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STATE OF SOUTH CAROLINA

VOLUME III OF III

S.C. SUPREME COURT

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBIN RENEE HERNDON,

APPELLANT

APPELLATE CASE NO. 2016-001109

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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 Chris should be there soon. And eventually he did
2 show up.

3 Q And why was he supposed to be there?

4 A Just kind of super -- you know, supervise. He had
5 kids of his own, so mom was comfortable with him
6 supervising us because, you know, she didn't want
7 to leave two 14-year-olds that were dating by
8 themselves at home.

9 Q He was a chaperone?

10 A Yes, ma'am.

11 Q Okay. So he ends up coming; correct?

12 A Yes, ma'am.

13 Q Okay. Did N. live near you?

14 A No, ma'am. He lived probably 25, 30 minutes from
15 me.

16 Q Where?

17 A Silver Bluff. I lived in North Augusta and it was
18 probably a 25-minute drive to his house.

19 Q Okay. How was N. supposed to get home?

20 A He called his mom and asked her how he needed to
21 get home. And she asked if we could meet her. And
22 we agreed and told her we would meet her at the
23 Walgreen's in Clearwater.

24 Q Why Walgreen's in Clearwater?

25 A It was kind of a halfway point. We both knew where

1 it was. We didn't really know where anything in
2 Silver Bluff was, so she agreed to meet us there
3 because we knew where it was.

4 Q Okay. Had your mom met N. 's mom prior to this?

5 A They had maybe waved or said hey, but they never
6 really introduced themselves.

7 Q So when it is time for N. to go home, who gets
8 in the car?

9 A Me, N. and my mom.

10 Q Okay. Was Christopher Rowley with you?

11 A No, ma'am.

12 Q Why?

13 A He wanted to go and my mom told him it was fine,
14 she'd take us, to stay with E.N. . And he really
15 wanted to go.

16 And she said, Well, you know, it's N. 's
17 mom. I want us to just us introduce ourselves, you
18 know, not overcomplicate anything, just a little
19 introduction.

20 And he really, really wanted to go.

21 Q So he was disappointed?

22 A Yes, ma'am.

23 Q Was there any communication between your mom and
24 Chris during the ride?

25 A Not on the ride there, no, ma'am.

1 Q And did you drop N. off at Walgreen's?

2 A Yes, ma'am. He left with his mom.

3 Q So his mom came?

4 A Uh-huh.

5 Q Picked him up. Okay. Then what happened?

6 A He left. And I assumed we were going to go home.

7 And she said, K.N. , I need to talk to you.

8 And I said, Okay.

9 And she said, It's very serious, I need you to
10 listen.

11 I said, Okay.

12 She said, You're smart, you know, I know you
13 know what's going on. You know, when you see stuff
14 and you're not going to be completely oblivious.
15 She said, I notice you -- you know me and Chris
16 argue.

17 And I said, Well, yes, ma'am.

18 She said, I want you to know he's been putting
19 his hands on me.

20 And I said, you know, What do you mean putting
21 his hands on you?

22 And she said, He's gotten physical with me.

23 And I said, What are you going to do?

24 And she said, I'm not sure. She said, you
25 know, I want to get him help. She said, I don't

1 know what's wrong or why it's happening. You know,
2 I don't know why he's doing it.

3 And, you know, like I said, I was in complete
4 shock. I was not expecting her to tell me that.

5 Q And those were her words, he was putting his hands
6 on her?

7 A I believe maybe he had gotten physical or he had
8 hit me before, something along those lines.

9 Q Okay. How did that make you feel?

10 A Scared, because he was staying with us, and I had
11 not seen it.

12 Q Did your mom say what she was going to do about it?

13 A She said they had talked about it and they were
14 going to maybe try to get him help or try to see a
15 therapist, or something of that nature. And that
16 if it didn't stop, she was going to have to evict
17 him.

18 Q And while you and your mom are having this
19 conversation, what is happening in relationship to
20 the phone?

21 A Like I said, he had not really contacted us on the
22 way there, but her phone was going off. And she
23 checked it and he was texting her wanting to know
24 where she was. And she actually made me -- she
25 said that if we got home and he asked what took so

1 long to lie and say that N. s mom talked a lot
2 and that's what took so long so he didn't suspect
3 she had been telling me what was going on.

4 Q All right. So let's back up a little bit. You had
5 this conversation with your mom?

6 A Yes, ma'am.

7 Q And you said there were texts?

8 A Yes.

9 Q How did you know there were texts?

10 A Like I said, the phone kept going off and he was
11 wanting to know where she was. And I believe she
12 showed me the phone. And she said, This is how he
13 talks to me. Because she got like she was going to
14 cry. And she said, This is now he talks to me.

15 And it said, I hope you crash on the way home
16 and die, bitch.

17 Q All right. Now, let's back up to prior to that,
18 okay, or at any time. Had you noticed anything
19 before this conversation about your mom that was
20 unusual?

21 A Like I said, with the dress thing, she was very
22 upset and they were arguing and I thought that was
23 weird. And I had noticed maybe handprints on her
24 arm once or twice. And I had seen them playing on
25 the couch and she'd go falling and he would grab

1 her and I thought that's what it was from. When
2 she told me what was going on, I thought maybe that
3 was not what was going on.

4 Q Did it cause you to be more vigilant about paying
5 attention?

6 A Yes, ma'am, it did.

7 Q Did you witness an incident on the porch?

8 A Yes, ma'am, I did.

9 Q Tell the Court about that.

10 A It was during the summer. I remember because I was
11 not in school and I didn't have to go to bed at a
12 certain time. I was in my bedroom and I was
13 watching TV and I came out trying to find my mom.
14 And I was walking through the house trying to find
15 her. And they spent a lot of time on the porch
16 smoking and talking. And so I was like, okay, well
17 they're on the porch then. And I went to open the
18 glass door and I took maybe one foot out and went
19 to open it. And when I looked over, she was pinned
20 up against the wall of the porch and Chris was
21 hovering over her. And I immediately walked back
22 in and went in my room. And I didn't know if they
23 had seen me or not, and I didn't want him to know
24 that I had seen it. I didn't want him to be mad at
25 her for me knowing what was going on.

1 Q So it didn't seem like a romantic hovering in the
2 corner?

3 A No, ma'am.

4 Q Did you ever have occasion to notice bruising on
5 your mom?

6 A Yes, ma'am. I noticed she had, like I said, the
7 handprints, and she'd have them on her arms, and
8 the black eye. I kept asking her where she got the
9 black eye and she wouldn't tell me. She just blew
10 it off like she didn't want to discuss it.

11 Q As the summer progresses, can you tell the jury
12 what the atmosphere was like in the house?

13 A It seemed fine. Like I said, me and Chris didn't
14 really argue that much, but I knew what she told me
15 and I would notice, you know, when it was hostile
16 or uncomfortable between them. Like maybe they had
17 been arguing, I would notice it when I had not
18 before she had told me or we had the conversation
19 about him putting his hands on her.

20 Q How would Chris treat your mom when there were
21 other people present?

22 A They seemed to get along fine. You know, he was,
23 you know, a little affectionate, maybe put his arm
24 around her or something. They didn't really argue
25 a lot in public or anything.

1 Q Again, can you describe your relationship with
2 Mr. Rowley?

3 A We got along pretty well. We would kid around.
4 Like I said, I really did like him. He got -- he
5 had kids where Sam, my mom's second husband, had
6 not. And Chris knew what it was like to have kids
7 and, you know, be a parent. And I really did get
8 along with him pretty well.

9 Q Okay. He was a good guy, but did you ever
10 experience any kind of outburst of anger by
11 Mr. Rowley?

12 A Yes, ma'am, I believe it was over the summer as
13 well. Me and my mom were arguing over something
14 silly in the kitchen, and we were going back and
15 forth. And I went to walk away and go into my
16 bedroom and shut the door because I didn't like me
17 and my mom arguing -- or I don't like arguing at
18 all. And I went to shut the door, and I didn't
19 realize he had followed me, and I shut the door in
20 his face. And he kicked it open and started
21 screaming at me.

22 Q When you say you didn't realize he was following
23 you, were you intentionally trying to slam the door
24 in his face?

25 A No, ma'am. Like I said, I don't like arguing and,

1 you know, being in a hostile situation. I was just
2 trying to go to my room and not argue with my mom
3 and shut the door.

4 Q And shut the door?

5 A Yes, ma'am.

6 Q Okay. And then what happened?

7 A He kicked the door open and it split the door. And
8 he came in and he was screaming, and it scared me
9 so bad. Like I said, it was -- I was more scared
10 because I didn't know he was even behind me. And
11 he came in and was yelling at me about I was being
12 disrespectful and I wasn't going to talk to her
13 that way and I needed to respect her. And I did, I
14 was being disrespectful. But he scared me so bad,
15 I didn't talk to them for about an hour. I stayed
16 in my room. I was crying, I was shaking. I was --
17 it literally scared me so bad I almost peed myself.

18 Q So it was upsetting, fair to say?

19 A Yes, ma'am.

20 Q Was the door split before Mr. Rowley hit it?

21 A No, ma'am. It split almost all the way to the top
22 when he kicked it.

23 Q Did you ever have an opportunity to see your mom
24 get physical with Chris?

25 A No, ma'am.

1 Q How would she deal with him?

2 A If we were in public or maybe at dinner or
3 something and he was trying to either start an
4 argument or maybe she could tell it was going to
5 lead to an argument, she would be like -- you know,
6 she kind of look at him and be like Chris, please
7 stop. Chris, please stop. She didn't want to
8 argue in front of us or other people.

9 Q So you would be half the time at your dad's house
10 and half the time with your mom; correct?

11 A Yes, ma'am.

12 Q Okay. When you would come home to your mom's
13 house?

14 A Yes, ma'am.

15 Q Would you ever notice things around the house that
16 were unusual?

17 A Yes, ma'am, I would notice stuff would be broken.
18 I went to shut the door one day, the wooden door
19 that was shown in the pictures, the white one, and
20 she had this Palmetto tree picture behind the door
21 and the glass had been broken out of it. And I
22 thought maybe it had been broken, but I didn't ask
23 until later. And she said that he had -- it had
24 been broken in an altercation.

25 And then the bed post -- I was getting onto

1 the bed one day and the part came off the bed, the
2 wooden part. I asked her what happened. And she
3 said they were playing around and it broke.

4 And then I noticed there was a hole in the
5 bathroom wall.

6 The curio cabinet in the kitchen, it was glass
7 all the way around, and on the left side the bottom
8 one had been broken. The glass piece was actually
9 broken out and there were pieces of glass inside
10 the curio cabinet.

11 Q Any damage to the screen door?

12 A Yes, ma'am. When the screen door would shut, it
13 would lock and it had a little knob you could turn
14 to lock it and the knob no longer worked to lock
15 it. The lock would just turn and turn and turn.
16 It would not lock.

17 Q As you are noticing these things, did you ever tell
18 anyone about what you were observing?

19 A No, ma'am.

20 Q Why?

21 A I didn't want anyone to know, and my mom asked me
22 not to tell anyone.

23 Q Did she tell you why?

24 A She said they were -- she didn't want anyone to
25 know, you know, because it's not very -- a good

1 thing for people to know, you know, it's
2 embarrassing. But they were -- like I said, they
3 were going to try to get him help and try to figure
4 out maybe if something was going on and see why he
5 was acting like this.

6 Q K.N. back in November of 2013 when this happened,
7 how did you find out?

8 A I was -- it was a Wednesday. I believe I was
9 getting ready for church and I was in there doing
10 my hair and stuff. And my dad came home from work
11 maybe 4:00, 4:00 o'clock, 4:30. And, of course, I
12 wanted to see him, you know, talk to him.

13 And he said, I need to talk to you guys.

14 And I said, What's wrong?

15 And he said, K.N. , I need you to sit down
16 now.

17 And I said, What's wrong?

18 And he said, Go get your sister. I need you
19 to come in here and sit down.

20 And we sat on the couch and he told us there
21 had been an incident at the house and that Chris
22 had been shot and that they had been calling him
23 all day trying to contact him because that night we
24 were actually supposed to go back to my mom's. And
25 they were trying to let him know, you know, don't

1 bring the girls home because there's police
2 officers everywhere and mom is not there.

3 Q How did you feel when you got the news?

4 A Partially responsible, because I knew what was
5 going on and I didn't -- I didn't say anything.

6 Q Did you have an opportunity to speak with your mom
7 that day?

8 A I did, once or twice on the phone. She called me
9 from like an unknown number, so I could not call
10 her back.

11 Q A brief conversation?

12 A Yes, ma'am, maybe a minute long. Not long at all.

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

14 (Pause.)

15 MS. HINDS: No further questions. Answer any
16 questions the State may have.

17 THE COURT: Yes, sir?

18 CROSS-EXAMINATION

19 BY MR. JUSTIS:

20 Q Good morning, K.N. . K.N. , Christopher, at some
21 point in time, he moved in and he was living there
22 with your mom; is that correct?

23 A Yes, sir.

24 Q Do you remember when that was approximately?

25 A Maybe March.

1 Q Okay. So in March. And then I think you mentioned
2 that at that point in time, you were kind of
3 spending 50/50, half your time with your mom and
4 half your time with your dad; correct?

5 A Yes, sir.

6 Q And initially when he first moved in, you really
7 liked him, got along with him. When you first met
8 him, he was kind of helping your mom with some
9 yard -- prior to him moving in, he had been helping
10 your mom with like things around the house,
11 yardwork, and stuff like that?

12 A Yes, sir.

13 Q Is that correct? Then essentially you discussed a
14 couple of incidences. One kind of near the end of
15 May. That was the incident with the dress that you
16 needed for a wedding?

17 A Yes, sir.

18 Q Is that correct?

19 A Yes, sir.

20 Q And you were supposed to go buy a dress for this
21 wedding that was happening the next day. And I
22 think you testified that your mom and -- you were
23 in the bedroom with your door closed and you could
24 hear your mom and Christopher arguing about that;
25 is that correct?

1 A I was in my bedroom part of it. When I walked out,
2 I could hear them arguing, so I just went back in
3 my room.

4 Q And were they arguing about the dress situation?

5 A I would assume. I couldn't hear what they were
6 saying. I could tell they were arguing.

7 Q Okay. But after that argument, you and your
8 mother, you went and -- essentially, went dress
9 shopping and purchased -- you got the dress;
10 correct?

11 A Yes, sir.

12 Q And you got to go to the wedding the next day?

13 A Yes, sir.

14 Q And then about a week or so later, you said it was
15 like -- that was the situation where your boyfriend
16 came over -- you and boyfriend came home that day?

17 A Yes, sir.

18 Q Is that correct? And Chris was supposed to be
19 there to chaperone, but he was late getting there?

20 A Yes, sir.

21 Q But he showed up eventually; right?

22 A Maybe an hour later.

23 Q Okay. And then later on that evening, when it was
24 time to take N. to meet his mom, that's when
25 Christopher wanted to go with y'all and your mom

1 wouldn't let him; correct?

2 A Yes, sir.

3 Q Okay. And then that kind of led to some kind of
4 phone argument where they were going back and forth
5 on text messages; is that correct?

6 A Yes, sir.

7 Q And that's when she showed you -- told you that he
8 had been hitting her and showed you some mean
9 things that he had been saying in text messages;
10 correct?

11 A Yes, sir, that he sent that night.

12 Q Correct. And of course this completely shocked
13 you? I think you testified you were in complete
14 shock when you found this out, that he had been
15 hitting your mom?

16 A Yes, sir.

17 Q Because up to this point, you didn't have any idea,
18 you didn't see any signs of this happening?

19 A If I had, I hadn't paid them any attention.

20 Q But you never physically -- other than this
21 incident on the porch, you never physically saw
22 Christopher and your mom get into a physical
23 altercation, did you?

24 A No, sir.

25 Q Okay. But it did cause you to be more vigilant, I

1 think you testified?

2 A Yes, sir.

3 Q Okay. But despite being more vigilant, you never
4 saw any physical altercation other than that
5 incident you claimed on the front porch; correct?

6 A No, sir.

7 Q In fact, you kind of characterized your
8 relationship with Christopher as you got along
9 pretty well?

10 A Yes, I really liked Chris a lot.

11 Q Right. Because he had kids, unlike her previous
12 husband, Sam, I think his name was?

13 A Yes, sir.

14 Q In fact, you testified in the previous hearing that
15 Christopher would get mad, he'd kind of walk off,
16 go to the bedroom?

17 A Yes, sir.

18 Q But you never saw him -- you never saw him
19 physically break anything, did you, other than I
20 know there's a situation with the bedroom door?

21 A Oh, yes, sir, I saw the bedroom door incident.

22 Q And that was -- and I think you said you were in an
23 argument with your mom, you were kind of being
24 disrespectful, so you kind of walk off to go to
25 your room. And when you get to your room, you kind

1 of shut the door behind you and it kind of shuts in
2 his face; is that correct?

3 A Yes, sir. I accidentally shut it in his face.

4 Q And then he kicks it and I think you said the door
5 broke as a result?

6 A Yes, sir. It's still broken.

7 Q And when he kicked it, I assume that was kind of
8 loud?

9 A Yes.

10 Q It scared you?

11 A Yes, sir.

12 Q And then having spent kind of 50/50, you'd spend
13 like 15 days and 15 then days, is that how it
14 worked?

15 A Yes, sir.

16 Q Okay. So I think you testified there were times
17 you would come back from your 15-day stay with your
18 dad and you'd notice things around the house that
19 were broken?

20 A Yes, sir.

21 Q Is that correct? And I think Ms. Hinds had asked
22 you, you know, kind of why didn't you tell somebody
23 about this. And you testified that your mom asked
24 you not to; is that correct?

25 A Yes, sir.

1 Q Because you spent half your time -- you could have
2 told your dad; correct?

3 A I didn't confide much in my dad. We didn't get
4 along.

5 Q So you really didn't get along with your dad?

6 A No, sir.

7 Q In fact, when you turned 17, you moved out of your
8 dad's house; correct?

9 A Yes, sir.

10 Q And where did you move to?

11 A With my mom.

12 Q Okay. So you are currently living with -- you've
13 been living with mom since you turned 17?

14 A Since July 20th, 2015, yes, sir.

15 Q Of this past year?

16 A (Nods affirmatively.)

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

18 (Pause.)

19 BY MR. JUSTIS:

20 Q K.N. you know, we talked about when you first
21 kind of met Chris or one of the first times I guess
22 you saw him at the house, he was kind of doing some
23 work for your mom around the house?

24 A Yes, sir.

25 Q And is that because your mom had injured her knee

1 back in like mid-February?

2 A I'm not sure. I remember she told me he was
3 helping her out because with the divorce with Sam,
4 no one was there to cut the grass and really keep
5 the yard up. And he was doing her a favor and
6 helping her with that because, like I said, Sam was
7 not there for that.

8 Q Okay. So you don't remember her injuring her knee?

9 A I don't. I came home and she had a brace on it. I
10 don't remember much about it, though.

11 Q So that would have been about mid-February, back in
12 that timeframe?

13 A Maybe.

14 Q You remember Chris helping to drive her around back
15 then?

16 A I mean, they would go places. I didn't pay
17 attention to really who was driving.

18 MR. JUSTIS: Okay. No further questions.

19 THE COURT: Anything else?

20 MS. HINDS: No, Your Honor.

21 THE COURT: All right. Ma'am, you may step
22 down.

23 (Witness steps down.)

24 THE COURT: Ladies and gentlemen of the jury,
25 as she steps down, this is a good time for us to

1 take our morning break. We'll go ahead and take
2 about 10 or 15 minutes.

3 Thank you.

4 (WHEREUPON, the jury retires to the jury
5 room at 11:29 a.m.)

6 THE COURT: We'll take about 10 or 15 minutes.

7 (WHEREUPON, a short break was taken.)

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

9 All right. Are you ready to bring them back
10 in?

11 MR. JUSTIS: Yes, Your Honor.

12 THE COURT: You can bring them in.

13 (WHEREUPON, the jury came into open
14 court at 11:50 a.m.)

15 THE COURT: All right. We're ready for our
16 next witness.

17 MR. LEIENDECKER: The Defense would call Danny
18 McDaniel.

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 the
24 Court and the 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: Yes, ma'am.

3 THE CLERK: Have a seat in the witness box,
4 stating your full name, spelling your last for the
5 court, please.

6 (Witness seated.)

7 THE WITNESS: Danny Wayne McDaniel,
8 M-C-D-A-N-I-E-L.

9 DANNY WAYNE MCDANIEL,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LEIENDECKER:

13 Q Mr. McDaniel, will you please tell the jury what
14 your occupation is, what you do for a living?

15 A I'm a licensed private investigator in South
16 Carolina, regulated by SLED. My license number is
17 PDC2199.

18 Q How long have you been a private investigator in
19 South Carolina?

20 A Since 2002.

21 Q Okay. Before you became a licensed private
22 investigator in South Carolina, did you have
23 another position?

24 A Yes, sir, I worked for the South Carolina Highway
25 Patrol, and I retired in 2002.

1 Q How long were you with the highway patrol?

2 A From 1989 until 2002.

3 Q Okay. After you retired, did you go directly into
4 private investigation work?

5 A Yes, sir, I took two days off.

6 Q Okay. Mr. McDaniel, do you have occasion to do
7 investigative work for the First Circuit Public
8 Defender's Office?

9 A Yes, sir, I do.

10 Q Okay. Do you also have a private investigative
11 firm that does work besides public defense work?

12 A Yes, sir, I do, for individuals and for private
13 attorneys.

14 Q Okay. Did my office contact you and contract with
15 you to do investigative work in the case of Robin
16 Herndon here in Aiken County?

17 A Yes, sir.

18 Q And, if you know, when about did you start doing
19 work on this case?

20 A My initial case work began on November 26th, 2013.

21 Q Okay. And, if you remember, where did you go or
22 where were you on November 26th, 2013?

23 A I left my residence in St. Matthews and traveled
24 over to in Aiken, or North
25 Augusta, Aiken.

1 Q And that's where you started your investigation
2 that day in 2013?

3 A Yes, sir, that's correct.

4 Q That was the 26th, you say?

5 A Yes, sir.

6 Q So that would have been literally 20 days after the
7 event that happened at Sudlow Lake Road?

8 A Yes, sir.

9 Q All right. Mr. McDaniel, I'm going to hand you
10 some photographs that have been previously marked,
11 I think all of them by the Defense, and ask you if
12 you can look at these and identify the subject
13 matter of these photographs. That's Defense
14 Exhibit 24, Defense Exhibit 28 -- obviously, I
15 don't have them in any kind of order -- Defense
16 Exhibit 26, Defense Exhibit 25, and Defense Exhibit
17 27. Not that I'm anal, but let me see if I can get
18 them in a better order. Okay. I hand you, I
19 believe, these five photographs and ask if you
20 recognize the subject matter in those pictures?

21 A Yes, I do.

22 Q Okay. Can you tell me what you see in Picture
23 Number 24?

24 A Picture 24 is the residence of Robin Herndon. It
25 is located at

1 Q And prior testimony established that those pictures
2 were taken by law enforcement on November 6th,
3 2013. Let me ask you, when you arrived 20 days
4 later, other than there being people in that
5 photograph, is that substantially the scene that
6 you saw at Sudlow Lake Road?

7 A Yes, sir. The cars are different and there were no
8 people. These people were not in the picture.
9 That's correct.

10 Q How about the surrounding area, the trees and the
11 foliage, is that substantially similar to what you
12 saw in 2013?

13 A Yes, sir, it is.

14 Q Okay. How about Number 25, can you tell me what
15 that is?

16 A It's a picture of a blue, looks like a Honda CRV,
17 and the side of Robin Herndon's house with the
18 steps and the railing going up and the -- it is
19 taken in the direction of -- well, that's what I
20 see.

21 Q Okay. Is it taken from -- if you're standing and
22 looking at her property, is it taken from the left
23 side of her property looking to the right or the
24 right side of her property looking to the left?

25 A If I'm standing in front of her house on Sudlow

1 Lake Road looking at the house, it's taken from the
2 left with a view towards the right.

3 Q Okay. And would that be the direction towards
4 Ms. Lacey Burton's home?

5 A Yes, sir, it would.

6 Q Can you see Lacey Burton's home in that photograph?

7 A Well, yes, sir, I can barely see it in the bottom
8 corner right here. That's -- it's kind of hard to
9 see, but you can see it. I mean, I know it's there
10 and I can.

11 Q Okay. Can you look at the next photograph, I
12 believe Number 25. If you'll check me on that.
13 Well, the next one --

14 A That was 25.

15 Q Okay, I'm sorry, 24, 25. The next photograph, is
16 that 26 or 27?

17 A Twenty-six.

18 Q Okay. Can you -- I'm sorry, I get ahead of myself.
19 The scene that is depicted in Number 25, the one
20 with the Honda CRV?

21 A Yes, sir.

22 Q Other than the car, does that substantially
23 resemble what you saw on the property November
24 26th, 2013?

25 A Yes, sir, but there's also a gentleman in the --

1 right here. Of course, he wasn't there either when
2 I was, yes, sir.

3 Q Okay. I'm not looking right at it, so you're going
4 to take -- the gentleman wasn't there either?

5 A That's correct.

6 Q There was nobody there when you were there that
7 day? When you were standing in the front yard
8 observing?

9 A Yes, sir. Yes, sir.

10 Q All right. Other than the people that were there
11 or the vehicles that were there on the 6th of
12 November, is that substantially the scene you saw
13 on the 20th -- 26th?

14 A Twenty-sixth. Yes, sir, it is.

15 Q All right. The next one. And tell me what number
16 that is.

17 A Twenty-six.

18 Q All right. Number 26, what is that a picture of?

19 A It is a picture of the silver Dodge Charger.
20 There's a -- it looks like a police car right here
21 on the side of the road, on Sudlow Lake Road. And
22 there is some police officers sitting near the
23 trampoline in the front yard.

24 Q All right. Now, and I know none of those things
25 were there when you were there; is that right?

1 A Yes, sir.

2 Q The Dodge Charger, the police, and the police car
3 were not there?

4 A That's correct.

5 Q Taking those out of your identification, where is
6 that view looking from Ms. Herndon's property?

7 A If you were standing in front on Sudlow Lake Road
8 looking at Ms. Herndon's house, it would be taken
9 from the left side looking toward the right side.

10 Q Up Sudlow Lake Road?

11 A Yes, sir.

12 Q Towards the residence of Ms. Burton?

13 A Yes, sir. It would be looking in the direction of
14 the residence of Ms. Burton.

15 Q Taking the cars and the police and the police car
16 out, does that picture substantially resemble what
17 you saw on the 26th day of November 2013?

18 A Yes, sir.

19 Q All right. Next one, please. Tell me what that
20 is.

21 A That's picture -- Defendant's 27. Defendant's 27.

22 Q I don't think I have any questions about that.
23 Next one?

24 A Defendant's Exhibit 28.

25 Q Okay. Can you tell me what that is?

1 A That's a picture of the front of Robin Herndon's
2 house as seen from the front of -- from Sudlow Lake
3 Road.

4 Q Okay. And the surroundings, are those
5 substantially similar to what it looked like when
6 you were there on the 26th of November of 2013?

7 A Yes, sir, except there is a chair in this picture
8 that was not there when I was there.

9 Q Okay. Other than that, it looks --

10 A Yes, sir.

11 Q -- substantially similar?

12 A That's correct, yes, sir.

13 Q No further questions about that. Thank you.

14 MR. LEIENDECKER: These are already in
15 evidence, Your Honor.

16 THE COURT: Okay.

17 BY MR. LEIENDECKER:

18 Q And I'd also now like to hand you two other
19 photographs, Number 20 and 23, Defendant's Exhibits
20 20 and 23, and ask you if you recognize those
21 pictures?

22 A Picture Number 20, yes, sir, I recognize it.

23 Q And Number 23, do you also recognize it?

24 A Yes, sir, I do.

25 Q Those have been previously identified by a witness

1 as having been taken from Ms. Burton's residence
2 looking back towards Robin Herndon's residence on
3 Sudlow Lake Road. Do you know where these pictures
4 came from?

5 A Yes, sir, I took these pictures.

6 Q Okay. Do you know what date you took these
7 pictures?

8 A On February 25th, 2016.

9 Q Okay. And you took these pictures from the porch
10 and from Ms. Burton's front yard?

11 A Yes, sir, I did.

12 Q Okay. Do those pictures substantially reflect what
13 you saw that day?

14 A Yes, sir.

15 Q As far as the amount of trees between the
16 properties?

17 A Yes, sir, they do.

18 Q I don't have any further questions about those.
19 Thank you.

20 MR. LEIENDECKER: These are also in evidence.

21 I have two exhibits to be marked.

22 (WHEREUPON, Defendant's Exhibit No. 29
23 was marked for identification only.)

24 (WHEREUPON, Defendant's Exhibit No. 30
25 was marked for identification only.)

1 BY MR. LEIENDECKER:

2 Q I'm going to hand you what has been marked now as
3 Defendant's Exhibit Number 29 and ask you if you
4 recognize that picture?

5 A Yes, sir, I do.

6 Q Who took that picture?

7 A I did.

8 Q And do you know when you took that picture?

9 A Yes, sir, on the 25th of February, 2016.

10 Q Can you describe to us what that photograph depicts
11 or shows?

12 A This is a glass door and the --

13 Q Glass door where?

14 A Of Robin Herndon's house on the outer door or the
15 storm door, whatever you want to call it. What it
16 is, is it is looking at the locking mechanisms and
17 closure of the inside of the door that actually
18 catches in the wall when you shut it.

19 Q Okay. And when you got there that day, did you
20 open the door?

21 A Yes, sir, I did.

22 Q Did you have to turn the handle to open the door or
23 did it just pull open?

24 A I just pulled it open.

25 Q Okay. So the finger in that photograph is

1 indicating or pointing to what?

2 A That's the actual catch when you close the door
3 that sort of makes a snap and it keeps the door
4 from, I guess, being blown open by the wind or
5 pulled open without mashing the -- you know,
6 turning the handle or mashing the handle.

7 Q Does it appear to be missing or broken?

8 A Yes, sir, it's broken.

9 Q I don't have any further questions regarding that
10 photograph. Thank you.

11 MR. LEIENDECKER: The Defense would move
12 Exhibit 29 into evidence.

13 THE COURT: Any objection?

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

15 (WHEREUPON, Defendant's Exhibit No. 29
16 was admitted into evidence.)

17 BY MR. LEIENDECKER:

18 Q Mr. McDaniel, on your visit or visits in
19 November/December of 2013, did you have an
20 opportunity to go into Ms. Herndon's residence?

21 A Yes, sir, I did.

22 Q And when you went into her residence, did you then
23 have an opportunity as part of your investigation
24 to take measurements in the front room and kitchen
25 area?

1 A Yes, sir, I did.

2 Q I'm going to hand you what has been marked as
3 Defendant's Exhibit 30 and ask you if you recognize
4 it?

5 A Yes, sir, I do.

6 Q And can you tell us what that is?

7 A This is a copy of the original hand-drawn, I guess
8 you would say, outline with the measurements of the
9 interior of the house --

10 Q Okay.

11 A -- of Ms. Robin Herndon.

12 Q All right. And you have the actual measurements
13 written there?

14 A Yes, sir, I do.

15 Q Okay. Not to try to in any way impugn your drawing
16 ability, Danny, but are the objects drawn to scale?

17 A No, sir, not at all.

18 Q Are the measurements that are written down actual
19 measurements that you took?

20 A Yes, sir, I took them with a tape measurer.

21 Q I ask that because as I was looking at it and
22 reviewing it, you drew the sectional sofa in, I
23 see, the L-shape in the middle?

24 A Yes, sir.

25 Q And I commented to you that the side that is the

1 shorter side says it is over eight feet long in
2 your drawing?

3 A Yes, sir.

4 Q The side that's the longer side says it is
5 seven feet long; right?

6 A Yes, sir, that's correct.

7 Q You're not a draftsman, are you?

8 A No, sir.

9 Q All right. But the measurements are accurate and
10 you took them that day when you were there; is that
11 right?

12 A Yes, sir, I did.

13 Q Did you take any other measurements outside the
14 residence that day?

15 A Yes, sir, I did.

16 Q Can you tell me, did you take a particular
17 measurement concerning the distance from
18 Ms. Herndon's front yard to that spot in
19 Defendant's Exhibit 23, the bare spot in the front
20 of Ms. Lacey's yard?

21 A Yes, sir.

22 Q Lacey Burton's yard?

23 A I did.

24 Q How far was that distance?

25 A From the house, basically the door to the kind of

1 the bald spot in the picture where she parks her
2 car -- and I guess the grass is not there because
3 that's where she parks her car -- is 225 feet.

4 Q Okay. Thank you.

5 A Yes, sir.

6 MR. LEIENDECKER: At this time, I would also
7 move State's Exhibit 30, the diagram, into
8 evidence.

9 MR. JUSTIS: No objection, Your Honor.

10 THE COURT: Defendant's -- is that State's?

11 MR. LEIENDECKER: Defendant's Number 30, yes.
12 Did I say State?

13 THE COURT: Yes, you did.

14 All right, it is entered without objection.

15 MR. LEIENDECKER: Thank you.

16 (WHEREUPON, Defendant's Exhibit No. 30
17 was admitted into evidence.)

18 MR. LEIENDECKER: One moment, Mr. McDaniel.

19 (Pause.)

20 MR. LEIENDECKER: Mr. McDaniel, I believe at
21 this point that's all the questions I have for you
22 regarding your work.

23 THE WITNESS: Yes, sir.

24 MR. LEIENDECKER: Thank you.

25 THE COURT: Answer any questions the State may

1 have.

2 MR. JUSTIS: Thank you, Your Honor. May it
3 please the Court?

4 CROSS-EXAMINATION

5 BY MR. JUSTIS:

6 Q Good afternoon, Mr. McDaniel.

7 A Good afternoon.

8 Q The first initial pictures that you looked at
9 there, they were pictures, you assumed, were
10 provided in discovery taken by crime scene
11 officials that day; correct?

12 A Yes, sir, that's what they appear to be.

13 Q Right. And it is your testimony, other than, you
14 know, the people, the cars, stuff like that, the
15 fixed structures and the plants, trees, things like
16 that that are in the picture were there when you
17 showed up three weeks later --

18 A Yes, sir, that's correct.

19 Q -- at the scene? Did you -- when you showed up
20 three weeks later, did you happen to take any
21 pictures that day?

22 A No, sir, I did not.

23 Q Okay. You were just essentially there, just to
24 kind of --

25 A Just to kind of get a feel of, you know, what's

1 going on, just kind of just starting.

2 Q Right. Was it on that date that you were able to
3 get inside and create the sketch?

4 A Yes, sir, that's correct.

5 Q Okay. So on that day, you essentially were able to
6 create this diagram. I think you testified, you
7 know -- I mean, it's not to scale, but the
8 measurements from wall to wall or length of the
9 couch, all that's accurate?

10 A Yes, sir, it is correct.

11 Q You used a tape measurer to do that. And how many
12 times did you go out there, would you say, during
13 the course of this case?

14 A At least five, maybe ten, yes, sir.

15 Q So you have been out there multiple times?

16 A Yes, sir, that's correct.

17 Q And the pictures, the Defense pictures, the ones --
18 the tree pictures, like this, State's 23 and 20 --
19 and 20, 20 and 23, the pictures of the trees, those
20 you took February 25th of this year; correct?

21 A 2016, that's correct, yes, sir.

22 Q Correct. When you were out there, did you have the
23 opportunity to meet with Ms. Lacey that day when
24 you went out there?

25 A On which day, sir?

1 Q The day you took those pictures?

2 A No, sir, I met with her back in 2013.

3 Q Okay. You met with her, and of course you had a
4 copy of her written statement of what she said back
5 when it happened?

6 A Well, yes, sir, and I also talked to her.

7 Q Okay. But -- so you had access to what she had
8 said she had seen and where she was, and all that
9 kind of thing?

10 A Yes, sir.

11 Q But when you actually took the pictures, she wasn't
12 with you that day, was she?

13 A The pictures were taken on the 25th of February,
14 2016.

15 Q Right. And was she with you that day?

16 A No, sir, she wasn't.

17 Q So you took those. And I think you testified one
18 of the pictures is taken from, I guess, a bald spot
19 or a worn spot in the front yard where you assumed
20 that's where the vehicle was parked that day?

21 A I didn't assume that's where it was parked, that's
22 where she told me that it was parked.

23 Q On a previous occasion?

24 A On a previous occasion.

25 Q Okay.

1 A Previous to the 25th of February 2016.

2 Q Okay. And that's the day -- it was back in
3 February when you measured from that spot to some
4 point in the front yard, the Defendant's front
5 yard; is that correct?

6 A Correct, yes.

7 Q You used the tape measurer and that's 225 feet;
8 correct?

9 A Yes, sir.

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

11 (Pause.)

12 MR. JUSTIS: Nothing further.

13 THE COURT: Yes, sir. Anything else?

14 MR. LEIENDECKER: No, Your Honor. I have
15 nothing.

16 THE COURT: Sir, you may step down.

17 (Witness steps down.)

18 THE COURT: Call your next witness.

19 MR. LEIENDECKER: May we approach, Your Honor?

20 THE COURT: Yes, sir.

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

24 THE COURT: All right. Ladies and gentlemen
25 of the jury, at this time, we're going to -- she

1 tells me that your lunch is here, so we're going to
2 go ahead and take a lunch break. We'll probably
3 take about 45 minutes again today for lunch, and
4 then we'll come back in for additional testimony
5 from witnesses.

6 Remember, you cannot discuss this case with
7 each other. And if you need to, you want to walk
8 outside and get some fresh air, the bailiffs will
9 accommodate you.

10 All right. Thank you.

11 (WHEREUPON, the jury retires to the jury
12 room at 12:16 p.m.)

13 THE COURT: All right. Let's try to start
14 back by 1:00 o'clock. See if you can get the
15 doctors over here by 1:00 o'clock.

16 MR. LEIENDECKER: Yes, Your Honor, absolutely
17 will. And there may well be one small matter
18 concerning supplementing the record that we can do
19 at 1:00 o'clock as well, if they're not here
20 immediately at that time.

21 THE COURT: Supplementing, you mean the
22 objection made yesterday?

23 MR. LEIENDECKER: Yes. Yes. I mean, they
24 passed up the expungement record and I actually was
25 able to pull from the Clerk's Office the full

1 record of everything that happened regarding that.

2 THE COURT: All right.

3 MR. LEIENDECKER: I understand the argument
4 has passed, I just want to pass that up as
5 supplement.

6 THE COURT: Well, they said they had the same
7 argument regarding the counselor; right?

8 MR. LEIENDECKER: I heard what they said, but
9 I'm not sure.

10 THE COURT: The same objection. I don't know,
11 that they had the same objection to the --
12 something that he told the counselor.

13 MR. JUSTIS: There were some notes -- or there
14 are some things in her notes that we would object
15 to if she were to attempt to testify to, so it
16 might be something we need to handle before she
17 testifies so that she doesn't slip up and say
18 something.

19 MR. LEIENDECKER: Right. We can take that up
20 at that time. And I believe that there are other
21 grounds for that admission, but that is something
22 else we can take up before she testifies, yes.

23 THE COURT: All right. Try to get them here.
24 All right.

25 MR. LEIENDECKER: I'm working on it.

1 THE COURT: All right. Thank you.

2 MR. LEIENDECKER: Thank you.

3 (WHEREUPON, a lunch break was taken at
4 12:18 a.m.)

5 THE COURT: All right. You may be seated.
6 Are y'all ready to bring the jurors in? Is
7 there any -- oh, you wanted to put the issue --
8 some issue on the record.

9 MR. LEIENDECKER: Both doctors are here and we
10 can do that after, Your Honor. The one thing I
11 have informed your clerk and I've informed the
12 State is there is one matter that I neglected or
13 failed to discuss with Mr. McDaniel, something I
14 asked him to do and something that he has done for
15 me in the investigation that deals with just the
16 length of time to smoke a cigarette, basically
17 three or four questions. And I would -- before any
18 other witness would be called since he's just
19 testified would ask that --

20 THE COURT: He's going to testify to what, the
21 time to smoke a cigarette?

22 MR. LEIENDECKER: Yes. Based on the testimony
23 from Ms. Burton concerning a cigarette being smoked
24 in the front yard on the day in question. He's
25 just going to give some generic information

1 regarding the two times that he timed the smoking
2 of a normal regular cigarette to the approximate
3 length that the cigarette was smoked that day.

4 THE COURT: Is he qualified to testify to
5 that? I mean --

6 MR. LEIENDECKER: He's real good with a stop
7 watch, and that's all he's going to testify to.

8 THE COURT: I'll be glad to hear from the
9 State.

10 MR. LEIENDECKER: He's not offering expert
11 testimony.

12 THE COURT: All right yes, sir?

13 MR. JUSTIS: I mean, he's not the same size
14 person. We don't know if it's the same type of
15 cigarette. You know, I mean, there's so many
16 variables. I think it could be misleading to the
17 jury if we're going to put it in as evidence that
18 it takes this long to smoke a cigarette.

19 MR. LEIENDECKER: Well, we'll let it in as
20 evidence and I will clearly demonstrate that that's
21 how long it took Ms. Hinds, the only other person I
22 know who smokes a cigarette, to smoke the
23 cigarette.

24 THE COURT: She might be a slow smoker.

25 MR. LEIENDECKER: Your Honor, she did it twice

1 and she was asked to do it the first time --

2 THE COURT: I have a colleague that smokes
3 cigarettes, and he does it pretty quickly. I don't
4 know -- I mean, I don't know how you can -- if
5 there's a scientific way he can testify as to how
6 long it takes to smoke a cigarette.

7 MR. LEIENDECKER: It is more of his
8 observation, Your Honor, of how long it took this
9 individual. The jury can use it for what it is or
10 isn't worth and it can be argued as to its value,
11 but it doesn't mean that it isn't evidence. It
12 just goes to the weight of the evidence.

13 THE COURT: All right. As to the doctors --
14 we'll come back to that. You're going to call the
15 doctors first; right?

16 MR. LEIENDECKER: I was planning to call him
17 because it's very quick, but if you want me --

18 THE COURT: What about the doctors?

19 MR. LEIENDECKER: The doctors are both here
20 and are both ready.

21 THE COURT: All right. We'll see. Is there
22 an issue, something you all are objecting to
23 regarding one of the doctor's testimony?

24 MR. JUSTIS: Well, Ms. Cummings, obviously
25 some of her assessments that she does are written

1 assessments. She made some comments that -- about
2 him abusing the children, physically abusing the
3 children. You know, it does say physical fights
4 with fiancée. But then it talks about physical
5 fights with his mother, physical fights with the
6 kids in the past.

7 And we have determined -- I mean, we don't
8 know when those happened. I mean, obviously the
9 fiancée, that's one thing, but all these other
10 things we don't know when that happened, how long
11 ago it was in the past. And we would -- you know,
12 under the same theory we talked about yesterday, we
13 would say that those types of comments are
14 inadmissible.

15 THE COURT: Under which rule? Are you saying
16 it is inadmissible?

17 MR. JUSTIS: Yes, ma'am.

18 THE COURT: Under which rule?

19 MR. JUSTIS: Well, first of all, it's hearsay.
20 I mean, he reported this to her. We have no
21 idea -- under the Day case, it says it must be
22 recent. If it's against other people, it has to be
23 recent to show state of mind. We don't know -- it
24 says in the past. We don't know how long ago that
25 was. And we don't know if Ms. Herndon was aware of

1 that, if he had disclosed that to her.

2 So as far as going to her state of mind the
3 date of this incident, if she knew he was violent
4 with his kids in the past or with his mother in the
5 past. I mean, she already testified that she
6 believed that he -- even though he was accused of
7 assaulting his first wife, he said he didn't do it
8 and she testified she believed him.

9 THE COURT: So your objection is not as to the
10 doctor testifying regarding what he told her
11 regarding this relationship, only regarding the
12 other relationships?

13 MR. JUSTIS: Correct.

14 THE COURT: Other relationships, the children
15 and the mother?

16 MR. JUSTIS: Right. If the doctor was asked a
17 specific question, Did he ever relate to you
18 anything about his relationship with the fiancée,
19 if he had ever been physical with her, I guess her
20 answer would be yes. She can't get into specifics.
21 And she doesn't have specifics on here, but as far
22 as the general.

23 MR. LEIENDECKER: There are two distinct
24 differences here, Your Honor. One, these are
25 statements made by the Defendant himself, not

1 denials made by the Defendant himself, but
2 admissions made by the Defendant himself that he --
3 by the victim himself, the alleged victim -- that
4 he did these acts. Therefore, they are statements
5 against his interest.

6 But, more importantly, under 803(4), these
7 statements were given to a psychologist for the
8 purposes of medical diagnosis or treatment. They
9 were questions and answers that she got him to fill
10 in explaining how these problems with his manic and
11 depressive states manifest themselves.

12 And statements made, it says in 403 -- 803(4),
13 for the purposes of medical diagnosis or treatment
14 in describing history, medical, past, present,
15 symptoms, pain, sensations, inception or general
16 characteristics of the cause are admissible when
17 testified to by the doctor.

18 These meet that four-square. These meet that
19 specific exception. It is different than what
20 we're talking about with the deputy.

21 THE COURT: All right. So looking at 803(4),
22 statements made for purposes of medical diagnosis
23 or treatment in describing medical history, or past
24 or present symptoms, pain, sensations, or the
25 inception or general character of the cause or

1 external source thereof insofar as reasonably
2 pertinent to diagnosis or treatment.

3 MR. LEIENDECKER: And this is a psychologist
4 and all this relates to --

5 THE COURT: Did he tell her this or is this
6 something he wrote on --

7 MR. LEIENDECKER: No, this is her notes from
8 the interview. He told her this, that's what she
9 testified to.

10 MR. JUSTIS: And she's a counselor, from what
11 I understand. He goes there for counseling not --
12 because she actually doesn't even give a diagnosis.
13 She says, You need to go see a psychiatrist before
14 I can help you.

15 MR. LEIENDECKER: No, she does give a
16 diagnosis.

17 MR. JUSTIS: No, she doesn't --

18 MR. LEIENDECKER: She states it is
19 non-specific bipolar, he needs to see a
20 psychologist or psychiatrist to determine whether
21 it is Bipolar I or Bipolar II.

22 MR. JUSTIS: She testified she cannot give a
23 definite diagnosis because she had no clinical
24 records. She based it solely on the medicine he
25 was currently taking and based on what he told her.

1 MR. LEIENDECKER: What he told her. He was
2 there for treatment, she told him she couldn't
3 treat him.

4 MS. JUSTICE: And she also used these two
5 self-reporting tests that she testified to that he
6 filled out with the other people in the waiting
7 room.

8 MR. LEIENDECKER: She didn't say that they
9 filled them out, she said he filled them out.

10 THE COURT: I think she testified that she
11 gave them to him.

12 MR. LEIENDECKER: Right.

13 THE COURT: I don't know if she knows who
14 filled them out.

15 MR. LEIENDECKER: There's no testimony
16 suggesting anybody other than he filled them out.

17 MR. JUSTIS: He's sitting there with -- and
18 there's no signature. I mean, he didn't sign these
19 or anything.

20 THE COURT: But is that -- where -- did she
21 tell him about -- did he verbally tell her or is
22 that written on these incidents?

23 MR. LEIENDECKER: No, Your Honor, he verbally
24 told her. It is her notes of what he talked to her
25 about. And that is what she testified, that he

1 told her this.

2 MR. JUSTIS: I mean, it specifically -- the
3 question, Your Honor, that she asked -- that she
4 filled in the answer on this form says, history of
5 presenting problem, events, precipitating factors
6 or incidents leading to the need for services. Not
7 for a diagnosis, for services, because he was there
8 for counseling.

9 MR. LEIENDECKER: These were all part of what
10 she did for the diagnosis, and she needed the
11 diagnosis to provide the treatment. And once she
12 got the diagnosis, she said he needed further help
13 before she could actually help him because of what
14 he provided.

15 MR. JUSTIS: She testified she could not
16 diagnose him.

17 MR. LEIENDECKER: That's not what she
18 testified to.

19 THE COURT: Look at State's v. Burroughs, 328
20 S.C. 489. It says -- we may have to proffer her
21 testimony regarding --

22 MR. JUSTIS: Right.

23 THE COURT: -- regarding this because it says
24 it has to be reasonably pertinent to the diagnosis
25 or treatment in order for it to be admissible under

1 803(4).

2 MR. LEIENDECKER: And there's no question it
3 is, Your Honor.

4 THE COURT: Well, I said we may have to
5 proffer her testimony. I have a question. I need
6 to listen to see what she's going to say. So go we
7 can ahead and call her up now and proffer her
8 testimony.

9 MR. LEIENDECKER: All right. Ms. Cummings.
10 If it please the Court, I'm happy to address
11 this at this time and deal with the proffer, but
12 when we call the doctors, I want to call Dr. Fallaw
13 first.

14 THE COURT: Oh, that's fine.

15 (Witness approaches.)

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

18 (Witness complies.)

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

23 THE WITNESS: I will.

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

1 court, please.

2 THE WITNESS: It is Cheryl Cummings,
3 C-U-M-M-I-N-G-S.

4 MR. LEIENDECKER: And it is only relative to
5 this issue?

6 THE COURT: Yes.

7 MR. LEIENDECKER: Can I explain to the witness
8 what we are doing?

9 THE COURT: She was sitting in the back of the
10 courtroom. I think she understands.

11 CHERYL CUMMINGS,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LEIENDECKER:

15 Q You understand?

16 A Uh-huh.

17 Q Very good. Dr. Cummings, during the course of your
18 meeting with Christopher Rowley, did you discuss
19 with him the manifestations or symptoms of the
20 problems he was experiencing with this depression,
21 anxiety, highs and lows?

22 A Yes.

23 Q Did he ever talk with you about any incidents that
24 suggested these manifestations?

25 A He just -- he told me about his presenting

1 problems, which was severe and extreme mood swings.
2 And then he said about a month and a half ago he
3 was physically aggressive with his fiancée. Last
4 year he was having suicidal thoughts. And he has
5 had years ago of anger and aggression issues and he
6 feels helpless -- hopeless and worthless. He also
7 goes on to state that he had some mood instability
8 and irritability, and he was unable to control his
9 anger and his emotions.

10 Q Did he ever give you any specific incidences beside
11 what you just testified to concerning his inability
12 to control his mood or anger?

13 A The only thing that he said to me when I asked him
14 the history of the presenting problem when it talks
15 about the actual events, the precipitating factors
16 or incident that was leading to his need for
17 services, he talked about physical fights with his
18 fiancée, his mother, physical fights with his kids
19 in the past. Unstable mood, irritation.

20 Q Okay. And when you asked this history of
21 presenting problems, is this a part of the process
22 for the diagnosis as to what treatment he needs or
23 help?

24 A Yes. The whole entire biopsychosocial assessment
25 is part of the actual --

1 Q So every question on the biopsychosocial
2 assessment --

3 A Biopsychosocial assessment.

4 Q It is for the purpose of determining what help or
5 diagnosing what problems he has; is that correct?

6 A Correct.

7 Q And I'm looking at your initial assessment form for
8 adults.

9 A Uh-huh.

10 Q That is what we are talking about; right?

11 A Correct.

12 Q The handwriting on that sheet, is that yours?

13 A That is mine.

14 Q And the answers, those were given by whom?

15 A That was given by Christopher.

16 Q And so this is your interview for the purposes of
17 your diagnosis?

18 A Correct.

19 Q And did you reach a non-specific diagnosis where
20 you recommended he seek further treatment?

21 A His symptoms were strongly correlated with bipolar
22 disorder. I could not determine if it was Bipolar
23 I or II, so I gave him what we consider as an
24 unspecified bipolar diagnosis, which means he
25 doesn't meet the full criteria for I or II, that

1 needs to be further tested. So he was diagnosed
2 with bipolar disorder not otherwise specified.

3 Q Okay. And that was your diagnosis regarding the
4 problems that he presented to you that day?

5 A Correct.

6 Q Okay.

7 MR. LEIENDECKER: That is what we would offer,
8 Your Honor.

9 THE COURT: All right. Yes, sir?

10 MR. LEIENDECKER: As to that issue.

11 CROSS-EXAMINATION

12 BY MR. JUSTIS:

13 Q Dr. Cummings?

14 A Yes, sir.

15 Q You testified earlier that you could not give a
16 definite diagnosis; is that correct?

17 A As to whether he was Bipolar I or Bipolar II.

18 Q Okay.

19 A So we gave him -- so I gave him a diagnosis of
20 bipolar disorder not otherwise specified, which
21 means he has bipolar symptoms. They fall in the
22 bipolar category, but I cannot say if it is Bipolar
23 I or Bipolar II, that he needed further assessment.

24 Q He needed further assessment?

25 A Correct.

1 Q And what did you base this I guess initial
2 diagnosis on?

3 A I based it on the whole entire biopsychosocial
4 assessment, primarily focusing on the presenting
5 problems, the signs and symptoms, and his history
6 of the problems.

7 Q What about any clinical records, were able to
8 review those?

9 A No.

10 Q And you spent how long be him?

11 A About an hour.

12 Q About and hour. And he also filled out some
13 self-reporting tests?

14 A Correct.

15 Q And I think you testified earlier that these were
16 filled out in the waiting room along with, I think
17 you testified his mother and fiancée was with him
18 when he filled these out?

19 A Correct.

20 Q And you didn't stand over them and watch him fill
21 them out, did you?

22 A No, I didn't.

23 Q So you can't say specifically he actually circled
24 these numbers, did you?

25 A I did not witness him circle the numbers. I gave

1 him the paperwork to complete. It was for him to
2 complete. But I did not witness.

3 Q And there is nowhere on here where he actually like
4 signed saying he filled this out?

5 A Correct. It is not required.

6 Q In fact, his name is not on here at all that he
7 wrote, just where you wrote his name; correct?

8 A Right.

9 Q These are actually copyrighted forms; right?

10 A Correct.

11 Q So you have to like pay a fee every time you use
12 this form?

13 A They are unlimited for my practice. They are
14 generic assessments, so they are pretty available
15 for anybody who is in the mental health field that
16 is qualified to use them.

17 Q And who did you -- when you came up with this
18 diagnosis, who got that information? Did you send
19 this information to anybody at any point in time,
20 besides obviously here for court with the
21 attorneys?

