

STATE OF SOUTH CAROLINA

VOLUME I OF III

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBIN RENEE HERNDON,

APPELLANT

APPELLATE CASE NO. 2016-001109

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State’s Exhibits No. 14, 16, and 17 (photographs), State’s Exhibit No. 34 (videotaped interview), Defendant’s Exhibits No. 1 – 29 (photographs), and Defendant’s Exhibits No. 1 – 6 (photographs) from Sentencing Hearing dated May 9, 2016

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF AIKEN) COURT OF GENERAL SESSIONS
3) 2014-GS-02-00664

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Robin Renee Herndon,)
8 Defendant.)

9 February 29 - March 8, 2016
10 Aiken, South Carolina
11
12

13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
15 jury.
16

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1 both have a fair trial in this case.

2 All right. We'll see you tomorrow morning at
3 9:30. Thank you.

4 (WHEREUPON, the jury is excused for the
5 day 1:05 p.m.)

6 THE COURT: Any objections or exceptions?

7 MR. JUSTIS: None from the State, Your Honor.

8 MR. LEIENDECKER: None, Your Honor.

9 THE COURT: All right. It's about 1:05 now,
10 and my court reporter is eager to find some good
11 food here. We will go ahead and take a lunch
12 break. I have no idea where we're going. Let's
13 start back -- it's about five after. Let's start
14 back about 2:15.

15 You have your witnesses prepared, lined up to
16 be here this afternoon?

17 MR. LEIENDECKER: Yes.

18 THE COURT: All right. We'll just work this
19 evening until we finish. Any other motions other
20 than the immunity motion filed by -- any motions?

21 MR. LEIENDECKER: Jackson v. Denno.

22 THE COURT: Denno. I was going to ask you any
23 Denno.

24 And your witnesses are lined up for that also?

25 MR. JUSTIS: That's correct, Your Honor.

1 MR. LEIENDECKER: It will be a simple matter,
2 but I do have a notion for confirmation or
3 compliance with Brady that I just want to put on
4 the record.

5 THE COURT: Okay.

6 MR. LEIENDECKER: I also would like to, before
7 we start, after the immunity hearing is over, put
8 the -- a confirmation of the offer from the State
9 on the record and get my client to acknowledge that
10 she was aware of that and chose to go forward.

11 THE COURT: All right. That's appropriate.

12 All right. See you at 2:15.

13 (WHEREUPON, a lunch break was taken at
14 1:08 p.m.)

15 (WHEREUPON, the proceedings resumed at
16 2:30 p.m.)

17 THE COURT: All right. You may be seated.

18 Good afternoon. Real quick before we get
19 started, Juror Number 5 has called and has an
20 issue, something about when he went back to work,
21 one person was out and so therefore he wants to --
22 he needs to be at work. It is only one other
23 person other than himself. He works at Mercedes
24 Benz. I told him I thought that Mercedes Benz
25 could probably figure it out. He wants to be

1 excused, the Alternate Number One. I was going to
2 discuss it with you. I hate to start letting
3 jurors go this early in the trial, that is my only
4 concern.

5 Any position from the State or the Defense?

6 MR. JUSTIS: No position from the State, Your
7 Honor.

8 THE COURT: I think I'll keep him.

9 MR. LEIENDECKER: None from the Defense, Your
10 Honor.

11 THE COURT: It is a little early. I mean, he
12 works for a company, so I'm sure they can figure it
13 out.

14 All right. I'll be glad to hear from the
15 State regarding any pretrial motions.

16 MR. SORENSON: The bondsman is back. Are you
17 prepared to kind of handle that?

18 MR. LEIENDECKER: Yes, Mr. Wilson is back,
19 Your Honor, having reviewed and checked his file if
20 you want to do that first.

21 THE COURT: You can come on up, sir. All
22 right. And you're still under oath. I'll be glad
23 to hear from you, sir.

24 The State had a question regarding the
25 Defendant's following, I guess, the GPS tracking

1 and the GPS tracking company. Do you have any
2 further information?

3 MR. WILSON: Yes, ma'am. My understanding is
4 that the -- there was a consent between the
5 Defendant's attorney and the Solicitor's Office
6 that they get a GPS tracking device on her. That's
7 the only knowledge I had concerning a GPS tracking
8 device. I did not know she was on a GPS tracking
9 device, ma'am.

10 THE COURT: Okay. All right.

11 MR. LEIENDECKER: He was also going to check
12 her compliance with his requirements regarding
13 reporting and calling in, and those kinds of
14 things.

15 THE COURT: Yes, sir.

16 MR. LEIENDECKER: And if she has followed his
17 instructions.

18 THE COURT: Yes, sir.

19 MR. WILSON: Yes, ma'am, I do have a printout
20 and everything of her check-ins and walk-ins.

21 And would you like to have a copy, sir, either
22 one?

23 MR. JUSTIS: That's fine, Your Honor.

24 MR. LEIENDECKER: I'm okay.

25 THE COURT: So you feel comfortable remaining

1 on the bond?

2 MR. WILSON: Yes, ma'am.

3 THE COURT: All right. Anything else from the
4 State or the Defense?

5 MR. JUSTIS: Nothing, Your Honor.

6 THE COURT: All right. I will allow her to
7 stay on the bond with the GPS tracking and no
8 infractions. She is not to have any infractions,
9 meaning she needs to be where she is supposed to
10 be. I'm assuming --

11 Is she on house arrest?

12 MR. LEIENDECKER: She is out on curfew. She
13 has a curfew, Your Honor, and it requires her to be
14 in by 10:00 p.m. and not out before 6:00.

15 MR. JUSTIS: I think it is 10:00 to 6:00.

16 THE COURT: All right. Thank you.

17 MR. WILSON: Thank you, ma'am.

18 THE COURT: All right. I'll be glad to hear
19 from the State.

20 MR. SORENSON: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. SORENSON: I think the first matter that
24 we've agreed we're going to take up is the Jackson
25 v. Denno hearing. There is a brief oral statement

1 that was allegedly made by the Defendant at the
2 scene of the incident to one of the responding
3 officers. And then there is a videotaped statement
4 that she makes to investigators afterwards. Those
5 are basically two separate statements that we've
6 gotten.

7 THE COURT: Yes, sir. You may proceed.

8 MR. SORENSON: The State calls Lieutenant
9 Marcus Padgett.

10 (Witness approaches.)

11 THE CLERK: Place your left hand on the Bible
12 and raise your right.

13 (Witness complies.)

14 THE CLERK: The testimony that you shall give
15 the Court in this case will be the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 THE WITNESS: It is.

18 THE CLERK: Have a seat in the witness box,
19 stating your full name, spelling your last for the
20 Court, please.

21 (Witness seated.)

22 THE WITNESS: Lieutenant Marcus Padgett,
23 P-A-D-G-E-T-T.

24 MARCUS PADGETT,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SORENSON:

Q Lieutenant Padgett, if you would, tell the Court where it is that you're employed.

A The Aiken County Sheriff's Office.

Q And how long have you been employed with the Aiken County Sheriff's Office?

A Since 1998.

Q Okay. And what are your current duties there?

A Currently assigned to Bravo shift, patrol supervisor. Temporarily detailed to IT systems and security.

Q Back in November of 2013, in what capacity were you employed with the Aiken County Sheriff's Office at that time, sir?

A Patrol supervisor for Bravo shift.

Q I want to turn your attention if I could to the afternoon of November 6th of 2013. Did you have an occasion that afternoon to be dispatched somewhere about 2:14 or so in the afternoon?

A I did.

Q Can you tell the Court where it is that you were dispatched to?

A I was dispatched Sudlow Lake Road, North Augusta, South Carolina, in Aiken County.

1 Q Okay. And tell the Court, what was the nature of
2 that call that you were being dispatched to?

3 A We were dispatched to a shooting incident called in
4 by 9-1-1.

5 Q Okay. And were you one of the first officers that
6 responded to that scene?

7 A I was the first officer on scene.

8 Q Okay. And tell the Court just briefly kind of what
9 that scene was like when you arrived there that
10 afternoon.

11 A There was a couple of people out in the driveway,
12 there was other people up on the porch. It was
13 very chaotic. There had been some type of incident
14 that had transpired. From what we determined, it
15 had been a shooting incident.

16 At that time we identified two people that
17 were involved in the possible incident, that being
18 the victim and the Defendant in this case.

19 Q Okay. And where was -- the victim, Mr. Rowley,
20 where was he located at when you got there?

21 A He was sitting in a plastic lawn chair up on the
22 front porch of the residence.

23 Q Okay. And you indicated that the Defendant in this
24 case, Robin Herndon, was on the scene also?

25 A That's correct. When I arrived she was hovering

1 over him up on the porch also.

2 Q Okay. And what was her demeanor like at that time
3 when you arrived there?

4 A Very frantic. Possibly classified as hysterical at
5 that time.

6 Q And let me ask you, do you -- you had the
7 information at that point in time that there was a
8 shooting you were responding to. Did you see any
9 weapons at that time when you first arrived there?

10 A Upon initial arrival, no. We approached the front
11 porch and I did observe a holster on the side of
12 the Defendant. So at that time questions were
13 asked of her of where the weapon was, at which time
14 she responded that it was inside the residence.

15 Q Did you, in fact, at that point in time ultimately
16 secure a .40 Caliber Glock inside that residence?

17 A I did. Due to the scene security and safety, I
18 secured that weapon and placed it in my patrol
19 vehicle.

20 Q Now ultimately did EMS respond?

21 A Yes. We had a First Responder on scene as well as
22 EMS that arrived on scene to take care of the
23 victim.

24 Q Okay. And the Defendant in this case, Ms. Herndon,
25 where was she initially placed or taken or told to

1 go?

2 A She was initially on the porch by the victim. Due
3 to the scene and having to do the medical
4 treatment, she was asked to be escorted off the
5 porch by the deputy, who just escorted her straight
6 off the porch into the front yard directly in front
7 of the porch to get a little bit more room till we
8 could figure out what was going on.

9 Q Okay. And at that point in time when that was
10 done, did you have any idea exactly what had
11 happened out there at that time?

12 A No, the scene was that chaotic. We just know that
13 somebody had been shot .and we did not know
14 anything else. We didn't know who had done the
15 shooting or anything. So we were still in the
16 initial stages of just trying to find out what had
17 transpired.

18 Q Okay. And did you have an opportunity, Lieutenant,
19 to talk to Ms. Herndon out there on the scene?

20 A I did. Once we had started medical treatment, I
21 then went back to her to try and see if we could
22 find out the basics of the case just to see what
23 had happened, at which time she did give some oral
24 statement to me.

25 Q Okay. Let me ask you, had she been placed in

1 custody at that point in time?

2 A No, she had not been placed in custody. Her
3 freedom of movement had not been denied. And she
4 had no inkling that we had -- we didn't even know
5 that she was fully involved at that time.

6 Q Other than just asking her to come off of the
7 porch?

8 A That's correct.

9 Q And if you would, tell the Court then what it was
10 that she -- did she give you a brief, kind of oral
11 statement out there then about what had happened?

12 A She did. She did state that she had been arguing
13 with the victim. And at one point that she had
14 even -- there was pushing and shoving that had been
15 going on. At one point that she had fallen to the
16 ground. They then started pushing and fighting
17 again, at which time the subject -- the victim
18 grabbed her, and she drew her weapon and ordered
19 him back.

20 She stated that he then grabbed her again, at
21 which time she advised that the gun discharged.

22 Q Is that kind of the sum of what she told you out
23 there on the scene?

24 A That's correct. That's the only information that
25 was provided once we got just the basics of what

1 was going on. That was it from my side.

2 Q And at that point in time was she ultimately
3 escorted back to the Aiken County Sheriff's Office
4 to be kind of further questioned about this
5 incident?

6 A It was that -- once the scene had been transferred
7 over to our criminal investigations division, they
8 asked that we have her transported up to the Aiken
9 County Sheriff's Office to be questioned further.

10 Q Were you involved at all in that questioning?

11 A I was not.

12 MR. SORENSON: Beg the Court's indulgence.

13 (Pause.)

14 Q Thank you, Lieutenant. Please answer any questions
15 that Mr. Leiendecker may have.

16 CROSS-EXAMINATION

17 BY MR. LEIENDECKER:

18 Q Lieutenant, just a few things. You said you
19 arrived on the scene on November 6th, 2013, and it
20 was chaotic. Was that the word you used?

21 A Yes.

22 Q It was chaotic not just with Robin and the victim
23 on the porch, but people were upset in other places
24 around the yard; correct?

25 A There were only two other individuals that were

1 initially present. Those were in the driveway out
2 by the roadway. The only other two people involved
3 that we were talking to at that time, to describe
4 the chaotic, was the victim and the Defendant.

5 Q And the victim wasn't saying anything, so the chaos
6 was Robin Herndon?

7 A Correct.

8 Q All right. You stated -- and let me understand you
9 that -- excuse me, that she was free to leave. She
10 wasn't in any kind of custodial situation. Is that
11 really true? She could have -- at that point she
12 had blood on herself, there was a victim with a
13 bullet hole in his neck, she was on the porch
14 screaming hysterically. She could have gotten in
15 her car and just left?

16 A No.

17 Q You would have been okay with that?

18 A No. At any point in time for law enforcement, we
19 have to determine what transpired during an
20 incident. At that time the initial investigation
21 was ongoing and that we were still trying to keep
22 things in order and trying to figure out what was
23 going on. She was not under arrest, though, for
24 that situation.

25 Q But she was being detained? She wasn't free to

1 leave?

2 A Correct.

3 Q Okay. And you never gave her any Miranda or talked
4 to her about her rights under Miranda, did you?

5 A For initial, no, we did not. For initial
6 statements, to figure out what had transpired, we
7 have to do initial questions and initial
8 statements. That's it. Once you --

9 Q Let me ask you that, is that a policy because there
10 is certainly nothing that prohibits you from giving
11 any or everybody Miranda when you arrive at the
12 scene, is there?

13 A Miranda is only required once the arrest is made or
14 once you deny freedom of movement enough -- once
15 you have established what has transpired on the
16 scene, at that point is when we read Miranda.

17 Q Well, you and I have already discussed, and I
18 thought you just told me, she was not free to
19 leave. She was detained at the scene?

20 A For initial questioning and to figure out what had
21 transpired in the initial part of the incident.

22 Q That's a neat dichotomy, isn't it? She is not
23 detained pursuant to Miranda, but she is detained
24 pursuant to initial investigation and questioning?
25 Is that what you're telling me?

1 A No. What I said was, was that we have to do
2 initial investigation. Once you figure out the
3 initial investigation and at that point you
4 determine that she may be a subject and you are
5 denying freedom of movement, you question further,
6 then we would do Miranda. But at that point we
7 were still trying to figure out what had
8 transpired. We had no idea who she was. We had no
9 idea what had transpired. And we had to figure it
10 out because we have an individual that had been
11 shot and we didn't know what happened.

12 Q Was she free to leave, get in her car and leave?

13 A No.

14 Q Okay. You, by your own statement, and the written
15 supplemental report I have, first note right after
16 you get there that she has an empty holster on the
17 side of her waistband; is that correct?

18 A That's correct.

19 Q You asked her where the gun is; is that correct?

20 A She's the only other person that we could talk to;
21 that's correct.

22 Q You asked her where the gun is; correct?

23 A That's correct.

24 Q You write your report and call her subject and him
25 victim; right?

1 A In the report, yes. We typically have a subject
2 and a victim in our report.

3 Q Okay.

4 A But the report is done after the entire incident is
5 over.

6 MR. LEIENDECKER: I don't have any further
7 questions. Thank you, Lieutenant.

8 THE COURT: All right. Anything else from the
9 State?

10 MR. SORENSON: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SORENSON:

13 Q So, Lieutenant, when you first arrived there at the
14 scene, for all you know, she's a witness to this;
15 is that correct?

16 A That's correct.

17 Q So in that regard, I mean, she is somebody that
18 y'all are going to want to talk to; right?

19 A That's correct.

20 Q So in that regard, when Mr. Leiendecker asked you
21 she was not free to go, she's somebody that, I
22 mean, y'all are going to have to talk to one way or
23 another, whether she ends up being the shooter or
24 not; is that correct?

25 A That's correct.

1 Q But it wasn't until -- the initial questioning is
2 an attempt to figure out what was going on out
3 there, who your subject is, obviously know who the
4 victim is; is that correct?

5 A That's correct.

6 Q And identifying any other witnesses?

7 A That's correct.

8 MR. SORENSON: That's all I have.

9 MR. LEIENDECKER: Very briefly.

10 RECROSS-EXAMINATION

11 BY MR. LEIENDECKER:

12 Q But your report says, Because of concern regarding
13 the situation, you immediately removed the weapon
14 from the house and put it in the back and locked it
15 in your car because it was close to the subject.
16 Close to Ms. Herndon; right?

17 A Scene security requires that we secure the scene.
18 Safety of the individuals, safety of our First
19 Responders, at which time the weapon, which was
20 loose, and near the victim, and anybody else we had
21 no knowledge that may have been inside, the weapon
22 was secured and returned to my patrol car to be
23 locked.

24 Q Tell me in your report where you show concern
25 regarding the two individuals standing down at the

1 street.

2 A They were not near where the victim was.

3 Q They weren't covered in blood either, were they?

4 A No.

5 Q All right.

6 THE COURT: All right. You may step down.

7 THE WITNESS: Thank you, Your Honor.

8 (Witness steps down.)

9 THE COURT: Any other witnesses?

10 MR. SORENSON: Not as to that oral statement.

11 So do we want to just kind of do all of it, and
12 then handle all of the statements at the end, or
13 how do you want to --

14 THE COURT: You can continue on, yes, as to --
15 so how many statements?

16 MR. SORENSON: There's a video statement that
17 has got, I guess, maybe two officers involved with
18 the Miranda and that statement.

19 THE COURT: All right. Well, let me hear from
20 you all as to this statement, and then we'll move
21 on to that one.

22 MR. SORENSON: It is the State's position she
23 is not in custody, so therefore Miranda is not
24 necessary. It is an officer arriving on the scene.
25 He noticed a person that is obviously dealing with

1 the victim on the porch that is covered in blood,
2 that they get off -- I mean, while she may not be
3 free to leave, it was more than -- I mean, she is
4 obviously a witness to what is going on. So in
5 that regard, it is clearly somebody that they are
6 going to want to talk to in that regard. But it
7 isn't until basically they get this brief oral
8 statement from her and at that point in time
9 realize that she is actually the individual that
10 shot this person, that she was at that point in
11 time taken into custody at that time. That's why,
12 as you're going to hear in a few moments in
13 subsequent questioning of her, that he Mirandized
14 her before any additional questioning. Initially,
15 I mean, it's just -- literally, just an officer
16 arriving. I mean, Mr. Leiendecker, I guess would
17 want him to just start Mirandizing every person out
18 there before they attempt to even figure out who
19 everybody is. And I just don't think that's --
20 that's not, first of all, not what the law
21 requires, but I don't think that is, honestly,
22 quite practical either.

23 THE COURT: All right.

24 MR. SORENSON: That's all from the State.

25 THE COURT: Yes, sir?

1 MR. LEIENDECKER: Thank you, Your Honor.

2 Mr. Sorenson and I could argue actual
3 practicability regarding that. It is not a real
4 difficult task. But that is really not the point
5 that the Defense was attempting to make.

6 In reading the report that the officer wrote
7 and listening to him testify, it is obvious that
8 there was a suspect regarding this. It was obvious
9 that she had the holster on herself. It is obvious
10 that she was the one that had blood on her. It is
11 obvious that she was the one that was hysterical.
12 There were only three people other than the victim
13 on the scene. And the other two were immediately
14 identified as traffic directors standing down at
15 the end of the driveway to direct.

16 He then, after he removed the gun from the
17 house, sent her down into the front of the yard and
18 then went down with her into the front of the yard
19 and began talking with her about this case.

20 I think it's obvious what they understood.
21 It's obvious that at that point she is physically
22 detained and unable to leave because she is a
23 suspect in the case, just as she is described. And
24 she was appropriately the kind of person that could
25 have or should have been given Miranda at that time

1 if they wanted to use this particular statement.

2 Now, they do all that when they take her to
3 the Aiken County Sheriff's Office and they get
4 statements from her there. And so I would ask that
5 these statements given to Lieutenant Padgett be
6 suppressed because of the failure to provide
7 Miranda to a subject who was a suspect in the case,
8 who was being detained at that time, and therefore
9 should have been afforded those rights under the
10 Fifth and Sixth Amendments to the United States
11 Constitution.

12 THE COURT: All right. Thank you.

13 Any response?

14 MR. SORENSON: Just real briefly, Your Honor.
15 As to Lieutenant Padgett, he covered this. I mean,
16 he is referring -- the lieutenant is referring to
17 her as the subject, but that is in a report that he
18 writes afterwards. It is obviously at that point
19 in time when she has been questioned, Mirandized
20 and arrested in this report he is referring to her
21 as subject. In fact, even in the report it even
22 says, he describes her initially as a female on the
23 scene, later identified as the subject.

24 But, yet again, I don't see how it is readily
25 apparent that she is the shooter when you arrive on

1 the scene. I think the vast majority of scenes, if
2 you arrived and you found an individual basically
3 hysterical with blood on them from dealing with a
4 shooting victim, that the vast majority of those
5 cases, that is probably not your shooter. So I
6 don't see how, as Mr. Leiendecker said, it is
7 readily apparent when they got out there that she
8 is going to be the subject and ultimately be the
9 person that did the shooting.

10 Obviously, she has got an empty holster and
11 there's a gun there, but, yet again, that's a whole
12 other issue as far as officer safety. I mean, they
13 are going to want to find out, Well, where is that
14 gun, and secure that.

15 THE COURT: All right. I think based on --
16 well, I find based on the testimony, the
17 Defendant -- at the time that the officer arrived,
18 the Defendant was not in custody at that time.

19 I think even Mr. Leiendecker said that the now
20 Defendant was allowed the opportunity to go down
21 into the front of the yard, move, walk away. She
22 was free. She was definitely freely moving around
23 the scene and was not in police custody at that
24 time.

25 For that reason, I will allow the statement,

1 the first part of the statement. I guess next we
2 need to hear the second. And I'll make a finding
3 that it appears based on the testimony that the
4 statement -- there was no coercion in giving the
5 statement. So the Court will allow that statement.

6 And you said you have another statement?

7 MR. SORENSON: Yes.

8 MR. LEIENDECKER: I'm sorry, Your Honor, just
9 for clarification of the record. I said she was in
10 the front of the property. She was not freely
11 walking around. And I want that clear for the
12 purposes of -- she was actually accompanied by an
13 officer. And the report clearly says he went down,
14 the officer was keeping her away from the scene.
15 They had sent her down there. She wasn't freely
16 wandering. And I want that as part of the record.

17 THE COURT: Well, and I guess when I say that,
18 she was moved from one part of the scene to
19 another.

20 MR. LEIENDECKER: By law enforcement.

21 THE COURT: Yes. All right. All right.

22 Thank you.

23 All right. Yes, sir?

24 MR. JUSTIS: At this time, Your Honor, the
25 State would call Special Agent Michael Perry.

1 (Witness approaches.)

2 THE CLERK: Place your left hand on the Bible
3 and raise your right.

4 (Witness complies.)

5 THE CLERK: The testimony that you shall give
6 the Court in this case will be the truth, the whole
7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes, ma'am.

9 THE CLERK: Have a seat in the witness box,
10 stating your full name, spelling your last for the
11 Court, please.

12 (Witness seated.)

13 THE WITNESS: Harold Michael Perry, P-E-R-R-Y.

14 HAROLD MICHAEL PERRY,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 MR. JUSTIS: Beg the Court's indulgence.

18 (WHEREUPON, State's Exhibit No. 33 was
19 marked for identification only.)

20 (WHEREUPON, State's Exhibit No. 34 was
21 marked for identification only.)

22 BY MR. JUSTIS:

23 Q Agent Perry, where do you work?

24 A South Carolina Law Enforcement Division.

25 Q And how long have you worked there?

- 1 A Twenty-five years.
- 2 Q And what is your job title there?
- 3 A I'm senior agent.
- 4 Q And what are a few of your duties you do as a
- 5 senior agent?
- 6 A At this time I am in the regulatory section. At
- 7 the time that this incident occurred, I was
- 8 assigned to the Midlands Investigative Region.
- 9 Q Okay. And did you have an opportunity to become
- 10 involved in the case involving Robin Herndon?
- 11 A Yes, I did.
- 12 Q How did you become involved?
- 13 A I was called by my supervisor and was asked to go
- 14 to the Aiken County Sheriff's Office, myself and
- 15 Agent Turner, to assist the Aiken Sheriff's Office
- 16 in an investigation of a shooting case that just
- 17 occurred.
- 18 Q And did you have an opportunity to speak with
- 19 Ms. Herndon?
- 20 A Yes, I did.
- 21 Q And where did you speak with her?
- 22 A At the Aiken County Sheriff's Office.
- 23 Q And when you spoke with her, who else was present?
- 24 A Investigator Brad Wertz and Agent Phillip Turner.
- 25 Q To the best of your knowledge, was the Defendant

1 under the influence of any drugs or alcohol?

2 A No, sir.

3 Q And did she appear to have any physical or mental
4 disability that would have impaired her ability to
5 understand what was going on?

6 A No, sir.

7 Q Could you describe the room where you met with her?

8 A It is an interview room, interview conference room
9 in the investigative section at the Sheriff's
10 Office.

11 Q And at that time was the Defendant under arrest?

12 A No, sir, she was not.

13 Q Was she free to leave?

14 A No, sir, she was not.

15 Q And tell me about some of the circumstances
16 surrounding your meeting with her.

17 A Okay. As I said, we were sent to assist the Aiken
18 County Sheriff's Office. We arrived there -- I
19 think we arrived about the same time Ms. Herndon
20 did. She was brought upstairs. We met with
21 Investigator Wertz with the Sheriff's Office, who
22 we would be assisting in the investigation. We
23 went in. We discussed some things. Went in and
24 let Ms. Herndon know that the victim had passed
25 away. Talked to her for a few minutes, then we

1 offered her Miranda at that time.

2 Q Okay. And when you offered her Miranda, how did
3 you do that?

4 A Actually, Detective -- or Investigator Wertz was
5 the one who actually read the Miranda to her. He
6 filled it out from a standard Aiken County
7 Sheriff's Office Miranda form. He read the form to
8 her. He read off each line. He would ask her to
9 initial out beside each line, which she did. Then
10 at the bottom it would ask, Did you understand
11 these rights? Then it went into the waiver of
12 rights, which she signed. She signed it, put the
13 time on it, and then I witnessed it at the bottom.

14 Q And were you there for that entire conversation?

15 A Yes, sir, I was.

16 Q I'm showing you now what has been marked as State's
17 Exhibit 33. Do you recognize that?

18 A Yes, sir, I do.

19 Q And what does that appear to be?

20 A It is an Aiken County Sheriff's Office Miranda
21 warning.

22 Q And is that the form that Ms. Herndon filled out?

23 A Yes, sir, it is. It has got her signature and my
24 signature at the bottom.

25 Q Could you go through that form and explain to the

1 Court what is included on that form?

2 A Okay. The heading is the typical Aiken County
3 Sheriff's Office logo. It has got a place then for
4 the date, which is 11/6/13, and the time is 3:50
5 p.m. It has got a box for the subject's initials
6 out beside each question.

7 And each question reads: Before we ask you
8 any questions, you must understand your rights,
9 which she initialed beside that. You have the
10 right to remain silent. She initialed beside that.
11 Anything you say can and will be used against you
12 in a court of law, which she initialed beside that.
13 You have the right to talk to an attorney before
14 advice -- for advice before we ask you any
15 questions and have him or her present during
16 questioning, which she initialed that. If you
17 cannot afford an attorney, the Court will appoint
18 an attorney to represent you without cash if you
19 wish. She initialed that. If you decide to answer
20 questions now without an attorney present, you will
21 still have right to stop answering at any time.
22 You also have the right to stop answering at any
23 time until you talk to an attorney. She initialed
24 that.

25 Then it has a line that says, I have read the

1 statement of my rights and understand what my
2 rights are, which she signed it right there, Robin
3 Herndon.

4 Below that, there is a box headed, Waiver of
5 rights: I am willing to make a statement and
6 answer questions. I do not want an attorney at
7 this time. I understand and know what I am doing.
8 No promises or threats have been made against me --
9 made to me, and no pressure or coercion of any kind
10 has been used against me. And she put her initials
11 there.

12 Below that box, it has a place for her
13 signature, the time, which she signed, and then she
14 put the time in at 3:55 p.m. Then I witnessed it
15 under her signature.

16 Q Is that your signature on that form?

17 A Yes, sir, it is.

18 Q Now, when you spoke with her and she was being
19 advised of these rights, did she appear to
20 understand these rights?

21 A Yes, sir, she did.

22 Q Could she understand English?

23 A Yes, sir.

24 Q What about her work experience, were you familiar
25 with what type of job she had?

1 A Yes, sir. She had worked for Probation, Pardon and
2 Parole. Before that, she had worked for SLED,
3 which me and Robin worked together some at SLED.
4 And before that she had worked for the Edgefield
5 Sheriff's Office. And I believe she has got prior
6 experience before that, but I'm not sure of where.

7 Q So it would be a fair statement to say she was
8 familiar with the criminal justice system?

9 A Yes, sir.

10 Q Did she appear rational and responsive to
11 questions?

12 A Yes, sir, she did.

13 Q And did anyone threaten or coerce her in any
14 fashion?

15 A No.

16 Q How did the Defendant respond when asked whether
17 she wanted an attorney before she spoke to police?

18 A She said she wanted -- she understood her rights
19 and wanted to give a statement.

20 Q And to the best of your knowledge, did she ever
21 later change her mind and ask to speak to an
22 attorney?

23 A Not in my presence, she didn't.

24 Q And to the best of your knowledge -- were you
25 present for her actual statement after she was

1 advised of her rights?

2 A No, I wasn't.

3 Q Who was present? Do you know who was present for
4 that?

5 A Investigator Brad Wertz and Agent Phillip Turner.

6 MR. JUSTIS: Beg the Court's indulgence.

7 (Pause.)

8 MR. JUSTIS: No further questions. Please
9 answer any questions Mr. Leiendecker may have.

10 CROSS-EXAMINATION

11 BY MR. LEIENDECKER:

12 Q Agent Perry, you say that you were familiar with
13 Robin and knew her from years that she had actually
14 even worked at SLED and you had worked with her; is
15 that correct?

16 A Yes, sir, it is.

17 Q And was it just before you handed her this Miranda
18 consent and warning form that you informed her that
19 the man that she described as her fiancée was dead?

20 A I believe it was a little while before that. It
21 was -- that was before we actually began
22 interviewing.

23 Q Could you describe her physical appearance that day
24 when you were working over this form with her?

25 A Yes, sir. When she first arrived, she had blood

1 all over her. She had blood on her hands, on her
2 shirt. She was very upset. Before we did the
3 interview, or whatever, I think she was allowed to
4 clean-up and all. So.

5 Q Okay.

6 MR. LEIENDECKER: I don't have any further
7 questions at this time.

8 THE COURT: All right. Anything else from the
9 State?

10 MR. JUSTIS: Not for this witness, Your Honor.

11 THE COURT: All right. You may step down.

12 (Witness steps down.)

13 THE COURT: Call your next witness.

14 MR. JUSTIS: The State calls Agent Phillip
15 Turner.

16 (Witness approaches.)

17 THE CLERK: Place your left hand on the Bible
18 and raise your right.

19 (Witness complies.)

20 THE CLERK: The testimony that you shall give
21 the Court in this case will be the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: Yes, ma'am.

24 THE CLERK: Have a seat in the witness box,
25 stating your full name, spelling your last for the

1 Court, please.

2 (Witness seated.)

3 THE WITNESS: My name is Phillip Turner,
4 T-U-R-N-E-R.

5 PHILLIP TURNER,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JUSTIS:

9 Q Thank you, Agent Turner. Could you explain to the
10 Court where you work?

11 A I work for the South Carolina Law Enforcement
12 Division in the Midlands Region of Investigative
13 Services.

14 Q And what are some of your duties?

15 A We investigate cases as assigned by supervision,
16 which comes down from the governor or Attorney
17 General's Office. We do murder cases, generally
18 criminal cases. Oftentimes we'll investigate cases
19 to assist local agencies.

20 Q And is that how you became involved in this case?

21 A Yes, sir.

22 Q And did you have an opportunity to participate in
23 an interview of the Defendant, Robin Herndon, on
24 November 6th, 2013?

25 A Yes, sir, I did.

1 Q Who else was present for that interview?

2 A Myself and Brad Wertz for the actual formal
3 interview part. Prior to that, Special Agent Perry
4 was in the room as well.

5 Q And were you in the room when the Miranda form was
6 reviewed with the Defendant?

7 A Initially, or the second time when we reviewed it?

8 Q Initially.

9 A Initially, yes, sir.

10 Q Okay. And you mentioned the second time. When was
11 the second time when it was reviewed?

12 A When we sat down to conduct a formal interview, it
13 was myself and Investigator Wertz, which is on
14 camera. We sat down and just went back over it one
15 more time. Just showed it to her, Do you remember
16 your rights. Investigator Wertz did.

17 Q Okay. I'm showing you what has been marked as
18 State's Exhibit 33. Do you recognize that?

19 A Yes, sir. That's her Miranda warning from that
20 day.

21 Q Okay, thank you. You mentioned that you and
22 Detective Wertz conducted an interview with
23 Ms. Herndon; is that correct?

24 A Yes, sir.

25 Q And was that interview recorded in any fashion?

1 A Yes, sir. It was recorded by video.

2 Q Okay. I'm showing you what has been marked as
3 State's 34. Do you recognize that?

4 A That appears to be the disk from the interview.

5 Q And did you have an opportunity prior to court
6 today to view the interview?

7 A I have seen it.

8 Q And the recording of the interview that you viewed,
9 did it appear to be a fair and accurate
10 representation of the interview from that day?

11 A Yes, sir.

12 Q Did it appear to be tampered with in any fashion?

13 A No, sir.

14 Q During that interview, was the Defendant free to
15 leave?

16 A No, sir.

17 Q And at any time during the interview did she ask to
18 stop?

19 A No, sir.

20 Q Did she ask to speak to an attorney?

21 A No, sir.

22 Q Was she denied any food or water or comfort breaks?

23 A No, sir.

24 Q Could you describe just real briefly the room that
25 this took place in?

1 A It is a small, probably 10 x 12 conference room
2 like you normally see. It has a table, I believe
3 there are six or eight chairs around it. It's not
4 crammed or anything. Everybody has their own, I
5 guess, room to talk, room to sit, table in the
6 middle. There is a video camera on a tripod, just
7 a small one, like a personal camera, sitting off to
8 the side of the room.

9 Q And the Defendant has been described as having been
10 distraught that day.

11 A Yes, sir.

12 Q Would that be a fair statement?

13 A Yes, sir.

14 Q Was she distraught to the point where she couldn't
15 communicate?

16 A No, sir, she could communicate.

17 Q Do you feel she was able to understand what was
18 going on?

19 A Yes, sir.

20 Q And were her answers to questions rational and
21 responsive?

22 A Yes, sir.

23 Q Did you or anyone else threaten or coerce her in
24 any way?

25 A No, sir.

1 Q Make her any promises if she were to give a
2 statement?

3 A No, sir.

4 Q And to the best of your knowledge, was the
5 Defendant's statement freely and voluntarily given?

6 A Yes, sir.

7 MR. JUSTIS: No further questions.

8 CROSS-EXAMINATION

9 BY MR. LEIENDECKER:

10 Q Agent Turner, you were a witness to these events,
11 is that your testimony?

12 A Yes, sir.

13 Q To the Miranda and to the second review of Miranda?

14 A Yes, sir.

15 Q You didn't administer Miranda?

16 A No, sir.

17 Q You didn't have the signatures or initials placed
18 on the form?

19 A No, sir.

20 Q And when the interview actually progressed or
21 proceeded, it was Detective Wertz doing the talking
22 or questioning for the most part; is that correct?

23 A We both asked questions as we felt needed.

24 Q Okay. Was it you or Detective Wertz that began
25 filling in the blanks concerning the law for Robin

1 during the interview?

2 A I'm not -- I can't remember exactly how the
3 interview went. We'd have to look at the video.

4 Q Okay. You've just reviewed the video?

5 A I've reviewed it since that day. I haven't just
6 reviewed the video. I haven't seen the video
7 recently.

8 Q So the disk you identified, you're not certain
9 what's on that disk?

10 A I've seen -- we saw that disk, we've talked about
11 that disk before in trial prep. I know that's the
12 disk. I haven't watched it completely through in a
13 while from start to finish. I know what's on the
14 disk.

15 Q Okay. I'm just a little confused. When you began
16 trial prep, did you look at that disk to see if it
17 conformed with what took place on that day on
18 November 6th?

19 A Yes, sir, I've watched that disk before.

20 Q No, that's not the question. I understand that's
21 the answer you want to give me, but the question
22 is --

23 A Sir, it has been --

24 Q When you got --

25 A Can I answer --

1 Q When you got together for trial prep, did you
2 review that disk to make sure it's the same disk
3 from the day of the interview?

4 A Okay. Let me expound upon my answer. We began
5 trial prep in this case over a year ago, the first
6 time I met Mr. Justis. At that time we all
7 reviewed that disk together and watched it through,
8 because there were certain things that were said
9 during the disk and certain things that were said
10 during the interview that we reviewed together at
11 the interview room, the same room where she was
12 interviewed at the Aiken County Sheriff's Office.
13 I'm trying to be very clear for you right now.

14 Q That's all I want.

15 A I've seen that disk with him on a laptop computer
16 on the same table where she was interviewed. And I
17 can tell you that that disk contains the entire
18 interview and has not been tampered with. Since
19 then, I have not sat down and watched that disk in
20 its entirety. But when we began trial prep, which
21 is your question, I watched that disk in its
22 entirety and I have seen it. That has been over a
23 year ago when we began trial prep, sir.

24 So if you ask, Recently have you watched it
25 again -- me, recently is within a year, 12 months.

1 So let's be very clear as to what recent means.

2 You asked when we began trial prep. Yes, sir,

3 that's the answer to the question.

4 Q Okay. I appreciate the explanation --

5 A Yes, sir.

6 Q -- and/or the lecture as it goes. But I'm asking
7 you, do you -- have you reviewed that disk and how
8 do you know that that disk contains what you saw
9 over a year ago?

10 A That's the same disk I saw then. We looked at it
11 and he showed it to me then.

12 Q All I'm asking is how do you know that that's the
13 same disk?

14 A It appears to be the same, sir.

15 Q Did you put your initials on it?

16 A I don't remember putting my initials on it, no,
17 sir.

18 Q Did you mark it in any way so that you could
19 further identify it?

20 A No, sir, I didn't.

21 Q All disks, wouldn't you say, look strikingly
22 similar? All optic CDs look strikingly similar,
23 don't they?

24 A What is an optic CD?

25 MR. JUSTIS: Objection, Your Honor. If

1 Defense counsel would like, we can play the disk
2 right now and he authenticate it right now.

3 A We can do that. I'd appreciate that.

4 MR. LEIENDECKER: That's all I'm asking.

5 THE COURT: When you redirect, you can
6 introduce it and play the video.

7 BY MR. LEIENDECKER:

8 Q And during the course of this, you asked questions
9 as well as Detective Wertz; is that correct?

10 A Yes, sir.

11 Q And you don't remember who it was that gave
12 opinions concerning the law and weapons and the
13 standard for police officers, is that your
14 testimony?

15 A I don't remember line by line what each person
16 said, and I'm not going to sit here and pretend.

17 Q Do you remember saying that? Do you remember
18 giving that advice or citing those?

19 A I don't remember anybody citing specific law. I
20 remember us going over and Mr. Wertz saying, So you
21 pulled the gun, you didn't pull the gun, you picked
22 it back up? And we both went through this because
23 it was somewhat -- for a moment there to make sure
24 it was straight as to what she was saying. I know
25 we went back and forth through this thing numerous,

1 numerous times and to make sure that we had a very
2 clear view of what she was trying to tell us.

3 Q Would you describe Robin that day, physically?

4 A White female, five-foot -- I mean, she's bloody.
5 Her hair is little disheveled. She looks upset.
6 You can tell she visibly had been crying.
7 Initially she had blood on her. We -- that's about
8 it.

9 Q All right.

10 MR. LEIENDECKER: And if it will help the
11 Solicitor and the Court, the Defense doesn't care
12 if Agent Turner reviews it at this time, but we
13 think before it is given to and introduced into
14 evidence, it will need to be authenticated and
15 reviewed. That's all I'm saying. I'm asking how
16 he knows that's the disk.

17 THE COURT: It's up to the State. You can
18 show it to him now or I'll be glad to -- I'm not
19 sure how -- is there some kind -- do you have a TV
20 or something?

21 MR. SORENSON: It's about 40 minutes long. I
22 mean, that's what we were trying to avoid.

23 THE COURT: I don't want to waste part of his
24 motion and I don't want to restrict to you on the
25 motion. Is that a part of --

1 MR. LEIENDECKER: You wouldn't be restricting
2 me on my motion at this time, Your Honor. But I
3 would reserve the right to move to exclude the
4 interview if it turns out not to match up with what
5 he saw a year ago. And, also, I have -- and I've
6 also given to the Solicitor, when we do get to it,
7 even if it is not suppressed, I have request that
8 portions of it be stricken or redacted before
9 presented to a jury. But at this point, we're not
10 there.

11 It is kind of -- we're kind of at an odd spot,
12 Your Honor, because we are prepping for a motion
13 hearing that is going to be argued in front of Your
14 Honor. And my thoughts about what you can and
15 can't see are really different than what a jury can
16 or can't see. So I'll withhold any motion to
17 suppress it at this time and reserve that until
18 later if further evidence comes up that provides
19 the opportunity for me to make said motion.

20 THE COURT: Yes, sir?

21 MR. JUSTIS: And, Your Honor, I think what
22 Mr. Leiendecker is concerned about, near the end of
23 the video there is a portion where Detective Wertz
24 is having a back and forth with Ms. Herndon, and
25 there are some things that he says that I think,

1 you know, concerns Mr. Leiendecker because he
2 starts talking about the law, and things like that.
3 So that's, I think, what he's referring to is that
4 portion. I think he might have a concern that some
5 of that might need to be redacted if the video is
6 going to be shown to the jury.

7 THE COURT: All right. Any other questions of
8 this witness?

9 MR. JUSTIS: No, Your Honor.

10 THE COURT: Any other questions?

11 MR. LEIENDECKER: No.

12 THE COURT: You may step down.

13 (Witness steps down.)

14 THE COURT: Call your next witness.

15 MR. JUSTIS: The State has no further
16 witnesses, Your Honor.

17 THE COURT: All right. Yes, sir, I'll be glad
18 to hear from the State.

19 MR. JUSTIS: The State would argue, Your
20 Honor, that the videotape is admissible. She was
21 in custody. The officers testified to that. But
22 she was also given her Miranda and Miranda was
23 reduced to writing where she initialed. It was her
24 initials. They witnessed her initial it, and they
25 went over it with her. And then at the beginning

1 of the videotape they showed her the form again and
2 reminded her that this was the Miranda form that
3 they went over.

4 Based on her demeanor that day, obviously she
5 was upset. However, we heard from the officers
6 that she could understand what was going on. And
7 based on the length of the video, the 40 minutes
8 she is talking throughout that video, she is able
9 to describe in detail what happened that particular
10 day, so we'd say, you know, she obviously knows
11 what's going on. Based on her educational level,
12 and also her work experience. She had been in law
13 enforcement for over ten years at that point in
14 time. She worked for SLED. She worked for the
15 Sheriff's Department. She worked for probation.
16 She's very familiar with Miranda and her rights.
17 She has probably given Miranda to people in the
18 past.

19 So based on the totality of all those
20 circumstances, you know, the State feels that the
21 statement that she gave that was video recorded was
22 given freely and voluntarily.

23 THE COURT: Yes, sir?

24 MR. LEIENDECKER: As previously expressed to
25 the Court, I do not object at this time, but I

1 reserve the right to object if we find something
2 different. And I certainly maintain my right to
3 argue to the jury that it was not a voluntary
4 statement because of her mental condition at the
5 time.

6 THE COURT: All right. Based on the totality
7 of the circumstances and considering the standard
8 for the Court to consider for preponderance of the
9 evidence, I do find that the statement was
10 voluntarily given in reviewing the written consent
11 and also the officer's testimony regarding the
12 verbal consent.

13 Of course, that is contingent upon the video
14 that he has testified to being the video, which
15 needs to be established prior to introducing that
16 to the jury. I think that --

17 Does that take care of your concern?

18 MR. LEIENDECKER: Yes, Your Honor.

19 THE COURT: Okay. All right. Anything -- any
20 other statements?

21 MR. JUSTIS: No, Your Honor.

22 THE COURT: All right, any other motions from
23 the State?

24 MR. JUSTIS: None, Your Honor.

25 THE COURT: All right. Yes, sir, Mr.

1 Leiendecker?

2 MR. LEIENDECKER: Thank you, Your Honor. If
3 it please the Court, I've handed to the Solicitor
4 already, and I would hand up to the Court our
5 motion in alternative to redact the Jackson v.
6 Denno when we get -- or the statement when we get
7 to that under Jackson v. Denno.

8 THE COURT: Are you talking about the
9 statement he was just referring to?

10 MR. LEIENDECKER: Yes, but we don't need to
11 worry about that until we get to the view and Your
12 Honor will then see what we're talking about.

13 THE COURT: How many -- from my understanding,
14 you're asking the officer to review it himself?

15 MR. LEIENDECKER: No. I'm just asking when we
16 review it, that he confirm that this is, in fact,
17 that. I don't care if he reviews it himself or
18 not -- or if he views it when we all view it.

19 And I think it will become apparent to the
20 Court, just as the Solicitor has already observed,
21 that there are some comments at the end that,
22 certainly not just the Defense, but I think
23 everyone would find troubling and inappropriate for
24 the jury to hear.

25 But, again, Your Honor, I'm just passing it up

1 for your review now, and we'll deal with that when
2 they attempt to bring the video.

3 THE COURT: Let's see what parts of it we can
4 agree to.

5 MR. SORENSON: We're going to try to do that,
6 Your Honor. We are going to let probably Agent
7 Turner go now and go review that disk so he can
8 initial that he watched it. And then we've talked
9 a little bit about removing -- we've got somebody
10 that can try to redact out the part that we think
11 Mr. Leiendecker is talking about and put that on,
12 basically, a new disk upon redacting --

13 MR. LEIENDECKER: And I'll be happy to review
14 that.

15 MR. SORENSON: We probably won't get to
16 putting that it into evidence probably until
17 Wednesday morning, so we should be able to address
18 that.

19 THE COURT: And if there's a -- I guess what I
20 am trying to get to is if there's a portion that I
21 need to look at that you all do not agree on -- it
22 sounds like you agree on some portion at the end
23 where --

24 MR. LEIENDECKER: I think we may be 90 to 100
25 percent in agreement. If not, I'll --

1 MR. SORENSON: We know the part he's talking
2 about and agree to that.

3 THE COURT: Well, if there is any portion that
4 you all cannot agree on, I need look to it at. And
5 I'd rather do that -- I can look at it at night. I
6 mean --

7 MR. SORENSON: We can burn you a copy of it so
8 you have it.

9 THE COURT: Okay. Yes, that way, instead of
10 using court time, we can do it --

11 MR. LEIENDECKER: That's fine.

12 THE COURT: -- at night.

13 MR. LEIENDECKER: Your Honor, I also had
14 stated earlier when the Court asked about motions,
15 before we get to our Stand Your Ground Castle
16 Doctrine immunity motion, that -- and I'm certain
17 everything has been taken care of, but I want to
18 cross my t's and dot my i's with the motion
19 concerning Rule 5 and Brady compliance. I have
20 received everything the Solicitor has in their
21 file, and they have assured me that I have. I just
22 want to be certain that I've got that motion in
23 should something out of the blue or surprise come
24 up that I have not seen.

25 THE COURT: All right. Concerning his Brady

1 motion, any -- I guess, Brady/Riddle, is there any
2 statements or anything that will be introduced that
3 have not been discussed?

4 MR. JUSTIS: No, Your Honor. There was an
5 e-mail sent late last week.

6 MR. SORENSON: Did you get the e-mail from the
7 trace department?

8 MR. LEIENDECKER: Yes, I have. I got an
9 e-mail with 160 some pages, and I have all those.

10 THE COURT: All right.

11 MR. LEIENDECKER: And then, Your Honor, I
12 would ask the Court the favor of examining my
13 witness under Frye concerning the offer that was
14 placed --

15 THE COURT: Yes, sir.

16 MR. LEIENDECKER: -- in this case or offered
17 in this case and that I communicated with her.

18 It is and was my understanding in
19 communications with Assistant Solicitor Justis that
20 the State of South Carolina, through the
21 Solicitor's Office, offered Ms. Herndon the
22 opportunity to plead to voluntary manslaughter,
23 reducing the indictment from murder to voluntary
24 with a cap of 15. In fact, both Solicitor Justis
25 and I engaged in a conference call with the Court

1 concerning that offer. And after discussions with
2 my client, she determined that she did not want to
3 or she would not accept that offer. But I'd like
4 to make that a part of the record today.

5 THE COURT: All right. You want to officially
6 put the offer on the record, and then I can give
7 her --

8 MR. JUSTIS: Yes, Your Honor. As Mr.
9 Leiendecker has stated, the State did offer a
10 voluntary manslaughter plea with a cap of 15 years,
11 so that's a 2- to 15-year range.

12 THE COURT: All right. Let me have
13 Ms. Herndon stand up.

14 (WHEREUPON, the Defendant stands.)

15 THE COURT: Raise your right hand.

16 (Witness complies.)

17 THE CLERK: The testimony that you should give
18 the Court in this case will be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE DEFENDANT: I do.

21 THE COURT: All right. Ms. Herndon, you heard
22 the Solicitor and also your attorney recite in the
23 record the offer that was made by the State to you
24 in this case?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Is that your
2 understanding of the offer?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: I think it is a cap of 15 and
5 pleading to a voluntary manslaughter; is that
6 correct?

7 MS. JUSTICE: That's correct, Your Honor.

8 THE COURT: All right. Is that your
9 understanding, ma'am?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you understand voluntary
12 manslaughter has a minimum of two years, it is a
13 2-year sentence, so the minimum would be two years,
14 and then they have asked for a cap of 15. Is that
15 your understanding?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right, ma'am, you understand
18 you are charged with murder, and it carries between
19 30 and life. Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Do you understand that
22 murder is -- if you were convicted, it is a day for
23 day -- as far as sentencing, it is a day for day
24 time. There is no percentage off. Do you
25 understand that, ma'am?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. And knowing all of
3 that, you still wish to reject the offer of the
4 State; is that correct? And you always can ask for
5 an opportunity to speak with your attorney if you
6 need to, but do you wish to reject the offer of the
7 State? Do you need to take to your attorney?

8 MS. HINDS: Give me just a second, Your Honor.

9 THE COURT: Take your time.

10 (Pause.)

11 MS. HINDS: She is ready, Your Honor.

12 THE COURT: Yes, ma'am. I gave you some time
13 to speak with your attorney and, once again, the
14 offer of the State, how do you wish to proceed on
15 that, ma'am?

16 THE DEFENDANT: I do not accept the offer.

17 THE COURT: All right. Thank you.

18 All right. I think, Mr. Leiendecker, is that
19 all of your motions covered so far, except for the
20 immunity from prosecution?

21 MR. LEIENDECKER: Yes, Your Honor, at this
22 time, that's all my motions present before the
23 immunity.

24 THE COURT: All right. I'll be glad to hear
25 from you as to that motion.

1 MR. LEIENDECKER: Thank you, Your Honor. If
2 it please the Court, the Defense would call
3 Ms. Robin Herndon to the stand for the purpose of
4 testifying concerning Castle Doctrine and the
5 statutory immunity afforded.

6 THE COURT: All right. And can I just ask the
7 reporter to not use a flash? It is distracting.
8 You can use your camera, but not the flash. Thank
9 you.

10 (Witness approaches.)

11 THE CLERK: Place your left hand on the Bible
12 and raise your right.

13 (Witness complies.)

14 THE CLERK: The testimony that you shall give
15 the Court in this case will be the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 THE DEFENDANT: I do.

18 THE CLERK: Have a seat in the witness box,
19 stating your full name, spelling your last for the
20 Court, please.

21 (Witness seated.)

22 THE WITNESS: Robin Renee Herndon,
23 H-E-R-N-D-O-N.

24 ROBIN RENEE HERNDON,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEIENDECKER:

Q Robin, I want to talk with you about several things, including some of your background, your history as to how you got here to Aiken, South Carolina, ultimately leading us up not just through your job history and the events of your life, personal and professional, but taking us through the events that occurred on November the 6th, 2013, at your home on Sudlow Lake Road. All right?

A Okay.

Q It's my need and my desire that you speak up today.

A Yes, sir.

Q So that I can hear you, so that the judge can hear you -- because the judge ultimately has to gather all these facts and make a decision concerning this motion for immunity. Do you understand?

A Yes, sir.

Q All right. Robin, tell me a little bit about yourself. When were you born and where?

A I was born , in Clarksdale, Mississippi.

Q Did you grow up in Mississippi?

A Yes, sir.

Q Tell me about where you went to school and what you

1 did while you were in Mississippi.

2 A I went to Madison Richland High School, and then
3 went to Hinds Community College. I got an
4 Associate's Degree in criminal justice, and then I
5 went to Delta State University and got a Bachelor's
6 Degree in criminal justice.

7 Q All right. When did you get your Bachelor's
8 Degree? Do you remember?

9 A 1997.

10 Q All right. And when did you move from Mississippi,
11 and where did you move?

12 A I moved from Cleveland, Mississippi, to North
13 Augusta, South Carolina.

14 Q And when about or approximate was that?

15 A 1996.

16 Q Okay. You got your Bachelor's Degree in 1997, did
17 you say?

18 A Excuse me, I'm sorry, 1996.

19 Q Okay. So you -- when did you move in relation to
20 getting your degree from Delta State?

21 A I moved in the summer after I graduated.

22 Q Okay. And what brought you to North Augusta? Why
23 did you move there?

24 A My husband -- the man I was dating at the time, he
25 was from that area, and so we moved here.

1 Q Okay. And his name is?

2 A Dwayne Newton.

3 Q And you and Dwayne got married?

4 A Yes, sir.

5 Q And why did Dwayne move the family to North
6 Augusta?

7 A His father owns a business here.

8 Q Okay. Tell me a little bit about what you did in
9 1996 after you moved to North Augusta, South
10 Carolina.

11 A I worked briefly for a credit bureau in Augusta for
12 a little while. I worked here at the Aiken County
13 Clerk of Court's Office in the civil division for a
14 little while until I got pregnant. And then I had
15 my daughter in 1998.

16 Q And your daughter's name is?

17 A K.N.

18 Q How many daughters do you have?

19 A I have one biological and one adopted.

20 Q Okay. And how old are your daughters now?

21 A Eighteen and 15 -- excuse me, 17 and 15.

22 Q Okay. And what is your younger daughter's name?

23 A E.N.

24 Q After working at the Clerk's Office, tell me what
25 you did next professionally. I mean, you had your

1 child, but then you went back to work; is that
2 right?

3 A Correct. In May of 1999, I was hired by the
4 Department of -- South Carolina Department of
5 Probation, Parole and Pardon Services.

6 Q For which county?

7 A Aiken.

8 Q Okay. And what job were you hired for, what was
9 your responsibilities?

10 A I was a case load agent.

11 Q Please explain to me very briefly what a case load
12 agent is and what she does.

13 A We supervise offenders who have been convicted of
14 offenses by the board and their own supervision,
15 either probation or parole. They report in. We do
16 things such as drug screens, refer them for
17 counseling, and things of that nature.

18 Q Okay. And how long did you work for the Aiken
19 Department of Probation, Parole and Pardon?

20 A Till September of 2003.

21 Q Can you tell me the names of some of the agents you
22 worked with while you were there in 1999 to 2003?

23 A Marie Boulton, Mitchell Collins, Brian Wilson,
24 Anthony Wilson.

25 Q Who was your agent in charge at that time, if you

1 remember?

2 A Robert Perry.

3 Q All right. You say you worked there until -- from
4 1999 until 2003. Tell me about why you left
5 Probation and Parole in 2003.

6 A I wanted to pursue a career as an investigator, so
7 I wanted to get some road time. I felt like that
8 was appropriate, so I applied with the Lexington
9 County Sheriff's Department.

10 Q All right. Had you been trained at the Criminal
11 Justice Academy as part of your job with Probation,
12 and Parole and Pardon?

13 A Yes, sir.

14 Q And tell me about that training. When did you go
15 and what was it?

16 A They sent us to a training that's especially
17 formatted for probation and parole agents. And
18 then during the course of the years I was there,
19 they went back and C1 certified us and we were
20 required to fulfill those requirements that the
21 state had, such as defensive driving and legals so
22 that we would be -- could get our C1 certification.

23 Q So by the time you left Probation, Parole and
24 Pardon in Aiken County in 2003, had you been
25 through the Criminal Justice Academy certification

1 just as if you were any other law enforcement
2 officer?

3 A Yes, sir.

4 Q As part of that training, did you receive training
5 in the use of handguns and weapons?

6 A Yes, sir.

7 Q And did you qualify on that on a regular basis?

8 A Yes, sir.

9 Q Tell me about where you went once you went to
10 Lexington County. And you went as a road deputy;
11 is that right?

12 A A sheriff's deputy, yes, sir.

13 Q Okay. And what did you do? What were your
14 responsibilities?

15 A I was a -- answered calls for service, respond to
16 civil or criminal complaints, enforce traffic laws,
17 issue tickets or warrants when appropriate, attend
18 court.

