

48

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 VI**

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INDEX

Indictments	1
Sentencing Sheets	5
Defendant's Request to Charge #1	7
Pre-trial transcript	8
Joseph Ryan	
Direct	55
Cross	61
James Standin Smith	
Direct	64
Cross	85
James Standin Smith	
Direct	97
Cross	99
Trial Transcript	201
Opening Statements	221
Joseph Ryan	
Direct	265
Cross	277
Redirect	293
Recross	294
Joseph Johnson Odom	
Direct	297
Cross	319
Redirect	331
Recross	332
Austin Lee Harvel	
Direct	335
Cross	346
Redirect	365
Recross	366
Kenneth Brown	
Direct	367
Cross	370

Robin Haselden	
Direct	372
Cross	375
Matthew Ellis	
Direct	379
Cross	388
Redirect	396
Recross	398
Nina Ducate	
Direct	400
Cross	402
Maria Yturria	
Direct	409
Cross	425
Jane Powell	
Direct	434
Cross	439
Stan Richards	
Direct	457
Voir Dire	462
Direct	470
In Camera	755
Cross	757
Redirect	793
Recross	799
Trevor Holt	
Direct	804
Voir Dire	807
Direct	812
Cross	843
Redirect	854
Recross	855
Harold Bouknight	
Direct	885
Voir Dire	887
Direct	890
Cross	905
Redirect	909
Recross	910
Anna Elsey Cavanagh	
Direct	911
Voir Dire	915
Direct	916

Cross	932
Brian Metz	
Direct	943
Cross	960
William Cedarstaff	
Direct	963
Cross	966
Donald McRae	
Direct	969
Cross	975
John Barron	
Direct	977
Voir Dire	980
Direct	982
Cross	1008
Trisha Collins Odom	
Direct	1015
Voir Dire	1017
Direct	1018
In Camera	1040
Cross	1043
Redirect	1050
Recross	1052
John G. D. Roberts	
Direct	1054
Voir Dire	1056
Direct	1058
Cross	1082
Redirect	1093
Recross	1094
Gary Watts	
Direct	1096
Cross	1107
Redirect	1132
Recross	1134
Scott McDonald	
Direct	1136
In Camera	1197
Direct	1204
Cross	1225
Redirect	1299
Recross	1307

Lindsay Mullins	
Direct	1315
Cross	1327
Redirect	1331
Recross	1333
Theresa Mills-Floyd	
Direct	1336
Cross	1351
Betty Anne Webb	
Direct	1359
Cross	1372
Redirect	1376
John A. Lucas, Jr.	
Direct	1378
Cross	1382
Redirect	1385
Recross	1385
Jackie Warren	
Direct	1387
Cross	1406
Kristin Polis	
Direct	1421
Voir Dire	1425
Direct	1427
Cross	1445
Bradley J. Marcus	
Direct	1454
Voir Dire	1462
Direct	1464
In Camera	1554
Direct	1564
Cross	1568
Redirect	1586
Recross	1588
James Morgan	
Direct	1590
Cross	1614
Terri Gleason	
Direct	1656
Voir Dire	1659
Direct	1662
Cross	1750

Lanny Gunter	
Direct	1762
Cross	1789
Natasha Nadkarni	
Direct	1796
Cross	1805
Redirect	1807
Recross	1818
Jim Headly	
Direct	1820
Cross	1842
Britt Jordan	
Direct	1854
Cross	1858
L. Alvin Kelley, Jr.	
Direct	1860
Cross	1869
Britt Dove	
Direct	1876
Cross	1912
Chris Lindler	
Direct	1917
Cross	1932
Redirect	1937
Recross	1938
Cindy Capnerhurst	
Direct	1939
Cross	1955
Heyward Barnes	
Direct	1963
Cross	1982
Liz Myers	
Direct	1987
Cross	1994
Sandy Morgan	
Direct	1998
Cross	2006
Redirect	2013
Recross	2013
Al Muncey	
Direct	2017
Cross	2022

Harry B. Benenhaley	
Direct	2029
Cross	2043
Redirect	2046
Recross	2047
Jerry Carswell	
Direct	2048
Cross	2053
Travis Holdorf	
Direct	2061
In Camera	2068
Direct	2072
Cross	2201
Redirect	2306
Recross	2309
Leon Lott	
Direct	2311
Cross	2335
Pat Pruitt	
Direct	2349
Cross	2353
Ben Staples	
Direct	2359
Cross	2387
James Standin Smith	
Direct	2403
Cross	2528
Redirect	2560
Recross	2564
Brad Spehl	
Direct	2598
Cross	2607
Redirect	2613
David Sojourner	
Direct	2615
Cross	2620
Redirect	2625
Fred Green	
Direct	2628
Cross	2631
Carol Haines	
Direct	2633
Cross	2636

Redirect	2638
Recross	2639
Sheri Davis Armstrong	
Direct	2640
Cross	2643
Wendy Combs-Kiser	
Direct	2647
Cross	2652
Redirect	2674
Recross	2676
B.P.	
Direct	2686
Cross	2688
Redirect	2694
Lanny Gunter	
Direct	2695
Cross	2698
Richard Earnest	
Direct	2708
Cross	2722
Redirect	2727
Recross	2730
Further Redirect	2734
Further Recross	2735
Robert Bowers	
Direct	2737
Brett Parker	
Direct	2744
Cross	2785
Redirect	2892
Recross	2902
Allison Marie Foster	
Direct	2916
Cross	2940
Redirect	2941
Gary Watts	
Direct	2943
Cross	2946
Ila Simmons	
Direct	2950
Voir Dire	2952
Direct	2953
Cross	2957

Closing Statements	2998
Jury Charges	3151
Verdict	3177
Motions	3182
Sentence	3190
Certificate of Counsel	3192

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 Q And are you familiar with ARC interview of B.P. ?

2 A Yes.

3 Q And did she also indicate where the gun was kept?

4 A That her father had a gun in the office.

5 Q And the drawer where that gun -- where that
6 ammunition was found and the drawer that was right
7 next to it, can it be locked?

8 A It can.

9 Q Moving your attention to May the 24th of 2012, did
10 you meet with Ben Staples and Jerry Carswell?

11 A I did.

12 Q And did you get certain information from
13 Mr. Carswell?

14 A We did.

15 Q Moving your attention to May the 30th of 2012, did
16 you sit down again with the Capnerhurst family?

17 A I sat down with Liz Myers and Heyward Barnes. I
18 had to go over the case some with them at that
19 point.

20 Q At some point in your talking with Ms. Myers and
21 Mr. Barnes, did they -- were they forthcoming?

22 A Yes, they were.

23 Q And did they provide certain information to you
24 about Cap's finances?

25 A They did.

1 Q And as part of that information, I believe it
2 included what?

3 A It included some debt that they had.

4 Q And the reports that they gave you were what? Do
5 you recall?

6 A Some credit reports, I believe, and a Visa bill.

7 Q I show you State's Exhibit Number 542. Is that one
8 of the things that they were forthcoming with?

9 A Yes. This is the Safe Federal Credit Union Visa
10 bill that they supplied.

11 MS. CAMPBELL: Your Honor, at this time we
12 would offer it in evidence.

13 MR. WHITLARK: What? I'm sorry.

14 THE WITNESS: Safe Federal Credit Union.

15 MS. CAMPBELL: Visa bill.

16 THE WITNESS: Visa bill.

17 THE COURT: What is the number on that?

18 THE WITNESS: 542.

19 MS. CAMPBELL: Sorry, Your Honor.

20 MR. WHITLARK: When did you -- well, all
21 right.

22 THE COURT: Any objection?

23 MR. WHITLARK: No objection, Your Honor.

24 THE COURT: All right, it will be entered
25 without objection.

1 (WHEREUPON, State's Exhibit No. 542 was
2 marked for identification and received
3 into evidence.)

4 BY MS. CAMPBELL:

5 Q That day did you also receive some information
6 about the testing that was done on the blinds?

7 A Yes.

8 Q Did you personally call SLED Agent John Roberts
9 about that information?

10 A I did.

11 Q What information did you discuss?

12 A Of the six lifts from the blinds, three of them he
13 reported the presence of small round lead
14 particles. Small round lead particles consistent
15 with an element of gunpowder residue.

16 Q Did you ask him a certain question?

17 A I asked him -- he actually had to put the word
18 inconclusive on his report. And he explained that,
19 and I hope the jury understood it. But basically,
20 as I understand it, if you have all three, then you
21 can definitely say it is GPR. If you have one,
22 then you just have to say inconclusive,
23 technically, but small round lead particles are
24 only found, according to his testimony and his
25 experience, with gunpowder residue.

1 So for the purposes of the report it is
2 inconclusive, but in reality he found the presence
3 of gunpowder residue in the form of small round
4 lead particles.

5 The question that I asked him was, would you
6 expect to find small round lead particles on a
7 window blind in a home.

8 And his answer at that time to me was no.

9 Q Moving your attention to June, June the 4th, did
10 you meet with the Solicitor in this case?

11 A Myself and Lieutenant McDonald did come and brief
12 the Solicitor, Mr. Johnson.

13 Q And the next day, did you make contact with an
14 attorney named Jake Moore about Lanny Gunter?

15 A I did. And during that conversation it was related
16 to me that the debt is probably going to be closer
17 to \$200,000.

18 Q As all this is going on and your investigation is
19 continuing, is Brett Parker still making contact
20 with the sheriff?

21 A As the sheriff testified to, he was contacting the
22 sheriff, not us. And the sheriff was accommodating
23 him with interviews.

24 Q And the next interview occurred, I believe, on
25 June the 6th?

1 A At 2:30 p.m.

2 Q And had you formulated a series of questions for
3 the sheriff to ask him?

4 A I supplied him with 12 questions that day.

5 Q And the sheriff has already testified as to what
6 his answers were?

7 A Yes.

8 Q And in reviewing that information, did it -- was it
9 inconsistent with some prior information he had
10 given you?

11 A It was. And I pointed out some of the
12 inconsistencies. For example, Question 1 about the
13 time lapse between Capnerhurst's arrival and the
14 9-1-1 call, he really didn't answer the question.
15 He just says it seemed quicker than that. The
16 sheriff testified to that.

17 Question 2, he did admit the fire alarm did go
18 off when Bryan allegedly shot Tammy, but he never
19 answers why he never mentioned this in prior
20 interviews and only told the dispatcher that.

21 In Question 3, he doesn't answer the question
22 about peeking out of the blinds of the side door,
23 he simply says he opened the garage door and may
24 have looked out his son's bedroom blinds.

25 And the significance of that is, the son's

1 bedroom is upstairs. The blinds we saw were
2 downstairs..

3 In Question 4, he directly conflicts with the
4 account of witnesses Cindy Capnerhurst and James
5 Morgan. Cindy specifically said that Brett changed
6 the meeting time and Morgan knew that Capnerhurst
7 was supposed to be there at 12:30. And Morgan
8 talked about Capnerhurst's punctuality and how this
9 trait made him the perfect guy to set up.

10 In Question 6, for the first time he admitted
11 that he was into another bookie for some gambling.
12 He had previously denied this and had specifically
13 denied online gambling. And this corroborated
14 Lanny Gunter's statement to Holdorf.

15 And during that previous interview, the one we
16 got -- remember, I told you when we collected the
17 DNA and the prints, that was the day we talked
18 about the bookie some more.

19 Question 7, he actually volunteers the name of
20 an online operation he bets on. He called it
21 SPORTSOPTIONS.COM. Well, we learned that not to be
22 true, it was BETCC.COM, as y'all have now heard
23 about.

24 In Question 10, he was adamant that Tammy was
25 on the phone when he left the office.

1 Lieutenant McDonald's analysis of the phone
2 calls revealed no such call on the day of the
3 murders.

4 Q That day did you also set up another interview for
5 the Defendant to come in and explain things?

6 A Yes.

7 Q And did that take place --

8 A June 13th.

9 Q Sorry, June 13th. Thank you. And did you actually
10 witness that interview?

11 A I did.

12 Q And were there some additional inconsistencies than
13 what he reported in that interview?

14 A In that interview he now admits that he told Bryan
15 to be there at 12:30. In the interview with the
16 sheriff a week before he said he had not set a
17 time. Just back and forth.

18 He said that the bathroom door was cracked
19 when he was in the bathroom. That was new
20 information.

21 He said that Bryan was 10 to 15 foot back when
22 they were in the area where the safe was.

23 Q Okay. Was that significant?

24 A Two to five feet.

25 Q And he specifically said 10 to 15 feet back?

1 A Ten to 15 feet. And he mentioned for the first
2 time that he felt Bryan had something to do with a
3 burglary that he had had. That just came out of
4 the blue.

5 Q And this is the burglary that has been referred to
6 over and over in this case?

7 A Yes. Now he is blaming Bryan for the burglary,
8 March of 2010.

9 He reiterated the story about the lady showing
10 up in Capnerhurst's office. It was a story
11 about -- and this story that you have heard about
12 Cindy Capnerhurst and the federal charges and the
13 story he was telling about that.

14 And for the first time he said that Tammy's
15 eyes were open. And that was significant, because
16 he had never mentioned that, that detail, which
17 I -- you know, that is pretty significant.

18 For the first time he said that Bryan was
19 making a noise when he went and checked on him.
20 And he said he went -- and then -- and he says he
21 went back and checked on him before he called
22 9-1-1. He never had said that. It had always
23 been, checked on Tammy, go call 9-1-1. Now it is
24 check on Tammy, go back and check on Bryan, and
25 call 9-1-1. Another change.

1 But, again, the truth is pure. The truth
2 ought to be the same every time you tell it. That
3 is why it is the truth.

4 He discusses affairs claiming again they were
5 only about sex at that time.

6 He was asked about what reasons Bryan would
7 have for killing Tammy. And now he comes up with
8 something about the fact that he was probably
9 jealous of her success when his own wife was not in
10 that category.

11 His second reason for this was the acquisition
12 of the money.

13 Q Okay, let me back up. Now his reason for killing
14 Tammy was not money, his first reason was what?

15 A He said that Capnerhurst was probably jealous of
16 Tammy's success in her job basically when his own
17 wife was not in that category.

18 Q And then what did he say was the secondary reason?

19 A The secondary reason was the acquisition of the
20 money.

21 Q And what had always been his story up to then as
22 far as --

23 A The money.

24 THE COURT: All right. I'm going to -- we
25 have been going about two hours. And I think the

1 jurors need a break.

2 MS. CAMPBELL: Thank you.

3 THE COURT: We are going to take about a ten
4 minute break for you all to refresh yourselves.

5 (WHEREUPON, the jury retires to the jury
6 room at 3:59 p.m.)

7 (Witness steps down.)

8 (WHEREUPON, a break was taken.)

9 THE COURT: All right, you can bring them in.
10 (Witness returns to witness stand.)

11 (WHEREUPON, the jury came into open
12 court at 4:22 p.m.)

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

14 THE COURT: All right, you may continue.

15 MS. CAMPBELL: Thank you, Your Honor.

16 DIRECT EXAMINATION CONTINUES

17 BY MS. CAMPBELL:

18 Q Again, sir, we were talking about the June 13th
19 interview. And you talked about his reasons that
20 Brett expressed about why Bryan would want to kill
21 Tammy.

22 A Yes.

23 Q And what was that reason again?

24 A That he was probably jealous of --

25 MR. WHITLARK: Objection, Your Honor. That

1 question has been asked and answered now, this will
2 be the third time.

3 MS. CAMPBELL: I'm just trying to go back to
4 where we left off, Your Honor.

5 THE COURT: All right. Objection overruled.

6 MS. CAMPBELL: Thank you.

7 A The fact that he was -- he might have been jealous
8 of her success when his own wife was not in that
9 category. In other words, Tammy was -- he was
10 saying Tammy was more successful than Cindy.

11 Q Than Cindy?

12 A Yes.

13 Q And then did he give a secondary reason that --

14 A The acquisition of the money would be the secondary
15 reason.

16 Q What else did he talk about?

17 A He talked about his last visions of Tammy, about
18 how -- he used the words, it sucked, versus other
19 family members who could recall her in a more
20 controlled situation. He talked about blood. Pool
21 of blood after she was down and not in a sitting
22 position.

23 And I alluded to there that, you know, the
24 investigation concluded that the first shots were
25 while she was sitting at the desk, and then she ran

1 to that location where she was found.

2 Q Let me back up a little bit.

3 A Uh-huh.

4 Q First he said it sucked to see her what?

5 A He said it sucked to see her sitting like that.

6 Q And then he mumbled --

7 A And then he mumbled something about blood. But the
8 investigation showed the only time she was sitting,
9 when she first started sustaining the shots before
10 she ran.

11 So, in other words, he talked about the blood,
12 the pool of blood would have been after she was
13 down on the floor, not sitting like that.

14 Q And according to his version of events, had he been
15 there to witness her actually sitting at the desk
16 when the shooting began?

17 MR. WHITLARK: Objection, Your Honor. It is a
18 leading question.

19 THE COURT: Sustained. Please rephrase.

20 BY MS. CAMPBELL:

21 Q According to his version of events, what had he
22 witnessed about Tammy Parker's murder?

23 A He left her on the telephone at the desk.

24 He talked about his dad's retirement, how
25 Bryan might have felt about that. I think his

1 point on that was if his dad had offered Bryan a
2 job that he might not have it because his dad was
3 going to retire.

4 He once again covered his point about the
5 laying-off as he explained it to me earlier about
6 betting with other bookies to offset losses.

7 Q Once that interview was concluded, did Mr. Parker
8 then leave the Sheriff's Department?

9 A He did.

10 Q And later that day did Mr. Parker make contact with
11 anyone again?

12 A Yes, he called back and talked to the sheriff that
13 afternoon.

14 Q And at that point what did Mr. Parker want as far
15 as further communication with the sheriff?

16 A He wanted further communication.

17 Q When was Mr. Parker scheduled to come back in and
18 talk to the sheriff again?

19 A Monday the 25th.

20 Q And, again, was this what Mr. Parker wanted?

21 A Yes.

22 Q Did he show up?

23 A He said he was too emotional to come in.

24 Q The next day was it arranged for him to come in on
25 the 26th?

1 A Yes.

2 Q And what month are we in?

3 A This is June.

4 Q Thank you. And on Tuesday, the 26th, who actually
5 called for Brett Parker?

6 A Jack Parker called and said Brett had been throwing
7 up all night, wouldn't be able to make it in.

8 Q Moving on to Wednesday, the 27th, was he supposed
9 to come in? He indicated there would be a period
10 of time before he could come in? I'm sorry.

11 A Yes. He asked for a delay at that time.

12 Q And at that point were arrangements made when it
13 suited Mr. Parker to come in on Friday, July 6th?

14 A He did.

15 Q And did he show up?

16 A He did.

17 Q Did he meet with the sheriff that afternoon?

18 A He did.

19 Q And what if anything of import did he say to the
20 sheriff that afternoon?

21 A Some new information. The sheriff took notes,
22 which he testified to. Brett recounted how -- what
23 he told the dispatcher on the date of the incident.

24 He said he told her that he shot him and was
25 asked if he were dead. He said that he thinks he

1 killed him.

2 For the first time he would now say that he
3 checked for life by checking Capnerhurst's neck and
4 wrist.

5 He then recounted how he found Tammy with her
6 eyes open with her gurgling. He said now he shook
7 her hip, which was something new that he had never
8 said before.

9 He said he felt for a pulse under her neck and
10 pushed her ribcage. The line about her ribcage was
11 new.

12 He said he tried to close her eyes. That was
13 I think new.

14 He admitted that he had been scared and had
15 not known what to do.

16 Q And the information, the new information about how
17 he had checked Tammy and touched her and moved her
18 and everything, was that consistent -- you are
19 familiar with the scene?

20 A Yes.

21 Q And she was shot in the head?

22 A Yes.

23 Q Was there a lot of blood?

24 A Yes.

25 Q Was that consistent with how he appeared when you

1 made contact with him?

2 A No, ma'am. There was no blood on him.

3 Q Again, at Mr. Parker's initiative, was there
4 another meeting with the sheriff?

5 A On July the 11th he met with the sheriff again. I
6 think this is the first time the sheriff kind of
7 told him there was a few problems.

8 During this interview he now recanted the
9 prior version that he checked Capnerhurst's neck
10 and wrist. He now went back to the assertion that
11 he only checked his nose for breath.

12 He would now say that he picked up
13 Capnerhurst's arm to check his pulse.

14 Q Wait a minute. He said he picked up what?

15 A He said he picked up his arm to check his pulse.

16 Q As far as how Mr. Capnerhurst's body was in that
17 attic, where would the gun have been supposedly?

18 A Well, the gun hand would have been over the other
19 one, if the gun was in his hand.

20 Q And his assertion was that he did what?

21 A Picked up his arm and checked his pulse. And that
22 was something new. He would now tell the sheriff
23 he didn't recall a bag being there at all.

24 Q And had you had prior discussions with him about
25 the bag?

1 A Yes. And he had admitted that he told him to bring
2 a bag.

3 He also wanted now to stress the fact that
4 Bryan Capnerhurst had been mad at his boss and wife
5 for a few months prior to the shooting.

6 Q During that meeting with the sheriff on July the
7 11th, did Mr. Parker want to set up yet another
8 meeting with the sheriff?

9 A Yes. As has been testified to by some other
10 parties, he did for the sheriff the same thing. He
11 wanted to show him what happened. And he wanted
12 the sheriff to meet him at the house to show him
13 what happened.

14 Q And was that set up for when?

15 A On the 19th of July, that meeting occurred.

16 Q And at that point did Mr. Parker attempt to show
17 the sheriff what happened?

18 A He did. And during that meeting is when the
19 sheriff I think basically challenged him to
20 things -- the sheriff testified I think about a
21 round peg in a square hole. He challenged him
22 about the wound in Bryan Capnerhurst's arm. The
23 blinds. The peeking out. The, you know, the fact
24 that -- lack of motive for Capnerhurst to do what
25 he did and his general disposition. Basically just

1 challenged him at that point. I think that was the
2 first time he really sort of -- not necessarily
3 lowered the boom, but let him know that his story
4 just wasn't adding up.

5 Q And later that day did Brett attempt to talk to the
6 sheriff one more time?

7 A The sheriff advised him that he was going to send
8 the detectives up, would be myself and Holdorf, to
9 the Solicitor for consultation about the
10 acquisition of possible warrants charging him with
11 these murders, and that if he had anything
12 different he needed to tell him, he needed to call
13 him by 3:00 o'clock.

14 Q And did the Defendant then call him back at 3:00
15 o'clock?

16 A He did call him back at 3:00 o'clock. And in that
17 call he became emotional, complaining that no one
18 believed him. And then it was during that call
19 that he acknowledged that he did peek out the
20 blinds, and he indicated that he always did that
21 when he was expecting people to come over.

22 Q And in that call, which blinds did he indicate he
23 peeked out of?

24 A The blinds in question. The blinds in the lower
25 area of the house off the mudroom.

1 Q And he said this was something he did how often?

2 A Every time he was expecting someone to come over.

3 Q And this would have been in the time period when
4 before he had said he was doing what?

5 A Going to the bathroom.

6 The sheriff advised him that he would call him
7 back with the Solicitor's decision. The following
8 morning that phone call was made.

9 Q And that would be on July the 20th?

10 A That's right. Around 9:00 o'clock he called him.
11 I think he left a message. Around 45 minutes later
12 Brett called back and said he was at the Lexington
13 Emergency Room with a panic attack.

14 Q That day did Brett Parker turn himself in?

15 A He did. Around 3:00 o'clock that afternoon he came
16 in with his attorney, Mr. Fedor, his father, and a
17 cousin accompanied him in.

18 Q And once he got there, what happened?

19 A He was processed.

20 Q And was he provided with some food and drinks?

21 A Yes. He indicated that he had hadn't had anything
22 to eat all day. And we got him a soft drink and a
23 vending machine snack.

24 The warrants were read to him in the
25 conference room. Lieutenant McDonald and

1 Investigator Holdorf I think were present at the
2 time.

3 Q As he was taken into custody, did Brett
4 specifically ask about anything?

5 A He wanted to know whether there would be TV or
6 books and magazines in his cell.

7 Q I want to turn your attention to July the 26th.
8 Did you get some information -- well, let me ask
9 you this. Once he was taken into custody on the
10 20th of July, at that point did the Secret Service
11 obtain his phone?

12 A They did.

13 Q And was there another dump done on his phone?

14 A Lieutenant McDonald did another dump on the phone.

15 Q And when you say dump on the phone, what are we
16 talking about?

17 A Went back through from the previous time when he
18 had dumped the phone, which was the 13th of April,
19 and re-dumped the phone to come up to the time of
20 the 20th of July.

21 And through that dump is when we found out
22 about some additional text messages or phone -- it
23 was actually some voicemails I think between
24 Natasha Nadkarni and the Defendant.

25 Q And at that point on the 26th, did you come into

1 some information about the dump?

2 A Yes.

3 Q On the phone?

4 A Yes.

5 Q And what information was that, sir?

6 A That was the information about Natasha Nadkarni.

7 Q And specifically what from the phone alerted you?

8 A Well, previously Ms. Nadkarni had reported that
9 their relationship just involved some flirtatious
10 activity. These voicemail messages were of a more
11 personal nature. The jury heard them.

12 Q Okay. And at that point did you then get Natasha
13 Nadkarni to come back in and be reinterviewed?

14 A We did. We interviewed her on the 31st to kind of
15 talk to her about those messages. It wasn't really
16 consistent with what she told us about the nature
17 of their relationship.

18 Q And as the months passed, did you continue to
19 interview family members, including Kim Smith?

20 A Yes.

21 Q And the Carswells?

22 A Yes.

23 Q And I believe you interviewed Mr. Stuart again, the
24 interior decorator?

25 A We did.

1 Q There has been some questions about the time of
2 death on the birth -- excuse me, the death
3 certificate?

4 A Yes.

5 Q Sorry. Tell me, is it unusual for the death
6 certificate to have an approximate time of death?

7 MR. WHITLARK: Objection, Your Honor. Is he
8 prepared to answer to this? I mean, I object to
9 this.

10 THE COURT: The objection is sustained. Just
11 let --

12 MS. CAMPBELL: I will lay the foundation.

13 THE COURT: Lay the foundation, his knowledge.

14 BY MS. CAMPBELL:

15 Q In working homicide cases, are you familiar with
16 certain documentation that comes with that?

17 A Yes.

18 Q And you are familiar that in every case of a
19 homicide there is a death certificate issued?

20 A Yes.

21 Q And on that death certificate there is the manner
22 of death?

23 A Yes.

24 Q In this case I believe they were both listed as
25 homicides?

1 A Yes.

2 Q And in those cases is there also a time of death
3 listed?

4 A Yes.

5 Q And you are familiar with how the Coroner's Office
6 comes up with that in general?

7 A It is just an estimated --

8 MR. WHITLARK: Objection, Your Honor. I
9 object. I mean, does he have some idea how
10 somebody that filled out another document did
11 something? I object to it.

12 THE COURT: All right.

13 BY MS. CAMPBELL:

14 Q Do you work hand-in-hand with the Coroner's Office
15 on these cases?

16 A I do.

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

19 MS. CAMPBELL: Thank you, ma'am.

20 BY MS. CAMPBELL:

21 Q Go ahead.

22 A It is just a -- it is not an -- I mean, an exact
23 time. The pathologists that testify that people
24 and the time of death in these situations is only
25 on TV. And that is just -- you know, they don't

1 have a full understanding of the sequence of events
2 of the case to put a time on there, an exact time.
3 It is an estimation.

4 Q In this investi -- in this trial, excuse me, there
5 has also been some question about James Morgan and
6 his occupation?

7 A Yes.

8 Q Did y'all develop any information that he was a
9 bookie?

10 A None whatsoever.

11 Q Would it matter if you did?

12 A Not really.

13 Q In this case there has also been testimony from the
14 pathologist as far as the final shot in each one of
15 these scenarios?

16 A Yes, ma'am.

17 Q What was the final shot to Tammy Parker?

18 A The head shot.

19 Q And what was the final shot to Bryan Capnerhurst?

20 A It was a head shot.

21 Q You also mentioned there was significant distance
22 testing that has come out before this jury?

23 A That's correct.

24 Q And by the Defendant's own estimation, how far does
25 he say he was from Bryan Capnerhurst when the

1 shooting occurred?

2 A Ten to 15 feet.

3 Q And by the estimation from the actual scene from
4 his feet just to the edge of the safe, how far is
5 it?

6 A Ten feet.

7 Q And is that significant as far as the evidence and
8 what it shows?

9 A Terri Gleason testified that it was two to five
10 feet distance testing.

11 Q And those are the wide ranges?

12 A Yes.

13 Q At any point did you target Brett Parker?

14 A No, ma'am.

15 Q There has been some questions about the child **ZP**?

16 A Yes, ma'am.

17 Q Peeing in the toilet?

18 A Yes, ma'am.

19 Q When is the first time you ever heard that?

20 A I heard about it in this trial. None of the
21 interviews with the Defendant did he talk about any
22 kind of potty training or anything. I think his
23 answer as to why he left the toilet seat up was he
24 just did that sometimes.

25 Q Finally, in this trial there has also been evidence

1 of Brett betting with BETCC?

2 A Yes.

3 Q And how many accounts did he have on there?

4 A He had two accounts.

5 Q And one account was in his name?

6 A Yes. And one was the Hal account.

7 Q And that was his account too?

8 A It was.

9 Q And the total of that that he was into those was
10 how much?

11 A \$176,000.

12 Q Was there a lock on the door to the attic?

13 A There was not.

14 Q There is also questions or evidence, testimony that
15 Lanny Gunter would have worked this out with Brett?

16 A Yes.

17 Q Would -- if he hadn't been able to pay his debt or
18 he had been prolonged, would he have been able to
19 continue to bet?

20 A One of the things -- I wasn't familiar with the
21 bookie business, as Investigator Holdorf testified
22 he wasn't either. One of the things we learned in
23 this case was we asked about -- the questions
24 about, what happened if these people don't pay. I
25 mean, do you have Guido come break their kneecaps,

1 you know, like you see on TV?

2 No, the answer was you just don't let them bet
3 any more and you blackball them. Word gets around
4 to the bookie community that this guy doesn't pay.
5 So he gets blackballed and he can't gamble any
6 more. And I think that is a significant point.

7 MR. WHITLARK: Objection, Your Honor. I
8 object to that, Your Honor. Objection.

9 THE COURT: What is the objection?

10 MR. WHITLARK: He is saying what somebody told
11 him. It is hearsay.

12 THE COURT: He said he learned.

13 MS. CAMPBELL: He learned.

14 THE COURT: Overruled.

15 MR. WHITLARK: All right.

16 BY MS. CAMPBELL:

17 Q Finally, Brett Parker, from when you were
18 interviewing him and meeting with him, has his
19 appearance changed any?

20 A He has. He has lost a lot of weight.

21 Q And finally, sir, the man that you interviewed and
22 met with all those times, the person that was in
23 the driveway, do you see him here in the courtroom?

24 A Yes.

25 Q Can you identify him for the jury?

1 A Red tie, I guess that is a gray coat, glasses,
2 sitting to Mr. Fedor's right.

3 MS. CAMPBELL: Your Honor, may the record
4 reflect he identified the Defendant.

5 THE COURT: All right. So noted.

6 Q Thank you, sir.

7 THE COURT: All right. Yes, sir?

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

10 THE COURT: Yes.

11 MR. WHITLARK: It is going to be brief, Your
12 Honor, I promise.

13 THE COURT: Do what now?

14 MR. WHITLARK: It is going to be a brief
15 cross-examination.

16 THE COURT: Take your time.

17 CROSS-EXAMINATION

18 BY MR. WHITLARK:

19 Q What was that saying you were just telling us, you
20 were trying to fit something in what? What is it?

21 A I don't know what you are talking about.

22 Q Trying to fit a square peg in a round hole or
23 something?

24 A Yes. Oh, I did say that, I wasn't trying to.

25 Q I know. You are trying to do that in this case,

1 aren't you?

2 A I was trying to verify the Defendant's story, yes,
3 sir.

4 Q Yes, I can see that.

5 A And it didn't work out.

6 Q I can see that. You are kind of ignoring the
7 evidence in this case, though, aren't you, sir?

8 A Absolutely not.

9 Q Well, let me -- let me ask you a question. Do you
10 have any more pages to your report? How many pages
11 are in your report?

12 A The investigative follow-up I just read?

13 Q Your entire report is how many pages?

14 A Sixty.

15 Q Sixty pages?

16 A Yes, sir.

17 Q Do you mind if I take a look real quick?

18 A Sure.

19 Q Look through it real quick.

20 A You want the whole thing?

21 Q I just want to look through -- just thumb through
22 it real quick.

23 MS. CAMPBELL: Your Honor, the Defense has
24 been provided with this in discovery.

25 BY MR. WHITLARK:

1 Q Page 60, is that it?

2 A I think that is it. I have some notes taken in
3 trial if you want those. Can I put them back?

4 Q Yes, sure.

5 A Thank you.

6 Q You testified a few minutes ago in this case that
7 there was a -- some sort of misdial for 14 seconds,
8 didn't you?

9 A I did.

10 Q On Bryan Capnerhurst's telephone, right?

11 A It was.

12 Q And you stated that that telephone was found in his
13 left pocket, right?

14 A Appears to me it is in his pocket from that crime
15 scene photo.

16 Q All right. Well, I want you to open your report to
17 Page 39, if you don't mind.

18 A Page 39.

19 Q Yep, the first paragraph?

20 A Yes, sir.

21 Q Okay. Now, you just testified to this jury that
22 that was quite significant to you, wasn't it? But
23 you have looked at this before, haven't you?

24 A Looked at what?

25 Q At this issue here about the telephone and this

- 1 misdial, this 14 second phone call, right?
- 2 A Are we on Page 39?
- 3 Q Thirty-nine.
- 4 A That is not on my Page 39.
- 5 Q Is this your report? Is this a copy of your
- 6 report?
- 7 A This is my Page 39.
- 8 Q Is this a copy of your report?
- 9 A Yes. That is not my Page 39.
- 10 Q Okay. Well, can you get on your Page 39?
- 11 A Well, that is my Page 39.
- 12 Q Well, how about this right here? Can you get to --
- 13 how about this? Can you turn to where you talk
- 14 about this telephone in your report?
- 15 A Hold on a minute. What date is that, the 17th?
- 16 Q I don't know.
- 17 A Well, the date --
- 18 Q May 17th. So it would be the day before that.
- 19 A All right. That is on my Page 37.
- 20 Q Okay. Do you see where you are talking about this
- 21 telephone?
- 22 A Yes, sir.
- 23 Q You said it was a big issue, right?
- 24 A I think it is a big issue.
- 25 Q Okay. Start reading where it dawned on the

1 investigating officer -- and that is you, isn't it?

2 IO is you, right?

3 A Yes, sir.

4 Q All right.

5 A It dawned on the investigating
6 officer as we were sitting there that if
7 the phone was in his left pocket he
8 could not have dialed it and held a
9 pistol at the same time.

10 Q Go ahead, please.

11 A The investigating officer reached out
12 to Trevor Holt, who Richards advised was
13 the individual who took the items from
14 Mr. Capnerhurst's pocket. Holt recalled
15 that the phone was in the right pocket.

16 Q All right. So Holt recalled it was in the right
17 pocket.

18 All right, go ahead.

19 A However, this seemed to still be of
20 significance of evidentiary value as
21 there would be no logical way to
22 understand Capnerhurst holding Brett at
23 gunpoint with a gun in the left hand and
24 yet trying to dial a number in his right
25 hand.

1 I would later confirm through Cindy
2 Capnerhurst via Heyward Barnes that Cap
3 would carry the phone in his right
4 pocket if indeed he would carry it on
5 his person.

6 Q Okay.

7 A However, Jane Powell testified that the phone was
8 taken out of his left pocket.

9 Q I know she did. The same Jane Powell that never
10 entered the premises, right? That was on -- have
11 you seen the log sheet?

12 A I have seen the log sheet.

13 Q Okay. Look on there and tell me when she entered
14 the premises, if you don't mind.

15 A 1755.

16 Q Okay. Let me see. You went and talked to
17 Ms. Capnerhurst. She said he always carries it in
18 his right pocket. And Trevor Holt was given the
19 phone by Jane Powell, wasn't he?

20 A Yes, sir.

21 Q You remember that? And he told you in this, in
22 your official report, well, it was in his right
23 pocket?

24 A He thought it was in the right pocket, but he is
25 not the one that actually retrieved it, it was Jane

1 Powell, as they both testified to.

2 Q I know.

3 A And I heard his testimony in here too, and he said
4 that he didn't remember.

5 Q I know he did.

6 A Jane Powell was the one that got the phone.

7 Q I know he did.

8 A In the crime scene photo it appears to be in his
9 left pocket.

10 Q Yes. And I know. He did. He came in after
11 telling you that it was in his right pocket, and
12 after Ms. Capnerhurst told you in the right pocket,
13 and the square peg doesn't fit the round hole, he
14 now doesn't remember where he got it from, does he?

15 A Look at the crime scene photo. It speaks for
16 itself.

17 Q Now, do you have the statements from Mr. Staples
18 and Mr. Jerry Carswell? Do you have statements
19 from them where they talk about all this insurance,
20 life insurance and stuff?

21 A There is a statement from Jerry Carswell, but I
22 don't think it addresses insurance.

23 Q Yes. Okay. You are sure it doesn't, right?

24 A I don't recall. I think he talked about parking of
25 the car and some other things.

1 Q Right. He also said that Brett Parker told him he
2 was going to give that gun away, didn't he? He
3 said, I'm going to give it away. I don't want to
4 keep it up here. Isn't that what he said in his
5 statement?

6 A I don't recall that. I don't think you would
7 misrepresent that to me, though.

8 Q I know you believe me.

9 A I trust you, Mr. Whitlark.

10 Q All right. Now, look, both of these men have come
11 in here and testified, have they not, sir, that now
12 Brett Parker knew all about the life insurance, all
13 about the amounts, and all that, haven't they?
14 Isn't that what you -- you have been here, you
15 heard them say it, right?

16 A I did.

17 Q Okay. But there isn't a single word, not one word
18 in your report or in their statements or anything
19 else saying Brett Parker knew any of that before,
20 is there?

21 A I don't know if it is referenced in a follow-up or
22 not. That doesn't mean we didn't know it.

23 Q Okay. All right. Well, they both also testified
24 that they now knew after talking to you guys that
25 for two -- well, one of them said that, because he

1 couldn't hold the gun, that is what changed my
2 mind. This is Mr. Carswell, a family member who
3 supported Brett Parker, right?

4 A Initially, yes, sir.

5 Q Uh-huh. And then he was convinced because y'all
6 told him there is no way he could have held that
7 gun in his hand? And that is what he said, isn't
8 it? Right? And that is why he turned against
9 Brett Parker, right?

10 A I don't recall if that was his sole testimony or
11 not. I --

12 Q It was.

13 A I think they said they were aware of some
14 inconsistencies in his story as well.

15 Q Well, I think actually he said that.

16 MS. CAMPBELL: Objection, Your Honor. He has
17 a right to finish his answer.

18 Q Uh-huh.

19 THE COURT: All right, let him finish.

20 A I think they testified that there were some
21 inconsistencies in the story is kind of what turned
22 their opinion.

23 Q Well, I -- well, okay. Well, I know what he
24 testified to. Anyway --

25 A I could have it wrong.

1 Q The point is this, sir. Both these men ostensibly
2 were supporting Brett Parker. And then we have got
3 Mr. Staples, we have learned a few things about him
4 today we didn't know. Did you know about that?

5 A I did.

6 Q What he testified to?

7 A I did.

8 Q You didn't think that was significant enough to put
9 in your report?

10 A I found out about it prior to trial. I found out a
11 lot of things that may not be in my report. I can
12 give you some other examples if you want them.

13 Q No, I want to talk to you about this. You have
14 told -- first of all, Mr. Staples says he now knows
15 that Brett is guilty now because of the blind test,
16 right? Okay. And --

17 A I don't believe -- I believe you are --

18 Q I believe that is what he said.

19 A Mr. Whitlark, you are making a misrepresentation to
20 the jury. You are limiting what --

21 Q I don't misrepresent anything to juries.

22 THE COURT: We can't talk over each other.

23 A If I might --

24 Q Well, I don't appreciate you saying it, because I
25 don't do that.

1 A Well, if I might, sir?

2 THE COURT: Hold on, hold on, hold on. All
3 right, Mr. Whitlark, you ask the question, and,
4 Major Smith, you answer. And then let him finish
5 answering the question before you cut him off,
6 okay, Mr. Whitlark? All right.

7 A Can I go now, Your Honor? I mean, is it my turn?

8 THE COURT: What is the question again?

9 BY MR. WHITLARK:

10 Q The question is this: Do you have any sort of
11 reports or anything else where these two men talk
12 about that Brett Parker knows about Tammy Parker's
13 life insurance?

14 A I don't know that it is in a report. But I have
15 seen the reports of life insurance. We discussed
16 it with them. We know about it. Not everything is
17 necessarily in a report. That doesn't make it
18 non-truth.

19 Q Is there -- is there anywhere in your -- this is a
20 long report, isn't it, 60 pages?

21 A It is long.

22 Q I have read it many times, I know. There is not a
23 word in there about that Brett Parker knows about
24 the life insurance proceeds, the things we heard
25 today? There is nothing in --

1 A I don't know that it is in a report, no, sir.

2 Q Okay. It is not in your report?

3 A No. But, again, that doesn't make it false that it
4 is not in a report.

5 Q Sir, I didn't say that. It just simply isn't
6 reported in there, is it?

7 A No, sir, I don't think so.

8 Q All right. All right. Did you hear the testimony
9 of James Morgan? You were here for that, weren't
10 you?

11 A I was.

12 Q He said that one of the issues that Bryan
13 Capnerhurst had was the \$6,000 from two years ago,
14 didn't he?

15 A He did.

16 Q As a matter of fact, he said he was going to make
17 an issue about it, didn't he? If you recall? If
18 you can recall?

19 A I don't remember the exact words, but it -- I don't
20 believe -- I believe he wanted his money, and I
21 believe he was going to demand his money.

22 Q Right. And we now know, don't we, that Tammy
23 Parker was involved in this gambling business,
24 don't we?

25 A Tammy Parker handled the tax end of it. I don't

1 think there has been any testimony that she did
2 anything other than that. I guess that makes her a
3 part of it, but not in the betting aspects of it,
4 the taking of the calls, and that kind of thing.

5 Q Uh-huh. Have you read the Secret Service report in
6 this case?

7 A I probably have.

8 Q They think she is involved in it, don't they?

9 A Again, she was involved in it by virtue of the tax
10 reporting. That puts her technically involved in
11 it. That is my understanding.

12 Q Well, I mean, in her own handwriting she wrote down
13 what the percentages were, right?

14 A I think there was something to that on a ledger. I
15 think she was responsible for budgeting. And some
16 of that had to do with budgeting their household
17 finances.

18 Q Well, I mean --

19 A She knew her husband was in the business and
20 certain monies had to be set aside to pay people.
21 I think that is undisputed. But that doesn't make
22 her part of the operation like you are saying. I
23 think it is a --

24 Q She was in charge of budgeting, wasn't she?

25 THE COURT: Let him finish.

1 A I believe it is a misrepresentation to the jury,
2 again, Mr. Whitlark. I testified to what I think
3 her involvement was, and that was reporting the
4 taxes.

5 Q Are you accusing me of misrepresenting something?

6 A I am.

7 Q Major Smith?

8 A I am. I don't think you are telling the whole
9 story.

10 Q Okay. Brett Parker told you, after y'all
11 repeatedly questioned him, didn't he, he said he
12 always carried a bag with him? He told you that,
13 didn't he? I mean, he told you that, didn't he?

14 A He may have said he always carries a bag.

15 Q Okay.

16 A But the implication, there again, he is carrying a
17 bag for gambling receipts. We heard from his
18 family he was carrying a bag because it is his gym
19 bag he took to work every day. That is another
20 misrepresentation.

21 Q Well, did you hear the Secret Service agent testify
22 to that?

23 A I did.

24 Q He said that he found the ash pile, the so-called
25 one that y'all said a misrepresentation, it was a

1 garbage pile?

2 A No, it is no more of a disposal of the gambling
3 records as much as the shredder we found in Brett
4 Parker's office.

5 Q Well --

6 A Mr. Capnerhurst, he just didn't have a shredder at
7 his house.

8 Q We knew they were doing it, don't we?

9 A So what is the point about the burn pile?

10 Q Well, the point is, sir, that you have to carry
11 that stuff, don't you? You have to put it
12 somewhere, don't you?

13 A Yes.

14 Q Okay. And the Secret Service agent recognized that
15 because he examined it?

16 A Sure.

17 Q All right. And Ms. Capnerhurst said he did it too,
18 he would bring them home and burn them?

19 A He didn't have a shredder in his house.

20 Q I'm just asking you, is that what she said?

21 A I think that is what she said.

22 Q All right. All right. Brett Parker told you that
23 he was going to have to give him some account
24 receivable papers to collect money, didn't he?

25 A Which version are you talking about?

1 Q Well, did he say that to you?

2 A First he told us it was for cash, cash that came
3 out of his front pants' pocket. And then later on
4 he comes up with something about some sheets.

5 Q Uh-huh.

6 A I mean, which version are you asking about?

7 Q Let me ask you a question. I'm asking about the
8 version where he said he had it on the seat.

9 A I think he mentioned that in one of them.

10 Q Y'all verified it was \$9,000 each, right? Y'all
11 called these men, didn't you?

12 A I think he mentioned something to that effect in
13 one of them.

14 Q I want to ask you something, Investigator -- Major
15 Smith. Do you think it is fair to take a man who
16 might possibly have post-traumatic stress disorder
17 and question him -- do you think so, right after he
18 has had to kill somebody who murdered his wife?

19 A I have no idea what you are talking about.

20 Q You took a statement from him right after it
21 happened, didn't you?

22 A I have -- I see nothing of PTSD anywhere, other
23 than this courtroom.

24 Q Okay. And then today, you are in here talking
25 about you spoke to him on many occasions, or

1 somebody from the police spoke to him on many
2 occasions?

3 A Are you alleging he had PTSD throughout the entire
4 set of interviews?

5 Q No, sir.

6 A Or just the one on that Friday?

7 Q No, sir. I'm talking about when you go back and
8 say you left something out or you changed
9 something.

10 A He was giving responsive answers to our questions.
11 He didn't tell us about the affair. He didn't tell
12 us about the gambling. Those things go to motive.
13 Those are the type things, if you are telling the
14 truth, you ought to be telling the police about
15 that.

16 Q Uh-huh. Uh-huh.

17 A PTSD, that has never been mentioned.

18 Q I'm just asking you a question.

19 A And I'm answering your question.

20 Q Uh-huh. Do you think it is fair to take a
21 statement from somebody in the condition he was in
22 that day, whatever it was -- I'm sure he wasn't in
23 a normal state of mind, was he?

24 A Just because he was upset doesn't mean he is not
25 capable of telling the truth.

1 Q I know, but you have questioned him for months on
2 this thing, haven't you?

3 A I didn't question him for months. He quit talking
4 to me after a period of time and started talking to
5 the sheriff.

6 Q All right. All right. Different officers. And
7 when he gets -- and when he gets a detail here or
8 forgets something, and all that, he is a liar?

9 A When he lies about significant things, yes, sir,
10 he's a liar.

11 Q Well, do people want to reveal, oh, yeah, by the
12 way, let me tell you about the affair I'm having?

13 A By your account he is so traumatized by the murder
14 of his wife, why would you lie about anything at
15 that point?

16 Q I didn't say he was traumatized.

17 A PTSD, whatever you want to call it.

18 Q Well, what kind of mindset do you think he was in
19 after that?

20 A I think he was upset. It doesn't mean he can't
21 tell the truth.

22 Q He is in an illegal business, isn't he?

23 A Mr. Whitlark, we're talking about a double
24 homicide.

25 MR. WHITLARK: Judge, Judge, could you please

1 direct the witness to answer my questions?

2 BY MR. WHITLARK:

3 Q He was in an illegal business, wasn't he?

4 A Yes.

5 Q Okay. And he didn't want to run right up and tell
6 you everything. I mean, is that -- do you
7 understand -- do you have any reasonable
8 understanding of that?

9 A No.

10 Q Do you just think he should have come right up and
11 said --

12 A Exactly.

13 Q All right. All right. I'm sure he should have.

14 A I'm glad you agree with me.

15 Q Okay. Did you go out and make the blinds test?
16 Were you there when that happened?

17 A I was.

18 Q You were there, weren't you?

19 A Yes, sir.

20 Q Okay. And how many days after y'all released the
21 house did you go there?

22 A I don't know.

23 Q It was a long time, wasn't it?

24 A Several weeks.

25 Q It could be over like 40 days or something?

1 A I'll take your word for it.

2 Q All right. Well, tell me, what steps did y'all do
3 to see if any kind of contamination had happened
4 over a month, I mean, did you go, let's go find
5 out? I mean, at least try to find out if any
6 cross-contamination has happened? Did y'all take
7 any steps?

8 A Here is what we did. We followed the evidence
9 trail. Had we known about the blinds being opened
10 on the 13th of April we would have done the test
11 then. We followed the evidence trail. My
12 lieutenant found out about it. We went and did the
13 test. We couldn't have predicted that action would
14 have taken place that day. It wasn't until the
15 further evaluation of the video did we learn that.

16 Q My question is, did you take any steps to ensure to
17 see if there had been cross-contamination before
18 you declared this test to be --

19 A I don't understand what steps could have been
20 taken.

21 Q To find -- I would go ask somebody, has anybody
22 been in the house?

23 A Well, it is like this. We saw someone open the
24 blinds after we -- on the day of the incident after
25 we believe that the evidence shows he just killed

1 his wife, shot her seven times. So I would go with
2 that version of the transplant of the GPR versus
3 some wild speculation that somebody went in the
4 house in between.

5 Q It is wild speculation that something that you look
6 at with an electron microscope is transferred,
7 could possibly be transferred by a house cleaner or
8 something?

9 A Well, I went with the evidence at hand, which
10 clearly somebody opened those blinds, which I
11 submit is the Defendant, with GPR on his hands.

12 Q Let me ask you this. What evidence do you have on
13 how many times those blinds were opened between
14 those two dates?

15 A I have none. But I know it was opened then.

16 Q All right. Hang on. Just asking if you have any
17 evidence. All right.

18 And what steps did you take to find out how
19 many people had been inside that house during that
20 40 days, or whatever it was?

21 A We followed the evidence trail.

22 Q My question to you is what steps did you take to
23 see how many people had been in that house between
24 the time y'all gave it back to him and the 40 days
25 later you went there?

1 A That doesn't make any sense, Mr. Whitlark. We
2 didn't take any steps. Because, first of all, we
3 would have to submit that somebody went in there
4 after shooting a gun.

5 Q You know a transfer of GSR, you know that happens,
6 don't you?

7 A I know it happens when you shoot your -- somebody
8 seven times and go open a blind. We learned that
9 in this case.

10 Q Yeah, I know you did. I know you did. Which
11 officer was it? You had 20 of them in there that
12 day, didn't you?

13 A It was the Defendant.

14 Q Did you find -- did you ask all your officers, did
15 you open those blinds?

16 A No, sir.

17 Q And how many were there that day? And, of course,
18 you know what, as long as it adds up against Brett
19 Parker, though, why take any steps to see whether
20 or not there is a problem, right?

21 A Mr. Whitlark, it added up on its own. Nobody was
22 trying to make it add up. It added up.

23 Q Do you agree, sir -- you know what, I'm going to
24 ask you just a few more questions.

25 Do you agree that Tammy Parker was in charge

1 of the budget and it included paying Bryan
2 Capnerhurst?

3 A I don't agree with that. Bryan Capnerhurst was
4 relying on payment from Brett Parker. Tammy
5 Parker -- there was no evidence, no testimony that
6 Tammy Parker was supposed to be involved with his
7 payment that day. He was talking to Jack Parker
8 about Brett paying him. He was talking to his
9 friends, his wife about Brett paying him. There
10 was never any mention made about Tammy Parker
11 paying him.

12 As a matter of fact, he was happy that she was
13 going to be there that day because he felt like
14 that he would get paid because of her presence.

15 So she was mentioned in conjunction with
16 payment, but it all involved payment by Brett
17 Parker.

18 Q I would ask you to take a look at that document
19 right there and ask you if you can identify it for
20 the jury?

21 A It looks like it is a monthly budget.

22 Q Do you recognize that coming from a report that was
23 done, an investigative report done in this case?

24 A It is done by Ric Stephens.

25 Q Uh-huh. Who does he work for?

1 A He works for us.

2 Q Do you recognize it?

3 A I probably have seen it, yes.

4 Q Do you see what it says at the bottom there?

5 A It says she calculated -- Tammy Parker calculated
6 the gambling proceeds and placed them within her
7 operating budget. It also implicates her in the
8 actual act of operating an illegal gambling
9 business. It doesn't have anything to do with
10 paying Bryan Capnerhurst.

11 Q I understand. I understand. What does it say --
12 let's see. Why don't we look at the second page of
13 Mr. Stephens.

14 Well, would you take my word for it if I told
15 you -- we have known each other a long time. Would
16 you take my word for it if I told you Tammy Parker
17 calculated out 10 percent for football and
18 30 percent for basketball? You have seen that?

19 A I would take your word for it, but it is not
20 relevant to what -- our discussion here.

21 Q Well, sir, the thing is, you say you can't think of
22 a reason that Bryan Capnerhurst would have shot
23 Tammy?

24 A That is accurate.

25 Q Uh-huh. Well, if he was going out of his mind, if

1 he was obsessed like his best friend said and he --
2 specifically also about the \$6,000 -- you know what
3 I'm talking about? The \$6,000 from two years ago?

4 A That just doesn't add up.

5 Q Okay. Well, if the guy was obsessed, his friend
6 said that, does that add up?

7 A I heard the word obsess, but I don't know how
8 obsessed translates into double homicide.

9 Q He said he had to have his money. And it was
10 written down \$21,300, wasn't it?

11 A \$21,300.

12 Q I know. But Brett Parker gave you a figure about
13 somewhere in the vicinity of \$15,000, didn't he?
14 Eventually he told you that?

15 A That's what he said, yes, sir.

16 Q All right. And Tammy Parker was not going to pay
17 the \$6,000 because she thought it had already been
18 paid, right?

19 A She wasn't going to pay anything because she didn't
20 do the paying. That document doesn't have anything
21 to do with her paying. That is a budget she is
22 setting aside. It was up to the Defendant to make
23 the payments, which he hadn't made. And that is
24 why Capnerhurst was so elated that he was going to
25 get paid that day.

1 Q Uh-huh.

2 A He was excited about it. That's why he talked to
3 Jack Parker. He said, hey, I'm going over to get
4 paid.

5 Q And if he got over there and they told him, we're
6 not paying you, that would be a reason to kill
7 them, wouldn't it?

8 A That is not what -- that is not what your client
9 said happened.

10 Q I'm asking you. He went upstairs and talked to
11 Tammy, didn't he?

12 A I don't think that is a reason to kill anybody, no,
13 if you are asking me my opinion.

14 Q You don't think a reason --

15 A No, sir.

16 Q You heard the description of this man's mindset
17 before he went there that day?

18 A Better than that, I have heard a description of
19 this man.

20 Q Uh-huh.

21 A And his aversion to firearms and his gentle
22 disposition and his elated nature that he was going
23 to get his money.

24 Q Uh-huh.

25 A A man working three jobs. That is what I heard.

1 Q Officer Smith -- Officer Smith -- Major Smith, when
2 you found out that Brett Parker was a bookie in
3 this case, that changed the way you viewed this
4 case, isn't it?

5 A No, sir.

6 MR. WHITLARK: Hang on one moment, please,
7 Your Honor.

8 (Pause.)

9 BY MR. WHITLARK:

10 Q By the way, when -- that day when this happened,
11 when y'all finished with him, the first thing he
12 wanted to do was get to his children, isn't it?

13 A He wanted to be the one to tell his children.

14 Q Okay.

15 A Of course I heard the testimony about how that
16 happened.

17 Q Again, Deputy Odom, Deputy Harvel, they are
18 eyewitnesses to Bryan Capnerhurst holding that
19 9-millimeter pistol in their hand when they were
20 the first responding officers, isn't that true?

21 A That's true.

22 Q And the GSR test done by John Roberts from SLED,
23 his testimony is that he would be comfortable -- he
24 said, I would be comfortable with saying that Bryan
25 Capnerhurst fired that handgun?

1 A That, Mr. Whitlark, is another misrepresentation.

2 Q Well --

3 A Which I would like to clarify. What I heard him
4 say was the GPR on his hand would be more
5 consistent with being on the muzzle end of a
6 firearm being shot at.

7 Then your question to him was, could it also
8 be consistent with him shooting a gun.

9 And he said yes.

10 But you are leaving out the first part of it.

11 Q He said yes, didn't he?

12 A Yes, but you are leaving out the first part of it.

13 Q Sir --

14 A That is what I heard his testimony.

15 Q Sir --

16 A In that order.

17 Q When you evaluated that evidence, did you ever
18 slant it towards Brett Parker or did you say, hey,
19 we'll just ignore that fact, you know he might have
20 shot that gun. Where is that meeting? Where is
21 that meeting?

22 A Mr. Capnerhurst was shot four times with a shotgun
23 pistol in the equivalent of a closet.

24 Q Uh-huh.

25 A He had GPR coated all over him. I accept the SLED

1 agent's testimony that it is more consistent in his
2 opinion with being on the muzzle end of a gun than
3 the shooting end.

4 Q Now you are misrepresenting because that is not
5 what he said.

6 A That's what I heard him say.

7 Q Okay. Well, we will play it back for the jury.
8 Anyway, let me --

9 A Let's play it back for the jury.

10 Q Let me ask you a question. Let me ask you a
11 question, Major Smith.

12 A I'm ready.

13 Q Okay. The final shot -- I know you are. I know
14 why you are a major. Listen, you changed -- the
15 shot to the head is now the last shot, right?

16 A I didn't change anything.

17 Q I didn't say you did.

18 A What did you just say?

19 THE COURT: All right. Hold on. Hold on.
20 Hold on. Quiet. Hold on. Please hold down the
21 laughter.

22 All right, Mr. Whitlark, let him finish. Ask
23 the question and then let him answer.

24 Q In your report it is said the last shot was to the
25 foot because there was no blood, right?

1 A If you are referring to the meeting we had with
2 Dr. Marcus --

3 Q Uh-huh.

4 A At the time he felt that way. However, later on,
5 after he got with our forensic people and they
6 explained to him some of the crime scene
7 photographs that he didn't have at the time, he
8 changed it and said the last shot was a head shot,
9 which was consistent with the last shot to
10 Ms. Parker, which I submit was needed by the
11 Defendant to make sure both of them were dead.

12 Q Major Smith, what would it take for you to at least
13 consider the possibility that Brett Parker is
14 telling the truth and he is innocent? What would
15 it take?

16 A It ain't possible.

17 Q Uh-huh. Well, how about two eyewitnesses that know
18 that Bryan Capnerhurst had a gun? Would that do
19 it? That can say positively he had that gun?

20 A They wouldn't be credible, in my viewpoint.

21 Q Well, I'm just asking.

22 A Perhaps that is in --

23 Q I'm giving you a hypothetical.

24 A Perhaps that is in a report. Like you said, I
25 don't have it in my report. You know, I haven't

1 seen that.

