

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

DeAndrea G. Benjamin, Circuit Court Judge

Case Nos. 2012GS1040032 and 2012GS1040033

The State, ... Respondent,

v.

Brett D. Parker, ... Appellant.

**RECORD ON APPEAL
VOLUME IV**

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Other Materials and Documents

State's Exhibits

2 - Statement of Defendant	on file with this Court
484 - X-ray of Bryan Capnerhurst	on file with this Court
486 - Diagrams	on file with this Court
487 - Diagrams	on file with this Court
490 - Diagram	on file with this Court

Defendant's Exhibits

4 - Transcript of Audio Call	on file with this Court

1 and the corresponding exit is J. That's the exit
2 wound, because it looked like an exit wound to me,
3 it didn't look like an entrance. So I wrote L goes
4 to J.

5 And the way I determined that, this one
6 (indicating) didn't go there. You can kind of see
7 the wound track. It follows hemorrhage, you know,
8 kind of like a bullet going through tissue. It's
9 going to bleed a little, the tissue is disrupted.
10 So the wound track was clearly going right to J
11 right there (indicating).

12 So that gunshot, that is Gunshot L, L going to
13 J, that bullet goes, again, through the skin,
14 subcutaneous tissue, just like your fat pads of
15 your body. It exits on J, the right lower abdomen.

16 And the resulting injuries include the skin
17 and subcutaneous tissue disruption with some
18 associated hemorrhage, because, you know,
19 disruptive tissues, they are going to bleed a
20 little bit.

21 That bullet actually never entered the true
22 peritoneal abdominal cavity. It was a very -- it
23 was a superficial wound. The angle of that bullet
24 is going slightly upward, and it's going to the
25 right. And I wrote it as without backward or

1 forward deviation.

2 It just kind of looked liked -- I put the
3 probe through. It was kind of horizontal with the
4 ground when she is laying on the ground like this.
5 And so it's not going backward, forward. But I
6 wrote it as that backward/forward deviation. So
7 and going from here (indicating), across.

8 The next gunshot -- pardon me for a moment.
9 Okay, the next gunshot is Gunshot Wound Number -- I
10 labeled it K. This gunshot is to the left hip
11 region here (indicating).

12 The corresponding exit is I, right up here
13 (indicating) on the upper right abdomen area. And
14 then I believe this bullet goes in, exits, and then
15 it re-enters the body right here (indicating) on
16 her arm. Okay?

17 And that -- I was able to recover a bullet
18 from there, a projectile from there, intact
19 projectile from her arm that I saw on the X-ray.

20 So Gunshot Wound Number -- I labeled that one
21 as K. Okay. That bullet goes through the skin and
22 subcutaneous tissue of the left hip region. It
23 actually goes into the left hipbone, subcutaneous
24 tissue, and then it comes up and goes through the
25 abdomen.

1 Again, the subcutaneous tissue down there, it
2 actually doesn't enter again into the abdominal
3 cavity hitting any vital organs at all. Okay?

4 And then exits at Gunshot Wound Number --
5 Gunshot Wound Number I, and then goes to the
6 gunshot wound right here (indicating) in the arm,
7 right there (indicating).

8 So entrance, exit, re-entry, projectile
9 recovered. That bullet was going slightly forward,
10 slightly upward, and to the right. So it was
11 coming up -- coming up like this (indicating) and
12 goes like this (indicating).

13 That right there describes five gunshot
14 wounds. And I know it looks like a lot of holes,
15 but there is only five.

16 Q And that was the summary of what you observed and
17 were able to connect to your initial assessment?

18 A Right, my initial assessment. She also had what I
19 talked about before, the injuries, the contusions
20 to her upper forehead here (indicating). She had a
21 contusion here (indicating), which is, again, just
22 a bruise from blunt trauma here (indicating), here
23 (indicating).

24 And then on this area right here (indicating)
25 underneath her right eye, again, there was an

1 abrasion, but it was yellow in color. So that is
2 post-mortem. That abrasion to me looked like it's
3 not -- it's from her laying on the floor. There is
4 no blood. It's just a pressure point. So it's
5 post-mortem. It didn't happen when she was alive,
6 in my opinion.

7 Q However, the abrasion on her head, what did that
8 indicate?

9 A It was red in color. That means there was some
10 blood flow. The heart was beating at that point.
11 And that, I believe, was when she, you know, went
12 and fell and hit her head on that tile floor.

13 You can go to the next diagram.

14 Q State's Exhibit 488.

15 A To show that I believe it was a significant impact
16 when she struck the ground is right here
17 (indicating). This is now -- in order to preserve
18 the face during autopsy, what we do is we make an
19 incision behind the ears and go up.

20 We actually are able -- it's a lot easier said
21 than done. I'm able to get my hands up under the
22 scalp. And I'm actually able to flip the scalp
23 over. All right? So you can actually see the
24 undersurface of the scalp. Okay.

25 And here on the undersurface of the scalp, we

1 actually have some areas of hemorrhage here. That
2 is significant. That is a blunt impact she had
3 there. So I believe that fall, when she had her
4 fall, she struck her head and caused those two
5 contusions there. That is my opinion.

6 Q And before we get to your final opinions, as far as
7 that last gunshot you described here, you said
8 something about it hitting the hipbone or the
9 pelvic region?

10 A Yes. It hit the hipbone and the pelvic area right
11 about here (indicating).

12 Q What would that have done or could that have done
13 to her ability to continue to move or run?

14 A That wound there could have caused her to fall, in
15 my opinion. You have a bullet going through. If
16 someone is running, for instance, then you have an
17 impact to that area, it could cause you to trip and
18 fall and then fall, hitting your head. That's a
19 possibility.

20 Q And after your review of the crime scene photos and
21 after performing your autopsy and actually having
22 been out there that day, do you have any
23 conclusions about how Tammy Parker was shot?

24 A Yes, I believe -- I believe, based on everything
25 that I have seen, that she was actually running. I

1 believe she was running because of the way we've
2 got this wound here (indicating).

3 And it's just -- usually when you run, you're
4 like this (indicating), you know what I mean?
5 You're moving. So to get these wounds like this,
6 her arms, they crossed, I think in my opinion she
7 was -- she was running.

8 And that is the way I can explain the gunshots
9 to her arms here. And I believe we have that one
10 gunshot actually going upward. I believe she might
11 have sustained that gunshot, because if her body is
12 moving and if she was falling down and a bullet is
13 coming, it could come and go -- it looked like it
14 was going upward because the body is in the
15 anatomic position when I make these judgments. But
16 it is possible she is falling forward. That bullet
17 looks like it's going upward there, the one that
18 went through her left breast.

19 And based on the blood I saw at the scene, I
20 believe that the gunshot wound to the head was one
21 of the last shots because the blood at that scene,
22 it looked like there was a significant pooling of
23 blood right around her body, right around her head
24 there.

25 These other wounds, they aren't going to

1 bleed. They are going to fat and fat doesn't have
2 a lot of blood vessels. You know, it's not going
3 to bleed a lot. It is going to bleed a little.
4 But head wounds generally bleed like crazy. So I
5 believe that shot was when she was in that area of
6 the bathroom.

7 Q And that was the fatal shot?

8 A That's the fatal shot. Out of all those gunshot
9 wounds that she had, that head wound is the only
10 fatal shot on her.

11 Q And typically in your experience, do gunshot wounds
12 to the head cause death?

13 A Yes. In my experience -- again, I'm a forensic
14 pathologist -- I see gunshots to the head are
15 associated with death most of the time.

16 Q Thank you, Doctor. You can take the stand again.
17 (Witness returns to witness stand.)

18 Q As far as the range on every one of these gunshot
19 wounds, were you able to say anything other than
20 they were indeterminate?

21 A No, I was not able to say more than that they were
22 indeterminate. The only thing I did collect was I
23 did collect the hair from around the wounds on the
24 head, and I sent that for analysis.

25 Q And as far as indeterminate, that just means it's

1 not a contact wound, but some distance further from
2 that?

3 A Yes. Yes.

4 Q And that could be a matter of feet, inches, or even
5 yards?

6 A Yes.

7 Q As far as what you're able to determine?

8 A Yes.

9 Q Did you also collect and check as far as toxicology
10 as far as Ms. Parker was concerned?

11 A Yes. We collected -- on all forensic cases, we
12 generally collect blood. Sometimes we can't get
13 enough blood. We are able to get the eye fluid
14 behind the eye.

15 In this case we didn't do that. We didn't
16 need to. I was able to collect some blood, some
17 cardiac blood from her and was able to send that
18 off to, I believe -- I'm not sure. It might have
19 gone to SLED or a private lab. I can't remember.
20 I have the results here in my report.

21 Q And what were the results?

22 A Her cardiac blood, ethanol was negative. Cardiac
23 blood, negative for drugs or recreational use. It
24 was an overall negative toxicology report.

25 Q As far as time of death, were your observations at

1 the scene and your findings at autopsy, are you
2 able to determine an exact time of death?

3 A No, no, no, I can't determine exactly when somebody
4 dies.

5 Q Were your findings consistent with her having been
6 shot and killed sometime between 12:00 and 1:00 the
7 day before?

8 A Yes. Yes, that is consistent.

9 Q But you can't even narrow it down to, say, 30
10 minutes, or anything like that?

11 A No.

12 MR. WHITLARK: Objection to the leading
13 question, Your Honor.

14 THE COURT: Overruled.

15 A No, you can't. They can do that only on the TV
16 programs, not in real life. You can't -- unless
17 you're there you can't say exactly.

18 Q The second autopsy that you performed that day was
19 on whom?

20 A I have the autopsy report, yes. That is
21 Ms. Parker.

22 Q Okay. And do you remember approximately what time
23 you started that autopsy? It was sometime after
24 ending the first one?

25 A Yes. That autopsy, I remember it was started

1 around 11:30, around lunch, because I remember I
2 had to take a break because I knew it was going to
3 take a while. So I went and got lunch. I ate my
4 lunch, I remember, with my assistant at that time.

5 Q And, again, how did you perform the autopsy? What
6 were your initial observations with
7 Mr. Capnerhurst?

8 A Well, with Mr. Capnerhurst I was -- I was under the
9 impression that he had only one gunshot wound, a
10 head shot. But what I was doing was after
11 Ms. Parker's autopsy, I called Gary Watts and told
12 him what I found.

13 And then he told me, he is like,
14 Mr. Capnerhurst has got -- it looks like he's got
15 multiple gunshots.

16 So that's why then I went to lunch because I
17 knew if he had multiple, it was going to take me a
18 while to do the autopsy, hours, again, and I was
19 getting hungry. I figured we'll get me and my
20 assistant down there and get us some lunch, and
21 we'll go and start this autopsy.

22 So then I realized -- I saw then, again, the
23 same thing. The body was pulled out of the morgue
24 cooler. It was in a body bag. And we started our
25 routine again.

1 Q And, again, were members of Richland County
2 Sheriff's Department and the Coroner's Office and
3 different people there?

4 A Yes, Coroner's Office people were there and
5 Investigator Kristen Polis, she was there too, and
6 my assistant was there.

7 Q And were certain -- again, when you first
8 encountered the body, was this -- how was it
9 presented?

10 A The body was presented. Mr. Capnerhurst was
11 wearing his clothing. He was wearing his clothing
12 that, I guess, he was wearing there on that day,
13 the previous day. He was wearing all the clothing.
14 He was fully clothed.

15 Q And during the course -- after making your initial
16 assessment and observing the body -- you then
17 remove the clothing and start your autopsy?

18 A That's correct. After that, I started my autopsy,
19 or removed the clothing. Once again, I knew I had
20 to call X-ray down. And I removed the clothing. I
21 saw where the gunshots were on his body.

22 So then I was able to call X-ray down and,
23 again, have his body X-rayed from -- I believe I
24 had it X-rayed from head to toe on him also because
25 he had gunshots coming from the head down to the

1 toe, the toe region.

2 Q And were certain photographs taken of the body at
3 autopsy?

4 A Yes. Lots of photos were taken, yes.

5 Q And you actually reviewed those photographs prior
6 to this, and we went through and picked out certain
7 ones that exhibit some of the stuff you are going
8 to talk about to corroborate your testimony?

9 A Yes.

10 Q I show you what has been marked as State's
11 Exhibit's 465 through 482. I first ask: Do you
12 recognize those?

13 THE COURT: Those are marked for ID purposes?

14 MS. CAMPBELL: They are marked for ID, Your
15 Honor, at this point.

16 THE COURT: Same objection?

17 MR. WHITLARK: Same objection. That's right,
18 Your Honor.

19 MS. CAMPBELL: At this point, Your Honor, we
20 are just offering them for ID.

21 THE COURT: Yes, ma'am.

22 (WHEREUPON, State's Exhibit Nos. 465-482
23 were marked for identification only.)

24 BY MS. CAMPBELL:

25 Q Go ahead.

1 A These are the photographs that were taken during
2 the autopsy that I performed on Mr. Capnerhurst.

3 Q And do some of those actually have trajectory rods
4 showing the path of certain entrance and exit
5 wounds?

6 A That's correct.

7 Q In addition to that, did you also prepare a diagram
8 in this case, or several diagrams?

9 A I prepared in this case several diagrams depicting
10 some of the injuries -- all of the injuries on
11 Mr. Capnerhurst.

12 Q And I am going to show you what has been marked as
13 State's Exhibit 486, 487, and 490. I first ask:
14 Do you recognize these?

15 A Okay. These are diagrams I prepared during the
16 autopsy of Mr. Capnerhurst.

17 MS. CAMPBELL: Your Honor, at this time we
18 would offer these into evidence. They have been
19 provided.

20 THE COURT: Any objection?

21 MR. WHITLARK: One moment please, Your Honor.

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. WHITLARK: No objection, Your Honor.

25 THE COURT: They will be entered without

1 objection. That's 486, 487, and 490?

2 MS. CAMPBELL: Yes, ma'am.

3 MR. WHITLARK: I believe the last one was 490,
4 wasn't it?

5 THE COURT: Yes, sir.

6 MR. WHITLARK: Thank you.

7 (WHEREUPON, State's Exhibit Nos. 486-487
8 were marked for identification and
9 received into evidence.)

10 (WHEREUPON, State's Exhibit No. 490 was
11 marked for identification and received
12 into evidence.)

13 BY MS. CAMPBELL:

14 Q During the course of the autopsy, or at some point,
15 did you also take X-rays to show Mr. Capnerhurst's
16 injuries?

17 A Yes. Again, I called down the X-ray technician.
18 They brought down the digital imager. And these
19 are the X-rays that I asked them to prepare for me.

20 MR. WHITLARK: Excuse me, Your Honor. May I
21 approach the bench, please?

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 THE COURT: All right. Ladies and gentlemen
2 of the jury, I'm going to send you all out for a
3 second, and I'll have you back in shortly.

4 All right.

5 (WHEREUPON, the jury retires to the jury
6 room at 11:35 a.m.)

7 THE COURT: All right, yes, sir? Do we need
8 to call?

9 MR. WHITLARK: We may need somebody. I don't
10 know. I'm not a doctor, Your Honor. He tells me
11 he thinks he needs a medic responder.

12 THE COURT: All right. We'll take a break.
13 What I'll do is I'll send the jurors out. I'll go
14 back in there and tell them to go ahead and take a
15 lunch break.

16 (Pause.)

17 THE COURT: I may just go ahead and excuse the
18 jurors.

19 And you can step down, Doctor.

20 (Witness steps down.)

21 (Pause.)

22 THE COURT: I'm going to send the jurors for
23 an early lunch. They are going out through the
24 garage so they won't see anything. I'm not going
25 to bring them back in.

1 MS. CAMPBELL: No, that's fine. Thank you,
2 Judge.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: All right. I have released the
5 jury for the day. We will start back at 9:30 in
6 the morning.

7 MS. CAMPBELL: Thank you, Judge.

8 THE COURT: All right. Thank you.

9 (WHEREUPON, the proceedings concluded at
10 2:49 p.m.)

11 MAY 17, 2013

12 THE COURT: Are we ready to get started?

13 MS. CAMPBELL: The State is ready, Your Honor.

14 MR. WHITLARK: The Defense is ready, Your
15 Honor.

16 THE COURT: All right. And Dr. Marcus is on
17 the stand.

18 MS. CAMPBELL: Would you like him back on the
19 stand?

20 THE COURT: Yes, he can take the stand.

21 (Witness resumes the witness stand.)

22 THE COURT: You can bring them in.

23 (WHEREUPON, the jury came into open
24 court at 9:50 a.m.)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: All right, ladies and gentlemen of
2 the jury, good morning. We are ready to proceed
3 this morning. We will continue with the testimony
4 of Dr. Marcus, the direct examination by Ms.
5 Campbell.

6 MS. CAMPBELL: Thank you, Your Honor. May it
7 please the Court?

8 THE COURT: Yes, ma'am.

9 DIRECT EXAMINATION CONTINUES

10 BY MS. CAMPBELL:

11 Q Doctor, yesterday we were talking about the autopsy
12 that you performed on Mr. Capnerhurst. And that
13 was done in the afternoon of the 14th, is that
14 correct?

15 A That's correct.

16 Q And that was a Saturday afternoon?

17 A That's correct.

18 Q And we have already admitted certain diagrams that
19 you did during the course of doing that autopsy, is
20 that correct?

21 A That's correct, yes.

22 Q And then I believe I showed you State's Exhibit
23 484. Are these, in fact, the X-rays that were also
24 taken during the course of that autopsy that
25 afternoon?

1 (Pause.)

2 A Yes, these are the radiographs that were provided
3 to me taken by the X-ray technicians.

4 Q And would those be helpful in explaining your
5 findings to the jury?

6 A Yes.

7 MS. CAMPBELL: Your Honor, at this time I'd
8 offer State's Exhibit 484 into evidence.

9 MR. WHITLARK: No objection, Your Honor.

10 THE COURT: All right, it will be admitted
11 without objection.

12 (WHEREUPON, State's Exhibit No. 484 was
13 marked for identification and received
14 into evidence.)

15 BY MS. CAMPBELL:

16 Q Doctor, in doing the autopsy on Mr. Capnerhurst,
17 can you tell the jury how he initially presented to
18 you and then what steps you took?

19 A Mr. Capnerhurst, we brought him out of the area of
20 the morgue where we stored the body. He presented
21 in a body bag.

22 From that point on, we went forward. We
23 opened the body bag, and I was able to -- he was
24 fully clothed in the clothing he had on. And then
25 from that point on, we proceeded with the autopsy.

1 Q Once the clothing was removed and any evidence, was
2 that all turned over to deputies from the Richland
3 County Sheriff's Department?

4 A That's correct. All the clothing was turned over
5 to the deputies.

6 Q As well as ultimately any projectiles you
7 recovered?

8 A That's correct.

9 Q Once the clothing was removed, were you able to
10 make observations about the injuries to Bryan
11 Capnerhurst?

12 A Yes. Yes.

13 Q What did you initially assess?

14 A Mr. Capnerhurst, I noticed, had several injuries
15 over his body. They appeared to be gunshot wounds
16 that were -- looked almost like -- almost looked
17 like shotgun wounds. They looked like shotgun
18 wounds, really, to his body.

19 Q And during the course of your examination of
20 Mr. Capnerhurst, did you become familiar with what
21 type of ammunition was used in the gun that shot
22 Mr. Capnerhurst?

23 A Yes. Yes, I became aware of the type of ammunition
24 that was used, yes, and the type of weapon.

25 Q And the weapon itself, even though it's a handgun,

1 does it use a certain type of ammunition?

2 A It does.

3 Q And what type of ammunition was that?

4 A It was a .410 type ammunition, .410. So it looked
5 like a very slender shotgun shell, to be honest.

6 That's what it looked like.

7 Q And was that different from the type of ammunition
8 that was used to kill Ms. Parker?

9 A Yes. It was clearly different, a different type of
10 ammunition, yes.

11 Q And the components of the .410 shotgun shell, are
12 those different -- and what is included inside the
13 shotgun shell as it fell from the gun?

14 A In this type of ammunition, it looked like a
15 small -- a slender, long shotgun shell.

16 And inside that shell there are three
17 copper-plated disks. And then behind them are BBs,
18 a type of BB, like a type of shot, but they are
19 metal. They look exactly like BBs, copper BBs.
20 And then there is a wad behind that, a plastic wad.

21 So when that type of shell is fired, you
22 get -- the three disks come out of the barrel of
23 the weapon, followed by the BBs, and then the
24 plastic wad comes out also.

25 Q And in this case when you observed

1 Mr. Capnerhurst's wounds, was that consistent with
2 that type of ammunition having been used?

3 A Yes, it was. I should note also that when I was
4 removing his fleece jacket, I noticed a disk that
5 was in the arm area.

6 Q And was that collected?

7 A That was collected, yes.

8 Q And the disk versus what you referred to as the BB,
9 are the disks larger or smaller than the BB?

10 A The disks are larger.

11 Q And in this case which would have inflicted more
12 damage?

13 A The disks inflict a significant amount of damage.

14 MS. CAMPBELL: Your Honor, may the witness
15 step down?

16 THE COURT: Yes, ma'am.

17 (Witness steps down.)

18 BY MS. CAMPBELL:

19 Q And explain to the jury the injuries that you
20 observed. If you can come over on this side, sir.
21 (Witness complies.)

22 Q I show you what is already in evidence as State's
23 Exhibit 487. Is that a blow-up of the actual
24 diagram you did of his injuries?

25 A Yes, this is a diagram that I did during the

1 autopsy of Mr. Capnerhurst's injuries. I did a
2 separate head diagram to depict that injury, the
3 blow-up of the head. So this is the diagram.

4 Q Okay. And taking them in whatever order you want,
5 can you explain to the jury the injuries that you
6 found during your autopsy?

7 A Okay. So what I will do is I am just going to give
8 you a brief overview of the injuries, then I'll go
9 through them all individually, okay?

10 So to his left chest region, this is one
11 gunshot wound here (indicating).

12 To his foot right here (indicating), there is
13 an entrance and an exit wound and a re-entry. So
14 we have one gunshot here (indicating), one gunshot
15 right here (indicating).

16 And then to his left thigh and left chest
17 region and to his arm, that is also another
18 gunshot. All three of these are related.

19 And then we have -- do you have the head
20 diagram?

21 Q Yes, sir. State's Exhibit 486.

22 A Okay, this is another -- this is another gunshot
23 wound right here (indicating) to the head, right
24 here (indicating) to the head.

25 Q And I notice in this diagram -- you can see it the

1 best -- that there were multiple circles that you
2 put on there indicating points of entry?

3 A Yes. Some of these -- the large defect here
4 (indicating) is where the disk that came out of the
5 weapon went into the body. And there's three
6 disks.

7 And then around here (indicating), this is
8 where the little BBs that followed those disks
9 struck the body, and they made little holes in this
10 region (indicating) of the body.

11 Q And on this diagram, is this an approximation of
12 where you found those?

13 A Yes, this diagram is an approximation as I drew out
14 what I saw on the body here.

15 Q And in the photos that have been marked for ID, you
16 can actually see that in his face?

17 A Yes. Yes.

18 Q Taking these in whatever order, can you tell the
19 jury what your findings were as far as each of
20 these? And it is a total of four times?

21 A Yes, there is a total of four gunshot wounds here.

22 Q So even though there's multiple places hit, again,
23 there are four total gunshots?

24 A It's four total gunshots, yes.

25 Q Can you explain your findings to the jury?

1 A Yes, I can. Pardon me while I get a drink of
2 water.

3 Q Sure.

4 A Okay.

5 (Pause.)

6 A So we'll start with the head. This is one gunshot
7 wound right here (indicating). The main gunshot is
8 right here (indicating), okay? A disk went through
9 here (indicating), and then these marks here
10 (indicating) are where BBs struck the face in this
11 region here (indicating).

12 In this area here (indicating), it appeared
13 that a disk had fragmented. Disks are made of
14 copper jackets around them, and inside they are
15 lead. So it's a very soft metal.

16 And when the disk struck the head here
17 (indicating), I think they fragmented because they
18 are coming out one after another. One disk
19 fragments, strikes the disk in the back; and I
20 found a jacket right in this area here
21 (indicating).

22 So the disk went into the head this way here
23 (indicating). And this is the BBs that also came
24 out of the weapon that struck him here
25 (indicating).

1 The disks went through the skin, subcutaneous
2 tissue. They went through the left frontal skull.
3 They went through both sides of the brain, because
4 you've got to remember also when it comes in, you
5 have your left cerebral lobe here (indicating), the
6 right here (indicating). It went through both
7 sides of the brain, and into the frontal and right
8 carotid cerebrum where the deformed copper
9 projectile, disk fragments, and BB shots were
10 recovered. There was extensive injuries to the
11 head here (indicating).

12 We had extensive skin and soft tissue
13 disruption of the face and scalp and forehead
14 region. We had extensive frontal skull fractures
15 and disruption.

16 The frontal cerebrum of the brain and the
17 parietal lobe of the brain were lacerated, which
18 means they just kind of tore apart. We have an
19 associated subarachnoid hemorrhage, a hemorrhage
20 under the membrane of the brain.

21 We had fractures of the anterior cranial
22 fossa, which is the -- it is the -- think of your
23 head as kind of a bowl. And the cranial fossa are
24 the bottom of that bowl. Okay? So the bottom of
25 your bowl.

1 The bottom of your skull is called the base of
2 the skull, and we split it up into three areas:
3 The anterior, middle, and posterior. He had
4 extensive fractures of that area. Those bones are
5 very, very thin.

6 He had a depressed left orbit. This orbit
7 right here (indicating) was depressed.

8 Q What does that mean?

9 A It was back in his skull. Because the fractures,
10 the anterior cranial fossa of the skull, it no
11 longer -- you know, it's integrity was disrupted.
12 So the eyeball would sink into the back.

13 And we had right periorbital ecchymoses, which
14 that's just a fancy name for a black eye. Okay?
15 It's just a fancy name.

16 The approximate trajectory of this projectile
17 pathway is going -- it was going backward, it was
18 going upward, and to the right. It was going sort
19 of like backward, you know, upward, and to the
20 right, kind of like this (indicating).

21 Q So literally this was a shot between his eyes?

22 A Right. This was -- yes. As you can see, the main
23 disk went through the -- cracked the fluid, almost
24 directly between his eyes.

25 Q Moving on to your other findings when doing your

1 autopsy.

2 A Okay. So another gunshot wound was to the left
3 chest region here (indicating). Again, we've got
4 our main defect where the disk went into the body.

5 Surrounding that are the corresponding little
6 holes where the BBs, the BB-type shot, went into
7 the body here (indicating).

8 This pathway of the bullet, of the projectile,
9 they went through the skin, subcutaneous tissue of
10 the left chest region, anterior left port,
11 intercostal space. Those are the spaces between
12 your ribs. You have 12 ribs on each side. And
13 then in between your muscle -- muscle between them.
14 And we can mark the spaces. It's 12 spaces. So
15 you count them down.

16 So it's the fourth one. It went through the
17 fourth left rib. It went through the upper lung
18 lobe. It went through the pericardium. The
19 pericardium is a membrane of fat that surrounds the
20 heart. Okay? It surrounds the heart.

21 It went through the right cardiac ventricle of
22 the heart. It went through -- then the projectile
23 continued and they went through the diaphragm. The
24 diaphragm is a muscle that enables you to breathe,
25 and it goes from one end here (indicating) to over

1 here (indicating).

2 And it actually looks like a parachute. Think
3 of a parachute. It's kind of like this
4 (indicating). And what happens is when you
5 breathe, you inhale, it goes slack, and you inhale.
6 And that actually gets your chest to move. Okay?
7 It's like a parachute. And it goes up.

8 The projectiles went through the diaphragm and
9 then they went into the abdominal aorta. The aorta
10 is the main vessel of your body. Okay? You have
11 oxygenated blood that comes from the lungs, goes to
12 the left ventricle, and goes -- pumps up to the
13 aorta.

14 The aorta is like -- it's the same size as a
15 garden hose. Okay? It comes up, it wraps around,
16 and then it runs along your spine, giving branches
17 of the vessels.

18 That aorta goes down here (indicating) into
19 your abdomen. And then it splits into the iliac
20 arteries which provide the pelvis, and those split
21 to the femoral arteries, which go down here
22 (indicating). So it's a very elastic tube. It
23 looks like a garden hose. That was also disrupted.

24 Q And when you say disrupted, what do you mean?

25 A It had perforated, perforated from the projectile

1 going through it.

2 And then the projectile went into the L-1
3 vertebral body where the wound tract ends. It
4 stops there.

5 Q The L-1 what?

6 A You have -- in the back of your spine, you have
7 cervical vertebrae, then you go into your thoracic
8 vertebrae, and then the ones that always give
9 people trouble are your lumbar vertebrae. Okay?
10 The lumbar ones that cause low back pain, because
11 your spinal cord runs through there.

12 The bullets went into the bone there. They
13 were sitting right on top of the bone, as I recall.
14 That is where the wound tract ends. It ends there.

15 I pulled out of the body there a slightly
16 deformed copper-colored projectile disk, a few
17 copper-colored BB-type shots that were pulled out
18 also.

19 The injuries that occurred here were massive
20 skin and soft tissue disruption. There was a hole
21 in the right ventricle of the heart. The lung was
22 perforated.

23 You had the abdominal aorta perforated, which
24 then resulted in massive amounts of bleeding. The
25 bleeding is due to the heart and lungs filled up

1 the right chest cavity with blood, approximately
2 500 milliliters of blood.

3 And then, because it went into the aorta, you
4 had a massive amount of blood in the abdominal area
5 here (indicating), from the aorta. Again, if you
6 puncture a garden hose, you are going to start
7 bleeding. Blood is going to -- water will rush
8 out. For instance, in this case blood is rushing
9 out of there, because the heart is still pumping
10 and you are under about 120 millimeters of ruptured
11 pressure. It's a closed system. Now the system
12 opens. So blood was pouring out of these areas.

13 Q Could he have survived that wound?

14 A No, that wound was fatal.

15 Q And I didn't ask you about State's Exhibit 486, the
16 head wound, could he have survived that wound?

17 A No, the head wound was fatal. The trajectory of
18 this pathway, it started up here (indicating), and
19 it went downward. It went downward this way
20 (indicating).

21 It went backward and it went to the right. So
22 it went like this (indicating). It didn't cross
23 the midline. So it kind of went like this
24 (indicating), but it was going downward, this
25 projectile.

1 Q What was the next one?

2 A Okay. The next gunshot I'll talk about is the foot
3 here (indicating). He had a gunshot wound to the
4 bottom of his left foot right here (indicating).
5 The gunshot went through the bottom of the left
6 foot near the toe area.

7 The gunshot was to the bottom of the left
8 foot. And the bullet went through the skin,
9 subcutaneous tissue, and the soft tissue of the
10 left foot with the bone and then exited. It exited
11 on top of the foot.

12 Q So the exit wound is on top of the foot?

13 A Yes, the exit wound -- the entrance is on the
14 bottom of the foot, and then the projectile exited
15 on the top of the foot. I labeled this gunshot
16 wound, Gunshot Wound Number X.

17 The projectile -- and I recovered several BBs,
18 and so forth, BB-type shots in the shoe, in the
19 skin, soft tissue there. But those disks, those
20 three disks, they continued onward. Okay?

21 And in my radiographs I saw sitting right here
22 (indicating), right in this area (indicating) of
23 the leg, right about where you can touch your
24 fibula, the bone in your leg right here
25 (indicating), I saw on the radiograph three disks,

1 three disks.

2 So the gunshot -- the disks came out. They
3 then struck the leg here (indicating) and went up
4 into the skin, the subcutaneous, soft tissue. And
5 three disks were recovered right here (indicating)
6 in the leg intact, right there (indicating).

7 So that's another gunshot wound right there.
8 That is where the wound tract ended. It ended
9 right -- just below the knee area.

10 Q And would that wound have been fatal?

11 A No, that wound wouldn't have been fatal.

12 Q Do you need some water?

13 A Yes, I need to get a drink of water.

14 Q Okay.

15 (Pause.)

16 A So another gunshot was here (indicating). I
17 labeled them Gunshot Wound Number C, Gunshot Wound
18 G, H, and D. And I believe that all these three
19 gunshots, these defects here (indicating) are all
20 related, right here (indicating).

21 Q And when you say defects, you are talking about
22 areas that were penetrated by some type of either
23 the disks or the BBs?

24 A Yes.

25 Q Okay.

1 A So on this area (indicating) there was a defect on
2 his posterior left arm area. There was a defect
3 that had a hole that looked liked disks were coming
4 through, and then the little holes where the
5 BB-type shot went through.

6 I told you earlier that when I removed his
7 fleece, I found one disk just sitting on his fleece
8 right here (indicating).

9 So this gunshot, the gunshot went through the
10 left forearm here (indicating) and then exited -- a
11 foot-like exit was right here (indicating).

12 And the gunshot then continued and grazed the
13 thigh here (indicating) and the chest here
14 (indicating) and made these graze wounds. And I
15 recovered some -- it's very hard to describe how
16 this was done. But somehow he was back like this
17 (indicating), and the bullet or the projectile went
18 like this (indicating), and they came out and
19 grazed and then struck here (indicating).

20 It's the only way I can kind of describe this.
21 And I can because I know at one point
22 Mr. Capnerhurst's foot was up in the air. He got a
23 gunshot wound to the bottom of his foot. So it
24 kind of went like this (indicating).

25 On Gunshot Wound Number D, no disks were

1 recovered here, but we recovered some BB-type shots
2 in his leg here (indicating).

3 And on Gunshot Wound Number C, that was a
4 graze wound. No disks or BB-type shot was
5 recovered.

6 We recovered in the arm numerous
7 copper-colored BB-type shots recovered in the left
8 forearm. A fragmented copper-colored disk was
9 recovered in the left forearm area in the soft
10 tissue here (indicating) adjacent to a fractured
11 ulna.

12 So when this projectile went through the arm
13 here (indicating), it fractured the left ulna. The
14 arm was broken. Okay. And then, you know, it
15 severed soft tissue, and so forth like that, and
16 then continued onward out through there. And that
17 is why I believe it struck these two areas
18 (indicating). That is another gunshot wound right
19 there (indicating).

20 Q Specifically, you mentioned in his arm, which arm
21 was it you're talking about?

22 A It's his left arm.

23 Q And you mentioned that a bone in that arm when the
24 bullets, or whatever they are, the disks and the
25 BBs entered it that it actually fractured a bone in

1 that arm?

2 A It fractured the bone in that arm, yes.

3 Q And which bone is that?

4 A It is the ulna.

5 Q Which is what bone?

6 A It is -- in your forearm there are two bones, the
7 radius and the ulna. And they twist over each
8 other. It's one of the two bones in your forearm
9 that gives your forearm the shape it has.

10 Q And in the radiographs or the X-rays, you can
11 actually see the break?

12 A Yes, you can see the break.

13 Q And what would that have done to his ability to use
14 his arm?

15 A Well, it would have been very, very difficult, if
16 not impossible. He has got a broken arm. A broken
17 arm is a painful thing.

18 Q There was also other damage, other than just the
19 break in the bone?

20 A Well, you get soft tissue. Any time you have a
21 projectile going through tissues, soft tissues,
22 you're going to get some, you know, hemorrhage,
23 destruction of the tissues, and so forth, that are
24 also in that vicinity because of the energy and the
25 disruption that occurs.

1 Q And the direction in which this gunshot traveled in
2 the body and through the arm, what was that
3 direction?

4 A The direction it hit the arm, all right, so as far
5 as trajectory, okay, to the posterior iliac
6 forearm, this one (indicating). Now, I'm giving
7 you the trajectory when the body is in the anatomic
8 position.

9 The anatomic position by definition is laying
10 on your back, okay, with your hands -- this is
11 called the supine position -- hands like this
12 (indicating), okay? So that is the way I'm giving
13 the direction of this wound.

14 The approximate trajectory of this projectile,
15 again, with the body in the anatomic position, is
16 forward, downward, and to the left. I wrote it and
17 said it was going forward, downward -- downward and
18 to the left.

19 Now, the reason I do that is because that can
20 change when you move your arm. So you understand?
21 It is inverse. The position of the arm, you know,
22 I'm just giving you the anatomic position.

23 Q Okay. And typically in your experience as a
24 forensic pathologist, do people just stand in a
25 supine position when they are being shot?

1 A Generally not. Generally not.

2 Q And as part of your training, do you take that into
3 account?

4 A Yes.

5 Q Once you -- and that shot, would it have been
6 fatal?

7 A Generally not. If you didn't receive medical
8 treatment, yeah, you can get infection and stuff;
9 but that shot, it didn't hit any vital organs. So
10 I wouldn't say that one could be 100 percent fatal.
11 All I can say with certainty is that the shot
12 through the chest and the headshot are fatal
13 wounds.

14 Q And on all these shots, were you able to in your
15 expertise make any determination as to the distance
16 of these shots?

17 A No, I did not because of the fact that we were
18 dealing with a .410 type of ammo. It is different
19 ammo. Okay. It's different. The weapon was
20 recovered.

21 So you could test fire the weapon and
22 determine the ranges, how far away this was. You
23 can test fire it. And so I deferred that to the
24 forensic scientists at the crime lab.

25 Q That wouldn't have been your testing, that would

1 have been theirs?

2 A That would have been their testing, yes.

3 Q And did you become aware that that was done?

4 A Yes, that was done.

5 Q In determining what happened, did you also have an
6 opportunity to review the crime scene photos from
7 the attic area?

8 A I did. I did. I reviewed the crime scene photos.

9 Q And you also reviewed the autopsy photos?

10 A I did.

11 Q The X-rays?

12 A Yes.

13 Q And all your findings?

14 A Yes.

15 Q And were you able to determine what happened that
16 day?

17 A I think I have a very good idea of what happened
18 here.

19 Q Can you explain that to the jury? Do you need any
20 aids? Could you explain that?

21 A If I could have, you know, another person, I think
22 I can describe what happened that day.

23 Q How tall was Mr. Capnerhurst approximately?

24 A Again, I measured the body when the body was laying
25 down on the table. I put him at 70.25 inches.

1 Q Describe it in feet.

2 A It's about five-ten and a half, five-eleven or so.

3 Q And approximately how much did he weigh?

4 A Approximately 200 pounds.

5 MS. CAMPBELL: Your Honor, may we have
6 somebody come down so he can demonstrate on them
7 what happened?

8 THE COURT: All right. Any objection?

9 MR. WHITLARK: Your Honor?

10 MS. CAMPBELL: Or we will offer the pictures.

11 MR. WHITLARK: We are getting into an area
12 here where I think we are going to have a
13 discussion regarding the rules that we had
14 previously discussed, Your Honor, on the motion in
15 limine.

16 THE COURT: All right. I'm going to allow --
17 he is just going to try to use somebody to
18 demonstrate?

19 MS. CAMPBELL: Just to demonstrate how the
20 shooting occurred since we can't use the photos.

21 THE COURT: In his expert opinion?

22 MS. CAMPBELL: In his expert opinion, based on
23 his review that I just went through.

24 THE COURT: Okay.

25 MR. WHITLARK: All right, Your Honor.

1 BY MS. CAMPBELL:

2 Q Do you need the board?

3 A Actually I think the board would be good, in my
4 opinion, to -- just so I can, you know, visualize.

5 In my opinion, based on the crime scene
6 photos, and so forth like that, they were in a very
7 enclosed space with the attic in there. Okay?

8 On one side of the attic, you've got the
9 rafters coming down. Okay? Right about there
10 (indicating) were a couple of boxes and over here
11 (indicating) was a piece of plywood, and so forth.

12 So the rafters are coming down. I think, in
13 my opinion, I think Mr. Capnerhurst was in the
14 room, and he was very, very close to those rafters
15 that were coming this way (indicating). Okay?
16 There is a very, very acute angle going up and
17 down.

18 Q And I show you what is in evidence, which is
19 State's Exhibit 262. Does that help you?

20 A Yes, that does.

21 Q If you can use either 262 or 263.

22 A So this (indicating) is where Mr. Capnerhurst was
23 down. But as you can see, I was just trying to
24 point out these rafters that are right here
25 (indicating). Okay?

1 And I believe that Mr. Capnerhurst was
2 standing somewhere around this area right here
3 (indicating). Again, those rafters are there. So
4 I believe that Mr. Capnerhurst was slightly kind
5 of -- just kind of bent over a little bit, because
6 I think he was aware his head was close to those
7 rafters, okay? I think he was aware like that.

8 And I think the first gunshot then, with him
9 being slightly bent down and a weapon brought up
10 like this (indicating), brought up like this, the
11 gunshot went here (indicating) and it went here
12 (indicating) and down like this (indicating),
13 because he is bent down like this (indicating).
14 And I think the gunshot actually knocked him over,
15 because it's a powerful weapon, and I think it
16 knocked him over.

17 When he got knocked over, he had some boxes
18 that were right here (indicating). I think his
19 legs, his left leg hit one of those boxes, which he
20 is now falling over. He is falling over, you know,
21 he is falling over to the right.

22 I am not going to have you do this, but I
23 think his leg, this leg (indicating), went up in
24 the air like this (indicating). Okay? And then
25 therefore you have another shot that went right to

1 the bottom of his leg as he is falling down towards
2 the right.

3 As he is falling down to the right, you know,
4 this arm is like this (indicating). He is falling
5 down. The third shot comes and strikes him, but
6 his leg, as he is falling, his leg is bent like
7 this (indicating). You see, he is bent like this
8 (indicating).

9 So therefore all of you can see how that
10 gunshot to the forearm, as related to this one
11 (indicating) and this one (indicating) -- because
12 they're all related because he is falling down --
13 and you know his leg is up in the air at one point.

14 And as he falls down -- if you could fall down
15 or just lay down. I'm sorry. He is in position
16 somewhat like this, his head is on something, and
17 it's kind of like facing just like that
18 (indicating). All right, his head is on like this
19 plastic bin. So it is slightly tilted up.

20 I think the final shot came from somewhere
21 around this area (indicating) like this. And as
22 you see, the projectile would then strike here
23 (indicating) and go in that trajectory I talked
24 about. That's --

25 MR. WHITLARK: I have an objection, Your

1 Honor, to the testimony that was just given.

2 THE COURT: All right. And the objection is?

3 MR. WHITLARK: The objection is he has already
4 stated that he doesn't know the distance between
5 them, but he just physically demonstrated a
6 distance.

7 THE COURT: All right. Any response?

8 MS. CAMPBELL: Your Honor, I think he is just
9 showing the parameters. He's not setting a certain
10 exact distance. He is saying where the bullet went
11 and the trajectory of the bullet and how it
12 entered. That's what he was just explaining.

13 He is not saying anything about distance
14 testing. We'll have that with another witness. He
15 is talking about the angle. And he is limiting it
16 to what he can tell happened.

17 THE COURT: All right. The objection is
18 overruled.

19 MS. CAMPBELL: Thank you.

20 A And some things that -- I believe that that shot to
21 the left -- to the head was the last shot. Because
22 in the photos that I reviewed, the way the blood
23 runs off of his face, it only runs in one
24 direction. And it runs in the direction, this way
25 (indicating). So his head is down that way

1 (indicating).

2 There is a little bit of blood that runs,
3 because he had already sustained those other
4 wounds, and his blood pressure had dropped. And,
5 therefore, you can just get a little bit of blood.
6 Head wounds tend to bleed very, very -- a lot.

7 So that is my opinion.

8 Q You mentioned that head wounds generally bleed a
9 lot, but in this point it didn't bleed as much,
10 why?

11 A I believe it didn't bleed as much why, because
12 you've got to remember, now we have what we talked
13 about the aorta and the heart as being a closed
14 system under pressure, because when you puncture a
15 garden hose at one end, you are going to lose
16 pressure on the other end. So his blood is coming
17 out of him.

18 You see, as his heart is pumping, every time
19 it pumps, blood is coming out. And you have two
20 locations where it's coming out -- three, actually.
21 Well, you have many locations: The skin,
22 subcutaneous tissue, the lungs, the heart itself,
23 and the aorta.

24 Q And, however, the significance in the blood you did
25 see, that it ran in which direction?

1 A It ran -- it ran towards the right. It ran down
2 and towards the right, that way (indicating).

3 Q So when that shot to the face occurred, in your
4 opinion, having reviewed everything, where was
5 Mr. Capnerhurst's body?

6 A I believe that he was laying down on the ground
7 there, down on the ground.

8 Q And that would have been definitely a fatal shot?

9 A That's a fatal shot, yes.

10 Q Was there anything else in the crime scene photos
11 that was significant as far as any ammunition or
12 any damage around the head?

13 A Yes. On that plastic bin that his head was lying
14 on, you can look closer to that and see that there
15 are defects in that that look like projectiles went
16 through them.

17 So that's also showed there. And then I
18 believe in one photo you can actually see a piece
19 of a fragment of a jacket kind of lying there next
20 to his head.

21 Q And that would be consistent with him having been
22 on the ground when the head shot occurred?

23 A Yes.

24 Q I show you what has been marked as State's Exhibit
25 Number 490, while you are still up. As far as the

1 head wound, what does this show?

2 A Okay. This here, again, is again like we did with
3 the autopsy. We made the incision behind the back
4 of the head and reflected the scalp up and over.

5 And this just showed that during the gunshot
6 he had a massive amount of hemorrhage in this area
7 (indicating) on his skull -- you've got to
8 remember, the skull fractured -- and the scalp area
9 over here (indicating).

10 Q And when you say hemorrhage, what does that mean?

11 A Blood. The blood bled into the tissue. And you
12 can clearly see it with a visible eye.

13 Q Thank you, Doctor. You can take the stand. Oh,
14 while you're still up. You also took X-rays in
15 this case?

16 A Yes.

17 Q Or they were taken? Both of Ms. Parker and
18 Mr. Capnerhurst?

19 A Yes.

20 Q I hand you State's Exhibit 483. Are those
21 Ms. Parker's?

22 A Yes, these are Ms. Parker's radiographs from that
23 day on the autopsy.

24 Q Can you go ahead and show the jury anything of
25 significance?

1 A Sure.

2 Q Can you get to them?

3 A Okay. So this is a side shot of Ms. Parker's skull
4 and head, and so forth. And you can see that there
5 is some fragments of projectiles here (indicating),
6 here (indicating).

7 And you will also note, this is normal skull
8 right here (indicating). You can see the lines,
9 that nice white line; and then you can see the
10 fractures that are associated. And these are just
11 little -- again, it was made -- it was a full metal
12 jacketed bullet. So it kind of shredded a little
13 bit. And these are just fragments of lead and the
14 copper jacket there (indicating).

15 So that is one. That is a side shot of her
16 head because the X-ray machine was over here
17 (indicating), and it was a shot with her head this
18 way (indicating) with the X-ray.

19 Q Here is a pointer.

20 A Okay. Here (indicating), this is what we call an
21 anterior/posterior. So the machine is over here
22 (indicating) and we shoot the X-ray this way
23 (indicating).

24 And, again, it's just showing some of the
25 projectiles in her head. Had we chose to shoot

1 these films looking at this head-on -- I can't tell
2 the depth of where it is, but we are shooting side
3 shots, so I know exactly where to go in the brain
4 to pull out the projectiles.

5 Here is an X-ray of her right forearm and just
6 demonstrating here (indicating) that I pulled out a
7 projectile out of her right forearm, and you can
8 see it also fractured a bone there (indicating).

9 The remainder of the radiographs, I
10 radiographed wherever I saw holes, and they don't
11 demonstrate any, you know, significant findings. I
12 did not find any projectiles in the remainder of
13 Ms. Parker's radiographs.

14 Q Okay. Taking State's Exhibit Number 484, are those
15 Mr. Capnerhurst's?

16 A Yes. This is a radiograph we call an
17 anterior/posterior radiograph. Again, the X-ray
18 machine was set up like this (indicating), and it
19 shot a film this way (indicating). And you can see
20 here (indicating) multiple projectiles here in the
21 right side of the head area.

22 Here (indicating), again, is a lateral view
23 from the side of Mr. Capnerhurst's skull showing
24 the radiograph projectiles. You can see that you
25 have a skull fracture right along that ridge there

1 (indicating).

2 Q What is this?

3 A This here is a radiograph of Mr. Capnerhurst's left
4 forearm.

5 Q And that is his left arm?

6 A This is his left arm here (indicating) showing some
7 of the disks right here (indicating), some
8 fragmented disks and some of the pellets. Then he
9 had a fractured ulna right there (indicating).

10 Q You can actually see the break?

11 A You can see the break right there (indicating).
12 You see the black space? There shouldn't be any
13 black space. You can see the crack in the bone
14 right there (indicating).

15 This is just another view of the left forearm,
16 again, just another view, but a different angle of
17 some of the BB-type shots, fragment of a disk where
18 you have a broken left ulna.

19 Here is a radiograph of Mr. Capnerhurst's
20 thorax, chest area, along with some of the abdomen
21 here (indicating). You can see this is his large
22 bowel here (indicating) with some gas in it.

23 But you can see we have the BB-type shot
24 here (indicating), and we have the disks down
25 here (indicating) near L-1, the vertebral region.

1 Okay?

2 Q The vertebral region would be the vertebrae?

3 A The lumbar area. The lumbar area, where people get
4 back pain.

5 This is just a higher-up shot where you get
6 the neck involved. You can see some of the BBs,
7 the BBs up in the left chest area.

8 Here is a radiograph of the foot, and you can
9 see some of the BB-type shots in the foot area, the
10 destruction of the bone right there (indicating).

11 Q And the foot and the disk that penetrated and went
12 through it and exited, the angle of that, was it
13 pretty much straight through?

14 A In the anatomic position, I'll have to check my
15 report. The trajectory of that foot shot is
16 forward, slightly upward, and is coming actually
17 left, so it is coming like that (indicating).

18 Q Okay.

19 A So here is a shot -- here is a radiograph of the
20 left leg region, okay? And remember that I said
21 that I recovered three intact disks -- one
22 (indicating), two (indicating), three
23 (indicating) -- right there near the head of the
24 fibula, that bone right there, that you see right
25 there (indicating).

1 Here is another, just another, different
2 angle. You see how they look different when you
3 change the angle around of the radiograph. There
4 are the three disks right there (indicating).

5 Q Okay.

6 A This here is a radiograph of Mr. Capnerhurst's left
7 thigh region right here (indicating). And I said I
8 pulled out a few BBs from the soft tissue of the
9 skin, in the soft tissue of the skin right there
10 (indicating) near the muscle area. You see the
11 bone is intact.

12 This is just another radiograph of
13 Mr. Capnerhurst's pelvis just to make sure I did
14 the same with that below, and there was just one BB
15 there.

16 I think those are all the radiographs.

17 Q Okay.

18 (Witness returns to witness stand.)

19 Q Based on the multiple gunshots and the areas that
20 were shot and everything, in your expert opinion,
21 would Mr. Capnerhurst have been able to maintain a
22 grip on anything --

23 MR. WHITLARK: Objection, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury,
25 at this time there is a matter of law that I need

1 to take up outside of your presence. I will send
2 you all back to the jury room for a short second.

3 Thank you.

4 (WHEREUPON, the jury retires to the jury
5 room at 10:46 a.m.).

6 THE COURT: All right. There is an objection?

7 MR. WHITLARK: My objection is that he is not
8 qualified to give this opinion, an opinion we
9 talked about previously. He is not an orthopedic
10 doctor. He is not an orthopedic surgeon.

11 He doesn't base this upon any study or science
12 or anything that has been peer reviewed or anything
13 that would support what he is about -- what they
14 are trying to get him to say.

15 He goes against what the facts are as reported
16 by eyewitnesses as well, Your Honor. So the first
17 thing is he is not qualified under Rule 704 -- or
18 from 702 to 705 -- as an expert to give an opinion
19 like this.

20 Number Two, he doesn't have anything -- he is
21 not basing this upon any sort of study that was
22 done. He is not basing it upon any science. He is
23 just saying, Well, in my opinion because of this,
24 he couldn't have done it.

25 First of all, Your Honor, it goes basically to

1 the ultimate issue in the case. And he is not --
2 Your Honor, he is not qualified to give this
3 opinion. They have got another orthopedic that
4 probably will and maybe he is qualified to give it;
5 but this man is not qualified to give it.

6 THE COURT: All right. Yes, ma'am?

7 MS. CAMPBELL: Your Honor, that is ridiculous.
8 He is a forensic pathologist. He is trained in
9 order to determine the cause and manner of death
10 and what did happen and what didn't happen at crime
11 scenes.

12 He is the chief medical examiner as well, Your
13 Honor. He has reviewed the crime scene photos. He
14 consulted with doctors. He did everything. He is
15 obviously qualified under 703 to give an opinion.

16 Any medical doctor could give an opinion if it
17 is within their training. It is within his
18 training.

19 If you want me to base that determination of:
20 During the course of being a forensic pathologist,
21 do you make determinations of what could or
22 couldn't happen?

23 Our contention is, Your Honor, that
24 Mr. Parker, after shooting this Defendant [sic] in
25 the head with the final head shot, then went and

1 got the gun that he had used to kill his wife and
2 placed it in the hand. That is significant in this
3 case.

4 But what he didn't know was that that arm was
5 broken, and he could not hold that gun in the
6 manner in which it was placed so the police would
7 find it to show guilt.

8 MR. WHITLARK: Your Honor --

9 THE COURT: All right. Well, let me ask you
10 this. Well, first of all, we'll proffer the
11 testimony so I can hear what he is going to say.
12 But I think under 702 and 703 that he has to -- and
13 I'm not sure if we went that far when we did the
14 voir dire initially qualifying him.

15 But under the case law, the Court requires us
16 to look at the scientific reliability as to the
17 testimony. Is this something he has done before.
18 If you can question him and lay the foundation
19 regarding that, we'll proffer it and then I'll hear
20 what you all have to say.

21 IN CAMERA EXAMINATION

22 BY MS. CAMPBELL:

23 Q Doctor, as a forensic pathologist, you are trained
24 to determine the cause of death, as well as the
25 manner of death?

1 A That's correct.

2 Q And as a forensic pathologist, you also have
3 training as far as what could or couldn't have
4 happened in a crime scene as purported?

5 A Yes.

6 Q And in this case you have specific training as a
7 medical doctor, just as a medical doctor, as far as
8 how certain wounds could affect a person's ability
9 to move, to handle things, or to do anything of
10 that sort?

11 A Yes.

12 Q And the basis of your opinion in this case about
13 facts that, based on your --

14 MS. CAMPBELL: And, Your Honor, this is the
15 ultimate opinion.

16 Q -- based on how Mr. Capnerhurst's manner of death,
17 and everything, would he have been able to keep a
18 grip on any object in his hand based on his
19 injuries?

20 A Yes.

21 Q Do you have an opinion?

22 A Yes.

23 Q And what is your opinion?

24 A I believe that Mr. Capnerhurst, due to the injuries
25 sustained to his left arm, that he was unable to

1 have carried a weapon based on the injuries to his
2 left arm, based on the circumstances of falling
3 backward and downward. That is my opinion.

4 THE COURT: Anything you want to ask?

5 MR. WHITLARK: Yes, there is, Your Honor. I
6 have quite a few things to ask this doctor.

7 Your Honor, first of all, I'd like to say that
8 when I agreed -- and I had no objection to his
9 qualifications as to the cause of death in this
10 case, and now he is getting --

11 THE COURT: Well, I think he testified when
12 she asked him that he has to determine cause of
13 death, manner of death, and something else. There
14 were three different things that he testified to.

15 MR. WHITLARK: Well, we don't object to that.
16 I didn't object to any of that. That was fine.
17 But, Your Honor, what he is testifying to goes
18 against the facts as determined.

19 This isn't a weight of evidence thing. This
20 man is a doctor and is telling the jury in his
21 opinion something that flies in the face of the
22 facts found here by the first two officers.

23 They didn't say the gun was near his hand.
24 They said the gun was in his hand with his fingers
25 wrapped around it.

1 And for him to now come in and give a
2 diametrically different opinion against a fact that
3 was found, it's not a weight issue, Your Honor.

4 THE COURT: So you don't think it goes to the
5 weight of the evidence? I mean, the jury still has
6 to decide -- I mean, the Court instructs the jury
7 that they can give it -- that they can give it
8 whatever weight they wish, if they wish to give it
9 any at all.

10 And if you intend on putting up your own
11 expert and that expert is going to say something
12 different, then basically the jury is going to have
13 to decide whether or not they believe this expert
14 or is your expert more qualified.

15 But I think it goes to the weight of the
16 evidence under 703. He is a forensic pathologist.

17 MR. WHITLARK: I'd like to ask -- I'm sorry,
18 Your Honor.

19 THE COURT: This is the kind of work they do.

20 MR. WHITLARK: I'd like to have a chance to
21 question his credentials in this.

22 THE COURT: Go ahead.

23 IN CAMERA EXAMINATION

24 BY MR. WHITLARK:

25 Q You are not board certified in orthopedic medicine,

1 are you?

2 A No, sir.

3 Q And you not a board certified orthopedic surgeon?

4 A No, sir.

5 Q And you have not listed in your reports, or
6 anything, anything that you are basing this on
7 other than he had a broken ulna, right?

8 A That's correct.

9 Q All right. Sir, you haven't eliminated all other
10 causes. Do you have a study that you base this on?

11 A No, sir.

12 Q Okay. Have you been in cases before where the
13 exact facts of this case were alleged or something
14 like this?

15 A No, sir.

16 MR. WHITLARK: I mean, Your Honor, I think
17 that is far enough right there what I have asked
18 him. He is not basing it on any type of science.
19 It's the opinion of the ultimate issue in this
20 case.

21 He is not an orthopedic surgeon. He has not
22 looked at anything. He's never had another case
23 like this. And he is simply giving an opinion: I
24 don't think he could have held a gun in his hand.

25 You know, I would object to it on that basis.

1 They've got an orthopedic surgeon who is qualified
2 probably -- but I'm going to fight it anyway -- but
3 probably, Your Honor.

4 And for the jury to hear this on the ultimate
5 issue from this man, it's basically letting them
6 make a decision about guilt or innocence in this
7 case.

8 THE COURT: All right.

9 MS. CAMPBELL: Respectfully, Your Honor, it
10 does go to the weight, not the admissibility. He
11 can cross him all he wants to. He can cross him on
12 his credentials and everything.

13 Your Honor, this is a determination he makes
14 during the course of doing autopsies, what can and
15 cannot have happened at a crime scene. This is
16 part of the manner of death, Your Honor. He is
17 qualified as a forensic pathologist.

18 He is qualified as a medical doctor, Your
19 Honor. They can go out and hire whoever they want,
20 be it orthopedic, medical doctor, family practice,
21 whoever, can come in and give an opinion if they
22 have some training in the field.

23 He has already testified that he does have
24 training in order to determine that, and this is
25 his opinion. Whether he wants to challenge his

1 opinion is his right. But just like he gets to
2 bring in experts to say whatever he wants them to,
3 our expert has a right to give an opinion as to
4 what happened that day at the scene.

5 And he based it not only on his training, he
6 also based it on a review of the crime scene, he
7 based it on a review of a series of gunshots, as
8 well as the breaks to the forearm.

9 MR. WHITLARK: Your Honor, if I could briefly
10 state this. We know that State v. White and the
11 rules require, first of all, is he qualified in the
12 first instance.

