

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME I OF II

RECEIVED

OCT 03 2019

SC Court of Appeals

Appeal from Beaufort County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NICK RUSSELL EVANGELISTA,

APPELLANT

APPELLATE CASE NO 2018-000448

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

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

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

ATTORNEY FOR APPELLANT

W. JOSEPH MAYE
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

DUFFIE STONE
Fourteenth Circuit Solicitor's Office
PO Box 1880
Bluffton, SC 29910

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (DECEMBER 11-14, 2014).....	1
<u>JACKSON V. DENNO</u> HEARING.....	16
TESTIMONY	
PHILIP NIX (IN-CAMERA)	
Direct Examination by Ms. Swanson.....	17
Cross Examination by Ms. Campbell	21
ROBERT GREENE (IN-CAMERA)	
Direct Examination by Ms. Swanson.....	23
Cross Examination by Ms. Campbell	27
IMMUNITY HEARING.....	37
DEFENDANT'S MOTION ON BURDEN OF PROOF FOR IMMUNITY	37
COURT'S RULING	39
TESTIMONY	
NICK EVANGELISTA (IN-CAMERA)	
Direct Examination by Ms. Campbell	43
Cross Examination by Ms. Swanson	73
JON ADAMS (IN-CAMERA)	
Direct Examination by Ms. Swanson.....	89
Cross Examination by Ms. Campbell	98
Redirect Examination by Ms. Swanson	112
COLLOQUY ON IMMUNITY UNDER S.C. CODE § 16-11-440 AND 16-11-450	115
COURT'S RULING	121
OPENING STATEMENT BY MS. SWANSON	126
OPENING STATEMENT BY MS. CAMPBELL.....	129
TESTIMONY	

BROOKER DEVORE	
Direct Examination by Ms. Swanson.....	136
ROBERT DICARLO	
Direct Examination by Ms. Swanson.....	140
BRANDON COOLER	
Direct Examination by Ms. Swanson.....	143
Cross Examination by Ms. Campbell	164
Redirect Examination by Ms. Swanson	167
Re-Cross Examination by Ms. Campbell.....	168
Redirect Examination by Ms. Swanson	169
ROBERT SNIPES	
Direct Examination by Ms. Swanson.....	170
JAMES FRYDRYCHOWICZ	
Direct Examination by Ms. Swanson.....	172
PHILIP NIX	
Direct Examination by Ms. Swanson.....	178
ROBERT GREENE	
Direct Examination by Ms. Swanson.....	182
JEFFREY MORAN	
Direct Examination by Ms. Swanson.....	188
Cross Examination by Ms. Campbell	192
NICK BATALIS	
Direct Examination by Ms. Swanson.....	194
Cross Examination by Ms. Campbell	204
Redirect Examination by Ms. Swanson	213
JOHN ADAMS	
Direct Examination by Ms. Swanson.....	214
Cross Examination by Ms. Campbell	225
Redirect Examination by Ms. Swanson	250
TIMOTHY FRENCH	
Direct Examination by Ms. Swanson.....	254
Cross Examination by Ms. Campbell	261
THE STATE RESTS	277

TESTIMONY

NICK EVANGELISTA

Direct Examination by Ms. Campbell	279
Cross Examination by Ms. Swanson	329

LOIS VERONEN

Direct Examination by Ms. Campbell	370
Voir Dire Examination by Ms. Swanson	372
Direct Examination by Ms. Campbell (continued)	374
Cross Examination by Ms. Swanson	390

SARAH COTTER

Direct Examination by Ms. Campbell	402
Cross Examination by Ms. Swanson	406
Redirect Examination by Ms. Campbell	408

JENNIFER KELLY

Direct Examination by Ms. Campbell	409
Cross Examination by Ms. Swanson	411

JULIE BHUIYAN

Direct Examination by Ms. Campbell	413
Cross Examination by Ms. Swanson	415

DUDLEY RUFFALO

Direct Examination by Ms. Campbell	419
Cross Examination by Ms. Swanson	421
Redirect Examination by Ms. Campbell	422

ERIC RICKER

Direct Examination by Ms. Campbell	424
Cross Examination by Ms. Swanson	427

ADAM PAUL

Direct Examination by Ms. Campbell	429
Cross Examination by Ms. Swanson	432
Redirect Examination by Ms. Campbell	434

NATHAN ARNETT

Direct Examination by Ms. Campbell	435
Cross Examination by Ms. Swanson	438

MICHAEL MALVASIO

Direct Examination by Ms. Campbell	439
Cross Examination by Ms. Swanson	445

CATHRYN EVANGELISTA	
Direct Examination by Ms. Campbell	447
Cross Examination by Ms. Swanson	452
THE DEFENSE RESTS	455
CLOSING ARGUMENT BY MS. CAMPBELL	456
CLOSING ARGUMENT BY MS. SWANSON	471
CHARGE ON THE LAW	487
VERDICT	508
SENTENCING	509
DEFENSE NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO BAR PROSECUTION UNDER S.C. CODE 16-11-410 THROUGH 450 (WITH ATTACHMENTS)	510
STATE'S EXHIBIT 35 (JOURNAL)	573
COURT'S EXHIBIT 3 (TO DO LIST)	587
COURT'S EXHIBIT 9 (EMAIL)	596
INDICTMENT	597
CERTIFICATE OF COUNSEL	599

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT) Court of General Sessions
Case No. 2014-GS-07-01787

3 _____)
4 STATE OF SOUTH CAROLINA)
5 vs.) Transcript of Record
6 NICK RUSSELL EVANGELISTA,)
7 Defendant.) DATES:
December 11 - 14, 2014

8
9 B E F O R E:

10 THE HONORABLE DEADRA L. JEFFERSON
11

12 A P P E A R A N C E:

13 HUNTER SWANSON and MARY COPPAGE JONES
14 Attorney for the State

15 TRASI CAMPBELL and JAMES BELL
16 Attorney for the Defendant

17 Karen V. Andersen, RMR, CRR
18 Circuit Court Reporter
19
20
21
22
23
24
25

1 How many witnesses does the State have on the
2 *Jackson v. Denno*?

3 MS. SWANSON: Your Honor, we have two witnesses,
4 the two officers that took those statements.

5 THE COURT: And those are?

6 MS. SWANSON: Philip Nix, formerly with Escambia
7 Sheriff's Office and Robert Greene with Escambia County
8 Sheriff's Office.

9 THE COURT: Which county is that?

10 MS. SWANSON: It's in Pensacola, Florida.

11 THE COURT: Then, let's see, the stand your ground,
12 how many witnesses are there?

13 MS. SWANSON: We have agreed to allow hearsay in
14 that motion. I would just intend to make the videos of the
15 statement a part of the record. I believe Your Honor has
16 reviewed those videos, those statements, the recorded
17 statements.

18 THE COURT: When you say you've agreed to hearsay,
19 I need you to be more specific as to what it is y'all agreed
20 upon so I can be clear.

21 MS. SWANSON: Yes, Your Honor. I only intended to
22 put up my lead investigator to cover the evidence in the
23 case, but also make part of the record two recorded
24 statements as well as a series of journal entries made by
25 the defendant.

1 THE COURT: And how many witnesses does the defense
2 have?

3 MS. CAMPBELL: Well, Your Honor, we have a motion
4 pending before the Court to have Dr. Lois Veronen testify at
5 the immunity hearing. And at the proper time, I can be
6 fully heard on that motion. I think I can cross-examine
7 Officer Adams without the need to call any one of the
8 officers. So we would just have the one witness.

9 THE COURT: And I guess I'm trying to figure out,
10 what motion did you make about your witness?

11 MS. CAMPBELL: Would you like to hear it now?

12 THE COURT: Uh-huh.

13 MS. CAMPBELL: Okay. So as far as the Castle
14 Doctrine hearing, the immunity hearing is concerned, and as
15 far as Dr. Veronen is concerned, I do have other motions
16 before we begin that hearing. The reason Dr. Veronen should
17 be able to testify at the immunity hearing is because she
18 can speak to the specific elements in the statute, which the
19 defendant has a burden to prove.

20 THE COURT: Let me interrupt you, however. How,
21 from an ethical standpoint, is she going to be able to talk
22 about your client as relates to this issue?

23 MS. CAMPBELL: I'm not sure about ethics --

24 THE COURT: Well, I've never -- most psychologists
25 ethically cannot testify about something they did not --

1 were not a party to, were not a witness to. They can't say
2 what they think about somebody's state of mind. They can
3 only talk in generalities. At least that's been my
4 experience with them. And they are very articulate about
5 that.

6 MS. CAMPBELL: She's not going to talk about
7 anything other than what I think would be appropriate for
8 her to testify to. You would have to go through the process
9 that -- I think the State and I both agree, she's an expert
10 in the field of battered person's syndrome --

11 THE COURT: She can talk about it in general, but I
12 don't think she can talk about him.

13 MS. CAMPBELL: Well, it is our intention for her --
14 the report that I submitted to Your Honor previously last
15 week, you know, we would make that report, ask that to be a
16 court exhibits, a part of the record.

17 THE COURT: How would you do that without them
18 being able to cross-examine her?

19 MS. CAMPBELL: Well, the State would be able to
20 cross-examine her.

21 THE COURT: How? How can they cross-examine a
22 report in a pretrial hearing?

23 MS. CAMPBELL: No, no. I'm saying the report needs
24 to be a part of the record of the case. My intention is to
25 put her up to testify --

1 THE COURT: So why would her report come in if
2 she's going to be here to testify?

3 MS. CAMPBELL: Because I think it's important that
4 that be a part of the record, should there be a necessity
5 for an appellate court to look at --

6 THE COURT: That's why you call witnesses live and
7 they testify and they opine and they get cross-examined.
8 The reports are hearsay.

9 MS. CAMPBELL: I will ask it be made a part of the
10 record --

11 THE COURT: I will cross that bridge when I come to
12 it, but it's unlikely I will let it in. It's cumulative at
13 best; at worst, inadmissible hearsay.

14 MS. CAMPBELL: So to continue my argument, if it
15 please the Court?

16 THE COURT: Yes, ma'am.

17 MS. CAMPBELL: Thank you. For instance, testimony
18 as to his fear, the element that he reasonably believed that
19 he must use deadly force and meet her attack was sufficient
20 force in order to prevent his death or his serious bodily
21 injury. So, yes, state of mind, and what he perceived the
22 events to be unfolding in that tense, rapid succession of
23 events on that night, it's extremely relevant evidence.

24 THE COURT: Let me interrupt you one quick second.
25 I guess we are putting the cart ahead of the horse. You

1 need to call your witness. They need to make a
2 contemporaneous objection. I am not ruling in a vacuum
3 about whether testimony is admissible. So you need to call
4 your witness. I am not aware of anything in the rules that
5 allows to call a report without them being able to
6 cross-examine it. So you are going to need to call your
7 witness.

8 And I've also never had a stand-your-ground where
9 the person who says they felt they had the right to act in
10 self-defense didn't testify. So I don't know how you are
11 going to get over that hurdle either strategically. It's
12 one you will have to cross and make an assessment.

13 Likewise, I think this akin to when you have a
14 sexual -- or what's the word I'm looking for? When you have
15 delayed reporting and you have experts in the area of sexual
16 abuse testify, they never testify about the person in
17 particular. They testify in generalities about certain
18 qualities, certain circumstances. They usually testify
19 about the elements of delayed reporting and otherwise. But
20 I've never had a psychological expert testify specifically
21 about what somebody thought who wasn't there. And I don't
22 think it's admissible.

23 I'm going to do some research over the lunch
24 recess, but unless you have a case for me to review -- I'm
25 willing to consider what you can show me, but I've never had

1 an expert testify. Even a battered -- a person who
2 specializes in battered spouse syndrome or battered -- I
3 don't want to say partner. That's not the word I'm really
4 looking for. But, ethically, they are quick to tell the
5 Court that we can't talk about specific things, we can only
6 talk in generality. It would be a violation of our code of
7 ethics to go beyond that. So it would be surprising to me
8 to have an expert come into court and say, I can opine about
9 this particular person and this particular situation and
10 what they would or would not have done, or what their state
11 of mind was. I just think it would run afoul of so many of
12 the rules of evidence. Because the State can't
13 cross-examine -- I mean, they can cross-examine it. But I
14 think there's so many variables. One is that the jury --
15 run the risk of the jury giving it too much weight, which
16 would make it more prejudicial than probative.

17 I don't know anybody else that can talk about his
18 state of mind except him. And she can talk in generalities
19 about what battered people generally do in certain
20 circumstances. But I don't think she can say what he would
21 have done in this circumstance.

22 MS. CAMPBELL: And I agree that if that is kind of
23 where we are, then there is no necessity for the State to
24 have an expert in rebuttal.

25 THE COURT: I don't know what their expert is going

1 to say.

2 MS. CAMPBELL: Exactly.

3 THE COURT: I don't know. I will have to cross
4 that bridge when I come to it.

5 MS. CAMPBELL: I think that's the way it's going to
6 go. So we will just follow that order of business. Thank
7 you.

8 THE COURT: Now, as far as the State's position, I
9 need to hear -- and I eclipsed some of it, because I heard
10 y'all on the telephone Friday. So I kind of know what your
11 posture has been on it. But, first, what would the State's
12 position be on a report without a live witness?

13 MS. SWANSON: I would object to the report without
14 a live witness. I would like the opportunity to cross
15 Dr. Veronen. But I would actually move to disallow
16 testimony of Dr. Veronen in the immunity hearing. The
17 burden is on the defendant to prove that he acted in
18 self-defense and that he had no duty to retreat by
19 preponderance of the evidence. And I think immunity is a
20 bar to prosecution. It's not a defense.

21 THE COURT: It is, correct.

22 MS. SWANSON: And so we are dealing with separate
23 issues here. Self-defense is what the purview of battered
24 spouse falls under. It's only relevant to state of mind in
25 a self-defense case. The defendant has already made

1 statements regarding what happened. And putting up
2 testimony of Dr. Veronen to expound on his ever-evolving
3 story of what happened the night of the murder does not seem
4 appropriate at this stage. There's certainly a lot of
5 evidence to the contrary that defendant was in fear. You
6 know, we would intend to show that the victim did not pose a
7 threat to the defendant. And I think that it just presents
8 a factual issue, not a matter of law at this point that the
9 Court can rule on.

10 MS. CAMPBELL: Judge Jefferson, I guess my point
11 is -- and I will be happy to fully put my argument on the
12 record at the time -- is that Your Honor is going to have to
13 interpret the statute and make factual finding during the
14 immunity hearing. And we are not relying on any section of
15 the Castle Doctrine other than Subsection C. And the
16 presumption of reasonable fear eludes him because it's not
17 an intruder situation. Therefore, under Subsection C,
18 whether or not his fear was reasonable that night is a fact
19 that Your Honor would have to find at the immunity hearing.
20 And Dr. Veronen is critical to the proof of why his fear was
21 reasonable.

22 THE COURT: You need to give me a case that says a
23 therapist can tell me about somebody's state of mind and for
24 that to carry the weight of finding of fact in court, other
25 than to speak in generalities. And if you can get me that,

1 I will be glad to review it. But I think otherwise, it
2 would be inappropriate.

3 MS. CAMPBELL: We will do that.

4 THE COURT: It would be speculative at best. She
5 can't tell me what he was thinking right then. She can talk
6 in generalities about people who have been the victim of
7 battered spouse syndrome, people who are in particular
8 circumstances. She can talk in generalities. But I don't
9 think it would be appropriate for her to tell me what she
10 thinks he thought. That's hearsay on top of hearsay, even
11 for an expert. And I've never encountered an expert who's
12 willing to do that. That's what I find even more troubling.

13 MS. CAMPBELL: I don't think it's that she's saying
14 what he thought.

15 THE COURT: Isn't that what you would want me to
16 believe and give weight to?

17 MS. CAMPBELL: Not necessarily.

18 THE COURT: Then why else would you be offering it?

19 MS. CAMPBELL: Because in her findings, she made a
20 finding that he was a victim of domestic violence and
21 that --

22 THE COURT: That's a finding of fact --

23 MS. CAMPBELL: -- and that he was suffering from
24 post-traumatic stress and trauma from the repeated attacks,
25 almost nightly at that point, from Rebecca on him. So on

1 the night that she died --

2 THE COURT: But that's her assuming that everything
3 he's saying is truthful. You are asking me to give it the
4 bearing of the weight of a finding of fact. That's why we
5 got 12 folk to listen to the facts and determine what they
6 are.

7 From a preponderance of the evidence, I can tell
8 you, I would be -- now, if you had other independent
9 empirical proof, other than what somebody thought who wasn't
10 there, you had multiple reports of the police coming there,
11 her having been charged with domestic violence, pictures of
12 him having been battered, pictures of him being at the
13 hospital --

14 MS. CAMPBELL: And we have all of that.

15 THE COURT: -- EMS reports --

16 MS. CAMPBELL: And we have all of that.

17 THE COURT: I don't know that that rises to the
18 level of stand your ground.

19 MS. CAMPBELL: Through hearsay, we will have this
20 officer put that in the record at the immunity hearing about
21 the multiple incidents of her being arrested for criminal
22 domestic violence against my client and the physical
23 injuries that he suffered as a result of her continued
24 abuse. So we will put that --

25 THE COURT: But all of that is a large formula. It

1 might amount to a self-defense argument. I don't know that
2 it's going to meet the preponderance of the evidence of
3 stand your ground. I don't even know what the facts are
4 alleged to have taken place. I have no clue. I haven't
5 read anything. I don't know. I haven't heard anything.

6 MS. CAMPBELL: Like I said during our telephone
7 conference last week, just prior to the hearing, I do have a
8 motion on the preponderance of the evidence standard. And I
9 will be happy to do that at that time. Thank you, Your
10 Honor.

11 THE COURT: You're welcome.

12 All right. And other than that and the *Jackson v.*
13 *Denno*, how long do you think it's going to take us to do
14 that? We are going to go to lunch, because I'm hungry. I
15 would imagine y'all are hungry. That will take us at least
16 to two o'clock. Are we pretty much saying our day is done
17 by the time we hear these motions? I would hate to have a
18 jury come back at, like, 4 or 3, and then we not be finished
19 and they have to wait. What do you think?

20 MS. SWANSON: My preference would be to just be
21 ready to go first thing with the case in chief in the
22 morning, and just make sure we do all the pretrial this
23 afternoon, if defense has no objection and if it suits Your
24 Honor.

25 MS. CAMPBELL: That's our preference as well.

1 THE COURT: If you could get the jury for me,
2 please. And I will appoint the foreperson in the morning.

3 (Whereupon, the jury returns to open court at 12:56
4 p.m.)

5 THE COURT: Ladies and gentlemen, we appreciate
6 your patience. You've been selected for the case of the
7 State v. Evangelista. I have some matters of law that I
8 need to take up with the attorneys that is probably going to
9 take us most of the afternoon. And we need to eat as well.
10 I'm sure you would like to have lunch. And by the time we
11 get done, I was thinking we wouldn't get you back to the
12 courthouse until four o'clock today. And that wouldn't make
13 sense. We are going to make a fresh start of it in the
14 morning at 9:30 tomorrow.

15 During the break, please do not discuss or
16 speculate about what you think the case may or could be
17 about. Please don't read, watch or listen to any media
18 accounts about this case. That includes radio, television
19 or Internet. And as tempting as it is to believe that
20 everything you see on the Internet is accurate, please don't
21 do any independent research on the Internet. You are bound
22 by your oath to decide this case according to the testimony
23 that you will hear from the sworn witnesses and the other
24 evidence that will be introduced. And I have great
25 expectation that y'all will take that responsibility

1 diligently and seriously.

2 Also, when you return to the courthouse, please
3 have no contact with anyone in or about the courthouse that
4 you do not recognize to be a fellow juror. Even an innocent
5 conversation could be observed and misinterpreted. People
6 tend to be, especially lawyers, a little paranoid during
7 trials of cases. And they tend to think that you would be
8 discussing something about the case rather than having an
9 innocent conversation about the weather or sports. So,
10 again, please confine your conversations to those you
11 recognize to be your fellow jurors.

12 When you return in the morning at 9:30, you will
13 come directly -- as you come into the courthouse, they will
14 direct you to your jury room. Is that how it works?

15 THE BAILIFF: We are going to have them come in the
16 side, Your Honor. So I will meet them down there. I
17 already discussed that with them. And I will escort them
18 upstairs to their jury room.

19 THE COURT: Y'all follow the bailiff's instruction.
20 She will tell how to gain entry in and out of the courthouse
21 in the morning. We appreciate your patience.

22 I know jury service is thankless, but it's my
23 sincere desire that it will be educational for you. And you
24 will learn that it's nothing like what you see on
25 television. And you will leave being some of our greatest

1 ambassadors for faith in the system and that it works
2 because of your willingness to be a part of it.

3 I hope that y'all have a great day. See you in the
4 morning at 9:30. Hopefully, it warmed up a little bit,
5 little bit of sunshine.

6 (Whereupon, the jury leaves open court at 12:58
7 p.m.)

8 THE COURT: Is there anything else we need to take
9 up before we go to lunch, from the State?

10 MS. SWANSON: No, Your Honor.

11 THE COURT: From the defense?

12 MS. CAMPBELL: No, Your Honor.

13 THE COURT: Have a good lunch. See y'all at two
14 o'clock.

15 (Court's Exh. 1, CD, was marked for
16 identification.)

17 (Court's Exh. 2, Miranda, was marked for
18 identification.)

19 (Court's Exh. 3, Interview CD, was marked for
20 identification.)

21 (Court's Exh. 4, Notbook entries, was marked for
22 identification.)

23 (Court's Exh. 5, Photograph, was marked for
24 identification.)

25 (Court's Exh. 6, Photograph, was marked for

1 identification.)

2 THE COURT: The State ready to proceed?

3 MS. SWANSON: Yes, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MS. CAMPBELL: Yes, Your Honor.

6 THE COURT: Which one do you want to do first? I
7 would think the *Jackson v. Denno* might be quicker. What do
8 you all want to do?

9 MS. SWANSON: May be quicker, but I suppose
10 depending on the Court's ruling, we wouldn't be able to
11 proceed after the immunity motion, so ...

12 THE COURT: Doesn't mean that I'm going to rule
13 right this minute and not going to think about it.

14 MS. SWANSON: The State doesn't believe that the
15 immunity hearing will be dispositive, but that would be the
16 one that would logically make most sense to take up.

17 THE COURT: Well, I don't know that I'm going to
18 rule contemporaneously. I may think about it overnight. So
19 up to y'all, whichever one you want to proceed with first.

20 MS. SWANSON: We can go ahead and go through the
21 *Jackson v. Denno*. The State calls Philip Nix.

22 PHILIP NIX,
23 having been duly sworn, testifies as follows:

24 THE CLERK: State your name and spell your last
25 name for the record.

1 THE WITNESS: Philip Nix, last name Nix.

2 THE COURT: Is that spelled with one L or two Ls?

3 THE WITNESS: One L, Your Honor.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MS. SWANSON:

7 Q. Mr. Nix, can you tell us where you worked in
8 October of 2014, please.

9 A. Pensacola Beach, Escambia County.

10 Q. What did you do first in the county?

11 A. I was a sergeant with the sheriff's office.

12 Q. How long did you work for the sheriff's office?

13 A. From '93 until December of last year.

14 Q. And were you on duty on October the 1st of 2014?

15 A. I was.

16 Q. And can you tell us what traffic stop you assisted
17 with?

18 A. We had information about a subject that was wanted
19 by the Marshal Service, Mr. Evangelista. If I'm saying that
20 correct.

21 Q. Mr. Nick Evangelista?

22 A. Yes.

23 Q. I can hand you the report, if you would like to
24 refer to it. Would that help you?

25 A. I remember it.

1 Q. Okay. Where did the traffic stop take place?

2 A. At the Exxon station on Pensacola Beach. It's the
3 only fuel station on the island. It's a convenience store
4 and gas.

5 Q. Were you the first officer to arrive?

6 A. I was not. Deputy Frydryhowicz was the officer
7 that initiated the stop. I backed him up.

8 Q. Okay. So you were backup for Officer Frydryhowicz?

9 A. Yes.

10 Q. And what kind of car was Nick Evangelista in?

11 A. Like a little -- it's not a Jeep.

12 Q. Was it a white Jeep Wrangler?

13 A. Yeah, but I was thinking it was -- I remember there
14 being something on the back tire cover that said something,
15 but it was a little white -- little sport vehicle.

16 Q. Would you disagree with me if I told you it was a
17 Jeep Wrangler?

18 A. No.

19 Q. And did you make contact with Nick Evangelista?

20 A. I did.

21 Q. How did you make contact with Mr. Evangelista?

22 A. Jay had made the stop. He was in Jay's vehicle.

23 And Jay came to me and he said that the gentleman that was
24 in the back of his car wanted to speak with me.

25 Q. So the defendant at that time -- and do you

1 recognize him today? Can you identify Nick Evangelista?

2 A. Yes, because I know where he's sitting. I would
3 know who it is, yes.

4 Q. Okay. And you were told that he wanted to speak
5 with you?

6 A. Yes, ma'am.

7 Q. And he was detained in the back of the patrol car;
8 is that right?

9 A. Yes.

10 Q. Did you threaten or promise him anything to talk to
11 you?

12 A. I did not.

13 Q. And were you at all tasked with interrogating him?

14 A. I was not.

15 Q. Had you talked to anyone about this South Carolina
16 investigation?

17 A. No. I had not spoke directly with anyone about it.

18 Q. So did you know any of the details from which he
19 was fleeing?

20 A. No. We knew that he was a fugitive, but I didn't
21 know the details of any of the -- of any case.

22 Q. And was that patrol car outfitted with audio and
23 recording devices?

24 A. Yes.

25 Q. And did you review that video with me in Pensacola?

1 A. I did.

2 Q. I'm going to hand you -- I apologize, Your Honor.

3 (Court's Exh. 7, In-car video, was marked for
4 identification.)

5 (Court's Exh. 8, Interview video, was marked for
6 identification.)

7 BY MS. SWANSON:

8 Q. I'm going to hand you what's been marked as State's
9 1, and ask you to identify this disk.

10 A. That's the disk.

11 Q. Okay. Is that a fair and accurate depiction except
12 for some redactions that refer to defendant's arrest of the
13 audio that recorded your discussion that day?

14 A. Yes.

15 Q. Thank you.

16 MS. SWANSON: The State would move to enter State's
17 1 for the purposes of this hearing?

18 THE COURT: Any objection?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: Marked and admitted without objection.
21 It will be Court's, because this is an in-camera hearing,
22 Court's whatever number the court reporter would have
23 reached at this point.

24 MS. SWANSON: Court's 7 and 8. Would you like me
25 to publish Court's 7 at this time?

1 THE COURT: Is that what you already sent me?

2 MS. SWANSON: Yes, Your Honor. Okay. Just making
3 sure.

4 BY MS. SWANSON:

5 Q. Did you have anything to do with the investigation
6 of the murder of Rebecca Melton after you made contact with
7 Nick Evangelista on October 1st of 2014?.

8 A. I did not.

9 Q. And, in fact, did the defendant say anything to you
10 before you left the patrol vehicle; do you recall? Did he
11 thank you for talking to him?

12 A. Yes. It was a cordial conversation. He was very
13 polite to me.

14 MS. SWANSON: Okay. Thank you. I have nothing
15 further at this time for this witness.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MS. CAMPBELL:

19 Q. Mr. Nix, Mr. Evangelista was handcuffed in the back
20 of a patrol car; is that correct?

21 A. I don't remember if he was handcuffed or not at
22 that point.

23 Q. So he was in the back of Jay's patrol car?

24 A. Yes.

25 Q. Okay. Was he moved to the back of your patrol car

1 or did you go to Jay's patrol car to speak to him?

2 A. I went to Jay's.

3 Q. You went to Jay's?

4 A. Yes.

5 Q. And in Jay's patrol car, there's an audio/video

6 recording system that recorded your conversation with

7 Mr. Evangelista, correct?

8 A. Correct.

9 Q. And during your conversation with Mr. Evangelista,
10 if he had asked you to get out of the car and leave, would
11 you have let him leave?

12 A. I would not.

13 Q. No? So he was in your custody, correct?

14 A. He was in the custody of the sheriff's office, yes.

15 Q. At the time, were you with the sheriff's office?

16 A. Yes, yes.

17 Q. So, yes, he was in your custody, the sheriff's
18 office, in the back of the patrol car having a conversation
19 with you about the events that occurred back here in South
20 Carolina, correct?

21 A. That is correct.

22 Q. At no time during that conversation did you advise
23 Mr. Evangelista of his Miranda rights, correct?

24 A. I did not.

25 MS. CAMPBELL: That is all I have.

1 THE COURT: Any redirect?

2 MS. SWANSON: No redirect.

3 THE COURT: Sir, you may step down.

4 THE WITNESS: Thank you.

5 THE COURT: You're welcome.

6 MS. SWANSON: Your Honor, would you like me to
7 present my next witness for the next statement or would you
8 like to hear argument on this particular statement?

9 THE COURT: You need to make a full presentation.

10 MS. SWANSON: Okay. The State calls Robert Greene.

11 ROBERT GREENE,

12 having been duly sworn, testifies as follows:

13 THE CLERK: State your name for the court reporter
14 and spell it first, please.

15 THE WITNESS: Robert Greene, G-r-e-e-n-e.

16 THE COURT: You may proceed.

17 MS. SWANSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 DIRECT EXAMINATION

20 BY MS. SWANSON:

21 Q. Investigator Greene -- I'm sorry, tell us what your
22 title is now.

23 A. I'm a field training officer currently assigned to
24 the patrol division.

25 Q. And who do you work for?

1 A. Escambia County Sheriff's Office in Escambia
2 County, Florida.

3 Q. Tell us how you became involved or had the occasion
4 to interview Nick Evangelista on October 1st of 2014.

5 A. October 1st, 2014, I was assigned to the criminal
6 investigation division as an investigator with the
7 robbery/homicide. I got a phone call from my supervisor
8 stating that patrol deputies had detained somebody under a
9 warrant and wanted me to interview him at the sheriff's
10 office.

11 Q. Okay. And did you, in fact, interview him that
12 day?

13 A. Yes, ma'am.

14 Q. And where did that interview take place?

15 A. Second floor of the Escambia County Sheriff's
16 Office, 1700 West Leonard Street.

17 Q. Was that interview audio and video recorded?

18 A. It was.

19 Q. I'm going to show you what's been marked as Court's
20 Exhibit No. 8 and ask that you identify this DVD, please.

21 A. Yes, ma'am. This is a DVD that I've signed.

22 Q. Okay. Is that fair and accurate depiction of the
23 interview that you conducted with Nick Evangelista?

24 A. Yes, ma'am.

25 Q. And did you, in fact, review that with me back in

1 Pensacola?

2 A. Yes, ma'am.

3 MS. SWANSON: The State would move Court's 8 in for
4 the purpose of this hearing.

5 THE COURT: Any objection?

6 MS. SWANSON: No, ma'am.

7 THE COURT: Marked and admitted without objection.

8 Q. Prior to asking Mr. Evangelista any questions, did
9 you review Miranda with him?

10 A. Yes, ma'am.

11 Q. I'm going to hand you what's been marked as Court's
12 2, and ask if you can identify this document.

13 A. Yes, ma'am. This is our rights waiver that I
14 signed and the defendant signed along with my supervisor.

15 Q. Okay. And did you go over -- is this a copy -- a
16 fair and accurate copy of the rights waiver that you
17 conducted with Mr. Evangelista?

18 A. Yes, ma'am, it is.

19 MS. SWANSON: At this time, the State would enter
20 Court's 2 for the purpose of this hearing.

21 THE COURT: Any objection?

22 MS. CAMPBELL: No, Your Honor.

23 THE COURT: Marked and admitted without objection.

24 Q. So you went over Court's 2, this Miranda form with
25 Mr. Evangelista?

1 A. Yes, ma'am.

2 Q. And did he seem to understand everything and of his
3 rights that you went over with him?

4 A. Yes, ma'am.

5 Q. In fact, did he seem well-educated?

6 A. Yes, ma'am.

7 Q. Was he a professional?

8 A. Yes, ma'am.

9 Q. What did he do for a living?

10 A. He told me he was, I believe, a physician assistant
11 working for a prominent sports medicine doctor, I believe.

12 Q. And after you went over those rights with him, did
13 he wish to speak to you?

14 A. Yes, ma'am.

15 Q. Did you threaten him or promise him anything to get
16 him to make any statements to you?

17 A. No, ma'am.

18 Q. And did he make incriminating statements?

19 A. Yes, ma'am.

20 Q. And, in fact, did they become more detailed as the
21 interview went on?

22 A. They did.

23 Q. All right. Did you have any other involvement in
24 this case other than interviewing the defendant in
25 Pensacola?

1 A. I issued a search warrant on a vehicle that was
2 recovered in his presence. And I executed the search
3 warrant and recovered items from the vehicle.

4 Q. Okay. And what kind of vehicle was that?

5 A. Without -- just the memory, it was a Jeep.

6 Q. Jeep Wrangler?

7 A. Yes, ma'am.

8 Q. White in color?

9 A. Yes, ma'am.

10 Q. And was that search conducted on October the 2nd of
11 2014?

12 A. Yes, ma'am.

13 Q. The day after he was arrested?

14 A. That's correct.

15 Q. And was Beaufort County present for that search?

16 A. They were.

17 MS. SWANSON: I have nothing further at this time.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MS. CAMPBELL:

21 Q. Officer Greene, do you have the Escambia County
22 Sheriff's Office rights form in front of you?

23 A. No, ma'am.

24 Q. May I hand that to him, please? If you could,
25 Officer Greene, on this form, there is no section whatsoever

1 for Nick Evangelista to say that he understands his rights,
2 correct?

3 A. The best way I can answer that question is, under
4 the waiver heading, it says: I have read the statement of
5 my rights shown above. And I understand what my rights are.

6 And then the subject's name where he wrote his name
7 out and then signature.

8 So my understanding is by him signing this waiver,
9 he's waiving his rights to speak at that point in time.
10 He's wishing to speak to me. And that by signing it, he
11 understands his rights and he understands what the
12 statements are above.

13 Q. That's your understanding?

14 A. Yes, ma'am.

15 Q. Of his signature at the bottom of this form?

16 A. Yes, ma'am.

17 Q. And so, for instance, with different sheriff's
18 departments, we have a form that says: Having read these
19 rights and having these rights in mind, do you wish to talk
20 to us now? And then the subject would initial that or sign
21 that. There's nothing on here where he indicates clearly
22 that he wishes to speak to you, correct?

23 A. On this rights waiver -- excuse me, I keep getting
24 tongue tied -- on that, that is correct, that statement.

25 Q. Whether or not he wants to speak to you is not

1 clear on this form, correct?

2 A. On this form, correct. But if I could add
3 something, on the audio of the interview, I believe
4 there's -- at some point in time, I explain to him that in
5 order to talk with me, that we need to discuss this. And if
6 you want to speak with me, you sign this, that tells me you
7 want to speak with me. So there's a verbal communication
8 between myself and him.

9 Q. And that is in evidence? I mean, the Court has
10 that for the purpose of this hearing. But I'm speaking
11 strictly to what Mr. Evangelista signed for you?

12 A. In your statement, that's correct.

13 Q. Now, when you receive Mr. Evangelista into your
14 care, you were aware that he had been with deputies at the
15 gas station and taken into custody there, correct?

16 A. What I was told by my supervisor is that patrol
17 deputies had got out with the vehicle. The person had a
18 warrant in South Carolina, would like us to talk to him.
19 And I didn't speak to the deputies prior to them dropping
20 Mr. Evangelista off. So that's my understanding that was
21 told to me by my supervisor about how they got any
22 interaction or got in contact with him in the first place.

23 Q. Are you testifying then that prior to speaking to
24 Mr. Evangelista, that you had not talked to any of the
25 fellows in the field or anybody in South Carolina to get an

1 understanding of what he had been accused of or to get an
2 understanding of what he might have already told, let's say,
3 Officer Nix?

4 A. Now, in South Carolina, in reference to South
5 Carolina, when I found out that they were bringing him to
6 us, I was given a phone number. And, unfortunately, my
7 memory escapes me now who I called. But it was someone with
8 the Beaufort County Sheriff's Office. And I talked to them.
9 They told me what they were looking at, what they were
10 wanting to know. And I asked them if they could put
11 together some questions so I would have a better
12 understanding of what they are trying to have an
13 understanding of themselves.

14 So I did speak with somebody over the telephone
15 with the Beaufort County Sheriff's Office who gave me
16 basically maybe 8 or 10 items that they needed to know
17 about.

18 Q. And as far as your own officers, did you have any
19 idea of what had transpired from the time he was taken into
20 custody to the time he was handed over to you?

21 A. No, ma'am. I didn't see Sergeant Nix that day at
22 all. I may have seen Sergeant Frydryhowicz. At the time he
23 was Deputy Frydryhowicz. I saw him when he brought the
24 gentleman to investigations. But my only interaction maybe
25 of him was inside of our viewing room where I went in, said

1 hi, thank you, did he give you any problems. But I don't
2 remember speaking to them or him specifically about the
3 interaction.

4 Q. So it's your testimony that you were unaware that
5 he had already confessed to this death in South Carolina, to
6 this killing in South Carolina when you got him at the
7 sheriff's department?

8 A. Yes, ma'am. Nobody told me that at all.

9 MS. CAMPBELL: Thank you. That's all I have.

10 THE COURT: Any redirect?

11 MS. SWANSON: No redirect, Your Honor.

12 THE COURT: Sir, you may step down.

13 THE WITNESS: Thank you.

14 THE COURT: You're welcome.

15 THE COURT: The State may proceed.

16 MS. SWANSON: Thank you, Your Honor. That
17 concludes the State's presentation as far as the recorded
18 statements go.

19 THE COURT: Defense have any witnesses?

20 MS. CAMPBELL: No, Your Honor.

21 THE COURT: You may proceed.

22 MS. SWANSON: Thank you, Your Honor.

23 Your Honor, I believe that the State has shown that
24 these are freely and voluntary statements. Although in the
25 first recorded statement, which is contained in Court's

1 Exhibit 7, the in-car video, which is a statement taken by
2 Philip Nix, he does not Mirandize the defendant, but
3 however, it's very clear that no interrogation takes place.
4 So Miranda is, in fact, not required.

5 This officer did not even know anything about the
6 investigation or what charges the defendant possibly faced
7 in South Carolina to even craft questions that were designed
8 to elicit any sort of incriminating statements. He actually
9 requested to speak to officers. And that's the only
10 evidence in the record.

11 And then at the end, he does thank Philip Nix for
12 speaking with him. And I think Your Honor viewed Court's 7.
13 And it's very clear in the exchange that Mr. Evangelista is
14 volunteering all of this information. And even states he
15 just wants to tell the truth. He knows he should be talking
16 to an attorney, but he hasn't spoken to anyone in five weeks
17 and needs to get this off his chest.

18 Regarding the second statement, I think that
19 there's no question that defendant was in custody and being
20 interrogated. His Miranda warnings were properly given.
21 And in that statement, he clearly understands what's going
22 on, that he has the right to an attorney, that he can stop
23 the questioning at any time.

24 Robert Greene actually goes into detail in the
25 recorded interview regarding that. And then he proceeds to

1 talk for approximately an hour about killing Rebecca Melton.

2 So the State believes that we have met our burden
3 to show that both of these statements are free and
4 voluntarily and would ask that the Court rule them
5 admissible.

6 THE COURT: You may proceed.

7 MS. CAMPBELL: Thank you, Judge.

8 The defendant would rely on *Missouri v. Seibert*,
9 2004 case, where a subsequent warrant confession directs
10 itself to the earlier statements. You know, the taint of
11 the failure to give Miranda in the first encounter with law
12 enforcement is clear from the testimony. Mr. Evangelista --

13 THE COURT: Was he subject to any interrogation
14 during the first statement or were his statements voluntary?

15 MS. CAMPBELL: Our position is he was.

16 THE COURT: How?

17 MS. CAMPBELL: The case law has said that expressed
18 questioning or its functional equivalent is law enforcement
19 interrogation. We say that by Officer Nix responding to
20 Mr. Evangelista's request to talk and to get things off of
21 his chest, that that is the functional equivalent of
22 beginning an interrogation and full knowledge on the
23 officer's part.

24 THE COURT: Do you have case law that when a
25 detainee or a person who is in a police car begins to

1 spontaneously make statements, that there's some obligation
2 upon the police to Mirandize that person?

3 MS. CAMPBELL: This was not a spontaneous
4 statement. This was a request to the law enforcement
5 officer.

6 THE COURT: Maybe you are not understanding. Maybe
7 I wasn't articulate in what I said. And my memory of the
8 statements may be fallible. I might not be remembering them
9 correctly. But who started the conversation?

10 MS. CAMPBELL: Mr. Evangelista, from the testimony,
11 requested to speak to a law enforcement officer.

12 THE COURT: I mean, what do the tapes show? They
13 speak for themselves. We have a contemporaneous record of
14 what happened. So who started the conversation?

15 MS. CAMPBELL: Well, then I will leave that to Your
16 Honor's review of the video that you have as a Court's
17 exhibit and that you've already reviewed.

18 THE COURT: Yeah. But, I mean, I've asked a
19 question because I am not understanding what you are
20 arguing. Because you seem to be arguing that somehow he was
21 responding to the police. But my recollection is that
22 spontaneously he began a conversation. So I'm trying to
23 figure out, which is it?

24 MS. CAMPBELL: I think it's up to you to make that
25 determination and what you see the facts to be in the

1 totality of the circumstances for the purpose of your
2 ruling. So we would just take the position that the
3 evidence before the Court is thus, that Mr. Evangelista
4 requested to speak to a law enforcement officer. A law
5 enforcement officer came to speak to him in the back of the
6 patrol car. He was not free to leave. He was in custody
7 and began a conversation. Because this officer converses
8 with Mr. Evangelista for 20-or-so minutes, maybe 30 minutes
9 or longer, with no Miranda.

10 There is talk about, I might need a lawyer. There
11 is talk about, you know, the knowledge that Mr. Evangelista
12 may have had that what he was saying was incriminating. And
13 so that this police officer should have given him his
14 Miranda warnings, full Miranda warnings. And then we would
15 take the position that having failed to do so, that any
16 subsequent confession, any subsequent statement given to
17 Officer Greene later at the sheriff's department is tainted
18 by the original failure to give the Miranda warning. And
19 that's the *Missouri v. Seibert* case from 2004 that we would
20 rely on that, getting in the car, responding to his request
21 to talk, functional equivalence of questioning. Again, as I
22 said, we just take a firm position that you cannot remove
23 the original taint from the failure to give Miranda in the
24 back of a patrol car. Thank you, Your Honor.

25 THE COURT: You're welcome. Anything further from

1 the State?

2 MS. SWANSON: Just briefly. The functional
3 equivalent of an interrogation is not a conversation. It
4 has to be designed to elicit an incriminating response and
5 contain some sort of psychological coercion by police.
6 That's *Pennsylvania v. Muniz*, 496 U.S. 582, 1990.

7 And then additionally, should the Court find that
8 Miranda was required in the in-car conversation with Philip
9 Nix that the defendant initiated, I would point the Court to
10 the Supreme Court -- South Carolina Supreme Court case *State*
11 *v. Campbell*, and that's 287 S.C. 377. I just pulled it the
12 other day and Shepardized it. It's good law. And it says
13 an initial failure to give Miranda warnings before a
14 statement is given does not taint a subsequent statement
15 made after a suspect has been fully advised of and has
16 waived his rights when both statements are voluntary.

17 And I think that there's no question that both of
18 these statements were voluntary. I mean, the defendant
19 couldn't stop talking.

20 THE COURT: During the phone conference, y'all
21 indicated that y'all were working on a redacted version of
22 the statements. Did you all conclude wrapping that up or
23 redacting the statements?

24 MS. SWANSON: Yes, Your Honor. And the Court's
25 exhibits are the redacted versions as well as the ones that

1 I forwarded in the link.

2 THE COURT: So the ones I got were the redacted
3 ones?

4 MS. SWANSON: Yes, Your Honor.

5 THE COURT: And y'all agreed on the redactions?

6 MS. SWANSON: I did provide Ms. Campbell with those
7 redactions. Basically, I took out any reference to any
8 arrest of the defendant. And I don't know if she's reviewed
9 those.

10 THE COURT: Did you review those, Ms. Campbell?

11 MS. CAMPBELL: Agreed, yes.

12 THE COURT: And has everything been redacted that
13 you and the State agreed upon?

14 MS. CAMPBELL: Yeah.

15 THE COURT: We need to proceed with the next
16 motion. Are we ready?

17 MS. SWANSON: Yes, Your Honor. I believe it's
18 defense's motion.

19 THE COURT: Correct. It's her motion, her burden
20 of prove. She needs to proceed.

21 MS. CAMPBELL: Well, that is an interesting way to
22 begin, because that would be our first argument, Your Honor,
23 that the standard and burden of proof is unconstitutional as
24 it exists today in South Carolina.

25 Before we begin the hearing, we would assert that

1 the current state of the law in South Carolina is in
2 violation of the United States Constitution and South
3 Carolina Constitution as they bear upon the defendant's
4 right to a fair trial, due process and protection of the
5 law. Current law in South Carolina requires the defendant
6 to show by a preponderance of the evidence that he was
7 justified in the use of deadly force when he killed Rebecca
8 Melton and, thus, seeking the protections afforded him by
9 the Protections of Persons and Property Act, as enacted by
10 the South Carolina legislature, and subsequently interpreted
11 by the South Carolina Supreme Court.

12 The defendant at this juncture asserts this
13 standard is impermissibly and unlawfully a shifting of the
14 burden of proof to the defendant in a criminal trial
15 proceeding. This is not the law in our sister states.
16 South Carolina stands in direct opposition to the current
17 state of the law as it is in Florida today.

18 Now, South Carolina, Your Honor, modeled our Castle
19 Doctrine, it's well-known, after the Florida Castle Doctrine
20 statute. And in doing so, South Carolina should now follow
21 the lead in Florida in correcting our burden of proof issue.
22 Florida has changed their Castle Doctrine law to adhere to
23 and be in line with the rule of law, in terms of the United
24 States Constitution, as it relates to the defendant and the
25 burden of proof never resting with the defendant. And

1 Florida has enacted this new standard that says that the
2 defendant in a murder trial that seeks the shelter of the
3 Castle Doctrine has no burden of proof and the State must
4 prove that the defendant did not act in accord with the
5 stand your ground laws by a preponderance of the evidence.

6 And in the Florida statute, I'm referencing
7 776.032, Subsection 4, which clearly outlines the burden of
8 proof resting upon the State and not the defendant. So we
9 would submit to Your Honor that we are crippled by the
10 burden of proof resting at this table. We understand that's
11 the law in South Carolina now. But it is our intention to
12 make clear to the Court that we feel like it is a burden of
13 proof that not should rest with us.

14 THE COURT: Would the State like to respond?

15 MS. SWANSON: Just briefly. I mean, we can only
16 rely on what the current law is. And the current law is
17 clear that the burden is on the defense by using a
18 preponderance of the evidence standard and that this is not
19 the proper venue to change that standard at this time.

20 I would note that *State vs. Manning*, Supreme Court
21 case 418 S.C. 38, decided in 2016, did just recently follow
22 *State v. Duncan*, I believe, which asserted the standard that
23 I just spoke of, and that the burden is on the defense.

24 THE COURT: The defendant's motion based on
25 unconstitutionality is denied. I do not find the argument

1 persuasive.

2 On the issue, I do not need to look to Florida. I
3 don't know what their statutory framework is. I don't know
4 what their statute reads. And even if I did, I don't find
5 that it would be particularly dispositive. Each state has
6 its own statutory framework which is guided by its
7 legislature whose job it is to promulgate our laws.

8 It is this Court's responsibility to look at the
9 plain and ordinary meaning of those words and to interpret
10 it, but not to make law. The legislature clearly in its
11 province has determined where the burden of proof should lie
12 as regards any stand-your-ground defense. And looking at
13 the wording of the statute, I would imagine, because it
14 deals with the taking of life or the defense of life, that
15 they had some particular public policy, agenda or motivation
16 in using the language that they used. But in any event, the
17 language is not ambiguous. It is not unclear. And it very
18 clearly establishes what the elements are as well as the
19 burden of proof regarding establishing what amounts to an
20 affirmative defense and a complete bar from being prosecuted
21 under certain set of circumstances, again as articulated by
22 the statute.

23 I do not find persuasive the argument that somehow
24 this is burden shifting and that it somehow prejudices the
25 defendant. Because even if this Court were to find that the

1 stand-your-ground statute did not amount to a complete bar
2 to this prosecution, that would not preclude the defense
3 from arguing self-defense, which the State still has the
4 burden of proving beyond a reasonable doubt before 12
5 individuals who sit as the finders of fact that, in fact, he
6 was not defending himself. So it does not in that aspect
7 shift any burden of proof required of the State of South
8 Carolina in proving the defendant's guilt beyond a
9 reasonable doubt.

10 And I cannot find any circumstance or argument that
11 would make that proceeding, that being a jury trial before a
12 jury, analogous to a pretrial matter asking for immunity
13 from prosecution and mixing, so to speak, apples and oranges
14 as regards to that burden of proof. So I do not find any
15 merit to the defense's argument that somehow the statute is
16 unconstitutional.

17 And, frankly, I have to admit ignorance. I have no
18 idea who we mirrored our statute after. And I don't know,
19 again, that it's particularly dispositive. But in any
20 event, South Carolina has not chosen to change its statute.
21 It remains as written. Again, it is not ambiguous. And it
22 is very clear as to the elements that are required to be
23 proven and the burden of proof.

24 But, again, I cannot discern any prejudice to the
25 defense. Because let's just say for argument's sake I don't

1 find there's any merit to his argument on stand your ground.
2 That doesn't preclude him from saying he still acted in
3 self-defense. And it does not negate the State's
4 responsibility to prove beyond a reasonable doubt that he
5 was not acting in self-defense. Therefore, the motion is
6 denied.

7 Are we ready to proceed?

8 MS. CAMPBELL: Yes, Your Honor.

9 THE COURT: And I believe there's a case that says
10 the statute is constitutional or that the statutes of this
11 ilk are constitutional with the same burden of proof. But
12 I'm still in the process of researching it. I believe
13 there's a U.S. Supreme Court case on point that deals with
14 these type statutes. But, again, I need to do some more
15 research, see where I land on it.

16 MS. CAMPBELL: Thank you, Your Honor.

17 I am not going to address the issue with
18 Dr. Veronen until after Mr. Evangelista testifies.

19 THE COURT: Call your witness. They need to make
20 an objection.

21 MS. CAMPBELL: We will call him now.

22 NICK EVANGELISTA,
23 having been duly sworn, testifies as follows:

24 THE CLERK: State your name for the record.

25 THE WITNESS: Nick Russell Evangelista,

1 E-v-a-n-g-e-l-i-s-t-a.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q. Good afternoon. Where are you currently living?

6 A. Living with my father in Gainesville, Georgia area.

7 Q. And was there a period of time when you lived in
8 the Hilton Head or Bluffton area?

9 A. Yes.

10 Q. Did you live in that area -- when did you start
11 living there?

12 A. Moved there in 2002.

13 Q. Where do you live before that?

14 A. I lived in Fairmont, Minnesota after graduating
15 college for approximately four years.

16 Q. And before that, where were you?

17 A. I was in college in the Minneapolis area.

18 Q. And was there a period of time before that where
19 you were in the military?

20 A. Yes, ma'am.

21 Q. When you came to the Hilton Head area, were you
22 married?

23 A. Yes.

24 Q. And you were married to?

25 A. Cathy Evangelista.

1 Q. Did you all have children?

2 A. Yes, we had two boys.

3 Q. Now, did you hold down a job when you lived in that
4 area?

5 A. Yes, I relocated to the area for that purpose.

6 Q. And what job was that?

7 A. I was a physician assistant with an orthopedic
8 practice.

9 Q. And how long did you work for them?

10 A. From 1998 'til 2004.

11 Q. And is there a name that that practice is known by?

12 A. In Hilton Head, it was Lowcountry Orthopaedics and
13 Sports Medicine.

14 Q. When I hear people talk about Optim, is that
15 another name used for that company?

16 A. That was not the same practice, no, ma'am.

17 Q. After that job, did you then become employed with
18 Optim?

19 A. No, ma'am. That practice folded. I had to seek
20 employment elsewhere. So for about a year and a half, I
21 worked for a solo pain management specialist in Savannah.

22 Q. And did you become employed with a Dr. Hope in
23 2005?

24 A. Yes, ma'am.

25 Q. And were you and Cathy still married then?

1 A. No, ma'am.

2 Q. Had you divorced?

3 A. She separated from me in 2002. And by South
4 Carolina law, that divorce was final in 2003.

5 Q. From 2003 until you met Rebecca Melton, were you in
6 any long-term relationships?

7 A. I was, 2010, for about a year and a half.

8 Q. And after that?

9 A. Three-month relationship, so I guess -- I wouldn't
10 deem that long.

11 Q. Now, as you approached the time period of 2012 when
12 you met Rebecca Melton, how did you meet her?

13 A. Online.

14 Q. Online? And how did you get online or take your
15 search for a relationship online?

16 A. Prior girlfriend suggested I do it. She had had
17 some success with it.

18 Q. And so were you then contacted by Rebecca Melton?

19 A. About a week after, roughly.

20 Q. And did you meet in real life?

21 A. Yes.

22 Q. And when you met in real life, how long before she
23 moved in with you?

24 A. About six months, so from early December until late
25 May, I'm going to say.

1 Q. And how often were you together once you got
2 together in real life?

3 A. For the first two weeks, virtually every evening.

4 Q. And so you would have moved in together around June
5 2013?

6 A. She moved in with me, yes.

7 Q. Was that at 4 Kings Court?

8 A. Yes, ma'am.

9 Q. During the early parts of your relationship with
10 Rebecca Melton, were you subjected to her threats of
11 suicide?

12 A. Yes, around about the first month was the first
13 event I can recall.

14 Q. Can you tell the Court what happened?

15 A. She would spend evenings at my house overnight, but
16 had a dog that couldn't come to my property. So she had to
17 keep her dog. And she loved her dog. She missed him quite
18 often and would become tearful. This would occur two to
19 three weeks after we started seeing each other. One or two
20 nights around about the three- or four-week mark, I woke up
21 in the middle of the night. It was a workday for me. And
22 she had gone. Didn't tell me she was leaving. She was just
23 gone. So I became concerned. I left work early one
24 morning. Had to be in Savannah for surgery. So I left the
25 house about 5:30.

1 I called her phone. She was crying, tearful on the
2 beach saying she had just taken all the rest of her Klonopin
3 medicine, which was a prescribed medicine for her, and she
4 was on the beach with her dog and she wanted to die.

5 Q. Now, did you try to talk her into getting some
6 help?

7 A. Yes.

8 Q. Or try to do anything to stop her trying to commit
9 suicide?

10 A. Yes. I kept her on the phone for quite some time.
11 I was in the middle of nowhere, you know, on the back roads
12 on the way to Savannah, so -- but I kept her on the phone.
13 She seemed to calm down. I didn't detect any slurred speech
14 or, you know -- which led me to believe I wasn't sure she
15 was being truthful with me.

16 Q. Right. So you came to the conclusion, having been
17 on the phone with her after some period of time, that she
18 was lying and that she, in fact, hadn't taken all the
19 medication?

20 A. That was my conclusion. She had calmed down and
21 agreed she wouldn't harm herself.

22 Q. After this particular episode, did you try to talk
23 to her about suicide or threatening suicide or get her some
24 help?

25 A. She came over that evening, was quite calm and

1 normal, and didn't appear to be under the influence of
2 anything. I asked about counseling. She said she already
3 was in some counseling through the volunteer medicine clinic
4 for depression.

5 Q. Did you try to get to the bottom of why she wanted
6 to kill herself?

7 A. Yeah, I did. I think one of the big things was
8 from previous marriage, she wasn't -- she couldn't see or
9 visit her young son.

10 Q. And so this inability or not being allowed to see
11 her child was causing her to be suicidal?

12 A. That's what she told me.

13 Q. Now, early on in your relationship with Rebecca
14 Melton, did you experience episodes of verbal abuse?

15 A. Yes.

16 Q. What started happening to you?

17 A. It was most typically after drinking. And her
18 speech usually became quite slurred quickly after a couple
19 of drinks. So I questioned internally whether or not she
20 was mixing the medication with alcohol. And she just -- she
21 would go back and forth from tearful to angry at me and, you
22 know, verbally abusing me and telling me my job was
23 worthless, you know, those kinds of things.

24 Q. Okay. And did the verbal abuse and the shaming and
25 things like that, did that escalate at some point to

1 physical violence against you?

2 A. St. Patrick's Day of 2013.

3 Q. What happened?

4 A. Her daughter and her boyfriend at the time came to
5 visit. Hilton Head has their St. Patrick's Day parade on
6 Sunday, prior to whenever St. Patrick's Day was. So it's
7 always a big event, music, parade. My kids were marching in
8 the parade. So we went down there. Everything was fine.
9 It was maybe mid-, late afternoon. Parade was over, but
10 there was still music to be seen.

11 As I recall, her daughter and Rebecca got into
12 verbal exchange that angered Rebecca. We parted ways, I
13 believe, as I recall. Her daughter and boyfriend went back
14 to Statesboro where she was going to college.

15 Rebecca and I went home. She kind of, for lack of
16 a better term, reflected her anger from that conflict on me,
17 verbally abusing me, you know, telling me she wants to die
18 again, being tearful.

19 She left my house to go back to where she lived
20 near the beach. I was concerned. So I called her daughter
21 on the phone, who just left. We spent most of the weekend
22 together. And told her, your mom is really concerning me,
23 she's making these threats of harming herself. And her
24 daughter seemed to kind of say that, yeah, this kind of
25 thing has happened a lot, I will call her, I will call her

1 for you and make sure everything is okay.

2 Maybe half hour, 40 minutes later, Rebecca came
3 slamming through my door at my house, angry for involving
4 her family member. And she started smashing furniture of
5 mine. I had a long glass bar with wineglasses and wine
6 bottles. And she basically rocked that until it tipped over
7 and smashed. She pulled my hair, scratched my face.
8 Eventually, she stormed out.

9 Q. And your feelings about what had just happened, did
10 you call law enforcement that night?

11 A. I did not at that time.

12 Q. How did you feel about the damage to yourself and
13 to your property?

14 A. I was shocked. I never been with anybody with that
15 level, you know, verbal abuse or even that.

16 Q. Did you hit her that night?

17 A. No.

18 Q. Now, there's another incident that happens at some
19 point not too long after that, Nick, where you actually do
20 call the police and she is arrested for criminal domestic
21 violence. Can you tell the Court a little bit about that
22 incident?

23 A. There's one that precedes that Memorial Day where I
24 called the police, but she wasn't arrested. We were living
25 across the street from a famous local seafood restaurant,

1 and literally could walk through from my house. So we
2 frequented there on the weekends, had drinks, had some
3 dinner. On the weekends, they usually had live music. I
4 have a lot of friends in the music industry. I'm friendly
5 with them all, go to visit and socialize with them.

6 After dinner, we had been there maybe a few hours.
7 She started to -- you know, her gait was irregular. Her
8 speech was, again, irregular, slurred. She wanted to dance.
9 I said I think we should go home. She got quite belligerent
10 with me and verbally abusive and started to make a public
11 seen. I left, walked a block and a half back to my house.
12 She --

13 Q. Did she show up, follow you to the house?

14 A. Yes, maybe 10, 20 minutes later, came through the
15 door, verbally abusive, threatening me, you know.

16 Q. When you say threatening you, was she threatening
17 to hurt you?

18 A. Uh-huh, yes.

19 Q. And in those times when she's attacking you, was
20 she also threatening your family members?

21 A. She started to, yeah, at that time. And I don't
22 know. I am not fond on that, threaten my kids, threaten my
23 father that didn't even live near me, you know, I could have
24 them killed.

25 Q. She told you she could have your family members

1 killed?

2 A. Uh-huh, yes.

3 Q. By having them killed, how would she go about
4 having them killed?

5 A. She claimed that her father had some ties with some
6 organized crime. That's the story she told me. And they
7 would disappear without any --

8 Q. Now, today, as we know, Rebecca had also told you
9 things like she was a Delta pilot, correct?

10 A. Correct.

11 Q. Today we know that is not true, correct?

12 A. Correct.

13 Q. So there were lies that you discovered later on?

14 A. Yes.

15 Q. On top of lies on top of lies?

16 A. Yes. She definitely had a story that she told
17 everybody we knew, friends, people we were out with, that
18 was just not true.

19 Q. At the time, did you believe she could kill you or
20 your family?

21 A. Yes. She was very persuasive, very angry. I
22 didn't know where that anger came from a lot of times. So
23 on that night, she again physically abused me, pulled my
24 hair, scratched me. I did call the police. I think it was
25 Saturday on Memorial Day or Friday night. I don't recall.

1 Called the police. Two squads showed up five or ten minutes
2 later. At that point, she had calmed down. She was very
3 afraid that I called the police. She was apologizing,
4 begging me not to call them. So the first time I called
5 them, it put a scare into her. The two squads showed up.
6 We were actually out on the driveway. We had calmed down.
7 We met the squads in the driveway.

8 They spoke to us both individually, collectively.
9 And they ran a background check on her. And before we met,
10 there was a disorderly conduct bench warrant out for her. I
11 was told that she missed her court date from maybe three
12 months before we had ever met.

13 Q. Correct.

14 A. So they put her in the squad car, wanting to take
15 her to --

16 Q. To jail?

17 A. -- to jail.

18 Q. Correct.

19 A. She sat there about ten minutes. The deputies came
20 and told us that they were too busy, too short-handed,
21 didn't have a soul to take her over to Beaufort. So they
22 decided after more conversation with the two of us that we
23 calmed down enough, promised we weren't going to harm one
24 another. She more impressively, I guess, than I had to.

25 Q. Now, did the deputies that night take pictures of

1 your injuries?

2 A. I believe so.

3 Q. And your injuries that night were a swollen ear and
4 scratches and bleeding on your neck?

5 A. I believe so, yes.

6 Q. Now, after this happened, how would she treat you?

7 A. She would go from periods of tearfulness and
8 anxiety to periods of anger, you never should have called
9 the police, you know. I'm going to -- you are going to
10 regret that.

11 Again, when she would get inebriated heavily,
12 threats against my family would come about again.

13 Q. Would she do things to you and to your property
14 that frightened you?

15 A. Yes.

16 Q. For instance, what would she do?

17 A. Well, on one occasion, I believe I left. My
18 landlord at the time was a manager of one of the resorts,
19 hotel resorts on the beach. I just had to get out and let
20 her calm down, was my intention. So he put me up at the
21 resort for maybe a weekend, maybe three days or so, until I
22 stopped receiving threatening text messages from her and
23 threatening phone calls. She would always, in every
24 incident, seemed to calm down after two or three days, be
25 apologetic, invite me back home. I would go back.

1 When I came back on this instance, all my clothes
2 and belongings was gone. She had taken them and put them in
3 an old storage shed of a friend's. So I didn't have a lick
4 of clothes to go to work with. I had guitars that were gone
5 and everything else.

6 Q. So you had no clothes to wear to work?

7 A. Correct.

8 Q. How did you get clothing to wear?

9 A. Eventually, within the next 12 hours or so, I
10 didn't have to be at work for another day, I believe, but
11 she calmed down enough to -- we drove out there and --

12 Q. She took you to get your clothes?

13 A. Took me to get my clothes back in the locked
14 storage unit, yes.

15 Q. Did you lose things like bikes and computers to her
16 anger in front of you --

17 A. Yes.

18 Q. -- trashing them?

19 A. Yes.

20 Q. Did she have a habit of doing something with your
21 refrigerator when she got angry with you?

22 A. Well, on the worst occasion, about a week before
23 the event that we are here for, I don't even recall why, her
24 mother -- I think her mother had just passed. She was quite
25 upset. But it was mostly tearful upset. But this night,

1 she claimed I took medicine from her. So took all the food
2 in the refrigerator, threw it against the wall in two
3 different rooms. Basically, anything I purchased, whether
4 it was sauce that I liked, a hot sauce, food, anything I
5 purchased, milk was on the floor, and basically trashed the
6 kitchen.

7 Q. Did you leave that night --

8 A. Eventually --

9 Q. -- and try to find some safety?

10 A. Absolutely. So she had left with her dog. I don't
11 recall where she went. It was about 1 in the morning. And
12 I quickly gathered up a backpack full of clothes, one of my
13 bikes, because she wouldn't give me any vehicle to drive.
14 She kept the keys for both vehicles. I rode across the
15 street.

16 Q. Let me back up. You said she kept the keys.

17 A. Right.

18 Q. For both vehicles?

19 A. Correct.

20 Q. So that you would not have a vehicle to drive; is
21 that correct?

22 A. Correct, correct.

23 Q. And you had to go to her to get permission --

24 A. Correct.

25 Q. -- to drive one of y'all's cars?

1 A. Correct.

2 Q. Now, there's this Jeep. Is that a Jeep she
3 purchased with the slip-and-fall money that she received?

4 A. Correct, correct.

5 Q. From her accusation she had fallen down
6 somewhere?

7 A. That's correct.

8 Q. Now, Nick, the night that you fled the home when
9 she had thrown everything up against the wall, that was at
10 Saint Andrews, correct?

