

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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ORIGINAL

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

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THE STATE,

v.

JAMES RICHARD ROSENBAUM,

RECEIVED  
APR 08 2020  
SC Court of Appeals  
RESPONDENT

APPELLANT

APPELLATE CASE NO. 2018-002240

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RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**PRETRIAL HEARING JULY 16-17, 2018: DEFENDANT DURKIN’S EXHIBIT #1 (PHOTO); DEFENDANT DURKIN’S EXHIBIT #2 (911 TAPE); DEFENDANT ROSENBAUM’S EXHIBIT #5 (PHOTO); DEFENDANT ROSENBAUM’S EXHIBIT #6 (PHOTO); DEFENDANT ROSENBAUM’S EXHIBIT #7 (PHOTO).**

**DECEMBER 3-10, 2018 TRIAL: STATE’S EXHIBIT #6**

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY )

State, )  
 )  
 Plaintiff, )  
 )  
 vs. ) 2017-GS-26-5268  
 )  
 Diane Marie Durkin, )  
 )  
 Defendant. )

State, )  
 )  
 Plaintiff, )  
 )  
 vs. ) 2017-GS-26-5269  
 )  
 James Richard Rosenbaum, )  
 )  
 Defendant. )

Transcript of Record  
July 16-17, 2018

B E F O R E:

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

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

Nancy R. Livesay, Esquire  
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Thomas Jarrett Bouchette, Esquire  
Johnny Gardner, Esquire  
Attorneys for Defendant Durkin

Alex Hyman, Esquire  
Attorney for Defendant Rosenbaum

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

State v. Durkin, Rosenbaum

8

1 (On the record, July 16, 2018.)

2 THE COURT: All right. This is 2017-GS-26-5269, State  
3 versus James Rosenbaum and 2017-GS-26-5268, State versus Diane  
4 Durkin. The matter is before the Court on motions -- hold for  
5 a second. Oh, here we go -- before the Court are both  
6 Defendants' motions for immunity to -- pursuant to South  
7 Carolina Code 16-11-410 of the South Carolina Protection of  
8 Persons and Property Act.

9 Present at the call of the case, Nancy Livesay and Chris  
10 Helms on behalf of the State, also Alex Hyman as attorney for  
11 James Rosenbaum, Johnny Gardner and Jarrett Bouchette as  
12 attorneys for Diane Durkin.

13 Now, since we're doing this together, I anticipate what  
14 we'll do, unless you all know of a better way, this is the  
15 first time I've done it with two Codefendants in one motion  
16 hearing, Mr. Hyman present your case, direct examination, then  
17 Mr. Jarrett any additional direct examination you want, the  
18 State cross examine and then Mr. Hyman redirect only as to  
19 issues brought out by Mr. Jarrett or the State or are you all  
20 going to do just one?

21 MR. HYMAN: Judge, we had, we had discussed actually his  
22 client testifying first just as far as, I mean and only --

23 MR. BOUCHETTE: Just, just kind of a --

24 THE COURT: All right. Well, then you present your -- I  
25 mean, we're not going to be flip flopping.

Diane Durkin - Direct by Mr. Bouchette

14

1 the question, but if you do not assert your Fifth Amendment  
2 Right against self-incrimination then you are voluntarily  
3 waiving that right as to that question. Do you understand  
4 that?

5 MS. DURKIN: Yes, sir.

6 THE COURT: All right. Is there anything you want placed  
7 on the record in that regard?

8 MR. BOUCHETTE: Nothing further, Judge.

9 THE COURT: All right. Anything further the State wants  
10 placed on the record in that regard?

11 MS. LIVESAY: No, sir.

12 THE COURT: All right. Mr. Bouchette.

13 DIRECT EXAMINATION

14 BY MR. BOUCHETTE:

15 Q Good afternoon, Diane.

16 A Good afternoon.

17 Q I want to start by getting a little bit of background  
18 information from you, but before we get started I want to  
19 remind you that the court reporter right here beside you is  
20 taking everything down. So you need to make sure that you,  
21 that you give me audible responses. Okay?

22 A Okay.

23 Q All right. Very good. Now, where were you born?

24 A Jersey City, New Jersey.

25 Q Okay. And when was that?

- 1 A [REDACTED] [REDACTED]
- 2 Q So you're how old?
- 3 A 51.
- 4 Q Okay. And how are you and Mr. James Rosenbaum
- 5 acquainted?
- 6 A Boyfriend and girlfriend.
- 7 Q And where did you and he first meet?
- 8 A We met online, actually.
- 9 Q Okay. And when was that approximately?
- 10 A In December of 2014.
- 11 Q And at some point did the relationship get more serious?
- 12 A Yes.
- 13 Q Did you and he at some point move in together?
- 14 A Yes.
- 15 Q And where was that?
- 16 A That was in Connecticut.
- 17 Q All right. Now, at the time when you were living in
- 18 Connecticut what occasion did you and he decide to move to or
- 19 at least to Horry County?
- 20 A We both discussed that we'd wanted to move down South.
- 21 Q Okay. And when did you and he ultimately make that
- 22 decision to make the move?
- 23 A We came down here on vacation, looked around at the area,
- 24 and went back up to Connecticut and we packed up and came
- 25 down, and we couldn't find anything for a while, a couple of

1 months or so.

2 Q But at some point did you and he take up residence at

3 [REDACTED] Highway 548 --

4 A Yes.

5 Q -- in Conway? Okay. And under what arrangement was

6 that? Did you own?

7 A Rental.

8 Q You rented?

9 A Yes.

10 Q Did anybody else live there with you other than you and

11 Mr. Rosenbaum?

12 A No, sir.

13 Q Okay. Now, at this point what kind of, what kind of work

14 were you doing?

15 A I wasn't working at the time.

16 Q Okay. How about Mr. Rosenbaum, what does he do?

17 A He used to be a painter.

18 Q Okay. But was he, was he earning a living as a painter

19 at this point?

20 A He was earning military benefits.

21 Q Okay. Was that the sole source of you and his --

22 A Yes.

23 Q -- income at this point? All right. Now, Diane, I want

24 to take a moment and I want to talk about, I want to talk

25 about two things. Okay. I want to talk about your past drug

Diane Durkin - Direct by Mr. Bouchette

17

- 1 use. I want to talk about Roy Davis.
- 2 A Okay.
- 3 Q I want you to describe for the Court your background at  
4 least as it relates to your drug use.
- 5 A I started using cocaine and marijuana when I was 13.
- 6 Q And was this an ongoing addiction or is this something  
7 more kind of marked by sobriety and then relapse?
- 8 A I did it for a couple of years and then I went into  
9 Alcoholics Anonymous because my mother was killed by a drunk  
10 driver.
- 11 Q Describe that, as time went on describe how your, your  
12 addictions went.
- 13 A I, I continued to do it until I had gotten pregnant with  
14 my daughter and I stopped doing drugs with both pregnancies.
- 15 Q Now, were you ever convicted of any drug crime?
- 16 A No, sir.
- 17 Q Were you ever convicted of any, any crime other than  
18 traffic ticket?
- 19 A No, sir.
- 20 Q Okay. Now, when you moved here to Horry County in 2015  
21 what was the status of your drug use at that time?
- 22 A I was doing heroin.
- 23 Q Okay. In the course of using heroin, did you have  
24 occasion to meet an individual named Roy Davis?
- 25 A Yes, sir.

1 Q Describe the circumstances under which you met Mr. Davis.

2 A Okay. Well, Mr. Rosenbaum was in the Veterans Hospital,  
3 and we were in the middle of moving from one trailer to  
4 another. So I moved all the furniture to the other trailer,  
5 and then I had called our friend, Kelly Jordan, to see if I  
6 could stay at her house because we -- the electric and I was  
7 by myself. So I really didn't want to stay there. So I went  
8 to her home, and Mr. Davis was there. The two of them was  
9 smoking crack, and they had given me some, and I shot it.

10 Q All right. Well, let me back up a little bit. This Ms.  
11 Jordan's house, how far away in relation to your house was her  
12 residence?

13 A About a quarter mile.

14 Q Okay. Prior to that night had you met Mr. Davis?

15 A No, sir.

16 Q Had you spoken with him?

17 A No, sir.

18 Q Did you know who he was?

19 A No.

20 Q Okay. Do you know or do you have any knowledge as to  
21 what the relationship was between Ms. Jordan and Mr. Davis?

22 A I would imagine it was sexual.

23 Q Okay. Do you know one way or another really?

24 A No, not really.

25 Q All right. Now, I'm sorry, describe for me again was Ms.

Diane Durkin - Direct by Mr. Bouchette

19

1 Jordan and Mr. Davis participating in drug use that night as  
2 well?

3 A Yes, sir.

4 Q Okay. And what were they doing?

5 A They were smoking crack.

6 Q Okay. And later on that night, did you and Mr. Davis  
7 have any occasion to discuss anything other than drug use?

8 A Yes. He had told me I could probably get a job at the  
9 farm where he was working.

10 Q Okay. And did he describe for you what kind of work he  
11 was doing on the farm?

12 A He told me that he was driving the tractor on the farm.

13 Q Okay. And did working on the farm or this particular  
14 farm have any interest to you?

15 A Yeah. It had horses on it.

16 Q So you were interested in working with the horses?

17 A Yes.

18 Q Okay. All right. Now, on that night did you drive Mr.  
19 Davis anywhere?

20 A I drove him to a trailer up the road from Ms. Jordan's  
21 house.

22 Q And was this his residence --

23 A No.

24 Q -- to your knowledge?

25 A No. It wasn't.

1 Q Okay. And so this -- where was this, where was this  
2 third residence that you drove him to in relation to your  
3 house? Approximately how far away was it?

4 A About a quarter mile, same as Ms. Jordan's.

5 Q All these are kind of in the same general vicinity;  
6 right?

7 A Yes, sir.

8 Q All right. Do you know what the purpose was for driving  
9 to this third residence?

10 A He wanted to go get more drugs.

11 Q Okay. And when you drove him to that residence do you  
12 know who lived there?

13 A No.

14 Q Did you speak to anybody at the residence?

15 A No.

16 Q As you pulled up tell us what happened from there.

17 A Pulled up, he went in and got some crack and we drove  
18 back to Kelly's house.

19 Q Is there a reason why Ms. Jordan didn't drive any?

20 A She didn't have a car.

21 Q She didn't have a car at that time, okay. And what  
22 happened when you got back to Ms. Jordan's house?

23 A Ms. Jordan and Mr. Davis were smoking crack. I decided  
24 not to smoke.

25 Q All right. And did you drive Mr. Davis anywhere else

Diane Durkin - Direct by Mr. Bouchette

21

1 that night?

2 A I drove him home to the farm.

3 Q Okay. And describe that for us. Did he have a residence  
4 there on the property? Is that --

5 A He had said that he had a trailer on the property.

6 Q Okay. And when you drove him to that trailer did you  
7 notice anything that resembled a farm kind of nearby?

8 A Horses. There was tobacco leaves. There was a  
9 greenhouse.

10 Q Okay. Did you see -- well, let me ask you this. Once  
11 you dropped Mr. Davis off did you see him later that night?

12 A No.

13 Q Okay. I want to talk about the -- what he mentioned was  
14 a potential job on this, on this farm. Do you remember how --  
15 let me ask you this, did you ever follow up on potentially  
16 getting a job there at the farm?

17 A Yes. I went to go back to the farm to see if I could  
18 follow up and there was no one there for me to talk to.

19 Q How many times did you go, in total, did you go to follow  
20 up?

21 A At least three.

22 Q Okay. And well, you just said it, but when was the first  
23 time that you went to get a --

24 A About a week after.

25 Q Okay. And were you able to speak with an owner or --

1 A There was no one, there was no one there.

2 Q There just wasn't anybody for you to speak to?

3 A Exactly.

4 Q All right. Describe for me the second time that you  
5 went.

6 A I went around March or, or April.

7 Q So that would be of 20 -- 2016?

8 A Yes.

9 Q Okay. And at that point was there anything different  
10 about the farm?

11 A There was no tractor, nothing was on, on the farm at all,  
12 but there was a lady there. She had told me the farm had  
13 moved.

14 Q Okay. All right. And was there any general description  
15 given as to where the farm had moved to or at least the  
16 farming operations?

17 A The lady told me it was about a quarter a mile -- about a  
18 mile and a half, excuse me, down the road.

19 Q Did you, did you follow up at least as to where she  
20 described the farm had moved to?

21 A I drove the mile and a half to find the farm, and I did  
22 find it, but there was no one there.

23 Q Okay. And again, now, did you, did you see the evidence  
24 of a, of a farming operation in term of equipment and --

25 A Yes. I saw the tractor and the horses.

Diane Durkin - Direct by Mr. Bouchette

23

1 Q Was there anybody for you to speak to?

2 A No.

3 Q So we're now in March or April of 2016; is that right?

4 A Yes.

5 Q All right. Now, at this point had you seen Roy since  
6 August of 2015, that night?

7 A No, sir.

8 Q Had you and he had any discussions since August of 2015?

9 A No, sir.

10 Q All right. So you went -- tell me when was the third  
11 time that you went back to the farm to follow up?

12 A In July.

13 Q That's July of 2016?

14 A Yes, sir.

15 Q Was that July 11<sup>th</sup>, 2016?

16 A Yes, sir.

17 Q Diane, I want you to, to tell us what you remember doing  
18 on July 11<sup>th</sup>, 2016, from the time you woke up in the morning  
19 until the late evening.

20 A I got up. I, I believe it was about seven a.m. I put  
21 the coffee on. I made breakfast, which I normally do. We had  
22 eaten breakfast. I cleaned up everything. I started doing  
23 things around the house, and it seemed that the day went by  
24 fast.

25 Q Okay.

1 A And that's when Mr. Rosenbaum told me he was going out  
2 and that was around three, three p.m., I believe.

3 Q Okay. And what, what did you do at that point?

4 A I told him I was going out food shopping.

5 Q And what did you do then?

6 A I went to the food store. I came home. I put the  
7 groceries away. I sat down, and Mr. Rosenbaum was -- has been  
8 bugging me to get a job. So the thought about the farm seemed  
9 like the potential thing to do. So I went back again to the  
10 farm.

11 Q Let me, let me stop you there. By the time you decided  
12 to go on your third inquiry to the farm approximately what  
13 time of day was this?

14 A Around seven.

15 Q Okay. But given that this was July, was it still light  
16 out?

17 A Yes.

18 Q Okay. All right. So I'm sorry. Finish from there,  
19 whenever you went to go follow up on the farm for the third  
20 time what happened then?

21 A I had met Mr. Hucks.

22 Q Okay. So when it -- did you ask Mr. Hucks about a job?

23 A Yes.

24 Q Did he say he had anything available?

25 A He told me he would see what he could do for me.

Diane Durkin - Direct by Mr. Bouchette

25

1 Q Okay. What happened after you concluded your  
2 conversation with Mr. Hucks?

3 A Mr. Hucks had drove off the property and that's when Roy  
4 had waved at me. I guess he recognized the car.

5 Q Okay. And what was Roy doing at that point?

6 A He was driving the tractor.

7 Q Okay. So when he waved you down what did you do from  
8 then?

9 A I stopped the car. I didn't even move the car. He said,  
10 "I'm getting off work. Can you give me a ride?"

11 Q Okay. And again, had you seen Roy since August -- at  
12 this point had you seen Roy since August of 2015?

13 A No.

14 Q Okay. All right. And did you see any problem with  
15 giving Roy a ride home at that point?

16 A No.

17 Q Now, tell me during this time period were you on the  
18 phone with Mr. Rosenbaum?

19 A Yes.

20 Q Is it safe to say that you and he throughout the day if  
21 you're not in each other's presence call each other on the  
22 phone --

23 A Yes.

24 Q You all talk a lot, is that right, with each other?

25 A Uh-huh.

1 Q On the phone?

2 A Yes.

3 Q Okay. At least during the time when, when Roy got into  
4 the vehicle were you on the phone with Mr. Rosenbaum?

5 A Yes.

6 Q Okay. Now, once he got into the car did he ask you for  
7 anything else?

8 A He asked me for \$20.

9 Q Okay. Did you find that at all kind of strange?

10 A Well, considering he was working, and I'm -- I wasn't,  
11 yeah.

12 Q Okay. But given your past exposure to him and given the  
13 fact that it was a denomination of \$20, did you have a  
14 suspicion as to what it was to be used for?

15 A Yeah. I kind of figured it would be for drugs.

16 Q Okay. All right. But with that being the case, did you  
17 ultimately loan him the \$20?

18 A Yes.

19 Q Okay. Did you have the cash on you?

20 A No.

21 Q Okay. So tell us what happened next.

22 A I went to the gas station and took the 20 out of the ATM.

23 Q And what happened from there?

24 A He asked, had asked me to drive him someplace else.

25 Q And where was the location that you drove him and dropped

Diane Durkin - Direct by Mr. Bouchette

27

1 him off, dropped him off at?