19 Q So you wrote speeding tickets and went wherever you
20 were called as a road deputy; is that right?

21 A Yes, sir.

22 Q All right. How long were you with Lexington
23 County?

24 A Approximately six months.

25 Q Why so short?

- 1 A I had actually applied with the Edgefield County
2 Sheriff's Office when I applied with Lexington.
3 And I got a call from the Chief Deputy, Joel
4 Summer, and he asked me if I would be interested in
5 interviewing for a position that they had open and
6 I said -- he thought he had an investigator
7 leaving. And I said, Well, just give me a call if
8 that happens and I would be more than happy to come
9 out and interview.
- 10 Q Okay. So did he call you?
- 11 A Yes.
- 12 Q Okay. And tell me what happened then.
- 13 A I was hired with the Edgefield County Sheriff's
14 Office as their SVU investigator.
- 15 Q I'm sorry, tell me what that is again.
- 16 A Their Special Victims investigator.
- 17 Q Okay. And as a Special Victims investigator, what
18 kind of cases were you primarily responsible for in
19 Edgefield County?
- 20 A Child abuse, child neglect, vulnerable adults,
21 harassment, stalking, criminal domestic violence,
22 those -- cases of that nature.
- 23 Q Did you investigate these cases?
- 24 A Yes, sir.
- 25 Q Did you have to testify in some of these cases?

1 A Yes, sir.

2 Q Did you during this time continue to maintain all
3 of your certifications required with the Criminal
4 Justice Academy?

5 A Yes, sir.

6 Q All right. How long were you with the Edgefield
7 County Sheriff's Office in the role of their SV
8 investigator?

9 A June of 2007.

10 Q From 2000 --

11 A Oh, excuse me, March of 2004 to June of 2007.

12 Q All right. Why in June of 2007, after just over
13 three years, did you leave the Edgefield County
14 Sheriff's Office?

15 A I applied with the South Carolina Law Enforcement
16 Division and I was hired.

17 Q How did that come about, Robin? How did it come
18 about that you applied for and knew to look for a
19 job at SLED?

20 A I had met people through SLED while working as an
21 investigator with Edgefield and I was aware that
22 there was a position -- made aware there was a
23 position open. And so I applied.

24 Q What was that position you applied for?

25 A Criminal investigator in the Midlands region.

1 Q Okay. And how long was the process from the time
2 you interviewed until you secured a position?

3 A I interviewed in February and they hired me in
4 June.

5 Q Okay. During that time, was there a lot of
6 background and other information you had to provide
7 to see if you qualified to be a SLED agent?

8 A Yes, sir.

9 Q Obviously you qualified and you went to work there
10 in 2007; is that right?

11 A Correct.

12 Q Tell me how long you worked there and what your
13 responsibilities were while you were at SLED.

14 A We investigated cases of all nature that were
15 referred either by other agencies, state or county
16 agencies. We were an assisting agency and we would
17 assist with other investigations. We worked
18 everything from political corruption to murders.
19 It ranged.

20 Q Okay. But you didn't stay with SLED?

21 A No, sir.

22 Q Why was that?

23 A In 2010, I got divorced and I wanted to be closer
24 to my children, so I spoke to the agent in charge
25 of probation about trying to come back to work

1 locally.

2 Q Okay. Explain to the Court as you explained to me
3 in our conversations over the years, how it --
4 where you lived and how it was when you were
5 working in places like Lexington and Edgefield and
6 Columbia. Did you move to those counties?

7 A No, sir.

8 Q Or how was family life? What did you do?

9 A I commuted when I worked for Lexington and I
10 commuted when I worked for SLED. The main office
11 was in Columbia, but I was a resident agent in
12 Aiken County.

13 Q Okay. So did you continue to live in your same
14 residence here in north Augusta?

15 A Yes.

16 Q All right.

17 MR. LEIENDECKER: I apologize, Your Honor. I
18 didn't know that was even -- very sorry.

19 BY MR. LEIENDECKER:

20 Q When you went back -- you said you saw the agent in
21 charge in 2010 and asked if there was an opening.
22 Who was that again?

23 A Marie Boulton.

24 Q Okay. Marie was not the agent in charge you told
25 me about when you left back in 2003, was she?

- 1 A No, sir.
- 2 Q Okay. But was Marie someone you knew back then?
- 3 A Yes. Yes, sir.
- 4 Q Okay. Had she gotten promoted to agent in charge
- 5 since you left?
- 6 A Yes, sir.
- 7 Q Tell me how that conversation went, Robin. How did
- 8 you run into Marie and how did you find out about a
- 9 position?
- 10 A I think I ran into her at the gas station and we
- 11 were talking. And I just told her that if she had
- 12 any openings to let me know, that I was wanting to
- 13 come back to Aiken, that I wanted to be home more
- 14 on a regular basis and not on call all the time,
- 15 more 8:00 to 5:00.
- 16 Q All right. And did you hear from Marie about a
- 17 position?
- 18 A I did.
- 19 Q And did you ultimately take that position?
- 20 A Correct. I made what they call a lateral move. I
- 21 transferred from one state agency to another.
- 22 Q And that was important because you needed to
- 23 maintain your salary; is that right?
- 24 A Yes, sir.
- 25 Q All right. So in 2010 you come back to work at the

1 office where it all started, your law enforcement
2 career, the Aiken County Department of Probation,
3 Pardon and Parole; is that right?

4 A Yes, sir.

5 Q All right. What were your duties from through 2010
6 through 2013 at the department?

7 A I was supervising part of the case load and I was
8 also pre-parole and pardon investigator.

9 Q And what does that mean, pre-parole and pardon
10 investigation?

11 A We did -- we did investigations for people who were
12 eligible for parole that were being released. We'd
13 do things like verify residence, and things of that
14 nature. We also did interstate compact
15 investigations, and we handled pardon
16 investigations for people who had been convicted of
17 a crime and wanted to apply for, I guess, an
18 expungement is what you could call -- a pardon
19 applying for an expungement.

20 Q And how would you describe your relationship with
21 the people you worked with in the Aiken County
22 Probation Office?

23 A Good.

24 Q All right. Robin, during this time, after your
25 divorce and leading up to 2013, did you at some

1 point meet and become acquainted with a gentleman
2 named Christopher Rowley?

3 A Yes, I did.

4 Q Tell me about how you met Chris and how a
5 relationship between the two of you developed.

6 A Chris was actually an acquaintance. I met him a
7 couple of years earlier. And we started talking on
8 Facebook and just talking in general on the phone
9 and hanging out, just kind of hanging out and
10 spending time together.

11 Q And when would this hanging out and talking begin?
12 When did it begin, approximate month?

13 A January of 2013.

14 Q All right. In January of 2013 were you going
15 through something yourself concerning your marriage
16 to your second husband?

17 A Months before, he had -- he had left.

18 Q Were the two of you at that point separated and
19 living apart?

20 A Yes.

21 Q What were you and Chris talking about? What things
22 in common did you have?

23 A He had some -- he was kind of going through some
24 things. He had had some bad relationships as well.

25 Q You guys shared that in common and talked about it?

1 A Yes.

2 Q All right. Tell me how the relationship began to
3 grow and develop from January in 2013 into March of
4 2013.

5 A Like I said, we were hanging -- we were hanging out
6 and spending time together. And we started dating,
7 I guess.

8 Q Well, Robin, you have got to do more than guess.
9 Were you guys dating or not?

10 A Yes, sir, we were together -- we were dating.

11 Q All right. By March of 2013 there was a dramatic
12 change in your relationship. Tell me about that.

13 A Right around the end of February -- Chris was
14 living with a guy over in Augusta and his
15 girlfriend. And they wanted Chris to move out, and
16 Chris didn't have anywhere to go. And he spoke to
17 his mom about letting her -- letting him move back
18 in with her, and she wasn't willing to do that.
19 And so he started talking about other options. And
20 living with me was not really an option because I
21 couldn't -- I wasn't allowed to have a man live
22 with me that I was not married to.

23 Q All right. So tell me about Chris's employment at
24 the time. Why is Chris living with other people
25 and why is he having trouble finding a place to

1 live?

2 A He wasn't working at the time.

3 Q All right. He wasn't working. So as you and he
4 began to spitball or think about solutions to this,
5 what kind of proposals or solutions did you come up
6 with?

7 A I offered to buy Chris a camper. I was going to
8 put it in my back yard. That way he could still be
9 close, he just couldn't be in the house. But he
10 didn't really like that idea. He said he didn't
11 like being treated like an animal and forced to
12 stay in the yard. He didn't have any other place
13 to go.

14 Q What do you mean he didn't have any other place to
15 go?

16 A He spoke to his mom and she wasn't willing to let
17 him live with her. And his friend, you know,
18 wanted him to move out. So we started talking a
19 lot about it, and he, you know, really wanted me to
20 agree to let him move in with me.

21 Q Did you?

22 A Yes.

23 Q Why and when and how?

24 A Right around --

25 Q I know that's three questions, but pick any one and

1 answer it.

2 A Right around the first of March. And because I
3 cared about him and I didn't want him to be
4 homeless.

5 Q So he moved in your house in March?

6 A Yes, sir.

7 Q Tell me, was it a great relationship? You guys
8 having a good time? Everything going well?

9 A Everything up until that point had gone pretty
10 well, but things got really tense when the issue
11 came up about him not having a place to live.

12 Q What -- how did it manifest itself and got really
13 tense?

14 A He was under a lot of stress and so was I. And --
15 because I really -- I wanted to help him and I
16 really didn't know how. And things got tense very
17 quickly. And I was struggling for answers to try
18 to figure out what to do.

19 Q Once you moved him in, did things calm down because
20 you've given him a place to live now?

21 A Not really, no, sir.

22 Q Tell me what manifestations of this tension
23 continued once he moved into the house.

24 A Well, things were tight. He had started working a
25 part-time job, but we were always struggling with

1 money. And right around the middle of March -- our
2 birthdays are both in March. And I thought it
3 would be nice if I tried for us to go somewhere for
4 our birthdays, and so I offered to take him to
5 Charleston.

6 And so when we're getting ready to go one day,
7 we're packing, and he started fussing. He said he
8 --

9 Can I get some water? I'm sorry.

10 THE CLERK: Yes.

11 (Pause.)

12 Q So by mid-March, you guys are splitting the
13 difference between an early March birthday and a
14 late March birthday. And what are you going to do
15 again?

16 A We were going to go to Charleston for the weekend.

17 Q All right.

18 A Yes, sir.

19 Q Well, tell me how the tension manifest itself that
20 weekend.

21 A We started packing, and he was complaining that he
22 had gained a little weight and he didn't really
23 have anything to wear. And I was telling him that
24 he looked fine. And I told him that, you know, we
25 really didn't have the extra money to go out and

1 buy, you know, a bunch of new stuff. And he was
2 really kind of irritated about that.

3 And he grabbed me by my arms and he was
4 squeezing really hard and he threw me up against
5 the bedroom wall.

6 And I said, Chris, what's wrong? I said,
7 Please just calm down, it's fine. It's no big
8 deal. But he was so angry. And after a while he
9 calmed down. Because I told him I wasn't going.
10 And so he calmed down. And we went ahead and went
11 on the trip.

12 Q Did he apologize to you for getting physical?

13 A He did.

14 Q Did he apologize to you for putting his hands on
15 you?

16 A Yes.

17 Q Did he cause you injuries with that?

18 A I had some bruises on my arms.

19 Q All right. Was that the last time you and Chris
20 had any physical altercation like that?

21 A No, sir.

22 Q Did it continue with regularity or irregular?

23 A With regularity.

24 Q Tell me the kind of things that Chris did to you
25 while he's living in your house.

1 A One time we were getting ready for bed, and I told
2 him I had to get up early to go to work for an
3 extradition and we were leaving early. And we
4 didn't have his vehicle, and I had forgot about
5 that, and he was not going to have a ride.

6 He was in the bathroom, and he came out and he
7 started screaming at me that he couldn't believe
8 that I would completely disregard him and not think
9 more of him than that.

10 And he grabbed me by my arms and he was
11 slamming me in the bed. And then he pulled me out
12 and he threw me on the floor and he spit on me.
13 And then he punched the bed post at the foot board,
14 and when he did the bed moved and he broke it away
15 from the frame.

16 Q So he physically assaulted you, spit on you, and
17 broke your bed this night?

18 A Yes, sir.

19 Q Did you end the relationship?

20 A No, sir.

21 Q Why not, Robin? Did you think you could fix him?

22 A I wanted to help him.

23 Q All right. So this is -- did he apologize for this
24 assault of you?

25 A Yes.

1 Q Did he promise that he would never strike you again
2 or break anything in the house?

3 A No.

4 Q He didn't promise that?

5 A No, sir.

6 Q Did he?

7 A Yes.

8 Q Tell me more. The next time you remember.

9 A One night we were arguing. I don't remember what
10 about. We were in the living room. He walked into
11 the bedroom. And I went in there after him, or was
12 following him in there. And he threw my boot at
13 me. It had a block heel on it. And when he did,
14 he struck me in the eye.

15 Q He struck you or the boot?

16 A The boot did.

17 Q Where did he throw it from, Robin?

18 A From across the -- I was almost to the doorway and
19 he was over by the dresser.

20 Q And what happened to your eye?

21 A It swole shut. I couldn't see out of it, and it
22 was bruised.

23 Q Did you have to go to work with that?

24 A Yes, sir.

25 Q Tell me what you did and what you told your

1 colleagues.

2 A I put on some makeup and some sunglasses.

3 Q You wore sunglasses in the office?

4 A I had to go to a training the next day. When I got
5 in the car with my co-workers, I told them that my
6 daughter and I were playing around and I had -- she
7 had thrown it at me and she had hit me in the eye
8 by accident.

9 Q You lied to your co-workers about his abuse?

10 A Yes, sir.

11 Q Is that the only time you lied to your co-workers
12 about his abuse?

13 A No, sir.

14 Q Were there continuing times that he assaulted you
15 in your own home and other places?

16 A Yes, sir. There were several times. We would be
17 riding in the car, we would start arguing. One
18 time he was driving and he grabbed me by the arm
19 and he twisted it almost -- he almost broke it. He
20 slapped me across the face. And when he did, my
21 head went up against the passenger window.

22 Q Did he assault you in front of people, Robin?

23 A Yes.

24 Q Who?

25 A His children.

1 Q Tell me about that.

2 A We had his children one weekend and we started
3 arguing. And we were in the living room. And he
4 shoved me on the floor and he got on top of me. He
5 had my arm pinned up behind my head and had my leg
6 pinned down. He was on top of me and I couldn't
7 get him off. And I kept begging him to get off me.
8 And when he did, he got up and he punched me in the
9 stomach, and then he kicked me, and then he spit on
10 me.

11 Q All this in front of his children?

12 A (Nods affirmatively.)

13 Q Robin, what did you do about this? This guy is
14 living in your house. He's in -- you've invited
15 him to stay with you. Did you -- you weren't
16 kicking him out. Did you try to do something to
17 get him help?

18 A I did.

19 Q Tell me what you did.

20 A I went and talked to his mom. I went to see her
21 one night. And her and I were really close. And I
22 loved her like a mom.

23 Q Did you tell her what was going on?

24 A Yes.

25 Q Did she offer to help?

1 A I told her, I said, I'm going to break up with
2 Chris, but if I do I want you to know why and I
3 want you to hear it from me. I said, I don't -- I
4 wanted you to know. I was coming to you for you to
5 hear it from me. And I told her that her son had
6 been beating me and that I was afraid he was going
7 to kill me. And I told her that I was going to
8 evict him from my home if he didn't get some help.
9 That something was wrong with Chris. He wasn't
10 well.

11 Q Did she offer to help you get him help?

12 A She did.

13 Q What did both of you do? Where did you take him?

14 A We -- well, we took him to see a counselor in
15 Aiken.

16 Q What was her name?

17 A Dr. Cummings.

18 Q Had you gotten Chris with any other doctors even
19 before that?

20 A Yes, he was seeing my personal doctor, Dr. Fallaw.

21 Q And what was she doing for him, if you know?

22 A Well, we took him to see Dr. Cummings, and she said
23 that he was highly irritated and that he needed to
24 be immediately hospitalized or immediately
25 medicated. So I called my doctor and she agreed to

1 put him on Lithium.

2 Q For the purpose of stabilizing him or what?

3 A Yes. She said she would do counseling, but she
4 wouldn't do it until his mood had stabilized.

5 Q She, being Dr. Cummings?

6 A Dr. Cummings, yes.

7 Q All right. So now, Robin, he's assaulted you
8 numerous times, he is living in your house, you've
9 threatened to kick him out, and you've taken him to
10 get help with a doctor and a psychologist. Does it
11 stop?

12 A No. There were several times after that we would
13 argue, like I said, mostly about money, sometimes
14 about kids. There were other times that he
15 would -- he threw two lit cigarettes in my face one
16 time. He has punched me, hit me, choked me.

17 One night we got into a fight and I went into
18 the bathroom to get away from him. And when I did,
19 he shoved me and I went back into the bathtub, and
20 I grabbed the shower curtain. When I did, I went
21 down and the rod broke. And I went outside, and he
22 was chasing me around in the yard apologizing.

23 Q By November of 2013, is Chris still on Lithium?

24 A Yes, sir.

25 Q Does he come to you and say anything about his

1 Lithium prescription?

2 A I knew it was close to being out, but Dr. Fallaw
3 had given us some information about getting him on
4 a drug program for a medication she wanted to put
5 him on. It was Abilify. And to get in it, because
6 it was so expensive, it was an indigent program, it
7 was like \$750 a month, and she wanted him to take
8 it along with the Lithium. And so we spent several
9 months trying to get him into that. And right
10 around the end of November he got -- or, excuse me,
11 October he got accepted into that.

12 Q So he's taking it as a piggyback to the Lithium,
13 along with it?

14 A Yes.

15 Q At some point in November, the end of October, does
16 Dr. Fallaw refuse to refill his Lithium if he
17 doesn't come for an appointment?

18 A We had -- I had seen her the week before and she
19 told me to make sure that Chris made his
20 appointment because she needed to check his liver
21 level.

22 And later that week -- I had bought tickets to
23 take Chris to see a wrestling event in Greenville,
24 and it was on the same night that he was supposed
25 to go to the doctor, and it was like a surprise.

1 And so he didn't go to the appointment because we
2 went to the other event instead.

3 Q When did the appointment get moved to?

4 A The morning of the incident.

5 Q It got moved to November 6th? And how did that
6 happen? Tell me what happened November 6th. Walk
7 me through November 6th. The minute you get up,
8 what happened that day?

9 A I mean, it was like any other normal day. I got
10 up, got dressed. I went to work. I guess about
11 10:00, 10:15, Chris texted me and he said -- said,
12 I love you, Mama. He said, I'm depressed.

13 And so I texted him back and I said, Call me.

14 Q Did he call you?

15 A Yes. And he said he was irritated and agitated and
16 he didn't know why, and he was depressed. And he
17 said he was really sick to his stomach.

18 And I said, Well, you missed your appointment
19 on Monday. I said, Do you want me to call
20 Dr. Fallaw to see if she can get you in?

21 And he said, Yes.

22 And I said, Okay. So I called and made an
23 appointment for him to be seen at 2:00 o'clock.

24 And I called him back and -- well, he was at
25 home. And he said -- I said, I made you an

1 appointment, I said, but I'm going to have to write
2 you a check to pay for it. I said, Are you going
3 to come to the office and get it, I said, or do you
4 want to meet me somewhere?

5 And he said, Well, I'll meet you. And said,
6 I'm going to lay down.

7 And I said, Okay.

8 And so I was working. And I guess it was
9 about 1:00, 1:15, I still hadn't heard from him and
10 I hadn't seen him. And so I texted him and I said,
11 Are you coming up here?

12 And he texted me and he said to meet him at
13 the cemetery.

14 Q This is the cemetery at the foot of Sudlow Lake
15 Road?

16 A Yes, sir.

17 Q About three miles from your house?

18 A Yes, sir.

19 Q All right.

20 A So I went up front and I signed out. Ruth was up
21 front. And she asked me how the wrestling thing
22 had gone. I said, We had a good time.

23 And I told her that I had to run to North
24 Augusta, that I would be back at 2:00 o'clock, that
25 I had a client coming in I needed to drug screen.

1 And I told her to tell them just to wait, I'd be
2 back.

3 And so I was driving the Charger that week.
4 And so I drove to the cemetery, and I pulled in and
5 I was waiting on him.

6 Q Was Chris there when you arrived?

7 A No, he pulled up like right after I did, I think.

8 Q Okay. Tell me about what happened in the cemetery
9 parking lot. Anything?

10 A I gave him -- I walked over and I gave him the two
11 checks. And we were talking. And I kept asking
12 him what was wrong.

13 And he just kept saying he was irritated and
14 agitated and he didn't know why.

15 And we started arguing a little bit because he
16 -- he didn't really want to go. And I said, Well,
17 you've got -- you've got to go get your medication,
18 I said, you have got to get this test done.

19 And we started -- like I said, we started
20 going at it a little bit. And I kept saying,
21 Chris, I don't -- why are you acting like this? I
22 said, You act like you don't know me. I said, I
23 don't understand what's wrong.

24 And he was just so angry. And he just kept
25 saying, I'm irritated and I'm agitated.

1 And I said -- I said, Chris, I said, why don't
2 you call your mom to come get you?

3 And he didn't -- I think that made him mad.

4 And I told him, I said, I don't think you
5 should be driving. And I said -- I said, Please
6 call your mom to go with you, because I was afraid
7 he wouldn't go.

8 And so we were still talking. And he said I
9 was being a melodramatic bitch, and that hurt.

10 Q Did you get in your car to leave?

11 A I went to walk off. And he said something, and I
12 walked back over there. And I can't remember what
13 he said, but I told him I had to go back to work.

14 And I said, Chris, I said, go back to the
15 house, park my car and take your own vehicle.

16 And he said, I'll wreck this bitch.

17 And I said, Chris, please. I said, I'm
18 worried about you. And I just kept asking him to
19 go back home and call his mom or drive his vehicle.

20 And so I walked back over to the car and I
21 went to get in. And he kind of backed up and he
22 kind of screeched and he kind of went up the hill
23 where the trees were at.

24 And I walked over there and I said, Chris, I'm
25 not kidding. I said, I want you to take my car

1 back to the house and drive yourself.

2 And he said, If you don't move, I'm going to
3 run over you. And he put the car in drive and the
4 car rolled forward.

5 And so at that point I went to walk off back
6 to the car, and I didn't know it but he was -- he
7 had gotten out of the car and he was behind me.
8 And when I went to get in to shut the door, he
9 started yelling at me that I was causing a scene in
10 front of all these people. There were some people
11 standing over there.

12 And I told him I wasn't trying to cause a
13 scene. I said -- you know, I just kept telling
14 him, Please go home.

15 Q Robin, you guys fought in the parking lot, I get
16 it. Did you guys ever leave the parking lot?

17 A Yes. He pulled out and he went up Sudlow Lake Road
18 back towards --

19 Q How did he pull out?

20 A Quickly. I mean, like, speeding.

21 Q And you went back to the office?

22 A No.

23 Q Why?

24 A Because I was worried about him. And so I pulled
25 out behind him because he had already threatened to

1 wreck the car and I was worried he was going to
2 hurt himself.

3 Q And where did he go?

4 A Went down the road. And he was -- we were both
5 speeding. And he ran off the right shoulder of the
6 road and he overcorrected and he came back onto the
7 roadway. And then he went a little further and he
8 passed a car on a double line. And I guess right
9 down around Crystal Point, he slowed down.

10 And we got to the house and he pulled in the
11 driveway, and I pulled in behind him. And he got
12 out and I got out. And we met at the bumper and
13 the hood.

14 And he started screaming at me. He said, I
15 can't believe you followed me home. He said, I'm a
16 31-year-old grown ass man. I've got a mom, I don't
17 need another one.

18 And I told him, I said, Chris, I'm not trying
19 to be your mom. I said, Please just -- please just
20 call her to come get you.

21 And we were arguing. And he said, That's my
22 car too.

23 And I said, Chris, that car is in my name.

24 And he said, You know what, bitch? If I can't
25 drive this car, neither can you. And his hand went

1 over his head like that, and he threw the keys to
2 the car on top of the roof of my house.

3 And I said, Chris, why did you do that?

4 So I went back to get into the car to find the
5 keys to the house. And when I got out, he walked
6 around and he was standing in front of me. And he
7 said, Oh, I know you didn't just bow up at me. He
8 said, If you're going to act like a man, I'm going
9 to beat you like a man.

10 Q And did he? Did he hit you? Did he shove you?

11 A He shoved me back onto the ground, and I fell on my
12 butt.

13 And I got up and I yelled, Chris, stop.

14 Q And in point of fact, he kept harassing you and
15 even knocked your sunglasses off?

16 A I don't remember that. I went around the back of
17 the vehicle, my -- the Charger, and I was walking
18 up the driveway. And he was arguing, coming up
19 behind me.

20 And when I got on the sidewalk, we were still
21 arguing, and he shoved me again. And when he did,
22 I went back. At that time I shoved him. And I
23 kept saying, Chris, stop it. And he shoved me
24 again. And when he did, I went off the sidewalk
25 into the grass onto my knees.

1 Q What did you start yelling at him then, Robin?

2 A I told him I was done.

3 Q What else did you tell him?

4 A I told him I wanted him out of my house and off my
5 property.

6 Q So this altercation finally was enough, you were
7 going to tell him to get out?

8 A Yes.

9 Q And did you?

10 A Yes.

11 Q Did you scream it at him?

12 A Yes.

13 Q He has knocked you down a few times in the front
14 yard. Now what?

15 A He was pacing up and down the sidewalk. And so I
16 went off the sidewalk into the grass and went
17 around him and went up the stairs and I unlocked
18 the door.

19 And I went inside, and I was looking for my
20 other set of car keys. And I went into the
21 bedroom. And I walked in there and I didn't see
22 them. And so I walked back into the living room
23 and into the kitchen. And I was trying to clean my
24 face up and stuff. I was crying because --

25 Q Are you in the house alone or is he right behind

1 you?

2 A No, I was in there alone.

3 Q All right. Now what happens?

4 A At some point he came inside. And when he did, he
5 walked into the bedroom and he walked out, and he
6 stopped in front of the entertainment center.

7 He said, So that's it? You're kicking me out?
8 You are just going to make me homeless?

9 And I said, Chris, I don't care where you go.
10 You just can't stay here anymore. I said, You
11 can't keep putting your hands on me.

12 Q I'm sorry, Robin. Take a breath.

13 A I said, You can't keep putting your hands on me. I
14 said, I have to go back to work. And so I went to
15 walk around the couch.

16 And he was walking towards me and he said, Oh,
17 I see. I'm just a do-boy who pays your bills.

18 And he got up in my face and I said, Chris,
19 get out of my way. And he shoved me into the
20 floor. And he just started wailing on me with his
21 fist.

22 Q You're laying on the floor?

23 A I'm on my back.

24 Q He's standing over you?

25 A Yes. And I had my arms up like this, and I kept

1 telling him to stop.

2 And he stepped back and he leaned up. And
3 when he did, I wiggled out a little bit from
4 underneath him, and I drew my gun. And I told him
5 to get out, I was calling the police.

6 Q Did he leave?

7 A No. Well --

8 Q Did you think he was leaving?

9 A Yes. He turned around and he started to walk off
10 towards the door. And I got up and I was going
11 behind him, walking behind him.

12 Q Where is your service revolver now?

13 A It was -- I reholstered.

14 And he went to the front door and he slammed
15 the door open with his fist and it hit the wall.

16 Q Is this the glass door on the front or the actual
17 front door?

18 A No, the glass door.

19 Q Okay. The screen-type door -- well, in this case,
20 a storm door, I guess.

21 A And he stepped right outside. And he turned around
22 and he started slapping on his chest and screaming,
23 You want some, come get some. Step your game up.

24 And he came at me, and his hand --

25 Q What did you do when he turned and started to come

1 at you?

2 A I started backing up. His fist was up, and I drew
3 my gun. And when he came up -- when his hand came
4 down, he opened it up and he hit it. I turned my
5 head, and I heard it go off.

6 Q Did you feel him touch you or hit you?

7 A No.

8 Q He didn't touch or hit your hand?

9 A His hand hit my hand.

10 Q That's what I asked you, Robin.

11 A I'm sorry.

12 Q Well, come on, stay with me. When you heard the
13 gun go off --

14 A I dropped it.

15 Q Immediately?

16 A Yes.

17 Q Then what happened, Robin?

18 A I said, Chris, are you hit?

19 Q What was he doing?

20 A He grabbed his throat.

21 Q Where did he go?

22 A He turned and he went out the front door and he
23 fell right there at the bannister.

24 And I was screaming for him to let me see, let
25 me see, to let me help him, and he wouldn't turn

1 over.

2 And when he did -- when I pulled his hand
3 away, there was all this blood everywhere.

4 Q Robin, is that the first time you saw the blood?

5 A Yes.

6 Q When he took his hand down?

7 A Yes. And so --

8 Q And what are you doing now, Robin?

9 A I had my hand on his neck and I was trying to hold
10 pressure on it, and I was trying to call 9-1-1 with
11 my left hand, and I couldn't get it to go through.

12 Q What else are you doing, Robin?

13 A I was screaming for somebody to help me.

14 Q Did anyone come?

15 A When I looked up, my neighbor was standing on the
16 porch -- on the sidewalk, and she told me, she
17 said, Do you want me to call an ambulance?

18 And I said, Yes.

19 And I was still holding his neck, and he
20 rolled over. And when he did, he pulled up on the
21 bannister and he stood up. And we were both
22 yelling for him not to move.

23 And then he stood back a little bit and he sat
24 down in that chair. And I was still holding
25 pressure on his neck.

1 Q Is that where you were when the ambulance and
2 police arrived?

3 A Yes.

4 Q Robin, did you go to your home that day intent to
5 shoot Chris Rowley?

6 A No.

7 Q Had you ever gotten angry enough with Chris Rowley
8 that you shot him -- that you thought you should
9 shoot him because you were mad at him?

10 A No.

11 Q Were you afraid of him that day?

12 A Yes.

13 Q Did he violently and physically assault you in your
14 own home that day?

15 A Yes.

16 Q Robin, I'm going to show you just a few pictures
17 and ask you if you can identify them. I'll have
18 them marked first.

19 (WHEREUPON, Defendant's Exhibit Nos. 1 -

20 6 were marked for identification only.)

21 BY MR. LEIENDECKER:

22 Q Robin, I'm going to hand you what has been marked
23 Defendant's 1 through 6, after I give Mr. Justis a
24 chance to look at them.

25 A (Pause.)

1 Q Are you all right? Can you look at these? And ask
2 you just look through those six pictures and tell
3 me if you recognize them and can you identify them?

4 A Yes.

5 Q Look through all six of them for me.

6 A (Complies.)

7 Q Robin, what are those pictures of, just generally,
8 all of them? Where are they taken?

9 A Inside my house.

10 Q And?

11 A On the porch.

12 Q Is that your house on Sudlow Lake Road?

13 A Yes.

14 Q Is that the home on November 6th, 2013, where these
15 incidents occurred?

16 A Yes.

17 Q All right. Take a look at Number 1, if you will.
18 Tell me what that picture shows.

19 A My living room.

20 Q Does that picture show the entertainment center?

21 A Yes.

22 Q Is that where he first confronted you?

23 A Yes.

24 Q Take a look at Picture Number 2. What does that
25 show?

1 A The shell casing.

2 Q It shows the shell casing? And where is it located
3 on the floor?

4 A In -- I guess, around near the door and around the
5 walkway.

6 Q All right. Between the sofa and the door?

7 A Yes, sir.

8 Q If you're looking at Photograph Number 1, would
9 that be at the end of the sofa that you can see
10 headed to the door?

11 A Yes.

12 Q All right. Take a look at Number 3 and tell me
13 what it shows.

14 A It's the view from my -- I mean, from my bedroom
15 into the living room. My keys are right there on
16 the chaise lounge.

17 Q All right. And does that show the space or
18 distance between your door and the sofa?

19 A Yes, sir.

20 Q All right. Number 4, tell me what you see.

21 A The door and the couch.

22 Q Okay. And that shows how close the door was to the
23 couch?

24 A Yes, sir.

25 Q All right. Number 5 and 6, are those the front

1 porch to your home?

2 A Yes.

3 Q You used to have two of those white chairs on your
4 porch?

5 A Yes.

6 Q Does it show those and how much room there was with
7 the chairs?

8 A Yes. Yes.

9 Q Does Number 5 show the spot where Chris fell on the
10 porch?

11 A Which number?

12 Q Five. Or 6?

13 A It's Number 6.

14 Q Does Number 6 show the spot where he fell?

15 A Yes.

16 Q And where would that have been?

17 A Right near the bannister near the top of the
18 stairs.

19 Q All right.

20 MR. LEIENDECKER: Your Honor, for the purpose
21 of this motion, I would move to have these admitted
22 for the Court's consideration regarding the motion.

23 MR. JUSTIS: No objection.

24 MR. LEIENDECKER: 1 through 6, Defendant's.

25 THE COURT: Defendant's 1 through 6 will be

1 entered for purposes of this motion without
2 objection.

3 (WHEREUPON, Defendant's Exhibit Nos. 1 -
4 6 were admitted into evidence.)

5 BY MR. LEIENDECKER:

6 Q Robin, in 14 years of law enforcement, from 1999 to
7 2013, have you ever drawn your service revolver and
8 discharged it in the line of duty?

9 A No.

10 Q Have you ever drawn your service revolver at
11 someone not in the line of duty and pointed it at
12 them?

13 A No.

14 Q Have you ever threatened anyone with a gun or your
15 service revolver to get them to do what you wanted
16 them to do?

17 A No.

18 Q Have you ever had to draw your service revolver for
19 the purposes of protecting yourself outside the
20 line of duty?

21 A Yes.

22 Q Before this time --

23 A Oh, no.

24 Q -- have you ever had to?

25 A No.

1 Q Is this the first time?

2 A Yes.

3 Q Is this the only time?

4 A Yes.

5 MR. LEIENDECKER: One moment, Your Honor.

6 (Pause.)

7 BY MR. LEIENDECKER:

8 Q Robin, that afternoon of November 6th, 2013,
9 describe for me and for the Court just what you
10 were feeling inside that house when the two of you
11 were in there alone.

12 A Fear. I was afraid he was going to kill me.

13 MR. LEIENDECKER: No further questions.

14 Answer any questions that the State may have.

15 MR. JUSTIS: May it please the Court, Your
16 Honor?

17 CROSS-EXAMINATION

18 BY MR. JUSTIS:

19 Q Ms. Herndon, you testified that that particular day
20 inside your house on November 6th that you felt
21 fear; is that correct?

22 A Yes, sir.

23 Q You stated that you were afraid?

24 A Yes, sir.

25 Q At any time were you angry?

1 A Inside the house?

2 Q Well, that day during the confrontation with
3 Christopher, were you angry with him?

4 A Yes.

5 Q What were you angry about?

6 A Because he had assaulted me and I was trying to
7 help him and I didn't understand way he was
8 assaulting me.

9 Q Were you angry because he threw those car keys up
10 on the roof?

11 A Yes, sir.

12 Q In fact, isn't that what you told police that the
13 reason you got so mad is that He threw my keys on
14 top of the house? Do you remember telling police
15 that?

16 A I was angry.

17 Q Well, that's not my question. My question is do
18 you remember telling police that?

19 A No.

20 Q No? Do you remember talking to police on
21 November 6th, 2013?

22 A No.

23 Q Do you remember giving a videotaped interview with
24 the police?

25 A Yes. I remember bits and pieces of it.

1 Q Do you remember sitting in the Sheriff's Office on
2 November 6th, approximately 4:00 p.m. that
3 afternoon, giving a videotaped interview with not
4 only Detective Wertz, but also Agent Turner with
5 SLED?

6 A Yes.

7 Q But you don't remember stating during that
8 interview that the reason you got so mad was, He
9 threw my keys on top of the house?

10 A That was the first reason I got upset.

11 Q What were the other reasons you got upset?

12 A Because I kept asking Chris to please call his mom
13 to come get him. And we kept arguing. And when he
14 shoved me on the sidewalk, and then he shoved me
15 again, I was just real upset.

16 Q Okay. Well, let's talk about when you went to the
17 cemetery that day, you stated that you went there
18 to take him a check to pay for the doctor; correct?

19 A Correct.

20 Q And when you got there, you two essentially got
21 into an argument?

22 A Yes.

23 Q Would that be a fair statement?

24 A Yes, sir.

25 Q Okay. And you stated that he was depressed. He

1 was real distant. And essentially you kept
2 pestering him, wanting to know what was wrong; is
3 that correct?

4 A I kept asking him why he was acting so weird and he
5 was so angry. And he acted like he didn't even
6 know me. He just wasn't acting like himself at
7 all.

8 Q You remember you telling police that he had said
9 that he would go home -- he didn't need this stuff
10 and that he would go home and pack his stuff and
11 he'd be gone when you got home?

12 A No.

13 Q You don't remember telling police that?

14 A No.

15 Q Do you remember him saying that he'll get his mom
16 to take him, Because she loves me?

17 A When we were at the house, he said that on the
18 sidewalk.

19 When I was begging him in the yard, I kept
20 saying, Chris, please just call your mom. Please
21 just call her to come get you.

22 And he said, I will call my mom. He said, She
23 loves me. She's always been there for me.

24 And I said, Chris, I'm not trying to be your
25 mom. Please, I want you to call her. Please, just

1 call her.

2 Q Did -- you stated that you asked him when you were
3 at the cemetery to take your car back to the house
4 and drive your own car; is that correct?

5 A Yes.

6 Q Why did you tell him that?

7 A Because he had already said something about being
8 depressed and wrecking the car. And Chris had done
9 damage to his vehicle and to mine before. And I
10 was worried that he might hurt himself or wreck the
11 car or do something stupid.

12 Q Well, you'd rather have him wreck his car than your
13 car; is that correct?

14 A No, I just -- I had just -- I hadn't had the car
15 but about a week, and it was the only car that I
16 had. And I just didn't want anything to happen to
17 it.

18 Q And when you -- when he left to go back towards the
19 house and you took off after him, at what point
20 when you got to the house -- you stated that he
21 threw the keys on the roof. Where were you when he
22 threw the keys on the roof?

23 A We were in the driveway, right there between the
24 vehicles.

25 Q So when you first got there to the house, that's

1 when he threw the keys on the roof?

2 A That's when he -- when he pulled in and I pulled in
3 behind him, he got out and he came to the back of
4 the vehicle and started yelling at me.

5 And that's when we were arguing and I told him
6 that -- he said, That's my car too. And that's
7 when I said, Chris, I said, that car is in my name.
8 And he threw the keys over his shoulder onto the
9 roof of my house.

10 Q And these were the keys to the Honda?

11 A Yes, but his car keys were on them as well.

12 Q And what did he drive? What kind of car did he
13 have?

14 A I believe it was a Bronco.

15 Q And you still have keys to your Charger; correct?

16 A Correct.

17 Q Those were the keys that were in the vehicle that
18 you went back to get?

19 A Uh-huh.

20 Q And how many times did he push you when you were
21 outside?

22 A Three.

23 Q Three times?

24 A He didn't push me, he shoved me.

25 Q And when he pushed you or shoved you, how many

1 times did you fall down?

2 A Twice.

3 Q Was that one time on your butt and one time on your
4 knee?

5 A Correct. Actually, both knees.

6 Q Now, when he's assaulting you, as you said, in the
7 front yard and arguing with you, is he yelling at
8 you?

9 A Yes.

10 Q Is his voice raised or is it at a normal
11 conversational tone?

12 A We were both yelling at each other at one point.
13 And I was -- after he shoved me the second time and
14 I went off in the grass, when I got back up and got
15 onto the sidewalk, we were both screaming at each
16 other and I was screaming at him that I wanted
17 him -- that I was done. I wanted him out of my
18 house and off of my property.

19 Q But you were both screaming?

20 A Yes.

21 Q And then you testified after he pushed you I guess
22 the second or third time that you went up the
23 stairs to go into the house?

24 A I did.

25 Q And I think you testified you went in the house

1 looking for your other set of car keys?

2 A Uh-huh.

3 Q Why?

4 A Because if he didn't call his mom to come get him,
5 eventually I figured I was going to have to give
6 him my keys to my other car because I wanted him to
7 leave, no matter what, and I figured I'd have to
8 deal -- we would just have to deal with each other
9 later because I had to go back to work.

10 Q Well, if you were so worried about his safety and
11 him maybe crashing the car, why would you want him
12 to leave and possibly give him the only other set
13 of keys you have to your brand new car you've only
14 had a week and give him that car?

15 A They -- they weren't -- it wasn't to the CRV, it
16 was to the other car that I had, the Saturn. I had
17 a car that was going back as part of a bankruptcy.
18 And so at that point, like I said, if he wasn't
19 going to call his mom to come get him, I wanted him
20 to leave because I wanted to be able to lock the
21 door so I could go back to work.

22 Q Well, when you went in the house -- when you walked
23 up in the house, you obviously unlocked the door,
24 you had a key on your, I guess on your Charger key
25 set; correct?

1 A I don't think it -- yeah. I may have put it on my
2 key ring. I had one -- I think it was one of those
3 lanyard things, I think.

4 Q Well, you got in the house; correct?

5 A Yes.

6 Q So you went in the house. At that point in time,
7 why didn't you just lock the door then?

8 A Because I -- I walked into the bedroom to look for
9 the keys and turned around and walked into the
10 kitchen to get something to drink, wipe my face
11 off. I was crying. I'm covered in dirt. And I'm
12 trying to compose myself, because I kept telling
13 him, I have to go back to work.

14 Q Right. And you're in fear for your life at this
15 point; correct?

16 A No.

17 Q So you weren't in fear after he knocked you down
18 three times in the front yard, you're not in fear
19 of him?

20 A I was afraid of him, yes. -- I was -- I distanced
21 myself from him. Every time he shoved me or pushed
22 me, I tried to distance myself and get away from
23 him.

24 Q And you got all the way into the house, which he
25 doesn't have keys to get in the house now because

1 he threw them up on the roof; correct?

2 A Correct.

3 Q But you didn't think to lock the door? Did you
4 have your cell phone with you?

5 A Yes.

6 Q Okay. So you could have called law enforcement at
7 that point?

8 A Yes.

9 Q Did you think to lock the door, call law
10 enforcement, call his mom and say, Come get him?
11 Did that ever cross your mind?

12 A I actually thought he was outside probably calling
13 her.

14 Q So you walked into the bedroom and looked for the
15 second set of keys. Did you find the second set of
16 keys?

17 A No.

18 Q And how long was it before he came into the house?
19 From the time you entered the house and the time he
20 came in, how long was that?

21 A I don't know. I can't -- I can't tell you how
22 long.

23 Q Well, was it seconds? Was it minutes?

24 A It may have been a couple of minutes. I'm not
25 sure.

1 Q Okay. So it is a couple of minutes. You go in the
2 bedroom. And correct me if I'm wrong. You are
3 searching for the keys. You don't find them. You
4 come walking out of the bedroom.

5 At that point in time, I think according to
6 your testimony, that's when he's coming into the
7 house; is that correct?

8 A No. I walked into the kitchen and I'm standing in
9 the kitchen. When he walked in the front door, I
10 was standing in the kitchen looking across at the
11 doorway where he walked in.

12 Q Okay.)

13 MR. JUSTIS: Beg the Court's indulgence.

14 (WHEREUPON, State's Exhibit No. 10 was
15 marked for identification only.)

16 BY MR. JUSTIS:

17 Q Robin, I'm showing you what has been marked as
18 State's Exhibit Number 10. Do you recognize that?

19 A Yes.

20 Q And just kind of describe what that picture shows.

21 A It's my living room/dining area.

22 Q Okay. And is that the kitchen you're talking
23 about?

24 A Uh-huh.

25 Q And the door -- the front door would be as you're

1 looking at that picture --

2 A I was standing, like, right here in the middle
3 towards the sink, right here. And if I'm standing
4 here, if I look straight across, it's my door, my
5 doorway. Like, the room is square. If I'm in this
6 corner, it's --

7 Q Right.

8 A It's that way.

9 Q And can you -- if you're standing over here, can
10 you get to your bedroom on this side?

11 A No. I have to go around the couch.

12 Q So you have to go all the way around --

13 A All the way around.

14 Q -- the couch. And why did you go into the kitchen?

15 A To get something to drink and probably to wipe my
16 face off. Like I said, I was crying. I had, I
17 think, dirt all over my behind. I was trying to
18 pull myself together because, like I said, I had to
19 go back to work.

20 And I kept telling him, Please call your mom.
21 I've got to go back to work. I was supposed to be
22 back by 2:00 o'clock.

23 Q Okay. And so you're in the kitchen or coming from
24 the kitchen, and he comes in?

25 A Uh-huh.

1 Q All right. What does he say when he comes in?

2 A He didn't say anything when he first walked in the
3 door. He walked into the bedroom and he walked
4 back out and he stopped right in the center of the
5 entertainment center, right in front of the
6 television.

7 Q Okay. So he's standing in front of the
8 entertainment system. Where are you standing at
9 that point?

10 A I'm standing in the kitchen.

11 Q Okay. And you're still in the kitchen. And what
12 happens at that point?

13 A He starts screaming at me, So that's it? You're
14 going to make me -- he said, So you're kicking me
15 out? You're going to make me homeless?

16 And that's when I told him, Chris, I don't
17 care where you go, but you can't stay here. I
18 said, I can't do this anymore. You can't keep
19 putting your hands on me.

20 Q Okay. And then what happened?

21 A I went to walk around -- because the couch sits
22 like this. I went to walk around the couch, and he
23 came -- was coming from the center of the
24 entertainment center this way.

25 And he said, Oh, I guess I'm just the do-boy

1 who pays your bills. And we met right there in
2 the -- I guess in the open way beside the couch.

3 Q Okay. I'm showing you Defendant's 2. Would this
4 be the area that you met?

5 A No.

6 Q Is it further this way or further back this way?

7 A Back. Like, where the wall breaks to go to where
8 my kids' -- their bedroom is, we were right there,
9 further back.

10 Q So back this way?

11 A Back towards the kitchen.

12 Q Or back towards the kitchen?

13 A Yes.

14 Q And when you met at that point, what happened then?

15 A He was up in my face. And I said, Chris, get out
16 of my way.

17 Q And did he say anything?

18 A No.

19 Q Did he get out of your way?

20 A No. He shoved me to the ground and started beating
21 me.

22 Q Okay. So he shoved you to the ground and you
23 landed -- how did you land?

24 A On my back.

25 Q You landed on your back. And when he started

1 hitting you, what was he hitting you with?

2 A His fist.

3 Q Okay. Where was he hitting you?

4 A On my arms and -- I had my arms up like this and my
5 head turned like that because I was trying to
6 protect my face.

7 Q Okay. Did he strike your face then?

8 A Not that I recall.

9 Q So it was just your arms that were hit?

10 A Yes.

11 Q And what do you do at that point?

12 A He -- I was yelling --

13 Q If you're laying like this getting struck --

14 A I'm yelling at him --

15 Q -- in the arm?

16 A -- to stop. And at some point, he leaned up and he
17 took a step back. And when he did, I started
18 moving back like this.

19 And that's when I drew my weapon and I told
20 him to get out, I was calling the police.

21 Q Did he say anything when you drew your weapon?

22 A He swatted at the gun or was trying to push it
23 away. And he told me not to point that thing at
24 him if I wasn't going to use it. And he turned
25 around -- and he turned his back to me, and when he

1 did, I reholstered.

2 Q And that's when he walked over to the door like he
3 was walking out the door?

4 A Correct.

5 Q Do you remember telling police that -- or you
6 testified earlier -- that as he's walking out the
7 door, you got up; correct?

8 A Yes.

9 Q And then you actually went after him?

10 A No.

11 Q You followed after him?

12 A He was walking towards the door and I was walking
13 behind him.

14 Q And what was the reason for walking behind him?

15 A At that point, I was waiting to see if he went out
16 the front door because at that point I was going
17 into the bedroom to go to the bathroom.

18 Q Okay. You weren't going to lock the door behind
19 him?

20 A No.

21 Q So you're scared of him, he just was on top of you
22 beating you, yet you pulled your sidearm on him to
23 get him off of you --

24 A Uh-huh.

25 Q -- to get him away from you, and you're not going

1 to lock the door?

2 A I didn't think to lock the door.

3 Q Okay. So when he gets to the door, at some point
4 he turns back around, I think you testified to; is
5 that correct?

6 A He walked to the door and he hit the door, the
7 glass door with his arm, like that. And it slammed
8 up against the wall. And he stepped out. And then
9 he turned around and he started slapping on his
10 chest and screaming, You want some, come get some.
11 Step your game up.

12 Q Now, I'm showing you Defendant's 1. This is the
13 glass screen door or glass door, storm door you're
14 talking about that's in that picture?

15 A Yeah. It's not exactly a storm door. It's just
16 glass. It just opens and closes.

17 Q Okay. And then there's a regular door --

18 A Correct.

19 Q -- that's open right there?

20 A Yeah.

21 Q But that's the -- it's like a green frame?

22 A Uh-huh.

23 Q Glass door? So when he -- after he starts beating
24 his chest and everything, what happens at that
25 point?

1 A He comes at me with his fist up like he's going to
2 start hitting me again. And I started backing up.
3 And when he did -- when I did start backing up, I
4 put my hand on my weapon again, and I pulled it
5 out. And when it came up, his arm came down and
6 his hand hit mine. And I turned my head like this.
7 I didn't even see the gun go off, I just heard it.

8 Q Right. So how far did you get -- when you stood up
9 and kind of followed behind him, how far did you
10 get from the -- to the door before he turned around
11 and came at you?

12 A Maybe three or four steps.

13 Q From the door?

14 A Yes. When I got up, I was almost to the -- where
15 the linoleum meets the carpet.

16 Q By the door or by the kitchen?

17 A By the kitchen.

18 Q So in State's 10 here, you would be -- and you
19 can't really see it, but you would be almost as far
20 back as that, but just over here --

21 A Yes.

22 Q -- on the end of the couch? So he comes at you and
23 he kind of swings. Which hand did he swing with,
24 do you know?

25 A His right hand.

1 Q You're positive it was his right hand?

2 A Yes.

3 Q And is that at the point when the gun went off?

4 A Yes.

5 Q Now, I think you testified earlier that you had
6 worked in law enforcement for 14 years; is that
7 correct?

8 A Yes.

9 Q And you've been to the law enforcement academy; is
10 that correct?

11 A Yes.

12 Q Criminal Justice Academy. You've been trained in
13 the use of firearms?

14 A Correct.

15 Q And these prior instances, you said one of them --
16 and I guess the first incident was when he kind of
17 felt fat and didn't have clothes to wear to go to
18 Charleston; is that correct?

19 A Yes.

20 Q Were there any witnesses, anybody that was there
21 that observed that altercation between you and
22 Chris?

23 A No.

24 Q What about the altercation when he grabbed your
25 arm, slammed you into the bed, threw you on the

1 floor, spit on you, and broke your bed, any
2 witnesses to that?

3 A No. We were getting ready to go to bed.

4 Q Okay. But there was an incident, I think you
5 testified to, where he assaulted you in front of
6 his children?

7 A Yes.

8 Q How often did his children come over?

9 A Usually every other weekend.

10 Q What about your children? You have children; is
11 that correct?

12 A Correct.

13 Q How often do they come over?

14 A They live with me. We split custody. I had --
15 they went to their dad's every other weekend. It
16 was 14 and 14. We did 14 days. He got them 14
17 days, I got them 14 days.

18 Q Did they ever witness these assaults?

19 A No, not that I know of.

20 Q And you also testified that you had received a
21 black eye on one occasion; is that correct?

22 A I did have a black eye.

23 Q And you actually -- some co-workers had asked you
24 about that black eye and that you had lied to them
25 and told them your daughter gave it to you?

1 A Yes.

2 Q And it is your testimony that you were just trying
3 to help Chris; correct?

4 A Yes.

5 Q That he was so enraged, had such a problem, had
6 issues, he had to go see a counselor, a doctor,
7 take Lithium, take all this medication; is that
8 correct? Because of his mood swings?

9 A The counselor that we saw said that he had serious
10 mood swing issues. She thought he was manic
11 depressive and severely bipolar. And so she
12 recommended that we either immediately hospitalize
13 him or immediately medicate him.

14 Q And so you medicated him; is that correct?

15 A Chris wouldn't agree to go to the hospital.

16 Q And how was he when he took his medicine? Was he
17 better?

18 A Somewhat, but he was still very agitated and it
19 upset his stomach real bad. He didn't take the
20 full dose usually everyday. He would only take two
21 pills. He was supposed to take it three times a
22 day, a thousand milligrams.

23 Q Right. So the medicine was important for him --

24 A Yes.

25 Q -- you would say; correct?

1 A Yes.

2 Q And I think you testified that Dr. Fallaw said that
3 she could not give him any more medicine until he
4 came in for some blood work; is that correct?

5 A Correct. I think it was October the 28th. I
6 actually had a doctor's appointment of my own.
7 And, you know, she was asking me about him. And I
8 said, you know, He's doing pretty well.

9 And she said, I will not renew his Lithium
10 prescription until he comes in to have his liver
11 level checked.

12 Q October 28th, that's interesting. Do you remember
13 talking to one of your co-workers on October 28th?

14 A No.

15 Q A Leeann Bost? Do you know who that is?

16 A Yes.

17 Q Do you remember telling her that you thought Chris
18 might have been cheating on you?

19 A No. Chris wasn't cheating on me.

20 Q That you checked his cell phone and found some
21 messages?

22 A No.

23 Q You don't remember telling Leigh Anne that you said
24 to Chris, Take a good look at this gun. If I ever
25 catch another woman in my house or my bed, I will.

1 shoot you and no jury will convict me. You don't
2 remember saying that?

3 A That conversation never occurred. Chris wasn't
4 cheating on me.

5 Q Well, did you ever accuse him of cheating on you?

6 A Did I ever -- no.

7 Q We'll get back to that. What about -- let's get
8 back to Dr. Fallaw. So he needed to see Dr. Fallaw
9 before he could get more medicine, correct?

10 A Yes.

11 Q And he actually had an appointment scheduled, but
12 you thought it would be better to go see wrestling
13 rather than take him for his medical appointment so
14 he could get his medicine; is that correct?

15 A I was trying to do something nice. We both liked
16 wrestling. That's something we did together.

17 Q So y'all liked to wrestle together?

18 A We liked to watch wrestling.

19 Q You never acted it out at any time?

20 A Acted out wrestling? I don't recall that.

21 MR. JUSTIS: Beg the Court's indulgence.

22 (WHEREUPON, State's Exhibit No. 35 was
23 marked for identification only.)

24 BY MR. JUSTIS:

25 Q Robin, I'm going to show you a printout of text

1 messages between you and Christopher dated back in
2 September and October of 2013. And I've got kind
3 of the relevant ones highlighted. If you can just
4 read them -- read them to yourself. You don't have
5 to read them out loud, but just read through those.

6 A Okay.

7 Q Would you agree with me that those text messages
8 kind of give the impression that maybe there was
9 some kind of an argument or discussion about
10 Chris's faithfulness?

11 A No. I mean, I think he expressed his faithfulness
12 to me just like I expressed my faithfulness to him.
13 I said, I know that you love me. I'm not saying
14 anything of the sort. We are both faithful to one
15 another.

16 Q But that was in response to him saying, I'm tired
17 of being accused or ridiculed for things I didn't
18 do, I am good and faithful to you; is that correct?

19 A Okay. I don't know what he's talking about being
20 accused of.

21 Q And then he also stated, I laid in bed all night
22 wondering in the back of your head whether you
23 trust me?

24 A I did trust him. Chris was not cheating on me and
25 I wasn't cheating on Chris.

1 Q But it is your testimony here today that that day
2 when you arrived at the house that you were in fear
3 of great bodily injury or death to your person by
4 Chris; is that correct?

5 A When I went back to the house, when I arrived
6 there, my hope was that Chris would call his mother
7 to come get him so that I could go back to work. I
8 didn't expect to get assaulted repeatedly and
9 placed in fear. I went into the house to get away
10 from him.

11 Q I think you testified you were good friends with
12 his mom; correct?

13 A We were very close.

14 Q Did you ever think to maybe call her and say, Hey,
15 your son's out of control, can you come get him?

16 A I didn't really have time. I was trying to talk to
17 him. I kept telling Chris repeatedly in the yard,
18 I have to go back to work. Please call your mom.

19 One of reasons why I insisted that he -- she
20 -- or him call her is when we went to see the
21 counselor, the woman -- the psychologist
22 recommended that if Chris was irritated, agitated,
23 or in one of those states, or having a mood swing,
24 that I should not be the one to try to handle him
25 alone, to have someone else there.

1 Q Or just leave him alone?

2 A I don't know that leaving him alone was the best
3 answer. I was extremely worried about him.

4 MR. JUSTIS: No further questions.

5 MR. LEIENDECKER: Very brief follow-up, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. LEIENDECKER:

9 Q You said to me, you repeated to Mr. Justis this
10 phrase that he got in the house and got mad at you
11 and he was yelling at you, I'm just your do-boy?

12 A Yes.

13 Q What he meant was he wasn't paying anything, he
14 wasn't even paying the rent, was he?

15 A I paid -- I paid the majority of the bills, and
16 Chris got paid weekly, so we lived off most of
17 that.

18 Q You didn't just pay the majority of the bills, you
19 were helping pay his child support, weren't you?

20 A Yes.

21 Q When he had you on the floor this time, inside the
22 house, and he was leaning over you and he was
23 striking you with his fist, and you said at that
24 point, you were afraid as you had been, had you
25 ever seen Chris like that before? Had you ever

1 seen him that out of control?

2 A No. Chris had never been like that with me. I
3 didn't know -- I didn't know who he was that day.

4 Q Is that what scared you?

5 A Yes.

6 Q Those keys that he threw on the roof that they want
7 to make a big deal about that somebody got upset
8 enough to shoot someone because they threw keys on
9 the roof, part of the problem with those keys on
10 the roof and the reason you were upset with him was
11 those were his keys along with the key to the
12 Honda; right?