22 A The only other person or agency that got the
23 information would be the disability board, because
24 they requested records.

25 Q And when did they request records? Would it have

1 been October 9th?

2 A October 9th it was faxed over.

3 Q And that is what this, it is a copy of the fax?

4 A Yes.

5 Q And you would have faxed a copy of this report over
6 to them?

7 A Correct. The whole entire record was faxed over.

8 Q Everything I had you would have faxed them?

9 A Right.

10 Q He completed this clinical record form?

11 A Correct.

12 Q Can I ask a question. If you turn to the second
13 page, it talks about the Beck Anxiety Inventory and
14 the Beck Depression Inventory. Those are the
15 self-reports?

16 A Correct.

17 Q Why does it say date administered October 9th,
18 2013?

19 A That was an error.

20 Q Okay. But this is what you sent to the disability
21 board?

22 A Correct.

23 Q Giving that day. You only met back in July?

24 A Correct.

25 Q So that wasn't correct. But that says, date

1 administered, and it lists those tests that you
2 sent over to special needs, we assume they were
3 administered back in October; correct?

4 A They didn't have any questions about them, but I
5 guess one looking at the record would think that,
6 but if they saw the actual assessments and tests
7 themselves and they knew I met with him on the
8 17th, and I have not met with him any other time
9 except when it was administered.

10 Q Okay. And under your assessment, where you wrote
11 down what he was telling you, when you go through
12 this assessment, you try to fill out every single
13 part of it; correct?

14 A Correct.

15 Q But you would admit to me that there is some of
16 these histories that aren't filled out, like Number
17 5, childhood adolescent history and the cultural
18 ethnic history?

19 A Correct.

20 Q And would you also agree on the first page, it says
21 at the bottom of the first page that he is
22 currently taking Abilify?

23 A Correct.

24 Q Correct? And I am assuming that is because he told
25 you that?

1 A Correct.

2 Q Turn to Page 5 and look at the handwritten note,
3 additional notes. The very last note says he is
4 not currently on any medication?

5 A Correct. That -- I'm writing down verbatim exactly
6 what he told me.

7 Q So at one point he told you he was on medication
8 and one point he told you he wasn't on medication?

9 A Correct.

10 Q Were you able to confirm whether or not he was on
11 medication?

12 A He was currently on Abilify, is what --

13 Q So were you able to confirm?

14 A Right. Because when I started, I started on the
15 back page, and then I went back to the front page.
16 I just started the conversation just very random in
17 general. And then I went back to the front page
18 and just started it from 1, 2, 3, and 4. I try to
19 conduct my interviews in a conversation rather than
20 completely going down question by question by
21 question by question. When I noticed that he was
22 kind of all over the place, I just started going
23 question by question.

24 MR. JUSTIS: All right. No further questions.

25 THE COURT: Anything else?

1 MR. LEIENDECKER: No.

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

3 MR. LEIENDECKER: Nothing else in reply to
4 that, Your Honor.

5 (Witness steps down.)

6 THE COURT: In reading State v. Burroughs and
7 State v. Small -- and the cite on that one is, it
8 is a Westlaw cite, Westlaw 2007WL8325974. Based on
9 the proffered testimony, she has testified that she
10 used all of that to come to her diagnosis of
11 bipolar. And one of the things she considered was
12 his past episodes and previous history.

13 And for that reason I will allow the testimony
14 under 803(4). No one specifically asked the
15 question if it was pertinent to the diagnosis, but
16 she did testify that she used all of that in coming
17 up with a diagnosis, although she cannot specify
18 which type of bipolar, which bipolar, I or II, but
19 that he was bipolar.

20 Anything regarding time and when he did it and
21 all of that go to the weight, and you all are more
22 than welcome to cross-examine her on that.

23 All right. Are we ready to bring them in?

24 Let's do these two witnesses. I have some concern
25 about the cigarette. I am going to try to see what

1 I can find. I'm not sure if he can -- you want him
2 to give opinion testimony?

3 MR. LEIENDECKER: No, I want him to give
4 observation.

5 THE COURT: Observation of what? That would
6 be in the form of an expert witness, to observe
7 someone -- to give opinion testimony as to how long
8 it took one person to smoke a cigarette. And I
9 think that -- I don't know if there are any smokers
10 on the jury or not, but I think -- I mean, I don't
11 think that testimony is necessary for the jurors --
12 or to provide any information to them that helps
13 them making their decision as to how long it takes
14 to smoke a cigarette.

15 So at this point, unless you can get me some
16 case law or direct me to a rule where that would be
17 admissible, I am not going to allow that. But --

18 MR. LEIENDECKER: Would you object to her
19 smoking a cigarette in front of the jury and
20 letting them observe it and make their own
21 conclusions?

22 THE COURT: Yes. Because there is nothing
23 that says that -- first of the all, she cannot
24 smoke in the building. Second of all, because she
25 smoked -- it takes her ten minutes to smoke a

1 cigarette, it may take someone else two minutes to
2 smoke a cigarette. It is just -- I mean, there is
3 a whole lot of other factors that play a part in
4 that, the size of the person, how long they have
5 been smoking cigarettes. It would probably take me
6 three hours to smoke a cigarette because I have
7 never smoked one. So, but that is so subjective
8 and speculative, I'm not going to allow that.

9 All right. It takes Judge Manning -- Judge
10 Manning smokes, and it takes him 30 seconds. So, I
11 mean, I don't know -- I'm not sure how her smoking
12 a cigarette is going to provide any -- it is very
13 speculative of how it will provide any information
14 to the jurors that they cannot conclude based on
15 their own personal experiences and observation.

16 All right. Let's bring them in.

17 (WHEREUPON, the jury came into open
18 court at 1:33 p.m.)

19 THE COURT: All right.

20 MR. JUSTIS: Your Honor, may we approach real
21 quick?

22 THE COURT: Yes, sir.

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

1 MR. LEIENDECKER: We call Dr. Robyn Fallaw.

2 (Witness approaches.)

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

5 (Witness complies.)

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

10 THE WITNESS: Yes.

11 THE CLERK: Have a seat in the witness box,
12 stating your full name, spelling your last for the
13 court, please.

14 (Witness seated.)

15 THE WITNESS: Robyn Fallaw, F-A-L-L-A-W.

16 ROBYN FALLAW,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LEIENDECKER:

20 Q Good afternoon, Dr. Fallaw. Would you please tell
21 me and the jury what you do and where your practice
22 is?

23 A I'm a family medicine physician at Center for
24 Primary Care in North Augusta, South Carolina.

25 Q Okay. Tell me about your educational background,

1 Doctor.

2 A I got my bachelor's in biology from Presbyterian
3 College and my medical doctorate from the Medical
4 University of South Carolina in Charleston. And
5 then I did my family medicine training at Medical
6 College of Georgia.

7 Q All right. How long have you been in private
8 practice with the Center for Primary Care here in
9 North Augusta?

10 A Since 2009.

11 Q All right. And tell me what your practice focuses
12 on. Family practices?

13 A It is really the full scope. It is everything from
14 pediatrics to blood pressure, sinus infections,
15 depression, anxiety. A little of everything.

16 Q Okay. Is or was Robin Herndon one of your
17 patients?

18 A Yes.

19 Q Do you know how long you have known or treated
20 Robin?

21 A It was for a few years.

22 Q All right. Sometime in 2013 did Robin refer to you
23 or introduce to you a Mr. Christopher Rowley,
24 R-O-W-L-E-Y?

25 A Yes.

1 Q And referring to your records, do you remember when
2 that was and why?

3 A He came to see me on April 15th of 2013 for
4 depression and anxiety.

5 Q And where did he meet with you?

6 A At my office in North Augusta.

7 Q Tell me what you did that day and what your
8 treatment plan was for him.

9 A Okay. He said that he had been having depression
10 and anxiety for approximately a year. He felt like
11 he might have some PTSD with -- from what he had
12 been exposed to previously in his life on the
13 streets. He did state he had a history of illegal
14 substance abuse. Sometimes he was doing that to
15 self-medicate from some of the depression and
16 anxiety symptoms. He said he cleaned himself up on
17 his own and had not used any drugs in over a year
18 at that time.

19 And after we discussed further we decided to
20 start him on an antidepressant. We started him on
21 Effexor. And he was supposed to follow up with me
22 in a month.

23 Q Okay. Do your notes reflect if he followed up with
24 you?

25 A He did come to see me approximately three weeks

1 later, but that was just for a sick visit for
2 bronchitis. We did not address his depression and
3 anxiety at that time because he was supposed to be
4 coming in another couple of weeks for that.

5 Q Okay. So when he came back to see you in -- would
6 that have been May?

7 A Yes.

8 Q It was to treat a sore throat or problems with his
9 throat?

10 A Well, chest, but, yes.

11 Q Okay. I'm sorry. And -- bronchitis, instead --
12 and you didn't discuss further the depression or
13 anxiety issue?

14 A No, not at that time.

15 Q Did he follow up with that meeting in May?

16 A No.

17 Q Okay.

18 A He did not come back in.

19 Q Did you see him again?

20 A No. He never came back in for an appointment.

21 Q Were there scheduled appointments that were either
22 not made or missed?

23 A Yes. The only time he scheduled was actually at
24 the beginning of November. Before then we had
25 asked him several times to come in, but he never

1 scheduled an appointment.

2 Q Do your records reflect if there was a phone-in to
3 the office to schedule an appointment on
4 November 6th?

5 A Yes. He did have an appointment scheduled. I
6 don't know who he spoke to, but my office staff did
7 set up an appointment on Tuesday, November 6th.

8 Q Okay. Do you have other records which indicate any
9 ongoing discussions regarding treatment or symptoms
10 for Mr. Rowley between May and November?

11 A Yes. We have several phone messages regarding how
12 he was doing and attempting to make adjustments in
13 medication.

14 Q Okay. And who would make these phone calls to your
15 office?

16 A The majority of the time it was Robin.

17 Q Did Mr. Rowley also call on occasion?

18 A There were -- there are a few that said, Patient
19 called. So that was taken by my staff. I can only
20 assume that was Mr. Rowley. You know, I think I
21 saw one that said, Patient called requesting a
22 refill. But I can't verify that, because I did not
23 speak to him for that.

24 Q And did you always speak with Robin?

25 A Usually. The very first phone call that we

1 received actually I did speak to him, and that was
2 just regarding side effects of the Effexor at that
3 time. But I cannot state a hundred percent, but
4 the vast majority of the time I would speak to
5 Robin after that.

6 Q Okay. And so when he called or when Robin called,
7 they were talking with you about the effects of the
8 medication he was taking?

9 A Yes.

10 Q Okay. And you say you got a call from him that
11 expressed he was having some side effects from the
12 Effexor; is that right?

13 A Well, yes. Initially Robin had called about it,
14 but when I called back, I did actually speak to
15 Chris that first time. And he was having some
16 sexual side effects from the medication. So he
17 said that at that time he would come in and sign a
18 release so we could further communicate with Robin.
19 And after that time we had the ability to speak to
20 her about everything.

21 Q So specifically when you spoke to him that time, he
22 said he wanted Robin to be able to talk to you as
23 well?

24 A Yes. To have full access to his medical chart.

25 Q Okay. And that is how you began talking with her

1 about actual issues?

2 A Yes.

3 Q Okay. Can you just walk me through what the
4 reports were and what changes, adjustments, or
5 compensations you made to try to solve the problem?

6 A Sure. On May 6th we got a phone call from Robin
7 that the sexual side effects from the Effexor were
8 not improving.

9 At that time he had increased his dose from
10 one pill to two pills a day without discussing with
11 me, and I felt that was a little too high a dose,
12 so I asked him to back down and see if the symptoms
13 improved with that. But they did not.

14 So we got a call a few days later that he was
15 still having trouble and tried another medication
16 to counteract the side effects.

17 Q Did you keep him on the Effexor or change
18 medicines?

19 A We changed it later that month because he was still
20 having trouble despite that. On May 29th we
21 switched from Effexor to Wellbutrin.

22 Q Okay. And what was the dosage of Wellbutrin?

23 A 150 milligrams.

24 Q And how was that administered or taken?

25 A Once a day.

1 Q All right. And what is the next report you have
2 concerning Mr. Rowley?

3 A Approximately a month later, on June 28th, once
4 again it was Robin that called. And they were
5 starting to wonder if he may have bipolar disorder.
6 So I told them I wanted him to see psychiatry.

7 And at that time they said they planned to
8 call Aiken-Barnwell Mental Health. I said in the
9 meantime I would give Seroquel to help try to
10 stabilize his mood. Seroquel is what is considered
11 an atypical antipsychotic.

12 Q You have told me this before.

13 A Yes.

14 Q Atypical --

15 A Antipsychotic. So it is just the older
16 antipsychotics were a lot harder to tolerate, the
17 ones that were used 20, 30 years ago. So it is a
18 newer version that most people are able to handle
19 better. And it is meant to stabilize the mood. It
20 is used to treat things like bipolar,
21 schizophrenia, and severe depression and anxiety.

22 Q And the atypical part is to hopefully eliminate
23 some of the side effects?

24 A Exactly.

25 Q Okay. How did that work?

1 A We got a call a few weeks later, on July 12th, that
2 the Seroquel was just still too sedating for him to
3 be able to function on it. We decided to try
4 Abilify, because it is in the same family, but with
5 less sedation. And he told me that he had an
6 appointment coming up with a psychologist or
7 counselor the next week to further assist us with
8 this.

9 Q Okay. Did you have a follow-up to that?

10 A Yes. On July 18th, Robin called again stating that
11 they did go to the counselor the day before and
12 that he said -- excuse me, that she said he was
13 severely bipolar. They discussed inpatient
14 treatment versus medication.

15 I told them once again that I wanted him to
16 see psychiatry for management of this, but that I
17 would start Lithium in the meantime to help with
18 mood stabilization.

19 They also said they understood that if he was
20 not doing well he needs to go to the ER for urgent
21 help. And she said she had contacted an Aiken
22 mental health organization to try to get in for
23 psychiatry.

24 Q All right. This is July 18th?

25 A July 18th, yes.

1 Q So now he is on Lithium instead of the Abilify?

2 A Right. The Abilify -- and I'm not 100 percent sure
3 if he was taking them both, they are safe to be
4 taken together -- but the Abilify is very
5 expensive, so they were, along the course, they
6 were trying to get patient assistance for it.

7 Q Okay. The Lithium is less expensive?

8 A Yes.

9 Q All right. Next contact?

10 A Was July 22nd. Once again, Robin came in and asked
11 if we could write a letter summarizing his current
12 treatment so that he could apply for disability.

13 We also in the next, you know, week or so were
14 also working on the patient assistance form, as I
15 mentioned before, to get the Abilify covered more
16 cost effectively.

17 Q All right. The next time?

18 A The next time was July 30th. Once again, about the
19 patient assistance forms. And I said, once again,
20 that he needed to come in for an appointment
21 because it had been a few months and we had made
22 adjustments, but he had not come back in to see me.

23 Q What date was that again?

24 A The initial phone call was on July 30th. And then
25 there were a few back and forth messages earlier

1 trying to reach each other, but that comment was on
2 August 2nd.

3 Q All right. And what did you tell him again on
4 August 2nd?

5 A That they needed to come in for an appointment
6 because it had been months and we had made a lot of
7 adjustments, we needed to re-evaluate.

8 Q Okay. Did you get a follow-up to that request?

9 A He did not come in for an appointment. I did
10 receive more phone messages. On August 12th we got
11 a call that -- this one is one that says,
12 Patient -- but, once again, I didn't speak to the
13 person -- wanted to know if I would increase the
14 dose of the Lithium because it was helping, but
15 would wear off in a few hours.

16 So originally he was on 300 milligrams twice a
17 day, and I did agree to increase it to three times
18 a day, but stated that he had to come back to check
19 Lithium levels in five to seven days because it
20 requires blood monitoring.

21 Q All right.

22 A The next communication we got was September 10th.
23 This was Robin calling to ask about the blood work,
24 because he had not come in for that yet, and mainly
25 asking about the cost of all this, plus the visit,

1 since he did not have insurance.

2 And she also said that he was getting stomach
3 upset on Lithium and wanted to know what else to
4 do.

5 And I said, Yes, he needs to come in because
6 Lithium, if it gets too high, can make him sick,
7 and we need to check his level to make sure that it
8 is an appropriate range.

9 And she stated that he would come by the next
10 morning for labs, but did not.

11 Q Okay. This is September?

12 A Yes.

13 Q The next contact?

14 A The next contact was just a few days later on
15 September 13th. Once again, asking for Lithium.
16 And I said that I would refill it, but he must come
17 in for follow-up. If he cannot afford the \$95,
18 that I would see him at a reduced rate right now,
19 but he has to come in, it is not safe for me to
20 keep adjusting medications without seeing him.

21 And they said that, you know -- I agreed to
22 decrease it down to \$50, and they said that they
23 would be able to handle that and would come in for
24 an appointment.

25 But we did not have any other further

1 communication and they did not come in for an
2 appointment until a phone call on October 2nd
3 asking for the Abilify again, wanting to get a
4 90-day supply of that because they had found a
5 patient assistance program that would help them out
6 if they had a 90-day supply.

7 Q So --

8 A Now we are into the beginning of October.

9 Q -- if I understand that, at the beginning of
10 October they found a patient assistance program?
11 That would have helped defray the cost of the
12 Abilify?

13 A Yes.

14 Q Which he hasn't been taking?

15 A I don't believe so, because I don't think that they
16 would be able to -- that it was cost feasible at
17 that point.

18 Q And the reason they are asking for a 90-day script
19 is that is what is required for the program?

20 A And it would be cheaper to do it that way than to
21 get it every month.

22 Q Okay. All right.

23 A Then on October 16th we had further communication.
24 There were new forms that needed to be filled out
25 for that patient assistance program. And they were

1 telling Robin that they had sent them to us, but we
2 had not received them. So we went back and forth
3 with that for a little while. And that is the last
4 communication we had with them until he had an
5 appointment scheduled on -- at the beginning of
6 November that he did not show up for, and then two
7 days later called for a work-in appointment, which
8 we did schedule, and that was the day of the
9 incident.

10 Q Okay. So he had an appointment two days before,
11 which would have been on or about the 4th?

12 A Yes.

13 Q Of November? And then someone called and scheduled
14 an appointment on the 6th?

15 A Yes.

16 Q This was the sum and substance of your treatment of
17 Mr. Rowley; is that correct?

18 A Yes.

19 Q And by the fall of 2013 you had told them that you
20 had reached the end of being able to write scripts
21 if he didn't come in for blood work?

22 A Yes. And re-evaluation.

23 Q All right. And the drug that he was on at that
24 time, Lithium?

25 A Uh-huh.

1 Q You had given him his last prescription of that
2 sometime in September?

3 A Yes.

4 Q Correct?

5 A (Nods affirmatively.)

6 Q And how many pills was that for?

7 A It was a 90 -- it was 90 pills because it was taken
8 three times a day.

9 Q So it would have been a 30-day supply; right?

10 A Yes.

11 Q Does Lithium have any side effects if you just quit
12 taking it?

13 A You know, if Lithium is keeping your mood
14 controlled, then removing that can allow you to go
15 into a depressive or a manic state.

16 Q Okay. All right. One moment, Doctor. Thank you.
17 (Pause.)

18 MR. LEIENDECKER: No further questions for
19 Dr. Fallaw from the Defense. Thank you.

20 THE COURT: All right. Yes, sir?

21 MR. JUSTIS: Thank you.

22 CROSS-EXAMINATION

23 BY MR. JUSTIS:

24 Q Good afternoon, Doctor.

25 A Uh-huh.

1 Q So it is your testimony you saw him essentially
2 twice, correct, early on?

3 A Yes.

4 Q Once for depression and anxiety, and then a few
5 weeks later for bronchitis; correct?

6 A Yes.

7 Q And most of the other times after that you are
8 pretty sure it was Robin calling?

9 A The majority, yes.

10 Q The majority. There might be some situations where
11 it is the patient?

12 A Right.

13 Q So you start him back in April on Effexor, which is
14 an antidepressant; correct?

15 A Yes.

16 Q And then sometime in May there is a phone call by
17 Robin, and you actually increase the dose because
18 he is having some side effects?

19 A He had already increased the dose, and so I told
20 him to back down from what he had increased it to.

21 Q And then eventually you changed the medicine to
22 Wellbutrin?

23 A Yes.

24 Q And that would have been in May?

25 A Yes, I believe so.

1 Q Right. And then on June 28th, I think you
2 testified that Robin called and said that -- or she
3 called again, and in my notes here, and correct me
4 if I'm wrong, June 28th, may have been bipolar?

5 A Yes.

6 Q Is that -- was that you telling her or her --

7 A No, that was her saying that -- she said that
8 "they" were starting to wonder, basically she and
9 Chris were starting to wonder if he may have
10 bipolar.

11 Q He might have bipolar. And it was at that time
12 then you said, Well, you need to go to a
13 psychiatrist?

14 A Yes.

15 Q And what would be the purpose of a psychiatrist at
16 that point?

17 A To help with medication management. Bipolar is a
18 harder to control illness than depression and
19 anxiety. And so they have more medications at
20 their disposal and you can do different
21 combinations to get them to the right level.

22 Q And would it be a fair statement to say that
23 psychiatrists typically deal with bipolar disorder
24 more than a medical doctor would?

25 A Yes.

1 Q So instead of attempting to diagnose him yourself,
2 you would recommend that they go to a psychiatrist
3 because they deal with it?

4 A Yes.

5 Q And -- but at that time you do change the medicine
6 to Seroquel?

7 A Yes.

8 Q And that is June 28th?

9 A Yes.

10 Q And then July 12th, approximately two weeks later,
11 that is when Robin calls and says, Listen, this
12 medicine is too sedative for him. So you switch
13 the medicine to Abilify?

14 A Yes.

15 Q And I think at that time you mentioned that they
16 had mentioned that they were going to go see a
17 counselor the next week?

18 A Yes.

19 Q Okay. Does it say in your notes a psychiatrist, a
20 psychologist?

21 A I had put psychologist, but I don't know exactly.

22 Q Okay. Well, you testified to counselor. What
23 did --

24 A The word I used --

25 MR. LEIENDECKER: Objection, Your Honor. It

1 mischaracterizes the witness's testimony. She said
2 both words.

3 A I didn't know which it was. Counselor --

4 THE COURT: Overruled. Go ahead.

5 BY MR. JUSTIS:

6 Q I just have in my notes, Went to counselor. That
7 is why I'm asking you.

8 A I may have said that. The word I used in my note
9 was "psychologist." They both can be used for this
10 type of thing.

11 Q Okay. Then on July 18th, that is when Robin called
12 back; is that correct?

13 A Yes.

14 Q And said that they went to a counselor?

15 A Yes.

16 Q Is that the word she used?

17 A That is the word I used in my notes. That may have
18 been what she said.

19 Q Okay. And that, according to what Robin told you
20 in your notes, she said that he was severely
21 bipolar?

22 A That was the wording that she used, yes.

23 Q Okay. And did she say anything about inpatient
24 treatment?

25 A She said that they had discussed inpatient

1 treatment or medication at that time with the
2 counselor or the psychologist.

3 Q Okay. And that is when he was switched to Lithium?

4 A Yes.

5 Q But you also told them at that time they needed to
6 go to psychiatry?

7 A Yes.

8 Q And then the next conversation in July is about the
9 disability letter?

10 A Yes.

11 Q July 22nd. And somewhere around July 30th, and the
12 first couple of days in August, that is the phone
13 tag back and forth?

14 A Yes.

15 Q Asking more about forms?

16 A Uh-huh.

17 Q And, of course, with all these conversations you
18 are having, you are essentially -- you testified, I
19 think that you said, I need to see him?

20 A Yes.

21 Q He needs to come in. Because at this point you
22 had, you know, changed medicines several times, as
23 far as the type of medicine, and also changed
24 dosage; is that correct?

25 A I had not changed the Lithium dosage at that time,

1 but, yes.

2 Q Right. But you had changed --

3 A The Effexor dosage, yes.

4 Q -- some of the others. He went from initially --

5 A Effexor.

6 Q -- Effexor, Wellbutrin, Seroquel, Abilify, and now
7 Lithium?

8 A Yes.

9 Q So five different medications?

10 A Yes.

11 Q And that is since you have seen him?

12 A Yes.

13 Q And then August 12th, that is when they call back
14 to get an increase in the Lithium?

15 A Yes.

16 Q And then September 10th, had some other -- stomach
17 is upset?

18 A Uh-huh.

19 Q There was some concern about the cost of different
20 medicine. Again, you tell him he needs to come in
21 for blood work, and they promise they would come in
22 at that point, but no one ever showed up; correct?

23 A Correct.

24 Q And September 13th, again, asking for more Lithium
25 at that point. You state that, You need to come

1 in?

2 A Yes.

3 Q October 2nd, that is when they want a 90-day supply
4 of Abilify?

5 A Yes.

6 Q And you allow them to do that because it is a
7 cheaper program for them.

8 And then October 16th they call about patient
9 assistant forms for Abilify.

10 And then eventually at some point in time they
11 make an appointment for the 4th of November;
12 correct?

13 A Yes.

14 Q That is one they missed. And then obviously there
15 is another appointment made for November 6th, that
16 is the day of the incident, and obviously he misses
17 that appointment?

18 A Yes.

19 Q So since you had seen him for the bronchitis, there
20 is at least one, two, three, four, five, six,
21 seven, eight, nine, ten, at least 11 conversations?

22 A Yes.

23 Q With -- and most of them, at least most of them are
24 with Robin, to either increase medicine or change
25 medicine; is that correct?

1 A Uh-huh, yes.

2 Q Is that a common practice, to --

3 A No. Obviously it is ideal to get them in the
4 office --

5 Q Right.

6 A -- but I was not able to.

7 Q Right. Did you ever receive any information or any
8 kind of diagnosis from a psychiatrist that he was
9 bipolar?

10 A I did not receive anything formal from anyone else,
11 no.

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

13 (Pause.)

14 MR. JUSTIS: Nothing further.

15 THE COURT: Anything else?

16 MR. LEIENDECKER: No, no further questions for
17 Dr. Fallaw.

18 THE COURT: All right, you may step down.

19 Any objection to her being excused?

20 MS. JUSTICE: None from the State, Your Honor.

21 MR. LEIENDECKER: None from the Defense.

22 THE COURT: Thank you.

23 (Witness steps down and is excused.)

24 THE COURT: Let me see you all one second.

25 (WHEREUPON, a bench conference was held

1 in the presence of the jury but out of
2 the hearing of the jury.)

3 THE COURT: Call your next witness.

4 MR. LEIENDECKER: We call Dr. Cheryl Cummings.
5 (Witness approaches.)

6 THE CLERK: Place your left hand on the Bible,
7 and raise your right.

8 (Witness complies.)

9 THE CLERK: The testimony that you shall give
10 the court and jury in this case will be the truth,
11 the whole truth, and nothing but the truth, so help
12 you God?

13 THE WITNESS: I will.

14 THE CLERK: Have a seat in the witness box,
15 stating your name, spelling your last for the
16 court, please.

17 (Witness seated.)

18 THE WITNESS: It is Cheryl Cummings,
19 C-U-M-M-I-N-G-S.

20 CHERYL CUMMINGS,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LEIENDECKER:

24 Q Good afternoon, Dr. Cummings. How are you?

25 A I'm good.

1 Q Dr. Cummings, would you please tell us, you have a
2 practice in the Aiken-Augusta area, and what is
3 your practice? What do you do?

4 A I do have a practice. It is called Stairways
5 Counseling Services, LLC. It is in the Aiken area.
6 And I'm a licensed professional counselor, where I
7 provide individual and family therapy.

8 Q Okay. Please give me a little about your history
9 and background, your education and your licensing.

10 A Okay. In 2000 and -- I'm sorry, in 1999-2000, I
11 graduated from USC Aiken with a degree in
12 psychology. And in 2006 I graduated from Troy
13 University with a degree in counseling and
14 psychology. That is a master's degree. And in
15 2015 I graduated from Capella University with my
16 PhD in counseling studies.

17 I have been working in the field of counseling
18 and psychology for about the past 15 years, but in
19 2012 I opened up my own practice.

20 I'm licensed by the State of South Carolina as
21 a licensed professional counselor. I'm also
22 nationally certified as a counselor, and I am a
23 certified clinical mental health counselor as well.

24 I received my licensure as an LPC in 2011, and
25 in about 2012-2013, I received my national

1 certification as a counselor and my certified
2 clinical mental health counselor.

3 Q Can you estimate for me how many hours of training
4 you have in this field of counseling for and
5 associated with your licensing?

6 A With my licensing degree, in order to become an LPC
7 in the State of South Carolina you have to have at
8 least two years' experience, over 1500 hours.

9 And then after that, every two years to five
10 years you have to have at least 40 hours of
11 continuing education credit, or at least 200 hours.
12 It depends on what certification or licensure is
13 requiring the hours.

14 Q All right. And since 2011 when you obtained your
15 licensing as a licensed professional counselor,
16 have you continued to maintain that license with
17 the State of South Carolina?

18 A Yes.

19 Q Were you a licensed professional counselor in the
20 summer of July of 2013?

21 A Yes.

22 Q Okay. Have you, as part of your practice, met
23 with, treated, and diagnosed patients who have come
24 to you for counseling services?

25 A Yes.

1 Q Have you, as part of your practice when diagnosing
2 those patients, made such findings that required
3 them to go seek other or different professional
4 help before you could help them?

5 A Yes.

6 Q Could you explain to me a situation, a hypothetical
7 situation that would cause that or --

8 A If a client comes in and they are not stable, what
9 I consider as stable, on medication, or I feel like
10 I need another -- a second opinion about what my
11 findings is, I may send them out to another
12 counselor or a psychiatrist to do some further
13 testing and treatment.

14 I have also had clients come to me who needed
15 to be on medication and wasn't currently on
16 medication and I wanted them to have a full
17 psychiatric exam, and since I don't have a
18 psychiatrist in my office, I usually refer them out
19 to a local psychiatrist in the area.

20 Q Okay.

21 A Sometimes their insurance does not take the -- or
22 there is not a local psychiatrist in the area, so
23 they have to see their primary care doctor for
24 medication.

25 Q Okay. All right. But your practice treats what

1 type of patients?

2 A When I started out it was primarily children and
3 adolescents, but then when I opened my practice I
4 moved on to the adult client. And it is primarily
5 for children that have behavioral disorders, ADHD.
6 For adults it is pretty much depression, anxiety,
7 and phases of life issues.

8 Q You say when you started your practice. That is
9 when you started Stairway Counseling?

10 A Yes.

11 Q When you moved out on your own?

12 A Yes.

13 Q Okay.

14 MR. LEIENDECKER: At this time I would move to
15 have the doctor qualified as an expert in
16 professional counseling.

17 THE COURT: Any objection? Any questions?

18 MR. JUSTIS: No objection, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury,
20 Ms. Cummings will be -- or Dr. Cummings will be
21 qualified in the area -- you said licensed
22 professional counselor?

23 MR. LEIENDECKER: Yes, Your Honor.

24 THE COURT: As a licensed professional
25 counselor.

1 All right, yes, sir, you may continue.

2 MR. LEIENDECKER: Thank you, Your Honor.

3 BY MR. LEIENDECKER:

4 Q Dr. Cummings, did you have occasion to have an
5 appointment with Mr. Christopher Rowley?

6 A Yes.

7 Q On or about the 7th day of July 2013?

8 A It was -- specifically the date, I believe, was
9 July 17th.

10 Q 17th?

11 A 2013.

12 Q All right. Do you know how that appointment came
13 to be made?

14 A It was either his mom or Ms. Robin who called and
15 made the appointment for him.

16 Q That would be Robin Herndon?

17 A Yes.

18 Q Okay. Had you known either his mother or
19 Ms. Herndon before that date?

20 A No.

21 Q Did you meet Robin Herndon and his mother on that
22 date?

23 A Yes, I believe so. I remember Robin. I faintly
24 remember mom, but I believe mom came in as well.

25 Q Were they both -- was he there with two women?

- 1 A Yes.
- 2 Q Okay. And you were introduced to one of them as
- 3 his mother?
- 4 A I was introduced to both of them, I believe. I
- 5 can't recall. It has been a little while ago.
- 6 Q Okay. Tell me about the procedure of what you did
- 7 for Christopher Rowley that day.
- 8 A When he initially came in, I gave him paperwork --
- 9 well, we call it initial intake packet -- to
- 10 complete. That form consists of new patient
- 11 information, informed consent, and information
- 12 about treatment.
- 13 I also gave him three assessments to complete.
- 14 The assessments were: The Beck Depression
- 15 Inventory, the Beck Anxiety Inventory, and also an
- 16 AUDIT-C.
- 17 The Beck Depression Inventory measures his
- 18 depression level. The Beck Anxiety Inventory
- 19 measures his anxiety level. And the AUDIT-C
- 20 measures any current substance abuse issues.
- 21 Q Okay. And who completes these forms?
- 22 A Generally it is given to the client for the client
- 23 to complete.
- 24 Q Okay. Did Mr. Rowley tell you that he completed
- 25 these forms?

1 A They were completed. I didn't -- he didn't tell me
2 that he completed the form. When he handed the
3 paperwork back to me, the forms were completed.

4 Q Okay. Did he tell you he didn't complete the
5 forms?

6 A No.

7 Q Did he tell you he hadn't looked at the forms?

8 A No.

9 Q Did you guys discuss what had gone on regarding his
10 filling out of the forms?

11 A Yes, we discussed it when we do our clinical
12 interview.

13 Q Did you explain to him that these forms were used
14 as what you were going to base your ultimate
15 decisions and diagnoses regarding his problems?

16 A Correct.

17 Q After he fills out these forms and he comes in to
18 meet with you, about how long was the meeting with
19 you?

20 A Generally it is about an hour to an hour and a half
21 and generally it is about 15 to 30 minutes for the
22 paperwork.

23 Q Okay. Is that included in the hour and a half, or
24 before the hour and a half?

25 A It is generally before the hour and a half.

1 Q Okay. So it takes -- you are with him that hour to
2 hour and a half; is that right?

3 A Correct.

4 Q All right. And when you get him in, tell us what
5 the procedure is, what you do.

6 A It is to make the client as comfortable as
7 possible. And I start off with just a general
8 conversation. But I have to complete what we call
9 a Biopsychosocial Assessment. And this is a list
10 of questions from current present symptoms to past
11 issues that is going on with the client.

12 Q Okay. So you ask him a series of questions
13 designed to elicit responses to help you determine
14 what the problem is?

15 A Correct.

16 Q All right. And what are some of these general
17 categories of questions you ask him?

18 A The first one is the presenting problem. And that
19 is pretty much, why you are here. Any signs and
20 symptoms that have been going on. Any history of
21 what they identify as the presenting problem.
22 Information as it relates to family and
23 relationships. Their social relationships. Their
24 spiritual life. Any legal issues they may have
25 been in. Employment information. Military

1 background. Physical health issues. Any prior
2 counseling or mental health treatment and chemical
3 history, which is substance abuse issues.

4 Q And the answers to these questions are all
5 self-reporting, they are information that the
6 patient gives you; is that correct?

7 A Correct.

8 Q Can you please tell us today what you learned from
9 Christopher Rowley concerning these subjects as you
10 interviewed him?

11 A Well, for the presenting problem, he stated that he
12 was having severe and extreme mood swings. About a
13 month and a half ago he was physically aggressive
14 with his fiancée, last year, which would have been
15 2012, because this was filled out in 2013. He was
16 having suicidal thoughts. He has had years of
17 anger and aggression issues and that he feels
18 hopeless and worthless.

19 When I asked him about his signs and symptoms,
20 he gave me symptoms such as hopelessness,
21 worthlessness, anger, aggression, mood instability,
22 irritability, and uncontrolled anger and emotion.

23 Q All right. What else did he tell you further,
24 besides that, about the history of these --
25 presentation of these problems in his life?

1 A He said that the -- well, the questions ask, What
2 are the precipitating factors or incidents that
3 lead him to his need for services.

4 Q Okay.

5 A And he says that he was getting into physical
6 fights with his fiancée, his mother, physical with
7 kids in the past, unstable moods, and irritation
8 levels.

9 And then I asked him what was the frequency or
10 duration or how often these symptoms occur. And he
11 was saying that they cycle. Mornings are the
12 toughest, or the beginning -- but the beginnings of
13 the morning is the best.

14 Q Mornings are the toughest, but the beginning of the
15 mornings he is the best?

16 A Right.

17 Q Okay. All right. Did he give you any other
18 background or history about what he felt
19 contributed to these problems he was having?

20 A He said that his father died at age 11. And that
21 he feels like it didn't take effect or he didn't I
22 guess actualize the death until the past five
23 years. He said that he was married to his first
24 wife and that they divorced in 2006. His father
25 was physically abusive towards him. He said that

1 when he was living with his father he was beat
2 daily. He lived with his mother as well. He gave
3 some history as to some mental instability with his
4 grandfather. He said that he felt like his success
5 had been ruined by a lot of people. That he had
6 been through an eviction. Was looking for a job.
7 Lack of authority or receiving authority. And
8 having difficult time controlling his anger.

9 Q All right. Did he tell you at that time that he
10 was taking any medications?

11 A He said that he was currently taking Abilify.

12 Q Okay. Did he discuss with you his social
13 relationships and any stressors in his life?

14 A He said that he really didn't have a very strong
15 support system, but he said that he doesn't -- it
16 looks like it says he doesn't want friends or
17 doesn't have friends, which I identified as a
18 problem. He had been with Robin for about six
19 months as he identified at that particular point in
20 time.

21 Q Did he identify Robin as a strength or a problem?

22 A When I asked for his current family and significant
23 relationships, under strength and support he said
24 Robin was his fiancée, and his mother.

25 Q All right. Did he say anything else regarding his

1 mother?

2 A He said something about his mother in terms of
3 recent changes with the relationship with his
4 mother. It didn't look like I completed that, so I
5 can't say exactly what that was.

6 Q So you don't really remember?

7 A Yes.

8 Q Did he give you any other background or history
9 concerning legal issues or problems?

10 MR. JUSTIS: Objection, Your Honor. May we
11 approach?

12 THE COURT: Yes, sir.

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: The objection is sustained.

17 BY MR. LEIENDECKER:

18 Q Did he tell you anything about his background or
19 his educational history?

20 A In terms of his educational history he reported
21 that he went to high school and that he wanted to
22 get back in college. Are you asking for just
23 education only?

24 Q Yes.

25 A Okay. That he went to high school, but that he

1 wanted to get back into college.

2 Q Did he tell you about his employment or vocation
3 and any stressors associated with that?

4 A He said that he was a plant worker, but I guess
5 recently or at the time he was what I considered as
6 underemployed or unemployed, because he had the
7 education and the background, but it seemed as if
8 he couldn't keep a job.

9 Q All right. Did he tell you about any other
10 stressors in the past year or nine months?

11 A He said that he was homeless in the past for about
12 nine months.

13 Q Did he define that as a problem or a stress?

14 A I defined it as a stress.

15 Q All right. As a result of this interview and
16 examination, were you then able to come to a
17 diagnosis or to attempt to diagnose his problems
18 and the source or cause of those problems?

19 A Yes.

20 Q All right. And what was that diagnosis?

21 A His initial first diagnosis would be bipolar
22 disorder not otherwise specified. And that is as
23 diagnosed by the DSM-IV-TR.

24 Q Tell us what the DSM --

25 A The Diagnostic and Statistic Manual is the resource

1 that we as counselors use to provide a diagnosis
2 for a client.

3 Q Okay. And it contains mental health issues or
4 problems by category?

5 A By category and symptoms.

6 Q Okay. And you diagnosed him at that time with
7 bipolar disorder not otherwise specified. Could
8 you please explain to me what that is and what that
9 means?

10 A Bipolar disorder not otherwise specified means that
11 a client has some presenting symptoms of bipolar,
12 but there is further assessment and testing, and
13 things of that nature, that needs to be done in
14 order to determine if that client is Bipolar I or
15 Bipolar II.

16 Q And Bipolar I and Bipolar II, although both are
17 diagnoses of bipolar, have some differences, don't
18 they?

19 A Correct.

20 Q Explain to us what Bipolar I is?

21 A Bipolar I is the more severe form of bipolar. It
22 has manic episodes and it also has depressive
23 episodes.

24 The manic episodes are episodes of states of
25 euphoria. We call them highs, where the person

1 could go for days without sleep and kind of feel on
2 top of the world, nothing can touch them. And then
3 their lows are very low. They feel very suicidal.
4 A lot of people with Bipolar I disorder end up in
5 and out of the hospital a lot.

6 Q So Bipolar I has highest highs and lowest lows,
7 cycles in peaks and valleys?

8 A Correct.

9 Q Diagnosis for Bipolar II is?

10 A The diagnosis for Bipolar II is, may be some
11 depression, no manic episodes whatsoever. So you
12 can't have any mania in order to be diagnosed
13 Bipolar II.

14 Q You don't have the highs?

15 A Right.

16 Q All right. And you say it is non-specified?

17 A Right.

18 Q Why was that?

19 A We were taught in school and grad school and
20 through my teachings that when you see a client
21 within a short period of time or you feel like you
22 just don't have enough information but they meet
23 some of the criteria, then you want to give them
24 the lesser form of the diagnosis.

25 So I know that his signs and symptoms fell

1 into the bipolar category. I didn't have enough
2 information to say that he was Bipolar I or II, but
3 he did meet some of the criteria through his
4 symptoms for bipolar disorder.

5 Q You actually, because of this concern, had
6 treatment considerations or recommendations for
7 him; is that right?

8 A Yes.

9 Q And at this point is he appropriate to counsel with
10 you for treatment?

11 A No.

12 Q Okay. If no, why?

13 A I told him that he wasn't appropriate for
14 counseling or therapy because he had significant
15 anger and impulsivity issues. His mood swings were
16 very unstable and that he needed a psychiatric eval
17 and stabilization of meds before counseling can
18 begin.

19 Q What did you recommend he do before he come back
20 for counseling?

21 A I recommended that either he seek help immediately,
22 that he can go to the Aurora to have a quick
23 psychiatric assessment to see if he needed to be
24 hospitalized, or that he needed to have a
25 psychiatric eval with a psychiatrist.

1 Q All right. Did your recommendation include that if
2 he got this and got stabilized then you could work
3 with him and treat him?

4 A Correct.

5 Q Okay. One moment, Doctor.

6 A Okay.

7 (Pause.)

8 MR. LEIENDECKER: No further questions at this
9 time.

10 CROSS-EXAMINATION

11 BY MR. JUSTIS:

12 Q Good afternoon, Doctor.

13 A Good afternoon.

14 Q So back when you met with Mr. Rowley back in 2013,
15 you had your master's degree. Since then you have
16 increased that education, you have a PhD now?

17 A Correct.

18 Q And that is a PhD in counseling?

19 A Correct.

20 Q And as a licensed professional counselor, you are
21 allowed to give kind of a diagnosis of, you know,
22 of mental issues; is that correct?

23 A For -- in the State of South Carolina. It varies
24 from state to state what you are allowed to do.

25 Q So in some states you are not allowed?

- 1 A Correct.
- 2 Q Okay. What about a psychiatrist or a psychologist,
3 are they allowed to give those diagnoses?
- 4 A Oh, yes. As far as I know.
- 5 Q In all states or --
- 6 A I don't know in terms of all states.
- 7 Q So typically people that would give these diagnoses
8 are doctors, psychiatrists, psychologists, and in
9 South Carolina we allow licensed counselors to do
10 it; correct?
- 11 A Correct. And licensed clinical social workers.
- 12 Q Okay. Okay. And so when you met with him, I think
13 you said you had him fill out some forms. And that
14 would be like in the waiting room?
- 15 A Correct.
- 16 Q As he is sitting there with his mom and his
17 fiancée, Ms. Herndon, he fills out these forms;
18 correct?
- 19 A Correct.
- 20 Q And some of the forms are just standard like you
21 fill out at any doctor's office?
- 22 A Correct.
- 23 Q All your contact information, waivers, HIPAA, all
24 this kind of stuff; is that correct?
- 25 A Correct.

1 Q And then he had some self-assessments to complete;
2 correct?

3 A Correct.

4 Q To include the depression inventory?

5 A Correct.

6 Q Which is essentially 21 questions that was designed
7 to kind of measure a person's level of depression?

8 A Correct.

9 Q Would that be a fair statement? And it is called
10 Beck's because that is the guy that created it back
11 decades ago; correct?

12 A Correct.

13 Q And it has been modified several times since it was
14 first created?

15 A Correct.

16 Q Is that correct? But it is essentially a
17 self-reporting document so the person reads the
18 questions and then rates themselves on a scale from
19 zero to three; is that correct?

20 A Correct.

21 Q So, depending on how they are feeling that
22 particular day, they are going to rate themselves?

23 A That particular day or within the last six months.

24 Q Okay. Does it say that on the report?

25 A It doesn't.

1 Q Okay.

2 A But generally when I hand these assessments to my
3 client, I say, Between today and the last six
4 months kind of rate how you have been feeling.

5 Q Okay. So if they actually took it again it could
6 actually change?

7 A Correct.

8 Q I mean, they could change it. And, in fact, one
9 knock on these types of self-reporting type things
10 are that, you know, sometimes some people
11 overreport, some people underreport. Would that be
12 a fair statement?

13 A Correct.

14 Q We hope that they try to make it as accurate as
15 possible, but we don't know.

16 A Correct.

17 Q So he filled that out or circled these numbers;
18 correct?

19 A Correct.

20 Q So you got that. And then you have the anxiety
21 inventory, which is essentially the same thing. I
22 mean, it is different questions, but it is
23 essentially -- it describes different sensations or
24 feelings, or whatever, and then they rate them how
25 often they have them?

1 A Yes, correct. But this --

2 Q Correct. I think what you were going to say was,
3 that specifically says during the past month?

4 A Right.

5 Q So that says, In the last month have you
6 experienced a numbness or tingling?

7 A Correct.

8 Q Feeling hot, wobbling -- I'm not even going to
9 try -- fear of dying, things like that?

10 A Correct.

11 Q And they would rate those?

12 A And it measured specifically, though, this is their
13 anxiety levels.

14 Q Right. And then you add up all the points and then
15 it has different categories?

16 A Correct.

17 Q All right. And it says if you score -- in fact, he
18 scared a 37; that's correct?

19 A Correct.

20 Q And which puts him just out of the moderate anxiety
21 and just into potential cause for concern?

22 A Correct.

23 Q Because it says the grand sum is exceeding 36,
24 which he had 37?

25 A Correct.

1 Q Is a potential cause for concern. And then you had
2 the -- the third one you mentioned was essentially
3 for, I guess it is alcohol abuse?

4 A Yes.

5 Q And he actually scored a zero on that, which is the
6 best you can score?

7 A Correct.

8 Q So there was no -- no worry about alcohol abuse
9 with Mr. Rowley?

10 A According to this assessment.

11 Q Right. And, again, he could be underreporting?

12 A Correct.

13 Q Correct? So obviously these three assessments,
14 that is part of your analysis?

15 A True.

16 Q When you are looking at it? And then you are able
17 to take an opportunity to sit down with him and go
18 over this assessment that you talked about, those
19 different questions you asked him. He gives you
20 the information, you fill it in. And it is a
21 pretty -- you know, it is about -- almost ten
22 pages, a little over nine pages long. Different
23 questions. And you filled most of these out, you
24 know, based on the answers that he gave you; is
25 that correct?

1 A Correct.

2 Q And this is -- when you fill this out, this is
3 essentially just you and him talking?

4 A Correct.

5 Q Is that correct? There is not other people around,
6 are there?

7 A Correct.

8 Q So you are in a room just with him?

9 A Correct.

10 Q And so you did that, you filled that out. And
11 Mr. Leiendecker went over that. And you -- there
12 are a couple of things, you had written in here
13 underemployment, it said, underemployed?

14 A Correct.

15 Q That just means that he was in a job that he
16 thought he could do better?

17 A Correct.

18 Q Isn't that correct?

19 A Correct.

20 Q And then in a previous hearing I think you
21 stated -- because I had questioned you about one
22 part, it says, He is taking Abilify, and another
23 part it says, Not currently on any medication?

24 A Correct.

25 Q And I think you testified that you actually kind of

1 started at the back of this and worked your way
2 forward?

3 A Correct.

4 Q Initially he said he wasn't on anything?

5 A Correct. Generally when I sit down and -- when you
6 are coming into a mental health counseling session
7 or intake assessment, I usually try to start out
8 with just a general conversation and make the
9 person feel comfortable.

10 Q Right.

11 A And not just kind of interview them very rigidly.

12 Q Right.

13 A So I just try to start on just a normal, general
14 conversation. And I noticed that I wasn't really
15 getting the information that I need, and he was
16 kind of all over the place, so I started asking
17 question by question.

18 Q Okay. So you start out with conversation, build a
19 rapport?

20 A Right.

21 Q And kind of see where they go from there?

22 A Correct.

23 Q And if they are kind of all over, then you do a
24 more structured? Some people talk more than
25 others?

1 A Correct.

2 Q Be a fair statement? So you did that. You went
3 through all that. And then ultimately -- and you
4 met with him, you actually have on here, duration
5 one hour?

6 A Correct.

7 Q So your time with him was one hour, not counting
8 the time he took to fill out these assessments?

9 A Correct.

10 Q Prior to. So I think you had testified you usually
11 spend an hour to an hour and a half with patient.
12 In this particular case you spent an hour with him;
13 correct?

14 A Correct.

15 Q From 4:00 to 5:00 p.m.?

16 A Correct.

17 Q Okay. And then ultimately you try to make a
18 diagnosis?

19 A Correct.

20 Q Right? And I think you diagnosed bipolar disorder.
21 And you said you couldn't -- which was kind of like
22 a preliminary diagnosis?

23 A Correct.

24 Q Would that be a fair statement?

25 A Correct. It is bipolar NOS, which is not otherwise

1 specified.

2 Q Not otherwise specified. And --

3 A And that is according to the DSM-IV-TR, because now
4 it is different from DSM-5, so.

5 Q But back then?

6 A Back then.

7 Q That was what you had to go by back then?

8 A Correct.

9 Q And then, but ultimately, to get, I guess you would
10 call, a full diagnosis, you would want to be able
11 to categorize somebody either as I or II; correct?

12 A Correct.

13 Q Right. And, obviously, based on the information
14 you had, you had some information, but you didn't
15 have enough information to be able to make that
16 diagnosis; is that correct?

17 A Correct. And sometimes people state NOS because
18 their symptoms are so unique to them that you
19 really can't put them in either category I or
20 category II.

21 Q Okay. So he was listed there. And, of course,
22 during your diagnosis you are basically going on
23 what he told you, what he self-reported, possibly
24 what medicine he is currently taking?

25 A Correct.

1 Q But you don't have like a medical history or
2 clinical records to refer to?

3 A With him? No, I didn't.

4 Q Correct. Sometimes you do with --

5 A With some clients I ask them to bring in any
6 medical history or record. If they are appropriate
7 for treatment, then I go ahead and try to get their
8 additional medical records, because their diagnosis
9 could change. But for him I automatically knew
10 after talking with him and at the end of our
11 assessment that he wasn't appropriate for therapy,
12 for counseling.

13 Q Right. And I think you state that because it talks
14 about treatment considerations?

15 A Correct.

16 Q And essentially it says, Is the patient appropriate
17 for treatment? And you say no at that time because
18 you state, Needs to see a psychiatrist for an
19 evaluation, psyche eval, and medication assessment
20 first?

21 A Yes.

22 Q So after that he potentially would be acceptable
23 for counseling?

24 A Correct.

25 Q So he needed to do that. I think you testified

1 that -- you used the word "immediately." You
2 didn't document that in this report, did you? That
3 he immediately had to see a psychiatrist?

4 A No, I didn't use the word "immediately."

5 Q Okay. And then there was a section that says,
6 Therapist's questions, concerns, comments. And you
7 said -- and I think you testified to this. But,
8 again, you kind of reiterate, Needs a psychiatric
9 eval and stabilization of meds before counseling
10 can begin?

11 A Correct.

12 Q Okay. So that was essentially your recommendations
13 from that meeting with him?

14 A Correct.

15 Q Would it be -- and I think you were in here earlier
16 when Dr. Fallaw testified. I don't know if you
17 remember her testifying or hear her saying that she
18 was told that he was severely bipolar. Would that
19 be a fair -- did you at any time diagnose him as
20 severely bipolar?

21 A No, I didn't diagnose him with severely bipolar. I
22 diagnosed him with bipolar disorder not otherwise
23 specified.

24 According to the symptoms that he actually
25 reported to me, which was the extreme irritability

1 or severe and extreme mood swings and the unstable
2 moods would lead me to believe that they are pretty
3 significant, especially when he tells me that he is
4 unable to control his anger and emotions. But when
5 you actually look at the Beck Depression Inventory
6 and the Beck Anxiety Inventory, he just meets the
7 clinically significant mark.

8 Q Right. And that is why you would, as part of your
9 diagnosis, you wouldn't have said he was severely
10 bipolar?

11 A Correct.

12 Q And I don't see in here in your diagnosis or
13 anything or your recommendations anything that says
14 he needs to be immediately hospitalized. Am I
15 missing something?

16 A I didn't write that in the report, but in talking
17 with him and discussing what treatment options
18 could be, I discussed with him that he needed to
19 see a psychiatrist or a doctor pretty quickly so
20 that he can get stabilized on his meds.

21 Q Right. And if they recommended, We need to keep
22 you, or something like that --

23 A Right.

24 Q -- then that is up to them? But you didn't say
25 that; correct?

1 A Correct.

2 Q And that was the only time you met with Mr. Rowley;
3 correct?

4 A Correct.

5 Q And, in fact, the only other time I guess you had
6 any kind of contact with Mr. Rowley or Ms. Herndon
7 was several months later when you were asked to
8 provide some documentation, I guess medical
9 records, because they were applying for some
10 disability?

11 A That actually came in the mail. I didn't have any
12 other contact with Mr. Rowley or --

13 Q Right. So you just received something in the mail
14 and it basically asked you to fax some documents?

15 A Correct.

16 Q And I think previously we had discussed on a
17 previous hearing that there is just one part on
18 this clinical record -- and I think you cleared it
19 up for me -- where it lists these tests that --
20 these self-reporting tests that he took?