13 THE COURT: Well, he's been qualified as a
14 forensic pathologist --

15 MR. WHITLARK: I understand that, Your Honor.
16 And I agree. I agree.

17 THE COURT: And as a forensic pathologist,
18 based on his testimony earlier, is to decide the
19 cause of death and the manner of death and the
20 circumstances surrounding the death.

21 So he has been qualified already, and there
22 was no objection by the Defendant. Now, I
23 understand what you're saying, but I think that
24 your questions go to the weight of the evidence.

25 He is a forensic pathologist. Once again, his

1 job is to determine the cause, the manner of death,
2 and circumstances surrounding the death. And he is
3 qualified to give that opinion. It's up to the
4 jury to determine whether or not they want to
5 believe that opinion.

6 And I give them that charge. I will give it
7 to them again, but the charge is -- you know, it
8 says opinion testimony, and it doesn't mean that
9 you have to accept the opinion. It is the evidence
10 for you to decide what weight you want to give to
11 it.

12 But I do believe that he is able to testify as
13 to his opinion because his job is to decide manner
14 of death and cause of death and circumstances
15 surrounding the death.

16 MR. WHITLARK: We don't object to that.

17 THE COURT: If she frames the question in that
18 way regarding the manner of death, then I think
19 it's within his expertise to testify to it.

20 MR. WHITLARK: I think he is well qualified to
21 testify as to cause of death. I don't think there
22 is any question about that.

23 Your Honor, I just want to note the specific
24 objections I have for the record.

25 THE COURT: Yes, sir.

1 MR. WHITLARK: Because it's going to be
2 important obviously. State v. White, first of all,
3 Does he have the credentials and the training and
4 the experience to, first of all, give an opinion?
5 And we object on that grounds based upon his own
6 testimony.

7 Secondly, Did he base his opinion upon
8 science, scientific testing that was solidly done
9 that was based upon peer reviewed articles that is
10 based upon some sort of study done in this area?
11 And we would object to it on those bases.

12 Thank you, Your Honor.

13 THE COURT: All right. The objection will be
14 overruled. I do believe that it goes to the weight
15 of the evidence. I do believe that he is
16 testifying to the manner of death, the cause of
17 death, and the circumstances surrounding the death.
18 That is what he was qualified as an expert on
19 yesterday.

20 All right. We will bring them back in. And
21 you can bring in experts.

22 MR. WHITLARK: Your Honor, could we have a
23 bathroom break?

24 THE COURT: Oh, sure. Sure.

25 MR. WHITLARK: Thank you.

1 THE COURT: One second. Mr. Bailiff, one
2 second, one second. We are going to take a
3 bathroom break.

4 MR. WHITLARK: Thank you, Your Honor.

5 (Witness steps down.)

6 (WHEREUPON, a break was taken.)

7 (Witness returns to witness stand.)

8 MR. WHITLARK: May it please the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 MR. WHITLARK: Your Honor, I just want to add
12 one thing for purposes of the record that the Court
13 knows what our objection is under Rule 702 and 705,
14 State v. White.

15 I would also like to state that under Rule 403
16 that the testimony he's about to give substantially
17 outweighs the probative value and is prejudicial,
18 unduly prejudicial, and substantially prejudicial
19 to the Defendant. And under Rule 403 we have
20 further objection.

21 Thank you, Your Honor.

22 THE COURT: All right. Any response?

23 MS. CAMPBELL: No, nothing.

24 THE COURT: All right. Looking under 403, in
25 considering 403, which I did not put that in my

1 ruling, but I already did consider the probative
2 value as to the manner of death and circumstances
3 of the death outweigh the prejudicial effect in
4 terms of his testimony or him giving his opinion.

5 Also, once again, the Defense has indicated
6 and the State has also indicated, there will be
7 several other experts. I do believe that his
8 testimony, that the issue goes to the weight of the
9 evidence as opposed to the admissibility of his
10 testimony.

11 So I will allow him to testify as to the
12 manner, the cause, and the circumstances
13 surrounding the death; and he can give his opinion
14 to those things. All right.

15 You can bring them in.

16 (WHEREUPON, the jury came into open
17 court at 11:18 A.M.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: All right. You may continue.

20 MS. CAMPBELL: Thank you, Your Honor.

21 **DIRECT EXAMINATION CONTINUES**

22 BY MS. CAMPBELL:

23 Q Doctor, as we were just saying, part of your duties
24 are to determine the cause of death?

25 A That's correct.

1 Q The manner of death?

2 A Yes.

3 Q And the circumstances surrounding it?

4 A Yes.

5 Q Do you have an opinion based on your assessment of
6 the crime scene, the autopsy, and everything, as to
7 whether or not when Bryan Capnerhurst was shot,
8 whether or not he would have been able to hang on
9 to anything in his left hand?

10 A I have an opinion, yes.

11 Q And what is your opinion, sir?

12 A Based on, you know, the injuries sustained to his
13 left arm and the way he fell back, I don't believe
14 he could have held onto anything that was in his
15 hand.

16 Q Once a person is deceased, does -- well, what is
17 rigor mortis?

18 A Rigor mortis is after you stop getting blood flow
19 to your muscles, your muscles tend to start to
20 become extremely stiff and board-like. Okay? So
21 that sets in within two hours or so after death,
22 you could start feeling a little bit of stiffness.
23 And by 12 hours after death, you're full of rigor.
24 You can't -- it's very hard to break the rigor.
25 It's hard to break it. I have to -- if a body

1 comes in, I have to pull the arm down and break it.

2 So the rigor is more -- it's fully stiff by 12
3 hours. It stays stiff for another 12 hours. After
4 that you start losing your rigor because your body
5 is decomposing, and then you become very floppy
6 again.

7 Again, this is all dependent on the
8 temperature and the environment that you are in.

9 Q And in the minutes after a person has died, can
10 their body parts still be moved?

11 A Yes, you can move the arm. You can move arms,
12 legs, yes. You can move them, yes, absolutely.

13 Q Fingers?

14 A Yes.

15 Q And are your findings as far as the autopsy you
16 did, your observations of Mr. Capnerhurst, can you
17 tell this jury exactly what time he died?

18 A I can't tell exactly what time. I just, you know,
19 based on when I got Mr. -- when I started
20 Mr. Capnerhurst's autopsy, his rigor -- I rate
21 rigor on a scale out of four. One being there is a
22 little bit of rigor; four being he is fully stiff.
23 And I put his rigor at the autopsy at a four out of
24 four. So he was in a fully stiff manner.

25 So, like I just said, again, it's variable.

1 Based on that, he had probably been dead from 12 to
2 24 hours or so, around those ranges. Okay? I'm
3 not giving you an exact, but based on his rigor and
4 based on when this incident occurred, it all fits.

5 Q Okay. So that's not the question. Is it
6 consistent that he was killed somewhere between
7 12:00 and 1:00 the previous day?

8 A Yes. That is consistent with the findings I had at
9 the autopsy, yes.

10 Q And for Mr. Capnerhurst, did you also get back
11 toxicology results?

12 A I did get toxicology results back on
13 Mr. Capnerhurst, that's correct.

14 Q And what were your findings?

15 A Cardiac blood ethanol was negative. So he had no
16 alcohol in his system. Cardiac blood was positive
17 for tetrahydrocannabinol, and 11
18 tetrahydrocannabinol. Those are marijuana
19 products.

20 Q And would that be consistent with recreational
21 marijuana use?

22 MR. WHITLARK: Objection to the leading
23 question, Your Honor.

24 MS. CAMPBELL: I will rephrase.

25 THE COURT: Sustained.

1 BY MS. CAMPBELL:

2 Q What would that be consistent with?

3 A He used marijuana. Marijuana can stay in your
4 system between -- again, it's variable depending on
5 how much you smoke, and so forth. If you use it,
6 it can stay in your system for three to ten days
7 and have a positive screen on your drug test.

8 Q Three to ten days?

9 A Yes, three to ten days.

10 Q Prior to his death?

11 A Prior to his death, yes.

12 Q Finally, as far as the cause of death in this case
13 for Ms. Tammy Parker?

14 A I put the cause of death on Tammy Parker as
15 multiple gunshot wounds to the head, thorax, and
16 abdomen.

17 Q And the cause of death on Mr. Capnerhurst?

18 A My cause of death statement on him was multiple
19 gunshot wounds to the head, chest, upper and lower
20 extremities.

21 Q Thank you, Doctor.

22 THE COURT: All right. Please answer any
23 questions that Mr. Whitlark may have.

24 MR. WHITLARK: May it please the Court?

25 CROSS-EXAMINATION

1 BY MR. WHITLARK:

2 Q Did you make a written report in this case, Doctor?

3 A Yes, sir.

4 Q How many pages was that report?

5 A Okay. So on Ms. Parker, the report is six pages
6 long.

7 Q Okay.

8 A That is front and back.

9 On Mr. Capnerhurst the report is seven pages
10 long.

11 Q Okay. Can I take a look at Mr. Capnerhurst's, the
12 records you've got on that, because these have
13 gotten out of your binder, or whatever you've got?

14 A (Hands to counsel.)

15 Q Now, you testified in your direct for the State
16 that you don't know how far away they were standing
17 when this happened; right?

18 A No, I don't know the exact -- how far they were. I
19 wrote in my report indeterminate range.

20 Q Doctor, can you look through that report and show
21 me in that report where it says what you just
22 testified to, that he couldn't have held onto that
23 gun?

24 A I didn't write this in the report.

25 Q You talked to a lot of people about this case,

1 didn't you, sir?

2 A I talked to the Solicitor, I talked to the Coroner,
3 a deputy, I talked to my colleagues --

4 Q You went there that day too, didn't you?

5 MS. CAMPBELL: Objection, Your Honor. Can he
6 finish his sentence?

7 MR. WHITLARK: Oh, I'm sorry.

8 THE COURT: Yes, let him finish the answer.
9 Were you done, sir?

10 THE WITNESS: I spoke with the coroner, the
11 coroner's deputies who were there, I spoke with the
12 investigators, I spoke with my colleagues about
13 this, about this case, yes.

14 BY MR. WHITLARK:

15 Q Okay. Well, I mean, you were there like very
16 shortly after it happened, weren't you?

17 A I think I got there around 2:30. Don't quote me on
18 that. I don't -- it was in the afternoon because I
19 had done autopsies earlier in the morning, and I
20 had my lunch. So it was in the afternoon sometime.
21 I don't know exactly what time, sir.

22 Q Okay. When you went out there that day, did you
23 hear or did anyone tell you that Brett Parker, the
24 Defendant here, was a bookie?

25 A Yes, yes. I heard that, yes.

1 Q Okay. All right. And did you hear from some of
2 the investigators that day in the case -- and since
3 then -- that they felt like there were some
4 suspicious circumstances around this? You've heard
5 that, haven't you?

6 A I've heard that, yes.

7 Q Okay. All right. Now, by the time you did this
8 report, there was a full-fledged investigation
9 going on by the Richland County Sheriff's
10 Department? You know about that, right?

11 A It was a full-fledged investigation, yes.

12 Q Okay. Now, you never met Brett Parker before, have
13 you?

14 A No.

15 Q You don't know him?

16 A No, sir.

17 Q Now, Doctor, you didn't go in the attic that day
18 when you went there; did you?

19 A No, sir.

20 Q Now, have you ever spoken to Deputy Odom in this
21 case?

22 A I don't know what he looks like, so I don't know.

23 Q Are you aware that Deputy Odom came into the attic,
24 was the first officer there, and saw
25 Mr. Capnerhurst with a gun in his hand?

1 A Yes, that was reported to me. Yes, that a
2 deputy -- yes, that was reported to me. I'm not
3 sure who it was, but that was reported.

4 Q Okay. And there was a second deputy who also saw
5 it, Harvel. Did you speak with him?

6 A No, sir.

7 Q Okay. You have never spoken to either one of them?

8 A No, sir.

9 Q All right. What is your understanding as to how
10 the gun was held by Mr. Capnerhurst?

11 A My understanding was that his hand was around the
12 handle of the weapon with his finger in the trigger
13 hole area.

14 Q Okay. So your understanding is that he was holding
15 the gun like this (indicating) and with his -- what
16 finger is this (indicating)?

17 A That's your index finger.

18 Q With his index finger in the -- where the trigger
19 is?

20 A Yes. That's what I understand, yes.

21 Q Okay. All right. Now, Doctor, he had sustained a
22 serious injury to -- is it a flexor? What do you
23 call this?

24 A Well, your forearm is made up of flexor muscles,
25 which flex your hand, and extensors. It's made up

1 of both of them. So he sustained injuries to both
2 of those.

3 Q Okay. Which one controls these three fingers
4 (indicating), if it does, for this motion
5 (indicating)?

6 A I don't know the exact names of the muscles. There
7 are numerous -- there are about 20 different
8 muscles in your forearm. So I couldn't -- I could
9 not tell you exactly which ones, no, I cannot.

10 Q You don't know the name of the tendons and the
11 muscles in the hand that control these three
12 fingers (indicating)?

13 A I don't know the names of the muscles offhand, no.
14 No. I have an anatomy book that I use as a
15 reference.

16 Q Okay. Where did you go to medical school, sir?

17 A I went to the American University of the Caribbean.

18 Q Okay. Doctor, do you know what cataleptic rigidity
19 is?

20 A Pardon me?

21 Q Do you know what cataleptic rigidity is?

22 A I've never heard that term before, sir.

23 Q Do you know what instantaneous rigidity is?

24 A Well, based on what you just said, I would think
25 that it instantly becomes rigid.

- 1 Q Do you know this from your medical training?
- 2 A No, I've never heard those terms before, sir.
- 3 Q Do you know what cadaveric spasm is?
- 4 A Cadaveric spasm?
- 5 Q Yes.
- 6 A I've heard of that term. I've heard of it.
- 7 Q Okay. Do you know what death grip is? Have you
- 8 ever heard that term?
- 9 A Death grip? Yeah, I have heard that term.
- 10 Q How long have you been doing this, sir?
- 11 A Approximately 11 years.
- 12 Q Eleven years. Okay. Have you ever done a drowning
- 13 case?
- 14 A Oh, sure.
- 15 Q Have you ever done a drowning case in which the
- 16 deceased was holding onto something tightly in
- 17 their hand?
- 18 A I can't recall off the top of my head.
- 19 Q Okay. But it is your testimony that you, first of
- 20 all, do not know what cataleptic rigidity is? You
- 21 don't know what it is?
- 22 A I've never heard of that term before, no.
- 23 Q And you don't know what these muscle groups are
- 24 called or the tendons are?
- 25 A I don't know the exact names of them, no, sir.

1 Q Okay. But you do know that you were told that this
2 man was a bookie?

3 A Yes. I was told that, yes.

4 Q And you were also told the suspicious
5 circumstances?

6 A Yes.

7 Q And you also were told, when they came back to you
8 later to talk to you about your testimony today,
9 the testimony you just gave about he couldn't have
10 held onto that gun, you do know that they are
11 having a problem proving this case against him?
12 You knew that, didn't you?

13 MS. CAMPBELL: Objection, Your Honor.

14 THE COURT: Sustained. Please disregard that
15 last question.

16 BY MR. WHITLARK:

17 Q Do you have anything in your official written
18 report stating that: In my opinion Bryan
19 Capnerhurst could not have held onto that weapon?

20 A No, I did not put that in my report.

21 Q Okay. And you never spoke to the officers who saw
22 him holding the gun, right?

23 A No, sir, I did not.

24 Q Okay. But you knew he was a bookie?

25 A Yes, sir.

1 Q Okay. Sir, in your studies as a doctor -- in your
2 studies as a doctor -- have you ever heard or do
3 you know anything about the crystallization -- do
4 you know what crystallization is?

5 A Yeah, like when you form crystals from something
6 liquid.

7 Q Right. Right. And, well, I'm talking about when
8 you went back -- your job, based on your testimony,
9 is to come back and tell us later on what your
10 opinions about what happened, right?

11 A That's correct.

12 Q And that would be something like crystalized,
13 right? I mean, let's take a look. It's frozen.
14 This is what happened, right?

15 A I guess you could say that.

16 Q Okay. Well, you knew nothing about any of the
17 facts or circumstances regarding Mr. Capnerhurst
18 discussing how much money was in Brett Parker's
19 safe, do you?

20 A No, I don't know anything like that.

21 Q You've never heard of that?

22 A I have heard about there was discussions of money
23 in the safe, but I don't know all of the intimate
24 details. I am not -- I just don't know any of
25 those details, all of the minutiae of the details

1 of that, no, I do not.

2 Q Okay. You know, based upon what you have been
3 told, though, that their position is that Mr.
4 Capnerhurst was closest to the entryway of the door
5 of the attic, wasn't he?

6 A Yes.

7 Q And Mr. Parker was on the other side of him, wasn't
8 he? Is that your understanding?

9 A Yes, that's my understanding that he was near the
10 safe.

11 Q Okay. And Mr. Capnerhurst was a fairly large
12 fellow, wasn't he?

13 A Yes, sir. Yes, sir.

14 Q Okay. And you're saying he was bent over,
15 something like this (indicating), right?

16 A Yeah, it was something -- I think he was bent over,
17 you know, slightly over. I do believe that.

18 Q And let me ask you something: Are you saying today
19 that the gunshot wound to his head was
20 instantaneous death?

21 A No, no, it is not -- death is not, you know, just
22 instantaneous, okay? You are bleeding out, and so
23 forth. Your heart is still beating, okay?

24 After you lose enough blood where your heart
25 can't get oxygenated, your heart starts to have an

1 arhythmia, which is an abnormal beat, because it
2 needs oxygen, your heart needs oxygen.

3 It does a few -- it goes into these crazy --
4 you see those strips, they go like this
5 (indicating). Eventually, though, the heart rate,
6 the line on an EKG machine, will be flat because
7 the heart no longer can beat, it has no oxygen.

8 So I don't believe his death was
9 instantaneous.

10 Q All right. I understand you. I believe I heard
11 you testify that this was a death shot -- or what
12 did you say it was?

13 A That he had -- the shot to the head is a fatal
14 wound.

15 Q Okay. All right, well, did it take a while for him
16 to die or something?

17 A I would say a few -- again, a few -- about a few
18 minutes, you know, two, three minutes before he was
19 completely dead, heart not moving.

20 Q Okay. Sir, there was quite a big investigation on
21 the Defendant here. You know that, right?

22 A From what I have read in the news, yes.

23 Q All right. Well, you were consulted many times
24 about it, right? I mean, y'all actually had
25 sessions where you were saying, What do you think

1 about this, how did -- isn't that true that y'all
2 talked about it some?

3 A About the scenario of where -- you know, the way
4 the body is and the evidence, not the actual
5 investigation into it.

6 Q Oh, I understand that. I understand that. I'm
7 saying you were consulted, though, by the law
8 enforcement investigators here. You were
9 consulted?

10 A Yes. We consulted, yes.

11 Q And those law officers did mention the word death
12 grip to you, didn't they? They asked you?

13 A Yes. They mentioned it, yes.

14 Q So you've heard it before, right?

15 A Yes.

16 Q So being the person who is determining what
17 happened there, you went and did some research
18 investigation on whether or not that to be true,
19 right?

20 A I tried. I did a literature search on holding of a
21 weapon. I did. I did.

22 Q All right. You wanted to make sure you were right,
23 didn't you, in this opinion about he couldn't hold
24 the gun?

25 A I couldn't find anything in the literature.

1 Q I am going to hand you this and ask you if you --
2 tell me what it is.

3 A Okay. This is what -- this looks like a Wikipedia
4 definition of what a cadaveric spasm is.

5 Q All right. Tell the jury what cadaveric spasm is.

6 A All right, I am going to read verbatim here what it
7 says here:

8 Cadaveric spasm, also known as
9 post-mortem spasm, instantaneous rigor,
10 cataleptic rigidity, or instantaneous
11 rigidity is a rare form of muscular
12 stiffening that occurs at the moment of
13 death persists into the period of rigor
14 mortis and can be mistaken for rigor
15 mortis. The cause is unknown, but is
16 usually associated with a violent death
17 happening under extremely physical
18 circumstances with intense emotion.

19 Q Would you agree with me, sir, that what was
20 described to you as happened there fits that
21 definition? It was a highly emotional circumstance
22 that was described to you, wasn't it?

23 A Yes. This certainly is -- you know, it's here.
24 It's in here.

25 Q Okay. I have marked it with a star down here -- by

1 the way, I got this off of the internet. Would you
2 take a look at where that star is and read that to
3 the jury?

4 A Sure. Can I read it to myself first and then read
5 it out?

6 Q Sure. Sure thing.

7 (Pause.)

8 A Okay.

9 Cadaveric spasm often crystalizes the
10 last activity one did prior to death and
11 is therefore significant in forensic
12 investigations, e.g., holding onto a
13 knife tightly.

14 Q Or a gun?

15 A Yeah, I guess you could put that with a gun, sure.

16 Q So you wanted to make sure you were being -- you
17 were correct in what you were saying about him not
18 being able to hold onto that weapon, you went and
19 did some reading or some research on it?

20 A That's correct.

21 Q But you didn't find that?

22 A I did a literature search, okay? A literature
23 search.

24 Q All right. All right. Well, you wanted to be sure
25 you were right before you said that, didn't you?

1 A That's correct.

2 Q I mean, you know, basically you know the theory or
3 do you know what the theory of the State is in this
4 case about what happened, about what they are
5 saying Brett Parker did?

6 A Yes, I know the theory.

7 Q Okay. That he put the gun in his hand after he
8 killed him, right?

9 A That's correct.

10 Q Okay. And so for you to come in here and say your
11 testimony -- correct me if I'm wrong -- is that
12 there's no way he could have held onto that gun,
13 right?

14 A In my medical opinion, based on the shots to the
15 arm, to the forearm, and falling over, I believe
16 that the gun fell out of his hand.

17 Q Okay. You don't know the name of the muscles in
18 the arm, right? I mean, you can't --

19 A I said that.

20 Q Yeah, right. And your research didn't -- you
21 didn't come across what I just -- what we have been
22 talking about, cadaveric spasm, cataleptic
23 rigidity? You didn't find that?

24 A I didn't, no.

25 Q And you wanted to be sure you were right, though,

1 right?

2 A That's correct, yes.

3 Q And you never spoke to the two officers, the two
4 eyewitnesses who saw him holding that gun in his
5 hand? You never even spoke to them, did you?

6 A No, I did not.

7 Q And your understanding is he had his whole hand
8 with his finger in the trigger, that he was holding
9 the gun like that (indicating), right?

10 A That's correct.

11 Q Okay. And do you feel confident that you've
12 eliminated any possibility there is as to him
13 holding onto that gun?

14 A In my opinion, based on the circumstances, I feel
15 that due to the injuries he sustained that he would
16 be unable to hold a weapon or anything in his hand.
17 I feel like it would have fallen out.

18 MR. WHITLARK: Beg the Court's indulgence,
19 Your Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. WHITLARK:

23 Q Do you know what the medical term dystonia is?

24 A Dystonia? I believe it's like when you become
25 rigid. I'm not sure exactly, but I believe it's

1 when you become rigid.

2 Q You're on the right track. It's normally
3 associated with hands when you sustain a serious
4 head injury. Did you know that?

5 A No, I did not know that, sir.

6 Q Do you agree that Mr. Capnerhurst sustained a
7 serious head injury in this case?

8 A Yes, he definitely sustained a serious head injury.

9 Q And tell the jury again what your understanding of
10 what dystonia is, the medical term dystonia?

11 A It's some sort of rigidity you'll get. That is
12 based on the exact -- it's not the exact
13 definition.

14 Q Okay. And rigidity of the hands. You know this?
15 That's what dystonia is. It's caused by a fatal or
16 a massive violent head injury?

17 A Okay.

18 Q Well, I'm asking you. You're the doctor.

19 A I'm saying, I said that is a term I've never heard
20 used with a head injury before. I'm telling you
21 that.

22 Q All right. All right. Fair enough. Fair enough.
23 When did you first tell somebody that you -- I
24 don't think he could have held the gun in his hand?
25 When did you first tell somebody that?

1 A I believe -- I can't recall -- probably when I was
2 working on the autopsy report. I can't recall
3 exactly when.

4 Q Okay.

5 MR. WHITLARK: Beg the Court's indulgence. I
6 believe I'm about done here.

7 THE COURT: All right.

8 (Pause.)

9 BY MR. WHITLARK:

10 Q Sir, were you ever asked to make some diagrams or
11 anything of holding the gun in your hand in a
12 defensive posture?

13 A No, I was never -- I was never asked.

14 Q Okay. All right. And, again, sir, your report in
15 this case, your seven-page report, does not mention
16 a single word -- not a single word -- about, You
17 know, I don't think he could have held a gun in his
18 hand?

19 A No, I did not put that in my report. That's
20 correct.

21 MR. WHITLARK: That's all the questions I
22 have. Thank you, Your Honor.

23 THE COURT: All right. Yes, ma'am.

24 MS. CAMPBELL: A couple of questions, Your
25 Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q He asked you who you consulted with in this case.

You mentioned you consulted with your colleague?

A Yes, I consulted with my colleague, Dr. Durso, who is my partner when we do autopsies. She works the service when I'm not on service; and when she is not on service, I work the service.

Q Did you also consult with other doctors?

A I think I might have discussed it with some of the pathologists in my group. They are not board certified in forensic pathology. But one in particular, he worked as an autopsy pathologist, I believe out in Arizona, as a coroner, I believe, many years ago. He doesn't do autopsies anymore, but I consulted with him about the case too, but not in super detail, though.

Q Dr. Fulton?

A I consulted also with Dr. Fulton, yes.

Q Who is Dr. Fulton?

A Dr. Fulton is an orthopedic surgeon over at Moore Orthopedics. I believe it is in Lexington.

Q And he also asked you about this definition he got off Wikipedia?

(Attorneys confer.)

1 MR. WHITLARK: Well, I just found it last
2 night.

3 MS. CAMPBELL: Thank you.

4 MR. WHITLARK: Sure.

5 BY MS. CAMPBELL:

6 Q Do you often, in determining people's cases,
7 whether they have cancer, whether they will survive
8 things, go to Wikipedia to do your research?

9 A Generally, no. I have many -- I have an office
10 full of textbooks.

11 Q And are you aware on Wikipedia that anyone can go
12 on there and put on definitions or modify things.

13 A Yeah, I look stuff up on there for, you know,
14 general things all the time.

15 Q And how long did you train to become a forensic
16 pathologist?

17 A I started -- I started my training in forensics
18 right when I was a first-year resident. And they
19 actually allowed me to moonlight when I was a
20 first-year resident. So I've been doing forensic
21 cases since 2002 continuously through now. I have
22 done about 2,000 autopsies.

23 Q And you trained down in Charleston at the Medical
24 University?

25 A I trained down in Charleston at the Medical

1 University of South Carolina.

2 Q Did the fact that Brett Parker was a bookie or a
3 criminal in any way affect your findings in this
4 case?

5 A No, they didn't. I worked for Bryan,
6 Mr. Capnerhurst, and Tammy. They were both my
7 patients. And we have a doctor/patient
8 relationship, and I did -- I did their reports.

9 Q And he asked you something about death grip or
10 rigidity instantaneous with death. You testified
11 earlier, but as he was being shot and then down on
12 the ground for the last shot, it would have taken a
13 minute or two for him to die?

14 A I agree with that, yes.

15 Q At the point when he is tumbling through the air
16 and going down on the ground, in your opinion would
17 he have been able to hold onto anything?

18 A I don't believe he could have.

19 Q Thank you, sir.

20 MR. WHITLARK: Briefly, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. WHITLARK:

23 Q So you called some people in Arizona? Is that what
24 you told us?

25 A No, no, no, no. One of my colleagues, one of my

1 colleagues used to work out in Arizona. He now
2 works here in Columbia with me. His office is
3 across from us.

4 Q So you spoke to several people about it?

5 A Yes.

6 Q But not to the two eyewitnesses who saw him holding
7 it?

8 A No, I did not speak to them.

9 Q And you said you've done 2,000 autopsies, right?

10 A That's correct, sir.

11 Q But you have never seen this before, this
12 circumstance with a gun that you're talking about,
13 have you?

14 A No, I have never seen something like this, no, sir.

15 MR. WHITLARK: That's all I have, Your Honor.

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

17 (Witness steps down.)

18 MS. CAMPBELL: Your Honor, may he be excused?

19 THE COURT: Any objection to this witness
20 being excused?

21 MR. WHITLARK: Your Honor, I would like to
22 keep him ready. We may recall him in our case in
23 chief. So I'd like to keep him under that. He can
24 go. I don't have any problem with that.

25 MS. CAMPBELL: We will have him on standby.

1 THE COURT: All right, thank you, sir.

2 THE WITNESS: Can I leave town?

3 THE COURT: Yes, sir, you can leave.

4 THE WITNESS: I'll be back Monday.

5 (Witness excused.)

6 THE COURT: All right. Call your next
7 witness.

8 MS. SIMPSON: The State calls James Morgan.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Have a seat in the witness box.

19 (Witness complies.)

20 THE CLERK: State your full name for the
21 record.

22 THE WITNESS: My name is James Morgan.

23 JAMES MORGAN,

24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

- 1 BY MS. SIMPSON:
- 2 Q Mr. Morgan, how old are you?
- 3 A Sixty-two.
- 4 Q Sixty-two? And where do you live?
- 5 A I currently live in the Carolinas. Greensboro.
- 6 Q Okay. So you live in North Carolina?
- 7 A I do at present.
- 8 Q Do you know one of the victims in this case, Bryan
- 9 Capnerhurst?
- 10 A He was my best friend.
- 11 Q Best friend?
- 12 A Yes, ma'am.
- 13 Q How long have you known him?
- 14 A Ten, fifteen years. It could be even more.
- 15 Q And how did y'all meet?
- 16 A Playing rotisserie baseball.
- 17 Q Okay. So both of y'all enjoyed baseball?
- 18 A Yes.
- 19 Q All right.
- 20 A It was an affliction.
- 21 Q An affliction?
- 22 A Yes.
- 23 Q Did y'all talk about baseball frequently or just
- 24 life in general?
- 25 A Usually baseball. We were -- we had the passion,

1 but we had two different viewpoints. He was very
2 visual. And I would read. He wouldn't read, he
3 would watch TV. I wouldn't watch TV. So we always
4 had something to talk about.

5 Q Okay. And did y'all play fantasy baseball
6 together?

7 A Yes, rotisserie baseball.

8 Q Okay. And what is that?

9 A It is a 12-year-old's game.

10 Q Okay.

11 A About a quarter of a century ago, I tried to go
12 back another quarter of a century to when I was 12,
13 and delivered newspapers in the afternoon and got
14 to see the box scores from the West Coast games. I
15 tried to do something that would go back to enjoy
16 the sport that I loved, looking at the details and
17 stuff. And that is where it came from.

18 Q So y'all enjoyed it? And y'all would talk
19 frequently?

20 A All the time.

21 Q All the time. Did you know the Defendant in this
22 case, Brett Parker?

23 A No, I have never met Mr. Parker.

24 Q Okay. Did you know that Bryan knew Brett Parker?

25 A I did.

1 Q Did you know what Bryan did for Mr. Parker?

2 A I knew he was an employee, but he would like to be
3 an associate.

4 Q Okay.

5 A He was like a clerk.

6 Q Okay. And on April 4th -- or April 13th of 2012 --

7 A Yes, ma'am.

8 Q -- when this murder happened, did you talk to Bryan
9 that morning?

10 A Several times.

11 Q Several times? What did y'all talk about in the
12 morning?

13 A Well, we -- I called to talk about baseball.

14 Q Uh-huh.

15 A And he called me back at 7:44. I had called early
16 because he was one of those guys who was going in
17 to work early. I think he was supposed to come to
18 work at 8:00, but he always came in early.

19 He told me he was not at work that day and
20 that he had just gotten a call from Mr. Parker,
21 Brett Parker.

22 And that he had told him that he was going to
23 settle up with the football and the basketball
24 season that day, that he had a wheelchair to
25 deliver and something else, he wasn't exactly sure

1 when, but he would call him back and let him know.

2 And then, you know, immediately, you know, Cap
3 wanted to know, you know -- you know, do you think
4 he is going to pay me? Do you think he will pay me
5 all the money?

6 Q And that is what you -- you call Bryan Cap?

7 A Yes.

8 Q And that is what he asked you, whether you thought
9 that Brett Parker would give him all the money?

10 A Yes.

11 Q And did you know how much Bryan was owed?

12 A \$21,000.

13 Q \$21,000?

14 A Yes, ma'am.

15 Q And y'all had talked about that?

16 A Forever.

17 Q And what happened next as y'all continued talking?

18 A He -- well, we talked about it. He wanted to know
19 how much I thought he might -- he would get paid.

20 And I said, you know, well, maybe \$10,000.

21 He said, how do you get that?

22 And I said, you know, because, you know, he
23 had already paid out \$10,000 to his dad and so he
24 would probably get shorted \$10,000 and that would
25 probably end up being at the most 10. I really

1 thought maybe less. I really thought he would get
2 less because he had already been shortened at least
3 two years before about \$6,100.

4 Q Okay. And so Brett had already shorted Bryan
5 before?

6 A Right.

7 Q And you weren't really confident that he was going
8 to get all the money?

9 MR. WHITLARK: Objection, Your Honor. It is a
10 leading question.

11 MS. SIMPSON: I'll rephrase.

12 THE COURT: Sustained.

13 BY MS. SIMPSON:

14 Q So after y'all finished talking at 7:44,
15 approximately 8:00 in the morning, did you talk to
16 Bryan again that morning?

17 A I talked to him several times that day. But he
18 called me, and the times I have are from looking
19 back at my caller ID on my phone.

20 Q Okay. So you actually checked your phone --

21 A Right.

22 Q -- to see when you talked to Bryan?

23 A Right. When I say I did that, I did that night. I
24 didn't do it when they were coming in.

25 Q Okay.

1 A Around 9:59 he called back and he said, I just got
2 off the phone again with Brett.

3 And he said, Brett said that he and Tammy were
4 going to eat lunch together at the house and that
5 he wanted me to come at 12:30.

6 And that Cap was really amazed this
7 conversation was longer than the 7:44 conversation
8 because he kept going back over it. He took it
9 very optimistically because Tammy didn't know about
10 the \$6,100 from the two years before and thought
11 the fact that she was going to be in the house, he
12 was surprised that, you know, maybe he was going to
13 get the \$6,100 because he had told Brett Monday of
14 that week that he wanted that \$6,100. That was
15 going to be the bone of contention. He wanted not
16 just what he was owed this season, but for two
17 seasons before.

18 Q So he wanted two seasons? And let me stop you just
19 a second to make sure we're clear. So Tammy --
20 Bryan didn't -- Tammy didn't know that Brett did
21 not pay him?

22 MR. WHITLARK: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MS. SIMPSON:

25 Q Did Tammy know whether Brett(sic) had been paid in

1 the past?

2 MR. WHITLARK: Same objection, Your Honor.

3 THE COURT: Sustained.

4 BY MS. SIMPSON:

5 Q What did Tammy know?

6 THE COURT: Sustained. The objection is
7 sustained. He can't testify as to what she may
8 have known.

9 MS. SIMPSON: Okay. I'll move on.

10 BY MS. SIMPSON:

11 Q Back to the first conversation. Was Bryan
12 concerned about this meeting?

13 A Yes. I would say he was obsessed. Not frustrated,
14 but obsessed.

15 Q And did he give you some direction as far as what
16 to do if you didn't hear from him?

17 A Yes, ma'am. In the first conversation, the 7:44 --

18 Q Uh-huh.

19 A I tend to think of that day when we talked several
20 times, really we only talked three times about, you
21 know, the Parker and the money. The rest of it was
22 baseball stuff. So I think it was just those three
23 calls primarily.

24 Q So y'all were talking about baseball stuff in
25 addition to the money?

1 A Right. Because the season had only started like
2 the previous two weeks, so we're all excited and
3 everybody is talking.

4 He had -- excuse me a second.

5 (Pause.)

6 Q Would it help you to look at your statement?

7 A Yes, it would.

8 Q And you gave a statement back when this happened,
9 right?

10 A The Sunday afterwards.

11 Q So back in 2012?

12 A Yes, ma'am.

13 Q So it has been a little while?

14 A And I'm not blind, I'm just challenged. There are
15 some glasses over there.

16 (Hands glasses.)

17 A Thank you.

18 Q And just what did Bryan --

19 A Sure.

20 Q -- want you to do if you didn't hear from him? And
21 we're in the first call, right?

22 A Yes, ma'am.

23 Q Okay.

24 A Going back to that -- because I should have said
25 something about that.

1 He mentioned in the first call that he would
2 call me when he got in the driveway whenever Brett
3 was going back to set up the meeting, and when he
4 got to the driveway he would call me before he went
5 in the house.

6 And I was to look at the time. And he would
7 be giving me a number. He wanted me to call him at
8 this number an hour later.

9 Q Okay. And that was from the first conversation?

10 A That was from the 7:44 conversation.

11 Q And in the second conversation after he found out
12 Tammy was going to be there, what did he tell you
13 about that call?

14 A Okay. He gave me the number to call and, you know,
15 because Tammy was just going to be in the house at
16 that point. That's all he knew. And so he gave me
17 the number. And it was, you know, like some kind
18 of like an 800-type number. And that was basically
19 it.

20 But he went on and on in the second call about
21 he just couldn't believe that Tammy was going to be
22 there, that, you know, this had to be a good sign.

23 And that in the second call, which he also
24 took as a very positive sign, he said that Brett
25 told him to bring a bag -- a bag, because he didn't

1 want his neighbors to see him carrying out that
2 kind of money in cash.

3 And I was nervous about that. And I said,
4 well, I mean, if it is, you know, if it is a lot of
5 cash, I mean, shouldn't he be bringing it to you
6 instead of you going to get it?

7 He said, oh, no, no, no, no, no, you don't
8 understand. It is my responsibility. He shouldn't
9 be taking that kind of risk as a, you know, an
10 employee. Of course, he said associate, but he
11 wasn't thinking of himself that way. You know, it
12 should be my responsibility to carry around in my
13 car the cash, not Brett's responsibility.

14 Q So he mentioned that bag several times?

15 A Yes. And he took that as a positive sign.

16 Q That he was actually going to get his money?

17 A Right. Well, he was thinking he was going to get
18 it. At this point he didn't think he was
19 necessarily going to get all of it, but he thought
20 he was going to get a lot of it. That is a little
21 of what he said.

22 Again, we repeatedly went over this like three
23 or four times in the whole conversation.

24 Q Just about the money and --

25 A The money and --

1 Q -- going over there --

2 A -- Tammy being there and the bag.

3 And I tried -- I said, you know, when he
4 mentioned the bag, I said, well, you know, you
5 know, you make deposits for the Recreation
6 Department and you need to get a, you know, a bank
7 bag, like one of those little bank bags.

8 And he said, oh, no, you know, that -- that --
9 I can't get that because I'm out today and I'm not
10 going in, and it wouldn't be big enough anyway. He
11 said, it would take something like a gym bag.

12 Q And you mentioned three calls actually about this.
13 What happened in the third call?

14 A The third call was around 11:15. And it was the
15 shortest of the three calls, because he was trying
16 to get a lot of things done. And he called and he
17 was very excited.

18 He said, Brett just called. He got off the
19 phone again. So each of these three calls he had
20 just gotten off the phone with Brett.

21 He said, Brett again wanted me to make sure
22 that I brought the bag. He said, that is -- and
23 then he said, Tammy is going to be in the meeting
24 and we're going to be upstairs and just use the
25 keypad to let yourself in and come on upstairs and

1 join us.

2 And Cap thought this meant that he was
3 probably going to get all the money because Tammy
4 never knew about the \$6,100 from the previous two
5 years. And so he was very excited. He was almost
6 jubilant.

7 Q And --

8 A Oh, and -- I'm sorry.

9 Q Go ahead.

10 A And he said -- he said, look, I'm not going to call
11 you when I get there because, you know, he is going
12 to want me to count it, and it is going to be
13 mostly 10s and 20s, it is going to take quite a
14 while to count it. It is going to take longer than
15 an hour. And she is going to be there when I get
16 the money, so I'm not going to call you when I get
17 to the driveway. There is no need to call the
18 number.

19 And he said, I told my wife the same thing I
20 told you, you know, before and, you know, I will
21 tell her now, or he had told her, I couldn't --
22 didn't understand which.

23 But he said, now, when I get back, I promised
24 Brett's dad that I would call him first. And I'm
25 going to be as good -- this is his exact words -- I

1 am going to be as good as my word. I'm going to
2 call him just as soon as I get in the car. But
3 when I hang up from him, you'll be the very next
4 person I call.

5 Q And why did he want to call Jack Parker?

6 A Well, Cap and I had been discussing -- I'm sorry,
7 which Parker?

8 Q Jack Parker. Brett's dad.

9 A I didn't know the name.

10 Q Brett's dad.

11 A Cap and I had been discussing Brett's dad for some
12 time because towards something like the middle or
13 the end of the season, he had had some health
14 problems and they had been collecting some of his
15 business as well as -- not collecting, taking bets.
16 And so he had been around some on the weeknight
17 when Cap would go over there.

18 And then when they went off on the trip, all
19 of the family except for Brett's dad -- Cap said he
20 had had some health problems and wasn't able --
21 they were talking and, you know, Cap, you know,
22 told me all these things. It was kind of like the
23 way he processed stuff. He --

24 Q Let me stop for you just a second.

25 A Good.

1 Q Brett's dad, Bryan -- are you saying that Bryan and
2 Brett had been kind of working and helping out
3 Brett's dad?

4 A Yes.

5 Q With the books?

6 A Yes. Helping to take some of the business while he
7 was not doing well health-wise.

8 Q And the family vacation --

9 A Cruise.

10 Q The cruise? It was a cruise?

11 A Yes.

12 Q And that was right before all this happened?

13 A It was sometime around March Madness or right after
14 March Madness, I can't remember which. And I'm not
15 a basketball fan anymore, so -- but it was very
16 close in there. But it would have been -- it is --
17 if I remember correctly in the conversations, they
18 came back from the cruise, and even though Brett
19 told Cap he would call him the very night he came
20 back, he didn't. He called him the next day,
21 Monday, and he told him it would take him two weeks
22 to collect. So I'm assuming it was probably close
23 to two weeks later.

24 Q A matter of weeks?

25 A Yes.

1 Q And so during that time while Brett was gone,
2 Bryan, was he talking to Brett's dad?

3 A Yes.

4 Q Okay. And what were their conversations? What did
5 he explain to you?

6 A Well, Cap and I were discussing that Brett's dad
7 was worried that Brett was getting in trouble
8 betting and --

9 MR. WHITLARK: Objection, Your Honor.

10 MS. SIMPSON: Your Honor, if I may? With
11 respect to this witness finally being on the stand
12 being able to explain, Defense counsel extensively
13 crossed several witnesses, specifically, I believe
14 maybe Lieutenant McDonald, but a prior witness, on
15 Mr. Morgan's entire statement.

16 So with respect to this witness being on the
17 stand, I think he should be allowed to actually
18 answer some of the questions regarding -- pretty
19 much his whole statement was brought out through
20 another witness in this case. This is the
21 appropriate witness for that information.

22 THE COURT: All right, well --

23 MR. WHITLARK: My objection is hearsay within
24 hearsay, Your Honor.

25 THE COURT: All right. It is hearsay. What

1 is your exception? Hearsay --

2 MS. SIMPSON: Your Honor, I am not offering it
3 for the truth of the matter asserted.

4 This witness spoke with Bryan Capnerhurst at
5 the time of these events, and it goes to his frame
6 of mind, what he was thinking, his impression of
7 what was going on at that point.

8 THE COURT: The objection is sustained.

9 BY MS. SIMPSON:

10 Q So you knew that they had been talking? You can't
11 tell me what they talked about --

12 A Yes, ma'am.

13 Q -- Brett's dad and Bryan, but Bryan had been
14 talking to Brett's dad?

15 A Yes.

16 Q Right?

17 A Yes.

18 Q And he was supposed to call Brett's dad after the
19 meeting as well?

20 A Yes, very first thing. He said he had promised him
21 he would do that, and he would.

22 Q And so after -- once y'all got off the phone about
23 the meeting -- and this is the final call?

24 A Yes.

25 Q You said that -- how was Bryan feeling about the

1 meeting now?

2 A Well, because Tammy was -- because he was going to
3 come up and Tammy was not only going to be in the
4 house, but be in the office -- and, you know, he
5 went over that two or three times, excited about
6 it -- he was pretty sure he was going to get almost
7 all the money, if not all the money. So he was
8 excited.

9 Q He was excited?

10 A And he cut the call short, you know, short for us.
11 I mean, we -- it would not be uncommon for us to
12 talk an hour on the phone.

13 Q Especially during baseball season?

14 A Yes. But we played a keeper league, so we had the
15 excuse of trading keepers for one season or
16 another, so even during the off-season we could
17 have calls like that.

18 But Bryan was very busy during the youth
19 football season. It took a lot of the time. And
20 that would be the one time we would cut back on the
21 calls quite a bit.

22 Q And going back to this day, when Bryan got off the
23 phone with you, it was 11:15, or the 11 call. What
24 time, again, was he supposed to meet the Defendant,
25 Brett Parker?

1 A 12:30.

2 Q 12:30?

3 A Yes.

4 Q Was Bryan pretty punctual?

5 A Very punctual.

6 Q Was Bryan a confrontational person?

7 A No. And the reason I know that is because he was a
8 very good hitting coach and he would help several
9 youth players. And the kids would love him.

10 But, you know, the parents would say, you
11 know, why either isn't he hitting a home-run, or,
12 why are you worried about him striking out, or
13 something like this. It would get kind of
14 confrontational.

15 So he gave up coaching the kids individually
16 to help them because of the confrontations with the
17 parents. He just didn't want to --

18 Q And he didn't even want to be involved with that?

19 A Right. And that was the reason -- the
20 confrontation thing was the reason that I took that
21 he did not -- he wanted me to call him in an hour,
22 because the big difference this time, as opposed to
23 the previous years, is he had already asked Monday
24 for that \$6,100 from two years ago. And he thought
25 for sure he was going to get everything but that,

1 but if he didn't get that, for the first time he
2 was going to really say something about it.

3 Q So he was going to say -- and by making it an
4 issue, he was going to say something to the
5 Defendant about being owed what he was due --
6 getting what he was owed?

7 A Right.

8 Q Why did he want you to call him?

9 A He wanted me to call him because he -- the way I
10 took it was that if he got embroiled in an argument
11 about this, he wanted an excuse to be able to
12 leave. He wanted somebody to call and say, you
13 know, Bryan Capnerhurst is called and there is
14 somebody here that wants Bryan Capnerhurst, he can
15 call the phone and say, I got to go, an excuse to
16 get out.

17 Q So he could get out of the situation --

18 A Right.

19 MR. WHITLARK: Objection, Your Honor.

20 MS. SIMPSON: I'll move on.

21 THE COURT: Sustained.

22 BY MS. SIMPSON:

23 Q Did you know Bryan to have a gun?

24 A No.

25 Q Did he talk about guns a lot?

1 A Never.

2 Q You never -- did you ever see a gun --

3 A No.

4 Q -- on Bryan? Do you know Jim Headley?

5 A Jim Headley.

6 Q Headley. I apologize.

7 A Yes, I do.

8 Q How do you know him?

9 A He's in the baseball league, and he was a good
10 friend of mine, and one of Cap's best friends. And
11 they worked together.

12 Q And they worked together? How did you find out
13 what happened to Bryan? Who did you talk to?

14 A I was treating Dr. Arthur in the bathtub, arthritis
15 in my legs.

16 Q Uh-huh.

17 A And I was soaking. And the phone rang. And I had
18 already worried forever. And I just thought that
19 Cap had gotten busy and not called me back, because
20 he was going to his daughter's prom thing to
21 decorate with his wife the next morning and all, so
22 I knew he had a lot of stuff to do. And I was
23 really disappointed, but I understood.

24 So when the phone rang, I thought the worst,
25 you know, from me that I could have felt. I

1 thought it was Cap. And I didn't jump out of the
2 bathtub and get the phone, I just let it ring. And
3 then maybe six minutes later it called again, and I
4 was still in the tub.

5 And I think I called back around 45 minutes
6 later. But when I got out, you know, and checked
7 my messages, the message was from Jim.

8 And then Jim says, you know, are you sitting
9 down?

10 And I thought it was going to be the typical
11 type thing, one of the players that I have in the
12 rotisserie league had gotten injured or, you know,
13 gotten kicked out. And so I didn't take him
14 seriously. I was standing up. And that was my
15 mistake.

16 And then he told me that Cap was dead.

17 Q And after finding out that your best friend had
18 died, did you try to make contact with law
19 enforcement?

20 A Yes, several times. At first without much success.
21 The phone just rang and rang and rang and rang and
22 rang, and it never answered. I tried a bunch of
23 times.

24 And I finally got through and left a message,
25 yes.

1 Q So you were able -- were you able to eventually
2 make contact with somebody from the Richland County
3 Sheriff's Department?

4 A Yes. I even talked with somebody that night, and
5 then I, you know how you lay awake at night, and I
6 thought of more things, and I called here the next
7 morning, and then somebody called me back in the
8 afternoon, and I told them more than the next day.

9 Q So you tried to tell them what you knew --

10 A Yes, ma'am.

11 Q -- about the situation?

12 A Yes, ma'am.

13 Q Mr. Morgan, are you a bookie?

14 A No, ma'am. I don't -- I don't bet. I don't
15 gamble. My father played cards. He loved the
16 ponies. He would go from Greensboro to West
17 Virginia. It was the closest racetrack. He liked
18 the dogs at Jacksonville because the stands were
19 air conditioned. His idea of a vacation was he
20 would go by himself to Miami and stay in a seedy
21 place near Hialeah and bet on the horses. It never
22 put us in the street. We never had the financial
23 strain from it. But he wasn't there. He was
24 somewhere else. So I really don't bet.

25 I have never done the March Madness pool, and,

1 you know, being from Greensboro, that is almost
2 un-American.

3 Q And you are not a bookie. And were you Bryan's
4 bookie? Cap's bookie?

5 A No.

6 Q Did Bryan owe you a substantial amount of money?

7 A The league fee for the -- that year was somewhere
8 between \$52 and \$56, and he was going to pay me
9 when he got paid.

10 I have people who have owed me for ten seasons
11 who haven't paid. I have adult relatives who
12 haven't paid me for seasons over two or three years
13 ago. I have probably two people who haven't paid
14 me from that season still.

15 Q What is the fee for a league? To be in a league?

16 A Well, that was our 26th consecutive season. And
17 when we started out, it was around \$100. It
18 eventually got to be like \$135 because these stat
19 sources kept getting so expensive.

20 But then, you know, competition came in, and
21 that got cheaper. And so I kept moving, finding
22 the cheapest stat service.

23 And I think the last three or four years it
24 had been in the 50s. And this year we went to
25 an -- and the only reason it was that much is we do

1 a live auction, so we have to have an auctioneer
2 and we have to have a scribe. And it is a long day
3 if you are not a fan. So, you know, we pay them
4 like \$100 or so. And the stat service we got down
5 to \$100. And then there is the crackerjacks.

6 Q Okay. So it was only a matter of \$50 bucks for the
7 league fee, and that's it?

8 A Low to mid \$50s.

9 MS. SIMPSON: Beg the Court's indulgence.
10 (Pause.)

11 Q Thank you, Mr. Morgan.

12 A Okay.

13 THE COURT: Please answer any questions
14 Mr. Whitlark may have.

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

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WHITLARK:

20 Q Mr. Morgan, sir, do you deny that you are in the
21 gambling business?

22 A Yes, sir.

23 Q I'm going to hand you Defense Exhibit -- the phone
24 records of Mr. Morgan -- are you aware that your
25 phone records are in evidence in this case?

1 A I am, sir.

2 Q Did you have meetings with the Solicitor regarding
3 those phone records? You have met with these
4 people about that, haven't you?

5 A They gave me the records, yes.

6 Q Okay. And you have discussed it with them, haven't
7 you?

8 A I have made -- tried to make a list of some of the
9 calls, yes.

10 Q Okay.

11 A I have not discussed it with them. That's been a
12 disappointment to me. They have not coached me up
13 at all, and I needed it.

14 Q You needed to be coached?

15 A Yes, sir.

16 Q Do you recognize that as your -- take a look at
17 that.

18 A Mr. Whitlark --

19 Q Yes.

20 A -- as I told you, I have one that is 25 percent
21 bigger. Could I use that one to look at?

22 Q Sure. Absolutely.

23 A Thank you.

24 (Pause.)

25 A I think they are the same.

1 Q Yes. Well, we'll find out. Okay. Now, what is
2 the first page that is up on that, what I just --

3 A Page 1?

4 Q No.

5 A This one?

6 Q Yes, the one I just handed you.

7 A It is Page 47.

8 Q Okay. And you went over that with the Solicitor,
9 right, before you came in here to testify?

10 A When you say went over -- well, first of all, the
11 attorneys have really ignored me, which I really
12 don't understand.

13 Q I'm sorry?

14 A The attorneys have really ignored me, which I don't
15 understand, but I did have this given to me by
16 people in the Sheriff's Department.

17 Q Okay.

18 A And I did look at it. But I have not discussed it
19 with anybody, but I have made some notations.

20 Q Okay. All right. Well, let me be clear about
21 something.

22 A Yes, sir.

23 Q Who were you talking with about this, the law
24 enforcement officers or the Solicitor?

25 A No, I have not talked -- I have not talked with

1 anybody there about this at that table, I don't
2 believe.

3 Q Okay. All right.

4 A I think somebody -- there might have been a guy
5 that was like the telephone guy or something that
6 you were interviewing. I think he --

7 Q Okay.

8 A I think it might have been him. He was a good
9 distance to the cheap seats.

10 Q All right. He was a law enforcement officer?

11 A Yes, sir.

12 Q Your understanding is?

13 A Yes, sir.

14 Q All right.

15 A And he gave it to me and asked me to look at it.

16 Q Okay. What else did y'all talk about?

17 MS. SIMPSON: Objection, Your Honor. If he
18 could just narrow the scope and have the question
19 directed to something relevant with this case.

20 THE COURT: All right. When you say y'all,
21 who are you referring to?

22 MR. WHITLARK: I'm sorry.

23 BY MR. WHITLARK:

24 Q Tell me -- I believe you -- does the name
25 Investigator McDonald ring a bell to you?

1 A I'm sorry, Mr. Whitlark, I'm a visual rememberer.

2 Q I got you.

3 A I just remember a face, but not a name.

4 Q All right. Was he a big ole guy, a big tall
5 fellow?

6 A I don't know. After five days, you even look tall,
7 so I don't know.

8 Q Thank you for that. Thank you for that.

9 Have you been watching the trial?

10 A Yes, sir.

11 Q Okay. But you live in Greensboro, don't you?

12 A I live in Greensboro, but from the mid 70s to the
13 mid 2000s I lived in South Carolina. And if I had
14 my choice, I would live here now.

15 Q All right. How long have you been up in
16 Greensboro, North Carolina?

17 A My grandmother died when she was 99. I left after
18 the last couple of years. And she'd be 108 now.
19 So whatever that math is.

20 Q Okay. You have been living up there for more than
21 two or three years?

22 A Oh, yes, sir. Yes, sir. I'm sorry if I --

23 Q All right. Again, Mr. Morgan, you deny you are in
24 the gambling business?

25 A Absolutely.

1 Q Okay.

2 A I mean --

3 Q I'm sorry?

4 A Well, the lady before you didn't let me explain
5 about the crackerjack prize. That is the only
6 thing that is there.

7 Q Mr. Morgan, the top page of what you were handed,
8 this Page 47, is that correct?

9 A Yes, sir.

10 Q And you went over this with a law enforcement
11 officer, right?

12 A I have not looked at this page and at that time
13 been assisted by anybody, period. I have looked at
14 it by myself, but I have not gone over this page
15 with anybody.

16 Q Okay. Did you not just tell me a few minutes ago
17 that you sat down with some -- none of the people
18 at this table, but some law enforcement people?

19 A No, sir. I'm saying I was sitting down when the
20 guy came over and handed me the copy.

21 Q Okay.

22 A And asked me to scrutinize it.

23 Q All right. Mr. Morgan?

24 A Yes, sir?

25 Q Now, Bryan Capnerhurst was obsessed with getting

1 his \$21,300, wasn't he?

2 A He was obsessed, but he was not frustrated the way
3 he had been previously.

4 Q Uh-huh. And he knew that Tammy Parker wasn't going
5 to pay the \$6,100 of that, didn't he?

6 A He did not know that. What he did know and what we
7 discussed many times was that she didn't know about
8 the \$6,100.

9 Q She didn't know about it? She didn't know about
10 the \$6,100?

11 A She didn't know -- we discussed this several times
12 and, you know, I tried it out, the old Chinese
13 saying, you know, about you don't take your sword
14 out of the scabbard against the prince. So if you
15 mention the \$6,100 to her, you are probably not
16 going to get paid for it.

17 And then he shamed me and said, well, that is
18 true, but you also don't do it to your friend -- to
19 his wife.

20 Q Did you just tell me that he knew that if he
21 didn't -- that if he brought that out in front of
22 her, the \$6,100, that he wasn't going to get paid?

23 A What I told you was that he didn't think if he made
24 Brett mad that Brett would give it to him, yes.

25 Q All right. Sir, Tammy Parker thought the \$6,100

1 had already been paid, isn't that true?

2 A Yes, sir.

3 Q And, now, you correct me if I'm wrong, but your
4 testimony is that if she finds out about this, then
5 he is not going to get anything, he is not going to
6 get paid?

7 A I'm sorry, Mr. Whitlark, I've been confusing. And
8 to say I'm not -- I'm pretty nervous.

9 Q I understand.

10 A What I meant was, in the past -- in the past when
11 this was mentioned, you know, she would be there,
12 and she might say something about, you know, how
13 are things going, and stuff. And it would be the
14 perfect opportunity for Cap to say something about
15 it, and he wouldn't.

16 And he didn't because, one, he -- you don't do
17 that to a friend.

18 And, two, if you make his wife angry, you
19 know, like that, you are probably not going to get
20 paid either by him because she is going to take it
21 out on him.

22 Now, with regard to this day, Cap's
23 expectation was the absolute opposite. He thought
24 because Tammy, first, was going to be in the house,
25 that he might get most of the money; but when he

1 found out she was actually going to be upstairs in
2 the meeting, he really thought he was going to get
3 all of it, because he thought that Brett -- on the
4 other hand, Brett would certainly not stiff him the
5 \$6,100 again, because why bring it up when she
6 didn't know about it.

7 Q Sir, you knew that Mr. Capnerhurst was in a serious
8 financial bind at that time, didn't you?

9 A I did, sir.

10 Q Yeah. And that it was upwards of \$25,000 in credit
11 card debts, right?

12 A Yes, sir.

13 Q All right. And he described it to you as his wife
14 has gotten him in financial trouble again? Is that
15 the way he described it to you?

16 A Yes, sir, that sounds like the Cliff Notes version.

17 Q Okay. Well, I'm actually taking it from your
18 statement, sir.

19 A Yes, sir.

20 Q Would you like to refer to your statement?

21 A I mean, you are right. I'm just saying -- yes,
22 that is boiled down. I mean, yes.

23 Q Okay. And it was within the last year and a half
24 that they had gotten in further financial trouble,
25 hadn't they, sir?