11 A. Correct.

12 Q. Had you been stabbed by Rebecca?

13 A. That night, I was.

14 Q. Tell the Court how you were stabbed.

15 A. So, I was asking her for car keys with an
16 outstretched hand. She stabbed me in the forearm. I mean,
17 to look at the scar, seemed like nothing. But it hit a
18 vein, not an artery, a vein. I know what, being in surgery
19 for 18 years, what that looks like. I put a pressure
20 dressing on that with something called a coban, which is a
21 compressive wrap. It was green in color, I believe.

22 I left. When she left the house, I quickly packed
23 up everything I needed for work. I typically kept clothes
24 at work so she wouldn't steal those, some of my dress
25 clothes, enough for four days. I took a bike. Rode across

1 the street. Stayed at Red Roof Inn about three hours.

2 Around six o'clock, took my bike to work.

3 Q. Now, were there times that you had to flee your
4 home and stay with your ex-wife, Cathy Evangelista?

5 A. Yes. That predates what I'm talking about now,
6 but, yes.

7 Q. This was not the first time that you had to quickly
8 pack a back --

9 A. No.

10 Q. -- and flee your home?

11 A. No.

12 Q. Because of her attacks?

13 A. Correct, maybe half dozen times.

14 Q. So you would stay with your ex-wife Cathy?

15 A. On one occasion, yes.

16 Q. Did you stay at a hotel?

17 A. On every other occasion, yes.

18 Q. And where else would you have to wind up staying
19 when you are fleeing?

20 A. Financially, for the first few nights after the
21 event we just talked about, I had to stay at my office.

22 Q. So you stayed at your office?

23 A. Yes.

24 Q. Did you have -- prior to the event where we are
25 talking about where you were stabbed in the arm, was there

1 an incident around the 4th of July?

2 A. Yes.

3 Q. Was that 2014?

4 A. It would have been -- no, no. It would have been
5 2013.

6 Q. 2013? Was she arrested that night?

7 A. Yes, yes.

8 Q. Did you pay for her attorney?

9 A. I did.

10 Q. So she had two CDV arrests?

11 A. Yes.

12 Q. Ultimately, three?

13 A. Yes.

14 Q. You paid for her attorney every time, correct?

15 A. Correct.

16 Q. If you didn't pay for your attorney, what did you
17 fear would happen?

18 A. She would go to jail with multiple CDV's.

19 Q. Did you want her to go to jail?

20 A. No.

21 Q. Did you fear for your own safety or health if you
22 didn't support her and pay for her attorneys?

23 A. Yes.

24 Q. Did you hire an attorney to represent you?

25 A. I did.

1 Q. In any matters?

2 A. I did.

3 Q. Who was that attorney?

4 A. Dudley Ruffalo.

5 Q. Due to her arrests for criminal domestic violence,
6 was she ordered to go to see Frank Bolgan?

7 A. Correct.

8 Q. And when she was ordered to see Frank Bolgan, was
9 she put on an alcohol leg monitor to make sure she stopped
10 drinking?

11 A. She was. She actually drank before her first
12 visit.

13 Q. When she drank before her first visit, what
14 happened?

15 A. She was belligerent at the house, you know, quite
16 cursing the fact that this is all my fault.

17 Q. Blaming you?

18 A. Blaming me.

19 Q. Because she attacked you and went to jail?

20 A. And I called the police, right.

21 Q. Now, when she would attack you -- oh, by the way,
22 did she get kicked out of that program?

23 A. I believe she successfully wore the bracelet for 30
24 days. She was then allowed back to finish that program.
25 They were going to kick her out and put her in jail, but

1 apparently --

2 Q. She did finish?

3 A. Yes.

4 Q. Now, the times that she attacked you in your home,
5 did you try to defend yourself?

6 A. I would.

7 Q. Okay. And in trying to defend yourself, how would
8 you do that?

9 A. Tried to restrain her arms or her legs so she could
10 stop hitting me and scratching me.

11 Q. Did you ever punch her?

12 A. On the last evening, I did.

13 Q. That night?

14 A. Yeah.

15 Q. And but prior to that night, you were only
16 defensive, correct?

17 A. Correct.

18 Q. Holding her off?

19 A. Correct.

20 Q. But, obviously, she got through, because you had
21 injuries?

22 A. Yes.

23 Q. On your face?

24 A. Yes.

25 Q. Where else?

1 A. That year, that one time, my neck. I would show up
2 to work, you know, having to make up a lie that I went
3 mountain biking and ran through the trees. That's how
4 scratched up I was.

5 Q. People at your work saw the visible evidence of her
6 attacks on you?

7 A. Clearly, yes.

8 Q. But you didn't tell them that you were being
9 attacked at home?

10 A. I hid the truth.

11 Q. Was there a time, Nick, that you had to barricade
12 yourself in a bedroom to protect yourself from her?

13 A. Yes, yes.

14 Q. What happened?

15 A. That would have been March of 2014. It was late at
16 night. I believe, again, I was woken up from sleep. It was
17 a workday for me. I take that back --

18 Q. Let's back up a little bit. You said you were
19 woken up from being asleep?

20 A. Right.

21 Q. Was that a pattern with Rebecca with you?

22 A. Yes.

23 Q. How did that work?

24 A. Oftentimes, you know, I would have to get up early,
25 but she wanted to stay up until 2 a.m. talking. And if I

1 didn't listen -- sometimes it was pleasant conversation, but
2 it was the fact that I had to be in the operating room at 7
3 with an hour-or-more drive. So I couldn't stay up until two
4 and function at my job. If I tried to beg her to go to
5 sleep, that would flip the switch. And, no, that would be
6 more common.

7 Q. Flip the switch?

8 A. Yeah, one of the more common ways.

9 Q. If you did fall asleep, what would she do?

10 A. Same thing, she would wake me up, keep me up, now
11 you are going to stay up all night, you are not going to
12 bed, I don't care about your job.

13 Q. And when she would wake you up, would it be a
14 gentle waking --

15 A. Oh, no.

16 Q. -- or a slamming, bamming, yelling, waking you up?

17 A. I would get a liquor drink thrown on me, any number
18 of ways. And, yes, it would be physical.

19 Q. So back to the incident we were talking about when
20 you had to barricade yourself in the bedroom, what happened
21 that particular night?

22 A. I was woken up by a tantrum in the main room where
23 I had all three of my guitars set up. There was a glass
24 table where we had a kitchen. And it just sounded like
25 things getting smashed. I barricaded myself in the room.

1 Put a dresser by the door. I didn't want any part of that,
2 whatever was going on.

3 Before I knew it, there was a bang on my door,
4 maybe five minutes after that. And it was a sheriff deputy
5 that came in to my room. Palmetto Security and Beaufort
6 County Sheriff's Department had her in the kitchen area.

7 Q. Did she go to jail?

8 A. She did.

9 Q. For the attack on you?

10 A. Yes.

11 Q. Now, the drinking excessively. What medications
12 what she on?

13 A. I want to say Effexor and Klonopin. She went on
14 hyperthyroid medication, something for osteoporosis, I don't
15 recall which, and Adderall.

16 Q. And these medications, did she often accuse you of
17 stealing them?

18 A. Uh-huh.

19 Q. And the purpose of accusing you of stealing them or
20 filing false police report about you stealing them, what was
21 that all about?

22 A. I did take some of her medication sometimes,
23 because, you know, if I was up from three in the morning, I
24 needed to function to go to work, yes.

25 Q. And so when these things would happen, could you

1 oppose her on that?

2 A. Never.

3 Q. Or any other issue?

4 A. Never.

5 Q. What would happen if you took a stance against her
6 or what she wanted?

7 A. Threats against my job, you know. Actually showed
8 up at my work one day with some photographs and all that and
9 wanting to talk to my boss, you know, and making a huge
10 scene in the lobby while we were still doing office visits
11 there.

12 Q. Were you afraid of her?

13 A. Yes. I left out the back door that day.

14 Q. You left out the back door?

15 A. Yes.

16 Q. And did you just sort of hide in the woods until
17 she left?

18 A. I was actually at a hotel at that point. I had
19 been two or three days prior, went back there.

20 Q. The night that Rebecca died, had you been away from
21 the home, from y'all's home for a couple of days?

22 A. Yes.

23 Q. And, again, you left the home because she had
24 stabbed you in the arm in a vein and you were potentially
25 bleeding out, correct?

1 A. No, I wouldn't say it was that serious. But it was
2 enough that I couldn't care for it at home. I had to go to
3 the office. We had surgical super glue we used in the
4 operating room. And that's the only thing that would stop
5 that.

6 Q. You bandaged yourself up?

7 A. I fixed the wound and bandaged myself up. I was
8 capable of doing that.

9 Q. Why did you go back home?

10 A. That was a Tuesday night. Stayed at my office
11 Wednesday, Thursday. She called the office Friday afternoon
12 as I'm finishing clinic, talked to my medical assistant,
13 threatened, you know, again to show everybody these
14 pictures, talked to Dr. Hope. Tell people I've been
15 sleeping at the office, she was sending the police over.

16 I left to stay at a nearby hotel for Friday and
17 Saturday. The threatening text messages and e-mails and all
18 that, verbal abuse continued on, until somewhere around
19 Saturday overnight, as I was sleeping, I want to say maybe
20 2:30, 3, woke up the next morning, and saw a text message
21 that she had cut her hand badly. We were in the process of
22 moving to another house within the next few days. There was
23 a huge round glass table with inch-thick glass. She was
24 telling me she attempted to move it, it broke, crashed, cut
25 her hand badly. She was now being more rational and

1 reasonable and not threatening. Those were the cues that
2 usually brought me back to the house to see if we could fix
3 things.

4 Q. So did you start to feel like you were entering
5 that point where, you know, you guys might reconcile, might
6 go home?

7 A. Certainly, at that point, we could go home and calm
8 down. And, clearly, I was, you know, concerned if her hand
9 was really that bad. And when I got home, it was.

10 Q. Did you help bandage her up?

11 A. I helped bandage her up. Recommended I take her to
12 the office where I had tools and sterile tools to, you know,
13 properly stitch that up. It needed that.

14 Q. How many times do you think you've been, let's just
15 say, chased out of the home through violence or the
16 craziness, the crashing of the computers and the glass and
17 this, and then gone back home to Rebecca over that period of
18 time?

19 A. Six or eight.

20 Q. Six or eight times?

21 A. Yeah.

22 Q. In that relationship that you had with her?

23 A. Yes.

24 Q. Were you ashamed of what had happened in this
25 relationship, I mean, where you were as a man?

1 A. Yes.

2 Q. Did you feel like there was anything you could do
3 about it? What did you want to do?

4 A. I didn't have any support. She isolated me from my
5 friends. I couldn't call my family.

6 Q. Who handled your money, Nick?

7 A. She did, eventually. She gave me enough to get
8 gas, maybe some lunch money that I needed for work, and took
9 everything and put it in her account.

10 Q. Now, Rebecca, you are aware of her schemes at how
11 she made her money, correct, with the gifting --

12 A. Correct..

13 Q. -- and the Lowcountry fraud to the businesses,
14 correct? You learned this during your relationship with
15 her?

16 A. I did.

17 Q. You knew she had solicited her daughter to be part
18 of that scheme, correct?

19 A. I did.

20 Q. And then at some point in your relationship, she
21 told you you were going to do all the false returns because
22 she wasn't allowed to do it anymore, right?

23 A. Correct.

24 Q. And did you do it?

25 A. Yes.

1 Q. The night you came home, was she drinking?

2 A. No. So I came home on Sunday morning, so, no.

3 Q. What happened?

4 A. It was early in the morning. I took a look at her
5 hand. All my clothes and belongings were gone again. She
6 told me she buried them in the woods. So I didn't have
7 anything to go to work with the next morning. Eventually,
8 when she calmed down a few hours later, we went out to the
9 site where she buried them under a big pile of leaves, three
10 guitar, two big duffel bags full of my clothes.

11 Q. She made you dig up your clothing, basically?

12 A. Yes.

13 Q. And cart it back to the house?

14 A. Yes.

15 Q. And back at the house, did she become amorous and
16 loving to you?

17 A. She was still pretty tearful, so not quite yet.
18 Her mom had just passed, you know, the week prior. And that
19 was -- that caused a huge, deep depression. There wasn't
20 very much break between being tearful, saying she wanted to
21 die and join her mother, she wanted to be with her mom.

22 Q. Would you say she was profoundly depressed at that
23 point?

24 A. More so than any other time I had seen, yes.

25 Q. So on Sunday night, did you all eat dinner?

1 A. We did. We went out. She actually calmed down
2 enough and had enough energy to go out shopping. So went
3 out to shop for a couple of hours after we got my clothes.

4 Q. After you dug your clothes up, then y'all went out?

5 A. Yep.

6 Q. And then you came back home. And when you came
7 back home, did you have drinks? What did you do?

8 A. We had drinks and dinner. It was a relatively
9 quiet evening. Other than her being tearful, you know. She
10 still -- unlike other times, she couldn't kind of overcome
11 the sadness, the grief she had about her mom passing.

12 Q. And so, Nick, then was there intimacy that night
13 between the two of you?

14 A. Not that night. That would have been Sunday. Came
15 home from work Monday. She had actually started to clean up
16 the mess in one of the two rooms, washed the walls down,
17 started to look somewhat presentable. We were still 6 or 7
18 days away from moving into a new house. Place was a wreck.
19 We were packing.

20 That night, she was Monday night, she was more sad,
21 tearful, but, you know, not violent or threatening or
22 anything.

23 Q. On the particular night that Rebecca died, did she
24 become angry over something she had fixated on in the past
25 in your relationship?

1 A. Yes.

2 Q. And what was that?

3 A. So I didn't recall right away until I had some time
4 to think and speak with other folks that had some evidence,
5 but I learned late that the thermostat was all the way down
6 to 60 when I had left the house. She was very fixed on
7 keeping a certain temperature. I think it was 71, 72 -- I'm
8 sorry, 68, colder than I liked it. I was cold that night.
9 We had been outside most of the night drinking. We skipped
10 dinner. It was about 11:30. I got ready for bed. I had to
11 work the next day early.

12 Again, I was woken from the sleep violently. She
13 grabbed the car keys that were on my night table for the
14 Jeep, ran into the bedroom yelling and screaming, slapping
15 and hitting, punching, or scratching I should say. And
16 started to pack up my clothes and told me to get out. I had
17 nothing but jeans, and no shirt, no shoes, anything.

18 Q. Jeans, no shirt, no shoes, nothing, get out, get
19 out, get out?

20 A. Yeah.

21 Q. And I think you told the investigator in Florida,
22 it's on the tape, you were driving to leave?

23 A. I was trying to leave.

24 Q. Yes. And when you were trying to leave, did she
25 further attack you?

1 A. Yes.

2 Q. Okay. And how was she attacking you when you were
3 trying to leave?

4 A. Again, scratching me with the keys. She was
5 holding it in her hand like a weapon, pulling my hair,
6 scratching my throat.

7 Q. And this is the set of keys, if you will, that she
8 had stabbed you with just a week or so prior?

9 A. Right.

10 Q. So at some point, as you are trying to leave and
11 she's attacking you, did you all wind up on the ground in
12 the attack?

13 A. I had to backhand her at that time to get her off
14 of me.

15 Q. So you said get off of me?

16 A. Let her, and she fell to the ground, right.

17 Q. And did you fall down with her?

18 A. No.

19 Q. How did that happen?

20 A. She was screaming so loudly at 1 or 1:30 at night,
21 whatever it was, that I was afraid the neighbors again --
22 because one other occasion in that place, the neighbors
23 called the police. I didn't want that for her. Didn't want
24 it for us.

25 Q. Not again?

1 A. No.

2 Q. Not again?

3 A. No.

4 Q. The night that Rebecca died, and you are on the
5 ground with her, and you tell the deputy, you know, you
6 put -- do you remember it clearly? What is going on in your
7 mind?

8 A. At that point, I don't remember detail other than
9 grabbing some bubble wrap to try to make her stay quiet.

10 Q. So to be clear, you are afraid for your life?

11 A. Yes.

12 Q. Afraid she may stab you again, maybe?

13 A. Worse, yes.

14 Q. And when you were told to leave and you were trying
15 to leave, she attacks you and stops you from leaving?

16 A. She wouldn't let me take anything I needed to
17 leave, anything, clothing included.

18 MS. CAMPBELL: Nick, thank you for going through
19 that with us, with the Court. Thank you. That's all I
20 have.

21 THE COURT: Any questions for the witness?

22 MS. SWANSON: Yes. Thank you.

23 CROSS-EXAMINATION

24 BY MS. SWANSON:

25 Q. Nick, y'all talk about the tumultuous nature of you

1 and Rebecca's relationship?

2 A. Yes.

3 Q. There was a lot of back-and-forth fighting, right?
4 She called police on you before, correct?

5 A. Correct.

6 Q. And neighbors called police saying that they heard
7 a woman screaming for help, correct?

8 A. I believe so.

9 Q. Okay. And did you review the 911 calls that you
10 made in some of the previous incidents?

11 A. There were numerous ones. So I would have to say I
12 did not review --

13 Q. Well, there were two recordings of you. Do you
14 recall saying for 23 South Forest Beach: My girlfriend is
15 threatening me continuously.

16 The operator asks: Where are you?

17 I'm still with her in the same place.

18 A. Okay. I suppose --

19 Q. Is that correct?

20 A. If it's there, yes, that's correct. I made so many
21 calls, I don't remember every detail.

22 Q. So you were so afraid of her that you stayed in the
23 same place with her sitting right across from you?

24 A. I didn't have any vehicle to go anywhere.

25 Q. Okay. Let's talk about those vehicles, actually.

1 A. Correct.

2 Q. So Rebecca had a Jeep Wrangler that you drove?

3 A. Or the BMW, whichever one.

4 Q. Okay. So two vehicles for your household?

5 A. Correct.

6 Q. Right. She had a BMW and the Jeep Wrangler?

7 A. Right.

8 Q. And the Jeep Wrangler is the vehicle that you took
9 after you killed her to go down to Florida for five weeks,
10 correct?

11 A. Correct.

12 Q. And, in fact, whatever car you had had been
13 repossessed because you took out a title loan on it and
14 didn't pay it, correct?

15 A. Correct.

16 Q. So she didn't make you sell that car, correct?

17 A. No, she did. We talked about it. She suggested I
18 did because of the finances and bills.

19 Q. Okay. Was it repossessed or not?

20 A. I voluntarily turned it in. So repossess, but I
21 voluntarily turned it back in.

22 Q. So it was repossessed?

23 A. Yes.

24 Q. And you were actually arrested for domestic
25 violence against her at one point, right?

1 A. Correct.

2 Q. And in discussing the injuries that you say
3 occurred at her hands, did you ever receive any medical
4 treatment for those?

5 A. They were scratches.

6 Q. Right?

7 A. Right, correct.

8 Q. No broken bones?

9 A. No.

10 Q. Nothing caused with a weapon?

11 A. Other than the stab, I treated myself for the
12 one-vein injury.

13 Q. With some car keys?

14 A. Uh-huh, but --

15 Q. Did anyone see that injury?

16 A. No, other than the bandage, no.

17 Q. So there are no pictures of that injury?

18 A. No.

19 Q. There's no report of that injury?

20 A. I treated myself.

21 Q. No medical records of that injury?

22 A. Treated myself, nope.

23 Q. Now, you would agree with me that the victim,
24 Rebecca Melton, your girlfriend of over two years, was
25 emotionally and physically infirmed, right?

1 A. I wouldn't say infirmed, emotionally. She was
2 physically capable of doing quite a lot.

3 Q. Okay. Well, she did have osteoporosis, correct?

4 A. Correct.

5 Q. And she had recently suffered a shoulder injury,
6 correct?

7 A. Correct.

8 Q. How big was she? She was about 5' 4", right?

9 A. That's about right.

10 Q. 120 pounds?

11 A. Right.

12 Q. How large are you?

13 A. 5' 8".

14 Q. How much do you weigh?

15 A. I weighed 165 then.

16 Q. Were you physically fit then?

17 A. Yes.

18 Q. All right. And, in fact, you told investigators
19 that you rode your bike up to 200 miles a week, correct?

20 A. That's correct.

21 Q. And you had hobbies, and that was one of your
22 hobbies, right?

23 A. Correct.

24 Q. And your other hobby was being in a band?

25 A. For a while.

1 Q. Okay. So you had guitars and bikes and hobbies and
2 you were actually the only one that worked outside the home,
3 right?

4 A. Correct.

5 Q. And you held that job down just fine? You didn't
6 get fired until your killed your girlfriend and fled,
7 right?

8 A. Correct.

9 Q. So she was the one that was homebound, correct?

10 A. By choice, she chose not to work.

11 Q. She didn't have a life outside the home, did she?

12 A. She couldn't get employed because she had been
13 fired three times in the last year. She deemed herself
14 unemployable. She told me she wasn't going to work. She
15 can't find a job. If I could support her financially, she
16 could take care of the house.

17 Q. All right. And you told Ms. Campbell that you hid
18 the truth, those were your words, hid the truth that Rebecca
19 was horribly abusive to you?

20 A. Yes.

21 Q. Okay. But, actually, you didn't hide it? You
22 didn't hide that at all, because didn't you tell your
23 father?

24 A. The first incidents, yes.

25 Q. And you told your ex-wife?

1 A. Yes.

2 Q. And you told Mike Malvasio, your band mate?

3 A. Right.

4 Q. And you told police?

5 A. Right.

6 Q. So it wasn't a secret?

7 A. Not every event was disclosed. That major one the
8 4th of July was because there were threats against my
9 family.

10 Q. When you talk about not having any support, you are
11 not talking about the law enforcement that showed up to help
12 you, right?

13 A. Sometimes they wouldn't. Sometimes they
14 couldn't.

15 Q. Okay. And you are not talking about your ex-wife
16 who took you in?

17 A. On one occasion.

18 Q. And you are not talking about your father that
19 allowed you, while on an ankle monitor, to live with him in
20 Georgia?

21 A. I was not allowed to contact them. She monitored
22 my home, broke two iPhones when she found a text from my
23 son. I had to get them replaced. So, basically, I was not
24 allowed to have any contact with them. And she watched
25 closely. So, basically, she isolated me from my family and

1 friends during the mid to end of it.

2 Q. Right. And so she went to work with you?

3 A. She didn't have to go to work with me.

4 Q. So you were -- what were your hours at work?

5 A. Anywhere from 7 in the morning to 4:30 if its

6 clinic; 7 to 5 if it's surgery.

7 Q. That's a large chunk of the day --

8 A. Right.

9 Q. -- that you are not with Rebecca?

10 A. Right, right.

11 Q. And you had a cell phone that you would take to
12 work, right?

13 A. Never used it at work. That wasn't allowed in the
14 clinic.

15 Q. You had access to a telephone at work, correct?

16 A. Correct.

17 Q. Now, you admitted to taking some of Becca's
18 medications?

19 A. Correct.

20 Q. You also prescribed her some medications, didn't
21 you?

22 A. I did.

23 Q. And that's something you are not supposed to do,
24 right?

25 A. That's correct.

1 Q. You talked a little bit about Becca being a
2 drinker, but you are a drinker too, right?

3 A. Uh-huh.

4 Q. And your drink of choice is vodka?

5 A. Yes.

6 Q. Sometimes brown liquor, whiskey?

7 A. Sometimes.

8 Q. And you were drinking the night that you murdered
9 Becca, correct?

10 A. We both were, yes.

11 Q. And, actually, in some writings that came -- well,
12 that you wrote while on the run, you stated that you had:
13 Fought drug and alcohol addiction your whole life and still
14 do. So after every event, meaning any sort of relationship
15 loss or problem in a relationship, I would just ramp up my
16 drinking to a level that would kill most people, correct?

17 A. That's what I wrote.

18 Q. How old was Becca's father?

19 A. I don't remember.

20 Q. Did you ever meet him?

21 A. No.

22 Q. Because he lives in Canada, right?

23 A. Either Canada or Michigan, is what I was told.

24 Q. Nowhere near South Carolina?

25 A. No, no.

1 Q. So he didn't pose a very realistic threat to you,
2 did he?

3 A. I heard. She was very persuasive. And that's all
4 I will say, she was very, very persuasive and very angry
5 when she talked about it. And early on, when she came on
6 with that conversation, it was very convincing.

7 Q. Going back to your -- what I'm going to call your
8 journal, you stated you took the life of a good and
9 beautiful person, correct?

10 A. I did.

11 Q. And that she didn't deserve to die?

12 A. No, she didn't.

13 Q. And that she never deserved to be hit, slapped or
14 abused either, no matter how many times she initiated it,
15 which was very often. Not always, very often, correct?

16 A. I loved her.

17 Q. Those are your words?

18 A. I guess they were. I don't remember everything in
19 the journal.

20 Q. And that: There are two sides to every story, the
21 truth is somewhere in between. I say that not to defend my
22 action, because it's indefensible, correct?

23 A. That's there, yes.

24 Q. And you stated that you wanted to write this
25 journal because you wanted people to know your story.

1 Everyone knew Becca's.

2 A. I wanted my sons to know where I was and what
3 happened. That was the primary purpose.

4 Q. But, actually, you prevented people from knowing
5 Becca's story, correct?

6 A. I don't follow that.

7 Q. Well, she's not here to tell it.

8 A. Okay.

9 Q. In recounting your past relationships, you say that
10 when you got your feelings hurt, sometimes you said horrible
11 things, and that your pattern of abuse to this point had
12 always been verbal, never physical to this point, correct?

13 A. Correct.

14 Q. All right. And so you do admit in here and in
15 interviews that when things got bad, you hit Becca?

16 A. Only before I was -- not before I was provoked.

17 Q. You don't disagree that you guys moved three or
18 four times to different apartments?

19 A. We were evicted.

20 Q. Okay. And you moved?

21 A. Yes, we did.

22 Q. And you could have chosen not to move together,
23 correct?

24 A. At some point, I didn't have a choice. And I also
25 wanted to support her.

1 Q. Okay. So you voluntarily participated in this
2 relationship?

3 A. Yes.

4 Q. And you also stated that you wanted to fix her?

5 A. Yes.

6 Q. And you had left on several occasions. You had
7 gone to hotels. You had gone to your ex-wife's house. You
8 had gone to your office to stay?

9 A. Yes.

10 Q. So you had gotten away from what you deemed to be
11 your abuser multiple times before?

12 A. Yes.

13 Q. And you stated that in the end, you became
14 something you couldn't control.

15 A. Okay.

16 Q. Do you recall that?

17 A. If it's there. I don't recall writing that.

18 Q. And nowhere in your journal or the two recorded
19 interviews with law enforcement do you ever allege that
20 Becca was threatening you with keys the night that you
21 murdered her?

22 A. Okay.

23 Q. So this is the first time that we are hearing about
24 that?

25 A. Actually, I can't recall who, there are some

1 photographs of me at the Hampton Inn with a bandage around
2 my arm where that occurred, and somebody asked about it
3 early on in the investigation, and I can't recall who.

4 Q. Right. And you stated that that went back to the
5 argument when you left for four nights?

6 A. Correct.

7 Q. And so I'm talking about the night of August 26th,
8 2014, when you kneeled on her arms and covered her entire
9 face with bubble wrap and pressed down until she stopped
10 breathing.

11 A. Okay.

12 Q. Where were the keys?

13 A. In her hand or in the room.

14 Q. And we are talking about bedroom two, which is the
15 spare bedroom, right?

16 A. That's correct.

17 Q. So she tells you to leave?

18 A. Yep.

19 Q. And she goes into the spare bedroom and you follow
20 her in there?

21 A. She started packing my stuff. If I was going to
22 leave, I needed clothes to go. She started doing what she
23 always does, taking all my clothes, putting them in duffel
24 bags, telling me to get out.

25 Q. And she was naked when she was doing this?

1 A. Correct. We often slept naked.

2 Q. And she was naked when you killed her?

3 A. Correct.

4 Q. And you've got medical training, don't you, Nick?

5 A. I do.

6 Q. You even treated yourself?

7 A. I did.

8 Q. But when you checked Becca's pulse that night, when
9 you put your finger to her carotid, like you told
10 detectives, you felt nothing. You didn't try and revive
11 her? You didn't call 911, correct?

12 A. Correct.

13 Q. And, in fact, you told investigators that you,
14 "just wanted her to stop breathing". Do you recall that?

15 A. I don't recall saying that.

16 Q. Okay. It's in one of your multiple statements.

17 A. Okay.

18 Q. And so after you make sure that she's dead, you
19 take her phone, right?

20 A. Correct.

21 Q. You leave Sugar, the three-pound Yorkie, in the
22 condo that you guys shared, right?

23 A. Right.

24 Q. You took her Jeep?

25 A. Correct.

1 Q. And then you "chucked her phone into a swamp in
2 Hampton"?

3 A. Correct.

4 Q. Then a few days later, you sell your iPhone for
5 cash?

6 A. Correct.

7 Q. So that you can pay for hotel rooms on the run?

8 A. Correct.

9 Q. Escorts?

10 A. Yep.

11 Q. And prescription pills?

12 A. Correct.

13 Q. Now, in your interview with Robert Greene at the
14 investigations office in Escambia County, Robert Greene
15 asked you what was the straw in the camel's back that night.
16 And you responded, I don't think there was one.

17 You didn't respond that she had a key and that she
18 was assaulting you or hitting you. In fact, you never said
19 any of that stuff that night, or when you were interviewed,
20 correct?

21 A. If that's what the record says. I don't recall. I
22 just drank a lot of vodka and a large beer before I was
23 arrested. So my memory is a little fuzzy.

24 Q. Okay. But you didn't tell police that either, that
25 you had drank a large --

1 A. I think I did. I don't know. If it's not on the
2 record, but I thought I mentioned that to Detective
3 Greene.

4 Q. Okay.

5 A. He asked me where I was all day and what I was
6 doing.

7 Q. Courts 7 and 8 will speak for themselves in that
8 regard.

9 MS. SWANSON: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 BY MS. SWANSON:

12 Q. Which hand were the keys in?

13 A. I don't know if they were in her hand, but she
14 brought them to the room.

15 Q. Oh, I'm sorry. I thought you just testified that
16 the keys were in her hand.

17 A. I don't think they ended up in her hand. They were
18 in her right hand which she was using them on me.

19 Q. All right. So it's -- is it your testimony that
20 she brought the keys to the room or they were in her right
21 hand?

22 A. She brought the keys to the room. I don't recall
23 which hand they were in.

24 MS. SWANSON: I believe that's all I have at this
25 time. Thank you, Your Honor.

1 THE COURT: Any redirect for the witness?

2 MS. CAMPBELL: No, Your Honor.

3 THE COURT: Pardon me?

4 MS. CAMPBELL: No, Your Honor.

5 THE COURT: Sir, you may step down. Anything
6 further?

7 MS. CAMPBELL: No, Your Honor.

8 THE COURT: Anything from the State?

9 MS. SWANSON: Yes, Your Honor. I would like to
10 call Investigator Jon Adams to the stand, please.

11 THE COURT: Sir, if you will come to the stand and
12 be sworn.

13 JON ADAMS,

14 having been duly sworn, testifies as follows:

15 THE COURT: If you will state your name for the
16 record, spelling your last name for the court reporter.

17 THE WITNESS: My name is Jon G. Adams, A-d-a-m-s.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MS. SWANSON:

21 Q. Thank you, Your Honor. Investigator Adams, tell us
22 about your involvement in the case regarding the murder of
23 Rebecca Melton, please.

24 A. September 4th, 2014, a little after 11 a.m. in the
25 morning, I responded to [REDACTED], Unit [REDACTED],

1 along with several other investigators from my unit, along
2 with some patrol officers. And I believe there were some
3 officers there from Palmetto Dune Security.

4 Q. What did you find at that unit?

5 A. We found a deceased white female that was nude.
6 And she had been there for several days in one of the spare
7 bedrooms.

8 Q. And can you describe the position that her body was
9 found in?

10 A. Ma'am, she was laying on her back. Her right hand
11 appeared to be partially obscured underneath one of her
12 hips. And she had her left hand by her head, possibly in a
13 defensive position.

14 Q. Okay. And was any DNA testing done on the
15 fingernail clippings from that left hand?

16 A. Yes, ma'am.

17 Q. And what did that come back to?

18 A. Came back with DNA profile for the defendant,
19 Mr. Evangelista.

20 Q. All right. And we are talking about -- what is the
21 victim's name here?

22 A. Rebecca Sue Melton.

23 Q. I'm going to show you -- this is just for the
24 purpose of this hearing. I wouldn't intend to enter for --
25 I'm going to show you what's been marked as Court's 6 and

1 ask if this is a fair and accurate depiction of how Ms.
2 Melton appeared, although her -- I understand that that's
3 not necessarily the position that her body was in exactly
4 when y'all found it. But is that how she appeared when she
5 was found?

6 A. It is.

7 MS. SWANSON: Okay. The State would offer Court's
8 6 for the purpose of this hearing.

9 MS. CAMPBELL: No objection.

10 THE COURT: You may proceed. What number would
11 that be?

12 MS. SWANSON: This is Court's 6.

13 THE COURT: Court's 6 without objection.

14 BY MS. SWANSON:

15 Q. When you guys arrived at Nick and Becca's condo,
16 was Nick anywhere?

17 A. No, ma'am, he was not.

18 Q. Had you even seen him recently?

19 A. Not to my knowledge, ma'am.

20 Q. All right. And at that point, did you start to
21 interview people that knew Nick and Rebecca?

22 A. I did.

23 Q. All right. And what did they have to say about the
24 relationship?

25 A. That it was as was described earlier, tumultuous,

1 mutually combative, that they were drawn to each other for
2 some strange reason, because they would move from place to
3 place.

4 Q. Okay. And did you talk to one of Becca's friends,
5 Lynn Bridges?

6 A. Yes, ma'am.

7 Q. And what did Lynn tell you?

8 A. She said that there was history of violence between
9 them, that --

10 Q. Had Becca ever asked Lynn to take pictures of
11 bruises?

12 A. She had. She said those bruises were caused by
13 Mr. Evangelista.

14 Q. All right. And did she describe how Becca used to
15 go out all the time and then didn't after meeting Nick?

16 A. Yes. She was being isolated from her family and
17 friends.

18 Q. All right. And did she actually offer to take
19 Becca in at one point?

20 A. I don't recall that, ma'am, but it's possible.

21 Q. Did you come across evidence that Nick had left the
22 residence and Becca before?

23 A. I think that evidence came, again, as a result of
24 Mr. Evangelista's statement and the statement of some of the
25 witnesses.

1 Q.. All right. And did you look into the history of,
2 like, calls for dispatch between the two?

3 A. I did. I asked for a series, I believe, five 911
4 calls with the corresponding CAD notes.

5 Q. All right. And was there any documentation of any
6 type of injuries on Nick besides scratches?

7 A. Not to my knowledge ma'am.

8 Q. As a police officer, have you responded to a number
9 of domestic violence calls?

10 A. I have, ma'am.

11 Q. And do you have any opinion as to whether scratches
12 can be defensive wounds?

13 A. They can be.

14 Q. All right. And particularly when there's a
15 physical size difference between two people?

16 A. Or a difference in gender or a difference in
17 physical fitness.

18 Q. And have you reviewed Nick's statement to law
19 enforcement?

20 A. Yes, ma'am.

21 Q. And did he ever allege at that time that Becca was
22 trying to kill him --

23 A. I don't believe so, ma'am.

24 Q. -- the night of her murder? Going back to how the
25 victim was found, I don't think I ever asked you this, but

1 did she have a weapon?

2 A. Not to my knowledge ma'am.

3 Q. She was not found with a weapon?

4 A. She was not.

5 Q. I'm going to show you what's been marked as Court's

6 4 and ask if this was taken as evidence from the Jeep

7 Wrangler that Mr. Evangelista was driving?

8 A. Yes, ma'am.

9 Q. And what is it?

10 A. It's a copy of his notebook or journal that you
11 read excerpts from.

12 MS. SWANSON: The State would move Court's 4 into
13 evidence for the purpose of this hearing at this time.

14 THE COURT: Any objection?

15 MS. CAMPBELL: No objection.

16 THE COURT: Marked and admitted without objection.
17 What number is that?

18 MS. SWANSON: Court's 4.

19 THE COURT: You may proceed.

20 MS. SWANSON: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 BY MS. SWANSON:

23 Q. Was a cell phone taken out of the Jeep Wrangler
24 that the defendant had?

25 A. Yes, ma'am, I believe it was our Samsung phone.

1 Q. And did you have that forensically analyzed?

2 A. Yes. I requested that it be analyzed by our
3 forensic analyst at the time, Sergeant Derrick Nelson.

4 Q. All right. And were there text messages on that
5 phone?

6 A. Yes, ma'am.

7 Q. Was there a search history of porn and escorts in
8 Pensacola on that phone?

9 A. There was, ma'am.

10 Q. And the text messages referred to soliciting
11 prostitution, trying to find drugs, right?

12 A. Appeared so.

13 Q. Were there any photos on the phone?

14 A. There was the photo that you have in your hand now.

15 Q. Some selfies and images of porn?

16 A. Yes.

17 Q. I'm going to show you what's been marked as Court's
18 5 and ask if this is one of the photos that came off of that
19 phone?

20 A. It is, ma'am.

21 Q. And was that in the same time frame of the journal
22 that Nick is writing?

23 A. I believe so, ma'am.

24 Q. While he's on the run after killing his girlfriend?

25 A. Yes, ma'am.

1 Q. Okay.

2 THE COURT: Are you seeking to admit that?

3 MS. SWANSON: Oh, yes, Your Honor.

4 THE COURT: Any exception?

5 MS. SWANSON: For the purpose of this hearing,

6 Court's 5.

7 THE COURT: Any objection?

8 MS. CAMPBELL: For this hearing, no.

9 THE COURT: Court's 5 without objection.

10 BY MS. SWANSON:

11 Q. I'm also going to show you Court's 1 and 3. And
12 these are simply copies of the initialed interviews with the
13 defendant, but ask if these are an in-car interview and an
14 interview at investigations that you reviewed in preparation
15 for this case?

16 A. Yes, ma'am.

17 MS. SWANSON: And, Judge, I realize that I have two
18 copies of this, but I have one copy that I would be entering
19 in my case in chief and then I thought one would stay
20 uninitialed for the purposes of this hearing.

21 THE COURT: You need to figure out which one you
22 want to use, because once I admit something as a court's
23 exhibit, it stays with me; doesn't go anywhere else.

24 MS. SWANSON: I understand that.

25 THE COURT: No, I mean it stays marked as a court's

1 exhibit. It's not going to have two stickers on it. So you
2 need to figure out which one, because the jury is not going
3 to see anything that is marked as a court's exhibit. It
4 stays in a separate evidentiary file.

5 MS. SWANSON: I do need the two copies.

6 THE COURT: Are those the same as what you have in
7 your hand?

8 MS. SWANSON: Yes, Your Honor. So I will just --

9 THE COURT: Why do you need the ones marked as
10 court's exhibit if they are the same thing?

11 MS. SWANSON: Well, just I had the witnesses
12 initial this.

13 THE COURT: Do you need to substitute that set for
14 the other set?

15 MS. SWANSON: Yes, Your Honor, if that suits.

16 THE COURT: Any objection?

17 MS. CAMPBELL: No objection.

18 THE COURT: It's substituted. And, Madam Court
19 Reporter, when you put the stickers over those, make sure
20 the Court sticker is covered.

21 MS. SWANSON: 7 and 8 will actually end up being a
22 State's Exhibit in the case in chief.

23 THE COURT: They will be withdrawn as Court's
24 exhibits and you need to substitute those for the other two
25 you have in your hand.

1 MS. SWANSON: I apologize for the confusion.

2 THE COURT: Have they been marked already?

3 MS. SWANSON: They have. And this is Court's 1 and
4 3 that will be substituted for Court's 7 and 8. And those
5 are copies of the in-car video as Court's 1 and the
6 interview at investigations at Court's 3.

7 BY MS. SWANSON:

8 Q. One more thing, Investigator Adams, how long was
9 Nick on the run in being sought for the murder of Rebecca
10 Melton, approximately?

11 A. From August the 26th until --

12 THE COURT: Of what year, sir?

13 THE WITNESS: 2014, until October the 1st of
14 2014.

15 MS. SWANSON: Okay. That's all I have at this
16 time, Your Honor.

17 THE COURT: Any questions for the witness?

18 MS. CAMPBELL: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. CAMPBELL:

21 Q. We will dispense with the whole, "you are the lead
22 investigator, you are very competent" questions. I believe
23 that to be true. So you are here allowed to testify, as the
24 State has had you do, to hearsay. So when you got down all
25 these reports of the criminal domestic violence cases, you

1 reviewed them all, right?

2 A. I did not review the incident reports. I did
3 listen to the 911 calls.

4 Q. Okay.

5 A. Initially, ma'am, when I responded to the location,
6 I was not sure if Mr. Evangelista wasn't also a victim of
7 homicide.

8 Q. Okay. Well, so then, no, you didn't look at, read
9 the incident reports from when Rebecca was arrested for
10 criminal domestic violence against Nick?

11 A. That's correct, ma'am.

12 Q. But they are included in the case file, in your
13 case file, correct?

14 A. I assume they are or you wouldn't be asking me
15 about them.

16 Q. So you've never read them?

17 A. I have actually read them just before our hearing
18 today.

19 Q. Okay. So you are familiar with them now?

20 A. I don't feel like I'm familiar with them. I just
21 glanced at them in the moments that I had between the recess
22 and the start of the pretrial motions.

23 Q. So are you familiar then that the officers who
24 responded to one of those incident reports took photographs
25 of Nick's injuries? There's a CD listed in that report --

1 A. Okay.

2 Q. -- demonstrating the injuries he suffered from
3 Rebecca; have you looked at those photographs?

4 A. No, ma'am, I have not.

5 Q. Since we are allowing hearsay, I'm going to pass up
6 to you a series of photographs from the Beaufort County
7 Sheriff's Office incident report for criminal domestic
8 violence of Rebecca Melton on to Nick Evangelista. Okay?

9 A. Yes.

10 Q. Having reviewed that, correct, do you see them?

11 A. I see them.

12 MS. CAMPBELL: I'm going to offer them, Your Honor,
13 as a part of the record of this hearing.

14 THE COURT: Any objection?

15 MS. CAMPBELL: No objection.

16 THE COURT: Marked and admitted without objection.

17 MS. CAMPBELL: There are three photographs.

18 THE COURT: They need to be each be marked
19 separately.

20 MS. CAMPBELL: Thank you. And so in those
21 photographs --

22 THE COURT: You need to give the court reporter a
23 chance to do that, please. She can't type and write.

24 (Dft. Exh. 1, Photograph, was marked for
25 identification.)

1 (Dft. Exh. 2, Photograph, was marked for
2 identification.)

3 (Defendant's Exh. 3, Photograph, was marked for
4 identification.)

5 BY MS. CAMPBELL:

6 Q. Defendant's Exhibit 3, Mr. Evangelista in that
7 photograph, wouldn't you agree, is suffering from a severe
8 injury to the ear, correct? That's not a scratch.

9 A. Ma'am, he has a red mark and --

10 Q. On his neck?

11 A. On his neck.

12 Q. What's happened to that ear?

13 A. It is red.

14 Q. Inflamed?

15 A. Okay.

16 Q. Correct?

17 A. Yes, ma'am, I see that.

18 Q. As if somebody would have grabbed you by the ear?

19 THE COURT: Be careful about speculation. Neither
20 one of you is qualified to render medical testimony about an
21 injury. The photo speaks for itself. Move to your next
22 question.

23 MS. CAMPBELL: Okay. Thank you.

24 BY MS. CAMPBELL:

25 Q. Officer Adams, the solicitor asked you about the

1 911 tapes, correct?

2 A. She did.

3 Q. And you listened to them, correct?

4 A. I did.

5 Q. And so Nick Evangelista tells the 911 operator,
6 while he's on the phone trying to get help because he's
7 under attack: My girlfriend hit me. It's over. I've had
8 enough. You are going to jail.

9 Correct?

10 A. I believe he does say that.

11 Q. I am not going to be afraid any more.

12 Correct?

13 A. Yes.

14 Q. Go away. You should have thought about that when
15 you fucking beat me up.

16 Is that not true what he says?

17 A. I believe he does say that.

18 Q. And the operator asks him about his medical
19 condition or how he's doing and he says: Yes, I'm bleeding.
20 She hit me in my face.

21 Correct?

22 A. Yes.

23 Q. Want to know what she hit with: She hit me with
24 her fists.

25 Correct?

1 A. Yes.

2 Q. She threw a bottle at me and my face is bleeding.

3 Correct?

4 A. Yes.

5 Q. She needs to go to jail now.

6 Correct?

7 A. Yes.

8 Q. Did you hit her? No.

9 They want to get on the phone with her and she says
10 no. She doesn't get on the phone. She doesn't want to talk
11 to you. And then he says: She's been arrested for this
12 before.

13 Correct?

14 A. Yes.

15 Q. I'm bleeding from my head.

16 Correct?

17 A. Yes.

18 Q. Through your investigation, you came across text
19 messages that Rebecca had sent to one of her girlfriends
20 where she said: I made him dig his clothes up again. He
21 will know better next time than to mess with me again.

22 Correct?

23 A. Yes.

24 Q. Okay. So Nick is telling you, she buries my
25 clothes, I have to dig them up. You are confirming that

1 Rebecca is joking with one of her girlfriends that this is
2 how she demeans him, this is what she does to him by burying
3 his clothes, correct?

4 A. Yes.

5 Q. Through your investigation and these witnesses that
6 you've talked to, I would like to know exactly who is it
7 that told you that they saw Nick or had some information
8 that Nick was hitting Rebecca? Who is that witness that
9 characterizes this as mutually combative?

10 MS. SWANSON: Just to avoid confusion, I believe
11 that would be in the defendant's own statements.

12 BY MS. CAMPBELL:

13 Q. Okay. So there's no witness, there's no
14 independent third-party, Officer Adams, that you've talked
15 to that says, oh, I saw Nick Evangelista hit Rebecca Melton,
16 correct?

17 A. Mr. Earley said that Ms. Melton had complained that
18 he had broken one of her ribs.

19 Q. Mr. Earley?

20 A. Mr. Earley.

21 Q. So, again, Rebecca is complaining of having broken
22 ribs?

23 A. Yes.

24 Q. You reviewed the autopsy in this case, correct?
25 And there are no signs that she ever had broken ribs,

1 correct?

2 A. Ma'am, I don't know if they looked for broken
3 ribs.

4 Q. Okay. Did you review the autopsy?

5 A. I did.

6 Q. Well, we will put a copy of that -- we will mark
7 that.

8 THE COURT: No. There's no basis to move autopsy
9 in. And I don't know that it's germane to this issue. I
10 don't know that anybody is qualified to testify about what's
11 in the autopsy.

12 BY MS. CAMPBELL:

13 Q. So --

14 A. Ms. Bridges also said that Melton complained about
15 him hitting her and choking her. And she is the one that
16 took pictures of the bruising.

17 Q. So these two people are getting their information
18 from Rebecca, correct?

19 A. Correct.

20 Q. Okay. But never witness to any violence from Nick
21 to Rebecca, correct?

22 A. I believe one of them or both of them witnessed him
23 taking her cell phone from her and refusing to give it back
24 to her.

25 Q. Okay. But not hitting her, correct?

1 A. Correct.

2 Q. Thank you. Now, Rebecca -- you took into custody
3 in your investigation a stack of her mental health records
4 yea thick, correct?

5 A. It was a large thing.

6 Q. In your investigation, did you not undercover
7 notations that Rebecca was shopping for life insurance on
8 Nick?

9 A. I think there was a note that asked about a
10 policy.

11 Q. Correct. When you interviewed Mike Malvasio, you
12 got information from him through the e-mail that Nick was
13 trying to warn his friends and family that she had
14 threatened to kill them, correct?

15 A. I don't remember the part about the threatening,
16 but I do remember Mr. Malvasio calling her a name.

17 Q. Well, you reviewed the e-mail that Mike Malvasio
18 sent to Brandon Cooler, right, as part of the case? Let me
19 find it for you, if you don't recall.

20 MS. CAMPBELL: If it pleases the Court, I will mark
21 this as Defendant's Exhibit 4.

22 THE COURT: I don't have any distinguished defense
23 exhibits. Normally I have court exhibits. While we are in
24 an in-camera hearing, that does not relieve you of your
25 responsibility to comport with the rules. I don't know

1 whose statement that is. I don't know whether it's hearsay.
2 I have no idea. You need to go through the foundation of
3 the authenticity of the documents.

4 MS. CAMPBELL: Well, I apologize, Your Honor. I
5 thought since we had agreed that hearsay was not
6 objectionable, that we were just moving this along.

7 THE COURT: I don't know what it is you are
8 referring to, but I would suggest you let him identify it at
9 least first.

10 BY MS. CAMPBELL:

11 Q. Officer Adams, can you tell this Court what you are
12 holding in your hand?

13 A. I have what appears to be an e-mail to Sergeant
14 Brandon Cooler from a Mike Malvasio.

15 Q. Correct. And the substance of that e-mail is
16 something that you garnered and put into your case file for
17 this case, correct? It's part of your investigation, is it
18 not, produced to me through discovery?

19 A. I think it is part of the investigation, but it was
20 collected by Sergeant Cooler.

21 Q. Correct. And you reviewed that e-mail, correct?

22 A. I don't believe I have reviewed this particular
23 e-mail.

24 MS. CAMPBELL: Well, then do we need to call
25 Brandon Cooler, Your Honor, or can this officer testify to

1 it as the lead investigator?

2 THE COURT: I have no idea. I don't know what you
3 and the State agreed to. I don't know. My understanding
4 was in terms of his case reporting and to give basically a
5 snapshot of the investigation, and that was the extent of
6 the hearsay testimony. But if they don't have an objection,
7 I don't. But I really haven't had clarity as to what it was
8 y'all agreed to.

9 MS. SWANSON: Your Honor, for the purpose of this
10 hearing, I do not have an objection. I suppose Ms.
11 Campbell, had she wanted to get into this particular
12 evidence, probably should have had Brandon Cooler here to
13 testify on her behalf in her defense. But if she wants to
14 enter that e-mail for the Court to review, I have no
15 objection. Obviously, I would object during the case unless
16 Mr. Malvasio testified.

17 THE COURT: It will be marked and admitted whatever
18 the Court's next in line is.

19 (Court's Exh. 9, E-mail dated 9/4/14, was marked
20 for identification.)

21 BY MS. CAMPBELL:

22 Q. Would you read the e-mail for the Court, please.

23 A. It's dated July 5th, 2013 at 2:23 a.m. from Nick
24 Evangelista: I am so sorry to even have to write this
25 e-mail to anyone. It seems the women I love and have loved

1 since December of '12 has some serious problems that may
2 eventually end in harm to me or others. Tonight after many,
3 many events that none of you are aware of, I had to press
4 charges on Becca for assault. And she is now headed for
5 jail with a bail hearing in the morning, Friday, 7/5. I
6 only tell you this because of the threats she has made, not
7 only on my life, but the lives of my children. She claims
8 that her father and her family have enough money and power
9 to basically kill at will without any trace or evidence.
10 Tonight I told the police this and wrote it in a statement
11 as she was taken to jail for yet another physical assault on
12 me. MOTO, I included you only because I named you in the
13 statement as a witness to my whereabouts tonight. Sorry
14 brother. As for the rest of you, tomorrow she will likely
15 be out on bond. She has 1,000-yard restraining order from
16 my property, but she has never shown much in the way of
17 restraint thus far. If it turns out that harm should come
18 to me or my children in any way, her name is Rebecca Melton,
19 date of birth [REDACTED], originally from Windsor, Ontario,
20 Canada. Again, I am so ashamed and sorry that I should ever
21 have to involve any of you, but I truly believe that she
22 will not go quietly, signed Nick.

23 And it was sent from his iPhone.

24 Q. Thank you. Now, the date that Nick sent this to
25 warn friends and family --

1 THE COURT: Please refrain from characterizing the
2 testimony and ask the question.

3 BY MS. CAMPBELL:

4 Q. So the date that this was sent is what?

5 A. September the 4th of 2014.

6 Q. That was sent to Brandon Cooler on that date,
7 correct?

8 A. I'm sorry, July the 5th of 2013.

9 Q. And the date that you placed Rebecca Melton's death
10 at is what?

11 A. Sometime between August the 26th and August the
12 27th.

13 Q. And for the Court, can you then give the time frame
14 between the e-mail and the date of her death, calculate that
15 for the Court?

16 A. Almost a year.

17 Q. A year ahead of time?

18 A. Ahead of time.

19 Q. Correct. Thank you. Officer Adams, you
20 interviewed Rebecca's ex-husband in Georgia about her
21 violence, didn't you?

22 A. No, ma'am.

23 Q. Never did that?

24 A. I never did that.

25 Q. Did you ever interview the mental health doctors

1 about the violence?

2 A. I did not.

3 Q. But now you have reviewed Nick's statement that he
4 gave to the Escambia County Sheriff's Department, correct?

5 A. Yes, ma'am.

6 Q. And the solicitor noted some things from that
7 statement. So I'm just going to ask you a couple of things
8 as well. He told the Escambia Sheriff's Department that he
9 was suicidal, correct? Disappointed, embarrassed and
10 ashamed, correct?

11 A. Yes.

12 Q. Planned to kill himself?

13 A. That's what he said.

14 Q. Had the noose in the car, correct?

15 A. Yes.

16 Q. Told them on the night that she died, he was trying
17 to leave, correct?

18 A. I don't remember that part of the interview, ma'am.

19 Q. Okay. That she was screaming at him to leave, he'd
20 leave: Hitting me, scratching me, I was trying to keep her
21 from hurting me; do you remember that?

22 A. I don't, ma'am.

23 Q. Do you recall him telling the Escambia Sheriff's
24 Department about the threats to kill him and kill his family
25 over the course of their relationship?

1 A. I don't recall that, ma'am.

2 Q. Did you, in your investigation, look at the weapons
3 that were easily available to Rebecca in the condo that
4 night, like the large knife on the center table by the
5 bedrooms?

6 A. I believe there is a photograph of that knife,
7 ma'am.

8 Q. And it was on the table when you got there and when
9 y'all took the photographs, correct, undisturbed?

10 A. It was.

11 MS. CAMPBELL: That's all I have. Thank you.

12 THE COURT: Any redirect?

13 MS. SWANSON: Just briefly, Your Honor.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q. In reference to that knife Ms. Campbell just asked
18 you about, was it on the table with a bunch of other items?

19 A. I believe it was, but I don't recall what those
20 items were.

21 Q. Was the condo a wreck?

22 A. It was.

23 Q. Was there any blood on that knife?

24 A. Not to my knowledge, ma'am.

25 Q. Right. And Becca didn't have any weapons in her

1 hands?

2 A. She did not.

3 Q. And do you recall any allegation that she had ever
4 picked up a weapon?

5 A. I don't.

6 Q. Ms. Campbell asked you about --

7 A. Other than the car key.

8 Q. Right, which we just heard today?

9 A. Yes, ma'am.

10 Q. Ms. Campbell asked you about the fact that you
11 didn't interview anyone that saw Nick hit Becca?

12 A. Yes.

13 Q. Were there any witnesses to Becca hitting Nick
14 besides Nick?

15 A. I don't believe so, ma'am.

16 Q. All right. So when he's telling 911 all of these
17 things, that's just what he's telling 911, right?

18 A. And he did it very calmly.

19 Q. Right. The photograph of the scratch on the ear,
20 this is -- I'm sorry, it should be labeled Court's -- should
21 be Court's exhibit. But these three photos of the scratches
22 on defendant's ear, did that incident occur the night that
23 Becca was murdered?

24 A. Not to my knowledge.

25 Q. And that e-mail to Mike Malvasio, that was over a

1 year before the murder?

2 A. A little less than three.

3 Q. And did Nick continue to engage in a relationship
4 with Becca?

5 A. He did.

6 Q. And he continued to live with her?

7 A. He did.

8 Q. And, actually, he bailed her out, right?

9 A. I believe so, ma'am. He said he did.

10 Q. Right. You heard him say he bailed her out. He
11 got her an attorney. And, in fact, in those 911 calls, do
12 you hear Becca crying in the background?

13 A. You do.

14 Q. And regarding the purported suicide attempts and
15 plans, do you recall what those were?

16 A. I think he talked about the hangman's noose and
17 some box cutters, cutting a vein or an artery.

18 Q. Taking some Tylenol?

19 A. Tylenol, drinking alcohol with the Tylenol.

20 Q. Right. So there were multiple methods that he
21 explored, but never got around to offing himself?

22 A. He is here today, ma'am.

23 Q. Right. Did he ever mention killing himself with
24 bubble wrap?

25 A. He did not.

1 MS. SWANSON: I have nothing further at this time.

2 THE COURT: Sir, you may step down.

3 Anything further from the State?

4 MS. SWANSON: Nothing further, Your Honor.

5 THE COURT: Anything further from the defense?

6 MS. CAMPBELL: No, Your Honor.

7 THE COURT: All right. Glad to hear any argument.

8 I would imagine the State would go first so that she can
9 respond.

10 MS. SWANSON: Thank you, Your Honor.

11 Essentially, for the defense to prevail, they would
12 need to present a case of self-defense as a matter of law
13 with no evidence to the contrary and show that there was no
14 duty to retreat. I do not believe that the defense gets
15 there and that they meet their burden.

16 I would argue that the defendant did help bring on
17 the difficulty by continuing to engage in this relationship
18 and by engaging in a mutually combative relationship. Your
19 Honor, there is certainly evidence in the record that both
20 parties called for police help, that both parties suffered
21 injuries. And just because this was a toxic relationship,
22 does not mean that the victim was a primary aggressor. And,
23 certainly, the injuries that defendant brings up, which
24 consist of scratches, could have been defensive wounds. And
25 we don't know what her side of the story regarding those

1 incidents were.

2 But, regardless, on the night of the murder, he had
3 gone back to the home after being away for four days and
4 went back to engage in the relationship, and also admitted
5 to drinking that night, which certainly could have
6 contributed to the difficulty. He had ignored no-contact
7 orders, restraining orders, bailed her out of jail, things
8 of that nature, when he continued the relationship, kept
9 going back.

10 Additionally, he's not entitled to the statutory
11 immunity because the victim was not exerting force against
12 the defendant, much less deadly force. I think one of the
13 first times today is when we've heard something about a key
14 being used. But I believe that the recorded statements
15 speak for themselves. And at the very least, there's a
16 factual dispute about what actually occurred that night.
17 And defendant contradicts himself in his own statements. So
18 I do believe that would be a fact for the jury to determine.

19 In addition, it was not at all reasonable for the
20 defendant, who is much larger, physically fit, than Becca
21 Melton for him to have been in fear. He had left plenty of
22 times before. He had demonstrated the fact that he had the
23 ability to leave. He was the financial breadwinner. He was
24 the one that worked outside the home. He had relied on the
25 support of his ex-wife, his father, his bandmates. He was

1 the one with hobbies. He had an out. And he chose not to
2 take it. And instead, he ended her life.

3 She was naked, defenseless, without a weapon, in
4 her most vulnerable state. I believe that there was plenty
5 of testimony to the fact that, you know, emotionally, she
6 wasn't in a great place. Her mother had just died two weeks
7 prior. And then she also physically suffered from
8 osteoporosis, had a recent shoulder injury. So, physically,
9 she was certainly the weaker of the two. And he
10 demonstrated that night that he could physically control
11 her. And in his own statements, he is pinning her down. He
12 has restrained her in the past. So I do not believe it was
13 reasonable for him to use deadly force against the victim
14 simply on the basis that there had been fights in the past
15 that resulted in some scratches on him. And at the very
16 least, again, that would be an issue that a jury would need
17 to determine.

18 I do not think at this stage it can be determined
19 as a matter of law. So I believe that the defense has not
20 met their burden for statutory immunity. Thank you.

21 THE COURT: You're welcome.

22 You may proceed.

23 MS. CAMPBELL: May it please the Court.

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: We are looking at page 4 of the

1 motion that the defendant filed with the clerk's office a
2 few weeks ago, Section C: A person who is not engaged in
3 unlawful activity and who is attacked where they have a
4 right to be, has no duty to retreat, has a right to stand
5 their ground, meet force with force, whatever that force is,
6 up to and including deadly force, if they reasonably believe
7 it's necessary to prevent death or great bodily injury to
8 themselves.

9 Don't need to get into another person's situation.
10 That wasn't the case here on this particular night.

11 The defendant takes the position from the testimony
12 at the hearing that the Court has to defined that he was
13 absolutely, under the first prong, a place where he had a
14 right to be and that he had no duty to retreat and, of
15 course, to stand his ground, meeting the force of the
16 attack.

17 And then we get into that area of Subsection C,
18 which, again, you know, I would fall back on the situation
19 we are dealing with a battered person syndrome diagnosis,
20 which, you know, we will get into in the case in chief,
21 reasonably to prevent death or great bodily injury.

22 He's testified to Your Honor that on repeated
23 occasions, that he was attacked. He told friends and
24 family, as best he could, that he had been subjected to
25 repeated cycles of violence.

1 You know, saying, you know, oh, you should just
2 leave, really sort of blames Nick, the victim in this
3 relationship, from the cycles of violence, and the go-to
4 answer is, oh, why don't you just leave. But that's not,
5 you know, what we are talking about. He had no duty to
6 retreat, no duty to run.

7 He actually did testify that when she came at him
8 again, waking him in the middle of the night from a sound
9 sleep, attacking him, that he tried to leave when she told
10 him to get out and was trying to throw him out of the house
11 and chase him out of the house and beat him out of the house
12 and meeting that like force with like force.

13 So he's in a situation where he's being faced with
14 the same weapon that had caused such severe injury to him
15 just a week or so before. And as I said, and as he
16 testified, well, you know, for most people, it could be very
17 serious. I did know that night how to bandage myself up,
18 and I did.

19 And, of course, was it reasonable to believe, based
20 upon their previous interactions, that she could have made
21 good on her threats and violence against him, and could he
22 have suffered great bodily injury and could he have died?
23 And we would take the position that the testimony that Your
24 Honor has heard certainly supports that.

25 You know, when he could, he called for help. He

1 reached out for help. And the system, this side of the
2 courtroom that was supposed to protect him, didn't protect
3 him. And just because he's a man sitting in Your Honor's
4 courtroom, there can't be any difference between a man or a
5 woman as the victim of criminal domestic violence.

6 If Nick fought back, he fought back. But he never
7 initiated any sort of violent attack upon Rebecca, his
8 attacker, his abuser, the woman he still today says I loved
9 her. He did. He loved her. She abused him. She pulled
10 him in, the grifter that she was, her machinations and her
11 schemes and what she did to him, she had done to so many
12 before.

13 It did end that night when he protected himself, as
14 he has a right to do under South Carolina law, from another
15 attack. Thank you, Judge.

16 THE COURT: You're welcome. Anything further from
17 the State?

18 MS. SWANSON: Just briefly. Ms. Campbell did refer
19 to battered spouse as a diagnosis. There's been absolutely
20 no testimony regarding battered spouse. And I would submit
21 to the Court that it's not a diagnosis. It's not found in
22 the DSM. And it's certainly not a legal defense. We are
23 talking about immunity and self-defense, showing that
24 there's no duty to retreat. Nick did have a duty to retreat
25 that night. And that's why the defense cannot prevail.

1 I would point the Court to Subsection (b) that,
2 because Becca was a lawful resident of the condo, defendant
3 is not granted a presumption that, you know, he be in fear
4 of imminent peril, such as, you know, dealing with someone
5 that maybe invades a home where they have no right to be.
6 So he does have to meet that burden of reasonableness in
7 using deadly force with deadly force, and showing that he
8 had a reasonable belief that he needed to protect himself
9 from great bodily injury or death. And he has not shown
10 that. Thank you.

11 THE COURT: You're welcome.

12 In order to prevail on a defense under the stand
13 your ground, that's commonly referred to which is 16-11-440
14 and 16-11-450, which provides immunity, our courts have been
15 very clear that there are four elements that must be
16 established by the person purporting to have that defense,
17 which is a complete bar of prosecution available to them,
18 and that they must meet these elements by a preponderance,
19 which we commonly refer to as greater weight of the evidence
20 and other words more likely than not.

21 Our Supreme Court has been very clear that immunity
22 under the Act is predicated on the accused demonstrating the
23 elements of self-defense to the satisfaction of the trial
24 court by a preponderance of the evidence, save the duty to
25 retreat. However, I think the State is correct that,

1 likewise, Ms. -- the victim in this case had no duty to
2 retreat either under (B)(1) of the statute, as it was her
3 lawful residence.

4 And those requirements are as follows: They have
5 to establish a valid defense of self-defense. And the Court
6 must necessarily consider the elements of self-defense in
7 determining the defendant's entitlement to act pursuant to
8 the immunity granted in the statute.

9 And in short, those four elements are as follows:
10 That the defendant must be without fault in bringing on the
11 difficulty; the defendant must have actually believed he was
12 in imminent danger of losing his life or sustaining serious
13 bodily injury, or he actually was in such imminent danger.
14 If his defense is based upon his belief of imminent danger,
15 a reasonably prudent man of ordinary firmness and courage
16 would have exercised the same belief. But if the defendant
17 actually was in imminent danger, the circumstances were such
18 as to warrant -- as would warrant a man of ordinary
19 prudence, firmness and courage to strike a fatal blow in
20 order to save himself from serious bodily injury of losing
21 his own life, and the defendant had no other probable means
22 of avoiding the danger of losing his own life or sustaining
23 serious bodily injury than to act as he did in this
24 particular circumstance.