21 A Correct.

22 Q You actually listed in your report that you gave
23 them to him on November -- on October 9th?

24 A Correct. That was an error. Generally I don't
25 print out my clinical records, they are in a

1 database.

2 Q Uh-huh.

3 A So at the time that Social Security Administration
4 asked for the disability records, I printed it out,
5 and it did print out the October 9th date.

6 Q Which was the date you faxed them to --

7 A Social Security Disability.

8 Q Social Security. And obviously you didn't have a
9 chance to doublecheck the records before they were
10 sent, so that explains why there is a different
11 date on there?

12 A Correct.

13 Q But the only time he was in there was back in July,
14 and that is when he did all those --

15 A Correct.

16 Q -- those self-assessments?

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

18 (Pause.)

19 MR. JUSTIS: No further questions.

20 THE COURT: Anything else?

21 MR. LEIENDECKER: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. LEIENDECKER:

24 Q In response to cross-examination, you didn't tell
25 him he needed to immediately be hospitalized, but I

1 understood you told me that you did tell him
2 that -- or refer him that a way to get this done
3 was to go and submit a report to Aurora; is that
4 right?

5 A Correct.

6 Q Could you explain to me again what that is, why he
7 goes there, and what Aurora could assess and do?

8 A The Aurora would have been the fastest way for him
9 to get -- to see a psychiatrist. The Aurora is the
10 local psychiatric hospital here in Aiken. And what
11 they do is they do an assessment to determine if
12 you are -- if you need psychiatric hospitalization
13 inpatient or if you need -- or if you can do
14 outpatient psychiatry help. So the immediate way,
15 the most quick way would have been to go to the
16 Aurora. If the Aurora said that he didn't need
17 hospitalization, then they would have referred him
18 out to make an appointment with a psychiatrist.

19 Q So if he had gone to Aurora, they could have
20 assessed him, and if they felt it was an immediate
21 need they could have actually checked him in that
22 day?

23 A Correct.

24 Q For an evaluation?

25 A Correct.

1 Q All right. You talked a little bit about these
2 Beck Assessments, one for anxiety and one for
3 depression.

4 A Correct.

5 Q And the Solicitor hit on the anxiety inventory,
6 pointing out that, although it is at the highest
7 level, it just barely is over that level.

8 A Right.

9 Q But if the interpretation does say that if the
10 grand sum exceeds 36, and this was 37, that it is a
11 potential cause for concern; correct?

12 A Correct. It says that, Persistent and high anxiety
13 is not a sign of personal weakness or failure. It
14 is, however, something that needs to be proactively
15 treated or there could be significant impacts to
16 you physically and mentally. You may want to
17 consult with a counselor if the feelings persist.

18 Q So this is kind of like words to the patient?

19 A Correct.

20 Q And it tells them that, We don't want you to feel
21 like you are a failure, but you need to get help?

22 A Correct.

23 Q As for the Beck's Depression Inventory -- and this
24 was part of what led you to assess the bipolar
25 non-specific?

1 A Correct.

2 Q He scored 41?

3 A Correct. The score for 41 is -- well, the lowest
4 score you can receive is 1, and then it has
5 category for over 40. He scored 41. And that is
6 extreme depression.

7 Q And it says in large capital type at the bottom of
8 that, that a persistent score of 17 or above
9 indicates that you may need medical treatment?

10 A Correct. Because the -- so the cutoff limit of --
11 well, 17 or above means that you have clinically
12 significant depression.

13 Q So 41 is significantly beyond that?

14 A Correct.

15 Q That is another reason you had these concerns and
16 you thought he should maybe go to Aurora?

17 A Correct.

18 Q And let me understand it. Your diagnosis that day
19 was that he has bipolar disorder. You just can't,
20 because of your limitations and diagnosis and
21 treatment, at this time say whether it is Bipolar I
22 or Bipolar II?

23 A Correct. I don't -- I didn't have enough
24 information at that particular time to say if it
25 was Bipolar I or Bipolar II.

1 Q It is definitely bipolar?

2 A It is definitely bipolar.

3 Q And that is why you wanted him to go see a
4 psychiatrist?

5 A Correct.

6 Q Thank you.

7 THE COURT: Anything else?

8 RECROSS-EXAMINATION

9 BY MR. JUSTIS:

10 Q And that is in the State of South Carolina you can
11 say that, not necessarily in all states?

12 A In the State of South Carolina I'm licensed to
13 diagnose and to treat. If I was to have a license
14 for Georgia I could only treat the client or -- so,
15 yes, for South Carolina I can diagnose and treat.

16 Q Thank you.

17 THE COURT: All right, you may step down.

18 Any objection to this witness being excused?

19 MR. JUSTIS: None, Your Honor.

20 MR. LEIENDECKER: None, Your Honor.

21 (Witness steps down and is excused.)

22 THE COURT: All right, let me see you all one
23 second.

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 THE COURT: All right, ladies and gentlemen of
3 the jury, that is our last witness for today. We
4 will start back on Monday morning at 9:30.

5 It is support for you all not to discuss the
6 case. I know it is the weekend. But I am sure you
7 all are tired from being here, and so am I, from
8 being here all week, and so we are going to take a
9 break for the weekend and start back up Monday
10 morning.

11 I do not anticipate us going in -- too far
12 into next week. I don't -- we'll see how it goes
13 on Monday. But the lawyers tell me that we are
14 nearing the end of all of the evidence.

15 So with that being said, we will start back
16 Monday morning at 9:30. There is a possibility
17 that we will be here late on Monday afternoon or
18 evening, so if you need to make arrangements for
19 Monday evening, please do so.

20 Remember, do not discuss the case. Do not
21 read any newspaper articles regarding this. Do
22 not -- or anything on TV or the internet regarding
23 this. Do not discuss this with anyone. And we
24 will see you back on Monday morning.

25 Thank you.

1 (WHEREUPON, the jury is excused at 2:50
2 p.m.)

3 THE COURT: All right. And the deputies have
4 asked that we remain in the courtroom until the
5 jurors are out of the building. And then we will
6 see you at 9:30 on Monday morning for Dr. Veronen.

7 If you have witnesses, if you plan on putting
8 up any reply witnesses, have them ready.

9 MR. JUSTIS: Yes, Your Honor. If we have any
10 reply, we will have them ready.

11 THE COURT: And her testimony, I think her
12 testimony was just short of two hours.

13 MR. LEIENDECKER: I believe so.

14 THE COURT: Earlier this week. So we'll see.
15 Hopefully we will be done by 11:30 or 12:00.

16 Oh, Stacy sent you all an e-mail with the jury
17 charges. Take a look at it. As I said before, it
18 is not -- she does not put everything in there.
19 And we can talk about it on Monday sometime. But
20 she put everything in there, but I have not made
21 decisions on any of them.

22 MR. LEIENDECKER: Your Honor, as I discussed
23 before -- and I know Your Honor has made a ruling
24 on the CV testimony of Deputy Downs. But the State
25 passed up the expungement, and I would also like to

1 make a Court's exhibits and pass up that it didn't
2 all really go away. Here is from the magistrate
3 court what the deputy did. It was rewritten as a
4 simple assault.

5 THE COURT: All right.

6 MR. LEIENDECKER: Have it marked, added to
7 supplement.

8 THE COURT: All right. Court Exhibit Number?

9 THE COURT REPORTER: Five.

10 THE COURT: Five.

11 (WHEREUPON, Court's Exhibit No. 5 was
12 marked for identification only.)

13 THE COURT: I need to put on record two quick
14 sidebars. I think there was objection -- I'm
15 trying to remember what the objections were. Oh,
16 there was an objection to any questioning regarding
17 CDV. And based on the ruling on yesterday
18 regarding the officer, I sustained the objection to
19 that portion. I think the question was did he have
20 any legal issues or troubles. And under 803(4) she
21 is allowed to testify to other things because she
22 said that they were things that she necessarily
23 used in coming to the diagnosis.

24 And then I think there was an objection to
25 Dr. Cummings being qualified as an expert, giving

1 opinion testimony or diagnosis, which that
2 objection was overruled. She was allowed to
3 testify as a licensed professional counselor, which
4 apparently in South Carolina she can give diagnosis
5 of bipolar.

6 All right. I think that was everything at the
7 sidebar.

8 MR. JUSTIS: Yes, Your Honor.

9 THE COURT: Anything else?

10 MR. LEIENDECKER: Not that I know of.

11 THE COURT: Have a good weekend.

12 (WHEREUPON, the proceedings concluded at
13 2:54 p.m.)

14 MARCH 7, 2016

15 (WHEREUPON, the proceedings resumed at
16 9:46 a.m.)

17 THE COURT: We are ready to continue on with
18 the Defense's case. I believe Mr. Leiendecker has
19 maybe one more witness and the State said they will
20 have some reply -- brief reply.

21 MR. SORENSON: Potentially, yes, Your Honor.

22 THE COURT: And then we will talk about the
23 jury charges on maybe a break, lunch break,
24 something like that. And maybe get it to them this
25 afternoon sometime.

1 All right. Let's bring them in.

2 (WHEREUPON, the jury came into open
3 court at 9:47 a.m.)

4 THE COURT: All right. Good morning. Ladies
5 and gentlemen of the jury, I hope that you had a
6 restful weekend. At this time we will continue
7 with the Defense's case. I will ask
8 Mr. Leiendecker please call his next witness.

9 MR. LEIENDECKER: Thank you, Your Honor. May
10 it please the Court? The Defense would call
11 Dr. Lois Veronen.

12 (Witness approaches.)

13 THE CLERK: Place your left hand on the Bible,
14 and raise your right.

15 (Witness complies.)

16 THE CLERK: The testimony you shall give the
17 court and jury in this case will be the truth, the
18 whole truth, and nothing but the truth, so help you
19 God?

20 THE WITNESS: Yes.

21 THE CLERK: Have a seat in the witness box,
22 state your name, spelling your last for the court.

23 THE WITNESS: My name is Lois J. -- last name
24 Veronen, V-as in Victor-E-R-O-N-E-N.

25 LOIS J. VERONEN,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. LEIENDECKER:

4 Q Good morning, Dr. Veronen.

5 A Good morning.

6 Q Dr. Veronen, you stated your name. Can you tell us
7 where you reside and what is your current
8 occupation?

9 A I reside in Rock Hill, South Carolina. And I am a
10 clinical psychologist and part-time professor at
11 Winthrop University.

12 Q Okay. Tell me a bit about your educational
13 training and background.

14 A My educational training is I have a bachelor's
15 degree from Marquette University in Milwaukee,
16 Wisconsin, and then a master's and a PhD from North
17 Texas University in Denton, Texas.

18 Q And your master's and PhD are -- what are those
19 degrees in?

20 A They are both in clinical psychology.

21 Q Okay.

22 A And then subsequent to that I did an internship at
23 the Medical University of South Carolina in
24 Charleston. And also a postdoctoral fellowship on
25 the Burn and Trauma Units, also at the Medical

1 University of South Carolina.

2 Q What positions do you currently hold?

3 A Well, I currently hold the position of part-time
4 professor at Winthrop University, and I have a
5 full-time private practice in the area of clinical
6 psychology.

7 As a part-time professor I direct some
8 research projects for students. I serve on the
9 Women's Studies Committee. And I also teach a
10 course called *The Psychology of Women* at Winthrop
11 in the Psychology Department.

12 Q Okay. Before you went to Winthrop and opened your
13 private practice, what did you do in the field of
14 psychology here in South Carolina?

15 A I did, as I said, my internship and a postdoctoral
16 training, and while involved with my postdoctoral
17 training I began some research for my dissertation
18 entitled, *The Fear Response of Rape Victims*.

19 Subsequent to that, there was some research
20 monies available from the National Institute of
21 Mental Health to study the impact of victimization
22 on women and how that changes their psychology.

23 And so subsequent to the dissertation, we
24 enjoyed the Medical University's -- actually about
25 seven years of funded research from both the

1 National Institute of Mental Health and the
2 National Institute of Justice. And out of that
3 came what is known as the National Crime Victim
4 Center now at the Medical University of South
5 Carolina.

6 Q And you were part of the funding and research that
7 led to that formation?

8 A I was. And then subsequent to that I moved to
9 Winthrop University.

10 Q What is the actual nature of your research and
11 clinical expertise?

12 A Well, the nature of my clinical expertise is what
13 has now come to be known as Post-Traumatic Stress
14 Disorder, but it is the changes that are produced
15 by traumatic events in the psychological
16 functioning of primarily women, although certainly
17 we know that men too suffer from Post-Traumatic
18 Stress Disorder experiences of war and severe
19 accidents, explosions and burning. Firemen, for
20 example, can all suffer Post-Traumatic Stress
21 Disorder. These are events that fundamentally
22 change your psychological make-up. And my research
23 has been devoted primarily to looking at that in
24 women, although my clinical practice is much more
25 broad-based and includes also children and males

1 throughout the age span.

2 Q Do you also work extensively in the area of
3 battered women or battered person issues or
4 syndrome?

5 A Well, that application to the court has become
6 known as Battered Woman Syndrome, but in the
7 psychological literature we really don't talk about
8 the Battered Person Syndrome, we talk about sort of
9 the area of Intimate Partner Violence, is what it
10 is called, or Victims of Domestic Violence, but it
11 isn't called Battered Person Syndrome. That is an
12 adaptation that came into the law in the 1970s in
13 which they were trying to -- well, there was an
14 attempt to understand sort of what might be the
15 fear response of women and their reaction to
16 relationships that are abusive, but now we know
17 certainly men can be abused as well. And children.
18 And actually that was sort of the origin of how
19 that research got started on Battered Person
20 Syndrome came out of children, looking at their
21 incredible loyalty to parents, even if their
22 parents had been sort of cruel and abusive to them.

23 Q Have you been asked in the past to research these
24 topics and provide testimony in court on these
25 subjects?

1 A I have been asked to, as a clinical --

2 Q As a clinical psychologist?

3 A As a clinical psychologist what we do is what we
4 call psychological evaluations. So I have not been
5 asked to prepare a large scale study, I have been
6 asked to evaluate specific individuals and
7 determine whether they in fact have had experiences
8 that qualify them as victims of trauma and whether
9 their reactions are consistent with persons that
10 have had this experience elsewhere.

11 Q As a result of these requests, have you then been
12 asked to testify in court concerning your findings?

13 A I have.

14 Q Have you been qualified in the past as an expert in
15 clinical psychology in these areas?

16 A I have.

17 MR. LEIENDECKER: At this time we would offer
18 Dr. Veronen as an expert in clinical psychology,
19 specifically in the areas, or the area of intimate
20 partner violence and post-traumatic stress.

21 THE COURT: Any voir dire from the State?

22 MR. SORENSON: No objection, Your Honor.

23 THE COURT: All right, ladies and gentlemen of
24 the jury, Dr. Veronen will be qualified as an
25 expert in clinical psychology, and also qualified

1 to give expert opinion testimony in the area of
2 intimate partner violence.

3 Yes, sir.

4 MR. LEIENDECKER: Thank you, Your Honor. And
5 Post-Traumatic Stress Disorder.

6 THE COURT: And Post-Traumatic Stress
7 Disorder.

8 Any objection to that?

9 MR. SORENSON: No objection.

10 THE COURT: All right.

11 MR. LEIENDECKER: Thank you, Your Honor.

12 BY MR. LEIENDECKER:

13 Q Dr. Veronen, let's get something out of the way
14 quickly. Are you paid for the work you do?

15 A I am paid by the hour for my clinical work and my
16 evaluation work and my testimony work, yes.

17 Q Have you been paid in this case?

18 A Yes.

19 Q And do those payments come from the Defense
20 attorneys?

21 A Yes.

22 Q Can you tell me, what is Intimate Partner Violence
23 or Battered Woman or Person Syndrome?

24 A Well, what it has come to be known by in the law is
25 that persons who have had experiences of intimate

1 partner violence develop sets of, or specific
2 responses to behaviors in situations that might be
3 unusual or perplexing to other people. For
4 example, the area of, you know, many people assume
5 that if you were being abused or beaten in a
6 relationship that you would not remain in that
7 relationship. But, in fact, we see many women
8 continuing in relationships that have been violent.
9 And so the psychological changes and reactions to
10 persons who have been -- experienced intimate
11 partner violence is what is known as the Battered
12 Person Syndrome.

13 Q Can you tell me, when did you perform your first
14 evaluation on a battered person with a history of
15 violence at the hands of her spouse who was using
16 that defense of Battered Woman or Battered Person?

17 A The first one I conducted was in 1979 in
18 Charleston, South Carolina. And the young woman
19 was 21-year-old Cynthia Hutto. And she had taken
20 the life of her husband, whom she had two children
21 with. And she was on trial charged with murder.

22 Q And did you perform that evaluation and testify in
23 that trial?

24 A I did. I did.

25 Q What are the other terms used to identify

1 individuals who had experiences of being struck or
2 hit or abused by a boyfriend or intimate partner in
3 the use of violence? Would that be the intimate
4 partner?

5 A That is the intimate partner violence. But in high
6 schools we find that, you know, sometimes it is
7 called dating violence. And, you know, there is
8 efforts made to educate at the high school level
9 and even middle school level that, you know,
10 partner violence is not -- or dating violence is
11 not what one should come to endure or expect.

12 Also the -- it is called domestic violence.
13 It is called battered persons. Those are all
14 terms. Battered woman.

15 Q Okay. How did you first become involved in this
16 specific case, Robin Herdon's case?

17 A I became involved in Robin Herdon's case when I
18 received a telephone call from your co-counsel,
19 Deborah[verbatim] Hinds, who called me, I think it
20 was approximately the 5th of February, and
21 indicated that there was a need for a particular
22 evaluation of Robin Herndon.

23 Q Okay. Would that be Peggy Hinds? My office
24 manager is Deborah Martin. I think you might be
25 actually merging them. Would it be Peggy that you

1 talked to?

2 A Yes. I'm sorry, Peggy Hinds. I have merged the
3 names.

4 Q Thank you. What procedures did you use once the
5 contact was made and a meeting was made with Robin
6 in evaluating Robin Herndon?

7 A I requested that I would receive the discovery
8 materials, meaning the materials that had been
9 prepared and were -- documents of her indictment,
10 documents in terms of the investigating officers
11 and witness statements, and anything else that
12 might be available.

13 And so I received materials, for example,
14 from -- that Robin had about her previous
15 employment and her evaluation records. I
16 received -- so a document of papers were reviewed
17 related to the crime for which she is charged. I
18 also requested mental health records, if those were
19 available. And I also requested any information
20 related to the Decedent, Chris Rowley, if the
21 information was available.

22 MR. SORENSON: Objection, Your Honor. May we
23 approach? I just want to -- we may not have an
24 objection.

25 THE COURT: Yes, sir.

1 MR. SORENSON: I just want to be careful where
2 this examination is going.

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

6 BY MR. LEIENDECKER:

7 Q Dr. Veronen, let me get us back on track. You were
8 telling me the things that you looked at and
9 reviewed and the things you requested. And the
10 only thing I would ask you to do today is stick
11 with all those things that we are allowed to talk
12 about and are admissible and not get into anything
13 concerning any external collateral criminal matters
14 that are not addressed here today. Is that vague
15 enough for you?

16 A I think I understand --

17 Q Okay.

18 A -- what you are asking me to do.

19 Q If not --

20 A Okay.

21 Q You told us that you had looked at the reports that
22 were sent associated with the case, including the
23 indictments, the warrants, the -- I understand that
24 to include the reports from the officers at the
25 scene?

1 A Correct.

2 Q And all the witness statements; right?

3 A Correct.

4 Q And you were going on to say that you also asked if
5 there was any kind of health, mental health records
6 available for either of the parties, Robin or
7 Mr. Rowley, that you wanted to look at those as
8 well; correct?

9 A Correct. And I received those records to review.

10 Q Okay. Were there other things you looked at before
11 you met with Robin?

12 A I think --

13 Q Or does that encompass most of it?

14 A That encompasses I think the totality of what I
15 reviewed prior to seeing Robin.

16 Q Okay.

17 A And then on February 15th, Robin and her daughter
18 K.N. made the trip from here in Aiken to my office
19 in Rock Hill, South Carolina. And I had the
20 opportunity to meet Robin and her daughter and to
21 conduct some testing on Robin. And while she was
22 completing the testing, I had an opportunity to
23 talk with K.N. , the daughter. And then I talked
24 also with Robin about the incident for which she is
25 charged.

1 The testing that is typically conducted is one
2 which is known as a Detailed Assessment of
3 Post-Traumatic Stress Disorder. And it goes
4 through one's kind of entire life and asks about
5 traumatic events that may have occurred, sort of a
6 natural disaster kind of thing, as well as sort of
7 accidents, and then getting more specific about
8 things that would be considered interpersonal
9 violence. So there is 15 screening questions about
10 these events. And then if there is a response,
11 there is much more detailed assessment.

12 The person completing the Detailed Assessment
13 of Post-Traumatic Stress -- this is a general
14 instrument which is used by -- for research
15 purposes and clinical purposes kind of throughout
16 the nation. It is a very widely used and accepted
17 instrument. And based on that, there are some sort
18 of specific -- one is asked to identify the
19 situation or event which is most traumatic for the
20 individual, and then to have that specifically
21 rated for situations as to how much fear and
22 helplessness it produced or how much horror, a
23 range of things. And then a scale of assessment is
24 produced on that particular event.

25 And Robin completed that. And there was no,

1 what we call, no attempt at, you know, a great deal
2 of positive bias to make herself look kind of
3 better or negative bias to make it look like she
4 was suffering from absolutely everything that came
5 before her. But on this instrument she scored, in
6 fact, that she did -- had experienced an event and
7 that events had produced very specific
8 Post-Traumatic Stress Disorder for her.

9 The other thing is that I use a broad scale
10 personality assessment inventory, which is a
11 multi-scale test of psychological functioning.
12 There is ten clinical scales associated with it.
13 And then there are 22 non-overlapping subscales.

14 And what we determined from that is that, in
15 fact, Robin on that particular instrument showed
16 herself to be answering in a way that was not
17 overtly negatively biasing or positively biasing,
18 but, you know, it was regarded as an accurate
19 assessment of what she was experiencing.

20 And based on that assessment, we determined
21 that she was suffering from -- also it confirmed
22 Post-Traumatic Stress Disorder, as well as major
23 depressive disorder.

24 So that was the objective instruments we used.
25 And then I subsequently gathered information about

1 her reaction, her social history with Chris Rowley,
2 her education level, her integration with family
3 and community, job functioning.

4 And based on that, we found that in this
5 relationship with Chris Rowley she -- do you want
6 me to go through all the social history too?

7 Q I do. Let me ask you this question. You met with
8 her on the 15th. You got these -- all these
9 evaluation tests done?

10 A Correct.

11 Q That you testified about. And did you then speak
12 with her that day as well?

13 A I did speak with her for a period of time on that
14 day.

15 Q Did you speak with her subsequent to that as well?

16 A Yes. I scheduled a subsequent interview three days
17 later after I had an opportunity to score the test
18 and was able to then sort of integrate the
19 materials that we had so I could go through and get
20 a very detailed assessment of the incident itself
21 that she experienced.

22 Q You told us today that the test results in your
23 interview led to your belief that she suffers from
24 Post-Traumatic Stress Disorder and also major
25 depressive --

1 A Disorder.

2 Q -- disorder. But go ahead and tell me what your
3 actual findings regarding Robin were on this and
4 the social psychological evaluation you did.

5 A Okay. Basically one of the things that we noted is
6 that Robin and Chris became involved in this
7 relationship very quickly. They were both sort of
8 reeling or suffering from divorces and they became
9 quickly involved in early 2013.

10 Chris was -- started out doing some work for
11 Robin. She had known him a little bit in their
12 social circles from years before. And he started
13 doing some work for her. And then they developed a
14 relationship which moved very quickly to a romantic
15 interest.

16 According to Robin, Chris was just getting the
17 opportunity to visit with his children. And one of
18 the first times that he had, again, resumed visits
19 with his children they came to Robin's house and
20 spent the weekend.

21 And it was at that occasion that they were all
22 playing in the back yard, jumping on a trampoline,
23 and Robin broke her ankle. And -- no, she broke
24 her knee, excuse me. She broke her knee. And in
25 the process of doing that, she was out of work for

1 a period of time.

2 And so this forged sort of a helplessness on
3 her part and ability for Chris to be very helpful
4 to her. And so this was even more endearing other
5 than their romance.

6 And so she was off work for a period of time
7 during that time and needed help going to the
8 doctor. And, you know, he was very attentive and
9 was doing those things for her.

10 In late February the relationship began to
11 change. And the change in the relationship
12 occurred because, according to Robin's report,
13 Chris was asked to leave the place he was living.
14 He was being ejected from his previous residence.
15 And at this point, with this eviction, he had no
16 place to live. And so she initially suggested --
17 tried to help him problem-solve because she felt
18 like the relationship wasn't at the point that she
19 could have him move in and, in fact, did not want
20 him to move in because she felt she might
21 jeopardize the custody of her children to have a
22 male in the house, because that was part of the
23 divorce proceedings.

24 Chris at this point sort of -- she offered to
25 buy him a small camper, use her income tax refund

1 and have him to live in the camper in their -- in
2 her back yard. But Chris at that point argued with
3 her and said, you know, I don't want to live in the
4 back yard like a dog. I, you know, want to live
5 with you.

6 And so Robin relented, and Chris moved in,
7 against her better judgment. And this began to set
8 off some real difficulties in their relationship.

9 Chris had difficulty holding a job
10 consistently, although when he did hold his job he
11 wanted Robin to take care of all the bills and the
12 money, and, you know, he directly deposited into
13 her account. And so this particular arrangement
14 kind of put Robin in a position of, you know, if
15 the money was not enough to go around she
16 supplemented it from her own monies.

17 And so, for example, another barrier or source
18 of conflict was Chris's child support. He was
19 expected to pay child support regularly. But if he
20 was in any way short, he would suggest to Robin
21 well, you know, they are going to arrest me if this
22 doesn't get paid.

23 And this financial hardship began to show its
24 effects on Robin's family. Robin's daughter K.N.
25 told me how --

1 MR. SORENSON: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. LEIENDECKER:

4 Q I didn't want you to testify specifically to what
5 K.N. told you.

6 A Okay. But it created financial difficulties within
7 the home.

8 And so subsequent to that, Robin experienced
9 Chris's mood as becoming increasingly uneven. And
10 at times he would appear to be very upbeat and
11 involved and have lots of ideas about, you know,
12 things he could do and very energetic. And then he
13 would alternate with times of anger and depression.

14 Robin put a great deal of energy into this
15 relationship trying to be sort of compassionate
16 towards him. He said he had a very difficult
17 childhood and that, you know, his father was
18 difficult and abusive when he was growing up. And
19 so Robin, one of her first gifts for Chris's
20 birthday was to have a picture of Chris as a young
21 boy with his father and his brother sort of made
22 into a larger picture for Chris. She attempted, as
23 we are fond of saying, sort of loving him into
24 health, trying to supplement his life and, you
25 know, make -- even out those things that were

1 uneven in his background.

2 Regrettably, when Chris became depressed, he
3 often became angry with Robin. When resources were
4 not sufficient or when he was feeling particularly
5 bad about himself -- apparently the first time he
6 was abusive to Robin and grabbed her arms and held
7 her down was when they were preparing to go to a
8 weekend in Charleston. And he was upset because he
9 didn't have anything to wear. And, again, she
10 tried to reassure him that, you know, he looked
11 fine, but he became, you know, Don't lie to me, you
12 know, kind of anger evolved -- erupted from that.

13 The use of force Chris used was: Shoving,
14 grabbing, restraining, punching, and even spitting
15 on her at times.

16 He, as the relationship progressed, Chris
17 blackened her eye, left bruises on her arms, which
18 began to be visible to family and work people. And
19 there were reports in the work reports of these
20 black eyes and bruises in which she had been
21 questioned about them, which, again, is not at all
22 uncommon. Many times the workplace has evidence of
23 physical abuse of women, in addition to the
24 families having knowledge of this physical abuse of
25 the woman.

1 Chris also did not respect the work Robin did.
2 He was very sort of verbally abusive. Told Robin
3 that she didn't know what a hard day's work was,
4 because he did primarily physical labor and kind of
5 warehouse kind of things. And so the fact that
6 Robin worked what he considered to be a desk job an
7 easy job. He also appeared to have sort of
8 contempt for police officers. She said that there
9 was one time that -- I don't know if I can --

10 Q Tell us what she said in the interview.

11 A There was a picture downloaded from Facebook of
12 Chris. He's got a police shirt on. And he is
13 doing sort of middle -- double middle fingers and
14 looking very contemptible towards police officers.

15 By late July of 2013, Chris's abuse had become
16 worse and worse, and Robin had considered that she
17 would have to put him out of the house if this
18 didn't stop. And so she went and appealed to
19 Chris's mother, Is there something we can do?
20 We've got to get him some help or I'm going to have
21 to evict him. I want you to know that, you know, I
22 care for him, but this is not something that can
23 continue.

24 His mother was very supportive at this point
25 and came over and an appointment was arranged and

1 they took Chris to a mental health professional.

2 And at that evaluation the mental health
3 professional suggest -- did a detailed assessment
4 and suggested that Chris needed immediate treatment
5 either to be an inpatient or to be medicated, but
6 he wasn't eligible yet for counseling because his
7 behavior was too agitated and aggressive, and
8 apparently his thought procedures or thought
9 processes weren't such that she believed the
10 therapy would be appropriate or counseling would be
11 appropriate at that time.

12 So Robin worked very hard to get Chris the
13 medication he needed. And even so -- and also she
14 filled out paperwork to try to get him on
15 disability.

16 There was a particular medication plan that
17 enabled him to get medications much more cheaply,
18 and she filled that out with the pharmaceutical
19 company and had the doctor verify the need so that
20 the medications for Chris would be affordable.

21 And then Chris's behavior became -- rather
22 than -- there were days in which it looked like he
23 was doing much better, and then there were days in
24 which he was apparently not doing as well. And the
25 events that were associated with November 6th,

1 2013 --

2 Q Doctor, let me ask you this question since you are
3 going into November 6th. How did this history of
4 Robin's relationship with Chris Rowley influence
5 her perceptions and reactions?

6 A Well, it influenced perceptions and reactions in
7 that she was involved in trying to sort of keep the
8 peace. So she became highly attuned to situations
9 in which, you know, Chris's mood might be off. For
10 the most part she tried to maintain the peace with
11 him and keep him from becoming violent and abusive.
12 But there were times in which she was not able to
13 influence him to do the things that she would
14 regard as his best interest. So she --

15 Q Did she tell -- I'm sorry.

16 A Yes.

17 Q Did she then tell you specifically about the events
18 surrounding November 6th, 2013?

19 A She did indeed. Yes. On this particular
20 November 6th, Robin -- according to Robin, Chris
21 was due to have a blood test, go to the doctor in
22 the afternoon. And on this particular occasion she
23 had to go to work and so could not accompany him.

24 She was concerned that he didn't seem very
25 enthusiastic about the appointment, so she was

1 trying to emphasize how important this test was,
2 this blood test was, if he was going to continue on
3 medication.

4 And according to Robin, she got up to go to
5 work and then had arranged -- texted back and forth
6 to find out when Chris was going to pick up the
7 check for this appointment.

8 She at some point decided that she would meet
9 him to make it a little easier for him. She met
10 him at the cemetery. And what she found at that
11 point was that he appeared to be very agitated and
12 at times sort of out of it and difficult and angry.
13 According to her, he was not himself. And he
14 appeared to be sort of stalling and, you know, not
15 focused.

16 She became concerned that if he were to drive
17 himself he might not be in a position to drive
18 himself to this appointment. Well, and he was also
19 operating a vehicle which was hers that she had
20 gotten recently. And so she pleaded with him to
21 call his mother for this accompaniment because the
22 mother had accompanied him in the past to
23 appointments.

24 Q Did she tell you that this argument ended at the
25 cemetery, or did it continue?

1 A It continued. Chris --

2 Q And where?

3 A It continued back -- Chris, in fact, did drive back
4 to the residence that they were sharing. And Robin
5 also came back there to make sure that, you know,
6 Chris would follow through with calling for his
7 appointment. And Robin followed. And she said at
8 times, you know, Chris seemed to be sort of
9 drifting off and then overcorrecting and driving
10 fast and not driving consistently.

11 So once back at their residence, an argument
12 ensued. And in this argument there were statements
13 exchanged such that, If I can't drive this car, no
14 one can. And then the keys for the car were thrown
15 up on the roof.

16 Chris became angry and agitated and began to
17 be physical with Robin. There was sort of an
18 exchange like, If you are going to operate like a
19 man, you have got to fight like a man. And so he
20 pushed her and shoved her.

21 This pushing and shoving continued into the
22 house. At one point he had her pinned down. She
23 said she pulled her service revolver off, and at
24 that point he backed off.

25 And then the same thing occurred a second time

1 after a period of -- and he didn't -- he had her
2 pinned down and she felt like he was very -- so she
3 pulled out her service revolver again. And at this
4 point she said he swatted at it, and the gun
5 discharged, and it fired. And subsequently the
6 blood issued forth. And she immediately did
7 everything she could to help him. She was
8 concerned about his life and was obviously shaken.

9 Q Where did she tell you at the property the shooting
10 occurred?

11 A She said it was like inside the house, just inside
12 the house.

13 Q Okay. And did she -- where did she tell you that
14 Mr. Rowley went or where he fell from his wound?

15 A He fell from his wound back on the porch. And at
16 one time was down on the porch and then was able to
17 get up and then fell into a chair, a lawn chair.

18 And that was the point at which she was trying
19 to cover the wound and apply pressure and call
20 9-1-1. And she was -- said she was crying and
21 hysterical and -- yes.

22 Q Okay. Dr. Veronen, can you answer this? Why do
23 women in violent relationships, as you described,
24 the history of it from March to November, not end
25 these relationships immediately?

1 A Well, they don't end these relationships because
2 very often they love the person that they are
3 involved with. And, you know, there is lots of
4 encouragement that once you establish your love
5 bond, you try to do caretaking things for this
6 individual.

7 And Robin was, you know, a competent woman who
8 she felt she had good resources and she was trying
9 to both, you know, sort of love him into health and
10 get him the help he needed so that he could be a
11 healthy functioning partner/mate for her.

12 So women don't end these relationships because
13 of -- primarily because of love connections.

14 Q How do women in these violent relationships explain
15 these episodes of violence to themselves or excuse
16 or cover them up to other third parties?

17 A Well, they do a series of things, which we see in
18 these relationships, in which they say, It will get
19 better. And hope runs eternal, or seems to in some
20 of these violent relationships. The nature of
21 violent relationships is such that, you know, there
22 is sort of periods of good times intermittent with
23 the bad times, and with this intermittence what we
24 call schedule of reinforcement. The theories are
25 very -- shown that those are highly resistant.

1 People remain in those kind of things for a very
2 long time. And it is only when sort of the
3 violence gets to be, you know, more or the erratic
4 behavior or disturbing behavior gets to be more
5 consistent that people move to say things like, I
6 can't have this anymore. We've got to end this.

7 And this is the point at which often, you
8 know, and research shows, that men who are in
9 abusive relationships are highly dependent on the
10 person in that relationship. And that dependency
11 often leads them to behave in ways that, you know,
12 is either self-harming or very desperate ways at
13 that point because they don't want that
14 relationship to end.

15 They may say, you know, horrible, abusive
16 things like, you know, You never cared about me
17 anyway. But, in fact, you know -- or start out the
18 door and then turn around and come back and, you
19 know, try it again.

20 But that intermittent behavior is very common.
21 And the dependency of the abusive person on the
22 person they are abusing is profound.

23 Q Are people -- are women in these kind of violent
24 situations honest with third parties about what is
25 going on?

1 A Often not. Often they are very protective of --
2 they want to present -- I mean, there is a lot of
3 shame involved in being in a violent relationship.

4 You know, as a child, you know, when you get
5 spankings or punishment, you know, in quotes, you
6 have done something wrong. So women who are in
7 abusive relationships often look to their own
8 behavior to say, you know, What could I have done
9 differently? And sometimes, you know, we
10 definitely see that. You know, these women search
11 themselves for, What could I do to keep this from
12 happening? What could I do to keep this from going
13 to this point?

14 But it is not at all uncommon that they will
15 lie to family members. They will cover for the
16 abusive person.

17 Q Was Robin Herndon's situation typical or similar to
18 those women you have met with and investigated that
19 are involved in violent relationships?

20 A Yes. It was -- and the most significant part of
21 this is her reaction of believing and feeling at
22 this particular junction that Chris was more
23 agitated and more disturbed and sort of more out of
24 control than she had ever seen him. And so in this
25 desperate situation she -- you know, she had never

1 before pulled a revolver on him, ever before.

2 Q And this was just a part of the escalation of what
3 was happening?

4 A Correct.

5 Q Based on what you saw and read, do you believe that
6 Robin feared Chris on November 6th, 2013?

7 A Based on everything that I have -- you know, the
8 testing that we have conducted, the assessment, all
9 the reports, suggested that this was an event that
10 was worse than she had ever endured with him
11 previously and that she was in fear for her life on
12 this occasion. Yes.

13 Q Based on everything you have seen in your
14 evaluations and discussions with Robin, do you
15 believe that she fits the definition of an abused
16 intimate partner?

17 A I do believe she fits the description of an abused
18 intimate partner. And her subsequent mental health
19 record -- she went to therapy for a year following
20 this particular incident, and she was at that
21 mental health record judged to have experienced
22 what they call Post-Traumatic Stress Disorder,
23 major depression, and also they use the word co-
24 dependency, meaning that she had had a relationship
25 in which she believed and she was involved in what

1 they call a co-dependent relationship, that she was
2 highly -- her happiness depended on Chris's
3 functioning well. Co-dependency is also a term
4 used in the addiction world as well for people who
5 have an addictive spouse and they are doing what we
6 call enabling kind of behaviors.

7 Q Dr. Veronen, I don't have any further questions at
8 this time. Please listen and answer any questions
9 that the Prosecution may have.

10 MR. SORENSON: May it please the Court? Is it
11 possible we could take a five minute restroom
12 break?

13 THE COURT: All right. We will take about a
14 five minute break.

15 MR. SORENSON: Thank you, Your Honor.

16 (WHEREUPON, the jury retires to the jury
17 room at 10:37 a.m.)

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

19 THE WITNESS: Thank you.

20 THE COURT: All right, five minutes.

21 (WHEREUPON, a break was taken at 10:38
22 a.m.)

23 THE COURT: Are you ready?

24 MR. SORENSON: Yes. Thank you.

25 THE COURT: All right, you can bring them on

1 in.

2 (WHEREUPON, the jury came into open
3 court at 10:46 a.m.)

4 THE COURT: Yes, sir.

5 MR. SORENSON: Thank you, Your Honor. May it
6 please the Court?

7 THE BAILIFF: Hold on. We are missing one.

8 THE COURT: Now we will start.

9 MR. SORENSON: Thank you. Thank you, Your
10 Honor.

11 CROSS-EXAMINATION

12 BY MR. SORENSON:

13 Q Good morning, Dr. Veronen.

14 A Good morning.

15 Q I've got a few questions for you. You have come in
16 here and given your opinion that Robin Herndon back
17 on November 6th of 2013 was suffering from
18 Post-Traumatic Stress Disorder; is that correct?

19 A Correct. I have.

20 Q There is no clinical diagnosis for either Battered
21 Women Syndrome or Intimate Partner -- of a person
22 suffering from Intimate Partner Violence; is that
23 correct?

24 A There is no clinical diagnosis for that. As I
25 explained, I think, you know, the application in

1 the court has come to be known as the Battered
2 Person, but in the psychological literature you
3 will see Intimate Partner Violence. The stressors
4 that are described for production of Post-Traumatic
5 Stress Disorder are: Sexual abuse, trauma, threats
6 to one's life, feeling like death is imminent.

7 Yes.

8 Q Gotcha. And you had listed areas that -- that is
9 obviously not something that is confined to just
10 women; is that correct?

11 A Definitely not. I mean, it is -- you know, many
12 returning veterans are suffering Post-Traumatic
13 Stress Disorder. And, you know, the format of that
14 Post-Traumatic Stress Disorder, or the nature of
15 the stressors is different because of the different
16 kinds of combat, you know. In Vietnam we had, you
17 know, a type of combat that was very different than
18 the kind of combat, you know, that people in
19 Afghanistan experienced or Desert Storm. But, you
20 know, when the experience is such that the person
21 believes or feels helpless or that death could
22 happen at any point, that is the threat that is
23 said to be able to produce Post-Traumatic Stress
24 Disorder.

25 Q Other examples are people that are in serious car

1 accidents, that they then have a fear where they
2 can't get behind the wheel of a car?

3 A Correct. Or, you know, the idea of explosions,
4 being trapped in a particular situation.

5 Q So a fireman I think may have it if they have been
6 involved in a traumatic -- you know, trapped in a
7 building or something like that?

8 A Correct. And that produces the avoidance that we
9 often see subsequent, but we don't always see
10 avoidance.

11 Q Gotcha.

12 A Sometimes the kind of suffering they do, they have
13 re-experiencing of the trauma. You know, one of
14 the things we often see is or is reported is sort
15 of sleep disturbance and the re-experiencing of
16 traumatic events with feelings, feeling like the
17 event is reoccurring.

18 Q Gotcha. By that avoidance, so that would be -- and
19 I want to get to this a little bit later also --
20 but just so I'm clear on that, that would be people
21 that have been in a traumatic -- that are suffering
22 from Post-Traumatic Stress Disorder would typically
23 try to avoid things that can kind of trigger that
24 fear; is that correct?

25 A They may. Avoidance is one of the symptoms and

1 manifestations, but it is not the only one.

2 Q Do they ever typically --

3 A Hyperarousal can be, you know, one, you know.

4 Q Would you expect a person to try to seek out the
5 things that is -- that would -- let's say if it
6 was, you know, somebody returning from war. I
7 mean, would they typically try to seek out
8 fireworks or gunfire, or something like that, or is
9 that --

10 A Well, for those people if they are high in
11 avoidance, they would probably avoid it.

12 Q Okay.

13 A But if -- for some people, they become, in fact,
14 their compulsion is to almost have an abnormal
15 attachment to firearms and, you know,
16 fortifications, and so they will, you know, take on
17 additional -- go to every gun show they can, take
18 additional training, and expose themselves in ways
19 that -- so, you know, the manifestations of
20 Post-Traumatic Stress Disorder may be with --
21 different in different individuals.

22 Q What about women who are the victims of Intimate
23 Partner Violence? Do they typically try to avoid
24 violent confrontations?

25 A They may try to avoid the violent confrontation.

1 They may, in fact. And avoidance was one of the
2 higher scores for Robin, but that doesn't
3 necessarily mean that each individual situation can
4 be predicted, that if she didn't avoid them she
5 wasn't suffering from it. Because, as I explained,
6 with different individuals, you know, the
7 compulsion for, you know, sort of managing that
8 particular reaction could be different.

9 Q And in this case, Dr. Veronen, you have issued a
10 4-page report; is that correct?

11 A Correct.

12 Q And then I have also been provided -- it has got a
13 cover sheet on it, so that makes it -- but it is a
14 total of 18 pages of notes from your meetings with
15 Ms. Herndon?

16 A Correct.

17 Q Is that correct? And then the actual scores for
18 the two, the Personality Assessment Inventory and
19 the DAPS, the other --

20 A Detailed Assessment of Post-Traumatic Stress, yes.

21 Q The two tests that you provided; is that correct?

22 A Correct.

23 Q Do you have other notes, or is that all of your
24 notes from your meetings with Ms. Herndon?

25 A That is my notes from the meeting.

1 Q All right. In just looking through this, I mean,
2 on the front page of this report that you issued,
3 it makes a comment here, In some situations of
4 intimate partner victimization, the victimization
5 is so severe and prolonged that the reactions of
6 the victim are comparable to individuals who have
7 been prisoners of war or who have experienced
8 torture.

9 You are not saying that she was in that
10 situation, are you?

11 A No. That is sort of part of the general statement.
12 But, you know, one of the other terms that they use
13 for describing, you know, women who are in severe
14 situations like that is domestic terrorism, you
15 know, that the person that they are living with
16 behaves like a terrorist.

17 Q Is it your testimony that that is the situation she
18 was in?

19 A No, that isn't my -- that is not my testimony.

20 Q Okay.

21 A But I'm saying --

22 Q Okay. I was just curious why that was in your
23 report, I mean --

24 A Because I laid out in several paragraphs, you know,
25 sort of just as I did for these people, the general

1 background how Post-Traumatic Stress Disorder and
2 battered women syndrome came to come about. Yes.

3 Q All right. And Mr. Leiendecker had asked you --
4 obviously, I understand you are getting paid for
5 your testimony today. How much are you getting
6 paid?

7 A \$150 an hour.

8 Q And about how many hours do you think after today
9 you are going to have in this case?

10 A The bill probably will not go over \$3,500.

11 Q And it is your testimony -- and you recall, you
12 testified in a prior hearing the beginning of last
13 week; is that correct, Dr. Veronen? Is that
14 correct?

15 A Correct.

16 Q And you testified -- Mr. Leiendecker asked you the
17 question a little while ago, When were you first
18 contacted by anybody about this case. Do you
19 recall that question?

20 A I think it was February 5th, approximately.

21 Q Okay. Now, last week you testified it was
22 February 10th. Do you remember that?

23 A I can't be certain because I don't have a note. I
24 know it was in close proximity to when I actually
25 performed the evaluation.

1 Q Somewhere between February 5th and February 10th.

2 You don't have that documented?

3 A I think it was -- it looks like February 6th.

4 Q Okay. So it wasn't February 5th or February 10th,
5 it was February 6th. Okay.

6 And it is my understanding at that point in
7 time you were contacted. And did you get a brief
8 kind of background as to what the situation was and
9 why they wanted you to --

10 A Yes. My understanding was that the expectation was
11 that they imagined as many of these cases as they
12 have evolved, what happens is that they are settled
13 in plea agreements as to opposed to being brought
14 to trial. And my understanding was that there was
15 an expectation that a plea agreement would have
16 been --

17 THE COURT: Hold on. Hold on. Hold on one
18 second. One second.

19 Ladies and gentlemen of the jury, let me send
20 you all out for one second.

21 (WHEREUPON, the jury retires to the jury
22 room at 10:57 a.m.)

23 THE COURT: All right. I kind of expected you
24 to object, but --

25 MR. LEIENDECKER: The problem -- and counsel

1 is asking the question. I'm sure he didn't want it
2 to lead this way, but --

3 MR. SORENSON: The problem is she is not
4 answering my -- I mean, she answers my question,
5 and then she just kind of goes on to a tangent
6 after that.

7 MR. LEIENDECKER: But also, part of the
8 problem is, he can ask what our financial working
9 relationship is, which he has, and which is
10 appropriate. But he's not allowed to ask any
11 questions about conversations with counsel and the
12 expert. And that is how he sort of opened this
13 door, What were the conversations with my office
14 and her. He is not permitted to do that. That is
15 privileged and protected.

16 THE COURT: Under what privilege?

17 MR. SORENSON: She is not your client. I
18 mean, she is testifying.

19 MR. LEIENDECKER: She is my expert. She -- he
20 can't get into that.

21 THE COURT: I don't know if there is a
22 privilege for it.

23 MR. SORENSON: Once she is sitting up on that
24 witness stand, I think that --

25 THE COURT: I don't know if there is any

1 privilege there. I'm not familiar with any
2 privilege between a witness and the attorney. But
3 I -- I don't know what she was about to say, but I
4 don't know if she was about to say that you all
5 were expecting a plea agreement. But let's --

6 MR. LEIENDECKER: I didn't have the
7 conversation with her, so I don't know what she was
8 told, but we certainly didn't have that, you know,
9 expectation. She may have been told that she may
10 or may not be needed based on whether we were able
11 to resolve this by a plea or not, but --

12 THE COURT: I think that is a road we do not
13 need to go down.

14 MR. SORENSON: And that wasn't what I was -- I
15 mean, I --

16 THE COURT: We have gone too far in this trial
17 to have those discussions in front of the jury. So
18 I am not going to allow -- I don't know what the
19 next -- what was your question?

20 MR. SORENSON: Well, my question was, and
21 really what I was trying to get at was the fact
22 that they were contacting her specifically to get
23 her as an expert in Battered Women Syndrome. I
24 mean, I didn't -- it says --

25 MR. LEIENDECKER: The problem is -- it is

1 cross-examination. He can ask that question, Isn't
2 it true they contacted you? What he is doing is he
3 is throwing open-ended questions and he is bound to
4 take what he gets.

5 THE COURT: All right. Well, I'm not going to
6 allow any testimony regarding any plea agreement
7 and discussions regarding a plea agreement. So
8 let's rephrase the question.

9 MR. SORENSON: Yes, ma'am.

10 THE COURT: And we'll instruct Dr. Veronen to
11 stay away from that area regarding any plea
12 agreements or testifying for a plea agreement.

13 THE WITNESS: Can I ask you a question?

14 THE COURT: Yes, ma'am.

15 THE WITNESS: You brought up the idea I
16 testified last week. And that was a Stand Your
17 Ground thing. And you, know, we're in dispute
18 about what the date was.

19 THE COURT: I think he was referring to the
20 trial. Were you referring to the trial?

21 MR. SORENSON: I was referring to her
22 testifying a week ago. A week ago she testified
23 that she was first contacted on February 10th.

24 THE WITNESS: Well, but that was -- where I
25 got -- where I testified was here.

1 THE COURT: Well, that's fine. Don't --
2 just -- you have to answer the question. That is
3 just part of the impeachment process.

4 MR. SORENSON: I'm not asking about some other
5 trial.

6 THE COURT: You don't have to get into the
7 fact that it was testified to on the Stand Your
8 Ground hearing. He just -- the question is, You
9 previously testified. And I think Mr. Leiendecker
10 has done it all through the trial. Because it is
11 sworn testimony that was previously given. So he
12 can ask that question. But we can't get into the
13 specifics of it.

14 THE WITNESS: All right.

15 THE COURT: And I don't think he asked where
16 it was that you testified.

17 MR. SORENSON: I just asked her, You testified
18 in a hearing a week ago and you said at that point
19 in time that you were first contacted on February
20 10th.

21 THE COURT: All right. And you just need to
22 answer that.

23 THE WITNESS: Okay.

24 THE COURT: And let's move on. But let's not
25 get into any discussions regarding any plea

1 agreement or plea offer and her turning down any
2 plea, or anything of that magnitude.

3 All right. We can bring them back in.

4 (WHEREUPON, the jury came into open
5 court at 11:02 a.m.)

6 THE COURT: All right. All right, please
7 rephrase the question.

8 MR. SORENSON: Yes, Your Honor.

9 BY MR. SORENSON:

10 Q Dr. Veronen, so when you were first contacted on
11 February 6th -- now I think that is when you
12 indicated you believe that contact was with
13 Ms. Hinds -- the purpose of them contacting you was
14 they were looking for an expert in Battered Women
15 Syndrome; is that correct?

16 A Correct. Yes.

17 Q And that is what my question -- I kind of probably
18 unartfully worded that. And I apologize. And you
19 testified at that point in time that you got
20 obviously a little bit of background, what she had
21 been charged with, and so forth; is that correct?

22 A Correct.

23 Q And then you also said that you had, I believe the
24 way you worded it on direct examination was that
25 you asked to be provided with basically all the

1 discovery for you to review; is that correct?

2 A Correct.

3 Q And you testified that you received the incident
4 report from the police officers, from law
5 enforcement?

6 A Correct.

7 Q Witness statements?

8 A Correct.

9 Q I'm not too sure what else you said that you got
10 besides those.

11 A Mental health records.

12 Q Some mental health records, that's correct. And
13 actually some of those you didn't get until kind of
14 real recent; is that correct?

15 A Correct. I requested them, but I didn't get them.

16 Q Gotcha. What I didn't hear you say you got was the
17 copy of the videotaped statement that Robin Herndon
18 gave the afternoon of --

19 A I did not get that.

20 Q -- November 6th? You didn't get any of the crime
21 scene photos?

22 A I did not get the crime scene photos.

23 Q All right. But then ultimately, with the stuff
24 that you did receive, you then had Ms. Herndon come
25 in and meet with you on February 15th; is that

1 correct?

2 A Correct.

3 Q Of 2016? And that is three weeks ago; is that
4 correct?

5 A Correct.

6 Q Three weeks ago probably today; is that right?

7 A Correct.

8 Q Okay. And you first met with her, got a little bit
9 of brief social history from her; is that correct?

10 A Correct.

11 Q And then at that point in time had her do those two
12 tests that you talked about; is that correct?

13 A Correct.

14 Q And at that point in time, after that -- and those
15 two tests, just to make sure I understand, the
16 personal -- the Personality Assessment Inventory
17 and DAPS, those two tests are both -- she is left
18 alone to kind of take those tests?

19 A Correct.

20 Q Okay. And they are multiple choice?

21 A Well the DAPS, I do -- we do the screening together
22 to find out what trauma events that she suffered.
23 And then she, in fact, completes the rest of it by
24 herself once we establish what the nature of the
25 traumatic events were.

1 Q And that --

2 A Yes.

3 Q I'm sorry. And of course that is all just based on
4 her responses at that point in time; is that
5 correct?

6 A Correct.

7 Q Okay. So if I come in there and tell you that I
8 have been, you know, sexually assaulted in the
9 past, I mean, you are taking my word on it at that
10 point in time; is that correct?

11 A Well, yes, but then you have corroborating events
12 that, you know, are either consistent or
13 inconsistent. And, you know, persons with combat
14 experiences, you know, that is a corroborating
15 event. Persons who have life threats due to
16 physical assaults, you know, yes, often there is
17 corroborating events that suggest that the physical
18 assaults have occurred and their places.

19 Q Of course in this case, all of the corroborating
20 evidence was yet again just what she told you had
21 happened; is that correct?

22 A It was what she told me that happened, but the
23 consistency with that and, you know, reports from
24 employer and people seeing bruises on her and --
25 yes.

1 Q That is testimony that they saw a bruise on her arm
2 and a black eye, right, one black eye; is that
3 correct?

4 A Correct. But --

5 Q I'll get to that in a second. Now, of course, when
6 she came to meet with you on February 15th of this
7 year, three weeks ago, she at that point in time
8 knew why she was coming to meet with you?