2 Q I want to ask you a question. If two witnesses,
3 who are neutral witnesses, that were credible
4 walked up and said, you know what, we know he had
5 the gun? I mean, would that even -- would that
6 make you think that Brett Parker is not guilty?

7 A No, sir.

8 Q All right. The truth is, there is nothing that you
9 are going to see any -- that you are going to think
10 he is not guilty? There is nothing that will
11 change your mind, is there?

12 A Mr. Whitlark, when I began working homicides back
13 in 1989, I learned to follow the evidence trail.
14 That is the first lesson I learned. And the
15 evidence trail in this case led to Mr. Brett Parker
16 in this double murder. That is what I rely on.

17 Q Y'all listed 150 something witnesses in this case,
18 didn't you? Something like that?

19 A It was something like that.

20 Q And you have had every department in your -- in
21 Richland County just about, except for K-9 maybe,
22 that has worked on this case some, right? The lab
23 has? The -- right?

24 A I mean, we have a lot of departments. You know, we
25 had a lot of people working on the case.

1 Q And you have got -- SLED worked on it, right?

2 A Yes.

3 Q Secret Service worked on it?

4 A Yes.

5 Q Coroner's Office worked on it?

6 A They work on every homicide.

7 Q Okay. And it all comes down really basically to
8 Dr. Marcus, who we saw here, and, you know, he --
9 there is no way he could have held onto that gun?

10 A It doesn't just come down to that. That is just
11 one element of it.

12 Q Well, if the two eyewitnesses that saw it in his
13 hand were right -- but they moved it, though,
14 didn't they? We don't have a picture of it?

15 A No. That has been testified to, I don't know,
16 probably 100 times.

17 Q But if that was a true fact that he was holding
18 that gun, that he did kill Tammy Parker, I mean,
19 would that -- even that wouldn't make you think
20 Brett Parker is not guilty[sic], would it?

21 A Repeat that question again.

22 Q I said, you think Brett Parker is guilty because he
23 is a bookie, don't you?

24 A No, sir.

25 Q Sir?

1 A I think Brett Parker is guilty because I have
2 followed the evidence trail and it leads to his
3 doorstep, firmly.

4 Q Major Smith, we like to deal -- we deal with
5 evidence, don't we, in cases?

6 A And we did in this case.

7 Q Uh-huh. And the evidence is, is that Bryan
8 Capnerhurst had a gun in his left hand when the
9 first two deputies arrived, didn't he?

10 A I think we have covered that plenty.

11 Q I'm asking you. Isn't that --

12 THE COURT: You have got to say yes or no.

13 THE WITNESS: Yes, Your Honor.

14 MR. WHITLARK: No further questions, Your
15 Honor.

16 THE COURT: All right.

17 Yes, ma'am?

18 REDIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q And based on the evidence, how did that gun end up
21 in Capnerhurst's hand?

22 MR. WHITLARK: I object to that.

23 A It was planted there.

24 MR. WHITLARK: Objection, Your Honor.

25 THE COURT: Overruled.

1 BY MS. CAMPBELL:

2 Q Go ahead.

3 A It was planted there.

4 Q He asked you about your follow-up and where the
5 actual phone was recovered from Capnerhurst's
6 pocket.

7 A Yes.

8 Q In State's Exhibit -- what is that exhibit?

9 A Does that say 564? 264 maybe.

10 MS. CAMPBELL: 264, Your Honor.

11 A It looks like to me it is in the left pocket. It
12 is clearly an outline, a square outline of the left
13 pocket.

14 MS. CAMPBELL: Your Honor, at this time we
15 would offer 264 into evidence over previous
16 objection by the Defense.

17 THE COURT: All right. Have you seen it?

18 MS. CAMPBELL: Do you want to look at it?

19 THE COURT: Is this the one that he --

20 MS. CAMPBELL: This is the one we talked
21 about, yes.

22 (Pause.)

23 MS. CAMPBELL: I think the jury has a right to
24 evaluate where the phone was. If you think it is
25 too prejudicial because of the body part, we could

1 cut -- I understand your previous ruling on it is
2 too prejudicial because it is too --

3 THE COURT: Let me see it.

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

7 MS. CAMPBELL: Admitted with the redaction?

8 THE COURT: Yes.

9 MS. CAMPBELL: Thank you, Your Honor. I will
10 redact it later.

11 (WHEREUPON, State's Exhibit No. 264 was
12 marked for identification and received
13 into evidence.)

14 BY MS. CAMPBELL:

15 Q He asked you about Jerry Carswell and his story?

16 A Jerry Carswell? Yes, ma'am.

17 Q And why y'all -- he asked you something about how
18 y'all just convinced him to change. What was Jerry
19 Carswell's relationship with Jackie Warren, Betty
20 Ann Webb, and Libby Carswell?

21 A He is friends with them because his -- that is --
22 Libby is his ex-wife, and he speaks to them
23 frequently.

24 Q And you were present when Betty Ann and Jackie
25 testified?

1 A I was.

2 Q And what changed their mind?

3 A Changing the story. The Defendant changing his
4 story yet one more time.

5 Q He asked you about that the Defendant told you he
6 always carried a bag?

7 A Yes.

8 Q At one point in conversations with the sheriff that
9 we just talked about, didn't he deny knowing
10 anything about a bag?

11 A He did.

12 Q And the bag is problematic?

13 A The bag -- the bag is very problematic.

14 Q He asked you about why you didn't test the blinds
15 until however many days later?

16 A Yes.

17 Q Had Brett Parker told you he was peeking out the
18 blinds rather than going to the bathroom, as he
19 wanted his story to be, would you have tested the
20 blinds that day?

21 A We would have.

22 Q Is there any evidence in this investigation
23 whatsoever that anyone, other than the Defendant,
24 shot a gun in that house, around that house, or
25 near that house, and then went and touched those

1 blinds?

2 A None whatsoever.

3 MS. CAMPBELL: Beg the Court's indulgence.

4 (Pause.)

5 Q Thank you, sir.

6 THE COURT: Anything else?

7 RECROSS-EXAMINATION

8 BY MR. WHITLARK:

9 Q Yes. And you have absolutely no evidence you can
10 show us that he planted that gun, can you?

11 A I think the totality of the circumstances
12 demonstrate he planted that gun.

13 Q I'm talking about evidence.

14 A That's evidence.

15 Q Uh-huh. And as far as the telephone is in a
16 different pocket, right? We know Trevor Holt has
17 changed his testimony, hasn't he?

18 A When I first talked to him he acted like he was
19 unsure. I think he yielded in trial here to Jane
20 Powell who actually retrieved it from the pocket,
21 yes.

22 Q Trevor Holt told you that it was in the right
23 pocket, didn't he?

24 A Yes. I don't think Trevor Holt is lying. He
25 yielded again to Jane Powell because she actually

1 retrieved the gun -- the phone from the pocket.

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

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

4 THE WITNESS: Thank you, Your Honor.

5 (Witness steps down.)

6 THE COURT: All right, call your next witness.

7 MS. CAMPBELL: Your Honor, at this point may
8 we approach?

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

12 MS. WALKER: Your Honor, at this time the
13 State rests.

14 THE COURT: All right, ladies and gentlemen of
15 the jury, at this time the State has rested their
16 case. And we will go ahead and take our evening
17 break and start back in the morning.

18 Let me see you all one more time.

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

22 THE COURT: All right, ladies and gentlemen of
23 the jury, there are some matters of law that I will
24 have to take up in the morning, and instead of you
25 all coming in and having to sit in the back, I am

1 going to just have you come back in at
2 11:00 o'clock in the morning.

3 Remember that you are not to read, watch, or
4 listen to anything on the news, the TV, radio, or
5 on the internet. No social media. No talking to
6 anyone about this case, including other jurors. Do
7 not form an opinion about the case. It would be
8 improper for you to form an opinion about this case
9 until you have received all the evidence in this
10 case, the arguments of both sides, and the law from
11 the Court.

12 Have a great evening. We will see you
13 tomorrow at 11:00. I will order lunch for you
14 since you will be coming in at 11:00. It would
15 make no sense to come in and leave right back out.

16 So, Ms. Tull, if you have -- we'll do that
17 when you get here in the morning. Just let her
18 know where you all want to order from.

19 All right, thank you. Have a good night.

20 (WHEREUPON, the jury was excused at 5:22
21 p.m.)

22 THE COURT: Now, before we break, there is
23 just some -- a couple of things. There was an
24 objection to 264, I believe. Did you object to
25 that, Mr. Whitlark, or ask to redact it?

1 MR. WHITLARK: Yes, I do object to it.

2 THE COURT: And that was the photo there was
3 quite a bit of dialogue about whether or not -- she
4 is going to take out the part of the picture that
5 shows the head and the blood on the -- just to show
6 the pocket?

7 MR. WHITLARK: Can I specify my objection,
8 Your Honor?

9 THE COURT: Yes, sir.

10 MR. WHITLARK: That picture doesn't show
11 anything that goes to what their testimony is. It
12 just a picture of him laying there. I don't see
13 what -- the significance of it, of how, you know,
14 let's put a picture up and see if they figure out
15 whether there is a phone in his pocket or
16 something. I mean, you know, they don't have X-ray
17 eyes. I don't know what was in his pocket.

18 THE COURT: All right. Yes, ma'am, any
19 response?

20 MS. CAMPBELL: No, ma'am, Your Honor. We will
21 redact it.

22 THE COURT: There was quite a bit of dialogue
23 between Mr. Whitlark and Major Smith regarding
24 whether or not it was a phone, what side it was on.
25 I think it is an issue of fact for the jury, and it

1 goes to the weight of the evidence as to whether or
2 not they think it is or if it is not.

3 And then you also had an objection to I
4 believe the Solicitor's question regarding the gun
5 placement. And the objection on that again -- do
6 you want to put the objection on the record?

7 MR. WHITLARK: I'm sorry, Your Honor?

8 THE COURT: You had an objection to the
9 Solicitor, that question she asked when --

10 MR. WHITLARK: It is improper. Improper
11 question. It is a leading question, Number One.
12 It is an improper -- asked for an improper opinion,
13 things like that.

14 THE COURT: All right. And, Ms. Campbell, any
15 response to that? Ms. Campbell?

16 MS. CAMPBELL: Sorry, Your Honor?

17 THE COURT: Any response to that objection you
18 want to put on the record regarding the question
19 regarding placement of the gun, how the gun -- I
20 think asked --

21 MS. CAMPBELL: That was in direct response to
22 his questioning of the witness and I just -- he
23 asked his opinion that there was no evidence, and
24 then I followed up just how -- it wasn't a leading
25 question, it was just how it didn't get in his

1 hand.

2 THE COURT: And the objection was overruled.
3 And there was extensive questioning regarding the
4 gun and the gun placement. And Major Smith had
5 testified as to his theory of the case, he is the
6 lead detective in the case, and that is his theory
7 of the case as to how it got there. For that
8 reason the objection was overruled.

9 MR. WHITLARK: Okay.

10 MS. CAMPBELL: Thank you, Your Honor.

11 MR. WHITLARK: When do I get to give my theory
12 of the case, Your Honor?

13 THE COURT: Tomorrow. You have your theory
14 and they have theirs. We will let you have at it
15 tomorrow.

16 As to -- I believe, Ms. Campbell, you said
17 there was some issue regarding --

18 MS. CAMPBELL: Yes, Your Honor. I just wanted
19 to mention to the Defense, and I had requested this
20 of them, they have given us a witness list, we
21 would just ask in order to -- not that they
22 expedited anything in this case; however, Your
23 Honor, if they can give us dates of birth and the
24 witnesses they intend to call tomorrow, we are not
25 asking for an order or anything, just so we can run

1 their records overnight so we don't have to be
2 doing that tomorrow and stopping for it.

3 MR. WHITLARK: We'll vouch for them, Your
4 Honor.

5 THE COURT: He'll get that to you before
6 tomorrow morning.

7 MS. CAMPBELL: If he could give it to me
8 tonight, Your Honor. I think Mr. Lucas is working
9 on it.

10 THE COURT: Yes, he can e-mail to you. And
11 then we'll do motions in the morning. Are you
12 going to e-mail us a brief tonight?

13 MR. WHITLARK: Oh, yes.

14 MS. CAMPBELL: If we could have some idea what
15 we need to respond to before 11:00 o'clock
16 tomorrow.

17 MR. WHITLARK: We can work it out right now.

18 THE COURT: Or if you would like to put the
19 issues -- I'm not going to decide tonight. If you
20 want to put -- if you want to make your motion --

21 MR. WHITLARK: I would rather wait, Your
22 Honor, so I could have a cogent argument on it.

23 MS. CAMPBELL: If he can just tell us what the
24 issues are so we don't have to recess because we
25 don't know what his argument is.

1 MR. WHITLARK: Well, Fourth Amendment
2 violation, sufficiency of the evidence. Let's see.

3 MS. CAMPBELL: Fourth Amendment?

4 MR. WHITLARK: Yes.

5 THE COURT: He brought that up in the
6 beginning.

7 MR. WHITLARK: Yes, that's right. I put it on
8 record.

9 THE COURT: He put it on the record.

10 MS. CAMPBELL: And I think you ruled on it.

11 MR. WHITLARK: I did put it on the record. I
12 mean, I moved to suppress all that evidence. We
13 had a lengthy in-camera hearing with Officer
14 McDonald. He identified there is a gap there.

15 THE COURT: You are talking about the law?

16 MR. WHITLARK: Yes. They didn't have a
17 warrant.

18 THE COURT: Okay.

19 MR. WHITLARK: And I hate to say that because,
20 you know, it could be a problem. It is not going
21 to be a problem here, though.

22 THE COURT: Okay. All right. Anything else?
23 I'm sure --

24 MR. WHITLARK: Do you have to go home, Your
25 Honor? Can we stay and keep doing this?

1 THE COURT: I'm sure you will come up with --
2 there will be more in the morning.

3 MR. WHITLARK: Yes, there will.

4 THE COURT: All right. The only reason I ask
5 is you said you were going to get us some motions.

6 MS. CAMPBELL: Your Honor, I would just mark
7 the redacted part as 264-A. This would not go
8 back. Just 264.

9 THE COURT: And we will start at 9:30-ish,
10 maybe closer to 10:00. It depends on what time my
11 court reporter gets here in the morning.

12 All right, y'all have a good evening.

13 (WHEREUPON, the proceedings concluded at
14 5:27 p.m.)

15 MAY 23, 2013

16 MR. WHITLARK: Can I talk one second with you?

17 THE COURT: Come up.

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

21 THE COURT: Mr. Whitlark, I'll be glad to hear
22 from you. The State has rested.

23 MR. WHITLARK: May it please the Court? Your
24 Honor, first of all, the Defendant makes a motion
25 for a directed verdict in this case of not guilty

1 based on insufficient evidence in the case to prove
2 the guilt of the accused here.

3 This case is basically a circumstantial case,
4 Your Honor, and under State v. Bostick we know that
5 they have to prove each one of the circumstances
6 connecting him beyond a reasonable doubt, and they
7 can't do that in this case.

8 There is no physical evidence that they have
9 that points to the guilt of the accused because
10 they need substantial evidence of it.

11 And we would ask the Court to direct a verdict
12 based upon their failure to prove that he did this,
13 in the first instance.

14 Do you want to do these in succession, Your
15 Honor?

16 THE COURT: I'll let her argue. Well --

17 MR. WHITLARK: Probably should because of --

18 THE COURT: Yes.

19 MR. WHITLARK: Yes.

20 THE COURT: And then I'll give you a ruling
21 after each one.

22 MR. WHITLARK: Yes, Your Honor.

23 THE COURT: Yes, ma'am, I will be glad to hear
24 from you.

25 MS. CAMPBELL: May it please the Court, Your

1 Honor? I think the standard in our state is taking
2 the evidence in the light most favorable to the
3 State, the standard is whether or not there is any
4 direct evidence or substantial circumstantial
5 evidence. That is State versus Mitchell, which is
6 341 S.C. 406.

7 The Court is only looking for the existence or
8 non-existence of evidence, not its weight. That is
9 State versus Williams at 303 S.C. 274. In this
10 case there is absolutely -- there is both direct
11 and substantial circumstantial evidence.

12 A DV should only be granted if the evidence
13 raises a mere suspicion. Here that is not the
14 case. That is under State versus Brannon, Your
15 Honor, 379 S.C. 495.

16 And, Your Honor, in cases where the Court has
17 said a DV should be granted are cases where the
18 Defendant cannot be placed at the scene, there was
19 no proof he killed anyone. In this case there is
20 direct evidence the Defendant was at the scene. He
21 admits he was a participant in the shooting spree
22 that occurred in State versus Martin.

23 As far as evidence that points to the
24 Defendant's guilt, there is gunshot residue that
25 was found on the blind that was testified to by

1 Agent Roberts.

2 There is no gunpowder from the 9-millimeter on
3 Cap's hands. As it was testified to by
4 Investigator Terri Gleason, it should have been
5 there if he was firing that gun. There was no
6 evidence that Cap ever possessed the gun.

7 The amount of time that passed between
8 Capnerhurst's entry into the scene, the chain of
9 events that Brett Parker then said occurred and
10 9-1-1 being called was over ten minutes, Your
11 Honor.

12 Your Honor, glaring inconsistencies or
13 outright contradictions in Brett Parker's story as
14 to the chain of events that occurred that day.

15 There is a fingerprint on the box of
16 ammunition which was found in the bag placed on top
17 of the clothing, a bag which was seen in the video
18 being thrown over the shoulder of Mr. Capnerhurst
19 as he enters into the residence, a bag that if any
20 fingerprint had been on there it was tossed around,
21 turned around, and, according to the Defendant,
22 placed in that bag a month earlier.

23 So any fingerprints or fragile evidence that
24 was testified to, any fingerprint from Brett
25 Parker, had it been there, should have been gone at

1 that point, the fingerprints on the box.

2 The ammunition, the gun, and the clip that
3 were found there all belonged to the Defendant by
4 his own admission.

5 According to him he gave it away; however,
6 there is no one else with any knowledge of that.

7 There is a gunshot residue expert who
8 testified, Agent Roberts, again, that the gunshot
9 residue on Capnerhurst's hand was most consistent
10 with him having been shot on the receiving end of
11 the gunshot. That the amounts were high. And that
12 would be consistent with where the gunshot residue
13 was at the end of the muzzle of the gun, where most
14 of it comes out as illustrated by that board.

15 Your Honor, the distance testing, according to
16 the Defendant, he gave several stories. He
17 indicates that he was by the safe at the time of
18 the shooting. He was facing the safe, so he would
19 have beyond the ten feet between Capnerhurst's feet
20 and the safe.

21 In addition to that, Your Honor, he gives
22 several different versions, according to family
23 members, of how the shooting actually occurred.

24 He actually changes the whole mechanism of how
25 he actually did the shots, which even caused family

1 members that supported him to realize his story
2 simply was not true.

3 The distance testing, as testified to by
4 Investigator Gleason, when she did all the testing,
5 was most consistent with three to four feet. In
6 order to give the benefit of the doubt to the
7 Defendant, she extended it to a 2- to 5-foot range;
8 however, it is most consistent with three to four
9 feet, which absolutely refutes the Defendant's
10 version of what he said happened. At one point he
11 even said he was 10 to 15 feet from the Defendant
12 at the time of the shooting.

13 The order of the shots, Your Honor, in both
14 cases with the victim, Ms. Tammy Parker, and the
15 other victim, Mr. Bryan Capnerhurst, the last shot,
16 according to the forensic pathologist, was to the
17 head.

18 It was absolutely crucial to this Defendant
19 for his story to survive that both Mr. Capnerhurst
20 and his wife be dead. Therefore, he had to finish
21 them off with the final shot.

22 In addition to that, Your Honor, when he was
23 initially talked to by the police that day, he gave
24 a statement.

25 When they specifically asked him about his

1 gambling, he denied it. When they specifically
2 asked him about any kind of problems in the
3 marriage or any adultery, he denied it. When they
4 specifically asked him if he had any reason, he
5 denied it, Your Honor.

6 And the testimony put up by the State is that
7 he had substantial debt. He had life insurance
8 benefits, a 401 and \$58,000 -- a \$51,000, I'm
9 sorry, Your Honor, pension plan that was coming.
10 He was the sole -- he was the beneficiary on all
11 three of those things.

12 And then there, of course, Your Honor, has
13 been evidence of his adultery on his part as being
14 a motive.

15 And then, very simply, Your Honor, even by his
16 own admission, to Ms. Natasha Nadkarni, his quote
17 was, the forensic evidence does not match my story.

18 In addition, Your Honor, there was also
19 testimony from the medical examiner, Dr. Marcus,
20 that the shots that were -- that Mr. Capnerhurst
21 incurred simply in the whole sequence of events,
22 especially the shot to the arm, would have
23 prevented him from being able to grip anything in
24 his hand as the gun was placed when officers
25 arrived.

1 MR. WHITLARK: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. WHITLARK: Your Honor, again, going back
4 to State v. Bostick, every single thing that they
5 just stated and listed the litany of it, each one
6 of those witnesses also testified, Your Honor, to a
7 version or to a set of facts that would prove that
8 he is not guilty in this case. Each one of those
9 witnesses did.

10 And the fact of the matter is this. No matter
11 what they say about Dr. Marcus, he was not
12 qualified to give that opinion. And he proved that
13 through his testimony. He had never seen this
14 before. He had never seen a case where a man --
15 where anyone had a grip on something. He said he
16 is not an orthopedic. He couldn't name a single
17 muscle in the left arm, forearm, of
18 Mr. Capnerhurst, and said so.

19 Now, the fact of the matter is that they are
20 basing a lot of this case upon the testimony of
21 Dr. Marcus.

22 All of the other stuff that she has mentioned,
23 the lab test on the UMC box and the DNA, and all
24 the rest of it, there is a counter argument from
25 their own witnesses on every single one of those.

1 And mere suspicion of guilt is not sufficient
2 under State v. Bostick, and we would ask the Court
3 to direct a verdict of not guilty on both counts.

4 Thank you, Your Honor.

5 THE COURT: All right.

6 MR. FEDOR: Your Honor, before we go any
7 further, I want to put this on the record for
8 Fedor, as a lawyer for the Defense.

9 They have shown not one scintilla of evidence
10 that this man fired a weapon into his wife. Just
11 referring to now the charge of Tammy Parker. There
12 is no evidence. They have innuendos, they have
13 theories, and they have thoughts on how it could
14 have happened.

15 This isn't a case of adultery. This isn't a
16 case of gambling. What evidence do they have that
17 Brett Parker fired the weapon? The answer is, not
18 one bit.

19 And we move for a directed verdict insofar as
20 Tammy.

21 THE COURT: All right. Thank you. As I
22 stated, this would be -- one of the motions --
23 well, not directed verdict, but one of the motions
24 regarding circumstantial evidence, so I have done
25 some research on that issue.

1 Before me I have State v. Cherry, which is 361
2 S.C. 588, in which the Court states that:

3 The trial court judge, when considering a
4 motion for directed verdict -- and it cites State
5 v. Mitchell -- that the Court must consider the
6 existence or non-existence of the evidence, not the
7 weight of the evidence.

8 Also, at any motion for directed verdict, the
9 evidence must be considered in the light most
10 favorable to the non-moving party.

11 Based on the evidence submitted to the Court
12 over the last several weeks, I do find that there
13 is substantial evidence from which his guilt may be
14 reasonably, fairly, and logically deduced, and that
15 it is an issue for the jury to decide. There is an
16 issue of fact.

17 And in considering this is in the light most
18 favorable to the non-moving party, I am going to
19 respectfully deny the motion for directed verdict.
20 Both motions.

21 MR. WHITLARK: Thank you, Your Honor. Your
22 Honor, I do have additional.

23 THE COURT: Yes, sir.

24 MR. WHITLARK: May it please the Court?

25 THE COURT: Yes, sir.

1 MR. WHITLARK: Thank you, Your Honor.

2 Your Honor, first of all, we would make a
3 motion to dismiss the case based on the Fourth
4 Amendment, and that would be the testimony and the
5 exhibit of the log that is in the record here.

6 It was testified to by State's witnesses that
7 there is a gap in there. And it is on the 14th of
8 April. They had to get a new warrant before they
9 started seizing the items of evidence in there, and
10 they didn't get one.

11 And I would ask the Court to dismiss this case
12 because of the Fruit of the Poisonous Tree Doctrine
13 that follows from that, because there is no way to
14 calculate how much evidence they took out on the
15 14th that has led us to this point.

16 And I would ask the Court -- and I have got a
17 two-prong Fourth Amendment, Your Honor.

18 The second would be the statement taken from
19 Mr. Parker. It was taken under conditions where he
20 was not mentally capable of deciding whether he
21 should voluntarily give this statement, whether he
22 should waive his rights.

23 And although we don't have medical testimony
24 to back up his mental condition then, it was
25 testified to, even by the most hostile witness,

1 Major Smith, he said: Well, yes, a person that has
2 been -- just come from the circumstances -- and
3 this is close in time that they took this
4 statement, Your Honor; it was basically right after
5 it happened. And the fact of the matter is this:
6 He didn't have the mental capacity at that time to
7 decide whether to voluntarily give a statement, to
8 waive his right to a lawyer, all of these things.

9 And because of his incapacity, based upon
10 State's witnesses admitting that a human being
11 would be in shock at that time, would have a mind
12 that was in shock and spinning around, that they
13 shouldn't be able to use that statement against
14 him.

15 Again, because of the statement, they are
16 using it as one of their main bases for a finding
17 of his guilt in this case.

18 And so not only the fact that they didn't have
19 a warrant on the 14th of April; but they took a
20 statement from a man who was in mental shock and
21 didn't have the capacity to waive his rights and to
22 cooperate with the police at that time.

23 I would ask the Court to dismiss this case on
24 that basis.

25 Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 MR. WHITLARK: And I do have two more.

3 THE COURT: Okay. That's fine. We'll do each
4 one individually.

5 MS. WALKER: Your Honor, we have already had a
6 Jackson v. Denno hearing in this case, and you have
7 already ruled on the admissibility of the statement
8 as a pretrial matter. So that has already been
9 taken care of.

10 In terms of the log, Your Honor, and the
11 search warrant, he claims we needed to have
12 gotten -- the testimony, Your Honor, has been, I
13 think Investigator Holdorf testified to this fact,
14 as did Major Smith, that at no point in time was
15 there ever a time in which the house wasn't
16 guarded. The log reflects that, Your Honor. They
17 just are basically ignoring what the log says. And
18 I don't want to say making things up, but I don't
19 really know how else to characterize it.

20 Your Honor, they say that there is a gap in
21 time. And Investigator Holdorf testified that at
22 no point in time was there a gap.

23 Your Honor, a John Bellinger comes on the
24 scene. And it goes from 2020 to 1:40 in the
25 morning. At 1:40 in the morning, Your Honor -- and

1 I'm referencing Defendant's Exhibit 1 -- at 1:40 in
2 the morning Sheila Aull comes on the scene and
3 takes the scene over from John Bellinger.

4 At 3:52 Sheila Aull releases the scene to
5 Guyon, Your Honor, who was there until 6:55. I can
6 hand this up to Your Honor again if you want to see
7 it.

8 THE COURT: I anticipated this would be an
9 issue, so I have it in front of me.

10 MS. WALKER: And if you look at -- it is the
11 second to the last page, Your Honor.

12 THE COURT: Well, I have the first page that
13 they have an issue with. I don't have the second
14 page.

15 MS. WALKER: Can I see what you have? May I
16 approach?

17 THE COURT: Yes.

18 (Ms. Walker approaches.)

19 MS. WALKER: Yes. Okay, we have the same
20 page.

21 THE COURT: Okay.

22 MS. WALKER: Do you see -- Your Honor, do you
23 see John Bellinger's name?

24 THE COURT: Yes.

25 MS. WALKER: Okay. And his time out is 1:40.

1 If you look at the bottom, Your Honor, you see S.
2 Au11.

3 THE COURT: She comes at 1:40.

4 MS. WALKER: She comes at 1:40. Then the
5 scene is released to Guyon, who comes 3:52. There
6 is never -- no matter how many times Mr. Whitlark
7 wants to jump up and down to say it, it is just
8 simply not true. There is never a time in which
9 the scene, Your Honor, isn't secured. And the
10 warrant from April 13th, Your Honor, is sufficient
11 for all the evidence that we have introduced.

12 MR. WHITLARK: Just briefly. Oh, I'm sorry.
13 I'm sorry.

14 MS. WALKER: And, Your Honor, I think you have
15 already ruled on this already pretrial. Or, if
16 not, it should have been raised pretrial.

17 THE COURT: He did raise it. I believe he did
18 raise it pretrial, and I ruled on it.

19 MS. WALKER: Okay. Thank you, Your Honor.

20 THE COURT: He had a motion to suppress, I
21 believe.

22 MR. WHITLARK: Yes, that's right.

23 Just briefly, Your Honor, I just rest upon
24 what was testified to and the exhibit. And I
25 guess, you know, that I'm not supposed to represent

1 and protect my clients rights, I guess is what they
2 are saying, you know. I have to do this, Your
3 Honor.

4 THE COURT: You can, yes, sir.

5 MS. WALKER: It is not the represent, it is
6 the misrepresent that I have an issue with, Your
7 Honor.

8 THE COURT: All right. In reviewing -- well,
9 as to the issue regarding the statement, the
10 Jackson v. Denno hearing was held at the beginning
11 of the trial as to the voluntariness of the
12 statement that he gave on the 13th.

13 And I think at that time no issue regarding
14 any PTSD was presented to the Court, nor has there
15 been any medical record to indicate any -- to
16 support any diagnosis of a PTS, post-traumatic
17 stress disorder.

18 The Defendant can argue to the jury his state
19 of mind or present witnesses, if you all decide to
20 present a case, but at this point no evidence to
21 support the Defendant's intention as to his state
22 of mind on that date, no medical evidence to
23 support any theory of post-traumatic stress
24 disorder.

25 For that reason, that motion will be denied.

1 As to the log and Defendant's Exhibit Number
2 1, the motion to suppress was properly made at the
3 beginning of the trial. And the Court considered
4 it at that time and denied it.

5 Since that time testimony has been given by
6 Investigator Holdorf that the crime scene was under
7 the control of the Richland County Sheriff's
8 Department at all times.

9 I have also reviewed a copy of Defendant's
10 Exhibit Number 1, the log that is in question.

11 It appears that there is a Bellinger, Officer
12 Bellinger, who left at 1:40 a.m. And then there
13 is an S. Aull, who comes on at 1:40 a.m. and stays,
14 it looks like -- she doesn't say when she left, but
15 the next person that signs in is Guyon. I think
16 where the confusion may be is she doesn't go inside
17 the house.

18 MR. WHITLARK: Right.

19 THE COURT: The people on the top of the list
20 are the ones that actually go in. She is the one
21 that I guess sits out there for purposes of making
22 sure no one goes in and out.

23 Guyon goes in, signs in at 3:52. And also
24 goes in at 3:52 until 6:55. And then Ken Williams
25 comes on at 6:55.

1 So based on Defendant's Exhibit, I find that
2 the crime scene was under control of the Richland
3 County Sheriff's Department during that time.

4 And I respectfully deny the Defendant's motion
5 I guess to dismiss, suppress.

6 MR. WHITLARK: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. WHITLARK: And as Your Honor knows, no
9 matter what we did at pretrial, I have to restate
10 this for purposes of appeal.

11 THE COURT: Yes. That's fine. You protect
12 the record.

13 MR. WHITLARK: Yes, ma'am.

14 THE COURT: All right.

15 MR. WHITLARK: All right. I do have another
16 argument, Your Honor, I would like to put on the
17 record.

18 THE COURT: Yes, sir.

19 MR. WHITLARK: And this is our last one, I
20 believe.

21 The Castle Doctrine, they call it, Your Honor,
22 it is the Protection of Persons and Property Act.

23 Your Honor, we are asking the Court to dismiss
24 the charges on him based upon the immunity that is
25 provided in that act.

1 We know this is a new law that our legislature
2 has given us here, and we don't have a whole lot of
3 case law. We have got State v. Duncan basically
4 telling us what to do.

5 No matter what you say, Your Honor, the
6 version given by the police in this case and the
7 statement that he put in here proves that no matter
8 what invitation was given to Mr. Capnerhurst, when
9 he came there, he made an unlawful entry, Your
10 Honor, based upon the fact that he was there to rob
11 and to kill.

12 And, therefore, under the act, Your Honor,
13 we're asking the Court to grant immunity to
14 Mr. Parker for the defense of his home and
15 self-defense.

16 Thank you, Your Honor.

17 MS. CAMPBELL: Respectfully, Your Honor, I
18 believe Castle has outlined the proper way in order
19 to raise this defense. It would be with a pretrial
20 hearing of some sort.

21 The Defense in this case did address Castle at
22 the pretrial and withdrew that motion.

23 Even if it were proper at this point, which it
24 simply is not, Your Honor, of course the house was
25 illegal gambling. He was invited in. There was no

1 forcible and unlawful entry. It goes on and on,
2 Your Honor. I think you are familiar with Castle
3 and what it says. But it is not even proper at
4 this point to address it. He withdrew that motion.
5 That is a strategy they took. And it is not proper
6 at this point to even raise it. But even if it
7 were, it does not apply here.

8 THE COURT: Yes, sir?

9 MR. WHITLARK: May it please the Court?

10 THE COURT: Yes, sir?

11 MR. WHITLARK: Your Honor, we are moving for
12 directed verdict under the -- what we call the
13 Castle Doctrine.

14 And the reason is, Your Honor, because the
15 evidence does show that Tammy Parker was killed
16 with a 9-millimeter pistol. We know that now.
17 That pistol was found in the hand of
18 Mr. Capnerhurst.

19 No matter how many times they want to say it,
20 even though we have no pictures of it and all, the
21 truth is, it was found in his left hand.

22 And under the Castle Doctrine -- and there was
23 no criminal activity going on, by the way, at that
24 moment. And that is our argument, Your Honor.

25 And we did not waive our right. We said that

1 we would wait and see what the evidence showed,
2 because we couldn't get our expert up here, and
3 some other matters involved with that.

4 However, at this time we would move for a
5 directed verdict based upon the Protection of
6 Persons and Property Act and ask the Court to
7 dismiss the case by granting him immunity in this
8 case.

9 Thank you, Your Honor.

10 THE COURT: All right. And I am very familiar
11 with State v. Duncan, and it requires the Court to
12 make -- and the issue in Duncan was, when is the
13 Court to decide if there is supposed to be a trial.

14 I think in that case the State's argument was
15 that it is supposed to be a full-blown trial and
16 then the Court could decide at this point or at
17 some other.

18 And our Supreme Court has made it very clear
19 in that case that -- they talk about immunity --
20 and that the immunity is to be immune -- that a
21 person is to be immune from prosecution -- from the
22 fear of prosecution prior to the trial if they are
23 defending themselves and their home.

24 So I do think that it is a pretrial issue.
25 But even considering it at this point for purposes

1 of directed verdict, if you look at 16-11-440,
2 which I think is what the Defendant initially filed
3 the Castle motion under, in order for it to apply,
4 Mr. Capnerhurst would have to unlawfully and
5 forcefully enter the house.

6 The testimony in this case based on the
7 statements that have been entered into evidence and
8 the testimony from witnesses is that Mr. Parker
9 invited him there, gave him a time to be there.

10 Based on the testimony that he -- and I think
11 that is undisputed testimony that he was invited.
12 That there was a time. That he came in through the
13 garage -- he left the garage door open for him.
14 That he had the code to the garage. And also told
15 him to go upstairs while he used the restroom
16 downstairs.

17 These actions indicate that Mr. Capnerhurst's
18 entry was lawful and without force as the statute
19 indicates under 16-11-440 for purposes of Castle.

20 Also, the statute further goes on to say that
21 the person who -- that this law only applies to
22 people who are engaged -- not engaged in illegal
23 activity. I think the testimony, and undisputed
24 testimony, is that the Defendant, by his own
25 admission in the statements, and I have not heard

1 anything to refute it, that he was engaged in
2 illegal activity of gambling. That Mr. Capnerhurst
3 was coming to the house to settle a gambling debt.
4 That he was there to receive money directly tied to
5 illegal gambling business.

6 And for that reason, he would -- that would be
7 another reason why Castle -- that this statute
8 would not apply.

9 For the reasons given above, immunity under
10 Castle is denied.

11 And, also, directed verdict is denied as to
12 Castle.

13 MR. WHITLARK: Yes. May it please the Court?

14 THE COURT: Yes, sir.

15 MR. WHITLARK: Yes. And just for purposes of
16 the record, Your Honor.

17 THE COURT: Yes, sir.

18 MR. WHITLARK: I forgot to say that the
19 standard of proof is different in an immunity
20 hearing under the Castle Doctrine.

21 THE COURT: It is a preponderance of evidence.

22 MR. WHITLARK: Yes, it is a preponderance of
23 the evidence, that's right.

24 THE COURT: And I didn't say that either. So
25 based on the preponderance of the evidence that has

1 been presented.

2 MR. WHITLARK: And, again, just for
3 clarification purposes, that our legal argument on
4 this is that, Number One, by a preponderance of the
5 evidence we have shown that they weren't engaged at
6 that moment -- at that moment -- in any illegal
7 activity which would deny them the right to take
8 advantage of the statute.

9 And, Number Two, that what we have shown by a
10 preponderance of the evidence is that he came over
11 there, made an unlawful entry because of his plan
12 to do some criminal activity.

13 THE COURT: Yes, sir.

14 MR. WHITLARK: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 And if there is anything else you want to put
17 on the record, I want to make sure you have -- we
18 have a -- both sides have everything stated on the
19 record.

20 MR. WHITLARK: And I just want to make sure,
21 Your Honor, because of the specificity required by
22 appellate courts that you renew what your
23 objections are and what your -- that is why we're
24 having to do this, Your Honor, as you well know,
25 Your Honor.

1 THE COURT: I understand. All right, anything
2 from the State?

3 MS. CAMPBELL: No, Your Honor.

4 THE COURT: All right. The jurors should be
5 coming in now. My clerk -- Mr. Truitt is going
6 to -- they need to order lunch, so I told them they
7 can decide where they want to order from.

8 THE CLERK: Yes, Your Honor.

9 THE COURT: So if you all can go and get their
10 orders.

11 And then if I can see the lawyers briefly in
12 chambers, and then we'll be ready to start up
13 hopefully in about 10 or 15 minutes once they get
14 all of that taken care of.

15 THE CLERK: Yes, Your Honor.

16 THE COURT: All right. Thank you.

17 MR. WHITLARK: Thank you, Your Honor.

18 THE COURT: All right. And if I can see the
19 lawyers in chambers for about 10 or 15 minutes.
20 Everybody.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Are you ready to bring them in?

23 MR. FEDOR: The Defense is ready, Your Honor.

24 THE COURT: All right. And just for
25 scheduling purposes, she ordered lunch for them,

1 she is finishing up ordering, and it should be here
2 around 1:00 o'clock.

3 So we will just let you call witnesses,
4 Mr. Fedor, until that happens. And if we have to
5 break, I'll stop at that time.

6 MR. FEDOR: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 (WHEREUPON, the jury came into open
9 court at 11:49 a.m.)

10 THE BAILIFF: The jury panel is seated, Judge,
11 Your Honor.

12 THE COURT: Good morning, ladies and gentlemen
13 of the jury.

14 THE JURY: Good morning.

15 THE COURT: The State, as you heard on
16 yesterday, has rested. And at this time the
17 Defendant will present his case.

18 Before we do that, there is -- I believe the
19 question is one of the jurors has to leave at
20 6:00 p.m.? Is it 6:00 p.m.?

21 THE JUROR: (Nods affirmatively.)

22 THE COURT: You need to leave at 6:00 or
23 before 6:00?

24 THE JUROR: 6:00 will be fine.

25 THE JUROR: 6:00 is fine with me too.

1 THE COURT: Okay. All right. I just wanted
2 to make sure with that. We'll try to work as close
3 as possible to that time. All right. Thank you.

4 (WHEREUPON, Court's Exhibit No. 6 was
5 marked for identification only.)

6 All right, I am going to ask the Defense to
7 call their first witness.

8 MR. FEDOR: Your Honor, we'd call Brad Spehl.
9 (Witness approaches.)

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

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 name for the record,
22 and spell your last name, please.

23 THE WITNESS: It is Brad Spehl, S-P-E-H-L.

24 THE COURT: Yes, sir.

25 BRAD SPEHL,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FEDOR:

4 Q Mr. Spehl, where do you work, sir?

5 A MetLife Insurance.

6 Q And what is your position with MetLife?

7 A I am the agency sales director for Columbia and
8 Charleston.

9 Q And how long have you worked for that insurance
10 company?

11 A For MetLife? Five years.

12 Q Are you from Columbia?

13 A Yes.

14 Q Where did you grow up, sir?

15 A Irmo.

16 Q Before two weeks ago, had you ever seen or heard of
17 me?

18 A No.

19 Q Did you know Brett Parker before this incident
20 happened on April 13th?

21 A Yes.

22 Q How did you know him, Mr. Spehl?

23 A I met Brett at a golf tournament about -- right at
24 12 years ago at a charity golf tournament.

25 Q And did you attempt to sell him insurance on his

1 wife?

2 A Yes.

3 Q Tammy?

4 A Uh-huh.

5 Q Were you successful in selling him insurance to his
6 wife?

7 A I was not.

8 Q What did he tell you?

9 A Well, I had met with him over the years, but
10 initially that he just was worried about getting
11 insurance on him, and at the time he only had a
12 daughter.

13 Q All right. Were you a close personal friend of his
14 or just an associate?

15 A An associate.

16 Q Okay. Now, this incident happened April 13th,
17 2012, is that right?

18 A Yes.

19 Q As a result of this incident happening, did Tammy
20 Parker have insurance with MetLife?

21 A She had insurance through our group department with
22 MetLife.

23 Q And what was the name of that group?

24 A Novartis, where she worked.

25 Q Novartis is owned by MetLife?

1 A No, Novartis is a pharmaceutical company in which
2 MetLife does the group benefits for them.

3 Q I see. Now, as a result, ten days after this
4 incident, did you receive this letter, sir, a copy
5 of it?

6 A Yes.

7 Q What is that, sir?

8 A This is the letter that is -- when the company --
9 when Novartis, or any company for that matter, has
10 a claim, they send that to our claims unit, and
11 then in turn they send us an e-mail to send that
12 letter to the beneficiary.

13 Q So ten days after this incident you received this
14 letter informing you that Tammy had life insurance
15 with her company, is that correct?

16 A Well, I received an e-mail of that.

17 Q An e-mail?

18 A He would have received that actual package.

19 Q Okay. But you did receive a copy of this?

20 A Yes.

21 MR. FEDOR: We'd like to introduce this as
22 Defendant's Number whatever.

23 THE COURT: All right. Have you seen it?

24 MR. FEDOR: Yes.

25 THE COURT: Any objection from the State?

1 MS. CAMPBELL: No objection.

2 THE COURT: That is Defendant's Number?

3 THE COURT REPORTER: 3.

4 THE COURT: All right, it will be entered
5 without objection.

6 (WHEREUPON, Defendant's Exhibit No. 3
7 was admitted into evidence.)

8 BY MR. FEDOR:

9 Q As a representative of that insurance company, did
10 you get in touch with Brett Parker?

11 A Yes.

12 Q And what conversations did you have with him,
13 Mr. Spehl?

14 A I had -- well, obviously, you know, of knowing him,
15 and I live fairly close by there, that I was
16 actually relieved that I was able to handle the
17 case.

18 When I got the e-mail, I called him and
19 basically said that, everything will be okay, and
20 just I need to meet with you, you know, bring --
21 you should have gotten some paperwork, which he had
22 just gotten, and I told him to bring that with him.

23 Q Okay. As a result of that conversation, did you
24 set up an appointment for Brett Parker to come to
25 your office?

1 A Yes.

2 Q Do you have any notes to that effect, sir, in your
3 file?

4 A I do.

5 Q What date did you set up for Brett to come to your
6 office?

7 A May 2nd.

8 Q May 2nd?

9 A Uh-huh.

10 Q That is three weeks after the incident?

11 A Correct. Yes.

12 Q Okay. When he got there, Mr. Spehl, what did you
13 and he converse about?

14 A Well, I mean, the obvious. I asked him, you know,
15 what happened.

16 And, you know, he had told me that -- well, I
17 had already kind of knew about the double murder.

18 And I basically -- when we have what we call a
19 deliver-the-promise lead, is what that is called,
20 is to basically let them know that it is a very
21 simple process to handle the claim, that they don't
22 need to worry, and that we pretty much have taken
23 the financial paperwork burden off of them so they
24 can deal with the grieving.

25 Q Well, as a result of the meeting, did you start the

1 paperwork for Brett?

2 A Yes.

3 Q At that time, what did Brett tell you he wanted to
4 do with the proceeds?

5 A Well, initially I told him, you know -- because the
6 letter tells, you know, the amount of the
7 insurance -- so I went over that with him. I told
8 him that if she had a 401(k) or anything that would
9 have to go into a Decedent IRA, and discussed, you
10 know, that that is simple, we can do that at a
11 later time, it is not something we had to talk
12 about, and that the proceeds could go into
13 something called a Total Control account, so where
14 it would basically be a money market account.

15 And when we talked about that, we had come up
16 with the discussion that -- which is normal to
17 talk -- most people want to pay off their mortgage,
18 most people want to pay off debts, and put aside
19 for education.

20 One of the things that we talked about was
21 that he did not want to pay off the mortgage, he
22 said he would just move because he didn't wanted to
23 stay in the home any longer, and that he wanted to
24 set up education for both of the kids.

25 Q Did he tell you directly, Mr. Spehl, that he wanted

1 this money to go to the children?

2 A Yes.

3 Q Was that set in progress at that time?

4 A We couldn't do that because we didn't know who the
5 contingent beneficiaries were, and I told him that
6 he had to contact Novartis to find out how that
7 paperwork was done.

8 Q And you told him to contact the company that Tammy
9 worked for?

10 A Right.

11 Q But he did state to you he wanted that money to go
12 to the children's account?

13 A Correct.

14 Q Do you know how much money that was, Mr. Spehl?

15 A \$703,000.

16 Q All right. And when was the next time you had any
17 contact with Brett?

18 A We had talked on the phone to follow up to see the
19 process, which at that time when I had called, I
20 couldn't get any information because of the trial.

21 And then I met with Brett back on June 21st to
22 again try to follow up to help him out with that,
23 and left a message with our home office.

24 Q So as a result of the second conversation, did you
25 ever see and visit with him again?

1 A Just on June 21st. That was the last time.

2 Q On June 21st, what were his thoughts to you by
3 word?

4 A He came in. He had the -- I guess this is a
5 statement from the funeral home for Tammy's
6 funeral. And with him obviously dealing with this
7 situation, he wanted to see if we could at least
8 have enough proceeds to pay for the funeral.

9 Q After that date, did the Prosecutors in this case
10 come to interview you?

11 A Yes.

12 Q Did you tell them the same thing you just told me?

13 A Yes.

14 Q Did they put a subpoena on you to testify in this
15 trial?

16 A Yes.

17 Q But they never called you, did they?

18 A No.

19 Q Do you know particularly the reason they didn't?

20 A Not specifically. Just nothing seemed out of order
21 when I talked to them when they showed me the group
22 paperwork.

23 Q Now, I got in touch with you about two weeks ago,
24 is that right, sir?

25 A Yes.

1 Q And you told me exactly what you told -- what you
2 just testified to?

3 A Yes.

4 Q Have you had any contact with Brett Parker since
5 that time?

6 A No.

7 Q If you'll answer any questions the Prosecutor has
8 for you.

9 MS. CAMPBELL: May it please the Court?

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. CAMPBELL:

13 Q Mr. Spehl, you had contact, I believe, in about the
14 month before this trial started with Ms. Walker?

15 A Yes, she had called me.

16 Q On a telephone call?

17 A Uh-huh.

18 Q And we were attempting to get some paperwork in
19 this case?

20 A No, she just said she wanted to talk to me.

21 Q Do you remember her talking about we were trying to
22 get some paperwork from MetLife?

23 A Yes.

24 Q The documents of her account?

25 A Yes. Yes.

1 Q Okay. And you recall all that as well?

2 A Yes.

3 Q And then I believe in about a week before this
4 happened, we actually came to your office and spoke
5 to you briefly?

6 A Correct.

7 Q And at that point you went through some of things
8 you have just gone through with the Defense
9 attorney, is that correct?

10 A Correct.

11 Q And at that point you told us about Brett coming
12 in?

13 A Correct.

14 Q Is your testimony here today, sir, that when he
15 talked to you about wanting to put some of this
16 money away for the education of the children that
17 he specified the whole amount?

18 A We didn't specify the entire amount, no.

19 Q And, in fact, when we met with you, we talked about
20 how he came in and he wanted to get rid of the
21 house because he didn't want to live there anymore?

22 A Right.

23 Q And then he mentioned the children?

24 A Right.

25 Q And everything. But he never said any specific

1 amount, he just talked to you kind of like in
2 general numbers?

3 A Well, we had talked about maybe doing around
4 \$100,000 each for their education. That is close
5 to in-state tuition.

6 Q And he was just running some ideas about what he
7 might do with the money?

8 A Well, I was giving him ideas, yes.

9 Q And who actually suggested to him that he put aside
10 some money for the children's education?

11 A Well, I basically, you know, I brought up of how a
12 lot of people pay off the mortgage and do
13 education, and so forth and so on. And that is
14 when that discussion came up.

15 Q So you suggested to him that he put some money
16 aside for the education of his children?

17 A Yes.

18 Q And that is when he agreed to maybe put \$100,000 or
19 so aside?

20 A Correct.

21 Q That that might be good enough.

22 A Just depending on once everything settled.

23 Q And you mentioned that you had met Brett 12 years
24 prior to this?

25 A Uh-huh.

1 Q When was the last time prior to -- you got notice
2 of this through your company, right?

3 A Correct.

4 Q And prior to getting that letter, or that e-mail, I
5 believe it was, right?

6 A Uh-huh.

7 Q From your company, when was the last time you had
8 any contact with Brett Parker or Tammy Parker?

9 A It would have been with Brett, and that was in
10 November of 2008.

11 Q November of 2008?

12 A Correct.

13 Q And what was the -- that last contact you had with
14 him, what was that about?

15 A We had met at Atlanta Bread Company, and I had
16 talked about -- I had moved companies, and we had
17 talked about redoing some of his insurance and
18 increasing the coverage on him and adding his son.

19 Q Okay. So from November of 2008 until sometime in
20 April or May of 2012, you had no contact with him?

21 A Huh-uh.

22 Q No phone call?

23 A Huh-uh.

24 Q No seeing him anywhere?

25 A I think I saw him once at Atlanta Bread Company and

- 1 said hey.
- 2 Q And that was it?
- 3 A Yes.
- 4 Q But no phone calls back and forth with y'all, y'all
- 5 weren't playing golf on a regular basis, or
- 6 anything back and forth?
- 7 A No.
- 8 Q And back when you knew him prior to 2008, you had
- 9 worked for a different insurance company?
- 10 A Uh-huh.
- 11 Q And then in 2012 you were working for MetLife?
- 12 A Correct.
- 13 Q And, again, you were the one that initiated contact
- 14 when you saw it come up on your radar as part of
- 15 your duties as manager?
- 16 A Correct. Correct.
- 17 Q Do you know why Brett Parker would have entered
- 18 your name into his phone directory and your phone
- 19 number on March the 30th of 2012?
- 20 A I would have assumed I was already in there.
- 21 Q Well, if the phone records showed that he entered
- 22 on March 30th, 2012, at 8:31 a.m. he entered your
- 23 name -- which is Brad, right?
- 24 A Correct.
- 25 Q And how do spell your last name?

1 A S-P-E-H-L.

2 Q Thank you, sir.

3 A Uh-huh.

4 Q And underneath that he entered MetLife, you don't
5 know why that would have been entered at that
6 moment?

7 A No.

8 Q And when we met, as we were walking out, and
9 everything, you gave us basically the same
10 information you are talking about here today?

11 A Uh-huh.

12 Q As we were leaving, do you remember what you said
13 to us?

14 A I mean, I said a bunch of things when I left, so.

15 Q Do you remember telling us as we were leaving that
16 you knew Brett, you knew him back in 2008, he
17 wouldn't have done this and you hope we lost?

18 A I did not say that. I said I hoped y'all used
19 facts to come up with it and not assume.

20 Q You don't remember saying that to Ms. Walker?

21 A I said -- I said that I don't think he did it,
22 based on his character.

23 Q And you also said that you hoped we lost? Do you
24 remember that?

25 A No, I did not say that.

1 Q And we had another investigator present there?

2 A I did not say I hope you lost.

3 Q Okay. Thank you, sir.

4 REDIRECT EXAMINATION

5 BY MR. FEDOR:

6 Q You never said you hoped the Prosecution lost?

7 A No.

8 Q Is that another fantasy that they have come up
9 with?

10 A I did not say they -- they had made the comment to
11 me, so you hope that we lose, was the comment they
12 made.

13 Q Okay. Now, from your knowing Brett and visualizing
14 him, did he look like an athlete to you?

15 A No.

16 Q What did he look like?

17 A Just a regular guy.

18 Q Was -- did he look athletic, other than playing
19 golf and drinking beer?

20 A No.

21 Q And it was his coming to your office as a result of
22 you calling him because of the situation, is that
23 true?

24 A Correct.

25 Q And he was the one that said he wants the money to

1 go to the children, did he not, sir?

2 A Yes. When we talked about it he wanted --

3 Q Thank you. One second.

4 (Pause.)

5 Q Thank you very much, Brad.

6 MR. FEDOR: We move that he be allowed to be
7 excused.

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

10 MS. CAMPBELL: No, ma'am.

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

12 (Witness steps down.)

13 THE COURT: Any objection to him being
14 excused?

15 MS. CAMPBELL: None from the State, Your
16 Honor.

17 THE COURT: All right, you are free to leave.
18 (Witness excused.)

19 MR. FEDOR: Your Honor, the Defense calls
20 David Sojourner.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, raise your right hand, and face the clerk,
24 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: I do.

6 THE CLERK: Have a seat in the witness box.
7 (Witness complies.)

8 THE CLERK: State your name for the record,
9 and spell your last name, please.

10 THE WITNESS: David Sojourner,
11 S-O-J-O-U-R-N-E-R.

12 DAVID SOJOURNER,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FEDOR:

16 Q Mr. Sojourner, what do you do for a living, sir?

17 A I'm an attorney.

18 Q How long have you been an attorney?

19 A Twenty-seven years.

20 Q What type of law do you specialize in,
21 Mr. Sojourner?

22 A I'm a tax attorney, primarily estate planning.

23 Q Could you tell the jury what estate planning is,
24 please?

25 A Wills and trusts and planning for -- anything

1 dealing with Probate Court, estate and gift tax
2 planning.

3 Q Something that we dumb trial lawyers don't know
4 anything about, would you agree?

5 A Typically.

6 Q Thank you, sir. Following -- strike that. Would
7 you explain to the jury, Mr. Sojourner, what a
8 disclaimer is?

9 A Yes.

10 Q What is it?

11 A A disclaimer is -- it is a provision in South
12 Carolina law that when someone is left an asset,
13 either through a will or by beneficiary
14 designation, they can refuse it. They have the
15 right to refuse it. And if someone does refuse it,
16 it passes to the next beneficiary.

17 Q As a result of the incident that occurred the 13th
18 of April, did Mr. Brett Parker come to your office
19 for any information and advice?

20 A He did.

21 Q Approximately what date was that, sir, if you can
22 remember?

23 A It was in late June of last year. I'd say the last
24 week of June, 26th, 27th, somewhere in that range.

25 Q And as a result of that, coming to your office, did

1 you find out what assets he had received by way of
2 an insurance policy, or insurance policies on his
3 wife Tammy?

4 A He had not received any of the assets when he came
5 to my office. He had not received anything yet.

6 Q Well, in anticipation of receiving assets, did you
7 advise him?

8 A I need to be clear that Brett Parker was not my
9 client.

10 Q Yes, sir.

11 A I was representing the interest of his children as
12 the contingent beneficiaries. And I made that
13 clear to Mr. Parker at the outset.

14 Q All right. Tell us, Mr. Sojourner, what are
15 contingent beneficiaries?

16 A Typically on a life insurance policy or retirement
17 plan, you might name a first beneficiary to receive
18 assets, and if that beneficiary is not living or if
19 that beneficiary has disclaimed or refused, it
20 would pass to the second beneficiary listed.

21 Q Now, on these assets that were coming into Brett
22 Parker's possession, did he sign a disclaimer and
23 giving that money, all of it, to his children?

24 A There are actually three assets that I discussed
25 with Mr. Parker. There were the life insurance

1 benefits.

2 Q What was the amount of that, sir?

3 A I believe it was in the neighborhood of 700 to
4 \$800,000.

5 Q All right.

6 A Those benefits had Brett as the primary
7 beneficiary, as I recall; and the two children,
8 B.P. and Z.P., as the contingent beneficiaries.

9 The second asset was a 401(k) plan. That
10 beneficiary had -- the beneficiary designation on
11 that particular asset was improperly prepared,
12 according to the retirement plan administrator when
13 I talked with him. Brett refused his interest in
14 it by disclaimer. He disclaimed it. And the
15 contingent beneficiary ended up being the estate of
16 Tammy Jo Parker.

17 Q Okay.

18 A The third is the 401 -- I mean, the pension plan.
19 That was about \$50,000. Though, again, there was a
20 little bit of confusion about this. Brett was the
21 primary beneficiary and, to the best of my
22 knowledge, daughter B.P. is the contingent
23 beneficiary. He refused his interest in that also.

24 So he disclaimed his interest on all three of
25 those things.

1 Q So he said, in common terms for we street lawyers,
2 I don't want the money, give it to my kids?

3 A That is the impact of what he did by signing the
4 disclaimer.

5 Q And in a disclaimer, Mr. Sojourner, can he ever
6 revoke that and ask for any of that money?

7 A That disclaimer is irrevocable, and it says it is
8 irrevocable.

9 Q Irrevocable means that he can never touch a nickel
10 of that money, is that true?

11 A That is. I am going to say that monies that pass
12 to Tammy Jo's estate, that would be the retirement
13 plan money, that money Mr. Parker is the
14 beneficiary of that estate.

15 Q And has he disclaimed that?

16 A He has not.

17 Q That amounts to what amount, sir?

18 A Probably between 200 and \$250,000. He would be a
19 50 percent beneficiary of that since she died
20 without a will. So 100 to \$125,000.

21 Q And who would the rest of it go to?

22 A To the children.

23 Q So the children would reap, as his disclaimers
24 state, about a million dollars, is that correct?

25 A All of the life insurance, which is \$700,000 or so;

1 all of the pension plan, \$50,000 or so; and half of
2 the retirement plan, that was 200. So about 100.

3 Q And did you explain to him, Mr. Parker, when you
4 sign this, it is out of your right forever?

5 A I did.

6 Q And he went along with that and gave it to the
7 children?

8 A He did.

9 Q Thank you very much, sir. Answer any questions the
10 Prosecution has for you.

11 MS. CAMPBELL: May it please the Court?

12 THE COURT: Yes.

13 MS. CAMPBELL: Thank you.

14 CROSS-EXAMINATION

15 BY MS. CAMPBELL:

16 Q Mr. Sojourner, how did you become involved with
17 this whole estate?

18 A I received a phone call actually the day before I
19 met with Mr. Parker from Ben Staples.

20 Q And whose idea was it that Brett do a disclaimer in
21 order for the money to get to the children?

22 A As I recall, when I spoke with Ben about this, he
23 was very concerned about taking care of the
24 children and making sure that the children received
25 these funds.

