

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Mark Hayes, Circuit Court Judge

RECEIVED

Apr 23 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM D. PENNINGTON,

APPELLANT

APPELLATE CASE NO 2018-001619

RECORD ON APPEAL

ADAM SINCLAIR RUFFIN
Appellate Defender

ALAN WILSON
Attorney General

ROBERT M. DUDEK
Chief Appellate Defender

DONALD J. ZELENKA
Deputy Attorney General

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

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General

P.O. Box 11549
Columbia, South Carolina, 29211
(803) 734-6305

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH)
CAROLINA)
5) TRANSCRIPT OF RECORD
6 -vs-) 2014-GS-11-00911
7) 2014-GS-11-00911A
WILLIAM DEAN)
PENNINGTON,) AUGUST 27, 2018
8) GAFFNEY, SOUTH CAROLINA
DEFENDANT.)

9
10 (VOLUME I)

11
12 B E F O R E:

13 THE HONORABLE J. MARK HAYES, II, JUDGE. ; And a Jury.
14

15
16 A P P E A R A N C E S:

17 MATT KENDALL, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

18 KIM LESKANIC, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

19 TRENT PRUETT, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT

21 DEAN COOK, ESQUIRE
22 ATTORNEY FOR THE DEFENDANT

23
24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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1 MR. PRUETT: One more housekeeping matter.

2 Mr. Kendall mentioned is that they did directly
3 indict Mr. Pennington for Count II on the indictment, which
4 Your Honor published a few moments ago, which was the
5 commission of a crime of violence with a weapon, and I
6 explained that to Mr. Pennington that was something that has
7 already been done and he's already been indicted and he's
8 informed of that. He's aware of it and he waives
9 arraignment or presentment to him personally.

10 THE COURT: All right.

11 MR. KENDALL: Going forward, Your Honor, I think
12 we are at the time we wish to kind of proffer some
13 testimony. We have four individuals here whose testimony we
14 wish to proffer; Rocky Pennington, Scarlett Pennington,
15 Sandra Porter, and Terry Lynn Swofford.

16 Overall, and we talked about this in chambers,
17 just a basic factual background of this case. This took
18 place resulting in the death of Ms. Pennington on June 1st,
19 2014. The State is alleging that -- and at that time the
20 defendant, or shortly thereafter the defendant alleged this
21 was an accident, that he had been cleaning his firearm and
22 that while he was cleaning it, it discharged and hit her in
23 the head.

24 As part of the State's case we wish to introduce
25 evidence that falls under a couple of different categories.

1 The first is Ms. Porter's statement. I believe I
2 have provided that to the court. Me and Mr. Pruett
3 discussed that. There should be four statements provided.

4 Ms. Porter was his ex-wife. And what her
5 testimony will relate to is what took place prior and during
6 their prior marriage.

7 I will let the court know that this was sometime
8 ago. I think she can address the specifics of that, but the
9 State would allege this constitutes -- I think it's
10 particularly relevant and that it negates the mistake
11 element the defendant is alleging.

12 In addition, I do think it shows common scheme or
13 plan, how he treated his wife and how he discharged the
14 firearm at her in the past.

15 We will additionally have Scarlett Pennington,
16 Rocky Pennington, and Ms. Swofford to talk about specific
17 instances of bad behavior on the part of Mr. Pennington.
18 Some of these will involve things such as -- such as
19 discharging firearms in the past, threats made either to
20 them or to -- and/or to Ms. Pennington that they personally
21 witnessed.

22 I discussed with these witnesses. I think we
23 discussed in chambers that statements made by the deceased
24 regarding things that Mr. Pennington had done are going to
25 be inadmissible. The State acknowledges that State v.

1 .Garcia, which it dealt with common sense impression is very.
2 Very similar facts seems to be fairly on point with regard
3 to this.

4 Should something come up that I feel is off point
5 of that, I would proffer it before the court, but they were
6 instructed not to discuss things that Ms. Pennington told
7 them that they did not have firsthand knowledge of.

8 So with that in mind, the State would call Sandra
9 Porter, Your Honor.

10 THE COURT: Mr. Pruett, do I recall correctly that
11 you have a brief?

12 MR. PRUETT: Yes, sir, I have a pretrial
13 memorandum that I prepared that kind of generalizes those
14 issues, Your Honor.

15 I have also got a copy for Mr. Kendall as well.

16 THE CLERK: Please raise your right hand.

17 SANDRA PORTER, having been first duly sworn,
18 testified as follows:

19 THE WITNESS: I do.

20 THE COURT: Ma'am, if you would, that gentleman
21 right in front of you is the court reporter. He's taking
22 down everything that's said.

23 You don't have to breath into the microphone. It
24 should be able to pick up your voice, but just speak up loud
25 enough so that he can hear you.

1 THE WITNESS: All right.

2 DIRECT EXAMINATION BY MR. KENDALL:

3 Q. Ma'am, could you please state your name for the record?

4 A. Sandra Porter.

5 Q. Okay. And Ms. Porter, do you know the defendant Mr.
6 William Pennington?

7 A. Yes.

8 Q. How do you know Mr. Pennington?

9 A. I was married to him for thirteen years.

10 Q. Okay. And what were the years of your marriage? When
11 were you married to him?

12 A. Oh, we got married in '64.

13 Q. Okay. And how long did that marriage last?

14 A. It lasted thirteen years.

15 Q. Okay. And how was Mr. Pennington over the course of
16 that marriage?

17 A. He was a very mean person.

18 Q. And how -- could you please elaborate on that?

19 A. Well, he -- he's always beat on me. He -- it was so
20 bad one time the kids was even afraid of him.

21 He would make me go to work and then he would come to
22 work and spy on me, say I was talking to men and all, and --
23 go into about what he did the night that he was shooting at
24 me?

25 Q. Yes, but let's talk about work first, if that's okay.

1 Do you remember where you were working at that time?

2 A. I was working at Limestone Mill.

3 Q. And what were your responsibilities over at Limestone
4 Mill?

5 A. I (unintelligible). It was a very hard job.

6 Q. Okay. And was Mr. Pennington working with you?

7 A. No, he hardly ever worked.

8 Q. Okay. Did he ever come by your job?

9 A. Yeah, he would sneak in and watch me. I didn't see
10 him, but other people would tell me "your husband is here.
11 You got to be --

12 MR. PRUETT: I would object to hearsay or somebody
13 else told her, whether he was there or not.

14 THE COURT: I would have to agree.

15 MR. KENDALL: Okay.

16 A. Well, I mean, the guard in the shack, he was --

17 BY MR. KENDALL:

18 Q. No, no, no.

19 A. Oh, I'm sorry.

20 Q. And while you were there, were there any sort of
21 physical altercations that occurred between the two of you?

22 A. When I would come out, I walked out of the mill one
23 night with a man and his wife and he accused me of going
24 with the man, and he was with his wife. And when I got in
25 the car, he threw a drink in my face and smacked me and

1 knocked me around.

2 Q. Okay.

3 A. That was nothing new.

4 Q. Were there any other instances involving --

5 How was your social life during that time?

6 A. What is that?

7 Q. Did you have a lot of friends on the outside?

8 A. Oh, no, I didn't. I wasn't allowed to have friends. I
9 couldn't go see anybody. He always kept me living way out
10 in the country or in another town. He didn't want me having
11 anything to do with my family or anybody.

12 Q. Okay. At this time did he ever make any accusations
13 about infidelity or an affair?

14 A. He used to accuse me of it all the time, but I don't
15 know how he thought I would meet anybody except at work, but
16 I didn't talk to anybody at work.

17 Q. Okay. And how was he with regards to the children?

18 A. Oh, he mistreated them a lot too.

19 Q. Okay. In what ways?

20 A. Well, beat them, and he shot at my youngest son. He
21 was shooting at him one time and his uncle come down. He
22 was up behind some trash cans he hid and his uncle come down
23 and made him leave him alone.

24 Q. Okay.

25 A. When I worked, he used to lock them up in a building

1 out behind the house. When I was asleep, I worked the third
2 shift, and I didn't know he was doing that until I woke up
3 one day and heard them out there.

4 Q. Did he ever at any time threaten you with a firearm?

5 A. Oh, yeah, this was right after he was locking them in
6 the building and all. I was working on the third shift, and
7 he come home one night, meaning he was hardly ever there,
8 but when he come home I always got beat. But he come in
9 that night and he had a gun. I don't know much about guns.
10 I just know it looked like a rifle or something and --

11 Q. You said it's like a rifle or something?

12 A. Like a rifle. I mean, you know, I don't know anything
13 about guns, but I just know it was a long -- I took it to be
14 a rifle.

15 Q. Okay.

16 A. And he was -- he pointed the gun at me and he would
17 pull the trigger and it wouldn't shoot. And he kind of
18 turned around and he would turn back around and he said
19 "this is for you" and he would shoot through the ceiling.
20 He done that at about five or six times and each time he
21 would turn around and he would say "this was yours" and he
22 would pull the trigger, but it didn't shoot, but then he
23 would shoot through the ceiling the next time. I figured it
24 was loaded, because it was kind of turned sideways like and
25 kind of like and said "this one is for you."

1 Q. Okay. And when did you -- how did that marriage
2 ultimately dissolve?

3 A. Well, when that happened, well, I know it was time for
4 me to get away from him and not go back, because I know if I
5 did, he would kill me. I mean, he's choked me and he would
6 beat me bad.

7 Q. And after you left, was there any other problems with
8 Mr. Pennington?

9 A. Well, he tried to bother me, but he -- there for awhile
10 he was following me and all. He was always correcting
11 the -- when I had kids, we had a house and he told me "I'm
12 going to come in and I'm going to be under the bed and I'm
13 going to kill all of you." He threatened to kill us all.

14 Q. Okay. Did he ever actually break in the house at any
15 point?

16 A. Oh, he hid at the house one time, hid behind the corner
17 cabinet we had. He was behind it and I come home from work
18 then and I just went to doing every-day things and the next
19 thing I know, he come out from behind the cabinet. He had
20 been back there with watching me to see if there had been a
21 man in there or something. I got accused of it all the
22 time.

23 Q. Okay.

24 A. He accused me of going with my own brother.

25 Q. Was there anything else involving Mr. Pennington you

1 could tell us involved in your marriage?

2 A. I just know I felt I didn't have anybody to help me. I
3 felt trapped. There was nothing I could do but take -- I
4 tried to do the best I could, but it just didn't -- I
5 couldn't let -- he would come and promise me -- you know, if
6 I left, he would promise me he was going to do better and
7 all, promised me that things would be different, but as soon
8 as I go back to him, he would start again. If I -- you see,
9 I didn't drive. I didn't have a car and I was always far
10 out. There was no help for me. I just didn't know what to
11 do.

12 Q. Yes, ma'am.

13 When did this marriage dissolve? When did y'all
14 finally break up?

15 A. That night that he did that. It was the next morning.

16 Q. With the gun, or with the -- when you say he did that,
17 what are you talking about?

18 A. When he pulled -- had the gun. And whenever he had
19 that gun, I know if I didn't get gone and stay gone, that he
20 was going to kill me. There is no doubt in my mind that he
21 was going to kill me.

22 Q. How long after this happened did he begin dating Ms.
23 Pennington?

24 A. Oh, he was dating her the whole time. I mean, he -- I
25 found out through one of his sisters.

1 Q. We don't want to go into the things that you heard from
2 other people.

3 A. Okay.

4 Q. Okay. Please answer any questions Mr. Pruett may have,
5 okay?

6 A. Okay.

7 CROSS EXAMINATION BY MR. PRUETT:

8 Q. Ms. Porter, do you know what year you were divorced?
9 Was it 1975?

10 A. It was something like that, yes.

11 Q. Okay. And how long after that did you wait before you
12 got remarried?

13 A. Oh, it had been awhile.

14 Q. One year? Two years?

15 A. I can't remember exactly. I mean, it was awhile. I
16 just -- I didn't have any boyfriends until I met my husband
17 now. My son-in-law's funeral is how I met him.

18 Q. All right.

19 Well, what I'm asking, Ms. Porter, is I read through
20 your Family Court paperwork. You got divorced and that
21 indicated 1975. That's why I was asking.

22 A. That's possible.

23 Q. Does that sound about right?

24 A. I try not to think about it.

25 Q. Okay. And then you went back to court in 1977, and Mr.

1 Pennington assumed custody of your children, correct?

2 A. Uh-huh.

3 Q. All right. And I think two of your children are in the
4 courtroom today. Robin, right?

5 A. Yes.

6 Q. And Brian?

7 A. Yes.

8 Q. Okay. And those are the children that you and Dean
9 have together?

10 A. Yes.

11 Q. You have four altogether?

12 A. Yes, we have got four.

13 Q. Okay. And after you got divorced in 1975, after that
14 were there any more incidents where Dean, according to you,
15 shot at you or pointed a gun at you after you got divorced?

16 A. Well, when me and my husband would pick the kids up at
17 his trailer he shot at us, but when we took it to court, the
18 magistrate's court, they didn't do anything about it. They
19 said firing a gun off in the city wasn't against the law.

20 Q. Well, what I'm asking is when was the last time
21 anything like that happened?

22 You got divorced in 1975?

23 A. Yes.

24 Q. That's forty-three years ago, all right?

25 A. Uh-huh.

1 Q. All right. And after you got divorced, when was the
2 last time that -- you remarried. When was the last time
3 that he threatened you with a gun, or shot at you, or
4 anything like that?

5 A. Well, he come to the mill when I worked at Hamrick
6 Mill. After I got married he come down there and he stuck
7 his hand in the welder and he was married to Rita then.

8 Q. When was that, though?

9 It's been more than forty years ago?

10 You got divorced forty-three years ago.

11 A. Let me think. Well, I was still married to -- oh, I'm
12 trying to think. I'm not good with dates.

13 Q. It's been a long time ago?

14 You are having trouble remembering?

15 A. We were married back in '76.

16 Q. Okay. Let me ask you this.

17 Did anybody else ever threaten you with a gun besides
18 your husband, Dean?

19 A. No.

20 Q. Nobody else?

21 A. No.

22 Q. So you never accused anybody else of doing the same
23 kind of thing that he did?

24 A. I said that my son had a gun once whenever he come to
25 the house. That didn't have anything to do with this.

1 Q. Well, I'm just asking if you made other allegations
2 similar to what we are talking.

3 A. No, no.

4 Q. Well, you just said your son, that you went and filed a
5 report and said your -- Brian, who is sitting right in the
6 courtroom, right? Is that who we are talking about?

7 A. Yeah, but I got -- told him I didn't see the gun. He
8 said he had a gun. I didn't see it and they dropped it.

9 Q. All right. Well, you filed the report with the
10 sheriff's office saying that he did have a gun.

11 A. The sheriff's office?

12 Oh, that's when my -- me and my oldest son come up
13 where his wife lived and he -- we was having problems
14 with --

15 Q. Yeah, you were having problems. You went to the
16 sheriff's office and you said Brian had a gun.

17 A. Well, he told my son he was going to shoot him. That
18 was between them two. That wasn't me. And --

19 Q. The report was filed by you, Ms. Porter.

20 A. Well, I know. We made a statement and he said he had a
21 gun, so I took him at his word.

22 Q. Okay. Because y'all were having problems?

23 A. I didn't actually see the gun, no.

24 Q. All right. That was 2009, I believe, and y'all were in
25 the middle of some issues involving the home?

1 A. Problems about the house, yes --

2 Q. Okay.

3 A. -- that I was buying from him.

4 Q. All right. Did you have any relatives, like brothers
5 or anything like that, living in Gaffney, or did you back
6 in --

7 A. I have got brothers and sisters, yes.

8 Q. All right. And all the time that you lived together,
9 whenever that was, from the time you got married to 1975,
10 there were never any reports filed with the sheriff's office
11 or --

12 A. Well, I went to the magistrate's office trying to get a
13 warrant, but he wouldn't give me one. He said that Dean had
14 been up there and said I hit myself with a Pepsi bottle and
15 Dr. Hall said ain't no way nobody could do that.

16 Q. All right. That's all I have. Thank you.

17 THE COURT: Any redirect on what he went into?

18 MR. KENDALL: No, sir, Your Honor.

19 THE COURT: Thank you, ma'am.

20 Mr. Porter, you may step down.

21 MR. KENDALL: Does Your Honor want to argue them
22 one at a time or just wait to the end?

23 THE COURT: Let's wait to the end.

24 MR. KENDALL: Yes, sir.

25 The State would call -- let's go with Scarlett

1 Pennington.

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

4 SCARLETT PENNINGTON, having been first duly sworn,
5 testified as follows:

6 THE WITNESS: I do.

7 DIRECT EXAMINATION BY MR. KENDALL:

8 Q. Ma'am, could you please state your name for the record?

9 A. Scarlett Pennington.

10 Q. And Ms. Pennington, how do you know the defendant Mr.
11 William Pennington?

12 A. He is my father-in-law.

13 Q. Okay. And I know these are hard questions. I know.
14 You were married to his son Riker prior to his death, is
15 that fair?

16 A. Yes.

17 Q. And how long have you known Mr. Pennington?

18 A. About nineteen years.

19 Q. And did you know Rita Pennington?

20 A. I did.

21 Q. How did you get to know the two of them?

22 A. I was married to their son Riker.

23 Q. And during that time did you have the opportunity to
24 observe Rita?

25 A. Yes.

1 Q. And what was Rita like?

2 A. Very sweet, humble.

3 Q. Okay. Did you have the opportunity to observe Dean?

4 A. Yes.

5 Q. And how was Dean?

6 A. He could be kind, but he had a mean side.

7 MR. PRUETT: I'm sorry, I couldn't hear what she
8 said.

9 A. He could be kind, but he had a mean side.

10 BY MR. KENDALL:

11 Q. And were you familiar with Rita's termination at Snack
12 Time Foods?

13 A. I was.

14 Q. And how did you come to know that? What was your
15 involvement with regards to that termination?

16 A. She had told me at first that -- I actually went with
17 her to pick up her last check from Snack Time.

18 Q. Okay. And was there anything out of the ordinary --
19 was Mr. Pennington aware that she was going to pick up her
20 last check from Snack Time?

21 A. Yes.

22 Q. And how do you know that?

23 A. We were at the house and he asked me to go with her to
24 make sure that I brought home a paper stating why she was
25 fired.

1 Q. And how did he appear when he was asking for this
2 paper?

3 A. He needed to know why she was fired, said that she had
4 been fired.

5 Q. Okay. And did you go and get that paper?

6 A. We went but we was not given a paper.

7 Q. Okay. Were you informed why she had been terminated?

8 A. They did discuss that in front of me, yes.

9 Q. Okay. What was the nature of the termination?

10 A. Sexual harassment.

11 Q. Okay. And did you go and tell Dean that?

12 A. I did not tell him that.

13 Q. And did you get a note?

14 A. No.

15 Q. And why not?

16 A. The lady at Snack Time didn't provide us with one.

17 Q. Okay. And did you all tell Dean why -- did you, when
18 you got back, tell Dean why she was fired?

19 A. I gave him a reason, but not the correct reason.

20 Q. Okay. Why did you tell Dean that she was -- what did
21 you tell Dean she was fired for?

22 A. That she had been hired for bumping into somebody and
23 calling them names.

24 Q. Okay. And was that accurate? Was that true?

25 A. No.

1 Q. Why did you make up that story?

2 A. Rita was crying and told me that she was scared for her
3 life, that if Dean found out.

4 Q. Okay.

5 MR. PRUETT: Your Honor, I know we are doing this
6 before the court, but obviously that's hearsay to what Rita
7 said. I think she can testify that she was fearful, but as
8 far as what she said would be inadmissible.

9 BY MR. KENDALL:

10 Q. Is it fair to say that when she came home from Snack
11 Time that she was fearful?

12 A. Yes.

13 Q. Okay. And did you have the opportunity to observe her
14 after the Snack Time firing?

15 A. Occasionally when we would be at their house, yes.

16 Q. At that time, after she was fired from Snack Time for
17 sexual harassment, did she appear more or less timid than
18 she had been pre-firing?

19 A. More timid, fearful.

20 Q. Okay. Please answer any questions Mr. Pruett may have.

21 CROSS EXAMINATION BY MR. PRUETT:

22 Q. So is it fair to say that Dean Pennington did not know
23 why his wife had been fired? He was asking you to find out
24 why?

25 A. Yes.

1 Q. Okay. So he didn't know the real reason?

2 A. He had told me that she was having an affair.

3 Q. I can't hear you. What?

4 A. He told me that he thought she was having an affair.

5 Q. Okay.

6 A. That was his thought.

7 Q. But the reason why she was fired is what I asked you.

8 He was asking you to find out the real reason why she was
9 fired?

10 A. Correct.

11 Q. And you lied to him?

12 A. I did.

13 Q. Okay.

14 MR. PRUETT: That's all I have.

15 THE COURT: Any redirect?

16 MR. KENDALL: Just to be clear.

17 REDIRECT EXAMINATION BY MR. KENDALL:

18 Q. So Mr. Pennington in front of you accused her of having
19 an affair, is that fair to say?

20 A. Yes.

21 Q. Okay. And did he indicate where that affair was taking
22 place, or like the contact of that affair?

23 A. Just that he thought she was having one.

24 Q. Okay. Did it involve work at all, or did he say?

25 A. He did not.

1 Q. Okay.

2 MR. KENDALL: Nothing further, Your Honor.

3 MR. PRUETT: No, sir, no further cross.

4 THE COURT: Ma'am, just watch your step as you
5 step down.

6 MR. KENDALL: Your Honor, the State would now call
7 Rocky Pennington.

8 THE CLERK: Please raise your right hand and put
9 your left hand on the Bible.

10 ROCKY PENNINGTON, having been first duly sworn,
11 testified as follows:

12 THE WITNESS: Yes.

13 DIRECT EXAMINATION BY MR. KENDALL:

14 Q. Could you state your name for the record, please?

15 A. Rocky Pennington.

16 Q. And Mr. Pennington, do you know the defendant Mr.
17 William Pennington?

18 A. Yes, I do.

19 Q. How do you know him?

20 A. He is my daddy.

21 Q. All right. So is it fair to say that you have known
22 him your entire life?

23 A. Yes, sir.

24 Q. Who is your mother?

25 A. Rita Pennington.

1 Q. Okay. And when this took place where were you living?

2 A. I was living out front. It's where the old house used
3 to be. I had moved a camper there.

4 Q. Okay. When you say where the old house had been, is it
5 fair to say you were living outside? Not in the residence
6 with Rita and Dean --

7 A. Not in the residence.

8 Q. -- but actually outside, outside in a separate camper,
9 is that accurate?

10 A. Yes, sir.

11 Q. So you are on the property, but not in the house, is
12 that fair to classify it?

13 A. (Shaking head yes).

14 Q. Okay. Over the course of your life did you see Mr.
15 Pennington with firearms?

16 A. Yes.

17 Q. How often would he be having -- be carrying firearms?

18 A. Every day.

19 Q. Okay. Did you see him cleaning firearms?

20 A. Yeah. Once in a while, yes.

21 Q. Okay. Based on your experience with him, was he
22 careful -- was he able to clean the firearm?

23 A. Yes.

24 Q. How was he as a gun owner? Was he a responsible gun
25 owner?

1 A. Yes, sometimes. Most of the time, yeah.

2 Q. All right. Were there any times that he discharged or
3 brandished a firearm and was not responsible?

4 A. Yes.

5 Q. Could you please tell us some of those instances?

6 A. When he would get angry.

7 Q. Okay. Did you ever see him --

8 Let me start from the beginning.

9 At any point in time did you see ever any problems
10 between Rita and Dean?

11 A. Yes.

12 Q. And what were the problems when you were younger?

13 A. When I was younger he would come in mad all the time.
14 He would lose his temper real fast. I mean, just the drop
15 of a hat he would lose his temper over anything.

16 Q. Did you ever observe any physical violence?

17 A. Yes.

18 Q. And when was that?

19 A. It started back from whenever I can remember as a small
20 child until I was old enough when I left home.

21 Q. Okay. Did you ever see him discharge --

22 .At least leading up to this, was he --

23 Did you ever see when you were living at the house
24 beating on her at that point?

25 A. As a -- before this happened?

1 Q. Yes.

2 A. Yes.

3 Q. In the years before that you saw him hitting her or
4 anything, or did it stop?

5 A. After -- I never seen it after I left home, and I was
6 very young when I left home.

7 Q. Okay. Okay.

8 And, again, one of the things we talked about is we
9 can't have you testify to things you heard from Rita. So I
10 understand there's some other stuff going on, but that's not
11 going to be admissible in court.

12 Did you ever see him point firearms or discharge
13 firearms near your mother?

14 A. Yes.

15 Q. And when was that?

16 A. Like I said, up until -- you know, from the time I was
17 young to middle age and after -- right before this happened
18 he would get angry. I never seen him point it, but he would
19 grab the gun.

20 Q. Okay. So right before this happened he would grab a
21 firearm?

22 A. On his side.

23 Q. And when he did that, what was he saying and doing?

24 A. I hadn't long and walked in and momma was coming in
25 through the kitchen, through her side of her door on her

1 side of the bed. He was laying on his side of the bed, like
2 he always was. Must have been arguing at the time I come in
3 there and sit. I always come in there and sit beside the
4 bed where he stayed in the bedroom.

5 He -- momma mouthed off -- he mouthed off at momma,
6 momma said something and -- momma said "I wish you would
7 just quit accusing me and just do what you imagined," put
8 her clothes in the closet. When she said that, he got mad
9 and crazy in his eyes. He reached and grabbed that gun and
10 screamed out "I'll kill you."

11 Q. Okay. And how far before his -- before her death did
12 this take place?

13 A. About two weeks.

14 Q. Okay. At any time when you were a child did you ever
15 see him discharge a firearm around your mother?

16 A. Yes.

17 Q. Please describe what happened in that instance.

18 A. Once I remember it was made it worse -- all of them was
19 bad, but this was at the kitchen in the old house. It was a
20 trailer. He always kept a gun on the gun rack. There was a
21 blue chair sitting there beside the table and they
22 were eating. He come in mad, jumping on her, beating her,
23 and I remember he grabbed her up and sling her into the
24 chair. He had a 30/30. He cocked it and he was screaming
25 different things at her head and he put the gun up side her

1 had and he pulled the trigger. And I remember the next
2 morning when she woke up the whole side of her face was
3 black and blue and you could see where the powder hit her in
4 her eye.

5 Q. And approximately how long ago was this? Was this
6 recent, like -- I guess let's say how long ago?

7 A. I was I would say maybe twelve, thirteen years old.

8 Q. Okay. All right.

9 At any time before this, other than you described him
10 grabbing her, did you see him firing a firearm at Rita or in
11 Rita's direction?

12 A. Yes.

13 Q. And when was that?

14 A. They were out in the back yard about I'm going to say
15 maybe a month or two before I moved down and they were
16 going -- we had a problem with the back pipe on the house.
17 It was messing up and I fixed it once before that. And I
18 was coming around the side of the house and he was back
19 there and they were arguing and he come around the house
20 shooting the gun towards -- that direction the way my momma
21 walked, but, you know, she had done walked on off. He was
22 shooting in the ground.

23 Q. Okay. He wasn't -- he wasn't like aiming right at her
24 and carelessly pulling the trigger? He was popping shots
25 off --

1 A. Popping shots off.

2 Q. In the direction where she was?

3 A. Yes.

4 Q. Okay. Did he ever shoot at her out the window?

5 A. Yes. Like momma chicken pen where she had animals and
6 stuff, they were outside towards where his window was and he
7 would take the gun and shoot out towards that direction when
8 she was out there feeding the chickens.

9 Or there have been times my little brother came over, I
10 came over, we would be out in the yard talking and we would
11 get out of the house. You know, we didn't want to be
12 inside. We would get out there and talk and he would shoot
13 off out through the window. The window would be open, but
14 it was the screen.

15 Q. And, again, those situations were he kind of carefully
16 aiming and like trying to hit her, or shooting in the air?

17 A. You were just there basically talking and hear a gun
18 going off.

19 Q. Okay.

20 A. But you knew it was coming in that direction because
21 you seen dust blow up.

22 Q. Okay. So it wasn't -- it's fair to say on those
23 instances he wasn't like aiming and shooting? He was kind
24 of shooting in your general direction? Is that --

25 A. Yes, sir.

1 Q. And you talked to Dean in the weeks leading up to
2 Rita's death. How did he appear in those weeks leading up
3 to that?

4 A. He was kind of quiet. He started talking to me a
5 little more, having different conversations, but he was --
6 he was really mad about what had happened at Snack Time and
7 where she used to work at Hamrick's, even accusing her of
8 messing around and that she had had an affair, supposedly,
9 with a couples of guys at Snack Time, the reason why she had
10 gotten fired for.

11 Q. And how did he take the news?

12 A. He was pissed.

13 Q. Okay. Did he do anything or hire anybody to look into
14 it?

15 A. He told me he hired a private investigator that cost a
16 thousand dollars.

17 Q. Okay.

18 A. That's how he found out, you know, what she got fired
19 for.

20 Q. How often would you go over there and talk to him?

21 A. I usually went every weekend, tried to.

22 Q. Okay.

23 A. There was sometimes we may not get along, so I did not
24 come around.

25 Q. All right. And how often would he mention the affair?

1 A. Every time.

2 He would come and pick me up at work and -- for awhile
3 and he talked about it. And I knew -- I knew the girl that
4 worked there with momma and the girl had told me what
5 supposedly happened. She was supposedly a witness.

6 Q. Uh-huh.

7 A. And he kept on, and I told him that I knew the girl,
8 that she bar tends at this bar and I told him her name, told
9 him what she had told me.

10 And later on in that conversation, after he was mad --
11 he was mad, you know, and later on, you know, I had spoke to
12 that girl and she said she had talked to him and said, you
13 know, basically she told him the same thing I did.

14 Q. Okay. So is it fair to say he was extremely upset
15 about the possibility she was having an affair?

16 A. Yeah, he was mad.

17 Q. Okay. Did you talk to him after the death of your
18 brother?

19 A. Yeah, I went down. I was tore up about my brother
20 being dead and all and I went down there to see his reaction
21 about it.

22 Q. And what did he say? Did he make any comments to you
23 about the death of your mother?

24 A. Well, we was sitting there and we talked. He didn't
25 really want to talk too much about her. He did tell me

1 that -- he did tell me once that -- I asked him, I said
2 "what happened?"

3 He said that he dropped the gun and she tried -- tried
4 catching it, and that's the only thing, and he stopped. He
5 didn't want to talk about it no more. So I got to telling
6 him -- because I went over there where my little brother,
7 after he killed himself, and we just got talking about that.

8 Q. Okay. Did he say when the gun got off, he dropped the
9 gun?

10 A. He told me he had it and he dropped it and she tried
11 catching it.

12 Q. Okay. Did it go off at that point?

13 A. (Shaking head yes).

14 Q. Okay. Did she try to catch it, or try to pick it up,
15 or --

16 A. Tried to catch it. She tried to catch it.

17 Q. Okay.

18 Please answer any questions Mr. Pruett has, okay?

19 CROSS EXAMINATION BY MR. PRUETT:

20 Q. Mr. Pennington, I want to understand the timeline of
21 what we are talking about here so we can get when some of
22 these things you just testified to occurred, all right,
23 specifically your dad using guns, or threatening your mom,
24 or shooting your mom, or whatever, okay?

25 Now, I'm hearing different things.

1 And I want to say, first of all, when you were
2 interviewed by the sheriff's office not long after the
3 shooting occurred, you didn't mention any of that, did you?

4 A. I wasn't thinking about it at the time. I was just
5 watching them bringing my momma's body out.

6 Q. I understand, but your dad has been accused of murder
7 for killing your mother, and none of those statements were
8 mentioned at all, correct?

9 A. (No response).

10 Q. Is that correct?

11 A. Yes.

12 Q. Okay. So getting to what you are testifying today, the
13 first time I learned about it was a few days ago, on
14 Thursday, when Mr. Kendall sent me an e-mail. Is that the
15 first time that you shared it with him as well?

16 A. When you sit down and you start thinking everything
17 goes over, and at that time we did talk about that, yeah.

18 Q. So the first time that you shared it with him would
19 have been Wednesday or Thursday of last week?

20 A. I have had to talk to so many people, I can't tell you
21 how --

22 Q. I'm not talking about different people --

23 A. You are asking me questions, I would like to tell you
24 something.

25 Q. Mr. Pennington, the first time that you shared it with

1 him was last week, on Wednesday or Thursday, is that
2 correct?

3 A. Yes.

4 Q. All right.

5 A. That don't mean it didn't happen.

6 Q. Well, I'm going to ask you about that so I can
7 understand it. All I have is some cryptic notes he sent me,
8 and I think it's what you testified to.

9 What he e-mailed was that he had fired a gun around
10 your mother. And he says here when you were a little boy
11 growing up, shot a gun by her head, can't remember the exact
12 age.

13 So I'm assuming this is the first time that you can
14 recall that, what Mr. Kendall has told me. You don't know
15 how old you would have been the first time that you saw
16 something like that?

17 A. When you go through that every since the time you can
18 remember, you don't keep up with dates. You don't write
19 them down.

20 Q. Well, I just remember the first time that you can
21 recall is what I'm asking, whether you were --

22 A. It's a lot of different times that really burned in my
23 head because I wake up every night screaming and hollering
24 and I had to go to sleep with them.

25 Q. Okay. So I need to know something, because that's what

1 the judge has to decide is how long ago was that?

2 A. I was at least twelve years old. I was real young.

3 Q. Twelve years old.

4 And how old are you now?

5 A. I'm fixing to be forty-one in October.

6 Q. So that would have been twenty-eight years ago,
7 something like that?

8 A. Yeah.

9 Q. Okay. All right.

10 Now, the other incident that he had that I learned for
11 the first time on Thursday was two months before the
12 shooting occurred in June, so I'm guessing that would have
13 been around April, your mother was outside, he was hollering
14 looking out the window and he shot a .22 rifle. Is that --
15 is that right, or am I misstating anything?

16 A. Yes, that's right, a .22 rifle. He always kept it
17 sitting beside the bed.

18 Q. And he shot it out the window?

19 A. Yeah.

20 Q. Did he shoot it at her, or he shot it out the window?

21 A. Towards where we all were standing.

22 Q. Where were you at?

23 A. We were gathering a little, you know, talking.

24 Standing around. My momma at the barn down there where she
25 keeps her chickens.

1 Q. Right.

2 A. We were all standing around together.

3 Q. All right.

4 A. Momma, she might be here. You know, people walk around
5 and look around as they talk showing things.

6 Q. You were there, your mother was there, and anybody
7 else?

8 A. Yes.

9 Q. Who?

10 A. Scarlett and my little brother.

11 Q. Okay.

12 A. Little kids where they were playing in the yard.

13 Q. They were all out there when this firing occurred,
14 correct?

15 A. Yes.

16 Q. Okay. And in two weeks before the shooting you
17 described an incident where they were arguing in the
18 bedroom?

19 A. Yes.

20 Q. And to quote you, he was on the bed with the gun where
21 he always is?

22 A. Yeah, he was laying on the bed right there where that
23 window is.

24 Q. Yeah.

25 So it wasn't unusual for him to have a gun laying in

1 the bed, was it?

2 A. He kept it on his side.

3 Q. Yeah. Well, he had one he kept on the side, but it's
4 not unusual for him to be in bed with the gun, correct?

5 A. He had them hanging on behind him. He had them in each
6 corner.

7 Q. Okay.

8 A. He had them in drawers.

9 Q. And on that occasion they were arguing. You just
10 testified to he put his hand on the holster and said "I'll
11 kill you"?

12 A. Yeah.

13 Q. Okay. I'm trying to get -- you know, listening to your
14 testimony, I wanted to be as accurate as possible, but those
15 are the incidents that I heard you testify to a moment ago
16 that Mr. Kendall advised me of.

17 Am I missing anything else more recent than -- because
18 you said, if I recall your testimony correctly in your
19 statement, while you were growing up there was abuse
20 occurring in the household. As you got older, you moved
21 out, and, to the best of your knowledge, it stopped at that
22 point?

23 A. Because I stayed gone for a little while at that time.

24 Q. I'm sorry?

25 A. There was a big argument. He run me off and I stayed

1 gone.

2 Q. Okay. I'm trying to get the times. That's all I'm
3 trying to do here.

4 So when you left your house, how young or how old?

5 A. I left, I was sixteen.

6 Q. Sixteen.

7 A. Fixing to be seventeen.

8 Q. And as you say in your statement, your written
9 statement that you made, after you left your household, to
10 the best of your knowledge, that type of abuse no longer
11 occurred?

12 A. It was hid from me, other than just what I could see.

13 Q. I'm just asking what you knew, and what you say in your
14 statement is that to the best of your knowledge, it no
15 longer occurred, correct?

16 A. You won't let me tell what I heard people say, and I do
17 know what I hear. When you get there and you see arguments
18 and people grabbing guns.

19 You said abuse. I never seen him put his hands on her.

20 Q. Well, reading from your statement, and if you need to
21 read it again, I can give you it to you. It says "I have
22 not seen any bruises on my mother since I have grown up."

23 And you just testified a moment ago that when you got
24 older and left the home, you were unaware of any abuse?

25 A. That was no bruises, no.

1 Q. All right. So you when went to go see your dad, did
2 you carry a gun on you?

3 A. No.

4 Q. You never did when you went to go visit your dad?

5 A. There would be one in the truck.

6 Q. All right. Were you drinking when you went to go see
7 him?

8 A. No, I didn't drink for two years after my little
9 brother died and all that.

10 Q. All right. So you went to visit your father. This has
11 been going on for four years. You never went down there
12 drinking and having a gun in your hand talking to him?

13 A. No, I never went down there drinking. I didn't drink
14 for two years after that.

15 Q. All right. That's all I have. Thank you.

16 THE COURT: Any redirect?

17 MR. KENDALL: Just to clarify something, and this
18 is just probably on me.

19 REDIRECT EXAMINATION BY MR. KENDALL:

20 Q. When we met back in January of 2017, is it fair to say
21 we talked generally about him doing things in the past,
22 grabbing at guns and things like that? Is that fair to say?

23 A. Yes.

24 Q. And then you did tell me, I'm just looking at my notes
25 specifically, about the conversation you had after Riker

1 died, is that correct?

2 A. Yes.

3 Q. Okay.

4 MR. KENDALL: Let me make sure I covered
5 everything.

6 (Off the record).

7 (Back on the record)

8 MR. KENDALL: Nothing further, Your Honor.

9 MR. PRUETT: No, sir.

10 THE COURT: Thank you, sir. Watch your step as
11 you step down.

12 MR. KENDALL: Now the State calls Lynn Swofford,
13 Your Honor.

14 THE CLERK: Please raise your right hand and place
15 your left hand on the Bible.

16 LYNN SWOFFORD, having been first duly sworn,
17 testified as follows:

18 THE WITNESS: So help me God.

19 DIRECT EXAMINATION BY MR. KENDALL:

20 Q. Could you please state your name for the record?

21 A. Terry Swofford.

22 Q. And Ms. Swofford, what is your relation to Rita
23 Pennington?

24 A. I'm her ex-daughter-in-law.

25 Q. Okay. And who were you married to?

1 A. I was married to Eric Pennington, Jr..

2 Q. Okay. And following your divorce, did you still have
3 the opportunity to see and interact with Rita?

4 A. Yes.

5 Q. Okay. And how long before that death, her death, did
6 that take place?

7 A. What?

8 Q. Did you -- did you interact with her up until her
9 death?

10 A. Oh, yeah.

11 Q. Okay. And how was Dean with regard to Rita?

12 A. Possessive.

13 Q. Okay. Could you please kind of elaborate on that a
14 little bit?

15 A. He was very mean. He was very controlling. He called
16 her crazy all the time. Called her stupid.

17 Q. Okay. At any point in time did he ever make any
18 threats towards Rita that you observed?

19 A. Yes.

20 Q. All right. And what sort of things --

21 Or did he ever tell you about any threats he made
22 towards Rita?

23 A. Yes.

24 Q. And could you please describe those?

25 A. I had called Rita one day to talk to Rita. I had my

1 granddaughter and I needed somebody to take care of her.

2 Dean was on the phone and Dean was just chattering
3 away, just chattering away, and he just was talking about
4 how he had a gun pointed at her head all night long and he
5 could just shoot her whenever he wanted to and she couldn't
6 do anything about it.

7 Q. Okay. Did he say why he was going to do this?

8 A. It's because he could.

9 Q. All right. Do you remember him saying something about
10 because she was stupid?

11 A. Yeah.

12 Q. At any point did you ever see him in person making any
13 threats towards Rita?

14 A. He always hollered at her, griped at her.

15 Q. Okay. Did he ever talk to you? Did he ever come to
16 your house or anything like that?

17 A. Yes.

18 Q. Please describe that incident.

19 A. I thought it was one of my sons walking in the door and
20 I had my granddaughter and daughter sitting on the floor. I
21 went to fix her something to drink. When I turned around it
22 was Dean standing at the fireplace with his arm propped up
23 like that and had that gun on his side.

24 Q. Okay. And what did he say?

25 A. Telling me he was going to kill Rita.

1 Q. Okay. And --

2 A. He told me that a lot.

3 Q. Okay. And how long before her death did this take
4 place?

5 A. I really can't give you specific times, because I had
6 my little girl, and my son was sick. There was a lot going
7 on. I can tell you approximately two months.

8 Q. Okay.

9 A. Maybe three.

10 Q. All right. Did he ever make any threats at all about
11 her infidelity?

12 A. He talked about the reason she got fired from Snack
13 Time all the time. That made him mad.

14 Q. Okay. And did you ever hear him discuss anything about
15 her funeral plans?

16 A. Yes.

17 Q. And when did that start? When did he start talking
18 about funeral plans? Was that before or after she was fired
19 from Snack Time?

20 A. It was before. He had went and done it and she done --
21 she said she had a pink casket.

22 Q. Let's not talk about what she said.

23 Was this -- she was fired from Snack Time that winter,
24 I think around the first of January, I think. Was this
25 before or after that?

1 A. It was before that.

2 Q. Are you sure?

3 A. Like I said, my son was sick and days was just -- I was
4 running back and forth to Charlotte and I had my
5 granddaughter too. She's got problems too. Time was
6 just --

7 Q. Okay. All right.

8 And the last thing, were you -- I asked Rocky this.
9 Were you ever able to be in the bedroom where they would be?

10 A. He slept on the right and she slept on the left.

11 Q. Okay.

12 Please answer any questions Mr. Pruett may have.

13 CROSS EXAMINATION BY MR. PRUETT:

14 Q. The first matter that you mentioned to Mr. Kendall was
15 you had called over to talk to Rita and you heard Dean
16 chattering over the telephone, correct?

17 A. That's not what I said.

18 Q. What did you say?

19 A. I said I called to talk to Rita. Rita wasn't there and
20 Dean answered the phone. He was the one that just kept
21 chatter, chatter, chatter.

22 Q. When was that?

23 A. I don't know what day that was.

24 Q. Well, what year was it? What year?

25 A. It had to be in '14.

1 Q. All right.

2 A. 2014, because my son died in 2015, January.

3 Q. Another incident --

4 And I know it's been a while. I thought you had a
5 chance to review your statement, but the incident when you
6 say he came over to the house. That was in November of
7 2013. Does that sound correct?

8 A. I guess. I -- I'm going to tell you I can't tell you
9 dates.

10 Q. Well, I understand. It's been four years since you
11 made this statement and I appreciate that, Ms. Swofford.

12 A. Since then my son has died.

13 Q. I'm just reading. I'm just assuming it's correct you
14 said "around November of 2013 Dean Pennington came to my
15 house, walked in and then he made statements about, you
16 know, going to kill Rita because she was stupid."

17 A. Yes.

18 Q. Okay. You said that was --

19 A. And is correct. If it's on that paper, it's correct.

20 Q. Okay. All right.

21 And the funeral plans you alluded to, you think that
22 occurred before this stuff came up about Snack Time,
23 correct?

24 A. (No response).

25 Q. And apparently you had spoken to Rita about that and

1 discussed it with her, correct?

2 A. Yes, I did.

3 Q. Okay. Thank you.

4 THE COURT: Any redirect?

5 MR. KENDALL: No, sir, Your Honor.

6 THE COURT: Ma'am, watch your step as you are
7 stepping down.

8 MR. KENDALL: I think those were the four that we
9 were going to proffer, Your Honor.

10 I'd like take over on kind of the main points one
11 by one, if that's the easiest way.

12 THE COURT: All right. Do you want to try it that
13 way?

14 MR. KENDALL: If that's all right, Your Honor.

15 So with regard to Ms. Porter, what the basic of
16 her testimony was of prior bad acts was that he was
17 physically abusive towards her. He would follow and stalk
18 her at work. I was mistaken. I thought she had first-hand
19 knowledge of that. Apparently she does not, so we are not
20 going to be discussing that.

21 That he threatened her with a gun in her house,
22 which I believe is the main -- the main issue here. He was
23 extremely controlling. His relationship with children. His
24 accusations of her having an affair, and then his hiding in
25 the house after the breakup.

1 The State's desire to use this kind of falls into
2 kind of a two-part analysis of her -- falls under 404 (b),
3 both as -- I think it's evidence of his intent with regards
4 to the ultimate shooting.

5 But I also --

6 THE COURT: What?

7 MR. KENDALL: The shooting in 2014 of Rita
8 Pennington. At issue is whether or not he did that
9 intentionally or not intentionally.

10 In this case with regard to Sandra, I think it
11 shows a common scheme or plan. It's a similar actions. In
12 both cases he's extremely controlling. He's using firearms
13 in a dangerous manner to exert that control. He makes
14 accusations of infidelity. I think, quite frankly, this was
15 borderline of paranoia, and he's physically violent.

16 I think this is relevant ultimately that it shows
17 a similar pattern of behavior with Ms. Porter, as it does
18 with Ms. Pennington -- as it did with Ms. Pennington,
19 leading up to her death.

20 I understand that there is certainly a long time
21 in between these two. I think Mr. Pruett brought up thirty
22 or forty years, and we certainly acknowledge that. However,
23 in looking at common scheme or plan, it requires that a
24 common scheme or plan. And in this case the sample size of
25 an ex-wife and his wife. And I don't think that -- I think

1 what's relevant is the similarities in those two
2 relationships. The fact that a significant amount of time
3 has elapsed I don't think makes those similarities any less
4 so.

5 I was unable to find, and I looked quite a bit to
6 the case law to anything that far back. I will just be
7 straight with the court, I couldn't find that, but I do
8 think it is both relevant and shows a pattern of conduct
9 towards his wives of controlling and violent behavior,
10 specifically violent behavior involving firearms. I think
11 that is extremely probative of the ultimate issue. Mr.
12 Pruett is certainly able to cross-examine her appropriately,
13 and I think he did with regards to this. Because of that, I
14 think that the probative value outweighs any prejudicial
15 effect. I think the jury could certainly make an
16 understanding that, you know, should they believe this
17 pattern of conduct exists, they can certainly weigh that
18 towards whether or not he intended to kill her in this case.

19 At the same time, I do not think -- if they don't
20 believe in a similar conduct that's so remote, that I don't
21 think anybody is just going to convict him because of
22 something that he did fifty years ago -- excuse me, thirty
23 or forty years ago.

24 I think weighing on all, I think it is appropriate
25 under 404 (b). I think it should be admitted, Your Honor.

1 THE COURT: As common scheme and plan?

2 MR. KENDALL: I do think it shows -- I think it
3 does show a common scheme or plan, in that he's using
4 firearms to -- I think the overall scheme or plan is the
5 controlling of the women in his life -- or his wife, excuse
6 me; using firearms and the paranoid behavior that's
7 associated with it.

8 I think ultimately we are using it to show an
9 absence of mistake, I guess, but I do think that what it
10 falls under is a common scheme or plan. This is what he did
11 with regards to his ex-wife. It was a very, very similar
12 pattern that took place with his current wife.

13 And, again, I understand that it's a significant
14 amount of time, but only one wife.

15 If we are looking at how somebody behaves towards
16 ex-wives, I do think it's important that -- how somebody
17 behaves towards their spouse by its very nature is going to
18 be over a longer time frame than how somebody behaves
19 towards doing something that's typically much less. We
20 would ask to allow this evidence.

21 THE COURT: Let me just ask that I want to be sure
22 I understand the analytical approach.

23 MR. KENDALL: Uh-huh.

24 THE COURT: First of all, evidence of other crimes
25 or other wrong doings or acts is not admissible to prove the

1 character of a person in order to show that the acts were in
2 conformity therewith. That's the first part of it. And so
3 we cannot use evidence of prior acts, bad acts, good acts,
4 or whatever, to show that at the time complained of in the
5 indictment he acted in the same fashion.

6 MR. KENDALL: Yes, sir.

7 THE COURT: All right. Under Subsection B, you
8 have got to take it out and you got to plug it into one of
9 those exceptions that --

10 MR. KENDALL: Yes.

11 THE COURT: -- allows you to have these prior acts
12 and that is common plan or -- common scheme or plan.

13 MR. KENDALL: Yes, sir.

14 THE COURT: And you are saying the way that he
15 controlled his prior wife is that type of common scheme or
16 plan --

17 MR. KENDALL: Yes.

18 THE COURT: -- contemplated by the rules?

19 MR. KENDALL: I do think so, Your Honor. In both
20 instances you have his questioning her fidelity. You have
21 him pointing firearms at her and using firearms to exert
22 control over her. You have in both instances her inability
23 to have an outside life, to have friends or associate with
24 others. I think that's common to both this case, as well as
25 the other case.

1 At issue --

2 THE COURT: I'm sorry, go ahead.

3 MR. KENDALL: At issue in this case is whether or
4 not he was using that firearm in the bedroom as an exercise
5 of controlling her or is he meaning to kill her with that,
6 or whether he was using that and was just simply cleaning
7 it.

8 I think it's very highly probative of his past
9 relationships and how he basically controlled when using a
10 violent means under this very similar set of circumstances
11 of that ultimate question.

12 THE COURT: But wouldn't we be -- wouldn't you be
13 asking a jury to say, okay, because he is suspicious of his
14 wife, because he's accusative of his wife of having an
15 affair, because he is basically a bad husband, then we want
16 you to convict him?

17 MR. KENDALL: No, sir, I think that what we would
18 be saying is that because he did all of these things with
19 his first wife, that that indicates and makes the testimony
20 regarding his behavior towards his second wife more credible
21 and as that, we reach that ultimate decision of what his
22 intentions were.

23 I guess the first wife would establish -- would
24 help to establish the validity of what we are saying
25 happened to the second wife.

1 THE COURT: Aren't you going to get in all that
2 information about the second wife?

3 MR. KENDALL: Yes.

4 THE COURT: Why do you need the information about
5 the first wife, because he never -- because the first
6 wife -- he didn't shoot the first wife.

7 MR. KENDALL: Yes, sir.

8 I think that -- I think it adds to it. We
9 certainly would want to offer as much evidence as we can.

10 THE COURT: Well, I'm sure, but what I'm concerned
11 about is that the more you talk about the first wife, the
12 more likelihood that you are going to, if he is convicted,
13 set up -- that we got to do it all over again. This family
14 will not have to bring an end to this legal processes.

15 MR. KENDALL: Yes, sir.

16 THE COURT: All right. He says common scheme or
17 plan.

18 MR. PRUETT: Your Honor, I heard him say that,
19 judge, and then if that didn't work, maybe accident to
20 disprove that, or absence of mistake.

21 I don't think it falls under common scheme or
22 plan, because I don't think the acts are similarly
23 sufficient in that, first of all. We haven't heard, and I
24 listened this afternoon, testimony that he engaged in that
25 same pattern of behavior with his wife Rita. So I question

1 whether or not they are even similar.

2 And secondly, of course, the remoteness.

3 Obviously forty years apart from each other raises issues
4 about relevancy. Clearly something that's more temporal in
5 time, more recent, increases the potential for relevancy.
6 The more remote, it only increases the potential for
7 prejudice.

8 And there are some striking dissimilarities. The
9 one being he suspected or maybe, according to Ms. Porter,
10 suspected her of infidelity. In this case there is evidence
11 of infidelity, so he was naturally suspicious. He was maybe
12 perhaps given some foundation or reason to suspect her.

13 THE COURT: You do agree that -- or do you agree
14 that the relationship that he had with the deceased, that
15 comes in, if established through statements that he's made
16 to other people?

17 MR. PRUETT: Yes, sir. I think it's direct
18 evidence from him, statements made by him that are
19 potentially inculpatory, but these statements from forty
20 years ago, I question the relevancy, first and foremost.

21 Of course, Your Honor has to apply the standard of
22 clear and convincing evidence to the testimony of the
23 witness, because there is no other corroboration. And I
24 would think that any time that you have an acrimonious
25 divorce, which is what we have here, you have to take a

1 little bit of what's being said with a grain of salt. Her
2 account about his abuse of the children, but yet two years
3 after the divorce he was awarded custody of the children
4 seems somewhat incongruent as to what may have actually
5 occurred.

6 She's testified she had nobody to turn to, but yet
7 she has brothers and family living in the community. There
8 are no reports of any of these incidents occurring, no
9 documentation.

10 In other words, there is no corroboration, other
11 than her testimony that these events, in fact, ever
12 occurred.

13 So, again, her testimony kind of has to be
14 assessed for under the standard, not a preponderance of the
15 evidence, but clear and convincing evidence that these prior
16 bad acts did, in fact, occur. And in the absence of any
17 corroboration, I think they have to be scrutinized that much
18 more. Even when there is corroboration, sometimes you have
19 to kind of look at behind those witnesses and see what that
20 evidence is, but in this instance there is not even that.

21 But I would submit, given the remoteness and given
22 the lack of dissimilarity, the lack of probative value, that
23 is far more prejudicial.

24 As Ms. Porter testified, Dean Pennington is a mean
25 person, and some of the things that were alluded to and

1 argued by the State has more to do with character traits
2 than they do with the actual prior bad act; that he's maybe
3 a mean person, or a bad husband, or controlling, or
4 possessive, or suspicious, or paranoid, those go to more bad
5 character traits to a bad person, but the actual prior bad
6 acts in question, I don't know that they are even similar
7 enough to qualify for admission of Rule 404 (b).

8 And I certainly don't think they go to the other
9 issues involving in the absence of mistake or intent.

10 THE COURT: Both of you do agree that you cannot
11 convict someone, regardless of how mean they are, simply
12 because they are mean?

13 MR. KENDALL: Yes, yes, and the State would agree
14 that's the point -- the point of the ruling and that's
15 not -- I don't think that's our intention to try to show
16 that he is a mean person.

17 I think what we are attempting to show, and this
18 is why it's such a -- kind of a bizarre argument, I guess,
19 but we are ultimately -- the ultimate question is whether or
20 not he intended to shoot her, or whether the gun just
21 wrongfully discharged.

22 THE COURT: Ultimately whether or not it's an
23 accident --

24 MR. KENDALL: Yes, sir.

25 THE COURT: -- that he's claiming, or whether it's

1 intentional?

2 MR. KENDALL: Yes, and sort of a subpart to that
3 is he says it's an accident. The State's position is look
4 at all this other stuff leading up to this that suggests
5 it's not an accident.

6 Obviously if there is a wonderful marriage and
7 there is no infidelity issues or accusations, I guess, and
8 he is okay with her and she's okay with him and the gun
9 obviously goes off, it's a very different case.

10 In this case we have got quite a few allegations
11 of behavior of his that is, quite frankly, very, very, very
12 suspicious of her behavior, to a point where I think that it
13 does bring seriously into question what his motives were. I
14 mean, that's our case. We can show beyond a reasonable
15 doubt he intended to kill her. And we think that his past
16 behavior with his past wife bolsters the case, because it's
17 consistent with his behavior towards his now late, but at
18 that time current wife, and that's what we just kind of
19 argue.

20 With regards to clear and convincing, Your Honor,
21 we find beyond a reasonable doubt with CDV victims based on
22 their testimony, is their sole testimony, there is no
23 requirement that it must be any sort of other evidence to
24 back that up. It's something that we do have.

25 Obviously, again, Mr. Pruett brought up the

1 temporal issue. I can't do anything about the fact it
2 happened a long time ago. It did, but though it did happen
3 a long time ago, the sample size here is two wives. And so
4 the fact he's married to this wife for a long time I don't
5 think necessarily makes that just, per say, admissible.
6 That's why we would ask for it to come in.

7 THE COURT: I mean, from what y'all have shared
8 with me is that what you have to -- what -- part of what you
9 are going to show is the relationship that the defendant had
10 with the victim and how the marriage was -- was less than
11 ideal, in that -- in what I have heard controlling, guns all
12 over the place, violence at times, suspicious, claims of
13 inappropriate relationships on the part of the victim, all
14 preceded this act that led to her demise and that you are
15 going to argue that's an intentional act.

16 And that's what the defense is going to argue is
17 that, well, we just look at it narrower, look at what
18 happened. This was an accident. He was cleaning the gun or
19 dropped the gun somehow and it went off.

20 I see -- I think right now there was a
21 relationship with his prior wife goes more to his character,
22 not to the specific facts of what led up to the demise of
23 his second wife and I don't think that I would allow her to
24 talk about that relationship, unless it got to be more
25 specific that you could tie it actually into the events that

1 led to this shooting. Otherwise, my concern is that we are
2 going to present a case to the jury. They might convict him
3 and then convict him based on just being a bad husband,
4 having treating his wives poorly. That leads us going
5 through this whole process all over again.

6 MR. KENDALL: Yes, sir. Yes, sir.

7 THE COURT: So that's my inclination with the
8 testimony of the prior wife, not given the fact that forty
9 years is a long time to tie something to this event.

10 MR. KENDALL: Yes, sir.

11 I believe the next witness we heard from was
12 Scarlett Pennington. I actually think Ms. Pennington's --
13 we brought her up here today just to kind of make sure,
14 because there was some overlapping things what Rita said
15 what happened. I actually think this is a completely
16 appropriate behavior. I think she is -- I'm not even sure
17 this constitutes a prior bad act, to be entirely honest.

18 What she testified to is the story of Rita going
19 to pick up her last check, that they felt it necessary to
20 make up a story to tell Dean about that, and that she was
21 afraid, based on that. We obviously can't go into things
22 Rita said, but I think she can discuss her behavior with
23 what she told Dean and witnessing -- Dean's witnessing,
24 excuse me, her -- witnessing Dean threaten her for him being
25 involved -- accusing her of infidelity related to Snack Time

1 and her becoming much more timid following the Snack Time
2 firing. I actually don't think any of that actually comes
3 now as a prior bad act. I'm putting her up there as more of
4 a concern with, entirely honest with you, making sure we
5 don't go over any lines with regards to what the victim said
6 and that 803 analysis, which I think we all kind of agree on
7 Garcia probably doesn't come in. I do think that's
8 appropriate. Her -- and this is directly related to what we
9 are talking about in the case.

10 I think it's important to distinguish, too, we are
11 talking about Rita's infidelity. There wasn't actually any
12 sort of sexual relationship between her and this guy. They
13 flirted back and forth. He's a significantly younger man.
14 I think he was eighteen when this is happening and he sort
15 of treated her as a sort of a grand motherly figure and I
16 think that she took those -- misunderstood those feelings or
17 wanted to misunderstand those feelings. She actually got
18 fired when she walked up behind him and aggressively grabbed
19 him on the thigh, which was like outside his pants. Just
20 sort of touched the penis. They have a zero, you know --
21 they got a zero tolerance policy for any kind of sexual
22 harassment. It got reported, not even by him I don't think,
23 and that's why she was terminated. So it wasn't like there
24 was a prolonged affair that was taking place between the two
25 of them. They -- their -- according to him it was not. I

1 don't think anybody has ever found that to be the case, but
2 I do think all of Ms. Pennington's testimony is both
3 relevant and discusses his behavior, and this would be, I
4 think, added to other testimony of other Snack Time
5 employees regarding his behavior in trying to and ultimately
6 determining the nature of her firing, which ultimately
7 provided the motive for the murder.

8 MR. PRUETT: I agree it's not a prior bad act. I
9 guess it's an issue of general relevancy, whether or not
10 they want to use that testimony or not. I think they will
11 have other witnesses that will testify to the same thing.

12 I don't know that I have an objection here, except
13 for maybe the remoteness, but -- it was six months, five
14 months before the incident she was describing when she was
15 fired.

16 MR. KENDALL: Well, where we think it's relevant
17 is he's wanting to get a note for her. I mean, this is the
18 like why didn't you come to court, get me a note. He's
19 requesting that she get him a note as to why she was fired.
20 That's -- that's fairly strange behavior from a spouse. It
21 clearly shows some level of suspicion with why she was
22 terminated.

23 THE COURT: Based on what I have heard, I don't
24 think you meet the relevancy standard with her, unless the
25 stories change. You know, as -- just with the understanding

1 she can't testify to what the deceased told her that -- like
2 "the victim told me." She can't do that, but other than
3 that, I don't -- I did not hear -- I was examining from
4 prior bad acts, but I did not hear anything that would limit
5 that testimony.

6 MR. KENDALL: Okay. Thank you, Your Honor.

7 MR. PRUETT: Just to add, Your Honor, she --
8 again, I know we are in-camera at this point, but she stated
9 that Mr. Pennington had a mean side to him. Again, those
10 character comments really would have to be inadmissible.
11 Just -- again, we are in-camera now, but she said he could
12 be good, but he also had a mean side to him, so that's --
13 that would be --

14 THE COURT: Those broad characterizations, I would
15 agree. If she's got some specific examples --

16 MR. KENDALL: Okay. Would it be fair to say,
17 just -- it will apply to a lot of witnesses, that he was
18 controlling of her? Maybe that sufficiently --

19 MR. PRUETT: Yeah, those are character --
20 characterizations of personally describe acts. And I think
21 her testimony in and of itself said he wanted to know why
22 she was fired and to get a note. I mean, that speaks for
23 itself. He can make the argument to the jury that he was
24 controlling.

25 THE COURT: But now if she has information that

1 describes how the victim knew, I think that would be proper,
2 was she fearful at the time, but you cannot go into specific
3 things that she had told. "I know that because she told me
4 that," she can't do that.

5 MR. KENDALL: Yes, sir, Your Honor.

6 THE COURT: All right.

7 MR. KENDALL: I think next we heard from Rocky
8 Pennington.

9 THE COURT: Uh-huh.

10 MR. KENDALL: And I'm going to break this into
11 sort of a couple different pieces.

12 The first one would be sort of a longer-term
13 problems between Rita and Dean, including in that
14 discharging a firearm at his mother when he was a young age.

15 The second sort of the more recent, I guess,
16 discharge of firearms near her, I guess sort of --

17 The third would be his behavior leading up to her
18 death. And by that, I would say would include that him
19 arguing and grabbing a gun -- or, excuse me, grabbing his
20 holster and saying he would kill her.

21 And then -- and then also during that time his
22 conversations with his father, which he appeared to be
23 growing more agitated, accusing Rita of an affair, and
24 claiming that he was hiring a P.I. virtually every time he
25 talked to him.

1 And then his subsequent statement that when he
2 talked to Dean, he had said at one point he had dropped the
3 gun and his mother grabbed it, or he grabbed -- I don't know
4 how he worded it. I had it in my notes as grabbed it.

5 And then we may use -- I don't think anybody has
6 any problem with his testimony that Dean was familiar with
7 firearms and knew how to clean them properly and handle them
8 properly. I don't think that's -- I don't think that's any sort
9 of issue with defense.

