

RECEIVED

MAR 21 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

VOLUME II 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

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

WILLIAM F. SCHUMACHER
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

ATTORNEY FOR APPELLANT

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
Post Office Box 874
Lexington, SC 29071
(803) 785- 8352

ATTORNEYS FOR RESPONDENT

PAGES 501 – 1,000

INDEX

INDEX i

TRIAL TRANSCRIPT (Dated February 29-March 8, 2016).....1

JACKSON V. DENNO HEARING

MARCUS PADGETT

Direct Examination by Mr. Sorenson 19
 Cross Examination by Leiendecker 24
 Redirect Examination by Mr. Sorenson.....28
 Re-Cross Examination by Mr. Leiendecker.....29

HAROLD MICHAEL PERRY

Direct Examination by Mr. Justis 36
 Cross Examination by Mr. Leiendecker 43

PHILIP TURNER

Direct Examination by Mr. Justis 45
 Cross Examination by Mr. Leiendecker 49

IMMUNITY HEARING

ROBIN RENEE HERNDON

Direct Examination by Mr. Leiendecker 67
 Cross Examination by Mr. Justis 109
 Redirect Examination by Mr. Leiendecker.....134
 Re-Cross Examination by Mr. Justis 136

LOIS J. VERONEN

Direct Examination by Mr. Leiendecker 138
 Cross Examination by Mr. Sorenson 162

ROBYN FALLAW

Direct Examination by Mr. Leiendecker 188
 Cross Examination by Mr. Justis 202
 Redirect Examination by Mr. Leiendecker.....207

CHERYL CUMMINGS

Direct Examination by Mr. Leiendecker 209
 Cross Examination by Mr. Justis 220
 Redirect Examination by Mr. Leiendecker.....231

MARIE A. BOULTON	
Direct Examination by Mr. Leiendecker	233
Cross Examination by Mr. Sorenson	251
LISA KENNER	
Direct Examination by Mr. Leiendecker	264
Cross Examination by Mr. Sorenson	273
LAURIE VARNADOE CALDWELL	
Direct Examination by Ms. Hinds	277
Cross Examination by Mr. Sorenson	286
K.N.	
Direct Examination by Ms. Hinds	292
Cross Examination by Mr. Justis	306
Redirect Examination by Ms. Hinds.....	321
JOHN BARRETT DOWNS	
Direct Examination by Mr. Leiendecker	325
Cross Examination by Mr. Justis	331
Redirect Examination by Mr. Leiendecker	337
Re-Cross Examination by Mr. Justis	338
WALLIS ALVES	
Direct Examination by Mr. Leiendecker	340
Cross Examination by Mr. Justis	345
Redirect Examination by Mr. Leiendecker.....	350
LACEY BURTON	
Direct Examination by Mr. Justis	351
Cross Examination by Mr. Leiendecker	357
PHILIP TURNER	
Direct Examination by Mr. Justis	366
Cross Examination by Mr. Leiendecker	390
MARY FRANCES O'GRADY	
Direct Examination by Mr. Sorenson	393
Cross Examination by Mr. Leiendecker	402
MOLLY HAHN	
Direct Examination by Mr. Justis	406
Cross Examination by Mr. Leiendecker	408
MOTION FOR IMMUNITY FROM PROSECUTION	412

COURT’S RULING	447
OPENING STATEMENT BY MR. SORENSON	471
TESTIMONY	
RUTH REEVES	
Direct Examination by Mr. Justis	483
Cross Examination by Mr. Leiendecker	485
Redirect Examination by Mr. Justis.....	489
WENDY KIZER	
Direct Examination by Mr. Sorenson	491
Cross Examination by Ms. Hinds	496
Redirect Examination by Mr. Sorenson.....	501
DARRYL A. PRATHER	
Direct Examination by Mr. Sorenson	502
Cross Examination by Ms. Hinds	507
SARAH WIGGINS	
Direct Examination by Mr. Justis	512
Cross Examination by Mr. Leiendecker	519
LACEY BURTON	
Direct Examination by Mr. Justis	523
Cross Examination by Mr. Leiendecker	530
Redirect Examination by Mr. Justis.....	538
Re-Cross Examination by Mr. Leiendecker.....	539
MARCUS PADGETT	
Direct Examination by Mr. Justis	541
Cross Examination by Ms. Hinds	555
JANICE E. ROSS	
Direct Examination by Mr. Sorenson	562
OBJECTION TO TESTIMONY	574
COURT’S RULING	580
TESTIMONY	

JANICE E. ROSS	
Direct Examination by Mr. Sorenson (continued).....	581
Cross Examination by Ms. Hinds	584
Redirect Examination by Mr. Sorenson.....	588
MARY FRANCES O'GRADY	
Direct Examination by Mr. Sorenson	590
Cross Examination by Mr. Leiendecker	613
MICHELLE EICHENMILLER	
Direct Examination by Mr. Sorenson	626
Cross Examination by Mr. Leiendecker	635
SAMUEL STEWART	
Direct Examination by Mr. Sorenson	639
Voir Dire Examination by Mr. Leiendecker	641
OBJECTION TO QUALIFICATION	643
TESTIMONY	
SAMUEL STEWART	
Proffer Examination by Mr. Sorenson (in camera).....	646
Proffer Examination by Mr. Leiendecker (in camera).....	651
OBJECTION TO QUALIFICATION	653
COURT'S RULING	653
TESTIMONY	
SAMUEL STEWART	
Direct Examination by Mr. Sorenson (continued).....	656
Cross Examination by Mr. Leiendecker	662
WHITNEY BERRY	
Direct Examination by Mr. Sorenson	666
Cross Examination by Mr. Leiendecker	681
Redirect Examination by Mr. Sorenson.....	691
LEANN BOST	
Direct Examination by Mr. Justis	697
Cross Examination by Mr. Leiendecker	702
Redirect Examination by Mr. Justis.....	706

MOLLY HAHN	
Direct Examination by Mr. Justis	707
Cross Examination by Mr. Leiendecker	721
HAROLD MICHAEL PERRY	
Direct Examination by Mr. Justis	724
Cross Examination by Mr. Leiendecker	730
Redirect Examination by Mr. Justis.....	732
PHILLIP TURNER	
Direct Examination by Mr. Justis	734
Cross Examination by Mr. Leiendecker	749
MOTION FOR A DIRECTED VERDICT	765
COURT'S RULING	768
OPENING STATEMENT BY MR. LEIENDECKER.....	774
TESTIMONY	
ROBIN RENEE HERNDON	
Direct Examination by Mr. Leiendecker	784
Cross Examination by Mr. Justis	839
Redirect Examination by Mr. Leiendecker.....	885
WALLIS ALVES	
Direct Examination by Ms. Hinds	905
Cross Examination by Mr. Justis	913
MARIE A. BOULTON	
Direct Examination by Mr. Leiendecker	915
Cross Examination by Mr. Sorenson	929
Redirect Examination by Mr. Leiendecker.....	940
LISA KENNER	
Direct Examination by Mr. Leiendecker	946
Cross Examination by Mr. Sorenson	955
MITCHELL COLLINS	
Direct Examination by Ms. Hinds	961
Cross Examination by Mr. Sorenson	968
JOSEPH BRIAN WILSON	
Direct Examination by Ms. Hinds	972
Cross Examination by Mr. Sorenson	980

DONALD MURPHY	
Direct Examination by Ms. Hinds	983
Cross Examination by Mr. Sorenson	988
Redirect Examination by Ms. Hinds.....	994
K.N.	
Direct Examination by Ms. Hinds	996
Cross Examination by Mr. Justis	1006
DANNY WAYNE MCDANIEL	
Direct Examination by Mr. Leiendecker	1022
Cross Examination by Mr. Justis	1036
CHERYL CUMMINGS	
Direct Examination by Mr. Leiendecker	1052
Cross Examination by Mr. Justis	1055
ROBYN FALLAW	
Direct Examination by Mr. Leiendecker	1064
Cross Examination by Mr. Justis	1078
CHERYL CUMMINGS	
Direct Examination by Mr. Leiendecker	1087
Cross Examination by Mr. Justis	1104
Redirect Examination by Mr. Leiendecker.....	1118
Re-Cross Examination by Mr. Justis	1122
LOIS J. VERONEN	
Direct Examination by Mr. Leiendecker	1128
Cross Examination by Mr. Sorenson	1158
Redirect Examination by Mr. Leiendecker.....	1203
Re-Cross Examination by Mr. Sorenson	1205
RENEWAL OF MOTION FOR DIRECTED VERDICT	1207
COURT'S RULING	1208
TESTIMONY	
JESSICA ABDULLAH	
Direct Examination by Mr. Justis	1215
Cross Examination by Mr. Leiendecker	1217
CHARGE CONFERENCE.....	1220

CLOSING ARGUMENT BY MR. JUSTIS	1242
CLOSING ARGUMENT BY MR. LEIENDECKER	1251
CLOSING ARGUMENT BY MR. JUSTIS	1304
CHARGE ON THE LAW	1343
VERDICT	1401
RENEWAL OF MOTION FOR DIRECTED VERDICT	1407
COURT'S RULING	1407
MOTION TO DEFER SENTENCING	1408
COURT'S RULING	1410
SENTENCING HEARING TRANSCRIPT (Dated May 9, 2016)	1414
SENTENCING	1415
COURT'S EXHIBIT NO. 1 (MOTION FOR IMMUNITY FROM PROSECUTION)	1419
COURT'S EXHIBIT NO. 2 (MOTION TO PROHIBIT OPINION TESTIMONY UNLESS/UNTIL THE WITNESS IS PROPERLY QUALIFIED).....	1430
COURT'S EXHIBIT NO. 6 (JURY INSTRUCTION REQUEST #2: CIRCUMSTANTIAL EVIDENCE)	1432
ORDER ON DEFENSE MOTION TO BAR PROSECUTION.....	1434
CERTIFICATE OF COUNSEL	1442

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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 A Yeah.

2 MS. HINDS: No further questions.

3 MR. SORENSON: Just real briefly.

4 REDIRECT EXAMINATION

5 BY MR. SORENSON:

6 Q Ms. Kizer, Ms. Hinds showed you your statement.

7 That's basically what you testified to the jury
8 about; is that correct?

9 A Uh-huh, yeah. It's what I said.

10 MR. SORENSON: Nothing further.

11 THE COURT: Anything else?

12 All right, ma'am, you may step down.

13 THE WITNESS: Thank you.

14 MR. SORENSON: May she be excused, Your Honor?

15 THE COURT: Any objection to this witness
16 being excused?

17 MR. LEIENDECKER: No objection.

18 THE COURT: Ma'am, you're free to leave.

19 (Witness steps down and is excused.)

20 THE COURT: Call your next witness.

21 MR. SORENSON: The State calls Darryl Prather.

22 (Witness approaches.)

23 THE CLERK: Place your left hand on the Bible,
24 raise your right.

25 (Witness complies.)

1 THE CLERK: The testimony that you shall give
2 the Court and jury in this case will be the truth,
3 the whole truth, and nothing but the truth, so help
4 you God?

5 THE WITNESS: Yes.

6 THE CLERK: Have a seat in the witness box,
7 stating your full name, spelling your last for the
8 Court, please.

9 (Witness seated.)

10 THE WITNESS: Darryl Anthony Prather,
11 P-R-A-T-H-E-R.

12 DARRYL A. PRATHER,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SORENSON:

16 Q Good morning, Darryl.

17 A Good morning.

18 Q If you would, tell the jury what you do for a
19 living?

20 A I'm a diesel mechanic at DSL in North Augusta,
21 South Carolina.

22 Q And how long have you been doing that?

23 A About three years.

24 Q And at some point in time, did you also work at the
25 Sunset Memorial Gardens Cemetery?

1 A Yes.

2 Q And how long did you work there?

3 A About two and a half.

4 Q And back in November of 2013, were you working
5 there?

6 A Yes.

7 Q You worked with Ms. Kizer?

8 A Yes.

9 Q And I want to turn your attention, if I could,
10 Darryl, back to the afternoon of November 6th of
11 2013. Were you working that afternoon?

12 A Yes, sir, I was.

13 Q Okay. And do you remember, did you observe
14 anything out of the ordinary that afternoon out
15 there at the cemetery?

16 A Yes, on that afternoon we was all in the office and
17 we seen two cars out in the parking lot. Two
18 individuals was arguing.

19 Q Okay. Could you describe the individuals to me,
20 first of all?

21 A One was a heavyset young man, and it was a young
22 lady with short, brown hair.

23 Q Were they both white?

24 A Yes.

25 Q White male and white female? Okay. And did you

1 see what vehicle or vehicles that they were in?

2 A Well, I know one was like a silver car and the
3 other one was like a SUV.

4 Q And what color -- do you remember what color the
5 SUV was?

6 A Not right off the top of my head.

7 Q Do you remember if it was light or dark or?

8 A Kind of -- might have been dark.

9 Q All right. And do you remember who was in which of
10 those vehicles?

11 A Well, the gentleman was in the SUV and the young
12 lady was in the silver car.

13 Q Okay. The young lady, you said she had short hair?

14 A Uh-huh.

15 Q Did you notice anything else about her?

16 A Well, we all noticed that she had like a gun on the
17 side, so we was kind of skeptical if we should call
18 the cops or not.

19 Q What did you think she may have been at that point
20 in time?

21 A Well, before we seen the gun, we just thought she
22 was -- they was just arguing, but when we seen the
23 gun, we thought she could have been an officer
24 herself.

25 Q And the two vehicles, were they -- describe for the

1 jury how they were parked.

2 A Erratic in the parking lot.

3 Q Close to each other?

4 A About two spaces down from one another.

5 Q Okay. And describe for the jury then, what did the
6 two of them appear to be doing out there in your
7 parking lot?

8 A They seemed to be arguing with one another.

9 Q Okay. Could you hear anything what they were
10 saying from inside the office?

11 A No.

12 Q Okay. Did they both appear to be arguing?

13 A Yes.

14 Q Kind of a mutual argument?

15 A Like mutual arguing.

16 Q Now, at any point in time, did you see either one
17 of them attempt to leave the parking lot?

18 A Yes. The gentleman got in his car and he tried to
19 leave and she blocked him in. And he got out his
20 car and went to her car and they was arguing. She
21 got back out. They was arguing. Then he got back
22 in and sped off. Then she got in her vehicle and
23 followed him.

24 Q Okay. And what direction did they go?

25 A They went up Sudlow Lake Road.

1 Q Did they both leave the parking lot at a kind of
2 high rate of speed?

3 A Yes, they were pretty fast.

4 Q Now, did you at any point in time during the two of
5 them arguing see either one of them put their hands
6 on the other one?

7 A No.

8 Q Now, you had said earlier that they both appeared
9 to kind of be mutually arguing?

10 A Uh-huh.

11 Q Did either one of them appear to be, from what you
12 observed, scared of the other one?

13 A Not really.

14 Q Now, did something happen a short while later out
15 there, Darryl?

16 A It was about 10 or 15 minutes later, we seen
17 ambulance, police cars going up Sudlow Lake Road.
18 So at that time, my boss and myself jumped into the
19 truck and went up Sudlow Lake Road to see what was
20 going on. And we came upon an officer, he had the
21 road blocked. And it was at the house on the
22 left-hand side, a gentleman, they were trying to
23 give him CPR, whatever. And we seen the silver car
24 and the other car at the residence.

25 Q Did you end up giving the officers your name at

1 that point in time?

2 A Yes, sir.

3 Q And where you were and --

4 A Yes, sir.

5 Q -- briefly what you had seen?

6 A Yes, sir.

7 Q As a result of that, did -- a short while later,
8 did an investigator with the Aiken County Sheriff's
9 Office come and take your statement?

10 A Yes, sir.

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

12 (Pause.)

13 MR. SORENSON: Thank you, Darryl. Please
14 answer any questions Ms. Hinds has for you.

15 MS. HINDS: Just very brief.

16 CROSS-EXAMINATION

17 BY MS. HINDS:

18 Q Good morning, Mr. Prather.

19 A Good morning.

20 Q Just to be sure, you didn't know either of those
21 people that you saw that morning or that afternoon
22 in the parking lot; correct?

23 A No.

24 Q Never seen them before?

25 A No, ma'am.

1 Q Okay. You see the two of them, I think you said,
2 arguing; correct?

3 A Yes, sir.

4 Q How did you know they were arguing?

5 A The way they -- their body language and the way
6 they was acting towards one another.

7 Q Could you hear any of the conversation or anything
8 that was said?

9 A No, ma'am.

10 Q Okay. And you're -- just to be -- I want to make
11 sure I'm correct. You're inside the office now
12 looking out the window?

13 A Well, we was on the porch also.

14 Q Okay.

15 A It's a porch adjacent to the office. And even on
16 the porch we couldn't -- we could hear, but we
17 couldn't hear what they were saying.

18 Q Okay. About how far is the porch from where they
19 were?

20 A Ten feet, 15 feet.

21 Q The two of them were arguing back and forth;
22 correct?

23 A Yes, ma'am.

24 Q I believe your testimony was there was nobody
25 putting hands on the other person?

- 1 A No.
- 2 Q No shoving?
- 3 A No.
- 4 Q No pushing?
- 5 A No.
- 6 Q No physical contact of any kind?
- 7 A No.
- 8 Q Strictly a verbal argument?
- 9 A Yes, ma'am.
- 10 Q Okay. Tell me what you mean -- your testimony was
- 11 that he tried to leave; correct?
- 12 A Yes, ma'am.
- 13 Q How does he try to leave?
- 14 A He got in his car and he backed up.
- 15 Q Okay. And can you kind of explain to us how -- I
- 16 think your testimony was they were about two spaces
- 17 apart?
- 18 A Right.
- 19 Q Were they pulled into the spaces?
- 20 A No. Our spaces at the cemetery, it's like an oval.
- 21 You can park on either side of the oval. They was
- 22 on the other side. One was parked up front, one
- 23 was right here. When he backed out, she pulled
- 24 behind him so he couldn't get out. Then he got out
- 25 his car and started arguing back with her. And he

1 got in his car and took off, and then she got in
2 her car and followed him out.

3 Q Did she move her car?

4 A No, he went the other way.

5 Q Okay. So he wasn't entirely blocked in?

6 A Well, as he backed up, she pulled behind him.

7 Q Okay. And was there any more arguing going on?

8 A Yes, he got out of his car and was arguing with
9 her, and then he jumped in and took off.

10 Q Okay. He got out and argued with her?

11 A Uh-huh.

12 Q At her car door?

13 A Yes.

14 Q Okay. Then he got in his car and he left?

15 A Right.

16 Q At a high rate of speed?

17 A Correct.

18 MS. HINDS: No further questions. Thank you,
19 Mr. Prather.

20 THE WITNESS: You're welcome.

21 THE COURT: Anything else?

22 MR. SORENSON: Nothing further, Your Honor.

23 THE COURT: All right, sir, you may step down.
24 Any objection to this witness being excused?

25 MR. LEIENDECKER: No.

1 (Witness steps down and is excused.)

2 MR. LEIENDECKER: Can we take a short break?

3 I have a couple of things working outside of the
4 courtroom I need to check on.

5 THE COURT: Let me see you all a second.

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

9 THE COURT: All right, ladies and gentlemen of
10 the jury, we are going to take a -- go ahead and
11 take our morning break now for about ten minutes,
12 and then we will receive you all back into the
13 courtroom shortly.

14 (WHEREUPON, the jury retires to the jury
15 room at 11:13 a.m.)

16 THE COURT: You can bring them on in.

17 (WHEREUPON, the jury came into open
18 court at 11:27 a.m.)

19 THE COURT: All right. I will ask the State
20 to call their next witness.

21 MR. JUSTIS: At this time the State calls
22 Sarah Wiggins.

23 (Witness approaches.)

24 THE CLERK: Please your left hand on the
25 Bible, raise your right.

1 (Witness complies.)

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

6 THE WITNESS: Yes.

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

10 (Witness seated.)

11 THE WITNESS: Sarah Wiggins, W-I-G-G-I-N-S.

12 SARAH WIGGINS,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JUSTIS:

16 Q Good morning, Ms. Wiggins.

17 A Good morning.

18 Q Make sure you speak loudly because the court
19 reporter has to take down everything that is said.
20 Ms. Wiggins, where do you live?

21 A

22 Q And how long have you lived there?

23 A About ten years.

24 Q And is that in Aiken County?

25 A It is.

1 Q And were you -- obviously, if you were living there
2 ten years, you were living there back in November
3 of 2013?

4 A I was.

5 Q And are you familiar with the Defendant, Robin
6 Herndon?

7 A I am.

8 Q And how do you know Ms. Herndon?

9 A We're neighbors. Our daughters are friends.

10 Q And where is your house in relation to
11 Ms. Herndon's house -- or where was it back in
12 November of 2013?

13 A It's diagonal from the yards.

14 Q Is it on the same side of the street?

15 A It is.

16 Q Is your house in front of hers or behind hers?

17 A Behind.

18 Q Let me turn your attention to November 6th of 2013.
19 Do you remember that day?

20 A I do.

21 Q And what were you doing that day in the early
22 afternoon hours?

23 A I was at my neighbor's doing work in his yard.

24 Q And where did your neighbor live in relation to
25 Ms. Herndon's house?

1 A Right behind hers.

2 Q Okay. And what's your neighbor's name?

3 A Terry Ray.

4 Q And do you remember seeing or hearing anything out
5 of the ordinary that afternoon?

6 A I do.

7 Q What do you remember seeing or hearing?

8 A I was out in the yard working, and Chris pulled up
9 in the vehicle and she pulled up after him. And
10 they were just standing out there arguing, having
11 words.

12 Q Could you hear what they were saying?

13 A I could hear him. I couldn't hear what he was
14 saying, I could just hear him talking to her. I
15 could hear her saying that she tells him
16 everything. That's about it. They were just
17 arguing.

18 Q And how long would you say they were arguing for?

19 A Just a few minutes.

20 Q Okay. At any point in time, did the arguing stop?

21 A I really don't know if it stopped. They just
22 walked around to the other side of the house.

23 Q And if you were --

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

1 BY MR. JUSTIS:

2 Q Let me show you what has been marked as State's
3 Exhibit 21. I show you State's 21. Do you
4 recognize that?

5 A I do.

6 Q What does that appear to be?

7 A The front of her house.

8 Q The front of Ms. Robin's house?

9 A It is.

10 Q And that picture would have been taken from the
11 street angle?

12 A Uh-huh.

13 Q Looking at it from the street?

14 A Yes.

15 Q So which side of the house were they standing on
16 and where were you kind of located?

17 A They were over here under the carport when they
18 were outside talking, and I was like directly
19 behind it.

20 Q Okay. So that would have been -- if you're looking
21 at the house, on the left side of the house, if
22 you're standing on the road looking at the house?

23 A Yes.

24 Q So when you said they went around the house, you
25 mean they kind of went around to the front of the

1 house?

2 A They went around to the front of the house.

3 Q At that point in time could you see them?

4 A No.

5 Q Could you still hear them?

6 A Not that I can recall.

7 Q At any point in time after they went around the
8 house, did you see or hear anything else?

9 A I heard the gunshot and her yelling for help.

10 Q Okay. And was there -- do you know how long that
11 would be from the time they walked around the
12 house?

13 A It wasn't very long, probably a minute, maybe,
14 minute or two. It wasn't long at all.

15 Q And after hearing what sounded like a gunshot and
16 the screaming for help, what did you do next?

17 A I ran down there and I called 9-1-1.

18 Q Okay. When you first ran down there, what did you
19 observe?

20 A He was laying on the porch, you know, bleeding from
21 the neck. And she was over him yelling help and
22 trying to apply pressure, I'm assuming.

23 (WHEREUPON, State's Exhibit No. 2 was
24 marked for identification only.)

25 BY MR. JUSTIS:

1 Q I'm showing you what is marked as State's 2. Is
2 that the porch you are referring to?

3 A It is.

4 Q And you stated he was laying on the porch?

5 A He was.

6 Q Was he on his back or front?

7 A He was on his back.

8 Q And where on the porch was he laying, was he closer
9 to the steps or further away?

10 A It's not really a very big porch, so I would say he
11 was kind of -- his head was kind of closer to the
12 step area.

13 Q And you stated that she was -- was she standing
14 over him?

15 A She was just sitting down at his head area.

16 Q Okay. And did you go up on the porch?

17 A No.

18 Q How far or how close did you get to Ms. Herndon and
19 Christopher?

20 A Just the end of the steps at the walkway area.

21 Q And did Ms. Herndon say anything to you when you
22 arrived at the porch?

23 A I can just remember her yelling for help.

24 Q And what did you do at that point?

25 A I was on the phone with 9-1-1 talking to them,

1 trying to get them there and just telling her she
2 needed to apply pressure and, you know, that's
3 about it.

4 Q So you were talking to 9-1-1 and also kind of
5 conversing with Ms. Herndon?

6 A Yes, telling her that they were on the way.

7 Q And what else did you do after -- as you're on the
8 phone, did you go anywhere else?

9 A No, I didn't go anywhere else. Mr. Terry, at that
10 time, he was down there, not in her yard, but on
11 the other side of the fence. And I had him take
12 off his shirt and give it to her so she could try
13 and wrap it around him to apply pressure.

14 Q And at some point subsequent to that, after that,
15 did an ambulance or police arrive?

16 A They did.

17 Q Now, Mr. Rowley, you stated that he's --
18 Christopher, he's laying on the porch on his back?

19 A Uh-huh.

20 Q Did he ever get up?

21 A He did. He got -- he stood up and kind of wavered
22 a little bit, and you could see the color coming
23 out of his face and, you know, he was pouring
24 blood. And I was telling him that he didn't need
25 to get up, he just needed to lay down and be still.

1 And he looked like he was trying to talk. And then
2 he just fell back into the chair and he was out,
3 kind of fell down.

4 Q Okay.

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

6 (Pause.)

7 MR. JUSTIS: No further questions. Please
8 answer any questions the Defense might have.

9 CROSS-EXAMINATION

10 BY MR. LEIENDECKER:

11 Q Good morning, Ms. Wiggins.

12 A Good morning.

13 Q You observed these events while you were working in
14 the yard behind Ms. Herndon's house; is that right?

15 A Correct.

16 Q And you saw the two of them pull up and you saw an
17 argument in the side yard that moved to the front
18 yard; correct?

19 A Correct.

20 Q They were out of your view once they left the park
21 area, the driveway, and moved in front of the house
22 because the house blocked your view; is that right?

23 A Correct.

24 Q So at that point, all you're doing is hearing;
25 correct?

1 A The gunshot. I didn't really hear them arguing or
2 anything like that after that.

3 Q Can I hand you a statement you gave just about 30
4 minutes after this event at --

5 A You sure can.

6 Q -- about 2:30 just to give you a chance to look
7 over what you wrote down that day?

8 (Pause.)

9 Q On that day, on November 6th, you actually told
10 police you did hear what she was saying and yelling
11 to him and that she was yelling to get out of her
12 house, to get off of her property, and that she
13 yelled this for a few minutes --

14 A Yes, sir.

15 Q -- at him?

16 A That is when they were over there arguing.

17 Q So --

18 A Where I could see them.

19 Q So you did hear and understand what was being said
20 by her?

21 A Yes.

22 Q And what she was saying was, Get out of my house,
23 get off of my property?

24 A Correct.

25 Q And they moved to the front and you weren't certain

1 whether you heard them or what they were saying?

2 A I don't know what happened at that point. I just
3 heard the gunshot and I went down there.

4 Q And that was a few minutes after they disappeared
5 from your view?

6 A It was.

7 Q Okay. And then afterwards, you came down out of
8 concern and to provide help; correct?

9 A Correct.

10 Q And that's when you saw Robin trying to administer
11 to Chris on the front porch?

12 A Correct.

13 Q And your testimony, if I understood it, to the
14 Solicitor was that he was -- State's Exhibit 21,
15 which he showed you, which was the house, if I hand
16 that to you again, that he was on the front porch
17 close to the steps?

18 A Uh-huh.

19 Q Which would be right by the front door?

20 A That's where his head was, yeah. He was laying
21 right here going across.

22 Q Okay. Thank you. And you also testified that he
23 didn't stay there, but that he moved again, got up
24 and tried to stand -- or did stand up?

25 A Uh-huh.

1 Q But then fell back into the chair that was on the
2 porch?

3 A Yeah.

4 Q All right. Just one moment, I think I've got
5 everything. Thank you.

6 MR. LEIENDECKER: Thank you. Nothing further.

7 THE COURT: Yes, sir?

8 MR. JUSTIS: Nothing further, Your Honor.

9 THE COURT: Ma'am, you may step down.

10 Any objection to this witness being excused?

11 MR. JUSTIS: None from the State.

12 MR. LEIENDECKER: None from the Defense.

13 (Witness steps down and is excused.)

14 THE COURT: Call your next witness.

15 MR. JUSTIS: At this time the State calls

16 Lacey Burton.

17 (Witness approaches.)

18 THE CLERK: Place your left hand on the Bible,
19 raise your right.

20 (Witness complies.)

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

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Have a seat in the witness box,
2 stating your full name, and spelling your last for
3 the Court, please.

4 THE WITNESS: Lacey Burton, B-U-R-T-O-N.

5 LACEY BURTON,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JUSTIS:

9 Q Good morning, Ms. Burton. Could you tell the jury
10 where you currently live?

11 A And

12 Q How long have you lived there?

13 A Going on five years.

14 Q So you were living there back in November of 2013?

15 A Yes.

16 Q Let me turn your attention specifically to
17 November 6th of 2013. Do you remember that day?

18 A Yes.

19 Q Do you remember noticing anything unusual that day?

20 A Yes.

21 Q Could you tell the jury what you were doing that
22 day in the early afternoon hours?

23 A I was home and had to leave to go get my daughter.
24 I came out my house and heard a woman's voice
25 screaming and yelling. And sat in my car and

1 observed an argument between a male and female in
2 the front yard of my neighbor's house.

3 Q Okay. Now, when you say you came out of your
4 house, where is your house in relation to the
5 Defendant's house?

6 A On the same side of the road, two houses down.

7 Q Okay. So there is a house in between your house
8 and the Defendant's house?

9 A Yes, there's a trailer that sits back some.

10 Q So it's not directly in line with your house and
11 the Defendant's house, the trailer is behind both?

12 A Correct.

13 Q Is there anything obstructing your view between
14 your house and -- or your front yard and
15 Ms. Herndon's front yard?

16 A I have a clear view to her house. There's minimal
17 trees, but it's a clear view. So there's no houses
18 or buildings or anything like that.

19 Q Okay. And could you describe kind of how your car
20 was parked in your front yard?

21 A I wasn't in my driveway, I was parked in my front
22 yard parallel to my house. So when I'm sitting in
23 my car, I look straight ahead and I see her yard.

24 Q I'm showing you what has been marked as State's
25 Exhibit 2. Do you recognize that?

1 A Yes.

2 Q And what does that appear to be?

3 A The neighbor's house where I seen the two
4 individuals arguing.

5 Q Okay. And where would your house be in relation to
6 that photograph?

7 A Looking at her house, to the right.

8 Q So if you're on the street looking at her house, it
9 would be to the right?

10 A Yes.

11 Q So what was the first thing you observed or heard
12 when you came out of your house that afternoon?

13 A I heard a woman's voice. And then when I sat in my
14 car, I just seen a woman and a man. I didn't hear
15 the man yelling or arguing, I just heard the woman.
16 I couldn't make out what she was saying, but her
17 demeanor seemed like she was upset. She was pacing
18 back and forth and just yelling at the man.

19 Q Okay. So you came -- and when you first came out
20 of your house, did you stand on your porch for a
21 period of time? Did you --

22 A No. I looked over there because I heard the voice,
23 but as soon as I came out my house, I came and sat
24 in my car. I didn't sit on the porch.

25 Q And where were you planning on going that

1 afternoon?

2 A To pick up my child.

3 Q So when you got in the car, did you start up your
4 car?

5 A No.

6 Q And why didn't you start up your car?

7 A It was unusual to see them arguing. That's not
8 something that happens on a regular basis that I've
9 ever seen. Honestly, I was just being nosy, you
10 know, just...

11 Q Okay. So as you're sitting in your car and you're
12 observing this, you say that you could hear the
13 female, but not what she was saying?

14 A Say that one more time?

15 Q You could hear the female -- was she louder than
16 the male?

17 A I didn't hear the male at all.

18 Q Okay. And could you describe the demeanor of not
19 only the female, but the male?

20 A The male seemed pretty calm for having somebody
21 yell at him. He was kind of standing in one place.
22 She was very loud and walking back and forth,
23 yelling, and just looked upset.

24 Q Did either one of them have anything in their hands
25 that you could tell?

1 A Not that I could tell. Eventually, he did light a
2 cigarette as she walked into the house.

3 Q Okay. So how long would you say you're sitting in
4 your car observing this go on in your neighbor's
5 yard?

6 A I watched them for about three to five minutes
7 before she walked into the house.

8 Q When you say she walked into the house, how could
9 you tell she went into the house?

10 A I watched her walk up the steps. But as soon as
11 she gets on the porch, the way her house is, her
12 porch is only on one side and the side my house is
13 on, I don't see anything. So I'm assuming she
14 walked in the house because she walked up the steps
15 of the porch.

16 Q So you can see her go up the steps and then she
17 disappears from your view?

18 A Correct.

19 Q What does the male individual do at that point when
20 she walks up the steps?

21 A He continues to stand on the sidewalk and finishes
22 his cigarette. And then he walks up there
23 eventually.

24 Q And when he walks up there, what happens when he
25 walks up the stairs?

1 A Not long after is when I heard the gunshot.

2 Q And when you say not long after, how much time are
3 we talking?

4 A Seconds, like 30 to 60 seconds.

5 Q After hearing what you believe to be a gunshot, do
6 you see or hearing anything else?

7 A I hear a woman's voice again just yelling to
8 breathe. That's all I can make out, was breathe.

9 Q And what are you doing at this point?

10 A I'm in shock. I see the neighbor run down and then
11 she -- the woman is still yelling to breathe, and
12 then I called 9-1-1.

13 Q So where are you when you called 9-1-1?

14 A Still sitting in my car.

15 Q And did you have an opportunity to speak with
16 someone at 9-1-1?

17 A Yes.

18 Q Did you give that individual the information that
19 you had observed?

20 A Yes. I gave them my information and what I
21 observed. And they said they'll be in contact.

22 Q Okay. And at some point -- what did you do next?

23 A I left.

24 Q And at some point subsequent, some point after
25 that, were you contacted by law enforcement?

1 A Yes.

2 Q And when you were contacted by law enforcement, did
3 you give them a statement?

4 A I did.

5 Q Now, during the time -- let's kind of back track a
6 little bit to when you see them both in the yard.
7 I think you have testified he's standing there,
8 she's pacing back and forth, is that a fair
9 statement?

10 A Yes.

11 Q At any time did you see any kind of physical
12 altercation between the two individuals?

13 A From neither of them, no. She never got in his
14 face, or vice versa.

15 Q And how long did you observe them?

16 A About three to five minutes.

17 Q I think you testified you observed them until both
18 of them eventually went up the stairs?

19 A Right.

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

21 (Pause.)

22 BY MR. JUSTIS:

23 Q Lacey, let me ask you, so you're sitting in your
24 car and you see these people arguing and,
25 essentially, you're being nosy. You're trying to

1 see what's going on, see if you can hear what's
2 going on. And then at some point the lady walks up
3 the steps, and then eventually the male walks up
4 the steps?

5 A Yes.

6 Q At that point in time, do you intend to leave or
7 are you waiting or?

8 A I hadn't crank asked up my car yet. I was --
9 because the whole time I'm watching what's going
10 on, I'm sitting in my car and my car door is open.
11 So I'm kind of sitting there relaxed, watching.
12 And the gunshot happened too quick for me to crank
13 up and leave.

14 Q So before you got your door shut and cranked up
15 after they left, you heard a gunshot?

16 A Yes.

17 MR. JUSTIS: Thank you. No further questions.
18 Please answer any questions the Defense might have.

19 CROSS-EXAMINATION

20 BY MR. LEIENDECKER:

21 Q Good morning, Ms. Burton.

22 A Good morning.

23 Q Ms. Burton, it is your testimony here today that
24 you saw all this from your house, which is a couple
25 of doors down from Robin's?

1 A Yes.

2 Q These aren't small lots, so by a couple of doors
3 down it is literally 250, 280 feet? It is not
4 quite a football field, but it's close, isn't it,
5 to that kind of distance?

6 A I don't know how big a football field is.

7 Q A hundred yards, 300 feet.

8 A Yes.

9 Q Okay. And it was further your testimony that you
10 watched all this sitting in your car; right?

11 A Yes.

12 Q Do you remember giving a statement to the police
13 just days after the event?

14 A It was about a week later, yes.

15 Q Okay. On November the 12th, six days later, just
16 about a week later, you gave a statement to the
17 police regarding what happened; is that right?

18 A Yes.

19 Q Can I hand you that statement so you can review it?

20 A Uh-huh.

21 (Complies.)

22 Q That is the statement you gave the police; is that
23 right?

24 A Yes.

25 Q And at the time you gave it, that was your honest,

1 fair and accurate estimate of what you had seen
2 that day and what had happened to you that day;
3 correct?

4 A Yes.

5 Q And you would agree with me that your actual memory
6 of what happened that day six days later is
7 probably better than your memory of what happened
8 today?

9 A Yes.

10 Q Correct? All right. I'd like to show you a couple
11 of photographs. The first one is marked
12 Defendant's Exhibit 20. Take a look at that
13 photograph and tell me, if you can, where that
14 photograph was taken and what it's looking at.

15 A It's from my front porch to Ms. Robin's house.

16 Q Okay. And is that a fair and accurate
17 representation of what it looked like on
18 November 6th, 2013?

19 A From the porch, yes.

20 Q From the porch?

21 A Uh-huh.

22 Q All right.

23 MR. LEIENDECKER: I would move this picture
24 into evidence.

25 THE COURT: Any objection?

1 What's the number again?

2 MR. LEIENDECKER: Defendant Number 20.

3 MR. JUSTIS: No objection, Your Honor.

4 THE COURT: It will be entered without
5 objection.

6 (WHEREUPON, Defendant's Exhibit No. 20
7 was marked for identification and
8 received into evidence.)

9 BY MR. LEIENDECKER:

10 Q Now, I'm going to show you what's marked Defendant
11 Exhibit Number 23 and ask you to look at that
12 photograph, if you will. Does this photograph --
13 doesn't this photograph reflect the front yard of
14 your house where your car would have been parked?

15 A Yes.

16 Q And it pulls off the driveway and points over so
17 that from that spot you are looking at Ms. Robin
18 Herndon's house; is that right?

19 A Yes.

20 Q Okay. And is that a fair and accurate
21 representation of what the view looked like from
22 that spot on November 6th, 2013?

23 A Yes.

24 Q Okay.

25 MR. LEIENDECKER: I would also move

1 Defendant's Exhibit 23 into evidence.

2 THE COURT: Any objection?

3 MR. JUSTIS: No objection, Your Honor.

4 (WHEREUPON, Defendant's Exhibit No. 23
5 was marked for identification and
6 received into evidence.)

7 BY MR. LEIENDECKER:

8 Q Those photographs aren't totally accurate because
9 the foliage is different in February when those
10 pictures were taken versus November, wouldn't that
11 be fair to say?

12 A Yes.

13 Q In fact, there's significantly more leaves on the
14 trees back --

15 MR. JUSTIS: Objection, Your Honor. May we
16 approach?

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

20 THE COURT: All right. Yes, sir.

21 BY MR. LEIENDECKER:

22 Q Ms. Burton, I'm going to show you what you have
23 already looked at and identified as Ms. Herndon's
24 house looking down the side yard towards your
25 property. And that is State's Exhibit Number 2.

1 You remember that photograph; right?

2 A Yes.

3 Q Then I'm going to show you what you have already
4 looked at and identified as pictures from your
5 property, Number 20 and 23, okay?

6 A Okay.

7 Q You would agree with me that the trees shown in the
8 picture from November of 2013 have significantly
9 more leaves than the views I'm showing you from
10 your property in 20 and 23; correct?

11 A I don't know. I don't remember there being a lot
12 of leaves.

13 Q I'm not asking you to remember, I'm not asking you
14 to do anything. I'm asking you to look at that
15 picture which was taken November 6th, 2013, State's
16 Exhibit Number 2, of Robin's house. You see the
17 photograph I'm talking about?

18 A Uh-huh.

19 Q You see the tree there between Robin's house and
20 your house?

21 A Uh-huh.

22 Q Has full leaves on it, doesn't it?

23 A The tree in her yard, yes.

24 Q Okay. And that tree would have been between your
25 house and her house?

1 A Yes.

2 Q All right. That's all I'm asking.

3 A Uh-huh.

4 Q Thank you.

5 Your testimony today was that you came out of
6 your house and you went right down to your car and
7 you got in your car and sat down and watched this
8 argument?

9 A Yes.

10 Q Your statement on November 6th, 2013 -- on the 12th
11 about November 6th, 2013, was that:

12 As I was leaving my residence and as soon as I
13 came out of my front door, I heard a woman's voice
14 yelling very loud. I looked to my right and there
15 was a man and woman standing in their yard. The
16 woman appeared to be very upset.

17 So on that day you say you observed this fight
18 from your porch?

19 A I wasn't clear where I was, but I heard her from my
20 porch, I didn't see her from my porch.

21 Q You further down in your statement say that you
22 can't hear what they're saying. She's yelling.
23 She's moving around. You never hear him yell. You
24 don't know what his responses are. You never
25 notice -- you told the Solicitor you never noticed

1 them get physical. The woman continues to yell at
2 the man for three to five minutes.

3 And at this point, at this point -- let me
4 show you -- the woman -- can you pick up right
5 there?

6 Continues to yell about three to five minutes.
7 And at this point, I get into my car. I'm just
8 getting to my car and I get into my car.

9 That's what you told them on the 12th; isn't
10 it?

11 A Yes.

12 Q That's different than what you told me today. You
13 weren't sitting in your car watching them argue
14 facing their front yard. You watched them argue
15 three to five minutes, then you got in your car;
16 right? Does that refresh your recollection as to
17 what really happened?

18 A No. I came out being nosy, so I'm walking slowly
19 in the front of my car and I get in.

20 Q It took you three to five minutes to walk from your
21 front porch and get in your car?

22 A No.

23 Q That's what you said that day, on the 12th?

24 A From my memory, everything I seen, I was sitting in
25 my car, so.

1 Q From your memory today?

2 A Correct.

3 Q But that's not what you told the police just days
4 after the event; is it?

5 A No.

6 MR. LEIENDECKER: No further questions.

7 THE COURT: Yes, sir?

8 REDIRECT EXAMINATION

9 BY MR. JUSTIS:

10 Q Ms. Burton, when you came out of your house and you
11 noticed this arguing or whatnot, did you happen to
12 look at your watch and time how long it was?

13 A No.

14 Q So when you wrote three to five minutes, are you --
15 you know, was that an exact time?

16 A It was an estimation.

17 Q I'm showing you what has been marked as Defendant's
18 Exhibit 23 and State's Exhibit 2. These are the
19 two pictures Mr. Leiendecker showed you. All
20 right. The trees that you see in those two
21 photographs, are you sure that they are the same
22 exact trees that are depicted in each photograph?

23 A No. They are trees from her yard and then trees
24 from --

25 Q In fact, would you agree with me that these trees

1 are actually behind the house?

2 A Correct.

3 Q So they are not in the front yard?

4 A Correct.

5 Q And let me ask you one other question. When you're
6 observing these two individuals, I think you
7 testified that you saw the male light up and smoke
8 a cigarette?

9 A Yes.

10 Q And you could see that all the way from wherever
11 you were, whether you're on the porch, in the front
12 yard, in the car, whatever, you saw this man, a
13 football field away or whatever, with a cigarette;
14 is that correct?

15 A Yes.

16 MR. JUSTIS: Thank you. No further questions.

17 THE COURT: Anything else?

18 REDIRECT EXAMINATION

19 BY MR. LEIENDECKER:

20 Q Ms. Burton, if I understand, you're telling us
21 today that these times you're talking about, those
22 are really just guesstimates or estimates, you
23 weren't really keeping track?

24 A Yes.

25 MR. LEIENDECKER: No further questions.

1 THE COURT: All right, ma'am, you may step
2 down.

3 Any objection to this witness being excused?

4 MR. JUSTIS: No objection from the State.

5 MR. LEIENDECKER: No objection.

6 (Witness steps down and is excused.)

7 THE COURT: Call your next witness.

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

10 (Witness approaches.)

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

13 (Witness complies.)

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

18 THE WITNESS: Yes.

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

22 THE WITNESS: I'm 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. JUSTIS:

Q Goods afternoon, Lieutenant. If you would, please tell the jury where it is you're employed.

A Aiken County Sheriff's Office.

Q And what are your current duties with the Aiken County Sheriff's Office?

A Currently assigned to the B Shift, patrol supervisor, temporarily detailed to Security and IT Systems Infrastructure.

Q How long have you been employed with the Sheriff's Office?

A Almost 18 years.

Q And how long have you been employed as your current -- as lieutenant?

A Approximately 14.

Q And back in November of 2013, obviously you would have been employed in that capacity at that time?

A That's correct.

Q And I will turn your attention, did you have an opportunity to respond to a call on the afternoon of November 6th of 2013?

A I did.

Q Okay. And where was that call that you responded to?

1 A I was dispatched to a shooting incident to
2 Sudlow Lake Road in North Augusta, located in Aiken
3 County.

4 Q Okay. What time were y'all dispatched to that
5 shooting call?

6 A Approximately 2:14 in the afternoon.

7 Q About what time did you arrive at that scene?

8 A Approximately four minutes later, at about 2:18.

9 Q Okay. And were you the first officer on the scene?

10 A I was.

11 Q Another officer arrived pretty much at the same
12 time as you?

13 A That's correct.

14 Q Who is that?

15 A Deputy Roberts at the time, now Abdullah.

16 Q And if you would, Lieutenant, describe kind of that
17 scene when you arrived there, what was going on?

18 A Upon arrival, there were two individuals that were
19 located toward the end of the driveway right at the
20 roadway, one male, one female, that appeared to be
21 directing us to that residence. There also -- once
22 pulling into the driveway, you could see some other
23 individuals on the porch of the residence.

24 Q Okay. If you would, describe kind of those
25 individuals that you saw up on the porch. What

1 appeared to be going on up there?

2 A I observed one female that was -- appeared frantic.
3 She appeared to be screaming. I also observed one
4 male who was sitting a plastic, lawn-type chair
5 sitting on the porch with blood on the shirt.

6 Q At that point in time, did you -- the female, did
7 you notice anything else about her at that point in
8 time?

9 A Upon approaching that incident, approaching the
10 porch further, did observe the blood on the shirt
11 of the male individual. The female was very
12 frantic. She was screaming, Help him. And at that
13 time I observed a holster on her side, an empty
14 holster on her side.

15 Q As a result of you responding to a shooting
16 incident and then seeing a holster, an empty
17 holster on a party that was out there, what was
18 your natural question at that point in time?

19 A Due to scene security and safety, we began
20 questioning trying to find out where the weapon was
21 or what had transpired, so we were asking the
22 female who -- where a weapon was -- where a weapon
23 was.

24 Q Who was that female you were asking at that time?

25 A The Defendant, Ms. Herndon.

1 Q Robin Herndon on the right at the Defense table?

2 A It is.

3 Q And did she indicate to you at that point in time
4 where that firearm was located at?

5 A She did. She had stated that it was inside,
6 indicating toward the inside of the residence.

7 Q And did you at that point in time, before dealing
8 with them further, do anything, Lieutenant?

9 A I did. Due to scene safety and security, I made
10 entry into the residence observing that there was a
11 closed storm glass door and an open wood front door
12 to the residence. Immediately opening that door,
13 to make sure that there was nobody just inside due
14 to the incident being a shooting incident and
15 needing to discover where the weapon was for our
16 safety and the safety of the First Responders, upon
17 opening of the glass door, I did notice a weapon
18 immediately just inside that glass door at the
19 threshold of the door.

20 Q What did you do with that weapon?

21 A I immediately grabbed it, just grabbing it by the
22 grip. I then removed it from the residence and
23 moved back to my patrol vehicle, placing it, I
24 believe, in the rear floorboard of my vehicle and
25 immediately locking or securing it with myself the

1 only person having key access or any access to that
2 vehicle.

3 MR. SORENSON: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, sir.

6 (Complies.)

7 BY MR. SORENSON:

8 Q Lieutenant, if I can show you a handful of
9 photographs, State's Exhibits 8, 13, 16 and 21, and
10 ask you if you recognize those photographs?

11 A I do.

12 Q Do those fairly accurately depict that area that
13 you've talked about kind of initially coming up to
14 the house and locating the Defendant and the victim
15 in this case, and also where the weapon was
16 recovered?

17 A They do.

18 MR. SORENSON: Your Honor, at this time we
19 would offer those four into evidence?

20 THE COURT: What are they?

21 MR. SORENSON: Eight, 13, 16, and 21.

22 MS. HINDS: No objection, Your Honor.

23 THE COURT: All right. Those will be entered
24 without objection.

25

1 (WHEREUPON, State's Exhibit No. 8 was
2 marked for identification and received
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 13 was
5 marked for identification and received
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 16 was
8 marked for identification and received
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 21 was
11 marked for identification and received
12 into evidence.)

13 MR. SORENSON: Your Honor, if I could publish
14 them to the jury? I think we can use the computer
15 and television to do that.

16 THE COURT: All right, yes, sir.

17 (Exhibits published to jury.)

18 BY MR. SORENSON:

19 Q I'm showing you -- can you see that television
20 there?

21 A I can.

22 Q Showing you State's Exhibit 21, is that the
23 photograph that is depicted up on the TV screen?

24 A It is.

25 Q Okay. And tell them --

1 MR. SORENSON: Actually, can I have him step
2 down, Your Honor?

3 THE COURT: Yes.

4 (Witness steps down.)

5 BY MR. SORENSON:

6 Q And what is depicted in State's Exhibit Number 21?

7 A This would be the -- facing from the roadway, the
8 front of the Defendant's residence, showing the
9 porch of the residence.

10 Q I see there is a chair kind of on the sidewalk, I
11 guess on the other side of this kind of grass or
12 whatever it is there?

13 A It is. There is a sidewalk and a parking area for
14 the driveway here. Coming down the sidewalk, there
15 is a white plastic lawn chair, which upon my
16 arrival was up on the porch just to the left of the
17 front door. And that is what the shooting victim,
18 Mr. Rowley -- later identified as Mr. Rowley -- was
19 sitting in at that time.

20 Q Part of the chair in it down there?

21 A When we had to perform medical care for the victim,
22 we had to remove him from that chair. It's a very
23 tight front porch. The chair was tossed down into
24 the front yard to get some more space to be able to
25 perform medical.

1 Q Showing you State's Exhibit Number 8, what does
2 State's 8 show there?

3 A This shows the front porch from the porch -- this
4 would be the front door of the residence with the
5 glass storm door. The chair, the white plastic
6 lawn chair, was originally placed right here, and
7 he was originally sitting in that chair right
8 there. We then had moved the chair off the porch
9 and we had to lay Mr. Rowley down to perform
10 healthcare on him at that point.

11 Q Okay. All right. And then you indicated --
12 actually, let's go to State's 16. You indicated
13 that when you came in the -- that Ms. Herndon had
14 indicated to you that the firearm was inside the
15 residence?

16 A That's correct.

17 Q And show the jury, if you would, where it was
18 located, if this picture shows where it was.

19 A From the front porch, I entered through the glass
20 door with this door open. Upon immediately opening
21 that door, it was noticed that the weapon was right
22 near the threshold. I could not state whether -- I
23 can't recall whether it was on the threshold or
24 just right here at the threshold, which would be
25 this wooden metal strip, that's what I'm

1 describing, so right in this general area.

2 Q And you indicated that you secured that at that
3 time?

4 A I did.

5 Q Did you see -- upon securing that weapon, did you
6 notice anything else right inside that front door
7 area?

8 A Yes. Upon immediately opening the door, the gun
9 was apparent. Also, there was a shell casing here
10 identified by an evidence marker tag that was not
11 present at the initial entry. It was placed by our
12 evidence technicians. There was a spent shell
13 casing just right here.

14 Q Go to, if you would, State's 13. Does that show
15 basically that same front door area, just from a
16 different angle, I guess?

17 A Correct. That would be entering from the front
18 porch behind this entertainment center -- would
19 have been just on the other side of this
20 entertainment center would have been where the
21 handgun was located, and the shell casing would
22 have been over in this area right about there.

23 Q That probably be it right about there?

24 A Yes, that's correct.

25 Q Okay. You can have a seat.

1 (Witness returns to witness stand.)

2 Q Lieutenant Padgett, you had indicated that a
3 firearm that you found just inside the threshold of
4 the door, that you collected that?

5 A I did.

6 Q Is that correct? I show you what has been marked
7 as State's Exhibit Number 36, and see if you
8 recognize that item?

9 A I do. It appears to be the same black Glock
10 handgun that was secured by myself at that time.

11 MR. SORENSON: Your Honor, at this time we
12 would offer State's 36 into evidence.

13 THE COURT: Any objection?

14 MS. HINDS: No objection.

15 (WHEREUPON, State's Exhibit No. 36 was
16 marked for identification and received
17 into evidence.)

18 BY MR. SORENSON:

19 Q And State's 36, obviously it has got a gun lock in
20 it now; is that correct?

21 A That's correct.

22 Q And that wasn't there, I assume, that day?

23 A That was not.

24 Q What kind of weapon is this?

25 A It's a Glock handgun, .40 caliber, I believe.

1 Q And you indicated that you secured this State's 36
2 in your patrol vehicle?

3 A That's correct.

4 Q Did you ultimately turn that over to somebody?

5 A Once our evidence technicians arrived, I escorted
6 one of them to -- back to my vehicle where I
7 unlocked it and released it to Investigator Watts.

8 Q That is O'Grady now?

9 A O'Grady now.

10 Q Same person. As far as the shell casing that you
11 pointed out to the jury, did you collect that or
12 did --

13 A I did not. There was no evidence other than that
14 handgun removed by myself from the residence.

15 Q The rest of the stuff crime scene investigators
16 would have handled?

17 A That's correct.

18 Q Ultimately, after securing that weapon in your
19 patrol car, what did you to at that time,
20 Lieutenant?

21 A After securing the weapon in my patrol car, I
22 returned to the front porch and I -- one moment,
23 please. Let me refresh my memory.

24 Q Okay.

25 (Pause.)

1 A Upon placing the handgun into my vehicle, I did
2 return to the porch. Ms. Herndon at that time was
3 still up on the porch, so the secondary officer
4 that was with me, I had her remove her from the
5 porch to give us a little bit more space and to
6 assist Officer Justin Goodwin with removing
7 Mr. Rowley from the chair and placing him onto the
8 ground.

9 Q Okay. At that point in time -- did EMS ultimately
10 come and attempt to treat Mr. Rowley?

11 A They did. At some point around that time, EMS was
12 en route and arrived on scene.

13 Q Did they actually transport him from the scene?

14 A They did.

15 Q Now, Ms. Herndon, you indicated she was removed
16 from the porch area. Did you have an opportunity
17 at that time to talk to her out there?

18 A I did. After helping Officer Goodwin remove Rowley
19 to the ground so he could start performing medical
20 techniques on him, I did return to the yard where
21 Deputy Roberts, now Abdullah, were standing with
22 Ms. Herndon to find out what had transpired of any
23 type, who was involved or what was going on, I did
24 speak with Ms. Herndon.

25 Q So at that point in time, did you have any idea who

1 had shot Mr. Rowley or anything about what had
2 happened?

3 A No. At that time, we had not spoken to any
4 individuals or had any statements from anyone
5 giving us any indication of what had transpired.

6 Q Out there then at the scene then, what did the
7 Defendant, Ms. Herndon, indicate to you out there?

8 A Ms. Herndon advised that she and Mr. Rowley had
9 been arguing. They had been pushing each other.
10 At some point in time she stated she had actually
11 ended up on the ground. She stated that they
12 started pushing and fighting again. The victim --
13 she then stated that the victim grabbed her and she
14 drew her handgun and ordered him back away from
15 her. She stated that Mr. Rowley then grabbed her
16 again, at which time she stated her gun discharged.

17 Q Now, at that point in time after -- let me ask you
18 this. Were other officers with the Aiken County
19 Sheriff's Office called out there to the scene
20 then?

21 A There were multiple officers called out and some
22 had started arriving at that point.

23 Q Investigators that came out?

24 A Correct. They were investigators that arrived,
25 including Lieutenant Fleury.

1 Q Obviously, Crime Scene that you talked about
2 turning over the gun to; is that correct?

3 A Correct.

4 Q Was a decision made by somebody in that capacity to
5 do something with the Defendant at that time?

6 A It was. Once senior criminal investigative
7 officers arrived on scene, which was Lieutenant
8 Fleury, advised him of the situation and control of
9 the scene, and at which time he also advised Deputy
10 Roberts to transport Ms. Herndon up to the Aiken
11 County Sheriff's Office.

12 Q Was that done, to the best of your knowledge?

13 A That was.

14 Q Let me ask you -- I probably should have asked
15 this, looking at my notes here. At some point in
16 time did somebody make sure that there was nobody
17 else inside that residence?

18 A Yes. After speaking with Ms. Herndon, due to the
19 medical personnel that would be arriving, First
20 Responders, I entered the residence to do an
21 initial sweep for persons only for scene safety to
22 make sure nobody would surprise us or harm us.

23 Q Anybody else inside?

24 A Nobody else was located.

25 Q You see any -- in your kind of sweep of that

1 residence, are you aware of any areas of
2 disturbance inside the residence in your brief time
3 of looking through it?

4 A Not that I can recall.

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

6 (Pause.)

7 MR. SORENSON: Thank you, Lieutenant. Please
8 answer any questions that Ms. Hinds may have for
9 you.

10 MS. HINDS: Beg the Court's indulgence for
11 just a moment.

12 (Pause.)

13 CROSS-EXAMINATION

14 BY MS. HINDS:

15 Q Good afternoon.

16 A Afternoon.

17 Q Okay. I think your testimony was that you were the
18 first one on the scene; correct?

19 A That's correct.

20 Q And that you saw a frantic -- in your words,
21 frantic female?

22 A That's correct.

23 Q And she was saying, Help him?

24 A That's correct.

25 Q Correct? And probably more than saying, Help him,

1 would you say?

2 A She was screaming.

3 Q Screaming. Okay. Your testimony was that,
4 obviously this was -- you determined there was a
5 gunshot wound; correct?

6 A Correct.

7 Q You were concerned, especially after you saw the
8 empty holster, in trying to find a weapon; correct?

9 A That's correct.

10 Q So you asked Ms. Herndon where the weapon was?

11 A Yes.

12 Q Okay. And she immediately responded to you?

13 A Yes.

14 Q And she told you that it was inside the residence;
15 correct?

16 A She did.

17 Q You ultimately go inside the residence, and that's
18 where the gun is found; correct?

19 A Right. Just inside that glass door right there at
20 the threshold.

21 Q Did you do anything to mark the area where it was
22 found?

23 A No. No. Due to safety and the immediate -- having
24 to deal with the patient care, we can't mark it --
25 I mean, we don't have time. We've got a person

1 that's shot. We immediately grabbed it from where
2 it was.