25 Considering the evidence in its totality, that

1 being the evidence presented by the defendant in this case,
2 Mr. Evangelista, as well as that of the case agent, I find
3 that he has failed to meet his burden by a preponderance of
4 the evidence. This does not negate, however, him being able
5 to propound the defense of self-defense in his case if he
6 should decide to pursue that. And the State, of course, has
7 the burden of proving beyond a reasonable doubt or
8 disproving that defense beyond a reasonable doubt.

9 I would find that there's a factual dispute as to
10 the events on August 26th of 2014, and it represents a jury
11 issue. Mr. Evangelista says himself he has no independent
12 recollection of what happened. And, therefore, I cannot
13 make any rational decision based on what he can't remember.

14 There is, however, convincing evidence in the
15 record by a preponderance of the evidence that deadly force
16 may not well have been necessary. There's no evidence that
17 the victim in this case was armed. There's no evidence that
18 she had any ordinary objects, such that would have posed
19 deadly force, such that would have taken his life. There's
20 no evidence of any imminent danger. Again, he can't
21 remember what happened. And there's also, likewise, no
22 evidence that there was any other probable means by which he
23 could have avoided this. Again, he has no independent
24 recollection.

25 However, the independent and empirical proof tends

1 to show that the victim in this case was naked, that she was
2 defenseless, that there was a disproportion in their size
3 and in their strength and ages, that she had had a recent
4 injury to her shoulder that would negate, to some extent,
5 any indication that she could have used an ordinary object
6 to have proposed deadly force to him.

7 If a gun was involved, that might well be
8 different. But in this instance, we would have to look to
9 see if there were any ordinary objects that could have been
10 used for the purpose of deadly force, which we know is
11 factually dependent.

12 But there's -- the record is devoid of that. And
13 I'm at a loss as to how past scratches or swollen ear would
14 rise to the level of deadly force being necessary to
15 preserve one's life. And I do not find that convincing or
16 persuasive, nor do I find the 911 calls or the recitation of
17 the 911 calls to be particularly persuasive. At best, they
18 are self-serving and bolstering.

19 As such, I'm denying the motion. I reserve the
20 right to do a written order regarding the issue in the
21 interest of time and without belaboring the issue. And I
22 may well do that. I will take leave to make any other
23 findings of fact as well as conclusions of law consistent
24 with the record.

25 I am going to review his first statement again in

1 listed. And I know there's some overlap.

2 MS. CAMPBELL: 8 to 10.

3 THE COURT: Okay. I just needed to know how we
4 needed to pace ourselves. Okay.

5 And do you all have your first witness ready after
6 openings and Court's instructions?

7 MS. SWANSON: Yes, Your Honor.

8 THE COURT: Please bring in the jury.

9 THE COURT: I assume y'all filed your motions as
10 well as any memos in opposition?

11 MS. SWANSON: Judge, I will take care of that.

12 THE COURT: I think y'all need to file them so they
13 can be a part of the record.

14 MS. SWANSON: Yes, Your Honor.

15 THE COURT: And that would be the State's
16 memorandum in opposition to the request for immunity and the
17 defendant's pretrial motions.

18 MS. SWANSON: Correct.

19 THE COURT: And there wasn't anything else that
20 y'all sent for me to review? I have a State's memorandum in
21 opposition. It's undated. It's signed by Ms. Swanson.

22 And then I have the defendant's pretrial motions,
23 which is dated December 4th. And I think I have multiple
24 copies of them, but those were the only items that y'all
25 filed, correct; or was there anything else I needed to be

1 Is there any exception from the State?

2 MS. SWANSON: None from the State.

3 THE COURT: From the defense?

4 MS. CAMPBELL: No, Your Honor.

5 THE COURT: Ladies and gentlemen, I would ask that
6 you give counsel your undivided attention in opening
7 argument. You may proceed.

8 MS. SWANSON: May it please the Court.

9 THE COURT: Yes, ma'am..

10 MS. SWANSON: I took the life of a good and
11 beautiful person. She didn't deserve to die. I've had
12 enough. I finished it. I took what I could and ran. I
13 haven't shed a tear since.

14 These are the words of Nick Evangelista on
15 September 10th of 2014 and September 14th of 2014, about a
16 week and a half, two weeks after he killed her. These are
17 words that were supposed to be in a suicide note.

18 He's still here. And he's indicted for murder. He
19 told investigators he tried to kill himself, tried to kill
20 himself any number of ways, taking too much Tylenol,
21 hangman's noose. He was going to hang himself. He had some
22 X-Acto knives where he was going to slice his arteries. And
23 he knows how to do that because he's a medical professional.
24 He worked as a physician's assistant.

25 He was going to drink and drug himself to death,

1 but he didn't. However, he does know how to take a human
2 life, because he took Rebecca Melton's. He took the life of
3 his girlfriend of over two years, his live-in girlfriend,
4 Becca.

5 He described to investigators that they had gotten
6 in a fight. He tells the investigator in Pensacola that he
7 kneeled on her arms, took a piece of bubble wrap, covered
8 her entire face, and held it there until she stopped
9 breathing. And then he checked her pulse, made sure she
10 wasn't breathing. Took her phone. Took her Jeep. And
11 headed for the beaches of Pensacola.

12 On the way, he tossed her cell phone in a swamp in
13 Hampton County. He left her and her dog for dead in their
14 Hilton Head condo.

15 It was quite a few days later when law enforcement
16 finally discovered her body, her naked body, laying on the
17 floor of the spare bedroom decomposing, bubble wrap
18 surrounding her.

19 I want you to understand from the beginning what
20 this case is not about. And it's not about Becca Melton's
21 problems. All right? Emotionally, she was going through a
22 rough time. Physically, she was not well. Pretty much in
23 every way, Nick was her superior. She was about 120 pounds,
24 5' 4". She did drink. So did Nick. They drank together.
25 And they had a terribly unhealthy and toxic relationship.

1 Her morning died two weeks prior to her murder.
2 She was very upset about it and had gone into a deep
3 depression. She had osteoporosis, which she took pain
4 medication for. And she had suffered a recent shoulder
5 injury, which she had surgery for.

6 Nick, on the other hand, physically fit, larger
7 than she, had demonstrated he could physically control her.
8 And he did. And he certainly did that night. I want you to
9 understand that she posed no realistic threat to the man
10 that sits over here.

11 This case is about his actions, what he did, and
12 holding him accountable for taking the life of a defenseless
13 woman, that had no weapon, and was in her most vulnerable
14 state.

15 Now, you are going to hear from witnesses from
16 Beaufort County. You are going to hear from witnesses from
17 Escambia County. They are going to take the witness stand.
18 And you are going to see pictures and physical evidence that
19 the investigators and law enforcement turned up throughout
20 this investigation.

21 And as Judge Jefferson said, you are going to base
22 your decision on what comes from that witness stand, not
23 from what I say, not from what Ms. Campbell says. Because
24 what we say is not evidence. And as jurors, it is your oath
25 to determine the facts, which means you get to determine

1 what's true in this case, who is credible, who is not, who
2 you believe, who you don't. You can believe pieces of this
3 and pieces of this. You don't have to believe all of
4 someone's testimony. And the judge will go into that more
5 at the end of the case.

6 But I do want you to bear in mind that the truth is
7 what Becca is not here to tell. And I'm going to be asking
8 you to speak her truth at the end of this case and find Nick
9 Evangelista guilty of murder. Thank you.

10 THE COURT: Ms. Campbell.

11 MS. CAMPBELL: May it please the Court.

12 THE COURT: Yes, ma'am.

13 MS. CAMPBELL: Good morning. My name is Trasi
14 Campbell. I'm a public defender here in Beaufort County in
15 the 14th Circuit. And I've been doing that work for you and
16 for the circuit for over 20 years. It's my pleasure to be
17 here with you today and to serve this county and to serve
18 Nick Evangelista and his family as his attorney.

19 You know, when I started thinking about talking to
20 you this morning, I always think about things that sort of
21 are life lessons And I got a lot of my life lessons from my
22 grandmother. And there's three things that stood out in my
23 mind, the lessons that she passed down when it comes to this
24 case. And I'm going to ask you to think about those lessons
25 and how they interplay here.

1 I've woven her life lessons to me in the fabric of
2 my life. I frequently use them in my assistance to my
3 clients and in my communications with my juries. In this
4 particular case, some of her lessons to me, well, they were
5 funny, quirky or downright serious. This case is about a
6 relationship. It's about the relationship between Nick and
7 Rebecca. It's about Nick's stalwart resolve to tough it
8 out, to make it work, to help, to fix, to mend, to give of
9 yourself until you have nothing left to give. And Nick gave
10 all. And Rebecca took all he had.

11 Now, my grandmother would say things like, you
12 know, something's tough as wet leather. I have no idea what
13 that is. But I took it to mean that someone or something
14 was extremely strong.

15 There are other times and stories about, you know,
16 a young couple, my mom returning home after the first
17 quarrel after marriage and being told, you know, you made
18 your bed, you need to lie in it. And I took that to mean
19 you take your responsibilities in life, the commitments that
20 you make, and you work on them. And you don't run away and
21 you don't leave. If you are committed to something, you try
22 to make it work.

23 And the last one, as I factored into this case in
24 how I would look at this and talk with you about it, is
25 Doris would say, you know, we don't speak ill of the dead.

1 But today and for the next few days, in order for you to
2 speak the truth, we are going to have to dispense with that
3 little bit of life lessons from Doris. Because you've got
4 to know the truth. In meeting my responsibilities to Nick,
5 in meeting my duty to you, I've got to tell you, I've got to
6 put up evidence, I've got to talk with investigators and
7 other witnesses about what happened to Nick Evangelista when
8 he met Rebecca Melton in the following two years, how she --
9 her machinations, the manipulations, the abuse against Nick,
10 not just emotionally and physically, but in every possible
11 way. Schemes, plans, actions, defrauding, everything that
12 happened to him took, you will see, the DNA of the man in
13 2012 and changed him to the man in 2014.

14 The witnesses from the State are going to primarily
15 be police officers, M.U.S.C., autopsy, and they are going to
16 give you what a Joe Friday would say, something like, just
17 the facts, ma'am, just the facts. And they will tell you
18 thing like, Rebecca Melton was found deceased in a villa in
19 Saint Andrews in Palmetto Dunes on Hilton Head.

20 The autopsy doctors going to testify findings of
21 died of suffocation, no visible trauma anywhere on her body,
22 but suffocation is the cause listed as death.

23 They will tell you Nick was found in Escambia
24 County, Florida, and that he was questioned. And you will
25 hear that statement that he made when they talked with him.

1 But the layers underneath those facts are critical in your
2 search for the truth. What brought Nick and Rebecca to that
3 night, that last night.

4 You will hear testimony that Nick, having served in
5 the military for this country, raised a family, married
6 Cathy Evangelista, two boys, that Nick and Cathy decided --
7 Cathy is going to testify -- for them at that time in their
8 lives, that they would divorce. But he remained a good
9 father and a good friend to Cathy.

10 You will hear from other family members and friends
11 that this was a man who never raised a hand to anyone or
12 anything.

13 You will also hear that Nick bouncing from woman to
14 woman after his divorce to Cathy that he searched for and
15 looked for a long-term commitment. And he found that, he
16 thought, when a friend suggested that he do that sort of --
17 I don't know what it's called, Match.com or something. And
18 Rebecca found him. And she found, I believe you will see
19 from the testimony, her next mark.

20 So profoundly lonely in 2012, you will hear the
21 testimony that Rebecca almost immediately moved her way into
22 Nick's life and then into his home. And you will hear
23 testimony that two years later, after she had been arrested
24 multiple times for criminal domestic violence against Nick
25 for beating him up repeatedly, that he was battered and

1 broken, suffering from trauma and post-traumatic stress from
2 the repeated attacks. She hit him. She pulled his hair.
3 She beat his face. She stabbed him. She destroyed his
4 bike. She smashed his computers. She buried his clothing
5 in the woods. Made him go dig it up. Threatened suicide.

6 All of these things you will hear from Dr. Veronen,
7 an expert in battered spousal syndrome, are parts of the
8 cycle of violence that normally you will hear and she will
9 tell you, associated with women. But that it does discount
10 the fact that a man can also be suffering from this
11 condition as well.

12 Witnesses will tell you, particularly Dr. Veronen,
13 that this was a different person from 2012 to 2014. The
14 friends and family will tell you they saw the evidence of
15 the attacks upon Nick. Sometimes he would tell them what
16 had happened. Sometimes he wouldn't. You will hear
17 testimony about an e-mail he sent during 2013, I believe,
18 after she had been arrested for criminal domestic violence
19 against him, again threatening his life, threatening the
20 life of his children. He knew her to have a firearm,
21 telling everyone, if anything happens to me or anything
22 happens to my boys, this is who she is, this is date of
23 birth, this is where she's from, I want to warn you to be on
24 guard.

25 Friends and family, co-workers will tell you that

1 they witnessed her showing up at his place of work at Optim
2 and acting irrational and erratic and threatening.

3 Nick himself will tell you about the relationship,
4 how he fled the home many times, having to stay at hotels,
5 having to stay at Cathy, his ex-wife's home, staying at his
6 office some nights, fearing for his life and his safety.

7 He became, I believe Dr. Veronen will explain to
8 you, a hostage in that home and in that situation. He was
9 cut off from friends and family. He was cut off from
10 everything. Rebecca had, at the end of that relationship,
11 and you will see in the evidence that we intend to
12 introduce, repeated check after check after check after
13 check, written to Rebecca, thousands and thousands and
14 thousands of dollars. This is a woman who didn't have a
15 job. This is a woman who couldn't hold a job. This is a
16 woman who was living off a settlement from a slip-and-fall
17 case.

18 You will hear testimony that at the end of this
19 relationship, when she stabbed him, hitting a vein, he
20 almost bleeding out, that he might have died except for his
21 own medical training and pulling himself together enough
22 that night, a few nights before she died, to bandage up his
23 own arm.

24 Nick will tell you that on the night Rebecca died
25 he acted in self-defense. He will tell you that he did what

1 he had to do in that moment to save his life from yet
2 another attack by Rebecca.

3 Now, remember this, as you hear the testimony in
4 this case, the law never requires any man, any woman, to
5 prove themselves innocent. The law requires, as it should,
6 that the Government prove, and in this case, prove beyond a
7 reasonable doubt, that Nick Evangelista did not act in
8 self-defense the night that Rebecca died.

9 Now, you will factor in the testimony. You will
10 factor in Dr. Veronen's testimony in making your decision as
11 to what was reasonable in his actions the night that she
12 died.

13 The Court is going to tell you that murder requires
14 malice. And that's an evil intent. That's a mind bent on,
15 you know, dark, black, evil actions. And I believe at the
16 close of this case, you will have every confidence to say
17 that the State has failed, as you've listened to the
18 testimony and recalled the testimony and recalled that the
19 burden of proof is never on a defendant in a criminal trial
20 to prove themselves innocent.

21 And peeling back the layers, it's going to be slow,
22 but we will get there. So that you could have a full
23 picture of what happened to him, what happened that night.
24 And that you will find that Nick was justified in acting in
25 self-defense when he stopped Rebecca from attacking him yet

1 again, from stabbing him yet again.

2 And, you know, in South Carolina, and you will hear
3 me say this again, survival, surviving the attack, survival
4 is not a crime.

5 Thank you for your attention.

6 THE COURT: The State may proceed.

7 MS. SWANSON: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 MS. SWANSON: The State calls Lieutenant Brooker
10 Devore.

11 BROOKER DEVORE,

12 having been duly sworn, testifies as follows:

13 THE COURT: Sir, if you will state your full name
14 for the record.

15 THE WITNESS: Brooker Devore, D-e-v-o-r-e.

16 THE COURT: Thank you. You may proceed.

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q. Detective Devore, who do you work for?

20 A. Palmetto Dunes Security.

21 Q. How long have you worked there?

22 A. Ten and a half years.

23 Q. Did you respond out to a call on September 4th of
24 2014?

25 A. Yes.

1 Q. Can you tell us about that?

2 A. My dispatcher had received a call from an employer
3 requesting a health and welfare check for one of their
4 employees.

5 Q. Where was -- what residence was the health and
6 welfare check requested for?

7 A. I am not exactly sure of the address.

8 Q. Would it help you to look at a copy of the Palmetto
9 Dunes report?

10 A. Yes.

11 MS. SWANSON: If I may approach the witness?

12 THE COURT: You may.

13 BY MS. SWANSON:

14 Q. Feel free to refer to that record, should you need
15 to. Where was the health and welfare check requested?

16 A. The health and welfare check was requested at a
17 complex known as Saint Andrews Commons, which is located at
18 [REDACTED], yes, [REDACTED]. And it was
19 for Unit [REDACTED].

20 Q. All right. And is that located in Beaufort County?

21 A. Yes.

22 Q. And whose residence was [REDACTED]?

23 A. The known residence was a Nick Evangelista.

24 Q. Who else lived there?

25 A. Rebecca Melton.

1 Q. Was there any answer at the door?

2 A. No, no, ma'am.

3 Q. Was there any signs of forced entry?

4 A. No, ma'am.

5 Q. Lieutenant, did you look in the window of the unit?

6 A. Yes, ma'am.

7 Q. And what did you notice?

8 A. One of the blinds was partially up. There was some
9 flies, some large flies inside of the window between the
10 blind and the window. One of the blinds was partially up.
11 I was able to look in. After couple of moments of adjusting
12 my vision, I noticed what appeared to be what looked like to
13 be a body lying on the floor and some sort of liquid, not
14 knowing whether it was oil or blood.

15 Q. And what did you do at that point?

16 A. I contacted my immediate supervisor of my findings
17 and requested my dispatch notify the Beaufort County
18 Sheriff's Department.

19 Q. Did you ever enter the residence?

20 A. No, ma'am.

21 Q. Was Nick Evangelista present?

22 A. No, ma'am.

23 Q. And does Palmetto Dunes have a database where you
24 can search cars that are registered to a certain residence?

25 A. Yes, ma'am.

1 Q. Okay. And how many cars were registered to this
2 particular condo?

3 A. Two.

4 Q. All right. And can you tell us what those cars
5 were?

6 A. One was a BMW. And the other was a Jeep Wrangler,
7 I believe.

8 Q. All right. And does the report note which vehicle
9 was registered to who?

10 A. I believe the report states that the BMW was
11 registered to Rebecca Melton. And the Wrangler was
12 registered to Mr. Evangelista.

13 Q. And we are just talking about, like, cars that
14 residents drive, correct?..

15 A. Yes.

16 Q. Not formal South Carolina registration?

17 A. Correct.

18 Q. Was the Jeep present?

19 A. No, ma'am.

20 Q. All right. If I may, I would like to publish
21 what's already been entered as State's Exhibit 3 at this
22 time.

23 THE COURT: You may proceed.

24 BY MS. SWANSON:

25 Q. And what are we looking at right here?

1 A. That is the BMW that was located in the parking lot
2 near Unit [REDACTED] -- I'm sorry, [REDACTED], Saint Andrews.

3 Q. Okay.

4 MS. SWANSON: Thank you, Lieutenant. I have no
5 further questions at this time.

6 MS. CAMPBELL: No questions.

7 THE COURT: Any objection to the witness being
8 excused from the State?

9 MS. SWANSON: None from the State.

10 THE COURT: From the defense?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: Sir, you are excused.

13 THE WITNESS: Thank you.

14 THE COURT: You're welcome.

15 You may call your next witness.

16 MS. SWANSON: The State calls Robert Dicarlo.

17 ROBERT DICARLO

18 having been duly sworn, testifies as follows:

19 THE CLERK: Would you state your name for the
20 record and spell your last name, please.

21 THE WITNESS: Robert Dicarlo, D-i-c-a-r-l-o.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MS. SWANSON:

25 Q. Good morning, Officer. Did you respond out to a

1 condo on September 4th of 2014?

2 A. I did.

3 Q. Okay. Can you tell us what kind of call you
4 responded to?

5 A. It was a request for assistance by Palmetto Dunes
6 Security for health and welfare.

7 Q. Where did you respond?

8 A. To the Saint Andrews Commons in Palmetto --

9 Q. Is that in Beaufort County?

10 A. Yes, ma'am, on Hilton Head, Beaufort County.

11 Q. All right. And what did you notice when you
12 responded?

13 A. I had met with security. They advised me that they
14 were there for health and welfare, kind of gave me a brief
15 synopsis of what they suspected they found. I walked up
16 towards the front door, immediately smelled a very foul
17 odor, walked over to a window where they had said --
18 security said they had seen something. Could look inside
19 and saw what I thought appeared to be a part of a human
20 body.

21 Q. And what did you do at that point?

22 A. I immediately called our sub-investigations units.
23 Started putting up crime scene tape, and secured the entire
24 perimeter until security and other units could arrive.

25 Q. And did you ever enter the residence?

1 A. I did not.

2 MS. SWANSON: At this time, the State's 4 and 5
3 have been entered and I would like to publish.

4 THE COURT: Yes, ma'am.

5 BY MS. SWANSON:

6 Q. Okay. And Deputy Dicarlo, what are we looking at
7 right here? This is State's 4.

8 A. That's -- I believe to be the entrance towards the
9 apartment. And that's our crime scene tape that we had put
10 up.

11 Q. Right. This is the crime scene tape that you put
12 up?

13 A. That is correct.

14 Q. And State's 5, is this the unit that you responded
15 to?

16 A. Yes, it is. It appears so.

17 Q. And is this the window that you looked in?

18 A. I do believe, yes.

19 MS. SWANSON: Nothing further for this witness.

20 THE COURT: Any questions for the witness?

21 MS. CAMPBELL: No questions.

22 THE COURT: Any objection to the witness being
23 excused, from the State?

24 MS. SWANSON: None from the State.

25 THE COURT: From the defense?

1 MS. CAMPBELL: No, Your Honor.

2 THE COURT: Officer, you are excused.

3 THE WITNESS: Thank you.

4 THE COURT: You're welcome.

5 Call your next witness.

6 MS. SWANSON: Brandon Cooler.

7 THE COURT: Did you say Orr? I didn't hear the
8 last name.

9 MS. SWANSON: Brandon Cooler.

10 BRANDON COOLER,
11 having been duly sworn, testifies as follows:

12 THE CLERK: If you would state your name for the
13 record and spell your last name, please.

14 THE WITNESS: Brandon Cooler, C-o-o-l-e-r.

15 DIRECT EXAMINATION

16 By MS. SWANSON:

17 Q. Is it Sergeant Cooler?

18 A. It's Sergeant.

19 Q. How long have you been with the sheriff's office,
20 Sergeant Cooler?

21 A. 13 years.

22 Q. And that's Beaufort County Sheriff's Office?

23 A. Yes, ma'am.

24 Q. All right. And back in September of 2014, what
25 unit were you with?

1 A. I was working for criminal investigations. It's
2 southern.

3 Q. Okay. And did you all have a crime scene unit at
4 that point. We did not.

5 Q. Did you have any special training in crime scene?

6 A. I've been to several crime scene classes.

7 Q. All right. And can you just tell us briefly about
8 your training and what you want to do when you get to a
9 crime scene?

10 A. Initially, you want to respond to the crime scene.
11 Once you enter, you do a basic walk-through to see what you
12 have. Start annotating evidence that you need to collect,
13 noting anything that might stick out to you, and to try to
14 avoid any areas that may be contaminated so you could
15 protect those areas.

16 Q. Okay. And when you are going through the
17 collection of evidence and things of that nature, are you
18 wearing gloves?

19 A. Yes, ma'am.

20 Q. And is that in order to prevent contamination?

21 A. Yes, ma'am. It's for our protection and also to
22 protect against cross-contamination.

23 Q. And did you respond out to a call at 2 [REDACTED]
24 [REDACTED], Apartment [REDACTED]?

25 A. Yes, ma'am, I did.

1 Q. And tell us what kind of call you received on that.

2 A. I was notified by my supervisor requesting I
3 respond to the address in reference to a health and welfare
4 check. It was my understanding that they could observe what
5 appeared to be a body through the window. So they wanted an
6 investigator there when they made entry.

7 Q. Okay. And what did you find when you got there?
8 Did you enter the residence?

9 A. I did.

10 Q. And who did you enter with?

11 A. I entered, I believe, with Sergeant Ricker and
12 Sergeant Adams.

13 Q. What did you find when you entered the residence?

14 A. Once we entered the residence, we did a protective
15 sweep. And in one of the bedrooms that I called bedroom
16 one, we found a white female laying on the ground in a stage
17 of decomposition.

18 Q. Okay. How was her body found when you first saw
19 her?

20 A. When you enter the room, her head was facing away
21 from us. She was lying on her back. Her right hand was
22 pinned underneath her, it looked. And her left hand was up.
23 Appeared to possibly have been trying to protect herself.

24 Q. Was she clothed?

25 A. She was naked, completely.

1 Q. Did she have any weapons in her hand?

2 A. I did not observe any.

3 Q. Any weapons in that room?

4 A. I did not observe any.

5 Q. Any keys around her?

6 A. I would have to refer back to the photos. I don't
7 remember or recall any.

8 Q. Can you describe what her skin looked like?

9 A. She was in, like I said, stage of decomposition.
10 Once the body starts to decomp', it turns like a black or
11 green color. When we were manipulating the body, looking
12 for evidence, I noted there was slippage, which means the
13 skin was starting to release from the muscle tissue.

14 Q. Okay. So it's fairly obvious that she was dead?

15 A. Yes, ma'am.

16 Q. And did you call EMS just to -- for them to confirm
17 that she was dead on arrival?

18 A. Yes, ma'am.

19 Q. And did EMS even come into the room with her?

20 A. I would have to look. The report, I believe, they
21 walked in and looked and didn't even attach any leads. Just
22 said, yes, she is deceased.

23 Q. Right. So she was well past any life-saving
24 measures?

25 A. Yes, ma'am.

1 Q. And EMS could not do anything with her?

2 A. Yes, ma'am.

3 Q. Were you able to identify the victim?

4 A. I know we identified her. I'm not sure how or who
5 was able to. I believe they found a driver's license and
6 identified her.

7 Q. As?

8 A. Rebecca Melton, I believe.

9 Q. All right. And at this time, did anyone have any
10 idea where the other resident of this unit was?

11 A. At that time, no.

12 Q. And that other resident was Nick Evangelista?

13 A. Yes, ma'am.

14 Q. Sergeant Cooler, I'm going to show you what's been
15 previously admitted as State's 6, and ask what we are
16 looking at here?

17 A. That is a bedroom. I believe I labeled it in my
18 report, or called in my report bedroom 2. It was the
19 bedroom belonging to the victim.

20 Q. To the victim and the defendant, presumably?

21 A. Yes, yes.

22 Q. And that was used as the master bedroom?

23 A. Yes, ma'am.

24 Q. I'm showing you what's been entered as State's 7.
25 And what is that a door to?

1 A. That is a door to the bedroom that I called one
2 where the victim was found.

3 Q. State's 12, what is that a picture of?

4 A. That is a picture of the bedroom where Rebecca was
5 found.

6 Q. All right. So that's Bedroom No. 1, the spare
7 bedroom?

8 A. Yes.

9 Q. State's 13?

10 A. That's also Bedroom No. 1 where Rebecca was found.

11 Q. State's 14?

12 A. Also Bedroom No. 1 where she was located.

13 Q. Okay. And is this her leg right here?

14 A. Yes, it is.

15 Q. So she was found with all of this stuff around her?

16 A. Yes, ma'am.

17 Q. State's 15?

18 A. Another picture of the victim's leg in bedroom one.

19 Q. What did you find around the victim?

20 A. While doing our initial canvas, we noted a lot of
21 boxes, as you could see. Also by her was bubble wrap used
22 for protecting things when you pack them up.

23 Q. Okay. Did you notice anything unusual about the
24 bubble wrap?

25 A. When we were looking at it, and I took a closer

1 look at it, it appeared that it was concaved, like it had
2 been wrapped around something. At that point, I was
3 thinking it may have been wrapped around her face.

4 Q. I'm going to hand you what's been entered as
5 State's 23, 24 and 25. If you can tell the jury what these
6 items are.

7 A. Exhibit 24, this is an evidence bag containing
8 bubble wrap numbered four. When we were going through
9 collecting crime scene with placard evidence, put numbers
10 down so we can tell which was which. This bubble wrap No. 4
11 that I collected at the scene.

12 Exhibit 23, bubble wrap number 5, paper evidence
13 bag containing bubble wrap number 5 that was collected at
14 the scene.

15 And Exhibit 25, paper evidence bag containing
16 bubble wrap number three that was collected from the
17 scene.

18 Q. Okay. And you said that you marked those pieces of
19 bubble wrap at the scene with placard numbers?

20 A. Yes, ma'am.

21 MS. CAMPBELL: May it please the Court. There's a
22 matter of law that we need to take up with you.

23 THE COURT: Approach for me, please.

24 (Whereupon, the following bench conference takes
25 place):

1 MS. CAMPBELL: One of those exhibits was not agreed
2 upon.

3 (Whereupon, the bench conference ends.)

4 THE COURT: Mr. Foreman, ladies and gentlemen, I
5 have a brief matter of law to take up with counsel. During
6 the break, please do not discuss the case. And please leave
7 your notepads in your seats. We appreciate your patience in
8 advance.

9 (Whereupon, the jury leaves open court at 11:07
10 a.m.)

11 THE COURT: I need to see the pictures, please.

12 MS. SWANSON: Yes, Your Honor. And I will go ahead
13 and hand up the three that defense was objecting to.

14 THE COURT: What objection does the defense have to
15 State's 11? Because the body is blacked out. All you can
16 see is her feet. I'm trying to figure how that's
17 inflammatory or prejudicial. It's an accurate reflection of
18 the scene as has been described by this witness.

19 MS. CAMPBELL: I'm sorry, Your Honor. I'm trying
20 to get this to pull up. Your Honor, the defendant takes the
21 position as to all three photographs --

22 THE COURT: I'm taking them one at that time. I
23 need to know what your objection is to No. 11.

24 MS. CAMPBELL: This is a depiction of a naked
25 body.

1 THE COURT: Is that what it is?

2 MS. CAMPBELL: It is. In our --

3 THE COURT: I have a picture where her body is
4 blacked out. The only thing that's showing are her feet.
5 So I need the record to be accurate. And I need to know
6 what the basis of the objection is.

7 MS. CAMPBELL: For the record, to be accurate, the
8 State has taken the position that she was found naked. The
9 photograph depicts her feet, which have no socks or shoes on
10 them. The inference can be drawn that it is a naked body on
11 the floor. And we object to the photograph.

12 THE COURT: I stand corrected. It shows an arm and
13 her feet, the lower portion of her feet, uh-huh.

14 MS. CAMPBELL: It's not relevant. There's already
15 photographs in evidence of the room. There are already two
16 photographs in evidence with a very small clip of the
17 defendant's foot allowed into them and agreed upon by the
18 defendant. It's cumulative. And it is unduly prejudicial
19 to the defendant. Thank you.

20 THE COURT: How is it unduly prejudicial?

21 MS. CAMPBELL: Again, the photograph of the
22 deceased decomposing body naked, we take the position is
23 unduly prejudicial. It is not relevant. There's other
24 evidence in the record already of the room. It's not
25 necessary for the State to introduce it. It's

1 inflammatory.

2 THE COURT: Glad to hear from the State.

3 MS. SWANSON: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MS. SWANSON: I believe Your Honor heard Sergeant
6 Cooler's testimony before where the bubble wrap, which was
7 the murder weapon, was located. It was located all around
8 her body. This picture depicts --

9 THE COURT: Oh, I neglected to see that, the
10 markers and bubble wrap.

11 MS. SWANSON: The placards. Yes, Your Honor.

12 THE COURT: Do you all have any -- I assume you did
13 the best you could in blotting out her body. But would it
14 be difficult to obscure her arm and feet as well if the
15 purpose for the photo is to show the bubble wrap and the
16 markers to corroborate his testimony?

17 MS. SWANSON: I don't see how it's any more
18 prejudicial than the way it is now than the pictures that
19 have some of the leg in it that the defense did not object
20 to.

21 THE COURT: I haven't seen those. So I don't know
22 what you are referencing.

23 MS. SWANSON: Beg the Court's indulgence. So in
24 State's 14 and State's 15, you do see portions of the
25 victim's leg, which is essentially what we are talking about

1 here.

2 THE COURT: But, again, my question is, do you have
3 any problem obscuring her arm and the bottom portion of her
4 body if the purpose of this photo is to corroborate where
5 the bubble wrap was located, which is the placard two,
6 three, I assume, five, six, seven and eight?

7 MS. SWANSON: I don't have a problem with it. I
8 just don't know that I have the means to do it right here
9 and right now.

10 THE COURT: I will give you the time to do it. Is
11 there any exception to the photo of those portions of the
12 body obscured -- I don't know how much you could do with No.
13 4 now. Well, that's 5. That's the bubble wrap, not No. 4.

14 MS. CAMPBELL: If the body is obscured, there's no
15 objection, Your Honor.

16 THE COURT: Then if y'all could redact -- and,
17 basically, you just need to put another bubble here and
18 another small bubble there.

19 MS. SWANSON: Okay.

20 THE COURT: And I think that would be fine. So the
21 original No. 11 will be marked as Court's exhibit, which is
22 unredacted photo. And No. 11 will be substituted, the
23 redacted photo. And that's a Court's exhibit. You need to
24 give it to the court reporter. And you can put -- you don't
25 have to cover up the original sticker, so we will know what

1 we are dealing with.

2 (Court's Exh. 1, Unredacted photo of State's Exh.
3 11, was marked for identification.)

4 (State's Exh. 11, Redacted Photograph of Court's
5 Exh. 1, was marked in evidence.)

6 THE COURT: For what purpose is the State seeking
7 to introduce No. 10?

8 MS. SWANSON: No. 10 shows the position of the
9 victim's arms. Her right arm is situated under her and her
10 left arm is up in a defensive stance.

11 THE COURT: Is somebody going to testify that's in
12 a defensive posture?

13 MS. SWANSON: Sergeant Cooler did on the stand, or
14 that it appeared to be in a defensive posture.
15 Additionally, combined with State's 16, that is the victim's
16 left hand, those hands were bagged, fingernail clippings
17 were taken --

18 THE COURT: I'm taking them one at a time. Yeah.
19 What is the defense's objection to No. 10?

20 MS. CAMPBELL: Your Honor, the defense objects that
21 the photograph is offered as an emotional, inflammatory,
22 arousing the sympathy of the jurors piece of evidence. Any
23 probative value surely is substantially -- you know, can't
24 outweigh the undue prejudice to this defendant. And it
25 directly contradicts what the solicitor said in her opening,

1 which is she's telling them the defendant's kneeling on the
2 victim's both arms stretched out.

3 THE COURT: I don't know that it contradicts it. I
4 haven't heard any medical testimony yet about where there's
5 pooling and where there was blood and where there was
6 bruising. I have no idea. At this point, it looks like it
7 corroborates this witness's testimony because he was a first
8 responder and he saw her body and says this is how he found
9 it, and that these pictures were taken contemporaneously.
10 Arguably, anything the State seeks to introduce against your
11 client is prejudicial.

12 MS. CAMPBELL: True. Absolutely. But, again, we
13 would just say that it's unduly prejudicial. And any
14 probative value of her deceased decomposing body sought to
15 be introduced to show the position of her arm, this officer
16 is more than competent to testify. He has and will continue
17 to testify truthfully, I believe. And showing that
18 photograph is unduly prejudicial. Probative value is not
19 outweighed. Thank you, Your Honor.

20 THE COURT: You're welcome. Anything further from
21 the State?

22 MS. SWANSON: No, Your Honor.

23 THE COURT: The photo is probative. It is not
24 unduly prejudicial. Arguably, any pictures of the scene of
25 a murder are prejudicial. And, however, I do think it needs

1 to be sanitized. I have a little problem with clearly her
2 decomposing face. That's not germane to anything, although
3 he did testify that there was some slippage. I just think
4 that crosses the line.

5 The position of her body, however, is relevant.
6 And it is relevant to the issues as I assume they will
7 develop in this case regarding the positioning of her body,
8 whether, in fact, she was in a defensive posture, and is
9 sought to directly contradict what will be the defense's
10 theory of this case, which is that she was combative on that
11 evening and attacked him first, and that he only killed her
12 to preserve his own life and that he had no other course of
13 action.

14 But I think that you can do the same thing with her
15 face. You can do the little bubble over it. And then I
16 think that you could do this picture in black and white,
17 because then it obscures all of the coloring of her skin,
18 which really isn't relevant. I don't think there's any
19 contention but that she was decomposing. But what is
20 relevant is the position and posture of her body.

21 So this will -- No. 10 will be marked as a Court's
22 exhibit and then y'all will substitute No. 10 just as I've
23 instructed.

24 (Court's Exh. 2, Unredacted photograph marked as
25 State's Exh. 10, was received in evidence.)

1 (State's Exh. 10, Redacted photograph marked as
2 Court's Exh. 2, was received in evidence.)

3 MS. CAMPBELL: Briefly, Your Honor. If you are
4 inclined to do that, I would ask that for the purpose of the
5 State introducing the position of her arm, that everything
6 be blacked out other than that for respect for --

7 THE COURT: What else needs to be blacked out? I
8 think the picture wouldn't make any sense. Then you
9 wouldn't be able to orient where her torso is. And they've
10 already muted the other portions of her body. And unless
11 you are really looking, you are not going to see. I don't
12 have a problem with that. And it's going to be in black and
13 white. So it's going to be tone on tone. It's not going to
14 make any difference.

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: You're welcome. What purpose is State
17 seeking to introduce No. 16?

18 MS. SWANSON: 16 is her left hand which the
19 defendant's DNA was found underneath the fingernails. I can
20 withdraw that.

21 THE COURT: Yeah. I was about to say, the average
22 juror, without expert testimony, is not going to know what
23 was under her fingernails. And it is prejudicial. We do
24 this every day. Doesn't affect us the way it would affect a
25 layperson. And I think it does run the risk of being unduly

1 prejudicial. So No. 16 will be withdrawn, marked for I.D.
2 only.

3 (State's Exh. 16, Photograph, was received and
4 marked for identification.)

5 THE COURT: Any other photos we need to deal with
6 while I have the jury out?

7 MS. SWANSON: I don't suppose we would address any
8 of the cell phone at this time. It would be through this
9 witness.

10 THE COURT: I need to know if there are any other
11 photos.

12 MS. SWANSON: No.

13 THE COURT: Why don't we take advantage of this to
14 take a short recess. Why don't we say 11:30.

15 (Whereupon, a recess transpired.)

16 THE COURT: The State ready to proceed?

17 MS. SWANSON: State is ready.

18 THE COURT: Defense ready to proceed?

19 MS. CAMPBELL: Yes, Your Honor.

20 THE COURT: Please bring in the jury.

21 (Whereupon, the jury returns to open court at 11:50
22 a.m.)

23 THE COURT: Ladies and gentlemen, we are now going
24 to resume the witness's testimony. You may proceed.

25 MS. SWANSON: May it please the Court.

1 BY MS. SWANSON:.

2 Q. All right. Sergeant Cooler, last time you were --
3 we were discussing the placards that you put out to mark the
4 bubble wrap that you collected, right?

5 A. Yes, ma'am.

6 Q. I'm going to publish what's now been admitted as
7 State's 11. And, Sergeant, if you can describe what is
8 contained in State's 11.

9 A. Again, this is bedroom one where the victim was
10 found. As you can see the placards, 1, 2, 3, 4, 5, 6, 7 and
11 8, they are around that blacked-out area which would be
12 where the victim was located at.

13 Q. All right. So that's -- the blacked-out area is
14 where the victim's body is?

15 A. Yes, ma'am.

16 Q. And so the placards denote the bubble wrap?

17 A. Yes, the placards denote the bubble wrap. I
18 believe all of those are bubble wrap. I would have to look
19 back at the evidence to say for sure.

20 Q. And I see bags right here. What are these bags?

21 A. In a -- when we are investigating a homicide, the
22 victim will take their hands and bag their hands, cover
23 their hands with paper bags to preserve any evidence. If
24 there's any kind of struggle during an altercation, usually
25 the suspect's DNA will be contained under the fingernails or

1 on the hands of the victim.

2 Q. And I'm going to publish what's been admitted as
3 State's 10. And is this the position with the hands, in the
4 way the hands were and the arms were that you found the
5 victim in?

6 A. Yes, the victim, her right arm up and her left arm
7 tucked behind her.

8 Q. And then the pieces of bubble wrap around her?

9 A. Yes.

10 Q. And what's this substance here?

11 A. That would be blood.

12 Q. Did you notice that the victim was bleeding from
13 anywhere?

14 A. She had blood coming from her nose, mouth and
15 ears.

16 Q. And did you take any swabs from the condo?

17 A. Yes, I took several swabs.

18 Q. Actually, before we get to the condo -- I
19 apologize -- did you take any swabs from the victim's body?

20 A. Yes.

21 Q. All right. I'm going to hand you what's been
22 admitted as State's 22 and ask for you to describe that
23 piece of evidence.

24 A. Again, the State's 22 is a paper evidence bag said
25 to contain swabs from the victim's body, six of them that I

1 collected from the scene.

2 Q. Where from the victim's body did you collect those
3 swabs?

4 A. I believe the arms, hands, legs area. I would have
5 to refer back to my report to be specific.

6 Q. Did you swab her mouth?

7 A. Yes, I took a nonstandard buccal swab.

8 Q. And that's so that we have the victim's DNA, right?

9 A. Yes, ma'am.

10 Q. And you say that you took several swabs from the
11 condo?

12 A. Yes, ma'am.

13 Q. I'm going to hand you what's been previously
14 admitted, State's Exhibit 17, 18, 19, 20 and 21; if you can
15 explain what these items are to the jury.

16 A. State's Exhibit 17, paper evidence bag containing
17 two swabs from Bedroom No. 1, which is where the victim was
18 located.

19 State's Exhibit No. 18, a paper evidence bag
20 containing swabs from a closet across the from bedroom
21 one.

22 Q. What are you swabbing for when you are swabbing?

23 A. These particular swabs, when I was doing my initial
24 walk through of the residence, I noted what appeared to be
25 blood splatter on several locations throughout the

1 residence. In one of those spatters, I did a presumptive
2 test to see if it was blood. And it came back, gave a
3 positive indication that it was blood. So these areas that
4 I swabbed were of a potential blood splatter.

5 Exhibit 19, paper evidence bag containing a swab
6 from the corner hallway of the residence.

7 Exhibit 20, a paper evidence bag containing two
8 swabs from the living room door of the residence.

9 And State's Exhibit 21, paper evidence bag
10 containing five swabs collected from bedroom two of the
11 residence, which, I believe, was the master bedroom.

12 Q. And you stated that State's 19 was a swab that you
13 took from the corner hallway?

14 A. Yes.

15 Q. I'm going to publish what's been admitted as
16 State's 8 at this time and ask if this is the area that you
17 are referring to?

18 A. Yes, it is.

19 Q. Okay. So this is the corner hallway swab, this
20 little small piece right here?

21 A. Yes, ma'am.

22 Q. I'm going to ~~hand you~~ what's been -- I apologize.
23 Beg the Court's indulgence. Sergeant, I'm going to hand you
24 what's been previously admitted as State's 28 and ask if you
25 can identify this item, please.

1 A. State's Exhibit 28 is a paper evidence bag
2 containing a paper towel wrapped in green gauze that was
3 collected from the top of the washing machine in the
4 residence.

5 Q. All right. And I'm going to publish what's been
6 entered as State's Exhibit 9 and ask you what we are looking
7 at?

8 A. That is the green paper towel wrapped in green
9 gauze that was in the paper evidence bag I just described.

10 Q. All right. So after you assisted with processing
11 the scene, did you look into the defendant's whereabouts at
12 all?

13 A. Yes, I did.

14 Q. And what did you do as a result?

15 A. I responded to Point South, Exit 33 off of
16 Interstate 95, to the Best Western Hotel out there, and
17 spoke with management and collected a video surveillance
18 from that establishment.

19 Q. And were you able to confirm that the defendant
20 stayed there the night of the murder?

21 A. I believe so, yes.

22 Q. And did you see someone who matched the description
23 of Nick Evangelista on that surveillance video?

24 A. Yes. When I observed the surveillance video, I
25 observed a white male that matched his description enter the

1 hotel.

2 MS. SWANSON: That's everything I have for you at
3 this time, sergeant.

4 THE COURT: Any questions for the witness?

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: You're welcome. You may proceed.

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. So, Officer Cooler, this officer, Officer Adams is
12 the lead investigator in this case, right?

13 A. Yes, ma'am.

14 Q. But you were assisting by going to the scene,
15 collecting evidence, processing the scene, correct?

16 A. Yes, ma'am.

17 Q. And some evidence you collected, processed and sort
18 of took into your possession and turned it into the evidence
19 custodian, right?

20 A. Yes, ma'am.

21 Q. Now, some of the things that you did on the case in
22 your investigation role, not lead investigator, but
23 investigator, is you contacted one of Nick Evangelista's
24 friends, Mike Malvasio, correct?

25 A. Yeah, ma'am.

1 Q. You telephoned Mike, because he had some evidence
2 and information he wanted to give you; is that fair?

3 A. Yes, ma'am.

4 Q. And what did you receive from Mike?

5 A. The e-mail that was forwarded to him from the
6 defendant, I believe.

7 Q. And do you recall, or would you like to see a copy
8 of that e-mail, the date that that was sent to Mike from
9 Nick?

10 A. I would have to look at a copy to confirm that.

11 Q. In addition to -- and I will locate that for you.
12 In your role in taking items into evidence, did you come
13 across a calendar? Did you take that into evidence that was
14 in the home?

15 A. I believe so, ma'am.

16 Q. And did you come across a large sort of carving
17 knife that was in the home?

18 A. I remember one, yes, ma'am.

19 Q. And did you also take into evidence the -- were you
20 the officer who took into evidence the large stack of mental
21 health records? Was that you?

22 A. I would have to look at the search return to be --

23 MS. CAMPBELL: May I approach, your honor?

24 THE COURT: You may.

25 BY MS. CAMPBELL:

1 Q. Use that to refresh your recollection.

2 A. This is the e-mail that was sent to me by Malvasio.

3 Q. Malvasio?

4 A. Malvasio, sorry. It was forwarded and sent to him
5 on July 5th, 2013 at 2:23 in the morning.

6 Q. And Mike Malvasio forwarded that e-mail to you
7 when?

8 A. Right after the investigation started. I believe
9 it was the 4th or the 5th when I got it.

10 Q. And you took that e-mail from Mike Malvasio, and
11 you logged it into evidence, correct?

12 A. Yes, ma'am.

13 Q. Thank you. The solicitor asked you about going to
14 the Best Western and watching a video and identifying Nick
15 as being at the Best Western on the video, correct?

16 A. Yes, ma'am.

17 Q. And in the video, did you also identify the fact
18 that he had an injury to his arm that was bandaged?

19 A. I believe, yes, there was a bandage on his arm in
20 the video.

21 MS: CAMPBELL: Thank you so much. That's all I
22 have.

23 THE COURT: Any redirect?

24 MS. SWANSON: Just briefly.

25

REDIRECT EXAMINATION

BY MS. SWANSON:

Q. Ms. Campbell asked you about the knife that was on the table or the knife that was in the condo.

A. Yes, ma'am.

Q. Where was the knife located?

A. It was located on a kitchen table of the residence.

Q. All right. So it wasn't in bedroom one with Becca's body?

A. No, it was not.

Q. And what else was on the table?

A. I would have to look at a photo, but a bunch of other things, if I recall.

Q. It was a mess?

A. Yes.

Q. Were they in the process of moving?

A. It appeared to be.

Q. And Ms. Campbell asked you about mental health records. Do you know if those were mental health records or just health records which may include physical and mental health records?

A. I would have to look at those records.

Q. All right. And she discussed with you an e-mail that was sent to you that you turned into evidence?

1 A. Yes, ma'am.

2 Q. And that e-mail was written over a year before
3 Becca's murder?

4 A. Yes, ma'am.

5 Q. And did you state that it was sent by the defendant
6 at 2:23 a.m.?

7 A. Yes, ma'am.

8 Q. Some time in July of 2013?

9 A. Yes, ma'am.

10 MS. SWANSON: Thank you. That's all I have.

11 MS. CAMPBELL: May it please the Court?

12 THE COURT: One time, only in response to redirect.

13 MS. CAMPBELL: I am.

14 RECROSS-EXAMINATION

15 BY MS. CAMPBELL:

16 Q. Officer Cooler, the solicitor asked you about the
17 knife. This is Defendant's Exhibit 3, which has been
18 admitted. Is that the knife on the table there in the
19 condominium?

20 A. Yes, ma'am, it is.

21 Q. And is this a close-up shot --

22 THE COURT: Please make reference to the exhibit.

23 Q. -- of the Defendant's Exhibit 4, which has been
24 admitted into evidence, of the knife that was lying on the
25 table in the condo when you arrived?

1 A. It is.

2 MS. CAMPBELL: Thank you. That's all I have.

3 THE COURT: Any further questions from the State?

4 MS. SWANSON: One question.

5 THE COURT: You may proceed.

6 REDIRECT EXAMINATION

7 BY MS. SWANSON:

8 Q. Did there appear to be any blood on that knife?

9 A. No, it did not.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MS. SWANSON: No objection.

13 THE COURT: From the defense?

14 MS. CAMPBELL: No, Your Honor.

15 THE COURT: Sir, you are excused.

16 Call your next witness.

17 MS. SWANSON: Robert Snipes.

18 ROBERT SNIPES,

19 having been duly sworn, testifies as follows:

20 THE CLERK: If you would state your name for the
21 record and spell your last name, please.

22 THE WITNESS: My name is Rob Snipes, S-n-i-p-e-s.

23 THE COURT: Is your first name Rob or Robert?

24 THE WITNESS: Robert.

25 THE COURT: Thank you, sir. You may proceed.

1 MS. SWANSON: May it please the Court.

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MS. SWANSON:

5 Q. Mr. Snipes, who were you working for in August of
6 2014?

7 A. Working for Optim Healthcare.

8 Q. Did you all have an employee by the name of Nick
9 Evangelista?

10 A. Yes, we did.

11 Q. At some point, did Nick just stop coming to work?

12 A. Yes.

13 Q. And did he contact Optim via an e-mail?

14 A. Yes. There was a notification sent to the office
15 manager indicating that he had a mother that was ill and was
16 not able to work.

17 Q. Okay. And we've actually already entered State's
18 Exhibit 26. If you can tell the jury what this exhibit is.

19 A. This is an e-mail from Nick just stating that his
20 mom had a significant stroke and the family advised to come
21 in ASAP. It was an e-mail sent to the office manager and
22 his clinical team.

23 Q. All right. And what date was that e-mail sent?

24 A. It was sent August the 27th at 2014, 4:19 a.m.

25 Q. If you can just read the e-mail aloud, please.

1 A. Sure.

2 Got a call from my brother around 2 a.m. Our mom
3 had had a significant stroke bleed, unknown as of yet this
4 evening and is in an ICU in Minneapolis now. Family is
5 advised to come in ASAP because she is not expected to make
6 a recovery. I left HHI two hours ago for a flight out of
7 Charlotte this a.m. Obviously, I won't be in Wednesday,
8 Thursday, probably Friday. Beyond that is a wait and see.
9 Sorry for the short news. Good news is my schedule was
10 pretty light the rest of the week. I will keep all
11 apprised. Nick.

12 Q. Thank you. Did he ever show up to work after that?

13 A. Not to my knowledge.

14 Q. In that e-mail you just read, was that part of the
15 e-mails that your company downloaded and provided to the
16 sheriff's office?

17 A. Yes, that's correct.

18 MS. SWANSON: I don't have anything further.

19 THE COURT: Any questions for the witness?

20 MS. CAMPBELL: No questions.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MS. SWANSON: None from the State.

24 THE COURT: From the Defense?

25 MS. CAMPBELL: No, Your Honor.

1 THE COURT: Sir, you are excused. Call your next
2 witness.

3 MS. SWANSON: James Frydryhowicz.

4 JAMES FRYDRYHOWICZ,
5 having been duly sworn, testifies as follows:

6 THE CLERK: If you would state your name for the
7 record and spell your last name, please.

8 THE WITNESS: Jay F-r-y-d-r-y-c-h-o-w-i-c-z.

9 THE COURT: You may proceed.

10 DIRECT EXAMINATION

11 BY MS. SWANSON:

12 Q. And you go by Jay, right?

13 A. I do.

14 Q. I'm just going to call you Jay.

15 A. Perfect.

16 Q. Where do you work, Jay?

17 A. I work at Escambia County Sheriff's Office in
18 Pensacola, Florida.

19 Q. And were you on patrol back in October of 2014?

20 A. I was.

21 Q. And can you tell us about a traffic stop that you
22 did on a white Jeep Wrangler, tag number -- South Carolina
23 tag KEP-355?

24 A. Yeah. That day I had gotten some information of an
25 individual that was going to be out on Pensacola Beach. And

1 I did locate the vehicle. And as I was attempting to
2 conduct a traffic stop, the individual pulled into a gas
3 station prior to my stop. And so at that time, I activated
4 my blue lights and pulled him over.

5 Q. All right. So were you looking for a specific tag
6 number that day in the area?

7 A. I was.

8 Q. Were you looking for a specific person associated
9 with that tag number?

10 A. I was.

11 Q. All right. Who was that?

12 A. Nick Evangelista.

13 Q. And is that man sitting in the courtroom today?

14 A. He is.

15 Q. All right. And can you identify him for the Court,
16 please?

17 A. He's got a blue blazer on and light-blue tie.

18 Q. Is that the man that was driving the Jeep Wrangler
19 that you did the traffic stop on?

20 A. It was.

21 Q. And was he a person of interest in the death of a
22 woman in South Carolina?

23 A. That was the information I had gained that day,
24 yes.

25 Q. Did you really have any other information?

1 A. No, nothing other than at that time I knew he had
2 some other history that I was informed of, and that was the
3 reason for the traffic stop.

4 Q. Okay.

5 MS. CAMPBELL: Objection, Your Honor.

6 THE COURT: Basis?

7 MS. CAMPBELL: Matter of law.

8 THE COURT: Please approach.

9 (Whereupon, the following bench conference takes
10 place):

11 MS. CAMPBELL: It's improper testimony under 404(b)
12 and Lyle. I would like to be heard on the record and then
13 I'll make a motion for a mistrial.

14 THE COURT: I always have a record. That's why
15 that mic is there. Can you repeat the question?

16 MS. SWANSON: I can go on to the next question.
17 But I was just trying to make the point that he didn't
18 really have any other information regarding the
19 investigation. All he did was make the traffic stop. I
20 certainly wasn't trying to elicit --

21 THE COURT: I understand. Why don't you lead a
22 little bit.

23 MS. CAMPBELL: When would you like to hear my
24 argument?

25 THE COURT: There's no argument to hear. The

1 question has been withdrawn.

2 MS. CAMPBELL: But the answer was given and the
3 jury heard it.

4 THE COURT: I will deal with that in a moment.

5 MS. CAMPBELL: Okay. Thank you.

6 THE COURT: Madam Court Reporter, can you come here
7 for a second?

8 (Whereupon, the Court reviews the court reporter's
9 transcript.)

10 THE COURT: Mr. Foreman, ladies and gentlemen, you
11 are to disregard the witness's last answer. You are to give
12 it absolutely no consideration in your deliberations.

13 You may proceed.

14 BY MS. SWANSON:

15 Q. All right. Thank you.

16 Jay, you didn't have any involvement in the
17 investigation into the death of this South Carolina woman,
18 did you?

19 A. No, I did not.

20 Q. So you simply conducted the traffic stop, right?

21 A. Yes.

22 Q. Did another officer accompany you on the traffic
23 stop?

24 A. Yeah. There was -- my sergeant at the time,
25 Phillip Nix, was on the beach with me. And he helped out,

1 and also one of our lieutenants showed up.

2 Q. All right. And at some point, did the defendant
3 ask to talk to Sergeant Nix?

4 A. I believe so, yes.

5 Q. And did you wait or transport the defendant for an
6 interview with Investigator Robert Greene?

7 A. Yes. Once I transported to my transport beach
8 precinct, I also transported in town to my investigations
9 division and then I left him with them.

10 Q. Is your patrol car equipped with audio and video
11 recording?

12 A. It is, yes.

13 Q. And I'm going to -- do you have a copy of your
14 report?

15 A. I do not, no.

16 Q. I'm going to hand you a copy of your report and ask
17 if you can tell us the height and weight of Mr. Evangelista.

18 A. It looks like his height is listed at 5' 8", 175.

19 Q. All right. And then I'm going to show you what's
20 been previously entered as State's 39. And ask you what we
21 are looking at right here.

22 A. That is the Jeep that Mr. Evangelista was driving
23 the day in question.

24 MS. SWANSON: Okay. I don't have anything further
25 for this witness.

1 THE COURT: Any questions for the witness?

2 MS. CAMPBELL: No questions.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MS. SWANSON: No objection. And I would ask that
6 he be allowed to be released from his subpoena.

7 THE COURT: That's what I asked. Yeah. Any
8 exception to him being excused from the State?

9 MS. SWANSON: No, no.

10 THE COURT: From the defense?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: Sir, you are excused. Have a good day.
13 Call your next witness.

14 MS. SWANSON: The State calls -- may I approach,
15 Your Honor?

16 THE COURT: Sure.

17 MS. SWANSON: May we approach?

18 THE COURT: Yes.

19 (Whereupon, the following bench conference takes
20 place):

21 MS. SWANSON: The next witness is Philip Nix who
22 did the in-car discussion.

23 THE COURT: Yeah. I need to see that entire
24 recording in its totality. Where it's redacted does not
25 give me a full picture of what took place. So it's out of

1 THE COURT: Defense ready to proceed?

2 MS. CAMPBELL: Yes, Your Honor.

3 THE COURT: Please bring in the jury. And your
4 next witness is Officer Nix? Is he present?

5 MS. SWANSON: He is.

6 (Whereupon, the jury returns to open court at 2:26
7 p.m.)

8 THE COURT: Ladies and gentlemen, I hope y'all had
9 a pleasant lunch. We are now going to resume testimony.

10 The State may proceed.

11 MS. SWANSON: The State calls Philip Nix.

12 THE COURT: Sir, if you will come forward to be
13 sworn.

14 PHILIP NIX,

15 having been duly sworn, testifies as follows:

16 THE CLERK: If you would, sir, state your name for
17 the record and spell your last name.

18 THE WITNESS: Phillip Nix, P-h-i-l-i-p, N-i-x.

19 THE COURT: You may proceed.

20 MS. SWANSON: Thank you, Your Honor. May it please
21 the Court.

22 DIRECT EXAMINATION

23 BY MS. SWANSON:

24 Q. Where were you working in October of 2014?

25 A. Escambia County, Pensacola Beach.

1 Q. Okay. What was your rank?

2 A. I was a sergeant at the Escambia County Sheriff's
3 Office.

4 Q. How long had you worked for them?

5 A. Since '93, 1993.

6 Q. Did you have the occasion to assist on a traffic
7 stop of a Jeep Wrangler driven by Nick Evangelista on
8 October 1st of 2014?

9 A. Yes.

10 Q. Okay. And were you the first or second officer to
11 respond at that traffic stop?

12 A. I would have been the second officer.

13 Q. All right. And did the defendant at some point
14 request to speak to you?

15 A. Yes.

16 Q. And where did you guys speak?

17 A. We were in the parking lot at the store where we
18 were stopped. He was in the back of the patrol car and I
19 was standing outside of the patrol vehicle.

20 Q. Okay. And is that patrol vehicle equipped with
21 audio and video?

22 A. It is.

23 Q. All right. And did you ever promise him anything
24 to talk to you?

25 A. I did not.

1 Q. Did you conduct an interrogation?

2 A. I did not.

3 Q. Did you threaten him in any way?

4 A. I did not.

5 Q. Did you have anything to do with the investigation
6 into the death of a woman in South Carolina?

7 A. I had no involvement in that case.

8 Q. Had you talked to any South Carolina investigators
9 or authorities?

10 A. I had not.

11 Q. So you didn't really have any information about the
12 death of the woman in South Carolina?

13 A. I had no information about the incident that
14 occurred in South Carolina.

15 Q. Okay. And after the traffic stop, did you have any
16 further involvement in this case?

17 A. I did not.

18 MS. SWANSON: All right.. And I'm going to at this
19 time, Your Honor, publish what has been entered as State's
20 1.

21 THE COURT: You may proceed.

22 (Video playing.)

23 THE COURT: Can you turn it up?

24 THE WITNESS: That's as loud as it will go.

25 THE COURT: Are you able able to hear clearly?

1 THE FOREPERSON: Yes.

2 MS. SWANSON: It does get slightly louder.

3 THE COURT: I just wanted to make sure they can
4 hear. You may continue.

5 (Video playing.)

6 MS. SWANSON: I have no further questions for this
7 witness?

8 THE COURT: You may proceed.

9 MS. CAMPBELL: No questions.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MS. SWANSON: None from the State.

13 THE COURT: From the defense?

14 MS. CAMPBELL: No, Your Honor.

15 THE COURT: Sir, you are excused. Call your next
16 witness.

17 MS. SWANSON: The State calls Robert Greene.

18 ROBERT GREENE,

19 having been duly sworn, testifies as follows:

20 THE CLERK: If you would just state your name for
21 the record and spell it for us, please.

22 THE WITNESS: My name is Robert Greene,
23 G-R-E-E-N-E.

24 THE COURT: You may proceed.

25 MS. SWANSON: Thank you.

1 DIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q. What is your rank?

4 A. I'm a field training officer assigned to patrol
5 division.

6 Q. What do I call you, Deputy?

7 A. You can call me Deputy. That would be accurate.

8 Q. All right. Deputy Greene, who do you work for?

9 A. Escambia County Sheriff's Office in Escambia
10 County, Florida.

11 Q. How long have you work there?

12 A. Going on seven years.

13 Q. Were you working there in October of 2014?

14 A. Yes, ma'am.

15 Q. And did you have an occasion to conduct an
16 interrogation of Nick Evangelista?

17 A. I conducted an interview of him, yes, ma'am.

18 Q. Can you tell the jury how that came about?

19 A. At the time I was assigned to the criminal
20 investigation division as an investigator for
21 robbery/homicide. I got a phone call from a supervisor,
22 told me that an individual had been detained and was en
23 route to our sheriff's office to be interviewed. I was told
24 that there was possibly a crime that had been committed in
25 South Carolina jurisdiction, and that I was to basically

1 interview the individual and see what I could get.

2 Q. Okay. And did you talk to South Carolina
3 authorities about some information that they were seeking?

4 A. I did.

5 Q. And prior to this interview, did you go over the
6 defendant's Miranda rights?

7 A. I did.

8 Q. And I'm going to hand you what's already been
9 admitted as State's 27. And if you can just tell us what
10 this form is.

11 A. Okay. This is a standard form that we have in our
12 interview room up at the sheriff's office. It is Escambia
13 County Sheriff's Office rights waiver. Basically, what this
14 is, is the investigator will read the rights to the person
15 I'm about to interview. And then there's a waiver. And it
16 says: I have read the statement of my rights shown above
17 and I understand what my rights are. No promises or threats
18 have been made to me. No pressure or threats have been used
19 against me.

20 We ask the individual to sign that if they are
21 willing to speak to me knowing that they've been read their
22 rights.

23 Q. Okay. Is your signature on that form?

24 A. It is.

25 Q. And was that audio and video recorded when you went

1 over it with Mr. Evangelista?

2 A. It was.

3 Q. Did he sign that form?

4 A. He did.

5 Q. That's his signature?

6 A. Yes, ma'am.

7 Q. Did he wish to talk to you?

8 A. He did.

9 Q. And you reviewed audio and video with me in
10 Pensacola of that interview?

11 A. Yes, ma'am.

12 Q. Is that the complete interview?

13 A. Yes, ma'am.

14 Q. At this time, I am going to publish what has
15 already been admitted as State's 2, which is a copy of that
16 interview.

17 (Video playing.)

18 THE COURT: Ladies and gentlemen, we will take a
19 brief recess. During the break, please do not discuss the
20 case and please leave your notepads in your seats. We will
21 use this as a quick restroom break.

22 (Whereupon, the jury leaves open court at 3:02
23 p.m.)

24 THE COURT: We had a juror that needed to use the
25 restroom. So as soon as they are done refreshing

1 themselves, which I think should take about ten minutes, we
2 will resume. Sir, you can walk around if you would like,
3 just don't discuss your testimony with anyone.

4 THE WITNESS: Yes, ma'am.

5 (Whereupon, recess transpired.)

6 THE COURT: The State ready to proceed?

7 MS. SWANSON: State is ready.

8 THE COURT: Defense ready to proceed?

9 MS. CAMPBELL: Yes, Your Honor.

10 THE COURT: Please bring in the jury. And I
11 apologize, y'all. I had my head buried in this. And I saw
12 him shift, but I didn't pay as much attention. And I
13 apologize. But he got somebody's attention.

14 (Whereupon, the jury returns to open court at 3:14
15 p.m.)

16 THE COURT: And y'all let me know about the
17 temperature. The problem with government buildings is they
18 are either hot or cold. There's just no in between. It was
19 a little warm this morning and I asked them to cool it off,
20 but if y'all are not comfortable, let me know and I will get
21 them to adjust the temperature.

22 We will now resume publication. You may proceed.

23 (Video playing.)