2 A I dropped him off at the trailer around the corner from  
3 my home where he had previously bought crack.

4 Q Okay. This was the same location which you had driven  
5 him to back in August in 2015?

6 A Yes, sir.

7 Q Okay. All right. Now, at this, at this point was there  
8 ever any conversation regarding him purchasing drugs on your  
9 behalf?

10 A No.

11 Q Did you give him any money to buy drugs for you?

12 A No.

13 Q Okay. And one more time, how far is, generally speaking,  
14 is this location from your residence?

15 A About a quarter mile.

16 Q Okay. So it's safe to say it's walking distance?

17 A Yes, sir.

18 Q All right. At this point did you speak to anybody at  
19 this location?

20 A No.

21 Q Did you see anybody come in or out?

22 A No.

23 Q When you dropped him off did you make any plans or make  
24 any -- have any discussions with him regarding seeing Roy  
25 later on that night or even at some later date?

1 A No.

2 Q Okay. Once you dropped him off, what was your impression  
3 as to what Roy was going to be doing when you dropped him off?

4 A Probably doing drugs in that house.

5 Q All right. Now, what happened after you dropped him off?

6 A I went home.

7 Q Okay. Tell us what happened from there.

8 A I, I walked in my house. I went into the guest room  
9 which is where I keep my clothes, and I had done laundry  
10 during the day. So I started folding all the clothes.

11 Q Okay.

12 A And about 15 minutes later I heard a knock at the door.  
13 So I went to check who it was and it was Roy.

14 Q Okay. Did you find this odd at all, strange at all?

15 A Yeah.

16 Q Did you notice anything about his demeanor at that point?

17 A He was sweaty and like looked kind of angry, agitated.

18 Q Okay. All right. What did he say whenever you opened  
19 the door?

20 A He asked me for a ride home.

21 Q Okay. And what was your response?

22 A I told him no because I was already home, I had been out  
23 and I'm tired, I want to stay home.

24 Q So he wanted you to drive him back towards the farm?

25 A Yeah.

Diane Durkin - Direct by Mr. Bouchette

29

1 Q Got you.

2 A No.

3 Q All right. Did he ask you for anything else?

4 A He asked me for a glass of water.

5 Q Okay. Did you comply with that?

6 A I gave him the glass of water. I told him to come inside  
7 because it was hot out.

8 Q Okay. All right. And where did you get the glass of  
9 water in relation to your == the inside of your home?

10 A It was in the kitchen. He was standing in front of the  
11 counter.

12 Q Okay. When you gave him the glass of water what did you  
13 do then?

14 A I went back into the bedroom to finish folding the  
15 clothes.

16 Q Okay. All right. Diane, tell us what happened when you  
17 reentered the living room and the kitchen area from your  
18 bedroom. What happened at that point?

19 A When I reentered the kitchen area Roy was completely  
20 naked.

21 Q Okay. And what did you do at that point?

22 A I told him to get the fuck out, excuse my language, but  
23 you know.

24 Q Okay. All right. And what was his response?

25 A He told me, "Give me that pussy."

1 Q Okay. Tell us what happened from there.

2 A He -- I told him no. He had clocked me in the eye,  
3 backhanded me across the face and I fell onto the mattress and  
4 that's when he got on top of me and I was kicking and  
5 screaming trying to get him off.

6 Q Okay. Now, I want to talk a little bit about the  
7 position of the mattress. Describe for us the furniture  
8 layout in the living room of your home.

9 A We have a couch and then we have a coffee table and then  
10 there's a mattress on the floor because we only had one  
11 television. So if we get tired of sitting on the couch we  
12 would just fall asleep on the mattress.

13 Q So the mattress and the couch kind of butt up to each  
14 other is that fair to say?

15 A Yes.

16 Q Do you recall where he struck you in the face?

17 A He struck me over here (indicating).

18 Q Anywhere else?

19 A In my left eye.

20 Q Diane, do you recall having your photograph taken the  
21 night you were arrested on these charges?

22 A Yes, sir.

23 Q Okay. And did you see that photograph whenever they took  
24 it of you?

25 A Yes.

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1 Q Okay. I'm going to show you a photograph. Now, do you  
2 recognize that photograph?

3 A Yes.

4 Q Is that your mug shot?

5 A Yes.

6 MR. BOUCHETTE: I want to pre-mark this as Defendant  
7 Durkin's Exhibit One.

8 THE COURT: All right.

9 MR. BOUCHETTE: Move to admit Defendant Durkin's Exhibit  
10 One into evidence.

11 THE COURT: Any objection?

12 MS. LIVESAY: Without objection, Your Honor.

13 THE COURT: All right. Any objection?

14 MR. HYMAN: No, Your Honor.

15 THE COURT: All right. Defendant Durkin Exhibit One  
16 admitted into evidence without objection.

17 (Defendant Durkin's Exhibit Number One [Photograph]  
18 admitted into evidence for purposes of motion hearing.)

19 BY MR. BOUCHETTE:

20 Q Diane, I want you to -- as you look at this photograph  
21 here, this is on your left-hand side sort of my right-hand  
22 side as we're looking at it.

23 A Yes.

24 Q On your left eye do you see a, a bruising or a  
25 discoloration?

1 A Yes, sir.

2 Q Okay. Did you have that prior to July 11<sup>th</sup> of 2016?

3 A No, sir.

4 Q And was that caused by the, by the striking that Roy  
5 Davis delivered to you at that time?

6 A Yes, sir.

7 Q Diane, at this point I want you to describe for us what  
8 your state of mind was.

9 A I was in shock. I didn't know what to do. I thought he  
10 was either going to kill me or rape me.

11 Q And what happened at that point?

12 A I was screaming profusely trying to get him off.

13 Q Okay.

14 A And --

15 Q He was completely naked at this point?

16 A Yes.

17 Q How about you, were you in any status of being partially  
18 clothed or were you fully clothed?

19 A I was fully clothed but he ripped my shirt.

20 Q Okay. All right. Now, what happened from there?

21 A I kept screaming and cursing trying to get him away and  
22 that's when Mr. Rosenbaum came through the back door. We  
23 always kept a baseball bat on the back porch because we had a  
24 dog and Mr. Rosenbaum used to hit balls for the dog.

25 Q Okay. Is it fair to say that the next several minutes or

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1 hour or so is, is fairly difficult for you to remember?

2 A Yeah. It went, it went really fast.

3 Q Okay. I just -- I want you to tell me what you can  
4 remember about the time -- from the time Jimmy comes in until  
5 the time the police arrive.

6 A Jimmy --

7 Q And for the record, when I say Jimmy I'm referring to  
8 James Rosenbaum.

9 A I know.

10 Q Very good. Tell us what you remember about from the time  
11 Jimmy --

12 A Jimmy came in. Somehow he got Roy off of me and somehow  
13 Roy got the bat from Jimmy and clocked Jimmy in the leg and  
14 Jimmy fell on top of Roy and I somehow got the bat. Those two  
15 were fighting back and forth. I had called 911 and then Roy  
16 was on the, on the mattress, and Jimmy was, I guess he -- them  
17 two were fighting back and forth at the time.

18 Q Now, was this, was this struggle confined to the living  
19 room area or were they going in other rooms as well?

20 A They -- well, the living room and the kitchen is one big  
21 room.

22 Q Okay.

23 A So basically like half and half.

24 Q Okay. Now, at some point do you recall Jimmy kind of  
25 pulled Roy down? Do you recall that?

1 A Yes.

2 Q Okay. And at -- is it safe to say that at some point Roy  
3 broke free and they began fighting again?

4 A Yes.

5 Q Okay. You mentioned a moment ago that you had at some  
6 point come into possession of the bat. Tell me about that.  
7 Do you know which hand you were holding the bat?

8 A I was holding it in my left hand.

9 Q Okay. And what was in your right hand?

10 A The, the phone.

11 Q Okay. Are you right-handed?

12 A Yes, sir.

13 Q Okay. So you had the bat in the left hand and you're on  
14 the phone with 911 with your right hand; is that right?

15 A Yes, sir.

16 Q Okay. Do you recall ever striking Roy Davis with the  
17 bat?

18 A I recall striking him in the legs and the groin.

19 Q Okay. All right. Do you recall striking him either in  
20 the head or in the chest or stomach area --

21 A No.

22 Q -- with the bat at any point? Did you strike him with  
23 any other objects to the head or to the chest?

24 A No, sir.

25 Q Diane, what happened after the police arrived?

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- 1 A The police told us both to sit on the couch.
- 2 Q And how long were you there?
- 3 A I, I --
- 4 Q Or how long did that last, I guess a better way to say?
- 5 A About five minutes it seemed.
- 6 Q Okay. Now, did they take you from your house to the
- 7 hospital?
- 8 A No. They took us straight to the police station.
- 9 Q Okay. Do you remember speaking with Detectives Hemingway
- 10 and Detectives Thompson?
- 11 A Yes, sir.
- 12 Q Describe for us sort of at this point what your state of
- 13 mind was when you --
- 14 A I was --
- 15 Q -- the interrogations began with Detective Hemingway and
- 16 Detective Thompson.
- 17 A I was in shock and exhausted.
- 18 Q At this point, you said you had woken up around seven
- 19 that morning. Do you have any idea what time it was by the
- 20 time you got to the police station?
- 21 A No.
- 22 Q Is it safe to say it was late at night?
- 23 A Yes.
- 24 Q All right. Whenever you spoke with the detectives did
- 25 you -- excuse me -- did you tell them that you had been

1 attacked by Roy?

2 A Yes.

3 Q Did you tell them that Roy had struck you multiple times  
4 in the face?

5 A Yes.

6 Q Did you tell the detectives that he threw you to the  
7 ground?

8 A Yes.

9 Q Did you tell them that you were in fear for your personal  
10 safety?

11 A Yes.

12 Q All right. Now, in the course of those discussions is  
13 there some information maybe that you told them that was not  
14 entirely accurate?

15 A Yes.

16 Q For example, I believe you mentioned to them that you had  
17 not known Roy previously to this evening; correct?

18 A Yes.

19 Q Explain to the Court or tell the Court why that ended up  
20 being the case.

21 A Because I didn't want Mr. Rosenbaum or the police to  
22 think that I was having an affair with Mr. Davis.

23 Q And the -- and it had been how long since you had last  
24 seen him?

25 A A long time.

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1 Q Was it that August 2015 date?

2 A Yes.

3 Q All right. You know, you also mentioned, I believe, at  
4 some point during your discussions, I believe you mentioned  
5 that Roy came in and pulled out a crack pipe. Do you remember  
6 telling them that?

7 A Yes.

8 Q Okay. But have you now come to learn that there was no  
9 crack pipe?

10 A Yes.

11 Q Okay. So again, Diane, the question is why did you tell  
12 them there was -- that he pulled out a crack pipe that night?

13 A Because I figured if I tell them stuff that they'd want  
14 to hear they'd let me go.

15 Q Okay. At this point how late -- well, let me ask you  
16 this, did you feel that you had a choice in being able to  
17 answer their questions or not answer their questions?

18 A No.

19 Q Okay. Did you feel that you had a right to leave or to  
20 stop the interrogation at that point?

21 A No. Because they kept me there, so.

22 Q Okay. Well, is it safe, is it safe to say then that you  
23 were looking for any means in which to end the interrogation  
24 and presumably go home?

25 A Yes.

1 Q Would that be safe to say?

2 A Yes.

3 Q Got you. And you also towards the end of your interview  
4 I believe you also mentioned or you stated that you had smoked  
5 crack with Roy that night. Do you remember that?

6 A Yes.

7 Q Okay. Was that true?

8 A No.

9 Q Had you told Detectives Thompson and Hemingway earlier in  
10 the evening that you had not, in fact, smoked crack with Roy  
11 that evening?

12 A I think so.

13 Q Had you -- let me say it again, had you asked them or had  
14 you told them earlier in the evening that you and he did not  
15 smoke crack together? Is that correct?

16 A Yes.

17 Q Now, did you offer to take a drug test that night --

18 A Yes.

19 Q -- a blood test?

20 A Yes.

21 Q Okay. You did offer to do that? Did they ultimately  
22 submit you to a blood test?

23 A No.

24 Q To finish up, I want to make just a couple of things  
25 clear on that night, were there any arrangements or plans or

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1 anything between you and Roy or any discussions for him to  
2 meet up with you at your residence on July 11<sup>th</sup> of 2016?

3 A No, sir.

4 Q When he showed up at your house, had you discussed or  
5 implied or insinuated in any way, shape or form that you were  
6 interested in a sexual encounter that evening?

7 A No.

8 Q Okay. Once he was in your house, and you found him  
9 completely naked?

10 A Yes.

11 Q At that point did he physically grab you?

12 A Yes.

13 Q Did he throw you to the ground?

14 A Yes.

15 Q He caused the bruising to your eye which is shown in  
16 Exhibit One?

17 A Yes.

18 Q At that point were you in fear for your physical safety  
19 and/or life?

20 A Yes.

21 MR. BOUCHETTE: One moment, Your Honor.

22 THE COURT: All right.

23 MR. BOUCHETTE: No further questions at this time. The  
24 Defense would move to play the 911 video, submit that as  
25 Defendant's Exhibit Two.

1 THE COURT: They want to play the 911. Any objection at  
2 this point in time?

3 MS. LIVESAY: He just needs to put it in, Judge. I got  
4 no objection to it if he wants to play it.

5 THE COURT: All right. Let's get it marked, put it in  
6 and then we -- are you through with this?

7 MR. BOUCHETTE: Well, I'd like --

8 THE COURT: Oh, okay. So you want to --

9 MR. BOUCHETTE: -- I'd like to play the audio and then  
10 she can --

11 THE COURT: All right. Let's get the 911 call  
12 identified. Have we got it? Is it on a disk or --

13 MR. HYMAN: Judge, I have it on a disk, but I also have  
14 it on my computer.

15 THE COURT: Well, let's -- well, let's get the disk  
16 marked as an exhibit, introduce it into evidence and then we  
17 can publish it.

18 MS. LIVESAY: I can play it, Judge. We got it right  
19 here, and we --

20 MR. HYMAN: I -- I've got --

21 THE COURT: We've got to get it marked and -- we got to  
22 get it marked as an exhibit first.

23 (Mr. Hyman and Ms. Livesay confer. Court and court  
24 reporter confer.)

25 THE COURT: Okay. You need to have a -- we got an

Diane Durkin - Direct by Mr. Bouchette

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1 envelope or something that we keep it in?

2 MR. BOUCHETTE: I got a -- I can put it in an envelope,  
3 Judge.

4 THE COURT: Yeah. Let's do it that way.

5 (911 call played in open court.)

6 THE COURT: Hold it. Wait a minute. We've got to get  
7 the --

8 MR. HYMAN: I'm, I'm sorry, Your Honor.

9 THE COURT: Okay.

10 MR. HYMAN: I was just trying to open it and it  
11 automatically started playing.

12 THE COURT: All right. So this is Defendant Durkin's  
13 Exhibit Two?

14 MR. BOUCHETTE: That's correct.

15 THE COURT: Any objection?

16 MS. LIVESAY: No, sir.

17 THE COURT: All right. Defendant Durkin's Exhibit Number  
18 Two admitted into evidence without objection.

19 (Defendant Durkin's Exhibit Number Two [911 Call]  
20 appropriately marked and admitted into evidence for purposes  
21 of motion hearing.)

22 THE COURT: All right. You can publish it.

23 (Defendant Durkin's Exhibit Number Two played in open  
24 court.)

25 BY MR. BOUCHETTE:

1 Q Diane, do you recognize your voice on that video?

2 A Yes.

3 Q Audio rather?

4 A Yes.

5 Q Do you recall saying everything that was said on the  
6 audio?

7 A I don't remember all of it, no.

8 Q All right. Now, that video was almost 20 some odd minutes  
9 long. Do you remember the altercation lasting that long?

10 A I don't remember it lasting that long, no, which  
11 everything went by so fast.

12 MR. BOUCHETTE: No further questions of this witness at  
13 this time, Your Honor.

14 THE COURT: All right. Cross examination.

15 MS. LIVESAY: Thank you, Judge.

16 CROSS EXAMINATION

17 BY MS. LIVESAY:

18 Q Ms. Durkin, that was a bat being used in that 911 tape?

19 A Yes.

20 Q Okay. And you used a bat on him?

21 A Yes.

22 Q I'm sorry?

23 A Yes.

24 Q Okay. And Jimmy Rosenbaum used a bat on him; correct?

25 A I think so. He came in and got him off me.

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1 Q You don't know if he used a bat or not but you know for  
2 sure you used it?