10 With regards to his prior actions of discharging a
11 firearm by his mother's head, I think he testified that he
12 was approximately twelve years old. I think this does
13 show -- following an argument. I think this does show an
14 absence of mistake. I think the prior action of him
15 basically getting in a fight with his wife and pulling a gun
16 and shooting at her tends to negate his -- or excuse me,
17 tends to negate his defense, that in this particular
18 instance he did so by accident. I think -- if that's what
19 his comment is that he's shooting at her, I think that does
20 go to whether or not ultimately this constituted a mistake.

21 With regard to bruising, I think that that does
22 show longer-term marital problems between the two. One of
23 the things in Mr. Pennington's statement is that they were
24 doing well. He does say they had had problems in the past.

25 With regard to the prior shootings, again, I think

1 this does indicate an absence of mistake. He's regularly
2 shooting at his wife, or fairly regularly shooting in her
3 direction, at least. It would seem to negate his sort of
4 idea that he is -- when he gets mad, that he is doing it
5 accidentally discharging a gun. I mean, this is basically a
6 situation where he shot at her in the past when he's gotten
7 mad. He's brandishing a firearm and shooting when he gets
8 mad and then saying in this particular instance it results
9 in some sort of mistake.

10 Next, I think that his -- about two weeks prior to
11 this talking about him reaching a holster on his gun and
12 threatening to kill her, I do think that is extremely
13 valuable evidence and I do think that is a basic statement
14 by the defendant of intent. I think that goes directly to
15 that. I don't think that falls under 404 (b), at least not
16 clearly of a prior bad act. I think it's a prior threat by
17 the defendant and I think those are, in fact, admissible in
18 court. There is sufficient amount of case law establishing
19 that. I'll just print it out and I'll pass up to the court.

20 And obviously any conversations he had with his
21 father leading up to the death about his agitation or
22 something to that I don't think would fall under prior bad
23 acts. I think it's highly relevant to the defendant's
24 mind-set that morning.

25 Is that everything?

1 Oh, and then he claimed that Dean told him after
2 his brother died that he dropped the gun I think is
3 basically an inconsistent statement by the defendant as to
4 what happened. I think that is -- I don't think that is --
5 I don't think it involves 404 (b) at all. I think it's just
6 a prior inconsistent statement.

7 THE COURT: All right. I mean, I -- my
8 understanding of Mr. Rocky Pennington's statements, his
9 testimony is based on conversation that he had with the
10 defendant, and I think conversations he had with the
11 defendant, absent some issue of -- well, I think his
12 information is relevant, you know, and I think he would be
13 allowed to testify as to his interactions with his father,
14 either through statements or his observations.

15 MR. PRUETT: I agree. I mean, it's a credibility
16 issue. We have a jury to weigh that evidence. That's a
17 jury issue.

18 THE COURT: Right.

19 MR. PRUETT: I agree it comes in, that it's a
20 prior inconsistent statement. They may use it that way.

21 THE COURT: Okay.

22 MR. KENDALL: And I guess we need to discuss the
23 discharging of the firearm in her direction and the stuff
24 when he was a little kid, discharging a firearm near her
25 head.

1 Again, I think that does show an absence of
2 mistake. Again, I acknowledge I have the same temporal
3 issue that I had with Ms. Porter. It happened a long time
4 ago, but I think it's relevant. I think that what he's
5 doing is debasing his wife. He's pulling out guns and
6 shooting at them. The fact that he's done that once very
7 close to her face and a couple other times it appears he's
8 popping off shots in the back yard very close in time to
9 when she died, I think it seems to suggest that --

10 THE COURT: Let me -- I mean, I agree with you.
11 Even though it happens when he was said that he was
12 twelve --

13 MR. KENDALL: Uh-huh.

14 THE COURT: -- that goes to the weight and
15 credibility of it, whether you want to actually present it,
16 but I think it is admissible.

17 MR. PRUETT: Well, Your Honor, I'm not sure which
18 exception he's trying to get it under. It's common scheme,
19 or absence of intent, or mistake.

20 THE COURT: Which?

21 MR. KENDALL: I think it's his intent and absence
22 of mistake.

23 MR. PRUETT: So it's not -- so we are not going
24 with common scheme?

25 MR. KENDALL: No, I don't think it would be a

1 common scheme or plan.

2 MR. PRUETT: And the intent there would be, Your
3 Honor, the defendant is saying it's accidental. They are
4 saying it's intentional. I don't know how that goes to the
5 issue of intent.

6 If you are saying it happened a completely
7 different way, as opposed to, you know, holding a gun up to
8 somebody's head and firing it, as opposed to sitting on your
9 bedside and the gun going off, I don't know how one proves
10 intent and the or the absence of mistake. It's so
11 dissimilar.

12 THE COURT: Well, that's a credibility issue.

13 MR. PRUETT: Well, that's the other thing. We are
14 learning about this literally four days before the trial.

15 THE COURT: You could cross-examine him on that.

16 MR. PRUETT: Okay. All right.

17 MR. KENDALL: Thank you, Your Honor.

18 And I guess the more recent -- does that the
19 conclude the more recent one as well, or just the shooting
20 when he was around twelve?

21 THE COURT: Do you think you have worse problems
22 with more recently?

23 MR. PRUETT: I do.

24 THE COURT: Okay.

25 MR. PRUETT: I do, because, Your Honor, he just

1 testified. He said --

2 And, again, I'm looking at his -- what Mr. Kendall
3 gave me, I'm assuming that's what he told Mr. Kendall, "this
4 happened outside two weeks before the shooting. I'm
5 outside. He leans out with a .22 rifle and fires it a few
6 times."

7 Today we are saying it happened when his wife was
8 there, his kids were there. His wife just testified and I
9 have to believe that Mr. Kendall would have asked her
10 "weren't you out there two weeks before when that shooting
11 happened?" And it's incredulous to me to believe that she
12 was there when it happened and that testimony was either
13 missed or at least before today provided to me that she
14 was -- testified to some prior bad act.

15 It's something that is obviously suspect to me.
16 It was so late in the game, four years later, that we are
17 learning about it.

18 Even more suspect that his father has been charged
19 with murder and that's the focus of the entire case is
20 whether or not this was accidental or intentional shooting,
21 and he's given an opportunity to present that evidence to
22 the sheriff's office in a written statement.

23 And what is also another point, and Your Honor
24 couldn't know this, is that his brother made comparable
25 statements to that. So now that his brother is deceased and

1 those statements can't be introduced, suddenly Rocky
2 Pennington is able to provide that testimony that his
3 brother might have testified, had he lived.

4 So it's almost as if they are trying to fill the
5 vacuum left there, "my brother can't testify to it, because
6 he's dead, I'll say it. I'll get on that witness stand."

7 And, again, I find it incredulous. I don't know
8 what else to say, that his wife is there, standing there,
9 she just testified before him, nothing. And I know Mr.
10 Pennington. I know Mr. Kendall being the attorney that he
11 is, he would have ferreted that information out before this
12 afternoon, had that been the case. Had Rocky Pennington
13 told him "my wife was there, my kids were there, my mom was
14 there, and my dad popped and shot at us out the window," we
15 would have known it before today and she would have
16 testified this afternoon before her husband did, or her --
17 excuse me. I'm sorry, go ahead.

18 I said Scarlett. I said Scarlett. That's Roger's
19 ex-wife.

20 But, nonetheless, his wife is not here. There is
21 no corroboration of that testimony.

22 THE COURT: How -- but I'm not being -- well, I
23 think you have made a brilliant closing argument.

24 I think it's properly presented to the jury based
25 on what we are going through right now.

1 MR. PRUETT: Yeah, I misspoke. It was not
2 Scarlett. It was his wife who hasn't testified in this
3 case.

4 THE COURT: Do you wish to respond to any of that?

5 MR. KENDALL: Well, I actually thought we were
6 going to have a different issue. I'm kind of hesitant to
7 call it to the court's attention, but I probably think I
8 need to.

9 What I was concerned about was in those instances
10 it's not clear that was a -- like an argument threat, like
11 he's -- I hope I have ferreted this out appropriately on
12 direct. He is firing at -- kind of firing in that
13 direction. It's not as if -- I don't think they are engaged
14 in like an argument right then. He's like popping off
15 shots. Apparently he did this pretty commonly where he
16 would like want something and --

17 I don't think -- that was what -- I wasn't using
18 this as a -- I should probably stop talking. I wasn't
19 actually using this to show his behavior with regards to her
20 in the context of an argument. In this instance they
21 weren't like arguing. He just want something, he would just
22 like fire off shots kind in her direction. These were a
23 little bit different, in that these weren't directly
24 threatening to her in the same way that earlier incident was
25 where he popped it off right next to her face. This is more

1 like he's wanting something and he's just shooting out the
2 windows and stuff like that. I think it shows more towards
3 the absence of mistake and that he's highly irresponsible
4 with firearms is what he's doing. He's not -- you know, he
5 knows how to use them. He just doesn't use them
6 responsibly. He's out shooting guns out windows and kind of
7 shooting in people's general directions, but I do want to be
8 very clear.

9 The testimony wasn't -- I didn't bring out enough,
10 this is not in a written statement, so Mr. Pruett is pin it
11 on me to know. These were not like direct shots. He's not
12 aiming at her and shooting. He's shooting in her direction
13 like generally speaking, if that makes sense. So we
14 wouldn't be using this in the same way as we would be using
15 prior incidents where they were in an argument, he pulls out
16 a gun and discharges it by her head. This is more of a
17 general, he is using the firearm.

18 I still think it's appropriate to use and I still
19 think it shows, number one, he knows how to handle firearms;
20 number two, he tends not to use those in an appropriate
21 manner. It would show an absence of mistake, but I don't
22 think it's -- Mr. Pruett said -- I want to make sure I'm not
23 misleading the court with the testimony here. That was not
24 my intention, but he's not shooting it at them. He's
25 shooting it in kind of the general direction of them. I

1 think that happened pretty regularly. I think that was
2 something is just what he did. He shot the guns near
3 people, with or without any sort of like argument between
4 them. Is that --

5 MR. PRUETT: Well, I don't think it falls under an
6 exception then. How does it go to what he's trying to prove
7 as part of his case?

8 THE COURT: But we are back to just the simple
9 relevancy issue, not a prior bad act issue. This is a
10 relevancy issue.

11 MR. PRUETT: I thought it was going to be a prior
12 bad act, that he was intentionally shooting at her to scare
13 her, intimidate her, what have you, but if it's just he
14 shooting out the window --

15 MR. KENDALL: Well, I think --

16 MR. PRUETT: -- how does that's bear relevancy?

17 MR. KENDALL: I think firing guns near people. As
18 I say, that doesn't have any controlling effect on them. I
19 think that's he's taken that too far.

20 To say at the same time, though, obviously
21 generally shooting in the area of somebody to scare them or
22 to get them for a reason, it certainly --

23 THE COURT: The best I can tell you right now is I
24 would probably allow it in, because I think the threshold of
25 relevancy is low. Credibility of it is something else, you

1 know, I mean, what weight the jury would give to it, but I
2 would listen to the testimony so that if you -- because
3 I'm -- I appreciate the clarity that you are bringing. If I
4 hear something different or when he goes to that point, if
5 you feel like you need to make an objection, make it, and I
6 might change my mind and not let it in, but, you know, based
7 on what I have heard, I think I would let it in because of
8 the relevancy part.

9 MR. KENDALL: Thank you, Your Honor.

10 And then I think the last witness we heard from
11 was with Ms. Swofford. And I believe what she testified to
12 was that he had walked in 2013 in the house and threatened
13 to kill Rita; put his hand on his gun.

14 And then in 2014, he told her that he had held a
15 gun to Rita's head and that he would kill her.

16 I think those are both appropriate. I think they
17 were his statements. I think the jury would hear that.

18 And I think also any accusations he made about
19 Rita having an affair would also be appropriate.

20 THE COURT: I tend to agree.

21 MR. PRUETT: 2013, so a little remote in time to
22 the actual shooting. November, that would put it at about
23 seven or eight months out from the actual time of the
24 shooting.

25 2014, she can't say when, but it's -- just

1 surmising, I guess, it was between January and June, but the
2 one in November, contextually I don't know how that is
3 relevant to what occurred seven months later.

4 MR. KENDALL: I think that is important in kind of
5 the context of her testimony. We are going to have
6 testimony of him like hiding out at around Snack Time and
7 stuff like that.

8 Obviously from that point on, somewhere around the
9 winter of 2013, I honestly can't put an exact date of when
10 he first started thinking she might be having an affair, but
11 sometime during that time he started getting suspicious of
12 her. That culminated through 2014 and her ultimate death.

13 There is obviously some things he needed to find
14 out in the meantime. It appears he was not initially aware
15 of those suspicions of the firing for sexual assault. It
16 looks like over some point in time he did learn about that,
17 and then obviously he made statements to family members and
18 morticians and, you know, quite a few people about nature of
19 the affair.

20 Accordingly, I think that 2013, I think that's all
21 under the sort of same res gestae of this entire thing. He
22 is suspicious of her infidelity. That goes to I think
23 radically heightened infidelity, or his fears of infidelity,
24 making her termination for sexual harassment before
25 ultimately getting to -- and the night before she was killed

1 she left late. You know, something had been concerned in
2 the past. So I do think that that is appropriate. I do
3 think prior threats by the defendant against the victim are
4 relevant in showing intent. I think I got some case law on
5 that as well.

6 THE COURT: Based on the facts that have been
7 presented to me so far, as I understand them, while the
8 relationship from when this -- from when this witness said
9 the statement was made to the time of death might go to the
10 credibility of it. I do believe that the probative value of
11 that outweighs any prejudicial effect, so I would allow it.

12 Now, if I'm misunderstood the testimony and it
13 gets presented, or it gets presented in some other way,
14 please renew the objection and I'll revisit it, but I tend
15 to say it's going to be admitted.

16 MR. KENDALL: Thank you very much, Your Honor.

17 MR. PRUETT: November off 2013 prior threat?

18 THE COURT: Right.

19 MR. KENDALL: Thank you, Your Honor.

20 MR. PRUETT: I guess the issue has been raised and
21 we are talking a lot. I guess just as those issues come up,
22 just put them on the record as they are testifying. I know
23 we covered a lot of ground in the last two hours. I don't
24 know how to -- except for trying to go back with witnesses,
25 Your Honor we have time to discuss it.

1 Now, in order to preserve everyone's rights, I
2 will give the parties an opportunity to object to anything
3 that I have said during this preliminary instruction.

4 Any objections from the State?

5 MR. KENDALL: No, sir, Your Honor.

6 MR. PRUETT: No, sir.

7 THE COURT: All right. Right now at this time we
8 will receive the opening statements.

9 MR. KENDALL: Thank you, Your Honor.

10 May it please the court, counsel, ladies and
11 gentlemen of the jury.

12 Good morning, ladies and gentlemen, and thank you
13 for coming here today.

14 We are all here because on the morning of June
15 21st, 2014, the defendant, William Dean Pennington, killed
16 his wife, Rita Pennington, by shooting her in the head with
17 a shotgun.

18 The call came in that morning at approximately
19 8:04 from Mr. Pennington, who claims that he was cleaning
20 his shotgun when it accidentally discharged.

21 Law enforcement responded to the scene. After
22 clearing the home they found Ms. Pennington lying on the
23 bedroom floor with a gunshot wound to her forehead. Ms.
24 Pennington was dead, ladies and gentlemen.

25 On the bed in their bedroom lay a stockless

1 12-gauge shotgun, disassembled. Next to it were seven
2 rounds. Six of them live rounds, unfired rounds, and one of
3 them, a double-aught buck round fired. This was odd,
4 because the shotgun only actually held six rounds, ladies
5 and gentlemen.

6 Mr. Pennington blames this fatal shot of his wife
7 on a gun cleaning accident, but as law enforcement will
8 discover there was far more to his story.

9 Mr. Pennington was a highly suspicious and jealous
10 man.

11 Back in the fall and winter of 2013, Rita
12 Pennington had been employed at Snack Time Foods here in
13 Cherokee County. There she befriended a young man named
14 Matthew Alexander. Over time Rita and Matthew struck up a
15 friendship. And, quite frankly, Rita kind of took that to
16 be a little bit more than it was. He was much younger and
17 to him she was more of a grandmother figure than someone to
18 be romantically involved, but Dean suspected something was
19 going on. He frequently waited out in the parking lot at
20 Snack Time spying. He was caught trying to sneak in and
21 look through the flats where she was working to keep an eye
22 on her.

23 On January 3rd, 2014, Rita was ultimately
24 terminated at Snack Time. She had gone up behind Matthew
25 and grabbed his crotch in kind of an inappropriate way.

1 Snack Time had a zero tolerance policy on sexual harassment,
2 ladies and gentlemen, and so Rita had to be let go.

3 But things didn't get better from there. He was
4 extremely upset when it came to Snack Time, demanding to
5 know why Rita had been fired. When they refused to tell
6 him, he yelled and threatened Snack Time employees.

7 When he went to get -- when Rita went to get her
8 last check, he asked Scarlett, another relative, to go with
9 her to find out why she had been fired, demanding a written
10 note. Scarlett picked up the check. They didn't tell Dean
11 the real reason she was fired. Still somehow Dean found
12 out. He dwelled on it for months. He spoke to his son
13 Rocky about it nearly every time they spoke in weeks leading
14 up to her death.

15 He tried to bribe security guards at Hamrick's --
16 or a security guard at Hamrick's where she was working at
17 that time and he tried to spy on her.

18 He even mentioned his perceived -- his wife's
19 perceived infidelities to the person who he made funeral
20 arrangements with for his wife a few months before she was
21 killed.

22 Then on morning of June 21st, 2014, he killed her
23 with a double-aught buckshot round to the head. Buckshot
24 round to the head.

25 Now, ladies and gentlemen, at the end of this

1 trial I'm going to ask you to return a verdict of guilty
2 against the defendant, but for right now I'm only asking you
3 of three things.

4 First, you listen carefully to the instructions of
5 the judge. He is the judge of the law and will provide the
6 guidance for how to look at this case.

7 Second, you listen to all the evidence that's
8 presented here in court.

9 And finally, ladies and gentlemen, in this case
10 use common sense. It will go a long way.

11 Thank you.

12 MR. PRUETT: May it please the court, Mr. Kendall.

13 Mr. Foreman, members of the jury, I too want to
14 thank you for your service in this trial. I know that
15 people who are summoned to court to serve on a jury, they
16 are not volunteering, you have to come, and none of you
17 volunteered to be picked to serve on this jury. I want to
18 thank you in advance for that service.

19 I anticipate this case will last two, maybe three
20 days. You heard the list of witnesses Judge Hayes called
21 out at the beginning of your qualification. There were
22 about fifty some witnesses. I don't think there would be
23 that many witnesses. Maybe about half, more or less.

24 Of course, the State's position on this is going
25 to be different from that of Mr. Pennington, but as the

1 judge told you, he's entered a plea of not guilty. What
2 that means in legal terms is this. Today in this courtroom,
3 Mr. Pennington, who is seated over to my right, is presumed
4 not guilty by the law. I know that you have heard that all
5 your life, presumed not guilty. What does that mean? Well,
6 what it means in this courtroom is he's as innocent as you
7 or I am right now, and he remains innocent throughout this
8 trial, and he remains innocent even when you go back to
9 begin deliberating. And it's only at that point, when and
10 if you become convinced beyond a reasonable doubt of his
11 guilt that that presumption disappears.

12 Now, in this case obviously there are different
13 ways to approach it, different ways to look at it, and I
14 always try to remind myself when I get up to speak to a jury
15 that knows nothing about the case, that unlike myself, I
16 have been working on this case for four years. This
17 happened back on June 21st of 2014, four years ago. So
18 obviously myself and Dean Cook, who is working with me on
19 the case, we are familiar with everything, and I don't want
20 to make the assumption that we sometimes make for the jury
21 to understand that or they already know about it.

22 The way I see this case when I try to break it
23 down and understand it, there are three essential parts of
24 the case, three parts that the State is going to present to
25 you.

1 The first part, what I think you are going to hear
2 first, is what happened at the residence of Rita Pennington,
3 who is the deceased person, who was fifty-nine years old at
4 the time, and Dean Pennington, who is now seventy-two years
5 old, they were living together, and they had lived together
6 for almost forty years. They were married. What you are
7 going to hear first is about what was happening at the scene
8 itself, at the residence.

9 I like forensic evidence as an attorney. I like
10 the hard facts, because it doesn't lie, okay?

11 You are going to hear evidence of where the
12 shooting occurred, how it occurred, where Mr. Pennington
13 might have been at the time of the shooting, where Rita
14 Pennington might have been at the time of the shooting, and
15 I think -- I could be wrong, but I think that on that kind
16 of evidence there is not going to be a whole lot of
17 disagreement between the State and the defense, because I
18 think the evidence is going to show, more or less, that it
19 happened just the way Dean Pennington said it happened.

20 In that home the two of them got up that morning.
21 It was early. Mr. Pennington was seated on his bed. He was
22 cleaning a shotgun, which I think the testimony will bear
23 out it's something that he did. Now, we all have hobbies.
24 His hobby was collecting guns, cleaning guns, shooting guns.
25 And on that morning he is seated on the bed cleaning that

1 shotgun.

2 It's going to be undisputed that Rita Pennington
3 was standing, more or less, at the foot of the bed, back --
4 if I can just use this table here, it would be almost as if
5 she's at the end of the bed, he's seated at the other end,
6 between them the shotgun. The shotgun goes off and shoots
7 her right here.

8 I believe that the evidence will show, the
9 forensic evidence, that the trajectory of that shot was
10 upward, consistent with where he says he was at at the time
11 of the shooting.

12 Again, forensic evidence, unlike testimonial
13 evidence -- I'll put that back -- it doesn't lie. It is
14 what it is.

15 We are going to hear about that part of the case
16 first, but the next two parts of the State's case get iffy,
17 it gets shaky, and they really go to the heart and soul of
18 the State's case, because we have a shooting. And the issue
19 really for you, I'm telling you today, because you are going
20 to be thinking about it two days or three days from now when
21 the case is over, was this an intentional act or was it
22 accidental? If it's intentional, it's murder. If he meant
23 to fire that gun and shoot his wife, it's murder, clear and
24 simple, and he's guilty of that and he's guilty of the other
25 charge of having a weapon while having committed a crime of

1 violence.

2 On the other hand, if it's accidental, it was not
3 intentional, it's not murder, and that's what you are going
4 to have to decide really at the end of this case.

5 The State can't get into the mind of Dean
6 Pennington any more than I can, so what they are trying to
7 do, and this is really the heart and soul of their case,
8 what they are trying to do is this. They are trying to show
9 that Dean Pennington was not a good husband, or spouse, or a
10 good father. All right. They are going to have witnesses
11 come in and say well, he was doing this, he was suspicious
12 of his wife, he was doing that, but I would submit to you
13 that I have never yet met a perfect husband or a perfect
14 wife. I have never met the perfect son or a perfect father,
15 because they don't exists.

16 Now, we have all done things when we are in a
17 relationship and said things in a relationship we wish we
18 hadn't, and what they are trying to do today and tomorrow
19 and maybe Thursday is use those isolated incidents to say
20 well, he wasn't a good husband, or he was a suspicious
21 husband, or he was a controlling husband. And you might not
22 like Dean Pennington when you hear that evidence, but being
23 a bad husband, or being a bad father, as the case may be,
24 doesn't make you guilty of murder. That's where I think the
25 State is going with this case, to show all these things that

1 he was doing, and, therefore, because of that his act was
2 intentional.

3 But, again, we will come back to the forensics and
4 that's what I will be looking at, because, again, forensics
5 don't lie. The actual facts of what happened that can be
6 proven by science, so to speak, can't lie, don't lie. Can
7 be interpreted maybe differently, but they are what they
8 are.

9 So the second part of the State's case is what
10 kind of person he is.

11 And to that end, too, you are going to hear just
12 in a few moments here the 911 call. And that's one of those
13 things that I have heard many 911 calls, been practicing law
14 thirty-five years. Part of that time I was the prosecutor
15 prosecuting murder cases in this very courtroom. You hear a
16 lot of 911 calls. And I always wonder to myself, you know,
17 what would happen if I was confronted with that situation
18 like he was, or something like that. I mean, how calm would
19 I be, because people react differently. Some people
20 understandably get very excited, even hysterical. They
21 can't even talk. And other people, they kind of
22 compartmentalize. You know, that's an actual term that
23 psychologists use. They kind of like look at what's in
24 front of them and say I got to handle this emergency now.
25 I'll deal with the emotions later, but right now I have got

1 to deal with what's in front of me. And I think that's what
2 you are going to hear in a few moments on this 911 tape when
3 they play it. Is Dean compartmentalizing dealing with that
4 situation that he has to deal with, a horrific tragic
5 accident.

6 The last part of the State's case, which I'm sure
7 that they will consider the most damaging, in their opinion,
8 the most dynamic or explosive, or whatever you want to call
9 it, is going to be the testimony of the witnesses that say
10 they knew him, they knew Rita. As attorneys we call these
11 things prior bad acts. Prior bad acts. And it's used to
12 try to show that the person had a history of doing similar
13 things, but what you are going to hear is this, is that some
14 of the most damaging or explosive testimony didn't even come
15 to light until last week. In other words, this case has
16 been going on for four years and for four years they have
17 had all the opportunity in the world to come forward and say
18 and do whatever they wanted to in preparation of this case.
19 But less than a week ago, suddenly, magically this new
20 evidence comes to light with them saying he did this and he
21 did that. I say where was this evidence four years ago
22 when they were interviewed by the sheriff's office? They
23 were asked specifically about those issues. Silence.
24 Nothing. Four years later, a few days before the trial,
25 suddenly appears. And that is why I always, and you should

1 always, too, distrust and question the evidence that comes
2 from that witness stand where it's purely what somebody is
3 saying, because it can be made up. People are supposed to
4 put their hand on the Bible and tell the truth. If that
5 were true and everybody told the truth, we wouldn't need
6 you, because we would all agree on the facts. Every time we
7 had a trial, we have a disagreement. Somebody says one
8 thing and somebody says something different. And what that
9 means is somebody is telling the truth and somebody is not
10 telling the truth. And that's what jurors have to do. You
11 have to sort through who is telling the truth. What is the
12 truth? And as Judge Hayes told you a moment ago, that is
13 the function of a jury, to find the truth, the facts, what
14 actually happened. And that's why we have your collective
15 wisdom. All of you come from different backgrounds. All of
16 you have different experiences and you bring that individual
17 experience to put it together, that collective wisdom, that
18 helps each one of you together find the truth of what really
19 happened.

20 So as we approach this case and we begin the trial
21 of this case with the presentation of evidence and
22 testimony, I want you to use your common sense and I want
23 you to use that life experience and ask yourselves the
24 question as you hear the testimony and evidence does this
25 make sense the way they are trying to portray Mr.

1 Pennington, and does it match up with the actual evidence in
2 the case?

3 I'll finish by saying what I always say in every
4 trial. I'm sure the State in its own mind has this idea of
5 what is justice in this case, as does the defense. Both
6 parties are seeking what they believe to be justice. There
7 is twelve of you and the alternates. Only you can do
8 justice, and you do justice by, again, following the law
9 Judge Hayes will give you and applying the truth as you find
10 it to be. Thank you.

11 THE COURT: The State ready to call its first
12 witness.

13 MR. KENDALL: Your Honor, the State would call Mr.
14 Brandon Peeler.

15 THE CLERK: Please raise your right hand and place
16 your left on the Bible.

17 BRANDON PEELER, having been first duly sworn,
18 testified as follows:

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Okay.

21 DIRECT EXAMINATION BY MR. KENDALL:

22 Q. Could you please state your name for the record?

23 A. Brandon Peeler.

24 Q. Mr. Peeler, where are you currently employed?

25 A. Deputy director at Cherokee County 911.

1 Q. And what do you do there at Cherokee County 911?

2 A. Supervise day-to-day operations, training.

3 Q. Okay. When a 911 call comes in, do you all save those
4 calls?

5 A. We do.

6 Q. And are you one of the custodians, one of the people
7 that keeps track of that stuff?

8 A. Yes, sir.

9 Q. Okay. Also what is generated when a 911 call comes in?
10 What is generated when the call comes in?

11 A. The 911 dispatcher at the time of the call, they will
12 start keying in information into a CAD system, which stands
13 for Computer Aided Dispatch. It's also recorded, all radio
14 traffic, all phone traffic.

15 Q. Okay.

16 (CD of 911 Call marked as State's Exhibit No. 1
17 for identification).

18 (CAD Sheet marked as State's Exhibit No. 2 for
19 identification)

20 BY MR. KENDALL:

21 Q. I'm going to show you what is marked State's Exhibit 1
22 and 2.

23 MR. KENDALL: Permission to approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. KENDALL:

1 Q. Do you recognize these two things?

2 A. Yes, sir.

3 Q. And what are State's Exhibit 1 and 2?

4 A. 1 will be the 911 audio from the incident.

5 And the CAD abstract report is the information
6 dispatcher actually enters into the CAD system.

7 Q. Okay.

8 MR. KENDALL: Your Honor, we would offer --

9 BY MR. KENDALL:

10 Q. And are those fair and accurate representations of the
11 CAD sheet and the 911 call?

12 A. (Shaking head yes).

13 MR. KENDALL: Your Honor, we would offer State's
14 Exhibits 1 and 2 into evidence.

15 MR. PRUETT: Without objection, Your Honor.

16 THE COURT: Without objection, State's 1 and 2.

17 (Whereupon, State's Exhibit No. 1 was entered into
18 the record as evidence).

19 (Whereupon, State's Exhibit No. 2 was entered into
20 the record as evidence)

21 BY MR. KENDALL:

22 Q. Based on the CAD sheet, can you tell us where and when
23 this was initially called in?

24 A. The call was created 6-21 of 2014, at 8:06 in the
25 morning.

1 Q. Okay. And what address was it called in to?

2 A. [REDACTED] Ford Road in Gaffney.

3 Q. Okay. Is that Cherokee County, South Carolina?

4 A. Yes, sir.

5 Q. Okay. Let me see that for a moment. All right.

6 MR. KENDALL: Your Honor, at this time the State
7 would request permission to play State's Exhibit 1 to
8 publish to the jury.

9 MR. PRUETT: No objection.

10 THE COURT: Without objection, you may publish.

11 (Whereupon, State's Exhibit No. 1 was played to
12 the jury panel)

13 BY MR. KENDALL:

14 Q. Now, on this recording we heard a long couple of
15 minutes of not much talking, just background noises. During
16 that time was that phone still active? Was that line still
17 open, so to speak?

18 A. Yes, sir.

19 MR. KENDALL: Nothing further, Your Honor.

20 CROSS EXAMINATION BY MR. PRUETT:

21 Q. Can I look at that CAD sheet again, Mr. Peeler? Oh,
22 he's got it.

23 Let me make sure I have got the times correct.

24 Referring to State's Exhibit No. 2 --

25 A. Yes, sir.

1 Q. -- and it's got created 8:06, and I thought I saw
2 another time that said 8:04.

3 What does that mean it was created at 8:06 and then the
4 dispatch was 8:07?

5 A. Basically the phone -- it -- the phone -- they actually
6 answered the phone. And as they were gathering
7 information --

8 Q. Uh-huh.

9 A. -- then they created the call, so getting the address,
10 the call types --

11 Q. Right.

12 A. -- it is off probably by a minute, it looks like. So
13 they basically answered the phone here at 8:04:48.

14 Q. That's what I was asking. The actual call came at in
15 at 8:04?

16 A. Yes, sir.

17 Q. That's when the dispatcher is picking the phone up --

18 A. Yes, sir.

19 Q. -- of Mr. Pennington?

20 A. They initiated the call with Mr. Pennington at that
21 time.

22 And after they got enough information to where they
23 could start populating their fields, which is address and
24 call types --

25 Q. Right.

1 A. -- that's when you will see the created CAD time.

2 Q. Right.

3 And the dispatch of the first deputy to the scene would
4 have been what time?

5 A. 8:07.

6 Q. That's when the deputy -- we have got a situation at
7 [REDACTED] Ford Road?

8 A. That's -- that's when it was put into CAD.

9 Q. Right.

10 A. Yes.

11 Q. Well, when was the dispatch made to the deputy is what
12 I'm asking?

13 A. It should be immediate, but --

14 Q. That's what I was saying.

15 A. Yes.

16 Q. All right.

17 And can you tell by that when the first deputy actually
18 arrived on the scene at the Pennington residence?

19 A. Yes, sir, at 8:11.

20 Q. 8:11?

21 A. Yes, sir.

22 Q. So more or less four minutes?

23 A. (Shaking head yes).

24 Q. And this 911 call was approximately how many minutes
25 long? About six minutes --

1 A. It was about six.

2 Q. -- seven minutes.

3 A. Yes, sir.

4 Q. So would they have been on the scene during the time
5 that we just heard that video -- I mean that audio?

6 A. Could have been.

7 Q. Okay. And the next question I had was I listened to
8 this many times. There's a lot of background noise. It's
9 kind of -- is that coming from Mr. Pennington's residence?
10 You hear like voices, or -- it's not his voice, other voices
11 talking in the background. Would that be from his end or
12 from --

13 A. It could be both.

14 Q. It could be both?

15 A. It could be both.

16 So the dispatcher is sitting in front of a console and
17 it's playing the radio traffic from the units responding to
18 the scene --

19 Q. Right.

20 A. -- and then you also pick up TV noises, or whatever may
21 be in the room of a caller.

22 Q. Yeah.

23 And you don't know if there was a TV or not?

24 A. I can't say that that was a TV.

25 Q. If I told you there was a TV in that room, or playing

1 at that moment, that would account for -- potentially
2 account for some of that background noise?

3 A. Absolutely.

4 Q. Okay. That's all I have. Thank you so much.

5 THE COURT: Any redirect into what he went into?

6 MR. KENDALL: No, sir, Your Honor.

7 THE COURT: Thank you, sir.

8 Watch your step as you step down.

9 THE WITNESS: Thank you.

10 THE COURT: Lawyers approach a minute.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 THE COURT: All right, ladies and gentlemen, given
14 the hour that it is, I'm going to let you take your lunch
15 break at this time.

16 I need to remind you, you can't have any
17 discussions with anyone about anything involved in the case.
18 You also cannot do any type of individual research or
19 investigation into anything involved in the case. You have
20 now received some testimony, so on the break don't get in
21 your car and say "I'm going to ride out there to take a look
22 at the scene." Do not do anything of that nature. Allow
23 the lawyers to present the evidence in the case and allow me
24 to instruct you on the law and let that be the basis for
25 rendering your decision.

1 for identification).

2 (Photograph marked as State's Exhibit No. 4 for
3 identification).

4 (Photograph marked as State's Exhibit No. 5 for
5 identification)

6 (Photograph marked as State's Exhibit No. 6 for
7 identification).

8 (Photograph marked as State's Exhibit No. 7 for
9 identification).

10 (Photograph marked as State's Exhibit No. 8 for
11 identification).

12 (Photograph marked as State's Exhibit No. 9 for
13 identification).

14 (Photograph marked as State's Exhibit No. 10 for
15 identification).

16 MR. KENDALL: We should be good, Your Honor.

17 THE COURT: Okay, let's bring them in.

18 (Whereupon, the following takes place in the
19 presence of the jury panel)

20 THE COURT: Is the State ready to call your next
21 witness?

22 MR. KENDALL: We are, Your Honor.

23 The State would call Dr. Janice Ross.

24 THE CLERK: Please raise your right hand.

25 DR. JANICE ROSS, having been first duly sworn,

1 testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Okay. Watch your step, please.

4 DIRECT EXAMINATION BY MR. KENDALL:

5 Q. Could you please state your name for the record?

6 A. Janice Edwards Ross.

7 Q. Dr. Ross, could you please tell the jury about your
8 employment? What do you do?

9 A. Yes, I'm in with Newberry Pathology Associates. We do
10 autopsies for coroners, and I also do pathology for the
11 Newberry County Memorial Hospital.

12 Q. Are you licensed to practice medicine in South
13 Carolina?

14 A. Yes.

15 Q. Could you please tell the jury about your education?

16 A. Yes, I went to the University of South Carolina, where
17 I got a Bachelors Degree in Biology.

18 And then I finished medical school at Upstate Medical
19 Center in Syracuse, New York, where I received my M.D..

20 I further did training in the field of pathology.

21 Now, pathology, as opposed to surgery or pediatrics.

22 In pathology we learned how to identify and diagnose

23 diseases, like cancers and anemias, by using a microscope.

24 We also learned how to use laboratory chemistry and whatever
25 to help diagnose diseases, and we learned how to do

1 autopsies to find the cause of death.

2 I did further training in the medical examiner's office
3 there and became board certified in forensic pathology,
4 where we learned how to do a forensic autopsy, which
5 documents patterns of injury and causes and manners of
6 death. And take -- we -- during those types of autopsies,
7 we take samples pertinent to the case; in other words,
8 toxicology, or ballistics, or whatever.

9 So I'm board certified in three areas of pathology.

10 Q. Okay. And, generally speaking, what is pathology?
11 What are you seeking to determine?

12 A. Path means tissue; ology, study of.

13 So we learn how to identify either diseases or injuries
14 to all parts of the body.

15 Q. Okay. And before -- or where are you currently --

16 Could you please describe more kind of your
17 responsibilities and duties are at your current position?

18 A. Yes, I have been at Newberry since May of 2000, and I
19 run the laboratory in the hospital, where I identify cancers
20 and different tissues from the surgery.

21 We also do autopsies for coroners of the State of South
22 Carolina.

23 Q. Okay. And how many autopsies have you performed?

24 A. At least twelve thousand.

25 Q. Have you been qualified in court as an expert in the

1 field of pathology before?

2 A. Yes.

3 Q. Approximately how many times?

4 A. Two hundred.

5 MR. KENDALL: Your Honor, at this time the State
6 would offer Dr. Janice Ross as an expert in the field of
7 pathology.

8 MR. PRUETT: No objection.

9 THE COURT: All right, ladies and gentlemen,
10 normally a person cannot give opinion testimony. Normally
11 when a person testifies, they must testify as to what either
12 they saw, heard, or sensed by smell, or something of that
13 nature. However, there is an exception when someone is
14 qualified because of education or experience. They are
15 permitted to give their opinion in certain areas that the
16 court qualifies them that way.

17 This witness will be qualified in the area of
18 pathology to give opinion testimony in that area.

19 That does not mean that you must accept opinion,
20 but it is evidence for you to use in any way that you see
21 fit and give it the weight and the credibility that you
22 believe is appropriate.

23 MR. KENDALL: Thank you, Your Honor.

24 BY MR. KENDALL:

25 Q. In this case did you perform an autopsy on Rita

1 Pennington?

2 A. Yes.

3 Q. And do you recall the date and location that took
4 place?

5 A. Yes, it was at Newberry County Memorial Hospital in the
6 morgue on June 22nd, 2014.

7 Q. Okay. And based on the autopsy, within the bounds of
8 reasonable medical certainty, have you formed an expert
9 opining concerning the cause of the death of Rita
10 Pennington?

11 A. Yes.

12 Q. And what is that opinion?

13 A. That's laceration and evulsion, which means the
14 throwing out of tissue of the brain due to the shotgun wound
15 in the head.

16 Q. Okay. Could you describe the wounds that Ms.
17 Pennington suffered?

18 A. Yes. She had an entrance shotgun wound in the left
19 forehead that basically took away most of that left side of
20 the upper part of the head and part of the brain. So the
21 wound was going from the left, slightly to the right, and
22 backward.

23 There was also some what we call stippling around the
24 entrance wound.

25 Stippling is caused by powder. When you shoot a gun,

1 not only the bullet comes out, but powder and soot come out,
2 but the powder and soot only go a certain distance, and it
3 depends on the caliber and the length of the gun and
4 different -- and different things about ballistics, whereas
5 obviously the bullet will go further.

6 She did have some stippling.

7 So as far as range goes, how far the gun was from the
8 target, we call this an intermediate range. In other words,
9 it was not contact. It wasn't right on the skull or the
10 face, and it wasn't far enough away where the powder
11 wouldn't hit the skin.

12 The exact measurement of how far away it would be would
13 have to be done by target shooting with the same gun and the
14 same ammunition, etcetera, but generally this would mean
15 that the muzzle of the gun was probably between two and four
16 feet away from the person.

17 Q. Okay. All right.

18 And you testified a moment ago -- could you tell us the
19 direction the bullet would go? In other words, as it
20 relates to her, did it go into the front or did it go into
21 the back?

22 A. It went in from the front of the left forehead and it
23 went very slightly to the right and backward and maybe
24 slightly upward.

25 Q. Okay. Was it slightly upward or slightly downward?

1 A. I'm sorry, it's hard to tell because the gun was -- or
2 that part --

3 Let's see what I have here.

4 Slightly downward.

5 Q. Okay.

6 A. Sorry.

7 Q. And to be fair, when you are talking about that, you
8 are talking about the path of the bullet, is that fair to
9 say?

10 A. That's correct.

11 Q. All right. And so that's -- when you -- when you do
12 your analysis, you don't have any independent way of knowing
13 how the body was positioned at the time of the shooting, is
14 that --

15 A. That's correct.

16 Q. Is that accurate?

17 So say someone say was bent over or leaning over, that
18 could affect or could show what ballistically -- could
19 affect the ballistics would go, is that --

20 A. All I can say is bullets go straight. So when you have
21 two, a shooter and a shootee, you can put them in all
22 different kind of --

23 Q. Okay.

24 A. -- positions to get the same result.

25 Q. Okay. And I'm going to show you what is marked State's

1 Exhibit 3 --

2 Or let me ask you this. Did you recover anything from
3 the inside of Ms. Pennington's head?

4 A. Yes, we -- we received -- we were able to find a couple
5 of pieces of lead metal.

6 Q. Okay. I'm going to show you what is marked State's
7 Exhibit 3.

8 A. Yes. This is -- this is what -- these are the metal
9 pieces that we retrieved out of the brain at autopsy on Rita
10 Pennington.

11 Q. All right.

12 MR. KENDALL: Your Honor, we would offer State's
13 Exhibit 3 into evidence.

14 MR. PRUETT: No objection.

15 THE COURT: Without objection.

16 (Whereupon, State's Exhibit No. 3 was entered into
17 the record as evidence)

18 MR. KENDALL: And just request permission to
19 publish to the jury.

20 THE COURT: All right.

21 Sir, tell the court what 3 is.

22 MR. KENDALL: 3, Your Honor, is fragments of the
23 rounds taken from Ms. Pennington's head.

24 THE COURT: Okay.

25 BY MR. KENDALL:

1 Q. All right. Just to kind of conclude on two things that
2 I just wanted to make sure the jury understood.

3 With regards to the distance, what you are telling us
4 is an approximation, is that fair to say?

5 A. That is correct.

6 Q. So it could be more, it could be six or eight feet, and
7 it could be less, is that fair?

8 A. It could be a little closer, or maybe a foot or two
9 longer.

10 Q. Okay. Okay.

11 Did Ms. Pennington die as a result of the shotgun blast
12 to the head on June 21st, 2014?

13 A. Yes.

14 Q. Please answer any questions that Mr. Pruett may have.

15 CROSS EXAMINATION BY MR. PRUETT:

16 Q. Dr. Ross, you wrote one report I believe back in 2014,
17 is that correct?

18 A. Yes.

19 Q. And was that report recently amended or changed? I
20 want to be sure I'm looking at the right one.

21 A. Yes, because I -- in proofreading -- in proofreading I
22 realized that the -- it was incorrect under -- it was
23 correct on the initial examination that the entrance wound
24 was in the forehead, but the description of the shotgun
25 wound I had it going back to front instead of front to back,

1 which is erroneous.

2 Q. Okay. Okay.

3 All right. And let me just pick up there where the
4 entrance wound was and you have in your report.

5 Approximately -- I know these are all approximations,
6 one and a half inches from the top of the head and one and a
7 half inches to the left of midline?

8 A. That's correct.

9 Q. Do you mind doing me a favor and pointing where you are
10 referring to?

11 A. Okay. It's on the -- we are talking about the person,
12 the victim's --

13 Q. Yes, ma'am.

14 A. -- left and right.

15 So this is the midline. So it would be one and a half
16 inches to the left of midline --

17 Q. Right.

18 A. -- and one and a half inches from the top of the head.

19 Q. Okay. Okay.

20 And as you just stated, bullets go straight, or pellets
21 in this case?

22 A. That's correct.

23 Q. All right.

24 And obviously if a person is bent over, it's going to
25 obviously change how you may perceive the directional path

1 of the pellets?

2 A. Correct, plus the head can move all kind of different
3 directions.

4 Q. Right.

5 So if I were standing, for example, given the
6 directional path that you just described to the jury for it
7 to be slightly backwards, as you describe it in your report,
8 a person -- if I were standing. I'm not saying that the
9 person was, but --

10 A. Correct.

11 Q. -- if I were standing erect, straight up, it would have
12 to come kind of like from that direction?

13 A. From your --

14 Q. I'm pointing --

15 A. From your left.

16 Q. Yes, ma'am, but it would be in an upward direction?

17 A. Well, it would be --

18 Q. Yes.

19 A. -- going down a little bit, so it would be --

20 Q. But the shooter, as you said, would be from above it,
21 correct?

22 A. Correct.

23 Q. All right. And obviously if the person were bent over,
24 the shooter could be in a lower position?

25 A. If the person were bend over --

1 Q. Like this.

2 A. Yeah, it would -- it would be going down.

3 Q. Right.

4 And it would be consistent with what you found?

5 A. Yes, sir.

6 Q. Okay. That's what I'm asking.

7 Regardless, if the person were -- if the shooter was --
8 is, would have been in front of her, correct?

9 A. Front and slightly to her left.

10 Q. All right. It would depend on how she was turned too,
11 right?

12 A. Right.

13 Q. If she was to the side or directly positioned in front
14 of him, correct?

15 A. Exactly. I mean, she could have had her head moved.

16 Q. Exactly, her head could have been turned?

17 A. Yes.

18 Q. In this case the stippling that you observed --

19 Have you had a chance to review that before you came
20 this afternoon? Did you look at the photographs that you
21 may have taken?

22 A. Yes.

23 Q. And it was more or less evenly distributed across her
24 face?

25 A. Yeah, it was in the diameter of about five and a half

1 inches.

2 Q. All right.

3 Well, can you -- I said across her face. On both sides
4 of her face?

5 A. I believe so. Yes.

6 Q. Okay. So other than the stippling on her face, did you
7 observe it on any other part of her body?

8 A. No, sir.

9 Q. And she was wearing a -- you can refer to your notes,
10 if you need to, but she was wearing a T-shirt, a sports -- a
11 short-sleeved T-shirt, is that correct?

12 A. Yes.

13 Q. So there was no stippling on her arms, correct?

14 A. Correct.

15 Q. Or her hands?

16 A. Correct.

17 Q. And you are qualified to testify as an expert in
18 forensic pathology, which refers to criminal investigations,
19 correct?

20 A. Yes.

21 Q. All right. So I know that you are familiar with the
22 concept of defensive wounds?

23 A. Yes, sir.

24 Q. So had Ms. Pennington had her hands up, we should have
25 expected to see stippling or some evidence of gunshot

1 residue on her hands, correct?

2 A. Yes.

3 Q. Or her arms, for that matter?

4 A. Yes, sir.

5 Q. Or had she been turning away, instead of being evenly
6 distributed across her face, maybe just one side of her
7 face?

8 A. That's correct.

9 Q. But that wasn't found in this case, was it?

10 A. Correct.

11 Q. And other than what you have already testified to,
12 reading your report, there is no evidence of any other
13 external injury, like bruises or contusions or cuts or
14 anything like that?

15 A. No, sir.

16 Q. Okay.

17 MR. PRUETT: If I may just briefly confer with Mr.
18 Cook, Your Honor?

19 THE COURT: Yes.

20 (Off the record).

21 (Back on the record).

22 BY MR. PRUETT:

23 Q. And you may have already said this, but just for
24 clarification, you can give some approximations as to
25 distance, correct? Like in this case, two to four feet?

1 A. Exactly.

2 Q. And you really can't, I guess, without having exact
3 information, know exactly where the person would have been
4 standing and how they were positioned?

5 A. No. No, we could not. I cannot.

6 Q. Or for that matter, the person with the firearm exactly
7 where he might have been sitting or standing?

8 A. No, I could not.

9 Q. Thank you so much.

10 A. Uh-huh.

11 THE COURT: Any redirect as to what he went into?

12 MR. KENDALL: Yes, sir.

13 REDIRECT EXAMINATION BY MR. KENDALL:

14 Q. For her to have stippling on both sides of her face,
15 how would she have had to have been looking at that gun?

16 A. She should have been pretty much looking head on onto
17 it.

18 Q. So she was looking straight down the gun when he shoots
19 her?

20 A. Well, pretty much. She could have been an inch or two
21 one way or the other.

22 MR. KENDALL: No further questions, Your Honor.

23 RECROSS EXAMINATION BY MR. PRUETT:

24 Q. Well, just to follow up on what I was asking.

25 If her head was bent down slightly looking down, that

1 still would be consistent with the stippling on her face and
2 with your testimony you just gave?

3 A. Yes.

4 MR. PRUETT: All right. Thank you.

5 MR. KENDALL: If I could?

6 REDIRECT EXAMINATION BY MR. KENDALL:

7 Q. The rounds -- the stippling -- the rounds is hitting
8 her in the head, correct, and she's got stippling on her
9 face, is that correct?

10 A. Correct, and the stippling is --

11 Q. So --

12 A. The stippling is below the entrance wound, so --

13 Q. Okay.

14 A. Yeah.

15 Q. So if she's down like this and she gets hit here, you
16 are not going to have the stippling across her face, is that
17 fair to say?

18 A. You could have some.

19 Q. You could have some, but is it evenly distributed?

20 A. It depends on where the gun is.

21 Q. Okay.

22 MR. KENDALL: Nothing further, Your Honor.

23 RECROSS EXAMINATION BY MR. PRUETT:

24 Q. Just because -- I'm not trying to beat a dead horse
25 here, but, again, it all depends, I guess, on something we

1 may or may not know and that's how far a person may be bent
2 over.

3 Obviously if the person is bent all the way over, it
4 would be going through the middle of her head. That would
5 be an impossibility, given the testimony that you have
6 given, so it's all a question of how far the person is bent
7 over, but they're in the same direction as the firearm?

8 A. Correct, it's -- it's just going slightly downward, so
9 it wouldn't be bent over very far.

10 Q. Right. Exactly. Thank you.

11 THE COURT: Okay. Thank you, ma'am.

12 Watch your step as you step down.

13 THE WITNESS: Thank you.

14 THE COURT: Is the State ready to call your next
15 witness?

16 MR. KENDALL: We are, Your Honor.

17 The State would call Nick Federico.

18 THE CLERK: Please raise your right hand and left
19 hand on the Bible.

20 OFFICER NICK FEDERICO, having been first duly
21 sworn, testified as follows:

22 THE WITNESS: I do.

23 THE COURT: Any reason why the last witness cannot
24 be excused?

25 MR. KENDALL: No, sir, Your Honor.

1 MR. PRUETT: No.

2 DIRECT EXAMINATION BY MR. KENDALL:

3 Q. Can you please state your name for the record?

4 A. It's Nicholas Federico.

5 Q. Officer Federico, now, where are you currently
6 employed?

7 A. Cherokee County Sheriff's Office.

8 Q. And how long have you been employed with the sheriff's
9 office?

10 A. It was eleven years this past July.

11 Q. And what are your responsibilities at the sheriff's
12 office?

13 A. Presently I'm a sergeant on the road. Overseer of four
14 guys right now -- four guys right now, doing basic duties of
15 the road, probably. Answering calls for service is our main
16 goal, serving warrants, different things like that.

17 Q. What were you doing back in June of 2014?

18 A. What was my --

19 Q. What was your job? What were you doing?

20 A. I was in narcotics.

21 Q. Okay. And did you also have some investigative
22 functions as well? Is it fair to say that you guys helped
23 out with other stuff?

24 A. Yes, sir.

25 Q. And did you respond to a scene on June 21st, 2014, at

1 [REDACTED] -- or, excuse me, at 8:04 to Mr. Pennington's home?

2 A. Yes.

3 Q. And what county and state was that located in?

4 A. Cherokee County, South Carolina.

5 Q. Okay. And what were you responding to?

6 A. A shooting with injuries.

7 Q. Okay. And when you arrived, are you the only one that
8 arrived on the scene?

9 A. No, sir.

10 Q. All right. Were you with the first batch of people
11 that basically got there?

12 A. Yes, sir.

13 Q. And did you go into the home at that time?

14 A. Yes, sir.

15 Q. Could you please describe what happened as you
16 approached the home?

17 A. I was with officer deputy Medley. I'm not sure if he
18 was a sergeant then or not. I think he was, maybe, but he
19 had arrived and I come in behind him. We knocked --
20 basically -- basically a knock. Didn't hear anything. Walk
21 in announcing the sheriff's office.

22 Q. When you say you didn't hear anything --

23 A. Nobody responded to the knock.

24 Q. Did you hear any other loud noise? Was there any
25 crying, yelling, anything like that going on?

1 A. Not at that time.

2 Q. All right. What about once you got to the door, did
3 you hear anything at that point?

4 A. No, sir.

5 Q. Did you all knock on the door or open the door?

6 A. Yes, sir.

7 Q. All right. And once you did that, did you hear
8 anything?

9 A. No, sir.

10 Q. When is the first time that you heard any loud
11 screaming, or wailing, or anything like that?

12 A. After we entered the home. We -- we knocked on the
13 door, announced ourselves as the sheriff's office.

14 We basically curled to the right to clear the house.
15 Once we curled to the right, I think it seemed like there
16 was a couch right there on the right. We started up through
17 there and then we started hearing the noise and was met by
18 Mr. Pennington.

19 Q. Okay. And so you didn't start hearing any sort of
20 crying, or wailing, or anything like that until you
21 announced that you were the sheriff's office and you were
22 there, is that fair to say?

23 A. Yes, sir.

24 Q. At that point in time how did Mr. Pennington react?

25 A. It was really loud.

1 Q. First off, do you see Mr. Pennington in the courtroom
2 today?

3 A. Yes.

4 Q. Could you point him out, please?

5 A. Yeah, he's sitting right there over there in the plaid
6 shirt I think.

7 Q. And once you announced as the sheriff's office, how did
8 Mr. Pennington react at that point, once you made it known
9 that you were, in fact, there?

10 A. I don't know how to explain it. Like it was a whining
11 noise with no tears, really loud. At that time the -- I
12 don't know what you would call it. I guess -- I mean, I
13 hate to say it this way, but it's almost like what we call a
14 fake cry. It's just a -- and I call it that because of the
15 no tears and it's really loud.

16 Q. Okay. And so it went from nothing at all, to the
17 sheriff's office there, and you hear this sort of loud cry,
18 is that fair to say?

19 A. Whining screeching type noise, yes, sir.

20 Q. Do you recall the overall appearance at the scene?

21 A. Yes, sir.

22 Q. All right. First of all, let me show you a couple of
23 exhibits.

24 I'm going to show you Exhibits 4 and 5. Do you
25 recognize these?

1 A. Yes, sir.

2 Q. And what are those?

3 A. The -- that's the residence we responded to.

4 Q. Okay.

5 MR. KENDALL: We would offer State's Exhibit 4 and

6 5 --

7 MR. PRUETT: No objection.

8 MR. KENDALL: -- photos into evidence, Your Honor.

9 THE COURT: Without objection, it would be 4 and 5
10 for the State.

11 (Whereupon, State's Exhibit No. 4 was entered into
12 the record as evidence).

13 (Whereupon, State's Exhibit No. 5 was entered into
14 the record as evidence)

15 MR. KENDALL: And permission to publish, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. KENDALL: State's Exhibit 4.

19 State's Exhibit 5.

20 BY MR. KENDALL:

21 Q. Once you entered into the home, what did you find at
22 that time?

23 A. Well, we went -- when we went into the home and we
24 curled right, the -- we met him, so it's pretty obvious what
25 happened. He showed us the scene, I guess you could call,

1 in the bedroom. He stated it was their bedroom, but the
2 lady was laying in the floor at the foot of the bed. And
3 then the shotgun laying on the bed. The shotgun was
4 disassembled, so we left it.

5 Normally with him walking around and all that stuff, we
6 would have actually secured the shotgun, but we brought him
7 towards the couch and set him on the couch, or helped him
8 sit on the couch, I guess. Walked him towards the couch.
9 And we didn't mess with the shotgun, because it was
10 disassembled.

11 Q. Okay. I'm going to show you what is marked State's
12 Exhibit 6 and State's Exhibit 7. Do you recognize these?

13 A. Yes, sir.

14 Q. And what are those pictures of?

15 A. The shotgun on the bed whenever we arrived.

16 Q. All right. And is that how y'all found it when you
17 arrived on the scene?

18 A. Yes, sir.

19 Like I said, it was -- it was already apart like that,
20 so there was -- we didn't feel that it was a safety issue
21 for us, so we didn't -- we didn't mess with it.

22 MR. KENDALL: Your Honor, we would offer State's
23 Exhibit 6 and State's Exhibit 7 into evidence.

24 MR. PRUETT: No objection.

25 THE COURT: Without objection.

1 (Whereupon, State's Exhibit No. 6 was entered into
2 the record as evidence).

3 (Whereupon, State's Exhibit No. 7 was entered into
4 the record as evidence).

5 MR. KENDALL: State's Exhibit 6.

6 And that's State's Exhibit 7.

7 BY MR. KENDALL:

8 Q. Were you able to determine --

9 What is that other can sitting on that thing? Did you
10 ever make a determination about that at all?

11 A. Yes, sir, that's like a penetrating oil/cleaner used
12 for guns, to clean guns.

13 Q. Did the gun have something on it as well?

14 A. Yes, sir, it was -- it was coated enough that it was
15 shiny.

16 Q. Okay. So a substantially amount had been sprayed on
17 that firearm?

18 A. Yes, sir.

19 Q. And was it still -- as you saw it, was there still a
20 substantial amount on there?

21 A. Yes, sir.

22 Q. Okay.

23 MR. KENDALL: I believe we put 6 and 7 into
24 evidence, is that correct?

25 COURT REPORTER: Yes, sir.

1 BY MR. KENDALL:

2 Q. With regards to Ms. Pennington, did you see where she
3 was lying?

4 A. Yes, sir.

5 Q. And where was she lying at the time that you saw her?

6 A. At the foot of the bed.

7 Q. Okay. Do you recall if she was laying on her stomach
8 or her back?

9 A. I think her back.

10 Q. Okay. Did you see anything with regard to Ms.
11 Pennington? Did she appear to be alive?

12 A. No, sir.

13 Q. And what led you to that -- did y'all get her up and
14 move her around, or try CPR, or anything like that?

15 A. No, sir.

16 Q. And why not?

17 A. It was -- it was pretty obvious that she was deceased
18 at that time.

19 Q. Okay. And what are you basing that on? What would
20 cause you to think that she was deceased?

21 A. The -- the injury to the head.

22 Q. Okay. Is it fair to say that there was a very
23 significant portion of her top of her head was not attached?

24 A. Yes, sir.

25 Q. Okay. I'm not going to put up a photographic picture

1 of that, but I am going to show you what is marked State's
2 Exhibit 8. Do you recognize that?

3 A. Yes, sir.

4 Q. And what is that?

5 A. That is -- that's basically the overall view -- the
6 best you can get the overall view of the bedroom.

7 Q. All right. And do you see Ms. Pennington in that
8 picture?

9 A. Yes, sir.

10 Q. And where is she?

11 A. She is laying at the foot of the bed on the floor with
12 her head facing towards the door that we would have came in.

13 Q. Okay.

14 MR. KENDALL: Your Honor, we would offer -- sorry.
15 We would offer State's Exhibit 8 into evidence.

16 MR. PRUETT: No objection.

17 THE COURT: Without objection, State's 8.

18 (Whereupon, State's Exhibit No. 8 was entered into
19 the record as evidence).

20 MR. KENDALL: And if I could publish this to the
21 jury.

22 BY MR. KENDALL:

23 Q. And just so we are clear, it's sort of difficult to
24 see. With regards to the fan -- with regards to the fan,
25 where is Ms. Pennington located?

1 A. Her head would be towards the fan. Her feet would be
2 away from the fan.

3 Q. Okay. Down in this area?

4 A. Yeah, the head would be like right at the corner, down
5 there at the bottom corner of the picture.

6 Q. Okay. Is it fair to say that those are her legs right
7 there?

8 A. (No response).

9 Q. You can step down and look.

10 A. Yeah, I'm going to need to, because I can't tell where
11 you are pointing.

12 MR. KENDALL: If it's all right, Your Honor,
13 permission to allow this witness to step down?

14 THE COURT: Sir, I just need to remind you, you
15 are stepping away from the microphone --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- so when you speak, speak up loud
18 enough so that both the court reporter and the jury can hear
19 you.

20 (Witness off the witness stand).

21 BY MR. KENDALL:

22 Q. You are welcome to look at it here.

23 A. I'm good.

24 Q. Okay.

25 A. This would be her feet, and her head would be off this

1 end here.

2 Q. Okay.

3 A. Okay.

4 (Witness back on the witness stand).

5 BY MR. KENDALL:

6 Q. Once you all had responded and there was a
7 determination that she was not going to be able to be --
8 that she was deceased, what did you do from there?

9 A. Called the detective, whatever detective was on call.

10 Q. Okay. All right.

11 And they took over at that point?

12 A. Yes, sir.

13 Q. Okay.

14 MR. KENDALL: Nothing further, Your Honor.

15 CROSS EXAMINATION BY MR. PRUETT:

16 Q. Who was the first deputy at the scene?

17 A. Tracy Medley.

18 Q. Who was the second deputy at the scene?

19 A. I think it would have been me. I think I was on his
20 heels, and then -- well, there was three of us there almost
21 around about the same time.

22 Q. All right. Yourself --

23 A. Tracy Medley.

24 Q. Tracy Medley and Derrick Greer?

25 A. Derrick Greer.

1 Q. Okay. Who had the body cam on?

2 A. I think Tracy Medley.

3 Q. Who?

4 A. Tracy Medley, I believe.

5 Q. Is he the only one that had a body camera on that day?

6 A. As far as I know. I didn't.

7 Q. All right. Is that because you were working narcotics?

8 A. Yes, sir.

9 Q. All right. And is that just for uniform officers, or
10 is it -- how does that work? How does the sheriff's office
11 determine who wears the body cameras and who don't?

12 A. At that time we didn't have a body camera policy. We
13 had some body cameras in the department.

14 Q. Uh-huh.

15 That's something I didn't know. That's why I'm asking.

16 A. Yeah.

17 Q. All right.

18 A. And it would have mostly been road guys.

19 Sometimes in narcotics we wore them when we went on --
20 like if we went on a search warrant, a raid, if you will.

21 Q. Okay. So Sergeant Tracy Medley had a body camera on
22 him that day that was video recording?

23 A. Yes, sir.

24 Q. What about Lieutenant Greer, did he not have one?

25 A. I -- I can't -- I can't remember. I mean, I don't

1 know.

2 Q. All right.

3 Can you explain to me why it is that he had a body
4 camera on, but it was only on for two minutes and
5 fifty-seven seconds?

6 A. No, sir, I can't explain that.

7 Q. Well, let me ask you this. If you are responding to a
8 homicide, would you not have it on the whole time,
9 especially if you were responding to it the time that you
10 pull up?