1 A Yes, sir.

2 Q Okay. And he also owed a note or something for
3 about \$3,000, or something like that? Is that
4 right?

5 A They had borrowed \$3,000, I believe, from his
6 father-in-law.

7 Q Okay. And there was a discussion with you and
8 Mr. Capnerhurst that, well, you know, he has to --
9 he wants to pay that, he is going to pay her father
10 back out of this money he is going to get, right?

11 A The \$3,000, yes, sir.

12 Q Uh-huh. Okay. And that he -- he also had been out
13 of work all week that week, hadn't he? About four
14 days?

15 A It could be. I know he went to Myrtle Beach in the
16 middle of the week to meet a friend.

17 Q Okay. Well, did he tell you he was out of work? I
18 mean, you talked to him -- I'm sorry, back up.
19 Scratch that. You talked to him seven times that
20 morning? Is that right?

21 A Seven or eight, yes. Well, not morning, but
22 through the whole day, yes. I mean, the last call
23 was at 11:15, so it would have been the morning,
24 yes, sir.

25 Q Okay. Is it your testimony -- well, first of all,

1 would you agree with me that you know a great many
2 details about this, do you not, sir? About Brett
3 owing him \$21,300?

4 A I would say I know more than I want to know, sir.

5 Q Well, he talked with you constantly about it,
6 didn't he?

7 A Yes, he did.

8 Q And he told you that -- he was saying, well, do you
9 think I'm going to get paid? He would say that a
10 lot, didn't he?

11 A Yes, sir.

12 Q And he -- did you know he was out of work for two
13 days that -- well, four days that week?

14 A Well, I mean, I probably -- you know, thinking back
15 about it, I probably did. I knew he had gone to
16 the beach for a couple of those days. And then he
17 was out that Friday. I didn't know until he told
18 me that he was out that Friday.

19 Q He talked with you about where he was going to park
20 his car when he went over there, didn't he, sir?

21 A No, sir, he never mentioned anything about the car
22 to me.

23 Q He never mentioned anything about how he was going
24 to park his car when he went there that day?

25 A No, sir. In fact, never in all of his trips to the

1 house did he ever mention anything to me about how
2 he parked the car.

3 Q Did you talk to him every time before he went over
4 there?

5 A Well, I think that would be impossible.

6 Q Well, I'm just asking you. You just said --

7 A If memory serves, it seems like that season he was
8 going over one weeknight, maybe a Wednesday or a
9 Thursday, and then he was going over Saturday and
10 Sunday, Saturday after he cleaned up at the
11 Recreation Department, his second job.

12 Q Okay. So is it your testimony -- again, sir, is it
13 your testimony that he didn't discuss the manner in
14 which he was going to park his car there?

15 A Yes, sir, that's true.

16 Q Your testimony is he did not discuss it with you?

17 A Not only did not discuss it with him, but had never
18 discussed it with me. It was news to me to find
19 out.

20 Q Okay. And it is also your testimony that you don't
21 gamble and you are not in the gambling business?

22 A No.

23 Q Your answer is no, you are not, is that what you
24 are saying?

25 A Definitely.

1 Q Okay. You knew that if he didn't get all of his
2 money he was going to take issue with Brett Parker,
3 didn't you?

4 A Well, that is not entirely true, sir.

5 Q Well, tell me. Go ahead.

6 A During the last two weeks, Cap and I had had
7 several discussions about a walk-away alternative.

8 Q Walk-away. What do you mean by that, walk-away
9 alternative?

10 A Well, that is what Cap said, but he didn't say it
11 as nicely as you did.

12 Q Tell me exactly what he said.

13 A You know, he said -- well, what -- what does
14 that -- what does that have to do with anything,
15 walk-away alternative. That is why I brought it
16 up.

17 And basically it took me a while, but the way
18 I explained it to him is, let's say we are going to
19 an auction -- because you remember we auction
20 baseball players in the draft -- and you want to
21 buy something, say a player, and that is going to
22 be his salary. How do you keep from paying too
23 much for the player, you know, because once you get
24 into it, you are going to get caught up in the
25 moment of it and you are going to maybe spend too

1 much.

2 So the walk-away alternative is, before you
3 go, if I don't get this player, what is my
4 back-door and my walk-away alternative.

5 And I said, you know, people that go to real
6 auctions do the same thing. They are either going
7 to buy another player or they are going to wait
8 until another auction or buy a used book or instead
9 of a book at the -- or whatever it is.

10 And so I said, you know, what if -- here is --
11 look -- and you have got to think of it in the
12 worst case scenario. What if you don't get a dime,
13 not nothing, what will you do? I mean, if you
14 don't have a walk-away alternative, you are going
15 to have a heart attack or vertigo or, you know, you
16 are going to do something -- you know, you are
17 going to lose your mind. So, to keep yourself in
18 control, you need a walk-away alternative.

19 So, you know, he was not numeric and, you
20 know, Cap was a great guy and he wasn't necessarily
21 the sharpest guy in some things. He worked at it
22 and played with the numbers. And he had already
23 gotten a lot of experience at this lately trying to
24 make the budget work.

25 And finally during that two weeks he comes

1 back to me and he says, okay, you know, because
2 Brett's dad says that if I don't work for Brett I
3 can work for him, that I won't be able to make it
4 forever, but I have worked it out, we can cut back
5 even more and have to give up -- and I have
6 forgotten whether he had satellite or cable -- but
7 we are going to have to give that up or do other
8 things, but if we can just scrape by until get paid
9 for the next season for me -- either working for
10 Brett because he -- well, if Brett doesn't pay him,
11 he will be working for his dad, and I will get paid
12 from him. So we can make it. It will be tough and
13 it is already tough. And it will be tough, but we
14 can do it.

15 So he knew that he had a walk-away
16 alternative. And that changed it from the time
17 back the previous spring or summer when he was
18 trying to get some of the money so he could pay his
19 daughter's first semester at Governor's School.

20 Then he was frustrated because the timeline
21 was coming and, you know, it had to be paid and
22 that was it. And he was frustrated then. He was
23 just obsessive this time. He talked about it a
24 lot, but the other time like, you know, a year or
25 whatever it was, it might not have even been that,

1 whatever it was, it is a lot earlier to the fall
2 than you think. Then he was frustrated. He was
3 not frustrated this time, he was obsessive because
4 he had decided --

5 Q I'm sorry, I didn't understand what you said. He
6 wasn't frustrated this time, he was what?

7 A Could I have some water?

8 Q Sure.

9 (Complies.)

10 A Thank you, sir.

11 Q Sure. All right. He wasn't --

12 A I'm saying that --

13 Q What did you say after you said he wasn't
14 frustrated, he was what this time?

15 A I'm saying he was obsessed about it. He talked
16 more about it. But the earlier time, which would
17 have been back before the previous fall semester --
18 and I think he might have paid in the middle of the
19 summer, if not even the spring for that -- then he
20 was really frustrated.

21 Now, he did get an advance then, but he was
22 frustrated because he was getting close to the
23 deadline and he didn't have that walk-away
24 alternative. So that is what it gave him in this
25 one to keep him from being so frustrated. He was

1 just obsessed with it. Because he was at a fork in
2 his life. He was going to continue working for
3 Brett, if he got paid; and if he didn't get paid,
4 he was going to work for Jack. But then he had to
5 survive to make it, because you don't get paid
6 until the end of the season.

7 Q So he was obsessed with it, in your opinion?

8 A Absolutely.

9 Q How come you didn't call -- how come you didn't
10 call him all day or night? Why didn't you call him
11 all day or night? You were supposed to call him in
12 an hour or something, or something like that, or he
13 was going to call you or something, right?

14 A Are we talking about the hour, sir?

15 Q I'm talking about Bryan Capnerhurst and you had
16 spoken seven times that morning, right?

17 A At least.

18 Q Yes. And he was obsessed about getting his money?

19 A Yes, sir.

20 Q And he told you -- he actually told you, if you
21 haven't heard from me, call 9-1-1? He said that to
22 you, didn't he?

23 A No, not 9-1-1, sir.

24 Q You don't know anything about him saying, call
25 9-1-1?

1 A No. No, it was not that. He gave me the number
2 the second time -- the first time he mentioned he
3 was going to do this. And the second time when he
4 called me he gave me the number. And the number is
5 in my statement. I thought the number was for the
6 Lexington County Recreation Department, but instead
7 it was Mr. Parker -- Mr. Brett Parker's employer's
8 number that he would get -- that Brett would get
9 paged at that number, my understanding.

10 Q He was not afraid of Brett Parker, was he?

11 A Well, I mean, it is funny you ask that.

12 Q Well, can you answer my question and then explain
13 it?

14 A Yes, sir.

15 Q He was not afraid of Brett Parker, was he, sir?

16 A No, I would say he was, physically, yes. But he
17 was -- he thought of him as his friend.

18 And let me explain since I have started.

19 Q Go ahead.

20 A Well, back in that period when he was frustrated
21 trying to get the money for Governor's School,
22 which would have been spring or summer, you know,
23 going backwards.

24 Q Uh-huh.

25 A You know, he was so frustrated -- and frustrated

1 that -- you know, I said, well, you know, if you
2 were 20 years younger and I was 30 years younger,
3 you know, you might have taken a swing at him over
4 this.

5 And he said, you have never seen Brett, have
6 you?

7 And I said, no.

8 He said -- and this is pretty close to his
9 exact words -- he said, one punch and my -- you
10 know, my scrawny ass would have been gone.

11 So, you know, we kind of tee-heed on that a
12 little bit. And then when it stopped, before I
13 could start in on talking about baseball, he says,
14 but then you don't do that after you have kids.

15 So me trying to be the smart guy and the quip
16 guy, I'm getting ready to say, well, of course, you
17 know, when the kids are old enough to understand.

18 And then I realized that I've got three kids
19 and he has only got one, and I should have been the
20 one that said that instead of him.

21 So, once again, he shamed me again.

22 Q Uh-huh. Let me ask you --

23 A I don't --

24 Q I'm sorry.

25 A He was afraid of him, but I don't think he would

1 have done anything.

2 Q Yeah. You think a man who is almost 6 feet tall
3 and 200 pounds is a scrawny guy? I mean, you just
4 described him as scrawny, right?

5 A Well, we were at the auction about three weeks
6 before and he looked the worst I have ever -- Cap
7 looked the worst I have ever seen him. He looked
8 the skinniest I ever seen him. He looked the
9 scrawniest I have ever seen him. And he looked
10 about ten years older than he was. So, yes, sir.
11 He didn't -- he didn't look very imposing to me.

12 Q Uh-huh. Let me get something straight with you,
13 Mr. Morgan.

14 A Yes, sir.

15 Q Would you agree with me that you spoke to -- and if
16 you need to look at your records -- you spoke to
17 Bryan Capnerhurst and Jim Headley a lot, didn't
18 you, sir?

19 A They were -- they were my -- Cap was my best friend
20 and Jim was my closest thing to a best friend after
21 that.

22 Q Okay. Now, I notice on your phone records -- and
23 you correct me if I'm wrong -- that you speak to
24 them -- you spoke to them a lot at the same time
25 sometimes, right? Or not the same time, but you

1 would make one call to one of them and then another
2 call to another one, right?

3 A Well, we all three suffered from this disease.
4 When you play these rotisserie sports, you want to
5 talk about your own team, your own players. And
6 nobody who doesn't play it wants to hear it. And
7 there are other people who play it, all they want
8 to talk about is their players. They don't want to
9 listen.

10 So the three of us actually listened to each
11 other because we are such huge baseball fans. And,
12 plus, Headley is a big Cardinals fan. And I was a
13 big Stan Musial fan.

14 Q Yes.

15 A So, yes, we talked quite a bit.

16 Q Sir, is it your testimony that these men were not
17 gambling? That Headley and Capnerhurst, they
18 didn't gamble? Is that what your testimony is?

19 A My testimony is that I knew Cap real well. And
20 he -- he did not gamble. I -- I did not know
21 anything of that area about Jim Headley.

22 Q Okay. But would you -- would you -- you are saying
23 you are Mr. Capnerhurst's best friend, right?

24 A He was my best. I think he might have had three or
25 four best friends.

1 Q All right. And is it your testimony that he didn't
2 gamble?

3 MS. SIMPSON: Objection, Your Honor. Asked
4 and answered.

5 THE COURT: Sustained.

6 BY MR. WHITLARK:

7 Q Okay. Did you know that -- did you know anything
8 about his wife embezzling money in the past to pay
9 his gambling debts?

10 A Well, that is not correct, but I do know something
11 about that.

12 Q What is not correct?

13 A I know that there were debts caused, debts were
14 caused by her spending addiction. And that he was
15 denied the gambling losses, but he was gambling
16 then. And that led ultimately to the, you know,
17 the unhappiness between them because he -- when it
18 happened -- it is like smoking. My sister has had
19 hypnosis, she has had the patches, she has had
20 every medicine you can think of, and she can't quit
21 smoking.

22 Cap quit gambling because he was worried about
23 his daughter because of this financial problem. So
24 he quit like that. And he couldn't understand why
25 his wife couldn't rein herself in and quit like

1 that.

2 So the debt was not as a result of gambling,
3 as far as I know, but, of course, spending. But he
4 was gambling at that time, but he quit cold turkey
5 then, the first time, the very first time.

6 Q Okay. All right.

7 A I apologize for rambling, sir.

8 Q No, no, that is all right. I just want to get
9 straight on a few things. I'm about done with you.
10 I know you don't like being up here. I understand.

11 A Who would?

12 Q I know. I know that. All right, I just want to
13 get straight. Your testimony is you don't gamble
14 and you are not in the gambling business?

15 A Yes. I'm not.

16 Q So you are not, right?

17 A No. Never.

18 Q Okay. And Bryan Capnerhurst wasn't gambling, is
19 that your testimony, that you knew of?

20 A Certainly not in, you know, the last -- you know,
21 six years ago. I mean, when you say gambling, I
22 think at the time that he was gambling he was
23 gambling on college football, and I don't think
24 that he gambled on college football now or --

25 Q Does this remind you of something, Mr. Headley -- I

1 mean, Mr. Morgan? Is it -- I believe you have told
2 the police that -- and you correct me if I'm
3 wrong -- you told the police that you didn't talk
4 to him much during the football season, right?

5 A Not near as much.

6 Q Okay. So --

7 A Because of the youth football.

8 Q All right. Well, I remind you, sir --

9 A That --

10 Q Excuse me, sir. I remind you your phone records
11 are in evidence right now, before you answer that
12 question. I mean, and what -- tell me again what
13 the frequency of you talking to him during football
14 season was?

15 A Well, let me make this perfectly clear.

16 Q Sure.

17 A He was not as accessible during the football
18 season. And after several years I didn't call as
19 much. I'm sure I called, because we had off-season
20 trailers, but -- excuse me -- he would disappear
21 because of the work and the hours involved in that
22 sport.

23 Q Okay. All right. Mr. Morgan?

24 A Yes, sir?

25 Q Bryan Capnerhurst was obsessed with the money Brett

1 Parker owed him, wasn't he?

2 A Yes, sir.

3 Q And his wife had him in a serious financial
4 situation at that moment, didn't he?

5 A She did.

6 Q And are you aware that --- are you aware of this --
7 that Cindy Capnerhurst and Bryan Capnerhurst were
8 discussing how much cash Brett Parker had in his
9 safe? Did you know that?

10 A I know a lot about that, yes, sir.

11 Q Well, I am wanting to hear all about that. Please
12 tell me what you know about that.

13 A Okay. And, again, I apologize if I ramble.

14 Q It is okay.

15 A Just stop me.

16 Q Go ahead.

17 A When Cap got shorted the \$6,100 --

18 Q Uh-huh.

19 A -- Brett told him that the reason he was shorted --
20 him because he had to make back his bank. That is
21 what he called it, Cap called it. I didn't
22 understand that.

23 Q Okay.

24 A And Cap explained it that Brett said, you know, if
25 we have an early pay-out in the next season, you

1 know, we could have problems. So we need to have
2 \$80,000 to \$100,000 in the bank, you know, at all
3 times, and certainly during the off-season, to
4 cover any early-season losses the next season.

5 And he said he couldn't pay him the \$6,100
6 because he didn't have \$80,000 to \$100,000.

7 So from that point on, Cap was worried that
8 the bank might be short again and that would be the
9 excuse for him to be shorted again.

10 So he was concerned about the \$80,000 to
11 \$100,000. Excuse me.

12 Q Are you done? I was going to tell -- I was going
13 to ask you a question.

14 A I apologize.

15 Q No, that's all right. In your description of this
16 to the police, didn't you tell them that Mr.
17 Capnerhurst felt like Brett Parker was going to
18 jerk him around about paying him? Didn't you say
19 that to them?

20 A I don't -- I don't know if I -- did I say jerk?

21 Q Yes, sir. That is what your statement says.

22 A Well --

23 Q He was not just jerking Brett around, he needed the
24 money. And that --

25 A Oh, yes. That is not -- that is taken out of

1 context.

2 Q Okay. Well, let me ask you something, Mr. Morgan.

3 Did you tell --

4 A Well, did you want me to answer that question?

5 Q Yes, I do.

6 MS. SIMPSON: Objection, Your Honor.

7 Q Go ahead.

8 MS. SIMPSON: If the witness could answer.

9 THE COURT: Let him answer.

10 BY MR. WHITLARK:

11 Q I'm sorry, I thought you were done. Go ahead.

12 A This is where Cap and I had a lot of arguments. He
13 felt that he should be totally honest with his
14 employer. He should tell them not just that he
15 needed the money that he was due, but he wanted his
16 friend -- he thought of it as his friend -- he
17 wanted his friend to know that he wasn't jerking
18 him around because he wanted this money to blow,
19 but he wanted it for specific things.

20 And so he would tell Brett, you know,
21 constantly, you know, we're this much in debt, I
22 need this much, I need this much for Governor's
23 School. He would tell him things that, you know, a
24 normal person would never tell their employer and
25 wouldn't want them to know that much about it.

1 And I would keep saying to him, you know, just
2 think about it. You wouldn't tell the Recreation
3 Department these kind of details about being
4 hard-up, you know, because an employer would take
5 advantage of it.

6 And he said, he is my friend and I'm not going
7 to let him think that I'm wanting this money and
8 going on about it --

9 Q Yeah.

10 A -- because I'm a jerk.

11 Q He told you he was going to make an issue of it
12 with Brett if he didn't get his money, didn't he?

13 A This \$6,100, yes, sir.

14 Q Yes, sir. That is the key thing here, isn't it,
15 the \$6,100?

16 A Right.

17 Q It was a debt that was owed from sometime past,
18 wasn't it? It was owed to Bryan Capnerhurst? In
19 his mind, anyway.

20 A Well, no -- yes, sir, it was one of the keys, and
21 it was still -- it is all -- I mean, \$6,000 is not
22 as important as the other \$15,000.

23 Q Okay. And he knew -- Bryan Capnerhurst told you
24 that Tammy wasn't going to pay any -- the \$6,100,
25 didn't he?

1 A No, he never told me that.

2 Q What did he tell you about Tammy -- if Tammy finds
3 out about this \$6,100, what did he tell you about
4 it?

5 A He said -- he said -- this is in relationship to
6 our having calls -- conversations and me saying,
7 you know, well, you have got a good opportunity
8 here to bring this up about the \$6,100, you know,
9 because if she says something about, everything is
10 going well, guys, and stuff.

11 Q Right.

12 A And he said, you know, I don't want to bring that
13 up because, you know, he is my friend, and if I
14 bring it up it will embarrass him and then he won't
15 pay me. He didn't say that Tammy wouldn't pay him.
16 He said that Brett wouldn't pay him.

17 Q Okay.

18 A Go on?

19 Q Yes, sir.

20 A It kind of flipped over on the 13th because she was
21 going to be there and he thought that Brett, you
22 know, wouldn't be -- you know, that was just going
23 to stay in the closet because he was going to pay
24 him all. So he thought that if Tammy was there he
25 was going to get everything, including the \$6,100.

1 He was very excited.

2 Q Would you agree with me that Bryan Capnerhurst told
3 you if he didn't get all his money, the \$6,100
4 included, that he was going to make an issue about
5 it? He said that to you, didn't he?

6 A Yes, sir, for the first time.

7 Q Okay. And he was obsessed with getting that money?

8 A Obsessed, but not frustrated.

9 Q And he was in the gambling business, wasn't he,
10 sir?

11 A He was a little bit better than the clerk at the
12 parimutuel window at the racetrack. He took your
13 money in, although he didn't actually take the
14 money, he took the bet, but he never paid any out.
15 When you collect -- Brett did the collecting and
16 Brett also did the paying off. He just took the
17 bets.

18 Q Okay. Mr. Morgan, did you speak to anyone in the
19 Richland County Sheriff's Department on the day
20 that this happened?

21 A I am absolutely sure I did.

22 Q What time?

23 A I don't know.

24 Q You have got your phone records right there.

25 A Well, I don't know what their number is. Let me

1 say this. You know, Jim called, and I want to say
2 it was probably 40 -- it must have been, you know,
3 late 6:00 or going towards 7:00 o'clock --

4 Q Uh-huh.

5 A -- when we had our conversation. And I had the
6 shock of it. And I probably called Jim back to,
7 you know, ask for some clarifying detail. I'm one
8 of those elevator remember guys. You know, I have
9 to get to the elevator and I then I remember what I
10 left in my office.

11 Q Uh-huh.

12 A That kind of thing. So I'm sure I thought of
13 something and I called him again probably, maybe
14 called him more than once.

15 But anyway, so then I said, you know, I'm
16 going to call the Sheriff's Department. And so it
17 took me a while to get a number. I'm not the
18 greatest guy on the internet. But I got a number.
19 I called it. It kept ringing, but it never
20 answered. It never answered. I hung up. I tried
21 again. It never answered. Never answered.

22 Finally, maybe the third or fourth time, you
23 know, somebody answers. And I want to say they
24 said -- this is my recollection -- that it was
25 maybe -- it was maybe Robinson and Smith were doing

1 this. And they would send me to a phone and they
2 sent me to a phone, and I don't think that worked
3 either. I don't think it happened. So I may have
4 even had to call back. I can't remember. I left a
5 message for somebody.

6 Q Uh-huh.

7 A And then somebody called me back. And then I told
8 them, you know, stuff. And I was all over the
9 place. You think I'm bad today; I was a whole lot
10 worse then.

11 And then, again, I slept on it, or tried to
12 sleep on it, thought of things, called again the
13 next morning. I left a message. They called me
14 back in the afternoon.

15 Q Uh-huh.

16 A It was about like some ex-wives, you know, they got
17 the message, but they didn't want the message, they
18 wanted to hear it out of my mouth. So I told them
19 again.

20 And then the next thing I know, somewhere
21 toward the end of the day, or maybe it was the
22 next -- it might have been the next morning, they
23 said, you know -- I think it was Mr. Holdorf who
24 actually called me himself and said, you know, how
25 long does it take me to get there, I'm on the way.

1 And so Sunday I gave a statement at the --

2 Q Yeah. They drove up to see you? By the way --

3 A It was a he, sir, just one.

4 Q I forgot to ask you. Tell me, what do you do for a
5 living, sir?

6 A Well, I'm retired now, but I had worked as a
7 banker, an agricultural lender and a commercial
8 lender, and then I was in commercial real estate.

9 I was here in South Carolina, Columbia, Camden
10 and Marion, for the mid 70s to mid 2000s, about 30
11 years.

12 Q You are about 63 or so?

13 A Sixty-two, but I feel a lot older.

14 Q Okay. Well, I understand that. When is the last
15 time you had a job where, you know --

16 A I actually made some money?

17 Q Well, no, sir, where you went in to work and did
18 something? When is the last time you had a job
19 like that?

20 A It has been quite a while. I would say -- I worked
21 for a few months for a consulting business out of
22 Chicago. And that was the summer my grandmother
23 died. She was 98. And she was born in -- 2006 or
24 2007, or something like that, would be my guess.

25 Q So you haven't had a job where you get up and go to

1 work since 2007, is that what you are saying?

2 A No, sir. I have -- I wrote a baseball blog for a
3 while and got paid for that.

4 Q You wrote what?

5 A I wrote for a baseball blog, you know, like a
6 rotisserie blog. And it was a -- you know, it had
7 a pay gate window, you know, where you pay a fee
8 and you could, you know, go behind and get the
9 articles on the players. And I wrote for them for
10 a few weeks.

11 But other than that, I have been living at
12 the -- on the charity of my sister. And looking
13 after her too. She has had three orthopedic
14 surgeries in the last five years.

15 Q Mr. Morgan?

16 A Yes, sir?

17 Q Is it your testimony that you are not in the
18 gambling business?

19 A Yes, sir. I'm not.

20 Q Okay.

21 A I'm sorry, when I say yes, I'm agreeing with you,
22 I'm not saying, yes, I am.

23 Q Okay. And that's your testimony. Okay. And that
24 Mr. Capnerhurst -- you know him well, don't you?
25 You know him well?

1 A Yes, sir. He is my best friend.

2 Q And he was obsessed about this money, wasn't he,
3 sir, about getting this \$21,300?

4 A Yes, sir.

5 Q And you actually spoke to him seven times that
6 morning about getting it, right? Or something like
7 that?

8 A No, sir.

9 Q Up till noon or something?

10 A No, sir. We talked seven times, but really only
11 three conversations -- or at least we had three
12 phone -- seven or so phone calls, but only three of
13 them did we talk about the money that day.

14 Q He originally was supposed to call you from the
15 parking --

16 A From the driveway.

17 Q From the driveway at Mr. Parker's house, right?

18 A When he arrived. That's what he told me the first
19 two calls of those three that were -- seemed
20 important.

21 Q Did you know he backed his car in there that day?

22 A No, sir. You have asked me that before too.

23 Q And you didn't tell the police anything about the
24 car, right?

25 A What I told the police was -- and this I told them

1 later, I don't think I told them on that Sunday
2 because I didn't even -- I didn't even know
3 anything about the car -- was that Alvin -- I think
4 Alvin Kelley told me that Cap was concerned because
5 he had Richland County plates, so like when they
6 would go to like Wal-Mart to get stuff for the
7 Recreation Department, he would back in because he
8 didn't want somebody calling the Recreation
9 Department saying, we just saw a county employee
10 walking out of Wal-Mart with bags of stuff and we
11 don't know whether they are spending the county's
12 money or they are spending their own money on the
13 county's time. So he was very conscious about the
14 public image of driving the county car. So that
15 was the reason he backed in Brett's and that was
16 the reason he backed in at Wal-Mart, those kind of
17 places.

18 I didn't know anything about that. I didn't
19 know he even backed in at all. So I did tell them
20 that, but I didn't know it at the time.

21 Q You did tell who that?

22 A I told somebody that.

23 Q So you did -- so you told somebody --

24 A But I didn't tell them that Sunday because I didn't
25 know it.

1 Q All right. I got you. Sir?

2 A Yes, sir?

3 Q Were you offered immunity in this case if you would
4 help them -- if you testified? Were you offered
5 any type of non-prosecution or anything else of
6 that nature if you testified and helped prosecute
7 Brett Parker in this case?

8 A I signed a paper that was served on me without
9 notice from -- I think signed by the judge here --
10 that was sent to criminal court in Guilford County.

11 Q Uh-huh.

12 A And I had a person like an investigator for them
13 come out and serve me with papers.

14 Q Okay.

15 A And then he said, because you can't subpoena
16 somebody from out of state. I never heard of this
17 anyway. So, anyway, I ended up next week in court
18 in Guilford County, and they said, sign this piece
19 of paper and it will be all right. And otherwise,
20 you know, you need to figure out what to do.

21 And I walked in in the middle of a court just
22 like this and there were people going over me, just
23 walked up to the judge and stopped the whole thing.

24 And the judge says, good afternoon,

25 Mr. Morgan, or good morning. Would you stand up?

1 And I stood up and said, yes. That was just a
2 nice way of knowing who I was. And I signed the
3 thing and went off.

4 And the paper said, you know, among other
5 things, that, you know, the State of South
6 Carolina, you would be immune from any prosecution
7 for civil or criminal things as a thing to come --
8 that had happened before this due to the case.

9 That is the only place I ever knew about it.
10 No, I didn't even --

11 Q Is that what you are holding in your hand right
12 there?

13 A No, sir.

14 Q Okay. Okay.

15 A That's a copy of my statement.

16 Q Okay. Well, I guess I'm not being clear to you. I
17 just want to know if you -- were you told anything
18 like this?

19 A No.

20 Q If you help us --

21 A No.

22 Q Are you going to let me ask the question first?

23 THE COURT: Let him ask the question, then you
24 can answer.

25 THE WITNESS: I apologize.

1 THE COURT: Go ahead.

2 A Yes, sir. I apologize, sir.

3 Q It is all right. It is all right. Did anyone from
4 law enforcement tell you you would not be
5 prosecuted or that you wouldn't have to worry about
6 anything happening to you if you helped them
7 testify and helped Brett Parker in this case?

8 And when I say for what, I'm talking about for
9 gambling.

10 A Okay. I got you. No, sir. The only time that
11 came up is the Guilford County guy explained it to
12 me.

13 Q Okay.

14 MR. WHITLARK: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. WHITLARK: Court's indulgence, please,
18 Your Honor.

19 (Pause.)

20 BY MR. WHITLARK:

21 Q One last question, Mr. Morgan.

22 A Yes, sir.

23 Q You did speak to law enforcement here, right, the
24 day it happened? You spoke to somebody?

25 A Yes, sir. Yes, sir, I did.

1 Q As a matter of fact, you gave them a great many
2 details that day, didn't you?

3 A Yes, sir. I tried to.

4 Q All right. Can you tell me about what time that
5 was? Was it late at night? Was it early in the
6 day? When was it?

7 A No, it couldn't have been early in the day because
8 I didn't --

9 Q Okay.

10 A -- know about it then. I think -- I think I talked
11 to Jim sometime around 7:00 p.m. And then I think
12 I probably -- I don't know, I could have started
13 calling sometime around 8:00, but I didn't get
14 anybody. And then when I finally got somebody, all
15 I got was a voicemail. Nobody answers their phone
16 anymore.

17 And so somebody called back, but I really
18 don't remember what time it was. I was pretty much
19 in a stew. I mean, it wasn't like it was midnight,
20 at least I don't think of it as midnight. But
21 somebody called back and then I talked to them.

22 Q And you gave them a great many details, did you
23 not, sir?

24 A Yes, sir. And I gave them even more the next
25 morning.

1 Q Okay. And they drove up to see you?

2 A The next day after that.

3 Q Did they tell you you were going to be in any
4 trouble?

5 A No, sir.

6 Q Okay.

7 MR. WHITLARK: That's all I have, Your Honor.
8 Thank you.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. Yes, ma'am?

11 MS. SIMPSON: No further questions for this
12 witness.

13 THE COURT: All right, sir, you may step down.
14 (Witness steps down.)

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

17 MS. CAMPBELL: None from the State.

18 MR. WHITLARK: Your Honor, I would like to
19 have a meeting with my co-counsel in this case
20 about whether or not to release him since he is an
21 out-of-state witness. And we may have a reason to
22 bring him back.

23 THE COURT: But you don't need him today, do
24 you?

25 MR. WHITLARK: No, no, Your Honor.

1 THE COURT: All right. All right, sir; we'll
2 just have you on standby, okay?

3 THE WITNESS: Pardon me? Like at the airport?

4 THE COURT: No, no, no, not like the airport.
5 You will be on standby on your subpoena. All
6 right, sir?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you.

9 (Witness excused.)

10 THE COURT: All right. Ladies and gentlemen
11 of the jury, it is 1:00 o'clock. They tell me that
12 your lunch is here. So at this time we will take a
13 short lunch break. We'll take about 30 minutes,
14 and we'll start back at around 1:30.

15 All right. Thank you.

16 (WHEREUPON, the jury is excused for
17 lunch at 12:59 p.m.)

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: You can bring the jury.

20 (WHEREUPON, the jury came into open
21 court at 1:49 p.m.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: Thank you. Call your next
24 witness.

25 MS. CAMPBELL: May it please the Court? The

1 State calls Terri Gleason.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, please.

5 (Witness complies.)

6 THE CLERK: Do you swear or affirm the
7 testimony you are about to give in this case will
8 be the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Have a seat in the witness box.

12 (Witness complies.)

13 THE CLERK: State your full name for the
14 record. Spell your last, please.

15 THE WITNESS: My name is Terri Gleason,
16 T-E-R-R-I G-L-E-A-S-O-N.

17 TERRI GLEASON,
18 being first duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q Ma'am, where are you employed?

22 A I work with the Richland County Sheriff's
23 Department in their forensic science laboratory.

24 Q And what do you do in the forensic science
25 laboratory?

1 A I'm a firearms and tool mark examiner.

2 Q I'm sorry. If you could speak up just a little bit
3 and speak into the microphone.

4 A I'm a firearms and tool mark examiner.

5 Q And as a firearms and tool mark examiner, what do
6 your duties include?

7 A My primary duties are to look at firearms and
8 ammunition components, as well as other tools and
9 band marks for forensic evidence, and then I report
10 my findings to the Court.

11 Q And can you tell this jury a little bit about your
12 education and your training in the area of firearms
13 examination?

14 A Sure. I have a bachelor of arts in both criminal
15 justice and psychology from the University of
16 Georgia and a Master of Science in forensic science
17 from the University of New Haven.

18 In July of 1999, I began work with the Georgia
19 Bureau of Investigation State Crime Lab in Atlanta,
20 Georgia. At that time I underwent an extensive two
21 and a half year training program dealing
22 specifically with firearms and tool mark
23 examination.

24 Over that time, in addition to receiving
25 certification from the state as an examiner, I also

1 received certification from the Federal Bureau of
2 Investigation in muzzle-to-target distance
3 determination and from the Bureau of Alcohol,
4 Tobacco, and Firearms in serial number restoration.

5 To date I have logged over 3,500 hours on our
6 comparison microscope, which is our primary
7 instrument. I have conducted approximately 3,000
8 weapon examinations and over 950 actual firearm and
9 tool mark cases.

10 I'm also a member of our professional
11 organization, which is the Association of Firearm
12 and Tool Mark Examiners.

13 Q And your laboratory here in Richland County, is it
14 accredited in any manner?

15 A Yes, it is. We are ASCLD/LAB International.

16 Q And that's the same accreditation that -- I guess
17 you weren't here for Lieutenant Elsey Cavanagh's
18 testimony -- and are there certain procedures in
19 place to ensure the quality of your work?

20 A Yes, there are.

21 Q And have you been qualified before as an expert in
22 firearms examination?

23 A Yes, I have.

24 Q And approximately how many times have you been
25 qualified?

1 A About 45 to 50 times here in the State of South
2 Carolina, as well as the States of Georgia and
3 Texas.

4 MS. CAMPBELL: Your Honor, at this time we
5 offer her as an expert in firearms and tool mark
6 examination.

7 MR. WHITLARK: Voir dire the witness, please,
8 Your Honor?

9 THE COURT: Yes, sir. You said tool mark
10 examination?

11 MS. CAMPBELL: Firearms and tool mark
12 examination.

13 THE COURT: Okay.

14 VOIR DIRE EXAMINATION

15 BY MR. WHITLARK:

16 Q Ms. Gleason, what was your first job in this area?

17 A In this area it was with the Georgia Bureau of
18 Investigation with their State Crime Lab. I
19 started in the Atlanta Crime Lab and actually was
20 moved independently to the Columbia Crime Lab.

21 Q Who did you train under?

22 A Bernadette Davey.

23 Q Do you know Richard Ernest?

24 A I do.

25 Q What -- how do you know him?

1 A He was a supervisor of mine for approximately six
2 months.

3 Q And where was that at?

4 A At the Atlanta Crime Lab.

5 Q Okay. What's your specialty? Do you have a
6 specialty that you studied? I think you mentioned
7 that you do muzzle --

8 A Our specialty -- I'm sorry?

9 Q What is your specialty? I mean, muzzles?
10 Distance? What is your specialty?

11 A Firearms and tool mark examination. For our
12 laboratory that is defined as both bullets,
13 cartridge case, and firearms examination.

14 We actually consider a firearm to just be a
15 specific type of tool. So we actually expand that
16 out to tools, like knives, bolt cutters, other
17 types of tools. It's the same process for us to
18 examine.

19 We also do muzzle-to-target distance
20 determination, which is where we determine
21 approximate distances where the muzzle of the
22 firearm is at the time of the shooting. Serial
23 number restoration, function testing. And there
24 are a variety of smaller services that fall under
25 it, but those are our primary duties.

1 Q Which one of those ones or which number of those
2 ones did you examine in this case?

3 A In this case we will have done bullet comparison,
4 cartridge case comparison, function testing. I'm
5 sorry, one that I did not mention was ejection
6 pattern. We do ejection pattern analysis of
7 cartridge cases, muzzle-to-target distance testing,
8 if I didn't say that one. I believe that is all of
9 them.

10 Q Have you been -- tell me about ejection -- did you
11 say cartridge ejection? What is it?

12 A Cartridge case ejection patterns.

13 Q Okay. Did you do some work on that in this case?

14 A Yes, sir.

15 Q Okay. And have you previously given testimony
16 about that in other cases?

17 A Yes, sir.

18 MR. WHITLARK: No objection to her
19 qualification, Your Honor.

20 THE COURT: All right. Ladies and gentlemen
21 of the jury, Ms. Gleason will be qualified in the
22 area of firearms and tool mark examination. She is
23 qualified as an expert to give opinion testimony in
24 that area.

25 Yes, ma'am, you may continue.

1 MS. CAMPBELL: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUES

3 BY MS. CAMPBELL:

4 Q Ms. Gleason, did you become involved in examining
5 certain items of evidence in this case?

6 A Yes, ma'am.

7 Q And before we even get into what you examined in
8 this case, can you tell the jury a little bit about
9 handguns, say, revolvers, semi-automatics?

10 A Sure. We had two types of handguns used in this
11 case, as well as two types of ammunition. We had a
12 revolver that was used. Revolver gets its name
13 from the revolving cylinder that is at the rear of
14 the firearm.

15 This cylinder houses several chambers, and as
16 the trigger of the firearm is pulled, those
17 chambers align with the barrel and initiate the
18 correct action for the unfired cartridge for them
19 to be fired in the firing process.

20 What is unique about revolvers is that
21 cartridge cases stay in the revolving cylinder
22 until they are manually extracted by the shooter or
23 other people at the scene.

24 The other firearm is a semi-automatic pistol
25 which has a magazine that houses all the unfired

1 cartridges. This magazine fits into the magazine
2 well, or the grip of the firearm.

3 And there is only one chamber, and that
4 chamber is integral to the barrel. So a cartridge
5 is taken off the top of the magazine, fitted in the
6 chamber, and then that firearm is then ready to
7 test fire.

8 What is different with that is with a
9 semi-automatic firearm, the cartridge cases are
10 actually ejected after firing.

11 Q And with all handguns, or with some handguns, is
12 there what is known as a safety feature that may be
13 involved in a certain handgun?

14 A Yes, there are many internal and external safeties
15 that are possible on different firearms because
16 manufacturers use different types of safeties,
17 depending on what their firearm is.

18 Q And in this case did you examine a number of
19 different weapons?

20 A Yes, I had three firearms on this case.

21 Q Before I get into that, is it fair to say -- can
22 you characterize one gun being safer than another
23 guns necessarily?

24 A No, they can all inflict damage. Some firearms,
25 depending on the different calibers, they have

1 higher velocities, more energy or foot-pounds of
2 pressure; but they are all equally dangerous or not
3 dangerous, depending on your viewpoint.

4 Q So anything, say, from be it a revolver or
5 semi-automatic, basically there's lower calibers
6 and then higher calibers?

7 A Right, and that is true both for revolvers and
8 semi-automatics. There's not a difference between
9 the types.

10 Q So, say, a lower energy gun, such as a .22, can it
11 still be deadly?

12 A Absolutely.

13 Q And then a higher energy gun, such as a .45 or a
14 .410, it can also be deadly?

15 A Correct.

16 Q In this case we're going to talk about the evidence
17 you got. Did you also have an opportunity to
18 review some crime scene photos?

19 A Yes, I did.

20 Q And specifically those photos, some of which are
21 in, from the office area where Ms. Parker died?

22 A Yes, I did.

23 Q As well as the outside where there are some shell
24 casings?

25 A The outside of the office?

1 Q Yes.

2 A Yes.

3 Q And then specifically the attic area where
4 Mr. Capnerhurst died?

5 A Yes.

6 Q The first gun I want to show -- well, let me show
7 you all three guns. I want to show you what has
8 been marked as State's Exhibit Number 373, State's
9 Exhibit 389, and State's Exhibit 390.

10 A I recognize and can identify State's Exhibit 373 as
11 my item number -- and by that I mean Richland
12 County Sheriff's Department assigns each of these
13 an individual item number that is referred to in my
14 report -- it's my Item 52, and it is a Smith &
15 Wesson Model 3913, 9-millimeter Luger caliber
16 pistol, Serial Number THH0904.

17 Q And are there any other items in that box in that
18 exhibit?

19 A Yes. This box also has my Item Number 53, which is
20 the pistol magazine for this firearm. And it has
21 an unfired 9-millimeter cartridge, which is my Item
22 54.

23 Q And typically when an item of evidence is
24 collected, would the -- in the semi-automatic,
25 would the semi-automatic, the magazine and any live

1 rounds in it be packaged together?

2 A That is our general policy, yes.

3 Q Upon initial testing that you'll do as you go
4 through these guns, basically, do you do any
5 testing to ensure that they are in working order?

6 A Yes. One of the first services we will do,
7 normally speaking, is a test function of that
8 firearm.

9 Sometimes we have to be careful about
10 destroying other evidence. So we may have to do
11 several services that might not check the function
12 right away, but that is typically one of the first
13 things we do, and it's always done if we have a
14 firearm.

15 Q And in this case in that firearm preliminarily, was
16 it functioning when you received it or did it --

17 A Yes, it functioned as it is designed.

18 Q Okay. And then I want to show you State's Exhibit
19 390.

20 A Do you have scissors?

21 Q I'm sorry. I should have put this up there.

22 A Yes, I recognize and can identify State's Exhibit
23 390 as my Item 80, which is a Rossi Model 68, .38
24 Special caliber revolver, Serial Number AA302286.

25 Q And is that one of the guns that was provided to

- 1 you in this case?
- 2 A Yes, it is.
- 3 Q And the accompanying ammunition in that gun or with
- 4 that gun, what is it?
- 5 A This is my Item 81, and it is unfired cartridge
- 6 cases, .38 Special, designed for this firearm.
- 7 Q And how many cartridge cases, unfired cartridge
- 8 cases, are there with that weapon that was in
- 9 there?
- 10 A Five.
- 11 Q And how many does that gun actually hold?
- 12 A Five.
- 13 Q And can I have a look at the gun?
- 14 A (Witness complies.)
- 15 Q You mentioned that the other gun we talked about --
- 16 which we will get back to in a minute -- was a
- 17 semi-automatic. What kind of gun is this?
- 18 A That's a revolver.
- 19 Q And a revolver is characterized, I believe, by the
- 20 cylinder that is sticking out here (indicating)?
- 21 A Yes, ma'am.
- 22 Q And if we didn't have this gun lock on it, it would
- 23 actually flip into there (indicating), correct?
- 24 A That's correct.
- 25 Q And when you tested this gun, was it in working

1 order?

2 A Yes, it was. It also functioned as designed.

3 Q And as you go through all the testing, that gun you
4 found, the one we just referred to, did it ever
5 match up to any of the evidence in this case, other
6 than the ammunition it was found with?

7 A No, this firearm is not associated with any other
8 of the fired evidence I received.

9 Q Finally, I want to show you what has been marked as
10 State's Exhibit Number 389. Do you recognize that?

11 A Yes, I recognize and identify State's Exhibit 389
12 as my Item 82, which is a Taurus Model, the Judge,
13 .45, .410 bore -- so actually it is chambered for
14 two different calibers -- revolver. The Serial
15 Number is BN125514.

16 Q And did that gun come with any type of fired or
17 unfired ammunition?

18 A Yes. This manila envelope actually also has my
19 Item 83, which, as received by me, was four unfired
20 .410 bore cartridge cases.

21 Q Four unfired?

22 A Yes, and one fired -- I'm sorry -- four fired .410
23 cartridge cases and one unfired. However, I did
24 use one of these for my distance testing. So it's
25 now in a fired position.

1 Q Okay. And when you received it --

2 A Let me restate that.

3 Q Yes, let's say it again.

4 A Doing it backwards for you. All right, my Number
5 83, as it came to me, was four fired cartridge
6 cases and one unfired, so one live round. And then
7 I used that live round in my distance testing, so
8 it is now in a fired position.

9 Q And that would have been how it came from, -- this
10 is what type of weapon?

11 A It's a revolver.

12 Q Can I see that weapon?

13 A (Witness compiles.)

14 Q So the fired shell casings would have been -- if
15 they were fired from this gun, would have been left
16 in the cylinder?

17 A Would have been, yes. They came to me in a manila
18 envelope.

19 Q And then one was unfired?

20 A Correct.

21 Q Okay. Did you do any preliminary testing on that
22 gun, as far as whether it worked or not?

23 A Well, again, in this case it was not preliminary.
24 It came as a secondary service, but, yes, it was
25 firing as designed.

- 1 Q Okay. So all three of these guns worked?
- 2 A Yes.
- 3 Q For simple people like me. I'm going to show you
- 4 State's Exhibit 396 and 392. Do you recognize
- 5 those items?
- 6 A I recognize and identify State's Exhibit 392 as my
- 7 Item 90. It's a black Gunmate handgun case.
- 8 Q And in doing your case work in this case, did you
- 9 check to see whether any of these guns would
- 10 actually fit in that gun case?
- 11 A Yes, because it comes to me, I do the best exam
- 12 with it I can. I document it and I check to see
- 13 which of the guns that were submitted could fit
- 14 into this case. And in this case all three of the
- 15 firearms that we just discussed can fit into this
- 16 case.
- 17 Q Including the 9-millimeter semi-automatic?
- 18 A Yes.
- 19 Q Okay.
- 20 (Hands to witness.)
- 21 A And then State's Exhibit 396 is my Item 91, and it
- 22 is a black leather Safariland holster.
- 23 Q And did you check to see whether or not it could
- 24 fit any of the three guns that were submitted to
- 25 you in your evaluation of this case?

- 1 A Yes, I did. And it is best designed for the Item
- 2 52, which is State's Exhibit 373, the Smith &
- 3 Wesson semi-automatic pistol. However, the Rossi
- 4 revolver would also fit into it.
- 5 Q So the one that we're going to refer to as the
- 6 Judge?
- 7 A No, the smaller revolver.
- 8 Q Fit in it?
- 9 A Yes.
- 10 Q And did the Smith & Wesson -- the 9-millimeter?
- 11 A Yes.
- 12 Q Semi-automatic?
- 13 A It's designed for the semi-automatic.
- 14 Q And, finally, the Judge, the larger gun, did it
- 15 fit?
- 16 A No, the larger revolver is too large to fit into
- 17 it.
- 18 Q Then I want to show you what has been marked as
- 19 State's Exhibit 391, a Taurus box.
- 20 A State's Exhibit 391 is my Item 84, which is a
- 21 Taurus handgun box. It's probably what the firearm
- 22 was purchased in. It does bear a sticker on here
- 23 that has the same serial number as the Taurus Judge
- 24 firearm.
- 25 Q The Taurus Judge firearm?

1 A Yes, which is State's Exhibit 389.

2 Q And in these two guns I want to focus on, which is
3 State's Exhibit 373 and then State's Exhibit, I
4 believe, 389, the Judge, and the -- I'll just refer
5 to it as the semi-automatic. Do those two guns
6 have safety features on them?

7 A Yes, they do.

8 Q And what type of safety feature -- taken in
9 whatever order you want -- do each of these guns
10 have?

11 A The Taurus Judge has some internal safeties. But
12 as far as something that can be used by the user,
13 it has a key safety, which the keys are actually in
14 this box. And it allows you to manually make the
15 gun safe.

16 Q And can you demonstrate that to the jury, how you
17 would actually use that key to manually make this
18 Judge safe? And when you say safe, what does the
19 safety do?

20 A A safety can work in a variety of different ways.
21 But what it does is it somehow prevents the gun
22 from firing in the safe mode. So it may block the
23 hammer, it may block the trigger, but it keeps it
24 from firing.

25 Q Can you show the jury how the safety would happen

1 on that one?

2 A With this revolver -- I don't know if you will be
3 able to see it -- but on part of this hammer here
4 (indicating), there is actually a place to insert
5 the key. You could insert the key and turn it, and
6 that would put it in a safe position.

7 Q But in order to do that, you would have to have the
8 key, is that correct?

9 A That's correct.

10 Q And then in order to release that safety, you would
11 have to use a key again as well, is that correct?

12 A That's correct.

13 Q And the key that operates this, where did you --
14 where was it located?

15 A Both keys were in this little plastic bag inside
16 State's Exhibit 391, which is the box.

17 Q And are there any other safety mechanisms on this
18 gun?

19 A Not external manual safeties.

20 Q And so if it wasn't -- if the key hadn't been used
21 and the safety hadn't been initiated, it would
22 be --

23 MR. WHITLARK: Object to the leading form of
24 the question, Your Honor.

25 THE COURT: Sustained. Please rephrase the

1 question.

2 BY MS. CAMPBELL:

3 Q What would it be able to do?

4 A I'm sorry?

5 Q If the safety is not on, who can fire it?

6 A Anyone that has access to the firearm.

7 Q Thank you. The semi-automatic gun, does it also

8 have safety features?

9 A Yes, it does.

10 Q And what are those features? And I'll hand you

11 373.

12 A I can actually do it off of my notes.

13 Q You can do it off your notes?

14 A Yes. It has, again, it has some internal safeties

15 as well, but it has a manual de-cock lever that

16 allows the hammer to fall.

17 Q And where is that indicated?

18 A It's this lever right up here (indicating).

19 Q And can that be -- you don't have to have a key to

20 do that?

21 A No. That's why it's called manual because you can

22 actually manipulate it.

23 Q So that can -- the safety can be done on that one

24 as well?

25 A That's correct.

1 Q The two guns, do they fire the same ammunition,
2 different ammunition?

3 A They fire different ammunition.

4 Q And I am going to show you what has been marked as
5 State's Exhibit 507 and 508, just for demonstrative
6 purposes. Are these examples of the type of
7 ammunition accompanying these guns and how it's
8 done?

9 A Yes, they are. Would you like me to go ahead and
10 explain?

11 Q Yes, could you just explain in whatever order you
12 want?

13 A Okay. State's Exhibit 508, this is the ammunition
14 and its components that have been broken down for
15 the Smith & Wesson semi-automatic pistol. This is
16 an unfired 9-millimeter cartridge.

17 Q And that is how it is when you, say, go to the
18 store and buy it?

19 A Yes.

20 Q And within this cartridge, as you refer to it, are
21 there different parts?

22 A There are. There are several components in that
23 cartridge. The main housing is the cartridge case.
24 At the base of the cartridge case is what's termed
25 a primer cup.

1 And then within the cartridge case is where
2 the gunpowder, the smokeless powder, actually will
3 be in. And then at the top is where your bullet
4 will fit in.

5 So in unfired condition, these would all be
6 held together, and then during firing they are put
7 in their parts.

8 Q So these are the three components, the remaining
9 components of this (indicating)?

10 A Yes.

11 Q And this gunpowder that I have in my right hand
12 would actually be located within this cap?

13 A It is.

14 Q And then the projectile that we have been referring
15 to comes out of what part of the gun?

16 A That comes out of the muzzle.

17 Q And that is this copper color?

18 A Yes.

19 Q And that's how it appears when it comes out?

20 A When it comes out, it will have markings from the
21 barrel on it, but generally speaking that is what
22 it looks like.

23 Q And then if it hits a target or hits something, can
24 its shape change?

25 A Absolutely. If it hits a hard object, it can be

1 mildly -- it can stay just like that in a soft
2 target. It can be completely flattened or
3 obliterated. So it just depends on what kind of
4 target it is striking.

5 Q And this brass-colored part, what is this?

6 A That's the cartridge case.

7 Q And typically in a semi-automatic gun, what happens
8 to the cartridge case as the bullet is shot?

9 A If the firearm is functioning correctly, the
10 cartridge case will be ejected from the firearm.

11 Q And in this case, with the one semi-automatic gun
12 that you had, were you able to determine basically
13 the ejection -- the general area it ejected from
14 the gun and how it ejected?

15 A Yes.

16 Q So on the 9-millimeter, say, if I'm holding it
17 straight on?

18 A Uh-huh.

19 Q Typically where is that going to -- or where would
20 this eject from this item?

21 A Okay. So what we do to determine that analysis is
22 I load the magazine, which is not -- but the
23 magazine that I showed you earlier, I would load it
24 to capacity, which in this firearm was eight.

25 We take it out to the range and we actually

1 create -- just to go back to high school math --
2 you have your X-Y axis. We create kind of a grid
3 that we can work off of.

4 We put the ejection port, which is this
5 ejection port here (indicating), which is actually
6 where the cartridge case will come out of when it's
7 fired. We put that right where the two lines
8 intersect.

9 We will put the ejection port right over that
10 X-Y axis right at the origin. And then we will
11 fire the contents of the magazine, so eight shots.
12 And we will mark -- we shoot it slow enough so that
13 we can mark where it falls the first time.

14 So frequently when a cartridge case hits the
15 ground -- unless it's high enough grass, it might
16 move -- we are actually going to mark where the
17 cartridge case first hits the ground.

18 Q And you talked about that when a cartridge goes
19 down to the ground, depending on the surface it
20 lands on, it can move?

21 A Yes.

22 Q And in this case were you able to determine the
23 general direction and distance, if it's
24 unobstructed -- and I'll get to that in a minute --
25 the cartridge case would eject?

1 A When we did our ejection pattern testing, it
2 ejected cartridge cases approximately five and a
3 half to eleven feet rearward and slightly to the
4 right.

5 Q And is that typical with a semi-automatic?

6 A That is the general rule. There are some
7 semi-automatic guns that will put their cartridge
8 cases off to the left or straight above. But, yes,
9 the majority of guns do go rearward and to the
10 right.

11 Q I want to turn your attention to 507, State's 507.
12 What type of ammunition does that belong to in this
13 case?

14 A State's Exhibit 507 is associated with the Taurus
15 Judge revolver. This is actually considered a .410
16 bore. Traditionally it would use that of shotguns;
17 however, as an easier home defense-type firearm,
18 they have actually made it into this handgun. The
19 Taurus Judge has a few other makes as well. This
20 is the unfired cartridge.

21 Q And that is how it would appear as if it came in
22 the box?

23 A Yes. You will notice, similarly to the cartridge
24 case that went out for the 9-millimeter, there is
25 also the primer pocket at the base.

1 And then within the cartridge case, in an
2 unfired condition, you would then have the
3 gunpowder.

4 Q And is this how it would appear after it had been
5 fired?

6 A That's cut open by me.

7 Q I wondered.

8 A You wouldn't have the cuts down the side that I
9 had. And the roll print would actually have opened
10 up a little bit at the top.

11 Q But essentially the interior would be expelled?

12 A Yes.

13 Q Thank you.

14 A Above the gunpowder would be what is termed as a
15 wad. Inside the wad sits 12 -- these are shots.
16 They are actually a BB-size shot, so BBs or
17 pellets. They sit inside the wad. And then above
18 that we have three, what Winchester terms -- this
19 is a Winchester piece of ammunition -- disks.

20 Q And the BBs you just mentioned that I'm holding in
21 my hand, they would actually be inside this wad?

22 A Yes, ma'am.

23 Q And what is the purpose of the wad?

24 A Wads fulfill a variety of different purposes. That
25 one actually protects the shot as it's being fired

1 down the barrel.

2 Those are so small if they get too damaged,
3 they are not -- they already aren't going to have
4 great trajectory, but if they get damaged -- it
5 also holds them together to keep a tighter pattern
6 for a while during firing.

7 Q And then also located in that are these three
8 disks?

9 A Yes.

10 Q And what are these called?

11 A They are actually termed by Winchester as disks.
12 They are copper-plated disks.

13 Q And how do these come out of the gun when it is
14 fired?

15 A They travel similar to a bullet. These did not
16 actually engage in the rifling of the firearm,
17 which we will probably get into shortly, but they
18 might not have as strong of a trajectory as a
19 bullet.

20 Q And what is the purpose -- you mentioned this is
21 for home defense -- what is the purpose of using
22 shotgun type ammunition in a handgun?

23 A For a long time --

24 MR. WHITLARK: Objection, Your Honor.

25 Objection, Your Honor.

1 THE COURT: What is the objection?

2 MR. WHITLARK: I thought she just asked what
3 the purpose of firing the bullet was. I'm sorry.

4 MS. CAMPBELL: No. I'm asking about this type
5 of ammunition, what its purpose is.

6 THE COURT: Why is it used, I think. Rephrase
7 the question again. Are you asking her why is it
8 used in that?

9 MS. CAMPBELL: Because she mentioned earlier
10 that it had been modified from shotguns to be able
11 to use with handguns. And the purpose in that is
12 for home defense. It's just how it comes out of
13 the gun, Your Honor.

14 THE COURT: And that is your objection? And
15 you object to it?

16 MR. WHITLARK: Yes, Your Honor.

17 THE COURT: The objection is overruled.

18 MS. CAMPBELL: Thank you.

19 BY MS. CAMPBELL:

20 Q Go ahead.

21 A Again, for a long time it has been said that, you
22 know, a good home defense weapon is a shotgun
23 because you don't have to have great aim. You have
24 multiple projectiles. So if you're nervous or you
25 are not someone who shoots frequently, you have a

1 better chance of hitting your target.

2 I believe that, you know, the Taurus Judge is
3 marketed as a home defense-type weapon,
4 self-protection. And it just takes that same
5 concept with multiple projectiles but puts it into
6 a smaller frame firearm.

7 Q However, is the effect with even the shotgun or a
8 bullet from, say, a semi-automatic, is it deadly?

9 A Yes, it can be deadly.

10 Q I want to turn your attention to the evidence that
11 you examined in this case, specifically focusing on
12 the evidence in relation to the semi-automatic and
13 the evidence gathered from Tammy Parker.

14 I am going to hand you first State's Number
15 Exhibit 383, 451, and 381, and first ask you to
16 look at those. And 384, sorry.

17 (Pause.)

18 A I recognize and identify State's Exhibit 383 as my
19 Item 64, 65, 66, 67, 68, and 69. Each of these
20 coin envelopes contains one fired 9-millimeter
21 Luger caliber cartridge case.

22 I recognize and identify State's Exhibit 384
23 as my Items 42, 43, 44, and 45. Two of these, my
24 Item 42 and 43, are intact fired metal jacketed
25 bullets. 44 is a jacketed nose fragment from a

1 bullet. And 45 is a jacket fragment.

2 Q When you say a jacket fragment, what do you mean by
3 that?

4 A That would be what would be found -- where we
5 talked about the projectile staying intact
6 depending on what type of surface it hits. When it
7 fragments, that would generally indicate it hit
8 something either inside a body bone, something
9 hard, or exterior wall, or something like that,
10 that would cause it to deform.

11 State's Exhibit Number 451 is my Items 11 and
12 12. Item 11 is an intact fired metal jacketed
13 bullet. And Item 12 is actually two metal
14 fragments from a bullet.