24 BY MS. SWANSON:

25 Q. Deputy Greene, can you briefly discuss any

1 interview techniques or rapport-building techniques that you
2 may have employed in the interview that we just watched?

3 A. Basically, the interview that you just watched was
4 an interview, as opposed to an interrogation. The classes
5 that I have taken as an investigator, I've studied under
6 what was called the Reid technique. And what that is, is
7 you come in there and you absolutely build a rapport with
8 the individual. You are not there to mislead or to lie, but
9 you are there to talk to them, to get them to be able to
10 open up and to get them to be able to trust you. They are
11 going to tell you their deepest, darkest secrets.

12 So throughout the video, I think it's apparent that
13 I let him speak. I let him explain what's going on. And
14 there's times where I even said, I know what you are going
15 through. I didn't know what he was going through, but
16 that's a rapport-building technique to allow him to open up
17 and tell me what's going on, tell me what's in his heart and
18 what he did.

19 Q. Thank you. On October 2nd of 2014, did you meet
20 with Beaufort County Sheriff's Office investigators to
21 process the Jeep Wrangler?

22 A. I did.

23 Q. And so they were there during that process?

24 A. They were.

25 Q. And you guys retrieved or you had a search warrant

1 issued for that search?

2 A. Yes, ma'am. I did a search warrant for the Jeep
3 itself that belonged to the young lady. And we searched for
4 possible evidence in reference to this case.

5 Q. And then did you have anything further to do with
6 the investigation after October 2nd of 2014?

7 A. No, ma'am.

8 MS. SWANSON: That's all I have for this witness.

9 THE COURT: Any questions of the witness?

10 MS. CAMPBELL: No questions, Your Honor.

11 THE COURT: Any exception to the witness being
12 excused from the State?

13 MS. SWANSON: None from the State.

14 THE COURT: From the defense?

15 MS. CAMPBELL: No, Your Honor.

16 THE COURT: Sir, you are excused.

17 THE WITNESS: Thank you very much.

18 THE COURT: You're welcome.

19 You may call your next witness.

20 MS. SWANSON: The State calls Jeff Moran.

21 JEFFREY MORAN,

22 having been duly sworn, testifies as follows:

23 THE CLERK: If you would state your name for the
24 record and spell your last name, please.

25 THE WITNESS: Jeffrey M-o-r-a-n.

1 THE COURT: You may proceed.

2 MS. SWANSON: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 DIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q. Deputy Moran -- I'm sorry. Mr. Moran now, are you
7 retired?

8 A. Yes, ma'am.

9 Q. And was that recent?

10 A. Yes.

11 Q. As of?

12 A. December 1st.

13 Q. Okay. So, Mr. Moran, back in October of 2014, were
14 you working for the Beaufort County Sheriff's Office?

15 A. Yes, I was.

16 Q. And what capacity were you working?

17 A. I was a sergeant in the southern investigation
18 section on Hilton Head.

19 Q. All right. And did you have an occasion to go down
20 to Pensacola, Florida?

21 A. I did.

22 Q. And do you recall when that was?

23 A. October 2nd, 2014.

24 Q. October 2nd?

25 A. Yes, ma'am.

1 Q. And what did you go down to do?

2 A. I went down to assist with the processing of a
3 vehicle after they had secured a search warrant for the jeep
4 and collect and bring back whatever evidence was recovered.

5 Q. And so you were present when the Jeep was
6 processed?

7 A. Yes, ma'am.

8 Q. And I'm going to show you what has already been
9 entered as State's 31, 32, 33 and 36 and ask for you to
10 explain to the jury what these items are.

11 MS. SWANSON: And, Your Honor, if I may, I'm just
12 going to open these items.

13 Q. And, Mr. Moran, you can take them out of the bag to
14 show the jury, but if you can reference the exhibit number
15 when you do so and explain what it is.

16 A. Exhibit No. 6 is a length of yellow nylon rope.

17 Q. That was 36?

18 A. It says 6. This one?

19 Q. No, it's the State's exhibit sticker.

20 A. Sorry. I didn't see that. It looks like it's
21 already 1. Let me make sure. I'm sorry about that.

22 State's Exhibit 31 is a yellow rope with hangman's
23 noose.

24 State's Exhibit No. 32 is a Stanley blade knife.

25 State's Exhibit 33 is a blue-handled box cutter.

1 State's Exhibit No. 36 is a Samsung cell phone with
2 charger.

3 Q. Okay. Thank you. And all of those items they came
4 out of that Jeep Wrangler?

5 A. Yes, ma'am.

6 Q. All right. Thank you. There are four photos that
7 have been previously admitted into evidence that I would
8 like to publish.

9 THE COURT: You may proceed.

10 Q. And, Mr. Moran, what are we looking at here? This
11 is State's -- I'm sorry. For the record, this is State's
12 41.

13 A. A backpack or small suitcase with some of the items
14 that were collected from the Jeep.

15 Q. And I'm now going to be showing you State's Exhibit
16 42.

17 A. Picture of the front seat where the cell phone on
18 the passenger seat was collected.

19 Q. State's Exhibit 43.

20 A. Just photograph of the center console. I'm not
21 sure what that is.

22 Q. Sand dollar?

23 A. Seashell or something.

24 Q. State's 40.

25 A. There was a letter satchel in it that had some

1 documents and some other items inside.

2 Q. Okay. I'm going to show you what's been marked as
3 State's 34. I'm going to show you what's been entered as
4 State's Exhibit 34, and ask if this is the brown leather
5 satchel that you retrieved from that vehicle?

6 A. Yes, it is.

7 Q. Okay. And contained in this satchel is what's been
8 admitted as State's Exhibit 35. Did this come out of the
9 satchel that was in the vehicle?

10 A. Yes, ma'am.

11 Q. I'm just going to keep these separate at this
12 point.

13 All right. So you retrieved all of these items
14 from Escambia County and brought them all back to Beaufort?

15 A. Yes, I did.

16 Q. And turned them into evidence there?

17 A. Yes, ma'am.

18 MS. SWANSON: I have nothing further for this
19 witness.

20 MS. CAMPBELL: May it please the Court.

21 THE COURT: Questions for the witness?

22 MS. CAMPBELL: Thank you.

23 THE COURT: You may proceed.

24 Why don't we mark the notebook as 35A.

25 MS. SWANSON: 35 for the journal and 34 for the

1 satchel.

2 THE COURT: Perfect. Thank you. I misunderstood.
3 Okay. I'm sorry.

4 CROSS-EXAMINATION

5 BY MS. CAMPBELL:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Good to see you.

9 A. Likewise.

10 Q. Contained within State's 34, Former Officer Moran,
11 was Mr. Evangelista's checkbook, correct?

12 A. Correct.

13 Q. And his wallet, correct?

14 A. Yes, ma'am.

15 Q. Contained within State's Exhibit 34 on
16 Mr. Evangelista's check register, I'm going to ask you to
17 start with Check No. 127, which is May 31st, 2014, and if
18 you will read through the check register for the jury,
19 please.

20 A. Number 127?

21 Q. Yes, sir.

22 A. Made out to it, looks like, Rebecca Melton \$1,590.

23 Check No. 128 on 6/6/14, Rebecca Melton, \$1,590.

24 Check No. 129, on 6/9/14, Rebecca Melton, \$1,490.

25 Check No. 130 on 6/14, Becca Melton, \$200.

1 Check No. 131 on 6/14/14 to Cathy Evangelista,
2 \$1,700.

3 No. 132, 6/26/14 to Freda Salon, \$30.

4 THE COURT: Can you spell that last name for the
5 court report, please.

6 THE WITNESS: F-r-e-d-a.

7 THE COURT: You said Freda Salon?

8 THE WITNESS: Freda Salon.

9 Check No. 133 on 6/27/14, it looks like made out to
10 Bob Sutton. I am not positive of that, but it looks like --
11 it looks like \$650. I can't really tell what that says.

12 No. 134, on 6/27/14, Becca Melton, \$1,130.

13 Check No. 135, on 6/27/14, made out to Bob Sutton
14 for \$1,000.

15 Check No. 136, on 6/30/14, made out to Becca
16 Melton, \$729.

17 No. 137, on 7/15/14, Becca Melton, \$2,100.

18 No. 138, on 7/25, made out to Cathy Evangelista for
19 \$1,700.

20 No. 139, on 7/25/14, Bob Sutton, \$200.

21 No. 140, Cathy Evangelista, \$811.

22 No. 141, Becca Melton \$1,800. That was August 8th,
23 2014.

24 No. 142 on 8/24/14, Becca Melton, \$3,000.

25 No. 143, 8/27/14, to, it looks like, Becca Melton,

1 \$2,500. And that's all.

2 MS. CAMPBELL: Thank you. That's all I have.

3 THE COURT: Any redirect?

4 MS. SWANSON: None for this witness.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MS. SWANSON: No.

8 THE COURT: From the defense?

9 MS. CAMPBELL: No, Your Honor.

10 THE COURT: Sir, you are excused.

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome.

13 Call your next witness.

14 MS. SWANSON: The State calls Dr. Nick Batalis.

15 NICK BATALIS,

16 having been duly sworn, testifies as follows:

17 THE CLERK: And if you would just state your name
18 for the record and spell your last name for us, please.

19 THE WITNESS: My name is Nicholas Ike Batalis,
20 B-a-t-a-l-i-s.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MS. SWANSON:

24 Q. Dr. Batalis, where do you work?

25 A. I work at the Medical University in South Carolina

1 up in Charleston.

2 Q. What do you do there?

3 A. I'm employed there as a forensic pathologist.

4 Q. What do you do as a forensic pathologist?

5 A. So forensic pathology is a subspecialty of medicine
6 that essentially deals with some of the legal aspects of
7 medicine. Probably our primary or one of our main jobs as a
8 forensic pathologist is to perform autopsies after an
9 individual has died to determine the cause and manner of
10 death.

11 Q. Okay. And can you just briefly go into your
12 training and employment history?

13 A. Sure. I received my undergraduate degree at Butler
14 University in Indianapolis, Indiana. I then received my
15 medical degree at Indiana University School of Medicine.
16 After graduating from there, I then moved down to Charleston
17 to pursue residency training in anatomic and clinical
18 pathology. So anatomic and clinical pathology is a general
19 pathology. Excuse me. Anatomic pathology, I guess, the
20 bulk of that is examining tissues that are excised by other
21 physicians and surgeons to determine if there's infection,
22 if there's an autoimmune disease, if there's cancer, and
23 provide that diagnosis.

24 Clinical pathology basically refers to any sort of
25 lab work that you have done to be sent off, a pathologist

1 oversees all of that.

2 So after completing those four years of training in
3 general pathology, I passed a national examination to become
4 board-certified. Then went onto a one-year subspecialty
5 fellowship in forensic pathology at the Dallas County
6 Medical Examiner's Office in Dallas, Texas. After that one
7 year, that focused on the forensic aspect. I took another
8 examination to become board-certified. And then I took my
9 current position at M.U.S.C. just under 10 years ago.

10 Q. Okay. So you've been at M.U.S.C. for about 10
11 years?

12 A. In my faculty role, yes.

13 Q. Have you ever testified in court before?

14 A. Yes, I have, once in Texas, I believe twice in
15 North Carolina, and probably over 50 times in South
16 Carolina.

17 Q. Okay. And have you ever been declared an expert?

18 A. Yes, I was declared an expert in forensic pathology
19 in each of those instances.

20 MS. SWANSON: At this time, the State would offer
21 Dr. Batalis as an expert in forensic pathology.

22 THE COURT: Any questions or objections?

23 MS. CAMPBELL: No. objections.

24 THE COURT: So admitted without objection. You may
25 proceed.

1 MS. SWANSON: Thank you.

2 THE COURT: You're welcome.

3 BY MS. SWANSON:

4 Q. Dr. Batalis, did you have the opportunity to
5 perform an autopsy on Rebecca Melton?

6 A. I did, on September 5th of 2014.

7 Q. And how old was she?

8 A. At that time, she was 55 years old.

9 Q. And if you can just give us her height and weight,
10 please.

11 A. We measured her as 64 inches in length, so
12 approximately 5' 4", and she weighed 126 pounds.

13 Q. And what were your findings?

14 A. Could you be more specific?

15 Q. Sure, let's see. Did you get any historical
16 background in reference to her death?

17 A. Yes. So in our system, we perform autopsies for a
18 number of counties across the state. In each case, what
19 tends to happen, one of the coroners or deputy coroners will
20 call us to inform us that they have a death they would like
21 us to investigate and give us a baseline history to kind of
22 know what we are getting into.

23 Q. Okay. Did you have any information from
24 investigators regarding her death?

25 A. The initial information came directly from the

1 coroner. I believe there may have been an investigator that
2 attended the autopsy. And then the investigator provided
3 additional information, but that was weeks down the road.

4 Q. All right. Health-wise, as far as her organs went,
5 how were they?

6 A. We really found no significant evidence of any
7 natural disease. If you think about the normal natural
8 disease processes that cause death in this age group, you
9 think about heart disease, was it a big heart or high blood
10 pressure, the arteries get block from artherosclerosis, there
11 was none of that. And another thing, people get lung
12 disease and blood clots in the lungs or pulmonary emboli,
13 none of that.

14 So both grossly, that is, looking at the organs,
15 kind of with our own eyes and by taking microscopic
16 sections, look under the microscope, we didn't find any
17 significant natural disease.

18 Q. Did she have any evidence of former injuries or
19 healing injuries or contusions?

20 A. Yes. As far as completely healed, there was a scar
21 on the right shoulder that looked more -- appeared to be
22 more of a surgical-type scar. But we can't always tell how
23 the scar got there. And then she had a number of bruises
24 and healing abrasions. There was a two-inch bruise on the
25 right arm, abrasion, so a healing scrape that was on the

1 right elbow; a one-inch bruise on the back of the right
2 hand; and on the legs, several different bruises up to about
3 six inches. And these appeared to be in different stages of
4 healing.

5 So bruises, basically the best thing we can look at
6 is the color. Does it look purple? Does it look brown?
7 There was some variation in the color of those wounds.

8 Q. Could you determine at all how long she had been
9 dead?

10 A. It's tough to say very specifically. You know,
11 it's one kind of myth about watching movies or TV shows, you
12 can pin it down to the exact hour. We can't be entirely
13 specific, but it's safe to say in exam, she had been dead a
14 couple of days.

15 Q. Can you describe the state of decomposition?

16 A. Sure. When examining the body, there's a
17 generalized green discoloration from head to toe. That was
18 more marked on the upper parts of the body. There's also
19 what we call skin slippage. Again, as the body begins to
20 break down, the very upper layer of the skin will start to
21 kind of slip away. Almost looks like a blister. And then
22 it will start to occur across the body.

23 There was also what we call mummification, where
24 the tissues get dried out and preserved. It's named just
25 like mummies were formed. So in a dry environment, the

1 tissues will get kind of very dry and hard. And
2 additionally, there were some insect activity and fly larvae
3 on the body as well.

4 Q. Okay. And does that state of decomposition make it
5 harder to produce findings as a forensic pathologist to
6 determine injuries, for instance?

7 A. At this level of decomposition, it would not
8 significantly hamper the ability to determine injuries. If
9 there's a gunshot wound, stab wound, serious bruising,
10 internal bleeding, we should still be able to detect that.
11 As the body becomes more decomposed to the point that it
12 becomes skeletonized and that sort of thing, it will hamper
13 that. But the longer the body is dead, the more
14 decomposition that's there, will hamper us.

15 Q. Okay. Can you explain why, as part of an autopsy,
16 you take fingernail clippings?

17 A. Sure. So in cases where it's a homicide and some
18 cases suicides or in some cases just suspicious deaths, we
19 are not sure what's happening, we will take different
20 samples from the body to preserve and transfer it to police.
21 So kind of our standard thing would be to take the
22 fingernail clippings from both hands. The idea being if the
23 person was assaulted and they were able to kind of scrape or
24 grab ahold of the perpetrator, they would get some of the
25 perpetrator's DNA underneath the fingernails. We also tend

1 to take pulled head hair in these type of cases. So there
2 could be some sort of match to see if they found hair at
3 another place that they could match it up to the decedent.

4 Q. I'm going to hand you State's 59 that the State
5 would seek to admit into evidence at this point.

6 MS. SWANSON: It's my understanding there's no
7 objection.

8 MS. CAMPBELL: No objection.

9 THE COURT: Marked and admitted without objection.

10 (State's Exh. 59, Fingernail clippings, is
11 received in evidence.)

12 BY MS. SWANSON:

13 Q. And ask if those are the fingernail clippings that
14 you took from the victim in this case?

15 A. I can't identify it. This is a bag by police
16 officers.

17 Q. This is law enforcement's bag. But did you, in
18 fact, take fingernail clippings from Ms. Melton?

19 A. We did.

20 Q. I believe it has an FA number on there. Is that
21 the FA number that corresponds to your report?

22 A. Yes. So each case is identified with the
23 decedent's name, along with the unique case number that's
24 only used for that case. So in this instance, we have
25 left-handed fingernail clippings labeled with the decedent's

1 name and that case number.

2 Q. So these are the left-hand fingernail clippings
3 from the autopsy?

4 A. Correct.

5 MS. SWANSON: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 BY MS. SWANSON:

8 Q. Dr. Batalis, as part of the autopsy, do you all do
9 toxicology on the patient?

10 A. Yeah. Essentially, probably 95 percent or even 99
11 percent of our cases, we will run a full toxicology screen.
12 The only exceptions would be if somebody had been
13 hospitalized long enough that any samples taken at the
14 autopsy wouldn't be representative of when they got in
15 trouble. So in the vast majority of cases, we do.

16 Q. Okay. And what did you find in Ms. Melton's
17 toxicology report?

18 A. In this case, the samples we submitted were
19 positive for ethanol, so drinking alcohol; also positive for
20 an anti-depressant, that's venlafaxine. I believe another
21 name for that is Effexor, and then one of the breakdown
22 products of that medicine. And then there was amphetamine.
23 So, again, it could be another medicine used to treat
24 different disorders. And then also caffeine was indicated.
25 So those four or five things.

1 Q. Okay. And through the decomposition process, does
2 the body produce ethanol?

3 A. It does. The longer a body decomposes, within the
4 first hour or two, you are not going to see that, but as the
5 days go by, as the bacteria break down the body's tissues,
6 you get fermentation. So if there's any sugar in the blood,
7 that can be basically altered by the bacteria to become
8 alcohol. So bodies will generate alcohol over time.

9 Q. And so would you expect a reading of ethanol to be
10 higher several days after someone's death?

11 A. Higher than at the moment they died?

12 Q. Correct.

13 A. Yes, I would.

14 Q. And what did you determine the cause of death to
15 be?

16 A. The cause of death in this case was determine to be
17 smothering. And from a medical definition, smothering is
18 the occlusion of the nose and mouth, the external airways.

19 Q. Okay. And, generally, how long does it take
20 someone to stop breathing from smothering?

21 A. So if you have a complete occlusion of the airways,
22 generally individuals that lose consciousness in less than a
23 minute. Some people say 15 seconds. It can go up to 30 or
24 40 seconds before they become unconscious. Generally, if
25 they are -- if oxygen is restored within the first couple of

1 minutes, they can come back to normal. But if they are
2 deprived of that oxygen for three or four minutes on up,
3 that will eventually lead to death.

4 Q. Okay. So about three to four minutes to lead to
5 death?

6 A. Correct.

7 Q. And that's obstructing someone's airways?

8 A. Correct.

9 Q. Nose and mouth, depriving them of oxygen?

10 A. Correct.

11 Q. And what did you determine the manner of death to
12 be?

13 A. The manner of death was deemed homicide, which is
14 death at the hands of another or death to another
15 individual.

16 MS. SWANSON: I have nothing further for this
17 witness.

18 THE COURT: Any questions for the witness?

19 MS. CAMPBELL: Thank you, Your Honor.

20 THE COURT: You're welcome. You may proceed.

21 CROSS-EXAMINATION

22 BY MS. CAMPBELL:

23 Q. You issued a preliminary autopsy report in this
24 case, did you not?

25 A. We did.

1 Q. And when you issued the preliminary autopsy report
2 in this case, cause of death pending, right?

3 A. Correct.

4 Q. Manner of death, pending, right?

5 A. Correct.

6 Q. On September 24th, you received the toxicology
7 results in this case, correct?

8 A. I will have to check the date on that. Yes, it
9 does look like it was September 24th.

10 Q. Okay. And you make a notation that a high level of
11 ethanol was found in the blood, although decomposition could
12 have contributed to some postmortem generation of the
13 ethanol, correct?

14 A. So the notation you are reading is from a
15 toxicologist. So we take the samples from the autopsy.
16 They are sent to a national laboratory where the testing is
17 done. They provide an interpretation, along with the raw
18 results that we then work into our report. So the words
19 that you read were from the toxicologist.

20 Q. Correct. So in the toxicology report it is noted
21 high level of ethanol, correct?

22 A. Correct.

23 Q. Although decomposition could have contributed to
24 that level to some degree, correct?

25 A. Correct.

1 Q. But they don't say to what degree, correct?

2 A. Correct.

3 Q. Thank you. Now, the ethanol that is reported to
4 have been in the cardiac blood, correct, which is what you
5 test, correct?

6 A. In this case, that is what we tested. Peripheral
7 blood was unavailable.

8 Q. Was the BAC, blood alcohol concentration level, as
9 we all would commonly refer to it as, you know, .226,
10 correct?

11 A. Yes.

12 Q. Now, you are a medical professional, correct?

13 A. Yes.

14 Q. You've been to medical school?

15 A. Yes.

16 Q. You have medical training?

17 A. Yes.

18 Q. You have been performing autopsies for a good
19 while, correct?

20 A. Yes.

21 Q. So prior -- and you note this in your final report.
22 There's been a report of a confession that she was smothered
23 with bubble wrap, correct?

24 A. Yes.

25 Q. So once you receive that report, then you make a

1 final autopsy that says cause of death, smothering, correct?

2 A. Yeah. At that point, at the time we received the
3 additional information from investigators, the toxicology
4 came back, the microscopic slides we had taken at the of
5 autopsy, they had come back. So that was basically the last
6 piece of information that we had access to.

7 Q. Was it medical information? It wasn't from law
8 enforcement that they had information that she had bubble
9 wrap put on her face, correct? No new medical information,
10 correct?

11 A. There was no information regarding her medical
12 history. As part of our death investigations, we receive
13 all sorts of investigation that factor into our
14 determination.

15 Q. The answer to my question is yes, there was no new
16 medical information; is it correct?

17 A. Again, it depends how you define medical
18 information. If it relates to how she possibly died, that
19 could be considered medical information.

20 Q. Okay. So in your final autopsy report, you note:
21 No evidence of significant trauma to her body.

22 Correct?

23 A. Correct.

24 Q. You also make a notation that in the
25 musculoskeletal system, the clavicles, ribs, sternum,

1 pelvis, vertebral column have no fractures, correct; no
2 broken bones?

3 A. Correct.

4 Q. You, a medical professional, having performed many
5 autopsies, you have performed autopsies on individuals who
6 you have deemed to have died from alcohol toxicity, correct?

7 A. I have.

8 Q. And explain to the jury what alcohol toxicity is.
9 Go ahead.

10 A. So alcohol toxicity, alcohol is obviously a drug.
11 Too much of it can lead to failure of the body, as you kind
12 of break down your equilibrium, can lead to coma, can lead
13 to death.

14 Q. And alcohol toxicity, before you get to the
15 toxicity level of death, it can cause you to have severely
16 depressed respiratory functions, correct?

17 A. It can.

18 Q. Abnormal breathing is what layperson's might call
19 it?

20 A. Correct.

21 Q. Long periods of time between taking a breath,
22 correct?

23 A. At high levels, yes.

24 Q. The other substances that were in her system from
25 the cardiac blood, you have listed -- and I got tell you,

1 you are going to say them for me, because -- let's go
2 through them. I think it's --

3 A. Venlafaxine.

4 Q. Yes. Yes. 820 nanograms per milliliter, correct?

5 A. Yes.

6 Q. Is that the Effexor?

7 A. It is.

8 Q. Overdose from Effexor, what would that entail?

9 A. I'm sorry?

10 Q. An overdose of Effexor, what would that entail in
11 terms of respiration?

12 A. Again, if there was an excessive amount of this
13 drug, it could lead to respiratory depression.

14 Q. Again, this was performed elsewhere. You reviewed
15 it. The amount was, in their terminology, therapeutic,
16 correct?

17 A. Correct.

18 Q. Okay. And the amphetamines that were in her
19 system, correct?

20 A. She did have amphetamines, yes.

21 Q. But not listed as any sort of level that would
22 cause toxicity, correct?

23 A. Correct. And the other thing in regards to this
24 case is, in regards to the blood that we tested, that it's
25 cardiac blood. When they talk about therapeutic levels,

1 fatal levels, we are comparing those to people who have
2 survived as they came into the ER. So that's compared to
3 peripheral blood. And in this case, because of the
4 decomposition, we had to use cardiac blood, or blood from
5 the heart. One of the problems with heart blood is you get
6 what we call redistribution. So you can't -- heart blood
7 numbers don't really equal one to one with peripheral blood
8 numbers, because you have blood from different organs. If
9 there's any pill from the stomach, that drug can make it
10 into the heart blood.

11 So I don't think we can -- I don't think -- you
12 cannot compare her heart levels directly to what we call
13 therapeutic levels that are on peripheral blood.

14 Q. Okay. And so given the toxicology results and
15 given your inability to state a cause of death preliminary,
16 what did you do to factor in the alcohol level, which
17 is .226, three times the legal limit, on her respiration
18 rate?

19 A. You know, at this level, at .226, again,
20 considering it's heart blood, so because of redistribution,
21 the peripheral level is probably a little lower. We also
22 have decomposition, which, as we know, will also raise it to
23 some degree. Again, we don't know exactly how much it will
24 raise it. But that alcohol level was not at a level I feel
25 comfortable attributing death. Generally, when we attribute

1 alcohol to cause of the death, we are looking at level .3,
2 .4 and on up from that point.

3 Q. The reason I'm asking that, because the prosecutor
4 was trying to get you to talk about how long the occlusion
5 would need to take and so forth and so on. So my question
6 to you has to do with, did you factor in in any way in
7 answering the solicitor's question or in your findings the
8 impact of that extremely elevated level of alcohol on the
9 time the occlusion might take? Did you factor that in at
10 all?

11 A. We considered it. Again, I don't consider -- while
12 her alcohol level was elevated, I don't consider it
13 extremely elevated. Again, especially taken into account
14 the redistribution and decomposition. It was not at a level
15 I thought would be significant to cause respiratory
16 depression.

17 Q. So you factored it in, but you didn't put it down
18 as being a factor? You thought about it, but you didn't
19 consider it as a factor to the death, correct? Is that what
20 you are testifying to?

21 A. We considered the alcohol onboard and decided that
22 it was not a contributing factor to the death.

23 Q. And in answer to the solicitor's question, again,
24 do you factor that in to your assertions that you are making
25 here before this jury about the length of time the occlusion

1 would need to take place, considering the decreased
2 respiratory functions at .226? Do you factor that in?

3 A. Again, you are twisting thing, because she was not
4 at .226 when she died. And people at -- let's say she
5 was .15, .2, those people don't universally have depressed
6 breathing. We don't usually see that until higher levels.
7 It's not a matter I didn't factor it in. I considered it
8 and it wasn't a factor based on the concentrations.

9 Q. And so when the solicitor asked you that question,
10 you are factoring it in on what level of blood alcohol?
11 What level are you using to answer her question?

12 A. I'm sorry. I don't understand your question.

13 Q. If you are trying to give an assertion or testimony
14 to the Court about the length of occlusion and you are
15 saying you didn't factor it in at .226, what level did you
16 factor in?

17 A. I'm still not sure where you are coming from.

18 Q. Did you factor in decreased respiratory function in
19 answering the solicitor's question about the length of time
20 needed for the occlusion?

21 A. No. Again, I don't have any evidence that she had
22 decreased respiratory function. So it was not factored
23 in.

24 Q. So the blood alcohol content in the cardiac sample
25 at .226, and you testified it could have been .15, you

1 didn't factor that in at all?

2 A. You don't factor in something that you don't think
3 is significant. I considered it, and didn't consider it a
4 contributory factor in this case.

5 MS. CAMPBELL: Thank you. That's all I have.

6 THE COURT: Any redirect?

7 MS. SWANSON: Just briefly.

8 THE COURT: You may proceed.

9 REDIRECT EXAMINATION

10 BY MS. SWANSON:

11 Q. Bottom line is, you do not believe anything in the
12 toxicology contributed to Rebecca Melton's death?

13 A. Correct.

14 Q. Okay. And would you expect for a nonabrasive
15 substance like bubble wrap to leave a mark on someone when
16 they are smothered?

17 A. No. The vast majority of deaths due to smothering
18 have no injuries, abrasions, any sort of indication that the
19 event occurred.

20 MS. SWANSON: Thank you, Dr. Batalis.

21 THE COURT: Any objection to the witness being
22 excused, from the State?

23 MS. SWANSON: No.

24 THE COURT: From the defense?

25 MS. CAMPBELL: No, Your Honor.

1 having a little taste of winter today. But we've had such a
2 wonderful temperate season. I guess we really can't
3 complain.

4 We are now going to resume with the State's
5 witnesses. You may call your next witness.

6 MS. SWANSON: Thank you. The State calls John
7 Adams.

8 JOHN ADAMS,
9 having been duly sworn, testifies as follows:

10 THE CLERK: If you would state your name for the
11 record and spell, please.

12 THE WITNESS: My name is John Adams. Last name is
13 spelled A-d-a-m-s.

14 DIRECT EXAMINATION

15 BY MS. SWANSON:

16 Q. Is it Sergeant Adams?

17 A. It is, ma'am.

18 Q. Sergeant Adams, tell us how you became involved in
19 the investigation of the death of Rebecca Melton.

20 A. Ma'am, on September the 4th, 2014, I was asked to
21 respond to condominium [REDACTED] at [REDACTED] on
22 Hilton Head Island in Beaufort County, South Carolina, in
23 reference to a possible deceased person.

24 Q. And were you one of the first officers to enter the
25 residence?

1 A. I was, ma'am.

2 Q. All right. And what did you find when you entered
3 the residence?

4 A. When we first entered the residence, we did what's
5 called a protective sweep. Entryway was first gained into
6 the residence because of what we considered to be exigent
7 circumstances. When we peered through the window, we could
8 see what appeared to be a human leg on the floor. And we
9 did not know if the person that that leg was attached to was
10 still alive or deceased or if there were other victims
11 inside the unit. So we chose to force the door open in
12 order to do what's called a protective sweep of that
13 residence, to see if there was anyone that needed medical
14 assistance or there were any other suspects present inside
15 the house.

16 Q. Okay. And what did you see once you got inside the
17 house?

18 A. When we went inside the house, the house appeared
19 to be in two different states. It looked like people were
20 moving. There were boxes that were being packed up,
21 belongings from the residents. There was also state of
22 disarray in one of the back bedrooms of the house. I
23 believe Sergeant Cooler called that Bedroom No. 2 or the
24 master bedroom. When we looked across the hallway from the
25 master bedroom, there was a small terrier-sized dog that was

1 walking around. And when we proceeded around towards the
2 front, which I guess was a spare bedroom that Detective
3 Cooler called Bedroom No. 1, I believe, there was a nude
4 deceased female lying on the floor..

5 Now, the door to that bedroom is a double door.
6 And it was secured, but not locked. And so that prevented,
7 I guess, the dog from getting inside where the deceased
8 person was.

9 Q. Okay. And do you recall how the body was
10 positioned when you witnessed it?

11 A. Yes, ma'am. The body was on its back, facing
12 towards the entry door to the unit. The female's right hand
13 was partially pinned underneath her right hip. And her left
14 hand was up in the air; not up in the air, but laying back
15 beside her head on the floor.

16 Q. Did you see any blood on her?

17 A. Yes, ma'am. There was blood coming from the eyes,
18 the nose, I believe the mouth, and I think the left ear.

19 Q. All right. And did you collect several items from
20 the scene on two different occasions?

21 A. Yes, ma'am.

22 Q. I'm going to show you -- well, let me ask you this.
23 You are the lead investigator in the case, right?

24 A. I was the investigator this case was assigned to,
25 correct.

1 Q. And at the time that you responded to Rebecca
2 Melton's residence, did you know where Nick Evangelista was?

3 A. No, ma'am, we did not.

4 Q. Did you have any information about what happened to
5 her?

6 A. No, ma'am.

7 Q. So when you went through to collect evidence or
8 potential evidence, what did you collect?

9 A. We collected a large amount of evidence of all
10 types. We were not sure at first if Mr. Evangelista was
11 also a victim of a crime. But as the investigation started
12 to unfold, it became clear that he could potentially be a
13 suspect in the crime.

14 Q. I'm going to show you a few things. I'm going to
15 show you what's been entered previously as State's Exhibit
16 8. If you can explain what this is. And you don't have to
17 open it.

18 A. Ma'am, it is labeled as green tape and tape with
19 gauze. And it was collected from a garbage bag on the back
20 of the doorknob where we gained entry into the
21 condominium.

22 Q. And why did you collect the item?

23 A. I collected that item because it appeared to have
24 blood on it.

25 Q. Okay. And was that later submitted for forensic

1 analysis?

2 A. It was, ma'am.

3 Q. And I'm going to hand you what's been admitted as
4 State's 29 and ask what this item is?

5 A. Ma'am, this item is a swab of the doorknob from
6 Bedroom No. 1 where the decedent was found on the floor.

7 Q. And why did you swab that doorknob?

8 A. We were hoping to collect DNA from a potential
9 suspect that may have closed that door.

10 Q. Okay. Handing you State's 37, if you can explain
11 what this item is?

12 A. This is a paper towel with bloodstain or suspected
13 bloodstain. Again, it was collected from a garbage bag that
14 was tied to the back doorknob or the inside doorknob of the
15 entry door into the condominium.

16 Q. Okay. I'm now going to hand you what's been
17 entered as State's 58 and ask for you to identify these
18 items.

19 A. These are two bottles of medication that were
20 collected from Bedroom No. 2 or the master bedroom of the
21 condominium during the service of a second search warrant at
22 the residence.

23 Q. All right. And can you take out the CVS bottle,
24 please.

25 A. (Witness complies.)

1 Q. And who is that medication prescribed to?

2 A. It is prescribed to Rebecca Melton, the deceased in
3 this case.

4 Q. And is there a prescriber listed?

5 A. There is. The prescriber is listed as Nick
6 Evangelista.

7 Q. Thank you. At this time, I'm going to publish some
8 photos that have been previously admitted. And the first
9 one I'm going to publish is State's 45. If you can tell us
10 what we are looking at.

11 A. You are looking at the photographs of the two
12 bottles that are in this bag.

13 Q. And this is State's 46?

14 A. That's driver's license of the decedent, Ms.
15 Melton.

16 Q. State's 47?

17 A. It appears to be Ms. Melton's passport.

18 Q. And State's 44?

19 A. That's the garbage bag that was on the back of the
20 knob leading into the condominium.

21 Q. Is that where you got the paper towel with
22 suspected blood?

23 A. It is, ma'am.

24 Q. All right. So after you processed the scene, did
25 you then go and begin interviews of people that knew both

1 Rebecca and Nick?

2 A. I did, ma'am.

3 Q. Were you able to develop a suspect based on your
4 interviews and investigation?

5 A. Yes, ma'am.

6 Q. And who was that suspect?

7 A. Mr. Evangelista, the defendant.

8 Q. Do you see him in the courtroom today?

9 A. I do, ma'am. He is wearing a blue shirt and tie.
10 And he's seated between his two attorneys.

11 Q. All right. And what did Nick do for a living?

12 A. He was a physician's assistant with an orthopedic
13 group called Optim.

14 Q. I'm going to show you -- publish State's Exhibit
15 60, and ask for you to describe what's contained in this
16 picture.

17 A. Ma'am, that is a still shot taken from the
18 surveillance footage from, I believe, the Best Western at
19 Point South. It's dated August the 27th of 2014 at 2:37 in
20 the morning. Point South, I believe is where Exit 33 is off
21 of I-95 traveling northbound from Hilton Head Island.

22 Q. Okay. And what do we see right here?

23 A. We appear to see some type of bandage on.
24 Mr. Evangelista.

25 Q. What color is it?

1 A. It's white. And it is on top of his forearm, his
2 right forearm.

3 Q. And what type of shirt is he wearing?

4 A. He's wearing a short-sleeved T-shirt and I believe
5 it says Cocks on it, which is typically a nickname for the
6 University of South Carolina.

7 Q. Does that appear to be the same type of shirt that
8 he was wearing in the interview with Robert Greene in
9 Pensacola?

10 A. If it's not the exact shirt, it is very consistent
11 to the one in that interview.

12 Q. Okay. And when was it determined that Rebecca
13 Melton died?

14 A. Sometime between August the 26th and when this
15 photograph was taken.

16 Q. I'm going to hand you what's been admitted as
17 State's 38 and ask you tell the jury what this item is.

18 A. Ma'am, these are two buccal swabs that were
19 collected from Mr. Evangelista. Buccal swabs is just a
20 fancy way of saying oral swabs. They were collected from
21 Mr. Evangelista to get what's called a known standard of his
22 DNA.

23 Q. And was that so that we could -- you could request
24 that it be tested against any of the swabs from the scene
25 that you took?

1 A. That's correct, ma'am.

2 Q. Did you have gloves on when you took that swab?

3 A. I believe I did, ma'am.

4 Q. All right. As the lead investigator in this case,
5 did you review what's been admitted as State's Exhibit 35,
6 and we've been referring to as Nick's journal, and actually
7 make copies of it?

8 A. I did. I requested copies of the journal from our
9 evidence division.

10 Q. I'm going to hand you what's been admitted as 35.
11 And it is the original journal. And I would like you to
12 publish portions of it. I will point you to those portions.
13 Of course, the entire journal will be in evidence, but we
14 have about 15 pages. If you can turn to page 1 and read the
15 first three sentences.

16 A. It's dated September the 10th of 2014. It says:
17 These will be the last words of me, Nick Russell
18 Evangelista. I should have taken my own life days ago.

19 Q. Go on.

20 A. And I will soon, because I don't deserve to live.
21 I took the life of a good and beautiful person.

22 Q. Okay. Now, go about halfway down the page,
23 beginning with: She didn't deserve to die.

24 A. She didn't deserve to die. Nobody does. And for
25 that, I cannot live any longer. She never deserved to be

1 hit, slapped or abused either, no matter how many times she
2 initiated it, which was very often.

3 Q. Thank you. Going on to the next page, what appears
4 to be a second paragraph, in the end.

5 A. In the end, there are two sides to every story.
6 The truth is somewhere in between. I say that not to defend
7 my victim, because it's indefensible. I also don't say it
8 to apologize to her family and friends, for there are not
9 enough words to ever temper the loss they have suffered. I
10 suppose it's mostly a confession, not to God, because I
11 don't believe in God and have not for years.

12 Q. Thank you. All right. Skipping to the next page,
13 down at the bottom.

14 A. Ma'am, page 3 or page 4?

15 Q. This would be page 4, I got my feelings hurt. It's
16 the last two sentences.

17 A. I got my feelings hurt and said horrible things to
18 make her hurt. My pattern of abuse to this point has always
19 been verbal only, never physical. Cathy and Jessica will
20 attest to that.

21 Q. Turning to the next page, if you can read the first
22 three sentences.

23 A. I was more devastated by my loss of Kim than any
24 other loss in my life. I have fought drugs and alcohol
25 addiction my whole life and still do. So after every event

1 like this, I would just ramp up my drinking to a level that
2 would kill most people.

3 Q. Thank you. All right. If we can turn to the first
4 entry that is labeled September 17th of 2014. And if you
5 can go about halfway down the page, but here is the
6 synopsis, and read the following two sentences.

7 A. But here is the synopsis, for every time I
8 retaliated because Becca's violence of my own, there were
9 four or five more times I didn't. I became something in the
10 end that I could not control. And despite medication and
11 therapy, she couldn't control herself either. When she came
12 home after the death of her mother, the violence on me was
13 daily.

14 Q. You can go to the -- no, that's fine. Thank you.
15 And skip the following page. We are on the page, in the
16 last few months.

17 A. Is that where you would like me to start, ma'am?

18 Q. No. Start down at page with the sentence, it was
19 just like so many fights before.

20 A. It was just like so many fights before, except this
21 time I had had enough. In a moment I don't really remember,
22 I finished it. I took what I could and ran. I haven't shed
23 a tear since.

24 MS. SWANSON: Thank you. Beg the Court's
25 indulgence.

1 THE COURT: Yes, ma'am.

2 MS. SWANSON: Thank you. I have nothing further at
3 this time.

4 THE COURT: Any questions for the witness?

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: You're welcome. You may proceed.

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q. Officer Adams, I am going to hand you what's been
10 previously admitted as Defendant's Exhibit 15.

11 MS. SWANSON: I'm sorry, that was 15?

12 MS. CAMPBELL: Correct.

13 BY MS. CAMPBELL:

14 Q. And if you would, please tell the jury what's
15 contained in Defendant's 15?

16 A. It is labeled as a brown wallet with victim's ID
17 and debit card, and a red wallet containing the victim's
18 passport.

19 Q. Would you take the wallet out, please.

20 A. (Witness complies.)

21 Q. Officer Adams, as the lead investigator in this
22 case, would you say that you are well prepared to testify
23 before this jury today?

24 A. Yes.

25 Q. You've been through all of this evidence, correct?

1 A. I have not been through every single piece of it,
2 ma'am, because this is -- the investigation is a team
3 concept.

4 Q. So on this particular item, this piece of evidence
5 in this case, have you been through Rebecca Melton's wallet?

6 A. I believe it's been photographed, ma'am.

7 Q. So the answer to my question is no, you have not
8 been through the contents of that wallet, correct?

9 A. I can't remember whether I specifically have been
10 through the contents of this wallet or I've seen the
11 photographs of this wallet.

12 Q. Well, let's go through it now. So within the
13 wallet, if you will pull out all the different cards that
14 are inside the wallet.

15 A. All of them?

16 Q. Please put them in front of you. We will wait.

17 A. (Witness complies.) I think I've got it, ma'am.

18 Q. Thank you.

19 MS. CAMPBELL: Now, may I approach, Your Honor?

20 THE COURT: You may.

21 BY MS. CAMPBELL:

22 A. You want the receipts as well, ma'am?

23 Q. Carry on. And inside the red wallet, the items
24 inside that, if you will pull those out as well.

25 A. (Witness complies.)

1 Q. All right. So it's fair to say then that this is
2 the first time you are seeing any of this, correct?

3 A. I can't remember whether I've seen all of these or
4 some of these items.

5 Q. So this item over here on the end, if you will pass
6 that.

7 A. This one?

8 Q. No, the one right next to it. Contained within
9 Defendant's 15, would you like to tell the jury what that is
10 right there, please.

11 A. It is a Georgia firearms license.

12 Q. Issued to?

13 A. Rebecca Sue Melton.

14 Q. And valid in 2014?

15 A. It is issued February the 1st of 2010 and it
16 expires February the 1st of 2015.

17 Q. So the answer is yes?

18 A. That's what it says on this card, ma'am.

19 Q. All right. Now, you may put that back. This card
20 here, you are familiar with the Supplemental Nutrition
21 Assistance Program in South Carolina, food stamps?

22 A. Yes, ma'am.

23 Q. Is that a food stamp card in Rebecca Melton's
24 name?

25 A. It is.

1 Q. Thank you. Dated 6/9/2014, is that a check written
2 out to Rebecca Melton?

3 A. It is.

4 Q. On whose account?

5 A. Nick Evangelista's account.

6 MS. CAMPBELL: Thank you. That's all I have. And
7 I will let you put these items back. Thank you.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Did you mean you were done questioning
10 or you were done with that line of questioning?

11 MS. CAMPBELL: No, I was just done with that.

12 BY MS. CAMPBELL:

13 Q. Thank you, Officer Adam. I'm going to show you
14 what's been previously admitted as Defendant's 8. Can you
15 tell the jury what that is a photograph of?

16 A. That is a photograph of the bedside table in the
17 master bedroom.

18 Q. And I'm going to show you what's been previously
19 marked as -- excuse me, admitted as Defendant's 9?

20 A. That is a note and it says: Find life policy for
21 me and for Nick.

22 Q. Thank you. I'm going to show you what's been
23 previously admitted as Defendant's 6. And tell the jury
24 what that is.

25 A. That's a calendar.

1 Q. Showing you what's been previously admitted as
2 Defendant's 7. And would that be a close-up of that same
3 calendar?

4 A. It would, ma'am.

5 Q. Thank you. Show you what's been previously
6 admitted as Defendant's 11, would you tell the jury what you
7 found in this drawer?

8 A. Those are photographs of store receipts.

9 Q. And there's four rows of them, correct?

10 A. Yes.

11 Q. And you took all of that into evidence, correct?

12 A. Correct.

13 Q. And you reviewed those receipts?

14 A. I did look at those receipts, ma'am.

15 Q. In reviewing those receipts, what did you determine
16 those receipts were for?

17 A. Those were receipts that are returns for
18 merchandise.

19 Q. I'm going to show you what's been previously
20 entered as Defendant's 1. Tell the jury what they are
21 looking at here.

22 A. Immediately upon going into the door that we made
23 entry into the condominium, if you turn to the right,
24 there's a dining room area. And that is one of the walls in
25 that dining room area.

1 Q. And what were you able to determine was all over
2 that wall?

3 A. They are sauces and foods.

4 Q. I'm going to show you what's been previously
5 admitted as Defendant's 2. Is that another view of that
6 same area, Officer?

7 A. Yes, ma'am, I believe it is.

8 Q. And the floor with the same sauce?

9 A. Correct, ma'am.

10 Q. I'm going to show you what's been previously
11 admitted as Defendant's 10. If you could tell the jury what
12 they are looking at here.

13 A. Those are close-up photographs of the floor of that
14 particular dining area. And there are broken pieces of
15 glass on that floor.

16 Q. Along with the dried sauce, correct?

17 A. Correct, ma'am.

18 Q. I'm going to show you what's been previously
19 admitted as Defendant's 12. And please tell the jury what
20 they are looking at.

21 A. It's a list of paper.

22 Q. And let's read the list. What's No. 2 on that
23 list?

24 A. Belk dash returns.

25 Q. And No. 3?

- 1 A. Lowe's returns, microwave two.
- 2 Q. Then we go to 1.
- 3 A. Bubble wrap, large boxes.
- 4 Q. Four?
- 5 A. CVS drop off, P-E-R-S.
- 6 Q. Five?
- 7 A. P.O. Box mail out Dennis -- demi-'s package.
- 8 Q. Six?
- 9 A. Go to my attorney's on bill.
- 10 Q. Seven?
- 11 A. TJ return.
- 12 Q. Eight?
- 13 A. Walmart return.
- 14 Q. After that?
- 15 A. SOS pads, large Ziplocs.
- 16 Q. Nine?
- 17 A. Go to moving company.
- 18 Q. Now, I can read 10 and 11. I'm assuming you can
- 19 too.
- 20 A. Go to leasing office.
- 21 Q. And 11?
- 22 A. I can't make out the first words, but I think the
- 23 second word is bank and shop, payment on -- something.
- 24 Q. How about, stop payment on check, maybe?
- 25 A. If I could see it closer, ma'am, it might help.

1 Q. I will be happy to hand it to you.

2 A. Yes, go to bank, stop payment on C-K.

3 Q. Okay. Thank you. I'm going to show you what's
4 been previously admitted as Defendant's 13. Please tell the
5 jury what they are looking at there.

6 A. Ma'am, they are photographs of notes that were
7 contained in the garbage bag from the back of the entry door
8 where the other items were.

9 Q. Did you read those notes, Officer Adams?

10 A. I did.

11 Q. And in reading those notes, did you make a
12 determination as to who you believe wrote these notes?

13 A. I believe those notes were written by Ms. Melton.

14 Q. Thank you. Okay. So in reviewing all the evidence
15 in this case, you obtained information about the prior
16 arrests of Rebecca Melton for criminal domestic violence
17 against Nick Evangelista, correct?

18 A. I personally obtained 911 calls and the
19 corresponding CAD information that is included with those
20 911 calls.

21 Q. And you listened to the 911 calls when he called
22 for help, correct?

23 A. I did, ma'am.

24 Q. And did you also speak to the officers who arrested
25 Rebecca Melton?

1 A. No, ma'am, I did not.

2 Q. And I'm trying to make sure I understand. You did
3 not read the incident reports?

4 A. That's correct.

5 Q. You've talked to Cathy Evangelista, correct?

6 A. No, ma'am.

7 Q. Nick's wife?

8 A. I did not.

9 Q. Or excuse me, ex-wife. Okay. You've talked to
10 Julie Buellion at Optim?

11 A. Yes.

12 Q. You've talked to Sarah Cotter at Optim?

13 A. I did.

14 Q. You've talked to Mike Malvasio, a friend of Nick
15 Evangelista, correct?

16 A. Correct.

17 Q. And those three individuals that you spoke to, were
18 you able to determine through your investigation after
19 speaking to them whether or not they were aware of the abuse
20 against Nick?

21 A. They believed that the troubles between Ms. Melton
22 and Mr. Evangelista were the result of Ms. Melton.

23 Q. And they provided you with information, like having
24 seen physical signs of abuse on Nick, correct?

25 A. Correct.

1 Q. Mr. Malvasio also provided you with, or in your
2 investigation, an e-mail that Nick had sent to him, correct?

3 A. He provided that to, I believe, Sergeant Cooler.

4 Q. But you reviewed that e-mail?

5 A. I have read that e-mail.

6 Q. Thank you. And made that a part of your case,
7 correct?

8 A. It was part of the case, ma'am.

9 Q. Okay. In your investigation and what you took into
10 evidence, you took into evidence a stack of what you list in
11 your evidence submittal form as Rebecca Melton's mental
12 health records, correct?

13 A. They were collected, ma'am.

14 Q. And I'm going to guesstimate -- and you can tell me
15 if I'm right -- about that thick (indicating), correct?

16 A. I'm not sure exactly how thick it was, but it was a
17 collection of records.

18 Q. Thank you. I'm going to hand you what's been
19 previously admitted as Defendant's 7 and ask you to tell the
20 jury what's listed on the Fridays in that month.

21 A. Give Sugar his flea and heart medicine; Nick's pay;
22 child support, \$816; car insurance, \$200; cell bill, \$180;
23 Zack's birthday and No. 28.

24 And then on the day of Friday, August 22nd: Nick's
25 pay; rent; Nick UC 5 to 9 p.m.; and cable, \$124.

1 Q. Thank you. And in your investigation of this case,
2 did you take that to be Rebecca Melton's calendar and her
3 handwriting?

4 A. I don't know whose handwriting it was, but it did
5 come from the residence.

6 Q. Thank you. In your investigation, Officer Adams,
7 did you become aware that at some point, that Rebecca Melton
8 had been placed on an alcohol ankle monitor?

9 A. I think I was aware of that.

10 Q. Through what we call the batterers program here in
11 Beaufort County?

12 A. I don't know what program it was, but I do think I
13 remember -- recall that she was on an alcohol monitor.

14 MS. SWANSON: Objection. Relevance.

15 THE COURT: Please approach.

16 (Whereupon, the following bench conference takes
17 place):

18 THE COURT: Why is it relevant?

19 MS. CAMPBELL: It's relevant because it goes to my
20 client's state of mind.

21 THE COURT: How is it his statement of mind if you
22 can't recall it from the incident?

23 MS. CAMPBELL: I will withdraw it. Happy to
24 withdraw it. Thank you.

25 THE COURT: You're welcome.

1 (Whereupon, the bench conference ends.)

2 THE COURT: The question is withdrawn.

3 BY MS. CAMPBELL:

4 Q. Officer Adams, do you and the Beaufort County
5 Sheriff's Office have programs that are designed to help
6 victims of domestic violence?

7 A. We do have programs.

8 Q. Thank you. Do you have individuals who are
9 employed by Beaufort County that are called victim
10 advocates?

11 A. We do, ma'am.

12 Q. And those are in place to help people who have been
13 victims of criminal domestic violence, right?

14 A. Correct.

15 Q. Thank you. The State of South Carolina, the
16 solicitor's office, has similar programs, correct?

17 A. I believe they do, but I am not completely familiar
18 with those programs, ma'am.

19 Q. In your investigation of this case, were you able
20 to determine whether either your sheriff's department or the
21 State of South Carolina provided victim services to Nick
22 Evangelista when he was a victim of criminal domestic
23 violence?

24 A. I don't know the answer to that question.

25 Q. Thank you. In this whole "she used to be a Delta

1 pilot story", were you able to confirm that that was true?

2 A. I was not able to confirm that she was a pilot. I
3 believe I learned that she was a stewardess.

4 Q. Thank you. Did you ever speak to her mental health
5 doctors?

6 A. No, ma'am, I did not.

7 Q. I'm going to hand you what's been marked as
8 Defendant's Exhibit 17, but not entered --

9 MS. SWANSON: And Your Honor --

10 MS. CAMPBELL: -- and ask you if you recognize it?

11 THE COURT: Please approach.

12 Mr. Foreman, ladies and gentlemen, I have a matter
13 of law to take up outside your presence. During the break,
14 please do not discuss the case. And please leave your
15 notepads in your seats. I appreciate your patience.

16 (Whereupon, the jury leaves open court at 10:32
17 a.m.)

18 THE COURT: What number was that again?

19 MS. SWANSON: Defendant's 17.

20 THE COURT: Has that been admitted?

21 MS. SWANSON: No.

22 THE COURT: What is it?

23 MS. SWANSON: It's the series of notes that the
24 State is objecting to the contents of.

25 THE COURT: Why would you seek to --

1 MS. CAMPBELL: Well, Your Honor, if you are
2 prepared at this time to hear full argument --

3 THE COURT: Well, you just should have given me a
4 heads-up or something. You didn't give me that impression
5 when we discussed it that you would be seeking to introduce
6 it through this witness. And you should have let me know
7 you had a matter to take up in-camera when you knew they had
8 an objection about it and we had a discussion about it.

9 MS. CAMPBELL: Right. I thought that we had done
10 that before we brought the jury in this morning.

11 THE COURT: No. No. I said I would not rule in
12 advance. You did not indicate that this was the witness you
13 intended to try to introduce these documents.

14 MS. CAMPBELL: I certainly apologize to the Court
15 if that is, in fact, what happened. I feel like I brought
16 that up. And, again, I'm sorry. At this time, Defendant's
17 17 is in contention. We would like to introduce the
18 contents of the notes. And I have my full argument prepared
19 and ready for Your Honor at this time.

20 THE COURT: I haven't read them yet. So it's going
21 to take a few minutes for me to read them, because I did
22 not -- maybe I misunderstood. But you didn't clearly
23 articulate that this was the witness you intended to seek to
24 introduce the notes through. So if y'all will give me a
25 couple of minutes, I would appreciate it.

1 MS. CAMPBELL: On the break --

2 THE COURT: Oh, no, we are not going anywhere.

3 MS. CAMPBELL: I have two cases, if you wanted me
4 to give them to your law clerk.

5 THE COURT: I would just like to read right quick.

6 MS. CAMPBELL: Thank you.

7 (Whereupon, the Court reviews materials at the
8 bench.)

9 THE COURT: These notes can be divided into two
10 categories. One is three separate to-do lists which I'm at
11 a loss as to how it could be relevant. And the others are
12 what appear to be notes. They are undated. I don't know
13 who wrote them. They are unsigned.

14 And I'm trying to figure out for what purpose they
15 are being offered, how they can be authenticated and how
16 they could be relevant. I'll be glad to hear from you. I
17 need to know first for what purpose you are offering them.

18 MS. CAMPBELL: I'm offering the contents of
19 Defendant's 17 as to his, my client's, state of mind.

20 THE COURT: How would you establish that?

21 MS. CAMPBELL: And I rely on *State v. Blurton*, 2000
22 case, and *State v. Griffin*, 2000 case.

23 THE COURT: You need to spell the first one for the
24 court reporter.

25 MS. CAMPBELL: B-l-u-r-t-o-n, 342 S.C. 500. And

1 *State v. Griffin* 339 S.C. 74, 2000.

2 In both of those cases, it was reversible error
3 when the defendant sought to introduce, in one particular
4 case it was a taped conversation --

5 THE COURT: Which can be authenticated.

6 MS. CAMPBELL: -- directly to his state of mind at
7 the time of the crime. And so we liken it to the same
8 situation where these notes are in the home and they are --

9 THE COURT: How are you going to authenticate them?
10 Tapes are self-authenticating once the voices are
11 identified.

12 MS. CAMPBELL: And Mr. Evangelista, when he
13 testifies, if we have to go that route, Your Honor, then he
14 will authenticate them as having been received from her to
15 him and read by him upon his returning home on that Sunday.
16 So there's the authentication on that. And if Your Honor
17 needs me to wait until Mr. Evangelista testifies and
18 authenticate them that way, then we are happy to do that.

19 THE COURT: For what purpose are you offering the
20 notes?

21 MS. CAMPBELL: To show his state of mind in the
22 period of time right around when she died, and to also
23 establish the cycle of violence that she put him through,
24 which was the beating --

25 THE COURT: How do the notes establish that?

1 MS. CAMPBELL: Within the notes themselves, they
2 are apologetic. They apologize for hurting him, for beating
3 him, for hitting him, asking him to come home, her life is
4 over if he doesn't come home.

5 THE COURT: I don't read anything about her
6 apologizing for beating or hitting him. Maybe I missed a
7 page, but nothing in the notes say that.

8 MS. CAMPBELL: Again, I'm just characterizing the
9 nature of them. They speak for themselves.

10 THE COURT: They do. And I need the record to be
11 accurate, because the notes don't say that. The notes
12 actually accuse him of stealing money and say that's why she
13 did what she did, because he took money they needed for
14 bills. But they don't say, I apologize for beating you,
15 blah, blah, blah. Sounds like a love-sick woman that wants
16 her man to stay home, basically. And people do that for a
17 myriad of reasons that have nothing to do with violence.

18 MS. CAMPBELL: And we are willing to take the risk
19 of anything contained within the notes that, you know, as
20 Your Honor is characterizing it, doesn't seem to be helpful
21 to us. We believe that the contents of those pages taken in
22 context with everything else that's been presented and will
23 be presented, substantiates the defendant's theory of his
24 case when it goes to his state of mind and to self-defense
25 and battered person syndrome, and, again, relying on *State*

1 *v. Blurton and State v. Griffin.*

2 THE COURT: *Blurton* has been overturned by the
3 Supreme Court. I need to figure out what basis -- on what
4 basis it was overturned. But I will have to look at it
5 right quick.

6 The other case, I am not certain factually, which
7 every case turns on facts, but I need to know again
8 succinctly for what purchase you are offering them, how are
9 they going to be authenticated, how can you establish the
10 time that they were written to bring them within the window
11 that would make them germane or relevant.

12 And I can tell you, and the note, that to-do list,
13 I need to know why they would be relevant and for what
14 purpose they are being offered.

15 MS. CAMPBELL: Well, again, the to-do lists contain
16 information -- and we've already got one in -- which
17 demonstrate the level to which Rebecca had control over
18 Nick, bringing him into her fraud, basically, of returning
19 items.

20 THE COURT: So when I go to T.J. Maxx and I return
21 something, I'm committing a fraud? Maybe I just don't like
22 it anymore.

23 MS. CAMPBELL: That's not how she did it.

24 THE COURT: How do the notes say that?

25 MS. CAMPBELL: She had a special tool, she would go

1 into the department stores. She would cut the tag off an
2 item.

3 THE COURT: But you haven't established that and
4 these notes don't establish that.

5 MS. CAMPBELL: No. And as I said, maybe then at
6 that point --

7 THE COURT: One says return something to Michael's.
8 One says return something to Dick's. One says drop off
9 prescriptions at CVS. Check the P.O. Box, returns at T.J.
10 Maxx, RadioShack or Best Buy to get computer worked on,
11 Lowe's, Belk, Walmart.

12 MS. CAMPBELL: Right.

13 THE COURT: Monday get to change -- I don't know
14 what that he is, change my something. Michael's, return
15 Christmas lights; T.J. Maxx return; CVS, pick up her
16 prescriptions; CVS and to go to Beaufort and Belk's. Nick's
17 office closed; Lowe's, buy; hammock return, something one;
18 blower, ceiling fans, three. I mean, this could be my to-do
19 list. I don't think that returning items to stores --
20 people have buyer's regret all the time.

21 Some people are what I would probably characterize
22 as serial buyers. They buy on impulse and then return
23 things. Sometimes they have their children in the store
24 with them and they don't make good decisions about what they
25 purchased or they are distracted. I don't think returning

1 things to a store establishes some grand scheme to defraud
2 stores.

3 And stores are adept at knowing what people are
4 stealing from especially if they are addicts, and they
5 generally catch them.

6 MS. CAMPBELL: That's just not the case here.

7 THE COURT: But you haven't proven that. So I'm
8 trying to figure out how, independent of themselves, these
9 notes are remotely relevant.

10 MS. CAMPBELL: So I think what I'm hearing the
11 Court say is that when Mr. Evangelista testifies to how she
12 defrauded the --

13 THE COURT: I don't know what he's going to testify
14 to. And I can't anticipate that. And I don't know that
15 that is going to come in. I have to deal with what is right
16 now. And I'm trying to figure out -- you've offered some
17 documents. And I'm trying to figure out how they are
18 relevant, which means what fact or consequence in this case
19 does it make more or less likely.

20 MS. CAMPBELL: And I feel like I've answered that.
21 Thank you.

22 THE COURT: Would the State like to respond?

23 MS. SWANSON: Just briefly. Even if the
24 authentication could come through Nick, to say that it was
25 her handwriting and it was the date, the purpose for which

1 she is seeking to enter these doesn't make any sense.

2 The second case that Ms. Campbell cites deals with
3 the writer's state of mind. So I don't know how we get to
4 Nick's state of mind through somebody else's writings.

5 Additionally, this is inadmissible hearsay. It is
6 offered -- it is words of another offered for the truth of
7 the matter asserted. And she is not here to explain any of
8 her writings or her state of mind at the time, because
9 Mr. Evangelista made that so. And he cannot now take
10 advantage of using her words when she died at his hands.

11 THE COURT: Anything further from the defense?

12 MS. CAMPBELL: No, Your Honor.

13 (Whereupon, a cell phone rings in the courtroom.)

14 THE COURT: If anyone has their telephones on, they
15 need to be turned off.

16 There are several things that concern me about the
17 statements. I'm excluding any references to to-do lists.
18 They are not relevant. And I haven't heard anything to
19 connect the dots to make them relevant. I will mark them as
20 a Court's exhibit.

21 As regards the other notes, there are several
22 layers of concern I have about them. One, they are hearsay.
23 And I have not heard any exception to the hearsay rule. And
24 they are clearly being offered for their truth. The defense
25 wants the jury to believe that the victim in this case, the

1 deceased, actually wrote these notes. They cannot -- so
2 they are hearsay. And I have not heard an exception to the
3 hearsay rule that would make them admissible.

4 And there are many valid reasons for that. Ms.
5 Melton cannot be cross-examined regarding the notes. And
6 there are certain statements that inherently have a
7 veracity. And those come within the hearsay exceptions,
8 but, again, there's been no hearsay exception articulated
9 that these statements would come of them.

10 The other concern is authentication. Unlike the
11 case that was cited, and I will get back to the cases that
12 were cited by the defense, but they can't be authenticated,
13 at least not by this witness. The other concern that I have
14 is they are undated. We don't know when they were written.
15 I don't know that they are close in scope and time when this
16 incident occurred, or at what point in the relationship they
17 are alleged to have been written.

18 The other concern that I have is that they do not
19 stand for the proposition that has been articulated by the
20 defense, that being that she admits that she beat him or did
21 other things and is, therefore, apologizing. While there's
22 a general statement made that, I apologize about my
23 behavior, there's no way for us really to discern what
24 behavior she's referring to. But later in this statement,
25 she says, but you took the money I pay bills with and that

1 was wrong. And then there's some discussion about money
2 really not meaning that much to her otherwise.

3 But these just seem to be forlorn love notes that
4 really make -- they just don't corroborate the proposition
5 for which it's been articulated they stand for. And I think
6 they have the tendency to mislead the jury. And they are
7 just not probative.

8 The other thing that concerns me about them is, the
9 defense has argued that they are offered to show the
10 defendant's state of mind. And I'm hard-pressed to see
11 that. Generally, when someone writes something, it is
12 evidence of their state of mind, what they are thinking,
13 that being their articulation of their thoughts in the
14 writing. So at best, they are showing what she's thinking.
15 What impression they may have had on him, he can always
16 testify she wrote notes to him and how that affected him,
17 there's nothing that precludes him from doing that. But as
18 it involves the defense trying to offer these notes through
19 this particular witness, I cannot find the evidentiary basis
20 for it.

21 The arguments and the cases that have been cited,
22 the *Blurton* case was reversed by the Supreme Court, but it
23 looks like it was reversed dealing with a jury charge. But
24 in *Blurton*, there was a recorded statement. And, clearly,
25 the person who recorded the statement, both parties were

1 present that could testify about it and be cross-examined.
2 In addition to that, statements are self-authenticating.
3 And the other part of that recording is there was clearly a
4 part of this crime, it was part of the continuum of the
5 crime, in other words, the planning of the crime. So it's
6 not analogous.