3 A I used it on -- hit him in the groin and legs.

4 Q Give me one second.

5 A Uh-huh.

6 MS. LIVESAY: Oh, it's -- okay, State's Two.

7 BY MS. LIVESAY:

8 Q Ms. Rosenbaum [sic], I'm showing you what's been marked  
9 --

10 MR. BOUCHETTE: Objection, Your Honor.

11 A Excuse me.

12 THE COURT: Hold it.

13 MR. BOUCHETTE: Yes, Your Honor. This is State's Two.

14 What was State's One?

15 MS. LIVESAY: State's One was the discovery from earlier.

16 MR. BOUCHETTE: Okay.

17 THE COURT: But it's --

18 MR. HYMAN: Okay.

19 MS. LIVESAY: The discovery, putting that in and we turn  
20 it over in October.

21 THE COURT: Oh, from the motion hearing earlier.

22 MS. LIVESAY: Yes, sir. Yes, sir.

23 MR. BOUCHETTE: Okay. That's fine.

24 THE COURT: Oh, okay. All right. All right. Go ahead.

25 MS. LIVESAY: Okay.

- 1 BY MS. LIVESAY:
- 2 Q This is State's Exhibit Two.
- 3 A Excuse me. You called me Ms. Rosenbaum. It's Ms.
- 4 Durkin.
- 5 Q Okay. You recognize this?
- 6 A Yes.
- 7 Q Okay. Is this the bat you used on Roy?
- 8 A I believe so.
- 9 Q I'm sorry?
- 10 A I believe so.
- 11 Q You believe so. Where was this bat kept in the house?
- 12 A It wasn't in the house. It was kept on the porch.
- 13 Q On the back porch?
- 14 A Yes. Because we had a dog and we used to hit balls for
- 15 the dog to go and retrieve the balls.
- 16 Q Okay. I'm going to show you something else that we found
- 17 in your house. I'm showing you now what's been marked as
- 18 State's Exhibit Three.
- 19 A Uh-huh.
- 20 Q Do you recognize this? It was mentioned in the 911 tape.
- 21 A Yes.
- 22 Q Okay. And this is the gun that was used to shoot Roy?
- 23 A I don't think so.
- 24 Q It was --
- 25 A It doesn't -- it --

Diane Durkin - Cross by Ms. Livesay

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- 1 Q This, this gun was in your house; correct?
- 2 A Yes.
- 3 Q Okay. And a pellet gun was mentioned on the 911 tape.
- 4 You remember that?
- 5 A Yes.
- 6 Q Okay. Is -- so a pellet --
- 7 A That's --
- 8 Q -- gun was used?
- 9 A That's an air gun, ma'am.
- 10 Q Okay. Well, an air gun.
- 11 A We use pellet guns just for target practice.
- 12 Q Okay. Was a gun used that night?
- 13 A Yes.
- 14 Q Okay.
- 15 A It wasn't an air rifle. It was a pellet gun, ma'am.
- 16 Q Okay. Is this the gun that was found on the kitchen
- 17 table, this is the gun that was used?
- 18 A I don't think so. I think it was the other one.
- 19 Q What did the gun look like that was used?
- 20 A It didn't have the thing on the back.
- 21 Q I'm sorry?
- 22 A It didn't have the air compressor on the back.
- 23 Q Okay. But this gun belonged to you and Jimmy Rosenbaum?
- 24 A Yes.
- 25 Q Okay. And you would agree it was in the kitchen when the

1 police showed up?

2 A I don't know if that one was in the kitchen.

3 Q Okay. I got a picture. Hold on. I can refresh your  
4 memory.

5 MR. BOUCHETTE: Yeah. Objection, Your Honor. We've -- I  
6 think she gave a clear answer she didn't -- basically she  
7 couldn't remember.

8 THE COURT: She said she didn't think that was the same  
9 gun. So she's going to give her a picture to see if it  
10 refreshes her memory.

11 BY MS. LIVESAY:

12 Q But you would agree with me up to this point from the 911  
13 tape a bat was used and a gun was involved?

14 A Yes.

15 Q Okay. I'm showing you State's Exhibit Four. You  
16 recognize these?

17 A Those are gloves, yes.

18 Q Okay. And these gloves came from your house?

19 A Yes.

20 Q Okay. And these gloves were also used on Roy that night;  
21 correct?

22 A Yes.

23 Q Okay. So we are in agreement that the gloves, a gun and  
24 a bat was used on Roy Davis that night?

25 A Uh-huh.

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- 1 Q Yes?
- 2 A Yes.
- 3 Q Okay. You and this lady here is trying to take down  
4 everything you say. So you can't just shake your head. Now,  
5 let me ask you this, this question, it wasn't mentioned in the  
6 911 tape or the police. Did Roy have a weapon?
- 7 A No.
- 8 Q Okay.
- 9 A He had his fists.
- 10 Q Ms. Durkin, I'm going to show you some pictures from your  
11 house.
- 12 A Excuse me a minute, ma'am. Could you repeat the last  
13 question about Roy not having a weapon?
- 14 Q I'm sorry?
- 15 A You said that Roy did not have a weapon?
- 16 Q Yes.
- 17 A He did, too, have a weapon. He had his fists.
- 18 Q Okay. Okay. Now, let me show you State's Five, Six,  
19 Seven and Eight. Can you identify all these pictures from the  
20 inside of your house?
- 21 A Yes.
- 22 Q Okay. So State's Exhibit Five is from inside your house?
- 23 A Yes.
- 24 Q State's Exhibit Six is from inside your house?
- 25 A Yes.

1 Q State's Exhibit Seven is from inside your house?

2 A Yes.

3 Q State's Exhibit Eight is from the inside of your house?

4 A Yes.

5 Q Okay. I'm going to show these to the Judge because he's  
6 the one --

7 THE COURT: Wait. We hadn't put them in evidence yet.

8 MS. LIVESAY: Okay. At this time can we put all these  
9 items in evidence, Your Honor?

10 THE COURT: Any objection to State's Exhibits Two, Three,  
11 Four, Five, Six, Seven or Eight?

12 MR. BOUCHETTE: Your Honor, I may have missed it. I  
13 don't think there was a foundation for the gun. I think she  
14 said that that wasn't the one she recognized from that  
15 evening. She knew she had two, but I don't know that she  
16 confirmed the pellet gun there.

17 THE COURT: All right. The, the gun is Number Three?  
18 All right. Any other objections?

19 MR. HYMAN: No, Your Honor.

20 THE COURT: All right. State's Exhibits Two, Four, Five,  
21 Six, Seven and Eight are admitted into evidence without  
22 objection.

23 MS. LIVESAY: Thank you, Your Honor.

24 THE COURT: Defendant's objection to State's Exhibit  
25 Three is sustained.

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1 (State's Exhibits Two [Bat], Four [Gloves], Five, Six,  
2 Seven and Eight [photographs] admitted into evidence and  
3 appropriately marked for purposes of the motion hearing.)

4 BY MS. LIVESAY:

5 Q Now, I wanted to show you something else before we get  
6 into too many pictures.

7 Your attorney showed you a picture of you. I'm going to  
8 show you some pictures of you at the police department. Is  
9 that you?

10 A Yes, ma'am.

11 MS. LIVESAY: So State's Number Nine she has identified  
12 as herself.

13 BY MS. LIVESAY:

14 Q State's 12?

15 A Yes.

16 MS. LIVESAY: Okay. So State's 12 she's identified as  
17 herself.

18 BY MS. LIVESAY:

19 Q State's Ten?

20 A Yes.

21 Q Okay.

22 MS. LIVESAY: She's identified as herself.

23 BY MS. LIVESAY:

24 Q State's 11?

25 A Yes.

1 Q Okay.

2 Q State's -- that's -- 12, State's 12?

3 A Yes.

4 Q Okay. State's 13?

5 A Yes.

6 Q Okay. So you've identified all these pictures of you at  
7 the police department?

8 A Yes.

9 Q Okay.

10 MS. LIVESAY: Your Honor, at this time the State wishes  
11 to put these in evidence.

12 THE COURT: Any objection to State's Exhibits Nine, Ten,  
13 11, 12 or 13?

14 MR. BOUCHETTE: Your Honor, my only objection would be,  
15 number one, is to relevance, and then two, as to foundation if  
16 we're trying to get into when these were taken and that kind  
17 of thing. I think whoever took the pictures can testify as to  
18 when they were taken and lay that foundation, but I don't  
19 think we can admit those in at, at this stage in the cross.

20 THE COURT: All right. State's Exhibits Nine, Ten, 11,  
21 12 and 13 are admitted into evidence over Defendant's  
22 objection.

23 MS. LIVESAY: Thank you.

24 (State's Exhibits Nine, Ten, 11, 12 and 13 [photographs])  
25 admitted into evidence and appropriately marked for purposes

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1 of the motion hearing.)

2 BY MS. LIVESAY:

3 Q This picture of you at the police department, State's 13,  
4 you're completely clothed in that picture; correct?

5 A Yes.

6 Q And you're wearing a belt?

7 A Yes.

8 Q A little brown belt?

9 A Yes.

10 Q Okay. And that belt is still intact; correct?

11 A Yes.

12 Q Okay. And you're completely covered up?

13 A Yes.

14 Q Okay. Now, do you see any scratches, anything on you?

15 A No. But he ripped my shirt.

16 Q Okay. Ripped your shirt? We got the shirt here. We'll  
17 look at it. Okay. State's 14. This the shirt you were  
18 wearing that night?

19 A Yes.

20 Q I'm sorry?

21 A Yes.

22 Q Okay. Well, show this Judge where it's torn, where it's  
23 ripped?

24 A In the front.

25 THE COURT: It's not in evidence yet.

1 MS. LIVESAY: Okay. I'm sorry.

2 THE COURT: Any objection to State's Exhibit 14?

3 MS. LIVESAY: At this time --

4 MR. BOUCHETTE: At this time I don't think a proper  
5 foundation has been laid as to where that was recovered or, or  
6 --

7 MS. LIVESAY: She said it was her shirt from that night.

8 THE COURT: Yeah. She said it was her shirt that from --

9 MR. BOUCHETTE: I don't -- did she say she was wearing it  
10 that night?

11 THE COURT: Yes.

12 MR. BOUCHETTE: Okay. That would be all right.

13 THE COURT: All right. State's Exhibit 14 admitted into  
14 evidence over Defendant's objection.

15 (State's Exhibit 14 [Shirt] admitted into evidence and  
16 appropriately marked for purposes of the motion hearing.)

17 BY MS. LIVESAY:

18 Q Black shirt, show this crowd where it's ripped because I  
19 don't see it.

20 A It was ripped in the cleavage part, and it's ripped on  
21 the other side of the sleeve.

22 Q Do you see a seam undone? Where's the seam undone?

23 A It's ripped on the other side, ma'am.

24 Q On this side?

25 A Yeah. Right there.

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- 1 Q Where?
- 2 A Right there where the armpit is.
- 3 Q Armpit?
- 4 A Do you see it? Do you see it right there? There you go.
- 5 Q This little rip right there?
- 6 A Yes.
- 7 Q Okay.
- 8 MS. LIVESAY: Let, let the record reflect that Ms. Durkin
- 9 has picked out a small rip.
- 10 MR. BOUCHETTE: Objection to that, Your Honor.
- 11 THE COURT: I sustain it. She said it was ripped and it
- 12 --
- 13 MR. BOUCHETTE: And Your Honor, I'd like the record to --
- 14 THE COURT: No other description is needed.
- 15 MR. BOUCHETTE: I would like the record to reflect there
- 16 is a tear there that was identified by the witness.
- 17 THE COURT: All right.
- 18 BY MS. LIVESAY:
- 19 Q Any other rips?
- 20 A No.
- 21 Q Okay. Okay. And was your belt tore up?
- 22 A No.
- 23 Q Okay. And were your pants ripped?
- 24 A No.
- 25 Q Were your shoes even unbuckled?

1 A No.

2 Q Okay. Okay. So the rip you're talking about is one  
3 little rip under -- right here.

4 MR. BOUCHETTE: Objection, Your Honor. Argumentative.

5 Q Under the sleeve of the shirt.

6 MR. BOUCHETTE: Again.

7 THE COURT: Okay. Well, the State's going to  
8 characterize it as a little rip. The Defense is going to just  
9 characterize it as a rip. The Court can look and see that  
10 there is a tear there. So what --

11 MR. BOUCHETTE: I understand. In light of the first  
12 ruling that's why --

13 THE COURT: Okay. I mean, I'll acknowledge that the  
14 State's going to say it's the tiniest of rips and that there's  
15 no significance to it. That's for the Court to decide. I  
16 acknowledge there is a rip where the Defendant said the victim  
17 ripped her blouse. All right.

18 MS. LIVESAY: I'll move on. Yes, sir.

19 THE COURT: All right.

20 (Reporter and Court confer.)

21 THE COURT: All right. Let's -- hold -- just --

22 MR. HYMAN: Judge, may we -- I think we may need to  
23 approach on those.

24 THE COURT: All right. Come on up. You can go ahead.

25 (A bench conference is held. Court and court reporter

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1 confer.)

2 THE COURT: All right. We'll go ahead and take about a  
3 10-minute break while the court reporter marks these exhibits.  
4 Okay. All right. Let's take about a 10-minute break. She  
5 can step down, but yes.

6 A Thank you.

7 THE COURT: All right.

8 \*\*\*\*\* OFF THE RECORD \*\*\*\*\*

9 (On the record.)

10 THE COURT: All right. Ms. Durkin, you are still under  
11 oath. Ms. Livesay, you can continue with your cross-  
12 examination.

13 MS. LIVESAY: Thank you, Judge.

14 BY MS. LIVESAY:

15 Q Is this a picture of your house? I've got it, State's  
16 15?

17 A Yes.

18 Q And is this a picture of your car and the car that Jimmy  
19 drove, State's 16?

20 MR. BOUCHETTE: Objection, Your Honor.

21 THE COURT: Hold, hold for minute. There's an objection.  
22 When he objects --

23 MR. BOUCHETTE: My objection at this point that this --  
24 all the photographs, at least the ones I saw, would be  
25 objection as to relevance. I don't see what the relevance is

1 of the exterior area of the house or as to the body that's  
2 being shown. I don't think any of these were taken by --

3 THE COURT: Okay. She's just getting them identified  
4 now. When she moves to admit them into evidence -- or let me  
5 go ahead. What is the relevancy?

6 MS. LIVESAY: Your Honor, this is the crime scene. I  
7 think that kind of speaks for itself. I don't know that there  
8 could be more relevant evidence than where this all took  
9 place.

10 THE COURT: It took place outside?

11 MS. LIVESAY: But if you want to be -- this is the place  
12 of her mobile home. Yes, ma'am.

13 THE COURT: The exterior?

14 MS. LIVESAY: Yes, sir. Where this happened, the  
15 exterior and the interior.

16 THE COURT: Okay. Well, go ahead. Overruled.

17 BY MS. LIVESAY:

18 Q This, that your white Buick and black truck that you all  
19 drove?

20 A Yes.

21 MS. LIVESAY: Okay. She's identified that. That's State  
22 16.

23 BY MS. LIVESAY:

24 Q That's the side of your mobile home there, State's 17?

25 A Yes. But I still don't understand. The crime was inside

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- 1 the home, ma'am.
- 2 Q Is this your mobile home?
- 3 A Yes.
- 4 Q Okay.
- 5 MS. LIVESAY: State's -- she's identified State's 17 as
- 6 her home.
- 7 BY MS. LIVESAY:
- 8 Q And this your back porch, State's Exhibit 18?
- 9 A Yes.
- 10 Q This a picture of the back of your mobile home, State's
- 11 19?
- 12 A Yes.
- 13 Q Okay. Is this the front door here, State's 20?
- 14 A Yes.
- 15 Q Okay. Is this a picture of the front door, State's 21?
- 16 A Yes. I said yes.
- 17 Q Okay. And is this a bedroom in your home is State's 22?
- 18 A Yes.
- 19 Q Okay. And is this the walkway in your home, State's 23?
- 20 A Yes.
- 21 Q And is this also the walkway in your home, State's 24?
- 22 A That's the kitchen.
- 23 Q Okay. And is this a picture of, State's 25, like the --
- 24 where the den and the kitchen meet with that couch right
- 25 there?

- 1 A Yes.
- 2 Q And is this the kitchen what's been marked State's 26?
- 3 A Yes.
- 4 Q And is this the kitchen what's been marked State's 27?
- 5 A Yes.
- 6 Q And is this the kitchen what's been marked State's 28?
- 7 A Yes.
- 8 Q Is this a picture of the refrigerator, State's 29?
- 9 A Yes.
- 10 Q Is this another picture of your refrigerator, State's 30?
- 11 A Yes.
- 12 Q Okay. Now, State's 31, is this a picture of your oven  
13 and kind of the sink area?
- 14 A Yes.
- 15 Q State's 32, this is a picture of your sink area in the  
16 kitchen?
- 17 A Yes.
- 18 Q And State's 33 where the kitchen and the den come  
19 together, hold on one second?
- 20 A Yes.
- 21 Q Okay. And State's 34 is this right in front of your  
22 sink?
- 23 A Yes.
- 24 Q Okay. And State's 35 is this a picture of your sink?
- 25 A Yes.