13 A Correct.

14 Q Could he have gotten his car and gotten out of
15 there without those keys?

16 A No.

17 Q Is that why you went in the house to find the
18 Saturn keys, your old car?

19 A Yes.

20 Q Had Chris ever told you -- in the back of your
21 mind, this thought when he's on you and assaulting
22 you, had Chris ever told you that he had been in
23 trouble before for assaulting women?

24 A Yes.

25 MR. LEIENDECKER: No further questions.

1 MR. JUSTIS: Briefly, Your Honor.

2 RE CROSS-EXAMINATION

3 BY MR. JUSTIS:

4 Q Actually, isn't it true that in June of 2013, he
5 actually had his checks directly deposited into
6 your account, but his name wasn't on them?

7 A That's correct. And it was a huge fight and I
8 begged him not to do it, because every time the
9 check went in he always told me, You've got all the
10 money. I don't have any money. And I begged him
11 to stop doing that. In fact, I insisted that he
12 call Augusta Staffing to have them stop doing it
13 because every time it was a fight.

14 Q So, you know, Please don't put your money in my
15 bank account and leave your name off the account,
16 that would be your --

17 A No.

18 MR. LEIENDECKER: Objection, Your Honor. The
19 condescension is not really necessary.

20 THE WITNESS: The checking account --

21 THE COURT: What's the objection?

22 MR. LEIENDECKER: First, it's been asked and
23 answered. And the form in which it is presented is
24 certainly argumentative and condescending.

25 THE COURT: All right. Rephrase the question.

1 MR. JUSTIS: I'll withdraw it, Your Honor. No
2 further questions.

3 THE COURT: Ma'am, you can step down.

4 (Witness steps down.)

5 THE COURT: All right. We're going to take
6 about -- the court reporter needs a break. We're
7 going to take about five or ten minutes.

8 Can I see the lawyers?

9 (WHEREUPON, a short break was taken at
10 5:10 p.m.)

11 THE COURT: You may proceed.

12 MR. LEIENDECKER: Can I -- Your Honor, one
13 minute?

14 THE COURT: Sure.

15 (Pause.)

16 THE COURT: All right. Yes, sir.

17 MR. LEIENDECKER: You're waiting on me?

18 THE COURT: Yes, sir. Call your next witness.

19 MR. LEIENDECKER: I call Lois Veronen.

20 (Witness approaches.)

21 THE CLERK: Place your left hand on the Bible
22 and raise your right.

23 (Witness complies.)

24 THE CLERK: The testimony that you shall give
25 the Court in this case will be the truth, the whole

1 truth, and nothing but the truth, so help you God?

2 THE WITNESS: It will be.

3 THE CLERK: Thank you. Have a seat in the
4 witness box, stating your full name, spelling your
5 last for the Court, please.

6 (Witness seated.)

7 THE WITNESS: Lois J. -- last name is V-as in
8 Victor-E-R-O-N-E-N.

9 LOIS J. VERONEN,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LEIENDECKER:

13 Q Ms. Veronen, would you please tell the Court where
14 you live and work now?

15 A I live in Rock Hill, South Carolina. I am a
16 clinical psychologist and part-time professor at
17 Winthrop University. And I work teaching
18 psychology of woman class, psychology of women and
19 gender, and I also have a full-time private
20 practice of psychology.

21 Q Okay. And can you give me your educational
22 background and how you got into clinical
23 psychology?

24 A I have a Bachelor's Degree in psychology from
25 Marquette University and a Master's and a PhD from

1 North Texas University in Denton, Texas.

2 Q All right. And when did you begin work in clinical
3 psychology here in South Carolina?

4 A I began work in clinical psychology in 1974. I
5 came to the Medical University of South Carolina to
6 do an internship in clinical psychology. I ended
7 up staying on writing my dissertation while at the
8 Medical University, and then became a faculty
9 member. And I stayed at -- was a faculty member
10 until 1988, when I moved to Rock Hill, South
11 Carolina, and took a position with Winthrop
12 initially and then went into private practice too.

13 Q Your advanced degrees beyond your Bachelor's
14 Degree, which you received at Marquette, you
15 received two degrees at North Texas University; is
16 that correct, your Master's --

17 A Correct.

18 Q -- and your PhD?

19 A Correct.

20 Q And since that time has your practice solely
21 focused on clinical psychology as well as teaching
22 and private practice?

23 A Yes, teaching and private practice and clinical
24 psychology. And while at the Medical University, I
25 was also involved in several research studies in

1 which we looked at the impact of being a victim on
2 psychological functioning, particularly as it
3 affects particular psychology -- or psychological
4 symptoms subsequent to a traumatic event, which has
5 come to be known as Post-Traumatic Stress Disorder.

6 Q When you began, they didn't even have that acronym;
7 is that right?

8 A Correct.

9 Q PTSD?

10 A In 1980, at the time the Diagnostic and Statistical
11 Manual for Mental Disorders came out, we had at
12 that time published research which showed that when
13 a woman is subjected to a violent sexual assault,
14 she develops symptoms that are very similar to that
15 of, at that time, the returning Vietnam veteran.
16 And therefore we had a way to communicate the
17 impact of and the severity of a sexual assault on a
18 woman's psychological functioning and making it
19 understood to the other aspects of the mental
20 health community.

21 Q Dr. Veronen, since your years at the Medical
22 University and now at Winthrop and private
23 practice, have you been called upon to consult
24 concerning court cases involving women and battered
25 syndromes?

1 A I have been called to do a variety of things
2 regarding victimization. At times, testifying
3 about sexual assault trauma, known as the Rape
4 Trauma Syndrome. I've also testified about
5 battered children. And I have also testified in
6 what has come to be known in the legal circles as
7 Battered Woman Syndrome.

8 Q How many times would you estimate that you have
9 actually not only been called on to consult, but
10 testified in court about these matters?

11 A I've probably testified over -- since 1979, when I
12 did my first testimony, I've probably testified
13 over a hundred times in 14 different states.

14 Q Have you been certified as an expert for that
15 testimony in those courts?

16 A Yes, I have.

17 Q Have you been previously certified as an expert to
18 testify concerning the effects as well as the
19 circumstances surrounding victims of domestic
20 violence or Battered Spouse Syndrome?

21 A Yes, I have. I have testified. And that is known
22 in a variety of ways. In our psychological
23 journals, we don't identify it as Battered Spouse
24 Syndrome, we talk about it as much more as victim's
25 of violence, victims of domestic violence, victims

1 of intimate violence. And that is the way it is
2 referenced in psychological journals.

3 Q I will try to hold to that more educated
4 pronunciation of the syndrome then from this point
5 forward. Thank you.

6 MR. LEIENDECKER: At this time, we would move
7 to qualify Dr. Veronen as an expert in clinical
8 psychology, specifically clinical psychology
9 dealing with victims of intimate violence as well.

10 THE COURT: All right. Any voir dire from the
11 State?

12 MR. SORENSON: No, Your Honor.

13 THE COURT: Any objection?

14 MR. SORENSON: Not at this point.

15 THE COURT: All right. For purposes of this
16 hearing, Dr. Veronen will be qualified as an expert
17 in clinical psychology with, you said, an emphasis
18 on intimate violence?

19 THE WITNESS: Intimate partner violence.

20 THE COURT: Intimate partner violence.

21 MR. LEIENDECKER: I'm going to write that
22 down, Your Honor.

23 THE WITNESS: IPV.

24 BY MR. LEIENDECKER:

25 Q Dr. Veronen, have you had an opportunity to have

1 contact and meetings with Robin Herndon, who
2 testified here today?

3 A Yes, I have.

4 Q And where did you meet with her and how often?

5 A I met with her on two occasions. And the dates of
6 that was February -- hang on a second. February
7 15th and February 18th of this year.

8 Q And as a result of those meetings, what was your
9 goal or objective in meeting with Ms. Herndon?

10 A I was assessing her to determine whether, in fact,
11 she had been the part of intimate -- been the
12 victim of intimate partner violence in a
13 relationship with Chris Rowley. And also to
14 determine if, because of that intimate partner
15 violence, it had produced some psychological
16 impacts that perhaps would have altered or changed
17 her perceptions of fear, particularly as it related
18 to his death.

19 Q Can you tell me how you do that? I mean, really,
20 you're not there. You don't have a video of the
21 action. What steps do you go through to try to
22 evaluate someone to determine whether they are or
23 are not a victim of this syndrome?

24 A Well, the procedure is to use some standard
25 psychological measures that we know have been

1 effective in assessing the traumas themselves. One
2 of the instruments is developed by a John Briere.
3 And it screens for a number of events that a person
4 may have experienced that might have produced fear
5 or a threat to one's life such that the person felt
6 that they might die.

7 So you go through a whole screening question,
8 and then you ask a question, Which one of those
9 events is the one that troubles you the most
10 currently?

11 And then you ask a number of scaled questions
12 about that particular event. And then when it is a
13 standard measure of assessment of Post-Traumatic
14 Stress Disorder, that is very widely accepted in
15 the area of psychology.

16 You also do a very detailed clinical
17 interview, in which you ask about family
18 background, ask about relationships, asking about
19 the whole social history.

20 Then, of course, the events of the day and
21 perceptions that might have been present at that
22 time as well as some physiological reactions that
23 might have occurred.

24 I also employ using a personality assessment
25 interview, which is a standard measure by Leslie

1 Morey, which has a multi-scale approach that
2 measures ten clinical factors of personality
3 functioning.

4 So that is the procedure that is used.

5 Also, I review all materials, hopefully that
6 have been supplied to the Defense, that are
7 existing around the circumstances of the homicide
8 or whatever event that we're talking about. And on
9 that basis, develop a report, sometimes lengthier,
10 sometimes briefer.

11 Q Okay. And what were your findings regarding Robin
12 Herndon based on your meetings and evaluations?

13 A Well, my findings, basically --

14 MR. SORENSON: Your Honor, I have an objection
15 at this point in time because I think she's going
16 to base her opinion on some testing that she did on
17 the Defendant that she just spoke about, the two
18 things called the Detailed Assessment of
19 Post-Traumatic Stress and the Personality
20 Assessment Inventory.

21 We have, pursuant to Rule 5(b), I think that
22 the results of those tests are something that needs
23 to be turned over to us. I have not received
24 anything regarding those tests or the results of
25 those tests. We received a fairly brief

1 five-page -- I'm sorry, four-page report that was
2 prepared by Dr. Veronen at USC last Tuesday
3 afternoon that references that those tests were
4 something that were administered, but there is
5 nothing as to the results or how they kind of
6 played into, ultimately, her opinion.

7 We attempted to -- I mean, we have the
8 documentation where we sent her a subpoena for her
9 records last Thursday. I understand Dr. Veronen
10 has told Ms. Hinds that she never received that. I
11 mean, but I think that was something we should have
12 had done, though. I think pursuant to Rule 5, this
13 is something that the Defense is required to
14 provide to us if they are tests that are performed
15 by their expert on their client that she is then
16 going to use as a basis of her testimony here
17 today.

18 MR. LEIENDECKER: Your Honor, I don't disagree
19 with what's being said. What I do disagree with is
20 that Rule 5 applies to Dr. Veronen producing those.

21 As you have heard, we were up in a short order
22 against this. I don't even have those. And if I
23 had them, I've given them everything I have. I've
24 provided them all the matters that I have. And
25 that is the report we have from Dr. Veronen, which

1 we just got on -- I think I got that on Wednesday
2 or Thursday last week myself and forwarded it on to
3 them the very next day. I think Rule 5 does
4 require me to provide them what I have, and I have
5 done that.

6 Unfortunately, Dr. Veronen -- and she can
7 certainly from the witness stand testify regarding
8 this -- did not receive the subpoena, but has said,
9 you know, she will try to put together the
10 materials she has in her file and make them
11 available to them. But at this point, I'm not
12 responsible for that and I don't have anything to
13 give them. And this isn't an ostrich move where
14 I'm trying to stick my head in the sand. This is a
15 reality. Rule 5 requires me to give them the
16 reports, the events, and the things that I have.
17 It doesn't require me to create things.

18 THE COURT: Yes, but you're asking her to
19 opine, give her opinion as to a -- in response to
20 your question.

21 MR. LEIENDECKER: Yes, Your Honor, absolutely.
22 And I gave them the report which summarizes those
23 conclusions.

24 THE COURT: So they do have the report that
25 summarizes the conclusions?

1 MR. LEIENDECKER: Yes.

2 MR. SORENSON: This report says absolutely
3 nothing about what the results of those two tests
4 were, only that -- it's got a paragraph that
5 describes what they both are and the fact they were
6 administered to Robin Herndon. And it actually
7 goes on to say right after that, A complete
8 detailed report of the background and development
9 of the relationship between Robin and Chris, the
10 nature of Robin's traumatization, and a detailed
11 discussion of the incident and Robin's perception
12 is not possible at this time. But yet -- but there
13 is nothing in here -- unless I'm missing something,
14 there is nothing in here that talks about the
15 results of these two tests.

16 I listened to her testimony last week, so I
17 know what she's going to ultimately say these tests
18 show, at least from what she testified about the
19 case last week in Orangeburg. And these two
20 paragraphs that talk about these two tests, this is
21 identical. It is a copy and paste from the report
22 from the case last week out of our circuit in
23 Orangeburg. So it is nothing specific to Robin
24 Herndon.

25 And I think under Rule 5 that if it is in his

1 control and if it is his expert -- I'm sorry that
2 he hasn't been able to get that stuff from her,
3 but, I would agree, maybe she's not under any
4 obligation to respond to my subpoena, but at the
5 same time, I haven't gotten anything from her
6 beyond this by the end of last week. So -- and I
7 knew she did respond to a subpoena from our office
8 in Orangeburg on that case last week. So I'm not
9 really necessarily faulting her. I mean, I do
10 think it's Mr. Leiendecker's responsibility to -- I
11 mean, just because he doesn't have it in his
12 possession, it is in his control. I mean, we hear
13 this all the time with them, you know, complaining
14 about Rule 5 and discovery with us all the time,
15 that, you know, just because it's buried somewhere
16 in the police department, it's still in our
17 control. I mean, if our expert had it, you can't
18 just not get it from her and then say, Well, I
19 don't have it, so I don't have to turn it over.

20 MR. LEIENDECKER: Your Honor, this is the
21 first -- five minutes ago -- the first I've heard
22 from Mr. Sorenson that he had any issue or problem
23 with this. In fact, he and I both sat in
24 Orangeburg over a week ago -- a week ago exactly
25 probably -- and listened to Dr. Veronen testify.

1 THE COURT: Were you copied on the subpoena?

2 MR. LEIENDECKER: No. I knew -- today, I was
3 shocked to learn there was a subpoena, and that's
4 why I went immediately to my expert and asked her
5 about it and she said she never received it. I
6 don't know how it was served and I don't know if it
7 was served pursuant to the rules.

8 THE WITNESS: And I was in Orangeburg last
9 week and it could have been delivered there if it
10 were something that was wanted, you know, because
11 we saw each other.

12 MR. SORENSON: Again, the complaint is not
13 necessarily with Dr. Veronen. Like I said, maybe
14 she wouldn't even have to comply with it. All I
15 know is I was told last week that she responded to
16 the subpoena -- a subpoena -- and gave the records
17 to Ms. Cornwell, who is a prosecutor on a case in
18 Orangeburg.

19 THE COURT: So let me understand. I guess I'm
20 not understanding. So there are two tests that she
21 used in coming to her conclusion; is that correct?

22 MR. SORENSON: That's what she did last week,
23 so I'm assuming that's what she was getting ready
24 based on Mr. Leiendecker's question of her. She
25 briefly talked about them a minute ago, something

1 called the Detailed Assessment of Post-Traumatic
2 Stress, which, apparently, will show -- I don't
3 know what she's going to say. I'm assuming she's
4 going to say that Robin Herndon is suffering from
5 PTSD as a result of that test and the Personality
6 Assessment Inventory is basically the same thing.

7 THE COURT: Does that report have any
8 conclusions in it? He's saying that she makes --

9 MR. SORENSON: No, it really doesn't. It
10 doesn't really have any conclusions at all. It
11 lays out -- the vast majority of this is a cut and
12 paste. The first two pages are almost identical to
13 the report we got in the case in Orangeburg. And
14 then there is two pages that -- basically 11
15 paragraphs that are, for the most part, just
16 regurgitating what Robin Herndon told her during
17 these two meetings, which is a little bit of a
18 prior history of some prior incidents, some of
19 which Ms. Herndon testified about, and then a brief
20 kind of synopsis of what allegedly occurred on
21 November 6th of 2013.

22 THE COURT: Do you have the results of the
23 tests?

24 MR. LEIENDECKER: No. I have exactly what I
25 gave him. Everything I have, I gave to them.

1 THE COURT: All right.

2 MR. LEIENDECKER: And, again, this is the
3 first I've heard that it wasn't sufficient.

4 MR. SORENSON: How am I supposed to
5 cross-examine her, Mark, based on this report with
6 what she's --

7 THE COURT: Do you have the tests -- the
8 results of the test as of today?

9 MR. LEIENDECKER: I don't.

10 THE COURT: Do you have them on you,
11 Dr. Veronen?

12 THE WITNESS: Yes. I didn't know they were
13 being requested, but I do have them.

14 MR. SORENSON: And to be honest with you, I
15 wasn't sure what she was going to base her opinion
16 on, but then Mr. Leiendecker's question, obviously,
17 I mean, it's going to be based on these two tests.
18 I have no idea how she -- I don't have any idea
19 what the results of those tests were.

20 MR. LEIENDECKER: My question was open-ended.
21 And I just thought I understood you read that --

22 THE COURT: What was your question? I forgot
23 your question.

24 MR. LEIENDECKER: I asked her, you know,
25 You're not there, there's no videotape, how do you

1 evaluate whether someone is a victim of this
2 syndrome and these conditions?

3 MR. SORENSON: And her response was, Based on
4 testing, the history I was given, and something
5 else.

6 THE COURT: Well, I think she can probably
7 testify as to how she was basically evaluated.
8 Once she gets into the specifics as to the
9 Defendant, I think they have a right to have a copy
10 of the report if she is going to give an opinion
11 and what she has based that on.

12 MR. LEIENDECKER: I'll give them to him now.

13 THE COURT: All right. How long are the
14 reports?

15 THE WITNESS: Well, the things that we're
16 provided, there is probably about six pages of
17 things that I can turn over because I'm not -- they
18 are scaled scores that I can explain. And that is
19 what I turned over.

20 THE COURT: Let's take five minutes so we can
21 get a copy, give that to the Solicitor's office.
22 And then once you all have a chance to look --
23 well, I said five minutes, five or ten minutes, if
24 you need additional time to review the documents.
25 Someone from the Clerk's Office can make a copy of

1 it.

2 Do you want to take a look at it first?

3 MR. LEIENDECKER: If they would make two
4 copies, that would be great, then I could see it.

5 THE COURT: All right. Thank you. So let's
6 take about five or ten minutes.

7 (WHEREUPON, a short break was taken at
8 5:58 p.m.)

9 THE COURT: Anything from the State before we
10 continue?

11 MR. SORENSON: I guess not.

12 THE COURT: All right. Thank you.

13 **DIRECT EXAMINATION CONTINUES**

14 BY MR. LEIENDECKER:

15 Q Dr. Veronen, then back to the question where you
16 talked about how you evaluate this, since you
17 weren't actually there and don't have the videos,
18 and that kind of thing.

19 I asked you the question before the objection
20 was made that, what were your findings regarding
21 Robin Herndon after your meetings with her?

22 A Well, my findings were that, based on the testing
23 that I had, the Detailed Assessment of
24 Post-Traumatic Stress, she was very definitely
25 experiencing PTSD, that she had several trauma

1 experiences, and that the nature of the trauma were
2 such that some of which was produced prior to the
3 event itself and some of it was produced from the
4 event itself. And at the time of the traumatic
5 event, the life threat that she has talked about
6 here, she had great, great fear for her life.

7 And what we know -- and this is where the
8 previous trauma sensitizes people to
9 understanding/perceiving, recognizing when someone
10 is behaving in ways that are extremely threatening.
11 And this is why the research has shown that women
12 who have lived with their intimate partner and have
13 suffered violence at the hands of their intimate
14 partner are in positions to predict when that
15 partner is going to be violent, and thus, you know,
16 may experience heightened fear commensurate with
17 that, and sometimes, as we say, physiological
18 changes.

19 For example, I was talking about fear for
20 Robin and with Robin, and she reported that at the
21 time she had to take off all her clothes, that of
22 course were blood stained, but she had been so
23 frightened that she had wet on herself. And so, I
24 mean, that was an indication of extreme fear.

25 We know from -- so -- but the traumatic event

1 data produces a suggestion, a strong suggestion and
2 evidence that this woman was, in fact, in fear for
3 her life and experienced fear at a very intense
4 level, imminent danger.

5 The Personality Assessment Inventory does not
6 tell us anything other than how she is functioning
7 at the time that I was able to interview her. And
8 at that time, basically she reported accurately and
9 clearly, didn't overexaggerate or under-exaggerate
10 her particular symptoms. She produced a profile
11 that indicated multiple distress in a lot of
12 different areas, which was certainly consistent
13 with the report that we obtained and what she
14 obtained as her diagnosis when she went to the
15 Mental Health Center subsequent to Chris's death.

16 So certainly testing is consistent with the
17 diagnosis of a victim of intimate partner violence.

18 Q Are her reactions typical to the reactions of women
19 who are subjected to this kind of physical and
20 emotional abuse at the hands of an intimate
21 partner?

22 A As I said, in the most kind of -- one of the bigger
23 findings that we have is that they become highly
24 sensitized to violence, and that is where it
25 relates to this particular situation. However, she

1 also showed many other characteristics that women
2 of intimate partner violence did. She tried to
3 explain away the violence by saying that, He's
4 depressed and troubled.

5 And, additionally, tried to say and get him
6 and obtain for him help. And she learned that, in
7 fact, he was troubled. He had a diagnoseable
8 mental disorder of bipolar of the rapid cycling
9 variety, which made him, according to the records
10 that I reviewed, about his interview on July 17th,
11 he was, in fact, at that point quite aggressive.
12 He reported that he had difficulty controlling his
13 anger, and thus would have, in fact, been even
14 perhaps a greater threat.

15 Q Is it atypical for women who are victims of this
16 kind violence to have it happen in secret without
17 lots of people being aware of or knowing of it?

18 A Well, it's quite typical in that you want to
19 present your partner in a good light. And, you
20 know, your partnership reflects on you. And so
21 often people do not fully disclose the nature of a
22 violent relationship because they are, in fact,
23 trying to be protective. So they lie about it,
24 come up with other explanations for why they have
25 marks and bruises.

1 Q Following your discussions with her and testing,
2 what do you believe was the nature of the
3 relationship between Robin and Chris?

4 A I believe that it was, in fact, a relationship that
5 had intimate partner violence. It was also a
6 relationship in which Robin cared for Chris very
7 much and did, in fact, go over and above trying to
8 obtain for him help. She went so far as to fill
9 out disability papers to try to get him on
10 disability. She helped him fill out a waiver so
11 that he could get medication for the special
12 medication he needed at a very reduced rate. She
13 provided the money to and took time out to take him
14 to the psychiatrist or to the doctor that they saw
15 on July 17th. So she certainly went over and above
16 trying to get him the help that she perceived that
17 he needed.

18 Q How did the history of their relationship, Robin
19 and Chris's relationship, influence Robin's
20 perceptions and her reactions to Chris, or other
21 people?

22 A Well, as I said, when one has experienced violence
23 in a relationship, one becomes perhaps sensitized
24 or more vigilant, more aware of what might be cues
25 that the violence is either escalating or more

1 serious than it has ever been in the past. And so
2 that sort of perceptual changes is something that
3 we see occurring with Robin.

4 Q I don't want this to sound a typical male question,
5 but why do women in violent relationships not just
6 end the relationships immediately?

7 A Well, because they love the person that they are
8 with and they fear him. And when the relationship
9 is good, there is, you know, a softness, often the
10 person is apologetic. They recognize sort of their
11 bond of love for one another. And so it is sort of
12 the hope springs eternal that, you know, that if
13 the person got the help they needed or if they were
14 somehow loved enough, they would be whole and stop
15 being violent.

16 Q Was Robin, from your review, typical or similar to
17 women that are involved in these kind of violent
18 relationships?

19 A She is very similar to women that, you know -- and,
20 you know, many professional women -- in fact, you
21 know, she was in law enforcement and a
22 professional, but she had this relationship that
23 was, in fact, not consistent with how she saw
24 herself, but, nonetheless, it was the reality of
25 her life.

1 Q What did Robin tell you about November 6th, 2013?

2 A Well, she told me and related that on that
3 particular occasion, she went to work like she had
4 done. And Chris had this appointment to have his
5 blood done and he needed money for that
6 appointment. And so they were negotiating in the
7 morning trying to determine how the check was going
8 to get for this appointment. And she reported
9 that, in fact, she checked out of her work and they
10 agreed to meet in the cemetery which was nearby
11 where they lived.

12 And so she went there. And she said that
13 Chris was behaving, in her words, sort of strangely
14 and seemed irritable and agitated, and at times
15 sort of out of it.

16 And, you know, she reported that he was, you
17 know, sort of more agitated and more difficult than
18 he had been previously. And he kept alternating
19 whether he wanted to go to this appointment or
20 didn't want to go to this appointment. And she's
21 doing her best to, you know, convince him that he
22 needs to do this.

23 She was so concerned that she, in fact, was
24 worried too that he needed to be accompanied, but
25 since she had to go back to work, she was pleading

1 with him that perhaps he could get his mother to go
2 with him. And she also had concern about him
3 driving.

4 She reported that he agreed to go back to the
5 house and kind of roared off and they had
6 exchanges. And she reported to me in much the same
7 manner that -- you know, we have heard her testify
8 here today that, you know, Chris became angry and
9 threw the keys on the roof and, you know, behaved
10 in sort of a strange way. And, again, this was
11 alternate back and forth between trying to be angry
12 and then agitated and irritable and -- but on this
13 particular occasion, she got into an altercation
14 with him in which he pinned her down and hit her
15 several times. She got up. Back and forth. Went
16 into the house. And she related to me the same
17 scenario that she has related here, that at that
18 point in time she very much feared for her life.

19 Q Based on your experience and evaluation, what is
20 the psychological state of a woman who has
21 exhausted her means of influencing the man she
22 loves and sees him as more violent and out of
23 control than previously?

24 A Well, at that point, many times we see that women
25 will defend themselves. You know, the question is

1 asked, Why does the self emerge at this particular
2 point in time? And, you know, the survival
3 response of, you know, the other person versus me.
4 At that point, it is instantaneous and an
5 instinctual response for survival. And so it is,
6 in fact, a self-defending where, in fact, she has
7 always put the other person first repeatedly.

8 Q Did Robin fear Chris that day when she pulled her
9 gun on him?

10 A Yes, she did.

11 MR. LEIENDECKER: Please answer any questions
12 Mr. Sorenson may have for you. Thank you..

13 CROSS-EXAMINATION

14 BY MR. SORENSON:

15 Q Good evening, Dr. Veronen.

16 A Good evening.

17 Q So it's your testimony that back on November 13th
18 of 2013 -- November the 6th of 2013, that last
19 question that Mr. Leiendecker asked you, that Robin
20 Herndon feared her life when she pulled the trigger
21 and shot Christopher, and your opinion is was that
22 she was; is that correct?

23 A Yes.

24 Q And that, Dr. Veronen, is based entirely on what
25 that lady told you in two interviews three weeks

1 ago, two weeks ago?

2 A Three weeks ago, two weeks ago, yes.

3 Q February 15th of this year and February 18th of
4 this year; is that correct?

5 A Well, it is also based on a consistent presentation
6 of trauma history, a consistent presentation of
7 assessment materials that look for either
8 overresponding or overreporting and underreporting.
9 It's based on her overall symptoms, presentation on
10 testing, social history, as well as her interview
11 data, yes.

12 Q And the vast majority of what you just told the
13 Court about is all stuff, yet again, that is coming
14 from her; is that correct?

15 A Correct.

16 Q And in this case, there are no independent
17 witnesses of any of this prior allegations of
18 domestic violence against her that you're aware of;
19 is that correct?

20 A Well, there's -- she said Chris's children
21 witnessed that and her daughter K.N. also
22 witnessed the bed being broken and other pieces of
23 glass and things being broken in the house. So
24 there is indications that violence was occurring.

25 Q And, of course, that comment about Chris's

1 children, she didn't tell you that a couple of
2 weeks ago, did she?

3 A Yes, she did.

4 Q It's not in your report, is it?

5 A That -- not everything is in the report, but she
6 did, in fact, say that. And she said Chris was
7 behaving so erratically on that occasion that after
8 this he told the children, you know, Sit at the
9 table. And then he changed it and said, We're
10 going to go. And then he changed it, and they
11 didn't leave. So he was behaving in ways that, you
12 know, sort of were consistent with, you know,
13 perhaps, a violent erratic man.

14 Q Okay. That wasn't my question, but I appreciate
15 it, Doctor. So it's your -- let me make sure I
16 understand. I received -- we got last Tuesday
17 afternoon at 3:00 o'clock or so in the afternoon,
18 almost 4:00 o'clock in the afternoon, we got a
19 four-page report that was faxed to us by
20 Mr. Leiendecker; is that correct?

21 A Check.

22 Q Do you need to look at that or is that accurate?

23 A That's correct.

24 Q Okay. And in that, there are -- the last two pages
25 contains, basically it is 11 different numbered

1 paragraphs, which are, for the most part,
2 information that, I assume, the Defendant had
3 provided you; is that correct?

4 A Well, the Defendant and also from other reports.
5 The size differential I don't think is data that
6 has come in here, but that was provided --

7 Q Number one --

8 A That was provided by looking at the reports. Robin
9 was 5'3" and weighed approximately 190 pounds at
10 the time. Chris was 5'11", weighed 350 pounds at
11 the time. He also had a history of using violence
12 against women. There is a police report in which
13 he was violent to his previous wife. And the
14 pattern of violence in that previous report was
15 very similar to what Robin was reporting with, with
16 being struck, hit, and spit upon.

17 The additional thing -- and this didn't come
18 out, but Robin and Chris, which is very typical of
19 relationships which become violent, they move
20 quickly to intimacy. And Robin, because of her
21 broken ankle --

22 MR. SORENSON: Your Honor, at this point, I
23 mean, I hate to interrupt her, but, I mean, this is
24 not responsive to my question. She had an
25 opportunity on direct examination to go through all

1 of this.

2 THE COURT: What was your question again?

3 THE WITNESS: My -- his question to me was
4 this is exactly what she told me. I'm just
5 regurgitating. And I'm saying that this report is
6 not a regurgitation of what I was told.

7 THE COURT: What's the question again?

8 MR. SORENSON: That's basically -- and that
9 would be the answer to the question as opposed to
10 the long explanation that she's gone into.

11 BY MR. SORENSON:

12 Q So I guess my next question, Dr. Veronen, do you
13 have notes in your file containing what Robin
14 Herndon did, in fact, tell you on those two
15 meetings on February 15th and February 18th of this
16 year? Because you're telling us now that there's
17 significantly -- there's additional stuff that did
18 not make it into this report you provided to Mr.
19 Leiendecker.

20 A I do have some additional notes here, yes.

21 MR. SORENSON: Your Honor, at some point in
22 time I'd like to get a copy of those. I thought we
23 had addressed this, but --

24 THE COURT: Do you have a copy of those?

25 MR. LEIENDECKER: I don't, Your Honor. And at

1 this point, now we've gone also beyond Rule 5
2 because that's reports, not notes, not things
3 that --

4 MR. SORENSON: That's fine. I'll move on. If
5 she doesn't want to give me a copy of that or you
6 don't want to, I'm fine with that.

7 MR. LEIENDECKER: I'm not saying that he
8 shouldn't get a copy of it, but at this point, we
9 can't focus on that particular --

10 MR. SORENSON: No, I wasn't asking that.

11 THE COURT: We'll come back to that, but if
12 she does have to testify in the actual trial, then
13 she's going to need to turn over those things that
14 she is testifying to or she is using to come to her
15 conclusions.

16 BY MR. SORENSON:

17 Q Let's kind of back up a little bit, Doctor. So
18 based on the report, I guess the what -- now the
19 incomplete report that I have a copy of, you met
20 with Ms. Herndon on two occasions, February 15th of
21 this year and February 18th of this year; is that
22 correct?

23 A Correct.

24 Q February 15th of this year -- let me ask you this
25 before I get to that. When were you first

1 contacted by Mr. Leiendecker about potentially
2 becoming involved in this case?

3 A I think it was around the 10th of February. And I
4 was contacted by his co-counsel, Peggy Hinds.

5 Q Okay.

6 A And she was saying that they needed an evaluation
7 relatively quickly.

8 Q Okay. And what were you provided at that point in
9 time by either Ms. Hinds or Mr. Leiendecker?

10 A They gave me what they had was full discovery.
11 They express mailed it to me so that I had it when
12 I began working with Robin on the 15th.

13 Q So you had the incident report?

14 A Uh-huh.

15 Q You had the supplemental incident report?

16 A (Nods affirmatively.) Yes.

17 Q You had a copy of her videotaped statement to State
18 Law Enforcement Division?

19 A I haven't seen her videotape.

20 Q So you don't have her prior statement. And
21 wouldn't that be kind of important when you're
22 trying to consider, I mean, what she's tell -- the
23 veracity of what she ultimately is telling you when
24 you meet with her and what she may have told law
25 enforcement or anybody else prior?

1 A I have the incident report and the supplemental
2 report. I don't have the video report.

3 Q Okay.

4 A Right.

5 Q All right. And how about crime scene photos?

6 A I don't have crime scene photos.

7 Q Autopsy report?

8 A Yes, I have autopsy report.

9 Q So they contact you, and you then set up and meet
10 with Ms. Herndon for the first time, you know, four
11 or five days later on the 15th; is that correct?

12 A Correct.

13 Q And she comes in the first time with her daughter;
14 is that correct?

15 A Correct.

16 Q And tell me or tell the Court what did y'all --
17 because you end up meeting with her, according to
18 your report, for a total of five hours over those
19 two days; is that correct?

20 A Correct.

21 Q What on February 15th -- what do you do on
22 February 15th?

23 A I talk with her to gain a social history. And then
24 I do the Detailed Assessment of Post-Traumatic
25 Stress, and then she completes the Personality

1 Assessment Inventory.

2 I spent a bit of time talking to her daughter
3 K.N. while she was completing some of those
4 measures. And then on the second occasion I
5 interviewed her based on the Detailed Assessment of
6 Post-Traumatic Stress and other aspects about the
7 relationship and the incident itself.

8 Q And let me ask you, in this report that we've got
9 that was dated February 21st -- that would have
10 been a week ago -- I see on here where it talks
11 about, if you look at your Paragraph Number 8,
12 about Ms. Herndon indicating she had made an
13 appointment for Christopher to receive a mental
14 health evaluation. It indicates you were awaiting
15 records. I guess, have you received those records?

16 A I have. I received those and was able to review
17 them. And it indicated exactly what Robin had told
18 me, is that Chris's mental health therapist
19 diagnosed Chris was suffering from a bipolar
20 disorder and he was suffering aggression and --

21 THE COURT: Hold on a second.

22 MR. SORENSON: I was checking, because I don't
23 have those records either, and I was asking if
24 Mr. Leiendecker had them.

25 THE COURT: Which records?

1 MR. SORENSON: This would be the ones that she
2 made reference to on direct examination about
3 Chris's mental health records from -- and I
4 think --

5 THE WITNESS: Stairway, I think is the --

6 MR. LEIENDECKER: Yes, those were provided for
7 review today and I do have them. That's what Glenn
8 and I were doing with the attorney for production.
9 We didn't get those until Friday. I can give those
10 to you.

11 MR. SORENSON: Okay.

12 MR. LEIENDECKER: But those were just handed
13 to the doctor when she walked in today.

14 BY MR. SORENSON:

15 Q You received those today for your review?

16 A Correct.

17 Q And you said then on the 18th is when you would
18 have gotten kind of the history from Ms. Herndon
19 about what had actually, she's saying, occurred on
20 November 6th of 2013?

21 A Correct.

22 Q And that is what you then is contained in your
23 Paragraph Number 10?

24 A Correct.

25 Q You have -- I don't have your notes. Is there more

1 to it than what is contained in Paragraph Number 10
2 that she told you?

3 A Well, she did, in fact, say that the keys were
4 thrown on top of the roof, and that isn't in the
5 paragraph. But, you know, this is a summary of
6 what, in fact, she had told me.

7 Q Okay. And you had an opportunity to sit and listen
8 to her testify today; right? You were here
9 throughout it?

10 A Correct.

11 Q Would you agree with me that what she told the
12 Court today, that is not really the same as what
13 she told you?

14 A I think it's the same. I don't see any --

15 Q I mean, she doesn't say anything about them having
16 met over at the cemetery and arguing with him
17 there, does she?

18 A This isn't verbatim. This is sort of the sum total
19 of he was both agitated and angry. You know,
20 basically, she's arguing with him about trying to
21 get him to, you know, call his mother so that he
22 will, in fact, you know, go to this appointment
23 safely.

24 Q Di you have -- I mean, are your notes from what she
25 told you about what happened on November 6th, is

1 that something that is readily accessible there?

2 A Well, it's not readily accessible, but.

3 Q You are talking to her and she -- I mean, I assume,
4 you're just asking her, Tell me what happened that
5 day, and she goes through and tells you what
6 allegedly happened that day and you're taking
7 notes; is that correct?

8 A Yes.

9 Q And I would think, Doctor, it would be important
10 to -- I mean, for you to come in here and give the
11 opinion that you've given to this Court, I mean, to
12 have kind of the full picture of what happened that
13 day; is that correct?

14 A Okay. Here's the full picture. Do you want me to
15 go through it?

16 Q I mean, I would -- I guess so. I mean, I was kind
17 of assuming before today that this is what she told
18 you happened that day, but, I mean --

19 A Well, I mean, there is more detail, but in terms of
20 the salient events that I think were influencing
21 her state of fear are, you know, contained in that
22 paragraph there, that he was both agitated and
23 angry.

24 Q So the fact that he was agitated and angry
25 therefore, in your opinion, justified her in

1 shooting him; is that correct?

2 A Oh, definitely not. She did everything she could
3 with that agitation and anger to calm him down, to
4 try to get him the help he needed.

5 Q So it is your testimony that on that day, on
6 November 6th of 2013, she was doing everything she
7 could to calm him down?

8 A To get him the help he needed. To get him the help
9 he needed. Because she recognized that, you know,
10 her efforts at loving him into health were not
11 working. He needed professional intervention.

12 Q And, of course, yet again, that opinion is based on
13 what she has told you because you haven't
14 interviewed any other witnesses out there from that
15 day or even reviewed any of their statements, have
16 you?

17 A Yes, I have reviewed the statements from that day.

18 Q And so you have the statements of the neighbor that
19 actually saw -- basically saw this altercation
20 going on out in the yard? You've seen the
21 statements from the two individuals at the cemetery
22 that saw the altercation?

23 A Yes.

24 Q And it is still your opinion, based on that -- you
25 would agree with me that that statement from that

1 neighbor doesn't jive with what she says happened?

2 A There is two statements from the neighbor. And one
3 said that they heard very distinctly her saying,
4 you know, This is over, it's done, or words to that
5 effect in a very loud voice out in there in the
6 yard. They did hear that. That's one of the
7 statements.

8 Q That's the one neighbor, that's all they heard,
9 that's correct.

10 A And then one other neighbor is, you know, reporting
11 on just kind of what they are seeing from a
12 distance and could not hear.

13 Q Did you read that whole statement, Doctor?

14 A I think I did.

15 Q Okay.

16 MR. SORENSON: May I approach the Doctor, Your
17 Honor?

18 THE COURT: Yes.

19 BY MR. LEIENDECKER:

20 Q This is the statement I'm referring to, Lacey
21 Burton. Have you seen that?

22 A She says, I could not make out anything she was
23 saying at him. I observed the male -- yeah. If he
24 did respond, he was calm and I never heard him say
25 anything in addition. Okay. She said she didn't

1 witness either person get physical. But we don't
2 know at what point she came into this particular
3 situation.

4 Q But you agree -- I mean, this differs from what she
5 says; is that correct?

6 A It differs from what she says, but I also know that
7 there is a lot of research on sort of eyewitness
8 report. And, you know, the distance that this
9 woman was from -- you know, there's another report
10 that, you know, follows a lot more closely with
11 what Robin, you know, was saying.

12 Q And the one thing I notice in kind of looking at
13 it -- and you haven't had the opportunity of
14 reviewing the -- Ms. Herndon's videotaped statement
15 from November 6th of 2013. But the one thing I
16 notice from what she testified today, I tell you,
17 from what's on that statement and from what you got
18 in here is she has never actually said that she
19 intentionally shot Chris; is that correct?

20 A Yes, she -- what I heard is that he sort of swatted
21 at the gun.

22 Q And it discharged and that she did not see it
23 discharge, she just heard it?

24 A Correct. And, you know, that may be consistent
25 with what she sort of reported is that, you know,

1 Chris was not respectful of her, was not respectful
2 of police officers --

3 MR. SORENSON: Your Honor, that is not in
4 response to my question. That is not even a --

5 THE WITNESS: Well, but swatting at a gun --

6 MR. SORENSON: My question -- again, that
7 wasn't my question.

8 THE COURT: Repeat the question.

9 MR. SORENSON: My question was she has never
10 said she intentionally shot Christopher.

11 THE WITNESS: And I answered that is true.
12 She did not say she intentionally shot Christopher.

13 BY MR. SORENSON:

14 Q Okay. A couple more things, Doctor. You had
15 testified kind of at the very beginning of your
16 direct examination that you have testified over a
17 hundred times since 1979; is that correct?

18 A Correct.

19 Q And that is -- I mean, obviously as a clinical
20 psychologist, I mean, you do more than just what
21 you're here testifying about today; is that
22 correct?

23 A Right, I have a general practice of clinical
24 psychology. I see children as young as four or
25 five and as old as 84. So I don't just do this,

1 no.

2 Q So my question is, in those hundred plus times that
3 you've testified, though, is that specifically with
4 regards to this field, intimate partner violence?

5 A Primarily, intimate partner violence, but it is
6 also sexual assault as well and the reactions to
7 being a victim of sexual assault in civil cases, in
8 family court.

9 Q How many, if you can -- and I'm not expecting you
10 to give me an exact number, but how many times do
11 you think you've testified as an expert witness
12 when you have been giving an opinion with regards
13 to intimate partner violence?

14 A Probably in excess of 70 times.

15 Q Okay. And let me ask you this. Obviously I had an
16 opportunity to watch you testify in a case last
17 week because I know that was similar type issues;
18 is that correct?

19 A Similar, yes.

20 Q How many -- how often -- let's say over the last
21 three years, since this has happened, so the last
22 two to three years, how many times have you been
23 consulted by a criminal defense attorney in a
24 situation such as this where you are asked to
25 evaluate their client with regards to whether they

1 suffer from Post-Traumatic Stress Syndrome because
2 of intimate partner violence?

3 A How many times in the last three years?

4 Q Uh-huh.

5 A Probably six or eight.

6 Q And out of those six or eight times, have you found
7 a similar opinion to this, that these women
8 suffered from Post-Traumatic Stress Disorder as a
9 result of intimate partner violence?

10 A Not always, no. Probably six out of the eight, I
11 did.

12 Q You would agree with me that in looking at this
13 case with regards to Ms. Herndon, she is a little
14 unique as far as probably some of the women that
15 you have evaluated and found to have suffered from
16 the hands of intimate partner violence? Would you
17 agree with me in that regard?

18 A Well, every individual is unique, of course, but,
19 you know, yes.

20 Q Typically, when you have a battered spouse,
21 typically they are financially dependent upon their
22 batterer; is that correct?

23 A That might be the possibility, but it is not
24 necessarily. I mean, people who are in these
25 relationships, the love bonds are various. And for

1 her, it was the love bond to try to help him and
2 love him into wholeness. And that was the love
3 bond. And some other people have, you know,
4 different kinds of circumstances that keep them in
5 the relationship, but.

6 Q Of course, you would agree with me, in this case, I
7 mean, she wasn't financially dependent on
8 Christopher Rowley; is that correct?

9 A No, in fact, he --

10 Q Probably the other way around; correct?

11 A -- he had a lot of dependence on her.

12 Q It was her home?

13 A Correct.

14 Q Her -- I think even she had gotten -- I think his
15 cell phone he had, but actually she paid for?

16 A Correct.

17 Q Additionally, she is a little different in the fact
18 that she actually has law enforcement background;
19 is that correct?

20 A Correct.

21 Q Including, not only just law enforcement
22 background, but also training in dealing with
23 domestic violence victims; is that correct?

24 A Perhaps. I didn't check that out, but she has law
25 enforcement background, yes.

1 Q You sat through her testimony today; is that
2 correct?

3 A Yes.

4 Q She testified to that; is that correct?

5 A (Nods affirmatively.) But that law enforcement
6 background and dealing with domestic violence, we
7 know is various across the state how people deal
8 with domestic violence.

9 Q She actually testified that she was a special
10 victims investigator?

11 A Correct.

12 Q All right. And, of course, she also has -- you
13 know, where a lot of women may not feel they have
14 anybody to confide in, I mean, she has multiple
15 friends in law enforcement that she could turn to
16 for help?

17 A That's true.

18 Q Just real -- just a couple more questions, Doctor,
19 and then I'm done, just because I don't understand
20 what I'm looking at here. We got a four-page
21 document kind of during the break. It looks like
22 one page is titled DAPS Profile Form: Women. It
23 has got Robin's first name on it. All right. What
24 is this supposedly showing?

25 A This is showing us that she -- in terms of the

1 first two scales that she reported herself and did
2 not overreport or underreport, try to make herself
3 either look better or worse than the conditions
4 warranted. She had -- the trauma reports that she
5 had, she had four particular trauma events, which
6 is about midway for the normative group here.

7 Q And that's the RTE, is that what that is, the
8 column I'm looking at?

9 A Correct.

10 Q Yet again, that's -- I mean, that's taking her word
11 for it; right? I mean, she's reporting four
12 episodes?

13 A Right. But that is, you know, sort of mid-range
14 with the test for which this is formed. And then
15 we look at the specific trauma at the time. And
16 she moves into the area of what we call -- the zone
17 there at the top is called Clinical Significance.
18 And so we have her reporting in Clinical
19 Significance. And then we move into what we might
20 consider to be the dissociative aspect. And she is
21 in Clinical Significance. And then she -- in the
22 area of reexperiencing, avoidance, arousal, and
23 what we call PTSD impairment, she is sort of at the
24 top of the scale. She is highly, highly reporting
25 trauma symptoms in that area.

1 Q And, of course, you had testified earlier that a
2 lot of what she reported or a lot of -- let me find
3 my notes here real quick. That the trauma that you
4 found on this DAPS I think, if I've got this
5 written down correctly, that you found that some of
6 that is produced by the actual incident, the
7 November 6th incident; correct?

8 A Correct.

9 Q And then some from prior events?

10 A Correct.

11 Q Okay. There's no way to kind of differentiate all
12 that, I guess?

13 A Well -- but what is important about this is that at
14 the time that she was faced with this threat, she
15 was highly fearful, high arousal. She felt
16 helpless. She felt fearful. She --

17 Q And that's all based on --

18 A Physiologically, she was so aroused, she, you know,
19 wet on herself. You know, that experience of high
20 fear, it can happen to people who are, you know,
21 very well trained people. I mean, I work with
22 combat veterans and I can tell you that, you know,
23 there are individuals so -- that report fear even
24 though they've been highly trained to deal with
25 combat.

1 Q So all these numbers kind of led you to your
2 conclusion, part of leading you to conclusions; is
3 that correct?

4 A Correct.

5 Q She did -- I'm glad you mentioned this. Now, she
6 told you that she had wet herself during the
7 incident?

8 A Correct.

9 Q That didn't make it into your report; right?

10 A No.

11 Q That is in your notes, I assume, that I'm going to
12 get?

13 A Yes.

14 Q And when did she say that she wet herself?

15 A She -- at the time, she didn't know she had, but
16 she -- when she turned in her clothing and had
17 to -- she noted at that point that she had wet.

18 Q So that should be something we should see, you
19 know, if she's supposedly down on the ground during
20 this -- inside on the carpet, there should be some
21 staining on the carpet then if she had wet herself;
22 is that correct?

23 A Perhaps.

24 Q We'll take a look at that then. When you met with
25 her on those two days, I mean, she actually, at

1 times, was angry, outraged; is that correct?

2 A There is a whole range of emotions that she
3 experienced.

4 Q And she would have known -- when she was coming to
5 meet with you on February 15th of 2016, she was
6 aware of why she was meeting with you; is that
7 correct?

8 A Oh, certainly. Yes.

9 THE COURT: Beg the Court's indulgence.

10 (Pause.)

11 MR. SORENSON: Thank you, Your Honor.

12 THE COURT: Yes.

13 MR. LEIENDECKER: Nothing.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 (Witness steps down.)

17 THE COURT: All right. It is about five after
18 7:00. I think we'll take our evening break and
19 start back at 9:30 in the morning.

20 I don't know -- we'll see how we progress in
21 the morning and we'll let the jurors know. I think
22 you told them 12:00 o'clock. They need to come at
23 2:00 and/or come on Wednesday. We'll see.

24 MR. LEIENDECKER: Your Honor, my only question
25 was, or problem with the Court is that my two other

1 medical doctors have actually blocked their
2 patients for today. And I don't -- it could be --
3 are we going -- what's our plan tomorrow? Is
4 tomorrow a day we can go late or not?

5 THE COURT: You mean for purposes of this
6 portion of it?

7 MR. LEIENDECKER: Yes, ma'am.

8 THE COURT: Are they blocked in the morning or
9 afternoon? I mean, are you now saying it is
10 probably going to take all day tomorrow?

11 MR. LEIENDECKER: No. No, I'm not. But
12 Dr. Fallaw and Dr. Cummings could give you a better
13 idea of what was their schedule of patients for
14 tomorrow.

15 THE COURT: I'm not sure what you're asking.

16 MR. LEIENDECKER: Well, I had hoped to put
17 them on today. I didn't expect Dr. Veronen to take
18 this long.

19 THE COURT: It is about ten after 7:00. I'm
20 not going to make these folks work.

21 MR. LEIENDECKER: I just feel terrible
22 blocking their patients -- taking them away from
23 their patients tomorrow again.

24 THE COURT: But I'm not going to make the
25 court staff -- I feel bad making them stay here.

1 It's 7:07. Now -- so we -- I don't know, you'll
2 have to figure that out with them. I'm not going
3 to make the staff, the court staff and everyone
4 else stay here and the deputies and all stay here
5 any longer. It's seven after 7:00.

6 All right. So I'll see you all at 9:30 in the
7 morning.

8 (WHEREUPON, the proceedings concluded at
9 7:08 p.m.)

10 MARCH 1, 2016

11 (WHEREUPON, the proceedings resumed at
12 10:05 a.m.)

13 (WHEREUPON, State's Exhibit Nos. 1
14 through 32 were marked for
15 identification.)

16 THE COURT: Good morning. All right. I think
17 we are ready to proceed. I had a brief meeting
18 with the lawyers, just trying to look at
19 scheduling. I think what we're going to do is have
20 the jurors come back on tomorrow. I think we have
21 a pretty full day today. So if you can ask them to
22 be back at 9:30 in the morning.

23 And then we also will probably order lunch and
24 just work a full day tomorrow instead of sending
25 them out. So if someone can just advise me what we

4 MR. LEIENDECKER: Yes, Your Honor. May it
5 please the Court? We would call Dr. Robyn Fallaw.

7 THE CLERK: Place your left hand on the bible
8 and raise your right.

10 THE CLERK: The testimony you shall give the
11 Court in this case shall be the truth, the whole
12 truth, and nothing but the truth, so help you God?

14 THE CLERK: Have a seat in the witness box,
15 state your name, spelling your last.

17 THE WITNESS: Robyn Fallaw, F-A-L-L-A-W.

18 ROBYN FALLAW,
19 after being duly sworn, testified as follows:

21 BY MR. LEIENDECKER:

22 Q Good morning, Dr. Fallaw. Would you please begin
23 by telling the Court where you practice, what your
24 concentration in practice is, and your educational
25 background for us?

1 A I received a Bachelor of Science in biology from
2 Presbyterian College and then a medical doctorate
3 from the Medical University of South Carolina in
4 Charleston. I then completed my family medicine
5 residency at MCG. And since that time, I have been
6 at the Center for Primary Care in North Augusta
7 doing general family practice.

8 Q Okay. And, I'm sorry, you did your residency at
9 MC --

10 A MCG, Medical College of Georgia, or GMU, whatever
11 acronym you want to call it right now.

12 Q Thank you very much. When did you join the
13 practice you're with here in Augusta -- North
14 Augusta and Aiken?

15 A 2009.

16 Q Okay. And during that time, have you had as a
17 patient Ms. Robin Herndon?

18 A Yes.

19 Q Do you know how long Robin has been a patient of
20 yours?

21 A I don't know. A few years.

22 Q Okay. And during the course of Robin being your
23 patient, did it ever come that Robin requested you
24 take on another patient by the name of Christopher
25 Rowley?

1 A Yes.

2 Q Can you please just briefly explain what or how
3 that happened?

4 A She asked me if I would see him, and I said yes.
5 And that was spring of 2013.

6 Q Okay. Sometime in the spring of 2013?

7 A Uh-huh.

8 Q And were you told before Chris arrived for an
9 appointment why it was that they wanted him to see
10 you as a primary care physician?

11 A The chief complaint that they were coming for was
12 depression and anxiety.

13 Q Okay. Tell me a little bit about that first
14 meeting, if you can, what you did, what your
15 conversations, as best as you can remember, and
16 what your course of action was concerning
17 Mr. Rowley.

18 A He came to see me on April 15th, 2013, and stated
19 that he had been getting depressed and anxious over
20 the past year. He felt like he may have some PTSD
21 due to what he was exposed to on the streets. He
22 also stated that he had used illegal substances in
23 the past to self-medicate his depression and
24 anxiety, but stated he cleaned himself up on his
25 own and hadn't used any drugs in over a year.

1 We discussed a little further. He denied any
2 hallucinations or paranoia. And we discussed
3 different medications and decided to start him on
4 an antidepressant, so we started him on Effexor.
5 And I requested he come back in a month.

6 Q Okay. This would have been in March?

7 A That was April.

8 Q April. Okay. And so in April you met with him and
9 you agreed that he was suffering from issues of
10 depression and/or anxiety?

11 A Yes.

12 Q And you started him on, I'm sorry?

13 A It's called Effexor.

14 Q Effexor.

15 A It's an antidepressant.

16 Q Okay. You asked him to come back and see you
17 sometime within the next month. When is the next
18 time that you met with him?

19 A The next time I saw him was about three weeks
20 later, but that was just for bronchitis.

21 Q Did you discuss the Effexor and any --

22 A We did not discuss the Effexor at that time.

23 Q Okay.

24 A Then he did not -- he was supposed to come back and
25 see me approximately a week after that and didn't.

1 Q All right. So sometime in May, he did not make
2 that return trip?

3 A Yes.

4 Q Do you know when you did see him to review the
5 Effexor?

6 A He never came back in.

7 Q So from May, he never came back in?

8 A Yes.

9 Q And the truth of it is that there is a number of
10 contacts between your practice and Mr. Rowley
11 concerning his needs and desires that are
12 communicated actually through phone messages that
13 we have seen from your office; is that correct?

14 A Yes.

15 Q Okay. So can you walk me through that, what was
16 going on while he was missing these appointments
17 and needing to make these appointments and what
18 additional complaints you heard --

19 A Sure.

20 Q -- and what treatments you were trying?

21 A At first, it was just that he was having some side
22 effects from the medication. And, specifically, he
23 was having sexual side effects, so we discussed
24 different options. And, you know, he had actually
25 self-increased the dose of Effexor without

1 discussing with me. And I stated that he was on a
2 higher dose than I recommended, so I decreased
3 slightly. But the sexual side effects did not
4 improve, so we switched him to a different
5 antidepressant, Wellbutrin. And that was at the
6 end of May. That was May 29th.

7 Then the next call I got was in June,
8 June 28th, that then -- most of the time, this was
9 Robin calling. We had a record release on file
10 that we could discuss with her any of his medical
11 history.

12 Q Okay. Let me just try to understand that point.
13 And I don't mean to interrupt.

14 A Sure.

15 Q So you were able to talk to Robin about Chris's
16 medical condition and his treatments as well?

17 A Yes.

18 Q And that was because who had signed a release?

19 A Chris.

20 Q So Chris had given you a release saying you can
21 talk to Robin or me about anything and everything?

22 A Yes.

23 Q All right. I'm sorry. Go ahead.

24 A On June 28th, Robin called saying they were
25 starting to wonder if he may have bipolar. And I

1 said that it was very important that he start
2 seeing psychiatry and recommended that they call
3 some place like Aiken/Barnwell Mental Health since
4 he did not have insurance. She said she would call
5 them. And we -- I said I would try to take
6 Seroquel to try to stabilize his mood. Seroquel is
7 what's considered an atypical antipsychotic.

8 Q Okay. Those are doctor words.

9 A Sure.

10 Q I have trouble with them. Atypical means?

11 A The older antipsychotics had significantly more
12 side effects, things that they used 30 years ago,
13 so it's a newer version of those that don't have
14 near as many side effects.

15 Q What is the hope for -- the name of this drug
16 again?

17 A This is Seroquel.

18 Q What's the hope for Seroquel concerning his
19 condition?

20 A To stabilize the mood. It is used for several
21 different types of psychiatric issues, bipolar,
22 schizophrenia and hard to control depression and
23 anxiety. So if he did have bipolar, as was the
24 assumption, then it would hopefully prevent him
25 from having manic or severe depressive episodes.