7 And the *Griffin* case deals with the declarant's
8 state of mind. So they sought to offer a statement that was
9 actually written by that witness as to their state of mind.
10 It looks like it was being used in some impeachment posture.
11 But, certainly, it is not analogous either.

12 So I will have the notes marked as Court's
13 exhibits. The State's objection to the admissibility of the
14 documents is sustained.

15 Now, are there any questions you want to ask for a
16 proffer of this witness regarding statements? I think the
17 only thing you would be able to ask him is where he found
18 them?

19 MS. CAMPBELL: No, ma'am.

20 THE COURT: Ready to proceed with witness's
21 testimony?

22 MS. SWANSON: Yes, Your Honor.

23 MS. CAMPBELL: Yes, Your Honor.

24 (Court's Exh. 3, To-do list, was marked for
25 identification.)

1 (Whereupon, the jury returns to open court at 10:57
2 a.m.)

3 THE COURT: Ladies and gentlemen, we appreciate
4 your patience. We will resume with the witness's testimony.
5 You may proceed.

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 BY MS. CAMPBELL:

9 Q. So, Officer Adams, I'm going to hand you an
10 evidence submittal form that has your signature on that.
11 And if you will, refreshing your memory as to the evidence
12 that you seized in this case and took into evidence. Does
13 it not reflect that you seized a Pro Bass (sic) Shop
14 eight-inch fillet knife, correct?

15 A. It does.

16 Q. And does it not also reflect that you seized from
17 this apartment a Goodwill receipt, correct?

18 A. It does.

19 MS. CAMPBELL: Thank you. That's all I have.

20 MS. SWANSON: May it please the Court.

21 THE COURT: Yes, ma'am, you may proceed.

22 MS. SWANSON: Beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 REDIRECT EXAMINATION

25 BY MS. SWANSON:

1 Q. Ms. Campbell questioned you, Sergeant Adams, about
2 a check. If I can have you read the whole thing, I'm going
3 to ask, is that an uncashed check?

4 A. It appears to be, ma'am. There are no markings
5 from the bank on the back.

6 Q. All right. And it is made out to who?

7 A. It says Becca Melton.

8 Q. And on what date?

9 A. 6/9 of '14, June the 9TH of 2014.

10 Q. And when did she die at the hands of Nick
11 Evangelista?

12 A. Sometime between August the 26th of 2014 and August
13 the 27th of 2014.

14 Q. Okay. So this check had been sitting in her wallet
15 for a few months?

16 A. It appears so, ma'am.

17 Q. Thank you. Ms. Campbell asked you about a license
18 to carry a firearm that Ms. Melton had in her wallet.

19 A. She did.

20 Q. Did you find a gun in that residence?

21 A. No, ma'am. It was searched twice.

22 MS. SWANSON: Your Honor, I would like to move a
23 picture into evidence at this time.

24 THE COURT: What number is it?

25 MS. SWANSON: Without objection.

1 THE COURT: What number?

2 MS. SWANSON: 61.

3 THE COURT: Is there any exception?

4 MS. CAMPBELL: No, ma'am.

5 THE COURT: Without objection, 61. You may
6 proceed.

7 (State's Exh. 61, Photograph of interior of
8 refrigerator, is received in evidence.)

9 BY MS. SWANSON:

10 Q. I'm showing you 61. What is this a picture of?

11 A. That's a photograph of the interior of the
12 refrigerator from the residence.

13 Q. And is that how it was found when you searched the
14 residence?

15 A. It is.

16 Q. And does it appear empty?

17 A. It is not empty, ma'am.

18 Q. Thank you. All right.

19 Ms. Campbell asked you about the food on the walls
20 and the broken glass on the floor. Does anyone have any
21 knowledge of how that got there besides what Nick told
22 police?

23 A. That's correct, ma'am.

24 Q. And Ms. Campbell asked you about interviewing Cathy
25 Evangelista, who is the defendant's ex-wife, right?

1 A. Correct.

2 Q. As well as two of his co-workers, Julie and Sarah?

3 A. Yes.

4 Q. And Mike, his band mate?

5 A. Yes.

6 Q. All right. So all of these people are associated
7 with Nick?

8 A. They are.

9 Q. All right. So what she asked you about are things
10 that Nick told them?

11 A. Correct.

12 Q. None of them had any personal knowledge of fights
13 or how they started?

14 A. I don't believe they had any idea how the fights
15 started. The only one that talked about a fight was
16 Mr. Malvasio and it's something he did not witness.

17 Q. Correct. So none of these people witnessed
18 firsthand any of the altercations between Nick and Becca?

19 A. That's correct, ma'am.

20 Q. So the information they are getting is coming from
21 Nick?

22 A. I believe that's correct, ma'am.

23 Q. And are you aware, Sergeant Adams, that Nick was
24 actually advised several times about services provided by
25 CODA, which is a domestic abuse --

1 A. I don't know the answer to that question.

2 Q. Okay. Would you disagree with me if I told you he
3 was advised several times--

4 MS. CAMPBELL: Objection, Your Honor.

5 THE COURT: What's the basis?

6 MS. CAMPBELL: Well, first of all--

7 MS. SWANSON: No speaking objection. What's the
8 basis?

9 MS. CAMPBELL: Asked and answered. He doesn't
10 know.

11 THE COURT: You can't lead your own witness.
12 Sustained, leading.

13 BY MS. SWANSON:

14 Q. Regarding the 8-inch fillet knife, where was that
15 knife found?

16 A. The knife was found out in a common area inside the
17 residence itself, a substantial distance from where the
18 defendant was found.

19 Q. The defendant or the victim?

20 A. I'm sorry, the victim.

21 Q. All right. And did it appear to have any blood on
22 it?

23 A. It did not appear to have any blood on it.

24 MS. SWANSON: Thank you, Sergeant. No further
25 questions.

1 THE COURT: You may step down.

2 MS. CAMPBELL: Nothing else. Thank you.

3 THE COURT: Thank you, sir. You may step down.

4 You may call your next witness.

5 MS. SWANSON: The State calls Tim French.

6 TIMOTHY FRENCH,

7 having been duly sworn, testifies as follows:

8 THE CLERK: If you would, sir, just state your name
9 for the record and spell it, please.

10 THE WITNESS: Timothy French, F-r-e-n-c-h.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MS. SWANSON:

14 Q. Mr. French, can you tell us where you work and what
15 you do for a living?

16 A. I work for the Beaufort County Sheriff's Office in
17 the DNA lab. I'm a DNA analyst there.

18 Q. All right. And can you explain your educational
19 background and training and employment history?

20 A. I have a bachelor of science degree with a major in
21 biology and minors in chemistry and math from the State
22 University of New York in Cortland. I have additional
23 training since then in conventional forensic serology at the
24 FBI Academy in Quantico, Virginia, a course in bloodstain
25 analysis system at Serological Research Institute in San

1 Francisco, and advanced DNA training at Marshall University
2 in West Virginia.

3 I have additional courses in -- two additional
4 courses in bloodstain pattern analyze, and five additional
5 courses pertaining to trace evidence.

6 Q. Okay. Have you ever testified in court before?

7 A. I have.

8 Q. How many times?

9 A. All told, more than 100.

10 Q. How many times -- have you ever been qualified as
11 an expert in forensic DNA analysis?

12 A. Yes.

13 Q. And how many times were you qualified?

14 A. I believe seven.

15 MS. SWANSON: At this time, the State would offer
16 Mr. French as an expert in forensic DNA analysis.

17 THE COURT: Any objection or questions?

18 MS. CAMPBELL: No objection. I'm familiar with
19 him.

20 THE COURT: So admitted without objection.

21 BY MS. SWANSON:

22 Q. Mr. French, can you please tell the jury what DNA
23 is and what you are looking for when you test DNA?

24 A. DNA is a hereditary molecule found in virtually
25 every cell of your body. It's what makes you human and also

1 what makes you unique. As pertaining to forensics, what we
2 do is we are looking for portions of the DNA where we can
3 get a profile and, hopefully, link that to an individual or
4 individuals.

5 Q. Okay. All right. Can you explain what quality
6 control measures the Beaufort County Sheriff's Office lab
7 employs to make sure that there's no cross-contamination?

8 A. There's quite a few. The first and foremost is
9 probably our accreditation, which is an external body that
10 verifies that the procedures that we use follow the
11 standards for the industry.

12 And pertaining to specific cases, we do things
13 like, you never open question evidence, something that comes
14 from a scene at the same time as a known or, like,
15 something, a standard that comes from an individual. You
16 never have those open in the same place at the same time.

17 Q. And did you follow all of the quality control
18 measures when you tested items in the case of Rebecca Melton
19 and Nick Evangelista?

20 A. Yes.

21 Q. And you tested a number of items, correct?

22 A. Yes, I did.

23 Q. And all of those items have actually previously
24 been entered into evidence. So I'm just going to ask you
25 about your findings.

1 A. Okay.

2 Q. Let's talk about the three pieces of bubble wrap
3 that you tested. What did you find on those three pieces of
4 bubble wrap?

5 A. On the bubble wrap, the No. 3 was actually two
6 pieces of bubble wrap. One of them had a blood stain and
7 the other did not. And then I swabbed the stain, the
8 unstained area of that piece. And then the other piece that
9 did not have stain, I took two swabs from.

10 Q. Okay. And did you match to any known DNA?

11 A. On those samples, I found -- let's see. All of
12 those samples I found the victim, Rebecca Melton. She was
13 either there by herself or a major contributor to a
14 mixture.

15 Q. Okay. And so that means that the presence of
16 somebody else's DNA was there, but it was just too small to
17 determine whose it was?

18 A. That's correct.

19 Q. But the victim, Rebecca, was certainly on the
20 bubble wrap?

21 A. That's correct.

22 Q. All right. Moving on to bubble wrap No. 4.

23 A. Again, on 4, there was blood on that piece of
24 bubble wrap. And when I did DNA typing on that, again, I
25 had the stained area was the victim's DNA. And the

1 unstained area again was a mixture where the victim was the
2 major contributor and there was an additional person in the
3 mixture.

4 Q. Additional person? Were you able to exclude Nick
5 Evangelista from being that additional person?

6 A. No.

7 Q. Okay. Because were his alleles consistent with the
8 alleles that were present in that sample?

9 A. Because it was a minor contributor that was in
10 addition to the victim, there's not enough there to really
11 do a statistical comparison to say someone is there. What I
12 found was that there wasn't anything there that didn't
13 either match the victim or alleles that are consistent with
14 Nick Evangelista.

15 Q. Moving on to bubble wrap No. 5, what were your
16 findings on that piece?

17 A. Again, I found the victim as a major contributor to
18 the swabs from there and, again, a minor contributor that
19 was not suitable for comparison.

20 Q. Okay. Now, you tested a number of swabs that were
21 taken from the condo. Let's go through those. I'm going to
22 point you to No. 11. Whose blood did you find there?

23 A. I did find blood on that swab, and it was the
24 victim's blood.

25 Q. No. 13, swab from door of Bedroom 2, whose blood

1 was that?

2 A. That was blood from the victim.

3 Q. No. 23, swab from frame of door in living room,
4 whose blood was that?

5 A. There was blood there. The DNA profile was a
6 mixture. And the victim was the major and, again, we had a
7 minor that was not suitable for statistics.

8 Q. But you could say the victim's DNA was there?

9 A. Yes.

10 Q. No. 24, swab from window of door in living room.
11 Whose blood was that?

12 A. There was blood there. And that was the victim's
13 DNA.

14 Q. And was there any swab that you tested that tested
15 positive from the defendant's blood?

16 A. Any swab from there? No, there was not.

17 Q. Well, No. 10 from the -- that's a swab from corner
18 hallway.

19 A. Oh, I'm sorry. Yes, there was.

20 Q. So there was one out of all those swabs --

21 A. That's correct.

22 Q. -- that tested positive for defendant?

23 A. Yes.

24 Q. Okay. All right. And so you also tested a paper
25 towel with blood on it?

1 A. Yes.

2 Q. And that's No. 28?

3 A. Yes.

4 Q. Whose blood was that?

5 A. That's the victim's DNA on the blood.

6 Q. And you tested No. 29, paper towel with green

7 gauze. Whose blood was that?

8 A. Again, that's the victim's DNA.

9 Q. And you tested green gauze tape and paper towel,
10 whose blood was that?

11 A. That's No. 30?

12 Q. 30, uh-huh.

13 A. Again, that's blood, and it's the victim's DNA.

14 Q. Now, you did a second round of testing on a few
15 items?

16 A. Yes, I did.

17 Q. Including fingernail clippings from the left hand
18 of the victim?

19 A. That's correct.

20 Q. And that's item 36?

21 A. Yes.

22 Q. Your lab item No. 36?

23 A. Correct.

24 Q. And whose DNA did you find under her fingernails?

25 A. I found the suspect's DNA.

1 Q. And did you come up with a random match
2 probability?

3 A. Yes, I did.

4 Q. All right. And what was that random match
5 probability?

6 A. That is the probability of selecting someone who is
7 not related to that suspect at random from the general
8 population. The odds of that are 1 in 910 quintillion.

9 Q. And that's 910 followed by how many 0s?

10 A. Eighteen.

11 MS. SWANSON: Beg the Court's indulgence. I have
12 nothing further at this time.

13 THE COURT: Any questions for the witness?

14 MS. CAMPBELL: Thank you, Your Honor.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MS. CAMPBELL:

18 Q. Good morning. How are you? So with your DNA
19 testing, there are some limitations on what you can say
20 about a sample. For example, the blood spot that the
21 solicitor talked about in the hallway, you can't tell this
22 jury when it was put there, correct?

23 A. That's correct.

24 Q. So there's no way to age the bloodstain, correct?

25 A. No.

1 Q. All right. So then it could have been in June
2 2014, correct?

3 A. Any time, sure.

4 Q. Right. And we could do this all day?

5 A. That's correct.

6 Q. Because you don't know?

7 A. Right.

8 Q. You just know it's blood and whose blood it is?

9 A. That's correct.

10 Q. But no testimony whatsoever on a time frame as to
11 when it got there?

12 A. No.

13 Q. Thank you. Same thing is true for the paper towel
14 in the trash can, no way to date that whatsoever, correct?

15 A. That's correct.

16 Q. All right. Thank you. Now, the whole concept of
17 touch DNA, let's talk about that just for a minute. When I
18 touch my pen, I'm leaving my DNA all over it, correct?

19 A. That's the theory, yes.

20 Q. Have you found that to be true?

21 A. Sometimes you don't, but most of the times, you
22 do.

23 Q. Right. Okay. So you've been given items from the
24 sheriff's department or other agencies during the course of
25 investigations where you are given an item and asked to see

1 if you can find touch DNA on that item, right?

2 A. That's correct.

3 Q. Perfect. Now, in finding the touch DNA, you have
4 the possibility to then match that to, let's say, what we
5 call the known samples given to you, correct?

6 A. Yes.

7 Q. Okay. So you've got known samples in this case
8 from Rebecca Melton, right?

9 A. That's correct.

10 Q. And Nick, from Nick Evangelista, correct?

11 A. Yes.

12 Q. And you have your report with you there?

13 A. Yes, I do.

14 Q. Of all the items given to you by the Beaufort
15 County Sheriff's Department, not included on your list would
16 be the eight-inch fillet knife, correct?

17 A. Things that were collected by the sheriff's
18 department that I did not test?

19 Q. You never received the eight-inch fillet from the
20 sheriff's department asking you to test it, correct?

21 A. I didn't see a knife at all, no.

22 Q. If you had been given the eight-inch fillet knife
23 and asked by the sheriff's department to test it for touch
24 DNA, you would have done it, correct?

25 A. Yes.

1 Q. And based on your testimony, you may have found who
2 was the last person holding that knife, touch DNA-wise,
3 correct?

4 A. Not necessarily. You don't necessarily find the
5 DNA from the last person that touched it, no.

6 Q. Persons who had handled it, correct?

7 A. Yes, yes, you would.

8 Q. Okay. And that knife was never in your possession
9 and your custody to test, correct?

10 A.. That's correct.

11 MS. CAMPBELL: That's all I have. Thank you.

12 THE COURT: Any redirect?

13 MS. SWANSON: No redirect.

14 THE COURT: Any objection to the witness being
15 excused, from the State?

16 MS. SWANSON: No objection.

17 THE COURT: From the defense?

18 MS. CAMPBELL: No, Your Honor.

19 THE COURT: Sir, you are excused. Mr. Foreman,
20 ladies and gentlemen, we are going to take advantage of this
21 break in testimony to take a morning recess. During the
22 break, please do not discuss the case and please leave your
23 notepads in your seats. We will be out about ten minutes.
24 If you will go with the bailiffs, please.

25 (Whereupon, the jury leaves open court at 11:20

1 a.m.)

2 THE COURT: Who is the State's next witness?

3 MS. SWANSON: The State's next witness is Derrick
4 Nelson. And I believe that will be my last witness.

5 THE COURT: That's the cell phone stuff?

6 MS. SWANSON: Correct.

7 THE COURT: Who is defense's first witness going to
8 be?

9 MS. CAMPBELL: Mr. Evangelista.

10 The court: Does the State have any records they
11 would be entering seeking to impeach his credibility?

12 MS. SWANSON: No. He has no prior record. It's
13 been expunged.

14 THE COURT: Does the State have an expert that it
15 would be calling in opposition to Ms. Veronen's testimony?

16 MS. SWANSON: Yes, Your Honor.

17 THE COURT: Let me ask what may seem like an overly
18 simplistic question, because I don't know your theory. But
19 do you think it might be more appropriate to call some of
20 these witnesses in rebuttal once certain things are brought
21 before the jury? In other words, once his state of mind and
22 character is introduced -- I'm sorry, y'all. My allergy
23 medicine makes me very overheated. I apologize. I know
24 it's a reasonable temperature in here, so I apologize for
25 fanning while we are talking.

1 Do you think that that witness might be more
2 appropriately called in rebuttal, since they have not
3 actually at this point -- well, they have kind of put a
4 state of mind in issue at this point.

5 MS. SWANSON: It has been referred to in the
6 opening. And Ms. Campbell -- I realize it is not evidence,
7 but Ms. Campbell did say that the jury was going to be
8 hearing from Dr. Veronen about his state of mind.

9 THE COURT: But they haven't yet. So I'm just sort
10 of thinking out loud. Does the State have any opposition to
11 Dr. Veronen testifying? I know we discussed it pretrial,
12 but I need to know if there's some objection so we can maybe
13 deal with it, use our time now and deal with it.

14 MS. SWANSON: While I agree that battered spouse
15 testimony is relevant and admissible pursuant to the case
16 law, in reference to the characteristics and state of mind
17 that a battered spouse may display, I don't think it is a
18 proper way to backdoor in self-serving hearsay.

19 THE COURT: So let me ask a quick question. You
20 really don't have any objection to Dr. Veronen? You don't
21 have any opposition or qualification as an expert on
22 battered -- I guess "battered spouse" is sort of outdated
23 now, since so many people cohabituate without marriage and we
24 also have same-sex couples I guess you still refer to them
25 as a spouse. But you have people, though, that are same-sex

1 couples who are not married. So I don't know. What do --
2 do they still call it battered spouse or what do they refer
3 to it as? What is Dr. Veronen going call it?

4 MS. CAMPBELL: I believe she uses battered
5 persons.

6 THE COURT: Battered persons. Wouldn't some of
7 what -- wouldn't some of what you are objecting to go to the
8 scope of her testimony?

9 MS. SWANSON: Correct.

10 THE COURT: And it would more appropriately be
11 raised during the course of what's being elicited from her?

12 MS. SWANSON: Correct. And it's possible that I
13 may not even need to call a rebuttal expert if we are not
14 addressing him specifically.

15 THE COURT: Well, I think, though, that the case
16 law -- and I did some research over the evening recess.
17 There are two cases that I believe are still good law. I
18 asked my law clerk to Shepardize them for me. And let me
19 see. There's one case I need to look at.

20 MS. CAMPBELL: Your Honor, I did e-mail your law
21 clerk two nights ago, I think, with a couple of cases, which
22 I'm sure she provided to you to support our position.

23 THE COURT: Yeah, but I don't read them. I do my
24 own research. I'm sorry. Yeah. I got to be objective.

25 MS. CAMPBELL: Thank you.

1 THE COURT: It's part of a thought process for me,
2 like digging through the weeds to find it. So it's not
3 personal.

4 MS. CAMPBELL: That's fine.

5 THE COURT: I found two cases. One is *State v.*
6 *Grubbs*, which is still good law, as well as *State v. Hill*.
7 *State v. Grubbs* is found at 353 S.C. 374, which is a Court
8 of Appeals case, which is still good law from 2003.

9 And the first case that addresses issue on first
10 impression was *State v. Hill*, which is 287 S.C. 398, which
11 is a 1986 Supreme Court decision that makes reference to our
12 sister states as to how they have treated it. And,
13 actually, there's a plethora of United States Supreme Court
14 precedent on it. I just -- there are too many for me to
15 really sort of take the luxury to read.

16 But our courts have been clear that expert
17 testimony regarding battered -- and they speak in terms of
18 "wife syndrome", because both of these cases deal with women
19 who killed their spouses and who have asserted self-defense
20 claims. But in the fact pattern, there's some indication
21 that they continued to live with their spouse, continued to
22 go back, continued in the eyes, I think factually as it is
23 presented, to subject themselves to abuse. And then when it
24 really wasn't a heated sort of a situation, to have killed
25 their spouses.

1 And so as a matter of fact, *State v. Grubbs*, Dr.
2 Veronen was called in that case as an expert. And Judge
3 Cooper excluded that testimony. They found it was
4 reversible error and that the expert testimony regarding
5 battered wife syndrome to assist in evaluating the
6 defendant's state of mind at the time of -- and I substitute
7 the word "crime" instead of "shooting", because this case
8 doesn't deal with the use of deadly force, that being a gun,
9 would be helpful, that it would be probative on the issue of
10 the defendant's state of mind in establishing their
11 self-defense claim.

12 And, likewise, Hill found the same, which is that
13 it is admissible to help establish a claim of self-defense
14 on a homicide case.

15 So I think the testimony is admissible. Now, the
16 scope of it is a whole other story. And I really don't know
17 what the scope of her testimony is going to be.

18 There's another line of cases that say, even if an
19 expert is rendering an opinion on the ultimate issue, that
20 it's still admissible.

21 There's another case that distinguishes *Hill*, which
22 is *Tate v. State*. I have to assume that is a PCR. And I
23 will have to look at that during the break or while the
24 testimony -- as we continue testimony, to see exactly what
25 that says. I don't know that it's a different holding. I

1 know factually it's different from the *Hill* case.

2 I think clearly she can call the witness. Now, the
3 scope of the testimony, I don't know if any expert -- let me
4 sort of rewind a little bit. I'm anticipating what your
5 witness is going to say, is that she's evaluated him, he
6 manifested syndromes of battered spouse, that is the reason
7 why he kept going back, this is what his state of mind would
8 have been. And that really goes to what he would have
9 thought at the time in terms of whether he -- a reasonably
10 prudent person of ordinary firmness and courage would
11 believe that their life was in danger, which, you know, is a
12 subjective thing with the person who's exercising the force
13 to kill somebody, not what the rest of us would have
14 thought. But it's still a reasonable person standard. So
15 to the extent that she sheds light on his state of mind to
16 that extent, I think it's probably relevant.

17 I don't know that any expert, medical,
18 psychological, or otherwise, is going to say what somebody
19 did at that time when they weren't there. I think
20 ethically, they have some -- at least I've heard them
21 testify: I can't answer that question because I wasn't
22 there and, ethically, I can't say that.

23 So I think that that might be the State's concern.
24 Again, if I'm misunderstanding what you told me earlier,
25 please correct me.

1 MS. SWANSON: No, that's correct. I just want to
2 avoid having Dr. Veronen regurgitate what simply the
3 defendant told her three years after the fact.

4 THE COURT: Yeah, but I don't think an expert -- an
5 expert can formulate an opinion based on hearsay, but there
6 are a line of cases in the last couple of years that have
7 distinguished that they can't simply repeat what someone
8 else said to them. They can say, I formulated my opinion
9 based on these things, based on hearsay, but they don't get
10 to say what the person said and it not be subject to
11 cross-examination.

12 So I think with that in mind, we should be able to
13 deal with Dr. Veronen's testimony. And I would expect that
14 the State would make any contemporaneous objections
15 regarding the scope of her testimony and otherwise.

16 The other thing I heard the State raise was that
17 she evaluated him three years later. I think that would go
18 to the weight of her testimony, the weight of how thorough
19 her evaluation was in cross-examination and otherwise.

20 So is there anything else we need to take up before
21 we all take a powder break?

22 MS. CAMPBELL: Your Honor, I would just -- there
23 was one other case. And like I said, it was one of the ones
24 I sent to your law clerk. It's *State v. Wilkins*, 305 S.C.
25 272, a Court of Appeals case in '91. And I just wanted to

1 make sure I got that to you as well.

2 THE COURT: I will take a look at it.

3 MS. CAMPBELL: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MS. SWANSON: Your Honor, I just wanted to revisit
6 the selfies, which were State's 48 and 49.

7 THE COURT: Have I ruled on those yet?

8 MS. SWANSON: I think you indicated that for the
9 purpose of his physical condition, they would be allowed in.
10 So I would call Derrick Nelson just for the purpose of
11 these, unless --

12 THE COURT: Well, it's up to you. You can call him
13 now or you can wait and see what they produce and then you
14 can call him in rebuttal.

15 MS. SWANSON: Well, I still think that his physical
16 condition is an issue.

17 THE COURT: Oh, I think it's relevant and I think
18 it's probative. I don't know. What else, would you be
19 offering it for? Nothing? Okay. Yeah. I made an
20 observation on yesterday. You started dealing with
21 self-defense, there's several elements that those pictures
22 would be relevant to. One is difference in size. I don't
23 know there's -- yeah, there's been testimony about their
24 ages. But I think relative size, physical strength and
25 other things are relevant. And people usually look very

1 different years later than they look at the time of the
2 incident. And I think that is a contemporaneous picture of
3 what he looked like. It is an accurate depiction of what
4 his musculature would have been, his height, weight and
5 otherwise. And I think it is probative and relevant. And
6 they are self-authenticating. He took them. I don't think
7 there's any question that those are photographs of him that
8 he took.

9 MS. SWANSON: Right. So I guess --

10 THE COURT: Now, who he was sending them to and all
11 that, I don't know that's relevant yet.

12 MS. SWANSON: Well, I suppose -- I mean, I'm happy
13 to ask them to be entered and I can just publish them for
14 the jury. But should the defense wish, I can call Derrick
15 Nelson to say that he extracted them from the defendant's
16 cell phone.

17 THE COURT: What's your preference, Ms. Campbell.

18 MS. SWANSON: That kind of opens the door to what
19 else was on that cell phone.

20 MS. CAMPBELL: Is the State saying they just want
21 to call him now and put in the two photographs that Your
22 Honor deems admissible?

23 THE COURT: Or if you want to admit them without
24 objection, she says she will do that as well.

25 MS. CAMPBELL: I mean, that is -- okay. So without

1 the officer?

2 THE COURT: No. She's saying she can, but it opens
3 the door of where he got them from and how he got them and
4 the time frame.

5 MS. SWANSON: Right.

6 THE COURT: Which they need to establish a
7 foundation for the photos.

8 MS. SWANSON: Right. If I call Derrick Nelson,
9 then I have to ask him where he got the photos. And he
10 dumped all of the information on the defendant's cell phone.

11 MS. CAMPBELL: Right.

12 MS. SWANSON: So then that sort of puts out there,
13 well, what else was contained on the cell phone? I mean, I
14 can call Derrick Nelson. That's fine.

15 MS. CAMPBELL: How would Your Honor be entering
16 them into evidence without calling the officer?

17 THE COURT: If you agree to it, they can come in
18 without the witness. But if you don't, then they need to
19 call the witness.

20 MS. CAMPBELL: I will agree to it. I will agree to
21 it. I mean, obviously, subject to the previous, whatever,
22 objection.

23 MS. SWANSON: So these are State's 48 and 49. And
24 then I will just reserve Derrick Nelson for possible
25 rebuttal. But I would be seeking to question the defendant

1 for impeachment purposes about any of those issues as
2 well.

3 THE COURT: Just let me know that you plan to do
4 that and we will take it up in-camera. So what we will do
5 is we will mark State's 48 and 49 without objection, but
6 subject to the earlier objection, which I've overruled. I
7 find that they are probative. They are relevant. They show
8 a contemporaneous picture of what he looked like at the
9 time, which meets the elements of -- which the State has to
10 disprove self-defense beyond a reasonable doubt. And I
11 think it is certainly relevant and germane on the issue.

12 Is there anything else we need to take up before we
13 all take us a mid-morning break as well?

14 MS. SWANSON: No, Your Honor.

15 THE COURT: Anything from the defense?

16 MS. CAMPBELL: No, Your Honor.

17 THE COURT: Okay. Let's take about ten minutes.
18 It's 11:34. Let's round it to 11:45.

19 (State's Exh. 48, Selfie of Nick Evangelista, is
20 received in evidence.)

21 (State's Exh. 49, Selfie of Nick Evangelista, is
22 received in evidence.)

23 THE COURT: As I understand it, you are going to
24 mark 48 and 49. And will the State's then be ready to rest?

25 MS. SWANSON: Yes, after I publish those photos.

1 And, Judge, I would like to state, as long as the
2 defense has no objection, that we all agree that these were
3 taken --

4 THE COURT: You want to stipulate as to when they
5 were taken, the date?

6 MS. SWANSON: Right.

7 THE COURT: What would that date be? Is it on the
8 photos?

9 MS. SWANSON: No. It's -- they were taken in
10 September of 2014.

11 THE COURT: Is that correct, Ms. Campbell?

12 MS. CAMPBELL: That is correct.

13 THE COURT: Once you rest, I think what we will
14 do -- we will take up motions. And I'm thinking that we
15 might as well let the jury go. And then we will resume -- I
16 can advise the defendant of his rights. And then we will
17 start fresh after lunch.

18 Is there any exception, from the State?

19 MS. SWANSON: None from the State.

20 THE COURT: From the defense?

21 MS. CAMPBELL: No, Your Honor.

22 THE COURT: Please bring in the jury.

23 (Whereupon, the jury returns to open court at 11:54
24 a.m.)

25 THE COURT: Ladies and gentlemen, we appreciate

1 your patience. The State may proceed.

2 MS. SWANSON: Thank you, Your Honor. At this time,
3 the State would request to publish what's been entered as
4 State's 48 and 49, photos of the defendant.

5 THE COURT: You may proceed.

6 MS. SWANSON: And, Your Honor, I believe everyone
7 has stipulated that these photos were taken in September of
8 2014. And I'm publishing State's 48 and State's 49. And at
9 this time, Your Honor, the State rests its case.

10 THE COURT: Mr. Foreman, ladies and gentlemen, the
11 State has rested their case. There's some matters of law
12 that I need to take up with counsel that may take us a
13 little bit of time. So I want to excuse for lunch. You
14 will need to return at 1:30, at which time we will resume
15 the trial. So give us enough time to dispose of what we
16 need to as well as have lunch. We appreciate your patience.
17 Hope y'all have a good luncheon recess. Please do not
18 discuss the case in any manner whatsoever. Please don't do
19 any independent research of any type or read, watch or
20 listen to media accounts about this case. And have no
21 contact with anyone in or about the courthouse as you return
22 from lunch. We will see y'all at 1:30. Enjoy your lunch.
23 Please leave your notepads in your seats.

24 (Whereupon, the jury leaves open court at 11:56
25 a.m.)

1 THE COURT: That's character. How are you going to
2 get that in and what does it have to do with your client or
3 his state of mind?

4 MS. CAMPBELL: It was the beginnings and explains
5 the beginnings of the return scheme that she --

6 THE COURT: I will hear it in-camera. You are
7 going to have to prove that and then you are going to have
8 to prove it by clear and convincing evidence. You are not
9 going to soil her up. You are not going to raise her
10 character. If he acted in self-defense, it's because of
11 what she did to him, not what she did to others, unless it
12 was violent in nature and he was present and witnessed it.

13 MS. CAMPBELL: Thank you, Your Honor.

14 THE COURT: Uh-huh.

15 All right. State ready to proceed?

16 MS. SWANSON: The State is ready.

17 THE COURT: Defense ready to proceed?

18 MS. CAMPBELL: Yes, Your Honor.

19 THE COURT: Do we have the jury?

20 (Whereupon, the jury returns to open court at 1:42
21 p.m.)

22 THE COURT: Good afternoon, ladies and gentlemen.
23 I hope y'all had a pleasant lunch. We are now going to
24 resume testimony. The defense may proceed.

25 MS. CAMPBELL: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 MS. CAMPBELL: As the defense begins its case in
3 this matter, we would call Nick Evangelista.

4 THE COURT: Sir, if you will come to the stand to
5 be sworn.

6 NICK EVANGELISTA,
7 having been duly sworn, testifies as follows:

8 DIRECT EXAMINATION

9 By MS. CAMPBELL:

10 Q. Would you please state your name and spell your
11 name for the court reporter.

12 A. Nick Evangelista. Last name E-v-a-n-g-e-l-i-s-t-a.

13 THE COURT: You may proceed.

14 Q. And what is your address?

15 A. Current address is [REDACTED] in Flowery
16 Branch, Georgia.

17 Q. Who lives at that address with you?

18 A. My father and stepmother.

19 Q. And about how long have you been living there?

20 A. Since August of 2015.

21 Q. Have you been able to find work during that period
22 of time?

23 A. I did.

24 Q. What sort of jobs?

25 A. I was working for UPS.

1 Q. UPS?

2 A. Yes.

3 Q. At some point, Nick, did you come to live on Hilton
4 Head Island or in the Bluffton area?

5 A. Yes, ma'am.

6 Q. And how many years would you say you lived in
7 Hilton Head/Bluffton?

8 A. Approximately 11 or 12 from 2002 to 2014.

9 Q. Now, prior to 2002 -- well, let's talk about, where
10 did you grow up?

11 A. Grew up in suburbs of Indianapolis in
12 Bloomington.

13 Q. Did you attend high school?

14 A. I did.

15 Q. Where did you go?

16 A. Bloomington Lincoln High School.

17 Q. And after that?

18 A. I graduated, went to work for just, you know, basic
19 entry-level jobs.

20 Q. And after that?

21 A. Got married to Cathy in 1988.

22 Q. And at some point, did you begin service to the
23 country?

24 A. I did, shortly after our marriage in November of
25 1988.

1 Q. And in what branch.

2 A. In the Navy.

3 Q. How long were you in the Navy?

4 A. Six years.

5 Q. At some point, did you attend college?

6 A. I did. After I got out of the Navy, I started some
7 night school in the Navy and then finished my college degree
8 moving back to the Minneapolis area.

9 Q. Did you obtain a degree?

10 A. I did.

11 Q. What was that degree in?

12 A. Bachelors in physician assistant studies.

13 Q. Approximately when did you obtain that degree?

14 A. It would be September of 1998.

15 Q. And you were already married to Cathy when you got
16 that degree?

17 A. I was.

18 Q. And after that, what did you do with that degree?

19 A. I immediately had employment down in Southern
20 Minnesota, in a town called Fairmont with Fairmont
21 Orthopaedics and Sports Medicine.

22 Q. Did you begin work?

23 A. I did, immediately.

24 Q. Was Cathy working?

25 A. She was.

1 Q. And during the course of your marriage, did you and
2 cane have children?

3 A. We did. By the time I was in college, we already
4 had two young boys.

5 Q. And the boys' names?

6 A. Nick and Joe.

7 Q. At some point, did you come to the Lowcountry to
8 practice medicine?

9 A. I did. The practice opened up a satellite office
10 down here in Hilton Head in 2002. I'm sorry. I take that
11 back. Yes, 2002.

12 Q. Thank you. And just again, to the best of your
13 memory, so did you stay with that practice?

14 A. I did until the practice folded in 2004. Then I
15 sought work. Found work with Dr. Kirby, who was an
16 independent pain management specialist in Savannah.

17 Q. How long did you stay with that practice?

18 A. A year and a half. I wanted to get back into
19 orthopedics and was recruited by my former employer.

20 Q. And who is that?

21 A. It's Dr. Hope. The current practice is Optim
22 Orthopedics.

23 Q. In your job with Dr. Hope, briefly, what were some
24 of your job responsibilities?

25 A. Physician assistants usually worked directly with

1 the doctor in the office, seeing patients, doing their
2 workups, doing the exams. And would follow, in the surgical
3 practice, would follow him into surgery and be his
4 right-hand man or first assistant during the techniques of
5 orthopedic surgery.

6 Q. Did you -- at some point after you guys were down
7 here with Cathy, did the two of you make a decision to
8 divorce?

9 A. We did.

10 Q. Okay. And the boys, what did they do after the
11 divorce?

12 A. So they stayed with me. I owned a home in
13 Bluffton, which was the better place for them to be. They
14 were still in Wisconsin school there. So they stayed with
15 me.

16 Q. At some point, did the boys start staying with
17 Cathy?

18 A. Yes, much later, 2010.

19 Q. When the boys stayed with Cathy, were you
20 supporting financially the boys or Cathy In 2010 I was, from
21 then on.

22 Q. In the later years, as the boys matured, going to
23 college and things like that, were you supporting them as
24 well?

25 A. Helped as much as I could with Nick, but Joe was

1 still at home, so I was supporting Cathy and Joe.

2 Q. And how would you describe your marriage with
3 Cathy?

4 A. Very good, very good.

5 Q. Good?

6 A. Absolutely.

7 Q. And how about your relationship with Cathy after
8 the two of you divorced?

9 A. Very good. We made a strong effort to stay close
10 and raise the boys.

11 Q. After your divorce, Nick, did you have any
12 relationships, long-term relationships with women, dating
13 them or living with them?

14 A. Nothing over a month or two, no; maybe on two
15 occasions.

16 Q. So if we come forward to 2012, what would be your,
17 I guess, state of mind at that point in terms of seeking a
18 companion, someone to share your life with?

19 A. To fill in the blank, in 2010, I did have a longer
20 term relationship, for about a year and a half. And then
21 moved to Savannah to be with her. And then after that ended
22 amicably, I felt lonely. I didn't date for years. I wanted
23 to be in a relationship. I enjoyed being married. So I
24 felt lonely.

25 Q. Lonely?

1 A. Yes.

2 Q. Did you get any advice or take any action on how
3 you might find a companion for your life?

4 A. The woman I was formerly with advised me to seek
5 online dating. She had been somewhat successful in it.

6 Q. And did you?

7 A. I did.

8 Q. How long was your profile up before you got a
9 response from Rebecca Melton?

10 A. I would say about three weeks.

11 Q. And tell the jury how things went when you got that
12 response from Rebecca and progressed early on there.

13 A. It was good. We had some early phone calls, text
14 messaging back and forth. I was limited to that. I was
15 working a weekend job as well on that particular weekend, so
16 I was limited to texting.

17 Q. Did you eventually meet her and have a date?

18 A. We did. I think after that weekend was the
19 following Tuesday where we met at a local restaurant.

20 Q. What were your feelings about meeting her and
21 beginning to date her?

22 A. I liked her. Very outgoing, very personable,
23 attractive.

24 Q. And at some point, did you make a decision with
25 Rebecca that the two of you would begin living together?

1 A. More than six months later, but, yes.

2 Q. Would that move-in date be sometime around June
3 2013?

4 A. Yes.

5 Q. And where were you living?

6 A. I was living at 4 Kings Court in Hilton Head.

7 Q. Did something happen in those early days that
8 caused you to be concerned about her mental health?

9 A. Yes.

10 Q. What was that?

11 A. The first couple of weeks, two weeks or three
12 weeks, she stayed at my house quite often. She couldn't
13 have her dog there because my landlord didn't allow pets.
14 But she would spend the night quite often. After a couple
15 of weeks, she started to wake up in the middle of the night
16 crying, sad. She missed her dog. I tried to, you know,
17 comfort her best I could...

18 On one occasion, perhaps between week three and
19 four, I woke up, and she was gone at 2 a.m. She didn't tell
20 me she was leaving. I was concerned. But I woke up and,
21 you know, I was due to be up in about an hour to go to work
22 and to be in surgery. So when I was on the road to
23 Savannah, an hour drive, I called her on the phone.

24 Q. So you called to check on her?

25 A. Yes.

1 Q. And when you called to check on her, what concerns
2 developed at that point?

3 A. She was very tearful on the phone, crying. She
4 stated that she was on the beach down in Hilton Head with
5 her dog. She had just taken --

6 MS. SWANSON: Your Honor, hearsay, objection.

7 THE COURT: Sustained, hearsay.

8 BY MS. CAMPBELL:

9 Q. Did you at some point become concerned that she
10 would take her own life?

11 A. Yes.

12 Q. And fearing she would take her own life, did you
13 take any action to try to stop that from happening? What
14 did you do?

15 A. I comforted her on the phone. And I believed it.

16 Q. How long would you say you kept her on the phone?

17 A. 30 minutes.

18 Q. Did you feel like -- when you hung up, what were
19 your feelings about her state of mind at that time?

20 A. I felt there was no threat after we talked for
21 quite some time.

22 Q. And being able to help her through that time, how
23 did that make you feel?

24 A. Concerned. There's more to talk about, certainly,
25 but relieved that there's no immediate danger to her life.

1 Q. Now, at some point, you started to learn about
2 Rebecca's life prior to you in 2012, right?

3 A. Yes.

4 Q. And these things that you started to learn, did
5 they impact how you felt about her?

6 MS. SWANSON: Objection.

7 THE COURT: Basis. Please approach.

8 (Whereupon, the following bench conference takes
9 place.):

10 THE COURT: It's troubling on many levels. One is
11 hearsay; two, you are leading; three, relevance.

12 MS. CAMPBELL: Well, he has a defense of
13 self-defense.

14 THE COURT: I understand that.

15 MS. CAMPBELL: As to information that he would have
16 at the time, it would support who was the aggressor.

17 THE COURT: You are going to have to prove a
18 foundation of that and actual incidents; no hearsay.

19 MS. CAMPBELL: Well, I will ask him specific
20 incidents then that he was aware of.

21 THE COURT: No, that's hearsay. He wasn't there.

22 MS. CAMPBELL: Okay.

23 THE COURT: The objection is sustained.

24 MS. CAMPBELL: Thank you.

25 (Whereupon, the bench conference ends.)

1 THE COURT: Proceed.

2 MS. CAMPBELL: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 BY MS. CAMPBELL:

5 Q. At some point, Nick, did Rebecca threaten your
6 life?

7 A. Yes.

8 Q. Did she threaten the lives of those around you?

9 A. Yes.

10 Q. Who specifically did she threaten?

11 A. My children, my ex-wife, my father.

12 Q. Did Rebecca and you attend a dinner at Kathy's
13 home?

14 A. Yes.

15 Q. Okay. And at that dinner, did anything happen that
16 caused you concern or anything of that nature?

17 A. No. It was quite pleasant. It was early on. It
18 would have been Christmas, yeah, yes.

19 Q. And at Christmas, what happened?

20 A. I don't recall anything other than, you know, we
21 just had a pleasant dinner. Her folks were in town. I
22 greatly wanted her to meet my children.

23 Q. So there was -- was there a time that Rebecca was
24 not allowed back to Kathy's house?

25 A. Yes.

1 Q. And were you present when she was told not to come
2 back to the house?

3 A. Yes.

4 Q. Were your children at the house when that happened?

5 A. Yes.

6 Q. Now, was there a time that you can tell the jury
7 around Memorial Day about an incident of aggression and
8 violence against you from Rebecca?

9 A. Yes, yes.

10 Q. Can you tell the jury what happened?

11 A. The place I lived at the time, that was only about
12 a block and a half from a very famous local seafood
13 restaurant and bar. It was outdoors. Great time of year.
14 So we could literally walked there. We went out there. We
15 had already been there previously. It was a holiday
16 weekend. So they typically had music there and dancing. We
17 had some seafood, started to have some drinks. She
18 started -- we started dancing a little bit.

19 Her speech became slurred. She started to stagger
20 a bit. Just looked like she started to have a little too
21 much to drink. It was getting late. I suggested we go
22 home. She refused and became a little belligerent with me.
23 I thought it best to walk home on my own. I left. Got
24 home.

25 And ten minutes later or so, she came barreling

1 through the door, angry, cursing, yelling at me, threatening
2 my children again, threatening me, pulling my hair, slapping
3 me.

4 Q. Were you able to get her to calm down?

5 A. Not yet, not until I called the police.

6 Q. And when you called the police, what happened?

7 A. She immediately became tearful, apologetic, calmed
8 down.

9 Q. Did the police show up?

10 A. Police showed up.

11 Q. And was Rebecca arrested that night?

12 A. She was not.

13 Q. Were you under the impression they couldn't
14 transport her that night?

15 A. That's correct.

16 Q. And so they left and she stayed?

17 A. That's correct.

18 Q. And did you reconcile with her after that incident?

19 A. We did.

20 Q. And how would that reconciliation happen?

21 A. She apologized. She calmed down. She became
22 tearful, but not any more aggressive, promised things would
23 be fine.

24 Q. Now, on the 4th of July weekend of 2013, was there
25 another incident of violence against you by Rebecca?

1 A. There was.

2 Q. Will you tell the jury what happened?

3 A. Earlier in the day, she was again little bit
4 tearful. Her speech was a little slurred. So I questioned
5 whether or not she had some medicine she was taking. We
6 were invited by my friend Mike and his wife to go out on the
7 boat. They had fireworks over the water over at Sea Pines.
8 So he docked at the seafood restaurant I just spoke about.
9 And we walked there with a cooler, went out at dusk to Sea
10 Pines, watched the fireworks. Came back. And again, 4th of
11 July at that restaurant was pretty busy, pretty festive with
12 music. Again, we already had something to drink. She
13 became belligerent, wanted to stay and dance. I suggested
14 we go home.

15 I went home. Brought the cooler with me. Again,
16 she followed. I was in the downstairs living room. She
17 came through the door, threw the cooler, smashed the bottle.
18 Started throwing things, slapping me, hitting me.

19 Again, I called the police. She went upstairs to
20 the bedroom. I went out to the driveway to wait for the
21 police.

22 Q. And the police did come?

23 A. They did come.

24 Q. And the police documented your injuries?

25 A. Yes.

1 Q. And she was taken to jail that night?

2 A. She was.

3 Q. How did Rebecca then get back into your home after
4 that?

5 A. She was -- I believe she was released on her own
6 recognizance that next day. I made arrangements to stay
7 with my friend, but I brought some of her belongings and so
8 forth over to her friends, Lynn and Chuck, who lived in
9 Kathy's neighborhood. I was familiar with where they lived.
10 And told them the story and said she will probably be coming
11 home today, she's got a restraining order, here's some of
12 her things, if you can take her in. And they initially
13 agreed.

14 MS. CAMPBELL: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MS. CAMPBELL:

17 Q. Nick, I'm going to hand you what's been marked as
18 Defendant's Exhibit 18 and ask you if you recognize that
19 document?

20 A. I do. It's an e-mail sent to my friend Mike
21 Malvasio.

22 Q. Are you the one that sent that e-mail?

23 A. I am.

24 MS. CAMPBELL: At this time, the defendant asks to
25 introduce Defendant's 18 into evidence.

1 THE COURT: Any objection?

2 MS. SWANSON: No objection.

3 THE COURT: Without objection, marked and admitted.

4 (Defendant's Exh. 18, E-mail dated 9/4/14, was
5 received in evidence.)

6 BY MS. CAMPBELL:

7 Q. Nick, will you please read the e-mail for the jury.

8 A. I'm so sorry to even have to write this e-mail to
9 anyone. Seems the woman I love and have loved since
10 December of '12, 2012, has some serious problems that may
11 eventually end in harm to me or others. Tonight after many,
12 many events that none of you are aware of, I had to press
13 charges on Becca for assault. And she's now headed to jail
14 for a bail hearing in the morning on Friday, 7/5. I only
15 tell you this because of the threats she has made not only
16 on my life, but the lives of my children. She claims that
17 her father and family have enough money and power to
18 basically kill at will without any trace or evidence.
19 Tonight I told the police this and wrote it in a statement
20 as she was taken to jail for yet another physical assault on
21 me. Moto, which is Mike's nickname, I included you only
22 because I named you in the statement as a witness to my
23 whereabouts tonight. Sorry, Brother. As for the rest of
24 you, tomorrow she will likely be out on bond. She has a
25 1,000-yard restraining order from my property, but she has

1 never shown much in the way of restraint thus far. If it
2 turns out that harm should come to me or my children in any
3 way, her name is Rebecca Melton, date of birth [REDACTED],
4 originally from Windsor, Ontario, Canada. Again, I'm so
5 ashamed and sorry that I should ever have to involve any of
6 you, but I truly believe she not go quietly. Nick.

7 Q. Thank you.

8 So, Nick, obviously, after she was arrested for
9 assaulting you, at some point, the two of you reconciled?

10 A. Yes.

11 Q. How did that happen?

12 A. Chuck and Lynn called me, since we were not allowed
13 to talk. And I was over at Mike's house in the afternoon.
14 They said they were not comfortable having her stay there.

15 MS. SWANSON: Objection, Your Honor, hearsay.

16 THE COURT: Sustained, hearsay. Sir, you can't say
17 what someone else said to you.

18 THE WITNESS: Okay. She was not allowed to stay
19 with them, so --

20 MS. SWANSON: That's --

21 THE COURT: Same, hearsay.

22 THE WITNESS: I'm sorry.

23 So I eventually allowed her to come back in the
24 home and stay there. And my plan was to stay away from
25 her.

1 BY MS. CAMPBELL:

2 Q. Were there promises made about, you know, her
3 return? How did you feel things were going to be? Were you
4 hopefully or --

5 A. She started texting me in the middle of the night,
6 because I was at Mike's house, saying, you know, I'm
7 sorry --

8 MS. SWANSON: Objection.

9 THE COURT: Sustained, hearsay.

10 THE WITNESS: She promised me things would be all
11 right.

12 THE COURT: Sir, that's hearsay. It's sustained.

13 Ladies and gentlemen, you are to disregard the last
14 answer. Give it absolutely no consideration in your
15 deliberations.

16 You may proceed, Ms. Campbell.

17 BY MS. CAMPBELL:

18 Q. You took Rebecca back, correct?

19 A. I did.

20 Q. And did the relationship get any better or worse?

21 A. For a while, it got better. She was very sad,
22 upset and anxious about, you know, the arrest.

23 Q. And were there periods of time when things seemed
24 calm to you?

25 A. Yes.

1 Q. And even despite the arrest?

2 A. Yes.

3 Q. And what you had been through so far, how did you
4 feel about Rebecca?

5 A. I loved her.

6 Q. Labor Day weekend, can you tell the jury what
7 happened Labor Day weekend?

8 A. It would have been a Saturday on that Labor Day
9 weekend... We lived on the beach in a different condo. We
10 spent the day on the beach having drinks. Came home,
11 cleaned up. There was music down the street at one of the
12 beach markets. So we went down there. The music got over
13 with.

14 She was, you know, starting to slur her speech
15 again and wobble a little bit. She wanted to go to a
16 restaurant that one of her friends owned that we frequented
17 to continue dancing. I suggested we not. And we started to
18 go home. She was not happy with that decision on my part
19 and, you know, started to verbally abuse me until we got
20 home to the condo, which is about a mile walk. And then it
21 became physical.

22 Q. When you got behind the closed doors of the condo,
23 what happened to you?

24 A. Then she started to get physical in the same
25 manner, scratching, hitting, pulling my hair. And I tried

1 to restrain her from punching me.

2 Q. And in trying to restrain her, how would you be
3 doing that?

4 A. With my arms around her upper arms, tried to pin it
5 against her body so she couldn't slap or hit me anymore.

6 Q. And the police came out again, correct?

7 A. Yes, yes.

8 Q. And this would be, I guess -- I'm counting -- one,
9 two, this would be the third time the police had been
10 involved here with the two of you, correct?

11 A. Yes.

12 Q. First two times she was arrested, correct?

13 A. The first time -- first time, not.

14 Q. Not? But the second time, yes?

15 A. Second time, yes.

16 Q. And so on this particular night, did the officer
17 just take both of you all in?

18 A. He did.

19 Q. He did? Okay. So on this particular night and
20 this particular occasion, you had injuries, correct?

21 A. I did.

22 Q. And what were those injuries?

23 A. The similar scratches to the face, some bruises, I
24 believe.

25 Q. And what would happen to your ears during these

1 assaults?

2 A. Get pulled, wrenched, yanked.

3 Q. Now, after all of this, you posted her bond again?

4 A. I did.

5 Q. Did you hire her an attorney?

6 A. I did.

7 Q. How many times did you hire her an attorney for
8 these CDVs?

9 A. For a total of three, but two were linked together.
10 And the third one occurred later in the next year.

11 Q. How much were you paying for her defense?

12 A. Total of \$7,000.

13 Q. Did you hire an attorney for yourself?

14 A. I did.

15 Q. Okay. And who was that attorney?

16 A. Dudley Ruffalo.

17 Q. And you were not convicted of that criminal
18 domestic violence?

19 A. I was not.

20 Q. As a result of her arrest for criminal domestic
21 violence, did the State of South Carolina or the sheriff's
22 office ever offer you victim services?

23 A. I got a phone call after the 4th of July incident,
24 I think the flex business day after the holiday.

25 Q. And were you given any services or offered any

1 services?

2 A. After they had took my information, financial
3 information --

4 Q. Don't tell me what they said.

5 A. They said, no, I didn't qualify.

6 Q. Don't qualify?

7 A. Right.

8 Q. And so you didn't get any help?

9 A. Correct.

10 Q. Okay. So during the time of these assaults and
11 when she was back in the house, if you didn't do what she
12 wanted you or listen to her demands, what sort of things
13 would happen to you?

14 A. At a minimum, verbal abuse and threats to my job or
15 my children.

16 Q. What would happen to your clothing?

17 A. Anything that was in my closet or that I needed to
18 function, you know, professionally or otherwise, was put
19 into bags when I was at work or gone. Oftentimes, I would
20 try to leave and stay at a hotel. And when I came back,
21 there would be no clothing back to go to work the next day.
22 She would take them and hide them.

23 Q. Where are some of the places you had to go and find
24 your clothing?

25 A. First place she took me to was a storage unit at

1 the place she used to live at. She still had a key.

2 Q. And other places?

3 A. One place, after I came back after a stay away from
4 home, she buried them in the woods near one of the local
5 thrift shops, two duffel bags of clothing and belongings,
6 three guitars.

7 Q. So you are having to dig up your clothing,
8 basically?

9 A. Yes.

10 Q. Did Rebecca damage your personal property?

11 A. Yes.

12 Q. What did she damage?

13 A. She threw one of my racing bikes on the ground and
14 proceeded to step on it, on the rear frame.

15 Q. Is that a fragile frame?

16 A. It's carbon fiber. It's not fragile unless you put
17 that kind of pressure on it. And then at that point in
18 time, it's irreparable.

19 Q. And was the bike able to be repaired?

20 A. No. You can't repair a one-piece carbon fiber
21 frame.

22 Q. Did you lose any other personal property?

23 A. Computer.

24 Q. Anything else?

25 A. Two iPhones.

1 Q. Smashed?

2 A. Smashed.

3 Q. In your presence?

4 A. In my presence.

5 Q. And when she was doing this, was she threatening
6 you as well?

7 A. Always.

8 Q. But you loved her?

9 A. I did.

10 Q. What were your thoughts about where the
11 relationship was headed or what might be able to happen to
12 the two of you?

13 A. I mean, she was getting counseling. I would hope
14 that that was helping at some point. And if I persevered
15 with her, showed her I loved her, we could start to work
16 together and make her better.

17 Q. Did the counseling seem to help?

18 A. I don't believe it did.

19 Q. Did she finish the counseling or leave it, or do
20 you have any idea?

21 A. She continued until -- I believe she stopped going
22 around the time her mother got very sick, around the period
23 where she passed away, and then she just wasn't going at
24 all.

25 Q. To the best of your knowledge, was she taking

1 multiple types of medications?

2 A. Yes.

3 Q. Do you know what she was taking?

4 A. I do.

5 Q. What was she taking?

6 A. Effexor, Klonopin, levothyroxine, I believe, for
7 her thyroid, there's an osteoporosis drug in there I can't
8 recall, and Adderall.

9 Q. And these particular medications, did you tell
10 Officer Greene that you never prescribed her medication?

11 A. I did tell him that.

12 Q. But you did?

13 A. Yes, I did.

14 Q. Okay. And what prescriptions did you write for
15 her?

16 A. On two occasions, I wrote for Klonopin for her, and
17 another for an anti-inflammatory called Mobic.

18 Q. Is there a brand name for that?

19 A. Mobic is the brand name. Meloxicam is the --

20 Q. That's a picture of the bottle we see here?

21 A. Correct.

22 Q. By did you write those prescriptions?

23 A. To help her. She was taking Advil. And it was
24 upsetting her stomach. And I knew that MOBIC was one of the
25 medicines more currently developed to not irritate people's

1 stomachs.

2 Q. How about the Klonopin?

3 A. So the Klonopin, on the first occasion when her mom
4 started to become really ill around April of 2014, she was
5 very anxious about it. She took her full supply of it she
6 normally got from the Volunteers in Medicine Clinic,
7 excessively ran out. And she was set to fly. We had bought
8 her ticket. She was set to fly out in April to be with her
9 mom indefinitely. She could not get another refill before
10 then. And her mood was definitely worsening anxiety-wise.

11 Q. What did you feel might happen if you didn't write
12 the prescription?

13 A. Reprisals.

14 Q. Nick, was there a time when you had to barricade
15 yourself in rooms in the home that you lived in to protect
16 yourself?

17 A. There was.

18 Q. What happened?

19 A. It was around the late winter, spring, March time
20 frame, 2014. I went to bed. And, normally, I believe it
21 was a Friday night. Suddenly, in the middle of the night, I
22 woke up to screaming and yelling in the other room, the
23 common area, as others have referred to it, things being
24 smashed. I looked out briefly at the end of the bedroom,
25 asked what's going on. She had one of my guitars in the air

1 and was smashing that on the floor. I immediately closed
2 the door. There was quite a racket. Very noisy it was.
3 And I pulled the dresser in front of the door and barricaded
4 myself for fear of being harmed.

5 It wasn't a couple minutes later, there was a
6 pounding on my door. I didn't know if it was her or not,
7 but I cracked the door open. And it was a sheriff's deputy.
8 So I let him in the bedroom.

9 Q. Were you able to protect yourself that night?

10 A. Well, yes, by that method.

11 Q. And did you leave the home after that?

12 A. I did. The next morning, I just planned to stay
13 away. And even talked about, you know, being done with
14 this. What I did was, I brought her belongings to the jail
15 in her car, left the keys there. Posted her bail. And then
16 went to a hotel indefinitely, close to work.

17 Q. Nick, not only -- well, you said to Officer Greene,
18 writing the prescriptions would be a conflict and you
19 couldn't do that, wouldn't do that, right?

20 A. Right.

21 Q. But you did?

22 A. Yes.

23 Q. And you know, was that wrong?

24 A. Yes, it was.

25 Q. Were there things that you did with Rebecca in

1 businesses around the Lowcountry that you knew were wrong
2 but did it anyway?

3 A. Yes.

4 MS. SWANSON: Objection. Relevance.

5 THE COURT: Basis? Please approach.

6 (Whereupon, the following bench conference takes
7 place.):

8 THE COURT: Is this the subject of something you
9 knew she was going to object to?

10 MS. CAMPBELL: No, not that I'm aware of. This is
11 the return scam.

12 THE COURT: Yeah. I believe we already talked
13 about that. I told you we would take that up in-camera.
14 It's a prior bad act, not the subject of a conviction. It's
15 character. You are going to have to prove it by clear and
16 convincing evidence before it can even meet the indicia of
17 being admissible.

18 MS. CAMPBELL: All right. Thank you.

19 THE COURT: You're welcome.

20 (Whereupon, the bench conference ends.)

21 THE COURT: Mr. Foreman, ladies and gentlemen, I
22 have a matter of law to take up with counsel. During the
23 break, please do not discuss the case. And please leave
24 your notepads in your seats. We appreciate your patience.

25 (Whereupon, the jury leaves open court at 2:17

1 p.m.)

2 THE COURT: Proceed, Ms. Campbell.

3 MS. CAMPBELL: So Your Honor would like me to
4 elicit the testimony?

5 THE COURT: Yes, we are creating a proffer.

6 BY MS. CAMPBELL:

7 Q. So what sort of scam was Rebecca running against
8 the businesses in the Lowcountry with returning items? How
9 did that work?

10 A. She would go to -- typically, her common places
11 were T.J. Maxx, Marshalls or Home Goods. She told me they
12 had generous policies, and take tags, price tags,
13 description tags, off of items and bring them home. Then
14 she would go to Goodwill stores or even rummage through her
15 own belongings to find like items. She had purchased online
16 somewhere one of the price-tag affixes which the stores used
17 and would attach that tag to the items she bought for a
18 couple of dollars or pawned herself, and then returned it
19 for --

20 Q. For the money?

21 A. Yes.

22 Q. And so you were aware of what she was doing?

23 A. Yes.

24 Q. At some point, was she banned from returning items?

25 A. She was. If she didn't own a receipt, or did too

1 many of those returns in a month, she was banned until the
2 next month.

3 Q. And so did she ask you to do the returns in her
4 place?

5 A. She did.

6 Q. And did you?

7 A. I did.

8 Q. Did she ask her daughter to do the returns in her
9 place?

10 A. She did.

11 Q. And her daughter did return for her as well?

12 A. I saw them go out together to do that one day.

13 MS. CAMPBELL: That's the extent of the --

14 THE COURT: For what purpose would you be offering
15 it?

16 MS. CAMPBELL: I'm sorry?

17 THE COURT: For what purpose would you be offering
18 it and how does it mean the clear and convincing standard?

19 MS. CAMPBELL: So the defendant takes the position
20 that in order to have a full-throated illustration of the
21 relationship of Rebecca Melton to Nick Evangelista in terms
22 of her level of manipulation over him, this is relevant to
23 the level of manipulation that she could bring him to.

24 THE COURT: How?

25 MS. CAMPBELL: To have him commit a crime with her.

1 And the level of manipulation --

2 THE COURT: What clear and convincing evidence do
3 you have that a crime actually took place? You are alleging
4 prior bad acts that are not the subject of a conviction.
5 Case law requires that you prove them by clear and
6 convincing evidence. His word without corroboration is not
7 adequate or even sufficient.

8 MS. CAMPBELL: So the receipts that are in
9 evidence --

10 THE COURT: That doesn't prove she stole it. And
11 tags are very, very advanced now. You can't just take a tag
12 off something and put it on something else. Those tags are
13 encoded. They know exactly when you purchase things.
14 That's how you can return stuff without a receipt. So I'm a
15 little hard-pressed as to how any of that would meet the
16 clear and convincing standard.

17 MS. CAMPBELL: That is the purpose for which we
18 offer it. And with that, I have no further argument.

19 THE COURT: What's the State's position on the line
20 of questioning?

21 MS. SWANSON: State's position is that it is not
22 relevant. It simply goes to the victim's character and not
23 something that would be relevant in a homicide case, which
24 are prior acts of aggression made towards the defendant. I
25 think case law is clear that that's what you can get into

1 and no other specific instances of conduct by the victim.

2 I also take the position that there's simply no
3 evidence besides Mr. Evangelista's word that she
4 participated in such a scheme.

5 THE COURT: Anything further from the defense?

6 MS. CAMPBELL: Well, I will just add that her
7 calendar and her handwritten notes, which are in evidence,
8 support her activities of slating the times and the dates
9 for which she would do returns and the times that she would
10 have Nick do returns. So there is evidence in the record
11 that she was making all of these returns, that she solicited
12 Nick to make returns as well. And I believe his testimony
13 as to how the returns were transacted is sufficient to
14 overcome any argument by the State, particularly in terms of
15 our defense and in terms of our battered person syndrome
16 expert who will testify to manipulation of Mr. Evangelista.

17 Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MS. SWANSON: And, Your Honor, if I may.

20 THE COURT: Yes, ma'am.

21 MS. SWANSON: I believe Your Honor actually went
22 into great detail about the notes and the to-do list and
23 that they are simply to-do lists from which you cannot
24 deduce that there's some sort of scheme coming on. Maybe
25 she was a compulsive shopper. Maybe she had a lot of

1 returns. But I would like to note for the record that I
2 will object to any mention of a scheme or anything like that
3 that victim was involved in in a closing argument made by
4 the defense if this is not admitted into the trial.

5 Thank you.

6 THE COURT: You're welcome.

7 The only purpose conceivably that this evidence
8 could be introduced would be to bring into question the
9 character of the deceased and to have the jury believe that
10 she's a thief and, therefore, a bad person and should be
11 looked upon unfavorably.

12 I do not find the defense's argument regarding
13 threats, connivance or manipulation persuasive, nor do I
14 find the defendant's testimony regarding that persuasive.
15 In addition to that, there's a lack of foundation regarding
16 his knowledge of these events. There's no testimony that he
17 was present when Ms. -- when the decedent's daughter is
18 alleged to have returned items. So that's hearsay on top of
19 hearsay. And in addition, he was not present when items
20 were returned. It is only his speculation and conjecture as
21 to what he believed was taking place.