3 Q Okay. But in the photos that we were showing
4 before?

5 A Uh-huh.

6 Q There's -- you pointed out Police Marker 1, or
7 whatever, where that was where somebody from crime
8 scene investigation had actually marked the exact
9 spot where that shell casing was before it was
10 removed; correct?

11 A Correct.

12 Q But you are telling me because of officer safety
13 concerns that you moved the gun, you needed to get
14 it out and secure it; correct?

15 A Correct.

16 Q But you didn't leave any indication or get anybody
17 to mark where you were picking the gun up from?

18 A There was nobody else. There was myself. We have
19 a patient that's been shot on the front porch that
20 was needing medical care. Due to scene safety and
21 security, we have to secure that weapon. There's
22 nothing else that I can immediately grab. I'm
23 having to deal with a frantic situation with
24 somebody bleeding all over the place. That weapon
25 was immediately secured and placed in my vehicle.

1 The -- what you saw with the shell casing and that
2 marker comes at a much later time. When I say much
3 later, it could be minutes, it could be an hour, it
4 could be two hours, it just depends on when the
5 evidence technician goes in there to take the
6 photographs and mark them. But we don't carry
7 evidence markers on our person. We have to
8 immediately secure a weapon, especially because of
9 the danger it poses to the First Responders.

10 Q But there is a reason for that procedure, correct,
11 where the evidence technician goes in and actually
12 marks the spot before that piece of evidence is
13 removed; correct?

14 A Yes, but that's at a much later time when evidence
15 technicians arrive. Due to the situation and the
16 chaos of a scene, we don't have the abilities to
17 place markers down and take photographs of
18 incidents.

19 Q No, I understand you wouldn't have that yellow cone
20 on you, but you couldn't place anything? You
21 didn't have a pen on you?

22 A Ma'am, at that time, that's the last thing that
23 you're trying to deal with. You're trying to deal
24 with a patient that's shot that's right there
25 beside where the weapon is at, and you have a First

1 Responder trying to render medical aid. You want
2 to secure that weapon and move it out of the way.
3 So you remember it based on the best of your
4 recollection and what you're dealing with. And I
5 grabbed it and secured it from that location and
6 moved it.

7 Q And I respect that. And, again, this is to the
8 best of your recollection; correct?

9 A It is.

10 Q Nobody saw the gun before you picked it up?

11 A No.

12 Q And just for the kind of discussion we just had,
13 you didn't collect the casing for that very reason,
14 so that it could be properly marked at a later
15 date. There was no worry about anybody getting
16 hurt from it; correct?

17 A That's correct. A weapon can hurt somebody; a
18 bullet or shell casing can't without the weapon.

19 Q I understand. I think you also testified that you
20 did -- in that protective sweep, you were
21 questioned about did you see any disturbances, that
22 kind of thing. I believe your testimony was, Not
23 that I recall?

24 A Not that I recall.

25 Q Okay. In that protective sweep, are you actually

1 looking for the minutia of the room or are you just
2 trying to find out if there's anybody else in there
3 you need to worry about?

4 A The only thing I'm looking for is a person at that
5 point to make sure that we're not going to be
6 harmed.

7 MS. HINDS: Beg the Court's indulgence.

8 (Pause.)

9 MS. HINDS: No further questions.

10 THE COURT: All right. Anything else from the
11 State?

12 MR. SORENSON: Nothing on redirect.

13 THE COURT: All right, sir, you may step down.

14 (Witness steps down.)

15 THE BAILIFF: The food is here.

16 THE COURT: Let me see you all.

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

20 THE COURT: All right, ladies and gentlemen of
21 the jury, they tell me that your lunch is here, so
22 we will go ahead and stop for our lunch break. We
23 will start back up around 1:15. That should give
24 you enough time to eat and go to the restroom. I
25 don't know if we have any smokers or not. If we

1 do, you can speak with the bailiffs regarding
2 arrangements and going outside to smoke.

3 Remember, do not discuss the case during --
4 you are not to discuss the case until you begin
5 your deliberations. You cannot discuss anything
6 about the case or anything else going on here in
7 the courtroom.

8 Enjoy your lunch, and we'll have you all back
9 in about 45 minutes.

10 Thank you.

11 (WHEREUPON, the jury retires to the jury
12 room at 12:32 p.m.)

13 THE COURT: We'll start back at 1:15.

14 (WHEREUPON, a lunch break was taken.)

15 (WHEREUPON, State's Exhibit Nos. 37 - 41
16 were marked for identification only.)

17 THE COURT: Are you ready?

18 You can bring them on in.

19 (WHEREUPON, the jury came into open
20 court at 1:24 p.m.)

21 THE COURT: All right. Call your next
22 witness.

23 MR. SORENSON: Thank you, Your Honor. May it
24 please the Court? The State calls Dr. Janice Ross.

25 (Witness approaches.)

1 THE CLERK: Place your left hand on the Bible,
2 raise your right.

3 (Witness complies.)

4 THE CLERK: The testimony you shall give to
5 the Court and jury shall be the truth, the whole
6 truth, and nothing but the truth, so help you God?

7 THE WITNESS: I do.

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

11 THE WITNESS: Janice Edwards Ross, R-O-S-S.

12 JANICE E. ROSS,

13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SORENSON:

16 Q Good afternoon, Dr. Ross.

17 A Good afternoon.

18 Q If you would, please tell us where it is that you
19 are employed.

20 A With Newberry Pathology Associates in Newberry,
21 South Carolina.

22 Q What do you do with Newberry Pathology Associates?

23 A We do autopsies for the coroners. I am a forensic
24 pathologist.

25 Q And, if you would, tell us a little bit about your

1 educational background, if you would, Dr. Ross.

2 A Yes. I have a Bachelor's Degree from the
3 University of South Carolina and my M.D., Doctor of
4 Medicine, from Upstate Medical Center in Syracuse,
5 New York, where I did further training in the field
6 of pathology.

7 In pathology, we learn how to identify
8 diseases and cancers by using the microscope and
9 looking at tissue and using the laboratory work to
10 diagnose diseases. We further learn how to do an
11 autopsy to find a cause of death.

12 I did further training in the field of
13 forensic pathology, which pertains to legal
14 matters, homicides, suicides, rapes, that kind of
15 thing, where we learn how to do specific -- more
16 specific autopsy and finding patterns of injury and
17 documenting injuries and collecting specimens for
18 the purpose of the court of law.

19 Q And how long have you been with Newberry Pathology
20 Associates?

21 A Since May of 2000.

22 Q Is that -- and actually you own that, that is your
23 business that you own?

24 A Yes.

25 Q Are there any other pathologists that currently

1 work there with you?

2 A One other pathologist, but he's not certified.

3 Q And so since 2000 you indicated; is that correct?

4 A Correct.

5 Q And have you been -- part of your job there has
6 been performing autopsies for various counties
7 around the state for the last 15, 16 years?

8 A Yes.

9 Q And about how many autopsies do you think you've
10 performed during that time period?

11 A During that time period, probably 5,000. In my
12 entire career, it's close to 10,000.

13 Q Have you had an opportunity, Dr. Ross, on occasions
14 to come into courts around not only this state, but
15 also other states and testify as an expert witness
16 in the field of forensic pathology?

17 A Yes.

18 Q And how many times here in South Carolina
19 approximately have you been qualified as an expert
20 in that field?

21 A Two hundred times.

22 MR. SORENSON: Your Honor, at this time, we
23 would offer Dr. Ross as an expert in the field of
24 forensic pathology.

25 THE COURT: Any objection?

1 MS. HINDS: None, Your Honor.

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, normally a person cannot give opinion
4 testimony. Normally when a person testifies, they
5 must testify as to what they either saw, heard, or
6 sensed by smell, or something of that nature.
7 However, there is an exception in the law when
8 someone is qualified because of education and
9 experience. They are permitted to give their
10 opinion in certain areas if the Court qualifies
11 them that way.

12 This witness will be qualified in the area of
13 forensic pathology to give opinion testimony in
14 that area. That does not mean that you must accept
15 the opinion, but it is evidence for you to use in
16 any way that you see fit and give the weight and
17 credibility you believe is appropriate.

18 Thank you.

19 Yes, sir, you may proceed.

20 MR. SORENSON: Thank you, Your Honor.

21 BY MR. SORENSON:

22 Q And, Dr. Ross, if you would, tell the jury what an
23 autopsy consists of.

24 A Yes. First of all, the autopsy is scheduled and
25 authorized by the coroner of that county. The body

1 is brought to us in a body bag into the morgue at
2 Newberry County Memorial Hospital, where we open
3 the bag. We take photographs externally, take
4 any -- write down any clothing or valuables there.
5 And then afterwards we do an internal examination.

6 In a case such as this where there's an
7 evident gunshot wound, we also -- we do X-rays
8 before we start doing anything else.

9 Q Okay. And ultimately what are you hoping to
10 determine within a reasonable degree of medical
11 certainty by performing an autopsy?

12 A The cause and then the manner of death.

13 Q Okay. And what is -- just tell the jury what those
14 two different terms mean, cause of death and manner
15 of death.

16 A Cause of death is just what it says, what caused
17 the death. If it was a heart attack or a gunshot
18 wound or bleeding out from something.

19 The manner of death pertains to how that cause
20 of death came about. And there are five different
21 manners of death. It's natural, if you have a
22 heart attack; suicide; accident; homicide; and
23 sometimes we can't determine, so we just write down
24 undetermined.

25 Q Okay. And, Dr. Ross, let's turn you then to this

1 case that we're here for today. Did you have an
2 occasion the morning of November 7th of 2013 to
3 perform an autopsy on 31-year-old Christopher
4 Rowley?

5 A Yes.

6 Q And that was performed at the Newberry County
7 Hospital?

8 A Yes.

9 Q And, if you would, describe for the jury what that
10 kind of initial, general examination of
11 Mr. Rowley's body revealed.

12 A Yes. He came without clothing. And he had been a
13 donor for long bones, which we appreciate very
14 much. He had an evident entrance gunshot wound in
15 the neck, so we did X-rays of the head, neck and
16 chest.

17 Q And upon looking at that, at that general
18 examination of him, did you note any other injuries
19 to him besides that gunshot wound to his neck area?

20 A No, I did not.

21 Q Any injuries to his hand that you noted?

22 A No.

23 Q And then you indicated that as part of your
24 performing an autopsy that photographs are taken of
25 the injuries; is that correct?

1 A Correct.

2 Q And that was done in this case?

3 A Yes.

4 Q And also that X-rays are taken, especially in the
5 case of a gunshot wound, to see, I guess, if
6 there's a projectile present in the body?

7 A Correct.

8 Q And was that done in this case?

9 A Yes.

10 Q And was a projectile still in Mr. Rowley's body?

11 A Yes.

12 MR. SORENSON: And I beg the Court's
13 indulgence.

14 (Pause.)

15 BY MR. SORENSON:

16 Q And, Dr. Ross, I would show you two pictures,
17 State's Exhibit 1 and 24. First of all, State's
18 Exhibit Number 1. Does that fairly and accurately
19 depict that gunshot wound to Christopher Rowley's
20 neck area, throat area?

21 A Yes.

22 MR. SORENSON: Your Honor, at this time, we
23 would offer State's 1 into evidence.

24 THE COURT: Any objection?

25 MS. HINDS: No objection, Your Honor.

1 (WHEREUPON, State's Exhibit No. 1 was
2 marked for identification and received
3 into evidence.)

4 Q And then showing you State's Exhibit Number 24,
5 does that show -- is that a photograph, basically,
6 of the x-ray that was taken of Mr. Rowley's upper
7 body?

8 A That's correct.

9 Q And does that photograph depict in the X-ray where
10 the projectile was located?

11 A Yes, it does.

12 MR. SORENSON: Your Honor, at this time, we
13 would offer State's 24 into evidence.

14 THE COURT: Any objection?

15 MS. HINDS: No objection.

16 (WHEREUPON, State's Exhibit No. 24 was
17 marked for identification and received
18 into evidence.)

19 MR. SORENSON: Can I publish these to the
20 jury, Your Honor?

21 THE COURT: Yes, sir.

22 MR. SORENSON: May Dr. Ross step down, Your
23 Honor?

24 THE COURT: Yes, sir.

25 (Witness steps down.)

1 (Exhibits published to the jury.)

2 BY MR. SORENSON:

3 Q Dr. Ross, this is State's Exhibit Number 1. If you
4 would kind of point out to the jury what they're
5 seeing in that photograph.

6 A Yes. The entrance wound is right here. This is
7 the middle of the neck, so it's just to the right
8 of the midline of the lower neck. And we also
9 found these little pinpoint, what we call
10 stippling. When a bullet comes out of the end of
11 the gun, so does soot and pieces of powder. And if
12 the powder hits the skin, it causes little tiny
13 marks like this. The powder and the soot only go a
14 certain distance, whereas the bullet goes farther,
15 obviously. So when we see that, we call it an
16 intermediate range gunshot.

17 Q Okay. And what does that -- intermediate range
18 what does that mean distance-wise?

19 A It means the end of the gun was within a couple of
20 feet of the skin. The exact range depends on the
21 type of gun, the caliber, the type of ammunition --

22 THE COURT REPORTER: I'm sorry, I can't hear
23 you.

24 THE WITNESS: The type of -- the range depends
25 on the type of gun, the ammunition and the length

1 of the barrel, lots of things. But, in general, if
2 the gun is -- end of the gun is two feet or more
3 beyond the target, then you don't see the
4 stippling. But when you do see stippling, you can
5 say that it's within a foot or two of the target.

6 BY MR. SORENSON:

7 Q Okay. And then this gunshot wound here, Dr. Ross,
8 were you then able to ultimately perform your kind
9 of -- well, actually, before we get to that. On
10 State's Exhibit 24, does that show a blow-up of the
11 X-ray?

12 A Yes. You can see the bullet right here. It looks
13 like it's in the -- towards the shoulder area.
14 This is taking an X-ray from the front to back, so
15 it doesn't tell you how deep it is. But, actually,
16 this bullet was just underneath the skin of the
17 back, right back.

18 Q If I could get you to kind of show just on me just
19 so it's kind of oriented to the body. Can you kind
20 of show the jury about where you're talking about?

21 A About here. So the bullet -- the pathway is going
22 front to back, towards the right and slightly
23 downward.

24 Q Slightly lower than where -- I guess, the gunshot
25 wound is more up in the area up in this part here?

1 A Correct.

2 Q You can have a seat, Dr. Ross.

3 (Witness returns to witness stand.)

4 Q Now, Dr. Ross, that projectile that we saw in
5 State's Exhibit Number 24, were you able to
6 actually go in and retrieve that item?

7 A Yes.

8 Q Okay. Showing you State's Exhibit Number 37, do
9 you recognize that?

10 A Yes, this is the bullet retrieved from Christopher
11 Rowley at the time of the autopsy.

12 MR. SORENSON: At this time, we would offer
13 State's 37 into evidence.

14 MS. HINDS: No objection.

15 THE COURT: All right. It will be entered
16 without objection.

17 (WHEREUPON, State's Exhibit No. 37 was
18 marked for identification and received
19 into evidence.)

20 BY MR. SORENSON:

21 Q Now, Dr. Ross, you testified a moment ago kind of
22 when you were showing on me, you know, kind of the
23 path that that bullet took through Mr. Rowley's
24 body. Did that bullet strike any bone on the way
25 from kind of here to where it was located?

1 A It struck some ribs, but it went through the upper
2 right chest and went through the upper lobe of the
3 right lung causing a lot of hemorrhage internally.

4 Q Anything that would have caused that bullet to
5 ricochet in a downward angle to explain it
6 coming -- being located lower in his body than the
7 entrance wound?

8 A No, sir, bullets go straight.

9 Q Given where the location on Mr. Rowley of that
10 gunshot wound and the location of where you
11 retrieved State's Exhibit Number 37, what does that
12 tell you about how the gun had to have been
13 positioned when Mr. Rowley was shot?

14 A The gun would have had to be to the victim's left
15 and above the neck or the position -- the position
16 of the body, you can't tell from just one -- from
17 the direction of the bullet. The victim may have
18 been bent over. If they're face to face, if he's
19 bent over, then if the bullet is going straight,
20 when you put the person back upright, it looks like
21 it is going down.

22 Q So would that be consistent or inconsistent if
23 Mr. Rowley was coming up a flight of steps and the
24 shooter was up at the top of the steps?

25 MS. HINDS: Objection, Your Honor. This is

1 beyond the scope of a forensic pathologist to be
2 able to say. Now we're going into more crime scene
3 reconstruction, which she is not qualified as an
4 expert in.

5 THE COURT: All right. Let me see you all one
6 second.

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

10 THE COURT: Ladies and gentlemen of the jury,
11 I'm going to send you all out for a brief second
12 while I handle a matter of law.

13 (WHEREUPON, the jury retires to the jury
14 room at 1:42 p.m.)

15 THE COURT: All right. What is the objection
16 again? And then I'll be glad to hear from the
17 State regarding the question.

18 MS. HINDS: Your Honor, the objection is going
19 beyond the scope of a forensic pathologist into
20 actual crime scene reconstruction. He is asking
21 her specifically about the crime scene and what
22 happened there.

23 Again, we would say that she is imminently
24 qualified as a forensic pathologist, but once we
25 get into the realm of the crime scene, that is not

1 what she's qualified as an expert in. That is
2 not -- generally speaking, if the State desires to
3 enter opinion evidence on specialized knowledge of
4 witnesses, you qualify her, which they did.

5 Additionally, expert testimony specifically
6 receives additional scrutiny relative to other
7 evidentiary decisions.

8 A trial court, in its role as gatekeeper, must
9 make three preliminary findings which are
10 fundamental to Rule 702, before the jury may
11 consider that expert testimony. Again, we would --

12 THE COURT: Okay. You would -- let me ask
13 this. Would you agree that she's a forensic
14 pathologist, she can testify as to where the bullet
15 entered the body; is that correct?

16 MS. HINDS: Yes, ma'am.

17 THE COURT: Forensic pathologists can -- the
18 distance of the gun --

19 MS. HINDS: Yes, ma'am.

20 THE COURT: -- based on the wound? A forensic
21 pathologist can testify to the angle?

22 MS. HINDS: Yes, ma'am.

23 THE COURT: All right. Your concern is just
24 her testifying, giving opinion testimony as to --

25 MS. HINDS: Evidence that was found at the

1 crime scene, which she is not qualified to do.

2 THE COURT: Okay. What's your question?

3 MR. SORENSON: My question was, Is that wound
4 that you found on Mr. Rowley consistent or
5 inconsistent with him having been going up a flight
6 of stairs and the shooter basically being above him
7 when he was shot?

8 I don't see how that's any different than if
9 it's a situation where the issue is whether it's a
10 suicide or somebody else with her giving the
11 opinion on whether, you know, the person could have
12 fired the shot themselves or it had to be somebody
13 else.

14 I mean, I think that's clearly within her
15 realm of expertise to be able -- I mean, it doesn't
16 require her going out to the crime scene or even
17 seeing crime scene photos. I mean --

18 THE COURT: What is the question again?

19 MR. SORENSON: Is that wound consistent or
20 inconsistent with it having been fired if
21 Mr. Rowley was walking up a flight of steps and the
22 shooter was above him when he was shot? Consistent
23 or inconsistent. I think those -- it's an
24 allowable hypothetical question because I think
25 it's consistent with testimony this jury has

1 already heard now from Lacey Burton about him
2 coming up the steps and then hearing within
3 seconds.

4 THE COURT: Do you have any case law? The
5 only thing I find quickly -- and I'm asking the
6 Defense. The cases state that the pathologist,
7 forensic pathologist, can testify as to the
8 trajectory of the bullet. There is another case
9 where -- and there is another case, State v.
10 Matthews, that talks about the pathologist being
11 able to testify to the path of the bullet. And the
12 Court says it is probative of circumstances of the
13 crime and appellant's character.

14 MS. HINDS: Your Honor, again, I would direct
15 the Court to State v. Ellis. It is almost entirely
16 on point. In that particular case, there was a
17 police officer who was qualified as an expert, but
18 he was not specifically qualified as an expert on
19 crime scene reconstruction. Apparently, he had
20 actually done measurements, so forth, so forth, in
21 his other capacity. But when -- he was not allowed
22 to draw conclusions as to what could have happened
23 when the State's theory was something about this
24 guy riding on a bicycle. And they said that it's
25 reversible error to allow him to say --

1 THE COURT: That's a police officer -- that's
2 a police officer testifying. You're saying -- I'm
3 assuming in that case -- and I don't have the
4 state -- what's the cite for that one? Because
5 that would be a police officer testifying in the
6 place of what, I guess, a MAIT officer would
7 normally testify, is what you're referring to in
8 State v. Ellis. But she's a forensic pathologist.

9 MS. HINDS: Correct, Your Honor. And I do not
10 object to her testifying as to the site, or
11 whatever, but her own testimony said that she
12 couldn't tell what the position of the person -- of
13 the victim would have been when it was fired.
14 She's already said she can't determine that. Now,
15 you're asking her --

16 THE COURT: Did you ask that question?

17 MR. SORENSON: She said she can't tell that
18 because it all -- I mean, bullets travel in a
19 straight line, so it is basically -- the bullet is
20 going slightly down. So either she's above him
21 shooting down or he's bent over. I mean -- and she
22 testified to that.

23 So that's why I want to say, given what you
24 just said, is that consistent or inconsistent with
25 the victim coming up the steps and her being above

1 him --

2 MS. HINDS: That's an argument, that's the
3 ultimate opinion that's left for the jury. That's
4 a jury question.

5 THE COURT: She's an expert.

6 MR. SORENSON: She can give that.

7 THE COURT: She's qualified to give her
8 opinion. They can accept it or not accept it. You
9 can cross-examine her as to it. But she is --
10 she's an expert. She's giving opinion testimony --

11 MS. HINDS: She's an expert -- I'm sorry, Your
12 Honor.

13 THE COURT: -- on her expertise.

14 MS. HINDS: She's an expert on the X-rays, on
15 all the things that we did not object to up until
16 now. But once she starts projecting an opinion
17 onto what might or might not have been possible at
18 the crime scene, she has gone beyond the scope of
19 her expertise.

20 THE COURT: How is that any different if the
21 Defendant was laying on the ground at the time
22 that -- a Defendant was laying on the ground at the
23 time that the Defendant was shot and the
24 pathologist saying based on the angle of the
25 bullet, it is consistent with the bullet going in

1 of somebody laying on the ground?

2 MS. HINDS: The difference is we don't know.
3 We have different theories of what happened. We
4 don't know. They're going to argue the body was
5 one place, we're going to argue differently.

6 MR. SORENSON: And you're welcome to on
7 cross-examination ask her your hypothetical and see
8 what she says.

9 THE COURT: I'm going to allow the question.
10 I think based on her qualifications as a forensic
11 pathologist, she can answer that question, if she
12 can. If she can't, she can state that she cannot.

13 MR. SORENSON: Right.

14 THE COURT: You all can cross-examine her on
15 it, but I am going to allow the question. All
16 right. Your objection is noted for the record.

17 MS. HINDS: We would further ask about -- it's
18 State v. Ellis, 345 S.C. 175, 547 S.E.2d 400, 2001
19 case. And we would ask that our brief be made a
20 Court's Exhibit.

21 THE COURT: You don't cite Ellis in the brief,
22 but I'll make it a Court's Exhibit. All right.
23 That's fine. We'll make this Court's Exhibit
24 Number 2.

25

1 (WHEREUPON, Court's Exhibit No. 2 was
2 marked for identification only.)

3 THE COURT: All right, you can bring them in.
4 And that case is State v. Matthews.

5 MS. HINDS: Okay.

6 THE COURT: Hold on a second.

7 That is 296 S.C. 379, State v. Matthews, which
8 talks about the pathologist testifying regarding
9 the path of the bullet.

10 All right. Thank you.

11 (WHEREUPON, the jury came into open
12 court at 1:56 p.m.)

13 THE COURT: Yes, sir, you may continue.

14 MR. SORENSON: Thank you.

15 **DIRECT EXAMINATION CONTINUES:**

16 BY MR. SORENSON:

17 Q Dr. Ross, I think my question was before we broke
18 was giving you a hypothetical question. If
19 Mr. Rowley, the victim in this case, was walking up
20 a flight of steps and the shooter was above him,
21 shooting him as he is coming up those flight of
22 steps, is that consistent or inconsistent with the
23 wound that you found on him?

24 A It is consistent.

25 Q Tell the jury, this -- I believe you had mentioned

1 earlier that the wound ultimately ended up
2 lacerating his right lung; is that correct?

3 A Correct.

4 Q And what effect -- or what would have actually
5 occurred to Mr. Rowley? What effect of having that
6 happen to you have on a person?

7 A In lacerating the lung, the lung tissue will bleed
8 out a lot. So the blood is going out of the
9 circulatory system into the chest cavity, so it
10 deletes blood from going to your brain and your
11 heart. And that chest cavity was full of blood.

12 Q Would that wound also around his neck ultimately
13 start to bleed also?

14 A I did not go through the trachea, but it went
15 through blood vessels and that would bleed, yes.

16 Q And ultimately -- so he starts bleeding internally
17 and the chest cavity is filling up, cutting off
18 blood circulation to his brain, what is ultimately
19 going to happen to him then?

20 A He'll go unconscious because his brain is not
21 getting enough blood supply.

22 Q About how long would that -- would it be before
23 that would occur?

24 A Probably less than a minute.

25 Q And during that minute of time leading up to that,

1 would he have the ability still to move around?

2 A Yes.

3 Q Then how long after -- so he would have become
4 unconscious within a -- less than a minute or so.
5 How long before he actually would have -- without
6 immediate medical treatment would he have passed
7 away as a result of this?

8 A About four or five minutes.

9 Q As part of your autopsy, do you do a toxicology
10 screen --

11 A Yes, we do.

12 Q -- on the individual? Have you gotten the results
13 back on the tox screen in this case?

14 A Yes.

15 Q And what were the results of that tox screen?

16 A It was negative.

17 Q That would be they test for alcohol, I guess?

18 A They test for alcohol and drugs of abuse, like
19 narcotics.

20 Q And it was negative in all that?

21 A Correct.

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

23 (Pause.)

24 BY MR. SORENSON:

25 Q Lastly, Dr. Ross, were you ultimately able to

1 render in this case an opinion as to the -- within
2 a reasonable degree of medical certainty as to the
3 cause and manner of death of Mr. Rowley?

4 A Yes.

5 Q Would you tell the jury what that is?

6 A The word is exsanguination, which means to bleed
7 out due to the laceration of the lung, due to the
8 gunshot wound of the neck. The manner of death is
9 homicide.

10 MR. SORENSON: Thank you, Dr. Ross. Please
11 answer any questions Ms. Hinds has for you.

12 CROSS-EXAMINATION

13 BY MS. HINDS:

14 Q Good afternoon, Dr. Ross.

15 A Good afternoon.

16 Q I guess, let's talk about the toxicology results.

17 A Yes.

18 Q You said it was negative for alcohol?

19 A Yes.

20 Q Negative for what else?

21 A The drug screen includes narcotics, cocaine,
22 marijuana, things like methadone, amphetamines,
23 Valium.

24 Q Did you specifically check for Abilify?

25 A No.

1 Q Did you specifically check for Lithium?

2 A No.

3 Q So we don't know what the levels might have been;
4 correct?

5 A No.

6 Q I believe your testimony began at the beginning
7 going through exactly what gunpowder and what
8 firing a gun, what kind of residue it would leave,
9 we talked about stippling; correct?

10 A Yes.

11 Q And your testimony, just so I understand it, was
12 that it can vary because of the different weapons,
13 different barrel sizes, but generally if it is two
14 feet or more, there is no stippling; correct?

15 A Correct.

16 Q And that if it's within a foot or two, then that
17 would be what happened in this case?

18 A Yes.

19 Q Okay. So that would be your best guess as to how
20 far away the person was?

21 A That's correct.

22 Q Okay. And I believe Mr. Sorenson asked you about
23 did the bullet strike a bone. You said it struck
24 ribs, but basically went into his upper right
25 chest; is that correct?

1 A Yes.

2 Q And that caused him to hemorrhage internally;
3 correct?

4 A Right.

5 Q He asked you a little bit about trajectory, but I
6 believe -- and correct me if I'm wrong -- but your
7 testimony was that you realistically couldn't tell
8 since you weren't there what position that the
9 victim may have been in when he was shot, would
10 that be fair to say?

11 A Yes. All I can say is bullets go straight, so
12 however you can position the two people, it could
13 be several scenarios. The bullet goes straight, so
14 it goes from the neck -- if you are -- if the
15 person is in a standing position, it goes from the
16 right side of the neck, backward, downward, and to
17 the right.

18 Q In this particular case, you don't know what the
19 position of the bodies were; correct?

20 A No.

21 Q Okay. Mr. Sorenson asked you a hypothetical, okay,
22 which means that it is a hypothetical; correct?

23 A Correct.

24 Q It is a made-up scenario?

25 A Yes.

- 1 Q And he wanted your opinion; correct?
- 2 A Yes.
- 3 Q Okay. He talked about walking up the steps. Would
- 4 you know whether or not he was walking up the
- 5 steps?
- 6 A No. But that's one scenario that could --
- 7 Q That's one out of --
- 8 A -- would fit --
- 9 Q -- how many scenarios people could come up with;
- 10 correct?
- 11 A Yes.
- 12 Q In other words, that might be one interpretation,
- 13 but you cannot say that -- all you can -- you
- 14 cannot say that Mr. Rowley was walking up the
- 15 steps; correct?
- 16 A Correct.
- 17 Q Okay. And you explained exsanguination is
- 18 basically a bleeding out; correct?
- 19 A Correct.
- 20 Q But it was internal hemorrhage; is that correct?
- 21 A It's outside of the circulatory system, the blood
- 22 system, but inside the chest cavity.
- 23 Q Okay. That basically caused his chest cavity to
- 24 fill up with blood; correct?
- 25 A Yes.

1 MS. HINDS: Beg the Court's indulgence.

2 (Pause.)

3 BY MS. HINDS:

4 Q Dr. Ross, let me give you another hypothetical.

5 A Okay.

6 Q Is it possible that if the victim had -- or
7 Mr. Rowley had been charging Ms. Herndon or coming
8 at her, that would also be consistent with your
9 finding with the autopsy result?

10 A I don't know if he was charging, but if he was bent
11 over, it could -- that would fit the trajectory.

12 Q If he was bent over, it would fit the trajectory;
13 correct?

14 A Yes.

15 MS. HINDS: Thank you.

16 THE COURT: Yes, sir?

17 MR. SORENSON: Just one or two more questions.

18 REDIRECT EXAMINATION

19 BY MR. SORENSON:

20 Q Let me ask you, that bullet, when it struck him --
21 you know, we've all seen in TV and movies that when
22 somebody gets hit by a bullet, it just knocks them
23 back or knocks them down. If a 270- to 300-pound
24 man was charging forward, would that bullet have
25 dropped him?

1 A Yes. Bullets don't push people backwards. His
2 momentum might have carried him forward somewhat if
3 that were the case.

4 Q If he was charging?

5 A But the bullet wouldn't have changed his momentum.

6 THE COURT: All right. Anything else?

7 MS. HINDS: Nothing else, Your Honor.

8 THE COURT: All right. You may step down,
9 Doctor.

10 Any objection to this witness being excused?

11 MR. SORENSON: Not from the State, Your Honor.

12 MS. HINDS: No objection.

13 (Witness steps down and is excused.)

14 THE COURT: Call your next witness.

15 MR. SORENSON: The State calls Investigator
16 Mary Frances O'Grady.

17 (Witness approaches.)

18 THE CLERK: Place your left hand on the Bible,
19 raise your right.

20 (Witness complies.)

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

25 THE WITNESS: I do.

1 THE CLERK: Have a seat in the witness box,
2 stating your full name, spelling your last for the
3 Court, please.

4 THE WITNESS: Mary Frances O'Grady, O-
5 '-G-R-A-D-Y.

6 MARY FRANCES O'GRADY,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SORENSON:

10 Q Investigator O'Grady, if you would, tell us please
11 where it is that you're employed.

12 A Aiken County Sheriff's Office.

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

15 A Since January of 2001.

16 Q And what are your current duties there?

17 A I am part of the forensic units, one of the crime
18 scene investigators.

19 Q And you have been with Aiken since 2000 and --

20 A One.

21 Q One?

22 A One.

23 Q And where were you -- where did you work prior to
24 that?

25 A The Columbia Police Department.

1 Q And what years did you work for the Columbia Police
2 Department?

3 A May of 1995 until January of 2001. And then Cayce
4 Public Safety in February of '93 till May of '95.

5 Q And how many of those years then have you been
6 employed as a crime scene analyst?

7 A This is my 15th year.

8 Q And I want to turn your attention, if I could,
9 Investigator, back to November the 6th of 2013.
10 Did you have an occasion to respond out to
11 Sudlow Lake Road in North Augusta here in Aiken
12 County?

13 A I did.

14 Q And what was the purpose of you responding out
15 there that afternoon?

16 A There was a shooting incident that had taken place.

17 Q So what was your role, as a crime scene
18 investigator?

19 A We are -- our responsibility is for the evidentiary
20 aspect of the investigation.

21 Q And describe, if you would, what was going on when
22 you got out there that afternoon.

23 A There were a number of people that were there. It
24 was a matter of finding out exactly what had taken
25 place and basically that the scene had been taken

1 care of and then I go to work.

2 Q And had that scene been secured when you got out
3 there?

4 A Yes.

5 Q And let me ask you, this was a single family
6 residence?

7 A Yes, it is.

8 Q And prior to you actually searching and potentially
9 collecting evidence from that residence, is there
10 something that has to be done before you can do
11 that?

12 A Search warrant.

13 Q And had that been obtained yet, that search
14 warrant, when you arrived out there that day?

15 A Not then. We had to wait on it.

16 Q And ultimately did you get word -- or was that
17 delivered out there to you that the magistrate had
18 signed a search warrant allowing you to search that
19 residence for any evidence?

20 A Yes.

21 Q Tell the jury, in a case like this with a shooting
22 incident, how do you go about -- what are the steps
23 that you take in processing that crime scene?

24 A It is a matter of observation first. You see what
25 you are being given, what you are going to need to

1 do your job to collect the evidence, preserve it,
2 transport it. You're going to be there to document
3 every aspect of evidence, whether it be cars, guns,
4 blood, no matter what. You are also going to take
5 photographs and sometimes you will take video. But
6 it is a matter of documenting every aspect of the
7 scene for something like this today. You'll take
8 them -- take markers, you'll put them down in your
9 photographs so each one of them has an established
10 reference point.

11 Once you collect everything, you'll put it on
12 a chain of custody. It is deposited into the
13 evidence room for safekeeping. Once you hold it
14 for so long, depending on what is determined to be
15 taken to the state lab for analysis, you'll
16 transport it to that location for further
17 investigation.

18 Q So in this case here, did you have an occasion to
19 photograph this scene?

20 A Yes.

21 MR. SORENSON: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 (Complies.)

25 BY MR. SORENSON:

1 Q Let me show you initially State's Exhibits 8, 13,
2 16 and 21. These are already in evidence. Are
3 those four of the photos that you took?

4 A Yes.

5 Q And then additionally let me show you State's
6 Exhibits 2 through 7, 9 through 12, 14, 15, 17
7 through 20, 22, 23. Would you look through all
8 those?

9 A Yes, they are all mine.

10 Q They all fairly and accurately depict the crime
11 scene that you processed on the afternoon of
12 November 11th, 2013?

13 A They are.

14 MR. SORENSON: At this time, I'd offer those
15 into evidence.

16 THE COURT: Any objection?

17 MR. LEIENDECKER: No objection.

18 THE COURT: What are the numbers?

19 MR. SORENSON: It is 2 through 7, 9 through
20 12, 14 and 15, 17 through 20, 22 and 23.

21 THE COURT: Entered without objection.

22 MR. SORENSON: Thank you, Your Honor.

23 (WHEREUPON, State's Exhibit Nos. 2 - 7
24 were marked for identification and
25 received into evidence.)

1 (WHEREUPON, State's Exhibit No. 9 - 12
2 were marked for identification and
3 received into evidence.)

4 (WHEREUPON, State's Exhibit Nos. 14 - 15
5 were marked for identification and
6 received into evidence.)

7 (WHEREUPON, State's Exhibit Nos. 17 - 20
8 were marked for identification and
9 received into evidence.)

10 (WHEREUPON, State's Exhibit Nos. 22 - 23
11 were marked for identification and
12 received into evidence.)

13 MR. SORENSON: Permission, Your Honor, for her
14 to step down?

15 THE COURT: Yes, sir.

16 (Witness steps down.)

17 BY MR. SORENSON:

18 Q I'm going to start, Investigator, with some of the
19 exterior photos and just kind of go through those
20 and kind of tell the jury what they are seeing.

21 A This is the front of the house.

22 THE COURT REPORTER: I'm sorry, I'm not going
23 to be able to hear you.

24 THE COURT: Stand to the side. She might be
25 able to hear you better.

1 THE WITNESS: This is the front of the house.
2 You always take a picture of the front of the house
3 for a point of reference. This way you'll see the
4 expanse, basically what you're dealing with. This
5 is exactly where everything begins, for the most
6 part, for me. The front yard had evidence in it,
7 so I want to take overall pictures. This is the
8 first one.

9 BY MR. SORENSON:

10 Q And the evidence that you speak of, is there a
11 chair that is kind of out of place?

12 A There is a chair that is out of place. It was
13 explained later how it got there. Because
14 originally it was positioned somewhere on the front
15 porch, but when they were tending to the victim at
16 the time it happened to be in front of the home.

17 MR. SORENSON: And this is, just for the
18 record, State's 21 we're looking at right now, Your
19 Honor.

20 BY MR. SORENSON:

21 Q Now, State's 2.

22 A This is a side angle of the front stairs.
23 Basically what I'm trying to get is the length of
24 the staircase going up. You'll also see in
25 particular up here on the bannister and the rungs

1 where the blood actually is in between them and it
2 dripped down onto the ground.

3 Q Let me show you State's Exhibit Number -- kind of
4 close into that -- 3.

5 A It is just a better picture, front version of where
6 the railing and the bannister, the blood dripping
7 from down over the side of the front of the house.

8 Q Now, let's go to State's Exhibit Number 5.

9 A Frontal view of the stairs as you're going to
10 ascend up to the front door.

11 Q And when you arrived on the scene, that glass storm
12 door was closed like that?

13 A It was.

14 Q Let me ask you this, what's hanging on that glass
15 storm door?

16 A There is a wreath.

17 Q Any damage to that wreath?

18 A No.

19 Q Any damage to the exterior of that storm door that
20 you observed?

21 A No, there wasn't.

22 Q State's Exhibit Number 8.

23 A This is another version of the porch, basically
24 from the corner right where the front windows are
25 back towards the stairs. And it's a matter of

1 placing everything that you see right there in
2 perspective.

3 Q And what if any items, Investigator, are located in
4 that picture on the ground there?

5 A Yeah, two cell phones. I believe there's a
6 T-shirt, a pair of sunglasses, pen, lighter,
7 baseball cap, and then there's a cigarette --

8 THE COURT REPORTER: I'm sorry, I didn't hear
9 it. Somebody was coughing.

10 BY MR. SORENSON:

11 Q Say that part again.

12 A Oh. A cigarette is right at the front door up
13 underneath the lip.

14 Q I've got a close-up one. I'll show you that in a
15 second. I'd ask you to go to, if you would, to
16 Number 7, please. Does that show --

17 A You can see it actually a little bit better in this
18 photograph up underneath the door.

19 Q That cigarette, was that a full cigarette or --

20 A No.

21 Q -- partially burned cigarette?

22 A It had already been used.

23 Q Showing you State's Exhibit Number 40, did you
24 collect that cigarette?

25 A This is my envelope, yes.

1 Q Is that that cigarette that's depicted in that
2 photograph?

3 A Yes.

4 MR. SORENSON: Your Honor, at this time, I'd
5 offer State's 40 into evidence.

6 THE COURT: Any objection?

7 MR. LEIENDECKER: I haven't had a chance to
8 see it, Your Honor.

9 THE COURT: Let him see it.

10 (Pause.)

11 MR. LEIENDECKER: Your Honor, I don't object,
12 assuming that that's what's in the envelope. All I
13 see is the envelope with the detective's
14 handwriting on it. That's what she's identifying.

15 MR. SORENSON: Is there a pair of scissors up
16 there?

17 (Witness opens envelope.)

18 THE WITNESS: There's going to be a couple of
19 different things in here. This is from the lab.
20 This is what they are going to put the sample in.
21 I can't really tell you the whole process. This is
22 what the original --

23 THE COURT REPORTER: I'm sorry. I can't
24 really tell you the whole process --

25 THE WITNESS: After it's done, after they

1 basically glean what they want to off of this
2 cigarette, it goes into a little capsule and then
3 it goes into a machine for analysis.

4 (Pause.)

5 MR. LEIENDECKER: No objection.

6 THE COURT: All right.

7 (WHEREUPON, State's Exhibit No. 40 was
8 marked for identification and received
9 into evidence.)

10 BY MR. SORENSON:

11 Q Obviously that is now not in one piece anymore; is
12 that correct? It has been out to the State Law
13 Enforcement Division --

14 A Correct.

15 Q -- since you collected it?

16 A Yes.

17 Q Now, also what is that item right there?

18 A That is a cigarette lighter.

19 Q Did you have an opportunity to collect that also?

20 A It is part of my evidence.

21 Q Showing you State's Exhibit Number 39.

22 A This is my envelope with my handwriting on it and a
23 cigarette lighter.

24 Q I also see kind of in the top, what is that item
25 right there?

1 A That is the baseball hat.

2 Q And was that collected also?

3 A Yes.

4 Q Additionally, you testified about a couple of cell
5 phones; is that correct?

6 A Yes, there are two cell phones. There's one right
7 here and one right there.

8 Q And then additionally, what is this item right
9 there?

10 A A pair of sunglasses.

11 Q Were the sunglasses collected initially?

12 A They are.

13 Q Okay. And did you ultimately kind of learn who
14 they belonged to?

15 A I did.

16 Q Who did they belong to?

17 A They were -- one of our responding officers lost
18 some glasses when they were trying to deal with
19 everything at that point. And that is where they
20 wound up. At that point, no, we did not know that
21 part, but now I do know who they belong to.

22 Q And that's Jessica, it was Roberts at the time --

23 A Roberts, yes.

24 Q -- and it is Abdullah now; is that correct?

25 A Correct.

1 Q And additionally what -- was there -- I mean, you
2 testified earlier about some of the blood on the
3 bannister and it dripped down; is that correct?

4 A Correct.

5 Q Was some of the blood found around that side on the
6 porch area?

7 A Yes.

8 Q While we're talking about sunglasses, let me show
9 you State's Exhibit Number 19. What does that area
10 depict?

11 A Back across the front of the house, to the right
12 side looking back to the left, you have the Honda
13 Civic, and then there's the Dodge. And in front of
14 the Dodge, there's another pair of sunglasses,
15 which is on the driveway. So I collected those as
16 well.

17 Q Show you State's Exhibit Number 20. Does that show
18 more of a close-up of the sunglasses?

19 A Yes, sir.

20 Q Were they collected?

21 A Yes, they were.

22 Q I show you State's Exhibit 41. Is that the
23 sunglasses that were collected?

24 A Yes, sir.

25 MR. SORENSON: Your Honor, at this time, we'd

1 offer State's 41 into evidence.

2 THE COURT: Any objection?

3 MR. LEIENDECKER: No objection.

4 (WHEREUPON, State's Exhibit No. 41 was
5 marked for identification and received
6 into evidence.)

7 BY MR. SORENSON:

8 Q Let me kind of -- before I go into kind of the
9 interior of the house with you, Investigator
10 O'Grady, when you first arrived out there that day,
11 did Lieutenant Padgett turn over any items to you
12 at that scene?

13 A He turned over a pistol.

14 Q And showing you State's Exhibit Number 36, is that
15 the firearm that was turned over to you?

16 A Yes.

17 Q Is this your box with your handwriting on there?

18 A Box with my handwriting.

19 Q When you -- when that weapon was turned over to
20 you, describe what condition it was in when you got
21 it.

22 A It was still fully loaded, one in the chamber. And
23 all I did was basically take possession of it, put
24 it in the box and lock it down in the truck.

25 Q Was it ultimately sent out to the State Law

1 Enforcement Division?

2 A Yes.

3 Q I'm going to turn you to the interior of the house.

4 Let's go to State's Exhibit Number 9. While he's
5 pulling that up, describe for the jury just kind of
6 when you got to the interior of the house what the
7 condition of the home was inside.

8 A It is very neat, very clean. The kind of thing you
9 wish you always. But this is one of those
10 situations where it is ideal.

11 Q Show -- on State's Exhibit Number 9, explain to the
12 jury kind of what we're seeing there.

13 A In the back of the house, there is a kitchen. The
14 kitchen is off to the right here. And then there's
15 a table right to the back of this couch. So when
16 you're looking out towards this picture, the basic
17 reason was to capture the majority of the living
18 room towards the front door.

19 Q In looking at State's Exhibit Number 9, was there
20 any evidence that you observed or documented that
21 would be shown in that photograph of any evidence
22 of any kind of struggle inside that home?

23 A No.

24 Q What is on the left-hand side of the photograph
25 there?

1 A This is what I would call a curio cabinet or
2 something that you put collectibles in. And it is
3 just off in like a little alcove. And then there's
4 another door where you go off to the bedrooms.

5 Q Any damage to that curio cabinet?

6 A No.

7 Q Had it been knocked over or anything?

8 A No.

9 Q How about over here, the entertainment center and
10 the television, any damage or anything appeared to
11 be knocked over there?

12 A There was not.

13 Q And let me ask you, in looking inside that living
14 room area, did you find any items of evidentiary
15 value inside that living room area?

16 A There were only two. In this photograph, you can
17 see the --

18 THE COURT REPORTER: I'm sorry, I can't hear
19 you.

20 THE WITNESS: In this particular photograph,
21 you only see one. There is two items I collected
22 out of here. One, being a set of keys that was on
23 the island. That's the only thing in this
24 particular photograph. But there is a shell casing
25 at the very end of the couch on the corner.

1 BY MR. SORENSON:

2 Q I'll show you that in a second. There's keys
3 there. Do you remember what vehicle they went to?

4 A Not off the top of my head, no.

5 Q But you indicated a shell casing was collected
6 also. Let me show you State's Exhibit Number 15.
7 Does that show that shell casing?

8 A The shell casing is right here in front of -- the
9 corner of the couch.

10 Q Did you ultimately mark that, State's Exhibit
11 Number 15, with an evidence marker, Number 1 marker
12 --

13 A Yes.

14 Q -- and collect that? I am showing you State's
15 Exhibit Number 38. Do you recognize that item?

16 A This is the shell casing. My envelope, my
17 handwriting.

18 Q That was collected from this item right there?

19 A Correct.

20 MR. SORENSON: Your Honor, we'd offer State's
21 38 into evidence.

22 THE COURT: Any objection?

23 MR. LEIENDECKER: No.

24 (WHEREUPON, State's Exhibit No. 38 was
25 marked for identification and received

1 into evidence.)

2 BY MR. SORENSON:

3 Q Go to State's 13. Kind of describe that area.

4 A This is the doorway from the master bedroom as if
5 you're looking out the door towards the front door.
6 We are just trying to catch all the angles that you
7 can within the room. So, basically you have the
8 keys here and then the shell casing, again, right
9 on the floor.

10 Q And, I'm sorry, go to that door right there and to
11 the right and go outside?

12 A Yes.

13 Q Yet, again, that -- shows that curio cabinet again?

14 A It does.

15 Q No damage to it?

16 A No.

17 Q Now, on the floor area here, the carpet, any blood
18 that you observed anywhere inside the residence?

19 A No.

20 Q And let me ask you, Investigator O'Grady,
21 ultimately was it brought to your attention of a
22 piece of evidence that was possibly located on the
23 roof of the residence?

24 A Yes.

25 Q Okay. And showing you State's Exhibit Number 17,

1 please, what does that show?

2 A This is another set of keys that was at the front
3 of the house right almost dead center that I had to
4 crawl up there and get.

5 Q Do you remember what car -- what vehicle they went
6 to?

7 A These were Honda, so I took it to mean they were to
8 the blue Honda that was in the driveway.

9 Q All right. You can have a seat. Not done yet.
10 (Witness returns to witness stand.)

11 Q Investigator O'Grady, did you attempt to do
12 anything with the two doors to the residence?

13 A We did -- oh, don't break the box. We did collect
14 gunshot residue kits from both the interior front
15 door, the white, and then from the interior glass
16 panel.

17 Q I'll show you -- I probably should have left that
18 up. Showing you State's Exhibit Number 13, does
19 that show one of the areas that you --

20 A The exterior of the front door, interior of the
21 glass door is where we did the GSR kit.

22 Q So where my finger is right here, that door?

23 A That door.

24 Q Okay. And by collecting for gunshot residue, is
25 that what you said?

1 A Yes, gunshot residue.

2 Q Explain to the jury how you go about --

3 A Basically --

4 Q -- doing that on that door.

5 A There is a kit that you can get, it comes in a
6 plastic box, and it has instructions, pair of
7 gloves. And there will be two -- at this time, I
8 think I still had -- there were two separate tests.
9 But you will have one that has four different tabs.
10 They're all, basically, labeled because usually you
11 would do it on a pair of hands for a suspect. But
12 in our case, you can actually do it on objects too.
13 We will take the tabs and we will take certain
14 portions of a door or an object and we will try to
15 pick up the particles that the scientists need to
16 say yay or nay that there actually is gunshot
17 residue present. And both of these surfaces, we
18 tried to see if there was, in fact, anything on
19 them.

20 Q Then you said you also swabbed the interior of the
21 glass door?

22 A (Nods affirmatively.)

23 Q Is that kind of -- that is State's Exhibit Number
24 11. That kind of -- the two -- parts of those two
25 doors --

1 A Right.

2 Q -- that are visible, is that the two areas that you
3 swabbed?

4 A Correct.

5 Q Ultimately, the swabs you took, were they then sent
6 off to State Law Enforcement Division for further
7 analysis?

8 A Yes.

9 Q Did you swab the entire door or a specific kind of
10 height area or?

11 A The tabs are kind of sticky, so you really are more
12 like dabbing than swabbing. So you're just kind of
13 moving around in no real random pattern and you're
14 just trying to pick up as much as you can off of
15 that surface. And then you place it in its plastic
16 housing, you'll label it with the case number and
17 where you collected it from, you'll place it back
18 in the box. The box has a seal. You put your name
19 over it because the seal will tear if you're not
20 careful, and it's ready to go.

21 Q Those two doors, though -- and I think I asked you
22 initially about the storm door -- is there any
23 damage to either of those doors that you observed?

24 A None that was visible.

25 Q Any blood on either of those doors?

1 A No.

2 Q Now, ultimately did you have an occasion to go to
3 and attend the autopsy that Dr. Ross performed the
4 following morning?

5 A I did.

6 Q Did you collect any items from Dr. Ross from that
7 autopsy to send out to SLED?

8 A I did.

9 Q You collected the projectile that we introduced,
10 into evidence, State's 37?

11 A Yes, sir.

12 Q And you talked about doing that gunshot residue
13 test on the door. Did you have an occasion to do
14 one of those on the victim, Christopher Rowley?

15 A Yes.

16 Q And ultimately was that sent out to SLED also for
17 analysis?

18 A Yes, it was.

19 Q On him, explain how you would have done it on the
20 victim in this case.

21 A Basically, as I was describing to you before, each
22 one -- there's four: Left palm, left back of the
23 hand, then you do the same thing on the other hand.
24 It's real simple. All you have to do is follow the
25 instructions. And all you're doing is trying to,

1 basically, glean any particles that you can off of
2 these two surfaces because this is where it's going
3 to be, for the most part. It could be on other
4 parts of the body, but the kit centralizes on the
5 hands. And you'll have corresponding paperwork
6 that you'll fill out with all pertinent information
7 and then you'll submit all of that in the box.

8 Q And ultimately, Investigator O'Grady, the gunshot
9 residue kit that you collected from the victim in
10 this case, the projectile from the autopsy, the
11 cigarette butt, the firearm, shell casing, was all
12 of that stuff sent out to -- the gunshot residue
13 test from the doors, all that stuff sent out to
14 SLED for further testing?

15 A Yes.

16 Q And then you had testified earlier and you showed
17 in the photo, did you collect two phones off of the
18 --

19 A Off the front porch.

20 Q Did you have an occasion after a search warrant was
21 obtained to kind of do a dump off of those phones
22 also of what was on them?

23 A Yes.

24 MR. SORENSON: That would be all I have.

25 Please answer any questions that Mr. Leiendecker

1 has for you.

2 THE COURT: Yes, sir?

3 CROSS-EXAMINATION

4 BY MR. LEIENDECKER:

5 Q Good afternoon.

6 A Good afternoon.

7 Q Before I get to the pictures and we talk about
8 that, because I'm a person of primacy and I can
9 only remember the things I just heard, let's talk
10 about gunshot residue.

11 A Okay.

12 Q And those tests. You described that the kit comes
13 with four tabs?

14 A It does.

15 Q And those are sticky tabs?

16 A It is, basically.

17 Q That you just sort of dot around the area?

18 A Uh-huh.

19 Q If you're doing hands, I think you said you do one
20 on the back, one on the palm, one on the back, one
21 on the palm of each hand?

22 A Correct.

23 Q You label -- they are labeled as to where they are
24 supposed be from -- one is the back of one --

25 A It already has a label and --

1 Q Two is the palm of the other, that kind of thing?

2 A Correct.

3 Q Then you bag those up and send them off?

4 A Well, put in the box, seal it, and put your name on
5 it, yes.

6 Q See, I'm not very good. I just remembered the
7 basics. You did that not just with the hand here,
8 or hands, but you also did it at the crime scene?

9 A Correct.

10 Q And you did it on the interior of the storm door?

11 A Yes.

12 Q And you did it on the outside exterior of the frame
13 of the door?

14 A Of the door --

15 Q Because the door was open.

16 A Of the door itself.

17 Q Of the glass door?

18 A Well, facing the door, glass door is closed. To
19 your left is the interior portion of the exterior
20 surface of the interior door, that surface right
21 there.

22 Q I'm sorry, could you do that for me one more time?
23 I got lost with the interior, exterior. I mean,
24 I'm not trying to be difficult, I'm just having
25 trouble following. Wait a minute. I've got an

1 idea. Let me show you State's Number 11.

2 A Okay.

3 Q Okay. See if that --

4 MR. SORENSON: Do you want to use this?

5 MR. LEIENDECKER: Not yet. I'm afraid of that
6 thing. And I've seen you shut boxes in it, so I'm
7 going to go with the photograph.

8 BY MR. LEIENDECKER:

9 Q That's State Number 11. That's an inside picture
10 of the house; right?

11 A Correct.

12 Q Now, I'm confident that what you told me was one of
13 the places you swabbed was the glass on that door
14 from the inside of the house; right?

15 A Correct. As you see it in this picture is the same
16 way that it's processed.

17 Q Okay. I'm good with that.

18 A Okay.

19 Q The second place you looked was an exterior
20 sampling. Where was that?

21 A Right -- the surface right here. This would
22 actually be the exterior surface of the interior
23 door. So basically if you didn't have a storm
24 door, that would be the exterior surface of the
25 front door.

1 Q Oh, okay.

2 A Because it was open when I got there, and that's
3 how we processed both surfaces. Because as you get
4 there, that's what you get.

5 Q All right. So if you're following me --

6 MR. LEIENDECKER: Y'all will get a chance to
7 look at this later, I promise.

8 BY MR. LEIENDECKER:

9 Q The interior of this glass door?

10 A Correct.

11 Q But you're still inside the house?

12 A I am.

13 Q And you do the exterior of the front door, the door
14 that closes behind the storm door?

15 A Correct.

16 Q Okay. That was what I didn't understand. You
17 didn't actually do any GSR outside in the door
18 frame or the front of the glass out on the porch
19 side of the house?

20 A No, sir.

21 Q The outside of the house?

22 A No.

23 Q Is that right?

24 A Correct.

25 Q And you've shown us in a couple of exhibits, I

1 think it is as prevalent or noticeable as any in
2 State's Exhibit 15, the shell casing; right?

3 A Correct.

4 Q And that shell casing is found at the end of that
5 sofa, of that sectional sofa, that L-shaped sofa;
6 correct?

7 A Yes.

8 Q Close to the doorway?

9 A Yes.

10 Q Did you do any GSR of the end of that sofa?

11 A No.

12 Q Okay. Did you do any GSR anywhere inside or
13 outside the house other than the two surfaces that
14 we've talked about of the doors?

15 A No.

16 Q Okay. Let me ask a question about the sunglasses,
17 which are State's Exhibit 41.

18 A The ones in the driveway?

19 Q Yes, the ones in the driveway. Thank you. What
20 did you do with these after you packaged them up?

21 A Just held onto them.

22 Q Did you send them for analysis?

23 A No.

24 Q Do you know whose sunglasses they are?

25 A Not to this day.

1 Q Okay. Did you ever ask any questions of anybody
2 about whose sunglasses they were?

3 A That would have been the primary investigator.
4 I --

5 Q That's not your job. Got it.

6 Let me ask you some general questions about
7 the interior of the house. And we've heard some
8 descriptions and talk about that.

9 One photograph that was put up on the big
10 screen was Number 9, which is that picture --

11 A From the back.

12 Q -- from the back where you're standing in like --

13 A The wooden table.

14 Q -- the eating area and looking to the front door
15 and can see the sofa; right?

16 A Correct.

17 Q Would you agree with me, this isn't a big house?

18 A No, it's a smaller house.

19 Q You don't have to be a major league pitcher to
20 throw a ball from the front to the back of this
21 house?

22 A No.

23 Q It's pretty compact?

24 A It is.

25 Q It's not overly crowded with furniture, but

1 furniture is everywhere because it's a small space
2 and you have to walk around it to get from one
3 place to the other?

4 A You do.

5 Q Okay. Would you also agree with me looking at that
6 Exhibit Number 9, where you said there were no
7 scenes -- no evidence of a struggle or a conflict
8 inside the house, that you are drawing those
9 conclusions because nothing on that cabinet, that
10 you called a curio cabinet, or that entertainment
11 center that has the television appears disturbed;
12 correct?

13 A Correct.

14 Q But isn't it equally true that there's no evidence
15 that there wasn't a struggle inside that house?

16 A Correct.

17 Q If it had taken place behind the curio cabinet or
18 to some place other than in front of the
19 entertainment center, it wouldn't have disturbed
20 it; right?

21 A Yes.

22 Q Okay. So either is true?

23 A Correct.

24 Q Thank you. You were also asked and you answered
25 affirmatively that there was no blood found in the

1 house?

2 A No.

3 Q That doesn't mean that someone wasn't shot inside
4 the house, does it?

5 A No.

6 Q Someone could have been shot inside the house, gone
7 outside, and there would be blood outside, but none
8 inside?

9 A Yes.

10 Q There is a more close-up picture, probably taken
11 after you got up the ladder onto the roof, of the
12 keys, Number 18, State's Exhibit Number 18?

13 A Yes.

14 Q Is that what that is?

15 A It is.

16 Q Are those the keys actually on the roof? Because
17 those look like shingles behind it.

18 A That's correct, yes.

19 Q Okay. And you were asked what those keys were to,
20 and you said those are the keys to the Honda
21 vehicle that was in the driveway probably because
22 they're Honda keys?