1 Q So bipolar manifests itself in high highs, a manic
2 phase, and low lows, a depressive phase?

3 A Yes.

4 Q And the desire or hope with this drug is that it
5 will even those waves out; is that right?

6 A Yes.

7 Q Okay. And what do your records indicate regarding
8 this?

9 A On July 12th, we got a call from -- once again,
10 from Robin that the Seroquel was too sedating for
11 him to function. So we decided to switch to
12 another medicine that's in the same family called
13 Abilify that has a lot less sedation with it. And
14 she did tell me that he had an appointment with a
15 psychologist coming up the next week. Since
16 Abilify was a brand name and therefore more
17 expensive than the Seroquel, we -- I said that we
18 would look into patient assistance programs, but if
19 not there were a few other medicines similar to it
20 that we could try if they couldn't get patient
21 assistance.

22 Q Okay. And at this time in July, you were given the
23 indication that they were going to go meet with a
24 psychologist; is that correct?

25 A Yes. Psychologist or counselor, yes.

1 Q Okay. To try to help with the situation as well?

2 A Yes.

3 Q All right.

4 A I then got a call on July 18th that they did go to
5 the counselor and she felt that he was severely
6 bipolar. They discussed inpatient treatment versus
7 medication. I explained that I wanted him to see
8 psychiatry for management of this, but that I would
9 start Lithium in the meantime to help with mood
10 stabilization. They also stated that they
11 understood that if he was not doing well, he needed
12 go to the ER for urgent help. And she said she had
13 contacted Aiken Mental Health organization to try
14 to get in for psychiatry.

15 Q Okay. So you switched his medications again, this
16 time to Lithium?

17 A Uh-huh.

18 Q And what is the hope with this medication?

19 A Lithium is a mood stabilizer. A similar premise,
20 but just different mechanism, to try to keep from
21 going into the high highs or the low lows.

22 Q Okay. So sometime -- is this the middle, end of
23 July, he begins the lithium?

24 A Yes.

25 Q All right. What dosage of Lithium do you

1 recommend?

2 A I started him on 300 milligrams twice a day.

3 Q Okay. And how big are the pills? Are they 300
4 milligrams pills or --

5 A Yes.

6 Q Okay. So he's taking one pill --

7 A Twice a day.

8 Q -- twice a day?

9 A Uh-huh. Then I got a call a few days later, on
10 July 22nd, that they were wanting a letter
11 summarizing his conditions and treatment to try to
12 apply for disability.

13 Then on July 30th, we were still trying to
14 figure out the patient assistance forms. And I
15 said I would have it done before I left, but they
16 need to come in for an appointment also, it has
17 been several months since I saw him and medications
18 have been adjusted and I have not been able to
19 re-evaluate him.

20 Q Okay.

21 A Then on August 12th, I had another call that the
22 Lithium seemed to be helping, but was wearing off
23 quickly, so wanted to try to increase the dose. So
24 I agreed to increase it to three times a day, still
25 the 300 milligrams. But I stated again that he had

1 to come in because we needed to check Lithium
2 levels to make sure that it was staying in the
3 correct range and that he was not developing any
4 blood abnormalities.

5 Q All right. So this is mid-August?

6 A Mid-August. Then the next communication was
7 beginning of September, September 10th, asking
8 about if he needed to come in for blood work or
9 does he need to make an appointment. They were
10 worried about the cost of it. And she said his
11 stomach was getting upset -- once again, this was
12 Robin calling -- wanted to know what else they
13 could do.

14 I said that, Yes, he does need to come in and
15 get labs, but the Lithium level would be a send-out
16 lab, so I could not control the cost of that. I
17 also said that he needed to come in for an
18 appointment and it was very part important that we
19 check this because if his Lithium level was too
20 high, it could be making him sick.

21 They said they would come in the next morning
22 for labs, but did not.

23 I then got another call on September 13th for
24 a refill of the Lithium. And I said, I will refill
25 it, but he must come in for follow-up. If he

1 cannot afford the \$95 fee, I will see him for a
2 reduced rate by now, but he has to come in. It is
3 not safe for me to keep adjusting medication
4 without seeing him.

5 You know, they asked how much I could decrease
6 it. And I asked if \$50 was doable for them, and
7 they said yes, and that they would schedule an
8 appointment.

9 Then October 2nd, I got another call regarding
10 the Abilify that we had initially tried to start on
11 him, but was expensive, wanting a 90-day supply
12 because they had found a medication program that
13 would be able to give a cheaper price if he was
14 given 90, which I did.

15 Q And let me ask a question. Abilify is taken in
16 conjunction with or works with --

17 A It can be.

18 Q Okay.

19 A Especially since he was having side effects from
20 the Lithium, I was hoping that we could get him on
21 something else that we could, then get him off of
22 Lithium because of the stomach upset he was having.

23 Q So at this point, he's piggybacking one with the
24 other?

25 A I'm assuming. I don't know if they actually had

1 the Lithium -- or excuse me, had the Abilify or
2 not. Because, once again, he never came back in
3 for me to be able to find this out.

4 Q Okay.

5 A Then October 16th, there was just another call
6 about the patient assistance forms. They said they
7 needed new forms filled out. And we went back and
8 forth trying to get them. They said they were
9 faxing them, but we didn't get them.

10 Q This was in relation to the disability?

11 A No, this was the patient assistance for Abilify.

12 Q The Abilify, okay.

13 A And that was the last communication that we had.

14 Q All right. That would have been October?

15 A Sixteenth. And then -- well, October 23rd, once
16 again, was just to follow-up the fact we still had
17 not received the paperwork that they needed.

18 Q Was there an appointment made near the end of
19 October that was not made or changed?

20 A I believe it was the very beginning of November.

21 Q Very beginning of November?

22 A Yes.

23 Q All right. Did you hear or did your office hear
24 from Robin on November the 13th?

25 A November 13th?

1 Q November 6th, I'm sorry, 2013?

2 A I know there was an appointment made. I don't know
3 what the communication was because that was with my
4 front office staff, it was not with me.

5 Q So you had a scheduled appointment for him on that
6 afternoon of the 6th?

7 A Yes.

8 Q And the purpose of that appointment would have been
9 to?

10 A Check blood work and discuss with him how the
11 medications were doing. But obviously that was the
12 date of this incident, so.

13 Q Other than your initial appointment with him when
14 he discussed with you his problems, your further
15 communication was with you and/or members of your
16 staff or other doctors in your practice?

17 A Uh-huh.

18 Q And those involved problems or needs he had
19 concerning the continuation of these problems; is
20 that right?

21 A Yes.

22 Q And you were making some changes on the fly and
23 begging him to come back in and see you to get this
24 blood work done; correct?

25 A Yes, as well as begging him to see a psychiatrist.

1 Q Was it reaching a point that if he didn't come in,
2 you were just going to quit writing these scripts?

3 A It would have eventually gotten to that point.
4 Typically what I do if I've had several times,
5 whether it is for this or even a blood pressure
6 medication, where people are continuing to miss
7 their appointments, I will usually say that if they
8 schedule an appointment, I will give them enough
9 medication to get them through to that time, but
10 that is very important they come in to see me.

11 Q Okay. And you had nearly reached that point
12 because you told him you weren't going to write
13 anymore?

14 A If he didn't continue to come see me, yes.

15 Q Right. Okay. Just one moment, please.

16 (Pause.)

17 MR. LEIENDECKER: That's all I have for this
18 witness.

19 Please answer any questions the State may
20 have. Thank you.

21 THE COURT: Yes, sir.

22 MR. JUSTIS: May it please the Court?

23 CROSS-EXAMINATION

24 BY MR. JUSTIS:

25 Q Good morning, Doctor.

1 A Good morning.

2 Q So you stated that you actually -- the first time
3 you saw Christopher Rowley, the victim in this
4 case, would have been the spring of 2013?

5 A Yes.

6 Q In May; is that correct?

7 A The first time was in April.

8 Q In April. April 15th. And he expressed to you he
9 was depressed, anxious, so you started him on an
10 antidepressant; correct?

11 A Yes.

12 Q Come back in a month. He actually came back three
13 weeks due to bronchitis?

14 A Yes.

15 Q And then after that point, you never saw him again?

16 A No.

17 Q Would that be a fair statement?

18 A Yes.

19 Q But I think you kind of went through your notes
20 there and explained, one, two, three, four, five,
21 six, seven, eight, nine, 10, 11 -- at least, 11
22 phone calls or 11 contacts after you last saw him,
23 and those were all by Robin?

24 A I believe. I'd have to look back. I think they
25 may have all been from her. There may have been

1 some from Chris, but I'd have to look back. I know
2 the vast majority, at least, were from her.

3 Q Okay. But you never -- you never talked to or met
4 with Chris after what would have been sometime
5 three weeks -- probably the early part of May when
6 he came in for that bronchitis; is that correct?

7 A When I would get a phone call from Robin, I would
8 attempt to call Chris, but I was never able to
9 reach him. I was always told that he was at work
10 and not able to answer his phone.

11 Q Okay. And who would tell you that?

12 A Robin.

13 Q Okay. So all your contacts were via Robin?

14 A As far as I remember.

15 Q So she pretty much controlled all the contact
16 between you and your patient, essentially?

17 A Yes.

18 Q Okay. And on multiple occasions on these phone
19 calls, medicine was either changed, a different
20 medicine was prescribed, or different amounts of
21 medicine were prescribed; is that correct?

22 A Yes.

23 Q And that's all based on what Robin was telling you;
24 correct?

25 A Yes.

1 Q And the symptoms that he was displaying according
2 to the Defendant, Robin; correct?

3 A Yes.

4 Q And on multiple occasions, probably starting --
5 technically, starting back in May, you said that
6 you kept on expressing an interest that you needed
7 to see him; is that correct?

8 A Yes.

9 Q And, in fact, you said in June 28th, on that
10 conversation when it was discovered that he might
11 be bipolar -- and that was according to Robin that
12 he might be bipolar?

13 A Yes.

14 Q And at that point in time, he hadn't gone to see a
15 counselor yet?

16 A He had not.

17 Q So this was in Robin's opinion he might be bipolar.
18 And that's when you recommended that he needed to
19 go see a psychiatrist?

20 A Yes.

21 Q Okay. Then on July 12th, I think you mentioned
22 that the medicine was making him, I guess, a little
23 too sedative?

24 A Yes.

25 Q So you switched the medicine again. July 18th,

1 that's when you received a call that he actually
2 went to a counselor and she told you that the
3 counselor talked about inpatient treatment versus
4 medicine?

5 A Yes.

6 Q And that's when he was switched to the Lithium?

7 A Yes.

8 Q And, Doctor, all these changes in the medicine, all
9 this is based on the information you're receiving
10 from Robin; is that correct?

11 A Yes.

12 Q I think you stated you had a release from Chris
13 that you could talk to Robin?

14 A Exactly.

15 Q And then, finally, I think you said the beginning
16 part of November is when an appointment was made,
17 but not made?

18 A Yes.

19 Q And then, finally, there was -- according to your
20 records -- I know you didn't speak to him, but
21 according to the records of your office, there was
22 an appointment made for November 6th?

23 A Yes.

24 MR. JUSTIS: Beg the Court's indulgence.

25 (Pause.)

1 MR. JUSTIS: No further questions.

2 MR. LEIENDECKER: Only one follow-up.

3 REDIRECT EXAMINATION

4 BY MR. LEIENDECKER:

5 Q Doctor, when you talked to Robin in July after the
6 appointment with the counselor, you said that there
7 were two options that needed to be undertaken,
8 either hospitalization or medication treatment?

9 A Uh-huh.

10 Q Did you have any discussion about why they weren't
11 going to follow through with hospitalization to try
12 to get this under control?

13 A I don't remember, and it's not -- I didn't write it
14 in my notes, so I can't say for sure.

15 Q Okay. That's all I'm asking. And as to the
16 Lithium which you put him on, when someone is
17 taking Lithium and they want to get off of it or
18 quit taking it, are you supposed to just quit, or
19 how are you supposed to --

20 A It is ideal to be able to decrease the dose and not
21 stop it completely, but it sounds like he actually
22 was already doing that. He had gone -- Robin said
23 yesterday that he had gone back down to taking it
24 just twice a day. So he was already decreasing the
25 dose.

1 Q Then if you just quit cold turkey, what are the
2 problems associated with that?

3 A Well, if it was stabilizing your mood, it can allow
4 you to swing into a depressed or a manic episode.

5 Q Any aggravation of that depressed or manic episode
6 versus before the Lithium?

7 A Not necessarily. It just depends on the person.
8 If that was what was making you not become
9 depressed or manic, then you take that away and may
10 have the ability to revert back to the way they
11 were without medication.

12 MR. LEIENDECKER: Okay. No further questions.
13 Thank you.

14 MR. JUSTIS: Nothing, Your Honor.

15 THE COURT: All right. You may step down.
16 (Witness steps down.)

17 THE COURT: Call your next witness.

18 MR. LEIENDECKER: We would call Cheryl
19 Cummings.

20 (Witness approaches.)

21 THE CLERK: Please your left hand on the Bible
22 and raise your right.

23 (Witness complies.)

24 THE CLERK: The testimony you shall give the
25 Court in this case shall be the truth, the whole

1 truth, and nothing but the truth, so help you God?

2 THE WITNESS: Yes.

3 THE CLERK: Have a seat in the witness box,
4 state your full name, spelling your last.

5 (Witness seated.)

6 THE WITNESS: It is Cheryl Cummings,
7 C-U-M-M-I-N-G-S.

8 CHERYL CUMMINGS,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LEIENDECKER:

12 Q Good morning, Cheryl.

13 A Good morning.

14 Q Cheryl, would you please explain to the Court who
15 you are, what you do, where you were educated, and
16 basically what your career is here in the Aiken
17 area?

18 A Okay. I'm Cheryl Cummings. I got my Bachelor's
19 Degree in counseling and psychology from USC Aiken.
20 I also got my Master's Degree from Troy University
21 in counseling and psychology. And I got my PhD in
22 counseling studies from Capella University. In
23 2012, I opened up my own private practice called
24 Stairway Counseling Services here in Aiken. And I
25 primarily do behavioral health counseling.

1 Q Okay. Dr. Cummings, since 2012, so it's a
2 relatively, at this point, still a new practice?

3 A Yes.

4 Q You began psychiatric counseling -- psychological
5 counseling, excuse me --

6 A Psychotherapy counseling.

7 Q -- here in the Aiken area?

8 A Uh-huh.

9 Q Is that right?

10 A Yes. I have about 14 years of experience working
11 in the field prior to me opening up my practice.

12 Q Okay. And when did you complete your degrees?
13 When did you get your PhD?

14 A I got my PhD last year, in 2015.

15 Q So you were working on that while you were actually
16 working?

17 A Yes. I'm a licensed professional counselor for the
18 State of South Carolina. I received that in 2011.
19 And I'm a nationally certified counselor as well
20 and a certified clinical counselor. All of those
21 was gotten in between 2011 and 2012.

22 Q Okay. Very good. And you've told the Court you've
23 been working at it about 14 years. What's your
24 experience working in the --

25 A My experience was primarily with children and

1 adolescents, dealing with depression, anxiety, and
2 behavioral health issues. Once I opened up my
3 private practice, I started taking on adult clients
4 for depression, anxiety issues, and phases of life
5 issues.

6 Q Okay. Can you tell us in the course of your
7 practice in 2013, did you have an opportunity to
8 meet and counsel with a Christopher Rowley?

9 A Yes, on July 17th, 2013.

10 Q Okay. If you know, can you explain to me how it
11 came to be that you got an appointment with Chris,
12 or Chris got an appointment with you, I should ask?

13 A I can't quite recall if his mom called me or Robin
14 called me, but someone called me to make an
15 appointment for him. They discussed the fact that
16 they were having some financial difficulties and
17 asked if I could see him on a sliding fee scale,
18 and I told them yes, I would. And we set the
19 appointment for the 17th of July, 2013.

20 Q Okay. Tell me about that appointment. What
21 happens when someone comes to you for a typical
22 appointment like that?

23 A Normally --

24 Q What do you do?

25 A Normally, what we do is we fill out just a basic

1 intake information. That's all the release of
2 information. It's counseling-type forms that
3 discuss informed consent and authorization of
4 release. Then I will start with some general
5 assessments, such as a Beck Depression Inventory, a
6 Beck Anxiety Inventory, and an Audit C, which is
7 for substance abuse issues. From there, I complete
8 an interview called a psychosocial assessment. And
9 I ask a series of questions trying to get down to
10 the root of the symptoms and the problems that the
11 patient is experiencing.

12 Q Okay. Have you provided me and, in turn, I
13 provided the Solicitor those documents from that
14 meeting that entailed those tests and those
15 interviews?

16 A Yes.

17 Q Okay. And it appears on one of the pages that you
18 give us a little bit of a most recent mental status
19 summary?

20 A Yes.

21 Q What is that?

22 A It is the current state of the client while they
23 are in your office. It talks about their
24 appearance, their body movements, their attitude,
25 their affect, their perception, their cognitive

1 ability, and their judgment. So that's when
2 they're currently right there in the office with
3 you.

4 Q Okay. What did you observe about Chris that day,
5 positive or negative? Did you have any concerns?

6 A In terms of his mental status exam, he appeared to
7 be moderately unkempt or disheveled. He appeared
8 to be slightly unhealthy. His posture was kind of
9 slumped and he was rigid and tense. He had very
10 accelerated and quick body movements. His speech
11 was very rapid. His attitude was moderately
12 domineering and controlling. He was slightly
13 hostile and challenging. Very guarded and
14 suspicious as to the questions that I asked him in
15 the interview. His affect was that he appeared to
16 have affect that was common with depression, which
17 is a very flat affect. Sometimes he was angry and
18 hostile, some depression and sadness and
19 irritability. His decision-making -- there was
20 some slight impairment in his decision-making, and
21 he was very impulsive.

22 Q In the course of your interview and discussions
23 with him, did he tell you anything about
24 manifestations of his inability to control his
25 anger?

1 A Yes. When I asked him what he was coming to see me
2 for, he said that he was having severe and extreme
3 mood swings. About a month and a half ago, he was
4 physically aggressive with fiancée. Last year, he
5 had some suicidal thoughts. He's had years of
6 anger and aggression issues, and that he felt
7 hopeless and worthless.

8 Then I asked him to describe his symptoms to
9 me currently and within the past six weeks. And he
10 said that he felt hopeless, worthlessness, anger,
11 aggression, mood instability, irritability, and
12 uncontrolled anger and emotions.

13 Q And so in his own discussions with you, he admits
14 to having been physically aggressive was his -- the
15 term you said; is that correct?

16 A Yes.

17 Q With Robin?

18 A Yeah. He said his fiancée, and that was Robin at
19 the time.

20 Q Okay.

21 A Or he referred to her as his fiancée.

22 Q That's how he referred to her?

23 A Right.

24 Q And did you -- as a result of your meetings with
25 him, did you come to any diagnosis regarding the

1 axes of mental health?

2 A Yes. Because this was my first time meeting him
3 and I didn't have any clinical records, and also
4 based on his information that he gave me about the
5 medications that he was on, and based on the Beck
6 Depression Inventory, Anxiety Inventory, and the
7 Audit C, I diagnosed him with Bipolar I disorder,
8 not otherwise specified, which simply means that he
9 has a pattern of manic and depressive episodes, but
10 I don't have enough information to definitely give
11 him a definite diagnosis of Bipolar I or II. So he
12 is somewhere in the category; we need to gather
13 more information before we can determine what
14 specific type of bipolar it is.

15 Q So your initial thoughts were that he is showing
16 the effects of suffering from bipolar, but you are
17 not able to pin it down at this time until you get
18 further information?

19 A Correct. He was also diagnosed as being a victim
20 of physical abuse as a child.

21 Q And how did you come by this information?

22 A That was information that he reported to me. When
23 I asked him about his mental health history within
24 the family or any type of abuse history in the
25 family, and he said that his father was physically

1 abusive towards him.

2 Q Okay. Did he tell you when or how long that went
3 on?

4 A He said that his father died at age 11. He just
5 said that he was beat daily by his father.

6 Q And his father passed away when Chris was age 11;
7 correct?

8 A Eleven, yes.

9 Q Was there anything else that you noticed or found
10 contributing to these problems that Chris was
11 suffering in your diagnosis?

12 A No.

13 Q Did Chris discuss with you his instability
14 concerning employment?

15 A He did.

16 Q Did he discuss with you, before Robin, a lack of
17 support from his family?

18 A He did. He said that he felt like his success had
19 been ruined by a lot of people. He had consistent
20 evictions. Lack of authority or receiving
21 authority. He had a difficult time controlling his
22 anger. And that he had a lot of jobs, that he just
23 couldn't keep a stable job. And he was having some
24 financial issues as well.

25 Q His explanation to you was that a lot of other

1 people were responsible for the problems he was
2 having?

3 A Yes.

4 Q Did you set a course of treatment for Chris Rowley?

5 A At that particular point in time, I told Chris that
6 there was nothing that I could do for him from a
7 counseling standpoint because his moods were so
8 unstable, that he needed to be psychiatrically
9 stabilized on medication before we can actually go
10 into some type of intensive counseling or therapy.
11 I suggested that he follow up with a psychiatrist.
12 And I told him about Aiken/Barnwell Mental Health,
13 to check with them to follow up for psychiatry work
14 and possibly counseling if that's the route that he
15 went. I also discussed possibly going down to the
16 Aurora and having a fairly quick psychiatric
17 assessment to see how stable he was.

18 Q If I understand what you're saying, you told him
19 that you couldn't really help him until he got
20 stable?

21 A Yes.

22 Q And was it obvious in this interview that he was in
23 an instable position or state?

24 A Yes.

25 Q And those -- are those the factors you talked to me

1 earlier about, his rapid speech, his rapid hand or
2 body motions, those kind of things?

3 A Yes. And then his -- him sharing with me about his
4 presenting problems, which was the extreme mood
5 swings, the physical aggression, the years of anger
6 and aggression. So -- and the irritability. So at
7 that particular point in time, I knew that with all
8 of those factors, if they weren't being controlled
9 by medication, that counseling wasn't going to do
10 anything but exacerbate the symptoms.

11 Q Okay. Did he talk with you during these counseling
12 sessions about his first family, his first
13 marriage? I'm looking specifically, I believe, at
14 Page 5 of your initial assessment.

15 A It says first marriage was okay. He was physically
16 abusive toward them. He had three children: One
17 son, a daughter, another daughter, and then he also
18 claimed his fiancée children as well.

19 Q Okay. So he not only told you that he had been
20 physically abusive to Robin, his fiancée, in
21 quotes, but that in his first marriage he had been
22 physically abusive towards them?

23 A Yes.

24 Q I assume that means not only his wife, but his
25 children?

1 A He said physically abusive towards them.

2 Q Okay. What did he tell you about his ability to
3 control his emotions or his moods?

4 A He said that he didn't have any ability to control
5 them at this point, that he felt like he couldn't
6 control them and that's why he was trying to seek
7 help.

8 Q How would you define his anger and impulsivity
9 issues: Moderate, mild, significant?

10 A His irritability and his anger and hostility was
11 severe.

12 Q And this was obvious to you in just this one
13 sit-down with him?

14 A Yes.

15 Q How long did you meet with him, do you think?

16 A Usually my assessments are about an hour, hour and
17 a half. I have about an hour, from 4:00 to 5:00
18 o'clock p.m. on my paperwork.

19 Q Okay. Was there anything else significant that
20 came out of that meeting other than your diagnosis
21 of his problems and your desire that he seek
22 psychiatric help to get stable before you could
23 help him with counseling?

24 A I could tell that, you know, Robin and his mom was
25 concerned about him, making sure that he got the

1 appropriate help that he needed.

2 Q And when you say you could tell that Robin and his
3 mom were concerned and wanting to get appropriate
4 help, were they both at the meeting -- at the
5 counseling session?

6 A I believe so.

7 Q And they accompanied him there?

8 A Yes.

9 MR. LEIENDECKER: Beg the Court's indulgence
10 one moment.

11 (Pause.)

12 MR. LEIENDECKER: No further questions of this
13 witness at this time.

14 THE COURT: Yes, sir.

15 MR. JUSTIS: May it please the Court?

16 CROSS-EXAMINATION

17 BY MR. JUSTIS:

18 Q Good morning, Ms. Cummings.

19 A Good morning.

20 Q I have the information that you turned over not
21 only to the Defense, but also to us.

22 A Okay.

23 Q And I think Mr. Leiendecker just went over the
24 first half of it. It is essentially just some
25 forms that they filled out, so when they arrived

1 that day, I'm assuming get filled out, like the
2 patient information, the insurance --

3 A Right.

4 Q -- forms, the services contract, the fee
5 information and agreement, no-show cancellation
6 policy, patient's rights and responsibilities,
7 authorization for release? All these things were
8 filled out?

9 A Right.

10 Q And then there's a clinical record. This is
11 essentially the summary of what happened that day.
12 Then there's an assessment form?

13 A Right.

14 Q And then, finally, these -- I guess, these little
15 --

16 A Screening exercises.

17 Q Screening exercises. And these are things that he
18 would have filled out?

19 A Yes.

20 Q So the Beck Anxiety Inventory, he would actually go
21 through and kind of circle the number that he felt
22 was appropriate; is that correct?

23 A That's correct.

24 Q And I notice some of the things that he's supposed
25 to mark on here are graded on a scale from one to

1 three, one being not at all, three being severely,
2 and then one and two being somewhere in between; is
3 that correct?

4 A That's correct.

5 Q So it talks about numbness or tingling, feeling
6 hot, wobbliness in legs, unable to relax, fear of
7 worst thing happening. And he filled this out,
8 correct?

9 A Correct.

10 Q And what was his score on that?

11 A It was 37.

12 Q Thirty-seven. And on the bottom of this form, it
13 gives a little interpretation, like from zero to
14 21, from 22 to 35, and then exceeds 36, and it kind
15 of grades each one; is that correct?

16 A That's correct.

17 Q So he scored a 37, which would barely put him in
18 the bottom category that says there's a potential
19 cause for concern, would that be correct?

20 A That's correct.

21 Q So he wasn't high in that category, he barely hit
22 that category?

23 A That's correct.

24 Q Is that correct? And this is as it relates to
25 anxiety?

1 A Right.

2 Q The next thing was a Beck Depression Inventory?

3 A Uh-huh.

4 Q And in that he kind of fills out the same thing, he
5 circles a number from zero to three -- I guess zero
6 being the lowest on the scale, three being the
7 highest -- and he wound up scoring a 41 on that;
8 correct?

9 A Correct.

10 Q And that would put him barely in the extreme
11 depression category; is that correct?

12 A Yes.

13 Q So essentially, based on his own admissions here,
14 you could say he was, you know, right at severe to
15 extreme depressed?

16 A Yes.

17 Q Would that be correct?

18 A Yes.

19 Q And that he's somewhere, you know, moderate to
20 maybe highly anxious?

21 A Yes.

22 Q And when he reported to you that day -- when he
23 came in that day, I think you said his attitude was
24 one of he was kind of hostile and challenging?

25 A Yes. In regards to his speech, not actually

1 physically body-wise. You could tell he was really
2 uncomfortable being there and talking to a
3 counselor.

4 Q Okay. And who called and made this appointment for
5 him?

6 A I believe it was Robin that called and made the
7 appointment.

8 Q It wasn't him?

9 A It wasn't him, no.

10 Q Did you get any feel from him that maybe he didn't
11 want to be there?

12 A At first, yes. And then as we began to talk, he
13 began to open up a little bit more and discuss some
14 of the issues.

15 Q Right. And when you talked to him, what was kind
16 of the physical setting, the physical surroundings?
17 Is it just you and him or are his fiancée and
18 mother present in the room?

19 A Generally, it's just me and him. And then I
20 believe I asked his mom and fiancée to come in at a
21 later point in time.

22 Q Okay. So during part of your conversation, it
23 would just be you and him?

24 A Uh-huh.

25 Q What about when he was filling out these forms, was

1 he by himself or were they with him?

2 A Usually this is done in the lobby when they're
3 filling out the rest of the information. So it
4 would have been around everybody else.

5 Q Okay. So he's filling out not only the -- this
6 paperwork?

7 A Correct.

8 Q You know, the basic patient information paperwork?

9 A Correct.

10 Q But also these little inventories, these Beck
11 Inventories, he's doing those at the same time?

12 A Correct.

13 Q And that would have been done prior to your meeting
14 with him; is that correct?

15 A That would have been done while he's waiting to see
16 me, so it's in the lobby area.

17 Q And I think you put in your report that you had met
18 with him, I guess, from 4:00 to 5:00, for an hour?

19 A Yes.

20 Q Okay. So that's when you actually met with him.
21 He would have filled this out prior to that or is
22 this --

23 A I'm the only person in my practice, so when he came
24 in, I handed him a packet of information to
25 complete. So he's supposed to sit down and

1 complete that information. And then after he's
2 completed the information, he comes back to see me
3 for the full psychosocial assessment.

4 Q So I guess the question I'm asking is, were you
5 able to sit down and talk to him for an hour, or
6 does that hour include filling out all this
7 paperwork?

8 A No, the hour does not include filling out the
9 paperwork.

10 Q Okay. So that hour, you actually spoke to him?

11 A Yes.

12 Q And you said you made a diagnosis of?

13 A Bipolar disorder not otherwise specified.

14 Q Okay. And that's based essentially on the
15 medicines that he was currently taking and then
16 essentially what he told you that day?

17 A Correct.

18 Q Because you didn't have any other clinical records
19 to go by?

20 A Correct. And bipolar disorder not otherwise
21 specified is what I consider as the lighter
22 diagnosis out of the bipolar-related categories
23 because it simply says that you don't have enough
24 information. The symptoms look like they're
25 bipolar symptoms. The medication that he's on is

1 being treated for bipolar, but you still need
2 additional psychiatric information to definitely
3 say if it's Bipolar I or Bipolar II. Bipolar I,
4 you can have manic episodes and depressive
5 episodes. And then Bipolar II is no mania at all.

6 Q Now, I guess you were in the courtroom earlier and
7 you heard the testimony of Dr. Fallaw. Would it
8 change your opinion any if you found out --
9 obviously, we heard from Dr. Fallaw that
10 essentially when this medicine was changed, that's
11 all coming from Robin, that's not something that he
12 told her?

13 A Correct. That's what I understood.

14 Q Right. And, in fact, I think you had said that his
15 moods were so unstable he needs to be either
16 medicated or needs to have either a psychological
17 assessment or maybe make an appointment with some
18 mental health, with a psychiatrist?

19 A Right. I understood that he was going to
20 Dr. Fallaw for medication. I understood at that
21 time he was currently taking Abilify. And I believe
22 in the past he had been on Effexor and Wellbutrin.
23 But I told him because of his symptoms that he
24 needed to see a psychiatrist, because a
25 psychiatrist would be able to better handle his

1 medication for this type of diagnosis.

2 Q Did you know that day or did you find out that day
3 that he actually only went to a doctor once two
4 months before concerning his depression, anxiety,
5 and those issues?

6 A I was just told that Dr. Fallaw was his primary
7 care doctor and that she was overseeing his
8 medication. We didn't discuss how many times he
9 had been to her.

10 Q Right. That was information that you were not
11 given?

12 A Right.

13 Q Right. And did you at any time say that he needed
14 to be either inpatient treatment immediately or
15 medicated?

16 A I stated that he needed to either go to the
17 Aurora -- that's a quick way you can actually get a
18 psychiatric assessment done. They would determine
19 if it's inpatient or outpatient counseling -- or
20 psycho -- whether there was inpatient or outpatient
21 stay, or if he needed to see a psychiatrist. And I
22 said that was Aiken/Barnwell Mental Health. And I
23 didn't know how long it was going to take for him
24 to actually get into the Aiken/Barnwell Mental
25 Health. So the quickest way was for him to go

1 through the Aurora and let him get a quick
2 psychiatric assessment.

3 Q Right. And I guess just to summarize, and correct
4 me if I'm wrong, you're essentially telling them,
5 Look, you know, I've talked to him, there's some
6 things that, you know, potentially concern me, he
7 filled out this information. He's either in these
8 higher categories or at least on the borderline of
9 these higher categories. He's taking some
10 medication that, you know, would lead me to believe
11 potentially he has, you know, bipolar based on
12 these little things I gave him, you know, but you
13 probably need to have an actual assessment done by
14 mental health?

15 A By a psychiatrist.

16 Q By a psychiatrist?

17 A Yes.

18 Q Someone that could actually adjust his medication
19 or make a medical determination on what's best for
20 him?

21 A Correct. At that point, I knew counseling was not
22 going to help him because of his mood instability
23 and his irritability.

24 Q And I guess it would be your testimony that they
25 have to be somewhat stable before you can enter

1 into like a counseling-type relationship with
2 someone, would that be a fair statement?

3 A Yes, correct.

4 Q And you wanted to make sure that you had that
5 diagnosis before you entered into some sort of
6 counseling relationship with him; is that correct?

7 A Correct.

8 Q And this is the only time you saw him; is that
9 correct?

10 A Correct.

11 Q Did you receive any other phone calls or any kind
12 of contact after this date?

13 A I don't have any documentation of it. I do know
14 that I received like a disability request of
15 records to release his records.

16 Q Okay. But you didn't receive anything as far as,
17 you know, We'd like to come see you again, or
18 anything like that?

19 A Not that I recall.

20 MR. JUSTIS: Beg the Court's indulgence.

21 (Pause.)

22 MR. JUSTIS: No further questions.

23 THE COURT: Yes, sir?

24 REDIRECT EXAMINATION

25

1 BY MR. LEIENDECKER:

2 Q Dr. Cummings, just to clarify for myself and the
3 Court, these forms, including marital status, Beck
4 Anxiety Inventory, the Depression Inventory, all of
5 those were filled out by Christopher Rowley; is
6 that correct?

7 A Correct.

8 Q They are self-reporting mechanisms; is that
9 correct?

10 A Correct.

11 Q And people could under or over report based on what
12 they put down there; correct?

13 A Correct.

14 Q To make the situation or counseling work, it's
15 important that they're as honest with you as
16 possible?

17 A Correct.

18 Q In your counseling session, your introductory
19 counseling session with Mr. Rowley, because of what
20 he filled out here and because of your
21 observations, you felt comfortable in saying that
22 he suffered from bipolar nonspecific, because you
23 weren't able to diagnose yourself whether it was
24 Bipolar I or Bipolar II; correct?

25 A Correct.

1 Q But that he had bipolar, he needed to get to a
2 psychiatrist for treatment and diagnosis as to
3 whether it was the I, with both the ups and the
4 downs, or just II with the depression, correct?

5 A Correct.

6 MR. LEIENDECKER: One moment.

7 (Pause.)

8 MR. LEIENDECKER: That's all. Thank you.

9 THE COURT: Anything else?

10 MR. JUSTIS: Nothing further.

11 THE COURT: All right. You may step down.

12 (Witness steps down.)

13 THE COURT: All right. You may call your next
14 witness.

15 MR. LEIENDECKER: If it please the Court, we
16 would call Marie Boulton.

17 (Witness approaches.)

18 THE CLERK: Place your left hand on the Bible
19 and raise your right.

20 (Witness complies.)

21 THE CLERK: The testimony you shall give the
22 Court in this case shall be the truth, the whole
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Have a seat in the witness box,

1 state your name, spelling your last.

2 (Witness seated.)

3 THE WITNESS: Marie Antoinette Boulton, B-as
4 in boy-O-U-L-T-O-N.

5 MARIE A. BOULTON,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LEIENDECKER:

9 Q Good morning, Ms. Boulton.

10 A Good morning, sir.

11 Q Ms. Boulton, would you please tell me and the Court
12 where you work and what your job is?

13 A I work for the South Carolina Department of
14 Probation, Parole and Pardon Services, and I am
15 currently the agent in charge of the Aiken County
16 office.

17 Q Okay. How long have you worked for DPPP?

18 A April 19th, 2016, will be 25 years.

19 Q Okay. And where have you worked for those 25
20 years?

21 A I've been the agent in charge of Aiken. I've been
22 the agent in charge of Barnwell County. I'm
23 nervous, please forgive me.

24 Q That's all right. Has your work in those 25 years
25 kept you in this general geographic vicinity of

1 Aiken, Barnwell, Edgefield, those kind of places?

2 A No, sir. I was an agent in Honolulu, Hawaii for
3 four years. And I was an agent in Fayetteville,
4 North Carolina as well.

5 Q So obviously those years weren't with South
6 Carolina?

7 A Correct. I bought some time to get me to the
8 25-year mark.

9 Q Excellent. Very good. We heard testimony earlier
10 this week from Robin that she began work at DPPP
11 here in Aiken in 1999. Do you remember Robin
12 coming to work at the office?

13 A I do.

14 Q Okay. Can you tell us what your job
15 responsibilities were in 1999 when Robin came to
16 the department?

17 A Just as she, I was a case load agent supervising
18 adult criminal offenders, drug testing, presenting
19 cases in court, issuing warrants, issuing
20 citations.

21 Q Okay. Did you develop a work relationship with
22 Robin during that time that she was there in 1999
23 to 2003?

24 A I did.

25 Q Okay. And you were aware -- obviously, you're

1 aware that she left that office sometime in 2004;
2 correct?

3 A She did.

4 Q Do you know why she left?

5 A I do.

6 Q Why?

7 A She went to work with the Lexington County
8 Sheriff's Office.

9 Q Okay. Was there anything about Robin's work or
10 performance up until 2004 that made the department,
11 if you're aware of, want her to leave or get rid of
12 her?

13 A No, sir.

14 Q After 2004 you had what has been described by Robin
15 as a chance meeting with her sometime in 2010 where
16 she asked you about job openings or possible
17 openings with the Aiken County Department of
18 Probation, Pardon and Parole. Do you remember
19 that?

20 A I do.

21 Q Okay.

22 A I had been recently appointed to the Aiken County
23 office in May, May 8th of 2010.

24 Q Recently appointed as the agent in charge?

25 A Yes.

1 Q Okay. And tell me about this meeting, what she
2 asked you and what you told her.

3 A It was at a gas station, gas pump. I was pumping
4 gas, and she was as well. And I had not seen her
5 in a while because she had been working with SLED.
6 She was made aware that I was recently brought back
7 to the Aiken office as the agent in charge. And
8 she asked me if I would -- if I had any openings,
9 if I would consider her -- consider bringing her
10 back on with the department as she wanted to be
11 closer to her children here in Aiken.

12 Q And it came about that there was an opening and you
13 brought Robin back; is that right?

14 A I did. I ran her information up the chain of
15 command. And I had no problem with bringing her
16 back on, and so we did the application process.
17 And she was already a sworn officer, and so that
18 helped me out a lot. And I had no problem with
19 her, so I brought her back on for hire.

20 Q Okay. So in 2010 Robin rejoins your department;
21 correct?

22 A She did.

23 Q And she continued to work there until this incident
24 in 2013; is that correct?

25 A Yes, sir.

1 Q Can you tell me what Robin was doing for the
2 department and what your evaluation was of her
3 work?

4 A She was a case load agent as well. And then -- she
5 kind of had dual duties. She was pre-parole
6 investigator, meaning that she did all my
7 investigations for offenders who are in the South
8 Carolina Department of Corrections coming up for
9 consideration for parole. She did all that
10 background information for me and she also carried
11 a case load. She had dual duties.

12 Q Okay. And how would you describe Robin's work
13 performance at the department?

14 A They were great. I had no issues with her. She
15 worked directly for me as my pre-parole
16 investigator, because I'm the one who had to sign
17 off on all investigations. So I've never had any
18 problems with her.

19 Q From your observations, how would you describe
20 Robin's work relationship with the people at your
21 office in Aiken?

22 A I never had any complaints about Robin or -- from
23 my staff. We have a very close-knit office. And
24 they know that certain things won't be tolerated by
25 myself, so I've not gotten any complaints about her

1 conduct or her work in the office.

2 Q In the years that Robin worked in the Aiken office,
3 both from '99 to 2003 when you were an agent, and
4 from 2010 to 2013 when you were the agent in
5 charge, are you aware of any formal complaints that
6 were filed against Robin by any of her co-workers
7 concerning her conduct while at work?

8 A No, sir.

9 Q Are you aware of any informal complaints you
10 received concerning Robin and her conduct at work?

11 A No, sir.

12 Q During that same -- those two same time periods,
13 Robin was issued a weapon as a probation officer
14 and expected to carry that at work; is that
15 correct?

16 A That's correct.

17 Q First as just another agent in the office, and then
18 as the agent in charge, are you aware if any formal
19 complaints were ever filed against Robin for
20 improper use of her weapon?

21 A No, sir.

22 Q Were you ever told informally by anyone that they
23 observed Robin in any careless or improper manner
24 handling her weapon while working at the
25 department?

1 A No, sir.

2 Q Describe for me and for the Court, if you would,
3 what your personal relationship with Robin Herndon
4 is and was.

5 A I don't --

6 Q You said it was a close-knit office. Just tell me
7 personally, you know, how you guys interacted and
8 got along.

9 A Personally, usually on the weekends I normally
10 don't see my staff, but I have an open door, open
11 house, open telephone policy. They know I'm there
12 at their disposal at any time. But usually on
13 Monday mornings, Robin would always come into my
14 office and we would talk about the sales that she
15 found and she would tell me about them. And I
16 would find a way to go to the sale. So we just
17 kind of chitchatted about silly girly things, I
18 guess, in the office on Monday morning.

19 Q Okay. And as a result of that open door policy,
20 you telling your agents that they can contact you
21 any time, did there come a time in 2013 when you
22 got an odd or strange communication from Robin on
23 your cell phone?

24 A I did.

25 Q Tell me about that.

1 A It was Saturday morning. When I got up -- I'm
2 sorry.

3 Q Take your time. Do you need a glass of water?

4 A I'm fine.

5 Q Okay.

6 A I'm a GPS responder, which is 24/7, we're on-call
7 for sex offenders. And so whenever we're on-call,
8 we have to have our agency cell readily available
9 on ring so that we can hear any calls that come
10 through. This particular weekend I was not
11 on-call, so I had my phone on vibrate and I did not
12 check it until the next morning, which is Saturday
13 morning, around 7:30, 8:00, when I awoke. And I
14 had a missed call from Robin's phone at 3:03 a.m.
15 And I have all of my staff numbers by name in my
16 phone, that's how I knew it was her.

17 And once I saw the missed call at 3:03 a.m.,
18 which I thought was odd because Robin has never
19 called me at 3:00 o'clock in the morning, and when
20 I woke up -- Robin lived at the time maybe two, two
21 miles from my home -- and so I asked my husband to
22 ride with me to her home because I didn't know if
23 something was wrong with Robin, her two daughters,
24 K.N. or E.N. . At that time, I thought it was
25 just the three of them living there.

1 And I go to the house and I pull in the
2 driveway. And I didn't park up very close because
3 I just didn't know what was going on. And so I got
4 out of the car. My husband stayed in the car to
5 watch me to make sure I was okay. And I knocked on
6 her door and I banged on her window, because her
7 door and her window were right side-by-side. And I
8 knocked for a good while, and no one answered. So
9 I proceeded to go back to my car.

10 And I was going to call my regional director
11 to inform her that I received a call from Robin in
12 the event something was wrong.

13 And as I was going back to my car, my husband
14 pointed to the front door, window area indicating
15 somebody was there. And so I turned around and her
16 door cracked just about this big. And she -- Robin
17 poked her head out of the door. She was wrapped in
18 a really thick blanket. No shirt or anything, but
19 just a thick blanket. And she wouldn't open the
20 door all the way, she just cracked it. And she
21 said something to the effect, Ma'am, why are you
22 here?

23 And I said, You called me at 3 -- 3:00 o'clock
24 this morning, is what I said.

25 I said, Are you, E.N. and K.N. okay?

1 And she said, Yes, ma'am.

2 And I said, Are you sure?

3 She said, Yes, ma'am.

4 I said, If you need anything, call me.

5 So I got back in the car, and my husband and I
6 left and went back home.

7 Q How would you describe her attitude or demeanor
8 that morning at 8:00 o'clock in the morning?

9 A She wouldn't open the door. She was very -- it was
10 like --

11 Q She was just peeking her head out the door and
12 didn't -- she didn't invite you in?

13 A No.

14 Q Okay. Did there come a time while Robin was
15 working for you that you actually became aware that
16 she was dating Mr. Christopher Rowley?

17 A Yes, sir.

18 Q And how did you find that out?

19 A Just me, myself, personally?

20 Q Yes, you?

21 A She brought him to the office.

22 Q Okay. Tell me about that time when -- the one time
23 that you met him at the office. How did that go
24 down and what did you observe that day?

25 A My door, again, is always open. And she was coming

1 down the hallway and she had him with her. And my
2 entire staff knows that I don't allow many unwanted
3 guests in the office because of the business that
4 we're in. So it was during lunch, so it was not
5 many people in the office other than staff.

6 And she asked me if I had a minute, and I
7 said, Sure.

8 She said, I want you to meet my boyfriend,
9 Chris.

10 And I didn't walk around to shake his hand, I
11 just stood up at my desk, and then he came over to
12 me and we shook each other's hand. And I said,
13 Nice to meet you.

14 Q Did she say or do anything else at that meeting
15 that seemed unusual?

16 A Yes, sir. She told him, she said, This is the one
17 that came to the house.

18 And it threw me, because I did not know that
19 somebody else was in the house. I thought it was
20 just E.N. and Robin and K.N. . And so I was kind
21 of thrown back, taken aback by it, because I didn't
22 realize that he was in the house when I came over
23 there that morning.

24 And so she looked at him and he looked at her
25 and she said -- she said, She's the one that came

1 by the house.

2 And he said -- he looked at her, he didn't say
3 a word, he just looked at her.

4 And she said, No, no, no, I just told her that
5 I accidentally butt dialed her.

6 And when she said that, it just threw me that
7 she --

8 Q How would you describe he looked at her, that she
9 would respond that way, almost defensively?

10 A He just gave her a dead look. Nothing was said,
11 just a look.

12 Q And her response to that was?

13 A No, no, no --

14 Q I didn't tell her anything, I butt -- but it was a
15 butt dial?

16 A I didn't tell her anything, I just told her I
17 accidentally butt dialed her.

18 Q Okay. Did you find that weird or odd?

19 A I did.

20 Q Because when you told me that story, so did I.

21 Let me ask you, during the time that she's
22 dating Chris, did there ever come any times in the
23 office that you observed that Robin had suspicious
24 or unusual injuries?

25 A Yes, sir.

1 Q Okay. Can you tell me about those few incidents
2 that you can remember?

3 A There's three that I recall.

4 Q Okay.

5 A I don't know even know if they are in sequence, I'm
6 just going to tell you the three that --

7 Q All right. I'm not going to hold you to which one
8 happened first.

9 A Okay. But, again, because I always have my door
10 open and my staff, they all know that I see
11 everything that goes on in my office. At least, I
12 try to see everything that goes on in my office.
13 And Robin was coming down the hallway and she was
14 walking fast. And I noticed that she had
15 sunglasses on. But, again, some of the guys, they
16 wear their sunglasses, kind of cutting up.

17 And so for some reason, I called her in and I
18 said, Ms. Lady, why do you have on sunglasses?

19 And she slowly pulled it off and -- pulled the
20 glasses off, and she had a black eye. It was a
21 black eye that was closed.

22 Q Her eye was swollen shut and black?

23 A Yes, sir. And I asked her what happened.

24 And she proceeded to tell me that she and
25 K.N. were wrestling on the living room floor and

1 it just kind of got out of control and K.N. took a
2 boot and threw it at her eye.

3 Q She told you her daughter did this accidentally?

4 A Yes. She said they were playing.

5 Q Okay.

6 A And another time, I saw her with a black boot on
7 her leg, a long boot, from like the ankle to the
8 knee. And I asked her what happened.

9 And she said that, You won't believe this, but
10 I got up on the trampoline with K.N. and E.N. and
11 we were jumping on the trampoline, and her leg
12 slipped through one of the holes on the side of it
13 and she injured her leg or her knee or her foot,
14 I'm not sure which one, but it was a long brace
15 that covered from about the ankle to all the way up
16 past the knee.

17 Q Then she told you this was a trampoline accident
18 with the kids?

19 A Yes.

20 Q All right. You said there were three. What else
21 did you observe?

22 A She had a bruise on her arm, like the fatty part of
23 her arm.

24 Q Back on the triceps side, the back side of her arm?

25 A Yes, sir. It was just a huge black and blue mark

1 that was noticeable to me. And I asked her what
2 happened. And each time, I called her in and asked
3 her because I saw it.

4 And she said that she bumped into the wall at
5 the house.

6 Q Marie, did you ever at any time have an idea that
7 what was happening was Robin was being physically
8 abused at home?

9 A No, sir.

10 Q If she had come to you and told you that, would you
11 have taken steps to help her?

12 A Yes, sir.

13 Q On the date of November 6th, something really
14 tragic happened. Where were you and what did you
15 know and find out about that?

16 A On the morning of November 6th, I had court duty,
17 so I was in court. And court broke kind of late
18 and I went to Specs Vision Center to -- I had an
19 eye appointment. So I rushed from here and went to
20 Specs to get my eyes examined. And I got a call
21 from the Aiken County Sheriff's Office that there
22 had been a shooting. And I actually thought it was
23 odd that they would call me to tell me that there
24 had been a shooting. Then they said it was a
25 shooting involving one of my agents. And even when

1 they said that, I thought that one of my agents
2 must have shot someone, one of our offenders. And
3 they said that I needed to come back across town
4 because it was involving my agent in a potential
5 domestic dispute.

6 Q When did you find out that Robin was this agent?

7 A I don't know if it was part of that conversation or
8 --

9 Q Sometime within proximity of that conversation?

10 A Yes.

11 Q Marie, how would you describe your reaction to
12 finding out that Robin had been involved in a
13 domestic shooting?

14 A I was just utterly shocked.

15 Q In the time that you have known Robin since 1999,
16 have you had an opportunity to observe her and
17 observe her demeanor around the office?

18 A I have.

19 Q How would you describe Robin if someone were coming
20 to you to talk, ask you about Robin and her
21 personality or demeanor around the office?

22 A Just a normal, hard-working agent who had a lot of
23 experience that I appreciated because I didn't have
24 to do a lot of hands-on with her because she knew
25 exactly what she was doing. She knew how to handle

1 the offenders. Again, my staff know that I don't
2 tolerate any of our offenders being mistreated in
3 any way at all. And so I've never had an issue
4 with her mistreating the people that we serve. And
5 she was a hard worker. She was fun. We had fun in
6 the office. We laughed. We cut up. We brought
7 food. We ate. I mean, it was just a normal
8 working environment.

9 Q Have you had an opportunity in those nearly 17
10 years that you've known Robin to observe her and
11 form an opinion concerning her veracity or her
12 ability to be truthful?

13 A I've not known her to lie to me.

14 Q What is your opinion concerning whether Robin is
15 honest when she discusses matters?

16 A Oh, I think she's honest. I believe her to operate
17 with integrity because we're sworn officers and
18 this is what we're -- we took an oath to do.

19 Q And even though as a probation and parole officer,
20 she carries a weapon, she goes on warrant sweeps,
21 and other kind of dangerous activities, have you
22 had an opportunity to observe her and form an
23 opinion concerning her propensity for quick anger,
24 violence, or flying off the handle?

25 A I have observed. I go out on most of our warrant

1 teams, mainly to observe my staff because I want to
2 make sure they're adhering to what it is they're
3 expected and their positions. So, oftentimes, I go
4 out -- I think all the time, I go out because I
5 want to make sure that, A, my agents are safe, and,
6 B, that the people that we're serving in the
7 community see us in a positive light. So I've not
8 had any problems with Robin or any of my staff.

9 Q Not had concern about her being one that's quick to
10 anger or fly off the handle?

11 A No.

12 Q Do you have an opinion concerning Robin's
13 propensity to be a peaceful person?

14 A I do.

15 Q And what is that opinion?

16 A That she is a very peaceful, nice mother, friend.

17 Q Okay.

18 MR. LEIENDECKER: Let me consult one minute.
19 I think I'm done here. Hang on.

20 (Pause.)

21 MR. LEIENDECKER: No more questions at this
22 time.

23 THE COURT: All right. Yes, sir?

24 MR. SORENSON: May it please the Court?

25 CROSS-EXAMINATION

1 BY MR. SORENSON:

2 Q Good morning, Agent Boulton.

3 A Good morning, sir.

4 Q I just have a few questions for you. Let me ask
5 you, in the Aiken -- or back in November of 2013 in
6 the Aiken County Probation Office?

7 A Yes, sir.

8 Q -- how many agents were there at that time?

9 A I had a staff of 17.

10 Q Those were all agents, or court staff also?

11 A Minus four secretaries.

12 Q So about 13 agents?

13 A Maybe ten agents, because myself as agent in
14 charge, and I have two team leaders.

15 Q Two what?

16 A Two team leaders.

17 Q Team leaders, okay. Agents, maybe three
18 supervisors, and about four support staff?

19 A Yes, sir.

20 Q And you had testified that y'all back then were a
21 very close-knit office; is that correct?

22 A Yes, sir.

23 Q So if Ms. Herndon had some issues at home, there
24 were plenty of people at work that she could have
25 talked to about that; is that correct? Including

1 yourself?

2 A Yes, sir.

3 Q And she never told you anything about any abuse
4 going on in her home; is that correct?

5 A That's correct.

6 Q And, in fact, in looking at the statement that you
7 provided to the State Law Enforcement Division
8 after this, you didn't even realize that she had a
9 boyfriend that was living with her until a few
10 weeks before this incident; is that correct?

11 A That's correct.

12 Q And just so I understand, I think I'm clear on
13 this, I imagine the Court is also, but just to make
14 sure that I am, as probation agents, y'all are
15 certified law enforcement officers; right?

16 A We are.

17 Q LE-1's, I guess; is that correct?

18 A Yes, sir.

19 Q And, in fact, probation agents actually have more
20 jurisdiction than a county sheriff's deputy has; is
21 that correct?

22 A We do, we have statewide jurisdiction.

23 Q So you can go arrest somebody -- even though you're
24 an Aiken County probation officer, you can go
25 arrest somebody in Charleston; is that correct?

1 A Yes, sir.

2 Q And as part of that, as being an LE-1, obviously,
3 you all carry firearms; is that correct?

4 A We do.

5 Q And in this case, the .40 caliber Glock that
6 Christopher Rowley was killed with was her
7 department-issued firearm; is that correct?

8 A It was.

9 Q Let me ask you this, are you aware back in November
10 of 2013, had Ms. Herndon kept up with
11 qualifications as far as using her firearm? Do
12 y'all have to go to the range and --

13 A We do.

14 Q -- do all that?

15 A We do.

16 Q And she was up to date on all that as far as you
17 know?

18 A Yes, sir.

19 Q And are you aware of how proficient she was with
20 that firearm?

21 A I'm not.

22 Q Proficient enough to stay qualified as an LE-1 and
23 a probation agent; is that correct?

24 A Yes, sir.

25 Q Now, you testified, Agent Boulton, about three

1 different occasions that you saw Ms. Herndon with
2 injuries at work; is that correct?

3 A Yes, sir.

4 Q And when -- do you know when that was that you
5 observed each of those or --

6 A I just -- I don't know the dates of when I observed
7 them.

8 Q Okay. Well, let me ask you, she started back
9 working with you in 2010; is that correct?

10 A Yes, sir.

11 Q Can you narrow it down any from -- I mean, those
12 three occasions -- you know, the black eye, her
13 foot in some sort of boot or something, and then a
14 bruise on her arm -- I mean, did they happen
15 sometime between 2010 and 2013?

16 A Oh, no, sir. It happened in 2013, the year of
17 2013.

18 Q Okay. But you're not sure when in 2013?

19 A That's correct. I'm not sure of the specifics.

20 Q Let me ask you as far as even what kind of what
21 order that you observed them in, do you remember
22 that?

23 A I can't even tell you. I can just tell you that
24 the black eye stands out, the black boot stands
25 out, and the black bruise on her arm. But I just

1 can't tell you when they occurred, in what
2 sequence.

3 Q Okay. And, of course, as you have testified
4 earlier, I mean, she had an explanation as to how
5 all those injuries occurred?

6 A She did.

7 Q And there was nothing in that -- in talking to her
8 where you ever had any inkling that she would now
9 say that those injuries were a result of
10 Christopher Rowley; is that correct?

11 A That's correct, I didn't.

12 Q Because if you had, you would have addressed that
13 back in 2013; is that correct?

14 A Absolutely.

15 Q Let me ask you this, were you here yesterday when
16 she testified?

17 A I was.

18 Q I know you were here part of the day yesterday.
19 Okay. And I recall her testifying about getting a
20 black eye and about an injury to the arm. I don't
21 recall her ever testifying about any injury to her
22 leg that resulted in a boot. Do you recall her
23 testifying about that at all yesterday?

24 A I don't recall exactly what she said, I'm sorry.

25 Q All right. And let me just -- I've got a couple of

1 questions about the Saturday morning that you
2 received the missed phone call from her. And do
3 you know, when did that occur?

4 A That was -- my notes when I looked at it -- when I
5 wrote the statement, I had to reflect back, but
6 that was several months before this occurred. And
7 I can tell you it was warm outside because we were
8 planning to go to yard -- were going yard sale
9 shopping that Saturday.

10 Q Where it's warm outside in South Carolina, that
11 could be --

12 A That's true.

13 Q -- could be any month, but. Okay, but so several
14 months prior to the shooting in November?

15 A Yes, sir.

16 Q And you had got up that morning, noticed you had a
17 missed call from 3:03 in the morning. So you and
18 your husband go over there; is that correct?

19 A Yes.

20 Q Knock on -- so it's 8:00 o'clock in the morning on
21 a Saturday morning or so now?

22 A Yes, sir.

23 Q Knock multiple times. And ultimately she ends up
24 answering the door; is that correct?

25 A Yes, sir.

1 Q She's got a blanket wrapped around her, the
2 impression that she doesn't have anything on under
3 it, at least up top; is that correct?

4 A Correct.

5 Q And, of course, that -- it wouldn't really be
6 unusual at that point in time that she wouldn't
7 invite you in; is that correct?

8 A Because I had never gone to her house before.

9 Q You're popping up unannounced on a Saturday morning
10 at 8:00 o'clock, she's not dressed. I mean, so
11 that part of it really wasn't unusual; is that
12 correct?

13 A Well, I wouldn't say it wasn't unusual, but knowing
14 that -- I don't want to sound pompous, but her
15 knowing it's me coming to her house and she not
16 open the door was weird.