11 A. I mean, I can -- I can answer what we do now.

12 Q. Well, I'm just asking just as a matter of common sense
13 that what good is a body camera if it's off?

14 A. I mean, there could be a lot of reasons why.

15 Q. Yeah.

16 Well, what would be the reasoning for turning it on
17 when you got there and turning it off after --

18 A. It might not have been charged up. He might have
19 turned it on and it died.

20 Q. Well, what if it came on later?

21 A. Then I -- I can't answer. I don't -- I really don't
22 know.

23 Q. Well, maybe Mr. Medley will testify. I don't know.

24 But my question is you got there, Derrick Greer, Tracy
25 Medley, they filed up with reports. I didn't see where you

1 even filed a report. Did you file a report?

2 A. No, sir.

3 Q. Why didn't you file a report?

4 A. They handled all of it.

5 Q. So you really weren't in charge doing any function at
6 the scene?

7 A. No, sir. I mean, I --

8 Q. Other than being there, then what was your role?

9 A. I basically walked with him, Mr. Pennington, and --
10 because eventually we walked him outside and I stood with
11 him outside.

12 Q. All right. Just you, or Tracy Medley with you and
13 Derrick Greer?

14 A. I don't remember him being with me outside.

15 Q. How long were you at the scene?

16 A. I have no clue.

17 Q. Well, I think that's what I need to know. I mean, did
18 you stay there for fifteen minutes, a half hour, an hour?

19 A. I can't -- I mean, I can't tell you. I don't know.

20 Q. Okay. So you have no record at all, no written record,
21 no incident report, nothing?

22 A. No, sir.

23 Q. All right. You testified that you can remember fairly
24 distinctly, is that right?

25 A. Yeah, pretty good.

1 Q. All right. Well, I'm --

2 MR. PRUETT: Any objection to the photos I have?

3 MR. KENDALL: No, sir.

4 BY MR. PRUETT:

5 Q. Just like Mr. Kendall, I have some photographs and I'll
6 just have you flip through them --

7 A. Yeah.

8 Q. -- and then -- I'm trying to get them in numerical
9 order here for the court reporter.

10 These are Defendant's Exhibit 3 through 8 and
11 Defendant's Exhibit No. 15. Just take your time. Just flip
12 through them and just tell me whether or not you can
13 recognize or identify what they are.

14 A. Okay.

15 Q. There shouldn't be anything shocking in those
16 photographs. They are just of the scene. I mean, is that
17 pretty much what --

18 A. Yes, sir.

19 Q. Do they accurately and correctly portray the scene on
20 the day that you were there?

21 A. Yes, sir.

22 Q. Okay. I'm going to first specifically refer now --

23 MR. PRUETT: You got those admitted?

24 COURT REPORTER: Yes, sir.

25 MR. PRUETT: Okay. Thank you.

1 BY MR. PRUETT:

2 Q. Refer now to Defendant's Exhibit No. 4, and that's
3 essentially a shot of the bedroom, correct?

4 A. Yes, sir.

5 Q. Okay. And laying on the bed there is a woman's purse,
6 correct?

7 A. Yes, sir.

8 Q. A set of keys? Do you see that?

9 A. Yes, sir.

10 Q. And her pants are laying on the bed?

11 A. Yes, sir.

12 Q. All right.

13 Looking at that photograph, and you walked through it,
14 was there any signs at all of a struggle in that home, in
15 that bedroom?

16 A. Not that I could see, sir.

17 Q. And I know you never have been subpoenaed to the
18 residence before, I assume, correct?

19 A. No, sir.

20 Q. So nothing from those photos that you witnessed or
21 looked at --

22 MR. KENDALL: I'm sorry to have to interrupt, but
23 are we going to put those into evidence?

24 MR. PRUETT: They're in evidence.

25 MR. KENDALL: I don't believe --

1 MR. PRUETT: Oh, I apologize. I thought there
2 were in evidence.

3 I move those exhibits into evidence I've
4 identified at this point, Your Honor.

5 THE COURT: Defendant's 3 through 8 and
6 Defendant's 15?

7 MR. PRUETT: Yes, sir.

8 THE COURT: Any objection?

9 MR. KENDALL: No, sir.

10 MR. PRUETT: I apologize.

11 THE COURT: All right. They are admitted.

12 (Whereupon, Defendant's Exhibit No. 3 was entered
13 into the record as evidence).

14 (Whereupon, Defendant's Exhibit No. 4 was entered
15 into the record as evidence).

16 (Whereupon, Defendant's Exhibit No. 5 was entered
17 into the record as evidence).

18 (Whereupon, Defendant's Exhibit No. 6 was entered
19 into the record as evidence).

20 (Whereupon, Defendant's Exhibit No. 7 was entered
21 into the record as evidence).

22 (Whereupon, Defendant's Exhibit No. 8 was entered
23 into the record as evidence).

24 (Whereupon, Defendant's Exhibit No. 15 was entered
25 into the record as evidence)

1 BY MR. PRUETT:

2 Q. You never been to the Pennington residence before,
3 obviously, so there is no evidence there that you could see
4 of indications or signs of a fight or a struggle inside the
5 residence?

6 A. No, sir.

7 Q. I mean no -- nothing -- nothing knocked over, lamps, or
8 anything broken, correct?

9 A. That's correct.

10 Q. All right.

11 MR. PRUETT: I would ask permission to publish
12 these to the jury, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. PRUETT:

15 Q. And we have already had some testimony, but you saw Ms.
16 Pennington there, correct --

17 A. Yes, sir.

18 Q. -- on the floor.

19 And she was partially dressed, correct?

20 A. Yes, sir.

21 Q. She had a T-shirt on and she had her underwear on?

22 A. Yes, sir.

23 Q. And nothing else?

24 A. Yes, sir.

25 Q. All right.

1 Some of this may be redundant, but this is just the
2 other side of the bed. This is Defendant's Exhibit No. 5?

3 A. Okay.

4 Q. Is that how it looked?

5 A. Yes, sir.

6 MR. PRUETT: Again, Your Honor, I would ask to
7 publish this to the jury.

8 THE COURT: All right.

9 BY MR. PRUETT:

10 Q. Essentially what I'm showing to the jury, on one side
11 you had Ms. Pennington's articles, is it fair to say, the
12 purse, the car keys, her pair of slacks or pants?

13 A. Yes, sir.

14 Q. The other side of the bed is Mr. Pennington's articles,
15 shotgun shells, oil can?

16 A. Cleaner.

17 Q. Right.

18 How closely did you actually walk around and examine
19 that bedroom? Do you recall?

20 A. I wouldn't think that I would have done a lot of that
21 because of scene preservation.

22 Q. All right.

23 And, again, that wasn't your role, was it?

24 A. No, sir.

25 Q. That would have been whose responsibility to actually

1 do a closer inspection of --

2 A. Detectives in the crime scene.

3 Q. Who would that have been in this case?

4 A. I think Tracy Fowler is the one that worked the case.

5 Q. Who would have actually, I guess, photo -- you didn't
6 photograph the scene, correct?

7 A. No, crime scene.

8 Q. Who would have done that?

9 A. Billy Anthony would have photographed it.

10 Q. Okay. Seated right here, correct?

11 A. Yes, sir.

12 Q. All right. So he would have been in charge of or
13 responsible for photographing the scene?

14 A. Yes, sir.

15 Q. Who would have been responsible for video recording the
16 scene?

17 A. I mean, I'm assuming -- Tracy Medley had a video on
18 him, so I guess --

19 Q. What about the crime scene persons who showed up?

20 A. I don't know if they video or not.

21 Q. Okay.

22 A. I mean, they might sometime, but it's not normal --

23 Q. Let me ask you this. When you left -- I know you don't
24 know when that was. When did you leave, was Mr. Pennington
25 still there, or had he been transported to the sheriff's

1 office?

2 A. I think he was still there when I left.

3 Q. So I'm just trying to get a time frame for how long you
4 were there.

5 When you left, you believe Mr. Pennington was still at
6 the scene?

7 A. I believe so, but I -- I can't be a hundred percent.

8 Q. And was that kind of standard procedure, deputy, when
9 several deputies respond, only one or two file reports, or
10 is that just something that you just did not do on that
11 occasion?

12 A. Yes, sir, that's -- that's pretty normal.

13 Q. Okay.

14 MR. PRUETT: That's all I have. Thank you.

15 THE COURT: Any redirect on what he went into?

16 MR. KENDALL: Yes, sir, Your Honor.

17 REDIRECT EXAMINATION BY MR. KENDALL:

18 Q. Just to be clear on the different roles and
19 responsibilities of the sheriff's office and what was going
20 on, do you recall the morning of June 21st?

21 A. Oh, yes, sir.

22 Q. What was that like at the sheriff's office?

23 A. The -- are you talking about the events prior to that?

24 Q. Yeah. Was that a busy morning or usual morning for you
25 all?

1 A. Yes, sir, I was already out on a shooting.

2 Q. Okay. So there had been another shooting that had
3 taken place that night, correct?

4 A. Yes, sir.

5 Q. Do you recall if crime scene went to that one as well?

6 A. Yes, sir.

7 Q. All right. And was that before or after you went to
8 this one?

9 A. That was before.

10 Q. So you had to go to that scene and then come straight
11 to this scene, is that fair to say?

12 A. Yes, sir.

13 Q. And so -- and your responsibilities at that time as a
14 narcotics detective, did y'all typically handle crime
15 scenes?

16 A. No, sir.

17 Q. Do you have any specialized training in like -- like
18 crime scene? I mean, did you do DNA and all that stuff?

19 A. No, sir.

20 Q. Who typically handles that?

21 A. Crime scene guys.

22 Q. What about Sergeant Medley and Greer? Are they crime
23 scene guys?

24 A. No, sir.

25 Q. And so what -- when you all got there, what were you

1 doing?

2 A. Basically we preserved the scene, make sure nobody
3 comes in, nobody leaves it under the investigation.

4 Preserve what we can. Secure it, I guess you could say.

5 Like the weapon, if we would have had to secure it, or
6 secure him, or any of that stuff. I mean, if he was acting
7 out or --

8 Q. Once you arrived on the scene, was there anything still
9 going on, as far as the crime? Did you see, other than Mr.
10 Pennington, any people inside?

11 A. No, sir.

12 Q. Was Ms. Pennington giving any last words or anything
13 like that?

14 A. No, sir.

15 Q. Is it fair to say the act was pretty much complete?

16 A. Yes, sir.

17 Q. And so when y'all got there, what were you doing? What
18 was your objective in going there?

19 A. To secure the house and try to preserve the evidence
20 that was there.

21 Q. Okay. And so other people were going to come and
22 actually do the investigation, is that fair to say?

23 A. Yes, sir.

24 Q. And take photographs and all that stuff?

25 A. Yes, sir.

1 MR. KENDALL: Nothing further, Your Honor.

2 MR. PRUETT: Briefly.

3 THE COURT: Just to new matters that he brought
4 up.

5 MR. PRUETT: Yes, sir.

6 RE CROSS EXAMINATION BY MR. PRUETT:

7 Q. You said what your role was was to search the crime
8 scene, but a moment ago you said that you were standing with
9 Mr. Pennington.

10 A. Yes, sir.

11 Q. So you were guarding him or staying with him?

12 A. I was staying with him. I mean, he -- there was an
13 investigation going on, so we are not going to let people
14 just walk away.

15 Q. Well, that's what I'm asking. I wasn't clear what your
16 role was, what he was doing.

17 You said that you were with him for however long. You
18 observed him. I mean, you said initially he was crying and
19 wailing. Did he continue to do that throughout that
20 process?

21 A. It seems like a little off and on.

22 Q. Okay. All right.

23 MR. PRUETT: That's all I have. Thank you.

24 MR. KENDALL: Nothing further, Your Honor.

25 THE COURT: Watch your step, sir, as you step

1 (Shotgun Heat Shield marked as State's Exhibit
2 No. 13 for identification).

3 THE COURT: All right, bring them in.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: Is the State ready to call their next
7 witness?

8 MR. KENDALL: We are, Your Honor.

9 The State would call Chad Smith.

10 THE COURT: Come up to the Clerk of Court and she
11 will swear you in.

12 THE CLERK: Please raise your right hand.

13 SLED AGENT CHAD SMITH, having been first duly
14 sworn, testified as follows:

15 THE WITNESS: I do.

16 DIRECT EXAMINATION BY MR. KENDALL:

17 Q. Could you please state your name for the record?

18 A. Chad Smith.

19 Q. Mr. Smith, where are you currently employed?

20 A. I'm employed with the South Carolina Law Enforcement
21 Division, which is commonly known as SLED.

22 Specifically, I work in the firearms department at
23 SLED's forensic services laboratory in Columbia.

24 Q. Okay. What sort of education do you have for that job?

25 A. I attended Clemson University where I earned a Bachelor

1 of Science Degree in Biological Sciences.

2 When I started my employment with SLED, I began my
3 training in the firearms department. This training program
4 lasts between three to five years. It is supervised by the
5 court-qualified examiners of the firearms department. It
6 involves extensive reading and studying. There are multiple
7 examinations and practical tests given during this time. I
8 also attended various classes and seminars.

9 Later in my training I was able to help the other
10 examiners prepare their own case work.

11 At the end of the training period I received a
12 comprehensive multi-part examination, which I successfully
13 passed, and then I began to receive my own case work.

14 Q. And as a -- as an examiner, what sort of things -- or
15 as a firearms examiner, what sort of things do you look at?
16 What sort of things do you examine?

17 A. My main responsibilities include the examination of
18 firearms, ammunition and ammunition components, such as
19 bullets and cartridge cases.

20 I also perform restorations on obliterated firearm
21 serial numbers, and also do muzzle-to-target distance
22 determination for shot pellets.

23 Q. Okay.

24 MR. KENDALL: Your Honor, we would offer Mr. Smith
25 as an expert in firearms and ammunition identification and

1 function.

2 THE COURT: Identification and function?

3 MR. KENDALL: Yes, sir.

4 THE COURT: Tell me, firearm --

5 MR. KENDALL: Firearms and ammunition

6 identification and function.

7 THE COURT: Any objection?

8 MR. COOK: No objection, Your Honor.

9 THE COURT: All right, ladies and gentlemen,
10 again, normally a person cannot give opinion testimony.
11 Normally when a person testifies, they must do so as to
12 whatever they saw, heard, or sensed by smell, or something
13 of that nature. However, there is an exception when someone
14 who is qualified because of education or experience, they
15 are permitted to give their opinion in certain areas the
16 court qualifies them that way.

17 This witness will be qualified in the area of
18 firearms and ammunition identification and function to give
19 opinion testimony in that area. That does not mean that you
20 must accept the opinion, but it is evidence for you to use
21 in any way that you see fit and give it the weight and
22 credibility that you believe is appropriate.

23 MR. KENDALL: Thank you, Your Honor.

24 BY MR. KENDALL:

25 Q. In your responsibilities at SLED, did you have the

1 opportunity to examine some shotguns and ammunition related
2 to the William Pennington case?

3 A. Yes, I did.

4 Q. I'm going to show you --

5 MR. KENDALL: Your Honor, I would ask that the
6 witness be allowed to step off the stand. I think it would
7 be easier in handling the firearm and safer.

8 THE COURT: All right, sir, you are stepping down
9 from the stand, so you will be stepping away from the
10 microphone. You will need to speak up loud enough so that
11 both the jury can hear you and also the court reporter.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: If can't do that, I'll have to have
14 you sit back down.

15 MR. KENDALL: Thank you very much.

16 (Witness off the witness stand)

17 BY MR. KENDALL:

18 Q. I'm going to offer you or show you what is marked as
19 State's Exhibit 12. Do you recognize this?

20 A. First off, ladies and gentlemen, just to put your mind
21 at ease, this is typically and visually inspected firearm
22 and safe to handle.

23 COURT REPORTER: Speak up, please.

24 THE WITNETT: Yes, sir.

25 BY MR. KENDALL:

1 Q. And what is that? What is that firearm?

2 A. It is a Mossburg Model 500-A, 12-gauge pump action
3 shotgun.

4 Q. And is that the shotgun that you examined with regards
5 to the William Pennington case?

6 A. Yes, sir.

7 Q. Now, you testified a moment ago that multi-action
8 shotgun, what -- or, excuse me, a pump action shotgun. What
9 caliber is that?

10 A. It is 12-gauge.

11 Q. Okay. And has there been -- there is some markings on
12 there. Do you recognize the serial number or anything on
13 there?

14 A. Yes, sir.

15 Q. Now, in examining the shotgun, we can't pass it around,
16 it appears hat there has been some of the paint buffed off.
17 Who did that?

18 A. I did it. The shotgun as received had a lot of paint
19 covering the manufacture's marking, which is the
20 manufacturer itself, the model and serial number. So in
21 order to see these markings I used some steel wool with some
22 acetone to soften up the paint and just basically lightly
23 scraped away that paint so I could read those markings.

24 Q. So the firearm had been painted over, is that correct?

25 A. Yes, sir.

1 Q. From its original manufacturer?

2 A. Yes, sir.

3 Q. And how would this affect rusting? Would that make it
4 less likely, once it's been painted over?

5 A. Well, I guess there could be rust underneath and paint
6 applied on top of that, but I did not see really any signs
7 of rust as it was received.

8 Q. Is it fair to say that painting over it would largely
9 present rusting -- prevent rusting to the outside of it? Is
10 that fair to say, until the paint wears off and it gets
11 older?

12 A. It could.

13 Q. Could you please describe, I guess, the characteristics
14 of that shotgun? Does it have a -- how is this different
15 from other shotguns you might see?

16 A. Well, it's a -- it's a pump action, which basically
17 means you have got a forehand here which operates the action
18 itself. And it's got a bolt inside here and the action,
19 when the forehand is pushed upward, the bolt is slid into
20 the position and it's ready for firing.

21 It's got a magazine tube here, so that shot shells are
22 inserted into the magazine tube. It has a spring and it has
23 what is called a follower right here underneath.

24 What happens is when the shot shells are inside the
25 magazine, that spring is compressed. And so as the action

1 is operated, the shot shells are loaded into the action of
2 the firearm and it's ready to fire.

3 This has a pistol grip instead of a full stock that you
4 would rest your shoulder on. It has a pistol grip forehand
5 too as well.

6 Q. Okay. And when you say a stock, what does that mean?

7 A. A stock usually refers to -- in a long arm sense, it
8 refers to the portion coming off of the receiver that you
9 would rest against your shoulder. Usually it has some sort
10 of recoil pad. It doesn't have to, but a lot of times they
11 do. So -- and it just sustains it for firing it.

12 Q. Okay. So the stock is just a support, is that correct?

13 A. Correct.

14 Q. And so without a stock, would you say -- is it fair to
15 say without a stock that a firearm has less support when you
16 fire it like this than you actually have it rested up
17 against your shoulder?

18 A. Yes, sir.

19 Q. Okay. And that would be described as kick. Is it fair
20 to say that it would give it more kick like that than it
21 would than if you actually had it up against your shoulder?

22 A. Right.

23 Q. Or you would feel it differently I guess is a better
24 way?

25 A. Well, when the firearm is a fired, you have what's

1 called self-recoil the cartridge firing. So as the
2 cartridge is fired, you have the pressure going out towards
3 the barrel, but then reverse pressure would be -- you would
4 feel in your shoulder. If you had a stock you would feel
5 it.

6 In this particular instance, you don't have a stock, I
7 guess all that recoil would generate into your hands.

8 Q. Okay. And does that particular firearm have a safety
9 on it?

10 A. Yes, it does. It has a safety right here. It's a
11 slide-in button safety. In the up position it is ready to
12 fire. And then when it is down, it is in a safe position.
13 And basically when the safety is engaged, it blocks the
14 trigger from moving.

15 Q. In your examination of that firearm --

16 MR. KENDALL: Actually let me just go ahead and --
17 Your Honor, the State would offer State's
18 Exhibit 12 into evidence.

19 MR. COOK: No objection.

20 THE COURT: Without objection.

21 (Whereupon, State's Exhibit No. 12 was entered
22 into the record as evidence)

23 BY MR. KENDALL:

24 Q. Did you have the opportunity to examine that firearm?

25 A. Yes, sir.

1 Q. And what sort of things do you look at when you are
2 examining the firearm?

3 A. Well, basically first hand when we do the rough
4 examination would be look for any signs of damage or any
5 sort of an issue that could possibly arise during test
6 firing so we don't want to shoot an unsafe firearm.

7 And so basically we just look at it, look down the bore
8 to see if there is any material in there, nothing
9 obstructing the bore. So, again, it would be safe to fire.
10 Then at that point it would be ready to test fire the
11 firearm.

12 Q. Okay. And what do you do? What are your test fire
13 procedures? What do you all do?

14 A. In this case we have two basic places where we can
15 shoot in our department. We have where we shoot small
16 caliber rifles and handguns. We can shoot them in a water
17 tank.

18 In this particular instance we are shooting a shotgun,
19 we shoot them in a little indoor range that we have.

20 And so I would test fire in that little indoor range
21 and then obtain my test fires, the shot shells that I would
22 be looking to. Submitted shot shells were examined so I can
23 compare the test fired shot shell with a submitted shot
24 shell to determine if it possibly be fired by the same
25 firearm.

1 Q. All right. And in your examination of that firearm,
2 was it working properly?

3 A. Yes, it was.

4 Q. Was it able to shoot rounds?

5 A. Yes, sir.

6 Q. Was it able to --

7 Did you ever notice anything that would cause it to
8 malfunction and shoot rounds when you didn't pull the
9 trigger, anything along those lines?

10 A. No, sir.

11 Q. Okay. So the firearm behaved like it should have
12 behaved, is that fair to say?

13 A. Yes, it was in the proper working order.

14 Q. Okay. Now, one of the things we had you look into is
15 the barrel screw. Could you just describe how someone with
16 sort of take apart that shotgun?

17 A. There is a screw here, which is called the disassembly
18 or take-down screw. Basically what it does is you when
19 unscrew it, it would loosen the barrel so you are able to
20 remove the barrel from the receiver in order for
21 maintenance, cleaning, etcetera.

22 So I was asked to -- one of the questions was would the
23 firearm function and fire with the take-down screw fully
24 screwed or loosened but the barrel still in its spot, but
25 just loosened. And I was able to determine that it would

1 still fire in that position.

2 Q. And in doing that, were you able to determine --

3 So, it could potentially fire in this position. Is
4 there anything that you know of that would say that it
5 definitely was fired in that position?

6 A. No, sir.

7 Q. Okay. So it would look the same whether the take-down
8 screw was loosened or not loosened, is that fair to say?

9 A. Correct.

10 When I received the firearm, the barrel was totally
11 removed from the receiver, so I couldn't say, you know, it
12 was not unscrewed, or anything like that, as I had received
13 it, but it was already actually removed from the receiver.

14 Q. Okay. All right. Thank you very much.

15 Now, I would like to sort of go -- you can sort of set
16 that one down for a second and I would like to talk to you a
17 bit about --

18 Oh, excuse me, before we set that down, before we set
19 that down; did you have the opportunity to examine the
20 trigger mechanism in that shotgun?

21 A. Yes, I did.

22 Q. And what did that trigger mechanism sort of show? What
23 did you find in that trigger mechanism?

24 A. Well, I was asked to determine the trigger pull weight
25 of the shotgun. When I say trigger pull weight, basically

1 it's measured in pounds, but basically indicates how much
2 pressure it takes to fire the firearm. And how we are able
3 to test that is we have a trigger testing mechanism which
4 basically is just a metal bar and we can add weights to it.
5 So the end of that metal bar is L-shaped and we put it right
6 where the trigger is. So you just keep adding weight until
7 it fires. And, of course, we don't use live ammunition for
8 that testing. We just dry fire the firearm when trying to
9 determine the trigger weight. And I was able to determine
10 that it takes about six and a quarter pounds to fire that
11 firearm.

12 And to put that something that you might know, a gallon
13 of milk weighs about eight pounds. So if you can imagine
14 having a gallon of milk just kind of resting on your index
15 finger, your trigger finger, that's what eight pounds would
16 feel like. So it takes a little less than that. So I
17 measured, it would be about six and a quarter pounds to fire
18 this firearm.

19 Q. So that is kind of the equivalent if you have got about
20 three-quarters of a gallon of milk, or so, and you are sort
21 of picking up on it, but that's the amount of force that you
22 have to exert to fire that weapon?

23 A. Yes, sir.

24 Q. Was that trigger in any way would you consider a
25 hairline trigger?

1 A. No, sir, a hair trigger usually refers to a very light
2 trigger, sometimes measured in just -- you know, just a
3 couple pounds. Maybe two pounds, or less. So it's an
4 extremely light trigger used for basically target shooting.
5 That would be what I consider a hair trigger. And this one
6 definitely does not have a hair trigger.

7 Q. So would that firearm go off if someone were to just
8 brush up against it?

9 A. No, sir.

10 And also, too, this is sort of a safety mechanism built
11 into the design of the firearm. Many firearms have it.
12 Most of them do. It's called a trigger guard, but basically
13 it does that. It just guards the trigger from any sort of
14 negligent, or any kind of debris, or anything like that
15 trying to get into where the trigger may be.

16 It is possible that something could, I guess, jam into
17 there and fire the firearm, but, again, that trigger guard
18 is there to keep any unwanted object or anything from
19 reaching that trigger.

20 Q. And if something -- if something did get jammed in
21 there, how much force would have to be put on that trigger
22 before it would fire?

23 A. Again, it would be six and a quarter pounds.

24 Q. Okay. So it's not just like somebody brushes up
25 against it and it goes boom? It actually has to have that

1 six and a quarter pounds of pressure on there for it to go
2 boom, is that fair to say?

3 A. Yes, sir.

4 Q. Under what I guess we would describe as like life
5 situations, like in June in upstate South Carolina kind of
6 situations, the kind of, you know, weather and, you know,
7 things like that, the house isn't on fire, there is no crazy
8 chemical stuff going on, like regular sitting in somebody's
9 bedroom kind of conditions. Is there any way for that gun
10 to go boom, a round come out of it, without six and a
11 quarter pounds of pressure being put on that trigger?

12 A. No, sir.

13 Again, I measured the trigger pull to be six and a
14 quarter pounds. That's how much weight it took to actually
15 fire this firearm.

16 Q. Okay. There is no way else it could go? If you
17 loosened the screw, is it going to cause the round to come
18 out of the front end?

19 A. To fire?

20 Q. Yes.

21 A. No, sir. This mechanism -- or the barrel doesn't have
22 any sort of bearing on the firing mechanism itself.

23 Q. Okay. What about if somebody like bumped it, they just
24 like bumped into it? Is that going to cause it to go off?

25 A. No, sir, this firearm was in proper working order.

1 There were no issues like that.

2 Q. All right. What about just like wiping it down with a
3 rag? Is there any way it goes off there, absent putting six
4 and a quarter pounds of pressure on that trigger?

5 A. Right. Unless something gets in there and that trigger
6 is depressed, again, it's six and a quarter pounds, it's not
7 going to fire.

8 Q. Okay. Thank you very, very much.

9 Now, let's talk about the ammunition for a little
10 while, if that's okay.

11 I'm going to show you what is marked State's Exhibit --
12 State's Exhibit 11.

13 I'm going to show you what is marked State's Exhibit
14 11.

15 A. Yes, sir.

16 Q. And do you recognize this?

17 A. I do.

18 Q. And what is that?

19 A. This is a fired 12-gauge shot shell.

20 Q. And was that the shot shell that was provided to you by
21 the Cherokee County Sheriff's Office?

22 A. Yes, sir.

23 Q. And what did you do with that shot shell?

24 A. Well, I examined it, just like I do all the other
25 evidence, just to make sure there is no kind of issues with

1 it, that blood or anything is on it, potential trace
2 material, which we collect if there is some sort of blood.

3 Seeing no blood, I was able, once writing up on the
4 work sheet and photographing it, that I'm ready to actually
5 compare test shot shells that are shot in our indoor range
6 to the fired shot shell that I received to try to determine
7 if they were fired by the same firearm.

8 Q. And how do you guys do that?

9 A. We have a -- it's known as a comparison microscope.
10 It's basically two microscopes connected by an optical
11 bridge system. So you can look through that optical system
12 and compare two samples simultaneously. You can move the
13 station on both sides, and you are looking for markings that
14 you feel are individual in nature caused by the firing of
15 the weapon. And a lot of those markings are created --

16 In this particular instance, this is the bolt of the
17 firearm. The bolt has what's known as a breech face area
18 and the breech face is just a rear portion of the bolt that
19 supports the cartridge during firing. And inside the breech
20 face area of the bolt is a hole that a firing pin protrudes
21 and ignites the primer or strikes the primer of the
22 cartridge and then that sends a chain reaction, lights the
23 powder and the cartridge is fired. So while the cartridge
24 is being fired, it is pushed back against the breech face of
25 that bolt. Those markings on the bolt or on the breech face

1 of the bolt are imparted onto the cartridge case or shot
2 shell during firing.

3 So, again, we compare shot shells that we know are
4 fired. We test fired them ourselves. Compare those shot
5 shells with each other to look for the markings and then we
6 compare those shot shells with the submitted evidence.

7 Q. In this case did you compare a shot shell fired by you
8 with the shot shell submitted by the Cherokee County
9 Sheriff's Office?

10 A. Yes, sir.

11 Q. And what did you find in relation to those things,
12 using the test that you did to describe kind of the
13 fingerprint of the gun, so to speak? What did you find?

14 A. I was able to determine that State's Exhibit 11 shot
15 shell was fired by State's Exhibit 12, the shotgun that I
16 received.

17 MR. KENDALL: And we would offer --

18 BY MR. KENDALL:

19 Q. And is that your expert opinion that that shot shell
20 was fired by that shotgun?

21 A. Yes, sir.

22 MR. KENDALL: Your Honor, we would offer State's
23 Exhibits --

24 BY MR. KENDALL:

25 Q. I think I guess 11? Shot shell is 11?

1 A. 11.

2 MR. KENDALL: -- into evidence, please.

3 MR. COOK: Without objection.

4 THE COURT: Without objection. Thank you.

5 (Whereupon, State's Exhibit No. 11 was entered
6 into the record as evidence)

7 BY MR. KENDALL:

8 Q. And also --

9 In addition, some other rounds were submitted, is that
10 correct?

11 A. Yes, sir, I received two unfired shot shells.

12 Q. Okay. I'm going to show you State's Exhibit --

13 MR. KENDALL: Could you go ahead and mark -- I'm
14 sorry, could you go ahead and mark State's Exhibit 13?

15 COURT REPORTER: Well, it's already been marked.
16 13 has already been marked.

17 MR. KENDALL: Is 14 marked?

18 COURT REPORTER: Not yet.

19 (Shotgun Shells were marked as State's Exhibit No.
20 14 for identification).

21 BY MR. KENDALL:

22 Q. I'm going to show what is marked State's Exhibit 13
23 (sic). Do you recognize these -- or excuse me, 14. I'm
24 sorry. 14.

25 A. Yes, sir. This is the unfired ammunition that I

1 received for examination.

2 Q. Okay. And is that -- did you, in fact, examine that?

3 A. Yes, sir.

4 MR. KENDALL: We would offer State's Exhibit 14
5 into evidence, Your Honor.

6 MR. COOK: No objection, Your Honor.

7 THE COURT: Without objection.

8 MR. KENDALL: We would offer 14 into evidence,
9 Your Honor.

10 THE COURT: It's in without objection.

11 MR. KENDALL: Okay. Thank you.

12 (Whereupon, State's Exhibit No. 14 was entered
13 into the record as evidence)

14 BY MR. KENDALL:

15 Q. What do we have in this pouch?

16 A. There is one unfired shot shell, 12-gauge, and one
17 disassembled still unfired shot shell. And I did
18 disassembly of the shot shell myself through my examination
19 to see what was inside.

20 A lot of times the information on a shot shell, you
21 just want to make sure that -- if it's indicated as being a
22 certain type of pellet, you want to make sure that that's
23 what is actually inside, if it's a reloaded shot shell, or
24 something like that. So I just did this one for
25 examination, but when I received them, they were both

1 intact.

2 Q. Okay. What kind of shot shells are those?

3 A. These are Federal brand, which is a company that makes
4 ammunition. 12-gauge, two and three-quarter inch length.

5 The chamber from the firearm shotgun is three-inch
6 chamber, which means it could fire three-inch shot shells,
7 as well as two and three-quarter inch shot shells. Just
8 difference in sizes.

9 They have double-aught buckshot is what was marked on
10 the shot shell, and that was what was received inside the
11 shot shell when I opened it up.

12 The disassembled shot shell had nine double-aught lead
13 pellets, which you can see here.

14 And also it had a combination wad shot cup inside the
15 shot shell. Basically what that does is the pellets sit
16 inside that shot cup while it's being fired. And so it just
17 protects the shot pellets while they are traveling down the
18 barrel. And then as it exits the barrel, the shot cup kind
19 of falls away and the pellets continue on to the target.

20 Q. So one the -- how does this whole thing go? How does
21 stuff start coming out? What starts the whole thing off?

22 A. When the firing pin of the firearm strikes the primer,
23 which is at the rear of the shot shell right here, it
24 basically causes a tiny explosion, and that explosion
25 ignites the firing of the gunpowder which is inside the shot

1 shell.

2 So when the gunpowder is ignited, there is a volume of
3 gas that builds up. That volume of gas pushes everything
4 that's ahead of it down the barrel. And so that volume of
5 gas builds inside that barrel and then pushes everything out
6 of the barrel. So, again, you would have the shot cup with
7 the shot pellet inside of it as it's traveling down the
8 barrel. You have some perhaps some unfired gunpowder, as
9 well as various debris.

10 Q. Okay. And when the bullets come out of there, the
11 little pellets like that in there, do they come out like a
12 rifle bullet, spin going straight?

13 A. No, sir. Shotguns have a smooth bore. So what he's
14 referring to as the rifling. Some shotguns have -- some
15 firearms, as well as some shotguns, have rifle barrels which
16 imparts a spin on a projectile as it travels down the
17 barrel. It basically makes it more accurate towards its
18 target. It's a lot like a quarterback throwing a football.
19 You will have a nice tight spiral as they hit the target.

20 Q. Does this shotgun have any kind of rifling to it?

21 A. No, sir.

22 Q. So these are just kind of flung out, is that fair to
23 say?

24 A. That's correct.

25 Q. Now, how do those rounds right there compare to this

1 fired round here?

2 A. They -- they are the same brand, the same markings on
3 the shot shell itself, so I would assume that they would be
4 the same -- contain the same amount of pellets and the same
5 type of pellet.

6 Q. Thank you very much.

7 MR. KENDALL: Hold on a second.

8 (Off the record).

9 (Back on the record)

10 MR. KENDALL: Please answer any questions that the
11 defense may have.

12 A. Yes, sir.

13 THE COURT: Sir, if you will just come back here.

14 MR. COOK: Your Honor, I have quite a few
15 questions regarding that actual gun. If he can remain here
16 it would be good.

17 THE COURT: All right.

18 CROSS EXAMINATION BY MR. COOK:

19 Q. Mr. Smith, you had the chance to analyze this gun and
20 you stated earlier that it's a Mossburg Model 500-A, serial
21 number J790206?

22 A. Yes, sir.

23 Q. And based on that serial number and condition of the
24 gun, would you say it's about thirty-four years old?

25 A. That I have no idea what age it is.

1 Q. Okay. Thank you.

2 Would you -- you said earlier that the weapon was in
3 good working order, everything was operable?

4 A. Yes, sir.

5 Q. Okay. How about the paint? Did that paint cause
6 problems? You said it had been painted. Did it cause
7 functionality problems?

8 A. I don't think so.

9 Again, when I fired it and examined it, it was in
10 working order, so I have no reason to believe that the paint
11 was an issue.

12 Q. But if paint entered the chamber, the face of the bolt,
13 could it affect the firing pin mechanism?

14 A. It didn't affect it when I fired it.

15 Q. It could have?

16 A. I -- I guess at some point in time it possibly could
17 have.

18 Q. Okay. Thank you.

19 Were any of the parts -- and I know I may be repeating
20 myself a little bit, but any of the working parts that moved
21 on that weapon, are they all the way they came from the
22 factory?

23 A. I didn't --

24 Q. Other than the stock?

25 A. Right.

1 I didn't take apart the firearm. That's not something
2 that we typically do, unless there is an issue with the
3 firearm. If it's just not working, I may investigate it to
4 see why it's not working, but since it was functioning fine,
5 I didn't take the trigger mechanism out or anything like
6 that.

7 Q. I know you described the safety on that weapon earlier.
8 Could you tell us again, being the firearms expert, when you
9 moved that safety forward, what alerts you to the fact that
10 that gun is not on safety?

11 A. Well, when the button is pushed forward, it's in the
12 firing position and you can pull the trigger. And then when
13 the button is pulled to the rear, the trigger is somewhat
14 blocked, a full motion, so --

15 Q. Is there supposed to be a red dot there indicating that
16 gun is not safe?

17 A. Yes, there is.

18 Q. And it's missing?

19 A. It is missing.

20 Q. Okay. Thank you.

21 Now, you talked earlier about the take-down screw. You
22 said that's --

23 A. Yes, sir.

24 Q. Okay. Now, what would be the purpose of unscrewing
25 that?

1 A. To remove the barrel from the receiver.

2 Q. For things like cleaning?

3 A. Yes, sir.

4 Q. Okay. And is it true that with this weapon, with that
5 take-down screw loose, that you testified earlier that it
6 could still fire?

7 A. Yes, sir. Yeah, as long as this is totally
8 unscrewed -- the barrel can be removed when it's totally
9 unscrewed, so when it's just like this --

10 Q. And if you fired it like that, would it tend to push
11 that barrel out if a round went off?

12 A. Yes.

13 Q. It would.

14 But at that point you could possibly see the shot shell
15 in the chamber?

16 A. I don't know if it would push it all the way out,
17 because that's a good distance, but during my testing it did
18 jump forward a little bit, but --

19 Q. Okay.

20 A. -- I don't know if it would jump all the way out or
21 not.

22 Q. Okay. But now the shell that you fired was a different
23 shell than the one that was fired in this case, right?

24 A. Right, they weren't submitted shells. It was from my
25 reference ammunition.

1 Q. Okay. Thank you.

2 Now, as far as the shotgun pattern, could you explain
3 the difference in a shotgun pattern or a shell when it exits
4 that weapon, as opposed to a rifle or a pistol, just a
5 little of the difference?

6 A. A rifle and a pistol are the type of single projectile.
7 Some revolvers can shoot some shot shells, but it's designed
8 to basically go towards the target one projectile to one
9 target.

10 A shotgun is designed -- in shooting pellets it's
11 designed to open up a pattern and for hunting purposes and
12 things like that, that would be beneficial, especially when
13 you are hunting birds, that you would want a pattern to
14 increase your chances of hitting the target. So that's what
15 shotguns are designed to do.

16 Different shotguns you can chokes, which is like to
17 basically squeeze out patterns as it exits the barrel.

18 This particular shotgun did not have a choke. It's
19 called cylinder bore, so it's basically uniform all the way
20 throughout, but that's what the shot pattern is designed to
21 do. It's to expand once it exits the barrel.

22 Q. Okay. Thank you.

23 The pellets in that gun, you testified earlier they
24 were nine shot in that one shell and when they exit that
25 weapon and strikes a solid object, what happens to that

1 pellet?

2 A. That's getting more towards into ballistics, which is a
3 different category than what my expertise is in, but
4 depending on what sort of pellet you have, I guess when it
5 hits the target, it can get damaged.

6 Pellets are made out of different material. Lead is
7 going to be very soft, so whatever it hits, it could deform
8 very easily.

9 You could have steel pellets as well, which are harder,
10 so they might deform less, but just depending on what sort
11 of pellet you have and how close you are to that target
12 would probably indicate what kind of damage that you have.

13 Q. Okay. Thank you.

14 Kind of what I'm getting at is would it cause it to
15 deflect and ricochet off of striking a solid object?

16 A. Possibly, yeah.

17 Q. Okay.

18 I have got a couple of questions for you about the
19 loading and unloading, and I know you talked about that
20 earlier, but when you load that shotgun, it's done from the
21 bottom side, right?

22 A. Yes, sir, the magazine is up under here and you would
23 put the cartridges, load them one at a time through here.

24 You could also load a cartridge singularly. If there
25 is none in the magazine, you could put one in the chamber

1 and then move the forearm up and it would chamber a round as
2 well.

3 Q. Okay. Once that's done, can you see those shells?

4 A. You can see shells in the magazine tube just from the
5 rear.

6 Q. So you would have to kind of turn it up and --

7 A. Yes.

8 Q. -- look up.

9 And once it's fully loaded, can you see all the shells?

10 A. No, you couldn't.

11 Q. Okay. Can you see any?

12 A. Again, other than what possibly you could see from the
13 magazine, you wouldn't see shot shells up in here or you
14 wouldn't see one in the chamber, if the bolt were forward.

15 Q. Okay. So if that weapon only had one round and that
16 one round was in the chamber, could you see that round at
17 all?

18 A. If the bolt were forward?

19 Q. Right.

20 A. I'm not sure if you could or not. Probably not. Since
21 the bolt would be locked into position, I don't think that
22 you could see it.

23 Q. Okay. Thank you.

24 Have you ever heard the term slamfire?

25 A. Yes, sir.

1 Q. Could you explain that to the jury?

2 A. Slamfire basically means that as the -- in this
3 particular case, if it was a shotgun like this and the
4 forearm was moved all the way forward and there was a shot
5 shell being loaded presumably at the same time, then it
6 would fire.

7 Basically that would happen if the firing pin were
8 protruding, or some shotguns that don't have a disconnect
9 mechanism, you could actually fire a shotgun like that.

10 This particular firearm was fired in working order, so
11 I didn't --

12 Q. Did you try to slamfire it?

13 A. Well, again, during my normal operations of it, it
14 didn't slamfire, so there would be no way to slamfire it if
15 hadn't fired improperly while I was testing it.

16 Q. Well, in your opinion does the weapon that is capable
17 of slamfiring, it can happen one time and does not happen
18 again?

19 A. Well, certain firearms can do that.

20 In my expertise opinion, I don't think that this
21 firearm would slamfire.

22 Q. Okay. And you said the reason it could slamfire is
23 because the firing pin could be protruding?

24 A. Right. You know, if there was some sort of incidence
25 where the firing pin was stick in the forward position, then

1 that could happen, but in my testing it functioned fine.

2 Q. But like paint or something around the firing pin that
3 causes it to stick?

4 A. I guess -- I guess that's possible.

5 Again, when I received it, there was no paint in the
6 breech face area or in the firing pin area that I noticed
7 that didn't cause any issues when I fired it.

8 Q. Okay. Back to the safety on this particular weapon.
9 Does that safety, when it's engaged to make the weapon safe,
10 what does that actually do? Does it stop the trigger from
11 being pulled?

12 A. It does. Inside here a trigger has a protrusion and
13 the safety has a block that the two interact. So when the
14 safety is disengaged, it allows the trigger to move fully to
15 the rear. And then when it's engaged, that protrusion
16 engages the block that's under there with the safety.

17 Q. It stops the trigger from being pulled back?

18 A. Correct.

19 Q. Okay. What about the firing pin? It's not connected
20 directly to that safety on this particular weapon?

21 A. No, sir.

22 Q. So the firing pin, it's on its own?

23 A. Yeah.

24 Q. Spring loaded?

25 A. Yes, sir.

1 Q. Okay.

2 I have one more question. If after you cleaned this
3 weapon and you wanted to fully reload it to its full
4 capacity, how would you do that?

5 A. You would -- you could do it two ways. You could
6 insert the cartridge in the magazine and then rack the slide
7 and load that cartridge -- and then you could load that
8 cartridges into the chamber. And then you could go back and
9 fully fill the magazine with cartridges.

10 Or you could put one in the chamber. Again, you could
11 load it just directly into the chamber and pull the forearm
12 down and load it into the chamber and then you could fully
13 load the magazine.

14 Q. Okay. So if I had a full compliment of shotgun shells
15 to fill this weapon to the capacity, including the magazine
16 and the chamber, how many would I have?

17 A. Six.

18 Q. Okay. Thank you.

19 MR. DEAN: I don't have any further questions.

20 THE COURT: Any redirect on what he's asked?

21 MR. KENDALL: Yes, sir, Your Honor.

22 REDIRECT EXAMINATION BY MR. KENDALL:

23 Q. Just a couple of things.

24 The take-down screw, did you see any evidence at all
25 one way or the other whether the take-down screw was

1 actually loose when that gun was fired?

2 A. I did not. I did not notice at the time.

3 Q. So you can't make the determination of whether or not
4 when that shell tested was fired the take-down screw was
5 loose or not, is that fair to say?

6 A. Correct.

7 Q. As far as you know, is there any way to tell that?

8 A. No.

9 Q. So it's possible that it was fired with the take-down
10 screw, so it doesn't mean that it actually was done with the
11 take-down screw loose, is that fair to say?

12 A. Yes.

13 Q. Okay. Now, let's talk about slamfire.

14 Could you walk me through again what slamfire actually
15 is, a gun just slamfires?

16 A. Some -- some firearms you can see it where you have
17 possibly enough inertia in the firing pin. You see it in
18 semiautomatic firearms mostly, from my experience. And then
19 what happens is during the action of the firearm that's
20 being fired, when it's extracting it, it ejects a fired
21 cartridge case and then there is another cartridge being
22 loaded into the magazine, basically it gets fired at the
23 same time as it fully is chambered, because the firing pin
24 is either stuck or there is enough inertia behind that
25 firing pin to actually fire that cartridge.

1 Q. Okay. So a couple things about that.

2 When you are slamfiring a weapon -- trying to slamfire
3 a weapon, how fast do you have to rack in the shells?

4 A. Well, again, I have seen it in semiautomatic weapons,
5 so it's not a manual type action like this particular --

6 Q. When you say semiautomatic, is it expedientially faster
7 than a pump action shotgun?

8 A. Yes, sir.

9 Q. Is that -- so it's a very, very quick?

10 A. Right. You got everything under spring tension and it
11 happens very quickly, whereas this you could basically do it
12 as fast or as slow as you wanted to. You just limit it to
13 how fast you could actually operate the action.

14 Q. So for that to even sort of even be a remote
15 possibility, you would have to really crank that thing, is
16 that fair to say?

17 A. Yes, sir.

18 Q. Now, my next question is, is there delay in slamfiring?
19 So let's say I get my gun and I can go as fast as I can get
20 it. I'm as fast as a semiautomatic M-4, right? As fast as
21 I can go and then I stop and I wipe it down. Would it
22 suddenly go off at that point?

23 A. No. Not -- the only way that it could possibly happen
24 is called hang fire, whereas the shot shell or, you know,
25 the ammunition of the cartridge primer had been struck, for

1 whatever reason there is a delay in the ignition of that
2 gunpowder. But, again, I have never seen it happen
3 personally, so -- but I know that it can happen. I don't
4 know if it actually happened on this particular instance,
5 but, again, the firing pin would actually have to hit that
6 primer and cause it to go off. It just -- it's a delay for
7 it to happen so -- but I have never actually seen it happen.

8 Q. Okay. And in this case did you see anything suggesting
9 that firing pin was somehow engaged and had struck that
10 primer?

11 A. No, sir.

12 Again, during my examination the firing pin was in
13 proper working order during my testing.

14 Q. So you didn't see any paint in there that would have
15 caused that pin to hit that primer and have a hang fire or a
16 slamfire, is that fair to say?

17 A. Not that I saw, no.

18 Q. All right. Okay.

19 Typically when you are cleaning a shotgun like that,
20 what position do you keep the bolt in?

21 A. It would be to the rear.

22 Q. Okay. So you can physically see inside of that, is
23 that correct?

24 A. Correct. One of the rules of safety for any firearm in
25 handling it is to make sure that it's fully unloaded.

1 Again, you have to actually pull to the rear, look and
2 you have to physically determining to make sure that that
3 firearm is not loaded.

4 Q. And would it fire like that?

5 A. No, sir, it will not fire with the bolt to the rear.

6 Q. Okay. And just to be clear, you didn't see any paint
7 inside the breech or on that firing pin?

8 A. That I noticed, not that I'm aware of.

9 Again, during my testing the firing pin did not
10 protrude past the breech face, so I guess -- I did not see
11 any evidence of that during my testing.

12 Q. So in your expert opinion did you see any sort of
13 evidence of a slamfire or hang fire?

14 A. No, sir.

15 Q. Okay. And what was the capacity of that thing again?

16 A. You can have one shot shell in the chamber and then
17 five shot shells in the magazine. So altogether you could
18 have six when the firearm is fully loaded.

19 Q. Okay.

20 MR. KENDALL: Nothing further, Your Honor.

21 MR. COOK: One thing.

22 THE COURT: New matters.

23 MR. COOK: What, Your Honor?

24 THE COURT: I said new matters.

25 MR. COOK: Yes, sir.

1 RECROSS EXAMINATION BY MR. COOK:

2 Q. Mr. Smith, how many times did you fire this weapon
3 during your testing?

4 A. Let me approach my notes.

5 Q. Okay.

6 A. Altogether I fired it seven times.

7 Q. And how close in succession were those?

8 A. The first time -- I received the shotgun twice. The
9 first time was just a general examination, and then I
10 received it again later on to try to determine if it would
11 fire with the take-down screw loose.

12 The first time I fired it five times. That would have
13 been fairly quick in succession to get those shot shells.

14 And then there would have been a period of time when I
15 didn't have the shotgun in my possession because of the --
16 it went back to the agency.

17 Then it came back for further testing and I fired two
18 more at that time.

19 Q. Okay. Thank you.

20 Because I'm not sure when Mr. Kendall was up awhile --
21 just a minute ago when you were -- y'all were talking about
22 the slamfires y'all were -- with the action of the weapon.
23 Can you demonstrate how to unload this weapon and talk about
24 that slamfire potential as you are jacking those rounds out,
25 because I'm not sure if I understand it and I don't

1 think the --

2 A. The correct way to unload a shotgun like this is not to
3 cycle it through to get the shot shells out. The correct
4 way is if there is ammunition in the magazine, to release --
5 there is a shell stop, which basically a little bar that's
6 inside here that keeps the shot shells aligned and in the
7 magazine, so one at a time -- it's actually cycled ready for
8 firing. So you would push that shell stop and you can empty
9 all the cartridges out that way. That's the safest way to
10 do it.

11 You could also do it by cycling the cartridges or shot
12 shells through the firearm like you were firing the gun, but
13 it's basically you are just unloading the gun, but you have
14 cartridges in the magazine. So you are basically racking
15 the slide back and forth and then that basically brings the
16 ammunition ready into the firing position and then it
17 extracts and ejects an unfired shot shell at that time, but,
18 again, that's not recommended just in case there is any sort
19 of any issue with the firearm, it could cause some kind of
20 potential firing. You don't want to introduce ammunition
21 into the chamber of the firearm that way.

22 Q. Okay. Thank you.

23 So basically on the not recommended way to unload a
24 shotgun, each time that you rack that fore grip, it's
25 introducing a round into the firing chamber, which comes in

1 contact with the bolt face, is that correct?

2 A. That's correct, because at that point the firearm would
3 be ready to fire. So if you did have say your finger near
4 the trigger or anything, or any object near a trigger, you
5 just don't want to introduce any sort of unwanted thing that
6 could potentially fire. You want be a safe as possible when
7 handling that ammunition in that firearm.

8 Q. Okay. Thank you.

9 MR. COOK: That's all I have, Your Honor.

10 THE COURT: Okay. Thank you, sir.

11 Any reason why this witness needs to stay?

12 MR. KENDALL: No, sir, Your Honor.

13 THE COURT: Any reason?

14 MR. COOK: No, sir, Your Honor.

15 THE COURT: Thank you, sir. You may be excused.

16 Ladies and gentlemen, we are going to take a short
17 recess.

18 I need to remind you not to have any discussions
19 among yourselves about anything involving the case, but we
20 will get you back just shortly.

21 I need to see the lawyers in chambers.

22 (The following takes place outside the presence of
23 the jury panel)

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 MR. KENDALL: That would be fine.

2 MR. PRUETT: And then substitute it in.

3 MR. KENDALL: If you could also go ahead and mark
4 this too.

5 (Body Cam Video marked as State's Exhibit No. 15
6 for identification)

7 (Pre-Interrogation Waiver Form and Written
8 Statement of William Dean Pennington marked as State's
9 Exhibit No. 16 for identification).

10 (Off the record).

11 (Back on the record)

12 THE COURT: Are you ready?

13 MR. KENDALL: Yes, sir, Your Honor.

14 THE COURT: Let's bring them in.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: Is the State ready to call their next
18 witness?

19 MR. KENDALL: Yes, sir, Your Honor.

20 The State would call Tracy Fowler.

21 THE COURT: Come forward and have the clerk swear
22 you in.

23 THE CLERK: Please raise your right hand.

24

25 OFFICER TRACY FOWLWER, having been first duly

1 sworn, testified as follows:

2 THE WITNESS: I do.

3 DIRECT EXAMINATION BY MR. KENDALL:

4 Q. Could you please state your name for the record?

5 A. Tracy Fowler.

6 Q. Mr. Fowler, where are you currently employed?

7 A. Blacksburg Police Department.

8 Q. How long have you been employed with the Blacksburg
9 Police Department?

10 A. About three and a half years.

11 Q. And prior to your employment with the Blacksburg Police
12 Department, where were you employed?

13 A. The Cherokee County Sheriff's Office.

14 Q. And what were your responsibilities while you were
15 working at the sheriff's office?

16 A. For the last ten years I was at the sheriff's office I
17 was an investigator, criminal investigations unit.

18 Q. Okay. And what sort of things did you do in the
19 criminal investigative unit?

20 A. Investigated anything from thefts to violent crime.

21 Q. Okay. And did you respond to a shooting that took
22 place here in Cherokee County on June 21st, 2014?

23 A. Yes, sir.

24 Q. And do you recall where you went?

25 A. It was Ford Road. [REDACTED] Ford Road.

1 Q. Okay. And what county and state is that located in?

2 A. Cherokee County, South Carolina.

3 Q. And do you recall what time, approximately, the time of
4 day that you responded to that location?

5 A. Around eight a.m. that morning.

6 Q. Okay. What was your understanding upon being called
7 out there to what was going on?

8 A. Actually I -- I heard the initial radio traffic. We
9 were already on another shooting at the time and we heard
10 the initial radio traffic. The dispatcher I believe just
11 told us that someone had called in and said they had shot
12 their wife.

13 Q. Okay. And the other shooting, is that the one over at
14 Main Event over here on --

15 A. Cherokee Avenue.

16 Q. Okay. So what would you do --

17 As the main investigator of a crime like this, what was
18 sort of your responsibilities? What would you do?

19 A. Initially we -- we just made sure we try to secure the
20 scene.

21 I started trying to take statements from basically
22 anybody that was there at that point and was actually trying
23 to get crime scene there. We were kind of giving them time
24 to get there, because they -- like I say, they were actually
25 out on the other shooting at that point, I believe.

1 Q. Okay. And so when you say get crime scene there, as
2 the detective working it, are you the one that also goes out
3 there and takes all the swabs and takes the gun into
4 evidence and things like that?

5 A. No, sir.

6 Q. What sort of things do you do?

7 A. I normally collect, you know, the statements and that
8 kind of thing from people and --

9 Q. Okay.

10 A. -- run that kind of thing down.

11 Q. All right. And who handles the actual processing of
12 the scene, the CSI?

13 A. The crime scene investigators. At that time it was
14 Jimmy Henson and Billy Anthony.

15 Q. Okay. So it's just different people than you rather --
16 everybody has got their own job and that's theirs was to
17 process the scene --

18 A. Yes, sir.

19 Q. -- is that fair to say?

20 A. Yes, sir.

21 Q. Okay. So you wouldn't be the person that normally like
22 goes through and photographs everything and takes things
23 into evidence and stuff like that, is that fair to say?

24 A. No, sir.

25 Q. It's not fair to say, or that's not what you normally

1 do?

2 A. That's not what I normally do.

3 Q. Okay. And over the course did you actually respond to
4 the scene? Just generally speaking, can you just kind of
5 explain to the jury what you saw that day, at the scene that
6 is?

7 A. When I arrived on the scene Mr. Pennington was seated
8 on the couch and I just kind of made my way to the bedroom
9 at that point.

10 There was -- Ms. Pennington was lying on the floor at
11 the foot of the bed. I noticed there was a partially
12 disassembled shotgun on the bed.

13 Q. Okay.

14 A. And pretty much at that point, once I saw her condition
15 and everything, we tried to get out of the house until we
16 could get crime scene there.

17 Q. When you say her condition, what do you mean by that?

18 A. She was obviously beyond the point of EMS or anything
19 at that point.

20 Q. Okay. I mean, is it fair to say that a significant
21 portion of her head wasn't there?

22 A. Yes, sir.

23 Q. Okay. And did you conduct an interview that day of
24 anybody?

25 A. I conducted several. I can't remember who all I

1 actually conducted that day, but one of the statements I
2 conducted was of Mr. Pennington.

3 Q. All right. So you did conduct one of Mr. Pennington?

4 I'm going to show you what is marked State's
5 Exhibit 16. Could you take a look at this, please?

6 A. Yes, sir, this is the statement I took from Mr.
7 Pennington on June 21st.

8 Q. And prior to taking that statement was Mr.
9 Pennington --

10 First off, what time did you take that statement?

11 A. At 11:05 a.m..

12 Q. All right. At the time that you took that statement --
13 so about three hours after this was called in,
14 approximately?

15 A. Yes, sir.

16 Q. After -- could you please describe Mr. Pennington's
17 appearance and mental condition at the time that you took
18 the statement?

19 A. At that point, I mean, he seemed to be level headed. I
20 mean, he was pretty confident. I mean, as far as his
21 answers didn't seem upset or anything at that point.

22 Q. Okay. When you said he didn't seem upset, was he, you
23 know, for example, crying uncontrollably?

24 A. No, sir.

25 Q. Or anything like that?

1 A. No, sir.

2 Q. Was he, you know, kind of like on the verge of breaking
3 down, or anything like that?

4 A. No, sir.

5 Q. Did he appear to be under the influence of any alcohol
6 or drugs or anything like that?

7 A. No, sir.

8 Q. What was the interview like with him? Was he -- was he
9 loud and passionate? Was he fairly calm? How did he
10 appear?

11 A. He was very calm. It was just -- it was a long -- I
12 mean, we were in there for awhile. Just -- almost three
13 hours.

14 Q. Okay. And in your discussions with him was he advised
15 of his Miranda Rights?

16 A. Yes, sir.

17 Q. Did he indicate that he wished to waive those rights?

18 A. Yes, sir.

19 Q. And based on your talk, did he appear to understand
20 what was going on in waiving those rights?

21 A. Yes, sir.

22 Q. So this wasn't something where he was just so overcome
23 with grief, he just signed it?

24 A. No, sir.

25 Q. What sort of markings were made on that paper

1 indicating he understood these rights?

2 A. He actually initialed by each number of his statement
3 of rights, and then he signed below that, and then also
4 signed down of his waiver of rights as he was explained why
5 he was being interviewed.

6 Q. Okay. And did he indicate that he did wish to, in
7 fact, talk to you?

8 A. Yes, sir.

9 Q. All right. Did he provide that statement?

10 A. Yes, sir.

11 Q. And could you take a look at those next couple of pages
12 in that exhibit? Does it appear to be the statement that he
13 gave you?

14 A. Yes, sir.

15 Q. Okay. Is that a fair and accurate representation of
16 what he told you?

17 A. Yes, sir.

18 Q. Now, I understand you all talked for three hours and
19 that's like two pages, so there is, you know -- was that
20 ultimately something that he adopted as his statement?

21 A. Yes, sir.

22 Q. Do you recall who physically wrote it?

23 A. I physically wrote it for him.

24 Q. Okay. Was it read back to him or was he in any way
25 given a copy of it so he could look at it?

1 A. Yes, sir. I provided him with that statement. I read
2 it back to him and gave him an opportunity to read it before
3 it was signed. He actually had initialed at the beginning,
4 the end of each page, and where there was -- he asked me to
5 make a correction, or actually I made -- I misspelled a
6 word, or something, marked a word out and changed it and he
7 initialed to that change.

8 Q. Okay.

9 MR. KENDALL: Your Honor, at this time we would
10 offer State's Exhibit 16 into evidence.

11 MR. PRUETT: No objection.

12 THE COURT: Without objection.

13 (Whereupon, State's Exhibit No. 16 was entered
14 into the record as evidence).

15 MR. KENDALL: Your Honor, at this time we would
16 like the officer to go ahead and read the statement to the
17 jury.

18 MR. PRUETT: No objection.

19 THE COURT: All right.

20 A. "My wife Rita and I have been together for forty years
21 and married for thirty-seven years. This morning I woke up
22 the first time at five a.m.. I fell back to sleep until
23 around seven a.m.. I laid in bed watching Pastor Chapel on
24 TV. I got up and Rita brought me a cup of coffee and left
25 it on the table by the bed. Rita was in a good mood and we

1 were talking about going to Hardee's and to buy groceries.
2 I told Rita I was going to clean my gun before we left. I
3 just shot the gun Thursday or Friday evening before dark. I
4 sat on the bed on the left side facing the headboard. I
5 ejected the shells out of the gun by pumping the forearm of
6 the gun. I counted six shells on the bed. The gun holds
7 five shells and one in the tube, one in the chamber" --
8 excuse me "five shells in the tube, one in the chamber. I
9 removed the screw from the front end of the gun to take took
10 the barrel off. The barrel was still on the gun loose as I
11 was oiling it and wiping it down with a rag. The stock was
12 resting on my leg with the barrel up at an angle. I was
13 facing the chest of drawers, not the headboard. As I was
14 wiping the gun down it fired. The barrel came out a little
15 bit. I could see the shell. I pulled the barrel up and
16 took the shell out. I heard Rita fall and saw blood on the
17 floor. I got some towels and tried to stop the bleeding,
18 but I wasn't able to. I tried to pick Rita up but I
19 couldn't. I pulled Rita away from the wall and moved her
20 legs from under the bed. I ran out to the camper in the
21 front yard and knocked trying to get my son Rocky. No one
22 answered, so I went back to the house and called 911. Then
23 I went back to the bedroom and put another towel on Rita's
24 head. I tried to clean the blood off Rita and the floor
25 with the towel until the police got there. Rita has been

1 working at Hamrick Mills for the past two months. Rita got
2 fired from Snack Foods on Beech Street for sexual harassment
3 about three or four months ago. Rita and I argued a lot
4 when we first got together. We got along good recently. I
5 think the last time I shot the shotgun was standing on the
6 back porch shooting into the woods. I shot the gun by
7 accident and would not have shot my wife on purpose."

8 BY MR. KENDALL:

9 Q. Okay. I just wanted to ask you a couple of questions
10 about this statement. How many shells did he indicate that
11 ejected out of that gun?

12 A. He said he had counted six shells on the bed. The gun
13 holds five with one in the chamber.

14 Q. Okay. So he said he counted six shells on the bed and
15 the gun holds five and one in the chamber, is that accurate?

16 A. Yes, sir.

17 Q. All right. Where did he say the stock of the gun was
18 resting and the barrel? Where did he indicate -- how did he
19 indicate he was holding the gun, positioning?

20 A. He said the stock was resting on his leg with the
21 barrel up at an angle and he was facing the chest of
22 drawers, which would have been directly beside the left side
23 of the bed -- or actually the right side.

24 Q. All right. When you talk about the stock of the gun,
25 what's he referring to? Did he --

1 A. From what I'm judging, what he was calling the stock
2 would have been the rear pistol grip.

3 Q. Okay. And what did he indicate he did before he called
4 911?

5 A. He said he had actually gone down to the camper in the
6 front yard and tried to wake up his son Rocky.

7 Q. Okay. And then he came back to the house, is that
8 correct?

9 A. Yes, sir.

10 Q. Did he indicate if he had done anything to the body
11 prior to calling 911?

12 A. He had pulled the body away from the wall and her leg
13 out from under the bed. And he was also --

14 Q. Okay.

15 A. -- attempting to clean the blood up at that point.

16 Q. Now, did he make any references to you over the course
17 of that statement about any sort of infidelity or issues
18 with Rita?