9 A Yes.

10 Q Is that correct?

11 A Exactly one of the questions I asked, Do you know
12 why you are here?

13 Q And she obviously knew it was in her best interest
14 for you to find that she is a battered woman; is
15 that correct?

16 A Perhaps, yes.

17 Q Perhaps? And at that point in time -- well, let me
18 ask you this. When you first interviewed her -- so
19 your first meeting with -- your first meeting with
20 Robin Herndon on February 15th, you described her
21 as very assertive; is that correct?

22 A Correct.

23 Q She was a self-starter?

24 A Right.

25 Q Has a take-charge personality?

1 A She closed the door of the room that we were in.
2 She sort of queried me about, you know, Had I done
3 this before, what were my credentials. Yes, she is
4 a self-starter in that regard, yes. And --

5 Q And --

6 A With her -- yes.

7 Q And so on February 15th, so you, as I said, you
8 talked briefly with her on that day?

9 A Um --

10 Q Because most of your notes that kind of lay out the
11 incident and all that are all dated on
12 February 18th?

13 A Correct.

14 Q So the 16th is getting kind of some of her kind of
15 background, got kind of what she has been doing
16 since this time, and stuff of that nature?

17 A Correct.

18 Q And then obviously the two tests that she took?

19 A Correct.

20 Q Is that kind of the sum of what happened on
21 February 15th?

22 A Yes.

23 Q And after that meeting on February 15th, you at
24 that point in time notified her lawyer that you
25 were willing to testify as an expert in Battered

1 Women Syndrome in this case; is that correct?

2 A I can't remember exactly what -- if it was after
3 the 15th or after the 18th.

4 Q Okay. Well, if a letter was sent to our office
5 indicating that you were going to be an expert
6 witness on February 16th --

7 MR. LEIENDECKER: Objection, Your Honor.

8 THE COURT: What is the objection?

9 MR. LEIENDECKER: The basis of that letter is
10 not --

11 THE COURT: No, the objection. What is the
12 objection?

13 MR. LEIENDECKER: That it is inadmissible.
14 The letter and that date that he is trying to glean
15 from it is inadmissible. It is a letter from my
16 office.

17 THE COURT: Let me see you all.

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

21 THE COURT: All right, the objection is
22 sustained. Rephrase the question.

23 BY MR. SORENSON:

24 Q Let me just ask that again just to make sure that I
25 understand your answer to my previous question,

1 Dr. Veronen. So you don't recall when it was that
2 you notified them that you were going to be a --
3 willing to be an expert witness in this case?

4 A I do not.

5 Q It could have been after that meeting on the 15th?

6 A It could have been.

7 Q And then on February 18th is when you actually sat
8 down and interviewed Robin Herndon about this case;
9 is that correct?

10 A Right.

11 Q All right. So you issued, as I had asked you
12 earlier, then a 4-page report a couple of days
13 after that on February 21st; is that correct?

14 A Correct.

15 Q Let me back up. I have one other question, though,
16 on this. Your testimony when talking about the
17 DAPS -- and what is that? I don't know why I can't
18 remember that, what that stands for.

19 A Detailed Assessment of Post-Traumatic Stress
20 Disorder.

21 Q Is it okay if I just call it DAPS?

22 A Sure.

23 Q All right. That test was given on the 15th based
24 on her responses. And you had indicated I think on
25 direct that she had indicated that the event that

1 caused her fear, so therefore that caused that
2 Post-Traumatic Stress Disorder, was the incident on
3 November 6th of 2013; is that correct?

4 A That is the one that I rated. There were other
5 significant traumatic events. She had four
6 significant traumatic events.

7 Q Okay. Well --

8 A The one that -- the question that I asked is, you
9 know, the item -- experience -- and the experience
10 she rated as being most troublesome and most
11 bothersome to her was Chris -- this event of
12 November 6th. Chris was agitated and aggressive
13 and behaved more aggressively, threw her down,
14 pinned her to the floor, et cetera. So we're
15 talking about -- and that was the event that she
16 rated as most significant, but it does not
17 necessarily mean that the other events were not
18 significant enough to produce Post-Traumatic Stress
19 Disorder, it is just the one that received the most
20 detailed assessment.

21 Q And yet again, this is, as I have asked you
22 bunches, that is entirely based on her description
23 of that event; is that correct?

24 A It is based on her description of the event, but,
25 as I said, this particular instrument is widely

1 used with people who have had all kinds of traumas
2 as an assessment procedure, a standard assessment
3 procedure.

4 Q And usually people that are being assessed by a
5 clinical psychologist are in there because they are
6 having issues and they are trying to find out what
7 is wrong with them; is that correct? They are
8 having depression, they are having trouble
9 sleeping, mood swings, things of that nature; is
10 that correct?

11 A Correct.

12 Q That would be -- and typically in your practice
13 that is probably most of what you see, right, when
14 you are evaluating people; is that correct?

15 A Correct.

16 Q They are coming to you because of problems that
17 they are having; is that correct?

18 A Correct.

19 Q All right. So if I, you know, am having mood
20 swings, I'm not sleeping well, got, you know,
21 appetite issues, things of that nature, and I come
22 in, and I'm just kind of telling you, This is what
23 is wrong with me, please figure it out?

24 A Correct.

25 Q I mean, obviously I'm not coming to you with a

1 preconceived notion with what I want you to
2 diagnose me with; is that correct?

3 A Correct. .

4 Q Okay. This is a whole lot different situation; is
5 that correct?

6 A Somewhat different.

7 Q Well, here --

8 A She had already been diagnosed with Post-Traumatic
9 Stress Disorder by, you know, a previous mental
10 health professional she saw for a year's period of
11 time.

12 Q After she had been arrested and charged with the
13 murder of her boyfriend?

14 A Correct. Correct. Correct.

15 Q All right. And she ends up -- bear with me one
16 second. (Pause.) All right. And she -- you kind
17 of go through testifying earlier kind of a long
18 narrative of kind of I guess what she told you
19 about their prior history, and stuff of that
20 nature; is that correct?

21 A That social history, yes. Some of it was
22 corroborated by her daughter. Yes.

23 Q That wasn't my question, but okay. And you
24 memorialized that either in your notes, what she
25 told you; is that correct?

1 A Correct.

2 Q Or -- and in your notes, some of that stuff made it
3 into your written report; is that correct?

4 A Correct.

5 Q You would agree with me that not everything that is
6 in your notes is in your written report; is that
7 correct?

8 A That's correct.

9 Q Okay. All right. But you went through kind of a
10 narrative on direct examination. I heard you say,
11 you know, when you were talking about around the
12 early part of -- late part of February, early part
13 of March that Mr. Rowley, Christopher, was going to
14 move in with her. Do you remember you were talking
15 about that part?

16 A Correct.

17 Q All right. And you were talking about the
18 Defendant indicating that she was going to put a
19 camper in the back yard; is that correct?

20 A That's what she had indicated.

21 Q Okay. And of course that is nowhere in your notes;
22 is that correct? And that is nowhere in your
23 report; is that correct?

24 A I think there is an allusion to it in the report.

25 Q Okay. If you need a second to find that I will be

1 glad to give you that opportunity.

2 (Pause.)

3 A Item 3 there: In late February the relationship
4 began to change and Chris became more demanding
5 about Robin meeting his needs. He was put out of
6 his previous residence, and his mother had
7 indicated that he could not live with her. He
8 needed a place to live, steady employment, and help
9 with child support. He began to use force and
10 emotional battery to get what he wanted from Robin.

11 The emotional battery was the notion that, I'm
12 going to live like a dog in the back yard.

13 Yes, the note might not be there. Not
14 everything that, you know, I'm told, you know,
15 makes it into --

16 Q Your notes even?

17 A Perhaps not into the notes.

18 Q Look. I mean, I will give you all the time you
19 need to tell me where in there it says anything
20 about the Defendant was going to put Christopher
21 out in a trailer in her back yard -- a camper in
22 her back yard.

23 A Well, perhaps it is not in there, but it was
24 something that she had indicated. (Pause.) But it
25 is the pattern of behavior that is what is

1 important.

2 Q That is not my -- Dr. Veronen, that is not my
3 question. My question is, is that in your notes or
4 your report?

5 A It is part of what we would consider to be
6 emotional battery.

7 MR. SORENSON: Your Honor, can you please
8 instruct her to answer my question?

9 THE COURT: All right, give her a chance to
10 look through her report.

11 And then once you look through the report,
12 Dr. Veronen, just answer yes or no, and then if you
13 need to explain.

14 (Pause.)

15 A I can't find it in my notes. Oh. Page 4, just
16 before -- I don't know that there is a date on it.
17 It begins: Other -- he was living with fellow in
18 Augusta. Guy asked him to leave. At the apartment
19 all the stuff got packed up. I was not divorced
20 from my husband. His mother, appealed.

21 And then there is a quotation: Live like an
22 animal. You know. And then the additional part in
23 that was he had said something, How can I protect
24 you from the back yard? So it is there.

25 Q You just remembered that from three weeks ago?

1 A No, it is right here in the notes. It is on
2 Page --

3 Q I'm looking right where you said. Where on earth
4 does it say anything in there about him living in
5 the back yard in a camper?

6 A Live like an animal. That was his word in the
7 context. I can't take down every word that is
8 said. But it is here.

9 Q Okay. Let's move on to another thing that you said
10 on direct. That the victim's check was being
11 directly deposited into Ms. Herdon's account. Is
12 that in your report or your notes?

13 THE COURT: Give her a second to look.

14 MR. SORENSON: Uh-huh.

15 (Pause.)

16 A I cant find it, but it doesn't mean it is not here.
17 (Pause.) Okay. I can't find it.

18 Q All right. How about the story about Chris
19 giving -- or her giving Chris a birthday present
20 and some photograph?

21 (Pause.)

22 A I can't find it. Apparently it is something she
23 told me.

24 Q But you didn't document it either in your notes or
25 your report, but yet now you remember three weeks

1 later -- four weeks later?

2 A Yes.

3 Q Waiting on the answer. All right. And then you
4 testified that the first time that an altercation
5 occurred stemmed out of an argument they had
6 regarding a trip to Charleston. Do you remember
7 that testimony on direct examination?

8 A Correct.

9 Q Okay. Anywhere in your notes or your report that
10 you say anything about that first altercation
11 involving them taking a trip to Charleston?
12 (Pause.)

13 A It may not -- it is apparently not there. I'll
14 take your word for it. It is something that she
15 told. And it is included in the paragraph which
16 says that, you know, he grabbed her, pushed her.

17 Q I mean, it is not included in that paragraph. You
18 said it is included, but --

19 A Well, not that specific, but it is the incident --
20 the incidents of violence was asked about.

21 Q Didn't you think that was important to document
22 somewhere, I mean, what the arguments were about?
23 I mean --

24 A They had an 11-month relationship.

25 Q I assume your testimony is that that is one of

1 those four episodes that she had, is that correct,
2 was that incident? Those four episodes that caused
3 this Post-Traumatic Stress Disorder that she
4 suffers from?

5 A It may have been.

6 Q Well, tell us. I mean, you have mentioned several
7 times now that there are four episodes that she
8 told you about that she tested positive for all
9 this. What were those four episodes?

10 A She answered that: Someone hitting, choking, or
11 beating you, including someone you live with, when
12 you are seriously hurt or afraid you would be hurt
13 or killed at any time in your life. She answered
14 positively to that event.

15 She answered positively to: Someone
16 threatening to injure you or do something sexual to
17 you against your will, although they didn't
18 actually do anything to you, but you were afraid
19 you would be hurt or killed.

20 She answered positively to: Some other
21 experience that caused you to be seriously hurt or
22 made you feel that you might be seriously hurt or
23 killed.

24 She also answered positively to: Did an adult
25 ever hit or beat you or in some other way

1 physically hurt you.

2 Q Of course, I mean, that could be one incident that
3 is positive to those four questions; right? I
4 mean, one incident occurred could easily cover
5 those four questions; is that correct?

6 A Well, the sexual history question is very, very
7 different.

8 Q But it still could be the same incident?

9 A It could be part of the same incident.

10 Q And of course you don't -- I don't see anything in
11 here where there is any kind of sexual assault
12 committed on her; is that correct?

13 A Correct.

14 Q But that was one of the episodes that you --
15 somehow that led to your finding she was a --
16 suffered from Post-Traumatic Stress Disorder was
17 her answering to that question?

18 A Not her answering to that question, her answering
19 the question: Chris was agitated and aggressive
20 and behaved more aggressive, threw her down, pinned
21 her down.

22 Q Go ahead. I mean, if you need to further explain.
23 Because ultimately what you said --

24 A The further explanation is that, you know, one does
25 not have to have Post-Traumatic Stress Disorder in

1 order to be afraid for their life. It happens to
2 be a corollary. Okay? And not everybody who has
3 life-threatening experiences, you know, is one that
4 suffers Post-Traumatic Stress Disorder. But
5 Post-Traumatic Stress Disorder can happen from, you
6 know, violent relationships.

7 Q All right. I fully agree with that, Dr. Veronen.
8 But your testimony in front of this jury is that
9 she suffers from Post-Traumatic Stress Disorder.

10 A Correct.

11 Q And that is the reason why she did what she did on
12 November 6.

13 A No. The reason she did what she did was because
14 she was in fear for her life. And you don't have
15 to have Post-Traumatic Stress Disorder to do that,
16 but from my assessment that, you know, did
17 contribute to her, you know, her knowledge of Chris
18 and her knowledge of the relationship with Chris
19 and, you know, having gone to mental health
20 appointments with him and kind of live through it,
21 it did produce the fact that she saw him as more
22 aggressive and, you know, she also saw the danger
23 of that aggression and said that, you know, This
24 relationship can't go on. And, you know, that is
25 often the point of which, you know, the most

1 violence in relationships occurs.

2 Q And it is ultimately -- it is your testimony, I
3 believe, you gave this opinion to Mr. Leiendecker
4 was that you believe that she was in fear of
5 Christopher Rowley on November 6th of 2013, and
6 that was --

7 A That was my testimony, yes, indeed.

8 Q And obviously that is based in large part on what
9 she told you happened that day; is that correct?

10 A It is based on what she told me that happened that
11 day and, you know, sort of the previous history,
12 which is highly consistent with, you know, other
13 persons that have had similar kind of abusive
14 relationships, yes.

15 Q Well, let's -- we are going to get to that in a
16 second. All right. One other thing I noticed that
17 you mentioned a couple of times, I actually saw it
18 in your report and I heard you testify about this,
19 about Ms. Herndon referencing multiple black eyes,
20 more than one. Do you recall that?

21 A I only know of one black eye.

22 Q Okay.

23 MR. LEIENDECKER: Objection, Your Honor. I
24 believe it mischaracterizes the testimony.

25 MR. SORENSON: I think she said black eyes.

1 MR. LEIENDECKER: I think the jury can decide
2 for themselves.

3 THE COURT: All right. Objection overruled.

4 MR. SORENSON: Thank you.

5 BY MR. SORENSON:

6 Q In fact, in your Paragraph Number 7, the second
7 line: Robin was lying to people about how she got
8 the bruises and black eyes. You even say plural
9 eyes in here; correct?

10 A I did, in fact, say that, I guess.

11 Q Obviously that would have had to have come from
12 Ms. Herndon; is that correct?

13 A She only told me about one incident. It would have
14 been a mischaracterization, an error in the report
15 to characterize it as black eyes.

16 Q Let me -- bear with me one second. (Pause.) What
17 is rapid cycling bipolar disorder? Is that the
18 same thing as like Bipolar I or Bipolar II, or is
19 that something totally different?

20 A It is -- it can be bipolar not otherwise specified.

21 Q That is what that can be?

22 A Yes.

23 Q And she told you that Chris was suffering from
24 rapid cycling bipolar disorder. Is that what she
25 told you or did you --

1 A That is what she told me.

2 Q And of course you have had a chance to get those
3 mental health records, and it doesn't ever use that
4 term anywhere in those mental health records?

5 A It doesn't use that term. It uses --

6 Q Bipolar not otherwise specified?

7 A Not otherwise specified.

8 Q Let's talk a little bit about what she told you
9 about what happened on November 6th of 2013.

10 She had told you that she had made an
11 appointment for Chris that day to get some blood
12 work done?

13 A Correct.

14 Q And that Chris didn't think that -- wasn't taking
15 that serious, and that she was the one that was
16 pushing it?

17 A Perhaps that is -- there were several kind of --
18 she was definitely pushing for it. She definitely
19 thought it was necessary and important. And she
20 was concerned that, you know, he acted
21 inconsistently and she wasn't sure that he would
22 make it to the appointment unless he was
23 accompanied. That was the sum total of what I got
24 out of talking with her.

25 Q Were you aware of the fact that that appointment

1 had been originally scheduled two days prior on
2 November 4th of 2013?

3 A I was aware that she had said that.

4 Q In fact, that he didn't make that appointment
5 because she made other plans?

6 A She wanted to gift him with a trip to see some
7 wrestling.

8 Q And that is what I want to -- let me -- and I kind
9 of -- you talked about this a little earlier about
10 this term avoidance. And I think you said that she
11 scored very high in that category. What does
12 avoidance mean and the fact that -- what did you
13 take out of the fact that she scored very high in
14 this category?

15 A Well, that she would perhaps at times try to avoid
16 confrontation, would try to do -- the avoidance
17 behaviors could be so complicated as she tried to
18 get him help in a mental health area so that he
19 would not be violent and so his mood would be
20 stable and they could have a loving relationship.

21 Q And the fact that you have testified that leading
22 up to November 6th of 2013 that she was a battered
23 spouse or the victim of intimate partner violence,
24 does it concern you at all, I mean, that she is
25 taking him to go see wrestling, which, I mean,

1 while fake, is still fairly violent; is that
2 correct? Does that concern you at all?

3 A It was something that she said that he enjoyed and
4 she -- you know, as I said, she wanted to gift him.

5 Q Did she tell you that she enjoyed it too?

6 A I think she said that, We enjoy wrestling together.

7 Q But that didn't concern you that somebody who is
8 supposedly the victim of all these violent
9 assaults, I mean, that she would then go with that
10 same person who is alleged to be assaulting her to
11 watch a violent sport?

12 A Well, some people don't consider -- they consider
13 wrestling a lot of acting. I don't know how she
14 considers it. They said -- she said she enjoyed
15 the wrestling -- she said they enjoyed wrestling.

16 Q And when she tells you about what happened on
17 November 6th of 2013 she goes through multiple
18 pages in your notes that actually go through that
19 day; is that correct?

20 A Correct.

21 Q And ultimately at the end of that she makes the
22 comment to you that, My story has not changed?

23 A Correct.

24 Q Okay. Well, your testimony earlier is that you
25 never -- you have never seen, I guess, at this

1 point in time the statement she gave to the police
2 on November 6th?

3 A I have not seen the statement she gave to -- the
4 videotape. I have read statements from witnesses
5 and the officers. I have not seen the videotape.

6 Q You didn't think that would be something that would
7 be important to see when you are basically judging
8 her credibility and determining what weight to give
9 to what she is telling you happened on November 6th
10 of 2013?

11 A It may have been helpful, but different
12 methodologies exist for different purposes. And
13 the methodology for a clinical assessment is not
14 necessarily the same methodology that one would use
15 when one is a police officer investigating, you
16 know, a particular scene and, you know, trying to
17 ascertain -- we have just completely different
18 purposes. And so, yes, it perhaps could have been
19 helpful, but, you know -- I do know that based on
20 the research that I have done in the past and I did
21 with colleagues, that when different methodologies
22 are employed one gets, you know, different reports.

23 When we first started doing the research on
24 sexual assault and victims of violence, people
25 said, You will never get people to answer those

1 questions. We did screening questions over the
2 telephone. And, you know, in fact, we did get
3 people to report about those events.

4 So when the conditions are sort of ripe for
5 gaining a report, you'll get a slightly different
6 report than you do when law enforcement is doing
7 that same report.

8 Q Of course, in this case, where you haven't seen the
9 video, you don't know what they asked or how they
10 took that statement from her, do you?

11 A No, I don't. But I do know that, you know, based
12 on -- different methodologies produce slightly
13 different emphasis.

14 Q And your testimony when you went through that kind
15 of what happened that day, you talk about them
16 having met at the cemetery, about Ms. Herndon
17 telling you that Christopher was agitated, angry,
18 was stalling about going to the doctor; is that
19 correct?

20 A Correct.

21 Q Correct?

22 A Correct.

23 Q And that the argument ultimately returned back to
24 their home; is that correct?

25 A Correct.

1 Q Okay. And I believe you testified that Ms. Herndon
2 described him as drifting, his driving erratically,
3 specifically drifting off of the highway? Do you
4 remember saying that on direct examination?

5 A I remember her saying something like him driving
6 crazy or he overcorrected or something.

7 Q Okay. Well, the fact is in your notes it just
8 says, He was driving crazy, on top of -- the page
9 number is cut off, but it looks like maybe your
10 Page 2 from --

11 A Correct.

12 Q From February 18th?

13 A Correct.

14 Q But that is the sum total of your description in
15 your notes is, He is driving crazy. But now you
16 are giving the jury a lot more specifics that are
17 consistent now with what she testified to; is that
18 correct?

19 MR. LEIENDECKER: Objection, Your Honor.

20 A I don't know what she testified.

21 MR. LEIENDECKER: Objection, Your Honor.

22 THE COURT: Hold on one second.

23 MR. LEIENDECKER: He is pitting the witnesses
24 now.

25 THE COURT: All right. What is the question

1 again?

2 MR. LEIENDECKER: He is comparing her
3 testimony to that of Ms. Herndon.

4 MR. SORENSON: Well, I mean, her testimony is
5 about what she said.

6 THE COURT: What is the question again?

7 MR. SORENSON: I asked her, I mean, Isn't it a
8 fact, you know, in your notes you have, He is
9 driving crazy, but, in fact, you testified a lot
10 more specific than that, that you said he was
11 drifting off the highway, more consistent now with
12 what her testimony was.

13 MR. LEIENDECKER: Objection. Pitting
14 witnesses.

15 THE COURT: You can ask her regarding her
16 testimony.

17 MR. SORENSON: Okay.

18 THE COURT: And her notes.

19 MR. SORENSON: That's fine.

20 THE COURT: Objection sustained.

21 BY MR. SORENSON:

22 Q So in your notes you have just very generic, He is
23 driving crazy; is that correct?

24 A Well, if you look a couple of lines before that, it
25 says, Acted very bizarre. Sped off. Headed to my

1 house. I'm behind him. He is driving crazy.

2 Okay. So there is references to --

3 Q To drifting off the highway? Because that is what
4 your testimony was --

5 A Overcorrected. That is, you know --

6 Q I mean, in fact, your testimony an hour ago was
7 that --

8 A Okay. Yes.

9 Q Was that he --

10 A Yes. And that is what I got from what --

11 Q That is what you got from, He is driving -- acting
12 bizarre and driving crazy, that is what you got?

13 MR. LEIENDECKER: Objection, Your Honor.

14 Asked and answered.

15 A Yes.

16 THE COURT: Overruled.

17 MR. SORENSON: Thank you. Thank you.

18 BY MR. SORENSON:

19 Q And he told you -- or she told you, I'm sorry --
20 that -- I believe you said that after Christopher
21 threw the keys on the roof, that he became angry.
22 Do you remember that description on your direct
23 examination?

24 A Yes.

25 Q Okay. Did she ever tell you that she became angry

1 and mad when Christopher threw her keys on the
2 roof?

3 A She was -- yes, she was in a state of upset. She
4 was angry. She was trying to persuade him. She
5 was trying to influence him to, Call your mother,
6 Call your mother.

7 Q Okay. So the answer to my question is, Yes, she
8 did say that she became angry?

9 A Yes.

10 Q Now, your testimony is that inside the residence,
11 once they got up inside the residence, that he
12 pinned her down two times inside. She told you
13 that?

14 A That is what I believe I heard.

15 Q That he pinned her down two times, and after the
16 second time -- and she had pulled her gun out both
17 times; is that correct?

18 A That is what I understood to have happened, yes.

19 Q And that he swatted -- he being Christopher --
20 swatted at the gun and it went off and then blood
21 issued forth from the wound?

22 A That is what I understood to have happened.

23 Q And the way you understood it was that all this
24 happened right inside the front door?

25 A Correct.

1 Q And that he fell from that wound back onto the back
2 porch -- onto the front porch?

3 A I'm not -- I don't know from what she told me
4 whether he fell or grabbed and turned around and
5 went out the door. I don't know whether he fell
6 out the door.

7 Q And she also told you in here, looking at the
8 bottom of Page 5, that she actually had found out
9 that she had urinated on herself during this
10 incident; is that correct?

11 A Correct.

12 Q And that is what she told you back on February 18th
13 of this year?

14 A Correct.

15 Q Going back, the social kinds of -- or the history
16 that you got from them, you had addressed this on
17 direct examination that Ms. Herndon told you that
18 back in -- let's see where it is -- in February of
19 2013 that she had broken her knee?

20 A Correct.

21 Q Playing on the trampoline. Is that correct?

22 A Correct.

23 Q And she never indicated to you that that was
24 anything that Chris had done to her that caused
25 that injury; is that correct?

1 A No. Chris did not -- at that point in the
2 relationship, no. That was part of what she
3 identified as he had been very supportive and they
4 had been very close during that time. She needed
5 help and he was providing it.

6 Q Okay. And just so I'm clear, these two tests, they
7 were given on February 15th; is that correct?

8 A Correct. It was scored on the 16th.

9 Q And you testified that one of the reasons why women
10 don't end relationships such as the one that you
11 have described Ms. Herndon being involved in is
12 because they love the person; is that correct?

13 A Correct.

14 Q And, of course, in this situation, I mean, the
15 history that you have been provided is they started
16 dating in January of 2013?

17 A Correct.

18 Q So this whole relationship only lasted at the
19 most --

20 A Eleven months.

21 Q Eleven. Well, actually, at the most ten months;
22 right? Ten months and a week?

23 A Ten months and a week?

24 Q If it started January 1st; is that correct?

25 A Correct.

1 Q And you would agree with me that that is not a
2 particularly long relationship; is that correct?

3 As far as when you are dealing with batterers and
4 victims being abused by their intimate partners?

5 A For some women, their experience is that it goes on
6 for a very long time, and for others it ends, you
7 know.

8 Q Usually that would be some kind of honeymoon period
9 at the beginning; right? Most of these
10 relationships don't start off right away as being
11 abusive; is that correct?

12 A Not always. And this one did not either. I mean,
13 there was, you know, the period of time in which
14 she was recovering and he was very attentive and --

15 Q Of course, in this situation Ms. Herndon, I mean,
16 she wasn't married to Mr. Rowley; is that correct?

17 A She was not married to Mr. Rowley, no, she wasn't.

18 Q They didn't have any children together?

19 A No.

20 Q She wasn't financially dependent on him?

21 A She was not financially dependent on him.

22 Q In fact, it was her house?

23 A Correct.

24 Q Her bank account?

25 A Correct.

1 Q Her vehicles?

2 A Correct.

3 Q If, anything, he was financially dependent on her;
4 right?

5 A Correct. And that is part of what we call the very
6 paradox about these relationships. These women
7 are -- the love binds them to the relationship.

8 Q And she is a little bit unusual also in the fact
9 that she, as you testified, has a kind of a
10 take-charge personality, was an assertive person?

11 A She is in her work situation. But people are often
12 different in their home situations and in their
13 intimate relationships than they are in their work
14 situations.

15 MR. SORENSON: Beg the Court's indulgence one
16 moment.

17 (Pause.)

18 MR. SORENSON: That's all I have, Your Honor.
19 Thank you.

20 THE COURT: All right. Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. LEIENDECKER:

23 Q Thank you, Dr. Veronen. The Solicitor spent a lot
24 of time and made a lot of point about your notes
25 don't record every single thing that Robin said to

1 you in your two meetings; is that right?

2 A That's correct.

3 Q You didn't tape record these meetings, did you?

4 A No, I did not.

5 Q You took the notes; correct?

6 A Correct.

7 Q The Solicitor made a point about the fact that in
8 your clinical psychology practice people on
9 occasions -- on several occasions -- will come to
10 you with a symptom and want you to help diagnose
11 what the problem is; is that correct?

12 A Correct. Yes.

13 Q He wanted to make a big point of the fact that
14 Ms. Herndon came to you with a question about
15 whether you could determine whether she suffered
16 from PTSD or Battered Women Syndrome; correct?

17 A Correct.

18 Q Have you been asked in your prior times that you
19 have testified to do these kinds of evaluations?

20 A Yes.

21 Q I think you in a previous hearing testified that
22 over the last three years you have done eight or
23 more of these evaluations?

24 A Correct.

25 Q When you do these evaluations, do you always find

1 that the person suffers from PTSD or Battered Women
2 Syndrome?

3 A No.

4 Q Do you always agree to testify after you have done
5 the evaluations?

6 A No.

7 MR. LEIENDECKER: One moment, Your Honor.

8 (Pause.)

9 BY MR. LEIENDECKER:

10 Q No further questions. Thank you, Dr. Veronen.

11 A Thank you.

12 THE COURT: All right. Anything else?

13 MR. SORENSON: Just real briefly, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. SORENSON:

16 Q Of course, you testified prior that out of those
17 eight or so at least six of them you have found
18 that they were battered; is that correct?

19 A Correct.

20 THE COURT: All right, you may step down,
21 Doctor.

22 Any objection to the witness being excused?

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

24 MR. LEIENDECKER: Not from the Defense.

25 THE COURT: Thank you. You are free to leave.

1 (Witness steps down and is excused.)

2 THE COURT: All right. Call your next
3 witness.

4 MR. LEIENDECKER: At this point, the Defense
5 has no more witnesses and would rest its case.

6 THE COURT: All right. Thank you.

7 Does the State have any witnesses on reply?

8 MR. JUSTIS: I do have a few short reply
9 witnesses, Your Honor.

10 THE COURT: All right.

11 MR. LEIENDECKER: At this point, Your Honor,
12 certainly, not in front of the jury, we don't have
13 a list of those people -- or those individuals.

14 THE COURT: All right, let's take about -- you
15 all take about a five or ten minute break and we'll
16 receive you back in.

17 (WHEREUPON, the jury retires to the jury
18 room at 11:53 a.m.)

19 THE COURT: All right. So you said you
20 provided him with a list or you haven't?

21 MR. JUSTIS: We haven't, Your Honor. They're
22 on our original witness list. One of them wasn't
23 called in our case in chief, the other one was.
24 But it is just to clarify one particular point that
25 was made on Dr. Veronen's testimony where she

1 testified that the Defendant had told her that she
2 had urinated on herself. So we are just calling
3 those two individuals. It would be the responding
4 deputy that actually transported her from the scene
5 to the Sheriff's Department. And then also recall
6 Investigator Hahn, who actually escorted
7 Ms. Herndon while she was at the Sheriff's Office,
8 took her to the bathroom, patted her down, just to
9 verify that they were not aware of her having
10 urinated on herself.

11 THE COURT: All right. Let me ask -- I did
12 not ask if there were any -- before we get into the
13 State's reply, any motions by the Defense? Let me
14 ask you this before -- I skipped ahead. Any
15 motions by the Defense?

16 MR. LEIENDECKER: I would, of course, at this
17 time renew our directed verdict motions, Your
18 Honor, for the same and substantial reasons we set
19 forth before. There's no direct, I believe, or
20 substantial circumstantial evidence as to the
21 element of murder. And no direct or circumstantial
22 evidence disproving the self-defense or -- and/or
23 defense of habitation set forth in the testimony.

24 THE COURT: All right. Anything else from the
25 State regarding his motion?

1 MR. JUSTIS: No, we would just make the same
2 argument we made previously.

3 THE COURT: And the motion will be denied for
4 the reasons that were previously stated on the
5 record.

6 MR. LEIENDECKER: Your Honor, my only other
7 question of the Court at this time is, I believe
8 that this reply testimony, which is being sought to
9 be brought forward is, in fact, not permissible.
10 It is on a collateral issue, not the issue of the
11 case -- the circumstances of the case itself. It
12 is whether she did or didn't urinate on herself.
13 They have already had testimony regarding what she
14 looked like. They put pictures in regarding that.
15 I believe at this time it is not only cumulative,
16 but it goes to a collateral issue for which you are
17 not allowed to put reply testimony up.

18 THE COURT: Yes, sir?

19 MR. JUSTIS: And I would argue, Your Honor,
20 Deputy Abdullah, Jessica Abdullah, she actually
21 transported -- she didn't testify in the case in
22 chief, she transported. And she's going to testify
23 that, you know, her car seat was not wet. She
24 inspected it prior to and after. And it goes
25 directly to her defense of she was so scared, she

1 was in fear, that she urinated on herself. That's
2 what she told the doctor. I think that goes
3 directly to her state of mind, which is -- which
4 goes directly to her self-defense claim, that she
5 is in such fear that she urinated on herself. So I
6 think it goes directly to disprove that she wasn't
7 in fear, Your Honor.

8 MR. LEIENDECKER: I don't think that was the
9 testimony, Your Honor. I think they
10 mischaracterized the testimony. She was asked, Did
11 she tell you that she urinated on herself? Didn't
12 say when. They could have asked -- if they wanted
13 to put reply testimony up, they could have asked,
14 Did she tell you when this happened? It could have
15 happened between the time she was there and went to
16 the jail. They didn't ask any of that. And if
17 they want to set it up for reply testimony, they
18 have to give the doctor time, place and opportunity
19 so that she can respond to that. It would be
20 inappropriate now to bring this in and say the
21 doctor said she urinated herself in fear in her
22 house. She didn't say that. And they had the
23 opportunity to ask her that.

24 MR. JUSTIS: I think the question was during
25 the incident, did she tell you.

1 MR. LEIENDECKER: Well, the incident was
2 November 6th. It ranged right until --

3 THE COURT: Wasn't there testimony, several
4 persons testified that she -- did she testify that
5 she wet herself?

6 MR. LEIENDECKER: She did not.

7 THE COURT: Okay. So the doctor -- you said
8 she did?

9 MR. SORENSON: She did not testify she did.
10 Dr. Veronen testified about it the other day and
11 then she was crossed on it. I noticed that she
12 stayed away from it on direct today. So that's why
13 I asked her that. It was in her notes, she
14 testified about that the other day when she was
15 giving a narrative.

16 MR. LEIENDECKER: She didn't, as I remember,
17 testify to it on direct. It was certainly brought
18 up on cross, both at the hearing and there. But
19 again, Your Honor, it wasn't testified to by my
20 client. It is a collateral issue and it is not
21 proper for reply testimony. And if it was, they
22 needed to set it up by asking the doctor time and
23 place.

24 THE COURT: All right. Well, of course, any
25 contradictory testimony is proper on reply. I

1 would have to go back and look at the question as
2 to how the question was asked regarding -- with
3 Dr. Veronen, and that's going to take us a second
4 and take us all not speaking.

5 MR. LEIENDECKER: And what they're doing here,
6 Your Honor, is creating their own error by failing
7 to ask a question and now trying to bring reply
8 testimony up. And I don't --

9 THE COURT: Okay. We'll see what Debbie
10 finds.

11 (Pause.)

12 THE COURT REPORTER: Oh, here it is.
13 And she also told you in here, looking
14 at the bottom of Page 5, that she
15 actually had found out that she had
16 urinated on herself during this
17 incident; is that correct?

18 Correct.

19 And that is what she told you back on
20 February 18th of this year?

21 Correct.

22 THE COURT: In reviewing the case law,
23 specifically State v. South, 285 S.C. 529, 331
24 S.E.2d 775, in that case the Court says that any
25 testimony that is arguably contradictory is

1 appropriate on reply.

2 In this case, it was testified to -- the
3 question was asked, and it was asked to establish
4 the state of mind of the -- I guess from the
5 doctor -- the state of mind and diagnosis, I guess,
6 by the doctor regarding Post-Traumatic Stress
7 Disorder, specifically her fear of the alleged
8 victim and fear of imminent danger, which the Court
9 finds is an element that the State has to disprove
10 in the Defendant's self-defense claim.

11 So, for that reason, I will allow the reply
12 testimony regarding in response, I guess, to
13 Dr. Veronen -- the questioning of Dr. Veronen
14 regarding her notes and the reporting of the
15 Defendant allegedly wetting herself.

16 All right.

17 MR. LEIENDECKER: If Your Honor, please, for
18 the record, I believe that what we heard from the
19 witness and from the examination provides
20 absolutely no time when that happened. It says
21 during the incident. The incident was that entire
22 day. And I believe it would be improper to allow
23 this testimony, certainly in response to what the
24 doctor said. The State created this situation or
25 problem because they could have asked her a more

1 direct question.

2 They further created a problem because they
3 brought it up on in their testimony. However, once
4 they did, they could have asked, Did she tell you
5 when this happened, was it when the assault
6 happened, was it after the assault happened, was it
7 on the way to the jail.

8 I think it creates not only greater confusion,
9 but it makes this collateral issue something that I
10 believe is improperly left as the impression with
11 the jury as to its importance. And I believe that
12 it does not go to any way to undermine what the
13 doctor has said because they didn't say, they
14 didn't pin down when this happened, which I just
15 think is prejudicial.

16 THE COURT: All right. Well, I think if it's
17 arguably contradictory, which means you can argue
18 all of that, that she didn't say when the incident
19 occurred, if it's arguably contradictory, then it
20 is appropriate on reply.

21 And specifically in this case, because one of
22 the things that the State has to do is disprove
23 self-defense, I am going to allow them to call the
24 reply witnesses.

25 And the issue is whether or not she was in

1 fear of imminent danger, did she fear the alleged
2 victim. That is the -- that is one of the elements
3 of self-defense that you all have presented, and I
4 think they have the right to put up any arguably
5 contradictory testimony which would be appropriate
6 on reply.

7 All right. But your objection is noted for
8 the record.

9 MR. LEIENDECKER: Thank you, Your Honor.

10 THE COURT: Let's bring them back in.

11 (WHEREUPON, the jury came into open
12 court at 12:13 p.m.)

13 THE COURT: All right. Ladies and gentlemen
14 of the jury, we will continue. We were not
15 breaking for lunch, and I apologize that they had
16 already set out the food. But to interrupt you for
17 those of you that had started eating, we have reply
18 testimony at this time from the State.

19 I will ask the State to call their witness.

20 MR. JUSTIS: Thank you. May it please the
21 Court, Your Honor? The State calls Deputy Jessica
22 Abdullah.

23 (Witness approaches.)

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

1 (Witness complies.)

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

6 THE WITNESS: Yes.

7 THE CLERK: Have a seat in the witness box,
8 state your name, spelling your last for the court.

9 (Witness seated.)

10 THE WITNESS: My name is Jessica Abdullah,
11 last name is A-B-D-U-L-L-A-H.

12 JESSICA ABDULLAH,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JUSTIS:

16 Q Deputy Abdullah, where do you work?

17 A Aiken County Sheriff's Office.

18 Q And were you working there back on November 6th,
19 2013?

20 A Yes, sir.

21 Q Did you have an opportunity to respond to a
22 shooting incident involving Ms. Robin Herndon?

23 A Yes, sir.

24 Q And did you have an opportunity to make contact
25 with Ms. Herndon that day?

1 A Yes, sir.

2 Q And when you made contact with Ms. Herndon, what
3 was the extent of your contact with Ms. Herndon?

4 A I sat with her while we -- they did the initial
5 part of the investigation, then I transported her
6 to the Sheriff's Office.

7 Q And when you transported her to the Sheriff's
8 Office, did you have an opportunity to inspect your
9 vehicle?

10 A Yes, sir.

11 Q And tell us about that.

12 A When I place somebody in my car, I always look
13 where I'm putting them. And then when I take them
14 out, I always check my vehicle to make sure there's
15 nothing there that shouldn't be.

16 Q Did you notice anything unusual in your vehicle --
17 in the seat of your vehicle after transporting
18 Ms. Herndon?

19 A No, sir.

20 Q Was the seat wet?

21 A No, sir.

22 MR. JUSTIS: Thank you. Please answer any
23 questions the Defense might have.

24 CROSS-EXAMINATION

25 BY MR. LEIENDECKER:

1 Q Deputy, your responsibility was taking her from the
2 scene to the Sheriff's Office. Did you have any
3 contact with her after that time?

4 A When I went into the conference room, somebody
5 relieved me and I left. No, sir.

6 Q So when you deposited her there and someone took
7 custody, you left and that was your last contact
8 with her; correct?

9 A Yes, sir.

10 MR. LEIENDECKER: Okay. No questions further.

11 THE COURT: Anything else from the State?

12 MR. SORENSON: Not from this witness.

13 MR. JUSTIS: Not from this witness.

14 THE COURT: You may step down.

15 Any objection to this witness being excused?

16 MR. LEIENDECKER: No.

17 THE COURT: You're free to leave. Thank you.

18 (Witness steps down and is excused).

19 THE COURT: Call your next witness.

20 MR. JUSTIS: Nothing further from the State,

21 Your Honor.

22 THE COURT: All right. Ladies and gentlemen
23 of the jury --

24 Let me see the lawyers real quick. Let me see
25 the lawyers real quick.

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

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, the State has rested, the Defense has
6 rested, and the State has put up their reply
7 witness in this case, so at this time we are ready
8 for closing arguments and the jury charge. But
9 before we can do that, there are several matters of
10 law that I need to take up outside your presence,
11 and it is going to probably take a little while.
12 So instead of keeping you here, I'm going to let
13 you go. I know they ordered lunch for you, you can
14 take with you, you can eat it back there. But I'm
15 going to have you all back -- it is probably going
16 to take us about an hour or so, and so we'll have
17 you back about 1:45, and then we will at that point
18 be ready to go forward with the closing arguments
19 and the jury charge.

20 All right. All right. You have all of the
21 evidence, but you do not have the charge on the law
22 and you do not have the closing arguments.

23 Remember, do not discuss the case. All right.
24 Thank you. We will see you back at 1:45.

25 (WHEREUPON, the jury is excused for

1 lunch at 12:20 p.m.)

2 THE COURT: All right. Let's put the motions
3 on the record. Any motions?

4 MR. LEIENDECKER: Your Honor, at this point,
5 only to be clear with the record, I renew the same
6 motion we just heard, you know, 20, 30 minutes ago
7 regarding directed verdict as to the issue of
8 murder and the issue of self-defense.

9 THE COURT: All right. Anything from the
10 State in response to his renewal of his motion for
11 the record?

12 MR. JUSTIS: No, Your Honor.

13 THE COURT: And, once again, I respectfully
14 deny your motion for directed verdict, but it is
15 noted for the record.

16 MR. LEIENDECKER: Thank you, Your Honor.

17 THE COURT: All right. Jury charges. I'm
18 trying to think if we want to do those now or have
19 you -- I know I just handed you --

20 MR. LEIENDECKER: I have five, Your Honor,
21 that I would ask to have marked as -- I guess I
22 should have them marked as a Court's Exhibit and
23 pass it up, or if you can just review them and then
24 I can --

25 THE COURT: You can mark them as a Court

1 Exhibit, that's fine, and then I can review them.

2 MR. LEIENDECKER: If it pleases the Court,
3 would it be appropriate for us to just at this time
4 comment and discuss the charges which have been
5 provided by the Court, then take our break and
6 allow the State an opportunity to reply to the five
7 --

8 MR. JUSTIS: Additional.

9 MR. LEIENDECKER: -- additional requests by
10 the Defense?

11 THE COURT: I thought they were ready.

12 Have you had a chance to look at these? Are
13 you ready?

14 MR. SORENSON: We've looked at them. I think
15 we're probably ready to handle them too.

16 THE COURT: Let's start with -- let's look at
17 the ones that were provided by the Court. I'll be
18 glad to hear from the State regarding any changes
19 or regarding the charges that were e-mailed to you
20 all on Friday.

21 And I'll say that with -- I don't know what
22 position the Defense has taken in regards to the
23 voluntary, involuntary, that was just placed in
24 there, so I don't know if you all --

25 MR. JUSTIS: On Page 5, Your Honor, under

1 charge, arrest and indictment, it just has to be
2 corrected, the first sentence there. She is just
3 charged with murder. And then there is -- in that
4 paragraph just, you know, kind of a few words have
5 to be changed to correspond that it is one charge
6 she is being charged with.

7 Under presumption of innocence on Page 6, the
8 end of the first paragraph, I guess it would
9 probably be changed to herself instead of himself.

10 On Page --

11 THE COURT: She's changing it.

12 MR. JUSTIS: Right. And on Page 7 under
13 reasonable doubt, the second sentence from the
14 bottom, it would be just the crime charged, just
15 singular instead of plural. These are just --

16 THE COURT: Hold on one second. And I'll
17 catch the he and the her as I read it if there's
18 any other ones in there.

19 And you've got to change it from crimes to
20 crime. And I usually catch stuff like that --
21 usually.

22 MR. JUSTIS: And then on Page 9, Your Honor,
23 under malice, that last paragraph, it talks about
24 inferred malice, it talks about use of a deadly
25 weapon. I think in self-defense cases that is not

1 supposed to be charged.

2 THE COURT: You would agree with that?

3 MR. LEIENDECKER: We would agree with that,
4 Your Honor.

5 MR. JUSTIS: I think we can argue it, but it
6 can't be charged as part of the jury charge in a
7 self-defense case.

8 MR. LEIENDECKER: Beginning with, Malice may
9 also be inferred -- or arise.

10 THE COURT: Wait a minute. Okay, let's go
11 back. So you're saying take out, Inferred malice
12 may also arise when the deed is done with a deadly
13 weapon?

14 MR. LEIENDECKER: Yes.

15 THE COURT: That whole paragraph?

16 MR. LEIENDECKER: Yes.

17 MR. JUSTIS: Correct. Right from where you
18 started reading.

19 THE COURT: So the only thing, Malice may be
20 inferred from conduct showing a total disregard for
21 human life, or do you want -- is that out?

22 MR. SORENSON: I think that can stay in.

23 MR. JUSTIS: That part I think can stay in, it
24 is just the part about the deadly weapon.

25 MR. LEIENDECKER: I think State v. Belcher

1 addressed the use of the weapon as an inference.

2 THE COURT: Okay.

3 MR. JUSTIS: I guess the only other question I
4 have on Page 13, under proximate cause, there is
5 the first paragraph I would not have a problem
6 with. Then the next several paragraphs, There may
7 be more than one proximate cause. I don't think
8 necessarily that applies in this particular case.
9 The next like -- basically the rest of that
10 proximate cause charge I don't think is necessarily
11 applicable in this case.

12 THE COURT: Let me go back and look at it. So
13 you are saying take out the second paragraph.

14 Any position, Mr. Leiendecker, regarding --

15 MR. LEIENDECKER: I agree with the State. I
16 believe that, from the second paragraph on, we
17 should just remove that instruction. It should end
18 with, That occurred immediately prior to death.

19 MR. JUSTIS: Correct.

20 MR. LEIENDECKER: Yes.

21 THE COURT: Okay. I'm ready.

22 MR. JUSTIS: And the only thing, I think we
23 both agree on changing, on Page 18, If guilty, say
24 so; if not, say so.

25 THE COURT: What is wrong with that? Y'all

1 just don't like the way it reads?

2 MR. JUSTIS: I have just never seen it before.

3 MR. LEIENDECKER: And we think you instructed
4 the jury that their decision must be unanimous,
5 they must each vote their own conscious.

6 THE COURT: I say that. But we can take out,
7 that's fine. But I use it all the time.

8 MR. LEIENDECKER: I don't stand in front of a
9 Mack truck on that one, Your Honor.

10 MR. JUSTIS: Neither do I.

11 MR. LEIENDECKER: It is just new to us.

12 THE COURT: If y'all don't like it, I'll take
13 it out. If you all don't like it, we'll take it
14 out. That's fine.

15 MR. LEIENDECKER: I hope she agrees with
16 everything else I have.

17 THE COURT: Okay.

18 MR. JUSTIS: And then under form of verdict,
19 it talks about forelady. So that is the only --

20 MR. LEIENDECKER: Foreperson.

21 THE COURT: Like I say, I'll catch that --
22 most of the time.

23 MR. JUSTIS: That's the only thing I saw.

24 THE COURT: All right. Let's hear from the
25 Defense regarding the jury charges that were

1 e-mailed out and then we'll get to your --

2 MR. LEIENDECKER: Right. I think the first I
3 have kind of bridges the gap of both of these
4 issues we're looking at. And that is the
5 instruction on Page 2 and 3 regarding direct and
6 circumstantial evidence. And I passed up a
7 proposed jury charge on direct and circumstantial
8 that mirrors the language of State v. Logan, but I
9 just make that comment at this time, and then we
10 can argue that when we argue my additions.

11 THE COURT: I think -- okay. Okay. We can go
12 ahead and handle your requests if you want to.

13 MR. LEIENDECKER: Okay. You want to -- if the
14 State has a position regarding my Logan instruction
15 versus the one that we have there?

16 THE COURT: It seems like it says basically
17 the same thing.

18 MR. SORENSON: I'm trying to find out, I mean,
19 exactly what the difference is. I mean, I guess if
20 Mr. Leiendecker would point out what the reason is,
21 what the difference in his as opposed to what Your
22 Honor has in there.

23 MR. LEIENDECKER: I'm sorry, Your Honor, I'm
24 looking for Number 2 right now.

25 Your Honor, my charge drawn directly from

1 Logan is a direct quote of the 2013 Supreme Court
2 decision. And I believe it accurately reflects
3 what the current state is.

4 It talks about the State's burden in there and
5 directly ends on that point. Although I think they
6 are similar, I think that it is a more direct and
7 complete statement of the law since 2013 as set
8 forth by our Supreme Court.

9 THE COURT: Anything from the State?

10 MR. SORENSON: I mean, I don't see a whole lot
11 of difference in the two.

12 THE COURT: I'll go with the charge that's in
13 the desk book. It seems very similar, so I will
14 not charge Number 2.

15 MR. LEIENDECKER: Yes, ma'am.

16 THE COURT: I'll use the one that is in the
17 desk book, and it has been updated since 2013.

18 All right. So we'll keep moving down.

19 MR. LEIENDECKER: My next observation, we have
20 already dealt with the malice paragraph, I had that
21 highlighted.

22 Under voluntary and involuntary manslaughter,
23 I like the first paragraph of the instruction in
24 each. I think that the desk version of this may
25 include alternate. I would move to strike,

1 Included within the offense of murder is the lesser
2 offense of voluntary manslaughter.

3 I believe the first paragraph more fully
4 explains that when it says, If you find the State
5 has failed to prove beyond a reasonable doubt
6 murder, then you may look at if the Defendant
7 committed voluntary manslaughter.

8 I think that is just redundant, that second
9 sentence. The remainder of that instruction, I
10 find -- I think those are just alternate ways to
11 start that instruction.

12 THE COURT: So you don't want it referred to
13 as a lesser included of voluntary manslaughter?
14 Because usually that's how the verdict form is
15 written, and I think that's why that is in there.
16 Because it will say murder or the lesser included
17 offense of voluntary manslaughter or --

18 Is that the way your verdict form --

19 MR. LEIENDECKER: I understand.

20 THE COURT: I don't --

21 MR. LEIENDECKER: If you think it provides
22 greater clarity. To me, when I read it, it sounded
23 like that was an alternate start. You could either
24 start at the first paragraph or you start at the
25 second paragraph.

1 THE COURT: Any position from the State
2 regarding?

3 MR. SORENSON: I'll leave that to Your Honor's
4 discretion. One thing I did notice was missing,
5 though, in the description of voluntary
6 manslaughter is the fact that it is an unlawful
7 killing of another without malice. I guess we
8 would ask it be put in there before you start going
9 into, To prove voluntary manslaughter, that you
10 just put the definition from the statute, It is the
11 unlawful killing of another without malice.

12 THE COURT: All right. I can leave it in or
13 take it out, whichever -- I mean, they seem
14 indifferent, so if you want it out, we'll take it
15 out.

16 MR. LEIENDECKER: Yes, please.

17 THE COURT: Okay. So, now, you said before
18 getting into prove --

19 Would you agree, Mr. Leiendecker, that it
20 needs to state according to the statute that
21 involuntary -- I mean, voluntary is without malice?

22 MR. LEIENDECKER: Yes, Your Honor.

23 THE COURT: Now we just need to figure out
24 where to put that in.

25 MR. SORENSON: I think -- my thought would be

1 just in place of that line that you just took out,
2 would be, Voluntary manslaughter is defined as the
3 unlawful killing of another without malice, express
4 or implied. Then go on, To prove voluntary
5 manslaughter the State must prove beyond a
6 reasonable doubt.

7 THE COURT: Does that work for you?

8 MR. LEIENDECKER: Yes.

9 THE COURT: You have got to pull the statute.

10 MR. SORENSON: 16-3-50. It is pretty simple.
11 It says, A person convicted of manslaughter -- or
12 the unlawful killing of another without malice,
13 express or implied.

14 THE COURT: All right. She has it.

15 I think we'll mark these separately.

16 (WHEREUPON, Court's Exhibit Nos. 6 - 10
17 were marked for identification only.)

18 (WHEREUPON, Court's Exhibit Nos. 6
19 through 10 were marked for
20 identification.)

21 THE COURT: Anything else regarding the
22 charge?

23 MR. LEIENDECKER: Nothing further other than
24 what we've already covered and discussed regarding
25 those things that have already been withdrawn, Your

1 Honor.

2 I would ask to add the additional instructions
3 that I have. First, I would ask Jury Instruction
4 Request 13. I don't know what Court Exhibit that's
5 marked as.

6 THE COURT: Nine.

7 MR. LEIENDECKER: That the State -- excuse me,
8 the Court would add that in front of the
9 instructions for accident.

10 Following the decision in State v. Jackson and
11 State v. Rash, and also pursuant to Rule 20(a) of
12 the Rules of Criminal Procedure, the Defendant does
13 not have to show that she was actually in danger,
14 it is enough if the Defendant believes she was in
15 imminent danger and a reasonably prudent person of
16 ordinary firmness and courage would have that same
17 belief. The Defendant has the right to act on
18 appearances even though they may be mistaken. It
19 is for you to decide, so on and so forth, it says.