17 Q Okay. Of course, I mean, just, yet again, from her
18 standpoint, you showing up at 8:00 o'clock on
19 Saturday morning, probably -- it's just an awkward
20 situation, would you agree with me?

21 A Yes, sir.

22 Q But at that point in time, you didn't observe any
23 injuries to her?

24 A No, I wasn't close enough to. I was just near the
25 stairs, so when she kind of cracked the door, I

1 just saw it was Robin.

2 Q Didn't look like she had been crying or anything
3 like that?

4 A I could not tell.

5 Q Nothing that concerned you enough that you needed
6 to do anything more than her telling you that she
7 was okay, also; right?

8 A Right.

9 Q And I believe it is your testimony that -- and you
10 put in your statement that at some point in time, I
11 guess -- you said three weeks ago when you wrote
12 the statement, so I guess sometime in mid-October,
13 is that the first time then that you met
14 Christopher Rowley?

15 A Yes, sir.

16 Q Okay. And she actually -- you put in her
17 statement, she, being Ms. Herndon, had made the
18 comment, Remember, she is the one, referring to
19 you, that came over to the house the night that you
20 were there to check on me and the girls. Do you
21 remember putting that in your statement?

22 A Well, I think what I was saying was she said, She's
23 the one that came over to the house to check on me
24 and the girls, the night that he was there.

25 Q Right.

1 A Yeah. Not that he came to check on --

2 Q No, no, no, that's not -- I'm sorry if you
3 misunderstood me. She made the comment to Chris,
4 Remember, she is the one, referring to you, that
5 came over to the house the night that you were
6 there to check on me and the girls?

7 A Oh, yes.

8 Q Okay. Of course, that's technically not accurate
9 because it wasn't at night that you went over to
10 check on them; right?

11 A Right. I guess I may have just thought about when
12 the call came at 3:03.

13 Q And he, at that point in time, looked at her, the
14 way you put it, and Mr. Leiendecker made it sound
15 like he gave her a look, like an intimidating look,
16 but what you put in your statement is actually he
17 gave her kind of a puzzled look; is that correct?
18 I mean, that's what you put in your statement back
19 in November of 2013. He looked at her in kind of
20 in a puzzled way, kind of with a question mark. Is
21 that accurate?

22 A That could be accurate, but it was a way that was
23 not -- it caught my attention.

24 Q And, of course, she's bringing this up out of the
25 blue talking about something that happened a couple

1 of months prior; is that correct?

2 A Yes.

3 Q And then she said when he looked at her with that
4 puzzled look, Well, you remember when I
5 accidentally butt called her around 3:00 o'clock in
6 the morning?

7 And he said, Oh, okay, I remember.

8 And that's the extent of what you put in your
9 statement about it; right?

10 A Yes.

11 Q And, of course, it could very well be that that's
12 the reason that morning that she didn't open the
13 door, because he was there?

14 A I have no idea why she didn't open that door.

15 Q And you described -- Mr. Leiendecker asked you
16 several questions about Ms. Herndon, about her --
17 you know, You've never known her to lie to you that
18 you're aware of; is that correct?

19 A Yes, sir.

20 Q And that as far as your dealings with her at work,
21 she was, in your opinion, a nice person and a
22 peaceful person; is that correct?

23 A Yes, sir.

24 Q But you didn't have an opportunity to see her
25 interact with family members or anybody outside of

- 1 the workplace really, did you?
- 2 A Other than her bringing her children by the office.
- 3 Q But didn't have an opportunity to see her interact
- 4 with Mr. Rowley other than the one time at the
- 5 office?
- 6 A That's correct.
- 7 Q And at that point in time, he, in fact, was
- 8 actually very friendly and complimentary to you; is
- 9 that correct?
- 10 A He was.
- 11 Q But didn't see -- have an opportunity to see her
- 12 interact with her previous spouses? You're aware
- 13 she had been married a couple of times prior; is
- 14 that correct?
- 15 A I was.
- 16 Q Let me ask you this. Would you describe her as
- 17 being a controlling person?
- 18 A No, sir. I've actually met her previous spouses at
- 19 the office before. And they seemed nice and she
- 20 seemed nice when she introduced them to me.
- 21 Q And let me ask you this. So you found out that
- 22 afternoon about the shooting on November 6th; is
- 23 that correct?
- 24 A Yes, sir.
- 25 Q Have you talked -- have you spoken with Ms. Herndon

1 since then about this incident?

2 A No. I saw her twice. Our one admin, Phyllis Ruth
3 Reeves, she retired, I don't know, 2014, I think,
4 and --

5 Q Uh-huh.

6 A -- her family had a retirement dinner for her. And
7 I went to the dinner and I saw Ms. Herndon there.
8 I spoke to her. She spoke to me. And I think she
9 knew that there's no -- I don't discuss anything
10 about this matter. And so she gave me a hug, I
11 gave her a hug. I told her I was praying for her
12 and her children.

13 And then a second time, I was leaving my
14 office going to a career seminar, and there was a
15 yellow taxi cab outside of the office, and I didn't
16 pay any attention. And she spoke to me on that
17 occasion and I spoke back to her. But we have not
18 discussed this matter at all. Again, I think she
19 knew that because of the integrity of everything
20 that we were not going to discuss that.

21 Q And one other question. I think I'm about done,
22 Agent Boulton. I asked you earlier, you said you
23 were here when Ms. Herndon testified yesterday.
24 She also didn't say anything about -- when she was
25 going through and describing alleged prior

1 incidents of abuse, didn't say anything that I
2 recall about something happening and her calling
3 you for help in the middle of the night; is that
4 correct?

5 A I don't recall her saying anything about it, in all
6 honesty. I had my Blackberry and I am running an
7 office at the same time.

8 Q I understand. I understand. And, obviously, the
9 Court heard the testimony. Okay.

10 MR. SORENSON: Beg the Court's indulgence.

11 (Pause.)

12 MR. SORENSON: Thank you, Agent Boulton.

13 THE WITNESS: Yes, sir.

14 MR. LEIENDECKER: No further questions.

15 THE COURT: All right. You may step down.

16 THE WITNESS: Thank you, ma'am.

17 (Witness steps down.)

18 THE COURT: All right. I think this would be
19 a good time to take a break. We're going to take
20 about a 10-minute break. Thank you.

21 (WHEREUPON, a break was taken at 11:38
22 a.m.)

23 THE COURT: All right. Ready for the next
24 witness?

25 MR. LEIENDECKER: Just waiting on Ms. Herndon.

1 THE COURT: Okay.

2 (Pause.)

3 THE COURT: All right. Call your next
4 witness.

5 MR. LEIENDECKER: We call Lisa Kenner.

6 (Witness approaches.)

7 THE CLERK: Place your left hand on the Bible,
8 and raise your right.

9 (Witness complies.)

10 THE CLERK: The testimony that you shall give
11 the Court in this case shall be the truth, the
12 whole truth, and nothing but the truth, so help you
13 God?

14 THE WITNESS: Yes.

15 THE CLERK: Have a seat in the witness box,
16 stating your name, spelling your last.

17 (Witness seated.)

18 THE WITNESS: My name is Lisa Kenner,
19 K-E-N-N-E-R.

20 LISA KENNER,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LEIENDECKER:

24 Q Good morning.

25 A Good morning.

1 Q Ms. Kenner, we're still five minutes away, so we're
2 good. Could you please tell me and the Court where
3 you work and what your job is there?

4 A I work for the Aiken County Probation, Parole and
5 Pardon Services. My current position is field
6 office specialist.

7 Q And that means?

8 A Administrative assistant.

9 Q Okay. So your job and responsibility is doing all
10 the administrative work for the agents in the Aiken
11 field office?

12 A It is.

13 Q Okay. How long have you been in that position,
14 Ms. Lisa?

15 A Since 1995. I've been here for 20 years, going on
16 21 years.

17 Q Oh, okay. And so you were in the office from the
18 time Robin began working there in 1999 until the
19 time she left in 2013; is that correct?

20 A That's correct.

21 Q Obviously there was a gap of service in there, but
22 you continued to work there --

23 A Yes.

24 Q -- during that time? Could you please tell the
25 Court today what your relationship was with Robin

1 from 1999 to today, professionally speaking?

2 A Professionally, we were co-workers. Robin and I
3 worked well together. We never had any problems.
4 We have always had a good working relationship.

5 Q Okay. And during the time that Robin has worked in
6 the office, have you had an opportunity to observe
7 Robin working with the other agents and
8 administrative assistants in the office?

9 A Yes.

10 Q And how would you describe Robin's working
11 relationship with everybody in the office?

12 A Robin got along well with everyone. And as Marie
13 stated previously, she got along with everybody.
14 We were like family. Robin did things to help
15 build the office morale. Like, for instance, she
16 would bake things and bring it to the office. She
17 was a fun-loving person.

18 Q Okay. During the time that you've known Robin and
19 seen her at work in the Department of Probation,
20 Pardon and Parole --

21 A Uh-huh.

22 Q -- have you at any time been aware of any formal
23 complaint that was filed against Robin for her
24 action or conduct with any of the other agents or
25 any of the clients that you service?

1 A Never.

2 Q Have you ever informally known of any complaints
3 that anybody, just even gossiping, come about
4 Robin being difficult or inappropriate in her
5 actions -- not difficult, but inappropriate in her
6 actions?

7 A Never.

8 Q Have you ever been -- have you ever had -- been is
9 not the right word -- any knowledge that Robin had
10 had a complaint regarding her use of her service
11 weapon while she was there from 1999 through 2013?

12 A No.

13 Q Have you ever heard anybody say that Robin had done
14 something inappropriate regarding her service
15 weapon while she was there?

16 A No.

17 Q Have you had an opportunity in your work with Robin
18 to talk with her about her personal life or observe
19 things about her personal life?

20 A I mean, we talked briefly about our children.
21 Because Robin loves her girls like I love mine.
22 She has two daughters, I have two daughters, so we
23 always talked about our children. And the one
24 thing that Robin loves to talk about is her
25 jewelry. She loved jewelry. She loved looking

1 good. And, you know, she was a good person.

2 Q Okay. Were you aware in 2013 that Robin was dating
3 a gentleman named Christopher Rowley?

4 A Yes.

5 Q And tell me how you became aware of that fact.

6 A She told us about -- she told me about him. And
7 she brought him to the office one day and
8 introduced him to me.

9 Q Okay. Did you get a chance to meet him that day?

10 A I did.

11 Q And what were your observations concerning Chris?
12 How would you describe him physically?

13 A He was nice and pleasant.

14 Q That's his personality. How would you describe him
15 physically?

16 A A short, stocky guy.

17 Q Okay. Broad shouldered?

18 A Kind of built as if -- when I looked at him, my
19 first impression of him he must work out because he
20 was kind of built.

21 Q Okay. And during that year of 2013, was there ever
22 any time that you noticed Robin at work and things
23 were off, she had some kind of unusual mark or
24 injury on herself?

25 A Yes.

1 Q Can you tell me what you observed regarding those
2 injuries, or injury?

3 A There were two injuries that I observed. I
4 remember one was a black eye. And I am the one who
5 questioned her about the black eye. And I asked
6 her what happened. And she said her and her
7 daughter were playing around and the daughter threw
8 a boot and hit her.

9 Q Okay. What did her eye look like?

10 A It was swollen and it was black.

11 Q It was black and swollen?

12 A Uh-huh.

13 Q All right. And you said you observed another time
14 that she had an unusual injury?

15 A Uh-huh. She had -- she injured her ankle, her foot
16 or something. She had a brace. And I questioned
17 her about that, too. And she said she was on the
18 trampoline and she injured it.

19 Q All right. Did you ever at any time question Robin
20 about what happened? Other than her explanation?

21 A No. But I mentioned to another admin that I didn't
22 think that she was telling the truth about it.

23 Q About what?

24 A About the black eye.

25 Q Really? Why did you say that to one of the other

1 admins?

2 A Because she had the glasses on and she stayed in
3 her office. And my thing was, if it was just an
4 injury and you and your daughter playing around,
5 why were just staying in your office, you know. I
6 just thought that something was going on and she
7 was just embarrassed about it.

8 Q She appeared to be trying to hide it?

9 A Yes, that's what I thought. That's my opinion.

10 Q Okay. I'm just trying to understand what you're
11 saying. All right. You and Robin, did you have
12 any relationship outside of the office?

13 A No.

14 Q Okay. So it was all work interaction?

15 A Yes.

16 Q All right. In that time that you were working with
17 Robin --

18 A Uh-huh.

19 Q This incident occurred in, November, November the
20 6th of 2013. Do you remember that day?

21 A I do.

22 Q Tell me what you remember and where you were.

23 A I was here working in the back. We had General
24 Sessions court and I was the court admin at the
25 time, so I was here.

1 Q You were here with Marie? Marie said she was here.

2 A Marie and I worked together that day. And she had
3 to leave because she had an appointment, so she
4 sent another agent over to work with me.

5 Q Okay. When did you hear about what had happened?

6 A I got a call to come back to the office and that's
7 when we were told.

8 Q What was your reaction?

9 A I was shocked.

10 Q Why?

11 A Because that's not Robin. That's not the Robin
12 that I've known for years. I don't think that
13 Robin would intentionally do anything to hurt her
14 family and to take herself away from her children.
15 Because, like myself, Robin is very close to her
16 children. So I just -- I can't see Robin just
17 doing that.

18 Q In the 16 to 17 years that you've known Robin in
19 two different work experiences, have you had an
20 opportunity to observe Robin in her interaction
21 with people and how she treats people?

22 A Uh-huh, yes.

23 Q Have you had an opportunity in that observation to
24 form an opinion concerning Robin's temperament,
25 whether she's that kind of quick to temper person

1 or a peaceful individual?

2 A She's always been peaceful, you know, around me.

3 I've never seen that side of Robin.

4 Q Have you seen her lose her temper with clients of
5 the agency?

6 A No.

7 Q How would you describe her conduct or work with her
8 co-workers and clients?

9 A Everyone loved Robin. And for her to come to work
10 for the agency two times, she had to have been a
11 good employee.

12 Q Okay. Have you had an opportunity during that same
13 time to form an opinion concerning Robin's honesty
14 or truthfulness?

15 A Yes.

16 Q And what is your opinion concerning Robin as to her
17 truthfulness?

18 A I think she's an honest person.

19 Q Is she --

20 A She has never give me a reason to believe that
21 she's not an honest person.

22 Q Okay. If she tells you something, you believe her?

23 A Right. Except for the black eye.

24 Q You didn't believe that?

25 A No. That, I did not believe.

1 Q You thought she was covering up something?

2 A Yes.

3 Q Did you ever ask her?

4 A No.

5 Q Okay. If she had come to you and told you what was
6 really going on, would you have helped?

7 A Yes.

8 Q But she never did?

9 A No.

10 Q Okay.

11 MR. LEIENDECKER: One moment.

12 (Pause.)

13 MR. LEIENDECKER: I have nothing further for
14 Ms. Kenner at this time.

15 THE COURT: Yes, sir?

16 MR. SORENSON: Just a couple of questions.

17 CROSS-EXAMINATION

18 BY MR. SORENSON:

19 Q Good afternoon.

20 A Good afternoon. How are you?

21 Q Is it Kenner or Kennerly?

22 A Kenner.

23 Q Kenner. Ms. Kenner, I have just a couple of things
24 I want to just ask you about and clarify a little
25 bit. The black eye that you recall observing on

1 Ms. Herndon, when was that? Do you recall?

2 A I can't remember, but it was in 2013.

3 Q And how do you know it was in 2013?

4 A Because I remember it was -- I don't -- I just
5 remember it was -- I'm thinking it happened just
6 before that incident happened. Because I do
7 remember the black eye. And when the incident
8 happened, that's what made me really think about
9 the black eye and the fact that I thought that she
10 was being abused.

11 Q You think that maybe it was right, I mean, within a
12 couple of weeks prior to the shooting?

13 A I can't really -- but I know it was the same year.

14 Q How about the injury to her ankle and her foot?

15 A I can't remember the injury to her ankle.

16 Q So you're not sure on that? It could have been any
17 time?

18 A I mean, it was 2013, but I don't know what month or
19 what the timeframe or which one occurred first.

20 Q You're not even sure which one happened first out
21 of those?

22 A No, I'm not sure.

23 Q And let me ask you again, you told the judge that
24 you did not think she was telling you the truth
25 about how she got the black eye. How about the

1 injury to her ankle and her foot?

2 A She said she fell off of a trampoline.

3 Q Did you think she was lying to you about that also?

4 A I'm not sure about the trampoline, but I just took
5 her word for it.

6 Q You took her word for it on the first one too,
7 though, right, or the other one also?

8 A Yes, but I didn't believe her.

9 Q Didn't believe her. This is the same person that
10 you testified that you basically thought she was a
11 truthful person?

12 A And I said I thought she was truthful, and I said
13 but I didn't think that the statement that she gave
14 me about the eye was truthful.

15 MR. SORENSON: Beg the Court's indulgence.

16 (Pause.)

17 BY MR. SORENSON:

18 Q Let me just, real quick, you had testified earlier,
19 Ms. Kenner, that you had -- after seeing her with a
20 black eye and her telling you how that allegedly
21 occurred that you had told one of the other admins
22 there that you didn't think she was telling the
23 truth?

24 A Yes.

25 Q Who was that that you told?

1 A Phyllis Reeves.

2 Q Reeves?

3 A R-E-E-V-E-S.

4 Q That's Ruth Reeves?

5 A I'm sorry, Ruth Reeves.

6 Q Just making sure it wasn't two different people
7 there.

8 MR. SORENSON: Thank you, Ms. Kenner.

9 THE WITNESS: Okay.

10 MR. LEIENDECKER: No further questions for Ms.
11 Lisa.

12 THE COURT: All right. You may step down.

13 (Witness steps down.)

14 MS. HINDS: We would call Laurie Caldwell.

15 (Witness approaches.)

16 THE CLERK: Place your left hand on the Bible,
17 and raise your right.

18 (Witness complies.)

19 THE CLERK: The testimony you shall give in
20 this case will be the truth, the whole truth, and
21 nothing but the truth, so help you God?

22 THE WITNESS: Yes.

23 THE CLERK: Please have a seat in the witness
24 box, stating your name, spelling your last.

25 (Witness seated.)

1 THE WITNESS: My name is Laurie Varnadoe
2 Caldwell, C-A-L-D-W-E-L-L.

3 LAURIE VARNADOE CALDWELL,
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. HINDS:

7 Q Good afternoon, Ms. Caldwell.

8 A Good afternoon.

9 Q Can you tell us where you are currently employed?

10 A I am an agent with the State Law Enforcement
11 Division.

12 Q SLED?

13 A Yes.

14 Q And are you working as a labor agent, or what is
15 the nature of that employment?

16 A I am a contract agent. I retired from SLED in
17 February of 2011 and had a 3-year break in service
18 and returned there as a contract agent in April of
19 2014.

20 Q What exactly -- "on a contract basis," what does
21 that mean?

22 A I get paid by the hour, and another agency
23 reimburses SLED for my salary. And I don't get
24 like regular holidays. And I work strictly 40
25 hours a week for this one particular job

1 assignment.

2 Q I believe you worked for SLED previously; correct?

3 A Yes, I did.

4 Q On a non-contract basis?

5 A Twenty-five years.

6 Q Twenty-five years. Can you tell us a little bit
7 about your training for that position and what the
8 position was?

9 A Yes. I was a special agent and retired as a senior
10 special agent. The first five years of my
11 employment was in the Missing Person Information
12 Center. And my career started because of training
13 overlapping with child abuse because the South
14 Carolina Missing Person law defines missing person,
15 missing child, and exploited child. So that led my
16 career path down to working crimes against
17 children, and eventually down to working
18 exploitation of vulnerable adults, as well as other
19 crimes.

20 After five years I transferred to what we
21 refer to as the Midlands region, which is a
22 10-county area, where we did all types of criminal
23 investigations, assisting local law enforcement.
24 And there I continued to do a lot of child abuse
25 cases and vulnerable adult cases, as well as other

1 cases.

2 Q Because you had developed an expertise?

3 A Yes.

4 Q Okay. Do you know Robin Herndon?

5 A I do.

6 Q Can you tell us how long you have known Robin?

7 A It has to be over ten years. She was hired in
8 2007. I knew her when she was employed as a
9 detective with the Edgefield County Sheriff's
10 Department. Our paths crossed over because of both
11 of us working child abuse. So it has been over ten
12 years.

13 Q So the first time your paths would have crossed
14 would have been when she was working as a deputy
15 with Edgefield County; correct?

16 A Correct.

17 Q Did you continue to know her after she changed
18 employment?

19 A Yes. I was actually on her interview panel for
20 hiring at SLED. And then once she was hired, we
21 were co-workers and established an even -- a close
22 friendship.

23 Q Okay. Can you tell us what capacity she was
24 working at at SLED?

25 A She was hired as a special agent assigned to the

1 Midlands investigative region.

2 Q And you continued to meet with her and work with
3 her, your paths continued to cross; correct?

4 A Yes. We worked some cases together. We saw each
5 other frequently. And then we also socialized
6 together.

7 Q So you were colleagues as well as friends at that
8 point?

9 A Yes.

10 Q Okay. And you were trained to work with victims of
11 domestic violence; correct?

12 A Yes. Some of my training did overlap with that.

13 Q When did you first become aware of Robin's
14 involvement with Chris Rowley?

15 A Very early 2013. She started referring to Chris as
16 a friend that was helping her around her house.
17 Because she was currently separated.

18 Q So your initial introduction to him was not by
19 face-to-face; correct?

20 A No. I never met him.

21 Q Never?

22 A Not as an adult.

23 Q What do you mean, "not as an adult"?

24 A I learned from Robin that Chris went through the
25 South Carolina Law Enforcement Cadet Academy. And

1 I was the director of that program. He would have
2 gone through as a teenager, but I -- a lot of
3 teenagers went through that program through the
4 course of the years, so I don't remember him. But
5 he apparently remembered me, from what Robin said.

6 Q And periodically did she speak to you about him?

7 A Yes.

8 Q Did you ever have occasion to have lunch with
9 Robin?

10 A Yes, I did.

11 Q Do you remember a conversation that took place in
12 August 2013?

13 A I do.

14 Q Tell us about that conversation.

15 A Robin was in Columbia for something to do with her
16 bankruptcy. And I was no longer at SLED at that
17 time. I was at a Child Advocacy Center. And we
18 met in West Columbia for lunch.

19 And she started talking about Chris. And she
20 described him as severely -- and that was her
21 word -- "severely" bipolar. And that they were
22 trying to get him help.

23 Q Did she tell you what kind of help?

24 A Well, medical help through a psychiatrist.

25 Q Did you ask her any questions about that

1 relationship and that conversation?

2 A I did. And I don't remember what prompted me to
3 ask this, but it was something that Robin had said.
4 And I asked her had he put his hands on her.

5 Q And what do you mean by, "putting hands on her"?

6 A I meant had he been violent.

7 Q What did she tell you?

8 A She got very defensive and said, Yes, one time, but
9 it will never happen again.

10 Q And did she go into any more detail?

11 A No. She got very defensive.

12 Q And did she volunteer any more information after
13 that?

14 A No. Well, I'm sorry, yes, she -- I immediately
15 told her that she needed to get him out of her
16 house for the sake of her and the sake of her
17 daughters.

18 And she said, No, she said, I'm trying to help
19 him.

20 And I told her, I said, You need to help him
21 from a distance. You need him out of your house.

22 And she was defensive just saying that, I'm
23 trying to help him. He has never had anyone to
24 help him.

25 Q That she was trying to help him?

1 A Yes.

2 Q Okay. Did you ever see any physical signs on Robin
3 that would have concerned you?

4 A No. During that relationship between she and
5 Chris, I only saw her one time, and that was at
6 lunch.

7 Q And you never met Chris; correct?

8 A No.

9 Q Okay. Did you have the chance to overhear a
10 conversation when you were on the phone with Robin
11 with someone in the background?

12 A Yes. I called her, and it was after we had had
13 lunch, and it would have been late September,
14 sometime in October, 2013. And I just called her
15 from the house. I had her on my mind and had not
16 heard from her since lunch in August.

17 And when she answered, she started whispering,
18 and I --

19 Q Was that unusual?

20 A Yes, because Robin talked loud. So she started
21 whispering. And I don't hear that great.

22 So I was like, Robin, what is wrong?

23 And she said, I can't talk right now.

24 And I said, Is Chris there? Because I could
25 hear some noise in the background, but, I mean, I

1 know she also has daughters.

2 And she said, Yes. I can't talk now. I'll
3 call you later.

4 And I asked her if everything was all right,
5 and she said, Some things -- she said, Things are
6 just going to change.

7 And I don't know if that is an exact quote,
8 but it was something about "something has got to
9 change" or "things are going to change."

10 -Q How would you describe Robin to somebody else?

11 A How would I describe Robin?

12 Q Uh-huh.

13 A She is probably one of the smartest people I have
14 ever met. I could never, ever as a co-worker
15 remember any statute on the book, but I could ask
16 Robin and she would just rattle it off. She is
17 extremely passionate about just about everything,
18 whether it is relationships, her work, shopping,
19 her family. She is just a very passionate person.
20 And when she walked in the room -- I know in the
21 Midlands -- you knew she was there, because she was
22 just full of life.

23 Q Okay. Do you have any either professional or
24 personal opinion on her ability to be honest?

25 A I have always thought Robin -- her interaction with

1 me was honest.

2 Q Okay.

3 A She might avoid information for -- because I might
4 not approve of it, but she didn't lie about it.

5 Q And after she told you about Chris, you were not
6 happy with where she was at; correct?

7 A Correct. When she got defensive with me at lunch,
8 there was something missing. I don't know what it
9 was. But her behavior certainly indicated there
10 was -- the Robin I know -- there was something
11 missing in what she was telling me.

12 Q Would you say that Robin is a person to anger
13 quickly?

14 A No. I go back to describing her as being very
15 passionate about her feelings and her opinion. But
16 anger? I don't know if I have ever seen her angry.

17 Q Did you ever hear of any complaints about her job
18 performance in the time that you interacted with
19 her?

20 A No. Robin was a very thorough investigator.

21 Q Did -- were there any complaints about her
22 conducting her job correctly or doing anything
23 inappropriate?

24 A Not to my knowledge, no.

25 Q As far as whether or not she was a peaceful person,

1 what would your opinion be?

2 A I mean, I have never known her to be violent.

3 MS. HINDS: One moment.

4 (Pause.)

5 MS. HINDS: No further questions. Answer any
6 questions the State may have, please.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. SORENSON:

10 Q Good afternoon, Agent Caldwell.

11 A Hi.

12 Q I've got a couple of questions for you. You said
13 the lunch you had with her was back in August of
14 2013?

15 A Correct.

16 Q Was it -- you had given a statement back in
17 November right after this happened of 2013. You
18 put in there August 9th. Would that have been --

19 A Yes, that would be correct, just because I had an
20 electronic calendar, and if I didn't schedule
21 lunch, I didn't get lunch, in that job that I had
22 at the time.

23 Q So that would be the exact date?

24 A That would be the exact date.

25 Q And you did not -- and I believe you testified that

1 during that time period of 2013 that was the only
2 time that you actually saw Ms. Herndon as you
3 recall?

4 A That is the best of my recollection. We had spent
5 New Year's Eve together, and then I didn't -- I
6 don't recall seeing her until August.

7 Q Okay. And you did not see any injury on her at
8 that point in time, though; right?

9 A No.

10 Q And then you did not -- you had the one phone
11 conversation with her in September of 2013?

12 A In September or October. One of the two.

13 Q And that was just kind of following up because you
14 hadn't talked with her since you had lunch with
15 her; is that correct?

16 A Correct.

17 Q Okay. And she had said that she can't talk right
18 now, she will call you later. Did you ever talk to
19 her again prior to this incident --

20 A No.

21 Q -- on November 6th?

22 A No, I did not.

23 Q And have you talked with her about this incident at
24 all after it happened?

25 A Yes, I have.

1 Q And when was that that you talked to her about this
2 incident?

3 A It wasn't long after she made bond. She came to my
4 house on a Saturday.

5 Q And did she tell you about what had happened?

6 A Yes.

7 Q And what did she -- as you recall, what did she
8 tell you had happened on November 6th?

9 A She had told me that she had been at work and that
10 she met -- she had to meet Chris. And they met
11 like halfway at a cemetery, or something. And I
12 don't know if she told me why they were meeting. I
13 really don't recall that at all. And that they got
14 in an argument. And that he left the cemetery. I
15 think she said he peeled out of the cemetery. And
16 she followed him to her house.

17 And that when they got there, an argument
18 continued, and that he pushed her down in the yard.
19 And either before he pushed her down or after he
20 pushed her down, he threw a set of keys up on top
21 of the roof. And that she went inside her house to
22 get another set of keys. And she was going to go
23 back to work.

24 And that when she -- I believe it was the
25 kitchen -- when she came out of the kitchen, she

1 said that just -- he came in the house and he, I
2 guess, attacked her, took her down to the ground.
3 She said she was down on the ground and that he
4 just started hitting her and that she had her arms
5 up over her face trying to protect herself. And at
6 some point she pulled her gun. And she told me
7 that she did not know if she pulled the trigger or
8 if Chris actually had pulled on her hand, and that
9 when the gun went off -- when the gun went off,
10 that it stunned both of them, and that she
11 immediately said -- asked Chris, Are you hit? And
12 I don't remember if she said he replied. And then
13 that he grabbed his neck and went out the front
14 door.

15 Q And do you remember, when she was describing when
16 he was hitting her, her being on the ground?

17 A That was my recollection, yes.

18 Q And at that point in time is when the gun -- she
19 pulled a gun out and it went off?

20 A Yes.

21 Q She wasn't sure?

22 A It was during -- while he had her down.

23 Q She didn't recall pulling the trigger, she just
24 didn't know if it --

25 A No. She said she didn't really -- she did not

1 recall what happened.

2 MR. SORENSON: Bear with me one second.

3 (Pause.)

4 BY MR. SORENSON:

5 Q Is that the only time that you talked to her about
6 kind of what she said happened back that day?

7 A She came to my house another time and she was
8 discussing information about Chris's medicine, and
9 that possibly he had not been weaned off of
10 lithium, but had just cut it off, that she was
11 aware that he had not been taking it.

12 Q Uh-huh.

13 A And that possibly could have caused a lot of his
14 aggression.

15 MR. SORENSON: Beg the Court's indulgence.

16 (Pause.)

17 BY MR. SORENSON:

18 Q I'm sorry, Agent Caldwell. That first time you
19 said when she kind of told you what had happened
20 that day, you said that was right after she had
21 made bond; right?

22 A Yes, within --

23 Q A couple of weeks?

24 A Within a couple of weeks after she made bond, yes.

25 Q And how about this other time? Was that shortly

1 after that, or are you talking a longer period?

2 A I don't -- I don't recall. It would have been in
3 2014.

4 Q Okay. Thank you, Agent Caldwell.

5 THE COURT: Anything else?

6 MS. HINDS: One moment, Your Honor.

7 (Pause.)

8 MS. HINDS: No further questions, Your Honor.

9 THE COURT: All right, you may step down.

10 (Witness steps down.)

11 THE COURT: Call your next witness in line.

12 MS. HINDS: The Defense calls K.N.

13 (Witness approaches.)

14 THE CLERK: Place your left hand on the Bible,
15 and raise your right hand.

16 (Witness complies.)

17 THE CLERK: The testimony you shall give the
18 Court in this case shall be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Have a seat in the witness box,
22 state your name, spelling your last.

23 (Witness seated.)

24 THE WITNESS: K.N.

25 K.N.

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. HINDS:

4 Q Good afternoon, K.N. .

5 A Hello.

6 Q How old are you?

7 A Seventeen.

8 Q You would have been how old at the time of this
9 incident?

10 A Fifteen.

11 Q And how do you know Robin Herndon?

12 A She's my mom.

13 Q She's your mom, okay. Let's talk a little bit
14 about that. Your mom and your dad are divorced;
15 correct?

16 A Yes, ma'am.

17 Q Okay. And tell me about the custody situation.

18 A For the first few months while the divorce was kind
19 of getting started up, we lived with her most of
20 the time and would occasionally see my dad. But
21 once they got it settled, they lived -- we had half
22 custody on both of us and we would spend 15 days
23 and nights with each parent.

24 Q And so you spent quite a bit of time with your mom?

25 A Yes, ma'am.

- 1 Q When did you first come to know Chris Rowley?
- 2 A When she was married to Sam, we went out to lunch
3 for him for his -- I think it was his birthday.
4 And Chris was actually a friend of his that
5 attended. But I was only acquainted, I didn't get
6 to know him. I just knew his name and was
7 introduced.
- 8 Q And then after that, there was no more interaction,
9 correct, for a time?
- 10 A Oh, yes, ma'am.
- 11 Q And when did you first come to know him as being at
12 the house?
- 13 A It was -- I believe we were coming back from my
14 dad's for the weekend, and we pulled in and came
15 into the house. And I saw he was in our back yard,
16 like raking the leaves and cleaning up the yard.
17 And I asked my mom who he was, and she said his
18 name was Chris.
- 19 Q And how did she -- did she describe her
20 relationship with him at that point?
- 21 A I asked who he was because, of course, I was
22 protective of her. But she said that he was a
23 friend of hers that was just -- stopped by to help
24 her clean the yard because, you know, he had been
25 going through a hard time.

1 Q And did you have occasion to see him around after
2 that?

3 A Yes, ma'am.

4 Q So you had a chance to be around him?

5 A Yes, ma'am.

6 Q At some point, was he actually living in the house?

7 A Yes, ma'am.

8 Q And you were around him at that -- when you would
9 be home on visitation; correct?

10 A Yes, ma'am, when he wasn't working.

11 Q Okay. Describe your relationship with Mr. Rowley.

12 A We got along pretty well. I actually really liked
13 him compared to Sam. And he had kids of his own,
14 so he knew what it was like to be a parent. Really
15 didn't get into it too often, but I noticed he got
16 angry very easily over stuff. And we would argue,
17 like, if there was no food in the cabinets because
18 we were struggling really bad at the time.

19 Q Do you remember an incident that happened end of
20 May, beginning of June?

21 A Oh, yes, ma'am.

22 Q Tell me about it.

23 A I believe it was the last day in May. I needed a
24 dress for my -- at the time, my boyfriend. His
25 aunt was getting married on the Saturday and I

1 didn't have a dress because I didn't wear them.

2 And my mom was going to take me to buy one. And we
3 were going to go to the Augusta Mall to get it.

4 Q And why do you remember that date so specifically?

5 A Well, I really liked the wedding, in fact, but
6 then also my mom was very, very upset the entire
7 time we were there. And her and Chris, I could
8 hear them arguing through the door that day before
9 they went -- or we went in the car.

10 Q And so Chris didn't go with you?

11 A No, ma'am.

12 Q Okay. Do you know what the argument was about?

13 A I found out later -- or in the evening that it was
14 about money, that he didn't believe we had the
15 money to buy me a dress at the time. And she told
16 him I needed it, I couldn't go to a wedding in
17 jeans.

18 Q How did your mom behave on that ride to Augusta?

19 A Very not responsive. She cried the entire way
20 there. She touched up her makeup in the car before
21 we even headed. And then the entire drive, she
22 cried and she had to fix it again when we actually
23 got to the mall. She cried it all off.

24 Q And did she get any phone calls on that ride?

25 A Not on the ride, no. At the mall, she did, though.

1 Q One phone call? How many?

2 A Just a couple. I found out when I was trying on
3 the dress and came out, she'd be on the phone with
4 him. And --

5 Q With who?

6 A Chris. They were arguing and she kept telling him
7 she had to go, that she -- you know, we had to
8 check out and we would be headed home soon.

9 Q Okay. Was there another incident that took place
10 about a week later?

11 A Yes, ma'am.

12 Q Tell me about that.

13 A It was the last day of my freshman year, and I
14 wanted my boyfriend to come home with me and spend
15 the evening with me. And Chris was going -- or
16 said he would watch us while my mom was working.
17 Because she got off at 5:00 and we got out of
18 school that day at 1:00 o'clock.

19 And like I said, he was supposed to watch us.
20 And we got dropped off by the people I rode with,
21 and he was not there like he said he would be.

22 Q And that was the last day of school?

23 A Yes, ma'am.

24 Q And did someone come home with you?

25 A Well, my sister and -- it was just me, my sister,

1 and N. that came home. And we were there by
2 ourselves for a little while.

3 Q And why was N. coming over?

4 A I wanted to see him other than at school, and we
5 hadn't really hung out. And, you know, we were
6 dating, you know, couldn't go two days without
7 seeing each other.

8 Q And Chris was supposed to be there?

9 A Yes, ma'am, when we got home.

10 Q Was he?

11 A No, ma'am.

12 Q He was supposed to be the chaperone of sorts;
13 correct?

14 A Yes, ma'am.

15 Q In other words, your parents didn't want you in the
16 house with a boy by yourself?

17 A Yes, ma'am, I was only 14.

18 Q Did N. live near you?

19 A No, ma'am, he lived like 30 minutes from me.

20 Q And how was N. supposed to get home?

21 A We called his mom and asked her what would be best
22 for her. And she asked if we would meet her in
23 Clearwater, because it was kind of a halfway point
24 between North Augusta and Silver Bluff. And we met
25 at the Walgreen's.

1 Q Had your mom met N. 's mom prior to this?

2 A No, ma'am, not in person.

3 Q And so you and your mom and N. rode to

4 Clearwater?

5 A Yes, ma'am.

6 Q Was Chris with you?

7 A No, ma'am.

8 Q Why?

9 A He wanted to go really bad and he kept -- he was
10 kind of joking that he wanted to go, but it kind of
11 got more serious that he really, really wanted to
12 go.

13 And mom told him, No, I'll take them. It's
14 his mom. You know, I just -- it'll be just us two
15 meeting. You know, I haven't met before and I just
16 want it to be me meeting her for the first time.

17 Q Not to complicate things?

18 A Yes.

19 Q Was there any communication between your mom and
20 Chris during that ride?

21 A He was texting her, mainly. I think he was texting
22 her actually when we arrived at Walgreen's
23 wondering where she was, and she didn't respond to
24 him until we actually left. But he was constantly
25 texting her.

1 Q You knew that how?

2 A After my mom met N. 's mom, we talked for a
3 little bit. We were talking and she told me that
4 she needed to tell me something serious and that
5 she needed me -- you know, that she needed my
6 attention.

7 And I told her okay. And we were talking.

8 And she showed me on her phone the way Chris
9 was texting her. And he was saying some really
10 mean things.

11 Q Okay. So you had a conversation with your mom
12 after you dropped N. off; correct?

13 A Yes, ma'am. He had pulled away -- pulled off in
14 their car and we sat in the Walgreen's parking lot
15 and talked for a few minutes.

16 Q And what did your mom talk to you about besides the
17 text?

18 A She told me that -- she said, I'm sure you've
19 noticed something is not right, or something along
20 those lines. I know you know something is going
21 on. She said, Chris has hit me.

22 And I said, What do you mean?

23 She said, Chris has hit me before, she said,
24 and he's done more than that.

25 And, of course, I was in complete shock. You

1 know, I didn't think of him like that. Like I
2 said, I really got along with him.

3 But she told me that he had been violent and
4 that she thought maybe he had -- maybe something
5 was wrong or, you know -- and I think that was all
6 she really told me.

7 Q Did she tell you anything about what she was
8 planning to do?

9 A Well, she showed me the text, like I said, and she
10 showed me -- she said, This is the way he talks to
11 me.

12 Q And how was that?

13 A He said, I hope you die on the way home, bitch. I
14 hope you crash and die. And I saw it.

15 Q And you saw that text?

16 A Yes, ma'am, she showed it and said, This is how he
17 talks to me.

18 Q Let's back up. Had you ever noticed anything prior
19 to that conversation with your mom that night,
20 anything about her or the house that was unusual?

21 A I would notice every now and then she would maybe
22 have like a handprint print on her arm,
23 fingerprint, but I'd seen them playing around one
24 time and he grabbed her to keep her from falling
25 off the couch, so I just thought maybe that is what

1 had happened, and I didn't really pay much
2 attention to it.

3 Q Thought that was innocent; correct?

4 A Yes, ma'am.

5 Q Then did you witness something on the porch?

6 A Yes, ma'am.

7 Q Okay. Tell the Court what you witnessed on the
8 porch.

9 A One night in the summer -- I remember because
10 didn't have to go to bed early that night and I was
11 really excited -- I came out of my room to find my
12 mom. And I walked through the house and I was
13 looking for her, you know, yelling her name. And I
14 walked in the bedroom and I thought, Okay, they're
15 on the porch because that's where they went and,
16 you know, they'd go out there and smoke and talk,
17 and everything else.

18 And I opened the screen door and I took a step
19 out, and he had pinned my mom up against the wall.
20 And I ran back inside. And I don't think they ever
21 saw me.

22 Q And he had her against the wall how?

23 A It was back in the corner of the porch, and he was
24 hovering over her. And once I saw that he was kind
25 of hovering, I just ran back in. I didn't see

1 exactly what was going on.

2 Q And did you ever see your mom with bruises other
3 than the one you're talking about on the couch?

4 A Yes, ma'am.

5 Q Where?

6 A I'd see them -- I saw the black eye and I asked her
7 about it. She never really gave me a straight
8 answer about it. I just kept asking what had
9 happened, and she didn't tell me. And --

10 Q She was evasive?

11 A Yes. She didn't really want to answer me. And,
12 like I said, the arm bruises. I'd see just other
13 bruises on her arms that weren't fingerprints.

14 Q As summer progressed, how would you describe when
15 you were actually present in the home, the
16 environment in the house?

17 A I mean, we all got along pretty well. It was
18 always a little tense, though, especially knowing
19 after she told me what was going on. So I was
20 always -- I could tell when they were -- there was
21 tension, when I could not before.

22 Q What would they argue about mostly?

23 A Money.

24 Q How would Chris treat your mom with other people
25 present?

1 A They got along fine. We all laughed and hung out
2 and nothing seemed to be wrong.

3 Q So he did not assault her when others were around;
4 correct?

5 A Not that I know of.

6 Q Other than the time on the porch when you happened
7 to see, did he ever assault her in your presence?

8 A No, ma'am.

9 Q Again, can you describe your relationship with
10 Chris?

11 A Like I said, we got along pretty well. I noticed,
12 like I said, he got angry pretty easily. And I'm
13 trying to think. That's all, really. I mean, we'd
14 argue over silly stuff, like, who ate the last
15 whatever, but that was it, really.

16 Q How did he handle his anger?

17 A He got -- he'd get mad and he'd either go in the
18 room and shut the door behind him or walk off or
19 he'd just -- he would yell or, you know, get mad.
20 I never saw him break anything or obviously hit mom
21 in front of me, but that's all I saw.

22 Q Well, I'm going to redirect you to an argument you
23 and Chris had.

24 A One night we were in the kitchen, and me and my mom
25 were arguing over something silly. I don't even

1 remember what it was. And I got mad and I stormed
2 off to my bedroom. And I could see when we were
3 arguing that it was making him mad and he did not
4 like the way I was talking to her and I was being
5 disrespectful. And I walked off and I shut the
6 door to my bedroom behind me. And I didn't know he
7 had taken off behind me. And I shut the door in
8 his face. And he didn't even turn the door knob,
9 he kicked my door open.

10 Q Can you describe the damage to the door?

11 A Oh, it split on the wood almost all the way to the
12 top. And it was damaged at the bottom and was
13 fraying and the paint peeled off and it was -- the
14 door was ruined.

15 Q So you did experience that for yourself?

16 A Oh, yes, ma'am.

17 Q How did you react to that?

18 A It scared me. Like I said, I had no idea he was
19 behind me. I sat in the floor and cried and I was
20 trembling. And my mom came to check on me and I
21 didn't talk to her -- or him for like an hour. And
22 I didn't come to eat.

23 Q Did you ever see your mom get physical with Chris?

24 A No, ma'am.

25 Q How would she react around him?

1 A If they were starting to get into it, she'd kind of
2 look at him, like, Chris, like stop, you know, if
3 it was turning into something more than it should
4 have, if he was instigating anything, or --

5 Q Were there any other things around the house that
6 you noticed other than the bedroom door?

7 A Yes, ma'am, the screen door was actually broken and
8 it wouldn't lock. The picture frame that -- or the
9 picture that we have on our wall behind our door,
10 the glass had been broken out of it. My mom's bed
11 post was broken. And I found out when I actually
12 like pulled the part off and I asked her what
13 happened, and she said he accidentally broke it.
14 And I'm trying to think of what else. We have a
15 curio cabinet and one of the glass pieces had been
16 broken out of it. There was a hole in the wall. I
17 think that's all I remember.

18 Q Going back to that incident on the porch, did you
19 ever tell anyone about what you saw?

20 A Not until later.

21 Q Robin Herndon is your mom; correct?

22 A Yes, ma'am.

23 Q Would you -- and you know that this is a very
24 serious allegation against her; correct?

25 A Yes, ma'am.

1 Q Would you lie to keep her from going to jail?

2 A No, ma'am.

3 MS. HINDS: Answer any questions the State
4 has.

5 CROSS-EXAMINATION

6 BY MR. JUSTIS:

7 Q Good afternoon, K.N.

8 A Good afternoon.

9 Q You testified that there were a couple of
10 incidences, one in late May, early June where you
11 needed a dress for a wedding; correct?

12 A Yes, sir.

13 Q And there was an argument that took place between
14 your mother and Chris as a result of you wanting to
15 get this dress for the wedding; is that correct?

16 A Yes, sir. Actually, I needed it. It was like a
17 Catholic church wedding. I could not go in pants,
18 so I needed a dress.

19 Q So you had to have a dress?

20 A Yes, ma'am -- or yes, sir. I didn't own one that
21 fit.

22 Q How old were you at this point in time?

23 A Fourteen, about to be 15.

24 Q And then the last day of freshman year, you wanted
25 your boyfriend to come over to the house; is that

1 correct?

2 A Yes, sir.

3 Q But he couldn't come over to the house because
4 Chris wasn't going to be there?

5 A No, he could come over. The agreement -- my
6 boyfriend could come over. The agreement was he
7 could come over if Chris would be home.

8 Q Right.

9 A And we got dropped off and walked in and Chris was
10 not there like we thought he'd be and our ride had
11 already left.

12 Q Right. So at that point, your boyfriend wasn't
13 going to be able to stay; correct?

14 A Or he could. I called my mom and asked her what to
15 do, and she told me just to wait till Chris got
16 there and stay in the living room. In a common
17 area, not in my room.

18 Q And it was during this time then, I guess, she came
19 and took you to meet with N. 's mother; is that
20 correct?

21 A At the time, no.

22 Q Okay. Is that another incident?

23 A No. We came home from school. Chris was supposed
24 to be watching us. He was not. He finally came
25 home and he went in his bedroom and we were hanging

1 out. And later on that evening, when N. 's mom
2 wanted him home, that was when we went to meet her.

3 Q And Chris wanted to go with you?

4 A Yes, sir.

5 Q But your mother wouldn't let him?

6 A No, sir.

7 Q So that led to an argument?

8 A Yes, sir.

9 Q So these two incidences, basically arguments,
10 nothing physical happened at that point in time?

11 A Not that I know of.

12 Q Did you want him to go with you to meet N. 's
13 mother?

14 A I was indifferent. Like I said, we got along
15 pretty well. I was kind of indifferent.

16 Q And it was that particular day that your mother
17 showed you some text messages?

18 A Yes. Yes, sir.

19 Q And it's also then when your mother disclosed to
20 you that he had hit you?

21 A Yes, sir.

22 Q And that you were in complete shock?

23 A Yes, sir. I didn't expect it from him. Like I
24 said, we got along great. I never would have
25 expected it.

1 Q Right, because I think you had testified earlier
2 that you really liked him; correct?

3 A Yes, sir, he was a pretty good guy. I mean, I
4 liked him a lot better than Sam. He understood,
5 like I said, what it was to be a parent, instead of
6 Sam just kind of dictated.

7 Q You talk about noticing some handprints on your
8 mother?

9 A Yes, sir.

10 Q And other bruises. Did that concern you?

11 A Yes, sir.

12 Q Okay. And why did that concern you?

13 A Well, the first one, the handprint I noticed, it
14 was more just like finger dots, did not because,
15 like I said, she told me they were playing and I
16 had seen them before and he grabbed her from
17 falling off the couch, but the other ones did
18 concern me.

19 Q Okay. Did you actually see the episode when she
20 was falling off the couch?

21 A Yes, I saw him -- or one time, she was rolling off
22 the couch almost, and I think he grabbed her to
23 kind of keep her from falling and pulled her back
24 on the couch. And it didn't show then, obviously,
25 because bruises take time, but I saw later that it

1 had formed some bruises on her arm. I had seen
2 that a couple of times, bruises.

3 Q But that didn't really concern you at that point?

4 A No, sir.

5 Q But this would have been all after she had told you
6 that he had hit her; correct?

7 A The incident where she rolled off the couch was
8 before.

9 Q Okay. Well, so that would have been prior to May?

10 A Yes, sir.

11 Q And what about all these handprints and everything?
12 Approximately when did you see those?

13 A Well, I'd see a handprint print every now and then.
14 Like I said, most of this happened over the summer.
15 The black eye, I believe, happened in the late
16 summer. I would see bruises on her arm
17 occasionally. Like, they went on a trip or
18 something and I saw pictures they had taken and
19 there were bruises on her arm in that picture too.

20 Q Okay. And all that would have happened -- occurred
21 after she told you that, Chris hits me?

22 A Yes, sir.

23 Q And that didn't concern you?

24 A It did -- it did concern me.

25 Q So you were concerned that possibly he might be

1 abusive to her?

2 A Yes, sir.

3 Q And you said -- I think you testified you spent
4 half your time with your mother and half with your
5 father; correct?

6 A Yes, sir.

7 Q Did you ever mention any of this to your father?

8 A No, sir.

9 Q And why didn't you?

10 A I was scared. I didn't want him to know. I didn't
11 want him to try to take me away from my mom. I
12 didn't get along with my dad very well, and I still
13 don't.

14 Q Is that because your mom lets you get away with
15 more stuff?

16 A No, sir. My mom was actually very strict and she
17 doesn't put up with stuff that's not acceptable.

18 Q Like when you're being disrespectful, slamming
19 doors?

20 A Yes, sir.

21 Q I think you testified that you were being
22 disrespectful, you went into the bedroom, you
23 slammed the door, and when you did, you actually
24 slammed it in Chris's face?

25 A Yes, sir.

1 Q And then he kicked the door and, as a result, the
2 door broke, whether from your slamming or his
3 kicking; is that correct?

4 A Yes, sir.

5 Q I think you also testified that when he would start
6 to get agitated that your mother would look at him
7 and tell him to stop?

8 A Yes, sir.

9 Q Is that correct? What would he do?

10 A Just if they were talking and maybe it was -- he
11 would make a comment or a snide comment and I
12 could -- you could tell it was going to maybe get
13 them into an argument, she'd be like, Chris, like,
14 stop.

15 Q So if it was something that irritated her, she'd
16 tell him to stop?

17 A Or not necessarily irritating, if it was going to
18 start an argument, yes, sir. And it wasn't in
19 public, it was most of the time at home.

20 Q And when she would tell him that, what would he do?

21 A He'd stop.

22 Q Okay. He didn't hit her, did he?

23 A No, sir.

24 Q In fact, I think you testified that at times he
25 would get mad, he would walk off and go to the

1 bedroom?

2 A Yes, sir.

3 Q And you also testified that you never saw him break
4 anything?

5 A Other than the door, no, sir.

6 Q Well, the door that you had first slammed in his
7 face; is that correct?

8 A Or shut in his face, yes, sir.

9 Q Now, let's talk about this incident on the porch a
10 little bit. I mean, it is your testimony that they
11 are out on the porch and you don't know where the
12 are, you thought they were in the bedroom. You
13 happened to go out on the porch, opened the door to
14 the porch, and you see your mother being
15 essentially held up against the wall by Chris; is
16 that correct?

17 A I saw her up in the corner and he was on top of
18 her. And I couldn't tell if he was pinning her or
19 not. It was probably 8:00 p.m. at night. It was
20 starting to get dark. I just saw he was hovering
21 over her in the corner.

22 Q But this was summertime; right?

23 A Yes, sir.

24 MR. JUSTIS: Beg the Court's indulgence.

25

1 (WHEREUPON, State's Exhibit No. 6 was
2 marked for identification only.)

3 BY MR. JUSTIS:

4 Q I'm showing you what's been marked as State's
5 Exhibit 6. Is this the porch you're talking about?

6 A Yes, sir.

7 Q Okay. Where in that picture were they standing?

8 A Kind of not in the middle, but towards this corner
9 right here.

10 Q Okay. And you actually opened up the door -- and
11 did you step out onto the porch?

12 A I took about a half step, kind of like walk
13 outside. And when I saw it, I shut the door back
14 and ran in.

15 Q And were they -- how were they facing?

16 A She was facing near the door, but he was on top of
17 her. And all I could see was him on top of her,
18 but he was facing her.

19 Q So would he be facing --

20 A His back was to me.

21 Q In this picture, would he be facing this way
22 towards the door or that way towards the wall?

23 A That way towards to wall.

24 Q So his back was towards you?

25 A Yes, sir.

1 Q But she would -- her front would be towards you?

2 A What wasn't covered by him, yes, sir.

3 Q And this porch isn't a very big porch, is it?

4 A No, sir.

5 Q How far would you say the porch is length-wise,
6 maybe from me to you?

7 A Maybe. It's not very big at all. You had room for
8 maybe two or three chairs and that's it.

9 Q It is your testimony that they didn't see you?

10 A My mom said she never saw me come out, but I
11 thought they heard me shut the door behind me when
12 I came back in because they came in a few minutes
13 later.

14 Q Were they yelling or screaming or saying anything
15 at that point in time?

16 A No, sir. No, sir.

17 Q No. So he just had her pinned up -- what was he
18 doing?

19 A He was just standing there with her. And I could
20 hear them saying something, but, like I said, I
21 walked out, it was like maybe a second, and I
22 walked right back in. She told me that -- and I
23 seen it and it was --

24 Q So did they eventually come back in the house after
25 that?

1 A Yes, sir.

2 Q Okay. When they came back in the house, did you
3 notice any marks on your mother?

4 A No, sir.

5 Q Was she crying?

6 A No, sir.

7 Q Did she appear to act like anything was wrong?

8 A No, they just kind of -- like I said, I thought
9 they had seen me because they just played it off
10 and acted like everything was fine.

11 Q So for all you know, they could have been making
12 out on the porch?

13 A No, sir.

14 Q Now, let me ask you a question. Did you ever tell
15 your father a statement that your mother told you
16 about the shooting? Do you remember talking to
17 your dad?

18 A We talked about a lot of stuff that day. Please
19 clarify.

20 Q And telling your father what your mother had told
21 you about the shooting, what had happened?

22 A The day of? I'm sorry, please --

23 Q Uh-huh.

24 A I'm sorry, repeat it. You're confusing me.

25 Q This would have been the day of, day after?

1 A Okay.

2 Q A phone conversation you had with your mom where
3 she told you what happened that day, and then you
4 relayed that information to your father. Do you
5 remember that conversation?

6 A Faintly. I barely spoke to her when she called me.
7 It was more her sobbing telling me she's sorry, it
8 was an accident.

9 Q Right. I think what you told father was: I'm
10 sorry, I'm sorry, I'm sorry. Chris was all up on
11 me and I told him, If you don't back off, I'm going
12 to get my gun. I went and got my gun to scare him,
13 and I accidentally shot him.

14 Does that sound like what you told your father
15 your mother told you?

16 A No, sir, because I didn't even find out most of
17 that until after she had been bonded out or later
18 on. I only got to talk to her for probably 20 or
19 30 seconds at a time every time she called me.

20 Q Who were you living with at this time? The day of
21 the incident and the days after that, who did you
22 stay with?

23 A We were with our dad that day. We were supposed to
24 go back with her that evening. But we lived with
25 him after the incident.

1 Q I mean, so what did your mother tell you about it?
2 You said you spoke to her. What did she say?

3 A The first time she called me, it was like an
4 unknown number or I didn't have it saved. And I
5 answered it, and she was like -- I heard, K.N. ?

6 And I said, Yes.

7 She said, K.N. ?

8 And I said, Yes.

9 And she told me that she was sorry. And she
10 was sobbing. I could barely understand her she was
11 so hysterical. And she was sorry and that she
12 loved me and that she didn't mean to and that --

13 I kept asking her, I said, Was he hurting you?

14 And she said -- she wouldn't answer.

15 And I said, Was he hurting you?

16 She said, Yes.

17 And I said, Okay.

18 And about that time, I think she was maybe in
19 a police car or something, some guy came over the
20 phone and told me that she had to get off the phone
21 and he had to let us go. And so I hung up and that
22 was the first call.

23 Q Okay. So this would have been right after the
24 incident happened?

25 A Maybe an hour or so after we found out. We didn't

1 even find out about it till probably 4:00 or
2 5:00 o'clock.

3 Q So you didn't talk to her prior to 4:00 o'clock?

4 A No, sir.

5 Q You didn't make a couple of phone calls to your
6 mother?

7 A I called her cell phone freaking out. Of course,
8 she did not answer. She was in --

9 Q And what time did you call her cell phone?

10 A Minutes after my dad had told me. I didn't want to
11 believe it. I called her multiple times. And like
12 I said, of course, she didn't answer. She didn't
13 have her on her. She was with the police.

14 Q And when would that have been approximately that
15 day?

16 A 4:00 or 5:00. Like I said, we came home from
17 school. My dad got home maybe 4:00, 5:00 and told
18 us what had happened. Right when he walked in the
19 door, he asked us to sit down, he needed to talk to
20 us.