22 There are many other ways this evidence could be
23 looked upon. I don't know if she was a compulsive shopper.
24 I have no idea. Many people have buyer's remorse and return
25 items. And if the barometer for a theft ring is returning

1 items, high-volume places, such as T.J. Maxx and Marshalls,
2 frankly, Walmart as well, would be out of business. You
3 know, that's how they make their money. You return stuff
4 and you buy more stuff.

5 But I haven't heard anything that would rise to the
6 level of what has been characterized as a theft ring of
7 sorts to -- I guess in the next leap would be to fund some
8 habit she has. And I guess that's where it would go.

9 But going back to what case law requires, you are
10 alleging a prior bad act, not the subject of a conviction.
11 You failed to prove for this record by clear and convincing
12 evidence that that is what, in fact, was taking place.

13 And having not met that bar, the Court really
14 doesn't have to look at any of the other elements, but I am,
15 because I think, clearly, this is evidence of her character
16 in violation of Rule 608. And, again, it is introduced to
17 have the jury believe she's a bad person.

18 And, therefore -- you know, my perspective would be
19 the same if it were the defendant. You don't just get to
20 say bad things about somebody and say, therefore, ergo, they
21 are a bad person. And then the next irrational thought from
22 that is that they deserved what happened. It's not
23 relevant. And it's certainly not relevant to any alleged
24 prior acts of aggression.

25 And when you look at the elements of self-defense,

1 which is why I took a few moments to look back through, just
2 to make sure they didn't fit within any of the subcategories
3 that would be relevant to the defendant and the deceased, it
4 certainly doesn't involve contemptuous language or mutual
5 combat. It doesn't fit within any of the elements of
6 battered syndrome. And, certainly, it's not the type of
7 threats contemplated by case law.

8 The type of threats contemplated by case law are
9 such that would rise to the level of provoking an ordinary
10 person of reason and courage to strike the first blow to
11 preserve their own life. So none of that rises to that
12 level.

13 So the proffer will be preserved for the record.
14 The State's's objection is sustained. The evidence is
15 excluded based on hearsay, character, relevancy, and the
16 failure to meet proof by clear and convincing evidence.

17 In addition to that, the Court finds any probative
18 value is outweighed by its potential prejudice.

19 Ready to proceed, the State?

20 MS. SWANSON: Yes, Your Honor.

21 THE COURT: The defense?

22 MS. CAMPBELL: Yes, Your Honor.

23 THE COURT: Please bring in the jury.

24 (Whereupon, the jury returns to open court at 2:28
25 p.m.)

1 THE COURT: Thank you, ladies and gentlemen. We
2 appreciate your patience. We will now resume testimony.

3 Ms. Campbell, you may proceed.

4 MS. CAMPBELL: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 BY MS. CAMPBELL:

7 Q. Nick, did Rebecca ever show up at your place of
8 work?

9 A. She did.

10 Q. Was there a time she showed up at your place of
11 work where you hid, ran out?

12 A. Yes.

13 Q. And why did you do that?

14 A. I was afraid. I did not go up front to where the
15 reception area was, but a couple of the office girls came
16 back to and told me she was up front.

17 MS. SWANSON: Objection, hearsay.

18 THE COURT: Sustained. Sir, you cannot repeat what
19 someone said.

20 THE WITNESS: So, yes, I was afraid.

21 BY MS. CAMPBELL:

22 Q. So at some point, after going out of the office,
23 you came back in, correct?

24 A. No.

25 Q. Did you ever come back to the office that day?

1 A. No.

2 Q. Okay. Now, her physicians, was that Volunteers in
3 Medicine, do you know?

4 A. Yes.

5 Q. And is that a free clinic?

6 A. Clinic for the indigent, yes.

7 Q. You saw the Supplemental Nutritional Assistance
8 Program card in her wallet?

9 A. Yes.

10 Q. It's in evidence?

11 A. Yes.

12 Q. Did you ever see her use it?

13 A. Not when I was with her, no.

14 Q. Who bought the food for the house?

15 A. I bought most of it.

16 Q. The solicitor placed into evidence this State's
17 Exhibit 61, which I'm going to hand you. Now, to get the
18 timeline straight, the food that was on the walls, when was
19 that refrigerator filled, relative to the food on the walls?

20 A. A week after -- or inside, I will say, five days
21 after.

22 Q. How did the refrigerator get refilled with food?

23 A. I went out and reshopped for groceries.

24 Q. Did you know Rebecca to have children?

25 A. Yes.

1 Q. And do you know who the children were?

2 A. I knew all of them, their names. I only met two of
3 them.

4 Q. I'm sorry. Who were the children?

5 A. I know all of their names. I only met two of the
6 children.

7 Q. Do you remember the names of the three children?

8 A. Johnnie was her young son, her late teenage son at
9 that time from her second marriage, and I met Molly and
10 Zack.

11 Q. And did Johnnie ever visit with you and Rebecca?

12 A. No, no, I never met him.

13 Q. Did you ever speak to ex-husband in Georgia?

14 A. Never.

15 Q. But you met and talked with Zack and Molly?

16 A. Yes.

17 Q. Did you ever communicate your concerns to them?

18 A. With Molly on one occasion.

19 Q. And those concerns were what?

20 A. It was after Molly and her boyfriend visited on St.
21 Patrick's Day. I believe that Molly and Rebecca got into a
22 verbal argument that made Rebecca upset.

23 MS. SWANSON: Hearsay.

24 THE COURT: Sustained. Hearsay.

25 THE WITNESS: Rebecca was upset. She told me --

1 THE COURT: Sustained, hearsay

2 THE WITNESS: Rebecca was upset.

3 THE COURT: Sir, you cannot repeat what anyone said
4 to you.

5 THE WITNESS: Okay. Rebecca was upset. We left to
6 go back to my place. Molly and her boyfriend left to go
7 back to Statesboro where she was in school.

8 BY MS. CAMPBELL:

9 Q. But the concerns that you had for Rebecca, you did
10 try to let her family know?

11 A. After we got back to my place, she acted out,
12 verbally making threats, threatening suicide to herself.
13 She left tearful. I had Molly's number. I called Molly on
14 the phone on her way back to Statesboro, expressed my
15 concern about her mother.

16 Q. Don't tell me what Molly said. You communicated
17 your fears, correct?

18 A. Yes, yes..

19 Q. Now, Nick, did there come a time in the summer of
20 2014 when the episodes of violence ramped up?

21 A. Yes.

22 Q. How did that happen? What was going on?

23 A. Her mother was becoming more ill, by her report.
24 And she became certainly more anxious. She was upset about
25 some court-appointed counseling she had to attend.

1 Q. And with the violence ramping up, what did you find
2 yourself doing at night for a place to stay?

3 A. I left on several occasions, either would stay at
4 local hotels or on one occasion stayed at work for a few
5 nights.

6 Q. Did you ever have to stay at Kathy's house?

7 A. That was not 2014, but that was the year prior.

8 Q. And you stayed at Kathy's house because you were --

9 A. Afraid.

10 Q. In the late summer of 2014, did Rebecca leave the
11 country at some point?

12 A. Yes, yes. She told me that her mom was
13 significantly ill.

14 Q. I know it's hard. It's really hard. I know you
15 are trying. So she left the country?

16 A. Yes.

17 Q. Her mother was ill?

18 A. Yes.

19 Q. How were things when she returned with you and
20 Rebecca?

21 A. Significantly worse.

22 Q. How were they worse? Tell the jury.

23 A. From her anxiety and depression and tearful, it was
24 every day. Every day, I couldn't comfort her. I couldn't
25 help her.

1 Q. Was she drinking?

2 A. Yes.

3 Q. Every day?

4 A. Every day.

5 Q. Klonopin every day?

6 A. Yes.

7 Q. Did there come a night that you had to leave your
8 home fearing for your life?

9 A. Yes.

10 Q. What happened that night?

11 A. That would have been Tuesday the 19th of August.

12 Q. Tell the jury what happened to you that night.

13 A. So she wanted to stay up and talk. You know, it
14 was a work night for me on Wednesdays. Typically, I had to
15 be every day very early. It was certainly past midnight. I
16 was trying to sleep. She wanted to continue talking about
17 her mother in a tearful way, she wanted to die, I want to be
18 with my mom. And I just had to go to sleep.

19 MS. SWANSON: That's hearsay.

20 THE COURT: Sustained, hearsay.

21 THE WITNESS: So I just wanted to go to sleep. She
22 wouldn't let me sleep. And she, you know, would not let me
23 sleep. So when she became so angry that I couldn't listen
24 to her anymore, she went out into the kitchen. I started
25 hearing crashes. And I went out to witness her taking

1 everything that I purchased out of the refrigerator, whether
2 it was my milk or sauces or anything, started throwing them
3 against the wall in the room that held the bicycles and in
4 the kitchen itself.

5 Q. Were you afraid at that point?

6 A. Absolutely.

7 Q. Okay. And did you try to leave?

8 A. I did leave. After she got in the car, took her
9 dog with her, I don't know how long she was gone, but I
10 quickly packed a bag for work the next day, got a bike, rode
11 across the street to stay at the Red Roof Inn. And in the
12 morning, I got up and went to work on my bike.

13 Q. Was there a time that you came back home after
14 that?

15 A. Only after assuring myself that things were going
16 to be better. It was Sunday. That was Tuesday night. I
17 came home Sunday morning.

18 Q. At some point in those days, did you suffer a stab
19 wound?

20 A. That would have been that Tuesday night.

21 Q. And how did that happen?

22 A. With a car key.

23 Q. How were you stabbed?

24 A. I was asking for the car keys so I could leave.
25 She had the Jeep key in her right hand, and stabbed me in

1 the forearm.

2 Q. And where were the car keys normally be kept?

3 A. In her bedside table.

4 Q. Were you allowed to get the keys?

5 A. No.

6 Q. You had to be given the keys?

7 A. Yes.

8 Q. The injury to your arm, what was that like?

9 A. It was more than a scratch this time. It punctured
10 what appeared to be a superficial vein. So it was dull
11 blood that I couldn't stop with pressure. I wrapped it in
12 green Coban. They had been referring to it as gauze. I had
13 a supply of that in my house. Wrapped that around there to
14 apply pressure to at least get out of the house.

15 Q. So at some point then, you came back to your home?

16 A. Yes.

17 Q. Were you guys moving?

18 A. We were.

19 Q. So who was packing up?

20 A. She was doing the majority of it during the day
21 while I was at work. She had 90 percent of that
22 responsibility.

23 Q. And when you did come home, was the packing still
24 going on?

25 A. Very much.

1 Q. When you came home, how was her demeanor and
2 behavior towards you?

3 A. It was calmer. At some point, she injured her
4 hand, cut it severely.

5 MS. SWANSON: Your Honor, unless --

6 THE COURT: Basis?

7 MS. SWANSON: -- he witnessed this, this would be
8 hearsay.

9 THE COURT: Basis? Sir, there's an objection
10 pending. The objection is sustained unless you can
11 establish the foundation for his personal knowledge.

12 BY MS. CAMPBELL:

13 Q. Nick, did you see an injury to Rebecca's hand?

14 A. I did.

15 Q. Okay. Was it wrapped?

16 A. It was, with a paper towel.

17 Q. Okay. Seeing an injury to her hand, it being
18 wrapped with a paper towel, what did you try to do to help
19 her?

20 A. I took the paper towel off. I saw that it was a
21 significant injury. If I had seen it in a medical setting,
22 I would recommend closure by suture, you know, surgical,
23 means.

24 Q. Had any items been broken in the apartment that you
25 could witness and see had been broken?

1 A. One of the large glass-top tables..

2 Q. And did you bandage up her hand?

3 A. I first strongly recommended she return with me to
4 the office where I had the means and the tools and sterile
5 environment to repair it myself.

6 Q. Would she do that?

7 A. She refused.

8 Q. So the night that you left Hilton Head, what had
9 the two of you done together that day? Do you recall being
10 with Rebecca that day earlier at all?

11 A. This would be the night of --

12 Q. Uh-huh.

13 A. Which date?

14 Q. On Monday. Something about the -- did you have
15 dinner together? Did you have drinks together? Was there a
16 reconciliation?

17 A. So I came home on Sunday. We reconciled. That was
18 the reconciliation. Then we went out shopping together,
19 yeah, some in Beaufort, some in Hilton Head, and we had
20 dinner together that evening at home.

21 Q. Yes. And did you all go to bed that night?

22 A. Yes.

23 Q. After you went to bed?

24 A. She was tearful, again, still sad, but no
25 aggression.

1 Q. And the next day?

2 A. I went to work. When I came home, she was actually
3 cleaning up the kitchen area that was -- that sustained all
4 the liquid and food damage, but didn't get around to
5 cleaning up the bike.

6 Q. And did you have drinks or dinner that night?

7 A. We did.

8 Q. After drinks and dinner, what happened?

9 A. Talked for a while. Again, she was tearful, upset
10 about her mother. We talked. I tried to comfort her. I
11 went to bed. Things were not aggressive, but she was
12 definitely sad.

13 Q. And when you went to bed, was there intimacy
14 between the two of you?

15 A. Not at that time.

16 Q. So then did you -- Rebecca was naked. You were
17 naked except --

18 A. This was Monday night.

19 Q. So what about the next day then?

20 A. Next day I went to work. And I came home, and she
21 came out to greet me, very upbeat, happy, hugs and kisses
22 and complete 180 of what I was used to from previous days,
23 said, let's have drinks, let's go to bed, I will make
24 dinner, and let's go to bed later.

25 Q. And did you?

1 A. Yes. We had drinks first. Never got around to
2 dinner. It became quite late. It was around 11, 11:30 when
3 we decided to go to bed.

4 Q. About what time did you get home?

5 A. I got home around five o'clock, 5:30.

6 Q. How much did you see her drink before you went to
7 bed?

8 A. Certainly several more than three; five, probably.

9 Q. What kind of drinks?

10 A. Vodka.

11 Q. Any other kind of drink?

12 A. No.

13 Q. So did you go to bed at the same time?

14 A. Yes, we went to bed.

15 Q. And what happened then?

16 A. Made love.

17 Q. When you fell asleep, were you clothed?

18 A. No. I typically slept nude, so did she.

19 Q. What about Rebecca?

20 A. Same thing.

21 Q. So dinner, drinks?

22 A. Uh-huh.

23 Q. Go to bed, make love. You are both nude?

24 A. Yes.

25 Q. Around what time do you recall waking up, any

1 ideas?

2 A. Maybe an hour later, not much more.

3 Q. And how were you awoken?

4 A. Being hit, yelled at, screamed at, verbal names,
5 I'm going to kill you, you need to get out, get out, and
6 then she left the room.

7 Q. When she left the room, did you have any idea where
8 she went or what she went to get?

9 A. I thought that she was going to start packing my
10 things, as it was her habit to do. So I got a pair of jeans
11 on. That's all I had in the room. Followed her into the
12 room. And that's what she was doing. She had the Jeep keys
13 with her so that I couldn't take them. And she was starting
14 to pack duffel bags of all my work clothes so I couldn't go
15 to work in the morning.

16 Q. Now, did you -- during the course of your
17 relationship, did you believe that Rebecca had a gun?

18 A. She told me she had a gun.

19 MS. SWANSON: Objection, hearsay.

20 THE COURT: Sustained, hearsay.

21 Ladies and gentlemen, you are to disregard the last
22 answer and give it no consideration in your deliberations.
23 You may proceed.

24 BY MS. CAMPBELL:

25 Q. So you are standing there in your jeans?

1 A. Yes.

2 Q. And you were trying to get the car keys. Is she
3 giving you the keys?

4 A. No.

5 Q. Why? Are you understanding why she's not giving
6 you the keys? She just told you to get out?

7 A. Exactly. She did that several times and wouldn't
8 let me take anything.

9 Q. How many times had you run out of your home half
10 dressed, nothing in a bag, fleeing Rebecca?

11 A. I never left half dressed, but many times with only
12 the clothes on my back.

13 Q. How many times, Nick?

14 A. Three or four out of the six or eight times I had
15 to leave.

16 Q. Now, when you were trying to get the keys from her,
17 she's trying to withhold the keys so you can't leave.

18 A. Right.

19 Q. What happens; do you recall?

20 A. Started slapping me, scratching my arms with the
21 keys, poking at it, pulling my hair.

22 Q. Did you sustain an injury from the keys then as
23 well?

24 A. Not the serious injury that we've been talking
25 about. That was Tuesday night, but some scratches and

1 scratched my finger.

2 Q. And the photograph that the solicitor showed with
3 your arm bandaged at the hotel, that was the injury from
4 that night?

5 A. No. It was from the 19th.

6 Q. From previously?

7 A. Yes.

8 Q. Now, if you can tell the jury to the best of memory
9 what you were thinking about in the bedroom with Rebecca
10 tussling with the keys?

11 A. I was afraid I was going to get hurt again.

12 Q. Okay. I know it's hard. So were you afraid she
13 might seriously injure you?

14 A. Yes.

15 Q. Were you afraid she might kill you?

16 A. She threatened it, and, yes.

17 Q. Nick, you left that night, right?

18 A. Yes.

19 Q. And you stayed gone a long time?

20 A. Yes.

21 Q. And we've heard you talk about suicide.

22 A. Yes.

23 Q. Do you have any idea what kept you from killing
24 yourself?

25 A. My children.

1 MS. CAMPBELL: Just one moment, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. CAMPBELL: Thank you, Your Honor. That's all
4 we have for Mr. Evangelista.

5 THE COURT: Any cross-examination of the witness?

6 MS. SWANSON: Yes, Your Honor.

7 THE COURT: You may proceed when you are ready.

8 CROSS-EXAMINATION

9 BY MS. SWANSON:

10 Q. All right, Nick. You testified that you live with
11 your father and your stepmother up in north Georgia, right?

12 A. Yes, correct.

13 Q. So they are currently helping you out with a place
14 to stay?

15 A. Yes, ma'am.

16 Q. Correct?

17 A. Yes, ma'am.

18 Q. And you told Robert Greene in your interview that
19 your dad would always be willing to help you out; is that
20 right?

21 A. I thought so at the time, yes. That's right.

22 Q. Yes. That's what you said in the interview?

23 A. I did tell him that, yes.

24 Q. And your marriage to Cathy you testified was really
25 good?

1 A. Yes.

2 Q. So good that it ended in divorce?

3 A. That's not my choice, but, yes.

4 Q. So she left you?

5 A. Yes.

6 Q. And then you and Ms. Campbell talked about

7 relationships and dating other women?

8 A. Yes.

9 Q. And, in fact, you go into a lot of detail about
10 that in your journal, which has been entered as State's
11 Exhibit 35, correct?

12 A. Yes, ma'am.

13 Q. Okay. And this is all your writing, right, Nick?

14 A. Correct, ma'am.

15 Q. And this was all written after you killed Becca,
16 right?

17 A. Yes, ma'am.

18 Q. Like two weeks later?

19 A. Yes, ma'am.

20 Q. And in your journal in talking about your other
21 relationships with women, you go on to recount a
22 relationship history, correct?

23 A. Yes, ma'am.

24 Q. All right. And you say: I suck at relationships.

25 Correct?

1 A. Yes, ma'am.

2 Q. All right. Because I was already so fucked up in
3 the head.

4 Correct?

5 A. Yes, ma'am.

6 Q. And when one woman that you had a relationship with
7 broke up with you, you stated: I got my feelings hurt and
8 said horrible things to make her hurt. My pattern of abuse
9 to this point had always been verbal and never physical.

10 Correct?

11 A. Yes, ma'am.

12 Q. All right. And that relationship, we are talking
13 about someone much younger than you, right?

14 A. Yes.

15 Q. The one that you refer to was young enough to be
16 your daughter, correct?

17 A. No, ma'am. That's not that lady.

18 Q. Oh, that's a different one?

19 A. Yes, ma'am.

20 Q. Is this the one that you called a cunt?

21 A. Possibly. I don't recall.

22 Q. And so after every relationship screw-up, you go
23 into say that you: Had fought drug and alcohol addiction
24 your whole life and still do. So after every event like
25 this, I would just ramp up my drinking to a level that would

1 kill most people.

2 Is that correct?

3 A. Yes, ma'am.

4 Q. And so after these relationships that you talk
5 about in your journal, you reach out online?

6 A. Yes, ma'am.

7 Q. Okay. And that's not the first time you've reached
8 out online for female companionship, is it?

9 A. No, ma'am.

10 Q. Okay.

11 THE COURT: Do you need to take it up in-camera?

12 MS. SWANSON: Yes, Your Honor.

13 THE COURT: Mr. Foreman, ladies and gentlemen, I
14 have a brief matter of law I need to take up with counsel.
15 During the break, please do not discuss the case and please
16 leave your notepads in your seats. We appreciate your
17 patience. Let the bailiffs know if you need anything.

18 (Whereupon, the jury leaves open court at 2:52
19 p.m.)

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

21 MS. SWANSON: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 MS. SWANSON: Would you like me to go ahead?

24 THE COURT: I don't know what you are about to do,
25 so --

1 MS. SWANSON: Your Honor, I do intend to offer
2 State's 50 and 51.

3 THE COURT: Which are?

4 MS. SWANSON: Which are the search Internet history
5 and text messages from Nick Evangelista's phone.

6 THE COURT: Which is which? 50 is which?

7 MS. SWANSON: 50 is the web history.

8 THE COURT: And then I assume then 51 are the text
9 messages.

10 MS. SWANSON: Correct. And I believe they are
11 relevant. The defense brought up that defendant was not
12 someone that jumped from woman to woman, you know, is
13 painting him in a picture of not being a womanizer. But
14 regardless, they are admissions by party opponent and
15 admissible.

16 THE COURT: Let me ask what might seem again like
17 sort of fast-forwarding. In order to use those extraneous
18 statements, he would have to answer inconsistently. And you
19 haven't asked him that question. You asked him in general
20 have you ever -- well, you asked him about other
21 relationships and how those were characterized by him. And
22 then you asked him, have you ever looked for -- and my
23 words, not his -- relationships online. And he answered
24 consistently. He said yes. I think in order for you to use
25 extraneous proof to impeach him, you are going to have to

1 give him an opportunity to either answer consistently or
2 inconsistently. I don't know that he's going to deny it.
3 He may say he did.

4 MS. SWANSON: Right. So I will just go along those
5 lines of questioning and --

6 THE COURT: Is there any exception, Ms. Campbell?

7 MS. CAMPBELL: Your Honor, I maintain the same
8 arguments as I have from the very beginning.

9 THE COURT: You have to remind me. It's Wednesday.

10 MS. CAMPBELL: Two pieces of evidence, they are
11 improper character evidence.

12 THE COURT: How are they character evidence? You
13 put your client's character in play when you started making
14 the assertions you did and when you embarked upon this line
15 of questioning, didn't you? You can't have it both ways.
16 That knife cuts both ways. You can't say he's a wonderful
17 person who was bereft and who was bullied and manipulated if
18 they have another side of that story.

19 MS. CAMPBELL: Again, that's our position. I
20 understand Your Honor's position --

21 THE COURT: I don't have a position.

22 MS. CAMPBELL: -- and what your ruling is.

23 THE COURT: I'm the only objective person in this
24 room. I'm just making an observation. I am not an
25 advocate. I'm just asking a generalize question about the

1 rules. Did you not put your client's character in evidence
2 now?

3 MS. CAMPBELL: His character is in evidence.

4 THE COURT: And didn't you put certain
5 characteristics about his character in evidence?

6 MS. CAMPBELL: Absolutely. And sought to introduce
7 evidence about Rebecca Melton's character.

8 THE COURT: Apples and oranges. It's not because
9 they get to do it, I get to do it. We are now talking about
10 your client. And you put his character in evidence. He's
11 in a whole different position because he's here to be
12 cross-examined. His testimony isn't hearsay. We are
13 talking about what he did on particular instance. So what
14 I'm trying to ask and what I need an answer to is, have you
15 now put his character into evidence?

16 MS. CAMPBELL: Absolutely.

17 THE COURT: And have you not put certain of his
18 characteristics in evidence?

19 MS. CAMPBELL: Absolutely.

20 THE COURT: And would you not agree with the Court
21 that they are not bound to, like, accept your version of it?

22 MS. CAMPBELL: Not at all.

23 THE COURT: So that's one of the -- I don't want to
24 say drawbacks, but that's just the way the rules play out.
25 Once you portray one version of it, they get to say what

1 their version of it is.

2 But now, the other side of that is -- and I thought
3 about it over the luncheon recess is -- do you need all of
4 those? Because don't they get cumulative at some point?

5 MS. SWANSON: Yes, Your Honor. And I am not going
6 to go through every page, certainly.

7 THE COURT: Tell me what it is specifically that
8 you would -- first of all, again, within the rules, you have
9 to give him the opportunity to say -- I mean, he may say,
10 yeah, I went online and looked at escort services, I looked
11 for phones, I looked for radar devices, I looked for lots of
12 things, I exchanged -- now, the text messages, I guess I
13 need to know what text messages you would be seeking to
14 introduce. Because I assume he met some of these folk
15 online or otherwise. And it's clear that a lot of the
16 conversation is about procuring pills in exchange for money
17 and other things.

18 MS. SWANSON: Correct. And I think there's
19 obviously been allegations of the victim's pill use and
20 everything like that.

21 THE COURT: I would think y'all would stipulate
22 that they both were using pills. I mean, it's just clear.
23 It's a two-way street.

24 MS. SWANSON: Yes. They clearly were. And he
25 testified in pretrial on Monday that he would take some of

1 Becca's medications. But, really, Your Honor, the thing
2 that -- the thing that I want --

3 THE COURT: Why don't you point to -- and I have a
4 duplicate copy, I assume, that you gave me. And mine are --
5 the text messages for me are numbered 1 through 26. The web
6 history is numbered -- oh, this doesn't have pages on it. I
7 know it's 335 entries, I assume. I don't think -- well,
8 could be 335 pages. I'm not sure.

9 Let's start with the text messages. And what would
10 you be seeking to ask him about to give him the opportunity
11 to either answer inconsistently -- consistently or
12 inconsistently? Because the only way these actual documents
13 become usable, not the best word, I guess, but is if he
14 denies it, because then you get to use extrinsic proof
15 subject to authentication.

16 MS. SWANSON: I understand.

17 THE COURT: Then you get to call another witness to
18 say how they procured this information and what it says.

19 MS. SWANSON: Okay. So there are just a few that I
20 think go to his state of mind and the fact that this is not
21 a man who is acting as if he is bereft and beaten down, has
22 no confidence, what have you. So if I can point you to page
23 25, because chronologically --

24 THE COURT: Do you have a copy of this, Ms.
25 Campbell?

1 MS. CAMPBELL: I've seen it.

2 MS. SWANSON: Chronologically, the text messages
3 begin at the back.

4 THE COURT: Okay. That would have been helpful.

5 MS. SWANSON: So, yeah. I'm sorry. That's just
6 the way the cell phone dump went.

7 THE COURT: That makes more sense to me now. I'm
8 sorry. I don't mean to chuckle. I was thinking I was
9 crazy, because I was reading the other way, was thinking it
10 didn't make a whole lot of sense for me and I kept doubling
11 back. Now it makes more sense to me.

12 MS. SWANSON: If I can point you to text message
13 140, which is at the top of the page, where defendant says:
14 I'm 45, white, clean, 5' 9", 165 with long, brown, curly
15 hair. I'm staying at an upscale place on the beach. Would
16 love to meet you. Can and will call. Send pic.

17 THE COURT: You said No. 145?

18 MS. SWANSON: No, 140 on page 25.

19 THE COURT: Okay. I'm with you now. Okay. So I
20 guess what question are you going to ask him to give him the
21 chance to admit or deny?

22 MS. SWANSON: Well, I mean, I think I need to,
23 under the rules, I have to tell him what the subject matter
24 is.

25 THE COURT: Under these circumstances, we are

1 talking in generalities. Normally, what you would have is
2 you would have some deposition testimony or some other sworn
3 statement where somebody would say -- you would ask him a
4 specific question. You would ask him that exact same
5 question and they would admit or deny it. And then you can
6 use extrinsic proof to impeach them.

7 Under these circumstances, I think you probably
8 have to ask generalizing questions about his behavior
9 subsequent to the incident. And then you would be able to
10 follow up with particularized entries, I guess. But I would
11 think that you would -- I don't want to put words in your
12 mouth.

13 MS. SWANSON: No, no, no. I can ask him, did he
14 seek the services of escorts in the Pensacola area, and did
15 you send text messages and selfies to those escorts?

16 THE COURT: But are these escorts that he sent
17 texts to or just people he met online?

18 MS. SWANSON: No. Amy is an escort, or we can ask
19 him if Amy is an escort.

20 THE COURT: Is that uncontested? Do we know who
21 Amy is?

22 THE WITNESS: Yes.

23 MS. SWANSON: He did just answer yes.

24 THE COURT: And then what other questions would you
25 be seeking to ask him?

1 MS. SWANSON: Well, let's see, on page 23, text
2 message 129, he jokes about what he packed, which --

3 THE COURT: Linens after Labor Day is what I
4 packed. What's that relevant to?

5 MS. SWANSON: Well, it's relevant to the fact that
6 he says that, you know --

7 THE COURT: Oh, that he had to leave under the dead
8 of night, but this constricts that he actually packed
9 clothes.

10 MS. SWANSON: Correct, and that she was packing for
11 him. She was in the spare room packing his stuff and he
12 followed her in there.

13 THE COURT: I think you can ask him that direct
14 question. And if he denies it, you can cross-examine him
15 with that particular text, because it seems to me that would
16 refute that someone else packed his clothes or they were
17 just thrown out.

18 What else?

19 MS. SWANSON: And if he referred to himself as "the
20 only hot guy at the poolside tables", and that's on page 20,
21 text message 112. I think that refutes Dr. -- well, what
22 he's saying, you know, he was ashamed, he had a lack of
23 confidence, he was beaten down at this time.

24 THE COURT: Is Dr. Veronen going to say that or is
25 he going to say that?

1 MS. SWANSON: Well, he did say that he was ashamed
2 and --

3 THE COURT: He said he was ashamed in the context
4 how he had come to live.

5 MS. SWANSON: Okay.

6 THE COURT: I don't know that he said in general he
7 had low self-esteem.

8 MS. SWANSON: All right. So what I would like to
9 do --

10 THE COURT: Some of this may not become germane
11 until Dr. Veronen comes to testify and you may have to call
12 your witness in rebuttal. I'm just not sure.

13 MS. SWANSON: I understand. What I would like to
14 do then is just ask him if he searched online after
15 Rebecca's death for escorts and whether he made arrangements
16 to meet an escort after killing Rebecca, and then talk about
17 the packing of the linen after Labor Day.

18 THE COURT: Okay. Anything further, Ms. Campbell,
19 before we proceed with questioning of the witness?

20 MS. CAMPBELL: Just to state, again, whether or not
21 we put his character in evidence, that under 404(b) and
22 Lyle, it's more prejudicial than probative. And the State
23 doesn't -- even if we put his character in question, that
24 meeting one of the exceptions to 404(b), they failed to do
25 so.

1 Thank you.

2 THE COURT: These are not evidence of bad acts.
3 People need escorts every day. That's why escort services
4 thrive. I'm not aware -- people pay for companionship all
5 the time. These text messages don't indicate that they were
6 involved in any illicit activities. They are adults. I
7 assume they could -- I have no idea what they did. They are
8 meeting in a public place at a bar. So it's not bad acts,
9 not the subject of a conviction. It's not illegal activity.
10 She doesn't make any reference to him trying to buy pills.
11 So it's beyond character --

12 MS. CAMPBELL: They could characterize it as
13 illicit activity. Despite the fact that Your Honor sees it
14 as commonplace, that's not the way the State is going to
15 picture it to the jury. And we may have jurors that don't
16 believe it's commonplace. And, you know, as my co-counsel
17 whispers to me, an escort is just another name for hooker,
18 so it does --

19 THE COURT: Well, I think they would beg to differ
20 with you, the ones that advertise. I think they would tell
21 you that you are paying for companionship.

22 MS. CAMPBELL: Can I get a jury charge on that?

23 THE COURT: Absent there's something explicit in
24 these texts that say anything other than that, I don't make
25 assumptions. I deal with what is empirical. What is in

1 black and white. If he says he's going to meet somebody at
2 a bar for a drink, that he's going to treat her to a drink,
3 they talk in very -- well, first they talk very openly about
4 the fact that he wants some Vicodin or Percocet, whatever
5 she has, Adderall. But they are not going to ask him about
6 that.

7 However, as I listen to the argument, it's really
8 not about character at this point. It's about impeachment.
9 He made direct statements about certain things of which they
10 can impeach him on. He said that he left the house. He
11 was stressed about leaving the house. He had to leave the
12 house. He basically says he was constructively evicted from
13 his residence with the clothes on his back, half clothed.
14 The text says he packed his clothes, that he put thought
15 into packing his clothes, and had enough hindsight to think
16 it was after Labor Day and he packed linen, which, you know,
17 we live in the south. So linen is always appropriate.

18 We're just having a little summer in winter right
19 now, which we usually don't have. But that text messages
20 directly refutes a statement, which goes to his credibility,
21 which is an impeachable statement. He made it. It's
22 authenticated.

23 The fact that -- his state of mind is relevant.
24 And he has opened the door to that when he says -- the
25 implication is that, especially from the e-mail that the

1 State let come in without objection that he sent to his
2 friend, as well as the other things, is that he was living
3 under duress and that this was just a horrific situation for
4 him. And these statements fly in the face of that state of
5 mind, which is impeachment and state of mind, not character.

6 The things that would fall under the ambit of
7 character, which are bad acts, the State doesn't plan to ask
8 him about, which are the pills. That is illegal without a
9 prescription.

10 MS. CAMPBELL: And I understand what Your Honor is
11 saying and I'm just a little confounded. And I'm sure it's
12 just me. But if his state of mind is the issue, and we've
13 sought multiple times to introduce the things that she said
14 to him that affected his state of mind and we were shut
15 down --

16 THE COURT: I've ruled contemporaneously. And I
17 stand by my ruling. You could not establish foundationally
18 that they took place contemporaneously with any event. And
19 I will stand by how I ruled previously. And, you know, I've
20 ruled on it. I've studied it.

21 MS. CAMPBELL: Thank you, Your Honor.

22 THE COURT: And you will get enough of what his
23 state of mind was. You've got an expert. He already
24 testified that he lived in what was at best an acrimonious,
25 combative situation and that he felt his life was in danger.

1 And it's up for a jury to decide whether they believe that
2 or not.

3 MS. CAMPBELL: Thank you, Your Honor.

4 THE COURT: All right. Are we ready to proceed?

5 MS. SWANSON: Yes, Your Honor.

6 THE COURT: Please bring in the jury.

7 And since this case does involve credibility, I was
8 thinking as we embarked on different conversation, I didn't
9 finish ruling, the evidence and the line of questioning the
10 State is going to embark upon are probative and they are not
11 overcome by prejudice. Any prejudicial effect, they don't
12 have. And his credibility is at issue as to his version of
13 what happened. So credibility is important and they have
14 the ability to impeach the witness with any inconsistent
15 statements that he has made.

16 (Whereupon, the jury returns to open court at 3:10
17 p.m.)

18 THE COURT: Ladies and gentlemen, we appreciate
19 your patience. We will now resume with questioning of the
20 witness.

21 You may proceed.

22 MS. SWANSON: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 BY MS. SWANSON:.

25 Q. So what we were talking about is that when you

1 began dating or when you dated online, that was not the
2 first time that you had sought female companionship online,
3 correct?

4 A. It was the first time, yes.

5 Q. That was the first time, but it's not the only
6 time?

7 A. That's correct.

8 Q. So, actually, after you killed Becca, you sought
9 companionship from escorts in the Pensacola area online,
10 correct?

11 A. Yes, ma'am.

12 Q. And you actually went so far as to make
13 arrangements with an escort named Amy to meet up, right?

14 A. Yes, ma'am.

15 Q. And at that time, you were staying at an upscale
16 hotel on the beach, correct?

17 A. Yes, ma'am.

18 Q. Okay. And you were going to send her a selfie?

19 A. Yes, ma'am.

20 Q. All right. And that was all on September 2nd of
21 2014, about a week after you killed Becca?

22 A. That's what that text shows, yes, ma'am.

23 Q. And then you later joked with Amy about how linen
24 was all you packed, but you know it's out of style after
25 Labor Day, ha, ha? Right?

1 A. Yes, I guess so. If it's there, yes, ma'am.

2 Q. Right. So you are referring to what you packed,
3 making a joke about what you packed, when you were fleeing
4 from the death scene of Rebecca Melton, correct?

5 A. Yes, ma'am.

6 Q. All right. So going back to your relationship with
7 Becca, it began, she was outgoing, personable. You didn't
8 start living together until six months later, right?

9 A. Yes, ma'am.

10 Q. And you actually invited her to live with you,
11 right?

12 A. Yes, ma'am.

13 Q. Okay. Y'all had good times. You testified about
14 the pleasant night that you had meeting her children at
15 Christmas time or when she met your children?

16 A. That way, yes, ma'am.

17 Q. So you had good times and you had bad times, right?

18 A. Yes, ma'am.

19 Q. A tumultuous relationship?

20 A. Yes, ma'am.

21 Q. Now, you told Ms. Campbell that some time on
22 Memorial Day, becca was threatening your children, right?

23 A. Yes, ma'am.

24 Q. Were your children present?

25 A. No, ma'am.

1 Q. Okay. Did she have a weapon when she was
2 threatening your children?

3 A. No, ma'am.

4 Q. And she was not arrested?

5 A. Ma'am, may I correct? Not threatening my children,
6 but threatening to do harm to them, verbal threats that she
7 would do harm to my children.

8 Q. Okay. That she was going to do harm to your
9 children that were not present when she didn't have a
10 weapon?

11 A. Correct, correct.

12 Q. Okay. And then the next three fights that you
13 testified about basically seem to have been when you guys
14 were out socializing and drinking. And we've already
15 established that Becca drank and you drank, and you drank a
16 lot, right?

17 A. Yes, ma'am.

18 Q. And your drink of choice is vodka, right?

19 A. Yes, ma'am.

20 Q. Sometimes whiskey?

21 A. Yes, ma'am.

22 Q. And so these times that y'all got in fights, you
23 guys were both drinking. You were out. You wanted to drag
24 her home. She wanted to continue to be out socializing with
25 friends, right?

1 A. I wouldn't say "drag". I was just tried, to
2 convince her to come home. I thought she had had too much.

3 Q. And, of course, she was the one that was pretty
4 much homebound? She was at home. She didn't have a life
5 outside the house, correct?

6 A. I didn't prevent her from having a life outside the
7 house.

8 Q. Okay. Did she have a life outside the house?

9 A. Sure, she did.

10 Q. Okay. And you testified that she took care of 90
11 percent of the household duties, didn't you?

12 A. That was her offer to me; for, you know, taking
13 care of her. As long as she said she would take care of the
14 place, she didn't really go much of anywhere except to shop
15 during the day.

16 Q. So she went to shop. And that was her life outside
17 the home. So she must have been pretty excited to get out
18 of the house when y'all went out to socialize, right?

19 A. Sure, yes.

20 Q. And 90 percent of those household duties would
21 include paying bills, right?

22 A. Yes.

23 Q. Now, all of these domestic violence accounts that
24 you gave where you called the police, was there anyone else
25 besides you present to witness this abuse?

1 A. No, ma'am.

2 Q. Okay. And so nobody besides you can tell anyone
3 how injuries to you occurred or to her occurred, correct?

4 A. That would be correct, ma'am.

5 Q. And, of course, she can't tell us because she's not
6 here, right?

7 A. Yes, ma'am.

8 Q. That's why you are not able to testify to hearsay?

9 A. Yes, ma'am.

10 Q. Now, all of these times that she abused you, which
11 I believe was, like, three that you named, you never
12 received more than a scratch, correct?

13 A. And a bruised ear, yes, ma'am.

14 Q. Okay.

15 A. And a stab wound.

16 Q. Stab wound, yes. Glad you brought that up. So we
17 see the stab wound in State's 60. The stab wound is right
18 here, Nick?

19 A. Yes, ma'am.

20 Q. And it doesn't appear to be wrapped up, correct?

21 A. At that point, it's over a week old. I had
22 compressed it, closed it with surgical glue at my office on
23 the night of the 19th, or the next morning on the 20th, on
24 my next day at work. Kept it compressed, when it slowly
25 stopped bleeding. What you are seeing there, it's called an

1 off-site type of dressing, which we use in surgery and in
2 the clinic. So at that point, it had calmed down over a
3 week's time.

4 Q. So due to your extensive medical training, you were
5 able to treat yourself and not have to seek treatment
6 elsewhere?

7 A. That's correct.

8 Q. So there's actually no record of this wound except
9 for your testimony and what appears to be a band-aid on this
10 screen?

11 A. That's correct.

12 Q. And so arteries are, like, on your forearm?

13 A. This was a surgical vein, just below the skin. But
14 those are arteries. Those run much deeper anatomically.

15 Q. All right. And you testified a number of times
16 that you wanted to help Becca, right?

17 A. Yes, ma'am.

18 Q. Because you loved her. And you wanted to fix her.
19 And you wanted to make her better, right?

20 A. Yes, ma'am.

21 Q. But you certainly didn't want to make her better
22 after you suffocated her with bubble wrap and failed to
23 render any sort of aid with your medical training? In fact,
24 all you did was hold your finger to her carotid artery and
25 make sure that she had no pulse before you fled without

1 calling 911 or anyone to help, correct?

2 A. Yes, ma'am.

3 Q. You testified about Becca damaging your personal
4 property. Was there anyone to witness that besides you?

5 A. No, ma'am.

6 Q. You testified that despite the fact that it's a
7 conflict and unethical, you provided Becca with drugs,
8 correct?

9 A. Yes, ma'am.

10 Q. You drugged her, correct?

11 A. I provided prescription drugs.

12 Q. Right. And you told Investigator Greene that you
13 would never prescribe drugs to yourself or take drugs,
14 correct?

15 A. Correct.

16 Q. Because you got drug tests?

17 A. Right.

18 Q. But in a pretrial hearing Monday, you testified
19 that you would sometimes take Becca's drugs, correct?

20 A. Correct.

21 Q. Now, out of all these times that police were
22 called, did Becca sometimes call police because of your
23 actions?

24 A. Not when I was with her physically.

25 Q. Did she call police for help?

1 MS. CAMPBELL: Objection. I don't know how he
2 would know how to answer that. He wasn't there.

3 THE COURT: No speaking objection. Approach.

4 (Whereupon, the following bench conference takes
5 place.):

6 THE COURT: That would be an excited utterance. He
7 would be present. It would be based on his rational
8 perception. He testified that they had a combative
9 situation.

10 MS. SWANSON: She called police and he left before
11 police got there.

12 THE COURT: But how do you know that? Is that
13 something he said?

14 MS. SWANSON: In a report.

15 THE COURT: That he said?

16 MS. CAMPBELL: Hm-mm, just in a police report.

17 MS. SWANSON: He testified --

18 THE COURT: Who said it?

19 MS. SWANSON: That he testified on Monday that she
20 called police.

21 THE COURT: Yeah, but you got to be careful about
22 making reference to in-camera hearings. You have to confine
23 that to under oath he previously said that. You don't make
24 reference to it.

25 MS. SWANSON: Okay.

1 THE COURT: I think you are going to have to
2 rephrase it such that he was present when it happened. He
3 has the knowledge of it and that it would come within an
4 exception to the hearsay rule, that being an excited
5 utterance.

6 MS. SWANSON: I will just ask him if he was
7 aware.

8 THE COURT: Yeah, but you are going to still have
9 to establish he was present and it was based on his rational
10 perception.

11 MS. CAMPBELL: Even if he answers that he's aware,
12 then he can explain and fully flesh out what she called them
13 about, which I think was the --

14 THE COURT: No. That is hearsay. It goes beyond.
15 It's a small window.

16 MS. SWANSON: I will withdraw the question.

17 THE COURT: A 911 call is an excited utterance
18 unless you have the recording. Yeah, yeah. Okay.

19 (Whereupon, the bench conference ends.)

20 THE COURT: Is the question withdrawn?

21 MS. SWANSON: Question is withdrawn.

22 THE COURT: You may proceed.

23 MS. SWANSON: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 (Whereupon, the bench conference ends.) BY

1 MS. SWANSON:

2 Q. In previous sworn testimony, Nick, you stated that
3 when you placed the bubble wrap over Becca's face, you just
4 wanted her to stop talking and stop screaming because you
5 didn't want neighbors to hear. And that's because neighbors
6 had heard the fights before, correct?

7 A. That's correct, ma'am.

8 Q. They had heard her screaming for help, correct?

9 A. Yes, ma'am.

10 Q. But, in fact, that wasn't the reason that you gave
11 to Investigator Greene about placing the bubble wrap on her
12 face, was it?

13 A. No, ma'am.

14 Q. And you told Investigator Greene you placed the
15 bubble wrap on her face because you just wanted her to stop
16 breathing? You had had enough, correct?

17 A. Yes, ma'am.

18 Q. And the night that you killed her, you told
19 Investigator Greene in your recorded interview that you guys
20 were fighting about your son. I think it was Joshua.

21 A. Joe.

22 Q. That you guys were fighting about Joe. And then
23 later, under sworn testimony, you said, oh, well, I
24 remembered that we were fighting about the thermostat,
25 correct?

1 A. Both were true. Both conversations were true.

2 Q. And for the days prior to you smothering Becca with
3 bubble wrap, you testified that she was tearful and sad over
4 the death of her mother, correct?

5 A. Yes, ma'am.

6 Q. And sometimes when you would get home from work,
7 she wouldn't even be out of bed, right?

8 A. Yes, ma'am.

9 Q. And then on this Tuesday, seemed like maybe she was
10 coming out of the fog, right?

11 A. Yes, ma'am.

12 Q. She was upbeat, affectionate towards you?

13 A. Yes.

14 Q. And you guys decided to have some drinks. And you
15 testified that she had five vodka drinks over a
16 six-and-a-half-hour period of time, correct?

17 A. Yes, ma'am.

18 Q. And then you made love, correct?

19 A. Yes, ma'am.

20 Q. And everything seemed fine, correct?

21 A. Yes, ma'am.

22 Q. And then just all of a sudden, your story is that
23 Becca just started hitting you and saying, I'm going to kill
24 you, correct?

25 A. Yes, ma'am.

1 Q. And she left the room. And you followed her,
2 correct?

3 A. Yes, ma'am, yes.

4 Q. You followed her into that spare bedroom?

5 A. Yes.

6 Q. Whereas, on August 19th of 2014, you testified you
7 left, rode your bike across the street to Red Roof Inn,
8 correct?

9 A. To escape, yes. After --

10 Q. I'm sorry?

11 A. Yes. She left the house briefly on the 19th, yes.
12 And then I, after she left, I took the opportunity to escape
13 and leave.

14 Q. Okay. So -- but the Red Roof Inn is apparently,
15 like, right across the street from your condo?

16 A. Right across the street and down a few blocks, yes,
17 not far.

18 Q. And you had and were able to ride your bike there?

19 A. Yes.

20 Q. All right. Let's talk about what you packed for
21 your five-week get away to Pensacola. This is your bag?

22 A. Yes, ma'am.

23 Q. All right. And you stated that in prior sworn
24 testimony, she was packing your things, right?

25 A. She was packing them, not allowing me to have them.

1 She told me to leave with what I had on, which is a pair of
2 jeans.

3 Q. Okay. And then I guess you took what she packed
4 after you killed her, right?

5 A. I packed much more than what was already in the
6 suitcase.

7 Q. Oh, okay. So you packed the bathing suit that you
8 are wearing in this picture? And I'm showing you State's
9 48?

10 A. Yes, ma'am.

11 Q. Okay. You testified about the job that you held as
12 a physician's assistant and you worked outside the home
13 Monday through Friday, right?

14 A. Yes, ma'am.

15 Q. And you worked outside the home from about 7 a.m.
16 to 5 p.m. every day?

17 A. Yes, ma'am. Yes, ma'am.

18 Q. And you were able to perform at that job, right?

19 A. Yes, ma'am.

20 Q. You said you had a good reputation with your boss
21 and your co-workers?

22 A. Yes, ma'am.

23 Q. And outside of work, you had hobbies, right?

24 A. Yes, ma'am.

25 Q. You enjoyed biking, correct?

1 A. Yes. Yes, ma'am.

2 Q. And you enjoyed music, right?

3 A. Yes, ma'am.

4 Q. And you had band mates, right?

5 A. For a time, yes, ma'am.

6 Q. And one of which was Mike Malvasio?

7 A. That's correct.

8 Q. Who you sent that e-mail to?

9 A. Yes, ma'am.

10 Q. Right. And that e-mail, Nick, you testified was
11 sent some time after a July 4th of 2013 argument that you
12 and Becca got into, correct?

13 A. Yes, ma'am.

14 Q. And it was sent at 2:23 a.m.?

15 A. Yes.

16 Q. After you had been drinking?

17 A. Yes.

18 Q. And so you had complained to Mike back in 2013
19 about this relationship with Becca?

20 A. Yes.

21 Q. It was not a secret to Mike?

22 A. Correct.

23 Q. And you had complained to your father about the
24 relationship with Becca?

25 A. Yes, ma'am.

1 Q. It was not a secret to your father?

2 A. Not anymore, no, ma'am.

3 Q. You had complained to your ex-wife about your
4 relationship with Becca?

5 A. Yes, ma'am.

6 Q. It was not a secret to your ex-wife?

7 A. Correct.

8 Q. And you had actually reached out to your ex-wife to
9 stay with her?

10 A. Yes, ma'am.

11 Q. To have someplace to go --

12 A. Yes, ma'am.

13 Q. -- when your relationship got too much to take?

14 A. Yes.

15 Q. And co-workers knew about this relationship,
16 correct?

17 A. Not through me, but -- I don't know what they knew,
18 but I didn't offer any information. They knew who she was,
19 yes. She was my girlfriend.

20 Q. And they knew that you hid from her that day that
21 you testified about, right?

22 A. I hid, yes, ma'am.

23 Q. And they knew that you left work that day, right?

24 A. Yes.

25 Q. To avoid her?

1 A. Yes, ma'am.

2 Q. So that wasn't really a secret either?

3 A. No, not anymore.

4 Q. And law enforcement knew about the relationship,
5 right?

6 A. Yes, ma'am.

7 Q. Because you had reached out to them?

8 A. Yes.

9 Q. Speaking of your co-workers, you sent them -- you
10 sent your boss and your co-workers an e-mail on Wednesday,
11 August 27th, 2014, at 4:19 a.m., correct?

12 A. Yes, ma'am.

13 Q. And the subject line says: Family emergency?

14 A. Yes, ma'am.

15 Q. And you made up this whole big lie about getting a
16 call from your brother about your mom, who you've actually
17 been estranged from since 2003, 2004, correct?

18 A. Yes, ma'am.

19 Q. And you are estranged from your mother because guys
20 have butted heads your entire life, right?

21 A. Yes, ma'am.

22 Q. And so you sent this e-mail to say that the mother,
23 who you don't even speak to, has had this significant health
24 stroke bleed, it's very detailed, she's in the ICU in
25 Minneapolis, right?

1 A. Yes, ma'am.

2 Q. And you were advised to come as soon as possible,
3 and you left two hours ago for a flight out of Charlotte,
4 correct?

5 A. Yes.

6 Q. And that was all a lie, right?

7 A. Yes, ma'am.

8 Q. A detailed lie, correct?

9 A. Yes, ma'am.

10 Q. All right. And when you were in Pensacola talking
11 to investigators, you told them that Becca had never used a
12 weapon against you, right? It's on the recorded interviews.

13 A. Okay. I guess that's what I told them, yes.

14 Q. You didn't talk about her using a key as a weapon,
15 or anything else for that matter, correct; not at that time?
16 Three years later you testified to it.

17 A. I don't recall what I said. The one we watched
18 yesterday, I thought I talked about my arm with Detective
19 Greene.

20 Q. But a weapon, a gun, a knife, anything of that
21 nature?

22 A. No, ma'am. That's correct. I did not tell them
23 that she used a weapon or anything of that nature.

24 Q. In fact, when you were talking about your arm to
25 Investigator Greene, because he asked you about any injuries

1 that you had, and you said, oh, I've had that for a while,
2 it's not a big deal?

3 A. Well, at that point, it was four weeks old. It
4 wasn't serious anymore.

5 Q. Yeah. That right there is not a big deal. Do you
6 have a scar?

7 A. Yes, I do.

8 Q. Can we see it?

9 A. Sure. (Witness complies.) There.

10 Q. Okay. So that is on your right --

11 A. Forearm.

12 Q. -- forearm, right here?

13 A. Yes, ma'am.

14 Q. Okay. So not on the top of your right forearm?

15 A. Right. That was a different one then, that night,
16 I guess. I couldn't recall. That was a scratch. I got a
17 scar there too.

18 Q. It must be confusing.

19 A. It is confusing. Sorry.

20 Q. All right. So you testified or -- I'm sorry. You
21 told investigators that you believed that Becca had early
22 stages of dementia, correct?

23 A. I can't say, hearsay, but that's --

24 Q. That's what you told investigators --

25 A. Yes, yes. She was being --

1 Q. -- on the recorded interview, right?

2 A. She was going through a workup for it, yes.

3 Q. And that she had what you considered to be some
4 mental health issues, right?

5 A. Yes.

6 Q. And she had pain associated with osteoporosis,
7 correct?

8 A. I would say never say osteoporosis causes pain,
9 because that's not true.

10 Q. I believe on the recorded interview, you talk about
11 pain that she has.

12 A. From her old injury in her shoulder, which is not
13 osteoporosis as a diagnosis. Osteoporosis is thinning bone,
14 which is typically not a painful condition. It is a weak,
15 soft bone.

16 Q. But you did say that she had some painful condition
17 in your recorded interview?

18 A. Yes.

19 Q. And that she was recovering still, obviously, if
20 she was having pain from it, from that shoulder injury,
21 correct?

22 A. Yes.

23 Q. And you classified it as legitimate, in your
24 answer, right?

25 A. Yes.

1 Q. Let's talk about your physical condition. At the
2 time, you were a little bit thinner, correct?

3 A. Yes, ma'am.

4 Q. Little bit more physically in shape?

5 A. Yes, ma'am.

6 Q. More definition in your arms?

7 A. Yes, ma'am.

8 Q. You told investigators that you would ride up to
9 200 miles a week on your bike, no problem?

10 A. Yes, ma'am.

11 Q. No health issues?

12 A. None.

13 Q. And Becca was not a large woman, was she?

14 A. No, ma'am.

15 Q. And she was an attractive woman, right?

16 A. Yes, ma'am.

17 Q. And she could be sweet and loving, right?

18 A. Yes, ma'am.

19 Q. And she loved you. And she loved her little dog
20 Sugar, right?

21 A. Yes, ma'am.

22 Q. And Sugar was her little dog that you actually left
23 in the condo for dead when you fled, right?

24 A. I didn't mean for him to die, but I left him
25 there.

1 Q. Okay. Well, I mean, you didn't take him or make
2 any arrangements for him, right?

3 A. Yes, ma'am.

4 Q. And you would have no idea as to when the victim's
5 body, Becca, your girlfriend's body, would be found, right?

6 A. Yes, ma'am.

7 Q. Because you certainly didn't tell anyone where you
8 were going, right?

9 A. Yes, ma'am.

10 Q. Or what you did to her, correct?

11 A. That's correct, ma'am.

12 Q. All right. So once you left her dead and her
13 three-pound Yorkie named Sugar in the condo to fend for
14 himself, you took her Jeep, right?

15 A. Yes, ma'am.

16 Q. The Jeep that belonged to her, but you drove all
17 the time, right?

18 A. One of the other cars I drove; not all the time.

19 Q. And your car -- what car was your car?

20 A. It was a Mazda.

21 Q. Okay. And that car was repossessed, right?

22 A. Yes, ma'am.

23 Q. She didn't make you sell it. It was repossessed,
24 right?

25 A. Yes, ma'am.

1 Q. And that's because you had financial problems,
2 right?

3 A. Yes, ma'am.

4 Q. You were in significant debt?

5 A. Yes, ma'am.

6 Q. Because you are actually just not that good with
7 money, right?

8 A. That's correct.

9 Q. And so you took her Jeep and you took her cell
10 phone?

11 A. Yes.

12 Q. And you drove to a frontage road in Hampton and
13 "chucked it in a swamp," right?

14 A. Yes, ma'am.

15 Q. And that was so nobody could track her down, right?

16 A. Yes, ma'am.

17 Q. So nobody would know what happened to her,
18 correct?

19 A. Yes, ma'am.

20 Q. And that's the same reason that you shut your
21 iPhone off and sold it, right?

22 A. Yes.

23 Q. All right. Let's go back to August 26th of 2014,
24 the night that you killed Becca. You never told
25 investigators that you were in fear of your life when you

1 suffocated her, did you?

2 A. I don't recall the conversation, no.

3 Q. In fact, you told them things like, you blacked out
4 and you snapped and you had had enough, right?

5 A. Yes, ma'am.

6 Q. And that's when you held these pieces of bubble
7 wrap to her face, correct?

8 A. Yes, ma'am.

9 Q. And over her entire face?

10 A. Yes, ma'am.

11 Q. With both hands, correct?

12 A. Yes, ma'am.

13 Q. Until she stopped breathing, correct?

14 A. Yes, ma'am.

15 Q. And so after you did that, you wrote about it?

16 A. Yes, ma'am.

17 Q. Again, referring to your journal, and a couple
18 weeks later, you say that you took the life of a good and
19 beautiful person, right?

20 A. Yes, ma'am.

21 Q. And that she didn't deserve to die?

22 A. Yes.

23 Q. And that: She never deserved to be hit, slapped or
24 abused either, no matter how many times she initiated it,
25 which was very often.

1 A. Yes.

2 Q. "Often" was your word, correct?

3 A. Yes, yes.

4 Q. And that: In the end, there are two sides to every
5 story. The truth is somewhere in between. I say that not
6 to defend my action, because it's indefensible.

7 Those are your words, right?

8 A. Yes, ma'am.

9 Q. And on September 17th of 2014, you said: The day
10 she died, she began to talk about it once again. As always,
11 her behavior escalated into late at night. She was out of
12 control. Even after making love, she became so angry and
13 told me to leave. It was just like so many fights before,
14 except this time, I had had enough. In a moment I don't
15 really remember -- although you recounted in pretty good
16 detail to Investigator Greene, on video -- I finished it. I
17 took what I could and ran. I haven't shed a tear since.

18 Those are your words, right?

19 A. Yes, ma'am.

20 Q. And that's your version of events back in 2014
21 before you had three years to think about it, right?

22 A. Yes, ma'am.

23 Q. Now, I believe you testified that on -- actually, I
24 withdraw that.

25 MS. SWANSON: Beg the Court's indulgence.

1 MS. CAMPBELL: Yes, ma'am.

2 THE COURT: Sir, if you will take the stand. You
3 said the next witness is?

4 MS. CAMPBELL: Dr. Veronen.

5 THE COURT: Please bring in the jury.

6 (Whereupon, the jury returns to open court at 4:05
7 p.m.)

8 THE COURT: Ladies and gentlemen, we will now
9 resume testimony. Does the defense have any redirect?

10 MS. CAMPBELL: We do not.

11 THE COURT: Sir, you may step down.

12 And you may call your next witness.

13 MS. CAMPBELL: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MS. CAMPBELL: The defense calls Dr. Lois Veronen.

16 LOIS VERONEN,

17 having been duly sworn, testifies as follows:

18 THE COURT: Please state your name and spell your
19 last name for the court reporter.

20 THE WITNESS: MY full name is Lois Joan Veronen,
21 V-e-r-o-n-e-n.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q. Dr. Veronen, what is your education background?

1 A. I have a bachelor's degree and master's degree and
2 a Ph.D. in clinical psychology.

3 Q. And are you licensed in the state of South
4 Carolina?

5 A. I'm licensed in the state of South Carolina. I've
6 held that license since 1978.

7 Q. And your work experience, what has that been?

8 A. Well, after I received my Ph.D., I was faculty at
9 the Medical University of South Carolina in Charleston. And
10 then became faculty at Winthrop, now University, in Rock
11 Hill, South Carolina. And I retired from that position and
12 am presently in private practice in Rock Hill, South
13 Carolina.

14 Q. Have you ever testified before in a South Carolina
15 court?

16 A. I've testified probably about 40 times in family
17 court, circuit court, civil court.

18 Q. And have you ever been qualified as an expert in
19 South Carolina in any certain field?

20 A. Yes, I have.

21 Q. Okay. And what field were you qualified as an
22 expert in?

23 A. The reaction of persons who have been victims of
24 violence.

25 MS. CAMPBELL: And at this time, Your Honor, we

1 would submit Dr. Lois J. Veronen as an expert in that
2 field.

3 THE COURT: Any questions or objections?

4 MS. SWANSON: I do have a question.

5 THE COURT: You may proceed.

6 VOIR DIRE

7 BY MS. SWANSON:

8 Q. Is that, Dr. Veronen, is that the terminology that
9 has been used the 40 times that you've been qualified as an
10 expert?

11 A. Well, it's one of the terms that's been used.
12 Sometimes we use the term "spousal violence", "battered
13 woman syndrome", "battered person syndrome", battered child
14 syndrome. But the psychological literature identifies
15 people as "victims of violence".

16 Q. Okay. So, I mean, have you ever been qualified in
17 battered man syndrome?

18 A. Not specifically battered man syndrome. That is
19 subsumed under battered person syndrome. The language has
20 become gender neutral over the years.

21 Q. And you are board-certified, right?

22 A. Yes. The certification is a license in South
23 Carolina. It's a clinical license. And I'm licensed in the
24 state of South Carolina, No. 259.

25 Q. Okay. But you are not board-certified? You are

1 not a forensic psychiatrist, are you?

2 A. No. I have not gone to medical school. I've gone
3 to graduate school. And graduate school is the school that
4 clinical psychologists do. Psychiatrists go to medical
5 school and psychiatrists prescribe medications.
6 Psychologists do testing and treatment and often engage in
7 research.

8 Q. Right. And forensic psychiatrists are actually
9 trained to apply the law to mental health issues, correct?

10 A. Forensic psychiatrists are trained that way, yes.

11 Q. And you are not a forensic psychiatrist, correct?

12 A. I have -- I am not a forensic psychiatrist. I am
13 not a psychiatrist. Okay? And I have not gone to law
14 school. So I do not use the application of the law,
15 although my testimony has been helpful in cases, many
16 cases.

17 Q. In defense cases?

18 A. In defense cases and prosecution cases.

19 Q. Okay. But, again, you have no specific training or
20 certification to apply the law to mental health issues,
21 correct?

22 A. I have no particular certification, correct.

23 MS. SWANSON: Thank you. Nothing further.

24 THE COURT: Any objection?

25 MS. SWANSON: No objection as far as an expert in

1 clinical psychology.

2 THE COURT: Any exception to that designation?

3 MS. CAMPBELL: Your Honor, I think she's been
4 qualified previously, as she's testified, as an expert in a
5 number of fields and she listed those fields.

6 THE COURT: But not what you articulated. So I
7 need y'all to agree on right quick and let me know what you
8 agree on so I can qualify her.

9 MS. CAMPBELL: I'm offering her as an expert --

10 THE COURT: I need you to talk to the solicitor and
11 y'all come to an agreement as to the terminology and we'll
12 go from there.

13 MS. SWANSON: I have no objection to --

14 THE COURT: I want y'all to talk to each other real
15 quick without us being privy to it and come up with a term.
16 Thank you.

17 MS. CAMPBELL: The solicitor and I have agreed that
18 the terminology would be battered person syndrome.

19 THE COURT: Works for me. Without objection, you
20 may proceed.

21 MS. CAMPBELL: Thank you.

22 BY MS. CAMPBELL:

23 Q. Dr. Veronen, having been qualified to testify
24 before this jury, you submitted a report to me, correct?

25 A. Correct.

1 Q. And in that report, you state the purpose of the
2 examination. And what was the purpose of the examination of
3 Nick Evangelista as you detailed it in your report?

4 A. Well, the purpose was to conduct psychological
5 testing so I could identify his current functioning, to
6 identify the background of the relationship between Rebecca
7 Melton and Nick Evangelista. And also to determine, at the
8 time the incident took place, the death of Rebecca Melton,
9 what was Nick's state of mind.

10 Q. Did you look at -- the purpose was to look at the
11 history and psychological profile, and to see whether or not
12 Nick Evangelista was consistent with spousal or battered
13 person syndrome?

14 A. Correct.

15 Q. Okay. And can you explain to the jury briefly what
16 is the battered person syndrome?

17 A. Okay. The battered person syndrome is basically
18 reference that persons who have been victims of abuse,
19 control, psychological repeated battery, produce changes in
20 their psychological makeup. Generally, those changes are in
21 the way of higher levels of fear. Sometimes we see arousal
22 to things that are associated with previous types of battery
23 and assaults. Sometimes we see an phenomena which we talk
24 about as sort of dissociation. It's a numbness or a
25 psychological disconnection from the immediate threat and

1 reality of a situation.

2 So violence, over a long period of time, or
3 sometimes as in the case of a single sexual assault,
4 sometimes it can be so profound that it produces these
5 psychological changes.

6 Q. Is there something that in the field that's known
7 as the fight, flight or freeze symptomatology? What is that?

8 A. Well, we try to identify that generally for sort of
9 more for the layperson. But it's more regarded as sort of
10 the primitive part of our brain is engaged in fight, flight
11 or freeze when we are in high arousal, high emotional
12 arousal. It's almost as if the cognitive portion, our
13 frontal lobes, our ability to reason, is not functioning at
14 that time. It's often as sort of an automatic response or
15 primitive response to threat.