19 A. No, sir. I mean, he just -- he said that she had been
20 fired from Snack Foods and said they just had previous
21 arguments, but didn't give any indication at that point that
22 there had been any infidelity or anything.

23 Q. So at the time that he gave that statement the day she
24 was killed, he had mentioned to you that she had, in fact,
25 been fired from Snack Time?

1 A. Yes, sir.

2 Q. Are you aware of that fact?

3 A. Yes, sir.

4 Q. Okay. Did he mention to you any malfunctioning with
5 the --

6 Over the course of your time at the crime scene while
7 you were there, do you know who responded to the crime
8 scene?

9 A. Yes, sir.

10 Q. And were you there some of the time when Deputy Medley
11 was there with regard to his body camera?

12 A. Yes, sir.

13 Q. Have you had the opportunity to watch that body camera
14 video?

15 A. Yes, sir.

16 Q. Was that a fair and accurate representation of what
17 took place?

18 A. Yes, sir, during that point in time.

19 MR. KENDALL: Your Honor, we would offer State's
20 Exhibit 17 --

21 MS. LESKANIC: 15.

22 MR. KENDALL: -- into evidence, so --

23 Excuse me, we would offer to publish State's
24 Exhibit 15, upon the stipulation that it be later entered
25 into evidence following a previous discussion.

1 THE COURT: 15 is the body cam?

2 MR. KENDALL: Yes, sir, Your Honor.

3 MR. PRUETT: Your Honor, without objection.

4 THE COURT: All right. Yes, sir, you may publish.

5 MR. KENDALL: Thank you, Your Honor.

6 (Whereupon, State's Exhibit No. 15 was played to
7 the jury panel).

8 (Videotape stopped)

9 BY MR. KENDALL:

10 Q. Just one question. What was he watching on TV?

11 A. I'm not sure what it was. It appeared to be a western.

12 (Whereupon, the videotape was resumed and
13 completed)

14 BY MR. KENDALL:

15 Q. Now, you testified a moment ago that one of the things
16 he told you is how he had the gun positioned with the stock
17 resting on his leg with the barrel up at an angle. Have you
18 fired a 12-gauge buckshot before?

19 A. Yes, sir.

20 Q. And tell me about that experience.

21 A. The first time I was a small child actually, sat me on
22 my backside.

23 Q. Okay. What about as an adult? Is it something that --
24 is it fair to say a 12-gauge double-aught buck has a
25 substantial amount of kick?

1 A. Yes.

2 Q. And that's with a butt stock, correct? You put up on
3 your shoulder --

4 A. Yes.

5 Q. -- is that fair to say?

6 A. Yes, sir.

7 Q. What about the pistol grips?

8 A. If you are not prepared, it's a good way to break your
9 wrist, or sprain your wrist.

10 Q. And so after Mr. Pennington told you how he had it
11 rested, did you look into anything to see if there was any
12 markings or anything on him?

13 A. I checked his leg where he said he was resting on the
14 inside of his thigh for bruising or any type of marks there.

15 Q. And did you see any bruising or anything like that?

16 A. No, sir.

17 Q. All right. I'm going to show you what is marked
18 State's Exhibit 9 and 10. Do you recognize these?

19 A. Yes, sir.

20 Q. And what are those?

21 A. These are the photographs I took the morning of the
22 21st.

23 Q. Okay. And was there any bruising on there?

24 A. No, sir.

25 Q. He appears to have other marks and scabs and stuff like

1 that. I know it's a picture, but did you see any -- did you
2 observe any bruises at all --

3 A. I did not.

4 Q. -- to his legs.

5 MR. KENDALL: Your Honor, we would offer State's
6 Exhibits 9 and 10 into evidence.

7 MR. PRUETT: No objection.

8 THE COURT: Without objection, it would be 9 and
9 10.

10 (Whereupon, State's Exhibit No. 9 was entered into
11 the record as evidence).

12 (Whereupon, State's Exhibit No. 10 was entered
13 into the record as evidence)

14 MR. KENDALL: And I would request permission to
15 publish.

16 I have nothing further, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MR. PRUETT:

19 Q. I'm just going to pick up where Mr. Kendall left off
20 and I will kind of go back to the scene. He talked about
21 shotgun and firing of the shotgun.

22 First of all, this is a stockless weapon, is that
23 correct?

24 A. Yes, sir.

25 Q. There is no stock on it --

1 A. Yes, sir.

2 Q. -- right?

3 And it's meant to be hand held?

4 A. Uh-huh.

5 Q. Using your hands?

6 A. (Shaking head yes).

7 Q. All right. And you didn't fire this weapon, did you?

8 A. No, sir.

9 Q. So you don't know what the recoil is, do you?

10 You don't know personally what the recoil is on this
11 particular weapon?

12 A. I know personally what it would be on a pistol grip
13 12-guage shotgun, yes.

14 Q. We just had an expert testify. He didn't mention
15 anything about a significant recoil, correct? You were in
16 here.

17 A. Okay. Well, I'm just speaking from my personal
18 experience.

19 Q. And where he had it rested, he said on his leg, so you
20 don't know if it was resting in between his legs or across
21 them, do you?

22 A. Actually where he showed me was inside of his left
23 thigh.

24 Q. Well, that's not in his statement. He said across his
25 legs or on his legs.

1 A. Okay. That's not in his statement, but that's where he
2 pointed to.

3 Q. All right. Didn't he also demonstrate what he was
4 doing at the time that it went off?

5 A. Yes, sir.

6 Q. Because on the video we just watched, he is
7 demonstrating I think what Agent Smith testified to a few
8 moments ago, he was doing like this, like he was ejecting
9 shells, correct?

10 A. Yes, sir.

11 Q. All right. Which Agent Smith said was the unsafe way
12 to unload the weapon, correct?

13 A. Yes, sir.

14 Q. All right. Let's go back to where you showed up at the
15 scene and just kind of start at the beginning, briefly.

16 You got there presumably after Tracy Medley and Nick
17 Federico and Derrick Greer, am I right?

18 A. Yes, sir.

19 Q. Okay. How much later were you on the scene at the
20 time?

21 Now, you are on the scene there and I don't know if the
22 time is correct on that particular video we just watched,
23 but it looked like it was like 8:14 in the morning. Does
24 that kind of coincide with your recollection?

25 A. It was -- I know it was within just a few minutes of

1 the original officers getting there.

2 Q. Okay.

3 Yeah, again, I don't know. Officer Medley hasn't
4 testified, but I'm presuming the timer on that video is
5 about right? It says 8:14 a.m.. Does that sound right to
6 you?

7 A. I don't know. It's been four years ago. I just -- I
8 know we were all responding at the same time, because I was
9 already out.

10 Q. All right.

11 So you get there, you walk through the scene.

12 When you got there, where was Mr. Pennington at?

13 A. On the couch in the living room.

14 Q. In the same position that's on that video, the same
15 place?

16 A. Yes, sir.

17 Q. All right.

18 And Derrick Greer was actually standing with him, it
19 appears on the video?

20 A. Yes, sir.

21 Q. Who stayed with Mr. Pennington during the time that you
22 were there?

23 A. For part of the time --

24 Well, when I was in the house, it was Derrick Greer.

25 When they were outside -- I had asked Nick to stay with him

1 when they were sitting outside.

2 Q. Deputy Federico, Nick?

3 A. Yes, I'm sorry.

4 Q. All right.

5 So he stayed with Mr. Pennington. I'm just trying to
6 understand who was with him most of the time when he's at
7 the scene. It would have been split between Derrick Greer
8 and Nick Federico?

9 A. More than likely. I was taking statements and we had
10 some other issues going on, so --

11 Q. How long were you at the scene before you left?

12 A. I -- right up until the point that we drove from the
13 sheriff's office and I got -- I took the statement from Mr.
14 Pennington.

15 Q. Okay.

16 A. So we were out there awhile.

17 Q. We have got that in evidence, the State does.

18 A. The statement?

19 Q. I'm sorry, you got it?

20 A. I have got it.

21 Q. If you got it, I want you to refer to it.

22 So you began his interview at approximately eleven
23 o'clock, is that right?

24 A. Yes, sir.

25 Q. So who transported Mr. Pennington to the sheriff's

1 office?

2 A. I would have had a marked car to take him, but I'm not
3 sure who transported him.

4 Q. Okay. Did you transport him?

5 A. No, sir.

6 Q. All right.

7 I have to assume while you are there, and some of what
8 was on that video is helpful, you can see on the video the
9 television is going, correct?

10 A. Uh-huh.

11 Q. And it was on when you walked in, correct?

12 A. Yes, sir.

13 Q. All right.

14 And, of course, it's already been testified to and I
15 won't cover it again what was on the bed, the shotgun, the
16 spray can, the six unfired shotgun cartridges, the one fired
17 shotgun cartridge, and there were two TV remotes all on the
18 bed. Is that consistent with your recollection? And if you
19 can't remember, I can show some photos.

20 A. The remotes I'm not sure about.

21 I remember seeing the gun, the shells, and that kind of
22 stuff.

23 Q. Okay. Well, I'm not trying to play gotcha here. I'm
24 going to show you. They put it over here.

25 Right here and right here, do those appear to be TV

1 remotes?

2 I'm sorry, Defendant's Exhibit No. 5.

3 A. Yes, sir.

4 Q. Okay. And then you have on the other side of the bed
5 what appear to be Ms. Pennington's purse, her keys and her
6 pair of pants?

7 A. Yes, sir.

8 Q. Okay. The ceiling fan in the video is going around and
9 around?

10 A. Uh-huh.

11 Q. So it was also on when you entered the residence,
12 correct?

13 A. Yes, sir.

14 Q. As were two other fans that were in the room, is that
15 correct?

16 A. Yes, sir.

17 Q. Again, you see them on some of the photos, it appears
18 to be one fan that was on pointing in the direction to where
19 Mr. Pennington would have been sleeping; the other side of
20 the bed, if I'm facing you, and the other fan pointing
21 towards where Ms. Pennington might have been sleeping on the
22 right-hand side. Again, does that comport with your
23 recollection of what was occurring when you arrived on the
24 scene?

25 A. Yes, sir.

1 Q. All right.

2 Now, once he's transported, he being Mr. Pennington, is
3 transported to the Cherokee County Sheriff's Office, that
4 was for the purpose of taking his statement, correct?

5 A. Yes, sir.

6 Q. Was he in custody at that point? Was he handcuffed?

7 A. I -- I believe so. I believe he was handcuffed before
8 he was transported.

9 Q. All right.

10 He knows he's in custody, that's my point.

11 A. I -- I don't think I notified him at that point that he
12 was under arrest or anything.

13 Q. Well, he was handcuffed?

14 A. He was handcuffed and that's -- that's generally just
15 the procedure before they get in our car.

16 Q. In custody?

17 A. Yeah.

18 Q. All right.

19 And once he gets to the sheriff's office, you arrived
20 there and, again, approximately eleven o'clock is when you
21 began the interview interrogation of Mr. Pennington,
22 correct?

23 A. (Shaking head yes).

24 Q. Now, prior to beginning the questioning of Mr.
25 Pennington, you are required, he's in custody, to go down

1 each and every Constitutional Right that he has, correct?

2 A. Yes, sir.

3 Q. And that includes the right to remain silent; anything
4 that he says could be used against him in a court of law;
5 that he has a right to talk to an attorney or have a lawyer
6 present when questioning; if you can't afford an attorney,
7 one would be appointed for him; and he has a right to stop
8 the questioning at any time. He waived those rights,
9 correct?

10 A. Yes, sir.

11 Q. Freely, voluntarily?

12 A. Yes, sir.

13 Q. All right. Answered your questions?

14 A. Yes, sir.

15 Q. And that was for a period of three hours?

16 A. Yes, sir.

17 Q. And from your form that you filled out that's in
18 evidence, it states that Mr. Pennington has a 6th grade
19 education, is that correct?

20 A. That's what he advised.

21 Q. He would have been at that time sixty-eight years of
22 age?

23 A. I believe so.

24 Q. Okay. And you also make a note -- and I don't know if
25 you have had an opportunity to do this prior to testifying

1 today. You made some handwritten notes. Do you recall
2 that?

3 Again, I'll -- this is what I have been provided by the
4 State. Are those your notes?

5 A. Yes, sir.

6 Q. Okay. This is the only copy I have, so --

7 MR. PRUETT: This is what you provided me. All
8 right.

9 BY MR. PRUETT:

10 Q. And you just mentioned some notations on your notes,
11 which I assume were contemporaneous with the interview of
12 Mr. Pennington, is that fair to say?

13 A. Yes, sir.

14 Q. All right. And one of those notes was that you noted
15 he was taking Percocet, which is a Schedule II painkiller,
16 and Xanax, is that correct?

17 A. I would have to look at my notes. Like I say, that's
18 been --

19 Q. I don't mean to do -- that's the only copy. I should
20 have made another copy I guess.

21 A. They may be in my other folder.

22 Q. Okay.

23 Right here.

24 A. Yeah, I believe that's what he was telling me he had
25 taken.

1 Q. That day?

2 A. I can't remember if he said that day or not.

3 He said he takes -- he normally takes four times a day,
4 but I can't remember specifically when he said the last
5 time.

6 Q. All right.

7 And we will have other evidence, probably tomorrow.
8 Again, you didn't process the crime scene, correct?

9 A. No, sir.

10 Q. So you wouldn't have walked around and took photographs
11 of the medication that Mr. Pennington had in his possession?
12 You wouldn't have done that?

13 A. No, sir.

14 Q. And what we -- I don't know. This is why I'm asking.
15 When I saw you in that video a few moment ago and then you
16 testified you kind of walked through the scene and you went
17 back outside, sort of not to contaminate the scene, is that
18 right?

19 A. Yes, sir.

20 Q. So you would not have spent a lot of time inside the
21 residence?

22 A. No, sir.

23 Q. Okay. So after you get his waiver of rights, get his
24 education and his background, when do you start audio and
25 video recording Mr. Pennington?

1 A. We didn't have that ability at the point in time.

2 Q. Why not? It's a tape recorder.

3 A. We didn't have body cams, and at that point at the
4 sheriff's office I didn't have a tape recorder.

5 Q. Well, there was a body cam video. Deputy Medley was in
6 the room with Mr. Pennington.

7 A. There were -- there were officers that had some that
8 they were testing out at that point in time, but we --
9 everybody was not issued a body camera.

10 Q. What I'm saying is Tracy Medley actually had a body cam
11 running when Mr. Pennington was in the interrogation room
12 when you came in. You're on the video. There was a body
13 cam in the room.

14 A. During the questioning?

15 Q. Right before it started and then it stopped.

16 A. I had no idea.

17 Q. Okay. Well, you knew Tracy Medley had the body cam on,
18 didn't you ?

19 A. Actually no, or I wouldn't have had the extreme
20 close-up.

21 Q. All right. All right. Fair enough.

22 So in the sheriff's office, even though -- even though
23 obviously this was a very important part of the case to get
24 everything done correctly, there is no video recording, no
25 audio recording of what transpired between you and Mr.

1 Pennington?

2 A. Yes, it wasn't available at that time.

3 Q. The whole sheriff's office you don't have a camera or
4 recorder?

5 A. I didn't have it to -- that I had access to.

6 Q. Had what?

7 A. That I had access to.

8 Q. Deputy Medley had one on him at that moment.

9 A. Like I say, I was unaware of that.

10 Q. All right.

11 Well, how did he happen to get access? I mean, the --
12 I mean, you're an officer of how many years, detective?

13 A. It's now twenty-two. I was -- I had been at the
14 sheriff's office for nineteen years at that point.

15 Q. Nineteen years?

16 A. Yes.

17 Q. And they have got cameras in cars and everywhere else.
18 And you have to have them in DUI cases. You got to
19 videotape the whole thing from beginning to end. You don't
20 do that in a murder case?

21 A. I'm telling you what we had at our disposal at that
22 point, or what I did.

23 Q. Well, let me ask you this. How many times did you
24 video record an interview with a suspect, a murder suspect?

25 A. At the sheriff's office?

1 Q. Yes, sir.

2 A. Zero.

3 Q. None.

4 So you never had access the entire time that you were
5 there?

6 A. No.

7 Q. Even though you knew when you went to the sheriff's
8 office with Mr. Pennington, between Mr. Pennington's home to
9 the sheriff's office and, that's what your purpose in going
10 there was, correct? It wasn't like you all of the sudden
11 had a surprise and you didn't know you were going to
12 interview him? You planned to interview him?

13 A. Yes, sir.

14 Q. All right. So it sounds to me like the policy is you
15 just don't interview people? It's not that you can't, you
16 just choose not to?

17 A. That I choose not to interview people?

18 Q. You choose not to video record.

19 A. I didn't have access to a camera.

20 Q. All right.

21 Any --

22 A. Like I said, I had no idea that Mr. Medley had a
23 camera -- that Officer Medley had a camera on.

24 Q. I'm saying the entire time that you have been at the
25 sheriff's office --

1 A. Now, since I have had access to a camera in Blacksburg,
2 I have not only videotaped every interview, but every
3 public --

4 Q. Right. Blacksburg?

5 A. Yeah.

6 Q. Not the sheriff's office?

7 A. That's what I have access to over there.

8 Q. All right.

9 A three hour interview and then the statement about a
10 page and a half, two pages long. What took three hours?

11 A. I know we talked -- we had talked for awhile, and
12 generally I'll start out talking to make sure that he feels
13 okay and -- I mean, it's on my notes. I mean, I go
14 through --

15 Q. Right.

16 A. -- asking them, you know, when they have taken
17 medication and all. I don't know why I didn't write that
18 last time he had taken it, but generally that's what I do.

19 Q. Okay.

20 A. I mean, it's still -- it takes a while.

21 Q. Okay. And I'm just asking.

22 And I'm assuming that you asked him to tell you what
23 happened more than once? It's not just a one time go, is
24 that correct?

25 A. Generally we go through it. And then as I'm writing it

1 down, I re-ask the questions and make sure that I'm writing
2 his statement in his words.

3 Q. And as you did that, he didn't apparently make any
4 significant changes, at least from your notes I can't tell
5 where that occurred.

6 In other words, the statement he gave the first time is
7 the same statement he gave the second or third time?

8 A. Yes, sir.

9 Q. And you would say at that point in time he had kind of
10 calmed down. Would you say that he was emotionally
11 distraught before?

12 A. There was -- I mean, we were dealing with a lot going
13 on at the house and he was what you saw on video at that
14 point at the house.

15 Q. All right.

16 I think that's all I have. I want to look at your
17 notes one second before I sit down. I don't want to miss
18 anything.

19 (Off the record).

20 (Back on the record)

21 BY MR. PRUETT:

22 Q. One thing I did note in your notes --

23 Again, I know you don't have a copy.

24 It's a little bit different from the statement. It may
25 not be significant. In your notes you say "the gun

1 discharged, pulled barrel apart from receiver, removed
2 shell."

3 His statement is a little bit different and I just
4 wonder if you could maybe explain that discrepancy, if there
5 is one. Maybe it's consistent with what he wrote in his
6 statement.

7 In his statement I'm looking to -- I'm just going to
8 count from the bottom, Detective Fowler. About the fifth
9 line from the bottom.

10 A. On the first page?

11 Q. Yes, sir. I apologize. The first page, the fifth line
12 from the bottom.

13 A. Uh-huh.

14 Q. It looks like next to the last sentence, "I pulled the
15 barrel up and took the shell out."

16 And on your notes it says "I pulled the barrel apart
17 from the receiver and removed the shell."

18 A. I mean, that's just a change in -- like I say, I
19 take -- usually take the notes just as he's telling me what
20 happened the first time and as we go back through the
21 statement I still write it down in his words. I mean, that
22 would just be the way he had worded it. It still means the
23 same thing, but that's the way he asked to word it on his
24 statement.

25 Q. All right.

1 I guess the reason I asked that is that they found the
2 shotgun partially disassembled in two pieces.

3 A. Yes, sir.

4 Q. And your notes would seem to indicate that's what he
5 was saying, "I pulled the barrel apart from the receiver,
6 removed the shell," as opposed to pulling it open.

7 It may be a distinction without a difference, but it's
8 worded different. To me it has different meanings.

9 A. Okay. I mean, that's just difference in the way
10 that --

11 Q. All right.

12 MR. PRUETT: That's all I have. Thank you so
13 much.

14 THE COURT: Any redirect on what he went into?

15 MR. KENDALL: Yes, sir, Your Honor. I'll be very
16 brief.

17 REDIRECT EXAMINATION BY MR. KENDALL:

18 Q. All right. Could you show the jury here on State's
19 Exhibit 12 which part is the receiver? I just want to make
20 sure they understand what he is saying.

21 A. This is -- this part right here is the receiver.

22 Q. All right. Which part is the barrel?

23 A. This is the barrel.

24 Q. All right. So when he fired --

25 How do you get the barrel off the receiver? Do you

1 know?

2 A. By removing that screw and pulling upwards.

3 Q. Okay. So when he said it kicked out a little bit, what
4 was he referring to?

5 A. The separation between the barrel and the receiver.

6 Q. Okay. So he says he pulls it up, just kind of -- you
7 don't have to take the whole shotgun apart, but what did you
8 understand that to mean, he was pulling it up?

9 A. That he's pulling the barrel up away from the receiver.

10 Q. Okay. So when he fired it, it kicked out a little bit
11 and then he took it the rest of the way up, is that fair to
12 say?

13 A. Yes, sir.

14 Q. All right. While you got it like that, could you show
15 us how he said he was holding it?

16 A. He said it was -- I'm not pointing the gun at the
17 judge.

18 Q. Fair enough.

19 A. But he said it was sitting against this inner thigh and
20 back over his right arm?

21 Q. Okay. What was he doing with it?

22 A. He said he was wiping it down.

23 Q. Okay. So on that video we saw in the distance that
24 motion, could that have been him demonstrating he was wiping
25 it?

1 A. I wasn't --

2 Q. Okay.

3 A. I overheard him talking to --

4 Q. Mr. Pruett characterized it as ejecting rounds like
5 that. I just want to see in his statement what did he say
6 he was doing when he was holding the gun like that?

7 A. He told me -- he advised me that he was wiping it down.

8 Q. Okay. You talked a few minutes ago to Mr. Pruett about
9 kind of this process of when y'all get a statement at this
10 point where he signed the statement, and you testified that
11 he said the same thing to you a couple of times and that's
12 how it got on the statement. Is that fair to say?

13 A. Yes, sir.

14 Q. Okay. So this wasn't something --

15 And how would you characterize his statement? What --
16 is this an explanation? Is this a confession? Is it what
17 he said happened?

18 A. His explanation.

19 Q. Okay. But he's not -- in his statement to some degree
20 is self-serving, is that correct? He claims it's an
21 accident, is that correct?

22 A. Yes, sir.

23 MR. PRUETT: I object to that characterization of
24 self-serving.

25 THE COURT: I'll sustain the objection.

1 MR. KENDALL: Nothing further, Your Honor.

2 THE COURT: Thank you, sir.

3 Watch your step. You may step down.

4 Lawyers approach.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 THE COURT: All right, ladies and gentlemen, I
8 want to thank you for your attention to the receiving of the
9 evidence today.

10 I need to remind you that we are now going to take
11 the evening break. Even more important that you don't have
12 any discussions with anyone, among yourselves, or with
13 anyone else about anything involving the case. Somebody's
14 loved one or somebody calls you and says well, what's the
15 case? Don't even tell the name of the case. Just tell them
16 that you can't, the judge has instructed me that I cannot
17 talk about anything involved in this case.

18 Also you have heard some evidence now. Do not do
19 any type of independent research or investigation into
20 anything that you have heard as part of this case,
21 including, you know, you heard the names of the lawyers, you
22 got my name, you got the courthouse staff. Do not do any
23 type of research in any of the individuals as well.

24 But with that said, I want to thank you again for
25 your service today.

1 (Off the record).

2 (Back on the record)

3 THE COURT: Are y'all ready?

4 MR. KENDALL: Yes, sir.

5 THE COURT: Bring them in.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Good morning, ladies and gentlemen.

9 Is the State ready to call their next witness?

10 MR. KENDALL: We are, Your Honor.

11 Your Honor, at this time the State would call
12 Billy Anthony.

13 THE COURT: Just come up here and let the clerk
14 swear you in.

15 THE CLERK: Please raise your right hand.

16 OFFICER BILLY ANTHONY, having been first duly
17 sworn, testified as follows:

18 THE WITNESS: Yes, I do.

19 DIRECT EXAMINATION BY MR. KENDALL:

20 Q. Could you please state your name for the record?

21 A. Yes, it's Billy Anthony.

22 Q. And Mr. Anthony, where are you currently employed?

23 A. The Cherokee County Sheriff's Office.

24 Q. And how long have you been with the sheriff's office?

25 A. I have been employed with the sheriff's office in a

1 full time capacity for sixteen years.

2 Q. And what are your duties at the sheriff's office?

3 A. I'm currently assigned to investigations as a crime
4 scene investigator and evidence custodian.

5 Q. Okay. And as it relates to this case, I know you kind
6 of wear a lot of hats, what sort of things does a crime
7 scene investigator do?

8 A. We go out. We process crime scenes from maybe
9 burglaries, larcenies, all the way up to suicides,
10 homicides.

11 Q. Okay. And were you working in that capacity in June of
12 2014?

13 A. Yes, sir, I was.

14 Q. And did you respond that morning to a shooting at [REDACTED]
15 Ford Road in Gaffney?

16 A. Yes, sir, I did.

17 Q. Before we get into that, I would like to talk to you a
18 little bit about your background.

19 Do you have any kind of training in crime scene
20 reconstruction or crime scene analysis?

21 A. Yes, sir. If I could --

22 Q. Yes, sir.

23 A. -- refer to my training log.

24 I attended my basic crime -- or Criminal Justice
25 Academy, my basic law enforcement training during March of

1 2002, through May of 2002.

2 I went to Advanced Blood Pattern Analysis training,
3 eight hours in Columbia, November 16th, 2007.

4 I attended an eighty hour crime scene investigation
5 course December of 2007.

6 I attended the DNA Overview and Forensic Pathology,
7 eight hour course, May of 2008.

8 North Carolina Criminal Justice Academy Legal Issues
9 and Courtroom Testimony as it relates to crime scenes. That
10 was sixteen hours, July of 2008.

11 Fingerprint reconstruction comparison, forty hour
12 course, August 25th through 29th, 2008.

13 Chemical Processing and Advanced Photography,
14 February of 2009. That was forty hours.

15 Death Investigations, North Carolina Criminal Justice
16 Academy. That was a forty hour course, August 2009.

17 Child Abuse Homicide Investigation, February of 2011,
18 seven and a half hours.

19 Footwear, Tire Tread Documentation, seven and a half
20 hours, February of 2011.

21 Forensic Death Investigations, February 2011. Seven
22 and a half hours.

23 Trace Evidence class, seven and a half hours, March of
24 2011.

25 On Scene Best Practices in Investigation of Crime

1 Scene, part one and two, two hours, October 2011.

2 Strangulation Indicators as a Predictor for Homicide,
3 October 2011.

4 Forensic Photography, October 14th, 2011, one hour.

5 Crime Scene Investigation. It was a one hour course,
6 November 2011.

7 DNA Evidence Collection, Processing, and CODIS entry,
8 one and a half hours, November 2011.

9 Overview of Forensic Evidence Submissions,
10 November 2011. That was a half an hour course.

11 A Child Death Investigation, two-hour course,
12 November 2011.

13 Blood Stain Pattern Interpretation and Crime Scene
14 Reconstruction, October of 2012. That was seven hours.

15 Domestic Violence Homicide and Crime Scene Staging,
16 October of 2012, seven and a half hours.

17 Homicide and Questioned Death Scene Determination and
18 Reconstruction. That was a twenty hour course, January of
19 2013.

20 Shooting Reconstruction Firearms and Tool Marks,
21 April of 2013, seven and a half hours.

22 Profiling and Processing Homicides --

23 THE COURT: Lawyers approach a moment.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 BY MR. KENDALL:

2 Q. Detective Anthony, is it fair to say that you have
3 attended a whole lot of training connected in the broad area
4 of crime scene analysis and reconstruction? Is that fair to
5 say?

6 A. Yes, sir, that's correct.

7 Q. And overall, I mean, if you could just estimate how
8 many hours total it would be?

9 A. Of total training in just forensics, say it's several
10 hundred.

11 Q. Okay. And that training would include things involving
12 blood splatter pattern and firearms analysis and
13 trajectories and things like that, and just crime scene
14 processing, things of that nature?

15 A. Yes, sir, that's correct.

16 Q. And that would all be sort of under the same umbrella
17 of crime scene analysis and reconstruction, is that fair?

18 A. Yes, sir.

19 MR. KENDALL: Your Honor, at this time we would
20 offer Detective Anthony as an expert in crime scene analysis
21 and reconstruction.

22 THE COURT: Crime scene analysis and
23 reconstruction?

24 MR. KENDALL: Yes, sir.

25 MR. PRUETT: Without objection, Your Honor.

1 THE COURT: All right.

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

10 This witness will be qualified in the area of
11 crime scene analysis and reconstruction to give opinion
12 testimony in that area.

13 Now, that does not mean that you must accept the
14 opinion, but it is evidence for you to use in any way that
15 you see fit and give it the weight and credibility that you
16 believe is appropriate.

17 MR. KENDALL: Thank you, Your Honor.

18 THE COURT: Uh-huh.

19 BY MR. KENDALL:

20 Q. Detective Anthony, did you respond to a crime scene at
21 [REDACTED] Ford Road back in December -- excuse me, June 21st,
22 2014?

23 A. Yes, sir, I did.

24 Q. All right. And could you describe that residence?

25 A. Yes, sir.

1 When myself and Detective Jimmy Henson arrived on the
2 scene that day, we were actually leaving another -- we had
3 another scene that we had been processing.

4 We -- when we arrived on the scene, it was a residence
5 sitting kind of off the roadway and there were several
6 patrol cars in the driveway and several other cars outside.

7 Q. Okay. And these have already been admitted into
8 evidence.

9 State's Exhibits 4 and 5, exterior photos. Is that a
10 fair and accurate representation of kind of what you
11 responded to?

12 A. Yes, sir, it is.

13 Q. Exterior doors.

14 Okay. I'm just going to show these to the jury again.

15 All right. And where did you enter in? If you could
16 just show the jury on these photographs where y'all entered
17 in, how you got into the --

18 A. The first photograph is the front of the residence.
19 There actually is a door on the front.

20 THE COURT: Sir, if you will, use the reference
21 number in the red tab when you refer to it.

22 A. Yes, sir, it's State's Exhibit No. 4 is the front of
23 the residence.

24 There is a door on the front, but the actual entrance
25 into the home is on the left side, which represents State's

1 Exhibit 5. It's a white storm door and the metal door
2 inside of it.

3 BY MR. KENDALL:

4 Q. Okay. Now, I'm going to show you State's Exhibits 17
5 and 18. Do you recognize these?

6 A. Yes, sir, I do.

7 Q. And is that a fair and accurate representation of what
8 you saw?

9 A. Yes, sir.

10 MR. KENDALL: Your Honor, we would offer 17 and 18
11 into evidence.

12 MR. PRUETT: No objection.

13 THE COURT: Without objection.

14 (Whereupon, State's Exhibit No. 17 was entered
15 into the record as evidence).

16 (Whereupon, State's Exhibit No. 18 was entered
17 into the record as evidence)

18 MR. KENDALL: And if it's all right with the
19 court, I would like to ask -- if it's all right, to ask the
20 witness to step down? We are going to put these items on
21 the screen and I think I can make it go faster.

22 THE COURT: All right, sir, I just need to let you
23 know that you are going to be stepping away from the
24 microphone, so I'll need you to speak up loud enough so that
25 both the court reporter and all of the jurors can be able to

1 hear you, but you can go down there and stand with Mr.
2 Kendall.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Uh-huh.

5 Really speak up now.

6 (Witness off the witness stand).

7 THE COURT: Mr. Court Reporter, interrupt when you
8 can't hear.

9 COURT REPORTER: Yes, sir.

10 BY MR. KENDALL:

11 Q. State's Exhibit 17, do you recall what this was?

12 A. Yes, sir.

13 When you entered the first door going into the
14 residence, it was an enclosed porch and this doorway was
15 directly in front of you on that -- when you enter that
16 first door.

17 Q. Okay. And State's 18 as well? The same thing?

18 A. Yes, sir, it would be.

19 Q. All right. If you could just stand right there.

20 After entering in that sort of initial area, where did
21 you all go inside the house?

22 A. Once we entered the first door, there is another main
23 door entering into the home that was to the left. We
24 entered that door and started taking photographs as we did a
25 walk-through of the scene.

1 Q. Okay. Now, I am going to show you State's Exhibits
2 19 --

3 MR. PRUETT: Your Honor, we can address it at a
4 side bar, but we have an issue with State's Exhibit No. 22.

5 THE COURT: All right. Y'all want to approach?

6 (Whereupon, the lawyers approached the bench for
7 an off-the-record discussion)

8 MR. PRUETT: With the exception to 22, no
9 objection to the remaining exhibits.

10 THE COURT: All right. And we have discussed 22
11 at the side bar.

12 BY MR. KENDALL:

13 Q. I'm going to show you State's Exhibits 20 -- excuse me,
14 19, 20, 21, and 23.

15 A. Yes, sir.

16 Q. Do you recognize those?

17 A. Yes, sir. These are photographs leading into the front
18 door that led into the living room of the home.

19 MR. KENDALL: And we would offer those into
20 evidence, Your Honor, at this time.

21 MR. PRUETT: No objection.

22 THE COURT: Without objection.

23 Again, that 19 through 23, absent 22?

24 MR. KENDALL: Yes, sir.

25 THE COURT: Okay.

1 (Whereupon, State's Exhibit No. 19 was entered
2 into the record as evidence).

3 (Whereupon, State's Exhibit No. 20 was entered
4 into the record as evidence).

5 (Whereupon, State's Exhibit No. 21 was entered
6 into the record as evidence).

7 (Whereupon, State's Exhibit No. 23 was entered
8 into the record as evidence)

9 BY MR. KENDALL:

10 Q. All right. We will try to move quickly through these
11 to kind of lay it out to the jury.

12 What is this?

13 A. This is -- entering from the front porch, enclosed
14 porch area, this is the front door that led into the living
15 room.

16 Q. Okay. And where is the bedroom?

17 A. When you enter the front door, it will be -- you will
18 turn to your right and it will be straight in front of this.

19 Q. Okay. I'm going to show you now State's Exhibit 20.

20 A. This is just inside the front door facing straight
21 ahead. The kitchen would be kind of across from it.

22 Q. All right. And State's Exhibit 23?

23 A. It's just a little closer photo, the same direction.

24 Q. Okay. So the actual bedroom where this took place is
25 all the way back and to the right?

1 A. Yes, sir, that's correct.

2 Q. Okay. Now, at this time I'm going to show you what was
3 marked State's Exhibit 24, 25, 26, 27, 28.

4 I'm going to show you what are marked State's 24
5 through 28. Do you recognize these?

6 A. Yes, sir, I do.

7 Q. All right. And what are these photographs of?

8 A. These are photographs of the bedroom.

9 Q. Okay.

10 MR. KENDALL: Your Honor, we would offer State's
11 24 through 28 into evidence at this time.

12 MR. PRUETT: No objection.

13 THE COURT: Without objection.

14 (Whereupon, State's Exhibit No. 24 was entered
15 into the record as evidence).

16 (Whereupon, State's Exhibit No. 25 was entered
17 into the record as evidence).

18 (Whereupon, State's Exhibit No. 26 was entered
19 into the record as evidence).

20 (Whereupon, State's Exhibit No. 27 was entered
21 into the record as evidence).

22 (Whereupon, State's Exhibit No. 28 was entered
23 into the record as evidence)

24 BY MR. KENDALL:

25 Q. Now, while I'm putting these photographs up, if you

1 could kind of tell the jury from what vantage point that you
2 are taking these?

3 So how many rooms -- excuse me, doors were there in the
4 bedroom?

5 A. There were actually two entrance doors into the
6 bedroom.

7 Q. Okay. And where did they come from?

8 A. One entered from the living room area, which is
9 directly off the living room. The other was off of a room
10 appeared to be a dining room came in on the opposite or the
11 sidewalk of the bedroom.

12 Q. Okay. So with regards to State's Exhibit 24, where is
13 that -- where is that taken from?

14 A. This is looking back from the side door that entered
15 from the dining room laundry area.

16 The main -- or the door that enters from the living
17 room would be in this area.

18 Q. Okay. And where was the victim in this case
19 contained -- where was she positioned?

20 A. She's positioned right here on the floor with her head
21 facing towards that doorway.

22 Q. Okay. And did you see any evidence at that time of any
23 shotgun or materials, wadding, anything like that?

24 A. Yes, sir, the photo is a little hard to see, but there
25 is a wadding in the floor right in this area.

1 Q. Okay. Now I'm going to show you what is marked State's
2 Exhibit 26. What is this a photograph of?

3 A. This is a photograph facing the doorway the previous
4 photo was taken from. This is a door leading in to where
5 the laundry and dining table are. The victim was in the
6 floor kind of to the left of this photo.

7 Q. And does that appear to be kind of her side of the
8 room?

9 A. Yes, sir, it is.

10 Q. And, likewise, State's Exhibit 28, what is this a
11 photograph of?

12 A. It's hard to see. This is a door frame to that doorway
13 leading back into the dining area.

14 This is the closet, and there is actually another
15 little closet door here facing that end wall. The victim
16 was seated in the floor right in this area here.

17 Q. Okay. And State's Exhibit 26, what is this a
18 photograph of?

19 A. This is actually a photograph of the bed from the same
20 angle. There is a cellular -- or a cordless telephone here,
21 and there is a weapon, a shotgun, lying on the bed, and the
22 victim is at the foot of the bed here.

23 Q. Okay. And State's Exhibit 26, what is this?

24 A. This is a photograph. This was taken later on after
25 the scene had been partially processed. The victim was no

1 longer there.

2 This photograph is just showing a general measurement
3 and line coming from near where the shotgun was on the bed
4 to an approximate area where the victim may have been
5 standing.

6 Q. And what are -- what are those blue things on the bed
7 right there?

8 A. That's a pair of denim jeans, and there is a female
9 pocketbook there on the side.

10 Q. Okay. Now -- you can go ahead and probably leave that
11 off.

12 I'm going to show you what has previously been entered
13 into evidence as State's 6, 7, and 8. Do you recognize
14 this?

15 A. Yes, sir, this is the photograph of the bed. The
16 cordless telephone is lying right here on the bed. The
17 disassembled shotgun, can of Liquid Wrench. There is an
18 upright spent shotgun shell. There is shotgun unspent
19 cartridges or shotgun shells on the bed here and a
20 television remote.

21 Q. All right. And, likewise, in State's Exhibit 7?

22 A. Yes, sir, this is a little closer photograph of the
23 same items on the bed, and this is the actual ruler that you
24 saw going back up to the gentleman standing at the end of
25 the bed. We were just using it for a reference pulling a

1 line back.

2 Q. Okay. And then State's Exhibit 8, I believe we looked
3 at this yesterday. I don't know if you can see it from the
4 overhead, but --

5 A. There is a nightstand on the right side of the bed
6 here. As you are facing it, there was a nightstand that had
7 several items on top of it.

8 Q. All right. Did you notice any shotgun, any part of it
9 on top of it?

10 A. Yes, sir. There is like a heat shield cover that goes
11 over the barrel area. It was lying on top.

12 Q. Okay. I'm going to show you what is marked -- probably
13 come on over here -- what is marked State Exhibit 13. Do
14 you recognize that.

15 A. Yes.

16 Q. And what is that?

17 A. That's the heat shield metal piece from the shotgun.

18 Q. Okay. And where was that lying?

19 A. It was lying on the nightstand.

20 Q. Okay.

21 MR. KENDALL: We would offer State's Exhibit 13
22 into evidence, Your Honor.

23 MR. PRUETT: Which exhibit was that?

24 MR. KENDALL: 13, the heat shield that was laying
25 on top of the nightstand. It was part of the shotgun.

1 MR. PRUETT: No objection.

2 (Whereupon, State's Exhibit No. 13 was entered
3 into the record as evidence)

4 BY MR. KENDALL:

5 Q. Now, you testified a moment ago that there was some --
6 when you were looking at State's Exhibits 6 and 7, I believe
7 about rounds. I'm going to show you what is marked State's
8 Exhibit 66.

9 MR. PRUETT: Without objection.

10 THE COURT: State's 66?

11 MR. KENDALL: Yes, sir, Your Honor.

12 We would offer --

13 THE COURT: Without objection.

14 (Whereupon, State's Exhibit No. 66 was entered
15 into the record as evidence)

16 BY MR. KENDALL:

17 Q. Do you recognize those?

18 A. Yes, sir, I do.

19 Q. You can go ahead and pull those out.

20 What were those?

21 A. These were the actual shotgun shells that were
22 collected off the bed in the bedroom.

23 Q. All right. And how many shells were there, unfired
24 shells were there?

25 A. There was actually a total of six that were unfired.

1 Q. All right. And what type of shells were those?
2 What -- what kind of shells do you have, as far as
3 differing -- or I guess what gauge are those shells?

4 A. They are all 12-gauge shotgun shells, but they are
5 actually somewhat different. We have got four that were a
6 No. 9 shot, which is a smaller pellet.

7 Q. What are No. 9 shots typically used for?

8 A. You usually see them as far as target, trap, or some
9 small game.

10 Q. Okay.

11 A. Then we have one Remington No. 6 shot, which is
12 slightly larger. You typically see it in smaller game, bird
13 hunting, or getting on the little bit larger game, rabbit,
14 small animals.

15 And then there was one unspent double-aught buck round
16 on the bed also.

17 Q. Okay. And to be clear, those six rounds in your hand
18 are the same six rounds that are in this photograph right
19 here?

20 A. Yes, sir, they are.

21 Q. Okay. And have you had the opportunity to kind of
22 examine the shotgun?

23 A. Yes, sir.

24 Q. How many rounds does that shotgun hold?

25 A. It would hold five in the magazine well and one in the

1 chamber.

2 Q. All right. So a total of six shotgun rounds could fit
3 inside that firearm?

4 A. Yes, sir, that's correct.

5 Q. Did you ever try to load seven?

6 A. Yes, sir, we did.

7 Q. Did it work?

8 A. No, sir.

9 Q. Okay. All right.

10 Did you find any other shotgun shells on the bed there,
11 fired or unfired?

12 A. There was one fired shotgun shell on the bed.

13 Q. All right. I'm sorry, I will put up State's Exhibit 66
14 again.

15 Could you show the jury using a laser where that was
16 located?

17 A. It was located between the barrel and the other part of
18 the shotgun. It's standing in the upright position.

19 Q. So it's sitting upright?

20 A. Yes, sir.

21 Q. All right. And how was the firearm laid when you got
22 there?

23 A. When we arrived -- we go through the whole scene and we
24 photograph everything that's in place when we arrived. We
25 don't change anything from how we arrive on the scene. We

1 walk through and take overall photographs.

2 When we arrived, this was lying on the bed in this
3 position.

4 Q. Okay. So fairly neatly next to each other?

5 A. Yes.

6 Q. All right.

7 MR. KENDALL: Yes, Your Honor, we would move 66
8 into evidence, if it hasn't already been.

9 THE COURT: We did it without objection, 66.

10 MR. PRUETT: Yes.

11 THE COURT: Yeah.

12 BY MR. KENDALL:

13 Q. Now, was there anything else on the bed at that time
14 when you -- anything else sitting on the bed when you all
15 got there?

16 A. Yes, sir, there was the cordless telephone, the TV
17 remote, and the can of Liquid Wrench was also there with the
18 shotgun.

19 Q. All right. I'm going to show you State's Exhibit 61.

20 MR. PRUETT: No objection.

21 MR. KENDALL: Your Honor, we would offer State's
22 Exhibit 61 into evidence.

23 THE COURT: It's without objection.

24 (Whereupon, State's Exhibit No. 61 was entered
25 into the record as evidence)

1 BY MR. KENDALL:

2 Q. Do you recognize this?

3 A. Yes, sir, this is the way it would have been packaged
4 on the scene.

5 This is a can of Liquid Wrench that was lying on the
6 bed with the shotgun.

7 Q. Okay. And did you see, over the course of your
8 investigation, any evidence that Mr. Pennington had used it?

9 A. Yes, sir, we did. There was what appeared to be a
10 similar type oil on the shotgun itself. It had a sheen of
11 oil. You could actually see it on the shotgun.

12 Q. Did it appear that it had somewhat a substantial amount
13 more than wiping that shotgun off?

14 A. It appeared that it had been sprayed down. It didn't
15 appear what I saw would have been wiped down.

16 Q. All right. Did you observe any of the spray anywhere
17 else in the room, any remnants of the spray or anything that
18 appeared to be an oily substance anywhere else in the room?

19 A. On the photograph there was a nightstand to the right
20 as you are facing the bed. There was over-spray kind of
21 over the items that were on that nightstand.

22 Q. All right. And I'm going to show you what is marked
23 State's Exhibit 29.

24 MR. KENDALL: We would offer, without objection,
25 State's 29 into evidence.

1 MR. PRUETT: No objection, Your Honor.

2 THE COURT: Without objection, it's admitted as
3 State's 29.

4 (Whereupon, State's Exhibit No. 29 was entered
5 into the record as evidence)

6 BY MR. KENDALL:

7 Q. All right. Do you recognize this?

8 A. Yes, sir.

9 Q. And what is that?

10 A. This is the top of the nightstand that was to the right
11 of the headboard of the bed. There is the heat shield or
12 piece of metal that was appeared to be from the shotgun. It
13 was collected and there was over-spray of some oil on some
14 of the items on the nightstand.

15 Q. And those appear -- or do you see anywhere in the
16 picture that appears to be a rag?

17 A. Yes, sir, there appears to be a rag right here kind of
18 between the cordless phone base and the heat shield.

19 Q. And did you see any other gun cleaning components
20 laying out there?

21 A. No, sir, we did not.

22 Q. All right. And so is it fair to say that there was oil
23 basically all over, the gun was saturated, and also sprayed
24 all over the top of that -- the top of that nightstand?

25 A. There was oil on top of the items there, yes.

1 Q. All right. Now, did you also look in that nightstand
2 at any point?

3 A. Yes, sir, we did.

4 Q. I'm going to show you what is marked as State's
5 Exhibit 67.

6 MR. PRUETT: I have no objection.

7 THE COURT: State's 67 without objection.

8 MR. KENDALL: I guess we would just offer it into
9 evidence.

10 (Whereupon, State's Exhibit No. 67 was entered
11 into the record as evidence)

12 BY MR. KENDALL:

13 Q. Do you recognize this?

14 A. Yes, sir.

15 Q. And what is that?

16 A. This is a red notepad, memo book, that was taken from
17 the top drawer of the nightstand.

18 Q. All right.

19 MR. KENDALL: And at this time, Your Honor, I
20 would like to publish this to the jury, a page in
21 particular.

22 THE COURT: All right. Yes, sir, you may publish.

23 BY MR. KENDALL:

24 Q. Would you mind reading to the jury the contents of that
25 page inside of the notebook?

1 A. The -- on here it's written "Snick Time," S-N-I-C-K
2 Time, with a phone number 649-1443.

3 "Vicky Fried."

4 Next line is "Kathy".

5 Next line "Melissa," underlined. "Boss."

6 Next line is "Tony/Black man."

7 Next line "Matt the one."

8 Next one is "Tarsus".

9 Q. All right. And just to highlight that, in this
10 notebook found in the bedside where the gun stuff was, there
11 was a note that says "Matt the one", is that correct?

12 A. Yes, sir.

13 Q. Okay. All right.

14 I guess before we move on, let me show you what was
15 marked yesterday as State's Exhibit 11. Do you recognize
16 that?

17 A. Yes, sir.

18 Q. And what was that?

19 A. This is the fired shotgun shell from the bed. It's
20 marked in our envelope and labeled as such.

21 Q. And what did you do with that shotgun shell once y'all
22 got it?

23 A. We packaged it and sent it to SLED for analysis.

24 Q. Okay. So the shotgun shell you sent to SLED, is it the
25 same one that's in the bag?

1 A. Yes, sir, it is.

2 Q. Okay. And did you see any markings on it indicating
3 that on your original submission?

4 A. Yes, sir, this inner envelope is the envelope that was
5 sealed in. Detective Henson actually initialed and dated it
6 and I transported it to SLED and it was actually -- it's
7 inside their envelope.

8 Q. So the shell they tested is the same shell taken from
9 the crime scene, is that fair to say?

10 A. Yes, sir, it is.

11 Q. Okay. I'm also going to show you what has been entered
12 into evidence as State's Exhibit 14. Do you recognize
13 these?

14 A. Yes, sir, I do.

15 Q. And what are those?

16 A. These are two shotgun shells that were located inside
17 the drawer of the nightstand. These were both unfired
18 shotgun shells, with similar markings as to the firing.

19 Q. Okay. And where were those found?

20 A. They were found in the nightstand drawer to the right
21 of the headboard.

22 Q. Okay. So these -- clearly these other two double-aught
23 buckshot rounds were not on the bed, is that correct?

24 A. That's correct.

25 Q. When cleaning a shotgun, what are the things you would

1 have out to clean the shotgun?

2 A. Typically you would have a cleaning rod or access to
3 clean actually the bore of the weapon out. Usually see
4 those when you are cleaning the firearm.

5 Q. Okay. What -- what order do people typically clean
6 firearms in?

7 A. Typically people, they were going to take and clear the
8 weapon of any rounds that are inside of it. Take the
9 barrel, remove any of the components and clean them
10 separate.

11 Q. When do you wipe down the exterior of the firearm?

12 A. That would -- for me, that is the last thing that I do
13 when I have cleaned all my internal components, wipe it down
14 and put it back together.

15 Q. Why do you do that last?

16 A. That takes everything that you could have gotten on it
17 from the outside and the last step is putting it back
18 together is how I typically do it.

19 Q. Okay. But if you were in a hurry, in some cases you
20 may just wipe down the outside, is that correct?

21 A. Yes, you could.

22 Q. Was there an oil to prevent rust, is that fair to say?

23 A. Yes, sir.

24 Q. With this particular shotgun, was there any heightened
25 risk of rusting, or anything like that?

1 A. Just as yesterday, the SLED agent said there was a coat
2 of paint on the outside of the weapon.

3 Q. So that would hinder rusting, is that --

4 A. Yes.

5 Q. Okay. We talked a minute ago about the different types
6 of shells. Would you just describe more of kind of -- what
7 sort of shells are double-aught buckshot typically used for,
8 say in a hunting environment?

9 A. For hunting it's larger game, usually deer, that type
10 animal.

11 Q. Okay. Could you see a scenario where you would be
12 shooting both of those things at the same time, other than
13 just wanting to shoot both of them at the same time?

14 A. I don't know of any reason that you would have.

15 Q. Okay. So it wouldn't be a situation where you would go
16 hunting bird and deer hunting at the same time, or something
17 like that?

18 A. No, sir, not that I'm aware of.

19 Q. And what is the -- have you fired rounds like that in
20 the past?

21 A. Yes, sir, I have.

22 Q. And what is the difference in recoil between like a 9
23 shot round and a double-aught buck round?

24 A. The No. 9, or a smaller shot, typically, as far as the
25 bird load, smaller loads from, you know, range from 6 to 9

1 shot, they typically have less recoil. As long as -- you
2 know, you are staying in a two and three-quarter inch shell,
3 which these are.

4 When you get into a larger round, like the buckshot or
5 slug, they typically have more recoil to them when they are
6 fired.

7 Q. Okay. Have you shot a double-aught buck out of a
8 pistol stop 12-guage?

9 A. I have.

10 Q. And describe that to the jury.

11 A. It has a significant amount of recoil to it.

12 The difference for me is you have less area to brace
13 with. One that has a stop, a traditional butt stock, you
14 have got your shoulder when you are firing it to help absorb
15 that recoil, whereas in a pistol grip you only have your
16 hand.

17 Q. Okay. Is this something that you would be left holding
18 onto when you fire it?

19 A. If you are likely holding onto it -- I have saw people
20 on the range with a traditional stop round or stock shotgun.
21 When they fired that weapon, it tends to either kick up or
22 around. One, if you are lightly holding it, it's a good
23 chance you could have an injury or it come out of your hand.

24 Q. Okay. All right.

25 I'm going to show you --

1 Oh, one more question. Did you see any coffee mugs
2 laying on that table, on that bedside table, anything like
3 that?

4 A. No, sir, I did not.

5 Q. Okay. Now, I'm going to show you what is marked
6 State's Exhibits 34 and 35. Do you recognize these?

7 A. Yes, sir, I do.

8 Q. And what are those photos of?

9 A. These are photographs of leading from the door coming
10 from the living room into the bedroom.

11 MR. KENDALL: Your Honor, we would offer State's
12 Exhibit 34 and 35 into evidence.

13 THE COURT: Without objection.

14 MR. PRUETT: Yes, sir, I'm sorry.

15 (Whereupon, State's Exhibit No. 34 was entered
16 into the record as evidence).

17 (Whereupon, State's Exhibit No. 35 was entered
18 into the record as evidence)

19 BY MR. KENDALL:

20 Q. And I just want to point out a few things on State's
21 Exhibit 34. Could you walk us through --

22 What is this, first off?

23 A. You can see the doorknob. This would be the doorway
24 that -- the door that leads into the bedroom from the living
25 room area.

1 This is the bed. The headboard of the bed is down here
2 against the back wall, and there is the nightstand to the
3 right of the bed.

4 Q. All right. And what is this over here? Can you see
5 that?

6 Do you want to look at the original picture?

7 A. Yes, sir.

8 This is a chest of drawers to the right.

9 Q. Okay. I'm going to show you what is marked State's
10 Exhibits 36 and 37.

11 When you all entered into the room, did you notice
12 where Ms. Pennington was lying?

13 A. When you entered the room from the door coming from the
14 living room, she was lying at the foot of the bed on the
15 left-hand side.

16 Q. Okay. And I am going to show you --

17 Were there any other, I guess, features of the room
18 that were near there; bed, closet, or anything like that?

19 A. Yes, sir, there was a closet. It would have been to
20 her left side, but directly at the end of the foot of the
21 bed.

22 Q. All right. And are those fair and accurate
23 descriptions of where she was lying?

24 A. Yes, sir, they are.

25 MR. KENDALL: We would like to publish 36 and 37

1 to the jury, Your Honor.

2 MR. PRUETT: No objection.

3 THE COURT: Without objection.

4 (Whereupon, State's Exhibit No. 36 was entered
5 into the record as evidence).

6 (Whereupon, State's Exhibit No. 37 was entered
7 into the record as evidence)

8 BY MR. KENDALL:

9 Q. Can you see Ms. Pennington?

10 A. Yes, sir. She's lying here on the floor right here.
11 This is the foot of the bed and there is the closet door.

12 Q. Okay. And what is on that closet door, on the -- sort
13 of facing out?

14 A. You have some blood spatter that is on -- swipe marks
15 on the door.

16 Q. And, likewise, in State's Exhibit 37?

17 A. Yes, sir, this is just looking a little more to the
18 left. You lose the foot of the bed, but this is the same
19 closet and door here.

20 Q. Okay. Now, I'm going to show you what is marked
21 State's Exhibit 33. Do you recognize that?

22 A. Yes, sir, I do.

23 Q. And what is that?

24 A. That's a picture of right above Ms. Pennington's head
25 of the floor.

1 Q. Okay.

2 MR. KENDALL: We would offer State's Exhibit 33
3 into evidence, Your Honor.

4 MR. PRUETT: No objection.

5 THE COURT: Without objection.

6 (Whereupon, State's Exhibit No. 33 was entered
7 into the record as evidence)

8 BY MR. KENDALL:

9 Q. Again, if you would just describe to the jury what this
10 is?

11 A. The doorway at the closet, this is the bottom corner of
12 the door. This -- Ms. Pennington was lying below here.
13 Actual red towel covering her up. And there is smeared
14 blood above the head.

15 Q. And what would the smeared blood indicate?

16 A. That indicates movement or wiping.

17 Q. Okay. And so based on seeing that, what did you
18 believe that would tell you about where Ms. Pennington's
19 position was, where she would naturally fall?

20 A. As we were looking at the blood that was there on the
21 floor, it was apparent that she had been moved from her
22 original position where she fell.

23 Q. Okay. Did it appear anybody had made any efforts to
24 clean up that blood, wipe it up?

25 A. Yes, sir, there were some swipe marks on the floor.

1 Q. All right. Now, I would like to sort of take a few
2 minutes to get into some of these other photographs.

3 Could you take a look at State's Exhibit 39, 40, 41,
4 42, 43, and 44?

5 A. Yes, sir. These are all photographs of the door, the
6 closet door.

7 MR. KENDALL: Your Honor, we would offer to move
8 State's Exhibit -- or offer State's 39 through 44 into
9 evidence.

10 MR. PRUETT: Without objection.

11 THE COURT: Without objection.

12 (Whereupon, State's Exhibit No. 39 was entered
13 into the record as evidence).

14 (Whereupon, State's Exhibit No. 40 was entered
15 into the record as evidence).

16 (Whereupon, State's Exhibit No. 41 was entered
17 into the record as evidence).

18 (Whereupon, State's Exhibit No. 42 was entered
19 into the record as evidence).

20 (Whereupon, State's Exhibit No. 43 was entered
21 into the record as evidence).

22 (Whereupon, State's Exhibit No. 44 was entered
23 into the record as evidence)

24 BY MR. KENDALL:

25 Q. Now, when you arrived on the scene, what did you see

1 with regards to blood sort of in other places?

2 Where broadly in the room was the blood?

3 A. You actually had blood spatter on the back wall near
4 where the closet was.

5 There was a bookcase to the right of the closet door.
6 There was some blood spatter there.

7 There was -- if you travel around the wall on the wall
8 where the back entrance into the dining room would have
9 been, there is a wardrobe there with glass front door. You
10 had blood spatter there. That general kind of corner area
11 of the room.

12 Q. And which side of the room was all that blood spatter
13 on?

14 A. If you were facing from the foot of the bed, it would
15 be kind of behind you to your left.

16 Q. Okay. What about in reference to where the shotgun was
17 found and laying?

18 A. If you were standing at the head of the bed and the
19 shotgun was right here on the bed, it's typically going back
20 to your right kind of a little more straight ahead, but kind
21 of towards the right.

22 Q. Okay. And so I just want to show you. I believe we
23 put this exhibit up in the past, State's Exhibit 25.

24 The blood spatter pattern that you saw was consistent
25 with the shot being fired from that side of the room, that

1 side of the bed, is that fair to say?

2 A. Yes, sir, it is.

3 Q. Okay. All right.

4 Now, looking at these pictures of the door, I think we
5 entered them into evidence, let me first show you what is
6 marked State's Exhibit 44, and what is this?

7 A. This is the closet door at the foot of the bed. The
8 door handle.

9 This would be the opening edge of your door, and you
10 have got blood spatter traveling back and downward on the
11 door.

12 This would have been the exterior of the door if it had
13 been closed.

14 Q. Okay. And State's Exhibit 39? Have I got that
15 oriented right?

16 A. Yes, sir, that's right.

17 Q. So the marking on State's Exhibit 39, is it fair to
18 say, first of all, it's upside down?

19 A. Yes.

20 You can see looking at the photo, it's hard to see
21 here, but the actual hinge on the door is right here. This
22 was the opening side.

23 Q. Okay. And State's Exhibit 41?

24 A. This is looking the same direction. This is the
25 exterior of the door into the bedroom and your blood spatter

1 traveling back and downward from the edge of the door.

2 Q. Okay. And State's Exhibit 43?

3 A. This is a little further back shot of the same door.

4 You have got your blood spatter traveling back as the door
5 would have been slightly open. It's traveling down.

6 And here you can see in the previous photo where I said
7 there was some wipe marks or slide of the type of drag mark,
8 right here on the floor is where those were located.

9 Q. Okay. And to be fair, this photo was taken after the
10 body had been removed, is that accurate?

11 A. Yes, sir, that's correct.

12 Q. And then State's Exhibit 40?

13 A. This --

14 Q. Go ahead. What does this photo show?

15 A. This is the same closet door. This would be the
16 opening side of it. This is the exterior. And on the
17 interior you had a small amount of blood spatter that was
18 traveling back with the door. You got more to the -- more
19 to the exterior of the door than on the interior.

20 Q. Okay. And then State's Exhibit 42. State's
21 Exhibit 42.

22 A. The same closet door. This is a face of it. You can
23 see you have some blood spatter up the edge of the door.
24 You have got a little bit on the inside of the door and you
25 have got it on items inside this closet on some of these

1 boxes over this direction, and there is the bookcase that
2 was to the right that had blood spatter also.

3 Q. What is the presence of blood on both sides of that
4 door indicate to you?

5 A. It indicates that the door was at least partially open.

6 To be able to get it on both sides, if the door had
7 been closed, you would expect to see all your blood spatter
8 on the exterior of the door.

9 If the door was in a fully opened position, you would
10 expect to see everything on the inside of the door, but with
11 it being edgewise, you get it on both sides and that's why
12 it's traveling more straight than downward.

13 Q. Okay. And what can you tell us about what is
14 significant of State's Exhibit 40, with regards to that
15 blood right there on the door frame?

16 A. When we got -- when we were looking -- after the victim
17 at this time had been moved, we were taking these
18 photographs. With her being moved slightly where you see
19 she had been pulled makes it a little more difficult to
20 determine exactly where things were originally at, but based
21 with this blood spatter, it appears this is where her head
22 struck the edge of the door as she was falling down.

23 Q. Okay. So the blood spatter on both sides of that door
24 would be consistent with her head actually hitting the door
25 as she falls?

1 A. Yes, sir. There was a little bit on the edge, but most
2 of it, there is a swipe mark down the exterior of the door.

3 Q. Okay. And I'll show you State's Exhibit 43. Could you
4 kind of point out where you were just talking about?

5 A. Yes, sir, you can see. You have -- it starts kind of
6 up in this area and it just -- the swipe mark travels at a
7 downward angle.

8 Q. Okay.

9 MR. KENDALL: I believe we put 43 and 44 into
10 evidence.

11 MR. PRUETT: If you didn't, I don't object.

12 BY MR. KENDALL:

13 Q. Now, sort of moving onto other things in the room, you
14 mentioned a moment ago you observed blood on some of the
15 other portions of the room. I'm going to show you kind
16 of -- you mentioned a black dresser, or something like that?

17 A. Yes, sir, on the wardrobe, yes.

18 Q. I'm going to show you what is marked State's
19 Exhibit 45. Do you recognize that?

20 A. Yes, sir, I do.

21 Q. What is that a photograph of?

22 A. That's a photograph of the wardrobe that would have
23 been -- from the closet door bookcase, it would have been on
24 the right-hand wall, still kind of to the back corner of the
25 bedroom.

1 Q. And there's blood drops on that?

2 A. Yes, sir.

3 Q. And I'm just going to show you --

4 MR. KENDALL: We offer State's 45 into evidence,
5 Your Honor.

6 MR. PRUETT: No objection.

7 THE COURT: Without objection.

8 (Whereupon, State's Exhibit No. 45 was admitted
9 into the record as evidence)

10 BY MR. KENDALL:

11 Q. I'm going to show you what is marked as State's
12 Exhibit 45, and then what I would also like to do is use a
13 pointer and show the jury where that is located at.