23 A Right.

24 Q But those aren't the only keys on there, are they?

25 A No, there are like house keys and other

1 unidentified keys on the chain.

2 Q Okay. In fact, in point of fact, some of those may
3 actually even be car keys, that double-sided key?

4 A It could --

5 Q I don't know if it is, but it --

6 A Could be.

7 Q -- could be?

8 A Sure.

9 Q That's unique to cars. Lots of cars have keys that
10 are cut on two sides?

11 A Correct.

12 Q Whereas house keys usually have jagged edges on one
13 side; right?

14 A I imagine so.

15 Q When you were given the weapon at the scene, you
16 were given that by Lieutenant Padgett?

17 A Correct.

18 Q And he explained to you that he had removed it from
19 the home; correct?

20 A I don't remember asking him that. I just remember
21 taking --

22 Q He just gave you the gun?

23 A He said, Here it is. I took it, I put it in the
24 box, I locked it down.

25 Q Okay. Where inside the house was the gun found, do

1 you know?

2 A No.

3 Q Was there any indication left, any mark, anything
4 to show where the gun was picked up from?

5 A No.

6 Q Okay. Not even like when you're golfing and you
7 drop a dime and pick your golf ball up so you know
8 where you put it back down, there wasn't anything
9 like that inside the house?

10 A No.

11 Q And no one told you where the gun had been located,
12 did they?

13 A No.

14 Q You also told me -- and I'm really not trying to be
15 snotty or persnickety, but you told me when you
16 arrived the crime scene hadn't been messed with or
17 contaminated, that it was pretty clean. But that's
18 not really a hundred percent true. The outside had
19 been messed because of the necessity for the
20 emergency treatment; right?

21 A That is always something that you allow for. How
22 you arrive and how the scene is, is what you get to
23 work with.

24 Q I'm just trying to clarify because it may be my
25 misunderstanding, I just want to make sure --

1 A It was the interior of the house I was referring
2 to, that's what you were focusing on.

3 Q So the interior of the house was?

4 A Very clean.

5 Q Very clean?

6 A Oh, yes.

7 Q And that made it easy for you to investigate --

8 A Yes.

9 Q -- the inside of the house? But you told us what
10 you found in the house were two items that you took
11 into custody, a set of car keys on the ottoman on
12 the round side -- the other side of the couch and a
13 shell casing?

14 A Yes.

15 Q And obviously you didn't find the gun because it
16 had already been removed?

17 A Right.

18 Q But were you told that it was -- came from the
19 interior of the house?

20 A I don't remember what -- all I remember is being
21 given the gun. I take possession of it and I
22 locked it down.

23 Q Okay.

24 MR. LEIENDECKER: All right. Just a moment.
25 I think I'm done, I've just got to check.

1 (Pause.)

2 MR. LEIENDECKER: I am. Thank you very much.

3 THE COURT: Yes.

4 MR. SORENSON: No further questions.

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

6 Any objection to this witness being excused?

7 MR. SORENSON: Not from the State, Your Honor.

8 MR. LEIENDECKER: None from the Defense.

9 (Witness steps down and is excused.)

10 THE COURT: All right, ladies and gentlemen of
11 the jury, it is about 2:48, and I think we've been
12 going about an hour and 20 minutes, so it's time to
13 take our afternoon break. We'll go ahead and take
14 a break right now and receive you all back in about
15 ten minutes, so probably about 3:00 o'clock.

16 (WHEREUPON, the jury retires to the jury
17 room at 2:48 p.m.)

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Are you ready to bring them in?

20 MR. SORENSON: One brief matter real quick,
21 Your Honor.

22 THE COURT: Yes, sir.

23 MR. SORENSON: It was brought to my attention
24 that Item 39, which was the cigarette lighter, that
25 was identified by Investigator O'Grady, I may not

1 have officially said I offer this into evidence. I
2 thought I did, but everybody told me I didn't.

3 MR. JUSTIS: I think he did.

4 THE COURT REPORTER: He did not.

5 MR. SORENSON: The most important person says
6 I didn't, so I --

7 THE COURT: Well, I didn't have it on mine.
8 The court reporter is the one that matters, so.

9 MR. SORENSON: The most important person says
10 I didn't, so I think it was adequately identified
11 and it was published to the jury, so I don't think
12 there was any objection.

13 THE COURT: Any objection?

14 MR. LEIENDECKER: No.

15 THE COURT: So number -- exhibit --

16 MR. SORENSON: Thirty-nine, Your Honor.

17 THE COURT: Thirty-nine; right?

18 MR. SORENSON: Thirty-nine.

19 THE COURT: Okay.

20 (WHEREUPON, State's Exhibit No. 39 was
21 marked for identification and received
22 into evidence.)

23 (WHEREUPON, the jury came into open
24 court at 3:06 p.m.)

25 THE COURT: All right. We're ready for the

1 next witness.

2 MR. SORENSON: Thank you, Your Honor. The
3 State calls Michele Eichenmiller.

4 (Witness approaches.)

5 THE CLERK: Place your left hand on the Bible,
6 raise your right.

7 (Witness complies.)

8 THE CLERK: The testimony you shall give to
9 the Court and jury shall be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes.

12 THE CLERK: Have a seat in the witness box,
13 stating your full name, spelling your last for the
14 Court, please.

15 (Witness seated.)

16 THE WITNESS: My name is Michele Eichenmiller,
17 E-I-C-H-E-N-M-I-L-L-E-R.

18 MICHELLE EICHENMILLER,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SORENSON:

22 Q Agent Eichenmiller, if you would, tell the jury
23 where it is you're employed.

24 A I work for the South Carolina Law Enforcement
25 Division, commonly known as SLED. I work in the

1 forensic lab in the firearms department.

2 Q And how long have you worked at SLED in the
3 firearms department?

4 A It will be ten years next month.

5 Q If you would, tell us briefly, I guess, your
6 educational background, if you would.

7 A I have a Bachelor's Degree in biology. I also have
8 a Master of Science in forensic science.

9 Q When did you receive those degrees?

10 A I graduated in 2005 with my Master's Degree and
11 1997 with my Bachelor's.

12 Q And your ten years at SLED, have they all been in
13 the firearms department?

14 A Yes.

15 Q And is that something that you have kind of --
16 well, tell the jury what your training has been
17 with regards to becoming a firearms analyst.

18 A In order to be a firearms examiner, unfortunately
19 there's no university you can go to, you have an
20 apprenticeship program. You learn under the
21 court-qualified examiners that are in your lab. So
22 it's about three to four years ago it takes, so
23 during that time I did a lot of reading, I did a
24 lot of microscope work on my own, and then I also
25 sat in different examiners' offices watching them

1 and learning what they do to examine evidence.

2 Q As part of the firearms department, do you have the
3 capability of taking a firearm and determining
4 whether it fired a particular bullet or a
5 particular shell casing that was ejected from that
6 firearm?

7 A Yes, that's what we do.

8 Q And let me ask you this, Agent. Have you had then
9 over the last ten years the occasion to be
10 qualified as an expert witness in the field of
11 firearms analysis?

12 A I have.

13 Q An approximately how many times have you been
14 qualified as an expert?

15 A Approximately 40.

16 MR. SORENSON: At this time, we would offer
17 Agent Eichenmiller as an expert in the field of
18 firearms analysis.

19 THE COURT: Any objection or any voir dire?

20 MR. LEIENDECKER: No, Your Honor.

21 THE COURT: All right. She will be offered as
22 an expert in the area of firearms examination.

23 MR. SORENSON: For analysis, I guess.

24 THE COURT: Analysis. All right.

25 MR. SORENSON: Thank you, Your Honor.

1 BY MR. SORENSON:

2 Q Agent Eichenmiller, tell the jury, I guess, what --
3 especially with regards to if you have a firearm
4 and any ammunition components, and so forth, that
5 are submitted to you out at the State Law
6 Enforcement Division, what are your capabilities
7 out there as far as examining and comparing those
8 items?

9 A In the case of receiving a firearm and fired
10 bullets or cartridge cases, my job is to try to
11 determine if those fired bullets and cartridge
12 cases came from a particular firearm. So my
13 examination includes documenting anything with the
14 firearm, its make, model, serial number, its
15 function, its safety. Then I test fire it. I
16 obtain test fire specimens. I compare those to
17 anything that was found at the scene and try to
18 determine if they were fired by that firearm based
19 on their individual characteristics.

20 Q And I'm showing you what has been marked -- what is
21 in evidence as State's Exhibit Number 36. Let me
22 ask you, is that a firearm that was submitted to
23 you for analysis?

24 A Whenever I receive evidence in a case, I will write
25 the lab number, the item number, and my initials on

1 it. On a firearm, it's in three different places.

2 This is the firearm I examined in this case.

3 Q Tell the jury, I guess, first of all, what kind of
4 weapon is that?

5 A It is a Glock Model 22 Gen 4. It is a .40 caliber
6 semi-automatic pistol.

7 Q Okay. And describe for the jury, if you would, the
8 difference between a semi-automatic pistol and a,
9 let's say, revolver.

10 A A semi-automatic pistol, you load a magazine and
11 for each pull of the trigger the gun will fire
12 once. And the energy from the firing will actually
13 cycle the firearm and load the next round. So then
14 the next time you pull the trigger, it's ready to
15 go again. That's the semi-automatic function.

16 A revolver has different chambers that have --
17 it's like a cowboy gun, if you watch the old
18 westerns. Every time you pull the trigger, the
19 cylinder will rotate, fire that, and then you have
20 to pull the trigger again to rotate the cylinder.

21 Q And showing then on State's Exhibit Number 36, you
22 talked about the magazine, where is the magazine on
23 that?

24 A It is this item right here. This is the magazine
25 release, and then the magazine will come out.

1 Q Then that magazine would then be loaded with --

2 A Cartridges.

3 Q -- cartridges? All right. And so when you pull
4 that trigger, assuming it's properly loaded and
5 properly working, obviously what comes out this end
6 down here?

7 A The bullet comes out the barrel.

8 Q And where is that spent shell casing then that had
9 that bullet in it, where does it --

10 A It will come out the ejection port, which is right
11 here.

12 Q Typically, on this type of gun, this .40 caliber
13 Glock, where will that shell casing go? You said
14 it will come out. What will happen with it when it
15 comes out?

16 A It will eject out the right side of the firearm,
17 typically.

18 Q It will come out this way. Is there any way to
19 tell specifically where it is going to land when it
20 comes out?

21 A No. There's many factors that relate to that, how
22 you hold it, what it hit when it landed, it could
23 have bounced off concrete or tile. But, in
24 general, it will come out to the right.

25 Q Now, that gun, that .40 caliber Glock, was it in

1 proper working order?

2 A Yes, when I received it, it was.

3 Q And you also received a couple of other items for
4 you to attempt to see if they were involved with
5 that gun, actually, the firing of that gun?

6 A I did. I received one fired cartridge case and one
7 fired bullet.

8 Q Showing you State's Exhibit Number 38 and 37.

9 A Same thing. I marked as evidence with the lab
10 number, the item number and my initials. It is
11 also still in my heat-sealed packaging. So that's
12 the cartridge case I examined. And that is the
13 bullet I examined in this case.

14 Q And, specifically, I guess, let's deal with the
15 cartridge case first. Tell the jury how you go
16 about comparing that cartridge case to determine
17 whether it was ejected from that .40 caliber Glock?

18 A As I said, I get test specimens. I shoot the
19 firearm into our bullet recovery tank, which gives
20 me the perfect specimen. I know they came from
21 this firearm. Then I take it back to my office. I
22 put it on my comparison microscope, which is
23 basically two stages connected by an optical
24 bridge, basically like a pair of binoculars. I can
25 look in there and see both specimens at the same

1 time. And by rotating them, I can line up the
2 individual scratches that we look at. We call them
3 striations, but they are basically scratches or
4 impressions made by the firearm on that cartridge
5 case.

6 Q And what were your results when comparing that
7 cartridge casing to the test casings that you got
8 from that weapon?

9 A I found that they were fired by that firearm.

10 Q Then additionally you were able to do the same
11 thing with that projectile that was recovered from
12 the autopsy of Mr. Rowley?

13 A Yeah, we do the same thing. We put the bullet and
14 the test-fired bullets on the microscope. I rotate
15 them trying to find, you know, similarities between
16 the two.

17 Q Describe this bullet in State's Exhibit Number 37.
18 It is not a round bullet anymore, is it?

19 A No. It started off as a jacketed hollow point.

20 Q Explain what that means.

21 A It means it had a hollow cavity at the nose. And
22 when it impacted its target, it expands, which is
23 what it is designed to do. And stop.

24 Q How it ends up, basically, in that condition. So
25 while this looks like it is not in very good

1 condition, is that typically what it looks like
2 after it has been fired?

3 A That is generally what we see in the hollow point,
4 yeah.

5 Q Were you able to compare that then to the
6 test-fired projectiles from that .40 caliber?

7 A I did.

8 Q And what were the results of that analysis?

9 A The results of the bullet comparisons to the
10 bullets test fired by firearm were inconclusive.
11 It just means there wasn't enough markings there
12 for me to tell if it was that firearm or another
13 firearm.

14 Q Let me ask you, when dealing with Glock .40 caliber
15 weapons, is that common or uncommon for that to be
16 the result that you get?

17 A That is sort of the result we get. The rifling in
18 this .40 caliber Glock is very smooth, so they
19 hardly make any marks on bullets. So it's a little
20 difficult to try to find enough individual marks
21 for me to say that it was fired by that firearm.

22 Q But that bullet from the autopsy, is that
23 consistent, though, in caliber and type of bullet
24 that would be fired by that .40 caliber Glock?

25 A It is consistent in its general rifling

1 characteristics, which means it has the same
2 rifling as the Glock, it has the same type, and it
3 is the correct caliber to be fired in that weapon.

4 MR. SORENSON: Thank you, Agent.

5 THE COURT: Yes, sir?

6 CROSS-EXAMINATION

7 BY MR. LEIENDECKER:

8 Q Good afternoon, Agent.

9 A Hello.

10 Q You were given this weapon for testing purposes; is
11 that correct?

12 A Correct.

13 Q And it is Exhibit Number 26; right? State's
14 Exhibit 26?

15 A Yes.

16 Q And when this gun is used or fired, you said that
17 the ejection is to the right; is that correct?

18 A If it is held in the correct orientation, it would
19 go to the right.

20 Q And I apologize, I'm not trying to -- so if someone
21 was holding this gun and firing it, where -- if I
22 were just standing here and firing it, where are
23 you going to expect to find the shell casing?

24 A If you're holding it that way --

25 Q Just like this.

1 A -- I would expect to find them off to your right.

2 Q Over by the jury box?

3 A Yes.

4 Q Okay. Now, it was your testimony, and it is also
5 logical, that exactly where to my right you find it
6 is influenced by the surface in which it is fired
7 or lands; correct?

8 A Or any other --

9 Q Ejected?

10 A Correct. Or any other circumstances in the firing.
11 If you move your arm at all, it will move that
12 cartridge case, exactly.

13 Q Right. Or if I was turned gangster sideways --

14 A Correct.

15 Q -- it might go straight up? That would be a bad
16 idea, now that I think about it. Anyway, having
17 said that, if it was held in the standard position
18 that I showed you, it is going to eject to the
19 right?

20 A Yes.

21 Q And your opinion about where it lands, did you test
22 the distance that this particular fire weapon --
23 fired weapon generally ejects a shell casing?

24 A No, that is not a test we do at SLED.

25 Q Okay. So you didn't fire this three or four times

1 and measure where the shell casing landed, you just
2 fired it for the purposes of retaining or obtaining
3 bullets, slugs, for rifling marks and shell casings
4 to see where the firing pin hit and the ejector
5 made marks on the shell casing; right?

6 A That's correct.

7 Q So you did no tests regarding typically if this
8 throws it two feet, six feet, eight feet?

9 A Right. It's not a test we generally do at SLED.

10 Q Okay. And it would be fair to say that if this
11 shell casing had ejected from this gun in an indoor
12 environment, it is not going to be affected by
13 wind, water, or other problems associated with an
14 outdoor firing; correct?

15 A I wouldn't think so.

16 Q Concerning where the shell casing lands?

17 A Right.

18 Q And if this is fired in an indoor environment on a
19 plush carpeted surface, it's going to be more
20 likely to be in the proximate area where it ejected
21 and hit the ground than if it is fired on a stone
22 or tile surface?

23 A That is what you would suspect, but it also depends
24 on what happened after it landed. If people walked
25 and kicked it or it --

1 Q Sure.

2 A -- rolled, but, yeah.

3 Q If it wasn't an immaculate or pristine environment
4 and people had been going over it, kicked it, and
5 moved it, it might be in a different spot?

6 A Correct.

7 Q Okay. And it is your analysis that the shell
8 casing you received was fired by this weapon?

9 A Yes, it is.

10 Q And that the bullet retrieved from the deceased was
11 consistent with slugs fired from this weapon?

12 A Correct.

13 Q And having gone through this, and being incredibly
14 redundant as I am, you have absolutely no opinion
15 concerning where that shell casing would have
16 landed or how far it would have traveled because --
17 say it with me -- SLED doesn't do that test?

18 A Correct.

19 MR. LEIENDECKER: Okay. Thank you.

20 THE COURT: Yes, sir. Anything else?

21 MR. SORENSON: No, ma'am.

22 THE COURT: All right, ma'am, you may step
23 down.

24 Any objection to this witness being excused?

25 MR. SORENSON: None from the State, Your

1 Honor.

2 MR. LEIENDECKER: No.

3 (Witness steps down and is excused.)

4 MR. SORENSON: The State calls Samuel Stewart.

5 (Witness approaches.)

6 THE CLERK: Place your left hand on the Bible,
7 raise your right.

8 (Witness compiles.)

9 THE CLERK: The testimony that you shall give
10 the Court and jury in this case shall be the truth,
11 the whole truth, and nothing but the truth, so help
12 you God?

13 THE WITNESS: Right.

14 THE CLERK: Have a seat in the witness box,
15 stating your full name, spelling your last for the
16 Court, please.

17 (Witness seated.)

18 THE WITNESS: Samuel Stewart, S-T-E-W-A-R-T.

19 SAMUEL STEWART,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SORENSON:

23 Q Good afternoon, Agent Stewart.

24 A Good afternoon.

25 Q If you would, please tell the jury where it is that

1 you are employed.

2 A I work for the South Carolina Law Enforcement
3 Division, commonly known as SLED.

4 Q In what department do you work in at SLED?

5 A I work for the DNA case work department.

6 Q Okay. And how long have you worked at SLED?

7 A Four years.

8 Q And you've been in the DNA department those four
9 years?

10 A That is correct.

11 Q Okay. If you would, tell the jury your educational
12 background.

13 A I received my Bachelor's of Science in biology from
14 Francis Marion University. I also received
15 in-house SLED training under other court-qualified
16 analysts for over a year and a half, where I had to
17 successfully complete a written exam, an oral exam,
18 a competency and a mock trial before I was deemed
19 competent as a DNA analyst.

20 Q And how long have you been kind of on your own then
21 doing DNA case work at SLED?

22 A Two and a half years.

23 Q Have you had an opportunity to testify over the
24 last two and a half years as to results of your
25 findings on cases that you worked at SLED?

1 A Yes, I have.

2 Q And how many times have you been qualified as an
3 expert in the field of DNA analysis?

4 A Fourteen.

5 MR. SORENSON: Your Honor, at this time we
6 would offer Agent Stewart as an expert in the field
7 of DNA analysis.

8 THE COURT: Any voir dire?

9 MR. LEIENDECKER: Just a few questions, Your
10 Honor, so I can understand.

11 VOIR DIRE EXAMINATION

12 BY MR. LEIENDECKER:

13 Q Agent Stewart, I'm sorry, I was writing. You have
14 a Bachelor's Degree; is that correct?

15 A That is correct.

16 Q Any other subsequent degrees, any Master's or
17 further work?

18 A No, I do not.

19 Q Okay. You also said that to become qualified, you
20 had to pass some exams and sit for a test. What
21 was that?

22 A I had to successfully complete a written exam and
23 oral exam, a competency and a mock trial.

24 Q These exams, those are SLED tests; is that right?

25 A They are administered by SLED personnel.

1 Q Okay. What are these, are these national
2 standardized exams?

3 A These are certified by SLED and they are, I
4 guess -- I won't say they're nationally certified,
5 but they're certified within the housing of SLED.

6 Q So it's SLED, certifying SLED to be competent for
7 SLED; is that right?

8 A I guess you could say that.

9 Q Okay. And you had to sit for a mock trial. You
10 mean like we're doing here?

11 A Well, that is correct, except this is real.

12 Q Oh, this is very real, trust me. That's why I'm
13 asking you these questions. So you had to sit for
14 a practice trial?

15 A Well, the trial is very much realistic. We do have
16 a jury. We do have a defense attorney. We do have
17 a prosecutor and a judge. And the questions are
18 real. We do it based on a real case as well. So
19 everything is substantially real, except that it's
20 not dealing with any real individuals.

21 Q Would you agree with me that that really has
22 nothing to do with your DNA qualifications? What
23 that has to do is to determine if you can testify
24 competently in a courtroom; right?

25 A I disagree. I think I have to be able to explain

1 the work that I do as well as perform the work in
2 the laboratory.

3 Q So you don't think that that courtroom test is for
4 the purpose of seeing if you're a good witness?

5 A No. It's about explaining the work that I have
6 performed.

7 Q All right.

8 MR. LEIENDECKER: I don't have any further
9 questions, Your Honor.

10 THE COURT: Any objection?

11 MR. LEIENDECKER: I would question his
12 qualifications. He has been certified and
13 qualified a few times, but he has nothing beyond a
14 Bachelor's Degree, and all of his actual DNA
15 licensing is done by SLED, through SLED, with SLED,
16 and for SLED. It has no national standards. It
17 meets no national testing. And it certainly
18 doesn't say to me that he's qualified then to do
19 what SLED asks him to do.

20 THE COURT: All right. Yes, sir?

21 MR. SORENSON: Your Honor, I think -- I mean,
22 he says he's testified 14 times and has been
23 qualified as an expert 14 times. He's worked at
24 SLED for four years, the last two and a half of it
25 now doing independent case work on his own after

1 being trained out there. I mean, it doesn't -- I
2 mean, there's nothing that says he has to have a
3 Doctorate Degree to testify as an expert witness.
4 It's based entirely on your training and your
5 expertise and your experience.

6 MR. LEIENDECKER: I --

7 THE COURT: One second.

8 Ladies and gentlemen of the jury, I'm going to
9 send you all out for a brief moment while I handle
10 a matter of law.

11 Thank you.

12 (WHEREUPON, the jury retires to the jury
13 room at 3:27 p.m.)

14 THE COURT: All right. What is it exactly
15 that you want him to testify?

16 MR. SORENSON: He developed a DNA profile from
17 the cigarette that was collected on the porch and
18 compares it to the DNA profile of the victim and
19 they match. I mean, that's it. I mean, there's no
20 other DNA in this case. I mean, that's the report
21 that they have.

22 THE COURT: Is he going to explain what
23 procedure he uses? We probably need to proffer his
24 testimony and because it's scientific we probably
25 need to have him explain what procedure he's using

1 and how it is reliable and all of that.

2 MR. SORENSON: All right. I mean, okay.

3 MR. LEIENDECKER: Do you have background
4 information on this witness, his CV, or anything
5 like that?

6 MR. SORENSON: I do not. He probably has it
7 up there.

8 MR. LEIENDECKER: It is the same kind of stuff
9 you asked from my expert and it wasn't provided to
10 me by your expert.

11 MR. SORENSON: You actually never provided me
12 the CV of your expert.

13 MR. LEIENDECKER: I'm just asking.

14 MR. SORENSON: But don't say that I -- you did
15 not provide me your expert's CV.

16 THE COURT: All right. All right. We're
17 going to proffer his testimony. In considering
18 expert scientific testimony, the Court has to first
19 decide if the subject matter is beyond the ordinary
20 knowledge of the jury, then if he is qualified to
21 testify, does he have the required knowledge to
22 testify as an expert as to the subject matter, and
23 then if the procedure that he is using is reliable,
24 the prior application of the method, quality
25 control procedures used to ensure reliability, and

1 if the method would recognize scientific laws and
2 procedure. All right.

3 He's going to ask you some questions.

4 THE WITNESS: Okay.

5 THE COURT: I can't ask you any questions, he
6 will -- well, I can. I'll let him do it..

7 PROFFERED TESTIMONY

8 BY MR. SORENSON:

9 Q Agent Stewart, let's talk a little bit about the
10 lab out at SLED, if we could. How long has the DNA
11 lab at SLED been in existence, if you're aware?

12 A I do not know off the top of my head. I know it's
13 been there for a significantly long time.

14 Q And how many other analysts over there?

15 A Currently we have, I would say, approximately 15.
16 We have about four in training right now.

17 Q If you would, explain to the Court what -- is SLED
18 an accredited lab?

19 A Yes, it is. It is ASCLD lab accredited.

20 Q Explain to the judge what that is.

21 A ASCLD lab is a nationally certified board. It
22 comes to audit us every other year, I believe, to
23 ensure that the quality of the work that we're
24 doing, the standards of the work we're doing is
25 aboveboard. We're very proud to have ASCLD

1 certification. And not only that, we have to sit
2 down -- when you first become certified as an
3 analyst, you have to be separately audited twice by
4 a different analyst at those different auditings to
5 ensure that the work that you've done is qualified,
6 that the work that you put forth is qualified, that
7 there is nothing wrong. They evaluate your case
8 work, any courtroom proceedings you have testified
9 to. So we do go through an extensive audit and, I
10 want to say, certification as well.

11 THE COURT: What's the name of that?

12 THE WITNESS: It is called ASCLD lab.

13 THE COURT: As?

14 MR. SORENSON: A-S-C --

15 THE WITNESS: A-S-C-L-D.

16 MR. SORENSON: I believe it's the American --

17 Do you know what that stands for?

18 THE WITNESS: It's the American Crime Lab
19 Certification Board.

20 THE COURT: All right.

21 BY MR. SORENSON:

22 Q And when was the last time that certification was
23 done with the DNA department at SLED, if you're
24 aware?

25 A Last year.

1 Q In 2015?

2 A Uh-huh.

3 Q And at that point in time, were you audited also?

4 A Yes, I was.

5 Q Did you pass that certification at that time?

6 A I did.

7 Q Okay. And tell the Court, if you would, what --
8 specifically turning to this case here, what is the
9 type of DNA testing that was done in this case
10 here?

11 A The PCR/STR testing. PCR stands for Polymerase
12 Chain Reaction. STR stands for Short Tandem
13 Repeat. If I can explain, DNA stands for
14 deoxyribonucleic acid. That is a genetic material
15 that is found in every person and is responsible
16 for certain traits, such as our eye and our hair
17 color. DNA is contained in dense packets known as
18 chromosomes, which are found in every cell in the
19 human body, excluding red blood cells. We receive
20 half of our chromosomes from our mother and the
21 other half from our father. We target certain
22 locations on those chromosomes known as STR. It
23 is, as I stated, short tandem repeats. We look at
24 16 different STR locations that are found in those
25 various chromosomes to develop what is known as a

1 DNA profile, which we use to identify a person from
2 another person, excluding identical twins.

3 Q And that PCR/STR analysis, is that -- how long has
4 that been used out at SLED, that --

5 A For a couple of -- I would say at least ten years
6 now that we've been using it. It's very much well
7 used in the forensic community.

8 Q And that was going to be my next question, is how
9 that method of DNA testing are you aware of -- is
10 that used nationwide?

11 A Absolutely. Worldwide.

12 Q Worldwide. FBI, is that what their lab uses, that
13 type?

14 A Yes, it is.

15 Q And you've had an opportunity, you said, to testify
16 as an expert witness, been qualified 14 times. Is
17 that the type of DNA testing that was done on those
18 14 prior times that you testified?

19 A Yes, it was.

20 Q And the other analysts out at SLED, have they also
21 got the same -- that PCR/STR testing, is that the
22 method of DNA analysis that would be used by your
23 entire DNA department at this point in time?

24 A Yes, it is.

25 Q Is it recognized within the scientific community as

1 reliable?

2 A Yes, it is.

3 Q And it has been admitted in courts throughout the
4 country?

5 A Yes. Yes, it has.

6 MR. SORENSON: Your Honor, that would be -- I
7 mean, I don't know if you want me to go through his
8 actual testimony as to what --

9 THE COURT: What is his education again? You
10 don't need to go through his testimony.

11 BY MR. SORENSON:

12 Q What was your educational background?

13 A A Bachelor's of Science in biology, and I also had
14 in-house SLED training for over a year and a half.

15 Q And when did get your Bachelor's?

16 A 2003.

17 Q Where was that at?

18 A Francis Marion University.

19 THE COURT: All right.

20 MR. SORENSON: I mean, this is something that
21 is admitted, I mean, probably -- I mean, literally
22 every day in this country. I mean, not -- let
23 alone, probably in our state even. This isn't some
24 new science, it is just --

25 THE COURT: All right. Any questions from

1 him?

2 MR. LEIENDECKER: I have just a few questions.
3 And as to the observation that counsel makes about
4 this is admitted all the time, that's true. It is
5 also equally true that in the last several years
6 the FBI lab for DNA, the North Carolina lab for
7 DNA, the Massachusetts lab for DNA have all been
8 found to do things that are considered improper and
9 called into question numerous trials where this
10 kind of evidence has been admitted because it
11 hasn't been admitted properly by those experts.
12 That's why I'm questioning him.

13 THE COURT: All right.

14 MR. LEIENDECKER: And what I understand from
15 him was that he went to Francis Marion University
16 and got a BA in biology -- or BS in biology.

17 PROFFERED TESTIMONY

18 BY MR. LEIENDECKER:

19 Q When did you say you completed your degree?

20 A 2003.

21 Q Your CV that you handed me said that you actually
22 went to Francis Marion University from 2003 through
23 2007. When did you receive your degree?

24 A I apologize, 2007. I misspoke.

25 Q Okay. When did you receive these -- this sample

1 that you tested for this trial case?

2 A Unfortunately I don't have a chain of custody on me
3 right now.

4 Q When did you do the test, do you know?

5 A My report is dated May 5th, 2015.

6 Q May 5th, 2015?

7 A That is correct. But I do not have the exact date
8 when the evidence came into my custody.

9 MR. SORENSON: Can I hand up?

10 MR. LEIENDECKER: Yes.

11 (Complies.)

12 THE WITNESS: Okay. So I received the
13 evidence into my custody on March 30th, 2015.

14 BY MR. LEIENDECKER:

15 Q March 30th, 2015. And where did it come from to
16 you on March 30th, 2015?

17 A I received it from one of our forensic technicians
18 in our evidence control department.

19 Q Do you know when it went into your evidence control
20 department?

21 A It was brought in by Mary Frances on November 22nd,
22 2013. So that's when it came into SLED.

23 Q Okay. So it sat in your evidence room from 2013
24 until spring of 2015?

25 A That is correct.

1 Q Okay.

2 MR. LEIENDECKER: Again, Your Honor, my
3 question concerning qualification is the limited
4 educational background of this individual. The
5 fact that all of his training beyond his college
6 degree centers on in-house stuff done by SLED. It
7 is SLED certifying SLED for the purposes of SLED.

8 THE COURT: All right.

9 MR. LEIENDECKER: And whether he has been
10 qualified before or not, what we are calling into
11 question here is, is he qualified to testify in
12 this trial.

13 THE COURT: All right. And I understand your
14 position, apparently, regarding his education of
15 Bachelor's Degree. There is a case, Lee vs. Suess,
16 318 S.C. 283 or 457 S.E.2d 344. It says that the
17 amount and quality of education and experience goes
18 to the weight of the expert's testimony and not its
19 admissibility.

20 Furthermore, in doing an analysis under 702 --
21 or considering 702, State v. White and State v.
22 Council, the Court finds that the witness has
23 testified that the lab that he has worked in is
24 ASCLD, is an ASCLD lab, which is a national
25 certified -- nationally board certified lab. That

1 is A-S-C-L-D. He has testified that they are
2 yearly -- audited yearly. That someone from the
3 nationally certified board comes in and audits and
4 evaluates the work that they are doing.
5 Specifically, his work was audited and evaluated
6 last year in 2015. He passed the audit and passed
7 the certification. The witness has testified that
8 the procedure he used was PCR and STR, which has
9 been used for ten years at SLED and is very well
10 known in the forensic community. Used worldwide,
11 used by the FBI in analyzing DNA.

12 The Court therefore finds that the expert is
13 qualified to testify, that the substance of the
14 testimony is reliable. It is peer reviewed. He
15 has testified that it is audited and evaluated,
16 quality control procedures are used to ensure
17 reliability and is a recognized scientific law and
18 procedure in the forensic community.

19 It is therefore -- and, finally, under Rule
20 403, the probative value of this outweighs any
21 prejudicial effect to the Defendant. And,
22 therefore, I will allow him to testify as an expert
23 in DNA analysis, specifically to the test of PCR
24 and STR --

25 Is that correct?

1 MR. SORENSON: It's the same test. It's PCR,
2 slash, STR.

3 THE COURT: PCR/STR. All right.

4 So I guess you need to go back -- you can put
5 your objection on the record in front of the jury.

6 You probably need to go back through that line
7 of questioning, I guess, when we bring them back
8 in.

9 MR. SORENSON: Okay.

10 THE COURT: All right.

11 MR. LEIENDECKER: If I understand the Court,
12 my objection then is noted for the purposes of the
13 record? I don't have to renew it in front of the
14 jury again?

15 THE COURT: Unless you want to, you can.

16 MR. LEIENDECKER: I don't want to, I'm just
17 asking to make sure.

18 THE COURT: It is. It is.

19 MR. LEIENDECKER: Yes. Thank you.

20 (WHEREUPON, the jury came into open
21 court at 3:43 p.m.)

22 THE COURT: Yes, sir?

23 MR. SORENSON: Thank you, Your Honor. And I
24 guess I'll just kind of -- kind of a couple of
25 follow-up questions before I offer Agent Stewart

1 again.

2 DIRECT EXAMINATION CONTINUES

3 BY MR. SORENSON:

4 Q Agent, you had testified that you have worked at
5 SLED for four years now and have been on your own
6 basically the last two and a half as far as doing
7 your own case work; is that correct?

8 A That is correct.

9 Q What kind of DNA testing is it that is currently
10 done out at SLED?

11 A The testing that we perform is STR/PCR testing.
12 PCR stands for Polymerase Chain Reaction. STR
13 stands for Short Tandem Repeat.

14 Q Okay. Is that type of testing, the DNA testing
15 that is currently used pretty much nationwide at
16 this point in time?

17 A Yes, it is.

18 Q Has it been used for a length of time out there?

19 A Yes, it's been used for a very long time.

20 Q And tell the jury a little bit about the SLED lab.
21 Are y'all an accredited lab?

22 A Yes, we are. We are an ASCLD lab, certified.

23 Q And explain to the jury what does that mean.

24 A It's a national certifying board to make sure that
25 the forensic work that is done in SLED is

1 aboveboard, that all the quality controls are being
2 met. And just making sure that the work is
3 aboveboard and is sound and is supported.

4 Q And is that testing -- when was last time that
5 SLED -- that testing was done at SLED?

6 A We were last audited last year.

7 Q Okay. As part of that auditing process, are you,
8 as an independent DNA analyst, also audited, also
9 your case work?

10 A Yes, my case work is audited and -- to determine
11 whether or not the work I'm doing is correct and
12 sound.

13 MR. SORENSON: All right. At this time, I
14 would renew my offering of Agent Stewart as an
15 expert in the field of DNA analysis.

16 THE COURT: All right. And the Defendant's
17 objection is noted for the record.

18 Ladies and gentlemen of the jury, the witness
19 will be qualified in the area of DNA analysis and
20 specifically to testify as to STR/PCR testing.

21 MR. SORENSON: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. SORENSON: Thank you.

24 BY MR. SORENSON:

25 Q Agent Stewart, did you have an opportunity in this

1 case -- well, first of all, the jury, I guess, a
2 little bit about that type of testing. How -- do
3 you have the ability to take an item of evidence,
4 whether it's a blood swab or something of that
5 nature, and attempt to compare it to a known
6 subject?

7 A First, DNA stands for deoxyribonucleic acid. It is
8 the genetic material that is found in every person
9 and is responsible for certain traits, such as our
10 eye and our hair color. DNA is contained in dense
11 packets known as chromosomes, which are found in
12 every cell in the human body, excluding red blood
13 cells. We receive half of our chromosomes from our
14 mother and the other half from our father. We
15 target certain locations on those chromosomes known
16 as STR. As I stated, that stands for short tandem
17 repeat. We look at 16 different of those STR
18 locations that are found on those various
19 chromosomes to develop what is known as a DNA
20 profile. And we use that DNA profile to identify a
21 person from another person, excluding identical
22 twins.

23 Q And, if you could, just kind of briefly -- you
24 talked about the type of testing that you use, the
25 PCR/STR testing. Explain to the jury just briefly

1 what that is.

2 A And what that is to determine a DNA profile for an
3 individual. This DNA profile helps us to identify
4 and also compare that person's DNA profile to the
5 DNA profile that we develop from the evidence. And
6 once we make that comparison, we put those
7 comparisons in a report and give that report to the
8 submitting agency.

9 Q In this case, did you have an item of evidence that
10 was submitted to you in an attempt to see if you
11 could develop DNA off of that item?

12 A Yes, I did.

13 Q And showing you State's Exhibit Number 40, I ask
14 you if you recognize that item?

15 A Yes, I do. It has the unique SLED item and case
16 number on it, along with my initials when I entered
17 into the heat-sealed pouch and when I exited the
18 heat-sealed pouch.

19 Q And that is a used Newport cigarette --

20 A Yes, it is.

21 Q -- is that correct? Let me ask you, how then --
22 like in this case where you had a cigarette, how do
23 you go about attempting to extract DNA from that --
24 from a used cigarette butt?

25 A No problem. With cigarette butts, we usually cut

1 the filter area where the cigarette would touch the
2 mouth. And what I would do is put it in a solution
3 to extract the DNA from that filter. Then we will
4 purify that DNA that I have extracted and put it in
5 a solution that would keep it stable.

6 Once that step is complete, the next step is
7 to quantify, to find out exactly how much DNA I
8 have. This is done in order to make sure that we
9 hit a certain range. The instrumentation that we
10 use needs a certain range of DNA. Too little, we
11 won't get a full DNA profile. And too much, we
12 won't get -- we'll get a blown-out profile that is
13 not a good representation.

14 So once we quantify and find out how much DNA
15 we have, then the PCR step is next. The PCR, like
16 I stated, is Polymerase Chain Reaction. And that's
17 just a fancy word for making more copies of the
18 DNA. And once we have enough copies for the DNA,
19 we run it on our instrument and this instrument
20 does give us the DNA profile with the 16 different
21 locations as I stated.

22 Q And were you able to develop a DNA profile from
23 that cigarette butt?

24 A Yes, I was.

25 Q And let me ask you, how long -- on our DNA, where

- 1 is my DNA found within my body?
- 2 A DNA is found throughout your body, your skin cells,
3 your blood. It can be found in semen. So DNA is
4 found throughout your body.
- 5 Q Is it found in your saliva?
- 6 A Yes, because your saliva carries your skin cells,
7 so, yes, it's definitely found in there as well.
- 8 Q If I smoke a cigarette, is it conceivable then that
9 I would leave my DNA on the filter of that
10 cigarette?
- 11 A That is correct.
- 12 Q All right. Now, did you have an opportunity then
13 to receive also DNA standards from the Defendant in
14 this case, Robin Herndon, and also from the victim,
15 Christopher Rowley?
- 16 A Yes, I did.
- 17 Q Were you able to develop DNA profiles from those
18 two standards?
- 19 A Yes, I was.
- 20 Q And were you able then to compare the DNA standard
21 that you got from that cigarette butt to Ms.
22 Herndon and Mr. Rowley?
- 23 A Yes, I was.
- 24 Q And were you able to -- did it match either of
25 their standards?

1 A The DNA profile developed from Item 8 matches the
2 DNA profile of Christopher Rowley. The probability
3 of randomly selecting an unrelated individual
4 having a DNA profile matching this item is
5 approximately one in 2.1 quadrillion.

6 Q So it is consistent with him having smoked that
7 cigarette or having that cigarette in his mouth?

8 A Yes. Within a degree of scientific certainty, I
9 can say it matched the DNA profile of Christopher
10 Rowley.

11 MR. SORENSON: That's all I have. Thank you.

12 THE COURT: Yes, sir?

13 MR. LEIENDECKER: Thank you.

14 CROSS-EXAMINATION

15 Q Agent Stewart?

16 A Yes, sir.

17 Q When you got this sample to test it at your lab at
18 SLED and you took it out, you would agree with me
19 that this is a smoked cigarette?

20 A Yes, sir.

21 Q It is not a new cigarette?

22 A It appears to be smoked, that is correct.

23 Q So it appears to be the butt of a cigarette that
24 someone has finished?

25 A Yes, that's correct.

1 Q You cut it open and you analyzed it for DNA?

2 A That is correct.

3 Q And your test results told you that that cigarette
4 sometime in the past was smoked by Christopher
5 Rowley; correct?

6 A No, I developed a DNA profile from that cigarette
7 butt and I matched it to the DNA profile that I
8 have for Mr. Christopher Rowley.

9 Q Yeah, I'm a skip-to-the-end kind of guy, I'm sorry.
10 Once you analyzed the DNA, then you matched that to
11 the sample you had from Mr. Rowley; correct?

12 A Yes, I compared the profiles.

13 Q And they matched?

14 A That is correct.

15 Q Okay. To a degree of scientific certainty, they
16 matched?

17 A That's correct.

18 Q Let me ask you a few things this test doesn't tell
19 us and see if you agree with me, okay?

20 A Uh-huh.

21 Q What this test doesn't tell us is when Christopher
22 Rowley put that cigarette in his mouth?

23 A That is correct.

24 Q What this test doesn't tell us is how long that DNA
25 was on that cigarette?

1 A That is correct.

2 Q In point of fact, DNA can last an infinitely long
3 time, it seems, if things are properly maintained
4 in evidence; correct?

5 A That's correct. Depending upon, you know, outside
6 factors, that's correct.

7 Q I mean, we're all aware of The Innocence Project
8 and the people across the United States that have
9 been let out of prison because they were wrongly
10 convicted once we were able to analyze the DNA in
11 their case, aren't we?

12 A Yes, I'm aware of that, yes.

13 Q Those were people that their crimes were committed
14 before we even knew what DNA analysis was, some of
15 them?

16 A That is correct.

17 Q So you can't give me any opinion regarding that
18 cigarette, how old it was or when that DNA was
19 placed there, can you?

20 A No, I cannot.

21 Q In point of fact, you didn't even get that
22 cigarette for analysis until two -- over two and a
23 half years after this event. You analyzed it in
24 the spring of 2015, didn't you?

25 A That is correct.

1 Q My math might not be right, that might be a year
2 and a half. But I apologize for my bad
3 mathematics.

4 MR. LEIENDECKER: I don't have any further
5 questions.

6 THE COURT: All right. Thank you.
7 Anything else?

8 MR. SORENSON: Nothing.

9 THE COURT: All right, sir, you may step down.
10 Any objection to this witness being excused?

11 MR. LEIENDECKER: No.

12 MR. SORENSON: None from the State, Your
13 Honor.

14 THE COURT: Thank you.

15 (Witness steps down and is excused.)

16 THE COURT: Call your next witness.

17 MR. SORENSON: The State calls Whitney Berry.
18 (Witness approaches.)

19 THE CLERK: Place your left hand on the Bible,
20 raise your right.

21 (Witness complies.)

22 THE CLERK: The testimony that you give the
23 Court and jury in this case will be the truth, the
24 whole truth, and nothing but the truth, so help you
25 God?

1 THE WITNESS: Yes.

2 THE CLERK: Have a seat in the witness box,
3 stating your full name, spelling your last for the
4 Court, please.

5 (Witness seated.)

6 THE WITNESS: My name is Whitney Berry,
7 B-E-R-R-Y.

8 WHITNEY BERRY,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SORENSON:

12 Q And, Agent Berry, if you would, tell us where
13 you're employed.

14 A I'm employed by the South Carolina Law Enforcement
15 Division, also known as SLED. I work in the
16 forensics lab in the trace evidence department.

17 Q And, if you would, tell the jury, first of all,
18 what the trace evidence department -- what do you
19 do in that department?

20 A I specialize in the analysis of gunshot residue in
21 the trace evidence department.

22 Q And, I guess, let's go back and tell the jury first
23 a little about what your educational background is.

24 A I have a Bachelor of Science in chemistry from the
25 University of South Carolina. I then began SLED's

1 in-house nine-month training program for gunshot
2 residue analysis when I was hired. During that
3 training program, I completed numerous written and
4 practical exams. I also worked many cases under
5 the supervision of a qualified analyst. I defended
6 my own evidence in a mock court setting.

7 Additionally, I received other training from
8 College of Applied Science in Westmont, Illinois.
9 I've taken their scanning electron microscopy
10 course for gunshot residue analysis. I have also
11 completed numerous webinars on gunshot residue
12 analysis provided by, let's see, different forensic
13 venues, as well as -- I'm trying to think. I'm a
14 member of the American Society of Trace Evidence
15 Examiners.

16 Q Agent Berry, have you had an opportunity -- and how
17 long have you been at SLED in the trace evidence
18 lab?

19 A Three years this week.

20 Q And have you had an opportunity to testify before
21 as a result of your analysis, specifically a
22 gunshot residue test?

23 A Yes, I have.

24 Q And have you been qualified as an expert witness?

25 A Yes, sir.

1 Q Have you ever not been qualified as an expert
2 witness?

3 A I have never not been qualified as an expert
4 witness.

5 Q How many times have you been qualified?

6 A Twenty-nine.

7 MR. SORENSON: Your Honor, at this time, we
8 would offer Agent Berry as an expert in the field
9 of trace analysis, specifically as to gunshot
10 residue analysis.

11 THE COURT: Any voir dire?

12 MR. LEIENDECKER: No objection.

13 THE COURT: All right. Ladies and gentlemen
14 of the jury, Agent Berry will be qualified in the
15 area of trace analysis, specifically gunshot
16 residue to testify to that area -- to testify in
17 that area.

18 All right. Thank you.

19 MR. SORENSON: Beg the Court's indulgence one
20 second.

21 (Pause.)

22 MR. SORENSON: Sorry, Your Honor.

23 BY MR. SORENSON:

24 Q If you could, Agent Berry, please tell the jury a
25 little bit what gunshot residue is, I guess, would

1 be the first thing.

2 A Gunshot residue is actually the primer residue that
3 comes out of a cartridge when it is fired out of a
4 gun. The majority of this primer residue will come
5 out of the barrel end of the gun, will come out of
6 the muzzle. And a smaller portion will come out of
7 the cylinder gap on a revolver or the ejection port
8 on a semi-automatic.

9 These -- this primer residue is composed of
10 three metallic elements, so that would be lead,
11 barium and antimony. They're solid metals. And
12 when they're put under the high heat and pressure
13 of gunshot, they vaporize. So that makes them
14 become a liquid state. And then when they cool
15 back off, they become solid again, but now, instead
16 of being crystalline or like a normal metal would
17 look, they're now molten or round in shape.

18 Q And have you had an opportunity then if you are --
19 let's say if I fire a gun, somebody then -- is
20 there a test that's able to be performed on my
21 hands that can then be submitted to you to
22 determine whether gunshot residue is present to say
23 whether I potentially fired or handled or was
24 around a weapon that was fired?

25 A Yes, sir. SLED issues out what we call gunshot

1 residue collection kits to any agency in the state
2 free of charge. Each kit contains four particle
3 lifts. They are containers like this. They are
4 labeled for the different areas of the hand that we
5 want sampled. It contains an instruction sheet, a
6 work sheet during -- on which we expect the name of
7 the person sampled from, the incident date and
8 time, the collection date and time written on. It
9 also contains a pair of disposable gloves, some
10 evidence tape and, in some cases, it can contain
11 swabs. But we don't analyze swabs anymore.

12 So this particle lift right here, it is the
13 black dot in the middle, that is double-sided
14 carbon tape. And when it is collected, it is
15 dabbed on the skin and picks up any particulate
16 matter that might be there. You keep dabbing until
17 there is no more sticky or tackiness to the lift.
18 It is then sealed back in its container, put in the
19 envelope it came in, and sealed with tamper-evident
20 tape.

21 We ask that -- or the kit contains four
22 samples, so it would be the palm of the right hand,
23 the back of the right hand, the palm of the left
24 hand, and the back of the left hand that we would
25 get samples from.

1 Q Okay. And you are able then to analyze those and
2 determine whether gunshot residue was present or
3 not present?

4 A Yes, that is correct.

5 Q And tell the jury how do you get -- let's say you
6 have a sample that you test and it comes back
7 positive for gunshot residue on the right palm.
8 What does that tell you?

9 A We don't put any emphasis on what part of the hand
10 we find any particles of interest, be it gunshot
11 residue or anything else. We report the hand as a
12 whole. So the report in that specific instance
13 would say the right hand and it would say particles
14 of gunshot residue were present or one particle of
15 gunshot residue was present.

16 We take the samples and load them into a
17 scanning electron microscope with an X-ray -- or,
18 excuse me, with an energy-dispersive X-ray detector
19 and -- it sounds very complicated, but if you think
20 of a science fiction movie where you have a radar
21 or any kind of a beam scanning across mountains or
22 anything, it is very similar. It just scans back
23 and forth across the top of the stub and any time
24 it sees an object that is higher or lower than the
25 stub, it will take a picture and it will also take

1 an X-ray to tell us the chemical composition.

2 Q And, ultimately, if it -- let's say the hand is
3 positive for gunshot residue, what does that tell
4 you that person had to have done?

5 A It tells us, if they are positive for gunshot
6 residue, that they were in the vicinity to the
7 discharge of a firearm or they came into contact
8 with something that was in the vicinity to the
9 discharge of a firearm.

10 Q In other words, it could have been the person that
11 fired the gun or it could have been in close
12 proximity to someone who fired a gun, or how about
13 if they handled a gun that had been fired, would
14 that also potentially get gunshot residue on them?

15 A All of the situations would potentially put gunshot
16 residue on someone's hands.

17 Q And as to gunshot residue, if I get it on -- let's
18 say I fire a gun in this courtroom right now, how
19 long will that gunshot residue stay on my hands?

20 A On a living person, we don't expect to find gunshot
21 residue more than four to six hours after the
22 incident has occurred. So if you think about being
23 in your kitchen with baking flour on your hands,
24 every time you touch something, a little bit of
25 that flour comes off. That is really a visual

1 representation for how gunshot residue can
2 transfer. So gunshot residue is very fine. It's
3 microscopic. It's very easy to remove. Any amount
4 of touching, rubbing your hands on your pants,
5 putting your hands in your pocket, washing your
6 hands, even sweating, bleeding can all potentially
7 remove gunshot residue. So it is SLED's policy
8 that if a GSR kit is collected after six hours, we
9 will not analyze it because we can no longer tie it
10 to a specific incident.

11 Q And that is dealing with a living person; is that
12 correct?

13 A Yes.

14 Q How about with a homicide victim?

15 A In the case of a deceased person, the decedent is
16 no longer sweating or moving or doing any activity,
17 so we expect the GSR will stay on their hands until
18 it is removed by an outside source.

19 Q How about, are you also able to, as a crime scene
20 investigator, able to swab an item, such as a table
21 or a door or something of that nature to determine
22 whether a firearm has been fired in the vicinity of
23 that item?

24 A Yes, we do often receive samples from inanimate
25 objects, such as walls or vehicles around where a

1 gunfire may have happened. We also receive
2 clothing as inanimate objects that we can sample to
3 see if there's gunshot residue on the clothing.

4 Q Will that gunshot residue stay on those inanimate
5 objects until they are washed or cleaned or somehow
6 wiped off?

7 A Yes, the GSR will stay on inanimate objects
8 indefinitely until it is removed by an outside
9 source.

10 Q I'm going to turn and ask you about some of the
11 items that you received in this case, Agent Berry,
12 okay? Did you have an opportunity to receive a
13 gunshot residue kit that was collected from the
14 Defendant in this case, Robin Herndon? I believe
15 that is your Item 6?

16 A Yes, sir.

17 Q Did you have an opportunity to test that -- test
18 that gunshot residue kit from Robin Herndon?

19 A Yes, I did.

20 Q Okay. What were the results of that analysis?

21 A On the right hand, which includes the right palm
22 and right back of the hand, no primer or gunshot
23 residue was found. On the left hand, one particle
24 of gunshot residue was found.

25 Q What does that tell you?

1 A That one particle of gunshot residue was there. I
2 don't know how it got there, but it is typically
3 indicative of being in the vicinity to the
4 discharge of a firearm or coming into contact with
5 something that was in the vicinity to the discharge
6 of a firearm.

7 Q Okay. All right. And then did you receive your
8 Item 10, the gunshot residue kit from the interior
9 surface of a glass storm door?

10 A Yes, sir.

11 Q Did you have an opportunity to see if you could
12 test that for the presence of gunshot residue?

13 A Yes, I did.

14 Q What were your results of that?

15 A No primer or gunshot residue was found.

16 Q How about your Item --

17 MR. LEIENDECKER: I'm sorry, I don't mean to
18 interrupt. That was Item Number, I missed?

19 MR. SORENSON: That was their Item 10.

20 MR. LEIENDECKER: Item 10. Thank you. I
21 apologize for interrupting.

22 BY MR. SORENSON:

23 Q And then looking at your Item 11, Agent Berry, that
24 is the gunshot residue from the front exterior --
25 front door exterior. Did you have an opportunity

1 to test that for the presence or absence of gunshot
2 residue?

3 A Yes, sir.

4 Q What were your results of that?

5 A No primer or gunshot residue was found.

6 Q Then going down to State's Exhibit -- I'm sorry,
7 your Item Number 13, did you have an opportunity to
8 test a gunshot residue kit from the victim in this
9 case, Christopher Rowley?

10 A Yes, sir.

11 Q And what was the result of that?

12 A Both the right and left hands were negative, so no
13 primer or gunshot residue was found.

14 Q Then, lastly, did you have an opportunity to test
15 your Item 15, which is a lime green T-shirt?

16 A Yes, sir.

17 Q Let me show you just for ID purposes, because that
18 shirt's not in evidence yet, but let me show you
19 State's Exhibit Number 25. Does that shirt that's
20 in that picture appear to be the shirt that you
21 tested?

22 A Yes, that appears to be the shirt that I tested.

23 Q And what were the results when you tested that lime
24 green T-shirt?

25 A Particles of gunshot residue and particles

1 consistent with gunshot residue were found. So
2 gunshot residue is a three-component particle that
3 is molten or round containing lead, barium or
4 antimony and consistent particles or two-component
5 particles that contain lead and barium or barium
6 and antimony or some combination of those three
7 elements. And they must be round in shape in order
8 for us to call them.

9 Q Okay. What -- as far as the actual shirt, was it
10 submitted to you?

11 A Yes, it was.

12 Q Who actually did the sticky tabs on the shirt to
13 attempt to locate gunshot residue?

14 A I did.

15 Q And I assume, just like you have the hands, you
16 know, parts for the front and back of right and
17 left hands, you also have -- able to kind of
18 differentiate on the shirt where you were taking
19 the lifts from?

20 A Yes, sir. Depending on the garment that we're
21 sampling, we have specific areas we look at that
22 would be more likely to have gunshot residue on
23 them. In this case, it was a short-sleeved shirt.
24 And on a short-sleeved shirt, we would sample the
25 right sleeve, the right chest area, the left

1 sleeve, and the left chest area.

2 Q And were you able to tell whether -- your report
3 was negative -- I'm sorry, positive, but what parts
4 of the shirt were actually positive for gunshot
5 residue?

6 A I would have to reference my notes.

7 Q Okay. If I show you -- oh, you got it.

8 A Four particles of gunshot residue were found on the
9 right chest area, two particles of gunshot residue
10 and two consistent particles were found on the left
11 sleeve area, and three particles of gunshot residue
12 were found on the left chest area.

13 Q The right sleeve then was negative?

14 A The right sleeve was negative; yes, sir.

15 Q Right chest, left chest, left sleeve were all
16 positive?

17 A Yes, sir.

18 Q Right sleeve negative; is that correct?

19 A Yes, sir.

20 Q Let me ask you, as far as gunshot residue,
21 though -- and you may have touched on this when I
22 was -- I'm not -- if I did, I apologize. When you
23 fire a gun, especially a semi-automatic handgun,
24 where is that gunshot residue coming out of?

25 A In a semi-automatic, it is going to come out of

1 ejection port, so when you are holding the gun and
2 firing, the bit that slides back when the
3 cartridge -- spent cartridge is expelled, that area
4 is where the gunshot residue would come from to
5 land on the hands of the person pulling the
6 trigger. The majority of the gunshot residue is
7 going to go out the barrel, the muzzle end of the
8 gun and follow the projectile or bullet toward its
9 intended target.

10 Q Okay. And is there any distance as far as how far
11 that gunshot residue can come out and can go out
12 the end of a --

13 A It depends on the condition and caliber of the gun,
14 of the gun that's used.

15 Q Obviously, as far as getting it on your hands, your
16 hands would have to be -- if you were a person that
17 was shot, your hands would have to be up in the
18 vicinity to get gunshot residue on them; is that
19 correct?

20 A They wouldn't necessarily have to be up, they would
21 have to be in the vicinity. GSR is going to come
22 out in a sort of a cone-like pattern from the front
23 of the gun, so anything in that cone area could
24 potentially have gunshot residue on it. So even if
25 a person's hands were by their side, if they were

1 shot in the chest, they could very well have GSR on
2 their hands.

3 Q I guess by coming out in a cone, so the closer they
4 are to the gun, obviously, the smaller the cone; is
5 that correct?

6 A The closer they are to the gun, the more likely
7 they would be to actually have gunshot residue on
8 them, but it would be a smaller area. So I think
9 that's what you're --

10 Q Gotcha. You said you could have it if you were
11 shot in the chest if your hands were at your side,
12 but, yet again, that cone has got to include your
13 hand --

14 A If you were at a close enough distance and your
15 hands were by your side, then it would be expected
16 that you may not have gunshot residue on your
17 hands.

18 Q Gotcha. And as far as -- just briefly as to the
19 initial kit I asked you about from the Defendant,
20 Ms. Herndon, obviously if somebody fired a gun --
21 assuming at this point in time that Ms. Herndon
22 fired a gun that day, and the fact that her right
23 hand was negative and there was just one particle
24 on her left hand, would that be consistent with her
25 having -- basically been wiping her hands and doing

1 other stuff prior to that test actually being done
2 on her hands? Could that explain for it being a
3 negative?

4 A That is a possibility, but I have no definitive way
5 to say --

6 Q I gotcha.

7 A -- if that was the situation or not.

8 Q Gotcha.

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

10 (Pause.)

11 MR. SORENSON: Thank you, Agent Berry. Please
12 answer any questions Mr. Leiendecker has.

13 THE COURT: Yes, sir?

14 MR. LEIENDECKER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. LEIENDECKER:

17 Q Good afternoon, Agent Berry. How are you?

18 A Good. How are you?

19 Q I'm doing all right. Thank you.

20 You told us that you did GSR analysis or trace
21 analysis on the right and left hands of Ms. Robin
22 Herndon; right?

23 A Yes, sir.

24 Q You told us that you did GSR or trace analysis on
25 the right and left hand of Mr. Christopher Rowley;

1 is that right?