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1 Q State's 36, this is a picture of the den; is that  
2 correct?

3 A Yes.

4 Q State's 37, this is a picture of the den going into the  
5 kitchen?

6 A That's a picture of the den. That's not picture going  
7 into the kitchen.

8 Q But this is a picture of your den?

9 A Yes.

10 Q Okay. State's 38, this is a picture of that trashcan in  
11 your house?

12 A Yes.

13 Q State's 39, this is a picture by the front door?

14 A Yes.

15 Q Okay. And State's 40 is a picture of your den including  
16 the couch, the coffee table and the mattress?

17 A Yes.

18 Q Okay. State's 41 is a picture of Roy in the house?

19 A Yes.

20 Q State's 42 is another picture of Roy in the house?

21 A Yes.

22 Q Okay. State's 43 is the front door and Roy in the house?

23 A Yes.

24 Q State's 44 is a picture of Roy on the mattress?

25 A Yes.

1 Q Now, State's 45 is the kitchen with the kitchen table  
2 area?

3 A Yes.

4 Q State's 46 is a picture of the kitchen with some sort of  
5 gun on the counter?

6 A Yes.

7 Q State's 47 is your hallway going towards the front door?

8 A Yes.

9 Q State's 48 is a picture of that mattress, the front door  
10 and the hallway?

11 A Yes.

12 Q State's 49 is a picture of the interior of the front  
13 door?

14 A Yes.

15 Q Okay. And State's 50 is a picture of the interior of the  
16 front door and the kitchen?

17 A Yes.

18 Q State's 51, the weight room in your house or a room with  
19 weights in the house?

20 A Yes. Excuse me. What does that have to do with the  
21 crime scene?

22 THE COURT: Ma'am, just answer the questions.

23 A Okay.

24 MS. LIVESAY: Thank you, Judge.

25 BY MS. LIVESAY:

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1 Q State's 52 is a mattress with Roy and something else on  
2 the mattress?

3 A Yes.

4 Q State's 53 is a picture of the den showing the bat, the  
5 mattress and the victim laying on the mattress?

6 A Yes.

7 Q State's 54 is a picture of the victim on the mattress  
8 with a pack of cigarettes and something else?

9 MR. BOUCHETTE: Objection to the use of the word victim,  
10 Your Honor.

11 THE COURT: Hold up. I'm sorry. What's the objection?

12 MR. BOUCHETTE: Objection to use of the word victim.  
13 There's not been a crime established here.

14 THE COURT: Overruled. I'll allow it. Go ahead.

15 MS. LIVESAY: What's the objection, Your Honor?

16 THE COURT: Go ahead.

17 MS. LIVESAY: Thank you, Judge.

18 BY MS. LIVESAY:

19 Q This is a picture of Roy on the mattress in your house?

20 A Yes.

21 Q This a picture of Roy?

22 A Yes.

23 Q This is a picture of the victim on the mattress?

24 A Yes.

25 Q This a picture of the ceiling, State's 57?

1 A Yes.

2 Q Okay. State's 58, is this Roy in the house?

3 A Yes.

4 Q State's 59, is this Roy in the house?

5 A Yes.

6 Q 60, is this by your front door?

7 A Yes.

8 Q State's 61, the front door?

9 A Yes.

10 Q State's 62, the kitchen?

11 A Yes.

12 Q State's 63, the kitchen?

13 A Yes.

14 Q Okay.

15 MS. LIVESAY: Your Honor, at this time we'd move to put  
16 all of these in evidence. The owner of the home who was there  
17 that night has identified these are all pictures and they're  
18 pictures of her house that night including the victim in the  
19 home.

20 THE COURT: Well, no, no, no. She, she hasn't said those  
21 are pictures of her house that night. She's just identified,  
22 "Yes, these are pictures of my home, that's a picture" --

23 MS. LIVESAY: Yes, sir. But I did ask her if that was a  
24 picture of Roy in her home that night. She said yes.

25 THE COURT: Okay. On some of them, but all of those --

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1 MS. LIVESAY: No, no, no, no.

2 THE COURT: -- she didn't say -- you need --

3 MS. LIVESAY: She just said all of these are her house.

4 THE COURT: Lay some further foundation.

5 BY MS. LIVESAY:

6 Q These pictures I showed you all with Roy in the house in  
7 these pictures --

8 A Uh-huh.

9 Q -- were these the pictures from the night of the  
10 incident?

11 A Yes.

12 Q Okay.

13 MR. GARDNER: Your Honor, I want to -- I object to that.  
14 That's not a proper foundation. She doesn't know when those  
15 pictures were taken.

16 THE COURT: Overruled.

17 MR. GARDNER: She doesn't know who took them. She  
18 doesn't know if they're fair and accurate, she didn't know if  
19 they were staged.

20 THE COURT: Overruled. Defendant -- State's Exhibits 15  
21 through 63 admitted into evidence over Defendant's objection.

22 (State's Exhibit Number 15 through 63 [Photographs]  
23 admitted into evidence and appropriately marked for the  
24 purposes of the motion hearing.)

25 MS. LIVESAY: And Judge, we got these -- I'm going to go

1 over these with her and we've got these on the TV so everybody  
2 can see them at once.

3 THE COURT: No. Only -- I only have to see them, just me  
4 and the witness. You don't have to have everybody see them.

5 MS. LIVESAY: These are just black and whites.

6 THE COURT: Well, the parties get to see them, too. All  
7 right. What do you need?

8 MS. LIVESAY: I was going to show them to them, Judge.

9 THE COURT: I've already ruled.

10 MS. LIVESAY: Okay.

11 THE COURT: You haven't shown them to them before?

12 MS. LIVESAY: Yes, sir. They got them in discovery.

13 THE COURT: Okay.

14 MS. LIVESAY: Okay. These are the same pictures. I was  
15 just going to put them up here, the colored ones. I just  
16 printed them off like this so I wouldn't have to use --

17 THE COURT: No. Black-and-white's what's admitted into  
18 evidence. We're not putting colored pictures on the screen  
19 when you've introduced black and whites into evidence.

20 MS. LIVESAY: Okay. Well, can I show her the colored  
21 ones and then she can -- I can ask her if those pictures are  
22 accurate?

23 THE COURT: No. Let's just move on with these.

24 MS. LIVESAY: Well, Judge, I hate to say this, but it's  
25 important because it is the crime scene and showing the blood

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1 and the victim --

2 THE COURT: You --

3 MS. LIVESAY: So if I show them to her and she can  
4 identify them can I ask to admit them at that time?

5 THE COURT: No, ma'am.

6 BY MS. LIVESAY:

7 Q Where was the blood in your house?

8 THE COURT: All right. Hold. You've got these exhibits  
9 into evidence. Let's don't leave them on your desk.

10 MS. LIVESAY: Oh, I thought they were already in, Judge.

11 THE COURT: They are, but leave them with the court  
12 reporter if you're not using them.

13 BY MS. LIVESAY:

14 Q Now, where did Roy get hit that night?

15 A What do you mean where did he get hit?

16 Q Where?

17 A What do you mean where did he get hit?

18 Q Where did you hit him with the bat?

19 A I hit him in the groin and the legs.

20 Q Okay. And who hit him in the head?

21 A I guess he hit his head when he got attacked, when Mr.  
22 Rosenbaum got him off me, when the two of them were in a fight  
23 together.

24 Q Okay. Okay. Now, I'm showing you what's been -- let's  
25 see -- in State's 25, you see that blood in the kitchen?

- 1 A Yes.
- 2 Q How'd that blood get there?
- 3 A I guess that's when Mr. Rosenbaum and Roy were fighting
- 4 back and forth.
- 5 Q I'm sorry. Who was bleeding?
- 6 A Roy was.
- 7 Q Who?
- 8 A Roy and Jimmy. Jimmy was bleeding from his leg where Roy
- 9 hit him with the bat.
- 10 Q And where was, where was the Defendant bleeding? I'm
- 11 sorry. Where was Jimmy Rosenbaum bleeding from?
- 12 A From his leg.
- 13 Q Okay. Okay. And how about this? I'm showing you now
- 14 State's Exhibit Number 27, all that blood in your kitchen.
- 15 A Uh-huh.
- 16 Q How did that get there?
- 17 A I guess that was from their fight.
- 18 Q Okay. State's 28, do you see all that blood?
- 19 A Yes.
- 20 Q What was going on in the kitchen right this -- to get all
- 21 this blood here?
- 22 A I guess they were fighting because I was on the phone.
- 23 Q Okay. And you -- thank you -- and you and Jimmy were in
- 24 the house that night together with Roy?
- 25 A Yes.

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1 Q Okay. I'm going to show you now State's 64, 65, 66.

2 Now, is that Jimmy Rosenbaum?

3 A Yes.

4 Q Okay. And is this Jimmy Rosenbaum?

5 A Yes.

6 Q And is this Jimmy Rosenbaum?

7 A Yes.

8 Q Okay. And is that the stuff he had on that night?

9 A Yes.

10 Q Okay. And what injury did he have?

11 A His leg.

12 Q Okay. That injury right there?

13 A Yes.

14 Q Did he have any other injuries?

15 A I don't know.

16 Q Okay. Do you see any other injuries in this picture?

17 A No.

18 MR. BOUCHETTE: Your Honor, at the appropriate time we'll  
19 have an objection to these, these photographs.

20 THE COURT: When she tenders them, we'll -- I'll hear any  
21 objections. Just raise your objection. I'll hear the  
22 arguments.

23 Q Showing you now State's 67 through 70. Is this Roy in  
24 your house and the front door?

25 A Yes.

1 Q Okay. Is this also Roy in your house?

2 A Yes.

3 Q That night?

4 A Yes.

5 Q Okay. How about 69, is this Roy in your house that  
6 night?

7 A Yes. Yes.

8 Q Okay. And how about State's 70, is this Roy?

9 A Yes.

10 Q Okay.

11 MS. LIVESAY: At this time, Your Honor, we're asking --  
12 she's identified this is the victim at her house that night.  
13 So we're asking to put them in evidence so we can look at the  
14 injuries of the victims.

15 THE COURT: So which ones are you moving?

16 MS. LIVESAY: 67 through 70, Judge.

17 THE COURT: All right. Any objection to State's Exhibits  
18 67, 68, 69 or 70?

19 MR. BOUCHETTE: Object on two basis, Judge. First, it's  
20 not a -- there's been no testimony as to whether or not those  
21 photographs fairly and accurately depict the condition of the  
22 victim at whatever time they were taken. She didn't take the  
23 pictures. There's no testimony to that. She says that's Roy  
24 in what she presumes to be her house. So there's no --

25 THE COURT: The night, that night. She said it was --

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1 that's how it appeared that night.

2 MR. BOUCHETTE: Well, I understand that, but they're  
3 introducing it for the purpose of establishing that those  
4 photographs right there fairly and accurately represent the  
5 condition of Roy that night and that's not what, what she  
6 said. She said, "That's Roy and, you know, he's in my house."  
7 So that's if -- I don't think a foundation has been laid. She  
8 doesn't have a basis to testify as to those photographs. She  
9 can identify Roy and she can identify her house but she can't  
10 testify as to those particular photographs, and then as a  
11 second matter, those are the same photographs which have  
12 already been entered into evidence in the black and white  
13 version in State's, whatever that cluster of photos is over  
14 there. So I think it's duplicative unless I'm missing  
15 something.

16 THE COURT: Are these already in?

17 MS. LIVESAY: Sir? These are the photographs taken in  
18 her house of the victim on her mattress.

19 THE COURT: But have you already got them into evidence  
20 in the black and white?

21 MS. LIVESAY: I don't, Judge. I want to ask her about  
22 these, these injuries.

23 THE COURT: All right. Let -- well, let's. Hold it.  
24 Hold it for a second. Let's pull out these --

25 MS. LIVESAY: I think --

1 THE COURT: I have not ruled they're admissible. So  
2 don't be showing them to me.

3 MS. LIVESAY: Okay.

4 THE COURT: He's saying they're duplicative and that  
5 you've already got them into evidence in the black and white.

6 MS. LIVESAY: That is not correct.

7 THE COURT: All right. Well, let's look and see because  
8 either they're in evidence or they're not in evidence.

9 MS. LIVESAY: These are the ones that show Roy's  
10 injuries. So I can compare his injuries to the Defendant's  
11 injuries.

12 THE COURT: All right. Let's pull the 15 through 63 and  
13 show.

14 MR. BOUCHETTE: And again, might be missing something,  
15 Judge, but these are the -- this is --

16 THE COURT: All right. Show them to her. Are those  
17 different photographs?

18 MS. LIVESAY: Judge, does this look like the same  
19 photograph to you? Obviously it's not. I'm trying to show  
20 the victim's injuries. I've shown the Defendant's injuries.

21 THE COURT: Yep. Those are different photographs.

22 MS. LIVESAY: What, Judge? I'm sorry.

23 THE COURT: I said they're different photographs.

24 MS. LIVESAY: These are the ones showing his injuries to  
25 the head.

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1 THE COURT: Well, let me see.

2 MS. LIVESAY: This is the one showing the door. So you  
3 can see this complete door on this one.

4 THE COURT: All right. All right. Defendant's objection  
5 is overruled.

6 MS. LIVESAY: Thank you, Judge.

7 THE COURT: State's Exhibits that's 67, 68, 69 and 70 are  
8 admitted into evidence over Defendant's objection.

9 MS. LIVESAY: Thank you, Judge.

10 (State's Exhibit Numbers 67 through 70 [Photographs]  
11 admitted into evidence and appropriately marked for purposes  
12 of motion hearing.)

13 BY MS. LIVESAY:

14 Q How did Roy get these injuries to the back of his head?

15 A I don't know.

16 Q Were you in the house that night?

17 A I was in the house.

18 Q Okay.

19 A But everything happened so fast, and I was on the phone  
20 with the police.

21 Q Okay. Well, when you drove him to the house did he have  
22 these injuries?

23 A No.

24 Q Okay. So --

25 A I -- he -- let me rephrase it. I did not drive him to

- 1 the house.
- 2 Q Who drove him to your house?
- 3 A He walked from the trailer to my house.
- 4 Q How did he get from the farm to that area?
- 5 A I drove him.
- 6 Q Okay. Okay. So you drove him. How many miles is it
- 7 from the farm to near your house?
- 8 A I'd say about two miles.
- 9 Q Okay. And while you had him in the car you stopped at
- 10 the ATM; correct?
- 11 A Yes.
- 12 Q Okay. And got out and got \$20?
- 13 A Yes.
- 14 Q And then got back in the car?
- 15 A Yes.
- 16 Q And then drove him to the area of your trailer?
- 17 A Yes.
- 18 Q Okay. So you went to the farm. Roy didn't have a car;
- 19 right?
- 20 A No.
- 21 Q Okay. And he didn't even have no phone; did he?
- 22 A No.
- 23 Q So if he was going to get to your area you were going to
- 24 have to drive him?
- 25 A Yes.

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1 Q Okay. And when you picked him up, I'm showing now  
2 State's 70, he didn't have these injuries?

3 A No.

4 Q Okay. So would you agree with me he had to sustain them  
5 while he was at your house?

6 A Yes.

7 Q Okay. Okay. Now, the question is who caused these  
8 injuries to the back of his head?

9 A It must've happened when Mr. Rosenbaum and him were in an  
10 altercation.

11 Q Okay. Let me ask you this, this is now State's 67. You  
12 see all that blood by the front door?

13 A Yes.

14 Q You see that blood smearing on the front door?

15 A Yes.

16 Q Okay. Is that from where Roy was trying to get out of  
17 the house?

18 A I guess so.

19 Q I'm sorry?

20 A I said I guess so.

21 Q Okay. So you would admit he was trying to get out of the  
22 house?

23 A Probably.

24 Q What?

25 A I said I guess so.

1 Q Okay. Well, on the tape you're saying, "Don't leave this  
2 fucking house"; is that not what you heard?

3 A Yeah. Well, he tried to rape me, so.

4 Q So you wanted to keep him in the house?

5 A No.

6 Q But he did try to leave the house?

7 A Yes.

8 Q He did try to leave, and the truth is you would not let  
9 him leave; is that correct?

10 A I wasn't going to let him leave until the cops came  
11 there.

12 Q Okay. So you would agree when we heard on the tape he's  
13 trying to get out of the house, you would not let him leave  
14 when you're saying, "Don't you leave motherfucker, don't you  
15 leave"?

16 A Yeah. Because I was on the phone with the police, and I  
17 wanted the police to come and arrest him.

18 Q Okay.

19 A For trying to rape me.

20 Q Okay. And on the 911 tape he's in here trying to run out  
21 the front door and you're beating him with that bat, "Don't  
22 you leave. Don't you leave"?