14 A. This is where the wardrobe is in the bedroom. You can
15 see the actual mirrored doors right here.

16 Q. Okay. So we are still getting splatter all the way
17 kind of towards that portion of the room?

18 A. Yes, sir.

19 Q. I'm sorry, State's Exhibit 8. I'm sorry. Just put it
20 back up there.

21 This is State's Exhibit 8 as previously admitted. I
22 apologize.

23 And is that the -- can you point out that glass door?

24 A. Yes, sir, this is the wardrobe here with the glass
25 doors.

1 Q. Okay. Now, did you find any other evidence of kind of
2 shotgun-related stuff on the other side of the room?

3 A. On --

4 Q. On -- well, let me show you State's Exhibits 30, 31,
5 and 32. Do you recognize these?

6 A. Yes, sir, I do.

7 Q. And what are they? What are those photographs of,
8 generally?

9 A. If you are standing at the footboard of the bed facing
10 the headboard, those are on the left side.

11 Q. Okay.

12 MR. KENDALL: Your Honor, we would offer State's
13 30 through 32 into evidence.

14 MR. PRUETT: No objection.

15 THE COURT: Without objection.

16 30 through 32?

17 MR. KENDALL: Yes, Your Honor.

18 (Whereupon, State's Exhibit No. 30 was entered
19 into the record as evidence).

20 (Whereupon, State's Exhibit No. 31 was entered
21 into the record as evidence).

22 (Whereupon, State's Exhibit No. 32 was entered
23 into the record as evidence)

24 BY MR. KENDALL:

25 Q. And then on this side of the bedroom what do we have?

1 A. This is the denim pants that were in the other
2 photograph, the lady's handbag pocketbook there.

3 Here is the -- another -- it's kind of like a dresser
4 on this side of the bed, and there is a cordless phone and
5 base there.

6 Q. Okay. State's Exhibit, very quickly, No. 32? Is that
7 a close-up of that bedside table?

8 A. Yes, sir, this is kind of like this is a close-up of
9 the dresser to the --

10 Q. And 31, is that the photo taken farther out?

11 A. Yes, sir, that's correct.

12 Q. On that side of the room did you find any remnants of a
13 shotgun, anything like that?

14 A. No, sir, we did not.

15 Q. What about remnants of the projectile from a shotgun?

16 A. There was several places inside the residence, in the
17 ceiling area and the bookcase that had been struck by
18 projectiles. We were able to retrieve one projectile out of
19 a book that was on the bookcase.

20 Q. Okay. Let me -- let me I guess kind of just go back.

21 I think awhile ago when we were initially looking at
22 the room, you mentioned shotgun wadding. Where was that
23 located?

24 A. It was located in the floor. I believe there was a
25 chair maybe on a rug right there nearby. It was on the

1 floor near the victim's head.

2 Q. I'm going to show you what is marked State's Exhibit --

3 MR. KENDALL: We would offer State's Exhibit 38
4 and 65 into evidence, Your Honor.

5 THE COURT: 38 and 65?

6 MR. KENDALL: Yes, sir.

7 MR. PRUETT: No objection.

8 THE COURT: Without objection.

9 BY MR. KENDALL:

10 Q. Do you recognize these?

11 MR. KENDALL: I'm sorry. I'm sorry. State's
12 Exhibit 64 and 38. I'm sorry.

13 THE COURT: 64 and 38?

14 MR. PRUETT: No objection.

15 THE COURT: Without objection.

16 (Whereupon, State's Exhibit No. 38 was entered
17 into the record as evidence).

18 (Whereupon, State's Exhibit No. 64 was entered
19 into the record as evidence)

20 BY MR. KENDALL:

21 Q. All right. And if we could, could you pull out that
22 wadding and show the jury?

23 A. This is the wadding that we recovered out there.

24 Q. Okay. And I'm going to show you what is marked State's
25 Exhibit 24. It was previously moved into evidence and it's

1 hard to see. Step around, if you can. Do you see the
2 wadding in this photograph?

3 A. It is right near the edge of this rug right here where
4 the chair is sitting on. It's right in that area.

5 Q. All right. And I'm going to show you State's
6 Exhibit 38, and what is that?

7 A. This is just a close-up photograph of the wadding.

8 Q. Okay. Now, generally speaking, what is a shotgun
9 wadding? What does it do?

10 A. That is -- the item is actually between your gunpowder
11 and the shotgun pellets, whatever kind of pellet that the
12 shotgun cartridges carry, and that is the piece that goes
13 out right behind the pellets. It sails, so it's lighter so
14 it usually has a tendency to fall off and not be exactly
15 where the pellets might be.

16 Q. And so what can you tell us generally about where the
17 shotgun wadding is?

18 A. It's found kind of in that same general direction
19 towards the corner of the bedroom. It's a little further to
20 the right over towards the wardrobe area.

21 Q. Okay. And is it fair to say the shotgun wadding goes
22 in the same general direction as the pellets are going to go
23 and it's very broad, generally?

24 A. Yes, sir, that's correct.

25 Q. And as you testified, because it's so much lighter, it

1 can fall off? It doesn't go as far as --

2 A. It's not going to travel near the distance.

3 When it first comes out, it stays in the same general
4 area, but depending on any obstructions or anything, it will
5 fall off a much shorter distance than the projectile.

6 Q. Okay. Did you see any other rounds in this room that
7 had been fired in this room -- excuse me, not any other
8 rounds. Any other pellets in this room?

9 A. We were able to locate the pellets that had struck the
10 bookcase and was lodged in one of the books inside the
11 bookcase.

12 Q. All right. I am going to show you what is marked
13 State's Exhibit 56, 57, 58, 59.

14 MR. KENDALL: Your Honor, we are moving State's
15 Exhibits 56 through 59 into evidence at this time, I think
16 without objection.

17 MR. PRUETT: No objection.

18 THE COURT: Without objection.

19 (Whereupon, State's Exhibit No. 56 was entered
20 into the record as evidence).

21 (Whereupon, State's Exhibit No. 57 was entered
22 into the record as evidence).

23 (Whereupon, State's Exhibit No. 58 was entered
24 into the record as evidence).

25 (Whereupon, State's Exhibit No. 59 was entered

1 into the record as evidence).

2 MR. KENDALL: Could I go ahead and also move
3 State's Exhibit 65 into evidence. This is the shotgun
4 pellet.

5 MR. PRUETT: No objection.

6 THE COURT: In without objection.

7 (Whereupon, State's Exhibit No. 65 was entered
8 into the record as evidence)

9 BY MR. KENDALL:

10 Q. All right. So I'm going to show you what is marked --
11 If I could first show you what is marked State's
12 Exhibit 58. Do you recognize this?

13 A. Yes, sir, this is the bookcase that was at the foot of
14 the bed. This is the closet door the previous photographs
15 had been taken of, the doorway that was open, and this is
16 the actual bookcase that we are referring to.

17 Q. All right. Did you see any rounds impact on that
18 bookcase?

19 A. Yes, sir, there is one had struck and traveled through
20 the wooded area at the top of the bookcase.

21 Q. Okay. And, likewise, State's Exhibit 57, what is that?

22 A. That's just a close-up photograph of where the
23 projectile struck -- the pellet had struck the bookcase.

24 Q. All right. And State's Exhibit 56?

25 A. This is just a shot further down of the bookcase.

1 There was a chip missing right here off the bookcase.
2 The actual book that the projectile was found in is right in
3 this area. So in photograph it had been pulled down and we
4 noticed the actual projectile struck it. It had been pulled
5 down, so we did not place it back in that spot.

6 Q. All right. And State's Exhibit 59?

7 A. This is the book that I'm referring to. You can see
8 there is a small hole in the binding of the book, a small
9 piece of blood spatter on the binder.

10 Q. And do you recall how many shells or approximate height
11 of where this book was found? Was it --

12 A. This was the next to the top shelf.

13 Q. Okay. So we have a round strike the top. We had a
14 round strike the second shelf at the top, is that true to
15 say?

16 A. Yes, sir.

17 Q. Then I'm going to show you what is marked State's
18 Exhibit 22 -- or excuse me, 65. Do you recall what that
19 was?

20 A. Yes, sir, this is the pellet that were taken from that
21 book.

22 Q. Okay. Just a few more questions.

23 THE COURT: Ladies and gentlemen, if you would
24 just stand up and stretch your legs just for a moment.

25 MR. KENDALL: If they need a couple minutes, Your

1 Honor, I understand.

2 (Off the record).

3 (Back on the record).

4 THE COURT: All right. Go ahead and have a seat,
5 if you would.

6 BY MR. KENDALL:

7 Q. Now Detective Anthony, was there any other areas in the
8 room that you examined for blood splatter, or rounds, or
9 anything like that?

10 A. Yes, sir, we looked at the ceiling area inside the
11 bedroom.

12 Q. Okay.

13 A. I actually pulled and we actually gridded the ceiling
14 off into sections.

15 Q. Okay. And I'm going to show you what is State's
16 Exhibit 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55.

17 All right. Could you take a look at these?

18 A. (Witness examining exhibits).

19 Q. Are those fair and accurate representations of what you
20 all saw and things like that?

21 A. Yes, sir, they are.

22 MR. KENDALL: Your Honor, we would move State's
23 Exhibit 46 through 55 into evidence.

24 MR. PRUETT: No objection.

25 THE COURT: Without objection.

1 (Whereupon, State's Exhibit No. 46 was entered
2 into the record as evidence0.

3 (Whereupon, State's Exhibit No. 47 was entered
4 into the record as evidence0.

5 (Whereupon, State's Exhibit No. 48 was entered
6 into the record as evidence).

7 (Whereupon, State's Exhibit No. 49 was entered
8 into the record as evidence).

9 (Whereupon, State's Exhibit No. 50 was entered
10 into the record as evidence).

11 (Whereupon, State's Exhibit No. 51 was entered
12 into the record as evidence).

13 (Whereupon, State's Exhibit No. 52 was entered
14 into the record as evidence).

15 (Whereupon, State's Exhibit No. 53 was entered
16 into the record as evidence).

17 (Whereupon, State's Exhibit No. 54 was entered
18 into the record as evidence).

19 (Whereupon, State's Exhibit No. 55 was entered
20 into the record as evidence)

21 BY MR. KENDALL:

22 Q. What I would like to do is sort of generally show you
23 this.

24 State's Exhibit 51, what is this?

25 A. This is a photograph from the -- from the headboard

1 area of the bed.

2 Here is the closet. The door is open on the closet.

3 This is the door that leads into the living room and
4 this is showing the ceiling.

5 And it's hard to see, but you can see we have got a
6 piece of sectioned-off tape that has measurements on it
7 traveling both directions.

8 In this photograph, yesterday on the video the ceiling
9 fan was on, but to be able to tape and take measurements we
10 actually turned the ceiling fan off. That way we were able
11 to process, cordon the ceiling off.

12 Q. All right. We will talk about the ceiling fan here a
13 in a couple of minutes.

14 I'm going to show you --

15 Excuse me, what other sort of landmarks, things that we
16 have already seen that are in this photograph?

17 A. The closet is right here with the doorway partially
18 open. Here is the bookcase here in the room and there is
19 the living room door.

20 Q. Okay. And where would the bed be?

21 A. This is -- this is the post of the bed is right in the
22 middle of the photograph. The bed would have been to our
23 left in the photo.

24 Q. All right.

25 A. It this area.

1 Q. I'll show you what is marked State's Exhibit 52. That
2 may help with where that is.

3 So where did you find most of the blood splatter --
4 spatter?

5 A. This shot is taken almost from -- very close to the
6 area of where the shotgun was lying on the bed.

7 And this is the closet door and you are looking back up
8 to the ceiling and the gridded-off area would have been
9 right in here. This is where we gridded it off.

10 Q. Okay. And this State's Exhibit 50 I think will help
11 you out with that as well.

12 A. This is the open closet door.

13 This is the foot of the bed. You can see the post
14 that's just past the ceiling fan, and here is our
15 gridded-off area.

16 Q. Okay. All right.

17 And then State's Exhibit 49. And what is that? Is
18 that --

19 A. This is looking in the same area. This is the top of
20 the closet door. Your ceiling fan and the bed would be back
21 to your left, and then this is where we gridded it off.
22 This is back towards the closet door.

23 Q. All right. And what are those -- you see some markings
24 on the ceiling. What are those markings on the ceiling?

25 A. When we gridded it off there is a series of letters and

1 numbers that we put in it. This is Section B, and then we
2 have got different numbers that are marking the areas that
3 we taped off.

4 Q. What about this sort of actual biological material?

5 A. They are -- there is blood spatter. There is tissue
6 that is actually stuck to the ceiling. It's all throughout
7 this cordoned off area.

8 Q. Okay. And did they appear to be coming from a
9 particular direction?

10 A. They were traveling upward from and back towards the
11 closet area.

12 Q. Okay. All right.

13 Now, you mentioned a few moment ago --

14 And so I'm going to show you State's Exhibit 48 as well
15 a little bit better.

16 Can you show us using the pointer kind of where the
17 blood is in this picture, or the blood and or the brain
18 material, any other biological matter in this photograph?

19 A. Yes, sir. This is the edge of the door. This is
20 looking straight up to the ceiling. If you see all of these
21 little areas, this is blood, tissue, hair. It could have
22 some brain matter in with it.

23 And we have a larger hole right here where a projectile
24 has actually went through the ceiling, ceiling tiles, but
25 you have -- primarily in this area you have got some over

1 this way, but there is more in this general area.

2 Q. Okay. Now, you mentioned a few moments ago that the
3 ceiling fan was on, is that correct?

4 A. Yes, sir, that's correct.

5 Q. What sort of difficulty do the fans provide for a crime
6 scene?

7 A. Well, as things -- as biological material, blood, any
8 fluids, or anything strike the fan, one, they are going to
9 prevent -- the fan is below your ceiling. It's going to
10 prevent some biological material from striking the ceiling,
11 but also with this revolving, you may have some smears or
12 some directionality on the fan that's hard to interpret
13 based on the movement of the fan.

14 Q. And in this instance did you all find biological
15 material on the fan blades?

16 A. Yes, sir, we did.

17 Q. I'm going to show you what is marked State's
18 Exhibit 53. Where is the kind of biological material on
19 that? You can step around. That's okay.

20 A. You have got -- you have got several spots of it all --
21 kind of all over the fan blade. You can see all these
22 little kind of shiny spots, you have got biological
23 material. You have got a little bit of tissue with hair
24 attached, but you have got -- it's just a lot -- there's a
25 lot of it just all over the place.

1 Q. Okay.

2 And, likewise, on State's Exhibit 54?

3 A. With the reflection on it, it's hard to see, but you
4 can see you have some biological material in this area and
5 you have got some smaller off in this direction.

6 Q. All right. And State's Exhibit 55?

7 A. You can see some of the smaller shinier spots,
8 spatters, that struck the blade here, and you have got some
9 larger blood spatter here. You can see the point
10 directionally, but you have got the drops all over the fan
11 itself.

12 Q. Okay. All right.

13 If you would just go ahead and have a seat back up on
14 the witness stand.

15 (Witness back on the witness stand).

16 BY MR. KENDALL:

17 Q. Now that we've seen a substantial number of pictures,
18 are those all pictures that you guys took that day?

19 A. Yes, sir.

20 Q. I know it's going to be hard for anyone to believe, but
21 would that consider that be a fraction of the pictures that
22 you all took?

23 A. Oh, yes, sir. We take many photographs on the scene.
24 They can range from hundreds to thousands of photographs on
25 every scene we process.

1 Q. Do you guys use video when you are photographing scenes
2 like this?

3 A. No, sir, there is -- there is no one in there moving
4 around the scene when we are arrived.

5 This one, in particular, we executed the search warrant
6 and we take still photographs from every direction inside
7 the residence, or building, or vehicle, whatever it may be.
8 We take all-over photographs of everything and what
9 condition it is when we arrive.

10 Q. All right.

11 Now, what I would like to talk to you about is were you
12 all able to form an opinion of where you believe the gunshot
13 came from in this case?

14 A. We can only do an approximation, but it was
15 approximately the headboard, the area near the area where
16 the shotgun was lying on the bed.

17 Q. Okay. Now, when you approach a crime scene, what
18 question are you basically trying to answer? When you are
19 doing like a crime scene analysis, examining where the
20 pellets went and where the blood spatter is and everything,
21 what question are you seeking to answer?

22 A. Well, we are just -- we are documenting all the
23 evidence to see what did happen. A lot of times we don't
24 have people that can tell us what happened, the victims can,
25 or we don't have anybody to tell us, so we start processing

1 the scene and we process it to see what the evidence shows.

2 Q. Okay. And with regard to the scene, what are you
3 ultimately trying -- in this case where we had the shotgun.
4 What were you ultimately trying to determine when you are
5 talking blood spatter analysis and location of the shotgun?

6 A. We want to get it as close as possible to where your
7 victim was located, suspect. We can determine areas where
8 the shot may have originated from or where a victim could be
9 standing, but as any moving part, a person can be turned or
10 facing a different direction, or they articulate, so they
11 can be moved in any form or fashion. Just because you have
12 a shot from the area or an impact in an area, it's kind of
13 hard to determine exactly if those parts are gone from the
14 scene or have been moved when we arrive.

15 Q. Okay. And what were some specific difficulties you all
16 faced in this case in reaching any conclusions exactly where
17 it was fired?

18 A. One thing is the firearm, where it was lying, was --
19 once we were completed with the initial scene processing, we
20 were trying to determine if that was the area. The gun had
21 been -- the shotgun had been disassembled.

22 Then, as far as the victim, she had actually been moved
23 prior to our arrival. We could tell where the general area
24 she was lying. She had been slid down, but that changes a
25 little bit on being able to interpret exactly where she was

1 would have been at. Feet had been moved out from under or
2 where they were initially would have been and she had been
3 slid down.

4 Q. All right. What about the nature of the weapon itself?
5 We heard some testimony yesterday about the trajectory of
6 the shotgun just kind of scatters stuff. How does that
7 affect you all's crime scene analysis?

8 A. Unlike a rifle or a handgun round that travels in a
9 straight direction, with a shotgun and with this type
10 cartridge, you have got nine pellets that's traveling out of
11 that barrel, so they are going in different directions.
12 They are traveling generally the same direction as they come
13 out, but they do spread. With a rifle, a pistol, it's going
14 to continue in that same direction, unless it encounters an
15 object to change that direction.

16 And when we are looking for a handgun, rifle rounds,
17 projectiles, we are able to compare them exactly to the
18 weapon, whereas with a smooth bore shotgun with many
19 pellets, you can't compare them back just to that one
20 weapon.

21 Q. And you said something else changes its direction,
22 talking about the pellets. Is there a possibility of
23 ricochet?

24 A. There are to a certain extent. Any time anything hits
25 a hard surface, it can typically -- it can change the

1 direction of travel.

2 If you have something soft that it travels through,
3 just soft tissue typically won't change it much, if any, but
4 as you talk, you know a bone, a hard impact of a surface,
5 metal, wood, it can change its direction.

6 Q. All right. So, for example, someone's skull, that
7 conceivably could change the trajectory of a shotgun, is
8 that fair to say?

9 A. Yes, it can.

10 Q. Based on your time at the crime scene, did it appear
11 some of those rounds hit the skull, is that fair to say?

12 A. Yes, sir, that's correct.

13 Q. Okay. When you are conducting this analysis, what can
14 you tell us about the condition of the shooter?

15 A. We cannot determine the position of the shooter based
16 on where it's fired from.

17 We can tell that the firearm was in a general area
18 there near that right side headboard area of the bed, but we
19 can't determine if the person would have been standing with
20 the shotgun facing that direction. They could be sitting in
21 a position.

22 The body position would be hard for us to determine.
23 As you know, everyone can move and change positions. It's
24 hard to say this is the exact position a person was in.

25 Q. So your analysis will tell us how the gun was pointed,

1 is that fair to say?

2 A. Yes, sir, that's correct.

3 Q. But it can't tell us how the person was pointed, is
4 that accurate?

5 A. Yes, sir, that's correct.

6 Q. So you have got somebody shooting a firearm and then
7 pointing it towards that ceiling grate, they could be over
8 here, they could be over here, they could have it back
9 behind them? Any of those are possibilities, is that fair
10 to say?

11 A. Any of them are a possibility.

12 Q. And the round itself wouldn't be impacted by how their
13 body was positioned, or that -- word that a different way.

14 You wouldn't be able to tell how their body was
15 positioned based on the impact of that round, is that fair
16 to say?

17 A. That's correct. The directionality that it's traveling
18 is going down that barrel, so it's going in that general
19 direction.

20 We can say the shotgun was pointed at an upward angle,
21 but we can't say that exactly with a hundred percent where
22 it was at or how that person was holding it.

23 Q. Okay. What about with regards to intent, what somebody
24 was intending to do with the shotgun? Is there anything
25 that you guys can do that tells you that based on the

1 science?

2 In order words, based on angles and blood splatter
3 patterns, everything else, is there anything that you can
4 tell what somebody was intending to do?

5 A. No, sir, there is no way to determine a person's intent
6 just based on one shotgun shot.

7 Q. And how would this blood spatter pattern differ from
8 somebody sitting on the bed looking at somebody intending to
9 shoot them and then somebody accidentally shooting them?
10 What would be the difference in that blood spatter pattern?

11 A. If you are at the same distance, weapon in the same --
12 pointed in the same direction, there is no difference. It's
13 going -- all we can determine is the area where that it was
14 fired in.

15 Q. So your analysis tells us what the bullets did,
16 correct?

17 A. Yes.

18 Q. It won't tell you what the shooter did, is that fair to
19 say?

20 A. That's correct.

21 Q. Okay. But in this case you all didn't look at
22 approximately where he said he was, is that right?

23 A. Yes, sir.

24 Q. And did you sit on the bed towards facing kind of more
25 towards that nightstand?

1 A. Yes, we looked at the different --

2 After interviews were done, Detective Fowler came back
3 to the scene, because we were still there processing the
4 scene, looking at any different avenues we could explore and
5 he give us -- told us what statements he had received and so
6 we did. We actually sat on the bed facing that wall.

7 Q. And if you are sitting on the bed facing that wall, how
8 natural would it have been to have that gun pointed at the
9 foot of the bed, if someone was at the foot of the bed?

10 A. If you are sitting facing the wall, like the head --
11 like where the shotgun area would have been and facing the
12 side wall where the chest of drawers and there was some
13 other items, you would have to be turned in a very steep
14 angle for that to have went off.

15 Q. Okay. And likewise -- let me find a picture here. I
16 think that --

17 MR. KENDALL: If I could just beg the court's
18 indulgence for just one second, Your Honor. I'm trying to
19 find one of these pictures.

20 (Off the record).

21 (Back on the record).

22 BY MR. KENDALL:

23 Q. So if someone were sitting on the bed sort of with
24 their legs laying off, and I don't know if you can see this
25 picture, how would they have to be turned to actually hit

1 someone standing at the edge of the bed saying near those
2 pants?

3 A. Here is the shotgun on the bed. And sitting in this
4 area -- say if you had your feet off of the bed facing the
5 opposite wall and you are trying to get the firearm to be --
6 the projectiles traveling in this direction, at which
7 direction the blood spattering and the projectiles were
8 traveling, if I were sitting on the bed, I would have to be
9 turned around almost shooting over my right shoulder kind of
10 in that upward direction to make that --

11 Q. All right.

12 A. -- follow.

13 Q. And let's go -- what if you were only sort of on the
14 bed? Let's say that you were watching that TV that was in
15 the corner --

16 A. Yes, sir.

17 Q. -- and you positioned yourself that way, so you were
18 partially on the bed and partially off the bed. Would that
19 make it easier or harder to take that shot?

20 A. The more that your body is rotated towards the foot of
21 the bed, of course, it's going to make the shot less of an
22 angle that you are actually having to hold the firearm, so
23 it could go at any amount, depending on how the body is
24 positioned on the bed.

25 You know, if you were facing the foot of the bed with

1 both legs up, your shot would be just a slight angle, but as
2 you turn further off of the bed, it's going to increase the
3 amount of turn your body is going to have to endure to fire
4 that shot.

5 Q. All right. And what would that also tell us about if
6 someone was turned that way and watching TV?. Would they be
7 able to see someone standing at the edge of the bed?

8 A. Yes, that would be just slightly off to the right of
9 your field of view there.

10 Q. So in that instance if somebody is actually keeping
11 your leg on the bed, it would be a much easier angle? The
12 angles work out better, but in that situation you would be
13 pointing the shotgun at somebody. And is that a very far
14 distance away? Is that like a normally large bed or
15 anything?

16 A. No, sir.

17 Q. Okay. So in that instance you are basically pointing
18 the gun at somebody, is that fair to say?

19 A. Yes, sir.

20 Q. And that's somebody in your sight. It's not somebody
21 sneaking up from behind you or, you know, in the room
22 without your knowledge. That's someone that's right in
23 front of you and you have got a gun pointed at?

24 A. Yes, sir.

25 Q. Perfect. Or completely over to the right.

1 Okay. Is there anything that you did --

2 And just, I guess, based on your examination, what can
3 you tell us about the shot that took place? Just based on
4 your expert opinion, where did that shot come and what sort
5 of angle?

6 A. It could have come from -- depending on the victim, how
7 her head was turned and where he was at, it could have come
8 from a general area right at the headboard or -- at the
9 actual right here at the bed near where the shotgun was.
10 You could be in, you know, three to four, five foot circle
11 right in this area, depending on how her head was turned for
12 that shot to occur.

13 Q. All right. And you think the shot was up or down?

14 A. It was traveling at an upward angle.

15 Q. Okay. So it did go up?

16 A. Yes.

17 Q. Let me ask you this just as a matter of natural of how
18 you would handle a firearm. If we had a firearm turning,
19 weapon down here, what if somebody was right in front of
20 you? How would you actually have to be holding it to shoot
21 them?

22 A. If you were facing the foot board of the bed, it would
23 have been at kind of in this direction.

24 Q. Okay. So you are actually handling it. Is that a
25 common way to wipe down a firearm?

1 A. I can't speak for everyone, but traditionally I
2 would -- I would disassemble my weapon and hold the
3 components one piece at a time and wipe then down, but, you
4 know, you are going to hold it with one hand and wipe with
5 the other.

6 Q. Okay. Would it be easy to rest it on your leg that
7 way? I mean, sort of flat down, is that correct?

8 A. That would be -- you know, most people do. They would
9 tend to rest a long weapon, longer weapon, on something to
10 wipe it down.

11 Q. But in that scenario where somebody is almost be
12 resting it on and holding the gun out here, not up here like
13 that, is that fair to say?

14 A. Yes, sir.

15 Q. Okay. And the reason I'm bringing that up is you saw
16 the video yesterday. For someone -- if someone was sitting
17 right in front of you, would you be able to put the shotgun
18 point it in that direction if they had it up like you did in
19 that body camera?

20 A. If you were completely sitting on the bed and holding
21 it off this direction, the shot would be back towards the
22 dining room door wall area.

23 Q. Okay.

24 A. Not at the foot.

25 Q. Okay. That's fine.

1 Now, did you all examine -- did you all examine any
2 other rooms in the house while you were there?

3 A. Yes, sir, we went through every room of the house, took
4 photographs, documented what was there.

5 Q. What about this room we put in on State's Exhibit 18?
6 Did you all go to that room as well?

7 A. Yes, sir. That's the doorway that was off that
8 enclosed front porch that entered a small room there.

9 Q. What did you all find in the small room?

10 A. Inside the room there was a little small like a table
11 or nightstand area. There was a bed.

12 On the -- in that area corner of the room there was a
13 telephone and the recording device attached to the cord.

14 Q. Okay. I'm going to show you what is marked State's
15 Exhibit 60, 62 and 63.

16 MR. KENDALL: And we would offer State's
17 Exhibit 60, 62 and 63 into evidence.

18 MR. PRUETT: No objection.

19 THE COURT: Without objection.

20 (Whereupon, State's Exhibit No. 60 was entered
21 into the record as evidence).

22 (Whereupon, State's Exhibit No. 62 was entered
23 into the record as evidence).

24 (Whereupon, State's Exhibit No. 63 was entered
25 into the record as evidence)

1 THE COURT: Lawyers approach a moment.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 BY MR. KENDALL:

5 Q. Do you recognize what that was?

6 A. Yes, sir.

7 Q. And what is that a photograph of?

8 A. That's a photograph of -- that's a little small dresser
9 that was in the room and a little small three-shelf unit
10 that's got a telephone on it.

11 Q. All right. And I'm going to show you --

12 MR. KENDALL: I'm going to publish this to the
13 jury, State's Exhibit 60.

14 BY MR. KENDALL:

15 Q. And if you could, just sort of walk through what you
16 found in there.

17 A. Okay. Inside the room on the dresser there is a little
18 small box right here. This is like a telephone control box
19 that's hooked up to this telephone, and then it's connected
20 to this recorder that was inside the room.

21 Q. Okay. And what was the purpose of -- did you all
22 collect those original -- the original items there?

23 A. Yes, sir, we did. They are right here.

24 Q. All right. And if you could, just go ahead and show
25 those to the jury.

1 A. Yes, sir.

2 (Witness off the witness stand).

3 A. This is the record box, the small record box on the
4 shelf and the dresser.

5 This is the tape recorder that was on that also.

6 BY MR. KENDALL:

7 Q. Okay. And what was the purpose of that? Was that like
8 an answering machine?

9 A. No, sir.

10 Q. What is that used for?

11 A. To record phone conversations.

12 (Witness back on the witness stand)

13 BY MR. KENDALL:

14 Q. Okay. So it's a recording device for people's phone
15 conversations?

16 A. Yes, sir.

17 Q. And just to be clear, where was that found?

18 A. It was found in that little room off of the enclosed
19 front porch.

20 Q. Okay. Do you recall if that room was locked or
21 unlocked?

22 A. I do not recall, no, sir.

23 Q. Okay. If you could just identify to the jury which one
24 of those two things is which of the two recording devices?

25 A. Yes, sir. The gray, the larger one, it actually holds

1 a cassette tape and that's what it actually records on.

2 The little smaller box is actually what switches the
3 line to be able to allow it to record.

4 Q. Okay.

5 MR. KENDALL: Your Honor, I think we have already
6 done this, just to make sure I have covered everything, the
7 State would move everything, all the exhibits, up to No. 67
8 into evidence, with the exception of No. 22 as previously
9 discussed.

10 MR. PRUETT: I don't have any objection. They
11 have already been shown to the jury. If they haven't been
12 moved in, we don't have any objection.

13 THE COURT: All right.

14 BY MR. KENDALL:

15 Q. Please answer any questions Mr. Pruett may have.

16 THE COURT: All right, ladies and gentlemen, we
17 are going to take a short recess.

18 I need to remind you not to have any discussions
19 among yourselves about anything involved in the case, but
20 you may go with the bailiff at this time. We will get you
21 back after the break.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: Sir, you are in the process of giving
25 testimony, so during the break you can talk to people, but

1 (The following takes place in the presence of the
2 jury panel).

3 THE COURT: Yes, sir, Mr. Pruett.

4 CROSS EXAMINATION BY MR. PRUETT:

5 Q. I'll show you a couple of photographs. I'm trying to
6 put them in a particular order for use.

7 Just for purposes of going through here, I'm going to
8 read them out.

9 Defendant's Exhibit 17.

10 A. Yes, sir.

11 Q. Defendant's Exhibit 2, 11, and 12, do you recognize
12 those as photographs that you took at the scene?

13 A. Myself or Detective Henson did, because one of them I'm
14 actually in.

15 Q. Okay. True. True. All right.

16 MR. PRUETT: And the State has already seen these.
17 We would offer these into evidence.

18 MR. KENDALL: Yeah, we have no problem with that.
19 Without objection.

20 THE COURT: Without objection.

21 (Whereupon, Defendant's Exhibit No. 17 was entered
22 into the record as evidence).

23 (Whereupon, Defendant's Exhibit No. 2 was entered
24 into the record as evidence).

25 (Whereupon, Defendant's Exhibit No. 11 was entered

1 into the record as evidence).

2 (Whereupon, Defendant's Exhibit No. 12 was entered
3 into the record as evidence)

4 BY MR. PRUETT:

5 Q. These photographs, Defendant's Exhibit 1, 14, 9, and
6 10?

7 A. Yes, sir.

8 Q. And these were photographs taken on the day you were
9 processing the crime scene, June 21st, 2014?

10 A. Yes, sir, that's correct.

11 Q. Okay. What do those photographs reflect?

12 A. The Defendant's Exhibit No. 10 and No. 9 is medication
13 bottles.

14 Defendant's No. 1 is medication bottles and a
15 medication dispenser top desk drawer.

16 And then Exhibit 14 is a close-up of the medication
17 dispenser.

18 Q. All right.

19 And these were in the top drawer of the nightstand?
20 Look again.

21 A. Yes, sir.

22 Q. And the last photograph?

23 A. Yes, that's correct. They are in the very top drawer.

24 Q. Top drawer he had his medications?

25 A. Yes, sir.

1 Q. All right. You testified for about two hours, and I'm
2 going to try to maybe just begin at the beginning and go
3 through your testimony from where you started at.

4 Of course, you told the jury your background, your
5 training, correct?

6 A. Yes, sir.

7 Q. And a good bit of that training is done at the State
8 Law Enforcement Division?

9 A. Yes.

10 Q. And they are sort of the premier agency in the state
11 for training and assisting law enforcement agencies?

12 A. Yes, they are an assisting agency to us.

13 Q. And they had Chad Smith come up and he's from SLED,
14 correct?

15 A. Yes.

16 Q. Okay. So in this particular instance, June 21st, 2014,
17 you got to the scene about three hours, I believe, after the
18 initial 911 -- excuse me, 911 call was placed?

19 A. Yes, sir, that's correct.

20 Q. You and Jimmy Henson?

21 A. Yes, sir.

22 Q. And when you got there, who was still at the scene at
23 that point?

24 A. There was officers there in the driveway or at the
25 residence. Everyone was outside of the residence. I

1 believe there may have been some family members outside, but
2 I did not speak to any of them. I'm unsure.

3 Q. What about Mr. Pennington, Dean Pennington, was he
4 there?

5 A. No, sir, he was not.

6 Q. All right. You arrived at the scene.

7 As you have already stated, you kind of -- I imagine
8 that you did an initial walk-through just to kind of see the
9 layout of the residence and where the shooting would have
10 occurred?

11 A. Yes, sir. Initially we do our walk-through and we take
12 our photographs, still photographs as we are walking
13 through.

14 Q. All right. And as you testified for a moment ago, I
15 think we have already seen a sampling of what you took that
16 particular day, literally hundreds and hundreds of
17 photographs of that scene, correct?

18 A. Yes, sir, that's correct.

19 Q. All right. So you walk through the residence and as
20 you seen on the video recording, you have seen some of these
21 photos, the television was on, correct?

22 A. Yes, sir.

23 Q. And we have already documented several times the
24 overhead ceiling was on?

25 A. Yes, sir.

1 Q. If fact, there were two fans in the room. They were
2 on?

3 A. Yes, sir.

4 Q. And then you had all these items that were located on
5 the bed, correct?

6 A. Yes, sir, that's correct.

7 Q. A lot of things that you testified to, so I'm going to
8 try on hit on them in some kind of logical order here.

9 Just looking at that area, that scene, the bed, the
10 nightstand, you made mention and some emphasis to the fact
11 that the spray, the oil can spray?

12 A. Yes, sir.

13 Q. The Liquid Wrench --

14 A. Yes, sir.

15 Q. -- was on the dresser area, correct?

16 A. The can -- the can was on the bed. There was a misting
17 kind of spray over it, yes, sir.

18 Q. That was where?

19 A. That was over on the -- there was some on the bed area
20 and some -- it was up on the nightstand --

21 Q. All right.

22 A. -- area.

23 Q. And that's where you kind of expect it to be, because
24 if you were spraying your gun down, you wouldn't spray it on
25 it bed, would you?

1 A. I would not, no, sir.

2 Q. Well, I wouldn't either, but I'm asking.

3 So does it make sense that if you are going to lay it
4 down and spray it, you spray it on the nightstand as opposed
5 to the bed?

6 A. It was a misting. It wasn't like it was lying there
7 being -- if you did, there would be a -- you would typically
8 expect to see a void where it had been lying in.

9 Q. So if he was holding it about that and spraying above
10 that, that would account for that?

11 A. Yes, sir, that's correct.

12 Q. Instead of spraying it over his bed where he would be
13 sleeping on it?

14 A. Yes, sir.

15 Q. All right.

16 Again, they covered a lot with you.

17 What I have generally noticed about this bedroom, and
18 you touched about your testimony, you walk in, it seems as
19 if though the room was almost divided in half in some
20 respects. Everything on the right-hand side of the room was
21 kind of Mr. Pennington's possessions or items?

22 A. Yes, sir.

23 Q. And everything on the left-hand side of the room, more
24 or less, was Ms. Pennington's items or possessions?

25 A. Yes, sir, that's correct.

1 Q. She had dolls and figurines and other whatnots kind of
2 put on that side of the room, correct?

3 A. Yes, sir.

4 Q. And you really haven't mentioned in your testimony, but
5 on his side of the room there were safes, or gun safes on
6 that side of the wall, correct?

7 A. Yes, sir, that's correct, there were.

8 Q. What was in those guns safes?

9 A. There was other firearms.

10 Q. Several?

11 A. Yes, sir, many.

12 Q. Shotguns, rifles, pistols, correct?

13 A. Yes, sir.

14 Q. I'm sure you made an inventory of them, but he had a
15 lot of guns in his bedroom?

16 A. Yes, sir, that's correct.

17 Q. And he had a lot of ammunition in his bedroom?

18 A. Yes, sir.

19 Q. And that ammunition went, I guess, more or less along
20 with the weapons he had in his possession, the rifles, the
21 shotguns and pistols?

22 A. Yes, sir.

23 Q. So he had various kind of ammunition. He didn't just
24 have shotgun shells. He had cartridges and you expect to
25 loading rifles or bullets you would be used for loading

1 pistols, correct?

2 A. Yes, sir, that's correct.

3 Q. So wouldn't that be consistent with some of the
4 testimony we have heard, that he kind of used that as his
5 place where he would hang out to do stuff?

6 A. It very easily could be, yes, sir.

7 Q. Which would include cleaning firearms?

8 A. Yes, sir.

9 Q. Well, I would think it unusual myself to clean the gun
10 in your bed, but apparently his stuff was all in that room?

11 A. Yes, sir.

12 Q. You didn't find guns, or did you find guns or weapons,
13 scattered throughout the house?

14 A. No, we did not. They were all contained to that
15 bedroom.

16 Q. In the bedroom --

17 A. Yes.

18 Q. -- right?

19 All right. And the nightstand, the nightstand area
20 that you have already been discussing some, he had on top of
21 that nightstand a lot of different items. Some of these
22 things admitted now as Defendant's Exhibit No. 2, which is
23 kind of a hodge-podge of things.

24 MR. PRUETT: This is Defendant's No. 2 I'm showing
25 the witness.

1 BY MR. PRUETT:

2 Q. He had like empty drink cans up there, right?

3 A. Yes, sir.

4 Q. What are these spray bottles? I didn't get a good look
5 at them. Kind of like --

6 A. It's kind of -- I'm not exactly sure, because I can't
7 see the labels on this, but it's not -- it was some kind of
8 almost like antiseptic something. On the back it says drug
9 facts, so it's not like an oil. It's some kind of --

10 Q. Medication or something?

11 A. Yes, sir, it's not --

12 Q. All right.

13 A. If you see this right at the very top it says drug
14 facts.

15 Q. I couldn't read that.

16 A. I'm sorry.

17 Q. You got a pack of crackers there, a pen. What are
18 these electronic devices in the back?

19 A. There is a cordless phone base to the left-hand side at
20 the back.

21 I'm unsure what this white box is. I'm not sure. It
22 looks like the wireless antenna router.

23 Q. Like a receiver or something for the TV, or --

24 A. It could be, or for Internet.

25 Q. Uh-huh.

1 A. I'm not exactly sure what it is.

2 A remote control for a television.

3 Q. What's this device right here?

4 Well, it looks like, and I don't want to lead you, but,
5 I mean, I can, but like a blood pressure cup?

6 A. Oh, yes, sir. I thought you were -- yes, sir.

7 Q. That's what I'm asking.

8 A. Yes, sir. Blood pressure cup.

9 Q. It's one of those things that you wrap around your arm
10 and you pump up to get your blood pressure?

11 A. Yes, sir, that's correct.

12 Q. And next to that there is a notebook?

13 A. Yes, sir.

14 Q. Let me just -- hold on to that for a second.

15 This is Defendant's Exhibit No. 12. It's already been
16 admitted into evidence. Is that an enlargement of that
17 notebook?

18 A. Yes, sir, it is.

19 Q. And looking on the left-hand side of that ledger or
20 notebook, what is this state going through here?

21 A. You have got 12, 14, 16-15, 17, 18, 20, and 21.

22 Q. 21. And the last entry is 21?

23 A. Yes, sir.

24 Q. And the date this happened was June 21st?

25 A. That's correct.

1 Q. All right. And, of course, reading across here and the
2 time on 21 is -- what's the last time entered?

3 A. 7:47.

4 Q. 7:47. I think it even says a.m.?

5 A. I believe it does. There is something across, but it
6 appears to be, yes.

7 Q. 7:47 a.m. is when that entry at least listed as being
8 made?

9 A. Yes, sir.

10 Q. And we know when the 911 call came in -- you were here
11 yesterday?

12 A. Yes, sir.

13 Q. The 911 call came in at 8:04?

14 A. Yes, sir, that's correct.

15 Q. Okay. So we are talking maybe at most fourteen,
16 fifteen minutes?

17 A. Yes, sir.

18 Q. All right.

19 Also on the nightstand -- and, again, we have already
20 alluded to this, he had in the second or third drawer of the
21 nightstand unfired shotgun shells --

22 A. Yes, sir.

23 Q. -- or cartridges?

24 What do you say, cartridges or shells?

25 A. People call it --

1 Q. What is --

2 A. People call it different things. I usually refer to
3 them as shotgun shells just because that's what most people
4 are familiar with.

5 Q. Okay. So, again, unfired shotgun shells in that
6 nightstand also, correct?

7 A. Yes, sir, that's correct.

8 Q. All right. And, as I stated, you already testified to
9 he had various medications in the top drawer?

10 A. That's correct, yes, sir.

11 Q. Now, the notebook that I just showed you, Defendant's
12 Exhibit, was that taken into evidence?

13 A. There was numerous notebooks acquired.

14 Q. Numerous notebooks?

15 A. Yes, sir.

16 Q. But this one was not taken into evidence, was it?

17 A. Without actually going through them, because I know in
18 this list is numerous notebooks --

19 Q. All right.

20 A. -- I would have to look.

21 Q. Well, let me ask you this, since we kind of touched on
22 that. Again, I'm trying to do this in a logical order. The
23 notebook that Mr. Kendall did put into evidence --

24 A. Yes, sir.

25 Q. -- exactly where was that found in the set of dresser

1 drawers there? It was found in the nightstand, correct?

2 A. Yes, sir.

3 Q. And was it like the first or second drawer there?

4 A. I believe -- I would have to refer to the photo. I
5 believe it was the second drawer there was another notebook.

6 Q. Okay.

7 A. It was the first or second drawer there was an
8 additional one there.

9 Q. And you can't see it in the photo, but I think you
10 pointed out to me that it was inside or underneath another
11 notebook?

12 A. Yes, sir.

13 Q. Inside or underneath?

14 A. It was underneath.

15 Q. Underneath that.

16 So there is no way for you to know how long that
17 notebook had been there, the one that's been put into
18 evidence?

19 A. No, sir.

20 Q. May have been there for six months?

21 A. Could have been, yes, sir.

22 Q. You don't know?

23 A. No, sir.

24 Q. And there is no date on the notation of that note, is
25 there?

1 A. No, sir, there wasn't.

2 Q. Again, no way to know when it was made, how long it's
3 been stuck in that dresser drawer?

4 A. That's correct.

5 Q. There's a lot of other stuff, obviously?

6 A. Yes, sir.

7 Q. Okay. What I'm trying to get to while we are here, the
8 gunshot itself, the shotgun shot?

9 A. Yes.

10 Q. Very small room --

11 A. Yes, sir.

12 Q. -- the bedroom.

13 What were the dimensions of that bedroom?

14 A. I'll refer to my sketch.

15 That bedroom was 15'8" long from, basically speaking,
16 the living room door towards the headboard of the bed, and
17 it was 17'6" across the other direction.

18 Q. All right. So if this was the bed right here, and
19 let's pretend this is the headboard, okay?

20 A. Okay. Yes, sir.

21 Q. It would have been how far to the end of the --

22 You are measuring the wall, correct?

23 A. Yes, sir, we are measuring the wall.

24 Q. So from headboard area, which is where that window and
25 the wall was to where the next wall is is approximately how

1 long?

2 A. Total -- total distance for the door, it kind of
3 stepped out a couple of feet, but to the doorway was 15'8".

4 Q. And that's what my next point was going to be. That's
5 where the door kind of is, but then it kind of comes out
6 more, correct?

7 A. Yes, sir, it does.

8 Q. You don't have to be exact. I'm not going to hold you
9 to it. I'm just trying to get a general -- kind of a
10 general idea.

11 A. It was approximately two feet shorter, so you are
12 looking around thirteen and a half feet.

13 Q. That was would be thirteen?

14 A. Yes, sir.

15 Q. So the space between --

16 Here is where I'm trying to go here, between the end of
17 the bed and the -- I guess the bookcase behind --

18 A. Yes, sir.

19 Q. -- how far was that?

20 A. You're four feet, five feet.

21 Q. Very short distance?

22 A. Yes.

23 Q. Four feet.

24 I'm trying to visualize something around here, but it's
25 maybe -- aside from the floor, it's a little bit above my

1 hand, something like that, four feet?

2 A. Yes, sir.

3 Q. Short distance.

4 And that's where Ms. Pennington would have been
5 standing, thereabouts, at the time of the shooting?

6 A. Yes, sir, that's correct.

7 Q. Somewhere at the end of the bed in between the bed and
8 the bookcase behind her?

9 A. Yes, sir.

10 Q. And you, or somebody, took the photograph. It may
11 already be in evidence. There was so many admitted and I
12 don't want to fish through it, but Defendant's Exhibit No.
13 11?

14 A. Yes, sir.

15 Q. And this is the photograph where you have somebody --
16 who was that person in the photograph?

17 A. That is Lieutenant Rodney Bright.

18 Q. Okay. You have Lieutenant Bright, who is kind of
19 reenacting, I guess, for lack of a better word --

20 A. Yes, sir.

21 Q. -- where you think or you are surmising Ms. Pennington
22 may have been standing at the time of the shooting?

23 A. Yes, sir.

24 Q. And just so we understand, these surmises are basically
25 speculations, educated guesses?

1 A. Well, you can get an approximate area based on the
2 blood spatter and the shot, but it could be within an area a
3 couple feet one way or the other.

4 Q. Right.

5 And what I want to emphasize and point out is that you
6 got the tape measure it looks like going back almost all the
7 way back to the headboard?

8 A. It was going back towards -- it was raised up, not
9 lying on the bed.

10 Q. All right.

11 A. So if you were going back, you can almost see the --
12 you can see the purple glove finger part where he is holding
13 it?

14 Q. Yeah.

15 A. It would be up, because if you are sitting on the bed,
16 the gun wouldn't be lying on the bed. You would have it up
17 somewhat versus lying down flat.

18 Q. Or he could have been sitting closer and the gun is
19 pointed at more of a steep trajectory or angle?

20 A. You could -- slightly steeper, yes, sir.

21 Q. Well, Dr. Ross testified yesterday, the State's expert,
22 that she would guess -- again, it's making an approximation,
23 three to four feet. Isn't that what she testified to?

24 A. Yes, sir, it is.

25 Q. Well, that's a lot further than three to four feet from

1 what I'm seeing in this photograph.

2 A. The headboard of the bed -- or excuse me, from the
3 headboard of the bed to the foot is seven and a half feet
4 total.

5 Q. Right.

6 A. That would be -- she is saying four to five feet and
7 that would be from the -- or the three to four feet would be
8 from the end of the barrel. That's where it would end.

9 Q. But it still would be closer than what's depicted in
10 this.

11 A. Well, yes. We are just pulling the tape. We didn't
12 have any close-ups of the exact measurement. We are pulling
13 it just for the general angle, not the --

14 Q. Well, I'm just stating -- I'm using the State's
15 witnesses, three to four feet?

16 A. Yes, sir.

17 Q. We are putting him closer to the middle of the bed as
18 opposed to at the headboard?

19 A. Yes, sir.

20 Q. All right.

21 And the other thing that you testified to, and I think
22 I understood, and I don't want to get more complicated or
23 confusing with you on the stand, because Dr. Ross kind of
24 testified to the same thing. There are any number of ways a
25 person could have been positioned, the shooter and the

1 person who was shot?

2 A. Yes, sir, that's correct.

3 Q. They could spend more time than what I'm sure the jury
4 or the judge wanted to hear, but positioning people this way
5 or that way so that it would be or might be consistent with
6 whatever way we want to put them?

7 A. Yes, sir, that's correct.

8 Q. All right.

9 Looking at the statement. That's what you said, you
10 came to the point where you were kind of maybe wrapping
11 things up, Tracy Fowler comes back, he's talking to you and
12 says hey, he gave a statement, which would have been at that
13 point, you know, a little bit later in the afternoon,
14 obviously. I see from the clock in some of the pictures you
15 are there at 3:30, it looks like four o'clock almost.

16 A. Yeah, we were there until -- I believe we were there
17 past dark.

18 Q. Past dark?

19 A. Yes, sir.

20 Q. This was on June 21st?

21 A. Yes, sir.

22 Q. I think the longest day of the year?

23 A. Yes, sir.

24 Q. All right. So given that there are any number of ways
25 you can position somebody, his statement says, and we can

1 read it if I can find it, his statement -- it's been
2 admitted as State's Exhibit No. 16. I want to quote
3 verbatim, because I'm assuming this is what Tracy Fowler
4 told you that evening, or afternoon, "I was facing the chest
5 of drawers, not the headboard."

6 A. Yes, sir.

7 Q. All right.

8 Now, I'm trying to demonstrate this so that I don't
9 have to try to describe it to the jury, but if this is the
10 bed, and, again, using this table that's in front of the
11 jury.

12 A. Yes, sir.

13 Q. This is Mr. Pennington's side of the bed?

14 A. Yes, sir.

15 Q. Ms. Pennington's side of the bed?

16 A. Yes, sir.

17 Q. If he's seated -- I don't want to get too close here.

18 If he's seated -- admittedly if he's seated on the edge
19 of the bed like this, he would be facing the chest of
20 drawers, correct?

21 A. Yes, sir.

22 Q. And everything that he had that he would needed to work
23 on the weapon is behind him?

24 A. Would have been directly behind him.

25 Q. Directly behind him.

1 His back would have been to it, correct?

2 A. Yes, sir.

3 Q. And you can't see the TV, obviously, if you wanted to
4 watch it, correct?

5 A. That's correct.

6 Q. You were actually facing the chest of drawers right in
7 front of you?

8 A. Yes, sir.

9 Q. Right?

10 A. Yes.

11 Q. So, again, we could spend as much time as we wanted or
12 tolerated, but I would submit to you if he had his leg up
13 and was turned, or had it positioned like this, or something
14 similar to that --

15 A. It changes the position of the shooter.

16 Q. Again, as you said, and it's kind of real hard for me
17 to follow at times, when you rotate the person or the
18 weapon --

19 A. Yes, sir.

20 Q. -- you can come up with any number of possibilities or
21 scenarios?

22 A. Yes, sir, that's correct.

23 Q. And that scenario where I'm turning my body on the bed,
24 I can look at the TV and hold the weapon at the same time,
25 would that not be almost perfectly consistent with the

1 direction of the shot?

2 A. It would put it in the same general area that we come
3 back to.

4 Q. By consistent, meaning it could happened that way?

5 A. Yes, sir, it could have.

6 Q. And the trajectory of those pellets was pretty
7 significant? I mean, they went into the ceiling above her?

8 A. You had a couple that did, and then you had some that
9 traveled that hit the bookcase traveling back.

10 Q. I'm going to ask you about that, but how many pellets
11 were taken out of the ceiling?

12 A. There was none taken out of the ceiling.

13 Q. I apologize.

14 How many pellet holes did you think were created in the
15 ceiling?

16 A. Let me refer back to my notes.

17 There was two pellet holes in the ceiling that appeared
18 to be pellet holes in the ceiling area.

19 Q. Two or three holes?

20 A. I actually have two pellet holes listed on the sketch
21 and then we have got stains.

22 Q. How many is in your sketch?

23 A. On the sketch it shows that there is two. In the
24 actual documented report it shows there are two pellet holes
25 in sector B and one pellet hole in sector C.

1 Q. Okay. Well, that's what I was alluding to was that
2 pellet hole then in sector C?

3 A. I would have to refer back to the photographs.

4 Q. Okay. Three?

5 A. Yes, sir.

6 Q. Okay.

7 MR. PRUETT: Will you mark that, please, as a
8 Defendant's Exhibit?

9 (Photograph marked as Defendant's Exhibit No. 18
10 for identification)

11 BY MR. PRUETT:

12 Q. Okay. This is Defendant's Exhibit marked No. 18. Do
13 you recognize that photo? Identify it?

14 A. Yes, sir, that's a photograph that we took.

15 Q. All right.

16 And you have got this marked as B that shows or
17 reflects what I believe to be 2, is that right, 2 and 3, or
18 is that something else?

19 A. Yes, that's 2 and 3.

20 Q. This is one over here?

21 A. Yes, sir.

22 Q. That would be the third pellet?

23 A. Yes, sir.

24 What -- if -- in looking at our sketch and actually
25 seeing the photograph, this is how we have got it's listed

1 as 3. It says pellet hole. It should be plural. There was
2 two in this one section versus the one.

3 Q. Right.

4 A. The one number actually was marking for the two. There
5 was a little divot that hit the metal, but there wasn't
6 anything -- it didn't carry through the grid.

7 Q. That's what I was -- and you kind of went into my
8 next --

9 MR. PRUETT: I'm going to ask this be admitted
10 first as Defendant's Exhibit No. 18.

11 MR. KENDALL: No objection.

12 THE COURT: Without objection.

13 (Whereupon, Defendant's Exhibit No. 18 was entered
14 into the record as evidence)

15 BY MR. PRUETT:

16 Q. And I have got them circled here for that reason,
17 because it's kind of hard to see. You have got the pellets
18 here, but that looks like it hit the metal track.

19 A. Yes, sir, something did.

20 Q. Well, I can't tell that's old, or new, or would that be
21 consistent with a pellet shot hitting that?

22 A. It could be a pellet shot, or a hard substance, piece
23 of bone or something --

24 Q. Okay.

25 A. -- could potentially create a dent divot.

1 Q. Was there any evidence of bone material hitting the
2 ceiling?

3 A. There was a little bit with some tissue that was --

4 Q. There was --

5 A. Little divots. There wasn't nothing that went through
6 the ceiling tiles.

7 Q. Okay. My point being you have at least three, maybe
8 four, pellets hitting the ceiling --

9 A. Yes, sir.

10 Q. -- right?

11 And, again, the trajectory --

12 I'm taking some liberalities here, but if you have got
13 Ms. Pennington here, she is about 5'6", it's going pretty
14 much like that, more or less? More or less?

15 A. Could possibly, yes, sir --

16 Q. She's --

17 A. -- depending on where you are at on the bed.

18 Q. Well, I'm saying -- you are right. You are right.

19 A. That changes your --

20 Q. You are right.

21 I'm -- I'm trying to do it where she was standing.

22 A. Okay.

23 Q. The trajectory going behind her where the bookcase is.

24 A. Okay.

25 Q. It would have been, according to the pellets you found,

1 top of the bookcase?

2 A. Yes, sir.

3 Q. And the ceiling?

4 A. Yes, sir.

5 Q. That one pellet that you found I'm a little confused
6 about. What pellets are you testifying to that actually
7 struck the bookcase?

8 A. There was one that struck above it or kind of the top.

9 Q. The top?

10 A. Yes, sir.

11 Q. Right.

12 A. It was consistent with the others going up.

13 And the other pellet struck the next -- it's like
14 the -- I believe it was the next shelf, the second shelf.
15 There is a divot and there was that one that was lodged in
16 the book.

17 Q. Well, I think you are describing two different things.
18 When you testified, I was kind of confused.

19 The book was found on the second shelf?

20 A. Yes.

21 Q. But the splinter and the divot, that was not on the
22 second shelf, was it?

23 A. No, sir, there was one, if you look at --

24 Q. Yeah.

25 A. -- where the book was on the second shelf, there is a

1 little bitty piece at the bottom of that shelf. There is
2 small splinter of it.

3 Q. So you are talking about the splintering that's on the
4 second shelf and not -- I don't want to mislead the jury and
5 they go back and view these exhibits.

6 A. Yes, sir.

7 Q. Let me hand you Defendant's Exhibit No. 7. It's
8 already been admitted into evidence. There is this here.

9 A. Yes, sir. That's not --

10 Q. This is the second shelf up here, or somewhere up
11 there.

12 A. This would be the top shelf. This is your second shelf
13 down.

14 Q. You think this is the second shelf?

15 A. I believe it was, yes, sir.

16 Q. And, again, I don't -- I'm not trying to confuse or
17 mislead you any, but I believe this is the third shelf down.

18 That's what I'm trying to ask you. Are you trying to
19 say that the pellet hit that and went into the book?

20 A. Yes, sir.

21 Q. All right. This has been identified as Defendant's
22 Exhibit No. 17. I'm assuming you didn't take that photo?

23 A. No, sir, I did not.

24 Q. All right.

25 A. I am mistaken. That's the third shelf down.

1 Q. All right.

2 A. That's the second shelf.

3 Q. That's what I'm asking.

4 Here is the book on the second shelf. I have got a
5 little circle there for the reason to help you. It's hard
6 to read the glucose revolution?

7 A. Yes, sir, that is -- that is the book, yes, sir. You
8 are correct.

9 Q. This splinter is not the one in the same?

10 A. It's the third shelf down, yes, sir, I misspoke on
11 that.

12 Q. Here is my contention. Are you saying that splinter
13 was caused by one of these pellets that low down?

14 A. That actual was not, no, sir.

15 Q. So the jury looks at these exhibits, like No. 7, and
16 they see the splintering on that shelf on that exhibit is
17 kind of the in the middle almost, that would not be a pellet
18 shot?

19 A. No, sir, that would on down.

20 Q. All right.

21 A. That would be below the trajectory they were traveling.

22 Q. Yeah. I wanted to clarify that.

23 A. Yes, sir, because this is the one where you have the
24 splintering, the bullet projectile struck the top and went
25 through --

1 Q. All right.

2 A. -- the top of the bookcase.

3 Q. I have got that for another reason there, but on the
4 bookcase on Defendant's Exhibit No. 17, what I had circled
5 is more or less where the pellet struck?

6 A. Yes, sir, those two on the bookcase, yes, sir.

7 MR. PRUETT: Can I publish this to the jury, Your
8 Honor?

9 MR. KENDALL: No objection.

10 THE COURT: Without objection.

11 MR. PRUETT: Actually also Defendant's Exhibit No.
12 7, which is not the pellet shot.

13 THE COURT: All right.

14 BY MR. PRUETT:

15 Q. You testified about the shotgun itself, and if I
16 understood your testimony correctly, are you testifying that
17 the cartridge can actually impact upon the recoil of the
18 weapon?

19 A. It -- the cartridges can't. Depending on how they are
20 loaded and the amount of powder, it does affect the recoil.

21 Typically when I have fired birdshot, other rounds,
22 they tend to have a less recoil than double-aught buck.

23 Q. All right.

24 And I think you have mentioned this about the wadding,
25 but I just wanted to clarify it, because all of the pellets

1 seem to be going in the same general direction.

2 A. Yes, sir.

3 Q. Some strike the top of Ms. Pennington's head, a few in
4 the bookcase, and then three, maybe four, hit the ceiling?

5 A. Yes, sir, that's correct.

6 Q. And that would pretty much account for all of them,
7 wouldn't it, pretty much? I mean, because how many shots do
8 you expect to have or pellets in that cartridge?

9 A. In that double-aught buck you expect nine.

10 Q. Nine?

11 A. Yes, sir.

12 Q. So we have got -- if I recall correctly, you are saying
13 there were two in the bookcase?

14 A. Yes, sir.

15 Q. Three, at least, in the ceiling?

16 A. Yes, sir.

17 Q. That's seven. Did I count that right? No.

18 Two in the bookcase, three in the ceiling. That's
19 five. And I believe there were four recovered from the
20 autopsy, or thereabouts. If not, they more or less are
21 pretty much accounted for, is that correct?

22 A. Yes, I think we are short one or two, but yes, sir.

23 Q. All right. So there might have been some you didn't
24 find?

25 A. Yes, sir, that's correct.

1 Q. And, again, that what was put into evidence, one of
2 what appears to be something hit the track, that metal track
3 on these -- on that ceiling?

4 A. Yes, sir, that's correct.

5 Q. All right.

6 So the wadding, given that all the pellets are going in
7 the same general direction, understanding that the pellets
8 in a shotgun, the greater the distance, the greater the
9 spread?

10 A. Yes, sir.

11 Q. But the wadding, off -- was found off to the right?

12 A. It doesn't mean that's where it landed. It could have
13 been kicked. It could have been moved. You know, the body
14 had been slid, so it could have been kicked or moved out of
15 the area where it initially landed.

16 Q. Okay. And a few more questions.

17 You testified to the recording device that was set up
18 in that one room?

19 A. Yes, sir.

20 Q. Was it hidden, or was it just out in the open?

21 A. It was out in the open on the top of the dresser.

22 Q. And working? Was it connected?

23 A. It was -- it was plugged up, but I did not examine to
24 see if it was in operation or running.

25 Q. Well, let me ask you this. Did you seize any cassettes

1 with that?

2 A. Yes, sir.

3 Q. Did you listen to them?

4 A. I did not, no, sir.

5 Q. Did anybody listen to them?

6 A. The case agent would have had the opportunity to review
7 them, but I did not.

8 MR. PRUETT: Your Honor, if I may have just a
9 moment to consult with Mr. Cook and the defendant?

10 (Off the record).

11 (Back on the record).

12 MR. PRUETT: I think I have everything, judge. I
13 just wanted to make sure there weren't any photographs or
14 anything that might have been submitted.

15 BY MR. PRUETT:

16 Q. So, again, like Mr. Kendall, I suppose, that the final
17 thought I'm going to leave with the jury, what I had said
18 earlier where he was positioned or could have been
19 positioned consistent with the hard side, the hard evidence
20 found at the scene?

21 A. Yes, sir, he could have been in any number of positions
22 in that area.

23 Q. Like the one I showed you?

24 A. Yes, sir, it could have been.

25 Q. Thank you.

1 THE COURT: Any redirect as to what he went into?

2 MR. KENDALL: I am, Your Honor.

3 REDIRECT EXAMINATION BY MR. KENDALL:

4 Q. Just a couple of questions.

5 The shells in the ceiling, bookcase, books, were you
6 able to determine if those had been in any way ricocheted?

7 A. The ones that were actually in the ceiling didn't
8 appear to be. They were actually going up. And the ones in
9 the top of the bookcase were in that same general direction.

10 Q. Okay. So all the rounds were being fired from that
11 same general direction, is that fair to say?

12 A. Yes, sir.

13 Q. All right. Mr. Pruett asked you a moment ago about
14 whether or not he could have been halfway up the bed. Do
15 you recall that?