2 A Yes, sir.

3 Q You told us that you did GSR analysis from the
4 interior of a glass storm door; is that correct?

5 A That is what the particle lift was submitted as, so
6 yes, sir.

7 Q You're always relying on what you're told in these
8 submissions; correct?

9 A Yes, sir.

10 Q You told us that you did particle analysis or trace
11 analysis on the exterior of a door from the scene?

12 A That's what it was submitted as, yes, sir.

13 Q You told us that you did particle analysis on a
14 T-shirt that you were told was worn by Robin
15 Herndon?

16 A Yes, sir.

17 Q On the date; correct?

18 A Yes, sir.

19 Q I'm asking -- and I can't find it, and it may be
20 that I'm just not looking in the right spot, about
21 an analysis on the shirt worn by Mr. Christopher
22 Rowley?

23 A No GSR analysis was performed on that item. SLED
24 does not analyze gunshot residue from the clothing
25 of victims of a gunshot wound.

1 Q Okay. Because you assume they have GSR on it?

2 A There's a few reasons, one of which is we assume
3 that they're going to have gunshot residue on it.
4 Another is that most victim clothing is covered in
5 blood. Blood can possibly alter the morphology of
6 the gunshot residue. It also is a potential to
7 remove it or to cover it, so it would be covered in
8 the fibers. Another reason is that normally a
9 person who is shot is worked on by EMS, and EMS
10 likes to cut clothing off of people. So that all
11 has the potential to remove the evidence off the
12 clothing.

13 Q Okay. You explained to us in your analysis about
14 GSR that GSR is a layman's acronym for the presence
15 of three metal elements that are together or in
16 conjunction; is that correct?

17 A Yes, sir.

18 Q And that sometimes you only have two of those, but
19 a lot of times you have three of those?

20 A With gunshot residue, we look for a population. So
21 we just see three component particles, yes, that's
22 positive for gunshot residue, but we really like,
23 at SLED especially, to look for more, such as
24 consistent particles, so those would be
25 two-component particles. Those would support the

1 conclusion that those three-component particles
2 were from a gunfire. We also look for what we call
3 associated particles, which are single component
4 particles of lead, barium or antimony.

5 Q And so if I would review your analysis, isn't it
6 true that I would find lead, barium and antimony on
7 the hands of Christopher Rowley?

8 A I would have to reference my notes to see what
9 exactly you are referring to.

10 Q Okay.

11 A Do you have a page number?

12 Q I'm going to try to help.

13 A Okay.

14 Q Let me ask this question before I start shouting
15 out page numbers.

16 A Okay.

17 Q Is this the report and are those the page numbers
18 in the upper right-hand corner?

19 A Yes, sir.

20 Q Okay. I have page numbers. Can you go with me to
21 Page 58 and 59?

22 A Page 58 is a sample from Christopher Rowley right
23 palm, was analyzed on 08/07/15.

24 Page 59 -- ah, I see what you're asking. Yes,
25 there were particles of lead, antimony and barium,

1 as well as particles that we would consider
2 consistent -- lead, antimony and barium antimony --
3 found on the hands. With gunshot residue, this is
4 an automated analysis, so this is a computer
5 printout.

6 We, as analysts, who are trained, have to go
7 back and verify and confirm every one of these
8 particles of interest that the computer designates.
9 So that means I went back and manually relocated to
10 each one of these particles and confirmed that they
11 either were not the right shape, so they have to be
12 round to indicate that they were under high heat
13 and pressure of gunfire, or they had what we would
14 call a contaminating element involved. And these
15 elements can be magnesium or iron, in most cases.
16 The reason we consider those contaminating is
17 because fireworks have those in them.

18 Q Okay. Did you have any evidence suggesting that
19 this Defendant had been shooting off fireworks?

20 A No, sir.

21 Q Okay. Because I hadn't heard that, I was just
22 curious. Can you go with me -- so you would agree
23 that the computer picked up lead, antimony and
24 barium. And what you're telling me is you went
25 back and discounted it because it didn't meet the

1 roundness or conjunction or proximity test that you
2 find individually; is that right?

3 A Yes, sir. Specifically, these particles contained
4 iron and they were not round in shape.

5 Q Okay. Can you go with me to Page 61 and 62?

6 A Yes, sir.

7 Q And what is that from?

8 A This is Christopher Rowley's right back. It
9 detected particles of lead, barium and antimony, so
10 those would be associated particles. But, again, I
11 have on my note sheet from when I analyzed, which
12 is Page 80, that the particles were not round and
13 contained iron.

14 Q Okay. Let me do this. Let me ask you to back up
15 to 59.

16 A Uh-huh.

17 Q And let me read you the numbers associated with
18 lead, antimony and barium. All right?

19 A Okay.

20 Q And this is for the right palm; is that right?

21 A Yes, sir.

22 Q The numbers are 5, 26 -- or 6, 26 and 5; lead,
23 barium and -- oh, it's a long day. Lead, antimony
24 and barium; right?

25 A Yes, sir. That would indicate that the instrument

- 1 picked up six particles that were lead bearing, 26
2 particles that were antimony bearing, and 5
3 particles that were barium bearing.
- 4 Q Okay. Now -- and that's the right palm?
- 5 A Yes, sir.
- 6 Q Turn with me to Page 62, which is the right back of
7 the hand; right?
- 8 A Okay.
- 9 Q And there the numbers for lead, antimony and barium
10 are 2, 18 and 10; correct?
- 11 A Yes, sir.
- 12 Q Okay. Now, will you flip forward with me to Page
13 64 and 65?
- 14 A Yes, sir.
- 15 Q This is the left palm of Christopher Rowley;
16 correct?
- 17 A Yes, sir.
- 18 Q The lead numbers on 65 are 3, antimony is 3, and
19 barium is 1?
- 20 A Yes, sir.
- 21 Q Let's switch ahead to Page 67 and 68. This is the
22 left back of Christopher Rowley's -- the back of
23 Christopher Rowley's left hand; right?
- 24 A Yes, sir.
- 25 Q The lead numbers are 1, antimony, 4, and barium, 0;

1 correct?

2 A Yes, sir, uh-huh.

3 Q All right. Give me a few seconds. And if you can
4 help me, that would be great. Where do we find
5 Robin Herndon in these tests? What page? You've
6 had a long day like the rest of us, I can tell.

7 A A long week. Robin Herndon is going to start on
8 Page 21.

9 Q Twenty-one. So my problem is I'm going the wrong
10 way. Right palm, Robin Herndon?

11 A Uh-huh.

12 Q Twenty-one, 22. The associated numbers for lead,
13 antimony and barium, 2, 2, 2; right?

14 A Yes, sir.

15 Q Right back, Page 24, results on Page 25, lead,
16 antimony and barium, 2, 1, and 1?

17 A Yes, sir.

18 Q Where did you find the GSR on Robin?

19 A I found it on her left palm.

20 Q Okay. Not on her right hand; right?

21 A No, sir.

22 Q So those low numbers suggest not there?

23 A Additionally, on Page 24 where it says features,
24 only 291 particles total were found on her hand.
25 That's a very small amount of particles to find --

1 Q Any kind of particles?

2 A Yes.

3 Q Okay. Left palm or left back of her hand?

4 A The GSR I found was on the left palm.

5 Q Okay. So let's look at that, starting on Page 27,
6 with the results on 28; correct?

7 A Yes, sir.

8 Q Lead, 11, antimony, 2, barium, 7; right?

9 A Yes, sir.

10 Q You explained to us, to myself and the Court and
11 the jury, that in a semi-automatic weapon like is
12 the subject of this case, the GSR, the majority of
13 the GSR, which is the primer from the firing of the
14 shell casing and the bullet, go out the front of
15 the gun; right?

16 A The majority of it will follow the projectile, yes,
17 up to a certain point.

18 Q And a small amount will come out when that slide
19 kicks back and goes this way, or this way, or which
20 way?

21 A Again, it depends on the type, quality and caliber
22 of the gun.

23 Q Okay. Let me ask you, did you take this gun and
24 test it to see where the GSR goes and how it comes
25 out of it?

1 A No, sir, we do not perform that kind of test. I
2 don't know of anybody who performs that kind of
3 test to see exactly where the GSR comes out.

4 Q It sounds like a cool test, though, doesn't it?

5 A No, it really doesn't because we have no way of
6 knowing how much GSR should be expelled by a given
7 ammunition or gun, especially in the case of a
8 Glock. It's a very tight system.

9 Q And you especially wouldn't know that because you
10 never test it; right?

11 A Not in this case. However, we have at SLED done
12 some test firing of other guns to collect gunshot
13 residue. That's part of our training.

14 Q Uh-huh.

15 A A person in our department will go fire and then
16 we'll collect off of their hands. And we have had
17 people go fire specific firearms and have come back
18 and we know they just fired and didn't wash their
19 hands and they were negative. So it can really
20 depend on the gun.

21 Q Oh, that's a really cool observation. So even when
22 we know there's GSR present, it might not show up
23 on somebody's hands, even when they're firing the
24 gun. That's really cool.

25 MR. SORENSON: Is that a question or --

1 THE COURT: Is that a question or not?

2 MR. LEIENDECKER: I decided not to ask a
3 question.

4 MR. SORENSON: I move to strike that last
5 because that wasn't all a question.

6 THE COURT: It will be stricken. Please
7 disregard the last comment, slash, question.

8 Yes, sir?

9 MR. SORENSON: Just real briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. SORENSON:

12 Q I just want to touch on a couple of things that Mr.
13 Leiendecker did ask you about that were questions.
14 Explain -- can you explain why, Agent Berry, --
15 because he had asked you about some of the numbers
16 specifically dealing with Christopher Rowley's
17 right hand in the presence of barium, lead and
18 antimony?

19 A Yes, sir.

20 Q And I believe you said this. I want to make sure I
21 understand. Why is it your opinion that his hands
22 were -- that you reported out that they were
23 negative for gunshot residue?

24 A We reported them negative because those particles
25 were not round in shape. That indicates they were

1 not under the high heat and pressure of gunshot
2 residue. Additionally, I believe it says in my
3 report that particles of lead, barium and antimony
4 are common in the environment. It may not be in
5 this report, but that is typically something that
6 we put in our reports when associated particles are
7 found.

8 Q Okay. And for it to be gunshot residue from a
9 fired weapon, they have to be round particles that
10 are found?

11 A In order for us to consider them coming from a
12 weapon, they have to be round, yes, sir.

13 Q Ultimately, the stuff that Mr. Leiendecker went
14 over with you, is there any of that that changes
15 any of the opinions that you gave to the jury
16 during my initial questioning of you?

17 A No, sir.

18 MR. SORENSON: Thank you, Agent Berry.

19 THE COURT: Anything else?

20 MR. LEIENDECKER: No.

21 THE COURT: All right. You may step down,
22 ma'am.

23 THE WITNESS: Thank you.

24 THE COURT: Any objection to this witness
25 being excused?

1 MR. SORENSON: None from the State, Your
2 Honor.

3 MR. LEIENDECKER: No.

4 (Witness steps down and is excused.)

5 THE COURT: Let me see you all one second.

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

9 THE COURT: All right, ladies and gentlemen of
10 the jury, it is about 4:35. And they told me
11 that -- what we were up here conferencing about
12 was -- conferring about is scheduling and how long
13 the next witness will take. And that witness will
14 probably take some time, and so we are going to go
15 ahead and take our evening break, because I did not
16 tell you we were working late today. But we will
17 possibly work a little bit later tomorrow unless
18 someone has some conflict. But we may work a
19 little bit later on tomorrow evening just so we can
20 move along.

21 Remember, you have not heard all of the
22 evidence in this case. You have not heard all the
23 testimony. So you cannot discuss this case. You
24 cannot deliberate. It would also be improper for
25 you to form an opinion in your mind at this time

1 until you have received all of the evidence, the
2 arguments of the parties, and the charge on the
3 law.

4 I would also ask that you, once again, not do
5 any independent research, no social media,
6 networking regarding your service, and no research
7 on the internet or reading any newspapers regarding
8 anything in the trial. You are more than welcome
9 to go on the internet, Facebook and talk about
10 anything else except for this.

11 All right. Have a great evening, and we will
12 see you back at 9:30 in the morning.

13 (WHEREUPON, the jury was excused for the
14 day at 4:35 p.m.)

15 THE COURT: The deputies have asked that
16 everybody stay in until they get the jurors out of
17 the building.

18 While we are doing that -- you said you have
19 about four or five more witnesses -- is there
20 anything we need to take up regarding the witnesses
21 on tomorrow so we won't have to stop and we can
22 keep going? Anything you all anticipate may come
23 up?

24 MR. JUSTIS: We did make copies -- what we did
25 was, we redacted all those portions except the one

1 with the stipulation that if we're going to use
2 that when we call Detective Wertz.

3 THE COURT: Yes, sir.

4 MR. JUSTIS: Given a copy of that video to the
5 Defense so they can view it to make sure it is
6 good. We had not only Detective Wertz, but also
7 Agent Turner view it, sign it, initial it, so they
8 said that is accurate. And we will make our
9 decision in the morning whether or not we are going
10 to go with that or have, you know, a fully redacted
11 version.

12 THE COURT: All right. Anything from the
13 Defense?

14 MR. LEIENDECKER: No. And we do have that
15 disk, we just haven't had a chance --

16 THE COURT: Look at it tonight, yeah.

17 MR. LEIENDECKER: Yeah, we'll do that instead
18 of, you know, going to the movies.

19 THE COURT: All right. Well, we'll wait on
20 them to exit the building. Once they exit -- we'll
21 start back at 9:30 in the morning. We'll try to --
22 depending on where we are in the case, if we can
23 work a little bit longer and get some more
24 testimony in, we'll do that.

25 (WHEREUPON, the proceedings concluded at

1 4:37 p.m.)

2 MARCH 3, 2016

3 (WHEREUPON, the proceedings resumed at
4 9:43 a.m.)

5 THE COURT: Good morning. You may be seated.

6 All right. Are you ready to bring them in?

7 MR. JUSTIS: The State is ready, Your Honor.

8 MR. LEIENDECKER: Yes.

9 THE COURT: All right, bring them on in.

10 (WHEREUPON, the jury came into open
11 court at 9:44 a.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: All right. Good morning, ladies
14 and gentlemen of the jury. I hope that you had a
15 wonderful evening. At this time we will continue
16 with the State's case.

17 I'll ask them to call their next witness.

18 MR. JUSTIS: At this time, the State calls
19 Leeann Bost.

20 (Witness approaches.)

21 THE CLERK: Place your left hand on the Bible,
22 raise your right.

23 (Witness complies.)

24 THE CLERK: The testimony that you shall give
25 the Court and the jury shall be the truth, the

1 whole truth, and nothing but the truth, so help you
2 God?

3 THE WITNESS: I will.

4 THE CLERK: Have a seat in the witness box,
5 state your name, spelling your last for the Court,
6 please.

7 (Witness seated.)

8 THE WITNESS: My name is Leeann Bost, B-O-S-T.

9 LEEANN BOST,

10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JUSTIS:

13 Q Thank you. Good morning, Ms. Bost. Could you tell
14 the jury where you work?

15 A I currently work at Aiken Treatment Specialists as
16 an addiction counselor.

17 Q And back in November of 2013, where were you
18 working?

19 A I worked for the South Carolina Department of
20 Vocational Rehabilitation as a counselor.

21 Q And as a counselor for Voc Rehab, did you have the
22 opportunity to work with individuals at the
23 probation office?

24 A Yes. There was a partnership between Voc Rehab and
25 Department of Probation, Parole and Pardon. I

1 worked with a case load of people that were
2 referred from PP&P that needed addiction help as
3 well as helping them get employed. So I spent at
4 least one day a week over at the probation office
5 in-house seeing clients.

6 Q Okay. And you say you spent one day a week over
7 there. Did you have some kind of office over
8 there?

9 A I did. They gave me an office and I would set up
10 the computer. The same set-up I have in my regular
11 office was set up there at the PPP office.

12 Q And typically did you go over there the same day
13 every week or was it just --

14 A It was a regularly scheduled day with scheduled
15 appointments, yes.

16 Q Okay. And was that a particular day of the week
17 normally?

18 A It normally was. I changed days a couple of times
19 during the course of my two years with Voc Rehab,
20 but it was typically the same day for an extended
21 period of time.

22 Q So while you were doing this back in November of
23 2013, did you have the opportunity to become
24 familiar with Robin Herndon, the Defendant in this
25 case?

1 A I did. She was one of the probation agents, and
2 her office was directly across from mine.

3 Q And during that time, approximately, I guess, how
4 long had you worked with her?

5 A I started with Voc Rehab at the beginning of 2013,
6 and so the better part of a year, nine, ten months.

7 Q And as you were working across the hall, I guess,
8 across the hallway from Ms. Herndon, did you ever
9 have the opportunity to speak with Ms. Herndon?

10 A Sure. We were approximately about the same
11 distance as you and I are and our desks were facing
12 each other, so when we were gearing up in the
13 morning or in between different clients, we would
14 chat, talk back and forth. I also maintained
15 contact with the probation agents regularly during
16 the week by e-mail and telephone as well.

17 Q And did you have an opportunity to talk about your
18 personal lives with each other?

19 A Sure. Typical what people would characterize as
20 girl talk, talk about -- we were both mothers, we
21 were both roughly around the same age group. Talk
22 about things like dating and raising children, and
23 things like that.

24 Q And were you aware that Ms. Herndon was dating
25 anyone at that time?

1 A She did indicate she had a boyfriend, yes.

2 Q Okay. Now, during that time, did she ever say
3 anything negative about that boyfriend?

4 A I remember a conversation I had with her. She was
5 checking phone records on her computer. She
6 indicated that she felt that he may be cheating on
7 her, unfaithful, and that she paid for the phone,
8 so she was keeping track of the phone calls that he
9 was making to try to determine whether that was
10 happening or not.

11 Q And do you remember approximately when this
12 conversation was?

13 A The conversation -- I wouldn't if the incident that
14 happened about nine days later hadn't happened, but
15 it happened about nine days before the incident
16 where Mr. Rowley was shot.

17 Q And what was the conversation you had with her that
18 day?

19 A We were talking about dating, dating as divorced
20 moms, single moms, just typical guy stuff. She
21 expressed, you know, frustration that he might be
22 cheating on her. And she made a statement that she
23 had told him to be very aware of the gun that was
24 on her hip, that that was her gun, and if she ever
25 caught him cheating she would shoot him dead with

1 it and no jury would ever convict her.

2 Q When she stated this, did she say it jokingly?

3 A It's a throw-away statement that I assume did not
4 have immediate meaning, but there were no body
5 language to indicate jokes. This was no smile on
6 the face or crinkled eyes. You can tell when
7 somebody says it with humor, where she said it
8 fairly flat, fairly deadpan.

9 Q Now, at this point in time, did it strike you as
10 something you felt you needed to report at that
11 time?

12 A No, sir.

13 Q At what point in time did you feel this was
14 something you needed to report?

15 A As I said previously, about nine days, nine or ten
16 days later, when I went into work at my regular
17 office for Voc Rehab, the administrative assistant
18 said, Did you hear what happened? And let me know
19 that Robin had been arrested. And as soon as I
20 heard what had happened, the conversation that had
21 occurred very recently came immediately back to my
22 mind, so I felt I needed to make that information
23 known to the investigation.

24 Q And did you do that?

25 A I did. The investigators from the Aiken County

1 Sheriff's Office were in contact with me and they
2 came to my office and took my statement.

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

4 (Pause.)

5 BY MR. JUSTIS:

6 Q You stated that this was approximately nine days
7 before. Do you happen to remember the date?

8 A Could I reference my statement? I would know the
9 day that I made the statement.

10 Q Sure.

11 A So I made this statement on November the 8th of
12 2013. And the conversation that I had, as I
13 referenced on here, was October 28th, 2013. That's
14 when the conversation took place.

15 Q Thank you.

16 A Thank you.

17 MR. JUSTIS: No further questions. Please
18 answer any questions Mr. Leiendecker or Ms. Hinds
19 may have.

20 CROSS-EXAMINATION

21 BY MR. LEIENDECKER:

22 Q Good morning.

23 A Good morning.

24 Q Ms. Bost, is it?

25 A It's Bost, yes.

1 Q Ms. Bost, you said that you went to the Aiken
2 Probation Office once a week throughout the year of
3 2013; is that right?

4 A Correct.

5 Q And you also said that that one day changed. Did
6 it change during 2013 or did it change after that?

7 A I believe in my second year with Voc Rehab, I
8 changed the day because various agents have
9 different reporting days. I had changed it to a
10 different day to have an opportunity to see more
11 clients.

12 Q In October of 2013, in the fall of 2013, what day
13 were you going to the office?

14 A I don't recall. It was -- if it was a Monday or a
15 Wednesday. I know that those are the two days that
16 I used throughout my time at Voc Rehab.

17 Q So you don't remember if you were there on a Monday
18 or if you were there on a Wednesday?

19 A Correct.

20 Q All right. You talked about girl stuff, you said,
21 kids and dating. Were you married, divorced,
22 single at the time?

23 A Divorced.

24 Q And how recently had that been?

25 A I was divorced in 2003.

1 Q Okay. So ten years later, you were still divorced?

2 A Correct.

3 Q Are you married today?

4 A No, sir.

5 Q And who was your former or ex-husband?

6 A His name is Matthew Riley Bost. He works for the
7 Aiken County Sheriff's Office.

8 Q Okay. It was your testimony here today that she
9 told you if she found her boyfriend cheating on
10 her, she was going to shoot him with the gun she
11 had; is that right?

12 A She told me that she told him that she would.

13 Q Okay. And in your statement, in fact, what you say
14 she said was, if she ever caught him in her house
15 or in bed with another woman?

16 A Okay.

17 Q Which is a little different than if she caught him
18 cheating; right?

19 A Correct.

20 Q I'm just asking you. You agree that's different;
21 right?

22 A I would believe -- I would characterize finding my
23 boyfriend in bed with another woman or in my house
24 as cheating.

25 Q Absolutely. I think under the broad context of

1 that, if I show up and my spouse is in bed with
2 somebody else, I'm going to call that cheating.
3 However, I think there are lots of other things
4 that I could discover which would suggest my spouse
5 was cheating on me that didn't include me actually
6 catching her in bed with someone, wouldn't you
7 agree?

8 A I agree.

9 Q Okay. So she laid out a specific scenario that if
10 she saw that, she told you she was going to shoot
11 him; right?

12 A Correct.

13 Q But the truth is, even though you say today that
14 she didn't have the crinkle lines or smiles, or
15 whatever else, but you really didn't take what she
16 said as a threat or serious?

17 A I didn't think there was any imminent danger to her
18 boyfriend.

19 Q You didn't report it to anyone or think that that
20 was any problem?

21 A No.

22 Q Despite the fact that your ex-spouse was with the
23 Aiken County Sheriff's Office and you could have
24 easily called him about it; right?

25 A Correct.

1 Q Okay. When you heard about this report, did you
2 hear anything or hear any suggestion that this was
3 a situation where Ms. Herndon caught her boyfriend
4 in bed at their home?

5 A Not that specific information. Domestic violence
6 was the phrase that I had heard.

7 MR. LEIENDECKER: Okay. No further questions.
8 Thank you.

9 MR. JUSTIS: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. JUSTIS:

12 Q At some point, did you call your ex-husband?

13 A I did.

14 Q And when did you call your ex-husband?

15 A Immediately after I learned that she had shot her
16 boyfriend during a domestic violence-characterized
17 situation.

18 Q In fact, that's how you reported it; is that right?

19 A Yes.

20 Q And then they got investigators with you?

21 A Correct.

22 MR. JUSTIS: Thank you.

23 THE COURT: Anything else?

24 MR. LEIENDECKER: No nothing for this witness,
25 thank you.

1 THE COURT: Ma'am, you may step down.

2 Any objection to this witness being excused?

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

4 MR. LEIENDECKER: None.

5 THE COURT: All right. You're free to leave.

6 (Witness steps down and is excused.)

7 THE COURT: Call your next witness.

8 MR. JUSTIS: At this time, the State calls
9 Molly Hahn.

10 (Witness approaches.)

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

13 (Witness complies.)

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

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Have a seat in the jury box, state
19 your full name, spelling your last.

20 (Witness seated.)

21 THE WITNESS: My name is Molly Hahn, H-A-H-N.

22 MOLLY HAHN,

23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. JUSTIS:

1 Q Ms. Hahn, could you tell the jury where you
2 currently work?

3 A I work for the Aiken County Sheriff's Office.

4 Q And what is your position at the Aiken County
5 Sheriff's Office?

6 A I'm a criminal investigator.

7 Q Did you have an opportunity back in November of
8 2013 to become involved in a case involving
9 Ms. Robin Herndon?

10 A Yes, I did.

11 Q And how did you become involved in the case?

12 A The case occurred on a weekday in the late
13 afternoon. I was still in the office working on
14 some case files when Ms. Herndon was brought to the
15 Aiken County Sheriff's Office. I was, at that
16 time, asked to assist with the investigation. We
17 do regularly assist other investigators with their
18 cases, especially on larger case loads.

19 Q Okay. And how did you assist on this particular
20 case?

21 A This particular case, when Ms. Herndon was brought
22 to the Sheriff's Office, I was asked to essentially
23 escort her anywhere that she needed to go within
24 the Sheriff's Office, restroom, get some water. I
25 also completed a gunshot residue kit on her hands,

1 as well as I took photographs of her that night.
2 And 24 hours later, I was asked to take more
3 photographs of her.

4 Q Okay. Explain a little bit about the gunshot
5 residue kit that you performed on her.

6 A The gunshot residue kit is a SLED-issued kit. It
7 comes in a plastic box. The kit is fully assembled
8 with everything you would need in order to complete
9 it. I followed the basic instructions that are
10 accompanied inside the kit. The dabs are completed
11 on the front and the back of both hands. There are
12 labeled essentially almost like a follow-by --
13 number. Very basic, very simple to follow. We
14 seal it up. I sealed it up with my signature. It
15 was turned over to evidence. I was told that she
16 had fired a firearm, which was the reason for me
17 completing the gunshot residue kit.

18 Q So after completing that kit and turning it over to
19 evidence, you stated you had an opportunity to take
20 some photographs of her?

21 A Yes. Photographs generally are taken of anybody
22 potentially involved, suspects, witnesses, victims,
23 if needed. At this time, I was asked to take
24 photographs of Ms. Herndon.

25 Q And what are some of the reasons for taking

1 photographs of someone -- of a Defendant?

2 A It would document their condition, what they --
3 their appearance was, clothing, and kind of
4 physical evidence that may be on them, any kind of
5 injuries that may be on them. And just basically
6 their physical appearance at the time.

7 Q And did you have an opportunity at any point in
8 time to conduct a frisk of Ms. Herndon?

9 A A Terry frisk, or what we essentially refer to as a
10 Terry frisk, is always conducted when somebody is
11 in custody. Also, whenever they are transferred
12 from one law enforcement officer to another, we
13 will conduct another frisk essentially for safety
14 reasons to make sure there's nothing potentially
15 dangerous to themselves or us.

16 Q And did you perform a frisk on Ms. Herndon?

17 A I did.

18 Q And did you observe anything as you were conducting
19 that frisk?

20 A Nothing out of the ordinary. She had no weapon,
21 she had no -- nothing that would cause concern.
22 She had a -- from what I can recollect, she had a
23 phone clip on her, as well as her badge. The
24 weapon, obviously, was already secured at this
25 time, so she did not have that. Nothing else that

1 stood out of the ordinary.

2 Q I'm showing you what has been marked as State's 26
3 and 27. Do you recognize these?

4 A I do.

5 Q And what do they appear to be?

6 A These are photographs that I took the night of the
7 reported incident. This is in the conference room
8 at the Aiken County Sheriff's Office. This one
9 would be the front pants and shoes, as well as her
10 hands -- she had her hands down by her side -- of
11 Ms. Herndon. The pants that she is wearing the
12 night of the incident. The second one is the back
13 side of Ms. Herndon, same location, showing the
14 back of her pants, back of her arms, and the back
15 of her blouse.

16 Q Okay. Are they fair and accurate representations
17 of how Ms. Herndon appeared before you that
18 particular day?

19 A They are.

20 MR. JUSTIS: At this time the State would
21 offer State's 26 and 27 into evidence.

22 MR. LEIENDECKER: No objection.

23 THE COURT: All right. They will be entered.
24 (WHEREUPON, State's Exhibit Nos. 26 - 27
25 were marked for identification and

1 received into evidence.)

2 BY MR. JUSTIS:

3 Q I'm also showing you what has been marked as
4 State's 25. Do you recognize that?

5 A Yes.

6 Q What does that appear to be?

7 A This is the full figure photograph that I took of
8 Ms. Herndon the night of the reported incident.
9 Same location. And it just shows the entire front.

10 Q Is it a fair and accurate representation?

11 A Yes.

12 MR. JUSTIS: The State would offer State's 25.

13 THE COURT: Any objection?

14 MR. LEIENDECKER: I haven't had a chance to
15 see it yet, Your Honor.

16 THE COURT: Oh, I'm sorry.

17 (Pause.)

18 MR. LEIENDECKER: No objection.

19 (WHEREUPON, State's Exhibit No. 25 was
20 marked for identification and received
21 into evidence.)

22 MR. JUSTIS: At this time, Your Honor, the
23 State would publish State's 25.

24 May the witness step down, Your Honor?

25 THE COURT: Yes, sir.

1 (Witness steps down.)

2 (Exhibit published to jury.)

3 BY MR. JUSTIS:

4 Q Investigator Hahn, if you could just kind of
5 explain, starting head to toe, kind of what we're
6 observing in that picture.

7 A We always take a photograph of the entire person so
8 we know who the photographs that are following are
9 going to be of.

10 This photograph would show Ms. Herndon from
11 head to toe, what she's wearing, her condition at
12 the time. It is going to show her entirety, so
13 obviously you can see what appears to be blood on
14 the front of her shirt. It shows what she's
15 wearing. Right here, you can see she still has her
16 badge on. It shows the condition that she was in
17 when she was photographed. Before we take any kind
18 of jewelry off of her, before we secure the badge,
19 anything that would have been on her person is
20 going to be shown in the photo in its entirety.

21 Q And, Investigator Hahn, I notice by her eyes,
22 there's some marks around her eyes and under her
23 eyes. What was that?

24 A That would be makeup. She had been crying. The
25 situation had caused her to cry, and that was

1 her -- as any woman knows, if you don't have
2 waterproof on, it is going to be your mascara,
3 eyeliner, that sort of thing, causing black streaks
4 going down your face.

5 Q And did you observe any injuries in her facial
6 area?

7 A No.

8 Q What about her arms? Did you observe that day any
9 injuries to her arms, any redness, things of that
10 nature?

11 A No. We generally will try to photograph those.
12 We'll ask the person if there's any other injuries
13 or anything that they wish us to further look at to
14 see if there are injuries sometimes they can't see
15 themselves, be in an area they cannot see, such as
16 their back. There were no other indicators that
17 there were further injuries that needed to be
18 documented that day.

19 Q Did Ms. Herndon express to you any injuries or any
20 pain she was feeling at that time?

21 A The only one I was advised by Ms. Herndon was that
22 her rear end was hurting, that she had landed on it
23 and it was still kind of sore.

24 Q State's 26. Looking at this picture, did you
25 notice any kind of stains on her pants? Any kind

1 of tears or anything to her pants?

2 A No tears. There was what appeared to be kind of
3 just debris, dirt. She advised she had landed, I
4 think, either on a tree trunk or a bush,
5 something -- it occurred in the front yard and she
6 said she had landed on the ground. Nothing to tear
7 the cloth, so I'm just documenting here the
8 condition of the front of the pants.

9 Q Okay. And what about State's 27, I believe it is?

10 A This would essentially be the same thing. I'm
11 documenting the condition of the clothing. No
12 tearing. Here, there is really -- even less of the
13 dirt stains on the back side. Nothing on the
14 shirt, nothing on the back of the arms.

15 Q Okay. Was there any kind of mud? Were they wet?
16 Anything like that?

17 A No. There was no complaints of any of that. And
18 from what I could observe and what I photographed,
19 there was nothing other than just little flecks of
20 dirt on there.

21 Q Thank you. You may sit down.

22 (Witness returns to witness stand.)

23 Q At this time I am going to show you what has been
24 marked as State's 28, 29, 30, 31 and 32. Can I get
25 you to identify these photographs?

1 A These photographs I took the following day.
2 Ms. Herndon sent a request to the investigators
3 that she had some bruises documented. I was then
4 requested by the other investigators to travel to
5 the Aiken County Detention Center, where I met with
6 Ms. Herndon at her request, that she had some
7 bruising she wanted me to photograph for the case
8 file. And these are the photographs that I took.

9 Q Are they a fair and accurate representation of what
10 you observed that day, which would have been the
11 day after the incident when you took those
12 photographs?

13 A Yes.

14 MR. LEIENDECKER: No objection to any of them.

15 THE COURT: All right. 28, 29, 30?

16 MR. JUSTIS: It would actually be 28, 29, 30,
17 31, and 32, Your Honor. We would offer those into
18 evidence.

19 THE COURT: All right. Without objection.

20 (WHEREUPON, State's Exhibit Nos. 28 -32
21 were marked for identification and
22 received into evidence.)

23 BY MR. JUSTIS:

24 Q I think I can start with 28.

25 MR. JUSTIS: May the witness step down, Your

1 Honor?

2 THE COURT: Yes.

3 (Witness steps down.)

4 BY MR. JUSTIS:

5 Q As we go through each one of these pictures,
6 Investigator, would you just explain what we're
7 looking at?

8 A Of course. This photograph is Ms. Herndon. It is
9 at the Aiken County Detention Center. Again, just
10 showing the frontal of her so that we know who you
11 are looking at in the pictures to follow.

12 Q Okay. Next one, 29?

13 A This is a photograph of her upper arm near the
14 armpit area that -- the bruise that she indicated
15 she wanted me to document. It shows the scale and
16 sizing, and the coloration of the bruise obviously
17 would show in the photograph itself.

18 Q So are you able to tell -- I know you have the
19 scale there -- are able to tell the size of the
20 bruise?

21 A Based on the size of the ruler next to it, the
22 bruise was, from what you can see, maybe a couple
23 of centimeters in diameter.

24 Q And you stated that was the arm. Do you know which
25 arm?

1 A This would have been upper left outer arm.

2 Q And State's Exhibit 30?

3 A This arm -- I apologize for the lighting. The jail
4 cells don't have the greatest lighting ever. This
5 is going to be the right forearm, about this area.
6 She had another bruise that she wished to have
7 marked. The coloration was a little more faded.
8 It was a little more difficult to capture the full
9 bruise. But, again, we have the scale of the ruler
10 there.

11 Q I think actually -- in the actual picture -- I
12 think the TV kind of lightens it up some. You can
13 actually see it better on the actual photograph.
14 Technology isn't always a great thing. And which
15 arm?

16 A This was the right forearm.

17 Q And what about State's Exhibit 31?

18 A This would have been, again, the right arm, but
19 this is the outside of just above the elbow, so
20 approximately this region right here. Again, she
21 indicated she had another bruise. The ruler there
22 shows it.

23 (Exhibit published to jury.)

24 BY MR. JUSTIS:

25 Q And, finally, State's Exhibit 32?

1 A This is the upper, outer right thigh. She
2 indicated one more bruise right there. The scale,
3 she is holding it against her side. So, again, I
4 apologize, the lighting is not clear on the TV.

5 (Exhibit published to jury.)

6 BY MR. JUSTIS:

7 Q You may have a seat.

8 (Witness returns to witness stand.)

9 Q Now, when you met with Robin the next day at the
10 jail, what did she express to you as far as
11 injuries?

12 A She asked that I take photographs of the bruises,
13 which I did. At the conclusion of the photographs,
14 I asked her if there were any other marks or
15 injuries that she needed me to document. She again
16 reiterated, well, her tailbone slightly hurt from
17 where she had landed. She did open up -- in the
18 pictures, I don't know if you can recall, she's
19 wearing a green, what we call a jumper, in the
20 jail. It is essentially held together with Velcro.
21 She did undo the Velcro on the back of that jumper
22 so I could take a look and make sure there were no
23 other injuries that needed to be documented. I
24 told her I did not see any other bruises on there.
25 She said that was fine. No other injuries were

1 reported and nothing else stood out that needed to
2 be documented at that time.

3 Q So you didn't take any pictures of that because you
4 didn't see any injuries?

5 A No.

6 Q So, generally speaking, what were the areas she was
7 complaining of that day having bruises?

8 A She said she had bruises. Not so much a complaint,
9 but she wanted to show that she did have the
10 bruises. The only injury that she was still saying
11 that she felt pain or discomfort with was the rear
12 end area where she had landed from the night
13 before.

14 Q Now, let's kind of back up a little bit to that
15 previous day when you first met her.

16 We saw in this picture, in State's 25, the
17 full body frontal shot of her where she appears to
18 have the makeup and everything running down her
19 face.

20 At some point in time, was she allowed to
21 clean up?

22 A Yes. After she was done with the photographs and
23 any potential evidence was collected, GSR kit,
24 photographs, I escorted her to the restroom where
25 she was allowed to use the facility, washed her

1 hands, threw some water on her face, kind of help
2 her clean up a little bit, feel more human.

3 Q And did you stand outside the restroom or inside
4 the restroom?

5 A I stood inside. Our investigation division has a
6 restroom upstairs. When you walk inside, there are
7 two bathroom stalls, but the sink is on the outside
8 of the stall area. So she is allowed to go into
9 the stall while I wait outside of it where I can
10 obviously see underneath of it. And she doesn't
11 have the door locked there. And then when she
12 exits that stall to wash her hands, she has to
13 stand in front of me where I can keep an eye on
14 her.

15 Q So you observed her wash her face and wash her
16 hands?

17 A I did.

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

19 (Pause.)

20 MR. JUSTIS: That's all I have for you,
21 Investigator Hahn. Please answer any questions the
22 Defense might have for you.

23 THE COURT: Yes, sir?

24 CROSS-EXAMINATION

25 BY MR. LEIENDECKER:

1 Q Good morning, Investigator.

2 A Good morning.

3 Q Twenty-five, 26 and 27 were all taken sometime in
4 the late afternoon, early evening of November 6th,
5 2013; is that correct?

6 A Yes.

7 Q And you took those soon after she arrived at the
8 Aiken County Sheriff's Office but before she
9 cleaned up and before she went through
10 interrogation; is that right?

11 A Yes.

12 Q Okay. Thanks. The remaining photographs, 28
13 through 32 -- and do you need to look at those?

14 A Those are the --

15 Q I'm just going to ask, those were all taken the
16 next day, November 7th, at the Aiken County
17 Detention Center; is that right?

18 A Yes.

19 Q And those were taken because of Robin's request
20 that you come and take the photographs; right?

21 A Yes.

22 Q Those photographs would have been taken less than
23 24 hours from the previous pictures; right?

24 A They were actually taken just over 24 hours. The
25 previous ones were late afternoon, about 4:30.

1 Q So you got there in the evening?

2 A Yes.

3 Q To the jail?

4 A Yes.

5 Q All right. So just beyond 24 hours?

6 A Yes.

7 MR. LEIENDECKER: No further questions. Thank
8 you.

9 THE COURT: Anything else?

10 MR. JUSTIS: Nothing, Your Honor.

11 THE COURT: All right, ma'am, you may step
12 down.

13 (The witness steps down.)

14 MR. JUSTIS: At this time the State calls Mike
15 Perry.

16 (Witness approaches.)

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

19 (Witness complies.)

20 THE CLERK: The testimony you shall give the
21 Court and jury will be the truth, the whole truth,
22 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 state your name, spelling your last for the Court.

1 (Witness seated.)

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

3 HAROLD MICHAEL PERRY,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JUSTIS:

7 Q Mike, where do you work?

8 A The South Carolina Law Enforcement Division.

9 Q And how long have you worked there?

10 A A little over 25 years.

11 Q And what is your job title there?

12 A My title is senior agent.

13 Q And as senior agent, what do you do?

14 A My position now, I am in the regulatory division
15 now.

16 Q And what did you do back in November of 2013?

17 A I was in the Midlands Investigative Section at that
18 time.

19 Q So what kind of things would you do working in that
20 area?

21 A Cases that were assigned from the Governor's
22 Office, Attorney General's Office, or assisting in
23 local law enforcement.

24 Q Did you have an opportunity to assist in a case
25 involving Robin Herndon?

1 A Yes, I did.

2 Q And what was the extent of your involvement in that
3 case?

4 A I was called that afternoon and was told when we
5 were called that we were going to be assisting the
6 Aiken County Sheriff's Office. Myself and Agent
7 Turner went to Aiken, met with Lieutenant Fleury
8 and Investigator Wertz. Met Robin there at the
9 department. I sat in on the Miranda Warnings
10 issued to her and also, later on, I assisted with
11 some statements that were taken.

12 Q And let's talk about -- let's talk about sitting in
13 on that Miranda. Could you explain to the jury
14 essentially what Miranda is?

15 A Miranda is the standard rights I'm sure you've all
16 heard on TV. You have the right to remain silent.
17 We were in a conference room there at the Sheriff's
18 Office. There was a conference table there.
19 Myself, Investigator Wertz, and Agent Turner were
20 there.

21 Q And did the Defendant appear to be under the
22 influence of any drugs or alcohol that day?

23 A No, sir, she did not.

24 Q Did she appear to have any physical or mental
25 disability that would have impaired her ability to

1 kind of understand what was going on?

2 A No. Earlier I had asked her was she okay and did
3 she need any medical treatment or anything else
4 upon first getting there, and she said she didn't.
5 She was upset, but she was not in any medical or
6 any type of needs like that.

7 Q Okay. And at this current time when you met with
8 her, was she in custody?

9 A Yes, sir.

10 Q She wasn't free to leave?

11 A No, huh-uh.

12 Q So at that point in time, did -- was she read her
13 Miranda rights?

14 A Yes, she was.

15 Q And how was that done?

16 A Investigator Wertz with the Sheriff's Department,
17 who was the lead investigator at the time, he took
18 the standard form that Aiken County uses -- it is a
19 printed form -- goes through the form, reads it to
20 her. He starts off at the top, he puts the date
21 and time, that type of thing, puts her name. He
22 reads each line. And as she reads the lines, she
23 is asked to initial the line if she understands
24 what she is reading. At the bottom she is asked to
25 sign that she understands what has been written.

1 Next, there is a waiver that says basically
2 that, I am willing to talk to you at this time
3 without an attorney. She signs that, which she
4 signed at that time. I witnessed it -- or, excuse
5 me, she signed it, then I witnessed her signature.

6 Q Okay. I'm showing you what has been marked as
7 State's 33. Could you tell me if you recognize
8 that document?

9 A Yes, I do. It has my signature, Robin's signature,
10 and it is the standard Aiken County Sheriff's
11 Office Miranda Warning form.

12 Q Is that the actual Miranda form that was read to
13 her and that she acknowledged that particular day?

14 A Yes, it was.

15 Q And how can you tell that?

16 A My signature is on the bottom.

17 MR. JUSTIS: At this time, the State would
18 offer State's 33 into evidence.

19 THE COURT: Any objection?

20 MR. LEIENDECKER: No.

21 (WHEREUPON, State's Exhibit No. 33 was
22 marked for identification and received
23 into evidence.)

24 BY MR. JUSTIS:

25 Q If you could, Agent, could you kind of go through

1 from top to bottom of that form and kind of explain
2 what is on there and explain to the jury how it is
3 filled out again?

4 A Yes. As I said, this is s standard form that the
5 Sheriff's Office uses on all their investigations.
6 It starts off just with their logo, then it has got
7 Miranda Warning written out. It has got a place
8 for the date and time, which was filled in 11/06/13
9 at 3:50 p.m. Then you've got a section where you
10 go through and you read each line to the person who
11 is being interviewed, and then they are asked to
12 initial out to each side that they know what they
13 are reading -- or know what they are hearing and
14 understand it.

15 When you get -- when you read through those,
16 then you come to a line that says, I have read this
17 statement of my rights and understand what my
18 rights are. And it asks for your signature, which
19 at that time Robin signed.

20 Then you have a Waiver of Rights. And it
21 basically says, I am willing to make a statement
22 and answer questions. I do not want an attorney at
23 this time. I understand and know what I am doing.
24 No promise or threats have been made to me and no
25 pressure or coercion of any kind has been used

1 against me.

2 They are also asked to put their initials
3 beside that. Then on the next line is where they
4 sign and put the time, and then I sign it as a
5 witness at the bottom.

6 Q Okay. Thank you.

7 Now, when this was conducted, when these
8 rights were being read to her and she was signing
9 all this, did she appear to have any trouble
10 understanding her rights?

11 A No, sir.

12 Q Did her answers appear rational and responsive?

13 A Yes, they did.

14 Q Did anyone threaten or coerce her into signing that
15 document?

16 A No, sir.

17 Q How did the Defendant respond when asked whether or
18 not she wanted an attorney present?

19 A She said she was willing to give a statement at
20 that time.

21 Q Did she ever, to your knowledge, ever change her
22 mind and ask to speak to an attorney?

23 A Not to my knowledge.

24 Q And to the best of your knowledge, was this -- were
25 these Miranda warnings signed freely and

1 voluntarily?

2 A Yes, they were.

3 Q I think you stated -- were you actually there for
4 the actual interview?

5 A No, I did not participate in the interview.

6 Q Okay. So the extent of your involvement that
7 particular day with Ms. Herndon was witnessing the
8 Miranda Warning?

9 A Right. I was in the room for Miranda, and after
10 that I stepped out of the room.

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

12 (Pause.)

13 MR. JUSTIS: Nothing further. Please answer
14 any questions the Defense might have.

15 THE COURT: Yes, sir?

16 CROSS-EXAMINATION

17 BY MR. LEIENDECKER:

18 Q Good morning, Agent Perry.

19 A Good morning.

20 Q Your participation came about because there came a
21 request that SLED become involved in this
22 investigation in Aiken County; is that right?

23 A Yes, sir, we were asked to assist the Aiken County
24 Sheriff's Office with their investigation.

25 Q And you would agree with me that this isn't an

1 incredibly complicated investigation?

2 A Yes, sir.

3 Q The reason you were called was because Robin was
4 law enforcement and they wanted support; correct?

5 A Yes, sir.

6 Q It made a unique situation, didn't it?

7 A It did because -- especially for me. Me and Robin
8 had worked together.

9 Q Because you and Robin used to work together at SLED
10 --

11 A Right.

12 Q -- in the Midlands Investigative Unit; correct?

13 A Yes, sir.

14 Q And the form that you witnessed Robin sign, she
15 signed freely and voluntarily?

16 A Yes, sir, she did.

17 Q And this form that you witnessed Robin sign was
18 dated by time at the top and at the bottom on
19 November 6th, 2013; right?

20 A Yes, sir.

21 Q Now, it is always a dangerous leap, my kids tell
22 me, to assume something, but I'm going to ask you
23 the question, and if I'm wrong, tell me my
24 assumption is wrong.

25 3:50 at the top is the moment that

1 Investigator Wertz began going over these rights
2 and the form with Robin?

3 A Yes, sir, it was.

4 Q 3:55 at the bottom is when Robin signed after she
5 had initialed the form?

6 A Yes, sir.

7 Q Okay. That was all on November 6th; right?

8 A Yes, sir.

9 Q Less than two hours after the shooting at her home;
10 right?

11 A Yes, sir.

12 Q Yet, she freely and voluntarily agreed to cooperate
13 and give you a statement in that very short time,
14 despite the fact that -- she was visibly upset,
15 wasn't she?

16 A Yes, sir.

17 Q She was crying?

18 A Yes, sir.

19 Q She looked disheveled?

20 A Yes, sir.

21 MR. LEIENDECKER: Thanks a lot. I don't have
22 any further questions.

23 MR. JUSTIS: Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. JUSTIS:

1 Q Having known Robin -- approximately how long had
2 she been in law enforcement?

3 A I don't know how long she had been in law
4 enforcement. I had known Robin when she -- before
5 she worked at SLED, since she worked for the
6 Edgefield County Sheriff's Office.

7 Q So she had been in several years, at least, would
8 that be a fair statement?

9 A Oh, yes, sir.

10 Q So would it be a fair statement to say she has
11 probably given Miranda rights to other individuals?

12 A Oh, yes, sir.

13 MR. JUSTIS: Thank you.

14 No further questions.

15 THE COURT: All right, you may step down.

16 Any objection to this witness being excused?

17 MR. LEIENDECKER: None.

18 MR. JUSTIS: None.

19 (Witness steps down and is excused.)

20 THE COURT: Call your next witness.

21 MR. JUSTIS: May we approach real quick, Your
22 Honor?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 MR. JUSTIS: At this time, Your Honor, the
3 State calls Agent Phillip Turner.

4 (Witness approaches.)

5 THE CLERK: Place your left hand on the Bible,
6 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: I do.

12 THE CLERK: Have a seat in the witness box,
13 state your name, spelling your last for the Court.

14 (Witness seated.)

15 THE WITNESS: I'm Special Agent Phillip
16 Turner, T-U-R-N-E-R.

17 PHILLIP TURNER,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JUSTIS:

21 Q Agent Turner, if you would, tell the jury where you
22 currently work.

23 A I work for the South Carolina Law Enforcement
24 Division, or otherwise known as SLED.

25 Q And how long have you worked at SLED?

1 A A little over three years now. I came in October
2 of 2012.

3 Q And what did you do prior to that?

4 A Prior to that, I worked for the North Augusta
5 Department of Public Safety as a public safety
6 officer, and then as a detective. I was a public
7 safety officer from 2002 to 2005, and an
8 investigator from 2006 until the time I came to
9 work at SLED.

10 Q Sir, approximately how many years in law
11 enforcement do you have?

12 A It is about to be 14 in a couple of days.

13 Q Now, what was your job title at SLED?

14 A It is a special agent.

15 Q And did you have an opportunity back in November of
16 2013 to become involved in this case?

17 A Yes, sir, I did.

18 Q And when you became involved in this case, did you
19 have an opportunity to speak to any witnesses in
20 the case?

21 A Yes, sir, I did.

22 Q All right. What witnesses did you speak to in this
23 case?

24 A I spoke with a couple of the neighbors. I spoke
25 with Lacey Burton, for one. I remember

1 interviewing her a couple of days after.

2 Q And why did you interview Lacey Burton?

3 A She was on our to-do list, I guess you would say,
4 like anything else. She had called -- been one of
5 the people to call 9-1-1. She wasn't present at
6 the time when law enforcement got there because she
7 had left. So we wanted to go back and follow up
8 with her a couple of days later to see what exactly
9 it was she had seen or witnessed.

10 Q And did you follow up with her?

11 A Yes, sir, we did.

12 Q And where did you follow up with her?

13 A At her home, which was right next to the incident
14 location.

15 Q Okay. And when you arrived there, were you able to
16 talk to her?

17 A Yes, sir, we did.

18 Q Was she able to give you a statement at that time?

19 A Yes, sir, she did.

20 Q Was she able to show you where she was when she
21 witnessed what she witnessed?

22 A Yes, sir. In fact, our entire interview was
23 conducted with her in the front yard where she said
24 she saw the incident take place.

25 Q Okay. So you were actually standing in the area

1 where she was standing?

2 A Yes, sir.

3 Q Did you have -- tell us about the view you had from
4 that location looking towards what would be the
5 Defendant's house?

6 A Yes, sir. What we did was we had her walk us
7 through kind of where she was, what she had seen,
8 just to make sure we were properly vetting her. We
9 stood where her car was --

10 MR. LEIENDECKER: Objection, Your Honor.

11 THE COURT: What's the objection?

12 MR. LEIENDECKER: The objection is that this
13 witness is trying to bolster a State's witness that
14 has already testified. He is trying to now make
15 his testimony supplemental or make it her
16 testimony. She was actually heard from the witness
17 stand. Her statement was reviewed. She was --

18 THE COURT: Okay, what portion of his -- what
19 exactly did he say?

20 MR. LEIENDECKER: He is now talking about he
21 stood all the places that she took him where she
22 was. We already have established that there is a
23 conflict in her testimony and written statement as
24 to where she was.

25 THE COURT: All right.

1 MR. LEIENDECKER: Where she stood and what she
2 did.

3 THE COURT: All right.

4 MR. LEIENDECKER: He can't now correct that by
5 --

6 THE COURT: He can testify as to what he did.

7 MR. LEIENDECKER: He can testify as to what he
8 saw. He can't testify as to what she told him --

9 MR. JUSTIS: And, Your Honor, --

10 THE COURT: Hold on --

11 MR. LEIENDECKER: -- or where she told him to
12 stand.

13 THE COURT: Hold on one second. Hold on one
14 second.

15 Let me see y'all a second.

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

19 THE COURT: You may be seated.

20 The objection is overruled.

21 MR. JUSTIS: Thank you, Your Honor. May it
22 please the Court?

23 BY MR. JUSTIS:

24 Q So when you spoke to her, what did you observe
25 there that day?

1 A Yes, sir. While we were standing in the front yard
2 of the home, we looked towards the house, the
3 incident location in question, observed where she
4 stated she was at. We just listened to her and
5 allowed her to tell us what had taken place. And
6 we just, I guess, vetted what she was to further
7 investigate.

8 Q At some point in time, did she document her -- what
9 she saw that day on a written statement form?

10 A Yes, sir, she did.

11 Q And were you the person that collected that form
12 from her?

13 A Yes, sir, myself and Agent Perry.

14 Q I'm showing you what has been marked as Defense 23
15 and 20. Those are photographs that were entered
16 into evidence that you had taken from her house, I
17 think one from her porch and one from her front
18 yard. In your opinion, are they fair and accurate
19 representations of what you saw several days later,
20 the view that you had several days later of the
21 Defendant's house?

22 A Yes, sir. The only thing that stands out to me is
23 the focal point of the photographs. You know how
24 you can take a picture, like if you take one
25 through a chain link fence of your kid playing

1 ball, you either get a picture of the fence or the
2 kid playing ball. It seems like the focal point is
3 the trees and not the incident location, but it's
4 fair and accurate.

5 Q Okay. Thank you. So you met with Lacey, you got a
6 statement from her. At some point after that -- at
7 some point during your investigation, did you have
8 an opportunity to meet with Ms. Herndon?

9 A Yes, sir.

10 Q And when was the first time you met with
11 Ms. Herndon?

12 A Met with her at the Sheriff's Office on the
13 incident date.

14 Q Okay. And what transpired that day at the
15 Sheriff's Office with you and Ms. Herndon?

16 A I sat in on the interview. She agreed to be
17 interviewed when we got there. I sat in with
18 Investigator Wertz and we conducted a formal
19 interview with her.

20 Q Okay. And when you conducted this interview, is it
21 videotaped in any way?

22 A Yes, sir.

23 Q During this interview -- where were you sitting
24 during the interview?

25 A I'm sitting -- well, it's in a conference room at

1 the Sheriff's Office. As you walk in, I'm to
2 the -- I guess if you're standing at the conference
3 table, I'm to the right as the camera appears, she
4 is in the middle, and Investigator Wertz is to the
5 left.

6 Q Okay. So you had an opportunity to view
7 Ms. Herndon that particular day?

8 A Yes, sir.

9 Q Okay. Did you notice anything unusual about her
10 physical appearance?

11 A She looked -- appeared to be upset. Her makeup is
12 running. She is disheveled. She had some blood on
13 her clothing. Yes, sir.

14 Q At some point in time, was she allowed to clean up?

15 A Yes, sir.

16 Q Did you notice any injuries on her?.

17 A No, sir.

18 Q Do you have any experience or any training in the
19 medical field?

20 A Yes, sir. I previously was a certified EMT,
21 intermediate. I worked for Augusta Fire
22 Department, a volunteer --

23 MR. LEIENDECKER: Objection, Your Honor.

24 THE COURT: Yes, sir. Same objection?

25 MR. LEIENDECKER: No. The objection here is

1 that his observations are no greater than yours or
2 mine just because --

3 THE COURT: What's the objection, though?

4 MR. LEIENDECKER: The objection is they are
5 trying to use him as some form of expert he hasn't
6 been qualified as.

7 THE COURT: All right.

8 MR. LEIENDECKER: And under 702 and (1), the
9 observations he is making are commonplace and don't
10 require that kind of expertise.

11 THE COURT: Are you trying to introduce him as
12 an expert?

13 MR. JUSTIS: No, Your Honor.

14 THE COURT: All right. So 702 wouldn't apply.
15 Is he giving --

16 MR. LEIENDECKER: It would apply, Your Honor,
17 because he didn't ask him if he observed -- first,
18 he asked him his background, if he had medical
19 background, then he asked him if he observed. He's
20 back-door doing exactly what 702 prohibits.

21 THE COURT: All right. Let me see you all up
22 here again.

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

1 THE COURT: All right. The objection is
2 overruled.

3 MR. JUSTIS: Thank you.

4 BY MR. JUSTIS:

5 Q What were your observations to any -- to her
6 physical appearance that day while she was sitting
7 there giving her statement?

8 A I didn't notice any physical injuries, any signs of
9 traumatic injury, just in my assessment.

10 Q And you stated that the video -- that this
11 interview was videotaped; is that correct?

12 A Yes, sir.

13 Q I'm showing what has been marked as State's Exhibit
14 34B, as in Bravo. Do you recognize that?

15 A Yes, sir, I do.

16 Q And what does that appear to be?

17 A It is an interview of the video.

18 Q And how do you know -- is that a fair and accurate
19 representation?

20 A Yes, sir, it is a video of the interview. I
21 apologize.

22 Q And how do you know that?

23 A Those are my initials on the disk. I viewed it to
24 make sure it was right this morning.

25 Q So prior to testifying today in court, you viewed

1 this actual video?

2 A Yes, sir.

3 Q And according to you, it is a fair and accurate
4 representation of what transpired that day?

5 A Yes, sir.

6 MR. JUSTIS: At this time the State would
7 offer State's 34-Bravo into evidence.

8 THE COURT: Yes, sir. Any objection?

9 MR. LEIENDECKER: Your Honor, I'm 99.5 percent
10 certain I don't have an objection, but I'd like to
11 wait to move it in until we've actually seen the
12 video and are certain that it is what we all think
13 it is and that it is not anything different.

14 THE COURT: All right. So no objection at
15 this time?

16 MR. LEIENDECKER: No objection at this time,
17 but I reserve --

18 THE COURT: I'm going to enter it because he
19 is going to ask to publish it to the jury. So
20 we'll enter it. If there is some portion that you
21 object to the video at the time, just stand up and
22 object and we'll stop it.

23 MR. LEIENDECKER: Very good.

24 MR. JUSTIS: Your Honor, if I might just add,
25 it is probably about 37 minutes. I didn't know if

1 you wanted to take a break.

2 THE COURT: Does anyone need to take a break?
3 The video is about 37 minutes. Does anyone need to
4 take a break, or are y'all ready to keep moving?
5 Keep going? Oh, one person? One person needs a
6 break. That's fine.

7 MR. JUSTIS: And that will give us a chance to
8 get it set up.

9 THE COURT: Yeah, that will give you a chance
10 to set it up.

11 It's okay. We'll take a break.

12 (WHEREUPON, the jury retires to the jury
13 room at 10:43 a.m.)

14 THE COURT: I'm going to allow Mr. Leiendecker
15 to put his objections on the record. The first one
16 was regarding when Agent Turner was saying where
17 she told him to stand and that objection
18 regarding -- I think you said he was bolstering --
19 the objection was bolstering, I believe.