21 Q And where do you live now?

22 A I live with my mom now.

23 Q Okay. And where is that?

24 A Aiken, South
25 Carolina,

1 Q And where is that located?

2 A Behind the mall, the Aiken Mall, near Target.

3 Q And how long had you lived with your mom?

4 A Since July 20th of 2015.

5 Q And when's your birthday?

6 A .

7 Q Isn't it true you moved out soon as you turned 17
8 from your father?

9 A Yes, sir.

10 Q And why was that?

11 A Me and my dad did not get along. We didn't agree
12 on a lot of things. He was verbally very mean. He
13 let his new wife be very ugly to us. She would
14 talk about my mom in a very rude way. They were
15 very just rude people, and I did not get along with
16 them at all.

17 Q So that's why soon as you turned 17, you just
18 packed up and moved out?

19 A Yes, sir.

20 Q Did you tell your dad or did you just leave?

21 A I left a note to let him know that I was okay.

22 Q Kind of similar to when Chris made an objection to
23 you spending money they didn't have for a dress.
24 That upset you, didn't it?

25 A A little bit. I just --

1 Q Same thing when he wasn't home when you wanted to
2 bring your boyfriend home. That upset you, didn't
3 it?

4 A I was more confused as to why he wasn't there. I
5 didn't understand. Same with the dress, I didn't
6 understand why a \$20 dress was that big a deal.

7 Q Right. So when you don't get your way, then it's
8 everybody else's fault?

9 A No, sir.

10 Q Is that correct?

11 A No, sir.

12 MR. JUSTIS: No further questions.

13 THE COURT: Yes, ma'am?

14 MS. HINDS: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. HINDS:

17 Q K.N. on the date that you went into your bedroom,
18 shut the door in his face?

19 A Yes, ma'am.

20 Q Okay? When you shut that door, did it split in
21 two?

22 A No, ma'am.

23 Q When did the physical damage happen to the door?

24 A When he kicked it open with his foot.

25 Q Okay. When you saw -- when you attempted to step

1 out on the porch and saw Chris and your mom on the
2 porch, were you under the impression that they were
3 making out?

4 A No, ma'am. They were not very -- they were -- they
5 would hold hands and stuff, but they didn't just
6 make out on the porch outside in front of whoever
7 can see it.

8 Q And in that conversation -- the first conversation
9 with your mom, she was kind of hysterical; correct?

10 A Yes, ma'am.

11 Q Tell me again what she told you.

12 A I believe I answered the phone, and I heard, K.N. ?

13 And I said, Yes, ma'am.

14 She said, K.N. ? Because she couldn't hear --

15 I guess she couldn't hear me.

16 And I said, Yes, ma'am. And I said, Mom?

17 And she said, Yes, it's me. And she said --

18 I said, What's going on? You know.

19 She said, I love you.

20 And I said, I love you.

21 And she said, I'm so sorry. She said, I'm

22 sorry, I'm sorry, I'm sorry. I didn't mean to.

23 And I said, Mom, was he hurting you?

24 And she said, I'm sorry.

25 And I kept asking her, Was he hurting you?

1 And she said, Yes.

2 Q Is there anything about your relationship with your
3 dad that would cause you to be telling us
4 untruthful things from the stand?

5 A I do not get along with my dad, but is it worth
6 lying in court? No.

7 MS. HINDS: Thank you.

8 THE COURT: Anything else?

9 MR. JUSTIS: Nothing, Your Honor.

10 THE COURT: You may step down.

11 (Witness steps down.)

12 THE COURT: All right. It is 1:02. This
13 would be a good time to take our lunch break. How
14 many more witnesses do you have?

15 MR. LEIENDECKER: Two.

16 THE COURT: All right. Let's start back
17 around 2:00, maybe a little bit after -- if I don't
18 get turned around on the one-way streets today.
19 Maybe about ten after so we will be ready to start
20 back up..

21 You have two, and you may have two more
22 witnesses?

23 MR. JUSTIS: Two witnesses and a video.

24 THE COURT: All right. We will see you about
25 10 after 2:00.

1 (WHEREUPON, a lunch break was taken at
2 1:03 p.m.)

3 THE COURT: All right. Are you ready for our
4 next witness?

5 MR. LEIENDECKER: We are.

6 THE COURT: All right. Call your next
7 witness.

8 MR. LEIENDECKER: Deputy J. B. Downs.

9 (Witness approaches.)

10 THE CLERK: Place your left hand on the Bible,
11 and raise your right.

12 (Witness complies.)

13 THE CLERK: The testimony you shall give the
14 court in this case shall be the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Have a seat in the witness box.
18 State your name. Spell your last name.

19 (Witness seated.)

20 THE WITNESS: I'm John Barrett Downs.

21 D-O-W-N-S.

22 JOHN BARRETT DOWNS,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. LEIENDECKER:

2 Q Officer Downs, could you please tell me and the
3 Court where you work and what your job
4 responsibilities are?

5 A I work at the Aiken County Sheriff's Office. I
6 have been there approximately 13 years. Currently
7 my duties involve -- I'm called a tax -- or a tag
8 enforcement officer. I go around to different
9 communities and make sure that they -- if I see an
10 out-of-state tag, that they have complied with
11 South Carolina property tax laws. Community
12 policing is another part of my duties. It kind of
13 varies. It depends on what the captain wants done
14 that day.

15 Q We spoke with you regarding an incident that
16 happened in 2009. What were your responsibilities
17 with Aiken County at that time?

18 A At that time I was a road deputy answering calls
19 for service.

20 Q Okay. And we had discussions about an incident
21 that occurred involving the deceased, Christopher
22 M. Rowley. Do you remember that incident which
23 took place in -- the 15th day of October, it
24 appears, 2009?

25 A I do recall that incident.

1 Q Okay. It is kind of weird to recall something.
2 Can you explain to me how you understand or
3 remember something that happened, at this point,
4 six and a half years ago?

5 A I remember a lot of calls. Just different things
6 key them in your memory. When your investigator
7 contacted me and told me what it was about, it came
8 back to me. I haven't thought of that case in a
9 good while. And I did not even realize Mr. Rowley
10 was that individual.

11 Q Was the individual that was the victim in this
12 case?

13 A Correct. Yes, sir.

14 Q All right.

15 A I had not put that together.

16 Q All right. Can you tell me from your own memory
17 what you remember happened on October 15th of 2009
18 involving Christopher Rowley?

19 A Yes, sir. I was working a midnight shift, I
20 believe it was. I was dispatched to a call that
21 was identified to me as a domestic disturbance on
22 Stevie Seymour in North Augusta. Went to the
23 location. Stevie Seymour, for those that don't
24 understand or don't know it, is a small trailer
25 park. It is very dark. The trailers aren't marked

1 very well.

2 I entered the area. Was looking for the
3 location I was dispatched to. I observed a man
4 standing on a front porch. Had his hands down
5 around a doorknob. I assumed he was trying to
6 enter that residence.

7 About the same time I realized that is where I
8 needed to be. Pulled into the driveway. The
9 gentleman successfully opened the door and stepped
10 inside.

11 I advised my dispatch I was on the scene.
12 Stepped out of the car. Began walking towards the
13 house. The door came open. And a white female,
14 later identified as Ms. Rowley, exited the house
15 with a pistol in her right hand.

16 I drew my agency-issued sidearm, ordered her
17 to the ground, to drop the pistol. I proned her
18 out on the front porch.

19 Knowing there was at least one other person in
20 the house, I approached with my weapon at the
21 ready. Stepped up on the porch. I remember
22 placing my boot on the gun so it didn't go
23 anywhere. Sliced the pie. Looked into the house.
24 Saw the gentleman standing there that I had seen at
25 the front door previously. He was a very large

1 gentleman, I remember that.

2 And I told him to show me his hands and don't
3 come towards me; do not come at me or I would fire
4 on him.

5 I placed him on his knees and had him
6 interlace his hands up behind his head. And we
7 just waited for my backup to get there.

8 I knew there were at least two guns and two
9 people in the house that I didn't know, so we just
10 waited.

11 My backup arrived. We handcuffed Mr. Rowley.
12 And I began my investigation.

13 Q Okay. Can you tell me what you determined was
14 going on at Stevie Seymour that night?

15 A Being six and a half years ago, I don't recall
16 individual conversations.

17 Q Sure.

18 A And my dispatch, or excuse me, my record center
19 advised me that the original case file had been
20 destroyed, so I wasn't able to review any witness
21 statements. But just on my best recollection, I
22 found out that the man and the woman that I first
23 encountered were husband and wife. There were two
24 minor children in the home. There was a third
25 female there, a younger woman, that was a roommate.

1 Ms. Rowley confirmed something that was told
2 to me by my dispatch, that there had been a
3 physical altercation at a location in Augusta at a
4 club.

5 She told me that there had been a
6 confrontation between her and Mr. Rowley at that
7 location.

8 Her statement was that she had been assaulted
9 at that location and they had been told to leave
10 that club by the Richmond County Sheriff's Office.
11 She had called the other young woman that lived
12 there to come and pick her up.

13 While they were en route to the location on
14 Stevie Seymour, an unknown third party, who was
15 transporting Mr. Rowley, had called her to check on
16 her well-being.

17 And she heard Mr. Rowley making verbal threats
18 in the background -- and I believe it is stated in
19 my report -- that he was going to get a gun and put
20 it in her face.

21 I don't know who that third individual was or
22 that individual with Mr. Rowley. He wasn't there
23 when I got there. Excuse me.

24 Once again, the best of my recollection is
25 Ms. Rowley, upon Mr. Rowley's arrival, had grabbed

1 a handgun that was in the house. I don't know
2 exactly what was said. She didn't tell me what was
3 said, or I just don't recall. Upon him coming in
4 the house and her coming out, it was a very few
5 seconds. But she did -- I will assume she told me
6 that she feared for her life. She -- the phrase I
7 have in my report is that she felt she was in
8 imminent peril and that she wanted to press charges
9 against Mr. Rowley.

10 The fact that I arrested him, I have to assume
11 that her story and the young lady's story, any
12 statements they gave me matched the verbal
13 statements that was given to me.

14 As I said, it was six and a half years ago. I
15 wouldn't have arrested Mr. Rowley if I didn't have
16 PC and a desire to press charges by the victim.

17 Q And so on this incident -- in this incident, excuse
18 me -- in 2009, the then Ms. Rowley, the woman who
19 was married to him, grabbed a gun to protect
20 herself against him because she was in imminent
21 fear, according to your report?

22 A I didn't say she grabbed it to protect herself.
23 She grabbed it and ran to keep it away from him,
24 because that is what she --

25 Q Because he had threatened to place the gun in her

1 face?

2 A It is my recollection that she had heard -- yes --
3 she had heard in a background of a phone call a
4 statement made by Mr. Rowley, so she grabbed that
5 weapon and exited the house with it.

6 Q And what she told you that night and what you
7 figure because you finally arrested him checked
8 out, was that earlier, some point earlier in that
9 evening, he had actually been assaulting her at
10 another location in Augusta?

11 A That is my recollection. That she --

12 Q And then he followed her home when you were called
13 to Seymour -- to Stevie Seymour?

14 A Yes, sir.

15 Q All right.

16 MR. LEIENDECKER: One moment.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. LEIENDECKER: Nothing further.

20 MR. JUSTIS: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. JUSTIS:

25 Q Officer Downs, everything that you just testified

1 to, you are just basing that on what you can
2 remember from six and a half years ago; is that
3 correct?

4 A That, and a review of a typed transcript that is in
5 a computer system at the Sheriff's Office called
6 "In Pursuit."

7 Q Uh-huh. And what did that typed transcript say?

8 A It was the -- it is the narrative of my status for
9 a written report.

10 Q Okay.

11 A The one I wrote back in '09.

12 Q Basically -- it was your narrative of when you
13 arrived at the trailer park; correct?

14 A Correct. Correct. Chronological order, yes, sir.

15 Q Correct. So when you arrived at the trailer
16 park -- you've got a call for a domestic
17 disturbance?

18 A Yes, sir.

19 Q Is that correct?

20 A Yes, sir.

21 Q So when you arrive, it is dark, you are looking for
22 the place. You see a man going into the house.
23 You assume to yourself, Well, this is probably the
24 place?

25 A I either did that, yes, sir, or else at that point

1 in time I saw a number on the trailer or something
2 of that that confirmed I was on the scene, yes,
3 sir.

4 Q So when you arrived, this individual, he goes
5 inside the house?

6 A Yes, sir.

7 Q And when you get out of your vehicle, the female
8 victim in this case comes running out of the house
9 and she has a gun?

10 A Yes, sir.

11 Q How is she carrying that gun?

12 A In her right hand. It was held up.

13 Q Okay.

14 A I remember that.

15 Q And then you drew down on her, had her get in the
16 prone position?

17 A Yes, sir.

18 Q Drop the gun, all that kind of stuff?

19 A Yes, sir.

20 Q How much time had elapsed from the time he went in
21 the house to the time she comes running out of the
22 house with the gun?

23 A As I said, very few seconds. Enough time for me to
24 verbalize to dispatch that I was on the scene, hang
25 up the microphone, open the door, probably grab the

1 flashlight, stepped out, and started walking up.

2 Maybe ten seconds.

3 Q Okay. And at the time when she came out -- during
4 the course of your investigation that evening, did
5 she tell you that he actually assaulted her when
6 they were in the trailer together?

7 A No. No.

8 Q It was a very short period of time?

9 A Correct.

10 Q But you do know that there was an arrest made that
11 night and that he was arrested that night?

12 A Yes, sir. I made it.

13 Q Okay. And do you remember or do you recall what
14 was the PC, the probable cause, for that arrest
15 that night?

16 A Her fear of imminent peril. Her fear of what would
17 happen when he got there. That she had been placed
18 in that fear by something he had said or done.

19 As I said, I don't recall exactly what she
20 told me. And the written statements were not
21 available to me to review.

22 Q Okay. So all we know at this point is that at some
23 point in time someone calls the Sheriff's Office
24 and says, you know, I've got a problem here, you
25 need to send somebody out? And when they arrive,

1 she comes running out of the house and says, I'm
2 scared? I mean, that is --

3 A I wasn't basing the arrest on that, but in a
4 nutshell. I'm pretty thorough.

5 Q So potentially, from what you remember, you think
6 it relates back to an altercation that occurred out
7 of your jurisdiction sometime earlier in the
8 evening?

9 A That was part of it, yes, sir.

10 Q Potentially. But you had no direct knowledge of
11 that incident?

12 A Do not.

13 Q And everything you are basing this on is
14 essentially hearsay from her, going back six and a
15 half -- what you remember someone else telling you
16 six and a half years ago?

17 A What I'm telling you today? Yes, sir.

18 Q Okay.

19 A Yes.

20 Q And you talked about this third female.

21 A Uh-huh.

22 Q That lived with them. Can you tell us -- I mean,
23 were you able to determine anything about that
24 house: Who lived where, and who all was living
25 there?

1 A I was.

2 Q And tell us about that. What do you remember about
3 that?

4 A It was Ms. Rowley, at that time. It was her
5 statement to me that Mr. Rowley lived on one end of
6 the house, the children lived in a bedroom in the
7 middle, and she and the young lady lived on the
8 other end.

9 Q And who was this young lady?

10 A I don't recall her name. I believe it was Bales or
11 Bates. She was a --

12 Q Okay. And what relation was she to Ms. Rowley?

13 A I believe she was an intimate partner, is what I
14 was told.

15 Q And do you remember anything from this incident at
16 the bar? Any information you can remember from
17 what that altercation might have been about at the
18 bar?

19 A To the best of my recollection, as I said before,
20 the young lady was not there. And it was my
21 understanding that the Rowleys had -- I don't know
22 if they went together or if they went separately, I
23 don't remember. But something that she did over
24 there upset him.

25 Q And so from the best of your recollection they are

1 at the bar, she does something that upsets him, and
2 then when she gets home she calls law enforcement,
3 and when you arrive she is coming out of the house
4 with a gun? Would that essentially be the
5 synopsis?

6 A That would nail it.

7 Q Thank you. No further questions.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. LEIENDECKER:

11 Q You reviewed everything you had in this file that
12 is left?

13 A Yes.

14 Q It was a chronological list of what happened?

15 A Yes, sir.

16 Q You have personal knowledge because it was unique
17 enough you remember some aspects of it yourself; is
18 that right?

19 A After being told what it involved, I went back and
20 just thought about it, yes, sir.

21 Q And after your investigation and after your
22 discussions, Christopher Rowley was arrested that
23 night for his domestic incident with his wife,
24 Ms. Rowley; correct?

25 A Correct.

1 Q And you don't have any information that would
2 suggest anything that this was her fault or her
3 responsibility, as is being suggested; it was his
4 fault?

5 A All I can tell you, sir, is that at that date and
6 time at that place, I established probable cause to
7 believe he was guilty of the crime of domestic
8 violence and had a desire for prosecution by the
9 victim, so I made an arrest.

10 Q Thank you.

11 THE COURT: Anything else?

12 MR. JUSTIS: Just briefly, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. JUSTIS:

15 Q And you have been a law enforcement officer for how
16 many years?

17 A Almost 13 years now.

18 Q And, ballpark figure, how many arrests would you
19 say you have made?

20 A Many hundreds.

21 Q All right. Hundreds of arrests. Have you gotten
22 convictions on every one of those?

23 A No, sir.

24 Q Have any --

25 MR. LEIENDECKER: Objection, Your Honor. At

1 this point, we are very tolerant, but he is
2 certainly exceeding what was the redirect
3 examination, and he is limited to that.

4 MR. JUSTIS: He is talking about probable
5 cause.

6 THE COURT: He said something about probable
7 cause, if he was guilty, so I think he has the
8 right to ask him. Your objection is overruled.

9 BY MR. JUSTIS:

10 Q Have you ever had a case dismissed for a lack of
11 probable cause in your career?

12 A For that? No, sir.

13 Q Any case?

14 A I have had cases dismissed, yes, sir, but never for
15 probable cause -- for lack of probable cause.

16 Q So you have never had a case at a preliminary
17 hearing dismissed?

18 A Never. Not that I know of, unless the Solicitor's
19 Office has not told me about it, sir.

20 Q So all your cases have been -- either went -- got
21 convictions?

22 MR. LEIENDECKER: Objection, Your Honor.
23 Asked and answered. Twice.

24 MR. JUSTIS: I withdraw.

25 THE COURT: All right.

1 MR. LEIENDECKER: No further questions.

2 THE COURT: All right, you may step down.

3 THE WITNESS: Thank you, Your Honor.

4 (Witness steps down.)

5 THE COURT: All right. Thank you. Call your
6 next witness.

7 MR. LEIENDECKER: Wallis Alves.

8 (Witness approaches.)

9 THE CLERK: Place your left hand on the Bible,
10 and raise your right.

11 (Witness complies.)

12 THE CLERK: The testimony you shall give the
13 Court in this case shall be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat in the witness box,
17 state your name, spelling your last.

18 (Witness seated.)

19 THE WITNESS: Wallis Alves, A-L-V-E-S.

20 WALLIS ALVES,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LEIENDECKER:

24 Q Wallis, I'm sure the Court is very familiar, but
25 would you tell me and the Solicitor who you are and

1 where do you work?

2 A My name is Wallis Alves. I'm an attorney at the
3 Second Circuit Public Defender's Office.

4 Q And how long have you worked with the Second
5 Circuit office?

6 A I've worked at the Aiken Public Defender's Office
7 off and on since 1993. I was in private practice
8 for about a year and a half, from '95 to '97. And
9 I was in the Lexington County Public Defender's
10 Office from 2001 to 2004. In those years, other
11 than what I've just mentioned, I been a public
12 defender for Aiken.

13 Q For Aiken?

14 A Yes, sir.

15 Q Okay.

16 A And Bamberg and Barnwell.

17 Q Now, the Second Circuit since 2008?

18 A Yes.

19 Q Okay. You are here for a very limit purpose,
20 Wallis. Did you meet with Robin Herndon after her
21 arrest that occurred on November the 6th, 2013?

22 A Yes.

23 Q And where did you meet her and why?

24 A I met her at the jail for the initial -- well, I've
25 known Robin for years as a probation agent in this

1 court. But I met with her after her arrest because
2 we were appointed to represent her.

3 Q At the Public Defender's Office?

4 A Yes.

5 Q Okay. And this was before y'all claimed a conflict
6 because of your personal relationship -- business
7 relationship, I should say -- with Robin and before
8 my office got involved; is that right?

9 A Yes.

10 Q And what did you go to the jail to meet with her
11 about?

12 A Her case and, more specifically, preparing for a
13 bond hearing.

14 Q Okay. Do you know the date that you went down
15 there?

16 A November 13th.

17 Q Okay. So it was nearly a week after; is that
18 right?

19 A Yes.

20 Q All right. Did Robin make a request of you while
21 you were there that day concerning her physical
22 condition?

23 A She -- is attorney-client privilege waived? I
24 mean --

25 Q I'm just asking did she ask you to take some

1 photographs of her physical condition?

2 A Yes.

3 Q Okay. All right. I'm going to have these -- I
4 believe there are 13 of them that I have that were
5 produced from you, and I'm going to get these
6 marked.

7 (WHEREUPON, Defendant's Exhibit Nos. 7 -
8 19 were marked for identification only.)

9 Q Wallis, I'm going to hand you what's been marked
10 Defendant's Exhibits 7 through 19. And ask you to
11 look at those --

12 THE COURT: Hold on one second. Have you
13 showed it to the --

14 MR. LEIENDECKER: Oh, I'm sorry.

15 MR. JUSTIS: I have not seen it.

16 MR. LEIENDECKER: I haven't, that was my
17 mental versus intentional.

18 (Pause.)

19 MR. LEIENDECKER: The deck is shuffled,
20 Wallis, but I assure you it's still 7 through 19.

21 THE COURT: Any objection?

22 MR. JUSTIS: No, Your Honor.

23 THE COURT: Are you trying to enter them or
24 you just --

25 MR. LEIENDECKER: Once she identifies them, I

1 will, Your Honor.

2 THE WITNESS: I recognize them.

3 BY MR. LEIENDECKER:

4 Q Are these pictures you took?

5 A Yes.

6 Q How did you take those pictures?

7 A With my iPad.

8 Q The one that's sitting right beside you?

9 A Yes.

10 Q You carry that with you everywhere?

11 A I usually carry it to the jail and court.

12 Q Okay. So when you went there that day, Robin had
13 these bruises; is that right?

14 A Yes.

15 Q And she asked you to take pictures of them; is that
16 right?

17 A Yes.

18 Q And she told you these came from where?

19 A From the altercation that she had with the
20 deceased.

21 Q All right.

22 MR. LEIENDECKER: I move these, 7 through 19,
23 into evidence for the purposes of the motion
24 hearing.

25 THE COURT: Any objection?

1 MR. JUSTIS: No, Your Honor.

2 THE COURT: All right. They'll be entered
3 without objection.

4 (WHEREUPON, Defendant's Exhibit Nos. 7 -
5 19 were admitted into evidence.)

6 MR. LEIENDECKER: I have no further questions.
7 Thank you, Wallis.

8 CROSS-EXAMINATION

9 BY MR. JUSTIS:

10 Q Ms. Alves, is it?

11 A Yes.

12 Q Was this the first time you talked to Robin after
13 she was arrested?

14 A Yes. Well, wait a minute, I don't remember. She
15 may have called the office asking about an
16 attorney, but that would have been the first time I
17 actually discussed her case.

18 Q Was that the first time you actually like met her,
19 like physically saw her?

20 A After her case?

21 Q After the incident happened? The incident happened
22 on the 6th.

23 A Yes, that would have been the first time I would
24 have actually seen her in person.

25 Q Your testimony is that she told you she received

1 all these injuries from the incident date?

2 A Yes.

3 Q And can you describe the locations of these
4 injuries?

5 A Defense Exhibit 13 shows a bruise on Ms. Herndon's
6 upper arm. It appears to be the right arm -- or
7 excuse me, I'm sorry, left arm.

8 Defense Number 14 is a bruise in the
9 mid-portion of her upper right arm.

10 Defense 15, it shows a bruise. It's on one of
11 the arms, I can't -- I'm not sure which one based
12 on what is shown in the picture.

13 Q You would agree they are fairly large bruises,
14 wouldn't you?

15 A Some of them are. Some of them are small.

16 Q Well, the ones on the arms appear to be fairly
17 large, don't they?

18 A Yes.

19 Q Okay. And I'm showing you what has been marked as
20 State's 29, 30, and 31. Can you look at those
21 bruises? Do they appear to be the same bruises?
22 Same area?

23 A In the same areas? State's 31 looks to be on the
24 right arm. I would have to look and see what's on
25 the right arm here.

1 Q Do they look smaller, bigger?

2 A I'm not sure what arm State's Number 30 is on. It
3 looks like it's on the --

4 MR. LEIENDECKER: I'm sorry, Your Honor. At
5 this time, I haven't seen these exhibits. I'm not
6 quite sure what we're talking about.

7 THE COURT: You all need to let him look at
8 them.

9 MR. JUSTIS: These were included in discovery.

10 MR. LEIENDECKER: I understand that, but I
11 haven't seen what you're showing her.

12 (Pause.)

13 MR. LEIENDECKER: Okay.

14 BY MR. JUSTIS:

15 Q Would you agree with me that these photographs, 29,
16 30, and 31, those bruises appear much smaller than
17 the bruises in the photographs you took?

18 A I'd have to look --

19 Q In diameter. Well, you have the pictures right
20 there. Can you look at them?

21 A I am. If I can have a moment?

22 Q Uh-huh.

23 (Pause.)

24 A Well, the bruise in State's Number 30 appears to be
25 consistent with the bruise in Defense Number 18,

1 for the bruise on the lower portion of the arm. It
2 looks like -- the one in the picture that I took
3 looks just a little bit older from the bruise here
4 that's underneath where the rulers are. Now, for
5 the bruise behind the rulers, I'm still looking to
6 see a comparable bruise in the pictures that I
7 took. Can I see the picture again? No, just this
8 one. I'm looking for a bruise that matches that.

9 Actually, the bruise in Defense Number 14, if
10 it's the same bruise on the lower portion closer to
11 the elbow, it looks about the same. Mine looks a
12 little older.

13 Q You would agree in this picture, the Defense photo,
14 that there seems to be a very large bruise in the
15 upper right arm area?

16 A Yes.

17 Q Is that what that's depicting? That's what you saw
18 that day when you took that picture?

19 A Yes.

20 Q Is that correct, a very large bruise?

21 A Yes.

22 Q In the upper arm area?

23 A Yes. And in Defense Number 16, it is not really
24 showing the bruise that is in State's Number 30.
25 But, like I said, if the bruise is the one that's

1 closer to the elbow, it's shown in Defense Number 8
2 and Defense Number 14. It just looks a little
3 older in mine, but they look about the same size.

4 Q Right. But there appears to be some larger
5 bruising too?

6 A There's additional bruising that's shown in the
7 pictures that I took that's not shown in these
8 three pictures that you have given me, but it
9 doesn't show the same areas of the body.

10 Q That's all there is.

11 A Okay.

12 Q And you did not have an opportunity to see
13 Ms. Herndon on November 6th, did you?

14 A I did not.

15 Q Or November 7?

16 A I did not.

17 Q So it wasn't until November 13th that you saw her?

18 A Yes.

19 Q So you have no idea to know when these bruises were
20 actually inflicted, other than what the Defendant
21 told you?

22 A That's right.

23 MR. JUSTIS: Thank you. No further questions.

24 THE COURT: Yes, sir?

25 REDIRECT EXAMINATION

1 BY MR. LEIENDECKER:

2 Q Wallis, do you have any idea when those pictures
3 the State just showed you were taken?

4 A I don't know.

5 Q Do you have any idea if those pictures were taken
6 at an earlier time before the bruises began to show
7 up, like often happens with folks?

8 A It appears that they were taken at an earlier time
9 based on what Ms. Herndon is wearing. She's
10 wearing green, which is what the inmates would wear
11 initially. That is what it looks like to me.

12 Q Okay. But you don't have any personal knowledge?

13 A I don't have any personal knowledge of that, I
14 don't.

15 MR. LEIENDECKER: No further questions. Thank
16 you.

17 THE COURT: Thank you. Anything else?

18 MR. JUSTIS: Nothing.

19 THE COURT: You may step down.

20 (Witness steps down.)

21 THE COURT: Call your next witness.

22 MR. LEIENDECKER: Those are all the witnesses
23 and evidence that the Defense has for its motion
24 for immunity.

25 THE COURT: All right.

1 All right. I ask the State to call their
2 first witness.

3 MR. JUSTIS: The State calls Lacey Burton.
4 (Witness approaches.)

5 THE CLERK: Place your left hand on the Bible,
6 and raise your right.

7 (Witness complies.)

8 THE CLERK: The testimony you shall give the
9 Court in this case shall be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Have a seat in the witness box,
13 state your name, and spell your last.

14 (Witness seated.)

15 THE WITNESS: Lacey Burton, B-U-R-T-O-N.

16 LACEY BURTON,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. JUSTIS:

20 Q Ms. Burton, where do you currently work?

21 A Walgreen's.

22 Q And what is your job there?

23 A Pharmacy tech.

24 Q And where do you live?

25 A

1 Q And where did you live back in November of 2013?

2 A Same address.

3 THE COURT: Can you speak up a little bit?

4 THE WITNESS: Yes. Sorry.

5 BY MR. JUSTIS:

6 Q The court reporter has to take everything down that
7 you're saying, so just make sure you speak loud.

8 Did you live there back on November 6th of
9 2013?

10 A Yes.

11 Q And what were you doing in the early afternoon
12 hours of November 6th of 2013?

13 A I came to leave to pick up my child and I came
14 outside.

15 Q And when you came outside, did you observe
16 anything?

17 A My attention was to the right. I heard some
18 yelling and seen a male and female in the front
19 yard.

20 Q Okay. And I'm showing you what has been marked as
21 State's Exhibit Number 2. Do you recognize this?

22 A Yes.

23 Q And what is that?

24 A My neighbor's house.

25 Q And where do you live in relation to that house?

- 1 A If you're standing on her front porch, it is two
2 houses down to the left.
- 3 Q Okay. If you're facing the street?
- 4 A Correct.
- 5 Q And what's in between -- you say two houses down,
6 what's in between you and this house?
- 7 A There's a trailer, but it's farther back than both
8 of our houses. My house and her house is the same
9 distance from the road, and that trailer between us
10 is way back.
- 11 Q Is there anything that obstructs your view from
12 your house to that house?
- 13 A No.
- 14 Q And you said -- you stated that you heard some
15 people arguing. Can you describe what the people
16 looked like that you saw arguing?
- 17 A It was a heavyset female and a male, white.
- 18 Q Okay. And where were they arguing?
- 19 A Their front yard.
- 20 Q Okay. And can you describe for us what you
21 observed when they were arguing?
- 22 A I only heard the female's voice. She was a little
23 angry. She was mad. She was yelling at the male.
24 And she was pacing back and forth on the sidewalk
25 and between the car and the porch. And he was just

1 standing there.

2 Q And what were you doing?

3 A When I first initially came out to my porch, I came
4 and sat in my car, was just observing them.

5 Q Okay. And why were you watching them?

6 A Because it was unusual. It was a quiet
7 neighborhood, so to see somebody arguing, it was
8 out of the ordinary.

9 Q So you are sitting in your car, you see them
10 arguing. What happens next?

11 A Eventually she walked in the house. And the man
12 was smoking a cigarette. He stayed out in the
13 front yard. And then he walked inside -- or walked
14 onto the porch. Once they get on the porch,
15 they're out of my view. And as soon as he walked
16 onto the porch, I heard a gunshot.

17 Q Okay. Now, while they were in the yard, you
18 testified that the female was pacing back and
19 forth?

20 A Uh-huh.

21 Q At any time did you see any kind of -- did either
22 one of them have any physical contact with each
23 other?

24 A No.

25 Q At any time did they get up in each other's face?

1 A No. She was yelling, she looked mad, but she never
2 got in his face, or vice versa.

3 Q And how long were you able to observe them? While
4 you're sitting in your car, how much time has gone
5 by from the time you get in your car and you're
6 observing this until the time they walk out of your
7 view?

8 A About three to five minutes.

9 Q Now, I think you testified the female went up the
10 steps of the porch first?

11 A Uh-huh.

12 Q And then followed by, eventually, the male. What
13 happened when he went up the steps?

14 A They were both out of my view. And then that's
15 when I heard the gunshot.

16 Q And how long would you say it was from the time he
17 walked up to the steps to the time you heard the
18 gunshot?

19 A It was no time. Because I was in my car, so I
20 hadn't even had time to crank the car up to leave.
21 No more than 30 to 60 seconds.

22 Q All right. Now, after you said you heard what
23 sounded like a gunshot, after you heard that, what
24 did you do?

25 A I called 9-1-1.

1 Q And after you called 9-1-1, what did you do at that
2 point?

3 A I left.

4 Q Okay. Why did you leave?

5 A To go pick up my child.

6 Q Okay. At some point later, at some point after
7 picking up your child, were you contacted by law
8 enforcement?

9 A Yes..

10 Q Did you have an opportunity to give a statement to
11 law enforcement concerning what you witnessed that
12 day?

13 A Yes.

14 Q Did you know these people?

15 A No.

16 MR. JUSTIS: Beg the Court's indulgence.

17 (Pause.)

18 BY MR. JUSTIS:

19 Q Let me ask you this question. After you heard what
20 sounded like a gunshot, did you hear any more
21 screaming?

22 A Yes.

23 Q What did you hear?

24 A Immediately after I heard the gunshot, I heard the
25 same woman's voice just yelling to breathe.

1 Q Was there anybody else you saw around the house at
2 that time?

3 A It appeared the neighbor -- she has a neighbor kind
4 of like catty-cornered behind her house, a girl
5 came running down and then ran to the front yard.
6 And by that time, I'm calling 9-1-1 and I leave.

7 MR. JUSTIS: Okay. No further questions.
8 Please answer any questions Mr. Leiendecker might
9 have.

10 CROSS-EXAMINATION

11 BY MR. LEIENDECKER:

12 Q Ms. Burton, where do you live now again?

13 A

14 Q Okay. Does anyone else live there?

15 A Currently, yes.

16 Q Who?

17 A Family members. It's a family house.

18 Q Okay. Who else lives there?

19 A My cousin.

20 Q Okay. Does your child live there with you?

21 A Uh-huh.

22 Q How old is your child?

23 A She's six now.

24 Q Okay. Any other kids live there?

25 A Uh-huh. My cousin's girlfriend has a son that --

1 Q So your cousin and his girlfriend live there?

2 A Her girlfriend, yes.

3 Q They both live there?

4 A Uh-huh.

5 Q All right.

6 A Just recently.

7 Q They just live there recently?

8 A Correct.

9 Q Okay. You stated that on November 6th, as you were
10 leaving your residence, as soon as you came out of
11 the front door, you heard a woman's voice at the
12 right yelling. You looked to the right and there
13 was a man and woman standing in the front yard. So
14 you looked and observed them at first just as you
15 walked out the door from your front porch?

16 A The yelling is what caught my attention, and that's
17 why I looked over there.

18 Q Okay. But that would have been from your front
19 porch?

20 A Correct.

21 Q Okay.

22 (WHEREUPON, Defendant's Exhibit No. 20
23 was marked for identification only.)

24 BY MR. LEIENDECKER:

25 Q I'm going to hand you what's been identified -- or

1 marked for identification purposes as Defendant
2 Exhibit 20, and ask you if that's the view from
3 your front porch to the residence where you heard
4 the yelling?

5 A Uh-huh.

6 Q Yes?

7 A Uh-huh.

8 Q Okay. You have to answer yes or no.

9 A Yes.

10 Q She has trouble with uh-huhs and huh-uhs.

11 A Sorry.

12 Q That's all right. So this is the view; right?

13 A When you come out on the front porch, yes.

14 Q Okay. From the front porch. And you would agree
15 with me that that's not an unobstructed view? When
16 you were asked by the Solicitor if there was
17 anything in the way of the view, you said no, but
18 there are trees in that way; right?

19 A Well, when I witnessed it, I'm not on the porch, I
20 was leaving, so when I --

21 Q I'm going to get there. I'm just saying --

22 A There's obstruction from the porch, yes.

23 Q Right. When you said when you first came out, you
24 were on the porch and you saw a man and a woman in
25 the front yard. So there are obstructions there;

1 correct?

2 A From the porch, yes.

3 Q All right.

4 MR. LEIENDECKER: I'd like to move Defense
5 Exhibit 20 into evidence.

6 MR. JUSTIS: No objection, Your Honor.

7 THE COURT: All right.

8 (WHEREUPON, Defendant's Exhibit No. 20
9 was admitted into evidence.)

10 BY MR. LEIENDECKER:

11 Q And where was your car parked at the time?

12 A In my front yard.

13 Q Okay. Not on the driveway, but pulled over in
14 front of the house in the front yard?

15 A Correct.

16 Q In a spot that sort of the grass is worn out
17 because people park over there some?

18 A Correct. So where I was parking when I sit in my
19 car, I looked straight ahead into her yard.

20 Q Okay.

21 MR. LEIENDECKER: I'll have this marked as
22 Defendant's 21 for identification.

23 (WHEREUPON, Defendant's Exhibit No. 21
24 was marked for identification only.)

25 BY MR. LEIENDECKER:

1 Q Does this look like a view from your front yard
2 over to the house?

3 A Yes. Yes.

4 Q Okay. So there were also trees in the front yard;
5 correct?

6 A Well, that's not the front yard, that's the side.

7 Q Well -- but from the front of your house through
8 the side yard, there are trees all along the line
9 between your house and Ms. Herndon's house;
10 correct?

11 A Correct.

12 Q All right.

13 MR. LEIENDECKER: I'd like to move this,
14 Number 21, into evidence.

15 MR. JUSTIS: I'd just ask that she
16 authenticate that that's what it looked like back
17 in November of 2013. I don't know when those
18 pictures were taken. I mean, they look like some
19 pretty narrow trees. I don't know if they've just
20 grown or, I mean.

21 THE COURT: You can ask her.

22 MR. JUSTIS: I think she has to authenticate.

23 THE COURT: I think she's got to be able --

24 BY MR. LEIENDECKER:

25 Q Does this look similar to what your front yard, the

1 trees looked like -- in your side yard, excuse
2 me -- the trees looked like in 2013?

3 A The way I remember it, it was a more clearer view.

4 Q Okay. And it was November, so there would actually
5 have been a lot more leaves on the trees then;
6 correct? Not January?

7 MR. JUSTIS: I would object --

8 BY MR. LEIENDECKER:

9 Q Or February?

10 MR. JUSTIS: Normally, fall is in October. I
11 think you can take judicial notice.

12 MR. LEIENDECKER: I'm not disputing when fall
13 or the seasons are, but in South Carolina --

14 MR. JUSTIS: I would just object. She just
15 said, I thought there were less trees back there,
16 so I don't think she's authenticating that that
17 picture represents accurately what she was looking
18 at back in November of 2013.

19 THE COURT: So you're objecting to the --

20 MS. JUSTICE: He hasn't laid a proper
21 foundation, hasn't properly authenticated that
22 picture, that that's what it looked like back in
23 November of 2013. She testified that there were
24 less trees.

25 THE COURT: All right. Ask the question again

1 regarding the trees.

2 BY MR. LEIENDECKER:

3 Q Defendant's Exhibit 21, that is the view from your
4 front yard across through your side yard to
5 Ms. Herndon's today; is that right?

6 A Correct.

7 Q Does it look substantially similar to what it
8 looked like in 2013? Not exactly, but
9 substantially similar?

10 THE COURT: You have to clarify in November of
11 2013. Is that what you're asking?

12 MR. LEIENDECKER: Yes. I'm sorry, in
13 November. On or about November 6th, 2013. Thank
14 you, Your Honor.

15 THE WITNESS: I don't remember it being that
16 crowded. It's a close picture to the trees. I
17 wasn't standing in the trees. I was in my yard,
18 so.

19 BY MR. LEIENDECKER:

20 Q Okay. So that is not the view that you think you
21 would have had that day; is that correct?

22 A Correct.

23 Q Okay. That's all I'm asking. I've got a million.
24 Let me see if I can find one that comes close, all
25 right? Have you -- since November 6th, 2013, have

1 you planted any trees or done any landscaping that
2 put more bushes or trees in your yard?

3 A No.

4 Q Okay.

5 (WHEREUPON, Defendant's Exhibit No. 23
6 was marked for identification only.)

7 BY MR. LEIENDECKER:

8 Q Let me show you what's been marked for
9 identification as Defendant's Exhibit 23. I'm
10 going to ask you if you recognize this as the area
11 where you would have parked your car in front of
12 your house looking towards Ms. Herndon's home?

13 A Yes.

14 Q Okay. Does that picture look substantially similar
15 to where you would have been when you heard and saw
16 these events on November 6th, 2013?

17 A Yes.

18 MR. LEIENDECKER: Move to admit this,
19 Defendant's Exhibit 23.

20 MR. JUSTIS: No objection, Your Honor.

21 THE COURT: Admitted without objection.

22 (WHEREUPON, Defendant's Exhibit No. 23
23 was admitted into evidence.)

24 BY MR. LEIENDECKER:

25 Q Your statement says that you actually sat in your

1 car three to five minutes; is that right?

2 A Yes.

3 Q And you saw the gentlemen light up a cigarette and
4 stand outside while the female went up the steps
5 and you assume in the house because he was outside
6 a while; is that right?

7 A Yes.

8 Q Okay.

9 MR. LEIENDECKER: I have no further questions
10 of this witness. Thank you.

11 MR. JUSTIS: Nothing, Your Honor.

12 THE COURT: Ma'am, you may step down.

13 (Witness steps down.)

14 THE COURT: Call your next witness.

15 MR. JUSTIS: The State calls Phillip Turner.

16 (Witness approaches.)

17 THE CLERK: Place your left hand on the Bible,
18 and raise your right hand, please.

19 (Witness complies.)

20 THE CLERK: The testimony you shall give the
21 Court in this case shall be the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Have a seat in the witness box,
25 state your name, spelling your last.

1 (Witness seated.)

2 MR. LEIENDECKER: Your Honor, may we approach?

3 (WHEREUPON, a bench conference was
4 held.)

5 THE COURT: All right, we'll take about five
6 minutes to go to the restroom.

7 (WHEREUPON, a break was taken at 3:09
8 p.m.)

9 THE COURT: All right. Are we ready?

10 MR. JUSTIS: May it please the Court, Your
11 Honor?

12 PHILLIP TURNER,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JUSTIS:

16 Q Agent Turner, where do you work?

17 A I work for the South Carolina Law Enforcement
18 Division.

19 Q And what's your job title there?

20 A I'm a special agent in the Midlands region of
21 investigative services.

22 Q And did you have an opportunity to become involved
23 in a case involving a shooting on Sudlow Lake Road?

24 A Yes, sir, I did.

25 Q And what involvement did you have in that case?

1 A We were called in as an assisting agency. We
2 assisted the Aiken County Sheriff's Office with the
3 investigation at this point.

4 Q At some point during the investigation, did you
5 have an opportunity to speak with the suspect at
6 that time, Robin Herndon?

7 A Yes, sir, I did.

8 Q And where did you speak with her?

9 A It was at the Aiken County Sheriff's Office.

10 Q And did she give a statement while you were at the
11 Sheriff's Office?

12 A Yes, sir, she did.

13 Q Was that after she was Mirandized by other
14 officers?

15 A Yes, sir.

16 Q I showed you previously -- and this is State's
17 Exhibit 34, there was a CD in there?

18 A Yes, sir.

19 Q Did you recognize what that CD was?

20 A Yes, sir, I did.

21 Q And what was it?

22 A It is a CD of the interview.

23 Q Okay. So that video was recorded?

24 A Yes, sir, it was recorded by videotape inside the
25 conference room at the Aiken County Sheriff's

1 Office, criminal investigations division.

2 Q Before starting the video, let me just ask you a
3 couple of other questions. Approximately, how much
4 time did you spend with Ms. Herndon that afternoon?

5 A More than one hour, less than -- probably close to
6 two hours.

7 Q Okay. And during that time, were you able to make
8 any observations about her physical demeanor and
9 her physical appearance?

10 A Yes, sir.

11 Q And what was her physical appearance?

12 A She had blood on her clothing. She was disheveled.
13 She -- you could tell her hair was messed up. She
14 had been dressed for work, it appeared. She had
15 on, I believe, a white shirt with a black shirt
16 under it, some black pants. She had blood on her
17 outer clothing. It was a short-sleeved shirt and,
18 as I said, black trousers.

19 Q At some point in time, was she given the
20 opportunity to clean up?

21 A Yes, sir.

22 Q And did she do that prior to or after the
23 interview?

24 A She was allowed to go to the restroom and clean up
25 after forensics dealt with her, but before we had

1 the formal interview that you'll see on the
2 videotape.

3 Q And do you have any medical training?

4 A Yes, sir, I do.

5 Q What type of medical training do you have?

6 A I have worked previously as an emergency medical
7 technician. I was trained and certified as a
8 national registry emergency medical technician. An
9 intermediate is what they would call it. I've also
10 worked in the capacity of a First Responder for
11 several years, Medical First Responder.

12 Q And based on your experience as a Medical First
13 Responder, were you able to make any observations
14 on Ms. Herndon's physical appearance?

15 A Yes, sir. When we initially saw Ms. Herndon, she
16 was covered in blood. You can't help but look
17 around, try to observe, see if you see any
18 injuries, anything obvious on her person. You
19 know, you have to ask the question is that her
20 blood or whose blood is it from an evidence
21 standpoint as well as for her own well-being.

22 So I visually looked at her. I sat close to
23 her, as you'll see in the interview, over a long
24 period of time. And I didn't see any deformities,
25 contusions, abrasions, punctures, the things that

1 an EMT or a medically trained person would look
2 for. I didn't observe any of that on her that was
3 obvious at the time. Her pupils were equal and
4 reactive, which is a sign of head trauma. I didn't
5 see any spinal fluid coming out of her ears, her
6 nose. There was no blood coming from her nose or
7 her mouth. I didn't observe blood in her teeth as
8 she spoke. All those things, which, you know, are
9 signs we always look for to make sure that the
10 person we're interviewing is; number one, they're
11 safe, they're healthy; but, number two, that their
12 thinking, their process hasn't been jarred by an
13 injury, they're not intoxicated, you know, there's
14 no obvious signs of anything like that that would
15 cause me to need to stop my interview.

16 Q Okay. And did she make any comments to you or any
17 complaints to you about any injuries at that time?

18 A No, sir.

19 Q And did you have an opportunity to view State's
20 Exhibit 34, this video, prior to today?

21 A Yes, sir.

22 Q Within the last 24 hours?

23 A Yes, sir.

24 Q Is it a fair and accurate representation of the
25 interview from that day?

1 A Yes, sir.

2 MR. JUSTIS: At this time, Your Honor, the
3 State would like to publish State's 34.

4 THE COURT: Any objection?

5 MR. LEIENDECKER: No.

6 THE COURT: What number is that, 34?

7 MR. JUSTIS: Yes, Your Honor, 34.

8 (WHEREUPON, State's Exhibit Number 34
9 was played in open court.)

10 MR. LEIENDECKER: Your Honor, I have an
11 objection.

12 THE COURT: Hold on one second.

13 MR. LEIENDECKER: At this point is when the
14 officer begins testifying about the law and how
15 people are supposed to handle their guns, and that
16 kind of stuff. I find it completely unacceptable
17 and objectionable for definitely the jury to hear,
18 and I would think it is objectionable as to this
19 motion itself that it be -- that that portion of
20 this be admitted for the Court and for review.

21 And everybody who has listened to it knows
22 what he's going to say. He's going to start
23 reporting how you handle a gun, that a police
24 officer is held to a different standard than other
25 people, what -- when you point a gun, what you're

1 required to and not required to do. It's all not
2 only off the cuff, but it's not right. It's not
3 the law. And I wouldn't want it in the record
4 either in the motion, and I definitely don't want
5 it heard by the jury, if we get to that point.

6 THE COURT: Well, I think I almost have to
7 review it in-camera. I'm trying to figure out -- I
8 mean, I almost have to review it in-camera to even
9 rule on your motion.

10 MR. LEIENDECKER: I agree, Your Honor, I
11 agree. But what I'm asking at this point, I don't
12 think if I let it go and don't enter an objection
13 that it's contemporaneous or that it's appropriate.
14 You have to hear it in-camera to make the decision,
15 but I believe after you hear it, you should rule
16 that it should not be included as part of the
17 record. Just that portion, I'm not talking about
18 the video.

19 THE COURT: Any position from the State?

20 MR. JUSTIS: Well, I would just say at this
21 point, you know, go ahead and play it so you can
22 actually see what he's talking about. And then
23 after we play it, he can finish making his argument
24 and we can discuss it at that point. There's -- at
25 this point, there's literally, I think, three

1 minutes left in the video, three minutes and 19
2 seconds left.

3 THE COURT: All right. I think he wants to
4 make a timely objection.

5 MR. JUSTIS: Right.

6 THE COURT: And that is noted for the record.
7 And I'll --

8 MR. LEIENDECKER: Rule on it after you've had
9 a chance to review it.

10 THE COURT: I'll overrule it for purposes of
11 me watching it in-camera. I'm going to watch it
12 in-camera, and then I'll revisit your motion
13 regarding --

14 MR. LEIENDECKER: I understand what Your Honor
15 is saying. And I'm not certain you have to
16 overrule it. I think you have to hold your
17 judgment until you've reviewed it in-camera.

18 MR. JUSTIS: Reserve your ruling.

19 THE COURT: That's fine. Your motion is for
20 it not to be considered as part of the record in
21 this -- for purposes of this --

22 MR. LEIENDECKER: Motion.

23 THE COURT: -- motion. And then your second
24 motion, my understanding, is definitely for it not
25 to be shown to the jury.

1 MR. LEIENDECKER: Right. And I understand I
2 might not only be contemporaneous with that, I
3 might be days ahead. And I'll renew my objection
4 at that time, but if Your Honor is willing to rule
5 on --

6 THE COURT: Well, I think you objected to it
7 earlier yesterday.

8 MR. LEIENDECKER: Right, if you're willing to
9 rule on both of those matters at this time then
10 certainly --

11 THE COURT: I think we can. You raised the
12 objection yesterday --

13 MR. LEIENDECKER: In limine, yes.

14 THE COURT: -- and we talked about the
15 admissibility of the tape.

16 MR. LEIENDECKER: Yes.

17 THE COURT: All right. Okay.

18 MR. LEIENDECKER: In the Jackson v. Denno?

19 THE COURT: Yes.

20 MR. LEIENDECKER: Yes, ma'am.

21 THE COURT: All right.

22 (WHEREUPON, the video continues to be
23 played in open court.)

24 MR. LEIENDECKER: Your Honor, there are
25 several problems with what the officer says.

1 First, what he says is opinion. It is not
2 testimony. Second, he talks about the law, but he
3 is not correct on the law. And, even as relevant,
4 he's not here. Here's the investigating officer.
5 They don't even show up with him here today. I
6 assume it's because he no longer works for Aiken
7 County. But it would violate the Sixth Amendment
8 constitutional right to confrontation. And even if
9 he was allowed to testify, he wouldn't be allowed
10 to testify to these kind of opinions.

11 So all I'm asking is that his comments be
12 stricken from the record for the purposes of the
13 consideration of this motion and that ultimately
14 his comments never be played to a jury, if we get
15 there.

16 THE COURT: And which comment exactly?
17 Because he -- which comment are you referring to,
18 the portion where he says police officer -- you're
19 trained, you're a police officer?

20 MR. LEIENDECKER: I'm referring to -- when I
21 start my objection, the moment he begins talking
22 and he talks to her about -- I mean, he gets to
23 that, You're a police officer, you hold a gun this
24 way, you do that way, but he talks about -- all of
25 that stuff is objectionable. He's not available,

1 it violates the Sixth Amendment, he can't be
2 questioned on it. None of his testimonial comments
3 on there and/or his opinion comments on there
4 should be allowed in the record or in front of the
5 jury.

6 THE COURT: I'll be glad to hear from the
7 State. Any response?

8 MR. JUSTIS: Your Honor, I would agree that
9 starting at 1730 where he talks about, you know,
10 You're certified to carry a firearm, and all that,
11 from that point to the end, which is about a minute
12 and 13 seconds, the last minute and 13 seconds,
13 definitely that's fine, that can be cut.

14 Prior to that, there's some things that I
15 think -- you know, at 1520, when he starts talking,
16 he basically summarizes what she has told him. So,
17 I mean, since he started speaking.

18 What we played, that last bit we played, when
19 it first comes on, he's summarizing what she has
20 told him. He slaps at the gun, all that stuff. I
21 don't think that's really objectionable. He's just
22 summarizing what she has told him. And she's
23 standing there shaking her head, Yeah, yeah, yeah.

24 THE COURT: You're not objecting to that, are
25 you?

1 MR. LEIENDECKER: I am objecting to that. It
2 is his opinion. He's not summarizing. He says
3 things like that, When somebody points a gun in
4 your face it's a natural reaction to slap at that
5 gun, it's a person's natural reaction to slap at
6 that gun.

7 THE COURT: Does he say that in that portion?

8 MR. LEIENDECKER: Yes.

9 MS. JUSTICE: Yeah, that's where he says is
10 that correct. I mean, he basically asks her a
11 question and she responds to the question.

12 MR. LEIENDECKER: It's still opinion. He's
13 providing opinion testimony. And the Sixth
14 Amendment is sacrosanct. He's not here to even ask
15 about that.

16 MR. JUSTIS: Essentially he's saying a police
17 officer in interrogation or -- he can't ask
18 questions.

19 MR. LEIENDECKER: No, I'm not saying that.
20 I'm not at all saying that.

21 MR. JUSTIS: We can watch it again.

22 MR. LEIENDECKER: I didn't object to anything
23 that Agent Turner asked her. He asked her
24 questions. It's certainly allowed. I didn't
25 object to the questions he asked in the first

1 three-quarters of it. I object when he starts
2 providing opinion. And it is not allowed. You
3 wouldn't allow it from the witness stand. And now
4 it's going to be played to a jury without
5 opportunity under the Sixth Amendment for him to be
6 confronted and cross-examined.

7 THE COURT: Well -- and we'll probably have to
8 pull that last three minutes back up. But there's
9 portions where he is offering his opinion, but then
10 there's also portions where he's asking her
11 questions and he's saying, is that correct. Not
12 the portion -- not the portions where he's saying,
13 you know, As a police officer, you're held to a
14 different standard. I think we all agree that
15 that's not admissible. But even in there, there
16 are some questions that he asks her and -- that he
17 asked of her where he is not inserting his opinion.
18 I'll go -- we can pull it back up.

19 MR. JUSTIS: And, Your Honor, there's another
20 part, and this is part of it, what he's referring
21 to, where he's kind of summarizing some things and
22 then he says, That's not self-defense; correct?

23 MR. LEIENDECKER: Yes.

24 MR. JUSTIS: We can cut that out.

25 THE COURT: Well, that's not coming in.

1 MR. LEIENDECKER: Your Honor, how does
2 anything that he says come in if he's not going to
3 sit on that witness stand? How do you get over the
4 Sixth Amendment? I don't have a right to confront
5 him. My client doesn't have a right to confront
6 and have her counsel ask questions of him.

7 THE COURT: You all -- is he listed as a
8 witness?

9 MR. LEIENDECKER: No.

10 MR. JUSTIS: He is listed as a witness, Your
11 Honor.

12 MR. LEIENDECKER: He is here? Is he
13 available?

14 MR. JUSTIS: He's not here right now.

15 MR. LEIENDECKER: Is he coming?

16 MR. JUSTIS: Your argument would be he
17 can't -- we have to cut everything he says out --

18 MR. LEIENDECKER: I'm asking is he coming?

19 MR. JUSTIS: Your argument is if he says
20 anything on that videotape, he has to be here to
21 testify to it. So in the beginning of the
22 videotape when he shows her the Miranda, Is this
23 the Miranda you signed?

24 MR. LEIENDECKER: Your Honor, that's not my
25 objection, and you heard that wasn't my objection.

1 My objection didn't begin until he started
2 inserting himself at the very end.

3 THE COURT: Let's look at it again. Let's
4 look at it again. And I'll -- I don't have -- I
5 can't see far enough to tell you what points, but
6 --

7 MR. SORENSON: It starts at 15 --

8 THE COURT: Where?

9 MR. SORENSON: At 15 minutes.

10 MR. JUSTIS: At 15 minutes.

11 MR. SORENSON: Fifteen minutes in.

12 MR. JUSTIS: It's approximately at 15 --

13 THE COURT: Where he objects. He objected --

14 MR. JUSTIS: Correct.

15 THE COURT: You said it's only three minutes
16 left after his objection.

17 MR. JUSTIS: On the second video, it's 15
18 minutes in.

19 MR. LEIENDECKER: Not 15 minutes into the
20 interview, just the last few minutes of the second.

21 MR. SORENSON: On the second one. Because
22 there's three minutes and 40 seconds left.

23 (WHEREUPON, a portion of State's Exhibit
24 Number 34 was replayed in open court.)

25 THE COURT: All right. Stop right there.

1 Stop right there. Okay.

2 MR. LEIENDECKER: This is right where I
3 objected, just before this comment. Just before he
4 started talking about, You drew your gun,
5 holstered, and reholstered. At 1524, I think is
6 when I stood up because he's beginning all this,
7 and objection.

8 THE COURT: All right. So this is the part he
9 said -- the narrative of, You holstered and
10 reholstered. I'm not sure --

11 MR. LEIENDECKER: That's the first six words
12 of a totally objectionable comment.

13 THE COURT: Well, I'm not so offended about
14 him asking her, Let me make sure the story is
15 correct, you holstered and reholstered. The next
16 part is where the problem presents itself. And I'm
17 just not sure if you can --

18 MR. LEIENDECKER: It's all the same phrase.

19 MR. JUSTIS: Where he says, Most normal people
20 would --

21 THE COURT: Would SWAT at -- that's the
22 problem, and I'm not sure how to go about --

23 MR. LEIENDECKER: That's opinion testimony.

24 THE COURT: Hold on one second. I'm not sure
25 how we go about -- the second portion of what he

1 says would be considered opinion. And I'm not sure
2 how you can get the first portion in without
3 putting in the second part. So -- all right. I'm
4 not sure how you can get the full sentence in
5 because it is -- that second part is opinion.