16 A. Yes, sir.

17 Q. Where did you find the spray can?

18 A. It was closer to the headboard of the bed. It was
19 right near the shotgun itself.

20 Q. What about the rounds? Where did you find the six
21 rounds?

22 A. They were approximately two feet from the headboard of
23 the bed near the shotgun.

24 Q. And what about the spray? Did you see any like
25 slippery floor where he would have sprayed halfway down the

1 bed, or anything like that?

2 A. I did not observe any on the floor, no, sir.

3 Q. Where did you see a film of oil?

4 A. There was some on the nightstand and items there on the
5 nightstand.

6 Q. Okay. And just to be clear, Mr. Pruett a moment ago
7 talked about a scenario where he was sitting on his bed with
8 his leg up resting like that, correct?

9 A. Yes, sir.

10 Q. All right. Can you tell which leg I have got sitting
11 on the bed?

12 A. Your right leg.

13 Q. Okay. And in his statement --

14 In this scenario, I guess, if he's doing this, he's not
15 facing the chest of drawers, like is in his statement, he's
16 sitting up like this, where is she located in reference to
17 him?

18 A. As far as if he's sitting facing more to the end of the
19 bed?

20 Q. Yes, if he's facing the end of the bed.

21 A. She's still there at the foot of the bed.

22 Q. So in this scenario with the TV, would she still be in
23 his line of sight?

24 A. She would be just off to the right.

25 Q. If he's doing this, he's actually resting the firearm

1 on his outside leg, is that -- is that how Mr. Pruett had
2 it?

3 MR. PRUETT: Objection. I didn't say that, Your
4 Honor, and we are getting into improper recross. That's not
5 what I said.

6 MR. KENDALL: It was how he demonstrated, though,
7 how it happened.

8 THE COURT: Go ahead.

9 BY MR. KENDALL:

10 Q. In that scenario the gun would be pointed more down
11 towards her? She's on the outside leg having to hold out to
12 wipe like that, is that correct?

13 A. Yeah, if you were positioned there, yes, sir, you would
14 have to be --

15 Q. And that's an angle a fairly flat one, almost have to
16 hold it out and then use your other hand to wipe that, is
17 that --

18 A. That would be fair.

19 Q. Is that a -- is that a very natural position for a
20 human being to sit while wiping a gun?

21 A. No, sir.

22 Q. Okay. With regards as well, if he is moving midway
23 down the bed, you know, if he's not here, but he's moving
24 midway down and he's sitting here, he's halfway down, how is
25 that going to make that rotational angle if he is sitting

1 with both feet on the floor?

2 A. You are going to have to turn more of an angle, but as
3 you are closing it up, that distance up, it's going to start
4 changing the amount of elevation that you are going to have
5 to raise --

6 Q. So in that scenario, he's got him sitting off the edge
7 of the bed, cleaning halfway down, he would have to turn
8 more than he would have to if he was at the far end of the
9 bed, is that correct?

10 A. Yes, sir.

11 Q. And not as well, Mr. Pruett mentioned the wadding and I
12 don't want to mislead the jury. Is the wadding something
13 that is --

14 What is the evidentiary value of the wadding in
15 determining a shot? Is it something that is the highest
16 priority?

17 A. No, it's going to have less -- it's going to have less
18 value in determining trajectory, because it will lose energy
19 faster and it generally stops. If it does hit something,
20 it's going to stop there. It's not going to continue on
21 through, like a pellet will.

22 Q. Okay.

23 MR. KENDALL: Nothing further, Your Honor.

24 MR. PRUETT: I have got just a couple he
25 mischaracterized.

1 THE COURT: Briefly on that one subject.

2 RECROSS EXAMINATION BY MR. PRUETT:

3 Q. Just so we are clear, my question of you I did not say
4 where he had the shotgun positioned on his leg, did I?

5 A. No, sir.

6 Q. All right. So I didn't say he had it jacked up on his
7 right leg pointed like this, and that would be impossible,
8 wouldn't it?

9 A. Yes, sir.

10 Q. But if he had it laid across his leg, maybe even not
11 touch his leg. I think his statement says on my leg, not my
12 right leg. That would be again consistent with what I
13 previously described, correct?

14 A. Yes.

15 Q. And in terms of the measurement that he just mentioned,
16 all I meant to point out was in the exhibit --

17 MR. PRUETT: Excuse me, judge.

18 BY MR. PRUETT:

19 Q. Defendant's Exhibit No. 11, which is -- that was more
20 obviously -- that tape measure was more than four feet,
21 correct?

22 A. Oh, yes, sir.

23 Q. All right. And in that exhibit, if you looked at the
24 tape measure, would not obviously be consistent with the
25 hard evidence that the shot occurred from three to four

1 feet?

2 A. That would be just pulling for the angle, not the exact
3 distance.

4 Q. All right.

5 MR. PRUETT: That's all I have. Thank you.

6 THE COURT: Just on that.

7 MR. KENDALL: Just one question.

8 REDIRECT EXAMINATION BY MR. KENDALL:

9 Q. Laying across your legs -- if it's laying across your
10 legs, what kind of angle are you looking at?

11 A. If you are lying it down flat, it's more straight.
12 It's not pointing up.

13 MR. KENDALL: Nothing further.

14 THE COURT: All right. Thank you, sir. You may
15 step down. Watch your step as you are stepping down.

16 THE WITNESS: Thank you.

17 THE COURT: Ladies and gentlemen, we are going to
18 take a lunch break at this time. I thank you for your
19 attention to all the testimony that's been presented this
20 morning.

21 Looking at the clock on the wall, I have got that
22 it's almost a quarter to one. I'm going to ask if you would
23 to please be back in the jury deliberation room by two
24 o'clock and we will begin.

25 Again, don't have any discussions among

1 yourselves. Don't do any type of independent research. No
2 investigation.

3 You may go with the bailiff.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: Lawyers approach.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: Anything before we bring the jury back
10 in?

11 MR. KENDALL: Do you want to say --

12 MR. PRUETT: Well, I do. Just that as I
13 understand the first witness is Ms. Bryant, correct?

14 MR. KENDALL: No, the first one is actually Rocky.

15 MR. PRUETT: The first witness is Rocky.

16 Your Honor, we had an in-camera hearing on Monday
17 and the State had presented, proffered the testimony of Mr.
18 Pennington, Rocky Pennington, and another witness, Scarlett,
19 and Terry Lynn Swofford. And at that time the defense
20 objected to the introduction or admission of prior bad acts
21 that were testified to.

22 Specifically, one incident that was testified to
23 that happened twenty-eight years ago, in which allegedly
24 Dean Pennington fired a weapon in close proximity to Rita
25 Pennington's head. That was one incident, which I would at

1 this point object to on the basis of the remoteness of that
2 act of twenty-eight years ago, as relevancy has been
3 admitted with the passage of time. That, and that there
4 appear to be nothing remotely similar to acts close in time
5 to the shooting that occurred in this incident on June 21st,
6 2014.

7 And that to the extent that it may be relevant or
8 is relevant, under Rule 403, using a prejudicial versus
9 probative analysis, that to the extent that it may be
10 relevant, the prejudicial impact far outweighs the
11 probativeness of that first prior bad act of twenty-eight
12 years ago.

13 The other incidents, again, if my recollection
14 serves me correctly, and I did review my notes and testimony
15 from Monday, the other incident that he testified to, one
16 occurred approximately two months, more or less, prior to
17 the incident, and as Mr. Kendall stated, this was not really
18 a prior bad act so much as it was the conduct of Mr.
19 Pennington about firing out the window or shooting in the
20 general direction of where Rita Pennington would have been
21 on one occasion. So, again, I object. I would object at
22 this point in time to the relevancy of that, because it's
23 not offered to prove anything under Rule 404 (b).

24 If it's admissible at all, I'm arguing it's not,
25 it would be under relevancy under Rule 401. And, obviously,

1 again, the relevancy of that in a murder case, whereby the
2 State's comments during the hearing were they were not
3 directed at Ms. Pennington. In other words, he was just
4 firing out the window in the general direction and area.

5 I would submit that the relevancy of a homicide
6 murder case, to the extent that it is relevant, would be
7 highly prejudicial. Again, using a Rule 403 analysis would
8 be inadmissible.

9 And then the last incident, probably I would have
10 more difficulty arguing admissibility of that as presented
11 by Rocky Pennington. He testified that approximately two
12 weeks before the incident that, if I'm recalling correctly,
13 he was inside the residence and they were arguing back and
14 forth and Mr. Dean Pennington put his hand on a pistol and
15 said "I'll kill you." Again, I would submit that the
16 relevancy is far outweighed by the prejudice in that
17 situation.

18 MR. KENDALL: Your Honor, I think, as we argued
19 before, with regard to the prior shooting of Ms. Younger
20 (sic), this was a good long time ago. However, I think it
21 does seek to establish an absence of mistake in that
22 situation. He got upset with his wife and his response was
23 to fire a gun close to her head. I believe it took place
24 when Rocky was twelve years old.

25 With regards to the second incident about his

1 actions, I think -- I don't think -- I think the testimony
2 indicated he didn't -- he wasn't firing -- I don't think
3 these were intended to shoot her at that point, but he was
4 shooting in her general direction. I think that negates the
5 actions of an accidental discharge of a firearm. Someone --
6 excuse me, if somebody is in the very close time, I mean, he
7 wants something to shoot guns at people, I don't think
8 that -- I think that goes to show the absence of mistake in
9 this case, Your Honor.

10 MR. PRUETT: And I neglected -- I apologize to
11 mention one other thing and that is -- of course, we have
12 discussed this on Monday afternoon. The standard for
13 admissibility of the evidence, evidentiary standard, is
14 clear and convincing evidence, but the court at this point
15 is kind of like the gatekeeper, in that you make the first
16 determination as to credibility.

17 It goes to the jury, obviously they could assess
18 the credibility of Mr. Pennington's, Rocky Pennington's,
19 testimony or statements. The court in the first instance is
20 passing upon the credibility of the statements made.

21 And as we brought to light the testimony of Mr.
22 Pennington, Rocky Pennington, these disclosures have come
23 less than a week from today. The case has been going on for
24 four years. Mr. Kendall has met with Rocky Pennington
25 several times and on the eve of the trial we have these

1 belated disclosures, highly prejudicial in nature, being
2 made. And, as I have noted, at least from my reading of the
3 case file, they were similar to statements of the previous
4 deceased brother of his and I think what he's done is simply
5 incorporated that statement and is now testifying to it. It
6 is magically suspect for me to think that after all this
7 time he's had multiple opportunities to make these
8 disclosures, that a few days before the trial of the case
9 suddenly they are disclosed to the defense and to the
10 prosecution. If I understand correctly, it was Wednesday or
11 Thursday, so we are talking six, seven days ago. So I would
12 think that those facts obviously reflect upon the
13 credibility.

14 Again, the court in the first instance, the trial
15 judge, must pass upon the credibility of the witness in
16 making the determination of whether the court believes by
17 clear and convincing evidence those prior bad acts did, in
18 fact, occur. The case law is clear just testifying to
19 something in and of itself doesn't make it admissible. The
20 trial judge has to make that credibility determination.
21 There is no corroborating evidence as to those prior bad
22 acts, only the testimony and belated disclosures.

23 THE COURT: Okay.

24 We did it the day before at the start of the
25 trial. I must have missed the twenty-eight years part,

1 because I thought we dealt with the -- I thought we dealt
2 with the issue of the relatedness, or belatedness, or the
3 time issue with the testimony of the first wife, so I was
4 focused on the time element when we were dealing with the
5 issues with the first wife.

6 I would agree that a twenty-eight year ago event,
7 absent there being some type of consistency with that
8 conduct, would make it in and of itself too remote to want
9 to link it to this, so I would -- if I need to change my
10 ruling, it would be a ruling as to that particular issue.

11 Now, as to the testimony of the witness based upon
12 what was stated a couple of -- the events that transpired a
13 couple of months before, you know, I think the State can go
14 forward with that, as well as the statements that were made
15 say two weeks before.

16 MR. KENDALL: Yes, sir.

17 THE COURT: Okay. That's -- I'm not viewing that
18 as -- I'm not viewing the statements as being prior bad
19 acts. I'm just reviewing that as being statements made by
20 the defendant that they would be able to testify to, you
21 know, and I think it is on your ability to attack the
22 credibility of that and argue to the jury to give it the
23 weight that it deserves to be given, you know.

24 So limit the -- so don't go into the twenty-eight
25 year ago things. Okay.

1 MR. KENDALL: And you didn't have any problem
2 with -- and just so the court knows, Mr. Pennington has
3 always kind of said they had this bad relationship. We
4 started getting into specifics as we got closer to the trial
5 and he did mention the dropping the gun thing in the past --

6 MR. PRUETT: I didn't -- I didn't reference that.

7 MR. KENDALL: I just wanted you to know. I wasn't
8 trying to --

9 MR. PRUETT: No, you told me that and I was aware
10 of that yesterday when e-mailed in January of 2017.

11 MR. KENDALL: Good. Good.

12 MR. PRUETT: There was another disclosure prior,
13 which are new last week.

14 THE COURT: Okay. I'm going to let him testify to
15 it.

16 MR. PRUETT: Yes, sir.

17 THE COURT: I cannot -- I think the witness
18 appears to be credible.

19 Now, you can attack how his appearance by the
20 timing and those types of things, so -- okay.

21 MR. KENDALL: Thank you, Your Honor.

22 THE COURT: Anything else?

23 MR. PRUETT: That was the only other witness I
24 think that I would have that type of motion on.

25 I think Ms. Swofford's testimony -- I think I need

1 to renew that, but I don't know when they intend to
2 introduce her testimony.

3 MR. KENDALL: She is going to be this afternoon.
4 She is probably going to be my third or fourth witness.

5 MR. PRUETT: Well, again, as -- I think I need to
6 make the motion. I understand the court's ruling on Monday.

7 Her testimony was two incidents, and the one being
8 in November of 2013, Your Honor, and that would be
9 approximately seven, eight months prior to the day of the
10 shooting. She testified that on an occasion in November of
11 2013 Mr. Pennington entered her home, made several remarks
12 to the effect he was going to kill Rita and she was stupid
13 and other unflattering remarks. And my objection is the
14 remoteness of that statement eight months, seven months
15 prior to the shooting as to how it bears on the relevancy of
16 what happened over such a long period of time.

17 Now, a threat -- it's going to be taken as that.
18 Of course, they can say it is and I can argue it's not, but
19 a threat, I think there be a threat, has to be more, or
20 closer -- closer in time to the actual incident. If I
21 threatened Mr. Kendall two years ago, I don't know if that
22 would be admissible at the present shooting, Your Honor, a
23 year.

24 At some point there's got to be a line there as to
25 remoteness of the threat and the relevancy to the actual

1 conduct in question to the shooting in this case. And I
2 would submit a seven or eight month threat, it's going to be
3 characterized that is too remote in time to be relevant; or,
4 if it is relevant, it is prejudicial more than probative on
5 the issue of intent, or for whatever purpose it may be
6 offered by the prosecution.

7 MR. KENDALL: And I think his threat to kill her
8 goes directly to whether or not he intended to kill her or
9 whether or not it's a mistake.

10 I'll point out also around this time we are
11 looking at when things started around the time she was
12 officially terminated from Snack Time January 3rd. So we
13 are looking at approximately the same time he is starting to
14 get suspicious as to an affair. I think that's highly
15 relevant -- a highly relevant fact to put this into
16 perspective on. It's not just, you know, she said it and
17 then they went their separate ways. He threatened his wife
18 to a family friend in around the time that this sexual
19 harassment was starting, when he was starting to get
20 suspicious. I think that's extremely appropriate. I think
21 it falls right into that narrow fact that he's subsequently
22 doing it after that I think lends credence to it. It
23 establishes a pattern of it. I do think that that's an
24 admissible statement made by the defendant. It goes to
25 whether or not a mistake was made.

1 I don't think seven months in the context of -- I
2 think there is going to be testimony that we don't know the
3 exact date he found out her firing, but I think it's coming
4 forward. I think that it's a highly relevant fact, Your
5 Honor.

6 MR. PRUETT: Her statements are not tied to that.
7 Had they been, I think they would be more probative and
8 maybe a more difficult position for the defense to argue
9 their inadmissibility, but her statement testimony doesn't
10 tie anything to Dean came over saying his wife was cheating
11 on him, he was going to kill her. That's not what happened
12 here. She just said he came over, walked through the house,
13 had a gun on him and made those comments. So, again, it's a
14 relevancy issue.

15 They are going to present a plethora of witnesses
16 presumably to testify about the Snack Time relationship she
17 had with this young man, but as far as when those statements
18 were made, he didn't know. And more importantly, the
19 witness doesn't reference it. The witness doesn't tie it
20 into he knew she was having an affair and believed that.

21 THE COURT: Okay. I'm going to allow it. I don't
22 think that on the surface of it that the amount of lapse of
23 time does not draw me into having concern that it's too
24 stale of a time or too distant of a time, and given the
25 statement that was made by the defendant and -- I think it's

1 relevant.

2 You know, you can definitely go into it and
3 challenge the credibility of the statement or challenge the
4 weight that it needs to be given by the jury and what
5 inferences that they should draw or not draw from that.

6 MR. PRUETT: Yes. One more statement, that Ms.
7 Swofford testified that was new to me, at least on Monday,
8 the telephone call, you all may recall. She testified that
9 she was calling over to the Pennington residence to speak to
10 Rita. Dean Pennington answered the phone and he began, in
11 her words, chattering on about Rita and killing her, or
12 whatever. She didn't say whatever, but making statements to
13 that effect.

14 So, again, I feel compelled to make the motion to
15 exclude that, again, based upon the relevancy and probative
16 value versus the prejudicial effect.

17 THE COURT: Okay. And, again, I would deny that
18 motion. I think it's a direct statement made by the
19 defendant. It seems to be in close proximity in time. I
20 don't believe it's too remote and I think the probative
21 value outweighs its prejudicial effect.

22 MR. PRUETT: Yes, sir.

23 And, Your Honor, just to those matters, well, I
24 have to put it on the record and if we don't, we will be
25 back on a PCR.

1 I just respectfully reserve the objection on those
2 matters that you have ruled against the defense on those two
3 witnesses. And for purposes of record preservation, if I
4 need to interject an objection during their testimony or the
5 court, at this point just note that on those matters.

6 THE COURT: I mean, I can say I note it, but I
7 know there is case law out there that says the judge cannot
8 simply say you are protected on the record and you are
9 protected on the record. That's what --

10 MR. PRUETT: Okay. I mean I didn't want to
11 aggravate the court by saying I object to --

12 THE COURT: Just don't stand and make a --
13 continue to re-articulate everything that you have said.
14 You can say objection based upon what we have already said.

15 MR. PRUETT: Okay. Thank you, Your Honor.

16 THE COURT: I think that works, but I can't -- you
17 know, I just don't think that I can simply say you don't
18 have to object ever again, you are protected.

19 MR. PRUETT: No, no, I understand, but just on
20 those parties that's fine, I will interject just a very
21 short brief objection.

22 THE COURT: I like that brief part.

23 All right. Let's bring them in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Is the State ready to call their next
2 witness?

3 MR. KENDALL: Your Honor, the State would call
4 Rocky Pennington.

5 THE COURT: Mr. Pennington, please come right on
6 up here and let the Clerk of Court swear you in.

7 THE CLERK: Please raise your right hand and place
8 your left hand on the Bible.

9 ROCKY PENNINGTON, having been first duly sworn,
10 testified as follows:

11 THE WITNESS: Yes.

12 MR. KENDALL: Thank you very much.

13 DIRECT EXAMINATION BY MR. KENDALL:

14 Q. Sir, could you please state your name for the record?

15 A. It's Rocky Pennington.

16 Q. All right. And Mr. Pennington, do you know the
17 defendant Dean Pennington?

18 A. Yes, I do.

19 Q. And how do you know Mr. Pennington?

20 A. He's my daddy.

21 Q. All right. And did you know Rita Pennington?

22 A. Yes.

23 Q. And how did you know Rita?

24 A. She was my mom.

25 Q. Okay. And at the time of her death where were you

1 living?

2 A. I was living out in front of their house that they were
3 in.

4 Q. Okay. You lived out the front, can you --

5 A. It was on the same property.

6 Q. Okay. But in a different --

7 A. In a different location.

8 Q. -- physical structure?

9 A. Yes, sir.

10 Q. Okay. In the weeks leading up to -- in the weeks
11 leading up to this, did you have an opportunity to talk
12 about and talk to your father about their marriage?

13 A. Yes.

14 Q. And what was he concerned about, or was he concerned
15 about anything?

16 A. He was mostly concerned about the affair that she was
17 supposedly had at Snack Time. There was a guy there that
18 she was a little friendly with and he had heard about it and
19 he was really upset about it. He asked me did I know
20 anything about it or just -- he just questioned me a lot.
21 And he -- just like every time he would come pick me up at
22 work he would talk more and more about it.

23 After the days went on we were together, the more upset
24 he was, the more he talked about it, the more trying to get
25 anything he could get out of anything to put more together

1 to find out anything about my mom and about Snack Time.

2 Q. Okay. Did he indicate if he had taken any actions or
3 anything to find out what was going on?

4 A. Yes, he had got a private investigator. He had paid a
5 thousand dollars. And the private investigator, he told me
6 that he had found out she had got fired for sexual
7 harassment.

8 Q. All right.

9 And you said this happened often when y'all were
10 talking. In the weeks leading up to her death, your mom's
11 death, what percentage of the time would you say he
12 mentioned it in your conversations with him?

13 A. Oh, lord, it was probably a good thirty minute drive
14 from my work and the whole thirty minutes every day that we
15 was together.

16 Because I lived so close to my mom and dad, I would
17 walk out there to visit and talk to them and if mom was in
18 the kitchen, he talked about it. He would tell me anything
19 that he had done found out from anybody that's worked at
20 Snack time, or -- you know, just talked about it more and
21 more about anything that, you know, he believed of that may
22 have happened.

23 Q. Okay. And over the course of your life have you -- did
24 you live with Dean?

25 A. Yes.

1 Q. And during that time did you have the opportunity to
2 see him handle and use, clean firearms?

3 A. Yes, I did.

4 Q. Was he able to clean firearms? Did he understand how
5 they functioned?

6 A. Yes.

7 Q. How often would you see him do that, handling guns?

8 A. He always had a gun on his side. He may pick a day
9 that he would pull them all out, maybe usually just he had
10 certain ones he liked more than the others ones and he would
11 have them laid out on the bed a lot looking them over.

12 Q. Did you ever see if he had a gun cleaning kit?

13 A. He had a piece of one.

14 Q. Okay.

15 A. And he, you know, had enough to clean a gun if you
16 needed it to clean.

17 Q. Was it more than just a rag?

18 A. Oh, yes, it was rods with handles. It came in a
19 carrying case. It had little old small pieces of cloth that
20 went into a little sliding area that you could twist and
21 turn, pull them out.

22 Q. Okay. Prior to this happening, and I want you to limit
23 your answer to, you know, weeks before this happened, did
24 you ever see any arguments between Rita and Dean?

25 A. Yes, it was right before, maybe two months before that

1 happened. I came in -- I went down to visit. At that time
2 I was actually fixing to move in down there. I was still
3 renting an apartment. I came into the front door, came, you
4 know, towards their bedroom. It was dad's bedroom door. On
5 his side there was always a chair in there. And I sit down.
6 And as I was sitting down there was a little bit of an
7 argument. Momma was in the kitchen on her side. I really
8 didn't couldn't get all of the argument. And when she came
9 in, she went to her closet to hang her clothes up. She must
10 have been doing laundry. And momma, she spoke out real
11 loud, kind of in a real deep voice and scared --

12 Q. Don't go -- it's important you don't go into anything
13 that your mother might have said or anything like that,
14 okay?

15 A. Okay.

16 Q. How did Mr. Pennington react?

17 A. He was mad. He reached and grabbed his gun on his
18 side. He always carried a 40-caliber.

19 Q. Did he say anything to her?

20 A. Yes.

21 Q. What did he say?

22 A. He told her, he said "I'll kill you."

23 MR. PRUETT: Your Honor, just note my objection as
24 previously made.

25 THE COURT: All right. And I'll overrule the

1 objection.

2 Go ahead, sir.

3 BY MR. KENDALL:

4 Q. And what did he say?

5 A. He said "I'll kill you."

6 Q. All right. At that time did he take the firearm out of
7 its case or anything like that?

8 A. No, he only grabbed at it like he was fixing to.

9 Q. Okay. And how long ago before your mother died did
10 this happen?

11 A. It was two weeks.

12 Q. At any point in time within the couple of months before
13 her death did you see him using firearms or discharging
14 firearms in a threatening manner towards her, in a manner
15 where she would be around?

16 A. It was one other time and they was out in the back yard
17 and she came around before him and out towards the other
18 part of the driveway and he come around. He was kind of
19 yelling where she had stuff and he just was shooting the
20 gun, but it was towards the ground of the path that she had
21 walked.

22 Q. Okay. And so he wasn't aiming directly at her at that
23 point?

24 A. Not at that point, no.

25 Q. But he was shooting near her?

1 A. Yes.

2 Q. In a scary manner.

3 Did you see him discharge any other firearms over that
4 time?

5 A. No.

6 Q. Anything about a .22 rifle, or was that the gun you are
7 talking about?

8 A. It was the .22 rifle incident.

9 Q. Okay. Did you talk to your father after the death of
10 your mother at all?

11 A. Yeah, after my brother passed away.

12 Q. Okay. And when was that? When did your brother pass
13 away?

14 A. It was almost two years after mom died.

15 Q. Okay. And where did that conversation take place?

16 A. At his house, momma's house.

17 Q. And what did he tell you when you were down there?

18 A. We just spoke for a little bit and I asked what
19 happened.

20 Q. And what did he tell you had happened, or how your mom
21 died?

22 A. That he had dropped the gun and she went to grab it and
23 it went off.

24 Q. Okay. And when he told you that, he was dropping the
25 gun and she goes to grab it and then it discharges?

1 A. Uh-huh.

2 Q. Okay. Did she try and catch it?

3 A. Yeah.

4 Q. To grab it or --

5 A. Yeah.

6 Q. Was there any incidents involving him shooting out a
7 window, anything like that?

8 A. Any incidents shooting out the window?

9 Q. Uh-huh.

10 A. Yeah.

11 Q. There was -- could you describe were those recent to
12 when this happened?

13 A. It wasn't -- I would say maybe a month or so ago, a
14 couple months ago before that happened.

15 Q. Okay. And what --

16 A. It's been different times.

17 Q. What happened in that situation?

18 MR. PRUETT: Your Honor, again just note my
19 objection for the record.

20 THE COURT: Lawyers want to approach a moment?

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 THE COURT: All right. What I'm going to do is
24 I'm going to sustain the objection.

25 MR. KENDALL: I have nothing further, Your Honor.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. PRUETT:

3 Q. At the time of this incident on June 21st, 2014, you
4 were living in a camper next to your parents' house, is that
5 right?

6 A. Yes, sir.

7 Q. Did your father come over that morning to your
8 residence, or were you there?

9 A. I wasn't there. I was at work.

10 Q. Okay. This is kind of testing your testimony, Mr.
11 Pennington, beginning just when the prosecutor was
12 discussing about your father's use of guns.

13 Do you recall giving a written statement around the
14 time this occurred in June of 2014?

15 A. Yes.

16 Q. Have you had a chance to read that statement prior to
17 testifying today?

18 A. Yes, I have read it.

19 COURT REPORTER: Speak up.

20 A. Yes, I have read it.

21 BY MR. PRUETT:

22 Q. Do you recall stating in your written statement "my dad
23 has always kept his guns loaded and he is always being
24 careless with it"?

25 A. Yes.

1 Q. Is that a correct statement?

2 A. Yes.

3 Q. Okay. In terms of his having guns or having weapons,
4 he had a lot of guns, didn't he?

5 A. Yes.

6 Q. Okay. And did he keep them in the bedroom area of the
7 house --

8 A. Yes.

9 Q. -- where he slept?

10 A. Yes.

11 Q. And I think you testified a few moments ago the times
12 you went over there leading up to the day of the shooting
13 almost always he would be in that room or your mom would be
14 in that room, is that right?

15 A. Yes.

16 Q. He would be on his side of the room and she would be on
17 her side?

18 A. Yes.

19 Q. More or less?

20 A. More or less, yes.

21 Q. All right.

22 Now, you testified that your father was - these are my
23 words - obsessed with this idea your mom and what had
24 happened at Snack Time, is that correct?

25 A. Yes.

1 Q. And you just testified he was talking to you about it
2 on almost every occasion that you may have talked, is that
3 correct?

4 A. Yes.

5 Q. All right. And you knew he was upset about it?

6 A. Yes.

7 Q. And he was wanting to know what happened?

8 A. Yes. He was trying to find out anything that happened.

9 Q. All right. And you testified he hired a private
10 investigator, according to him?

11 A. Yes, he told me.

12 Q. But knowing how mad or upset he was about it, why did
13 you tell him how to find out? Didn't you put him on the
14 trail that telling him --

15 A. He asked me did I know the person, because the person
16 said they knew me.

17 Q. So you gave him that information and he went and talked
18 to that person, right?

19 A. I don't know if he did. That's pretty much -- I think
20 he did. I'm not for exact sure.

21 Q. Well, you just testified on Monday that you confirmed
22 that, that --

23 A. Well, people can say one thing, you know.

24 Q. I didn't hear your answer.

25 A. Yes, they did. He told me that he -- he had to tell

1 me. He spoke to the girl that told me that.

2 Q. Yeah, the girl did. You referred him to the girl and
3 said "if you want to find out, daddy, about momma."

4 A. No, he asked me who that girl was and if I knew her.

5 Q. All right. You knew she worked at Snack Time?

6 A. Yes. My mom told me.

7 Q. Okay. You knew. You told your dad. "And you want to
8 find out, dad, go talk to her." He went and talked to her
9 and found out?

10 A. I assume he did.

11 Q. Yeah, the girl told you, didn't she?

12 A. Yes.

13 Q. All right. So if you are so concerned about your dad
14 being so mad, why would you basically like refuse and tell
15 him where to go so you could find out about it?

16 A. Because he was my dad.

17 Q. All right.

18 Now, the two incidents that you testified to this
19 afternoon, the one was about -- I'm not exactly clear maybe
20 about when this may have occurred. Your father was shooting
21 outside and your mom was outside? Is that what you said?

22 A. Family was outside, my brother and my sisters and other
23 kids.

24 Q. Who is -- who? Give me some names. Who is out there?

25 A. Scarlett.

1 Q. Who else?

2 A. Sister-in-law. My little brother Riker and his two
3 kids.

4 Q. Well, that would have been --

5 A. And my mom was out there too.

6 Q. -- years ago.

7 You testified a few moments ago that was like a few
8 months before this incident.

9 A. Well, not a few months. In between that time. It grew
10 up to that time.

11 Q. Okay. But my understanding that's not what you just
12 testified to. You said a few months before this incident
13 that that incident occurred when all those people were there
14 and he was shooting outside.

15 A. Yeah, it grew up around that time it happened.

16 Q. All right. I'm going to ask it again, because I need a
17 straight answer from you, okay?

18 When did that happen? Did it happen a couple months, a
19 couple years, or you just don't know?

20 A. It was a few months before that. It was real early.
21 It wasn't like --

22 Q. All right.

23 A. -- when I was a teenager, no.

24 Q. A few months before the shooting?

25 A. Somewhere in that area, yes.

1 Q. In that area.

2 You testified a moment ago Riker died two years ago.

3 A. About two years ago now.

4 Q. All right. Well, the jury heard it. All right.

5 The last incident you referred to had to do with about
6 two weeks before the actual shooting, correct?

7 A. Yes.

8 Q. Your testimony was your dad and your mom were arguing,
9 right?

10 A. Right.

11 Q. She's arguing with him and he's arguing back with her,
12 right?

13 A. Yes.

14 Q. And at one point he was upset and put his hand on the
15 gun and says "I'm going to kill you"?

16 A. Yes.

17 Q. Now, as I alluded to a few moments ago, you made a
18 statement to the police back in 2014, correct?

19 A. Yes.

20 Q. Correct?

21 Where they were asking about incidents between your mom
22 and your dad, correct?

23 A. Yes.

24 Q. And, of course, since that time you have had numerous
25 opportunities and contact with Mr. Kendall, correct?

1 A. Yes.

2 Q. And all those years, month to month, year after year,
3 the testimony you have given today was only disclosed as to
4 those two incidents last week, correct?

5 A. Somewhere around there, yeah. We talked about it --

6 Q. There was no somewhere around there.

7 A. We talked about it. I have talked with people about
8 it.

9 Q. No, sir, no, sir, that's not what I'm asking.

10 A. I tell you.

11 Q. I asked you specifically, and I asked you on Monday
12 when did you first disclose this very damaging testimony you
13 are giving this afternoon and I said was it Wednesday or
14 Thursday of last week for the first time and you said yes.

15 A. You asked me the last time I talked to him about it.

16 Q. No, sir, I'll read your testimony.

17 A. Well, maybe that's the way I took it.

18 Q. No, I was very clear when I asked you, because this is
19 first time I have learned about it.

20 Reading from the transcript:

21 "Q. Mr. Kendall, the first time that you shared it
22 with him was last week on Wednesday or Thursday, isn't that
23 correct?"

24 Your answer "yes."

25 Now, do you want to change that testimony that you just

1 gave forty-eight hours ago?

2 A. If that's what it said then, yes.

3 Q. Well, it is what it said.

4 Is that testimony correct or not?

5 A. Yes, I guess it is. It's on that paper.

6 Q. Pardon?

7 A. Yes.

8 Q. And this other matter about your dad describing to you
9 how the incident occurred, that would have been -- you said
10 after Riker's death. How long after Riker's death did you
11 go down and see your father?

12 A. I'm going to say about a week after that, sir.

13 Q. About a week.

14 And he died how long ago?

15 A. Why do you keep talking about my brother?

16 Q. Because it's relevant to the case, because you brought
17 it up.

18 A. My brother hung himself.

19 Q. I understand.

20 When did it happen?

21 A. It was in March.

22 Q. Of 2016?

23 A. Yes.

24 Q. What year was it?

25 A. Almost two years after mom died in 2014.

1 Q. 2016. March. That's when you went down to your dad's
2 house, correct? Correct?

3 A. I had nowhere else, nobody else to talk to or go to.

4 Q. I'm just asking the question, Mr. Riker (sic).

5 A. Rocky.

6 Q. Rocky.

7 A. Oh, you made a mistake. You are excused, I'm sorry.

8 Q. I did.

9 A. Like I made a mistake too.

10 Q. My question is this, that was March of 2016, and you
11 didn't disclose that to the prosecutor until 2017, correct?

12 A. (No response).

13 Q. This is just a yes or no.

14 A. People make mistakes when they go through a lot of
15 stuff like this.

16 Q. I'm just asking when this evidence came to light.

17 A. I could tell you a lot of stuff.

18 Q. All right.

19 A. I don't have time.

20 MR. PRUETT: Your Honor, if the witness is not
21 going to be responsive to my questions, I would ask that the
22 testimony be struck.

23 THE COURT: Mr. Pennington, can you try to answer
24 his questions, okay?

25 A. Ask me the question again.

1 BY MR. PRUETT:

2 Q. My question was you disclosed it to Mr. Kendall in
3 2017, correct?

4 A. Yes.

5 Q. All right. That's all I have. Thank you.

6 THE COURT: Any redirect on what he went into?

7 MR. KENDALL: I'll be very, very short. I just
8 want to touch on one thing Mr. Pruett brought up.

9 REDIRECT EXAMINATION BY MR. KENDALL:

10 Q. The times that -- the times that you saw that you
11 testified to that your father was shooting kind of in the
12 area of your mother, how long before her death did this
13 happen?

14 A. Maybe a month or two, or somewhere around that area.

15 Q. So you don't know the exact date?

16 A. I don't know the exact time.

17 Q. But Rocky (sic) was still alive at that time?

18 A. Yeah, Riker was still alive at that time.

19 Q. He was down there as well?

20 A. Huh?

21 Q. He was down there as well?

22 A. No, he wasn't there that I recall. They was tearing
23 down the old house and that's about what time it happened.

24 Q. Okay.

25 MR. KENDALL: Nothing further, Your Honor.

1 THE COURT: Sir, watch your step as you are
2 stepping down. Thank you.

3 Is the State ready to call their next witness.

4 MR. KENDALL: Yes, sir, Your Honor.

5 The State would call Amy Bryant.

6 THE COURT: Come forward and the Clerk of Court
7 will swear you in.

8 THE CLERK: Please raise your right hand.

9 AMANDA BRYANT, having been first duly sworn,
10 testified as follows:

11 THE WITNESS: I do.

12 DIRECT EXAMINATION BY MR. KENDALL:

13 Q. Could you please state your name for the record?

14 A. Amanda Bryant.

15 Q. And Ms. Bryant, do you normally go by Amy?

16 A. Yes.

17 Q. Ms. Bryant, where are you currently employed?

18 A. Dunbar Funeral Service in Columbia, South Carolina.

19 Q. Okay. And where were you working back in March of
20 2014?

21 A. Shuford Hatcher Funeral Home here in Gaffney.

22 Q. All right. And during March of 2014, did you have the
23 opportunity to speak to the defendant, William Dean
24 Pennington?

25 A. Yes.

1 Q. And what was he coming in to talk about?

2 A. He was coming in to make pre-arrangements for himself
3 and his wife.

4 Q. Okay. When you say pre-arrangements, what sort of
5 services do you recall?

6 A. Well, in funeral service you can pre or -- pre-pay and
7 pre-plan your funeral services. So we kind of having a
8 special and he came in to take care of those needs for
9 himself.

10 Q. Okay. And did he indicate -- and you say for himself.
11 Was it also for his wife Rita?

12 A. Right, both of them.

13 Q. All right. And over the course of this conversation
14 did he talk to you about his wife?

15 A. Yes, we -- we sat and we talked a good bit about a few
16 different subjects.

17 Q. Okay. And what did he indicate about his wife? What
18 did he say?

19 A. Well, you know, basically he said that they were
20 roommates at this point, that he still loved her very much,
21 but there were rumors of her cheating on him and, you know,
22 he was just there to try to, you know, take care of their
23 funerals just in case of anything -- you know, he wanted to
24 make sure that he was put away and that she was put away
25 nice as well.

1 Q. Okay. Did he indicate -- he said he talked about his
2 wife cheating on him. Is this something that you all had
3 had -- you had known each other before this?

4 A. No.

5 Q. Something that ordinarily in the funeral service people
6 talk about?

7 A. Well, you know, sometimes people come in and because
8 you are the funeral director, they will tell you their whole
9 life. So I think a lot of people come in and -- a big part
10 of being a funeral director is, you know, you kind of are a
11 therapist, you're a minister, and people will just talk to
12 you, so --

13 Q. Okay. And in your conversations he specifically
14 mentioned her cheating on him?

15 A. Yes.

16 Q. And then he said at that point that basically they were
17 not in a loving marriage, is that fair to say? Or they were
18 what, roommates?

19 A. Right, correct.

20 Q. Was she there? Was Rita there when y'all were making
21 these funeral arraignments?

22 A. No.

23 Q. So she wasn't like in the room when he was talking
24 about this? He was just talking basically to a stranger
25 while this was going on about his wife cheating?

1 A. It was just him and I.

2 Q. Okay.

3 MR. KENDALL: Nothing further, Your Honor.

4 CROSS EXAMINATION BY MR. PRUETT:

5 Q. A few questions, Ms. Bryant.

6 Had he ever been in before?

7 A. No, I have never ever met him before.

8 Q. Okay. When he was talking with you, how -- I mean, how
9 was his demeanor? Was he calm, was he angry, or he was just
10 talking like you and I are now?

11 A. Well, you know, it was just kind of like what we talked
12 about. He was just talking. It was just kind of a normal
13 day. You know, we talked about religion. We talked about
14 this, and, you know, he was just kind of almost sad, but
15 kind of, you know, maybe even a little disheveled.

16 Q. Was he maintaining his train of thought when he talked
17 to you, or was he just kind of wandering off this way, or --

18 A. We sat at the table the whole time.

19 Q. I mean, his train of thought, was he staying on point?
20 Was he wandering off on the subject? I mean --

21 A. Yeah, we just kind of -- the conversation just, you
22 know, flowed normally.

23 Q. Okay. All right.

24 And he said he loved his wife?

25 A. Yes.

1 Q. Thank you.

2 THE COURT: Any redirect into what he went into?

3 MR. KENDALL: One moment, Your Honor.

4 (Off the record).

5 (Back on the record)

6 MR. KENDALL: No, sir, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down.

8 Watch your step as you are stepping down.

9 THE WITNESS: Okay.

10 THE COURT: Any reason why the witness cannot be
11 excused?

12 MR. KENDALL: No, sir.

13 MR. PRUETT: No, sir.

14 THE COURT: Thank you, ma'am. You may be excused
15 as well.

16 Is the State ready to call their next witness?

17 MR. KENDALL: We are, Your Honor.

18 At this time the State would call Dale Kiser.

19 THE CLERK: Please raise your right hand.

20 DALE KISER, having been first duly sworn,
21 testified as follows:

22 THE WITNESS: Yes, ma'am.

23 DIRECT EXAMINATION BY MR. KENDALL:

24 Q. Could you please state your name for the record?

25 A. Dale Kiser.

1 Q. And Mr. Kiser, where are you currently employed?

2 A. Right now I'm laid off permanent.

3 Q. Okay. Where were you employed back in 2014, the year
4 2014?

5 A. At Snack Time Foods.

6 Q. And what were your responsibilities at that time at
7 Snack Time Foods back in 2014?

8 A. I was the supervisor over shipping and receiving.

9 Q. Okay. And what sort of things would you do in that
10 job?

11 A. Load and unload the trucks. A lot of accessibility to
12 the outside, you know, parking lot area and such like that.

13 Q. And while you were there, did you know Rita Pennington?

14 A. Yes, sir.

15 Q. And how did you know her?

16 A. She just came there as an employee. I mean, you know,
17 I didn't know her personally.

18 Q. Was Dean Pennington working there at that time?

19 A. No, sir.

20 Q. And how would Rita typically come to work? Were you
21 able to observe that?

22 A. Yes. She -- she had a vehicle. I mean, she drove her
23 own vehicle to work, from what I saw.

24 Q. Did you ever see Dean at the job?

25 A. Yes, sir.

1 Q. And when would you see Dean?

2 A. It would all depend. Most of the time it would be
3 like --

4 We do a lot of school business, so when school would
5 start back up, we would have to work a lot of long days and
6 into the nights, and he showed up in the parking lot a lot
7 of times and I would see him out there and he would question
8 me about when was she going to get off work; you know, when
9 was she going to be home. Yeah, he wanted her to have a job
10 but, you know, he didn't want her staying there night and
11 day.

12 Q. Did he ever have anything out of the ordinary with him?

13 A. Yes, sir.

14 Q. What?

15 A. The majority of the time I saw him out there, he had a
16 pistol in his seat, side arm.

17 Q. He had a gun in his seat?

18 A. Yes.

19 Q. Did he just stay outside in the parking lot?

20 A. No, sir.

21 Q. Were there any times he tried to come inside?

22 A. Yes, sir.

23 Q. Would you mind telling us about that?

24 A. Yes. My office was -- there is an employee door back
25 where my office was in the shipping warehouse and he came in

1 I think it was two different occasions, at least, but I
2 came -- I had went back to the freezer and I came back
3 through. He came in the side employee entrance and we had
4 like plastic flaps there where you can see out into the
5 production room and he was up against the flaps, had them
6 pulled back, you know like spying on his wife, or whatever,
7 looking out trying to --

8 Q. Who would have been working?

9 I guess, first off, do you recognize Mr. Pennington in
10 the courtroom?

11 A. Yeah.

12 Q. Is that him at the defense table?

13 A. Yeah.

14 Q. Okay. And would his wife have been working in that
15 room that the flaps led into?

16 A. Yes.

17 Q. Okay. So basically was he doing anything else, or just
18 watching?

19 A. Just -- from what I saw, just watching.

20 Q. Okay.

21 A. And, you know, I asked him who he was and what he was
22 doing there and -- well, I mean, I knew who he was. I
23 talked to him in the parking lot, but --

24 Q. Okay.

25 A. -- anyway, I ran him out of the building.

1 Q. All right. And after you told him to leave, did he
2 immediately leave?

3 A. Yeah, reluctantly, but --

4 Q. Okay.

5 A. I mean, he didn't -- okay, gone, you know. He
6 wanted --

7 Q. Okay. You said it happened -- do you recall --

8 (Off the record).

9 (Back on the record).

10 BY MR. KENDALL:

11 Q. Do you remember a time when you asked him to step back
12 and you went back to your office and he came back to the --
13 back to the -- he came back to the flaps?

14 A. Yes, sir.

15 Q. Okay. And I was just -- that is because -- I was
16 asking how he had left.

17 Could you describe what happened in that case?

18 A. Well, it was the same incident I was talking to about
19 awhile ago where I asked him to leave and he went outside
20 the door and then a couple minutes later he was back at the
21 flaps again.

22 Q. Okay. All right.

23 A. I had to ask him to leave a second time.

24 MR. KENDALL: Nothing further, Your Honor.

25

1 CROSS EXAMINATION BY MR. PRUETT:

2 Q. Mr. Kiser, how long did Rita work there, do you know?

3 A. I don't really remember. I would say it was less than
4 a year. Maybe six months to a year, or something.

5 Q. And the incident you just testified to the jury, when
6 was that?

7 A. It was during the time she was working there. I mean,
8 I don't -- she might have been there three or four months, I
9 don't know.

10 Q. Okay. Well, was it towards the end of her employment
11 before she left, or --

12 A. It was probably about mid ways.

13 Q. Okay. All right. Thank you.

14 A. Uh-huh.

15 THE COURT: Any redirect from what he went into?

16 MR. KENDALL: No, sir, Your Honor.

17 THE COURT: Thank you, sir. You may step down.

18 Watch your step as you are stepping down.

19 Any reason why this witness cannot be excused?

20 MR. KENDALL: No, sir.

21 MR. PRUETT: No, sir.

22 THE COURT: Thank you, sir. You may be excused as
23 well. Thank you.

24 Is the State ready to call their next witness?

25 MR. KENDALL: Yes, sir, Your Honor.

1 At this time the State would call Terry Swofford.

2 THE COURT: Ma'am, just come right up here and let
3 the Clerk of Court swear you in.

4 THE CLERK: Please raise your right hand and place
5 your left hand on the Bible.

6 TERRY SWOFFORD, having been first duly sworn,
7 testified as follows:

8 THE WITNESS: Yes.

9 DIRECT EXAMINATION BY MR. KENDALL:

10 Q. Could you please state your name for the record?

11 A. Terry Swofford.

12 Q. All right. And do you go by Terry or any other name?

13 A. Lynn.

14 Q. Okay. And Ms. Swofford, do you know Dean Pennington?

15 A. Yes.

16 Q. And how do you know Mr. Pennington?

17 A. I was married to his oldest son.

18 Q. Okay. What's his son's name?

19 A. Eric Pennington.

20 Q. Okay. And how long have you known Dean?

21 A. Since 1983.

22 Q. All right. And in November of -- around November of
23 2013, did Dean make any statement to you regarding Rita?

24 MR. PRUETT: Your Honor, just for the record I
25 note my previous objection.

1 THE COURT: All right. I'll overrule the
2 objection.

3 BY MR. KENDALL:

4 Q. You can answer the question.

5 A. Are you talking about the phone call?

6 Q. Coming by -- well, in November.

7 A. When he come to my house?

8 Q. Yes, ma'am.

9 A. Yes, he walked in my house. I thought it was one of my
10 sons, but it was him, and he put his arm up on the fire
11 board like that and he had the gun on his side and
12 everything and he was just talking and everything and he
13 just said he could kill me too. He was going to kill Rita.

14 Q. All right. Did he indicate why he was going to kill
15 Rita?

16 A. At that time he was just talking about her running
17 around and not -- just her being stupid was his words.

18 Q. That was his words was being stupid. Okay.

19 And at that time he threatened to kill her, is that
20 fair to say?

21 A. Yes.

22 Q. All right.

23 Did -- at any point in time did he ever tell you about
24 any threats he had made to Ms. Rita?

25 A. Right now, with all that happened at that time, I also

1 had a granddaughter and a sick son, I just -- I can't really
2 go on just everything. I can tell you about the phone call
3 and I know that he has told me different things about her.

4 Q. Okay. Well, do you think that looking at your
5 statement would help you? Did you write a statement to law
6 enforcement?

7 A. Yes, I did.

8 Q. Do you think taking a look at it would help to refresh
9 your memory about everything?

10 A. Yes, please.

11 Q. I'm going to show her the statement.

12 A. Can I get my glasses?

13 THE COURT: Are they in your pocketbook?

14 THE WITNESS: Right there.

15 THE COURT: Yes, ma'am.

16 A. (Witness reviewing document).

17 This tells me just like the things that I know when he
18 had my grandchild -- when Rita was watching my grandchild
19 for me to go to a funeral, I was called in the middle of the
20 funeral. I had to come and get her --

21 BY MR. KENDALL:

22 Q. Okay. Hold on.

23 A. -- because that --

24 Q. Hold on one second.

25 Could you tell us about any threats that he told you he

1 had made regarding a firearm?

2 A. Yes, he had them. He said he was going to use them.

3 Q. All right. Did he ever say anything about pointing
4 them at Rita, or anything like that?

5 A. Yup.

6 Q. All right. What did he say about that?

7 A. He said he just sits and points at her.

8 Q. Okay. Did he ever say anything about pointing it at
9 her at night?

10 A. Yup.

11 Q. What did he say?

12 A. He said he had laid there in the bed at night and he
13 had a gun pointed to her head, and he said while she was
14 sleeping she would never know it, he could blow her head
15 right off her shoulders and she would never know it.

16 Q. All right. Now, when did he make those statements?

17 A. Again, I cannot tell you what time, because I was going
18 through a lot.

19 Q. Okay. Was it around the same time as he came by, came
20 by the house and threatened to kill her?

21 A. I would -- yeah.

22 Q. And I understand it's been four and a half years ago.
23 We are not looking for an exact date. We are just looking
24 for --

25 So a couple months on either side?

1 A. Yeah.

2 Q. All right. Were there any other times in the --
3 well --

4 (Off the record).

5 (Back on the record).

6 BY MR. KENDALL:

7 Q. Please answer any questions Mr. Pruett may have.

8 MR. PRUETT: One moment, Your Honor. Thank you.

9 (Off the record).

10 (Back on the record)

11 CROSS EXAMINATION BY MR. PRUETT:

12 Q. So that conversation, that threat you are relating
13 occurred in November of 2013, correct?

14 A. If that's the date I give you, yes, I cannot remember.

15 Q. Okay. I was just reading from your statement is all.

16 A. Okay. Is if it's on the paper, it's true.

17 Q. Okay.

18 That was 2013 that he had come by your home, correct?

19 A. Yes.

20 Q. All right. That's all I have. Thank you.

21 THE COURT: Any redirect into what he went into?

22 MR. KENDALL: No, sir, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down.

24 Watch your step as you are stepping down.

25 THE WITNESS: Can I leave?

1 THE COURT: Any reason why the witness cannot be
2 excused?

3 MR. KENDALL: No, sir, she can leave.

4 MR. PRUETT: No.

5 THE COURT: Yes, ma'am, you may be excused as
6 well.

7 Is the State ready to call its next witness?

8 MR. KENDALL: We are, Your Honor.

9 The State would call Mark Hutchinson at this time.

10 THE COURT: Sir, just come right up here and let
11 the clerk swear you in.

12 THE CLERK: Please raise your right hand.

13 MARK HUTCHINSON, having been first duly sworn,
14 testified as follows:

15 THE WITNESS: Yes.

16 DIRECT EXAMINATION BY MR. KENDALL:

17 Q. How are you, sir?

18 A. I'm doing great.

19 Q. Could you please state your name for the record?

20 A. Yeah, Mark Hutchinson.

21 Q. Mr. Hutchinson, where are you currently employed?

22 A. Snack Time Foods.

23 Q. And how long have you been at Snack Time Foods?

24 A. I have been at Snack Time Foods since 2008.

25 Q. Okay. And were you working there in 2014, in June --

1 or excuse me, in 2013-2014?

2 A. Correct.

3 Q. All right. And during that time did you know Rita
4 Pennington?

5 A. Yes.

6 Q. And how did you know Ms. Pennington?

7 A. She worked the production line for me.

8 Q. Okay. What was her responsibilities working on the
9 production line?

10 A. As the -- we manufacture biscuit sandwiches and as the
11 biscuits come down out of the slicer, then we had five to
12 seven people on one line and they would pick up the top of
13 the biscuit and place meat in there and let it go on down to
14 the wrapper and that was her -- one of her responsibilities.

15 Q. Okay. While she was there, did you ever see Dean
16 Pennington?

17 A. Yes, sir.

18 Q. And where would you see Dean?

19 A. Multiple places. I have seen him hide out behind the
20 dumpster. We had the dumpster in there and he would park
21 his pickup truck behind the dumpster and keep an eye on the
22 building, and then seen him inside the building at the
23 flaps.

24 Q. All right. When you say at the flaps, what are you
25 referring to as the flaps?

1 A. When you come in the side production door that the
2 employees enter, you can walk right into the shipping and
3 receiving department. And then we have a separated wall
4 with plastic curtains to separate the two and that's where
5 the curtains are going into the production room.

6 Q. Okay. And what would you do when you all saw him
7 hanging out there?

8 A. Dale approached him and told him he would have to
9 leave.

10 Q. Okay. Did you ever see him -- how often would you see
11 him out in the parking lot?

12 A. He would be in the parking lot quite often.

13 Q. Okay. Now, the reason -- Ms. Pennington was fired in
14 January of 2014. Does that sound correct?

15 A. Correct.

16 Q. Is that the end of seeing Dean at that point?

17 A. No, Dean come in afterward to try to find out why she
18 was terminated.

19 Q. All right. Were you present for that?

20 A. Yes.

21 Q. And how did he -- how did y'all respond? Did you tell
22 him why she was terminated?

23 A. No, sir, that's confidential information.

24 Q. And how did he respond when you would not tell him?

25 A. You could tell he was angry, but, you know, we

1 couldn't -- we couldn't revolve that information. You know,
2 that's between, you know, the company and the employee.

3 Q. Okay. Did he make any threats or say anything in
4 person there?

5 A. Not to myself, no.

6 Q. Okay. And do you recall how long after she was fired
7 that he came in, approximately?

8 A. I would say approximately two to three week period.

9 Q. Okay. This would have been January, end January of --

10 A. Mid to the end of January, yeah.

11 Q. All right. Did he come with her, or did he come by
12 himself?

13 A. By himself.

14 Q. Okay. All right.

15 And you said that when you refused to give that
16 information he got upset?

17 A. Yes.

18 Q. Okay. And that was with you? Were you present for
19 that?

20 A. I was up front, yes.

21 Q. Please answer any questions Mr. Pruett may have.

22 MR. PRUETT: No questions.

23 THE COURT: Thank you, sir. You may step down.
24 Watch your step as you are stepping down, sir.

25 Is the State ready to call its next witness?

1 MR. KENDALL: Yes, sir, Your Honor.

2 The State would call Vicki Teague at this time.

3 THE CLERK: Please raise your right hand.

4 VICKI TEAGUE, having been first duly sworn,
5 testified as follows:

6 THE WITNESS: I do.

7 DIRECT EXAMINATION BY MR. KENDALL:

8 Q. Could you please state your name for the record?

9 A. Vicki Teague.

10 Q. And Ms. Teague, where are you currently employed?

11 A. First Franklin Financial.

12 Q. Back in December of 2013, January of 2014, where were
13 you employed at that time?

14 A. Snack Time Foods.

15 Q. What were your responsibilities at Snack Time Foods?

16 A. I was the H.R. manager.

17 Q. And as H.R. manager what types of things did you do?
18 What kind of things did you handle?

19 A. Time, attendance, policies, procedures, customer
20 complaints, because I also did customer service, and
21 employee complaints and problems.

22 Q. Okay. And during that time did you know Rita
23 Pennington?

24 A. Yes, I did.

25 Q. For most of her employment did you have any problems

1 with her at all?

2 A. No.

3 Q. But she was ultimately terminated, correct?

4 A. Yes.

5 Q. And could you just kind of describe as the H.R. what
6 happened in that situation?

7 A. Yes. We had a no tolerance sexual harassment policy.

8 I did not witness it, but we had several employees that
9 witnessed circumstance between Rita and Matt. Rita
10 inappropriately touched Matt and he came and also made that
11 complaint to me.

12 Q. Okay. And so you said you all had a zero tolerance
13 policy for any kind of sexual harassment?

14 A. Yes.

15 Q. All right. And because of that, when was Rita
16 officially let go?

17 A. It was the first part of January 2014.

18 Q. Okay. Do you know when the act itself occurred? Was
19 it before that?

20 A. It was a week before that, I believe. It took a couple
21 of days for all the information to come through.

22 Q. Okay. And once she was --

23 Did you ever see Dean Pennington there?

24 A. Yes, I did.

25 Q. What would Dean Pennington be doing?

1 A. The first few times that we saw him he would be going
2 through her vehicle --

3 Q. Okay.

4 A. -- looking under the seats. You could tell he was
5 doing a very thorough search of her vehicle.

6 Q. Okay. And following her termination did you have any
7 interaction with him?

8 A. A couple of times.

9 He did come to the office one time demanding to know
10 why she was terminated. By law we cannot give that
11 information out. That is confidential information.

12 He waited a few days after that and he called me back
13 and he demanded to know why she was terminated and I told
14 him again that I would not and could not give him that
15 information, and he proceeded to tell me that he would find
16 out one way or the other, even if he had to come and blow me
17 away.

18 Q. Okay. Did you report that information to anyone?

19 A. Mark Hutchinson, and I did tell Dean that if he came on
20 the property, that I would have him arrested.

21 Q. Okay. So how would you characterize Mr. Pennington's
22 reaction overall to her firing?

23 A. Extremely angry.

24 Q. Okay.

25 MR. KENDALL: Nothing further, Your Honor.

1 CROSS EXAMINATION BY MR. PRUETT:

2 Q. He didn't know why she was fired?

3 A. No, sir, he did not.

4 Q. You wouldn't tell him?

5 A. No.

6 Q. All right. Did you report that to the police what you
7 just testified to?

8 A. No, I didn't.

9 MR. PRUETT: That's all I have. Thank you.

10 THE COURT: Any redirect limited to what he went
11 into?

12 MR. KENDALL: I just wanted to clarify two things.

13 THE COURT: Limited to what he went into.

14 MR. KENDALL: Yes, sir.

15 REDIRECT EXAMINATION BY MR. KENDALL:

16 Q. The first is Mr. Pruett asked you if you called the
17 police about any threat, or you told the police, and you
18 said no. You actually did tell them that when they
19 interviewed you as a part of this, is that correct?

20 A. Yes, sir.

21 Q. It just wasn't contemporaneous to when it happened, is
22 that fair to say?

23 A. Right.

24 Q. This is not something that you just made up today?

25 A. No, sir. No, sir. I believe it was Mr. Fowler,

1 Detective Fowler, that I spoke with.

2 Q. Okay.

3 And the second thing that Mr. Pruett asked if you
4 knew -- if he knew she why she was fired. That wasn't
5 something that you told him? He had found out from other
6 sources, is that correct?

7 A. Exactly.

8 MR. KENDALL: Nothing further, Your Honor.

9 THE COURT: Thank you, ma'am. You may step down.
10 Watch your step as you step down.

11 Any reason why the witness could not be excused?

12 MR. KENDALL: No, sir, Your Honor.

13 MR. PRUETT: No, sir.

14 THE COURT: Thank you, ma'am. You may be excused
15 as well.

16 Is the State ready to call its next witness.

17 MR. KENDALL: Yes, sir, Your Honor.

18 The State would call Matthew Alexander.

19 THE COURT: Sir, just come on up here and let the
20 Clerk of Court swear you in.

21 THE CLERK: Please raise your right hand and place
22 your left hand on the Bible.

23 MATTHEW ALEXANDER, having been first duly sworn,
24 testified as follows:

25 THE WITNESS: Yes.

1 DIRECT EXAMINATION BY MR. KENDALL:

2 Q. Could you please state your name for the record?

3 A. Matthew Alexander.

4 Could I get some water?

5 Q. Yes, sir.

6 Could you please state your name for the record?

7 A. Matthew Alexander.

8 Q. And Mr. Alexander --

9 A. Sorry, I'm nervous.

10 Q. That's all right.

11 Mr. Alexander, where are you currently employed?

12 A. I'm unemployed.

13 Q. Okay. And before we get into too much of your
14 testimony, I think you ought to be -- just kind of let the
15 jury know you have got it looks like a couple convictions
16 for burglary and -- burglary and petit larceny, is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. And those are crimes that happened in 2012, that
20 carry over a year, is that fair to say?

21 A. Yes. Yeah.

22 Q. Okay. All right.

23 Back to the actual case at hand.

24 At any point in time in your life did you work at Snack
25 Time Foods?

1 A. Yes.

2 Q. And when did you work there?

3 A. Like from 2013 until 2015.

4 Q. Okay. And during that time did you know Rita
5 Pennington?

6 A. Yes.

7 Q. And how did you know her?

8 A. A co-worker. Just -- I worked with her, beside her.

9 Q. Okay. And how was Rita? How was it when you talked to
10 her?

11 A. When I first met her?

12 Q. Uh-huh.

13 A. She was very timid and shy and like nervous.

14 Q. And how long did you work with her?

15 A. I would say probably a couple months. Two or three
16 months.

17 Q. Okay. And as y'all worked together, kind of describe
18 to me sort of how that relationship sort of formed.

19 A. I had to work on the line right across from her. We
20 had two lines, assembly lines --

21 Q. Uh-huh.

22 A. -- and I just -- my first words to her were "why are
23 you so quiet," like that, and that's how it started, and we
24 just started talking --

25 Q. Okay.

1 A. -- and we became real good friends.

2 Q. And is it fair to say a friendship sort of sparked off
3 of that?

4 A. Yes, sir.

5 Q. All right. And in your mind was anything that happened
6 on --

7 How old are you right now?

8 A. Thirty-three.

9 Q. And so you were in your twenties when this took place?

10 A. I was twenty-nine.

11 Q. Okay. And do you know approximately how old Ms.
12 Pennington was?

13 A. Around sixty, I think.

14 Q. Okay. So she was substantially older, is that fair to
15 say?

16 A. Yeah.

17 Q. And in your mind was any sort of -- anything romantic
18 happening or anything?

19 A. No, definitely not.

20 Q. Okay. What about in her mind? How -- what was sort of
21 going on?

22 A. I don't know. I didn't know the whole time until she
23 told me like --

24 You know, for a couple of months I looked at her like a
25 mother and I thought she looked at me like a son. I found

1 out that she thought something different.

2 Q. Okay. And when you say thought something different, is
3 it fair to say and her reactions that she had sort of
4 experienced a romantic feeling for you?

5 A. Yes, definitely.

6 Q. Okay. And this ultimately culminated with her being
7 terminated. Could you sort of describe what happened in
8 that case?