20 MR. LEIENDECKER: Yes, Your Honor. And I
21 think obvious from Mr. Sorenson's observation at
22 the bench, I already talked that out. And I think
23 my reasons for believing that that was bolstering
24 are on the record. And I would only clarify it or
25 reiterate it by saying that, you know, they had a

1 witness here. It was her testimony. She was the
2 one who testified and wrote a statement and she was
3 available to be cross-examined by the State about
4 that. And it would be improper to allow the
5 State's witness now to bolster his observations by
6 saying, This is what she told me where she was, She
7 did this, She did that on that given day.

8 And so I think that would be improper and
9 those comments should be struck from the record.

10 THE COURT: All right. And that objection was
11 overruled. As I told you all -- stated to you all
12 at the sidebar, the witness can testify as to what
13 he did and how he conducted his investigation. And
14 for that reason, that objection was overruled.

15 All right. The next objection was him
16 testifying as to his medical background.

17 MR. LEIENDECKER: Yes, Your Honor. Although
18 the State did not follow any steps to seek to
19 qualify him, I believe that under 701(c), they were
20 back-door attempting to make his observations
21 concerning Ms. Herndon and her physical condition
22 that day more important than the observations of
23 you or me or any other lay person because he had
24 this medical EMT background. They were headed that
25 way, and that's why I objected.

1 I also believe that those are common sense
2 observations that the jury, who is going to get to
3 see this video, certainly will be allowed to make
4 for themselves. They can see if she looks like she
5 is injured. They can see if she looks like she is
6 distraught. They can see all those things.

7 And what they are trying to do was make his
8 opinion more important than the lay person's
9 opinion because he has a medical background.

10 And I believe it's really a back-door attempt
11 to violate 701(c) and we would move to strike the
12 comments concerning his medical background.

13 THE COURT: All right. In looking at 701, it
14 does state that lay witnesses are permitted to
15 offer opinion testimony when such testimony is
16 rationally related to the witness's perception.

17 I think the question regarding his medical
18 background would probably go to the weight. And,
19 of course, you would have the opportunity to
20 cross-examine him regarding his opinion and whether
21 or not he can give it to some reasonable degree of
22 medical certainty, which, apparently, he's going to
23 have to say no, he can't because he has not been
24 qualified as an expert.

25 So I am going to overrule that objection and

1 deny the Defense's request to strike that portion
2 of the testimony. I think he can testify as to his
3 opinion. They've asked what his background is, but
4 he can't testify to any degree of medical certainty
5 because he has not been qualified as an expert in
6 that area.

7 All right. Are we ready to bring them in?

8 MR. JUSTIS: Yes, Your Honor.

9 (WHEREUPON, the jury came into open
10 court at 11:02 a.m.)

11 MR. LEIENDECKER: Your Honor, may it please
12 the Court? Any problem with me sitting over here
13 to take notes?

14 THE COURT: No problem at all. You can sit
15 here or over there if you like, either one.

16 All right. Ladies and gentlemen of the jury,
17 we will continue with the State's case.

18 MR. JUSTIS: At this time, Your Honor, the
19 State would publish the Defendant's interview,
20 which is State's Exhibit 34B, as in Bravo.

21 THE COURT: All right.

22 (WHEREUPON, the video was published to
23 the jury.)

24 MR. JUSTIS: No further questions, Your Honor.

25 THE COURT: All right. Let's give

1 Mr. Leiendecker a second to walk down.

2 CROSS-EXAMINATION

3 BY MR. LEIENDECKER:

4 Q Good morning.

5 A Good morning.

6 Q What we saw is a fair and accurate representation
7 of what happened the afternoon of November 6th in
8 the conference room at the Aiken County Sheriff's
9 Office; right?

10 A Yes, sir.

11 Q You asked some questions, Investigator Wertz asked
12 some questions, but basically Robin talked?

13 A Yes, sir.

14 Q Robin talked that day in a very up and down erratic
15 fashion. Sometimes she is meek, sometimes she
16 almost talked plain, sometimes she cried, sometimes
17 she raised her voice; right?

18 A Yes, sir.

19 Q It is fair to characterize that she looks bad, just
20 emotionally --

21 A Yes, sir.

22 Q -- in that interview; right?

23 A Yes, sir.

24 Q You noticed that; right?

25 A Yes, sir.

1 Q It wasn't until somewhere three-quarters of the way
2 into the interview you actually asked her if she
3 was on any kind of medications herself; right?

4 A Yes, sir.

5 Q And you found out then she was taking Wellbutrin
6 and some other things?

7 A Yes, sir. At 7:00 o'clock that morning, I believe
8 she said.

9 Q Okay. SLED was called into this investigation not
10 because it was a complicated investigation, but
11 because it involved an officer involved in a
12 shooting, a law enforcement officer; right?

13 A Yeah, I guess. We get called -- we assist Aiken
14 County with -- right now, we're assisting them with
15 another double homicide here that doesn't have a
16 police officer. So if they call -- Lieutenant
17 Fleury or the Sheriff calls and needs help, we
18 come. But this one, I would assume.

19 Q The unique circumstance here was a law enforcement
20 officer involved --

21 A Oh, yes, sir.

22 Q -- in a shooting?

23 A Yes, sir.

24 Q Typically -- you and I talked -- when SLED is
25 investigating an officer involved in a shooting,

1 they send that officer home for 24 hours to get
2 stable and bring them back and then question them
3 about the event; right?

4 A You know, and that's not true.

5 Q Well, that is what you told me before from the
6 witness stand. You have changed your opinion?

7 A I don't think I said that. What I'll tell you
8 about SLED and officer-involved shootings is -- and
9 I've even researched it since you and I spoke the
10 other day -- we have no written policy on that. We
11 interview an officer no different than we interview
12 any other person, as soon as we can, or whenever
13 the investigation directs us to, whenever we're
14 allowed or directed to. They're afforded the same
15 rights as any other person is. There's no written
16 policy, as I said, about sending someone home for
17 24 hours. In fact, it's my personal experience in
18 every officer-involved shoot I've worked where we
19 went to speak with the officer and each and every
20 one of them has invoked their Fifth Amendment
21 Miranda Rights. The same rights she was offered,
22 they have all invoked, which is why they get sent
23 home. And we have to come back when they get an
24 attorney, such as yourself, and they set up the
25 time for us to speak with them.

1 So when I say that, Yes, we've sent them home,
2 we have to send them home, sir, because you guys
3 don't come out 24/7 and aren't available right then
4 and right there.

5 Q I appreciate you making this about me, but that
6 really wasn't the question.

7 MR. LEIENDECKER: And if we could take a
8 matter up outside of the presence of the jury, Your
9 Honor.

10 THE COURT: All right. Ladies and gentlemen
11 of the jury, I am going to send you all out.

12 (WHEREUPON, the jury retires to the jury
13 room at 11:46 a.m.)

14 THE COURT: All right. Yes, sir.

15 MR. LEIENDECKER: Are we able to see or hear
16 his cross-examination testimony from Monday or
17 Tuesday, it would have been?

18 THE COURT: She'll have to find it. It is not
19 in format to read.

20 MR. LEIENDECKER: It is real-time reporting?

21 THE COURT REPORTER: What time -- I mean, what
22 day?

23 THE COURT: Monday.

24 MR. LEIENDECKER: Tuesday. He wasn't up until
25 the State called him, so it would be Tuesday,

1 Tuesday after lunch.

2 (Pause.)

3 MR. LEIENDECKER: I thought he admitted to
4 making it and he said I've researched since when
5 the question was is it policy.

6 MR. JUSTIS: That's what was asked, I think,
7 the other day, on Tuesday. And he said I've
8 researched it since and it's not a policy. Every
9 officer-involved shooting --

10 MR. LEIENDECKER: Wait a minute. She can't
11 look and take you down too.

12 THE COURT: Hold on one second. She's looking
13 for it.

14 (Pause.)

15 THE COURT REPORTER: Is it commonplace to wait
16 maybe even 24 hours before you bring them in to
17 talk to them?

18 We can, depending on the situation.

19 Why do you wait?

20 Just depending on what the situation is and
21 where we're at with the officer.

22 Not just depending on the situation, you wait
23 because they're so emotional, such a hypercharged
24 situation, you want to give them an opportunity to
25 calm down so you can get the facts straight and

1 then tell you what really happened; isn't that
2 right?

3 You want my opinion?

4 Yes, isn't that right?

5 I don't know that I can offer my opinion.

6 So you don't know -- what you said is you have
7 no idea, you have no idea why someone --

8 You started that question is it your opinion
9 and I'm just making sure that I'm answering the
10 question.

11 I'm asking you, is it common practice?

12 Yes, at times, yes.

13 No further questions.

14 MR. LEIENDECKER: He didn't qualify --

15 THE COURT: Hold on.

16 THE COURT REPORTER: Wait a minute. Let me
17 get back to this one. Okay.

18 THE COURT: Is that the same question that you
19 just asked him? You said is it commonplace -- I
20 couldn't tell -- the question you just asked, isn't
21 it SLED's policy, is that what you asked?

22 MR. LEIENDECKER: Yes. And that's basically
23 the same thing I asked then when he told me -- when
24 I asked if it was commonplace, and then he started
25 talking about SLED. He even goes on to say that,

1 But this wasn't his call because this was an Aiken
2 County investigation and he just follows Aiken
3 County's policy and that they were the ones that
4 set the interview up at that time.

5 He doesn't qualify what he says there at all.
6 He says yes at the end. He tarries for quite a
7 while trying to talk about opinion and no opinion,
8 but when it gets down to it, the ultimate answer to
9 the question is, That is not atypical.

10 THE COURT: All right.

11 MR. LEIENDECKER: This isn't a huge point, but
12 it's a difference from what he told us before, and
13 it's important.

14 THE COURT: All right. Yes, sir?

15 MR. JUSTIS: I don't think I really need to
16 say anything. I mean, I think he said the same
17 thing. If you feel he said something different,
18 then I'll respond, but I think it's the same thing.
19 He said it depends on the situation. Today, he
20 says, Well, it depends. In the ones I've
21 experienced, that I've been involved in, they all,
22 you know, asked for a lawyer, so obviously he has
23 to wait. I think the other day he said they were
24 too emotional and basically don't want to speak.
25 You can't force somebody to speak. Well, they

1 can't if they're not coherent enough to speak.

2 That's why we do Miranda Rights.

3 THE COURT: All right. My first question
4 is -- and I guess we'll have to go back and look at
5 it -- is the question the same question? The
6 question you asked today, you said is it -- isn't
7 it SLED's policy to allow officers to go home 24
8 hours and then bring them back in. That is not
9 what she just said. There was some question about
10 is it commonplace and he said, Well, it depends on
11 the circumstances, I believe.

12 Debbie, can we go back off the record and you
13 find that again? The portion that goes back to Mr.
14 Leiendecker's question.

15 THE COURT REPORTER: I don't think I went back
16 this far; I can't remember.

17 In the officer-involved shooting, you
18 immediately bring the officer in and interview them
19 about what happened?

20 Just depending on what supervision says to do.

21 Okay. Is it commonplace to wait maybe even 24
22 hours before you bring them in to talk to them?

23 We can, depending on the situation.

24 Why do you wait?

25 Just depending on what the situation is

1 and where we are at with the officer.

2 Not just depending on the situation, you
3 wait because they are so emotional, such
4 a hypercharged situation you want to
5 give them an opportunity to calm down so
6 you can get the facts straight and tell
7 you what really happened; isn't that
8 right?

9 Do you want my opinion?

10 Yes. Isn't that right?

11 I don't know that I can offer my
12 opinion.

13 So you don't know what he says -- you
14 have no idea -- you have no idea why
15 someone --

16 You started that question, Is it your
17 opinion. I'm just making sure that I'm
18 answering the question.

19 I'm asking you -- the question is common
20 practice.

21 Yes. At times, yes.

22 No further questions.

23 THE COURT: All right. I think your question
24 needs to be to him, are there situations --

25 MR. LEIENDECKER: Your Honor, the only

1 difference is then we got to common -- he's a SLED
2 officer, we got to common practice. So today I
3 asked him policy. I could certainly rephrase the
4 question, is it common practice.

5 THE COURT: He said it is not the policy. But
6 I think you can ask him -- you need to probably
7 rephrase the question, ask him about common policy.
8 And I think you can also ask him -- based on what
9 he said, it is common practice sometimes that if
10 someone is too upset to give a statement to send
11 them back and come back. That sounds like what he
12 said.

13 MR. LEIENDECKER: And nowhere in there does he
14 say it has anything to do with Miranda or the long
15 explanation about the fact that, I don't work 24/7
16 and I'm not available.

17 THE COURT: Well, he said --

18 MR. LEIENDECKER: That was all added today.

19 THE COURT: Well, he said for numerous reasons
20 they send them home. And then you go back and ask
21 about specifically someone who is upset, and he
22 says yes.

23 MR. LEIENDECKER: And he says yes.

24 THE COURT: Okay.

25 MR. LEIENDECKER: And today he didn't say

1 that. He tried to find another excuse.

2 THE COURT: Well, I think you need to rephrase

3 --

4 MR. JUSTIS: He said in the officer-involved
5 shootings I've been involved in, which we didn't
6 talk about the ones he was involved in the other
7 day. He said, The ones I've been involved in, all
8 of them have invoked their Fifth Amendment right.

9 THE COURT: All right. So you need to
10 rephrase the question, and then if he -- if it is
11 not consistent, then we'll try to go back and look
12 at the testimony again. But I think you need to
13 rephrase the question.

14 MR. LEIENDECKER: And the question needs to
15 say, Is it --

16 THE COURT: Is it uncommon for you to send
17 people home because they are too upset --

18 MR. LEIENDECKER: -- uncommon practice.

19 THE COURT: Yes, 24 hours --

20 MR. LEIENDECKER: Is it a common practice.

21 THE COURT: Is it a common practice that
22 they -- and you can ask -- I mean --

23 MR. LEIENDECKER: Which is what I said on
24 Tuesday.

25 THE COURT: He said it is not the policy of

1 SLED, though.

2 MR. LEIENDECKER: All right.

3 THE COURT: So I don't think that's
4 inconsistent --

5 MR. LEIENDECKER: I'll ask him and we'll see
6 if he's consistent this time or inconsistent.

7 THE COURT: All right.

8 THE WITNESS: I'll be sure to explain very
9 well.

10 THE COURT: All right. You can bring them in.
11 (WHEREUPON, the jury came into open
12 court at 11:56 a.m.)

13 THE COURT: All right. Yes, sir.

14 CROSS-EXAMINATION CONTINUES

15 BY MR. LEIENDECKER:

16 Q Agent Turner, isn't it a common practice in
17 officer-involved shootings to let the officer go
18 home for as much as 24 hours and calm down before
19 you -- they are interviewed?

20 A It can be, depending on the situation.

21 Q Okay. And when we discussed this on Tuesday, one
22 of those situations -- one of those reasons that a
23 supervisor might do that is because of the
24 emotionally-charged situation; correct?

25 A It could be a number of things. If they are too

1 upset --

2 Q Yes or no, because of the emotionally-charged
3 situation? Then you can explain if there are a
4 number of reasons. But that is one of the reasons,
5 isn't it?

6 A That could be one of the reasons.

7 Q Okay. Thank you.

8 A Just like in any interview, if I came to talk to
9 you today or talk to him, or anybody else, if --
10 you know, when we -- just like with Ms. Herndon,
11 when we walk in the room, we read them their
12 Miranda Rights, we talk to them for a few minutes.
13 She can at any time say, I don't want to talk to
14 you, or, I'm too upset, can I have a little bit of
15 time? We'll give you a little bit of time. We're
16 not monsters. We're not trying to force anybody
17 into anything. We are trying to be reasonable and
18 get the information in a timely manner as possible.

19 So if a police officer or a private citizen or
20 anyone else just basically says, I don't want to
21 talk to you, we can't force you to talk. It is a
22 roundabout of what we're doing. And if they say,
23 I'd like to talk to you tomorrow. Can I have a
24 day? Can I have 15 minutes? Ms. Herndon asked if
25 she could go to the bathroom. We didn't say, No,

1 you can't go to the bathroom. We're not going to
2 talk to you right now. What we said was, Sure.
3 She was allowed to go to the restroom and wash her
4 hands. You know, she was given that time, and when
5 she was ready to talk she came in the room and she
6 talked.

7 And that, I think, is the full answer to the
8 question you're asking.

9 Q I'm not sure I understand. So it was Ms. Herndon's
10 idea to conduct the interview that day?

11 A Once we asked her, Are you ready to talk, Would you
12 like to talk, and she said Yes, then she consented
13 to being interviewed.

14 Q I heard previously that she was in custody, she
15 wasn't free to leave, and that she was being taken
16 to a conference room for what, in essence, is an
17 interrogation, a questioning of a suspect; right?

18 A Yes, sir. And had she said, I don't want to talk
19 --

20 Q And you're not suggesting to me now that she
21 controls that, are you?

22 A She was read her Miranda Rights and asked, Would
23 you like to speak with us at this time?

24 Q So we're talking about two different things.
25 You're talking about her Miranda Rights. And if

1 under her Miranda Rights she had invoked her right
2 to speak to her attorney, you would have stopped;
3 right?

4 A If she -- yes, if she said, I want to speak to an
5 attorney, we would have stopped right then and
6 there.

7 Q If she had said, I want to go home for the night
8 and come back tomorrow, you would have let her go
9 home and come back tomorrow?

10 A No, sir, I can't say that. What I can say is, if
11 she had said, I don't want to talk to you right
12 now, or, I'm not talking to you right now, I can't
13 force her to speak.

14 Q If she had made --

15 A I can't force her to talk.

16 Q -- that decision, you would have honored it?

17 A What choice do I have?

18 Q I'm just asking?

19 A Yes, sir.

20 Q However, you also told me today that she was an
21 emotional wreck.

22 A I didn't say she was -- I said she very upset, was
23 the words you asked, was she very upset, yes, sir,
24 she was upset.

25 Q Well, we'll leave it to the jury to determine

1 because they saw it as well.

2 A Yes, sir.

3 Q So you agree that we can all come to our own
4 opinion concerning her emotional state?

5 A Yes, sir, she was upset.

6 Q Okay.

7 MR. LEIENDECKER: That's all I've got for the
8 agent. Thank you.

9 THE COURT: All right.

10 Yes, sir?

11 MR. JUSTIS: Nothing further, Your Honor.

12 THE COURT: All right, sir, you may step down.

13 (Witness steps down.)

14 THE COURT: All right. Call your next
15 witness.

16 MR. JUSTIS: At this time the State rests,
17 Your Honor.

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, at this time the State has rested.
20 And I am -- there are some matters of law that I
21 need to take up outside of the presence of the
22 jury. And so I am going to send you all back into
23 the jury room. I will check to see if your lunch
24 is here.

25 It is here?

1 THE BAILIFF: I'll check.

2 THE COURT: Okay. And I'll check on
3 scheduling with the lawyers, and we'll have you
4 back out shortly. Either we'll give you
5 instructions to eat and go ahead and take your
6 lunch break, or we will have you back out shortly.

7 Okay. Thank you.

8 (WHEREUPON, the jury retires to the jury
9 room at 12:02 p.m.)

10 THE COURT: All right. Any motions from the
11 State?

12 MR. JUSTIS: Nothing from the State, Your
13 Honor.

14 THE COURT: Anything from the Defense?

15 MR. LEIENDECKER: Your Honor, the Defense
16 would move pursuant to Rule 19 of the South
17 Carolina Rules of Criminal Procedure for a directed
18 verdict.

19 We would believe that the evidence presented
20 thus far fails to provide any substantial and/or
21 circumstantial evidence of the Defendant's guilt to
22 the crime of murder.

23 We also believe that obviously one of the
24 elements involved here is self-defense, and the
25 State is required to disprove the self-defense

1 beyond a reasonable doubt. And the evidence they'
2 have presented thus far certainly does not do that
3 either.

4 And I would ask the Court to therefore grant a
5 directed verdict and release the Defendant.

6 THE COURT: Thank you.

7 Yes, sir?

8 MR. JUSTIS: Yes, Your Honor. As you know,
9 when ruling on a motion for a directed verdict, the
10 Court is concerned with the existence or
11 non-existence of evidence, not the weight. That is
12 for the jury to decide.

13 And here, you know, the law says that if there
14 is any direct evidence or any substantial
15 circumstantial evidence reasonably tending to prove
16 the guilt of the accused, then the case must be
17 submitted to the jury.

18 Here we have, obviously, a videotaped
19 statement given by the Defendant. And in that, she
20 talks about this altercation that occurs out in the
21 yard. We have an independent eyewitness that
22 doesn't see an altercation, so there is a dispute
23 of fact for the jury to decide there on whether or
24 not there was an altercation.

25 That is important because ultimately -- you

1 know, there is not an issue of whether or not she
2 was the person that fired the fatal shot. The
3 question was, was she in fear? Did she have a
4 right to self-defense?

5 And here, obviously, we don't -- for the jury,
6 we do have to prove or disprove self-defense beyond
7 a reasonable doubt. But here we're looking at the
8 existence of evidence, is there any evidence that
9 the jury could use to disprove that self-defense
10 claim and also prove her guilt beyond a reasonable
11 doubt.

12 We have the eyewitness. We have physical
13 evidence that contradicts some of the stuff. If
14 you listened -- as you heard the statement in
15 there, she talks about him coming at her, the gun
16 goes off.

17 We heard the pathologist testify the angle of
18 the bullet hypothetically -- or not hypothetically,
19 she actually said that the person -- it was a
20 downward angle. And the way she describes it in
21 the video doesn't make sense, doesn't match up to
22 the physical evidence, we would argue. Again,
23 that's a question for the jury.

24 And there is other pieces of physical
25 evidence, such as the crime scene photos inside the

1 house. She describes a struggle inside the house.
2 Other than the shell casing, there is no blood in
3 the house. There was nothing disturbed in the
4 house. You can see the marks in the carpet where
5 the vacuum had vacuumed. None of those are
6 disturbed.

7 So those are all facts that the jury will have
8 to weigh to determine who they believe. So we do
9 believe that there was evidence that the jury could
10 infer the guilt of this Defendant.

11 THE COURT: All right. I do find that the
12 State has put forth evidence, specifically the
13 testimony of eyewitnesses Lacey Burton, Wendy
14 Kizer, Darryl Prather. And those two, I guess,
15 would be in response to the State disproving --
16 putting forth evidence to disprove self-defense.

17 Also, there has been the CSI investigator's
18 testimony regarding the crime scene, the
19 pathologist's testimony, all of those -- all of the
20 testimony of the witnesses and exhibits, I do find
21 that the State has met the -- the State has entered
22 evidence and that there is evidence that exists
23 which leads to a question of fact for the jury to
24 decide as to the issues of the indictment for the
25 murder and also the issue on the self-defense and

1 whether or not the State has been able to disprove
2 self-defense would be an issue for the jury to
3 decide.

4 For those reasons, I will respectfully deny
5 the Defendant's motion for directed verdict.

6 All right. Thank you.

7 All right. Scheduling. Their lunch will be
8 here, I think, in five minutes. We can go ahead
9 and take a break. Come back. Of course, you don't
10 have to present any evidence. If you are, I would
11 ask that you all have witnesses lined up to go
12 until about 6:00 o'clock or so this evening.

13 MR. LEIENDECKER: Okay.

14 THE COURT: But that will maybe give you a
15 break to figure out who you're going to call. And,
16 of course, I need to give your client her -- read
17 her rights regarding testifying.

18 MR. LEIENDECKER: Okay. If you can give us a
19 break at this point, an hour or so, that should
20 give us time to get with our witnesses, get them
21 lined up.

22 THE COURT: Okay.

23 MR. LEIENDECKER: And I should be able to have
24 them here by 1:15 and be ready to go.

25 THE COURT: All right. So 1:15. All right.

1 So we'll take a break.

2 Let's see, I'll tell -- the jurors, you can
3 just let them know we're going to go ahead and take
4 our lunch break. And some of them, I think,
5 ordered; some of them may not.

6 MR. LEIENDECKER: Couple of them may want to
7 go out and stretch their legs.

8 THE COURT: Yeah. They can eat in there.
9 They just need to be back at 1:15.

10 All right. See you all at 1:15.

11 (WHEREUPON, a lunch break was taken at
12 12:09 p.m.)

13 THE COURT: All right. You may be seated.
14 Good afternoon.

15 Is your client -- do I need to go ahead and
16 give your client her rights now regarding
17 testifying? Do you plan on calling her this
18 afternoon, potentially, maybe?

19 MR. LEIENDECKER: Yes.

20 THE COURT: Okay. All right.

21 All right, I will ask you, Ms. Herndon, please
22 stand and raise your right hand.

23 (Defendant 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 DEFENDANT: I do.

3 THE COURT: All right. Ma'am, at this time, I
4 am going to explain to you certain rights that you
5 have. If you do not understand anything that I
6 say, please let me know. If you want me to explain
7 anything in more detail, please let me know. Do
8 you understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And if you can speak up for me,
11 that would be great.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: We have reached the stage of the
14 trial where you may present your defense. You have
15 the right to claim the protections given to you by
16 the Fifth Amendment of the Constitution of the
17 United States.

18 This amendment states, in part, that no person
19 shall be compelled in any criminal case to be a
20 witness against himself or herself. This means
21 that you cannot be required to testify in this
22 case. You have the right to testify on your own
23 behalf. However, no one can make you testify here
24 today. This is a personal right and no one can
25 waive the right except for you.

1 If you decide to testify, you will be subject
2 to the same rules that govern other witnesses and
3 you may be examined and cross-examined on any
4 relevant issue in this case. In addition, if you
5 have any convictions involving dishonesty or false
6 statements or for crimes punishable by imprisonment
7 for more than one year and the Court determines
8 that the probative value of admitting this evidence
9 outweighs its prejudicial effect to you, the
10 Solicitor will be able to introduce your record to
11 attack your credibility.

12 If you decide to testify, this decision on
13 your part must be freely, voluntarily and
14 intelligently made with knowledge of the
15 protections given to you by the Fifth Amendment and
16 the consequences of your decision to testify.

17 If you decide not to testify, I will instruct
18 the jurors that they cannot give the fact that you
19 did not testify any consideration whatsoever and
20 that there is absolutely no prejudice to you
21 because you did not testify.

22 It is left entirely up to you whether or not
23 you testify. You may talk with your attorney, your
24 family members and friends, or anyone else, but the
25 final decision will rest with you as to whether or

1 not you wish to testify.

2 Do you understand what I have explained to
3 you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you have any questions about
6 what I have explained to you?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: All right. And have you discussed
9 this with your attorneys?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you need any additional time to
12 speak with your attorneys?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: And, ma'am, do you wish to
15 testify?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. Thank you.

18 (Defendant seated.)

19 THE COURT: All right. So we'll bring the
20 jury in. Are you ready to call your first witness?

21 MR. LEIENDECKER: I will do my opening
22 statement first, Your Honor. At the beginning of
23 our case, I reserved that.

24 THE COURT: You sure did.

25 All right. Yes, sir.

1 (WHEREUPON, the jury came into open
2 court at 1:36 p.m.)

3 THE COURT: All right. I hope you had a good
4 lunch and got some fresh air. At this time, we
5 will continue.

6 You heard earlier the State has rested at the
7 time. The Defense may put up a case if they choose
8 to do so. They do not have to.

9 Mr. Leiendecker reserved his right earlier to
10 do an opening statement before he presented his
11 case.

12 Yes, sir, Mr. Leiendecker.

13 MR. LEIENDECKER: Thank you, Your Honor. If
14 it please the Court? Ladies and gentlemen of the
15 jury?

16 OPENING STATEMENT

17 MR. LEIENDECKER: We're at the point of the
18 trial where we've heard the State's case and
19 they've presented all the evidence they intend to
20 present. It is now the opportunity for the
21 Defense, for me, and on behalf of Robin Herndon to
22 present to you the facts of the case as we see them
23 and as she lived them.

24 Robin, seated with co-counsel at our table,
25 Ms. Peggy Hinds, Robin is the mother of two

1 children, two girls. One 17 and one, I think, 15
2 at this point.

3 Robin is, you are going to hear her testify, a
4 college-educated woman, who has served in law
5 enforcement capacity since 1999 continuously until
6 the date of this event, November 6th, 2013. She
7 has been respected and liked by the people she
8 works with. And you'll hear from some of those
9 people at the office she works here in Aiken.

10 And you will hear also that she has been the
11 kind of person that gets along with the clients,
12 even the difficult clients that they have to deal
13 with on occasion in the Probation, Pardon and
14 Parole office. And has done that for a number of
15 years.

16 Mr. Sorenson, who gave the State's opening
17 statement, as most Solicitors do in their opening
18 statement, lapses into Latin and tells you that the
19 word verdict comes from a Latin word, veritas.
20 Well, its root may be Latin, but I'm not sure that
21 that's the truth. And the reality of it is, they
22 want to tell you that because veritas or, actually,
23 verisis means truth, or speaking the truth.
24 Verisis being the pronoun and veritas being the
25 noun. Veritas means honesty, means, I think,

1 truthfulness or forthrightness.

2 But it really hides the fact of why you're
3 here today, because you're not here to seek the
4 truth. That is not the function of the jury. And
5 the judge will explain that to you when she charges
6 you. What you are here today and this week to do
7 is to hear the facts of this case and be deciders
8 of those facts, and to test those facts, and to
9 test the things that you see and you hear in this
10 courtroom, and hold the State to a standard of
11 proof of all the elements of the crime that they
12 accuse Robin of committing. That burden of proof
13 is to be beyond a reasonable doubt. That's your
14 job. You're not investigators. We've heard from
15 all the investigators. They're supposed to be the
16 ones that are seeking the truth. You are here to
17 determine if what they have brought to this court
18 today is sufficient to prove that Robin Herndon
19 committed the crime of murder beyond a reasonable
20 doubt. Not just is it possible, not just even is
21 it likely, but is it proven to you beyond a
22 reasonable doubt?

23 You have already heard some of this from the
24 video and from other sources, but Robin Herndon was
25 an abused woman in a relationship with Christopher

1 Rowley. It isn't something that you're going to
2 see just looking at her. It isn't something that
3 you can tell just by meeting someone. It isn't
4 something you're going to discover even if you're a
5 close work confidant or friend with someone that
6 you're even going to know. Because the sad truth
7 and reality of abuse in our state is that those
8 people that are being abused are embarrassed, they
9 are hiding, they are covering up the acts, and for
10 a variety of reasons.

11 What you're going to hear is that Robin
12 Herndon thought not only that she loved Christopher
13 Rowley, but that she could help him get over this
14 abuse. She could help him quit making the mistakes
15 that you heard even on the video, the admission
16 that he's been arrested a couple of different times
17 with different women for this kind of conduct and
18 this kind of act.

19 It is something that is a problem in our
20 state. You've read it in the newspaper. It
21 doesn't make us look good. The number is 50 out of
22 50. Of the 50 states, South Carolina ranks at the
23 very bottom in the protection of victims of
24 domestic violence. South Carolina ranks at the
25 very bottom of women killed by domestic partners.

1 And part of the problem is domestic abuse is
2 viewed by people that aren't involved in it, people
3 that are in healthy relationships, people that
4 don't treat women that way, with skepticism.

5 We want to impose our values on the values of
6 that individual who is suffering from that abuse.
7 We want to say: It's not logical that you didn't
8 walk away from it. It doesn't make sense that you
9 didn't get rid of this relationship. It's crazy
10 that you didn't shut yourself away from it.

11 Well, you know what? It is crazy. It is hard
12 to believe. It is difficult. And it is real. The
13 numbers don't lie.

14 The problem is too many people that are these
15 victims, they cover it up. They cover it up
16 because they want to be protected or they think
17 they need the relationship or they have some warped
18 sense that they need to be in a man/woman
19 relationship, or whatever. Or they think that they
20 can fix this other person and that, I'm the one
21 that's going to make it stop. It's not going to
22 happy anymore. I can fix it.

23 You've already heard evidence and you're going
24 to hear more evidence that Christopher Rowley was a
25 serial domestic violence abuser. For whatever

1 reason, this 5'11," 350-pound man thought that he
2 should be able to force his anger and his
3 frustration on the people that were closest to him.
4 His wife, his girlfriend, and even his children,
5 you'll hear he told people he's abused.

6 The key to his continued success of this
7 serial abuse is that people don't want to get
8 involved. People don't want to get involved for a
9 number of reasons. Even when they see evidence
10 that something is going on, they are willing to
11 accept any logical explanation because it's
12 uncomfortable. It's uncomfortable to talk to
13 somebody about it. It's uncomfortable to talk even
14 to the person that's being abused about it. So we
15 ignore it. We hope that they'll get help and that
16 it'll be solved.

17 The State told you in their opening statement
18 that they weren't just going to prove all the
19 elements in this case beyond a reasonable doubt,
20 but that they were going to prove the elements
21 beyond any doubt. Well, I wish I could hold them
22 to that standard because that's an impossible
23 standard, but I can't.

24 But I assure you, already there are doubts
25 about what happened that day. There is no doubt

1 that Christopher Rowley was killed that day and
2 that Robin Herndon was the person who caused that
3 death. But what there is a ton of question and
4 doubt about is how and why that happened. How and
5 why they got to that situation.

6 The State wants to argue with you that Robin
7 put herself in that situation. Well, Robin didn't
8 avoid that situation, but the mere fact of having
9 an argument with someone and you continue that
10 argument, does that mean you put yourself in a
11 position to be physically threatened and abused by
12 that person? I hope not. I hope that's not your
13 experience, and I hope that's not your
14 relationship. Because that's not right.

15 Robin did not shoot and kill Christopher
16 Rowley on November 6th, 2013, with any kind of
17 malice in her heart, which is what our statute says
18 is needed to prove murder. She shot and killed
19 Christopher Rowley that day out of fear. Out of
20 fear for herself, out of fear for an out-of-control
21 situation, out of fear for what was happening at
22 her house, at her home.

23 You have already heard testimony from one of
24 the State's witnesses and on the video from Robin
25 herself that things got so out of control that

1 morning -- that afternoon, excuse me, in the front
2 yard -- that she was screaming at him, Get out.
3 Pack your stuff and get out. Get off of my
4 property. Go away.

5 And I might be making that part up myself.
6 But you know what I'm saying and you heard it. And
7 I'm depending on you to remember it correctly.

8 Christopher Rowley's actions were abusive.
9 Christopher Rowley's actions forced Robin -- you've
10 heard the testimony that she asked him to leave,
11 that there was a fight inside the house. That she
12 actually pulled her weapon and told him to leave
13 and he backed off. That she holstered her weapon.
14 And that when he got almost out the door, he turned
15 around and came back at her again after she had
16 drawn her service revolver at him.

17 You heard testimony on the tape that he
18 reached out, swung at or went for the gun.

19 What you heard on this CD is, in essence, what
20 happened, but the reality of it is, it's not what
21 actually happened, it's not what fully happened.
22 It's a story of a woman who just two hours before
23 had been involved in a shooting that killed a man
24 she thought she loved. Who was covered in his
25 blood. Who had been screaming on her front porch

1 just an hour and a half before, Help him, Help him,
2 Help him, Please breathe.

3 And they sat her down and they talked to her
4 expecting to get the full facts of what happened.
5 Even in the interview, she at one point, says, No,
6 wait, no, wait, that's not exactly what happened.
7 That's sequentially wrong. She didn't say
8 sequentially, but that's what she meant. And she
9 backed up and started over.

10 What we're going to do is we're going to put
11 evidence up. We're going to put evidence up
12 through Robin and through other people who knew
13 her. Evidence showing that Robin put herself in a
14 situation that she thought she could handle, she
15 thought she could control, she thought she could
16 help. But she didn't put herself in a situation to
17 be physically abused in her own home.

18 We challenge the assumption that people are
19 responsible for being abused. They are not. The
20 abuser is responsible for the abuse.

21 The State wants to eliminate all of her prior
22 experiences. They don't want you to think about
23 where Robin was that day based on all of the, as
24 she described it, beatings she had received from
25 March of 2013 through that date. They want you to

1 pretend that she's just a normal person that's in
2 an argument and that's what you need to look at.

3 Well, that isn't what you need to look at.
4 You need to understand the dynamics of what's at
5 play here.

6 The State wants you to believe that beyond a
7 reasonable doubt Robin Herndon with malice that day
8 shot and killed Christopher Rowley. It almost
9 sounded in their opening statement like they want
10 you to believe that because Christopher Rowley was
11 driving her car badly and threw her keys on the
12 roof, she shot him dead. That is not Robin
13 Herndon. And you're going to hear that from every
14 witness that you hear in the next day or two.
15 You're going to hear a significantly different
16 story than you've heard to this point.

17 And what I do -- want you to do for Robin
18 Herndon is I want you to listen carefully. I want
19 you to listen carefully to all that you hear and I
20 want you to, once you've had all the evidence, go
21 back into that jury room and I want you to weigh
22 the evidence, which you're called to do, and I want
23 you to find that this prosecution and this
24 investigation has not proven beyond a reasonable
25 doubt -- has not proven beyond a reasonable

1 doubt -- that Robin Herndon is guilty of any crime.

2 Thank you. And I look forward to the next
3 several witnesses and working with you.

4 THE COURT: Call your first witness.

5 MR. LEIENDECKER: The Defense would call Robin
6 Herndon.

7 (Witness approaches.)

8 THE CLERK: Place your left hand on the Bible,
9 raise your right hand.

10 (Witness complies.)

11 THE CLERK: The testimony you shall give the
12 Court and jury in this case shall be the truth, the
13 whole truth, and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Please have a seat in the witness
17 box, state your name, spelling your last for the
18 Court, please.

19 (Witness seated.)

20 ROBIN RENEE HERNDON,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LEIENDECKER:

24 Q Good afternoon, Robin.

25 A Good afternoon.

1 Q Robin, I watched the video and I've talked to you
2 numerous times. I'm going to tell you once we
3 start, and I'm probably going to have to tell you
4 throughout this, speak up, okay? I want to be able
5 to hear you clearly back here, all right?

6 A Okay.

7 Q All right?

8 A Okay.

9 Q All right. Because it's important that everybody
10 hear what you have to say. Robin, when were you
11 born?

12 A

13 Q Where?

14 A Clarksdale, Mississippi.

15 Q All right. Where did you grow up, Robin?

16 A Jackson, Mississippi.

17 Q Okay. And tell me a little bit about your
18 education. Where did you go to school there, where
19 did you graduate high school, that kind of stuff?

20 A I went to Madison-Ridgeland High School. And then
21 I went to Hinds Community College and I got an
22 Associate's Degree in criminal justice. And then I
23 went to Delta State University and got a Bachelor's
24 Degree in criminal justice.

25 Q Okay. And about when, if you remember, did you

1 finish your Bachelor's Degree and graduate from
2 Delta State?

3 A 1996.

4 Q Okay. You were still living in Mississippi. How
5 does it come to be that you wind up in Aiken-North
6 Augusta area of South Carolina?

7 A After I graduated, the gentleman I was dating, I
8 moved here and we got married.

9 Q Okay. Is that the gentleman who becomes the father
10 of your children?

11 A Yes, sir.

12 Q Okay. You have two kids; is that right?

13 A Yes, sir.

14 Q And what are your children's name and how old are
15 they?

16 A E.N. , she's 15; and K.N.

17 K.N. , she's 17.

18 Q Okay. Why did your family -- well, at that point,
19 it was you and your husband. Why did the two of
20 you move to the Aiken area?

21 A His father owned a business here and he was going
22 to be working for him.

23 Q Okay. Did you work once you guys relocated to
24 South Carolina?

25 A Briefly I worked for a credit bureau over in

1 Augusta, Georgia. And then I worked here, actually
2 in the Clerk of Court's Office in the civil
3 division.

4 Q Here in this courthouse?

5 A Yes, sir.

6 Q Okay. And how long were you at the Clerk's Office?
7 When did you leave there?

8 A I think it was like late 1997.

9 Q And why did you leave the employ of the clerk?

10 A I got pregnant.

11 Q With your first daughter?

12 A Yes, sir.

13 Q K.N. ?

14 A Yes, sir.

15 Q All right. After K.N. was born, did you take the
16 opportunity to go back to work?

17 A Yes, sir. I went to work for the South Carolina
18 Department of Probation and Parole and Pardon
19 Services in 1999.

20 Q Okay. So about a year and a half, two years after
21 you left the Clerk's Office, you go to work for the
22 Department of Probation, Pardon and Parole; is that
23 right?

24 A Correct.

25 Q All right. In 1999, what office did you work with

1 or work out of for the department?

2 A Aiken.

3 Q Aiken County?

4 A Yes, sir.

5 Q Okay. And what was your job title and what were
6 your responsibilities with the department?

7 A I was a probation agent. And we supervised a case
8 load of offenders and we took reports and did home
9 visits and drug tests and we came to court to
10 handle violations.

11 Q Okay. And how long did you do this, Robin? How
12 long did you do this job?

13 A Till September of 2003.

14 Q All right. Four years almost?

15 A Uh-huh.

16 Q Why in 2003 do you leave the Department of
17 Probation, Pardon and Parole for Aiken County?

18 A I accepted a position with the Lexington County
19 Sheriff's Office as a deputy sheriff. I wanted to
20 be a criminal investigator and I wanted to have
21 some time on the road, so I went to work for them.

22 Q So you were looking to do more than you were doing
23 at probation here in Aiken, you wanted to be an
24 investigator?

25 A Yes, sir.

1 Q Let me back up just a couple of steps. As a
2 probation agent by 2003, are you fully licensed and
3 trained through the department and through the
4 Academy of Criminal Justice here in South Carolina?

5 A Yes, sir.

6 Q Does that training include the handling of
7 firearms?

8 A Yes, sir.

9 Q Does that include on a regular basis, at least
10 annually, proficiency testing with those firearms?

11 A Yes, sir.

12 Q And during the time that you are working there, do
13 you continue to maintain all of the certifications
14 necessary to be a law enforcement officer?

15 A Yes, sir.

16 Q When you go to Lexington County in 2003, how long
17 are you there as a road deputy?

18 A I was there approximately six months.

19 Q Wow, not very long. Why is that?

20 A I had filled out an application with the Edgefield
21 County Sheriff's Office when I was looking -- when
22 I got hired with Lexington. And the chief deputy
23 there called me one day and asked me if I wanted to
24 come for an interview, they were looking to hire
25 another investigator. And I said, Just give me a

1 call and let me know if you want to interview me,
2 and he said he would. And he eventually did call
3 me and I was interviewed.

4 Q Okay. So this interview in Edgefield is to do what
5 you really wanted to do, to be a criminal
6 investigator?

7 A Yes, sir.

8 Q What kind of position was it in Edgefield? What
9 was your investigative role?

10 A They wanted me to handle primarily what they
11 consider special victims crimes, criminal domestic
12 violence, assault, stalking, harassment, child
13 abuse, child neglect, and vulnerable adults.

14 Q Did you do that?

15 A Yes, sir.

16 Q And how long did you do this job, Robin?

17 A To right around June of 2007.

18 Q So in 2004 until 2007, three years, you're an
19 investigator with the Edgefield County Sheriff's
20 Office?

21 A Yes, sir.

22 Q Did you like the work?

23 A I did.

24 Q Why did you leave then?

25 A I applied with the South Carolina Law Enforcement

1 Division. They had a job opening in the Midlands
2 Region as an investigator.

3 Q Okay. And the Midlands Region, does that include
4 Aiken County?

5 A Yes, sir.

6 Q And how did that go? How did that process go? Did
7 you get the job?

8 A Yes, sir.

9 Q When did you start at SLED?

10 A June of 2007.

11 Q All right. And you became now the Midlands -- or
12 one of the Midlands investigators; is that right?

13 A Yes, sir.

14 Q And how long did you continue to work that job as a
15 Midlands investigator?

16 A To November of 2010.

17 Q Okay. Again, another three, three and a half
18 years. Why did you decide to leave SLED at that
19 point?

20 A I got divorced and I wanted to be home and be
21 closer to my girls because when we worked at SLED,
22 we were on call a lot, and I wanted to be able to
23 be there. K.N. was right around the teenage
24 years, and I wanted to be there, work something
25 more 8:00 to 5:00.

1 Q Okay. Describe for the jury during these job
2 changes, leaving from the Aiken Probation Office,
3 going to be a road deputy in Lexington, becoming an
4 investigator in Edgefield County, and then actually
5 going to work for SLED as a Midlands investigator,
6 what was your home base for your family? Did you
7 guys move for these jobs?

8 A No, sir, I lived in Aiken the whole time.

9 Q So you and Mr. Newton, who you were married to,
10 your home life as far as where you lived didn't
11 change?

12 A No.

13 Q What was changing is how much you weren't home
14 because you had to travel with these jobs?

15 A Yes, sir.

16 Q And you just testified, I believe, that in 2010 you
17 and Mr. Newton, after 13 or 14 years of marriage,
18 went through a divorce?

19 A Yes, sir.

20 Q And as a result of that divorce, you didn't want to
21 travel as much; is that right?

22 A Correct.

23 Q All right. So how did it come that you left SLED
24 and where did you go? Tell me -- just tell me that
25 story.

1 A I ran into the agent in charge one day at the gas
2 station --

3 Q Okay. You have to back up because we don't know
4 what you mean when you say agent in charge. Agent
5 in charge of what?

6 A The agent in charge of the Aiken County Office,
7 Marie Boulton. I ran into her at the gas station
8 and we were talking.

9 And I asked her if they had any positions
10 open, and she said that she might have some.

11 And I said, Well, if you do, keep me in mind,
12 that I'm trying to come back home to Aiken County.

13 And she said, Okay, I will. And she
14 eventually called me and said that she had a
15 position she was interested in for me.

16 And so -- and I told her, I said, I would like
17 to transfer if that's possible from one agency to
18 another.

19 Q And what was -- what was -- let me also back up
20 because I'm not sure you really answered my
21 questions. Marie was the agent in charge of the
22 Aiken Office of?

23 A South Carolina Probation and Parole.

24 Q Right where you started in 1999; is that right?

25 A (Witness nods.) Yes.

1 Q And so you're going back to a familiar place where
2 you worked for four years previously?

3 A Yes, sir.

4 Q And you asked if the position allowed a lateral
5 move. Why was that important and what does that
6 mean?

7 A Because over the years, my salary had increased and
8 I didn't want to lose any income, so they asked if
9 I could just do a lateral transfer from SLED to
10 probation.

11 Q And this was important because of your domestic
12 situation?

13 A Correct.

14 Q You were going to be a single mother?

15 A Correct.

16 Q All right. Sometime from that time when you
17 started back in 2010 to 2013, you became acquainted
18 with first, as you said in the video, and then
19 involved with later, an individual named
20 Christopher Rowley; is that right?

21 A Yes, sir.

22 Q Tell me about when you and Chris began to get
23 involved more than just knowing each other.

24 A We had been talking for a couple of months just as
25 friends. And then in January of 2013, I -- we -- I

1 started dating.

2 Q You started dating who?

3 A Christopher Rowley.

4 Q Oh, okay. In January of 2013, y'all started going
5 out?

6 A Yes, sir.

7 Q Okay. Tell me about the beginning of the
8 relationship. How did that go?

9 A Things were okay in the beginning. We were seeing
10 each other. I hurt my knee in February and he was
11 helping me take care of things, driving me around
12 and taking me to the doctor.

13 And then right around the end of February --
14 he was living with a friend and the friend really
15 wanted him to find another place to live. And so
16 he had talked to his mom and his mom didn't want to
17 let him come back there because their relationship
18 was somewhat strained. And so he didn't really
19 have anyplace to go..

20 Q And you knew these facts because y'all were talking
21 and he told you?

22 A Yes, sir.

23 Q Okay. What are you guys talking about? What do
24 you guys have in common? It's just that kind of
25 spark that happens?

1 A Well, we had a lot -- I mean, we enjoyed each
2 other's company, like, we liked hanging out
3 together. We had both come out of some bad
4 relationships. And I guess that's one of the
5 reasons, you know, we clicked because we talked on
6 that level. And he was fun to be around.

7 Q By 2013, it's true that you actually had been
8 married again and were going through another
9 divorce; is that right?

10 A Yes.

11 Q And what kind of difficult situation was he coming
12 out of?

13 A He had been in some relationships. One had ended
14 abruptly and the girl had -- I think she had moved
15 away.

16 Q Okay. And so you guys had mutual interests, but
17 also common problems?

18 A Yes, sir.

19 Q You alluded to the fact that in February, the end
20 of February 2013, he was having problems about
21 where he was going to live. He had been living
22 with a friend; is that right?

23 A Yes, sir.

24 Q Well, tell me what -- a bit about that. What is
25 Chris doing right now, is he working?

1 A No. No, sir.

2 Q He's unemployed?

3 A Yes, sir.

4 Q All right. So does there come a time around that
5 point in February 2013 that Chris's friend just
6 abruptly kicks him out?

7 A He didn't exactly kick him out, he -- they wanted
8 him to go ahead and move out.

9 Q Didn't just kick him out. Did you show up at the
10 apartment and unbeknownst to Chris, the friend and
11 his --

12 MR. JUSTIS: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. LEIENDECKER:

15 Q Did you show up at the apartment with Chris towards
16 the end of February and see anything that had been
17 done by the friend and his girlfriend to more than
18 suggest, but push Chris to leave?

19 A We were -- we went over there one day and when we
20 showed up, they had already packed all of his
21 things and they were sitting in the living room.

22 Q Did Chris know they were going to pack his stuff?

23 A No.

24 Q But you wouldn't call that he was being kicked out?
25 I'm just asking you, yes or no?

1 A Yes.

2 Q So he really was being kicked out?

3 A Yes.

4 Q Had you and Chris been talking about this problem,
5 about his friend wants him out, what's he going to
6 do?

7 A Yes, sir.

8 Q Tell me about that. Was it a stressor? Was it a
9 concern?

10 A Yes. Everything was happening really fast. And he
11 was very concerned about not having a place to go.
12 And at the time, him living with me was really
13 not -- well, it wasn't an option in my mind because
14 I was not divorced and I was not allowed to have
15 another man live in my house. And it was causing a
16 lot of strain. We were both under a lot of stress.

17 Q What kind of solutions did you discuss to try to
18 solve this problem, short of him actually getting a
19 job and getting a place for himself?

20 A We looked at a camper. There was an electrical
21 outlet in my backyard and I was going to let him
22 pull it in there and let him stay back there.

23 Q Okay. So if he couldn't find any place else, you
24 were going to let him live in a camper on your
25 property?

1 A Yes, sir.

2 Q And did that work out?

3 A No, sir.

4 Q Why?

5 A The one we looked at needed a lot of repair and
6 Chris just really wasn't comfortable and he didn't
7 like the idea of having to be in the yard, he said,
8 like an animal. And I said, but he'd still be
9 close to us.

10 Q So what happened?

11 A We continued to talk. And I didn't see -- we
12 didn't have any other option, and so I agreed to
13 let him stay with me.

14 Q He talked you into this even though you thought it
15 was a bad idea?

16 A Yes.

17 Q Why, Robin?

18 A Because I was scared that my ex-husband would try
19 to start trouble.

20 Q Not why you were afraid to have him move in. I get
21 that, I understand that. You've got kids. Why did
22 you let him move in?

23 A Because he didn't have anywhere else to go, he was
24 going to be homeless.

25 Q And by this point, this early point in your

1 relationship, March, you think that's your
2 responsibility?

3 A No.

4 Q Well, you must have, you let him move in; right?

5 A Yes, sir.

6 Q Why, Robin?

7 A Because I cared about him.

8 Q All right. Once he moved in in March, did you
9 begin to see a different side to Chris compared to
10 the caring, nurturing guy you saw in February when
11 your leg was hurt?

12 A Things were still really stressful. I was having a
13 lot of financial problems. And Chris had been back
14 to court and was supposed to be paying child
15 support. And he had started working some
16 part-time, but we just weren't making the bills.
17 And the stress just never seemed to let off.

18 Q This is already the case in March?

19 A Yes.

20 Q Has he got a permanent full-time job now?

21 A No. He was working part-time.

22 Q Where was he working, do you remember?

23 A At the Wal-Mart in Evans, they were doing a
24 remodel.

25 Q This was a good job, he liked it? It was --

1 A It was night shift. He liked it okay.

2 Q Okay. So money has become a stressor in your house
3 already?

4 A Yes.

5 Q You guys just arguing, or did it escalate?

6 A It escalated.

7 Q Tell me about that time in March. He has just
8 moved in, just been there a few weeks.

9 A Right around the middle of March, our birthdays,
10 his was at the beginning and mine was at the end.
11 And so I thought it might be nice if we went
12 somewhere because neither one of us had been
13 anywhere, you know, in a long time. And so I
14 suggested we go to Charleston for the weekend. And
15 I had talked to his mom and she actually
16 recommended like a riverboat cruise thing. And we
17 booked it and we were going to go down there.

18 And the morning we were getting ready to
19 leave, we were packing, and Chris was getting real
20 upset because he was -- he said he was fat and that
21 he didn't have anything decent to wear.

22 And I said, Well, Chris, you look fine. And I
23 said, You know, we don't have a lot of extra money,
24 I said, we don't have, you know, to go out and buy
25 a lot of new things.

1 And he was frustrated by that and he got
2 angry. And he grabbed me by the arms and he shoved
3 me up against the door. And it caught me off
4 guard.

5 And I said, Chris, it's fine.

6 And at that point, I think I told him I didn't
7 want to go, but after that, he kind of seemed to
8 calm down and then finished packing and we went.

9 Q You didn't want to do something, but he talked you
10 into it again; is that right?

11 A Yes.

12 Q You didn't want to do something because he had been
13 physically violent with you; is that right?

14 A Yes, sir.

15 Q Did he scare you that day?

16 A Yes. Nobody had ever -- nobody had ever put their
17 hands on me before.

18 Q Did he apologize and promise not to do it again?

19 A Yes.

20 Q Told you that this was a one-time thing, it
21 wouldn't happen again?

22 A I don't remember if he said that, but he was very
23 apologetic, yes.

24 Q All right. And did it ever happen again after
25 March?

1 A Yes.

2 Q Did it happen with increased and regular intervals?

3 MR. JUSTIS: Objection. Leading, Your Honor.

4 THE WITNESS: Yes.

5 THE COURT: Sustained. Please rephrase the
6 question.

7 BY MR. LEIENDECKER:

8 Q Did it happen just once more?

9 A No, it happened multiple times.

10 Q All right.

11 A He -- a couple of weeks --

12 Q Let me ask the question. If you can remember, and
13 it doesn't have to be chronological, what's the
14 next event that stands out to you?

15 A A couple of weeks later I had to get up early to go
16 to work one day for an extradition and he was --
17 his car was parked at his mom's house, because even
18 though he was staying with me, I didn't want him to
19 leave his vehicle at my house.

20 And so we were getting ready for bed. And he
21 was in the bathroom. And I said, Well, you know, I
22 got to get up early.

23 And he said, You didn't tell me that.

24 And I said, Yeah.

25 And he said -- he came out of the bathroom and

1 he started yelling at me that he couldn't believe
2 that I would totally disregard him and not think
3 any more of him than that so he would have his car.

4 And I was in the bed, and he grabbed me by my
5 arms and he was pushing me on the bed. And then he
6 dragged me out of the bed and threw me on the
7 floor, and then he spit on me. Then he punched the
8 bed post. And when he did, the bed shifted and it
9 broke the frame.

10 Q The frame of your bed?

11 A Yes.

12 Q Did it scare you?

13 A Yes.

14 Q What did you do?

15 A I was crying. I got up off the floor and went into
16 the bathroom.

17 Q Did he apologize?

18 A Yes.

19 Q Did you believe him?

20 A Yes.

21 Q Did you have any idea what was going on with him?

22 A No, I just -- like I said, we were both under a lot
23 of stress. And Chris would get depressed sometimes
24 and his mood swings were really weird. He would be
25 really happy one moment and then really sad. And I

1 was trying to do all that I could just to -- for
2 us -- the environment to be stable.

3 Q At this point in your relationship, has he told you
4 anything about prior problems with other domestic
5 partners?

6 A No.

7 Q You don't have any idea about that?

8 A No.

9 Q You notice these ups and downs emotionally.
10 Sometime in April or May, do you do something about
11 that?

12 A I was seeing Dr. Fallaw in North Augusta and -- I
13 have problems with depression anyway -- and he came
14 with me and -- or we made him an appointment and
15 he -- because he -- you know, he said he was
16 depressed too, and so we thought we would try to
17 get him in to see her. And she put him on Effexor.

18 Q Put him on Effexor?

19 A Yes.

20 Q And that was meant to try to help with what?

21 A Anxiety or depression.

22 Q Did it work?

23 A It was helping some, but Chris would still get real
24 easily agitated. And we were still arguing about
25 money and stuff a lot because that situation just

1 wasn't changing.

2 Q Okay. But did it help solve the problem and he
3 didn't put his hands on you anymore?

4 A No.

5 Q Really?

6 A Yes.

7 Q What do you remember next regarding that?

8 A Right around the end of April, the first of May,
9 Chris had been working over at a place over in
10 Grovetown for Serta and he really didn't like that
11 job. He really didn't like his boss. And so --

12 Q Wait a minute, Robin. This isn't the Wal-Mart job
13 anymore?

14 A No.

15 Q This is his second, third, fourth job since he's
16 moved in?

17 A I think it was the second.

18 Q Okay.

19 A And he worked there for a little while, he really
20 didn't like it. And so I told him if he didn't --
21 you know, didn't like working there just to not go
22 back. And, of course, money was already strained,
23 so it was even more strained. And we were arguing
24 a lot.

25 And one night we were in the bed -- in the

1 living room and he walked into the bedroom and I
2 went to go in there. And the next thing I know, I
3 was getting hit in the face with a boot that I had
4 been wearing. It hit me in the eye.

5 Q What kind of injury did it cause?

6 A My eye swole shut. It turned real black and blue.

7 Q Is this the incident you talked about on the video?

8 A Yes.

9 Q You said on the video you didn't think he meant to
10 do it. You didn't think he meant to throw the boot
11 or what?

12 A I don't -- he threw it at my face.

13 Q You just think he maybe didn't think he was going
14 to hit you right in the eye?

15 A No -- I mean, I don't know.

16 Q Was he angry?

17 A Yes.

18 Q Was he remorseful, sympathetic, concerned after he
19 hit you right in the face with a boot?

20 A When he hit me, I turned around and I fell on the
21 floor and started crying.

22 And he came over to -- he was saying, Let me
23 see, let me see. And I was crying. And he was
24 looking at it and I couldn't -- it wouldn't open
25 up. And we put ice on it, and stuff like that.

1 Q Did he apologize?

2 A Yes.

3 Q Did he say he would never do that again?

4 A I don't -- I don't remember that.

5 Q You didn't ask him to leave?

6 A No.

7 Q What did you do? Did you call the doctor?

8 A I don't -- I don't believe I called the doctor.

9 Q All right. So this is May?

10 A Yes.

11 Q Things got better --

12 A No.

13 Q -- or worse?

14 A No, they got -- they got worse. Like I said, we
15 were always arguing about kids or money or
16 something. There were several times we had fights
17 about his ex-wife. Two times, he threw a lit
18 cigarette in my face. One of them almost hit me in
19 the eye. One time we were riding down the road and
20 we started arguing and he grabbed me by the arm and
21 he was twisting it almost to the point I thought he
22 was going to break it. He slapped me across the
23 face, like pushed me, and when he did, my head hit
24 up against the passenger window.