1 We talked a little bit about some different
2 provisions under South Carolina law to actually
3 accomplish what Ben wanted to accomplish.

4 Ben is a longtime client of mine. And I
5 suggested the disclaimer as a way of accomplishing
6 what Ben wanted to do, which was get the money to
7 the children.

8 Q And who was the primary beneficiary on the life
9 insurance policy?

10 A Brett was the primary beneficiary.

11 Q And you mentioned that the amount was around 700
12 and something thousand dollars?

13 A Seven or eight.

14 Q Would you be surprised if there was a double --
15 some indemnity or something that made it closer to
16 eight?

17 A 830 or something. That's true.

18 Q And who was the beneficiary on the 401(k) plan? Do
19 you remember?

20 A The 401(k), I believe was the one that -- the way
21 that that was -- and I didn't bring my file with
22 me.

23 Q Yes, sir.

24 A But I believe that that was set up so that Brett
25 and **B.P.** together were beneficiaries on it, but

1 that was not a proper beneficiary designation,
2 because under federal law, if you want to designate
3 someone other than your spouse, your spouse has to
4 consent to it, and there was no consent signed by
5 Brett.

6 Q So Brett never signed a consent for his child or
7 anyone else to inherit that?

8 A That's correct.

9 Q Okay. So he would have been the beneficiary?

10 A That's correct.

11 Q And then, finally, the 50,000,
12 50-something-thousand-dollar retirement account,
13 who was the beneficiary?

14 A Brett first, **B.P.** as the alternate.

15 Q When Ben Staples made contact with you, why was he
16 trying to set it up so that Brett disclaimed the
17 money so it would go to the children? What were
18 his concerns about Brett?

19 A Well, one of the concerns was that this would be
20 tied up for a long time. That if Brett were the
21 beneficiary, that in all likelihood the insurance
22 companies were not going to pay that money to Brett
23 because of the circumstances of the death.

24 Q So Brett wasn't going to get that money?

25 A That's right.

1 Q So it was Mr. Staples' concern to try to get that
2 money secured for the children since it was money
3 that Tammy rightfully had insurance on?

4 A Yes.

5 Q So the main concern at that point was that Brett
6 wasn't going to get the money based on the laws in
7 this state and the circumstances of this case. So
8 it was -- you were trying to get it to the
9 children?

10 A That's correct.

11 Q And who was the person that was concerned about
12 that? Who brought that to your attention to try to
13 make that happen?

14 A Ben Staples.

15 Q When you met with Mr. Parker on the 25th, he came
16 in and talked to you about the realities of
17 everything?

18 A Ben came in and met with me that morning. I
19 actually didn't know Mr. Parker was coming in also,
20 but Mr. Parker joined us after just a few minutes.

21 Q You were a little surprised by that?

22 A I was.

23 Q And when he came in, did y'all discuss the reality
24 of whether or not he could inherit this money and
25 how -- in order to get it to his children?

1 A We did.

2 Q Was he reluctant?

3 A I -- I don't know if I would describe him as
4 reluctant. He was distraught. He was very upset.
5 He was very anxious. Very emotional. He did not
6 make a decision at that meeting to disclaim. I
7 prepared a letter and sent it to him with a draft
8 of the disclaimers clarifying that I did not
9 represent him.

10 Q Uh-huh.

11 A Clarifying the impact of the disclaimer and
12 suggesting that he consult with an attorney of his
13 own before he signed it.

14 Q So you told him to go to other attorneys to see if
15 what you had explained to him about how he wasn't
16 getting his money was true and for him to make a --
17 educate him?

18 A I did, because he was not my client.

19 Q But when he left that day, he hadn't signed any
20 disclaimer?

21 A That's correct.

22 Q And it was only a later date that he did sign that?

23 A Yes.

24 Q Because he wasn't getting the money?

25 A That's correct.

1 Q And did you ever have any contact with Mr. Fedor in
2 this case?

3 A I did.

4 Q And did he make any comment to you about the
5 disclaimer?

6 A He did.

7 Q And what did he say?

8 A I spoke with Mr. Fedor approximately two or three
9 days after I met with Brett.

10 Q Uh-huh. Did he talk to you about motive?

11 A Brett had -- Brett had brought him the disclaimer.

12 Q Yes.

13 A And Mr. Fedor told me that he thought that this was
14 a good idea and that he thought that this took
15 motive off the table.

16 Q Thank you, sir.

17 REDIRECT EXAMINATION

18 BY MR. FEDOR:

19 Q Mr. Sojourner, when Brett walked into your office
20 with Mr. Staples, he was distraught, was he not?

21 A Yes, sir. He was not with Mr. Staples, they were
22 separate. Mr. Staples arrived first. We met for a
23 few minutes, and then Mr. Parker arrived.

24 Q And anybody would be distraught if their wife were
25 killed, wouldn't you agree?

1 A I would.

2 Q I would too. When you called me, David -- and I
3 have known you for a long time -- if you didn't
4 know you are the only one in town that doesn't know
5 that I don't know up from down about insurance or
6 disclaimers, or anything else. I'm a tort lawyer,
7 accident cases, right?

8 A Yes, sir.

9 Q But when you talk to me, I always depend on what
10 you tell me because you know that area of law, and
11 I don't know it. And when we talked, then, as his
12 initial idea was, all the money was left to the
13 children that he knew about at that time? That is
14 what he wanted done, didn't he?

15 A Could you repeat that question, Dave?

16 Q When you talked to Brett, when he finally signed
17 the disclaimer, you explained to him what a
18 disclaimer was and it meant all the money went to
19 the children?

20 A Well, that is not exactly right. Certainly that
21 is --

22 Q Explain.

23 A -- the case for the insurance. But the retirement
24 plan money, we talked about the fact that it would
25 go to the estate, or it may go to the estate.

1 He was concerned that he may need money for
2 attorney's fees, and he mentioned that to me.

3 Q Okay.

4 A So the insurance, he knew where that was going.
5 The retirement plan money went to the estate, and
6 he did not disclaim his interest in that. So I
7 can't really say that all the money was going to go
8 to the children.

9 Q Okay.

10 A I hate to be splitting hairs.

11 Q Sure. I understand. But the majority of that
12 \$1 million or so went to the kids?

13 A Yes, sir.

14 Q Thank you very much.

15 THE COURT: Anything else from the State?

16 MS. CAMPBELL: No, ma'am.

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

18 (Witness steps down.)

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

21 MS. CAMPBELL: None from the State.

22 THE WITNESS: Thank you, Your Honor.

23 MR. FEDOR: No, Your Honor, no objection.

24 THE COURT: All right, you are free to leave.
25 (Witness excused.)

1 MR. FEDOR: We call Fred Green as our next
2 witness, Your Honor.

3 THE COURT: All right.

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 record,
15 and spell your last name, please.

16 THE WITNESS: My name is Fred Green.

17 FRED GREEN,

18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FEDOR:

21 Q Mr. Green, before this morning, have you ever met
22 me?

23 A No, sir, this morning is the first time.

24 Q You have been subpoenaed to be in this trial, have
25 you not, sir?

1 A I have.

2 Q What is your job? What is your employment, sir?

3 A I am president of the South Carolina Bankers
4 Association.

5 Q As president of the South Carolina Bankers
6 Association, how long have you been in this
7 position?

8 A I started on March 15th of last year.

9 Q And what did you do before then, Mr. Green?

10 A I had been a banker since 1979.

11 Q Where are you from originally?

12 A Georgetown, South Carolina.

13 Q Where have you lived for the past few years before
14 you took over this job?

15 A I was in Columbus, Georgia, for six -- well, let me
16 back up. Columbia, then Columbus, Georgia for six
17 years. Then back to Georgetown for two years.
18 Then Columbia for the last year.

19 Q Now, do you know Linda Parker?

20 A I do.

21 Q Is she an employee of yours?

22 A She is.

23 Q And I call your attention to the morning of
24 April 13th, 2012, last year. Where were you
25 working that morning, sir?

1 A I was in my office at the South Carolina Bankers
2 Association.

3 Q And what is the address of that office?

4 A It is Park Street. I think 2009 Park Street.

5 Q That morning did you have an opportunity to be
6 introduced to Brett Parker by his mom?

7 A I did.

8 Q About what time was that, Mr. Green?

9 A It was mid to late morning, 10:30 to 11:15,
10 sometime in that timeframe.

11 Q At that time, when Linda Parker introduced you to
12 her son, say between 11:00 and 11:15, did you have
13 a conversation with him?

14 A I did.

15 Q Do you know what the conversation consisted of?

16 A It was a casual, small talk conversation, maybe
17 about ten minutes long. I asked what he did. We
18 talked about me looking for a house in Columbia,
19 things like that.

20 Q And did he appear to you that morning to be out of
21 sorts or distraught about anything?

22 A No. It was a very, again, casual conversation,
23 normal conversation you have with someone.

24 Q After you talked with him, say ten minutes or so,
25 after 11:00, did he leave the premises?

1 A I am pretty confident that he and his mother Linda
2 walked out and he left. They left my office and
3 they were headed that way. And I'm pretty sure he
4 went out the front door.

5 Q After we gave your name to the Solicitor's Office
6 and subpoenaed you, did they come over to your
7 office to interrogate you about what happened?

8 A They came to my office to talk to me, yes.

9 Q What questions did they ask you, sir?

10 A Pretty much the same as what you did: How long I
11 had been working there, what the conversation was,
12 anything unusual.

13 Q And you told them the same thing you told me?

14 A Yes, I did.

15 Q Thank you, sir.

16 MR. FEDOR: No further questions.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MS. WALKER:

20 Q Mr. Green?

21 A Yes, sir.

22 Q You spoke with Investigator Streater with our
23 office, right?

24 A I did.

25 Q And you shared with him the same information you

1 shared with Mr. Fedor?

2 A That's correct.

3 Q You said that Brett spoke with his mother that
4 morning?

5 A Her office was right beside mine. And she came and
6 introduced him to me, that's correct.

7 Q Could you hear what they were talking about?

8 A No, I could not.

9 Q Other than that five minute meeting with
10 Mr. Parker?

11 A Five, ten minutes. It was a short meeting.

12 Q Do you know anything about anything going on with
13 this trial? Do you have any direct knowledge of
14 any of the factual circumstances?

15 A I have not been in this trial. I know what is
16 printed in the newspaper and what is on the TV at
17 night.

18 Q Thank you for coming, Mr. Green.

19 MR. FEDOR: Thank you very much, Mr. Green.

20 (Witness steps down.)

21 THE COURT: Any objection to Mr. Green being
22 excused?

23 All right, you are free to leave, sir.

24 (Witness excused.)

25 MR. FEDOR: One second, Your Honor.

1 THE COURT: All right.

2 (Pause.)

3 THE COURT: All right. Call your next
4 witness, Mr. Fedor.

5 MR. FEDOR: Here she is.

6 (Witness approaches.)

7 THE COURT: All right. Your name, ma'am?

8 THE WITNESS: Carol Haines.

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

11 (Witness complies.)

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

16 THE WITNESS: I do.

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

18 (Witness complies.)

19 THE CLERK: State your name for the record,
20 and spell your last name, please.

21 THE WITNESS: My name is Carol Haines, and it
22 is spelled H-A-I-N-E-S.

23 CAROL HAINES,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. FEDOR:

2 Q And, Ms. Haines, where do you work?

3 A I work at NHC Parklane on Parklane Road.

4 Q What does that stand for?

5 A National HealthCare. It is a nursing home.

6 Q Do you work with Brett Parker?

7 A Brett Parker would bring in durable medical
8 equipment for our facility.

9 Q Ms. Haines, I call your attention to April 13th,
10 the day of this sad incident. Were you working
11 that morning?

12 A Yes, sir, I was.

13 Q And what do you do at that facility?

14 A I am the director of rehabilitation, and also a
15 physical therapist.

16 Q Now, as director, did you observe that morning
17 Brett Parker come into your facility?

18 A I observed Brett Parker at my facility. I didn't
19 actually see him walk in.

20 Q All right. About what time was that, Ms. Haines?

21 A I would put it at approximately 9:30.

22 Q And what was he to do there that morning?

23 A He -- we had called him to repair a wheelchair.

24 There was a brake that malfunctioned. And it was a
25 special kind of wheelchair, so we called the rep to

1 come in and look at it.

2 Q And was that his purpose when he arrived, to repair
3 the wheelchair?

4 A Yes, sir.

5 Q Did you see him repair that wheelchair that
6 morning?

7 A I saw him working on it. I come in and out of the
8 room, so I saw him in a corner working on it.

9 Q And how long did he work on that wheelchair?

10 A I couldn't give you a specific time that he worked
11 on that wheelchair, because I go in and out of the
12 room. I know he worked on it. And I know I still
13 saw him again around 11:00 o'clock. He was talking
14 to my staff at that point.

15 Q At 11:00 o'clock?

16 A Uh-huh.

17 Q Did you know Brett?

18 A I know him from bringing in the equipment.

19 Q Did he appear to you out of sorts or anything --

20 A He did not appear out of sorts that day. He seemed
21 pretty typical. He was coming in to repair the
22 chair. I didn't see anything unusual.

23 Q He is a pretty low key guy, isn't he?

24 A Typically.

25 Q Okay. And he repaired the wheelchair and left your

1 facility at approximately 11:00 o'clock?

2 A Yes, sir.

3 Q All right. Did you see Brett after that?

4 A No, sir. Well, did I see him physically --

5 Q Yes.

6 A -- after that time? He did come back to the
7 facility another time after that.

8 Q And what did he do when he came back to the
9 facility?

10 A He talked with some of the staff members at that
11 point and said that, to please just consider using
12 his company, he wouldn't be coming out after that
13 point.

14 Q Okay. Thank you, Ms. Haines. You are here under
15 subpoena, are you not?

16 A Yes, sir, I am.

17 Q Answer any questions the Prosecutor has for you.

18 THE COURT: Yes, ma'am?

19 MS. SIMPSON: Thank you. May it please the
20 Court?

21 CROSS-EXAMINATION

22 BY MS. SIMPSON:

23 Q Ms. Haines, what time did you say you saw
24 Ms. Parker?

25 A Approximately 9:30. I come out of a meeting. I

1 didn't time it, but I'm usually out --

2 Q And then you saw him again kind of working on the
3 wheelchair?

4 A Uh-huh.

5 Q Just throughout the morning. And you stated that
6 he left, or he was talking to your staff about
7 11:00 a.m. that morning?

8 A That's correct.

9 Q Right? But you didn't actually talk to him that
10 morning, did you?

11 A I did not talk to him myself, no. Other than just
12 across the room. I didn't even verbalize, just
13 like a nod that you are there.

14 Q Okay. And you didn't hear anything he was
15 saying --

16 A I did not.

17 Q -- to the staff? You just saw him leave?

18 A I didn't physically see him leave. I saw him
19 talking to the staff. I came back in and then he
20 wasn't --

21 Q And then he was gone?

22 A Yes.

23 Q Where is your office located?

24 A It is at 7601 Parklane Road in Dentsville.

25 Q Okay. So northeast?

1 A Yes, uh-huh.

2 Q And do you know a Natasha Nadkarni?

3 A No, ma'am, I don't.

4 Q And you don't know anything about what happened at
5 12 Tackeria Court back on April 13th of 2012,
6 correct?

7 A I do not know what happened. You know, I have seen
8 some papers, but I purposely quit -- when they said
9 they wanted me to be a witness, I just quit
10 listening to stuff.

11 Q Thank you, Ms. Haines.

12 A You're welcome.

13 THE COURT: Anything else, Mr. Fedor?

14 MR. FEDOR: Just one second, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 REDIRECT EXAMINATION

18 BY MR. FEDOR:

19 Q Without keeping books on arrivals and departures,
20 could you be perhaps a little bit off on the time?

21 A Yes, sir, I could.

22 Q Okay.

23 MR. FEDOR: We have nothing further, and ask
24 that she be allowed to be excused, Your Honor.

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

1 MS. SIMPSON: Your Honor, just briefly.

2 RECROSS-EXAMINATION

3 BY MS. SIMPSON:

4 Q When the Defendant came back the later time to tell
5 you he wasn't going to be working but to still use
6 his company, when was that?

7 A I -- I could not give you a date. I just know it
8 was after that Friday and it was after the
9 newspapers had done the stories. But I couldn't
10 give you a date, I really don't know that.

11 Q So June -- you don't know whether it was June or
12 July or --

13 A I don't -- I couldn't even -- I don't know. I'm
14 sorry.

15 Q Thank you.

16 MR. FEDOR: Now we ask that she be able to be
17 excused.

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

19 MR. FEDOR: Thank you, Ms. Haines, for coming.

20 THE WITNESS: Thank you.

21 (Witness steps down and is excused.)

22 THE COURT: All right, call your next witness.

23 (Witness approaches.)

24 MS. CAMPBELL: Her name?

25 THE COURT: Her name?

1 MR. FEDOR: Just a moment. Sheri Davis
2 Armstrong.

3 MS. CAMPBELL: Thank you.

4 THE BAILIFF: Place your left hand on the
5 Bible, raise your right hand, and face the clerk,
6 please.

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm the
9 testimony you are about to give in this case will
10 be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: Yes, ma'am.

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

14 (Witness complies.)

15 THE CLERK: State your name for the record.

16 THE WITNESS: My name is Sheri Davis
17 Armstrong.

18 THE COURT: Yes, sir?

19 SHERI DAVIS ARMSTRONG,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FEDOR:

23 Q Ms. Armstrong, by whom are you employed?

24 A National HealthCare on Parklane Road.

25 Q Is that the same place where Carol Haines is

1 employed?

2 A Yes, sir.

3 Q What are your duties there?

4 A I'm a ped occupational therapist. I treat
5 patients. Make sure they get what they need.

6 Q In the treating of patients, do you stay within
7 that facility when people come and go to that
8 facility?

9 A Yes, sir. I'm in the therapy gym most of the day,
10 and then in the suite or bedrooms when I'm not in
11 the gym.

12 Q As a result of working there, did you come to know
13 a gentleman by the name of Brett Parker?

14 A Yes, sir.

15 Q And what would he do when he came to the facility?

16 A He was one of our primary durable medical equipment
17 suppliers, so if a patient was going home he would
18 order them a quick med: Wheelchairs, walkers,
19 canes, tub benches, shower chairs.

20 Q And as a result of his employment, you would see
21 him occasionally when he came and left your
22 facility?

23 A Yes, sir.

24 Q I call your attention to April 13th of last year,
25 2012. Did you see Brett that morning?

- 1 A Yes, sir.
- 2 Q What was he doing at that morning meeting?
- 3 A He was there to fix a wheelchair for a patient.
- 4 Q And you saw him then?
- 5 A Yes, sir.
- 6 Q About what time was that?
- 7 A It was around 10:00 o'clock. I don't know the
- 8 exact time. But it was in that area.
- 9 Q Did you see him fixing the wheelchair?
- 10 A No, sir.
- 11 Q What did you see him doing?
- 12 A The set-up of the gym, I was in the middle and he
- 13 was kind of I think around the corner, because that
- 14 is where the wheelchair was that he was fixing.
- 15 Q All right. And he did work that morning fixing the
- 16 wheelchair?
- 17 A I believe so. It was fixed when he left.
- 18 Q Okay. Do you know approximately what time he left,
- 19 Ms. Armstrong?
- 20 A No, sir.
- 21 Q Did he wave to you when he left, or did you wave to
- 22 him?
- 23 A He waved when he walked in.
- 24 Q I see. And did you seem to think he was distraught
- 25 or emotionally upset or anything?

1 A No, sir, he was not.

2 Q Have you seen Brett since that time?

3 A I saw him once. He came back. I don't know the
4 exact date, but he came back just to say hello and
5 to tell everybody not to blame his business for all
6 the things going on.

7 Q Okay. All right. Thank you, ma'am. If you'll
8 answer any questions the Prosecution has for you.

9 THE COURT: Yes, ma'am?

10 MS. SIMPSON: Thank you. May it please the
11 Court?

12 CROSS-EXAMINATION

13 BY MS. SIMPSON:

14 Q Ms. Armstrong, do you recall the date when the
15 Defendant came back after the 13th?

16 A No, ma'am.

17 Q Even an approximate timeframe?

18 A Maybe a week later. Maybe. But I don't know for
19 sure.

20 Q And he said, Don't blame my business, essentially
21 keep using them?

22 A I think so. He was just -- he looked really down
23 and going through a lot and --

24 Q And on the 13th, you didn't actually talk to the
25 Defendant that morning, correct?

1 A I waved at him from across the room and I overheard
2 a therapist picking on him about not wearing
3 golfing clothes, because he normally dresses to go
4 play golf. And he said no.

5 Q So on Fridays he is normally dressed to play golf
6 when he comes?

7 A That, or softball.

8 Q Or a sport?

9 A Yes.

10 Q But you didn't actually speak with him or have a
11 conversation with him that day?

12 A No. Just hello.

13 Q And you don't know anything about the events that
14 occurred on April 13th with respect to these
15 murders, do you?

16 A No, ma'am.

17 Q Thank you.

18 MR. FEDOR: We ask that Ms. Armstrong be
19 allowed to leave.

20 THE WITNESS: Thank you.

21 MS. SIMPSON: No objection from the State.

22 THE COURT: All right, ma'am, you are free to
23 leave.

24 THE WITNESS: Okay.

25 (Witness steps down and is excused.)

1 MR. WHITLARK: Your Honor, may we approach the
2 bench?

3 THE COURT: Yes, sir.

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

7 THE COURT: As you all can probably imagine,
8 we were trying to decide scheduling. They tell me
9 that the next witness may take a little bit of
10 time, and so therefore -- and your lunch is
11 supposed to be here in about ten minutes. So I
12 don't want to -- I'm not sure if we want to start
13 and then have to stop.

14 So I'm going to go ahead and let you all take
15 your lunch break. And hopefully the lunch will get
16 here on time. And then we'll start back in about
17 an hour. Okay? All right. Thank you.

18 And, once again, Mr. Bowen, if any of them
19 need to go outside, get some fresh air, you can
20 allow them to do that.

21 THE BAILIFF: Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 THE BAILIFF: Everyone remain seated until the
24 jury leaves, please.

25 (WHEREUPON, the jury retires to the jury

1 room at 12:48 p.m.)

2 THE COURT: All right, we will start back in
3 about an hour.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Y'all hold it down. They just got
6 lunch. I had never ordered from there. It took an
7 hour and a half to get their lunch here.

8 MS. CAMPBELL: Judge, we had subpoenaed
9 records from Dr. Ekman's office. And we have
10 received those. We have handed over a copy of what
11 we got.

12 THE COURT: All right. Are you ready to bring
13 them in? I'm not sure if they are ready, but will
14 you bring them in?

15 (WHEREUPON, the jury came into open
16 court at 2:53 p.m.)

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

19 THE COURT: I apologize for the issue with the
20 lunch. I'm not sure what happened. We have not
21 ordered from there before -- I have not ordered
22 from there before, so I'm not sure what the delay
23 was. But we are ready to begin.

24 Mr. Fedor, I would ask that you call your next
25 witness.

1 MR. FEDOR: Wendy Kiser, please.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, raise your right hand, and face the clerk.

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 name for the record,
14 and spell your last name, please.

15 THE WITNESS: Hi. My name is Wendy Combs,
16 C-O-M-B-S, hypen, Kiser, K-I-S-E-R.

17 WENDY COMBS-KISER,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FEDOR:

21 Q Ms. Kiser, where are you from?

22 A I live in a small town called Mocksville, North
23 Carolina.

24 Q When did you meet Brett Parker?

25 A I met him June 1st of 2012.

1 Q And where was the meeting?

2 A I met him at Great Wolf Lodge in Concord, North
3 Carolina.

4 Q And what were you doing at Great Wolf Lodge?

5 A I had taken both my boys to Great Wolf Lodge the
6 last day of school after it got out just for
7 vacation.

8 Q I'm sorry. And did Brett have his son at the same
9 lodge up there?

10 A Yes, he had taken Z.P. there.

11 Q Okay. His son Z.P., a 5-year-old at that time?

12 A I guess he was.

13 Q And did you and Brett strike up a conversation?

14 A Well, my youngest son, Hunter, had jumped in the
15 pool and started playing with Z.P.. He was playing
16 basketball in the pool. And they just started
17 playing together.

18 Q And this was months after the incident in Irmo, is
19 that correct?

20 A Yes.

21 Q Had you ever known Brett before then?

22 A No.

23 Q As a result, did you become friends with Brett?

24 A Yes.

25 Q And when he was arrested, did you happen to come

1 down here through Columbia on your way to the
2 beach?

3 A Yes.

4 Q When you were driving and you arrived at Alvin
5 Glenn holding society down there --

6 A Uh-huh.

7 Q -- tell us what happened.

8 A I had come to visit Mr. Parker. And when I
9 arrived, I had taken my children to go see a movie
10 because I didn't want to take them over there when
11 I went to go visit Brett. I just stopped there. I
12 went to go visit Brett, and when I got out of my
13 car, I don't know the deputy's name or
14 investigator, or whatever, but he came out from
15 behind the car that was parked beside of mine, he
16 and a girl, or whatever. And they just sort of
17 startled me. They didn't tell me their names or
18 anything.

19 And they asked me if they could ask some
20 questions of me.

21 The first that they asked of me was how I knew
22 Brett, when I met him, if I had an intimate
23 relationship with Brett, which I did not because
24 Brett and I were friends.

25 Q And as a result of questioning you at that time,

1 had you violated any law?

2 A No.

3 Q Had you been driving erratically?

4 A No.

5 Q How did they know you were going to see Brett?

6 A Because Brett has to put in a request a week in
7 advance.

8 Q And this was some months after this incident
9 happened in Irmo, is that correct?

10 A Yes. He was arrested the end of July.

11 Q Did you ever have an intimate relationship of any
12 sort with Brett?

13 A No.

14 Q Did they ask you had you done so?

15 A Yes, they did.

16 Q Were you frightened?

17 A Yes. I was startled when they -- when I got out of
18 my car and turned around and they came out from the
19 car behind -- beside of my car. I was startled.
20 That was not exactly what I was expecting.

21 Q In this situation today, did the Richland County
22 Sheriff's Department or some persons associated
23 with them contact you in North Carolina and have
24 you served with a subpoena?

25 A Yes, they did.

1 Q Where did they serve you, ma'am?

2 A They served me at my residence, and both of my
3 children saw -- they were at home when I was
4 served.

5 Q Do you have any idea why they served you with a
6 subpoena?

7 A No, I do not. But I know the day that they
8 questioned me, the way that they were questioning
9 me was, they were trying to make it out that Brett
10 and I met there under the pretense, that it was a
11 prior arrangement, which it was not, because I did
12 not know him, I didn't know his circumstances, or
13 anything else. I didn't even know him. I didn't
14 know Brett.

15 Q So the subpoena was served on you in North
16 Carolina?

17 A Yes.

18 Q And you were ordered to be in this courthouse, is
19 that correct?

20 A Yes.

21 Q Did they call you as a witness?

22 A No, they did not.

23 Q Ma'am, answer any questions the Prosecutor has for
24 you.

25 THE COURT: Yes, ma'am?

1 MS. CAMPBELL: May it please the Court?

2 CROSS-EXAMINATION

3 BY MS. CAMPBELL:

4 Q Is it Ms. Combs-Kiser or Kiser that you prefer?

5 A Combs hyphen Kiser, but you can just say Kiser.

6 Q Kiser is okay?

7 A Uh-huh.

8 Q Ms. Kiser, when you got the subpoena, when you were
9 served at your home, that was an interstate
10 subpoena?

11 A I guess that is what you call it.

12 Q And it was a lawful document?

13 A Yes.

14 Q And you aren't saying anyone served you incorrectly
15 or anything?

16 A No. I was served -- actually it came through the
17 Davidson County, which is not where I live, I live
18 in Davie County.

19 Q Okay. But you were lawfully served with a warrant.
20 And that is the steps we have to go through in
21 order to get you served in case we were able to put
22 your testimony up in front of this jury?

23 A Yes. I had to go to my county first, and then they
24 had to send me through here.

25 Q And then you made contact with our office, and I

1 believe you talked to Ms. -- is it Ms. Walker?

2 A I guess.

3 Q And at that point we told you that we would be in
4 contact if we were able to put up your testimony,
5 right?

6 A Yes, she told me --

7 Q Because you had a cold?

8 A You told me that you would probably use me on the
9 following Monday.

10 Q And you and I have never spoken, have we?

11 A No, ma'am, we did not.

12 Q And that if we needed you, we would let you know so
13 you could come down and we would make arrangements,
14 and things of that nature?

15 A Yes. And then you called me back the next day and
16 told me that -- to call you back, that we would --
17 the way that you all put it was, call me back as
18 far as making arrangements to set up stuff.

19 And then when I called back it was, When are
20 you coming down for the trial?

21 Q Okay. Because your lawyers had indicated you were
22 coming down -- or you had told them you were coming
23 down for the trial anyway?

24 A Yes.

25 Q Okay. So you were planning on being here for Brett

1 Parker before we ever served you with any subpoena?

2 A I had planned on coming down for Monday, but you
3 guys had already -- at that point had already --

4 Q Okay. And just answer my question first, and then
5 you can explain it. You had planned on coming
6 down here to support Brett Parker anyway,
7 regardless of our subpoena, is that true?

8 A Yes, I had decided to do that the night before, but
9 then I was given a subpoena the next morning.

10 Q And were you here on that Monday, not at our
11 request, but because you were here supporting Brett
12 Parker?

13 A Yes.

14 Q And you mentioned that you had gone -- had met
15 Brett at the Great Wolf Lodge?

16 A Yes.

17 Q And that your son started playing. And how old is
18 your younger son?

19 A My son is 12 now.

20 Q He is 12? So your 12-year-old son and **Z.P.** were
21 playing in the pool?

22 A Yes.

23 Q Right? And at that point that you started striking
24 up a conversation with Brett Parker?

25 A Well, the kids had played for a while, and then we

1 just started talking.

2 Q Okay. And at that point -- you said now that you
3 thought that happened on June the -- what did you
4 say?

5 A It was June the 1st..

6 Q June the 1st.

7 A 2012.

8 Q And back when you talked to these investigators
9 that startled you, it was actually in May is when
10 you said it happened?

11 A It was around May 31st, June the 1st. But I
12 actually still have the bill from Great Wolf Lodge,
13 and it was June the 1st.

14 Q And when they talked to you, they just said you met
15 in May, and you were just mistaken about that?

16 A No, ma'am. I know it is June the 1st because I
17 have the bill from Great Wolf Lodge.

18 Q Do you recall telling them you met in May?

19 A May 31st. I told them specifically it was the end
20 of May.

21 Q Okay.

22 A Because school was let out.

23 Q And at that point y'all started talking, you and
24 Brett Parker, is that correct?

25 A We met -- when I met him was the end of May, first

1 of June.

2 Q Okay.

3 A It was June 1st is when I met him.

4 Q Okay. And at that point y'all started talking?

5 A Yes. After our children met.

6 Q And how long were you at the Great Wolf Lodge?

7 A I was there three nights.

8 Q And how many nights was Mr. Parker there with you
9 at the Great Wolf Lodge?

10 A He and **Z.P.** were there, I don't know --

11 Q Do you remember how many conversations y'all had
12 while you were at the Great Wolf Lodge?

13 A Our kids hung out --

14 Q Uh-huh. Which is normal.

15 A -- from the time that we met. Probably -- we had
16 been there -- I met him on the 1st. I think my
17 kids and I had gotten there on the 31st. I met him
18 on the 1st. So we checked out I think on the 4th.

19 Q Okay. And during that time period, how many
20 conversations did you have with Brett Parker over
21 this several days?

22 A I talked to him every day that -- after we had met.

23 Q Okay. Did y'all go out to eat together?

24 A Until we checked out. We ate dinner at the buffet
25 at Great Wolf Lodge like --

- 1 Q You explained, you struck up a friendship?
- 2 A Yeah. I mean --
- 3 Q And that is how --
- 4 A We had hung out. And then there was another family
- 5 that was from Charleston that also -- we just --
- 6 Q And it was a friendship?
- 7 A Yeah.
- 8 Q And it is still a friendship?
- 9 A Yes.
- 10 Q And you are a good friend of Brett Parker?
- 11 A Well, Brett and I are -- I mean, Brett and I were
- 12 friends, and as we have been friends over the past
- 13 year, Brett and I are actually more at this point.
- 14 Q And what do you characterize yourself with Brett
- 15 Parker, who you met the end of May, the first of
- 16 June, what is your relationship now?
- 17 A Now? I love Brett.
- 18 Q After you left the Great Wolf Lodge on -- did you
- 19 say June 2nd?
- 20 A Right around June the -- I guess around June the
- 21 3rd, June 4th.
- 22 Q Something in there?
- 23 A Somewhere around there.
- 24 Q Is that fair?
- 25 A Yes.

1 Q Did y'all continue to stay in touch?

2 A No, we did not.

3 Q And, in fact, when is the next time you had any
4 contact with Brett Parker either by phone,
5 telephone --

6 A Text.

7 Q Seeing him? Text?

8 A Actually I think it was -- he had called me -- he
9 had said something about that they normally go to
10 the beach around July the 4th, or whatever. I
11 normally take my kids down for their birthdays,
12 around their birthdays on the end of June. He had
13 contacted me around the end of June.

14 Q So from the 1st of June, 2nd or 3rd, 4th, whatever
15 that date is, is that a fair characterization?

16 A No, he didn't --

17 Q Until the end of June.

18 A Now, rephrase that.

19 Q I'm sorry.

20 A Sorry.

21 Q I don't mean to mix you up. I'm sorry.

22 A No.

23 Q Maybe I'm not being clear. When was the next
24 contact after you left the Great Wolf Lodge with
25 Brett Parker, your friend?

- 1 A The end of June.
- 2 Q And how did that contact come about?
- 3 A He had called me regarding when -- that they were
- 4 going to the beach.
- 5 Q Okay. So he had your phone number?
- 6 A And **ZIP** was wanting to just, you know, get
- 7 together with the boys. He had had a really good
- 8 time hanging out with Hunter and my other son
- 9 Taylor.
- 10 Q Uh-huh. And so --
- 11 A He wanted to know if we were going to be at the
- 12 beach again.
- 13 Q Okay. Well, you hadn't been at the beach before,
- 14 had you, you had been at the Great Wolf Lodge, is
- 15 that correct?
- 16 A I go to the beach every month, ma'am.
- 17 Q What beach is it?
- 18 A My dad has a house at Little River.
- 19 Q Your dad has a house at Little River?
- 20 A Yes.
- 21 Q And so it just happens that Brett Parker called you
- 22 up, after not talking to you for a month, and y'all
- 23 arranged to meet up at the Little River Beach, is
- 24 that correct?
- 25 A No.

1 Q Okay.

2 A His family goes to Myrtle Beach every 4th of July.

3 Q His family?

4 A Yes, he and the kids normally go for 4th of July.

5 Q And did y'all end up meeting up at Myrtle Beach,
6 somewhere around there, or Little River, or
7 wherever?

8 A You are getting it totally just misconstrued.

9 Q Please correct me.

10 A I will. My children and I always go to the beach
11 every single month, because my family has a house.

12 He had told me that his kids, that they had
13 always gone to the beach every 4th of July.

14 Q When did he tell you that?

15 A At Great Wolf Lodge.

16 Q Okay.

17 A They said that they always did this, this was just
18 something that they did every year.

19 Q Uh-huh.

20 A I always take my children for their birthdays the
21 end of June.

22 Q Uh-huh.

23 A My children's birthdays are June 27th and 29th.

24 Q Yes, ma'am.

25 A He had called me around the end of June to see if

1 we were still going to be down there because Z.P.
2 was wanting to play with my two kids. My youngest
3 son, that seems like he is older than Z.P., which
4 he is, has disabilities.

5 Q Uh-huh.

6 A He has high functioning Asperger -- well, not
7 Asperger's, autism.

8 Q Uh-huh.

9 A And has seizure disorders.

10 Q Yes, ma'am.

11 A So he functions on an emotional level of a 7- to
12 8-year-old child.

13 Q And I don't mean to imply anything about --

14 A I know, but I'm giving you an understanding --

15 Q I understand.

16 A He is not -- he is mentally on Z.P.'s level.

17 Q Okay.

18 A When he called me at that time, I didn't think we
19 were still going to be there.

20 Q Had you been at the -- did he call you while you
21 were at the beach?

22 A We had -- we were at the beach at that point.

23 Q Okay.

24 A But I did not think we were still going to be.

25 Q Okay.

1 A So I did not talk to him anymore. But then around
2 July, I think it was around July 3rd, or whatever,
3 our plans had changed because my children did not
4 go to their grandmother's for the 4th of July
5 family reunion, and I ended up -- I'm the one that
6 had texted him and said that our plans had changed,
7 that we were still at the beach.

8 Q Okay.

9 A And when I texted him, I said that we were still
10 there at the beach, and everything, and that the
11 kids could hang out with them if they were coming
12 down to the beach.

13 Q Okay.

14 A So we did end up getting together on July the 4th.

15 Q And you --

16 A And we watched the fireworks together July the 4th.

17 Q Okay. Who was at the beach with you? Your
18 children?

19 A It was me and both of my children, my sister --

20 Q Uh-huh.

21 A -- and my sister's grandchild.

22 Q And who was at the beach with Brett Parker?

23 A It was Brett, B.P., Z.P. and one of B.P.'s
24 friends.

25 Q Okay. So y'all met up and watched the fireworks



1 together?

2 A Uh-huh.

3 Q So y'all just saw each other on that one day?

4 A We saw each other that night.

5 Q Uh-huh.

6 A Briefly. And watched fireworks. And then I saw
7 him again the next day -- like not the next day,
8 but the next night for probably about two hours.

9 Q Uh-huh.

10 A And the kids hung out and played, and stuff, and
11 that was about it.

12 Q Okay.

13 A And then they left and came back --

14 Q To Columbia?

15 A -- here. Yes.

16 Q And then you went on with your life?

17 A Uh-huh.

18 Q And at that point did y'all again make any plans to
19 see each other again or to do anything?

20 A No, because he came back here, and then it was
21 within like two, three weeks he was arrested.

22 Q How did you find out he was arrested?

23 A I saw it on the internet.

24 Q And when you saw it on the internet, what did you
25 do?

- 1 A I am the one that just sort of read everything on
2 the internet, found out where he was, and then I
3 started writing him, because I knew he needed a
4 friend.
- 5 Q Okay. And after you started writing him, did he
6 write you back?
- 7 A Yes.
- 8 Q And do you have those letters?
- 9 A Yes, I do.
- 10 Q Where are they?
- 11 A The are in my possession.
- 12 Q Did you bring them here to court?
- 13 A No, I did not.
- 14 Q And is this first time you told anybody about those
15 letters?
- 16 A No. My family knows about them.
- 17 Q Is this the first time you have ever told anybody
18 like connected to law enforcement that there was a
19 series of letters between you?
- 20 A No. I mean --
- 21 Q Who did you tell?
- 22 A My family knows. They are my personal possessions.
- 23 Q And what was in those letters?
- 24 A I mean, there is nothing really in those letters.
25 Brett and I talk about just any and everything.

1 Q And did your friendship continue to grow?

2 A Yes.

3 Q And as you continued to exchange letters while he
4 was incarcerated in Alvin S. Glenn Detention
5 Center, at some point did you think it was prudent
6 to come see him?

7 A Did what?

8 Q Did you think it was important for you to come see
9 him?

10 A I didn't start to come see him until probably the
11 end of January.

12 Q Okay. And did you have any phone calls with him?

13 A Yes. I do talk to him.

14 Q And do you talk to him regularly now on the phone?

15 A Yes, I do.

16 Q And has your relationship continued to grow?

17 A Yes.

18 Q And it was when you came down to see him, I believe
19 on February the 15th of this year, is when the
20 police officers approached you?

21 A Yes.

22 Q And when they approached you, you said you were
23 startled?

24 A Yes.

25 Q And you said they did not identify themselves?

1 A No, they did not.

2 Q So you talked to these people, these strangers who
3 did not identify themselves?

4 A No, because they came out from behind the other
5 car.

6 Q So you did or you didn't talk to them?

7 A I did talk to them.

8 Q But you didn't know who you were talking to?

9 A Ma'am, if I hadn't talked to them, they would think
10 I was hiding something.

11 Q Because they were police officers and had
12 identified themselves?

13 A And I'm not hiding anything.

14 MR. FEDOR: Might she answer the question,
15 ma'am?

16 THE COURT: Is that an objection? Let her
17 answer the question.

18 MS. CAMPBELL: Yes, ma'am.

19 BY MS. CAMPBELL:

20 Q Did you know who they were?

21 A No, I did not know who they were.

22 Q Then why did you --

23 A But I was assuming who they were because they are
24 sitting there hunting for any information they can
25 find on Brett.

1 Q And at that point --

2 A But they did not show me their badge, they did not
3 tell me who they were with, or what their names
4 were.

5 Q But you knew they were police officers?

6 A I assumed they were police officers.

7 Q And do you recognize those people here in the
8 courtroom?

9 A Right there is one of the men, and the other lady
10 is not here. She had long blond hair and was tall.

11 Q Was he rude to you?

12 A He didn't say anything. The lady is the one that
13 talked the majority of --

14 Q Was she rude to you?

15 A She said quite a few things that I was not really
16 happy with. She insinuated that **Z.P.** was looking
17 at my youngest child as if looking at him wanting
18 him to be a brother.

19 Q And that is offensive?

20 A It is when that is the first time that -- meeting
21 my child for the first time.

22 Q You didn't have your children with you when you
23 went to the Alvin S. Glenn Detention Center, did
24 you?

25 A No, I did not. But meeting him for the first time

1 and then insinuates -- it is like she is
2 insinuating that that is the first time of meeting
3 somebody.

4 Q I'm not following you.

5 A She was trying to make the first time that I had
6 met Brett into a relationship that was not a
7 relationship.

8 Q It was a friendship relationship?

9 A It was a friendship. I had just met him that day.

10 Q The end of May, the 1st of June, that time period,
11 you had just met Brett Parker?

12 A Yes, ma'am.

13 Q And when you talked to the police officers, who
14 were not identifying themselves, did you -- did
15 they ask you basically if Brett had talked to you
16 about the case?

17 A Brett did not talk to me about the case. He never
18 talked to me about the case, because I told Brett
19 that he did not have to tell me anything.

20 Q How did you know to tell him not to tell you
21 anything?

22 A Because Brett told me when I first met him, he told
23 me that his wife had been murdered and that a
24 family acquaintance had killed his wife.

25 Q And that was the extent of it?

1 A And I could tell that it was upsetting him.

2 And I told him, I said, you don't have to tell
3 me anything.

4 Q So did you know he was under investigation? Did he
5 tell you that?

6 A I did not know he was under investigation. But I
7 am also a nurse. And I know when a person is
8 upset. And there is no reason to continue to push
9 a person asking them questions and stuff.

10 Q So as your friendship -- which is now more than
11 that, because you love him, right?

12 A I do.

13 Q And you felt it was in your family's best interest
14 that you not ask him any questions, or in his best
15 interest?

16 A I felt like in his best interest it was best not to
17 ask him any questions. I can look in the internet
18 myself. I can figure it out for myself. I know
19 what type of person he is by talking to him.

20 Q Uh-huh.

21 A I don't have to sit there and question him to
22 death. I have met Brett. I have known Brett now
23 for --

24 Q A year, almost?

25 A Almost a year.

- 1 Q Uh-huh.
- 2 A I do not think Brett did this.
- 3 Q I understand your opinion, ma'am.
- 4 A It is my opinion.
- 5 Q Do you know anything that happened that day?
- 6 A No. I was not in that house that day.
- 7 Q Thank you.
- 8 A But sitting in this courtroom and listening to all
- 9 the evidence, I do not think he did this.
- 10 Q Have you been here every day?
- 11 A Just about every day. I have been in here three
- 12 times.
- 13 Q Three days?
- 14 A And I have listened to it, I have watched
- 15 everything.
- 16 Q You think three days is just about all the time --
- 17 A No, ma'am. But I have followed it, and I have
- 18 followed it on the news, and everything else.
- 19 Q Okay. Well, after your friendship with Brett
- 20 continued, the friendship part, when did it turn
- 21 into love?
- 22 A Probably about February, March.
- 23 Q So when you talked to them in February, when you
- 24 told them that it was just a friendship, it was on
- 25 the verge of becoming love, but it hadn't gotten

1 there yet?

2 A They were referring more to beginning. And it was
3 at that point turning into.

4 Q Did you tell them that you loved him?

5 A No, because it was at that point of turning into.

6 Q Since then have you gotten to know his parents?

7 A Yes, I have.

8 Q And do you vacation now regularly with his parents
9 and his children?

10 A I do not vacation with his parents.

11 Q Have you gone on trips with his parents?

12 A I have not gone on any trips with his parents.

13 Q What interaction have you had with his parents?

14 A Let's see. Since I have been up here in court I
15 have been around his parents.

16 When his daughter had a cheerleading
17 competition down at the beach, my children and I
18 were down at the beach. I met them over at
19 Broadway at the Beach and had lunch with them.

20 Q Was there some kind of boat involved with that?

21 A Boat?

22 Q Uh-huh?

23 A No.

24 Q Okay. So you met them at the beach?

25 A My dad has a boat. I took my child fishing on my

- 1 dad's boat with my dad.
- 2 Q Okay. So you met his parents at the beach?
- 3 A Yes.
- 4 Q When was that?
- 5 A March.
- 6 Q March of this year?
- 7 A I guess so, yes.
- 8 Q Do you remember having -- you have had numerous
- 9 phone calls with Brett since he has been in jail,
- 10 is that right?
- 11 A I didn't start talking to Brett on the phone until
- 12 January.
- 13 Q Okay. This year you have had numerous phone calls?
- 14 A Yes.
- 15 Q And do you remember specifically a phone call on
- 16 April 23rd of this year?
- 17 A No, I don't remember specific phone calls.
- 18 Q Do you remember in the beginning of those phone
- 19 calls where they talk to you about how this phone
- 20 call is being recorded?
- 21 A Yes.
- 22 Q When you get the call?
- 23 A All recorded.
- 24 Q So you knew they were being recorded?
- 25 A Yes.

1 Q Do you remember any specific phone call on
2 April 23rd where you and Brett made plans about
3 what you were going to do and how you were going to
4 be in bed together?

5 A No.

6 Q And what you were going to do?

7 A No.

8 Q When you were in bed together?

9 A No, we don't talk about --

10 Q Waking up together?

11 A So? That is futuristic. That has nothing to do
12 with past, because we've never had -- we have never
13 had intimate relations.

14 Q When he talked to you about the family that would
15 go to the beach every year as part of the 4th of
16 July where you met up with him, did he ever talk to
17 you that that was something that was really special
18 to Tammy, his wife, that was their time?

19 A I don't know. I guess.

20 Q Thank you, ma'am, I don't have anything further.

21 REDIRECT EXAMINATION

22 BY MR. FEDOR:

23 Q Have you ever been followed by law enforcement
24 before?

25 A Have I? Yes.

- 1 Q When was that?
- 2 A At Alvin S. Glenn Detention Center.
- 3 Q At Alvin Glenn?
- 4 A Uh-huh.
- 5 Q Set up by these folks?
- 6 A Uh-huh.
- 7 Q They knew you were going there, they were following
- 8 you, right?
- 9 A Uh-huh.
- 10 Q They were trying to make a case out of nothing,
- 11 were they not?
- 12 A Uh-huh.
- 13 Q Have you ever had relations with Brett?
- 14 A No.
- 15 Q Did you learn to love his children?
- 16 A Yes.
- 17 Q And the families were intertwined, were they not?
- 18 A Yes.
- 19 Q Do you think it is wrong for a citizen to be
- 20 followed like you were?
- 21 A No.
- 22 Q If you don't have a case you dig deep, don't you?
- 23 A Yes.
- 24 Q That's what they are doing, aren't they?
- 25 A (Nods affirmatively.)

1 Q Thank you, ma'am. Answer any questions she has for
2 you.

3 RECROSS-EXAMINATION

4 BY MS. CAMPBELL:

5 Q You mentioned that the only time you have ever been
6 followed by the police --

7 A Uh-huh.

8 Q -- is this time?

9 A Uh-huh.

10 Q They weren't following you, ma'am, weren't they
11 just waiting for you to get there?

12 A No.

13 Q Because you had planned that visit on a --

14 A No.

15 Q -- phone call?

16 A No.

17 Q Your testimony is they followed you?

18 A Yes, ma'am, they did.

19 Q Well, when did they -- when did you notice they
20 were following you?

21 A In the parking lot.

22 Q Where they were parked?

23 A No, ma'am, actually they followed me in through the
24 parking lot.

25 Q Let me ask you this. You said you had never been

1 followed by the police before. Do you recognize
2 that?

3 A Yeah, I know all about this.

4 Q Were you followed by the police on that date when
5 you were arrested?

6 A I'm not worried about this. You think that you
7 are --

8 Q I'm not asking if you are worried about it. I am
9 asking you first if you were followed by the police
10 when they made that arrest on you?

11 A Yeah, I know all about that. You want to talk to
12 my ex-husband who did that to me?

13 MR. FEDOR: Might I see that, ma'am?

14 (Pause.)

15 THE COURT: Are you done, Ms. Campbell?

16 MS. CAMPBELL: Yes, ma'am. I'm sorry.

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

18 MR. FEDOR: No, no, ma'am. We have a few more
19 questions.

20 THE COURT: Oh, you have more?

21 MS. CAMPBELL: He can't.

22 THE COURT: Let me see y'all one second.

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

1 MR. FEDOR: No further questions.

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

4 (Witness steps down.)

5 THE COURT: Any objection to this witness
6 being excused?

7 MS. CAMPBELL: None from the State, Your
8 Honor.

9 THE COURT: Ma'am, you are free to leave.
10 (Witness excused.)

11 THE COURT: Call your next witness.

12 MR. FEDOR: We call Linda Parker.

13 MS. SIMPSON: Your Honor, at this time we have
14 a matter to take up, or I can just approach.

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

18 THE COURT: All right, ladies and gentlemen of
19 the jury, I'm going to send you all out for a short
20 moment, and I will have you back in shortly.

21 Thank you.

22 (WHEREUPON, the jury retires to the jury
23 room at 3:29 p.m.)

24 THE COURT: Yes, ma'am?

25 MS. SIMPSON: With respect to Ms. Linda

1 Parker, of course she is the Defendant's mother, as
2 well as the wife of Jack Parker.

3 Jack Parker, along with a friend, Douglas
4 Taylor, and the Defendant are indicted federally
5 for gambling charges. That is an ongoing
6 investigation with their charges pending.

7 It is my understanding that Ms. Parker does
8 not have counsel. But as this is an ongoing
9 investigation with respect to the gambling, she
10 needs to be advised with respect to taking the
11 stand and the possible ramifications of that, or at
12 least understand that there is an investigation and
13 that that is, you know, a possibility.

14 THE COURT: All right. Can you ask Ms. Parker
15 about that?

16 MR. FEDOR: Your Honor, I'm certain everybody
17 knows that Linda is Brett's mama. Linda is Jack's
18 wife.

19 THE COURT: I understand.

20 MR. FEDOR: I have no fear of putting her on
21 the stand to answer any questions they want.

22 THE COURT: I understand. But you
23 understand -- I understand. At this point you
24 represent Mr. Brett Parker and you don't represent
25 Ms. Linda Parker, so I have to advise her of her

1 rights, the right to have an attorney represent her
2 and to advise her as to her testimony.

3 I don't know of anything -- I don't know what
4 is going to come out of her testimony, what will be
5 said, but I do have the right to advise her of her
6 Fifth Amendment rights. And that is what I need to
7 do.

8 So if she could -- if you can have her come
9 up. And if she wishes to have counsel, we will
10 take a break so she can do that, so she can speak
11 with an attorney before she takes the witness
12 stand. Or if she would like to take the witness
13 stand, I still have to advise her of her rights as
14 to what she may answer and what she may not want to
15 answer and how she is supposed to go about doing
16 that.

17 MS. SIMPSON: Thank you, Your Honor.

18 MR. FEDOR: I would love to have her speak to
19 a counsel. Perhaps the Prosecution would pay for
20 the attorney's fees.

21 THE COURT: Sir, no, they will not, but if you
22 would like for me to have someone from the Public
23 Defender's Office to speak with her, I can arrange
24 that.

25 MR. FEDOR: Bring them up. That will be fine,

1 Your Honor.

2 THE COURT: Go ahead. Oh, I'm sorry,
3 Mr. Patrick Sharpe is in the courtroom. Nevermind.
4 Mr. Sharpe is in the courtroom.

5 And I don't know if there is any information
6 that the State has they would like to provide
7 Mr. Sharpe while he speaks with Ms. Parker briefly.

8 MS. CAMPBELL: I don't --

9 THE COURT: All right. Well, let me ask you
10 this. Do you know if your office --

11 MS. SIMPSON: This is a federal investigation.

12 THE COURT: Your office does not have any --

13 MS. SIMPSON: And, Your Honor, if I may, just
14 so she is aware as well, Agent Pruitt with the
15 Secret Service, who was involved in this
16 investigation, is present in the courtroom.

17 THE COURT: Is still in the courtroom. I was
18 going to advise her that he was still in the
19 courtroom.

20 Mr. Sharpe, just so that I'm handling it
21 correctly, do you need to speak with your --

22 MR. SHARPE: Yes, probably.

23 THE COURT: Okay. With Mr. Strickler?

24 MR. SHARPE: I believe so.

25 THE COURT: Why don't you go do that?

1 MR. SHARPE: Okay.

2 THE COURT: And if you need a room to speak
3 with her in, we'll arrange that also.

4 MR. SHARPE: Okay. Thank you. What should
5 she do?

6 THE COURT: Ms. Parker, just have a seat right
7 there and Mr. Whitlark will --

8 MS. CAMPBELL: Mr. Whitlark --

9 MR. SIMPSON: Your Honor, I think maybe she
10 needs to be advised without --

11 THE COURT: Mr. Whitlark will take her down.

12 MS. CAMPBELL: He just doesn't need to be
13 present for the conversation.

14 THE COURT: He's not. He's just taking her
15 outside. He is at the door.

16 MS. CAMPBELL: Thank you.

17 THE COURT: All right, I guess we can take
18 a --

19 MR. FEDOR: Five minute break, Your Honor?

20 THE COURT: Well, I have got to go -- let's
21 see what Doug Strickler says. We will take about
22 10 or 15 minutes.

23 (WHEREUPON, a break was taken.)

24 THE COURT: Mr. Fedor, do you have any other
25 witnesses you can call at this time?

1 MR. WHITLARK: I'm sorry, Your Honor?

2 THE COURT: Do you have any other witnesses
3 that you can call?

4 MR. WHITLARK: Yes, Your Honor, we do.

5 THE COURT: All right. I spoke with
6 Mr. Strickler, the Circuit Public Defender.

7 MR. WHITLARK: Yes, Your Honor.

8 THE COURT: And they are advising her as to
9 her rights. I have not appointed them to represent
10 her, just to advise her of her rights. And if she
11 decides that she wishes to have an attorney to sit
12 in here while she testifies, Mr. Strickler is going
13 to advise her of that also and what she needs to
14 do, and then we will just have to take her
15 testimony up on another day.

16 MR. WHITLARK: That's fine, Your Honor. We'll
17 work with the Court any way that we have to.

18 Your Honor, Mr. Lanny Gunter has been
19 transported here, and his testimony will be very
20 brief.

21 THE COURT: Okay. Is he downstairs?

22 MR. WHITLARK: I believe he is here.

23 MS. WALKER: He is speaking with his attorney.

24 THE COURT: His attorney is here?

25 MS. WALKER: Yes, Your Honor.

1 MR. WHITLARK: Now, I have spoken with his
2 lawyer.

3 THE COURT: So as soon as he is ready. And do
4 you foresee any of the other --

5 MS. CAMPBELL: There are other witnesses too,
6 I believe, today.

7 THE COURT: There is Mr. Strickler and
8 Mr. Sharpe.

9 MR. STRICKLER: May I approach, Your Honor?

10 THE COURT: Yes. Would you like to have
11 counsel up here?

12 MR. STRICKLER: That is fine with me.

13 (WHEREUPON, a bench conference was held
14 in the presence of the jury but out of
15 the hearing of the jury.)

16 THE COURT: All right. And, Ms. Parker, it is
17 my understanding that you would like to speak with
18 an attorney. And so what we will do is, if you
19 decide to testify and once your attorney talks with
20 you, we will take that testimony at a later time,
21 and not today.

22 MS. PARKER: Okay.

23 THE COURT: Are y'all ready for your next
24 witness?

25 MR. WHITLARK: Yes, we are, Your Honor, but I

1 think they are bringing him.

2 THE COURT: Okay.

3 THE DEPUTY: He is on the way up now, Your
4 Honor.

5 THE COURT: He is on the way up. Okay.

6 MS. WALKER: Your Honor, it is my
7 understanding that he is speaking with his
8 attorney.

9 THE COURT: Is he on the way up?

10 THE DEPUTY: I sent Deputy Barefoot to go get
11 him.

12 MS. CAMPBELL: Who is the next witness?

13 THE COURT: Do you want to call your next
14 witness? And once he comes in we'll call him? Mr.
15 Whitlark?

16 MR. WHITLARK: I'm sorry?

17 THE COURT: Do you want to call your next
18 witness?

19 MR. WHITLARK: Yes, Your Honor, we will.

20 THE COURT: All right. Bring them in.

21 (WHEREUPON, the jury came into open
22 court at 4:06 p.m.)

23 THE BAILIFF: The jury panel is present,
24 Judge, Your Honor.

25 THE COURT: All right, ladies and gentlemen of

1 the jury, we will continue with the Defense's case.
2 I'm going to ask them to call their next witness.

3 MR. WHITLARK: May it please the Court, Your
4 Honor? The Defense calls B.P.

5 (Witness approaches.)

6 THE BAILIFF: Place your left hand on the
7 Bible, raise your right hand, and face the clerk,
8 please.

9 (Witness complies.)

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

14 THE WITNESS: I do.

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

16 (Witness complies.)

17 THE CLERK: State your name for the record,
18 please.

19 THE WITNESS: B.P.

20 B.P.

21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WHITLARK:

24 Q How old are you?

25 A Fourteen.

1 Q Is Brett Parker your dad?

2 A Yes, sir.

3 Q Was Tammy Parker your mom?

4 A Yes, sir.

5 Q I want to ask you a question about something that
6 happened at your house. You lived over on Tackeria
7 Court, didn't you?

8 A Yes, sir.

9 Q I am going to ask you something that happened over
10 there sometime before April 13th of 2012, okay?

11 A (Nods affirmatively.)

12 Q Were you upstairs in the office?

13 A Yes, sir.

14 Q Can you tell us a little bit about what -- who was
15 there and what was going on?

16 A When I was in the office, Bryan and my dad were
17 discussing a gun that my dad had. And they were
18 just talking about how they thought it was good for
19 him to have safety at his house and to protect
20 Bryan's family.