15 Q And does it indicate on the label there where those
16 were collected from?

17 A Yes. They actually originally came in these vials
18 from autopsy. I cleaned them and I put them in a
19 clean container, but the label in part says that
20 they are from Tammy Parker.

21 Q Okay.

22 A State's Exhibit 381 are my Item numbers 58, 59, 60,
23 61, 62, and 63.

24 The Items 58, 62, and 63 are all fired plastic
25 wads. So they would be that interior part that

1 held the BBs in the cartridges for the Judge.

2 Item 59 is just a deformed piece of a light
3 grayish material.

4 60 and 61 are both fired metal jacketed
5 bullets. They were fairly intact.

6 Q I hand you what has been marked as State's Exhibit
7 375. Do you recognize that?

8 A State's Exhibit 375 are my Items 56 and 57. 56 at
9 the time of receipt, was a Remington ammunition box
10 that housed 35 unfired 9-millimeter Luger caliber
11 cartridges.

12 Again, during some of my distance testing, I
13 test fired these, so some of them are now in a
14 fired condition.

15 And Item 57 is a magazine for a semi-automatic
16 pistol.

17 Q And those were forwarded to you together?

18 A Yes, they were.

19 Q Okay. The next item I want to show you is Item
20 448, which is some clothing.

21 A Would you like me to actually take these out?

22 Q Whatever -- yes, to make sure we are looking at the
23 right things.

24 A Ms. Campbell, may I get some gloves, please?

25 Q Sorry.

1 (Hands to witness.)

2 A State's Exhibits 448 are my Item numbers 92, 93,
3 94, 95, 96, and 97.

4 Of those, 95 and 96, a pair of gray socks and
5 a pair of shoes, I did not examine in any way other
6 than to document that they are in this container.

7 Q Uh-huh.

8 A My Item 92 is black athletic pants. Item 93 is a
9 white sports tank top. Item 94 is a red hooded
10 jacket. And Item 97 is a black hair clip.

11 Q And on that document, does it identify whose
12 clothing that was?

13 A No, it does not. Do you want me to look on the
14 packaging?

15 Q Yes, I'm sorry, on the packaging.

16 A Actually it's not on the packaging either.

17 Q Okay. Did you come to learn whose clothing that
18 was?

19 A I did. This was the clothing that was worn by
20 Ms. Parker.

21 Q Let me show you State's Exhibit Number 408.

22 A Let me package this back up.

23 Q Oh, sorry.

24 (Pause.)

25 Q I hand you State's Exhibit 408, which contains

1 three gunshot residue kits.

2 A State's Exhibit 408 is my Item 31, 32, and 33.
3 These are collectively called GSR kits. Do you
4 want me to say who they are from?

5 Q Uh-huh.

6 A They are labeled being from -- my Item 31 is from
7 Tammy Parker. My Item 32 is labeled being from
8 Brett Parker. And my Item 33 is labeled as being
9 from Bryan Capnerhurst.

10 Q Okay. And, finally, State's Exhibit 491 for
11 purposes of what we are getting ready to talk
12 about, do you recognize that?

13 A State's Exhibit 491 is my Item 4. And it is
14 actually hair that, according to the label, was cut
15 from Tammy Parker.

16 Q When you receive evidence in a case such as this,
17 such as projectiles from a crime scene and shell
18 casings from a crime scene, what, if any, kind of
19 determination can you then go and make or try to
20 make if you, in fact, have a weapon recovered?

21 A As far as fired cartridge components, when we have
22 a particular firearm, we will do test fires with
23 that firearm into a water tank.

24 From the water tank -- we use a water tank
25 because that is the best means to slow down a

1 projectile without imparting any additional
2 marking -- because what we are looking at, we are
3 looking for individual identifying characteristics
4 that are from the firearm.

5 So when a firearm is manufactured -- just to
6 step back just a little bit because we will be
7 talking about this throughout the identification.
8 When a firearm is manufactured, it's designed with
9 a set number of grooves that are either cut or
10 formed into the barrel.

11 These grooves will have either a right or a
12 left-hand twist, and it's known as the rifling for
13 that firearm.

14 Rifling is used to impart spins, much like a
15 well-thrown football will have a tight spiral,
16 hopefully. A spinning bullet will have a better
17 trajectory and will keep it in a nose forward path
18 while it's traveling.

19 During the rifling process, as well as all the
20 machine processes that go on to make a firearm,
21 from the initial boring of the barrel to the cutout
22 for the breach face, all these machining processes
23 leave behind microscopic imperfections in the forms
24 of knicks, spurs, and cuts that are left on the
25 surface of that metal.

1 They are totally random. They are not meant
2 to be there by the manufacturer. They are just
3 things that happen from the tools that are being
4 used.

5 So when firing occurs, the bullet travels down
6 the barrel, and it's imparted not only with the
7 rifling characteristics, but also those individual
8 characteristics that are unique, kind of a
9 fingerprint for that firearm.

10 And we look at those imperfections that come
11 out as a pattern of striation that we can use to
12 identify the bullet back. And then at the same
13 time that the bullet is being forced out by the
14 gases that come from the combustion of the
15 gunpowder, the cartridge cases also swell in and
16 then are being pushed back.

17 And it is impressed by any markings that are
18 left in the chamber area or the breach face of the
19 firearm.

20 And, again, we have those individual kind of
21 fingerprints for that firearm that we look at to be
22 able to say if it came from the firearm in
23 question.

24 So once we test fire it into the water tank,
25 we use those test fires. We will have fired.

1 cartridge cases and bullets as exemplars. We will
2 look at those under a comparison microscope, which
3 is essentially two microscopes that are joined
4 together by an optical bridge to let us see two
5 things side-by-side under the same lighting and
6 magnification.

7 Once we determine that the marks in the
8 firearm are reproducing, we will then replace one
9 of the test fires with the evidence, either the
10 cartridge case or the bullet. And then we will do
11 a direct comparison. And then we can make a
12 determination if that was the firearm used or not.

13 Q And in this case were you able to do some
14 comparisons with the cartridge casings, the spent
15 cartridge casings, found at the scene?

16 A Yes.

17 Q That we just talked about?

18 A Yes. I was able to identify all six of the fired
19 cartridge cases from the 9-millimeter or the
20 9-millimeter caliber cartridge cases back to the
21 Smith & Wesson 9-millimeter firearm.

22 Q So there is no question that the six cartridge
23 cases were fired by which gun?

24 A The Smith & Wesson.

25 Q The semi-automatic?

1 A Yes.

2 Q And in this case there were actually seven shots
3 but only six shell casings were recovered. Is that
4 unusual for a crime scene?

5 A I wouldn't say it's necessarily unusual. It
6 depends where the crime scene might be, where they
7 could get lost. You could get -- you even hear
8 about EMS personnel, or whatever, get stuck in the
9 thread of a shoe, they get kicked underneath
10 something and they are not located. So I wouldn't
11 say it's unusual to only have six of the seven, or
12 to lose one in the process.

13 Q In this case, were you able to make any
14 determinations as far as Items 11 -- your 11 and
15 12 -- which were the projectiles from the autopsy?

16 A Item 11 was an intact 9-millimeter bullet, and I
17 was able to ID it back to the semi-automatic Smith
18 & Wesson.

19 Q Uh-huh.

20 A Item 12 -- I think you probably don't remember by
21 this point -- but it was actually two metal
22 fragments. One was very, very small. I actually
23 sub-itemized these into 12.1 and 12.2.

24 Q Uh-huh.

25 A The larger item, 12.1, I was able to ID back to the

1 9-millimeter firearm. The smaller item I put it
2 inconclusive or unsuitable because of its size and
3 the damage.

4 Q And your Item Numbers 42 through 45, which were
5 projectiles recovered from the office, were you
6 able to make a determination as far as what gun
7 fired those?

8 A Item 42, 43, and 44 --

9 Q Uh-huh.

10 A -- I was able to ID all of those back to the Smith
11 & Wesson semi-automatic firearm.

12 Item 45 had extensive damage to it. And while
13 it did have -- the features that were there were in
14 agreement. There were not enough features
15 available to make an identification. So it is
16 actually down as inclusive.

17 Q But the others were all definitely fired by that
18 same gun?

19 A Yes.

20 Q And when you are talking about matching this to a
21 gun, is it unique to that gun?

22 A Yes.

23 Q So it couldn't be the Judge in this case?

24 A No.

25 Q Or the other gun that was provided to you?

1 A No.

2 Q What other determinations were you able to make
3 from the bullets or projectiles that were provided
4 to you?

5 A I believe we are left with my Item 60 and 61.

6 Q Uh-huh.

7 A Which are also both -- they were able to be
8 identified back to that Smith & Wesson firearm.

9 Q And those were all items that were recovered from
10 the scene, the office in this case, or the office
11 area, I should say?

12 A With the exception of the first two you asked me
13 about from the autopsy.

14 Q Sorry. Were you able to associate any of these
15 different pieces together in any way?

16 A Well, the one item we have not talked about is my
17 Item 59.

18 Q Yes.

19 A Which was the gray metal that I told you about.
20 Most consistently, that is the lead core of a
21 jacketed bullet.

22 So for the ammunition that was used in this
23 case, the bullet actually consists of a lead core,
24 a soft gray material of lead on the inside, and
25 then they put a jacket over it, which has a lot of

1 advantages. It doesn't throw the barrel. It
2 doesn't -- it allows for better seating.

3 So in this case it appears that because of the
4 damage on impact, the jacket actually separated
5 from the core. So most consistently it would look
6 like that core would be associated with my Item 45
7 and potentially be Item 11, fragments, because all
8 of those metal fragments were missing their core,
9 the lead core interior.

10 Q And do you know where those items were recovered in
11 the office?

12 A I do not offhand. I can look it up if you want me
13 to look.

14 Q We are going to come back to those.

15 A Okay.

16 Q You also talked about how you are able to do
17 ejection pattern analysis?

18 A Yes.

19 Q In reviewing the crime scene photographs, were you
20 able to make any general conclusions about where
21 the gun was when it was being fired?

22 A Based on how this firearm ejects to the right and
23 rearward, at least two of the cartridge cases are
24 outside of the office, indicating, at least at the
25 time of firing, the ejection port for the firearm

1 was probably behind the main wall so that the
2 cartridge cases could go out unobtruded from the
3 wall.

4 And then the remainder of the cartridge cases
5 are inside of the office, which would indicate that
6 there is at least some forward movement of that
7 firearm, again bringing that ejection port into the
8 room. And then at that point the cartridge cases
9 are ejected. They could have hit walls or any
10 number of the things that are inside that office,
11 but they all ended up inside the office.

12 Q And there was one fired shell casing that was found
13 right next to Ms. Parker's leg. Are you familiar
14 with that?

15 A I have seen it in the picture, yes.

16 Q And then the others were over on the other -- a
17 little bit away from that?

18 A Correct.

19 Q Would that indicate some additional movement
20 towards her body?

21 A It could indicate additional movement towards the
22 body. It could also indicate that it was kicked or
23 moved in some other fashion. But it is separate
24 from where the other grouping of ejection cases is.

25 Q In this case were you able to examine the clothing

1 and try to determine anything as far as -- you
2 mentioned that you test fired the ammunition as
3 well, right?

4 A Yes, yes, I did test fire it.

5 Q And when you examined the clothing, tell the jury
6 what you were looking for.

7 A When we get clothing in on a case and there's a
8 question of distance determinations, we would
9 consult a variety of things. We'll look at autopsy
10 pictures. We'll look at the autopsy report when it
11 is available. And then we do our own inspection of
12 the clothing.

13 The first thing we are looking for is obvious
14 defects. In this case we're looking for a singular
15 defect because we only have one projectile. At
16 that point, I guess, it's an indication of where to
17 start looking.

18 We then use a stereomicroscope, which is
19 essentially a glorified magnifying glass. You can
20 see a little bit more of the smaller particulates.

21 At that point we're looking for what type of
22 damage is around the defect. Is there any burning
23 or singeing of the fibers? Do we see any partially
24 burned or unburned gunpowder, any sooting or
25 leading that maybe indicative of distance.

1 Q And when you did the examination of the clothing in
2 this case, what were your findings?

3 A Out of all defects on Ms. Parker's clothing, I only
4 found one piece of partially burned gunpowder,
5 which tells me that most likely what happened,
6 sometimes at the base of a bullet as it is
7 traveling you will get pieces of gunpowder that
8 will stick to the base and just carry it -- fly
9 with it. And it was right outside of one of the
10 entry defects.

11 So in this case we essentially call that a
12 negative result for gunpowder. And so the most we
13 can do when we have the firearm is to test it and
14 determine where it stops throwing powder.

15 Q In this case, with the clothing that Ms. Parker was
16 wearing, did that not hinder your investigation,
17 but affect your ability to find certain evidence in
18 this case?

19 A Because it was all the athletic kind of slick
20 material, it was not conducive for holding any
21 powder. So I can only base it on what I saw, and I
22 only saw the one. I consider that a somewhat
23 conservative estimate.

24 There is a chance that if it had been a
25 different type of material, you might have had a

1 few more articulates present, but I would still
2 stick with a negative for this, for my examination.

3 Q And when doing your test firing on that gun, as far
4 as how far it -- and let me get this straight.
5 What you are looking at is what type of evidence?

6 A It's gunpowder.

7 Q Powder?

8 A Uh-huh.

9 Q And is that different from what SLED looked at in
10 this case, which is gunshot residue?

11 A It is. What SLED is looking for actually comes out
12 of the primer. So the base -- actually could we go
13 ahead and bring up the poster that shows gunpowder?

14 Q Sure. I will show you what has been marked as
15 State's Exhibit Number 498 and then 499.

16 A We don't need 499.

17 MS. CAMPBELL: This is just for demonstrative
18 purposes.

19 (WHEREUPON, State's Exhibit Nos. 498-499
20 were marked for identification only.)

21 MR. WHITLARK: No objection.

22 MS. CAMPBELL: Your Honor, may the witness
23 step down?

24 THE COURT: Yes, ma'am.

25 (Witness steps down.)

1 BY MS. CAMPBELL:

2 Q If you can come over on this side. This is the one
3 you wanted, right?

4 A Yes.

5 Q Okay.

6 A Okay, so the first thing to note about this is that
7 it has nothing to do with any of the evidence on
8 this case. This is just to kind of help -- I know
9 it to be somewhat of a confusing concept because
10 you have different experts talking about different
11 things.

12 So this picture up here (indicating) is a
13 revolver. It's a slow-motion photograph taken at
14 the time of firing.

15 What you're seeing here is all classified as
16 gunshot residue. There are different things that
17 can come out of a firearm during the firing
18 process.

19 Of these, the things we can find, the primer,
20 which we talked about at the base. That is our
21 primary ignition source.

22 So when the trigger is pulled, the firing pin
23 or hammer strikes this primer, and it has an
24 explosive mixture in it that creates a spark.

25 That spark then travels into the cartridge

1 case and ignites the gunpowder, which is this here
2 (indicating).

3 Traditionally what SLED is looking for is very
4 small. You can't see it. They have a very
5 expensive piece of instrumentation that we do not
6 have to magnify it so many times. I don't even
7 know. That's not my area.

8 But traditionally what they are looking for is
9 inorganic metallic components of that primer in the
10 form of lead, barium, and antimony.

11 Some of that might come out right here
12 (indicating) where you see the cylinder that we
13 talked about. It's pushed into the frame of the
14 revolver.

15 There is a gap here (indicating). And some of
16 the gunshot residue, a very small amount compared
17 to what is coming out the muzzle, but some of it
18 will come out here (indicating).

19 If we are dealing with a semi-automatic, it
20 might be coming out of the ejection port with the
21 cartridge case.

22 But you do get some residue here (indicating).
23 You may get some gunpowder. But primarily you will
24 be getting some sooting, some gases, and the primer
25 components of the process of their ignition coming

1 out here (indicating).

2 Then the rest of it follows the bullet out.
3 And here (indicating) you can actually see the
4 bullet coming out of the firearm, and then it
5 follows. So once this (indicating) opens up, it
6 allows all the gases and pressure behind the bullet
7 to release.

8 And you can see, you are getting carbonation,
9 soot, and vaporized lead. So the vaporized lead
10 could be coming from the priming components, but it
11 could also be coming -- if you are dealing with a
12 lead bullet or, in this case, these are all lead
13 that are just plated with a copper kind of wash on
14 it. So they could vaporize from the heat to some
15 extent and produce a vapor.

16 You're also seeing all of these strings
17 (indicating) that are pieces of individual
18 gunpowder that are burning.

19 And then down here (indicating) you actually
20 see pieces of unburned gunpowder. They haven't
21 even started burning.

22 So this is everything we're talking about with
23 gunshot residue, with the exception of vaporous
24 lead that may come out, which can come from a
25 variety of sources. Again, it can come from the

1 bullet, the projectile, it can come from fouling in
2 the barrel, and it can also come from the primer
3 mixture. With the exception of the lead. I'm not
4 looking for anything that deals with the primer, so
5 my exams are totally separate from anything you
6 have heard previously about what is there.

7 And then down here (indicating) -- just for
8 future reference while I'm down here -- this kind
9 of shows you how we do our distance patterning. We
10 establish distances at which to set up panels. So
11 we wouldn't be doing this in succession. It would
12 be one panel, remove it, and then further back.

13 But what you have here -- so this tells you
14 what you can kind of expect during firing at
15 various distances.

16 Up close to the muzzle, you'll see that you
17 have the majority of the item actually -- or the
18 residue -- going into the target. You might get
19 some tearing.

20 As you move just a slight bit away, the gases
21 are able to start leaking. And so you're going to
22 get a real tight pattern, a lot of the gaseous
23 soot, and very bent, very tight gunpowder patterns.

24 As you keep moving out, you are going get a
25 little less of that sooting and the gaseous

1 response because you are going to get still a tight
2 gunpowder pattern.

3 A little further back you are no longer going
4 to get the gases response to that smoky, sooty
5 look. You are going to get a strong pattern of
6 fairly dense gunpowder.

7 If you move further away still, that pattern
8 starts to spread and the density lessens. You'll
9 eventually get to a point where all you're getting
10 is the entry hole from the projectile. The powders
11 and everything have lost their velocity. They are
12 not traveling any further.

13 Q And how far the gunpowder we are talking about
14 travels, does that vary from gun to gun?

15 A It varies from gun to gun and it also varies with
16 the type of ammunition that is used.

17 Q Using the ammunition for the semi-automatic in this
18 case, did you do test firing in this case?

19 A Yes, I did.

20 Q And were you able to determine at what point the
21 gunpowder you're looking for would no longer
22 deposit with the projectile?

23 A We stopped seeing gunpowder on our targets at
24 between three and three and half feet. So
25 conservatively we consider that this gun would stop

1 throwing gunpowder at distances greater than three
2 and a half feet.

3 Q And as far as your findings as far as examining
4 Tammy Parker's clothing then, a conservative
5 estimate of how far the gun would be from her would
6 be what?

7 A Greater than three and a half feet.

8 Q And, again, the type of clothing she was wearing
9 may affect the ability to retain the gunpowder?

10 A That's correct.

11 Q And when you say greater than three and a half
12 feet, it could be three and a half feet, four feet,
13 four and a half feet, anything like that?

14 A That's correct.

15 Q And I'll get back to the gunshot residue kit. As
16 far as Mr. Capnerhurst and the Judge, that gun, did
17 you examine certain evidence in this case?

18 A Yes.

19 Q I hand you State's Exhibits 377, 450, and 376. And
20 take them in whatever order.

21 A State's Exhibit 377 is my Number 136, and it's an
22 additional fired plastic wad.

23 State's Exhibit 376 is my Item Number 138, and
24 it is a Winchester Supreme Elite PDX .410
25 ammunition box.

1 At the time I received it, it had two unfired
2 .410 cartridges. I did later use one of them for
3 distance testing. So there is now one unfired and
4 one fired.

5 State's Exhibit 450 includes my Item
6 Numbers 21, 22, 23, 24, 25, 26, 27, and 28. These
7 all came out of the vials from autopsy, and each of
8 those was labeled in part Bryan Capnerhurst.

9 My Item 21 is four of the copper-colored BBs.

10 My Item Number 22 is one of the copper-colored
11 disks.

12 My Item 23 is three of the copper-plated
13 disks.

14 Item 24 is four of the copper-colored BBs.

15 25 is three of the copper-colored disks and
16 one copper-colored BB.

17 26 is one deformed copper-colored BB, three
18 deformed copper-colored disks, or parts of disks,
19 one piece of copper-plated grayish material. And
20 there is an additional strand of hair in with that
21 one.

22 27 is two copper-colored BBs.

23 And 28 is one copper-colored BB, one deformed
24 copper-colored BB, and grayish material.

25 Q And I'll show you what has been marked as State's

1 497. Do you recognize that?

2 THE COURT: Ms. Campbell, I think the jurors
3 have indicated someone needs to take a break.

4 MS. CAMPBELL: Okay. I'm sorry.

5 THE COURT: If someone needs to take a break,
6 we will go ahead and break right now. We will take
7 about ten minutes.

8 MS. CAMPBELL: Thank you.

9 THE COURT: Sorry to interrupt you.

10 MS. CAMPBELL: No problem.

11 THE BAILIFF: Keep your seats. Quiet.

12 (WHEREUPON, the jury retires to the jury
13 room at 3:10 p.m.)

14 THE COURT: All right, let's take about ten
15 minutes.

16 (WHEREUPON, a break was taken.)

17 THE COURT: Yes, ma'am?

18 MS. CAMPBELL: Thank you, Your Honor. I hand
19 up what has been marked as State's Exhibit Number
20 504 and 505. These are blow-ups of photographs.
21 What is significant in this case is there was
22 certain ammunition in some folds that has been
23 testified next to Mr. Capnerhurst's head that would
24 support what Dr. Marcus and this witness are going
25 to talk about.

1 Your Honor, at this time the relationship to
2 the head is important as far as them making
3 determinations.

4 Your Honor, I know about your prior ruling,
5 and these were blown up anyway, so I wanted to show
6 them to you without showing them to anyone else and
7 let you make a determination.

8 As you can see -- and if I can show you -- on
9 here, what is significant is this here
10 (indicating), from here to right here (indicating).
11 And that's what we are trying to show is the
12 relation to where Mr. Capnerhurst's head is
13 located.

14 Now, I understand from your earlier rulings
15 and everything, but as we are getting into this
16 more and more, I mean, it's becoming apparent that
17 that is somewhat crucial as far as -- the other one
18 is this one (indicating), Your Honor.

19 MR. WHITLARK: Let me see it.

20 THE COURT: What is the probative value then?

21 MS. CAMPBELL: The probative value, as was
22 testified to by Dr. Marcus and is going to be
23 further referred to by this witness, is this right
24 here (indicating), which is down on this photo
25 right here (indicating), which is where he ended

1 up.

2 In this one, this piece of lead (indicating),
3 which is blown up here (indicating) is located
4 right there (indicating) on that one.

5 Now, if you want me to at this point to cut
6 off this one (indicating) and just let her talk
7 about where it was located.

8 MR. WHITLARK: Let me see what you are talking
9 about.

10 (Attorneys confer.)

11 THE COURT REPORTER: Is this on the record or
12 off the record?

13 MR. WHITLARK: This doesn't need to be on the
14 record.

15 (Attorneys confer.)

16 MS. CAMPBELL: Okay, Your Honor.

17 THE COURT: All right, you can bring them in.
18 (WHEREUPON, the jury came into open
19 court at 3:38 p.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Yes, ma'am. You may continue.

22 MS. CAMPBELL: Thank you, Your Honor.

23 DIRECT EXAMINATION CONTINUES

24 BY MS. CAMPBELL:

25 Q I will you show what has been marked as State's

1 Exhibit 497 for ID at this point. Do you recognize
2 that?

3 A Yes. State's Exhibit 497 is my Number 168. And it
4 is another copper-colored BB. This is actually one
5 that I found during my examination of another item
6 of evidence, and it fell out during that time. So
7 I actually admitted this as evidence.

8 MS. CAMPBELL: Your Honor, at this time we'd
9 offer State's Exhibit 491 and 497 into evidence.

10 THE COURT: Any objection?

11 MR. WHITLARK: Let me make sure what they are,
12 Your Honor, may it please the Court?

13 (Attorneys confer.)

14 MR. WHITLARK: No objection, Your Honor.

15 THE COURT: 491 and 497 will be entered
16 without objection.

17 (WHEREUPON, State's Exhibit No. 491 was
18 marked for identification and received
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 497 was
21 marked for identification and received
22 into evidence.)

23 MS. CAMPBELL: And, finally, Your Honor, 485.

24 BY MS. CAMPBELL:

25 Q Was this another item you actually examined?

1 A Yes.

2 MR. WHITLARK: No objection, Your Honor.

3 THE COURT: All right, it will be entered
4 without objection.

5 [REPORTER'S NOTE: State's Exhibit 485
6 was previously entered.]

7 BY MS. CAMPBELL:

8 Q Did you examine this?

9 A Yes. State's Exhibit 485 is my Item Numbers 98,
10 99, 100, 101, 102, and 103.

11 98 is a pair of Ralph Lauren brand navy blue
12 shorts.

13 99 is a lycra T-shirt.

14 100 is a Columbia pullover.

15 101 is white briefs.

16 102 is a pair of socks.

17 And 103 is a pair of New Balance tennis shoes.

18 Q And then while we're here, the final -- another
19 item you actually examined in this case was also
20 clothing taken from Brett Parker?

21 A Yes, that's correct.

22 Q And I will show you what has been marked as 432.
23 (Pause.)

24 Q And you don't have to look at this individually,
25 but did you examine the clothing from Brett Parker?

1 A Yes, I did.

2 Q In examining the clothing from Brett Parker, what,
3 if anything, were you looking for?

4 A In this case I didn't expect to find any defects.
5 I did check each item of clothing as well as the
6 shoes to see if I could find anything related to
7 gunshot residue or evidence of firing or defects.

8 Q Okay. And in this case there has been some
9 testimony that the Defendant indicated he had fired
10 under his arm, specifically.

11 A Okay.

12 Q Would you find any evidence of that if a person
13 were to fire under their arm like this
14 (indicating)?

15 A If they were in the position you're in where the
16 firearm is that close to the clothing, I would
17 expect to find burning and tearing to the material
18 from the gap that I showed you between the cylinder
19 and the barrel of the firearm. All those gaps, I
20 would expect that to burn or tear that area of the
21 clothing.

22 Q And in examining the clothing that was recovered
23 from the Defendant in this case, did you find any
24 burning or tearing in that area?

25 A No, I did not.

1 Q Once the items were retrieved that you examined as
2 far as the ones associated with the Judge, can you
3 go through and tell us whatever you think is good
4 and tell the jury what your findings were?

5 A Sure. Of the four fired cartridge cases --

6 Q That were recovered inside the weapon?

7 A Yes. They are in with State's Exhibit 389.

8 Q Uh-huh.

9 A I was able to ID all four of those fired cartridge
10 cases back to the revolver --

11 Q Yes.

12 A -- in question. The only other thing I was able to
13 identify there, when the wads travel down the
14 barrel, the plastic material expands and engages
15 the rifling. And I was actually able to identify
16 the plastic wadding, three of them, back to the
17 firearm. The other one did not engage well enough,
18 so it had an inconclusive finding, but three of
19 them were able to be ID'd back.

20 There was potential for the copper disks to
21 engage; however, I examined each of those that were
22 recovered --

23 Q These (indicating)?

24 A That's correct.

25 Q From the actual ammunition you looked at?

1 A Yes. And they did not engage. So none of those
2 were able to be identified back. And I would not
3 have expected the BB-size pellets to engage or have
4 any need to identify them back as well.

5 Q The .410 ammunition that you found with the gun and
6 from the autopsy, and all that, that was the proper
7 type of ammunition for the Judge, is that correct?

8 A Yes, it was.

9 Q Did you do any further testing in this case that
10 proved significant?

11 A With the fired ammunition components or just with
12 the firearm?

13 Q With the fired ammunition components? And then we
14 will move on to...

15 A No, that covers all the fired ammunition
16 components.

17 Q Once you did your basic findings in this case as
18 far as ID'ing ammunition back to guns, did you then
19 do any further testing?

20 A Yes. I then did muzzle-to-target distance
21 determinations like I did with Ms. Parker's
22 clothing as well. I did that with Mr. Capnerhurst.

23 Q And can you tell the jury how you went about doing
24 that and what the results were?

25 A Much like I showed you in that first demonstration,

1 we set up panels at various distances to get our
2 exemplar distances, what we would expect to find at
3 different distances.

4 And just like I did with Ms. Parker's, I
5 looked at each item of clothing, looked for
6 defects.

7 In this case I was looking for -- instead of
8 just the one defect, because we only had one
9 projectile with the Smith & Wesson, I was looking
10 for multiple defects to complete a pattern with --
11 each associated shot would have multiple holes. So
12 that in itself created a pattern.

13 Then, again, I also looked for any of the
14 sooting or the gaseous material around the hole,
15 any additional damage, and any gunpowder.

16 Q And what were the results of those examinations
17 initially?

18 A Well, I was able to find two complete patterns. By
19 complete that means that -- in this case we have a
20 known number of projectiles, so we had the three
21 disks and the 12 BBs, so we are looking for a total
22 of 15.

23 With the entry wound to the chest on the
24 fleece, that turned out to be a complete pattern.
25 Complete doesn't necessarily mean that I found 15

1 individual defects, but it means that it was in a
2 tight enough pattern with no indication of an
3 outlier, but you can have a pellet or a BB travel
4 through the same hole or, with the case of the
5 disks, they frequently stay together, so they
6 mainly create one big hole instead of three
7 individual holes. But you can tell by looking at
8 the clothing that it's a complete pattern.

9 Additionally, I found another complete pattern
10 on the left shoe of Mr. Capnerhurst. Then I found
11 multiple defects on the shorts and on both sides of
12 the arm, as well as two to the kind of ribcage area
13 on the left side..

14 In the course of examinations and trying to
15 complete patterns and looking at the radiographs
16 from the autopsy, I was able to say that these are
17 most consistent with having gone together because
18 of the angle and the grade.

19 Q And would you stand up and show us what you are
20 talking about?

21 A Sure.

22 (Witness complies.)

23 A The graze to the leg created an angle with the arm.
24 So most consistently these three shots were
25 together. And between the radiograph and what was

1 collected by the medical examiner, we were able to
2 find 14 of the 15 expected projectiles to complete
3 that pattern.

4 And then I think that would cover all of the
5 physical before we get to additional testing.

6 Q And then you did do additional testing?

7 A Yes. In addition to that, I also -- those are the
8 physical patterns of the BBs and the disks. I also
9 found gunpowder patterns around those holes. In
10 some cases they created an actual like pattern.
11 Sometimes it was just scattered. So I could
12 document those as well.

13 Q And did you do any test firing with this gun?

14 A Yes.

15 Q At various distances?

16 A Yes.

17 Q And did that prove significant when you examined
18 the clothing as well as the test firing?

19 A Well, again, when we do the test firing with the
20 gun, that's where we get our exemplars. So what we
21 expect to see with that gun -- and in this case we
22 have limited ammunition. With the Smith & Wesson
23 we had an abundance of ammunition, so we only used
24 evidence ammo. In this case we had three unfired.
25 I kept one --

1 Q When you say three unfired, one unfired was from
2 where?

3 A One was in the gun as received, and then we found
4 two at a later time in that ammunition box at the
5 house.

6 Q And this now is one fired and one unfired, but you
7 were the one that actually fired the one that has
8 now been fired?

9 A Correct.

10 Q Makes sense. Go ahead.

11 A So I used two of those. And what I did is I
12 established a bracket of two and an eighth because
13 I wanted to cover various distances. And I shot
14 those with evidence. And then I shot many using
15 lab ammunition that duplicated that.

16 So we have to verify that the ammunition we
17 use from our lab is a close enough exemplar of what
18 was actually used in the case, because
19 manufacturers with their ammunition, they can
20 change their lots, the powder type. In order to
21 make a judgment call, we need to verify that there
22 is enough similarities between the evidence and the
23 lab ammunition.

24 And in this case the evidence ammunition
25 actually gave a slightly more conservative pattern,

1 slightly tighter. So anything we do at the lab, if
2 anything, would have been beyond what would have
3 happened with the evidence. So we were able to use
4 that.

5 Q So you were able to verify it enough that -- it was
6 within the parameters to be compared?

7 A Yes.

8 Q And once you did that, were you able to also do
9 some chemical testing in this case?

10 A Yes, we also do chemical testing.

11 Q And what do you do chemical testing for?

12 A Chemical testing, we have two tests that were used
13 in this case. We have the sodium rhodizonate test,
14 which is a test that allows us to visualize that
15 vaporous lead that we may not otherwise be able to
16 see.

17 It also shows us lead particulates. So if the
18 disks were fragmenting as they are being fired, you
19 might see pinpoint marks of response, but what
20 we're looking for is the actual gaseous lead vapors
21 that we are saying we would see at closer
22 distances.

23 Do you want to go ahead and do the...

24 Q Yes.

25 MS. CAMPBELL: Your Honor, may the --

1 Q Well, let me show you these first. Are these
2 documents you actually prepared for court?

3 A Yes, they are.

4 MS. CAMPBELL: Your Honor, at this time, I
5 believe without objection, is 500, 501, 502, and
6 503.

7 MR. WHITLARK: No objection, Your Honor.

8 MS. CAMPBELL: May the witness step down, Your
9 Honor?

10 THE COURT: Those are for ID or those are in?

11 MS. CAMPBELL: Those are in.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit Nos. 500-503
14 were marked for identification and
15 received into evidence.)

16 (Witness steps down.)

17 BY MS. CAMPBELL:

18 Q If you will come over on this side. Can you
19 explain what this is?

20 A I will. And this is actually the last step of our
21 distancing. We have various steps we have to
22 follow because one step may interfere with the
23 results of another test. But when I get to the end
24 of this explanation you'll see why.

25 But this is just to help kind of put some of

1 the chemistry into picture format so that it makes
2 a little more sense.

3 This (indicating) is a distance pattern that
4 we created at one foot. This is before any
5 treatment. It's kind of hard to see, but there is
6 actually individual pellet holes here (indicating).
7 And if we had more light and more magnification,
8 you actually may be able to see some gunpowder
9 around here (indicating) as well.

10 What we do, though, is we spray the surface
11 with a sodium rhodizonate solution. Sodium
12 rhodizonate comes in a powder form that we add to
13 water. We spray that and it gives us this orange
14 color.

15 We then over-spray it with a tartaric buffer
16 and a hydrochloric solution that adds acidity to
17 it, and it causes any lead that is on this sample
18 here to turn to a purplish color, a blue-violet
19 color.

20 But this shows you ideally what we would see.
21 We see the pre-treatment, during the first step of
22 treatment, and then after treatment. And then you
23 can see what a positive response for lead would
24 look like.

25 Q What were your actual results that are on the

1 bottom of that exhibit?

2 A The bottom here (indicating) is the same thing, but
3 at two feet. We skipped showing you the various
4 steps because the closest range of one foot gives
5 you the visual.

6 Down here (indicating) you're seeing a very
7 light blue-purple response. You are also seeing --
8 because those were lead BBs and disks -- you are
9 also seeing a positive response around those.
10 We're, again, looking for this very light purple.
11 It barely shows up here (indicating).

12 And then at three feet -- this (indicating) is
13 another test pattern -- you see that after
14 processing there is no blue-purple response.

15 So what this told us is that vaporous lead
16 with this firearm and ammunition combination, it is
17 positive at two feet, negative at three feet.

18 What that means for us in terms of the
19 clothing is that every test that I did on the
20 clothing was negative.

21 So that gives me my bottom parameter. It has
22 to at least be greater than two feet because we
23 know we should have had a positive at two, by three
24 we didn't, so with no positive we know we are at
25 least greater than two.

1 Q And that is some indication of the distance from
2 the end of the muzzle of the gun --

3 A Yes.

4 Q -- to the clothing?

5 A We are always talking about the end of the firearm.

6 Q With Mr. Capnerhurst, from your chemical testing,
7 what were your conclusions?

8 A Well, I have to finish. What happens with -- with
9 what we had in this case, we have four tests that
10 we're looking at to come to our ultimate
11 conclusion.

12 We have the diameter of the BB disk pattern.
13 We have the diameter of the gunpowder pattern. We
14 have the results of the sodium rhodizonate test.
15 And then the next test I am going to show you is
16 actually going to be a nitrite test.

17 Q And when you tested his clothing, they were all
18 negative?

19 A For sodium rhodizonate. So we have to actually
20 discuss all four tests before I can give you a
21 conclusion on all the clothing.

22 Q Okay. And would this (indicating) help?

23 A Okay, the next -- or actually there is a test we do
24 prior to that, but that's kind of simplified that
25 we have a minimum distance of two feet that it has

1 to be greater than.

2 The second test that we can do is called a
3 Modified Griess Test, or we sometimes hear it
4 pronounced "Grease" test. It's a test for
5 nitrites.

6 So when we're talking about the gunpowder that
7 is in a cartridge, a major component of this is
8 nitrated cellulose, which essentially means
9 cellulose is going to be wood or paper pulp. And
10 then they nitrate it. They add oxygen and nitrogen
11 to make it explosive.

12 When this burns as a product of their
13 combustion, the nitrates that it starts at become
14 nitrites.

15 So, a little bit of the basic chemistry. This
16 is inkjet photo paper. We treat this in a bath of
17 equal parts of alpha-naphtol and a methanol
18 solution and sulfanilic acid and a water solution.
19 We create a bath with that and dip the paper in it.
20 All that does is create an environment that will be
21 sensitive to nitrites.

22 In each of these corners, you're going to see
23 that we dipped and we then test that paper. We
24 have cotton swabs that we treat with sodium
25 nitrites. We just add acetic acid and we test each

1 corner to make sure that the entire paper that we
2 treated has been coated.

3 And when you see this orange response
4 (indicating), that's what indicates that this paper
5 is going to respond to nitrites.

6 Then what we do -- this is my Item 100. This
7 is the fleece that Mr. Capnerhurst had on.

8 The complete pattern that I talked with you
9 about is up here (indicating) on the kind of left
10 upper chest shoulder area. This is just an
11 enlarged version of it. I don't know if you can
12 see it, but you can see the individual physical
13 pattern as well.

14 We then chemically test this, and the results
15 is this center here (indicating). So what we do is
16 we lay the treated piece of paper down. We put
17 this face-down on top of the paper, and we kind of
18 index the defects so we know where to associate the
19 pattern.

20 We then soak cheesecloth in an acetic acid
21 solution that sits on top on the back side, the
22 actual back side of this, and heat it with an iron.
23 That allows the acetic acid vapors to transfer
24 through the clothing.

25 And it causes the nitrites that might be

1 present to turn into a nitric acid that then
2 responds with the chemicals here (indicating) on
3 the paper to produce orange pinpoint locations.

4 That ultimately -- the end of all that is what
5 we are looking for, is the orange pinpoints.

6 Because they don't show up very well, I
7 actually went -- and so now the orange pinpoints
8 are blue so you can actually see them. Each of
9 these circled is an orange pinpoint.

10 One of the things you have to watch for that
11 frequently happens is this orange haze that you'll
12 see. That is a response to some kind of -- like
13 the dye in the fabric or some other means that is
14 causing a response. So it's important that we
15 distinguish just the pinpoint response. We're not
16 looking at the orange haze.

17 So what we then have is we have our evidence
18 exemplar here (indicating) of positive nitrites
19 around the defects.

20 So just like we did with sodium rhodizonate,
21 we go out and we test different distances. And
22 then we go and we run the same chemical tests on
23 each of those distance patterns.

24 Here (indicating) at one foot you can see you
25 have a very tight pattern. It is slightly smaller

1 in dimension. And it is also very concentrated.
2 So actually this big circle (indicating) is full of
3 a bunch of those pinpoints. I couldn't hit all of
4 them, but I circled that whole area. So you can
5 see that that is much tighter than what we are
6 looking for here (indicating).

7 At two feet you're getting, you know, about
8 the right dimensions, maybe a little bit more
9 concentrated. Three feet is a little bit bigger
10 dimension. So the concentration is about right.
11 And by four feet, you are not getting any of the
12 density and you're also wavering out of the pattern
13 of nitrites.

14 So this is another chemical test that we use
15 to come to our conclusions. So with this we would
16 bracket it based off just this test alone at
17 between one foot and three foot. But, again, we
18 have already eliminated that one foot option
19 because of our sodium rhodizonate. So now we are
20 up to two.

21 Q What State's Exhibit is that?

22 A 501.

23 Q Thank you.

24 A So, again, we are looking at the same defects here
25 (indicating), but this time we are going to be

1 looking at the physical pellet and disk pattern.

2 Unfortunately, the gunpowder was too small for
3 me to put into any kind of exhibit that you would
4 be able to see it.

5 So this is going to be the third test that I
6 can actually show you. One of the ways that I
7 document these patterns is I actually use a clear
8 overlay that I lay on the top of the garment and
9 actually physically mark where I see defects, which
10 are the bigger circles.

11 You can see the larger defect here
12 (indicating), which is probably where the disk
13 entered. And then these tiny spots (indicating)
14 are actually everywhere that there was gunpowder.
15 So you can get a little bit of a visual of what I
16 am looking at with the gunpowder pattern.

17 But here (indicating) we are just trying to
18 duplicate the physical pellet and disk pattern.

19 Unfortunately, at the closer distances, there
20 was a lot of damage to the target material, so you
21 are getting a lot of tearing. But hopefully you
22 can somewhat visualize that here (indicating) at
23 two feet, you're getting a lot of centralized
24 tearing with just a few of the BBs starting to
25 spread out from that pattern.

1 Three feet, it's actually a pretty good
2 pattern as far as dimensions. And the BBs are
3 separating out from the disks. So very similar
4 here (indicating).

5 Four feet, again, you're seeing some of the
6 separation out of the main pattern. We have a lot
7 of tearing with this one. But the dimensions,
8 again, aren't too far off. So we wouldn't
9 eliminate that.

10 By five feet we are starting to actually get
11 dimensions that are significantly bigger than this.

12 And then at eight feet we have a much wider
13 pattern.

14 At this point, if all I was looking at were
15 these physical patterns, I would have then gone on
16 and done some additional patterning with lab
17 ammunition to see if I could narrow this down,
18 because this is obviously much bigger at eight than
19 at five.

20 So I might have done something closer, about a
21 six and a seven to see if I could have narrowed
22 that bracket.

23 But based on this alone, I went ahead and went
24 conservative, and I said that it was between two
25 and eight feet.

1 But then, again, we have the Griess test,
2 which brought that back down, and gunpowder as
3 well.

4 So between the four tests for this defect, my
5 final conclusion on this was a distance of two to
6 five feet.

7 Q So from the shot -- because you're only doing the
8 test on complete patterns, right?

9 A Yes.

10 Q Two to five feet would be the distance?

11 A For this, yes, for this complete pattern.

12 Q And did you mention there was a second complete
13 pattern that you were actually able to do distance
14 testing for?

15 A Yes.

16 Q And what is that exhibit number?

17 A This is Exhibit 503.

18 Q And what testing were you able to do on the shoe
19 area?

20 A This one was a little bit easier to come to.
21 Because we are dealing with a rubber surface and a
22 textured surface, there wasn't a lot chemically
23 that we could do. We did try, but it just kind of
24 ran off the rubber.

25 But what you're seeing here is the base of the

1 left shoe. You can see rubber is a yielding
2 material. So when the pellet and disk entered,
3 they made small defects, and then the rubber kind
4 of closes back around it. So that's why these look
5 a good bit smaller.

6 And this is it blown up. You can see the tiny
7 individual defects, and you can also see a circular
8 impression from the disk entering.

9 We did do sodium rhodizonate on this, which,
10 again, takes us to the greater than two feet.

11 Because we did not get a positive response --
12 we actually got purple responses around the entry
13 holes. But, again, we have to attribute that to
14 the fact that it was a lead projectiles. So we
15 consider that a negative sodium rhodizonate
16 response.

17 Because of the material, we could not do the
18 Griess test with the nitrites. So all we have here
19 is to base the physical pattern of the pellets and
20 the disk.

21 Again, I did an overlay. This top portion
22 (indicating) is actually an overlay of the sole and
23 the bottom portion (indicating) is an overlay of
24 the insole and that little small piece you can take
25 out of the shoe.

1 So looking at this, again, we have a nice
2 physical pattern. This was -- if it were blown up
3 more you could see the question mark next to it --
4 but I excluded it, but technically I don't actually
5 think -- I think it's just a defect in the shoe
6 because it's far out and it didn't have the same
7 look as these.

8 But, again, so we used these patterns. And
9 these are actually the same patterns that are on
10 the other. With this, our closest physical pattern
11 is three foot. So we brought that back at two to
12 five feet.

13 Q Two to five feet?

14 A As well, for the shoe.

15 Q But the closest physical pattern there is three
16 feet?

17 A Yes.

18 Q So, again --

19 MR. WHITLARK: Object to the leading form of
20 the question, Your Honor.

21 THE COURT: Sustained. Please rephrase the
22 question.

23 BY MS. CAMPBELL:

24 Q How did you estimate two to five feet when it's
25 closest to the three feet?

1 A We always graph it because there's a lot of
2 variability. In fact, the reason that I was able
3 to stick with two to five feet on this physical
4 pattern --

5 Q Uh-huh.

6 A -- is because the three feet is closer. On State's
7 Exhibit -- I'll give you a little more detail --
8 501, the reason I actually went more conservative
9 with three to eight on physical -- for a two to
10 eight physical pattern is because at five feet,
11 each shot has different variations. And so I have
12 multiple tests at different distances.

13 But there was one five-foot pattern smaller
14 that we didn't measure it exactly right or
15 something, but I had one five-foot pattern that was
16 a little closer to this. So that's why I went more
17 conservative with the eight. But then used the
18 chemical testing to back it back down.

19 With this one (indicating), because three is
20 the closest pattern, we bracket a foot out. So it
21 is two to five. I think we actually gave a little
22 extra.

23 Q Did you also review photographs from the crime
24 scene?

25 A Yes, I did.

1 Q And I show you what is left of your exhibits, 505
2 and 504. This is information you got from
3 reviewing the crime scene photos?

4 A Yes.

5 MS. CAMPBELL: Your Honor, at this time I
6 would offer, in their redacted state, 504 and 505.

7 THE COURT: Any objection?

8 MR. WHITLARK: No objection, Your Honor.

9 THE COURT: Number 504 and 505 are entered
10 without objection.

11 (WHEREUPON, State's Exhibit Nos. 504-505
12 were marked for identification and
13 received into evidence.)

14 BY MS. CAMPBELL:

15 Q So what are these photos of? They are close-ups
16 actually.

17 A Let me first -- the reason I go to crime scene
18 photos is generally just because I had two
19 incomplete patterns. So I'm trying to get as much
20 information as I can.

21 In the course of combining everything
22 together, I was able to say that it is most
23 consistent that is three shots: The shorts, the
24 arm shot, and the lower chest all went together.
25 But, again, I considered it an incomplete pattern,

1 and we don't report distances on that.

2 The way I came to an complete pattern on the
3 face is when we are looking at crime scene photos
4 where Mr. Capnerhurst's head fell was actually --
5 it looked like a wrapping paper plastic box. And
6 sorry for the line here (indicating). This is
7 actually a smaller picture that this is blown up
8 from.

9 But this (indicating) is the top of his head
10 where it fell. And obviously there is a lot of
11 movement to the head, which is one reason that once
12 we saw this, we still couldn't complete the
13 pattern, because we don't know exactly how he fell.

14 But when you get down onto the plastic, there
15 is this very characteristic mark here (indicating)
16 of a defect, of a high velocity entry.

17 And the reason I say it's visually consistent
18 with a high velocity entry to this plastic is we
19 do, as part of our reconstruction with shooting
20 scenes, we tested for various materials.

21 And glass and hard plastic respond very much
22 the same. When a projectile hits glass and hard
23 plastic, it absorbs -- both of them yield before
24 they actually break.

25 Many times, even if you don't actually

1 perforate it -- because the glass or the plastic
2 will absorb some of the energy of the bullet -- it
3 will actually do what is called a cone fracture.

4 What you can see is actually on the side
5 opposite of impact, which is very characteristic.
6 It flays out in a cone and actually tiny shards
7 that shoot out just because the glass can't take
8 the impact, all the energy that is being forced
9 into it.

10 And then when you actually do get a
11 perforation, the glass bends before it breaks. So
12 then as it breaks, it follows a path of least
13 resistance, which is characteristically seen as
14 these radial fractures (indicating).

15 This is just two textbook examples showing
16 how, even if you get a deflection here (indicating)
17 of the BB, you still get the cone fracture off the
18 opposing side.

19 That, again, is what you are seeing on this
20 underside (indicating), and then the radial
21 fracture from the point of impact where it actually
22 starts to break.

23 So this was one thing that led us to think
24 that it is most consistent that part of the face
25 pattern is actually going to be on this plastic.

1 Q And State's Exhibit 504?

2 A And the other thing that we noticed coming across
3 looking at the crime scene photos, again, trying to
4 complete that pattern, this (indicating) is the
5 same plastic box. So you can actually see the
6 defect that we were just looking at up here
7 (indicating) in the upper corner.

8 But just under that, at this angle
9 (indicating) you can see what is visually
10 consistent with one of our fragmented lead disks.
11 You can see these (indicating) are two items that
12 came from Mr. Capnerhurst's body at autopsy.

13 You can see how it is the rounded-out fragment
14 and the lead shape. And here (indicating), this is
15 it blown up. This picture is actually focusing on
16 something else, so it's blurry, so I apologize for
17 that. But this is just it larger.

18 So, again, it is visually consistent with a
19 projectile from the .410 being near this box. So,
20 again, that leads us to believe that the rest of
21 the pattern was not with it. So we couldn't do a
22 determination on that distance.

23 Q However, what conclusions were you able to make in
24 reviewing the autopsy photos, the crime scene
25 photos, and the observations on those two pieces of

1 evidence as far as the shot to the face?

2 A That it is most consistent with having been
3 incorporated with this plastic box, so indicating
4 the head was down on that plastic box at the time
5 of firing.

6 Q At the time of firing, the head was where?

7 A Consistent with being on top of the plastic box.

8 MR. WHITLARK: Objection, Your Honor. I
9 object to that question.

10 THE COURT: All right. What is the objection?

11 MR. WHITLARK: First of all, it is a leading
12 question.

13 THE COURT: I think she asked it twice. What
14 was -- I don't remember.

15 MS. CAMPBELL: I'll be glad to ask her again.

16 MR. WHITLARK: I'm sure she would.

17 THE COURT: All right, what is the question
18 again?

19 MS. CAMPBELL: It is based on her
20 observations, she testified, where would the
21 position of the head have been at the time it was
22 shot.

23 THE COURT: And your objection is what?

24 MR. WHITLARK: Well, I object to her -- she is
25 not qualified to give that opinion, Your Honor.

1 It's not part of a gun and tool expert testimony.

2 MS. CAMPBELL: It is in her purview as a
3 ballistics expert, Your Honor, firearm and tool
4 mark.

5 THE COURT: As to where the?

6 MS. CAMPBELL: That completed the pattern;
7 therefore, his head would have down on that plastic
8 box at the time.

9 THE COURT: Based on the injury?

10 MS. CAMPBELL: Based on that, plus what she
11 observed.

12 THE COURT: All right, the objection is
13 overruled.

14 MR. WHITLARK: Thank you, Your Honor.

15 BY MS. CAMPBELL:

16 Q And the pictures here on 504 are of what?

17 A Again, these are what were collected from the left
18 arm of Capnerhurst. There were actually two BBs
19 collected from autopsy, as well as a disk fragment.
20 And then this (indicating) is from
21 Mr. Capnerhurst's brain.

22 Here you are actually seeing two BBs that
23 looked to be three fragmented disks. Actually I
24 think this is more of an attached disk. And then
25 the fragments of this here (indicating).

1 Q And, finally, before you sit down, you also
2 testified earlier about that certain things were
3 consistent with having one shot from the
4 midsection?

5 A Yes.

6 Q And what helped you in determining that as far as
7 your finding on the clothing?

8 A We looked at several -- there was a great deal of
9 evidence we kind of had to piece together to try
10 and get -- we knew we only had four shots. We had
11 two complete patterns.

12 When we combined these three, there had
13 been -- when we did just the anatomical position
14 with the fleece, there had been a void in
15 gunpowder, which led us to think that something was
16 blocking this area (indicating).

17 There was gunpowder on this arm (indicating)
18 that kind of filled in. So if we laid this over
19 (indicating), it kind of completed that pattern and
20 made us look at it.

21 Then we also asked for the radiographs from
22 the pathologist. And when we did that, again, with
23 what was collected from autopsy and what remained
24 in his body, that led us to 14 of the 15
25 projectiles, which meant that it is most consistent

1 that those three were associated.

2 Q And as far as your distance testing, or anything
3 else, were there any other conclusions you were
4 able to come to?

5 A Let me check my report and make sure.

6 (Pause.)

7 A No, in terms of the Taurus and the finding in each
8 component, as well as Capnerhurst's clothing, that
9 completes everything.

10 Q As part of your testing in this case, did you also
11 look for the presence of gunpowder in certain
12 areas?

13 A Yes.

14 Q And specifically was there certain evidence you
15 reviewed for that?

16 A Yes.

17 Q And what was that?

18 A Well, are we talking in addition to all the
19 clothing?

20 Q In addition to all the clothing, which we have
21 talked about.

22 A Additionally, I looked at the GSR kits from each of
23 the three individuals involved.

24 Q And I show you State's Exhibit 408. That contains
25 the individual kits?

1 A Yes, it does.

2 Q And in looking at those kits, had they already been
3 examined by SLED, I believe, for gunshot residue?

4 A Yes. These kits are generally collected for GSR to
5 the hands, which, again, is a service I do not
6 provide. It goes to SLED --

7 MR. WHITLARK: Objection, Your Honor.

8 THE WITNESS: -- for examination.

9 MR. WHITLARK: Objection.

10 THE COURT: And the objection is?

11 MR. WHITLARK: The objection is she is also --
12 now she's testifying to gunpowder. She is a tool
13 and firearm experts, Your Honor.

14 MS. CAMPBELL: She said in her qualifications
15 in her voir dire that that was one of things they
16 tested for. Your Honor, it is well within her
17 realm.

18 THE COURT: And the question again? What was
19 the question you asked?

20 MS. CAMPBELL: I asked her what testing, what
21 she was testing for, and she was telling me how it
22 was different from what SLED did. That was her
23 answer when he objected.

24 THE COURT: All right, I'm going to send y'all
25 out for one second.

1 THE BAILIFF: Remain seated until the jury
2 leaves, please.

3 (WHEREUPON, the jury retires to the jury
4 room at 4:20 p.m.)

5 THE COURT: All right.

6 MS. CAMPBELL: Your Honor, I believe as part
7 of her voir dire, she talked about the types of
8 testing that they do, and this is one of the things
9 she mentioned. I would be glad to proffer it
10 again.

11 THE COURT: All right, yes, ma'am. Thank you.

12 MR. WHITLARK: Judge, I will withdraw my
13 objection. We can go ahead and let her --
14 Mr. Fedor has just convinced me we should do that.

15 THE COURT: All right. Didn't Mr. Roberts
16 testify already?

17 MS. CAMPBELL: This is different from gunshot
18 residue. That is what she was just explaining to
19 the jury. He tests for certain elements, such as
20 antimony -- I can't get those words -- the lead,
21 the barium, the antimony, or whatever it is.

22 This is different because it's a physical
23 inspection she does for the presence of gunpowder.
24 It's different from gunshot residue. So, no, this
25 is not the same testimony at all.

1 THE COURT: Okay. So, Mr. Whitlark, you are
2 withdrawing --

3 MR. WHITLARK: We are going to withdraw the
4 objection, Your Honor.

5 THE COURT: Okay.

6 MS. CAMPBELL: And then this is the last line
7 of questioning we have for this witness.

8 THE COURT: All right. You can bring them in.

9 THE BAILIFF: Quiet, please. Quiet.

10 (WHEREUPON, the jury came into open
11 court at 4:21 p.m.)

12 MR. WHITLARK: Your Honor, we withdraw our
13 objection.

14 THE COURT: All right. Yes, ma'am, you may
15 continue.

16 THE BAILIFF: The jury is seated, Your Honor.

17 DIRECT EXAMINATION CONTINUES

18 BY MS. CAMPBELL:

19 Q You were explaining to the jury how the testing --
20 or what you were looking for is different from what
21 SLED actually tested for, is that correct?

22 A Yes. This is actually not something -- okay, if
23 you are looking for gunpowder, it's something I do
24 in any muzzle-to-target distance case. What is
25 unique about this is we had two guns involved, very

1 distinct types of gunpowder. And the question that
2 we had is who was shooting the gun.

3 So we tried to the best of our ability to
4 think of any and every possible way to associate
5 those two different types of gunpowder to any
6 particular individual. Can we show it?

7 MS. CAMPBELL: This is State's Exhibit Number
8 499 for demonstrative purposes, Your Honor, ID
9 only.

10 (WHEREUPON, State's Exhibit No. 499 was
11 marked for identification only.)

12 THE COURT: All right.

13 BY MS. CAMPBELL:

14 Q Continue.

15 MR. WHITLARK: No objection, Your Honor.

16 BY MS. CAMPBELL:

17 Q You don't have to step down.

18 A Yeah, I don't need to step down for this. This is
19 just to help you see. Sometimes it's hard to think
20 about something that small being easy to
21 differentiate. But as you can see -- and I don't
22 remember what is on what side.

23 THE COURT: You can step down, ma'am.

24 MS. CAMPBELL: I'll just move it back, Your
25 Honor.

1 BY MS. CAMPBELL:

2 Q Is that good?

3 A What you see on the left side if you're looking at
4 it, the right side if you are with me, is the type
5 of gunpowder that is in the .410 ammunition. It's
6 spherical and a flattened ball.

7 The gunpowder on your right -- the left from
8 my prospective -- is actually an irregular flake.
9 They are very easy to distinguish from one another
10 when you are looking stereoscopically. So one of
11 the things I considered looking at, once this was
12 examined by SLED -- this primary determinant was
13 for their examination for lead, barium, and
14 antimony -- was just to look at these and see if
15 any of what they collected from each of the
16 individual's hands had gunpowder that I could see
17 on it.

18 Again, what they are looking at, this is an
19 instrument that looks at stuff that is not visual
20 to the eye. I'm looking for anything that might
21 have been intact gunpowder particles.

22 Q Taking Tammy Parker's gunshot residue kit, did you
23 examine it?

24 A Yes, I did.

25 Q And from the gunshot residue kit that was collected

1 from her hand, what, if anything, were you able to
2 visualize?

3 A On one of the swabs labeled the left back --

4 Q Uh-huh.

5 A -- there was one potential gunpowder particle that
6 could have been used for future examination.

7 Q And what was that consistent with, the ammunition
8 from the .410 or the ammunition from the --

9 A That would have been consistent with the
10 flattened -- or, I'm sorry -- the irregular disk
11 off on your right, the flake pattern.

12 Q And, again, gunpowder is different from gunshot
13 residue, as you have explained in your first
14 demonstration, how is it expelled from the gun?