25 And one time there was -- we were arguing, and

1 his kids were actually there. And I didn't like to
2 fight in front of them, but he pushed me down in
3 the floor and got on top of me. And he had my arm
4 up over my head and he was laying on my leg. And I
5 was begging for him to get off me and he wouldn't.
6 And when he got up, he kicked me in the side and he
7 spit on me.

8 And he told Jacob and Kaylee, they were at the
9 kitchen table, to get up and get their stuff, they
10 were leaving.

11 And I got up and went into the bedroom.

12 Q Did he leave?

13 A No.

14 Q Did you ask him to get out?

15 A No.

16 Q Why, Robin?

17 A Because I loved him.

18 Q You thought you were in love with him?

19 A (Witness nods affirmatively.)

20 Q Did he tell you he was sorry?

21 A Yes.

22 Q Did he promise not to do this again?

23 A I don't -- no. He would always -- he would always
24 apologize and say he was sorry. And then --

25 Q At some point, Robin, while all this abuse is going

1 on, he opens up to you about the fact that he's got
2 a problem --

3 MR. JUSTIS: Objection. Leading.

4 THE COURT: Sustained.

5 BY MR. LEIENDECKER:

6 Q Does he at some point tell you about prior domestic
7 difficulties he's had?

8 A Yes.

9 Q Tell me about that.

10 A Just, I mean, in conversation, he had told me that
11 him and his ex-wife had gotten in a fight one
12 night, I believe over in Augusta, and that she said
13 that he hit her, but that he didn't. And that he
14 had gotten arrested.

15 Q He denied striking her?

16 A Yes.

17 Q Did he tell you if he's ever had any other domestic
18 difficulty?

19 A There was one other girl, something about a knife
20 and a stabbing in a truck or something, and that he
21 got arrested and that it went to court. But I
22 think she moved to California or something.

23 Q Okay. So he told you about at least two incidents?

24 A Yes.

25 Q Does it reach a point where the abuse is continuing

1 and you decide you can't take it anymore?

2 A One night, we were in the bedroom and we were
3 arguing. And I went into the bathroom and he
4 followed me in there and he shoved me. And when he
5 did, I went back into the bathtub. And when I did,
6 I tried to pull the shower curtain -- I grabbed
7 onto the shower curtain, I guess, to break my fall.
8 And when I did, I bent the shower rod in half. And
9 when I got up, I was crying.

10 And I went out of the bedroom and out the
11 door, out into the front yard. And he followed me
12 out there and he was telling me that he was sorry.

13 And I told him, I said, Chris, I said,
14 something is not right. I said, You're not well.
15 I said, I can't do this anymore. I said, You need
16 to get some help.

17 Q About what month was this?

18 A Maybe the first of June.

19 Q Okay. Did you tell anyone else about the problems?

20 A I did.

21 Q Who did you tell?

22 A I went one night and saw him mom.

23 Q I'm sorry, you went to see who?

24 A His mom.

25 Q Okay.

1 A I told -- I went to see her and I told her, I said,
2 I don't want Chris to know that I came and saw you
3 because he'd be mad.

4 Q Because he'd be what?

5 A He'd be mad.

6 Q Okay.

7 A And me and his mom had gotten really close, and I
8 told her, I said -- I said, I'm going to break up
9 with Chris. I said, And if I do, I want you to
10 hear it from me, not from him, why I broke up with
11 him. I said, Because I care about you and I wanted
12 you to hear it from me.

13 And she asked me what was going on. And I
14 told her that Chris had been beating me and that I
15 was afraid he was going to kill me.

16 And she said, Okay.

17 And I said -- she said, Well, what do you want
18 to do?

19 And I said, I think we ought to get him some
20 help.

21 And she said, Okay. Well, how do you want to
22 do this?

23 And I said, Could you maybe come by in a
24 couple of days, you know, and we'll, you know, talk
25 to him.

1 Because that night we were in the yard, I said
2 something about getting help, and he said he would
3 go.

4 Q When he was trying to apologize to you?

5 A Yes.

6 Q He said he'd go?

7 A Yes.

8 Q Does his mom come by and you talk about going to
9 get him help?

10 A Yes. A couple of days later, she came by, and my
11 kids were there. And we were sitting on the porch
12 smoking.

13 Q We being?

14 A It was me, her and Chris.

15 Q Okay.

16 A And we were outside. And it was him and then her
17 and then me. I was sitting by the door. And she
18 started pulling on my sleeve and she was -- I think
19 I had a bruise right there, and she was asking what
20 that was about. And she kind of confronted Chris.
21 And she asked him if he had been hitting me. And
22 he said he had gotten physical.

23 And she told him that she loved me and that I
24 was a good woman and that I was one of the best
25 things that had ever happened to him and that I was

1 good to him and I treated his kids good. And that
2 if she found out he ever put his hands on me again,
3 she'd disown him.

4 Q You said she was coming by to talk about getting
5 him help. Did y'all talk about that?

6 A Yes.

7 Q Tell me that.

8 A I mean, it went really well. We were all talking.
9 And they were talking and we were all crying and he
10 agreed to do.

11 Q Who did he agree to go see?

12 A Carolyn, I think, she had a friend whose son was
13 seeing a counselor in Aiken, Stairway Counseling.
14 And I called her and made an appointment for him to
15 be seen.

16 Q Who?

17 A Cheryl Cummings.

18 Q This is who the friend was going to see?

19 A Yes.

20 Q And who went?

21 A Me, him and his mom.

22 Q Y'all went to his appointment with Cheryl Cummings?

23 A Yes.

24 Q All right. And did he share with you or did you
25 understand what the results of that initial

1 'appointment and interview with Cheryl Cummings
2 were?

3 A We went in and he filled out some paperwork and
4 then they went in and talked. And then I think we
5 all sat -- I think she sat down with all of us and
6 we talked. And she said she was concerned about
7 him being, I think it was manic and bipolar, and
8 that she recommended that he be hospitalized or
9 that we put him on some medication immediately,
10 that -- she wanted to do counseling with him, but
11 she wanted to wait until his mood had been
12 stabilized.

13 Q And so what course of action did you undertake at
14 that point, in July, going into August?

15 A We -- I called my doctor, Dr. Fallaw, and she
16 agreed to put him on Lithium.

17 Q All right. Did that work? Did it help?

18 A It helped some. His moods were still up and down,
19 and he said it made him sick to his stomach.

20 Q Okay. After you had been to see the counselor and
21 he switched meds to Lithium, do you have any more
22 incidents? Does he have any more physical
23 altercations with you?

24 A Yes. They were not as close between, but, yes.
25 Mostly grabbing me by the arms. One time -- we got

1 into an argument one night and he was unloading the
2 dishwasher and I was over by the washing machine,
3 by the dryer, and he threw a handful of silverware
4 at me. And when he did, he -- it busted out the
5 glass on the curio. And he was squeezing a knife
6 so hard that it actually cut his finger. And we
7 went to his mom's house and she had some -- like a
8 tourniquet thing or something, and we put it on
9 there.

10 Q Okay. Did he continue to take the Lithium and make
11 doctor appointments?

12 A He continued taking the medicine, but he was having
13 a hard time getting to the doctor because of work.
14 He worked -- you know, he got up -- he worked late
15 a lot of nights.

16 Q Did that cause a problem, he wasn't making the
17 doctors appointments?

18 A I mean, Dr. Fallaw was considerate of it. I mean,
19 she was still refilling his scripts.

20 Q Did there come a time when she refused to do that?

21 A Yes. She said he needed to come in and have his
22 liver level checked. I guess the way that
23 medication works, it has something to do with your
24 liver, and I guess it made it too high. And she
25 said she wouldn't rewrite it unless he came in.

1 Q When was this that she told you that he needed to
2 come in or she wasn't going to rewrite it?

3 A When I saw her on October 28th.

4 Q Okay. Did you make an appointment for him to come
5 in?

6 A Yes. It was November the -- I think it was the
7 4th.

8 Q Did he make that appointment?

9 A No.

10 Q Why?

11 A We were -- Chris and I were big wrestling fans.
12 And WWE was coming to Greenville and I wanted to do
13 something. It was supposed to be a surprise,
14 surprise him. And I got tickets for us to go. And
15 it was the same night. And so, you know, we -- I
16 bought the tickets, so we went to that instead.

17 Q That's November 4th?

18 A Yes.

19 Q That takes us right up to November 6th. Still
20 hasn't been to see the doctor?

21 A No.

22 Q His prescription has run out?

23 A I'm not sure if he was completely out, but he was
24 close.

25 Q Tell me about November 6th, Robin. Tell me about

1 your morning.

2 A I got up like every other day. I mean, it was a
3 normal day. And I got dressed and went to work.
4 And I guess about, I want to say 10:00, 10:30
5 maybe, he texted me and he said, I love you, mama.
6 He said, I'm depressed.

7 And I said -- I said, Call me. And so he did.
8 And I said, What's wrong?

9 And he said that he was really irritated and
10 agitated and he didn't know why. And that he
11 wasn't feeling well, he was really sick to his
12 stomach. And he said he was at the house.

13 And I said, Did you come home from work?

14 And he said, Yes. Chris never felt that bad.

15 And so I said, Well, we didn't go to the
16 appointment on Monday. I said, Let me call
17 Dr. Fallaw's office and see if I can get you in to
18 be seen.

19 And he said, Okay.

20 And so I hung up and I called the doctor's
21 office and I made an appointment, and they said
22 they would see him at 2:00 o'clock.

23 Q All right. So he could just go over to the
24 doctor and see the doctor?

25 A Yeah. And she told us that she wanted to do that

1 test. And I called him and I told him, I said, Are
2 you going to come -- I -- come up here, I said,
3 because I was going to have to write him a check
4 for the doctor visit and then for the medicine.
5 And I said, Are you going to come up here?

6 And he said, Yeah. And he said, But I'm going
7 to lay down for a little while.

8 And I said, Okay.

9 And so I guess about, I don't know, 1:15 -- it
10 was after 1:00 o'clock, I still hadn't heard from
11 him. So I texted him, I said, Are you coming up
12 here?

13 And he said, Meet me at the cemetery.

14 Q The cemetery just a few miles down from your house
15 at the bottom of your road?

16 A Yes.

17 Q All right.

18 A And so --

19 Q So what did you do?

20 A I went up front and I signed out.

21 Q Who did you talk to?

22 A Ruth Reeves.

23 Q Who we heard from earlier?

24 A Yes.

25 Q Okay. And where did you go after you signed out

1 with Ruth?

2 A I signed out till 2:00 o'clock and I told her I
3 would be back, I needed to run an errand to North
4 Augusta.

5 She said, Okay.

6 So I got in the car. I was driving a Charger
7 that week. And I drove to the cemetery.

8 Q All right. Tell me what happened at the cemetery.

9 A I think I got there first and then he drove up.
10 And I walked over there and I gave him the checks,
11 And he was just really irritated and he seemed
12 really angry.

13 And I kept asking him, you know, Are you okay?
14 And he was just acting really strange. And we were
15 kind of just going back and forth. And I said,
16 Chris, you act like you don't know me. I said --

17 Q Had you ever seen him like this before?

18 A No. He was -- he was being mean, like, you know --
19 and I don't -- I don't think he was -- I knew he
20 didn't feel good, but he was being mean.

21 And I said -- I said, Chris, I said, you know,
22 I've got to go back to work. And I tried to walk
23 off and then he said -- I think he said something
24 about, Are you just going to be like that, or,
25 You've got an attitude.

1 And I said -- and I just kept saying, Chris, I
2 don't understand why you're being this way. Like I
3 said, I just kept saying, You act like you don't
4 know me. I said, you know -- you know I love you.

5 Q You gave him the checks, so why didn't you just
6 leave?

7 A Well, I went to walk off and he would say something
8 and I think I walked back over there again. And
9 then he said something about -- I don't know. Oh,
10 I had asked him, actually, to call his mom and --
11 because I didn't want him going by himself. He
12 obviously wasn't feeling really good. And I think
13 he said he would call his mom. And he was being
14 kind of nasty about it. I mean, like I was nagging
15 him, but I just wanted him to call her because I
16 was worried about him.

17 And I said -- at some point, I said, Go back
18 to the house. I said, Call your mom and have her
19 come get you, I said, or drive, you know, your car.

20 And then he said something about, I'll
21 wreck -- I think he said, I'll wreck this bitch, or
22 something.

23 And I kept saying, you know, Chris, why are
24 you being like this?

25 And I think I went back to get in the car and

1 he came up and he said that I was causing a scene
2 in front of the people that were there.

3 And I said, Chris, I'm not trying to cause a
4 scene. I said, you know, Please just go back to
5 the house, park my car, and call your mom.

6 And he went to back out, and I walked over
7 there and he stopped. And I said -- I said, Chris,
8 I'm serious, please go back to the house.

9 And he put the car in drive and when he did,
10 it rolled forward and he said -- he said something,
11 If you don't -- he said, If you don't move, I'm
12 going to run over you. And then he put the car in
13 drive and the car rolled forward. And then he took
14 off out of the parking lot.

15 Q Why didn't you go back to work?

16 A Because I was worried about him.

17 Q How did he drive out of the parking lot?

18 A Fast.

19 Q How did you drive out of the parking lot?

20 A Fast.

21 Q Where did you go?

22 A We were driving down Sudlow Lake Road. And I was a
23 couple of cars behind him and I could see him and
24 he pulled off -- he pulled off the side of the
25 shoulder, of the right shoulder, and then pulled

1 back on. And then he went down a little further
2 and he passed a car on a double line. And a little
3 ways down, he kind of slowed down. And then we
4 pulled into the driveway. And he pulled in and I
5 pulled in behind him.

6 Q What happened once you get back to the house?

7 A He got out and I got out. And we were standing
8 there arguing. We were at the -- at the vehicles.

9 And he started yelling at me. He said, I
10 can't believe you followed me here.

11 And I said, Chris, I said, you're driving
12 crazy. I said, Please call your mom to come get
13 you, please.

14 And he said he was a 31-year-old grown ass
15 man, he didn't need another mother.

16 And I said, Chris, I'm not trying to be your
17 mom. I said, Please just call her. And, you know,
18 I told him I didn't want him driving my car.

19 And he said -- he said, That's my car too.

20 Q Did he assault you?

21 A I don't remember.

22 Q You don't remember that he assaulted you that --
23 while you were there?

24 A Oh, I thought you said insulted.

25 Q Not insult.

1 A Oh.

2 Q Assault?

3 A He said, This is my car too.

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

5 And he said, You know what, bitch, if you --
6 if I can't drive this car, neither can you. And he
7 threw the keys. And when he did, they landed on
8 the top of the roof of the house.

9 And I said, Chris, why did you do that? And I
10 walked around and I was trying to get back in the
11 car and I grabbed my house keys.

12 And when I turned around, he was walking over
13 to me. And he said, I know you didn't just bow up
14 at me. He said, If you're going to act like a man,
15 I'm going to beat you like a man. And he shoved
16 me. When he did, I went back onto the ground and I
17 landed on my butt.

18 And I got up and I was trying to walk around
19 the car away from him. And I was going up the
20 sidewalk -- side of the driveway. And we were up
21 there arguing and I was still begging him to call
22 his mom to come get him. And he shoved me again.
23 And when he did, I went back, I stumbled.

24 And I said, Chris, stop. And that time, I did
25 shove him back. And when I did, he shoved me

1 again. And when I went back again, I went off in
2 the grass. And when I got up, I got back on the
3 sidewalk, and I started yelling at him that I
4 was -- I was done. I just -- I couldn't do this
5 anymore and I wanted him to get out of my house and
6 off my property.

7 Q Are you in the front yard yelling this at him?

8 A Yes.

9 Q Are you pacing back and forth yelling at him?

10 A Yes.

11 Q And you continue yelling at him. Then what
12 happens?

13 A I went -- I went down the sidewalk. I think I went
14 around him and I went up the stairs. And I
15 unlocked the front door and I went in the house.

16 Q Did he follow you immediately into the house?

17 A No.

18 Q All right.

19 A I went into the bedroom -- I threw my keys on the
20 ottoman and I went into the bedroom because I was
21 looking for the other set of keys to the other
22 vehicle that was in my driveway.

23 Q You had another car that he could use?

24 A Yes.

25 Q All right.

1 A And I didn't see them. And so when I walked back
2 out, I walked around in the kitchen. And I was
3 standing in there and I was crying and I think I
4 was trying to clean my face up.

5 And then he came inside the door and he walked
6 in the bedroom. And he walked back and stopped
7 right in front of the entertainment center. And he
8 said, So you're just going to kick me out? You're
9 just going to make me homeless?

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

13 Q All right. You're in the kitchen, he's at the
14 entertainment center. What happens?

15 A I went to walk around and --

16 Q When you say around, around the sofa?

17 A Around -- yeah, around the sofa. And he was
18 walking towards me, and we met. And I said -- I
19 said, Chris, get out of my way. And he shoved me.
20 And when he did, I fell in the floor. And he
21 started punching me with his right hand. And I had
22 my arms up like this(indicating). And then he took
23 a step back. And when he did, I drew my weapon and
24 I pointed it at him and I told him to get out or I
25 was calling the police.

1 Q Speak up, Robin, I need to hear you.

2 A I told him to get out, I was calling the police.

3 And he swatted at it, like -- like, swatting it out

4 of -- away. And he told me not to point that thing

5 at him if I wasn't going to use it. And he turned

6 around and he was going toward the door, and so I

7 put it up. And then I got up out of the floor.

8 And he started walking towards the door, and I

9 started taking steps or walking behind him. And he

10 walked up to the door and he slammed the door open.

11 Q Which door, Robin?

12 A The glass door.

13 Q Okay.

14 A And he turned around and he started beating on his

15 chest and he was screaming. He said, You want

16 some? Come get some. Step your game up. And then

17 he just charged me. And when he did, he was coming

18 at me and his arm was up like this(indicating). I

19 thought he was going to try to punch me again. And

20 when he did, I started backing up. And I went to

21 draw my gun again because I thought, he backed off

22 me the first time, he'd back off me again. And

23 when I did, it came up and his hand came down. His

24 fist came down and then it opened up. I don't -- I

25 don't know if he was trying to grab it or swat it

1 or what. When he did, it banged.

2 Q Did he hit your hand?

3 A Yes, it felt like -- yeah, like that. And I had
4 turned my head, so I didn't see it go off.

5 Q But the gun went off at the same time?

6 A Yes.

7 Q Robin, we're pretty certain today that gun went off
8 because you pulled the trigger; right?

9 A Yes.

10 Q Did you mean to pull the trigger?

11 A No.

12 Q When the gun goes off, what do you do? What does
13 he do? Pick a question, answer one at a time. I'm
14 sorry.

15 A When I turned back, I looked at him and I said,
16 Chris, are you hit? And he grabbed his throat, and
17 he turned around and went out the door.

18 Q Where was he before he turned?

19 A In front of me.

20 Q I understand that he was in front of you. Where
21 was he between the sofa and the door?

22 A I'm not real sure. We were, like, right there
23 between the wall and the sofa, right there kind of
24 near the curio cabinet in that open area.

25 Q All right.

1 A And he went out the door. And when he did, he fell
2 right there by the bannister. And I was begging
3 for him to let me see, let me see. And when he
4 turned over --

5 Q How is he laying when you get outside with him?

6 A His back was to me. He was facedown.

7 Q Okay.

8 A When he rolled over, when I pulled his hand away, I
9 started seeing all this blood.

10 Q Is this the first time you've seen the wound and
11 the blood?

12 A Yeah. I couldn't see it because his hand was over
13 it. And when I pulled his hand away, like I said,
14 I started seeing all this blood. And I put my hand
15 on there and I was trying to hold pressure and I
16 was screaming for him to breathe. And I was trying
17 to call 9-1-1 on my phone with my left hand and I
18 couldn't -- I couldn't get it to go through. And
19 so I started screaming for somebody to help me.

20 Q Did someone show up?

21 A When I looked up, my neighbor was standing on the
22 sidewalk.

23 Q What did you tell her to do?

24 A To call an ambulance.

25 Q What did Chris do?

1 A He was laying there. I was still holding pressure
2 on his neck. And at some point he rolled over, and
3 when he did he grabbed the bannister with his hand
4 and he stood up.

5 And me and Sarah were telling him not to move,
6 not to move. And when he did, he took a couple of
7 steps back, and then he sat down in the chair that
8 was there.

9 Q On the porch?

10 A Yes.

11 Q Is that where he was when EMS and the police
12 arrived?

13 A Yes.

14 Q Once the police got there, did they let you stay up
15 there, or what did they do?

16 A No. They made me get away from him and made me go
17 down in the yard.

18 Q What were you doing? Do you remember?

19 A Screaming. I didn't want to leave him.

20 Q Did they eventually take him away by ambulance?

21 A They did.

22 Q Did they eventually take you away by police
23 cruiser?

24 A Yes.

25 Q Where did they take you?

1 A To the Sheriff's Office.

2 Q Before you and I watched that video of your
3 interview for the first time, did you really
4 remember what you had been saying in that video?

5 A No.

6 Q Tell me what you remember about your time at the
7 police station from 4:00 o'clock that afternoon on?

8 A They took me in there. And I remember talking to
9 them. I don't remember everything I said. I know
10 they took photos of me, and some other stuff. Mike
11 and Mr. Perry was there.

12 Q All right. You need a drink?

13 A Please.

14 Q Let me get you one.

15 (Pause.)

16 Q I'm close, Robin, I've just got a few things I need
17 you to do for me, all right?

18 MR. JUSTIS: No objection.

19 THE COURT: What number?

20 MR. LEIENDECKER: I haven't had them marked
21 yet.

22 (WHEREUPON, Defendant's Exhibit Nos. 24
23 - 28 were marked for identification
24 only.)

25 MR. LEIENDECKER: Twenty-four through 28.

1 THE COURT: All right. You said no objection
2 to all four pictures?

3 Is it pictures?

4 MR. LEIENDECKER: Pictures, yes, ma'am.

5 BY MR. LEIENDECKER:

6 Q Robin, can I show you what has been marked for
7 identification as Defendant's Exhibit Number 28.
8 Can you tell the jury what that's a picture of?

9 A The front of my house.

10 Q Does that look like the front of your house on the
11 afternoon of November 6th, 2013?

12 A Yes.

13 Q Is that a fair and accurate representation of what
14 your house looked like after the EMS had been
15 there?

16 A Yes.

17 Q Okay. Also, looking at that picture, just
18 generally, at the foliage and the trees around your
19 house, is that also a fair and accurate
20 representation of what those looked like on the day
21 in question, November 6th, 2013?

22 A Yes.

23 Q I hand you what has been marked as Defendant's
24 Exhibit 27 for identification purposes. What is
25 that a picture of besides the chair that is thrown

1 on the front?

2 A The front of my house from the sidewalk. There's a
3 trampoline in my yard.

4 Q Okay. And that trampoline was sitting in your yard
5 November 6th, 2013?

6 A Yes.

7 Q Okay. I show you, for identification, what has
8 been marked as State's Exhibit 24. Tell me what
9 that picture is.

10 A The front of my house from the yard.

11 Q Okay. Is that a fair and accurate picture of the
12 entire front of your house on that afternoon of
13 November 6th, 2013?

14 A Yes.

15 Q Is that what it looked like?

16 A Yes.

17 Q Is that a fair and accurate representation of what
18 the trees and the foliage looked like that day?

19 A Yes.

20 Q I hand you what has been marked as Defense Exhibit
21 26 for identification. Can you tell me what that
22 is?

23 A Oh, that's the state Charger I was driving.

24 Q Is that a picture of it on that day where it was
25 parked in the driveway?

1 A Yes.

2 Q What direction is that picture looking?

3 A Across the yard.

4 Q Across the yard towards your neighbor's house?

5 A Yes.

6 Q Can you see your neighbor's house in the picture?

7 A Not really, no.

8 Q Can't see it far up in the corner? If you can't,
9 that's fine.

10 A Yeah, I can.

11 Q Okay. So you do see it in the picture. And
12 finally I am going to hand you what has been marked
13 Defense Exhibit 25 and ask you what is that a
14 picture of?

15 A It is the blue SUV.

16 Q Where it was parked that day on November 6th, 2013?

17 A Yes.

18 Q And where is the picture angle looking?

19 A Across the yard, towards the front of the house.

20 Q The trees in the background, is that a fair
21 representation of what they looked like on
22 November 6th, 2013?

23 A Yes.

24 MR. LEIENDECKER: If it please the Court, I
25 would move to enter Defense Exhibits 24 through 28.

1 MR. JUSTIS: No objection, Your Honor.

2 THE COURT: They will be entered without
3 objection.

4 (WHEREUPON, Defendant's Exhibit Nos. 24
5 - 28 were admitted into evidence.)

6 MR. LEIENDECKER: And I would ask the
7 opportunity to publish them to the jury.

8 THE COURT: Yes, sir.

9 (Exhibits published to the jury.)

10 BY MR. LEIENDECKER:

11 Q Robin, do you know Leeann Bost who testified
12 earlier today?

13 A I do.

14 Q How are you acquainted with her?

15 A She worked for Vocational Rehabilitation when I
16 worked for probation.

17 Q How often did she come to the office, do you know?

18 A Usually -- usually once a week, maybe twice.

19 Q Were you there every time she came?

20 A No.

21 Q Would you characterize the relationship as close?

22 A No.

23 Q Did you guys talk?

24 A Occasionally, yeah.

25 Q What kind of stuff would you talk about?

1 A Just life in general. She had a daughter. She had
2 been married to an employee for the Sheriff's
3 Office. And I actually know him, Bobby Bost. And
4 we'd talk about clients. You know, I referred a
5 lot of my clients to Voc Rehab for services.

6 Q Did you have a conversation with her sometime
7 around the end of October about Chris?

8 A I don't remember that.

9 Q Did you search records in front of her to try to
10 discover if Chris's phone was being used to call or
11 text another woman?

12 A I don't remember that either.

13 Q Did you ever tell her you thought Chris was being
14 unfaithful to you or cheating on you?

15 A Not that I recall. Chris and I, at that point,
16 were actually doing okay. I mean --

17 Q Until nine days later?

18 A Well, I mean, there wasn't any ongoing issue. I
19 mean, we had some pretty good days in those days up
20 to that. I mean, we went to the raw thing. We
21 went to his mom's house and had -- I think we
22 watched the football game over there. And then I
23 think Sunday night we all went and -- my daughter
24 got baptized and we all went and ate. And then,
25 like I said, we went to the raw function on Monday.

1 So, I mean, things were --

2 Q Did you ever have a conversation where you talked
3 to her about shooting Chris if you caught him in
4 bed with another woman?

5 A No.

6 Q Does that sound like something you would tell
7 anybody?

8 A I wouldn't tell anybody that.

9 Q Is that something you would say?

10 A No.

11 Q Have you ever drawn your weapon, except in the line
12 of duty or responsibility as a law enforcement, any
13 day other than November 6th, 2013?

14 A No.

15 Q Have you ever pointed your weapon at anyone, except
16 in the line of responsibility or at a target on a
17 firing range?

18 A No.

19 Q Other than November 6th, 2013?

20 A No.

21 Q Did you go to your house intent on having a
22 continuing fight with Chris and shooting him dead
23 that day?

24 A No.

25 MR. LEIENDECKER: I don't have any further

1 questions at this time. Please listen and answer
2 any questions the Solicitor may have.

3 THE COURT: All right. Ladies and gentlemen
4 of the jury, at this time I think it will be good
5 for us to take an afternoon break. We've been
6 going probably almost two hours, so we'll go ahead
7 and take our afternoon break. Take about 10 or 15
8 minutes, and then we'll receive you all back in the
9 courtroom.

10 (WHEREUPON, the jury retires to the jury
11 room at 3:18 p.m.)

12 THE COURT: All right, we'll start back at
13 3:30.

14 (WHEREUPON, a short break was taken at
15 3:19 p.m.)

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

17 I'm going to bring them back in, but real
18 quick, I'm going to ask everyone that is in the
19 audience to refrain from making facial expressions
20 or shaking your head or nodding your head to the
21 questions. All right?

22 Anything else before we bring them back in?

23 She can come back up.

24 (Witness returns to witness stand.)

25 (WHEREUPON, the jury came into open

1 court at 3:37 p.m.)

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, we will continue with the Defendant's
4 case. I think we are at the point of
5 cross-examination.

6 I will be glad to hear from you. Thank you.

7 MR. JUSTIS: Thank you, Your Honor. May it
8 please the Court?

9 CROSS-EXAMINATION

10 BY MR. JUSTIS:

11 Q Good afternoon, Robin. Let's kind of start back
12 kind of at the beginning, back when -- let's go
13 back to when you met Chris, Christopher, which was
14 I think you said you started dating him back in
15 January of 2013; is that correct?

16 A Yes.

17 Q Okay. And it was March, right around the first of
18 March when he moved in with you; is that correct?

19 A Yes, sir.

20 Q And prior to that, he was living with a friend?

21 A Yes.

22 Q And I think you stated they essentially, you know,
23 kicked him out and he needed a place -- he was
24 essentially homeless and he needed a place to stay;
25 is that correct?

1 A Yes.

2 Q Okay. That friend is actually seated in the front
3 row of the courtroom. Is that the friend you're
4 talking about that he actually lived with right on
5 the front row with the white shirt on?

6 A I'm not sure. I don't remember what he looked
7 like.

8 Q Isn't it true that actually Christopher called him
9 up and told him to have his stuff packed, that he
10 was moving out?

11 A I don't recall that.

12 Q That he had talked to you and you had agreed to let
13 him move in?

14 A No, I don't recall that, no.

15 Q Okay. Well, isn't it also true that he was already
16 working at Wal-Mart when he moved in?

17 A No, because he started driving my car after he got
18 the job.

19 Q So he didn't start with the staffing agency -- he
20 didn't contact them back in January?

21 A I can't remember when it was.

22 Q Okay. Okay. Well, we can move on. So he moved
23 in -- I think you kind of went through several
24 instances where you claim that Christopher
25 assaulted you; is that correct?

1 A Yes.

2 Q You mentioned the time, I guess it was in March
3 near your birthdays?

4 A Yes.

5 Q You decided to go to Charleston for the weekend; is
6 that correct?

7 A Yes.

8 Q Take a harbor cruise?

9 A Uh-huh.

10 Q Okay. Because at this time, you were hurting for
11 money, that's what you testified to; correct?

12 A Yes.

13 Q That you were both kind of stressed out because you
14 had a lack of money, no money?

15 A I mean, money was tight, yes.

16 Q Okay. So in response to that, you decided to take
17 a cruise, a river cruise?

18 A I think I had a little bit of income tax money.

19 Q Okay. Because that's what started that first -- I
20 guess, that first assault was that he felt fat and
21 needed some clothes and you didn't have money to
22 buy clothes for the cruise?

23 A Well, we were just -- we were just trying to watch
24 our spending for the trip.

25 Q And you stated then that you were scared --

1 A Yes.

2 Q -- when he assaulted you? That's when he grabbed
3 you and threw you up against -- was it a door or a
4 wall?

5 A The door.

6 Q Because previously -- in a previous hearing, you
7 said wall. I just wanted to clarify that. So he
8 threw you up against the door. And you stated that
9 you were scared; is that correct?

10 A Yes, I was.

11 Q Did you pull your gun on him then?

12 A I wasn't armed.

13 Q Okay. You had -- you were a police officer or
14 probation officer then, weren't you?

15 A Yes. But that was on a Saturday.

16 Q Okay. Well, where did you normally keep your
17 weapon?

18 A In the closet.

19 Q So it was home; correct?

20 A Yes.

21 Q And then you said a couple of weeks later he
22 grabbed your arm, slammed you into the bed, pulled
23 you out, threw you on the floor, spit on you. You
24 were scared at that time also; right? That's when
25 he broke the bed?

1 A Yes.

2 Q Did you pull your weapon on him then?

3 A No, sir.

4 Q Okay. And then that's when you contacted
5 Dr. Fallaw, is that correct, and had him go see
6 Dr. Fallaw?

7 A I can't remember. I mean, it may have been a
8 couple of days, maybe a couple of weeks.

9 Q Right, but that would have been sometime in the
10 spring, maybe April, mid-April?

11 A Yes.

12 Q Would that be fair? And Dr. Fallaw, I think you
13 testified, gave him some medicine?

14 A She put him on Effexor.

15 Q Okay. And with Dr. Fallaw -- over the next several
16 months, he was actually getting medicine from
17 Dr. Fallaw; correct?

18 A Yes.

19 Q Okay. And did he ever go back and see Dr. Fallaw?

20 A I think he saw her one time, he got sick with
21 bronchitis, and then I think he saw her maybe one
22 other time.

23 Q Okay.

24 A And I believe he actually went with me one time to
25 one of my appointments.

1 Q And then there was an incident where he threw a
2 boot at you, maybe in May?

3 A Yes.

4 Q And hit you in the eye?

5 A Yes. It was in the first of May. Because the
6 day -- the night before it happened, I actually had
7 to be in Columbia in a training the next day. And
8 so while I was there, I had makeup on and
9 sunglasses, and everybody thought it was strange
10 that I had them on in the room.

11 Q Okay. And what did you tell everybody?

12 A I lied and said my daughter threw a shoe at me. We
13 were playing around and she threw it at me.

14 Q And that's what you told your co-workers too;
15 correct?

16 A Yes.

17 Q And then there were other instances where he would
18 grab you, twist your arm, slap you in the face,
19 that's when you were in the car. And another time
20 when his kids were there when he assaulted you; is
21 that correct?

22 A Yes, sir.

23 Q I think you testified in your -- or didn't testify,
24 you stated in your -- in that video interview the
25 day of the incident that the worst thing that ever

1 happened to you was when he blackened your eye; is
2 that correct?

3 A That was probably the worst injury.

4 Q Okay. Did you ever go seek any kind of medical
5 treatment for the injuries you received?

6 A No, I didn't. No, I didn't. I ended it up seeing,
7 I think, my eye doctor. I was having a problem
8 where I could see like these squiggly line things
9 coming out of my eye, started happening.

10 Q Do you wear glasses?

11 A I wear contacts.

12 Q You're also anemic too; correct?

13 A Yes.

14 Q And you take iron for that?

15 A Uh-huh.

16 Q I think you stated that on the video. I think you
17 stated that Chris told you that his ex said that he
18 had hit her, but he claimed to you he didn't; is
19 that correct?

20 A We didn't talk about it a lot because Chris and his
21 ex-wife did not get along.

22 Q But that's what he told you; correct?

23 A He just said that they had gotten into an argument,
24 I think somewhere over in Augusta, and she claimed
25 he hit her and he said he didn't, and he got

1 arrested.

2 Q And you believed him; correct?

3 A Yes.

4 Q And then there was another time, I think you were
5 at the washing machine and he was at the dishwasher
6 and he just throws some silverware?

7 A Yes.

8 Q What would precipitate all these assaults? I mean,
9 would he just all of a sudden do this out of the
10 blue?

11 A We could be talking about something and he would
12 get angry, or we would be talking about money. It
13 could be kids. It could be a number of things.
14 We -- we'd argue about silly things or we would get
15 into conversations and argue about things I didn't
16 think would turn into an argument.

17 One day we were on the porch and he started an
18 argument with me about Obamacare. He said he was
19 upset because he didn't have insurance. And I told
20 him that I didn't know what we would do about that.
21 And it escalated into a fight and he ended up
22 pushing me up against the wall of the porch.

23 Q Okay. And that was over Obamacare?

24 A Yes.

25 Q Now, you also stated that he had a hard time

1 getting to the doctor -- we had talked about
2 Dr. Fallaw -- getting to the doctor because he was
3 working, because of his work schedule; is that
4 correct?

5 A He -- he worked. He got up -- I think he worked --
6 went to work about 8:00 o'clock, but he worked late
7 a lot of times.

8 Q So he was working a good bit?

9 A Yes.

10 Q Because you testified he was kind of in and out of
11 work?

12 A Well, when he worked at the Wal-Mart, when he did
13 the remodel. After that, he went to work for the
14 mattress company in Grovetown, and worked there for
15 not very long. He really, really didn't like that
16 job. And then he didn't work for seven weeks. And
17 then he got hired with Carolina CoverTech. And he
18 really wasn't crazy -- I mean, he liked the people
19 more than he did the job, but he liked the job.

20 Q All right. And when he was out of work for seven
21 weeks, when was that? Was that springtime,
22 summertime --

23 A It was spring --

24 Q -- fall?

25 A It was right around maybe the end of April. I

1 don't think he worked any in May and then I think
2 he went to work right around the first of June at
3 CoverTech.

4 Q Okay. Now, let's kind of turn our attention to
5 November 6th. That day, I think you testified that
6 morning, I guess, you were in communication with
7 them via text and telephone?

8 A Uh-huh.

9 Q And he had come home early from work that morning;
10 is that correct?

11 A That's -- Chris always left after I did to go to
12 work, so I didn't see him when he left. And then
13 when he texted me and he said he was -- he said, I
14 love you. And he said, I'm depressed.

15 And so I said, Call me.

16 And when he did, he told me that he was
17 irritated and agitated. He didn't feel good. He
18 was really sick to his stomach and that he was at
19 the house.

20 And I thought that was odd because Chris never
21 would come home from work when he felt bad.

22 Apparently, I was -- I mean, he went and then he
23 didn't stay for long and he came back home.

24 Q Right. So obviously he wasn't feeling good?

25 A Yes.

1 Q That would be a fair statement? That's when you
2 suggested, Do you want me to call the doctor for
3 you?

4 A Yes.

5 Q Correct? And you did call the doctor. You made an
6 appointment for 2:00 o'clock that afternoon;
7 correct?

8 A Yes.

9 Q And then he was supposed to come by and pick up a
10 check so he could pay for the doctor?

11 A Correct.

12 Q And that's because you kind of commingled your
13 funds, in other words, his check went into your
14 account; correct?

15 A And the only reason that was was is because Chris
16 was have to drive all the way to Augusta on Fridays
17 to get his check, so it was easier just to have it
18 deposited into mine, into my checking account.

19 Q Okay. And he didn't have -- his name wasn't on the
20 checking account, was it?

21 A The bank wouldn't allow me to do that.

22 Q Okay. They wouldn't allow you to open a joint
23 account?

24 A Security Federal, that's who I bank with, they
25 wouldn't allow me to add him.

1 Q So you go to the cemetery because he doesn't
2 come -- he doesn't come to the probation office;
3 correct?

4 A No.

5 Q So at that point I guess there's an agreement that
6 you're going to meet at the cemetery?

7 A Yes.

8 Q So you go there and you get there and you wait on
9 him and he gets there?

10 A Uh-huh.

11 Q And then I think you stated you were going back and
12 forth with him. I mean, essentially, you mean
13 you're arguing with him; correct?

14 A Well, I mean, we're not -- when I came up and
15 started talking to him, I could just tell he was
16 really irritated, he didn't feel well. He just --
17 he seemed mad. Like I said, he just was not acting
18 like his normal self.

19 And I think he said something kind of smart
20 and I said, you know, I'm going to go back to work
21 or something.

22 And then he said something about me having an
23 attitude.

24 And I told him I wasn't trying to have an
25 attitude.

1 Q Right.

2 A And we kept -- we would -- it was like one would
3 say something and we'd walk off. And then -- and
4 then I'd say something, or just like that.

5 Q So he wasn't acting like his normal self. What was
6 his normal self?

7 A Well, I mean --

8 Q I mean, was he generally a happy person? I mean,
9 did you have fun together?

10 A Yes, we had fun together, but Chris was sad a lot.

11 Q So was it normal for him to be sad or was it normal
12 for him to be happy? I'm just trying to figure out
13 how does he normally act. Because you have
14 testified that he was acting differently that day.

15 A Well, like I said, Chris had mood swings and his
16 behavior would -- could -- I mean, he could be fine
17 and then the next hour he'd be crying. But that
18 day, he just seemed off. I mean, just not like his
19 normal self.

20 Q Now, why didn't you want him to drive your car?
21 Because that's what he brought to the cemetery;
22 correct?

23 A I didn't understand what you said, the first part.

24 Q He brought -- to the cemetery, he brought your car,
25 which was the SUV; correct?

1 A Right.

2 Q And I think you told him to go drive his own car.
3 Why?

4 A Because as the conversation escalated, he was
5 getting more angry and, you know, saying things.
6 And at that point, I think he said something about
7 wrecking the car.

8 And I said, Chris -- I said -- I think I said,
9 You're scaring me. I said, Go back to the house,
10 park your car -- park my car and drive your car.

11 Q And what did he drive?

12 A I think it was -- I think it's a Bronco.

13 Q What color?

14 A Tan.

15 Q So he tries to leave and you kind of get in his
16 way; is that correct? Then he gets out and comes
17 to your car?

18 A I don't remember if I pulled out of the parking
19 space or not, but I know he backed up on the hill.
20 And like I say, when I went over there to him, I
21 said, Chris, I'm serious, I want you to please go
22 back to the house and park my car. You need to
23 drive your car or call your mom to come get you.

24 And that's when he told me that if I didn't
25 move that he was going to run over me.

1 Q Okay. And where were you standing now? Were you
2 in front of the car?

3 A No, I was -- no, huh-uh, I was by the driver door,
4 his driver door, yeah.

5 Q So you're next to the driver's side door?

6 A Right.

7 Q So you -- all right.

8 A I was at the window. I walked up to the window.

9 Q Now, this argument -- you're not afraid of him at
10 this point, are you?

11 A No, I'm not afraid. I'm worried about him.

12 Q So you're worried he might hurt himself?

13 A Yes.

14 Q Okay. Well, when he left, did you attempt to call
15 anyone, like his mother?

16 A No, I didn't. When we were driving down the --
17 when he pulled -- when he pulled out onto Sudlow
18 Lake Road, he was going down the road. Then I
19 pulled out and I was behind him. Like I said, he
20 ran off the road and came back on and then he went
21 down and he passed somebody on a double line and he
22 was speeding. And then when he got right around
23 Crystal Pointe, he slowed down. We weren't calling
24 each other. We weren't texting each other.

25 Q So why are you following him?

1 A I wasn't following him. I asked him to go back to
2 the house.

3 Q So you were essentially making sure he took the car
4 back to the house?

5 A Basically.

6 Q Would that be a fair statement?

7 A Basically.

8 Q And when you saw him pull in the house --

9 A When he pulled into the driveway and I got out, he
10 came back and immediately started arguing with me.
11 And that's when I was asking him to call his mom.

12 He said, I can't believe you followed me here,
13 but I asked him to go there.

14 Q Right. And he went there?

15 A Yes.

16 Q He did what you told him to do?

17 A Yes.

18 Q Okay. So he took the car back. So what's the
19 problem at this point?

20 A I wanted to make sure he was calling his mom.

21 Q Okay. And obviously --

22 A Because --

23 Q -- he didn't call his mom?

24 A No.

25 Q Okay. So -- and where is this -- where is this

1 occurring?

2 A He pulled -- he pulled up in the driveway and I
3 pulled up behind him.

4 Q In just a second here, Robin, I'm going to show you
5 State's 22.

6 (Pause.)

7 Q While we're waiting on that, I think you testified
8 you were in the driveway and maybe between the two
9 vehicles; is that correct?

10 A Yes.

11 Q Like in front of the Charger, but behind the SUV?

12 A Yes.

13 Q Okay. That's where you first kind of confront each
14 other when you get there?

15 A Uh-huh.

16 Q Okay. Here we go. And is that his SUV, that white
17 one or light-colored SUV on the left?

18 A No, that's mine.

19 Q Okay. And what kind of vehicle is that?

20 A It's a Saturn.

21 Q Okay. And where is his parked?

22 A It's in the back yard, I think. I think it was in
23 the back yard.

24 Q Okay. So it's not in that picture?

25 A Huh-uh, no.

1 Q So explain to the jury where you were standing when
2 you first got there.

3 A Like right in between, I guess.

4 MR. JUSTIS: May the witness step down, Your
5 Honor?

6 THE COURT: Yes, sir.

7 Yes, ma'am, you may.

8 (Witness steps down.)

9 MR. JUSTIS: And you can just stand next to
10 them and kind of point?

11 THE COURT REPORTER: You have to keep your
12 voice up.

13 THE COURT: The TV is kind of blocking, so if
14 you can --

15 THE WITNESS: I was like right in there, I
16 think.

17 BY MR. JUSTIS:

18 Q Okay. And I think you stated -- stated on direct
19 that that's, I guess, where he first pushed you and
20 pushed you down?

21 A Yes. Right -- I was like right -- came back here
22 and I went off in the grass, I think.

23 Q So it would have been in this area somewhere?

24 A Yes.

25 Q Okay. And then I think you testified then

1 eventually you walked up the sidewalk, I guess,
2 more in front of the house?

3 A Yeah. Actually, when he pushed me down here, I
4 actually went around this side of the car away from
5 him and came up this way and came -- I think it's
6 on the sidewalk. You can't see it, but on that
7 side. Because he was here and I went away from
8 him.

9 Q Okay. And let me show you what has been marked as
10 State's 20. State's 20. Can you tell me whose
11 sunglasses those are by the vehicle?

12 A Huh-uh.

13 Q Did you have sunglasses that day? Do you remember?

14 THE COURT REPORTER: I can't hear you.

15 A I don't.

16 Q Okay. So you don't know whose sunglasses those
17 are?

18 A No.

19 Q Okay. Let me what show you what has marked State's
20 41?

21 MR. LEIENDECKER: I'm sorry, Your Honor, but
22 it would be infinitely more convenient if she go
23 back to the witness stand.

24 MR. JUSTIS: She can sit back down.

25 THE COURT: Yes, sir.

1 MR. LEIENDECKER: If she's not dealing with
2 the photographs.

3 THE COURT: Ma'am, you can have a seat.

4 MR. LEIENDECKER: I'm just having trouble
5 hearing.

6 THE COURT: Yes, sir.

7 (Witness returns to witness stand.)

8 BY MR. JUSTIS:

9 Q Let me show you State's 41. Do you recognize
10 those?

11 A Not really.

12 Q Okay. So it would be your testimony you've never
13 seen those sunglasses before?

14 A I don't -- I don't know if I have or not.

15 Q Okay. You have no idea what they would be doing in
16 your yard? I mean, if you don't, that's fine.

17 A (WHEREUPON, there was no response.)

18 Q So it is at this point when you're outside that
19 Christopher throws the keys on top of the house; is
20 that correct?

21 A When -- no.

22 Q We can go back to State's 22.

23 A When we were in between the vehicles and he got out
24 and he was -- he was saying he was grown, a grown
25 man and all that, he said, This is my car too.

1 And I said -- I said, Huh-uh, this car -- I
2 said, Chris, that car is in my name.

3 And he said, You know what, bitch? If I can't
4 drive this car, neither can you. And that's when
5 he threw the keys up on the roof.

6 Q Right. So he would be in the driveway there --

7 A Correct.

8 Q -- probably in between the car somewhere in --

9 A When I went to go get back into my vehicle, when I
10 got in to get the keys and got out, that's when he
11 came around the side and he said, Oh, I know you
12 didn't just bow up at me. He said, If you're going
13 to act like a man, I'm going to beat you like a
14 man. And he shoved me, and that's when I went into
15 the grass.

16 Q And that's when he shoved you?

17 A Uh-huh.

18 Q So he actually throws the keys -- you're in front
19 of the vehicle, you're arguing --

20 A Uh-huh.

21 Q -- he throws the keys onto the house?

22 A Uh-huh.

23 Q And then at that point --

24 A I went around the back of the vehicle.

25 Q By that point he pushes you, correct, after --

1 A That's after he pushed me. After he pushed me --

2 Q Right.

3 A -- when I got up --

4 Q So he throws the keys, then he pushes you?

5 A Uh-huh.

6 Q And then you come around the back of the vehicle
7 and you go onto the sidewalk more like in front of
8 the house?

9 A Right.

10 Q Is that a fair statement?

11 A Yes.

12 Q Now, I think you told police that day that, you
13 know, what made you mad was, The reason I got so
14 mad is he threw my keys on top of the house. So at
15 this point, you are not scared?

16 A I'm mad.

17 Q You're mad, right. And that's the reason when
18 somebody just threw your car keys -- because how
19 long had you had that car?

20 A Maybe ten days.

21 Q So your brand new car and he just threw the keys up
22 on the roof?

23 A Yes.

24 Q And so then you're in front of the house and he
25 pushes you down again; correct?

1 A He shoved me. And when he did, I went -- I went
2 back, I stumbled. And I said, Chris, stop it. And
3 then I did shove him back. And then when he shoved
4 me again, I went off the sidewalk into the grass.

5 Q Okay. So he shoves you, he kind of pushes you, but
6 you don't fall, you just kind of stumble. And then
7 you come back and you give him a push. And then he
8 pushes you harder?

9 A Yes.

10 Q Hard enough where you kind of either trip over the,
11 I think you said the monkey grass --

12 A Yes.

13 Q -- in your video thing? And you can see the monkey
14 grass in the front yard there.

15 A And I think I landed on my knees.

16 Q Okay. And it is at that point that you decide, You
17 know what, I'm going in the house; is that correct?

18 A Yes.

19 Q Because you're going in the house because now
20 you're going to give him the keys to your other
21 car?

22 A I was looking for them, yes.

23 Q You were looking for which keys?

24 A The keys to the Saturn.

25 Q To the white car?

1 A Uh-huh.

2 Q And you're looking for those keys, why?

3 A Well, at that point I didn't figure he was going to
4 call his mom and I still wanted him to go to the
5 doctor. I kept telling him I need -- I needed to
6 go back to work. Chris, please just call your mom.
7 I've got to go back to work.

8 Q So he has already assaulted you three times,
9 technically, pushed you down twice --

10 A Uh-huh.

11 Q -- and pushed you another time, so three times? So
12 you're going to give him your keys to your other
13 vehicle now, because you don't want him driving the
14 brand new vehicle because you think he might hurt
15 himself or wreck it, because you said he said he
16 was going to wreck it?

17 A Uh-huh.

18 Q So you're going to let him wreck your other
19 vehicle?

20 A That wasn't my thought at the time. I just wanted
21 him to go to the doctor and I just wanted to go
22 back to work.

23 Q Well, at what point did you tell him to get out,
24 Get your stuff and get out?

25 A After I fell off in the grass, when I got back up

1 on the sidewalk, I started yelling at him that I
2 couldn't do this anymore and that I wanted him to
3 get his stuff and leave.

4 Q Now, I mean, you were here when Sarah Wiggins
5 testified; correct?

6 A Yes.

7 Q And I think she said she heard you -- because on
8 cross-examination, your attorney asked her this.
9 She heard you say something like, you know, Get
10 your stuff and get out?

11 A Yes.

12 Q And she testified you were kind of by the carport
13 at that time when you said that?

14 A I don't remember being there --

15 MR. LEIENDECKER: Objection, Your Honor,
16 pitting witnesses.

17 THE COURT: Sustained.

18 THE WITNESS: I don't remember. I thought --

19 THE COURT: You can't answer, ma'am.

20 Rephrase the question, please.

21 MR. JUSTIS: I'll withdraw it, Your Honor.

22 THE COURT: Okay.

23 BY MR. JUSTIS:

24 Q So -- okay, so you get pushed down and you fall in
25 the monkey grass. At this point in time, you go in

1 the house; correct?

2 A Yes.

3 Q And you're looking for the Saturn keys?

4 A Yes.

5 Q So you go in and I think you testified you kind of
6 threw your car keys. I'm assuming the Dodge
7 Charger keys?

8 A Yes.

9 Q Keys you had with you. You throw those on the
10 little ottoman?

11 A Yes.

12 Q On your way into the bedroom?

13 A Yes.

14 Q Okay. And at some point when you come out of the
15 bedroom, you go into the kitchen; is that correct?

16 A Yes.

17 Q Let's go to State's Exhibit Number 10. State's
18 Exhibit Number 10, is that what you see when you
19 kind of walk in the front door, or is that --

20 A That's from over near, like, near my laundry thing
21 that's on the -- the laundry thing that's on the
22 wall.

23 Q Okay.

24 A Looking into the kitchen.

25 Q Right. On the left side of that picture, that

1 doorway on the left side of that picture as you're
2 looking at it, what is that?

3 A My bedroom.

4 Q Okay. So if I walked into your house and I walked
5 straight, this isn't straight from the front door,
6 you'd have to walk straight and then take a left;
7 correct?

8 A Right.

9 Q So if you walk straight in, you'd be actually
10 looking at that picture this way?

11 A Right.

12 Q That would be to your left? That's a view from
13 your left? If I walked straight in your house and
14 took a picture --

15 A Uh-huh.

16 Q -- that's the angle we're looking at; correct?

17 A Yes.

18 Q Okay. So you were -- after you went in the
19 bedroom -- now, can you walk from the bedroom to
20 the kitchen next to where that brick is, that brick
21 wall?

22 A No. It's butted up against the fireplace. There's
23 no through. You have to go around.

24 Q You have to go around your sectional there?

25 A Right.

1 Q Let's go to State's Number 9. Okay. So that's the
2 front door, correct, with the wreath on it?

3 A Uh-huh.

4 Q So that picture, that's displaying a photograph if
5 I was standing right on the edge where that like
6 little dinette table was shooting back towards the
7 front door; is that correct?

8 A Correct.

9 Q And that's your bedroom on the right?

10 A Right.

11 Q And you have an entertainment center, the front
12 door, there is the sectional?

13 A Uh-huh.

14 Q So when you're in the kitchen -- you're coming out
15 of the kitchen, I think you testified, and that's
16 when Christopher is coming in the front door;
17 correct?

18 A No, I'm standing in the kitchen.

19 Q Okay. You're standing in the kitchen?

20 A Uh-huh.

21 Q So you can't -- if you're back in the kitchen, you
22 can't really see him come in the front door, can
23 you?

24 A Yes, I can. It's a direct shot. I can see him
25 come in. I was standing right there.

1 Q So you can see and he comes in. And it's at that
2 point in time where you try to come around, you're
3 heading towards the front door --

4 A No.

5 Q -- and he's coming -- how's he coming?

6 A No. He came in the front door and he walked into
7 the bedroom. And then he turned around and he came
8 and he stopped right in front of the television and
9 I'm standing in the kitchen. And that's when he
10 started screaming at me, So you are just kicking me
11 out, you're just going to make me homeless?

12 And I said, Chris, I don't care where you go,
13 but you can't stay here.

14 Q Okay. And then that's when, I guess -- do you
15 start walking towards the front door?

16 A I start -- yes, I started towards the front door.

17 Q Right. And he comes and he comes to meet you, I
18 think that's what you testified; right?

19 A We ran into each other right there -- see where
20 that split is in the couch?

21 Q Correct.

22 A Right around in there. Oh, there's an opening
23 right adjacent to it that goes to my other two
24 bedrooms.

25 Q Right. Right behind --

- 1 A In the opening, like right around in that area.
- 2 Q Right. Because we have that curio cabinet?
- 3 A Right.
- 4 Q And if you're looking at it, right before you get
- 5 to that curio cabinet if you're coming from the
- 6 kitchen --
- 7 A Yes.
- 8 Q -- it would be, like, a hallway to get to the
- 9 bedrooms?
- 10 A Right.
- 11 Q So you kind of meet right there?
- 12 A Uh-huh.
- 13 Q And that's when I think you say something to him,
- 14 like, Chris, get out of my way? That's what you
- 15 testified to?
- 16 A Yes.
- 17 Q Correct? And he -- does he push you?
- 18 A He shoved me into the floor, just shoved me in the
- 19 floor right there.
- 20 Q Right next to where, like, that curio cabinet --
- 21 right on the carpet right there?
- 22 A We were further back. I'm back toward the kitchen
- 23 more.
- 24 Q Okay. But you were still -- was the couch kind of
- 25 still next to you?

- 1 A Yeah.
- 2 Q Okay. So you're still kind of next to that --
- 3 A Right.
- 4 Q -- long sectional part of the couch?
- 5 A Uh-huh.
- 6 Q And he pushes you. And do you fall down at that
- 7 point?
- 8 A I do.
- 9 Q Okay, so you fall down. You're on your back, I
- 10 assume?
- 11 A Uh-huh.
- 12 Q And I think you stated that's when he starts
- 13 punching you?
- 14 A Yes. I had my -- he started hitting me with his
- 15 right fist and I had my arms -- I was kind of like
- 16 this, kind of curled up. I had my -- I was trying
- 17 to block my face.
- 18 Q Right. And he's -- and he's -- I think you've
- 19 testified in a previous hearing that he was wailing
- 20 on you. Would that be a fair statement?
- 21 A He was punching me.
- 22 Q Okay. And so he's punching you. Do you know how
- 23 many times he punches you?
- 24 A Huh-uh.
- 25 Q Was it more than once?

1 A Yes.

2 Q Okay. And how tall is Chris?

3 A I'm not sure, 5'10", 5'11".

4 Q Okay. And how much, ballpark, would you say he
5 weighs?

6 A Right around 350 pounds.

7 Q So he's a pretty big guy?

8 A Yeah.

9 Q Okay. At some point in time, you're blocking these
10 blows as they rain down upon you. At some point in
11 time, I guess, the punches stop; correct?

12 A Yes.

13 Q What causes them to stop?

14 A He leaned up, and when he did I started scooting
15 back. He took a step back, and when he did I
16 started scooting out from underneath him.

17 Q Was he -- when he came, is he like standing over
18 you?

19 A Yes.

20 Q Hitting you like this(indicating)?

21 A Yes, he was not on his knees, he was standing over
22 me.

23 Q Okay. So he's standing. Is he hitting you with
24 both fists?

25 A No, just his right -- like, just his right hand.

1 Q Just his right hand. So he's just doing
2 this(indicating)?

3 A Yeah.

4 Q Okay. And then at some point, he kind of leans up,
5 you said?

6 A Yes.

7 Q And when he does that, you start scooting back?

8 A Yes.

9 Q And at what point do you draw your sidearm out from
10 its holster?

11 A After I had scooted back a little bit, I pulled it
12 and I pointed it at him and I told him to get out,
13 that I was calling the police.

14 Q Okay. So at this point, obviously, you are in
15 fear?

16 A I'm terrified.

17 Q Right. You're terrified because you -- you know,
18 according to you, you've been assaulted. You've
19 have now drawn your weapon out. Okay. And as a
20 law enforcement officer, you know that's a serious
21 thing. You've been trained. In fact, you're a law
22 enforcement officer 14 years?

23 A Yes, sir.

24 Q And you have to qualify every year; is that
25 correct?

1 A Yes, sir.

2 Q You go through all kinds of training?

3 A Yes, sir.

4 Q Gun safety training. Would that be a fair
5 statement?

6 A Yes, sir.

7 Q And they teach you not to pull a weapon out. If
8 you pull it out, you must have the intent to use
9 it. Isn't that what they teach you in any kind of
10 gun safety class?

11 A Not -- I mean, if deadly force presents itself, I
12 mean, you can draw your weapon. If at some point
13 or another it backs off, then we're to put it -- I
14 mean -- when he turned around and started walking
15 off, I reholstered because he moving -- he was
16 backing away from me. The threat was backing off,
17 he was backing off of me.

18 Q Right. And maybe that's not a fair statement what
19 I said. Not that if you pull the gun you have to
20 use it, but if you pull the gun, you need to be
21 prepared to use it. Is that a fair statement? Is
22 that what they teach you?

23 A Correct.

24 Q Okay. So at that moment when you pulled it, you
25 were prepared to use it if need be? Is that a fair

1 statement?