21 Q You were talking about Mr. Capnerhurst?

22 A Yes, sir.

23 Q Where were you at?

24 A I was sitting in my mom's chair, in the office.

25 Q So you were in there with both of them?

1 A Yes, sir.

2 Q And, anything else? Anything else you can
3 remember?

4 A I --

5 Q Do you remember what they said to each other, or
6 anything like that?

7 A They were just talking about how -- I mean, not
8 really.

9 Q Are you making this story up to help your daddy?

10 A No, sir.

11 Q You heard him -- you heard them do this?

12 A Yes, sir.

13 Q You heard this conversation?

14 A Yes, sir.

15 Q I know you love your dad. Are you sure about that?

16 A Yes, sir.

17 MR. WHITLARK: No further questions.

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

19 MS. WALKER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. WALKER:

22 Q B.P. my name is Meghan. You and I have never
23 met?

24 A No, ma'am.

25 Q You have been asked some questions about all of

1 this before, haven't you? At the ARC interview?

2 A Yes, ma'am.

3 Q Let me ask you this. Did you -- when did you first
4 tell somebody about that conversation?

5 THE COURT: Hold on. I'm sorry. B.P. you
6 are going to have to speak into the microphone.
7 Pull your chair up, okay? And speak into the
8 microphone so the jurors can hear you, okay?

9 (Pause.)

10 THE COURT: There you go.

11 BY MS. WALKER:

12 Q Are you okay?

13 A (Nods affirmatively.)

14 Q Okay. When did you first tell somebody about that
15 conversation?

16 A Maybe like a month after.

17 Q A month afterwards?

18 A (Nods affirmatively.)

19 Q Who did you tell?

20 A Mr. Fedor.

21 Q Did you write out a statement for him about what
22 you were going to say?

23 A No, ma'am.

24 Q Do you have something up there with you?

25 A Just some notes that I made myself.

1 Q Do you mind if I take a look at them?

2 A Sure.

3 (Pause.)

4 Q Thank you. On here it says, later you saw Bryan
5 walk out with the gun?

6 A No, I didn't see him walk out with the gun.

7 Q You didn't? You just knew that?

8 A I knew.

9 Q Okay. I'll give that back to you.

10 (Complies.)

11 Q Do you remember the ARC interview you went to?

12 A Yes, ma'am.

13 Q And they asked you some kind of similar questions
14 to what Mr. Whitlark asked you, right?

15 A Not about -- not about what I just told them.

16 Q Okay. Well, let me -- let me go over with you kind
17 of what they asked you, okay?

18 A Okay.

19 Q I am going to give you a transcript of that
20 interview. Here you go.

21 (Complies.)

22 MS. WALKER: Mr. Whitlark, would you like a
23 copy as well?

24 MR. WHITLARK: Sure.

25 (Complies.)

1 BY MS. WALKER:

2 Q They asked you about the guns that were in your
3 parents' house, right?

4 A I think so.

5 Q And you told them that you knew that there were a
6 couple of guns in the house?

7 A Yes, ma'am.

8 Q Okay. And you told them that you knew that he kept
9 one in the office, and you knew that because you
10 had seen that one?

11 A I saw it like two days, and then it was moved.

12 THE COURT REPORTER: I'm sorry, I didn't hear
13 you.

14 A I saw it like for two days, and then it got moved,
15 so I didn't see it again.

16 Q Okay. I'm just looking on Page 19 of that
17 transcript. And it just says -- are you there?

18 A Yes, ma'am.

19 Q Okay. On Line 10 it says, So where did your dad
20 keep his guns?

21 And you said, I don't know. I mean, he has
22 one in the office, which is where it all took
23 place. He had one in there, I know that.

24 Do you remember that?

25 A He did, but he had it there -- I only saw it there

1 for like two days before it was moved.

2 Q I understand what you are saying now. I am just
3 going back to what you said at this point in time,
4 okay?

5 And you knew about another gun -- I'm looking
6 at Page 48 now, okay? Just that first part, You
7 knew about another gun.

8 Actually, I think my dad -- yeah, my dad had
9 one in his closet. He was using the bathroom. Now
10 that I think about it, he probably went to his
11 closet and got it and then went upstairs.

12 So there is another gun in that downstairs
13 bathroom?

14 A I didn't know about that. I was talking about his
15 closet that is like in the office. I mean, I don't
16 know anything about it.

17 Q Well, okay, I'm just -- you said he has one -- dad
18 has one in his closet. He was using the bathroom.

19 That bathroom is downstairs, right?

20 A Yes, ma'am.

21 Q And then you said, Now that I think about it, he
22 probably went to his closet and got it and then
23 went upstairs.

24 So you are talking about that downstairs
25 bathroom?

1 A I guess I was. I didn't know there was one...

2 MS. WALKER: Hold on one second.

3 (Pause.)

4 BY MS. WALKER:

5 Q B.P., I'm sorry.

6 (Pause.)

7 MR. WHITLARK: There you go, Sweetheart. It's
8 all right. It's okay. It's all right.

9 BY MS. WALKER:

10 Q I just have a couple more questions, okay, B.P.?
11 When did you and your father discuss what you were
12 supposed to say here today?

13 A I didn't discuss anything with him I was going to
14 say here today.

15 Q Do you know that the phone calls that you had with
16 your father, B.P., do you know that they are
17 recorded?

18 A Yes, ma'am.

19 Q Do you remember having a phone call conversation
20 with him about what you were supposed to say here
21 today because you couldn't remember it correctly?

22 A I don't recall that.

23 MS. WALKER: Your Honor, I need --

24 (Pause.)

25 MS. WALKER: Your Honor, I don't have any more

1 questions.

2 MR. WHITLARK: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. WHITLARK:

5 Q Have you ever spoken to me before today?

6 A No, sir.

7 Q And what did -- go ahead and tell the jury what I
8 asked you.

9 A If I was lying about what I was telling here today.
10 And I don't remember -- I remember I was in the
11 room.

12 Q And how many times did I ask you that?

13 A Like, a lot of times.

14 Q And I also asked you if you were doing this to help
15 your daddy?

16 A Yes, sir. And I am not doing it to help him. I
17 was in the room and I witnessed them talking about
18 how he was giving a gun to Bryan. I'm not lying
19 about that. I was there and I remember.

20 Q All right. How many times did I ask you if you
21 were sure?

22 A A lot of times. Too many to count.

23 Q Today is the first time I have ever spoken to you?

24 A Yes, sir.

25 MR. WHITLARK: No further questions.

1 THE COURT: Anything else from the State?

2 MS. WALKER: Nothing, Your Honor.

3 THE COURT: All right. You can step down.

4 (Witness steps down.)

5 THE COURT: Any objection to this witness

6 being excused?

7 MS. WALKER: None from the State.

8 (Witness excused.)

9 THE COURT: All right, call your next witness.

10 MR. WHITLARK: The Defense calls Lanny Gunter.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the

13 Bible, and raise your right hand, please.

14 (Witness complies.)

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

19 THE WITNESS: Yes, ma'am.

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

21 (Witness complies.)

22 THE CLERK: State your name for the record,
23 please.

24 THE WITNESS: Lanny Gunter.

25 LANNY GUNTER,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WHITLARK:

4 Q Hello, Mr. Gunter.

5 A Hello.

6 Q Do you remember when you were testifying the other
7 day? You remember the other day?

8 A Unfortunately.

9 Q Yes, sir. And I asked you had you -- did you sign
10 something with the government, and all that.

11 And I want you to -- I am going to hand you a
12 document and ask you if you recognize it. I'm
13 sorry.

14 A Yes, sir, I do.

15 Q Tell the jury what it is.

16 A This is a United States of America v. Lanny Ray
17 Gunter, II. And under criminal there it says, plea
18 agreement.

19 Q Okay. Do you remember the document?

20 A For the most part. There has been a lot going on
21 in my life the last few months, but, yes, I do
22 remember it.

23 Q I want to direct your attention to Page 4. And I
24 have actually underlined something for you. Would
25 you read to the jury what it says there?

1 A The Defendant must also testify fully
2 and truthfully before any Grand Juries
3 and at any trials or other proceedings
4 if called upon to do so by the
5 government.

6 Q Okay. One more thing. Do you remember that? Do
7 you remember that, something like that?

8 A Yes.

9 Q I am going to direct you to Page 6 and ask if
10 you'll please read to the jury what I have
11 underlined.

12 MS. CAMPBELL: Your Honor, may I see that?

13 THE COURT: Do you have a copy for --

14 MS. CAMPBELL: He hasn't given me a copy, but
15 I have seen the document before, but I would just
16 like to see which part he is showing him.

17 (Complies.)

18 MS. CAMPBELL: No problem. I just wanted to
19 make sure we had the same one. Thank you.

20 MR. WHITLARK: Sure.

21 BY MR. WHITLARK:

22 Q Would you please read to the jury what is
23 underlined there on that page.

24 A Provided the Defendant cooperates
25 pursuant to the provisions of this

1 plea agreement and that cooperation is
2 deemed by the government as providing
3 substantial assistance in the
4 investigation or prosecution of
5 another person who has committed an
6 offense, the government agrees to move
7 the Court for a downward departure or
8 reduction of sentence.

9 It is a little blurry.

10 Q I got it.

11 MR. WHITLARK: No further questions, Your
12 Honor.

13 THE COURT: Anything from the State?

14 CROSS-EXAMINATION

15 BY MS. CAMPBELL:

16 Q Have you been promised anything here to testify?

17 A To my knowledge, no one has ever promised me
18 anything.

19 Q And even in that agreement, it says you have to
20 testify truthfully, doesn't it?

21 A That is all I ever try to do.

22 Q Thank you, sir. Nothing further.

23 MR. WHITLARK: No, nothing further.

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

25 (Witness steps down.)

1 MR. WHITLARK: May we approach the bench, Your
2 Honor?

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: All right, any objection to
7 Mr. Gunter being released from this trial?

8 MS. CAMPBELL: None.

9 MR. WHITLARK: None from the Defendant.

10 THE COURT: All right. He is free to leave.
11 (Witness excused.)

12 THE COURT: All right. We need to take about
13 a five or ten minute break. I am going to send you
14 all out. And then I will have you back in shortly.

15 (WHEREUPON, the jury retires to the jury
16 room at 4:25 p.m.)

17 THE COURT: All right, I had planned on going
18 until about 6:00 o'clock. I understand you all
19 were anticipating calling Ms. Parker.

20 MR. WHITLARK: Yes, Your Honor.

21 THE COURT: How many more -- well, is there
22 other witnesses that you can call? I really do not
23 want -- I mean, we are on Week Three. And I
24 understand that y'all have just begun with your
25 case, but we've got about an hour and a half left

1 of testimony that we need to take.

2 MR. WHITLARK: Your Honor, we have to,
3 according to the Court's instructions, which I
4 agree with, the attorneys for these -- for some of
5 the witnesses that we are going to anticipate
6 calling after Ms. Parker have to be notified and
7 have them up here. We have them on standby for
8 tomorrow.

9 THE COURT: All right. Well, I can call -- I
10 mean, if it is a local attorney I'll call -- have
11 my law clerk call and tell them to come over. If
12 you just give her the information, they'll call.

13 MR. WHITLARK: Right. I have a matter of law
14 of declaration of a witness, Your Honor.

15 THE COURT: All right.

16 MR. WHITLARK: Do you want me to do it, Your
17 Honor? I will be glad to. I know him. Do you
18 want me to go call him?

19 THE COURT: Yes.

20 MS. CAMPBELL: Who is it?

21 MR. WHITLARK: Josh Kendrick is the lawyer.

22 THE COURT: All right. And I guess you need
23 to find out about the witness.

24 All right, we'll take about five minutes. We
25 will try to call.

1 (WHEREUPON, a break was taken.)

2 THE COURT: You can bring them in.

3 (WHEREUPON, the jury came into open
4 court at 4:42 p.m.)

5 THE BAILIFF: The jury is now seated, Judge
6 Your Honor.

7 THE COURT: All right, ladies and gentlemen of
8 the jury, we are going to go ahead -- I'm concerned
9 that if we call any other witnesses it may take a
10 little bit longer, and I forgot that a couple of
11 you have obligations to your children tonight, and
12 so I am going to go ahead and release you.

13 But we will start at 9:00 o'clock in the
14 morning. We will have breakfast for you when you
15 get here in the morning, and we will probably order
16 lunch tomorrow, if anyone brings their lunch, so
17 that we can keep it moving through tomorrow
18 afternoon.

19 So I am going to go ahead and release you all
20 for the afternoon.

21 Remember that you are not to read, watch,
22 listen to TV, radio, internet. No social media.
23 You cannot discuss this case with anyone. And it
24 would also be improper for you to form an opinion
25 in your mind as to the guilt or innocence of the

1 Defendant until you have received all of the
2 evidence, the arguments of the parties, and the
3 charge on the law from the Court.

4 Have a great evening. Enjoy the band concert.
5 And we will see you tomorrow at 9:00 o'clock a.m.

6 All right. And I think our elevators are
7 broken. So I will ask -- so they are going to
8 escort you all out. I am going to ask the bailiff
9 to lock the courtroom.

10 Thank you.

11 THE JUROR: Thank you, Your Honor.

12 (WHEREUPON, the jury is excused at
13 4:45 p.m.)

14 THE COURT: All right. And they are going to
15 escort them out of the building. And then we
16 will -- but there is a couple of things I need to
17 put on the record before I dismiss everyone else
18 today.

19 Anything from the State?

20 MS. SIMPSON: Nothing from the State, Your
21 Honor.

22 THE COURT: All right. Anything from the
23 Defense?

24 MR. WHITLARK: Just that we request that the
25 Court instruct Mr. Parker about his rights.

1 THE COURT: Yes, sir. All right. Mr. Parker,
2 I'll have you stand.

3 (Defendant complies.)

4 THE COURT: And you can -- and I need you to
5 swear him, please.

6 THE CLERK: Do you swear or affirm to tell the
7 truth, the whole truth, and nothing but the truth,
8 so help you God?

9 THE DEFENDANT: I do.

10 THE COURT: And you are Mr. Brett Parker, is
11 that correct?

12 THE DEFENDANT: Yes, I am.

13 THE COURT: All right, sir, at this time I am
14 going to explain to you certain rights that you
15 have.

16 If you do not understand anything that I say,
17 please let me know. If you want me to explain
18 anything in more detail, please let me know. Do
19 you understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: We have now reached the stage in
22 the trial where you may -- potentially tomorrow --
23 present your defense. You have the right to claim
24 the protections given to you by the Fifth Amendment
25 to the constitution of the United States.

1 The amendment states in part: No person shall
2 be compelled in any criminal case to be a witness
3 against himself.

4 This means that you cannot be required to
5 testify in this case. You have the right to
6 testify on your own behalf. However, no one can
7 make you testify. This is a personal right, and no
8 one can waive this right except you. I cannot make
9 you testify. The State cannot make you testify.
10 Mr. Fedor or nor can Mr. Whitlark make you testify,
11 sir. That is your right, and only you can waive
12 this right and testify.

13 If you decide to testify, you will be subject
14 to the same rules that govern other witnesses, and
15 you may be examined and cross-examined on any
16 relevant issue in this case.

17 In addition, if you have any convictions
18 involving dishonesty or false statements or for
19 crimes punishable by imprisonment for more than one
20 year and the Court determines that the probative
21 value of admitting this evidence outweighs its
22 prejudicial effect to you, the Solicitor will be
23 able to introduce your record to attack your
24 credibility.

25 If you decide to testify, the decision on your

1 part must be freely, voluntarily, and intelligently
2 made with knowledge of the protections given to you
3 by the Fifth Amendment and the consequences of your
4 decision to testify.

5 If you decide not to testify, I will instruct
6 the jurors that they cannot give the fact that you
7 did not testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you
9 because you did not testify. And I usually tell
10 them that they cannot even discuss the fact that
11 you did not testify during their deliberations.

12 It is left entirely up to you whether or not
13 you testify. You may talk with your attorneys this
14 evening -- that is why I'm giving you these
15 advisements at this point -- your attorneys, your
16 family and friends, or anyone else, but the final
17 decision will be left entirely up to you, sir.

18 Do you understand what I have explained to
19 you?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And do you have any questions
22 about what I have explained to you?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: All right. And I will ask you
25 again in the morning a couple of questions before

1 we start as to -- once you have had the opportunity
2 to talk to your attorneys and your family as to
3 what your decision is. You do not have to give me
4 a decision right now, sir.

5 THE DEFENDANT: Okay.

6 THE COURT: All right. Thank you.

7 THE DEFENDANT: Thank you, Your Honor.

8 MR. WHITLARK: Thank you, Your Honor.

9 THE COURT: All right. We will start promptly
10 at 9:00 o'clock in the morning.

11 MS. WALKER: Thank you, Your Honor.

12 MS. CAMPBELL: Thank you.

13 MR. WHITLARK: Thank you, Your Honor.

14 THE COURT: Oh, one second. One second. They
15 said they were going to radio back up and let us
16 know when everybody leaves.

17 (Pause.)

18 THE COURT: You can open the courtroom.
19 Mr. Whitlark, may I speak with you all?

20 MR. WHITLARK: Yes.

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

24 (WHEREUPON, the proceedings concluded
25 at 4:50 p.m.)

1 MAY 24, 2013

2 THE COURT: All right, are you ready to get
3 started?

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

5 MR. WHITLARK: The Defense is ready.

6 THE COURT: All right, you can bring them in.

7 MS. CAMPBELL: Your Honor, the deputy did say
8 something to us, I need to tell Mr. Whitlark about
9 how the witnesses need to come to the stand.

10 THE COURT: Okay. Yes. The deputies, the
11 Captain, for security reasons, the witnesses need
12 to come back this way around. Actually, that is
13 the way they are supposed to enter the stand. So
14 if they are sitting over here, they have to go
15 around and come back.

16 (WHEREUPON, the jury came into open
17 court at 10:03 a.m.)

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

19 THE COURT: All right. Good morning, ladies
20 and gentlemen of the jury. I hope that you enjoyed
21 your breakfast.

22 We are ready to continue with the Defense's
23 case.

24 I am going to ask that call your next witness.

25 MR. WHITLARK: The Defense calls Richard

1 Ernest.

2 (Witness approaches.)

3 THE BAILIFF: Sir, 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 name for the record.
14 And spell your last name, please.

15 RICHARD ERNEST,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WHITLARK:

19 Q Good morning, Mr. Ernest.

20 A Good morning, sir.

21 Q Where are you from, Mr. Ernest?

22 A Fort Worth, Texas.

23 Q And what do you do for a living?

24 A I'm a forensic laboratory director for Alliance
25 Forensics Laboratory.

1 Q Tell me a little bit about your educational
2 background.

3 A I received my bachelor of science degree from the
4 University of Georgia. And I worked as a scientist
5 for a couple of different companies in the Atlanta
6 area before going to work for the Georgia State
7 Crime Lab in the spring of 1977.

8 I have been a forensic scientist continually
9 since that time. This is my 36th year.

10 During my first two years at the State Crime
11 Lab, I underwent extensive training courses in
12 several different areas: Firearms and tool marks
13 examination, gunshot residue analysis, trace
14 evidence exams, and also arson-related
15 examinations.

16 I was on the Crime Scene Teams for the state
17 and -- for a period of about 14 years. I was a
18 senior criminalist there, and a senior firearms
19 examiner.

20 And in 1990 I heard about a new laboratory
21 opening up out in Fort Worth that was looking for
22 some section heads for the different sections.

23 I applied as the section head for the firearms
24 and tool marks section and was hired in 1990. And
25 I remained with them for a period of about almost

1 ten years.

2 Some of my friends back at the State Crime Lab
3 in Georgia asked me, once my old boss there had
4 retired, to come back to Georgia and head up the
5 section. And I did that for a few months. But it
6 really wasn't a good fit for me, and I decided to
7 open up my own forensic laboratory, which I did in
8 Texas in 2000.

9 And by 2003 I had my own stand-alone forensic
10 laboratory.

11 And by 2006 I was accredited through the
12 American Society of Crime Lab Directors Lab
13 Accreditation Board.

14 I am one of only three private labs that I
15 know of in the United States that is ASCLD/LAB
16 accredited and does firearms examinations.

17 Q What does that mean, Mr. Ernest?

18 A Accredited through the American Society of Crime
19 Lab Directors Laboratory Accreditation Board, or
20 what is known as ASCLD/LAB.

21 We're accredited under their current program,
22 the international program, and, like I say, I think
23 we're one of only three private labs in the U.S.
24 that does firearms examinations and is ASCLD/LAB
25 accredited.

1 I have been doing that since 2000. And so
2 that is where we are today. I work cases from all
3 across the United States, and also other countries.

4 And I do a lot of cases for police agencies
5 and district attorneys in the State of Texas.

6 And I also do a lot of cases that are private
7 in nature or civil cases in defense of police
8 agencies, quite often, and a lot of hunting
9 accident cases, and things like that, that are
10 civil cases. We do a few criminal cases across the
11 country too.

12 Q All right. Now, you work for the Georgia Bureau of
13 Investigation?

14 A Yes, sir, that's correct.

15 Q How many years have you worked there?

16 A About 14.

17 Q Okay. And during that time, did you do the type of
18 things that I have asked you to do in this case?

19 A Yes, on a routine and daily basis.

20 Q How many firearms do you think you have looked at
21 ballpark in your life?

22 A I stopped counting years ago, but it was well over
23 20,000 at that point. And I have worked in excess
24 of 10,000 firearms cases. And I have testified
25 more than 1,500 times.

1 Q All right. You have previously been qualified as
2 an expert in courts?

3 A More than 1,500 times.

4 Q Okay.

5 MR. WHITLARK: At this time, Your Honor, we
6 would move to qualify Mr. Ernest in the area of
7 firearm examination and gunshot residue analysis.

8 MS. CAMPBELL: Your Honor, we would have no
9 questions at this time.

10 THE COURT: You have no questions?

11 MS. CAMPBELL: At this time.

12 THE COURT: Any objection?

13 MS. CAMPBELL: None, Your Honor.

14 THE COURT: You said firearm examinations
15 and --

16 MR. WHITLARK: Gunshot residue analysis, Your
17 Honor.

18 THE COURT: All right, ladies and gentlemen of
19 the jury, Mr. Ernest will be qualified as an expert
20 in the area of firearm examination and gunshot
21 residue analysis to give his opinion, expert
22 opinion in that area.

23 Yes, sir, you may continue.

24 DIRECT EXAMINATION CONTINUES

25 BY MR. WHITLARK:

1 Q Mr., Ernest, tell me the evidence that you have
2 looked at in this case.

3 A I was provided a number of reports by your office
4 in this particular case that were reports from the
5 investigation and the laboratory analysis in this
6 case, and specifically starting out with the report
7 of an analyst in the firearms and tool mark
8 section, Terri Gleason.

9 There was a long report by her that detailed
10 all of the various items that she had looked at in
11 regards to this particular case. And so I asked to
12 see the physical evidence in that particular case.

13 And by one way or another, the evidence came
14 out to me in my lab in Texas, carried there by
15 David Collins, of the firearms and tool mark
16 section for Richland County S.O.

17 And all of those items were examined during a
18 two-working-day period there in my laboratory
19 employing myself and two other of my staff.

20 Q Okay. So you did an analysis of all the physical
21 evidence that we sent out to you?

22 A Yes.

23 Q Okay. And I know it is a litany of stuff. It is a
24 lot of stuff, wasn't it?

25 A It is.

1 Q Including the firearms themselves?

2 A Yes.

3 Q All right. Well, did you -- do you have some
4 conclusions after your analysis?

5 A Yes, sir, I do. You could take Terri Gleason's
6 report of the various items of evidence, and I
7 agree almost in totality with everything that she
8 found.

9 I agree with all of the microscopic
10 comparisons that the various bullets and -- the
11 9-millimeter bullets and cartridge cases compare
12 back to the Smith & Wesson 9-millimeter pistol in
13 this case and are matched to it.

14 Also, the four fired rounds of .410 in the
15 Taurus .410 revolver match that particular
16 revolver.

17 That the various projectile evidence of a
18 shotshell nature is consistent with that .410 round
19 that was loaded in that particular gun.

20 So all of the microscopic comparison work I
21 agree with in totality.

22 And additionally --

23 Q Let me ask you a question, Mr. Ernest. When you
24 say microscopic, would you give us a little more
25 information? What are we looking at here? I mean,

1 how -- this stuff is not visible to the naked eye?
2 Is that what you are saying?

3 A Well, we're not there yet. On the bullet
4 comparisons, for instance, we make test-firings
5 from that particular firearm. And then we compare
6 those under a comparison microscope.

7 Basically, this is two stereo microscopes that
8 have variable power to them. They are bridged
9 together optically so that under one field of view
10 I'm able to look at the magnified images of one
11 thing in direct comparison with another.

12 Our normal working ranges are usually about 15
13 to 25 power to be able to see the fine markings on
14 the outside of bullets and cartridge cases.

15 And so after matching the test-firings against
16 each other, then each of the items of evidence was
17 compared microscopically.

18 And in my opinion, it is the same as Terri
19 Gleason's: That the bullets were in fact fired
20 from this particular Smith & Wesson 9-millimeter
21 pistol; the cartridge cases were in fact fired in
22 the chamber of this Smith & Wesson 9-millimeter
23 pistol; and that the four fired .410 shotshells
24 were fired in that particular Taurus revolver.

25 Q Okay. What about the distance of Tammy Parker from

1 the Smith & Wesson?

2 A Yes, sir. I examined the clothing of Tammy Parker
3 and all of the various items. Not only did I look
4 at those microscopically, but I also treated them
5 as we would a trace evidence case.

6 And I scraped down all of that clothing very
7 carefully and looked at the residues looking for
8 any gunpowder particles or particle fragments that
9 might be there. And there is absolutely none on
10 that clothing.

11 This particular firearm stops throwing
12 gunpowder essentially at about three feet as far as
13 gunpowder particles are concerned.

14 That is not the same thing as the cloud of
15 gunshot residues that come out the end of the
16 barrel, but the actual gunpowder particles and
17 particle fragments only extend out to about three
18 and a half feet.

19 Terri Gleason had reported that the distance
20 was greater than three and a half feet. I concur
21 with that.

22 Q Okay. What about the distance on Bryan
23 Capnerhurst?

24 A On Bryan Capnerhurst -- we had the clothing of
25 Mr. Capnerhurst. I examined all of that

1 microscopically -- visually, microscopically, and
2 also used trace evidence techniques to look at it
3 for any gunshot residue that might be there in the
4 way of gunpowder particles, particle fragments. I
5 found a tremendous number of gunpowder particles on
6 that clothing.

7 And there are four different shots that were
8 fired. There is a shot to the face; there is a
9 shot to the upper left chest; there is a shot
10 through the arm, which I believe is connected with
11 a shot to the abdomen, all of that being one shot;
12 and then there is a fourth shot that comes in
13 through the bottom of the foot.

14 And I believe one of the -- one of the pellets
15 from that is what grazed the shorts that he was
16 wearing.

17 So that accounts for the four shots that were
18 fired.

19 Q All right.

20 A And --

21 Q Were any tests done on the shots to the arm and the
22 face by Ms. Gleason?

23 A I don't believe so. There is mention -- I don't --
24 I don't think she did anything other than take the
25 size of the pattern on the clothing.

1 I looked at the autopsy photos and determined
2 the size of those wounds on the face, and also the
3 outer table of the arm has a central gunshot hole
4 surrounded by a number of BB pellet impacts. And
5 so a distance or approximate distance can be done
6 on those particular shots.

7 I believe that Ms. Gleason had reported out
8 that we're looking at a distance of approximately
9 two to five feet. I concur with that. All of
10 these shots fall into that range.

11 The three shots, the one to the chest, the one
12 through the arm, and the one through the bottom of
13 the foot is a shorter distance. That is on the
14 short end of the two to five-foot range. The one
15 to the face is at the outer distance along about
16 four or five feet. That is most consistent.

17 Q Mr. Ernest, let me ask you about your opinions now.
18 I mean, is it reasonable that Bryan Capnerhurst
19 fired the 9-millimeter Smith & Wesson?

20 A It is entirely consistent as far as his gunshot
21 residues are concerned with that. Certainly that
22 is not the only way in which gunshot residue can be
23 had. But it is consistent with firing a gun.

24 Q Okay. Well, wouldn't you expect if Brett Parker
25 had fired the 9-millimeter Smith & Wesson that the

1 levels of GSR would be high?

2 A If he fired both the 9-millimeter and the .410
3 revolver in combination, I would expect his levels
4 to be very high.

5 Q All right. Well, what did you find in this case,
6 sir?

7 A Well, these levels are consistent with someone who
8 has fired a firearm certainly, but they are not
9 extremely high.

10 And in that regard, again, you know, he has
11 got gunshot residues on him, Mr. Capnerhurst is
12 loaded with gunshot residue on him, and in fact
13 there is some gunshot residue on Tammy Parker, but
14 nobody has contended that she ever had handled or
15 fired a weapon. I think it is most likely that she
16 picked that up either by way of some of the muzzle
17 cloud getting her or by cross-contamination.

18 Q Okay. Would you explain to me the properties of
19 lead pellets and things like that? Tell us a
20 little bit more about that. How does it move
21 through a room? How do you move it from one place
22 to another? How can it get there?

23 A Okay. Let's clearly define what we're talking
24 about. When I use the term lead pellets, I'm
25 usually talking about shotgun ammunition.

1 But in this particular case, we're talking
2 about gunshot residues that contain lead. We're
3 talking about extremely small particles.

4 The human hair is about 100 micro-millimeters
5 in diameter. A gunshot residue particle is about
6 one one-hundredth of the diameter of a human hair.

7 You could take a hundred of them and line them
8 up end to end and it would equal a human hair in
9 diameter.

10 So what is coming out the end of the barrel as
11 far as gunsmoke is concerned, gunshot residues is
12 usually a mixture of very fine particles of lead,
13 barium, and antimony from the primer residues.
14 They are extremely small particles. They form a
15 cloud that drifts and seeps through the air. It
16 doesn't just fall to the ground. It literally
17 fills out a room over a period of time.

18 If you have an air handling system like we
19 have in most buildings and houses, over a period of
20 time it will be sucked through the intakes and
21 distributed fairly evenly through a place.

22 And this has caused some real problems in
23 laboratories where there are firearms sections in
24 one area of the building and they are doing certain
25 testing there, it gets into the air handling

1 system, and you wind up having gunshot residues all
2 over the building.

3 Q Okay. Again, sir, is it your opinion and is it
4 reasonable that Bryan Capnerhurst fired the
5 9-millimeter Smith & Wesson pistol in this case?

6 A Yes. That is scientifically reasonable to say that
7 he did.

8 Q Okay. And Brett Parker, the amount found on him,
9 sir, would his level be higher if he had fired not
10 only the Taurus Judge, but also the 9-millimeter
11 Smith & Wesson?

12 A If he fired all the firearms, then he should have a
13 very high level. And that is certainly with
14 certain caveats to it. Whether he washed his
15 hands, or anything else like that, or whatever
16 activity he might have had. But that is certainly
17 consistent -- a high level would be consistent with
18 him firing all firearms.

19 Q And based on what you looked at in this case, the
20 GSR -- tell the jury what GSR is again.

21 A It is gunshot residue.

22 Q All right.

23 A And defined as, in this particular case, defined as
24 that cloud of discharged, very fine particles out
25 of the firing of a gun.

1 Q Okay. And your finding of this as far as Brett
2 Parker goes is, again -- tell the jury one more
3 time, please.

4 A It is consistent with having fired a firearm. It
5 is not as high as I would have expected if he had
6 fired all of -- both -- all shots of the
7 9-millimeter and the .410. Those levels could have
8 and should have been higher.

9 Q Thank you. Please answer any questions counsel has
10 for you. Thank you.

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. CAMPBELL:

14 Q Mr. Ernest?

15 A Yes.

16 Q I just have a few questions. Your expertise and
17 your training back in Georgia was basically in the
18 area of firearms training?

19 A Gunshot residue analysis, firearms and tool marks
20 examinations, crime scene analysis.

21 Q You don't actually do gunshot residue analysis
22 yourself, do you?

23 A On a limited basis today. I consult on it. And
24 also recently I co-authored a paper with one of my
25 fellow professors at the University of North Texas.

- 1 Q So on --
- 2 A Where I'm also in the forensic program there.
- 3 Q On your website, when you talk about gunshot
- 4 residue testing, you say you consult with other
- 5 people about that, you don't actually do the
- 6 testing yourself?
- 7 A Correct. I don't run an SEM today.
- 8 Q And basically in this case you reviewed Terri
- 9 Gleason's findings and you basically agree with
- 10 those?
- 11 A Yes.
- 12 Q And the testimony you have given today just is
- 13 about gunshot residue.
- 14 Do you remember testifying in a case several
- 15 years ago in Texas, I believe, about how gunshot
- 16 residue is deposited on people's hands?
- 17 A I have testified a lot in Texas.
- 18 Q I know.
- 19 A Would you be more specific?
- 20 Q I think it was the Hagood case?
- 21 A It doesn't ring any bells.
- 22 Q And in that case you testified to that jury that
- 23 the only thing you can tell -- and it was some
- 24 question about this -- when you look at gunshot
- 25 residue on people's hands, is that they may have

1 fired the gun? Do you agree with that?

2 A Correct. That's one of the possibilities.

3 Q And they may have been on the receiving end of a
4 shot?

5 A Correct.

6 Q Or they may have handled the gun that had been
7 shooting?

8 A Yes, that's correct. In any combination of them.

9 Q Any combination. And at that point when you
10 testified, you said that is basically what you can
11 tell from gunshot residue?

12 A Correct. And that is what I have said today,
13 consistent with that.

14 Q And just so the jury is clear on this, there are a
15 number of variables when you are looking at gunshot
16 residue?

17 A I would agree with that.

18 Q And gunshot residue, when it is deposited on
19 someone's hand, is a fairly fragile thing? There
20 is a limited time that you even test for?

21 A If it is on somebody's hands, yes, that's correct.

22 Q A living person I'm referring to.

23 A Correct.

24 Q I'm sorry. I don't mean to be -- like at autopsy.

25 And activity, as you said, what type of

1 activity can cause someone's hand to lose gunshot
2 residue?

3 A Rubbing them on clothing, washing them in -- under
4 running water, that kind of thing can take away
5 gunshot residue.

6 Q Touching other items?

7 A Yes.

8 Q And if someone has gunshot residue on their hands
9 and they touch another item or twist something, can
10 they transfer gunshot residue like that?

11 A Yes, sir -- yes, ma'am, that is correct.

12 Q And are you aware that all the gunshots in this
13 case took place upstairs?

14 A Yes.

15 Q And that there was -- did you even review John
16 Roberts' information?

17 A I did.

18 Q And that the gunshot -- the lead particles were
19 found downstairs on some blinds?

20 A Correct.

21 Q And you just mentioned sometimes, you know, air
22 vents can carry this gunshot --

23 A Correct.

24 Q Were you aware that there are separate air
25 conditioning units, one for the top floor and a

1 separate one for the bottom floor of this house?

2 A No.

3 Q You mentioned also that the amount that you think
4 had been shot, all these different shots, that you
5 should find more?

6 A Correct.

7 Q But if there was activity, washing the hands or
8 even just touching other items, transferring it to
9 other items in between the two sets of shots, that
10 could just make the levels lower?

11 A Yes, ma'am.

12 Q Would you agree with that?

13 A It could.

14 Q And, in addition to that, would you agree that the
15 majority of gunshot residue when someone is firing
16 a gun comes out the end of the gun?

17 A Yes.

18 Q So that if a person has high levels of gunshot
19 residue on their hand, it is most consistent with
20 having been on the receiving end of a shot?

21 A Well, that is one of the possibilities.

22 Q Did you review a video in this case of the
23 Defendant after the shootings occurred but before
24 the police got there?

25 A No, I have not.

1 Q Did you see him rubbing his head, rubbing his
2 hands, handling the phone, doing like this on his
3 clothing (indicating)?

4 A No, I have not seen that video.

5 Q Actions such as that, could that affect the amount
6 of gunshot residue on someone's hands?

7 A It could.

8 Q Thank you, sir. I appreciate it.

9 MR. WHITLARK: Briefly, Your Honor?

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. WHITLARK:

13 Q Mr. Ernest, how many scenes have you been to or
14 analyses have you made of residue left on items in
15 a house, furniture, floors, walls, things like
16 that? Have you done that type of thing?

17 A Hundreds.

18 Q Okay. And can you tell us the ways that that could
19 be transferred -- how you would transfer the lead
20 or the particles you mentioned before?

21 A By way of touching, also by way of someone that has
22 gunshot residues on them, come in contact with it.
23 This could be other types of personnel, crime scene
24 personnel, law enforcement personnel, that have
25 gunshot residues on them and transfer those. There

1 is a number of different ways.

2 But then, in addition to that, if there is a
3 large amount of gunshot residue in a place that has
4 enough time to drift through a place, then it could
5 also deposit out on the surfaces all throughout the
6 house.

7 And so one thing that you would want to do is
8 to take a control sample, or maybe more than one
9 control sample. Let's say that you wanted to test
10 some blinds. Not only the place that you want to
11 test, but also places that could be down from it
12 that should not have been touched, but you also
13 take samples there to make sure that there is not
14 the presence of gunshot residue on those surfaces
15 too.

16 Q Okay. And if you wanted to get a good -- a good
17 look at this, you'd look at all the surfaces that
18 are in combination or in that area, right?

19 A Right.

20 Q Okay. And, again, tell us the ways that you can
21 transfer these microscopic pieces of lead, and so
22 forth?

23 A They can transfer by way of the air, they can
24 transfer by way of touch, they can transfer by way
25 of being carried on air currents.

1 Basically, gunshot residue, these are -- these
2 are elements. And they are either -- you know,
3 they don't go away. They can be buried in
4 something, but they last a long time in the
5 environment. And so they can plate out on various
6 surfaces all throughout a place, whatever that
7 place may be.

8 Q All right. And if you -- let's say for example
9 that you had 10 or 15 windows that had the same
10 type of blinds on them on the same floor or in the
11 same area. You would want to test all of those,
12 wouldn't you?

13 A You could.

14 Q To see whether or not there had been spreading of
15 lead particles and throughout that whole area,
16 right?

17 A Well, it is the essence of science to be able to do
18 controls to make sure that you're not getting some
19 sort of errant results by way of just testing one
20 thing when in fact there may be the presence of
21 gunshot residue other places in this house, even on
22 the blinds close to where you are testing.

23 Q Right. And if a large number of people had been
24 going through a place, it could easily transfer
25 these microscopic particles?

1 A That is certainly a possibility.

2 Q Okay. All right. Did you know that the test that
3 they are talking about in this case was done 43
4 days after they released the house back to the
5 owner?

6 A No, I did not know that.

7 Q Would you feel good about that, about making
8 conclusions based on that, 43 days, 15 or so blinds
9 but they only tested a couple?

10 A Well, I think you would want to test more to make
11 sure that you didn't have a contamination problem.

12 Q Thank you, Mr. Ernest.

13 MR. WHITLARK: No further questions, Your
14 Honor.

15 RECROSS-EXAMINATION

16 BY MS. CAMPBELL:

17 Q And when did you actually do your testing in this
18 case, sir?

19 A Just a few days ago.

20 Q How many days ago?

21 A Well, last Sunday and Monday.

22 Q This week?

23 A Right.

24 Q When did the Defense contact you?

25 A Not long ago. The 6th of May, I believe.

1 Q So you couldn't have come to any conclusions in
2 this case or known anything about it until after
3 you did your testing this week?

4 A Correct.

5 Q And they are paying for your services, sir?

6 A Yes.

7 Q And how much are they paying you to come here and
8 testify to this?

9 A 300 an hour.

10 Q An hour?

11 A Correct.

12 Q And is that 300 an hour for your testing as well?

13 A Correct.

14 Q And so of course if you come up with something that
15 they want you to say, you get paid 300 an hour to
16 come to court and to testify?

17 A Or if I don't.

18 Q You get paid when you don't come testify?

19 A I get paid that same rate no matter what I say,
20 whether it is for them or against them, whether it
21 is for that you or against you.

22 Q I understand, sir. But if you don't come to court
23 and testify, you don't get paid for all those hours
24 coming from Texas, coming to court, testifying here
25 today?

1 A Correct. I get paid just the same as everybody
2 else in here.

3 Q \$300 an hour is the same as everybody else in here?

4 A You are a full-time Prosecutor, Madam Prosecutor.
5 How much do you make?

6 THE COURT: Hold it down. Hold it down. Hold
7 it down.

8 A If you know anybody that works for free, please
9 send them out to Fort Worth, Texas.

10 MS. CAMPBELL: Your Honor, could you instruct
11 the witness to refrain from diatribe?

12 THE COURT: All right, sir, please answer the
13 questions that she asks.

14 BY MS. CAMPBELL:

15 Q You have testified now that this GSR can just go
16 through the house -- on your first questions you
17 asked specifically about how it transfers through
18 air vents, but now you have expanded it to air
19 currents that run through the house?

20 A Sure.

21 Q So you want to tell this jury that in a room or an
22 area that is on the other end of the house on a
23 floor that is not air conditioned in the same
24 manner, that these microscopic things that are so
25 fragile managed to travel out of an office, out of

1 an attic, down the stairs, around the corner, and
2 down a hallway?

3 A Sure. Absolutely.

4 Q And how long do these microscopic particles hang
5 out in the air?

6 A They can stay in the air a long time. They are
7 buoyed by the air currents. They are extremely
8 small.

9 Q And now your testimony is, as well, is that any law
10 enforcement personnel who had been trained would
11 just randomly go through the house and touch
12 things. Is there any evidence -- do you know of
13 anyone else in this house that survived that shot
14 anything other than Brett Parker?

15 A I don't know of anything like that. But I know of
16 scientific papers that list a real source of
17 contamination in a lot of crime scenes for GSR is
18 law enforcement officers.

19 Q Is there any evidence that you are aware of in this
20 case that any law enforcement officer or any other
21 personnel, EMS or otherwise, got gunshot residue on
22 their hands and went and touched the blinds that
23 Brett Parker happened to be looking out of, looking
24 for Bryan Capnerhurst?

25 A It is certainly a possibility.

1 Q Is there any evidence that you know of?

2 A No, I don't know of any evidence to that. But it
3 is certainly a possibility.

4 Q Thank you, sir.

5 MR. WHITLARK: Briefly, Your Honor.

6 MS. CAMPBELL: No, sir.

7 THE COURT: I will let him, based on that.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. WHITLARK:

10 Q Mr. Ernest?

11 THE COURT: And I'll give you an opportunity
12 to go back.

13 MS. CAMPBELL: Okay.

14 MR. WHITLARK: Yes.

15 BY MR. WHITLARK:

16 Q Did you know that none of the other blinds in the
17 house were tested other than the ones they just
18 referenced?

19 A That is what I've been told.

20 Q Yes, sir. Would you feel good about making the
21 conclusion based on that with no control done?

22 A I would have done controls.

23 Q Of course, we don't know if all the blinds in the
24 whole house have particles on them, do we?

25 A We don't know that.

1 Q Okay. Did you know that the State -- the
2 information I gave you was given to us in the first
3 week of April of this year? Were you aware of
4 that? We talked -- remember we talked about that,
5 the reports came in from the State?

6 A Yes. I think it was -- at the time that you
7 contacted me, this had just been made available to
8 you.

9 Q That's right. And how many pages was the report
10 that I sent you?

11 A All total, about 700 pages.

12 Q Okay. We got that in April.

13 THE COURT: All right. And Ms. Campbell?

14 MS. CAMPBELL: Thank you.

15 FURTHER RECROSS-EXAMINATION

16 BY MS. CAMPBELL:

17 Q In fact, he got the reports in January and in
18 October of last year. Did you know that?

19 A I have no earthly idea. You can argue with him
20 about that all day long.

21 Q You were contacted May the what?

22 A 6th.

23 Q And you did your testing this week?

24 A Correct.

25 Q You talked about other areas in the house that

1 should have been tested.

2 Were you aware that like the door handles and
3 things like that were tested as well?

4 A No.

5 Q And came back negative?

6 A No.

7 Q Nothing further.

8 A Okay.

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

10 MR. WHITLARK: Thank you, Mr. Ernest.

11 THE WITNESS: Thank you.

12 MR. WHITLARK: Thank you, Your Honor.

13 (Witness steps down.)

14 MR. FEDOR: The Defense calls Robert Bowers.

15 (Witness approaches.)

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

18 (Witness complies.)

19 THE CLERK: Do you swear or affirm the
20 testimony you are about to give in this case will
21 be the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: I do.

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

25 (Witness complies.)

1 THE CLERK: State your name for the record.
2 And spell your last name, please.

3 THE WITNESS: My name is Robert Bowers.
4 Bowers, B-O-W-E-R-S.

5 ROBERT BOWERS,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FEDOR:

9 Q Mr. Bowers, how old are you, sir?

10 A I'm 44 years old.

11 Q Where have you lived most of your life?

12 A I have lived in Chapin most of my life.

13 Q How long have you known Brett Parker?

14 A Me and Brett have been friends for over 28 years.

15 THE COURT: Sir, you need to speak up, please.

16 A Me and Brett have been friends for over 28 years.

17 Q Twenty-eight years?

18 A Over 28.

19 Q Were you in high school with Brett?

20 A Yeah. Brett was a year behind me.

21 Q And since the days of high school, have you been
22 probably the best friend Brett had?

23 A Me and Brett been real good friends throughout the
24 years. I moved to Atlanta for a while for one
25 year, and then I moved back, and we maintained

1 contact throughout those years.

2 Q During those years when you and Brett were growing
3 up, did you have occasion to eat with his family
4 and he ate with your family, and you were that
5 tight?

6 A Yes. Yes.

7 Q And this went on year after year after year, didn't
8 it?

9 A Yes. Yes. I used to go to Brett's house and, you
10 know, we played games and fish and get in the
11 batting cage. We just hung out.

12 Q Describe, if you would, Mr. Bowers, Brett Parker's
13 personality that you saw.

14 A Brett was always the kind of guy, you never saw
15 Brett get angry about anything. I mean, most of
16 the time he would crack a joke if he got mad. I
17 mean, he was very -- when it came to sports, he was
18 competitive. But as far as fighting, and anything
19 like that, I have never known Brett to fight. Me
20 and him never had an argument. I mean, not where
21 we got mad at each other where we wouldn't talk to
22 each other, or anything like that.

23 But, I mean, Brett, I never seen him really
24 angry, angry enough to hurt anybody or to do any
25 harm to anybody.

1 Q During the entire life that you have spent 28 years
2 with Brett, did you ever see him get into a fight?

3 A I never saw Brett get into a fight. Never.
4 Playing ball, anything.

5 Q And during that time when you were going to his
6 house and he was going to your house, did you
7 become close friends with his family?

8 A Yes. Ms. Linda and Mr. Jack, I mean, they treated
9 me like one of theirs. I was there after school a
10 lot of times.

11 Like I said, we just hung out. I mean, I was
12 welcome at their house. Even now I go by and talk
13 to Brett's parents and son.

14 Q And he was the same with your family, is that
15 right?

16 A Yeah. Brett was always -- I mean, it was just
17 Brett. That's Brett.

18 Q When this horrific, terrible crime occurred, do you
19 believe Brett had anything to do with it?

20 A I don't. I don't think it was in Brett heart to
21 hurt anybody, to do anything like that. You know,
22 I figure, if anything, he is protecting his family.
23 But as far as him just being a cold-blooded
24 murderer, I don't believe that, from me knowing
25 Brett.

1 Q Mr. Bowers, answer any of the questions the State
2 has for you.

3 MS. SIMPSON: Your Honor, no questions for
4 this witness.

5 THE COURT: All right, sir, you may step down.
6 (Witness steps down.)

7 MR. WHITLARK: May we approach the bench, Your
8 Honor?

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: Ladies and gentlemen of the jury,
14 there are some matters of law that I need to take
15 up outside of your presence. I'm going to send you
16 all for about 15 minutes. We will start back in
17 about 15 minutes.

18 Thank you.

19 (WHEREUPON, the jury retires to the jury
20 room at 10:45 a.m.)

21 THE COURT: All right, we are going to take
22 about a 15 minute break. But before we do that,
23 I'll have Mr. Parker stand up again.

24 (Defendant stands.)

25 THE COURT: All right. And I advised you of

1 your rights on yesterday. And before we take the
2 break -- I know you are going to talk to your
3 attorneys and come back with a decision as to
4 whether or not you wish to testify. And once --
5 but I want to make sure you don't have any
6 questions of me, or if you would like me to go back
7 over your rights again, I'll be glad to do that. I
8 did it on yesterday afternoon. I don't have a
9 problem doing it again. Or if you feel like you
10 fully understand your rights, I will let you speak
11 with your attorneys, and we'll come back and I'll
12 get your decision then.

13 THE DEFENDANT: Okay. I understand everything
14 you said, so I'm fine. You don't have to go
15 through it again.

16 THE COURT: All right. Thank you.

17 THE DEFENDANT: Okay.

18 MR. WHITLARK: Thank you, Your Honor.

19 THE COURT: All right, we'll start back at
20 about 11:00 o'clock.

21 MR. FEDOR: Your Honor, might we have a room
22 someplace for the three of us to sit down?

23 THE COURT: Is there a room available?

24 (WHEREUPON, a break was taken.)

25 THE COURT: Mr. Parker?

1 (Defendant stands.)

2 THE COURT: I have given you an opportunity to
3 speak with your attorneys on yesterday evening and
4 lunchtime yesterday and again today.

5 As I told you yesterday, that your attorneys
6 can advise you, but the ultimate decision is up to
7 you as to whether or not you wish to testify.

8 If you do wish to testify, now is the time to
9 do so. Do you plan on testifying today, sir?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. And is that your
12 decision?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right, thank you. You may
15 take the stand.

16 (Mr. Parker takes the witness stand.)

17 THE COURT: All right. And for members of the
18 press, we are not live streaming any of the
19 testimony. I will get -- I have talked to a couple
20 of you about doing it for purposes of next week
21 during the verdict. And I'll get with you all at
22 the end of the day regarding that.

23 But at this point, of course you have got your
24 cameras, but we are not live streaming the
25 testimony.

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

2 MR. FEDOR: We're ready, Your Honor.

3 THE COURT: All right. You can bring them in.

4 (WHEREUPON, the jury came into open

5 court at approximately 11:17 a.m.)

6 THE BAILIFF: The jurors are all present, Your
7 Honor.

8 THE COURT: All right. Ladies and gentlemen
9 of the jury, at this time we will continue with the
10 Defendant's case.

11 And Mr. Fedor has already called Mr. Parker to
12 the stand. I'll ask Mr. Fedor to continue with his
13 case.

14 MR. FEDOR: Thank you, Your Honor.

15 THE COURT: Oh, I'm sorry. I did not swear
16 you.

17 I will ask the clerk to swear the witness.

18 THE BAILIFF: Place your left hand on the
19 Bible, 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: State your name for the
2 record, please.

3 THE WITNESS: Brett Parker, P-A-R-K-E-R.

4 BRETT PARKER,
5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FEDOR:

8 Q Brett, how old are you?

9 A Forty-three.

10 Q Where did you live -- have you lived all your life?

11 A Columbia, Chapin-Irmo area.

12 Q What high school did you go to?

13 A Chapin High.

14 Q You were married to Tammy, is that correct?

15 A Yes, I was.

16 Q You have two children?

17 A Two children.

18 Q What are their ages today, Brett?

19 A Fourteen and six.

20 Q In going through school, have you ever been
21 arrested for anything in your life?

22 A No, sir. The only -- I had a speeding ticket when
23 I was 17. Other than that, that's it.

24 Q Brett, unlike me, have you ever had a fight in your
25 life?

1 A No, sir. No, sir. I have never been in a
2 fistfight in my life. I have never punched another
3 person, nothing, no.

4 Q And, Brett, you work for who, sir? For whom?

5 A Well, I've had -- as everybody knows, I was a
6 bookie, but I also worked for Palmetto Home
7 Medical, which is a durable medical equipment. We
8 supply wheelchairs, hospital beds, power chairs,
9 everything like that, to facilities, to homes. We
10 have doctors' offices that call on us. We have
11 rehab facilities.

12 And we are in sales, so it was just a straight
13 sales job. And we actually did the delivering of
14 equipment and repairing of equipment.

15 We also had a repair person because I couldn't
16 fix everything, but he could, so ...

17 Q Now, Brett, you stated from the very first time
18 this incident occurred you were a bookie?

19 A Yes, sir.

20 Q Tell the jury, if they don't know by now, what is a
21 bookie?

22 A A bookie is someone who takes wagers on sporting
23 events: Football, basketball, baseball. I didn't
24 do baseball every year. I did it probably the last
25 couple of years. And it was just because I had

1 four or five people that wanted to do it.

2 When I got involved in it, really on my own,
3 five -- I think it was five or six years ago -- I
4 got what they call a federal gambling stamp, which
5 I don't think anybody in here really knew about it
6 until I told them.

7 And what a federal gambling stamp is, is I
8 paid right at \$500 a year to get a federal gambling
9 stamp.

10 And on the gambling stamp, it reads: If you
11 are in a state where it is illegal, you must send
12 in two percent of every bet you take every month.

13 So every month I had what they called a
14 Form 730 that I sent in each month, which was
15 two percent of every bet I take, whether you win or
16 lose, but you had to send it in.

17 So I sent that in, like I said, every month
18 from September through -- like after the end of the
19 basketball tournament, which was usually the first
20 week or second week in April, so ...

21 Q Now, Brett, in addition to having this federal
22 gambling stamp, did you pay income tax on each and
23 every nickel you made?

24 A I did. I mean, I paid taxes on it, yes. Yes, I
25 did.

1 Q Did you, at that time, because it wasn't being
2 enforced in South Carolina, did you ever think this
3 was illegal?

4 A I mean, I knew it was illegal in the state, but
5 when the federal government gives you permission,
6 as long as you're paying taxes, you kind of think
7 it overrides it.

8 They had no problem cashing the checks that I
9 sent them. I can tell you that. So -- and they
10 knew it was coming from, you know, from what state
11 and everything, so ...

12 Q Well --

13 A I mean, I --

14 Q -- when did you start booking football and
15 basketball?

16 A With the --

17 Q Ever?

18 A It would have been -- it was about the year me and
19 Tammy got married, which was 1996. I was working
20 with my dad some, and then I went out on my own.
21 And, like I said, I think it was 2006 when I went
22 out on my own.

23 Q All right. Now, it has been brought to the
24 attention, and you have verified it, that you had
25 an affair, did you not?

1 A I did. I did.

2 Q Have you reflected on that since this thing
3 started?

4 A I've reflected on a lot of things since this has --

5 Q And you knew that affair was wrong?

6 A Yes.

7 Q Other than that affair, how did you and Tammy get
8 along as parents?

9 A Me and Tammy got along fine. We -- she is the best
10 mother -- I could not have asked for a better mom
11 to my two kids.

12 And unfortunately -- I think both of us with
13 our work, we both worked like crazy; Tammy made a
14 lot of money, as you all know; we loved each other,
15 but I think we just -- we put a lot of stuff ahead
16 of our own relationship. But we were not in any
17 way vulgar, mean to each other. We didn't argue.

18 And the reason we stayed together is because
19 of our kids. We put our kids before everything,
20 before -- I mean, anything we have ever done, we've
21 done for our kids.

22 And the reason we couldn't come to separate, I
23 believe, is because we didn't want to hurt the
24 kids. I know that's why I could never go to her
25 and ask for separation, because it would just

1 destroy our kids.

2 Q Until Leon Lott told you that Tammy was having an
3 affair, did you ever even suspect it?

4 A No, I did not. It -- no, I didn't.

5 Q How did you and Tammy operate as parents of these
6 two kids?

7 A Well, as B.P. got older, naturally she was more
8 towards mommy because of -- how can I say -- girl
9 issues with her starting as a teenager. And it is
10 not something she is going to come talk to her dad
11 about.

12 So Tammy did a lot of the stuff, going to
13 cheerleading for B.P. And I was there with
14 Z.P. because I was working or -- and if I had a
15 busy weekend, my father and mom, Jerry and Libby,
16 or whoever, would take Z.P. away for a while just
17 to -- so I could work, get my stuff done.

18 And Z.P. I was coaching him. I was coaching.
19 I started coaching Z.P. when he was four years old
20 at T-ball. So I began coaching in the little
21 league programs around Irmo.

22 And, like I said, Tammy would go to all the
23 cheerleading events. Me and Z.P. would go to the
24 one at the beach. I would go to one a year. It
25 was -- cheerleading is a little different than what

1 it used to be when I was in school. I mean, it's
2 really big time.

3 So we would go to the beach because **Z.P.**
4 couldn't sit there for eight hours a day during
5 cheerleading competition. So we could -- there was
6 a lot of stuff we could do.

7 But as far as the kids go, we did everything
8 for them. As a matter of fact, we probably spoiled
9 them too much.

10 I mean, we -- there is nothing like having a,
11 you know, daddy's little girl. She would always
12 come to me first if she wanted something, put it
13 like that. She wouldn't go to Tammy first.

14 Q When did you first meet Bryan Capnerhurst?

15 A Capnerhurst was -- when I was working with my dad,
16 he was betting with us. He had bet with us for
17 quite a few years. Unlike that was testified in
18 here, he had quit betting in 1995. That is the
19 only way I knew him, because he was betting with me
20 and my dad.

21 And then when I went out on my own in 2006, he
22 was betting with me up until that point. And I sat
23 down and talked with him and asked him if he would
24 like to come answer the phone for me, you know,
25 work as a bookie. And that's how we -- that's how

1 I knew Bryan because of him betting with us.

2 Q Now, as a friend of Capnerhurst, when he came to
3 work for you --

4 A Uh-huh.

5 Q -- what was the arrangements on payment to him?

6 A Payment started out, when he first started working
7 with me, was he was getting 10 percent of the
8 football, 30 percent of basketball; and we settled
9 up at the end of the year.

10 Now, let me explain his hours as he worked
11 with me. It wasn't a seven-day-a-week job. He
12 came to my house on Thursdays at 5:30 and would
13 work until the football game kicked off, which was
14 usually 7:30.

15 He didn't work on Fridays, rarely he would, if
16 I had something to do because there wasn't any
17 games usually on a Friday. But we were there in
18 case somebody was going to the Carolina games
19 early, and they wanted to get the lines for the
20 next day.

21 And Bryan would work with me on Saturdays from
22 10:30 till 7:30, 8:00 o'clock, depending on when
23 the game kicked.

24 Sunday he was there from 10:30 to 4:15.

25 And that was it.

1 He didn't have any responsibilities for
2 handing out sheets. Every week I would have a
3 sheet with every game on it in the rotation, and we
4 would -- I would hand those out. Bryan did none of
5 that. He didn't do any collecting. He collected
6 maybe three or four times throughout the year.

7 But, as I said, that's the way it started out
8 with his pay. And then after a couple of years, he
9 came to me and he didn't want to get it all at the
10 end of the year.

11 His reasoning was he wanted to hide some money
12 from Cindy because if he brought -- every time he
13 brought that home it was -- she had it spent, is
14 what he told me, or she would get into it, and, you
15 know, he couldn't do what he wanted to do with the
16 money.

17 So after a couple of years, you know, probably
18 three years ago, I told him, you know, if you want
19 to hide money or not tell her what you make, just
20 collect some throughout the year.