15 A Well, the great majority of all residues, again,
16 come out the muzzle end; but the ejection port or
17 the barrel cylinder gap on revolvers also, as that
18 picture shows, does have some of the materials
19 escaping at that point.

20 Q So if a person is supposedly shooting a gun, it has
21 potential to get whichever one is shooting?

22 A Can you rephrase that?

23 Q Gunpowder, what you're looking for?

24 A Yes.

25 Q Not gunshot residue. If someone is shooting a gun,

1 can you get that on your hands?

2 A You potentially can. Again, it depends what is
3 coming out of those gaps as well, if you have
4 forward progress, because the materials that are
5 coming out the muzzle are going with high velocity
6 with the bullet this way (indicating).

7 So the only thing that is going to get on the
8 hands is what is coming from the ejection port or
9 the barrel cylinder gaps, unless you're moving
10 forward or you are otherwise near the end the gun,
11 and some of those residues may transfer to hands as
12 well.

13 Q And in this case I believe you found at least one
14 flake that was identifiable as coming from the
15 semi-automatic?

16 A One potential, yes.

17 Q And did you also examine Bryan Capnerhurst's hands
18 for the presence of that?

19 A Yes, I did.

20 Q And what were your results?

21 A On the particle lift -- there are two types of
22 things that are in these GSR kits. There is
23 particle lifts that are kind of a sticky -- I don't
24 know if they already explained this.

25 Q Yes, they did.

1 A And then the swab. So on the particle lift, the
2 right back particle lift had four of the flattened
3 balls and actually had two pieces of copper
4 flaking. So that copper coating that is on the
5 lead, some of that fragments off during the firing
6 process.

7 We actually had four gunpowder particles and
8 two of those copper plating particles. The right
9 palm had three gunpowder particles, a few
10 miscellaneous pieces of the gunpowder. And then it
11 actually had some wood and fibrous material as
12 well.

13 Nothing on the left palm. And on the left
14 back, two impact flattened ball patterns.

15 And then from the swab, the right back showed
16 one intact flattened ball.

17 Q So all the gunpowder that you found on
18 Mr. Capnerhurst's GSR kit came from what type of
19 ammunition?

20 A The ball, flattened ball, which is the .410.

21 Q Did you find any that would be consistent with the
22 9-millimeter?

23 A I did not.

24 Q This type of evidence that you are looking for --
25 again, there has been some testimony -- how would

1 you characterize it as far as how it remains on the
2 hands?

3 A Can you rephrase that?

4 Q Is it easily removed?

5 A Easily removed? I would say the flattened ball, if
6 there is sweat or blood or something on the hands,
7 I think it would be more likely to stay through a
8 lot of movement.

9 I would think with the skin, it would probably
10 fall off relatively easily, particularly with the
11 flattened ball spherical because it's rounded and
12 it can roll.

13 Q What effect, say, if someone had washed their hands
14 in between the shootings have on retaining --

15 A Washing hands, I would assume -- I would expect it
16 would also be removed from washing hands.

17 Q And when you examined the gunshot residue kit from
18 Brett Parker, what were your findings?

19 A None of the particle lifts showed anything
20 morphologically similar to gunpowder. His hands
21 had nothing.

22 Q So his hands had nothing?

23 MR. WHITLARK: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MS. CAMPBELL:

1 Q What did his hands have?

2 A The particle lifts that I examined did not have
3 anything morphologically similar to gunpowder
4 particles.

5 Q Thank you, ma'am.

6 THE COURT: Please answer any questions
7 Mr. Whitlark may have.

8 MR. WHITLARK: May it please the Court, Your
9 Honor?

10 CROSS-EXAMINATION

11 BY MR. WHITLARK:

12 Q Have you got your report with you?

13 A Yes, sir.

14 Q Take a look at it, if you don't mind. Tell the
15 jury what the date of that report is if you don't
16 mind.

17 A The date of this report is January 3rd.

18 Q Of what year?

19 A 2013.

20 Q Okay. And, of course, Brett Parker had already
21 been in jail for five months when that report was
22 done, right?

23 A I know he was in jail sometime last summer. That's
24 all I know.

25 Q Okay. Now, you have no explanation, do you, for

1 why you didn't test at six and seven feet? Do you
2 know what I'm talking about?

3 A I do, yes.

4 Q Why didn't you test at six and seven feet?

5 A Okay. One of the -- going back to what I just
6 said, we had a set of circumstances where we had
7 two guns involved, two very distinct visually types
8 of gunpowder.

9 And, as I mentioned way earlier in my
10 testimony, we have to make sure that certain tests
11 we do don't interfere with any future testing. As
12 you guys probably know, our sciences are always
13 developing and furthering.

14 One of the things they are currently
15 researching is taking individual gunpowder and
16 actually almost creating like a DNA or fingerprint
17 for it.

18 The literature is talking about looking at
19 things; whereas, right now they are looking at the
20 inorganics of lead, barium, and antimony for the
21 primers, looking at some of the organic type things
22 that they are adding, some additives for explosion
23 or controlling of burning.

24 It's the same thing for gunpowder. Each
25 manufacturer uses different gunpowders, and they

1 each put different additives in. Some are
2 proprietary.

3 So just kind of a common sense thinking, as
4 you look with instrumentation increasing and their
5 abilities to individualize things, they're
6 researching the potential to actually look at much
7 more detail than what we currently are looking at.

8 So many of the things I collected for the way
9 I did testing was to make sure I didn't interfere
10 with that. So I had to collect powder from the gun
11 before I fired it. I collected swabs from each of
12 the cartridge cases just so that there would be
13 exemplars should the decision be made to try to
14 explore this testing.

15 Because it is not a test that we would do, it
16 is up to our customer -- which in this case is our
17 investigators from Richland County, as well as the
18 Prosecution -- whether to proceed down this road
19 for this new type of research.

20 My understanding is that when they did this
21 research into the new developments, that it's not
22 currently at a state where it has been standardized
23 enough to be admissible in court. I didn't
24 actually finally get that ruling until October of
25 2012.

1 But, going back to the question, because I had
2 to make the best use of the unfired cartridges that
3 I did have that were evidence, because the only --
4 if you are looking at individualization, you have
5 to only use the evidence, you wouldn't able to use
6 our lab exemplars like I did for our additional
7 testing.

8 Instead of doing the distance patterning the
9 way I would have without this circumstance, which
10 means I would have used lab ammunition and test
11 fired the gun and then determined, okay, it's
12 patterning in this way, so the best way to use my
13 evidence ammunition would have been -- in this case
14 it would have been better to go at like two and
15 five instead of the two and eight that I told you I
16 originally did.

17 But because I had to do the evidence tests
18 first, I just had to kind of err on the extreme.
19 So I picked two and eight for that evidence before
20 I did any other patterning.

21 Luckily, my findings were less than that. So
22 I really wasn't hampered too much by that. I was
23 still able to use that eight-foot pattern with our
24 lab ammunition to make sure that our lab ammunition
25 was closely enough replicating the evidence ammo.

1 The only place I told you that actually
2 affected me would have been to make me more
3 conservative when I did the actual pellet pattern,
4 because I didn't have a six or seven.

5 And, again, if I needed the six or seven,
6 that's all I had was the physical pattern, I could
7 have come closer. But because I had a chemical
8 test with the Griess results that put me at one to
9 three and then that, of course, was brought up to
10 the two foot with the sodium rhodizonate, I didn't
11 feel the need to go back out and shoot some more to
12 get this done because we had already kind of been
13 delayed in our processing waiting for the
14 determination to be made as to the outside testing
15 that could or could not have been done.

16 Q Okay. Do you know what I asked you?

17 A Yes, if you'd like me to repeat it.

18 THE COURT: All right, let's hold the laughter
19 down.

20 BY MR. WHITLARK:

21 Q Do you have that -- would you take a look at this
22 and tell the jury what that is?

23 A This, again, is State's Exhibit 373, which is my
24 Item 52, as well as the ammunition and magazine
25 that came with it, and the Smith & Wesson

1 semi-automatic pistol.

2 Q Okay. Now, this gun here was found in Bryan
3 Capnerhurst's hand. You know that, don't you?

4 A I have heard that. I don't have direct knowledge
5 of it, other than hearing it in passing.

6 Q You heard it in passing? Okay. Well, two line
7 officers, the first ones there, saw him holding
8 this gun in his hand, didn't they? You have heard
9 that, haven't you?

10 A I have heard it, yes.

11 Q Okay. And you certainly know what the results are
12 of the SLED GSR tests, don't you?

13 A Actually, I have not seen those results.

14 Q You are not aware?

15 A Beyond to say that I know everyone had GSR from the
16 hands.

17 Q Well, would you be surprised to hear that the lab
18 expert from SLED says that he'd be comfortable
19 stating that Bryan Capnerhurst fired this pistol,
20 what he found?

21 A I would never testify to what another scientist
22 said.

23 Q I was wondering if you knew about it or I was just
24 wondering if you heard that. Have you?

25 A I have heard that all three individuals had

1 positive results from SLED.

2 Q Have you heard what the SLED GSR expert has
3 testified to?

4 A No, I have not.

5 MS. CAMPBELL: Objection, Your Honor. Asked
6 and answered.

7 THE COURT: Sustained.

8 MR. WHITLARK: I am going to move on, Your
9 Honor.

10 BY MR. WHITLARK:

11 Q Okay. That's (indicating) the gun that killed
12 Tammy Parker, isn't it?

13 A Yes.

14 Q That Smith & Wesson?

15 A The bullets from that gun were used to kill Tammy
16 Parker.

17 Q Right. All right. I gotcha. And you know we have
18 no photographs of that, though, right?

19 A I'm sorry, of what?

20 Q Of Mr. Capnerhurst holding that gun in his hand
21 with his fingers wrapped around it?

22 A I have not seen any pictures of that, no.

23 Q Neither has anyone else. All right. Look, you
24 said you used some information from the medical
25 examiner, Dr. Marcus, some stuff he gave you?

1 A I used his autopsy report, and then he gave us
2 copies of his radiographs.

3 Q You used that to come to some of the conclusions
4 you have reached in this case, which came from
5 Dr. Marcus?

6 A That to assist in our processing, yes.

7 Q All right. Now, I'm only asking you a yes or no
8 question here, okay? You didn't test from six and
9 seven feet, did you?

10 A I did not test from six and seven feet.

11 Q Okay. Thank you.

12 MR. WHITLARK: That's all the questions I
13 have, Your Honor.

14 THE COURT: Anything else, Ms. Campbell?

15 MS. CAMPBELL: No, ma'am.

16 THE COURT: All right, ma'am, you may step
17 down.

18 (Witness steps down.)

19 THE COURT: Any objection to this witness
20 being excused?

21 MS. CAMPBELL: No, Your Honor.

22 THE COURT: All right. You are free to leave,
23 ma'am. Thank you.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE BAILIFF: Quiet, please. Quiet.

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

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

6 MR. WHITLARK: Thank you, Your Honor. We're
7 good.

8 THE COURT: All right. Ladies and gentlemen
9 of the jury, they tell me that our -- it is about
10 20 minutes until 5:00 on Friday afternoon. They
11 tell me that the next witness will take some time.

12 So I am going to go ahead and release you all
13 for the weekend so you will not be here until the
14 wee hours of the night. We will not be here until
15 late.

16 We will start back on Monday morning at 9:45,
17 if you can be back in the jury room around that
18 time. I hope that you have a wonderful weekend.

19 I'll go ahead and remind you again, since it
20 is the weekend, that you are not to read, watch, or
21 listen to anything on the TV, radio, or internet
22 regarding this case. No social media, Facebook,
23 Twitter, anything regarding your service on the
24 jury or this case. No talking to anyone about the
25 case, including any of the jurors. And it would

1 also be improper for you to form an opinion in your
2 mind until you have heard all of the evidence, the
3 arguments of the parties, and the charge on the law
4 from the Court.

5 I am going to release you all for the weekend
6 I hope that you have a wonderful, restful weekend.
7 And we will see you Monday morning.

8 And somebody wanted a note. And if you have
9 not gotten that, the clerk will be more than happy
10 to help you get that.

11 All right. Thank you.

12 (WHEREUPON, the jury was excused at 4:42
13 p.m.)

14 THE COURT: Y'all need to -- before everyone
15 leaves, Officer Collins is here. And we need the
16 evidence that has to go to Texas. We've got to get
17 that straight before we leave out of here today.

18 MS. MCDUFFIE: Mr. Collins just went to run an
19 errand, and I will get it straight with the Clerk's
20 Office.

21 THE COURT: Okay. All right, thank you.

22 (WHEREUPON, the proceedings concluded at
23 4:43 p.m.)

24 MAY 20, 2013

25 MS. CAMPBELL: The first witness is Lanny

1 Gunter this morning, just to let you know. I
2 turned over his prior record.

3 THE COURT: Did you want to put the other
4 issue on?

5 MS. CAMPBELL: Your Honor, I did receive a
6 phone call this morning from David Collins, who
7 accompanied the evidence to Texas for the testing
8 to be done by the Defense expert, Your Honor. I
9 got a call from him this morning.

10 He indicated that the Defense expert wishes as
11 part of his protocol to take the one surviving
12 shotgun shell and dismantle it.

13 It is my understanding that this is part of a
14 protocol. That is a piece of evidence that is
15 already in evidence, Your Honor, and, as such, it
16 cannot be altered in any way. I don't think that
17 is necessary for their other testing.

18 As Mr. Whitlark and I discussed, he can go out
19 and buy more ammunition if that becomes crucial.

20 THE COURT: Anything?

21 MR. WHITLARK: Just this, Your Honor. Your
22 Honor, I don't expect that we'll be ambushed
23 because he didn't look at it. That is the only
24 problem I would have.

25 MS. CAMPBELL: He will not be cross-examined

1 on the fact that he didn't do that as part of his
2 protocol.

3 THE COURT: All right. But I can't -- now, it
4 is already in evidence, so he cannot alter it. So
5 if you all can just let him know that he'll have
6 to --

7 MS. CAMPBELL: I have got Ms. McDuffie calling
8 him to tell him that he can't.

9 THE COURT: All right. Okay.

10 MS. CAMPBELL: Okay?

11 THE COURT: Are you ready to bring them in?

12 MS. CAMPBELL: The State is ready, Your Honor.

13 MR. WHITLARK: The Defense is ready, Your
14 Honor.

15 THE COURT: All right. You can bring them in.
16 (WHEREUPON, the jury came into open
17 court at approximately 10:09 a.m.)

18 THE BAILIFF: All jurors are seated, Your
19 Honor.

20 THE COURT: Good morning. I hope that you had
21 a wonderful weekend.

22 The State is prepared to continue with
23 testimony. I am going to ask them to call their
24 next witness.

25 MS. CAMPBELL: May it please the Court?

1 THE COURT: Yes, ma'am.

2 MS. CAMPBELL: The State calls Lanny Gunter.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you are about give in this case will be
9 the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Have a seat in the witness box.

13 (Witness complies.)

14 THE CLERK: And state your full name for the
15 record. Spell your last name, please.

16 THE WITNESS: My name is Lanny Gunter. Last
17 name is G-U-N-T-E-R.

18 LANNY GUNTER,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. CAMPBELL:

22 Q And, Mr. Gunter, where are you from?

23 A Columbia.

24 Q And have you lived here all your life?

25 A For the most part, yes, ma'am.

1 Q And until recently, what did you do for a living?

2 A Well, I'm a business owner in Columbia.

3 Q And what kind of businesses do you own?

4 A I'm in the restaurant business.

5 Q And how long have you been in the restaurant
6 business?

7 A In the restaurant/bar business the better part of
8 about 15 years.

9 Q And do you know Brett Parker?

10 A Yes, ma'am.

11 Q Can you tell this jury how you know Brett Parker?

12 A I have known Brett since we were mid teens, grew up
13 I guess -- I had some cousins that went to school
14 with Brett at Chapin. And we played golf together
15 when we were younger. And our fathers were
16 friends. And just through the years playing golf
17 together.

18 Q Okay. So you know his father?

19 A I do know his father.

20 Q And what is his father's name?

21 A Jack Parker.

22 Q And what kind of business was Jack Parker in?

23 A Jack's -- well, when I knew him when we were
24 younger, his legitimate business was -- I believe
25 he was in the machine business, poker machines or

- 1 video game machines, and whatnot.
- 2 Q And did he also provide services as a bookie?
- 3 A Yes, ma'am.
- 4 Q And as a bookie, what are the services that are
- 5 offered?
- 6 A You take wages on sporting events.
- 7 Q On sporting events?
- 8 A Yes, sporting events.
- 9 Q College?
- 10 A Yes, ma'am.
- 11 Q Professional as well?
- 12 A Yes, ma'am.
- 13 Q It depends on the bookie as to what he takes wages
- 14 on, is that correct?
- 15 A I would assume, yes. But most of it is sports.
- 16 Q And is there also what is known as online booking?
- 17 A There is.
- 18 Q And during the course of the years, did you
- 19 yourself take bets?
- 20 A Yes, ma'am.
- 21 Q And approximately how long have you been doing
- 22 that?
- 23 A Probably 20 years.
- 24 Q And did you have an online betting site?
- 25 A Yes, ma'am.

1 Q And how many online betting sites did you have?

2 A I had one, and then as we closed that one down, I
3 negotiated with another company to use their site.

4 Q Okay. And what was the name of your online site,
5 sir?

6 A The one that we used predominantly was BETCC.COM.

7 Q BETCC.COM?

8 A Yes, ma'am.

9 Q So capital BETCC.COM?

10 A Yes, ma'am.

11 Q And if someone were to place a bet on your booking
12 site, how would they go about doing that? Who did
13 they have to set the account up with?

14 A With me. I would give them an account number and
15 they -- like an ID number and a password, and they
16 would use it to go into the site.

17 Q And did Brett Parker ever set up with you so that
18 he could bet with you?

19 A Yes, ma'am.

20 Q And approximately when did he start betting with
21 you?

22 A On the site, 2010, 2011, somewhere in that range.

23 Q Around there?

24 A Yes, ma'am.

25 Q So about a couple of years before this?

1 A Oh, yes, ma'am.

2 Q On the site. Had he bet with you prior to that in
3 another way?

4 A I believe so. But I had a partner that he would
5 call because I didn't answer the phones myself, and
6 I don't know the regularity of his calling, but
7 that is him.

8 Q Who is your partner?

9 A Harry Benenhaley.

10 Q And what was your role in the business and what was
11 his role in your business?

12 A Harry's primary role was to answer phones and to
13 keep up with the records. And he and I would get
14 together once a week, and if there was someone I
15 needed to see, then I would see them, and he would
16 see who he needed to see.

17 Q Did you keep up with the accounts, though?

18 A I did more of the online stuff.

19 Q And when you kept up with the online stuff, did you
20 become familiar with Brett Parker's online betting
21 with you?

22 A Yes, ma'am.

23 Q And in the month prior to this happening, did --
24 had Brett run up a significant amount of debt on
25 your online betting site under his own account?

- 1 A Yes, ma'am.
- 2 Q And approximately how much money was he in debt to
- 3 you for when this murder occurred?
- 4 A \$100,000. It was \$101,000 and change, somewhere in
- 5 there.
- 6 Q \$101,000?
- 7 A I believe that was the correct number.
- 8 Q And is that a fairly high amount for someone to be
- 9 in debt to you for?
- 10 A Yes, ma'am.
- 11 Q But you had known Brett?
- 12 A Yes, ma'am.
- 13 Q And what type of betting did Brett do online?
- 14 A Sports. I mean, he would bet on games, college,
- 15 pro. He would bet -- different ways you could bet:
- 16 Teasers, parlays, straight plays, that kind of
- 17 thing.
- 18 Q And you allowed him to run up this much debt?
- 19 A Unfortunately.
- 20 Q As the months up to this murder occurred, was he
- 21 making payments to you on a regular basis?
- 22 A Yes, ma'am.
- 23 Q And how would he make payments?
- 24 A He would call myself or Harry and -- when he was
- 25 ready to make a payment. We never really called

1 him a whole lot about it. He would just call us
2 and say, hey, I'm ready to make one. And it was
3 normally about every two or four weeks, somewhere
4 in that range, maybe six weeks, but --

5 Q And typically how much would his payment be?

6 A Probably at least \$5,000. Between \$5,000 and
7 \$10,000.

8 Q So every several weeks he would have to pay you
9 \$5,000 to \$10,000 -- or he was paying you -- I'm
10 sorry -- \$5,000 to \$10,000?

11 A Yes, ma'am.

12 Q About nine months prior to this murder, did Brett
13 come to you and set up a second account?

14 A He did at some point in time. I don't remember --

15 Q The exact --

16 A Yes, ma'am.

17 Q Okay. Just at some point?

18 A Yes, ma'am.

19 Q Around a year before this?

20 A I don't think it was quite that long, but it was,
21 you know, eight to ten months, I would think.

22 Q Okay. Eight to ten months prior. And what
23 information did Brett give you when he came to you
24 and asked to set up a second account?

25 A He told me that he had a player of his that was

1 intrigued about the site and he wanted to offer it
2 as far as flexibility to be able to play.

3 He told me the person was employed I think by
4 a food company, maybe Monarch Food Company. He
5 told me his name was Hal. And he said that --

6 Q His name was what, I'm sorry?

7 A Hal?

8 Q Hal, H-A-L?

9 A I believe that is how -- yes. And he wanted to set
10 the account up for him.

11 Q And at that point when Brett set up the second
12 account, how much was he in debt to you for
13 approximately? Do you remember?

14 A At that time?

15 Q Uh-huh, when he set up that Hal account?

16 A I believe it was around \$40,000 to \$50,000.

17 Q So at that point he was only \$40,000 to \$50,000 in
18 debt to you, is that correct?

19 A I believe that's correct, yes, ma'am.

20 Q And when you set up the Hal account, again, was
21 that unusual for him to come to you and set up a
22 second account for someone else?

23 A He didn't have another one for anybody else.

24 Q Did you allow him to set up a separate account for
25 Hal?

1 A Yes, ma'am.

2 Q And over the eight to ten months up until this
3 murder occurred, what kind of debt did Hal incur?

4 A The Hal account was around \$75,000 before this all
5 happened.

6 Q So the two accounts together was a total of
7 approximately how much money?

8 A \$175,000, \$176,000.

9 Q In the months prior to this -- month or so prior to
10 this murder occurring, did you and Mr. Benenhaley
11 have a conversation?

12 A We had many conversations.

13 Q About the Hal account?

14 A Yes.

15 Q And what did you discuss with Mr. Benenhaley about
16 the Hal account?

17 MR. WHITLARK: Objection, Your Honor.

18 MS. CAMPBELL: He can say what he said.

19 THE COURT: The objection is overruled.

20 Sir, you can say what you said, but you can't
21 say what the other guy said to you.

22 THE WITNESS: I don't know that I know how to
23 frame what I said without saying what the other guy
24 said.

25 BY MS. CAMPBELL:

1 Q What did you tell Mr. Benenhaley about your opinion
2 about the Hal account?

3 MR. WHITLARK: I withdraw the objection.

4 BY MS. CAMPBELL:

5 Q You can say everything now.

6 A Harry had come to me at some point in time and had
7 had a concern that the second account, the Hal
8 account, was not actually for anybody named Hal,
9 that it was perhaps a second account for Brett
10 himself to use.

11 And he and I talked about it and we were both
12 of the opinion -- we hoped that he would have won
13 some money back down to where it wouldn't be such a
14 big figure.

15 And it was really -- we just decided there was
16 nothing we were going to do about it. We were just
17 going to let it go. As long as we were getting
18 paid on a basis, a regular basis, that we didn't
19 really care.

20 Q Were you -- the basketball season, approximately
21 when did that end? Was that in March or April?
22 That was --

23 A Typically -- typically we would wind down our
24 operations about the NCAA championship game. That
25 is what our -- you know, not that we didn't do any

1 business after that, but that was 99 percent of our
2 business was done from the beginning of football
3 season to the end of the NCAA tournament.

4 Q And were you aware that approximately two weeks
5 prior to this murder that Brett and his family had
6 gone on vacation?

7 A Yes, ma'am.

8 Q And during that time period, that week they were on
9 that vacation, that cruise, was there any activity
10 on the Brett account that you noticed?

11 A I don't believe there was any account on either one
12 of -- either of those accounts.

13 Q Or the Hal account?

14 A No, ma'am, I don't believe there was.

15 Q When he got back, had y'all set up a payment that
16 he was supposed to make that week?

17 A Well, he had just told us that, you know, the
18 couple of times from bowl season through the
19 tournament that he would have some money for us.

20 And we were planning on -- and he had told us
21 that, yes, he was going to get with us the week
22 when he got back from his trip.

23 Q To make a significant payment?

24 A Yes, ma'am.

25 Q And how much did he indicate he was going to pay

1 you that week he got back, the week this occurred,
2 from -- on his account?

3 A I don't know that he ever gave us a number. Harry
4 and I were just thinking somewhere around \$50,000,
5 though.

6 Q \$50,000?

7 A Yes, ma'am. And I don't know where that figure
8 came from, I don't know if he told Harry that and
9 Harry told me, but that was the number that Harry
10 and I had discussed.

11 Q Let me back up a second too. As far as payments on
12 the Hal account, who would make those payments on
13 the --

14 A Brett. Brett handled all that.

15 Q Are you aware of when the payment was supposed to
16 be made that week he came back from vacation?

17 A That was the week of the Heritage in Hilton Head,
18 and I had left on that Tuesday or Wednesday to go
19 down with some friends. And Brett was supposed to
20 get with Harry I believe that Wednesday. And that
21 didn't happen.

22 And he had asked Harry if he could just put it
23 off till the end of the week.

24 And Harry had said, yes, that will be fine, as
25 it always was.

1 And I believe he called Harry that Friday
2 morning and said that somebody had come to see him
3 that owed him some money and wanted to know if he
4 could meet with him that evening, or something.

5 And Harry said he was going to play golf that
6 day and that it would either be that afternoon or
7 over the weekend sometime would be fine with him.

8 And I was out of town. I was in -- like I
9 said, I was in Hilton Head until that Friday, and
10 then I went to the Isle of Palms to meet my family
11 for the weekend.

12 Q The time period leading up to this, would Brett
13 call you more often than usual?

14 A No, I wouldn't say more often than usual, no,
15 ma'am.

16 Q Do you remember giving a statement to the Richland
17 County Sheriff's Department?

18 A I do.

19 Q And do you remember --

20 A He was more concerned about the debt with me. I
21 will say that. You know, whether he called me more
22 often or not, I don't know. But I know that he was
23 more concerned about the debt and addressed it more
24 with me than he did with Harry, that -- over the
25 last few months.

1 Q I want to turn your attention to that Friday
2 afternoon.

3 A Okay.

4 Q How did you become aware of what had happened?

5 A I was crossing over the connector going into the
6 Isle of Palms, and my phone started ringing. And
7 it was one of my cousins, I believe, that had
8 called me.

9 Q Uh-huh.

10 A And started telling me what was going on. And I
11 got back to the house. Another one of our friends
12 was at the house with me. And she and I were just
13 sitting by the pool just trying to process
14 everything. And I started making some phone calls
15 and found out what was going on.

16 Q And when you say you found out what was going on,
17 did you find out that Tammy had been killed?

18 A Well, I didn't know it for sure, but that was the
19 speculation of what I was told.

20 Q Did you try to get in touch with anybody once this
21 information came to you?

22 A I called Harry first and then had conversations
23 back and forth with several of my friends. And
24 then I did try to call Brett directly. And then I
25 called Jack.

1 Q And that afternoon, did you -- were you able to
2 make contact with Brett?

3 A Not until that evening.

4 Q And do you remember Brett calling you at 2:42 that
5 afternoon?

6 A Well, he called, but it went straight to my
7 answering machine. I didn't actually talk to him.

8 Q That was my fault.

9 A Yes, ma'am. He did call and left a message for me.

10 Q And that afternoon did his father also call and
11 leave you a message?

12 A Jack did leave me a message, but he and I actually
13 talked a couple of times that afternoon.

14 Q And what was Jack's demeanor when you were talking
15 to him?

16 A He was very concerned.

17 Q What was he concerned about?

18 A And he just -- when I called him -- he and I
19 finally talked -- and I said, Jack, I said, have
20 you talked to Brett?

21 And he said, no, I tried to call him a couple
22 of times and I haven't been able to get a hold of
23 him.

24 And I said, well, you need to get over to his
25 house.

1 And he said, well, Lanny, what is going on?

2 I said, Jack, I said, I don't want to get into
3 it. I just want you to get -- you need to get to
4 your son. He needs you to be with him.

5 And that was I think our first real
6 conversation that we had had.

7 And then from that point we talked a couple of
8 more times that afternoon.

9 Q And specifically what was he concerned about?

10 MR. WHITLARK: Your Honor, objection, Your
11 Honor. I mean, it is a hearsay statement.

12 THE COURT: Sustained.

13 MR. WHITLARK: Thank you, Your Honor.

14 BY MS. CAMPBELL:

15 Q Specifically, in response to Jack asking you
16 questions, what information did you give him about
17 his son?

18 A Well, I mean -- what information did I give him?
19 He asked me if Brett owed me any money.

20 And I told him, Jack, that is not important
21 right now. What is important is you get to your
22 son.

23 And then we had another conversation and he
24 asked me again.

25 And I said, yeah, Jack, he owed me a little

1 bit of money.

2 And he said how much.

3 And I told him around \$8,000 to \$10,000.

4 Q That was the extent of the conversation?

5 A Well, then we talked about -- at some point in time
6 during the day we had talked about getting Brett
7 some legal representation.

8 Q The two recordings of the messages, one from Jack
9 and one from Brett, when you met with police, did
10 you turn that over to them?

11 A I did.

12 MS. CAMPBELL: Your Honor, at this time we
13 would offer State's Exhibit 509 into evidence. 509
14 is the tape recording or audio.

15 MR. WHITLARK: Your Honor, I might have a
16 matter of law, but I don't remember this tape. I
17 don't know whether --

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, I am going to send you all out for a
20 short second.

21 All right. Thank you.

22 (WHEREUPON, the jury retires to the jury
23 room at 10:29 a.m.)

24 THE COURT: All right. What is the recording
25 of?

1 MS. CAMPBELL: It is the recording where Brett
2 Parker first made -- left a message at 2:42 that
3 afternoon with Lanny Gunter explaining what was
4 going on, his explanation.

5 MR. WHITLARK: I would just like to have a
6 proffer, Your Honor.

7 MS. CAMPBELL: And that has been turned over
8 to the Defense, Your Honor.

9 THE COURT: Can you just --

10 MS. CAMPBELL: Yes. It is short. We can play
11 it.

12 THE COURT: All right.

13 (Complies.)

14 THE COURT: That's it?

15 MS. CAMPBELL: That is the Brett call. Then
16 there is the Jack Parker call.

17 (Complies.)

18 MS. CAMPBELL: That is the extent of it.

19 THE COURT: Any objection?

20 MR. WHITLARK: On relevance, Your Honor.

21 Well, not really.

22 THE COURT: All right. The objection will be
23 overruled.

24 MS. CAMPBELL: Thank you, Your Honor.

25 THE COURT: All right. We'll bring them back

1 in.

2 MS. CAMPBELL: Thank you.

3 MR. WHITLARK: Your Honor?

4 THE COURT: Yes, sir?

5 MR. WHITLARK: We withdraw the objection to
6 it. He just explained it.

7 THE COURT: Okay.

8 (WHEREUPON, the jury came into open
9 court at approximately 10:31 a.m.)

10 THE BAILIFF: The jury panel is present, Your
11 Honor.

12 THE COURT: All right. You may continue.

13 MS. CAMPBELL: Thank you, Your Honor.

14 Permission to publish to the jury?

15 THE COURT: Entered without objection. And
16 what number is that?

17 MS. CAMPBELL: 509.

18 (WHEREUPON, State's Exhibit No. 509 was
19 marked for identification and received
20 into evidence.)

21 (Audio played in open court.)

22 DIRECT EXAMINATION CONTINUES

23 BY MS. CAMPBELL:

24 Q The second phone call, whose voice was that?

25 A Jack.

1 Q The one that said -- identified himself as Jack was
2 Jack?

3 A Yes, ma'am.

4 Q Who was the other one?

5 A Brett.

6 Q And you kept those messages on your phone for how
7 long until you met with police?

8 A Well, I mean, those calls took place on April 13th.
9 And I'm not sure when I met with the police.

10 Q I will show you a copy of your statement. The date
11 at the top reflects what month?

12 A The first day of October, 2012.

13 Q When you talked to Jack that day, you said -- when
14 he was arrested -- he owed you about \$8,000 to
15 \$10,000. Why did you minimize the amount?

16 A I didn't feel it was important at the time.

17 Q Later that evening on the 13th, did you have a
18 phone conversation with Brett Parker?

19 A Yes, ma'am.

20 Q And tell the jury what was said in that phone
21 conversation.

22 A I mean, I expressed my concern for his family. He
23 and I have been friends for a long time. And I
24 knew that he was -- had a pretty big ordeal that
25 day. And we just talked about what happened and

1 how it happened, that type of thing.

2 Q What did he tell you that night that happened, if
3 you recall?

4 A He had told me that he and Tammy were at home, I
5 believe was eating lunch. And I think he was
6 expecting Bryan to come over. And I think he was
7 in the restroom. And he had heard Bryan come in.
8 And I think he said, Bryan, is that you, or
9 something.

10 He said, yeah.

11 He told him to go upstairs, that Tammy was
12 upstairs, he would be right there.

13 And as he was washing his hands he had heard
14 some type of noise or a ruckus or something and a
15 couple of gunshots.

16 And then at that point he went upstairs. And
17 when he got to the top of the stairs that Bryan had
18 had the gun on him.

19 And that apparently Brett had owed Bryan some
20 money, and Bryan had expressed to him that he was
21 there to get his money this time and didn't want
22 any excuses about it and directed Brett to go to
23 his safe and to get his money and whatever else
24 money was there.

25 And at that time, I, you know, said, well, how

1 does he -- you know, were you able to get a gun on
2 him with him having one on you?

3 And he explained going into the -- where his
4 safe was. And I have never been in this house, so
5 I don't know how it is laid out or anything, but he
6 said as he went into this attic area, or whatnot,
7 to get the gun, he said he kept a headboard from a
8 bed in front of his safe. And as he moved the
9 headboard, that he was -- he looked back and saw
10 that Bryan had followed him completely in.

11 And he kept a gun on top of the safe. And he
12 was able to get his gun and turn around and shoot
13 Bryan.

14 And after he had shot Bryan, he went out to
15 check on Tammy. And he said he rolled her over and
16 that she was gargling blood and blood was coming up
17 and she was trying -- he called 9-1-1. And she
18 died.

19 And he said he went back downstairs. And I
20 believe he told me he just went and sat in the
21 garage, to be honest with you.

22 And I'm not sure exactly if he told me he went
23 and sat in the garage, or something, but I know
24 that he said he went downstairs, I believe.

25 Q And that is pretty much what he told you?

1 A Yes, ma'am.

2 Q And what did he say he heard prior to the gunshots?

3 A Said he heard some kind of noise, and I don't know
4 if it was a scuffle, or whatnot, and that he heard
5 gunshots and then he went upstairs.

6 Q And what did he tell you about when he went to
7 check on Tammy?

8 A After he had shot Bryan?

9 Q Uh-huh.

10 A That he went to her side and rolled her over to see
11 how she was and she was spitting up blood or
12 gargling blood.

13 Q I want to turn your attention back to December of
14 2011. At that point did you and Brett have a
15 conversation about his wife?

16 A Yes, ma'am.

17 Q And in December of 2011, what did he indicate to
18 you about his marriage?

19 A He said they were having some issues. And he had
20 known that I had some rental properties and had
21 asked me if I had anything that was open that he
22 could rent short-term.

23 And we got into a conversation. And I believe
24 it was sometime around the end of November, getting
25 close to the holidays.

1 And my advice to him, if he wanted it, was
2 that being that it was coming up on the holidays,
3 for him to try to go home and work it out with
4 Tammy and to at least get through the holidays for
5 the kids' sake.

6 And then after the first of the year for them
7 to try to get back together and if separating was
8 an option then, then so be it, but I had asked him
9 to do it for his children's sake if nothing else at
10 that time.

11 Q Around that same time period, did he also indicate
12 to you about how he would be able to get his debt
13 under control? When he would be flush with money?

14 A Well, he -- yeah, he had told us. And it wasn't
15 uncommon for people that were in the gambling world
16 that, you know, that he had some people that were
17 going to settle up with him, let's say after bowl
18 season, and that we would get together then.

19 And when bowl season came -- I mean, he was
20 paying us, but not a lump sum like we were
21 anticipating. And then he asked us if we would put
22 it off until after the Super Bowl. And then the
23 Super Bowl came and went. Then it was -- well, he
24 has got some guys that want to settle up with him
25 after the NCAA championship game. And so that is

1 when that date came about. And we didn't care. We
2 were fine.

3 Q I know. And that would have been right around the
4 time period we are talking about when these murders
5 occurred?

6 A Normally that game is held the first Monday of
7 every April. Typically it is, anyway.

8 Q You talked about how he talked about how he and his
9 wife weren't getting along and talked about the
10 rental property. Did he specifically say anything
11 about Tammy?

12 A At what point in time? I guess I'm not --

13 Q Do you remember giving a statement?

14 A Yes, ma'am.

15 Q If this can refresh your memory.

16 A Yes, ma'am.

17 Q And I --

18 A He told me they weren't getting along. He was
19 tired of her complaining and bitching, and whatnot.
20 And I believe he also told me something, that they
21 weren't hardly even sharing a bedroom. And I kind
22 of laughed at him because me and my wife play
23 musical beds too, so...

24 Q You met with Investigator Holdorf?

25 A Yes, ma'am.

1 Q And that was prior to actually giving this written
2 statement, is that correct?

3 A That is.

4 Q And after that meeting with Investigator Holdorf,
5 what information did you provide to them initially
6 about Brett, about the amount?

7 A On our first meeting?

8 Q Yes, sir?

9 A I just told him about the Brett -- the debt that
10 Brett and I had individually, his own account, the
11 \$100,000 or \$101,000.

12 Q And after that, did you -- did Brett have a
13 conversation with you about your meeting with
14 investigators?

15 A We had talked. He -- his son and my son played
16 ball together. Brett coached the team. And we had
17 a conversation at the ballpark either that evening
18 or the next evening. And he asked me how it went.

19 And I told him I thought it went fine.

20 And we just talked about some of the
21 questions. And when -- I told him they asked me
22 how much money the indebtedness was, and I told
23 them what it was.

24 And he asked me, said, you told them the whole
25 amount?

1 And I said, yes, the whole amount.

2 And he kind of made a facial expression and
3 kind of turned away and then he came back over to
4 the fence and talked with me.

5 Q Do you remember how you described it when you gave
6 your statement?

7 A Yes, ma'am. I said he looked like he had seen a
8 ghost.

9 Q And that was in reaction to your telling him that
10 you told the police about --

11 A The amount of money, yes, ma'am.

12 Q And, sir, you are currently incarcerated?

13 A Unfortunately.

14 Q And is -- was Brett a friend of yours? You don't
15 want to be here?

16 A I do not want to be here. Brett and his family I
17 consider very good friends of mine.

18 Q And you are currently serving a sentence because
19 you were convicted of what crime?

20 A Violation of federal gambling, I think it was U.S.
21 Code 1955. It is a federal gambling charge.

22 Q And do you remember how much time that charge
23 actually carried?

24 A I know what I was sentenced to. The maximum was I
25 think of five years. I think that is what it was.

1 Q And you were sentenced when?

2 A January the 8th, I believe.

3 Q And you are currently serving your sentence?

4 A Yes, ma'am.

5 Q And what is your sentence, sir?

6 A Excuse me?

7 Q What is your sentence?

8 A Judge Currie gave me a ten months' split sentence,
9 five months in a federal facility and five months
10 of home detention, with three years of probation,
11 and a \$10,000 fine.

12 MS. CAMPBELL: Beg the Court's indulgence.

13 (Pause.)

14 MS. CAMPBELL: Thank you. I don't have
15 anything further.

16 THE COURT: Thank you. Please answer any
17 questions.

18 MR. WHITLARK: May it please the Court, Your
19 Honor?

20 CROSS-EXAMINATION

21 BY MR. WHITLARK:

22 Q Hello, Mr. Gunter.

23 A Hello.

24 Q You have known Brett since y'all were about 14 or
25 15?

- 1 A Mid teens, yes, sir.
- 2 Q Y'all are good friends? I mean, y'all grew up --
- 3 A I would say we're good friends.
- 4 Q And y'all's kids were together a lot and played
- 5 baseball with him and all that, right?
- 6 A Our sons, yes, sir. They played ball together for
- 7 a year or two.
- 8 Q And you have expressed concerns for him about what
- 9 was going on because of your friendship, right?
- 10 A I feel terrible about everything, yes, sir.
- 11 Q I know you do. A lot of people got arrested,
- 12 didn't they, Mr. Gunter, in this thing, this
- 13 federal gambling thing, didn't they? They came
- 14 after a lot of people, didn't they?
- 15 A To my knowledge I'm the only person that has been
- 16 arrested federally.
- 17 Q Okay. When you were first --
- 18 A Should I say incarcerated.
- 19 Q Right. But there was a bunch of people in an
- 20 indictment you were part of, right?
- 21 A There was two other people. I don't think we were
- 22 ever indicted, but we pled -- we pled on
- 23 information.
- 24 Q You were having some conversations with these
- 25 police officers over here from Richland County,

1 though, weren't you, early on in that thing, or
2 during the investigation or whatever they were
3 doing?

4 A I had met with Mr. Holdorf and my attorney at the
5 time, Jake Moore's office.

6 Q Right.

7 A And I'm not sure exactly when that took place. And
8 then after the target got put on my back, I sought
9 other counsel. And then through that counsel we
10 started meeting with Officer Smith and Holdorf and
11 Secret Service and everybody else that was
12 involved.

13 Q And, I mean, I know this sounds stupid, but you
14 don't want to be testifying against Brett, do you?

15 A No, sir..

16 Q But during the negotiations they were having with
17 you, did the word *forfeiture* ever come up? Was
18 that ever said to you, anything about a forfeiture?

19 A No, sir.

20 Q Nothing was said about forfeiting your property?

21 A I don't remember hearing anything about that, no,
22 sir.

23 Q That they were going to take your property or
24 anything like that?

25 A No, sir.

- 1 Q What was your fine again?
- 2 A \$10,000.
- 3 Q You signed an agreement in this case with the
- 4 federal government, didn't you? Do you remember
- 5 that?
- 6 A An agreement?
- 7 Q A proffer or agreement.
- 8 A I didn't sign a proffer, to my knowledge. I know I
- 9 pled guilty.
- 10 Q Right. And, well, was it discussed with you that
- 11 if you gave some assistance in this thing that you
- 12 might get a shortened sentence or get some sort of
- 13 deal on it or something?
- 14 A No, sir.
- 15 Q They didn't discuss that with you?
- 16 A No, sir.
- 17 Q All right. When you talked with Brett and he was
- 18 having some problems back in, I think it was
- 19 December, right?
- 20 A I believe it was November, but it could have been
- 21 December.
- 22 Q Well, and you recommended to him that, you know, go
- 23 work it out for the kids' sake and see what y'all
- 24 can do, right?
- 25 A Yes, sir.

1 Q And he did that, didn't he?

2 A For the holiday season I felt that was probably the
3 best thing for him.

4 Q And you said at least to do it for the kids at
5 least, right?

6 A Yes, sir.

7 Q And he did, didn't he?

8 A Yes, sir.

9 Q And when he was talking to you about not getting
10 along with his wife -- now, they had been married
11 about 15 years, right?

12 A I believe that is correct. I'm not sure exactly
13 how long.

14 Q And people have troubles in their marriage, don't
15 they, Mr. Gunter?

16 A Yes, sir.

17 Q I believe you talked to -- as a matter of fact, you
18 are such a good friend of his you were actually
19 talking to him about the situation?

20 A Brett and I are good friends.

21 Q Okay. You gave different amounts about what he
22 owed you at different times, right? I mean, at
23 Jake Moore's office I think you said it was maybe
24 \$70,000 or something at that time?

25 A At Jake Moore's office the debt that Brett had

1 under his account was \$100,000, \$101,000.

2 Q Okay. And you weren't worried about that, were
3 you?

4 A I have never been worried about Brett.

5 Q And, as a matter of fact, if he had called you and
6 said, look, I'm having a problem, you would have
7 wiped the whole thing clean for him, wouldn't you?

8 A We would have worked something out, yes, sir.

9 Q Sure. Sure. And you never put any pressure on him
10 or anything, called him up, I'm going to come get
11 you, or something, right?

12 A No, sir.

13 Q Okay, Mr. Gunter. All right. You have known Brett
14 for near 30 years, right?

15 A Like I said, since we were mid teens.

16 Q He is a good father, isn't he?

17 A From what I saw, yes, sir.

18 Q And you never saw him having like knockdown fights
19 with his wife or never saw him do anything violent
20 in his whole life, have you?

21 A I think I stated the fact the only thing I ever saw
22 him do violent was break a golf club.

23 Q All right. You weren't asking Brett when he was
24 telling you what happened -- you know, he told you
25 what happened there, right? What you just told us?

1 A On the day of April 13th?

2 Q Well, you weren't asking questions about like, well
3 how long did it take you to get upstairs, or --

4 A No.

5 Q -- tell me exactly --

6 A No. I didn't go in any detail. I mean, you know,
7 first of all, I just wanted to be a friend to him.
8 And I really didn't push him into conversation. We
9 just -- I let him go wherever he wanted to go with
10 it, for the most part.

11 Q And you are still friends with him, aren't you?

12 A I consider myself a friend of his.

13 MR. WHITLARK: That's all I have, Your Honor.

14 MS. CAMPBELL: Nothing further, Your Honor.

15 THE COURT: All right, sir, you may step down.
16 (Witness steps down.)

17 THE COURT: Call your next witness.

18 MS. CAMPBELL: Your Honor, may this witness be
19 excused?

20 THE COURT: Yes.

21 (Witness excused.)

22 MS. WALKER: The State calls --

23 MR. WHITLARK: Go ahead.

24 MS. WALKER: The State calls Natasha Nadkarni.

25 MR. WHITLARK: Excuse me, Your Honor. May we

1 approach the bench, please?

2 THE COURT: Yes, sir.

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

6 MR. WHITLARK: Thank you, Your Honor.

7 (Witness approaches.)

8 THE BAILIFF: Place your left hand on the
9 Bible, and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you are about to give in this case will
13 be the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat in the witness box.

17 (Witness complies.)

18 THE CLERK: State your full name for the
19 record, please.

20 THE WITNESS: Natasha Nadkarni,

21 N-A-D-K-A-R-N-I.

22 NATASHA NADKARNI,

23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. WALKER:

1 Q Could you speak up, please, just so we can make
2 sure that everybody on the jury can hear you?
3 A Okay.
4 Q Okay. Are you nervous?
5 A A little.
6 Q All right. Where are you from?
7 A Lexington.
8 Q Have you lived in Lexington -- how long have you
9 lived in Lexington?
10 A Probably 12 years.
11 Q I'm sorry?
12 A Twelve years.
13 Q Twelve years? And are you married?
14 A Divorced.
15 Q You are divorced?
16 A (Nods affirmatively.)
17 Q How long have you been divorced?
18 A Three years.
19 Q Where do you work?
20 A I work at Fairfield Healthcare.
21 THE COURT: You are going to have to speak up,
22 ma'am.
23 THE WITNESS: I'm sorry. Fairfield
24 Healthcare.
25 BY MS. WALKER:

- 1 Q What is Fairfield Healthcare?
- 2 A It's a skilled nursing facility.
- 3 Q Do you know Brett Parker?
- 4 A I do.
- 5 Q How long have you known him?
- 6 A About two, three years.
- 7 Q And how did you meet him?
- 8 A He was a vendor for the building. He provided
- 9 medical equipment.
- 10 Q That was part of his -- that was his job?
- 11 A Yes.
- 12 Q Did you know about his other job?
- 13 A Yes.
- 14 Q And what was that?
- 15 A That he was a bookie.
- 16 Q Once you got to -- once you -- you met Brett
- 17 through work?
- 18 A Uh-huh.
- 19 Q Did y'all develop a friendship?
- 20 A We became friends.
- 21 Q Did Brett confide in you about things?
- 22 A He talked about what was going on with him at
- 23 times.
- 24 Q Did he ever talk about his wife?
- 25 A Just about his marriage.

1 Q What did he tell you about his marriage?

2 A Just that it wasn't good and that they didn't
3 really get along.

4 Q Do you remember when you guys were having -- do you
5 need some water?

6 A No, I'm okay.

7 Q Okay. Do you remember when y'all were having this
8 conversation?

9 A Since the day I met him, that's pretty much always
10 been the case.

11 Q Since the day you met him until when?

12 A I mean, always.

13 Q Did you talk to him in, let's say, December of
14 2012? Were y'all still in communication?

15 A Probably a little bit before then, maybe October.

16 Q And he was telling you that his marriage wasn't
17 good?

18 A Right.

19 Q Did he tell you about their sleeping arrangements?

20 A He said that they slept on other ends of the house,
21 and a lot of times he would sleep with his son.

22 Q Did he ever tell you whether or not he was going to
23 get a divorce?

24 A He -- yeah, he said that he was looking at trying
25 to get a divorce.

1 Q Did he tell you about any difficulties that he was
2 going to have with getting a divorce?

3 A He said that it would be complicated just because
4 of the salary on paper versus the other business
5 and how they would work that out.

6 Q Financially difficult?

7 A Yes.

8 Q Did he seem to be bothered by other things that
9 were going on?

10 MR. WHITLARK: Objection, Your Honor.

11 THE COURT: Sustained. Rephrase the question.

12 BY MS. WALKER:

13 Q Did he ever express other concerns to you?

14 MR. WHITLARK: I have another objection, Your
15 Honor. I object on the grounds of relevance, Your
16 Honor, and distance and time to this. This is
17 months before.

18 THE COURT: Lay the proper foundation as to
19 time.

20 MS. WALKER: I have asked her those questions.
21 Do you want me to ask them again?

22 THE COURT: You can ask the question, and then
23 you need to determine when it was. She said they
24 had known each other for two or three years.

25 MS. WALKER: Right.

1 BY MS. WALKER:

2 Q You said that y'all talked about this throughout
3 the course of y'all knowing each other?

4 A Yes, ma'am.

5 THE COURT: And that objection is overruled.

6 MS. WALKER: Thank you, Your Honor.

7 BY MS. WALKER:

8 Q Did Brett -- this was before the objection -- did
9 Brett ever discuss other things in his life that
10 were bothering him?

11 A He would talk about -- he had a lot of family
12 illnesses going on, and he had been sick, and
13 things like that.

14 Q Brett had been sick? You said he was sick?

15 A Well, he said that he had gone for routine tests,
16 and they were testing him for --

17 MR. WHITLARK: Your Honor -- objection, Your
18 Honor. Relevance again, Your Honor.

19 MS. WALKER: I didn't know that. I will move
20 on.

21 THE COURT: Okay. Sustained.

22 BY MS. WALKER:

23 Q In terms of his work situation?

24 A He was just saying it was hard for him to balance
25 the two different jobs, and it was taking a toll on

1 him.

2 Q At some point -- and was that usually -- his
3 complaint about his marriage, was that usually what
4 y'all's conversations were about?

5 A Not always, no. But he -- I mean, he -- I mean,
6 just being in the building, and stuff, that was
7 just something he normally mentioned.

8 Q Did he ever talk to you about his gambling debts?

9 A No. I mean, he would say stuff like, I had a bad
10 weekend, or something like that, but nothing
11 specific.

12 Q But he would mention that he had a bad gambling
13 weekend?

14 A Just a bad --

15 MR. WHITLARK: Objection, Your Honor. It's a
16 leading question.

17 THE COURT: Sustained. Please rephrase the
18 question.

19 BY MS. WALKER:

20 Q Did he ever -- what did he say to you about his
21 gambling?

22 A He would just say it was a good weekend or it was a
23 bad weekend.

24 Q Do you remember giving a statement to law
25 enforcement in this case?

- 1 A Yes, ma'am.
- 2 Q Would that refresh your memory?
- 3 A Sure.
- 4 (Hands to witness.)
- 5 A That's about the bad weekends and that he had lost
- 6 a lot of money on it.
- 7 Q Go ahead. He had lost a lot of money?
- 8 A On the weekend from his other games.
- 9 Q At some point in time, did your communication with
- 10 Mr. Parker decrease?
- 11 A After October we didn't really talk at all a whole
- 12 lot.
- 13 Q And why did that -- why did y'all's communication
- 14 decrease?
- 15 A No particular reason. You know, that was common.
- 16 Sometimes we would talk and sometimes we wouldn't.
- 17 Q I want to ask you about that statement again.
- 18 Okay?
- 19 A Okay.
- 20 (Pause.)
- 21 A Oh, that was further on. That was just -- he had
- 22 checked in, and just the same stuff about not being
- 23 happy, and things that were going on, and I just
- 24 kind of quit talking to him.
- 25 Q At some point did you find out what had happened on

1 that -- on April 13th at Mr. Parker's residence?

2 A After. Like a day after.

3 Q And did you talk to Brett Parker after that?

4 A I talked to him when he was delivering medical
5 equipment to the building with a couple of other
6 people.

7 Q Did you talk to him about what happened?

8 A He talked to us. I didn't ask any questions.

9 Q What did Brett Parker say to you about what
10 happened?

11 A He just talked first about his kids and how they
12 were having a hard time in T-ball. And, you know,
13 he was trying to kind of help them.

14 And then he talked about that the forensic
15 evidence didn't -- they were saying it didn't quite
16 match, but it was self-defense, and he didn't
17 understand all that science stuff.

18 Q I will ask you about the statement again. Okay?

19 A I'm sorry.

20 Q Don't apologize.

21 (Pause.)

22 A That's what I said, the forensic evidence didn't
23 match up.

24 Q Match up to what?

25 A To what he was saying.

1 Q He said the forensic evidence doesn't -- didn't
2 match up to his story?

3 A Yes.

4 MR. WHITLARK: Objection, Your Honor. It's a
5 leading -- objection, Your Honor.

6 MS. WALKER: Your Honor, I can impeach the
7 witness with her own statement.

8 THE COURT: Objection overruled.

9 BY MS. WALKER:

10 Q When you spoke to law enforcement on July 31st,
11 2012, you told them that Brett Parker said the
12 forensic evidence didn't match up to his story?

13 A Yes.

14 MS. WALKER: No further questions.

15 THE COURT: Yes, sir?

16 MR. WHITLARK: May it please the Court, Your
17 Honor?

18 CROSS-EXAMINATION

19 BY MR. WHITLARK:

20 Q It is Nadkarni (phonetic)?

21 A Nadkarni.

22 Q Nadkarni?

23 A Yes, sir.

24 Q The police came. They took two statements from
25 you, didn't they, Ms. Nadkarni?

- 1 A Yes, sir.
- 2 Q And one of the things they were very interested in
- 3 is: Did you have an affair with him? Did you have
- 4 sex with him? They wanted to know all about that,
- 5 didn't they?
- 6 A Yes, sir.
- 7 Q Uh-huh. And you never did?
- 8 A No, sir.
- 9 Q But they did take two statements from you?
- 10 A Yes, sir.
- 11 Q And they were very interested in that. Now, how
- 12 many different policemen came to see you? Was it
- 13 just one, the same one, or was it two?
- 14 A I don't know if I talked to the same person both
- 15 times. I honestly don't remember.
- 16 Q And did they make you come down to the police
- 17 station a couple of times?
- 18 A Yes, sir, twice.
- 19 Q And give two statements?
- 20 A Yes, sir.
- 21 Q By the way, did you have a lawyer with you when you
- 22 were doing that?
- 23 A No, sir.
- 24 Q Just these fellows around?
- 25 A Yes, sir.

1 Q But when they first approached you, they wanted to
2 know. Hey, are you having sex with him, and all
3 that, didn't they? That's what they wanted to know
4 about?

5 A That was one of the questions.

6 Q Yes.

7 MR. WHITLARK: No further questions, Your
8 Honor.

9 THE COURT: Yes, ma'am?

10 **REDIRECT EXAMINATION**

11 BY MS. WALKER:

12 Q Mr. Whitlark asked you questions about a possible
13 affair between you and Mr. Parker? He just asked
14 you a question about a possible affair between you
15 and Brett Parker?

16 A He did.

17 Q You and Brett Parker sent some pretty flirty text
18 messages to each other back in December of 2012,
19 didn't you?

20 A I don't remember our text messages. They were
21 friendly, yes.

22 Q Okay. Let's go back to that statement you gave,
23 okay?

24 A Okay.

25 (Pause.)

1 A I just said that he was -- he became flirtatious,
2 as in friendly.

3 Q He became friendly-flirtatious? He became
4 friendly-flirtatious towards you?

5 A He was a flirtatious person in general, yes, ma'am.

6 Q And in December of 2012, his wife found out about
7 those text messages, didn't she?

8 MR. WHITLARK: Objection, Your Honor.

9 MS. WALKER: He opened the door, Your Honor.

10 THE COURT: Overruled.

11 BY MS. WALKER:

12 Q His wife found out about those text messages,
13 didn't she?

14 A Yes.

15 Q I'm sorry, December of 2011. And after the murders
16 occurred at his residence, you wanted to contact
17 Brett Parker about what happened, right?

18 A I had some questions for him.

19 Q And you left voicemails on his phone, didn't you?

20 MR. WHITLARK: Objection. Your Honor,
21 objection. This is not proper redirect, Your
22 Honor. I didn't go into any of that stuff with
23 her.

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

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: Ladies and gentlemen of the jury,
5 I am going to send you all out one second.

6 THE BAILIFF: Quiet, and remain seated.

7 (WHEREUPON, the jury retires to the jury
8 room at 11:06 a.m.)

9 THE COURT: How are the voicemails admissible,
10 I guess, based on his cross-examination on your
11 redirect?

12 MS. WALKER: Your Honor, if Your Honor will
13 note, I didn't go into any of this in my direct
14 examination.

15 On cross-examination Mr. Whitlark got up and
16 started asking questions about the fact that they
17 never had an inappropriate relationship. They
18 never had an affair.

19 The flirty text messages that Ms. Parker found
20 out about in December, Your Honor, I think go to
21 the credibility of what the witness --

22 THE COURT: Do you have the text messages?

23 MS. WALKER: She acknowledges those text
24 messages in her statement. They were text messages
25 that Ms. Parker found out about and that hampered

1 the amount of communication the two of them were
2 having.

3 After the incidents, Your Honor -- and I can
4 play these voicemails for you -- she called
5 Mr. Parker. She wants to have an explanation. She
6 deserves to know what happened.

7 After everything that they have been through
8 together, she has questions that need to be
9 answered. That is the context in which those
10 voicemails, Your Honor, are being provided.

11 Once again, it is not something I went into in
12 my direct examination under -- you know, respecting
13 the Court's prior ruling. Once again, as he tends
14 to do, Mr. Whitlark opened the door in this
15 instance.

16 MR. WHITLARK: Your Honor, I didn't open any
17 door. I just asked them what they were -- what
18 they want to know about. They wanted to know
19 whether or not they had had an affair. I didn't
20 open the door. They didn't go into -- I didn't go
21 into anything that this is responding to.