23 A But it's okay for him to get naked in my house and try to  
24 rape me; right?

25 Q I'm asking you. He was trying to leave the house and you

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1 took that bat to him and said, "Don't you leave. Don't you  
2 leave," and you were hitting him with that bat?

3 A I wasn't hitting him with the bat telling him not to  
4 leave. I hit him when he was on the mattress with the bat.

5 Q Did you hear the same 911 tape I did?

6 A Yes. I did.

7 A Okay. So you --

8 A And I was there.

9 Q You can hear -- okay. Good. Then how do you --

10 A Excuse me, Your Honor. I do not want to answer her  
11 question.

12 THE COURT: All right. She's asserting her Fifth  
13 Amendment Right. Move on.

14 Q So since you were there tell us how did he get these  
15 injuries to the back of his head? You would know better than  
16 anybody in here.

17 A I don't know.

18 Q Okay. But you would agree he sustained them at the  
19 house?

20 A I guess.

21 Q Okay. And you would agree this is your front door and  
22 he's right by the door?

23 A And he's naked.

24 Q Has he got on shorts?

25 A They're not all the way on his, his body.

1 Q Okay. Does he have on shorts?

2 A Again, they're not on all the way. He's naked.

3 Q Okay. Do you see shorts on him?

4 A I see shorts on one leg.

5 THE COURT: Ms. Livesay, the picture speaks for itself.

6 MS. LIVESAY: Okay.

7 THE COURT: He's naked. He's got shorts down below his  
8 knees I believe. So go ahead. Move on.

9 BY MS. LIVESAY:

10 Q And does he have shoes on?

11 A Yes.

12 Q Okay. Okay. Now, do you remember that his shirt was  
13 folded in your house?

14 A No.

15 Q Okay. But you remember the police asking you about it?

16 A Yeah.

17 Q Okay. Now, when he tried to leave was he able to get up  
18 at that point?

19 A He was.

20 Q He was? He was able to get up and go for the door?

21 A Yeah.

22 Q Yes. And was he --

23 A He was staggering.

24 Q Okay. He was staggering and he was going for the door  
25 and was he able to talk at that point?

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1 A He was able to talk. Yes.

2 Q Okay. So tell this Court what happened between the time  
3 Roy is bleeding, staggering for the door and when he ends up  
4 like this laid out on the mattress?

5 A I don't know. It happened so fast.

6 Q But you would agree, you heard the 911 tape?

7 A Yeah. But I was also in shock at the time because he  
8 tried to rape me.

9 Q Okay. But would you agree you're saying on the tape,  
10 "Don't leave, don't leave"?

11 A I heard the tape. Yes.

12 Q Okay. And would you agree shortly after that Roy is like  
13 this?

14 A Shortly after me telling him not to leave, no.

15 MR. BOUCHETTE: Objection as to foundation, again, Your  
16 Honor. She doesn't know when that photo was taken. There's  
17 no foundation about --

18 THE COURT: Overruled. Go ahead.

19 Q At some point when you're waiting on the police --

20 A Uh-huh.

21 Q -- Roy is no longer moving or talking?

22 A No.

23 Q Okay. He, he isn't; is that correct?

24 A Yes.

25 Q He's no longer moving or talking?

1 A Yes.

2 Q Okay. So something happens between the time he's able to  
3 stagger towards the door and when the police get there and  
4 he's completely killed; is that correct? No, no, no life, no  
5 breathing, no talking, no moving?

6 A I don't know if he was dead at that time.

7 Q Okay. But you would agree he was not able to talk or  
8 move?

9 A Because I was still on the phone with the police. Like I  
10 said, I don't know.

11 Q Okay. But you would, you would agree at --

12 A Your Honor, can I waive, please? I don't want to answer  
13 that question.

14 THE COURT: All right. Move on.

15 A Thank you.

16 THE COURT: She's asserted her Fifth Amendment Right.  
17 Let's move on.

18 MS. LIVESAY: Judge, just for the record, I am clear when  
19 she took the stand she waived her right.

20 THE COURT: Wrong. I told her if at any time she wanted  
21 to assert her Fifth Amendment Right against self-incrimination  
22 then she needs to let the Court know. If she answered the  
23 question then it was a waiver. So she has asserted her right.  
24 Just because she takes the stand during this motion hearing  
25 does not mean she waives her total right against self-

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1 understand that you're going to be cross-examined.

2 THE COURT: Uh-huh.

3 MS. LIVESAY: Okay.

4 BY MS. LIVESAY:

5 Q I'm going to show you now what's been marked as State's

6 71. It's a picture of your couch, hallway and Roy?

7 A Uh-huh

8 Q Okay.

9 THE COURT: Is that a yes?

10 Q And this is Roy and Jimmy?

11 A Yes.

12 THE COURT: Okay.

13 A I'm sorry.

14 THE COURT: Go ahead.

15 Q And this is your -- this is Roy in your house that night;  
16 correct?

17 A Yes.

18 Q Okay. And how is Roy situated at that time?

19 A In that picture I can hardly tell. It's a blur. It's  
20 still a blur, ma'am. It's black and white.

21 Q Can you see Roy in the picture?

22 A I can see Roy in the picture.

23 Q Okay. What is Roy --

24 A He looks like he's sitting up. He does not look like  
25 he's laying down, ma'am.

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1 Q Okay. But you would agree that's the mattress in your  
2 den?

3 A Yes.

4 Q Okay. And you would agree that's Roy sitting on the  
5 mattress?

6 A Yes.

7 Q Okay. And at this point that's your couch?

8 A Yes.

9 Q Okay. Now, I want you to tell this Court where Roy is  
10 sitting there on the mattress is he a threat to you at this  
11 time?

12 A I don't, I don't know what time that was. I couldn't  
13 tell you what time that was.

14 Q Okay. But it was definitely the night in question?

15 A Yes.

16 Q Okay.

17 MS. LIVESAY: Your Honor, at this time she's identified  
18 State's 71. So I'd like to put it in evidence.

19 THE COURT: Any objection?

20 MR. BOUCHETTE: I just renew the same objection as the  
21 previous.

22 THE COURT: Okay. I sustain that because she said she  
23 didn't know what time it was. So I sustain Defendant's  
24 objection.

25 MS. LIVESAY: Can I ask her a couple of more questions,

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1 Judge?

2 MR. BOUCHETTE: Your Honor, I'd object. The Court's  
3 already -- if it -- the question's regarding --

4 THE COURT: I've already ruled on that one.

5 BY MS. LIVESAY:

6 Q But, but you would agree it was from that night?

7 A Yeah.

8 Q Okay. And you would agree this is the mattress.

9 MR. BOUCHETTE: Same objection, Your Honor.

10 THE COURT: Sustained.

11 Ms. Livesay, she needs to keep it. No. The court  
12 reporter needs to keep it.

13 Q In that picture would you agree with me when he was in  
14 your house at that time that he was not a threat?

15 MR. BOUCHETTE: Objection, Your Honor. I think we're  
16 still referencing the picture.

17 THE COURT: Sustained. The picture didn't come into  
18 evidence, so, no, don't reference the picture.

19 Q Now, did you hear Roy on the 911 tape saying, "I can't  
20 move, I can't move"?

21 A I heard it.

22 Q Okay. Did you still think he was a threat then when he  
23 was yelling, "I can't move, I can't move"?

24 A Okay. If a person can't move they can't move, they're  
25 not a threat then, but he was a threat when he tried to rape

1 me. Yes.

2 Q But would you agree at some point between, "I can't move,  
3 I can't move," he was further beat and to the point he was  
4 deceased?

5 A I don't know if he was deceased at that time.

6 Q Okay. But at some point he's laying on the mattress and  
7 can't talk?

8 A Yeah.

9 Q Okay. So at some point between, "I can't move, I can't  
10 move," he's beat further to the point where he's just laying  
11 on the mattress and can no longer talk?

12 A Uh-huh.

13 Q Yes, that --

14 THE COURT: Is that a yes?

15 A Yes.

16 Q Okay. And at some point after he's trying to get out the  
17 front door and you're saying, "Don't you leave, don't you  
18 leave," he's still moving at that point; correct?

19 A Yes.

20 Q And then at some point after he's trying to get out of  
21 the door he's beat further?

22 A Yes.

23 Q Okay.

24 A I guess.

25 Q Okay. Okay. Beat him some --

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1 A Between the struggle.

2 Q Okay. And then after that.

3 A Excuse me. Your Honor, she said I beat him some more.  
4 She's, she's mistaken with that one because I only hit him  
5 twice.

6 THE COURT: Okay. Go ahead.

7 Q So he staggers for the door?

8 A Uh-huh.

9 THE COURT: Is that a yes?

10 A Yes. I'm sorry. I apologize.

11 THE COURT: All right.

12 Q When you say stagger, was he upright or was he crawling?

13 A He was upright and walking, staggering.

14 Q Okay. Okay. And how close did he get to the door?

15 A Maybe he was like right by the handle. I don't, I don't  
16 know. It happened so fast like I said before.

17 Q Okay. How did you know he was going for the door?

18 A How did I know he was going for the door? I saw him  
19 going for the door.

20 Q Okay. So it was clear that he was going for the door?

21 A Yes.

22 Q Okay. And he staggered -- is he talking then?

23 A He was just running out -- trying to run out the door.

24 Q Okay. Now, obviously you're saying, "Don't, don't you go  
25 out that door"?

1 A Because I wanted the police come and to arrest him for  
2 trying to rape me.

3 Q Okay. But you would agree he was not able to make it out  
4 the door?

5 A He could have made it out the door. He was still  
6 walking.

7 Q Okay. So what happened between the time he was going for  
8 the door and he ended up laid out on the mattress?

9 A That I don't remember.

10 MR. BOUCHETTE: Objection. Asked and answered. I think  
11 we've already gone --

12 THE COURT: Sustained.

13 MR. BOUCHETTE: -- through this multiple times.

14 THE COURT: Sustained.

15 Q Now, you remember talking to the police?

16 A Somewhat. I was, I was in shock and I was out of it.

17 Q Okay.

18 A I was exhausted.

19 Q Okay. Do you remember them reading you your Miranda  
20 Rights?

21 A No. I do not remember them reading me my Miranda Rights.

22 Q Okay. Let me show you something. Do you recognize what  
23 I'm showing you now? It's been marked State's 72.

24 A I don't remember even signing that.

25 Q Okay.

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- 1 A That's how out of it I was.
- 2 Q Well, tell this Court is, is that your signature?
- 3 A Yes.
- 4 Q Okay. Now, is this your initials?
- 5 A Yes.
- 6 Q Okay. So after you have the right to remain silent,  
7 anything you say can and will be used against you in a court  
8 of law you initialed there?
- 9 A Yes.
- 10 Q Okay. After you have the right to talk with a lawyer and  
11 have him present with you while you are being questioned, did  
12 you initial there?
- 13 A Yes.
- 14 Q Okay. If you cannot afford to hire a lawyer one will be  
15 appointed to represent you before any questioning if you so  
16 desire, did you initial there?
- 17 A Yes.
- 18 Q Okay. If you make a statement or answer any questions  
19 you have the right to stop at any time, did you initial there?
- 20 A Yes.
- 21 Q Okay. And then at the end did you sign?
- 22 A Yes.
- 23 Q Okay. So you would agree that you did initial beside  
24 each right and then sign?
- 25 A Yes. But like I said, I do not remember that paper.

1 MS. LIVESAY: At this time, Your Honor, I'd like to put  
2 State's 72 into evidence as her signed Miranda form she's  
3 identified, she initialed and signed.

4 THE COURT: All right. Objections?

5 MR. BOUCHETTE: No objection, Your Honor.

6 THE COURT: All right. State's Exhibit 72 admitted into  
7 evidence without objection.

8 (State's Exhibit Number 72 [Miranda Rights Form] admitted  
9 into evidence and appropriately marked for purposes of motion  
10 hearing.)

11 BY MS. LIVESAY:

12 Q And when you were in there did they give you anything to  
13 stay warm?

14 A They gave me a blanket.

15 Q Okay. Okay. And while you were in there were you  
16 allowed to go to the bathroom?

17 A I didn't even get up to go to the bathroom. I was  
18 knocked out.

19 Q Okay. Okay. Did anybody tell you you couldn't go to the  
20 bathroom?

21 A No.

22 Q Okay. And they gave you a blanket to stay warm?

23 A Yes.

24 Q Okay. And who went in there -- do you remember two  
25 officers questioning you?

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1 A Yes.

2 Q Do you remember one of them was black, one of them was  
3 white?

4 A Yep.

5 Q Do you recognize them in here? There's one of them there  
6 in a blue shirt, Brad Thompson?

7 A Yes.

8 Q You remember him? And there's Ken Hemingway. If you  
9 look to the right you can probably see him. Do you remember  
10 him being in there?

11 A Yep.

12 Q Now, while the two of them are in there did they ever put  
13 their hands on you in any kind of form or fashion?

14 A No.

15 Q Grab you by the arm?

16 A No.

17 Q Okay. Did they ever put handcuffs on you while you were  
18 in there?

19 A No.

20 Q Okay. Did they ever restrain you in any form or fashion?

21 A No.

22 Q Okay. Now, did these two gentlemen in here while they  
23 were talking with you did they threaten you?

24 A No. But when they came back and found out that Roy was  
25 dead one of them slammed his hand on the desk and told me that

1 Roy was dead and the other officer told me I must have wanted  
2 that big black dick.

3 Q So you remember that?

4 A Yes.

5 Q Okay. Okay. So you were pretty alert at that time?

6 A Well, of course when somebody slams their hand on the  
7 table I am going to jump up and wake up.

8 Q Okay. Do you remember why he slammed his hand?

9 A No. Because -- I guess because Roy was dead.

10 Q Okay. Do you remember him telling you that he had heard  
11 the 911 tape?

12 A No.

13 Q Okay. And that he was making that noise like that.

14 A No. I don't remember him doing that.

15 Q Right to the head.

16 A I don't remember him saying that.

17 Q Okay. Were you ever restrained at any point in that  
18 room?

19 A No.

20 Q Okay. And did they ever put their hands on you?

21 A No.

22 Q Did they ever threaten you in any way that they were  
23 going to harm you, hurt you?

24 A Of course not. They're police.

25 Q Okay. Okay. Did they ever promise you anything?

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1 A No.

2 Q Okay. Okay. Did they offer you to go to the bathroom?

3 A They asked me if I needed to go when I first got there  
4 but I told them no because I was out, like I was exhausted.

5 Q But they told you if you needed to go you could go?

6 A Yes.

7 Q Okay. Okay. Now, did they offer you a bottle of water?

8 A No.

9 Q Now, while you were in there were there times when they  
10 gave you a break, they would talk to you for a while and leave  
11 and give you a break?

12 A No. Not that I recall.

13 Q I'm sorry?

14 A No. Not that I recall.

15 Q Okay. Okay. While you were in there were you able to  
16 talk with them and express to them anything you wanted?

17 A Whatever I wanted to say, yeah, but I really don't  
18 remember everything.

19 Q Okay. Were you under the influence of any drugs when you  
20 were in there?

21 A No.

22 Q Okay. Okay. Not, not under the influence of any drugs  
23 or alcohol?

24 A No.

25 Q Okay. How about prescription medication?

1 A No.

2 Q Now, in that picture I didn't see any severe injuries.

3 When you're in the room are you physically able to move  
4 around, get up and walk around, put the blanket over you?

5 A Yeah.

6 Q Okay.

7 A But I didn't get up and walk around. I was asleep the  
8 whole time.

9 Q Okay. Okay. So they let you sleep while you were in  
10 there?

11 A Uh-huh.

12 Q Okay.

13 A Until he slammed his hand on the table.

14 Q Okay. Okay. Now, did you ever ask for a lawyer while  
15 you were in there?

16 A No.

17 Q Okay. Did you ever give them any indication that you  
18 didn't want to talk to them?

19 A No. I was -- I, like I said --

20 Q Okay.

21 A -- I was in shock.

22 Q Okay. And did you tell them what happened that night?

23 A I don't remember if I told them because I, like I said, I  
24 was in shock.

25 Q Okay. Do you remember telling them that you went to the

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1 horse farm, you were looking a job? Do you remember that?

2 A No. I do not remember that.

3 Q I'm sorry?

4 A I do not remember that.

5 Q Okay. Would you like me to refresh your memory on that  
6 part?

7 A If you have to.

8 Q Okay.

9 MS. LIVESAY: Judge, can I refresh her memory? I can put  
10 the tape in to refresh her memory.

11 THE COURT: Any objection?

12 MR. GARDNER: Relevance again, Judge. I don't know where  
13 we are.

14 THE COURT: Yeah. What's the relevance? What's the  
15 relevance?

16 MS. LIVESAY: Your Honor, she gave some inconsistent  
17 statements. So I want to refresh her memory.

18 THE COURT: And what did she testify to that's  
19 inconsistent?

20 MS. LIVESAY: She told the police -- she testified  
21 earlier that she went up there and Roy asked for a ride. She  
22 told the police that she knew Roy and she went out there and  
23 said, "Hey, do you want a ride? Come on, get in the car."  
24 She went out there and picked him up.