16 Sometimes, you know, we've heard of unusual
17 phenomena that occur for people who are in high emotional
18 arousal. You know, a slender, small woman capable of, you
19 know, extracting her child from, you know, under a car, you
20 know, feats of extraordinary phenomena that occur from sort
21 of the primitive part of our being. It's not that somebody
22 would think about that. They just automatically respond.

23 Q. Thank you. And so the victim would not be, I
24 guess, having thoughtful, intentional behavior; is that
25 correct?

1 A. Correct.

2 Q. Okay. And it's more instinctive behavior?

3 A. Correct.

4 Q. The psychological research that you reviewed in
5 terms of intimate partner victimization, have the studies
6 that you've reviewed compared the victims of that intimate
7 partner violence to any prisoners of wars, things like that?
8 What does the research tell us on that?

9 A. Well, very definitely, when I was conducting
10 research in the late '70s and into the '80s, there was in
11 1980 identified in the diagnostic and statistical manual of
12 mental disorders. They identified something called
13 post-traumatic stress disorder. And that was based on sort
14 of returning Vietnam veterans who were coming back and were
15 still displaying sort of post-war effects. They were not in
16 threatening situations, but sometimes in situations that
17 might be similar. They might have sort of what we might
18 consider to be automatic responses.

19 Q. Triggers?

20 A. Triggers. And so at the same time, we were
21 conducting research at the Medical University of South
22 Carolina on victims of sexual assault, female victims of
23 sexual assault, and found that we were able to communicate
24 with our peers in the psychological field by saying that
25 many women who had had violent sexual assaults were similar

1 to the returning Vietnam veterans who had diagnosis had
2 initially been developed.

3 Q. Is it fair to say, really in terms of this
4 research, and to some extent, your involvement in it, we are
5 talking about 40-plus years of research in this area?

6 A. Correct, we are talking about 40-plus years.

7 Q. Now, when you were asked to engage with Nick
8 Evangelista, what tools did you have to work with other than
9 meeting with Nick? What did you have to work with?

10 A. I used -- utilized what's known as the detailed
11 assessment of post-traumatic stress disorder, which is 104
12 questions that identifies on a rating scale and identifies
13 major traumatic experiences that people have had, the
14 severity of those traumatic experiences. And, you know, so
15 their current reactions to that experience, the reactions at
16 the time of the trauma and the reactions currently.

17 So I used a detail assessment of post-traumatic
18 stress. I used also a Personality Assessment Inventory,
19 which is a very widely used clinical instrument which gives
20 us kind of validity scales and helps us with understanding
21 what other current functioning there might be other than
22 psychological trauma, if trauma is suspected.

23 I also used a detailed -- it's called an
24 interpersonal violence interview. It's a tool which is used
25 in the area of research and clinical work to gather

1 information's on specific incidents of violence that a
2 particular individual has experienced. And I also did just
3 a general clinical interview.

4 Q. Were you provided the case file in this case?

5 A. Yes, I had the full, what we call the discovery,
6 all the materials that were available at the time to the
7 defender and to the solicitor.

8 Q. And did you have also included in that the full
9 mental health records for Rebecca Melton?

10 A. Those were not initially available, but I was able
11 to secure those later, the entire record for Rebecca
12 Melton's treatments at the Volunteers in Medicine Clinic.

13 Q. Now, in your report, you answer four questions. So
14 I would like to just talk about each question, but let's lay
15 out what the four questions were that you answered. So the
16 first question is: What is the background of the
17 relationship between Rebecca Melton and Nick Evangelista?
18 And you addressed that, correct?

19 A. Correct.

20 Q. The next question that you addressed was: What was
21 and is Nick's level of psychological functioning, correct?

22 A. Correct.

23 Q. The third question was: How did the physical abuse
24 and psychological control exerted by Becca impact Nick's
25 cognitive and psychological functioning?

1 A. Correct.

2 Q. And the fourth question is: What was Nick's state
3 of mind at the time of Becca's death, correct?

4 A. Correct.

5 Q. So I'm going to go to the second question, which
6 deals with what was and is his psychological functioning.
7 Can you talk to the jury about that, please?

8 A. Certainly.

9 Q. I'm looking at page 7, fourth paragraph maybe.
10 But, again, you take it from where you need to, Doctor?

11 A. Well, utilizing the testing that we did, the
12 results of Personality Assessment Inventory, also the
13 detailed assessment of post-traumatic stress, also utilizing
14 the interpersonal victimization incident reports, and what
15 we determined was that Nick was traumatized by the
16 increasing threats and Becca's degrading behavior.
17 Basically, to the outside world, Nick was a hard-working,
18 competent, compassionate professional, treating patients in
19 the orthopedic clinic or assisting surgeries at the
20 hospital.

21 At home, at night with Becca, he became an
22 appeaser, a highly conforming partner to her depressive and
23 at times irrational demands.

24 Q. Now, the testing that you use, don't they have
25 built-in what we call validity scales? And what did you

1 find about the validity scales for the testing for Nick?

2 A. Nick answered in a very honest and straightforward
3 manner. And there was no elevation on the scales that would
4 indicate he was inflating to look kind of better than he
5 was, clinically, or worse than he was clinically. So we
6 felt like we had a very valid assessment of his
7 functioning.

8 MS. SWANSON: Your Honor, I would object to the
9 expert testifying to the defendant's credibility.

10 THE COURT: Sustained. Bolstering. Rephrase.

11 BY MS. CAMPBELL:

12 Q. The results of the DAPS were what for Nick?

13 A. Well --

14 Q. You found he was suffering from two mental
15 disorders. What would those be?

16 A. He was suffering from the disorder of
17 post-traumatic stress disorder and major depressive
18 disorder.

19 Q. What would characterize those? And what was Nick
20 experiencing with the feelings and things of that nature?

21 A. Well, the nature of post-traumatic stress disorder
22 is that you are reliving portions of the distressful traumas
23 that you've endured. And so at times, there were feelings
24 of terrible anxiety, fear, feelings of helplessness, high
25 emotional arousal, discomfort, sometimes seeking to avoid

1 further confrontation by being, perhaps, passive and
2 accommodating.

3 Q. Were there periods of feelings of worthlessness and
4 hopelessness as well?

5 A. Well, that's with the depressive disorder. The
6 depressive disorder is a major depressive disorder. We
7 often find there are feelings of helplessness, hopelessness,
8 thoughts that the future might not be a promising future.
9 And sometimes with depression, we also find that people have
10 changes in appetite and difficulty in sleeping well and
11 functioning well. Although Nick was so exhausted most of
12 the time, that when he slept, he was able to sleep well.
13 But he was often --

14 MS. SWANSON: Objection, hearsay.

15 THE COURT: I'm going to overrule the objection.
16 She can base her opinion on hearsay. She just can't repeat
17 what he said to her. You may proceed.

18 By MS. CAMPBELL:

19 Q. You can continue. Was there something else you
20 wanted to add or shall I move along?

21 A. Move on.

22 Q. Okay. Thank you. You know, Dr. Veronen, I guess
23 most people typically think of women as being the victims in
24 this scenario. What has your research shown about men
25 becoming victims and suffering under the battered person

1 syndrome?

2 A. Well, the research is pretty clear that in terms of
3 what we call crying victim research, that more women are
4 reporters in crying victim research.

5 Q. Why would the men not be reporting as often?

6 A. The men would not be reporting because of feeling
7 pride, that they should be able to handle this situation.
8 They should be able to manage this situation. Also, you
9 know, there's a stigma of reporting that you are a victim of
10 assaults and violence by the hands of your partner. And
11 there's certainly humiliating aspects, embarrassment, all
12 those factors that are associated with men not reporting.

13 But if you look at the research that's done on the
14 conflict in relationships, and that relationship -- research
15 is conducted from the standpoint of a relationships, marital
16 research -- or cohabitating relationships, we find that men
17 and women report equal levels of violence, and that
18 sometimes -- well, many women engage in more controlling
19 kinds of behaviors; perhaps less in terms of the violence,
20 but the rates are very, very similar.

21 Q. And controlling behaviors, would that, in terms of
22 things like cutting you off from friends and family, taking
23 over control of the money, give us some examples of the
24 controlling behaviors that the abuser might use against the
25 victim to isolate them and bring control over them?

1 A. Certainly. The idea of isolating -- certainly,
2 isolate from family and previously levels of activities, and
3 certainly that can be done by objecting to engaging with
4 family and friends, perhaps making a scene and embarrassing
5 the individual at that time. So it turns out to be a type
6 of psychological control to keep the person isolated.

7 Also, certainly controlling monetarily, not giving
8 the person, you know, money to spend, taking their money,
9 restricting use of vehicles, those are all kinds of
10 controlling behaviors that an individual -- certainly,
11 there's name calling that can occur, threats of embarrassing
12 the person at work or calling, you know, threatening to say,
13 well, you are not going to be believed if you report this.
14 That kinds of things are controlling behaviors.

15 Q. Now, a lot of people, Dr. Veronen, might think and
16 say, well, why don't they just leave? Is there anything in
17 the research about the cycle of violence that keeps the, you
18 know, person who has been the victim of this abuse coming
19 back and coming back? What is that about?

20 A. Well, violence in relationships does not -- it's
21 not 24 hours a day, 7 days a week. It's intermittent. And
22 the nature of intermittency, a violent event followed by a
23 time in which the person might be compassionate and
24 repentant and say, I'm sorry for this, it will never happen
25 again, and then the bonds of love and commitment.

1 You know, Nick was in his 50s, as was Becca at this
2 point in time, you know, the idea of wanting a stable,
3 caring, loving relationship over time. So people often --
4 and, you know, the research is also very clear that people
5 in very long-term relationships will report bad times. You
6 know, that was a real bad time, we got through.

7 So part of the reason is that we sometimes say love
8 springs eternal. So that, you know, it continues in the
9 face of very difficult times. And so it is mysterious why
10 people don't use kind of their best interest and say, enough
11 is enough, and I'm leaving this relationship. But many
12 times, we find that people do not leave abusive
13 relationships. They continue in this cycle. And it's based
14 on sort of intermittency. It's based on the bonds of love
15 and commitment. It's based on saying you are sorry after
16 you engage in that kind of behavior. And also, you know,
17 sort of the pride, I want a relationship that's working, I'm
18 going to stick it out, I'm going to stay in this
19 relationship, I love the person.

20 Q. Have you experienced in the research also the
21 fear -- the victim's fear of reprisals or fear of action
22 from their abuser as they are trying to get out?

23 A. Oh, yes, very definitely. And that's often the
24 most dangerous time in a relationship, when the person is
25 announcing that they are going to leave. That is the time

1 that violence is most likely to be a factor.

2 Q. Now, Dr. Veronen, what did you find Nick's
3 cognitive abilities to be?

4 A. Well, overall, certainly, Nick's cognitive
5 abilities in terms of functioning in his job and in his
6 work, you know, this is an above-average individual who, you
7 know, was capable of focusing in the domain of his work very
8 well. But in terms of his problem solving around this
9 relationship, he was impaired. And I would say he was
10 impaired because of these psychological factors of being in
11 a battered and abusive relationship. They produce those
12 kinds of changes in him that impaired his cognitive
13 abilities during that time.

14 Q. Did you find also that his fear had a realistic
15 basis?

16 A. His fear definitely had a realistic basis. He
17 had --

18 Q. I'm sorry. I didn't mean to interrupt you.

19 A. Yeah. He had faced threats at his work. He had
20 been evicted several times. His relationships with, you
21 know, fellow band members and friends had been altered
22 somewhat because of the relationship.

23 Q. Dr. Veronen, did you find that his self-esteem had
24 diminished?

25 A. In regard to his overall sense of competency and

1 effectiveness particularly, yes. But in the range of
2 interpersonal functioning, very definitely. He felt a great
3 deal of shame about this relationship.

4 Q. And what did you find was Nick's state of mind at
5 the time of Becca's death?

6 A. I found that at the time of Becca's death --

7 MS. SWANSON: Your Honor, I would object to Dr.
8 Veronen testifying as to his state of mind considering --

9 THE COURT: No speaking objections. Please
10 approach.

11 (Whereupon, the following bench conference takes
12 place.):

13 THE COURT: How can you establish -- how can she
14 establish his state of mind at her death?

15 MS. CAMPBELL: Because she's an expert in the
16 field. She's done it before. She's doing it in this case.
17 And the cases that I cited to Your Honor are the ones that
18 say that she's absolutely allowed to give her opinion.

19 THE COURT: I didn't say she couldn't give her
20 opinion. This is a foundation issue, not a expert case
21 issue. In those other cases, those folks evaluated within
22 weeks. We are three years out. We are talking about
23 foundation now, not about her expertise. I assume that's
24 the basis of the objection.

25 MS. SWANSON: That's correct.

1 MS. CAMPBELL: Okay. So I will lay a foundation.

2 THE COURT: I think you need to.

3 MS. CAMPBELL: So she can object --

4 THE COURT: I think you have to, uh-huh.

5 (Whereupon, the bench conference ends.)

6 THE COURT: Sustained, foundation. You may

7 proceed.

8 BY MS. CAMPBELL:

9 Q. Dr. Veronen, when I asked you to interview Nick, it
10 was a long time after the night Rebecca died, correct?

11 A. Correct.

12 Q. Does the fact that it was a long time after Rebecca
13 died impact your diagnosis of his state of mind at all?

14 A. No. Many times, people continue to experience
15 symptoms related to traumatic and profound events that have
16 occurred in their life. And, you know, returning Vietnam
17 veterans in Iraq and Afghanistan and all of that bear
18 witness to that very fact that events remote from time
19 continue to be impacting us in our daily lives.

20 Q. And did you find in your research and your work on
21 this case that Nick was a battered person and suffering from
22 the battered person syndrome?

23 A. I did indeed find that he is suffering from the
24 battered person syndrome and that he has had changes in
25 terms of his -- and at the time had difficulty with his

1 cognitive formation of good problem solving. And was, in
2 fact, responding in an automatic fashion to the level of
3 threat that was posed to him.

4 Q. So I ask you again, Dr. Veronen, what was Nick's
5 state of mind at the time of Rebecca's death?

6 A. Nick, at the time of Rebecca's death, was suffering
7 from what we would identify as battered person syndrome.
8 And in that battered person syndrome, he was experiencing
9 post-traumatic stress disorder, the psychological disorder
10 of, at times having reliving experiences, heightened levels
11 of fear and anxiety, and disassociative times in which one
12 has a loss of complete awareness because of the heightened
13 emotional arousal.

14 Q. Did you find that in any way at that time that he
15 was a conscious, free-thinking adult man?

16 A. No.

17 Q. Was he capable of volitional actions?

18 A. The idea of -- again, volitional means sort of
19 intended that you are voluntarily responding, as opposed to
20 automatic response. So, no, he was not engaging in
21 volitional behavior.

22 MS. CAMPBELL: Thank you. That's all I have, Dr.
23 Veronen. Appreciate your time.

24 THE COURT: Any questions for the witness?

25 MS. SWANSON: Yes, Your Honor.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MS. SWANSON:

4 Q. Dr. Veronen, you are getting compensated for your
5 testimony here today, right?

6 A. Correct.

7 Q. And how much are you getting paid?

8 A. I'm getting paid by -- we put a cap on it, because
9 of this additional time.

10 Q. The amount is fine.

11 A. It will be in approximately about \$3,500 for not
12 just today, but for seeing Nick, conducting the evaluation
13 and writing the report and traveling here.

14 Q. All right. I don't know if I understood you
15 correctly. What was the number again?

16 A. \$3,500.

17 Q. 3,500?

18 A. Correct.

19 Q. And you testified in several cases before, right,
20 for the defense?

21 A. Correct. And I've also testified for the
22 prosecution.

23 Q. All right. And you've testified for the defense in
24 York County and Orangeburg County, right?

25 A. And Laurens County and Horry County and Charleston

1 County and Aiken County. There might be other counties,
2 Richland County, Fairfield County.

3 Q. Okay. So you are actually quite busy making money
4 going around this state testifying about this, correct?

5 A. I actually do only one or two cases a year. I've
6 been in this for a very long time. I did my first case in
7 1979. So I don't -- I have a general practice of clinical
8 psychology currently, my youngest client being about four
9 years old and my oldest about 86.

10 Q. Okay. You are aware of the DSM, right?

11 A. Correct.

12 Q. What is it?

13 A. It's the diagnostic and statistical manual of
14 mental disorders.

15 Q. And is that sort of like the Bible for
16 psychologists and psychiatrists?

17 A. It's what is known as the nomenclature. These
18 people, psychiatrists and psychologist, get together and
19 they decide what disorders should go in there. And so it is
20 the method by which insurance companies reimburse us. And
21 so the people have to have a certain kind of diagnoses. But
22 it isn't what we call the Bible, because people vote on it.
23 So I wouldn't say it's the Bible.

24 Q. Okay. But it is what psychologists and
25 psychiatrists use to diagnose patients with mental illness,

1 correct?

2 A. Correct, correct.

3 Q. And what's not in the DSM is battered spouse
4 syndrome, correct?

5 A. Correct.

6 Q. Because it's not a diagnosis, correct?

7 A. Yes. As I said earlier, in the psychological
8 research, we refer to post-traumatic stress disorder and
9 victims of violence. And so there is a difference between
10 sort of the language of law and the language of psychiatry
11 and psychology.

12 Q. Right. And even though there's been all of this
13 research on battered spouses syndrome and things of that
14 nature, and that you've been working on it since 1979 and
15 testifying everywhere, attempts have been made to make
16 battered spouse syndrome a diagnosis, that still has not
17 happened to this day in 2017, correct?

18 A. Correct, it is not a diagnosis within the manual.
19 The language is different for the law and for psychology.

20 Q. And you would agree with me that men and women are
21 different, right?

22 A. I would agree that men and women are different,
23 yes.

24 Q. Okay. And that there would be, or there has been,
25 a lot more research into battered woman syndrome than

1 battered man syndrome, correct?

2 A. Correct. In terms of the under-researched area, we
3 are recognizing that it is an under-researched area. And as
4 we look at more what we might consider to be gender blending
5 as times have gone on and opportunities are available for
6 education for men and women, gender characteristics are not
7 as distinct by sex as they once were. We have men who are
8 highly compassionate and perhaps at times passive and
9 conforming. And we have women who are highly aggressive and
10 have the capacity to use violence.

11 Q. Ms. Campbell talked to you about the fact that you
12 didn't meet Nick until three years after he murdered Becca,
13 right?

14 A. Correct. I met him first on August 18th.

15 Q. Right, almost three years to the day after he
16 smothered Becca with bubble wrap, correct?

17 A. Correct.

18 Q. And you are aware that that at that time, Nick held
19 a job, right?

20 A. Correct.

21 Q. He worked outside the home, right?

22 A. Correct.

23 Q. Becca did not, correct?

24 A. Nick was supporting --

25 Q. Did Becca work outside of the home?

1 A. Becca did not work outside of the home, although
2 she had a sort of interesting business involved --

3 MS. SWANSON: Objection, Your Honor.

4 THE COURT: Sustained. Character and lack of
5 personal knowledge.

6 BY MS. SWANSON:

7 Q. And you are aware that he was the financial
8 provider, correct?

9 A. Yes.

10 Q. And he told you about his hobbies, his band, music
11 and bicycling, correct?

12 A. Correct.

13 Q. And in forming your opinion, the primary basis of
14 your opinion, it appears from reading your report, was
15 information that you got from Nick three years after he
16 killed Becca?

17 A. The information I got from Nick three years after
18 he took the life of Becca, but also many, many police
19 reports that were made which identified highly conflicted
20 relationships between the two in which there were reports of
21 passive aggression.

22 MS. SWANSON: Hearsay. Objection. She can talk
23 about the fact that she -- oh, sorry.

24 THE COURT: Is there a question pending?

25 MS. SWANSON: I'm sorry?

1 THE COURT: Is there a question pending?

2 MS. CAMPBELL: The solicitor is objecting to her
3 own --

4 THE COURT: Why don't you repeat the question.

5 MS. SWANSON: Okay.

6 THE COURT: So the witness can be clear what you
7 are asking.

8 MS. SWANSON: I don't think it's responsive to my
9 question.

10 THE COURT: I think you need to repeat the question
11 and let's see if it's responsive, because she didn't get the
12 answer.

13 MS. SWANSON:

14 Q. In forming your opinion, much of what you talk
15 about in your report is what Nick told you three years after
16 he murdered Becca, correct?

17 A. Much of what he -- much of what is in the report is
18 that. But, also, a substantial amount in that report is
19 based on the discovery that was provided to me and Becca's
20 mental health records.

21 Q. Okay. But you never met Becca? You never
22 interviewed her, right?

23 A. Correct.

24 Q. Okay. And there's no mention in your report of
25 violence by Nick at all, is there?

1 A. I'm not sure. I think there is, that he held her,
2 tried to -- there is some mention that he was trying to act
3 in ways to subdue her and stop further violence.

4 Q. Okay. And would you classify restraint and
5 subduing as violence?

6 A. Yes, indeed.

7 Q. Okay. You would agree with me that Nick had
8 demonstrated on multiple occasions the ability to leave the
9 home and go stay at his ex-wife's, at a hotel, and at his
10 office, correct?

11 A. Correct, he utilized all those methods of
12 leaving.

13 Q. Right. And, typically, a battered spouse may not
14 have a support system, correct?

15 A. Typically, with battered spouse, the support system
16 gets reduced, yes.

17 Q. All right. And, typically, with battered spouse,
18 that person doesn't have access to money, correct?

19 A. At times, yes, right, battered spouse may not have
20 access to funds.

21 Q. And a typical battered spouse may not have really
22 much of a life outside the home and engage in hobbies and
23 talk to friends about the abuse, correct?

24 A. That can characterize some battered spouses, yes.

25 Q. Right. The secret abuse, correct?

1 A. Correct, that may be the case.

2 Q. And were you aware when you were forming your
3 opinion that Nick's car had been repossessed?

4 A. I was aware that Nick and Becca were utilizing one
5 vehicle that was titled in Becca's name.

6 Q. Okay. So you were not aware that they actually had
7 a two-vehicle household?

8 A. Not at the time of the incident of the 26th.
9 Perhaps I was misinformed or failed to understand.

10 Q. Okay.

11 A. But it was my --

12 Q. You have not reviewed that portion of the discovery
13 in forming your opinion?

14 A. Apparently, I did not or I missed it then.

15 Q. And in reference to your opinion, I am turning to
16 page 9 of your report where you write: Becca's violent and
17 provocative behavior of "just kill me" and "go ahead and
18 kill me" reflects her desire to die and stop suffering from
19 her depressive thoughts, overwhelming hopelessness and
20 helplessness for her future. She created a situation in
21 which Nick did for her what she had been unable to do for
22 herself, ended her life. In the psychological and
23 psychiatric literature on suicide, this phenomenon has been
24 identified as victim-precipitated suicide or provoked
25 suicide.

1 And that's in your report, correct?

2 A. Correct.

3 Q. All right. And so, surely, you are not asserting
4 that just because the victim was severely depressed two
5 weeks after her mother dies and because of the fact that
6 she's in a relationship with Nick Evangelista, which is
7 tumultuous at best, that she -- that she made him kill her?

8 A. It is a very interesting set of dynamics that
9 occur. And Becca, by indications from her mental health
10 record, was a severely disturbed woman. And regarding, you
11 know, when her mother died, these three different reports in
12 the discovery about when her mother passed, she told Nick
13 one time she tells --

14 MS. SWANSON: Objection, hearsay.

15 THE COURT: Ma'am, you can't -- there's an
16 objection pending. You can't repeat what someone said. You
17 can say what opinion you formulated as a result. You can
18 say where you gathered the information.

19 THE WITNESS: I gathered the information --

20 THE COURT: You can't say what they said.

21 THE WITNESS: I gathered the information from the
22 mental health record that reported that Becca reported her
23 mother as dying in much earlier during that summer. And
24 there's also a Facebook listing of her mother dying at
25 another time. There's other reports in the mental health

1 record and obtained from other places that she had times in
2 which she became so upset that she had thoughts of taking
3 her life. The mental health record also says that she
4 feared that she might be suffering from early onset
5 Alzheimer's.

6 MS. SWANSON: Again, this is hearsay. Objection,
7 Your Honor.

8 THE WITNESS: It's located in the record.

9 THE COURT: You still can't repeat what someone
10 else said that's not subject to cross-examination.. The
11 objection is sustained. Unless you have -- and foundation
12 can be established of your own personal knowledge of the
13 criteria to establish that condition. If you used it to
14 formulate your opinion, you can see where you gathered it
15 from. But you can't say exactly what the person said or
16 repeat it. You can say that you formulated that -- used it
17 to formulate your opinion and what your opinion is.

18 THE WITNESS: I formulated the opinion from a
19 variety of sources, that Becca was a severely disturbed,
20 depressed individual, and at times had thoughts of wanting
21 to die and taking her own life. And in the psychological
22 research, we often -- and in criminal justice research, the
23 phenomena of victim-precipitated death or in -- the police
24 officers, they call it death by cop, but there are
25 individuals who are behaving, because of mental illness, in

1 a very violent and provocative way, so that they, in fact,
2 are said to precipitate their own death by their sometimes
3 erratic and sometimes irresponsible ways. So, yes, it's in
4 the criminal justice research. And it is a phenomena that
5 occurs.

6 Q. Okay. And you are aware, though, that
7 victim-provoked suicide is not a legal defense, correct?

8 A. I'm aware that it is not a legal defense.

9 Q. Thank you.

10 A. But I'm also aware that this phenomena occurs in
11 situations in which persons automatically respond to
12 threats, people even who are highly trained, police
13 officers, and other individuals in which they take the life
14 of someone that is severely disturbed because of this
15 erratic, violent behavior.

16 Q. And we talked about, or Ms. Campbell talked to you
17 about two diagnoses that you gave to Nick. One that he was
18 majorly depressed. And so would one maybe be depressed if
19 they had ruined their lives by killing someone? Could that
20 be a reason that someone is depressed three years after the
21 fact?

22 A. Certainly. There's a great deal of shame involved
23 as well.

24 Q. And regarding post-traumatic stress disorder, I
25 hope I did not misunderstand you when you were comparing him

1 to someone that may have served in Vietnam, right?

2 A. Correct.

3 Q. So you're comparing living with Becca Melton to
4 someone that endured what went on in Vietnam, right, in
5 reference to PTSD?

6 A. I'm making the comparison; yes, because --

7 Q. Okay. And so --

8 A. Being uncertain about the nature of the threat can
9 be a similarity. Not knowing either sort of what the
10 situation of violence can be, that it might be unexpected.
11 It might follow a time of a pleasant time, not knowing the
12 nature of violence keeps one in high arousal.

13 Q. Got you. And so you are aware that one can bring
14 on post-traumatic stress disorder by their own intentional
15 criminal actions, correct?

16 A. Correct.

17 Q. Right. So it really would be any traumatic event.
18 And even if you mean to smother your live-in girlfriend with
19 bubble wrap, that can still be traumatic, right?

20 A. Correct.

21 MS. SWANSON: I have nothing further.

22 THE COURT: Any redirect?

23 MS. CAMPBELL: No, Your Honor. Thank you.

24 THE COURT: Any objection to the witness being
25 excused?

1 hope everybody had a pleasant evening. We will now resume
2 testimony.

3 The defense may proceed.

4 MS. CAMPBELL: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: The defense calls Sarah Cotter.

7 THE COURT: If the witness will come forward to be
8 sworn.

9 SARAH COTTER,
10 having been duly sworn, testifies as follows:

11 THE COURT: Please state your full name for the
12 record and spell your last name for the court reporter.

13 THE WITNESS: Sarah Lois Cotter, C-o-t-t-e-r.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q. Ms. Cotter, where do you live?

17 A. I live in Bloomingdale, Georgia.

18 Q. And what is your current employment?

19 A. I work for Optim Orthopedics as a certified medical
20 assistant.

21 Q. And how long have you worked for Optim?

22 A. Approximately nine years.

23 Q. In the course of your employment with Optim, did
24 you come to know Nick Evangelista?

25 A. I did.

1 Q. And about how long did you work and know Nick
2 Evangelista?

3 A. About five years.

4 Q. What, essentially, was Nick's job there?

5 A. He was a physician's assistant working for my
6 physician as well as another physician in the office.

7 Q. During the course of time you knew Nick and worked
8 at Optim with him, did you come to know a woman by the name
9 of Rebecca Melton?

10 A. I did.

11 Q. How did you come to know Rebecca?

12 A. She first came in to our office in an attempt to
13 see if Nick truly worked for our office. She came in during
14 a clinic day and asked if Nick was truly an employee of our
15 office.

16 MS. SWANSON: Objection, hearsay.

17 THE COURT: Sustained. Hearsay.

18 You can't say what someone said to you. You can
19 only say what you did as a result.

20 The objection is sustained. You may proceed.

21 BY MS. CAMPBELL:

22 Q. Your interactions when she would come into the
23 office, were they pleasant or unpleasant, or your
24 perceptions of her at that time?

25 A. The first few times she came in to the office, it

1 was pleasant. It was a normal stopping by to say hi. Over
2 the course of the time that she would come into our office,
3 she began to cause a ruckus, I will say, in the front
4 office, to the point that another medical assistant and
5 myself --

6 MS. SWANSON: Objection. That would be --

7 THE COURT: Basis?

8 MS. SWANSON: Hearsay. Unless she personally
9 observed this interaction, she can't testify to it.

10 THE WITNESS: I did walk to the front desk --

11 THE COURT: Ma'am, don't speak when an objection is
12 pending. The objection is sustained subject to foundation
13 being established.

14 BY MS. CAMPBELL:

15 Q. Did you see the ruckus?

16 A. I was in the front office when she was escorted out
17 of the building.

18 Q. Thank you very much. Did you have occasion to
19 suspect that Nick was being abused?

20 A. Yes.

21 Q. Do you recall any events where Nick fled the
22 office?

23 A. Yes.

24 Q. Can you tell the jury a little bit about that?

25 A. On one occasion, Nick had come into the office. At

1 that point in time, it was our understanding that they were
2 no longer together. She had come to the front desk. We
3 were in the back in clinic. And the front desk informed us
4 that she was --

5 MS. SWANSON: Objection.

6 THE COURT: Sustained. Hearsay.

7 MS. CAMPBELL: Right.

8 BY MS. CAMPBELL:

9 Q. So she was at the office?

10 A. Correct.

11 Q. Did Nick flee the office?

12 A. Yes, he fled out the back door.

13 Q. Okay. Did you ever see Nick with the visible signs
14 of this abuse?

15 A. Scratches on his face at one point, yes.

16 Q. Yes. Did you ever have an opportunity to witness
17 or see any swelling or anything like that of his ears or
18 anything of that nature?

19 A. Not myself, no.

20 Q. Not yourself. Thank you. And was there a period
21 of time where Nick's automobile had been -- the windows had
22 been crashed in?

23 A. Yes.

24 Q. All right. Sarah, thank you for being here. I'm
25 going to ask you just one or two more quick questions before

1 we let you go. Was Nick ever violent or disrespectful to
2 anyone around you?

3 A. No.

4 Q. And how would you describe Nick in just a word or
5 two?

6 A. I thought of him as an uncle.

7 MS. CAMPBELL: Thank you. That's all I have.

8 THE COURT: Any questions for the witness?

9 MS. CAMPBELL: Yes, Your Honor.

10 THE COURT: You may proceed.

11 MS. CAMPBELL: Thank you.

12 THE COURT: You're welcome.

13 CROSS-EXAMINATION

14 BY MS. SWANSON:

15 Q. Hi, Sarah. How are you?

16 A. Hi, Ms. Hunter.

17 Q. Now, Nick never told you he was in danger, right?

18 A. Correct.

19 Q. And he showed up for work consistently, right?

20 A. Correct.

21 Q. He was never fired before he just disappeared,
22 right?

23 A. Correct.

24 Q. And when Nick sent you guys the e-mail about his
25 mother being deathly sick, you believed him, didn't you?

1 A. Absolutely.

2 Q. So you believed that lie that he told, right?

3 A. Absolutely.

4 Q. And you stated to Ms. Campbell that you only saw
5 scratches on Nick at one point, correct?

6 A. Right.

7 Q. And they were nothing more than scratches, right?

8 A. Correct.

9 Q. And you never saw any swelling or anything on his
10 ears?

11 A. No.

12 Q. And you told Ms. Campbell that he had never been
13 violent, right?

14 A. Correct.

15 Q. But it's true that Nick did have a temper, right?

16 A. Yes.

17 Q. And he had that temper prior to his relationship
18 with Becca, didn't he?

19 A. Yes.

20 Q. And, in fact, it culminated in an incident where he
21 screamed and threw something that hit another employee at
22 work, right?

23 A. A notebook.

24 Q. A notebook. Thank you.

25 MS. SWANSON: I have nothing further.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q. Sarah, were you ever afraid of Nick?

5 A. No.

6 MS. CAMPBELL: Thank you. That's all I have.

7 THE COURT: Any objection to the witness being
8 excused, from the State?

9 MS. SWANSON: None from the State.

10 THE COURT: From the defense?

11 MS. CAMPBELL: No, Your Honor. Thank you.

12 THE COURT: You're welcome. Ma'am, you are
13 excused.

14 Call your next witness.

15 MS. CAMPBELL: May it please the Court.

16 THE COURT: Yes, ma'am.

17 MS. CAMPBELL: Defense calls Jennifer Kelly.

18 JENNIFER KELLY,

19 having been duly sworn, testifies as follows:

20 THE COURT: Please state your full name for the
21 record, spelling your last name for the court reporter.

22 THE WITNESS: Jennifer Kelly, K-e-l-l-y.

23 THE COURT: Thank you, ma'am, you may proceed.

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL:

1 Q. Good morning.

2 A. Good morning.

3 Q. Do you live in this area?

4 A. I do.

5 Q. Where do you live?

6 A. In Bluffton.

7 Q. And where do you work?

8 A. At Optim Orthopedics.

9 Q. Did you have an opportunity during your employment
10 at Optim to meet and know Nick Evangelista?

11 A. I did.

12 Q. About how long did you know and work with Nick
13 Evangelista?

14 A. About five years.

15 Q. Did you ever have any interactions or know a
16 Rebecca Melton?

17 A. Yes.

18 Q. Were you ever abused by Rebecca Melton?

19 A. I took a phone call from Rebecca Melton. She was
20 calling to speak to Nick.

21 MS. SWANSON: Objection.

22 THE COURT: Sustained. Hearsay. Please watch the
23 leading and the characterization.

24 MS. CAMPBELL: Thank you, Your Honor.

25 THE COURT: Ask your next question.

1 BY MS. CAMPBELL:

2 Q. Did you have to hang up on that phone call?

3 A. I did.

4 Q. Okay. Did you notice any changes in Nick's
5 behavior after he became involved with Rebecca Melton?

6 A. Yes.

7 Q. What were those changes?

8 A. He was not as professional as he used to be.

9 Q. What about his demeanor?

10 A. His demeanor was about the same.

11 Q. What about seeking of medical treatment and needing
12 to have X-rays taken at work?

13 MS. SWANSON: Leading. Objection.

14 THE COURT: Leading. Sustained. Rephrase.

15 BY MS. CAMPBELL:

16 Q. Were there any times when Nick needed medical
17 treatment or asked for medical treatment?

18 A. He asked me to take X-rays, but we never did.

19 Q. And X-rays of what?

20 A. I want to say one time it was his shoulder, but I
21 don't remember.

22 Q. Were there times that you suspected Nick was having
23 to sleep at the office?

24 A. Yes.

25 Q. Were you aware of why he was having to sleep at the

1 office?

2 A. No.

3 Q. Jennifer, if you had to tell this jury in a couple
4 of words your perception of Nick, what would that be?

5 A. Nick was an all-around great guy. He was very
6 professional at work. He cared about his patients. Outside
7 of clinic, he was, you know, he was funny. He was smart.
8 He was part of my work family that I cared a lot about. And
9 he cared about us.

10 MS. CAMPBELL: Thank you, Jennifer. That's all I
11 have.

12 THE COURT: Any questions for the witness?

13 MS. SWANSON: Just a few.

14 THE COURT: You may proceed.

15 CROSS-EXAMINATION

16 BY MS. SWANSON:

17 Q. So you worked with Nick?

18 A. Correct.

19 Q. And you said he was extremely professional at work,
20 right?

21 A. Yes.

22 Q. Okay. And so you would never -- you wouldn't think
23 that he would ever prescribe drugs to his girlfriend who was
24 not a patient, right?

25 A. No, ma'am.

1 Q. That's something he would never do, right?

2 A. No, ma'am.

3 Q. Okay. And you were an employee there when you guys
4 got an e-mail about how his mom was sick?

5 A. Yes, ma'am.

6 Q. And did you believe that e-mail?

7 A. Yes, ma'am.

8 Q. Okay. So you believed all of the lies that were
9 contained in that e-mail from Nick, right?

10 A. Yes.

11 Q. And you have no personal knowledge of any of Becca
12 and Nick's relationship or arguments or anything like that,
13 correct?

14 A. No, ma'am.

15 MS. SWANSON: I have nothing further.

16 THE COURT: Any redirect?

17 MS. CAMPBELL: No. Thank you, Judge.

18 THE COURT: Any objection to the witness being
19 excused from the State?

20 MS. SWANSON: None from the State.

21 THE COURT: From the defense?

22 MS. CAMPBELL: No, Your Honor.

23 THE COURT: Ma'am, you are excused.

24 You may call your next witness.

25 MS. CAMPBELL: Julie Bhuiyan.

1 THE COURT: I'm sorry. I didn't hear the name.

2 MS. CAMPBELL: I'm going to have to spell it. It's
3 B-h-u-i-y-a-n.

4 JULIE BHUIYAN,

5 having been duly sworn, testifies as follows:

6 THE COURT: If you can state your name for the
7 record and spell your last name for the court reporter.

8 THE WITNESS: Julie Bhuiyan, B-h-u-i-y-a-n.

9 THE COURT: Thank you. You may proceed.

10 DIRECT EXAMINATION

11 BY MS. CAMPBELL:

12 Q. Good morning, Julie. Thank you for being here.

13 A. You're welcome.

14 Q. Julie, where do you currently live?

15 A. I live in Houston, Texas.

16 Q. And you traveled from Houston, Texas here to
17 testify today; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. And were you ever living in the Lowcountry?

20 A. Yes, ma'am.

21 Q. And where did you live in the Lowcountry?

22 A. I lived in Beaufort for a while. And then prior to
23 moving, I lived in Pooler.

24 Q. And did you work when you lived here in the
25 Lowcountry?

1 A. Yes.

2 Q. And where was that?

3 A. Optim Orthopedics.

4 Q. During that employment, did you have an opportunity
5 to know Nick Evangelista?

6 A. Yes, ma'am.

7 Q. And when you worked with him and knew him, did you
8 also have an opportunity to come to know Rebecca Melton?

9 A. No, ma'am, not directly.

10 Q. Did you ever meet her in person?

11 A. No, ma'am.

12 Q. Did you ever receive phone calls from Rebecca
13 Melton?

14 A. I -- not me directly, but at the office, yes.

15 Q. Okay. Did you ever see Nick Evangelista with
16 injuries on his face?

17 A. Yes, ma'am.

18 Q. Did you ever inquire about the injuries?

19 A. Yes, ma'am. Well, not directly inquire, but I did
20 see them, but didn't ask him directly what happened.

21 Q. Did Nick ever divulge to you how he had gotten the
22 scratches?

23 MS. SWANSON: Hearsay.

24 THE COURT: Sustained. Hearsay. Ma'am, you can't
25 repeat what someone said.

1 BY MS. CAMPBELL:

2 Q. Julie --

3 A. Yes, ma'am.

4 Q. -- did you ever see Nick become violent in your
5 presence?

6 A. No, ma'am, never.

7 Q. Did you ever see Nick disrespect anyone in your
8 office?

9 A. No, ma'am.

10 Q. Or any patients?

11 A. No, ma'am.

12 Q. Okay.

13 A. Never.

14 Q. And if you had to talk to this jury just briefly
15 about your perception of Nick, what would you say?

16 A. If I had to say anything, because I worked with him
17 directly, I would say that Nick was a very responsible guy.
18 He cared a lot about his patients. He was very punctual.
19 He liked things the way he liked things. And I think he was
20 misunderstood by a lot of people.

21 Q. Thank you.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MS. SWANSON:

25 Q. Hey, Julie, how are you?

1 A. Good morning.

2 Q. All right. You have no personal knowledge of how
3 any injuries, scratches that you saw on Nick's face
4 occurred, right?

5 A. No, ma'am.

6 Q. And you never met Becca and you never saw the two
7 of them interact together, right?

8 A. Not -- again, not directly, but indirectly, yes.

9 Q. Okay. But not actually witness that?

10 A. Correct.

11 Q. Okay. And you say that he was never violent in
12 your presence?

13 A. Never.

14 Q. And never disrespected anyone in the office?

15 A. Never.

16 Q. Were you present for the time that he threw a
17 notebook and hit an employee in the head?

18 A. No, ma'am.

19 Q. Okay. And you say that he was responsible?

20 A. Yes, ma'am, very.

21 Q. And professional?

22 A. Very.

23 Q. All right. And he would never prescribe drugs to
24 his girlfriend, would he? That wouldn't be very
25 professional?

1 A. Again, nothing that I ever saw from Nick
2 Evangelista was unprofessional, so no.

3 Q. Okay. It would surprise you if he did, correct?

4 A. No, not really.

5 Q. That he prescribed drugs to a nonpatient?

6 A. No, ma'am. I've worked in the medical field for a
7 long time. It happens more often than people, I guess,
8 would like to acknowledge.

9 Q. Okay. And is that allowed?

10 A. It's definitely not allowed.

11 Q. Is that ethical?

12 A. Again, it's not allowed. It's not ethical.

13 Q. Okay. You stated that Nick was punctual?

14 A. Yes, ma'am.

15 Q. All right. So he was always showing up for work on
16 time? He wasn't missing days all the time?

17 A. No, ma'am. If he was running five minutes late, he
18 would let me know he was running five minutes late.

19 MS. SWANSON: Great. That's all I have.

20 THE COURT: Any redirect?

21 MS. CAMPBELL: No, Your Honor. Thank you for being
22 here.

23 THE COURT: Any objection to the witness being
24 excused from the State?

25 MS. SWANSON: None from the State.

1 THE COURT: From the defense?

2 MS. CAMPBELL: No, Your Honor.

3 THE COURT: Ma'am, you are excused.

4 Call your next witness.

5 MS. CAMPBELL: May I approach, Your Honor?

6 THE COURT: You may.

7 (Whereupon, the following bench conference takes
8 place):

9 MS. CAMPBELL: If it please the Court, the next
10 witness is Mr. Evangelista's former attorney. And
11 Mr. Evangelista has signed the, of course, waiver
12 attorney/client privilege. Mr. Ruffalo wanted to put it on
13 the record as well.

14 THE COURT: Yeah. We are not going to do that
15 right now. We will do it after, but I am not going to stop
16 the flow of witnesses for that.

17 MS. SWANSON: Okay. Well, I just wanted to make
18 sure that the intent is not to have Mr. Ruffalo testify to
19 things that Mr. Evangelista said, because that will be
20 hearsay.

21 THE COURT: It would be bolstering.

22 MS. CAMPBELL: It's not what he said. It's what he
23 saw, the injuries.

24 MS. SWANSON: Okay.

25 THE COURT: You will have to make objections. Not

1 my job to object.

2 (Whereupon, the bench conference ends.)

3 THE COURT: Call your next witness.

4 DUDLEY RUFFALO,

5 having been duly sworn, testifies as follows:

6 THE COURT: If you would state your full name for
7 the record, spelling your last name for the court reporter.

8 THE WITNESS: My full name is Dudley Bradstreet
9 Taft Ruffalo, R-u-f-f-a-l-o.

10 THE COURT: Thank you. You may proceed.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q. Mr. Ruffalo, what is your profession?

14 A. I'm an attorney at law.

15 Q. How long have you been an attorney at law?

16 A. Since 1981.

17 Q. And are you licensed to practice law?

18 A. Yes.

19 Q. Where are you licensed?

20 A. In South Carolina.

21 Q. Thank you. The course of your employment has been
22 what?

23 A. Somewhat varied. I started out in the solicitor's
24 office. I was the deputy solicit for Beaufort and Jasper
25 County in the '80s. After that, I practiced criminal

1 defense law for a little while. I then took a position as
2 the chief municipal judge for the town of Hilton Head for a
3 few years, and returned to the practice of law.

4 Q. Thank you. And you have been a criminal defense
5 attorney most of your career?

6 A. Most of my career.

7 Q. Did you have an occasion to meet and know Nick
8 Evangelista?

9 A. Yes.

10 Q. And in the course of that relationship, were you
11 his attorney?

12 A. I was his attorney.

13 Q. And in the course of that relationship, did you
14 have an opportunity to meet with Nick Evangelista?

15 A. Yes, a couple of times.

16 Q. And when you met with Nick Evangelista, were you
17 able to observe injuries to his body?

18 A. Yes.

19 Q. And the substance of those injuries that you
20 observed were what?

21 A. I noticed -- and this was the fall of 2013. I
22 noticed that he had some damage to one of his ears and he
23 had a scratch on his neck or lower face.

24 Q. And how was Mr. Evangelista dressed? How did he
25 carry himself in your interactions?

1 A. Mr. Evangelista was -- and you try to make some
2 notes sometimes when people come into your office, just your
3 first impression. And he was very downcast. His clothes
4 were disheveled, somewhat dirty, unironed. He appeared at
5 ends as the expression goes.

6 Q. At some point, did your attorney/client
7 relationship end with Mr. Evangelista?

8 A. Yes, it did.

9 Q. And did you have any opportunities to interact with
10 him other than that period of time?

11 A. Not really. I met him in the office a couple of
12 times. He would meet me at court a few times during the
13 course of our representation. That would be about it. I
14 mean, obviously, I made observations about him.

15 MS. CAMPBELL: Thank you. That's all I have.

16 THE COURT: Any questions for the witness?

17 CROSS-EXAMINATION

18 BY MS. SWANSON:

19 Q. Dudley, how are you?

20 A. Very well, ma'am.

21 Q. Nice to see you in court.

22 A. Nice to see you too.

23 Q. What were you representing Nick Evangelista for?

24 A. Criminal domestic violence, first offense.

25 Q. Okay. And the injuries that you observed on him,

1 you didn't have any personal knowledge of how those
2 occurred, right?

3 A. He was evasive about that.

4 Q. Well, without telling me what he said --

5 A. Yes.

6 Q. Yes. So he was evasive about how those injuries
7 occurred, but you didn't witness him getting those injuries,
8 correct?

9 A. No, ma'am.

10 Q. And is it unusual for your criminal defendants to
11 come in downcast, maybe disheveled, when they are facing
12 criminal charges and kind of not in the best place?

13 A. That's correct as a general observation. I mean,
14 obviously, all people are different. I represent sort of
15 all levels of people. That occurs.

16 MS. SWANSON: I have nothing further.

17 THE COURT: Any redirect for the witness?

18 MS. CAMPBELL: Just briefly.

19 REDIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q. Did Mr. Evangelista appear to you to be concerned
22 for himself or his fate or what might happen to him?

23 A. That was somewhat significant with Mr. Evangelista.
24 When you would try to direct the conversation towards him
25 and what was going on with him and his defense, his world,

1 his general concern would always turn towards the other
2 party that was involved.

3 Q. And would that have been Rebecca Melton?

4 A. Yes.

5 Q. And what might happen to her and how to take care
6 of her?

7 MS. SWANSON: Objection. Leading.

8 THE COURT: Sustained. Leading.

9 MS. SWANSON: Thank you. That's all I have.

10 THE COURT: Any objection to the witness being
11 excused, from the State?

12 MS. SWANSON: None from the State.

13 THE COURT: From the defense?

14 MS. CAMPBELL: No, Your Honor. Thank you.

15 THE COURT: You are excused, sir.

16 THE WITNESS: Nice to see you again, Judge.

17 THE COURT: Nice to see you.

18 You may proceed. Call your next witness.

19 MS. CAMPBELL: Thank you, Your Honor.

20 May it please the Court. Beaufort County Sheriff's
21 Deputy Ricker.

22 ERIC RICKER,

23 having been duly sworn, testifies as follows:

24 THE COURT: If you would state your full name for
25 the record, spelling your last name for the court reporter.

1 THE WITNESS: My name is Eric J. Ricker,
2 R-I-C-K-E-R.

3 THE COURT: Thank you, you may proceed.

4 MS. CAMPBELL: Thank you.

5 THE COURT: You're welcome.

6 DIRECT EXAMINATION

7 By MS. CAMPBELL:

8 Q. Good morning, Officer Ricker. How long have you
9 been with the sheriff's department?

10 A. I've been with the Beaufort County Sheriff's
11 Department almost 18 years.

12 Q. Have you had occasion during those 18 years to be
13 called out to criminal domestic violence scenes?

14 A. Yes.

15 Q. Were you called out to a criminal domestic violence
16 scene on or about July 4th, 2013?

17 A. Yes, ma'am.

18 Q. And when you were called out to that scene, can you
19 tell us who was listed as your victim in that case?

20 A. On that day, it would have been Nick Evangelista.

21 Q. Evangelista?

22 A. Evangelista.

23 Q. Okay. And who was your suspect?

24 A. It would have been a Rebecca Melton.

25 Q. And who was arrested that night?

1 A. Rebecca Melton.

2 Q. Did you have an opportunity to observe physical
3 injuries upon Mr. Evangelista that night?

4 A. He had some scratches on the right side of his
5 neck.

6 MS. CAMPBELL: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MS. CAMPBELL:

9 Q. I show you what's been marked as Defendant's
10 Exhibit 19. Would that be a fair and accurate
11 representation of how you observed Mr. Evangelista on that
12 evening?

13 A. From what I remember, yes.

14 MS. CAMPBELL: At this time, the defendant offers
15 Defendant's Exhibit 19 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MS. SWANSON: None.

18 THE COURT: Marked and admitted without objection.

19 (Dft. Exh. 19, Photograph of Nick Evangelista, is
20 received in evidence.)

21 MS. CAMPBELL: I would like to publish it at this
22 time.

23 BY MS. CAMPBELL:

24 Q. It's difficult to see with the light here, but,
25 Officer Ricker, in the photograph, there appears to be a

1 scratch on the neck; is that correct?

2 A. Yes.

3 Q. And then some bruising and swelling on the ear; is
4 that correct?

5 A. The ear was red, yes.

6 Q. Thank you. Now, where were you able to locate
7 Rebecca Melton when you got on the scene?

8 A. The way the location was set up, it was actually a
9 house with a, I guess to say, like, a mother-in-law's
10 quarters attached to the rear. And it was basically a
11 kitchen/living room area with stairs that went up to, like,
12 a loft bedroom. And she was located upstairs in the
13 bedroom.

14 Q. And in what state, I guess, did you find her in in
15 terms of alcohol consumption or anything of that nature?

16 A. She was lying in the bed. She appeared to be
17 sleeping. And she was in a highly intoxicated state.

18 Q. Did you also find her to be agitated?

19 MS. SWANSON: Objection. Leading.

20 THE COURT: Sustained. Leading. Rephrase.

21 BY MS. CAMPBELL:

22 Q. If you refer to your report, her behavior with you,
23 how would you describe that, as you did in your report?

24 A. In the report that was written -- let me get to it:
25 She was sleeping upstairs, loft bedroom. Melton appeared

1 intoxicated. And she was agitated. And did not have a
2 clear memory of events.

3 Q. Thank you. Did you have an opportunity as an
4 officer on this case to listen to the 911 call that Nick
5 Evangelista made that night?

6 A. No.

7 MS. CAMPBELL: Thank you. That's all I have.

8 THE COURT: Any questions for the witness?

9 MS. SWANSON: Just a few.

10 CROSS-EXAMINATION

11 BY MS. SWANSON:

12 Q. How are you doing?

13 A. Good. How are you?

14 Q. Good. So when you got to the residence, was Nick
15 Evangelista there?

16 A. Yes. He was actually -- I believe he was
17 downstairs outside and met us.

18 Q. So he had left the building, though?

19 A. He was out -- I believe he was outside.

20 Q. Okay. Did he seem fearful?

21 A. I don't recall.

22 Q. And when you came across Becca, she was in her bed
23 sleeping, right?

24 A. She appeared to be sleeping, yes.

25 Q. And did Nick -- Nick didn't require any medical

1 treatment? EMS wasn't called out or anything like that,
2 right?

3 A. I believe he declined EMS.

4 Q. Okay. And does the sheriff's office have a policy
5 to arrest a party for criminal domestic violence if there's
6 any sign of injury, even a scratch?

7 A. At the time of this call, it was state law that
8 manifestation of injury during a domestic substance abuse or
9 domestic violence situation mandated an arrest.

10 Q. Right. So you have to take someone in?

11 A. Yes.

12 MS. SWANSON: Thank you. Nothing further.

13 MS. CAMPBELL: That's all.

14 THE COURT: Any redirect?

15 MS. CAMPBELL: Thank you.

16 THE COURT: No. I asked if there was any redirect.

17 MS. CAMPBELL: I said, no, ma'am.

18 THE COURT: Any exception to the witness being
19 excused, from the State?

20 MS. SWANSON: None from the State.

21 THE COURT: From the defense?

22 MS. CAMPBELL: No, Your Honor.

23 THE COURT: Sir, you are excused.

24 Call your next witness.

25 MS. SWANSON: May it please the Court.

1 THE COURT: Who is your next witness?

2 MS. CAMPBELL: Beaufort County Sheriff's Deputy
3 Paul.

4 THE COURT: Is that his first name or last name?

5 MS. SWANSON: Paul is the last name.

6 ADAM PAUL,

7 having been duly sworn, testifies as follows:.

8 THE COURT: Sir, please state your name for the
9 record, spelling your last name for the court reporter.

10 THE WITNESS: Adam Paul, P-a-u-l.

11 THE COURT: Thank you, sir. You may proceed.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q. Good morning.

15 A. Good morning.

16 Q. Good to see you. Officer Paul, clearly, you are
17 employed with the Beaufort County Sheriff's Department. How
18 long have you been in that employment?

19 A. About seven years.

20 Q. During the course of your employment, have you had
21 the opportunity to be called out to criminal domestic
22 violence cases?

23 A. Yes, ma'am.

24 Q. Do you have a report that you brought with you
25 today relative to a criminal domestic violence case on or

1 about March 1st, 2014?

2 A. Yes, ma'am, I do.

3 Q. Thank you. And in that case, can you tell us where
4 that call went to, where it was called to, the location?

5 A. Yes, ma'am. We ended up at Apartment [REDACTED], [REDACTED]
6 [REDACTED] in Hilton Head.

7 Q. And that's in Palmetto Dunes?

8 A. Yes, ma'am.

9 Q. And at that location, can you tell us -- well, who
10 all was on scene with you? Let's start there.

11 A. Another deputy, Corporal Leder (ph).

12 Q. And who else?

13 A. We had Rebecca Melton and Nick Evangelista.

14 Q. Wasn't Palmetto Dunes security also with you?

15 A. I believe they got there just about the same time
16 we did.

17 Q. And the basis for your call out there, can you let
18 the jury know why you were there or how you got there?

19 A. An anonymous female caller called 911 saying they
20 heard pounding and yelling for help.

21 Q. Correct. And then did you make your way into [REDACTED]
22 Saint Andrews?

23 A. I did.

24 Q. And when you made your way into [REDACTED] Saint Andrews,
25 who did you find inside?

1 A. Initially met with Ms. Melton and then also met
2 with Mr. Evangelista.

3 Q. Did Ms. Melton appear to be intoxicated?

4 A. She did.

5 Q. And did she have a bruise on her arm?

6 A. She did.

7 Q. And did Mr. Evangelista have any visible injuries
8 to his body?

9 A. He did. I believe he had a scratch on each cheek
10 on his face, scratch on the right side of his nose and also
11 on the right side of his neck.

12 Q. Other than those injuries, did he complain about
13 anything else?

14 A. No, ma'am.

15 Q. Was he requesting EMS?

16 A. He did not.

17 Q. How did you find the condition of the interior of
18 that condominium to be?

19 A. It was in disarray.

20 Q. As if someone had been, what?

21 A. Report says as if someone had been throwing things.

22 Q. Thank you. What else did you find in terms of the
23 items that were on the floor or around the apartment?

24 A. There were broken glass bottles, bar stools.
25 Musical instruments had been tipped over. And there were

1 couch pillows in the hallway. .

2 Q. And you separated Rebecca Melton and Nick
3 Evangelista and they were both interviewed, correct?

4 A. That's correct.

5 Q. And during that separation time, are you performing
6 a function that would be sort of, I guess, like trying to
7 determine who is the primary aggressor?

8 A. Yes, ma'am.

9 Q. Based upon your determination from those
10 interviews, who was arrested?

11 A. Ms. Melton was arrested.

12 Q. Thank you. Did you ask Mr. Evangelista for a
13 written statement as to what had happened?

14 A. I did.

15 Q. And did he provide that for you?

16 A. Yes, he did.

17 MS. CAMPBELL: That's all I have.

18 THE COURT: Any questions for the witness?

19 MS. SWANSON: Just briefly.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MS. SWANSON:

23 Q. How are you doing?

24 A. Wonderful. Thank you.

25 Q. Good. So do you recall there was a female voice

1 that was calling for help?

2 A. I do not recall.

3 Q. Okay. And when you first came across Rebecca
4 Melton, you noted that her pajamas were torn in the front
5 waist area, right?

6 A. That's right.

7 Q. Okay. And that she had a bruise on her right
8 bicep?

9 A. Yes, ma'am.

10 Q. And the injuries that you noted on Nick did not
11 consist of anything more than scratches, right?

12 A. Right, that's correct.

13 Q. Have you ever come across someone in a domestic
14 violence case that had defensive wounds, what you would
15 consider to be defensive wounds?

16 A. I have, yes, ma'am.

17 Q. And what kind of wounds are those, typically?

18 A. Well, it could be anything from them trying to hold
19 arms away from them, stop them from punching them, or if
20 they are being held down, punched, maybe they are trying to
21 scratch somebody.

22 Q. Okay. And Nick, when he spoke to you, he did admit
23 to grabbing her around the shoulders, right?

24 A. Yes, ma'am.

25 Q. And, again, EMS was not called and Nick didn't seem

1 in fear, did he? Did he ever tell you he was in danger?

2 A. He didn't state that to me. I don't recall his
3 exact emotions that night.

4 Q. And at the time when Beaufort County or any law
5 enforcement was responding to a domestic call, was it a
6 policy or state law that you take someone in, you know, if
7 there's a manifestation of visible injury?

8 A. At the time that this was, yes, ma'am, that was
9 correct.

10 Q. So you were instructed to take someone in, right?

11 A. Because of the injuries, somebody was going to go
12 to jail, yes, ma'am.

13 Q. Okay. Thank you.

14 REDIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q. Briefly, isn't it true that Mr. Evangelista was
17 barricaded in the back bedroom and you had to get him out?

18 MS. SWANSON: Leading.

19 THE COURT: Sustained. Leading.

20 BY MS. CAMPBELL:

21 Q. Was he barricaded?

22 THE COURT: Leading. Rephrase.

23 By MS. CAMPBELL:

24 Q. How did you find Mr. Evangelista in the house?

25 A. I did interview him in the back bedroom. And I

1 believe that's where I ended up finding him initially.

2 MS. CAMPBELL: Thank you. That's all I have.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MS. SWANSON: None from the State.

6 THE COURT: From the defense?

7 MS. CAMPBELL: No, Your Honor.

8 THE COURT: Sir, you are excused. Call your next
9 witness.

10 MS. CAMPBELL: May it please the Court.

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: The defense is calling Nathan or
13 Nate Arnett.

14 NATHAN ARNETT,

15 having been duly sworn, testifies as follows:

16 THE COURT: Sir, if you would state your full name
17 for the record, spelling your last name for the court
18 reporter.

19 THE WITNESS: Nathan Bennett Arnett, A-r-n-e-t-t.

20 MS. CAMPBELL: May it please the Court.

21 THE COURT: Yes, ma'am.

22 DIRECT EXAMINATION

23 By MS. CAMPBELL:

24 Q. Good morning, Mr. Arnett.

25 A. Good morning.

1 Q. Did I have an opportunity to speak to you about
2 this case?

3 A. Very briefly yesterday.

4 Q. Yesterday. And so can you tell the jury, where do
5 you live?

6 A. Bluffton, South Carolina.

7 Q. Thank you. Where do you work?

8 A. Hilton Head Bicycle Company.

9 Q. Did you ever come to know Nick Evangelista during
10 the course of your time in this area?

11 A. Yes.

12 Q. And how did you come to know Nick Evangelista?

13 A. We played in a band together.

14 Q. And did you ever see Nick Evangelista and Rebecca
15 Melton together?

16 A. Yes.

17 Q. Okay. And when you saw Nick Evangelista and
18 Rebecca Melton together, was that a social setting?

19 A. Yes.

20 Q. Thank you. And in that setting, how would you
21 describe what you saw going on between Nick and Rebecca?

22 A. Nothing stands out. Seemed normal.

23 Q. Very normal, correct. Now, if you knew Nick and
24 knew Rebecca, were you friends with either one of them on
25 Facebook or Facebook Messenger?

1 A. Yes.

2 Q. Okay. Did there come a period of time when you
3 decided you needed to defriend Rebecca?

4 A. Yes.

5 Q. And for maybe -- I'm not sure, some of us who are
6 not very tech or Facebook savvy, what does defriending mean?

7 A. Basically, just taking it so I don't have to see
8 her feed any more. I wasn't aware of unfollow.

9 Q. Could she communicate with you after you defriended
10 her?

11 A. Yes.

12 Q. Okay. Did she try to communicate with you after
13 you defriended her?

14 A. Yes.

15 Q. And your feelings about those communications were
16 what?

17 A. They weren't friendly.

18 Q. Thank you. Did you ever see Nick hit a woman?

19 A. No.

20 Q. Lose his temper?

21 A. No.

22 Q. And if you told this jury how you described Nick,
23 what would that be?

24 A. He was a good band mate.

25 MS. CAMPBELL: Thank you. That's all I have.

1 THE COURT: Any questions for the witness?

2 MS. SWANSON: Just briefly.

3 CROSS-EXAMINATION

4 BY MS. SWANSON:

5 Q. Did you meet Nick when you worked at the bicycle
6 company?

7 A. Yes.

8 Q. Okay. So he had this hobby of bicycling and
9 cycling, right?

10 A. Correct.

11 Q. And he also had the hobby of playing in the band?

12 A. Yes.

13 Q. With you and, I believe, Mike Malvasio?

14 A. Correct.

15 Q. And so you would see Nick and Becca together, and
16 nothing stood out to you?

17 A. Nothing.

18 Q. Okay. And you never saw any injuries or anything
19 on Nick, did you?

20 A. No.

21 MS. SWANSON: I think that is all I have. Thank
22 you.

23 THE COURT: Any redirect?

24 MS. CAMPBELL: No, Your Honor.

25 THE COURT: Any objection to the witness being

1 excused, from the State?

2 MS. SWANSON: None from the State.

3 THE COURT: From the defense?

4 MS. CAMPBELL: No, Your Honor.

5 THE COURT: Sir, you are excused.

6 Call your next witness.

7 Proceed.

8 MS. CAMPBELL: Mike Malvasio, please.

9 MICHAEL MALVASIO,

10 having been duly sworn, testifies as follows:

11 THE COURT: sir, if you would state your full name
12 for the record, spelling your last name for the court
13 reporter.

14 THE WITNESS: It's Michael Malvasio,
15 M-a-l-v-a-s-i-o.

16 THE COURT: You may proceed.

17 MS. CAMPBELL: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q. Good morning.

21 A. Good morning.

22 Q. Did we have an opportunity to speak briefly
23 yesterday?

24 A. Yes.

25 Q. Thank you. Do you live in this area?

1 A. I live in Bluffton.

2 Q. Okay. And how long have you lived in Bluffton?

3 A. Seven years.

4 Q. Do you have a business or work in the area?

5 A. Yeah. I own a motorcycle repair shop. I do a
6 couple different things, own a few different businesses,
7 actually.

8 Q. Do you have any hobbies that you pursue?

9 A. Yeah. We ride motorcycles, dirt bikes, boating.
10 I'm an outdoors guy.

11 Q. Did you have an opportunity to come to know Nick
12 Evangelista during this period of time?

13 A. Yes.

14 Q. And in what capacity did you know Nick Evangelista?

15 A. I'm also a musician, and Nick is a musician, and
16 that's how we got together, from a mutual friend.

17 Q. And did you have an opportunity to, I guess,
18 practice or play or begin a band with Nick?

19 A. Yeah. We rehearsed quite a few times, actually.

20 Q. And over the course of time that you were in the
21 band or playing music together, did you have an opportunity
22 to socialize with Nick?

23 A. Yes.

24 Q. And, well, let me just ask you this first. Did the
25 band stay together?

1 A. No, we broke up.

2 Q. Was there a particular reason that that happened?

3 A. Probably had something to do with Nick's
4 relationship.

5 Q. With?

6 A. With Becca, yeah.

7 MS. SWANSON: Speculation.

8 THE COURT: Sustained. Lack of foundation.
9 Speculation.

10 MS. CAMPBELL: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 BY MS. CAMPBELL:

13 Q. And when you socialized with Nick and Rebecca,
14 where are some of the places those social events would take
15 place?