20 THE COURT: Any position regarding that?

21 MR. SORENSON: No, Your Honor.

22 THE COURT: All right. I think that one is
23 fine.

24 Can someone e-mail it to my law clerk so she
25 can just cut and paste?

1 MR. LEIENDECKER: Yes.

2 THE COURT: All right. So I'll charge --

3 MR. LEIENDECKER: I only say that when Mr.
4 Stevens nods his head.

5 THE COURT: Jury Request Number 13, which is
6 Court Exhibit 9, will be charged.

7 Okay. Yes, sir?

8 MR. LEIENDECKER: Next is Number 14. I don't
9 know what Court Exhibit that is.

10 THE COURT: Ten.

11 MR. LEIENDECKER: I would ask after the one we
12 just agreed to admit, Number 9, Court Exhibit 10,
13 that pursuant to also State v. Rye and State v.
14 Jackson and 20(a), that we add that a person cannot
15 be required to make an exact calculation as to the
16 degree or amount of force that is necessary to
17 avoid death or serious bodily harm. Therefore, in
18 self-defense, the Defendant has the right to use
19 the force needed to avoid that death or serious
20 bodily harm, so on and so forth, as it says there,
21 including how to instruct the jury.

22 THE COURT: Any position from the State?

23 MR. SORENSON: No, Your Honor.

24 THE COURT: All right. We'll add that one.
25 Where did you say you wanted that one added?

1 MR. LEIENDECKER: Just after the -- right
2 about act on appearances, still in front of
3 accident.

4 THE COURT: Right after self-defense, right
5 before accident?

6 MR. LEIENDECKER: Yes, Your Honor.

7 THE COURT: All right.

8 MR. LEIENDECKER: Next is our listed as Jury
9 Request Number 8. I assume that might be Number 7
10 maybe, Court Exhibit Number 7?

11 THE COURT: Yes.

12 MR. LEIENDECKER: We would ask the Court to
13 instruct on the jury instruction the defense of
14 cohabitation as was affirmed in State v. Bryant
15 regarding instruction in this kind of a
16 self-defense. And it contains just over a page and
17 a quarter of language from there.

18 THE COURT: Yes, sir?

19 MR. SORENSON: We would object to it.

20 THE COURT: And your objection?

21 MR. SORENSON: Basically, none of this is our
22 case. I mean, there is no evidence that he's a
23 trespasser. I mean, he was residing there. This
24 deals with a trespasser. That is not our --

25 MR. LEIENDECKER: The standard of review, just

1 as the Court has already let me in on, is is there
2 any evidence. There is evidence from one of the
3 State's witnesses as well as the Defendant herself
4 that said that she told him, Get out, stay out, get
5 off my property.

6 He then -- there is also testimony from three
7 of the witnesses, two of the State's and the
8 Defendant, that he then followed her into the home
9 after not following her, but standing outside.

10 I think there is, as the language says, a
11 scintilla of evidence that the Court could
12 determine that he was, in fact, a trespasser when
13 he came into that house that day.

14 MR. SORENSON: I think all the testimony is --
15 all the evidence is that he was residing there for
16 eight months. I mean --

17 THE COURT: Okay. Let me take a look at it
18 over lunch. I'll get back to you on that.

19 MR. LEIENDECKER: Yes.

20 THE COURT: I will check the case law on that.

21 MR. LEIENDECKER: Yes. And I have a copy of
22 State v. Bryant, or you can find that.

23 THE COURT: You can hand it up.

24 MR. LEIENDECKER: Thank you. Oh, I'm sorry,
25 that also cites State v. Rye. Thanks.

1 Then, finally, Your Honor, I believe Number
2 10. I'm not as good at this. I think that would
3 be 8?

4 THE COURT: Court Exhibit 8.

5 MR. LEIENDECKER: There has been evidence
6 submitted from multiple witnesses concerning
7 Defendant's character and things like truthfulness,
8 peace and other things. And I believe a good
9 character instruction is appropriate. And that
10 this good character instruction taken directly from
11 State v. Green is the appropriate instruction.

12 THE COURT: All right. Any position from the
13 State?

14 MR. SORENSON: That's one of -- if I could
15 have a moment, Your Honor? I'm not -- I have not
16 seen this charge before, so I don't know if it is
17 appropriate or not. I mean, I may not have an
18 objection to it if there's something that says it's
19 appropriate, but --

20 THE COURT: Do you have any case law that says
21 it's appropriate?

22 MR. LEIENDECKER: State v. Green, 278 S.C.
23 239.

24 THE COURT: We'll take a look at that one over
25 lunch.

1 MR. LEIENDECKER: A 1982 case.

2 THE COURT: I need to get you a ruling on
3 Request 10, which is Court Exhibit 8, and Request
4 8, which is Court Exhibit 7.

5 MR. LEIENDECKER: That's all I have.

6 THE COURT: Anything else from the State?

7 MR. JUSTIS: None from the State.

8 THE COURT: In the self-defense elements, they
9 have several -- is that one good -- not several,
10 but -- is that one okay, the self-defense?

11 MR. LEIENDECKER: We have no objection.

12 MR. JUSTIS: No objection from the State
13 either.

14 THE COURT: All right. We'll take a look at
15 Number 10 and Number 8 jury requests, and then
16 we'll be -- I guess be back in here at quarter
17 till.

18 Oh, what about the verdict form?

19 MR. JUSTIS: It looked fine to me, Your Honor.

20 THE COURT: Is the verdict form okay?

21 MR. LEIENDECKER: I haven't seen it. I just
22 didn't look at that, I guess.

23 THE COURT: Just take a look at it.

24 MR. LEIENDECKER: Yes, I'll look at it over
25 lunch. I apologize, I was concentrating on the

1 charge.

2 THE COURT: It's okay. She's -- well, we'll
3 update it once we decide the verdict form and then
4 we will resend it to you all.

5 MR. LEIENDECKER: All right. Thanks.

6 THE COURT: All right. We will see you back
7 about quarter till.

8 (WHEREUPON, a lunch break was taken at
9 12:50 p.m.)

10 (WHEREUPON, the proceedings resumed at
11 1:53 p.m.)

12 THE COURT: Court Exhibit Number 8, does the
13 State have any position regarding that?

14 MR. SORENSON: Is that the circumstantial
15 evidence charge?

16 THE COURT: No, the good character charge.

17 MR. SORENSON: Oh, the good character. I read
18 that case, Your Honor, and it seems to be what the
19 case says.

20 THE COURT: There is another case with a
21 little more -- actually, a lot more -- State v.
22 Threatt. And so it says that the Court must charge
23 that.

24 All right. So I will -- she has already added
25 that one in, the charge that Mr. Leiendecker handed

1 up.

2 And then that takes us to Number 8, defense of
3 habitation. Anything else from the State or the
4 Defense regarding that?

5 MR. SORENSON: Nothing further, Your Honor.

6 MR. LEIENDECKER: Nothing further.

7 THE COURT: I have read State v. Bryant. The
8 facts on that one are a lot different than this.
9 It is about two guys in a hotel, one of them --
10 apparently, one lives in a hotel. I think in that
11 case -- or I find in that case that the Defendant
12 and the victim met at a club. The victim in this
13 case fell along the lines of an invitee, who once
14 the person was there -- or he told them to stop
15 pushing him in a wheelchair and he did not need his
16 help any further. I think that -- I find that this
17 case is distinguishable from the case that we have
18 here today. Also, I took a look at State v. Rye,
19 and that case talks about self-defense and the
20 defense of habitation. But the issue here is
21 probably somewhat similar to the order that I
22 issued on last Tuesday or Wednesday -- Wednesday --

23 MR. SORENSON: Wednesday morning.

24 THE COURT: -- regarding the habitation here.
25 There has been testimony provided that the

1 Defendant introduced -- well, that the Defendant
2 testified that he was living in her home. That she
3 allowed him to live in her home. She invited him
4 to live there. He had nowhere else to go. He had
5 keys to the house. They shared cars. He -- they
6 shared bills and finances. They co-mingled funds
7 in her bank account. Based on the facts presented
8 and the testimony -- I even think the Defendant --
9 I can try to have the court reporter find that in
10 the record, but testified that at one point she was
11 thinking she was going to have to evict him.

12 Based on the facts presented in the testimony,
13 it appears that the victim was rightfully in the
14 dwelling and therefore there would be no legal
15 cause to -- there was legal cause to enter the
16 dwelling. This is not a trespassing situation.
17 And for that reason, I will not charge the defense
18 of habitation, which is the Defendant's Jury
19 Instruction Question Number 8, Court Exhibit Number
20 7.

21 All right.

22 MR. LEIENDECKER: Thank you, Your Honor.

23 THE COURT: And that is marked and noted for
24 the record.

25 MR. LEIENDECKER: For the record, I do not

1 believe the fact that the Court has made a
2 determination based on the facts in its previous
3 hearing beyond a preponderance of the evidence has
4 any applicability to what we're doing here today.
5 The standard is, is there evidence, a scintilla of
6 evidence, that would support the Defense's claim
7 that this was defense of habitat. There is, there
8 was, and two of those witnesses were the State's
9 witnesses. Witnesses that saw what was happening,
10 saw that she had left, saw that he had entered,
11 after other witnesses had heard her yelling at him,
12 Get out, get off my property, I don't care what you
13 do, I want you to get out.

14 He is -- whether she says eviction in her
15 testimony, whether anyone says eviction or not, he
16 is nothing more than an invitee. If boyfriend
17 moves into a girlfriend's home at the behest and
18 request of that person, that ability can be ended,
19 suspended or terminated at any time. And I believe
20 the standard isn't, is it more likely than not that
21 he was allowed to go in, but is there a scintilla
22 of evidence that would suggest that the jury could
23 consider that, and I believe there is. I believe
24 from at least three witnesses there is. And that
25 it should be instructed to the jury.

1 THE COURT: All right. Real quick on that.
2 What evidence is there that he did not live there?

3 MR. LEIENDECKER: The evidence is that he was
4 ejected that day. The evidence from Lacey Burton
5 was -- not hearing evidence, but physical evidence
6 was that he didn't follow her directly into the
7 house. He stood outside and smoked a cigarette to
8 completion, then went up the steps.

9 The testimony from Sarah Wiggins, the State's
10 other witness, was that after they got out of her
11 view, she heard them yelling and she heard Robin
12 scream more than once, I want you to get off my
13 property, I want you to get your stuff and get out.
14 I want you to get off my property, I want you to
15 get out.

16 Robin Herndon's testimony also was to that
17 same effect, I had had enough, he just had to go.

18 And that when he did unlawfully force his way
19 into the home, he said, So that's it, you're
20 kicking me out? You're making me homeless?

21 That's evidence, Your Honor. And that
22 evidence is enough to support that instruction.

23 THE COURT: All right. Well, I'm going to --
24 I think the evidence -- what you have asked for is
25 defense of habitation and it -- him living in the

1 home contradicts him being a trespasser. I think
2 there is not -- I have not heard any testimony that
3 he was not living in the home at the time of the
4 incident. And for that reason, I am not going to
5 charge the defense of habitat.

6 All right. Are we ready for closing
7 arguments?

8 MR. JUSTIS: Yes, Your Honor.

9 THE COURT: Oh, I'm sorry, my law clerk said
10 any -- have you all had a chance to look at the
11 verdict form? Any objection from the State?

12 MR. JUSTIS: None from the State.

13 THE COURT: Any from the Defense?

14 MR. LEIENDECKER: None.

15 THE COURT: All right. Let's see. I don't
16 want to ask you to estimate the time.

17 Who is going to close for the State?

18 MR. JUSTIS: I am, Your Honor.

19 THE COURT: Mr. Leiendecker, are you going to
20 close for the Defense?

21 MR. LEIENDECKER: Yes, I am.

22 THE COURT: And then the State will have an
23 opportunity to respond. Are you going --

24 MR. JUSTIS: Yes, Your Honor.

25 MR. LEIENDECKER: Does the State intend to

1 open on the law?

2 MR. JUSTIS: Yes, sir.

3 MR. LEIENDECKER: And only the law, I assume?

4 MR. JUSTIS: Correct. In fact, let me just
5 get the TV going.

6 THE COURT: All right. Are we ready to bring
7 them in?

8 Bring them on in.

9 (WHEREUPON, the jury came into open
10 court at 2:02 p.m.)

11 THE COURT: All right. Ladies and gentlemen
12 of the jury, as I stated earlier, you all have
13 heard all of the evidence in this case. At this
14 time we are ready for closing arguments. First you
15 will hear from the State, and then you will hear
16 from the Defense, and then you will hear again at
17 the end from the State.

18 All right. Yes, sir, Mr. Justis.

19 MR. JUSTIS: Thank you, Your Honor. May it
20 please the Court?

21 CLOSING STATEMENT

22 MR. JUSTIS: Mr. Foreman, ladies and gentlemen
23 of the jury, first of all I'd like to thank you for
24 your time here not only this week, but last week.
25 I know it has been a long trial, but it's a very

1 important matter that you've been called to do.
2 It's a civic duty that you have and we appreciate
3 you taking the time to do this.

4 I'm going to spend just a few minutes here
5 talking about the law in this case. The judge,
6 when we finish our arguments, is going to instruct
7 you on the law applicable in this case. So I just
8 want to briefly go over that with you.

9 First of all, you heard that the Defendant is
10 charged with one count of murder. And murder, as
11 Mr. Sorenson told you, actually has a very short
12 definition. And it is simply the killing of
13 another person with malice aforethought, either
14 expressed or implied.

15 Now, malice is defined as hatred, ill-will, or
16 hostility towards another person. It is the
17 intentional doing of a wrongful act without just
18 cause or excuse and with the intent to inflict an
19 injury upon another person. It must exist just
20 before and at the time of the act.

21 Like Mr. Sorenson explained to you in his
22 opening, we don't have premeditated murder in South
23 Carolina, but malice must exist just before and
24 during the commission of the act. So it could be a
25 split second before the trigger is pulled.

1 And malice is defined as either express malice
2 or implied. Express means something like spoken
3 words: I'm going to kill you. That would be
4 express malice. Or prior preparation, someone
5 lying in wait. Inferred or implied malice can be
6 determined from the surrounding circumstances in
7 the case. That is inferred malice.

8 Now, you will also be charged on the crime of
9 voluntary manslaughter. If you feel that the
10 Defendant did not commit the crime of murder, you
11 are allowed to look at a lesser included charge of
12 voluntary manslaughter. And voluntary manslaughter
13 simply is the unlawful killing of another person
14 without malice and is described as in the sudden
15 heat of passion soon after legally sufficient
16 provocation.

17 And heat of passion, that is the type that
18 would make an ordinary person incapable of cool
19 reflection and it produces an uncontrollable
20 impulse to do violence. That is heat of passion.
21 They are upset, they can't cool down. That would
22 be heat of passion.

23 And legal provocation, they have to be
24 provoked. Must be the type that would make a
25 person of ordinary reason and caution become

1 enraged and to lose control temporarily. The
2 provocation must come from some act of or related
3 to the victim. Words alone are not enough. So the
4 victim saying something to you is not enough legal
5 provocation. It must be accompanied -- if there
6 are words, it must be accompanied with an act also.

7 And then finally there is a third charge,
8 involuntary manslaughter. And that is simply the
9 unintentional -- unintentional killing. Murder and
10 voluntary manslaughter are intentional killings.
11 Involuntary manslaughter is unintentional killing
12 of another without malice with reckless disregard
13 for the safety of others.

14 Now, in this case, the Defendant has claimed
15 self-defense. And in order to prove self-defense,
16 the State actually has to disprove self-defense.
17 If there's a claim of self-defense, it is our
18 burden beyond a reasonable doubt to prove that the
19 Defendant is not entitled to a self-defense claim.
20 Self-defense would excuse them from the killing.

21 So self-defense, there's essentially three
22 elements, but really the second and third are kind
23 of connected.

24 The first is without fault. In other words,
25 the Defendant -- we have to prove either that the

1 Defendant was not -- was without fault in bringing
2 upon the difficulty. So whatever transpired, the
3 Defendant, in order to claim self-defense, has to
4 say, I was without fault in bringing upon that
5 situation.

6 If I go up to a person and I punch them and
7 then they respond and punch me back, I can't claim
8 self-defense because I brought upon the difficulty.
9 Okay?

10 The second part is imminent danger or belief
11 of imminent danger. In order to use deadly force,
12 which was used in this case, the Defendant has to
13 believe that they are in imminent danger of
14 great -- serious bodily injury or death, or they
15 believed they were in imminent danger of serious
16 bodily injury or death.

17 And that is based on a reasonable person
18 standard. So in other words, another person, a
19 reasonable person in their shoes, in the same shoes
20 as them would entertain the same belief. They
21 would believe the same thing, that they were in
22 imminent danger of serious bodily injury or death.

23 And if you find out that the Defendant was
24 without fault and actually believed that they were
25 in imminent danger and that was a reasonable

1 belief, then they are excused from the killing.

2 But if either one of these -- you don't
3 believe either one of these, if you believe that
4 the Defendant was partially at fault in bringing
5 upon the difficulty, then they cannot claim
6 self-defense.

7 You are also going to be charged on something
8 called accident. Accident, kind of like
9 self-defense, excuses the killing. And it simply
10 states that the act was unintentional. The
11 Defendant was acting lawfully. So whatever they
12 were doing, they were within their legal rights to
13 do it. And -- such as self-defense -- and
14 reasonable care was used by the Defendant in
15 handling of the weapon.

16 So those are the three elements that have to
17 be met to find that the killing is excused by
18 accident. Okay? The act was unintentional; the
19 Defendant was acting lawfully; and, finally,
20 reasonable care was used with the weapon.

21 Now, throughout this trial and in every trial,
22 whenever you have people testifying, you are the
23 judge of the facts. The judge explained to you she
24 is the judge of the law, you are the judge of the
25 facts.

1 And how do you determine those facts? Well,
2 you determine them from testimony. Testimony
3 from that witness stand. And when people take the
4 stand and they tell you what their testimony is,
5 you employ common sense. You employ the same
6 techniques you use every single day. You're
7 judging their credibility.

8 Credibility simply means believability. Okay?
9 We do this every day. We do it with our spouses,
10 with our children, with our family members,
11 friends, co-workers. We're constantly judging, Do
12 I believe what they are telling me?

13 And there are some factors you can consider
14 when judging someone's credibility or
15 believability. One is interest. Did they have any
16 special interest in testifying the way they did?
17 Do they show any bias in their testimony, any
18 prejudice? Their appearance and manner on the
19 stand. On the stand, are they forthright with
20 their answers or are they hesitant? These are all
21 things you look at. And, finally, corroborated or
22 contradicted? Was there evidence corroborated by
23 other people or other pieces of evidence? Was it
24 backed up? Or was it contradicted by other
25 evidence, whether it be testimony or physical

1 evidence? So these are the factors you consider
2 when looking at the credibility of witnesses.

3 And the thing is, the Defendant has no duty to
4 testify. But when the Defendant does take the
5 stand, you judge her just like you do every other
6 witness and you apply those same credibility
7 factors to her testimony.

8 Finally, reasonable doubt. You heard this
9 term. It is the State's burden and it is a burden
10 we gladly accept. We must prove that the crime
11 happened beyond a reasonable doubt. People say
12 Well, what does that mean? Well, first of all, it
13 is not beyond any and all doubt. Okay? We all
14 doubt things. There are lots of things that we're
15 not 100 percent on. You might doubt that the earth
16 revolves around the sun. The question is, is that
17 reasonable? It has to be a reasonable doubt.

18 The law does not require absolute certainty.
19 If you are firmly convinced of the Defendant's
20 guilt, after hearing all the evidence, looking at
21 all the evidence, hearing the testimony, if you are
22 firmly convinced, then you are obligated by law to
23 find the Defendant guilty. If, after looking at
24 all the evidence, you are not firmly convinced,
25 then you are obligated to find her not guilty.

1 So that is the law that the judge will go over
2 with you. And if anything I have said here
3 contradicts what the judge tells you when she
4 instructs you on the law, you need to disregard
5 what I say and follow the law as the judge gives it
6 to you.

7 Now, Mr. Leiendecker is going to give his
8 closing arguments. I just ask that you keep an
9 open mind. When he is done, I will come up and I
10 will give the State's argument.

11 Thank you.

12 THE COURT: You all get the TV, unless Mr.
13 Leiendecker would like to use it?

14 MR. LEIENDECKER: Not at this moment, Your
15 Honor.

16 THE COURT: All right. Thank you.

17 MR. LEIENDECKER: And I know it's me and I
18 know it's my hot personality, whatever, but can
19 someone turn the AC up a little?

20 THE COURT: We'll have them check on that.

21 MR. LEIENDECKER: I'm already warm, and I
22 haven't started.

23 THE COURT: Yes, sir?

24 MR. LEIENDECKER: Thank you, Your Honor.

25 CLOSING STATEMENT

1 MR. LEIENDECKER: Ladies and gentlemen of the
2 jury, the State has opened on the law. And the
3 reality is that 95 percent of the time, Mr. Justis
4 and I agree on what the law is. The reason we're
5 here in trial is we disagree how the facts fit that
6 law. And that's why the 12 of you are so
7 important, because you are the ultimate judges and
8 ultimate deciders of how those facts fit the law he
9 described to you.

10 Now, one thing I did take a bit of exception
11 with what Mr. Justis said and will ask you to
12 listen carefully to the judge's instruction and,
13 that is, he said if you are firmly convinced of the
14 Defendant's guilt or firmly convinced of her
15 innocence, being not guilty, then you should act
16 accordingly.

17 But the truth of it is, you have to be firmly
18 convinced about every single element. And if
19 you're not firmly convinced of every one of those
20 little points that he went through on the first
21 four screens, then your duty and your
22 responsibility is to return a verdict of not
23 guilty, because the State must prove every -- every
24 element beyond a reasonable doubt.

25 And in the case of self-defense, when there is

1 evidence that can be presented of self-defense and
2 it is recognized by the Court, the Court instructs
3 you on self-defense. And when that happens, they
4 have to disprove, they have to prove a negative
5 that those elements don't exist. They have to
6 prove that they don't exist beyond a reasonable
7 doubt.

8 And that is why we're here. That's why you're
9 here. And at this time, it is my opportunity to
10 stand in front of you and just make some
11 observations about the evidence that I have
12 witnessed and watched and talk with you about my
13 thoughts and interpretation of that evidence.

14 Now, we understand that we wouldn't be picking
15 the 12 of you if this case was decided on what Mark
16 Leiendecker thought. We would be done. We
17 wouldn't be doing this if it was decided on what
18 Glenn Justis thought. We would be done. But it's
19 not, it's decided upon what the 12 of you, the
20 citizens of Aiken County, believe concerning the
21 facts that were presented.

22 And I'm just going to try to be straight, get
23 through it, discuss the witnesses, give my
24 observations concerning those and give you pause to
25 think about the elements of what they discussed.

1 The State began their case by putting on
2 Ms. Ruth Reeves, a retired member of the South
3 Carolina Department of Probation, Pardon and
4 Parole -- or Parole and Pardon, I'm not sure how
5 that goes -- here in Aiken County. And they put
6 Ms. Reeves on because she was the administrative
7 assistant at the front desk on November the 6th,
8 2013, the day that caused us to be here.

9 And what did Ms. Reeves tell us? Ms. Reeves
10 basically told us that Robin checked out. Robin
11 said she would be back around 2:00. That she had a
12 2:00 o'clock appointment. That if she was late,
13 have them wait, she would be back soon thereafter.

14 What did Ruth Reeves also tell us? Nothing
15 seemed out of the ordinary. Robin wasn't upset.
16 Robin didn't seem aggravated or stressed. Robin
17 seemed to be running a typical errand on her lunch
18 hour. Her state of mind was not one of agitation,
19 aggravation, or anger.

20 Ms. Reeves further told us that in her years
21 of knowing Robin Herndon that Robin Herndon had
22 always been pleasant, had dealt well with the
23 clients, and had been an honest and truthful person
24 to the best of her knowledge with the things she
25 told Ruth. She could depend on what Robin told

1 her.

2 The State then gave us Wendy Kizer and Darryl
3 Prather, both employees at the cemetery at the
4 bottom of Sudlow Lake Road, who both told us, in
5 essence, the same story with a few deviations or
6 differences just based on their individual
7 perspectives.

8 But what I understood them to tell us was that
9 they saw a woman in a Dodge Charger pull into the
10 lot at the Memorial Gardens and soon thereafter
11 they saw a gentleman in a dark Honda SUV, black or
12 blue, I think they described it, and that she got
13 out of her car, she walked over. They had words.
14 That it became obvious that they were having an
15 argument, although nobody could really hear what
16 that argument was about. No one saw anything
17 physical. No one saw anything untoward. Nobody
18 saw anything that made them think that they should
19 call the police. In fact, they thought Robin
20 probably was the police. One of them might think,
21 even observed that maybe he was being stopped for a
22 ticket.

23 They did notice some back and forth. He got
24 in and out of his car. She got back in and out of
25 her car. And the aggravation and frustration

1 between them was visible through hand motions and
2 the fact that they were arguing with each other,
3 although they couldn't hear. And I don't think
4 they even described what they were doing as yelling
5 at that point.

6 They are consistent that he got in his car and
7 left the lot at a rapid rate of speed. Peeled out,
8 one of them said. And that she soon thereafter got
9 in her car and did the same, following him up
10 Sudlow Lake Road.

11 Now, questions were asked, and it has and will
12 be the position of the State, Robin, why didn't you
13 just go back to work then? He had the check. Why
14 didn't you go back to work?

15 First time, in my notes, first time that we
16 start to blame the victim of the abuse. Why didn't
17 you just walk away? Why didn't you just put it to
18 a stop?

19 She told you why. She told you she was
20 concerned about him. She was concerned about his
21 mental state at the time. She was concerned about
22 his attitude. She was concerned that he had
23 threatened to, I'll just wreck this car, bitch.

24 And so she followed him home in an attempt to,
25 I believe, diffuse that situation and solve those

1 questions and concerns that she had.

2 But more on that, let's try to continue
3 chronologically with the witnesses. We then hear
4 from the State from two of Robin's neighbors -- two
5 of Robin's neighbors who were in proximity in and
6 around the time that she and Mr. Rowley arrive back
7 at the Sudlow Lake address.

8 What we hear from the first witness, Sarah
9 Wiggins, is that she is working up and behind
10 Robin's house in the front yard of a neighbor who
11 lives directly behind Robin. And that she is able
12 to see Robin and Mr. Rowley arrive at the
13 residence, or she notices them soon after they
14 arrive at the residence, it wasn't clear, but she
15 sees them arguing with each other. They were
16 arguing with each other, she said. She said she
17 didn't see them once they moved beyond the area of
18 the carport in front of the house. And you'll get
19 a chance to see pictures, there's evidence,
20 pictures of what the house and the carport looked
21 like. She didn't get a chance to see them after
22 they moved there because her perspective from up on
23 the hill looking down at the house is the carport
24 and the driveway and the house blocks the rest of
25 her view. Logical. Reasonable. Makes sense. But

1 she continues to hear them.

2 And what she hears is Robin yelling at
3 Christopher Rowley, I've had enough. Get your
4 stuff. Get out. Get off my property. Or words to
5 that effect. Get off my property. Get your stuff
6 and get out.

7 Now, the State wants to focus on, and will
8 focus on, I'm certain, what didn't Ms. Wiggins see?
9 She didn't see him put his hands on her and take
10 her to the ground on the other side of the Dodge
11 charger when she went to get her keys. Guess what
12 else she didn't see? Guess what uncontroverted
13 piece of evidence she didn't see? She didn't see
14 Mr. Rowley take the keys to the Honda and over his
15 head hook them up halfway up the roof of the house.

16 You know what that means, ladies and
17 gentlemen? What that means is she wasn't just
18 watching what was going on down there. She was
19 doing her stuff. She was interested. She thought
20 it was unusual. She knew these people. But she
21 obviously didn't see everything that happened.
22 Even when she could see them, she didn't see
23 everything that could happen because it is
24 uncontroverted that happened. The evidence is
25 clear. The State put evidence of the picture of

1 those keys up that roof.

2 But they are going to want to make a big, big
3 deal out of the fact she didn't see Robin get
4 pushed down, an event that, I tell you, takes no
5 more time than the tossing of keys onto a roof.

6 So I'm not bothered by that fact. I believe
7 Sarah Wiggins. I believe she heard Robin yelling,
8 Get out of my house, get off of my property. I
9 believe she saw them fighting verbally. And I
10 believe she couldn't see anything once they got in
11 front of the house.

12 What I do know is she said sometime after
13 this, she heard a gunshot. Not immediately after
14 this, not right after they went out of her sight,
15 not right after the yelling, but that sometime
16 after, soon sometime after, she heard a gunshot.
17 And she came down very quickly. How long that took
18 her, I don't know. Thirty seconds? Forty seconds?
19 A minute? But she came down because Robin was
20 screaming. She was screaming things like, Breathe.
21 Help. Someone help me. Breathe. Someone help me.
22 Frantic. Panicked. Wildly beside herself.

23 And Sarah Wiggins came down and she found that
24 scene on the front porch. She found that scene at
25 that point, Mr. Rowley has rolled over from being

1 on his back with his hand on his throat. And Robin
2 is down on him at this point getting covered in
3 blood, trying to put pressure on him and crying and
4 telling Sarah, Call for an ambulance. Call for an
5 ambulance. Call 9-1-1. Call for an ambulance.
6 And Sarah tells you she does that.

7 But Sarah also tells you in the midst of doing
8 that, while she's been down there all that time,
9 Christopher Rowley actually puts his hands on the
10 rail, stands up on the porch, turns and falls back
11 into the white plastic chair that is closest to the
12 door.

13 And that she and Robin are both telling him,
14 Lay still, lay still, don't move, don't move, while
15 she's still on the phone talking to the 9-1-1
16 authorities.

17 And Christopher Rowley settles in that chair.
18 And Robin now begins to try to attend to him in
19 that chair. Still hysterically panicked. Still
20 screaming. Still crying.

21 The State's other witness, the other witness,
22 Ms. Lacey Burton, who lives two doors down, so
23 she's a further distance than Ms. Wiggins, but she
24 says she has a better view because she sees across
25 the front yard what's going on. Lacey Burton

1 testifies that she sees them in the front. And the
2 woman is yelling and she's agitated and she's
3 waving her hands and she's upset. And she's pacing
4 back and forth and she's yelling at the gentleman.
5 She says, I can't hear him, but he seems calm. I
6 don't hear him saying anything. And she also says,
7 from the State's perspective, importantly for them,
8 I don't see them having physical confrontation with
9 each other, either one of them.

10 Guess what else she didn't see? Guess what
11 else she didn't see that the State put in evidence
12 and is uncontroverted? She didn't see him throw
13 the keys on the roof. She watched three to five
14 minutes, she told us, although she told us she
15 can't be certain of that because she didn't have a
16 watch on it. And, in fact, in Mr. Justis's
17 testimony when he got up after cross on redirect,
18 she said it is really an estimate or guesstimate.
19 You know, her timing is just sort of. But that's a
20 while.

21 But what was it about she said that -- that
22 starts to get into this discussion that Mr. Justis
23 told you about the law, about judging the quality
24 of the testimony you are getting from the witness?

25 She said on the witness stand on Wednesday,

1 five days ago, two and a half years after the
2 event, that she came out on her porch, she looked
3 to the right because she heard a woman yelling.
4 And she went right down to her front yard where her
5 car was looking towards the house and she got in
6 her car and she sat and watched for three to five
7 minutes.

8 But on cross-examination, what did she say?
9 When I asked her about her statement she gave just
10 six days after the event when SLED came and talked
11 to her, then she said, Came out, I heard them
12 yelling on -- from my porch and I watched them.
13 And the woman was doing this and the woman was
14 doing that. And I continue to watch them. And
15 then -- and then -- just before the woman went up
16 into the house, or something to that effect, I
17 walked around and got into my car. I got into my
18 car just before that. Or maybe she even said, I
19 got into the car just before the gunshot. But I
20 got her to admit that her memory today -- that day
21 on the witness stand couldn't have been as good as
22 it was two and a half years ago. And that wasn't
23 what she said two and a half years ago.

24 And the reason that's important and the reason
25 that's crucial and the reason she's concerned about

1 that is because she had been shown State's -- or
2 Defense Exhibit 20, a picture that our
3 investigator, Danny McDaniel, told you was taken at
4 the end of February of this year. A picture that
5 shows, you know what, even in the dead of winter,
6 it's incredibly difficult to see what's happening
7 from your porch in Ms. Herndon's front yard. Even
8 assuming that she got down to her car while some of
9 this was going on, Defense Exhibit 23, it's still
10 difficult in the dead of winter to tell exactly
11 what was going on over there. And Defense Exhibits
12 24, 25, 26, 27, 28 all show that it wasn't just
13 difficult, that it might have been near impossible
14 to really see everything that was going on.

15 Did she see something? Did she hear
16 something? Yes. Yes. Yes, she did. But did she
17 see and hear two and a half years later what she
18 wants us to hear and believe? No. No, she didn't.
19 No, she didn't.

20 Her testimony was that after the woman,
21 someone she didn't know, disappeared up the steps,
22 and we can only assume goes into the house, because
23 what does the man do that she doesn't know,
24 Christopher Rowley? Takes a cigarette out, he
25 lights that cigarette, and he paces in the front

1 yard while he smokes that cigarette. That's what
2 she said. He finished that cigarette.

3 I'm not a smoker, but I have a lot of friends
4 that are smokers. It might be a nervous habit for
5 attorneys, I don't know. But that's a couple,
6 three minutes. In that three to five minutes that
7 she's watching, a couple, three minutes is him
8 smoking that cigarette in the front yard. And that
9 couple, three minutes that he's smoking that
10 cigarette, Robin Herndon is in that house doing
11 exactly what she told you she was doing.

12 What did she say? In that couple of minutes,
13 she said, I went up the steps, I went in the house
14 to look for keys, because he had thrown the other
15 keys up on the roof. The other keys that even the
16 State's witness, Investigator O'Grady, told us had
17 keys on it besides the Honda keys. Keys, when you
18 look at them, you'll see in the evidence, one of
19 those keys looks strikingly like a Ford key, round,
20 gold, double teeth on both sides. The kind of key
21 we all used to have when we drove Fords before they
22 had all these fancy chip keys. The kind of key
23 that fits that Bronco that was in the back yard.
24 His car. Because if he wasn't going to call his
25 mom, he wasn't going to get help, but he was still

1 going to go to that doctor, she asked him, Please
2 drive your own car.

3 Well, that's out the window when he threw the
4 keys on the roof. Not only can't he drive the
5 Honda, but he can't drive that. Now we're left
6 with Robin's car and the Saturn, the old car, which
7 she hasn't traded or sold. I think she said it
8 might have been some issue of bankruptcy. I don't
9 remember, but I think she said that.

10 She said she went in the house to try to find
11 the keys to that car. She said she went in her
12 bedroom, looked, couldn't find them. She came out,
13 was distraught, had been crying, she was upset.
14 She went back to the kitchen. She said she went
15 back there to just wash her face, splash water or
16 get a drink, but she went back to the back of the
17 house to compose herself. Couple of minutes.

18 Even when searching in the bedroom, the
19 timeline fits, a couple of minutes. He smokes that
20 cigarette, he comes up the steps. He has his
21 lighter, he has the butt of that cigarette, and he
22 has a cell phone in his hand. And he walks up
23 those steps and he puts those down, whether he
24 drops them or bends down and casually puts them
25 down beside the door. The cigarette, you see, is

1 kicked up under the door, in fact, in the State's
2 photograph. The lighter is here and the phone was
3 over there.

4 They're not beside each other,
5 Mr. Leiendecker. What you're telling me doesn't
6 make any sense. Yeah, it does. Yeah, it does.
7 Because that's right where he fell. That's right
8 where the EMS had to come up and get him. That's
9 right where they treated him. That's right where a
10 police officer who was offering help dropped her
11 own sunglasses. And things were being kicked
12 around and moved around and changed in position.
13 Because no one was marking and tagging those things
14 at that time because they were in a desperate,
15 life-threatening situation trying to save a man.
16 Yeah, he put them down there and he went in the
17 house.

18 Now, the State wants you to believe a couple
19 of things. The State wants you to believe that
20 when he put that cigarette -- when he finished that
21 cigarette and started up those steps that the
22 physical evidence from the medical examiner proves
23 that he was shot coming up the steps. That Robin
24 Herndon was standing above him and shot him and
25 that's why the bullet enters the right side, right

1 of center of his throat -- just right of center of
2 his throat -- and goes in a downward trajectory
3 piercing his lung and lodging in his back.

4 Mr. Sorenson even took his coat off to demonstrate
5 so he could show how it was and where it went.

6 And why is that important? Because it fits
7 what the State wants you to believe what Lacey
8 Burton also told you, that he went up the steps and
9 she heard the gun go off. However, that's really
10 not what she said. What she said was he went up
11 the steps and she heard the gun go off soon
12 thereafter. Now, she probably didn't use those
13 words. You know, whatever words it was she used,
14 but heard it go off soon after that. What did she
15 say, 30 to 60 seconds? What did she admit to the
16 State? I didn't have a watch on it. Those are
17 kind of guesstimates, but 30 to 60 seconds. Let's
18 stretch it out, 20 to 90 seconds, but somewhere in
19 that range.

20 And the State is going to want you to believe
21 beyond a reasonable doubt that that means it's
22 impossible, impossible that what happened that day
23 on Sudlow Lake Road happened the way Robin Herndon
24 says it happened. It's impossible.

25 Guess what? It's not impossible. It's even

1 reasonable that it happened just the way she
2 described it. It's even reasonable he went up
3 those steps, he put down that cigarette, he opened
4 that door, and he walked in that house. You're
5 going to see the diagram of that house. She's back
6 in the kitchen, he turned and he walked to that
7 bedroom. As he walked to that bedroom, she didn't
8 know why he was going there or what he was doing
9 there, but he wasn't in there long at all. It's
10 like he walked in there, turned around and he came
11 back. And he stood in front of that entertainment
12 center on the other side of that sectional sofa and
13 he bellowed to her, So that's it? That's it?
14 You're going to make me homeless? You're going to
15 kick me out? A moniker that he's been using since
16 he got his foot in the door in March of 2013.
17 Don't make me homeless. My mama won't take me.
18 You'll make me homeless.

19 And after he bellows that at her, just seconds
20 into the house, he starts around that sectional
21 sofa. And he meets her midway in that 20 plus feet
22 of the length of the width of the house. And he
23 confronts her and he knocks her down. And when he
24 knocks her down, he stands there. He doesn't get
25 on top of her, he stands over her with his fist and

1 he swings at her and he hits her arms as she's got
2 them up protecting herself. And then he steps back
3 or stands up enough that she scoots back and draws
4 her service revolver and she shoots him dead. No.
5 She doesn't shoot him. She tells him to get out.
6 I don't care where you go. Get out.

7 And his bravado -- here's another phrase, If
8 you're going to pull that gun, you better be ready
9 to use it, Miss. You better be ready to use that.

10 But he appears to hear what she says and he
11 turns for the door, a matter of steps. He's 5'11",
12 350 pounds. He hits the door. He bangs it open.
13 And he starts to step out that threshold. She's
14 following behind him. She thinks he's leaving.
15 And he spins. And he comes right back in with that
16 hand up again. And she draws her service revolver
17 and she points it out at him again, holding it in
18 her right hand, she says. And he swings at her.
19 And she says he's got his fist, but she thinks he
20 opens his hand and she sort of turns her head and
21 she feels him hit or touch her hand and the gun
22 goes off.

23 Guess what? That can happen in a minute.
24 That can happen in a little less than a minute.
25 That can happen in a little more than a minute. In

1 the door, to the bedroom, turn from the bedroom, in
2 front of the TV, yell at her. She yells at him.
3 He rounds that. Then he hits her, or pushes her,
4 takes her down, he hits at her. He steps back, she
5 pulls the gun. He backs off. He heads to the
6 door. He opens that door, but before he gets out,
7 he thinks better about it. He slams it open and he
8 spins back. And he reaches for her again. He
9 reaches for her again. And the gun goes off. And
10 he puts his hand up to his throat and he
11 immediately turns. He's just a step or so from the
12 door and he goes out the door, and before he can go
13 any further, he falls, falls on that porch.

14 She comes out. She hasn't even seen blood
15 yet. She's still screaming, Are you hit? Are you
16 hit? Are you hit? She rolls him over -- I don't
17 know which hand he has, his left or his right. She
18 rolls him over and she sees the blood. She has
19 blood on her hand. She's freaked out. She's
20 crying. She's screaming. She's panicked. She's
21 hysterical.

22 But as much as the State wants to say this
23 proves beyond a reasonable doubt that it didn't
24 happen that way, there is more evidence that it did
25 happen that way. There is more evidence that

1 that's just how it happened.

2 All right, Mr. Leiendecker, there's
3 Investigator O'Grady, crime scene specialist, she
4 was in the house. She said that house was
5 beautiful, immaculate. All she found in it was a
6 shell casing right at the end of the sofa. You'll
7 see that in the State's pictures as well. She's
8 going to say on direct examination there was no
9 sign of struggle in the house. Guess what? On
10 cross-examination she says there was no sign there
11 wasn't a struggle in the house. You know what that
12 is? Reasonable doubt. The kind of doubt the State
13 doesn't like you to believe exists in this case.

14 But, Mr. Leiendecker, there's no blood in the
15 house. He's right by the door, he gets shot and
16 puts his hand up to his throat and nobody even sees
17 the blood until he's outside. You'll also notice
18 there is not a lot of blood even while he's there
19 on the porch. They show you the blood. They show
20 you it is run down. They show you all this stuff.
21 But there's no pool of blood. This isn't one of
22 those kind of scenes. There's as much blood on
23 Robin as there is at the scene. There really is.
24 You saw the video.

25 It could happen that way. And that -- that

1 proves that it is reasonable doubt. He stepped
2 right out that door and blood didn't get left
3 inside. The blood didn't get anywhere until he
4 fell to the ground outside.

5 So the investigator really doesn't prove --
6 the investigator really doesn't prove beyond a
7 doubt that it didn't happen the way Robin describes
8 it.

9 Now, you're allowed to judge contradictions,
10 you're allowed to judge problems, and you're
11 especially allowed, Mr. Justis was careful to tell
12 you, to judge those contradictions of the Defendant
13 when the Defendant started to testify.

14 Well, guess what? There are irregularities.
15 There are. There are things that aren't completely
16 filled in every time she tells the story. There
17 are things that just don't evolve. Like I told you
18 in opening statement, until we've gotten a chance
19 to look at everything.

20 Now, the State's theory on that is that Robin
21 Herndon is a criminal law expert mastermind. She
22 was a special victims investigator for Edgefield
23 for a number of years. She did Midlands
24 investigations for SLED. She actually cooked up
25 this plan. She actually thought this up. And she

1 justified all this because she has got all this up
2 in her head.

3 Well, okay. She's a genius. And, at the same
4 time, she's stupid. That's the only way that
5 theory works. She cooked all this up. She thought
6 it all up. Yet, she never told it to anybody
7 directly or completely. She hadn't set up the
8 background completely. Because she's not a genius.
9 And I'm not saying she's not a smart woman, I'm
10 just saying as far as setting this crime up, it was
11 no criminal mastermind idea. It was no SUV plan.

12 It was a horrible, horrible emotional event
13 that happened on the 6th of November 2013 where a
14 man nearly twice her size not only tried to
15 physically assault her, but did physically assault
16 her. Not only took her down and she felt so
17 threatened that she drew her weapon, but after
18 she'd drawn her weapon once, he came back again.
19 What else could she think than that he intended to
20 kill her? Because he didn't care that she had a
21 gun. He was coming back any way. He intended to
22 kill her. And if he didn't kill her, he intended
23 to hurt her so bad -- so bad that who knows what
24 would have happened.

25 What do we know about Mr. Rowley? We know he

1 admitted to Dr. Cummings, the therapist he went to
2 see, that he had been a person who had a hard time
3 controlling himself, that he had ups and downs.
4 She diagnosed him as bipolar nonspecific, meaning
5 he needed to go see someone, someone more advanced
6 with medical background to diagnose whether this
7 was Bipolar I with big ups and downs, or Bipolar II
8 with the downs. But she thought it was serious
9 because she even gave him a quick way to get it
10 done, go see -- to the Aurora house. They'll check
11 you in right away if they agree. You'll get a
12 weekend or three days of eval, you'll get on meds,
13 or they'll put you in an outpatient program and get
14 you stabilized. And once you get stabilized, try
15 to come back and see me.

16 Because those manifestations of those ups and
17 downs result in anger and violent activities. By
18 your own admission, Mr. Rowley, that's what they
19 result in. Because you haven't just assaulted
20 Robin, who you describe as your fiancée, but you
21 have assaulted your own mother and your own kids.
22 That's what he admits to having done. He's a
23 serial violent person. A serial domestic violent
24 person, assaulting the people that he knows and he
25 loves, because he feels that he isn't in control.

1 What else do we hear? What else is the State
2 going to say this proves that beyond a doubt, the
3 physical evidence proves that it couldn't have
4 happened this way. It just couldn't have happened
5 this way. We've got a DNA expert who came in and
6 told us that that cigarette was Christopher
7 Rowley's. Well, that's really not rocket science
8 because we would have admitted that, that was his
9 cigarette. Lacey Burton watched him smoke it. He
10 finished it. He brought it up and he threw it on
11 the porch. Sat it down with his phone and with his
12 cigarette lighter.

13 Then they brought Whitney Berry. Whitney
14 Berry was the GS -- GSR, gunshot residue, expert.
15 And Whitney Berry told us that she found GSR only
16 on Robin's right hand and only a little bit on the
17 back of Robin's right hand that could have come
18 when the bullet ejected out. Only one particle.
19 Only one particle.

20 What else did she tell us? That it was
21 antimony, barium and lead. These three things
22 together, or two of them, maybe, at times, show us
23 GSR. But on cross, what did she admit? That on
24 Chris Rowley's right hand, antimony, barium and
25 lead levels were significantly higher than anywhere

1 else that they tested. Way off the charts compared
2 to what was on his left hand. Guess what? That
3 supports Robin's testimony.

4 Well, they weren't molten, they weren't
5 molded, they weren't fit. Well, then how was there
6 such a significant difference on the right hand
7 versus the left hand? And even if they weren't,
8 what did the testimony tell us happen when he went
9 for that gun? When he went for that gun, a foot or
10 less away from her, because the doctor said that
11 that blow at the wound demonstrates that he was one
12 to two feet. Who knows. But the farthest was two
13 feet. It could have been one foot. And he's
14 reaching for that gun.

15 Well, his hand is behind -- is his hand behind
16 the gun? Because the blow is coming out of the
17 front, remember? Most of the blow is coming out
18 that barrel. And that creates that stippling
19 that's on his throat. The wound that entered was
20 here. The wound that the State says proves that
21 she shot him in a downward trajectory.

22 As potentially difficult as it is to look at
23 State's Exhibit Number 1, Mr. Rowley at the
24 autopsy, you know what I noticed when I looked at
25 it? I noticed that the wound is where they said it

1 was. I noticed that there appear to be marks, dark
2 marks around the wound, which corroborates the idea
3 that he was very close when he got shot. And I
4 noticed that it is just right of center.

5 I'm not a biologist, I'm not a physiologist,
6 but I am smart enough to know right behind this
7 point of center are the vertebrae in my backbone.
8 Right up and down my neck. A distance of inches.
9 Inches.

10 What she did tell us and what she was willing
11 to tell us and what she was willing to be fair
12 about was, bullets travel straight unless, I asked
13 her, they hit something. Unless they hit
14 something. Or bullets travel straight, but they
15 don't really tell us what the scene was like
16 because if the individual was like this, the bullet
17 traveled straight this way. That's absurd. It
18 wasn't like that. If the bullet is like this, the
19 bullet travels straight that way. Okay. If it
20 travels straight that way, it had to have been
21 diverted one way or the other. Or if it travels
22 like this, it travels in behind the clavicle
23 through his lung and rests right behind his
24 scapula.

25 The State wants you to believe that that

1 establishes their theory beyond a reasonable doubt.
2 Well, the truth of it is, it supports the testimony
3 of Robin Herndon. I'll tell you, I watched the
4 video. I listened to Robin. I've seen everything.
5 I'm not sure where the fatal gunshot came. I'm
6 sure it came in the house. I'm sure it came near
7 the side of that sofa. And I'm sure that the shell
8 ejected in that house.

9 To buy the State's theory of what happened,
10 that she shot him outside on the porch out of anger
11 over him throwing her car keys on the roof --
12 because that seems to be what they're talking --
13 she would have had to find the gun shell, find the
14 gun shell that ejected from the gun outside --
15 maybe still on the porch, maybe not -- collect the
16 gun shell while stepping over Mr. Rowley, or maybe
17 even moving him if the gun shell would be under
18 him. Pick up that gun shell in anticipation that
19 they're going to investigate this. Find that gun,
20 or she still has it in her hand, take the gun
21 inside and drop it. Now, this is a part, if that's
22 their theory, that doesn't make any sense, drop it
23 right inside the door. Don't carry it on in the
24 house, drop it right inside the door. Then throw
25 the shell over here.

1 Ladies and gentlemen, that theory is
2 reasonable doubt. Or she was holding the door
3 open. And she held the door open and she fired and
4 while she's standing right on that 40 some inches
5 of porch and she fires, the bullet makes its way
6 past the door frame into the house, curves over and
7 lands on the carpet. The medical examiner said
8 bullets travel in straight lines, so guess what?
9 That shell casing didn't have English on it and
10 curve either. She shoots it inside the house. It
11 ejects out. Whether she's here or there or what,
12 it ejects out. Maybe a little farther, maybe not,
13 but it ejects out and it lands. Maybe it bounces
14 off the couch, I don't know, but it lands right
15 there on that floor. And that's where it was and
16 that's where it stayed and nobody messed with it.
17 Nobody touched it. To suggest otherwise isn't
18 anything other than crazy.

19 Because -- why do we know that? Because
20 immediately, soon after the gunshot is heard, Sarah
21 Wiggins hears screaming. As soon after the gunshot
22 is heard, Lacey Burton hears screaming. Not, Oh,
23 my gosh, oh, my gosh, where is the gun shell, but
24 breathe, help, I need help. Hysterical screaming.

25 The police officers arrive on the scene.

1 Lieutenant Padgett and the officer we heard from
2 today, both are attending to her. Lieutenant
3 Padgett describes her as screaming, even down in
4 the front yard, screaming hysterically. Wanting to
5 be with him, screaming hysterically.

6 These theories that the State is presenting to
7 you don't -- don't diminish what you heard from the
8 witness stand from Robin. Don't diminish what you
9 heard on the tape from Robin that day, even though
10 what you heard then wasn't complete. She was still
11 in shock. Still in shock.

12 They are going to want to say, Well, you know
13 what, Hahn asked her -- Investigator Hahn asked
14 her, Hey, are you hurt, do you have any injuries,
15 let me help you.

16 And she said, Well, my tailbone hurts where it
17 hit. I bet it really did hurt because that's the
18 only thing she complained about. It wasn't until
19 later that evening that she sent a request saying,
20 You know what, my arms hurt, and I want you to come
21 take pictures of those because they hurt.

22 And Lieutenant -- or Investigator Hahn comes
23 down the next evening, just over 24 hours after,
24 and takes pictures.

25 And the State is going to argue that those

1 pictures prove that she's lying. In State's 29,
2 State's 30, State's 31, and State's 32. But,
3 fortunately for Robin, Wallis Alves, the Public
4 Defender for Aiken County, was there just six days
5 later on the 13th. And she took these pictures,
6 Defendant's 7 through 19. Take them back, look at
7 them. You'll be able to figure them out. You'll
8 be able to match them up.

9 What you're seeing here are bruises that are
10 just coming to the surface. People don't bruise
11 immediately. It's an injury, subcutaneous,
12 below-the-skin injury that doesn't show until the
13 blood fills into it and starts the healing process.
14 And then they fade days or weeks later. And that's
15 what you're going to see here. But match them up.
16 Match them up.

17 Mr. Sorenson said that their case is a puzzle.
18 Well, their case isn't that much of a puzzle.
19 Their case is one trick pony. You know, it's
20 inconsistent, it's inconsistent, it's inconsistent.
21 Guess what? It's consistent. She wasn't making it
22 up. They want to theorize that she did this to
23 herself. Well, that's bizarre and interesting that
24 she'd be able to make those injuries to herself if
25 that's what they're going to say, and it's

1 ridiculous.

2 She's still -- at the time she asks them to
3 come back that evening, she's still stressed.
4 There's no way she has come down off of that crazed
5 person we saw on that video.

6 And then they put up Investigator Turner. In
7 essence, they put up Investigator Turner to
8 corroborate that he was there, she was given her
9 Miranda and she gave a statement and he watched
10 that statement. And then they rested.

11 Then the Defense had the opportunity to put on
12 its case. And the Defense put the Defendant up
13 first. And then after we put her up, we called the
14 people that knew her, people that may have known
15 what was going on, but really did not know what was
16 going on.

17 We talked to, I think, five of her co-workers.
18 And we'd already talked to Ruth Reeves, so six of
19 her co-workers.

20 What did they all tell you? She was
21 vivacious. She had a big personality. She was
22 honest. She was truthful. She was peaceful. That
23 she worked so well with the clients that they
24 didn't even remember a complaint from the
25 probationers about her work with them. That not

1 one of the officers there ever heard of a complaint
2 with fellow officers. That no one ever heard any
3 evidence that she'd ever misused her firearm.

4 And that to a person, they were stunned and
5 shocked on November 6th when they heard this had
6 happened. They were stunned and shocked because
7 not only they knew Robin as a person, but they
8 thought Robin had a good life. Thought she had a
9 new boyfriend. They thought things were going
10 well. She brought him around.

11 But there were inklings that something was
12 going on. There was a black eye so badly that it
13 was swollen shut. There was a bruise on the back
14 of her arm.

15 There were those things that to a person when
16 they were asked by Mr. Sorenson, If she had just
17 come to you and said something, you guys were like
18 family, you would have helped her; right? You
19 would have helped her?

20 Guess what? That's the second observation -
21 I'll make to you, that the State is blaming the
22 victim, the victim of domestic violence. Why
23 didn't the victim just tell somebody? She could
24 have gotten help. She could have gotten help if
25 she just told somebody.

1 Even in the interview, she said, I didn't tell
2 anybody because I was embarrassed. I knew what
3 would happen. I knew that it would cause problems.
4 She thought she loved this guy. She thought she
5 could help this guy. She thought she could fix
6 this problem.