21 And what I called it was getting a draw. And
22 we'd make sure, you know, he wasn't going to ever
23 overdraw because Bryan wouldn't get enough to
24 overdraw. He would get a couple of thousand here,
25 3,000 there, or whatever, just so he didn't have a

1 huge amount at the end. So he could tell his wife,
2 you know -- I never asked him what he told her he
3 made. You know, that was up to him if he wanted to
4 tell her everything or not.

5 Q Now, during all the time you have known Bryan
6 Capnerhurst, did you ever have any disagreements or
7 arguments with him?

8 A No. No. I mean, we didn't -- no. I never --

9 Q Up until the day of this incident, had you and he
10 ever really exchanged any hard words?

11 A No, we haven't.

12 Q Let's turn now to the day of April 13th, 2012. Are
13 you with me?

14 A Yes.

15 Q What did you do when you got up that morning,
16 Brett?

17 A You want the whole routine?

18 Q Well ...

19 A I mean, I know what you're saying, but -- I mean, I
20 got up like I normally do.

21 Q Okay.

22 A I had gotten up.

23 Q What time did you eat breakfast?

24 A I got up at 5:30.

25 Q Okay.

1 A I get up at 5:30 every morning to go check tickets
2 from the night before.

3 All right. So I checked those, went
4 downstairs, probably took a shower, and got the
5 kids -- the kids are getting up at that time -- got
6 the kids up.

7 I don't know if I ate or not. I don't know if
8 I ate breakfast or not. A lot of times I wouldn't
9 eat breakfast because I had to get -- I wanted to
10 get out.

11 I had to go to NHC that morning. They wanted
12 me to fix a wheelchair. So I ran by my office.

13 Q What time did you go to your mom's office?

14 A I mean, I would say it was on my way back. So
15 probably around 11:00 o'clock, 10:45,
16 11:00 o'clock, somewhere in there.

17 Q And that morning did you talk with her new boss and
18 were you introduced to Fred Green, who has
19 testified?

20 A I did. That was the first time I had met him.

21 Q Okay. And what time did you get to the place where
22 you had to fix the wheelchairs?

23 A I would say 8:30, 9:00 o'clock, somewhere in there.

24 Q Okay.

25 A I mean, I don't know the exact time. I wasn't, you

1 know, really keeping up with it. I don't have to
2 log a time sheet or anything, so ...

3 Q Okay. Well, after you did what you did that
4 morning and people have already testified to, did
5 you go past any place to pick up lunch for you and
6 Tammy?

7 A I did. I talked to Tammy and asked her what she
8 wanted me to pick up, and she said Firehouse Subs
9 would be good with her.

10 Q And did you take the sub sandwiches to your home?

11 A I did.

12 Q Now, whenever Tammy got home, did you and she eat
13 lunch?

14 A We did. It was -- I think it was close to
15 12:00 o'clock, somewhere in there, when we sat down
16 and ate.

17 Q Then did you go upstairs with Tammy at that time?

18 A We did, yes. We went upstairs and I got on the
19 computer to check the lines, I mean, as I did a
20 lot; and she was sitting -- sitting next -- on the
21 other side of the desk and was opening her daytimer
22 and getting ready to, you know, do a little bit of
23 work, and whatever.

24 Q During your entire life, have you ever had any
25 physical disagreement or striking of Tammy? Did

1 you ever hit her or abuse her in any way?

2 A No. I would never hurt her. I would never lay a
3 hand on her. The answer is no.

4 Q She was making, as I understand the testimony,
5 about \$160,000 a year, is that correct, sir?

6 A I think she had a year where she made that. I
7 think more realistic, she was probably around 120,
8 somewhere in there. I mean, I never asked her
9 exactly what she made. I didn't -- I mean, as you
10 can see, I'm kind of -- I didn't know exactly to
11 the penny what she made, but she was around 120,000
12 a year, yeah.

13 Q Now, and you were making about 40, is that right?

14 A Right, with the DME company, yes.

15 Q So you were dependent, truthfully, on her salary to
16 help you and the children continue the life you
17 were living?

18 A Oh, yeah. I mean, we wouldn't have had the house
19 we had if it wasn't for her job. There is no doubt
20 about it. I mean --

21 Q Now, after you finished lunch, you went downstairs
22 to go to the bathroom, did you not?

23 A No, no, no, no. After we finished lunch, we were
24 upstairs.

25 Q Okay.

1 A And then I came back down eventually, yes. Yes.

2 Q And at any time did you go into the bathroom?

3 A I did.

4 Q Now, when you went into the bathroom, did you at
5 that time hear Capnerhurst come in?

6 A I did. As I finished -- as I was finishing up,
7 yes, I did.

8 Q And the video that you had in your home showed he
9 arrived at your home, if my memory serves me right,
10 at 12:31:55. And I'm sure the Prosecutor will
11 correct me if I'm wrong.

12 A Right.

13 Q Say 12:32.

14 A Okay.

15 Q That might be off five-tenths of a second.

16 A Okay.

17 Q Now, what happened when Capnerhurst came into the
18 house?

19 A When he came in, he hollered my name, Brett.

20 And I said, I'm in the bathroom. Tammy is
21 upstairs. You can go on up.

22 Q Okay. And after you spent some time in the
23 bathroom, did you go upstairs as a result of
24 hearing something?

25 A I did.

1 Q What did you hear, sir?

2 A Gunshots.

3 Q It has been listed on the death certificate of
4 Tammy that she died -- and I'm sure you heard the
5 evidence -- at 12:36.

6 When you got upstairs, tell this jury what
7 happened, sir.

8 A I ran -- the steps go, as you have seen, they go up
9 and then around and then back up. I went up the
10 steps. And as I got to the landing before I go up,
11 Bryan was standing there with a gun pointed at me
12 and told me to go to the fucking safe.

13 And I walked up the steps. I mean, I was --
14 didn't know what was going on. I was panicked. I
15 kept asking him, why? What are you doing?

16 And as we as we walked by the office, I could
17 see -- I could see Tammy's feet sticking out of the
18 bathroom, and then I knew something was wrong bad,
19 that he had probably shot her.

20 Q When you got upstairs and Capnerhurst had the
21 pistol in his hand, where did he walk you to?

22 A He was walking me to the safe, which is -- you had
23 to go -- it was actually our room over the garage.
24 I know we don't -- I can't show you, but you had to
25 walk through this room over the garage.

1 The whole time he was behind me, walking me
2 through the room over the garage, which opened up
3 to a bigger room, and then to the side was where
4 the storage area closet was.

5 And he forced me in first and forced me down
6 to where the safe was.

7 Q When you were at the safe, unbeknownst to
8 Capnerhurst, tell the jury what was on top of that
9 safe under the blanket.

10 A It was my gun, the Judge. I had an actual
11 headboard that -- from a bed that was leaned up
12 against the shelves and the wall to conceal -- to
13 also help conceal the safe. So I had to move the
14 headboard over out of the way to get to the safe.

15 Q Now, Brett, stop just a moment. On the
16 recommendation of your pastor, did you buy the
17 Judge?

18 A I did. In 2010 on my 40th birthday, me and Tammy
19 got back. It was 2:30, 3:00 o'clock in the morning
20 because she had a birthday party for me. I was
21 unloading some presents and stuff out the back, and
22 I heard Tammy scream.

23 And immediately I dropped that and came
24 running inside. And she was in the kitchen. She
25 just started hollering, Somebody broke in! And the

1 back door was kicked in. There was wood all over
2 the kitchen floor -- and, well, a little side room
3 there.

4 And she ran back to her closet and noticed
5 there was costume jewelry everywhere and that
6 somebody had stolen all of the good jewelry that
7 she had and a thing of change. And that is what
8 was stolen that night.

9 And that changed a lot of things for me that
10 night. When your house is violated like that, it
11 changed me forever. It changed Tammy. It changed
12 my kids. My kids couldn't sleep at night. My
13 daughter actually slept with Tammy, and I slept
14 with **Z.P.** They were scared.

15 That's when I got the camera system for my
16 house. And just as -- later on, as was testified
17 in here, the house across the street from me and
18 Tammy was broken into.

19 And the actual person that broke into that
20 house came up to my front door and tried to get in
21 my house, and my video camera got him. And his
22 picture was put all over the news. And I helped
23 Richland County.

24 I got them to come over. I didn't know if
25 anything would be on the camera system because you

1 can see just a little bit of the cul-de-sac. I
2 thought maybe they could see the car.

3 Well, lo and behold, the guy came up to my
4 house and was looking in and tried to get in. So I
5 don't know if they caught him or not. I'm not
6 aware, but ...

7 Q But immediately after that robbery, did you contact
8 the Richland County Sheriff's Department?

9 A Yes, they came out there.

10 Q And they came out that same night?

11 A They did.

12 Q All right. Let's fall back just a little bit in
13 this scenario.

14 Several weeks or months before this incident
15 occurred with Tammy, had you been given a pistol
16 that was testified to by John Lucas that was left
17 from his in-law's death?

18 A Yes, I was. It was my uncle that had passed away.

19 Q And your uncle and John Lucas were very close, were
20 they not?

21 A Well, William, my uncle that died, he was kind of a
22 loner, but he got along with certain people in the
23 family: Me, my dad, and I think he got along with
24 JD real well.

25 But the reason I bring that up, they called me

1 and dad to go over to his house that day when my
2 uncle had passed because nobody knew what had
3 happened. He just didn't show up for work.

4 Q As a result, though, his pistol, this 9-millimeter
5 Smith & Wesson gun, was given to your dad?

6 A It was.

7 Q And your dad, in turn, gave it to you?

8 A He did.

9 Q Now, we have the pistol in your house that was left
10 and given by John Lucas. Tell me how that pistol
11 was given to Capnerhurst.

12 A Well, we were working one day or night, and I just
13 basically mentioned to him that I was going to get
14 rid of the gun because I didn't like it. I had the
15 two revolvers, which I thought were safer guns
16 because they were revolvers. That gun just scared
17 me with a clip. I've never had a clip.

18 Like I said, I had two revolvers and I've shot
19 guns twice. I shot them when I bought the .38 when
20 I was 23 or 24 years old. I shot it right after I
21 bought it. Never shot it again.

22 I shot the Judge after I bought it, and that
23 is the only time I shot it. I've never shot the
24 9-millimeter that I had for a brief time, and I
25 just didn't want it.

1 Q As a result, was Capnerhurst in your house when
2 this gun was given to him?

3 A He was.

4 Q And was your daughter, Brett [sic], in the room
5 when the gun --

6 A B.P.

7 Q I'm sorry. Was B.P. in the house and in the room
8 when you gave the pistol to Capnerhurst?

9 A She was sitting at Tammy's desk sitting in her
10 chair. I mean, just ...

11 Q What did Capnerhurst say about the gun?

12 A He said that he would take it. He said he would
13 take the gun. I mean, there wasn't a whole lot of
14 like banter back and forth about it. I just asked
15 if he wanted it, and he said he would take it. I
16 told him, if not, I was going to give it to
17 somebody, so ...

18 Q So you gave it to Capnerhurst?

19 A I did.

20 Q Where did he put it when you gave it to him?

21 A He put it in his bag, his gym bag, that he brought
22 to my house every weekend. He brought -- he would
23 bring a bag to my house every weekend because he
24 maybe would have some beer in it that he carried up
25 or he may have tickets to take home to burn. He

1 always brought a bag to my house.

2 Q When you say tickets to burn, was that the results
3 of y'all's betting system?

4 A Right, the gambling. It could have been tickets
5 from the week before. Once we had verified with
6 every person that owed or we had -- that I had to
7 pay or collect from, we would burn the tickets.

8 Q Okay. Now, let's discuss the trip that you and
9 Tammy and **Z.P.** and **B.P.** and your mom took a week
10 before this incident occurred.

11 A It was spring break. We always did our vacation
12 with the kids on spring break whether, you know --
13 we've been in different places, but this one in
14 particular we went to the Bahamas on a cruise.

15 Q All right.

16 A And, like I said, it was me and Tammy, **B.P.** and
17 **Z.P.**, and my mother.

18 Q And how did you get along with Tammy on that trip?

19 A It was great. I mean, we had a good time.

20 Q Did the kids have a good time?

21 A They did.

22 Q Before you left on that trip, you borrowed \$5,000
23 from Britt Jordan, did you not?

24 A No, not before the trip.

25 Q Not before the trip?

1 A No, I didn't.

2 Q When you got back?

3 A Right.

4 Q Okay. Now, when you got back from the trip, did
5 you borrow \$5,000 from Mr. Jordan?

6 A I did.

7 Q Why did you borrow that \$5,000?

8 A Well, I wanted to -- I was supposed to pay Lanny a
9 substantial amount of money.

10 Q That's Lanny Gunter?

11 A Lanny Gunter, yes.

12 Q Okay.

13 A I've been doing business with Lanny for a few
14 years, and I have never -- I don't know how to say
15 it -- I never screwed the man out of a dime. And
16 he can tell you that.

17 And as was told up here, I paid the man
18 probably \$100,000 up to this point. And I wanted
19 to try to get him as much as I could.

20 And I knew I had some collections I was coming
21 due over -- I was going to try to get some of it
22 that day, later on, and some the next week. So
23 that would give me some time to put with some money
24 and give him, you know, 10-, \$15,000, if I could.

25 And it was just -- it was going to buy me

1 time. And then I was going to have to sit down and
2 talk with Lanny, that I couldn't pay him the whole
3 thing right now, but I would keep making payments.

4 Q Now, Brett, you borrowed \$5,000 from Mr. Jordan?

5 A Right.

6 Q And the interest rate as proven by the prosecution
7 was 119 percent interest and you had to pay back --

8 A That was -- no, that was -- that was for the

9 TitleMax car loan. That was TitleMax, the 119.

10 No, Britt, I was going to pay him back \$7,000 on

11 \$5,000. I was going to pay him \$1,000 a month for

12 seven months.

13 Q Okay. How long did you keep that money from

14 Mr. Jordan?

15 A How long?

16 Q Yes, before you paid him back.

17 A I haven't. I've been incarcerated.

18 Q You haven't paid him back yet?

19 A Yeah, I've been --

20 Q But you took a car loan out?

21 A I did. I think it was in January maybe.

22 Q Okay.

23 A Or something.

24 Q And the payback was at 119 percent interest?

25 A Yes, right.

1 Q And you paid back 13,000?

2 A Okay. Well, if you let it go the full time, that
3 is what you would pay back, yes. But if you --

4 Q Brett, I hate to call it to your attention, but
5 that is a pretty stupid move, is it not?

6 A Yes. Yes, it is. There's quite a few things I
7 wish I could take back that I have done in my past.

8 Q And there has been testimony in this case by the
9 prosecution --

10 A Right.

11 Q -- that in one year you supposedly, as a bookie,
12 lost \$176,000. Is that correct?

13 A That is what I was gambling and lost, but not in
14 the bookie business. That was my stuff, my
15 individual stuff, yes.

16 Q Brett, does it occur to you that you're not much of
17 a businessman?

18 A The last year? Yes. Yes.

19 Q I have represented people in all lines of work. I
20 have never lost -- or never understood a human
21 being that could lose \$176,000 as a bookie.

22 A Well --

23 Q Have you ever heard of anybody but you?

24 A No.

25 Q Okay. Let's get back to the scenario that happened

1 that morning. Now, when you got to the safe,
2 Capnerhurst holding the pistol in his left hand --

3 A Right.

4 Q -- as has been testified to --

5 A Uh-huh.

6 Q -- did you reach down and get the pistol you had on
7 the top of the safe --

8 A I did.

9 Q -- that wasn't known to Capnerhurst?

10 A No.

11 Q What did you do?

12 A I grabbed it and immediately turned and just kept
13 pulling the trigger.

14 Q Did you, as has been I thought testified, shoot
15 under your arm or behind your back or something?

16 A No, that is the most ridiculous thing I've ever
17 heard.

18 When I walked in, my back was to Bryan. I was
19 forced in with my back to him. That is what was
20 said.

21 Shooting under my arm? As a matter of fact, I
22 was probably 30 pounds heavier at the time. I
23 don't even know if I could have done that.

24 Q Now, when you shot Capnerhurst, did you have any
25 fear in your mind at that time?

1 A Any fear?

2 Q Yes.

3 A I was scared the whole time. I mean, I am walking
4 with a gun to my back. Yeah, I'm scared. Yes.
5 But when I got to that safe, I made a decision
6 right then it's going to be me or him.

7 Q Okay. When you shot him, what did you do from that
8 point?

9 A After I shot him, I jumped over him and ran to
10 check on Tammy.

11 Q What did you find when you got to Tammy?

12 A (Pause.) I'm sorry. It is the most horrific thing
13 I have ever seen in my life.

14 Q Let's skip past that. After you checked on Tammy,
15 did you go and check on Capnerhurst?

16 A I ran back to him to see if he was -- see if he had
17 moved, and then I ran down to get the phone and
18 call 9-1-1.

19 Q Let's do some time elements that the prosecution
20 brought up in this case. Let me ask you. You
21 heard the testimony. Capnerhurst arrived at 12 --
22 just about 12:32. The records show Tammy died at
23 12:36. Capnerhurst died at 12:40. And the records
24 show you made this emergency call to 9-1-1 at
25 12:41. Is that correct?

- 1 A Yes, sir.
- 2 Q So in nine minutes -- they want us to believe in
3 these nine minutes you went up and placed a pistol
4 in Capnerhurst's hands. Did you ever do such a
5 thing, sir?
- 6 A No. That is ridiculous. No.
- 7 Q In nine minutes -- and I think I have tried to
8 convey to the jury and to you, you are not exactly
9 a brilliant man, are you? Will you admit that?
- 10 A No. Lately, no. You can say that.
- 11 Q And I hate to say it.
- 12 A No, no. I mean, it's the truth. I screwed up. I
13 had -- I had a gambling problem, yes, I did. There
14 is no doubt about it.
- 15 Q But in nine minutes they want this jury to believe
16 that all this occurred, and you in the meantime
17 went up and put a pistol in Capnerhurst's hands.
18 Did you ever do such a thing, sir?
- 19 A No. No. That is --
- 20 Q You have heard the testimony that the pistol, the
21 9-millimeter that you gave Capnerhurst, was found
22 in his left hand with his fingers wrapped around
23 it?
- 24 A Right, I have heard it.
- 25 Q And you have also heard from everyone, including

1 Dr. Ernest that testified this morning, there was a
2 great deal of gunshot residue on Capnerhurst's left
3 hand?

4 A Right. And it should be, because he killed my
5 wife. He pulled the trigger. I mean, why wouldn't
6 it be there?

7 Q Next. You also heard the testimony that the police
8 removed the pistol from Capnerhurst's hands by
9 shaking his arm three times. Did you hear that,
10 sir?

11 A Right. I heard that, that it took three times to
12 shake it out, and I just --

13 Q Did you also hear that they took over a thousand
14 pictures of the inside of that house and not one
15 picture of Capnerhurst having the pistol in his
16 left hand? Did you hear that, sir?

17 A I have heard it several times, yes.

18 MS. CAMPBELL: Objection.

19 THE COURT: What is the objection?

20 MS. CAMPBELL: To leading. I haven't objected
21 to this, but if counsel would let the witness
22 testify.

23 THE COURT: The objection is sustained.

24 MR. FEDOR: All right.

25 THE COURT: Please rephrase the question.

1 BY MR. FEDOR:

2 Q What did you hear, sir, about where the pistol was
3 when the police arrived?

4 A The pistol, from the testimony I have heard in
5 here, was found in his hand.

6 And as stated by, I think, Lieutenant Odom, it
7 took him three shakes to get it out of his hand.

8 And then I also heard that there was no
9 pictures taken of it in his hand.

10 Q All right.

11 A And that was from everything I have heard that,
12 just like everybody else, that that was a very
13 important thing, that they take a picture of it,
14 and they didn't.

15 Q Brett, the jury has heard the telephone call from
16 you to 9-1-1 when you were directing the police how
17 to get to your house?

18 A Yes.

19 Q What was your state of mind or what was your panic
20 situation at that time, when you were making this
21 call?

22 A Well, that was the first time I had heard the 9-1-1
23 call was in here, and I believe it pretty much
24 speaks for itself. I was out of my mind. I
25 didn't -- I mean, I was shocked, whatever you want

1 to call it.

2 I didn't -- I mean, I couldn't have told you
3 what was really said to her, you know, not
4 verbatim. And I -- I was out of my mind. That was
5 the worst experience I have ever been through in my
6 life.

7 Q As a result of the call, the police arrived at your
8 house, did they not, sir?

9 A They did.

10 Q And it was after 12:00 when they finally got there,
11 is that right?

12 A After 12:00?

13 Q Yes.

14 A Yeah. I mean, this didn't happen until after
15 12:00, you know, maybe 1:00 o'clock.

16 Q Let me correct you. It was after 1:00 o'clock when
17 they got there?

18 A To tell you the truth, the state I was in, I don't
19 know what time they got there.

20 Q Anyway, at 2:00 o'clock, give or take a few
21 minutes, you were taken to the Richland County
22 Sheriff's Department, were you not, sir?

23 A I was.

24 Q And they asked you questions and they wrote down
25 answers about what happened in the house, did they

1 not?

2 A They asked me what happened in the house.

3 Q And since the time that you have answered their
4 questions and put down what happened in the
5 house --

6 A Uh-huh.

7 Q -- have you ever changed your statement in one way
8 or at all?

9 A Not as to what happened in the house. I mean, some
10 of the details and stuff have changed, yes. But at
11 that moment they asked me what happened in the
12 house, what happened that day.

13 Q And is that what you told them?

14 A I told them what happened in that house.

15 Q And is that the same thing you have just told this
16 jury?

17 A It is.

18 Q Now, they asked you numerous questions down there.
19 What was your state of mind when you were giving
20 these statements -- this statement?

21 A Well, I can tell you, until I saw the statement
22 again, I couldn't tell you what they asked me
23 really, because I was -- I mean, I was just out of
24 it.

25 I mean, it was just -- what had just happened

1 to me and what I had to do was horrific. I mean,
2 you've just seen your wife murdered and you had to
3 shoot somebody who you thought was a friend in
4 self-defense.

5 I mean, it's -- it's -- it was crazy. Then
6 not only that, you know, I'm laying in the middle
7 of my driveway, and I've got cops with guns pointed
8 on me. I had guns pointed on me that day like --
9 you know, it was just very horrific.

10 Q Now, when that statement was taken, did the police
11 take you back to your dad's house?

12 A They did.

13 Q Your children were expected home about 2:00 o'clock
14 or so that day, were they not, give or take?

15 A Yeah, give or take. [B.P.] rode the bus at that
16 time, and we would pick [Z.P.] up from the
17 after-school program, one of us, me or Tammy.

18 Q Brett, did you plan to kill your wife and kill
19 Capnerhurst?

20 A No. No. That is ridiculous. No. I mean, no.
21 That is crazy. Don't even say that.

22 Q There has been talk during this incident in this
23 trial when you got to your dad's house and then the
24 children arrived. How did you react with your
25 daughter, [B.P.]? How did you inform her that her

1 mom was dead?

2 A I started crying. And it was hard for me to even
3 say anything for a minute.

4 And then I came out and told her, I said,
5 Mommy is dead.

6 And then she started crying.

7 My mom immediately went to her. And I was
8 standing up. And I just -- I just lost it. I
9 never had to -- I went over and hugged her and then
10 I had to walk out the room. It was just -- it was
11 killing me.

12 Q But later on did you explain to her, as you have
13 explained to this jury, how this situation
14 occurred?

15 A I did. I sat **B.P.** down. I know **Z.P.** wasn't
16 there. He is too young to understand. I did tell
17 him that Bryan -- I did tell them both that Bryan
18 had killed Tammy.

19 Q And sometime later -- before I say -- get into
20 that, you went back to work Monday morning, did you
21 not?

22 A I went in there Monday, yes. I wanted to check and
23 see if faxes had come across that I could leave
24 them for somebody to do because I wasn't able to
25 actually work-work and, you know, got some stuff

1 out of my drawers, some -- I got some old
2 paperwork. I kind of knew then that I wouldn't be
3 working-working for a while.

4 Q Brett, it has come to everybody's attention that
5 there were some details the date this statement was
6 taken that you didn't explain to them what the
7 situation was.

8 A Situation like?

9 Q Like --

10 A Because I didn't tell them about the gambling?

11 Q Yes.

12 A And the affair?

13 Q Yes.

14 A Well --

15 Q Now --

16 A Okay.

17 Q -- did they ask you specifically how this thing
18 happened in the house?

19 A They asked me what happened in the house that day.

20 Q And that is what you were answering?

21 A That's what I told them, what happened in the
22 house.

23 They -- the next day is when they asked me
24 about the affair, and I admitted it to them that
25 next day.

1 And as far as the gambling goes, if you know
2 bookmakers, it's not something you just talk about
3 and as you can see now why. Because this has
4 turned into nothing but a bookie thing.

5 I mean, and I hate it because people have
6 gotten caught up in it, like friends of mine, that
7 had nothing to do with what Bryan did that day, but
8 they are suffering for it. Their family is
9 suffering for it.

10 And it's just not something you come out and
11 just start talking about. I mean, plus, it's --
12 when you're -- what I have done, being, you might
13 as well say, a gambling addict, it's not something
14 you want to admit, that you did that, that you've
15 done that.

16 Q Now, Brett, there were other safes in your house,
17 were there not, sir?

18 A Yes, there was.

19 Q And did you have money in those other safes?

20 A I had -- there was one in Tammy's bedroom, and she
21 kept her jewelry in there, and there was some cash
22 in there, probably \$1,000 or so, 600- to \$1,000.
23 Then I had a couple of money boxes, the fireproof
24 boxes, that I had in other parts of the house. One
25 of them was full of change. I think the other one

1 had probably \$8,000 in it, 7- or \$8,000, somewhere
2 in there.

3 Q Why didn't you tell the police that you had 8- or
4 \$9,000 in these other spots?

5 A To be honest with you, I didn't think about it at
6 the time. All I was thinking about is what I just
7 went through, seeing my wife murdered and killing
8 somebody.

9 How am I thinking about everything? I can't
10 think of everything that is going on at that point.
11 I mean, it's just everything was a -- everything is
12 a blur for weeks after that. Everything.

13 Q Now, I'll have to admit to you, many of these
14 officers in here are good friends of mine.

15 A Yes.

16 Q Did you try to tell them what you just told us in
17 its entirety the first day this happened?

18 A Are you talking about the story -- what I just
19 told? No. No, I didn't. I did not.

20 Q Well, I believe they are -- all the ones in this
21 courtroom are good men, and I have good
22 relationships with them. But could they have
23 taken, with the understanding of what you have just
24 told us, and checked out that -- portions that you
25 told them?

1 A Oh, yeah. I'm sure they could have. I mean, they
2 walked through the whole house. I mean, they could
3 have asked me if there was anything else or
4 anything else in the house, I'm sure. I mean, they
5 are investigators. They could ask me anything they
6 wanted to.

7 Q Now, you had at that time no lawyer, did you?

8 A No. I didn't feel like I needed one.

9 Q And you didn't get in touch with me for some time
10 later, did you?

11 A Right. I mean, at the time, as I stated, I didn't
12 do anything, so I didn't feel like I needed a
13 lawyer.

14 When the gambling stuff started coming out,
15 and I knew that it was going to be taking off as,
16 oh, he's a bookie, he is this, he is that, then
17 that's when I contacted you.

18 Q Before you contacted me, we had never met in our
19 life, had we?

20 A Never met you before, no.

21 Q You, on many occasions, contacted Leon Lott because
22 you trusted him, didn't you?

23 A I did.

24 Q And Sheriff Lott testified yesterday as to what he
25 thought happened, although he was out of town when

1 it happened, true?

2 A True.

3 Q You actually contacted Mr. Lott and tried to show
4 him through your own house what had happened?

5 A I did.

6 Q Myself or Mark Whitlark were not with you when you
7 talked to them?

8 A No. I called him on my own.

9 Q Okay. And Mark Whitlark and I weren't with you
10 when you went down and talked with the officers --

11 A No.

12 Q -- in any way?

13 A No, sir. I mean, one of the reasons I did contact
14 y'all is because kind of -- well, really in the
15 beginning when they lied to me about my kids going
16 to that, whatever they call it, ARC interview.

17 It was told to me that it was a counseling
18 session for my kids, that they needed it, and I
19 agreed, but it wasn't. It was an interrogation.
20 They lied to me.

21 I took my kids down there, and they
22 interrogated my kids. They told me it was for
23 counseling.

24 Q Well, we're going to ask that those tapes be put
25 into evidence in just a few minutes, but until

1 then, when you were in jail, did you talk to your
2 daughter, **B.P.**?

3 A I talked to her several times.

4 Q And did you explain to her how Capnerhurst carried
5 the pistol out of the house the day you gave it to
6 him?

7 A I mean, I can't -- I remember talking to her.
8 She -- I think she brought it up to you or to my
9 parents or something, and then it was relayed to me
10 that, you know, that she saw it.

11 But, again, it was told to me after it was
12 told to y'all, because I was in jail. So I've been
13 sitting down there for ten months.

14 MR. FEDOR: Beg the Court's indulgence, Your
15 Honor.

16 (Pause.)

17 BY MR. FEDOR:

18 Q Brett, what church do you go to or did you go to?

19 A Riverland Hills Baptist Church.

20 Q Do you believe in God?

21 A Yes, I do.

22 Q Under your belief in God and you are sworn to tell
23 the truth, I ask you: Did you shoot and kill your
24 wife, Tammy?

25 A No, I did not.

1 Q Did you shoot in self-defense Capnerhurst?

2 A Yes, I did.

3 Q Did you ever have a plan, a premeditated plan, to
4 shoot and kill your wife?

5 A No. That is ridiculous.

6 Q Did you even know, as has been testified to by
7 agents yesterday, how much money was in her
8 insurance?

9 A I knew nothing about that. She kept up with that.
10 I never asked her what was in her insurance.

11 Q And immediately when MetLife got in touch with you,
12 did you, by the process that they demanded, give
13 the entire amount that you knew of to Brett -- to
14 B.P. and to your son, Z.P.?

15 A I talked to -- when Brad Spehl called me in, that
16 is one of the first things I talked to him about.
17 But it couldn't be done at that time because, I
18 guess the funds were hung up because of the
19 investigation.

20 But I had talked to him about it. He said
21 once he gets the paperwork in, he would call me and
22 we would sit down and talk about how to do it.

23 Q And has that been done as testified to by David
24 Sojourner?

25 A It has. It has been done through Mr. Sojourner.

1 Q And do you have any interest that you could ever
2 get a nickel?

3 A No.

4 Q From the estate of Tammy?

5 A No, I can't. No. I mean, the estate you're
6 talking about? I don't know. I have no idea. I
7 don't know what's -- I mean, like I said, I have
8 been incarcerated. So what is going on with the
9 estate, I don't know. I know it's in foreclosure.
10 But as far as anything, no, I'm not going to get a
11 dime.

12 Q But you know very well by signing a renunciation of
13 all rights to that money, the children have already
14 been appointed by the probate court to get that
15 money, and you have no way in the world you could
16 ever touch a penny, is that right?

17 A That's right. That's right.

18 Q Brett, I'm sorry you had to go through this.
19 Answer any questions the prosecutor has.

20 A All right.

21 THE COURT: Yes, ma'am.

22 MS. CAMPBELL: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. CAMPBELL:

25 Q So your testimony is today you're the victim?

1 A Yes, I am.

2 Q You are the victim. You talk about how this has
3 affected you.

4 A I believe I'm a victim. I think Tammy is a victim.
5 I think Bryan is a victim. I think everybody
6 involved -- my kids are victims, my parents,
7 everybody -- everybody sitting in this courtroom is
8 a victim.

9 Q And you just looked at this jury and talked to them
10 about how you believe in God.

11 A Yes, I do.

12 Q Wasn't that one of the biggest problems Tammy had
13 with you was the fact that you didn't believe in
14 God?

15 A Well, did you not research that I was in the men's
16 fraternity program at the time my house was broken
17 into, but that doesn't --

18 Q Can you answer the question first and then you can
19 explain it?

20 A Okay.

21 Q Wasn't that one of the biggest problems that Tammy
22 had with you was your commitment to God, your
23 commitment to your children's religious beliefs?

24 A My commitment to being able to go to church was one
25 of her big issues, because I worked on Sundays

1 during football season.

2 Q And Tammy had friends?

3 A Yes.

4 Q And she talked to them about the problems?

5 A I guess.

6 Q You know Angela Leon?

7 A I do.

8 Q And that group of women?

9 A Uh-huh.

10 Q And did you know that she told them about how one
11 of her biggest problems with you, as you just said,
12 was the fact that you told her you didn't believe
13 in God and that troubled her because she was
14 religious?

15 A No. Not believe in God? I was -- listen, I went
16 to church when I could. I was in a men's
17 fraternity program and finished it. As you can --
18 I mean, you can research that.

19 So I believe in God. I just wasn't as -- I
20 don't know how you say it -- outgoing about it as
21 she was.

22 I had questions. Yeah, I have had questions
23 about it, but I believe in God. But I have had
24 questions about some stuff about it.

25 Q And for a living, sir, you're a salesman?

1 A I'm a salesman in the -- yes, in the durable
2 medical business.

3 Q And throughout your life you have been able to talk
4 your way through things, talk your way out of
5 things?

6 A I've never had to talk my way out of anything. So
7 I'm not sure what you are going at there.

8 Q And you have told this jury over and over how much
9 you love your children?

10 A I do.

11 Q And B.P. is your child?

12 A She is.

13 Q And Z.P. is your child?

14 A He is.

15 Q So was it your idea that you thought it was a
16 really good idea to bring B.P. in here for the
17 last three weeks for her to listen to all this?

18 A No, ma'am. She made that decision on her own.

19 Q So your 14-year-old daughter decided she wanted to
20 come to court and listen to the horrific things
21 about you, about your wife, and you thought that
22 was a good idea for --

23 A As a matter --

24 Q -- for a 14-year-old to come to court?

25 A Can I answer now?

1 Q Yes, sir.

2 A Okay. As a matter of fact, I asked on the phone to
3 my parents, do you think it's a good idea for her
4 to come? And B.P. said she wanted to come. She
5 wanted to be here.

6 She wanted to support her dad because she
7 knows that this is all a lie. She knows that y'all
8 are making up stories. She knows it. Y'all are
9 inventing a story trying to convict an innocent
10 man. That's why she is here, because she is
11 supporting her dad.

12 Q So you thought it was in her best interest to miss
13 three weeks of school and be in here to listen to
14 this horrific testimony of the last three weeks?

15 A As I said, Ms. Campbell, it was her decision. She
16 made that decision on her own to support her dad.

17 You know, if my father was going through
18 something like this, I would want to support him
19 too, especially when people are lying about him.

20 Q Tammy's parents begged you not to have her in here?

21 A Tammy's parents have not begged me about anything
22 about B.P. being in this courtroom.

23 Q They begged you --

24 A They have not. If they talked to my parents, I
25 know nothing about it. Okay? So, I mean, I'm just

1 telling you, I don't know anything about that.

2 Q So you think it was in the best interest of B.P.
3 to be in here for the last three weeks?

4 A As I told you, it is her decision. And, you know
5 what? It was good to have her here supporting me.
6 It shows you how strong she is, what a strong
7 person she is to stand up for her family, which is
8 what we have.

9 We don't have a whole lot anymore. As you can
10 see, people have turned against me because of
11 y'all. I have -- what I have is sitting right over
12 there, family and friends. Okay?

13 Q People have turned against you because of us?

14 A Oh, yeah, because y'all can -- boy, y'all can turn
15 anything around and make a story out of it.

16 Q Okay. So your mother-in-law's friends have turned
17 against you because of us?

18 A I -- yeah, I do believe that. That, among the
19 other people up there that has had little stories
20 and comments to make.

21 Q Didn't Tammy's family support you completely?

22 A They did for a while, but I think y'all were
23 chirping in their ear quite a bit.

24 And I also think that -- don't you agree that
25 my daughter and son were victims in this? Do you

1 agree with that?

2 Q Yes, sir, I do.

3 A Okay. Well, then why haven't y'all been over to
4 talk to them? Why haven't y'all been to talk to
5 them and try to support them?

6 Q Out of respect to your children.

7 A Out of respect?

8 Q They aren't involved in this.

9 A They're not? They are a victim as much as anybody
10 in here, and y'all have not had the decency to come
11 talk to them and see how they are doing.

12 Q And have them interviewed by police?

13 A Aren't y'all trying to help the victims over here?
14 That's what y'all have been doing. I've had to put
15 them in counseling. And I couldn't even get my
16 daughter in counseling, it was hard to get her in,
17 because y'all lied about the first counseling
18 session.

19 Y'all told me to take her down to ARC. I took
20 her to ARC. That was supposed to be a counseling
21 session. That is what was told to me. And it was
22 not. It was an interrogation.

23 You have already admitted that there was
24 two -- I think it was two -- investigators down
25 there listening to her because they were giving her

1 an interrogation.

2 If I had known that, I would have took my kids
3 right out of there. I was trying to take them down
4 there to get them help. What y'all did was hurt
5 them worse.

6 Yes, my daughter, I tried to get her help
7 after that, tried to get her some counseling. She
8 wouldn't go because of the first event that y'all
9 sent her to.

10 Q Do you recall a phone conversation you had with
11 Sheriff Lott where he begged you to get them
12 professional help? Where he told you that it would
13 be in their best interest to get help?

14 A Yes, I did. And I also recall -- do you recall a
15 call where I called him when I was crying because
16 my daughter cried with me in the car, and I told
17 him I needed to get her some help and I don't know
18 what to do because she won't go? Do you
19 remember -- you probably don't remember that call,
20 though, do you?

21 Q Yes, I do. And he told you over and over -- he
22 begged you to get your children the help they
23 needed because of what had happened?

24 A And just what I said, I couldn't get them in
25 because of what y'all did to them the first time.

1 See, that's what I'm talking about. You twist
2 things around because you hear what you want to
3 hear.

4 The fact of the matter is, y'all hurt my
5 daughter when y'all sent her over there and
6 interrogated her.

7 Do you know how hard it is to get her to trust
8 somebody now to go to counseling? I went to
9 counseling. I've had to go to counseling myself.

10 Q So this is all the police doing or our office? I
11 don't know. You tell me.

12 A It is the police -- whoever set up this ARC
13 interview has a lot to do with why my daughter is
14 having a hard time going to counseling. Yes, it
15 is. It's not my doing. You're the ones that lied
16 to her and lied to me.

17 Q And who supposedly lied to you that she was being
18 interviewed that day?

19 A Whoever called me and set up the appointment for
20 her at ARC. Okay? They lied. They said it was
21 for counseling. Counseling is not an
22 interrogation.

23 We have been through enough. And then for
24 y'all to do that to her just a few days after the
25 funeral? That is sick.

1 Q We're sick?

2 A I said that is sick. I didn't say you're sick. I
3 said that is a sick gesture on your part to tell me
4 that it's counseling.

5 Q And --

6 A And then send her in there into an interrogation.
7 Yes, it is sick.

8 Q And the people that interrogated her in this awful
9 interview are trained to deal with children to see
10 if they have any information that may be important,
11 isn't that true?

12 A I don't know what happened. They wouldn't let me
13 in the room.

14 Q You met with them. You're on the videotape talking
15 to them, and they are explaining to you what's
16 going on.

17 A No, no, no. They are not explaining to me that
18 they are going to interrogate my daughter, no.

19 Q And isn't it true during that time your daughter
20 talked about how she was feeling and what she knew?

21 A There again, I don't know what all went on, but I
22 know there was an interrogation.

23 Q And isn't it true in that interview that she told
24 the ARC interview people, who are trained to do
25 this --

- 1 A Who's trained to interrogate?
- 2 Q Those are your words, sir, not mine.
- 3 A Well, that's what happened.
- 4 Q -- that she knew that you kept a gun in the office?
- 5 A She knew that I had a gun up there at one time,
- 6 yes.
- 7 Q And isn't it true that she also knew about your
- 8 second gun downstairs?
- 9 A The second gun downstairs?
- 10 Q Uh-huh.
- 11 A Well, yeah. I had -- the 9-millimeter was up there
- 12 for a while, but I gave it to Bryan, yes.
- 13 Q And isn't it true that at that point when she was
- 14 asked point blank if she had ever seen Bryan
- 15 Capnerhurst with a gun, she told them no?
- 16 A That is not what she said on the stand.
- 17 Q I understand that is not what she said on the
- 18 stand. I'll get to that in a minute.
- 19 A I don't know what happened on the -- like I said,
- 20 the ARC interview, I wasn't there. I couldn't hear
- 21 it all. I couldn't hear any of it, as a matter of
- 22 fact.
- 23 Q And isn't it true that she couldn't understand how
- 24 Bryan could have done this because he was so nice?
- 25 And I may be paraphrasing there.

1 A Yeah -- I mean, if that's what you say was said,
2 then that is what was said.

3 Q And you also know the jail phone calls you made
4 were recorded, right?

5 A Yeah, I do.

6 Q And in the jail phone calls, at one point **B.P.**
7 gets on the call and is sad because she's like she
8 can't remember correctly?

9 A Uh-huh. I mean, I think you've got the transcript
10 right there, yes.

11 Q And then you explain to her how she is supposed to
12 tell that he put it in the bag and that he took it
13 out then. I mean, that is you explaining it to
14 her.

15 But the first thing you said to her was, let's
16 not talk about this on the phone, because you know
17 it's recorded?

18 A Yeah. I mean, if you -- I mean, I'll be glad to
19 read it because, I mean, the way you make it sound
20 is a little different than the way she said it, so
21 ...

22 Q And at some point she says, I guess that's what
23 I'll just tell them?

24 A You've got the transcript. Can I read it? I'll be
25 glad to read the whole thing.

1 Q Do you remember that, first?

2 A I remember a lot of stuff on that, a lot of
3 conversation. But it is -- the way you're making
4 it sound is a little different than is what on the
5 paper.

6 Q And at least once or twice in that phone call you
7 tell her you don't want to talk to her about that
8 on the phone?

9 MR. FEDOR: Your Honor, objection. May we ask
10 that the entire transcript that they took with the
11 two children be put into evidence now?

12 THE COURT: All right, she is talking about
13 the jail phone calls at this time.

14 MR. FEDOR: That too.

15 THE COURT: All right. Is that the
16 transcript?

17 MS. CAMPBELL: I am moving on to the next
18 phone call.

19 THE COURT: All right. Do you have the
20 transcript?

21 MR. FEDOR: And we'd ask that it all be given
22 to the jury.

23 THE COURT: Well, if not, you'll have to move
24 it into evidence if you want to. I can't make her
25 put something in evidence. It's up to her decide

1 whether or not she puts it into evidence.

2 MR. FEDOR: Your Honor, will you let us be
3 allowed to put it in?

4 THE COURT: You will have an opportunity once
5 she finishes to go back on redirect.

6 BY MS. CAMPBELL:

7 Q Did you want to review that?

8 A I mean, I don't know what it is. You've just given
9 it to me. Is this when I talked to B.P. or?

10 Q Uh-huh. It's when you talked to B.P.

11 A Okay.

12 Q You can review it.

13 A Okay.

14 THE COURT: I believe you asked to see the
15 transcript. Is that the transcript?

16 MS. CAMPBELL: Yes, ma'am.

17 THE WITNESS: Oh, okay. Yeah. Okay.

18 MS. CAMPBELL: I provided it to him and
19 they've had a copy of it.

20 THE WITNESS: Okay. I'm fine.

21 (Pause.)

22 A Okay. What?

23 Q Is there anything else you wanted to tell the jury?

24 A No. I mean, I'm just --

25 Q I'm trying to give you the opportunity. We are not

1 trying to hide anything here.

2 A I know. I mean, I'm just saying the way you say it
3 is you pick out like one sentence. I mean, you
4 don't even ask how the call started with it, you
5 know, when she came as to -- you know, about
6 getting the card and all that. And then it goes
7 into -- let's see, where does it start?

8 B.P. says -- well, before that I said, well,
9 hopefully I'll be seeing you soon and get all this
10 mess done, all these lies and stuff. I'll tell you
11 what. It's aggravating, but the truth will come
12 out, and I'll be out there with you, so . . .

13 And then B.P. says, good. Well, I have to
14 talk at the trial.

15 And my first comment is, huh?

16 I have to talk at the trial.

17 Q Uh-huh.

18 A And I said, you have to talk to Kyle? I
19 couldn't -- I mean, the phones aren't that great.

20 She said, no, I have to talk at the trial.

21 Oh, okay. Yeah, that's what I heard. But
22 that is -- you know, we won't talk about that over
23 the phone, but that is -- well, you know, well,
24 it's good, though. I mean, you know, because they
25 are trying to lie about stuff, and you know what I

1 mean.

2 And then that's when B.P. asked me the
3 question. Well, I have a question. How did he
4 carry it out?

5 And I said, huh?

6 How did he carry the gun out?

7 How did he --

8 Yeah, like, it was in --

9 And then I said, in his --

10 And then she said, In his pocket or like --

11 I said, in his bag.

12 And she said, what bag?

13 I said, he put it in his bag, in that tote bag
14 that he always brought over.

15 That's what was said. She brought it up to me
16 about it.

17 Q Whoa, whoa, don't close it.

18 A Okay. All right. I'll keep going. We'll keep
19 going.

20 Q She said, what bag?

21 A She said, what bag?

22 I said, he put it in his bag, in that tote bag
23 he always brings over here.

24 And then do you want me to keep going?

25 Q Yes, sir.

1 A She said, yes. Well, because they asked me that
2 and I didn't know. I couldn't remember it all. I
3 couldn't remember it correctly.

4 Q I couldn't remember it correctly?

5 A Yes.

6 Q Then what did she say?

7 A She said, well, should I tell them that?

8 And my response was, I don't know, just
9 whatever. I don't know.

10 She said, well, I mean, I'll just tell them
11 that and just tell them I saw that.

12 I said, yeah, well, whatever. I don't know,
13 **B.P.** Just don't -- we don't need to talk about
14 it now. Just talk to them. But that is what --
15 you know, that is where he -- he put it in the bag
16 where he always -- the bag he always brought. He
17 brought it over there. You know, he always brought
18 a bag over here. So, I mean, it's ridiculous that
19 they are just trying to lie about everything but,
20 you know --

21 Well, tell me this. How --

22 Nothing.

23 Nothing?

24 Yeah.

25 How is cheerleading going?

1 I mean, fine. I hurt my thumb.

2 You hurt your thumb?

3 Yes. I haven't been able to tumble.

4 Oh, really?

5 Yes.

6 Do you want me to keep going?

7 Q No, you can stop now.

8 A Okay. I didn't know.

9 Q And that was a phone call, I believe, in August of
10 last year?

11 A Okay.

12 Q And then there are other phone calls later on where
13 you're talking to your father about the video of
14 **B.P.**, the two-hour video of her and **Z.P.**. Do you
15 remember that?

16 A I've talked to them about a lot of stuff since I've
17 been in there.

18 Q And do you remember y'all talking about there was
19 nothing mentioned about the -- and saying, yeah,
20 **B.P.** gave it -- and your father says what to
21 you?

22 A I don't know. I'll have to look at it.

23 MR. FEDOR: Might we see a copy of that, Your
24 Honor?

25 MS. CAMPBELL: They have been provided all

1 this in discovery, Your Honor. They have
2 everything we have.

3 THE COURT: Do you have a copy of it? It's
4 the transcript you asked for.

5 MR. FEDOR: Yes, ma'am.

6 THE COURT: That she put in evidence.

7 MS. CAMPBELL: I would be glad for him to see
8 it, but he has everything we've got, all the phone
9 calls.

10 (Pause.)

11 BY MS. CAMPBELL:

12 Q That's a conversation with you and your father.

13 A Okay.

14 Q Where your father says, yeah, **B.P.** gave us some
15 bad information on that.

16 And you say, huh?

17 And he says, not a thing mentioned and I'm
18 going to ask her about it. And then he talks about
19 telling **Z.P.** to quit slamming the door. Then he
20 goes on.

21 You say, you are going to ask her?

22 And he says, yes. He says, I know, you know,
23 because she is going to have to change her
24 statement or something. You can't -- God Almighty,
25 no. That's just -- that's like sticking a bag

1 around you right now, you know, because that was
2 one of the . . .

3 Do you remember having that conversation about
4 B.P. having to change her statement?

5 A I remember some stuff about it, yes.

6 Q And what was B.P. having to change her statement
7 about?

8 A Well, according to that about the bag or the gun,
9 but ...

10 Q Let me go back a little bit further. You and Tammy
11 had been married for a number of years?

12 A As a matter of fact, it would have been 17 years
13 tomorrow.

14 Q And you indicated -- what was your relationship
15 like with Tammy?

16 A We had a good relationship even though -- I mean,
17 just like anybody else, we had problems, but we --

18 Q How did you feel about her?

19 A I loved her. I'll love her till the day I die.

20 Q And during this good relationship, you mentioned
21 that you had an adulterous affair?

22 A I did.

23 Q But now you know that that one affair was a
24 mistake? Is that what you testified to?

25 A Yeah. I think both of the affairs I had were

1 mistakes.

2 Q And what was the other one?

3 A Well, I think it's already been brought out that I
4 had sex with two girls, two ladies.

5 Q Who were they?

6 A Dana Allpress.

7 Q And where was Dana from?

8 A Oregon.

9 Q And when did that affair take place?

10 A We had sex one time in 2011 and one time in 2012.

11 Q So --

12 A That's all it was.

13 Q Where would that take place?

14 A I think she was staying at the Embassy Suites when
15 she came in, I think.

16 Q Did you tell Tammy about that one?

17 A No, I didn't.

18 Q Did you tell Tammy about Ms. Mullins?

19 A No, I didn't.

20 Q To your knowledge did Tammy know about those?

21 A No. The same way I didn't know she was too.

22 Q At one point, though, did Tammy become upset when
23 she saw some of the text messages between you and
24 Natasha Nadkarni?

25 A She did.

1 Q And when did that take place?

2 A December -- I think December 2011.

3 Q And prior to all this happening, hadn't Tammy
4 written a letter to your parents about you?

5 A I think that was years ago.

6 Q And in that letter did Tammy express and kind of
7 even imply that she blamed your parents for how you
8 were acting?

9 A You know, I didn't see the letter. You can -- I
10 don't know, maybe so.

11 Q Did she refer to you as daddy's boy?

12 A That I don't know. If you say that, that's what's
13 in the letter, then that is what it says.

14 Q And her complaint was about how self-centered you
15 were?

16 A I don't know about that. Like I said, I didn't
17 read the letter. It was to my parents.

18 Q And just for the record, when you put Brad Spehl's
19 phone number into your telephone --

20 A Uh-huh.

21 Q -- on March the 30th of 2012, your insurance wasn't
22 with Brad Spehl of MetLife, was it?

23 A I'd been with Brad Spehl for a year. I've got two
24 policies that he set up for me for my kids years
25 ago. Brad has been in my phone for years.

- 1 Q At North what?
- 2 A Northwestern.
- 3 Q Northwestern?
- 4 A It was Northwestern.
- 5 Q And that was the company he used to be with prior
- 6 to MetLife?
- 7 A Right, right.
- 8 Q So you wouldn't need to be contacting Brad Spehl at
- 9 MetLife for your policy with Northwestern?
- 10 A No. And I didn't contact him this time either. I
- 11 didn't contact him for anything. He contacted me.
- 12 Q Jackie, Betty Ann, Libby, Jerry, they all believed
- 13 you?
- 14 A Yeah, they did.
- 15 Q They loved you?
- 16 A I -- yeah.
- 17 Q And they wanted to believe everything you said. Do
- 18 you remember that first night when you were showing
- 19 them what happened?
- 20 A I don't remember a whole lot about the first night,
- 21 to tell you the truth.
- 22 Q Well, do you suffer from Post-Traumatic Stress
- 23 Disorder?
- 24 A I --
- 25 Q I've got the medical records.

1 A No, I've never been treated for that. But, I mean,
2 do you think I'm in my right mind that night?
3 Would you be? How would you be if you witnessed
4 your spouse dead and you had to kill somebody? How
5 would you feel that whole day and night and for
6 weeks to come? I mean, I don't know anybody that
7 would be in their right mind. If you are, then
8 you've got a problem.

9 Q You're right because you're traumatized because --

10 A That's right. I was very traumatized.

11 Q -- as you just testified to this jury twice in your
12 examination, you saw your wife get murdered?

13 A I did not say that. I said I saw my wife dead.

14 Q Do you want me to have it played back? Your quote,
15 just went through seeing my wife murdered.

16 A See, there you go twisting stuff again. That's
17 what happened. She was murdered. I didn't see the
18 actual event take place, but I know what happened.
19 That's what I'm talking about, you twist.

20 Q We will talk about that too.

21 A That's what you do. You twist more stuff than I
22 have ever seen.

23 Q When the police talked to you, did you ever go
24 through exactly what had happened, how the
25 ballistic evidence indicated what had happened in

1 that office?

2 A Did I go through with the police?

3 Q Uh-huh.

4 A Well, I --

5 Q Did they ever tell you exactly what the ballistics
6 showed as far as where Tammy was sitting, where she
7 moved, where the final shot occurred?

8 A Did they show me that?

9 Q Did they ever show you that?

10 A I mean, I don't know if they walked me right
11 through it, but I saw when I went in the house
12 where sticky tabs were, Number 1 or whatever, 2.
13 3. I mean, I looked at the scene myself.

14 Q So you were able -- have you ever had any training?

15 A No, I haven't.

16 Q As far as trajectory, things of that nature?

17 A I've never said I did. I've never said anything
18 about trajectory or anything.

19 Q And by the time you went back to the house once you
20 left it and when you made the 9-1-1 call -- and
21 we'll get back to that -- all the evidence had been
22 collected, right?

23 A When I?

24 Q Went back on the 14th.

25 A I mean, I don't know. They were still in there.

1 Q The shell casings were gone? The bodies had been
2 removed?

3 A You know, I really -- yeah, yeah, yeah. The bodies
4 were gone, yeah.

5 Q And yet you were able to tell Libby's friends,
6 Betty Ann and those, exactly how the murder
7 occurred, almost as if you had been there?

8 A Well, I don't think it takes a rocket scientist to
9 see where the bullets were fired and where Tammy
10 ended up.

11 I mean, that is not -- you don't have to be a
12 forensic pathologist to see where Tammy was when
13 shots were fired and where she ended up. I mean,
14 it's not that difficult to know what happened.

15 I didn't go into detail about, well, Bryan
16 shot the bullet at this angle, he shot it at this
17 angle. I didn't say where Bryan was. I just said
18 Tammy was sitting at the desk. And you can see
19 that.

20 I mean, it's common sense, when you see holes
21 in the desk and you see where she ended up, that
22 she got up from the desk. I mean, she didn't sit
23 at the desk the whole time. You can see that.

24 I mean, it doesn't take -- I don't have to be
25 a police officer to see that.

1 Q And how were you able to tell exactly where the
2 person was standing when they shot her?

3 A I never said that. I just -- I never said --
4 y'all -- I have sat here and listened to testimony
5 of where shell casings were found, and they assumed
6 in here that Bryan was standing somewhere in the
7 doorframe. Has that not been said in here?

8 Q Yes, it has been said now in here. That wasn't
9 told to them.

10 A So you mean to tell me that the shell casings and
11 everything -- you're just -- you know it came from
12 over that area. See, you're just . . .

13 Q And when you told the police about what happened,
14 you told them you were 10 to 15 feet away from Cap?
15 Is that what you're testifying to now?

16 A I said -- yes, they asked me. I don't know the
17 distances. I didn't even know the distance. I
18 think they measured from where Capnerhurst was to
19 my safe, and what I have heard was 10 feet. So I'm
20 not real good at telling you exactly how far away I
21 was. All I can tell you is what happened.

22 Q That's fine. Where were you?

23 A I was -- as I said, I grabbed it from the safe,
24 went that way, and just started shooting.

25 Q Were you standing up or kneeling?

1 A I was kneeling at first, and I don't know if I got
2 up or what. I pulled the trigger so quick and just
3 kept -- I don't know what I was doing.

4 Q Were you kneeling in front of the safe?

5 A I was kneeling right there in front and then
6 turned --

7 Q And the safe faces over to where the eaves come,
8 right?

9 A The safe faces out, yes, towards the eaves.

10 Q Uh-huh. And at that point is when you are able to
11 get that gun?

12 A Yes.

13 Q And you told the police that you shot from that
14 position all the shots and you didn't even know how
15 many times you shot him?

16 A I said I pulled the trigger. I just kept pulling
17 the trigger. I don't know -- I mean, I can't tell
18 you if I stood up, if I was coming up as I was
19 shooting. I don't know what happened. I mean, I
20 can't go into that great -- I can't remember every
21 little detail of what happened.

22 Q Let's talk about that, because you were able to
23 demonstrate to your co-worker exactly how you stood
24 over him and shot that final shot to his head.

25 A No.

1 Q Do you deny that?

2 A I deny that he -- that is not what was said. No,
3 it wasn't.

4 Q So he's in on it too?

5 A I don't know if he is in on anything. I mean, the
6 way y'all talk to people just like -- I mean, y'all
7 go around talking to everybody about everything.
8 So I don't know what has been said to him, to
9 anybody around here.

10 Q Well, does he have any reason to make that up about
11 you, your own co-worker?

12 A There again, I have no idea. All I can tell you is
13 what happened in that house that day, and that's
14 what happened.

15 Q And you pretty much hold the police, as it has
16 become evident, in disdain basically, don't you?

17 A Hold them as a stain?

18 Q Disdain. You don't have much respect for the
19 police?

20 A Um, I've had a lot -- I had more respect until all
21 this happened, yes, because they are --

22 Q Even back when this was being investigated, you
23 didn't think a whole lot of the police. You kind
24 of thought they were, in fact, they were stupid?
25 They were stupid? Do you agree with that?

1 A What are you talking about, before this?

2 Q Well --

3 A Why would I have a --

4 Q What was your opinion of the police before this?

5 A Before this? I've never had an opinion because I
6 never had any run-ins with the police. I've never
7 had any problems with them.

8 Q We'll get back to the gambling. But do you recall
9 on occasion mocking the police and how they bungled
10 the investigation? Just like you just said, there
11 is no picture of the gun in his hand, right?

12 A Yeah. I think that they did a pretty bad
13 investigation. I do.

14 Q Bad investigation?

15 A No -- well, you can say bad. I think they -- what
16 they've done is tried to paint a picture to destroy
17 me.

18 Q And before you were ever arrested, while you were
19 still making contact, you chose to, with Sheriff
20 Lott?

21 A That's right, because I didn't do anything. Why
22 would I -- I mean, do you think I would really be
23 calling Sheriff Lott if I had done this? Why would
24 I contact him without my lawyers?

25 Q To try and talk your way out of this.

1 A No. No, you're wrong.

2 Q You actually showed the people in the attic what
3 happened, and at that point you pulled out a
4 T-shirt that was thrown over on the side of the
5 attic area where Capnerhurst died, where you killed
6 him?

7 A Yeah, there was a T-shirt up there. It was kind of
8 odd where it was sitting.

9 Q And you laughed and you said, see, they did such a
10 bad investigation they didn't even get this, this
11 is evidence in the case.

12 A I didn't say it was evidence. I said, I don't know
13 what is on it. I said, but it's amazing they
14 didn't take it. It's kind of out of place. You've
15 got a T-shirt sitting up there on -- sitting on
16 Christmas decorations.