2 A Actually, I was -- I pulled it because I wanted him
3 to back off of me. I didn't -- my intent was not
4 to shoot him, no.

5 Q Okay. So despite all your law enforcement training
6 with weapons and gun safety and stuff, you really
7 didn't intend to use the gun, you just wanted to
8 scare him, is that what you're saying?

9 A I wasn't trying to scare him. I was trying to get
10 him to back off of me.

11 Q Okay. So he starts backing off and you reholster
12 because at that point, he's backing off, you feel
13 safe at that point; right? He's backing off, I
14 don't need this?

15 A Yes, I put it away.

16 Q Okay. So you went from terrified to okay, That's
17 over, I'm going to reholster. So -- and you say
18 that he walked to the door. Okay. So he's right
19 in that little way, so he turns, because he's
20 backed off?

21 A Uh-huh.

22 Q And then at some point, he turned and headed back
23 to the door?

24 A He turned and he started walking towards the door.

25 Q Okay.

1 A And I was getting up off the floor.

2 Q Right. And you're getting off the floor and
3 you're, you know -- now, you scooted back some.
4 How far did you scoot back?

5 A Almost to the laminate, out where it meets my
6 kitchen.

7 Q Right. As we saw in the other picture, after that
8 couch, there is a little bit of space and then you
9 kind of hit, like, the kitchen floor?

10 A Uh-huh.

11 Q Right. It's not carpet, it's some other type of --

12 A Yes. It's like hardwood.

13 Q Let me pull up real quick Number 10, State's 10.

14 Right. So you see a little bit after that couch --

15 A Uh-huh.

16 Q -- and then it starts with the laminate. Okay. So
17 you get backed up all the way to the laminate or
18 almost to the laminate?

19 A Yeah, close to it.

20 Q Okay. But you're still probably on the carpet?

21 A Yes.

22 Q Okay. So you start getting up at that point. And
23 let's go back to State's 9. So you get up, he's
24 walking. I think you testified he gets to the
25 door, the glass storm door there?

- 1 A Uh-huh.
- 2 Q And he slams the glass storm door open?
- 3 A Uh-huh.
- 4 Q So he does kind of one of these(indicating)?
- 5 A Uh-huh.
- 6 Q Because you can see the kind of handle on the door,
7 so I'm assuming the door opens this way?
- 8 A Yes.
- 9 Q So he kind of just slams it open. But at that
10 point, you said he turned around. So he slams it
11 open and stops?
- 12 A Yes.
- 13 Q Is he in the house, outside the house? Do you
14 know?
- 15 A He stepped right outside.
- 16 Q So he's right outside the threshold standing there
17 with the door and he turns around?
- 18 A Yes.
- 19 Q And when he turns around, is the door still open or
20 closed? Or do you remember?
- 21 A It was still open, I think.
- 22 Q Okay. And you state at that point in time, he kind
23 of does one of these(indicating), like beats his
24 chest; correct?
- 25 A He started slapping his chest like

1 this(indicating).

2 Q Like this(indicating)?

3 A Uh-huh.

4 Q Okay. And, you know, he makes some kind of comment
5 to you. And then you stated -- now, where are you
6 at this point? When he gets to the door, where are
7 you?

8 A I'm still kind of right around in this area. I was
9 trying to kind of, I don't know, pull myself
10 together. I was crying. And I started kind of
11 walking that way. And when I got maybe, like I
12 said, back to the split --

13 Q To the split in the sectional?

14 A -- and he turned around and he bowed -- he started
15 doing -- and he started screaming again and he
16 started -- like I said, I was still -- this is all
17 happening kind of in one motion. And I'm walking.
18 And then he bows up and he says that. And then he
19 puts his hand up again, his fist, and he just
20 charges me. And when he does, I started trying to
21 back up.

22 Q Right. Because --

23 A Right.

24 Q -- he is running at you, it doesn't make sense to
25 charge at him? So you're maybe at the split when

1 he kind of bows up, does this and starts charging
2 at you?

3 A Um --

4 Q And you start backing up at that point?

5 A I may have been a little closer to the door, I'm
6 not sure. Like I said, this was all -- he was
7 moving and I was moving.

8 Q Right. Right. And you backed up. And then as
9 you're backing up, I think you testified that's
10 when you draw the gun for the second time?

11 A I do. Yes, I drew my weapon.

12 Q Because he is charging at you now?

13 A Yes.

14 Q So at this point -- and correct me if I'm wrong,
15 but I assume you're in fear at this point because
16 he's now charging you like this?

17 A Yes, because -- I mean, it completely caught me off
18 guard. I mean, he just -- he just started
19 screaming. And when he did, he just charges me.

20 Q Right. And he's 5'10", 5'11", 300 plus pounds
21 coming like this at you?

22 A Yes.

23 Q And then you say when you -- by the time you get
24 the gun up, he's basically, essentially almost
25 right on top of you?

1 A Yes. Well, yes, because while he's coming at me,
2 I'm trying to back up.

3 Q Right. So you're doing this(indicating)?

4 A Uh-huh.

5 Q Is that correct? And then when he comes, he takes
6 that hand and as he's swinging it, you're like
7 this, and I think you said you kind of turned?

8 A I was trying -- when I pulled -- and it all -- his
9 hand came down like -- his fist. And when mine
10 came up, his hand came open. And I didn't -- I
11 didn't see it because I turned my head, and when I
12 did, I could -- I could feel it.

13 Q You could feel the contact?

14 A And then I heard it go off.

15 MR. JUSTIS: Your Honor, may I have the
16 witness step down?

17 Mr. Sorenson is how tall? Might be an inch
18 taller or something like that. Because I'm
19 definitely nowhere near six feet.

20 (Witness steps down.)

21 BY MR. JUSTIS:

22 Q And how tall are you?

23 THE COURT REPORTER: I can't hear you.

24 MR. JUSTIS: She's 5'3".

25 BY MR. JUSTIS:

1 Q Okay. So pretend that's Mr. Rowley. Just kind of
2 describe to him what he needs to be doing.

3 A I mean, he just had his hand up, his arm like that,
4 and we were moving. And I drew my weapon. And
5 when I came -- I came out like that. Like, in a
6 swinging kind of motion. Like I said, I turned my
7 head. And when I did, I didn't see it, I felt it.

8 Q Right. Then bang, you hear the shot?

9 A Uh-huh.

10 Q Okay. So at that point -- at that point --
11 obviously, at some point you kind of --

12 A I'm like -- I'm completely -- like I said, this is
13 all happening. I'm like this. I'm going back like
14 this. I'm trying to keep my balance and back up.

15 Q And what does he do? What do you see him do?

16 A What do you mean?

17 Q Like, so you're doing that, so are you paying
18 attention to what he's doing? The first time you
19 look at him --

20 MR. LEIENDECKER: I'm sorry, Your Honor. This
21 is important stuff, I'd like the jury to hear it.
22 She's got her back to them now. If we're done with
23 Mr. Sorenson, can we put her back in the witness
24 box?

25 MR. JUSTIS: Sure.

1 (Witness returns to witness stand.)

2 BY MR. JUSTIS:

3 Q So, when you first -- after you kind of fall back a
4 little bit, when you refocus your vision, what is
5 Christopher doing?

6 A Like I said, after that happened and I turned my
7 head and I looked back and I looked at him and he
8 grabbed -- I said, Are you hit? I said, Chris, are
9 you hit? And he grabbed his throat.

10 Q Right.

11 A And then he turned around and he went out the front
12 door.

13 Q Right. So he grabbed with one hand and then kind
14 of went out?

15 A And I was screaming. I was running behind him.

16 Q Okay.

17 A Saying, Let me see, let me see.

18 Q So he was probably near the curio cabinet when --

19 A I think we were -- I think we were actually a
20 little past it. I'm not --

21 Q Right. And then -- so he goes outside; correct?

22 A Yes.

23 Q And then obviously you follow him outside at that
24 point?

25 A Yes.

1 Q And at some point he's kind of laying, I guess, on
2 the porch there?

3 A He fell -- he fell right outside the door and --
4 the glass door. And when he did, I was screaming
5 for him to roll over so I could see. And when he
6 did, when I pulled his hand away is the first time
7 I could see any blood.

8 Q Okay.

9 A And I started trying to apply pressure. I was
10 screaming. And then I was trying to dial 9-1-1
11 with my left hand, and I couldn't get it to go
12 through. And I started screaming for somebody to
13 help me.

14 Q Okay. And you're either sitting or kneeling on the
15 porch next to him; correct?

16 A Yes.

17 Q And at some point in time, that's when the neighbor
18 comes?

19 A I looked up and she was standing there.

20 Q Right. And that's when you asked her to call
21 9-1-1?

22 A Correct.

23 Q And she called 9-1-1 --

24 A Uh-huh.

25 Q -- and eventually law enforcement arrives? Let's

1 kind of go back a little bit. You know, we did
2 mention, talking about your experience as a law
3 enforcement officer. You've been an investigator,
4 you've been a deputy sheriff, you've been -- you've
5 worked for the Clerk's Office, Probation and
6 Parole, South Carolina Law Enforcement Division.
7 So you've worked in a lot of different aspects of
8 the criminal justice system; is that correct?

9 A Yes, sir.

10 Q And you also have not only an Associate's, but a
11 Bachelor's Degree in criminal justice; correct?

12 A Yes, sir.

13 Q And, in fact, I think you testified you worked as a
14 special victims investigator?

15 A Yes.

16 Q Okay. So you worked with people that were victims
17 of domestic violence; is that correct?

18 A Yes.

19 Q And you worked with people, you know, child abuse,
20 child neglect, people suffering from PTSD?

21 A Not really PTSD.

22 Q Did you ever conduct a forensic interview of
23 children, and things like that?

24 A I was, I was certified in forensic interview.

25 Q Okay. So you were certified on how to conduct the

1 interviews of potential victims of crimes; correct?

2 A Yes, sir.

3 Q Because a forensic interview usually is an
4 interview done with a small child that's either the
5 victim of sexual or child abuse; is that correct?

6 A Yes.

7 Q So you were trained on how to conduct those
8 interviews; correct?

9 A Yes, sir.

10 Q So you had those interviewing skills. And these
11 were skills that you either were taught or learned
12 over the course of a 14-year criminal justice or
13 criminal -- criminal justice career; correct?

14 A Yes, sir.

15 Q Now, let me ask you, you talked about -- you talked
16 about several days before this incident, y'all went
17 to a WWE wrestling match; correct?

18 A Yes, sir.

19 Q And you said it was a surprise. Do you remember --
20 do you remember when he found out that you had
21 tickets for this event?

22 A Well, no, because what had -- I think what had
23 happened was is I had gotten -- I think I saw it on
24 the internet or something they were coming. And I
25 think I got on, like, Craig's List or something to

1 see if anybody had tickets.

2 And one day, we were talking -- in that week,
3 we were talking on the phone and I said -- I said,
4 I can get tickets to this thing. I said, Would you
5 want to go?

6 And he was like, Yeah. He had never been, and
7 neither had I. And that was -- like I said, that
8 was something we did together.

9 So I said, Do you want me to try to get them?
10 And he said, Yeah. And so I did.

11 Q Right. And that was several days before the
12 incident?

13 A Yes.

14 Q Not on the incident, but before the wrestling
15 match?

16 A Uh-huh.

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

18 (Pause.)

19 MR. JUSTIS: I think that's all the questions
20 I have for you, Ms. Herndon.

21 THE COURT: All right. Anything else from the
22 Defense? Do you need this?

23 MR. LEIENDECKER: You can leave it up.

24 THE COURT: Okay. Yes, sir. I will be glad
25 to hear from you.

1 MR. LEIENDECKER: I haven't had a chance to
2 deal with the big picture, may I'll try.

3 REDIRECT EXAMINATION

4 BY MR. LEIENDECKER:

5 Q Robin, a lot of questions were asked about where
6 everybody was standing, where everything was inside
7 the house that day.

8 A Uh-huh.

9 Q Do you remember exactly where y'all were positioned
10 every point?

11 A No.

12 Q Was it chaos? Once he took you to the ground, was
13 it --

14 A Yeah --

15 Q -- chaos?

16 A Yeah, I mean, once that happened, yes, I was
17 terrified.

18 Q When you said that he was beyond the cabinet, you
19 mean he was beyond the cabinet closer to the door
20 or closer to the back of the house?

21 A No, closer to me, towards the kitchen.

22 Q And when you say you're not sure where everybody
23 was, you're not sure where you were after you got
24 up and after he got up?

25 A No, I mean, like I said, he backed off and then at

1 some point I got up. And he started walking that
2 way, and I started walking. I don't know how far
3 we got. And then when he went to the door and then
4 he turned around and he started charging at me, I
5 started moving too. So while he's moving at me,
6 I'm moving back while he's moving towards me.

7 Q Robin, I'm asking simple questions. Are you sure
8 where everybody was when this -- when this incident
9 occurred?

10 A No, sir.

11 Q That's what I'm asking. Stay with me, okay?

12 A Uh-huh.

13 Q I know you're upset. You were a special victims
14 investigator. You understood the crimes committed
15 against people, including domestic abuse; is that
16 correct?

17 A Yes, sir.

18 Q Can you explain to me, Robin, how you got in this
19 situation?

20 A No.

21 Q It's not a very big room, is it?

22 A No.

23 Q In that picture.

24 MR. LEIENDECKER: No further questions.

25 THE COURT: All right.

1 MR. JUSTIS: Nothing, Your Honor.

2 THE COURT: All right. Ma'am, you may step
3 down.

4 Would you all -- can you pull the TV down?
5 (Witness steps down.)

6 THE COURT: All right. Call your next
7 witness.

8 MR. LEIENDECKER: The Defense would call
9 Officer Downs.

10 MR. JUSTIS: Your Honor, may we approach
11 before the witness takes the witness stand?

12 THE COURT: Yes.

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

16 THE COURT: Ladies and gentlemen of the jury,
17 I am going to send you all out for a short moment.
18 And I will have you back in shortly.

19 (WHEREUPON, the jury retires to the jury
20 room at 4:36 p.m.)

21 THE COURT: I anticipated that this would be
22 an issue, but I'll be glad to hear from you.

23 MR. JUSTIS: Your Honor, we would object to
24 the calling of this witness. There's case law,
25 State v. Day, that says evidence of other specific

1 instances of violence by the victim are only
2 admissible if directed against the Defendant or if
3 against others who were so closely connected at the
4 point of time or occasion with the homicide as
5 reasonably to indicate the victim's state of mind
6 at the time of the homicide or could produce a
7 reasonable apprehension of great bodily harm.

8 You know, when the officer testified the other
9 day, I don't know how many times he said, Well, I
10 think or, you know, I assume. I mean, he
11 essentially said, I arrested him so I must have had
12 probable cause, he must have did something. I
13 mean, that's essentially what his testimony was.
14 Since I arrested him, he must have done something.

15 The actual victim in this case -- or in this
16 incident -- it is actually the alleged victim -- is
17 actually on the Defense's witness list.

18 Now, if they call her, then maybe it comes in.
19 You resolve kind of the hearsay issue. I mean,
20 it's kind of like a prior bad act, I mean, which
21 would have to be proven by clear and convincing
22 evidence. And, you know, maybe you kind of leap
23 that hurdle if you have the actual alleged victim,
24 you know, potentially.

25 But I still think it's inadmissible. I mean,

1 State v. Day, unless I'm missing something, says,
2 you know, unless it's close in time to the
3 homicide.

4 THE COURT: Is it Davis or Day?

5 MR. JUSTIS: I have Day.

6 THE COURT: Do you have the cite?

7 MR. JUSTIS: Back in 2000 -- I think I have
8 it.

9 MR. LEIENDECKER: Your Honor, let me explain
10 why this is clearly distinguishable from Day.

11 This isn't offered to show that that's what he
12 did in close proximity to the event itself. This
13 is actually as well 404(b) reverse information
14 concerning what he's done.

15 But even more importantly, she testified that
16 he told her about this incident. He told her that
17 it happened in Augusta, just like this incident
18 happened. This incident turned out to be eerily
19 similar to what happened in our incident. And this
20 is the officer to verify that her knowledge of what
21 she was told is, in fact -- it is verifying that
22 information that she is given was, in fact, true.

23 MR. JUSTIS: And he said, I didn't do it.

24 And I asked her on cross, I said, Did you
25 believe him when he said I didn't do it?

1 And she said, Yes.

2 I specifically asked her that question.

3 MR. LEIENDECKER: And the truth of it is that
4 the Day case, which is a 2000 case, was addressed
5 and explained allowing evidence in just as we are
6 seeking in this case in State v. Mekler, which is a
7 2005 case. And that cite is 368 S.C. 1 or 626
8 S.E.2d 890. And that's actually a Court of Appeals
9 case that was later affirmed by the Supreme Court.

10 What we're doing here is we are corroborating
11 the things that she has told us. And I understand
12 that they don't want that to happen. They want her
13 to seem like a lunatic.

14 THE COURT: Did she testify to the specifics
15 of it or that -- I thought she testified that he --
16 she told them -- he told them something about him
17 and his wife having a previous domestic --

18 MR. LEIENDECKER: No, she testified to the
19 specifics, that it occurred somewhere in Augusta,
20 that he said it didn't happen and that he got
21 arrested when they were back in South Carolina.

22 THE COURT: But down to -- I'm trying to
23 remember, did she testify to the pulling of the
24 gun?

25 MR. JUSTIS: No.

1 MR. LEIENDECKER: Until she saw this report,
2 she didn't know anything about that. He didn't
3 tell her that.

4 THE COURT: So other than him saying --
5 getting into the specifics, other than him saying
6 that he arrested her -- there's several problems
7 with it. One of them is the remoteness of time.
8 Second problem -- and I'm going to read the cases.
9 The second problem with it is there's no conviction
10 of record. Am I correct?

11 MR. LEIENDECKER: I don't know the answer to
12 that. She said --

13 THE COURT: Well, I'm assuming --

14 MR. LEIENDECKER: She said that he pled to an
15 assault.

16 THE COURT: But I'm assuming that you all ran
17 a rap sheet on him and on that rap sheet --

18 MR. LEIENDECKER: Yes, there is a conviction
19 on that rap sheet for on an assault.

20 THE COURT: For this assault in Augusta?

21 MR. LEIENDECKER: You know, Judge, they're
22 hard to match up.

23 THE COURT: All right. Was there a conviction
24 for assault --

25 MR. JUSTIS: I have it right here.

1 THE COURT: -- in Augusta, Georgia?

2 MR. LEIENDECKER: No. He was not arrested in
3 Augusta, Georgia. He was arrested in Aiken, South
4 Carolina after he had been to Augusta and assaulted
5 her and then threatened her on the way back. He
6 was arrested by an Aiken County deputy.

7 THE COURT: So is there a conviction in Aiken
8 for criminal domestic violence, domestic violence,
9 assault, simple assault, anything related to this?
10 I'm just trying --

11 MR. JUSTIS: No, Your Honor. I have his rap
12 sheet right here if you'd like to see it.

13 THE COURT: What year was it this occurred?

14 MR. JUSTIS: 2009. I do have this, which
15 is -- I don't know where this comes from --

16 (Pause.)

17 MR. JUSTIS: This is a report from the
18 Sheriff's Department, like their little report
19 system. It looks like he was charged that night
20 with a criminal domestic violence and simple
21 assault and battery. That was in October of 2009.
22 But it was crossed out because apparently --

23 THE COURT: We don't know if he was -- if he
24 was convicted or the CDV was expunged? I didn't
25 think CDV could be expunged under the statute.

1 MR. JUSTIS: It is after a certain period.
2 It's a longer time period. It used to be like five
3 years.

4 MR. LEIENDECKER: You're allowed for
5 expungement after five years.

6 MR. JUSTIS: On a CDV first, you can have it
7 expunged --

8 THE COURT: So you're saying this is four
9 years ago, so that would not -- four years.

10 MR. JUSTIS: Well, it happened in 2009.

11 THE COURT: Mr. Leiendecker, what's the two
12 cases you cited and the cites for those cases?

13 MR. LEIENDECKER: The appellate case -- hang
14 on a second, Your Honor. I'll pull up the public
15 index. The appellate case is State v. Mekler,
16 M-E-K-L-E-R. You want the South Carolina cite or
17 the S.E. cite?

18 THE COURT: Either one. Both are fine.
19 Either one.

20 MR. LEIENDECKER: 368 S.C. 1, that's the
21 easiest one, or 626 S.E.2d 890. It's a 2005 case.
22 Cert was granted in 2007. And I don't have a
23 Supreme Court cite here, but the Supreme Court
24 affirmed, is what I believe.

25 Now I have it. The Supreme Court cite is --

1 it is also State v. Mekler, of course, is the
2 title, and it says cite that as 379 S.C. 12, 664
3 S.E.2d 477. And that's a cite in 2008.

4 THE COURT: And that's Mekler?

5 MR. LEIENDECKER: M-E-K-L-E-R.

6 THE COURT: Yeah, we have that one. What was
7 the first one?

8 MR. LEIENDECKER: They are both Mekler. One
9 is the appellate decision and one is the Supreme
10 Court.

11 THE COURT: Okay.

12 MR. LEIENDECKER: And they both deal with and
13 address Day.

14 Your Honor, the reason I gave you both of
15 those cites is Mekler was decided on the first
16 issue on appeal. They don't reach the second
17 issues. They left Court of Appeals' decision in
18 place regarding that and reversed and sent Mekler
19 back for trial based on failure to charge on
20 manslaughter.

21 MR. JUSTIS: Your Honor, I have an expungement
22 form here. Apparently, the charge was nol-prossed.

23 THE COURT: That's what I thought.

24 MR. JUSTIS: And it states on the date of
25 arrest October 15th, 2009. Criminal domestic

1 violence first offense, the charge was nol-prossed.

2 THE COURT: All right. I've looked at Mekler
3 and -- State v. Mekler and State v. Day. Actually,
4 State v. Mekler cites State v. Day. And it reads:

5 In the case at hand, the prior act of violence
6 by Bubba -- who I'm assuming is the victim --
7 against Loretta -- who was I think the wife --
8 occurred less than three months prior to Bubba's
9 death, and was so closely connected at point of
10 time to indicate Bubba's state of mind at the time
11 of the shooting. The prior incident of criminal
12 domestic violence was also admissible to prove
13 Mekler had a reasonable apprehension of great
14 bodily harm from Bubba and essential element of
15 Mekler's claim of self-defense as well as her claim
16 of defense of others.

17 In reading State v. Day, the Court held that
18 the arrest -- I'm trying to find the exact
19 language. In State v. Day -- this is a 4-month --
20 I believe it was four months prior to the victim's
21 death. And in that, they said that it was
22 admissible in a murder prosecution and relevant to
23 essential element of the Defendant's self-defense
24 claim. In Day, the Court says that it has to be --
25 let me find the exact language. In close --

1 closely connected as to time.

2 In the murder prosecution of one pleading
3 self-defense against an attack by the deceased,
4 evidence of other specific instances of violence on
5 the part of the deceased are not admissible unless
6 they are directed against the Defendant or if
7 directed against others were so closely connected
8 at point of time or occasion with the homicide as
9 reasonably to indicate the state of mind of the
10 deceased at the time of the homicide or to produce
11 reasonable apprehension of great bodily harm.

12 Whether a specific instance of conduct by the
13 deceased is closely connected in point of time on
14 occasion to the homicide so as to be admissible is
15 in the trial court's discretion and will not be
16 disturbed on appeal absent abuse of discretion.

17 Which I think if it had happened closer in
18 time and she was aware of the details of it and
19 because she was aware of the details of it she --
20 her state of mind -- well, the other problem is she
21 said she didn't believe it. So I'm not sure,
22 Mr. Leiendecker, how -- if she didn't believe it,
23 how does that --

24 MR. LEIENDECKER: Your Honor, that evaluation
25 is limited only to the 608. I still think it comes

1 in under that, but it ignores the 404(b) argument,
2 which I put forth in the Lyle evidence, which under
3 B section, those prior bad acts or wrong acts are
4 admissible when they tend to show the existence of
5 a common scheme or a common plan, the absence of a
6 mistake or an accident, or intent. And it could
7 well be that it shows all of that in this. It's a
8 common scheme of what he does. It's a common
9 scheme of how he does it. It's a common intent.
10 And it is no mistake that he was actually
11 assaulting her, because he had done that in the
12 past.

13 So that, not -- if you don't like it under
14 608, I put forth also the argument that it comes in
15 under Lyle under prior bad act evidence. Something
16 I'm fighting all the time as a defense attorney.

17 THE COURT: I know you are.

18 MR. LEIENDECKER: And it is unique that for
19 the first time I'm on the other side of that issue.

20 THE COURT: All right.

21 MR. LEIENDECKER: It's crammed down my throat
22 constantly.

23 THE COURT: All right. 404(b).

24 MR. SORENSON: Yes, Your Honor. Our position
25 as to that is, first of all, it's got to be proved

1 by clear and convincing evidence. That would be
2 the first part. It is a dismissal, so therefore I
3 think he's got an issue there.

4 Secondly, I don't think this witness is the
5 way you go about doing it because even if -- to
6 attempt to prove it by clear and convincing
7 evidence, it's still got to be admissible evidence.

8 What he wants this officer to testify to is
9 hearsay, so I don't see how -- I mean, even before
10 you even get to whether it's the same common scheme
11 or plan, as I said, every time we try to get into
12 that, it gets shot down from the State's
13 standpoint. It seems like they're trying to prove
14 there's got to be some signature crime and I don't
15 see -- so what he's saying is, you know, basically,
16 any domestic assault is a signature crime and would
17 be admissible. I don't --

18 MR. LEIENDECKER: They practice in a different
19 First Circuit than I do, because I've had to take
20 it all the way to the South Carolina Supreme Court
21 because it got admitted.

22 THE COURT: And it probably got overturned,
23 I'm sure. I'm sure it was overturned.

24 MR. LEIENDECKER: It actually was.

25 THE COURT: Yeah, because --

1 MR. LEIENDECKER: And it's the only Lyle case
2 that I know of and it's unreported where it was
3 overturned.

4 MR. SORENSON: Actually, it got -- we got
5 ruled against at the State level, the one I'm
6 thinking about.

7 THE COURT: Yeah, that's what he's saying. It
8 was overturned --

9 MR. SORENSON: It finally got overturned and
10 we don't even get to do anything with it because
11 the Defendant passed away in the meantime.

12 THE COURT: What is your position regarding
13 clear and convincing evidence? The problem is we
14 have a charge --

15 MR. LEIENDECKER: The clear and convincing
16 evidence here, Your Honor, is that we have other
17 witnesses that will testify. Robin, who says he
18 told her about this and said it happened.
19 Dr. Cummings, who relates to the fact that he talks
20 about assaulting his wife and his children and that
21 this is the only wife that he was married to that
22 he had children with. So these are his own
23 admissions that these happened. I don't know how
24 to get more clear or convincing than that, that he
25 actually admitted it.

1 MR. SORENSON: There's no specifics to that
2 and we have an objection when that witness comes up
3 also as to hearsay at that point in time.

4 MR. LEIENDECKER: It's not hearsay, it is
5 admission against interest. It is an exception to
6 hearsay. But we'll get to that when we get to it.

7 THE COURT: Yeah, we'll get to that when we
8 get to that one.

9 As to the officer, I do think that it is
10 hearsay. There is no conviction. Apparently it
11 was nol-prossed. I'm not going to allow the
12 testimony.

13 MR. LEIENDECKER: Just for the record, I would
14 also like to note that he is just here to report
15 about what he saw and collected during his
16 investigation. Much like Agent Turner was allowed
17 to testify and I was told I wasn't allowed to
18 question that because he is an officer and he's
19 investigating and he is allowed to talk about his
20 investigation.

21 THE COURT: But Agent Turner was investigating
22 this case. I'm trying to figure out how --

23 MR. LEIENDECKER: I'm sorry, Your Honor. From
24 my perspective, that's a distinction without a
25 difference, but --

1 THE COURT: All right. Well --

2 MR. LEIENDECKER: -- if that's the Court's
3 perspective --

4 THE COURT: Well, this is a case that happened
5 four years prior to this incident. The officer
6 testified on Monday or Tuesday or whenever it was.
7 He didn't remember a whole lot. He had to use
8 his -- he went back and pulled what he could find
9 out of the court notes -- out of the incident
10 report and was testifying to that. Pretty much
11 everything he testified to was hearsay. I just
12 don't see how it's admissible if -- if they were
13 trying to admit it, I would say the same thing.
14 It's not relevant to this case and it is therefore
15 not admissible.

16 All right.

17 MR. LEIENDECKER: Thank you, Your Honor. If
18 it please the Court? I would like to have the
19 incident report, which I'm referring to, marked as
20 a Court's Exhibit to be included in the record.

21 THE COURT: Sure.

22 MR. JUSTIS: And the State would like to have
23 the expungement form that shows it was dismissed or
24 nol-prossed.

25 THE COURT: All right. That will be Court

1 Exhibit number?

2 THE COURT REPORTER: Three and four.

3 THE COURT: Three and four.

4 (WHEREUPON, Court's Exhibit No. 3 was
5 marked for identification only.)

6 (WHEREUPON, Court's Exhibit No. 4 was
7 marked for identification only.)

8 THE COURT: Your next witness is how long?

9 MR. LEIENDECKER: Your Honor -- and the only
10 other thing I want to clarify is I don't -- you
11 know, unless the Court really feels it's necessary
12 for me to put him on the stand and proffer what
13 testimony he would have offered, I would ask that
14 the Court could adopt the testimony he gave during
15 the immunity as what I would have asked him today,
16 and that would be the proffer.

17 THE COURT: Would his testimony be the same?

18 MR. LEIENDECKER: Yes.

19 THE COURT: Yes. One of the cases even said
20 you can do an in-camera proffer of his testimony,
21 which I think -- I mean, if it's the same testimony
22 that was given on Monday or Tuesday --

23 MR. LEIENDECKER: My questions would be
24 identical.

25 THE COURT: Okay. Then we will adopt that for

1 the purposes of, I guess, the in-camera proffer.

2 MR. LEIENDECKER: Thank you, Your Honor.

3 THE COURT: All right. As to his testimony.

4 All right. Your next witness?

5 MR. LEIENDECKER: My next witness is Wallis
6 Alves. She was very short on Tuesday. I don't
7 have anything more for her, maybe even less for
8 her. And then I have the two witnesses from
9 probation, who testified in the immunity hearing,
10 Ms. Boulton and Ms. Kenner.

11 THE COURT: Before we bring the jurors back
12 in, do you all have an objection to their
13 testimony? I can't remember anything that I can
14 think that you would --

15 MR. SORENSON: Assuming that their testimony
16 is similar to what they testified to on Tuesday, I
17 think --

18 MR. LEIENDECKER: I can't promise identical,
19 but I can definitely promise similar.

20 THE COURT: Same substance.

21 MR. LEIENDECKER: Yeah, I don't have any new
22 place to go. And those -- and that's everybody I
23 brought for today because I thought that would take
24 us close to 6:00 o'clock.

25 THE COURT: And we may not get to -- I can't

1 remember how long their testimony took, but we'll
2 see. We'll try.

3 MR. LEIENDECKER: Okay.

4 THE COURT: All right. Any of y'all need a
5 break?

6 Debbie, do you need a break?

7 THE COURT REPORTER: Yes, I need a break.

8 THE COURT: All right. Let's take five or ten
9 minutes.

10 (WHEREUPON, a short break was taken at
11 5:07 p.m.)

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

13 All right. Let's bring them in.

14 (WHEREUPON, the jury came into open
15 court at 5:16 p.m.)

16 THE COURT: Call your next witness.

17 MS. HINDS: The Defense would call Wallis
18 Alves.

19 (Witness approaches.)

20 THE CLERK: Place your left hand on the Bible,
21 raise your right.

22 (Witness complies.)

23 THE CLERK: The testimony you shall give to
24 the Court and jury in this case will be the truth,
25 the whole truth, and nothing but the truth, so help

1 | you God?

2 THE WITNESS: I do.

3 THE CLERK: Have a seat in the witness box,
4 state your name, spelling your last.

5 (Witness seated.)

6 THE WITNESS: Wallis Alves, A-L-V-E-S.

7 WALLIS ALVES,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. HINDS:

11 Q Good afternoon, Ms. Alves.

12 A Good afternoon.

13 Q Can you tell the jury where you are employed?

14 A The Second Circuit Public Defender's Office.

15 Q And how long have you been with Second Circuit
16 Public Defender's Office?

17 A I originally started here in 1993. I left from '95
18 to '97 to go into private practice. I returned to
19 the Public Defender's Office. I left again in 2001
20 to be a public defender in Lexington. And then I
21 came back in 2004 and was appointed Chief Public
22 Defender for Aiken.

23 Q So you've got a lot of experience, don't you?

24	A	Yes.

25 Q Let me ask you this. Did you know Robin Herndon

1 before November 6th, 2013?

2 A Yes.

3 Q And can you tell the jury a little bit about how
4 you knew her?

5 A Ms. Herndon was a probation agent here in Aiken.
6 And as a public defender, we often represent people
7 who are charged with violating their probation.
8 And so, as a result, I would have a lot of
9 communication with Ms. Herndon regarding cases that
10 she had made regarding some of my clients.

11 She also had duties where during terms of
12 court while we're in court, she would be
13 representing the probation office here in court.

14 And so I had a lot of contact with her, both
15 in the probation office and while she was working
16 here in this courtroom.

17 Q So would you say a considerable amount of
18 professional interaction?

19 A Yes.

20 Q Would you consider her a friend or was it strictly
21 professional?

22 A Professional.

23 Q And you have known her since she was working at the
24 probation office the second time around, not the
25 first time she worked there, would that be correct?

1 A She was a probation officer here while I was an
2 attorney working in the Public Defender's Office
3 here, and then she left and went somewhere else.
4 And then she came back here and worked here a
5 second time. So I've known her during two
6 different stints that she had in the probation
7 office here.

8 Q Safe to stay a considerable length of time?

9 A Yes.

10 Q Did you have occasion to meet with Ms. Herndon
11 after her arrest?

12 A Yes.

13 Q And where was that meeting at?

14 A At the Aiken County Detention Center.

15 Q And why did you meet with her?

16 A Our office was appointed to represent Ms. Herndon
17 when she was originally charged with this offense.
18 And the circuit public defender was going to take
19 her case, but he was unable to meet with her, so
20 the case was transferred to me.

21 Q Okay. Did you ultimately meet with her?

22 A Yes.

23 Q And do you remember when that was?

24 A November 13th.

25 Q And do you remember why you set up that meeting?

1 A That was an initial meeting to meet with a client
2 who had been charged with an offense. And we were
3 going to have a bond hearing for her, so I went to
4 just get the initial information and to prepare for
5 a bond hearing.

6 Q At that meeting, did Robin make a request of you?

7 A She made several.

8 Q Did she ask you to do something for her?

9 A Yes.

10 Q What was that?

11 A Take pictures of her.

12 Q She wanted you to take pictures of her physical
13 condition, would that be --

14 A Yes.

15 Q -- correct? Okay. I'd like you to look at some
16 photographs.

17 MS. HINDS: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, ma'am.

20 (Complies.)

21 BY MS. HINDS:

22 Q Do you recognize these photos?

23 A I do.

24 Q Are these, indeed, the photos that you took of her
25 on November 13th, 2000 -- excuse me, November 6th,

1 2013?

2 A I took my pictures on November 13th, 2013.

3 Q I stand corrected, that's right. But these are the
4 photos that you did take?

5 A Yes.

6 Q How did you take them?

7 A With my iPad.

8 Q You took your iPad to the jail?

9 A Yes.

10 Q And just in general, before we get specifically
11 into the pictures, did you notice anything about
12 Ms. Herndon's physical condition when you met with
13 her that day? Anything unusual?

14 A She had bruises on her.

15 Q I refer now to Defendant's Exhibit 7. I'd like you
16 to take a look at that and describe to the jury
17 what's in the photograph?

18 A This is a picture of the back of Ms. Herndon's left
19 arm.

20 Q All right. And Defendant's 8?

21 A This is a picture of Ms. Herndon's upper right arm.

22 Q And Defendant's 9?

23 A It appears to be a picture of Ms. Herndon's right
24 arm. It looks like the right arm.

25 Q It's kind of difficult to tell because they're

1 fairly close -- this one is fairly close up?

2 A There's nothing really distinguishing which arm it
3 is.

4 Q Okay. And Defendant's 10?

5 A This is a picture of Ms. Herndon's right arm.

6 Q What do you see there?

7 A There appears to be a dark bruise on her lower arm
8 and maybe something on her -- on the upper part of
9 that closer to the elbow.

10 Q Okay. Defendant's 11?

11 A This is a picture of Ms. Herndon's face and the
12 back of her left arm.

13 Q What do you see on that picture?

14 A A bruise on the lower part of the arm closer to the
15 elbow.

16 Q Okay. And Defendant's 12?

17 A This appears to be a picture of Ms. Herndon's right
18 arm, the lower part, the lower back part of her
19 arm, and it is a large bruise shown.

20 Q Defendant's 13?

21 A It's a picture of a bruise on the back of
22 Ms. Herndon's left arm.

23 Q About how big is that one?

24 A How big is the bruise?

25 Q Uh-huh.

- 1 A It looks to be about the size of a quarter.
- 2 There's two bruises showing, on the upper part and
- 3 one on the lower part, so the two on the upper part
- 4 appears to be about a quarter size and the one on
- 5 the lower a little smaller.
- 6 Q Okay. Defendant's 14?
- 7 A It's a picture of the side of Ms. Herndon's right
- 8 arm. It shows bruising.
- 9 Q Defendant's 15?
- 10 A It's a picture of Ms. Herndon's -- I know it's an
- 11 arm, I don't know which arm that is. It looks like
- 12 it might be the right arm, but I can't say a
- 13 hundred percent. And it shows a bruise on that.
- 14 Q Okay. And Defendant's 16?
- 15 A It's a picture of a large bruise on Ms. Herndon's
- 16 right arm with a piece of Ms. Herndon's face
- 17 showing.
- 18 Q And Defendant's 17?
- 19 A It's a picture of a bruise on the center of
- 20 Ms. Herndon -- the back of Ms. Herndon's left arm.
- 21 Q Nineteen -- or excuse me, 18?
- 22 A Eighteen shows a large bruise on the back of
- 23 Ms. Herndon's -- well, actually, I guess it's the
- 24 side of Ms. Herndon's right arm.
- 25 Q And, finally, Defendant's 19.

1 A It shows a bruise on the side of Ms. Herndon's, it
2 looks like her right arm.

3 Q And it's safe to say that since you photographed
4 these bruises that you saw them yourself?

5 A I did.

6 Q And there is bruising in every one of the pictures;
7 correct?

8 A Yes.

9 Q Would you say that these are a fair and accurate
10 representations of the bruising that was on her
11 body on November 13th, 2013?

12 A Yes.

13 MS. HINDS: Your Honor, I'd ask to move these
14 into evidence.

15 THE COURT: Any objection?

16 MR. JUSTIS: Let me see them real quick.

17 THE COURT: What's your numbers again, seven
18 through?

19 THE COURT REPORTER: Nineteen.

20 THE COURT: Seven through 19.

21 (Pause.)

22 MR. JUSTIS: No objection, Your Honor.

23 THE COURT: All right. Defendant's 7 through
24 19 entered without objection.

25

1 (WHEREUPON, Defendant's Exhibit Nos. 7 -
2 19 were marked for identification and
3 received into evidence.)

4 MS. HINDS: Your Honor, I'd ask to publish
5 these photos?

6 THE COURT: Yes, ma'am.

7 (Exhibits published to the jury.)

8 MS. HINDS: I have no further questions for
9 this witness.

10 Please answer any questions from the State,
11 Ms. Alves.

12 THE COURT: Yes, sir?

13 MR. JUSTIS: Briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. JUSTIS:

16 Q Ms. Alves, these pictures that you looked at, you
17 state they were taken on November 13th; correct?

18 A November 13th.

19 Q Right. And that was a week after the incident
20 because the incident was on the 6th; correct?

21 A Yes, sir.

22 Q Okay. And you didn't see Robin Herndon on the 6th,
23 did you?

24 A No.

25 Q Okay. In fact, you have no knowledge of where the

1 bruises came from other than what Robin told you?

2 A That's right.

3 MR. JUSTIS: Okay. Thank you. No further
4 questions..

5 THE COURT: Anything else?

6 MS. HINDS: No, ma'am.

7 THE COURT: You may step down.

8 Any objection to this witness being excused?

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

10 (Witness steps down and is excused.)

11 THE COURT: Call your next witness.

12 MR. LEIENDECKER: We call Marie Boulton.

13 (Witness approaches.)

14 THE CLERK: Place your left hand on the Bible,
15 and raise your right.

16 (Witness complies.)

17 THE CLERK: The testimony that you shall give
18 the Court and the jury shall be the truth, the
19 whole truth, and nothing but the truth, so help you
20 God?

21 THE WITNESS: I do.

22 THE CLERK: Have a seat in the witness box,
23 state your name, spell your last for the court.

24 THE WITNESS: Marie Antoinette Boulton. B-as
25 in boy-O-U-L-T-O-N.

1 MARIE A. BOULTON,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. LEIENDECKER:

5 Q Good afternoon, Ms. Boulton.

6 A Good afternoon, sir.

7 Q Would you please tell the jury where it is you work
8 and what your job is.

9 A I work for the South Carolina Department of
10 Probation, Parole and Pardon Services. And I am
11 currently the agent in charge for Aiken County.

12 Q How long have you worked for the D-Triple P[DPPP],
13 as it is referred to in the vernacular, here in
14 Aiken County?

15 A I worked for Triple P[PPP] for 20 years.

16 Q Okay. And were you in the Aiken office in 1999
17 when Robin Herndon began work there?

18 A I was.

19 Q And what was your job at that time?

20 A I was just a regular case load agent.

21 Q Okay. You and Robin held similar positions in
22 1999?

23 A We did. The exact same position.

24 Q Okay. Did you get to know her in her years of
25 service from 1999 to 2013?

1 A I did.

2 Q All right. Robin left sometime mid 2003 and went
3 to Lexington County; is that right?

4 A Yes, sir.

5 Q And then eventually Edgefield?

6 A Yes, sir.

7 Q And then with SLED?

8 A Yes, sir.

9 Q And then sometime in 2010 she came back to the
10 Aiken probation office. Can you tell me, if you
11 know, how that happened or occurred?

12 A Well, I was appointed on May 8th, 2010, as the new
13 agent in charge for the Aiken County office. And
14 sometime in June 2010 I ran into Ms. Herndon at the
15 gas station, at the gas pump. And she knew that I
16 was back in town and that I was the new agent in
17 charge, and she asked me if I would consider her
18 for rehire, if you will, as one of my caseload
19 agents in the Aiken County office.

20 Q And what happened as a result of that request?

21 A I took that information, because I know -- I knew
22 of her, and I knew that she was already certified
23 and that she was qualified, and I knew of her work
24 history. So I went to bat for her, and I ran her
25 name up the chain of command and was given the okay

1 to bring her on board.

2 Q Did she tell you why she wanted to come back to the
3 Aiken Office of Probation in 2010?

4 A She did.

5 Q Why did she say?

6 A She was -- her daughters were getting older,
7 pubescent teens, I believe. And she wanted to be
8 closer to home -- because I think SLED kept her a
9 lot on the road -- she wanted to be closer to the
10 house. And my office would have allowed her to do
11 that.

12 Q Okay. What was Robin's work like as a probation
13 and parole officer?

14 A I have never had any problems with Ms. Herndon as
15 an agent. She worked directly for me as my
16 pre-parole investigator, which meant she did all my
17 background investigations on my offenders coming up
18 for parole, possible release. I signed off on all
19 of her work, and I am a stickler about everything
20 that I do pertaining to the job, and so I never had
21 any issues with her.

22 Q Could you describe for the jury what the work
23 environment is like in your office, you know, how
24 many people are working there, and what the
25 working -- just the working relationship or dynamic

1 is like?

2 A Well, at the time we had -- I had four secretaries,
3 two team leaders, ten agents -- I think it adds up
4 to -- and myself as the agent in charge.

5 And just like any other office, the dynamic is
6 we were very close, all of us. I am a very
7 involved manager in that I want to know what is
8 going on with my staff. And we bring food and
9 share food. We ate all the time. And just kind of
10 a close-knit office environment.

11 Q Sorry, that strikes me as funny, Marie, you don't
12 look like you eat all the time. But that aside,
13 what about you and Robin? What about your
14 relationship? You say that the people there were
15 close. Professionally and personally, what kind of
16 things did you and Robin share in the office?

17 A We were close. She came into my office almost
18 every Monday after a weekend to tell me about her
19 weekend and the girls. I have a son that is
20 younger than her children. But we just talked
21 about the children, sales that would go on in the
22 community. Like, in particular, I just remember
23 CVS for some reason, and she would tell me about
24 the good deals. And just talk about girlie stuff
25 like that, about the house and children.

1 Q Okay. During the year of 2013, did you become
2 aware that Robin was dating a new man?

3 A Yes, sir.

4 Q And how did you become aware that she was dating
5 somebody new?

6 A She brought him to my office.

7 Q Okay. How did that -- let me back up a little bit
8 before we get into that. You say that you are
9 close with your agents. Did you spend time out of
10 the office with Robin?

11 A No, sir.

12 Q So it is a close -- within-the-work-environment
13 close is what you mean; right?

14 A It is close that they know that they can call me
15 24/7. They know that if anything is going on they
16 can call me; I'm available.

17 Q Okay. Did there come a time in 2013 when you got a
18 unique or unusual call from Robin?

19 MR. SORENSON: Your Honor, I am going to
20 object to relevance to this next line of
21 questioning.

22 THE COURT: I'm going to allow it. I am going
23 to overrule your objection. I'll allow him to ask
24 the line of questioning.

25 MR. LEIENDECKER: Thank you, Your Honor.

1 THE COURT: Let me see you all one second.

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

5 THE COURT: The objection is overruled.

6 BY MR. LEIENDECKER:

7 Q Tell me about this unusual phone call in 2013.

8 A Yes, sir. In our line of duty we have to have -- a
9 select few of us, and I was one of them, being the
10 agent in charge -- and we carried cell phones,
11 agency cell phones, in which I was on GPS on-call.
12 Whenever I'm on-call, we have to respond to that
13 call, that phone.

14 But this particular weekend I received a call
15 on a Friday night or Saturday morning at 3:03 a.m.
16 And I didn't realize the phone had rang until the
17 next morning when I got up because I wasn't on-call
18 so I didn't have the phone on ring, I just had it
19 on vibrate.

20 But around 7:30, 8:00, when I got up, I saw
21 that I had a missed call from Ms. Herndon. And I
22 knew it was her because I have all of my agents'
23 names in my phone so that I will know if they call
24 me if they need me for anything, or if something is
25 going on with our offenders.

1 And so I saw the missed call from her at
2 3:03 a.m., which was unusual because she had never
3 called me at 3:03 a.m. And I found that alarming,
4 and so I -- Saturday morning I asked my husband to
5 ride with me -- I drive a company vehicle, so I
6 asked my husband to ride with me to her house just
7 to make sure that she and her children were okay.

8 And we get to the house and -- well, let me
9 back up. I called Robin maybe 10, 15 times before
10 I actually got in my car, because I thought if I
11 could see what was going on I would just call her
12 first. And she never did answer.

13 So then I asked my husband to get in the car
14 with me and ride around -- she lives about two
15 miles from me -- to see if she and the girls were
16 okay.

17 So I get to the house. And my husband did not
18 get out of the car, only I did. And I went to go
19 knock on the door. And I knocked for like what
20 seemed like forever. And I proceeded back to my
21 car because no one answered the door.

22 And as I was walking back to my car, my
23 husband pointed to the door, to the window area,
24 which was side-by-side, to say that somebody was at
25 the window, or the door.

1 So I turned around and I saw the door crack,
2 about like this(indicating). And it was
3 Ms. Herndon. And she looked puzzled as to why I
4 was there.

5 And I said -- she goes, Ma'am, is everything
6 all right?

7 And I said, You called me at 3:00 o'clock this
8 morning. Are you and E.N. and K.N. okay?

9 And she said, Yes, ma'am, everything is good.

10 And I said, If you need anything, just let me
11 know. Call me.

12 She said, Okay.

13 And so I proceeded to get back into my car,
14 and my husband and I left.

15 Q Okay. Did anything seem unusual with her
16 explanation?

17 A I mean, it was just weird to me that I got the
18 call, but I took her at face value.

19 Q Okay. Then sometime after that you said that she
20 brought Chris Rowley to your office and introduced
21 him to you; is that right?

22 A She did.

23 Q Could you tell me about that event when you were
24 introduced to Mr. Rowley?

25 A It was during lunch. Because the entire staff

1 knows that I don't allow anybody from the outside
2 in our building unless it is business. That
3 includes spouses unless it is a need to be there --
4 girlfriends or boyfriends or children, for that
5 matter -- because we effect -- we carry firearms,
6 and I didn't want anybody to get hurt. But during
7 this particular day during my lunch and her lunch,
8 she stuck her head in my door and said, Got a
9 minute?

10 And I said, Sure.

11 And she said she wanted me to meet her
12 boyfriend Chris.

13 And I stood up from my desk. I didn't walk
14 around to shake his hand, I just stood up, and he
15 came in to me, and he shook my hand and said, Nice
16 to meet you. I have heard great things about you.

17 And that was it.

18 Q Did Robin say anything to him at that point in your
19 presence?

20 A She did.

21 Q What did she say?

22 A She said, She is the one that came by the house
23 that night -- I mean, that morning.

24 And it kind of puzzled me, because I thought
25 it was just Ms. Herndon, E.N. and K.N. in the

1 house.

2 And so Chris looked at Robin, and Robin
3 responded, No, no, I just -- I just told her I
4 accidentally butt-dialed her.

5 Q That was the substance of it?

6 A Yes.

7 Q Okay. Can you tell us, were there ever any times
8 that Ms. Herndon showed up at the office for work
9 with some questionable injuries or marks on her
10 person?

11 A She did.

12 Q Can you tell me about the ones that you saw or you
13 remember?

14 A There were three instances. And I don't recall the
15 order that they occurred. But the one was --
16 because I have an open door policy, I leave my door
17 open all the time, unless something is going on and
18 I'm discussing personnel matters. This particular
19 day Ms. Herndon came down the hall, and she was
20 passing me. I caught a glimpse of her before she
21 could get by. And she had on black shades. And I
22 called her back.

23 And she said, Ma'am?

24 And I said, you know, Come in. And she came
25 in. And I said, Ms. Lady, why do you have

1 sunglasses on in the office?

2 And she pulled them off, and I saw her eye
3 blackened and closed shut. And I asked her what in
4 the world happened.

5 And she said, You won't believe this, but me
6 and K.N. were on the floor wrestling in the living
7 room and K.N. took a boot and accidentally threw
8 the boot -- threw the boot and accidentally hit her
9 in the eye.

10 And she came in one day with a knee -- a leg
11 brace on. It was the one that was from the knee --
12 from the leg to the knee, the bottom of the leg to
13 the knee. And I called her in and asked her about
14 that.

15 And she said that she and the girls were up on
16 the trampoline and that she had accidentally -- her
17 foot slipped through one of the slits on the
18 trampoline.

19 And the last incident was the -- she had a big
20 black and blue mark on the back side of her arm.
21 And I asked her what happened.

22 And she said she bumped into the wall at the
23 house.

24 Q Did you have any reason to, at that point,
25 disbelieve what Robin was telling you about the

1 injury to her eye?

2 A I did not.

3 Q Did you have any reason to disbelieve what she was
4 telling you about the bruise on the back of her
5 arm?

6 A I did not.

7 Q Did you ever get any information concerning the
8 knee to suggest that it wasn't what she said?

9 A I did not.

10 Q Did you and Robin have the kind of relationship
11 that if she had told you that the black eye or the
12 bruise on the back of her arm was the result of
13 violence within her home, you would have helped
14 her?

15 A Absolutely. Any of my employees.

16 Q But she never told you that, did she?

17 A She did not.

18 Q Tell me briefly -- well, however long you want,
19 briefly is not fair -- tell me about your memories
20 of November 6th, 2013, what happened that day -- to
21 you, I mean.

22 A I can tell you it was one of the worst days of my
23 career. And I was working court over here. And I
24 left because I had an eye doctor appointment at
25 Specs over off of Pine Log Road, I believe it is.

1 And I went over there. And I got a call on my
2 agency cell from law enforcement that there had
3 been a shooting.

4 And initially I was just puzzled as to why
5 they were calling me about a shooting. And then
6 they said it was a shooting involving one of my
7 agents. I just merely assumed that one of our
8 offenders attacked one of my agents is probably why
9 the shooting occurred. But then I was told it
10 involved my agent in a domestic, and that I needed
11 to get back to the other side of town.

12 Q What was your reaction, your reaction to hearing
13 that news about Robin Herndon?

14 A Utter shock. Utter shock. To this day, utter
15 shock.

16 Q In the years that you worked with Robin, did you
17 have a chance or opportunity to develop an opinion
18 concerning Robin's demeanor and attitude towards
19 the people she interacted with?

20 A Yes, sir.

21 Q Did you find her to be the kind of person that was
22 quick to anger or fly off the handle with people?

23 A No, sir. We served the warrants. We issue our own
24 warrants and serve our own warrants. We -- I have
25 interacted with her on the warrants team. We work

1 as a team. We are out to apprehend our offenders,
2 serving -- including warrants.

3 And my main job is that I observe my staff to
4 make sure that everybody is where they need to be
5 when they need to be there; there are no issues
6 with the offenders or family members of the
7 offenders that we are trying to apprehend, and that
8 includes any loud talking or yelling or cursing or
9 anything that is not professional would not be
10 tolerated by myself. And I never witnessed that
11 with Ms. Herndon.

12 Q As the agent in charge and in those years before as
13 a fellow worker, have you ever heard of a complaint
14 filed against Robin formally or informally
15 concerning her interaction with the officers in
16 your department and/or the clients that you work
17 with?

18 A I have not.

19 Q Have you had an opportunity in your time to work
20 with Robin to form an opinion as to her
21 truthfulness?

22 A Initially, when she asked me for this job, if I had
23 any question about her integrity, her truthfulness,
24 if I didn't trust her, I would have never gone to
25 bat for her, ever. So, no, I had no question about

1 her truthfulness.

2 Q Have you ever, in your capacity as the agent in
3 charge or as a co-worker, ever heard anyone file a
4 complaint formally or informally about Robin's
5 misuse of her service revolver?

6 A No, sir. And we wouldn't even consider it formal
7 or informal. If there was ever a complaint about
8 the misuse of a firearm, it would definitely be
9 dealt with at the moment, as soon as the complaint
10 came in.

11 Q And so there has never been any complaint about
12 Robin misusing her firearm?

13 A No, sir.

14 Q Okay. I have no further questions, Ms. Boulton.
15 Thank you.

16 A You're welcome.

17 THE COURT: Yes, sir?

18 MR. SORENSON: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. SORENSON:

23 Q Good afternoon, Agent Boulton.

24 A Good afternoon, sir.

25 Q I just have a few questions for you, okay?

1 A Yes, sir.

2 Q If you would, just for some of us that may not be
3 familiar with basically what a probation agent
4 does, you as a probation agent are a certified law
5 enforcement officer; is that correct?

6 A We are.

7 Q Go through the Criminal Justice Academy?

8 A We do.

9 Q You are what is considered an LE1?

10 A We are.

11 Q Is that correct? And part of that, I mean, you are
12 authorized then to carry a firearm?

13 A We are.

14 Q Is that correct?

15 A Yes, sir.

16 Q And, in fact, you as a probation agent actually
17 have statewide arrest jurisdiction; is that
18 correct?

19 A Yes, sir, we do.

20 Q You have probably more jurisdiction than a
21 sheriff's deputy or a town police officer; is that
22 correct?

23 A Yes, sir.

24 Q And back in November of 2013 Ms. Herndon would have
25 been a certified LE1 officer; is that correct?

1 A Yes, sir.

2 Q So she therefore would have been authorized to
3 carry a weapon. And we have heard testimony about
4 her having the weapon, that .40 caliber Glock
5 actually in the holster on her hip, and that is
6 how -- she is authorized to carry it like that; is
7 that correct?

8 A Yes, sir.

9 Q And she would have had to have maintained
10 proficiency with that weapon to keep up her
11 certification; is that correct?

12 A We do. We have to recertify every year.

13 Q And to the best of your knowledge she had, sometime
14 in that prior year, had passed that certification;
15 is that correct?

16 A She had.

17 Q All right. Let me ask you about your office.
18 Now -- and I think you testified earlier that back
19 in 2013 you believe there were ten agents, three
20 supervisors, including yourself, and then about
21 four support staff in your office; is that correct?

22 A Yes, sir.

23 Q About 17 people altogether?

24 A Yes, sir.

25 Q And I believe you testified that you considered

1 your office to be a very close-knit office; is that
2 correct?

3 A Yes, sir.

4 Q So if Ms. Herndon back in 2013 was having problems,
5 she had plenty of people at work that she could
6 have turned to and confided in; is that correct?

7 A She could have.

8 Q Let me ask you this. Were you in the courtroom
9 when she testified today? I wasn't sure what time
10 you got here.

11 A I got here -- I was here at the tail end of it.

12 Q Okay.

13 A I came in around 3:15.

14 Q Okay. Did you ever hear her -- and if you didn't
15 hear her whole testimony, but at any point in time
16 did you ever hear Ms. Herndon testify about
17 anything happening in the middle of the night at
18 3:00 o'clock in the morning where she called you
19 for help and you didn't answer?

20 A No, sir.

21 Q In fact, her explanation that she gave for that
22 call is that she must have accidentally just
23 butt-dialed you or something; is that correct?

24 A Yes, sir.

25 Q And you have no reason to doubt -- I mean, it may

1 be a little unusual seeing that you missed a call
2 at 3:00 o'clock in the morning -- no reason to
3 doubt that that is what happened; is that correct?

4 A I did not know what happened. Honestly didn't
5 know. But it alarmed me because that is why I went
6 to check on her.

7 Q I understand that. But no reason -- I mean, she
8 gave you an explanation, and nobody has ever given
9 you another explanation, anything but that; is that
10 correct?

11 A Correct.

12 Q You didn't see when you saw her that morning any
13 injuries on her or anything to that effect; right?

14 A I just knew that it was her. She cracked the door.
15 And I couldn't really see anything other than she
16 had a blanket wrapped around her breasts.

17 Q No injuries that following Monday when she showed
18 up for work that were, you know -- hadn't been
19 there on Friday?

20 A I don't even know if I worked that following
21 Monday, so I don't know.

22 Q All right. And your testimony is that you -- and
23 when did that -- that you met Christopher Rowley
24 shortly after that; is that correct? When she
25 brought him by the office shortly after that time

1 you went to check on her on that Saturday morning?

2 A No, I met that young man shortly before this
3 incident.

4 Q Okay. But it was after, though, that Saturday
5 morning that you went over; is that correct?

6 A Right.

7 Q And she had brought him by the office. And prior
8 to that, did you even -- did you know that she had
9 a boyfriend?

10 A I only knew by what, you know, the other staff
11 knew, but I didn't know. I did not know.

12 Q Okay. So you didn't know that she had a male
13 living with her?

14 A I did not. No. Prior to this, no.

15 Q Okay. And that day, then, that you saw -- how far
16 before the shooting incident was that, do you
17 think, that you met him that one time?