25 THE COURT: Well, just ask her if she told the police

1 that. If she admits it fine. If not, then you can publish  
2 that portion to show a prior inconsistent statement, but we  
3 don't have to do the whole interview, just as to what she  
4 denies saying.

5 MS. LIVESAY: I can do it, Judge.

6 BY MS. LIVESAY:

7 Q Do you remember telling the police that you went and  
8 picked up Roy and said, "Come on. Do you want a ride"?

9 A No.

10 Q So you don't remember telling the police, "I pulled up to  
11 Roy and asked him if he wanted to go for a ride"?

12 A No.

13 Q "And then we started smoking"?

14 A I don't remember that.

15 Q Let me refresh your memory then.

16 MS. LIVESAY: Okay. Go to 1:33:54 on Diane's statement.

17 Shouldn't take long, Judge.

18 THE COURT: That's fine.

19 MS. LIVESAY: I've got the time beside it.

20 THE COURT: That's fine.

21 MS. LIVESAY: Ms. Durkin, you want some water?

22 A No. Thank you.

23 (Statement of Diane Durkin played in open court.)

24 MR. BOUCHETTE: Objection, Your Honor. That's not  
25 teaching anything at this point.

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1 THE COURT: That's not the portion that you just  
2 questioned her on.

3 (Statement of Diane Durkin played in open court.)

4 MR. BOUCHETTE: Objection. Your Honor, I think the  
5 section --

6 THE COURT: You moved past. Go ahead and cut it there.

7 BY MS. LIVESAY:

8 Q Does that refresh your memory when you said that you went  
9 and picked Roy u?

10 A Yes. But the night in question I did not smoke with him.  
11 I only told the police that because I figured that they would  
12 let me go if I told them anything.

13 Q Okay. And would you agree that you told these police  
14 officers when you were talking to them and you had that  
15 blanket on that you all went and got that \$20 to get a rock  
16 and go to your house and smoke it? Do you remember telling  
17 the police that?

18 A No.

19 Q Okay. Did you just listen to your statement?

20 A Yes.

21 Q Okay. Did you hear that in your statement?

22 A I didn't hear it in my statement but, you know, you're  
23 saying it, but I did not smoke with Roy that night.

24 MR. BOUCHETTE: Your Honor, I have to object as the facts  
25 not into evidence.

1 Q Okay. So --

2 MR. BOUCHETTE: I don't think the audio said what  
3 Solicitor reporting it to have said.

4 THE COURT: Overruled. Go ahead.

5 MS. LIVESAY: Thank you, Judge.

6 BY MS. LIVESAY:

7 Q Now, in your statement to the police and in the 911 tape  
8 did you hear Roy say saying, "She's lying, she's lying"?

9 A No.

10 Q You didn't hear that in the 911 tape?

11 A No.

12 Q Okay. Do you want me to play it to refresh your memory  
13 because he says it several times and you're saying, "I'm not a  
14 liar. You're the liar." Do you remember that?

15 A I remember me saying, "I'm not a liar." I don't remember  
16 him saying that I was a liar.

17 Q What, what was he saying you were lying about?

18 A I don't know.

19 Q Okay. You told the police that -- isn't it true that you  
20 told the police that he was saying you were lying about him  
21 trying to have sex with you?

22 A Probably.

23 Q Okay. So you would agree you did tell the police that?

24 A Yes.

25 Q I'm sorry?

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1 A Yes. But I don't remember.

2 Q Okay.

3 A Like I said, I was in shock.

4 Q Okay. But you do hear the 911 tape Roy saying, "She's  
5 lying, she's lying." You're saying, "I'm not the liar"?

6 A Yes.

7 Q Okay. And so you would agree you told the police he was  
8 saying you were lying about him raping you or wanting to have  
9 sex with you; isn't that correct?

10 A That's what he said. But he did try to rape me.

11 Q Okay. Now, do you remember telling the police that you  
12 didn't tell Roy not to leave?

13 A Did I -- ask -- rephrase that, please.

14 Q I'm sorry?

15 A Rephrase that, please.

16 Q Sure. The police ask you, "Well, did you ever just ask  
17 Roy to leave?" Do you remember that?

18 A No.

19 Q And you told them, "I ain't tell Roy not to leave." Do  
20 you remember that?

21 MR. BOUCHETTE: Objection, Your Honor. She replied she  
22 didn't remember.

23 THE COURT: Well, overruled. Go ahead.

24 Q Do you remember telling the police, "I ain't tell Roy not  
25 to leave"?

1 A No. I don't remember telling that to the police.

2 Q If I play it would that refresh your memory?

3 A You don't have to play it. I mean, if I said it I said  
4 it, but I was in shock like I said.

5 Q Okay. So now are you agreeing that you did tell the  
6 police that?

7 A Probably.

8 Q Okay.

9 A But I was out, like I said, I was in shock. I was  
10 exhausted.

11 Q And at some point they ask you, "Did you keep Roy from  
12 leaving," and you said, "No. I never did anything to keep him  
13 from leaving." Do you remember that?

14 A No. I do not remember that.

15 Q Okay. Did you tell the police that?

16 A I don't -- like I said, I don't know.

17 Q Do you want me to --

18 A I was in shock. You don't have to, but I mean, I was in  
19 shock.

20 Q So you're saying you didn't?

21 A And I was exhausted. So whatever I said to them I don't  
22 remember.

23 Q Okay. So you did tell the police that?

24 THE COURT: Ms. Livesay, she says she doesn't remember.

25 So let's move on.

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1 Q Okay. Do you remember telling the police that Roy stood  
2 up and started running?

3 A I, I don't remember saying that.

4 Q Okay. Do you not remember or are you denying saying it?

5 A No. I do not remember.

6 Q Okay. Would playing the tape refresh your memory?

7 A You don't have to play it. I, like I said, I was in  
8 shock and I do not remember.

9 Q And did you remember telling the police that Roy got up  
10 and tried to take off out the front door?

11 A I don't remember saying that. Like I said, I was in  
12 shock, again.

13 Q Okay. So you're not denying saying it. You're just  
14 saying you don't remember?

15 A I don't remember because I was in shock.

16 Q Now, when you had Roy in the car with you and you're at  
17 the ATM at the Kangaroo, do you remember that on 378 getting  
18 that \$20?

19 A Uh-huh.

20 Q Do you remember that?

21 A Yes.

22 Q Okay. And you were on the phone?

23 A Yes.

24 Q And you were talking to the Codefendant, Jimmy Rosenbaum?

25 A Yes. Because we always communicate when I'm out because

1 he worries about me.

2 Q Okay. Okay. And Roy was in the car?

3 A Yes.

4 Q Okay. Do you remember it being about 8:30?

5 A I don't remember what time it was exactly.

6 Q Okay. Was it dark outside?

7 A No. It was getting dark.

8 Q It was getting dark. What were you telling Jimmy when

9 you were on the phone at the ATM and Roy was in the car?

10 A I asked him if I could lend Roy \$20 because it was

11 actually not my money. It's Jimmy's money.

12 Q Okay. And did you tell him you had Roy in the car?

13 A I told him that there was a guy in the car that wanted to

14 borrow \$20.

15 Q Okay. But you didn't tell him it was Roy?

16 A No.

17 Q Okay. And did you tell him that you were giving him \$20?

18 A I had asked him if it was okay. Like I said, it was his

19 money.

20 Q Okay. And what did he say?

21 A He said okay.

22 Q Okay. And did he tell you where he was at that time?

23 A Jimmy, he said that he was going to take a friend of his

24 somewhere.

25 Q He was where?

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1 A He was going to take a friend of his somewhere.

2 Q Okay. So you -- so he told you he was somewhere off away  
3 from the house?

4 A Yes.

5 Q Okay. Now, you make two more phone calls and talk to him  
6 while Roy is at the house. What are you telling him then?

7 A I just said I was okay.

8 Q Okay. So --

9 A And that I need to finish folding the clothes.

10 Q So you called him twice while Roy was at the house to  
11 tell him you were okay?

12 A Yeah. Like I said, we call each other all the time no  
13 matter who's at the house.

14 Q Okay. And where was Jimmy at that time?

15 A I don't know. I think he was with a friend.

16 Q Okay. Did you tell him at that time that Roy was at the  
17 house?

18 A No.

19 Q But Roy was at the house?

20 A Yeah.

21 Q Okay.

22 A Because I invited him for, for a drink of water because  
23 it was hot out.

24 Q Okay. And in fact, you talk to him twice while Roy was  
25 right there in the house; correct?

- 1 A Yes.
- 2 Q Okay. So you had your phone on you at that time and was  
3 able to use it?
- 4 A Yes.
- 5 Q Okay. And Roy did not have a phone?
- 6 A Not -- I don't know if he had a phone on him or not.
- 7 Q Okay. Did you see him with a phone?
- 8 A No.
- 9 Q Okay. And Roy did not have a car?
- 10 A No.
- 11 Q Okay. But you had a car?
- 12 A Yes.
- 13 Q Okay. Now, where did Roy live? How far did he live from  
14 you?
- 15 A About two, two and a half miles.
- 16 Q Okay. So really the only way he was getting back home is  
17 if you gave him a ride?
- 18 A Yes.
- 19 Q Okay. And in fact, you told the police that he asked you  
20 to take him back home?
- 21 A Yes.
- 22 Q I'm sorry?
- 23 A Yes.
- 24 Q Okay. But you told him you weren't going to take him  
25 back home right then; right?

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1 A Yes.

2 Q Okay. So you were in control of when Roy was coming and  
3 leaving the house because you were the only one with a  
4 vehicle?

5 A Yeah. But I did not turn around and I did not make any  
6 advances at Roy for him to get naked and try to rape me  
7 either.

8 Q In that 911 tape -- well, why didn't you just take him  
9 home?

10 A Why didn't I just take him home?

11 Q Yeah.

12 A Because I was home already and he could have gotten a  
13 ride from the place where he got drugs.

14 Q Okay. And you called Jimmy twice while he was over  
15 there?

16 A Yes.

17 Q Okay. And you never told Jimmy he was there?

18 A No.

19 Q Did you tell him there was any kind of problem?

20 A No.

21 Q Okay. In the 911 tape you keep saying that Roy is a  
22 pedophile, he's a pedophile, he peeps in girls' windows?

23 A Yes.

24 Q Okay. When did you learn that?

25 A Somebody around in the vicinity around near my house had

1 told me that. I didn't believe it at first but --

2 Q So somebody told you he was a pedophile?

3 A Yes.

4 Q Okay. And you picked him up from where he worked?

5 A Yes.

6 Q Okay. And in the car with him and drove him to the ATM?

7 A Yes. That was after I spoke to the owner about a job.

8 Q Okay. And then get him home or get him to your house; is  
9 that right?

10 A He did not come to my -- I did not bring him straight to  
11 my house. I brought him to the trailer around the corner from  
12 my house where he can get his drugs, and I just dropped him  
13 off there.

14 Q Okay. But at some point you did let him in the house?

15 A He walked to my house. I wasn't expecting him to even  
16 show up at my house.

17 Q Okay. Did you let him in the house?

18 A Yes. To get water.

19 Q Okay. And you gave him a drink of water?

20 A Yes.

21 Q Okay. And at that time somebody, again, had called --  
22 told you he was a pedophile?

23 A Not at that time.

24 Q So you didn't know it at that time?

25 A No. Somebody had told me prior to that, but I didn't

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1 believe it at first, but you never know because I don't really  
2 know people.

3 Q Earlier you said the baseball bat was on the back porch  
4 to hit balls for a dog you all had; is that right?

5 A Yes. We used to have a dog.

6 Q Did you have a dog at that time?

7 A No. We had given the dog to our landlady.

8 Q When you're on the 911 tape saying, "Give me that bat,  
9 give me that bat", who, who were you talking to?

10 A Who was I talking to?

11 Q Yeah.

12 A I don't remember how I got the bat, and I don't remember  
13 who I was talking to.

14 Q But do you remember hearing on the 911 tape you're  
15 saying, "Give me that bat, give me that bat"?

16 A I, I remember on the tape. I've heard it, yeah, but I  
17 don't how I got the bat.

18 Q But you do -- you -- but you would say that's what you  
19 were saying?

20 A Yes.

21 Q Okay. When I'm -- you listened to the 911 tape right  
22 along with us?

23 A Yes.

24 Q Okay. When I'm listening to the tape and you're  
25 listening to it, you tell me who is cussing and attacking who

1 in the house?

2 A Well, I don't know what you mean.

3 Q Who is the one in there saying, "I'm going to get you,  
4 I'm going to get you, don't you leave, I'll kill you myself"?

5 A That was me because I was very upset because he tried to  
6 rape me.

7 Q Okay. So you're the one cussing at Roy calling him a  
8 motherfucker; is that right?

9 A Absolutely.

10 Q Okay. If he says --

11 A And I'm sure every other woman would do -- be doing the  
12 same thing.

13 Q Okay. And you're the one that's beating him with the  
14 bat?

15 A I only hit him in the legs, in the groin, ma'am.

16 Q And Roy is the guy in the background we hear saying, "I  
17 can't move, I can't move"?

18 A Uh-huh.

19 Q Is that him?

20 A Yep.

21 Q Okay. At what time in that 911 tape do we ever hear Roy  
22 cuss, threaten or do anything for 10 minutes but beg for his  
23 life and try to get out of that house? When does that happen  
24 on the tape?

25 MR. BOUCHETTE: Objection. Assumes facts not into

Diane Durkin - Cross by Ms. Livesay

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1 evidence. There was no begging for his life in that video --  
2 that audio.

3 THE COURT: Well, we heard the 911. I'll let her go  
4 ahead. Ask the question. I heard it. I mean, I heard the  
5 tape.

6 A Can I not answer that, Your Honor?

7 THE COURT: No. You need to answer that question. Ask  
8 your question again.

9 Q When on that tape -- you would agree we heard the 911  
10 tape?

11 A Yes.

12 Q The tape is 10 minutes long --

13 A Yes.

14 Q -- about 10 minutes, you would agree?

15 A Yes.

16 Q When on that tape do we ever hear Roy for 10 solid  
17 minutes threaten or cuss anybody?

18 A Not on the tape but when he was trying to rape me he was  
19 cursing at me.

20 Q Would you agree for 10 minutes on that tape all he's  
21 doing is solid begging for his life, "I can't move," and  
22 trying to get out of the house?

23 A He's saying, "I can't move," and that's -- I don't  
24 consider that begging for your life.

25 Q Is that what we hear on the tape him saying, "I can't

1 move, I can't move, don't kill me"?

2 A I didn't hear him say that, "don't kill me", but I heard  
3 him say don't -- "I can't move".

4 Q Okay. And you know in the 911 tape he went for the door;  
5 is that correct?

6 A Yes.

7 Q Him trying to get out?

8 A Yes.

9 Q Okay. So, you would agree for the entire 10 minutes it's  
10 Roy that's saying, "I can't move, I can't move, don't kill me,  
11 let me out of this house"? That's what's going on for 10  
12 minutes; correct?

13 A Uh-huh.

14 Q You listened to it?

15 A Yes.

16 Q And you're the one that's sitting there beating him with  
17 that bat, cussing him, calling him a motherfucker and telling  
18 him he ain't going nowhere? Ain't that what we heard on the  
19 tape?

20 A Yes.

21 Q Okay. But you're the victim? Who's the victim, him, him  
22 or you?

23 A He tried to rape me, ma'am.

24 Q How many times during that altercation did you say, "I  
25 can't move"?

Diane Durkin - Cross by Ms. Livesay

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1 A None.

2 Q How many times during that altercation --

3 A But it's okay for him to punch me in the eye, right, and  
4 backhand me across the face; right?

5 Q You're telling me this is you, State's Exhibit 13, this  
6 is Roy State's evidence 69 so everybody can see what we're  
7 seeing?

8 A Uh-huh.

9 Q And you're telling me you're the victim?

10 A Yeah.

11 Q How many times did you beg for your life that night?

12 A I screaming and yelling to have him get off me when he  
13 was trying to rape me.

14 Q Okay. How many times during that 10 minutes we heard?

15 A I wasn't on the tape when he was trying to rape me.

16 Q So you're telling me you're acting in self-defense when  
17 you're beating him with that bat, cussing him, telling him,  
18 "You ain't going nowhere", that's you acting in self-defense?

19 A Yeah. Because it could have been another woman right  
20 after me. If he didn't try to rape me or when he punched me  
21 in the eye, but that's okay; right, and he backhands me across  
22 the face but that's okay? I'm sorry that he's gone. I really  
23 am, but you know what, I was trying to be nice and he attacked  
24 me. That's the fact.