16 A. We went out a couple of times as couples, couple of
17 times out on my boat, couple of times at my house.

18 Q. Do you recall around the 4th of July 2014
19 socializing with Nick and Rebecca?

20 A. I did.

21 Q. Can you tell the jury about what you did that day?

22 A. We set out to go watch the fireworks on my boat.
23 We packed a couple of coolers with some food and couple of
24 beers and we went out to watch the fireworks. We watched
25 the fireworks at the light house, and then we decided to

1 go -- there was another set of fireworks at the boathouse.

2 So we went over to the boathouse.

3 Q. Now, Rebecca Melton was on your boat?

4 A. That is correct.

5 Q. And how did you find her behavior to be on your
6 boat?

7 A. She was probably intoxicated.

8 Q. And other than that, was it appropriate,
9 inappropriate behavior?

10 MS. SWANSON: Leading, Your Honor.

11 THE COURT: Sustained. Leading. Rephrase.

12 BY MS. CAMPBELL:

13 Q. How was her behavior on your boat? What did you
14 observe?

15 A. She was intoxicated, so, you know, little loose.

16 Q. Loose how?

17 A. Just hard to explain, just like an intoxicated
18 person would act.

19 Q. At any point, was she not clothed on your boat?

20 MS. SWANSON: Leading, Your Honor.

21 THE COURT: Sustained. Leading and relevance.
22 Subject to foundation. Rephrase.

23 BY MS. CAMPBELL:

24 Q. How was she clothed on your boat?

25 A. She was -- maybe left an article of clothing at

1 home.

2 Q. Okay. I know it's delicate and it's hard to get
3 there. What article of clothing did you feel like --

4 MS. SWANSON: Your Honor, I'm still objecting.

5 THE COURT: Sustained. Relevance. Subject to
6 connection to an element of the charged offense or the
7 defense.

8 MS. CAMPBELL: Thank you, Your Honor.

9 THE COURT: And character.

10 By MS. CAMPBELL:

11 Q. Did you eventually have Rebecca and Nick off the
12 boat?

13 A. Yes.

14 Q. Did there come another time when you were
15 socializing with Nick and Rebecca?

16 A. Yes.

17 Q. Do you recall that time?

18 A. Yes, I do.

19 Q. And where did that socializing take place?

20 A. At my home.

21 Q. Thank you. This previous incident on the boat in
22 July 4th, 2013, after the 4th of July, did you have an
23 occasion to receive an e-mail from Nick Evangelista?

24 A. Yes.

25 Q. And the e-mail that you received from that, from

1 Nick, what -- did it cause you any concern?

2 A. Oh, yes.

3 Q. Why did it cause you concern?

4 A. Well, Nick was -- in the e-mail, he said he was
5 afraid that he might go disappearing or something might
6 happen to him. So he wanted us to know about it.

7 Q. And when Nick did disappear in the fall of 2014,
8 were you fearing for him?

9 A. Yeah.

10 Q. Why?

11 A. Because of that e-mail.

12 Q. And what was your fear?

13 A. Well, I kind of thought that he had gone --

14 MS. SWANSON: Speculation.

15 THE COURT: Sustained. Speculation. Lack of
16 foundation.

17 By MS. CAMPBELL:

18 Q. Was Nick your friend?

19 A. Yes.

20 Q. Thank you. Is there anything in here that you
21 would lie about to this jury?

22 A. No.

23 Q. Thank you. Do you have any words to kind of just
24 briefly tell this jury who Nick was or who you saw him to
25 be?

1 A. Well, he was a -- for me, he was a friend. He was
2 a good guy, helped my daughter become a physician's
3 assistant. She followed him. And he wrote a letter of
4 recommendation to her. And she's now a PA.

5 MS. CAMPBELL: Thank you, Mike.

6 THE COURT: Any questions of the witness?

7 MS. SWANSON: Just briefly.

8 CROSS-EXAMINATION

9 BY MS. SWANSON:

10 Q. You describe yourself as an outdoors guy?

11 A. Uh-huh.

12 Q. Man's man?

13 A. I don't know about that, but ...

14 Q. And you got along with Nick well, correct?

15 A. Uh-huh.

16 Q. And so you socialized together and you socialized
17 on this 4th of July back in 2013?

18 A. That's correct.

19 Q. What time did you guys head out on the boat that
20 day?

21 A. It was before dark. I don't remember the exact
22 time.

23 Q. And then, of course, the fireworks don't happen
24 until after dark, right?

25 A. That is correct.

1 Q. And we are talking about July, so it gets dark
2 late, a lot of times, 9, 9:30, right?

3 A. Uh-huh, uh-huh.

4 Q. So you went to one fireworks show and then you
5 boated over to another fireworks show, right?

6 A. That's correct.

7 Q. So you guys were on the boat for several hours?

8 A. Uh-huh.

9 Q. And that was 4th of July. And then later that
10 night, and I say night, it was actually morning, but on the
11 5th of July is when you received the e-mail at 2:23 a.m.
12 from Nick, right?

13 A. Yeah. I probably didn't see it until the following
14 day.

15 Q. Sure. Sure. Most people are asleep, right?

16 A. That's correct.

17 MS. SWANSON: That's all I have. Thank you.

18 THE COURT: Any redirect?

19 MS. CAMPBELL: No, Your Honor. Thank you.

20 THE COURT: You're welcome. Any objection to the
21 witness being excused, from the State?

22 MS. SWANSON: None from the State.

23 THE COURT: From the defense?

24 MS. CAMPBELL: No, Your Honor.

25 THE COURT: Sir, you are excused.

1 Call your next witness.

2 MS. CAMPBELL: Your Honor, at this time the defense
3 would call Cathy Evangelista.

4 CATHRYN EVANGELISTA,
5 having been duly sworn, testifies as follows:

6 THE COURT: Ma'am, please state your name for the
7 record and let us know if your first name starts with a C or
8 K, and spell your last name for us.

9 THE WITNESS: Sure. It's Cathryn Mary Evangelista,
10 starts with a C, C-a-t-h-r-y-n.

11 THE COURT: You may proceed.

12 MS. CAMPBELL: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL:

15 Q. Good morning. May I call you Cathy?

16 A. Of course.

17 Q. Thank you. Cathy, you have the same last name as
18 Nick?

19 A. Yes.

20 Q. I take that at some point, you were married to
21 Nick?

22 A. Yes.

23 Q. All right. When did you marry Nick?

24 A. 1988, July 1st.

25 Q. Did you and Nick ever have any children?

1 A. Yes, we have two.

2 Q. And the boys are?

3 A. They are boys. One is 23 and one is 20.

4 Q. At some point, Cathy, did your marriage to Nick
5 end?

6 A. Yes.

7 Q. And how would you describe your marriage to Nick in
8 terms of his demeanor and behavior to you?

9 A. Always -- there was never any arguments. There was
10 never any fighting. I can remember the one time we ever had
11 an argument that was loud, and that was after our marriage
12 had ended, and we had a little argument over the children.
13 But, yeah, very calm. Everything was focused around the
14 children, taking care of the children. Yeah, there was
15 rarely an argument in our house.

16 Q. And during the course of the marriage, how was Nick
17 as a father to the children?

18 A. He was a stellar father. He was an amazing
19 father.

20 Q. Now, there's been a divorce.

21 A. Uh-huh.

22 Q. How will you describe your relationship with Nick
23 after the divorce?

24 A. Well, for many years, it was wonderful. People
25 actually would say, I can't believe you have such a great

1 relationship with your ex-husband.

2 He came to -- we celebrated all the holidays
3 together. We planned birthdays together. We actually went
4 to see my oldest son play in the USC band at a football game
5 together down in Florida. Yeah, it was very, very good. I
6 would describe him -- he was my best friend.

7 Q. Did there come a period of time when you saw Nick
8 change?

9 A. Oh, yeah, yeah.

10 Q. And the changes that you saw happening to Nick,
11 around when did that happen?

12 A. Gosh, you know, at one point -- I would say maybe
13 in 2013, maybe around in there. I remember him telling me
14 he was lonely and he was, you know, trying to find a
15 companion again. And I think that was a really good thing,
16 because I love Nick and I wanted him to be happy. So I
17 thought that was good. And then he told me he had started
18 seeing a woman.

19 MS. SWANSON: Objection. Hearsay.

20 THE COURT: Sustained. Hearsay.

21 THE WITNESS: I'm sorry?

22 THE COURT: You can't repeat what anyone said.

23 THE WITNESS: Oh, I'm so sorry.

24 THE COURT: That's okay.

25 BY MS. CAMPBELL:

1 Q. It's okay. So in 2013 or so, did you have an
2 opportunity to meet a woman named Rebecca Melton?

3 A. Yeah.

4 Q. And how did you meet Rebecca Melton?

5 A. She came to my house for Christmas Eve.

6 Q. And the Christmas Eve at your home, how was that?

7 A. It was different. It was loud. And I just was
8 kind of uncomfortable for a while. When I met her, I
9 thought she was very funny and outgoing. And then it got
10 very strange. And she was saying kind of odd things to my
11 sons. And then I got uncomfortable with it. But she was in
12 my house, and I was gracious and she was a guest.

13 Q. Did you want her to come back to your home after
14 that?

15 A. No.

16 Q. Now, did you ever get any messages or text messages
17 that you suspected were from Rebecca Melton?

18 A. Yes.

19 MS. SWANSON: Hearsay and speculation.

20 THE COURT: Sustained on both grounds.

21 BY MS. CAMPBELL:

22 Q. Did you suspect that Nick was being abused?

23 A. Yes.

24 MS. SWANSON: Speculation.

25 THE COURT: Sustained. Speculation. Subject to

1 foundation.

2 BY MS. CAMPBELL:

3 Q. Did you ever see Nick when he had been hurt?

4 A. Yes.

5 Q. Thank you. Did Nick ever come to your home seeking
6 shelter?

7 A. Yes.

8 Q. Thank you. Did Nick ever call you --

9 A. Yes.

10 Q. -- seeking shelter?

11 A. I'm sorry. Yes.

12 Q. Thank you. Did you ever know of Nick to have to
13 sleep at hotels?

14 A. Yes.

15 MS. SWANSON: That would be hearsay.

16 THE COURT: It is hearsay. Sustained. Subject to
17 foundation.

18 BY MS. CAMPBELL:

19 Q. Thank you.

20 A. Ma'am -- okay.

21 Q. That's okay. Were you aware that Rebecca had been
22 arrested?

23 MS. SWANSON: Objection. Hearsay.

24 THE COURT: Sustained. Speculation. Foundation,
25 unless it's based on her rational perception.

1 BY MS. CAMPBELL:

2 Q. Cathy, as far as Nick is concerned, if you had to
3 talk to this jury about the man you know, what would you
4 say?

5 A. About Nick? He's -- he was an amazing father. He
6 was a great friend to me for a long, long time. He's a very
7 kind man to a fault, extremely funny, made me laugh all the
8 time.

9 Q. And were you ever in fear of Nick?

10 A. Never. One of the gentlest souls I ever knew.

11 MS. CAMPBELL: Thank you.

12 THE COURT: Any questions for the witness?

13 MS. SWANSON: Yes. Thank you.

14 THE COURT: You may proceed.

15 CROSS-EXAMINATION

16 BY MS. SWANSON:

17 Q. How are you, Cathy?

18 A. I'm fine. Thank you.

19 Q. Cathy, you would agree with me that people change
20 through the years sometimes, right?

21 A. Yes, uh-huh.

22 Q. And through your marriage with Nick, you guys
23 probably changed and drifted apart?

24 A. Uh-huh, yes.

25 Q. And you said for many years it was wonderful and

1 that he was a good friend to you for a long time?

2 A. Yes, ma'am.

3 Q. So at some point that changed, correct?

4 A. Yes.

5 Q. And it wouldn't surprise you that when Nick was
6 talking to investigators, he said, well, I don't care much
7 for her, but I do care for my children?

8 A. Yes.

9 Q. And, of course, when you share children with
10 someone, you feel for your children, right?

11 A. Yes.

12 Q. And you don't want them to not have access to their
13 father, do you?

14 A. Right, correct.

15 Q. Nobody would ever wish that for their children,
16 right?

17 A. Uh-huh.

18 Q. And Nick was bad with money, wasn't he?

19 A. I'm sorry?

20 Q. He was not very financially responsible, was he?

21 A. No, he wasn't good with money, no.

22 Q. But, you know, he would pay you alimony and child
23 support, right?

24 A. Child support, not alimony.

25 Q. Okay. So child support?

1 A. Uh-huh.

2 Q. And he was paying you child support back in 2014?

3 A. Yes.

4 Q. And you were someone in 2013 that he could call,
5 right?

6 A. Yes.

7 Q. You would go help him and pick him up?

8 A. Yes.

9 Q. Take him to a hotel?

10 A. Yes, ma'am.

11 Q. Allow him to sleep at your house?

12 A. Yes, ma'am.

13 Q. And, in fact, he told you about his relationship
14 with Becca?

15 A. Yes.

16 Q. And did you ever see any -- you didn't ever see any
17 injuries on Nick, did you?

18 A. Yeah. They were minor, but, yeah.

19 Q. Minor?

20 A. They were scratches, yeah.

21 Q. Scratches, okay.

22 MS. SWANSON: I think that's all I have. Thank
23 you, Cathy.

24 THE COURT: Any redirect?

25 MS. CAMPBELL: No, Your Honor.

1 THE COURT: Any objection to the witness being
2 excused from the State?

3 MS. SWANSON: None from the State.

4 THE COURT: From the defense?

5 MS. CAMPBELL: No, Your Honor.

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

7 Mr. Foreman, ladies and gentlemen, we are going to
8 take advantage of this break in testimony to take a brief
9 restroom break. During the break, please do not discuss the
10 case and please leave your notepads in your seats.

11 (Whereupon, the jury leaves open court at 10:48
12 a.m.)

13 THE COURT: We will be at ease about ten minutes.

14 (Whereupon, a recess transpired.)

15 THE COURT: The defense?

16 MS. CAMPBELL: Your Honor, the defense will rest.

17 At this point, Your Honor, the defense rests. The
18 defendant would renew his motion for directed verdict on the
19 same basis as before and renew his motion for a mistrial
20 made previously.

21 THE COURT: I don't think you can renew that if you
22 didn't do it at the close of the State's case, which you did
23 not.

24 MS. CAMPBELL: And that would be all we have.

25 THE COURT: But I don't think it matters because I

1 MS. CAMPBELL: Testimony from two key witnesses in
2 this case, Cathy Evangelista: One of the gentlest souls
3 I've ever known.

4 The testimony from Dr. Veronen in this case:
5 Rebecca Melton, a severely disturbed woman.

6 Ask yourselves what kind of person goes years
7 without seeing their young child?

8 Ask yourself what kind of person threatens to kill
9 themselves repeatedly in the relationship.

10 Ask yourselves what kind of person is arrested
11 three times for criminal domestic violence.

12 What sort of person is ordered into batterers
13 program or an alcohol treatment program?

14 What sort of person has plenty of food provided for
15 them every single day, yet possesses a Supplemental
16 Nutrition Assistance Program, food stamp card for use in
17 South Carolina?

18 Ask yourselves what kind of person -- or better
19 yet, how in the world does a person with a mental health
20 record five inches thick get a license to carry a firearm in
21 the state of Georgia?

22 What kind of person threatens to kill their
23 partner?

24 What sort of person threatens to kill their
25 partner's children?

1 What sort of person goes and harasses their partner
2 at work?

3 What sort of person throws all the contents of the
4 refrigerator up against the walls?

5 What sort of person smashes computers, destroys
6 iPhones, smashes bikes?

7 What kind of person buries their partner's clothing
8 in the woods?

9 What sort of person has their partner controlled
10 enough to make them dig them up?

11 What sort of person wakes their partner up in the
12 middle of the night, night after night at the end, yelling
13 and screaming, get out, or, kill me?

14 What kind of person chases their partner out of the
15 home?

16 What kind of person -- what sort of person causes
17 their partner to be so afraid of them that they have to
18 barricade themselves in one of the rooms in the home and
19 push a dresser in front of that door?

20 What sort of person begs for forgiveness, asks to
21 be reconciled, asks to be resuming the relationship?

22 What sort of person demands and seeks and wants and
23 gets control over their partner?

24 What kind of person is this?

25 Well, we have tried as best we could, clawing our

1 way through this case to give you a clear as possible
2 picture of who this person is, how she operated, how she
3 manipulated, managed, controlled, lied, threatened, beat,
4 stabbed, her partner.

5 This kind of person, a master manipulator and
6 abuser, this is Rebecca Melton.

7 What kind of person falls for a beautiful woman
8 with a tall tale of having been a retired Delta pilot?

9 What sort of person, on the initial appearance, the
10 initial package, the book cover, seems looking perfect in
11 every way? Hmmm.

12 But woe to you if you open that book and become
13 part of that story, because that story for Nick Evangelista
14 was a horror story. He opened the book, became part of her
15 story. He became part of the abuse. You've heard what
16 happened, digging up his clothes, the destruction of his
17 property, taking her back again and again, reconciling,
18 wanting, needing, seeking, trying to help her, trying to get
19 her counseling, trying to help her feel better, trying to
20 bring some peace to her life.

21 That person is a battered person. That person is
22 Nick Evangelista. And all the sheriff's department
23 resources and all the resources of the State of South
24 Carolina, they are supposed to be in place. The safety net
25 that we all depend on for the victims of criminal domestic

1 violence, well, that just wasn't there. And whatever might
2 have been there, the single phone call that he got the one
3 time, they just let him just slide right through. And when
4 he fell through, the net that he should have been caught by,
5 he was right where Rebecca Melton wanted him. She wanted
6 him on his knees with complete control over every aspect of
7 his life.

8 And that is where he ended up, on his knees,
9 fearing for his life, fearing for the lives of his children,
10 believing that Rebecca could kill him with a phone call,
11 could kill him with her gun, could kill him any number of
12 ways. And the fear you heard from Dr. Veronen, the fear was
13 real.

14 Now, the State is going to want to talk to you and
15 try to argue to you, perhaps, that Nick created some
16 defense, obscure defense after he had time to think about
17 what had happened. But you know that's not true. And how
18 do you know that's not true? Because in evidence and from
19 the testimony, you heard back -- way back in 2013, after
20 Rebecca had been arrested for criminal domestic violence, he
21 had sent a message: Friends and family, this is what's just
22 happened. She's been arrested. She's threatened to kill
23 you. She's threatened to kill me.

24 Read it for yourselves again: I want you to know
25 what's happened in case something happens to me.

1 Now, there wasn't some grand scheme. It was his
2 reality. I believe, quite frankly, that even today, Nick
3 really doesn't truly understand, because of the nature of
4 what Dr. Veronen testified happens to people who are
5 battered. I don't think he really understands the abuse and
6 the tragedy and the horror and how it has impacted him.

7 Now, the solicitor in her questioning of Deputy
8 Greene from Escambia County, it sounded to me like she
9 wanted to make a big deal about how that deputy used his
10 Reid technique to get this statement out of Nick. All
11 right. Well, that's just not true. There wasn't some
12 working of charms and, you know, whatever trickery and all
13 that.

14 As soon as Nick got in the back of that patrol car
15 and he had an opportunity to tell what had happened to him,
16 it was just coming out of him. And he said, I haven't been
17 able to talk to anybody about what's happened. And it came
18 out of him. So when he saw Officer Greene, he continued to
19 be consistent with what he said all along.

20 Now, not -- I think these are the words: Not a
21 fully functioning adult male, capable of forming and acting
22 out a volitional act on the night Rebecca died, Dr. Veronen;
23 suffering from post-traumatic stress disorder, classified as
24 a battered person at the hands of Rebecca Melton.

25 And not just by what Nick had to say, but by the

1 entire police file, all of Rebecca Melton's mental health
2 records from Volunteers in Medicine, all the criminal
3 domestic violence arrest reports, a battery of testing,
4 multiple sources of information pulled together and pulled
5 upon by Dr. Veronen to be able to say to you that Nick was
6 acting in that freeze, fight-or-flight mode, which is a
7 primal functioning of our brain in order to survive, and
8 it's not based on forming an intent.

9 The State has to prove that Nick killed Rebecca
10 with malice. Now, Her Honor is going to give you the full
11 definition of what malice is. Please adhere to what she
12 tells you that means.

13 The State would have you believe about Dr. Veronen,
14 a professional licensed clinical psychologist, 30, 40 years
15 practicing in the state of South Carolina, testifying for
16 both defense and the State, that Dr. Veronen would come in
17 here for \$3,500 and lie and compromise her ethics. That's
18 the implication that the State wanted to leave you with.

19 You know, let's think about this. Because she's
20 going to talk -- the State is going to talk about the
21 physicality of the two of them. But when you have and own
22 and carry a license for a firearm, when you have a gun and
23 when your victim believes you have a gun, it doesn't matter
24 what your size is. Now, fear is real.

25 You heard Dr. Veronen testify about -- about

1 interpersonal relationships. And anybody that's ever been
2 married, anybody that's ever had a long-term relationship,
3 we know, and she said, I mean, there are good times. There
4 are bad times. And in those relationships, you make
5 decisions. You have arguments. You move forward or you
6 move on.

7 And that is how, up until the time he met Rebecca
8 and opened that book and became a part of her story, that's
9 how Nick functioned. You heard the witnesses. You heard
10 Cathy. In the normal prism of life, Nick functioned as we
11 all function.

12 And can you imagine the shock and the horror that
13 you find yourself in when you are in love with this person
14 and you are so outside that prism of normal, and you are
15 being hit, you are being scratched, you are being flung, you
16 are being abused. And the abuse becomes more and more and
17 more frequent.

18 And you learn behaviors, what to say, whatnot to
19 say, what to do, whatnot to do, in order to avoid the
20 violence. In the normal prism of life, you know, men don't
21 hit woman. Isn't that what we are telling boys? Oh, I
22 don't care, you shouldn't worry, you are not to hit that
23 girl. And that's Nick. Okay? Cathy talked to you about
24 Nick.

25 And when he was part of Rebecca's story, his DNA

1 had changed. He took the abuse as it got worse and worse.
2 And, yes, he said, and there's evidence, of course, he
3 restrained her. He tried to stop her from -- well, number
4 one, hurting herself, because she had been threatening to
5 kill herself, or, further hurting him.

6 And, you know, there's a shame. There's an
7 embarrassment that comes attached to all of this. And Dr.
8 Veronen spoke to you about that. And, you know, I can say,
9 and this is my belief, that if the roles were reversed, we
10 wouldn't even be in a trial right now. I believe if the
11 State of South Carolina and the Beaufort County Sheriff's
12 Department had done their jobs, the victim advocate jobs,
13 that they are hired to do, paid to do, that Nick Evangelista
14 would have been helped. And he wasn't.

15 And, obviously, if Nick had never met Rebecca, we
16 would not be here. You heard from the testimony what Nick
17 was before he met her.

18 Now, look at the photos of that house. You will
19 have an opportunity to do that. Every single part of that
20 house was in just complete disarray. The only part of that
21 house that was orderly was Rebecca's drawer of her receipts.

22 Look at the photo of her personal note to herself,
23 that she needed to find life insurance on Nick and herself.

24 Look at the notes on that calendar. Look at what
25 she thought was important. Look at what she had down to do.

1 Recall Mike testifying: The band broke up when we
2 met Rebecca.

3 Do you recall Dudley Ruffalo, long-time attorney
4 here. I don't know his exact words. I don't want to
5 misquote him, but something along those lines of battered,
6 beaten, disheveled, hanging his head down, not concerned
7 with himself.

8 Oh, and remember Officer Adams taking into custody
9 Rebecca's wallet and not ever even going through it. How do
10 you do that? How do you take a piece of evidence and don't
11 open it up? As soon as I had an opportunity to do that
12 here, I did it. And there, as I suspected, it was. Now, I
13 had him open it for you, go through everything for you. And
14 there we found her permit, her lawful carry-gun permit.
15 Now, if you had done your job, if you opened the wallet, if
16 you had found that, don't you think you might be looking for
17 her gun? But you can't look for something you didn't even
18 know you needed to look for.

19 Now, look at Defendant's Exhibits 7 and 12 in
20 particular, notes of Rebecca's. They are there for you to
21 review.

22 Now, look, despite the fact that each and every one
23 of you sits in the box here together, you each have an
24 individual seat. You each have an individual mind. You
25 each bring with you to this case your commonsense, your life

1 experiences, and all of the factors that you carry with you
2 when the judge tells you, okay, it's time to begin your
3 deliberations. And no one can tell you that your belief or
4 your belief is better than the other, or make you give up
5 what you believe just to be in agreement with someone else.

6 There's only one requirement, and Her Honor will
7 tell you, is that whatever decision that you come to, it has
8 to be unanimous. Ask yourself about the testimony of the
9 fellow from M.U.S.C. Again, the preliminary autopsy results
10 says they can't make a finding of a cause of death. Then,
11 you know, I asked him about no signs of physical trauma
12 anywhere to her body included in his report. He gets the
13 toxicology report back. He acted a little bit of off-kilter
14 about when he was called on that. And he can't make a
15 finding about the death until he gets this nonmedical
16 information that Nick is telling the officers in Florida
17 that he tried to stop her from screaming with the bubble
18 wrap.

19 Well, now, all of a sudden, he's got a cause of
20 death. And for whatever purpose you choose to use that, use
21 it or don't use it, but I do point it out to you.

22 Now, recall the testimony of those friends and
23 family, some of them who saw the abuse. Some of them did
24 not see it. Recall those same people who talked about Nick
25 in terms of, he's a good guy, he was like an uncle, he was a

1 good friend, he helped my daughter, he was a healer.

2 Nick was a healer. He sought out the medical
3 profession, a profession where he could go in every single
4 day and make a difference in the lives of those people in
5 this community who needed him the most, who were in pain and
6 suffering. And he did that every day of his life.

7 But you heard Dr. Veronen talk about when he went
8 home at night, he was a different person. He had become
9 what she wanted, needed, manipulated, maneuvered him to be.
10 And that was at her complete control.

11 Now, there were times that Nick tried to open the
12 door. There were times he tried to open the door and get
13 out or open the door and let somebody see in to what's
14 happening. There were the 911 calls from the sheriff's
15 department. You know, after the repeated arrests, and
16 particularly after the occasion where the neighbor called
17 because of her screaming, nobody -- they never got any help.
18 Should have been there. He never got it.

19 And the abuse continued to escalate to the summer
20 of 2014. Look at the photographs in evidence. The
21 readily -- and, remember, the readily available instrument
22 of death, which is the eight-inch fillet knife, just feet
23 from the hallway where the second bedroom is, if I'm
24 intending to take your life, you know, I'm grabbing a knife.
25 I'm grabbing something that I know is going to kill you.

1 It's right there. Or, on the other side of the coin, am I
2 so fearful, I mean, I know what you are capable of, you
3 stabbed me a week before with the car keys, do I know the
4 knife is there? Am I afraid you are going to grab the
5 knife?

6 Kill me, trying to stop the attack, already called
7 the police multiple times, never gotten any help, this is
8 where I am. Not a fully functioning person, emotionally and
9 intellectually acting. There's a primal fear, fight,
10 fright, freeze. Fear was real. Battery was real. His
11 actions were not intentional.

12 You know, you don't wind up in this horror story if
13 you haven't fallen in love. Nick fell in love with the
14 picture on the front of the book cover and then became part
15 of the horror inside. But when it happened, when he
16 realized it was too late, because he had already been
17 inducted into the oh-so-unfortunate people who are battered.

18 You know, he told you, I'm sure he believed it,
19 just like Dr. Veronen said, every time they think, oh, it's
20 going to get better, it's going to change, something is
21 going to be different. But it never was.

22 You know, he testified, he told you -- and this is
23 the level to which he cared for her, for which he loved her,
24 that he, knowing -- although you heard from one of the
25 witnesses that it's common practice -- that he prescribed

1 her some medications. She was going home to see her mother,
2 something about the time in Canada or something with her
3 mother dying, and didn't want her to be without her
4 medication. And so he prescribed certain medications for
5 her.

6 Can you imagine the level of control that he was
7 under to have -- to get to that point, with his profession,
8 his livelihood? And so it's, on the one hand, I'm so
9 wanting to help you, and on the other hand, I'm knowing if I
10 don't do this, there will be hell to pay.

11 Now, the solicitor repeatedly wants to cherry pick
12 portions of Nick's journal that he wrote when he was in
13 Florida. But I got to say, you know, especially after all
14 that you have heard in the testimony in this case and when
15 you go through all the evidence in the jury room, because
16 she wants to pull out a phrase here or a portion here from,
17 basically, his last will, musings on what had happened to
18 him. But, you know, here's the thing, Nick's mind was so
19 severely damaged at that point, his functioning, his
20 thinking, so traumatized, so distorted, that, really, any
21 and all of those writings, well, you just have to put that
22 in the context of the battered man, of the battered person
23 whose very DNA has been altered by their abuser.

24 And I say to you that the prosecution, their
25 responsibility in this case, I see, is to seek justice, not

1 to seek a conviction. And my responsibility to you, I feel
2 like, you know, as Nick's attorney, is to bring to you as
3 best I can the whole picture, to bring to you the truth of
4 the situation. And I've tried my very best to do that and
5 give you that information so that you can apply all of that
6 in making your decision.

7 Now, so we have to ask ourselves at this point, so
8 what is the rule of law in South Carolina? And Her Honor is
9 going to spend a long time going over that with you after
10 you have lunch. But I will just point out a couple of
11 things and then I will be finished.

12 So burden of proof, proof of guilt beyond a
13 reasonable doubt, it's not just a phrase. It's reality.
14 It's where we are. It's where we should be. So the State
15 has to prove that Nick killed Rebecca beyond a reasonable
16 doubt with malice.

17 Now, burden of proof, self-defense. Defendant
18 never has to prove anything. None of us would want it any
19 other way if we are sitting at that table. Right? That's
20 the law.

21 The State has to prove beyond a reasonable doubt to
22 you that Nick did not act in self-defense. So I am not very
23 tech savvy. I'm a teacher at heart, I guess. But I'm going
24 to go through some points with you that I think will be
25 helpful.

1 So self-defense, in South Carolina, it is a
2 complete defense. You may use force which is intended to
3 cause death or great bodily harm if you reasonably believe
4 that such force is necessary to prevent death or great
5 bodily harm to yourself. And that is what is called
6 justified. And that is not guilty.

7 Now, other items on self-defense that Her Honor
8 will go through with you, the law, I say to you, Nick was
9 without fault in bringing on the difficulty. What could he
10 possibly have done sound asleep? He was attacked. Nick was
11 in imminent danger of death or serious bodily injury. You
12 can consider Rebecca's prior attacks on him. Nick, a man of
13 ordinary firmness and courage, is warranted to strike the
14 final blow to prevent death or serious bodily injury. You
15 may factor in Rebecca's prior attacks, Dr. Veronen's
16 testimony on all of this.

17 If Nick is justified in defending himself, then he
18 can continue to defend until it is apparent that the danger
19 of death or serious bodily injury has completely ended. And
20 Nick does not have to wait for Rebecca to get the drop on
21 him. Nick does not have to show that he was actually in
22 danger. It is enough if Nick believed he was in imminent
23 danger and a reasonably prudent person of ordinary firmness
24 and courage would have had the same belief. Again,
25 factoring in what Her Honor is going to tell you the law is

1 on battered person.

2 The State of South Carolina must prove to you that
3 Nick did not act in self-defense. And the State of South
4 Carolina must prove this to you beyond a reasonable doubt.
5 This is the burden of proof that they carry. Her Honor is
6 going to tell you what beyond a reasonable doubt means. And
7 in deference to Her Honor, I will refer to have instruction
8 to you on that.

9 I say to you as I close, Nick acted in
10 self-defense. He was a battered man. He was justified. He
11 saved his own life that night and every night after that.
12 Because, here, this is what I said to you at the beginning
13 and this is what I say to you here, in South Carolina,
14 surviving this is not a crime.

15 I believe and have confidence that at the close of
16 your deliberations, as you tear off your piece of paper,
17 when you write down your verdict and you fold it up and you
18 pass it down to your foreman, that every single piece of
19 paper will read not guilty.. Thank you.

20 MS. SWANSON: May it please the Court.

21 THE COURT: Yes, ma'am.

22 Anybody need to go to the restroom?

23 (No response from the jury.)

24 THE COURT: Everybody good? Okay.

25 MS. SWANSON: I want to start by briefly responding

1 to some of the things that Ms. Campbell just talked to you
2 about. She began by talking to you about her two key
3 witnesses, one of the which was the defendant's ex-wife,
4 Cathy Evangelista, who has absolutely no knowledge of the
5 events of August 26th, 2014. How in the world can she be a
6 key witness in this case?

7 The next key witness is Dr. Veronen, who never met
8 Becca, never interviewed Becca, but had a lot of horrible
9 things to say about Becca, as did the defense. They spent
10 about 30 minutes bashing the victim in this case. You know,
11 you can't kill someone for hiding your clothes. I mean,
12 Becca may have done some whacky things, but the words coming
13 out of Dr. Veronen's mouth yesterday were pretty whacky too.

14 The only evidence of Becca's abuse comes from the
15 words that Nick has told police, has told his friends.
16 There is no other evidence. There's some evidence of
17 scratches on his face, tiny little scratches. We don't know
18 how these scratches occurred. They certainly could have
19 been defensive wounds.

20 Ms. Campbell spent a long time talking about guns.
21 Why? There was no gun in this condo. There was no
22 allegation that Becca ever had a gun. There's no allegation
23 that she ever even had a weapon at all.

24 Survival is not a crime. Ms. Campbell is right.
25 But murder is. And the defense wants to lead you to believe

1 that Becca Melton made Nick Evangelista kill her by
2 suffering from mental health issues. In what world and
3 under what legal theory is killing someone okay because you
4 are tired of dealing with them? Maybe they are acting a
5 little crazy. They won't get out of bed. They won't clean
6 the house like you want them to. It's not a basis for
7 killing someone.

8 Nick apparently thinks she's in a better place
9 right now. And he told that to Robert Greene on the
10 recorded interview. I'm certain her family would disagree
11 with that. This wasn't a mercy killing. He pinned her
12 down. Placed a whole sheet of bubble wrap all the way over
13 her face -- you can even see blood and hair attached to
14 it -- until she stopped breathing. This didn't take
15 seconds. This took minutes. She died naked and afraid when
16 she took her last breath. Is that how anyone would choose
17 to go? How humiliating. How degrading.

18 Even the defendant's whacky expert threw in
19 victim-provoked suicide, which I don't think anybody would
20 believe is the truth here. And, of course, Nick is blaming
21 the woman because he's had a long history of poor
22 relationships with women, beginning with his mother that
23 he's been estranged from since 2003, 2004.

24 And then, you know, Cathy, things changed, and at
25 one time, he was her best friend. At one time, he was

1 wonderful. She did couch it in this terms.

2 And then he starts dating on the people. One of
3 them breaks up with him. He gets verbally abusive with her,
4 calls her a cunt.

5 And then, of course, we come to Becca. Oh, and one
6 thing I would like to point out is, if you heard it, while
7 he tries to paint a rosy picture here on the stand with his
8 ex-wife, if you heard it in the interview with Robert
9 Greene, they are talking about: Who do you want me to call?
10 Who do you want me to call? Maybe call Cathy; I don't care
11 much for her, but I do care for my children.

12 I want you to remember that battered person
13 syndrome is not a legal defense. It's not a separate
14 defense. All it goes to is explaining the defendant's state
15 of mind when we are talking about it in context with
16 self-defense. Was the fear reasonable?

17 But let's talk about Nick's state of mind. While
18 there are moments of honesty in his journal, he is writing
19 it as if he's a bereft, beaten man, while at the same time,
20 he is seeking out the companionship of escorts. He is going
21 to the beach. He's collecting sand dollars. He's talking
22 about, come meet me at my upscale hotel at the beach. He's
23 sending selfies of him in a bathing suit that he packed the
24 night that he was panicking because, oh, my, God, I just
25 killed Becca. People that go on normal vacations forget to

1 pack their bathing suit. This is not a panicked man. And
2 does that look like a battered person?

3 What about the smirk on his face in this one? Does
4 that look like a battered person? Look at the muscle
5 definition in his arms. Does that look like someone who
6 should be in fear of a physically and mentally infirmed
7 woman? Did he look ashamed in that picture?

8 So I do want to explain why Nick does not display
9 the characteristics of a battered person. So let's go
10 through those. You know, you were here when I
11 cross-examined Dr. Veronen. We talked about a lot of
12 aspects and characteristics of someone that's battered and
13 what those characteristics might be. Usually they are not
14 the financial provider who works outside the home. Nick,
15 you heard, works outside the home 7 a.m. to 5 p.m. He's
16 pretty much at work more than he's at home. And, obviously,
17 not under Becca's control at that time.

18 She never went to work with him. She was the one
19 that stayed home isolated in the house.

20 He was able to hold down a professional job. You
21 know, he certainly wasn't incapable of doing that.
22 Apparently, he's incapable of, you know, controlling his
23 emotions. But as far as, you know, functioning like a
24 normal person, which Dr. Veronen said he couldn't do, but,
25 of course, everyone at his job said he could do, he was

1 fine. He relied on support from co-workers, his ex-wife,
2 his father, band mates. He had friends. And he told them
3 about the troubles with Becca.

4 Did he, you know, exaggerate the troubles with her?
5 Of course, he did. Did he minimize his participation in
6 those troubles? Of course, he did. No doubt they had a
7 tumultuous relationship. No doubt it was unhealthy. No
8 doubt it was toxic. But many people live to tell about
9 that. And Becca didn't.

10 He demonstrated that he had the ability to leave
11 the residence with Becca. He left those homes many, many
12 many times. He went to hotels. He rode his bike across the
13 street to a hotel. He called his ex-wife to come pick him
14 up. He stayed at his office. He was not a POW, as Dr.
15 Veronen would have you believe. Living with Becca Melton
16 was not like being in Vietnam.

17 He had hobbies. He had his cycling. He had his
18 band and music. And they can call Becca Yoko Ono all they
19 want, but that's ridiculous. And if you can kill someone
20 for breaking up your band, then, I mean, that's not allowed.
21 Okay? You know, and maybe all of this stuff built up and he
22 just had enough. That's what he told investigators.

23 These characteristics of Nick's are all in contrast
24 to those of Becca's, who was emotionally unstable, tearful,
25 laid in bed all day, did not work outside the home, did not

1 have hobbies. Well, Nick piped in, well, she did go to the
2 store. Well, okay. I mean, I think all of us women and
3 those who are homemakers are not going to consider going to
4 the store a hobby.

5 Small woman, physically and mentally infirmed,
6 didn't have any money, he said. She had no money. He also
7 said she was responsible for 90 percent of the household
8 chores, which included paying bills. So, you know, the
9 money that she's in charge of is money that she's using to
10 pay their bills.

11 Now, ask yourselves, who sounds like the battered
12 person in this scenario? But I am not here to prove that
13 Becca was the battered person. I'm here to prove that Nick
14 murdered her. And it was not at all reasonable for Nick to
15 be in fear of death at the hands of Becca.

16 What he did was intentional and criminal. And any
17 aftereffects, trauma, depression that he was diagnosed with
18 three years later were of his own doing.

19 So what are we left with? We are left with a
20 self-defense case. And the State must prove that the
21 defense does not meet all four elements of self-defense.
22 And that's very important, because all four elements must be
23 met in order for the defendant to prevail on a claim of
24 self-defense. The State only has to show you that he does
25 not meet one.

1 Ms. Campbell briefly went over the elements of
2 self-defense. And I'm going to go over them with you and
3 why Nick fails on these.

4 The defendant was without fault in bringing on the
5 difficulty. This fails because Nick continued to
6 participate in a combative and unhealthy relationship. He
7 exerted violence against her. He drank to excess most
8 nights, "enough to kill a person", he wrote in his journal.
9 And that typically precipitated any argument and escalated
10 arguments on both ends. He engaged and he continued to
11 engage, despite the fact that he left many times before and
12 was arrested for criminal domestic violence against her, he
13 kept getting back together with her. Nobody was forcing him
14 to. That's what he did.

15 Number two, the defendant actually believed that he
16 was in imminent danger of losing his life or sustaining
17 great bodily injury. Well, Nick can get on the stand and
18 say that until he's blue in the face, but you get to judge
19 his credibility on that one. And he certainly didn't say
20 that he believed she was going to kill him the night he
21 murdered her to investigators back when this happened in
22 those August 1st interviews. He said he snapped. He said
23 he had enough. And those interviews are recorded. It was
24 not fear. He wanted to be done with her.

25 Number three, that his belief of the danger was

1 reasonable. And this is where Nick fails big time. That
2 injuries that he recounted for you at the hands of Becca
3 consisted of scratches. That is not great bodily injury.
4 That is not, you know, imminent death. And that's taking
5 him at his word that she actually was the aggressor in those
6 situations and, you know, caused those injuries not being
7 defensive wounds. There's no medical or photographic
8 documentation of -- well, I'm sorry, there is documentation
9 as far as photographs go of a scratch, and then remember the
10 small bandage which looks like a band-aid on his right
11 forearm, the one that was supposedly causing him the
12 greatest fear, the one where he said he bled for a week
13 from.

14 And I asked him if he had a scar. And he said,
15 yes, I do. And he rolled up his sleeve and he pointed to
16 something that I couldn't really see, on the inside of his
17 forearm, which is not this injury. So the one that impacted
18 him so badly, he couldn't even remember where it was.

19 The fact that Becca was so much smaller and, you
20 know, recovering from that shoulder injury, had pain from
21 that still, naked, weaponless, all points to the fact that a
22 reasonable person would not be in fear. And Nick is held to
23 a reasonable person standard. He could ride his bike 200
24 miles a week, physically fit, no health issues. Certainly
25 in the past, he demonstrated and testified that he could

1 physically control her. He told you he restrained her. And
2 he certainly restrained her that night.

3 Number four, the defendant had no other means to
4 avoid the danger. Again, Nick had successfully left this
5 household on many occasions. He chose not to leave on
6 August 26th of 2014. He had money. He had support. He had
7 places to go. And he chose not to.

8 Nick fails on all of the four elements of
9 self-defense. You must only find that he fails on one for
10 it not to be self-defense.

11 The judge will tell you that murder is an unlawful
12 killing with malice aforethought. And we must prove that to
13 you beyond a reasonable doubt. Now, beyond a reasonable
14 doubt means that we must leave you firmly convinced of the
15 defendant's guilt. Malice is evil intent. For instance,
16 holding bubble wrap over somebody's face for minutes to make
17 them stop breathing, checking their pulse, making sure they
18 are good and dead, packing a spring-break bag to head for
19 the beach, might all be indicative of malice and evil
20 intent.

21 The facts of this case really speak for themselves.
22 This was no justified or mitigated killing. This was
23 murder.

24 And why can't you believe Nick's version of events?
25 Because he lies. And he's an admitted liar. He had to

1 admit that he was a liar on the stand over and over again.
2 First, I would remind you that if there are words of his
3 that you don't remember, this is a court of record. You can
4 read the testimony. You can review any of the recorded
5 statements. Don't take my words or Ms. Campbell's words for
6 gospel, they are right here before you. That's all in
7 evidence.

8 We talked about the forearm injury. He was
9 extremely inconsistent with his rendition on that. Can't
10 believe him about that one. He told investigators that he
11 would never prescribe drugs to Becca, that would be a
12 conflict and that would be wrong. But, you know what, he
13 did that. And he had to admit he lied about that. And just
14 because it was wrong, he really didn't have a problem doing
15 it.

16 Furthermore, I would tell you that it's evidence of
17 him possibly drugging her. That's a way to exert control.
18 If you are the one giving pills to someone who needs those
19 pills, that's control. He has the control. Who is
20 controlling who here?

21 His co-workers testified that they couldn't believe
22 he would ever do that. But he told you he did that. He
23 sends that detailed e-mail that's a complete lie to his
24 employers and everyone that talked to him. They all
25 believed it. What else did they believe? Who knows? He

1 must be a pretty good liar. What other e-mails did he send
2 in the wee hours of the morning that contained lies? Well,
3 maybe that one to Mike Malvasio where he's talking about how
4 Becca could just make a phone call to Canada and his family
5 will be dead. Who's ever heard of the Canadian Mafia? Is
6 that a thing?

7 In his recorded statements to Philip Nix at the
8 traffic stop, he never mentions that Becca had a weapon or
9 keys on the night of the murder. In this statement, it's
10 more about what he didn't say and how his story has evolved
11 over the past three years and how he has manipulated this
12 version of events. At that time, he had about five weeks to
13 come up with the initial story. And he's now had over three
14 years. So, of course, it's changed..

15 And, you know, judge his demeanor on these tapes.
16 He doesn't sound like a beaten man. What he sounds like is
17 a man that's sorry he got caught. And that's where any of
18 the tears that we saw were coming from on October 1st of
19 2014. He hadn't cried and he didn't start crying until he
20 started talking about his children. He was sorry he got
21 caught. And I have no doubt that he loves his children.
22 But he was sorry he got caught. And he didn't want to ruin
23 his life or theirs.

24 He may have been too chicken to take his own life,
25 but he certainly wasn't too chicken to take Becca's. And

1 while he may have been thinking of his children then when he
2 neglected to end his, he certainly wasn't thinking about her
3 children who have sat here in the courtroom all week
4 listening to this horrible bashing of their mother.

5 Nick tells Robert Greene that he blacked out. And
6 then proceeds to give a vivid detailed statement about how
7 he kills Becca, how he suffocated her. That's inconsistent
8 and it makes no sense.

9 But he does go into detail about kneeling on her,
10 holding the bubble wrap with both hands so that it covers
11 her entire face and he can't see her, because why would you
12 want to stare at her for the three to five minutes it's
13 going to take for her to stop breathing?

14 Within the first minute, she's clawing at him,
15 trying to get him off of her. His DNA is getting under the
16 left-hand fingernails. She's probably flailing about before
17 she goes unconscious. And there are several pictures of
18 where, you know, bunch of items had fallen on to her legs
19 and things of that nature.

20 And at that time in 2014, he said he just wanted
21 her to stop breathing. And then he agreed with me that he
22 gave a prior -- he gave prior sworn testimony where he said
23 he just wanted her to stop talking, and then, well, stop
24 screaming. Because guess what? Neighbors had heard a woman
25 screaming for help before. And he did want her to stop

1 talking. He wanted her to stop talking forever. There's no
2 question about that. He didn't want to talk about her dead
3 mom anymore, especially when he was trying to go to sleep.

4 If you wonder about how long it takes to smother
5 someone, here's a little test you can do in the jury room.
6 You can all stare at each other for three minutes and feel
7 how long that is. Okay? That's a long time to decide to
8 stop doing something. It's not like a gunshot where it's
9 instant, instant death. This is something that you have to
10 commit to. Okay? I mean, minutes of staring at this person
11 while they are writhing, probably trying to beg for their
12 life.

13 Nick testified about his extensive medical
14 training. Did he ever stop once to try to revive her? No.
15 Could he have? Yeah. Did he make sure she was dead by
16 checking her pulse on her carotid artery? Yes. Did he call
17 for help? No. He went to the beach.

18 He tells Robert Greene that Becca made him sell his
19 car which was one of the things that Dr. Veronen wanted to
20 talk about, you know, being a point of control, because, you
21 know, Becca had control of this car. And she would hold it
22 against him. Well, Becca didn't make him sell his car. His
23 car got repossessed because he was terrible with money. And
24 that's probably why she was in charge of paying the bills.
25 But, nonetheless, it was a two-vehicle household. And Dr.

1 Veronen was surprised by that.

2 Her controlling his use of the Jeep is just not
3 true. Nick didn't miss work. He wasn't late for work. His
4 co-workers testified to that.

5 Robert Greene asked Nick in the interview if he had
6 any injuries. And Nick pointed to his arm that, you know,
7 what we were seeing on his right forearm, saying, oh, no,
8 that's old, it's not a big deal. He didn't say anything
9 about Becca causing that injury.

10 Speaking of injuries, all those swabs that the
11 crime scene guys took at the condo where they are swabbing
12 blood spatter and blood on the walls, there was only one
13 that came back as Nick's blood. And it was a tiny little
14 spot. All of those other swabs came back as Becca's blood.
15 Does it make sense that Becca's blood is all over the house
16 when Nick is the battered person? And this is the spot that
17 I'm speaking of. (Indicating). Nick's blood. Everything
18 else is Becca's. All those pieces of gauze and paper towels
19 with blood on them, those were all Becca's, not Nick's. But
20 he was leaving Robert Greene to believe that those were, you
21 know, from old war wounds of Nick's at the house.

22 Think about what you may have heard for the first
23 time today, three years after the fact, and how Nick has
24 manipulated this version of events and his story to now
25 portray himself as the victim.

1 At the beginning of this case, I asked you to speak
2 the truth, the truth that Becca is not here to speak. Becca
3 couldn't control herself, okay, much less another person,
4 and certainly not Nick. None of this was Becca's doing.
5 And I'm asking you to find Nick guilty of murder.

6 Thank you.

7 THE COURT: Mr. Foreman, ladies and gentlemen, your
8 lunch has arrived. We are going to take a lunch recess.
9 During the break, please do not discuss the case in any
10 manner whatsoever. Once y'all have completed eating, we
11 will resume the proceedings. And if you would leave your
12 notepads in your seats as well. If you need a smoke break
13 or want to get some air after you eat, please let the
14 bailiffs know and they will take you downstairs for that
15 purpose.

16 I'm estimating that we should be out about 30
17 minutes. I'm thinking two o'clock. We will just be 35
18 minutes. And then we will resume with the Court's
19 instructions on the law. Enjoy your lunch. We will see you
20 at two o'clock.

21 (Whereupon, the jury leaves open court at 1:26
22 p.m.)

23 THE COURT: I can't remember, and if I'm repeating
24 myself, please indulge me. Does the State have the any
25 objection to the request to instruct criminal intent?

1 MS. SWANSON: None from the State.

2 THE COURT: I'm going to use my standard
3 instruction on intent, which is different from the one I
4 read. And it's the standard instruction that comes from the
5 *State v. Ferguson* that talks about just the general
6 definition of intent. Is there an exception, from the
7 State?

8 MS. SWANSON: No, Your Honor.

9 THE COURT: From the defense?

10 MS. CAMPBELL: No, Your Honor.

11 THE COURT: Okay. There wasn't anything else about
12 the jury instruction I was to think about, was there?

13 MS. SWANSON: I don't think so.

14 MS. CAMPBELL: No.

15 THE COURT: Y'all have a good lunch. We will be
16 back at two.

17 (Whereupon, a recess transpired.)

18 (Whereupon, the jury returns to open court at 2:13
19 p.m.)

20 THE COURT: Ladies and gentlemen, I hope you
21 enjoyed your lunch.

22 You have heard the arguments of the attorneys in
23 this case. I will now instruct you on the law applicable to
24 the matter. During this trial, ladies and gentlemen, you
25 and I have certain duties to perform. As the trial judge,

1 it is my responsibility to preside over the trial of this
2 case. I also have the duty to rule upon or pass upon the
3 admissibility of evidence which has been offered during the
4 trial.

5 You are to consider only the competent evidence
6 before you. And you are to disregard and disabuse from your
7 mind any testimony ordered stricken from the record in this
8 case during the progress of this trial, if there has been
9 any. You are to consider only the testimony which has been
10 presented from the witness stand, together with any exhibits
11 which have been made a part of the record in this case, and
12 any stipulations between the attorneys in this case made for
13 the record. And so that you are clear, a stipulation is an
14 agreement between the attorneys. And it does not require
15 any further proof.

16 I have the additional duty to charge or instruct
17 you on the law applicable to this case. As the presiding
18 judge, I'm the sole judge of the law of this case. And it
19 is your duty as jurors to accept and apply the law as I now
20 state it to you. If you have a preconceived idea as to what
21 the law is or what the law should be in a case or in this
22 case and it should not agree with what I now tell you the
23 law is, you are obligated under your oath to abandon this
24 preconception on your part, because you are sworn to accept
25 the law and apply the law precisely as I now state it to

1 you.

2 In every case tried in this court before a jury,
3 the jury becomes the sole and exclusive judges of the facts.
4 You the jury are the judges of the facts in this case. This
5 court is the judge of the law. The Constitution of our
6 state has declared that a trial judge shall not intimate,
7 state, comment upon, or make any statement to a trial jury
8 about the facts in a case. Since you the jury are the sole
9 judges of the facts in this case, you are not to infer
10 anything from what I've said during the progress of this
11 trial in ruling upon the admissibility of evidence or
12 otherwise or anything that I say now to you during the
13 course of this instruction that I have any opinion about the
14 facts. The law does not allow me to have an opinion about
15 the facts. This is a matter solely for you the jury to
16 determine.

17 As jurors then, it is your duty, as I've
18 instructed, to determine the effect, the value, the weight
19 and the truth of the evidence presented during this trial.
20 Necessarily, ladies and gentlemen, you must assess the
21 credibility of witnesses who have testified. Credibility is
22 simply a legalistic term meaning the believability of each
23 witness who has testified and presented or provided evidence
24 in this case. It becomes your duty as jurors to evaluate,
25 to analyze and to evaluate the evidence and determine the

1 credibility of that evidence.

2 Some of the things you may consider as you decide
3 whether or not to believe a witness's testimony about a
4 particular matter include: What was the manner and
5 appearance of the witness who testified? Was he or she
6 straightforward or hesitant in answering? Was the testimony
7 of a witness consistent or inconsistent? How did the
8 witness come to know the facts that he or she testified to,
9 or what was his or her ability to know these facts? Is
10 there some reason a witness would want to give testimony
11 which would help or hurt one side or the other? In other
12 words, was the witness bias or prejudiced? And was the
13 testimony of a witness strengthened or weakened by other
14 testimony or evidence?

15 I further instruct you that in determining the
16 question of the credibility or believability of witnesses
17 who have testified, you may believe one witness as against
18 several witnesses or several witnesses as against one
19 witness. You may believe a part of the testimony of a
20 witness and reject the remaining part of the testimony of
21 that same witness. If you have a good and sound reason, you
22 may believe the testimony of a witness in its entirety or
23 reject the testimony of a witness in its entirety. Ladies
24 and gentlemen, you can believe as much or as little of each
25 witness's testimony as you think proper.

1 You may also consider the demeanor of the witness,
2 that is, the manner and appearance of the witness from the
3 witness stand.

4 I further instruct you that our rules of evidence
5 ordinarily do not permit witnesses to testify to opinions or
6 conclusions. An exception to that rule exists for witnesses
7 we call expert witnesses. A witness, who by their
8 education, training and experience, has become an expert in
9 some art, science or profession or calling, may state an
10 opinion as to relevant and material matters in which the
11 witness claims to be an expert, and may also state the
12 reasons for the opinion. You should consider any expert
13 opinion received in this case like any other evidence. Give
14 it the weight you think it deserves.

15 If you decide that the opinion of an expert is not
16 based on sufficient education, training and experience, or
17 if you conclude that the reasons given in support of the
18 opinion are not sound, or that the opinion is outweighed by
19 other evidence, you may disregard the opinion entirely. An
20 expert witness's testimony is to be given no greater weight
21 than that of other witnesses simply because the witness is
22 an expert. Further, you are not required to accept an
23 expert's opinion even though it is not contradicted.

24 I further instruct you, ladies and gentlemen, that
25 the defendant has presented evidence of his good reputation

1 and character to show that it would be inconsistent with the
2 defendant committing the crime. The weight you give to that
3 testimony, like all other testimony in the case, is for you
4 to decide in your good judgment. You may consider testimony
5 of the defendant's good character along with all the other
6 evidence in deciding whether or not the defendant committed
7 the crime. And it is then for you to give it the effect,
8 value and weight you decide it should receive.

9 There are two types of evidence which are generally
10 presented during a trial, direct evidence and circumstantial
11 evidence. Direct evidence is the testimony of a person who
12 asserts or claims to have actual knowledge of a fact, such
13 as an eyewitness. Circumstantial evidence is proof of a
14 chain of facts and circumstances indicating the existence of
15 a fact. The law makes absolutely no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence, nor is a greater degree of
18 certainty required of circumstantial evidence than of direct
19 evidence.

20 As I've instructed, ladies and gentlemen, there are
21 two types of evidence, direct and circumstantial evidence.
22 Crimes may be proven by circumstantial evidence. Again, the
23 law makes no distinction between the weight or value to be
24 given to either direct or circumstantial evidence. However,
25 to the extent the State relies on circumstantial evidence,

1 all of the circumstances must be consistent with each other.
2 And when taken together, point conclusively to the guilt of
3 the accused beyond a reasonable doubt.. If these
4 circumstances merely portray the defendant's behavior as
5 suspicious, the proof has failed.

6 The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt.. This burden of proof
8 rests with the State regardless of whether the State relies
9 on direct evidence, circumstantial evidence, or some
10 combination of the two.

11 Ladies and gentlemen, you should weigh all of the
12 evidence in this case. After weighing all of the evidence,
13 if you are not convinced of the guilt of the defendant
14 beyond a reasonable doubt, you must find the defendant not
15 guilty. Conversely, if you are convinced of the guilt of
16 the defendant beyond a reasonable doubt, then you must find
17 him guilty.

18 I instruct you that the fact that the defendant was
19 arrested, indicted and charged, is not evidence in this
20 case. And it cannot be considered by you as evidence of
21 guilt in this case, nor does it create any presumption or
22 inference of guilt. This documentation, ladies and
23 gentlemen, is simply the formal written instrument which
24 contains the charge or charges made against a defendant. It
25 simply serves as the formal document by which this case is

1 processed or brought in to the court.

2 The defendant has pled not guilty to this
3 indictment. And that plea casts the burden on the State to
4 prove the defendant guilty, because a person charged with
5 committing a criminal offense in South Carolina is never
6 required to prove himself innocent. I instruct you,
7 Mr. Foreman, ladies and gentlemen, that it is a cardinal and
8 important rule of the law of evidence that the defendant in
9 a criminal trial, no matter what the seriousness of the
10 charge or charges made against him may be, will always be
11 presumed to be innocent of the crime for which he is
12 indicted, unless his guilt has been proven by evidence
13 satisfying you of that guilt beyond a reasonable doubt.

14 This presumption of innocence does not cease when
15 you retire to deliberate, but it accompanies the defendant
16 from the time of his appearance throughout this trial until
17 you reach a verdict in this case. Our Supreme Court has
18 said that the presumption of innocence is like a robe of
19 righteousness placed about the shoulders of the defendant.
20 And it remains with him and assigns him to that class of the
21 innocent until that presumptive robe of righteousness has
22 been stripped from his person by evidence satisfying you of
23 that guilt beyond a reasonable doubt.

24 The presumption of innocence is not mere legal
25 theory. It is not just a legal phrase. It is a substantial

1 right to which every defendant is entitled unless you the
2 jury are satisfied from the evidence of his guilt beyond a
3 reasonable doubt.

4 The State has the burden of proving the defendant
5 guilty beyond a reasonable doubt. Some of you may have
6 served as jurors in civil cases, where you were told that it
7 is only necessary to prove that a fact is more likely true
8 than not true, such as by the greater weight or the
9 preponderance of the evidence. In criminal cases, the
10 State's proof must be more powerful than that. It must be
11 beyond a reasonable doubt.

12 Proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's guilt. There
14 are very few things in this world that we know with absolute
15 certainty. And in criminal cases, the law does not require
16 proof that overcomes every possible doubt. If based on your
17 consideration of the evidence, you are firmly convinced that
18 the defendant is guilty of the crime charged, you must find
19 the defendant guilty.

20 If, on the other hand, you think there's a real
21 possibility that the defendant is not guilty, you must give
22 the defendant the benefit of that doubt and find him not
23 guilty.

24 The defendant is charged with murder. The State
25 must prove beyond a reasonable doubt that the defendant

1 killed another person with malice aforethought. Malice is
2 hatred, ill will, or hostility towards another person. It
3 is the intentional doing of a wrongful act without just
4 cause or excuse, and with an intent to inflict an injury or
5 under circumstances that the law will infer an evil intent.

6 Malice aforethought does not require that malice
7 exist for any particular time before the act is committed,
8 but malice must exist in the mind of the defendant just
9 before and at the time the act is committed. Therefore,
10 there must be a combination of the previous evil intent and
11 the act.

12 Malice aforethought may be expressed or inferred.
13 These terms, expressed and inferred, does not mean different
14 kinds of malice, but merely the manner in which malice may
15 be shown to exist. That is, either by direct evidence or by
16 inference from the facts and circumstances which are proven.

17 Expressed malice is shown when a person speaks
18 words which express hatred or ill will toward another or
19 when the person prepared beforehand to do the act which was
20 later accomplished. For example, lying in wait for a person
21 or any other acts of preparation, going to show that the
22 deed was within the defendant's mind, would be express
23 malice. Malice may be inferred from conduct showing a total
24 disregard for human life.

25 I instruct you, ladies and gentlemen, in order to

1 establish criminal liability, criminal intent is required.
2 For example, the mental state required to be proven by the
3 State for a particular crime might be purpose, intent,
4 knowledge, recklessness or criminal negligence. Criminal
5 intent must be proven by the State beyond a reasonable
6 doubt. Criminal intent is always a matter that must be
7 determined by the jury from the circumstances surrounding
8 the situation.

9 There is no way to prove intent to a mathematical
10 certainty. There is no way medical science can dissect a
11 person's brain and determine what the person had in mind.
12 So the law says that criminal intent may be inferred from
13 the circumstances shown to have existed. This is how you
14 make a determination of whether or not the element requiring
15 intent was present. It is not necessary to establish intent
16 by direct and positive evidence. But intent may be
17 established by inference in the same way as any other fact,
18 by taking into consideration the acts of the parties and all
19 the facts and circumstances of the case.

20 Criminal intent is a mental state, a consciousness,
21 a wrongdoing. It is up to you -- a conscious wrongdoing.
22 It is up to you to determine what the defendant intended to
23 do based on the circumstances shown to have existed.
24 Criminal intent can arise from action or failure to act. It
25 can arise from negligence, recklessness or indifference to

1 duty, or consequences that is considered by the law to be
2 the equivalent of criminal intent.

3 I instruct you that the defendant has raised the
4 defense of self-defense. Self-defense is a complete bar.
5 And if it is established, you must find the defendant not
6 guilty. The State has the burden of disproving self-defense
7 by proof beyond a reasonable doubt. If you have a
8 reasonable doubt of the defendant's guilt after considering
9 all of the evidence, including the evidence of self-defense,
10 then you must find the defendant not guilty.

11 On the other hand, if you have no reasonable doubt
12 of the defendant's guilt after considering all of the
13 evidence, including the evidence of self-defense, then you
14 must find the defendant guilty.

15 The following elements are required to establish
16 self-defense: First, the defendant must be without fault in
17 bringing on the difficulty. If the defendant's conduct was
18 the type which was reasonably calculated to and did provoke
19 a deadly assault, the defendant would be at fault in
20 bringing on the difficulty and would not be entitled to an
21 acquittal based on self-defense.

22 If the defendant killed his abuser during a
23 confrontation when the abuser clearly is the aggressor, this
24 element is satisfied. However, it may be possible to
25 characterize a battered person as the victim of a continuing

1 assault at the hands of the batterer. When in this case --
2 when this is the case, the first element of self-defense may
3 be satisfied even though the battered person acts at a time
4 when the batterer is not being physically abusive.

5 The second element of self-defense is that the
6 defendant was actually in imminent danger of death or
7 serious bodily injury, or that the defendant actually
8 believed he was in imminent danger of death or serious
9 bodily injury. If the defendant was actually in imminent
10 danger, it must be shown that the circumstances would have
11 warranted a person of ordinary firmness and courage to
12 strike the fatal blow to prevent death or serious bodily
13 injury.

14 If the defendant believed he was in imminent danger
15 of death or serious bodily injury, it must be shown that a
16 reasonably prudent person of ordinary firmness and courage
17 would have had the same belief. In deciding whether the
18 defendant actually was or believed he was in imminent danger
19 of death or serious bodily injury, you should consider all
20 the facts and circumstances surrounding the crime, including
21 the physical condition and characteristics of the defendant
22 and the victim.

23 I further instruct you that the defendant does not
24 have to show that he was actually in danger. It is enough
25 if the defendant believed he was in imminent danger and a

1 reasonably prudent person of ordinary firmness and courage
2 would have had the same belief.

3 The defendant has the right to act on appearances,
4 even though the defendant's beliefs may have been mistaken.
5 It is for you the jury to decide whether the defendant's
6 fear of immediate danger of death or a serious bodily injury
7 was reasonable and would have been felt by an ordinary
8 person in the same situation.

9 Once the right to act in self-defense arises, a
10 defendant is not required to wait until his adversary is on
11 equal terms in order to act. Similarly, the defendant does
12 not have to wait until his assailant gets the drop on him.
13 He has the right to act under the law of self-preservation
14 and prevent his assailant from getting the drop on him.

15 At times, a battered person actually is in imminent
16 danger of violence when he acts, depending on the facts of
17 the case. The defendant may act in self-defense if he
18 believes that he is in imminent danger of death or serious
19 bodily harm, even though the batterer is not being
20 physically abusive when the defendant acts. This is because
21 battered persons can experience a heightened sense of
22 imminent danger arising from the perpetual terror of
23 physical and mental abuse. Often the terror does not
24 decrease even when the batterer is absent or asleep.

25 Where torture appears interminable and escape