22 MS. WALKER: He said, In fact, you guys didn't
23 have that type of relationship, did you? Those
24 were the questions.

25 THE COURT: Well, I think the question is

1 whether or not -- well, he asked the question. She
2 said no. I think the State has a right to impeach
3 her based on the relationship because you asked the
4 question.

5 They didn't ask it. They didn't bring it up.
6 But, you know, she is saying that they -- her
7 testimony to them was that he came to the business,
8 they talked on the phone, and that was it.

9 I mean, I will have to listen to the
10 voicemails and see what they say, if they tend to
11 offer something that is more than just talking on
12 the phone.

13 MR. WHITLARK: I understand that, Your Honor,
14 but the point is -- the two points here, Your
15 Honor. Number One, is this is getting to a point
16 where, I mean, it's going to be confusing to the
17 jury because of the distance in time from it, which
18 we have already discussed many times in this case.

19 Second of all, I only asked her one time. I
20 said, Y'all -- they wanted to know --

21 THE COURT: You asked twice.

22 MR. WHITLARK: Right. They wanted to know
23 whether or not y'all were having sex. And she has
24 already stated under oath they did not.

25 And, you know, the rest of this is just -- I

1 mean, it's getting misleading. This is the danger
2 of this case, Your Honor, in this case, Your Honor,
3 are the things that we've talked about about this
4 kind of stuff. And I just think that it is putting
5 undue weight on this.

6 THE COURT: I know. But, Mr. Whitlark, she
7 didn't bring it up; you did. So, I mean, I think
8 if they have anything that proves or tends to prove
9 something different, then, I mean, I can't --

10 MR. WHITLARK: Well, Your Honor --

11 THE COURT: Under the doctrine of
12 completeness, they have a right to be able to
13 impeach her if they have something to impeach her
14 based on her testimony.

15 MR. WHITLARK: She hasn't said anything that
16 would be impeached on. She just said, No, we
17 didn't have sex. I don't see --

18 THE COURT: I mean, I can have Debbie go back
19 and tell us what she said or what you asked, if
20 you'd like, but we have to stop talking for her to
21 do that.

22 And then we will listen to -- we'll see what
23 the voicemails say. I need to see what the
24 contents of the voicemails are.

25 MR. WHITLARK: We'd object on the grounds of

1 relevancy. I mean, Your Honor, this is the one of
2 the dangers of this case in a circumstantial case,
3 things like this.

4 THE COURT: All right. I understand.

5 MS. WALKER: If you will give me one moment to
6 pull it up, Your Honor.

7 THE COURT: All right, well, I'm going to have
8 the court reporter pull up her answer.

9 (The testimony is played in open court.)

10 THE COURT: We are back on the record. Now,
11 do you want to play the voicemails?

12 MS. WALKER: Sure, Your Honor. Let me see if
13 it will play.

14 (Pause.)

15 (Voicemails are played in open court.)

16 MS. WALKER: For the record, Your Honor, these
17 are consecutive voicemails. They are being like
18 one minute apart.

19 MR. WHITLARK: Your Honor, again, I would
20 raise the issue of relevance.

21 (Voicemails continue to be played.)

22 MS. WALKER: Your Honor, that was at 6:27:52.
23 The one you hear before that was at 6:28:14. And
24 the one I am about to play is at 6:27:24. And
25 these are all on June 20th.

1 (Voicemails continue to be played.)

2 MS. WALKER: Your Honor, that would be the
3 extent of the voicemails that we would be offering
4 at this time.

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

7 (WHEREUPON, a bench conference was
8 held.)

9 MS. WALKER: Thank you, Your Honor.

10 MR. WHITLARK: All right.

11 MS. WALKER: The State is ready.

12 THE COURT: All right. Based on the testimony
13 that she gave, I believe she indicated that in her
14 testimony on direct examination that they just knew
15 each other from work and talked on the phone.

16 The nature of those voicemails are a lot
17 different than I think what she has testified to.
18 And Mr. Whitlark did ask the question. And he
19 asked it, I believe, two or three times as to
20 whether or not they were having an affair.

21 And so I think the State -- under the rules,
22 the State has a right to impeach her as to the
23 relationship.

24 And so I'm going to overrule the objection.

25 MS. WALKER: Thank you, Your Honor.

1 MR. WHITLARK: Thank you, Your Honor.

2 THE COURT: But the objection is noted for the
3 record.

4 MR. WHITLARK: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MR. WHITLARK: May it please the Court, Your
7 Honor? Your Honor, a further objection to them
8 doing this, I would state it is extraneous evidence
9 of a collateral matter, Your Honor.

10 And the playing of the tapes would be the
11 introduction into this record of extraneous
12 evidence of a collateral issue, not -- the issue in
13 this case is not whether or not he was flirting
14 with this girl or having sex with this girl. This
15 issue is: Did he kill his wife? Is he guilty of
16 murder?

17 And so that is a further objection, Your
18 Honor. First of all, relevance. Second of all, it
19 is extraneous evidence of a collateral matter to
20 impeach a witness not a party to the case.

21 Thank you, Your Honor.

22 THE COURT: All right. Yes? Any response?

23 In looking at Rule 607, it says that the
24 State -- well, it says credibility of a witness may
25 be attacked by any party, including any party

1 calling the witness.

2 Now, this rule changed, 607. It used to be
3 that a Prosecutor has to --

4 MS. WALKER: I'm not vouching for her
5 credibility.

6 THE COURT: -- declare her a hostile witness.
7 But I think under the new rule that you do not have
8 to do that any longer.

9 So I think under Rule 607, they have the right
10 to impeach their own witness. They do have the
11 right to impeach their own witness under Rule 607.

12 MS. WALKER: Thank you, Your Honor.

13 THE COURT: All right.

14 MR. WHITLARK: But not by introduction of the
15 extraneous evidence, though, Your Honor. They can
16 talk to her about it, but not --

17 THE COURT: Well, that depends on what she
18 says.

19 MR. WHITLARK: Well, I'm saying, as far as
20 being introduced as evidence in the case, I'm
21 saying it's extraneous evidence. I mean, they can
22 ask her, but I don't see how the evidence itself is
23 admissible.

24 THE COURT: Are you trying to get it in or are
25 you just --

1 MS. WALKER: I'm not introducing it into
2 evidence, Your Honor. I'm just impeaching the
3 witness with it.

4 THE COURT: Okay.

5 MR. WHITLARK: Thank you, Your Honor.

6 THE COURT: All right. Now, you can bring
7 them in.

8 (WHEREUPON, the jury came into open
9 court at 11:25 a.m.)

10 THE BAILIFF: All the jurors are present,
11 Judge.

12 REDIRECT EXAMINATION CONTINUES

13 BY MS. WALKER:

14 Q Ms. Nadkarni, before the break you said you never
15 had an affair with the Defendant?

16 A No.

17 Q Do you stand by that statement?

18 A Yes, ma'am.

19 Q Do you remember leaving voicemails on his phone on
20 June 20, 2012?

21 A You just played them.

22 (Voicemails are played in open court.)

23 BY MS. WALKER:

24 Q Then you left one at 6:27:24 and then another at
25 6:27:52.

1 (Voicemails continue to be played.)

2 BY MS. WALKER:

3 Q Then the last one you left was at 6:28:14 on the
4 same day.

5 (Voicemails continued to be played.)

6 BY MS. WALKER:

7 Q You left those three voicemails in the span of
8 about two minutes?

9 A Yes.

10 Q But y'all were just friends?

11 A Yes.

12 Q Okay.

13 MS. WALKER: No further questions.

14 MR. WHITLARK: Briefly, Your Honor.

15 **RECROSS-EXAMINATION**

16 BY MR. WHITLARK:

17 Q You hadn't seen him in quite some time when all
18 this was happening?

19 A About six or seven months.

20 Q Right. And that is what you wanted to talk to him
21 about, isn't it?

22 A Well, when somebody calls and asks you all these
23 questions and you haven't even seen somebody in
24 seven months, I was a little pissed.

25 Q Right. And they brought you down twice to take

1 statements from you too, right?

2 A Yes, sir.

3 Q And that is what you were calling him about, isn't
4 it?

5 A Yes, sir.

6 Q Thank you.

7 MR. WHITLARK: No further questions.

8 THE COURT: All right, ma'am. You may step
9 down.

10 (Witness steps down.)

11 MS. WALKER: May the witness be excused, Your
12 Honor?

13 THE COURT: Any objection to this witness
14 being excused?

15 MR. WHITLARK: No objection from the Defense,
16 Your Honor.

17 THE COURT: All right, ma'am, you are free to
18 leave.

19 (Witness excused.)

20 THE COURT: All right, call your next witness.

21 MS. SIMPSON: The State calls Jim Headley.

22 (Witness approaches.)

23 THE BAILIFF: Place your left hand on the
24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the
2 testimony you are about to give in this case will
3 be the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: Yes, ma'am.

6 THE CLERK: Have a seat in the witness box.
7 (Witness complies.)

8 THE CLERK: State your full name for the
9 record. And spell your last name, please.

10 THE WITNESS: My name is Jim Headley,
11 H-E-A-D-L-E-Y.

12 JIM HEADLEY,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q Mr. Headley, how old are you?

17 A I'm 48.

18 Q And are you married?

19 A No, ma'am.

20 Q Where do you live?

21 A I live in Lexington.

22 Q In Lexington? Are you from Lexington, South
23 Carolina?

24 A Not originally, no, ma'am. I graduated from the
25 University of Iowa and moved down here in 1987.

1 Q And you've been down here ever since?

2 A Yes, ma'am.

3 Q Where do you work?

4 A I'm employed with the South Carolina Recreation and
5 Parks Association. It's a non-profit association
6 that represents all the cities and counties across
7 the State of South Carolina. It's a professional
8 association for public parks and recreation issues.

9 Q What do you actually do for the Lexington
10 Recreation?

11 A It's a South Carolina Recreational Parks
12 Association.

13 Q Okay.

14 A I am their executive director. And I do meet with
15 a lot of municipalities and counties throughout the
16 State. I travel the entire state, from Greenville
17 down to Hilton Head to Myrtle Beach.

18 And we put on education and training
19 workshops, probably very similar to a lot of
20 professional associations. We identify needs that
21 public parks and recreation employees need, and
22 then try to fill those.

23 Then we do monitor legislation at the
24 Statehouse as well that affect local municipalities
25 and counties' needs.

1 Q And do you know Bryan Capnerhurst?

2 A Yes, ma'am, I do.

3 Q Can you tell the jury how you know him?

4 A I did.

5 Q Tell the jury how you know him.

6 A I knew Bryan for a little over 20 years. I came
7 here -- when I came in 1987, my offices first were
8 in downtown Columbia. Then we subsequently moved
9 them out to Lexington.

10 And at that time I got to know Bryan over the
11 years, considered him one of my best friends in
12 South Carolina.

13 He is one of those friends -- to give you an
14 example -- when I had to move, even though he knew
15 that I had a sleeper sofa, he still was the first
16 one at the front door to help me move.

17 He was just that type of individual. He was
18 always there. He was the first one there. He was
19 always dependable. He would go the extra mile for
20 you as a friend.

21 Q Now, you were good friends and had known each other
22 for a while. Did y'all actually work next to each
23 other?

24 A Yes, ma'am. We rent office space from the
25 Lexington County Recreation and Aging Commission.

1 That is why it might be a little confusing. But we
2 rent office space. Our association rents office
3 space from the Lexington County Recreation and
4 Aging Commission. My office was pretty much
5 directly across the hall from Bryan's office.

6 Q And so even though y'all didn't work together,
7 would you see him often?

8 A We saw each other obviously wherever I was in town.
9 Obviously I travel a lot. I would see him every
10 day. We were probably one of the first two to
11 three or four people in the office. And the first
12 person there always made the coffee for the entire
13 office.

14 So either he was making coffee, I made the
15 coffee, our friend Alvin would make the coffee
16 every now and again. It was just depending on who
17 got there first was the individual who did that.

18 And then he also -- we also became obviously
19 very good friends with that. When you are working
20 with somebody that close, he -- as I said, he was
21 always there, you know, for me and for any of his
22 real good friends.

23 Q And having seen Bryan on, I guess, a daily work
24 basis when you were there, can you tell the jury a
25 bit about his work habits or his routine?

1 A As I mentioned, he was there well before he ever
2 needed to be. His work day usually started about
3 8:30. He was there usually by quarter till 8:00.
4 He was probably the most diligent and hardest
5 working individuals I have ever seen.

6 If you -- he also was one of the most anal
7 individuals. Attention to detail was Bryan's
8 specialty, and he always was there to listen. He
9 was in a kind of a volatile situation from the
10 standpoint with his job of working with youth
11 athletics.

12 Many of you know probably, you know, they
13 receive many angry telephone calls. And Bryan
14 would diffuse those phone calls. He would listen
15 to them intently, accept what was going on and
16 being screamed at and yelled at on the other end of
17 the phone.

18 Even though it was nothing of his doing, it
19 was usually the last time that the parents -- you
20 know, when they get the call, they want to vent on
21 somebody. And usually it was Bryan.

22 And he accepted that with great
23 professionalism. And, as I said, he would always
24 follow up on the phone calls, very detailed, very
25 dependable. One of the most dependable people that

1 I think I have ever met in my life.

2 Q So you wouldn't consider him quick-tempered or --

3 A No, ma'am.

4 MR. WHITLARK: Objection, Your Honor.

5 A No, ma'am, not at all.

6 MR. WHITLARK: Objection.

7 THE COURT: What is the objection?

8 MR. WHITLARK: It's a leading question, Your
9 Honor.

10 MS. SIMPSON: I'll rephrase.

11 THE COURT: The objection is sustained.

12 BY MS. SIMPSON:

13 Q How would you describe his temperament?

14 A Bryan's temperament was very even-keeled. Again,
15 he had to be. He was forced into -- because when
16 you pick up the phone and you've got an irate
17 parent on the other end because Johnny or Susie was
18 either called out or left off the All-star team, or
19 whatever, you know, the parent was very, very
20 angry.

21 And he never knew what was going to happen
22 next. So he was excellent at being able to diffuse
23 that situation, to be able to listen to the
24 individual on the phone call, to be able to
25 understand their concerns, their wants, their

1 needs. And then he would reassure them.

2 He -- to my knowledge, he never raised his
3 voice at an angry parent coming in through the
4 door. He never raised his voice, period. Bryan
5 was a very calm individual underneath pressure.

6 Q And was he that way with his co-workers as well?

7 A Absolutely. Very dependable.

8 Q Were you aware of Bryan's other work or any other
9 jobs that he had outside of working at the
10 Commission?

11 A Yes, ma'am. Bryan had a lot of jobs prior to five
12 years ago with Mr. Parker. Prior to that he
13 delivered newspapers at 4:30 in the morning. And
14 he would get up at probably 4:00, get all the
15 papers for the paper routes. And he did that for a
16 good two and a half years.

17 And if you think about that, he never missed
18 one day of work that I know of. He never called in
19 sick. Again, the most dependable, the most
20 organized.

21 And if you wanted somebody in your corner,
22 Bryan was that individual, because Bryan was very
23 dependable, very organized, and really wanted to do
24 a good job.

25 He also cleaned the office at the same time.

1 Q And with respect to cleaning the office, was that
2 something he did, I guess, prior to his death as
3 well?

4 A Yes, ma'am. Yes, as well. So he had three jobs.
5 He always had two to three jobs, constantly.

6 Q And one of those jobs, did you know whether or not
7 he worked for the Defendant?

8 A Yes, ma'am. Brett had hired him to answer the
9 phones and take bets over the phones.

10 Q And did you know the Defendant as well?

11 A Yes, ma'am.

12 Q How did you know Brett Parker?

13 A Brett had been in the office several times. The
14 prior executive director, before he deceased, was,
15 I guess, a client, for lack of a better term, a
16 client of Mr. Parker's. And then eventually I was
17 off and on.

18 Q And by client, what do you mean by that?

19 A Just call up on occasional bets.

20 Q So you would occasionally bet with the Defendant?

21 A Yes, ma'am.

22 Q Was this prior to -- in the months prior or years
23 prior kind of a timeframe?

24 A Years prior, yes, ma'am.

25 Q Years prior. And when you would place bets with

1 him, how were those placed?

2 A Over the phone.

3 Q Over the phone? And is that what Bryan did?

4 A Yes.

5 Q Did he take calls, or what did he do?

6 A He was nothing more than a glorified clerk, for
7 lack of a better term. He answered the phone, took
8 down the amounts, and then would calculate them and
9 get them to Mr. Parker.

10 Q Did Bryan discuss his work with the Defendant with
11 you?

12 A Yes, ma'am, he did.

13 Q And did he discuss his financial situation with
14 you?

15 A Yes. Yes, he did.

16 Q What did you know about that?

17 A Brett had owed Bryan for at least -- at least a
18 year and a half -- in excess of \$20,000. And we
19 continually sat down, as friends do, and I kept
20 saying, Cap, you know, what is going on? Why
21 hasn't he paid you?

22 And it was excuse after excuse after excuse
23 after excuse after excuse after excuse after excuse
24 as to the reason why Mr. Parker would never pay
25 Cap.

1 And, you know, I said, Well, have you gone
2 over and logged that to show him, you know, how
3 much money he owes you? And has he agreed to that?

4 And he said, Yes, he has agreed to it. And,
5 in fact, he kept a yellow pad. Bryan -- again,
6 going back to the whole anal comment -- he was very
7 meticulous. And Bryan wrote everything down on the
8 yellow pad, and he wrote down how much Brett owed.

9 I said, You need to take that in and talk to
10 Brett about that and show him how much money he
11 owes you and ask when you're going to get it.

12 Q And was that money owed to him from, I guess, his
13 work as an employee or was it gambling debt?

14 A No, ma'am, it was not gambling debt. It was owed
15 to him by work as an employee as an arrangement
16 that they had.

17 Q And did you have an idea of the amount of time that
18 he had been owed this money?

19 A Like I said, I believe it was at least a year and a
20 half, if not longer.

21 Q And that was with -- somewhere around \$20,000 or
22 so?

23 A Twenty thousand dollars is, again, give or take the
24 amount that sticks in my mind.

25 Q Did you also know the Defendant's father, Jack

1 Parker?

2 A Yes, ma'am.

3 Q How did you know him?

4 A Jack was the -- he was the original gentleman who
5 took the bets for the previous executive director
6 for Lexington County, the gentleman who is deceased
7 now. He took his bets for him.

8 And then Jack and Brett at some point in time
9 split. And then they got back together. I think
10 Jack might have had some health issues maybe. So
11 then they got back together again and then split
12 again.

13 Q So Jack was a bookie as well?

14 A Yes, ma'am.

15 Q Did Bryan ever indicate any discussions or talk to
16 you about any discussions that he had regarding
17 Jack Parker?

18 A Yes. He told me that Jack said, Bryan, don't worry
19 about any money that Brett owes you. He said, I
20 will make good on that for you. He said, I will --
21 furthermore, he said, I will employ you. I will
22 hire you and I will make good on the amount of
23 money that Brett has not paid you and refuses to
24 pay you for whatever reason.

25 Q So was it your understanding that Bryan had another

1 job if the Defendant -- if his work with the
2 Defendant didn't work out?

3 A Yes, ma'am, with Mr. Parker, yes, as well as
4 numerous other jobs.

5 Q And do you know James Morgan?

6 A Yes, ma'am, I do.

7 Q How do you know him?

8 A I met James through the fantasy baseball league.
9 James was the commissioner of the fantasy baseball
10 league. And James and I talked probably -- I'd
11 love to see my minutes burned up on the cellphone.
12 Numerous times. More than I can count.

13 There are several times that I would leave
14 Columbia going to a meeting in Charlotte, and James
15 and I -- I would leave Columbia, and by the time I
16 got to Charlotte, I was still on the phone with
17 James.

18 So we talked a lot about baseball and our love
19 for baseball, similar to what Cap had. He had a
20 love for baseball and a love for fantasy baseball
21 as well.

22 Q So all of you -- Bryan, Mr. Morgan -- y'all were
23 kind of friends through baseball and liking fantasy
24 baseball?

25 A Yes, ma'am.

1 Q As well as work with respect to you and Bryan?

2 A Correct, yes, ma'am.

3 Q Now, did -- was James Morgan a bookie?

4 A No. I am sure James Morgan has been called a lot
5 of things in life, but a bookie would be a very
6 unusual one.

7 Q I want to talk to you about Friday, the 13th, the
8 day this happened. Do you recall that day?

9 A Very good, yes, ma'am.

10 Q And did you speak with Bryan that morning?

11 A I did. Bryan had called me, and I missed the phone
12 call. And that was earlier in the morning,
13 9:00-ish. And then I called him back at about
14 11:00 and talked to him.

15 And we talked a lot about the fantasy
16 baseball. He congratulated me because I was in
17 first place at the time, which is very unusual.
18 And he said, Congratulations on a good season.

19 And he said -- actually when I first -- when
20 the phone rang he said, I thought you were Brett.

21 And I said, What do you mean?

22 And he said, When the phone rang, I was
23 expecting Brett to call because Brett was supposed
24 to call me.

25 And then Brett had invited him over at

1 lunchtime to be able to settle up on the debt.

2 And I said, Finally, you're going to get some
3 money out of him.

4 And he said, yes, that he was expecting a
5 large payout from Brett, if not at least half of
6 everything that he owed him.

7 Q So he had actually talked to Brett earlier that
8 morning?

9 A Yes, ma'am.

10 Q And when did he say the meeting was supposed to be?

11 A It was around noontime, noon, 12:30.

12 Q And would you describe Bryan Capnerhurst as
13 punctual?

14 A Yes, ma'am, very punctual. The most punctual
15 person. Very dependable, very punctual. You know,
16 if he said he was going to be there, that man was
17 going to be there. That man would be there. He
18 would run through a brick wall in order not to be
19 there.

20 Q And had Bryan actually come to work that day?

21 A No, ma'am. That was another part of the
22 conversation. I'm sorry, I left part of that out.
23 He indicated to me that he still was a little not
24 feeling well and not coming in to work that day.

25 Q Had he been sick earlier?

1 A Yes, ma'am. And that week happened to be a payroll
2 week for him, and Lexington County still issues the
3 checks. And he said because his immediate
4 supervisor, Alvin Kelley, was not going -- was not
5 there, he said, Hawk, do you mind -- pardon me --
6 he said, Jim, do you mind if -- would you go and
7 get my check for me?

8 And he said, I'll meet you probably about 3:00
9 or 3:30 out in front so I can deposit my check, my
10 payroll check.

11 Q And so at 3:30 he was going to meet you for the
12 check?

13 A Yes, ma'am.

14 Q Do you know whether he was also going to clean the
15 office that day?

16 A Yes, ma'am, he had indicated that he would be there
17 to clean the office that day.

18 Q And is cleaning the office something he did after
19 work?

20 A On Fridays after 5:00 o'clock. Again, it was a
21 side job. It had nothing to do with his -- he just
22 happened to work there. And the commission needed
23 somebody to be able to clean the office, and he did
24 that on the side. He did that, again, after
25 5:00 o'clock.

- 1 Q So he wanted to meet you at 3:30?
- 2 A Yes, ma'am.
- 3 Q And then he was going to clean the office?
- 4 A Yes, ma'am. And then he was going to -- I'm
- 5 sorry -- he was going to go on. He had made plans
- 6 for H.C.
- 7 Q And who is H.C.?
- 8 A H.C. is his daughter.
- 9 Q How old is she?
- 10 A H.C. is just a senior in high school. She's at
- 11 the Governor's School for the Arts up in
- 12 Greenville. Cap knew that she was Number 1 or
- 13 Number 2 in her class at Batesburg-Leesville High
- 14 School.
- 15 And Cap knew that in order for her to
- 16 continuously be pushed and to succeed in life that
- 17 he wanted nothing but the best for her. He was --
- 18 H.C. is everything to him.
- 19 Q And was that --
- 20 A He -- go ahead.
- 21 Q Let me just ask: Did he talk about her when he was
- 22 talking about trying to get his debt paid and --
- 23 A Yes, ma'am.
- 24 Q --make his money as well?
- 25 A Yes, ma'am. That was the full intent and purpose

1 of him working three jobs was because of H.C. He
2 did not want anything to stand in her way to be
3 able to succeed in life, and to go to any college
4 that she wanted to, and to -- and, again, to go to
5 Governor's School, which, for those of you that
6 don't know, it is very competitive. You can't just
7 go to Governor's School. You have to apply. And
8 she was selected one of -- I think there were in
9 the neighborhood of about 100 to 200 people that
10 she was selected out of. It was a very proud
11 moment for him, for his daughter. And that also
12 speaks back -- goes back to his personality and his
13 love for his daughter.

14 Q And you mentioned -- let me stop you just a little
15 bit. You mentioned that he had plans that weekend
16 with her?

17 A Yes, ma'am.

18 Q What did he plan to do?

19 A He and Cindy were going to be chaperones at the
20 prom.

21 Q At H.C.'s prom?

22 A At H.C.'s prom in Greenville. And, you know,
23 again, he's the type of individual that will pack
24 his daughter up -- and he loved his other children
25 very much too, his stepchildren -- but H.C. was

1 his child.

2 And he packed her up and moved her to
3 Greenville the last two years so she could succeed
4 and so that she could have an opportunity to have
5 the best for her. And that is all Cap ever wanted.

6 Q So he was working really hard for her?

7 A Extremely hard for her.

8 Q On that morning after you had your initial
9 conversation with him right before lunchtime, did
10 you try to call Bryan again?

11 A Yes, ma'am. I think I called around 1:00-ish or a
12 little bit thereafter to say -- and I think I left
13 a voicemail on his phone. And I said, Cap, I got
14 your check. Don't worry about it. Meet you at
15 3:30.

16 And then I got busy with work again and I had
17 several phone calls and several e-mails, and
18 5:00 o'clock rolled around.

19 And I was like, Where is Cap? And nobody in
20 the office had heard from him. And I said, that is
21 just -- that is unusual -- very, very unusual.
22 Very unusual.

23 So, again, I tried calling him at 5:00 o'clock
24 and I got voicemail. And I just wanted...

25 Q Take your time. How did you find out about what

1 happened?

2 A Our friend, Alvin Kelley, called me about 5:15,
3 maybe 5:30, in that neighborhood, and said, Jim,
4 you are not going to believe it. Where are you at
5 right now?

6 And I said, I'm at home. I live literally,
7 you know, 30 seconds from work. I was at home on
8 the back deck.

9 And he said that Bryan had been shot, and
10 Bryan had been killed and murdered by Brett Parker.

11 Q Did -- once you and Mr. Kelley spoke and you found
12 out, did you also speak with Mr. Morgan at some
13 point that evening?

14 A Later on that evening I called. We were like
15 trying to divvy up the folks to call, and I told
16 Alvin that I would call James and tell him.

17 Q And in addition to Bryan being pretty open with his
18 work and what the Defendant owed him, did he
19 discuss some of his financial, I guess, situation
20 or issues with you?

21 A Yes, ma'am, he did on numerous occasions.

22 Q And what was your understanding about that?

23 A There was some credit card debt that had been run
24 up and that he was -- he had actually taken over
25 the books for the family.

1 In true Cap form, I mean, on his desk
2 calendar -- y'all don't know him -- on his desk
3 calendar, he would write out every single bill,
4 when it was due, how much was due, and who was it
5 to.

6 He called and talked to several of us about
7 the amount for groceries, how much should we budget
8 for groceries, because he didn't have -- that was
9 not his -- you know, him and Cindy's relationship
10 until he decided to -- that he needed to take over
11 the books for the family.

12 Q So he was open with you all about what his finances
13 were?

14 A Yes, ma'am.

15 Q Did he seem to have a plan in place to get his
16 credit card debt paid off?

17 A Yes, ma'am. He had a plan in place and was ahead
18 of schedule, like he could do. Again, he was the
19 most anal, most dependable. And when he decided he
20 was going to do something, it was going to get
21 done, without a doubt.

22 I just -- you know, I knew when he took over
23 the books for the family, I knew that that was
24 going to -- that he would pull them out with no
25 problems.

1 It was not an insurmountable amount of money.
2 Yeah, it was, you know, a couple of credit cards,
3 things were rolled up. But, you know, it was very
4 doable, and he had a plan, and he was sticking to
5 that plan.

6 Q And did you ever know Bryan to carry a gym bag at
7 all?

8 A Every day at work. Again, the man was -- you could
9 set your watch by him. He worked out from 1:00 to
10 2:00 every single day. And he carried a gym bag
11 with him every single day. And he would go to the
12 back, take his 99-cent Banquet meals that he
13 brought to work every single day. He would take
14 that out, put it on the table, go downstairs, work
15 out, come back upstairs, shower, put that
16 godforsaken 99-cent Banquet meal in the microwave.
17 And that is what he had for lunch every single day.

18 I would ask him, Cap, let's go to lunch.

19 No, I can't.

20 Q So he wasn't just spending money on lunch or --

21 A No, ma'am.

22 Q He kind of watched it?

23 A He was -- he was very, very tight with his money.

24 Q Did you know whether Bryan had a gun?

25 A Not no, but heck no, he did not have a gun. Bryan

1 was scared of guns. Bryan did not like guns.
2 Bryan would have -- Bryan would have told us that
3 he had a gun. There is no way on this earth that
4 Bryan Capnerhurst had a pistol. None. Zero. It
5 did not happen.

6 Q So you never saw him shoot a gun?

7 A Never saw him shoot a gun. He was scared of guns.

8 Q And, I guess, are you a hunter or did people at
9 your work hunt?

10 A Yes, ma'am. I mean, there was a time that the
11 previous executive director brought an air rifle
12 into work, a BB gun. And everybody like took turns
13 shooting it at targets off the back at work. And
14 they set up like little cans and stuff and were
15 knocking them off.

16 Bryan wouldn't even hold the gun. Bryan
17 wouldn't shoot it. And so, you know, Bryan
18 wouldn't hurt a flea.

19 I mean, he would -- in driving with him, if
20 there was a squirrel that would run in front of
21 him, he would swerve in order to miss the doggone
22 squirrel. You know, he would almost get in a wreck
23 because of that.

24 No, ma'am, Bryan did not have a gun. He would
25 not shoot guns.

1 We talked about it. He was not one of these
2 individuals that was like nobody should ever have a
3 gun. He believed that, to each their own. If
4 somebody wanted a gun, hey, that is their
5 bailiwick. Him --

6 Q Guns just weren't his thing?

7 A Not his thing at all, no, ma'am.

8 Q And, again, you never saw him carry, you never saw
9 him with a gun?

10 A Never saw him carry, never saw him with a gun, and
11 that would -- that just -- no, ma'am, not at all.

12 Q Thank you.

13 (Pause.)

14 THE COURT: All right. Any other questions?

15 MS. SIMPSON: Oh, no, Your Honor. I
16 apologize.

17 MR. WHITLARK: May it please the Court?

18 **CROSS-EXAMINATION**

19 BY MR. WHITLARK:

20 Q He always had that bag with him, didn't he? Isn't
21 that what you just testified to?

22 A When he came to work, yes.

23 Q His gym bag?

24 A Yes, sir.

25 Q Okay. And he didn't mention anything to you about

1 Brett Parker told him to bring a bag with him, did
2 he?

3 A Not to my recollection, no, sir.

4 Q Okay. But he always had that bag with him, didn't
5 he?

6 A Yes, sir. He carried the Banquet meal. He carried
7 his gym clothes. He carried his workout clothes.
8 And then he would change. And then, because that
9 was a Friday, he had his shorts in there. He had
10 his -- take the -- the outfit that he would clean
11 the office with, he carried that in there as well.
12 And he left it open. It was open in the office all
13 the time for anybody to see.

14 Q You testified that he never missed work and he was
15 very punctual, and things of that nature, didn't
16 you, sir?

17 A Yes.

18 Q Okay. But you do know for a fact that he missed
19 four days of work that week? He wasn't there for
20 four straight days before this happened, was he?

21 A Well, two of those days were planned days off that
22 he had requested and that he had had leave for to
23 meet a friend of his, yes, sir.

24 Q Well, he did miss work, though, didn't he, four
25 days that week, right?

1 A Yes, sir.

2 Q Okay. And he -- I think you said you talked to
3 him, and he wasn't going to be able to work because
4 he was sick or something? Is that what you said?

5 A Yes. He didn't want to come back into work because
6 he didn't want to infect the rest of the office. I
7 mean, that was Cap. I mean, you know, when you're
8 sick and around people, he didn't want to come back
9 into the office. And so that is why he wanted me
10 to meet him outside with his check.

11 Q Did you know he smoked marijuana?

12 A We had discussed that, yes, sir. And what people
13 do on their own time is, hey, their own issues.

14 Q Y'all had discussed smoking marijuana?

15 A He had -- we were friends and he said he did it,
16 and I was not...

17 Q Okay. Did he talk to you about his wife's
18 embezzlement of \$35,000?

19 A Yes, sir.

20 Q Okay. And that was used to pay gambling debts that
21 he had had?

22 A That was not my understanding, no, sir.

23 Q Okay.

24 A Not at all.

25 Q Is it your testimony that you don't gamble?

1 A No, sir. I believe we can replay it right here. I
2 said that I had.

3 Q Do you gamble, sir?

4 A Yes, sir.

5 Q You gamble quite a bit, don't you?

6 A No.

7 Q You don't? Okay. What is your telephone number?

8 A (803)238-6323.

9 MR. WHITLARK: Beg the Court's indulgence,
10 Your Honor.

11 (Pause.)

12 BY MR. WHITLARK:

13 Q What is the telephone number?

14 A (803)238-6323.

15 Q (803) -- go ahead.

16 A 238-6323.

17 Q 6323. And that is still your number, right?

18 A Yes, sir.

19 Q You talk to Mr. James Morgan quite a bit, don't
20 you?

21 A Yes, sir.

22 Q As a matter of fact, sir, you have been calling
23 Mr. Morgan probably for, what, almost every other
24 day for a long period of time? Y'all talk a lot?

25 A A lot, yes, sir. I mean, I wouldn't say every

1 other day, probably was more like probably every
2 day sometimes.

3 Q Do you have any explanation why every time you
4 speak to Mr. Morgan that he calls a betting line
5 service after he gets off the phone with you?
6 Could you explain why that is?

7 A No, sir. That's Mr. Morgan's issue, not mine.

8 Q Well, you know he is a bookie, right?

9 A No, sir, I do not know that.

10 Q Sir, you had said -- I believe your testimony was
11 that he was continually getting excuses is what he
12 told you? What was the word you said over and over
13 again? That Bryan was talking about getting his
14 money and Brett would give him excuses?

15 A Yes, continually giving him excuses as to why he
16 could not pay.

17 Q Continually, continually. So y'all talked about
18 this quite a bit, didn't you?

19 A When somebody owes you money for a year and a half,
20 two years, yes, sir.

21 Q All right. And he -- as a matter of fact, sir,
22 would you describe his desire to get his money from
23 Mr. Parker that week as an obsession?

24 A I don't think it would be an obsession. In fact,
25 when he and I talked, it was more of a matter of

1 relief on that Friday, like finally, you know, this
2 guy is going to finally pay me.

3 Q Did he discuss with you what type of financial
4 difficulty he was in at that moment when this
5 happened?

6 A There was some credit card debts, and that was
7 about it, sir.

8 Q Well, do you consider between 20 and \$25,000 in
9 credit card debt to be an insubstantial amount of
10 money?

11 A I never said it was substantial. You know, I
12 don't -- I said it was not insurmountable. It was
13 not something that he couldn't take and he couldn't
14 get a plan for, to be able to pay off.

15 Q He told you his wife had gotten him in financial
16 difficulty again, didn't he?

17 A Yes, sir. I testified to that, yes, sir.

18 Q And he specifically said that to you, didn't he?

19 A Yes, sir.

20 Q Okay. Everywhere he went he had that bag with him,
21 though? Isn't that what you said?

22 A No, that's not what I said.

23 Q Tell me what you said.

24 A I said every day when he would come into work, he
25 had his workout bag. That was his gym bag. He had

1 his workout clothes in there. He had his -- you
2 know, a change of clothes in there.

3 Then on Fridays he would have probably shorts
4 and a T-shirt in there, I would imagine, because,
5 you know, that's the day that he would clean the
6 office.

7 Q Did you go through his bag?

8 A No, sir. He would leave it open on the floor, and
9 it is in plain view.

10 Q Okay. Are you aware that he was found deceased at
11 the scene of the Parkers' house with a 9-millimeter
12 pistol in his hand? Did you know that?

13 A That's a theory, yes, sir.

14 Q Okay. Well, did you know that his hand was also
15 covered in GSR? Do you know what GSR is?

16 A I would assume that would stand for gunpowder
17 residue. It could be like because he was trying to
18 block a shot of a .410 bullet coming at him.

19 Q Oh, you talked about that with the police, or what?

20 A No, sir, that has been in open court.

21 Q Right. Well --

22 A I mean, that's pretty plain. That's not anything
23 hidden. I have never talked with the Defense [sic]
24 about that.

25 Q Sir?

1 A Yes, sir.

2 Q If you are planning on going over and killing two
3 people with a pistol, you are not going to --

4 MS. SIMPSON: Objection, Your Honor. Calls
5 for speculation.

6 MR. WHITLARK: He claims that he would have
7 known if he had a gun, Your Honor.

8 THE COURT: Hold on one second. What is the
9 question again?

10 MR. WHITLARK: The question is -- I'll
11 rephrase the question, Your Honor. I'll withdraw
12 that question.

13 THE COURT: All right.

14 BY MR. WHITLARK:

15 Q If you were planning on killing two people, you
16 wouldn't tell anybody you had a pistol, would you?

17 A I would never do it because it would be totally out
18 of character, just like it was out of Cap's
19 character.

20 Q Sir, it's also out of character for him to miss
21 work, right? But he did miss four days that week,
22 didn't he?

23 A Two were planned. They were on the leave plan that
24 he was going to meet an individual friend of his in
25 Myrtle Beach with his wife, Cindy.

1 Q Sir, you didn't actually see him, did you? You
2 didn't see him during those four days, did you?

3 A No, sir.

4 Q And the only thing he talked about when he did talk
5 to you was about getting his money from Brett
6 Parker, right?

7 A No, sir. No, sir. We talked about the fantasy
8 baseball league. We talked about me picking up his
9 check and meeting him out at 3:30.

10 And then the initial phone call was, Yes, you
11 know, I thought you were Brett when he called --
12 when I called him.

13 Q Uh-huh.

14 MR. WHITLARK: Beg the Court's indulgence.

15 (Pause.)

16 BY MR. WHITLARK:

17 Q Did Bryan Capnerhurst tell you that he thought that
18 Brett Parker had maybe 80 to \$100,000 in his safe?

19 A No, sir.

20 Q Did he ever talk to you about Brett Parker's safe?

21 A No, sir. That was an area that he did not go. He
22 never went in there out of respect to Brett and
23 Brett's privacy of what's behind a wall is behind a
24 wall.

25 Q Okay. Well, Bryan Capnerhurst did gamble, didn't

1 he, sir?

2 A Yes, sir.

3 Q And so did you?

4 A Yes, sir. I testified to that now, I believe this
5 is the third time I've said that.

6 Q And Bryan Capnerhurst never mentioned a single word
7 to you that Brett Parker told him to bring that gym
8 bag with him, did he?

9 A That day, no. No, I don't think so.

10 Q He didn't tell you that, did he?

11 A Not in the short amount of time I talked to him
12 that morning.

13 Q Okay. The bag he always had --

14 A I talked to him that one time that day, sir.

15 Q It was the bag he always had with him, isn't it?

16 A The bag that he carried with him to change clothes
17 in and that he always -- his usual gym bag, yes.
18 Yes, sir.

19 MR. WHITLARK: No further questions, Your
20 Honor.

21 THE COURT: Yes, ma'am?

22 MS. SIMPSON: Nothing further from the State,
23 Your Honor.

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

25 THE WITNESS: Thank you.

1 (Witness steps down.)

2 THE COURT: All right. I think we have -- all
3 of the jurors may have had a bathroom break. We
4 have not. We've been in here working continuously.
5 We're going to take about a ten minute break. Then
6 I'm guessing we'll stop for lunch around 1:00
7 o'clock.

8 MR. WHITLARK: May I approach the bench, Your
9 Honor?

10 THE COURT: We'll take about a ten minute
11 break.

12 THE BAILIFF: Remain seated.

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

15 (WHEREUPON, a bench conference was
16 held.)

17 THE BAILIFF: Quiet. The judge is still on
18 the bench.

19 (WHEREUPON, a break was taken.)

20 THE COURT: Let me ask you all to hold it
21 down. There is another trial going on right
22 next-door to us. So when we leave in and out of
23 this courtroom, y'all need to hold it down so we
24 will not disturb them.

25 Also, if you could hold the laughter down. I

1 know some things some people may try or attempt to
2 make a joke, or something, but try to hold the
3 laughter down.

4 But there is a courtroom next-door. So if you
5 can hold it down so we will not disturb them, that
6 would be great, as far as entering and leaving.

7 You can bring the jury in.

8 (WHEREUPON, the jury came into open
9 court at 12:34 p.m.)

10 THE BAILIFF: The jury panel is seated, Judge,
11 Your Honor.

12 THE COURT: Ladies and gentlemen of the jury,
13 we'll continue with the State's case. I will ask
14 the State to call their next witness.

15 MS. WALKER: Your Honor, the State calls Britt
16 Jordan.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, and raise your right hand, please.

20 (Witness complies.)

21 THE CLERK: Do you swear or affirm the
22 testimony you are about to give in this case will
23 be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Have a seat in the witness box.

2 (Witness complies.)

3 THE CLERK: State your name for the
4 record. Spell your last name, please.

5 THE WITNESS: Britt Jordan, J-O-R-D-A-N.

6 BRITT JORDAN,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. WALKER:

10 Q Mr. Jordan, where are you from?

11 A Columbia.

12 Q And how long have you lived here?

13 A All my life.

14 Q Do you work?

15 A I do.

16 Q What do you do for a living?

17 A I have a liquor store.

18 Q Where is your liquor store?

19 A Prosperity.

20 Q Do you know the Defendant?

21 A I do.

22 Q How long have you known him?

23 A A long time, more than 20 years probably.

24 Q Are you guys -- do you consider that y'all have a
25 close relationship?

- 1 A Not now, but we used to be good friends.
- 2 Q When did y'all's relationship change?
- 3 A The day before all this happened. I probably
- 4 haven't talked to him since then.
- 5 Q You haven't talked to him since then?
- 6 A Huh-uh.
- 7 Q The last time you --
- 8 A Well, no, I take that back. I have talked to him
- 9 since then. I haven't talked to him since he was
- 10 arrested. I'm sorry.
- 11 Q Before the murders happened, when was the last time
- 12 you talked to him?
- 13 A The day before.
- 14 Q The day before?
- 15 A Uh-huh.
- 16 Q What did y'all talk about?
- 17 A I loaned him some money.
- 18 Q How much money did you loan the Defendant in the
- 19 days prior to this happening?
- 20 A Five thousand dollars.
- 21 Q Why did you loan him \$5,000?
- 22 A Because he called and asked if I would loan it to
- 23 him for one of his friends.
- 24 Q He had a friend that needed the \$5,000?
- 25 A Right. And I didn't have any problem with loaning

1 it to him.

2 Q Did he say he was going to pay you back?

3 A It would have been on the 12th every month for
4 \$1,000 for seven months.

5 Q If you loaned him \$5,000, how much money was he
6 going to pay you back?

7 A Seven thousand.

8 Q And what were the installments for that payback
9 plan?

10 A A thousand dollars a month on the 12th of every
11 month.

12 Q And this was -- if the murders happened on a
13 Friday, what day was this?

14 A Thursday.

15 Q Do you remember giving a statement to law
16 enforcement?

17 A I do.

18 Q Would it help to refresh your memory on kind of the
19 timeline?

20 A I remember pretty good, I think.

21 Q What day did you loan the Defendant the money?

22 A On a Thursday, the 12th of April --

23 Q Do you remember telling --

24 A -- 2012..

25 Q And this is just a small detail, but do you

1 remember telling law enforcement that it was that
2 Wednesday?

3 A No, I didn't tell them that. He called me on
4 Wednesday.

5 Q He called you on Wednesday?

6 A Right.

7 Q And you loaned it to him that Thursday?

8 A That's right.

9 Q And he was going to pay you back in \$1,000
10 installments?

11 A That's correct.

12 Q How much money of that has he paid you back?

13 A None.

14 Q Did he tell you who the friend was that he was
15 going to give that money to?

16 A No, he did not.

17 Q Did he tell you what that friend needed the money
18 for?

19 A His business.

20 Q For his business?

21 A Uh-huh.

22 Q Did you ask any more in-depth questions about where
23 your money was going?

24 A Not really, because I trusted him. I wasn't
25 concerned about it.

1 Q You trusted Brett to pay you back?

2 A Very much so, yes.

3 Q And how did you give Brett the money? Was it a
4 check or cash?

5 A It was cash.

6 Q And to date you have received none of that money
7 back?

8 A No.

9 MS. WALKER: No further questions.

10 THE COURT: All right. Yes, sir?

11 MR. WHITLARK: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. WHITLARK:

16 Q Of course, you didn't have him sign a loan
17 agreement or anything also, did you, Mr. Jordan?

18 A No, I did not.

19 Q Because you knew he was good for that money, didn't
20 you?

21 A In my heart, yes, I did.

22 Q Okay. Of course, Brett Parker didn't know his wife
23 was going to be murdered the next day, did he?

24 A I don't know what he -- no.

25 Q When you spoke to him -- you have spoken to him

1 since this happened, haven't you?

2 A Oh, yes.

3 Q Okay. And he has told you over and over again, he
4 has told you, I didn't murder my wife, didn't he?

5 A Yes, he has told me that.

6 Q And he also told you that all these rumors, and
7 everything, a lot of people were going to be -- you
8 know, having to give him apologies when this was
9 over, didn't he, sir?

10 A He did.

11 MR. WHITLARK: No further questions, Your
12 Honor.

13 MS. WALKER: No questions, Your Honor.

14 THE COURT: All right, sir. You may step
15 down.

16 (Witness steps down.)

17 THE COURT: Any objection to this witness
18 being excused?

19 MR. WHITLARK: None from the Defense, Your
20 Honor.

21 THE COURT: All right. Sir, you are free to
22 leave.

23 (Witness excused.)

24 THE COURT: Call your next witness.

25 MS. WALKER: Your Honor, the State calls Alvin

1 Kelley.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, please.

5 (Witness complies.)

6 THE CLERK: Do you swear or affirm the
7 testimony you are about to give in this case will
8 be the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Have a seat in the witness box.

12 (Witness complies.)

13 THE CLERK: State your full name for the
14 record. And spell your last name, please.

15 THE WITNESS: Leonard Alvin Kelley, Jr.

16 K-E-L-L-E-Y.

17 L. ALVIN KELLEY, JR.,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. WALKER:

21 Q Mr. Kelley, where are you from?

22 A I currently live in Walhalla, South Carolina. I
23 lived 25 years in Lexington.

24 Q What do you do for a living?

25 A I'm athletic director for Lexington County

1 Recreation Commission.

2 Q Do you know Jim Headley that testified earlier?

3 A Yes, I do.

4 Q And how do y'all know each other?

5 A I have been employed with the Recreation Commission
6 for 31 years. Just five years ago I moved my
7 family to Walhalla. I commute weekly. But I have
8 known Jim pretty much those whole 31 years.

9 Q And did you know James Morgan?

10 A I have known James Morgan probably about 15 years.
11 Probably 15 years ago I was involved with a
12 rotisserie baseball league, fantasy league. That's
13 how I met him.

14 Q And, finally, did you know Bryan Capnerhurst?

15 A Yes, I did.

16 Q How did you know Bryan?

17 A Bryan started working with us August the 8th of
18 1988. That was his hire date. And I have known
19 him for 25 years. Not only as an employee, but as
20 a brother.

21 Q Did y'all have a close relationship?

22 A Yes, ma'am.

23 Q Before -- I want to take you back to April of last
24 year.

25 A Uh-huh.

1 Q In the week leading up to his murder, were y'all in
2 communication?

3 A Yes. One thing about Bryan and I, we -- he was --
4 I'm athletic director, he is assistant athletic
5 director. And we never took off without one of us
6 being at work. We have -- always have so much
7 going on at work that we try to work around each
8 other's schedule where one of us is always there.

9 That particular week, Bryan, I believe, may
10 have worked Monday. I really can't remember. But
11 the rest of the week he had planned to take off.

12 Q This was a planned vacation?

13 A Yes, ma'am.

14 Q Did you know where he was going?

15 A Going to Myrtle Beach to meet a childhood friend,
16 Keith Lang.

17 Q Was his wife going with him?

18 A Yes, Cindy was with him.

19 Q Okay. Go ahead.

20 A Bryan had probably more unused annual and sick
21 leave in our whole 300-employee commission, so I
22 believe he was entitled to some time off.

23 Q And he took a vacation with his wife that week?

24 A Yes, ma'am.

25 Q When he was on his way back from vacation, did you

1 speak with Bryan?

2 A Yes. He came back a day early. We always touched
3 base by phone because of the nature of our job.
4 And he called Thursday afternoon, I believe it was.
5 He and Cindy were riding back from Myrtle Beach.

6 In that conversation he said he had talked
7 with Mr. Jack Parker.

8 Q Well, let me ask you this.

9 A Okay.

10 Q Did you know about Bryan's other job with Brett?

11 A Yes.

12 Q Did you know what he did for Brett Parker?

13 A Yes.

14 Q And what was that?

15 A He was basically a glorified clerk for a bookie.

16 Q And what did his duties include? Did you know?

17 A Taking the bets over the telephone.

18 Q Okay. Go ahead. Now, you were talking about the
19 conversation you had when he was on his way back
20 from Myrtle Beach?

21 A He was on his way back from Myrtle Beach and he
22 touched base about work, and so forth.

23 And he said that he had had some conversations
24 with Jack Parker and that -- he said, I have got a
25 lot to tell you. It is a lot -- you know, I don't

1 have time over the phone right now. Plus, he was
2 not feeling good. He had the crud. But he said,
3 I'll touch base with you when I get back to work.
4 And basically said that if he didn't get paid from
5 Brett Parker that Mr. Jack Parker would pay him
6 himself. And if it didn't work out, that he would
7 employ him next year.

8 Q Was that the only time you spoke with him that
9 Thursday?

10 A Yes, that day, yes.

11 Q Going to the Friday morning, did you speak with
12 Bryan then?

13 A Yes. About 8:30 Friday morning -- I was out of
14 town basically refinancing my home loan, and I took
15 off. And it is very unusual for both of us to be
16 off at the same day. So we had a lot of issues at
17 work that we needed to discuss. So he called me at
18 8:30 a.m. and said that he had talked with Brett,
19 Brett was going to pay him, to come over for lunch
20 and eat lunch with Brett and Tammy.

21 Q He was to eat lunch with Brett and Tammy?

22 A Yes.

23 Q Go ahead.

24 A And said that he would have to be over -- he would
25 need to be over there around 12:00 or 12:30, I

1 think it was. And that when he got through that he
2 was planning on going back to work, 3:00 or 3:30,
3 and get his paycheck. And then he was also
4 planning to clean the office that night, and the
5 next morning go to Greenville to his daughter's
6 prom.

7 Q When he was speaking with you about going over to
8 Brett Parker's house --

9 A Uh-huh.

10 Q -- did he tell you whether or not Brett Parker ever
11 told him to bring anything with him?

12 A Yes, to bring a bag.

13 Q And this bag -- have you been in here for some of
14 the testimony?

15 A Oh, yes, I have been here the whole time.

16 Q Are you familiar with the gym bag?

17 A Yes.

18 Q How are you familiar with the gym bag?

19 A That is the bag that he brought to and from work
20 every day. And his workout clothes, cleaning
21 clothes, anything of that nature. He had one
22 particular spot in his office that we -- since I
23 have known him so long, we tend to learn each
24 other's little idiosyncrasies, I guess, but he
25 would lay the bag next to his window on the ground

- 1 on the floor wide open.
- 2 Q And how many times did you speak with Bryan that
- 3 Friday morning?
- 4 A Just once around 8:30.
- 5 Q There has been testimony about possible gambling on
- 6 Bryan's part. Did you know Bryan to be a gambler?
- 7 A He did years ago, but quit cold turkey.
- 8 Q And I think there has been testimony about
- 9 marijuana use on his part. Did you know anything
- 10 about that?
- 11 A He did it recreationally at his own home on the
- 12 lake.
- 13 Q Is that something he talked to you about?
- 14 A Occasionally. Not often.
- 15 Q What about a gun? Did you ever know Bryan
- 16 Capnerhurst to have a gun?
- 17 A Absolutely not.
- 18 Q Would that have been something y'all talked about?
- 19 A Yes.
- 20 Q He never mentioned Brett Parker giving him a gun?
- 21 A Absolutely not.
- 22 Q Were there plans for you and Brett to talk later
- 23 that -- I mean, sorry, you and Bryan to talk later
- 24 that day on Friday the 13th?
- 25 A Yes, sometime that afternoon. We always touched

1 base if both of us were out probably four to five,
2 six times a day.

3 Q Did you try to make -- did you try to call him
4 again?

5 A Yes, I did.

6 Q Of course those phone calls went unanswered?

7 A Correct.

8 Q How did you find out what had happened to Bryan?

9 A Cindy, his wife, had called me to see if I had
10 heard from him. And of course I had not. And so
11 she hung up and was going to call other people, I
12 guess.

13 And at that time I did not have my phone with
14 me, I had laid it down at my home, and I went back
15 to it and saw that Cindy had called and left a
16 message.

17 And she was very distraught on that message.
18 Couldn't actually make out anything. So I dialed
19 it back and got one of her brother-in-law -- one of
20 her brother-in-laws to answer, and he told me what
21 had happened.

22 Q Were you familiar with any debt that Bryan and his
23 wife may have had?

24 A Credit card debt.

25 Q Was that something he was open with you about?

1 A Yes. Actually it was beginning around \$25,000, but
2 he had actually worked it down to about \$19,000.

3 Q He had a plan in place to pay that debt?

4 A Yes, he did.

5 Q Was he working that plan?

6 A Yes.

7 Q You said that you knew that Bryan had a job with
8 Jack Parker if Brett didn't make good on his debt?

9 A That is what Bryan told me, yes.

10 MS. WALKER: Beg the Court's indulgence, Your
11 Honor.

12 (Pause.)

13 BY MS. WALKER:

14 Q The vehicle that Bryan Capnerhurst drove, was that
15 a county vehicle?

16 A Yes, ma'am.

17 Q Did y'all all have kind of the same custom with
18 regard to how you guys parked those vehicles?

19 A Absolutely. Another thing, that particular day he
20 did drive his county vehicle over there.
21 Occasionally he may have to do that, rather than go
22 home to Batesburg and drive all the way to Brett's
23 house. Probably a no-no, but, you know, any time
24 that any of us employees go out on recreation
25 business, we use a county vehicle. Occasionally if

1 we stop by a store or something of that nature on a
2 personal note, we were always very careful to park
3 it where the county tag would not be seen. Very
4 customary for us to do because occasionally people
5 call up, just like police at a doughnut shop, you
6 know. So we did that just to cover ourselves with
7 the public.

8 Q What about the keys?

9 A The keys, it was very customary at work to leave
10 our keys in the vehicle in the parking lot of our
11 Recreation Commission office.

12 MS. WALKER: No further questions.

13 THE COURT: All right. Please answer any
14 questions Mr. Whitlark may have.

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

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WHITLARK:

20 Q Mr. Kelley, I believe you just testified a minute
21 ago that Bryan Capnerhurst told you, I'm going to
22 take four days off this week, right?

23 A I believe so. It has been a year. It is hard to
24 remember. But he did take some time off, and sick
25 too.

1 Q Okay. Well, did he tell you that he was going to
2 take some time off and then he would be sick the
3 last two days?

4 A No. He was actually going to come back to work.

5 Q All right. I notice that you and the fellow that
6 worked with him, the gentleman that testified a
7 minute ago --

8 A Uh-huh.

9 Q -- now, y'all have both now just testified, have
10 you not, that, well, his gym bag was open; I mean,
11 he always had it open?

12 A Uh-huh.

13 Q That is after you had talks with the Solicitor's
14 Office about your testimony, right?

15 A No.

16 Q Oh, okay.

17 A As a matter of fact, I can tell you a little about
18 that.

19 Q Go ahead.

20 A About three years ago, I think Brett paid him
21 anywhere from \$6,000 to \$10,000, and that
22 particular gym bag is where he kept the money when
23 he got it from Brett. As a matter of fact, it was
24 laying in the spot that I described with it wide
25 open and I saw the money.

1 And he asked me what should I do, bury it?

2 Q Uh-huh. Did you -- that is the bag he always had
3 with him, wasn't it?

4 A The gym bag.

5 Q Uh-huh. Uh-huh. Did you also know -- did you know
6 that he was burning receipts up at his house,
7 gambling receipts? Were you aware of that?

8 A I was not aware of that.

9 Q Okay. And you had never seen any kind of problem
10 at all, not a single problem ever, between Bryan
11 Capnerhurst and Brett Parker, have you?

12 A I have never witnessed anything, no.

13 Q Okay. And he wasn't scared of Brett Parker, was
14 he?

15 A No.

16 Q Okay. Did you say it was all right to use county
17 vehicles to go off and do illegal activities? I
18 didn't understand that.

19 A No, I didn't say it was all right. I said it was
20 done.

21 Q Do you do it?

22 A I occasionally go to the store, grocery store, or
23 something of that nature.

24 Q Okay. Well, he wasn't going to a grocery store,
25 was he, sir?

1 A No. But he was also coming back to work. That is
2 why he drove his county vehicle.

3 Q Oh, he was coming back to work the day -- that day?

4 A Yes.

5 Q Okay.

6 A To get --

7 Q The day he called in sick, is that what you are
8 saying?

9 A Yes, to get his paycheck and also clean the office.
10 He was going to try to do that. Because if he
11 didn't do that, he didn't get paid that.

12 Q Well, Mr. Kelley, he talked incessantly about the
13 money that Brett Parker owed him, didn't he?

14 A I don't know about incessantly. He discussed it.

15 Q Did you know or are you aware that no DNA from
16 Brett Parker was ever found on that gym bag, even
17 though they checked? Did you know that?

18 A Well, possible.

19 Q And you can't state right now, as a fact, can you,
20 whether or not Bryan Capnerhurst had a 9-millimeter
21 Smith & Wesson inside that bag, can you?

22 A I can state it, yes. Ain't no way he had one.

23 Q Okay. Really? Did you check it that day? Did you
24 go through it and look inside of it?

25 A No.

1 Q Have you ever gone through his bag and looked
2 inside of it?

3 A At work, yes.

4 Q Oh, you do? You go through this bag?

5 A With his permission.

6 Q Okay.

7 A I have before.

8 Q What were you looking for?

9 A Whatever he needed me to get for him.

10 Q Okay.

11 A He said, look in my bag and get me this. I would
12 get it.

13 Q Okay. So the bag was -- now the bag was open. You
14 and Mr. Headley, y'all -- the bag was open. Y'all
15 didn't see a gun in there. And now you were going
16 through it and there wasn't a gun in there, right?

17 A I was talking about in the past. Not that day.

18 Q Uh-huh. That is my point, sir. That day you don't
19 know for a fact that he didn't have that gun inside
20 that bag that day, do you?