17 Q Well, at that point when you found it, did you call
18 the police and go, hey, you might have missed
19 something?

20 A No. I mean, this was three months later.

21 Q Did you ever call the police and tell them they
22 missed some evidence that might be important to
23 your case?

24 A No, I didn't. No.

25 Q And what happened to the T-shirt that you thought

1 was so important?

2 A I don't know where it is. It's probably in the
3 house or my parents probably got it when they
4 cleaned out the house. I have no clue where it is.

5 Q You mentioned on the beginning of your direct that
6 you thought that gambling was legal.

7 A I didn't say it was legal. I said --

8 Q Well, explain that to me again, because I didn't
9 quite hear it.

10 A I said it stated that if I was in a state where it
11 was illegal, that if I paid taxes on it, it was
12 pretty much giving you permission to do it.

13 Q How much a year did you make in gambling, in the
14 bookie part, not your gambling?

15 A The bookie part? I mean, it varied. It would
16 be -- I don't know -- it could be upwards to 80-,
17 \$100,000. It could be 40, 50, 60. It depends on
18 the year.

19 Q Could it be 200,000?

20 A No, no, not --

21 Q Three hundred thousand?

22 A No.

23 Q Well, from the, let's just take one calendar year,
24 the percentage that you said you were supposed to
25 report -- because you reported it properly, right?

1 A Yeah. I mean, I reported it, yeah.

2 Q From April of 2011 to April of 2012, what you
3 reported -- what was the percentage you said?

4 A What are you talking about, percentage?

5 Q That you reported. Two percent did you say? Three
6 percent or something?

7 A Two percent of every bet I take.

8 Q If you calculated the amount you reported, you
9 would have made \$324,000 that year?

10 A See, there you go again. You are not listening to
11 me. You are not listening. I just told you I sent
12 two percent of every bet I took, not what I made.
13 That is what was stated, two percent of every bet I
14 took.

15 That means if I had \$5,000 on San Francisco
16 and I had \$5,000 on the Giants, okay? I'm going to
17 make \$500, okay? But I had to send them two
18 percent of that \$10,000.

19 Q Okay.

20 A So you're wrong on what you're saying.

21 Q And I understand. I'm just trying --

22 A No, see, you're just trying to make me out to --
23 that's what I'm taking about, you are twisting
24 stuff they said.

25 Q Well, your lawyer just asked you how you were not

1 very smart, but you are pretty good with numbers?

2 A Yeah, I am. I'm pretty good with numbers. You're
3 right. I'm not too smart at gambling. I'm a good
4 bookie, but not a good gambler.

5 Q Well, let's talk about your debt.

6 A Okay.

7 Q You are Hal, right?

8 A Yes.

9 Q And why did you feel the need to set up a second
10 account under a dummy name?

11 A Because I thought I could get some of my money
12 back.

13 Q And isn't that the problem with gambling is you
14 always think the next bet is going to be the best
15 one?

16 A It sure is.

17 Q And I think even in that letter that you wrote
18 about your gambling --

19 A That's the letter from six or seven years ago?

20 Q Yes, sir.

21 A Okay.

22 Q When you got in trouble before.

23 A Right.

24 Q And when you got in trouble before, you went to Las
25 Vegas?

1 A I did.

2 Q And while you were in Las Vegas, you were trying to
3 get that last -- win back that money, right?

4 A I was. I was -- yes, I was on a --

5 Q It didn't work for you?

6 A -- a gambling binge. Yes.

7 Q How much in debt were you then?

8 A I think it was 84-, 88,000, something like that,
9 84- to 88,000.

10 Q And at that point you were so desperate from the
11 amount of debt you had, which was 84- to \$88,000,
12 that you even tried to commit suicide?

13 A I took some over-the-counter sleeping pills. I
14 don't think that was a real full-hearted attempted,
15 taking over-the-counter sleeping pills. I mean --

16 Q And at that point after you took the sleeping pills
17 and it didn't work, you then came clean, right?

18 A I called Tammy that morning, and I think I got on a
19 flight the next day and came back and --

20 Q And who paid off your \$88,000 debt that time?

21 A My dad. I can't remember how it was done, if they
22 got a second mortgage on the house or -- my
23 grandmother had passed away. So they owned her
24 house. And I can't remember how it came about, but
25 they got me the money.

1 I paid -- I didn't owe anybody any money. It
2 was on credit cards. And, I mean, I just want to
3 straighten it out with you. It was on credit cards
4 and a couple of loans that I had gotten, and it was
5 gambled through a bookie who was out of town,
6 actually lived in Camden. He got paid all of his
7 money.

8 And I -- my parents bailed me out, but I paid
9 them back paid, paid the loan off. I think they
10 had signed a loan, and I just paid the actual loan
11 to the bank. And I had that paid off in eight or
12 nine months.

13 Q So the credit card debt was from the gambling?

14 A Well, I used it to pay my gambling debts. I would
15 get cash off of it to pay my bookie.

16 Q Because bookies don't take credit cards?

17 A No, no, no, no.

18 Q And at that point when you wrote about what that
19 had been, that traumatic event in your life?

20 A Uh-huh.

21 Q You basically said, gambling has turned me into a
22 person I hate?

23 A It did.

24 Q Do you remember that?

25 A Yes.

1 Q A person that my family can't trust?

2 A Yep.

3 Q A person that can't even trust himself?

4 A Yes. At that time, yes. I felt bad. I didn't --
5 the last thing I wanted to do was ever hurt my
6 family. That is what -- they meant so much to me
7 that I didn't want to hurt them. I didn't want
8 to -- I mean, it just hurt me so bad to have to
9 tell Tammy.

10 I just remember sitting there telling her and
11 I sat in bed. She hugged me. And I was shaking.
12 I was scared. I mean, I had a gambling problem.
13 But as Tammy is, she comforted me and she took
14 me --

15 Q Tammy was like that?

16 A She was the best.

17 Q Uh-huh. But you would never do anything to hurt
18 her?

19 A Never hurt her. I would never hurt Tammy. Never
20 have.

21 Q Do you remember after that Tammy took over the
22 finances, the budgeting, the bills?

23 A She always budgeted. I paid my -- what bills I was
24 supposed to pay.

25 Q Uh-huh.

1 A And never had a problem, still --

2 Q And Tammy told you at that point that if you ever
3 gambled again, no matter how much she was trying to
4 keep the marriage together for those kids, she
5 wasn't doing it?

6 A That's right.

7 Q And you knew that if Tammy found out that you had
8 gotten in this much debt that she wasn't going to
9 put up with it?

10 A She probably wouldn't have. We probably were
11 headed for a divorce. You're probably right, yes.

12 Q And you knew that you didn't have any money? You
13 had gambled it all away?

14 A Okay, as stated earlier in here, Lanny and Harry
15 both said that they would work stuff out with me.

16 And Lanny, I wouldn't have -- Lanny would not
17 have sat there and made me pay \$175,000 right then.
18 I would have worked it out. I would have made
19 payments. I would have stopped betting with him.

20 And I work every day, Ms. Campbell. I made
21 money every day. I tried to make money every day.
22 I survived.

23 Q And you gambled it away to the tune of --

24 A I did.

25 Q -- \$176,000 at the time Tammy died?

1 A You're right. Yes.

2 Q And in the months leading up to that -- and we will
3 even go back to December -- you had to get a loan
4 from your boss, Bill Dent?

5 A Okay.

6 Q Six thousand dollars plus?

7 A Right.

8 Q In December, right?

9 A Yep.

10 Q And in January you took out a \$5,000 loan on your
11 car?

12 A Right. I did.

13 Q From TitleMax?

14 A I did.

15 Q Why didn't you just go to Tammy and tell her you
16 needed money?

17 A Because I knew it would hurt her.

18 Q Or you knew it would hurt you?

19 A What do you mean, hurt me? I was --

20 Q Was Tammy going to want to know why you needed
21 money since you are supposedly coming to the end of
22 the season, you're supposed to be flush.

23 A It would have hurt her that I was doing --

24 Q Or hurt you with Tammy?

25 A I mean, our relationship. I mean, our relationship

1 was already, you know -- I mean, yeah, it would
2 have hurt her. It would have hurt me and her.

3 Q And was this the only car that was in your name
4 only?

5 A Yes. Yes.

6 Q Did Tammy know that you took out a \$5,000 loan with
7 TitleMax?

8 A No, she didn't.

9 Q At the end of March before you went on the
10 cruise --

11 A Uh-huh.

12 Q -- do you remember borrowing money from your
13 parents?

14 A No, I didn't. I did not borrow money from my
15 parents. I don't know where that came from.

16 Q At that point you mentioned that you owed Bryan
17 Capnerhurst, and you told the police that you only
18 owed him \$13,000, isn't that right?

19 A Correct.

20 Q And how much did you really owe him?

21 A That was it. If you -- there is a sheet that we
22 have that you should have, but you never put it
23 into evidence, showing that Bryan collected money
24 throughout the year.

25 Q At one point you even told the police that Bryan

1 had even come to you for a loan, right?

2 A He had asked me for it in the past, yeah, he has.

3 Q You told the police that, didn't you?

4 A Yeah, I did.

5 Q Why would Bryan have to come to you for a loan when
6 you owed him money?

7 A I don't know. I have no idea.

8 Q Why would he need a loan if you owed him money?

9 A He had collected money throughout the year, and it
10 is on the sheet that y'all have in y'all's -- one
11 of y'all's books over there, because we've got it,
12 because I know y'all gave it to us.

13 Q Your lawyers have it?

14 A Yes, they do.

15 Q Okay.

16 A They sure do.

17 Q And at that point you owed him, by your own
18 admission, \$13,000 and by his estimation, \$21,000?

19 A That's what I was guessing at.

20 Q And how much were you supposed to pay Lanny Gunter
21 that week?

22 A We had never said a specific figure. I told him I
23 would try to get him a bigger amount.

24 Q And how much had you been paying him up to that
25 point?

1 A I was taking him anywhere from 5- to \$10,000 every
2 other week, every -- as much as I could. And, like
3 I said, I paid him probably \$100,000 up to that
4 point.

5 Q And when were you supposed to make that payment to
6 Harry Benenhaley?

7 A We were -- I think we tentatively set it up for
8 Wednesday, but we normally met on Fridays. And I
9 told him I hadn't seen everybody. I wanted to get
10 him as much money as I could.

11 So Harry was playing golf, I believe, Friday,
12 and he said he would call me Friday afternoon and
13 we'd meet up Saturday morning over the weekend,
14 which is not uncommon. I mean, I did that a lot,
15 went over to his house and seen him on Saturdays,
16 Fridays. I mean, we never had a set time of when
17 we would pay each other.

18 Q Why did you have to go borrow \$5,000 from Britt
19 Jordan the night before this happened?

20 A I think I told earlier that I wanted to try to give
21 Lanny as much as I could, and that would give me
22 some time. I could get some more of my money,
23 maybe see a couple of people to try to get him as
24 much as I could, and it would give me time to pay
25 back Britt. There again, I never have screwed

1 Britt Jordan out of anything.

2 THE COURT: I think you have to back up a
3 little bit from the microphone.

4 THE WITNESS: Is this good?

5 THE COURT: Yes.

6 A And, like I said, I was trying to get Lanny -- I
7 didn't want him -- you know, I wanted to try to get
8 him as much as I could.

9 Q And he was expecting a \$50,000 payment. Did you
10 have anything near that?

11 A No, I didn't. I had, like I said --

12 Q In fact, in your pocket you had \$4,500, which is
13 what was left of what you borrowed from Britt the
14 night before?

15 A I don't know if it came from Britt. I mean, I had
16 other money. Like I said --

17 Q That was that wad of cash you were flashing at
18 work?

19 A Yeah. Flashing at work? Yeah. Well, something
20 that wasn't said is that everybody cut up about
21 that. What you got in your pocket? And everybody
22 just -- you know, that is something that was cut up
23 at work all the time. It wasn't just that day. It
24 was done all the time.

25 Q But you always bragged about how much cash you had?

1 A No, no, I didn't brag about it, no. As a matter of
2 fact nobody in here -- I mean, you asked me
3 something. Can I finish?

4 Q Yes, sir.

5 A Okay. Well, a bookie never talks about what they
6 make. If you go -- I'm just telling you -- you
7 don't go around talking about how much you make as
8 a bookie.

9 I can guarantee you there is nobody in here
10 that has ever told what they made from people.
11 They don't walk around bragging about what they
12 make as a bookie.

13 Q Well, then why were you flashing a wad of cash that
14 morning at work?

15 A As I said, that's what happened at work quite a
16 bit. People would walk in and they'd have -- just
17 cutting up. All it is is cutting up. It was guys
18 cutting up. That's all it is. It's not saying
19 what you made or how much you make. It's just guys
20 cutting up.

21 Q So at this point you're \$176,000 in debt? You had
22 to borrow money on your car? You are paying that
23 back at 119 percent interest rate?

24 A Right.

25 Q You have borrowed money supposedly from this other

1 person the night before, from Britt Jordan, and
2 that was a lie?

3 A Right. I mean, yes, like I said --

4 Q That you were supposed to pay back in the next
5 several weeks. Lanny Gunter was putting pressure
6 on you to make a payment. How were you going to
7 pay him?

8 A Lanny Gunter never put any pressure on me.

9 Q How --

10 A That's not Lanny's nature. I mean, you're asking
11 me and I'm telling you. Lanny did not put pressure
12 on me.

13 Q How were you going to pay him?

14 A I just told you. I was going to give him 10 --
15 whatever I could get, 10-, 15,000. And I was going
16 to talk to him about continuing to make payments
17 but just cut me off and not let me play no more
18 until I got it down to a reasonable figure. If it
19 took me a year, if it took me two years, I would
20 have paid Lanny.

21 Q And if you had been cut off --

22 A Huh?

23 Q -- how does that look to all your friends in the
24 bookie world?

25 A I don't think Lanny would have said anything about

1 it. Lanny wouldn't have run around. Lanny don't
2 put anybody's business in the street. I mean, he
3 wouldn't have gone out and told people that he cut
4 me off, just as I don't tell anybody who bets with
5 me. Nobody knows who bets with me unless they tell
6 them. I don't go around telling who bets with me
7 and stuff. I don't do that.

8 Q Were you ever able to make anymore payments to
9 Lanny?

10 A Since this happened?

11 Q Yes, sir.

12 A No, I have not.

13 Q Were you able ever to pay back the money to Britt
14 Jordan?

15 A I have not. But I will promise you this, it will
16 be paid back. I will not -- I'm not going to do
17 that to my friends. I mean, I would never do that.
18 I'm not going to do that to him. I will get money
19 to him.

20 Q You weren't able to pay the next mortgage payment?

21 A The next mortgage payment?

22 Q Yes, sir. You never paid another mortgage payment.

23 A After this happened?

24 Q Yes.

25 A I did pay -- make the mortgage payment. I did. I

1 tried, yes.

2 Q The house is in foreclosure.

3 A I know that, Ms. Campbell, because I've been in
4 prison for ten months.

5 Q What is your testimony about the last mortgage
6 payment you made?

7 A It was probably May, would have been May, I think,
8 May of -- yeah, I think it was May. I don't know.
9 I mean, you probably know exactly what day. But
10 I'm just saying it was probably in May that I made
11 it.

12 But you've got to understand, once this
13 happened, nobody that owed me money was answering
14 the phone. I wasn't getting any money coming in.
15 I basically wasn't working.

16 I mean, I had -- you know, the money that I
17 was expecting to get, I have never, up to this
18 point -- and I think you can look on it -- I was
19 not late. We didn't have any problems with paying
20 bills, and I paid them. I paid my bills.

21 Q Well, had you ever taken out TitleMax loans before?

22 A I have already admitted to that three or four
23 times.

24 Q Have you ever lied to your friends and tell them
25 that you had to borrow money from somebody else?

1 A Yes, I did. Yes, I've admitted to that already two
2 or three times.

3 Q Had you ever done that before?

4 A Before?

5 Q Before the day that your wife and your best friend
6 were murdered?

7 A I did that -- I think I just said that I got
8 money --

9 Q From Britt?

10 A -- from Britt.

11 Q Had you ever done that prior to that night before
12 this happened?

13 A I'm not following you. Are you talking about like
14 in like past years?

15 Q Have you ever lied to your friends to borrow money?
16 Have you ever had to borrow money from your friends
17 and lied to them about it?

18 A No. No, I did not. I did not.

19 Q And had you ever been \$176,000 in debt with no way
20 to pay them before?

21 A With no way to pay them?

22 Q With no way to pay it.

23 A There is not -- you're saying no way to pay it? I
24 was making money all the time. So when I would
25 make it, I would give it to Lanny. So you are

1 sitting there saying that there was no way to pay
2 it? That's a lie.

3 Q And you couldn't get the money together --

4 A I couldn't pay him \$176,000, no, not right then,
5 but he was getting paid.

6 And as Harry and Lanny both said, they said it
7 in their statement, as long as Brett was making
8 payments, we were fine with it. And that is what
9 was happening. I was making payments.

10 Q And everything between you and Tammy was good?

11 A I didn't say everything was good. Our marriage --
12 we stayed together because of our kids.

13 Q And, in fact, y'all for years had slept in separate
14 parts of the house?

15 A We did. And it happened right after the break-in
16 is when it really started happening, because my son
17 couldn't sleep by himself.

18 Q For years prior to sleeping with your son, you
19 slept with your daughter, didn't you?

20 A I did some, yes, I did.

21 Q Until she was 11?

22 A Yeah. I mean, it wasn't every night, no.

23 Q And then -- but that was a problem Tammy brought up
24 with you. She didn't think that was good
25 parenting?

1 A Yeah. I mean, we had -- like I said, I spoiled my
2 kids. Yes, I did.

3 Q And then you slept with your son once you quit
4 sleeping with your daughter?

5 A Yeah, we did -- I did. And B.P. slept with Tammy
6 for a while too because of the break-in, like I
7 said.

8 Q But that had been going on for years prior to the
9 break-in?

10 A Well, I mean, you make it sound like me and Tammy
11 didn't have any intimacy whatsoever, and that is
12 not true. I mean, because we slept -- because our
13 kids didn't want to sleep by themselves and we put
14 our kids before a lot of stuff, you know, that --
15 and, anyway, where they slept has nothing to do
16 with what happened in that house that day. So, you
17 know, I don't follow you here, what you're -- I
18 mean, you're just trying to paint a picture. I'm
19 not sure what you are doing.

20 Q Your daughter also said that she even knew and
21 other people knew that you kept a gun in that
22 locked drawer in the office. Why did you move it?

23 A Why did I move it?

24 Q Uh-huh.

25 A As I said earlier, the gun that was in there was

1 the 9-millimeter that I gave to Bryan. That was
2 the gun that was in there. And then -- let me --
3 I'll finish -- the only time a gun was ever in that
4 drawer would have been the .38. And the only time
5 it was ever taken upstairs out of that closet was
6 if I was working by myself on the weekend.

7 If Tammy was gone, if B.P. was gone for
8 cheerleading or something, I would take that
9 upstairs because I would sleep right there in the
10 chair in my office. I would sleep in the chair.
11 Nobody was there while I was working.

12 And then on Sunday, or whatever, I would take
13 it back down to that linen closet. The Judge
14 stayed on top of my safe.

15 Q That's where I'm going. The Judge was always on
16 top of the safe?

17 A It stayed on top of my safe. If there was a gun up
18 there, it was the .38, and it would be when I was
19 there alone on the weekends.

20 As I said, after that break-in, there is a lot
21 of stuff that changed.

22 When I walked into that house that night in
23 2010, and I couldn't find a gun, all I had was a
24 bat sitting around, it changed a lot of your
25 thinking on things.

1 Q So at that point you got the Judge and you loaded
2 it, and you put it on top of the safe, right?

3 A Yes, I did.

4 Q And it stayed there for, I guess, the two years
5 prior to this happening?

6 A Right. I didn't get the gun -- I'm not sure the
7 date of purchase.

8 Q That's fine. From the date of purchase, whenever
9 that was?

10 A It may not have been the exact day I put it back
11 there, but, I mean, it was within a few days.

12 Q Within a few days?

13 A Right.

14 Q But it had been there a long time?

15 A Yes, it had.

16 Q And you told Tammy, Tammy, I think it's a good idea
17 for me to put this loaded gun on top of the safe in
18 an attic area where the Halloween stuff is?

19 A Yes.

20 Q And she thought that was great?

21 A Well, as I stated before, the -- you have to go
22 through a big -- I don't know if you have a picture
23 to make it a little bit easier to show, but I'm
24 sure you don't want to do that, but you walk
25 through this big room over the garage, which is

1 nothing but storage.

2 Q Uh-huh.

3 A Nothing but storage.

4 Q Uh-huh.

5 A Then you go in that closet -- or the storage area.

6 Q Uh-huh.

7 A Okay. And then on back, ten or so feet -- you
8 know, I'm not sure the exact feet -- but go back
9 there is the safe.

10 Q Uh-huh.

11 A All right. The gun is on top of the safe, kind of
12 under a blanket.

13 Q Yes.

14 A And there is a headboard over it. So my son could
15 not get to the gun. There is no way. My son would
16 not even go in that room. He doesn't go in the
17 room over the garage. My son does not walk in
18 there by himself.

19 My son wouldn't hardly go up the stairs to his
20 room by himself because after that break-in, it
21 scared him to death. He always thought somebody
22 was up there. And there was Halloween stuff, as he
23 called it, an ooh-man.

24 Q Your testimony is that Tammy thought it was a good
25 idea to put a loaded pistol with no safety on it on

1 top of the safe in an unlocked room on the same
2 floor where her son slept?

3 A Yes, it was, just as we had the .38 in the top of
4 that closet, in the linen closet in the bathroom,
5 in our master bathroom. Yes, I am saying that.

6 Q And you weren't mad at Tammy when all this
7 happened?

8 A No, I was not.

9 Q And did you know about her affair?

10 A I did not.

11 Q You didn't know about those cards that your
12 lawyer --

13 A I sure didn't.

14 Q Well, the police didn't find them.

15 A Right.

16 Q How did they know where to find the cards?

17 A I have no idea who found the cards. I don't know.
18 I have no idea where those cards came from.

19 Q What did you clean out of your desk that Monday
20 morning after this happened?

21 A Out of my desk?

22 Q At work.

23 A Palmetto Home Medical?

24 Q Uh-huh.

25 A It would have been old files, could have been some

1 old files, old paperwork, may have been a couple
2 of -- stuff from gambling. I didn't want anything
3 to happen to that company because they found a
4 gambling sheet, like an old -- as I was talking
5 earlier, an old sheet that had the rotation of the
6 games and all.

7 There was probably one or two of those in the
8 desk drawer. There was just some old stuff in my
9 drawer. I just cleaned it out. I had a feeling I
10 wouldn't be working there much more. I mean, you
11 don't -- you know, I just went in there and cleaned
12 some stuff out, made sure there was no faxes that
13 needed to be taken care of.

14 Because as you were told, if you don't deliver
15 equipment, the patient is going to call, and the
16 patients need equipment. It's not like we are a
17 service that can wait. If a patient goes home and
18 needs a wheelchair, they need a wheelchair right
19 then.

20 Q Let me turn your attention to when you gave Bryan
21 the gun. This was a gun that was handed down to
22 you. It was kind of like a family -- you were
23 close with your uncle, I guess?

24 A Probably it's -- I mean --

25 Q I don't mean to put words in your mouth.

1 A No. I mean, I can try to explain it, but it might
2 take a minute, but, I mean, I'm just trying to --
3 my uncle was kind of a loner, like I said, but he
4 loved me, he loved Tammy, he loved my kids.

5 As a matter of fact, at Christmas before he
6 passed, he passed in April of 2011, I think --
7 yeah, April 2011 -- it was so odd. He gave my son
8 a bike and gave my daughter -- I can't remember if
9 it was a coat. It was something that was just
10 ridiculously expensive. And I know he couldn't
11 really afford it, you know what I mean. He went
12 way overboard for my kids. And -- so he was close
13 to me, yes.

14 Q He wanted you to have his gun?

15 A My uncle that died?

16 Q Yes.

17 A My uncle that died had -- I don't know how many
18 guns they recovered there. He never said he wanted
19 me to have a gun. This was given out. They were
20 given to my other Uncle JD -- I mean, John Lucas.
21 We call him JD.

22 There were -- I mean, he had, I don't know,
23 20, 30 some-odd guns, weapons in that house. And
24 they were given to John. And then John asked if
25 family members wanted guns.

1 Q And at that point John gave it to your father?

2 A He did.

3 Q And then your father -- did your father decide to
4 give it to you or was he told to give to you? Do
5 you know?

6 A They were -- they had asked if anybody wants any
7 guns. And my dad had called me sometime. They
8 were going over there and asked if I had wanted
9 one.

10 And I said, yeah, I'll take one.

11 And they had given -- I don't know if they
12 gave dad a gun too. I'm not sure. You know, I
13 really don't know.

14 Q And at that point your dad -- when did he actually
15 give you that gun?

16 A I mean, I don't know the exact date. I mean, I
17 would say it was December, January, somewhere in
18 there. I mean, I don't know. I'm not sure.

19 Q When he gave you the gun, you noticed that it was a
20 semi-automatic, and you said -- you stated you
21 don't like those?

22 A Well, I've mean, I never -- like I said, I've never
23 been around a semi-automatic. I've had, like I
24 say, I had the .38 revolver. And then, you know, a
25 year or so before I received that gun, I had gotten

1 the Judge, which is a revolver type. So I have
2 never --

3 Q The Judge you put over the safe?

4 A Right, yeah.

5 Q Did B.P. know it was there?

6 A I don't know. I don't know. I mean, I didn't tell
7 her. I don't know if she knew it or not.

8 Q Okay. When you got the gun from your dad, you
9 don't know exactly when that was, but you had it
10 for a period of time before you gave it away,
11 right?

12 A A month maybe. A month or two.

13 Q A month or two?

14 A Maybe. I'm not sure.

15 Q And during that period of time, this was something
16 that was handled down through your family?

17 A Right.

18 Q And you became uncomfortable with that gun?

19 A I did.

20 Q Even though it was locked in the drawer?

21 A Right, because I really -- I mean, I didn't even
22 know how to load it. I had to figure that out, how
23 to load the clip.

24 Q But you were able to load it?

25 A Yeah, I did. I did.

1 Q And it had an extra clip?

2 A Yes.

3 Q And a box of ammo that came with it?

4 A Yes, it did.

5 Q And a gun case? It kind of came as a package?

6 A Yes. Yeah, it did. It did. I don't know -- I
7 can't remember if the gun was in the case or what
8 when my dad gave it to me, but I, like I said --

9 Q And then you became uncomfortable with the gun
10 according to you?

11 A Yeah, I just didn't like it. It just seemed
12 very -- I mean, just unsafe. I mean, just the way
13 it operated. It looked like you could drop it and
14 it would go off, I mean, very easily.

15 Q Did you tell your father who you were so close to
16 that you didn't want the gun anymore?

17 A I have no idea.

18 Q But your testimony is that just on this day you
19 started talking about the gun, and then there was
20 an exchange where Bryan Capnerhurst --

21 A Right. I mentioned to him I was going to get rid
22 of the gun. And, you know, he said he wouldn't
23 mind having it, is what was said. I don't know if
24 those exact words were said, you know, but -- no,
25 I'm just -- I don't know if --

1 Q And then specifically you said you saw him put it
2 into his bag?

3 A Right.

4 Q With the ammunition?

5 A Right.

6 Q And the magazine?

7 A Right.

8 Q And you just may have forgotten to give him the gun
9 case?

10 A I guess. I think it was -- from what -- I don't
11 know. I don't even know where it was. It may have
12 been on the floor under a bunch of junk. My office
13 wasn't exactly the cleanest place in the world.

14 Q But did Bryan know where that gun had come from?
15 That it was kind of one of your family guns? I
16 don't know how to characterize it.

17 A I don't know about, I mean, family guns. I'm not
18 really into --

19 Q And that is what you say -- and your testimony is
20 now is that B.P. was there?

21 A B.P. was in the office.

22 Q Did you ever tell the police that B.P. was there
23 and she knew that you had given it to him?

24 A No. I mean, how do I know that she is even paying
25 attention to what we're doing? You know what I

1 mean? She is 13 years old. I don't know if she is
2 paying attention to us. I mean, I didn't sit over
3 there and holler at her and say, B.P. --

4 Q As time passed they were pressing you pretty good?

5 A Huh?

6 Q They were pressing you pretty good about your story
7 about giving Bryan the gun?

8 A Yeah. And I told them I gave him the gun, yes.

9 Q Did you tell them B.P. was there when you gave it
10 to him?

11 A No. I mean, they asked me about me giving him the
12 gun. That's what I did. They didn't ask me about
13 B.P. I mean, they asked me if I gave him the
14 gun, and I said yeah.

15 Q Okay. And your story is, as you just told this
16 jury today, that on the date in question -- do you
17 remember making arrangements for Bryan to come over
18 that day?

19 A Yeah. Well, we had talked. I had talked to him
20 earlier in the week, and I believe I asked him if
21 he wanted to come by on Wednesday, and he said he
22 was at the beach. You know, that is just -- that
23 was earlier in the week, though.

24 And I said, well, Friday or whatever. We can
25 meet Friday. That's fine.

1 Q And when were y'all supposed to originally meet?

2 A Two o'clock, I guess. I'm not sure.

3 Q And then you had to change the time, didn't you?

4 A I had a delivery to make that afternoon. Yes, I
5 changed the time and just asked if he could come
6 by.

7 Q Did you also find out that Tammy had a doctor's
8 appointment at 2:00 o'clock that afternoon?

9 A I think I had known that. She had told me, yeah,
10 something with that -- I can't remember her name.

11 Q And what was the purpose of Capnerhurst coming over
12 that day?

13 A To collect some money.

14 Q And who owed who money?

15 A I owed him money for work.

16 Q You owed him money?

17 A I did.

18 Q And how much were you going to pay him?

19 A Five thousand that day.

20 Q Was that the, well, almost \$5,000 that was in your
21 pocket?

22 A Yes. Well, I had to get some more out of one of
23 the other boxes, yes.

24 Q That was one of the other boxes where you said
25 there was 8,000 in one?

1 A Well, one -- not -- no, no. One of the boxes was
2 change. The other box had some money. Then
3 Tammy's -- the safe in Tammy's room had some money.

4 Q I'm sorry, I thought you testified on direct that
5 there was safes in different places, and one had
6 \$8,000?

7 A I did. That is what I just said. I said there was
8 a money box that was -- if you remember, I said
9 there was a safe in Tammy's room, in Tammy's
10 closet.

11 Q And so the money in your pocket wasn't the money
12 you were going to pay Lanny with?

13 A Wait.

14 Q That was the money you were going to pay --

15 A Well, it doesn't matter. It don't matter how you
16 look at it, where it came from. They were both
17 going to get it. I mean, money is money. It don't
18 matter if it comes out of this pocket or out of a
19 box. I mean, I can't say I was going to give him
20 every one of those bills that Britt gave me. I
21 can't say that. I mean, you -- I don't know what
22 you are trying to say here.

23 Q Did you tell the police about the \$8,000 in the
24 other safe that would have paid off some of your
25 debts?

1 A No, I didn't.

2 Q And the first time we have heard about that is
3 here, right?

4 A Yeah, probably so.

5 Q And once you changed the appointment to 12:30, you
6 also set it up to have lunch with Tammy, right?

7 A We had already planned to have lunch.

8 Q Okay. Y'all had planned to have lunch?

9 A Yes.

10 Q And what do you usually do on Friday, every other
11 Friday?

12 A I play golf some, but it just depends on work too.
13 It depends on if I get a call. If I have a
14 delivery to make in the afternoon, then golf is
15 out, and I don't make --go ahead.

16 Q I'm sorry, I didn't mean to interrupt you.

17 A No, I'm sure.

18 Q Would it surprise you that of all the co-workers we
19 talked to that it was very, very, very unusual --

20 A Right.

21 Q -- for you not to play golf on Friday?

22 A Uh-huh. Did you -- okay, go ahead.

23 Q It was unheard of?

24 A Uh-huh.

25 Q But on this Friday you set up lunch with your wife?

1 A Right.

2 Q And you invited Bryan Capnerhurst over at 12:30?

3 A Can I respond?

4 Q Sure.

5 A You also heard that I normally dress in golf
6 attire, which is shorts and tennis shoes and a golf
7 shirt, when I go to NHC on Fridays. And I wasn't
8 dressed like that because I had my long slacks on.
9 I don't play golf in slacks. Okay?

10 Q Oh, I know you planned not to play that Friday.

11 That's not the question.

12 A No.

13 Q The question is: Didn't you almost always play on
14 Friday?

15 A Almost always? Probably two, three times a month,
16 two, a couple times a month, two or three. Like I
17 said, that decision was made in the morning. I
18 would always call a guy named Mike Moody, and if he
19 was playing, I would definitely play, if I could.

20 And, like I said, I can't -- I can never say,
21 and a lot of times I didn't make that decision
22 until 11:00 o'clock. I'd call and say, I'm on the
23 way.

24 Q And, in fact, your company actually closes its
25 offices at 1:00 o'clock on Friday so y'all can all

1 play golf, is that right?

2 A No -- the office, yeah, they close it, but you can
3 come in and out. I have a key. If I have a
4 delivery to make at 2:00 clock, I have worked many
5 a times on Fridays till -- as a matter of fact, the
6 owner, Bill Dent, helped me one Friday deliver a
7 bed after 2:00 o'clock. So, I mean, it's not
8 uncommon for you to have to work. We try not to.
9 There is no doubt about that. I mean, I'd play
10 golf every Friday if I could have, but I couldn't.

11 Q And on this date when he came over, why did you
12 tell him to bring a bag?

13 A He brought a bag all the time, every time he came
14 over. But one reason I told him was because he
15 needed to get the money for, one, and receipts. I
16 had some paperwork of people that people owed us
17 that was still out. I had some tickets for him to
18 take for him to burn. And just the end of the year
19 information stuff.

20 Q What happened to the tickets?

21 A What happened to the tickets?

22 Q For him to burn? Yeah.

23 A They're probably sitting -- probably SLED or the
24 Feds have it. I don't know. I mean, I think they
25 found a lot of stuff, a lot of gambling stuff.

1 Q And once you told him to come over with the bag?

2 A Uh-huh.

3 Q Did you know that -- I mean, Bryan was punctual,
4 wasn't he?

5 A Yeah, I mean, pretty much. Yeah, I mean, he showed
6 up when he was supposed to.

7 Q Did you know he had been talking to your dad that
8 week about your gambling?

9 A No, I didn't.

10 Q So when he came over --

11 THE COURT: Ms. Campbell, I'm sorry to
12 interrupt you.

13 MS. CAMPBELL: Yes, ma'am.

14 THE COURT: But a couple of the jurors have to
15 go to the bathroom.

16 MS. CAMPBELL: I understand. I'm sorry.

17 THE COURT: So we will take about a
18 five-minute bathroom break and then we will come
19 back. Sorry.

20 THE BAILIFF: Everyone remain seated still
21 until the jury leaves.

22 Quiet, please.

23 (WHEREUPON, the jury retires to the jury
24 room at 1:20 p.m.)

25 THE COURT: All right. We are going to take

1 about five minutes and be back because their lunch
2 is here, so we will have to take another break.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Are you ready to bring them back
5 in?

6 MS. CAMPBELL: Yes, ma'am, if they are ready.

7 THE COURT: Are you ready, Mr. Fedor?

8 MR. FEDOR: Yes, we're ready.

9 THE COURT: You can bring them in.

10 (WHEREUPON, the jury came into open
11 court at approximately 1:32 p.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: Yes, ma'am, you may continue.

14 CROSS-EXAMINATION CONTINUES

15 BY MS. CAMPBELL:

16 Q We were talking about how you testified on direct.
17 And basically you testified that that day you and
18 Tammy had lunch around noon?

19 A Yes, ma'am.

20 Q And then I believe you testified that you went
21 upstairs?

22 A After we ate.

23 Q After you ate? I'm sorry.

24 A Yes. Yes, we did.

25 Q At that point, once you went upstairs, Tammy was

1 seated at the desk?

2 A She was. I was -- yes, she was seated at the desk.

3 Q And I'm just trying to go through it. Is that what
4 you say happened?

5 A Right. And I was seated on the inside U-part of
6 the desk where the computer was.

7 Q What was Tammy doing?

8 A She had her daytimer out, and she was getting ready
9 to make a call. I mean, she was going through her
10 daytimer doing some, just work, I think scheduling
11 stuff.

12 Q Did you actually see her make the call?

13 A I saw her -- yeah, I mean, I saw her pick up the
14 phone whenever I was going out, so I thought she
15 was making a call.

16 Q And who did you tell police she was making a call
17 to?

18 A She had told me she had to check on her
19 appointment. I don't know if it was one that day
20 or one a week from now. Like I said, she had her
21 daytimer out. So I'm not sure.

22 Q And at that point you said you had to go
23 downstairs?

24 A I had -- I'm sorry?

25 Q You had to go downstairs?

1 A I took -- yeah, I grabbed some magazines and took
2 them downstairs, right.

3 Q And then what happened?

4 A Then what happened? I went downstairs and I went
5 to the bathroom eventually. I mean, I don't know.
6 I can't tell you step-for-step what I did.

7 Q You can't tell us step-for-step what you did down
8 there?

9 A I mean, I don't remember everything I did down
10 there.

11 Q Do you remember going and looking out the blinds?

12 A No, I don't. Until you showed me looking out down
13 the garage, I didn't remember that. But I do
14 remember I did go out in the garage, but I didn't
15 remember looking down the driveway.

16 Q Do you remember now? Or you would agree with me
17 that you did go and you looked out the blinds?

18 A I -- yeah, I assume so.

19 Q And when you looked out those blinds, what area of
20 your yard were you looking at?

21 A The driveway.

22 Q And what were you looking for, sir?

23 A Uh --

24 Q What were you looking for?

25 A I was -- I thought you was talking to them. I'm

1 sorry. If somebody was coming over, it was not
2 uncommon for me to look out the window to see if
3 they were coming because you can't -- you know,
4 depending on where you're at in the house. So I
5 may have looked out to see if he was coming or see
6 if he was there yet.

7 Like I said, I had to use the bathroom, and I
8 think I -- I know I walked out in the garage, and I
9 put some tools up in my toolbox, which was right
10 there. And obviously I looked down.

11 I didn't know I -- I didn't remember that, but
12 I did look down. Then I went in and went to the
13 bathroom.

14 Q You went out and put some tools up?

15 A I had a screwdriver laying around and I just put it
16 up. I had worked some on that door down there
17 that --

18 Q And you had left the garage door open for
19 Capnerhurst, had you not?

20 A Right.

21 Q And he had access to your house, didn't he?

22 A He did. He knew the garage code.

23 Q And he could come and go because he did come and go
24 sometimes when y'all weren't there?

25 A Right. I mean, most of the time I was there. I

1 mean, it was very rare that he worked there by
2 hisself. But he would just come in through the
3 garage, you know, no matter what. He didn't come
4 and ring the doorbell. He would come in through
5 the garage.

6 Q So at this point you're looking for him, and then
7 you go out the garage door because you could see on
8 the video now, can't you?

9 A Yeah. Yeah, I did.

10 Q And you looked down the driveway?

11 A Right. And I didn't see him. When I didn't see
12 him, I ran in to use the bathroom real quick. I
13 knew he would be there shortly, sometime after, I'm
14 sure.

15 Q And your testimony is you ran in to use the
16 bathroom?

17 A Right.

18 Q And that you were actually using the bathroom?

19 A Right.

20 Q And I believe you testified on direct, you were
21 finishing up?

22 A I was just finishing up, yes.

23 Q And I hate to be graphic, sir, but what does that
24 mean?

25 A I don't know how you want me to say it. I got

1 through --

2 Q At one point you say you were washing your hands at
3 one point --

4 A No. No, I never said I was washing my hands. I
5 said I was finishing up when he came in the door.
6 I had finished -- it can't embarrass me no more --
7 wiping my butt.

8 Q Okay.

9 A If that's what you want to hear.

10 Q Okay. And at that point you yelled to him?

11 A He said, Brett.

12 And I said --

13 Q Was the door open or shut?

14 A The door to the house?

15 Q To the bathroom.

16 A It was cracked. It was open a little bit.

17 Q Was the light on or off?

18 A I don't remember. I had the door open, so I may
19 have had the light off. I don't know if I needed
20 it on or not. I had the door open. I don't know
21 if was on or not, to tell you the truth. I
22 didn't --

23 Q Was the door open or was it cracked?

24 A Just what I said, it was open, cracked. I mean, it
25 wasn't wide open, but it was open, halfway open,

1 cracked, however you want to look at it. I mean --

2 Q Okay.

3 A I don't know what that --

4 Q So the door was either open or cracked?

5 A It was.

6 Q And at that point you hear him come in the back
7 door?

8 A No, not the back door, the garage door.

9 Q I'm sorry, the garage door.

10 A Yes.

11 Q Okay. And at that point when he comes in, do you
12 yell to him or does he yell to you?

13 A I think he said, Brett.

14 And I said, Cap, I'm in the bathroom. Tammy
15 is upstairs. Go on up. Go on up.

16 Q Well, could you hear him actually go up the stairs?

17 A I mean, I don't know if I sat there and listened to
18 every footstep. I mean, you're --

19 Q And how long was he up there?

20 A I don't know. I mean, I wasn't timing him. I
21 would say minutes, couple of minutes.

22 Q What were you doing at this point? You had
23 finished, right?

24 A Yeah. I just finished wiping my butt. I was
25 standing up, pulling up my pants. Pulling up my

1 pants.

2 Q Pulling up your pants?

3 A And cut on the fan. I pulled up the seat.

4 Q Cut on the fan.

5 A Pulled up the seat. Cut on the fan.

6 Q And you pulled up the seat?

7 A Pulled up the seat, yes.

8 Q And why did you pull up the seat?

9 A Because I have a five-year-old son, who the first
10 thing he does when he comes home every day after
11 school is he throws his book bag down right over
12 there where the -- whatever it's called -- a mud
13 room, and he is going right to that bathroom to
14 pee.

15 And I promise you, he is not going to pull it
16 up, he is going to pee, and it's going to go
17 everywhere.

18 Q So you are in the -- now your testimony is you are
19 in the dark bathroom, pulling your pants up, and
20 you pull up the seat --

21 A I don't think I said I was in a dark bathroom. I
22 think you are putting words in my mouth right now.

23 Q Okay. Was the light on or off?

24 A I just said I didn't know if it was on. I said the
25 door was cracked. It's daytime. I don't know if I

1 cut the light on. Have you ever seen the lights in
2 there, how dim they are? Have you ever seen that?
3 I mean, I don't know if y'all looked at it or not,
4 but they're dim anyway. So, I mean, I don't know
5 if I had them on or not.

6 Q And then you're finishing up.

7 A I mean, had I known this was going to happen, I
8 would have observed every little detail, I promise
9 you, if I had known this was going to happen.

10 Q How much time passes approximately?

11 A I just told you. I'm guessing, a minute to two
12 minutes.

13 Q Pretty quick?

14 A Yeah.

15 Q A minute to two minutes?

16 A I'm just guessing. I don't know. He went up the
17 stairs.

18 Q And during the time period he is up there, you
19 finished?

20 A Right.

21 Q Because as he walked in, you just testified, your
22 wife was --

23 A Yes.

24 Q And at that point, you pull up your pants, right?

25 A Right. After I finished wiping, yeah, I did.

1 Q And then you hear gunshots?

2 A I did, yes.

3 Q Any doubt in your mind they were gunshots?

4 A I have never been in a house where a gunshot went
5 off, but I heard a rapid, you know, like I said, it
6 was pop, pop. I don't know how to describe it. I
7 just heard noise and I took off running.

8 Q You described it as gunshots.

9 A Well, that is what it sounded like. I mean, I have
10 shot a gun before, like I told you.

11 Q And at that point what was going through your head?

12 A Nothing. I just -- I ran up to see what was going
13 on.

14 Q Oh, my God, what is going on?

15 A Well, yeah.

16 Q Why are there gunshots?

17 A I mean, I don't think anything like that -- you
18 don't remember what happens at that exact moment.

19 Q Okay.

20 A I mean, I don't know -- you know, I've never
21 experienced it to know what I'm thinking. I just
22 take off running because I hear it and wanting to
23 get up there and see what is going on.

24 Q And you placed guns around your house because in
25 case of another burglary or any incident, your

1 shotguns, you were worried about this stuff, right?

2 A You say I placed guns around my place? There was
3 two guns, one in the -- like I said, the master
4 bathroom and the one up there on the safe.

5 Q So at that point you hear gunshots, and it's not
6 just one gunshot, is it?

7 A No, I heard multiple.

8 Q And, in fact, it's seven gunshots?

9 A Well, like I said, I didn't -- I wasn't counting.

10 Q And at that point you ran past -- out the bathroom
11 door, and you know you've got that gun right there
12 in your master bath, right, right next to him?

13 A Ma'am, at that moment you don't know what is going
14 on.

15 Q True.

16 A I took off running upstairs because my wife was up
17 there. I wanted to get up there and see what was
18 going on. I'm not thinking at that point. If you
19 can sit here and tell me I can think -- and do you
20 know how my bathroom is, where it is in relation?
21 You have to go in through the bedroom and then go
22 back -- go in there. So it's not like -- you are
23 making it sound like it was two feet from me.

24 Q Okay. You ran up the stairs, right?

25 A I did. I did.

1 Q When you got to the top of the stairs -- or where
2 was it exactly because I wasn't sure -- that you
3 saw Bryan with the gun?

4 A When I made the first -- when I went up the first
5 steps and then turned to the left right there to go
6 up the second set, he is standing there with the
7 gun on me, like I said before.

8 Q And what does he say?

9 A Just what I said, go to the fucking safe.

10 And there again, I don't know if it's exactly
11 word for word what he said, but that is what was
12 said, something like that.

13 Q And at that point you come on up the stairs?

14 A Yes, as I said earlier.

15 Q And he's got the gun pointed at you?

16 A Yes.

17 Q Does he say anything else?

18 A I asked him, why, why?

19 He said, just go to the fucking safe, he said.

20 You know, that is about it. That's all that
21 was said. I just kept asking why, and he wouldn't
22 say a whole lot.

23 Q And then he marches you to the safe?

24 A Yes, ma'am.

25 Q And at this point does he have the bag with him?

1 A You know, you're asking me that, and I really
2 wasn't paying attention to the bag. What I'm
3 paying attention to was a gun pointed at me.

4 Q Okay.

5 A And my back is to him as we're walking. So that
6 exchange right there at the stairs was pretty
7 quick, and then my back was turned to him.

8 Q Okay.

9 A Walking me through.

10 Q Then you walked --

11 A Right.

12 Q -- through -- I think you have to go to two
13 different rooms to get to the safe?

14 A Well, it's one room, but it's sectioned off.

15 Q I'm sorry, one?

16 A One big room. It's just sectioned off.

17 Q Correct me if I'm wrong.

18 A No, I'm just saying it's sectioned off.

19 Q And then you go into that room where the safe is?

20 A Right.

21 Q And you go in first?

22 A Well, he made me go in. We couldn't walk in there
23 side by side. There's no way.

24 Q He came in after you?

25 A Right behind me, right.

1 Q And then as you testified, you moved the headboard?

2 A I did.

3 Q And what is he saying at this point, anything?

4 A He's not saying anything.

5 Q And at that point once you move the headboard, you
6 kneel down in front of the safe, right?

7 A I kneeled down on one knee, yes.

8 Q And then you do what?

9 A As I said earlier, I grabbed the gun, turned like
10 that (indicating). And I'm sure I turned my whole
11 body to get to him, to get to -- and shot. I just
12 started pulling the trigger and just kept going.
13 And when I saw him down, that is when I ran and
14 jumped over him.

15 Q Did you glance back and see that the gun was down
16 at that point so you had your advantage?

17 A Did I glance back to see if the gun was down on
18 him?

19 Q Uh-huh.

20 A All I was concerned with was getting to my wife at
21 that point.

22 Q I'm just asking you, did you glance back --

23 A No, I did not.

24 Q -- to see --

25 A I did not.

1 Q So at that point, for all you know -- because you
2 didn't glance back?

3 A I didn't glance back at him to see --

4 Q He still had the gun on you?

5 MR. FEDOR: Might he have time to answer the
6 question, Your Honor?

7 THE COURT: Please let him answer the
8 question.

9 MS. CAMPBELL: Thank you, your Honor.

10 A You're saying I had the gun? Yes, I had the gun on
11 me, my gun. I did.

12 Q And then you turned and shot? It happened fast?

13 A Wait a minute. You are going back. Just asked me
14 when I jumped him if I glanced back. Now you are
15 going back to when I shot him?

16 Q I'm sorry, sir.

17 A I mean, you skip. That is what I'm saying. You
18 just asked me when I went by him --

19 Q Correct me if I'm wrong.

20 A If I glanced back is what you asked me. Now you
21 are asking me if I had the gun. So I don't know
22 where you're going. You want me to go back to
23 where I was at the safe again?

24 Q You're at the safe.

25 A Okay.

1 Q Are you kneeled down or standing?

2 A As I said before, I was on my knee. I turned and I
3 shot. I just kept turning -- I kept pulling the
4 trigger. And if I got -- I don't know what I did
5 in that instant. I just kept pulling the trigger.
6 That's all I was doing was pulling the trigger. I
7 don't even know how many times.

8 Q It happened fast?

9 A Yeah, it happened pretty quick. Yeah, it did.

10 Q Pretty quick?

11 A Pretty quick.

12 Q As fast as you could pull the trigger?

13 A Yeah. I guess so, yeah.

14 Q And at that point you've still got the gun in your
15 hand?

16 A I do.

17 Q And you go and you jump over him?

18 A I do.

19 Q And where is the gun that he had?

20 A To tell you the truth, I didn't really pay
21 attention to that at that point. I mean, I was
22 concerned with my wife, as I said.

23 Q I understand that.

24 A I did not -- trust me --

25 Q You were concerned with your wife --

1 MR. FEDOR: Your Honor --

2 THE WITNESS: I wasn't going to -- I can't
3 answer the question. I mean, every time I'm
4 answering, she is interrupting me.

5 MR. FEDOR: We're not in a speed rush today.

6 THE WITNESS: Yeah, I mean --

7 THE COURT: All right. Ms. Campbell, if you
8 would allow him to answer the question.

9 MS. CAMPBELL: I'm sorry, Your Honor.

10 THE COURT: And, Mr. Parker, you need to
11 answer the question, as I directed other witnesses,
12 yes or no, and then you are able to explain. But
13 you don't get to ask her questions.

14 THE WITNESS: Okay.

15 THE COURT: You have to answer the questions.
16 She gets to ask the question. That's the way it
17 works.

18 A All right. Ask again.

19 THE COURT: Yes, ma'am.

20 BY MS. CAMPBELL:

21 Q What happened?

22 A What happened when I jumped over Bryan?

23 Q You jump over Bryan. What happens next?

24 A I ran to check on Tammy.

25 Q Because at this point what are you thinking about

1 Tammy?

2 A At this point I knew that something happened
3 because I saw her feet laying.

4 Q That's right.

5 A So I'm assuming that she was probably shot.

6 Q So at that point you go back to the office area?

7 A I do.

8 Q And at that point -- and correct me if I'm wrong --
9 you look down and you see her on the ground, where
10 you saw her feet?

11 A Right.

12 Q And at that point she is halfway in the bathroom,
13 and her legs are in the office area, is that
14 correct?

15 A Yes.

16 Q What do you do?

17 A I lean down to her and I checked her pulse, and I
18 did say, Tammy, Tammy, can you hear me? I did say
19 stuff like that. I don't know exactly. And as --

20 Q Is she making any sound?

21 A She had a gurgling, like a -- I don't know what
22 it --

23 Q Some sound?

24 A Just a gurgling sound. That's why I said, Tammy,
25 can you -- and then I felt her pulse and didn't

- 1 feel anything.
- 2 Q How did you feel her pulse?
- 3 A On her neck.
- 4 Q On her neck?
- 5 A Yes, ma'am.
- 6 Q Right here (indicating)?
- 7 A Well, she was -- it wouldn't have been on that
- 8 side.
- 9 Q On this side (indicating)?
- 10 A I think she was -- her head was laying like this
- 11 (indicating), and I felt like this (indicating),
- 12 like that.
- 13 Q At this point she is making sounds and you're
- 14 checking her pulse?
- 15 A Right.
- 16 Q So at that point you tried to help her?
- 17 A I called 9-1-1 right after that.
- 18 Q While your wife is lying down there on the ground,
- 19 did you roll her over?
- 20 A No, I didn't.
- 21 Q Did you try to hug her?
- 22 A Ms. Campbell, what you are doing right now is -- I
- 23 was trying to get help there for her. I am not a
- 24 medic. And for you to sit here and say -- are you
- 25 going to sit here and tell me after what I was

1 going through -- is there a book on what you're
2 supposed to do?

3 Q No, sir.

4 A Because I was out of my mind. I had just killed
5 somebody.

6 Q Okay.

7 A And I'm sitting there looking at my wife laying
8 there in a puddle of blood.

9 Q So at this point you want to get her help as
10 quickly as possible, right?

11 A And that's what I did. I tried.

12 Q So what did you do?

13 A I just told you what I did.

14 MR. FEDOR: Your Honor, may the witness have a
15 chance to answer the question.

16 A I went and got --

17 MR. FEDOR: Just a minute.

18 THE COURT: Hold on one second, Mr. Fedor.
19 All right. We can't talk over each other. Allow
20 him to answer the question.

21 Thank you, Mr. Fedor.

22 BY MS. CAMPBELL:

23 Q What did you do?

24 A As I said, I went and got a phone and called 9-1-1.

25 Q Where did you go to get the phone?

1 A I went downstairs.

2 Q Where was your cellphone?

3 A It was in my pocket.

4 Q You didn't use your cellphone?

5 A I didn't.

6 Q Where were the phones in the office?

7 A They were on my desk.

8 Q Right next to where Tammy's body was lying?

9 A No, ma'am, not right next to where she was lying.
10 They were on the desk, which is quite a few feet
11 away. So I couldn't be there beside her as I was
12 talking to anybody. I couldn't take those phones
13 away with me and go. I also went and checked on
14 Bryan. So I don't think I could take those phones
15 with me.

16 Q Okay.

17 A And to be honest with you, I didn't even think
18 about the cellphone in my pocket.

19 Q And I messed up. I thought you said you went
20 downstairs and called 9-1-1 right away?

21 A That's what I said.

22 Q But you went back and checked Bryan first?

23 A As I'm calling 9-1-1, I go back up the stairs.

24 Q Okay. I messed that up. Now, you're saying you go
25 back upstairs?

1 A Yes. It said I went up there. It said on the
2 9-1-1 call that I checked on Bryan. I checked on
3 my wife again.

4 Q So once you checked on Bryan to make sure -- I
5 mean, he's not going to be anymore threat or
6 anything, right?

7 A He hadn't moved.

8 Q Okay. And how did you check him?

9 A I checked the breathing under his nose. I didn't
10 feel anything. And I believe I eventually checked
11 his pulse on his arm, I think.

12 Q Did you notice the gun was still in his hand?

13 A I honestly -- I didn't pay much attention to it. I
14 was just trying -- I was more worried about Tammy
15 than I was him. The only thing that was said to me
16 was -- is to make sure -- I needed to make sure
17 Bryan was not a threat anymore, or something,
18 according to 9-1-1. I don't remember how it was
19 said on the 9-1-1 call.

20 Q So you check on Bryan?

21 A Right.

22 Q Are you on the phone with 9-1-1 at this point?

23 A Yeah, I'm pretty sure I was. Yeah, I went up there
24 one time to check on him while she was on the
25 phone.

1 Q And then you went back --

2 A And then I went back to her and checked her again,
3 and there was no movement, no pulse.

4 And that is when I told them, I said, please
5 get somebody here.

6 That is when they were having a hard time
7 finding the place, finding the house.

8 And I went downstairs. And that is when, I
9 believe, the -- she told me -- asked me if I had a
10 gun.

11 And I said, yeah, I still had it.

12 And they told me to set it down.

13 And I asked them where.

14 And they said anywhere.

15 I said, well, I'm sitting it on the rug, I
16 think, in the foyer.

17 Q In the living room?

18 A The foyer, whatever it is.

19 Q Whatever area it is?

20 A Where you walk in the front door.

21 Q Okay. So did you go back after you checked on
22 Bryan to see if you could aid your wife?

23 A I mean, I didn't -- I went back and checked her
24 pulse again, but I didn't -- no, I did not
25 administer CPR or anything like that. But, I mean,

1 I guess you just don't understand what I was going
2 through right then, I guess. You know, I don't
3 know everything. I don't know how to doctor on
4 people. I'm not a -- I tried to get help there as
5 quick as I could.

6 Q That's right.

7 A I did.

8 Q Do you know why the 9-1-1 operator's call, the time
9 is after you were out in the driveway when the call
10 was placed?

11 A Was after when I was out in the driveway? What do
12 you mean?

13 Q There's a few seconds once you're out in the
14 driveway where you see -- you realize there is a
15 videotape out there?

16 A Right, yes.

17 Q That shows what all you did out there?

18 A Right, yes. I think we -- y'all showed it in here,
19 I believe.

20 Q And are you aware of the time that the 9-1-1 call
21 was actually placed?

22 A 12:41 is what I was told.

23 Q Then the police respond. And again, I mean, they
24 pulled guns on you?

25 A Yes, it was very traumatizing.

1 Q It was traumatizing?

2 A Yes.

3 Q And, in fact, so traumatizing that you told them
4 that you were having -- I think they even brought
5 EMS for you?

6 A I think I told the 9-1-1 dispatcher that I was
7 having that before they got there.

8 Q It may be true. And, anyway, you were --

9 A It is true, yes.

10 Q Okay. And then you have EMS. The police come and
11 they --

12 A Right.

13 Q -- actually handcuff you?

14 A Yeah, they did.

15 Q And they then get -- the police hold you there, and
16 then they get EMS to come see you. And this is all
17 prior to you meeting with Major Smith, right?

18 A Right, right.

19 Q And they actually check you out to make sure you're
20 okay?

21 A They did.

22 Q And Major Smith shows up and you decide to talk to
23 him, right?

24 A I did.

25 Q And you're advised of your rights prior to him even

1 getting there?

2 A Right.

3 Q And you cooperate?

4 A I did.

5 Q And he advises you of your rights again when he
6 gets there, right?

7 A Yes. I mean, I'm pretty sure. Like I said, I
8 can't remember every detail of that -- what was
9 going on in that driveway. I was in a different
10 state of mind.

11 Q At that point you're trying -- but you are trying
12 to tell the police what happened?

13 A Yes, I am.

14 Q And at that point Major Smith starts asking what
15 happened, and you related some of this to him,
16 right?

17 A Right.

18 Q And then he asked you what your relationship was
19 with Bryan Capnerhurst?

20 A Right.

21 Q And at that point you tell him -- because you're
22 still upset -- but you tell him you can't talk in
23 front of the EMS workers?

24 A I just didn't want to blurt it out that we were
25 bookies. I mean, that was just -- I felt like I

1 could talk to him. He's the one talking to me, you
2 know, asking the questions. So, I mean, I just --
3 yeah.