25 Q Okay. Where -- go ahead and tell this crowd, where was

1 Jimmy when you had Roy in the house? You talked to him three  
2 times?

3 A He was with a friend.

4 Q He was with a friend, sitting where, right up the road?

5 A No.

6 Q Well, where was he?

7 A I don't know. He was with a friend somewhere.

8 Q When you talked to him twice while Roy was there you  
9 didn't know he was sitting right up the road?

10 A No.

11 Q How about when you were at the ATM after you picked him  
12 up?

13 MR. BOUCHETTE: Objection, Your Honor, asked and  
14 answered. We've gone through these same questions.

15 THE COURT: Sustained. Asked and answered.

16 Q They asked you at the police station about his clothes  
17 being folded up. Do you remember that?

18 A You have already asked me that question and I have told  
19 you no.

20 Q Did Roy fold them?

21 A I don't know.

22 Q Did you fold them?

23 A No. I did not fold them. I was in the other room  
24 folding my own clothes. When I came out he was completely  
25 naked.

Diane Durkin - Cross by Ms. Livesay

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1 Q I've only got one last question.

2 A Okay.

3 Q And you tell me if I'm on par or if I'm off par. When I  
4 listen to that 10 minutes --

5 A Uh-huh.

6 Q -- does it sound more to you like you were acting in  
7 self-defense or does it sound like you were absolutely  
8 torturing a man trapped in that mobile home? What does it  
9 sound like to you when he's in there yelling and begging for  
10 his life? Does it sound like he's being tortured? Is that  
11 what it sounds like to you?

12 A He was fighting back at that time, ma'am.

13 MS. LIVESAY: No further questions, Judge.

14 THE COURT: All right. Redirect.

15 MR. BOUCHETTE: Could I have a moment to confer?

16 THE COURT: All right.

17 MR. BOUCHETTE: No further questions.

18 THE COURT: All right. You may step down.

19 A Thank you.

20 THE COURT: All right. Let me see the attorneys.

21 (A bench conference is held.)

22 THE COURT: All right. We're going to go ahead and  
23 recess. I'll take the bench tomorrow morning at 9:30. Okay?  
24 We'll be ready to go then.

25

OFF THE RECORD

1 Q Mr. Rosenbaum, I, I know you as Jimmy. Do you mind if I  
2 call you Jimmy?

3 A Not at all.

4 Q All right. Now, you heard Ms. Durkin testify yesterday.  
5 So you probably have an idea kind of how this is going to go.  
6 Just like with Ms. Durkin, I'm going to ask you first, can you  
7 give me a little bit of background about you? What, what year  
8 were you born?

9 A 1963.

10 Q Okay. And as far as that goes --

11 MR. HYMAN: Judge, I'm just going to push this a little.

12 THE COURT: All right.

13 BY MR. HYMAN:

14 Q Can you pull yourself up a little bit?

15 A Yes.

16 Q Thank you. What was your birth date again?

17 A [REDACTED] [REDACTED] [REDACTED]

18 Q So how old are you now?

19 A I'm 54.

20 Q Okay. Now, Mr. Rosenbaum, where were you born?

21 A Meriden, Connecticut.

22 Q Okay. How long did you live there?

23 A Most of my life.

24 Q Okay. The -- your time in Connecticut, did you work?

25 A Sometimes.

James Rosenbaum - Direct by Mr. Hyman

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- 1 Q Okay. How far did you go in school?
- 2 A GED.
- 3 Q Okay. And as far as after school, did you enter any work
- 4 programs or did you go to work? What did you do?
- 5 A I became a, a painter's apprentice.
- 6 Q Okay. After that at any point did you join the military?
- 7 A Yes.
- 8 Q Okay. Now, did you go through boot camp in the military?
- 9 A Yes.
- 10 Q Did you complete boot camp?
- 11 A Yes.
- 12 Q Okay. Did you enlist after that?
- 13 A Yes.
- 14 Q Okay. Tell me -- what happened after boot camp? Were
- 15 you -- did you continue in the military?
- 16 A No. I was discharged, honorably discharged.
- 17 Q Okay. Now, at what age were you when that happened?
- 18 A 17.
- 19 Q Okay. Now, tell me what you did after that.
- 20 A Started painting.
- 21 Q Okay. Did you paint -- and in what year was this that
- 22 we're talking about?
- 23 A 1980.
- 24 Q So did you paint throughout the eighties? Was that your
- 25 job?

- 1 A Yes.
- 2 Q Okay. At any point did you begin to have issues with  
3 your physical body, that kind of thing?
- 4 A Yes.
- 5 Q Did you go on disability?
- 6 A No.
- 7 Q Did you continue trying to paint?
- 8 A Yes.
- 9 Q Now, Mr. Rosenbaum, I know this is -- it's kind of tough  
10 to talk about but I'd like to just as with Ms. Durkin I'd like  
11 to talk a little bit about your, your prior drug background.  
12 Have you had a drug problem in the past?
- 13 A Yes. I have.
- 14 Q Okay. And when did that drug problem occur?
- 15 A I want to say mid-eighties.
- 16 Q Okay. And what was your drug of choice during the  
17 eighties?
- 18 A Cocaine.
- 19 Q All right. Now, did -- have you -- did you continue  
20 using cocaine during the eighties?
- 21 A Yes.
- 22 Q All right. How about into the nineties?
- 23 A Yes.
- 24 Q Okay. Did you have any other drug problems?
- 25 A I started using heroin.

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1 Q Okay. At any point during that time did you seek any  
2 type of treatment?

3 A Yes. I did.

4 Q And when was that?

5 A I believe it was 1996.

6 Q Okay. Where did you receive treatment?

7 A Bridgeport Mental Health.

8 Q Okay. After that did you continue to struggle with drug  
9 addiction?

10 A Yes.

11 Q Okay. How long did you continue to struggle with drug  
12 addiction?

13 A For years.

14 Q Okay. Would you get cleaned up and then relapse; I mean,  
15 is that kind of how that went?

16 A Yes. I would.

17 Q All right. Let's move forward. Ms. Durkin yesterday  
18 testified that she met you in December of 2014. Is that what  
19 you remember?

20 A December 2013.

21 Q '13?

22 A Yes.

23 Q So her testimony of 2014 was, was not accurate?

24 A No. It was not.

25 Q All right. Now, you heard her testify that you all met

1 online?

2 A That's correct.

3 Q Okay. Do you remember what online dating thing it was?

4 A SpeedDate I believe it is.

5 Q Okay. All right. Now, when you met her where were you  
6 residing?

7 A Waterbury, Connecticut.

8 Q Okay. And was she living in Connecticut at that time,  
9 too?

10 A No. She was not.

11 Q Okay. And where was she living at that time?

12 A She was living in I believe it was Congers, New York.

13 Q Okay. All right. So at what point did you all two  
14 become an item?

15 A You mean living together?

16 Q Yeah.

17 A March 2014, maybe February 2014.

18 Q Okay. Okay. Now, did you move there or did she move in  
19 with you?

20 A She moved in with me.

21 Q Now, were you painting at this time or were you receiving  
22 some other type of benefits?

23 A I was getting Social Security disability at the time.

24 Q Okay. At some point during that year did you begin  
25 receiving any other benefits?

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1 A I applied from VA benefits and about eight months later I  
2 started receiving them.

3 Q Now, is that disability benefits?

4 A Yes. It is.

5 Q So you began receiving your VA disability benefits in  
6 2014; is that correct?

7 A Yeah. About November.

8 Q Okay. Now, and at this point was Ms. Durkin living with  
9 you?

10 A Yes. She was.

11 Q Okay. Now, you heard Ms. Durkin testify yesterday that  
12 you all moved down here. Do you remember when that was?

13 A I know I left Connecticut, we left Connecticut March 3<sup>rd</sup>,  
14 2015.

15 Q What made you decide to come here?

16 A Got tired of shoveling snow and wanted to get away from  
17 the same crowd.

18 Q Had you visited here before?

19 A Yes. I did.

20 Q And when was that?

21 A January 2015.

22 Q Was Ms. Durkin with you when you all visited?

23 A Yes. She was.

24 Q Was that a business visit or a vacation or --

25 A It was like a vacation to see how the area was.

1 Q Okay. And so I believe it was just your testimony that  
2 March the 3<sup>rd</sup>, 2015?

3 A Yes. That was when I moved finally.

4 Q Okay. Well, let's, let's fast-forward a little bit now.  
5 When you all moved here where were you all living?

6 A At first?

7 Q Uh-huh.

8 A I believe it was off 544, Kimberly Road or Kimberly  
9 Circle.

10 Q Okay. And I believe -- have you ever been married  
11 before?

12 A No. I have not.

13 Q Is this kind of the first time that you had, I guess, a  
14 home with a, a woman?

15 A No.

16 Q Okay. The -- when you all moved down here were you all  
17 trying to make a home here?

18 A Yes. We were.

19 Q Okay. Now, you said you lived on 544 when you all moved  
20 here. Obviously this incident did not take place on 544.

21 This was on 548.

22 A Correct.

23 Q At what point did you all move to 548?

24 A I believe it was August 2015.

25 Q All right. The -- did you live anywhere between --

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- 1 A Yes.
- 2 Q -- March and August?
- 3 A Yes. Old Tram Road in Conway.
- 4 Q All right. So you lived on 544 and then Old Tram Road
- 5 and then you all moved to 548?
- 6 A No. 544, it was Race Straightaway.
- 7 Q Okay.
- 8 A Straightaway off of 544. I moved there and then I moved
- 9 to Old Tram Road and then I moved to 548.
- 10 Q Okay. Now, you said that you all moved to 548 in August?
- 11 A Yes.
- 12 Q Okay. In August of that year is there anything about
- 13 August of that year that makes you remember August?
- 14 A Yes. There is. I went into the VA Hospital in the
- 15 psychiatric ward.
- 16 Q Okay. Now, was that the VA Hospital in Myrtle Beach?
- 17 A No. It was the VA Hospital in Charleston.
- 18 Q Okay. Now, why did you go to the VA Hospital?
- 19 A I was coming off of pills, and I was very depressed,
- 20 suicidal. So I called up. They told me to come in, that
- 21 they'd detox me and help me out.
- 22 Q Now, you said pills. Were you prescribed pills?
- 23 A Yes. I was.
- 24 Q What medication were you prescribed?
- 25 A At that time I was prescribed Oxycodone and Valium.

- 1 Q Okay. And what was the valium for?
- 2 A Depression.
- 3 Q Okay.
- 4 A Anxiety attacks.
- 5 Q Okay. After your detox, you said that that was at the VA
- 6 in Charleston?
- 7 A Yes.
- 8 Q Did they put you on other medications?
- 9 A Yes. They did.
- 10 Q Okay. Do you remember what medication that was?
- 11 A Prozen. It's like a blood pressure pill. It's for
- 12 nightmares.
- 13 Q Okay.
- 14 A And Wellbutrin --
- 15 Q What --
- 16 A -- for depression.
- 17 Q For depression?
- 18 A Yes.
- 19 Q Were you placed back on Oxycodone for pain?
- 20 A Yes.
- 21 Q Okay. Now, the pain that you have as far as the
- 22 Oxycodone, what -- where is -- just tell me what, what pain it
- 23 -- what -- that you have?
- 24 A I've got a bad back, two bad knees, bad shoulders.
- 25 Q Did -- do you know exactly what it is or is it just

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1 degenerative?

2 A The back's degenerative. The knees had prior surgery and  
3 the shoulder, left shoulder had surgery and it still has like  
4 six tears and the right shoulder has like seven tears in it.

5 Q Have you been told that you need shoulder surgery?

6 A Yes. I have.

7 Q Now, after the VA Hospital, where did you go?

8 A Home.

9 Q Did you drive yourself?

10 A Diane drove me.

11 Q All right. So Diane came and picked you up?

12 A Yes.

13 Q Okay. And you came back to 548?

14 A Yes.

15 Q All right. Now, did Diane at that point tell you  
16 anything about a job or partying or anything like that?

17 A Said she was partying at a girl's house.

18 Q Okay. The -- did she tell you anything about meeting a  
19 guy named Roy Davis or anything like that?

20 A No.

21 Q Okay. Did she mention to you anything at that point  
22 about a job?

23 A That she was looking for one.

24 Q Now, during the time between August and we'll just say  
25 August and January 1<sup>st</sup>, and this is August 2015 and January

- 1 1<sup>st</sup>, 2016, did Diane have a job during any of that?
- 2 A She worked at a temp agency at Walmart for three days.
- 3 Q Now, was that during August to January or was that from
- 4 -- was that 2016?
- 5 A That was in 2016. I believe it was in May.
- 6 Q Okay. So that would have been after that, but that first
- 7 part August 2015 to August -- or to January 2016 do you
- 8 remember her working?
- 9 A No.
- 10 Q Did you, did you guys argue about work?
- 11 A Yes.
- 12 Q Okay. What did you argue about?
- 13 A I was tired of paying all the bills.
- 14 Q Okay.
- 15 A And I told her that she needed to get a job to help out,
- 16 at least buy her own cigarettes and help out a little bit.
- 17 Q Now, was that in 2015?
- 18 A That was in 2015 and '16.
- 19 Q Okay. Let's move forward to 2016. You heard Ms. Durkin
- 20 yesterday testify that she wanted to work at a horse farm.
- 21 A Yes.
- 22 Q Did she ever relay that message to you?
- 23 A Yes.
- 24 Q Okay. Do you remember her talking about going to a horse
- 25 farm or anything like that?

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1 A Yes.

2 Q Okay. Do you remember when that was, and if you don't  
3 that's okay?

4 A Not offhand. No.

5 Q Okay. Now, you said that in the spring of 2016 she had  
6 worked for a temp agency at Walmart for a couple of days. Do  
7 you remember her having any other jobs or doing any other  
8 jobs?

9 A Yes. I put an ad in the paper for her to detail  
10 automobiles and she got a job. Somebody called up the ad and  
11 she detailed one vehicle.

12 Q Okay. Any more vehicles?

13 A No.

14 Q Just the one?

15 A Yes.

16 Q Do you remember when that was?

17 A It might've been April or May.

18 Q Okay.

19 A 2016.

20 Q 2016?

21 A Yes.

22 Q Okay. Well, I want to, to move forward a little bit to  
23 the weeks or maybe really the time right before this occurred,  
24 so July 11<sup>th</sup>, 2016. When this incident occurred were you guys  
25 getting along?

1 A Yes.

2 Q Okay. Were you still arguing about the job search?

3 A Yes.

4 Q Okay. Now, you gave a statement the night of July 11<sup>th</sup>,  
5 2016, and actually into the morning of July 12<sup>th</sup>, 2016. Do you  
6 remember talking to law enforcement?

7 A Yes.

8 Q Can you tell me what your mental state was at that point?

9 A I was very distraught.

10 Q Okay. Were you tired?

11 A Very tired.

12 Q Were you stressed?

13 A Yes. I believe I was having a panic attack in the police  
14 department.

15 Q Okay. Do you remember everything you told law  
16 enforcement?

17 A No.

18 Q Okay. Do you remember everything about this incident?

19 A No.

20 Q Okay. I want to go back to the day. Now, the  
21 Solicitor's Office provided to us your phone records and  
22 things like that. Did you and I talk about those?

23 A Yes. We did.

24 Q Okay. Do you remember us going over and, and us talking  
25 about those phone records?

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1 A Yes.

2 Q Going over the phone records did that help you to  
3 remember things that occurred that day?

4 A A little bit. Yes.

5 Q Do you have a better recollection at this point about  
6 what you did that day than you did back then?

7 A Yes.

8 Q Okay. When you were taken into the police station that  
9 afternoon -- let me change that. When you woke up July the  
10 11<sup>th</sup> did you think that night you were going to have to account  
11 for every minute of that day?

12 A Never.

13 Q So let's go back to that day, July the 11<sup>th</sup>. You heard  
14 Ms. Durkin testify earlier or yesterday that she got up and  
15 that she made breakfast and made coffee. Do you remember  
16 that?

17 A Yes.

18 Q Okay. Do you remember what you did that morning?

19 A Stayed around the house.

20 Q Do you remember if you left the house that morning?

21 A No.

22 Q Do you remember if you ran to the store to get cigarettes  
23 that morning?

24 A No.

25 Q No, you don't remember, or no, you didn't do that?

1 A I didn't do that.

2 Q Okay. Do you remember what time you left your house that  
3 day?

4 A About 3:00 o'clock.

5 Q Okay. Now, at 3:00 o'clock Diane testified yesterday  
6 that she remembered you taking someone to go get some stuff.