7 Is that insecurity? I don't know. I don't
8 understand it myself. But I've seen enough to know
9 that it's reality. I've read the newspapers enough
10 to know that it is a grim reality in our state.
11 I've seen the budget of our governor which calls
12 for a desire to put additional funds, people and
13 money to solve the problem of violence against
14 women in our state, a state that ranks 50th in the
15 union in protecting its women from violence. A
16 state that is willing to say because she didn't
17 tell somebody about it that it didn't happen. And
18 if it was happening and you didn't tell somebody,
19 it's your fault. It's your fault.

20 After we heard from her co-workers, we also
21 heard from her daughter. Her daughter told you
22 that she was in and out of her mom's house and she
23 liked Mr. Rowley. She thought he was okay. She
24 didn't notice anything that was going on. And she
25 was there half the time. She assumed everything

1 was okay. Yes, she saw some marks on her mom, but
2 she thought it was horseplay or roughhouse. She
3 didn't think anything about it until some incidents
4 started to happen, some incidents at the beginning
5 of the summer, end of May through June or July.
6 Some incidents where she saw Mr. Rowley's temper.
7 Some incidents where she saw inappropriate texts
8 Mr. Rowley was sending to her mother. A situation
9 where she saw something on the front porch that
10 didn't look right. Mom pinned against the wall and
11 him hovering over her. A situation where she saw,
12 finally, for the first time that kind of off the
13 leash anger that when she went to her room and shut
14 the door -- and let's assume she even shut the door
15 in his face, put that big foot up and split the
16 door top to bottom. Busted in and going in and
17 yell at her. She was so frightened she didn't even
18 go to dinner and she cried and worried about that.

19 And then from that witness stand, despite the
20 cross-examination and other things that called into
21 question the veracity of what she was saying, when
22 asked by Ms. Hinds, How did you feel when you heard
23 what had happened? She broke down and said, I felt
24 responsible. I hadn't told anybody what I knew was
25 happening. It was my fault. A child of a victim

1 of domestic abuse felt like it was her fault.

2 And you had an opportunity to hear from the
3 doctors. Not always the most scintillating
4 testimony that you get to hear in a case like this,
5 but what you did hear was important.

6 Dr. Fallaw, the primary treating physician,
7 Robin's doctor, Robin's doctor, who she hooked
8 Chris up with, maybe even brought him in when she
9 was having an appointment the first time because he
10 was feeling depressed, because she thought she
11 could fix him. She thought she could solve his
12 problem if she could just get him on these
13 medications. And she paid for it. And she did
14 everything she could. And he got on this med and
15 changed to that med and had side effects, worked
16 through it, and did this and did that. And he
17 wasn't following doctor's instructions about coming
18 back in, but she really, really wanted to help him
19 because she felt he had a real problem. And so
20 right up until October, she kept trying to help
21 over the phone.

22 Now, the State is going to argue that she was
23 really only listening to what Robin had to say, but
24 we heard her say that Robin called more than he
25 did, but the notes show that he called too. And

1 guess what? It is not a unique situation for a big
2 strapping man like that that's got problems, relies
3 on his girlfriend or his mama, to do all the leg
4 work and calls. It's not. He was too busy and too
5 bothered or too embarrassed, so he let someone else
6 do it.

7 But the situation was immense and difficult
8 and strong enough that the end of June, beginning
9 of July, he assaulted her again. We heard about
10 multiple assaults, but he assaulted her again. And
11 she went to his mother. And from what I heard, his
12 mother didn't seem surprised. She said, We've got
13 to get him help and I'll help you get him help.
14 And between them, or one of them comes up with the
15 idea that they heard that there was this counselor,
16 Cheryl Cummings, a licensed professional counselor
17 in the State of South Carolina, who now actually
18 has a doctorate in that, that would help him. And
19 they went to see her, Dr. Cummings.

20 Dr. Cummings met with them. And we've already
21 discussed, he was frank and honest with her. He
22 told her about the problems he had with his anger.
23 He told her how it resulted in multiple assaults
24 and that how he wanted to solve this problem. And
25 she said, you know, he was fidgety and agitated and

1 I had trouble getting him to focus, so I had to
2 actually go to the questions instead of just having
3 a conversation because I couldn't keep him on task.
4 But I learned early on that -- in that hour
5 interview that I couldn't help him till he got
6 stabilized because I'm a counselor, I'm not a
7 doctor. He needed medicine. He needed
8 doctor help, and then I could get to the source of
9 what his aggravation was, not the treatment of that
10 aggravation. And I know from my discussions with
11 him that all of the signs exhibited demonstrated a
12 non-specific bipolar disorder. Something that he
13 needed help, needed help quickly. Something that
14 she even, as I said, Go straight to the Aurora
15 house. They'll let you in. They didn't do that.
16 He didn't do that.

17 Dr. Fallaw said when she put him on Lithium,
18 this can cause problems. If they do, you need to
19 go straight to the emergency room. He didn't do
20 that. They didn't do that.

21 In September, middle of September, Dr. Fallaw
22 said, I'm not going to write any more scripts.
23 This is the last one. You've got to come see me.
24 You've got to get the Lithium levels checked. She
25 gave him 90 pills, three pills a day, that carried

1 him for a month. Mid-October, there was testimony
2 that he had cut back, he was taking less and he was
3 running out, so he had an appointment to go see the
4 doctor. He had an appointment to go see the doctor
5 and instead of going to see the doctor on the 4th,
6 he and Robin went to wrestling. They both talked
7 about it we heard in her testimony. They both
8 decided that that would be a fun thing to do and
9 they should do it.

10 But what I heard today from the State and the
11 questioning of Dr. Veronen was, is that really what
12 someone would do if they're having these kind of
13 troubles with a person who has got anger issues?
14 Would they go to wrestling? You know what that is?
15 Blaming the victim. How dare you, how dare you
16 take him to that event? You're just encouraging
17 him to hit you. You're encouraging him to be
18 violent with you. How dare you do that? That's
19 your fault.

20 There will be much said in the State's closing
21 probably about the fact that Dr. Cummings is just a
22 counselor. She's not a psychiatrist. She's not a
23 psychologist. Well, guess what? She's recognized
24 by the State of South Carolina. She's allowed to
25 diagnose by the State of South Carolina. And she

1 did her job. And they probably went there because
2 she wasn't as expensive. Money was always an
3 issue. But what she did was, she confirmed all the
4 other stuff they had been seeing, they had been
5 experienced and they had been feeling all along.
6 Chris had a problem. Chris had a problem and there
7 had to be some source to his problem. Robin had to
8 be able to fix it. There had to be a way to fix
9 it.

10 And he continued to assault her and bruise the
11 back of her arms. And she wouldn't tell anybody.
12 And she wouldn't tell anybody. So guess what?
13 It's her fault. It's her fault because she hid it.
14 It's her fault because she was embarrassed about
15 it. It's her fault because she thinks she can fix
16 it. It's her fault. It's her fault. It's her
17 fault. It's her fault because she had an argument
18 with him and then followed him back to her house.
19 It's her fault because she yelled at him and got
20 mad at him because he threw the keys on the roof.
21 It's her fault. And none of this other stuff
22 really happened anyway, she's just making it up
23 because she's fabricating a way, fabricating a way
24 to get herself out of this charge.

25 And Dr. Veronen today, a well-known

1 professional, someone who's done this since her
2 first case in 1979 in Charleston dealing with
3 domestically abused women in court trials, a woman
4 she told you killed her husband.

5 And she told you that Robin took inventories,
6 Robin spoke to her on two occasions, and she was
7 able to determine with her work with Robin and
8 subsequent reports, medical and otherwise, that she
9 received, Robin is a classic victim of domestic
10 abuse. And that she may even be a victim of
11 Post-Traumatic Stress Disorder. Maybe from the
12 incident itself and maybe from a combination of the
13 incident itself and the abuse she suffered before.

14 What did she say? Importantly, she said she
15 didn't have to be victim of PTSD to be a problem.

16 When Mr. Sorenson asked her, Hey, she scores
17 really high on avoidance, so she would have avoided
18 these problems. She wouldn't have had these
19 problems. It's her fault. She's a good avoider.
20 She didn't -- it's her fault.

21 But the doctor said, Yeah, in her work
22 environment, she's assertive and she can do that,
23 but, you know what? In her private life, maybe no,
24 maybe that's not what she is or who she is.

25 She seems assertive. She seems in charge.

1 She walked right in, sat down with me and asked me
2 what my background was. Asked me what my history
3 was. Asked me what my experience was. And the
4 State wants you to believe that she's a firm,
5 assertive person, this couldn't have happened to
6 her. And if it did, it's her fault. It's her
7 fault. She's firm. She's assertive. She'd be
8 able to take control of this.

9 Mr. Sorenson wanted to make a point of people
10 come to psychologists with symptoms and expect
11 psychologists to determine the problem. That my
12 office called and asked that Robin be evaluated to
13 determine if she suffered from abuse or battered
14 wife difficulties or syndromes. That we had
15 suggested the answer before she got there. And
16 that Robin knew that suggestion and that I'm sure
17 Robin answered all those questions. What did the
18 doctor say? They're controlled questions in those
19 that can be a plus or minus deal about whether
20 they're under or overreporting to try to influence
21 the decision. And all those were within the norms
22 and the parameters. Those are natural standardized
23 questions and tests. And I looked at them and it
24 didn't appear to me that she was manipulating or
25 trying to under or overreport, that she was just

1 telling me what happened.

2 And how do we know she's just telling her what
3 happened? Because the doctor's notes reflect sort
4 of the exact same thing Robin told us. And what
5 the State wants to seize on is that the doctor
6 didn't hear it exactly the same way, so they have
7 some differences. You know what that tells me? No
8 one's trying to create an illusion here. They're
9 just telling a story. It doesn't come out the same
10 way every time. It's not exactly the same words
11 every time. And everybody doesn't hear it exactly
12 the same way every time -- because? Because it's
13 the truth.

14 She said that over the last three years she
15 has evaluated at least eight of these cases. And
16 that she has told the attorneys and defense teams,
17 No, I just don't see it. It's not here.
18 25 percent of the time, she has told them no.
19 These are people who have clients, have cases that
20 they are firmly convinced they have these problems.
21 And she's told them, No, you don't. But guess
22 what? She told Robin yes. Yes, you did.

23 They want to degrade her opinion because they
24 don't like her opinion. They want to talk about,
25 Well, I don't see in there anywhere that you wrote

1 down camper in the backyard.

2 And she says, Well, you know what? That's
3 what she told me, and I remember it because my note
4 were, live like an animal. And I know that's what
5 she meant. I just don't write every word. I don't
6 record it, but I make notes. And three weeks
7 later, I still remember it. I remember and I saw
8 the reports that said he was diagnosed with bipolar
9 non-specific.

10 She never saw the video. She only saw what
11 was sent to her by the Defense team. She saw all
12 the reports. She saw all the investigation. She
13 saw the witness statements. She saw the medicals.
14 And she interviewed the client. She didn't see the
15 video. Blame me for that one. Blame me for that
16 one. It had nothing to do with not wanting her to
17 see the video, it had everything to do with wanting
18 to get an honest response, not an emotional
19 response to what that video showed.

20 Why do they stay with people that are being
21 violent to them? Because they love that person.
22 That's what she told Don, because they love that
23 person. It's not a typical situation. You know,
24 he was depending on her. Well, she loved him. Or
25 I say she thought she loved him. And because she

1 left herself in that situation, guess what? It's
2 her fault. Because that doesn't make sense to you
3 and me. They weren't married. They had no
4 children. She wasn't economically dependent on
5 him, he was economically dependent on her. It's
6 her fault. It's her fault.

7 You wrote down in your notes that she urinated
8 on herself, so in reply we're going to call a
9 detective -- or a deputy, excuse me, who picked her
10 up at the scene to demonstrate that she hadn't
11 urinated on herself at the scene.

12 Well, guess what? So what? Because it was
13 hours before she wound up at the jail. It was
14 hours before she was taken out of that clothes.
15 And there was no evidence that it didn't happen.
16 There was no evidence at all that it didn't happen.
17 If it hadn't happened, wouldn't they have brought
18 somebody from the jail to tell you, Hey, when she
19 was put in jail clothes, I took her -- I took the
20 clothes. And guess what? They were dry. That's
21 what they didn't do. You know what we can assume
22 from that is? It didn't support their theory or
23 they would have brought it.

24 Robin Herndon told you in broad strokes what
25 happened November 6th, 2013, just hours after it

1 happened. Not even really hours after it happened,
2 just a few -- hour or so after it happened. She
3 told you that on State's Exhibit 34.

4 And as part of my close and in discussion
5 concerning the alleged inconsistencies of her
6 statement, I would now like to play that to you and
7 discuss those inconsistencies.

8 If it please the Court?

9 THE COURT: Yes, sir.

10 Does anyone need a bathroom break?

11 MR. LEIENDECKER: It is going to be about 37,
12 40 minutes.

13 THE COURT: All right. We're going to take a
14 restroom break.

15 (WHEREUPON, the jury retires to the jury
16 room at 3:29 p.m.)

17 THE COURT: All right. Let's take about five
18 minutes.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: You may be seated.

21 You're going to show the whole video? You
22 said you're going to show the whole video?

23 MR. LEIENDECKER: Yes, ma'am.

24 THE COURT: All right. Let's bring them back
25 in.

1 (WHEREUPON, the jury came into open
2 court at 3:40 p.m.)

3 THE BAILIFF: The jury is present, Your Honor.

4 THE COURT: All right, ladies and gentlemen,
5 we will continue with closing argument.

6 Yes, sir?

7 MR. LEIENDECKER: At this time, we would
8 please publish the video to the jury.

9 (Video published to the jury.)

10 MR. LEIENDECKER: Robin Herndon at 4:00
11 o'clock on November 6th, 2013, tells her story to
12 two detectives, one from SLED and one from the
13 Aiken County Sheriff's Office. She tells the story
14 that not only does the State want you to believe
15 isn't true, but they want you to believe because
16 she didn't fill in all the details it's a lie.

17 She tells you a story about the assaults that
18 happened that day. She tells you a story about she
19 was afraid. She had never had seen him like that
20 before, and she couldn't believe this was
21 happening.

22 She tells you a story that she asked him to
23 leave. She tells the story that he was going to
24 get his stuff and leave. She tells the story that
25 she couldn't do this anymore.

1 The last time he assaulted her with his fist,
2 she had gone to his mom. And she told his mom, I
3 can't do this anymore. I just want you to know I'm
4 going to kick him out and I want you to know why.

5 His mom said, No, no, let's see if we can get
6 him help.

7 On that day, I think he knew, I think he knew
8 it was serious. He came in the house and he said,
9 What, you're going to make me homeless?

10 And what she says that day, it doesn't match
11 up 100 percent with what she says today. But what
12 she says today has been a consistent story since
13 that day. What she has told the other people that
14 she's talked to about this, the other people you
15 heard from, the doctor, herself.

16 The State -- and it occurred to me because the
17 questions even here on the investigation, Was he
18 cheating on you? Like you did this because in
19 somebody's mind, you'd do that because someone was
20 cheating on you. She denied it.

21 The State even brought in a witness who said,
22 She said if she ever caught him in bed, she would
23 shoot him and no jury would convict her. Guess
24 what? That's a superfluous conversation.
25 Conversation that Robin says never even happened.

1 She doesn't even remember it. No one else was a
2 witness to that. No one else observed that. And
3 it's not the facts involved in this case, but it's
4 brought to you for the purpose of poisoning this
5 case.

6 When that detective asked, Was he cheating on
7 you, that was just another, It's your fault this
8 was happening. When that Detective asked, You're a
9 cop, you're law enforcement, you've actually worked
10 in special victims before, you know how it works.
11 Why didn't you do something? That was him saying
12 it's her fault. When that investigator said, Tell
13 me how it's been happening, tell me what's been
14 happening. Did you ever tell anybody this? Did
15 you ever confide in anybody about this? That's
16 them telling her it's her fault. It's her fault
17 this happened.

18 It is and has been the State's desire not only
19 to come up with theories that this happened because
20 of anger over the car keys on a roof. Ridiculous.
21 Or this happened out of some scheme or plan because
22 she was a detective who knew how to set it up.
23 Ridiculous. Or that she wanted this to happen.
24 You watched that video. No way she wanted that to
25 happen. On that video, even when she's asked by

1 these detectives after the fact, she knows he has
2 died, about has he ever been arrested. Her
3 demeanor and her voice suggest she's still trying
4 to protect him. She quiets down. I don't know too
5 much about that. It's sad.

6 This is one of those situations where this
7 little inconsistency of what was said that time or
8 that little inconsistency of what was said this
9 time. This tree or that tree the State wants you
10 to focus on because they really don't want you to
11 see the forest. They don't want you to really put
12 this jigsaw puzzle together like they say because
13 they don't want to see the whole picture. They
14 want you to concentrate on this piece, that piece,
15 this tree, that tree. That's what they want you to
16 see. But the evidence not only demonstrates that
17 it could have and did happen the way Robin Herndon
18 said, but the evidence demonstrates that there is a
19 myriad of reasonable doubt.

20 The State is going to want to argue that she's
21 not entitled to your consideration for self-defense
22 because she's at fault. You know why she's at
23 fault? Because they got in an argument at the
24 cemetery parking lot and she followed him home to
25 her house because she was concerned about him

1 getting in touch with his mom, she was concerned
2 about the way he was driving and threatening to
3 wreck and kill himself and/or wreck the car, and
4 she was concerned about the doctor's appointment.

5 The State is going to say that that makes it
6 her fault this happened. They are going to say if
7 she had walked away at the cemetery, this never
8 would have happened. Well, guess what? You're
9 right. It wouldn't have happened. But that
10 doesn't make her concern, her care, her wanting to
11 get him help her legal fault. No, it doesn't.
12 Because she was inside the house. She had
13 separated from the dispute. The dispute could have
14 been over if he had walked away. But they don't
15 want to talk about that.

16 And the dispute was brought into the house
17 when he set everything down by the door and came
18 in, when he got gruff, when he started talking
19 smack, when he came around and knocked her down,
20 when he hit her. Guess what? She doesn't fully
21 describe that on here. She doesn't. But guess
22 what? Those bruises are apparent within hours
23 after that incident.

24 Don't let them get you to concentrate on the
25 pieces of the puzzle, see the whole picture. Don't

1 let them focus on that tree. See the forest.

2 She was not at fault for the assaults that
3 were happening to her on November 6th. And they
4 all happened. The physical evidence demonstrates
5 it. Even the State's witnesses obviously didn't
6 see everything because they missed the evidence
7 that we have proof of. The State's own proof. And
8 she has said from the beginning that she was in
9 fear. She'd never seen him like that. She had
10 never seen him act like that. He approached her
11 twice with a drawn gun. He swung at it twice. He
12 reached for it in what she thought was an attempt
13 to grab it the second time, or slap it out of her
14 hands. She doesn't know what happened.

15 Mr. Sorenson got testimony from the gun guy at
16 the Department of Probation and Parole that a gun
17 goes off because your finger is on the trigger.
18 That doesn't mean that this wasn't an accident.
19 That doesn't mean she wasn't rightfully allowed to
20 defend herself. That doesn't mean that it isn't
21 reasonable that when he slapped at this gun she
22 squeezed that trigger in a reflex action. It
23 doesn't mean she intended to do what happened. It
24 doesn't mean she's legally responsible for what
25 happened. That would mean it is an accident.

1 She wasn't at fault. She had reasonable fear
2 from this crazed 5'11", 350-pound man who had
3 assaulted her repeatedly. Not just that day, but
4 in the past. She had a right to defend herself in
5 her own home. That's self-defense.

6 She's not guilty of a crime. She's guilty of
7 a lot of things that you may not hold her in high
8 esteem for. She's guilty for not dealing directly
9 with the situation, for not even protecting her
10 kids when she let him move into the house even
11 though she knew it was a problem. She's guilty for
12 wanting a relationship with someone so bad and
13 thinking she loved him so bad that she's willing to
14 put up with the abuse. She's guilty of thinking
15 she can fix him. She's guilty of thinking that she
16 can make a difference. But don't you tell her that
17 this is her fault that she was abused. Don't you
18 tell her that what happened that day wasn't a
19 result of what had been going on in the history
20 that they had. Don't forget that this isn't the
21 first history of this kind of conduct that he's
22 admitted to having with women in his life and kids.

23 Put that whole puzzle together, look at that
24 forest, not those trees. Look at the emotion, the
25 raw emotion on that video. And understand that

1 that was a moment of raw emotion and shock. But
2 even then, it was 90 percent of the story. She
3 didn't finish it off to make herself look better
4 because she had done nothing to make herself look
5 better.

6 But what I know is there is not evidence
7 presented by the State to prove that she is guilty
8 of murder or any of the other lesser included
9 offenses of that. There is not evidence to
10 disprove that on that day in question, she acted in
11 self-defense. That she had a right to be in her
12 home and that she had a reasonable probability to
13 think that he was going to seriously hurt her or
14 maybe even kill her because he was going for her
15 gun. And that if that isn't enough, that a
16 reasonable person who had been through the events
17 she had been through since March would have
18 logically thought that even if that wasn't what was
19 on his mind. And that even beyond that, there's
20 sufficient evidence for you to determine that what
21 happened could well have been an accident. He's
22 smacking at the gun. She never intended -- she had
23 a right to defend herself, so she's legally doing
24 what she's allowed to do. And the gun went off and
25 killed him.

1 When you look at State's 1, show me where the
2 medical examiner opened that body to really
3 investigate the path of that bullet and not just
4 take an X-ray, because it didn't happen. It didn't
5 happen. Think logically. It's just as reasonable
6 that he was reaching for her like this and it had
7 that path or that just right would have been right
8 off that vertebrae and down.

9 Don't let the trees cloud your view of the
10 forest. Don't let them tell you it's her fault.
11 Don't let them tell you that you have to find she's
12 guilty of all elements of the crimes charged beyond
13 a reasonable doubt. Because they can't even
14 disprove self-defense beyond a reasonable doubt.
15 They can't even prove that it wasn't an accident.

16 Thank you for your attention. Thank you very
17 much.

18 THE COURT: All right. Yes, sir.

19 MR. JUSTIS: Thank you, Your Honor. May it
20 please the Court?

21 THE COURT: Yes, sir.

22 CLOSING STATEMENT

23 MR. JUSTIS: Ladies and gentlemen of the jury,
24 everything that family has been through in the last
25 two years has been the result of the actions of one

1 person, and one person only. And that is Robin
2 Herndon. Very assertive, self-starter, take charge
3 personality. That wasn't our witness, that was
4 their witness. The doctor, the expert, who noticed
5 that the first five minutes she met her. And this
6 was three weeks ago. This wasn't two and a half
7 years ago. This was three weeks ago.

8 Fourteen years in law enforcement. You heard
9 the whole litany of all the jobs she's had. She's
10 done just about everything in law enforcement, to
11 include, just so happens, working with victims of
12 domestic violence. She knows what the signs and
13 symptoms are. She knows how they act.

14 Her co-workers described her as very
15 competent. She did a good job. I have no doubt
16 she did a good job. She knows what she's doing.

17 Mr. Leiendecker says, Oh, don't blame the
18 victim, she's the victim. She ain't the victim.
19 Ms. Rowley's son is the victim. That's who the
20 victim is. The person that for over a week, you
21 hear all the bad things about. He's not hear to
22 defend himself.

23 You know, Chris is a serial domestic violence
24 abuser, that's what they said. He said it in his
25 opening and he said it again in his closing,

1 because that's what we wants you to believe.

2 Well, where's the evidence? Oh, the
3 co-workers. One, two, Marie, Lisa, Mitchell,
4 Donald, Brian, all of them, what did they testify
5 to? She had a black eye. That's what they
6 testified to. He's beating the hell out of her so
7 damn much that she has a black eye once. And they
8 can't even tell you when. Some were, Well, I know
9 it was sometime in 2013. I don't know when, but I
10 know it was 2013. They all say the same thing.
11 Kind of ironic, isn't it? It's like they got the
12 same script. Look, they are her co- workers. I'm
13 sure they like her. I would hope -- I don't know
14 if it would happen, but I would hope my co-workers
15 would say nice things about me.

16 And they all met Chris, except the one guy who
17 said, I heard he came one day. Again, the script.
18 They met Chris. Very nice. Nobody said he looked
19 like a jerk, he acted like a jerk. He didn't say
20 nothing. He was rude. No, he was very nice.

21 Robin, this whole time she's dating him is
22 acting normal. If something is going wrong at
23 home, don't you think she would be a little bit
24 different? No, she's handling her job just fine.

25 Mitchell Collins, he's the only one that can

1 actually put what came first, the chicken or the
2 egg, the black eye or the boot. Remember, they
3 can't -- everyone says, Well, I don't know which
4 one came first. I remember two, and I know it was
5 2013. Well, it has to be 2013 because if it wasn't
6 2013, they couldn't blame Chris for it. So it has
7 to be 2013. But he says -- he puts the black eye
8 happening before the boot.

9 And, of course, we find out from their own
10 witness that she tells Dr. Veronen, the whole boot
11 thing with the leg and stuff, that was an injury
12 just like she said that she hurt on the trampoline
13 that Chris was actually helping her with. He was
14 driving her around. That's why he's helping her in
15 the yard because she's got this brace on.

16 So essentially we're down to a black eye. And
17 she says that came from the boot that was thrown.
18 And she tells her co-workers it is the daughter
19 that throws it. You know, eventually she says, no,
20 it was Chris that threw it. But she says on the
21 stand, I'm not sure he meant it.

22 Of course, she does talk to one co-worker,
23 Leeann Bost. And what does she say? She says
24 we're talking girl talk. We always talk, you know,
25 about our lives and our boyfriends, things like

1 that. And she tells her, you know, I think she's
2 cheating on me and I said, you know, if I catch
3 another woman, I will shoot you dead and no jury
4 will ever convict me. All right.

5 And he says, Well, no one else was a witness
6 to that. Kind of like all these assaults that they
7 keep bringing up. Where's the witnesses to those?
8 So it's okay to believe everything she says, but
9 not okay to believe a co-worker who -- why would
10 she make up something like that? Why? She came in
11 here. She testified. She worked with her once a
12 week. She came in, they had offices across from
13 each other. And she even said when she said it she
14 didn't know if she was serious about it or she was
15 just saying that. It wasn't until it actually
16 happened she said, Oh, I think I should tell
17 somebody about it. And that's all she did. Her
18 ex-husband happened to be a deputy. She says, Hey,
19 you know, after this -- I heard about this
20 incident. You know, she did tell me this eight,
21 nine days ago. And then when the police comes, she
22 writes a statement. This is what I know. But it
23 couldn't have happened because nobody witnessed it.
24 But all these assaults, you can believe because she
25 was the witness.

1 And other thing about the co-workers, the
2 one -- Marie Boulton, her boss, talks about this
3 mysterious call at 3:03 a.m. one day. And what
4 does Robin say? I butt dialed -- or I butt dialed
5 you. That's what she tells Marie. What does she
6 say when takes the stand? She doesn't even mention
7 it. Now, if this is one of the times when she
8 allegedly got beat, you'd think she'd mention that
9 on the stand. No. Why did they bring it up?
10 Because they want you to infer something bad
11 happened that night.

12 Her boss, who had never been to her house
13 before, because she said we didn't socialize
14 outside of work, shows up at her house at, you
15 know, early morning hours on the weekend. She
16 answers the door and she says, you know, I got a
17 call from you. Oh, I must have butt dialed you.

18 And then when Chris -- a few weeks later, she
19 actually meets Chris and mentions it, Chris kind of
20 has a puzzled look on his face. You remember, this
21 is the lady that came by the house the other day
22 checking on me. And he's like, Okay. But
23 something bad must have happened. That's what they
24 wanted you to believe.

25 Where are all these injuries? Why don't her

1 co-workers notice more injuries on her? If he's a
2 serial abuser and is so terrible, he's obviously
3 putting bruises on her or black eyes or something.
4 They noticed one black eye, that's it.

5 Her daughter, who lived there 50 percent of
6 the time, what does she say about Chris? I really
7 liked him. That, you know, he had some arguments
8 with mom, they had some arguments mainly over
9 money; right? Because the daughter wanted a dress
10 for this wedding. She had to have a dress for this
11 wedding. And he's saying, We don't have the money.
12 He's the reasonable one.

13 And then, Oh, my God, her boyfriend was
14 supposed to come home with her and he had to
15 chaperone and he wasn't there when she got there.
16 He showed up a few minutes late. So?

17 They argue. That's amazing. Couples never
18 argue. That's what they want you to believe.
19 Because they argued, he must have been beating her.
20 She talks about broken stuff. She'd see broken
21 stuff around the house, but she never sees how it
22 happens.

23 Okay. They got this picture, it's in here
24 somewhere, of the door, the broken latch on the
25 door. Here it is, that. The investigator took

1 that picture last month. Last month, this picture
2 was taken. How long has it been broke? Who knows.
3 Maybe it was broke back then, maybe it wasn't, who
4 knows. Because remember, he doesn't take -- he
5 didn't take any pictures the first time he went out
6 there. He's an investigator and going to the crime
7 scene for the very first time three weeks after and
8 I take zero pictures. That's odd.

9 But when I go out three weeks -- you know,
10 three weeks after the incident, zero pictures.
11 Three weeks before trial, I better get some
12 pictures. Let me take some pictures of some trees
13 too. You know, the State is not taking pictures of
14 trees, it's the Defense. Because they don't want
15 you to see the forest through the trees. They're
16 focused on the trees. She can't see anything.
17 Well, then, how did she write a statement? She saw
18 something. She could see him smoking a cigarette
19 through the trees. And we know she's right about
20 the cigarette because if you look in this picture,
21 you'll see the cigarette. And by the way, it's not
22 burned all the way down. Look at the picture. He
23 hadn't finished the cigarette.

24 But, you know, the only injuries K.N. talks
25 about is the black eye. Okay, everybody --

1 everyone has testified to that. And she says
2 handprints, but she saw them fooling around one
3 time, fooling around on the couch. But she doesn't
4 remember the leg injury. So her mom's in some kind
5 of leg brace, she doesn't remember that. I asked
6 her that. Do you remember that? No. She lived
7 there half the time and she doesn't remember that.
8 She has selective memory.

9 And what did she say about Chris when he got
10 mad, what would he do? He'd walk off, go to the
11 bedroom. She didn't say, Well, when he got mad he
12 hauled off and hit my mom. He'd walk off. Try to
13 get away from the situation. You know, kind of
14 like the cemetery. They get in an argument, what
15 does he try to do? Leave.

16 Dr. Robyn Fallaw. Very nice lady. But she
17 sees him one time in April, says, You're a little
18 depressed, you're anxious, I'm going to give you
19 Effexor. I'm going to give you medicine for that.
20 Come back and see me in a month. So he comes back
21 in three weeks, got bronchitis. You know, they
22 don't discuss his depression and anxiety, they deal
23 with that, and then she never sees him again. But
24 he goes from Effexor to Wellbutrin to Seroquel to
25 Abilify to Lithium, all in about three months. All

1 through phone calls from her. Just keeps changing
2 medicine. This is like antipsychotic medicine.
3 Let's try him on this. Let's try him on that.
4 Because of what she's telling the doctor. Kind of
5 goes back to that very assertive, self-starter,
6 take charge personality.

7 All right. And not only is he on five
8 different medications over that three months, but
9 the dosages are changing. They're up and down and
10 all this other stuff. No wonder he had erratic
11 mood swings. He's drugged.

12 And, again, the doctor is doing this all based
13 on what Robin is telling her. Robin tells you he's
14 severely bipolar. Well, you heard from
15 Ms. Cummings. She didn't say severely bipolar.
16 That's Robin saying it. But the doctor does say,
17 you know, Hey, I need to see him. I need to see
18 him. I need to see him. He needs to see a
19 psychiatrist. He needs to see a psychiatrist. So
20 they take him to a counselor.

21 Even the counselor says, You know what? Based
22 on his medicine and based on my 1-hour conversation
23 with him and the self-report tests that I gave him,
24 that he filled out in the waiting room with Robin
25 sitting right there, okay, based on that, you know,

1 I can't really counsel him, he should go get a full
2 screening by a psychologist. But that never
3 happens. She cares for him so much, never sets
4 that up. Maybe she's afraid what the psychiatrist
5 would say.

6 Cheryl Cummings, you know, she counsels for
7 one hour. She doesn't review any clinical records,
8 but she knows he's on medicine because she's
9 already gotten Dr. Fallaw to put him on medicine.
10 So, you know, based on that, based on some of the
11 answers. You know, he's out of work at that time.
12 You know, he's depressed. A lot of people are
13 depressed when they lose their job.

14 And then, finally, talking about Chris and his
15 serial -- being a serial abuser. You know, all
16 this information is basically told to Dr. Veronen.
17 And according to Robin, you heard her testify, you
18 know, there was the big fight because of the
19 Charleston Harbor cruise, you know, where he said,
20 I'm fat, I don't have any clothes, and that started
21 a big fight. Then there's the broken bed incident.
22 Don't know why that started. The black eye. We
23 don't know why he threw the boot. She never tells
24 us why. Riding in the car, she gets slapped and,
25 you know, arm twisted. We don't know why. In

1 front of his kids. Remember, she said in front of
2 his kids, he pinned me to the floor and pinned,
3 punched, kicked and spit on me. We don't know why.
4 Pushed into the bathtub and then chased her around
5 apologizing. We don't know why. The only one she
6 gives any kind of story with is this Harbor cruise
7 one, but the rest are just, I would contend, made
8 up. Because she never really gives any specifics.
9 And where's all the injuries? Co-workers didn't
10 see these injuries.

11 And he showed the video, and you look at the
12 video that he showed. And, actually, I was going
13 to show a little 5-minute clip from it, but he
14 showed the whole thing, so that saves five minutes
15 of my closing. I promise I won't show that five
16 minutes. But what does she say on the video about
17 the incident?

18 I asked her, What has he done to you? And she
19 talks about the eye. Everybody knows about the
20 eye. He threw a boot at me and hit me in the eye.
21 Okay. And then she says -- Has he ever punched you
22 or used his fist? She said, Yes. And I asked her
23 about it. And the only thing she could do is, He
24 punches the back of my arms. She gives no
25 specifics. She doesn't say, Well, this was this

1 one time. No. She doesn't say anything. She
2 avoids that. She doesn't have specifics, that's
3 why. But, you know, she's pointing to her arm, she
4 said, you know, He would hit me in back of my arms.

5 Now, remember -- I don't know where the
6 pictures are, but the next day or a week later,
7 she's showing all these big bruises on her arms.
8 You'd think she'd say, you know, He hit me on my
9 arm, you know, like he did today. Look at that.
10 Look at that. She doesn't say anything about her
11 arms. This is a perfect opportunity to show
12 Phillip Turner, who's sitting right next to her.
13 She's at the head of the table, he's sitting right
14 there. I mean, he's like two feet away from her
15 arms and she's doing this. He doesn't see any
16 bruise on her arms.

17 I submit to you when you look at these
18 pictures -- and you'll see them, they're back
19 there -- they'll be back there. Here they are. I
20 mean, these look -- they look bad. I mean, they're
21 all yellow and green and all that stuff. You'll
22 have them back there. You can look at them. I'm
23 not denying they are bruises, they're bruises.
24 Okay. But if he's hitting hard enough to put those
25 kind of bruises on you -- and remember, she's got

1 them there because she's like this, she says,
2 right? That's what she says. I covered my face.
3 He's 300 pounds and he's hitting her (indicating),
4 hard enough to put those bruises on there, and
5 those arms don't hit her face, nothing? Don't
6 break her nose, nothing? Her face, you see her the
7 next day without makeup on, perfectly white. Not
8 one little spot on her face.

9 I submit to you if I'm hitting you, I don't
10 care if you have your hands over you, I mean,
11 unless she's just Wonder Woman and she can do this.
12 If you've got your hands like this, it's getting
13 driven into your face. He's 300 pounds. You would
14 see some injuries.

15 Oh, that's right, in the video, she mentions
16 nothing about punches that day. Nothing. I don't
17 think that -- to put those kind of bruises, you'd
18 remember that. Surely, you'd remember that. She
19 remembers every darn thing he said, like, Go fuck a
20 cop, and this -- and, you know, If you're going to
21 fight like -- if you want to be a man, I'll fight
22 you light a man. And she remembers all that
23 perfectly, but she doesn't remember herself getting
24 punched. Does that make sense? Is that
25 reasonable?

1 Dr. Veronen. Nice lady. Hired three weeks
2 ago to talk to Robin and meet with her. And she
3 does. She says the first time she meets with her,
4 Robin is like interviewing her. How long have you
5 been doing this? You know, what's your experience?
6 Have you done this before? I mean, that doesn't
7 sound like a battered woman. That sounds like
8 someone who's making sure they've got their ducks
9 in a row.

10 And Dr. Veronen reviews everything except for,
11 you know, she doesn't get to see the video. And,
12 you know, the Defense says that's our fault, we
13 didn't send it to them. It's nothing Dr. Veronen
14 did.

15 Well, don't you think that would be pretty
16 important? If you're a doctor who specializes in
17 intimate partner violence, wouldn't it be kind of
18 good to see how she was reacting right after it
19 happened? I mean, forget what story she's telling,
20 just to see her -- what she looks like. I mean, I
21 don't know how many times police, when they
22 interview somebody and they don't video record it,
23 we hear that all the time. You couldn't video
24 record it? And the importance of it, the reason
25 why you video record so you see people's demeanor.

1 See what they look like.

2 I mean, here is a 40-minute video, 37-minute
3 video of exactly what her demeanor was like. And
4 what was her demeanor like? It was kind of weird
5 because she'd go from crying one minute, and then,
6 all of a sudden, totally composed, and then back to
7 crying, totally composed. I would think that would
8 be important for the doctor to see that. The
9 doctor -- heck, it might help the doctor. She
10 might say, you know, I mean, looking at her
11 demeanor, she's exactly what you would expect in an
12 intimate partner violence, or whatever they call
13 it.

14 Plus, yes, I do think it's important what she
15 says there. I understand sometimes people fill in
16 details later on. That's normal. But do they
17 change details? Because remember, she can remember
18 specifics and certain things, all the things that
19 are good for her. And the things that he's saying,
20 all the bad things he's saying. I'll just bring my
21 fat ass up there and get it, talking about the
22 check. She remembers all that, but she doesn't
23 remember being punched. In fact, at the end of the
24 video, she even says, Or pushed. I guess that's
25 the wrong word, pushed. She says that. So she

1 says in the video, He didn't punch me.

2 Remember, she doesn't see any of these photos,
3 the doctor doesn't. So what is she basing it on?
4 She's basing everything on what Robin is telling
5 her. That's what she's basing it on. And
6 remember, this is coming from Robin,
7 Ms. Self-Defense over here. You know, 14 years in
8 law enforcement, Ms. Special Victims Investigator.

9 Oh, oh, oh, she did corroborate something, she
10 had a black eye. Everybody said that. So that's
11 the only thing corroborated from the discovery is
12 that other people said, Yeah, I saw her with a
13 black eye.

14 You know, she said that when she spoke to her,
15 she was depressed. Well, I'd be depressed too if I
16 was charged with murder and about to go to trial in
17 three weeks. I'd be pretty depressed too. She
18 scored high on the avoidance. You know, they
19 talked about the whole wrestling -- would it be
20 common for her to go to wrestling if she's, you
21 know, high on the avoidance scale? And what did
22 the doctor tell us? Well, whenever she was pinned
23 down to anything like that, she said, Depends.
24 Maybe she could be or she couldn't be. Even though
25 she scored high on avoidance, that doesn't mean she

1 avoids those kind of things. What does it mean
2 then?

3 And, of course, the doctor -- maybe the doctor
4 should have videotaped her interview with Robin
5 because apparently her notes and what she testified
6 to were two different things. She put in a lot
7 more testimony than she put in her notes. And she
8 testified that Robin told her she was pinned down
9 twice. Well, according to Robin's story, she
10 wasn't pinned down once, let alone twice.

11 She describes Robin as trying to keep the
12 peace. Well, what about on November 6th, was she
13 trying to keep the peace then, or was she helping
14 to agitate him? There's no doubt they were both
15 arguing and there's no doubt Christopher Rowley was
16 arguing too at the cemetery. We've got independent
17 witnesses that say that. And there's no doubt when
18 they left there and got to the house, there was an
19 argument also. We hear that from Sarah Wiggins,
20 the neighbor that's in the back yard.

21 You know, she tells the doctor, My story
22 hasn't changed. Why would she tell her that?
23 That's like people that say, I'm going to tell you
24 the truth. You want to know the truth? No, I want
25 you to lie to me. It's not that I don't like the

1 doctor's opinion, I just can't figure out how she
2 formed it. I mean, it is based on what Robin told
3 her.

4 Now, let's talk about the incident. November
5 6th, they're at the cemetery. You know, I submit
6 to you, Robin, she gets to the cemetery because she
7 has to meet him there to give him the check because
8 he won't, as she said in her statement, bring his
9 fat ass up to the office to come get it. She has
10 to go meet him. As she arrives, one of the
11 witnesses said she parked kind of erratically and
12 she's waiting on him. They said they thought she
13 arrived first, so she's waiting on him. He gets
14 there and the two witnesses that testified said
15 they're arguing. And then at some point in time,
16 he tries to leave, she blocks him in. And he gets
17 out, goes to her car. They're still jawing back
18 and forth at each other. And it basically comes
19 down that she doesn't want him using her car at
20 that point. She's -- for whatever reason, she's
21 pissed at him. So you know what? You can't use my
22 car. Take my car back home, I don't want you using
23 it. All right. And then he leaves.

24 Well, she follows him because, by God, she's
25 going to make sure he doesn't take the car. And

1 she says, Well, he's driving erratically. Yes,
2 that's because you're following him. Maybe he's
3 just trying to get away from you. Kind of like
4 K.N. said, you know, when he gets upset, he just
5 tries to get away, walk away from the situation.
6 So he's trying to get away, but, no, she's not
7 going to let him. She's just going to follow him.

8 Because -- he has the check at this point.
9 She said, I gave him the check, so he has the
10 check. So she's got people waiting for her back at
11 work. She can go back to work. Well, I was
12 worried about him. No, she said she doesn't want
13 him driving her car. She's pissed at him. He's
14 got her car and she doesn't want him to use her
15 car.

16 I mean, if she's so worried and wants mom to
17 go with him, call her. She calls mom every other
18 time, according to her. Call mom. No, she just
19 takes off after him.

20 And what happens when they get there? They
21 pull in. And she testifies that he said to her, I
22 can't believe you followed me here. Why does he
23 say that? Because he can't believe she followed
24 him. All right.

25 And it is at that point in time that they

1 start arguing. And she's telling him, you know,
2 You're not taking my car. It's in my name. You
3 ain't taking it. All right.

4 And at that point in time, he makes the
5 comment, according to her, you know, If I can't
6 drive it, nobody can, and he chucks the keys on the
7 roof. I don't doubt he did that. I don't doubt he
8 said that. Because where are the keys? They're on
9 the roof.

10 Now, this is where Mr. Leiendecker said I'm
11 going to make a big, big deal out of it. Well,
12 actually, you know, he's right on some things, but
13 on this point, he's actually incorrect. And Sarah
14 Wiggins is in the yard. She sees them arrive. She
15 hears them arguing. They're by the carport.
16 You'll see the pictures. Okay? They're by the
17 carport, which is over in this area. So they're
18 over in this area between the vehicles, that's what
19 she testified to, and they're arguing. This is
20 where the whole incident happens with the keys and
21 all that stuff. Okay? And Sarah Wiggins, she's
22 doing yard work. So she hears them, she sees them.
23 But she's not standing there watching the whole
24 time, you know. Maybe there is some pushing. I
25 don't know, I wasn't there. She knows. Because we

1 do find, you'll see in the picture, a pair of
2 sunglasses by her car. Men's sunglasses.

3 Because remember what she says? He says to
4 her something about, you know, If you're going to
5 act like a man, I'll beat you like a man. He
6 probably says that -- after he throws the keys, she
7 gets out of her car. I contend she comes up, and
8 maybe she pushes him, and that's why he says that.
9 Why would he say that? Why would he say that?
10 Unless she got in his face, maybe pushed him?
11 Maybe that's how the glasses got on the ground.

12 Does he push her back? Maybe. It's possible.
13 I'm not going to say -- you know, he expects me to
14 say that didn't happen. I don't know. It might
15 have. Because when you look at these pictures,
16 you'll see the cars are there. You got the
17 carport, cars. We don't know what Sarah Wiggins is
18 doing. She's raking, whatever she's doing. She's
19 probably not standing there watching the whole
20 thing. So maybe she misses Ms. Herndon getting
21 pushed down and landing on her butt. Because when
22 you look in the pictures, you'll see some stuff on
23 her pants. And maybe she got that when she sat
24 down to try to, you know, render aid or maybe she
25 got pushed down. Who knows. But then eventually

1 they move to the front of the house out of Sarah
2 Wiggins' view. At this point, we know Sarah
3 Wiggins can't see anything. I think everyone would
4 agree to that.

5 So then we have the other neighbor. We have
6 Lacey. And he said that, you know, Lacey doesn't
7 see the keys thrown. She might not be out of the
8 house by time the keys are thrown. When the keys
9 are thrown, more when they're by the carport.
10 Lacey might not be out of the house at that point
11 in time. Okay? Lacey might not see that first
12 push.

13 But now they're in front of the house. And
14 what Lacey testified to is she sees Robin pacing
15 back and forth and it appears she's yelling at
16 Chris and he's just standing there. She doesn't
17 see any physical altercation. Maybe there was one
18 and she missed it. I don't know. I wasn't there.
19 She was there. I don't know.

20 But if there was a physical altercation -- if
21 we believe what she says, she will say that she was
22 pushed backwards, okay, kind of stumbled back, and
23 then she pushes him back, and then he pushes her
24 again and she falls down over the monkey grass.
25 Okay, that's what she testifies to. Maybe that

1 happened. And maybe she gets up and she's pacing
2 back and forth when Lacey comes out. Maybe Lacey
3 misses it, I don't know. Or maybe it never
4 happened.

5 But what Lacey does see is she does see him
6 light up a cigarette and start smoking a cigarette
7 after Robin goes up the steps. She sees Robin.
8 And she says looking from the side of the house --
9 you know, there's a point when they're walking up
10 the steps where they disappear out of her view. So
11 she sees Robin go up. And then a little while
12 later, Chris is there, and he eventually goes up.
13 He had lit a cigarette, started smoking a
14 cigarette. He goes up.

15 And at the top of the stairs, you'll see by
16 the door there's a cigarette. Of course, you look
17 at it now, it's all tore apart because they tested
18 it. But you'll see the white on the cigarette. It
19 wasn't fully smoked. He didn't get to smoke the
20 whole thing. I submit to you it dropped right
21 where he got shot. Okay. Because you also notice
22 on the porch -- and you'll see it in these
23 pictures, there's an ashtray where they normally
24 sit out on the porch and smoke. So the cigarette
25 wasn't in the ashtray. I would submit it was still

1 lit and he was still smoking on it when the ashtray
2 hit the ground. Because if he had it in his mouth
3 still smoking it when he went in the house and
4 there's this big scuffle, you know, there would be
5 ash, there would be something on the carpet.
6 Nothing on the carpet.

7 Same thing with the lighter. He's got the
8 lighter in his hand, but he's doing all this
9 assaulting and everything. He's holding a cell
10 phone, a cigarette, a lighter, all this stuff, and
11 he's beating on her, slapping, doing all this
12 stuff. I submit to you it's all on the front porch
13 because that's where he got shot.

14 She even kind of says that in her videotaped
15 interview. They're at the door -- she
16 demonstrates. They're at the doorway. They're not
17 back towards the kitchen like she testified to.
18 That's the big difference between the video and her
19 testimony. That's not filling in details, that's
20 just plain different.

21 And she says when Chris goes up the stairs,
22 it's seconds later, she says maybe as many as 30 or
23 60, but seconds later, bang, she hears the shot. I
24 submit to you it's outside, because she hears the
25 shot, Sarah Wiggins hears the shot. I submit if it

1 was in the house, it would be a lot harder to hear.
2 It would be muffled somewhat. But they hear it
3 because it's outside.

4 I think Mr. Leiendecker said, you know, after
5 the little scuffle in the front yard, that Chris
6 should have left. She told him to leave, he should
7 have left. How's he going to leave? He has no car
8 keys. They're up on the roof. Any extra keys or
9 anything are in the house. Everything he owns is
10 in that house. What's he supposed to do, just walk
11 down the street?

12 Now, we're getting inside the house. She went
13 in to get the Saturn key. Now, mind you, her
14 testimony is, I'm kicking him out of the house. I
15 want him to leave. Don't come in here, you know,
16 just leave. But I'm going to go in and get the
17 Saturn key and give you the key to my other car.
18 Does that make any sense? Why would she do that?

19 She says she went to the bedroom. She
20 ended -- and then eventually ended up in the
21 kitchen. He came in, went into the bedroom, came
22 back out and they met at the couch.

23 Well, that's not what she says in the video.
24 In the video, she doesn't even mention the kitchen.
25 She's like, I'm going to the bedroom. I don't even

1 know if I got there, I turned around and he was
2 coming at me. That's what she said in the video.
3 But now she's got to put him in the house. She's
4 got to get him further in the house. Okay?
5 Because one thing she didn't have -- hold that
6 thought, I'll get to that in a minute.

7 So he walks up the steps, according to the
8 Defense, and he puts down that cigarette. Well, if
9 he's going to put it out, just put it in the
10 ashtray. It's sitting right there not fully
11 burned. So he comes in, he pushes her down, hits
12 her with fist. Like I said, nothing on her face.
13 She gets out from under him, pulls the gun. He
14 slaps it away and she reholsters it. Doesn't go
15 off the first time he slaps it. Of course, you
16 heard from the firearms expert that that gun was in
17 working condition. And you heard from their
18 witness, the probation agent, that you've got to
19 pull the trigger to get a Glock to fire. You're
20 not just going to slap it and it goes off. There
21 is a reason why law enforcement uses Glocks.

22 So then she says after she reholsters, he
23 starts to walk to the door. She gets up and she
24 starts to follow him. Why? You were just so
25 scared of this guy that you had to pull your

1 firearm out and point it at him and say, I'm going
2 to call the police, get out of here. And he
3 actually does, according to you, what you want him
4 to do. He's leaving -- or, at least, he appears to
5 be leaving. So you're going to get up and follow
6 him? If you're that scared, you keep the gun
7 trained on him and wait till he goes out the door.
8 Then you get up with your gun out and you lock that
9 door and you call the police, you do whatever, if
10 you're really scared of him. I submit to you she
11 wasn't scared of him at that point.

12 So he walks to the door, she gets up, follows
13 him, slams the glass door open. Boom. Okay. Even
14 though -- you'll see the pictures, this glass
15 door -- it's a glass door, it doesn't break, by the
16 way, because it must be real strong glass, and
17 there's a wreath on it. That's what it looks likes
18 when the police get there. Was the wreath
19 disturbed? No. Was the glass broken? No.

20 And in the videotape, she talks about him
21 punching the door. And she makes it sound like --
22 maybe I'm wrong, but she makes it look like he's
23 punching the wooden door, the actual front door.
24 Not the glass door, but the wooden front door
25 that's open on the inside. That's what she makes

1 it sound like on the video. But now it's changed
2 to the storm door. I mean, the wreath, nothing was
3 knocked off, nothing. Must be a strong wreath.

4 All right. And then he turns around and he
5 beats his chest and then he charges at her with his
6 right arm, charges like this. Okay. And he has to
7 be charging like this because, see, they have to
8 get that angle. Okay. Because what did
9 pathologist say? It was a downward angle. And
10 bullets go straight. So either you're above him
11 shooting down or he's got to be bent over. Okay?
12 So she has to say bent over. The problem is, bent
13 over also covers up your neck to where the bullet
14 goes in. All right. So I guess he does one of
15 these and comes at her like a bull. All right.

16 And she also -- the pathologist also testified
17 that a bullet doesn't stop your momentum. So if
18 you're charging forward and you get shot, you're
19 still going to charge forward some. She testifies
20 he gets shot and goes backwards. He's a 300-pound
21 man. I submit to you that's not reasonable, that's
22 not logical.

23 So he's charging, right arm raised. She backs
24 up, draws the gun. He slaps at it and it goes off.
25 It has to go off, and she can't say she pulled the

1 trigger, okay, because she wants you to believe it
2 was an accident, so she can't say, Yeah, I pulled
3 the trigger. So she has to say, I don't know what
4 happened. Fourteen years in law enforcement, she
5 gets recertified every year on her firearm, and she
6 didn't know her finger was on the trigger. She
7 didn't know. They're trained to know.

8 And she says on the stand that, you know, this
9 all happens, he gets shot right near the curio
10 cabinet. Okay. So that shell casing -- he talks
11 about the shell casing. So I guess that shell
12 casing just leaps over the couch and all that stuff
13 and rolls around and does all that stuff.

14 You know, I wasn't there. I don't know
15 exactly where they all were when he got shot. I'm
16 not going to pretend I do know. She knows. But I
17 do know one thing, that story is not logical. It
18 defies the physical evidence. And why does it defy
19 the physical evidence?

20 Well, it doesn't -- it obviously doesn't match
21 the story she told in the video. Okay? And when
22 she told that story in the video, you know, no
23 mention of punching. Everything is just pushed.
24 Pushed right here. That's what she said, I was
25 pushed. She puts it closer to the door. She puts

1 him punching the door. Slapping, grabbing at the
2 gun. You know, nothing about being punched with
3 fist. He went back and I dropped the gun. Well,
4 where did they find the gun? Right at the door.
5 They don't find it back by the curio cabinet. But
6 in her video, she says she dropped the gun after he
7 was shot. He went back and I dropped the gun. She
8 says it in the video. Okay.

9 So why does she change her story when she
10 takes the stand? What has happened between her
11 giving that video statement and her testifying in
12 court? What has happened? Well, I'll tell you
13 what happened. She's gotten to see all the
14 physical evidence. She's gotten to see the autopsy
15 report. When she makes that statement to police on
16 video, she doesn't not know any of that. She
17 doesn't know that there were neighbors hearing and
18 seeing what was going on. She doesn't know that.
19 That's why she gives that story. She doesn't know.