21 A I don't know that he did.

22 Q Or that he had that ammunition in there, did he?

23 A Don't know that he did.

24 MR. WHITLARK: No further questions, Your
25 Honor.

1 THE COURT: Anything else from the State?

2 MS. WALKER: Nothing further, Your Honor. May
3 the witness be excused?

4 THE COURT: All, sir, you may step down.

5 (Witness steps down.)

6 THE COURT: Any objection to this witness
7 being excused?

8 MR. WHITLARK: No, Your Honor.

9 (Witness excused.)

10 MS. WALKER: May we approach, Your Honor?

11 THE COURT: Yes, ma'am.

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

15 THE COURT: All right. Ladies and gentlemen
16 of the jury, at this time we'll go ahead and take
17 our lunch break. It's about 1:00 o'clock. I will
18 have you all return at 2:00 o'clock.

19 We'll take a shorter lunch today. If you all
20 could be back in the jury room at 2:00 o'clock.
21 All right. Thank you. Remember to keep your
22 badges on.

23 (WHEREUPON, the jury is excused for
24 lunch at 1:00 p.m.)

25 THE COURT: We will start back at

1 2:00 o'clock.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: Are you ready for the jurors?

4 Anything from the Defense before I bring them
5 in?

6 MR. WHITLARK: The Defense is ready, Your
7 Honor. Your Honor, I believe we made arrangements
8 to get Mr. Gunter back here on Wednesday. Is that
9 right?

10 THE COURT: She is working on it.

11 MS. McDUFFIE: Your Honor, he is just not
12 going to be transported back. He is just going to
13 remain here so we don't have to do another federal
14 writ and have it take two weeks.

15 THE COURT: We will put him on the transport
16 list.

17 MS. McDUFFIE: Correct.

18 MR. WHITLARK: That's fine, Your Honor. Thank
19 you, Your Honor.

20 (WHEREUPON, the jury came into open
21 court at approximately 2:24 p.m.)

22 THE BAILIFF: The jury is all present, Judge,
23 Your Honor.

24 THE COURT: Thank you. You may call your next
25 witness.

1 MS. CAMPBELL: The State would call Britt
2 Dove.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you are about to give in this case will
9 be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness box.

13 (Witness complies.)

14 THE CLERK: State your full name for the
15 record, please.

16 THE WITNESS: My name is Britt Dove. First
17 spelling, B-R-I-T-T; last name D-O-V-E.

18 BRITT DOVE,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SIMPSON:

22 Q Agent Dove, where are you employed?

23 A I'm employed with the South Carolina Law
24 Enforcement Division in their Computer Crime
25 Center.

1 Q Okay. And what do you do there?

2 A In the Computer Crime Center I'm a special agent.
3 I'm assigned to do investigations, along with
4 forensic examinations of electronic items.

5 I do investigations dealing with the trading
6 of child pornography online, threats online,
7 harassment online, the solicitation of minors.
8 Pretty much anything involving online-type
9 investigations.

10 I also do the forensic examinations of
11 electronic items that are brought to us from either
12 our agencies or coming from our cases or coming
13 from the locals, whether it is a computer, a GPS
14 system, a cellphone, laptop, MP3 player, DVR type
15 system.

16 Q What exactly is computer forensics? Or what is
17 meant by that term?

18 A Computer forensics is a practice where we go in and
19 we try to extract information from an electronic
20 device.

21 The term computer forensics incorporates many
22 things. Any kind of electronic device we classify
23 under that. We'll go in and we'll take a forensic
24 image of computer. We'll go in and get an exact
25 duplicate of that image or that item.

1 And then once we do that, we go through that
2 item looking for information that may assist an
3 investigation or maybe retrieved-and-lost
4 information too.

5 Q Can you tell the jury a little bit about your
6 educational background and training.

7 A Yes. I have a bachelor of science degree in
8 criminal justice from the University of South
9 Carolina.

10 I have also been to the South Carolina Law
11 Enforcement Academy.

12 I am currently employed at SLED as a special
13 agent since June 2008 until present.

14 I am also an adjunct instructor with ITT
15 Technical College dealing in computer forensics,
16 examinations. Have been there for about two years
17 now.

18 Previous to that, I worked for the City of
19 West Columbia as an investigator for about four
20 years doing child abuse, elder abuse, and sexual
21 assault investigations.

22 Previous to that I worked for the Richland
23 County Sheriff's Department as a school resource
24 officer.

25 Along with the training I received through

1 them, multiple law enforcement training, I have
2 received other specialized training in computer
3 forensics and computer investigations.

4 I have attended a five-week class out in
5 Hoover, Alabama for the National Computer Forensic
6 Institute that is in conjunction with the Secret
7 Service.

8 I am also a member of the Secret Service South
9 Carolina Electronic Crime Task Force and the FBI
10 Cyber Working Group.

11 I received training from them also at the same
12 location in point of sales, compromises in computer
13 forensics. I received training from EnCase, which
14 is through Guidance Software, at their Level One
15 and Two.

16 I have also received advanced incident
17 handling for technical staff, this coming from
18 Carnegie Mellon University.

19 I also received the fundamentals in incident
20 handling from Carnegie Mellon.

21 I also attended the FBI Cart Image Scan
22 Systems, Versions 3 and 2.1 and 3.02(a) through the
23 FBI.

24 I have also attended Cybercop 101, Basic Data
25 Recovery and Acquisition, through the National

1 White Collar Crime Center.

2 I also received core skills for the
3 investigation of cellphone -- cellular telephones
4 through SEARCH.org.

5 I have attended many conferences with the
6 Cyber Technology Conference, Project Safe Childhood
7 Conference, the 2006 Children's Law Conference,
8 Electronic Law Enforcement Centers, and also assist
9 in training the basic investigations through the
10 South Carolina Criminal Justice Academy.

11 Q Agent Dove, with the enhancements in computer,
12 cellphone technology, and things of that nature,
13 has your field become more significant or developed
14 with respect to criminal investigations over time?

15 A Yes, it has. It seems like nowadays every event we
16 have, everybody has some kind of electronic device
17 involved, whether it is our cellphones that are
18 like smart phones, mini computers, or whether it is
19 GPS systems in the cars to help us find our way.

20 People use computers, cellphones, GPS for a
21 variety of things. Many schools now are using
22 tablets versus textbooks, which has brought a whole
23 new elements to things. We were dealing with
24 teenagers and the things they could do on a tablet,
25 which is a mini computer.

1 MS. SIMPSON: Your Honor, at this time I'd
2 like to offer Agent Dove as an expert in computer
3 forensics and analysis.

4 MR. WHITLARK: We would like to voir dire the
5 witness, please, Your Honor.

6 THE COURT: Yes, sir.

7 VOIR DIRE EXAMINATION

8 BY MR. WHITLARK:

9 Q It is Agent Dove?

10 A Yes, sir.

11 Q Hey. How are you doing?

12 Can you tell me, first of all, what is your
13 anticipated testimony? I mean, what subjects are
14 you going to be talking about today?

15 A I'm going to be speaking to the computer forensics,
16 the forensic examination that I conducted on an
17 item that was submitted to us, which is an iMac.

18 Q I mean, does it deal with gambling or --

19 A The case does involve gambling and everything they
20 asked for us to look for.

21 Q Okay. So it is what you found on these things?

22 A Yes, sir.

23 MR. WHITLARK: No objection, Your Honor.

24 THE COURT: All right, ladies and gentlemen of
25 the jury, Agent Dove will be entered as an expert

1 in the area of computer forensics to give his
2 opinion in that area.

3 Yes, ma'am.

4 MS. SIMPSON: Thank you, Your Honor.

5 DIRECT EXAMINATION CONTINUES

6 BY MS. WALKER:

7 Q Agent Dove, can you tell the jury a little bit
8 about the lab you work in and the equipment you
9 utilize?

10 A Yes, ma'am. We are located in the SLED Annex,
11 which is located in Columbia.

12 Inside our lab when -- I guess the easiest way
13 to start would be once something is brought to us.
14 When something is brought to us, what we do is we
15 meet the officer, whether it is an evidence officer
16 or a lead investigator, at our intake desk.

17 At that time they fill out forms for us
18 basically giving us a brief description of what
19 they are looking for, how the items might possibly
20 be used or contain information regarding that
21 crime.

22 Then we go through, we log it into our
23 evidence system. Either myself or one of our other
24 agents that work up there will log the evidence in,
25 place an evidence sticker on there, and then take

1 that, go to our lab and our evidence vault, and
2 scan it inside the evidence vault.

3 Myself and one other agent are the only two
4 that have access to our lab facility and also
5 access to our evidence vault facility.

6 Once we go into our evidence vault, we'll scan
7 it in, place it on the shelf.

8 At that time, whether it is myself or the
9 other agent that is going to be assigned to do
10 forensic imaging of the computer, we'll go into the
11 lab and to the vault, scan it out of the vault area
12 into the lab, and begin the forensic imaging
13 process.

14 Now, the forensic imaging process will hook
15 the computer up to a write blocker, whether it be a
16 hardware -- a piece of hardware equipment or
17 whether it be a piece of software on the computer,
18 and it will make a computer forensic image of it.
19 And that is going to be a bit-by-bit copy.

20 Probably the easiest way I can describe that
21 is, a lot of times people think it is marrying of a
22 hard drive, just making a copy of the hard drive,
23 but it is really not.

24 If you think about it, if you think about your
25 hands, if you hold your hand up as a computer in

1 front of the mirror, the only thing you are going
2 to see is the palm of your hands, because that is
3 what is facing the mirror and looking back at you.

4 If we make a forensic bit-by-bit copy, what we
5 do is we will take every piece of it, even what you
6 can see and what you can't see, like the back of
7 your hand, for instance. And that is the
8 difference when we do a forensic image of it.

9 Once that image is done, it is placed on a
10 server. The investigator that is going to handle
11 the examination is notified. And then at that time
12 they will begin the forensic process.

13 And in that process they will decide what
14 software will be best fitted for that case.

15 Now, our servers that we put the imaging on is
16 basically unhackable. And the reason I say that
17 is, it never touches the internet. It is
18 completely removed and contained inside the walls
19 of our organization. So it cannot be hacked from
20 the outside. So we know that the image that is
21 made and the image that is produced are the exact
22 same.

23 We also compare what is called an MD5 hash.
24 Basically it is a cryptic algorithm. It is a 128
25 bits in length, 32 -- if you think of the numbers

1 like a 32-bit number, it is produced at the
2 beginning of the process and reproduced at the end
3 of the process on a copy. And if those two match,
4 we know that it is an exact copy of what we started
5 with.

6 Q And when an item of evidence comes to you, is it --
7 and I guess contained in your lab -- can it be
8 altered or tampered with in any way?

9 A No. We never -- once we receive a piece of
10 evidence, we never turn that evidence back online
11 as far as the computers. We'll take and remove the
12 hard drive from the computer. And the way it gets
13 power is through the write blocker. Write blockers
14 will not allow us to write back to the computer, it
15 only allows us to read what is on the computer
16 itself. So we never cut it -- plug the cords back
17 in and power it up to extract that information.

18 Q Did you examine some items of evidence in this
19 case?

20 A Yes.

21 Q Tell the jury what those were.

22 A We were submitted two items of evidence in this
23 case, one of them being a laptop item with a Serial
24 Number R9-BZ6R1. It came with a power code and a
25 docking station.

1 We also submitted an Apple iMac. It is a
2 Model 1311 with a power cord, a wireless keyboard.
3 And that Serial Number was QP040157DAS.

4 Q Okay. And when you received those items, what did
5 you do?

6 A The items were -- we attempted to image -- make an
7 image of both items on there.

8 The first one, the laptop, it contained a
9 password on the hard drive.

10 When you place a password on your computer,
11 most people place it on the application level.
12 That is when you log into your profile so your kids
13 have a separate profile. You are logging in your
14 yours. So you put it on a document because you
15 don't want somebody to see what the document is.

16 Those can be bypassed with the imaging process
17 because you are grabbing all of the hard drive, not
18 just applications themselves, like Word or in
19 pictures.

20 When you place it on the hard drive, the hard
21 drive you can make an image of it, but you will not
22 be able to open it and look at it when you start to
23 examine it unless you can break that password.

24 That was presented with a password to me. And
25 we tried several variations of combinations of

1 things and were never able to get past that
2 password.

3 The only other way that we could find to get
4 past that password would cause us to alter the
5 system, and then it wouldn't have made it
6 principally sound for us to be able to look at it
7 and testify to what it had on the system.

8 So that item was never actually looked at
9 because of the hardware password.

10 Now, the Apple iMac, I opened it up. I used
11 Access Data, FTK, Forensic Tool Kit, and did a
12 forensic examination of that item.

13 Q And were you able -- so you were able to get an
14 image of that?

15 A Yes.

16 Q Did you subsequently learn who that computer
17 belonged to?

18 A Yes. According to what we found when we did the
19 imaging and the forensic examination of that, it
20 appeared to belong to a Brett Parker.

21 Q I'm going to show you what has been marked as
22 State's Exhibit 511. Do you recognize that?

23 A Yes, ma'am.

24 MR. WHITLARK: Your Honor, we don't have an
25 objection to this testimony on this piece of

1 evidence, but it is not all gambling. I don't
2 know -- I'd like to reserve the right to object,
3 depending on what they put up on --

4 THE COURT: Are you trying to enter it?

5 MS. SIMPSON: Yes, Your Honor, I was
6 attempting to enter it. It is the entire computer
7 download from Brett Parker's computer.

8 THE COURT: And the objection is?

9 MR. WHITLARK: Well, yes, Your Honor, I would
10 object because I don't know what part of this
11 content of this they are trying to put in.

12 MS. SIMPSON: Your Honor, so it is clear, all
13 of this was turned over. The download will contain
14 such as -- the images that Agent Dove collected. I
15 mean, that includes searches, passwords, online
16 gambling, things that the Defendant did with
17 respect to -- I believe there is a video download
18 from him as well. So it is everything that was
19 imaged from that computer.

20 MR. WHITLARK: Well, on that basis I would
21 object to it on that -- for that part of it,
22 because I don't think it is relevant. I guess we
23 would ask --

24 THE COURT: I guess you are objecting to some
25 of it. Some of it you are okay with it, but you --

1 are saying some of it you don't know how it is
2 relevant? And it is everything that --

3 MR. WHITLARK: Correct, Your Honor. I believe
4 that, you know, the gambling part of it, I mean, we
5 would stipulate to that, but I don't know what else
6 they are going to try to put in that is on the
7 thing, so I would reserve objection depending on
8 that. I mean, I can't agree to put the whole thing
9 in because of the content of it. It may have
10 spurious material.

11 THE COURT: Do you want to say something?

12 MS. SIMPSON: Your Honor, I think it is
13 relevant. It is the Defendant's computer in this
14 case. He repeatedly denied online gambling. We
15 discussed some of the marital issues as well. And
16 I know with respect to that there is some
17 information on this computer as well.

18 MR. WHITLARK: All right. Well, Your Honor,
19 on that basis we would make an objection as to
20 relevancy in the case.

21 THE COURT: All right. Ladies and gentlemen
22 of the jury, I am going to send you all out for a
23 second.

24 (WHEREUPON, the jury retires to the jury
25 room at 2:39 p.m.)

1 THE COURT: Okay. So I have a better
2 understanding as to what is on the computer, you
3 all -- is there a specific portion that you are
4 trying to get in, or are you trying to get the
5 entire computer in? Because I am sure if it is the
6 entire computer there is definitely stuff on there
7 that is not relevant. So the relevant stuff on
8 there --

9 MS. SIMPSON: But, Your Honor, there is, in
10 addition to the numerous -- and when it is shown it
11 will be a little more clear -- BETCC is one of
12 gambling websites.

13 THE COURT: Okay.

14 MS. SIMPSON: It shows where the Defendant has
15 accessed numerous, numerous, numerous times on
16 both -- on two separate accounts.

17 Additionally, Your Honor, it has certain
18 websites and searches, such as, How to Find a
19 Mistress, Discreet Affairs, and certain Facebook
20 pages that we would not go into, as well as
21 pornographic sites in front of the jury.

22 There is extensive -- I believe there is a URL
23 list and, Your Honor, it does contain, just so I am
24 not misrepresenting to the Court, a number of porn
25 sites that he visited.

1 THE COURT: Okay. So if you put the entire
2 computer in, the disk --

3 MS. SIMPSON: I will be happy to limit it to
4 the demonstrative purposes. I actually do have,
5 Your Honor, a visual aid which does not contain --
6 well, the Discreet Affairs and How to Find a
7 Mistress, those are posted, but depending on the
8 Court's ruling, basically I would submit that he
9 has opened the door throughout the cross-
10 examination and the testimony in this case with
11 respect to the marital issues. It is not a
12 specific person that I will be going into, but it
13 does contain the image of the Google search.

14 And in addition to that, I have put together
15 numerous -- the online BETCC gambling websites as
16 well.

17 THE COURT: But he is stipulating to that, is
18 that correct?

19 MR. WHITLARK: That's correct.

20 MS. SIMPSON: Your Honor, if I may, with
21 respect to the stipulation, I mean, the State is
22 not bound. Just because the Defense is willing to
23 stipulate to some piece of information does not
24 limit or restrict us with the presentation of our
25 case.

1 At the end of the day -- and I have heard
2 Defense counsel make this argument numerous times
3 about cumulative or all this evidence that the
4 State has. The reality is, we do have the burden
5 of proof, and they are contesting our evidence in
6 this case, so as far as the stipulation, I don't
7 think the State should be bound by that. I think
8 we're allowed to demonstrate the online gambling.

9 Your Honor, I'll be happy not to introduce the
10 entire computer download, but limit his testimony
11 and just not submit the actual download into
12 evidence as long as he is allowed to talk about
13 what he did. And I won't go into the pornographic
14 sites, or anything of that nature.

15 THE COURT: All right. So the pornography is
16 out.

17 MR. WHITLARK: That's fine. Your Honor, could
18 I briefly respond?

19 THE COURT: Yes, sir.

20 MR. WHITLARK: This is a murder case. And we
21 understand about the involvement of the gambling,
22 and even though we have fought it, we understand
23 the connection there. But the rest of this is
24 exactly what we've been saying the whole time about
25 this. He is a bad guy. He is going -- you know,

1 he is looking at naked girls, and things like --
2 you know, I mean, it just doesn't have any place
3 in -- this is a very serious matter, Your Honor.

4 And they keep talking about I opened the door.
5 I mean, their case is basically chock full of this
6 kind of stuff. That is what their case is
7 basically.

8 I mean, you know, as far as hard evidence, we
9 have talked to the lab people about what hard
10 evidence they have in this case.

11 This stuff is getting dangerously close to,
12 well, let's go ahead and assassinate his character
13 and, you know, he's a bad guy and he must have done
14 it. I mean, you know, that is basically what they
15 are saying.

16 MS. SIMPSON: And, Your Honor, basically the
17 Defense has presented the case in point. They are
18 contesting our evidence in this case. We should be
19 allowed to put up our evidence in this case. We
20 have already been limited with respect to the
21 affairs and specific individuals and introduction
22 of text messages, and things of that nature.

23 And, you know, all of this is evidence. And
24 it goes directly to motive. This is not something
25 we're putting out there to say he is a bad guy. I

1 mean, we are here for murder. And all of these
2 things go to our burden of proof and what we have
3 to prove in this case, especially considering their
4 defense and his argument.

5 THE COURT: Well, their defense is not that he
6 didn't have an affair or affairs. I don't know if
7 he will say affair or affairs. That is not -- I
8 mean, I think they acknowledge --

9 MS. SIMPSON: Well, they are basically in
10 their self-defense and with Bryan Capnerhurst
11 coming, basically they are saying he did not have a
12 motive to kill, things were fine, there was no way
13 he would kill, and then puts all of the motive off
14 onto Bryan Capnerhurst for the 20 he was in debt --
15 he was in debt -- but not that he was in debt from
16 online gambling. This is specifically Lanny
17 Gunter's website, BETCC.

18 THE COURT: Well, that is not an issue. He is
19 not objecting to that.

20 MS. SIMPSON: Well, maybe I am a little
21 unclear on exactly what he is or is not objecting
22 to.

23 THE COURT: He is objecting to the -- I think
24 you said that there is a URL where he went into
25 some site on how to cheat. I don't know. Am I

1 correct?

2 MR. WHITLARK: Yes, you are correct, Your
3 Honor.

4 THE COURT: He is not objecting to the
5 gambling, is that correct?

6 MR. WHITLARK: Well, I mean, I do -- I do
7 object to it on relevancy grounds, but, I mean, I
8 guess if there is a degree of objection, we know
9 that that is involved in the case. There is things
10 about that. But the rest of this is just -- let's
11 go see what he was looking at. He is looking at,
12 you know, pornography or, you know, how to cheat or
13 get a mistress or something.

14 I mean, Your Honor, I mean, it is just too
15 dangerous in a circumstantial case to allow it.

16 THE COURT: All right. I am going to allow
17 the testimony and the site, the BETCC, regarding
18 the gambling. The site on pornography, I don't see
19 how that is relevant here. And the stuff with the
20 adultery, I mean, I think y'all -- that has been --
21 it is already -- I mean, it is already in the
22 record. I mean, the text messages may not be in,
23 but I think that it has been made pretty clear by
24 you all and Mr. Whitlark that he was having an
25 adulterous affair, maybe one or more, I don't know.

1 So I don't know why it is necessary -- if it is
2 necessary to even get into those websites, but for
3 purposes of the gambling and the betting online,
4 and all of that stuff, it is admissible. The
5 pornography and other things are not. And you are
6 not going to enter the --

7 MS. SIMPSON: Disk.

8 THE COURT: Yes. Because, I mean, I don't
9 know, he may -- you know, if it is his computer,
10 there is all kind of stuff. He may look at the
11 newspaper. I mean, I'm guessing there is all kind
12 of stuff on there.

13 MS. SIMPSON: There is a substantial amount of
14 information.

15 THE COURT: Okay.

16 MS. SIMPSON: Just so we're clear and I'm
17 clear with the Court's ruling, we do still have the
18 demonstrative, but the only ones I will present to
19 the Court -- or to the jury would be from the
20 gambling website.

21 THE COURT: Yes.

22 MS. SIMPSON: Thank you, Your Honor.

23 THE COURT: All right.

24 MR. WHITLARK: Thank you.

25 THE COURT: We can bring them back in.

1 (WHEREUPON, the jury came into open
2 court at approximately 2:48 p.m.)

3 THE BAILIFF: The jury panel is present,
4 Judge, Your Honor.

5 THE COURT: Yes, ma'am.

6 DIRECT EXAMINATION CONTINUES

7 BY MS. SIMPSON:

8 Q Agent Dove, back to the Apple -- what was the
9 Apple -- what was the electronic item that belonged
10 to the Defendant?

11 A It was an Apple iMac, which is the large desktop
12 computer that Apple makes.

13 Q Okay. And tell the jury what your first step was
14 when you received that item.

15 A Once we received that item, we checked it in at our
16 intake area, had the investigator that brought it
17 to us fill out an evidence intake form with us.
18 They gave a brief description of the type of case
19 they had, information that they installed in the
20 device to see if it was present. It was logged
21 into our evidence file by myself. It was taken to
22 our lab and I scanned it and placed it into the
23 evidence vault.

24 That same day, which was I believe the 17th of
25 April, 2012, it was scanned out of our evidence

1 vault into the lab area to be started for a
2 forensic image of it.

3 The item was placed into target disk mode,
4 which is the way that Apple has designed where you
5 can take it and track the information and make a
6 forensic copy without actually having to take Apple
7 completely apart due to a lot of proprietary
8 things they have on there like some of their screws
9 and some of the ways they hook up the hard drives
10 in there.

11 Q And was that done in this case?

12 A Yes.

13 Q You were able to make a forensic copy?

14 A Yes, ma'am, it was. That copy was made. That copy
15 was placed in a folder on our server for myself.
16 Then I began to process the computer, began to
17 image it, and began the process to start the
18 forensic examination.

19 Q Okay. And when you start a forensic examination as
20 you did in this case, what exactly are you looking
21 for trying to do?

22 A Many times it depends on the type of case. One of
23 the things they asked about in this case were some
24 images related to gambling, some financial records,
25 and some other web history and web searches.

1 What I did, and probably the quickest way that
2 I do in most cases, I'll begin with the images.
3 I'll go through, I'll set it up and start looking
4 for how many pictures I see on the computer.

5 Now, pictures on the computer, they are saved
6 in many ways.

7 One way can be you can right click and do a
8 "save as" and save it yourself.

9 Another way is you hook your camera up and
10 import the information.

11 Another way to get it is, when you go to a
12 website, that website puts it into cache history.
13 It will sit there and take a snapshot many times of
14 what you are looking at, whether it is pop-up
15 pictures, like ads, whether it is thumbnails, if
16 you are looking on different places, or whether it
17 is the page you are actually looking at.

18 I'll go through and I'll start looking through
19 those type pictures, seeing if I find anything that
20 is relevant.

21 And then at that point, once I find that, I'll
22 take that and I'll do what is called a bookmark,
23 which I use those, the bookmarks, to build a final
24 report on.

25 Q And so you physically look at those files which are

1 developed from -- or the images that are developed
2 from your searches?

3 A Yes, ma'am. I go through and look at all the
4 images that the computer is able to pull back and
5 retrieve.

6 I go through, sometimes it can number in the
7 hundred thousands. I have had them go as high as
8 six hundred, seven hundred thousand in just one
9 computer.

10 Many times it depends on what the person does
11 with a computer, how big the hard drive is, if they
12 are on the web a lot looking at stuff, if they are
13 taking a lot of photos.

14 For instance, even with an iPhone, for
15 example. We have had them with 40,000 images on
16 just an iPhone before.

17 So -- but we physically go through and look at
18 all those images to verify if it is anything that
19 is relevant to the case or if it is any contraband
20 or something illegal, such as child pornography, or
21 something.

22 Q And, again, can that image or information be
23 tampered or altered in any way?

24 A No, ma'am. Once we get an image of it -- once I
25 have the image and it is placed in my folder, I go

1 in and I do not work with the original piece of
2 evidence anymore. The original piece of evidence
3 is returned to the evidence lab, and I work off a
4 copy of that evidence, which is the forensic image.

5 Once we set that up, the software we use,
6 whether it is through Guidance Software, EnCase, or
7 in this case through Access Data with the Forensic
8 Tool Kit, it has built-in write blockers even
9 inside that software where we can't change the copy
10 itself.

11 Even if I were to go in and try to mess up and
12 hit a button or something, once you close it out
13 and you are working off that forensic image still,
14 you are not working off of what you saved out, you
15 can only save out your reports to it.

16 Q And in this case, what -- and did you actually meet
17 with the investigator, or was it just on that
18 intake form?

19 A I met with the investigator when he brought in the
20 computers to us and filled out the intake form at
21 that period.

22 Q Okay. And primarily, I guess, what would be the
23 bulk of the type of information that you were
24 looking for?

25 A Usually we will look for anything that they think

1 is relevant to the case.

2 In this case one of the things they asked for
3 were gambling and web history, photos relating to
4 that. So in that aspect, that was one of the
5 primary things we were looking for, and looking for
6 financial records to see if I found anything such
7 as checking account information or spreadsheets, or
8 anything along that line.

9 Q And did you in fact find any of that type of
10 information on the Defendant's computer?

11 A Yes, ma'am, I did. What I found on there were
12 thousands of images that appeared to come from
13 betting websites. One of the websites in
14 particular was called BETCC--B-E-T-C-C--.COM.

15 I found log-in pages with user identification
16 as far as the log-in number that the user had. I
17 also found where passwords were being entered.

18 I also found images inside that website where
19 it showed games that were being bet on,
20 professional and college games.

21 It also showed what appeared to be money
22 gained, money lost, and how much was available to
23 bet.

24 Q And when a person attempts to, I guess, delete
25 something, is it necessarily deleted from the hard

1 drive? And I am probably using the wrong term, but
2 describe how something is deleted or maybe removed
3 in the computer.

4 A Many times when you delete something -- some people
5 think if you delete something it goes to your
6 recycling bin or the trash can on your computer, if
7 you delete it out there it is gone.

8 Actually it is not. What happens, the
9 computer has allocated an unallocated space. That
10 item, once you delete it, goes from the allocated
11 space to the unallocated space.

12 The best example I can think of to give would
13 be, if you think about a library, you used to have
14 to go to the library and you pull out a card
15 catalog to find the book. You pull out that
16 drawer, you would look through there for the book
17 you want, you look at the card. It may say it is
18 on Row 40, Section 4, Shelf 3. That is how you
19 know where to go get it.

20 The computer works in the same kind of
21 fashion. You click on, you want a picture or
22 something or document, it knows it, it looks
23 through the file tables, knows where to go find
24 that out on the hard drive.

25 When you delete something, all that happens

1 is, you go in just like the card catalog. You pull
2 it out, you pull that card out for that book, you
3 would rip it up, throw it away. The book is still
4 on the shelf, on the island, the same section, just
5 like your item is on the computer hard drive. It
6 is still there, but when you go to look for it in
7 the card catalog or in the file table, you can't
8 find it. You think it is not there.

9 And that is what the user sees. They look at
10 it and they think it is gone, it is not there,
11 when actually it is still in the hard drive in that
12 location until it needs that space.

13 And then once it needs that space, it will go
14 and take that book off the shelf, throw it away,
15 and then you put in the new book there.

16 Q So just because the Defendant may have deleted
17 something from his history doesn't necessarily mean
18 that it was deleted from the computer itself?

19 A Correct. It will stay there in that space on the
20 hard drive until the computer needs that space to
21 save something else.

22 And then once it needs that space, then it
23 will go in and overwrite the space and use it.

24 Q And these images -- we're going to go through a few
25 of them now.

1 MS. SIMPSON: Beg the Court's indulgence for a
2 few moments.

3 (Pause.)

4 MS. SIMPSON: Your Honor, permission for the
5 witness to step down?

6 THE COURT: Yes, ma'am.

7 (Witness steps down.)

8 BY MS. SIMPSON:

9 Q Agent Dove, now, this is -- tell us what this is.

10 A This is one of the images that I found on the
11 computer. This one comes out of the cache history.

12 When you look on the internet and you click on
13 a web page or you are looking at something, whether
14 it is a news article or whether it is -- you are
15 shopping for a new jacket for winter, a lot of
16 times it will capture that and put it into the
17 cache history. That way the computer knows if you
18 click on that site again how to go back to it
19 faster.

20 Q Okay. And did you learn what website this
21 information was from?

22 A Yes. This came from BETCC. It was one of the
23 websites I found dealing with the gambling aspect
24 on this case.

25 You can see when you look at it, it has the

1 welcome, 7705, right up here. And I found
2 corresponding pages that actually lay out the web
3 page that say BETCC on it that have that same
4 number 7705 on it.

5 Q And what was -- I guess as a -- for example -- and
6 these are only a few of what you actually found,
7 right?

8 A Yes, ma'am. I found thousands of them and just
9 took a sampling of the ones that I found.

10 Q And, again, is this the corresponding page from
11 the --

12 A Yes.

13 Q -- BETCC website?

14 A Yes. And you can see up here it has got -- it is a
15 little fuzzy on this one, and I apologize for that.
16 It is 7705 right up here. The money amount right
17 here, I believe that is \$56,000, also corresponds
18 to the previous page.

19 And a lot of times when you are looking at a
20 web page, like if you go to your bank, for
21 instance, and you click on the beginning of it and
22 then you go from your checking account to check
23 your savings account, it will lay it out in order
24 because you are clicking one to the next.

25 Q And what is this?

1 A This was another image that I found on here. The
2 number here, 7705, you can see where somebody has
3 typed in their password, and that would be one of
4 the entry pages into the site.

5 Q And I apologize. I am not really savvy.

6 And, again, we have the 7705 information.
7 What is the current balance as best you can see?
8 It is a little blurry on that one.

9 A Let me step back over here and see if I can see.
10 It looks like the current balance is going to be
11 negative eighty-three thousand -- eighty-three --
12 eight thousand --

13 Q That is last week's balance?

14 A Yes, that is last week's balance. So you have got
15 a current balance here. It looks like it is going
16 to be approximately \$102,500 negative, because I
17 believe that is going to be a decimal and a cent
18 sign there.

19 Then you have the beginning of the week
20 balance. It is going to be -- I can't tell if that
21 is the negative \$83,000 or \$93,000 there.

22 And then you have an available amount that is
23 available to bet here.

24 You can also see where it breaks it down into
25 sports, casino, and horses, and shows the pending

1 amount that has been bet and each day of the week
2 what was bet and the negatives or the loss are the
3 ones -- and it has a total amount for that week.

4 Q And so 7705 can potentially bet on sports, horses,
5 and casino under this website?

6 A Yes, ma'am.

7 Q Okay. Now, did you learn of another log-in that
8 was used on this computer?

9 A Yes, ma'am. When I was looking through the images,
10 I found another log-in. It was a 7778 log-in that
11 I went through and found.

12 I also found pages similar to the one that was
13 just up where you can see dollar amounts from days
14 of the week, whoever won or lost with that.

15 Also, too, when you go through and look, you
16 can go through and see where there is password
17 logged into it to able to access it.

18 And there is also, besides this page here
19 showing the 7708, I found corresponding pages for
20 the main website where it actually showed the
21 different games and things that were bet on that
22 week.

23 Q Okay. And on this one, what log-in did he have?

24 A This one is 7778.

25 Q And it looks -- where are the bets being placed on

1 this 7778?

2 A It looks like you have some pending bets on this
3 one are in sports. You have some bet on Monday.
4 You have some negative. It appears to be the
5 casino on Monday. And then some sports bets on
6 Monday. Tuesday are sports and casino. The same
7 with Wednesday, Thursday, Friday, and Saturday. It
8 doesn't appear that anything is on Sunday bet, but
9 it does appear that this site is being bet for the
10 casino, playing casino games, and also sporting
11 events.

12 Q And, again, are these the corresponding, I guess,
13 games with the lines on them and spreads?

14 A Yes. And this would be one of the corresponding
15 pages. This one is actually going to be
16 corresponding to the 7705, which you can see where
17 it lays it out on here. This one is the NBA
18 regular season where it has the different lines and
19 the bets.

20 I also found with some of them where once the
21 bet was made, if they lost, it was highlighted in
22 red. If they won, it would highlight it in green
23 on sporting events.

24 Q And then what is this page?

25 A This was one of other pages on the website where

1 you could bet on racing for different tracks and
2 different horses.

3 Q So this log-in, the 7705, and the 7778, were those
4 log-ins betting on different types of things
5 frequently?

6 A Yes, ma'am, they were.

7 Q To include sports, horses, and casino games?

8 A And casino.

9 Q And this is the main website?

10 A Yes, ma'am, that would be the main website. You
11 can see where it has got the BETCC on it. Up here
12 would be where you would log-in, user name and
13 password.

14 Q And you can also see -- I'm not going to flash this
15 up, but like the searches, is there a way to tell
16 where a person goes frequently or what searches
17 they do?

18 A Yes, ma'am. A lot of times what you'll have with
19 an Apple computer, it lays it out very nicely, they
20 have what is called a key list, or basically a
21 property list. It is how they design the software
22 and the programs and Apple designed their items.

23 What it will do is it will have a top site
24 section. When you go to a site over and over again
25 or you save the site as a bookmark, a lot of times

1 it will add those sites in there, because then what
2 happens is the computer, once you click on that, it
3 wants to start auto-filling in. Think about when
4 you Google something and it starts auto-filling in
5 what the rest of the word may be if you go there a
6 lot. It is going to save it so that you can go
7 there a lot faster for you. It speeds up the
8 process and doesn't slow it down.

9 Q And on the searches for the Defendant, did you also
10 find -- what other, I guess, gambling or line-
11 related websites did you find?

12 A I found other ones dealing with sports and odds. I
13 believe one of them was DONSBETS. There was other
14 various websites. I found Google searches dealing
15 with sports and odds, things relating to gambling
16 kind of websites. And I was able to find the
17 Google page.

18 Q Thank you.
19 (Witness returns to witness stand.)

20 Q And were those -- was that the extent of the
21 investigation that you did in this case?

22 A Yes, ma'am. The extent of it was just doing the
23 forensic analysis of that iMac computer.

24 Q Thank you.

25 MS. SIMPSON: No further questions, Your

1 Honor.

2 THE COURT: All right.

3 Yes, sir, Mr. Fedor.

4 CROSS-EXAMINATION

5 BY MR. FEDOR:

6 Q Sir, are you aware this is a murder indictment?

7 A Yes, sir, I am.

8 Q Murder wasn't computed and worked over by this
9 computer system, was it?

10 A What I found did not show a videotape of the murder
11 occurring, no, sir.

12 Q You have told us everything in the world a layman
13 wants to know about computers. You have told us
14 absolutely nothing about this murder case, have
15 you?

16 A I have discussed --

17 MS. SIMPSON: Objection, Your Honor.

18 MR. FEDOR: It is cross-examination, Your
19 Honor.

20 THE COURT: What is the objection?

21 MS. SIMPSON: You know absolutely nothing
22 about this murder case. Especially with Your
23 Honor's limited rulings.

24 THE COURT: He said, you told me nothing --
25 you told us --

1 MS. SIMPSON: Well, then where is the
2 question?

3 THE COURT: Let me see y'all. Let me see
4 y'all.

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

8 THE COURT: Please rephrase the question.

9 BY MR. FEDOR:

10 Q Now, you examined Brett Parker's computers?

11 A I examined the computer presented to me that had
12 Brett Parker's information in it, yes, sir.

13 Q Did you examine Bryan Capnerhurst's computer?

14 A No, sir. That was never presented to our unit to
15 examine.

16 Q Have they ever given to you any information about
17 his gambling?

18 A No, sir. We were just presented information
19 regarding this computer and the items they were
20 looking for on this computer.

21 Q Items they gave you to examine were taken from
22 Brett Parker's house in open view to everybody,
23 were they not?

24 A I don't know. They were presented to us. They
25 were brought to us at the lab. We never went to

1 the scene, so I don't know where they were
2 retrieved from. I just know the investigator
3 brought them and logged them in with myself at our
4 unit.

5 Q There were thousands of entries, as you said, by
6 Bryan -- by Brett Parker's computer: Horses,
7 casinos, betting on football, none of which had to
8 do with anything charged in this indictment for
9 murder, did it?

10 A I don't know what the indictment read. I know what
11 I retrieved regarding the information on the
12 computer. I'm not sure of the indictment. I don't
13 have intimate details of the investigation.

14 Q If I gave you the indictment, would you see that it
15 had nothing to do with anything you have mentioned
16 today?

17 A Quite possibly. If you give me the indictment I
18 would read it and look at it, but, like you said, I
19 examined the computers that were presented to us.

20 Q You had log-ins from seven different numbers. None
21 of those numbers had anything to do with murder,
22 did they?

23 A I'm sorry, I don't understand your question, the
24 log-ins.

25 Q 7707, 7708 were your figures you put up here. None

1 of them had anything to do with murder, did they?

2 A The two log-ins I found, the 7705 and 7708, were in
3 regards to betting and money loss and accounts on
4 betting websites.

5 Q So the last hour that you spent on the stand
6 reciting to us the wonders of computers have
7 nothing to do with the murder case, do they?

8 A I don't know what all goes into the motive of a
9 murder or what goes into the background and
10 intimacy of this investigation. I don't know if it
11 does or not.

12 Q This would be a great bit of testimony if a man
13 were charged with gambling, would it not, sir?

14 A I would think this would be better if it was
15 charged with gambling, yes.

16 Q And it has nothing to do with a man charged with
17 murder?

18 A Unless it goes to some factor in the murder such as
19 motive or a reason.

20 Q Unless he hit him on the head with a computer, it
21 is not a murder case, is it?

22 A I wouldn't necessarily say he would have to hit him
23 on the head with a computer to be a murder case,
24 no, sir.

25 Q Well, it might be the same way as this information

1 you have given us has anything to do with a murder
2 case, isn't that true?

3 A Like I stated, I would think that if it goes to
4 motive or if it goes to a reason why somebody would
5 commit the murder, then I think it would be
6 relevant.

7 Q Is the evidence you have given any evidence at all
8 showing motive?

9 MS. SIMPSON: Objection, Your Honor. Asked
10 and answered.

11 MR. FEDOR: Disregard it.

12 THE COURT: All right, thank you.

13 MS. SIMPSON: No further questions, Your
14 Honor.

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

16 (Witness steps down.)

17 MS. SIMPSON: May this witness be excused?

18 THE COURT: Yes, ma'am. Any objection to this
19 witness being excused?

20 MR. WHITLARK: No objection from the Defense,
21 Your Honor.

22 THE COURT: All right, sir, you are free to
23 leave.

24 (Witness excused.)

25 THE COURT: Call your next witness.

1 MS. WALKER: Thank you, Your Honor.

2 The State would call Sergeant Chris Lindler.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you are about to give in this case will
9 be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness box.

13 (Witness complies.)

14 THE CLERK: State your name for the
15 record. Spell our last name, please.

16 THE WITNESS: Chris Lindler, L-I-N-D-L-E-R.

17 CHRIS LINDLER,
18 after being duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 BY MS. WALKER:

21 Q Good afternoon, Sergeant. Sir, where are you
22 currently employed?

23 A I'm employed with the Richland County Sheriff's
24 Department. I'm one of the sergeants over the
25 major crimes unit.

1 Q How long have you been with the Sheriff's
2 Department?

3 A Fifteen years this past Saturday.

4 Q How long have you been in the major crimes unit?

5 A Since October of last year.

6 Q Did you become involved in the investigation of
7 this case?

8 A I did.

9 Q Do you remember exactly when you became involved?

10 A The afternoon of. I was notified by Deputy Chief
11 Wilson. I was at headquarters on Two Notch Road.
12 And Deputy Chief Wilson had come out and had stated
13 there had been a shooting in Ascot where two people
14 had been shot and killed, and I responded from
15 headquarters, which is located off Two Notch Road.

16 Q You responded to the --

17 A I responded to the scene, 12 Tackeria Court.

18 Q Is that here in Richland County?

19 A It is.

20 Q When you responded to the scene, what was the
21 purpose for your responding to that scene?

22 A To assist in any way we could with the
23 investigation. And once out on scene I met Major
24 Smith and Investigator Holdorf and Sergeant
25 Meadows.

1 Q And when you got on the scene, did you see the
2 Defendant on scene?

3 A I did.

4 Q And were you familiar with him?

5 A I am. Brett and I went to high school together at
6 Chapin High School. I believe Brett graduated in
7 about 1988, and I graduated in 1990.

8 Q And had you actually been to that residence before?

9 A I had not been to that residence before. One of
10 investigators that I worked with worked a burglary
11 case at that residence some years prior in
12 reference to a break-in of the home where some
13 jewelry was taken from the home. And I don't
14 believe that case had ever been solved.

15 And I also worked another burglary in the
16 Ascot subdivision probably a year prior where we
17 actually used video from the Parker home to catch
18 the suspect that had broken into another home in
19 that subdivision.

20 Q So you were aware that there were video cameras at
21 that home?

22 A I was.

23 Q And can you -- are those video cameras visible as
24 you walked up to the home?

25 A They are. They are on the eaves and the corners of

1 the house next to the garage and the front door.

2 Q Did you speak with the Defendant when you got to
3 the home that day?

4 A I did not at first. Major Stan Smith did. I
5 just -- I was standing back taking notes, just kind
6 of watching him and observing. And I didn't speak
7 with him first off, no.

8 Q Did you eventually speak with him?

9 A I did.

10 Q And please tell the jury about that conversation.

11 A Once Major Smith had gotten done speaking with him,
12 I had -- he had asked me to call Sergeant -- I
13 mean, Lieutenant Scott McDonald so we could draw up
14 a search warrant for the home before anybody else
15 entered the home. That was done.

16 Major Smith went to go handle some other
17 things there on scene, and I talked with Brett
18 standing over by the fence there behind his cars.

19 I asked him if the cameras at the home were
20 still operational, and he said that they were.

21 I asked him how much money was in the safe,
22 and he said approximately \$20,000.

23 Q Did you later learn that was a lie?

24 A I did.

25 Q When you observed the Defendant's physical

1 appearance that day, can you describe that to the
2 jury?

3 A He was visibly shaken. He -- red in the face. You
4 could definitely tell he had an elevated heart
5 rate. He was somewhat agitated. When we got on
6 scene, he was hooked up to, I believe, a heart
7 monitor by EMS and was sitting on a cooler that was
8 out there on the concrete in the driveway. But he
9 seemed to be very agitated and very red in the
10 face. No tears.

11 Q Did he have -- did you observe anything about his
12 clothing? Did he have blood on his clothing, or
13 anything of that nature?

14 A I didn't observe any blood on his clothing, no.

15 Q Did he tell you about what had transpired at his
16 home that day?

17 A As he was --

18 Q I'm sorry, go ahead.

19 A As he was talking to Major Smith, we were taking
20 notes. He said that he had gone and gotten subs
21 from Firehouse Subs for he and Tammy that day. And
22 Bryan was supposed to meet him at the house so he
23 could pay him some money for some gambling debts.
24 And that Bryan was supposed to be there at 12:30.
25 And that Bryan came in. Tammy was in the upstairs

1 office. He heard gunshots.

2 As he made it to the top of the stairs, Bryan
3 met him there with the gun, and then took him back
4 to the safe, which was located in the attic area of
5 the house.

6 And he stated once they got to the attic area,
7 he knelt down at the safe as if to get money out of
8 the safe, grabbed the .410 Judge pistol that he
9 kept on top of the safe, grabbed it and fired at
10 Capnerhurst, striking him.

11 Q Did he mention anything about the gun that was used
12 to kill his wife that day?

13 A He stated that he had given a gun to Bryan a few
14 weeks, couple of months prior, and it would have
15 been a 9-millimeter. That he didn't want it in the
16 house because it wasn't safe for the children.

17 Q But he was okay with having the Taurus Judge .410
18 around his children?

19 A Correct.

20 MR. WHITLARK: Objection, Your Honor.

21 THE COURT: Sustained. Please rephrase the
22 question.

23 MS. WALKER: I'll move on.

24 BY MS. WALKER:

25 Q And who were you working with that day? Were you

1 with another investigator?

2 A I was with Sergeant Don Robinson.

3 Q Were y'all doing things in conjunction with one
4 another?

5 A We were.

6 Q And as that day went on, did you continue with this
7 investigation?

8 A We did.

9 Q Did you make contact with Angela Leon?

10 A I did. Actually while we were out on the scene, I
11 received a call from Captain Chris Cowan -- he is
12 our PI over at the Sheriff's Department -- who had
13 passed on some information in reference to Ms.
14 Angela Leon that included a phone number. That she
15 had some information that she wanted to pass on to
16 us.

17 I made contact with her. Myself and Sergeant
18 Don Robinson made plans to go meet her over in
19 Lexington.

20 We left the crime scene, and Sergeant Robinson
21 and myself proceeded over to a gym located off of
22 Number 1 there by the Old Mill in Lexington and met
23 Ms. Leon and talked to her for several minutes.

24 Q And what was her relation to the Parker family?

25 A Angela and Tammy were good friends. She and Tammy

1 and some other girlfriends, she would tell us,
2 would meet for supper about once a month. And
3 Tammy confided in them about a lot of stuff.

4 Q And don't tell me what she confided in them about,
5 but did it become relevant to your investigation?

6 A It did.

7 Q Later that evening did you go to the Capnerhurst
8 residence?

9 A I did.

10 Q And was Sergeant Robinson with you when you went
11 there?

12 A Sergeant Robinson was with me there as well. We
13 left from the gym in Lexington on Number 1 and
14 proceeded to the Capnerhurst house in Batesburg.

15 Q And when you were at the Capnerhurst residence, to
16 whom did you speak?

17 A We spoke with Ms. Cindy Capnerhurst, her stepson --
18 I mean, her son, Bryan -- I mean, Heyward, excuse
19 me -- and Liz.

20 Q Which would be her daughter?

21 A Correct.

22 Q Did Ms. Capnerhurst tell you about Bryan's
23 involvement with Brett?

24 A She did. She stated that Bryan would help Brett
25 out most weekends taking bets on ballgames, whether

1 it be football season, basketball season, baseball,
2 whatever.

3 He was there most weekends, Saturdays and
4 Sundays. And he would work the phones for Brett.
5 As folks would call in bets, he would take them and
6 write them down.

7 Q Did you and Sergeant Robinson perform a search of
8 the Capnerhurst residence?

9 A We did. We asked Ms. Capnerhurst for a consent to
10 search her residence, which included her residence
11 and the vehicles there on the residence and any
12 other buildings.

13 Q And did she freely give you that consent?

14 A She did.

15 Q What, if anything, did you find at the residence?

16 A Absolutely nothing. We were looking for any guns,
17 any shell casings, any ammunition. We found none
18 there.

19 Q At that point in time, did y'all speak with
20 Ms. Capnerhurst about any debt that she and Bryan
21 Capnerhurst may have?

22 A We did. I asked her how much debt they had
23 incurred, how much debt they were in. At that time
24 she went and got their credit card bill and handed
25 me their credit card bill and told me that I could

1 take it with us if we needed it to look through it.
2 And that credit card bill had about \$21,000 in
3 credit card debt on it. And it showed it right on
4 the bill.

5 Q Was she cooperative with you that day?

6 A She was.

7 Q Later that day did you and Sergeant Robinson speak
8 to James Morgan?

9 A I did not speak to James Morgan. As we were
10 leaving the Capnerhurst house, I got a call from a
11 Lexington County investigator by the name of Chris
12 Stout who put me in touch with a retired state
13 trooper transport policeman. And I don't remember
14 his name right of the top of my head. I have it in
15 my notes.

16 But he had given us a number for Alvin Kelley,
17 who Bryan worked with or worked for at the
18 Lexington County Recreation Commission.

19 And they in turn gave us the number for James
20 Morgan. And I believe Sergeant Robinson made
21 contact. We were able to make contact with
22 Mr. James Morgan later that night.

23 Q And in speaking with James Morgan, was he able to
24 give you any insight into his relationship with
25 Bryan Capnerhurst?

1 A He said that he and Bryan were best friends and had
2 been best friends for a long time and that they
3 were involved in what is called a fantasy baseball
4 league, where they pick players and pick teams, and
5 stuff like that. I think you pay a fee and you get
6 to pick your team and a lot of people are involved
7 in it.

8 Q And as the investigation, I guess, continued on
9 into the following week on April 16th, which that
10 was a Monday?

11 A Yes, ma'am.

12 Q Did you make contact with more of Bryan
13 Capnerhurst's friends?

14 A I did. We spoke with a Mike Stevens on the phone.
15 He was a friend of Bryan's. And he knew from
16 conversations with Bryan that Brett had owed him
17 money for over a year and that he told him Tuesday
18 of that week that he was done working for Brett,
19 that he wasn't going to work for him anymore.

20 Q And did you speak with Keith Lang as well?

21 A We did. I actually believe I was one that took the
22 statement from Keith Lang, or I was there at the
23 time.

24 Q And is he a friend of Bryan Capnerhurst?

25 A He is. He is a friend of Bryan's from Michigan.

1 Bryan was originally from Michigan, and they
2 were -- had been friends for many years, I believe,
3 possibly going back as early as childhood.

4 Q And had they been on a family vacation?

5 A They had. They had been at the beach earlier that
6 week, in which Bryan and his wife, Cindy, had met
7 Keith and his wife down at the beach for a few
8 days.

9 Q And did Keith Lang know where Bryan was headed that
10 morning before he was murdered?

11 A He did.

12 Q I want to go back to James Morgan for a moment and
13 show you what has been marked as State's Exhibit
14 445, Mr. Morgan's phone records. Do you recognize
15 those?

16 A I do.

17 Q A lot has been made over those phone records over
18 the course of this trial.

19 MR. WHITLARK: Objection, Your Honor.

20 Objection.

21 THE COURT: What is the objection?

22 MR. WHITLARK: It's not a direct question.

23 It's a statement.

24 MS. WALKER: Well, if he would let me finish
25 my question, I'll ask a direct question.

1 THE COURT: All right. The objection is
2 sustained. Please rephrase the question.

3 BY MS. WALKER:

4 Q Did you review those phone records?

5 A I did.

6 Q Were you aware that assertions have been made that
7 there are gambling phone calls being made on those
8 phone lines?

9 A Yes, ma'am.

10 Q Did you look at the numbers that are dialed from
11 Mr. Morgan's phone?

12 A I called all those numbers myself in those lists,
13 the 1-800 numbers, the 1-386 numbers. There are
14 several repetitive numbers in there. If you go
15 through and look, there's only 73 phone numbers
16 that are different.

17 Q There are 73 unique numbers?

18 A Yes, ma'am. And most of those phone numbers come
19 back to either Wells Fargo, card services, card
20 services management, Chase, Capital One. There is
21 even one to MOB.COM, I believe. And MOB.COM, all
22 you can do is purchase tickets and check stats and
23 scores of baseball games and buy licensed
24 merchandise.

25 There are several calls to Duke Energy, I

1 would assume for a power bill for Mr. Morgan since
2 he lives in North Carolina.

3 MR. WHITLARK: Your Honor, I'm going to object
4 to the rendition of that. It's actually --
5 technically, it is hearsay. He is not a telephone
6 expert. What he is telling us is hearsay. What he
7 is saying is actually hearsay.

8 MS. WALKER: Your Honor, I don't think you
9 have to be a telephone expert to call numbers and
10 see who answers.

11 THE COURT: All right. The objection is
12 overruled.

13 MR. WHITLARK: Thank you, Your Honor.

14 BY MS. WALKER:

15 Q You said card member services and banks?

16 A Yes, ma'am.

17 Q When you were going line-by-line through those
18 phone records, was there any gambling phone numbers
19 that you came across?

20 A No, ma'am.

21 Q Were you aware that when these phone records were
22 originally put into evidence, they were put in
23 under a different time zone than they actually are?

24 A Correct. It would have been Greenwich Mountain
25 Time, I believe, which is four hours ahead of us --

1 or Greenwich Mean Time, I believe, excuse me.

2 Q After speaking with Keith Lang -- that was on
3 April 17th -- on April 18th did you secure a number
4 of search warrants in this case?

5 A I did. I was asked by Lieutenant Scott McDonald to
6 prepare a couple of search warrants for Brett and
7 Tammy Parker. One was for Palmetto Citizens Bank
8 for personal and business accounts related to both
9 Brett and Tammy. It was for all withdrawals and
10 deposits from April the 13th of 2011 until
11 April the 18th of 2012.

12 I also spoke with Danny Conyers from Wells
13 Fargo Bank and did a second search warrant for
14 additional financial records from Wells Fargo Bank
15 for Brett and Tammy Parker as well.

16 Q And at that point in time, you already had the
17 Capnerhurst credit card statement?

18 A Correct.

19 Q Sergeant Lindler, was that the extent of your
20 involvement with this investigation?

21 A Other than taking a statement from, I believe it
22 was, Britt, the gentleman that...

23 Q Britt Jordan?

24 A Britt Jordan. That was the extent of my
25 involvement in this case, yes, ma'am.

1 MS. WALKER: No further questions.

2 THE COURT: All right. Yes, sir?

3 MR. WHITLARK: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. WHITLARK:

7 Q Sergeant Lindler, you knew there had been a
8 burglary at the Parker home sometime about a year
9 before that or something?

10 A Yes, sir. Investigator Gwyn actually worked that
11 burglary.

12 Q And did you also -- I thought I heard you say that
13 you had gone there to get some information about
14 some other crime that was committed, not at their
15 house or something?

16 A Investigator Gwyn and myself, when we worked on the
17 burglary team some years back before I was a
18 sergeant, a sergeant over the major crimes unit,
19 Investigator Gwyn and I were partners in that area
20 working burglaries.

21 Q Okay.

22 A And Investigator Gwyn had gotten assigned another
23 case to another house around the corner from
24 Mr. Parker. And I don't remember everything about
25 it. I want to say that maybe Brett even called us

1 and said that he had some video of the guy coming
2 up on his front porch and knocking on the door, and
3 he provided that video to us freely.

4 Q Okay. Did you know Brett when he was in high
5 school?

6 A I knew him. He and I never associated together.
7 We weren't friends, or anything like that. I knew
8 he played baseball. And he was a hell of a
9 baseball player.

10 Q You never saw him beating up people or he wasn't in
11 a gang or anything that you knew of, was he?

12 A No, sir.

13 Q Okay. And you didn't know him to have any violent
14 propensities at all when y'all were in high school
15 together, did you, sir?

16 A I never saw him have any, no, sir.

17 Q When you got there that day, he was upset, wasn't
18 he?

19 A Yes, sir, he was agitated.

20 Q Were you listening to him or did he -- was he
21 telling you what happened? Did he tell you or were
22 you --

23 A He was not telling me. He was engaged in a
24 conversation with Major Stan Smith.

25 Q Right.

1 A And I was listening to what he had to say. And at
2 some point during that conversation, like I said,
3 Major Smith had turned to me and asked me to get a
4 hold of Lieutenant McDonald and draw up a search
5 warrant for the house before anybody else went
6 inside, that we weren't going inside at that point.

7 Q What time? About what time was it?

8 A I'd say that was probably around maybe 1:15, 1:20.

9 Q Okay.

10 A Maybe a little bit later, maybe closer to 1:30.

11 Q Do you have your report with you?

12 A I do.

13 Q The first page of the report at the last
14 paragraph -- were there a lot of police officers
15 there when you got there, Chris, I mean, Sergeant
16 Lindler?

17 A No more than usual for a murder scene. I mean,
18 it's typical to have several out there, especially
19 when you need to clear a home, or something along
20 those lines, but no more than usual.

21 Q Okay. At the last paragraph of your first page,
22 you thought it was best to obtain a search warrant
23 for the home before any additional entry was made
24 by y'all or the Coroner's Office, right?

25 A Or crime scene, yes, sir.

1 Q All right. And the reason is because you want to,
2 you know, try to keep the crime scene pristine,
3 right?

4 A Yes, sir.

5 Q And we all have heard -- you have been here this
6 week or been here for the last two weeks?

7 A Some, in and out, yes, sir.

8 Q But ideally you wanted it not to be touched or
9 messed around with. I mean, you can't always do
10 that, but that's what we want to have happen --

11 A Correct.

12 Q -- isn't it?

13 A Yes, sir.

14 Q And you know about the gun that was taken out of
15 his hand, right?

16 A Yes, sir.

17 Q That Odom and Harvel saw. Did you talk to them
18 about it?

19 A I did not.

20 Q Did you hear what he said? He said he had been at
21 another scene? Have you heard anything or have you
22 ever heard him describe the way the gun was held or
23 any of that?

24 A No, sir, I have not. I was not present for any of
25 those conversations.

1 Q Okay. Did you prepare any search warrants for
2 anything for Bryan Capnerhurst?

3 A No, sir, I did not. I was not asked to do that.

4 Q Do you know of any that were done?

5 A I don't know if they were done or not. I was just
6 asked to prepare the ones for Brett and Tammy on
7 Monday.

8 Q Did you actually mark as evidence this credit card
9 debt, whatever it was you saw, for \$21,000?

10 A It was entered in evidence that night, either by me
11 or Sergeant Don Robinson.

12 Q Okay. All right.

13 MR. WHITLARK: I think I'm about done here,
14 Your Honor. Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Pause.)

17 BY MR. WHITLARK:

18 Q Are you aware that the records of James Morgan were
19 provided to the Solicitor, the Prosecution in this
20 case, by the Defense attorneys, weren't you?