9 A. In -- what do you mean?

10 Q. The actual act that caused it.

11 A. Oh, yeah, we was going to lunch break and she run up
12 behind me and reached through here.

13 Q. You had --

14 A. The back of my leg, right up at my private area and
15 grabbed my private area and my leg.

16 Q. Okay. And were you the only one around, or --

17 A. I had some people around. Everybody was around.

18 Q. Okay. And was that kind of where things sort of
19 started off and she was ultimately let go after that?

20 A. Yes.

21 Q. Okay. And at any point in time was there actually a
22 romantic relationship between the two of y'all?

23 A. Definitely not.

24 Q. Okay. But it was kind of a friendship? Is that fair
25 to say that y'all talked pretty regularly?

1 A. Oh, yeah, we talked every day.

2 Q. Okay. And did you ever see her husband out at Snack
3 Time?

4 A. Yes.

5 Q. And where would he be?

6 A. Just different places. We got two parking lots. He
7 might be on the side parking lot. Sometimes he was at the
8 picnic bench when we went outside for a break, for lunch
9 break one time.

10 Q. Okay.

11 A. He was up there behind the trash can and parked out by
12 the bay door in the back.

13 Q. Okay.

14 A. Just sitting there.

15 Q. Did you ever see him come inside the building?

16 A. Yeah.

17 Q. Please describe what happened there.

18 A. Well, me and Rita was working on the line together and
19 she said "oh, God."

20 I was like "what"?

21 She said -- then I raised my head up and he was
22 standing back behind the flaps, the dust covers. He was
23 standing back there just staring.

24 Q. Okay. And so is it fair to say he was --

25 How did Rita get to work? Do you know that?

1 A. She drove.

2 Q. Okay. Separately from Mr. Pennington, or -- was he
3 ever at work? Did he have any reason to be there, as far as
4 you know?

5 A. Not that I know of.

6 Q. Okay. And so on multiple occasions you saw him just
7 hanging out, sort of lingering around, sort of watching you
8 and Rita, is that fair to say?

9 A. Yes, sir.

10 MR. KENDALL: Nothing further, Your Honor.

11 MR. PRUETT: No questions, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 Watch your step as you are stepping down.

14 Any reason why this witness cannot be excused?

15 MR. KENDALL: No, sir, Your Honor.

16 MR. PRUETT: No.

17 THE COURT: Is the State ready to call their next
18 witness?

19 MR. KENDALL: Yes, sir, Your Honor.

20 At this time, Your Honor, the State would call
21 Scarlett -- hold on a second.

22 THE COURT: If y'all want to stand up and stretch
23 your legs.

24 (Off the record).

25 (Back on the record).

1 MR. KENDALL: Your Honor, at this time the State
2 would call Scarlett Pennington.

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

5 SCARLETT PENNINGTON, having been first duly sworn,
6 testified as follows:

7 THE WITNESS: I do.

8 DIRECT EXAMINATION BY MR. KENDALL:

9 Q. Could you please state your name for the record?

10 A. Scarlett Pennington.

11 Q. Okay. And Ms. Pennington, do you know the defendant
12 Dean Pennington?

13 A. I do.

14 Q. And how do you know Dean?

15 A. I was married to his youngest son.

16 Q. And what was his youngest son's name?

17 A. Riker.

18 Q. Okay. And we kind of touched on this in the past. Is
19 Riker living any more?

20 A. No.

21 Q. Okay. And over the course of your marriage did you
22 know Dean and Rita Pennington?

23 A. I did.

24 Q. Okay. And did you interact with Rita very much?

25 A. I did.

1 Q. And are you familiar with her being terminated from
2 Snack Time, the kind of circumstances around that?

3 A. Yes.

4 Q. Could you please kind of explain to the jury what took
5 place at that time with regard to Dean?

6 A. He thought that she was having an affair. He was upset
7 about it. She was fearful.

8 Q. Okay. And did he ask you to do anything with regards
9 to Snack Time? Did Dean ask you to do anything?

10 A. Yes, he did.

11 Q. And what did he ask you to do?

12 A. We were at their house, at Dean and Rita's, and he
13 asked me to go with her to pick up her last check.

14 Q. Okay.

15 A. And he wanted us to bring back a note stating why she
16 was fired.

17 Q. He wanted his wife to bring back a note indicating why
18 she was fired?

19 A. Yes.

20 Q. Did it seem as he was doing this out of concern for
21 where she was wrongly terminated?

22 A. No, he thought that she had been having an affair and
23 he wanted basically, I guess, written proof.

24 Q. Okay. And did you all get written proof?

25 A. No, sir.

1 Q. What -- what happened when you went there, when you
2 went to Snack Time?

3 A. We went up -- we went in and there is an office kind of
4 to your left. That's where we stood and Rita asked for her
5 check stub. She was talking with the woman and they
6 discussed -- Rita told her that she needed a note --

7 MR. PRUETT: Your Honor, I object as far as it
8 concerning getting into what Ms. Pennington did.

9 THE COURT: I would sustain the objection.

10 MR. KENDALL: Okay.

11 BY MR. KENDALL:

12 Q. Let me ask you this. When you went there, were you
13 actually ever given a note by anybody at Snack Time?

14 A. No.

15 Q. And did you hear the explanation from Snack Time why
16 she was fired?

17 A. Yes.

18 Q. Did you all report that explanation to Dean?

19 A. No.

20 Q. What did you -- what did you -- what did you do
21 instead?

22 A. Made up a lie.

23 Q. Okay. What did you tell -- what did you tell Dean
24 happened?

25 A. I told him that she had bumped into somebody and called

1 him a bad name and that's why she was terminated.

2 Q. Okay. And is that why she was, in fact, terminated?

3 A. No.

4 Q. That's just something that y'all told Dean?

5 A. Yes.

6 Q. And why did you tell Dean that?

7 A. Rita was scared.

8 Q. Okay. Did you have the opportunity to observe her
9 before she was fired from Snack Time?

10 A. Yes.

11 Q. What about after she was fired from Snack Time?

12 A. Yes.

13 Q. And how did she appear -- how did she appear? What was
14 the difference in how she appeared after Snack Time?

15 A. She was very fearful and cried a lot.

16 Q. Okay. That's after she was fired from Snack Time?

17 A. Yes, after she was fired.

18 Q. Please answer any questions Mr. Pruett may have.

19 CROSS EXAMINATION BY MR. PRUETT:

20 Q. I had a hard time hearing you.

21 What was the reason that you gave that she was
22 terminated to Dean?

23 A. That she bumped into someone and called him a name.

24 Q. And do you remember being present with Rocky when Dean
25 has fired shots?

1 A. Yes.

2 Q. Is there any reason why you never had mentioned that
3 before today?

4 A. I -- it happened frequently, so --

5 Q. Well, you were interviewed extensively by the sheriff's
6 office?

7 A. Yes.

8 Q. And obviously prior to today, and you testified on
9 Monday, and just now for the first time that you ever
10 mentioned?

11 A. This is the first time that I have been asked.

12 Q. So you were asked about it back in 2014 by Detective
13 Fowler. You didn't mention it then, correct?

14 A. I gave my statement on that day.

15 Q. Okay. You didn't mention it then, Ms. Pennington?

16 A. I did not.

17 Q. Thank you very much.

18 THE COURT: Any redirect as to what he went into?

19 REDIRECT EXAMINATION BY MR. KENDALL:

20 Q. You just -- you testified it sort of happened
21 frequently. I just want to make sure we understand this.

22 How would you describe Mr. Pennington with firearms?
23 Was he a responsible gun owner?

24 MR. PRUETT: That's improper redirect what I was
25 asking her.

1 THE COURT: Narrow your question, if you would,
2 sir. Thank you.

3 BY MR. KENDALL:

4 Q. Did Mr. Pennington carelessly fire off guns?

5 A. He would shoot them.

6 Q. Okay.

7 A. I don't --

8 Q. And was this like a shooting range, or --

9 A. No.

10 Q. Okay. These were sort of around the house, is that --

11 A. Yes.

12 Q. -- fair to say?

13 Was this on some sort of predesigned course or
14 something like that?

15 MR. PRUETT: Again --

16 A. No, sir.

17 MR. PRUETT: -- my question was very limited and
18 very direct as to nondisclosures.

19 THE COURT: All right.

20 Any more questions of this witness? I'll allow
21 her to answer that question that she just answered.

22 BY MR. KENDALL:

23 Q. Oh, can you tell us about the incident when you heard
24 shots fired? Any of this would have happened before this?

25 A. There would be -- there are several times.

1 Q. Are there any in particular you can give us more detail
2 on?

3 A. There was one instance I was sitting in the house and a
4 gun went off.

5 There was one instance I was outside. He was pointing
6 out the window shooting down in the direction where we were.

7 I mean --

8 Q. You said a gun went off. Did it accidentally go off,
9 or is it something that you saw?

10 A. I wasn't in the room. I just know that it was shot.

11 Q. Okay. Okay.

12 And these were close in time to when -- they are a
13 couple months before the murder took place?

14 A. Yeah.

15 Q. Okay. Was anybody hurt or anything by any of this
16 stuff?

17 A. No.

18 Q. All right. And --

19 MR. KENDALL: Nothing further, Your Honor.

20 THE COURT: Thank you, ma'am. You may step down.
21 Watch your step as you are stepping down.

22 Lawyers approach.

23 (Whereupon, the lawyers approached the bench for
24 an off-the-record discussion)

25 THE COURT: We are going to take a brief recess.

1 I need to remind you not to have any discussions
2 among yourselves during the break about anything involved in
3 the case. You can talk to each other, but just don't talk
4 about the case.

5 I'm going to let you go with the bailiff. We will
6 take a short recess.

7 (The following takes place outside the presence of
8 the jury panel).

9 (Whereupon, proceedings were recessed).

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Lawyers approach a moment.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion).

14 THE COURT: All right, we will go back on the
15 record.

16 We had a bench conference during the examination
17 of Mr. Pennington that was not recorded, so the lawyers are
18 going to summarize the bench conference for us.

19 MR. PRUETT: Well, Your Honor, what was at issue
20 was from the testimony that was presented on Monday, my
21 recollection was, and I have read the transcript --

22 THE COURT: Just of the bench conference.

23 MR. PRUETT: Yes, sir.

24 Well, there were two incidents that he -- three
25 incidents that he testified to this afternoon and the third

1 incident was one where seemingly was the same incident
2 testified to twice that the court had not ruled on. And
3 because there was some confusion as to there being two or
4 one incidents, I objected to the second one as being more or
5 less the same or combined with the first one and Your Honor
6 noted that objection and sustained it.

7 MR. KENDALL: That's correct. I think he was -- I
8 tried to kind of explain it I think on Monday and I don't
9 think -- I think he was actually asked about it anyway and
10 it all sort of came in in this one.

11 MR. PRUETT: It did.

12 MR. KENDALL: And so I don't think that it --

13 MR. PRUETT: I would say that, too, Your Honor,
14 when Scarlett Pennington testified, I made the, and I'll put
15 this on the record, strategic choice to question her about
16 that.

17 THE COURT: Okay.

18 MR. KENDALL: Anything on that I think would be --

19 THE COURT: All right. Lawyers want to approach
20 one more time?

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 THE COURT: All right. Let's bring the jury in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Is the State ready to call their next
2 witness?

3 MR. KENDALL: We are, Your Honor.

4 The State would call Virginia Blanton.

5 THE COURT: I'm sorry, say that name one more
6 time.

7 MR. KENDALL: Virginia Blanton, Your Honor.

8 THE COURT: Ma'am, just come right up here and let
9 the clerk swear you in.

10 THE CLERK: Please raise your right hand and put
11 your left hand on the Bible.

12 VIRGINIA BLANTON, having been first duly sworn,
13 testified as follows:

14 THE WITNESS: Yes.

15 DIRECT EXAMINATION BY MR. KENDALL:

16 Q. Could you please state your name for the record, ma'am?

17 A. Virginia Blanton.

18 Q. Ms. Blanton, it's all right. Just take a deep breath.
19 Do you need some water?

20 A. No, I'm okay.

21 Q. Okay. All right.

22 Ms. Blanton, where are you currently employed?

23 A. Hamrick Distribution.

24 Q. How long have you been at Hamrick's?

25 A. Fifteen -- fourteen years.

1 Q. Fourteen years.

2 And were you working there in 2014?

3 A. I was.

4 Q. And during that time did you know Rita Pennington?

5 A. I did.

6 Q. And how did you know Rita?

7 A. I worked with her every day.

8 Q. Okay. And what were your responsibilities there?

9 A. Inspector.

10 Q. Okay. What does an inspector do?

11 A. You just look at the clothes to make sure there ain't
12 no holes in them, or dirt, or something.

13 Q. All right. And what would Rita do? What was her job?

14 A. She pushed lines.

15 Q. Okay. When you say pushed lines, what do you mean by
16 that?

17 A. She pushes the clothes out from where they hang them.
18 She pushed them to us, the inspectors.

19 Q. Okay. And how long did you and Rita work together for,
20 I guess, that time in 2014?

21 A. Probably about three or four years.

22 Q. Now, she worked at Hamrick's a couple of times, is that
23 correct?

24 A. Two times.

25 Q. Two times. Okay.

1 A. The first time I worked with her, I don't know how
2 long. I can't remember how long.

3 Q. Okay. What about the second time, just a few months?

4 A. Second time, yeah.

5 Q. Okay. Now, was Rita one to hang out around Hamrick's
6 after the shift was over?

7 A. No.

8 Q. What would she do? What was her sort of behavior when
9 the shift was over?

10 A. She -- she -- she would leave and go home. She had to
11 call him before she went.

12 Q. Okay. So before she went, she would call home?

13 A. Every day.

14 Q. Every single day she did?

15 A. (Shaking head yes).

16 Q. Would she ever hang out in the parking lot?

17 A. No.

18 Q. Hang out with people or anything like that?

19 A. No.

20 Q. All right. So the shift gets over, she has to call
21 home and then she goes to her car and gets out of there?

22 A. She would get out there faster than anybody.

23 Q. Okay. And how did -- how did Rita look? Did you --
24 were you working with her before she died?

25 A. Yeah.

1 Q. All right. And it's very important you can't say
2 anything that Rita said, but how did she appear?

3 A. She was -- she was -- she acted like she was nervous
4 all the time and she just -- like she was down and out,
5 depressed.

6 Q. Okay. All right.

7 Please answer any questions Mr. Pruett may have.

8 MR. PRUETT: I have no questions.

9 THE COURT: Thank you, ma'am. You may step down.
10 Watch your step as you step down.

11 Any reason why the witness could not be excused?

12 MR. PRUETT: No.

13 THE COURT: Mr. Kendall, any reason?

14 MR. KENDALL: No, sir, Your Honor.

15 THE COURT: Thank you, ma'am. You may be excused.

16 The State may call their next witness.

17 MR. KENDALL: Your Honor, the State would call
18 Kathy McMurray.

19 THE CLERK: Raise your right hand, your left hand
20 on the Bible, please.

21 KATHY MCMURRAY, having been first duly sworn,
22 testified as follows:

23 THE WITNESS: I do.

24 DIRECT EXAMINATION BY MR. KENDALL:

25 Q. Ma'am, could you please state your name for the record?

1 A. Kathy McMurray.

2 Q. And Ms. McMurray, where are you employed?

3 A. I'm retired. I retired from Hamrick's.

4 Q. Okay. How long did you work at Hamrick's?

5 A. Thirty-two years.

6 Q. Thirty-two years?

7 And before you retired -- what year did you retire?

8 A. I'm sorry?

9 Q. What year did you retire?

10 A. 2016.

11 Q. 2016?

12 A. Yes.

13 Q. And so were you working with Rita Pennington?

14 A. Yes.

15 Q. And I understand she worked at Hamrick's a couple of
16 times, is that correct?

17 A. She did.

18 Q. Okay. Now, I would like to talk to you about kind of
19 two things.

20 The first is the day before she died, do you all recall
21 what you were doing that day?

22 A. Opening boxes, taking garments out of boxes and putting
23 them on trollies.

24 Q. Was it a day off at all?

25 A. It was. We normally worked five days, but there was

1 times that we were slow and they were off on Fridays.

2 Q. Okay. And was Rita off Friday?

3 A. If we didn't have work she was.

4 Q. Okay. I just want --

5 Do you remember giving a statement to the police on
6 this?

7 Maybe this will help refresh your memory.

8 MR. PRUETT: Your Honor, she hadn't said she
9 couldn't remember yet.

10 MR. KENDALL: I agree.

11 THE COURT: Go ahead.

12 BY MR. KENDALL:

13 Q. Do you recall specifically the work schedule on
14 June 20th, 2014?

15 A. Rita was working, yes.

16 Q. Okay. Rita was working.

17 Was other people not working at the plant at that time?

18 A. They may have been a section off, but --

19 Q. Okay.

20 A. -- the majority of them were working, yes.

21 Q. Okay. So that was a work day that y'all had? Rita was
22 in to work that day, is that fair to say?

23 A. Uh-huh.

24 Q. All right. And did you ever have any contact with
25 Rita -- excuse me, with Dean Pennington?

1 A. That she was being what?

2 Q. Did you ever have any contact with Dean Pennington?

3 A. Oh, yes, he called me on the phone.

4 Q. All right. What did he talk to you about?

5 A. He just told me that Rita was -- well, he called her a
6 lot of ugly names, that she was basically trash. That's my
7 words. That wasn't -- I can't say that's what he said, and
8 he just thought I ought to know what kind of person I had
9 working for me.

10 Q. Okay. Was this a soliciting call? Did you ask him to
11 tell you his thoughts about Rita, or anything like that?

12 A. Uh-uh.

13 Q. How did you know it was Dean?

14 A. He told me it was him.

15 Q. Okay. And how long before she died did this happen?

16 A. I couldn't tell you that. I can't remember.

17 Q. Okay. Was it the first time she worked there or the
18 second time?

19 A. The second time.

20 Q. Okay. So sometime between January and June of 2014,
21 somewhere in there?

22 A. Yes.

23 Q. Please any questions Mr. Pruett may have.

24 MR. PRUETT: Can we just have a minute, Your
25 Honor?

1 (Off the record).

2 (Back on the record).

3 CROSS EXAMINATION BY MR. PRUETT:

4 Q. I know it's been four years, Ms. McMurray, a long time
5 since you were asked to give a statement to the police. Did
6 you have a chance to read this before you came to court this
7 afternoon?

8 A. No.

9 Q. Nobody showed it to you?

10 A. (Shaking head no).

11 Q. Do you recall in your written statement where you
12 stated that Dean had not called you?

13 A. Excuse me?

14 Q. Do you recall in your statement where you stated to I
15 guess Richard Burgess that Dean had not called you?

16 A. (Shaking head no).

17 Q. Well, let me show you this and see if you can remember,
18 okay?

19 THE COURT: Ma'am, if you would, I need for you to
20 give verbal responses. Shakes and nods of the head --

21 THE WITNESS: Okay.

22 THE COURT: -- are difficult.

23 BY MR. PRUETT:

24 Q. And I know it's been four years. I understand that.
25 Is that your signature, Ms. McMurray?

1 A. Yes, it is.

2 Q. And in your statement you referenced Rita had asked you
3 about Dean calling and I said no?

4 A. Rita asked --

5 MR. KENDALL: Your Honor, if he's going to go into
6 this, if we could put the statement into evidence, I think
7 that's --

8 MR. PRUETT: Well --

9 A. You said --

10 THE COURT: Hang on. Wait, wait.

11 A. I told --

12 THE COURT: Ma'am, ma'am, ma'am.

13 A. Okay.

14 THE COURT: They are making an objection. I need
15 to do my part.

16 A. Okay.

17 THE COURT: Let him ask the question first to get
18 the responses and then we will address admitting the
19 statement through redirect.

20 BY MR. PRUETT:

21 Q. He may have called you. I'm not saying that he didn't,
22 okay, but you say here Dean -- she referenced and said I
23 said no, Dean had not called. But that's incorrect, he did
24 call you?

25 A. Dean did call me.

1 Q. Okay.

2 MR. PRUETT: That's all I have.

3 A. And it was put on file at Hamrick's too.

4 Q. All right. Thank you.

5 MR. PRUETT: Okay. That's all I have. Thank you.

6 MR. KENDALL: May we approach, Your Honor?

7 THE COURT: Yes.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: Ladies and gentlemen, I'm going to
11 need for you to retire back. I have a matter of law that I
12 have to address with the lawyers. Don't have any
13 discussions amongst yourselves involving the case.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Yes, sir, Mr. Kendall, you --

17 MR. KENDALL: Yes, sir, Your Honor.

18 Mr. Pruett made reference to a statement that
19 Kathy McMurray made, and I think the testimony as put is
20 giving an incomplete account of what took place. I would
21 like to be able to enter in the entire statement. Prior to
22 her testimony I told the witnesses they couldn't say what
23 Rita said. I will read the statement to her.

24 "Rita Pennington worked for me at Hamrick's. We
25 worked yesterday. She asked me if her husband Dean had

1 called me and I said no. She said that he was pressing why
2 were you working Fridays because you are usually off
3 Fridays. She said she thought he had followed her at work.
4 He was real controlling over her. I know that he had told
5 Laquita Ellis she couldn't hear real good because Dean had
6 shot close to her ears. She always seemed scared."

7 The part I'm interested in, I think that
8 conversation is reasonably correct is about whether or not
9 Dean Pennington called to ask if they were working Fridays,
10 not did Dean Pennington ever call. And I think to cut it
11 off right there is -- I mean, simply to leave out that last
12 sentence doesn't give any context to that conversation.

13 Now, I understand, and the witnesses I think have
14 done a pretty good job of it today, have not been going into
15 things Rita told them. There is lots of that and nobody
16 has touched on that, but in this case --

17 THE COURT: I would let you publish that part of
18 the statement. I would not let you admit the actual
19 statement. I mean, you can publish it through this witness
20 by asking her to read that part of the statement that she
21 gave to the police.

22 MR. KENDALL: Okay. Yes, sir. We would -- I
23 guess we would ask to be able to read it and explain what
24 she meant and I was going to cut it off, if it's okay with
25 the court, and I think it's consistent with the court's

1 decision, that Fridays.

2 MR. PRUETT: Judge, this is not what I asked. I
3 was very careful how I phrased the question, because the way
4 the sentence reads "she asked me if her husband Dean had
5 called me and I said no," and I allowed her an opportunity
6 to explain that and say "well, he had called me." And to go
7 beyond that and getting in this other stuff is not --

8 THE COURT: We're not going to get into the other
9 stuff. The other stuff runs contrary to what I understand
10 the case law is on these issues.

11 MR. PRUETT: I think maybe at most the first three
12 sentences, "Rita worked for me at Hamrick's. We worked
13 yesterday. She asked me if her husband Dean had called and
14 I said no."

15 MR. KENDALL: That mischaracterizes the
16 conversation. To just leave it off right there looks like
17 they're having a separate conversation about a very specific
18 time period about whether or not he had called to find out
19 if they were working Fridays. To leave it at that, you
20 know --

21 THE COURT: All right. I'll let you -- I'll let
22 you recross her on whether or not it was about Fridays or
23 whether or not he had called at all, because I think that he
24 had asked -- he had established that. You had crossed her
25 to get the jury to believe that he had never called or that

1 she had given an inconsistent statement here on the witness
2 stand compared to what it was in the statement. So I think
3 Mr. Kendall has the right to be able to clarify.

4 MR. PRUETT: All right.

5 THE COURT: But don't go -- you could not get her
6 to go into the other statements that Rita had said.

7 MR. KENDALL: No, sir, and I would -- if it's all
8 right, I'll just -- what I was going to cut her off Fridays.
9 I was just going to have her read the statement. I could
10 highlight it just the first I guess --

11 MR. PRUETT: Just read it. Just read it to her
12 and say is that what it says.

13 MR. KENDALL: That's fine with me. I just want to
14 make sure I don't go over the line.

15 THE COURT: Let bring the jury back in.

16 (The following takes place in the presence of the
17 jury panel)

18 MR. PRUETT: Your Honor, I would --

19 Your Honor, I'm still on cross-examination. Mr.
20 Kendall objected and maybe I can clarify it.

21 BY MR. PRUETT:

22 Q. The question I was asking in your statement, and we can
23 read it together. I don't want to just read it to you, Ms.
24 McMurray.

25 "Rita Pennington worked for me at Hamrick's. We worked

1 yesterday. She asked me if her husband Dean had called me,
2 and I said no. She said that she was questioning why we are
3 working. He was questioning why we were work on Friday,
4 because we were usually off Fridays."

5 A. Okay. That's true.

6 Q. Okay. And I'm sorry --

7 A. But --

8 Q. But he calls another time?

9 A. But -- yes.

10 Q. But that's not mentioned in this statement?

11 A. Okay. Well, I -- I didn't know which time you were
12 talking about.

13 Q. Yeah, and I didn't know which time you were talking
14 about. All right. Thank you.

15 THE COURT: Any redirect on what he went into?

16 REDIRECT EXAMINATION BY MR. KENDALL:

17 Q. I guess just to be clear, in your statement you were
18 talking about whether or not he had called about working
19 that Friday, is that correct?

20 A. In my statement, yes.

21 Q. And there was another time he also called and said bad
22 things about Rita?

23 A. Yes, and that's when I said I couldn't tell you when he
24 called then.

25 Q. Okay.

1 MR. KENDALL: Nothing further, Your Honor.

2 THE COURT: Any reason this witness cannot be
3 excused?

4 MR. PRUETT: No, Your Honor.

5 THE COURT: Thank you, ma'am. Watch your step
6 when you step down. You may be excused as well.

7 Is the State ready to call their next witness?

8 MR. KENDALL: Yes, sir, Your Honor.

9 The State would call Judy Sparks.

10 THE CLERK: Raise your right hand and place your
11 left hand on the Bible.

12 JUDY SPARKS, having been first duly sworn,
13 testified as follows:

14 THE WITNESS: I do.

15 DIRECT EXAMINATION BY MR. KENDALL:

16 Q. Yes, ma'am, could you please state your name for the
17 record?

18 A. Judy Sparks.

19 Q. And Ms. Sparks, where are you currently employed?

20 A. Nippon Electric Glass.

21 Q. And what are your responsibilities there?

22 A. It's a new job I'm just starting.

23 COURT REPORTER: Could you please repeat that?

24 THE WITNESS: Nippon Electric Glass. It used to
25 be PPG.

1 THE COURT: Do you want to pull the microphone a
2 little bit closer to you. Thank you.

3 BY MR. KENDALL:

4 Q. And today was supposed to be your first day, correct?

5 A. Monday was supposed to be.

6 Q. All right. I won't keep you long.

7 Back in March of 2014 where were you employed?

8 A. Hamrick's.

9 Q. Okay. And what were your responsibilities during that
10 time?

11 A. I worked security. I was the supervisor.

12 Q. Okay. And in March of that year did you indicate -- or
13 excuse me, did you see Dean Pennington on the property?

14 A. Yes.

15 Q. What was he doing in March of that year?

16 A. He had came to get a set of keys out of Rita's car.

17 Q. Was it keys or cell phone?

18 A. Keys or a cell phone, I can't remember.

19 Q. Okay. All right.

20 And at that time did you let him in?

21 A. Yes.

22 Q. So at that point you were familiar with who he was?

23 A. (Shaking head yes).

24 Q. And based on that you allowed him to go in?

25 A. (Shaking head yes).

1 THE COURT: Ma'am, if you would, I need you to
2 give a verbal response. Shakes and nods of your heed don't
3 get taken down.

4 BY MR. KENDALL:

5 Q. Did you ever see Mr. Pennington again?

6 A. Yes.

7 Q. When was the next time that you saw Mr. Pennington?

8 A. June 21st.

9 Q. June 21st, or May 21st?

10 A. May 21st. I can't remember exact dates.

11 Q. Okay. Well, if at any time point in time you think
12 your statement would help you remember things, just let me
13 know and you can take a look at it.

14 A. Okay.

15 Q. It's not against the rules.

16 Then you will remember. It's very important to get it
17 right, okay?

18 And what happened on May 21st, 2014?

19 A. He came that morning. I got off at eight. He come in
20 a little after eight and he asked me if I was following
21 Rita, if I would let him know if somebody came in to pick
22 her up or drop her off or anybody that came at lunch to pick
23 her up. He offered to pay me twenty dollars for the
24 information. He said that she was a whore and prostitute on
25 the streets, he took her in and fed her, but you just

1 couldn't turn a whore into a housewife.

2 Q. Okay. This is something that he said to you on
3 May 21st, 2014?

4 A. Yes.

5 Q. Did he indicate why he wanted you to be spying on her?

6 A. He thought she was cheating on him.

7 Q. Okay. And how did you respond?

8 A. I told him I couldn't do that.

9 Q. Okay. Was he allowed on the property at any point
10 after that?

11 A. No, we banned him.

12 Q. Okay. Did you make any notations or anything?

13 A. I did. I posted a note at the guardhouse.

14 Q. Okay. So just to be clear, one month before she was
15 killed, on May 21st he came in and offered you money to spy
16 on her?

17 A. Yes.

18 Q. And he indicated she was a whore and couldn't turn a
19 whore into a housewife?

20 A. Yes.

21 MR. KENDALL: Nothing further, Your Honor.

22 CROSS EXAMINATION BY MR. PRUETT:

23 Q. So after May 21st did he come back?

24 A. No, sir.

25 MR. PRUETT: That's all I have.

1 THE COURT: Thank you, ma'am. You may step down.
2 Watch your step as you are stepping down.

3 Any reason why this witness cannot be excused?

4 MR. KENDALL: I have no objection, Your Honor.

5 MR. PRUETT: No.

6 THE COURT: Thank you, ma'am. You may be excused
7 as well.

8 MR. KENDALL: The State would call Myra Bafease.

9 THE CLERK: Raise your right hand and left hand on
10 the Bible.

11 MYRA BAFEASE, having been first duly sworn,
12 testified as follows:

13 THE WITNESS: I do.

14 DIRECT EXAMINATION BY MR. KENDALL:

15 Q. Could you please state your name for the record,
16 please?

17 A. Myra Bafease.

18 Q. Ms. Bafease, where are you currently employed?

19 A. Hamrick's.

20 Q. How long have you been at Hamrick's?

21 A. About twenty-two years.

22 Q. Okay. And were you at Hamrick's in May -- were you
23 working at Hamrick's in May of 2014?

24 A. Yes.

25 Q. And what were your responsibilities at that time?

1 A. I think I was a size checker then.

2 Q. Okay. Were you working with Rita Pennington?

3 A. Yes.

4 Q. Could you give us that title, your job duty again?

5 THE COURT: Job duty again?

6 THE WITNESS: Oh, I was a size checker. I'm
7 sorry.

8 THE COURT: I didn't understand. What is it?

9 THE WITNESS: Size checker.

10 THE COURT: Size stretcher?

11 THE WITNESS: Size checker.

12 THE COURT: Size checker.

13 THE WITNESS: I check size of clothes.

14 BY MR. KENDALL:

15 Q. What was Rita doing? Does she work with you or sort of
16 around you?

17 A. Well, sort of around me. She pushed the line of
18 clothes.

19 Q. Okay. And pushing the line of clothes, is that just
20 physically pushing the clothes down, is that --

21 A. Yeah, she pushed from the press and out to the
22 inspectors and stuff.

23 Q. Okay. And were you familiar with Rita?

24 A. Yes.

25 Q. And did you -- were you familiar with what kind of car

1 Rita drove and things like that?

2 A. Yes.

3 Q. And what did she usually drive?

4 A. Well, she -- she drove a Camry for awhile, and then she
5 had a small gold truck, and then she had a little red truck.

6 Q. Okay. All right.

7 And did you see her at work the day before she was
8 killed?

9 A. Yes.

10 Q. And what was she -- what was she doing the day before
11 she was killed? What happened? Do you see her -- when did
12 you see her that day?

13 A. She was driving the little red truck that day. I came
14 in -- I was at the red light at Hyatt Street and I seen the
15 Camry coming out of frontage road and I said well, Rita must
16 be driving the Camry today. And we pulled going into the
17 parking lot and the Camry pulled over at the guard shack,
18 and so I go on and I see the little red truck go in and
19 park. And I said well, she's driving the truck. That
20 wasn't Rita. And so she gets out and before I could get out
21 of my car and get parked she's done running into the
22 building.

23 Q. Okay. And so let's back up a second.

24 So you saw the Camry and they got the little red truck,
25 is that correct?

1 A. Yeah.

2 Q. And you saw a vehicle that day, it was a Camry make
3 it -- did he make it all the way to the guard shack, or did
4 he make it close to the guard shack?

5 A. Yeah, but they pulled in and they stopped at the guard
6 shack.

7 Q. And so the Camry never made it inside of the --

8 A. No, I never did see him come in. I went on in, so I
9 don't know what happened after that.

10 Q. And did you see who was driving the Camry?

11 A. I'm not really sure.

12 Q. Okay. So you couldn't see the driver or anything?

13 A. No.

14 Q. You saw the Camry?

15 A. I saw the Camry, yeah.

16 Q. And this was not allowed, is that fair to say?

17 A. Yeah.

18 Q. All right. And the red truck is the one Rita was
19 driving, is that correct?

20 A. Yeah.

21 Q. How far apart are the Camry and the red truck?

22 A. Well, she had done proceeded to get into the parking
23 lot. I think she had done got a good bit ahead of the
24 Camry, because I didn't see her until I got in the parking
25 lot.

1 Q. About how many minutes would you say? Are we talking
2 like less than a minute, or are we talking thirty minutes?

3 A. Less than a minute.

4 Q. Okay. So the Camry looks like the one she's driven in
5 the past?

6 A. Yeah.

7 Q. Turned away from the guard shack?

8 A. Yeah.

9 Q. Her red truck goes in ahead of time?

10 A. Uh-huh.

11 Q. And once she got there, how did she -- did she wait for
12 you to walk in together?

13 A. No, she ran in.

14 Q. Okay. Now, did you see her again that day at closing
15 time -- excuse me, at closing time? What happened at
16 closing time?

17 A. At closing time I was a few minutes getting out of
18 there and I was coming down the steps and she was just
19 leaving the parking lot and I said -- you know, to myself, I
20 said, you know, Rita, you are going to be in trouble because
21 she was a few minutes late leaving.

22 Q. Okay. So the day before she was killed you saw her
23 like running into work?

24 A. Yes.

25 Q. And then that night she was -- you know she left later

1 than she normally leaves?

2 A. Yes.

3 Q. Correct?

4 A. Right.

5 Q. Okay. Please answer any questions that Mr. Pruett may
6 have.

7 MR. PRUETT: No questions.

8 THE COURT: Thank you, ma'am. You may step down.

9 Any reason why this witness cannot be excused?

10 MR. KENDALL: No, sir, Your Honor.

11 MR. PRUETT: No, sir.

12 THE COURT: Thank you, ma'am. You may be excused
13 as well.

14 Is the State ready to call their next witness?

15 MR. KENDALL: If I could just have a second, Your
16 Honor. We may be able to --

17 (Off the record).

18 (Back on the record)

19 MR. KENDALL: If we could maybe take a five-minute
20 break, Your Honor?

21 And if I could approach.

22 THE COURT: Approach. The lawyers want to
23 approach.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion).

1 THE COURT: Ladies and gentlemen, I need to talk
2 to the lawyers so I will have you go to the jury room. Do
3 not have any discussions among yourselves about anything
4 involving the case. We'll get you back shortly.

5 (The following takes place outside the presence of
6 the jury panel)

7 (Whereupon, proceedings were recessed).

8 (Whereupon, proceedings were reconvened).

9 THE COURT: Are you ready to bring them back in?

10 MR. KENDALL: We are, Your Honor.

11 THE COURT: Are you going to rest?

12 MR. KENDALL: Yes, sir.

13 THE COURT: Okay. What I would do after you rest,
14 I would dismiss them for the day and we can go back on the
15 record on any administrative matters that we need to do
16 today.

17 MR. PRUETT: A D.V. motion?

18 THE COURT: If we have time.

19 Okay, bring them in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Yes, sir.

23 MR. KENDALL: Your Honor, the State rests at this
24 time.

25 THE COURT: Thank you, sir.

1 MR. PRUETT: Your Honor, at this time the defense
2 would move for a directed verdict of not guilty on the count
3 of murder. And, of course, the murder indictment would be
4 directed verdict of not guilty, the weapons charge would
5 naturally follow.

6 What I'm asking the court to do is to direct a
7 verdict of not guilty on the murder, but to allow the lesser
8 included offense of involuntary manslaughter to proceed to
9 the jury.

10 And my argument is that at issue I believe at this
11 juncture of the trial is whether the State has presented by
12 substantial evidence that a jury could find Mr. Pennington
13 guilty beyond a reasonable doubt of murder. And here we
14 have it's un-refuted, uncontradicted evidence there was a
15 shooting. A shot took place. A shot took place on the
16 morning of June 21st, but whether or not it was done with
17 malice aforethought or the act was intentional, the State
18 has, at best, only presented evidence that would allow the
19 jury to speculate as to whether or not the act was
20 intentional or not.

21 The quintessential element of the crime of murder
22 is that there be malice at the time the battery is inflicted
23 and that it be intentional. As I just noted, given the
24 surrounding circumstances, there has been a dearth of
25 evidence on the question of whether or not the act was

1 intentional or whether or not he acted with malice at the
2 time the shot was actually fired.

3 I would submit there is evidence, obviously, to
4 establish that he may have acted with criminal negligence or
5 recklessness to support a lesser-included offense on the
6 murder indictment, but on the murder count itself there's
7 not substantial evidence of malice aforethought or
8 intentionalness of the act to allow the case to go to the
9 jury on the count of murder.

10 MR. KENDALL: Your Honor, first with regard to
11 murder, it sounds like the parties are in agreement there
12 is, in fact, evidence a shooting took place by William
13 Pennington, that the shot killed Rita Pennington. At issue
14 is whether or not the mens rea requirement has been met.

15 As Mr. Pruett actually stated in his opening, the
16 State has the ability to use direct evidence to prove the
17 act. We are almost by definition required to use
18 circumstantial evidence.

19 I think in this case the record shows that
20 starting with the 911 call that a shot was fired. Mr.
21 Pennington reported, did not terminate that line. You
22 clearly hear an empty line.

23 When law enforcement shows up, he then starts
24 wailing as indicated as someone who is basically faking, I
25 believe as the officer put it.

1 You have heard substantial testimony from multiple
2 witnesses that Mr. Pennington at the time had threatened
3 Mrs. Pennington, a threat to her life. You also saw his
4 extremely nervous -- excuse me, dangerous behavior in
5 stalking her, showing up at places of work at multiple
6 locations, making threats to employees who failed to
7 indicate to him why, in fact, she had been terminated.

8 In addition, Your Honor, you also heard from two
9 witnesses testify that he had made threats to her regarding
10 this. You heard the testimony her need to call home before
11 she left. The day before this happened she appeared to ran
12 from the building, she ran away from the vehicle matching
13 the description of his, and that she left late the night
14 before she was killed.

15 In addition, you have Mr. Pennington's -- the
16 crime scene, you have Mr. Pennington moving the body
17 attempting to clean up the blood stains.

18 You also have, I think it's extraordinarily
19 important, Your Honor, inconsistent number of shells with
20 the shotgun. There were, in fact, seven shells found on the
21 bed and the shotgun only contained six. This would lead to
22 the conclusion that his statement is not true.

23 Moreover, I think that the haphazard sprayed
24 nature of his cleaning would suggest that he, in fact, was
25 not cleaning that shotgun, but, in fact, shot his wife. He

1 sprayed, you know, haphazardly with oil, disassembled the
2 shotgun and placed six shells on the bed, even though that
3 was, in fact, the wrong number. He failed to count for the
4 one that was in the hole.

5 I think based on the totality of this, Your Honor,
6 a reasonable jury could conclude. I think at this point we
7 just have a scintilla of evidence -- there is more than a
8 scintilla of evidence to suggest Mr. Pennington did, in
9 fact, willfully kill his wife, and we would ask for the
10 murder charge to go to the jury.

11 Well, there is also evidence that the shotgun was
12 used. I think we've heard from Dr. Ross, as well as the
13 firearms expert crime scene linking that shell that was
14 fired to that shotgun. His statement also indicates that he
15 used the shotgun.

16 THE COURT: Any reply?

17 MR. PRUETT: The standard is not just a scintilla
18 of evidence. It's whether or not there is substantial
19 evidence by which the jury could find the defendant was
20 guilty of attempted murder.

21 With that being said, again, I listened to Mr.
22 Kendall's recitation of the facts, and I would say at issue
23 of malice aforethought at the time of the shooting, because
24 the crime scene itself or the scene of the crime at the
25 residence there was no signs of struggle going on. There is

1 nothing to suggests that he intentionally did it or there
2 was something argument happening.

3 Again, it's everything that they thus far
4 presented, as I view it, and I know it's viewed in the light
5 most favorable to the State, but it still has to be
6 substantial evidence, would be consistent with an
7 unintentional act as opposed to an intentional act.

8 It's true that malice and intent, for that matter,
9 some cases may be state of mind that no one could ever know
10 for sure, but that being said, there is no evidence to again
11 support the idea that it was an intentional act.

12 He -- we're asking the jury to speculate, because
13 they don't know. They are saying look at all the
14 circumstances surround, which admittedly his conduct leading
15 up to it may not make him the best husband or maybe a good
16 person, but that's not what's he's being tried for. He's
17 being tried for whether or not he killed her intentionally.
18 And what they are saying is if it's also consistent with
19 that unintentional act, but we are going to ask you to
20 speculate as to whether or not it's actually murder.

21 MR. KENDALL: No, that's not what we are
22 suggesting, Your Honor. We are asking them to -- I think
23 that this is logically a false argument to suggest if you
24 can't say -- if the crime scene doesn't show what he was
25 thinking, you can't prove he was thinking it. I disagree

1 with that. We have established crime scene, where it
2 happened, and how it goes. The question for the jury is
3 whether or not did he do this intentionally or whether he
4 did this unintentionally. And looking at it, they have the
5 ability to look at all the evidence that's presented to them
6 over the last couple of days. I think that based on that,
7 the threats and -- the threats alone withstand a motion for
8 a directed verdict. His statements inconsistency with facts
9 that appeared there. The other law as observed nature of
10 having to wrench his body around, such as to fire in the
11 way. There is no doubt he shot her. The question is why
12 did he shoot her. And I think that all the facts leading up
13 to his behavior at Snack Time, at Hamrick's, as well as the
14 inconsistencies between the crime scene and his statement
15 all go to that fact, Your Honor. I think there is
16 substantial evidence to go to the jury.

17 I believe the standard is the evidence weighed in
18 the light most favorable to the State. If you take what
19 everybody said as true, as is required at this stage, I
20 believe there is a substantial amount of evidence suggesting
21 that he, in fact, did shoot her intentionally. I mean, he
22 tells people he's going to kill her and then she ends up
23 dead. I think in and of itself is a substantial fact.

24 THE COURT: All right. I have listened to the
25 witnesses that have testified, understanding the standard

1 that this court has to apply in ruling upon a motion, as
2 well as the fact this court must look at the evidence in the
3 light most favorable to the nonmoving party, I would have to
4 deny the motion.

5 So do you want me to include the lesser included
6 offense charge?

7 MR. PRUETT: That's my intention, yes, Your Honor,
8 involuntary manslaughter.

9 THE COURT: All right. The proposed charges that
10 I gave you, I did not have that in there because I had not
11 been asked that yet, but I do have an involuntary
12 manslaughter as a lesser-included offense charge that we
13 could give y'all copies of as well.

14 MR. KENDALL: I may, before the jury is sworn,
15 have an objection to involuntary. I have to do a bit of
16 research on it, if I could, Your Honor.

17 THE COURT: Uh-huh. Yeah, I have not made a
18 ruling. I just let y'all know.

19 Now, the only person that's given me any charges
20 is Mr. Pruett. Now, if y'all got anything else -- take a
21 look at what I have given you and let me know if y'all want
22 me to add to them or if y'all have problems concerning what
23 I put in there.

24 Do you know yet whether you are going to put forth
25 evidence?

1 MR. PRUETT: We will have probably three witnesses
2 in the morning, Your Honor.

3 I'm going to confer with Mr. Pennington tonight
4 about his intention on testifying, but if he doesn't
5 testify -- even if he does testify, I can't imagine we would
6 go more than --

7 THE COURT: All right. Anything else we need to
8 put on the record?

9 MR. PRUETT: No, sir.

10 THE COURT: Y'all want to come forward.

11 (Whereupon, proceedings were adjourned to August
12 30, 2018)

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1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: Good morning, ladies and gentlemen.
4 Thank you for your patience. We were able to take care of
5 several matters of law while you waited in the back, so that
6 way hopefully this morning's session will go a lot smoother,
7 but thank you for your patience while we conducted those
8 matters.

9 Mr. Pruett, are you ready to call your first
10 witness?

11 MR. PRUETT: Yes, sir, I am.

12 We call Robin Peeler.

13 THE COURT: Ma'am, if you will come up and be
14 sworn.

15 THE CLERK: Please raise your right hand.

16 ROBIN PEELER, having been first duly sworn,
17 testified as follows:

18 THE WITNESS: I do.

19 DIRECT EXAMINATION BY MR. PRUETT:

20 Q. Would you state your name, please?

21 A. Robin Peeler.

22 Q. And where do you live at, Ms. Peeler?

23 A. [REDACTED] Patrick Road, Gaffney, South Carolina.

24 Q. How long have you lived in Cherokee County?

25 A. All my life.

1 A. Probably about eleven years.

2 Q. All right. What about the age difference between you
3 and Rocky?

4 A. About twelve, I think.

5 Q. All right.

6 Now, we are obviously dealing with what happened on
7 June 21st, 2014. In the time period leading up to that day,
8 how often would you have contact with your father and Rita?

9 A. Two -- two to three times a week.

10 Q. All right. So fairly often?

11 A. Yes.

12 Q. And would that include personal visits, phone calls,
13 just whatever contact we are talking about?

14 A. Both, yeah.

15 Q. Both. All right.

16 And the time period leading up to that, I mean, who in
17 your family you got -- I should have he listed this question
18 already. How many brothers and sisters do you have with
19 Sandra and your dad, Sandra Porter?

20 A. There were four of us with momma, and then two brothers
21 he had with Rita.

22 Q. Okay. So Rocky and Riker --

23 A. There were six of us all together.

24 Q. So Rocky and Riker would be your half-brothers?

25 A. Half-brothers, yeah.

1 Q. And your other siblings would be who?

2 A. Their names, Samantha, Eric and Brian.

3 Q. Okay. And Brian is seated out in the courtroom?

4 A. Yes.

5 Q. Okay. So out of all your siblings, close relatives,
6 who would have probably the most contact, or would have had
7 the most contact with Rita and Dean?

8 A. I did.

9 Q. All right.

10 Now, there has been some testimony presented by the
11 prosecution about the relationship between Rita and your
12 father. And given the time period we are talking about, a
13 year, two years before the shooting, did you ever see or
14 witness any verbal abuse?

15 A. No.

16 Q. What about physical abuse?

17 A. None.

18 Q. I mean, by your father toward Rita?

19 A. No.

20 Q. All right. Now, today your father is seventy-two years
21 old?

22 A. Yes.

23 Q. And the time this incident occurred he would have been
24 about sixty-eight?

25 A. Yes.

1 Q. Four years ago.

2 And looking to that time around June 21st, 2014, based
3 upon your personal observations, what you actually saw, how
4 would you describe or characterize your father's physical
5 health condition?

6 A. His health was poor. He had a lot of health problems.
7 He had high blood pressure, diabetes, back problems. He was
8 very unstable, you know, like shaky. He had a pacemaker in
9 from heart attacks that he had had -- a heart attack.

10 Q. All right. And in the photographs that are already
11 into evidence, there are several photographs where you see
12 wheelchairs or scooters, I guess?

13 A. Yeah.

14 Q. Did he have to use those to get around?

15 A. He did at times. He had a cane he used sometimes.
16 Sometimes he used a wheelchair, depending on his days, if he
17 had a good day or bad day.

18 Q. All right. And was he taking various medications
19 during the time period we are talking about, June 21st,
20 2014?

21 A. Yes.

22 Q. All right. And I believe, just so we are clear -- see
23 if I can find the Defendant's Exhibit here. I'm looking for
24 the photograph. Here we are.

25 Defendant's Exhibit No. 2, which is the nightstand next

1 to the bed, there's a lot of objects on this photograph, and
2 I was asking one of the officers the other day what this
3 white thing was here in the background. It's kind of like a
4 rectangular object. What is that?

5 A. That's his monitor for his pacemaker. I was there when
6 he had it put in and they took my number as a reference
7 number, say if something happens with it, they call me and I
8 would --

9 Q. You are kind of a backup person?

10 A. Yeah, I'm the backup person.

11 Q. Is that little -- again, it looks like a rectangular
12 kind of object in the corner here. That was his pacemaker,
13 or monitoring device?

14 A. Monitor, yeah. Monitors his pacemaker.

15 Q. All right. And in terms of his medication, and I guess
16 his habit, his normal routine, when he would get up in the
17 morning, and still does, what does he normally do, as far as
18 taking his blood pressure, those kind of things?

19 A. He -- when he wakes up, the first thing is usually he
20 will -- when it's time to take medicine, he will take his
21 blood pressure. He will check his sugar so he knows how
22 much -- you know, now it's insulin. Then it was pills that
23 he took for sugar.

24 Q. Right.

25 A. But -- so he knows how much to take.

1 And his blood pressure, because it was high at times,
2 he had to keep a monitor of it.

3 Q. All right. And then you mentioned something about
4 habit, routine he does?

5 A. He does every morning.

6 Q. All right.

7 A. And now it's more, but then it was every morning he did
8 it.

9 Q. All right.

10 And, again, I'm going to refer to Defendant's Exhibit
11 No. 12. That's already been admitted into evidence. And is
12 this a log of the type that he would have been keeping back
13 in 2014?

14 A. Yes, it is.

15 Q. What does BF indicate?

16 A. Before his medicine, if he took his blood pressure
17 before he took his medicine, or --

18 Q. All right. This is already in evidence, but this would
19 have been like a log he kept?

20 A. Yeah, he keeps it beside his bed. Even now he has one.

21 Q. For his blood pressure.

22 A. Blood pressure, all his medicine and stuff and --

23 Q. All right.

24 And what about your father's, I guess his --

25 Again, your personal observations or personal

1 experiences in dealing with him around June of 2014, when
2 you were dealing with him talking about things, what was his
3 kind of mental ability to keep focused?

4 A. You can be talking to him and then in the middle of
5 talking to him he might be like "I forgot, what was we
6 talking about?" He may forget, you know, what you were
7 talking about at the time, and that was not unusual for him
8 to not be able to remember.

9 Q. But given that your dad kind of had, based upon your
10 testimony, kind of limited physical abilities and kind of --

11 A. Yes.

12 Q. -- questionable at times his mental capabilities --

13 A. Yes.

14 Q. -- how did he spend his time? What did he do?

15 A. Every time I came he would be in the bedroom with most
16 of the time laying down either watching TV, or, you know,
17 sitting in there. Him and Rita would be there. He would be
18 on his side of the bed and she would be on her side. That
19 was their place. That was -- that was what they did. And,
20 like I say, watching TV, sometimes reading, or, you know,
21 just doing their normal thing. That was their thing.
22 That's what they did. It was not abnormal for her to be on
23 her side at the foot of the bed.

24 Q. Uh-huh.

25 And you just popped in just unannounced?

1 A. Sometimes I called and said I was coming. Sometimes I
2 just come. I had gotten back from vacation the Sunday
3 before this happened and --

4 Q. What day?

5 A. -- it was Father's Day --

6 Q. Father's Day.

7 A. -- and I called and said "y'all home? I'm coming."
8 And when I got there, they were in bed. You just let
9 yourself in. You just went in and you knew they were going
10 to be in the bedroom and that's where they were at. And I
11 brought my grand kids. We came and we sit and talked. I
12 talked to Rita and talked to daddy.

13 Q. Was that the last time that you were there --

14 A. That was the last time I was there.

15 Q. -- before the 21st?

16 A. Before this happened. I talked to him on the phone,
17 but that was the last time that I was there.

18 Q. All right. And, again, that's where he kind of hung
19 out, so to speak?

20 A. Yeah, that was their spot.

21 Q. All right. In terms of I guess his, for lack of a
22 better word, fascination with guns and what have you, I
23 mean, is that something that he just did, or --

24 A. Yeah, because, you know, he -- he always had them and
25 we would go down there, me and my husband and my kids, and

1 then sometimes my grand kids now, and he would -- he would
2 get a gun out, if it was a new gun especially, and he would
3 show us, you know, and he would by like "see this gun." I
4 was like "okay," and we would look at the gun and, you know,
5 he would put it back up, or he may lay it beside him on the
6 side the bed or on the nightstand.

7 Q. All right. That's all I have, Ms. Peeler.

8 If you would, answer any questions the prosecution may
9 have.

10 CROSS EXAMINATION BY MR. KENDALL:

11 Q. Thank you very much, Ms. Peeler. Just a couple of
12 quick questions.

13 You said that you came down there approximately two to
14 three -- made contact with them two to three times a week,
15 is that correct?

16 A. Yes.

17 Q. All right. And some of those were by phone call and
18 some of those were by actually physically going there,
19 correct?

20 A. Yes.

21 Q. And so you weren't there every morning, is that fair to
22 say?

23 A. Not every morning, no.

24 Q. Okay. Well, if you were only making contact two or
25 three times a week, some of those are phone calls, that you

1 are -- most mornings you are not there, is that fair to say?

2 A. Yes.

3 Q. Okay. And were you there the morning that this took
4 place on June 21st? Were you there for that?

5 A. You mean before it took place, sir?

6 Q. The day Rita was shot.

7 A. I came afterwards.

8 Q. Right.

9 A. Before, no.

10 Q. All right.

11 Now, you testified a moment ago as to Mr. Pennington's
12 limited mobility. He was able to walk fairly well at that
13 time, is that correct?

14 A. He walked some.

15 Q. Okay. And in that house that most of the towels aren't
16 kept in the bedroom, is that fair to say?

17 A. Sometimes they would be in the room right beside the
18 bedroom. The dining room area where the laundry is at, they
19 would be there.

20 Q. Not in the bedroom? You actually have to go into a
21 separate room, is that fair to say?

22 A. Yeah, right there, yeah.

23 Q. And Rocky's trailer -- Rocky's trailer, do you know
24 where that was on the property?

25 A. Yeah.

1 Q. And how far away was that?

2 A. I don't know exactly. I just know --

3 Q. Let me ask it a little bit different way.

4 A. I couldn't say.

5 Q. It wasn't miles away, correct? ,

6 A. No. No.

7 Q. But it was -- it was outside --

8 A. You had to walk outside.

9 Q. -- and not directly attached to the home, correct?

10 A. No, it was not attached.

11 Q. Okay. At any point in time were you familiar with
12 where Rita was employed?

13 A. Yes.

14 Q. All right. Did you ever talk to anybody out there
15 about -- where was she employed?

16 A. When this happened, at Hamrick's.

17 Q. Okay. And did you ever talk to anybody out there at
18 Hamrick's about Rita or Dean?

19 A. No.

20 Q. All right. What about Snack Time before that?

21 A. No.

22 Q. Okay. And was Dean working at that time, or was he --

23 A. No.

24 Q. Okay. Was he working back when she was at Snack Time?

25 A. No.

1 Q. Okay.

2 A. He hadn't worked in -- you know, he -- he's not been
3 able to work. He hadn't worked in years.

4 Q. Okay. But he had a substantial gun collection?

5 A. Yeah, he draws a check, so he has money. I mean, he
6 could buy.

7 MR. KENDALL: Nothing further, Your Honor.

8 THE COURT: Any redirect on what he went into?

9 MR. PRUETT: No, sir.

10 THE COURT: Thank you, ma'am. You may step down.
11 Watch your step as you are stepping down.

12 You may call your next witness.

13 MR. PRUETT: We call Rick Pennington.

14 THE CLERK: Please raise your right hand.

15 RICKY PENNINGTON, having been first duly sworn,
16 testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION BY MR. PRUETT:

19 Q. State your name, please.

20 A. Ricky Pennington.

21 Q. I called you Rick. Do people call you Rick or Ricky?

22 A. Rick.

23 Q. Mr. Pennington, where do you reside at? Where do you
24 live at?

25 A. I live [REDACTED] Ford Road.

1 Q. [REDACTED] Ford Road.

2 How far is that from --

3 Well, I should have asked you this. What is your
4 relationship to Dean Pennington?

5 A. He's a brother.

6 Q. All right. And I'm presuming you're a younger brother?

7 A. Correct.

8 Q. And how old are you?

9 A. Fifty-nine.

10 Q. Fifty-nine.

11 So how far do you live from Dean's residence?

12 A. Maybe two hundred yards.

13 Q. Close?

14 A. Yeah, just right above him.

15 Q. All right. And what is your current employment, Mr.
16 Pennington?

17 A. I was employed with the Timken, retired.

18 Q. All right.

19 A. Thirty-seven years.

20 Q. Given your close proximity to Dean's residence, how
21 much contact would you have had with your brother around
22 this time we are talking about, which was June of 2014?

23 A. I would go see him twice a week -- at least once a
24 week.

25 Q. All right. And when you went to visit your brother,

1 more often than not if you went to his home, where would you
2 find him at?

3 A. Always sitting on the side of his bed.

4 Q. All right. You heard Robin, his daughter, kind of
5 describe his physical condition. I'm not going over all
6 that again. Would you more or less agree with what she
7 said?

8 A. Agree with that. He is shaky, weak.

9 Q. All right. And when you went to visit your brother and
10 he's in his bedroom, more often than not what would he be
11 doing or how would he be pre-occupying his time?

12 A. The times I went, about every time, he was sitting on
13 the bed, gun laying beside him, gun on his side. He
14 collected guns, clean them. As a matter of fact, I -- that
15 was one of the reasons I go over there to see if he got a
16 new gun in. I like guns too, but he would be there and Rita
17 would be on the right side.

18 I was there the night -- that evening before the
19 incident.

20 Q. So the Friday night before the actual --

21 A. I went over to see them that evening.

22 Q. Do you remember -- I know it's been four years ago. Do
23 you remember approximately what time that you were there,
24 Mr. Pennington?

25 A. The time I'm going to say six, seven o'clock --

1 Q. All right.

2 A. -- I'm thinking, because it's sort of getting edge of
3 dark.

4 Q. All right. So you were there the night before the
5 shooting itself and your testimony was you were on average
6 maybe once or twice a week?

7 A. Yes, sir.

8 Q. And the year, the two years before this, did you say
9 that was probably true, once or twice a week?

10 A. Yes, sir.

11 Q. And based upon what you personally saw, have you ever
12 seen your brother being abusive towards his wife?

13 A. I never seen no abuse, no anger with either one of
14 them. They loved each other. Rita was quite a woman, a
15 good woman. She loved him. He loved her.

16 Rita was like a sister to me, more than a
17 sister-in-law. I mean, I grew up with them, or her, in the
18 family. In the family.

19 Q. You and Rita were actually pretty close in age?

20 A. Yeah, right, correct.

21 Q. Answer any questions that Mr. Kendall may have.

22 CROSS EXAMINATION BY MR. KENDALL:

23 Q. Just a real quick question.

24 So you were over there -- do you remember what day --
25 this occurred on a Saturday, is that correct?

1 A. I think, yes, sir.

2 Q. All right. So you were over there the night before, is
3 that right?

4 A. That evening, yes, sir.

5 Q. Okay. That night when you were over there, did you see
6 him target firing his shotgun?

7 A. No.

8 Q. Okay. Did you see any evidence laying around that he
9 had been target firing a shotgun that night?

10 A. That he had?

11 Q. Yes. Did he have a shotgun out?

12 A. We were -- yeah, there was guns out that night.

13 Q. Okay. So the night before the shotgun was out. Do you
14 recall where it was?

15 A. There was one laying between him and Rita. She was on
16 the right side of the bed. He was on the left side and he
17 was cleaning the gun. Cleaning the gun --

18 Q. So the night before --

19 A. -- every time I went in.

20 Q. The night before she was killed he had the same
21 shotgun? I believe you were in the courtroom --

22 A. Now, I don't know. I don't know what the weapon was
23 or -- all I know is it was a shotgun laying there between
24 them.

25 Q. A shotgun laying on the bed between he and Rita the

1 night before?

2 A. Yeah.

3 Q. You said he was cleaning guns at that time?

4 A. He cleaned guns -- you would go in there in the morning
5 time he was cleaning a gun. He collected them. That's what
6 he did. He would clean them.

7 Q. What about the night before, the night before she was
8 killed, was he cleaning guns then?

9 A. He was cleaning a gun when I went in that night.

10 MR. KENDALL: Nothing further, Your Honor.

11 THE COURT: Any redirect into what he went into?

12 MR. PRUETT: No, Your Honor.

13 THE COURT: Thank you, sir. You may step down.

14 Watch your step as you are stepping down.

15 MR. PRUETT: I call Brian Pennington.

16 THE COURT: Sir, just come down and let the clerk
17 swear you.

18 THE CLERK: Please raise your right hand and place
19 your left hand on the Bible.

20 BRIAN PENNINGTON, having been first duly sworn,
21 testified as follows:

22 THE WITNESS: Yes, I do.

23 DIRECT EXAMINATION BY MR. KENDALL:

24 Q. State your name, please.

25 A. Brian Pennington.

1 Q. And where do you live at, Mr. Pennington?

2 A. I live on [REDACTED] Ford Road.

3 Q. So you also live on Ford Road?

4 A. Yeah.

5 Q. All right. And Dean Pennington, he's your father,
6 correct?

7 A. Yes.

8 Q. Sandra Porter was your mother?

9 A. Yes.

10 Q. All right.

11 Now, again, I'm trying to kind of move along here.

12 There is testimony -- your sister testified that your
13 parents probably got divorced about forty years ago?

14 A. Yeah.

15 Q. More or less?

16 A. Somewhere in there.

17 Q. All right. And you got three siblings including Robin,
18 who's your sister --

19 A. Yes.

20 Q. -- right.

21 And then that would make, of course, Rocky, your
22 half-brother?

23 A. Yes.

24 Q. All right. And you are about one year older than your
25 sister Robin?

1 A. Yeah.

2 Q. So you would be about twelve, thirteen years older than
3 Rocky?

4 A. Yeah.

5 Q. All right.

6 I'm going to ask you, again kind of moving along, how
7 often did you have contact with your father and Rita before
8 June 21st, 2014?

9 A. Well, it varied. I mean, a lot of times I would see
10 him at least once a month. And then sometimes, you know,
11 two, three times a week. It just depends on what I was
12 doing for him --

13 Q. All right.

14 A. -- because I worked on his stuff for him sometimes, his
15 cars and stuff.

16 Q. All right. If he needed something done, his son, you
17 would help him out?

18 A. Yeah.

19 Q. Did he help?

20 A. And he'd help and I was there and he knew -- if he come
21 by, you know. He was always wrecking his cars and stuff and
22 tearing them up and I would have to patch them back up for
23 him.

24 Q. All right. And, again, without belaboring it too much,
25 your sister testified that he had certain physical problems,

1 mental problems. Were those your similar observations?

2 A. Yeah, he -- he would always call me somebody else and
3 never even -- half the time didn't know who I was and he
4 would call me by the name and I was always somebody else.

5 Q. All right.

6 A. You know, and we would be talking and he would be
7 talking about me and don't even realize he's talking about
8 me, you know, and then dawn on him he was talking to me.

9 Q. When you went over there to visit him at the residence,
10 his residence, again, I may be intuitive, but where would
11 you find him at? Where would he normally be at?