6 MR. JUSTIS: Right. I understand that, Your
7 Honor. And we probably would have no objection to
8 cutting that whole portion out, but there's some
9 things later on that come out.

10 THE COURT: Okay. And we'll keep going. So
11 redact that portion.

12 (WHEREUPON, portions of State's Exhibit
13 Number 34 continues to be replayed in
14 open court.)

15 MR. LEIENDECKER: I'm sorry, Your Honor, I
16 can't see the time. Someone has taken the time
17 monitor off.

18 (WHEREUPON, portions of State's Exhibit
19 Number 34 continues to be replayed in
20 open court.)

21 THE COURT: Stop. All right, so the first
22 portion of the question, once again, would probably
23 be appropriate, but he doesn't allow her to answer
24 it. And that's when he starts the portion about,
25 You beat around the bush -- we've been beating

1 around the bush, and goes into his opinion. So I
2 think that would need to be redacted also.

3 MR. JUSTIS: Okay.

4 MR. SORENSON: We probably would keep
5 redacting from whenever it started.

6 MR. LEIENDECKER: That's the same part of that
7 phrase.

8 THE COURT: Okay.

9 (WHEREUPON, portions of State's Exhibit
10 Number 34 continues to be replayed in
11 open court.)

12 THE COURT: Stop there. Of course, that's --
13 because this is an issue for the jury to decide the
14 self-defense and the Court for purposes of -- well,
15 considering, I guess, here on the preponderance of
16 the evidence. But so he's -- that conclusion, the
17 statement, of course, is out.

18 All right. Start back.

19 (WHEREUPON, portions of State's Exhibit
20 Number 34 continues to be replayed in
21 open court.)

22 THE COURT: Stop.

23 You are objecting to that part too?

24 MR. LEIENDECKER: I object to everything he
25 says from that point forward. And not only am I

1 objecting because what he's offering is opinion,
2 but I am objecting because he is now summarizing
3 his view of the facts, he is summarizing his view
4 of what happened, he is asking her to answer his
5 view, and the Sixth Amendment doesn't allow me to
6 cross-examine him. He's not available.

7 THE COURT: All right. Rewind that back to
8 that portion.

9 MR. LEIENDECKER: That's as to the trial, Your
10 Honor.

11 (WHEREUPON, portions of State's Exhibit
12 Number 34 continues to be replayed in
13 open court.)

14 THE COURT: Stop. All right. On that
15 portion, it is primarily her talking.

16 MR. LEIENDECKER: What I'm talking about, Your
17 Honor, as far as redaction is he says the phrases,
18 You love him, you don't love him; he is crazy off
19 his meds. Those are his summaries and opinions
20 about what he has been told. I don't think that
21 should be included in this record, nor should it be
22 in front of the jury. I don't have any ability to
23 object to what my client says there.

24 MR. JUSTIS: We can start right where she
25 says, My intent was not to shoot him, which would

1 be after he gives his little, He's on his meds,
2 he's off his meds. We're fine with that, Your
3 Honor, which is right -- probably be about 1658ish,
4 right around there. That's where she starts
5 talking.

6 THE COURT: I assume you want that?

7 MR. LEIENDECKER: It is hard to assume, but,
8 yes. Yes.

9 THE COURT: Okay. So just redact the portion
10 where he says he's crazy off his meds.

11 (WHEREUPON, portions of State's Exhibit
12 Number 34 continued to be replayed in
13 open court.)

14 THE COURT: All right. And that portion
15 regarding, You said you never tell me he punched
16 you in response to what she said. I think that
17 part stays in. And she says, Well, no, I mean
18 shove.

19 All right, is that the end?

20 MR. JUSTIS: It is, Your Honor. At this
21 point, 1728, then he goes into his spiel about
22 certified to carry, so we would agree from that
23 point on. So we would just have, essentially, this
24 little bit in the middle where she starts out with,
25 My intent was not to shoot him. From that point

1 until right before he says about, You're certified
2 to carry. We want that in. The bit before that
3 where he's talking and then after that, cut that
4 out.

5 THE COURT: And, of course, before we show it
6 to the jury, you will go through the redacted
7 version and let Mr. Leiendecker see --

8 MR. JUSTIS: Yes, Your Honor.

9 THE COURT: See it.

10 MR. LEIENDECKER: Your Honor, my only -- the
11 only point I would put on the record, when you say,
12 You never said he punched you, that is clearly a
13 comment on the facts of the case. It is a comment
14 on the interview itself. It is something that the
15 jury can glean for themselves and not something
16 that this detective has to tell them. And,
17 furthermore, it still doesn't get over the Sixth
18 Amendment when he starts talking about the facts of
19 the case and not just asking questions.

20 THE COURT: You understand and you know the
21 case law as far as an interrogation, I don't want
22 to use the word liberal, but, I mean, it goes as
23 far as saying that the police officers can lie in
24 interrogations to get someone to say what they want
25 them to say. I understand that. But I understand

1 your Sixth Amendment argument and I will take a
2 look at that point and get back with you on that.
3 But I think he has the right to ask her a question
4 in response to a comment that she made. So right
5 now I'm going to allow that part in. I will
6 check --

7 MR. LEIENDECKER: To be part of the record,
8 you mean, or for the jury?

9 THE COURT: At this point, for the jury
10 until -- I'll take a look at the argument -- your
11 Sixth Amendment regarding confrontation.

12 MR. LEIENDECKER: While you're looking at it,
13 Your Honor, I wish you would -- when you say that
14 police are allowed to do all these things in
15 interrogation --

16 THE COURT: I didn't say that, I said the case
17 law said --

18 MR. LEIENDECKER: Well, I don't believe that's
19 where the case law is today.

20 THE COURT: Okay.

21 MR. LEIENDECKER: The 2015 case of State v.
22 Brewer, which I think the citation for that is 411
23 S.C. 401, should be considered by the Court this
24 evening when you're reviewing other matters as well
25 concerning the admissibility of these statements.

1 THE COURT: I'll take a look at that and the
2 other cases. I just had a case similar to this
3 with the same issue and researched the issue, and
4 I'll try to find the other cases that the Court
5 says, not me, the Court says that the jury has -- I
6 mean, that the police officers in interrogation are
7 given some latitude in the questions that they ask.
8 But I'll take a look at that portion.

9 MR. JUSTIS: Right. Your Honor, he's just
10 correcting something -- a misstatement she made.
11 And she acknowledges it. And then she took the
12 stand here yesterday and talked about how she was
13 wailed on, hit. Nowhere in that statement does she
14 say she was punched. And when she does say it one
15 time, she goes, Oh, no, no, no, I meant pushed.

16 MR. LEIENDECKER: They're allowed to get to
17 that. They're allowed to show all that to the
18 jury. They're allowed to argue all that. I don't
19 understand why we're now calling into question
20 whether the Sixth Amendment is valid anymore. I
21 don't understand why we're not following the edicts
22 of Brewer, which don't talk about what police are
23 allowed to do in interrogation, but, in fact, what
24 the jury is allowed to hear from that. And those
25 are two different standards.

1 THE COURT: All right. I'll take a look at
2 it.

3 MR. LEIENDECKER: And I'm going to be able to
4 argue what she did or didn't say on this disk, just
5 like the Solicitor's going to be able to argue
6 that. I just don't want to listen to someone who's
7 not here argue that.

8 THE COURT: Now, they claim he is listed as a
9 witness. Whether or not they are going to call him
10 or not, I don't know.

11 MR. LEIENDECKER: I still find it very
12 interesting that he never answered that question.

13 MR. SORENSON: We don't know yet.

14 THE COURT: He's listed as a witness, so we'll
15 see. I will look at Brewer and I'll look at the
16 other cases regarding the interrogation and Sixth
17 Amendment as far as the jury is concerned so we
18 don't -- for purposes of tonight. I don't think
19 you all need an answer on that this afternoon.

20 MR. LEIENDECKER: No, ma'am. No, ma'am.

21 THE COURT: All right.

22 MR. JUSTIS: No further questions.

23 THE COURT: All right. Yes, sir, any
24 questions?

25 MR. LEIENDECKER: Just a few.

CROSS-EXAMINATION

BY MR. LEIENDECKER:

Q Agent Turner, you said you reviewed the tape; is that right?

A Yes, sir.

Q Okay. You also today added a new twist to the fact that you are a certified EMT; is that right?

A I'm a trained -- I was certified. My certification I allowed to elapse because I don't work on an ambulance or in the medical field anymore.

Q So you're not a certified EMT?

A I was a certified EMT. I've been through the class. I graduated through college.

Q No, no. Here's my question. You are not a certified EMT today?

A Right now, I don't hold a certification.

Q You were not a certified EMT November 6th, 2013?

A No, sir.

Q Yet, you want to offer opinion statements concerning whether Robin was injured, in shock --

A I didn't say shock.

Q Oh, so you don't offer any opinion to that?

A What I did offer was my factual -- what I observed, my observations.

Q I'm not saying you can't offer those observations,

1 but you're not offering them actually as an expert?

2 A I was never qualified as an expert.

3 Q All right.

4 A Unless I missed it.

5 Q And you don't have any opinion as to whether she
6 could have or was in shock at that time?

7 A I didn't -- she did not exhibit any outward signs,
8 through my training and experience -- which was
9 quite a few years of experience, sir -- I didn't
10 see any outward signs that I saw of any
11 traumatic -- trauma, physical trauma, injury, which
12 I looked for to make sure she's okay. I didn't see
13 anything that would show me where she was
14 incapacitated, inebriated, intoxicated, grossly
15 intoxicated that would cause me any issue with
16 going forward with the interview at that time.

17 Q Okay. How long after the incident was this
18 interview?

19 A Two hours.

20 Q Okay.

21 A Approximately.

22 Q In an officer-involved shooting, do you immediately
23 bring the officer in and interview them about what
24 happened?

25 A Just depending on what my supervision says to do.

1 Q Okay. Is it commonplace to wait maybe even 24
2 hours before you bring them in to talk to them?

3 A We can, depending on the situation.

4 Q And why do you wait?

5 A Just depending on what the situation is and where
6 we're at with the officer.

7 Q It's not just depending on the situation. You
8 wait, don't you, because they are so emotional and
9 it is such a hypercharged situation, you want to
10 give them an opportunity to calm down so that they
11 can get the facts straight and tell you what really
12 happened; isn't that right?

13 A You want my opinion?

14 Q Yes. Isn't that right?

15 A I don't know that I can offer my opinion.

16 Q So you don't know? What you're saying is you have
17 no idea? You have no idea why someone --

18 A You started that question with, Is it your opinion.
19 And I'm just making sure that I'm answering the
20 question.

21 Q I'm asking you.

22 A Do we -- is it common practice?

23 Q Yes.

24 A At times, yes, sir.

25 MR. LEIENDECKER: No further questions.

1 MR. JUSTIS: Nothing further.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 (Witness steps down.)

5 THE COURT: All right. Call your next
6 witness.

7 MR. SORENSON: The State calls Investigator
8 Saige O'Grady.

9 (Witness approaches.)

10 THE CLERK: Place your left hand on the Bible,
11 and raise your right hand.

12 (Witness complies.)

13 THE CLERK: The testimony you shall give the
14 Court in this case shall be the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Have a seat in the witness box,
18 state your name, spelling your last.

19 (Witness seated.)

20 THE WITNESS: Mary Frances O'Grady, O-'-
21 G-R-A-D-Y.

22 MARY FRANCES O'GRADY,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SORENSON:

1 Q Investigator O'Grady, if you would, tell the Court
2 where it is that you're employed.

3 A I'm employed with the Aiken County Sheriff's Office
4 in the forensics division.

5 Q How long have you been employed with the Aiken
6 County Sheriff's Office in the criminal
7 investigative division?

8 A Since January of 2001.

9 Q And have you been employed in that capacity as a
10 crime scene investigator the whole time?

11 A Yes, sir.

12 Q Here in Aiken?

13 A Yes, sir.

14 Q Where did you work prior to that?

15 A Columbia Police Department.

16 Q In what capacity were you employed with the
17 Columbia Police Department?

18 A The last five years was as crime scene
19 investigator. Prior to that, it was road work and
20 various other duties.

21 Q And did you work also for a couple of years prior
22 to that with the Cayce Police Department?

23 A Yes, that was where I started out.

24 Q And, if I could, I want to turn your attention back
25 to the afternoon of November 6th of 2013. Did you

1 have an occasion that afternoon to respond to
2 Sudlow Lake Road here in North Augusta?

3 A I did.

4 Q And what was the purpose of you responding out
5 there?

6 A A shooting incident.

7 Q And what was your role going to be?

8 A As the forensic investigator, just basically to
9 take the evidence aspect of the investigation.

10 Q And did you ultimately process that crime scene?

11 A I did.

12 Q And did you take photographs of that crime scene?

13 A I did.

14 Q And describe initially just briefly for the Court
15 what was kind of the nature of that scene?

16 A It was actually pretty concise, for all intents and
17 purposes. There wasn't a lot involved. Most of it
18 was pretty much concentrating on the front porch
19 and within the front aspect of the doorway.

20 Q Okay. And this is a single-story, single-family
21 residence?

22 A Correct.

23 Q If I could, let me show you State's Exhibit Numbers
24 2 through -- it's 2 through 18, and then 20 and 23.
25 If you'll look through those real quick.

1 A (Pause.)

2 Q All those all photographs that you took of that
3 scene that afternoon?

4 A Yes, I did.

5 MR. SORENSON: Your Honor, at this time, we'd
6 offer State's 2 through 18 and 20 and 23 for
7 purposes of this hearing.

8 MR. LEIENDECKER: No objection.

9 THE COURT: Entered without objection.

10 (WHEREUPON, State's Exhibit Nos. 2 - 18
11 were marked for identification and
12 received into evidence.)

13 (WHEREUPON, State's Exhibit No. 20 was
14 marked for identification and received
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 23 was
17 marked for identification and received
18 into evidence.)

19 BY MR. SORENSON:

20 Q I guess initially, Investigator O'Grady, you had an
21 opportunity to kind of process the scene on the
22 porch?

23 A Correct.

24 Q And if you would describe for the Court what was --
25 what that kind of porch area looked like as far as

1 a crime scene goes.

2 A It's a flat, concrete porch right at the front
3 door. There is some blood transfer on the floor,
4 on the railing. There is a few items that are
5 placed throughout that area, a variety of things.

6 Q Did you collect a cigarette butt from that area?

7 A Yes.

8 Q A cigarette lighter?

9 A Yes.

10 Q Cell phones?

11 A Yes.

12 Q And you indicated there was some blood on the
13 railing and the concrete slab and some that had
14 dripped over on the ground?

15 A Correct.

16 Q And that was all documented in these photographs?

17 A Yes, it was.

18 Q Now, moving inside of the residence, let me show
19 you State's Exhibit Number 9. That shows the --
20 kind of the interior looking towards the front
21 door?

22 A Yes. It's from the kitchen area towards the front.

23 Q State's Exhibit Number 11, just basically, is that
24 a similar type angle?

25 A Actually in the kitchen back right corner toward

1 the front door.

2 Q State's Exhibit Number 13?

3 A That's coming from the master bedroom doorway
4 toward the front door.

5 Q Now, did you have an opportunity then to kind of
6 search that living room area?

7 A Yes.

8 Q Were there any items of evidence found in that
9 living room area?

10 A There was a shell casing on the floor near the
11 front door and there was a set of keys on an
12 ottoman adjacent to the master bedroom door.

13 Q Showing you State's Exhibit Number 14, does that
14 show a set of keys on the ottoman?

15 A Yes, sir.

16 Q And State's Exhibit Number 16, does that show --

17 A A shell casing on the floor.

18 Q And that's Marker Number 1?

19 A Correct.

20 Q And tell the Court, have you, in your 13 or so
21 some-odd years of processing crime scenes, have you
22 had an opportunity to collect shell casings before
23 at crime scenes?

24 A Yes.

25 Q Okay. And tell the Court how -- is there any

1 way -- when you're looking at the location of a
2 shell casing, is there any way to tell where a
3 person was standing when they fired a gun?

4 A No.

5 Q What do shell casings do when you fire, in this
6 case, a .40 caliber semi-automatic Glock?

7 A You'd have to get an expert actually to tell you
8 their opinion, but most of the time they are going
9 to eject and wherever they eject happens to fall.
10 So you're just taking for granted that's where it
11 landed when you got there.

12 Q Are they something that are easily kicked also?

13 A They could be.

14 Q Bear with me one second. All right. And in
15 looking -- let me show you State's Exhibit Number
16 12. Is that another one that kind of shows that
17 kind of inside the doorway area?

18 A Correct.

19 Q And you can see, I guess, a shell casing in that
20 picture also?

21 A Yes.

22 Q All right. In looking at -- and that also
23 obviously shows the kind of carpet area around the
24 front door?

25 A Yes.

1 Q Is there any blood or any evidence of a struggle
2 found anywhere inside that living room?

3 A No.

4 Q I see there's a TV on kind of an entertainment
5 center?

6 A There is.

7 Q Is anything knocked over on the TV or that
8 entertainment center?

9 A Nothing appeared to be disturbed, no.

10 Q Showing you in State's Exhibit Number 14, what is
11 that that is kind of right inside the front door on
12 the right-hand side?

13 A A curio cabinet.

14 Q Anything that appeared to be disturbed or knocked
15 over in that curio cabinet?

16 A No, there wasn't.

17 Q Did there appear to be any stains at all on the
18 carpet anywhere inside that front door?

19 A No.

20 Q No blood stains?

21 A No.

22 Q No urine stains?

23 A They would still be visible at that point.

24 Q Anything you were able to tell in processing this
25 scene that appeared to indicate that any kind of

1 struggle had occurred inside of that residence?

2 A None that you could tell if it did.

3 Q Is there any damage to that white hardwood door?

4 A No.

5 Q How about the -- there is also a glass, kind of
6 storm door; is that correct?

7 A Yes.

8 Q Any damage to that glass storm door?

9 A The glass door was intact.

10 Q I'm trying to find one, if I have it. At least you
11 can see on State's Exhibit Number 11 that there
12 appears to be some sort of wreath on that storm
13 door?

14 A There was.

15 Q Any damage to that wreath?

16 A No, it was still hanging.

17 Q Showing you State's Exhibit Number 17. What does
18 State's 17 show?

19 A A set of keys on the roof.

20 Q And they were collected off the top of the roof?

21 A They were collected.

22 Q How about State's Exhibit Number 20?

23 A A pair of sunglasses that were adjacent to the car
24 in the driveway.

25 Q Let me ask you, in showing you State's Exhibit

1 Number 8, were there also another pair of
2 sunglasses collected off of the porch?

3 A Yes.

4 Q Did you subsequently learn who those sunglasses
5 belonged to?

6 A I did.

7 Q And who did they belong to?

8 A One of our deputies that happened to respond to the
9 scene that day.

10 Q And she was involved with, I think, kind of
11 treating --

12 A Yes.

13 Q -- Mr. Rowley before EMS transported him?

14 A Yes.

15 Q So other than those sunglasses, these are the only
16 other sunglasses that were collected?

17 A Correct.

18 MR. SORENSON: Beg the Court's indulgence.

19 (Pause.)

20 MR. SORENSON: Thank you, Investigator

21 O'Grady. Please answer any questions

22 Mr. Leiendecker has.

23 CROSS-EXAMINATION

24 BY MR. LEIENDECKER:

25 Q Hey, Investigator.

1 A Hey.

2 Q I'm first going to hand you some of the State's
3 Exhibits, the photographs you took. And those are
4 the photographs of the porch. I think I gave you
5 four of them.

6 A Okay.

7 Q There's only one chair on the porch. Was there
8 only one when you arrived?

9 A Yes. The other one was actually in the crosswalk
10 or in the sidewalk.

11 Q It had been tossed off the porch, it appeared?

12 A Yes.

13 Q Was that done by EMS when they were treating him?

14 A I found out later that Lieutenant Padgett had
15 actually thrown it so this way they could attend to
16 victim at the time.

17 Q So it had been on the porch before law enforcement
18 arrived?

19 A Yes. Where it was positioned originally, I
20 couldn't tell you.

21 Q Okay. The question was asked about the inside,
22 were there any signs of a struggle.

23 A Okay.

24 Q And your answer was no. Outside on the porch,
25 other than there being signs of blood, is there any

1 signs of a physical struggle outside?

2 A It's hard to determine because you have blood
3 transfer. There may have been. But it's hard to
4 tell without someone else advising you to say, Yes,
5 this took place.

6 Q Okay. So the way you can tell when it is not
7 obvious whether there is a struggle is someone --
8 is from the testimony of people that were there,
9 they are advising you as to what happened?

10 A They do assist you, yes.

11 Q Okay. Thank you. For all the pictures inside --
12 and, you're right, it is a pretty clean house. The
13 Photograph Number 12, which you looked at, which
14 shows the shell casing and the entertainment
15 center?

16 A Yes.

17 Q The fact that the TV is still sitting in place in
18 the entertainment center doesn't answer whether
19 there was or wasn't a struggle in the house, does
20 it?

21 A No.

22 Q Number 9, which shows on the far edge of it what
23 you describe as the curio cabinet.

24 A Yes, sir.

25 Q The fact that nothing is disturbed on the curio

1 cabinet doesn't answer the question whether there
2 was or wasn't a struggle inside -- was or was not a
3 struggle inside, does it?

4 A No.

5 Q Did you, when you were at the scene, photograph or
6 see where the weapon was found?

7 A The weapon was not in the house. The weapon was
8 handed to me by Lieutenant Padgett.

9 Q Okay. Did Lieutenant Padgett tell you where the
10 weapon was found?

11 A No. I didn't ask him. All I did was take
12 possession of it and lock it down.

13 Q Okay. Did you process or collect any of the GSR
14 from this scene, just the swabs?

15 A I actually did the door.

16 Q Okay. Did you do anywhere else inside the house?

17 A There should have only been the interior portion of
18 the front door and of the glass door.

19 Q Did you do any GSR near the sofa or where the shell
20 casing was found?

21 A No, sir.

22 MR. LEIENDECKER: Okay. Nothing further.

23 Thank you very much, Investigator.

24 THE COURT: Yes, sir.

25 MR. SORENSON: Nothing further, Your Honor.

1 (Witness steps down.)

2 MR. JUSTIS: We have one more brief witness,
3 Your Honor.

4 THE COURT: All right.

5 MR. JUSTIS: The State calls Investigator
6 Molly Hahn.

7 (Witness approaches.)

8 THE CLERK: Place your left hand on the Bible,
9 and raise your right hand.

10 (Witness complies.)

11 THE CLERK: The testimony you shall give the
12 Court in this case shall be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Have a seat in the witness box,
16 state your name, spelling your last.

17 (Witness seated.)

18 THE WITNESS: My name is Molly Hahn, H-A-H-N.

19 MOLLY HAHN,

20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. JUSTIS:

23 Q Molly, where do you work?

24 A I work for the Aiken County Sheriff's Office.

25 Q And what is your job title?

1 A I am a criminal investigator.

2 Q And were you working with Aiken County back in
3 November of 2013?

4 A Yes, I was.

5 Q Did you have an opportunity to become involved in
6 this case?

7 A Yes, I did.

8 Q And what was the extent of your involvement in this
9 case?

10 A My extent of -- my involvement in this case was to
11 assist in the investigation. I took photographs
12 and helped assist with Ms. Herndon when she was
13 brought to the office.

14 Q Okay. And what did you take photographs of?

15 A I initially took photographs of Ms. Herndon herself
16 prior to the interrogation. And then approximately
17 24 hours later, at Ms. Herndon's request, I
18 responded to the Aiken County Detention Center and
19 took more photographs of her.

20 Q So you took two sets of photographs, one the day of
21 the incident and one the day after?

22 A Yes.

23 Q And on the day of the incident when you met with
24 Ms. Robin Herndon, did she make any complaints of
25 any injuries she had?

1 A The only complaint she voiced to me was that her
2 tailbone was kind of sore. She said she had landed
3 on it when she fell or was pushed.

4 Q Did she complain of any other injuries?

5 A Not at that time.

6 Q When you took photographs that day, did you notice
7 any other injuries on her person that day?

8 A No.

9 Q What about the next day when you took more
10 photographs of her?

11 A She requested some photographs of some bruising.
12 She showed me several different bruises that in the
13 photographs that I took appeared to be yellow and
14 greenish in color. Those are the only marks that
15 she showed me at that time.

16 Q Okay. And where were those bruises located?

17 A Primarily, her arms.

18 MR. JUSTIS: Beg the Court's indulgence.

19 (Pause.)

20 MR. JUSTIS: No further questions. Please
21 answer any questions Mr. Leiendecker might have.

22 CROSS-EXAMINATION

23 BY MR. LEIENDECKER:

24 Q Ms. Hahn, were you made aware of subsequent
25 requests to come back to the jail and take

1 photographs?

2 A I was only made aware of the one request 24 hours
3 after when I was contacted and asked to --

4 Q You were never notified that two other times --

5 A No.

6 Q -- there were other requests?

7 A No.

8 Q Okay. And you never went back and looked at her
9 two, four, or six days later?

10 A No.

11 MR. LEIENDECKER: Okay. No further questions.

12 MR. JUSTIS: Nothing further, Your Honor.

13 THE COURT: All right. You may step down.

14 (Witness steps down.)

15 THE COURT: Call your next witness.

16 MS. JUSTICE: No further witnesses.

17 THE JUROR: All right. Anything on reply?

18 MR. LEIENDECKER: No.

19 THE COURT: All right. I'll be glad to hear
20 from Mr. Leiendecker regarding his motion. I can
21 give you five minutes to collect your thoughts or
22 if that -- actually, I probably will take five
23 minutes anyway for a bathroom break to give you
24 all -- and then we can -- considering I need to
25 rule on this this evening, I will be glad to hear

1 from you regarding your motion and the testimony
2 that was heard.

3 MR. LEIENDECKER: Okay.

4 THE COURT: And a response.

5 MR. LEIENDECKER: We're going to take a break
6 and then do that?

7 THE COURT: Yes, about five minutes.

8 MR. LEIENDECKER: Very good. Thank you.

9 (WHEREUPON, a break was taken at 4:52
10 p.m.)

11 THE COURT: All right. Real quick before we
12 do that, I wanted to make sure we get that video --
13 that tape edited and allow Mr. Leiendecker to see a
14 copy of it and make sure we're all in agreement on
15 it.

16 So I read over Brewer during the break. And
17 in reviewing Brewer, the Court acknowledged the
18 right for the police to use law enforcement
19 interrogation techniques. They, however, hold that
20 it is improper to put all of that in front of the
21 jury and that the Court should do an in-camera --
22 should review the video in-camera and make a
23 decision and redact the video.

24 So, in looking at that -- in looking at the
25 Brewer case, it is talking about the techniques

1 where the police are misrepresenting -- as I stated
2 earlier, misrepresenting some of the facts to the
3 Defendants. And they said those techniques are
4 improper in front of the jury.

5 However, in this case, the Defendant makes a
6 statement that, He punched me. And then the
7 officer follows up with her statement -- he follows
8 up with the statement and says, Now, did he punch
9 you? She says, No, no, no, I meant pushed me. I
10 think this goes to believability and credibility,
11 and I find that it is admissible.

12 With that being said, I do think, and
13 considering Crawford, Mr. Leiendecker is correct
14 that it is only admissible if they have the
15 opportunity to cross-examine the officer.

16 And so the ruling will be, if the officer is
17 here and he has the opportunity to cross-examine
18 him, it is admissible. If the officer is not here
19 and he does not have the opportunity to
20 cross-examine him, then it is not admissible under
21 Crawford, because he should have the opportunity to
22 cross-examine him regarding the statement, in
23 regards to that statement.

24 The other statements we've already redacted,
25 because I think whether or not he's here or not,

1 they would be improper under Brewer to go in front
2 of the jury.

3 All right. So we'll see if he shows up.

4 All right. Yes, sir.

5 MR. LEIENDECKER: First, Your Honor, I would
6 like to -- I have provided to the Court and to the
7 Solicitor's Office my motion and the accompanying
8 legal brief for a motion for immunity from
9 prosecution. I'd like to have an additional copy
10 marked as a Court Exhibit so it can be made part of
11 the record.

12 THE COURT: Yes, sir.

13 That's Court Exhibit?

14 THE COURT REPORTER: One.

15 (WHEREUPON, Court's Exhibit No. 1 was
16 marked for identification only.)

17 THE COURT: Yes, sir.

18 MR. LEIENDECKER: Thank you, Your Honor. Very
19 briefly, I would like to address the Court, because
20 I believe my legal arguments are set forth
21 completely in the motion and brief passed up to
22 you, why Ms. Herndon is entitled to immunity from
23 prosecution in this case.

24 In the alternative, under Section A, because
25 it was her dwelling and her residence, she had told

1 Mr. Rowley that he needed to leave, to get his
2 stuff, to get out.

3 She had -- he had followed her uninvited into
4 the home. There was an actual physical altercation
5 inside the home. He then got up to leave and he
6 turned around and came back in with the obvious
7 intent to assault her again, making him an intruder
8 and trespasser and, therefore, making this
9 available under section A.

10 It was never his home. He was an invited
11 guest for the times that he was there. He was
12 never paying rent. His name was never on the
13 property. He was never acknowledged even to other
14 people as living there.

15 Furthermore, even if the Court were to find
16 that it doesn't qualify under that, it certainly
17 qualifies understood Subsection C of the statute
18 because she was in a place she had a right to be
19 and she was acting in self-defense.

20 Because of that, she is also entitled -- if
21 the Court doesn't deem under A, she is entitled to
22 that immunity from prosecution under Subsection C.

23 I believe that the witnesses that have been
24 presented here today set forth that basis for her
25 immunity.

1 First of all, we spent a very long time
2 yesterday, painstakingly, with the Defendant to
3 describe what had happened to her as Robin laid out
4 not only her history, but the history of their
5 relationship that led to that day.

6 Her description of the assaults that occurred
7 to her on a periodic and repeated basis from the
8 time he moved into her residence in March of 2013,
9 until this final event on November 6th of 2013.
10 Her description of the fact that that was the worst
11 she had ever seen it, that, you know, she was
12 afraid. She was afraid to the point of fearing for
13 her safety and her life at the time when he
14 intruded into her home following her on that time.

15 We heard from Dr. Veronen, again, for a
16 lengthy period of time, which Dr. Veronen explained
17 that, you know, women that are victims of domestic
18 abuse do not, are not people that react like we
19 think logical people should react. They have
20 reasons that they are covering this up. They have
21 reasons that they are denying that this has
22 happened. They have reasons that they are
23 justifying this. They believe that they are going
24 to be able to make a difference or make a change.
25 All of these elements fit Robin and what was going

1 on.

2 Not only did we hear that they fit Robin and
3 what was going on from Dr. Veronen and her plugging
4 her into this situation as showing all the typical
5 signs of an abused victim of an intimate
6 relationship, but we heard from other independent
7 witnesses that verified those elements.

8 We heard from her co-workers today. We heard
9 from Marie Boulton and we heard from Lisa Kenner,
10 who talked about that they had seen signs of things
11 and things seems unusual, but Robin always had an
12 explanation. What Robin had was a coverup, because
13 she didn't want to admit what was going on.

14 We heard from a very dear friend of hers,
15 someone that she had met when she was working
16 in Edgefield in the special victims investigation,
17 Ms. Caldwell, who said that she continued to remain
18 and be friends with Robin. She wasn't just a
19 co-worker. And that she began to be concerned
20 about Robin when she would talk to Robin on the
21 phone and hear about Chris in Chris and Robin's
22 home. That when she met with her in August of
23 2013, which would have been after the appointment
24 with Dr. Cummings, that she actually felt and
25 sensed that something was wrong, and she confronted

1 Robin with it. And Robin got defensive. Robin got
2 evasive. Robin quit talking to her. And that
3 wasn't typical of what Robin was like, she said.
4 And that gave her pause for concern. Such pause
5 for concern that later in the end of September or
6 maybe into October, she called Robin and got a
7 weird response.

8 Robin was whispering on the phone, I can't
9 talk, I can't talk, I can't talk.

10 Why can't you talk, because is Chris there?

11 Yes, Chris is there.

12 We heard from people that were intimately
13 involved in Robin's life, specifically from her
14 daughter, who was in and out of her home 50 percent
15 of the time from March until November, living in a
16 joint custodial arrangement with her mom and her
17 dad.

18 We heard her say that on a personal persona
19 level, Chris seemed like a nice guy and was
20 easygoing, but could get riled or upset. But that
21 she didn't think anything about it until she
22 started noticing the things. She walked out on the
23 front porch and finds her mom in a dangerous -- at
24 least, I would describe it a dangerous and
25 compromising situation, enough that she immediately

1 goes back in the house because she's afraid of what
2 she has seen.

3 She sees Chris get easily agitated and her
4 mom, Calm down, calm down, calm down, to try and
5 settle him down to avoid the situation.

6 We see Chris walking away and then coming back
7 to confrontations. We see Chris reacting in such a
8 manner and such fly-off-the-handle kind of nature
9 that he actually follows this young lady, at that
10 time 15 years of age, to her room, a teenager, who
11 has had a fight with her mom, not his wife, not his
12 child, but he follows her and kicks the door to the
13 point where he splits it top to bottom. Not
14 because she shut the door, because, Lord knows,
15 doors have been slammed in my house and not one of
16 them yet has broken from top to bottom because of
17 the fact that I had an angry teenager in my house.
18 What happened was Mr. Rowley's temper was
19 demonstrated for the first time to Robin's
20 daughter.

21 We heard testimony from both of the treating
22 physicians who saw Chris. And Chris kept avoiding
23 these visits, kept avoiding going back. The State
24 on cross-examination went at length and tried to
25 demonstrate that, in fact, it was Robin who was

1 making all this up. Well, Robin wasn't making it
2 up in 2009 when the deputy responded here -- that
3 deputy being J. B. Downs -- to a trailer park in
4 Aiken County and encountered a strikingly similar
5 situation.

6 A gentleman, a large gentleman, he described,
7 who was having a confrontation or domestic matter
8 with his then wife. A wife who had a gun and was
9 getting it out of the house because she was afraid
10 that it was going to cause further injury to her.
11 A wife who said she had been physically abused,
12 actually across the state lines in Augusta. A wife
13 who said that he has threatened her -- or she had
14 heard a threat when he was on the phone -- the
15 background of a phone conversation on the way home,
16 that he was going to get a gun and stick it in her
17 face.

18 And although he doesn't remember all the
19 specifics, it was amazing the detail that he was
20 able to remember. What he does remember is that he
21 found after the investigation of that matter that
22 there was sufficient probable cause for him to
23 arrest Mr. Chris Rowley on domestic violence.

24 We also heard Robin say in the interview that
25 she believed that Chris had told her he had been

1 arrested twice on domestic violence, once with a
2 girlfriend and once with his former wife, which
3 fits what Downs tells us, at least regarding the
4 former wife.

5 What we're going to deal with here and what
6 the State is going to argue is that there are a
7 bunch of inconsistencies. Well, there are
8 inconsistencies. I'm not going to argue that there
9 aren't inconsistencies. What I am going to argue
10 is those inconsistencies aren't of a level that
11 rise to the questioning of the veracity of what
12 Robin here today had to say about what happened to
13 her in November of 2013. She is being interviewed
14 on that 40-some-minute interview merely two hours,
15 two to three hours after these events have
16 happened. She's still covered in his blood. She's
17 still shaking. She's unable to understand that she
18 is not even talking loud enough at some times for
19 us to hear what she's saying because she's gotten
20 so mousy.

21 How was she described by Laurie Caldwell?
22 When she came in the room, you knew Robin was there
23 because she was big, she was vivacious, and she was
24 loud.

25 But what we have is an interview that's done

1 immediately after this event, that describes
2 90 percent of what you heard from the witness
3 stand, but doesn't describe to you the veracity of
4 all of the attacks and what happened. It doesn't
5 give the full-blown details of what he did as far
6 as assaulting her that day.

7 And even if it doesn't give the full details
8 of what he did assaulting her that day, she still
9 had a right if there weren't those assaults to
10 shoot him when he came through that door under the
11 Castle Doctrine under Paragraph A. He was not an
12 invited guest. He had brought himself into that
13 house in contravention of what she had told him.
14 He was following her for a reason, and it wasn't a
15 good reason. It was an evil reason.

16 And what we hear -- what we hear from the
17 other witnesses are -- of the State, we hear that
18 the forensic or the crime scene techs were there
19 and that they processed the scene. They didn't say
20 there wasn't a struggle inside the house, they said
21 they couldn't find signs that there was a struggle
22 in the house.

23 They also didn't say that there were signs
24 that there was a struggle on the porch, with the
25 exception of transferred blood, which is consistent

1 with the story that Robin tells us.

2 There is no blood on the carpet. Well, what
3 she told us was and what was testified to and
4 uncontroverted was that he was shot through the
5 throat. His hand went to his throat. She was
6 panicked because she hadn't seen it and she was
7 screaming, Are you hit? Are you hit? Are you hit?
8 He turned, pivoted at the door where he was, went
9 outside and fell. That she still didn't see the
10 blood until she turned him over and was able to
11 take his hand off. And then totally freaked out
12 because she realized that not only was he hurt, but
13 that he had been shot, and he had been shot during
14 their confrontation in the home.

15 And what did she do? She immediately began to
16 apply pressure and dial 9-1-1. She's so
17 distraught, panicked and fraught, she's not able to
18 get three numbers -- two numbers, but one have to
19 punch twice, it kind of was three numbers, punched
20 into her phone. And it is not until Sarah Wiggins,
21 her neighbor from behind, comes down that she's
22 able to get Ms. Wiggins and call and get
23 Ms. Wiggins to help her.

24 What we hear from Lacey Burton, a neighbor who
25 lives 285 feet down the road, nearly 75 yards,

1 three-quarters of the length of a football field,
2 is that she stepped out on her porch -- she told me
3 that the pictures I introduced demonstrate that she
4 really wasn't able to see from her porch, but she
5 knew there was an argument, so she walked down the
6 steps of her porch to her front yard and sat down
7 in her car and sat there for three to five minutes
8 inside her car watching the argument go on. She
9 said that Robin was agitated. She didn't say she
10 could hear what Robin was saying, but Robin was
11 yelling. She said the man didn't look like he was
12 agitated, didn't look like he was yelling at the
13 point when she saw him. I don't know when she came
14 into what was going on. She clearly didn't see the
15 shoves in the front yard. She didn't see anybody
16 get in anybody's face. Robin admits to shoving
17 him, Robin talks about him shoving her. But the
18 physical evidence does demonstrate, her glasses are
19 knocked off. They've even introduced that. They
20 were in front of the car.

21 She has given her statement about what
22 happened. What she said was she went out and she
23 was in the house a number of minutes, or at least a
24 few minutes.

25 What Lacey Burton says is she disappeared out

1 of view and she was gone. The gentleman lit a
2 cigarette, took some time, walked in the front
3 yard, smoked a cigarette, and then went up the
4 steps while he gathered himself to decide that he
5 wasn't going to do what she asked him to do. He
6 wasn't going to leave. He wasn't going to call his
7 mom. He wasn't going to forget it. Even though he
8 had the check to go see the doctor at that time, he
9 was going to charge into that house. And he did.
10 And he went up those steps.

11 The only controversy in what I believe Lacey
12 Burton said, despite the fact that I don't think
13 she could actually see what she said she saw, but
14 we'll have to get into that further when we get to
15 the trial, is that she says it was a matter of
16 moments, seconds, 30 to 60 seconds after he went up
17 the steps that the gun went off. I don't believe
18 that's what happened, Your Honor. I don't believe
19 that that is what happened, but if it -- what -- if
20 what she perceived -- I don't know where she came
21 in. I don't know if Robin's right, if she's right,
22 or if they're both right or if they're both wrong
23 in some aspect.

24 What I do believe is that all that's required,
25 all that's required under South Carolina law and

1 the statutes that codify the Castle Doctrine is
2 that the Defendant be able to present evidence to
3 provide beyond a preponderance of the evidence a
4 civil standard of law, meaning it is more likely
5 than not that she's entitled to this immunity that
6 that's what happened. She doesn't have a state
7 criminal burden of beyond a reasonable doubt. What
8 she has is a preponderance of the evidence.

9 And I believe, Your Honor, that if you review
10 the brief that I have handed in and now made a
11 Court's Exhibit, that she is entitled to immunity
12 by a preponderance of the evidence under Subsection
13 A against an intruder into her home, someone who
14 was uninvited, someone who was told to get out.

15 And if you don't find that persuasive, I
16 believe that she certainly is entitled to that
17 under the elements of self-defense. Not only
18 self-defense from the acts that had been committed
19 against her before that, but self-defense because
20 in her mind this was a dangerous, dangerous
21 individual, as Dr. Veronen has described to us.

22 I ask the Court to seriously consider these as
23 you contemplate ruling on this motion and that you
24 grant the motion for immunity.

25 THE COURT: Thank you.

1 Yes, sir?

2 MR. JUSTIS: Thank you, Your Honor. May it
3 please the Court? As far as Subsection A,
4 obviously the State would argue that it does not
5 meet that subsection. He states he was a
6 trespasser because she told him that day or at that
7 moment, You need to leave, you need to get out.

8 The truth was, he said it was never his home,
9 well, since March 1st, according to the Defendant
10 when she took the stand, when no one else would
11 take him in, she took him in. And not only that,
12 she took his check in too, into her bank account
13 with her name on it. She admitted to that, that he
14 was having his check direct deposited into her
15 account. So, in essence, he was helping to pay the
16 bills. There were times when he was not working,
17 but obviously she's got his money in her account.
18 So we would say he's not a trespasser, he lives
19 there. And you can't just kick somebody out
20 without any kind of notice. There is
21 landlord/tenant laws that deal with that. So
22 legally he had a right to be there. His stuff was
23 there. He had a right to be there.

24 So we would say under Section A -- the reason
25 why that's important is because under Section A, if

1 you believe he's a trespasser, there's a
2 presumption that he's there to do ill-will. Okay.
3 So she can just shoot him right off the bat. And
4 we would argue her own testimony says, He lived
5 with me. And his daughter testified to that, that
6 he was there. He was living there.

7 Under Subsection C, which we believe that's
8 really where the argument the Defense has can be
9 made. We would also agree it doesn't meet that.
10 And that's mainly because under Subsection 3 you
11 essentially have to prove the four elements of
12 self-defense minus the last one, the last one being
13 a duty to retreat. So you have to prove the first
14 three elements of self-defense. And in this case,
15 we're talking about, first of all, that she has --
16 she is not responsible for bringing upon the issue.
17 So this altercation that happened, she had no
18 responsibility in bringing about the hardship.

19 We would say, you know, when this starts
20 off -- it starts off at the cemetery. This
21 argument starts off at the cemetery. At the
22 cemetery where she's supposed to be just giving him
23 a check. Instead of just coming and giving him the
24 check, he comes to get the check, she starts asking
25 him all kinds of questions. What's wrong? What's

1 wrong? She says he's irritated, that's what she
2 testified to. So she knows he's irritated, so she
3 keeps needling him. What's wrong? Tell me. Tell
4 me. Tell me. What's wrong? What's wrong? What's
5 wrong? And then she tells him, you know, I don't
6 want you driving my car. So she's egging on this
7 argument.

8 She wants to testify that, you know, he's so
9 abusive, he's, you know, very volatile. He goes
10 off at a moment's notice. And here she is
11 continuing to needle him.

12 When he leaves, he leaves the cemetery, she
13 says he -- he says -- in her statement, her video
14 statement, she says in that that he said, you know,
15 I'm not going to be home when you get there. I'll
16 have my mom take me.

17 Now, when she testified yesterday, that's not
18 what she said. She's like, Have your mom take you.
19 I want somebody to take -- have your mom -- call
20 your mom. So she testified to one thing yesterday
21 and then on the videotape, it's totally different.

22 Now, he says, When you get home, I won't be
23 there. I'll get my mom to take me. That's what
24 she's upset about. That's why she tears off after
25 him to follow him. Because what does he say when

1 she pulls into the driveway? She said it yesterday
2 and she said it on that tape. I can't believe you
3 followed me here. I can't believe you followed me
4 here. He doesn't get out and start assaulting her.
5 He says, What are you following me for? I can't
6 believe you followed me here.

7 Then we have Lacey. Lacey says, I come out of
8 my house. I go to get in my car because I had to
9 go pick up my kid and I see these two people -- I
10 see -- I hear this lady yelling at this guy. And I
11 see them in the front yard. And she says the lady
12 is pacing back and forth from the sidewalk to the
13 yard. And what is the victim doing? He is just
14 standing there. She doesn't hear him. She hears
15 her. So she's yelling at him. So who's the
16 aggressor at that point? Who's the aggressor?

17 And she says the -- now, she sits there in her
18 car and she doesn't leave because this kind of
19 stuff doesn't happen in her neighborhood, it is a
20 quiet neighborhood. So she is noticing it. She is
21 going to watch and see what happens. And she's
22 watching. And she says for three to five minutes
23 this is going on. And she says the entire time,
24 there is no physical altercation between them.
25 Zero, none, nada. They don't even get up in each

1 others face. He's standing there, and then she
2 walks off to go up in the house. That's when he
3 lights a cigarette, has a cigarette, and eventually
4 he starts walking up the steps.

5 Now, why is that important? Because in her
6 videotaped interview and also on the stand she says
7 that, you know, he pushes her twice and the second
8 time he pushed her she got up and she goes up the
9 stairs to unlock the door.

10 So she didn't get pushed prior to Lacey
11 sitting in her car and watching for three to five
12 minutes. If she got pushed, it would have happened
13 during that three to five minutes. And Lacey is
14 the neighbor. She doesn't know anybody. She
15 doesn't bother with anybody. She has zero reason
16 to lie. Zero reason. And she says as soon as he
17 goes up those stairs, within seconds, bang, she
18 hears the gunshot.

19 Now, if you listened to the Defendant's
20 testimony yesterday and also on the videotape, what
21 she describes didn't take, you know, 30 seconds or
22 20 seconds, it took at least a couple of minutes.
23 By the time she goes in the house, she goes in the
24 bedroom, she's looking for keys, then she comes out
25 and she's around the other -- she goes into the

1 kitchen. She's in the kitchen. She's doing
2 whatever. She comes out of the kitchen. Then he
3 comes in.

4 And she testifies yesterday that that's when,
5 you know, he pushes her the first time. She only
6 talked about one time getting pushed inside on the
7 video. But yesterday she says she gets pushed, she
8 falls down, she pulls the gun. And he says, you
9 know, If you are going to pull a gun, you better
10 use it, or something. She eventually reholsters.
11 She gets back up. And he goes to leave.

12 She is telling him -- or she says, you know,
13 Get out, get out, get out. And he goes to leave.
14 And what does she do? She follows after him. She
15 follows after him, which goes back to, again, when
16 we are talking about that self-defense, you know,
17 does she have any part in bringing about the harm.
18 She is re-engaging him. She re-engaged him when
19 she followed him to the house and she -- you know,
20 if he's so mad and she's so scared of him, why does
21 she follow him to the house and why does she follow
22 him back to the door?

23 Then when she gets -- it isn't like she's
24 going to the door to lock him out.

25 So he turns back around -- according to her

1 yesterday -- turns back around and pushes her
2 again. And this time he gets on top of her and, in
3 her words, starts wailing on her. Okay? She's
4 like this. And she has to say that because she
5 wants those bruises that she enters in to kind of
6 match up. So he's wailing on her.

7 Now, she testified he's 350 pounds. If he's
8 wailing on her, he's going to do a hell of a lot
9 more damage than even those bruises, if he's so
10 enraged and he is wailing on her. And then
11 eventually he backs off. She pulls the gun and,
12 then he slaps at it, and it just goes off. It just
13 goes off.

14 Now, in her videotaped statement, that's not
15 what she says. Let's see what she says in that.
16 And these are her words.

17 She says when they got on the -- when they are
18 outside, He, you know, pushed me. So she talks
19 about him pushing her, falling backwards, landing
20 on my right side. I got up. Come on, you want to
21 fight like a man. I went past him and went up the
22 stairs and opened the door. I came back down.
23 Then she says -- then she says, No, wait, I take
24 that back. She says that on the video, No, wait, I
25 take that back. She's got to change it because

1 that doesn't make sense. No, wait, I take that
2 back. We were arguing right there on the walkway.
3 He was irritated and he left.

4 Chris, I don't want to do this anymore. I'm
5 tired of this. It's best if you just leave. He
6 pushed me. I went over the monkey grass and I
7 fell, went down on my knee. All right. Got up, I
8 pushed him, he pushed back.

9 So there's this pushing back and forth, which
10 Lacey does not see. All right. Pushing back and
11 forth.

12 So all that kind of is the same as what she
13 testified to yesterday. But then when she gets
14 inside, she says went inside to go to the bedroom,
15 turned around and he was coming in. And she says
16 she was -- in the video, she talks about, He pushed
17 me again and I just kind of stumbled. He was
18 telling me that his mom would come and get him and
19 he'd be gone when I got home. That's what she said
20 in the video.

21 Well, yesterday she's trying to say like she's
22 trying to tell him to go. Well, in the video she's
23 saying, I'm going to -- he said, I'm going to
24 leave. So which is it?

25 Then he walks to the door. I went to follow

1 him. He turned around and pushed me again. I fell
2 on the floor right by the curio by the couch. He
3 came at me and had his fist up like he was going to
4 hit me. I pulled my gun on him, told him to leave
5 me alone. He backed up. If you're going to pull a
6 gun. She puts the gun back in the holster. She
7 gets up. I guess when I was getting up, he walked
8 out or was standing in the door or something. He
9 turned and punched the door with his fist.

10 And yesterday, she talked about it was the
11 glass door. And when you look at the pictures, it
12 is a glass door. The entire door is glass. You
13 can see part of it in there. But in that picture,
14 it is a glass door. And what's on that glass door?
15 A wreath. So if he threw that door open like she
16 said yesterday and slammed it -- first of all, I
17 would contend that glass would break. At the very
18 least, something would happen to that wreath. It
19 wouldn't be sitting there perfect, not harmed when
20 police arrive.

21 Now, the video makes it sound like he punched
22 the white door. In fact, that's what I thought she
23 was going to testify to yesterday, that he punched
24 the white door. That's why when she said the glass
25 door, I was kind of surprised. Because in the

1 video, it sounds like it was the white -- because
2 she even demonstrates in the video. She uses that
3 door and she says he punched the door.

4 Well, there's no marks on the door. Nothing.
5 He's a big guy, 350 pounds. If he punched that
6 door, there's going to be a mark. Because if he's
7 strong enough to split a door right up the middle
8 when he's chasing after the daughter, according to
9 them, he certainly would leave at least a little
10 mark on a white door, or break that glass or
11 something happen to that wreath. Nothing. That's
12 where the physical evidence starts contradicting
13 what she says.

14 Then she talks about -- all right. So then he
15 comes back at her and she has to -- he came at me
16 again. I pulled my gun. He went to slap at it and
17 it went off. I don't remember if my finger was on
18 the trigger. He went to swat at it like he was
19 going to grab it. He went back -- he went
20 backwards. I dropped the gun. He was holding his
21 neck.

22 Nothing about her being on the ground, him on
23 top wailing her like she said. In fact, she even
24 says in the video, later in the video when she
25 says, You know, I just wanted him to stop punching

1 me. Well, you didn't say punch. Well, shove, I
2 meant shove. She says nothing about him punching
3 her that day on the video.

4 Now, all these bruises and stuff. You've
5 heard from Phillip Turner. They are sitting right
6 next to her looking at her and she's got short
7 sleeves on. If she had any marks -- they took
8 pictures of her that day. It is not until the next
9 day, 24 hours later when she's in the jail, she's
10 putting her story together, and all of a sudden, I
11 want you to come look at some bruises I got. And
12 they take some pictures and there is some bruises.
13 And then a week later they are like big bruises.
14 When they were put there, who knows. Maybe they
15 happened when she ran into a wall or something or
16 some other story she told her co-workers. Because
17 we heard that too.

18 We heard about how tight-knit a family the
19 probation office is here in Aiken County. They're
20 all tight-knit. They're like family. She'd never
21 lie to them. Well apparently she did. She admits
22 she lied to you. So if they're so tight-knit, they
23 know her so well -- it doesn't make sense. It
24 doesn't add up.

25 Now, when you look at the factors, you also

1 have to look at she has to be in fear of great
2 bodily injury or death. That's one of the factors
3 in order to get the immunity. Great bodily injury
4 or death.

5 And I asked her, What was the worst he ever
6 did to you?

7 He threw a shoe at me. I got a black eye.

8 Now, not to demean a black eye, but that's
9 usually not classified as great bodily injury. So
10 if that's the worst he ever did to you and you are
11 trying to say based on his past behavior, I was so
12 fearful he was going to do this to me again. Throw
13 a shoe at you? She even says in the video, I don't
14 think he was throwing the shoe at me, but it hit
15 me. She says that in the video. So is that the
16 worst he did?

17 And when he comes in, supposedly after her,
18 he's unarmed. He doesn't have any weapons. I
19 would contend he didn't make it inside. Because if
20 you look at the crime scene photos of the porch,
21 what is on the front porch? His cell phone, the
22 lighter, and a cigarette. Unless they magically
23 flew out of his pocket after he got shot, I would
24 contend that that is where the assault occurred.
25 That is where he got shot. He is on that front

1 porch.

2 Because you heard from Lacey, he had lit up a
3 cigarette. Started walking up the stairs. He
4 still had the lighter in his hand. And when he got
5 shot, he dropped it right where he got shot, which
6 is right on that porch. Because the cigarette is
7 right there by the door too.

8 You know, Lacey has got the cigarette in his
9 month and, like I said, the lighter he's got in his
10 hand and his cell phone in whatever hand and he's
11 assaulting. He's got a cigarette in his mouth.
12 There's no ashes on the floor. Because when you
13 look at these pictures, the nicest thing I can say
14 is the house is immaculate. You can see the lines
15 where they had vacuumed. That's how neat the house
16 was. In fact, right by the door where all this
17 assaulting is taking place, you can see it in this
18 picture, even the little Crocs are perfectly lined
19 up right in their place where they're supposed to
20 be. And there's a curio cabinet right near where
21 she landed. Right in this corner right near where
22 she landed, has all these collectibles in it and
23 stuff, nothing is disturbed, nothing is moved,
24 nothing. The only thing in this entire house that
25 is out of place is one shell casing right there.

1 You heard the crime scene investigator testify
2 to, When a gun is fired, the shell casing ejects
3 out. Nobody knows where the shell casing is going
4 to go. I mean, it could go back and to the right.
5 It could -- whatever, you could kick it. Who
6 knows.

7 So you have to believe she is in fear. There
8 is not enough time for this assault that she
9 describes in detail on the stand to have happened
10 if you believe Lacey. And why would Lacey -- why
11 would Lacey sit there? She said she heard the shot
12 and she called 9-1-1. Why would she sit there
13 after they go in the house for two minutes? The
14 fun is over. You know, the argument is over, you
15 know. The show is over. There's no need to sit
16 there to see what happens. No. She's there. She
17 doesn't have a chance to start the car up. She
18 thinks it's over. She doesn't get a chance to
19 start the car before, bang, there's the shot.

20 And then, finally, you have to find it is that
21 reasonable person standard. A person, a reasonable
22 person with the same firmness would entertain --
23 would have struck the fatal blow also.

24 And I know they want to argue, Well, you have
25 to measure her based on someone that is suffering

1 from intimate partner abuse, or whatever it's
2 called, domestic abuse, whatever. That is the
3 prism you should view it through because that is
4 what she was suffering from.

5 Well, you know, we heard from the doctor. The
6 doctor met with her for a total of five hours. The
7 doctor did not review any of these crime scene
8 photos, did not view the videotaped statement.
9 Basically the doctor took whatever Robin told her,
10 and based on what she told her, that is what she
11 formed her opinion on. And this is what Robin told
12 her two weeks ago -- two weeks ago. I mean, that's
13 what she based her opinion on, was -- she even says
14 in own report, you know, A full report is not
15 possible at this time. Because, basically, all she
16 had was a police report. And she discounted
17 Lacey's statement. Well, you know, Lacey, she said
18 that, but I really don't believe it. So an
19 independent witness I don't believe, but the person
20 that has the most to lose and the most to gain by
21 maybe lying to me, I do believe. But the person
22 that has nothing to gain, I'll discount that
23 statement. I mean, that's essentially what she
24 said.

25 And that's what she does. She's a hired

1 expert. She testifies for the Defense. That's
2 what she does. So I would say -- you know, she's
3 not really -- you heard from the other doctors.
4 You know, we have a doctor who is writing
5 prescriptions, changing medicine, upping the
6 medicine, you know, giving him different medicine
7 based on having seen a person essentially one time
8 months ago. Where are they getting all their
9 information from? Robin. I mean, that's the
10 theme. Even going to see the counselor. Went to
11 see a counselor one time for an hour.

12 And the counselor is like, Well, you need
13 to -- I think there might be -- you need to get,
14 you know, a psychiatrist to talk to. One time.

15 I think when you look at everything, the
16 totality of all this, Your Honor, unless you just
17 absolutely believe everything she said on that
18 stand and you discount everything she said here and
19 you discount all the physical evidence, that is the
20 only possible way -- and you believe that when she
21 told law enforcement that day, Are you hurting
22 anywhere? You heard, My body. It doesn't say
23 anything about arms. If she was wailed on and got
24 all those bruises and stuff, she would have been
25 hurting that day. And she says no. That was her

1 time to say, Yes, he beat the hell out of me. He
2 did this and this and this. She didn't. I was
3 trying to help him. She helped him all right. She
4 helped him to death.

5 MR. LEIENDECKER: Brief reply, Your Honor?

6 THE COURT: Yes, sir.

7 MR. LEIENDECKER: Mr. Justis never
8 intentionally, but often misconstrues his own facts
9 from the testimony that we heard here today.

10 His check went into her account. We heard
11 that. He brought that up. We also heard, when
12 asked, that she begged him not to do that. His
13 check didn't go into her account because she set it
14 up because we know you can't do that. Only the
15 account holder, the employee who is receiving the
16 check can designate it to go somewhere. She asked
17 him to quit doing it because it was causing fights
18 and causing problems.