20 And then after all the evidence starts coming
21 in, the pictures and autopsy reports and
22 ballistics, and all this good stuff, gunshot
23 residue, all this stuff, okay, I have to craft a
24 story that kind of is like I've got in the video
25 because I can't change it totally, close enough --

1 and that's why she's so specific. She's had two
2 and a half years to craft her story.

3 Like I said, whether you believe the first
4 story or the second story or what Dr. Veronen said,
5 it doesn't matter because it doesn't match up with
6 the physical evidence. Because what did we learn?
7 Lieutenant Marcus Padgett, he's got written in his
8 report that she told him they were arguing and
9 pushing each other. That might be true. They
10 might have been pushing. Remember, when we talk
11 about self-defense and use of deadly force, can you
12 kill somebody because they pushed you? Can you?
13 You know, he grabs her, pulled the gun, grabbed her
14 again, pulled the gun back. That's essentially
15 what she told Lieutenant Padgett. She told him
16 where to find the gun. And you open -- should be
17 right inside the house, you open the door and it's
18 right there.

19 Crime scene. You heard from the crime scene
20 investigator. It was very clean inside the house.
21 You'll have the pictures. You'll see how clean it
22 is. Very neat. No damage or disturbance to
23 anything, the curio cabinet, the entertainment
24 center, nothing. You know, people are being pushed
25 down and people landing, you know, something

1 would -- nothing. The inside of the doors, no GSR
2 on them. All right. No blood.

3 Remember what Dr. Veronen said? She told
4 Dr. Veronen, she shoots him and then blood starts
5 coming out. There's nothing. Look at these
6 pictures when you get them. Not a drop of blood
7 anywhere in that house.

8 Where's all the blood? Lo and behold, all the
9 blood is on the front porch right at the top of the
10 stairs. And you'll see on the side on this
11 railing, there's blood. When you look at the
12 ground right below it, there's a puddle of blood
13 where he stands up and he is leaning and the blood
14 is dripping onto the floor -- onto the ground.

15 You know, they have this picture here because
16 they want you to know it's very tight quarters.
17 And it is, it's a small house. The porch is very
18 small. If a 300-pound man and her are wrestling
19 around, something is going to get disturbed. Is it
20 reasonable? I would submit to you he dropped all
21 that stuff right where he was shot, right on that
22 front porch.

23 GSR, she had on her hand. It wasn't on both
24 her hands. Well, don't forget, she's also doing
25 CPR. She's got blood all over her. And what did

1 they say? What did the trace person tell you?
2 That GSR, you can go like this and wipe it off.
3 That's why after four to six hours, they don't even
4 test for it when it is on a person because you
5 sweat and it comes off. And she's mixing it in
6 with his blood. Her hands were all bloody, you
7 heard that.

8 You know, they want you to believe that Chris
9 had GSR on his hands. What she testified to was he
10 had some of these metals on his hands, but they
11 weren't round. That's why she did not classify
12 them as GSR. And what if he did have GSR on his
13 hands? Maybe he did one of these(indicating)
14 before he got shot.

15 The pathologist. Downward and to the right.
16 Right here in the throat, downward and to the
17 right. Ends up right here. Stippling on his face.
18 You can see it on the left side of his face.
19 That's what that is. All those little black marks
20 right here, I submit to you, you know, probably
21 what it is. Gunshot. That's why it's on that
22 face. She's pointing at him. And the doctor said
23 that would mean that the muzzle of that gun was
24 within two feet of the wound when he was shot.
25 That's as far as stippling will show, two feet.

1 Nothing -- and she testified nothing to
2 indicate it ricocheted. She testified to that. He
3 wants you to believe it hit his spine and then it
4 ricocheted off and went down. Well, I'll tell you,
5 if it hit his spine, he ain't walking. Not only is
6 he walking, but he falls down, and we know from
7 police, he gets back up. Sarah Wiggins says that.
8 He gets back up and he's leaning, all right. There
9 ain't no way he's standing if it hit his spine.
10 Now, she said it hit some ribs. Okay, they're kind
11 of down here. It's already gone in its downward
12 angle when it hits those. It didn't ricochet.

13 And the other thing she says, I don't know if
14 you picked up, he had no other injuries. If he's
15 wailing on her, wouldn't he have some marks on his
16 hands or something? She's got -- look at all those
17 rings and stuff in the video, all the jewelry she's
18 got on. And she's doing this(indicating). You
19 mean to tell me he doesn't hit a ring on something,
20 doesn't nick his finger or something like that as
21 he's wailing on her? No injuries. No other
22 injuries to him except that bullet hole.

23 But she did say it would be consistent if he
24 was walking up the steps and she's about --
25 remember, she's about 5'4" and he's about 5'10",

1 5'11".

2 In fact, to demonstrate. Mr. Sorenson? Let's
3 do a little --

4 (Demonstrating with Mr. Sorenson.)

5 MR. JUSTIS: You got a toy gun here. It's not
6 loaded. This is two feet. So she's got to be
7 within this distance --

8 MR. LEIENDECKER: Objection, Your Honor, this
9 mischaracterizes the testimony and now they're
10 attempting to demonstrate with something that's two
11 feet when the testimony clearly says within two
12 feet. It could have been as close as a foot. So
13 this demonstration is not appropriate.

14 MR. JUSTIS: Your Honor, I can demonstrate at
15 two feet. I'd be happy to break the stick in half
16 and do it at one foot, six inches, three inches,
17 however much he wants. It's just for demonstrative
18 purposes, Your Honor.

19 THE COURT: All right. As long as it's
20 consistent with the testimony.

21 MR. LEIENDECKER: Which it's not.

22 THE COURT: Well, he's saying he's going to do
23 it at different feet, so.

24 (Demonstrating with Mr. Sorenson.)

25 MR. JUSTIS: So this would -- he gets shot

1 right about there and it's a downward angle.

2 Mr. Sorenson, how tall are you?

3 MR. SORENSON: Six foot.

4 MR. JUSTIS: He's six foot, I'm 5'8" on a good
5 day with shoes on. So I'm probably four inches
6 taller than her. He's maybe an inch taller. But
7 I'm still probably, in comparison, standing higher
8 up than she would have been. To get it to go down,
9 I'd have to be shooting like this. Because,
10 remember, bullets go straight. Okay. And if it's
11 closer, do it closer. Same thing.

12 But it's not -- she testifies she's bringing
13 it up and he slaps at her. All right. Well, if he
14 slaps at her, first of all, it's going like that.
15 Second of all, it's -- remember, the stippling is
16 on this side of his face. She says it's his right
17 hand. So how does he get stippling over here?
18 Unless he's doing kind of weird thing. But that's
19 what she said. Does that make sense? Because
20 remember --

21 Now, the other thing is, He charged me, bent
22 over, okay, and I shot him. Okay, well, the
23 problem is I would shoot him up here in the chest.
24 The bullet hole is here. How do I get to it?
25 Doesn't make sense.

1 Thank you.

2 I mean, that's just pure physics.

3 Now, the Defendant claims she was in fear of
4 serious bodily injury or death, but she never
5 claims anything more than pushing. That's what she
6 says. That's what she tells Lieutenant Padgett.
7 When Investigator Molly Hahn inspects her and takes
8 pictures, all she talks about was her butt. He
9 pushed me down. She doesn't say he beat on my arms
10 or nothing. She takes pictures that day. And then
11 24 hours later, she gives notice she wants more
12 pictures taken, she's got some bruises. So
13 Investigator Hahn goes over there and takes more
14 pictures, and takes pictures of her arms and
15 everything. She even wants her to take pictures of
16 her butt. She doesn't see any injuries on it.
17 Don't you think she would take pictures if there
18 were more injuries?

19 Phillip Turner sitting next to her doesn't see
20 any injuries. I mean, now is the time to say,
21 Look, he did this, he did that. Look at this.
22 Look at this. Nothing.

23 Injuries only pop up 24 hours later and then a
24 week later. But we don't know where they came
25 from.

1 And, you know, she talks about the struggle.
2 She talks about the struggle. Okay? Here's this
3 big struggle. She's getting pushed down, how many
4 times? At least two or three times outside, at
5 least once inside. Notice something about this
6 picture. Look at what's on top of her head. The
7 sunglasses. When you watch that video, they're
8 sitting right in front of her on the table. This
9 is taken before the interview before she gets to
10 clean up.

11 Now, unless he got shot and she said, Hold on
12 a second, I know he's shot, he's dying, but let me
13 go get my sunglasses. It's kind of bright in here.
14 I submit to you they were on her head the whole
15 time during all these alleged assaults outside and
16 inside the house. And they're still on top of her
17 head two hours later at the Sheriff's Department.
18 Well, in the video she has them off her head
19 sitting right in front of her, right next to her
20 drink cup.

21 Now, the Defendant claims self-defense. And,
22 you know what, if you don't believe that, let's try
23 accident. Or maybe even try accident first and if
24 you don't believe that, we'll say self-defense.
25 You know, as you follow their train of thinking,

1 you can kill somebody if they push you. Your
2 spouse pushes you down, raises a fist and runs at
3 you, you can shoot them and kill them and get away
4 with it. Because it's just an accident. Even if
5 you're a trained law enforcement officer and
6 trained in weapons and stuff, you can get away with
7 it, it's just an accident or self-defense.

8 Ladies and gentlemen, I submit to you when she
9 took this weapon that she has been trained in and
10 she pulled that trigger, she knew exactly what she
11 was doing. She knew exactly what she was doing.

12 And, you know, as Leeann Bost said, No jury
13 will ever convict me. Prove her wrong.

14 Thank you.

15 THE COURT: Does anyone need a break? We've
16 been going for about almost two hours. Do you want
17 to take a break? Keep moving? Everybody okay?

18 All right. All right, ladies and gentlemen --

19 I'm sorry, let me ask my court reporter. Are
20 you okay?

21 JURY CHARGE

22 THE COURT: All right. I remind you that
23 during this trial, you and I have certain duties to
24 perform. As the trial judge, it is my
25 responsibility to preside over the trial of this

1 case. And I also have the duty to rule on the
2 admissibility of the evidence offered during this
3 trial. You are to consider only the competent
4 evidence before you. If there was any testimony
5 ordered stricken from the record in this case
6 during this trial, you must disregard that
7 testimony.

8 You are to consider only the testimony which
9 has been presented from this witness stand, any
10 exhibits which have been made a part of the record
11 in this case, and any stipulations of counsel.

12 I have the additional duty to charge you the
13 law applicable to this case. As the presiding
14 judge, I am the sole judge of the law of this case,
15 and it is your duty as jurors to accept the law and
16 apply the law as I now state it to you.

17 If you already have any idea as to what the
18 law is or what the law ought to be and it does not
19 agree with what I now tell you the law is, you must
20 abandon this idea because you are sworn to accept
21 the law and apply the law exactly as I state it to
22 you.

23 In every case tried in this court before a
24 jury, the jury becomes the sole and exclusive judge
25 of the facts in a case. A trial judge cannot

1 state, comment on, or make any statements to a
2 trial jury about the facts in a case.

3 Since you, the jury, are the sole judges of
4 the facts in this case, you are not to infer from
5 what I have said during the progress of this trial
6 in ruling upon the admissibility of evidence or
7 otherwise or anything that I say now during the
8 course of this instruction to you that I have an
9 opinion about the facts in this case.

10 The law does not allow me to have an opinion
11 about the facts in this case. This is a matter
12 solely for you, the jury, to determine. As jurors,
13 it is your duty to determine the effect, value,
14 weight and truth of the evidence presented during
15 the trial.

16 Ladies and gentlemen of the jury, I submit to
17 you that there are two types of evidence which are
18 generally presented during a trial, direct evidence
19 and circumstantial evidence.

20 Direct evidence is the testimony of a person
21 who claims to have actual knowledge of a fact, such
22 as an eyewitness. It is evidence which immediately
23 establishes a main fact to be proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of

1 a fact. It is evidence which immediately
2 establishes collateral facts from which the main
3 fact may be inferred. Circumstantial evidence is
4 based on inference and not on personal knowledge or
5 observation.

6 The law makes absolutely no distinction
7 between the weight or value to be given to either
8 direct or circumstantial evidence. Nor is a
9 greater degree of certainty required of
10 circumstantial evidence than of direct evidence.

11 You should weigh all of the evidence in the
12 case. After weighing all of the evidence in the
13 case, if you are not convinced of the guilt of the
14 Defendant beyond a reasonable doubt, you must find
15 the Defendant not guilty.

16 Necessarily, you must determine the
17 credibility of witnesses who have testified in this
18 case. Credibility simply means believability. It
19 becomes your duty as jurors to analyze and to
20 evaluate the evidence and determine which evidence
21 convinces you of its truth.

22 In determining the believability of witnesses
23 who have testified in this case, you may believe
24 one witness over several witnesses, or several
25 witnesses over one witness. You may believe a part

1 of the testimony of a witness, and reject the
2 remaining part of the testimony of that same
3 witness. You may believe the testimony of a
4 witness in its entirety, or reject the testimony of
5 a witness in its entirety.

6 You may consider whether any witness has
7 exhibited to you any interest, bias, prejudice, or
8 other motive in this case. You may also consider
9 the appearance and manner of the witness while on
10 the witness stand.

11 The rules of evidence -- and we'll talk about
12 expert witnesses -- the rules of evidence
13 ordinarily do not permit witnesses to testify to
14 opinions or conclusions. An exception to this rule
15 exists for witnesses we call expert witnesses. A
16 witness who by education or experience has become
17 an expert in some art, science, profession or
18 calling may state an opinion as to relevant and
19 material matter in which the witness claims to be
20 an expert and may also state the reasons for their
21 opinion.

22 You should consider an expert's opinion
23 received in evidence in this case and, like any
24 other evidence, give it the weight you think it
25 deserves. If you decide that the opinion of an

1 expert witness is not based on sufficient education
2 and experience or if you conclude that the reasons
3 given in support of the opinion are not sound or
4 that the opinion is outweighed by other evidence,
5 you may disregard the opinion entirely. An expert
6 witness's testimony is to be given no greater
7 weight than that of other witnesses simply because
8 the witness is an expert. Further, you are not
9 required to accept an expert's opinion even though
10 it is not contradicted.

11 There has been evidence presented that
12 witnesses have made prior statements which are not
13 consistent with the witness's present testimony.
14 You may use this evidence to decide whether to
15 believe the witness. You may also use evidence of
16 the earlier contradictory statements to determine
17 the truth of those statements. It is up to you to
18 decide whether to believe the earlier statement or
19 the testimony given at trial.

20 If a witness shown to have knowingly testified
21 untruthfully concerning any material matter, you
22 may consider this in determining whether to trust
23 the witness's testimony as to other matters. You
24 may reject all testimony of that witness or give
25 all or part of the testimony the weight you think

1 it deserves.

2 Ladies and gentlemen of the jury, as I told
3 you earlier at the beginning of the trial, the
4 indictment in this case charges the Defendant with
5 the charge of murder. I remind you that the fact
6 that the Defendant was arrested, charged and
7 indicted in this case is not evidence in this case
8 and cannot be considered by you as evidence of
9 guilt in this case, nor does it create any
10 presumption or inference of guilt. This document
11 is simply the formal written instrument which
12 contains the charge made against the Defendant. It
13 is the formal document by which this case is
14 brought into court.

15 Ladies and gentlemen of the jury, the
16 Defendant in this case has pled not guilty to this
17 indictment. And that plea puts the burden on the
18 State to prove the Defendant guilty. A person
19 charged with committing a criminal offense in South
20 Carolina is never required to prove herself
21 innocent. I charge you that it is an important
22 rule of law that a Defendant in a criminal trial,
23 no matter what the seriousness of the charge may
24 be, will always be presumed to be innocent of the
25 crime for which the indictment was issued unless

1 guilt has been proven by evidence satisfying you of
2 that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end
4 when you begin your deliberations, but it
5 accompanies the Defendant throughout the trial up
6 until you reach a verdict of guilt based on
7 evidence satisfying you of that guilt beyond a
8 reasonable doubt.

9 The presumption of innocence is like a robe of
10 righteousness placed about the shoulders of the
11 Defendant, which remains with the Defendant until
12 it has been stripped from the Defendant by evidence
13 satisfying you of the Defendant's guilt beyond a
14 reasonable doubt.

15 The presumption of innocence is not mere legal
16 theory. It is not just a legal phrase. It is a
17 substantial right to which every Defendant is
18 entitled unless you, the jury, are satisfied from
19 the evidence of the Defendant's guilt beyond a
20 reasonable doubt.

21 What is reasonable doubt? A reasonable doubt
22 is the kind of doubt that would cause a reasonable
23 person to hesitate to act. The State has the
24 burden of proving the Defendant guilty beyond a
25 reasonable doubt. Some of you may have served as

1 jurors in civil cases where you were told that it
2 is only necessary to prove that a fact is more
3 likely true than not true, such as by the greater
4 weight or preponderance of the evidence.

5 In criminal cases, the State's proof must be
6 more powerful than that. It must be beyond a
7 reasonable doubt. Proof beyond a reasonable doubt
8 is proof that leaves you firmly convinced of the
9 Defendant's guilt. There are very few things in
10 this world that we know with absolute certainty.
11 And in criminal cases, the law does not require
12 proof that overcomes every possible doubt.

13 If, based on your consideration of the
14 evidence, you are firmly convinced that the
15 Defendant is guilty of the crime charged, you must
16 find the Defendant guilty. If, on the other hand,
17 you think there is a real possibility that the
18 Defendant is not guilty, you must give the
19 Defendant the benefit of the doubt and find her not
20 guilty.

21 Ladies and gentlemen of the jury, the
22 Defendant in this case is charged with murder. The
23 State must prove beyond a reasonable doubt that the
24 Defendant killed another person with malice
25 aforethought.

1 Malice is hatred, ill-will, or hostility
2 towards another person. It is the intentional
3 doing of a wrongful act without just cause or
4 excuse and with an intent to inflict an injury or
5 under circumstances that the law will infer an evil
6 intent. Malice aforethought does not require that
7 malice exist for any particular time before the act
8 is committed, but malice must exist in the mind of
9 the Defendant just before and at the time of the
10 act and at the time the act is committed.
11 Therefore, there must be a combination of the
12 previous evil intent and the act.

13 Malice aforethought may be express or
14 inferred. These terms, express or inferred, do not
15 mean different kinds of malice, but merely the
16 manner in which the malice may be shown to exist.
17 That is either by direct evidence or by inference
18 from the facts and circumstances which are proven.

19 Express malice is shown when a person speaks
20 words which express hatred or ill-will for another
21 or when the person prepared beforehand to do the
22 act which was later accomplished. For example,
23 lying in wait for a person or any other acts of
24 preparation going to show that the deed was within
25 the Defendant's mind would be express malice.

1 Malice may be inferred from conduct showing a
2 total disregard for human life.

3 Ladies and gentlemen of the jury, if you find
4 that the State has failed to prove beyond a
5 reasonable doubt that the Defendant committed
6 murder, you may consider whether the State has
7 proved beyond a reasonable doubt that the Defendant
8 committed voluntary manslaughter. Voluntary
9 manslaughter is defined as the unlawful killing of
10 another without malice, express or implied. To
11 prove voluntary manslaughter, the State must prove
12 beyond a reasonable doubt that the Defendant took
13 the life of another in the sudden heat of passion
14 based on sufficient legal provocation. Both heat
15 of passion and sufficient legal provocation must be
16 present at the time of the killing to constitute
17 voluntary manslaughter.

18 Sudden heat of passion may for a time affect
19 the person's self-control and temporarily disturb a
20 person's reason. The sudden heat of passion must
21 be the type that would make an ordinary person
22 unable to coolly reflect on his or her actions and
23 would produce an uncontrollable impulse to do
24 violence.

25 Sufficient legal provocation must be the type

1 that would make a person of ordinary reason and
2 caution become enraged and to lose control
3 temporarily. The provocation needed for voluntary
4 manslaughter must come from some act of or related
5 to the victim. Words alone, however vulgar or
6 insulting, are not enough to be legal provocation.
7 Where death is caused by the use of a deadly
8 weapon, the words must be accompanied by some overt
9 threatening act which could have produced the heat
10 of passion. The exercise of a legal right, no
11 matter how offensive it is to another, is never
12 sufficient legal provocation for voluntary
13 manslaughter.

14 If the heat of passion had cooled or if there
15 was enough time between the provocation, if any,
16 and the killing for the passion of a reasonable
17 person to cool, the killing would not be voluntary
18 manslaughter.

19 In deciding whether a reasonable person would
20 have had enough time to cool off, you should
21 consider all the circumstances surrounding the
22 killing. You may consider the nature of the
23 provocation, if any, the Defendant's mental and
24 physical state, and the circumstances and
25 relationship between the parties.

1 Next, ladies and gentlemen, if you find that
2 the State has failed to prove beyond a reasonable
3 doubt that the Defendant committed voluntary
4 manslaughter, you may consider whether the State
5 has proved beyond a reasonable doubt that the
6 Defendant committed involuntary manslaughter. To
7 prove involuntary manslaughter, the State must
8 prove beyond a reasonable doubt that the Defendant
9 unintentionally killed the victim without malice,
10 but while engaged in an unlawful activity not
11 naturally tending to cause death or great bodily
12 harm or that the Defendant unintentionally killed
13 the victim without malice while engaged in a lawful
14 activity with reckless disregard for the safety of
15 others.

16 Unintentional means that the Defendant did not
17 intend for anyone to be killed or seriously
18 injured.

19 Reckless disregard for the safety of others is
20 more than mere negligence or carelessness. Mere
21 negligence or carelessness is the failure to use
22 the care that a person of ordinary reason would use
23 under the same circumstances. Recklessness is a
24 conscious failure to use ordinary care. Reckless
25 disregard for the safety of others means that you

1 are not interested in the consequences of your acts
2 or the rights and safety of others.

3 If a person who knows or should know that
4 ordinary care requires certain precautions be taken
5 for the safety of others when using a dangerous
6 instrumentality such as a gun or a car, but that
7 person fails to use those precautions without
8 concern, the person's actions are considered
9 reckless.

10 The State must also prove beyond a reasonable
11 doubt that the Defendant's act was the proximate
12 cause of death. Proximate cause is the direct
13 cause. It is the immediate cause. It is the
14 efficient cause. It is the cause -- it is that
15 cause without which the death of the victim would
16 not have resulted.

17 There must be a chain of causation from the
18 time of the injury inflicted by the Defendant until
19 the time of the victim's death. Proximate cause
20 does not necessarily mean that it occurred
21 immediately prior to the death.

22 In order to establish criminal liability,
23 criminal intent is required. For example, the
24 mental state required to be proven by the State for
25 a particular crime might be purpose, intent,

1 knowledge, recklessness, or criminal negligence.

2 Criminal intent must be proven by the State
3 beyond a reasonable doubt. Criminal intent is
4 always a matter that must be determined by the jury
5 from the circumstances surrounding the situation.
6 There is no way to prove intent to a mathematical
7 certainty. There is no way medical science can
8 dissect a person's brain and determine what the
9 person had in mind. So the law says that criminal
10 intent may be inferred from the circumstances shown
11 to have existed.

12 This is how you make a determination of
13 whether or not the element required intent was
14 present. It is not necessary to establish intent
15 by direct and positive evidence, but intent may be
16 established by inference in the same way as any
17 other fact by taking into consideration the fact --
18 the act of the parties and all the facts and
19 circumstances of the case.

20 Criminal intent is a mental state, a conscious
21 wrongdoing. It is up to you to determine what the
22 Defendant intended to do based on the circumstances
23 shown to have existed.

24 Criminal intent can arise from action or
25 failure to act. It may arise from negligence,

1 recklessness or an indifference to duty or to the
2 consequences that is considered by law to be the
3 equivalent of criminal intent.

4 Ladies and gentlemen of the jury, the
5 Defendant in this case has raised the defense of
6 self-defense. Self-defense is a complete defense
7 and if it is established, you must find the
8 Defendant not guilty. The State has the burden of
9 disproving self-defense by proof beyond a
10 reasonable doubt. If you have a reasonable doubt
11 of the Defendant's guilt after considering all the
12 evidence, including the evidence of self-defense,
13 then you must find the Defendant not guilty. On
14 the other hand, if you have no reasonable doubt of
15 the Defendant's guilt after considering all of the
16 evidence, including the evidence of self-defense,
17 then you must find the Defendant guilty.

18 The following elements are required to
19 establish self-defense.

20 First, the Defendant must be without fault in
21 bringing on the difficulty. If the Defendant's
22 conduct was the type which was reasonably
23 calculated to, and, did provoke a deadly assault,
24 the Defendant would be at fault in bringing on the
25 difficulty and would not be entitled to an

1 acquittal based on self-defense.

2 Second, imminent danger. The second element
3 of self-defense is that the Defendant was actually
4 in imminent danger of death or serious bodily
5 injury or that the Defendant actually believed she
6 was in imminent danger of death or serious bodily
7 injury. If the Defendant was actually in imminent
8 danger, it must be shown that the circumstances
9 would have warranted a person of ordinary firmness
10 and courage to strike the fatal blow to prevent
11 death or serious bodily injury.

12 If the Defendant believed she was in imminent
13 danger of death or serious bodily injury, it must
14 be shown that a reasonably prudent person of
15 ordinary firmness and courage would have had the
16 same belief.

17 In deciding whether the Defendant actually was
18 or believed she was in imminent danger of death or
19 serious bodily injury, you should consider all of
20 the facts and circumstances surrounding the crime,
21 including the physical condition and
22 characteristics of the Defendant and the victim.

23 Evidence of good character and good reputation
24 may, in and of itself, create a doubt as to guilt
25 and should be considered by you, along with all

1 other evidence, in determining the guilt or
2 innocence of the Defendant.

3 The Defendant does not have to show that she
4 was actually in danger. It is enough if the
5 Defendant believed she was in imminent danger and
6 that a reasonably prudent person of ordinary
7 firmness and courage would have had the same
8 belief. The Defendant has the right to act on
9 appearances, even though the Defendant's beliefs
10 may have been mistaken.

11 It is for you to decide whether the
12 Defendant's fear of immediate danger of death or
13 serious bodily injury was reasonable and would have
14 been felt by an ordinary person in the same
15 situation.

16 A person cannot be required to make an exact
17 calculation as to the degree or amount of force
18 which may be needed to avoid death or serious
19 bodily harm. Therefore, in self-defense, the
20 Defendant has the right to use the force needed to
21 avoid death or serious bodily harm. The force used
22 in self-defense does not have to be limited to the
23 degree or amount of force used by the victim. The
24 Defendant has the right to use so much force as
25 appeared to be necessary for complete

1 self-protection and which a person of ordinary
2 reason and firmness would have believed to be
3 needed to prevent death or serious bodily harm.

4 Ladies and gentlemen of the jury, the
5 Defendant in this case has raised the defense of
6 accident. An act may be excused on the ground of
7 accident if it is shown that the act was
8 unintentional, that the Defendant was acting
9 lawfully, and that reasonable care was used by the
10 Defendant in handling of the weapon. For example,
11 if a person is lawfully armed in self-defense and
12 the gun accidentally discharges, the defense of
13 accident would apply. The burden is on the State
14 to prove beyond a reasonable doubt that the act was
15 not an accident, but was caused by the negligence
16 or carelessness on the part of the Defendant in the
17 handling of a dangerous instrumentality or by
18 unlawful activity by the Defendant.

19 Ladies and gentlemen of the jury, the
20 Defendant and the State are entitled to the
21 individual opinion of each juror on the issues of
22 fact in this case. It is the duty of each of you
23 to consider and weigh all the evidence in the case
24 and from such evidence to determine, if you can,
25 the question of guilt or innocence of the

1 Defendant.

2 There is nothing peculiarly different in the
3 way a jury should consider the evidence in a
4 criminal case from that in which all reasonable
5 persons treat any question depending upon evidence
6 presented to them.

7 You are expected to use your good sense,
8 consider the evidence in the case for only those
9 purposes for which it has been admitted, and give
10 it a reasonable and fair construction in the light
11 of your common knowledge of the natural tendencies
12 and inclinations of human beings.

13 Your verdict in this case will be one of two
14 forms. If, from the evidence and the law, you find
15 the Defendant is not guilty, you will circle not
16 guilty on the verdict form that I will give you and
17 the foreman will sign his name.

18 If, on the other hand, you find that the
19 Defendant is guilty based upon the evidence and the
20 law which you have heard, you will circle guilty on
21 the verdict form and the foreman will sign his
22 name.

23 Your verdict must be unanimous. It must be
24 guilty or not guilty. The law requires that a jury
25 verdict be unanimous, which means that all jurors

1 must agree. The only two forms of the verdict are
2 guilty or not guilty.

3 Mr. Foreman, once the jury reaches a verdict
4 of not guilty or guilty, circle the verdict on the
5 face of the verdict form and sign under the verdict
6 to signify that what you have circled is the
7 verdict of all the jurors. You will then notify
8 the bailiffs that you have reached a verdict and we
9 will receive you back in the court.

10 I have before me the verdict form that you
11 will receive back in the jury room. And it states,
12 State of South Carolina, County of Aiken, In the
13 Court of General Sessions for the Second Judicial
14 Circuit. State of South Carolina v. Robin Renee
15 Herndon, Defendant. Indictment number
16 2014-GS-02-00664. Verdict form. Please circle the
17 appropriate verdicts below.

18 Number 1: As to the indictment alleging
19 murder, we, the jury, unanimously find the
20 Defendant -- and you will see next to each other,
21 guilty or not guilty. You will circle one of
22 those.

23 If you circle guilty, please stop your
24 deliberations and sign and date below. If you
25 circle not guilty, please continue your

1 deliberations.

2 The second question says: As to the charge of
3 voluntary manslaughter, we, the jury, unanimously
4 find the Defendant guilty or not guilty.

5 If you circle guilty, please stop your
6 deliberations and sign and date below. If you
7 circle not guilty, please continue your
8 deliberations.

9 And Number 3 states: As to the charge of
10 involuntary manslaughter, we, the jury, unanimously
11 find the Defendant guilty or not guilty.

12 At that point, you will stop and end your
13 deliberations. Mr. Foreman, you will knock on the
14 door and indicate to the bailiffs that you have
15 reached a verdict.

16 At this time, I am going to send you all back
17 into the jury room. But you cannot begin your
18 deliberations until you have received all of the
19 evidence, the exhibits that were presented, and the
20 verdict form and an instruction from the bailiffs
21 to begin your deliberations.

22 Once they instruct you to begin your
23 deliberations, you may begin. I'm going to send
24 you all back. Do not begin to discuss the case
25 until then.

1 All right, thank you.

2 (WHEREUPON, the jury retires to the jury
3 room at 6:02 p.m.)

4 THE COURT: All right. Any objections or
5 exceptions by the State?

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

7 THE COURT: All right. Any objections or
8 exceptions by the Defense?

9 MR. LEIENDECKER: Yes, Your Honor. I do not
10 believe, unless I was not paying close attention,
11 you did not instruct on the request for good
12 character, which we all agreed --

13 THE COURT: I did.

14 MR. SORENSON: She did.

15 THE COURT: I did.

16 MR. LEIENDECKER: I just wasn't -- right.

17 MR. SORENSON: She said it. Out of those
18 three of yours that she instructed, that one was
19 the first out of the three.

20 THE COURT: I did. I did that one before
21 right to act on appearances and degree of force.

22 MR. LEIENDECKER: Okay. That's all I have.

23 THE COURT: You must have been sleeping during
24 my charge.

25 MR. LEIENDECKER: Well, it wasn't your fault,

1 it was my fault.

2 THE COURT: You won't be the first.

3 MR. LEIENDECKER: It's my fault trying to
4 follow where the inserts were.

5 THE COURT: Yes, sir. I'll have her e-mail
6 you all a copy of that. Oh, she has hard copies
7 too. And doublecheck the verdict form, and of
8 course your objections -- previous objections are
9 noted for the record to the jury charge.

10 MR. LEIENDECKER: As to --

11 THE COURT: As to the charges that I did not
12 charge, the defense of habitation and --

13 MR. LEIENDECKER: And my alternate charge --

14 THE COURT: To the circumstantial and direct
15 evidence.

16 MR. LEIENDECKER: Circumstantial, yes.

17 THE COURT: Yes, those are noted for the
18 record.

19 All right. So let me ask you all, normally I
20 would excuse the alternates. What is your
21 position? However, there is the practice that we
22 can hold onto them and keep them in a separate jury
23 room. I'm going to let them start deliberating.
24 I'm not going -- we're not going to stay till
25 midnight. So we may stop and bring them back in

1 the morning. That's my only concern about the
2 alternates. I can hold them in a separate room,
3 tell them they can't discuss anything, or I can
4 release them. Normally I would release them, but
5 because of the hour.

6 MR. SORENSON: I think -- the State's
7 position, Your Honor, we've had this issue come up
8 a few times in the past, is that we would ask Your
9 Honor to keep them. I mean, they've sat through
10 four days' worth of testimony. I think they can be
11 kept separate and if something were to happen with
12 one of other jurors, I think we would be in a
13 position where we wouldn't have lost all of this
14 time. Your Honor could at that point in time put
15 one of them in with, obviously, the instruction at
16 that point they basically have to start over.

17 THE COURT: Yes, they would have to start
18 deliberating again.

19 MR. LEIENDECKER: We don't object to that,
20 because of the length and complication of this
21 trial.

22 THE COURT: That's what I was thinking. And I
23 don't know how long they will take to deliberate.
24 But after a certain time, we may stop and just
25 start back in the morning. There's that

1 possibility. There's two ladies on the jury that
2 are pregnant, two or three, I think. I know at
3 least two. So I don't know if they are up for a
4 late, late evening.

5 So what I'll do is -- right now, the jurors
6 are in the Grand Jury room because it's bigger. So
7 we can put the alternates in the jury room. And
8 then, is there any objection to -- well, I was
9 going to say let them watch TV or something,
10 they're just going to be sitting in there.

11 MR. SORENSON: I don't think we would have
12 objection, as long as it is not news.

13 MR. LEIENDECKER: As long as they're not
14 watching the local news, I don't care what they do.

15 THE COURT: Let me see if we have --

16 MR. LEIENDECKER: They should be instructed
17 not to among themselves talk about the --

18 THE COURT: Oh, yeah, yeah, yeah. I'm going
19 to bring the two of them in, give them instructions
20 that they cannot discuss the case. They can sit in
21 the jury room. I don't know if they have a book,
22 have some crossword puzzles or something they can
23 entertain themselves with.

24 Okay. Let's bring the two alternates in and
25 let me speak with them.

1 MR. SORENSON: Your Honor, obviously, if we
2 send the disk back, if they were to want to watch
3 it, we can either bring them back out here or the
4 Solicitor's Office here has a laptop that is --

5 MR. JUSTIS: Clean laptop.

6 MR. SORENSON: And it's got where they can be
7 logged in where they can't access anything else
8 other than just playing the disk. Also, I think in
9 the past, they've used that to kind of send back.

10 THE COURT: Mr. Leiendecker?

11 MR. LEIENDECKER: I don't have a problem
12 either way, Your Honor.

13 MR. SORENSON: I guess, we'll just wait to see
14 if they ask.

15 MR. LEIENDECKER: I mean, if they ask to view
16 it, it's just as easy for them to watch it
17 themselves than drag them out here.

18 THE COURT: Okay. Let's have the alternates
19 back while you all are doing that.

20 (WHEREUPON, the alternates enter the
21 courtroom.)

22 THE COURT: Gentlemen, we're at the point or
23 stage in the trial where the 12 jurors that were
24 initially selected will begin deliberations in less
25 than five minutes. We will need to hang onto you

1 all, so we're going to put you -- we're going to
2 move you to the other jury room. They're going to
3 get you some crossword puzzles. I know they talked
4 about ordering some food or something. Of course,
5 we're going to feed you all. You cannot discuss
6 the case with each other, just in case something
7 happens and we have to replace one of the jurors
8 with you all.

9 So we're going to put you in the other jury
10 room. If you have some reading material or if
11 there's some reading material, magazines or
12 anything that you have. Mr. Bailiff, he's going to
13 try to round up some stuff for you all, but you
14 cannot discuss the case with each other.

15 All right. Thank you.

16 (WHEREUPON, the alternates exit the
17 courtroom at 6:10 p.m.)

18 THE COURT: Is that everything?

19 Mr. Leiendecker, y'all are sure on those
20 photos, that's everything?

21 MR. SORENSON: We've gone through it all, yes,
22 ma'am.

23 MR. LEIENDECKER: Yes ma'am.

24 THE COURT: All right. The verdict form, take
25 a look at it one more time and make sure we don't

1 have any errors.

2 (WHEREUPON, the jury begins
3 deliberations at 6:11 p.m.)

4 THE COURT: Now, that the jury is deliberating
5 -- we're back on the record. Now that the jury is
6 deliberating, the Defendant -- she's not in here.

7 MS. HINDS: She went to the restroom.

8 THE COURT: Okay. She'll need to stay in the
9 courtroom or with one of the deputies. She can sit
10 in here as long as one of the deputies is in here
11 with her. And Mr. Leiendecker is going to bring
12 her food back since she's technically -- I know
13 she's in custody, y'all will feed her, but she's
14 technically not in custody.

15 MR. LEIENDECKER: And her family can sit in
16 with her?

17 THE COURT: That's fine.

18 MR. LEIENDECKER: While she's sitting in here?

19 THE COURT: Okay.

20 MR. LEIENDECKER: I'll do that. Thank you.

21 THE COURT: Bring her something. She cannot
22 leave.

23 (WHEREUPON, a break was taken.)

24 (WHEREUPON, the following occurred at
25 7:46 p.m.)

1 THE COURT: All right. You may be seated.
2 They have a question.

3 The question is, Can you get us the difference
4 between voluntary and involuntary, a list of the
5 two? Signed, The Foreman.

6 Let make this Court Exhibit 11.

7 (WHEREUPON, Court's Exhibit No. 11 was
8 marked for identification only.)

9 THE COURT: I can read it to them or I can
10 give it to them, whichever one works for everybody.
11 I think I'm going to at some point -- I can send it
12 back, the voluntary and involuntary charge, or I
13 can bring them in and read it to them.

14 Any position from the State?

15 MR. JUSTIS: The State does not mind if you
16 want to send a written charge back of voluntary and
17 involuntary.

18 MR. LEIENDECKER: Your Honor, I think that we
19 can bring them out and read it to them again. I'm
20 not sure we can send them part of the jury
21 instruction back there.

22 THE COURT: I think you can, but I don't have
23 a problem reading it. When I send it back, I
24 usually give them a charge to send them back, so it
25 takes about the same amount of time.

1 MR. LEIENDECKER: At this point, I would
2 request we read it and then we recharge reasonable
3 doubts as well.

4 MR. JUSTIS: They didn't ask for that.

5 THE COURT: I'll give them what they asked
6 for. They didn't ask for -- I will ask them, Is
7 this everything that you need, is there any other
8 portion, but at this point I'm going to read
9 them -- if that's the case, I'll end up reading the
10 whole charge over in its entirety. Stick to the
11 question at hand, read voluntary and involuntary to
12 them again. Then I will ask them is there any
13 other portions that they would like read.

14 All right.

15 MR. LEIENDECKER: Yes, ma'am.

16 THE COURT: Bring them on in.

17 (WHEREUPON, the jury came into open
18 court at 7:50 p.m.)

19 THE COURT: Ladies and gentlemen of the jury,
20 you have asked for the Court to charge you as to
21 the -- you have asked for the charge on voluntary
22 and involuntary manslaughter; is that correct? And
23 I will read that to you again.

24 If you find that the State has failed to prove
25 beyond a reasonable doubt that the Defendant

1 committed murder, you may consider whether the
2 State has proved beyond a reasonable doubt that the
3 Defendant committed voluntary manslaughter.

4 Voluntary manslaughter is defined as the
5 unlawful killing of another without malice, express
6 or implied.

7 To prove voluntary manslaughter, the State
8 must prove beyond a reasonable doubt that the
9 Defendant took the life of another in the sudden
10 heat of passion based on sufficient legal
11 provocation.

12 Both heat of passion and sufficient legal
13 provocation must be present at the time of the
14 killing to constitute voluntary manslaughter.

15 Sudden heat of passion may for a time affect a
16 person's self-control and temporarily disturb a
17 person's reason. Sudden heat of passion must be
18 the type that would make an ordinary person unable
19 to coolly reflect on his or her actions and would
20 produce an uncontrollable impulse to do violence.

21 Sufficient legal provocation must be the type
22 that would make a person of ordinary reason and
23 caution become enraged and to lose control
24 temporarily. The provocation needed for voluntary
25 manslaughter must come from some act of or related

1 to the victim.

2 Words alone, however vulgar or insulting, are
3 not enough to be legal provocation. Where death is
4 caused by the use of a deadly weapon, the words
5 must be accompanied by some overt threatening act
6 which could have produced the heat of passion. The
7 exercise of a legal right, no matter how offensive
8 it is to another, is never sufficient legal
9 provocation for voluntary manslaughter. If the
10 heat of passion had cooled or if there was enough
11 time between the provocation, if any, and the
12 killing for the passion of a reasonable person to
13 cool, the killing would not be voluntary
14 manslaughter.

15 In deciding whether a reasonable person would
16 have had enough time to cool off, you should
17 consider all the circumstances surrounding the
18 killing. You may consider the nature of the
19 provocation, if any, the Defendant's mental and
20 physical state, and the circumstances and
21 relationship between the parties.

22 All right.

23 Involuntary manslaughter. If you find that
24 the State has failed to prove beyond a reasonable
25 doubt that the Defendant committed voluntary

1 manslaughter, you may consider whether the State
2 has proved beyond a reasonable doubt that the
3 Defendant committed involuntary manslaughter.

4 To prove involuntary manslaughter, the State
5 must prove beyond a reasonable doubt that the
6 Defendant unintentionally killed the victim without
7 malice, but while engaged in an unlawful activity
8 not naturally tending to cause death or great
9 bodily harm, or that the Defendant unintentionally
10 killed the victim without malice while engaged in a
11 lawful activity with reckless disregard for the
12 safety of others.

13 Unintentional means that the Defendant did not
14 intend for anyone to be killed or seriously
15 injured. Reckless disregard for the safety of
16 others is more than mere negligence or
17 carelessness. Mere negligence or carelessness is
18 the failure to use the care that a person of
19 ordinary reason would use under the same
20 circumstances.

21 Recklessness is a conscious failure to use
22 ordinary care. Reckless disregard for the safety
23 of others means that you are not interested in the
24 consequences of your acts or the rights and safety
25 of others.

1 If a person who knows or should know that
2 ordinary care requires certain precautions be taken
3 for the safety of others when using a dangerous
4 instrumentality, such as a gun or car, but that
5 person fails to use those precautions without
6 concern, the person's actions are considered
7 reckless.

8 The State must also prove beyond a reasonable
9 doubt that the Defendant's act was the proximate
10 cause of death. Proximate cause is a direct cause.
11 It is the immediate cause. It is the efficient
12 cause. It is the cause without which the death of
13 the victim would not have resulted. There must be
14 a chain of causation from the time of the injury
15 inflicted by the Defendant until the time of the
16 victim's death. Proximate cause does not
17 necessarily mean that it occurred immediately prior
18 to death.

19 All right. Mr. Foreman, is there any other
20 portions of the jury charge that you would like for
21 the Court to read? Is that what you were asking
22 for?

23 MR. FOREMAN: Yes, Your Honor.

24 THE COURT: Is there anything else -- any
25 other portions that you're asking for at this time?

1 MR. FOREMAN: No, Your Honor.

2 THE COURT: And if there are, we'll be glad to
3 read those to you.

4 Thank you. You may continue your
5 deliberations. And you can deliberate while you
6 eat, it's up to you all.

7 (WHEREUPON, the jury retires to the jury
8 room at 7:56 p.m.)

9 THE COURT: Any objections or exceptions?

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

11 MR. LEIENDECKER: None from the Defense.

12 THE COURT: All right. So we will break and
13 see what they say. If they have any other
14 questions, we'll give you a call.

15 (WHEREUPON, a break was taken.)

16 THE COURT: All right. You may be seated. So
17 we're going to bring them back at 9:30 in the
18 morning. We're going to take our evening break.

19 So you can bring them in. I'll tell them to
20 stop deliberating.

21 (WHEREUPON, the jury came into open
22 court at 9:34 p.m.)

23 (WHEREUPON, the alternates came into
24 open court.)

25 THE COURT: Ladies and gentlemen of the jury,

1 it's about -- it's 9:35 now. We are going to go
2 ahead and take our evening break and have you all
3 back in the morning at 9:30. Although you began
4 your deliberations, you cannot -- once you are out
5 of the jury room and you have been instructed to
6 stop, you have to stop your deliberations. And you
7 will be able to begin at 9:30 in the morning.

8 We will not bring you back in the courtroom.
9 As soon as, Mr. Foreman, as soon as all the jurors
10 are present, then you may begin your deliberations
11 at that time.

12 So we will see you all tomorrow morning at
13 9:30. Remember, you still cannot discuss the case.
14 You cannot do any research on the case. And have a
15 good evening.

16 Thank you.

17 (WHEREUPON, the jury retires to the jury
18 room at 9:36 p.m.)

19 MR. LEIENDECKER: Your Honor, I spoke with
20 counsel, and we both are of the opinion that if we
21 get back in the morning, everybody is here, we
22 don't have any -- lose anybody or have any issue or
23 problem, we would both, State and Defense, be in
24 agreement to go ahead and release the alternates
25 tomorrow morning.

1 THE COURT: Okay.

2 MR. LEIENDECKER: We need to get through the
3 night, but --

4 THE COURT: Yeah, well, that was my concern.

5 MR. LEIENDECKER: If we had to go overnight.

6 THE COURT: Yes, overnight.

7 MR. LEIENDECKER: I think that's appropriate.

8 THE COURT: Okay. That was my concern.

9 All right. We will see you in the morning at
10 9:30.

11 Hold on one second. Let me see you all up
12 here one second.

13 (WHEREUPON, a bench conference was
14 held.)

15 THE COURT: All right. 9:30 in the morning.
16 Go ahead and take her in custody.

17 (WHEREUPON, the proceedings concluded at
18 9:39 p.m.)

19 MARCH 8, 2016

20 (WHEREUPON, the jury resumed
21 deliberations at 9:35 a.m.)

22 (WHEREUPON, Court's Exhibit No. 12 was
23 marked for identification only.)

24 (WHEREUPON, the following occurs in the
25 Judge's Chambers at 11:26 a.m.)

1 (WHEREUPON, Juror Number 186 enters the
2 chambers.)

3 THE COURT: Hey. You can have a seat. You're
4 Jill Vaughan?

5 THE JUROR: Yes.

6 THE COURT: The foreman sent a note out. I'm
7 sure you're aware of it. I think you may have
8 spoken with him?

9 THE JUROR: Yes, I did.

10 THE COURT: He said that you wanted to speak
11 with us in private?

12 THE JUROR: Yes.

13 THE COURT: Regarding being a victim of
14 domestic violence -- previously being a victim of
15 domestic violence?

16 THE JUROR: Yes.

17 THE COURT: Okay. And don't -- let me say --
18 we don't want to know what the discussions are in
19 there. We can all assume that domestic violence
20 has probably come up in the discussions just
21 because that is the part -- that's come up as part
22 of the case. But I need to find out from you when
23 you were a victim of domestic violence and some
24 details regarding that.

25 THE JUROR: It was when I was in -- between

1 the ages of 16 and 21.

2 THE COURT: Okay.

3 THE JUROR: I was in a relationship for five
4 years and he threw me around a lot. He -- so I had
5 bruises on my arms. Busted lip from him, like,
6 hitting me with his head. And he bit my face once.
7 He would just -- he would show out, like, all the
8 time. But it was the, you know -- I mean, typical
9 abuse, where, you know, very apologetic afterwards
10 and --

11 THE COURT: Yes.

12 THE JUROR: -- then you have the honeymoon
13 period.

14 THE COURT: Cycle.

15 THE JUROR: Right. So I think it's clouding
16 my judgment on this trial.

17 THE COURT: So -- and we asked the question on
18 Monday and I know you -- was that Monday last week?

19 THE JUROR: Last Monday.

20 THE COURT: And I don't think -- when we
21 looked back in the notes, you did not disclose
22 that.

23 THE JUROR: Yes, because that's embarrassing.

24 THE COURT: But you do think that -- well, let
25 me ask you this, I have to ask the question I asked

1 on Monday, does the fact that you were involved in
2 a domestic violence relationship affect your
3 ability to be fair and impartial on this jury?

4 THE JUROR: I feel like it is.

5 THE COURT: All right. Okay. All right.
6 Anything else?

7 MR. JUSTIS: No, ma'am.

8 THE COURT: Why don't you just sit -- Stacy
9 will take you.

10 Why don't you have her sit back outside.

11 We're not going to send you back in the jury
12 room right now, okay?

13 THE JUROR: Okay.

14 THE COURT: We need to discuss and figure out
15 what we're going to do.

16 THE JUROR: Okay.

17 THE COURT: All right. Thank you.

18 She can sit right outside the door.

19 (WHEREUPON, juror exits the chambers.)

20 THE COURT: Okay.

21 MR. SORENSON: We have alternates. She can't
22 stay. She would have been struck for cause last
23 Monday. I mean, she would have never been in this
24 situation had she disclosed that. I'm a little
25 concerned because I don't know -- I don't know if

1 we need to find out how much she's talked about all
2 that back in there.

3 THE COURT: Well, that's the other thing.
4 What we would have to do is -- because she sat in
5 there, we would have to bring each of the other
6 jurors in, find out what she --

7 MR. SORENSON: Said to them.

8 THE COURT: This is what the case law says,
9 find out what she said, if she participated in the
10 conversation -- if she participated in
11 deliberations and what her comments have been. And
12 then you have to ask them would it affect their
13 ability to be fair and impartial jurors. And if
14 they say yes, then we have to excuse them and seat
15 an alternate.

16 So that is what -- and Stacy can find the case
17 law, but because I kind of have done this before.
18 And we almost have to find out what her comments
19 have been and if it would affect their ability to
20 be fair and impartial.

21 MR. SORENSON: I don't know if -- I guess my
22 suggestion would be maybe bring the foreman in
23 first and find if this is something where she just
24 kind of disclosed this to him. You know, if she
25 was emotional in there and said something to him

1 and he sent the note out or if it was literally all
2 of this came out in deliberations. I mean, we
3 still may have to question them, but, at least, to
4 give us an idea how -- I mean, literally, if she
5 brought all that out in discussions back there, I
6 mean, that's not good.

7 THE COURT: Anything from you all? You want
8 me to bring the foreman in?

9 MR. LEIENDECKER: Sure.

10 THE COURT: All right.

11 MR. LEIENDECKER: Before we bring the foreman
12 back in, should we bring her back in and ask her if
13 she participated and what she said?

14 THE COURT: I can.

15 MR. SORENSON: That might not be --

16 MR. LEIENDECKER: Because if she comes back in
17 and says, I haven't really told anybody until I
18 told him, then he could confirm that.

19 THE COURT: Stacy, can you bring her back in?

20 THE LAW CLERK: Bring her back in first?

21 THE COURT: Yes. Just tell him to have a
22 seat.

23 (WHEREUPON, Juror Number 186 enters the
24 chambers.)

25 THE COURT: Come on in. It's okay. I don't

1 want you getting stressed out. Everybody just
2 wants to have a fair and impartial jury. And we
3 know the issues are sensitive. And as we were
4 sitting hear saying that this happens, this is not
5 the first time that this has happened.

6 Let me ask you real quick. As far as your
7 discussions in there, have you disclosed this only
8 to the foreman, or did you disclose it to everyone
9 there, in the jury room?

10 THE JUROR: Everyone in there.

11 THE COURT: And what part of it have you
12 discussed with them exactly? What you told me?

13 THE JUROR: Yes.

14 THE COURT: Okay. And was that an active part
15 of your deliberations? I mean, were you actively
16 engaging in deliberations?

17 THE JUROR: Yes, I was.

18 THE COURT: Okay. And I know, of course, in
19 deliberations, jurors explain -- not what -- don't
20 tell me what the other jurors said, but what you
21 may have said. Jurors explain, and we ask you to,
22 your own personal observations and things. Is that
23 something that you disclosed to them regarding your
24 relationship and things --

25 THE JUROR: Yes, I said I had some experience

1 with abuse.

2 THE COURT: Okay. And you got into -- you
3 kind of gave them the details?

4 THE JUROR: Yeah, just a few, yeah.

5 THE COURT: All right. All right. Anything
6 else from you all?

7 (WHEREUPON, there was no response.)

8 THE COURT: All right. We're going to send
9 you back out one more time. We're not trying -- I
10 don't want you to get up -- oh, you have water,
11 you're okay?

12 THE JUROR: Yes.

13 (WHEREUPON, Juror Number 186 exits the
14 chambers.)

15 THE COURT: Bring the foreman.

16 Y'all ready for him?

17 MR. SORENSON: It sounds like we have to
18 question everybody.

19 MR. LEIENDECKER: Yes.

20 (WHEREUPON, Foreman enters the
21 chambers.)

22 THE COURT: Hey, how are you?

23 MR. FOREMAN: Good. How are you?

24 THE COURT: Good. Have a seat. Have a seat.
25 Now, you pronounce your last name, is it Basile?

1 MR. FOREMAN: Yes, ma'am.

2 THE COURT: Okay. I appreciate you sending
3 the note out. And as a result, we did bring --
4 followed your suggestion and brought her in
5 privately. And she's saying that -- exactly what
6 you're saying, it has been emotional for her.

7 Can you just give me -- not telling me kind of
8 what everyone else said, but just the situation
9 with her? What is -- is she just --

10 MR. FOREMAN: It was something -- I don't
11 think she wanted to get up in front of the Court.
12 I don't think she understood the question, like,
13 pre-jury questioning. I don't think she understood
14 --

15 THE COURT: Yes.

16 MR. FOREMAN: -- that this case was going into
17 that. But late last night, I could kind of
18 sense -- she came out last night probably right
19 before we got done. That was about 9:30 or
20 something like that?

21 THE COURT: Yeah.

22 MR. FOREMAN: And she came out with that and
23 that's kind of where we kind of just were, Look,
24 this is kind of not -- she wasn't supposed to have,
25 like, a bias towards this kind of the case.