18 A I want to say it was three weeks before, but I'm
19 not really certain, but it was shortly before the
20 incident.

21 Q And he was pleasant?

22 A He was very nice.

23 Q And, in fact, you even commented to him, I believe
24 I heard you say, that, you know, he said kind of,
25 Nice to meet you, and I think had complimented you

1 on things Robin had said about you as a boss; is
2 that correct?

3 A Yes.

4 Q And you even said back to him, Well, I have heard
5 nice things about you also; is that correct?

6 A I'm not sure if I said that.

7 Q Okay. I may have misunderstood that. I thought I
8 heard you say that.

9 A Because I had not met him before.

10 Q Okay. But had you heard --

11 A She had never mentioned him to me yet.

12 Q Gotcha. I misunderstood that then. That is my
13 mistake.

14 Now, just briefly as to these three incidents
15 where you testified that you observed some injury
16 on Ms. Herndon at work.

17 A Yes, sir.

18 Q Do you know when those were?

19 A I do not. I don't even know the sequence that they
20 occurred.

21 Q Okay.

22 A But I know that I witnessed them myself. And I
23 called her in on all three of them.

24 Q Okay. On all three of them. And she gave you an
25 explanation on all three of them?

1 A She did.

2 Q Okay. An explanation that, at the time she gave it
3 to you, you didn't doubt; is that correct?

4 A I did not.

5 Q And I believe you had testified in a prior hearing
6 that you are sure that they all happened sometime
7 in 2013, though?

8 A Oh, yes, sir.

9 Q Okay. And you never -- you never had any -- you
10 know, prior to all this happening in November, but
11 leading up to that, never had any thought that she
12 was being abused at home; is that correct?

13 A I did not. I don't know what happens with my staff
14 after we leave that office, unless they tell me.

15 Q Unless they tell you; is that correct? Let me just
16 ask you, you know, as a probation agent, obviously
17 y'all are in the unique position where every person
18 that you deal with is somebody that is a convicted
19 criminal; is that correct?

20 A Yes, sir.

21 Q I mean, everywhere -- it is like a sheriff's
22 deputy, they come into contact with, you know,
23 basically all of the community. But every person
24 that you are personally dealing with from work is
25 somebody that has been convicted of a crime; is

1 that correct?

2 A That's correct.

3 Q And Ms. Herndon would have been in the same
4 situation in all those years that she worked as a
5 probation agent, all the people that she supervised
6 as a probation agent were all convicted criminals;
7 is that correct?

8 A That's correct.

9 Q And as part of that, as being -- and you testified
10 that in your opinion she was a good probation
11 agent; is that correct?

12 A She was.

13 Q So part of being a good probation agent is she has
14 to be able to control people that sometimes are not
15 nice people; is that correct?

16 A Well, I beg to differ. That is something I work
17 hard at every day is we don't want to control
18 anyone. We want them to adhere to the conditions
19 that they have been court ordered and/or ordered to
20 do.

21 Q They have to respect you; is that correct?

22 A They don't.

23 Q They don't?

24 A They don't. I wish they had to, but they don't.

25 Q Yes, ma'am, I agree with that. But she has to have

1 at least a -- maybe not -- control is not the right
2 word, but still has to know how to deal with
3 difficult people all the time at work; is that
4 correct?

5 A Yes, sir.

6 Q You have never had any problems with her not being
7 able to do that; is that correct?

8 A That's correct.

9 Q And you obviously -- you testified that you learned
10 about this incident that afternoon shortly after it
11 happened; is that correct?

12 A Yes, sir.

13 Q And I believe you testified in a prior hearing we
14 had that you have seen -- obviously you have seen
15 her in court this week, but prior to kind of court,
16 you have seen her, I think, on two occasions kind
17 of after this incident at a retirement dinner for
18 someone and then once somewhere just kind of out in
19 public?

20 A And I saw her after the incident at the Sheriff's
21 Department.

22 Q Okay.

23 A I did not mention that during the hearing, but I
24 did see her then.

25 Q Okay. When she -- right after she had been

1 arrested, basically, or brought -- taken into
2 custody?

3 A Yes, sir.

4 Q Okay. But you weren't involved in her --
5 questioning her that day; is that correct?

6 A Other than when I went -- I went to go termi -- to
7 suspend her.

8 Q Okay. So you had some administrative stuff that
9 you had to handle based on her arrest?

10 A Yes.

11 Q Okay. But has she at any point in time told you
12 anything about what happened that day in the times
13 that you have seen her since then?

14 A At the Sheriff's Department I asked the
15 investigator if I could hug her, and he said, Yes.

16 Q If you what?

17 A If I could hug her.

18 Q Hug her.

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

20 (Pause.)

21 BY MR. SORENSON:

22 Q Thank you, Agent Boulton. That's all I have.

23 THE COURT: Yes, sir?

24 REDIRECT EXAMINATION

25

1 BY MR. LEIENDECKER:

2 Q Very briefly, Agent. The Saturday visit after the
3 unusual phone call, you accepted the explanation,
4 that is what you testified to; right?

5 A Yes, sir.

6 Q It didn't get unusual or strange until they both
7 came into your office and they started talking
8 about it; right?

9 A Right. That is when I made the connection, because
10 I had no idea that he was in the home when I came
11 by there that morning.

12 Q And she said to you, This is the person who came
13 over that Saturday morning; right?

14 A She is the one who came over Saturday morning.

15 And --

16 Q And then what happened again?

17 A He gave her a look.

18 Q And she said what?

19 A She said --

20 MR. SORENSON: Asked and answered, Your Honor.
21 We have gone over all this. I'm not sure really --
22 I didn't even get into this at all in my --

23 THE COURT: I think she has already
24 answered --

25 MR. LEIENDECKER: But he actually did get into

1 it because he said there was nothing unusual. This
2 is the unusual part.

3 MR. SORENSON: Well, and that goes back then
4 to my -- if this is what he is getting into, this
5 goes back to my original objection as to the
6 admissibility of this and --

7 THE COURT: The objection is sustained. Let's
8 move on.

9 BY MR. LEIENDECKER:

10 Q And what was your reaction to the comments?

11 MR. SORENSON: Objection, Your Honor. That is
12 the whole --

13 THE COURT: All right. She has already
14 answered it. Let's move on.

15 MR. LEIENDECKER: Okay.

16 BY MR. LEIENDECKER:

17 Q I apologize, Marie, for keeping you up there longer
18 than I should. Come on down.

19 A Thank you.

20 THE COURT: All right. Anything else from the
21 State?

22 MR. SORENSON: Nothing further.

23 THE COURT: Ma'am, you are free to leave.

24 THE WITNESS: Okay. Thank you, Your Honor.

25 (Witness steps down and is excused.)

1 THE COURT: Who is your next witness?

2 MR. LEIENDECKER: Lisa Kenner. She will
3 probably be shorter than, but similar.

4 THE COURT: Let me see you one second.

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

8 THE COURT: All right, ladies and gentlemen of
9 the jury, it has been a long day. We will go ahead
10 and stop for the evening. It is about 6:15.

11 Remember, you are not to discuss the case be
12 each other or anyone else. We will start back in
13 the morning at 9:30. Remember, do not to do any
14 research regarding any issue in the case. No
15 reading any articles or watch any news reports
16 regarding anything in this case.

17 We will see you tomorrow morning at 9:30. I
18 will probably do like we did yesterday and order
19 lunch. I don't know if you are planning -- if
20 anyone has any plans, but we will probably break a
21 little bit earlier tomorrow. We will see how it
22 goes. We will probably break a little bit earlier
23 on tomorrow afternoon.

24 All right. We will see you tomorrow. We will
25 probably take about 30 or 45 minutes for lunch like

1 we did on -- I can't remember what day it was --
2 yesterday. And then we will try to get as much
3 testimony in as possible.

4 All right, thank you. Everyone else remain
5 seated.

6 (WHEREUPON, the jury was excused at 6:14
7 p.m..)

8 THE COURT: All right, so we will start at
9 9:30 in the morning. And you have about eight or
10 nine more witnesses?

11 MR. LEIENDECKER: Yes.

12 THE COURT: Do you think we will get through?
13 Your longest one is Dr. Veronen?

14 MR. LEIENDECKER: Yes. I make no promises.

15 THE COURT: I know. I don't know why I'm
16 asking you that. We'll try -- like I said, we'll
17 probably break for about 30 or 45 minutes for
18 lunch.

19 MR. LEIENDECKER: They are all going to be
20 here, so I'm going to give it my best shot.

21 THE COURT: And I will need to stop probably
22 around 4:00, around 4:00 at the latest.

23 MR. LEIENDECKER: Stop the testimony by 4:00?

24 THE COURT: Yes, by 4:00 o'clock.

25 All right, thank you. Have a good evening.

1 (WHEREUPON, the proceedings concluded at
2 6:16 p.m.)

3 MARCH 4, 2016

4 (WHEREUPON, the proceedings resumed at
5 10:02 a.m.)

6 THE COURT: Good morning. You may be seated.

7 All right. I think we talked about scheduling
8 in the back. Are we ready to bring them in -- oh,
9 let me bring in Juror Number 191. She is the one
10 that knows our next witness, and I just need to ask
11 her to make sure she doesn't -- make sure she is
12 still able to be fair and impartial.

13 (Juror Number 191 enters the courtroom.)

14 THE COURT: Hi. Is it Ms. Watson?

15 THE JUROR: Yes, it is.

16 THE COURT: Hey. I appreciate you letting the
17 bailiffs know that you -- when we did the
18 questioning on Monday, I guess it was?

19 THE JUROR: Uh-huh.

20 THE COURT: It is hard to keep up what day it
21 was. I asked about Lisa Kenner, who is I think --
22 might be one of our next witnesses.

23 THE JUROR: Yes.

24 THE COURT: And they said that you know her as
25 Lisa, didn't really --

1 THE JUROR: I didn't know her last name.

2 THE COURT: Let me ask you this. She is a
3 witness in this case. She will probably be called
4 today. And remember on Monday, we -- the question
5 I asked everyone and kept asking, Knowing that you
6 know her, can you still be fair and impartial?

7 THE JUROR: Yes, ma'am. Yes, ma'am.

8 THE COURT: All right. Thank you.

9 (Juror 191 exits the courtroom.)

10 THE COURT: And that is Juror Number 191. Is
11 there anything from the State or the Defense
12 regarding that?

13 MR. JUSTIS: Nothing, Your Honor.

14 MR. LEIENDECKER: No.

15 THE COURT: All right. Thank you.

16 All right. We are ready to bring them in.

17 (WHEREUPON, the jury came into open
18 court at 10:05 a.m.)

19 THE COURT: Good morning, ladies and gentlemen
20 of the jury. At this time -- I hope you had a
21 restful and good evening. At this time, we will
22 continue with the Defendant's case.

23 And I will be glad to hear from
24 Mr. Leiendecker or Ms. Hinds.

25 MR. LEIENDECKER: Thank you, Your Honor. May

1 it please the Court? The Defense would call Lisa
2 Kenner.

3 (Witness approaches.)

4 THE CLERK: Place your left hand on the Bible,
5 raise your right.

6 (Witness complies.)

7 THE CLERK: The testimony you shall give to
8 the Court and jury in this case will be the truth,
9 the whole truth, and nothing but the truth, so help
10 you God?

11 THE WITNESS: Yes.

12 THE CLERK: Have a seat in the witness box,
13 state your name, spelling your full name for the
14 court, please.

15 (Witness seated.)

16 THE WITNESS: My name is Lisa Kenner,
17 K-E-N-N-E-R.

18 LISA KENNER,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LEIENDECKER:

22 Q Good morning, Ms. Kenner.

23 A Good morning.

24 Q Would you please tell myself and the jury where you
25 work and what your job is there?

1 A I work for the South Carolina Department of
2 Probation, Parole and Pardon Services. My current
3 position is field office specialist.

4 Q Okay. And that means?

5 A Administrative assistant.

6 Q Okay. So you're not one of the agents, but you're
7 the person who does everything to keep the agents
8 functioning and working?

9 A That's correct.

10 Q All right. How long have you been at the Aiken
11 Department of Probation?

12 A Since 1995.

13 Q All right. During the time that you've been there,
14 have you been acquainted with and worked with Robin
15 Herndon?

16 A Yes.

17 Q And you would have been there and worked with Robin
18 in your capacity from 1999 to 2003; is that right?

19 A Correct.

20 Q And you had also been working with Robin from 2010
21 until November of 2013; is that right?

22 A That's correct.

23 Q All right. During that time, have you had a chance
24 to observe Robin around the office and see how she
25 interacts with her fellow agents?

1 A Yes.

2 Q And what observations would you share with us
3 concerning her work with the other agents?

4 A Robin was a good worker. She has always gotten
5 along with the employees. We've never had a
6 problem with her. She has always treated the
7 clients well.

8 Q Okay. Have you experienced or heard any complaints
9 from the other agents or seen any formal complaints
10 filed regarding Robin's conduct with her fellow
11 agents?

12 A Never.

13 Q With the administrative staff?

14 A Never.

15 Q Have you ever seen or heard, formally or
16 informally, of any complaints filed against Robin
17 for her interaction or conduct with the clients,
18 the probationers?

19 A Never.

20 Q Have you ever seen or heard, as the administrative
21 person, of any complaint, formally or informally,
22 filed against Robin for improper use of her service
23 revolver?

24 A Never.

25 Q Describe for us, if you could, briefly, what the

1 dynamics of your relationship with Robin were at
2 the office?

3 A Like I previously stated, I was the
4 administrative -- I am the administrative
5 assistant. Robin and I worked close together. She
6 was a pre-parole investigator. And I would have to
7 come over to the courthouse to pull some of her
8 paperwork, so she and I, we worked closely
9 together.

10 Q And what about your personal relationship at the
11 office?

12 A I would consider Robin as a friend. We never hung
13 out outside of the work, but we've always gotten
14 along.

15 Q What kind of things would y'all chat with about at
16 the office?

17 A Our children, our girls. We both have two girls.

18 Q So that was a common thing you both discussed?

19 A Yes.

20 Q All right. Did you have occasion in 2013 in your
21 discussions with Robin to become aware of the fact
22 that she was dating Mr. Christopher Rowley?

23 A Yes.

24 Q Tell us how you learned that fact.

25 A Well, she told -- well, she told me she was dating

1 somebody named Chris. And she brought him by the
2 office and she introduced him to us -- she
3 introduced him to me.

4 Q Okay.

5 A Uh-huh.

6 Q And what was your meeting with Chris like?

7 A It was --

8 Q Was it long? Brief?

9 A It was brief. We were -- he just came in and she
10 just introduced him as, This is Lisa, this is
11 Chris. And it was just very short.

12 Q Okay.

13 A Uh-huh.

14 Q Could you describe Chris physically, if you
15 remember?

16 A He was big, as if he worked -- when I looked at
17 him, he looked like he was stocky as if he worked
18 out.

19 Q Okay.

20 A Uh-huh.

21 Q Did you have occasion during that calendar year of
22 2013 to observe anything unusual physically about
23 Robin when she came to the office?

24 A Yes.

25 Q Could you tell me about what incidents you saw and

1 what you observed?

2 A There were two incidents, but I don't know what
3 order. The one that I remember the most was a
4 black eye. And I am the one who questioned Robin
5 about the black eye. And her response to me was
6 her daughter threw a boot and hit her. They were
7 playing around.

8 Q Did she walk in and just have a black eye that day?
9 How did she show up at the office?

10 A She showed up with sunglasses.

11 Q Oh, okay.

12 A Uh-huh.

13 Q And how did you find out that behind the sunglasses
14 was a black eye?

15 A She had taken them off and she walked up front, and
16 I questioned her about the eye.

17 Q What did she -- and, again, she told you?

18 A Her daughter threw a shoe or a boot and hit her in
19 the eye, they were playing around.

20 Q Okay. And how did her eye look? You said it was
21 black. Was it swollen?

22 A It was swollen.

23 Q All right. Tell us about the other incident.

24 A The other incident was when she had a boot on. I
25 don't know if it was a leg or ankle. And I asked

1 her about that, and she said that she was on a
2 trampoline and she injured her leg. But it was
3 just the bottom part of her leg and it was in a
4 cast -- I mean, a brace.

5 Q Okay. Did you ever have any reason to question or
6 suspect that Robin wasn't telling you the truth
7 regarding these matters? Either of them?

8 A The first one, because I thought it was strange
9 that she would come in with sunglasses. And she
10 stayed hid most of the day. And just knowing that,
11 you know, she could talk to us, I just felt like
12 she was embarrassed and that's why she said her
13 daughter threw the shoe. But I didn't believe her
14 story about the shoe.

15 Q Okay. Did you ever question her any other time
16 about it or say --

17 A No.

18 Q -- or call her on it and say, I don't believe that,
19 Robin?

20 A No, I didn't. I just mentioned it to another
21 admin.

22 Q Okay.

23 A Uh-huh.

24 Q Let me ask you this question -- because you worked
25 with Robin from '99 to 2003, about four years?

1 A Uh-huh.

2 Q 2010 to 2013, another three years, so approaching
3 seven years that the two of you worked together?

4 A Uh-huh.

5 Q During that time, did you have the opportunity to
6 observe Robin and her conduct and form an opinion
7 regarding Robin's temperament, her personal
8 temperament?

9 A Yes.

10 Q Is she the kind of person that you would describe
11 that was quick to anger and flew off the handle?

12 A No.

13 Q Would you describe her as the kind of person that
14 actually was easy to get along with and peaceful?

15 A She was very easy to get along with and very
16 peaceful.

17 Q All right. Did you have an opportunity during that
18 7-year time period to observe Robin and her conduct
19 in and around the office and form an opinion
20 regarding Robin's veracity or ability to be
21 truthful?

22 A Yes.

23 Q And what is your opinion regarding her
24 truthfulness?

25 A As a co-worker, I believed her -- you know, her

1 interaction with clients and dealing with us. The
2 only time I ever doubted Robin was the incident
3 about her eye.

4 Q That's the only time you questioned whether she was
5 --

6 A Right.

7 Q -- being honest?

8 A But she's never given me a reason to believe that
9 she was not an honest person until that one
10 incident. And I'm not saying that she's dishonest,
11 I'm just thinking that she was just embarrassed
12 because of the situation.

13 Q Okay.

14 A Uh-huh.

15 Q If Robin had come to you and told you at any time
16 during 2013 that the mark you saw was a result of
17 abuse from Mr. Rowley --

18 A Uh-huh.

19 Q -- would you have listened to that?

20 A I would have.

21 Q Would you have stepped up and tried to help her?

22 A I would have.

23 Q But she never came to you and told you that?

24 A No.

25 MR. LEIENDECKER: All right. One moment.

1 (Pause.)

2 MR. LEIENDECKER: No further questions at this
3 time from Ms. Kenner. Thank you.

4 MR. SORENSON: May it please the Court, Your
5 Honor?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. SORENSON:

9 Q Good morning, Ms. Kenner. How are you today?

10 A Good morning. I'm good. How are you?

11 Q I've just got a few questions for you. Now, you
12 worked with Ms. Herndon at probation on two
13 different occasions; is that correct?

14 A That's correct.

15 Q For several years?

16 A Uh-huh.

17 Q Would you just describe Ms. Herndon and your
18 observations of her and your working with her as
19 being an assertive person?

20 A No.

21 Q She's not assertive?

22 A No.

23 Q How about kind of a take-charge type of
24 personality?

25 A No.

1 Q So you wouldn't describe her as either one of
2 those?

3 A No.

4 Q And in your office you had testified -- one of the
5 last things that Mr. Leiendecker asked you was that
6 if Ms. Herndon had come to you with any concerns
7 about her being physically abused at home.

8 A Uh-huh.

9 Q I mean, you would have done something about that;
10 right?

11 A Absolutely.

12 Q Talked to somebody or done --

13 A Right.

14 Q And you weren't the only person that she could have
15 come to in your office about those concerns; is
16 that right?

17 A That's correct.

18 Q Would you describe the probation office back in
19 2013 as being a pretty tight-knit --

20 A Yes.

21 Q -- family almost?

22 A Yes.

23 Q So there were plenty of other people that she could
24 have come to, is that correct, if she had problems
25 at home?

1 A But I don't think she would have felt comfortable
2 going to them.

3 Q But you did just say that office was kind of a
4 tight-knit type family; is that correct?

5 A It was, but when you're having problems at home, I
6 don't think you want to share it with all your
7 co-workers.

8 Q And you weren't -- obviously, we heard from Agent
9 Boulton yesterday. There were other women that
10 worked in the office also?

11 A Yes.

12 Q And -- all right, you talked about -- I want to see
13 if -- kind of three different events, and I want to
14 kind of see if we can figure out a little more when
15 those occurred. That being when you met Chris.

16 A Uh-huh.

17 Q When you saw her with the black eye.

18 A Uh-huh.

19 Q Then when you saw her with the boot on her foot.

20 Okay?

21 A Okay.

22 Q Do you remember specifically when any of those
23 incidents occurred?

24 A No, I don't.

25 Q Okay. How about kind of the order of when they may

1 have occurred?

2 A I can't remember, but I know they were all in 2013.

3 Q Okay. How is it that you know that they were all
4 in 2013?

5 A Because when -- I remember after the incident
6 occurred with Robin and him and I thought about the
7 black eye and I thought about him and -- you know,
8 because I kept saying, you know, he's a big guy and
9 I wondered, you know, was he abusing her, but
10 she -- you know.

11 Q She didn't --

12 A I assumed, but I just didn't -- I couldn't just
13 say.

14 Q But you're sure that they all happened on 2013?

15 A Oh, yes, 2013.

16 Q How soon -- so you remember, obviously, when this
17 incident occurred; is that correct?

18 A I just don't know the timeline with all of it.

19 Q Had you met him, you know, a couple of weeks before
20 that, a month before that, six months before that?

21 A I don't think it was six months, I think it was
22 less than six months.

23 Q So this happened in November. Sometime after May?

24 A I can't -- I'm not sure.

25 Q I gotcha.

1 A I'm sorry.

2 Q No, that's all right. And part of that is you
3 never gave a statement to anybody back when this
4 happened; right?

5 A No. No.

6 Q So a lot of this, you're trying to remember now two
7 and a half years later; is that correct?

8 A Right.

9 Q But when you met Chris, whenever that was, sometime
10 several months prior to this incident, you had
11 described his physical build earlier, describe -- I
12 mean, how did he act when you met him?

13 A Chris was pleasant.

14 Q And Ms. Herndon was with him?

15 A She was.

16 Q Did they interact?

17 A Uh-huh.

18 Q Did they interact well together when you saw them?

19 A Yes.

20 Q So there's nothing from that meeting of him with
21 the two of them that suggested that there was
22 anything wrong going on between their relationship?

23 A No.

24 Q Okay.

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

1 (Pause.)

2 MR. SORENSON: Thank you, Ms. Kenner.

3 THE WITNESS: Okay.

4 MR. LEIENDECKER: She may be excused.

5 THE COURT: All right. You may step down and
6 you're excused.

7 (Witness steps down and is excused).

8 THE COURT: All right. Call your next
9 witness.

10 MS. HINDS: The Defense would call Mitchell
11 Collins.

12 (Witness approaches.)

13 THE CLERK: Place your left hand on the Bible,
14 raise your right.

15 (Witness complies.)

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.

21 THE CLERK: Have a seat in the witness box,
22 state your name, spelling your full name for the
23 court.

24 (Witness seated.)

25 THE WITNESS: Mitchell Collins, C-O-L-L-I-N-S.

1 MITCHELL COLLINS,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HINDS:

5 Q Good morning, Mr. Collins.

6 A Good morning.

7 Q How are you this morning?

8 A Fine, thank you.

9 Q Can you tell the Court where you are employed?

10 A I work for the South Carolina Department of
11 Probation, Parole and Pardon Services.

12 Q And when did you first start working with them?

13 A In 1990.

14 Q 1990?

15 A Ninety.

16 Q And you've been with them continuously since then?

17 A I have been.

18 Q And what would your job title be?

19 A I'm a team leader.

20 Q Could you explain to the jury what a team leader
21 does?

22 A I have a team of agents that I supervise, staff
23 cases, just handle the business of the office.

24 Q And you have been there so long, did you have an
25 opportunity to work with Ms. Herndon way back when

1 she started in 1999?

2 A I did.

3 Q And can you tell me a little bit of your
4 interaction with her during that period of time?

5 A During that period, she was on my team. She was an
6 agent. And she just ran the case load.

7 Q Were you her supervisor?

8 A I was her direct supervisor.

9 Q Her direct supervisor?

10 A Yes, ma'am.

11 Q So she would -- you would keep fairly close tabs on
12 what she was doing; correct?

13 A Yes, ma'am.

14 Q Would you say you interacted with her on a daily
15 basis?

16 A I did.

17 Q And then she left the department, did she not?

18 A She did.

19 Q You know where she went?

20 A I think the Edgefield Sheriff's Office and I knew
21 she worked with SLED for a while.

22 Q Okay. And then she came back in 2010; correct?

23 A Yes, ma'am.

24 Q And you were working still there in 2010?

25 A Correct.

1 Q So you worked with her -- you had an opportunity to
2 work with her again?

3 A Yes, ma'am.

4 Q All right. Were you her supervisor?

5 A No, not the second time when she came back, I was
6 not, no.

7 Q But you worked in the same office; correct?

8 A Correct.

9 Q Describe the office atmosphere. Describe how the
10 office worked.

11 A We just had -- we have two teams, and usually
12 anywhere from 12 to 15 employees. And just a daily
13 interaction with each other as we serve offenders
14 and just do the different tasks that we have with
15 probation.

16 Q Physically, can you describe -- since I've never
17 been to your office, is it everybody had a separate
18 office, separate cubicles?

19 A Separate office. Everybody has their own office.

20 Q Okay, but are they in fairly close proximity?

21 A They are.

22 Q Would you say everybody got to interact on a daily
23 basis there?

24 A Yes, ma'am.

25 Q Okay. Describe the relationship with Ms. Herndon.

1 A We just worked. Occasionally, she would come by if
2 she needed to staff a case. Or if there was some
3 issue that we needed to address, she would come in
4 and we would discuss it and bring resolution to it.

5 Q Okay. Would you describe your relationship as
6 professional?

7 A Yes, ma'am.

8 Q Okay. Did you socialize with Ms. Herndon outside
9 of work?

10 A I did not.

11 Q If you had to describe Robin to somebody who had
12 never met her before, how would you do that?

13 A She is dependable and respectful of others. I
14 consider her as an honest person.

15 Q Okay. Did you ever have an opportunity to meet
16 Christopher Rowley?

17 A I did.

18 Q Can you describe that to the jury, please?

19 A I met him once. Robin brought him into the office.
20 We met for maybe two minutes. Robin was present.
21 And we just had a light conversation.

22 Q But basically just an introduction --

23 A Yes.

24 Q -- type of situation?

25 A Yes, ma'am.

1 Q And at that point in time, there was nothing
2 unusual; correct?

3 A There wasn't.

4 Q Can you describe -- did you have an opportunity to
5 observe anything unusual about her appearance when
6 she came into the office?

7 A There were two occasions. The first time that I
8 recall, she came in wearing sunglasses and she told
9 us that, I think, over the weekend her and her
10 daughter, they were playing, play wrestling. And
11 just through tussling, I think somehow -- I don't
12 know if it was a shoe involved, but she was struck
13 in the corner of the eye and she was wearing
14 sunglasses.

15 Q Did you actually see her with the sunglasses off?

16 A I did not. I don't recall seeing her without the
17 sunglasses.

18 Q But from the explanation, you deduced it was a
19 black eye; correct?

20 A I assumed it was, yes, ma'am.

21 Q Was there any other occasion?

22 A One other occasion, she came in wearing like a
23 brace or a light cast on her leg. Said that she
24 had been jumping on the trampoline with her
25 daughters, landed wrong, and had done some damage

1 to the ligaments in her leg.

2 Q During the course of your relationship --
3 professional relationship with Ms. Herndon, did you
4 have an opportunity to watch her interact with
5 clients?

6 A Yes, ma'am.

7 Q And how would you describe her interaction with
8 clients?

9 A She worked well. She was respectful. Tended to
10 the needs and issues at hand.

11 Q In your experience being around her, working with
12 her, seeing her on a day-to-day basis, have you had
13 an opportunity to form an opinion about her
14 truthfulness?

15 A I find her to be a truthful person.

16 Q Ever had any reason to doubt her truthfulness?

17 A No, ma'am.

18 Q Okay. How would you describe her temperament as
19 far as, quick to anger?

20 A No.

21 Q Okay. Do you have -- have you had an opportunity
22 to form an opinion about whether or not she was a
23 peaceful person?

24 A I found her to be a peaceful person, a person
25 that -- she was easy to work with and dependable.

1 Q Now, I think you said you directly supervised her
2 when she was with the department the first time;
3 right?

4 A Yes, ma'am.

5 Q Either during those years or in the years since she
6 has come back, have you had any opportunity to see
7 her do anything inappropriate regarding her service
8 weapon?

9 A No, ma'am, I have not.

10 Q Mr. Collins, can you describe how you found out
11 about the incident on November 6th, 2013?

12 A Yes, ma'am. I was on leave that afternoon. I had
13 worked that morning. My agent in charge, Ms.
14 Boulton, she called me and informed me.

15 Q What was your reaction?

16 A I was surprised and shocked.

17 Q Why?

18 A It's just not something I expected to hear. Just
19 to suddenly hear something -- a tragic event, it
20 was shocking. And having known Robin for the years
21 that I have, I was just surprised to hear that.

22 MS. HINDS: Answer any questions that the
23 State has, please.

24 THE WITNESS: Okay.

25 MR. SORENSON: May it please the Court?

CROSS-EXAMINATION

1
2 BY MR. SORENSON:

3 Q Good morning, Agent Collins.

4 A Good morning.

5 Q How are you today?

6 A Fine, sir.

7 Q I have a couple of questions for you, okay? So you
8 had an opportunity to -- when Ms. Herndon initially
9 worked for Probation, Pardon and Parole, you were
10 her direct supervisor; is that correct?

11 A Yes, sir.

12 Q And it is your testimony that during that time
13 period, she was a good employee?

14 A She was.

15 Q Hard worker?

16 A She was a hard worker.

17 Q Didn't have any problems with her work ethic or
18 anything of that nature?

19 A No, sir.

20 Q And then when she came back kind of with her second
21 stint with Probation, Pardon and Parole, I want to
22 say sometime around 2010, you worked with her up
23 until this incident occurred also; right?

24 A That's right.

25 Q You were not her direct supervisor, though, at that

1 point in time; is that correct?

2 A That's correct.

3 Q You still, though, get to interact with her pretty
4 much on a daily basis at the office?

5 A Yes, sir.

6 Q And during that time in 2010, was her work ethic
7 still good?

8 A Yes, sir.

9 Q Hard worker, no problems?

10 A None that I know of.

11 Q 2011, same situation?

12 A As far as I know, yes, sir.

13 Q 2012, as far as you know, same situation?

14 A Yes, sir.

15 Q 2013, up until November 6th of 2013, same
16 situation?

17 A Yes, sir.

18 Q Hard worker, no problems that you were aware of
19 with her work product, with her dealing with people
20 at work, or anything of that nature?

21 A None that I know of.

22 Q So nothing had changed really over the time period
23 that you knew her and worked with her --

24 A No, sir.

25 Q -- that gave you any concern about something going

1 on in her life at home; is that correct?

2 A No, sir. I didn't observe anything.

3 Q All right. Now, you had testified that you met her
4 boyfriend, that she had brought Christopher by the
5 office once and you had briefly met him; is that
6 correct?

7 A Yes, sir.

8 Q And when was that that that occurred?

9 A Honestly, I would have to say it was sometime in
10 2013, but I'm not -- I'm not sure.

11 Q Was it close to this incident or early part of 2013
12 or?

13 A I -- I would think several months prior, but I
14 can't recall.

15 Q All right. And you testified about seeing her with
16 what you think was probably a black eye just
17 because she had sunglasses on in the office?

18 A Yes, sir.

19 Q Okay. And when did that occur?

20 A The timeline, I don't know. It was, I would think,
21 sometime in 2013, but just I'm guessing.

22 Q Could it have been the end of 2012, possibly?

23 A Honestly, I don't know. I remember -- I would have
24 to say that it would have been several months
25 before the incident, but I'm just speculating.

1 Q And how about the time when you saw her where she
2 had indicated she had hurt her leg playing on the
3 trampoline?

4 A I think -- what I recall is that occurred after the
5 incident with the sunglasses. That's my
6 recollection.

7 Q So you think the sunglasses was first, that was
8 second. How about, do you think you had met Chris
9 before or after that, seeing those injuries?

10 A I think before. I think.

11 Q So you think that they kind of went basically in
12 the order that you described them to Ms. Hinds, I
13 mean, that she went through, that you had met
14 Chris, saw her with a black -- or with the
15 sunglasses on and then saw her with some injury to
16 her leg, kind of in that order?

17 A Yes, sir.

18 Q Sometime in 2013?

19 A Yes, sir.

20 MR. SORENSON: Thank you, Agent Collins.

21 THE COURT: Anything else?

22 MS. HINDS: No, Your Honor.

23 THE COURT: All right, sir, you may step down.
24 Any objection to this witness being excused?

25 MR. SORENSON: Not from the State, Your Honor.

1 MS. HINDS: No, sir.

2 THE COURT: You may be excused.

3 (Witness steps down and is excused.)

4 THE COURT: Call your next witness.

5 MS. HINDS: The Defense calls Brian Wilson.

6 (Witness approaches.)

7 THE CLERK: Place your left hand on the Bible,
8 raise your right.

9 (Witness complies.)

10 THE CLERK: The testimony you shall give the
11 Court and jury in this case will be the truth, the
12 whole truth, and nothing but the truth, so help you
13 God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Have a seat in the witness box,
16 stating your full name, spelling your last for the
17 court, please.

18 (Witness seated.)

19 THE WITNESS: Joseph Brian Wilson,
20 W-I-L-S-O-N.

21 JOSEPH BRIAN WILSON,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. HINDS:

25 Q Good morning, Mr. Wilson.

1 A Good morning.

2 Q Can you tell me and the jury where are you
3 employed?

4 A Department of South Carolina Probation, Parole and
5 Pardon Services.

6 Q And when did you get hired with the department?

7 A April 14th, 1994.

8 Q And have you worked for them continuously since
9 '94?

10 A No, ma'am, I left for a short while and came back.

11 Q When did you come back?

12 A I came back in 2005 to probation.

13 Q What are your job responsibilities?

14 A I supervise the sex offender population for the
15 County of Aiken County.

16 Q Can you explain to the jury a little bit about what
17 that entails?

18 A They come out on different releases, probation,
19 parole or community supervision. And a lot of them
20 come out with GPS, and we track them, keep track of
21 them. They come in, and we go out to the field and
22 we conduct investigations and searches, and things
23 of that nature.

24 Q So you were working for the department in 1999 when
25 Ms. Herndon would have been there; correct?

1 A Yes, ma'am. I was leaving at the time, and she was
2 coming in. That my first interaction with Robin.

3 Q Okay. And would you say -- you are leaving, she's
4 coming in. We're talking about days, weeks,
5 months?

6 A I think it was within days. I believe she became
7 the absconded parole agent.

8 Q And then you left for other employment; correct?

9 A Yes, ma'am.

10 Q But I think you said you came back; correct?

11 A Yes, ma'am, I did.

12 Q And that would have been in 2005?

13 A Yes, ma'am.

14 Q And did you have an opportunity to work with
15 Ms. Herndon then in 2010?

16 A Actually, I worked with Ms. Herndon on a few
17 operations prior to that. I think it was in 2007,
18 2008. We had some alcohol suppression in Aiken
19 County working with SLED and all the other
20 departments.

21 Q So that would have been when she was working for
22 SLED, not Triple P[PPP]; correct?

23 A Yes, ma'am.

24 Q And you were working for the department?

25 A Yes, ma'am.

1 Q Okay. Tell me a little bit about what an alcohol
2 suppression operation would entail?

3 A She came down, we met in the office with SLED, SLED
4 agents in the county. And we went out to the local
5 clubs and bars, places like that, checking for
6 liquor licenses and making sure everything was up
7 to par.

8 Q And you said she was part of the interacting team
9 with SLED?

10 A Yes, ma'am. I think she was kind of our point
11 person at the time. She was the one that came and
12 talked to our agent in charge at the time and the
13 duties we were going to be doing.

14 Q You had an opportunity to work with her even when
15 she wasn't with the department?

16 A Yes, ma'am.

17 Q Okay. Safe to say that overall, since 2010, you've
18 seen her on a daily basis?

19 A Yes, ma'am.

20 Q Would you describe -- or describe your relationship
21 with Ms. Herndon.

22 A Co-worker. We did a lot of field work together,
23 extraditions, lot of in-the-office stuff. She was
24 a pre-parole investigator and so I had to do
25 investigations on sex offenders and sometimes we

1 were in the field together. Warrant teams.

2 Q Okay. Would you say you also had a personal
3 relationship?

4 A I wouldn't say it was -- I didn't have any kind of
5 personal relationship with her outside of work, but
6 we worked well together.

7 Q Did you have occasion to meet Christopher Rowley?

8 A I've seen Mr. Rowley twice. And one time, he came
9 to our back door of our old office at 1636 Hampton
10 Avenue, and I just happened to be coming out of my
11 office. And we always check who's coming and
12 going.

13 Q Why is that?

14 A Office security. You know, we deal with some
15 people that are dangerous. And so I remember going
16 to the back door, seen him coming in. He was on
17 the telephone and he was texting. I don't know why
18 I remember that, you know, these young people on
19 their telephones. And that was my first
20 interaction. And I didn't -- I don't think I even
21 had a conversation with him at that point.

22 The only other time I saw him was me and
23 another agent, Agent White, with our department, we
24 went and picked up a car from Ms. Herndon's house
25 that she had been driving that week. And Mr.

1 Rowley and Ms. Herndon, they were on the front
2 porch. And very little interaction. Robin asked a
3 few questions, and that was it, and we left.

4 Q So she had been using basically a department car?

5 A For some of her duties during that week, yes,
6 ma'am.

7 Q Okay. And somebody else needed it over the
8 weekend?

9 A Yes, ma'am. We have like a GPS team.

10 Q And so you saw them on the porch?

11 A Yes, ma'am.

12 Q Okay. So there was little interaction; correct?

13 A Yes, ma'am, very little.

14 Q Okay. You just came and picked up the car?

15 A Yes, ma'am.

16 Q If you were describing Ms. Herndon to someone who
17 didn't know her, how would you describe her?

18 A Well, she was very energetic. She was passionate
19 about what she did. I mean, she loved what she
20 did. She talked about her children more than
21 anything. Outside of work, her children were her
22 whole world. She talked about two girls. One that
23 she had adopted and her -- one she had with her
24 first husband.

25 Q Okay. In your interactions with her on a daily

1 basis at work, did you ever see anything unusual
2 about her physical appearance?

3 A Only one time. She came in with like a gray boot,
4 some kind of cast, I believe it was on the right
5 leg. And she had fallen off a trampoline, that was
6 the story she told us, playing with her children.

7 Q Did you have any reason to disbelieve that?

8 A No, ma'am.

9 Q Did she ever confide in you anything about
10 Mr. Rowley, talk to you about her relationship with
11 him?

12 A I can't recall anything personal.

13 Q In your interactions with Ms. Herndon, would you
14 say she was a truthful person?

15 A Yes, ma'am.

16 Q Would you say she's a hard worker?

17 A Yes, ma'am.

18 Q Would you say she is a peaceful person?

19 A Yes, ma'am, she was. Yes, ma'am, she was very
20 peaceful.

21 Q And in your interactions with her, did you ever see
22 her display any inappropriate actions with her
23 service revolver?

24 A No, ma'am.

25 Q How did you find out about this incident that

1 happened in November of 2013?

2 A I believe it came across the radio. I used to live
3 in a neighborhood right above -- right above Sudlow
4 Lake Road, right off Sudlow Lake Road. The first
5 thing I heard there was a shooting that involved
6 some type of officer I believe. And actually that
7 day I tried to call her twice to make sure she
8 wasn't -- I know she had gone to lunch and I didn't
9 know where she was at that point, you know. But I
10 did try to call her and I couldn't get ahold of
11 her. I was worried sick something may have
12 happened to her. I didn't know anything about this
13 incident at that point as far as -- you know, I
14 knew like everybody else, nothing.

15 Q Okay.

16 A Until after the fact.

17 Q Until when?

18 A Until after it broke on the news and then we had --
19 actually, I knew it before the news people because
20 my supervisor came in and told us there has been an
21 incident.

22 Q How did you react to that news?

23 A I was -- I didn't know. I mean, I didn't know what
24 had gone down. You know, I was worried sick about
25 her at the time because I didn't know exactly how

1 everything transpired. I had no opinion on it at
2 the time. I was just kind of -- you know, that's
3 what you do when you're in a situation like us, you
4 know, it's like a brotherhood and sisterhood. You
5 know, it's a close-knit group of people and, you
6 know, you're worried sick about the person next to
7 you because you see them every day.

8 Q If she had confided in you more about her
9 relationship with Mr. Rowley, would you have
10 listened?

11 A Yes, ma'am.

12 Q Would you have tried to help her?

13 A Yes, ma'am, I would have tried to direct her in the
14 right way, you know, what she needed to do, who she
15 needed to contact, other law enforcement.

16 MS. HINDS: Answer any questions that the
17 State may have, please.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. SORENSON:

21 Q Good morning, Agent Wilson.

22 A Good morning.

23 Q Just a couple of questions for you. You testified
24 that the Probation Office back -- here in Aiken
25 County back in 2013, you described it as a

1 close-knit family; is that correct?

2 A Yes.

3 Q A brotherhood, sisterhood, I think is the term you
4 used?

5 A Yes.

6 Q So if one of y'all was having problems, there was
7 plenty of people at work that you could talk to,
8 you could confide in --

9 A Yes, sir.

10 Q -- about your problems; is that correct?

11 A (Nods affirmatively.)

12 Q And, lastly, you talked about seeing an injury to
13 Ms. Herndon. She had a boot on her leg; is that
14 correct?

15 A Yes, sir.

16 Q She had indicated she had fallen on a trampoline.
17 Could that possibly have been kind of in
18 mid-February or so, somewhere around there, of
19 2013?

20 A I don't recall the exact time.

21 Q Could that possibly be, though? I mean, would that
22 possibly jibe with that time that you saw that?

23 A Possibly.

24 Q It was in 2013?

25 A Yes, sir.

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

2 THE COURT: Anything else?

3 MS. HINDS: Nothing, Your Honor.

4 THE COURT: All right, you may step down.

5 (Witness steps down.)

6 MS. HINDS: The Defense would call Donald
7 Murphy.

8 (Witness approaches.)

9 THE CLERK: Place your left hand on the Bible,
10 raise your right.

11 (Witness complies.)

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

16 THE WITNESS: Yes, ma'am.

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

20 THE WITNESS: My name is Donald Murphy,
21 M-U-R-P-H-Y.

22 DONALD MURPHY,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MS. HINDS:

2 Q Good morning, Mr. Murphy.

3 A Good morning.

4 Q Can you tell the Court where it is you are
5 employed?

6 A Yes, I work for the State of South Carolina
7 Probation and Parole Department.

8 Q And what is your job title?

9 A I'm an agent there. I run a case load. I'm also
10 an instructor of firearms, driving 3-week basic,
11 and arrest scenarios.

12 Q So explain to them what carrying a case load means.

13 A I have approximately right now 240 offenders that I
14 supervise, anywhere from low to high supervision.
15 Just making sure that they're following any orders
16 from the Court, that they're staying out of
17 trouble, going through any of their rehab, and all
18 that.

19 Q And you said you're an instructor as well?

20 A Yes, ma'am.

21 Q Tell me a little bit about that.

22 A I'm a firearms instructor, so any agent has to do
23 in-service. Also, any new agents hired on go
24 through a firearm training with us. Also, a
25 driving instructor. Any new agent that comes on,

1 they actually do an in-service with us to prep them
2 for 12-week academy. Three-week basic, I'm an
3 ethics instructor. It's a program of which we use
4 to better help our offenders, be able to talk to
5 them and guide them through whatever they need.

6 Arrest scenarios is once an agent becomes a
7 certified agent, they have to go through arrest
8 scenarios, which teaches them how we actually like
9 run our warrant teams. And it teaches them the --
10 it kind of teaches them the basics of that.

11 Q Okay. Had you -- and you started with the
12 Probation Department when?

13 A I started July 17th, 2012.

14 Q And have you had an opportunity or did you have an
15 opportunity to work with Robin Herndon?

16 A Yes, I did.

17 Q Okay. Can you describe that relationship?

18 A Just pretty much strictly work. We would talk
19 about kids. I have two daughters and she has two
20 daughters, so we would every now and then just
21 chitchat about kids. But pretty much just work.

22 Q But you had an opportunity to work with her on a
23 daily basis pretty much?

24 A Yes, ma'am.

25 Q Okay. Since you said you were an instructor and it

1 also involved firearms, did you have an opportunity
2 to teach her?

3 A No, ma'am.

4 Q That office is small?

5 A Yes, ma'am.

6 Q How many people are employed there now?

7 A Approximately 15. Maybe just a few -- maybe a
8 little bit more.

9 Q Back in 2013, how many people would have been
10 there?

11 A It would have been fewer than that at that time.

12 Q Okay. Can you describe the work area? Are you all
13 in separate offices?

14 A Yes, we each have our own offices.

15 Q But you have an opportunity to interact with other
16 people there as well?

17 A Yes, ma'am.

18 Q Okay. Would you say you worked with Robin pretty
19 much on a daily basis?

20 A Yes, ma'am.

21 Q Okay. If you had to describe Robin to somebody who
22 didn't know her, how would you describe her?

23 A She's very easy-going, just kind of happy-go-lucky,
24 very personable person.

25 Q Okay. Did you ever have an opportunity to meet

1 Christopher Rowley?

2 A I don't believe I did. I know he came into the
3 office one day. I don't know if I was there or
4 not.

5 Q Okay. So as far as you know, you never met him?

6 A No, I don't believe so.

7 Q Don't know anything about him?

8 A Huh-uh.

9 Q Okay. In your interactions with Ms. Herndon, did
10 you have an opportunity to observe any physical
11 problems that might have been out of the ordinary?

12 A Yeah, just two. I don't know what order and I
13 don't remember which one was which. One time, she
14 came into the office wearing sunglasses. I never
15 seen her take -- actually, take the sunglasses off
16 during that day, but I heard kind of through talks
17 in the office, she was wearing the sunglasses
18 because --

19 MR. SORENSON: Objection, Your Honor.

20 Hearsay.

21 THE COURT: Sustained.

22 BY MS. HINDS:

23 Q Just answer what you saw.

24 A Okay.

25 THE COURT: You can't say what other people

1 said.

2 THE WITNESS: Yes, ma'am.

3 She was just wearing sunglasses throughout the
4 day in the office.

5 BY MS. HINDS:

6 Q Did you have an opportunity to see her with her
7 sunglasses removed?

8 A No.

9 Q In dealing with her since 2012, pretty much on a
10 daily basis, do you think you had an opportunity to
11 form any opinion about her ability to tell the
12 truth?

13 A Yes. I mean, she seemed honest to me. She never
14 gave me any opinion to not trust anything that
15 she -- anything that she would say.

16 Q How about any opinion as to her temperament?

17 A Just very easy-going, just happy-go-lucky.

18 Q Did you experience any fits of temper?

19 A No, ma'am.

20 Q Did you ever observe or know of any incident where
21 she mishandled or did anything inappropriate with
22 her service weapon?

23 A No, ma'am.

24 Q In your opinion -- do you think in working with her
25 that you would have an opinion as to her being a

1 peaceful person?

2 A Yes, absolutely, she was.

3 Q Okay. How did you find out about the incident?

4 A We were all called into an office -- office
5 mandatory meeting. In fact, people that was off
6 was called to come in. All of us had to meet in
7 the front conference room, and it was told to us
8 then that at that time.

9 Q Do you remember what your reaction was?

10 A Just shock. Just stunned.

11 Q And why were you shocked?

12 A Just saw her earlier that day and then, all of a
13 sudden, there was an officer-involved shooting, it
14 just kind of -- it just kind of hits you, I mean,
15 that somebody that I worked with was now involved
16 in this.

17 Q Would you say it seemed out of character?

18 A Yes, ma'am.

19 MS. HINDS: Answer any questions the State
20 might have.

21 THE WITNESS: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. SORENSON:

24 Q Good morning, Agent Murphy.

25 A Good morning.

1 Q How are you today?

2 A Good. How are you?

3 Q I'm good. I just have a few questions. I believe
4 you testified you've been with probation since
5 2012?

6 A Yes, sir.

7 Q Where did you work prior to that?

8 A Before that, I was with Aiken County Sheriff's
9 Department. I worked in the jail about a year,
10 maybe year and a half.

11 Q Okay. And you said that part of your duties now
12 with Probation, Pardon and Parole, you are their
13 firearms instructor?

14 A Yes, sir.

15 Q Okay. And what does that entail doing?

16 A Any new agents that come in have to go through like
17 a training with us. Then any agent that is now
18 qualified, every year they have to go through a
19 recert.

20 Q Okay. And did you -- so obviously you were not
21 employed there when Ms. Herndon initially was hired
22 with Probation, Pardon and Parole; is that correct?

23 A Correct.

24 Q So you would not have been involved with any of her
25 initial training, or anything of that nature?

1 A No, sir.

2 Q Even when she was hired back, I guess, was probably
3 prior to you starting there; is that correct?

4 A Correct.

5 Q You said, though, that you have to go through a
6 yearly kind of recertification. Were you involved
7 in her recertification?

8 A No, sir.

9 Q So that had not occurred from July 7th of 2012
10 until November 6th of 2013? She hadn't been --

11 A Correct. I became a firearms instructor in 2014.

12 Q I gotcha. I gotcha. You started in July of 2012,
13 but the firearms part you didn't start doing until
14 2014?

15 A Correct.

16 Q I misunderstood. I guess I just wasn't clear on
17 that initially. Okay. Let me ask you, showing you
18 State's Exhibit Number 36, it is a .40 caliber
19 Glock?

20 A It is a Glock. I cannot tell from here if it is
21 .40 caliber.

22 Q I apologize. I'll let you look at it.
23 (Pause.)

24 A It is a .40 caliber Glock.

25 Q And is that the standard issue that all probation

1 agents carry, or do you have the ability to kind of
2 pick and choose what kind of weapon you use?

3 A No. All agents carry a Glock 22, .40 caliber.
4 Now, they can qualify, if they have their own Glock
5 23 or Glock 27, which are .40 calibers, they can
6 qualify with that. They're not allowed to carry
7 that on warrant -- warrant teams, or anything like
8 that. It's strictly an optional weapon inside the
9 office and that.

10 Q Gotcha. Gotcha. So that would be -- back in
11 November of 2013, that was basically the standard
12 issue for every probation agent; is that correct?

13 A Yes, sir.

14 Q All right. And with that weapon, in order for it
15 to discharge, you have to pull the trigger;
16 correct?

17 A Correct.

18 Q This is kind of probably a real silly question, but
19 when you pull the trigger and the bullet comes out,
20 the bullets go straight; is that correct?

21 A Yes.

22 Q All right. Now, I believe you testified that you
23 saw Ms. Herndon with the sunglasses on in the
24 office one day. Do you remember when that may have
25 happened?

1 A No.

2 Q Okay. Do you remember -- even know what year that
3 happened in?

4 A I don't.

5 Q Okay. But that is something -- I mean, you didn't
6 give a statement to law enforcement after this
7 incident happened, did you?

8 A No, sir.

9 Q Okay. So that's something, though, that you
10 remember now a couple of years later?

11 A Yes, she had sunglasses on and then another time
12 with a leg brace.

13 Q Okay. Let me ask you about that, because you
14 didn't say that on direct examination. So there
15 was a leg brace also?

16 A Yes, sir.

17 Q And would that have happened possibly in
18 mid-February of 2013?

19 A I don't know.

20 Q Could that have been in mid-February of 2013?

21 A It could have been, yes, sir.

22 Q Do you remember -- I think you had said -- because
23 initially you said there were two things and you
24 didn't remember which order, but then you didn't
25 say the other one. Is that accurate, though, that

1 you don't remember which one of those you saw
2 first?

3 A Correct. I don't know.

4 Q You could have seen her with the leg brace and then
5 a month later with the sunglasses or --

6 A Yeah, I have no idea --

7 Q Or vice versa?

8 A Yeah. I don't know what happened which way.

9 Q And you're not even actually sure exactly when that
10 was even?

11 A Right.

12 Q Sometime obviously after July 7th of 2012 --

13 A Correct.

14 Q -- because that's when you started there?

15 A Yes, sir.

16 Q And before November 6th, 2013?

17 A Yes, sir.

18 Q But it could have been any time in between there?

19 A Yeah. I don't remember when.

20 Q I gotcha.

21 MR. SORENSON: I appreciate it, Agent Murphy.

22 Thank you.

23 THE WITNESS: Yes, sir.

24 MS. HINDS: Just briefly.

25 REDIRECT EXAMINATION

1 BY MS. HINDS:

2 Q The Solicitor asked you -- or made a statement and
3 you agreed with it, a bullet goes straight; is that
4 correct?

5 A Yes.

6 Q But that would be if and until it might hit
7 something that would deflect it; correct?

8 A Correct.

9 MS. HINDS: No further questions.

10 THE COURT: Anything else?

11 MR. SORENSON: No.

12 THE COURT: Any objection to this witness
13 being excused?

14 MR. SORENSON: Not from the State.

15 THE COURT: Sir, you're free to leave.

16 THE WITNESS: Thank you.

17 (Witness steps down and is excused.)

18 THE COURT: Call your next witness.

19 MS. HINDS: The Defense calls K.N.

20 (Witness approaches.)

21 THE CLERK: Place your left hand on the Bible,
22 raise your right.

23 (Witness complies.)

24 THE CLERK: The testimony you shall give the
25 Court and jury in this case will be the truth, the

1 whole truth, and nothing but the truth, so help you
2 God?

3 THE WITNESS: Yes, ma'am.

4 THE CLERK: Have a seat in the witness box,
5 stating your full name, spelling your last for the
6 court, please.

7 (Witness seated.)

8 THE WITNESS: K.N.

9 K.N.

10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HINDS:

13 Q Good morning, K.N.

14 A Good morning.

15 Q Are you okay?

16 A (Nods affirmatively.)

17 Q If you need to take a break or need some water,
18 just let me know, okay?

19 A (Nods affirmatively.)

20 Q K.N. how old are you?

21 A Seventeen.

22 Q And are you still in school?

23 A Yes, ma'am, I'm in high school and college right
24 now.

25 Q What high school?

1 A Midland Valley.

2 Q What college?

3 A Aiken Technical College.

4 Q What kind of courses are you taking?

5 A General education right now.

6 Q What do you hope to do in the future?

7 A I'm attending USC Aiken in the fall for criminology
8 to become an investigator.

9 Q Let's get right to the point. How do you know
10 Robin Herndon?

11 A She's my mom.

12 Q She's your mother?

13 A Yes, ma'am.

14 Q And she and your dad divorced; is that correct?

15 A Yes, ma'am.

16 Q When was that?

17 A The summer between my seventh and eighth grade
18 year, I believe 2010.

19 Q Okay. And at the point where they separated or
20 divorced, what was the living arrangement for you?

21 A During the summer and when the school year got
22 started, we lived with my mom full-time and would
23 see him occasionally. But once the divorce was
24 final, we lived with him 15 days and nights out of
25 the month, half and half.

1 Q Basically shared custody?

2 A Yes, ma'am.

3 Q Did you have an opportunity to meet Christopher
4 Rowley?

5 A Yes, ma'am.

6 Q Tell me about that.

7 A The first time I met him I believe was maybe 2011
8 or '12 at a birthday party for my mom's second
9 husband. He was a friend of Sam's at the time.
10 And it was brief. That was the first time I ever
11 met him.

12 Q Basically he was just another guest at a party?

13 A Yes, ma'am. I sat next to him.

14 Q When did you have occasion to come across
15 Mr. Rowley again?

16 A I believe it was January of 2013. I came home from
17 my dad's, and it was my mom's turn to see her for
18 the week. And he was helping my mom in the yard
19 and raking. And I think he mowed the grass. He
20 was just helping her do some housework because she
21 was no longer married.

22 Q Did you get introduced to him or did you recognize
23 each other?

24 A I did not recognize him. I didn't find out till
25 later that he had been a friend of Sam's. And my

1 mom did introduce me to him.

2 Q Okay. After that, did you have an opportunity to
3 interact with Mr. Rowley?

4 A Yes, ma'am.

5 Q Describe your relationship with Mr. Rowley.

6 A It started out just, you know, casual. He was a
7 friend of my mom's and they started dating. And I
8 liked him fine. We got along pretty well, we
9 didn't argue that often -- or that often at all,
10 actually.

11 Q Okay. And so you got along?

12 A Yes, ma'am.

13 Q Everything was fine?

14 A Uh-huh.

15 Q Do you remember an incident about the end of May,
16 beginning of June?

17 A Yes, ma'am.

18 Q Tell the Court about that incident.

19 A It was, I believe, the last day in May, a Friday.
20 I needed a dress for a wedding that we were going
21 to the next day. And it was going to be in a
22 Catholic church here in downtown and I didn't own a
23 dress to wear because I didn't like them and I
24 needed one to go to this wedding.

25 And my mom told me she would take me when she

1 got home to find a dress. And when she got home,
2 her and Chris started arguing, and they were in the
3 bedroom for quite a long time. And we didn't end
4 up going to Augusta till probably 7:00 o'clock that
5 night, maybe an hour or so after she got home. And
6 we went --

7 Q Was the door to the bedroom open or closed?

8 A Closed. But I could hear them arguing.

9 Q Okay. Loudly?

10 A More muffled, but it wasn't necessarily quiet
11 either.

12 Q All right. Did you go to Augusta that day?

13 A Yes, ma'am, we did.

14 Q Tell me about that.

15 A She got in the car and -- I had been waiting on
16 her. And she fixed her makeup and we went to go.
17 And she cried the entire way there. She wouldn't
18 talk and she wouldn't say anything. I kept asking
19 her what was wrong. And she kept telling me it was
20 fine, it was fine. But she cried the entire way
21 there.

22 And when we got to Augusta, probably 20 to 30
23 minutes later, she had cried every bit of makeup
24 she had on off and she had to fix it again, she had
25 been crying so much on the way there.

1 Q And did your mom's phone ring at all on the way to
2 Augusta?

3 A Not on the way, no, ma'am.

4 Q Once you got to Augusta, did she have occasion to
5 have phone calls?

6 A Yes, ma'am, when I was trying on dresses in the
7 store, I would come out and she would be on the
8 phone. I'd -- she was saying she had to go, that
9 we were trying to check out and leave.

10 Q And was there another incident about a week later?

11 A Yes, ma'am. I believe it was a Thursday, the first
12 few days of June. It was the last day of school
13 and it was a half day. And I had asked if my
14 boyfriend at the time, N. , could come home with
15 me. And his mom said it was fine and my mom said
16 it was fine as long as Chris would be there to
17 watch us and my little sister. And so it was fine.

18 And we came home -- and we got home and Chris
19 was not there like he said he'd be and our ride had
20 already left. So we were kind of confused as to
21 why he wasn't home.

22 Q What did you do?

23 A I called my mom. She was like, Don't worry about
24 it. Just wait in the living room in a common area,
25 you know, don't go in your room with him. And