21 A Yes, sir.

22 Q You know that, right?

23 A I don't know if y'all provided them. I know that
24 we have them.

25 Q All right. I don't have any other questions.

1 Thank you, Sergeant.

2 REDIRECT EXAMINATION

3 BY MS. WALKER:

4 Q Sergeant, Mr. Whitlark asked you some questions
5 about the burglary that took place at the
6 Defendant's home?

7 A Yes, ma'am.

8 Q Over the course of your murder investigation, did
9 you learn information about that burglary?

10 A Just that -- just what people have said, just some
11 innuendos.

12 Q From the victims' friends?

13 A Yes.

14 Q And what was that information?

15 A That --

16 MR. WHITLARK: Objection, Your Honor. That is
17 hearsay.

18 MS. WALKER: Your Honor, I think he can go
19 into what he learned.

20 THE COURT: What he learned. He can't say who
21 said what. He can say what he learned, or what
22 conclusions he made. Objection overruled.

23 BY MS. WALKER:

24 Q Over the course of your investigation, what did you
25 learn about that burglary?

1 A That some high-end jewelry was taken that may have
2 been bogus to cover some gambling debts.

3 Q Of the Defendant?

4 MR. WHITLARK: Objection, Your Honor.

5 A Yes, ma'am.

6 THE COURT: Sustained.

7 MS. WALKER: No further questions.

8 THE COURT: All right.

9 MR. WHITLARK: Your Honor, if I could, just
10 one follow-up.

11 **RECROSS-EXAMINATION**

12 BY MR. WHITLARK:

13 Q Has that case ever been solved?

14 A That case has never been solved, sir.

15 Q Thank you.

16 MR. WHITLARK: No further questions, Your
17 Honor.

18 THE COURT: All right. You may step down.
19 (The witness steps down.)

20 THE COURT: Call your next witness.

21 MS. CAMPBELL: The State would call Cindy
22 Capnerhurst.

23 (Witness approaches.)

24 THE BAILIFF: Place your left hand on the
25 Bible, and raise your right hand, please.

1 (Witness complies.)

2 THE CLERK: Do you swear or affirm the
3 testimony you are about to give in this case will
4 be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Have a seat in the witness box.

8 (Witness complies.)

9 THE CLERK: State your name for the
10 record, please.

11 THE WITNESS: Cindy Capnerhurst.

12 CINDY CAPNERHURST,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Ms. Capnerhurst, are you from the Midlands area?

17 A Yes, ma'am.

18 Q And where do you currently reside?

19 A In Leesville.

20 Q And how long have you been living in the Leesville
21 area?

22 A All my life.

23 Q Did you know Bryan Capnerhurst?

24 A Yes, ma'am.

25 Q And how did you know Bryan?

1 A He was my husband.

2 Q He was your husband?

3 A Uh-huh.

4 Q And when did you first meet Bryan Capnerhurst?

5 A In 1988.

6 Q And how did y'all meet, ma'am?

7 A Bryan was my boss. I was an aerobic instructor at
8 the Leisure Center in Batesburg.

9 THE COURT REPORTER: I'm sorry, I can't hear.

10 BY MS. CAMPBELL:

11 Q Take your time, okay?

12 A Okay.

13 Q Bryan was your boss?

14 A Uh-huh.

15 Q And where were you working when you met him?

16 A At the Leisure Center in Batesburg, as an aerobic
17 instructor.

18 Q As an aerobic instructor?

19 A Yes, ma'am.

20 Q And part of his duties included being your boss?

21 A Yes.

22 Q At the time, did you have any children?

23 A Yes, ma'am.

24 Q And how many children did you have?

25 A Two.

- 1 Q And what were those children's names?
- 2 A Liz and Heyward.
- 3 Q As time progressed -- and that was in what year?
- 4 A '88.
- 5 Q Did your relationship with Bryan get more serious?
- 6 A Yes, ma'am.
- 7 Q And eventually did y'all get married?
- 8 A Yes, ma'am, in 1993.
- 9 Q In 1993?
- 10 A Yes, ma'am.
- 11 Q And while y'all were married, did Liz and your son,
- 12 Heyward, live with y'all?
- 13 A Yes, ma'am.
- 14 Q And did Bryan participate in raising them?
- 15 A Yes, ma'am.
- 16 Q After your marriage in 1993 or at some point, did
- 17 y'all have a child?
- 18 A Yes, ma'am.
- 19 Q And what is that child's name?
- 20 A H.C.
- 21 Q H.C.?
- 22 A H.C.
- 23 Q And how old is H.C. now?
- 24 A H.C. is 17. She will be 18 June 1st.
- 25 Q Where does H.C. go to school?

- 1 A She is at the Governor's School in Greenville in
2 Arts and Humanity.
- 3 Q The Governor's School in Greenville?
- 4 A Yes, ma'am.
- 5 Q And how long has she been attending the Governor's
6 School in Greenville?
- 7 A This is her second year. She started attending as
8 a junior.
- 9 Q And is she scheduled to graduate?
- 10 A This Friday.
- 11 Q Were **H.C.** and her father close?
- 12 A Very.
- 13 Q I want to turn your attention to that week when
14 Bryan was murdered.
- 15 A Yes, ma'am.
- 16 Q Earlier that week had y'all made plans before
17 that --
- 18 A Oh, yes, ma'am.
- 19 Q -- to go on vacation?
- 20 A We had plans probably for three or four weeks to
21 meet the Langs at the beach.
- 22 Q The Langs?
- 23 A Yes, ma'am, Keith and Kathy Lang from Michigan.
- 24 Q And what was your relationship with the Langs?
- 25 A We were real good friends. Keith and Bryan were.

- 1 Q The grew up together?
- 2 A Yes, ma'am.
- 3 Q And Bryan, was he originally from South Carolina?
- 4 A No, ma'am, Michigan.
- 5 Q And how did he end up in South Carolina? Do you
- 6 know?
- 7 A Actually, Bryan went to Morehead State in Kentucky
- 8 where he played baseball, and he met his first
- 9 wife, Lisa, there. Lisa lived in Columbia, and
- 10 that's how he got to the Columbia/
- 11 Batesburg-Leesville area.
- 12 Q That week was Bryan suffering from any kind of
- 13 illness?
- 14 A Yes, ma'am. He had an ear infection, I think, like
- 15 a sinus infection. He was rather hard headed and
- 16 would not go to the doctor.
- 17 Q He wouldn't go to the doctor?
- 18 A No, ma'am.
- 19 Q Was he taking any kind of medication for that?
- 20 A He was, over the counter.
- 21 Q How long were y'all at the beach? Do you remember?
- 22 A I worked on Tuesday and he picked me up at work,
- 23 and we drove down and left Thursday morning to come
- 24 home. We got home around 2:00 o'clock Thursday.
- 25 Q Are you a little bit nervous here today?

- 1 A Yes, ma'am.
- 2 Q So you left on Tuesday?
- 3 A Yes, ma'am.
- 4 Q And then you returned when?
- 5 A Thursday.
- 6 Q And were any of y'all's children with you during
- 7 that time period?
- 8 A No, ma'am.
- 9 Q And why was it important for y'all to come back on
- 10 Thursday before that weekend? What was going on
- 11 that weekend?
- 12 A That weekend **H.C.** was... I'm sorry. It was her
- 13 first prom.
- 14 Q And had y'all made any plans about helping out with
- 15 the prom in Greenville?
- 16 A We were chaperones.
- 17 Q Do you need some Kleenex?
- 18 A Please.
- 19 (Complies.)
- 20 A Thank you.
- 21 Q Prior to coming home -- let me ask you this.
- 22 A Yes, ma'am.
- 23 Q Did your husband work for Brett Parker?
- 24 A Yes, ma'am.
- 25 Q And did he have any other jobs?

- 1 A Yes, ma'am.
- 2 Q And what all jobs did Bryan hold at the time or
3 around the time he was killed?
- 4 A He worked for Brett a lot answering the phones,
5 taking in bets. He worked for Lexington County Age
6 and Recreation, and he also cleaned the office at
7 the commission every Friday.
- 8 Q And your husband, had he ever gambled?
- 9 A Years ago.
- 10 Q But had he made a decision to quit that?
- 11 A When **H.C.** was born, he did not do it after she was
12 born.
- 13 Q That week while y'all were at the beach, were there
14 some phone calls with the Parker family?
- 15 A Yes, ma'am.
- 16 Q And are you familiar with Brett Parker's father?
- 17 A Yes, ma'am.
- 18 Q And who is Brett Parker's father?
- 19 A Jack Parker.
- 20 Q And do you recall specifically any phone calls
21 while y'all were at the beach, specifically that
22 Wednesday?
- 23 A Yes, ma'am.
- 24 Q And what was the gist of that phone call?
- 25 A I know Jack and Bryan did talk a lot that

1 Wednesday. We were in the road actually.

2 And he made a comment that Jack was concerned
3 that Brett may be gambling the winnings away --

4 MR. WHITLARK: Objection, Your Honor.
5 Hearsay.

6 THE COURT: All right. Objection sustained.
7 Please rephrase.

8 MS. CAMPBELL: Your Honor, may we approach?

9 THE COURT: Yes, ma'am.

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

13 BY MS. CAMPBELL:

14 Q That Wednesday while y'all were at the beach, were
15 you aware that there was a conversation between
16 Jack Parker and your husband, Bryan?

17 A Yes, ma'am.

18 Q And did he relate certain information to you about
19 that?

20 A Yes, ma'am.

21 Q And the information that he related that Jack
22 Parker was talking to Bryan, who was it about?

23 A Brett.

24 Q Did the information he got from Jack cause Bryan
25 some concern about Brett?

1 A Yes, ma'am.

2 Q As a result of that, later on y'all came back to
3 Columbia that Thursday? Are you aware of that?

4 A Yes, ma'am.

5 Q And tell the jury how it came about that this
6 meeting was set up between Brett and Bryan at
7 Brett's house on Friday?

8 A It was to be at 2:00 o'clock.

9 Q At 2:00 o'clock?

10 A Yes, ma'am.

11 Q And whose idea was it to have the meeting at 2:00
12 o'clock initially?

13 A Brett's.

14 Q How did that change?

15 A To be honest with you, I'm not really sure how that
16 changed, but Bryan called me at work on Friday --
17 the last time I spoke with him was at 11:38 -- and
18 he informed me that Brett had moved the time from
19 2:00 to lunchtime. He did not give me a specific
20 time. He just said lunchtime.

21 Q Okay.

22 A And he was rather excited because he said Tammy was
23 going to be home. So he felt like he would be --
24 he would get paid the money owed for the year and a
25 half that he had not been paid.

1 Q Did he explain to you why he thought if Tammy was
2 there, everything would be better?

3 A Because Brett would not -- there would not be any
4 type of confrontation with Tammy there.

5 Q And prior to that, on the day before, had Bryan
6 made a comment to you about being concerned?

7 A Yes, ma'am.

8 Q What did he say?

9 A He was concerned because of -- he was actually
10 concerned because he was afraid that when he got
11 there that Brett would not pay him the amount of
12 money and that Brett may be the one with the temper
13 when he questioned Brett about his money.

14 Q And specifically did he make some comment to you
15 about that?

16 A He did, yes, ma'am.

17 Q What was that comment?

18 A The comment was if I had not heard from him within
19 an hour to call 9-1-1.

20 Q And that was on that Thursday he made that comment?

21 A Yes, ma'am.

22 Q And the next day you mentioned he felt better?

23 A Yes, ma'am.

24 Q And why was that?

25 A Because Tammy would be at home.

- 1 Q You mentioned the last time you talked to him on
2 that Friday was at what time?
- 3 A 11:38.
- 4 Q That morning?
- 5 A Yes, ma'am.
- 6 Q Where were you that day?
- 7 A At work.
- 8 Q Where do you work, ma'am?
- 9 A Medical Services for America.
- 10 Q And how long have you worked there?
- 11 A Fifteen years.
- 12 Q That afternoon, did you hear from Bryan?
- 13 A No, ma'am.
- 14 Q What did you do after you got off work?
- 15 A I picked up my great nephew, which is what I did at
16 the time, Monday, Wednesdays, and Fridays.
- 17 Q You picked up your great nephew?
- 18 A Yes, ma'am.
- 19 Q And approximately what time did you get off work
20 that day?
- 21 A 4:30..
- 22 Q Once you picked up your great nephew, what did you
23 do?
- 24 A We went to the IGA in Gilbert.
- 25 Q You went where?

1 A IGA grocery store.

2 Q And do you remember approximately what time it was
3 when you got home that day?

4 A It was probably 5:15.

5 Q What do you recall next?

6 A Well, prior to me getting home, I had had two
7 strange phone calls from both of my brother-in-laws
8 wanting to know where I was.

9 And them calling me wasn't strange, it was
10 just the way they acted. And one of them made a
11 comment that I needed to get home, that there was a
12 silver unidentified vehicle in my driveway.

13 Q And when you got home was there, in fact, a silver
14 vehicle in your driveway?

15 A Yes, ma'am.

16 Q And what happened next?

17 A I was told by the assistant coroner that Bryan had
18 been shot.

19 Q And that's the first you heard about it?

20 A Yes, ma'am.

21 Q Had it been any big secret where Bryan was going
22 that day?

23 A No, ma'am.

24 Q Did Bryan have a gun in your household?

25 A No, ma'am.

- 1 Q Your son, Heyward, does he hunt?
- 2 A He did. He doesn't now.
- 3 Q But has Bryan ever hunted or used a gun -- had a
- 4 gun?
- 5 A No, ma'am. He tried to use a BB gun one time, and
- 6 Heyward will have to tell you about that story.
- 7 Q Were y'all having financial problems?
- 8 A We had in the past, but Bryan had his budget and
- 9 had his plan, and we were getting through those
- 10 problems.
- 11 Q And did y'all -- at one point had up to \$25,000 in
- 12 debt?
- 13 A Yes, ma'am. We had remodeled our kitchen.
- 14 Q You had remodeled your kitchen?
- 15 A Yes, ma'am.
- 16 Q Had you also lent some money to certain people?
- 17 A Yes, ma'am, a brother-in-law.
- 18 Q And why were you helping your brother-in-law out if
- 19 y'all were already in debt?
- 20 A He needed the money. He was not able to borrow it
- 21 from anyone else. We did share a driveway. And he
- 22 had had asked Bryan to borrow some money to improve
- 23 the driveway. So Bryan had lent it to him.
- 24 Q Did Bryan have a certain way that y'all were going
- 25 to pay everything back?

1 A Oh, yes, ma'am. He had everything written down.

2 Q And at that point had he worked the debt down some?

3 A Yes, ma'am, about \$6,000.

4 Q After you found out about Bryan, did investigators
5 from the Sheriff's Department from Richland County
6 Sheriff's Department come and talk to you?

7 A Yes, ma'am.

8 Q And did they ask you for certain documents?

9 A Yes, ma'am.

10 Q Related to certain information?

11 A Yes, ma'am.

12 Q And did you tell them the truth?

13 A Yes, ma'am.

14 Q And you've been cooperative and truthful with them
15 from the beginning?

16 A Yes, ma'am.

17 Q Back in 2002 -- 2000 -- were you charged with an
18 embezzlement charge?

19 A Yes, ma'am.

20 Q And did you plead guilty to that charge?

21 A Yes, ma'am.

22 Q At the guilty plea -- oh, who was your lawyer?

23 A Breibart.

24 Q Breibart?

25 A Breibart.

- 1 Q Do you remember his first name?
- 2 A Richard Breibart.
- 3 Q Richard Breibart? At the plea, did certain
- 4 allegations come out about Bryan?
- 5 A Yes.
- 6 Q Explain that to the jury, please.
- 7 A I said nothing at the trial, the hearing.
- 8 Mr. Breibart explained to the Court that Bryan had
- 9 a gambling problem, which he did not at the time,
- 10 because, like I said, he didn't gamble after **H.C.**
- 11 was born. This was 13 years ago. And he did all
- 12 the talking and said that it was to pay back
- 13 Bryan's gambling, but that was a lie.
- 14 Q And that's what your lawyer said?
- 15 A Yes, ma'am.
- 16 Q And you allowed him to do that?
- 17 A At the time I was not in my right frame of mind.
- 18 Q And what has happened to that lawyer since then?
- 19 A He is incarcerated.
- 20 Q Were you aware whether or not -- did Bryan ever
- 21 drink alcohol?
- 22 A Yes, we would both drink socially. Yes, ma'am.
- 23 Q And did he ever use marijuana?
- 24 A He did not that week. Now, he did at one time.
- 25 Q Once you pled guilty, were you placed on probation?

- 1 A Yes, ma'am.
- 2 Q And did you pay back the money?
- 3 A Yes, ma'am.
- 4 Q And did you pay back the total amount?
- 5 A Yes, ma'am.
- 6 Q And how much was that?
- 7 A Thirty-five thousand.
- 8 Q Later, did the police show you a gym bag that they
- 9 had taken in custody?
- 10 A Yes, ma'am.
- 11 Q And when they showed you that bag, whose bag was
- 12 it?
- 13 A Bryan's.
- 14 Q And what did Bryan customarily do with that bag?
- 15 A He took it with him to work every day.
- 16 Q That Friday, did Bryan ever tell you about the bag,
- 17 something specific about it?
- 18 A He did. He said that he felt it rather strange
- 19 that Brett asked him to bring a bag.
- 20 Q And did y'all -- did he say anything about why
- 21 Bryan -- I mean -- Brett might ask him to bring a
- 22 bag?
- 23 A When I asked him, he asked me, he said, Why do you
- 24 think Brett would want me to bring a bag?
- 25 I said, The only thing I can say is he is

1 giving it to you in small bills.

2 Q Thank you.

3 MS. CAMPBELL: I don't have anything further.

4 THE COURT: Yes, sir?

5 MR. WHITLARK: May it please the Court, Your
6 Honor?

7 CROSS-EXAMINATION

8 BY MR. WHITLARK:

9 Q Ms. Capnerhurst?

10 A Yes, sir.

11 Q I'm sorry about what happened.

12 Now, you spoke to the police more than --

13 A Yes, sir.

14 Q -- more than one time in this case, haven't you?

15 A Yes, sir.

16 Q And part of your conversation was, is that you
17 informed them that Bryan knew where Brett's safe
18 was?

19 A That was never discussed.

20 Q You never discussed that with the police?

21 A No, sir.

22 Q You never discussed that you and him thought there
23 was about 80 to --

24 A No, sir.

25 Q I'm sorry. Can I finish my question?

- 1 A Sure.
- 2 Q Are you saying that you never told the police when
- 3 they were talking to you about this that you
- 4 thought that there -- y'all figured there was about
- 5 80 to \$100,000 in there?
- 6 A I never said that.
- 7 Q You never said that?
- 8 A No, sir.
- 9 Q Okay. And you did embezzle \$35,000?
- 10 A I just said I did.
- 11 Q From Lexington's -- is it Lexington Bank?
- 12 A Yes, sir.
- 13 Q Okay. And you pled guilty to it?
- 14 A I did.
- 15 Q Because you were guilty?
- 16 A Yes, sir.
- 17 Q And when you were under oath in court -- do you
- 18 remember that?
- 19 A Yes, sir.
- 20 Q You swore to tell the truth then?
- 21 A Yes, sir.
- 22 Q And you told them that you had taken that money to
- 23 pay your husband's gambling debts?
- 24 A I did not tell them that. No, sir, I did not.
- 25 Q You didn't say that?

1 A My attorney did.

2 Q It is your testimony that you have never told the
3 police that you and your husband -- or that your
4 husband knew where Brett's safe was?

5 A I just said that, no, sir.

6 Q Okay. And you never told them that you thought
7 there was 80 to \$100,000 in there?

8 A No, sir, again.

9 Q Okay. Do you remember when -- they didn't seize
10 your computer, by the way, did they, when this
11 happened?

12 A Not as I recall, they didn't.

13 Q You do recall that your husband used to bring home
14 receipts from gambling, right?

15 A It was not receipts.

16 Q What was it?

17 A It was little pieces of paper that he would write
18 down the names of who called in and the amounts
19 that they would place on bets, but it was not a
20 receipt.

21 Q Okay. It was some sort of gambling paperwork,
22 right?

23 A It was something he would give Brett, to read off
24 to Brett.

25 Q Okay. But there was a place where he burned it,

1 wasn't it?

2 A He got rid of it, sure.

3 Q Well, my question to you is, there was a place
4 where it was burned, right?

5 A Yes, sir.

6 Q And when the Secret Service came over there, you
7 showed them that ash pile, didn't you?

8 A I showed them that ash pile. There was nothing
9 there.

10 Q But they went through it to see if there was,
11 didn't they?

12 A No, sir, they did not go through it, because there
13 was nothing to go through.

14 Q Just ashes?

15 A Just ashes.

16 Q Ms. Capnerhurst, your husband was in the gambling
17 business, wasn't he?

18 A Years ago, before 1995. Our daughter was born in
19 '95. In the gambling business? No, sir. He
20 gambled, but it was not a business.

21 Q Okay. Well, he was working with Mr. Parker in the
22 business, right?

23 A But that was prior to. He worked with Brett for
24 about three years. We're talking about 1995.

25 Q Well, he was gambling with baseball out of y'all's

1 house, wasn't he? Wasn't your husband gambling
2 doing baseball?

3 A He was taking calls for Brett Parker. He was not
4 gambling himself, no, sir.

5 Q Okay. But he was doing -- gambling with baseball
6 out of -- was it out of your house?

7 A Taking calls for Brett Parker.

8 Q Okay. But it -- and you knew about it, right?

9 A Sure, I knew about it.

10 Q And your husband -- or you said your husband said
11 that he thought there might be a fistfight when he
12 went over there, didn't he?

13 A And the reason for that was because he said Brett
14 had a temper.

15 Q He said that, though, didn't he?

16 A Yes, he did.

17 Q Or something. He said it was going to be a
18 fistfight or something, right?

19 A Yes.

20 Q Now, he always had that bag with him, didn't he?

21 A He took it every day to work.

22 Q Okay. Well, it wasn't unusual for him to have it,
23 right?

24 A No, sir.

25 Q Okay. And when he'd come home with these

1 gambling -- or whatever it is you're saying --

2 A He didn't come home with those.

3 Q He just -- he made them at your house?

4 A Right. When he would take calls for Brett at the
5 home, he made them at the house. And then he would
6 relay those to Brett when he and Brett would talk.

7 Q And then he would burn it?

8 A Right, per Brett's orders.

9 Q Your husband did gamble, though, did he not, ma'am?

10 A My husband did not gamble after 1995, sir.

11 Q That you knew about?

12 A That I knew about.

13 Q Did he have any -- did your husband have any bank
14 accounts that you didn't know about?

15 A No, sir.

16 Q You'd be surprised by that if you found out?

17 A I wouldn't be surprised. I mean, I know he had one
18 in his name and I had one in my name, and we had a
19 joint account.

20 Q Well, I mean, again, my question to you is --

21 A No, sir, I would not be surprised.

22 Q Okay. All right. And, again, ma'am, I'm sorry
23 about what happened.

24 So it wasn't unusual for him to have that bag
25 with him, right?

1 A He took it with him every day to work, sir.

2 Q Okay. Of course, he didn't go to work for four
3 days that week, did he?

4 A He did not work Tuesday, Wednesday, or Thursday
5 because we had already planned to go to the beach
6 to meet our friends from Michigan.

7 Q Right.

8 A And he was not feeling well Friday.

9 Q Okay.

10 A But he was going by the Commission after he met
11 Brett to clean the office, which he did every
12 Friday.

13 Q Okay. Well, was he going to go to work on
14 Thursday -- or on Friday?

15 A No, he was not going to work Friday.

16 Q He wasn't going to work Friday night?

17 A He was going by Friday to clean, yes, sir.

18 MR. WHITLARK: Beg the Court's indulgence
19 Your, Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. WHITLARK:

23 Q Ma'am, when you were in court on the embezzlement
24 charge of \$35,000?

25 A Yes, sir.

1 Q The Court was told that it was for your husband's
2 gambling debts, right?

3 A The attorney Breibart said that.

4 MR. WHITLARK: That's all I have, Your Honor.
5 Thank you.

6 THE COURT: Anything else?

7 MS. CAMPBELL: Nothing.

8 THE COURT: All right, ma'am, you may step
9 down.

10 (Witness steps down.)

11 THE COURT: Ladies and gentlemen of the jury,
12 we have been going for about two hours. We are
13 going to take a break, about a ten-minute break, a
14 bathroom break.

15 All right. Thank you.

16 THE BAILIFF: Quiet. Remain seated until the
17 jury leaves. Quiet, please.

18 (WHEREUPON, the jury retires to the jury
19 room at 4:01 p.m.)

20 THE COURT: All right. We will take about ten
21 minutes.

22 (WHEREUPON, a break was taken.)

23 THE COURT: Are we ready to bring them in?

24 MS. SIMPSON: The State's ready.

25 MR. WHITLARK: The Defense is ready, Your

1 Honor.

2 THE COURT: All right. Bring them in.

3 (WHEREUPON, the jury came into open
4 court at 4:26 p.m.)

5 THE BAILIFF: The jury is present, Judge, Your
6 Honor.

7 THE COURT: All right. Call your next
8 witness.

9 MS. SIMPSON: The State calls Heyward Barnes.
10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the
12 Bible, and raise your right hand, please.
13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the
15 testimony you are about to give in this case will
16 be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat in the witness box.
20 (Witness complies.)

21 THE CLERK: State your full name for the
22 record. And spell it, please.

23 THE WITNESS: Heyward Barnes, B-A-R-N-E-S.

24 HEYWARD BARNES,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SIMPSON:

Q Mr. Barnes, how old are you?

A Thirty-two.

Q And where do you live?

A In Lexington.

Q Are you married?

A I am.

Q Do you have any children?

A I have one on the way.

Q Little boy or girl?

A A little girl.

Q Tell the jury about your immediate family and your relationship to Bryan Capnerhurst.

A I played baseball in high school and throughout college. Bryan and I actually met when my mom was working at the Leisure Center. I would go up there after school and sometimes at night when the rec league was going on.

Bryan would always let me shoot basketballs after hours before my mom was getting done. But, Bryan and I became real close through baseball. Bryan actually taught me. If it wasn't for him, I wouldn't have played college baseball.

He was very intelligent, would keep me out

1 there hours and hours, just drill after drill. But
2 we became really close through baseball and stayed
3 throughout, you know, all the way up until college
4 and afterwards.

5 Q And when did your mom and Bryan get married?

6 A I'm not sure.

7 Q Were you in college?

8 A In the '90s. I was in high school.

9 Q Were you still living at the house?

10 A I was.

11 Q And did Bryan kind of take on a father figure or
12 father role?

13 A He did.

14 Q And what about your siblings? Can you tell us
15 about them?

16 A I have an older sister, Liz Barnes, and then I have
17 a younger sister, **H.C.**

18 Q And **H.C.** is still in high school?

19 A Yes, graduates Friday.

20 Q How would you describe Bryan's personality?

21 A He was, in my words, I would say, cool, calm, and
22 collected. I mean, he was very laid back. Ever
23 since **H.C.** was born, it was just all about **H.C.**.
24 He did anything he could for her. He did anything
25 he could for any of us.

1 We talked on a personal level, financial
2 level. We talked about any and everything. But he
3 was there. He was just very cool and calm. You
4 never saw him really raise his voice. A hard
5 worker. I mean, he would come over to the house
6 and help me any time I asked him. So just...

7 Q What jobs did Bryan have that you were aware of?

8 A With the Lexington County Recreation Commission. I
9 knew that he cleaned it at night on Fridays, and I
10 knew he was working with Brett.

11 Q And did you know the Defendant?

12 A I did.

13 Q How did you know him?

14 A I had actually -- through mutual friends. I
15 actually work out with a guy that was pretty good
16 friends with Brett every morning. I've known --
17 Randy Norman -- I have known him for about ten
18 years now.

19 We work out every morning. But I had actually
20 played softball a few times with Brett at the
21 softball field. But it was mainly just meeting
22 through other mutual friends.

23 Q And what did you understand Bryan's work or
24 position to be with the Defendant?

25 A Bryan told me that he was just taking phone calls,

1 and it was anywhere from football, basketball,
2 baseball. You know, throughout the summer he would
3 go over to Brett's house, on the weekends,
4 sometimes during the week.

5 He would take calls if he was at, you know,
6 their house, out at my mom and Bryan's house at the
7 lake. But he just took phone calls and wrote
8 everything down.

9 Q And did you know Tammy Parker at all?

10 A I had met Tammy just through, I think, a couple of
11 Halloween parties, through some mutual friends.
12 Where Brett used to work, I know some guys there.
13 So I had met her at, you know, some stuff like
14 that. But then I know our family and her family
15 grew up together.

16 Q Did Bryan ever discuss his finances, or his and
17 your mom's finances with you?

18 A He did. He consulted with me quite a bit. I
19 actually did their tax returns. And, it's funny,
20 my wife -- I'm a CPA -- and everybody calls me anal
21 as far as I squeak when I walk.

22 But Bryan would always -- he found out that I
23 had a spreadsheet that I would keep all my budget
24 in. And he wanted to see my spreadsheet and how I
25 was doing it and what my plan was and how he could

1 put his own plan together.

2 Q And you said you're a CPA. Where did you go to
3 school?

4 A I went to Southern Wesleyan.

5 Q And how long have you been doing accounting?

6 A About nine years.

7 Q So Bryan asked you to help him with his?

8 A Uh-huh.

9 Q When did he come to you or was this -- do you
10 recall?

11 A He started really discussing the financials with me
12 probably six to seven years ago when I -- I was
13 working in Camden. And then I actually moved back
14 and started working in West Columbia. And when I
15 moved back to Lexington, I would visit more often.
16 Of course, it was closer. So he would come over to
17 the house, and stuff like that. But probably six
18 or seven years ago is when we started really
19 talking because, like I said, he found out I had my
20 spreadsheet.

21 Q And, spreadsheet, what would you have on the
22 spreadsheet?

23 A I just created an Excel spreadsheet that shows just
24 my monthly bills as far as, you know, the house
25 payment, credit cards, student loans, car payment,

1 gas, food, entertainment, miscellaneous.

2 I mean, any and everything just broken down
3 per month, and actually with a budget of what I
4 wanted to spend, and I could compare what I
5 actually spent.

6 Q So it was your budget?

7 A Right.

8 Q And you said that you did Bryan and your mom's tax
9 returns?

10 A I did.

11 Q What all financial information did Bryan have you
12 review?

13 A He had me, as far as the tax return went, it was
14 just a matter of filing their 1040 and itemized
15 deductions, just the mortgage interest, car taxes,
16 property taxes, any contributions, and then putting
17 their W-2's in there, their income.

18 Q And as far as their general finances, what was the
19 situation with respect to the home, their home, and
20 the land? Did they own their home? Were they
21 renting?

22 A They actually bought the land, but the land is
23 actually right beside my aunt. And the land was
24 actually -- they got a very good deal on the land,
25 because I think there was an old agreement that

1 whenever my Aunt Renee and her husband bought the
2 land, it could be -- a family friend would get it
3 at a discount.

4 So they got the land at a very good deal, to
5 my understanding. And then also the house, they
6 contracted it out so they could try to save some
7 money. But that was back in, I think, 2001 or 2.

8 Q And in addition to tax returns, did Bryan discuss
9 his just general financial situation, or were you
10 aware of their credit card debt?

11 A Yes. Yes.

12 Q Can you tell the jury about that?

13 A Yes. Bryan, at one point there was -- before all
14 this, it was just the one. But even before that,
15 there were some smaller credit cards, but they were
16 high interest rates.

17 And so I advised Bryan -- we were looking at
18 it and figuring out what we were going to -- you
19 know, put a plan together to pay everything off.
20 And I told him that I thought he could refinance
21 the house with the equity in it since he got the
22 land for such a good deal.

23 So I said, Bryan, we need to talk to the bank
24 so we can refinance, put the credit cards into the
25 house, it will be a lower interest rate, and that

1 way you can pay it off sooner.

2 And so they actually refinanced. He called
3 the bank, got the appraisal, refinanced. And then
4 he still had this other credit card that he got
5 that was for the house, the kitchen, and some other
6 small things, but mainly the kitchen. The
7 renovations were put on his credit card.

8 Q So they had recently renovated the kitchen?

9 A Yeah, I think it was a couple of years ago.

10 Q And how much was their debt?

11 A Total?

12 Q That you knew, yes.

13 A That I knew of, it was -- I want to say the house,
14 I'll estimate around 185, give or take, \$185,000.
15 And then the credit card was 20. And then they
16 leased the cars from Bryan's buddy, Keith, up in
17 Michigan. He ran a car dealership.

18 And so Bryan -- Keith would call him any time
19 he needed a good deal or if Keith found a car that
20 they could use, and he would lease it back through
21 Keith.

22 Q And so credit card debt, as far as what Bryan was
23 working to pay off, how much was that?

24 A At the time Bryan and I talked, it was give or
25 take, 25. And he had started paying it down. And

1 my understanding was that it was between 19 and 20.

2 Q Okay. And that was the result of, you said,
3 consolidation?

4 A Consolidation, and just some work around the house,
5 and different things.

6 Q And did your mom work as well?

7 A She did.

8 Q And was Bryan, to your knowledge, was he at threat
9 of losing his job?

10 A No, he was not.

11 Q Were they about to lose their car?

12 A No, they were not.

13 Q Was their house about to be foreclosed upon?

14 A No, it was not. They actually -- at one point
15 during -- after this happened, I know Bryan always
16 wanted me to kind of check their credit reports
17 because I had access to do that. And I actually
18 had a credit report of Bryan and my mom's, and I
19 keep one of myself and other people that advise me
20 to.

21 But I actually, I think, one day went over and
22 talked to Major Smith and handed him their credit
23 reports because there was nothing there, no late
24 payments. Everything was on time.

25 Q So as a CPA, I guess, and his stepson --

1 A Uh-huh.

2 Q -- you helped Bryan with the finances?

3 A Right. Bryan just -- it didn't matter if it was a
4 dollar or \$25,000. Bryan did not like debt. He
5 just did not want to owe anything. And he just
6 wanted to get it paid off. His goal was just to
7 pay everything off so could have the house payment,
8 and that was it.

9 Q And were you aware of any -- or I guess what the
10 Defendant owed him?

11 A Yes. Bryan always kept his legal pad. And he kept
12 the actual normal bills on there. And he had his
13 calendar at work, which I saw later on, but he
14 would show me his yellow legal pad that he always
15 would write down what he owed and his plan. He
16 would have his budget.

17 It was, Okay, let's pay a thousand this month.
18 Well, maybe I can pay \$1,200 so I can get ahead.

19 So he would always write stuff down. And he
20 had showed me a couple of times between the
21 different seasons.

22 If I recall, the last number Bryan showed me
23 was \$21,300 that Brett owed him.

24 Q And did he talk with you about what Brett owed
25 him --

1 A Yeah.

2 Q -- like recently prior to his murder?

3 A Yeah. He had mentioned that there was an amount of
4 money that Brett owed him from over a year ago.

5 And I guess at this time it would be now two years
6 to two and a half.

7 And then I think maybe 60, 70 percent of it,
8 I'm not sure, a certain amount, 14 or 15 grand was
9 actually owed to him from the prior football
10 season. Back, I think he said the last time he had
11 been paid was maybe September, so the beginning of
12 the football season, and he hadn't been paid since.

13 And so he just said that Brett would always
14 give him an excuse. He would always say, Well, so
15 and so hadn't paid me, or so and so hadn't paid me,
16 so I can't pay you now.

17 Q So the money that the Defendant owed him, that was
18 for his actual work as an employee?

19 A Right.

20 Q He didn't gamble?

21 A He did not.

22 Q With respect to the monies that he was owed, did
23 you actually know about the meeting at all?

24 A I had heard. Bryan had told me. Actually two
25 weeks before this occurred, myself and my wife got

1 in a pretty bad car wreck, and my wife was out of
2 work for an extended period of time, even after,
3 and I was banged up a little bit.

4 So Bryan actually came over to the house the
5 week before they went to the beach and would cut my
6 grass, check on us every day after work, and stuff
7 like that.

8 So he talked to me about it and said that he
9 was just -- my understanding -- and I didn't know
10 it changed until afterwards -- but he was going to
11 meet Brett at 2:00 on Friday.

12 Q And with respect to his amount of debt and what the
13 Defendant owed him, assuming that Brett didn't pay
14 him, was Bryan's credit card debt manageable?

15 A Yes, of course. He wouldn't be able to pay what he
16 wanted to pay on his budget, but he could very
17 easily make the minimum payment.

18 Q Did Bryan ever discuss potential work with Jack
19 Parker with you?

20 A He had mentioned it a couple of times. The week
21 before -- I guess it was two weeks before when he
22 was over cutting the grass, he mentioned to me
23 about at one time that Brett had gotten in some
24 trouble and Jack bailed him out. And then that
25 Jack said that he would make him whole. And that

1 if there was a problem, he could come work for
2 Jack.

3 Q I want to talk to you a little bit about guns.

4 A Uh-huh.

5 Q And Bryan. How did he feel about guns?

6 A Bryan did not like guns. He didn't know how to use
7 guns. I grew up hunting and fishing a good bit and
8 don't do it anymore. I still fish a little bit.
9 But he had never shot a gun in his life until he
10 came down here. And this was at the old house on
11 Crossing Street probably --

12 Q And where is Crossing Street?

13 A Crossing Street is still in Leesville. It was just
14 the house prior to them moving out to the lake. It
15 had a pond behind it. And the ducks would come out
16 there and have little baby ducks, and the turtles
17 would actually eat the little baby ducks.

18 But Bryan didn't want that. He wanted to
19 figure out how to get rid of them. So I would
20 actually bring a .22 long rifle, which is, you
21 know, a long gun with the .22 long rifle shots in
22 it. And I would shoot the turtles so they wouldn't
23 eat the ducks, the baby ducks.

24 Well, finally, being back and forth through
25 school and baseball practice, and everything, I

1 said, Bryan, why don't I show you how to shoot this
2 gun so you can shoot the ducks if you see one out
3 here.

4 And we had a dock. And I remember it had
5 rails on the side. And I propped it up on the
6 rail.

7 You know, I first told him to hold it, and he
8 was shaking. So I propped it up on a rail and told
9 him, you know, how to sight it so he could see the
10 actual ducks, and showed him how to pull the
11 trigger. And I let him hold it and let him pull
12 the trigger.

13 But when he pulled the trigger, he about
14 dropped my gun in the water because he jumped. And
15 I actually called him a big sissy.

16 And he said, I never want to do that again.

17 Q And so you said you hunted?

18 A I did.

19 Q And how did Bryan feel about hunting?

20 A He didn't like it. I would always question him.
21 At their house out at the lake, they've got quite a
22 number of deer and some big ones I have seen. And
23 I always wanted to hunt. And he said I could not
24 kill any of his animals and his pets.

25 I told him it would be real easy. I could

1 drink a cup of coffee on the back porch. We could
2 be eating by that afternoon.

3 And he said, You are not killing my animals.

4 Q So you never saw Bryan with a gun?

5 A Never.

6 Q And if Bryan had been given a gun or had bought a
7 gun, would he have told you?

8 A Definitely.

9 Q How did you find out about what happened?

10 A I had worked, probably not a full day that day. I
11 can't really remember. I probably did if it was
12 during tax season. That day is kind of a blur.
13 But I remember I was home and I was actually out in
14 the yard.

15 And I got a phone call, and it was my
16 grandmother, Martha. And we talk, but we don't
17 talk on a regular basis. So I thought it was kind
18 of odd that she was calling Friday at about 5:30,
19 6:00 o'clock.

20 And she said, You need to come and be with
21 your mother.

22 I said, you know, What's wrong?

23 She said, You just need to come out to the
24 house and be with your mother.

25 And I said, You can't leave me like that. You

1 have to tell me what is going on.

2 She just said, Bryan is dead.

3 And I remember I just hung up the phone and
4 dropped it and went inside and told my wife we
5 needed to drive out to the house.

6 And I remember on the way out there, you know,
7 I kind of sometimes draw up a little bit and don't
8 show a lot of my emotions, and I just got in the
9 car and started driving.

10 And my wife was asking me, you know, what was
11 going on. And I said, All I know is that, you
12 know, Bryan is dead.

13 And I had mentioned something, she asked what
14 was going on, or something, I'm not completely
15 sure, but she said something, and I said, Well, he
16 was meeting with Brett today, and there is no
17 telling.

18 And she immediately started breaking down
19 crying. I just looked at her. We were actually in
20 front of, I guess it's where Michelin and US Foods
21 are. We were getting ready to cross the railroad
22 track.

23 And I just looked at her and said, What is
24 going on?

25 And she has a mutual friend at work that her

1 husband is with Lexington County. And she had
2 gotten a text that day that said there was a double
3 murder in Ascot. And that is why she broke down,
4 because she, I guess through our conversation, she
5 knew that Brett lived in Ascot.

6 Q After you found out, and later on law enforcement
7 started investigating, did they make contact with
8 you?

9 A They did. Sergeant Lindler and Don Robinson came
10 out to the house that night, talked to my mom,
11 myself, and my sister, Liz. **H.C.** wasn't home yet.
12 We sent somebody up to school to get her and bring
13 her back.

14 But they came in and we all sat down at the
15 kitchen table and discussed everything. And that's
16 when -- they asked some normal, general questions.
17 And then that's when they asked for consent to
18 check the house.

19 And I said, Sure, have at it.

20 And that's when they walked around the house,
21 and I walked behind them, and they checked
22 everything.

23 Q And at some point did they want some of the
24 financial information from y'all or wanting to know
25 about Bryan's financial situation?

1 A Right. They had asked some questions. And I think
2 that is when I just said, Well, hey, look, I have
3 got the credit reports. I'll hand them over to
4 you, because there is nothing there. If you want
5 them, I'll bring them tomorrow.

6 And I think that's when I think Stan and I, or
7 Major Smith and I, had actually at one point met up
8 one afternoon, I left work or something like that,
9 and either handed them over to him or somebody
10 else, I'm not sure, but I took them the actual
11 credit reports.

12 Q So you didn't hide anything? You turned them over?

13 A Immediately.

14 Q And gave them consent to search?

15 A Uh-huh.

16 Q And, again, what was the total amount of credit
17 card debt he had?

18 A Probably, I would say, 205, 210,000.

19 Q I mean, not with the house payment, but the credit
20 card debt?

21 A Oh, the credit card was 20.

22 Q Twenty thousand?

23 A Uh-huh.

24 Q And if the Defendant hadn't paid him, Bryan still
25 had a plan?

1 A Yes, he could still make it. He just wouldn't be
2 able to make the payment he wanted to make, but he
3 could still make the minimum payment.

4 Q And were you aware of plans he had that weekend?

5 A Yes, he was going to H.C.'s graduation that night
6 or the next morning.

7 Q Or her prom?

8 A Prom.

9 Q She is graduating this week?

10 A Right, yes. Her prom, I'm sorry.

11 Q Thank you.

12 MS. SIMPSON: Nothing further.

13 THE COURT: Mr. Whitlark?

14 MR. WHITLARK: May it please the Court?

15 **CROSS-EXAMINATION**

16 BY MR. WHITLARK:

17 Q How did you report the income from the gambling
18 business?

19 A It was not on the tax return.

20 Q Okay. But he did make money doing that, didn't he?

21 A He did. But on an actual individual tax return,
22 you're cash basis.

23 Q Uh-huh.

24 A So until you are actually paid, you cannot report
25 it on a tax return.

- 1 Q All right. Well, how much money did he make the
- 2 year before on it?
- 3 A I don't know.
- 4 Q Well, I thought you were working on his finances
- 5 for him for a while?
- 6 A I did.
- 7 Q How long did you work on them?
- 8 A For about six or seven years.
- 9 Q Did he ever report his gambling income?
- 10 A Not to my knowledge.
- 11 Q Okay. Okay. When you were riding in the car with
- 12 your wife, you remember that? It's what you just
- 13 testified to, the day it happened?
- 14 A That afternoon, yes, sir.
- 15 Q Your comment was to her when you said that he was
- 16 dead that, There's no telling what happened?
- 17 A Right. I can't assume anything. I don't know what
- 18 happened. I wasn't there.
- 19 Q Did he ever mention to you about \$6,100 had been
- 20 owed for two years?
- 21 A Yes, he did.
- 22 Q Yep. As a matter of fact, he was pretty upset
- 23 about that, wasn't he?
- 24 A Yeah, of course. If my boss hadn't paid me for two
- 25 years, I'd be upset too.

1 Q Did he tell you that he was going to get his money,
2 no matter what, when we went over there?

3 A No, he did not.

4 Q What did he say about it?

5 A He said he was going to go over there, and he
6 expected that Brett was going to pay him, that he
7 was hoping. And he said that if Brett didn't, he
8 would bring it up as to why he did not or was not
9 able to pay him.

10 Q Did you know that he had told Cindy Capnerhurst
11 that, you know, that there's going to be some
12 trouble. There could be a fistfight or something
13 else?

14 A At the time I did not know that.

15 Q You know it now, don't you?

16 A Of course. I've been here all week.

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

18 (Pause.)

19 BY MR. WHITLARK:

20 Q Do you agree that Bryan Capnerhurst was obsessed
21 with getting this money from Brett Parker?

22 A No, not in my context. Like I said earlier, I'm a
23 CPA. And you can ask any of my friends, anybody
24 that knows me. If I owe five dollars, it drives me
25 crazy. So in that context, no, sir. And to me

1 20,000 wasn't a lot.

2 Q Well, he hated debt, didn't he?

3 A Of course. I do too. And I have it.

4 Q And you did his taxes for six years, you said?

5 A Uh-huh.

6 Q And he never reported any of the gambling income?

7 A No, sir.

8 Q Do you know if he had a separate bank account we
9 don't know about? Did he ever mention it? I guess
10 he didn't mention it to you?

11 A If it was one that I didn't know about it, of
12 course I wouldn't know.

13 Q How did he keep -- what would he do with that
14 money, with the gambling money, if it wasn't being
15 reported?

16 A I guess buy groceries. I mean, we didn't get into
17 that kind of detail.

18 Q Okay. He didn't go to work all that week, did he?

19 A No, they took vacation. I think he went to work
20 that Monday.

21 Q Okay.

22 A He was supposed to go to work that Friday, and he
23 called in.

24 Q Would you agree that he was talking about getting
25 that \$21,300? It was 21,300 that he was looking

1 for, wasn't it?

2 A Right, was my knowledge.

3 Q And he was talking about it a lot, wasn't he?

4 A Yeah, we discussed it.

5 Q Not just with you, but, I mean, he was talking
6 about it for at least two weeks before that; right?

7 A Yes, with me. Uh-huh.

8 Q Did you see him talking -- did you hear him talking
9 about it with other people?

10 A Not around me. We just talked about it at my house
11 when he was over there helping me cut the grass.

12 Q Did you see the bag he always carried?

13 A Yeah, his gym bag.

14 MR. WHITLARK: That's all the questions I
15 have, Your Honor.

16 THE COURT: Anything else from the State?

17 MS. SIMPSON: Nothing further from the State.

18 THE COURT: All right, sir. You may step
19 down.

20 THE WITNESS: Thank you.

21 (Witness steps down.)

22 MS. SIMPSON: Your Honor, may this witness be
23 excused?

24 THE COURT: Any objection from the Defense?

25 MR. WHITLARK: No objection from the Defense,

1 Your Honor.

2 THE COURT: All right. Thank you. You're
3 free to leave, sir.

4 THE WITNESS: Thank you.
5 (Witness excused.)

6 THE COURT: Call your next witness.

7 MS. WALKER: Your Honor, the State calls Liz
8 Myers.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Have a seat in the witness box.

19 (Witness complies.)

20 THE CLERK: State your name for the
21 record, please.

22 THE WITNESS: Liz Myers.

23 LIZ MYERS,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. WALKER:

2 Q Where are you from?

3 A Batesburg-Leesville originally.

4 Q Did you grow up in this area?

5 A I did, in Batesburg-Leesville.

6 Q You went to Batesburg-Leesville High School?

7 A I did.

8 Q And you're related to Heyward?

9 A I am. He's my brother.

10 Q And Cindy is your mother?

11 A She is.

12 Q Bryan would have been your stepfather?

13 A Yes, he was, and still is.

14 Q Do you remember how old you were when your mom and

15 Bryan got married?

16 A I was in high school. It was September, I think.

17 It was in sophomore or junior year in high school.

18 Q And they had a daughter?

19 A Yes, H.C.

20 Q And she hasn't been here?

21 A No. It's inappropriate.

22 Q Did you and Bryan become close over the course of

23 y'all's relationship?

24 A We did. We did. I wasn't as close to him as

25 Heyward was because Heyward is a boy that loves

1 baseball, but we were close.

2 Q Did you know that Bryan worked for the Defendant?

3 A I did.

4 Q Did you know what he was doing for him?

5 A Yes, he was taking calls and bets from some of
6 Brett's clients.

7 Q Do you remember how long he had been doing that
8 when all this happened?

9 A I'm not sure.

10 Q At some point did you become aware of the debt
11 Brett Parker owed your stepfather?

12 A Yes.

13 Q I want to show you what has been marked as State's
14 Exhibit 523 and 524 and ask you if you recognize
15 those?

16 A Yes, I recognize that one and that one.

17 Q Do you recognize the handwriting?

18 A Yes, it's Bryan's.

19 Q And are you familiar with Bryan's handwriting?

20 A Yes.

21 (Attorneys confer.)

22 MR. WHITLARK: No objection.

23 THE COURT: That's 523 and 524?

24 MS. SIMPSON: 523 and 524, Your Honor.

25 THE COURT: They are entered without

1 objection.

2 (WHEREUPON, State's Exhibit Nos. 523-524
3 were marked for identification and
4 received into evidence.)

5 BY MS. WALKER:

6 Q Did Bryan kind of keep a running log of all his
7 finances?

8 A Yeah, he was pretty anal about that. He was
9 always -- he always had a yellow note pad with him
10 and writing down figures.

11 Q And on these note pads, does it have the amount of
12 money that he was owed by Brett Parker?

13 A Yes. He has what he's paying for Governor's School
14 and some of the other bills he owes. And then up
15 at the top it says 20,500.

16 MS. WALKER: Your Honor, permission to publish
17 to the jury?

18 MR. WHITLARK: One moment please, Your Honor.
19 Is that a notebook or a page there?

20 MS. WALKER: It's the same thing you just
21 admitted without objection.

22 MR. WHITLARK: No objection.

23 THE COURT: All right. You may publish it.
24 (Exhibit published to jury.)

25 BY MS. WALKER:

1 Q And on this legal pad, it says BP owes, and what is
2 that amount?

3 A Twenty-one thousand three hundred.

4 MS. WALKER: Permission to publish, Your
5 Honor?

6 THE COURT: Yes, ma'am.

7 (Exhibit published to jury.)

8 BY MS. WALKER:

9 Q And that was something your stepfather shared with
10 you?

11 A Yes. That was out on the kitchen counter several
12 times when I was home.

13 Q Did you know that your parents were taking a
14 vacation that week?

15 A Yes. They were going to Myrtle Beach with the
16 Langs.

17 Q There has been testimony about your mother's
18 embezzlement convictions.

19 A (Nods affirmatively.)

20 Q Did you attend that guilty plea?

21 A I did.

22 Q Did you ever hear your mother say anything about
23 gambling, about Bryan gambling?

24 A No. Mom actually cried the entire time. She could
25 not carry on a conversation at all. That was

1 discussed between the judge and her attorney at the
2 time.

3 Q Richard Breibart?

4 A Uh-huh.

5 Q Who is now disbarred and in prison?

6 A Right.

7 Q When was the last time you spoke with Bryan?

8 A Easter Sunday.

9 Q The Sunday before this Friday?

10 A Uh-huh.

11 Q That was before they went to Myrtle Beach?

12 A Yes.

13 Q The documents that you identified that are being
14 passed around now, where did y'all find those?

15 A One was found in his office area.

16 Q The home office?

17 A Yes. I'm not sure where the other one was found,
18 actually. I'm not real sure where that one was
19 found.

20 Q But you had seen those around the house?

21 A Yes, both of them.

22 Q On Friday, the 13th, how did you become aware of
23 what happened to your stepfather?

24 A I was home getting ready to go meet some friends.
25 And I had a phone call from my uncle, a missed

1 call.

2 And I thought -- I own a photography business,
3 and I thought he was calling me to take some
4 photographs of my cousins.

5 And I kind of was like, I'll call him later.
6 And then one of my mom's best friends called me.

7 And she said, Liz, where are you?

8 And I said, I'm at home. Why? What is going
9 on? It was Carla.

10 And she said, You need to call your mom.

11 And I said, What's going on?

12 And she said, You need to call your mom.

13 I said, You can't leave me like this. You
14 need to tell me what is going on.

15 And she said Bryan had been shot.

16 And so I called my mom, and my Uncle Rick
17 answered the phone.

18 And he said, You need to come home.

19 And I said, Somebody needs to tell me what's
20 going on.

21 And he said, Bryan has been shot. You need to
22 get home.

23 And so I got in my car shortly after that and
24 drove to Batesburg.

25 Q And did y'all meet with members of the Richland

1 County Sheriff's Department?

2 A Yes.

3 Q And they asked you questions about your parents'
4 finances?

5 A They did.

6 Q Did y'all turn over any and all credit information
7 you had?

8 A Well, I remember mom giving them her credit card
9 statement.

10 Q Were you aware of any guns that may have been in
11 your parents' home?

12 A No. I have never seen a gun in that house ever.

13 Q Were you aware of Bryan ever having a gun?

14 A No.

15 Q Thank you.

16 MS. WALKER: No further questions.

17 MR. WHITLARK: Briefly, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. WHITLARK:

21 Q You have looked at these documents?

22 A Yes, sir.

23 Q And he has the figure 21,300?

24 A I don't know which one you're looking at.

25 Q Oh, I'm sorry.

1 (Hands to witness.)

2 A Yes. This one says BP owes 21,300.

3 Q Did he talk to you about this?

4 A Did he talk to me about the legal pad or the money
5 owed to him?

6 Q The money.

7 A Yes.

8 Q How many times did he talk to you?

9 A When I asked.

10 Q Was he talking about it a lot?

11 A No.

12 Q When is the last time you saw him before this
13 happened?

14 A Easter Sunday. And I actually asked him if he had
15 been paid any money at that point. He never
16 brought it up to me first.

17 Q How long before that was this? How long was that
18 before this happened?

19 A Easter Sunday was the Sunday before this happened.

20 Q Did you see him in between that time?

21 A No. They were at the beach.

22 Q The last time you saw him, he told you that Brett
23 Parker owed him \$21,300?

24 A I asked him how much Brett owed him, and he told me
25 after I asked him, yes, sir.

1 Q Did you know what he did for a living?

2 A What who did for a living?

3 Q Did you know Bryan Capnerhurst was in the gambling
4 business?

5 A I knew he worked for Brett Parker and took calls
6 for Brett Parker, yes, sir.

7 Q Well, did you know it was gambling?

8 A I knew he took betting calls for Brett Parker.

9 Q Okay. Did you know about the burned receipts
10 outside the house?

11 A I knew they were notes he took for the clients for
12 Brett Parker, yes, sir.

13 Q Did you ever ask him about that?

14 A Huh-uh. I knew what they were.

15 Q How did you know what they were?

16 A Because I had seen him write the notes down when he
17 was taking the calls.

18 Q Were you there when the Secret Service came there?

19 A I was not. Actually, nobody was there at first.

20 MR. WHITLARK: That's all the questions I
21 have, Your Honor. Thank you.

22 THE COURT: Anything else?

23 MS. WALKER: No questions. Your Honor, may
24 this witness please be excused?

25 THE COURT: All right, you may step down,

1 ma'am.

2 (Witness steps down.)

3 THE COURT: Any objection to this witness
4 being excused?

5 MR. WHITLARK: No objection from the Defense,
6 Your Honor.

7 THE COURT: All right, ma'am, you are free to
8 leave.

9 (Witness excused.)

10 THE COURT: Call your next witness.

11 MS. SIMPSON: The State calls Sandy Morgan.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible, and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm the
17 testimony you are about to give in this case will
18 be the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Have a seat in the witness box.

22 (Witness complies.)

23 THE CLERK: State your name for the record.
24 And spell your first name, please.

25 THE WITNESS: My name is Sandy Morgan,

1 S-A-N-D-Y.

2 SANDY MORGAN,
3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SIMPSON:

6 Q Ms. Morgan, how old are you?

7 A Fifty-three.

8 Q Fifty-three? And where do you live?

9 A I live in Irmo.

10 Q And are you married?

11 A Yes.

12 Q Do you have any children?

13 A Yes.

14 Q Where do you work?

15 A I work at Palmetto Home Medical, Durable Medical
16 Equipment Company.

17 Q And what do you do there?

18 A I handle -- I'm a customer service rep, basically.
19 I handle the insurance claims, and when the
20 referral sources send over orders for the durable
21 medical equipment, I make sure that we verify the
22 insurance and then I contact all the reps to give
23 them the order so they can deliver it.

24 Q Are you a little nervous?

25 A Yes. I'm sorry.

1 Q That's fine. And you said you are a rep. What is
2 Palmetto Home Medical Supplies? Like what do y'all
3 do?

4 A Durable medical equipment. We provide hospital
5 beds, wheelchairs, walkers, bedside commodes,
6 crutches, any need for someone that is discharging
7 from the hospital or a rehab facility. It is for
8 home use, medical equipment for home use.

9 Q And how do you know the Defendant?

10 A He works -- or worked for Palmetto Home Medical.

11 Q And what did he do there?

12 A He delivered medical equipment.

13 Q And how long have you been working for Palmetto?

14 A Two and a half years.

15 Q Two and a half? And did the Defendant start there
16 while you were working there or --

17 A He was already there.

18 Q He was already there?

19 A Yes.

20 Q I want to turn your attention to Friday,
21 April 13th, when this murder occurred. How did you
22 find out what happened?

23 A Well, I found out -- basically how it started, the
24 phone calls started coming in about what had
25 happened. I received a phone call. And I don't

1 remember exactly on times, but I want to say
2 between 2:00 and 2:30 from a customer that didn't
3 receive some medical equipment that Brett had
4 planned to deliver.

5 And I contacted another rep and, you know,
6 wasn't sure what to do, if somebody else needed to
7 take it or if they knew, you know, what was going
8 on with Brett or anything.

9 And so I actually called Brett. And Brett
10 answered the phone and said that he had an
11 emergency and was not going to be able to deliver
12 the equipment.

13 Q And this was around 2:00, 2:30?

14 A I would say 2:00, 2:30. Maybe it was a little bit
15 later than that. I don't remember the times
16 exactly.

17 Q So was Brett supposed to work that day?

18 A Well, Friday, he would have come in, but not a lot
19 of work, because we close at 1:00 on Fridays and
20 most -- well, on our door it says we close at 1:00.
21 I'm there all day. And a couple of the guys will
22 choose to work all day and some will play golf in
23 the afternoon.

24 Q And was Brett usually there on a Friday?

25 A In the morning just for a little while. Everybody