12 A. Well, if I went down there to see him, if he knew I was
13 coming, he may be laying on his bed when I got there. If he
14 didn't know when I was coming, or whatever, you know, he
15 would -- if he wasn't already up on the side of the bed, he
16 would get up on the side of the bed, you know, to see who
17 was coming in. And, you know, I have been there on
18 occasions when he would be cleaning his gun, you know.

19 Q. Let me ask you about that. We have had some testimony,
20 but what was your observation about your father around this
21 time, June of 2014, when it came to him and his guns or
22 weapons? What's your general observation?

23 A. He was -- he was getting real careless. He was getting
24 to where he would shake all the time. And I done got onto
25 him, I told him, I said "you need to stop driving" because

1 he was tearing his cars up all the time. I said "you need
2 to stop driving and messing with them doggone guns," but he
3 just -- you know, he just kept on doing it.

4 Q. Well, really, what else could he do?

5 A. I mean, that's -- that was his thing. That's what he
6 enjoyed doing, I guess, was, you know, messing with guns and
7 stuff. I mean, you know, it was like every time he got in
8 the car it seemed like he bumped into something or wrecked
9 it --

10 Q. All right.

11 A. -- you know.

12 Q. That's all I have.

13 Answer any questions that Mr. Kendall would have.

14 CROSS EXAMINATION BY MR. KENDALL:

15 Q. Thank you very much.

16 Mr. Pruett asked you -- you own a shop, is that
17 correct?

18 A. I have a shop. That's where I live at.

19 Q. And is it fair to say that most of the time when you
20 and Mr. Pennington would have contact, it was at that shop?

21 A. Yeah, he come to my shop more than I went to his place.

22 Q. And he would bring you eggs, is that right? Rita
23 raised eggs?

24 A. Yeah, or if they got something out of the garden, he
25 might drop something off.

1 Q. And that was something that started -- would you say
2 over the course of your adult life him visiting you started
3 more recently? Is that fair to say?

4 A. It started more recently, yes, within two years
5 probably before this incident.

6 Q. Okay. That wasn't something that went back kind of
7 forever, is that right?

8 A. No. I mean, in the past, you know, when I grew up, I
9 moved out and left, you know, and we kept in contact at
10 Christmases and stuff like that and all, but more recently
11 the reason why he was coming to see me is because I had the
12 shop and he needed work done.

13 Q. And speaking of Christmases, on that last Christmas
14 before she was killed, did Rita invite you to dinner, or
15 anything like that? Brings?

16 A. She always invited all of us to dinner, you know,
17 Thanksgiving and Christmas.

18 Q. Did you go to the dinner that year?

19 A. No, I already had other plans.

20 Q. Okay.

21 A. I mean, I had kids of my own.

22 Q. You said y'all made contact at some point.

23 A. Yeah, she called everybody, you know, and asked them to
24 come to dinner.

25 Q. Okay. All right. But it wasn't something that you

1 attended regularly, is that fair to say?

2 A. No, as we got older everybody drifted apart, like some
3 people do sometimes, you know, but still I stayed in contact
4 with them.

5 Q. All right.

6 Now, a few moments ago you testified that he was
7 reckless with the car or was hitting stuff frequently with
8 the car, is that correct?

9 A. Yeah, he -- he got to where he just -- he would make
10 wrong turns, bumping into stuff. He just -- you know, he
11 just couldn't drive good any more.

12 Q. And then he was starting to get careless with the guns,
13 is that right?

14 A. He was careless the way he done everything. I mean, he
15 was always stumbling and falling, you know. He would come
16 up to my place and he would trip and stumble and everything
17 else all the time.

18 Q. Okay. Did y'all consider taking the guns away from him
19 because he couldn't handle them?

20 A. No, it wasn't something at the time that I could do. I
21 mean, you know, you just can't go to somebody's house and
22 take their guns.

23 Q. But you worried that it was a concern.

24 A. Yeah, I mean, I felt like, you know, he needed to be
25 more aware of what was going on, because he was just having

1 a hard time. It was if I was just noticing how shaky he was
2 and how -- he kept wrecking his car all the time and he
3 carried that gun on his side. I mean, that was something he
4 done all the time. I'm like "you don't take that gun on
5 your side any more. He need to quit that," you know.

6 Q. Okay. So he always carried a gun on his side as well?

7 A. Yeah, he had a concealed weapon permit and he carried
8 it.

9 Q. All right. Based on the shakiness and his
10 carelessness, it wouldn't have been a good idea to have
11 children around him with those guns?

12 A. I never took mine down there, you know, but, of course,
13 everybody else always did.

14 Q. When he was carrying a gun, was it on his hip, or was
15 it actually concealed? Did he carry a concealed weapon, or
16 did he have it kind of --

17 A. He would have it covered up. Sometimes when he would
18 get out the door at my place, he would take his jacket off,
19 or whatever, you know.

20 Q. He typically carried it on his hip, correct?

21 A. It was kind of like on his side. It wasn't like I
22 noticed exactly where it was.

23 Q. All right. And just to sort of make sure I understand
24 the family dynamic, you and Robin and Rick are all the
25 children of Ms. Porter, is that correct?

1 A. Not Rick. Rick is his brother.

2 Q. I'm sorry, yes. Thank you very much. You are
3 absolutely right.

4 Rick is his brother and the two of you all are the
5 children of Sandra Porter, is that correct?

6 A. Yes.

7 Q. Okay. And then Rocky and Riker are the children of Ms.
8 Pennington, is that right?

9 A. Yes.

10 MR. KENDALL: Nothing further, Your Honor.

11 THE COURT: Any redirect into what he went into?

12 MR. PRUETT: No, sir.

13 THE COURT: Thank you. You may step down. Be
14 careful when you step down, sir.

15 THE WITNESS: All right. Thank you.

16 MR. PRUETT: At this time the defense rests, Your
17 Honor.

18 THE COURT: All right, ladies and gentlemen, this
19 is another one of those times where I have to have
20 discussions with the attorneys outside of your presence, so
21 I'm going to ask you to retire back to the jury deliberation
22 room.

23 Do not have any discussions among yourselves about
24 anything about this case. We will get you back shortly.

25 (The following takes place outside the presence of

1 the jury panel).

2 THE COURT: Lawyers approach.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: Yes, sir.

6 MR. PRUETT: Your Honor, now that we are at the
7 conclusion of the trial, I would renew my motion for a
8 directed verdict on the count of murder and following with
9 the possession of a firearm, naturally, presumably if that
10 was granted, and without repeating essentially what I argued
11 at the mid-point of the trial, I would ask that those
12 arguments simply be re-incorporated at this point in time
13 for the reasons previously stated. Those are the objections
14 from the prosecution or court. I don't think I need to
15 repeat all that again, but I just re-incorporate the exact
16 arguments I made previously asking the court to grant the
17 verdict of not guilty on the count of murder and the weapons
18 offense and allow the jury to consider the lesser offense of
19 involuntary and not guilty, obviously.

20 THE COURT: All right. And am I correct the State
21 does not intend to put any reply testimony up?

22 MR. KENDALL: That's correct, Your Honor.

23 THE COURT: And I would --

24 One of the things that I believe we got to place
25 on the record is in chambers, I did indicate to the

1 attorneys that I would be charging the lesser included
2 offense of involuntary manslaughter. We have included that
3 in the jury charges.

4 I have not heard any additional information or
5 evidence that would bring me to a different conclusion than
6 what I have already ruled in regards to the motion, so does
7 the State need to put anything else on the record in regards
8 to the motion?

9 MR. KENDALL: I don't believe so, Your Honor.

10 THE COURT: All right. Okay.

11 Anything else before we step down and y'all get
12 ready for your closings?

13 MR. PRUETT: Nothing else from the defense, Your
14 Honor.

15 MR. KENDALL: Nothing from the State, Your Honor.

16 THE COURT: All right. And you are going to get
17 somebody to take care of the gun?

18 MR. KENDALL: Yes, sir.

19 THE COURT: All right.

20 MR. KENDALL: The officer went to get -- he's
21 having to get another band. He said he thought he had one
22 in the crime scene truck.

23 THE COURT: All right. I'll step down for a few
24 minutes and we will come back and do the closings.

25 MR. KENDALL: Thank you.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: Let's bring the jury in.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: Ladies and gentlemen, the parties have
7 presented their evidence in this case. It is now time for
8 the attorneys to make their closing arguments to you.

9 Now, the arguments of the attorneys are not
10 evidence in this case. Their statements and arguments are
11 meant to help you understand the evidence and apply the law
12 to the evidence. You should disregard any remark,
13 statement, or argument which is not supported by the
14 evidence presented during this trial or the law that I will
15 explain to you after the arguments, but at this time we will
16 receive the closing arguments of counsel.

17 MR. KENDALL: Thank you, Your Honor.

18 May it please the court, counsel.

19 Good afternoon, ladies and gentlemen of the jury.
20 Thank you for your service this week.

21 At the beginning of this trial I asked you to do
22 three things. The first of these things that you listen to
23 the instructions of the judge. In a few moments the judge
24 is going to provide you with your final instructions.
25 Please listen carefully to what the judge tells you and

1 follow these instructions. He's going to instruct you on
2 the law.

3 I would like to talk to you about the law here in
4 a moment. Before I do, please understand. If anything I
5 say is different than anything the judge says, please listen
6 to the what the judge is saying. As you all are the judges
7 the facts, he is the judge of the law and what he says on
8 this is correct.

9 Now, ladies and gentlemen, before you the judge is
10 going to charge you with ultimately three things.

11 The first is murder.

12 Murder is the killing of any person with malice
13 aforethought, either expressed or implied.

14 Malice is doing a wrongful act intentionally and
15 without just cause or excuse.

16 Aforethought is the timing you list to these,
17 ladies and gentlemen. There is no particulars length of
18 time prior to the killing for malice to exists to have
19 malice aforethought.

20 In addition, connected with the murder, and only
21 with the murder, we have the second separate count of use of
22 a firearm during the commission of a violent crime. The
23 crime in this case that we are alleging, that is, is the
24 murder, ladies and gentlemen. And what we are saying with
25 that is this. Over the course of that as he carried out

1 that murder, he did, in fact, in this case use that shotgun.

2 The judge is also going to charge you with
3 involuntary manslaughter.

4 Involuntary manslaughter involves killing another
5 with criminal negligence.

6 Criminal negligence is a reckless disregard for
7 the safety of the others. A person charged --

8 Now I would like to take a few minutes to talk
9 about the primary differences between these in this case.

10 In both cases, ladies and gentlemen, we, the
11 State, bear the burden of establishing all the elements. We
12 must show you that all the elements are satisfied that the
13 judge is going to instruct you, but here, ladies and
14 gentlemen, what I would like it do is focus on a couple, or
15 one in particular, the intent.

16 Did William Pennington intend to kill Rita
17 Pennington by shooting her; or, did he do it while
18 exercising reckless disregard for her safety; or, was it
19 really an accident?

20 I would like to take a look at the evidence in
21 this point and tell you, explain what the State feels it
22 shows in this case.

23 At first in this trial you heard the call come in
24 from William Pennington to 911 telling the dispatcher he had
25 shot his wife in the head. He sounds calm on this, not

1 hysterical, while he informs dispatch he blew the top of his
2 wife's head off.

3 You also heard, ladies and gentlemen, that line
4 staying open. And what's important is what you didn't hear
5 at this time. You didn't hear that loud sobbing. You
6 didn't hear that loud crying. You just heard what was just
7 usually background noises from one end of the phone. This
8 was subsequently confirmed by Officer Nick Federico, who
9 testified when he arrived on the scene he did not hear any
10 crying, until they entered the home, announced their
11 presence, and then suddenly he began hearing this loud
12 crying, as you saw on the video, which he described as sort
13 of a fake cry.

14 You also heard there lying on the floor Rita was
15 already dead.

16 Now, from there, ladies and gentlemen, we began to
17 introduce some experts; Dr. Ross, Chad Smith, and Billy
18 Anthony.

19 And in talking about these expert testimonies,
20 it's important for us from the outset to tell you what we
21 sought to prove and we could not prove by this. Expert
22 testimony could not tell you intent. We don't know based on
23 the angles of the gun. We can tell you approximately where
24 the shot was fired from. We can tell you the testimony of
25 how she was killed or what killed her. We can tell you

1 about the firearm in working condition.

2 We can't tell you if he was sitting on that bed,
3 if he intended to shoot her in the head, or if it was merely
4 an accident, based solely on the expert testimony.

5 In addition, there was some other issues that came
6 up. The body had been moved and we don't know her position.
7 And so with that in mind I would like to talk about that
8 expert testimony.

9 You first heard from Dr. Ross, ladies and
10 gentlemen, who testified that the cause of death was a
11 gunshot wound fired approximately two to four feet away at a
12 slightly downward angle, left to right.

13 Dr. Ross was careful to point out the limitations
14 of this autopsy. She could tell you that Rita was killed by
15 this shotgun blast. She could tell you the approximate way
16 it was traveling. What she was unable to tell you, ladies
17 and gentlemen, is the position Rita was in at the time she
18 was killed, because we simply don't know that.

19 You also heard from the firearms expert, ladies
20 and gentlemen, who testified about the weapon in question,
21 the shotgun being in proper working order. The weapon was
22 fired. It was in fine working condition.

23 This firearm did not have a hair trigger, ladies
24 and gentlemen. It had a six and a half pound draw, the
25 approximate weight of picking up three-quarters of a gallon

1 of milk.

2 The weapon also had safety features. It had a
3 safety on it, as well as a trigger guard to prevent
4 accidental brush-ups with the trigger.

5 There was no evidence, according to the firearms
6 expert, of any paint or anything lodged in the firing pin,
7 and the weapon appeared to him to be functioning absolutely
8 properly. By his own statement, ladies and gentlemen, Mr.
9 Pennington said that he had fired it the day before.

10 Moreover, he claims in his statement that the gun
11 went off when he was ejecting rounds, which, according to
12 the firearms expert, it was done improperly by pumping
13 rounds out of the shotgun instead of removing them in the
14 proper way, but this also shows that even that remote
15 possibility of a slamfire, something that he testified, the
16 expert testified it's merely something that comes up with
17 semiautomatic weapons with very fast cycling, it wouldn't
18 really be an issue. The gun didn't discharge, according to
19 Mr. Pennington's statement, when he is ejecting rounds. The
20 gun fired while he was wiping it down.

21 Moreover, ladies and gentlemen, and equally
22 important, you heard the capacity of this firearm. This
23 firearm, according to the firearms expert, only held six
24 rounds. You could put five rounds in the tube. You could
25 put one round in the chamber. Six. This will come up again

1 as on that day there were a total of seven rounds.

2 Shortly after this, ladies and gentlemen, crime
3 scene arrived and they began their long work of analyzing
4 and photographing the crime scene. I'm not going to go
5 through all those pictures again. I suspect that's not
6 necessary, but you will have those in the jury room to look
7 through as you see fit.

8 You saw, ladies and gentlemen, the layout of the
9 home and the photographs of the bedroom. You heard
10 testimony it was determined the firearm shot on Mr.
11 Pennington's side of the bed at an upper angle hitting Ms.
12 Pennington.

13 There were difficulties with crime scene, though,
14 ladies and gentlemen, because before the police had got
15 there in that conceivably couple of minutes when he called
16 911, or I guess before he called 911, and after he called
17 911 he attempted to clean up the scene, wiping off the blood
18 and moving the body.

19 You heard from these experts, ladies and
20 gentlemen, what happened, how she was killed; how the gun
21 worked; what its capacity was; what its trigger pull was.
22 What they all said, though, ladies and gentlemen, is that
23 they couldn't pull -- they couldn't tell you intent. Crime
24 scene can't tell you what someone was thinking. They can
25 tell you angles. They can tell you cause of death. They

1 can tell you trigger pull, and they can tell you if the gun
2 is working, but they can't tell what somebody is thinking
3 when they pulled that gun.

4 We agree with that, ladies and gentlemen, so what
5 I would like to do now is discuss the main question in this
6 case. Did he intend -- did Dean Pennington intend to shoot
7 Rita Pennington in the forehead with double-aught buck from
8 a 12-guage shotgun, or was this an accident? Was this
9 negligence? Did the gun go off while he was cleaning it, or
10 did he simply shoot her in the head and sprayed the gun down
11 and take it apart to make it look like an accident?

12 To address this I would like to start with Mr.
13 Pennington's statement, ladies and gentlemen. Mr.
14 Pennington told the police that he got up for good at seven
15 a.m. and was watching Pastor Chapel on TV. When they got
16 there, it was actually a western, but Rita brought him a cup
17 of coffee and left it at a table at the end of the -- at the
18 nightstand at the end of the bed. There is no coffee cup on
19 that stand at the end of the bed.

20 He said that he sat on the bed and ejected six
21 rounds. There were seven on the bed, more than the capacity
22 of that shotgun.

23 He said for some reason he loosened -- or he said
24 he loosened the head screw to take the barrel off, even
25 though he wasn't cleaning the internal components of the

1 shotgun, ladies and gentlemen. He was cleaning the outside
2 of the shotgun. He didn't take the barrel off.

3 He then said he rested the shotgun on his leg
4 while wiping it down. His leg had no markings, had any sort
5 of bruising whatsoever, when it suddenly went off. To be
6 specific, the firearms expert who said that this couldn't
7 happen. From the firearms expert, he had to pull the
8 trigger for it to go boom.

9 He then says he got up and he got some towels to
10 wipe the blood up; moved the body. Odd, because he hadn't
11 called 911 yet. He left his house, went to try to find
12 Rocky at his camper on the property, then came back to the
13 house, at that point called 911, and then kept cleaning the
14 blood up.

15 He also references in his statement, ladies and
16 gentlemen, that he knew that Rita had been fired for sexual
17 harassment. This was sort of odd, because you heard
18 testimony from Snack Time employees at H.R. that they didn't
19 tell him. And at least we know as she picked up the check
20 Rita didn't tell him. You heard the testimony from Scarlett
21 who came and made up a story. But he did find out, ladies
22 and gentlemen, possibly from somebody that Rocky knew.

23 His statement also indicates that they had been
24 getting along recently. This is odd because a month before
25 this took place he had tried to pay off a guard at Hamrick's

1 to spy on her and got banned. And not long before that he
2 had called her place of employment to say awful things about
3 her to her boss.

4 Now, I would like to take a second to discuss how
5 his statement fits in the crime scene, ladies and gentlemen,
6 because there is very important.

7 First, and arguably most important, are the number
8 of shells on that bed. In his statement he ejects six
9 shells and is wiping the gun down. Sure enough, there are
10 six shells on the bed, ladies and gentlemen, but what he
11 fails to account for when he makes that statement to the
12 police is that seventh round. That seventh double-aught
13 buckshot round that killed Rita, ladies and gentlemen. This
14 is extremely important, because simply put, that gun doesn't
15 hold seven. That gun only holds six rounds. This wasn't a
16 situation where he simply ejected the rounds and that was
17 it. There are more rounds on that bed than fit in that
18 shotgun, which means somehow that other round had to get in
19 that shotgun at a separate time. It wasn't just in there
20 left in there. There are more rounds on that bed that were
21 in that shotgun.

22 Moreover, ladies and gentlemen, there is different
23 kinds of rounds. There are four rounds that are nine-shot,
24 that you heard testimony for birds, or for like trap or
25 target practice. One is a number six-shot for shooting

1 larger birds or rabbits. Then there is one un-shot
2 double-aught buck round laying there. As you heard -- and
3 then, of course, the round that killed her.

4 As you hear the testimony, why are there different
5 kinds of rounds, ladies and gentlemen? It appears not that
6 these were the rounds that were ejected from the gun, which
7 was simply impossible, based on the number, but he simply
8 could have grabbed a handful of 12-gauge rounds and put them
9 on the bed to make it look like an accident, but in his
10 haste simply counted wrong.

11 In addition, ladies and gentlemen, we see the
12 placement of that gun. Not thrown across the bed. The heat
13 shield is sitting on the nightstand, but the gun itself is
14 placed neatly on the bed, side by side with that
15 double-aught buck round that shot Rita sitting straight up.
16 This is hardly a sign this weapon is broken down, that there
17 is this malfunction, he pulled it apart and he saw his wife
18 die.

19 Moreover, the gun was covered in oil, ladies and
20 gentlemen. Odd, because the gun was painted over. It
21 wasn't really in real risk of rusting. He had painted over
22 the firearm.

23 But it's also odd because he was apparently
24 cleaning the outside of the gun before cleaning the inside
25 of the gun, which is particularly odd because he had already

1 loosened the screw to the outside of the gun.

2 We also don't see the cleaning rag, ladies and
3 gentlemen, sitting on the bed, but on the nightstand, neatly
4 folded up. Not laying across the thing as someone happened
5 if someone accidentally shot their wife and had a moment of
6 panic, but neatly folded sitting on that nightstand.

7 Additionally, ladies and gentlemen, you heard
8 testimony that Mr. Pennington had lots of firearms and knew
9 how to clean them. You heard testimony from witnesses who
10 spoke a moment ago Mr. Pennington had been cleaning them the
11 night before. Why he would have had to clean this one
12 separately that next morning is certainly in question, but
13 he certainly knew how to clean them.

14 You also didn't see, ladies and gentlemen, is the
15 gun cleaning kit sitting out. All that's sitting out there
16 is a folded up rag on that nightstand and that spray bottle.
17 This suggests, ladies and gentlemen, that this gun wasn't
18 fired while being cleaned, but that he fired it and in his
19 haste -- or excuse, there was also spray all across that
20 table. All across that bedside table there is spray. It's
21 hard to see on the projector. You will have this, but if
22 you look closely at these pictures you can sort of see this
23 spray, the remnants of that spray on it. You also heard
24 testimony there was spray all over that bedside table. Not
25 out into the room, not back towards the dresser, but on that

1 table, and the gun soaked in it, ladies and gentlemen. It
2 had not been wiped down, but it was still soaked in that
3 oil. This suggests, ladies and gentlemen, that he was in
4 the process of wiping that gun down. He wasn't in the
5 process of cleaning that gun. He shot her. He needed to
6 come up with an excuse real quick. Six shells on the bed,
7 forgot about the one in the chamber. Sprayed the gun down
8 real fast and take it apart and says it's a cleaning
9 accident.

10 Next, ladies and gentlemen, I would like to talk
11 to you about his body position. And as I said before, you
12 heard testimony from crime scene. They aren't able to tell
13 you how his body is positioned. They could tell how the gun
14 was pointing at her, but they cannot say what his body
15 position was. So I would like to talk to you about some of
16 the positions for broad support and draw some conclusions
17 from his statement and from what crime scene testified to
18 you.

19 It's important to remember, ladies and gentlemen,
20 that if sitting on the bed facing towards the end of the bed
21 that Rita would have been in front and to the right.

22 So let's first talk about him sitting at the end
23 of the bed near the headboard where the heat shield was
24 found, where the rag was sitting on that table, where the
25 rounds are. If he's sitting there with his legs off the bed

1 facing that chest of drawers, that bedside table right
2 there, as he seems to indicate in his statement. This,
3 ladies and gentlemen, would actually have to cause him to
4 fire behind him, to turn his body actually go behind him to
5 shoot Rita. This would be an extremely odd position to be
6 cleaning that gun, ladies and gentlemen, to actually have to
7 shoot behind you and to the right.

8 Secondly, ladies and gentlemen, you saw the
9 testimony. The TV was on. It was brought up that he was
10 watching TV. Well, in this instance, ladies and gentlemen,
11 the angle certainly are better, but at that point Rita
12 stands at the edge of that bed. At that point he knows he's
13 pointing that gun right at Rita. She is in his sight line,
14 ladies and gentlemen. She's not off someplace else. He's
15 got that gun pointed right at her. And either way, ladies
16 and gentlemen, for that gun to go boom, for rounds to come
17 out of that gun, he needs to put six and a quarter pounds of
18 pressure on that trigger. Ladies and gentlemen, if he's
19 looking at her and he pulls that trigger, that is murder.

20 Additionally, let's talk about what's going on
21 when this took place. What else was going on in their
22 lives, because that's extremely important, ladies and
23 gentlemen, when you look at all the evidence to help infer
24 intent. I agree with something that Mr. Pruett said in his
25 opening statement. We can't look inside Mr. Pennington's

1 head. What we can do is look at what is going to in his
2 life, going on in Rita's life before this took place.

3 First, ladies and gentlemen, you heard from
4 numerous witnesses detailing Mr. Pennington's jealous
5 behavior. You heard from Snack Time employee Dale Kiser who
6 saw Rita drive into work separately, but saw Dean sitting in
7 the parking lot spying, sometimes with a gun he claims it
8 was on the seat. You also heard him testify, ladies and
9 gentlemen, they caught him sneaking in and trying to peer
10 through the flaps, spying on Rita, watching her while she
11 worked.

12 The parking lot spying, the parking lot watching
13 and spying, were also observed by Matthew Alexander, a
14 significantly younger man that Rita had befriended and who
15 was the subject of the sexual harassment complaint.

16 It's also important at this time to remind you,
17 ladies and gentlemen, of that notebook that was found in the
18 drawers. It had that note on that last page with his
19 writing that said "Matt the one."

20 And you heard from Mark Hutchinson, the manager at
21 Snack Time, who testified that he too saw Dean peering
22 through those flaps, and he came back to demand to know why
23 Rita was fired and he was angry. He was angry when he
24 wasn't told why she was fired.

25 This anger progressed when he subsequently called

1 Vicki Teague, the H.R. director at Snack Time, who had also
2 seen him going through Rita's car, and he told her he would
3 blow her away; to find out one way or another, he would even
4 blow her away. This is threats he made to Snack Time
5 employees, the H.R. person because she would not tell him
6 why Dean (sic) was fired. He threatened to blow her away.

7 You also heard around these times where threats
8 were made to Rita through Lynn Swofford, spoke with Lynn
9 Swofford, who Dean told that he was going to kill Rita
10 because she was stupid. He told her that he had put a gun
11 to her head while she was sleeping at night.

12 You heard from Scarlett Pennington who testified
13 that at Rita's request -- at Dean's request she went with
14 Rita to go pick up her check and request a written reason.
15 He was requesting his wife to bring him a work excuse,
16 ladies and gentlemen, from Snack Time indicating why she was
17 fired, and that she was fearful and they made up a fake
18 excuse and that after she was fired she became more fearful
19 and cried a lot.

20 You also heard from Rocky Pennington, ladies and
21 gentlemen, Dean's son. You heard him say that he had heard
22 his father threaten his mother in the past with a gun, or
23 grabbing at a gun. You heard that Dean had shot near Rita
24 when she was outside not long before this. He was careful
25 in his testimony. I think it's important to note he didn't

1 claim he was aiming at her, as in this case, and actually
2 shot her, but shot in the earth.

3 You also heard that right up to his mother's death
4 Dean became more and more concerned with Rita's perceived
5 infidelity. They spoke about it nearly every time they met,
6 and that he was more obsessed with Snack Time, that he even
7 claimed to have hired a P.I., and paid him a thousand
8 dollars. Then following the death of his brother, ladies
9 and gentlemen, and his mother, Rocky went to see Dean, who
10 now told him that he had dropped the gun and it went off and
11 Rita was grabbing it, an entirely different story from what
12 was told to the investigators.

13 Moreover, ladies and gentlemen, around this time
14 Dean started to make funeral plans for Rita a few months
15 before her death. He went and saw Amy Bryant, a stranger,
16 someone who he did not know, and said that basically he
17 mentioned the infidelity. He mentioned he thought his wife
18 was cheating on him and there were more like friends -- more
19 like roommates, excuse me.

20 Finally, ladies and gentlemen, you heard from the
21 folks at Hamrick's. You heard from Virginia Blanton who
22 testified that Rita was very nervous all the time, had to
23 call home before she left work.

24 Kathy McMurray who said that Dean called out of
25 the blue to tell her what kind of person Rita was; told her

1 ugly things, things that she didn't even want to say in the
2 courtroom, but she described generally as trash. This was
3 her boss, ladies and gentlemen. Dean Pennington called his
4 wife's boss to complain about her and called her names in
5 the months leading up to her death.

6 You also heard from Judy Sparks, the security
7 officer, ladies and gentlemen, who testified that one month
8 before Dean killed Scarlett (sic) he offered her twenty
9 dollars to spy because he thought she was cheating. He said
10 she was a prostitute, had been a prostitute, and what he
11 told her was "you can't turn a whore into a housewife." He
12 was barred from that place of employment too.

13 Finally, ladies and gentlemen, you heard from Myra
14 Balfease, who testified that the day before Rita was killed
15 she rushed into work, and a Camry, a Camry similar to the
16 one that she and Dean had owned, was turned away at the
17 guard shack not long before that. She also remembered Rita
18 leaving late that night and thinking that she would be in
19 trouble for being late.

20 Now, ladies and gentlemen, at the end of this
21 trial the judge is going to give you some options. He's
22 going to ask you, in addition to the weapons charge, about
23 the crime of whether he's guilty or not guilty of murder or
24 manslaughter, involuntary manslaughter.

25 Now, even if you believe Mr. Pennington's

1 statement lock, stock and barrel, the whole thing just like
2 that, ladies and gentlemen, that is still involuntary
3 manslaughter.

4 You heard testimony that he was improperly
5 handling that gun, improperly loading that gun, that he
6 apparently has problems not hitting other cars, and has
7 shaky hands, and at that time was pointing it at Rita, that
8 there was nothing wrong with the shotgun. You saw nothing
9 wrong with the shotgun. You saw him do nothing wrong with
10 the shotgun. It was functioning properly. It had a safety
11 on it. It had a trigger guard on it and it had a
12 respectable -- or it had a six and a quarter trigger pull on
13 it. If he's cleaning a shotgun and pointing it at her and
14 not cleaning it the way he's supposed to, not unloading it
15 like he's supposed to, that, ladies and gentlemen, is
16 involuntary manslaughter.

17 If he is so shaky that he can't handle the firearm
18 and he knows that and he's pointing it at her, I would
19 assert that that is reckless behavior and is involuntary
20 manslaughter.

21 But, ladies and gentlemen, that is not what
22 happened in this case. We would ask you to return a verdict
23 of murder and using a firearm during the commission of a
24 violent crime, because at the end of the day of all of the
25 places in that room that round could end up, it happened to

1 hit the top of Rita Pennington's forehead.

2 Now, you, the jury, are going to ultimately
3 determine if this shot, this shot to the forehead, was an
4 accident, was it criminal negligence, or the intentional act
5 of a jealous man, a man who would spy on Rita, ladies and
6 gentlemen, who had stalked Rita, who had threatened Rita,
7 who had threatened Rita's H.R. representative when he
8 wouldn't tell him the information that he wanted to know;
9 who talked about her perceived infidelity up until her
10 death; who called her work and called her trash; who tried
11 to bribe guards; and whose statement simply does not line up
12 with the facts. There are more shells on that bed that go
13 in that shotgun, ladies and gentlemen.

14 Ladies and gentlemen, this was not an accident,
15 but the work of a jealous vengeful man and the State would
16 ask you to return a verdict of guilty. Thank you.

17 MR. PRUETT: If it please the court, Mr. Kendall.

18 Mr. Foreman, members of the jury, I want to thank
19 you again at the outset upon closing remarks for your
20 service this week. I appreciate the time and attention that
21 you have given. I have watched all of you pay close
22 attention.

23 One of the things about this case is, more so than
24 most cases, is a lot of stuff. I don't know how many
25 exhibits the prosecution put in. I'm looking at this number

1 here, 66. It's a good many. A lot to go through, but I
2 would say this. Most of this you will have to be looking
3 at, it really doesn't get down to the core issue that's
4 going to be before you this morning. It comes down to this,
5 simply this, whether or not Dean Pennington intentionally
6 pointed a shotgun and pulled the trigger and killed his
7 wife, intentionally. That's what it comes down to. That's
8 what murder is. It's the intentional killing of another
9 person.

10 And I will tell you now, as I said on Tuesday, if
11 he intentionally pointed the gun and pulled the trigger and
12 killed his wife, he's guilty of murder.

13 And if he's guilty of murder, the other crime he's
14 charged with is when you intentionally commit a crime with a
15 weapon, that's a separate charge the State brings, he's
16 guilty of that too.

17 I'll say it again. If it's an intentional act, if
18 you believe that Mr. Pennington pointed that shotgun and
19 pulled the trigger and killed his wife on purpose, he's
20 guilty of murder and he's guilty of possession of a weapon
21 during the commission of a violent crime, because murder is
22 a violent crime.

23 On the other hand, if you listened to the evidence
24 and you talk amongst yourselves and you decide it was
25 unintentional, then there are two other possibilities that

1 the judge is going to tell you. One is you can be guilty of
2 involuntary manslaughter. Even though he may not have
3 intended to hurt somebody or harm somebody or kill them.

4 And, of course, the other is, the last is, it was
5 just an accident, in which case he's not guilty.

6 The law, I always tell people, is not complicated.
7 Okay, it really isn't. Lawyers go to law school for years,
8 but the reason it takes years is there is so much other
9 stuff we have to learn. In corporate law, business law,
10 tort law, but when you get right down to it, at the end of
11 this trial you will know as much about the law as to what
12 Mr. Kendall or I know, okay? And the law in this case,
13 again, is either going to be murder, involuntary
14 manslaughter, or accident.

15 And to kind of illustrate what I'm talking about,
16 okay, if I'm in my car and I leave the courtroom this
17 afternoon and I'm driving down Highway 29 in front of either
18 Timken or Nestle's, a four-lane highway, and I see Mr.
19 Kendall, using him as an example, walking down the road, on
20 the side of the road, and I intentionally turn my car, speed
21 it up and I run him over, that's murder, plain and simple.

22 Let's say this. Let's say I was driving down
23 Highway 29 and I'm just careening back and forth driving all
24 over the road, I know I'm doing that, I'm speeding seventy
25 miles an hour and as I'm careening back and forth I hit Mr.

1 Kendall. I didn't mean to kill him, but my actions were so
2 negligent, so reckless, that I should have been able to
3 foresee something like that could have happened, in that
4 case I would be guilty of involuntary manslaughter, because
5 of my conduct being so reckless in driving that vehicle.

6 Lastly, using that same example, I'm going down
7 the road, Highway 29, doing the speed limit, driving by the
8 rules of the road and my phone rings. I take my eyes off
9 the road and I'm looking for my phone and as I do that the
10 car veers to the right, hit him, kill him. There is no
11 negligence on my part. It was simple negligence. I wasn't
12 paying attention, but I didn't realize it, and in that
13 situation accidents happen. It's unfortunate. It's a crime
14 if it's an intentional or reckless, but a simple negligence
15 case I wouldn't be guilty of murder. I could be sued by his
16 family and held accountable in a court of law for that, but
17 I couldn't be charged with a crime.

18 So those are the context we are dealing with, the
19 intentional act, the reckless action and you know you are
20 being reckless or careless, and then the act in which is
21 just a mistake or an accident, simple negligence.

22 And in this case, and I said this on Tuesday, as I
23 see it then, and as I see it now, they are kind of three
24 groupings of evidence that the prosecution has put before
25 you during the course of this trial.

1 And the first, what I call category or group, has
2 to deal with this history of Rita having this relationship,
3 if I want to call it that, or connection with this person
4 named Matthew Alexander. What we know for a fact at this
5 point, because the State presented the evidence, is that Ms.
6 Pennington -- and I'm not judging her as a person. I'm just
7 saying she had an interest or romantic interest in her
8 co-worker. She was fifty-nine and he was twenty-nine. She
9 made advances towards him that weren't wanted by him and as
10 a result of that she was fired.

11 Now, Mr. Pennington and Rita Pennington married
12 thirty-seven years. He is sixty-eight years old at the
13 time. She's fifty-nine. And what happened in their
14 marriage in thirty-seven years I don't think is any
15 different than what happens in a lot of relationships. You
16 know, whether it's the wife, the husband, boyfriend,
17 girlfriend, they become interested in somebody else, but
18 what happens in that relationship when that comes to light
19 or when you suspect something like that? And in this case
20 the suspicions of Mr. Pennington as they were apparently
21 well founded, because it did happen. In that situation, and
22 I'm glad again that when you bring in your common life
23 experiences into this trial, I submit to you the husband and
24 wife, boyfriend, girlfriend, and you find out your other
25 person is cheating on you, or wants to cheat on you, are you

1 going to be suspicious of them? Are you going to trust them
2 in the same way that you would have before that happened?
3 No. I mean, you are going to kind of put them on probation.
4 You are going to be like "I know you cheated on me once. Am
5 I supposed to trust you from this point going forward?" So
6 you got to do some of the things maybe that Mr. Pennington
7 did, maybe not to the same extent he did it, but it's not
8 unusual or ordinary, or out of the ordinary I should say,
9 that somebody would have those suspicions or concerns, but
10 they were married for thirty-seven years. This happened in
11 January, this incident involving Matthew Alexander, and here
12 we are in June, five months later. We are supposed to
13 believe he's still carrying a sense of revenge that he wants
14 to do something about it. I mean, just get a divorce, if
15 that's what you want to do something about it. His thoughts
16 and his feelings I submit were no different than any one of
17 us would have.

18 He made the comment to the funeral director that
19 he still loved his wife, still cared for her, but, you know,
20 we are almost like roommates at this point. Maybe that was
21 part of the problem. Maybe that's why Rita Pennington was
22 interested in somebody else besides him, but his conduct,
23 his actions, while not what I would do, are altogether not
24 unusual on the other hand, or understandable.

25 The other category that they referred to and used

1 is they are trying to show somehow and some way some prior
2 bad acts or conduct by Mr. Pennington. And all they have
3 been able to come up with, I want you to think about this,
4 the only thing they have been able to come up with, the
5 State has, is that, one, you have the incident or testimony
6 of Terry Swofford that she stated Dean came over to the
7 house in November of 2013, eight months before this
8 happened, and he's talking and ranting about how he was
9 going to kill Rita. I kind of put that statement in the
10 same category as the commoner statement he made to Vicki
11 Teague, the H.R. director, when he was mad, upset with them.
12 He's trying to find out why she's fired. They won't tell
13 him. If he's suspecting, even might be suspecting more than
14 what he was getting at home, and so he tells her "well, if
15 you don't tell me, I'm going to come down there and blow you
16 away." What did Ms. Teague do? Did she pick up the phone
17 and call the police, "oh my gosh, I just been threatened,
18 this lunatic saying he's coming down here and blow me away."
19 No, she didn't do anything. She just kind of put it aside,
20 because people say stuff like that. And the person who is
21 hearing is in the best position to judge whether it's
22 serious or not and apparently Ms. Teague didn't think it was
23 serious enough to pick up the phone and call the police,
24 because, you know what? It is a crime to threaten somebody
25 over the phone. She didn't do it. She kind of put it aside

1 and said he's just blowing off steam, whatever, because I
2 won't tell him what he wants to know.

3 The same thing is true of Ms. Swofford's
4 testimony. She didn't tell anybody. She didn't go running
5 down to the police and say "oh, my gosh, I was at my hose
6 today and Dean Pennington came rushing into my house and
7 threatened to kill people."

8 If you really believe that, if you really believe
9 this, you would act on it, but neither one of them did and
10 that's really the most they got, except the statement of
11 Rocky Pennington.

12 Now, Rocky Pennington, the son of Dean and Rita,
13 when this incident happened four years ago, police spoke to
14 him at length. Detective Fowler did. "Tell me what you
15 know. Tell me what you know about your dad and how he
16 treated your mom and of any threats he may have made."
17 Nothing. Nothing about any threats made two weeks before
18 the shooting or two months before the shooting. All right.

19 He gives a statement. Time goes on. One year,
20 two years, three years, four years, and in all that time
21 he's having contact with Mr. Kendall and the prosecution,
22 the same way I had with Mr. Pennington, waiting for this
23 case to come to trial. Lo and behold, last week I'm in my
24 office and I get an e-mail from Mr. Kendall on Thursday.
25 Guess what? Rocky Pennington is now saying that two weeks

1 before his mother was shot, that his father put his hand on
2 his gun and said "I'll kill you" when they were having an
3 argument.

4 Not only that, two months before that, or so, he
5 said his dad was shooting at his mom. Well, I was very
6 surprised to hear that, as anybody would be after four
7 years, because if the police are knocking on your door, they
8 are coming to you and saying "your mom has just been killed.
9 We suspect your dad had committed the murder. What can you
10 tell us?" Don't you think you would have said "let me tell
11 you about my dad", but he didn't. And that kind of evidence
12 this late in the game should be and is suspicious.

13 Even when Mr. Pennington, Rocky Pennington, was on
14 the witness stand yesterday, he wouldn't answer my
15 questions. I want you to know that on Monday when I alluded
16 to it yesterday, we had a hearing. He got on the witness
17 stand and he testified and some of the same questions I
18 asked him yesterday I asked him on Monday. It's not like I
19 was out of the blue trying to beat him up on the witness
20 stand. I'm asking him the same, very exact questions. And
21 when I questioned him on Monday, I said "isn't the first
22 time that you shared this information with Mr. Kendall last
23 week on Wednesday or Thursday?"

24 He said "yes."

25 I said "all right." There you go.

1 But yesterday he acted like I was just out of the
2 blue, you know, attacking him. I don't like doing that. I
3 don't consider myself a rude person, but I got a job to do,
4 the same as you got a job to do today, and it may not always
5 be pleasant, but you do what you have to do, and so when I
6 asked him on the stand last week, Wednesday or Thursday.
7 Now, now we get this information. And I submit to you the
8 reason we are getting it now, a week ago, today is when I
9 got it, is because an act of desperation by the prosecution.

10 When you look at a case, prosecutors determine it;
11 you are saying to yourself I can't prove intent, I can't
12 prove if this man had the intent to kill, how are you going
13 to prove murder? You can't. So you go looking. And Rocky
14 Pennington gave them what they needed, because without that,
15 consider what they have left. They have the statement of
16 Terry Swofford, eight months ago. That's it.

17 What I thought that was interesting, and again you
18 have to put everything in context, Scarlett Pennington, she
19 was on the witness stand yesterday. I threw out the same
20 question to her. "Have you ever seen Dean Pennington shoot
21 at Rita?

22 "Oh, yeah. Seen it before." The first time she's
23 ever said that. First time. They gave her plenty of
24 opportunities also. It's just like Rocky. They came to her
25 and said "tell us what you want to know.

1 "We want to know how Dean got along with her. Did
2 he ever threaten her? Did he ever shoot at her?" Nothing.
3 Silence until yesterday.

4 As jurors the judge will tell you that you are the
5 judge of every witnesses' credibility, and that means
6 whether you want to believe them or not. And you can
7 believe some of what a witness says, you can believe all of
8 it, or you can believe none of it.

9 In essence, you can pick and choose from every
10 witness that testified in this trial what it is you want to
11 believe or disbelieve, and I submit to you Rocky
12 Pennington's testimony, Scarlett Pennington's testimony,
13 given how late in the day we get it, is not worthy of
14 belief. It just isn't.

15 You have heard testimony from other people that
16 knew Rita and Dean.

17 And I'll say this, because, you know, you should
18 say as jurors when you go back and begin looking at the
19 evidence, and I called the only people that I know that I
20 can call that had contact with both Dean and Rita. I called
21 his daughter, Dean's daughter Robin, who testified "I
22 probably had more contact than anybody else." And if you
23 remember, she said "I'm kind of the backup person for my
24 daddy's pacemaker. It if goes down, I'm the one who gets
25 the call."

1 I called his son Brian Pennington. I called his
2 brother, who were over there all the time. Brian Pennington
3 and Rick Pennington, they live on the same road. Rick lives
4 two hundred yards away, says "I'm down there all the time.
5 Never seen any evidence of verbal abuse or physical abuse.
6 Never."

7 And what's more telling is this. Forget about
8 their testimony. If you want to throw it out, you can.
9 It's yours. Dr. Ross. Dr. Ross testified, the pathologist,
10 said "okay. Obviously Ms. Pennington had a shotgun wound.

11 "What about the rest of her?

12 "Not a bruise on her. Not on mark on her."

13 And what that tells me is there is no physical
14 abuse going on, because had there been, had she been a
15 battered abused women, we would have seen that evidence, but
16 there was nothing. That isn't there.

17 So we have those two components of the State's
18 case to have these, the husband, who is, maybe, maybe not,
19 depending upon how you look at it, justifiably concerned
20 about his wife as she was seeing other people, and then you
21 have this other evidence of intent. But, again, I submit
22 highly questionable. Highly questionable.

23 So that leaves us with the third part of the case.
24 It's kind of what you see around. It's the crime scene, the
25 residence, what's going on there. And I'll say that again,

1 and I said it on Tuesday, this type of evidence as an
2 attorney, and I will say to you as a juror, should be
3 looking at, because unlike that chair where people take and
4 put their hand on the Bible and swear to something, they
5 could swear to anything, but the evidence at the scene, not
6 so much. It's still subject to interpretation. You heard
7 that from the witnesses, Dr. Ross, and from Detective
8 Anthony and yeah, you know, a couple things you can do, it's
9 the way you look at it, but fundamentally it remains the
10 same. It is the same.

11 A lot of exhibits. What I tried to do in turn --
12 and I'm going to say, what I try to do, this is how much we
13 put in. Most of these are all on blister boards, just a
14 little easier to handle, but fundamentally in this case,
15 what I think, I'm going to ask you to consider is how the
16 shooting occurred could best be summarized by Defendant's
17 Exhibit No. 11. All right. Now, this, not what I did.
18 This is what the investigator did on the day they were
19 there, and what they are trying to do is to reconstruct what
20 happened based upon what they are seeing in front of them.
21 And what this photo shows, and what I submit, is what
22 happened, more or less. Again, you can change a few things
23 here and there. Basically, basically, that's where I think
24 Rita Pennington was standing at the time that shot was
25 fired. And that's what all the other evidence showed.

1 Again, a lot of, for lack of a better word, a lot of stuff,
2 a lot of evidence has been put in, but it all goes all the
3 way back to this one photograph. All right?

4 Rita Pennington -- I wish I could re-enact it
5 better and I could say it, but Rita Pennington was standing
6 at the end of the bed. Mr. Pennington is sitting on the
7 bed. And why we know he is sitting? We can't defy the
8 natural law of physics to try the state of mind in this
9 case. Those pellets are going up. They are not just going
10 up at a slight angle. They are hitting the ceiling, okay?
11 And the only way that you can have that kind of trajectory
12 is if the person is in a seated position. There is no other
13 way. No other way. And we have got pellets in the ceiling.
14 We have got a pellet in the bookcase behind her. All of
15 that is consistent with that shot going up, but he's got to
16 be in a seated position. There is no other way -- excuse
17 me, no other place he can be seated, except on that bed.

18 And so where we are kind of quibbling about, for
19 lack of a better word, is how is he positioned on that bed.
20 I'm not going to pull this out again and sit on the table,
21 but my point is this. Yeah, sure, if he's sitting facing
22 like you, if you are the dresser, yeah, that is an
23 impossible shot. No, he had to put it over his shoulder to
24 do that, but if he's turned with his shotgun on his lap and
25 he's looking at the TV, which is kind of where Detective

1 Anthony is, or kind of turned toward the TV and Ms.
2 Pennington is this way, it's perfectly consistent, and that
3 just makes sense, because think about it. All of this stuff
4 on the bed that you see, all this stuff on the bed, the
5 cleaner, the shells, the TV remotes, all right there. If
6 you are sitting on the edge of the bed watching the TV,
7 that's where your stuff is going to be at. Perfectly
8 consistent with that set of facts.

9 You can turn and twist people anyway that you
10 want, but you have to use your common sense, as Mr. Kendall
11 asked you to do during the trial. If you are watching TV on
12 Saturday morning, you are not going to be looking at the
13 dresser. You are going to be turned where the TV is. And a
14 lot of us do things similar to what he's doing. I might
15 polish my shoes sitting on the edge of the bed, watching the
16 news, or be doing something else in the bedroom, but if I'm
17 watching the TV, I'm going to have to be turned.

18 I submit, again, twist to the side, the gun
19 pointed in that direction. He's down. She is standing.
20 Again, the trajectory matches that that's been described.

21 Now, the State is going to say "well, be that as
22 it may, Mr. Pruett. Let's just pretend for a moment it
23 happened just the way you say it did. He still shot her."
24 Again, I don't rely upon what's being said or told to me.
25 I'm looking at the physical evidence. And from Dr. Ross,

1 their expert, they called her, I didn't. Dr. Ross came in.
2 She described, again with her examination, what did she tell
3 you? She said Ms. Pennington had stippling evenly
4 distributed on the front of her face. A stippling is a --
5 the best way I can describe it, it's almost like freckles.
6 They're like little red dots, exactly what it looks like,
7 and that's where the powder burns hit somebody's face. They
8 go into the skin. All right. That's what it looks like,
9 freckles. She had that across her face, evenly distributed.

10 Here is what I asked Dr. Ross. "Dr. Ross, if she
11 had been turned away, would she have had that evenly
12 distributed, or would it not have been on one side of her
13 face?"

14 She said "well, it wouldn't be on one side of her
15 face."

16 I asked Dr. Ross "had she thrown her hands up,
17 would there be any stippling on her hands?"

18 She said "yes.

19 "Was there?

20 "No.

21 "What about her arms, stippling on her arms?

22 "No. There was none."

23 But what that should tell you is this. If
24 somebody is pointing a shotgun at you, about to pull the
25 trigger, are you going to be looking down the barrel, or are

1 you going to be doing this? Are you going to be turning
2 away, don't do that, because I'm one of those people that I
3 don't even like an empty gun pointed at me, even when
4 somebody tells me it's empty. Even when they emptied out
5 the shells in front of me, I still don't want them pointing
6 that gun at me.

7 So if it's like the prosecution wants you to
8 believe, that he's having a bead on Ms. Pennington that
9 morning pointing a shotgun about to kill her, do you think
10 she is going to be standing there doing nothing, or is she
11 going to be doing this? She is going to be throwing her
12 hands up, turning away, getting away. That didn't happen.
13 You don't have to believe me or anybody else. Just the
14 State's own expert, Dr. Ross. She said "no, sir, no
15 stippling on the hands, none on her arms. Evenly
16 distributed on her face." Again, perfectly consistent with
17 what we have seen and what's been described. You can't lie
18 about the physical evidence. Might lie about everything
19 else, but not about that.

20 I have listened to Mr. Kendall's closing remarks,
21 and I'm trying to be brief and to the point, but there is a
22 lot there that obviously I dispute and take issue with.

23 From the very beginning, you know, we talked about
24 what happened that morning and we looked at Mr. Pennington's
25 statement, and what he has described, at least from the

1 beginning of his statement, is this is a typical morning in
2 the Pennington house. He gets up about five o'clock,
3 potentially, going to go back to bed, gets up about seven.
4 You know, Rita gets coffee. Kind of kick around some. We
5 talk about going to Hardee's, going to the grocery store.

6 But I want to tell you something about this
7 statement. I don't want to skip around too much when I'm
8 talking, but, you know, when the officers arrived that
9 morning, Deputy Medley was the first deputy on the scene in
10 response to that 911 call. There was a body cam on Officer
11 Medley, and for whatever reason, I don't understand it
12 either, I don't know, there is only two minutes and
13 fifty-seven seconds of that video. All right. They have
14 those cameras on for a reason. They are not for decoration,
15 and I don't know what's going on in this particular case. I
16 don't know if he had it on the whole time, or if he cut it
17 off and cut it on. What I suspect happened is they flipped
18 out that little snippet, two minutes fifty-seven seconds,
19 just the part where Mr. Pennington was on there, kind of
20 wailing, crying, whatever you want to call it, because they
21 thought that was kind of incriminating maybe. And
22 unfortunately it's just a fact of life, and I say this as a
23 former prosecutor for many years, that officers sometimes
24 only keep what they think is going to help them incriminate
25 the person they are investigating. It's just natural. You

1 see something, I think that could be incriminating. You
2 save it and the rest of it you don't keep, but in my eyes
3 it's all relevant. It's all worthy of keeping, because one
4 day in time you are going to have to come in this courtroom
5 and present that case to a jury. It's a far, far better
6 thing to say let it all play, let's see everything
7 happening, and not just two minutes and fifty-seven seconds
8 that we chose to snip out. They did that, because, again,
9 Mr. Pennington is on the video and he's upset and Mr.
10 Kendall wanted to characterize that as fake crying. I would
11 like Mr. Kendall maybe come back up here and talk to you
12 again and maybe show you how a real cry looks like. Maybe
13 he can demonstrate it for us, because I think everybody is
14 going to be different. We are not all going to be the same.
15 The way people express grief, one person, the next is
16 better. But, again, maybe he can show us how a real man
17 cries, because I don't know.

18 But be that as it may, on these statements,
19 everything -- I want you to keep in mind this written
20 statement is not the whole thing of what happened, okay,
21 these page and a half, two pages here that Detective Fowler
22 took down. And, again, I don't know how else to say this,
23 they make a choice on how they take statements. I find it
24 hard to believe that the Cherokee County Sheriff's Office
25 doesn't have a tape recorder or a video recorder that they

1 can just sit down and turn on and record somebody's
2 statements, and this is 2014. Now, this little recorder
3 from Radio Shack cost twenty-nine dollars, but there are
4 cameras everywhere. We can't get away from cameras these
5 days. People have phones, they are on computers. You walk
6 in the sheriff's office, they got security cameras all
7 around you, but they can't find one when it comes time to
8 take a statement from somebody. All right.

9 But be that as it may, this isn't the whole
10 statement. They had been there for three hours and I
11 thought it's interesting that Tracy Fowler's notes had other
12 things that weren't in his statement. Things that Mr.
13 Pennington told him are not in his statements, but they are
14 in his notes.

15 And we know this is not the whole statement. We
16 know this is not everything Mr. Pennington did that morning,
17 because -- I'm just using this as an example. Defendant's
18 Exhibit No. 12, one of the things he did that I thought was
19 extremely interesting, this is his log book. You know, he's
20 got apparently heart issues, got a pacemaker in him and
21 every morning he religiously gets up, takes that blood
22 pressure and takes that sugar before he takes his
23 medication. Well, Dean, he didn't put that in his
24 statement. Do you think that it didn't happen?

25 And every morning he gets up and he has a little

1 regimen he follows. He got his pill dispenser here where he
2 takes his medication. Well, that morning is missing. It's
3 not in his statement. He didn't say "I got up that morning
4 and I took my medication, the way I always do," but it's
5 probably what happened. So a lot in this statement that's
6 not complete. It's not whole. I wish we had the video
7 recorded statement. We don't. But even by his statement,
8 even by Mr. Pennington's statement, he is describing what I
9 would say to you is this is the average, average day to get
10 up, having coffee, sitting on the bed, talking about going
11 to Hardee's, talking about going to go get groceries.

12 And what is striking about all that is this. If
13 this man has murder on his mind, the evidence sure doesn't
14 show it. It sure doesn't show it.

15 Blood pressure was 81. Not like someone's blood
16 pressure is about ready to kill somebody. And that blood
17 pressure and those measurements we're all talking about,
18 7:47 a.m.. He writes down the time on this is what lawyers
19 call contemporaneous recording. As the event is happening,
20 he's writing it down. 7:47 a.m.. The 911 call came in at
21 8:04. A few minutes in between that time and everything is
22 apparently fine and normal. I would not think that they are
23 about ready to kill you, intending to kill somebody, but
24 that's what the State's theory is. Got murder on his mind,
25 wants to kill his wife. None of that is borne out by the

1 evidence.

2 The other thing that I found striking that Mr.
3 Kendall did not mention, chose not to mention, is that on
4 the bed we see -- I am referring to Defendant's Exhibit 4,
5 the purse of Ms. Pennington. Her car keys are out. She's
6 laying out her pants in front of the bed. She's dressed in
7 a short-sleeved T-shirt and her underwear. She's getting
8 ready to put her pants on. Again, not what you would expect
9 or think. If I'm in a heated argument with somebody, that's
10 not how I want to be dressed or positioned. It's not going
11 to be what I'm doing or about to do. It is completely
12 inconsistent with somebody who's in the middle of an
13 argument with a man who is about to kill her. None of that
14 makes sense at all.

15 And the other thing that, again, I find striking
16 is this State's notion that apparently William Dean
17 Pennington is a criminal mastermind, that apparently this
18 was all set up, it was all planned, premeditation, malice
19 aforethought, when again the evidence completely is
20 inconsistent with all of that.

21 And he's made a big deal about a Liquid Wrench can
22 and the spray being on the nightstand and on the gun. Well,
23 if you recall, and again it's in the photograph, there is a
24 fan -- I'm referring now to Defendant's Exhibit No. 4 again,
25 there is a fan -- actually there are three fans in that

1 room. One fan overhead, one fan is in the bed or on Mr.
2 Pennington's side. The other fan on the other side is on
3 Ms. Pennington's side. But, again, it's just kind of common
4 sense and life experience, you take a spray can of anything,
5 you spray it, what's going to happen if the fan is right
6 there? It's going to blow. Where is it going to blow on?
7 It's going to blow on that nightstand, right where he is
8 standing.

9 Again, you can't defy the law of physics. That's
10 what's going to happen and I submit to you that's the
11 explanation for that, being sprayed on the bed. That's what
12 I thought was interesting. They are trying to make it look
13 like "oh, my, I have intentionally shot my wife. Now, I
14 will reconstruct the crime and it's going to fool
15 everybody," because that's exactly what Mr. Kendall just
16 said. "I'm going to lay my gun down and I'm going to
17 disassemble and I'm going to put it down and I'm going to
18 put spray on there." Well, it would have been all over the
19 bed. It would have been everywhere. That's inconsistent
20 with the reality of what they found on that morning. You
21 can't have it both ways. You can't make up the facts to
22 suit you.

23 This case unfortunately and tragically centered
24 around Mr. Pennington's negligent careless use of a firearm,
25 plain and simple.

1 You heard the testimony from his children, from
2 his brother, saw him all the time, saw how he was getting
3 over. You know, some people age obviously at a different
4 rate of age. Mr. Pennington, being sixty-eight, a little
5 more so than a lot of us. Shaky, kind of terrible. Having
6 difficulty with simple things, like driving. Having to use
7 a cane when he walked. There were pictures of wheelchairs
8 in his home. This isn't stuff that I have to make up. This
9 is stuff the State has already put into evidence. So he's
10 not maybe like a person you or I might know who is
11 sixty-eight and he's got all these health issues. He's got
12 a pacemaker in. He's got a heart condition. He's got high
13 blood pressure. He's taking Xanax. He's taking Percocet.
14 He's got all these prescriptions. Well, he's got a lot of
15 physical problems going on. And as his son and daughter
16 rightly said -- you know, the son said "I'm trying to
17 discourage him from driving and handling guns. It's just
18 not a good idea. He's getting to that point where he
19 probably needs to stop." And you know what? It's a hard
20 thing to tell his dad. It's a hard thing to tell your dad
21 you can't do this, you can't do that. But, in any event, he
22 is obviously careless at that point in time.

23 One of the things that was noteworthy was in Rocky
24 Pennington's own statement, he even said "my dad has always
25 kept his guns loaded and he's always been careless with

1 them." That's not what he testified to, but that was in his
2 statement when they first interviewed him. "My dad has
3 always been careless," and that's what's happened in this
4 case.

5 Mr. Pennington was handling this gun on the
6 morning of the incident. He had fired it the night before.
7 He got it out maybe -- maybe sometime that evening, I don't
8 know. Maybe he already cleaned it some before that morning.
9 You know, we heard Rick Pennington say "yeah, he had it out
10 on the bed, some kind of gun on the bed. Wouldn't shock me
11 at all if was cleaning that same gun the night before. He
12 still had it out, still fiddling with it. Maybe he had
13 already cleaned most of it, except for the barrel, I don't
14 know." But the point being is this. He did have it out.
15 He thought he had unloaded it. He had it on his lap, turned
16 towards his wife in an upward trajectory and it fired. I
17 mean, handling the gun and you think it's unloaded, you make
18 a mistake, as people oftentimes do, is not careful as you
19 should be.

20 Now, I know the prosecutor made a big deal on the
21 fact of a six and a half pound trigger pull. That sounds
22 like a lot. Sorry. That sounds like a lot when you are
23 talking about something like this, but it's just a regular
24 trigger pull.

25 The safety is on. I'm not going to point it at

1 anybody, okay.

2 (Whereupon, Mr. Pruett pulled the gun trigger one
3 time)

4 MR. PRUETT: Just a regular trigger pull.

5 (Whereupon, Mr. Pruett pulled the gun trigger
6 three times)

7 MR. PRUETT: Six and a half pounds, does it sound
8 like a lot? It's a normal pull.

9 And you may or may not have handled firearms, but
10 if you have, that's what this shotgun is.

11 The State's position is almost as if, though,
12 accidents never happen with firearms. Unfortunately they
13 happen all the time. I have known deputies that shoot
14 themselves. You know, they would be holstering the gun and
15 the gun go off. They think it's unloaded, the gun would go
16 off.

17 On this particular date Mr. Pennington thought the
18 gun was unloaded. He testified how he ejected the shells.
19 It came out. "I thought it was unloaded, started cleaning
20 it, it fired."

21 And the only way to hold this, it's a stockless
22 weapon, you can't rest the stock -- usually there is
23 something coming out here. You can rest it on the leg. The
24 only thing you can rest is here. So if you are holding it
25 to balance it, you are going to be holding it by the

1 trigger. And if you are messing around with it, pulling on
2 it, accidents happen. In this case I submit to you that's
3 exactly what happened. And I say that not because that's
4 what I think, what I feel. I say that because I'm looking
5 at all of the other evidence in the case.

6 I'm going to sit down. I probably have been
7 talking longer than I needed to, or should, but let me say
8 this and this is the last thing I say in every case. The
9 prosecution brings a charge against an individual, and the
10 judge will tell you this, they are presumed innocent, as
11 innocent as you or I are right now, and that innocence stays
12 with them, again, even when you go back to begin
13 deliberating, and it's only until such time as you come to
14 the conclusion beyond a reasonable doubt that he's guilty,
15 that innocence goes away.

16 Reasonable doubt. Judge Hayes is going to tell
17 you reasonable doubt, what is it? Reasonable doubt is the
18 kind of doubt that would cause a reasonable person to
19 hesitate to act. And that's something that you do, whether
20 you are conscious of it or not, every day. When you have to
21 make an important decision in your own life, you are trying
22 to weigh all the facts and you decide what to do. No, I'm
23 not so sure I should be doing that or not, that's what a
24 reasonable doubt is. You are questioning your rightness of
25 the decision. And in a criminal case it has real meaning

1 when you go back in that jury room and you begin
2 deliberating, you begin going through all the evidence, all
3 of the evidence that's been presented, all the testimony,
4 and you have been talking among yourselves, at some point,
5 Mr. Foreman, members of the jury, you got to take a vote or
6 you will never get out of here. You got to vote. And when
7 it comes time to vote, and every vote on this jury counts,
8 because a verdict has got to be unanimous. Every vote
9 counts. When it comes time for each one of you to vote
10 whether or not Mr. Pennington is guilty of murder and I'm
11 like "uh", I'm not so sure," that's what a reasonable doubt
12 is. Casting that vote and saying "uh, I'm hesitating
13 because I got a doubt here about this man's guilt."

14 The State has the burden of proving beyond a
15 reasonable doubt. And in this case there is plenty of
16 evidence to raise, not just a doubt, but a reasonable doubt
17 as to whether or not he's guilty of murder.

18 Again, the hard evidence, the science, Dr. Ross'
19 testimony all goes against the State's theory, and that's
20 all it is, it's a theory. It's just speculation about Mr.
21 Pennington's guilt.

22 The other two alternative verdicts the judge will
23 tell you about, involuntary manslaughter, you have to
24 determine whether or not Mr. Pennington acted
25 unintentionally, whether he was reckless in the way he