4 Q And that was the one thing you didn't want to say
5 in front of the EMS people?

6 A It wasn't EMS. I just wanted to talk to him about
7 it in private, about the whole thing, about the
8 whole situation that happened that day.

9 Q And then you go to headquarters?

10 A Yes.

11 Q And are they mean to you?

12 A No, they were not.

13 Q Were they polite and advise you of your rights?

14 A They did.

15 Q They go down and they talk with you about
16 everything?

17 A They did.

18 Q They even make sure that your children don't -- can
19 find out from you?

20 A Right. And they -- I asked them I don't know how
21 many times about my kids. I asked them a lot of
22 times about my kids, if everything was -- if
23 they're okay. And I asked them that. But I know
24 that wasn't said and that's not going to be said in
25 here, but that is what was said.

1 Q And they were polite to you?

2 A I've never said they weren't. As a matter of fact,
3 I told Sheriff Lott when I first talked to him that
4 they were -- that Investigator Holdorf and Smith
5 were nice. I even said that to him.

6 Q Then they take a statement, right?

7 A They did.

8 Q And in that statement you try to tell them as best
9 you can what happened?

10 A I did. They asked me what happened in the house,
11 and I told them what happened in the house. I
12 mean, I didn't -- for me to go into every detail of
13 it that they're asking, but then there was no way I
14 could do that at that point, tell them every little
15 detail about what had -- you know. There's no way
16 I can just sit there and think. My mind -- I was
17 out of my mind still.

18 Q When did you delete the text messages from Lindsay
19 that day?

20 A Right after she texted me, just like I did every
21 text message she ever sent me. Every -- can I --
22 I'd love to finish. Every time we would text each
23 other, if she sent me a text message, I would read
24 it, erase it, text her back and erase the message I
25 sent. And I'm sure you can figure out the reason

1 for that, because I didn't want my wife to see it.

2 Q When the police talked to you that day, they asked
3 you some follow-up questions, didn't they?

4 A The next day?

5 Q That day? About your marriage?

6 A Yeah, they did.

7 Q And you told them that it was good?

8 A Yeah, I did.

9 Q No affairs?

10 A I don't think I said it in those terms. No
11 affairs? Is that what was said? I don't think
12 that was said, was it?

13 Q I don't know, sir. I wasn't there.

14 A I think the answer was, no, that our marriage was
15 okay. I don't think I went into --

16 Q Do you remember them asking you if you had any
17 other interests, any other affairs going on?

18 A That day? I remember the next day when I think --
19 I can't remember who all was up there, but they
20 asked me about Lindsay.

21 Q Do you remember them asking you specifically about
22 the safe and how much money was in it?

23 A Yes.

24 Q What did you tell them?

25 A Twenty thousand.

1 Q And, in fact, in the safe there wasn't 20,000, is
2 that right?

3 A No, no.

4 Q Do you remember them that night later finding out
5 about the suicide attempt?

6 A Yeah, they did.

7 Q And you denied that?

8 A Yes. Again, in my opinion it was very irrelevant
9 to what happened in that house. This was six years
10 ago, and it's quite embarrassing to go through that
11 again.

12 And at that point I didn't see where it had
13 any relevance. That was seven -- six years ago.
14 That had no reason why Bryan came in my house and
15 killed Tammy. So, I mean, I don't see where it's
16 relevant.

17 Q So you lied about the 9-1-1 stuff?

18 A The what?

19 Q You lie about things you don't think are relevant?

20 A I lie about them?

21 Q Uh-huh.

22 A Just because I didn't come out and tell them right
23 away of stuff that meant nothing? To why Bryan did
24 this? I have no idea what you're saying. I'm not
25 lying about it.

1 Like I said, you don't just go out and blurt
2 out that you're gambling and all that and your
3 affair. Why would I -- I mean, that wasn't asked
4 of me that night. The first day they asked me what
5 happened in that house, and that is what I told
6 them, what happened in the house.

7 Q Did you think it was important to tell the police
8 the truth?

9 A I did tell them the truth. I told them what has
10 happened in that house, and that is the truth. And
11 I believe, as I see it, the evidence proves it,
12 that Bryan pulled the trigger and killed Tammy.
13 That's the whole thing in this case.

14 It's not that I was a gambler. That has
15 nothing to do with it. It's not that I had an
16 affair. It's not that Tammy had an affair. That
17 means nothing to this.

18 What is the fact is the fact is that Bryan
19 pulled the trigger and killed my wife. That is the
20 fact. All this other stuff that y'all are trying
21 to paint a picture of, paint me out to be this bad
22 guy, is not true.

23 Q It wasn't true that you were having affairs?
24 Multiple affairs?

25 A I just said I had an affair.

1 Q It wasn't true that you were \$176,000 in debt?

2 A Yes, I did say that. It has been said. All that
3 has been said.

4 Q Wasn't it true that you were going to come into
5 over a million dollars if Tammy is dead?

6 MR. FEDOR: Your Honor, I believe we have
7 proved already --

8 THE WITNESS: I wasn't coming into nothing.
9 That money was going to my kids --

10 THE COURT: Objection overruled.

11 THE WITNESS: That money --

12 THE COURT: You have to state the objection
13 for the record.

14 And you have to stop talking when your
15 attorney makes an objection, all right?

16 THE WITNESS: Okay. I'm sorry. I'm sorry.
17 Whose turn is it?

18 THE COURT: Ms. Campbell, do you want to ask
19 the question again?

20 THE WITNESS: I mean, I don't know.

21 BY MS. CAMPBELL:

22 Q This isn't a game.

23 A Hey, I never said it was a game. I just asked
24 her -- see if I ask a question, boy you can twist
25 anything, can't you?

1 Q And it's true you didn't have any money to pay any
2 of your debts?

3 A No, that is false.

4 Q And the only way out for you, the only way you
5 thought, because you were that desperate, because
6 you didn't want to disappoint your father again?

7 A No, you're -- no, I would never hurt Tammy. Never.

8 Q Do you remember the conversation you had with Jerry
9 Carswell when you and Tammy were joking about how
10 much each one was worth dead?

11 A I remember saying something about mine. I don't --
12 you know, as said, it was a joke. You know, had I
13 known this was going to happen, I would have
14 recorded everything that ever went on in that
15 house.

16 Q Didn't you just assume the police would take you at
17 your face and be gone anyway?

18 A No, I -- no. I assumed they would go with the
19 facts of the reports that Bryan pulled the trigger,
20 which is proven.

21 Q You did --

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

24 MS. CAMPBELL: I'm sorry. I said he did
25 assume that.

1 BY MS. CAMPBELL:

2 Q Did you shake Tammy's hip when you went up there?

3 A I think -- yes, I did. Later, as I thought about
4 it, I did. I shook her hip. And that's when I
5 called to her.

6 I said, Tammy, can you -- Tammy. I just said
7 her name. I did shake her hip, but I felt her
8 pulse. That was the thing I did. That was the
9 main thing I did.

10 Q You testified you loved Tammy and you still love
11 her to this day?

12 A I do. I will love her forever.

13 Q You'll love her forever?

14 A I will. She's always going to have a place in my
15 heart.

16 Q When did you meet Wendy?

17 A Huh?

18 Q When did you meet Wendy?

19 A I think it was June the 1st of 2012, a couple of
20 months after.

21 Q And y'all met up at the Wolf Lodge?

22 A We didn't -- I mean, yeah, I met her there. I
23 didn't -- it wasn't set up to meet each other.

24 Q I'm not saying that. I'm just saying you met while
25 you were there. How about that?

1 A Right.

2 Q And while you were there, you struck up a
3 friendship?

4 A We did.

5 Q And then when was the next time y'all got together
6 with this friendship?

7 A It would have been at the beach the week of the
8 4th. She was --

9 Q Who were you at the beach with? I'm sorry.

10 A No, that's fine.

11 Q I didn't mean to cut you off.

12 A No, I'm fine. I was with Z.P. B.P., and one of
13 B.P.'s friends, and that was it.

14 And the way that came about was every year we
15 went to the beach for the week of the 4th.

16 I did not mention it to B.P., but a few days
17 before the week of the 4th, she came to me and
18 asked me if we could go to the beach.

19 I said, well, B.P., I hadn't really thought
20 about it, and I thought at that point that it meant
21 something to her to go because it was a tradition
22 that we did.

23 So I called, and luckily there was one room
24 left at the hotel where we stayed at the last three
25 years or so, at Dunes Village Resort.

1 So we went there, stayed there, and -- I think
2 you're asking me about the next time I talked with
3 Wendy, or whatever. Is that what you're getting
4 at?

5 Q (Nods affirmatively.)

6 A Okay. I believe I talked to her before that and
7 told her that we were going to the beach that week.
8 Because she told me that she goes to the beach a
9 lot, but she wasn't sure she would be there.

10 And I think she texted me or I texted her, and
11 she said she was there. And they came over and
12 watched the fireworks on the 4th. And then the
13 next night I think they came over and played. The
14 kids swam, went swimming.

15 Q Who called who? Who set up that meeting at the
16 beach?

17 A There again, I don't know if I texted her or she
18 texted me first, or what. It was just kind of
19 talking that I would be at the beach, and she may
20 be there.

21 Q Y'all never discussed anything that happened as far
22 as what happened?

23 A I mean, I just told her that my wife was murdered.

24 Q And your relationship with her has changed
25 according to you?

1 A Yes, it has.

2 Q According to her -- excuse me. I apologize.

3 A According to me too, yes, it has.

4 Q What is your relationship with this woman you met
5 six weeks after the death of your wife?

6 A Can I explain it after I answer?

7 Q Yes, sir. Go ahead.

8 A I will. Right now, I love her. And I would love
9 to elaborate on that. When I came -- when I was
10 locked up, one of the first letters I got was from
11 her.

12 She wrote me talking to me, and we continued
13 to write. We continued to write each other and
14 getting to know each other.

15 And we just -- I mean, for someone like that
16 to hear all the stuff that she has heard about me
17 and stand behind me when I have friends that won't,
18 that have turned their back on me, it is something
19 special for a woman to do that.

20 I mean, for her to stick in my corner the way
21 she has and talk to me and comfort me through
22 this -- she talks to me about everything. We talk
23 about our kids. We talk about her kids, what she
24 is doing up in Mocksville.

25 I mean, we talk about everything. And, yes,

1 it has grown. When you're sitting in a cell, a
2 7 x 10 cell, and not a whole lot to do in there,
3 and but you've got somebody that sticks by you like
4 that, it's pretty special to have somebody stand up
5 for you like that.

6 Q Well, you've arranged it so you can even be in
7 isolation away from the general population, haven't
8 you?

9 A I didn't arrange anything. I was told to be put on
10 PC. And I'm not away from general -- there's five
11 of us up there that stay in a pod. I mean -- do
12 you want me to explain how that works? There's
13 five of us. There's eight cells in our pod.

14 Q Uh-huh.

15 A There's five of us up there right now. There has
16 been as much as seven people up there. We come out
17 and rec at the same time. We eat together. We sit
18 at the table together. We watch TV together. So,
19 I mean, as far as general population, I'm not sure
20 where you're going with that.

21 Q Do you remember a phone call that you had with your
22 father in February of this year?

23 A I talk to my dad every day.

24 Q And he was talking about how he had figured out
25 that you were taking some of his clients from him?

1 A I don't know if that's the way it was. He asked me
2 about one, Willie Carroll.

3 Q Okay. I'll show you Page 11.

4 A Okay.

5 Q Do you see in that phone call where you had a
6 conversation were your dad was talking about --

7 A Yes.

8 Q -- what you had done to him?

9 A Yeah, I see that.

10 Q And what does it say, the highlighted part?

11 A All right. This is him talking. So you just want
12 me to start there, not at --

13 Q (Nods affirmatively.)

14 A He says, I don't know. It's just -- it makes you
15 look bad.

16 And I say, it makes me look bad?

17 Yeah, because if you will betray me, who else
18 will you betray?

19 But then, as we talked about it, as it was
20 told, Willie bet with me in baseball. And Willie
21 didn't want my dad to know, and I didn't want him
22 to know, because he was betting baseball with me,
23 which dad does not do baseball. So I did not take
24 his player. He continued to bet with my dad. He
25 continued to bet with my dad throughout that whole

1 year.

2 Q Okay.

3 A I didn't take his player.

4 Q Your father said to you, because if you betray me,
5 who else would you betray?

6 A Yes.

7 Q Thank you.

8 THE COURT: All right.

9 MR. FEDOR: May we approach, Your Honor?

10 THE COURT: Yes, sir.

11 (WHEREUPON, a bench conference was held
12 in the presence of the jury but out of
13 the hearing of the jury.)

14 THE COURT: Ladies and gentlemen of the jury,
15 we're going to -- before we have Mr. Fedor back up,
16 I'm going to let you all have your lunch.

17 We are going to take a very short lunch break,
18 maybe 20 minutes, enough time for you all to eat
19 and use the restroom and refresh yourself, and then
20 we'll come right back in.

21 All right. Thank you. Enjoy your lunch.

22 (WHEREUPON, the jury retires to the jury
23 room at 2:09 p.m.)

24 THE COURT: All right, we'll start back at
25 2:30.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: All right. Are we ready to bring
3 them back in? Mr. Fedor?

4 MR. FEDOR: Yes, Your Honor.

5 (WHEREUPON, the jury came into open
6 court at approximately 2:47 p.m.)

7 THE BAILIFF: The jury is present, Your Honor.

8 THE COURT: All right. I hope you enjoyed
9 your lunch, although it was quick.

10 We will continue with the redirect examination
11 by Mr. Fedor.

12 MR. FEDOR: Thank you, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. FEDOR:

15 Q Brett, you have been indicted because of this
16 gambling situation by the Federal Court, have you
17 not?

18 A I have.

19 Q And your dad, Jack, has been indicted?

20 A Yes.

21 Q And your mother has been in the court?

22 A Yes.

23 Q And they both have lawyers. Do you realize that?

24 A I do, yes.

25 Q And their lawyers have advised them --

1 MS. CAMPBELL: Objection, Your Honor.

2 Q -- they cannot testify.

3 MS. CAMPBELL: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. FEDOR: May I approach, Your Honor?

6 THE COURT: Yes, sir, you may.

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

10 THE COURT: The objection is sustained. Next
11 question, please.

12 MR. FEDOR: Excuse me, just a second, Your
13 Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. FEDOR:

17 Q Now, Brett, the last two hours of cross-examination
18 by the Solicitor's Office, it has been about, as I
19 understood it, mostly gambling, right?

20 A Yes, sir.

21 Q You don't deny the fact that you're a gambler, do
22 you?

23 A Deny? No, sir, not --

24 THE COURT: If I can get you to speak up.

25 A No, sir.

1 Q Would you kill the mother of your children?

2 A No. That is -- no. That is absurd.

3 Q Now, Brett, there has been testimony about you
4 owing money, \$88,000 to people in Vegas, is that
5 correct?

6 A That's what was said, but I didn't owe anybody in
7 Las Vegas.

8 Q But the bet -- the fact was reiterated to this jury
9 that you owed this money. Did your mom and dad
10 stand good for that money and pay it off?

11 A They got a loan and I was responsible for paying
12 the loan. They got a loan again, I think against
13 the house, and I was responsible for paying it.

14 Q Is this the receipt showing you paid off every
15 nickel?

16 A Yes, sir. It says payment was begun on 7/19/2007
17 and paid in full on 6/19/2008. And it was for
18 \$88,000.

19 MR. FEDOR: We'd like to introduce this as the
20 Defense's next exhibit, Your Honor.

21 MS. CAMPBELL: Again, Your Honor, this was not
22 provided to us. If we could just have a minute to
23 look at it.

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 MS. CAMPBELL: We can move on. If he wants to
2 mark it for ID at this point, and then we can
3 review it. We probably won't have any objection,
4 other than --

5 (Attorneys conferred.)

6 MR. FEDOR: That is the document, Your Honor.
7 We just wish to introduce it, showing the debt was
8 completely paid off.

9 THE COURT: Well, go ahead and take your time
10 and look at it. She said she hasn't had time to
11 look at it.

12 MS. CAMPBELL: If I can approach. I just have
13 never seen it.

14 (Attorneys conferred.)

15 BY MR. FEDOR:

16 Q Brett, have you ever failed to pay any debt that
17 you owed?

18 A No, I have not.

19 Q Have you ever what they call stiffed anybody to
20 beat him out of money?

21 A No, I have not.

22 Q Now, Lanny Gunter testified that he would be
23 willing to wipe the slate clean of any money you
24 owed him if you asked him, isn't that true?

25 A He said that, but I couldn't allow him to do that.

1 There is no way. I couldn't live with myself not
2 at least paying him something. That would be
3 crazy, I mean, out of that. I couldn't -- I mean,
4 he said he would do it, yeah. He's a good
5 friend -- or was.

6 Q But up until the time you were arrested, you were
7 paying him 5- to \$10,000 every few weeks?

8 A Oh, yeah.

9 Q On your debt, were you not?

10 A Yes, I was. Yes.

11 Q And you had paid him over \$100,000 last year, did
12 you not?

13 A Right, estimate \$100,000. That was verified by
14 Mr. Benenhaley, yes. So I wasn't stiffing him. I
15 was paying him.

16 Q Now, this was your conversation while you were in
17 the jail that was recorded by the Sheriff's
18 Department about your conversation with your
19 daughter, **B.P.** is that correct, sir?

20 A Yeah, if that's what -- okay.

21 Q Did you know this was being recorded?

22 A Oh, yeah, I mean, I knew that. I mean, yeah, they
23 record every call that goes out.

24 Q All right.

25 A Every call.

1 MR. FEDOR: We introduce this, Your Honor.

2 THE COURT: All right. Will you let the State
3 see a copy?

4 MS. CAMPBELL: Your Honor, that's great.

5 THE COURT: And that will be Defendant's
6 Number?

7 THE COURT REPORTER: Four.

8 THE COURT: Four. Any objection?

9 MS. CAMPBELL: None.

10 THE COURT: It will be entered without
11 objection.

12 (WHEREUPON, Defendant's Exhibit No. 4
13 was marked for identification and
14 received into evidence.)

15 BY MR. FEDOR:

16 Q Now, the so-called counseling sessions given to
17 your son and your daughter were recorded because
18 you took them down there, did you not, sir?

19 A I did. I took B.P. and Z.P. the day I was
20 supposed to take them.

21 MR. FEDOR: And, Your Honor, at this time we
22 move to introduce the tapes that were made of those
23 two interviews.

24 THE COURT: Do you have them?

25 MR. FEDOR: We will ask the Solicitor to

1 produce those so we might show the jury.

2 THE COURT: You do not have a copy of them?

3 MS. CAMPBELL: Yes, he does.

4 MR. FEDOR: I don't know where it is now, but
5 I will ask as an officer of the court that she give
6 us the copy. They have the material here to play
7 it on.

8 MS. CAMPBELL: Your Honor, we have no
9 objection to the B.P. tape coming in. The Z.P.
10 tape, I believe, is not relevant to any of the
11 procedures in this case. And we object to that.

12 THE COURT: All right. And your objection is
13 as to the?

14 MS. CAMPBELL: Relevance of the Z.P.
15 interview. I don't know how it would be relevant
16 or add anything.

17 THE COURT: What about the daughter?

18 MS. CAMPBELL: The first one we have no
19 problem with. We would like to offer it ourselves.

20 MR. FEDOR: It is admissible to show whether
21 this was a counseling interview or interrogation of
22 a five-year-old child, and I think it's certainly
23 relevant in this case.

24 THE COURT: All right. Let me see you all.

25 (WHEREUPON, a bench conference was held

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

3 MR. FEDOR: Your Honor, we withdraw the motion
4 to introduce those into evidence.

5 THE COURT: All right. Yes, sir. Next
6 question.

7 BY MR. FEDOR:

8 Q Brett, did you see the interviews of your two
9 children?

10 A I did not.

11 Q But you know they were taken, don't you?

12 A I knew they were taken, and I couldn't stomach
13 seeing it.

14 Q What was the reaction to your son, [ZP] when you
15 picked him up to take him home?

16 A He was upset. He was upset.

17 Q How so?

18 A Just crying, wanted to -- ready to leave. And
19 just -- I mean -- but, there again, I didn't know
20 what had taken place in the room. I still didn't
21 know.

22 Q There has been testimony, in fact, questions by the
23 prosecutor that you were coming into \$1 million if
24 your wife died. Did you hear that question, sir?

25 A In this courtroom?

1 Q Yes.

2 A I have heard it a lot.

3 Q Did you hear the testimony of Brad Spehl and
4 Sojourner, the lawyer, saying that everything that
5 was coming to you was already signed over to your
6 children?

7 A Yes, because that is what I wanted.

8 Q You have been in and out of debt all your life.
9 Would you kill your wife for that?

10 A No. That's ridiculous. It's ridiculous.

11 Q The year before Capnerhurst died, that you killed
12 him in self-defense, how much money had you paid
13 him that year? Do you have any idea?

14 A Yes. On that sheet that we have, it was 13,000 --
15 \$13,500. I know \$500 of that was a Christmas bonus
16 I gave him every year at Christmastime.

17 Q And you were still going to pay him the money you
18 collected from the debts you had --

19 A Right.

20 Q -- that hadn't been paid to you yet?

21 A Exactly.

22 Q Is that correct?

23 A Exactly. Exactly.

24 Q And you heard the testimony that has been put into
25 this case that Capnerhurst was found with a

1 .38-millimeter Smith & Wesson in his left hand, did
2 you not?

3 A The 9-millimeter?

4 Q The 9-millimeter.

5 A Yes, I have heard that. Yes.

6 Q And you also heard the testimony about the
7 gunpowder residue of great amount on his left hand?

8 A Right. From what I have heard, he had more than
9 anybody.

10 Q And you also heard, did you not, sir, that the
11 pistol was taken out of his hands by two police
12 officers?

13 A Yes.

14 Q One that shook his arm three times?

15 A Yes, three shakes to get it out.

16 Q And I ask you once again: Did you ever put a
17 pistol in Capnerhurst's hand?

18 A No.

19 Q And to this moment when I'm asking you questions,
20 have you ever heard or found out from law
21 enforcement and their prosecutors who fired the
22 pistol that killed your wife?

23 A No, they have not said that. But it is proof from
24 all the evidence that Bryan pulled the trigger.

25 MR. FEDOR: Court's indulgence, Your Honor.

1 THE COURT: Yes, sir.

2 (Pause.)

3 BY MR. FEDOR:

4 Q Bryan Capnerhurst had a pistol when he walked you
5 up the stairs, did he not?

6 A When I came up the stairs, he had a pistol on me,
7 yes.

8 Q What was the look on his face then, sir?

9 A Just had a glazed look in his eyes, just real -- I
10 don't know. I've never seen him look like that,
11 just a crazy look.

12 Q And did you hear his friend from North Carolina say
13 he was obsessed to get the money that day?

14 A Yes, I heard that from him.

15 Q And did you hear the evidence that came in that
16 they were talking -- Capnerhurst and his wife --
17 about 80- to \$100,000 they thought you had in that
18 safe?

19 A Yes, I heard that.

20 Q Thank you, sir.

21 MR. FEDOR: No further questions.

22 THE COURT: Yes, ma'am.

23 **RECROSS-EXAMINATION**

24 BY MS. CAMPBELL:

25 Q You just testified and he asked you about that you

1 don't deny to this jury about your gambling and
2 your gambling debts?

3 A No, I don't.

4 Q You never told the police about it?

5 A I think it came up pretty quick.

6 Q They found it. You never told them.

7 A Like I told you, I wasn't asked about my gambling
8 debt the day this happened. I was told to tell
9 what happened in that house, which is what I did.

10 Q Your lawyer just asked if you were forthcoming to
11 this jury about your gambling debt. You were never
12 forthcoming about your gambling debt to the police?

13 A It came out, yes. But they didn't ask me that the
14 first day, Ms. Campbell. They asked me what
15 happened in that house. They didn't ask me about
16 gambling or anything else, so . . .

17 Q You don't remembering them asking about gambling?

18 A I told them I was a bookie right away, yes, I did.

19 Q Then the next question he asked you about was you
20 always paid your debts. You've never welshed on
21 any debt, is that correct?

22 A No, I haven't. I mean, this point right here, you
23 know, I owe some people, yes.

24 Q You never paid any more debt to Lanny Gunter, Harry
25 Benenhaley, Britt Jordan after the day this

1 happened?

2 A No, I didn't. I didn't.

3 Q Did you even pay for your wife's funeral?

4 A Her --

5 Q Her funeral?

6 A Yeah, her --

7 Q Did you even pay for your wife's funeral?

8 A I'm trying to answer it. Her insurance paid for
9 it.

10 Q Didn't you go asking for money because you didn't
11 have any money to even pay for your wife's funeral?

12 A Go asking for money to pay for --

13 Q From Brad Spehl.

14 A Go ask him for it? I asked -- no, because the
15 funeral home asked me to give this to the insurance
16 company, to fax it over to them. No, I didn't go
17 ask Brad Spehl for money to pay for my wife's
18 funeral.

19 MS. CAMPBELL: I don't have anything further.

20 MR. FEDOR: One further question, Your Honor.

21 THE COURT: No.

22 MR. FEDOR: I'm sorry?

23 THE COURT: That's all. All right. Let me
24 see y'all one second.

25 (WHEREUPON, a bench conference was held

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

3 THE COURT: All right. Ladies and gentlemen
4 of the jury, there is a matter of law that I need
5 to take up. So I'm going to send you all out of
6 the courtroom, and then we'll have you back in
7 shortly.

8 (WHEREUPON, the jury retires to the jury
9 room at 3:10 p.m.)

10 MR. WHITLARK: May it please the Court? Just
11 for clarification on the record, Your Honor, that
12 we're not -- that the lawyers, the attorneys for
13 Jack Parker, would have to take the stand. Is that
14 what the ruling is, Your Honor?

15 THE COURT: For clarification on the record,
16 he can't testify as to what his parents' attorney
17 advised him because that would get into
18 attorney-client privilege.

19 MR. WHITLARK: Right. Okay.

20 THE COURT: He wasn't there. Mr. Fedor, I
21 don't think was there. And I think the only way
22 that -- well, and I don't even know if that was --

23 MR. WHITLARK: The answer got in. The answer
24 was he was.

25 THE COURT: No, I don't think the answer got

1 in.

2 MR. WHITLARK: I think about Jack was
3 indicted.

4 THE COURT: No, I don't think the answer got
5 in.

6 MR. WHITLARK: That your dad was indicted?

7 THE WITNESS: Yes.

8 THE COURT: I don't recall.

9 THE WITNESS: It was asked.

10 MR. WHITLARK: Was that asked?

11 THE WITNESS: It was.

12 MR. WHITLARK: Okay.

13 THE WITNESS: It was.

14 MR. WHITLARK: All right. That's all we have.

15 THE COURT: I think if you want to call them
16 and have them invoke it, I think that they can do
17 that.

18 MS. CAMPBELL: Your Honor, there is case law
19 on point that you cannot make either a witness or
20 someone representing a witness invoke in front of
21 the jury. That is pretty -- State v. Braddock,
22 Your Honor, and I'll get the other cases.

23 THE COURT: Well, the instruction that we give
24 says that at any point there is a question that you
25 wish to ask -- that you do not wish to answer, that

1 you can invoke at that point in time.

2 MR. WHITLARK: I think it's a violation of the
3 privilege anyway.

4 MS. CAMPBELL: Your Honor, I think there is
5 case law that you cannot put a witness on the stand
6 solely to invoke, either the witness himself or
7 someone --

8 THE COURT: You said solely to invoke?

9 MS. CAMPBELL: To invoke. And that's all they
10 are doing here is to invoke. Because usually it's
11 the State that wishes to actually put the witness
12 on the stand to invoke in front of the jury to
13 infer that there is something they're hiding.
14 There is case law on that. And if you will give me
15 five minutes, I will be glad to get you those
16 cases.

17 MR. WHITLARK: There is no need for that. I
18 just want to make sure for purposes of the record
19 it that was asked and answered, that both he and
20 his father were indicted in federal gambling
21 charges.

22 THE COURT: I will have to have Ms. McCurdy go
23 back and look because I don't --

24 MR. WHITLARK: I think it was.

25 THE WITNESS: It was.

1 MR. WHITLARK: They did. All right. Debbie
2 just said it did. We've got it in the record.
3 Thank you, Your Honor.

4 THE COURT: All right, you can step down.
5 (Witness steps down.)

6 THE COURT: Ms. Campbell, which case says that
7 the lawyer cannot be called?

8 MS. CAMPBELL: I am looking at State vs.
9 Braddock, which is -- the lawyer -- it says the
10 witness cannot be called, which is the same effect,
11 they are just trying to back-end it, Your Honor.
12 It says, no one can be called to invoke in front of
13 the jury. State vs. Braddock is 548 S.E.2d 210,
14 Your Honor. And there are some more charges -- if
15 you will give me a minute, Your Honor, I'll get
16 other cases.

17 (Pause.)

18 THE COURT: We are discussing scheduling up
19 here, just in case you are wondering. I'm going to
20 ask Mr. Fedor to call his next witness.

21 MR. FEDOR: We have no more witnesses, Your
22 Honor. We close.

23 THE COURT: All right. And I will let you do
24 that in front of the jury once they come back in,
25 okay? But for purposes of not trying to bring them

1 back in and then send them right back out, any
2 motions from the Defense?

3 MR. WHITLARK: Yes, Your Honor. We make a
4 motion -- renew our motion for a directed verdict
5 in this case, Your Honor, based upon the grounds
6 previously stated. That would be the sufficiency
7 of the evidence. As a matter of fact, on each one
8 of the elements required under murder, the State
9 has failed to produce evidence sufficient to
10 convict beyond a reasonable doubt with malice --
11 killing a human being with malice aforethought.
12 And we would ask for a directed verdict on that.
13 And on the Castle Doctrine. And the self-defense,
14 we would ask for a directed verdict on that. And
15 on our Fourth Amendment violations, Your Honor,
16 that they had no warrant on the 14th of April.
17 There was no new warrants on any of the items of
18 evidence seized that day of the fruit of the
19 poisonous tree, and ask the Court to dismiss it on
20 that basis.

21 And also his voluntary state of mind on the --
22 when they took his statement on the 13th of April
23 was a violation of his Fourth Amendment rights.
24 And we ask the Court to dismiss on that basis.

25 One second, please, Your Honor.

1 (Pause.)

2 MR. WHITLARK: Sufficiency of the evidence
3 would be our main thrust, though, Your Honor.
4 There was insufficient evidence under the elements
5 that are required under South Carolina law to prove
6 this case beyond a reasonable doubt, and we would
7 ask for a dismissal on that basis.

8 Thank you, Your Honor.

9 THE COURT: All right. And those are the four
10 that you previously stated for the record?

11 MR. WHITLARK: Yes, Your Honor, they are.

12 THE COURT: All right.

13 MR. WHITLARK: And also, which I don't know,
14 it is a novel issue under this Castle Doctrine, of
15 course, but we will let them figure it out
16 upstairs, but I would say that we have proven -- we
17 have enough evidence by a preponderance of the
18 evidence to show that the killing was done in
19 self-defense.

20 Thank you, Your Honor.

21 THE COURT: All right. And as to the issue
22 regarding the -- the Fourth Amendment issue, the
23 motion to suppress was made, as I stated before, at
24 the appropriate time by Defense attorney. At the
25 beginning of trial a motion to suppress was made.

1 The Defendant's motion was denied at that time
2 based on my review of the log-in sheet. And I
3 don't have the exact exhibit number before me.

4 MR. WHITLARK: Defense Exhibit 1, Your Honor.

5 THE COURT: Defendant's Exhibit 1. For that
6 reason, the Defendant's motion is denied as to that
7 issue.

8 As to -- I think the next one was that the
9 Defendant lacked mental capacity to give a
10 statement.

11 There is no evidence to support that. And
12 there has not been any evidence supported --
13 evidence given by the Defense to support that.

14 For that reason, I deny that motion.

15 As to the Castle Doctrine, my ruling will
16 remain the same as to that, as to relying on State
17 v. Duncan, and in a pretrial determination as cited
18 in that case.

19 Also, even if it is not necessary -- even if
20 you can't consider it at this point in a trial, in
21 looking at 16-11-440, even from the Defendant's
22 testimony, Mr. Capnerhurst was invited to the
23 house, let in the house, told to go upstairs.

24 And also, based on the Defendant's testimony
25 today, he also indicated that he was coming there

1 to settle a gambling debt.

2 For those reasons, the Defendant's motion is
3 denied as to 16-11-440.

4 As to the sufficiency of evidence, for
5 purposes of a motion for directed verdict, I
6 respectfully deny the Defendant's motion.

7 There has been sufficient evidence and
8 evidence -- and issues of fact that has been
9 presented to the trier of fact.

10 And for those reasons, I will deny the motion.

11 As to --

12 MR. WHITLARK: Excuse me -- I'm sorry, Your
13 Honor. I'm sorry to interrupt you. I just wanted
14 to add one more thing, just to protect the record.

15 THE COURT: Okay.

16 MR. WHITLARK: When you are done, Your Honor.
17 If you want me to go now, I will.

18 THE COURT: Give me one second.

19 MR. WHITLARK: Yes, ma'am.

20 THE COURT: All right. As to self-defense, in
21 reading State v. Long, which talks about a directed
22 verdict in a self-defense, because I think you are
23 claiming Castle and also self-defense, is what you
24 just stated.

25 MR. WHITLARK: Yes, Your Honor.

1 THE COURT: All right. Whether the
2 Defendant -- based on the testimony that has been
3 given here today and over the course of the last
4 three weeks, I do find that it is an issue of fact
5 that has to go to the jury on the self-defense
6 claim, and therefore it is a question of belief,
7 and it is a question for the jury to decide.

8 For that reason, I will deny the Defendant's
9 motion for a directed verdict as to its
10 self-defense claim.

11 MR. WHITLARK: Yes, Your Honor. And if I may,
12 with the Court's permission, add one more --

13 THE COURT: Yes, sir, please do.

14 MR. WHITLARK: -- exception just for
15 specification and clarification for the record, is
16 that under State v. Edwards we made a motion to
17 dismiss the case, because it is a circumstantial
18 evidence case and all the circumstances say we have
19 to have evidence supporting beyond a reasonable
20 doubt in a case. And so -- that is 379 S.E.2d 888.
21 That each one of the circumstances must point
22 conclusively to the Defendant's guilt to the
23 exclusion of every other reasonable hypothesis,
24 Your Honor. We would ask for a dismissal on that
25 basis.

1 MS. CAMPBELL: That is incorrect law, Your
2 Honor. I believe Grippon is the more current law
3 as far as circumstantial evidence.

4 THE COURT: All right.

5 MR. WHITLARK: You have our motion, Your
6 Honor. Thank you.

7 THE COURT: Yes, sir. And I believe that was
8 one of the ones we heard earlier after the State's
9 case. And I will deny that motion for the same
10 reason.

11 And the case law says that the judge has a
12 duty to submit the case to the jury should there be
13 any substantial evidence which reasonably tends to
14 prove the guilt of the accused or for which his
15 guilt may be fairly and logically deduced.

16 I find that the State has presented
17 substantial evidence, although it may be
18 circumstantial, but substantial evidence has been
19 presented.

20 And for that reason, I will deny the
21 Defendant's motion for directed verdict as to the
22 circumstantial evidence.

23 All right.

24 MR. WHITLARK: Thank you, Your Honor.

25 THE COURT: All right. And you all need to

1 rest in front of the jury.

2 Is the State prepared to call anyone on reply?

3 MS. WALKER: Yes, ma'am, we are.

4 THE COURT: On rebuttal, I should say.

5 Are y'all prepared to go forward now?

6 MS. WALKER: Yes, ma'am, we are.

7 THE COURT: Are we ready to going them back
8 in?

9 MR. FEDOR: Yes, Your Honor.

10 THE COURT: You can bring them in.

11 (WHEREUPON, the jury came into open
12 court at 3:30 p.m.)

13 THE BAILIFF: The jury is present, Your Honor.

14 THE COURT: All right. Yes, sir, Mr. Fedor,
15 call your next witness.

16 MR. FEDOR: The Defense rests, Your Honor.

17 THE COURT: All right. Thank you, Mr. Fedor.

18 All right. And does the State have anything
19 on rebuttal?

20 MS. SIMPSON: We do, Your Honor.

21 THE COURT: All right. Are you prepared to
22 call your witness?

23 MS. SIMPSON: Yes, Your Honor.

24 THE COURT: Call your next witness.

25 MS. SIMPSON: The State calls Allison Foster.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, raise your right, and face the clerk.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you are about to give in this case will
7 be the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 THE WITNESS: I do.

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

11 (Witness complies.)

12 THE CLERK: State your name for the record,
13 please.

14 THE WITNESS: My name is Allison Marie Foster.

15 ALLISON MARIE FOSTER,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SIMPSON:

19 Q Ms. Foster, where are you employed?

20 A I'm employed at the ARC, the Assessment and
21 Resource Center here in Columbia. It is a
22 children's advocacy center.

23 Q And what is your position with the ARC?

24 A For 17 years I was the program director there.
25 Recently I have moved into a half-time position,

1 and my title is chief psychologist.

2 Q And, again, what exactly is the Assessment Resource
3 Center? Like, what services do you all provide?

4 A Sure. The Assessment and Resource Center -- we
5 call it the ARC -- is a children's advocacy center.
6 That is a national term of accreditation. And what
7 that means is we meet federal standards. And we
8 are something of a, kind of a one-stop shop towards
9 children when child abuse is suspected, primarily,
10 that is the most common referral to the ARC is when
11 there is a suspicion of serious child abuse, like
12 child sexual abuse or child physical abuse. They
13 will be referred to the ARC by law enforcement or
14 by Child Protective Services or by the Family
15 Court.

16 But, also, we will take referrals when
17 children may have been witnesses to violent crimes,
18 may be witnesses to a homicide, or domestic
19 violence, or they have been a crime victim, in
20 other words, they have been impacted by a crime.

21 What we do there is we provide a range of
22 services. One service we provide is what is called
23 a forensic interview of the child. And that is to
24 serve a few different purposes, but it is a way of
25 conducting an interview of the child, but we are

1 very careful not to lead or suggest information and
2 we're just gathering information from the
3 perspective of the child.

4 Also on our team is a medical doctor.
5 Children may receive a medical exam at the ARC.

6 We have a victim advocate who assists in
7 linking families to resources.

8 And we used to provide therapy services.
9 Those services got cut. So now what we do is we
10 make sure to provide referrals to families so that
11 children get the services they need in the
12 community.

13 Q Can you tell the jury just a little bit about your
14 educational background and training?

15 A Sure. I went to college at Emory University in
16 Atlanta. And that was from 1984 to 1988. And then
17 I worked for a year in a residential treatment
18 facility for adolescents in Atlanta.

19 Then I moved to Columbia where I entered the
20 Ph.D. program in clinical psychology in 1989. I
21 graduated with a Ph.D. in clinical psychology in
22 the spring of 1996.

23 As part of my education, I had to do a year's
24 internship. I did that here in town at William S.
25 Hall Psychiatric Institute. And part of that

1 training year included working at the ARC.

2 So, after I finished my internship, I actually
3 was offered the position as the program director.
4 So I started my work there in the fall of 1995.

5 And so since finishing my doctoral education,
6 I just continue every year to get continuing
7 education in issues around child abuse and just
8 related issues to the work that I do.

9 Q And in your training, and still currently, I guess,
10 part-time, do you actually conduct forensic
11 interviews?

12 A Yes, I do.

13 Q How many forensic interviews would you say you have
14 conducted over your career?

15 A More than 1200, and probably fewer than 1500.

16 Q All right. Can you tell the jury exactly what a
17 forensic interview is and how that differs from,
18 say, a regular interview or --

19 A Sure.

20 Q -- interrogation?

21 A Oh, it is an interrogation?

22 Q How it differs?

23 A Oh. Well, it differs. It is sort of the opposite
24 of an interrogation. The whole purpose of learning
25 how to conduct a forensic interview of a child,

1 which I have sort of quickly mentioned, is to
2 ensure that we ask questions in a way that is not
3 leading and it is not suggestive, because what we
4 want to do is gather information and we want to
5 find out about a wide range of information from the
6 child relative to the child's age.

7 And as you might imagine, we can collect a
8 wider range of information from an adolescent as
9 compared to preschool-aged child.

10 So the purpose is to ensure that we're
11 collecting information but not altering how a child
12 views something or what a child might have as a
13 memory or something they want to say.

14 Q And do you all have I guess a protocol or something
15 that you use with respect to conducting the actual
16 forensic interviews?

17 A We do. There are national guidelines that instruct
18 us on what would be called evidence-based
19 practices, or, in other words, practices that we
20 know are acceptable to collecting information from
21 children.

22 And we at the ARC particularly use a method
23 that is known as the Child -- excuse me, the
24 CornerHouse Forensic Interview Model, sometimes it
25 is referred to by its acronym, which is RATAC, and

1 that just describes the stages that an interview
2 might include. But it is a flexible -- sort of
3 flexible guidelines. In order to learn this
4 protocol you attend a 5-day 40-hour training
5 course.

6 Q Okay. And what exactly are the stages of the RATAC
7 protocol?

8 A It does differ depending on the referral. So if,
9 for example, it was a sort of a typical child abuse
10 referral, the stages would include rapport, which
11 is the first stage, which is sort of getting
12 comfortable and getting familiar with the child.

13 It would move maybe into a stage where it is
14 called anatomy identification, where a child would
15 identify what their words are for body parts.

16 And then we would ask children about different
17 kind of touches, a wide range of touches, just to
18 see how they communicate about the way they are
19 touched and cared for.

20 And from that communication we might find out
21 about information that leads into an abuse
22 disclosure. That is the second A in RATAC.

23 And then C is closure.

24 We have modifications for that protocol for
25 when we are interviewing a child who is being

1 referred in for something like an eyewitness case
2 or a case where they are impacted by a crime.

3 So we are not -- we don't go like by a set
4 script.

5 Q And most of your cases, or a fair amount, are sex
6 abuse or child abuse type cases?

7 A That's right.

8 Q And do you work with other agencies?

9 A We do.

10 Q What all agencies does the ARC work together with?

11 A Well, we work with -- our Multidisciplinary Team,
12 our core team includes our local law enforcement
13 agencies. That includes the Richland County
14 Sheriff's Department, the City of Columbia Police,
15 Irmo and Forest Acres, the Richland County
16 Department of Social Services, the Solicitor's
17 Office. But also our community partners provide
18 therapy, so Post Trauma Resources is a counseling
19 group in town that we partner with. Sexual Trauma
20 Services.

21 So we have community partners for carrying on
22 the mission. After we do our piece, we are
23 referring out to others to carry on the mission.

24 Q And at one time you all actually had some of the
25 counseling services and therapy available within

1 the ARC, correct?

2 A That's correct.

3 Q But funding and issues, that is no longer the case?

4 A That's correct.

5 Q But you work closely in counseling, like you said,
6 the second step, or third or fourth, whatever it
7 may be, in the process is an important part?

8 A Oh, absolutely. Without question.

9 Q Did you actually have the occasion to conduct an
10 interview of B.P. [REDACTED] in this case?

11 A I did.

12 Q When was that interview?

13 A April 19th, 2012.

14 Q So the 19th. How was she referred to you?

15 A She was referred I believe by the Richland County
16 Sheriff's Department. I was going to look up the
17 specific date. But she was referred -- excuse
18 me -- it looks like she may have been referred on
19 the same day that I did -- conducted the interview.
20 I think this all happened rather quickly.

21 Q Okay. And what was she referred to you for? What
22 information did you have available to you at the
23 time of her referral?

24 A What was available to me was knowing that there was
25 a homicide, or a shooting death of two individuals

1 in her home. She had lost her mother as a result.
2 And it was very early in the investigation, so
3 there were just a lot of questions.

4 And the referral was to interview B.P., find
5 out about her, how she was doing, what she could
6 provide, just in terms of helping understand the
7 dynamics in her household, what she could tell
8 about the relationships between people, like
9 Mr. Capnerhurst and her father and her mother.

10 But it was also a time for sort of debriefing,
11 assessing her state of mind and her needs in that
12 sort of acute state of loss and grief so that we
13 could make a referral for appropriate services for
14 her.

15 Q Are the interviews that you do recorded in some
16 way?

17 A Yes.

18 Q All of the interviews?

19 A All of the interviews.

20 Q Can you tell the jury about that?

21 A Yes.

22 MR. WHITLARK: Objection. Your Honor, I am
23 objecting to this. This isn't proper
24 re-examination of a witness on any issue that has
25 been raised. And I am objecting on relevance

1 grounds.

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

3 MS. SIMPSON: If I may? With respect to the
4 Defendant's testimony that just went up, I believe
5 there was extensive testimony about the Assessment
6 Resource Center and how the police misrepresented
7 to him and how they were awful because they sent
8 his kids, his children to this interrogation, and
9 that we shouldn't have done that. The police
10 misconduct to this awful -- I don't even know how
11 many times he actually said the word interrogation.
12 I'm only offering this -- and I'm not sure exactly
13 of counsel's objection, but the videotape we will
14 only offer for ID purposes, but as far as
15 Ms. Foster's testimony, it is absolutely relevant
16 and appropriate in this case.

17 MR. WHITLARK: Your Honor, there is nothing to
18 this responding to it. I mean, it is irrelevant.
19 And we have already visited this issue one time in
20 front of the Court. As far as any of these tapes
21 go and --

22 MS. SIMPSON: Only ID, Your Honor.

23 MR. WHITLARK: It is irrelevant, Your Honor.

24 THE COURT: All right, she is offering it for
25 identification purposes. The objection is

1 overruled. I believe there was an extensive amount
2 of testimony given by the Defendant as to the way
3 they conducted their interview, if it was an
4 interrogation, and how his children were treated at
5 the interview.

6 MR. FEDOR: Your Honor, might I entertain this
7 with Your Honor? That is why we want both tapes in
8 of both children, and they have opened the door to
9 it, and we think they are both allowed to be shown.

10 THE COURT: All right. Well, she is only
11 trying to introduce that one, so I can't really
12 deal with the issue -- she is only presenting it
13 for identification purposes. She hasn't tried to
14 introduce it yet.

15 MS. SIMPSON: Correct, Your Honor. As far as
16 introducing video, we are not trying to do that.

17 THE COURT: The objection is overruled.

18 MS. SIMPSON: Thank you, Your Honor.

19 BY MS. SIMPSON:

20 Q Again, tell the jury about the recording process at
21 the ARC.

22 A Okay. Since 2000 we have had a policy at the ARC
23 that we video record all of the forensic interviews
24 that are conducted. The only change that has
25 happened is moving from VHS tapes to DVDs. So

1 there is a camera in every interview room. There
2 is a microphone in every interview room. And that
3 is explained to the child in child-appropriate
4 terms so they understand that they are being
5 recorded.

6 Q So every child knows that there will be a video or
7 that they are being recorded?

8 A About the only exception to that would be 3-year-
9 olds because it is just an overwhelming amount of
10 information and it is hard for them to understand.
11 We may try, but that would be about the only
12 exception to that rule.

13 Q And I am going to show you what has been marked as
14 State's Exhibit 543 for identification purposes
15 only. Do you recognize that?

16 A I do.

17 Q What is it?

18 A It is the -- it would be a copy of my interview
19 with **B.P. [REDACTED]** on April 19th, 2012.

20 Q And tell us about the facility that you work in and
21 where these interviews are conducted.

22 A Sure. We are a program of the South Carolina
23 Department of Mental Health, and we are located on
24 that Bull Street and Elmwood Avenue, that old State
25 Hospital campus. We are in a building that was

1 built in the 60s. It is a child-friendly facility
2 with a bright blue waiting room full of toys and
3 comfortable furniture. We have a child life
4 specialist on hand, who is somebody specially
5 trained to monitor the children along with the
6 victim advocate when we are talking to the parents.

7 Each of our interview rooms is set up for the
8 child's comfort. We have flip chart paper and
9 markers and comfortable seating. No toys usually
10 are in the interview room because it is not -- we
11 don't want to invite fantasy, we want it to be a
12 conversational place. But it is still
13 child-friendly.

14 I could say more, but that kind of gives you
15 an idea.

16 Q And you actually conducted the interview yourself
17 of B.P. [REDACTED]?

18 A I did.

19 Q And what -- I guess, how was that interview
20 conducted?

21 A I would call it a slow and careful interview. I
22 knew that this was a child who had just loss her
23 mother, and so I felt -- I knew the funeral had
24 just happened, I knew she had just gone back to
25 school. There was a lot of very recent acute

1 events, and so I wanted to make sure that I took my
2 time. And I was very careful and I was tracking
3 her mental status and her emotional state. So I
4 would call it slow and careful.

5 Q And as part of that slow and careful process, do
6 you ask her questions about her school and how she
7 is doing, her family, things of that nature?

8 A Absolutely.

9 Q Do you also ask her questions about what happened?

10 A Yes.

11 Q And is that the sole focus of the interview? Or
12 what is your purpose in the interview?

13 A No, it is not the sole purpose. It is a focus.
14 She lived in that home. She was referred to be
15 interviewed by law enforcement because they are
16 trying to figure out what happened and why. So it
17 is certainly a focus to find out what did she know
18 about Mr. Capnerhurst, what does she know about the
19 relationships of these individuals, what can she
20 tell me about the house. So there is a component.

21 But it is also about her sleep, her appetite,
22 her thinking, what has she heard, how are the
23 rumors affecting her, what are her needs.

24 So I spent a lot of time learning about her
25 interests, her family life, her relationship with

1 her mother. I wanted to think about what her needs
2 were going to be in terms of the loss of her
3 mother.

4 We talked about whether they would be
5 returning to the house or not and what that might
6 be like for her, whether they did or didn't.

7 We talked about coping mechanisms. We talked
8 about stages of grief. And I gave her suggestions.

9 Q And in that interview, did you address some
10 questions regarding guns located in the home and
11 what she knew about those guns?

12 A Yes. I did.

13 Q And are you familiar with I guess what B.P. has
14 actually said in her interview, or would her
15 transcript assist you?

16 A I only very -- I was told today that I was going to
17 be called to testify, and I saw a quick news
18 summary like an online news bulletin, and that is
19 it. So I don't know the -- I don't know her
20 testimony other than that.

21 Q And from the interview you actually conducted,
22 would it actually assist you to have a transcript
23 of that interview?

24 A Oh. Yes. I have been provided with a transcript.

25 Q Oh, great. If you could, turn to Page 48.

1 MR. WHITLARK: Your Honor, I object again.
2 They are trying to introduce what is not proper
3 rebuttal in this case. This is not a rebuttal to
4 anything. This doesn't have anything to do with
5 whether it was interrogation or not. We are
6 just -- I mean --

7 THE COURT: I don't know what the question is.

8 MR. WHITLARK: Well, I don't either. That is
9 the reason I'm objecting. I mean, this --

10 MS. SIMPSON: And, Your Honor, in addition to
11 the Defendant's testimony, which I know that is
12 what counsel may be focused on, because that is
13 what we heard today, B.P. herself took the
14 stand, and her testimony differs substantially from
15 what actually occurred in that interview.

16 So I think we are permitted to offer testimony
17 on that point as well.

18 MR. WHITLARK: Your Honor, I object to it.
19 They know that ARC interviews are not admissible,
20 either one of them. But if they want to put both
21 of these interviews in, we will go ahead and move
22 to put both of them in, put both tapes in, right
23 now. Go ahead.

24 THE COURT: She is not putting the tape in,
25 are you?

1 MS. SIMPSON: No, Your Honor. I am just
2 addressing, and very limited, the statements that
3 we would need to offer and provide evidence for.

4 MR. WHITLARK: Your Honor, may we approach the
5 bench, Your Honor?

6 THE COURT: Yes.

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

10 THE COURT: Ladies and gentlemen of the jury,
11 there is a matter of law I need to take up outside
12 of your presence. I am going to send you all out
13 for a short second.

14 (WHEREUPON, the jury retires to the jury
15 room at 3:51 p.m.)

16 THE COURT: All right. Now, I guess we first
17 need to -- what is the question that you are trying
18 to ask her?

19 MS. SIMPSON: Basically, Your Honor, B.P.
20 [REDACTED] testified in the Defendant's case regarding
21 having seen Bryan with a gun, the discussion about
22 the gun, things of that nature.

23 Well, her transcript from the ARC interview --
24 the ARC interview itself, that her testimony is
25 contradictory to the testimony that was provided to

1 Ms. Foster within a week after this incident.

2 I think we are allowed to put up testimony on
3 this point.

4 Additionally, Your Honor, generally with a
5 witness we would have probably cross-examined more,
6 but, of course, you know B.P. [REDACTED]'s condition
7 on the stand as well. Ms. Foster is the better
8 witness to provide this information. And basically
9 she has inconsistent statements that this testimony
10 is proper for reply. I'm not introducing the ARC
11 interview or even the complete transcript, none of
12 the videos, things of that nature, which the
13 Defense themselves tried to offer, or wanted to
14 offer. So --

15 THE COURT: I understand. So what you are
16 trying to do is question her about the interview
17 and the statement that she gave in the interview in
18 rebuttal to her testimony?

19 MS. SIMPSON: Correct.

20 THE COURT: The only reason I ask -- and I
21 have my law clerk looking it up -- there is a case
22 that came out about ARC interviews, like in the
23 last month or two. And I need to take a look at
24 that first. If you are trying to get it in. But
25 if y'all are not trying to introduce the interview

1 or the transcript into evidence?

2 MS. SIMPSON: No, Your Honor. We are
3 essentially going under South Carolina Rules of
4 Evidence 613(b) with extrinsic evidence of a prior
5 inconsistent statement of a witness.

6 MR. WHITLARK: May it please the Court, Your
7 Honor?

8 THE COURT: Yes, sir. I'll allow you to be
9 heard.

10 MR. WHITLARK: Yes. Your Honor, this
11 specifically -- these ARC interviews are not
12 admissible in court, Your Honor.

13 MS. SIMPSON: We are not offering them.

14 MR. WHITLARK: And for them to try to do this
15 now -- we are in the last day of this trial -- is
16 going to foul this record. Your Honor --

17 THE COURT: All right. Well --

18 MR. WHITLARK: They are specifically not
19 admissible, Your Honor.

20 THE COURT: Just give me a second. I am going
21 to look at the case and see what it says.

22 (Pause.)

23 THE COURT: Back on the record. Ms. Simpson,
24 you cited 613(b), is that correct?

25 MS. SIMPSON: Yes, Your Honor.

1 THE COURT: And that is, reading 613(b), that
2 applies to bringing in an inconsistent statement of
3 the witness.

4 MS. SIMPSON: Correct.

5 THE COURT: Which would be -- if she had given
6 an inconsistent statement, then she would be able
7 to -- it says: The substance -- unless the witness
8 is advised of the substance of the statement -- and
9 the witness has to be given opportunity to explain
10 or deny.

11 So it is your position that you can bring it
12 in under this witness and it doesn't have to be
13 brought in under the witness that you are trying
14 to --

15 MS. SIMPSON: Correct. The proper foundation
16 was laid through B.P. [REDACTED], who denied making
17 the statement, so at this point essentially --

18 THE COURT: So if the witness does not admit
19 that she has made the prior inconsistent statement,
20 then extrinsic evidence could be brought in?

21 MS. SIMPSON: Correct.

22 THE COURT: Under 613(b)?

23 MS. SIMPSON: Yes, ma'am.

24 THE COURT: And it says: If a witness does
25 admit that she made the prior statement, then it is

1 inadmissible.

2 And I don't recall, did she admit or deny that
3 she made the prior inconsistent statement?

4 MR. WHITLARK: I can speak to that, Your
5 Honor.

6 THE COURT: All right. Well, I'll hear from
7 them first, and then I'll give you an opportunity.

8 MS. SIMPSON: Hear from me first?

9 THE COURT: Yes.

10 MS. SIMPSON: I'm sorry. Your Honor, it is my
11 understanding that she -- so essentially the
12 information -- beg the Court's indulgence.

13 (Pause.)

14 THE COURT: I can have her pull the testimony
15 back up, but she has to use the restroom first,
16 before we do that.

17 MS. SIMPSON: That's fine, Your Honor.

18 THE COURT: All right.

19 MR. WHITLARK: I remember her testimony
20 verbatim. It was very short, Your Honor.

21 THE COURT: Okay. Well, Ms. McCurdy can pull
22 it back up so that we are all on the same page.

23 MR. WHITLARK: Okay.

24 THE COURT: But she needs to use the restroom
25 before we do that.

1 MR. WHITLARK: Okay.

2 THE COURT: All right. So let's take a break
3 now.

4 MR. WHITLARK: Thank you, Your Honor.

5 THE COURT: We will take a break now. And if
6 I could see you all shortly.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Yes, ma'am?

9 MS. SIMPSON: Thank you, Your Honor. May it
10 please the Court? We are actually going to move
11 away from the path of going into the specific
12 statements within the ARC interview. And I will
13 limit my question to, was she interviewed, did she
14 provide you with information about what she knew,
15 and what happened, and move on.

16 THE COURT: As to the interrogation aspect?

17 MS. SIMPSON: Well, there is no interrogation.

18 THE COURT: I know, as in response to --

19 MS. SIMPSON: Exactly. No specifics as to the
20 information that is contradictory to what her
21 testimony is.

22 THE COURT: I'm not saying -- that is what the
23 Defense is saying. And y'all are providing their
24 rebuttal to their current position.

25 MS. SIMPSON: Correct.

1 THE COURT: Okay. All right, we can bring
2 them in.

3 (WHEREUPON, the jury came into open
4 court at approximately 4:21 p.m.)

5 THE BAILIFF: The jury is all present, Your
6 Honor.

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

8 MS. SIMPSON: Thank you, Your Honor.

9 DIRECT EXAMINATION CONTINUES

10 BY MS. SIMPSON:

11 Q Going back to B.P.'s interview, you stated that
12 you asked her certain questions regarding what she
13 knew about what happened, and things of that
14 nature, correct?

15 A Yes.

16 Q And was she able to provide you with some
17 information at that time?

18 A Yes.

19 Q Now, did you actually have contact with, or someone
20 from your office have contact with the Defendant,
21 Brett Parker, about this interview?

22 A Yes.

23 Q And was he fully informed about what was going on?

24 A Yes. In fact, the family had prior experience with
25 the ARC.

1 Q And, in addition to that, did you actually follow
2 up with him after the interview?

3 A I did.

4 Q Can you tell the jury about that?

5 A Certainly. Well, first of all, the day of the
6 interview we sat down, the individual who
7 interviewed B.P.'s little brother, and then I sat
8 down together with Mr. Parker the day of the
9 interviews, so after we finished our interviews, we
10 sat down with him, checked in, gave him a, sort of
11 a summary of how our interviews with his children
12 had gone.

13 I actually asked him several questions about
14 how he was doing, because he appeared not to be
15 doing all that well. And --

16 Q And the *he* being actually Mr. Parker, the
17 Defendant?

18 A Mr. Parker. And upon further reflection of some
19 things he said to me during that conference, I
20 followed up with him by telephone I think the next
21 day or two days later to make sure he was aware of
22 resources both for himself and his daughter.

23 Q So you actually advised him about some therapy or
24 counseling that was available for the children as
25 well as himself or the family unit?

1 A That is correct. And to maybe be a little bit
2 clearer about that, we specifically gave referral
3 for B.P. to go to a specific partner agency for
4 therapy, and our victim advocate set up B.P.'s
5 first appointment with that provider. So we made
6 sure that we followed up to make sure that she got
7 to the first appointment.