1 THE COURT: Yes.

2 MR. FOREMAN: But it kind of throws --

3 THE COURT: Was she crying or anything?

4 MR. FOREMAN: She started to, yeah.

5 THE COURT: And she explained to you all her
6 personal situation?

7 THE FOREMAN: She did.

8 THE COURT: Okay.

9 THE FOREMAN: And it kind of threw up some red
10 flags with some of the other jurors. I could
11 tell -- they didn't say anything, but you could
12 kind of tell. Then this morning, they kind of --
13 we slept on it and then I could kind of tell there
14 was a few that whispered something to me, and then
15 we decided that just to calmly just approach her
16 and -- because I didn't want to have this out there
17 with her because it's kind of her personal --

18 THE COURT: Yeah.

19 MR. FOREMAN: And I don't -- I respect that
20 for her to actually say that to us.

21 THE COURT: Let me ask you this. Do you think
22 that what she's -- because you all have began
23 deliberating, do you believe that what she said and
24 the -- you know, I guess her physical or emotional
25 state, would that affect your ability to be --

1 continue to be fair and impartial in this trial?

2 MR. FOREMAN: I believe she has in her mind --
3 I think what she's been through --

4 THE COURT: No, no, your ability? Do you
5 think if -- let me -- you suggested --

6 MR. FOREMAN: What she said --

7 THE COURT: -- release her and replace her
8 with an alternate. Based on what she has said in
9 her -- based on her experience and what has
10 happened with her, would that affect your ability
11 to be fair and impartial in this trial?

12 MR. FOREMAN: I don't believe so. She didn't
13 really go into detail last night of what actually
14 happened to her, but she was just basing everything
15 kind of seemed like from her personal experience
16 and that's what she was --

17 THE COURT: Okay.

18 MR. FOREMAN: But after she has mentioned it,
19 she didn't say a whole lot after. She kind of got
20 quiet. She was very -- I don't know, she was a
21 little upset.

22 THE COURT: So would anything that she said --
23 have said or done during deliberations affect your
24 ability to be fair and impartial?

25 MR. FOREMAN: No, ma'am.

1 THE COURT: Okay. All right. We may bring
2 you back in.

3 THE FOREMAN: Okay.

4 THE COURT: If he can just sit right outside.
5 (WHEREUPON, Foreman exits the chambers.)

6 THE COURT: Okay. I'll be glad to hear from
7 the State.

8 MR. JUSTIS: I mean, I would think if the
9 jurors say they can all be fair and impartial, you
10 know, we allow her to be replaced and then
11 continue.

12 THE COURT: Yes, sir. Of course, I know you
13 need to go talk to your client.

14 MR. LEIENDECKER: I really -- yes. And I
15 don't -- I mean, it's unique and new to me. I
16 don't really know.

17 THE COURT: Do you want --

18 MR. LEIENDECKER: I'm not certain that anybody
19 wouldn't be honest with us in telling us they think
20 they can be fair and impartial, but at the same
21 time, I'm not certain what reaction what she said
22 will have, either positive or negative, on their
23 view of the case. And, Lord knows, I'm not looking
24 to come back and do this again.

25 THE COURT: I can formulate two or three

1 questions or we can formulate two or three
2 questions to ask them and then --

3 MR. LEIENDECKER: I mean, the thing that
4 concerned me was, what he said from the chair was,
5 I think she was just -- something about her
6 personal history or past, she was involving that in
7 her decision-making process. That's way
8 paraphrased, but that's the sense I got. And the
9 truth is, that's not improper. I mean, the
10 Solicitor and I both asked them to use their common
11 sense and personal experience in thinking about the
12 case.

13 THE COURT: But what's improper -- and I think
14 what --

15 MR. LEIENDECKER: Well, it's clearly improper
16 --

17 THE COURT: -- was not --

18 MR. LEIENDECKER: -- her having that history
19 and not disclosing it.

20 MR. JUSTIS: Then coming back and saying I
21 can't --

22 THE COURT: Well, he also said that the other
23 jurors when she brought it out were all looking
24 like, why didn't she say anything on Monday.
25 That's kind of what he said.

1 MR. LEIENDECKER: Right.

2 THE COURT: So he said -- then he came back
3 and said, because we're all supposed to be -- we're
4 not supposed to have any biases --

5 MR. SORENSON: Right.

6 THE COURT: -- or pre -- so.

7 MR. JUSTIS: I think if the other jurors are
8 all like that, they understand that, well, she got
9 too -- she took it too personal, and they can still
10 be fair and impartial, that would be no different
11 than someone in voir dire coming up and saying,
12 I've been a victim, I don't think I could be fair
13 and impartial, and we dismiss them in front of the
14 whole jury panel and they all see that person get
15 dismissed. I mean, as long as they individually
16 can be fair and impartial and there's nothing that
17 she said that would make them not be fair and
18 impartial.

19 MR. STEVENS: That's right, and that's the
20 concern. It's a little bit different because I
21 think from what you and he said and what she told
22 us, she didn't relay some details and, apparently,
23 was a lot of visible emotion about it.

24 MR. JUSTIS: One prospective juror in voir
25 dire will start crying when she's talking about her

1 sister or cousin or whoever it was.

2 MR. STEVENS: But if she says we know it's a
3 full taint of the entire pool, number one, to what
4 extent does it affect the jury.

5 THE COURT: We have to bring them in. I think
6 what has to happen, according to the case, I think
7 we have to bring them all in, if I remember
8 correctly, question every single one of them and
9 see what they say. And if they all say they can be
10 fair and impartial -- because before anyone can
11 make a motion for a mistrial, I think I have to do
12 that.

13 MR. SORENSON: Right, yes, ma'am.

14 THE COURT: And then after we do that, if for
15 some reason someone is being untruthful or someone
16 says they can't be fair and impartial --

17 MR. JUSTIS: Right.

18 THE COURT: -- then --

19 MR. SORENSON: Maybe do that and run out of
20 alternates.

21 THE COURT: I would have to entertain a motion
22 for a mistrial at that time. But I think we have
23 to bring them in, if I'm remembering the case.

24 MR. LEIENDECKER: Individually?

25 THE COURT: Oh, yes, yes, at this point.

1 MR. LEIENDECKER: Not as a pool?

2 THE COURT: No. No, individually, because --
3 yes -- no, because if you bring them in all
4 together, they're going to all say -- do what the
5 other ones -- if everybody says yes, they're going
6 to all say yes.

7 All right. So we got the foreman.

8 Bring him back in because I need to tell him
9 he cannot discuss any of the questions that we
10 discussed in here or discuss anything we discussed.
11 And then I'll explain to him what's going on, that
12 we're going to bring each individual juror in.

13 MR. LEIENDECKER: Are we going to leave them
14 in the jury room together as they're coming and
15 going? Where do we have the alternates right now?

16 THE COURT: In the other jury room, but
17 there's two jury rooms.

18 MR. LEIENDECKER: Can we send those being
19 questioned to a different jury room?

20 THE COURT: Yes, we'll figure out the
21 logistics.

22 (WHEREUPON, Foreman enters the
23 chambers.)

24 THE COURT: Come on in. All right, so what we
25 have to do is we have to bring -- just like the

1 other jurors back in, leave Juror Number 5 in the
2 jury room by himself now, and bring the other
3 jurors back.

4 MR. LEIENDECKER: Your Honor, do you have to
5 bring in the prior jury panel first before the
6 seated alternate is brought back so you can talk
7 about --

8 THE COURT: I can. I can. Yes, that is
9 correct.

10 Bring the other 11 in, and we'll bring them
11 back in in a second.

12 THE BAILIFF: The alternate?

13 THE COURT: Don't bring them just yet, just
14 the other one.

15 Thank you.

16 (WHEREUPON, the jury came into open
17 court at 1:32 p.m.)

18 THE COURT: All right. I appreciate your
19 patience this morning. I know it has been a long
20 morning. Your lunch should be coming shortly.

21 At this time we are going to seat another --
22 seat the alternate -- one of the alternates. They
23 have been in the other room. You all cannot
24 discuss -- you are going to have to start your
25 deliberations completely over. You cannot discuss

1 anything regarding Juror Number 186, anything that
2 she said. The whole process that has happened here
3 today, they have no idea, and you cannot discuss
4 that with them, anything that she may have said or
5 done and why she was replaced.

6 All right. So we'll bring in Juror Number 2.
7 There is a short jury charge, one page, that I need
8 to give you. And then you will be sent back in the
9 jury room to begin your deliberations. There is a
10 new verdict form also.

11 All right. You can bring in Juror Number 2.

12 (WHEREUPON, alternate juror enters the
13 courtroom at 1:34 p.m.)

14 THE COURT: Ladies and gentlemen of the jury,
15 due to unforeseen circumstances, it has become
16 necessary to replace Juror 186 with one of our
17 alternate jurors with you on the jury panel. And
18 that will be Alternate Juror Number 2.

19 I ask that you all now return to the jury room
20 and begin your deliberations anew. You have a duty
21 to make every reasonable effort to reach a
22 unanimous verdict. In doing this, you should
23 consult with one another, express your own views,
24 and listen to the opinions of your fellow jurors,
25 tell each other how you feel and why you feel that

1 way, discuss your differences with an open mind.
2 Although the verdict of the jury must be unanimous,
3 every one of you has the right to your own opinion.
4 The verdict you reach must be your own verdict, the
5 result of your own convictions, and you should not
6 give up your firmly held beliefs to be in agreement
7 with your fellow jurors.

8 Ladies and gentlemen of the jury, as to the 11
9 of you who were in the previous deliberations, this
10 is brand new. There is a new alternate. You will
11 need to review the exhibits. Again, this is a new
12 process of deliberating, so you will need to start
13 all over again with your deliberations.

14 All right. Of course, if there is any portion
15 of the jury charge that you would like read again,
16 I will be more than happy to do that for you.

17 Just let me know, Mr. Foreman.

18 MR. FOREMAN: (Nods affirmatively.)

19 THE COURT: All right, thank you. And you may
20 begin once you receive the exhibits, the verdict
21 form, and the instructions from the bailiff.

22 (WHEREUPON, the jury retires to the jury
23 room at 1:35 p.m.)

24 THE COURT: All right, any objections or
25 exceptions?

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

2 MR. LEIENDECKER: None.

3 THE COURT: All right. This was -- the jury
4 charge been marked as Court Exhibit Number 13.

5 We printed an all new verdict form. Y'all
6 want to take a look at that again, check the
7 exhibits, and let's start all over?

8 And, Madam Court Reporter, you may mark the
9 time they begin deliberations.

10 (Pause.)

11 THE COURT: Just real quick, that rule that I
12 was looking at, it is 24(b), it is a federal rule I
13 think I cited, because I could not find -- I could
14 not find any state court cases on the issue. So
15 that is a federal rule. For the record, because he
16 was looking for that.

17 Okay. So we will go ahead and send it back
18 and start deliberations at 1:40.

19 (WHEREUPON, the jury began deliberations
20 anew at 1:40 p.m.)

21 (WHEREUPON, court was in recess awaiting
22 a verdict.)

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

24 All right. It is my understanding that the
25 jurors have informed the bailiffs that they have a

1 verdict. And there he is with the exhibits.

2 Before the jurors come back in, for those of
3 you who are seated in the audience, when the
4 verdict comes in, I am instructing you at this
5 point that there are not to be any outbursts. If
6 you feel that you cannot control your emotions and
7 control yourself, I am going to ask and give you an
8 opportunity to leave out at this time. But there
9 are not to be outbursts when the verdict is
10 announced.

11 Is there anything else before I bring the
12 jurors in?

13 MR. JUSTIS: Nothing from the State.

14 MR. LEIENDECKER: No, Your Honor.

15 THE COURT: All right. You can bring them in.
16 (WHEREUPON, the jury came into open
17 court at 2:54 p.m.)

18 VERDICT

19 THE COURT: All right. Thank you.

20 All right. Mr. Foreman, it is my
21 understanding that the jury has reached a verdict;
22 is that correct?

23 MR. FOREMAN: Yes, Your Honor.

24 THE COURT: And is that verdict unanimous?

25 MR. FOREMAN: Yes, Your Honor.

1 THE COURT: All right. If you can hand the
2 verdict form to the bailiff.

3 (Foreman complies.)

4 THE COURT: All right. I will ask the clerk
5 to publish it.

6 THE CLERK: Your Honor, we have State of South
7 Carolina, County of Aiken vs. Robin Renee Herndon,
8 Indictment Number 2014-GS-02-00664. As.

9 To the indictment alleging murder: We, the
10 jury, unanimously find the Defendant not guilty.

11 As to the charge of voluntary manslaughter:
12 We, the jury, unanimously find the Defendant
13 guilty.

14 Signed by Juror Foreman, Jason Basile, dated
15 March 8, 2016.

16 THE COURT: All right.

17 THE CLERK: Mr. Foreman, and ladies and
18 gentlemen of the jury, is this your verdict?
19 Please indicate by raising your right hand.

20 (Jurors complied.)

21 THE CLERK: All hands were raised.

22 THE COURT: All right. Let the record reflect
23 that all jurors have raised their right hand.

24 Anything else before I release the jurors?
25 From the State?

1 MR. JUSTIS: Nothing from the State, Your
2 Honor.

3 THE COURT: Anything from the Defense?

4 MR. LEIENDECKER: The Defense would ask that
5 they be individually polled --

6 THE COURT: Yes, sir.

7 MR. LEIENDECKER: -- for their verdict.

8 THE COURT: All right, yes, ma'am, if you
9 could individually poll the jurors by their juror
10 numbers.

11 THE CLERK: Yes, ma'am.

12 As I call your name, please answer the
13 following question.

14 Juror Number 77, Wendy K. Hausrath, is this
15 your verdict?

16 THE JUROR: Yes.

17 THE CLERK: And do you still agree?

18 THE JUROR: Yes.

19 THE CLERK: Juror Number 110, Brian
20 Marchildon, is this your verdict?

21 THE JUROR: Yes.

22 THE CLERK: And do you still agree?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 90, Lauren Hunt, is
25 this your verdict?

1 THE JUROR: Yes.

2 THE CLERK: And do you still agree?

3 THE JUROR: Yes.

4 THE CLERK: Juror Number 32, Candy R. Butler,
5 is this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: And do you still agree?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number 3, Larry Ainscough,
10 is this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: And do you still agree?

13 THE JUROR: Yes.

14 THE CLERK: Juror Number 191, Beverly Watson.

15 THE JUROR: Yes.

16 THE CLERK: Is this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Do you still agree?

19 THE JUROR: Yes.

20 THE CLERK: Juror Number 102, Jeffrey Kenley?

21 THE JUROR: Yes.

22 THE CLERK: Is this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: And do you still agree?

25 THE JUROR: Yes.

1 THE CLERK: Juror Number 193, Robert Wilkes,
2 is this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: And do you still agree?

5 THE JUROR: I do.

6 THE CLERK: Juror Number 76, Mack Hartley,
7 Jr., is this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: And do you still agree?

10 THE JUROR: Yes.

11 THE CLERK: Juror Number 16, Jason Basile?

12 THE JUROR: Yes.

13 THE CLERK: Is this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Do you still agree?

16 THE JUROR: Yes.

17 THE CLERK: Juror Number 60, Roland C. Franks?

18 THE JUROR: Yes.

19 THE CLERK: Is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: And do you still agree?

22 THE JUROR: Yes.

23 THE CLERK: Juror Number 2, J. L. Adams, is
24 this your verdict?

25 THE JUROR: Yes.

1 THE CLERK: And do you still agree?

2 THE JUROR: Yes.

3 THE CLERK: Your Honor, that is all.

4 THE COURT: All right, thank you.

5 Ladies and gentlemen of the jury, I would like
6 to thank you all for your service this week and
7 last week. I know that it has been long evenings,
8 long days, but I do want you all to know that we
9 appreciate you all serving this week. There are
10 matters that come up in this court, whether it be
11 civil or criminal, that cannot be resolved. And
12 that is when we have to employ 12 persons like
13 yourself to participate in the civic process and
14 fulfill your civic duty. And so I do want to thank
15 you all for your service here this week. On behalf
16 of everybody here, thank you. I know it has been a
17 sacrifice for you all, and I just want you to know
18 that we appreciate your service and your -- and the
19 time that you have spent here.

20 The clerk should have --

21 You have some additional paperwork or
22 anything?

23 THE CLERK: They can go back to the jury room.
24 That's what I was just asking. I have to get it
25 from the jury clerk.

1 THE COURT: They will have some paperwork for
2 you at this point. I usually tell you you cannot
3 talk to anyone. You can talk to whoever you
4 choose. You can go home and tell your family
5 members about the case if they choose to hear --
6 listen to you.

7 But at this point, we are going to send you in
8 the jury room. You should get -- if you need a
9 work excuse, she can give you a work excuse. You
10 should not have to -- you will not have to serve in
11 this court for three years unless you choose to do
12 so after the first year.

13 All right. Thank you. Have a wonderful day.

14 (WHEREUPON, the jury is excused at 3:00
15 p.m.)

16 THE COURT: All right. Anything else from the
17 State?

18 MR. JUSTIS: Nothing, Your Honor.

19 THE COURT: Oh, I'm sorry. And to our
20 alternate, who has also stayed here with us. Thank
21 you for your services. Thank you for your
22 patience. I am going to -- you will be released
23 also. You can go in the room with them now and
24 wait for the paperwork.

25 Thank you again, sir.

1 ALTERNATE JUROR: Thank you.

2 (WHEREUPON, the alternate was excused.)

3 THE COURT: Yes, sir, Mr. Leiendecker?

4 MR. LEIENDECKER: Your Honor, I would, of
5 course, renew my directed verdict motions. We
6 still think the evidence was insufficient even to
7 support the involuntary conviction, which was
8 stated today, and that there was not a showing
9 beyond a reasonable doubt concerning the
10 self-defense argument. And, therefore, the State
11 should order a new trial in this case.

12 THE COURT: And I think for the reasons
13 previously stated, I am going to respectfully deny
14 the motion for a directed verdict or a new trial at
15 this point.

16 I do find that there was sufficient evidence
17 placed before the jury for them to come to a
18 decision. And for that reason, I am going to
19 respectfully deny your motion. All right.

20 MR. LEIENDECKER: Your Honor, secondly, at
21 this time, the Defense would move, because of the
22 nature of this case, because of the evidence
23 presented, and because of the position that my
24 client held up until 2013 with law enforcement,
25 that Your Honor would entertain the Defense motion

1 to at this time defer sentencing until such time as
2 a presentence report can be prepared, which will
3 assist not only the Defense and the State, but the
4 Court in examining not only her background, but the
5 facts relative to sentencing.

6 THE COURT: All right.

7 MR. LEIENDECKER: I think it is well within
8 the Court's discretion. And I think although it
9 has never really been anything I've asked for, it
10 is something that is unique in this kind of
11 situation in this kind of case.

12 THE COURT: All right.

13 MR. LEIENDECKER: I would also tell the Court
14 that we will be moving for a hearing on the issue
15 of domestic violence, and that would give us --

16 THE COURT: Under Section 16-25-90?

17 MR. LEIENDECKER: Yes, ma'am. And that would
18 give us sufficient time, obviously, well before
19 that to have the presentence report done and we can
20 appear in front of Your Honor for sentencing
21 anywhere, as we would waive those kind of venue
22 issues.

23 THE COURT: All right. Yes, let me hear from
24 the State.

25 MR. JUSTIS: Well, Your Honor, I think the

1 victim's family has been put through enough. At
2 this point in time, I think they want to see a
3 resolution. And so we would ask that sentencing
4 commence today, Your Honor.

5 THE COURT: All right. What I am going --
6 what I will do -- I think I'm back here in April.
7 I don't know -- I'm here in April. I'm here a
8 couple of times. I don't have the schedule. I
9 don't know how long it is going to take for a
10 presentence investigation to be done. And I'm not
11 sure, considering -- because she worked at
12 Probation, Pardon and Parole, that is who normally
13 does it, I'm not sure if they are going to conflict
14 themselves out from doing it.

15 MR. LEIENDECKER: Your Honor, I'm certain,
16 obviously, from what we heard, Aiken will conflict
17 themselves out. It would have to be done by one of
18 the neighboring counties. But I'm also
19 sufficiently certain in the cases where I've seen
20 it done that it can be prepared, certainly, well
21 before an April term of court. It doesn't really
22 take that long.

23 THE COURT: I'm here in April and in May. So
24 I can -- I would like to have that information. I
25 understand the family wanting her to be sentenced

1 today, but I would like to have that information.
2 I also, of course, have to look at the factors
3 under 16-25-90 regarding the domestic violence
4 eligibility parole statute. And I think it would
5 only be fair to give them an opportunity to be able
6 to make that argument and you all to make any
7 arguments against her being given that
8 consideration under Section 16-25-90.

9 So, with that being said, I will not sentence
10 her today. I am not going to allow her to go
11 home --

12 MR. LEIENDECKER: I understand that.

13 THE COURT: -- in that she has been convicted.
14 She will have to be detained at the Aiken -- is
15 there an issue with her being detained at Aiken
16 County Detention Center?

17 MR. LEIENDECKER: The issue and/or problem
18 with Aiken, Your Honor, is that as a parole officer
19 it puts her in a very untenable situation or
20 position. And she's had to be held there in
21 protective custody.

22 THE COURT: I can --

23 Yes, ma'am?

24 THE DEPUTY: If she does come back, we're
25 going to probably send her somewhere for

1 safekeeping.

2 THE COURT: All right. And if I need to sign
3 an order to that effect. I'm not sure --

4 I'll ask the Solicitor where they normally
5 would send someone. Like in Columbia, we send them
6 to Camden.

7 MR. JUSTIS: Wherever you choose.

8 THE DEPUTY: You mean as far as jail-wise?

9 MR. JUSTIS: Yes.

10 THE DEPUTY: The jail normally just
11 corresponds and finds one that doesn't have a
12 conflict.

13 THE COURT: Okay. Okay. And then can you all
14 let her attorney know so that he --

15 THE DEPUTY: As long as he gives us his
16 contact information.

17 THE COURT: And he'll be glad to do that.

18 MR. JUSTIS: Your Honor, if you like, we can
19 have her transferred down to Dorchester County.
20 Mr. Leiendecker is right there.

21 MR. LEIENDECKER: That would be most excellent
22 if she could be held in Dorchester Detention
23 Center.

24 THE COURT: I will -- if there's no objection,
25 I'll sign an order to that effect. Somebody just

1 needs to get me an order today.

2 MR. LEIENDECKER: I'll have an order for you
3 today.

4 THE COURT: Saying that she will be
5 transported to Dorchester.

6 And as to the presentence investigation, let's
7 see, we probably need to contact the General
8 Counsel's office at Probation, Pardon and Parole,
9 because they may just conflict themselves out of
10 it. Because one of the things, as you know, that
11 they consider is where they work, people they work
12 with. And I'm not sure --

13 MR. LEIENDECKER: Right. They may be able to
14 assign the Dorchester office to work on that, not
15 anyone who has knowledge with the Aiken agents.

16 THE COURT: So let's -- once we find someone
17 to do it, let's -- but I'm here the week of
18 April 18th and back again the week of May the 9th.
19 But if it comes up and we can do it, I'll figure
20 something out to work my schedule to come here and
21 contact Court Administration if those two weeks
22 don't work.

23 MR. LEIENDECKER: Yes, ma'am.

24 MR. JUSTIS: Yes, ma'am.

25 THE COURT: Just check -- of course, your

1 victims would have a right to be at that
2 proceeding. So we'll try to figure out a date that
3 works for everyone.

4 MR. JUSTIS: Yes, ma'am.

5 THE COURT: If I need to leave Columbia early,
6 I'll be glad to.

7 MR. LEIENDECKER: Thank you.

8 THE COURT: All right. Anything else?

9 MR. JUSTIS: Nothing from the State.

10 MR. LEIENDECKER: Nothing.

11 THE COURT: All right. So I'll just wait to
12 hear from you all. And we'll stick around while
13 he's working on that order to transport to
14 Dorchester.

15 All right, thank you. Thank you all.

16 (WHEREUPON, the proceedings were
17 concluded at 3:09 p.m.)
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24

25 (END OF TRANSCRIPT)

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF AIKEN)

COURT OF GENERAL SESSIONS
2014-GS-02-00664

3
4 State of South Carolina,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 Robin Renee Herndon,)

8 Defendant.)

9 May 9, 2016
Aiken, South Carolina

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11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

15
16
17 A P P E A R A N C E S:

18 GLENN P. JUSTIS, ASSISTANT SOLICITOR
DONALD N. SORENSON, ASSISTANT SOLICITOR
19 Attorneys for the Plaintiff

20 MARK A. LEIENDECKER, ASSISTANT PUBLIC DEFENDER
MARGARET E. HINDS, ASSISTANT PUBLIC DEFENDER
21 Attorneys for the Defendant

22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

1 (Defendant approaches.)

2 THE COURT: All right. On Indictment
3 2014-GS-2664, ma'am, you will be sentenced to the
4 State Department of Corrections for 19 years. You
5 will receive credit -- I don't know how many days
6 she has as of today for the time. I know she has
7 been in jail since March -- what is it -- this is
8 the 9th -- March 8th. I will just calculate how
9 many days that is. It is probably about --

10 MR. LEIENDECKER: She was in jail some days
11 before she was released on bond.

12 THE COURT: All right, you can give me the
13 total amount.

14 In considering -- based on the totality of the
15 circumstances and the facts of the case, in
16 considering the motion of Mr. Leiendecker, this
17 Court finds by a preponderance of the evidence that
18 the Defendant is eligible for early parole
19 consideration under Section 16-25-90.

20 The Court makes the following findings
21 regarding testimony and evidence in the case.

22 The Court finds that the testimony from co-
23 workers, specifically her supervisor, Ms. Boulton,
24 who witnessed bruising -- who testified that she
25 witnessed bruising on the arm of the Defendant on

1 one occasion and on a separate occasion she
2 witnessed the Defendant with a black eye. The
3 Defendant showed up for work with dark glasses.
4 This is consistent with the photo, Defendant's
5 Exhibit Number 6, that was presented today.

6 The Court further finds that the Defendant's
7 Exhibits 1 through 5 show bruising to the arm of
8 the Defendant from June of 2013.

9 The Court further finds that there was a
10 statement given by the victim's mother in this case
11 in the PSI that her son admitted to grabbing the
12 arm three or four months into the relationship of
13 the Defendant.

14 She also spoke to the relationship today
15 regarding the relationship being volatile between
16 the victim and the Defendant in this case.

17 And, finally, the most compelling credible
18 evidence in this case would be the testimony of
19 Dr. Cummings, an independent witness in this case,
20 who testified that the victim himself admitted to
21 her during a counseling session physically abusing
22 his mother, children, and Ms. Herndon.

23 For the reasons set forth, the Court does find
24 that by a preponderance of the evidence that the
25 Defendant is eligible under Section 16-25-90 for

1 early parole consideration or eligibility. Of
2 course, we all know that it is not guaranteed, she
3 will just come up for parole earlier than she would
4 have ordinarily come up, and then the parole board
5 will have to decide at that point as to any parole.

6 All right, anything else? Anything else from
7 the State?

8 MR. JUSTIS: No, Your Honor.

9 THE COURT: All right. Yes, sir?

10 MR. LEIENDECKER: No.

11 THE COURT: All right, thank you. I know this
12 has been difficult for both families. And I do --
13 I want to acknowledge that I know it has been
14 difficult for both families.

15 For the family of the deceased, I am sorry for
16 your loss. I hope this brings you some closure
17 regarding the court case for you, and you and your
18 family here today.

19 All right, thank you.

20 MR. LEIENDECKER: Thank you, Your Honor.

21 THE COURT: How much time did you say she has
22 done?

23 MR. LEIENDECKER: Eleven days pretrial, Your
24 Honor, eleven days before bonding. We believe that
25 calculation is 73 total days.

1 THE COURT: All right. And I will give her
2 credit for the 73 days that she has already served.

3 Thank you.

4 MR. LEIENDECKER: Thank you, Your Honor.

5 (WHEREUPON, the proceedings were
6 concluded.)
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(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Indictment No.: 2014-GS-02-00664
THE STATE	)	
	)	MOTION FOR IMMUNITY FROM
vs.	)	PROSECUTION
	)	
ROBIN RENEE HERNDON,	)	
	)	
Defendant.	)	

The Defendant, Ms. Robin R. Herndon (Ms. Herndon), by and through her undersigned counsel, respectfully moves this honorable Court for immunity from prosecution. This Motion is based upon the Protection of Persons and Property Act, within Sections 16-11-410 *et seq.* of the South Carolina Code. Ms. Herndon is entitled to immunity pursuant to the Act because: she was acting lawfully; she was in a place where she had a right to be; she was being attacked; and she was acting in compliance with established principles of self-defense.

FACTS

On November 6, 2013, Ms. Herndon was in front of her home in North Augusta, South Carolina, arguing with her live-in boyfriend, Christopher Rowley (Rowley), who shoved her to the ground during the argument.¹ Ms. Herndon repeatedly told Rowley to leave, saying among other things, "Get out of my house," and "get off my property," and she entered the safety of her home. Rowley entered Ms. Herndon's home shortly after, and the argument carried on into Ms. Herndon's home where she again told Rowley to leave, including saying, "I don't care where you go, but you can't stay here! You can't keep putting your hands on me!"

¹ According to multiple police reports provided in discovery by the State, Rowley was 5'11" and weighed 350 pounds.

FENGAD 800-831-8888	COURT'S	
	EXHIBIT NO.	
	IDENTIFICATION/EVIDENCE	
	DKT.#	
DATE:	dm	

Rowley attacked Ms. Herndon, and shoved her to the floor inside her home. Ms. Herndon was in fear for her life based not only on Rowley's present conduct, but also on his prior verbal and physical abuse toward her. Ms. Herndon was able to draw her service pistol² and get Rowley off of her. She again told Rowley to leave. Rowley reluctantly went to the front door, stepped over the threshold, then spun around and charged back toward Ms. Herndon, swinging at her pistol in the process. Ms. Herndon's service pistol fired, striking Rowley in the neck. Rowley went back out the storm door, and fell on the porch. Ms. Herndon immediately began CPR. He tried to get back up by pulling himself up by the bannister, but fell back into a plastic chair next to the front door.

When police arrived, they found *inter alia* Ms. Herndon's service pistol and a single .40 caliber fired shell casing inside her home near the front door. Further, the subsequent autopsy of Rowley indicated he died of exsanguination from a laceration of his right lung caused by the single gunshot wound to the neck.³ Ms. Herndon was arrested on November 6, 2013, for Voluntary Manslaughter. She was subsequently indicted for Murder on May 8, 2014.

² At the time of the incident, Ms. Herndon was an officer with the South Carolina Department of Probation, Parole, and Pardon Services.

³ In pertinent part, the autopsy report indicated the following regarding the gunshot wound:

It is round and measures .4 inches in diameter. There is stippling above this in the left upper neck and over the chin and neck with few stippled areas over the left forehead also. The bullet path continues downward, to the right and backward to perforate the upper lobe of the right lung causing a right hemothorax of 1000 cc.

LAW / ANALYSIS**I. Ms. Herndon is entitled to a pre-trial hearing determination of immunity under the Protection of Persons and Property Act using the preponderance of the evidence standard.**

Section 16-11-450(A) of the South Carolina Code provides in pertinent part that an individual “who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force *and is immune from criminal prosecution...*for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer....” Id. (emphasis added). Immunity under the Protection of Persons and Property Act (the Act) “is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial.” State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011); see also State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 265-66 (2013). Moreover, “when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.” Id. 392 S.C. at 411, 709 S.E.2d at 665.

In the present case, Ms. Herndon was assaulted in a place where she had a right to be: her home. While inside her home, she used deadly force to repel further attack by her boyfriend, Rowley, whom she had already ordered off her property. Accordingly, Ms. Herndon is entitled to a pre-trial immunity hearing wherein the applicable evidentiary standard is a preponderance of the evidence.

- II. **Ms. Herndon is entitled to immunity under Section 16-11-440(A) of the Act because, after she ordered Rowley to leave her premises, Rowley entered Ms. Herndon's residence and attacked Ms. Herndon when she was trying to eject him from her residence.**

At the time Ms. Herndon used deadly force within her home, Rowley was a trespasser on her property: he was told to leave, yet entered her closed doors after Ms. Herndon went inside, and despite Ms. Herndon's prior orders to leave. Ms. Herndon again ordered Rowley to leave when inside her home; yet, in the face of her repeated orders to leave, Rowley responded by attacking Ms. Herndon. Thus, when Ms. Herndon's service pistol fired, it was during the act of ejecting Rowley, who was unlawfully and forcibly attacking her inside her home.

The General Assembly's intent for passing the Act is stated in § 16-11-420:

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the castle doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and other from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

.....
(D) The General Assembly finds that a persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

Further, the General Assembly set out the circumstances where immunity may apply in Section 16-11-440 of the South Carolina Code. Specifically, Section 16-11-440(A) provides as follows:

(A) A person is *presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person*

when using deadly force that is intended or likely to cause death or great bodily injury to another person if:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, *or has unlawfully and forcibly entered* a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that *an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred*.

§ 16-11-440(A)(1)-(2) (emphasis added). In other words, a defendant is entitled to immunity from prosecution under § 16-11-440(A) when deadly force is used where: (1) *the decedent* unlawfully and forcibly entered a dwelling or residence; and (2) *the defendant* knows or had reason to believe an unlawful and forcible entry *or* unlawful and forcible act is occurring or has occurred.

In the present case, Ms. Herndon acted within her rights under the Act. First, Ms. Herndon both owned and lived in her home; as such, she held all the sticks in her bundle of rights—including the right to exclude others.⁴ Although Rowley was Ms. Herndon's live-in boyfriend, his status amounted to merely that of an invitee or guest, which could be—and unequivocally was—revoked by Ms. Herndon prior to Rowley's entry into Ms. Herndon's closed-door home. See, e.g., State v. Bradley, 126 S.C. 528, 533, 120 S.E.2d 240, 242 (1923) (“A man who attempts to force himself into another's dwelling, or who, being in the dwelling by

⁴ As the United States Supreme Court has repeatedly held, “the right to exclude [others is] ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” Nolan v. California Costal Comm’n, 483 U.S. 825, 831 (1987) (quoting Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 433 (1982)).

invitation or license refuses to leave when the owner makes that demand, is a trespasser . . ."). Thus, Rowley's status was that of a trespasser not only when he forcibly entered the closed doors of Ms. Herndon's home, but also at the time when he was shot. Id.

Next, Ms. Herndon knew an unlawful and forcible entry occurred into her home by Rowley. After their argument in front of Ms. Herndon's home, and after Ms. Herndon told Rowley to leave, Rowley instead barged into Ms. Herndon's home and went inside.

Further, Ms. Herndon was acutely aware that unlawful and forcible acts were occurring or occurred; she was the victim of Rowley's abuse, both outside and inside her home. Specifically, when she went inside her own home, and reiterated her demand that Rowley leave, she was assaulted by Rowley. Even after the initial assault, Ms. Herndon was able to draw her service pistol⁵ and get Rowley off of her. She again told Rowley to leave. Rowley reluctantly went to the front door, stepped over the threshold, then spun around and charged back toward Ms. Herndon, swinging at her pistol in the process. Ms. Herndon's service pistol fired, striking Rowley in the neck. In so doing, Ms. Herndon was aware of—and reacted to—the unlawful and forcible acts of Rowley. Under these circumstances, Ms. Herndon's use of force was justified under § 16-11-440(A) of the Act; she had a right to expect to remain unmolested and safe within her home, *and she was presumed* to have a reasonable fear of imminent peril of death or great bodily injury to herself when using deadly force as she was attacked by Rowley during her efforts to eject him from her home.⁶ Accordingly, she is entitled to immunity.

⁵ At the time of the incident, Ms. Herndon was an officer with the South Carolina Department of Probation, Parole, and Pardon Services.

⁶ See Bradley, 126 S.C. at 533, 120 S.E.2d at 242 ("A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much

III. Ms. Herndon is entitled to immunity from prosecution under Section 16-11-440(C) the Act because she was acting lawfully while in a place where she had a right to be when she was attacked and acted in self-defense.

As previously indicated, the General Assembly set out the circumstances under which immunity may apply in Section 16-11-440 of the South Carolina Code. While § 16-11-440(A) refers to individuals being able to act when in their residence, dwelling, or occupied vehicle, subject to the exceptions of Section 16-11-440(B), Section 16-11-440(C) provides broader protection. Specifically, Section 16-11-440(C) of the South Carolina Code provides as follows:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

Id. Thus, § 16-11-440(C) provides immunity to someone who uses deadly force when she is acting lawfully and is being attacked in a place where she has a right to be.

In State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), the South Carolina Supreme Court clarified the applicability of Sections 16-11-440(A) and -440(C) in situations where the

force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.”); see also State v. Bryant, 391 S.C. 225, 234, 705 S.E.2d 465, 470 (Ct. App. 2010) (citing State v. Sparks, 179 S.C. 135, 137, 183 S.E.2d 719, 720 (1936). To this end, “if the entry itself is made in a reckless, riotous or violent manner, or is effected by overcoming the physical or verbal opposition of the occupant, or is made under such circumstances as manifestly evidence a purpose to endanger the life or limb of any inmate, or to commit a felony on them, the habitation or property therein, in other words, is not quiet and peaceable, no request to depart, or the laying on of hands, need precede, as a legal requirement, the act of ejectment by such force as is necessary, even to the killing of the assailant, for the very obvious reason, as is well said in one of the cases, ‘since the trespasser knows as well without express words as with, that his absence is desired.’” Bradley, 126 S.C. at 534, 120 S.E.2d at 243.

decedent had a right to be inside the residence where he was shot:

Section 16-11-440(A), the main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle. However, the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence. Because [the decedent] was a social guest and rightfully in the apartment, subsection (A) is inapplicable to [the defendant], *and he is therefore defaulted into subsection (C) which deals with the use of force by one who is attacked in another place where he has a right to be.*

Id. 406 S.C. at 370, 752 S.E.2d at 266 (emphasis added) (internal citations omitted). Further, “the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Acts immunity. This includes all elements of self-defense, *save the duty to retreat.*” *Id.* 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). In other words, even if § 16-11-440(A) does not apply, a defendant is still entitled to immunity from prosecution pursuant to § 16-11-440(C) when acting in self-defense at a place where she has a right to be.

In the case at bar, Ms. Herndon readily meets the elements of self-defense, save the duty to retreat, by a preponderance of the evidence. As provided by our Supreme Court, a person is justified in using deadly force in self-defense when:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011); see also State v. Douglas, 411 S.C. 307, 311, 168 S.E.2d 232, 238-39 (Ct. App. 2014) (affirming trial court's finding of immunity from prosecution). However, "the last element, i.e., the duty to retreat, need not be shown when seeking immunity under the Act." Douglas, 411 S.C. at 311, 168 S.E.2d at 238-39 (citing Curry, 406 at 371, 752 S.E.2d at 266).

Here, Ms. Herndon was without fault in bringing on the difficulty, as the residence in which the incident occurred was hers—not Rowley's—and she was finally ejecting Rowley from her home after suffering abuse at his hands on multiple occasions. Further, it was Rowley who attacked Ms. Herndon by turning around at the threshold of the storm door, charging at her, and swinging at her gun. Moreover, he did this following his physical attacks on her just moments earlier in her own home. As such, Ms. Herndon did not bring on the difficulty.

Next, Ms. Herndon actually believed she was in imminent danger of sustaining great bodily injury or losing her life. Ms. Herndon had felt and seen first-hand the abuse Rowley could, would, and has dealt when angry. That day, Rowley already acted violently toward Ms. Herndon in her home despite the fact that she repeatedly told him to leave. Even after she told him again to leave and drew her service pistol to keep him away, Rowley—nearly six-feet and 350 pounds—still turned from the door and charged at her in anger. Thus, not only did Ms. Herndon actually believe she was in imminent danger, but also a reasonably prudent woman of ordinary firmness and courage would have entertained the same belief under these circumstances.

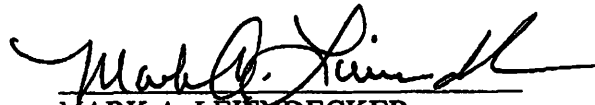
Finally, Ms. Herndon had no other probable means of avoiding the danger of losing her own life or sustaining serious bodily injury than to act as she did in this particular instance. As stated above, she was inside her own home facing an abusive, angry, 350 pound man charging at her, after Rowley already began physically abusing her that day, after Ms. Herndon already told Rowley to leave, and after Ms. Herndon felt compelled to draw her service pistol to protect herself from Rowley. Simply stated, at the time the shooting occurred, Ms. Herndon had nowhere else to go; had she turned her back, she would have succumbed to the very danger inside her own home that she was trying to eject. Accordingly, Ms. Herndon had no other means to avoid the danger of Rowley at the time of the shooting than to act as she did.

The preponderance of the evidence shows that Ms. Herndon should be immune from prosecution. She was assaulted in her own home, and acted in self-defense to repel further attack by her boyfriend. Accordingly, Ms. Herndon is entitled to immunity under § 16-11-440(C) of the Act.

CONCLUSION

Accordingly, for the foregoing reasons, the Defendant, Ms. Robin Herndon, respectfully requests this honorable Court for a pre-trial immunity hearing, and an Order granting immunity from prosecution pursuant to the Protection of Persons and Property Act, within Sections 16-11-410 *et seq.* of the South Carolina Code.

Respectfully Submitted,



MARK A. LEIENDECKER
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First Judicial Circuit
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Telephone (843) 821-9800

ATTORNEY FOR THE DEFENDANT

Date: Feb 29, 2016
Aiken, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT
Indictment No.: 2014-GS-02-00664

THE STATE)
vs.)
ROBIN RENEE HERNDON,)
Defendant.)

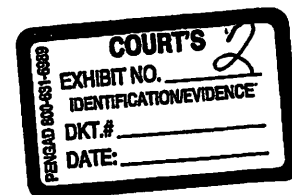
**MOTION TO PROHIBIT OPINION
TESTIMONY UNLESS/UNTIL THE
WITNESS IS PROPERLY QUALIFIED**

The Defendant, Ms. Robin R. Herndon (Ms. Herndon), by and through her undersigned counsel, respectfully moves this honorable Court to prohibit opinion testimony from any witness unless and until the witness is properly qualified by the Court in its gatekeeping role to give opinion testimony.

Rule 701 of the South Carolina Rules of Evidence governs opinion testimony by lay witnesses, and provides that:

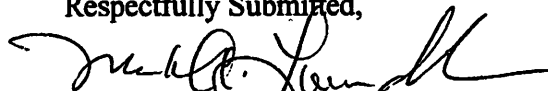
If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, *and {emphasis on} (c) do not require special knowledge, skill, experience or training.*

Therefore, if a person is not qualified as an expert witness, his/her testimony regarding opinions or inferences is sharply limited. Such lay witness testimony must meet the three conjunctive requirements established by Rule 701, or it is beyond the scope of lay witness testimony.



Generally speaking, if State desires to enter opinion evidence based on the specialized knowledge of witnesses, then it is required to qualify them as expert witnesses. See Rule 702, SCRE ("If scientific, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, *a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.*") (emphasis added). Additionally, expert testimony specifically "receives additional scrutiny relative to other evidentiary decisions." As such, the trial court, in its role as gatekeeper, "must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony." *Watson v. Ford*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (listing the three mandatory preliminary findings a court must make prior to permitting expert opinion testimony). Accordingly, Ms. Herndon respectfully requests this honorable Court to prohibit any such opinion testimony unless/until the witness is properly qualified by the Court in its gatekeeping role to give opinion testimony, and that any such voir dire and determination regarding such witness be initially conducted *in camera*.

Respectfully Submitted,



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Telephone (843) 821-9800

ATTORNEY FOR THE DEFENDANT

Date: Feb. 19, 2014
Aiken, South Carolina

THE STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

THE STATE)

Indictment No.: 2014-GS-02-00664.

v.)

JURY INSTRUCTION REQUEST # 2
CIRCUMSTANTIAL EVIDENCE (LOGAN)

ROBIN RENEE HERNDON,)

DEFENDANT.)

The Defendant, Robin Herndon, by and through her attorney, respectfully submits the following jury instruction pursuant to Rule 20(a) of the South Carolina Rules of Criminal Procedure, and *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013):

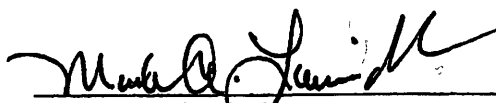
There are two types of evidence which are generally presented during a trial--direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed.



The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.¹

Respectfully submitted,


Mark A. Leiendecker
Attorney for the Defendant

Date: 3-7-2016
Aiken, South Carolina

¹ *Logan*, 405 S.C. at 99, 747 S.E.2d at 452.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

STATE OF SOUTH CAROLINA,)

-VS-)

ROBIN RENEE HERNDON,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
IN THE SECOND CIRCUITORDER ON DEFENSE MOTION TO
BAR PROSECUTIONIndictment No. 2014-GS-02-00664 (*Druck Indict.*)

The Defendant moved prior to trial to bar the prosecution of these cases under the immunity provided in S.C. Code Ann. §16-11-410, et seq., the Protection of Persons and Property Act (the Act), which is South Carolina's codification of the common law Castle Doctrine. Pursuant to the holding in *State v. Duncan*¹ the Court conducted a pretrial hearing and received testimony from various witnesses, including expert testimony for the defense. The motion is denied.

BACKGROUND

On November 6, 2013, Ms. Herndon (Defendant) was driving to work when she received a call from her live-in boyfriend, Christopher Rowley (Victim), asking her to meet him at a nearby cemetery to pick up a check for a doctor's appointment after Victim told her he was irritated and agitated. Defendant told Victim she could meet him briefly, but she had to be back at work by 2:00p for an appointment. An argument ensued at the cemetery, witnessed by several cemetery employees. After the argument, Defendant and Victim got into their respective cars and left the cemetery parking lot, with Defendant following the Victim to their home. The argument continued to the front yard, where

¹ 392 S.C. 404, 709 S.E.2d 662 (2011).

Copies: M. Leander
D. Justice

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FILED April 19 2016
Liz Gadard
C.C.P. & G.S.
Cheryl E. Westall / RSN
Deputy Clerk

Defendant alleges Victim threw the car keys on the roof of the house. Testimony determined the Defendant was pacing back and forth and yelling. After the argument, Defendant went into the house while the Victim smoked a cigarette in the front yard according to witness testimony.

Defendant alleges Victim came into the house, and she asked him to leave. Defendant alleges Victim pushed her to the floor, punching her. She reached to her side to retrieve her service pistol out of the holster and pointed it at him. Defendant alleges Victim swatted at her hand in an attempt to grab the gun, and the gun discharged, hitting Victim in the neck. The Victim stumbled and fell on the porch. Defendant alleges she immediately began CPR. He tried to get back up by pulling himself up by the bannister, but fell back into a plastic chair next to the front door. A nearby neighbor heard Defendant's calls for help. The neighbor dialed 911, and ran to assist.

When the police arrived, they found Defendant's service pistol and a single .40 caliber fired shell casing inside her home near the front door. Defendant was transported to the Sheriff's Office, and the Victim was transported to the nearby hospital where he succumbed to his injury. The subsequent autopsy of Victim indicated he died of exsanguination from a laceration of his right lung caused by the single gunshot wound to the neck.² Defendant was arrested on November 6, 2013, for Voluntary Manslaughter. She was subsequently indicted for Murder on May 8, 2014.

² In pertinent part, the autopsy report indicated the following regarding the wound:

It is round and measures .4 inches in diameter. There is stippling above this in the left upper neck and over the chin and neck with few stippled areas over the left forehead also. The bullet path continues downward, to the right and backward to perforate the upper lobe of the right lung causing a right hemothorax of 1000 cc.

2/1/13

ANALYSIS**A. Immunity Under § 16-11-440(A)**

The motion before the court is an assertion that the State is barred from prosecuting the Defendant because she is entitled to immunity under the Act. The Defendant has the burden of proving her claim of immunity by the preponderance of the evidence. She has failed to do so.

The procedural statute is § 16-11-450(A), which reads as follows:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer. . .

The statute provides immunity from prosecution if a person is found to be justified in using deadly force under the Act.³ Justification for use of deadly force is found in the substantive statute § 16-11-440. If a Defendant's use of deadly force is justified, then the Defendant is immune from prosecution. Defendant seeks to invoke § 16-11-440(A) and (C).

§ 16-11-440(A) provides, "a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: . . . (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred." S.C. Code Ann. § 16-11-440(A)(2). Upon further reading, § 16-11-440(B) states, "the presumption provided in subsection (A) does not apply if the person: (1) against whom the deadly force is used has the right to

³ *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013).

be in or is a lawful resident of the dwelling, residence. . .” S.C. Code Ann. § 16-11-440(B). Section 16-11-440(B) disallows the presumption of subsection (A), thus making the immunity inapplicable, where the person [subsection (1)] against whom the deadly force is used has the right to be in the dwelling; or, [subsection (4)] where the person against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

Here, testimony provided by Defendant shows that Victim was her live-in boyfriend whom she invited to live with her in March 2013 as he “had no where to go.” Further testimony showed that the Defendant and Victim shared finances. For example, the Defendant testified that she primarily paid household bills, they primarily lived off Victim’s money, and argued about household finances. The Defendant’s daughter testified about a specific argument where the Defendant and Victim argued for an entire day about purchasing a dress for the daughter. The Defendant even assisted Victim with his child support payments. Testimony also showed the Defendant and Victim shared other property, such as the cars. Based on the facts presented in the testimony, the Victim was rightfully in the dwelling, and therefore the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence as made clear by the statute. Because Rowley had a right to be in the dwelling, § 16-11-440(A) does not apply to the Defendant in the present case.

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B. Immunity Under § 16-11-440(C)

Next, Defendant claims immunity to prosecution under § 16-11-440(C),

the "pertinent 'force' section."⁴ The section states:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person...⁵

In a case which a murder defendant claims immunity under the Protection of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining the defendant's entitlement to immunity, including all elements of self-defense save the duty to retreat.⁶ The elements required to establish a case for self-defense are:

- (1) the Defendant must have been without fault in bringing the difficulty;
- (2) the Defendant must have actually believed she was in imminent danger of losing her life or sustaining serious bodily injury, or actually have been in such imminent danger;
- (3) a reasonably prudent woman of ordinary firmness and courage would have entertained the same belief or circumstances were such as would warrant a woman of ordinary prudence, firmness and courage to strike fatal blow in order in order to save herself from serious bodily harm or losing her own life;
- (4) the Defendant had no other probable means of avoiding danger of losing her own life or sustaining serious bodily injury than to act as he did in the particular instance.⁷

⁴ *Curry*, 406 S.C. at 371, 752 S.E.2d at 266.

⁵ S.C. Code Ann. § 16-11-440(C)

⁶ *Curry*, 406 S.C. at 371, 752 S.E.2d at 266.

⁷ *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). The fourth element -- the duty to retreat -- is excused under the Act/ Castle Doctrine.

5/12

As to the first element, the Defendant alleges she was without fault in bringing the difficulty, and Victim was irritated and got himself upset. However, the Defendant followed Rowley from the cemetery, where they were already engaged in a heated argument according to Defendant's testimony, to the home, where Victim inquires why she followed him. Under the totality of the circumstances, this action to follow Rowley to the home led to the shooting that occurred within the home. Defendant made the conscious choice to follow the victim to the house they shared even after testifying that he was "very irritable." For this reason, it is questionable if the Defendant is entirely free of fault in bringing the difficulty, thus the first element is not satisfied.

Next, the Defendant alleges she was in imminent danger of sustaining great bodily injury or losing her life. Section 16-11-430(2) defines "great bodily injury" as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ."⁴ Under the totality of the circumstances and the testimony provided, it is difficult for the Court to determine if the Defendant believed she was in imminent danger. The inconsistent testimony ranges from the Defendant purposely firing the pistol in self-defense, to the pistol firing accidentally because Victim swung at her holding the pistol, and it discharged through no action of her own. Therefore, the Defendant failed to prove by a preponderance of the evidence that she actually believed she was in imminent danger of losing her life or sustaining serious bodily injury, or that she was in such imminent danger.

⁴ S.C. Code Ann. § 16-11-430(2); *State v. Douglas*, 411 S.C. 307, 317, 768 S.E.2d 232, 238 (2014).

Furthermore, the testimony of the independent witness neighbor Lacey Burton completely contradicts Defendant's story. Ms. Burton testified that the parties were engaged in a verbal argument in front of the house, with the Defendant pacing the front yard yelling and screaming. The witness goes on to testify that the Defendant eventually walks up the stairs and goes in the house. The Victim allegedly lights a cigarette and begins to smoke. The victim proceeds to go up the porch stairs, approaches door (out of her sight) and within not more than 30-60 seconds she hears a gun shot. Pictures of the crime scene were entered through the crime scene investigator showing a very immaculate house. The pictures presented no evidence whatsoever of a struggle inside the home. What the pictures do show is the Victim's cell phone, lighter and cigarette lying on the porch with patches of blood on the porch and the bannister dripping onto the grass.

Based on the findings cited above, this Court finds that the Defendant has failed to meet the burden of proving the second and third elements of self-defense. In considering the evidence presented to the court, the inconsistent testimony of the defendant, the testimony of the witnesses, this court finds that the Defendant has failed to prove by a preponderance of the evidence that she was acting in self-defense pursuant to Section 16-11-440 (c) and thus is not immune from prosecution under Sections 16-11-410 and 16-11-450.

THEREFORE, IT IS ORDERED that the motion to bar prosecution of these cases is respectfully denied.

AND IT IS SO ORDERED.





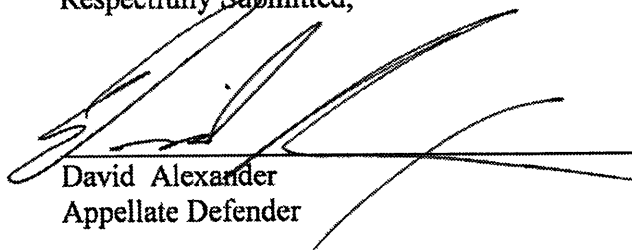
DeAndrea G. Benjamin, Judge

April
~~March~~ 18, 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 8th day of December, 2017.