19 Mr. Justis, obviously not a civil attorney,
20 misconstrues landlord/tenant law by saying that
21 somehow because he's an invitee in her home he has
22 become a tenant that is entitled to eviction
23 proceedings. That's not true. That's not even
24 accurate.

25 But the thing that is maybe most disturbing

1 is, Mr. Justis, whose office consistently
2 prosecutes individuals accused of and responsible
3 for domestic violence in this state, is standing in
4 front of the Court today saying, It's her fault.
5 She doesn't get to qualify for it because he was --
6 she -- what did he say? She went to the cemetery
7 to give him the check. And guess what? She made
8 him mad because she kept asking him, What's wrong?
9 What's wrong? What's wrong?

10 I didn't hear that that's exactly how it
11 happened, but it's her fault. It's the person who
12 has been abused. It's the person who is the
13 victim. It's her fault. What he's doing is he's
14 endorsing a serial domestic violent criminal by
15 saying that he didn't bring this on, the victim,
16 Robin Herndon, brought it on.

17 I say serial because we know of at least two
18 other incidences that he admitted to. He admitted
19 not just to Robin, he admitted to the counselor.
20 He was then tested by an officer and arrested for
21 it. Yes, he was serial.

22 She said -- this is the other consistency he
23 says the physical evidence demonstrates. She said
24 he hit the door. I listened to this -- I've
25 listened to this video a hundred times. I don't

1 know where he gets that he hit the white door. But
2 what he's saying is that if someone slaps a door
3 open, a tempered glass door, mind you, that I don't
4 know what it takes to break it, but I don't think
5 that just because you slap it with a fist or an
6 open hand and bang it open that that tempered glass
7 is supposed to break because I'm pretty sure that
8 that's a product defect that the manufacturer
9 doesn't want to exist, that something like that
10 would happen.

11 And then he says, We know it didn't happen
12 because there's a wreath hanging on it. Well, it's
13 not glued on there. It's not stuck on. It is
14 on one of the -- if you'll look at the pictures,
15 and I'm sure you will, it's on one of those long
16 holiday hooks that goes over the top, hangs down,
17 and has a large hook on the other side meant to
18 hold it against storm and other activities that go
19 on when you put something on the outside of your
20 door. I use them all the time at the holidays at
21 my house. And despite the fact we've had some bad
22 storms, I've got kids slamming in and out of the
23 doors, my wreath hasn't fallen off the door either.

24 He talks about the video not supporting what
25 Robin says. The video doesn't say everything that

1 Robin said from the witness stand. I've already
2 gone over that. It was immediately after the
3 event. But it does say -- if you look at the
4 beginning, it says that he hit her three times.

5 He wants to go to Lacey's testimony and he
6 wants to say that she sat and watched him for three
7 to five minutes. That is not what she said. That
8 is not what she said. She said that, I sat in my
9 car three to five minutes and watched what was
10 going on. She said that the woman went up the
11 steps and disappeared in the house and was gone for
12 a while. Gone for a while. Because the guy lit a
13 cigarette and paced around in the front yard. So
14 she came in after the assaults. It fits the theory
15 just as easily as Mr. Justis's theory.

16 Mr. Justis then begins to go far afield and
17 theorize exactly how this really happened. That he
18 came up the steps and he was shot immediately and
19 dropped everything right there.

20 Well, you know, I can do that too. He came up
21 the steps. He threw down his cigarette. And he
22 went into the house and he assaulted her. He
23 didn't want anything in his hands because he was
24 going in to assault her.

25 But we're not there. We're just theorizing.

1 And that's not what the Court bases a preponderance
2 of the evidence decision on. Again, a
3 preponderance, not beyond a reasonable doubt.

4 Lacey says that the gunshot went off seconds.
5 I think in her testimony, you can check it, I have
6 written down 30 to 60 seconds. Not immediately.
7 30 to 60 seconds. Maybe she is not quite right
8 with that, I don't know. But what I do know is
9 that there is more than sufficient evidence
10 demonstrating that this man is not an invitee
11 anymore in her home. That this man is an intruder
12 and she is entitled to Subsection A.

13 We are unknown about the shell casings. What
14 we do know is the gun and the shell casing were
15 found in the house. So if we want to buy Mr.
16 Justis and the State's theory, what we have to buy
17 is that this woman, who is panicked and people hear
18 her immediately screaming, even Lacey hears her
19 immediately screaming after the gunshot goes off.
20 And the neighbor, Ms. Sarah Wiggins, is it, comes
21 down and immediately sees her on the ground with
22 her hands on him. Physical evidence demonstrates
23 that that's true because she's covered in his
24 blood. That somewhere in that timeframe, she got
25 up and she moved the gun that she used to shoot

1 somebody outside and she found the shell casing and
2 she scrambled to get it inside. It doesn't have
3 any blood on it. It doesn't have any evidence on
4 it to demonstrate that it was ever moved. It was
5 inside because that's where it happened. That's
6 where it happened.

7 Her story is corroborated by the physical
8 evidence, not discounted by the physical evidence.
9 It is just that we're interpreting it in different
10 ways. They're interpreting it to their best, I'm
11 interpreting it to my best. But what I ask you to
12 do is interpret it and find that beyond a
13 preponderance of the evidence she is entitled to
14 immunity under A and under C. She is allowed to be
15 afraid of this guy. She is allowed to ask him
16 questions and not be bringing on the kind of anger
17 she faced. Let's not turn victims of domestic
18 violence into Defendants of criminal actions.

19 THE COURT: Thank you. All right. I will
20 have a ruling for you all at 9:30 in the morning.
21 I would like to -- the exhibits that were entered,
22 if you all want to take a look at them. I will
23 take a look at them tonight, so if you can look
24 over them and make sure I have everything.

25 (WHEREUPON, the proceedings concluded at

1 5:53 p.m.)

2 MARCH 2, 2016

3 (WHEREUPON, the proceedings resumed at
4 9:47 a.m.)

5 THE COURT: We are back on the record on the
6 case of State v. Robin Herndon. And that is
7 Indictment 2014-GS-02-664.

8 On yesterday, on Monday and Tuesday -- on
9 Monday the Defendant moved prior to trial -- and
10 that motion, I believe it was marked as Court's
11 Exhibit Number 1 -- the Defendant moved for
12 immunity pursuant to Section 16-11-410, the
13 Protection of Persons and Property Act and pursuant
14 to the holding in State v. Duncan.

15 The Court conducted a pretrial hearing and
16 received testimony from various witnesses,
17 including expert testimony from the Defense.

18 In looking at the statute under Section
19 16-11-440(a), this section states that:

20 A person is presumed to have a reasonable fear
21 of imminent peril or death or great bodily injury
22 to himself or herself, or another person using
23 deadly force that is intended or likely to cause
24 death or great bodily injury to another person. If
25 the person who, number two, who uses deadly force

1 knows or has reason to believe that an unlawful and
2 forceful injury or unlawful and forceful act is
3 occurring or has occurred, pursuant to South
4 Carolina Code Annotated 16-11-440 (a)(2).

5 Testimony was given in this case, and
6 specifically testimony was given by the Defendant
7 stating that she, I believe, met the alleged victim
8 in this case in February of 2013. In March of
9 2013, it was the Defendant's testimony that he had
10 nowhere to go and that she allowed him to move in
11 with her.

12 Testimony showed that the Defendant -- the
13 Court finds that the testimony showed that the
14 Defendant and Rowley shared finances. The
15 Defendant testified that she was primarily -- she
16 primarily paid the household bills and that they
17 lived off of -- primary lived off of Rowley's money
18 when he was working.

19 The Court further finds that the Defendant
20 testified that they -- the funds were -- their
21 finances and their funds were commingled, such as
22 the victim's paycheck was directly deposited into
23 the Defendant's bank account.

24 Furthermore, the Defendant's daughter
25 testified supporting this about a specific argument

1 she -- that her mother and the alleged victim had,
2 which involved her regarding purchasing a dress and
3 that the parties did not have the money, according
4 to the alleged victim, to purchase the dress.

5 Based on the facts presented in the testimony,
6 under State v. Curry, in that the Court ruled that
7 the -- under 16-11-440(a), that (a) does not apply
8 against whom the deadly force is used if the person
9 has the right to be in or is a lawful resident of
10 the dwelling and residence.

11 This Court finds based on all the testimony
12 given and the totality of the circumstances that
13 the alleged victim was -- that the alleged victim
14 had a right to be in the dwelling. And so
15 therefore 16-11-440(a) does not apply to the
16 Defendant in this present case, which moves us on
17 to Section 16-11-440(c), which states that:

18 A person who is not engaged in an unlawful
19 activity and who is attacked in another place where
20 he or she has a right to be, including but not
21 limited to his place of business, has no duty to
22 retreat and has a right to stand his ground and
23 meet forceful force, including deadly force if he
24 reasonably believes it is necessary to prevent --
25 he or she reasonably believes it is necessary to

1 prevent death or great bodily injury to herself or
2 another person.

3 In the case at bar, the Defendant claims
4 immunity under protection of the act. A valid case
5 of self-defense must exist and the trial court must
6 necessarily consider the elements of self-defense
7 in determining the Defendant's entitlement to
8 immunity. Including all of the elements of
9 self-defense, except for that last element of
10 course of duty to retreat, that element would not
11 apply under the immunity statute.

12 In considering self-defense, this Court
13 considered whether or not the Defendant was without
14 fault in bringing on the difficulty, whether the
15 Defendant actually believed she was in imminent
16 danger of losing her life or sustaining serious
17 bodily injury or actually had -- actually was in
18 such imminent danger. And, third, the Court
19 considered it based on a reasonably prudent woman
20 of ordinary firmness and courage and would they
21 have entertained the same belief or circumstances
22 where such as would warrant a woman of ordinary
23 prudence, firmness and courage to strike the fatal
24 blow in order to save herself from serious bodily
25 harm or losing her own life.

1 In considering the first element, the Court --
2 the Defendant alleges that she was without fault in
3 bringing the difficulty on, that Rowley was
4 irritated and got himself upset. However, the
5 Defendant followed Rowley from the cemetery, where
6 they were already engaged in a heated argument
7 according to the Defendant's testimony, to the home
8 where, when she arrived, the alleged victim
9 inquires as to why she was following him.

10 It should be noted that the Defendant
11 testified that when she spoke with Rowley over the
12 phone that she indicated to him that she would
13 quickly meet him at 1:45 to deliver a check at the
14 cemetery because she had to be back to work for an
15 appointment at 2:00 o'clock. However, noting that
16 she was concerned about his recent mental state and
17 his irritability at the cemetery, she chose to
18 follow him back to the parties' home.

19 In considering the totality of the
20 circumstances, this action to follow Rowley to the
21 home led to the shooting that occurred within the
22 home. The Defendant made a conscious choice to
23 follow him to the home knowing his current state of
24 mind, according to her.

25 For this reason, it is at least questionable

1 as to whether the Defendant is not freely --
2 entirely free of fault in bringing the difficulty,
3 thus not satisfying the first element of
4 self-defense.

5 Next, the Defendant alleges she was in
6 imminent danger of sustaining great bodily injury
7 and losing her life. Section 16-11-432 defines
8 great bodily injury as a bodily injury which
9 creates a substantial risk of death or which causes
10 serious permanent disfigurement or protracted loss
11 or impairment of the function of a bodily member or
12 organ.

13 Under the totality of the circumstances and
14 the testimony provided, it is difficult for the
15 Court to determine if the Defendant believed she
16 was in imminent danger. The inconsistent testimony
17 ranges from the Defendant purposely firing the
18 pistol in self-defense to the Defendant being
19 unsure if she fired the pistol or had her finger on
20 the trigger, to the pistol fired accidentally
21 because the victim swung at her holding the pistol
22 and it discharged through no action of her own.

23 Furthermore, testimony does not prove beyond a
24 preponderance of the evidence that she actually
25 believed she was in imminent danger of losing her

1 life or sustaining serious bodily injury or that
2 she was in such imminent danger.

3 Furthermore, the testimony of the independent
4 witness, neighbor, Lacey, completely contradicts
5 the Defendant's story. Lacey testified that the
6 parties were engaged in a verbal altercation in the
7 front of the house with the Defendant pacing in the
8 front yard yelling and screaming.

9 The witness goes on to testify that the
10 Defendant eventually walks up to the stairs and
11 goes into the house. The alleged victim lights a
12 cigarette and begins to smoke. The alleged victim
13 proceeds to go up the stairs, approaches the door
14 out of the witness's sight, and within not more
15 than 30 to 60 seconds she hears a gunshot.

16 Pictures of the crime scene were entered
17 through the crime scene investigator showing a very
18 immaculate house. The pictures presented no
19 evidence whatsoever of a struggle inside of the
20 house. What the pictures do show is the alleged
21 victim's cell phone, lighter and cigarette lying on
22 the porch with patches of blood on the porch and
23 the bannister dripping -- blood dripping from the
24 bannister onto the grass.

25 Based upon the findings cited above, this

1 Court finds that the Defendant has failed to meet
2 the burden of proving the second and third elements
3 of self-defense.

4 In considering the evidence presented to the
5 Court, the inconsistent testimony of the Defendant,
6 the testimony of all the witnesses, this Court
7 finds that the Defendant has failed to prove by a
8 preponderance of the evidence that she was acting
9 in self-defense pursuant to Section 16-11-440(c),
10 and is thus not immune from prosecution under
11 Section 16-11-410 and 16-11-450.

12 The Defendant's motion is respectfully denied.

13 And I will get you all a formal written order.
14 This is what I -- I normally do a formal written
15 order, but, of course, under the circumstances, I
16 have not been able to complete that. But I will
17 try to get that to you before the conclusion of the
18 trial as to the Defendant's motion.

19 All right. With that being said, the jurors
20 have ordered lunch and we are ready to proceed with
21 the State's case.

22 We have that one issue of that juror that has
23 to leave Friday afternoon. It's questionable as to
24 whether or not she can come back on next week if we
25 do not complete the case. Do you all want me to

1 bring her in now or would you like for her to stay
2 until Friday and then we bring her in at that point
3 and inquire as to her ability to come back on
4 Monday? Any position? We do have three
5 alternates.

6 Are they all here? All of the alternates and
7 all?

8 MR. LEIENDECKER: At the Court's discretion,
9 however you feel. I don't have a problem if we
10 handle it today. In fact, it probably seems better
11 if we ask her today if she can come back versus let
12 her sit through three days and then have to replace
13 her.

14 THE COURT: All right. I can bring her in now
15 and ask her, and we'll see what she says and then
16 I'll make a decision then.

17 If you can bring in -- do you know which one
18 it is?

19 MR. LEIENDECKER: Your Honor, I have one more
20 matter that we need to address with the jury.

21 As was pointed out by the Solicitor yesterday,
22 when I called my last witness in the immunity
23 hearing, we inadvertently left Wallis Alves's name
24 off of our witness list. She works with the Public
25 Defender's Office. And I think it's probably --

1 here's our modified witness list, which only adds
2 Wallis to it. I think we probably need to inquire
3 of the jurors concerning Wallis since she wasn't
4 read as a potential witness.

5 THE COURT: Okay.

6 MR. LEIENDECKER: I also thought I put it on
7 there.

8 THE COURT: Okay. So we'll bring her in, and
9 then I will question them regarding Wallis Alves,
10 if anyone knows her.

11 Which juror is it that has to leave? Is it
12 Juror Number 136? Juror Number 136.

13 THE BAILIFF: 136?

14 THE COURT: Yes, sir.

15 (WHEREUPON, Juror Number 136 enters the
16 courtroom.)

17 THE COURT: All right. Is it Ms. Neira?

18 THE JUROR: Neira, yes, Your Honor.

19 THE COURT: We -- as you can tell, we have
20 been working doing pretrial the last two days. So
21 we will start the trial today. I am not sure if we
22 will finish by Friday afternoon. And I remember on
23 Monday you said that you have to leave on Friday.
24 At what time do you need to leave?

25 THE JUROR: I have arranged it where I don't

1 have to leave until Saturday morning. I don't know
2 if that's --

3 THE COURT: And if we were to go into next
4 week -- what part of Florida are you going?

5 THE JUROR: Orlando.

6 THE COURT: If we were to go into next week,
7 would you be able to return on Monday?

8 THE JUROR: I would have to make a call.

9 THE COURT: Okay.

10 THE JUROR: I'm trying to get -- I don't want
11 to get all personal or anything, but I would have
12 to call one of my uncles to see if he can support
13 my mom in that regard.

14 THE COURT: Okay. Do you mind doing that?

15 THE JUROR: No.

16 THE COURT: Can she have her cell --

17 You have a cell phone back there?

18 THE JUROR: Yes.

19 THE COURT: All right. Thank you.

20 THE JUROR: Okay.

21 (WHEREUPON, Juror Number 136 exits the
22 courtroom.)

23 THE COURT: All right. We'll see what the
24 uncle says.

25 Let me ask you all this, the rules technically

1 say in seating an alternate that -- in a criminal
2 case you are supposed to take the three and draw
3 one out of a hat. Or do you all -- in most cases,
4 most people don't have a problem with selecting the
5 next one in line, but I want to make sure we are
6 following the rules. That is just something to
7 think about if we need to seat an alternate. I
8 think it says you have to draw -- in a criminal
9 case you draw one from the hat; in civil cases you
10 seat the next one. I don't know if we have a hat.

11 MR. SORENSON: We have one in evidence we can
12 use.

13 THE COURT: Oh, you have one in evidence. We
14 don't want to use that.

15 (WHEREUPON, Juror Number 136 enters the
16 courtroom.)

17 THE COURT: Yes, ma'am?

18 THE JUROR: I spoke to them. It is just a
19 very difficult situation, as you can understand.
20 So really where it stands now is I either can go or
21 can't go. So I am going to leave that decision up
22 to you, Your Honor, because there are so many
23 moving parts.

24 THE COURT: Okay.

25 THE JUROR: And it just boils down to me

1 canceling, obviously, my flight, and that's it, so.

2 THE COURT: Okay. Let me talk to the
3 attorneys, and then we'll bring you back in.

4 THE JUROR: Sounds good. I'm sorry.

5 THE COURT: Oh, no problem. No problem.

6 (WHEREUPON, Juror Number 136 exits the
7 courtroom.)

8 THE COURT: All right. It sounds like it is
9 going to be real difficult for her to come back on
10 Monday. Any position from the State?

11 MR. JUSTIS: I'll be fine if you want to
12 dismiss her and seat an alternate. The State would
13 have no objection to that.

14 THE COURT: From the Defense?

15 MR. LEIENDECKER: We certainly don't object
16 based on this situation. I'm sorry that it came to
17 this. We would -- from a Defense standpoint, we
18 would prefer that we randomly draw the next
19 alternate.

20 THE COURT: All right. We'll do that.

21 MR. JUSTIS: That's fine.

22 THE COURT: So you can bring her back in, and
23 we'll go ahead and release her.

24 And then if you all can find a cup.

25 THE CLERK: It's already done.

1 (WHEREUPON, Juror Number 136 enters the
2 courtroom.)

3 THE COURT: All right. I think it will
4 probably be best, since we are definitely going
5 to -- well, not definitely, there's a possibility
6 that we will go into next week, we are going to go
7 ahead and release you from serving.

8 THE JUROR: Okay.

9 THE COURT: I do appreciate you coming back --

10 THE JUROR: Thank you so much, Your Honor, I
11 appreciate that.

12 THE COURT: And I hope everything goes well
13 with your travel and your grandmother.

14 THE JUROR: Thank you so much. Have a good
15 day. Bye-bye.

16 THE COURT: Thank you.

17 (WHEREUPON, Juror Number 136 was
18 released from jury duty.)

19 THE COURT: All right. Let Debbie do it.

20 THE COURT REPORTER: Number 60, Alternate
21 Number Two, Franks.

22 THE COURT: Roland Franks.

23 All right. That is Juror Number 60, you said?

24 THE COURT REPORTER: Yes, ma'am.

25 THE COURT: Okay. You can bring them in.

1 THE BAILIFF: Okay. Bring them in, please.

2 (WHEREUPON, the jury came into open
3 court at 10:14 a.m.)

4 THE COURT: All right. Good morning, ladies
5 and gentlemen of the jury. We appreciate your
6 patience back there. Before we get started,
7 there's a couple of housekeeping things that I need
8 to take care of.

9 Juror Number 60, Mr. Roland?

10 THE JUROR: Yes, ma'am.

11 THE COURT: We -- there was one juror that I
12 needed to excuse because of scheduling issues, and
13 so therefore you have been selected to take that
14 seat. So you can move over here. So you are no
15 longer an alternate, you will be one of our 12
16 jurors.

17 Juror Number 5 and Juror Number 2 will remain
18 our alternates.

19 All right. Thank you.

20 The other issue is, there was one name that
21 was not -- I did not give you on Monday on the
22 witness list, and her name is Wallis Alves.

23 Is she here?

24 And she is with the Aiken County Public
25 Defender's Office. Is there anyone on the jury who

1 is related by blood or marriage or who has a close
2 personal relationship or has been represented with
3 Wallis Alves?

4 (WHEREUPON, there was no response.)

5 THE COURT: All right. Thank you.

6 All right. I will ask the clerk to swear the
7 jurors.

8 THE CLERK: Please stand and raise your right
9 hand.

10 (The jury complies.)

11 THE CLERK: You shall well and truly try and a
12 true deliverance make between the State of South
13 Carolina and the Defendant at the bar and a true
14 verdict render according to the law and evidence in
15 this case, so help you God.

16 Please respond "I will."

17 ALL: I will.

18 THE CLERK: You may have a seat.

19 (The jury was seated.)

20 THE COURT: Ladies and gentlemen of the jury,
21 what I will now say to you is intended to serve as
22 an introduction to the trial of this case. These
23 remarks are not a charge on the law in this case.
24 I will instruct you on the law applicable to this
25 case at the end of the trial before you retire to

1 consider your verdict. This is merely an
2 explanation of the procedure that we will follow in
3 the trial of this case so that you may better
4 understand what may be happening.

5 You are not to take any notes during this
6 trial. As I told you on Monday, the Defendant in
7 this case is charged by an indictment filed in the
8 court with the crime of murder, the elements of
9 which will all be explained to you later.

10 The indictment, as I told you on Monday, is
11 simply the charge by which the case is brought into
12 court. And it is not in any sense evidence of any
13 of the allegations it contains. The Defendant in
14 this case has pled not guilty to this indictment.
15 The State therefore has the burden of proving each
16 of the elements of the indictment beyond a
17 reasonable doubt. And it will be your duty, ladies
18 and gentlemen of the jury, to decide whether the
19 State has met that burden.

20 Your purpose as jurors is to find and
21 determine the facts. You are the sole judges of
22 the facts in the case. If at any time I make any
23 comment regarding the facts, you must disregard it.
24 You are to determine the facts from the testimony
25 you hear and the other evidence introduced in the

1 court.

2 It is up to you to determine the emphasis
3 which you feel may properly be drawn from the
4 evidence. It is especially important that you
5 perform your duty of determining the facts
6 diligently and conscientiously because, ordinarily,
7 there is no way to correct an erroneous
8 determination of the facts by a jury.

9 On the other hand, and with equal emphasis,
10 the same law that makes you the judges of the facts
11 makes me the judge of the law. The law as given by
12 the Court is the only law you may consider. You
13 must accept and follow it even though you may
14 disagree with it. I cannot tell you what the facts
15 are and you cannot disagree with me about what the
16 law is or should be. Your job is to take the law
17 as I give it to you and apply it to the facts as
18 you find them from the testimony of the witnesses
19 and any other evidence that is introduced. After
20 doing that, you will render your verdict, a verdict
21 under the solemn oath that you just took.

22 Until I tell you that you may begin to
23 deliberate, you must not discuss this case with
24 anyone, including your fellow jurors, friends,
25 family members, and anyone involved in the case.

1 The attorneys and the parties in this case have
2 been advised that they are not to talk to you at
3 all. So, if you see anyone involved in the case
4 and they do not even say hello, it is not because
5 they are being unfriendly, they are just following
6 my instructions. You will have --

7 Do they have their juror badges?

8 THE BAILIFF: No, no, we don't have badges.

9 THE COURT: Okay.

10 When you -- when you go to lunch or if you're
11 out and about, if you see any of the attorneys,
12 like I said, they will not speak to you. And if
13 you hear of any conversation, you need to report
14 that back to the Court, if there's anything -- if
15 anyone tries to speak to you or if there's any
16 improper conversation in front of you.

17 During your -- you must decide this case based
18 solely on the evidence presented here in this
19 courtroom. This means that during the trial you
20 must not conduct any independent research about
21 this case, the facts of the case, the evidence
22 presented in the case, or the people, organizations
23 involved in any way in the case. Please do not try
24 to find out information from any other source
25 outside this courtroom.

1 In other words, you must not look at
2 dictionaries or other reference materials, search
3 the internet, websites, or blogs or use any other
4 electronic tools to get information about this case
5 or to help you decide the case. You may not use
6 computers, telephones, cell phones, smart phones,
7 tablets, the internet, or other tools of technology
8 with communication capabilities at any time while
9 you are in the courtroom or during your
10 deliberations. During your breaks for meals or
11 overnight, if necessary, you may use these devices,
12 however you must not use these devices to
13 communicate with anyone about the case until the
14 case is over.

15 This means you must not use phone calls,
16 e-mails, text messages, instant messages, Twitter
17 or any blog, chat room or website, including
18 Facebook, Google Plus, MySpace, LinkedIn, YouTube
19 or any other social media website to send or
20 receive information about this case. This includes
21 information about a party, a witness, an attorney
22 or a court officer, news accounts about the case,
23 research on any topics raised, any topics you may
24 think would be helpful in deciding the case or any
25 testimony presented by any witness.

1 Once again, during the trial, do not read,
2 listen to or watch any news reports about this
3 case. This includes anything that may be in the
4 newspaper, on the internet, the radio or
5 television. You must not consider anything you may
6 have read or heard about the case outside the
7 courtroom, whether before or during the trial.
8 Information on television, radio and the internet
9 or from other sources might be wrong or incomplete.
10 In our judicial system, it is important that you
11 are not influenced by anything or anyone outside of
12 the courtroom.

13 If you become aware of another juror's
14 violation of these instructions, please inform me
15 immediately. It is important that you keep an open
16 mind and not decide any issue in the case until all
17 the evidence has been presented, the parties have
18 made their closing arguments, and I have instructed
19 you on the law in this case.

20 It is your solemn responsibility to determine
21 the guilt or innocence of the Defendant in this
22 case. And your verdict must be based solely on the
23 evidence as it is presented to you in this trial
24 and on the law as I instruct you during and at the
25 close of the trial.

1 In just a moment, the Solicitor will make what
2 is called an opening statement in which the
3 Solicitor will explain to you the issues in this
4 case, or at least what the Solicitor thinks the
5 issues are in this case. The attorney for the
6 Defendant may also make an opening statement,
7 although he is not required to do so because, once
8 again, the burden is on the State to prove the
9 Defendant guilty beyond a reasonable doubt.

10 What the attorneys tell you during their
11 opening statements is not evidence in this case.
12 It is only their contention as to what the issues
13 are in the case. The evidence in the case will be
14 presented to you by the testimony of sworn
15 witnesses from the witness stand and/or by exhibits
16 that may be introduced into evidence.

17 From time to time during the trial, you may
18 hear one of the lawyers say something like, Your
19 Honor, I believe we have a question of law or a
20 matter of law to discuss with you or Your Honor,
21 may we approach the bench. Or sometimes I, myself,
22 might find it necessary to excuse you from the
23 courtroom for a short while so the attorneys and I
24 can discuss a matter of law.

25 The reason for this is because you are the

1 judges of the fact in this case, and sometimes when
2 I am discussing a matter of law, it may be
3 necessary for me to comment as to the facts in
4 connection with ruling whether or not a particular
5 law applies. I am not supposed to tell you what
6 the law -- what I think the facts are, so I will
7 excuse you from the courtroom so you will not be
8 influenced by anything that I may say or do in
9 connection with ruling upon the facts in this case.

10 In determining what the true facts are in this
11 case, you must decide whether or not the testimony
12 of the witnesses is believable. It will be my
13 responsibility to rule as a matter of law as to
14 whether certain testimony is admissible at all or
15 not, but once the testimony is admitted, whether or
16 not you believe it is solely for you to determine.

17 In deciding whether to believe a witness, you
18 have the right to consider the interest of any
19 witness, the bias of any witness, the prejudice of
20 any witness, the opportunity for the witness to
21 have seen the matters and the things about which
22 the witness may testify. And you may consider the
23 way the witness acts on the witness stand.

24 You have a right to consider anything that is
25 in the record that will help you evaluate the

1 testimony of the witnesses. That means that it is
2 your duty to pay close attention to these
3 witnesses, to observe the witnesses, to listen to
4 the witnesses, and to pay close attention to the
5 attorneys and the Court. Do not let your thoughts
6 wander, but give strict attention to the testimony
7 in this case so that at the end of all the
8 testimony, after the arguments of counsel, and the
9 charge on the law by the Court, you will then be in
10 a position to determine the true facts -- what the
11 true facts are and to apply the law to those facts
12 and thus render a verdict.

13 Mr. Foreman, it is your added duty to preside
14 in the jury room and be the juror spokesperson here
15 in the courtroom. It will also be your duty to
16 write the verdict, but I will give you further
17 instructions at the end of the trial.

18 In order to preserve everyone's rights, I will
19 give the parties an opportunity to object to
20 anything I have said.

21 Any objections or exceptions from the State?

22 MR. JUSTIS: None from the State, Your Honor.

23 THE COURT: Any from the Defense?

24 MR. LEIENDECKER: None from the Defense.

25 THE COURT: All right. Thank you.

1 For the ladies -- I know there was some
2 concern, a couple of ladies are pregnant. I have
3 been there, done that. If you need a break, try to
4 get my attention or one of the bailiffs and we will
5 take a break at any time. And that applies to
6 everyone if you need a break. But we usually will
7 take a break about every hour, hour and a half.
8 But if you need one before then, just get my
9 attention and we will take a break.

10 All right. At this time, we are ready for our
11 opening statements. We will ask the State to make
12 their opening statement, and if the Defense
13 chooses, they may make an opening statement also.

14 MR. SORENSON: Thank you, Your Honor. May it
15 please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 OPENING STATEMENT

18 MR. SORENSON: Good morning, Mr. Foreman,
19 ladies and gentlemen of the jury. Back on
20 November 6th of 2013, Robin Herndon shot her
21 live-in boyfriend, Christopher Rowley, one time in
22 the throat with her .40 caliber Glock. That bullet
23 traveled slightly downward to the right, lacerating
24 his right lung, down just inside his skin and his
25 shoulder blade. Mr. Rowley died on their porch,

1 allegedly died from that wound.

2 As a result of her actions that day, she has
3 been indicted by the Aiken County Grand Jury for
4 one count of murder. As you were introduced to us
5 the other day, my name is Don Sorenson, and with me
6 is Glenn Justis. And we're Assistant Solicitors in
7 the First Circuit, which is Dorchester, Calhoun and
8 Orangeburg Counties. We have been assigned in this
9 case to prosecute it here in Aiken County. I want
10 to take a few minutes of your time now and go over
11 a little bit about what she's charged with and then
12 just give you a little kind of brief outline of the
13 evidence that we're going to present over the next
14 couple of days that I submit to you proves Robin
15 Herndon's guilt not beyond a reasonable doubt, but
16 I submit to you beyond any doubt.

17 Okay. As you've heard multiple times, she's
18 charged with one count of murder. And murder,
19 while it is without a doubt the most serious charge
20 a person can be charged with in South Carolina, it
21 probably has the most simple definition in our law
22 books. Murder is very simply the unlawful killing
23 of another person with malice aforethought, either
24 express or implied. Unlawful killing of another
25 person with malice aforethought. And I'm going to

1 talk to you briefly about a couple of these terms.

2 Notice one thing I didn't say, the State
3 doesn't have to prove premeditation. You may have
4 heard on TV or even in other jurisdictions where
5 they have something called premeditated murder.
6 That's not something that we have to prove in South
7 Carolina. What we have to prove is that malice --
8 and I'm going to talk to you about in a moment what
9 malice is -- we have to prove that malice existed
10 at the time that fatal shot was fired by Robin
11 Herndon. Malice, very simply, is ill-will, hatred,
12 or anger towards another person. That is part of
13 the definition, and Your Honor will further charge
14 you a little more on what malice is at the close of
15 our case.

16 Now, ladies and gentlemen, this is -- a lot of
17 times you have cases, whether armed robbery or a
18 shooting or homicide or something, that's whodunit.
19 And most of the evidence is trying to prove who
20 committed the crime. This, ladies and gentlemen,
21 is not a whodunit. The Defense -- and you're going
22 to hear back when Ms. Herndon was arrested, she
23 gave a statement to the State Law Enforcement
24 Division and the Aiken County Sheriff's Office
25 where she admitted to shooting her boyfriend,

1 Christopher Rowley. She ultimately is going to
2 raise in that statement the defense of
3 self-defense. I just want to talk to you about it
4 for a couple of moments.

5 Just like Her Honor told you, we have the
6 burden of proving -- not only in this case, but
7 every criminal case across the country, the burden
8 is on the State to prove a Defendant guilty beyond
9 a reasonable doubt. What that very simply means is
10 that when you've heard all the evidence, considered
11 all the witnesses' testimony, all the physical
12 evidence that is presented, if you are firmly
13 convinced at that point in time of the Defendant's
14 guilt, you have a duty under that oath that you
15 just took to find her guilty -- to find her guilty.
16 However, after looking at all that, if there's a
17 real possibility that she is not guilty, then you
18 have that same duty to find her not guilty.

19 Just like we have the burden of proving her
20 guilty of murder, once they have raised -- the
21 Defense has raised the issue of self-defense, we
22 also have the burden to disprove self-defense. I
23 want to talk to you for a couple of minutes what
24 that is.

25 Self-defense basically contains a couple of

1 different elements. The first one, in order to --
2 in order for a self-defense claim to survive, you
3 have to be without fault in bringing on the
4 difficulty. In other words, you can't be part of
5 the problem that led to the fatal shooting and then
6 claim that you shouldn't be guilty of it. That's
7 the first one.

8 The second element is kind of a two-part
9 element. There's two separate elements, but
10 they're kind of similar. It's either the Defendant
11 has to have been in imminent danger of either death
12 or great bodily injury at the time they fired, in
13 this case, the fatal shot. Imminent danger of
14 either death or great bodily injury, actually had
15 to have been in that, or they believed they were in
16 danger of death or great bodily injury. And if it
17 is a belief of the Defendant, then you have to look
18 at, would a reasonably prudent person in that same
19 situation have had that same belief.

20 And I submit to you, ladies and gentlemen,
21 after you hear all of the evidence in this case,
22 you are going to find that the State -- that we're
23 going to disprove all three of those elements in
24 this case beyond any doubt.

25 How are we going to go about doing that?

1 Trying a case and putting it up before a jury is
2 kind of like putting together a jigsaw puzzle
3 sometimes. It's pieces. And sometimes, you know,
4 there will be a witness or a piece of evidence that
5 may not make a whole lot of sense initially, but
6 they're all pieces in the puzzle that when put
7 together at the end, we're going to prove
8 Ms. Herndon's guilt, as I said, beyond any doubt.

9 The way we're going to do that is by calling
10 witnesses, witnesses that have firsthand knowledge
11 about what happened or that were involved in
12 processing the crime scene, collecting evidence,
13 testing evidence, and putting forth the evidence
14 that was collected to you.

15 So I'm going to take just a couple of minutes
16 and give you just kind of a real brief kind of
17 outline of what you're going to hear over the next
18 couple -- today and into tomorrow, from the State
19 about the evidence that proves her guilt.

20 You're going to hear how all this started back
21 on November 6th of 2013, when the two of them,
22 Robin Herndon and Christopher Rowley, were living
23 together. He had moved in with her eight or nine
24 months earlier into her home on Sudlow Lake Road
25 here in Aiken County in North Augusta. You're

1 going to hear how on the morning of November 6th of
2 2013, Ms. Herndon was at work. At the time, she
3 was a probation agent here in Aiken County. She
4 had made a call and scheduled and made a doctor's
5 appointment for her boyfriend, Christopher, for
6 that afternoon at 2:00 o'clock. But that she had
7 to get up with him to get him a check to pay for
8 that doctor's appointment. And how they made
9 arrangements to meet at a cemetery about three or
10 so miles down the road from their home. It's kind
11 of in between, so she could come from work and he
12 could come from the home and meet there.

13 You'll hear from witnesses at that cemetery
14 that when the two of them got there, they began
15 arguing. They were arguing out in the parking lot
16 back and forth with each other, enough so that it
17 drew basically a bunch of the employees in the
18 cemetery's attention being nosy as to what's going
19 on out in the parking hot. They see a female out
20 there with a gun on her hip and a male arguing back
21 and forth. He attempted to leave at one point in
22 time and she blocked him in. They continued
23 arguing. And ultimately he took off at a high rate
24 of speed down the road that they both lived on,
25 Sudlow Lake Road. And how she got in her car and

1 peeled out after him.

2 You're going to hear how the two of them
3 went -- she followed him back to their home. Got
4 out in the driveway and the argument continued.
5 You're going to hear from a witness next-door that
6 was coming out to leave, I believe to go pick up
7 her child, and kind of heard a commotion next-door
8 and basically just sat in her car and watched for a
9 couple of minutes as her neighbor, two houses down,
10 was pacing around yelling and screaming at the
11 victim, Mr. Rowley, in the front yard.

12 You are going to hear how she ultimately
13 walked up her steps. The neighbor, Ms. Lacey
14 Burton, lost sight of her at that point in time
15 because of the angle, assumed she went into the
16 home, and saw at that point in time Christopher
17 light up a cigarette out in the driveway, out in
18 the front yard. A few moments later, he headed
19 towards and up the front steps. Yet again, from
20 her vantage point ultimately loses sight of him as
21 he's approaching the top of the steps. And you'll
22 ultimately see pictures of this house. Excuse me.
23 And how within a matter of 30 to 60 seconds at the
24 most, she hears a single gunshot, then hears a
25 woman screaming. She called 9-1-1. There's

1 another neighbor on the other side that hears some
2 of this, but never was really able to see anything.

3 By the time law enforcement gets there,
4 Mr. Rowley is basically unresponsive on the front
5 porch. Cigarette is on the porch. Lighter is on
6 the porch. Cell phone is on the porch. Baseball
7 hat is on the porch. He is transported, but is
8 basically dead at that point in time. As I said,
9 they do an autopsy on him and find that bullet.
10 Enters his throat right here, almost dead center,
11 goes slightly downward and to the right and found
12 in his upper right back.

13 Ms. Herndon is on the scene. She is taken
14 into custody at that point in time and brought back
15 to the Sheriff's Office and gives a statement, a
16 40-minute videotaped statement that she gives to
17 investigators. You are going to hear during that
18 where she admits to shooting Christopher Rowley.
19 Like I said, this isn't a whodunit.

20 But, more importantly, I'm going to ask you --
21 I'm sure you're going to pay attention when you
22 hear that statement, she gives a whole lot of
23 details about how much she was in fear, about how
24 this whole incident took place, more importantly
25 where it took place. That there was this violent

1 physical altercation brought on by Mr. Rowley
2 inside the residence. And I submit to you what
3 you're ultimately going to hear from other
4 witnesses, the crime scene personnel, the photos,
5 the physical evidence collected at that scene, I
6 submit to you refutes 95 percent of what she tells
7 law enforcement that day about how this incident
8 took place.

9 There is no evidence of a struggle inside the
10 residence. You'll see photographs where she says
11 all this happened. No evidence of a struggle
12 inside that house. No blood inside the house.
13 Nothing knocked over. Nothing broken inside the
14 house. I submit to you the evidence is going to
15 show that Mr. Rowley was shot as he had reached the
16 top of those steps, she was leaning out that front
17 door. Because she was mad at him, they were
18 arguing, she was angry.

19 She tells law enforcement in that statement
20 why she was mad at him. He was driving her
21 vehicle. She had a county-issued vehicle that she
22 was driving and he was driving her vehicle that
23 day. And during the course of that argument, he
24 took the keys and threw them up on the roof. She
25 tells law enforcement, That's what got me mad. He

1 took my keys. And they found them, they were up on
2 the roof.

3 Now, ladies and gentlemen, ultimately at the
4 close of this case, after you've heard all of the
5 evidence, you'll have an opportunity at that point
6 in time -- after you've heard all the evidence,
7 heard the closing arguments from the lawyers, the
8 charge on the law by Her Honor, you'll have an
9 opportunity at that point in time to go back and
10 deliberate and reach a verdict. The verdict comes
11 from -- the word verdict comes from a Latin word
12 that means to speak the truth -- speak the truth.
13 And that is ultimately all we ask. All anybody in
14 this courtroom can ask of the 12 of you is to reach
15 a verdict that speaks the truth about what happened
16 back on November 6th of 2013.

17 And I submit to you on behalf of the County of
18 Aiken and the State of South Carolina, the only
19 truthful verdict in this case will be one that
20 holds Robin Herndon accountable and holds her
21 responsible for her actions back on November 6th,
22 her actions that led to the death of Christopher
23 Rowley.

24 Thank you.

25 THE COURT: Thank you.

1 Yes, sir?

2 MR. LEIENDECKER: The Defense would reserve
3 their opening statement for the presentation of
4 their case.

5 THE COURT: Thank you.

6 All right. I'll ask the State to call their
7 first witness.

8 MR. JUSTIS: The State calls Ruth Reeves.

9 (Witness approaches.)

10 THE CLERK: Place your left hand on the Bible
11 and raise your right.

12 (Witness complies.)

13 THE CLERK: The testimony that you shall give
14 the Court and the jury in this case will be the
15 truth, the whole truth, and nothing but the truth,
16 so help you God?

17 THE WITNESS: Yes.

18 THE CLERK: Have a seat in the witness box,
19 stating your full name and spelling your last for
20 the Court, please.

21 (Witness seated.)

22 THE WITNESS: My name is Phyllis Ruth Reeves,
23 last name R-E-E-V-E-S.

24 RUTH REEVES,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JUSTIS:

Q Good morning, Ms. Reeves.

A Good morning.

Q Ms. Reeves, could you tell us where you worked back in November of 2013?

A With the South Carolina Probation, Parole and Pardon Services.

Q And do you currently work there?

A No, sir, I'm retired.

Q And when did you retire?

A October 16th, 2014.

Q And how long had you worked at probation?

A Thirty years.

Q And did you happen to know the Defendant in this case, Robin Herndon?

A Yes, sir.

Q And how did you know her?

A She was one of my co-workers.

Q And approximately how long did you work with her?

A Since the day that she started.

Q And let me direct your attention back to November, specifically November 6th of 2013. Did you have an opportunity to speak with Robin on that day?

A Yes, sir. I got to work at 8:00 o'clock. I always

1 get there early. And she came into my office
2 somewhere between 9:00 and 10:00 o'clock requesting
3 some raps to be run, but I couldn't run them at
4 that time because SLED was down. So we sat in my
5 office and talked for a while and just caught up
6 with each other.

7 Q And what was her demeanor like that morning?

8 A She was fine.

9 Q Did y'all discuss -- do you remember anything you
10 discussed that morning?

11 A Yes. We talked about the date that she and Chris
12 had the night before. They went to the WWF
13 wrestling match in Augusta. And I asked her if she
14 had taken the girls with her, and she said, no,
15 that they made it a date night, and that they had a
16 good time.

17 Q And did you have an opportunity later on in the day
18 to speak with her?

19 A Yes, sir. I had to go across the hall to relieve
20 one of the other admins for lunch to cover the
21 front window, and she came up to the office to
22 check out -- we have a checkout board. And any
23 time any of the agents went out, they had to check
24 out the time they went and what time they might be
25 coming back. And she -- and that was about 1:30.

1 And she told me that she had a client coming in at
2 2:00 o'clock and then when the client came in to
3 tell them to wait, that she would be back, she had
4 to run to North Augusta.

5 Q Was that the last time you saw Ms. Robin that day?

6 A Yes, sir.

7 Q And at some point that day, did you hear some news
8 about Robin?

9 A Yes, sir.

10 Q And when did you hear that?

11 A It was about -- around 2:30, I think it was. My
12 supervisor, she came in and knelt in front of me,
13 in front of my desk and took my hands and told me
14 what happened.

15 MR. JUSTIS: Beg the Court's indulgence.

16 (Pause.)

17 MR. JUSTIS: No further questions. Please
18 answer any questions Mr. Leiendecker might have.

19 MR. LEIENDECKER: Thank you.

20 CROSS-EXAMINATION

21 BY MR. LEIENDECKER:

22 Q Good morning, Ms. Ruth.

23 A Good morning.

24 Q You said that on November 6th, you and Robin
25 interacted with some business matters and some

1 personal discussions; right?

2 A Yes.

3 Q And it is your testimony here today to the jury
4 that everything seemed fine?

5 A Yes, sir.

6 Q Robin wasn't upset?

7 A No, sir.

8 Q Robin wasn't stressed?

9 A No, sir.

10 Q Robin wasn't angry?

11 A No, sir.

12 Q You were the administrative assistant in charge
13 when Robin checked out at 1:30 --

14 A Yes, sir.

15 Q -- to run a quick errand to North Augusta; correct?

16 A Yes.

17 Q That's where she lived, North Augusta; right?

18 A Yes, sir.

19 Q Robin didn't appear upset?

20 A No.

21 Q Robin didn't appear stressed?

22 A No.

23 Q Robin appeared normal?

24 A Yes, sir.

25 Q How would you describe Robin around the office in

1 her interaction with the people there?

2 A She was cheerful. She was very patient with the
3 clients. And she was friendly with all of us. We
4 loved getting along with her. We had no problems.

5 Q Had you, in your time there -- and you were there
6 the entire time she worked there -- ever heard any
7 of the other agents make complaints about Robin or
8 her attitude at the office?

9 A No, sir.

10 Q Had you ever had any of the clients that you deal
11 with -- and some of them are difficult -- make
12 complaints about Robin in her handling of them?

13 A No, sir.

14 Q Had you ever heard or seen any formal complaints
15 that were filed against Robin for anything she had
16 done while she was there?

17 A No, sir.

18 Q Had you ever heard anyone say or seen any formal
19 complaints that suggested that Robin ever did
20 anything improper or unlawful with her weapon while
21 she was working for the probation office?

22 A No, sir.

23 Q Your time and your experience with Robin, did you
24 have an opportunity to form an opinion as to
25 Robin's truthfulness or honesty on subjects?

1 A I mean, we were friends. I believe what she -- you
2 know, what we talked about, because we talked about
3 our families together.

4 Q It's a tricky question. Let me go over it again.
5 Did you have an opportunity to form an opinion, a
6 personal opinion about Robin's honesty?

7 A Like a specific --

8 Q No, not a specific incident. Do you have an
9 opinion concerning her?

10 A I trust her. I believe her.

11 Q So that answer would be yes, you do have an
12 opinion?

13 A Yes.

14 Q And that opinion is?

15 A That I trust her.

16 Q And you believe she's honest?

17 A Believe in her, yes.

18 Q How about Robin's temperament? Did you have an
19 ability to form an opinion about what her
20 temperament was like? Yes or no?

21 A Yes.

22 Q Did you find her to be the kind of a person that
23 was easily angered, flew off the handle?

24 A No, sir.

25 Q Short with people?

1 A No, huh-uh.

2 Q Did you find her to be a peaceful person who got
3 along with people?

4 A Yes, sir.

5 MR. LEIENDECKER: One moment, Ms. Ruth.

6 (Pause.)

7 MR. LEIENDECKER: I have no further questions.

8 Thank you, ma'am.

9 THE WITNESS: Okay.

10 MR. JUSTIS: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. JUSTIS:

13 Q Ms. Reeves, based on your extensive experience in
14 probation and everything, and you were talking
15 about Ms. Herndon's peaceful temperament. As a
16 probation officer, she deals with a lot of
17 individuals that have been convicted of crimes,
18 would that be a fair statement?

19 A Yes, sir.

20 Q And some of those crimes are serious crimes?

21 A Yes, sir.

22 Q Was she able to handle her clients if need be?

23 A Yes, sir.

24 Q Or -- so if she needed to be stern, she could be
25 stern?

1 A Yes, sir.

2 MR. JUSTIS: No further questions.

3 THE COURT: All right, ma'am, you may step
4 down.

5 THE WITNESS: Thank you.

6 THE COURT: Any objection to this witness
7 being excused?

8 MR. LEIENDECKER: None from the Defense.

9 (Witness steps down and is excused.)

10 THE COURT: Call your next witness.

11 MR. SORENSON: The State calls Wendy Kizer.

12 (Witness approaches.)

13 THE CLERK: Place your left hand on the Bible
14 and raise your right.

15 (Witness compiles.)

16 THE CLERK: The testimony that you shall give
17 the Court and jury in this case will be the truth,
18 the whole truth, and nothing but the truth, so help
19 you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Have a seat in the witness box,
22 spelling your full name -- giving your full name,
23 spelling your last for the Court, please.

24 (Witness seated.)

25 THE WITNESS: My name is Wendy Kizer, last

1 name, K-I-Z-E-R.

2 WENDY KIZER,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SORENSON:

6 Q Good morning, Ms. Kizer.

7 A Good morning.

8 Q I'm going to turn your attention back to November
9 of 2013. Where were you working back at that time?

10 A At Sunset Memory Gardens Cemetery.

11 Q Okay. And where is Sunset Memory Gardens Cemetery
12 located at?

13 A It's on Aiken-Augusta Highway at the corner of
14 Highway 1 and Sudlow Lake Road.

15 Q And how long did you work there?

16 A Probably about a year and a half.

17 Q Okay. And if you would, describe -- I assume
18 there's an office there at the cemetery?

19 A Uh-huh.

20 Q And how many people were working in that office
21 back during that time?

22 A I think about five people.

23 Q And I want to turn your attention, Wendy, if I
24 could, back to the afternoon of November 6th of
25 2013. Do you recall if you were working that day?

1 A Yes, sir.

2 Q Okay. And did anything out of the ordinary happen
3 there at the cemetery that afternoon?

4 A We just observed two people in the parking lot, you
5 know, a male and a female, arguing out in the
6 parking lot through the window.

7 Q And let me ask you, I guess there's a parking lot
8 outside of your office?

9 A Uh-huh, yes.

10 Q And you said you saw a man and woman?

11 A Yes.

12 Q If you would describe the female for the jury, if
13 you would.

14 A She was -- just had blonde, short hair. The male
15 was -- he had brown hair, sort of heavyset.

16 Q Okay. Do you remember what kind of -- were they --
17 did you see what vehicle or vehicles they arrived
18 in?

19 A The female arrived in a silver, looked like an
20 unmarked car. He was in some type of blue SUV, I
21 think.

22 Q Okay. And specifically about the female, did you
23 notice anything else about her?

24 A Just that she had a gun on her side. So we
25 figured, you know, it was a police officer.

1 Q And what did these two individuals appear to be
2 doing out in the parking lot?

3 A Just arguing. Hand motions. You know, you could
4 see on their faces they were arguing, just a couple
5 arguing. Hands flying around. Just motions, and
6 things like that.

7 Q Did you ever see either one of them put their hands
8 on the other one?

9 A No, never saw that.

10 Q And let me ask you, from where you were, were you
11 able to hear what they were arguing about?

12 A I could not hear a word, no.

13 Q Did you watch them, though, the entire time after
14 you kind of saw them out there?

15 A Pretty much, because the window was -- where they
16 were was right there where I was sitting at my
17 desk.

18 Q Anybody else inside watching also?

19 A Yeah, several people.

20 Q And tell the jury, what ended up happening there?

21 A They just argued for a good long while. And at one
22 point it looked like he tried to leave. And then
23 he got in the car and then he got back out, and
24 then they just continued to argue. And then, you
25 know, when it ended, he got in his car and turned

1 out, you know, going up towards Sudlow Lake Road,
2 and then she got in her car and went after him, you
3 know, followed behind.

4 Q How long do you think you actually observed them
5 outside of your office?

6 A Less than ten minutes.

7 Q All right. And when they left, who left the
8 parking lot first?

9 A He left first.

10 Q Okay. How did he leave the parking lot?

11 A He spun -- he sped out, you know. Got to the end
12 of the parking lot and going up Sudlow Lake Road
13 peeled out a little bit. And then, you know, she
14 had already jumped in her car and obviously peeled
15 out, you know, quickly behind him, following him.

16 Q So when you last saw the vehicles, she was
17 basically following him?

18 A Yes.

19 Q Up Sudlow Lake Road?

20 A Yes.

21 Q Now, did something happen out there a short while
22 later after that? Did you observe something else
23 out there?

24 A At the cemetery?

25 Q Uh-huh, yes, ma'am.

1 A Just, you know, it was probably less than ten
2 minutes later, we started hearing cop cars and
3 seemed like ambulances and several of them came,
4 you know, past the cemetery and went up Sudlow Lake
5 Road. And, you know, we were just like, you know,
6 something must have happened. Maybe one of those
7 had a wreck because they were peeling out or
8 something even worse. And two of the guys that
9 work at the cemetery got in the truck just to go
10 see, you know, make sure -- I guess just to see
11 what had happened, because, you know, we were all
12 watching and concerned anyway. And so they came
13 back and said that, you know, something terrible
14 had happened.

15 Q One of those was a young man by the name of Darryl
16 Prather?

17 A Yes.

18 Q Ultimately did the Sheriff's Office come by a short
19 while after that --

20 A They did.

21 Q -- and take a statement from you at the cemetery?

22 A Yeah, they came shortly after and asked us, you
23 know, what we had saw.

24 Q And these two individuals that you saw out there,
25 did you know either one of them?

1 A No. No.

2 Q Ever see them before?

3 A Never in my life.

4 MR. SORENSON: Thank you, Ms. Kizer. Please
5 answer any questions that Ms. Hinds has for you.

6 CROSS-EXAMINATION

7 BY MS. HINDS:

8 Q Good morning.

9 A Good morning.

10 Q I think you said that you worked at the cemetery
11 for about a year and a half?

12 A Uh-huh.

13 Q Do you still work there?

14 A No, ma'am.

15 Q Kind of describe the office that you were in at the
16 cemetery.

17 A Describe the office?

18 Q Yes, ma'am. One room, more than one room?

19 A It's more than one room. It's probably four to
20 five rooms. Just separate rooms, yes.

21 Q And you said that you had a window that you were
22 looking out?

23 A Yes.

24 Q Was the window directly in front of you?

25 A Yes.

1 Q To the side or?

2 A Well, yeah, like if we were sitting here, the
3 window was to the right of me. I had my chair and
4 was turned and was looking out the window.

5 Q So you had to look a little bit to the right?

6 A Yes.

7 Q Okay. And I believe you said that you first
8 noticed a lady and a man arguing?

9 A Uh-huh.

10 Q Okay. And I think your testimony was you don't
11 know either one of them?

12 A No.

13 Q Had never seen them before?

14 A Huh-uh.

15 Q Okay. You initially assumed that the female might
16 be a cop; is that correct?

17 A Well, just seeing that a gun was there and it
18 looked like an unmarked car, you know, just knowing
19 that.

20 Q A logical assumption?

21 A Yes.

22 Q Okay. Did you think maybe she was pulling him over
23 initially?

24 A I -- I really didn't know. I think at one point --
25 I came in the office and sat down at my desk and

1 I -- we just saw them arguing. I mean, I don't
2 remember exactly. But, yeah, I mean, all I know is
3 I sat down and they were already there and they
4 were arguing.

5 Q Do you know what the argument was about?

6 A I have no idea. I couldn't hear anything that was
7 ever said.

8 Q Couldn't hear anything whatsoever?

9 A No.

10 Q So you're basing your assumption on mostly the
11 gestures and --

12 A Yes.

13 Q -- facial expressions, body language?

14 A Yeah, two people arguing.

15 Q But no idea of in context what the argument was
16 about, who started it?

17 A No, no idea.

18 Q Okay. You said then at some point she got in her
19 car; correct?

20 A Well, no, I think -- the only time I saw her get in
21 her car is when she was leaving.

22 Q Okay. You gave a written statement, did you not?

23 A I did. And I may need to read it because that's
24 been almost two years ago.

25 MS. HINDS: Your Honor, may I approach so we

1 can refresh?

2 THE COURT: Yes, ma'am.

3 (Complies.)

4 BY MS. HINDS:

5 Q : I'll give you a minute to read what you said.

6 (Pause.)

7 A Okay. So the only time I saw her get in her car
8 was when she was leaving. He tried to get in his
9 car at one point and leave, and then he got out and
10 started arguing again. So, yeah.

11 Q And then she got in her car?

12 A No, that was -- the only time I saw her get in her
13 car was whenever they were leaving, pulling out.

14 Q And this statement was given on the 6th, the same
15 day; correct?

16 A Doesn't that -- that's what that says. Yeah.

17 Q So this would have been right the same day it
18 happened when it was fresh in your mind; correct?

19 A I would think so.

20 Q Okay. So he actually came over to her car; is that
21 correct?

22 A I don't -- I mean, that was two years ago. I don't
23 remember those exact details, that he came to her
24 car. I'm not sure when you're talking about or
25 what you're talking about.

1 Q But your writing is that they argued at the window;
2 correct? Would you like to see it again?

3 A Well, they were arguing at the cars, yes. I mean,
4 in the car, out of the car. He got in the car.
5 They were arguing, then he got back out and they
6 were still arguing.

7 Q And ultimately he leaves; correct?

8 A Yes, ma'am.

9 Q All right. He left first?

10 A Uh-huh.

11 Q And your testimony is he did spin -- he sped out of
12 that parking lot?

13 A Yep, zoom.

14 Q And she followed at a high rate of speed also?

15 A Yep, zoom. Spun out, zoom.

16 Q Up the same road?

17 A Uh-huh.

18 Q But you don't know what the argument was about?

19 A No.

20 Q You don't know what was being said?

21 A No idea.

22 Q You don't know who started it?

23 A No idea.

24 Q You just know there was an argument in the parking
25 lot?