8 Q And so that referral was actually made for her to
9 actually go, that is what you mean?

10 A Yes.

11 Q And an appointment made for her?

12 A Correct.

13 Q To your knowledge, was that appointment kept?

14 A Well, yes. He -- when I talked to Mr. Parker after
15 we made the recommendation, he was not inclined to
16 follow up with it, but he -- B.P. attended a
17 single appointment at Post Trauma Resources, which
18 is where we had recommended she go, and then they
19 did not return after that.

20 Q All right. Thank you, Ms. Foster.

21 MR. WHITLARK: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. WHITLARK:

25 Q And you are aware that they had counseling at

1 another place, right? Do you know about that?

2 A The pastoral counseling that Mr. Parker wanted to
3 pursue? Is that what you are referring to?

4 Q Yes. Well, various -- yes. Did he tell you about
5 it?

6 A Well, if you are asking about the pastoral
7 counseling, then he had indicated to me that he was
8 interested in pursuing counseling through, I
9 believe the way he put it was through the church.

10 Q Okay. And these are forensic interviews, right?
11 Was this a forensic interview? Is that what this
12 is?

13 A This would be considered a forensic interview.

14 Q And you had a couple of homicide -- or
15 investigators from Richland County were observing
16 or --

17 A Yes, that's right.

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

19 MS. SIMPSON: And just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. SIMPSON:

22 Q With respect to the investigators, are they
23 actually present in the room with you when you are
24 interviewing the child?

25 A No. Investigators are not present. Nobody is

1 present in the room. It is just myself and the
2 child.

3 MS. SIMPSON: Thank you, Your Honor.

4 THE COURT: All right. Ma'am, you may step
5 down.

6 (Witness steps down.)

7 THE COURT: Any objection to this witness
8 being excused?

9 THE WITNESS: Thank you.

10 MR. SIMPSON: None from the State.

11 MR. WHITLARK: No objection from the Defense,
12 Your Honor.

13 THE COURT: All right, you are free to leave.

14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MS. CAMPBELL: Thank you, Your Honor. The
17 State calls Gary Watts.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, raise your right, and face the clerk.

21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 testimony you are about to give in this case will
24 be the truth, the whole truth, and nothing but the
25 truth, so help you God?

1 THE WITNESS: I do.

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

3 (Witness complies.)

4 THE CLERK: State your name for the record,
5 please.

6 THE WITNESS: It is Gary Watts, W-A-T-T-S.

7 GARY WATTS,

8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q Sir, you have testified before in this case?

12 A Yes.

13 Q And some issues have come up. You all enter --
14 actually issued death certificates?

15 A Yes. Well, we signed the death certificates.

16 Q And I show you two documents. Do you recognize
17 those death certificates?

18 A These are copies. One is Tammy Parker's, a copy of
19 her death certificate, and the other one is Bryan
20 Capnerhurst's death certificate.

21 Q Okay. And on those there is a time of death that
22 you put down there on both of them?

23 A Yes.

24 Q And they differ a little bit?

25 A They do. Tammy's is listed as 12:35 p.m. on the

1 13th, and Mr. Capnerhurst is listed as 12:40 p.m.
2 on the 13th.

3 Q And what can you tell this jury about how y'all
4 estimate time of death and whether it is an exact
5 science.

6 A Well, it is an estimate. I mean, it is -- the only
7 way we can put an exact time of death on the death
8 certificate would be if the death was witnessed,
9 say, in an emergency room or in a home setting
10 where there was a hospice nurse. So that is the
11 only way we can have an exact time.

12 We generally go by EMS call times, what time
13 they arrive, what time the call maybe went into the
14 9-1-1 central, and just try to figure out a time
15 close to when the incident occurred.

16 Q So in your death certificates, you aren't here to
17 tell this jury that that is the exact moment you
18 know these people died?

19 A No. I mean, the only way we would know that that
20 was an exact time would be if, say, if a suspect in
21 a homicide told us what time he pulled the trigger,
22 then we could figure out what time the person died.
23 Or if the person died in a hospital, we could
24 figure out what time the person died exactly.

25 Other than that, it is totally an estimate

1 based on everything else we received at the time.

2 Q And what day were these birth certificates issued?

3 A Death certificates?

4 Q Yes, sir, death certificate.

5 A Both of these were issued it looks like on the

6 19th.

7 Q Of what month?

8 A April of 2012.

9 Q And as far as your involvement --

10 A I'm sorry. I'm sorry. One looks like it was
11 issued on the 16th and one was issued on the 19th.

12 Q And was that fairly early on in the investigation
13 of this case?

14 A That was roughly, what, three days after the
15 deaths.

16 Q And at that point, the forensic and all the other
17 evidence had not been developed in this case?

18 A No. I mean, the only thing that we had at the time
19 that this was filled out would have been the
20 information we had from the initial call.

21 Q And from Mr. Parker?

22 A From whatever his statements were at the time, yes.

23 Q So in no way does that -- do those documents
24 dictate at what time exactly these people were shot
25 and killed?

1 MR. WHITLARK: Objection, Your Honor. That is
2 a leading question.

3 THE COURT: All right. Objection sustained.

4 MS. CAMPBELL: I'm sorry, Your Honer.

5 BY MS. CAMPBELL:

6 Q What does that indicate?

7 A The time on the death certificate is absolutely an
8 estimate of the time of death. There is no way
9 unless I was standing there could I tell you
10 exactly what time these people died. So this
11 information is strictly an estimate.

12 Q And it is based on what information you have at
13 that point?

14 A It is based on whatever information we had at April
15 the 16th or April the 19th. That is the only way
16 we can tell. If I have a correct time or a time is
17 changed, I will be more than happy to amend it.

18 MS. CAMPBELL: Your Honor, I don't have
19 anything further.

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

22 CROSS-EXAMINATION

23 BY MR. WHITLARK:

24 Q Who signed that from your office? Did you sign it?

25 A No. This was signed by one of my deputies.

1 Q Okay. Are both of them signed by the same deputy?

2 A Yes. And Ms. Joe actually handles probably
3 99 percent of our death certificates.

4 Q What is the name?

5 A Joe. Ann Joe.

6 Q Ann Joe. Okay. And these are filled out pursuant
7 to statutory law, are they not?

8 A Our portion of it is, yes, sir.

9 Q Okay. It is a duty you have as the coroner to do
10 it, right?

11 A Yes, sir.

12 Q And within that statute, it requires you to be as
13 specific and give as much factual information as
14 you can? It is mandated, isn't it?

15 A And we do.

16 Q When was the Bryan Capnerhurst death certificate
17 done?

18 A It was signed, it looks like on the 16th.

19 Q Okay. And Ms. Parker's?

20 A Was on the 19th.

21 Q Okay. And those were pursuant to autopsies that
22 were done?

23 A No, actually the timeline is more controlled by the
24 funeral home.

25 Q Okay.

1 A The funeral home actually initiates the death
2 certificate.

3 Q Okay.

4 A From the family. Fills in all the proper
5 demographic information as far as date of the
6 birth, mother, father, that kind of thing. They
7 then forward that portion of the death certificate
8 to us, and we put in the cause and manner of death.

9 Q Both of those bodies had been -- there had been
10 autopsies, hadn't there?

11 A Yes.

12 Q Forensic autopsies?

13 A Yes.

14 Q By the -- Dr. Marcus, right?

15 A I believe so.

16 Q Were you present for those autopsies?

17 A No, I was not.

18 Q Was Ms. -- what is the lady's name that signed it?

19 A Ms. Joe.

20 Q Was she present for this?

21 A No, she was not.

22 Q Okay. So she signed those pursuant to information
23 she got after an investigation had been done,
24 right? By the forensic pathologist, Dr. Marcus,
25 right?

1 A She signed those based on the cause of death
2 provided by Dr. Marcus.

3 Q Okay. And every bit of information in there is
4 mandated by law to be accurate, isn't it,
5 Mr. Watts?

6 A As accurate as possible, sir.

7 Q All right.

8 MR. WHITLARK: No further questions, Your
9 Honor.

10 THE COURT: Anything else?

11 MS. CAMPBELL: Nothing further.

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

14 THE WITNESS: For good this time?

15 THE COURT: I think so.

16 (Witness steps down.)

17 THE COURT: Any objection to this witness
18 being excused?

19 MS. CAMPBELL: None, Your Honor.

20 MR. WHITLARK: None from the Defense, Your
21 Honor.

22 THE COURT: All right, you are free to leave.

23 (Witness excused.)

24 THE COURT: Call your next witness.

25 MS. WALKER: Thank you, Your Honor. The State

1 calls Ila Simmons.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, raise your right, and face the clerk.

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 name for the record,
14 and spell your name, please.

15 THE WITNESS: My name is Ila Simmons. My
16 first name is spelled I-L-A. My last name is
17 spelled S-I-M-M-O-N-S.

18 ILA SIMMONS,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. WALKER:

22 Q Good afternoon. Where do you work?

23 A I'm employed at the South Carolina Law Enforcement
24 Division, also known as SLED, in the Forensic
25 Services Laboratory's Trace Evidence Department.

1 Q And how long have you worked at SLED?

2 A Almost 14 years.

3 Q And how long have you worked in the Trace Evidence
4 Department?

5 A That entire time.

6 Q What is it that you do at SLED?

7 A We analyze gunshot residue, gunpowder residue. We
8 also analyze glass, paint, fibers, and explosives,
9 and arson.

10 Q Can you tell this jury about your educational
11 training and background?

12 A I have a bachelor's of science degree in chemistry.
13 After completing that I came to work at SLED. It
14 was my first place of employment after completing
15 college.

16 My first three years there I went through an
17 extensive in-house training program where I was
18 instructed by a court-qualified, SLED-certified
19 trace evidence examiner to collect and analyze
20 trace evidence.

21 After that, each year I have to take a
22 proficiency test in every area and every discipline
23 that I analyze and complete it at 100 percent
24 efficiency. And I have to continue my education
25 with courses. I'm a member of the American Academy

1 of Forensic Science, the Southern Association of
2 Forensic Science. And I am also a member of the
3 original Gunshot Residue Scientific Working Group,
4 where the FBI invited people from around the world
5 to analyze gunshot residue, to come and set up the
6 standards and practices of gunshot residue.

7 Q Have you ever been qualified as an expert before in
8 the area of gunshot residue?

9 A Yes, ma'am, I have.

10 Q How many times?

11 A Probably over 250 times.

12 MS. WALKER: Your Honor, at this point we
13 offer this witness as an expert in gunshot residue.

14 THE COURT: Any objection?

15 MS. WALKER: And trace evidence, to include
16 specifically gunshot residue.

17 MR. WHITLARK: May it please the Court? May I
18 voir dire the witness?

19 THE COURT: Yes, sir.

20 VOIR DIRE EXAMINATION

21 BY MR. WHITLARK:

22 Q Did you work on this case?

23 A Did I analyze the samples in this case? No. But I
24 reviewed the report.

25 Q Okay. And where did you go to school again?

1 A At Columbia.

2 Q Columbia?

3 A Columbia, yes, sir.

4 Q Columbia University.

5 A Yes. College. Yes, sir. Columbia College, here
6 in Columbia.

7 Q Oh, Columbia. Oh, okay. All right. And what did
8 you get a degree in?

9 A Chemistry.

10 MR. WHITLARK: Okay, Your Honor.

11 THE COURT: Any objection?

12 MR. WHITLARK: No objection.

13 THE COURT: All right, ladies and gentlemen of
14 the jury, this witness will be admitted as an
15 expert in the area of trace evidence, specifically
16 gunshot residue.

17 DIRECT EXAMINATION CONTINUES

18 BY MS. WALKER:

19 Q In terms of this case, have you had an opportunity
20 to review the report prepared by John Roberts?

21 A I have.

22 Q Were you present for the testimony of the Defense
23 expert, Richard Ernest?

24 A Yes, I was.

25 Q In terms of the levels of gunshot residue, is there

1 a description that you would be able to provide to
2 the jury of level of gunshot residue found on the
3 people in the home at 12 Tackeria Court?

4 A I can if I am allowed to review the notes real
5 quickly.

6 Q Yes. Please do so.

7 (Pause.)

8 A The largest quantities of gunshot residue were
9 found on the gunshot residue kit collected from
10 Bryan Capnerhurst. And then there was less found
11 on the GSR kit from Tammy Parker. And somewhere in
12 between there where the levels of Brett Parker,
13 somewhere between Mr. Capnerhurst and Ms. Parker.

14 Q And the amount of gunshot residue that was found on
15 Bryan Capnerhurst, is that -- can you describe what
16 that is consistent with in the scenario of whether
17 or not firing a gun or being on the receiving end
18 of a gun?

19 A It is most consistent with being on the receiving
20 end of a gun. However, you can't differentiate
21 between gunshot residue. It is like shooting a
22 water pistol. If I shoot a water pistol, I am
23 going to get a little bit of water on my hand.
24 However, if somebody turns the water pistol on me
25 and shoots me, I am going to be soaked with water.

1 You are not going to be able to tell if the water
2 came from me shooting my water pistol or someone
3 soaking me with water. So you can't differentiate.
4 But the fact that I'm soaked with water can give an
5 indication that I have been shot at with a water
6 pistol rather than just shooting one.

7 Q And the levels on Brett Parker's hands, can you
8 describe what those are most consistent with?

9 A They could be consistent with either being in the
10 vicinity of a weapon when it fired or discharging a
11 weapon.

12 Q And you said you were present for Mr. Ernest's
13 testimony?

14 A Yes.

15 Q He testified -- and excuse me if I mess this up --
16 I think he testified something about gunshot
17 residue getting on -- traveling through an air
18 current in a home, down some stairs, around the
19 corner, and being deposited on some blinds.

20 Are you familiar with the way gunshot residue
21 travels?

22 A Gunshot residue travels in a direct line. And with
23 the published research that I have read -- I have
24 read over 150 papers on this specific topic --
25 gunshot residue does not remain in the air much

1 longer than a minute, or a couple of minutes.
2 Therefore, it is going to fall off relatively
3 quickly.

4 And even the research that was conducted, it
5 was within one room. They never found gunshot
6 residue with outside -- outside of a room when a
7 gun was fired within one room. It didn't travel
8 from room to room that -- of the research that I
9 have read.

10 Q In terms of gunshot residue being transferred from
11 one object to another, can you describe how that is
12 done?

13 A Yes. That can happen. It is about a ten to one
14 transfer, according to the research. If I were to
15 have ten particles of gunshot residue on my hand,
16 and I were to touch this desk, maybe one particle
17 would be transferred. It is not going to be -- I'm
18 not going to transfer all ten particles to this
19 desk.

20 Q And in terms of a person removing gunshot residue
21 from their hands, how does that -- in what ways can
22 that happen?

23 A Gunshot residue has the consistency of flour, so it
24 is very easily removed. If someone were to wash
25 their hands, wipe their hands on a towel, use hand

1 sanitizer, put their hands in and out of their
2 pockets, this can remove gunshot residue. Just
3 general contact with any item can remove gunshot
4 residue from the hand.

5 Q Thank you very much.

6 MS. WALKER: I have no further questions.

7 MR. WHITLARK: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. WHITLARK:

11 Q Did you know Brett Parker was a bookie?

12 A I heard testimony about it today.

13 Q How many people work in your lab out there at SLED
14 in the department where you are at?

15 A I believe there is seven now.

16 Q Okay. And do you know who has testified in this
17 case from SLED?

18 A Yes, sir, I do. I was here for his testimony as
19 well. Yes, sir.

20 Q Okay. Just about everybody? Or was it just half
21 of you? How many testified?

22 A I believe John Roberts is the only other person who
23 has testified other than me in this case.

24 Q The fellow that went to Texas A&M?

25 A Yes, sir.

1 Q Did you hear his testimony?

2 A Yes, sir, I did.

3 Q And he said that he would be comfortable, didn't
4 he, saying that the gunpowder residue on
5 Mr. Capnerhurst's hand was consistent with him
6 firing a 9-millimeter pistol? Did you hear that?

7 A Actually what he said was it was consistent with
8 maybe him firing a gun or him being on the
9 vicinity -- the muzzle end of the gun when it was
10 discharged.

11 Q Well, do you agree with it?

12 A Yes, I agree. It could either have come from him
13 discharging the gun or it could have come from him
14 being on the muzzle end of the gun. But the
15 quantities that were found were more consistent
16 with being on the muzzle end of the gun.

17 Q Now, are you telling -- is it your testimony that
18 the lead particles that are looked at under an
19 electron microscope cannot be transferred through
20 the air?

21 A It is -- they can be transferred through the air.
22 However, with the research that has been published
23 in hundreds of papers, it has never been found that
24 they go out of a room and long distances away.

25 Q Uh-huh. And these things are -- you have to have

1 an electron microscope to find them, don't you?

2 A Yes, sir. The electron microscope that we use can
3 see down 100,000 times greater than the human eye
4 can see.

5 Q And do you know what cross-contamination is?

6 A Yes, I do.

7 Q Okay. Tell the jury what cross-contamination is?

8 A If I were to handle something and touch
9 something -- if I were to handle a gun with gunshot
10 residue and touch something, I can put gunshot
11 residue on the other object.

12 Q And you wouldn't feel comfortable about doing a
13 test that doesn't have any kind of controls on it,
14 do you? Do you know what I mean by having a
15 control on something?

16 A Yes, sir. In fact, in this case when we were
17 contacted -- when John Roberts was contacted about
18 samples being collected from a home --

19 Q Uh-huh.

20 A -- he also said, make sure that samples are
21 collected from the home that were not in the area
22 that gunshot residue was expected to have been
23 collected, had been exposed to, and some samples
24 were also submitted from the house that were not in
25 the area of the gunshot residue so that we could

1 see if gunshot residue was all over the house. And
2 those samples came back negative.

3 Q Okay. Where was that testimony at? I mean, we
4 have been here for four weeks. I mean, have you
5 heard that -- somebody say that in this trial?

6 A No, but we have the report that says some interior
7 door handles, and things like that, were also
8 sampled and came back negative.

9 Q Did they tell you they were having a problem down
10 here and they needed you to come testify?

11 A No, sir. I was asked as a rebuttal witness to come
12 and testify.

13 Q Okay.

14 MR. WHITLARK: No further questions, Your
15 Honor.

16 THE COURT: All right. Anything else from the
17 State?

18 MS. WALKER: Nothing, Your Honor.

19 THE COURT: All right, ma'am, you may step
20 down.

21 THE WITNESS: Thank you.

22 (Witness steps down.)

23 THE COURT: Any objection to this witness
24 being excused?

25 (Witness excused.)

1 THE COURT: Call your next witness.

2 MS. WALKER: Your Honor, the State has no
3 further witnesses in reply.

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, the State has rested.

6 At this time we are -- we'll talk about this
7 next week. We are not going to work on Monday.
8 But on Tuesday we will begin -- I'll have you all
9 come at 10:00 o'clock on Tuesday. We will order
10 lunch on Tuesday.

11 We are ready for our arguments of the parties
12 and the charge on the law. And you all -- and then
13 you'll have the charge on the law, and then the
14 case will be turned over to you all at that time.

15 Once again, you cannot read, watch, listen to
16 anything regarding this case on the news, on the
17 radio, or the internet. No social media. No
18 talking to anyone about this case, including other
19 jurors. Do not form an opinion until you have all
20 of the evidence, which you do, the arguments of the
21 parties, which you don't, and the charge on the law
22 from the Court.

23 Once you receive the charge on the law from
24 the Court and further directions, then I will
25 direct you as to when you may begin your

1 deliberations.

2 Until that time, do not discuss the case with
3 anyone. And, like I said, it is also improper for
4 you to form an opinion in your mind as to the
5 innocence or guilt of the Defendant at this point
6 in time.

7 All right, I am going to have you come in at
8 10:30, and we will -- because there are some
9 matters of law that I need to take up with the
10 lawyers, in an effort to keep you all from having
11 to stay back there longer than you need to. I'll
12 have you come in at 10:30, and we will be ready to
13 start at 10:30 with the arguments of the parties.

14 Have a wonderful weekend. Once again, we are
15 not working on Monday, so do not show up here
16 Monday. The courthouse will be locked. And we
17 will see you all next week.

18 Thank you. I hope you have a great weekend.

19 (WHEREUPON, the jury is excused at
20 4:46 p.m.)

21 THE COURT: All right. Before everyone starts
22 moving around, we are going to start back at 9:00
23 o'clock on Monday. We will do our charge
24 conference at 9:00.

25 Mr. Whitlark, did you want to put your motions

1 on the record again at this point? Well, you might
2 as well go ahead and put them on. You want to
3 renew motions and your objections, put that on the
4 record now? And then if there is anything else you
5 have, you can think of it over the weekend.

6 MR. WHITLARK: If the Court permits, can I
7 just do it Monday and give it to you in writing, or
8 whenever, just to make sure we have got it covered?
9 Or I can do it right now if you want me to.

10 THE COURT: You can go ahead and do it. And
11 if there is anything you leave out, then you can
12 bring it on Monday.

13 I really do want to start with the arguments
14 at 10:30, so we need to be here at 9:00 o'clock.
15 If you can e-mail my law clerk your proposed
16 Requests to Charge. Take a look at each other's
17 charges. Y'all can do that. We have a long
18 weekend, which will be a working weekend for us.
19 But you can get -- everybody can get their Requests
20 to Charge to each other by Sunday afternoon. Maybe
21 by Monday we can have some dialogue -- I don't want
22 say dialogue versus via e-mail, but if there is
23 some objection to each other's e-mails -- I mean,
24 each others charge, we can do that. You will at
25 least know what they are objecting to. That will

1 hopefully streamline some of the time from the
2 charge conference on Tuesday morning.

3 So we are going to start at Tuesday at
4 9:00 o'clock sharp.

5 MR. WHITLARK: I tell you we are going to need
6 a State v. Edwards, we will be making a request.

7 MS. CAMPBELL: I understand what he is
8 requesting. I believe --

9 MR. WHITLARK: I think we are entitled to it.

10 MS. CAMPBELL: Grippon, I believe, is the
11 controlling law.

12 THE COURT: We'll take a look at that. And
13 what I will have -- Jessica -- Ms. Mangum has
14 already started on the Requests to Charge, and I
15 will have her e-mail you all what she has. Oh, she
16 already has. She has already e-mailed you what she
17 has. And if you all have any changes from that,
18 just e-mail us back and let us know.

19 MS. CAMPBELL: Thank you, Jess.

20 MR. WHITLARK: Sure will.

21 THE COURT: All right. Yes, sir? And he
22 wants to put his motions on the record.

23 MR. WHITLARK: May it please the Court, Your
24 Honor? Again, we renew our motion to dismiss this
25 case on the grounds that it is a circumstantial

1 evidence case and that they can't prove -- there is
2 not evidence beyond a reasonable doubt that each
3 circumstance that the State is relying upon to
4 convict this man of murder and ask the Court to
5 dismiss it for insufficiency of the evidence based
6 on that.

7 Secondly, Your Honor, we would state -- ask
8 the Court to -- our two Fourth Amendment violations
9 are no warrant on the 14th of April, and the fact
10 that he couldn't make a voluntary decision to waive
11 his right to a lawyer because of the mental state
12 he was in on the 13th of April of 2012. And it is
13 a violation of his Fourth Amendment rights.

14 And also, Your Honor, under the Castle
15 Doctrine we have produced enough evidence by a
16 preponderance of the evidence to have raised the
17 inference -- to have raised an inference, Your
18 Honor, that this man killed Bryan Capnerhurst in
19 self-defense, and we would ask the Court to dismiss
20 it on that basis.

21 Lastly, Your Honor, there is insufficient
22 proof of the killing of Tammy Parker by Brett
23 Parker. There is absolutely nothing but one -- the
24 testimony of one person. And that is insufficient.
25 We ask the Court to dismiss it on that basis.

1 Thank you, Your Honor.

2 THE COURT: All right. And for the reasons
3 stated above, I believe those are the same motions
4 that the Court has already ruled on, and for the
5 same reasons stated earlier, I am going to
6 respectfully deny the motions also, once again,
7 your motion as to the self-defense claim and the
8 Castle Doctrine, and I think I have already stated
9 the reasons for the denial of those motions.

10 MR. WHITLARK: You have, Your Honor. Thank
11 you, Your Honor.

12 THE COURT: All right, thank you.

13 MS. CAMPBELL: Thank you, Your Honor.

14 THE COURT: I'm sorry, Ms. Campbell, you were
15 about to say something?

16 MS. CAMPBELL: No, ma'am.

17 THE COURT: Oh, and I have had a couple of
18 members of the press, if you all want to come down
19 I'll talk to you all. I know we have had a couple
20 of inquiries about live streaming of the, I think
21 arguments and the charge. I guess I need to talk
22 to my lawyers about that first. Let me talk to you
23 all about that real quick.

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

1 the hearing of the jury.)

2 (WHEREUPON, the proceedings concluded
3 at 4:51 p.m.)

4 MAY 28, 2013

5 THE COURT: Thank you all for sending us
6 the -- working on the weekend and sending us your
7 Requests to Charge. And I think the State had two
8 additional?

9 MS. CAMPBELL: Yes, Your Honor. I believe
10 everything is included. The only thing we have as
11 far as the self-defense is just some of the wording
12 in your charge. If we could specifically say that:
13 "On the other hand, if you have no reasonable doubt
14 of the Defendant's guilt..." We would just ask
15 that maybe, "If you don't have a reasonable
16 doubt..." Just not "no" reasonable doubt. I think
17 that emphasizes guilt.

18 Go to the beginning of your self-defense
19 charge, Judge.

20 THE COURT: So you are just saying take out
21 the word "no"?

22 MS. CAMPBELL: Yes. And instead put: "If you
23 do not have a reasonable doubt."

24 THE COURT: That came from the deskbook.

25 MS. CAMPBELL: Yes, I know.

1 THE COURT: So you just want: "If you do
2 not..."

3 MS. CAMPBELL: "...have a reasonable doubt."

4 THE COURT: Anything regarding that?

5 MR. WHITLARK: Your Honor, I think we
6 submitted -- what we submitted is what we wanted
7 regarding that. But what page are they on again,
8 Your Honor?

9 THE COURT: She didn't put the page number,
10 but it is under self-defense.

11 I looked at yours, Mr. Whitlark.

12 MR. WHITLARK: Yes, Your Honor.

13 THE COURT: I think the one from the deskbook
14 goes into a lot more details of the elements of
15 self-defense. They say the same thing, but it goes
16 into -- it explains without fault, it explains
17 imminent danger, it goes in and gives a lot more
18 detail.

19 Even though yours is accurate, an accurate
20 statement of the law, this one that came from the
21 deskbook explains it a little bit more.

22 MR. WHITLARK: Okay, Your Honor.

23 THE COURT: So I am inclined to charge that
24 one that came from the deskbook.

25 The only changes she had, she just wanted

1 changed, is: "If you have no reasonable doubt of
2 the Defendant's guilt" to say "if you do not have a
3 reasonable doubt."

4 It is the same thing, I guess it just reads a
5 little bit better.

6 MR. WHITLARK: That's fine, Your Honor.
7 That's fine.

8 THE COURT: All right. Anything else? And I
9 am going to come back to you. You had some changes
10 also.

11 MR. WHITLARK: Yes.

12 THE COURT: And then, let's see, imminent
13 danger.

14 And I think, Ms. Campbell, on your third one,
15 I think that is covered under the imminent danger
16 in the self-defense.

17 MS. CAMPBELL: I think that is included in
18 your charge, Your Honor. We reviewed that, and I
19 agree with you. And I apologize.

20 THE COURT: Now, the malice --

21 MS. CAMPBELL: And, Your Honor, in the malice
22 in the Israel Wilds one, some of that is already
23 included in your charge.

24 Your Honor, just some of the language we would
25 like added to your malice charge.

1 We also submitted a second request which uses
2 the language: "Something which springs from
3 wickedness, from depravity, from a heart devoid of
4 social duty and fatally bent on mischief."

5 I believe that is the language, Your Honor.
6 And I don't know why the cite didn't accompany the
7 request. But that would be from State versus
8 Mouzon and State versus Fuller.

9 THE COURT: Is that not in there? Because I
10 know I have done that one before.

11 MS. CAMPBELL: No, Your Honor, it is not in
12 your charge. And I think you have done that
13 before, and I don't -- or language similar to that
14 I know you have done before, and it just didn't
15 make it into this charge.

16 And I can hand up the case law.

17 THE COURT: As to her second Request to
18 Charge, Mr. Whitlark?

19 MR. WHITLARK: Yes, Your Honor. We object to
20 it. In the first place, it seems to put too much
21 emphasis on malice.

22 The Court's charge adequately covers that
23 element. And the charge that they are asking for
24 here puts more emphasis on it. And it is lengthy.
25 It is longer than most that we charge.

1 THE COURT: What about under the second malice
2 she has? The first one I think is repetitive. I
3 mean, I don't see anything in there --

4 MS. CAMPBELL: That's fine, Your Honor, if we
5 just get the second one.

6 MR. WHITLARK: We're fine with what the Court
7 has, and we object to it, Your Honor.

8 THE COURT: All right. Let me take a look at
9 that. I know I have charged that one before.

10 MS. CAMPBELL: Yes, ma'am.

11 THE COURT: I'll go back and look at. Because
12 the language, I recall the language.

13 MS. CAMPBELL: Yes, the language -- and I know
14 you have charged it before. I mean, we would just
15 ask for that language again. I don't even think it
16 is the first line of that. It just starts with:
17 "Something that springs from wickedness, from
18 depravity, a heart devoid of social duty and
19 fatally bent on mischief."

20 And that would be the extent of what we are
21 requesting, Your Honor.

22 THE COURT: All right, I'll take a look at
23 that one, but the other two, the first one that you
24 object to, I think it is cumulative and I'm going
25 to leave that one out, and then the third one is

1 also cumulative and is already in there, which
2 describes imminent danger.

3 Let me take a look at that case. You said it
4 was State v. Mouzon?

5 MS. CAMPBELL: State versus Mouzon, Your
6 Honor, I believe State versus Fuller.

7 THE COURT: Okay.

8 MS. CAMPBELL: And maybe State versus Zeigler.
9 And I can get you those cases if you would like me
10 to.

11 THE COURT: Okay. She'll find them.

12 MR. WHITLARK: Your Honor, just to comment on
13 it. First of all, the Court's charge adequately
14 covers the required element.

15 And this charge they are asking for here would
16 seem to indicate to the jury that we have somebody
17 devoid of social duty and fatally bent on mischief.

18 The Court's charge covers that. And I don't
19 see it. I mean, I think it puts too much emphasis
20 on the somebody bent on -- a socially wicked
21 person. I mean, I think there has been a lot of
22 evidence, and it sounds almost like a commentary on
23 the facts, Your Honor, based on some of the
24 evidence in this case. I don't think that --

25 THE COURT: All right. I am going to take a

1 look at those cases that she cited.

2 MR. WHITLARK: Yes, ma'am.

3 THE COURT: And then I'll get back to you on
4 that.

5 MR. WHITLARK: Okay.

6 THE COURT: Is that everything?

7 MS. CAMPBELL: That's all for the State, Your
8 Honor.

9 THE COURT: All right.

10 MR. WHITLARK: May it please the Court, Your
11 Honor?

12 THE COURT: Yes, sir.

13 MR. WHITLARK: Your Honor, we just have some
14 minor changes. I think we had -- the letter you
15 got from us --

16 THE COURT: Yes, sir.

17 MR. WHITLARK: On presumption of innocence, we
18 would like the words: "Unless and until you reach
19 a verdict." It is in there twice in that charge.
20 I believe that is normally -- I think the Court
21 actually has it in there at the end of it.

22 And what I would like in the first
23 paragraph -- or in the second paragraph of--
24 presumption of innocence, second to the last line,
25 I would like: "Throughout the trial unless and

1 until you have reached a verdict of guilt based on
2 the evidence satisfying you..."

3 And then the next paragraph the same thing on
4 the third line: "Remains with the Defendant unless
5 and until it has been stripped from the Defendant."

6 THE COURT: Any position from the State
7 regarding that?

8 MS. CAMPBELL: Your Honor, I think your charge
9 is a standard charge that is always given and would
10 be adequate on that front. I don't think it is
11 misleading.

12 MR. WHITLARK: Well, Your Honor, it seems to
13 indicate to the jury -- and I believe this is -- it
14 correctly states what is in most charges I have
15 ever seen on presumption of innocence, that is
16 "unless and until you find." And when you say
17 "until you reach a verdict," that means you are
18 waiting until they do it.

19 We are just asking to have "unless and until"
20 added, which the Court does state later on in
21 there, but it seems to indicate "until you reach
22 the verdict of guilty." I just would like those
23 words in there.

24 THE COURT: You mean the part that says:
25 "Until it has been stripped from the Defendant by

1 evidence?"

2 MR. WHITLARK: Yes, ma'am. And where it says:
3 "But it accompanies the Defendant throughout the
4 trial." And what the Court has given us says
5 "until you reach a verdict of guilt." I would just
6 like "unless."

7 THE COURT: No, no, not, it says: "Until it
8 has been stripped from the Defendant by evidence
9 satisfying..." Is that what you are talking about?

10 MR. WHITLARK: No. There is two places in
11 there, Your Honor. The first one is above that in
12 the second paragraph. And it is the second to the
13 last line of that. It says: "But it accompanies
14 the Defendant throughout the trial until you reach
15 a verdict of guilt based on evidence."

16 And I just would like: "Unless and until you
17 reach a verdict." I think that is the law, Your
18 Honor. I think that is a standard charge.

19 MS. CAMPBELL: I do not think that is the
20 standard charge, Your Honor. I do believe that the
21 verbiage in your charge is the standard charge.

22 THE COURT: Well, this is the standard. This
23 is the one that is pulled straight from the
24 deskbook straight off the computer.

25 MR. WHITLARK: Yes. But, Your Honor -- I'm

1 sorry.

2 THE COURT: It says: "Until you reach a
3 verdict of guilt based on evidence satisfying you
4 of that guilt beyond a reasonable doubt."

5 So I think it is pretty clear that they have
6 to make that decision.

7 And then it goes on and talks about: "The
8 robe of righteousness placed upon the shoulders of
9 the Defendant and which remains with the Defendant
10 until it has been stripped from the Defendant by
11 evidence satisfying you..."

12 So I'm not inclined to change that just
13 because --

14 MR. WHITLARK: If I could, Your Honor?

15 THE COURT: Yes, sir.

16 MR. WHITLARK: Your Honor, I believe this is
17 my 16th or 17th murder case and -- I think it is.
18 Anyway, the fact of the matter is that these jurors
19 are going to be listening very carefully to what
20 the Court says here.

21 This charge is not -- I have seen charges in
22 civil cases that are ten times longer than this
23 Your Honor. And the fact of the matter is that
24 when they hear this -- when they hear, "until you
25 reach a verdict," and the Court does say it later

1 on in that charge, "unless you are satisfied."

2 And I'm just asking the Court to put two words
3 in there. I don't think it is going to change
4 anything. It is a fair statement. "Unless and
5 until you reach a verdict." I don't see where it
6 hurts anything, Your Honor.

7 And, Your Honor, the best evidence that it is
8 likely to be misconstrued by it is the fact that
9 the Prosecution does not want to add two simple
10 words to it would be the best evidence that it
11 could be misconstrued.

12 MS. CAMPBELL: No, Your Honor, the Prosecution
13 doesn't want to confuse or mislead the jury.

14 MR. WHITLARK: I don't see how it does. We
15 would just request that, Your Honor. We think it
16 is a fair -- more even-handed.

17 Do you have a couple -- let's see. Your
18 Honor, did you get -- did you think about what we
19 said about...

20 (Pause.)

21 THE COURT: All right, let me think about
22 that.

23 MR. WHITLARK: Thank you, Your Honor. Your
24 Honor, do you want me to go on?

25 THE COURT: Yes.

1 MR. WHITLARK: The order of the charges, Your
2 Honor, I have always -- I thought it was always the
3 presumption of innocence, the burden of proof, and
4 then move into the evidence charge. For some -- I
5 don't know why I think that. I have just done a
6 lot of criminal cases. And I believe the rights of
7 a citizen are stated first, and then the burden of
8 proof, which would be the presumption of innocence,
9 the burden of proof, and then the evidence.

10 MS. CAMPBELL: You did.

11 THE COURT: What is that?

12 MS. CAMPBELL: That is what you did. I don't
13 understand.

14 THE COURT: All right. Well, this is the way
15 it is laid -- this is the way I have always charged
16 it. Because in the beginning it talks about the
17 value, the weight of the evidence, and that is why
18 it talks about direct and circumstantial evidence.

19 And then it goes in and talks about the
20 indictment not being evidence and the presumption
21 of innocence and then reasonable doubt, and then we
22 get into the actual -- where it talks about
23 credibility, inconsistent statements. And then you
24 get into the actual law regarding the charge.

25 MR. WHITLARK: Yes, Your Honor.

1 THE COURT: Any position from the State?

2 MS. CAMPBELL: On the order?

3 THE COURT: Yes?

4 MS. CAMPBELL: No. I think your order is what
5 traditionally is done.

6 THE COURT: All right, I am going to leave
7 that as it is.

8 MR. WHITLARK: Okay. Thank you, Your Honor.

9 The next thing, Your Honor, is under statement
10 of the Defendant.

11 THE COURT: Okay.

12 MR. WHITLARK: I think his current mental
13 capacity I think is correct under the United States
14 Supreme Court decisions regarding whether or not he
15 was in such a mental state and whether or not we
16 have proven it. I don't believe it is required
17 that we have medical evidence, which we did not
18 present in the case.

19 However, I believe each officer that was
20 cross-examined in this case stated that, yes, he
21 was in a mentally upset condition.

22 And I think it goes to -- it is not a matter
23 of whether he was in custody or not, it is a matter
24 of whether or not at the time this happened and the
25 mental condition he was in, his capacity to

1 understand his rights and whether to invoke his
2 rights because of his mental condition of being in
3 shock or being extremely highly charged mental
4 state.

5 Just add "mental capacity," if you add two
6 words.

7 THE COURT: Well, it is in there.

8 MS. CAMPBELL: It is in there, Number 3.

9 THE COURT: His mental ability or capacity.

10 MS. CAMPBELL: Exactly.

11 THE COURT: It is in there.

12 MR. WHITLARK: Okay. All right.

13 THE COURT: And it even goes on and talks
14 about his background and the environment that he is
15 in. So I think that covers your concern
16 regarding -- both mental ability or capacity is in
17 there.

18 MR. WHITLARK: All right. Thank you, Your
19 Honor.

20 THE COURT: All right.

21 MR. WHITLARK: Under -- do you want me to go
22 on, Your Honor?

23 THE COURT: Yes, sir.

24 MR. WHITLARK: All right. Under intent, the
25 second paragraph under the charge on intent says:

1 "Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine what the
3 Defendant intended to do based on the circumstances
4 shown to have existed."

5 I'm thinking -- I was wanting to know whether
6 or not the Court could put in there whether or not
7 to determine if the allegations -- because they are
8 making strong allegations of what he intended to do
9 in this case. I mean, they are stating it
10 outright. And I was just wondering, "if the
11 allegations of what he intended to do," I would
12 like that added to it, Your Honor.

13 MS. CAMPBELL: That would be improper, Your
14 Honor. "It is up to you to determine what the
15 Defendant intended to do based on the
16 circumstances." There is no allegations at that
17 point, they are fact finders.

18 MR. WHITLARK: This is my point, Your Honor.
19 They are alleging what he intended to do. They
20 have stated it directly. And I just want the jury
21 to hear, you know, that it is not what he intended
22 to do, it is what the allegations are that he
23 intended to do, if they find that.

24 THE COURT: Don't you agree at this point that
25 they are the fact finders? They are to decide what

1 his intent was?

2 MR. WHITLARK: Your Honor --

3 THE COURT: That is one of the things that
4 they have to decide.

5 MR. WHITLARK: I always think that about the
6 jury. But it is just that it seems to state -- you
7 know what my problem is, Your Honor? I was an
8 English major in college, if you can believe it. I
9 know it is hard to believe. And it is just the
10 semantics of it, Your Honor. But that's all. I
11 just want the jury to hear that, "the allegations
12 of what they are saying he did," or, "what they are
13 saying he intended."

14 THE COURT: So you want it to say, "based on
15 the allegation showing..."

16 MR. WHITLARK: Yes, Your Honor. Or "if the
17 allegations."

18 MS. CAMPBELL: At that point indeed they are
19 fact finders and it is not proper because it is no
20 longer allegations, it is what he intended to do.

21 THE COURT: All right.

22 MR. WHITLARK: Well, Your Honor, then I don't
23 see one thing wrong with saying that. And the
24 reason being, I mean, it has nothing to do with
25 fact finding, it is simply a statement by the Court

1 that they are alleging certain things. And "if the
2 allegations are," you know, I just want three words
3 in there, "if the allegations of what the Defendant
4 intended to do are based on circumstances shown to
5 have existed." That's all.

6 THE COURT: All right. I think it is covered.
7 I pretty much cover that in the beginning, that
8 when you talk about the indictment, that these are
9 just mere allegations, that it is not --

10 MR. WHITLARK: Thank you, Your Honor.

11 THE COURT: It is not evidence in this case.
12 It can be -- so they -- I think they get that it is
13 an allegation. So I'm not inclined to change that
14 language in there.

15 MR. WHITLARK: Yes, Your Honor.

16 THE COURT: All right.

17 MR. WHITLARK: Getting there, Your Honor.

18 THE COURT: All right.

19 MR. WHITLARK: Do you want me to proceed?

20 THE COURT: Yes, sir.

21 MR. WHITLARK: Okay. Under imminent danger,
22 Your Honor, the second paragraph of it, I just ask
23 that four words be added to the end of that
24 paragraph, "under those same circumstances," is
25 what I would ask the Court.

1 That is based upon an understanding and
2 reading of the law, Your Honor. Basically the law
3 talks repeatedly about, you know, what would a
4 reasonable person under the same circumstances have
5 done, would be the measure that the jury applies to
6 it. And I would ask that those four words be
7 added, "under those same circumstances."

8 THE COURT: Are you in Paragraph 2 or 3?

9 MR. WHITLARK: Paragraph 2, Your Honor. At
10 the very end after belief, just put "under those
11 same circumstances."

12 THE COURT: Any position regarding that?

13 MS. CAMPBELL: Your Honor, again, I believe
14 that the whole paragraph basically goes through
15 that this is the proper language for self-defense.
16 And I don't know why that would help them, because
17 basically they have to make a determination if that
18 would be what a reasonable person of ordinary
19 firmness and courage would have had the same
20 belief.

21 Of course, it was -- I just think that he's
22 trying to fashion this -- and of course the law is
23 that your charge can't comment on the facts, and
24 that would be getting into the province of you
25 saying a comment on the facts, that this is a

1 standard -- this is the standard language. And we
2 would request you just stick to your language.

3 MR. WHITLARK: Your Honor, just briefly about
4 it. It is a fair -- it is a fair addition of four
5 words. And that is what the law is. What would a
6 reasonable person under the same circumstances --
7 under those same circumstances -- have done. And
8 that is the law, Your Honor. I don't know -- I'm
9 not trying to do anything.

10 THE COURT: "A reasonably prudent person under
11 the same circumstances of ordinary firmness and
12 courage would have had the same belief." Is that
13 where you want it? Because it doesn't necessarily
14 sound right at the end.

15 MR. WHITLARK: At the very end of Paragraph 2
16 I would just -- what I'm asking is -- what I have
17 written in here is, "shown that a reasonably
18 prudent person of ordinary firmness and courage
19 would have had the same belief under those same
20 circumstances," because I think that is a correct
21 statement of the law of self-defense, Your Honor.
22 What would a reasonable person have done if the
23 same thing was going on. I think that is clearly
24 the law.

25 And I just for purposes of clarity, Your

1 Honor, and for the jury to see that, I'm requesting
2 it, Your Honor. That's all.

3 THE COURT: The next paragraph talks about the
4 same circumstances. Do you see that? It says:
5 "In deciding whether the victim actually was or
6 believed he was in imminent danger of death or
7 serious bodily injury, you should consider all the
8 facts and the circumstances surrounding the crime."

9 MR. WHITLARK: Yes, Your Honor. That is my
10 next thing, Your Honor. I would like "crime"
11 stricken and put "event" instead of "crime."

12 THE COURT: Well, it is -- I mean, it is
13 allegations of a crime. "Including the physical
14 condition and characteristics of the Defendant and
15 the victim."

16 MR. WHITLARK: Well, my position is, I think
17 that is a statement of the facts. I don't like --
18 I think it is confusing to the jury. I think we
19 should just put "event." That was going to be my
20 next request. I think that is the last one. I
21 just think for purposes of clarity we request that,
22 Your Honor.

23 THE COURT: All right. I'm going to leave
24 that. I'll add "under the same circumstances." It
25 is kind of repetitive, but I'll add it there.

1 MR. WHITLARK: Thank you.

2 THE COURT: For you. But I am not going to
3 take the last paragraph out because that is an
4 accurate statement of the law.

5 MR. WHITLARK: Yes, Your Honor.

6 THE COURT: And so we'll leave that in.

7 MR. WHITLARK: All right, Your Honor. That is
8 the last thing regarding any clarifications
9 requested and all that.

10 However, Your Honor, may I now speak about
11 our Requests to Charge?

12 THE COURT: Yes, sir.

13 MR. WHITLARK: On Number 1, Your Honor, we
14 would request that you charge that. That is -- I
15 know that State v. Edwards has apparently been --
16 it has been tinkered with, no doubt about that, but
17 we would request it, Your Honor, because I think it
18 is -- it is fair and it is accurate. And I think
19 legally speaking it is a correct statement of the
20 law as it should be or going to be.

21 But I understand the Court's position on
22 the -- is it the Pylon case? What is the name of
23 that case?

24 MS. CAMPBELL: State v. Cherry.

25 THE COURT: And I read that one earlier, last

1 week, week before. There has been some issue. And
2 I think it is State v. Cherry -- I'm pulling it up
3 now -- is the new law, I guess.

4 But I will be glad to hear from you, Ms.
5 Campbell.

6 MS. CAMPBELL: Your Honor, under State v.
7 Cherry it expressly says that the old Edwards law
8 should not be charged, that it is confusing to the
9 jury.

10 It even went so far as to address that issue
11 as to whether it should be charged in addition, and
12 they said no, that the correct charge is the
13 Grippon charge, which is part of your charge.

14 He then cites two cases Your Honor, State
15 versus Hernandez and State versus Battle, which is
16 misleading.

17 Those two cases, those are cases that when the
18 old charge was used, they do cite it, and even in
19 their footnotes say that the new law should apply
20 as State v. Cherry.

21 So that Your Honor knows, those were 2009
22 cases just -- were charged before the law changed.
23 And we just respectfully ask that you follow
24 Cherry, and that your charge as it is is the
25 correct charge. And that was a Supreme Court case,

1 Your Honor, and has been the law of the state in
2 effect for the last eight or nine years.

3 MR. WHITLARK: Your Honor, may it please the
4 Court?

5 THE COURT: Yes, sir.

6 MR. WHITLARK: First of all, Your Honor, I
7 think the Court knows me well enough to know I'm
8 not trying to mislead anybody, I'm not making an
9 incorrect statement of the law. I'm simply
10 requesting that the law that has been the law of
11 this state since 1850, I think is where this
12 originated, this charge about, to the exclusion of
13 any other reasonable hypothesize. And it may have
14 been changed.

15 THE COURT: In 2004.

16 MS. CAMPBELL: Uh-huh.

17 THE COURT: So we have to go with the changes,
18 Mr. Whitlark.

19 MR. WHITLARK: That's what they tell me.
20 That's what they tell me, Your Honor.

21 THE COURT: That's what they tell me too.
22 Especially when they are pretty direct.

23 MR. WHITLARK: That is what they tell me, Your
24 Honor.

25 THE COURT: So we -- I can't blame you for

1 trying, but we have got to go --

2 MR. WHITLARK: I gotcha.

3 THE COURT: We usually don't have something
4 that is directly on point, but it is on point.

5 All right.

6 MR. WHITLARK: We still -- we request -- we'll
7 take -- we'll do the procedural exception on that.

8 THE COURT: Okay.

9 MR. WHITLARK: I don't know what is going to
10 happen. I've got a gut feeling about this one,
11 Your Honor.

12 THE COURT: About the charge?

13 MR. WHITLARK: About what is going to happen
14 in the future. I've got a gut feeling about it.

15 THE COURT: Okay.

16 MR. WHITLARK: It has always been the law for
17 most of my career, by the way.

18 THE COURT: Yes, well --

19 MR. WHITLARK: But, you know, you have got to
20 get with the changes, you know.

21 THE COURT: Yes, they changed it in 2004. All
22 right.

23 MS. CAMPBELL: And I believe the reasonable
24 doubt is already included.

25 THE COURT: Yes, the reasonable doubt is

1 already in there. And like I said, the
2 self-defense charge, Request to Charge 2, I already
3 have that in there. And it is cumulative. And the
4 one that came from the deskbook goes into
5 explaining the elements of self-defense.

6 MR. WHITLARK: I just want to tell the Court
7 that under State v. Jackson -- I am just covering
8 some of those areas that we -- I think your dad, or
9 somebody talked about -- under State v. Jackson we
10 just make sure we requested that. Thank you.
11 Thank you, Your Honor.

12 THE COURT: All right.

13 MS. CAMPBELL: The only other thing I will
14 bring up again, Your Honor, I don't know how else
15 to put it, but over the weekend it did come to my
16 attention -- and I don't know if this is true or
17 not -- that Mr. Whitlark went on TV again and was
18 explaining his position of why they put the child
19 up on the stand. It was broadcast again. I
20 believe that is in violation of your order. And I
21 would bring it to the Court's attention.

22 MR. WHITLARK: I don't recall that at all,
23 Your Honor. I don't -- I didn't talk --

24 MS. CAMPBELL: It would either be on ABC or
25 WIS.

1 MR. WHITLARK: I don't know what it was on. I
2 didn't talk to anybody. I have been running from
3 them, Your Honor, to be honest with you.

4 THE COURT: That he -- that there is a
5 personal interview with him?

6 MS. CAMPBELL: My information. I haven't
7 checked it out. I just bring it to the Court's
8 attention.

9 MR. WHITLARK: I didn't do that, Your Honor.
10 No. Your Honor, I will tell you one thing, I was
11 pretty tired by last Friday. I doubt I did it. I
12 don't remember doing it. And I don't think it
13 happened.

14 MS. CAMPBELL: I don't think the Defense not
15 remembering it is a defense.

16 MR. WHITLARK: Well --

17 THE COURT: All right.

18 MR. WHITLARK: I didn't get interviewed by
19 anybody, Your Honor, I'm telling you.

20 THE COURT: We'll take a look.

21 MS. CAMPBELL: We can take that up at a later
22 time. I just bring it to the Court's attention.

23 THE COURT: Yes, we'll take that up later.
24 We'll take it up later. I didn't read a whole lot.
25 I just saw a couple of things, but I didn't see

1 anything --

2 MS. CAMPBELL: I didn't see it personally, it
3 was just brought to my attention. And that would
4 be a violation of your order.

5 MR. WHITLARK: I didn't give an interview to
6 anybody.

7 THE COURT: Okay. All right. All right, is
8 that everything as to the charge?

9 MS. CAMPBELL: Yes, Your Honor. That's all as
10 far as the charge.

11 THE COURT: Yes, sir?

12 MR. WHITLARK: That's it from the Defense,
13 Your Honor.

14 THE COURT: All right. And let's talk
15 about -- well, let me tell you, the jury charge
16 with those changes, I'm going to -- I want to read
17 State v. Mouzon and I think you said Fuller. I'll
18 take a look at those and then I will let you know
19 if I'll charge that or not.

20 MS. CAMPBELL: And I'll get you the exact cite
21 under which we submitted that.

22 THE COURT: And then we'll make the changes
23 that we talked about in here. And then I'll have
24 Jess, she is going to get it all typed up. I guess
25 I should ask the question -- I know Judge Newman

1 does it -- about sending the jury charge back,
2 because if we do there is a charge that I have to
3 give regarding sending the charge back.

4 I don't -- I mean, I don't have to in this --
5 this isn't one of those ones where you necessarily
6 have to. Some of those civil cases it helps out.

7 MS. CAMPBELL: Yes, ma'am.

8 THE COURT: In this one I don't think it makes
9 much of a difference.

10 MR. WHITLARK: I don't either, Your Honor.

11 THE COURT: Whether they have it or not.
12 Okay, so we will not send it back.

13 Also, the closing arguments. Who is going to
14 open on -- you are going to open on the law?

15 MS. SIMPSON: Yes, Your Honor.

16 THE COURT: And then you are going to close,
17 Ms. Campbell?

18 MS. CAMPBELL: (Nods affirmatively.)

19 THE COURT: And I don't usually give time
20 limits because I know that -- I hope that lawyers
21 will take -- be mindful of the time and not take
22 two or three hours to give a closing argument. But
23 I do realize this case has taken -- we are on week
24 what, four? So I do know that the charge will take
25 some time.

1 If we need to break in between, we will,
2 because the jurors will have to go to the bathroom.
3 I definitely will let them take a break before I
4 give them a charge on the law just because -- I'm
5 guessing the closings are going to probably take a
6 couple of hours?

7 MR. WHITLARK: Well, again, Your Honor, to
8 prove the accuracy of my predictions, I told the
9 Court we were going to streamline the Defense's
10 case, and we did. I am telling the Court right now
11 that Mr. Fedor wants to -- is going to come in
12 behind me to discuss the law and the application of
13 the law with the facts here. I am giving a 15, 20
14 minute closing myself, and then I am going to turn
15 it over to him. And I have been with him this
16 weekend to discuss the parameters of how much time
17 he is going to take. And I'll be very surprised if
18 Mr. Fedor takes more than 40 minutes. So I am
19 saying that the entire Defense closing argument
20 would probably be slightly more than one hour. And
21 that is what I predict.

22 THE COURT: All right.

23 MR. FEDOR: Your Honor, the thing is, I have
24 always gone by the statement, "The mind can absorb
25 what the seat can endure," and I seriously doubt

1 I'll take over 30 minutes.

2 THE COURT: All right. And so what we'll do,
3 since you all want to -- I will allow them to split
4 their closing if they want to do that. And the
5 State of course gets to open on the law and close.
6 If y'all want to split yours, you can also, if you
7 would like to do that. But I'll allow you all to
8 split it. And so, Mr. Whitlark, you are going to
9 start off and then you are going to turn it over to
10 Mr. Fedor?

11 MR. WHITLARK: Yes, ma'am.

12 THE COURT: All right. And then we'll come
13 back to Ms. Campbell.

14 MS. CAMPBELL: Thank you.

15 MR. FEDOR: Thank you.

16 THE COURT: Okay. All right, anything else
17 before we -- she'll get that typed up and printed
18 off. The jurors won't be here until 10:30. They
19 won't be under until 10:30. But that will give
20 y'all a chance to refresh yourselves. And then we
21 will be ready start whenever they get here.

22 MR. WHITLARK: I'll see if I can chisel a
23 little more time off of the closing.

24 THE COURT: You don't have to. Take your
25 time.

1 MR. WHITLARK: Thank you, Your Honor.

2 THE COURT: All right.

3 (WHEREUPON, a break was taken.)

4 THE COURT: The note that we got from the
5 juror, I'll mark it -- I'll have Debbie mark it as
6 Court's Exhibit 7:

7 (WHEREUPON, Court's Exhibit No. 7 was
8 marked for identification only.)

9 THE COURT: All right, are we ready?

10 MR. WHITLARK: The Defense is ready, Your
11 Honor.

12 THE COURT: All right. We'll bring them in.
13 And like I said, we'll probably take a break before
14 the charge. Well, I'm sorry, we'll take a break,
15 depending on how long you all go, but probably
16 right after you all, and then we will let Ms.
17 Campbell close, and then we'll go into the charge,
18 depending on how long her closing takes.

19 (WHEREUPON, the jury came into open
20 court at approximately 11:17 a.m.)

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

22 THE COURT: All right. Good morning, ladies
23 and gentlemen of the jury. At this time we are
24 ready for -- I hope that you all had a great
25 weekend, a great Memorial Day weekend. And at this

1 time we are ready to continue with the case.

2 We will have closing arguments from the
3 parties at this time.

4 Just so you all have an idea as to what
5 happens, first you will hear from Ms. Simpson, on
6 behalf of the State. She will open on the law.
7 And then you will hear from the Defense. You will
8 hear from Mr. Whitlark and also Mr. Fedor. And
9 then you will hear from the State again. And then
10 you will have the charge on the law from the Court.

11 All right. Yes, ma'am?

12 MS. SIMPSON: Thank you. May it please the
13 Court?

14 CLOSING STATEMENT

15 MS. SIMPSON: Make no mistake about it: The
16 only people that should have been able to come in
17 this courtroom, take this witness stand, and
18 testify that they had a right to act in
19 self-defense are the victims in this case, Tammy
20 Parker and Bryan Capnerhurst.

21 Unfortunately, they never got that chance.
22 Because the Defendant never gave them that chance.

23 Tammy Parker, seated at her desk, with her
24 back to the door, shot at seven times with five of
25 them striking her, one to the abdomen bringing her

1 down where she fell.

2 But, still, none of those shots were fatal,
3 until that final headshot, as the Defendant stood
4 over her with that 9-millimeter Smith & Wesson
5 handgun and pulled the trigger. The insurance
6 shot.

7 Bryan Capnerhurst, shot four times with that
8 Taurus Judge pistol. Two of those shots were
9 fatal, the one to the chest, and then, again, that
10 final fatal headshot, that insurance shot.

11 Because the Defendant had to make sure that
12 only one story came out of that house that day:
13 His own.

14 And when you ask yourself, how did Bryan
15 Capnerhurst end up in that attic that day, well,
16 while the Defendant may have had that 9-millimeter
17 Smith & Wesson and that Taurus Judge pistol, the
18 most powerful weapon he had that day was trust.

19 Tammy and Bryan trusted the Defendant. They
20 never saw it coming. Never had it coming. And
21 certainly didn't deserve to die this way.

22 Now, this is contrary to what the Defense and
23 the Defendant would have you believe. They would
24 have you believe that Brett Parker is a victim in
25 this case. He is a victim of Bryan Capnerhurst.

1 He is a victim of the responding officers who
2 responded to the scene. He is a victim of the
3 crime scene investigators who investigated the
4 case, processed the scene, and collected evidence.
5 He is a victim of the Secret Service. He is a
6 victim of Sheriff Leon Lott. He is a victim of the
7 crime scene investigators. He is a victim of the
8 analysts from SLED and Richland County. He is a
9 victim of Tammy Parker's friends and family, his
10 own friends and family, who supported him and
11 believed him, but then turned their backs on him
12 and took this stand. He is a victim of the
13 interviewers at the Assessment Resource Center. He
14 is a victim of his own co-workers who took the
15 stand and testified in this case. Poor, poor Brett
16 Parker.

17 No. That just simply is not true. Brett
18 Parker is no victim. He is a greedy, selfish,
19 entitled, and while, yes, maybe charming at times,
20 manipulative killer.

21 And, yes, he is a bookie. Yes, he is a
22 gambler. Yes, he committed adultery. But that is
23 not why we are here today. We are here today
24 because he shot and killed Tammy Parker, who while
25 not perfect by all accounts, was loved by everyone.