7 A Yes. I did.

8 Q Okay. Now, at 3:00 o'clock tell me what you did?

9 A I went down the street to a friend's house and --

10 Q Did you call him ahead of time?

11 A Yes.

12 Q Okay. Now, are we saying -- is this down 548 or is this  
13 on a different road?

14 A It's on my road, 548.

15 Q Okay. Now, the guy that you took, what was his name?

16 A Mark.

17 Q Okay. Where did you take Mark?

18 A I took him to some meat plant on 701. I'd been there one  
19 other time myself.

20 Q Is this 701 North or 701 South?

21 A South.

22 Q Is it -- so this, is this the place that's right  
23 underneath the 501 Bypass?

24 A Yes. It is.

25 Q How long you think you were there?

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- 1 A 20 minutes.
- 2 Q Did you, did you buy anything there?
- 3 A No.
- 4 Q Okay. Did Mark buy some stuff there?
- 5 A Yes.
- 6 Q Do you remember what he bought?
- 7 A No.
- 8 Q Okay. The -- as far as your time at that place, you said
- 9 -- I believe you said you were there 20 minutes?
- 10 A Yes.
- 11 Q Where did you go after that?
- 12 A Walmart.
- 13 Q All right. So what time -- let's see, you said you
- 14 picked him up at three, took him to the locker plant, you're
- 15 there for 20 minutes. Do you remember what time you got to
- 16 Walmart?
- 17 A I'd say about 4:00 o'clock.
- 18 Q Okay. Now, as far as at Walmart, how, how long would you
- 19 say you were at Walmart?
- 20 A 20 minutes or so.
- 21 Q Is that an exact or is that --
- 22 A That's a guess.
- 23 Q Okay. Did you buy anything at Walmart?
- 24 A No. I did not.
- 25 Q Okay. Did Mark?

- 1 A Yes.
- 2 Q What did he buy?
- 3 A Food.
- 4 Q Okay. So it was just grocery shopping?
- 5 A Yes.
- 6 Q Okay. At -- after Walmart did you all go anywhere else?
- 7 A No. I brought him home.
- 8 Q Okay. And that's again on 548?
- 9 A Yes.
- 10 Q Okay. So you're at Walmart for your -- you say you're
- 11 there 20, 25 minutes, something like that. Do you remember
- 12 what time you got home?
- 13 A About a quarter to five.
- 14 Q Okay. So you remember anything about being home or
- 15 anything like that or were you just home?
- 16 A I know I got home there was no one there.
- 17 Q Okay. At some point after that did Diane call you?
- 18 A Yes. She did.
- 19 Q What did she say?
- 20 A She said she was on her way home.
- 21 Q Okay. Did she come home?
- 22 A Later on.
- 23 Q Do you remember what time it was that she got home?
- 24 A 5:30, maybe.
- 25 Q Okay. Now, as far as your -- when Diane got home, do you

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- 1 know where she had been?
- 2 A Said she was shopping.
- 3 Q Okay. Was that like clothes shopping or grocery shopping?
- 4 A Food shopping, getting a few things at the store.
- 5 Q Do you remember where she went?
- 6 A No.
- 7 Q Okay. The -- did anything else happen at that point?
- 8 A Yeah. We got into an argument about her not finding
- 9 work.
- 10 Q Okay. Is this the same argument that you all had been
- 11 in?
- 12 A Yes.
- 13 Q Do you remember what happened next?
- 14 A Yeah. I kind of stormed out the door.
- 15 Q Okay. At that point did, did you go anywhere?
- 16 A I went to Savannah Bluff.
- 17 Q Okay. Do you know if at that point you had your phone?
- 18 A No.
- 19 Q No, you don't know, or no, you didn't have your phone?
- 20 A No. It was home. I just stormed out and forgot it.
- 21 Q Okay. As far as that time at Savannah Bluff, were you
- 22 there very long?
- 23 A 10 minutes or so.
- 24 Q So you leave, go to Savannah Bluff, you're there 10
- 25 minutes or so, where do you go after that?

- 1 A Go back home.
- 2 Q All right. Now, you know what time it was that you got  
3 home at that point?
- 4 A Close to seven.
- 5 Q Okay. So you get home --
- 6 A Maybe ten minutes till seven.
- 7 Q You get home and it's close to seven. Is Diane there?
- 8 A No.
- 9 Q Okay. Do you remember what you do next?
- 10 A Yeah. I call my friend again.
- 11 Q Okay. Now, as far as calling your friend again, what did  
12 you call him about?
- 13 A To see if he wanted to go to the gym later on.
- 14 Q Okay. Had you all talked about going to the gym at some  
15 point?
- 16 A Yeah. I went down to his house.
- 17 Q Okay. The -- now, did you go down to his house after  
18 this occurred, I mean, like after you called him?
- 19 A Yes.
- 20 Q Okay. Now, so you go down to his house. Were you there  
21 very long?
- 22 A No.
- 23 Q All right. Do you remember what he was doing?
- 24 A Not offhand.
- 25 Q Was he inside or outside?

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- 1 A Outside.
- 2 Q Okay. Just talk to him in general?
- 3 A Yes.
- 4 Q Okay. Did he tell you he wanted to go work out?
- 5 A Yeah. He said call, call him later on.
- 6 Q Okay. So what did you do at that point?
- 7 A I went back home.
- 8 Q Okay. So if you were -- I think it was your testimony
- 9 that you got home and that you called Mark and you went down
- 10 there. How long do you think you were there?
- 11 A 10 minutes.
- 12 Q So what time is -- that would put it at 7:15ish,
- 13 something like that?
- 14 A 7:10, 7:15, somewhere in that area.
- 15 Q Is that exactly the time or are you just --
- 16 A I'm just guessing.
- 17 Q Okay. So at that point you go back home you say?
- 18 A Yes.
- 19 Q All right. While you're at home and I think you just
- 20 testified Diane was not there.
- 21 A No.
- 22 Q Okay. Did you, while you were home, call Diane?
- 23 A Yes.
- 24 Q All right. And there was -- you and I talked about this.
- 25 There was a phone call that was made I think around 7:42 that

- 1 was a pretty long phone call.
- 2 A Yes. It was.
- 3 Q Do you remember that phone call?
- 4 A Yes.
- 5 Q Who were you talking to?
- 6 A Diane.
- 7 Q What were you all talking about?
- 8 A About her finding work.
- 9 Q Did she tell you where she was?
- 10 A She said she was at a barn or a horse farm and she was
- 11 trying to get work there.
- 12 Q Now, while you were on the phone with her was it just one
- 13 place or was it multiple places?
- 14 A It was a couple of places.
- 15 Q Now, do you remember if you were actually talking to her
- 16 the entire time during that phone conversation?
- 17 A No.
- 18 Q Now what do you mean no?
- 19 A There was one place she went to and she said hang on and
- 20 she left, she talked to a lady there and she came back and I
- 21 asked her how'd it go and she said she can't -- she can't
- 22 afford to hire no one.
- 23 Q Now, do you know who that lady is?
- 24 A No.
- 25 Q Could you hear everything that was being said?

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- 1 A No.
- 2 Q Do you know it was a lady just from the voice or --
- 3 A She told me a lady answered the door.
- 4 Q Okay. So you couldn't actually hear what they were
- 5 talking about?
- 6 A No.
- 7 Q Okay. Now, did that happen again?
- 8 A Yes.
- 9 Q All right. And this is all still on that, that I think
- 10 we said 50 -- that 50 some minute conversation?
- 11 A An hour.
- 12 Q Now, during that did this pause where she was gone happen
- 13 again?
- 14 A Yes.
- 15 Q Okay. Do you remember approximately how long that was,
- 16 and if you don't, that's fine?
- 17 A Not offhand.
- 18 Q Okay. But was there a couple of different times that
- 19 that occurred?
- 20 A Yes.
- 21 Q Okay. While you were on the phone with her at that point
- 22 did she ever mention to you about giving anyone a ride?
- 23 A Yes.
- 24 Q Okay. Did she tell you who she was giving a ride?
- 25 A No.

- 1 Q What did she say?
- 2 A She asked me if she could give a guy a ride and --
- 3 Q Okay. Did she tell you where he was taking -- she was
- 4 going to take him?
- 5 A Not really.
- 6 Q Okay. Just said that she was going to give him a ride?
- 7 A Yes.
- 8 Q What happened after that?
- 9 A I believe I hung up.
- 10 Q Okay.
- 11 A And I called my friend Mark back.
- 12 Q Did -- do you remember if you talked to Mark?
- 13 A No. I did not.
- 14 Q Okay. Did you call Diane again?
- 15 A Yes. I did.
- 16 Q All right. Now what did that phone conversation consist
- 17 of?
- 18 A She asked me if she could take \$20 out and loan this guy
- 19 \$20.
- 20 Q Okay.
- 21 A And I said what for and she said, "Well, he works where
- 22 I'm going to be working and he'll give me the money back
- 23 Friday," and I said sure.
- 24 Q Okay. Now, any other thing said at that? Did you tell
- 25 Diane where you were going or anything like that?

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- 1 A I told her I was going out with a friend.
- 2 Q Okay. Did you tell her where you were going?
- 3 A No.
- 4 Q Okay. Did you tell her who the friend was?
- 5 A No.
- 6 Q Okay. Now, after your conversation with Diane, that
- 7 conversation, did she tell you where she was?
- 8 A No.
- 9 Q Okay. So you don't know -- don't remember if she told
- 10 you she was at a gas station or anything like that?
- 11 A I know she said she was at a store.
- 12 Q Okay. You don't remember which -- she didn't tell you
- 13 which store?
- 14 A No.
- 15 Q Okay. So after the phone conversation with Diane, did --
- 16 what happened next? Did you call Mark again?
- 17 A Yes. I did.
- 18 Q Did you talk to him?
- 19 A Yes. I did.
- 20 Q Okay. What did you and Mark talk about?
- 21 A I asked him if he wanted to go to the gym.
- 22 Q Okay. And at what time would this be?
- 23 A Ten of eight, maybe, or --
- 24 Q Okay. Now --
- 25 A -- ten of nine.

1 Q Got you. Ten of nine?

2 A Yeah.

3 Q As far as your phone conversation with Mark you're saying  
4 he said he didn't want to go to the gym?

5 A Correct.

6 Q Are you still at the home?

7 A Yes.

8 Q At your home when you're talking to him at this point?

9 A I'm in my vehicle.

10 Q As far as when you're at, at home and you call Mark are  
11 you all -- are you, are you deciding whether or not you're  
12 going to go work out or are you deciding where you're going to  
13 go? What's happening?

14 A I'm deciding whether if I'm going to go to the gym or  
15 not.

16 Q Okay. Now, you heard Ms. Livesay on cross-examination  
17 ask Ms. Durkin about phone calls that were made to you while  
18 Roy was at home. Do you remember any of those?

19 A No. And I believe Ms. Livesay said it was at 8:30 that  
20 she was at the house and that's impossible because I was still  
21 there at the house.

22 Q Do you remember what time you left the house?

23 A Probably around nine, a little after nine.

24 Q All right. And I think the phone calls that Ms. Livesay  
25 is, is talking about were around 9:07, 9:08, that kind of

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- 1 thing?
- 2 A Yes.
- 3 Q You and I looked at that and they appear to be very,  
4 very, very short, about six seconds, 20 seconds, that kind of  
5 stuff, and if you were -- it appeared that you were trying to  
6 look at your voicemails. Do you remember that?
- 7 A Yes.
- 8 Q Did you ever speak with her during that interchange?
- 9 A No.
- 10 Q Did you call her?
- 11 A Yes.
- 12 Q Were you able to get her?
- 13 A No.
- 14 Q Did she call you?
- 15 A Yes.
- 16 Q Was she able to get you?
- 17 A No.
- 18 Q So it was kind of like playing phone tag?
- 19 A Yes.
- 20 Q So her testimony about calling you when Roy was there  
21 it's your testimony that didn't happen?
- 22 A Correct.
- 23 Q That you never talked to her?
- 24 A Correct.
- 25 Q At 9:07 when those calls took place, were you still at

1 the house or had you just left or --

2 A I had just left.

3 Q Now, let's move forward. All right. You said you leave,  
4 you just left at 9:07. So we'll say just a little after nine  
5 you leave the house. Where'd you go?

6 A Go down 548 to 501.

7 Q Okay.

8 A And I head towards Planet Fitness.

9 Q Okay. Now, where is Planet Fitness?

10 A Just a couple of miles from the house, a few miles.

11 Q Okay. Is it on 501?

12 A Yes. It's on 501 across from Conway High School.

13 Q Okay. Now, did you go work out at Planet Fitness?

14 A No.

15 Q Why not?

16 A A lot of cars in the parking lot. It was crowded.

17 Q Okay. So did you pull in?

18 A I pulled in but I pulled right out.

19 Q Okay. How long you think you stayed in that parking lot?

20 A Seconds.

21 Q Okay. Now, at what point -- what do you do then?

22 A Start heading home.

23 Q Did you go to any stores or anything like that?

24 A No.

25 Q Do you remember how you got home?

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- 1 A Yeah. There's a light when you go past Walmart and you  
2 take a left. I forget the name of the road.
- 3 Q Is this the same way that you went to?
- 4 A No.
- 5 Q So you went home a different route?
- 6 A Yes.
- 7 Q Okay. Now, next to Walmart, you're saying the road next  
8 to Walmart?
- 9 A Yeah. The road from Walmart that runs down to I believe  
10 it's 378, from 501 to 378.
- 11 Q Is it Old Bethel? Does that sound right?
- 12 A Yes.
- 13 Q Did you take that road to get home?
- 14 A I turned on that road and you take your first right.
- 15 Q Okay. And then how do you get home?
- 16 A You go on Singing Pines, Singing Pines Drive till you hit  
17 Wayside.
- 18 Q Okay. All right.
- 19 A You take a right on Wayside till you hit 548 and then you  
20 take a left.
- 21 Q Any reason why you went a different route?
- 22 A No.
- 23 Q Okay. Now, as far as your route there, at what point --  
24 do you have any, any guess -- you know, I'm just -- I'm trying  
25 to figure out if you went to Planet Fitness, turned around,

- 1 came back and let's just say it's a 10-minute drive both -- I  
2 mean, are you, are you home around 9:25 you think?
- 3 A 9:25, 9:30, give or take.
- 4 Q Somewhere around that time?
- 5 A Yes.
- 6 Q Okay. Now, do you remember what the weather was like?
- 7 A Raining.
- 8 Q Was it like a hard rain or just like a drizzle?
- 9 A I don't remember.
- 10 Q Okay. You just remember it was raining?
- 11 A Yes.
- 12 Q Okay. Now, when you came home did you have any idea  
13 about what you were going to do next?
- 14 A Yeah. I was going to go in the house and work out.
- 15 Q Do you have gym equipment at your house?
- 16 A Yes.
- 17 Q The -- and I think -- can you tell me what's in this  
18 picture?
- 19 A Yeah. Two 40 pound dumbbells, an E-Z curl bar, and about  
20 80 pounds on it, 75 pounds.
- 21 Q Okay. Is this your home?
- 22 A Yes.
- 23 Q Now, is this a bedroom or what is this room?
- 24 A That's a bedroom.
- 25 Q It doesn't appear to have a bed in it or anything?

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1 A No. It's just used for working out.

2 Q Okay. So is this your workout room?

3 A Yes.

4 Q Is this your workout equipment?

5 A Yes.

6 MR. HYMAN: I'd like to mark this as Defendant  
7 Rosenbaum's. Your Honor, after he has identified this I would  
8 move to have it introduced into evidence.

9 THE COURT: Any objection?

10 MS. LIVESAY: Without objection, Your Honor.

11 THE COURT: All right. Defendant Rosenbaum's Exhibit  
12 Number One admitted into evidence without objection.

13 MR. HYMAN: Thank you.

14 (Defendant Rosenbaum's Exhibit Number One [Photograph]  
15 admitted into evidence and appropriately marked for purposes  
16 of the motion hearing.)

17 BY MR. HYMAN:

18 Q Now, Mr. Rosenbaum, you said that you got home, you just  
19 figured you would do some working out there?

20 A Yes.

21 Q All right. Do you have gloves that you work out with?

22 A Yes.

23 Q Did you have them with you?

24 A Yes. I did.

25 Q Are these the gloves that you work out with?

1 A Yes. Yes. They are.

2 Q Okay. Now, these kind of look like padded gloves. Do  
3 you work out with them, too?

4 A Yes. I do.

5 Q Is there much padding on this area right here or anything  
6 like that?

7 A No.

8 Q It appears to be some padding on the palm, too?

9 A Yes.

10 Q Is that right? Did you take these to Planet Fitness?

11 A Yes.

12 Q Okay. So, you get home, do you have the gloves with you?

13 A Yes. I do.

14 Q Okay. Tell me what, what you hear. I want you to, to  
15 think about it, you're hearing rain, that kind of stuff. What  
16 did you hear when you opened the car door when you got out --  
17 when you got there? Excuse me.

18 A I heard Diane screaming.

19 Q Okay. Did you immediately know what it was or did it  
20 take you a few seconds?

21 A No. I didn't know what it was right away.

22 Q Okay. Did, did she sound fearful?

23 A Yes.

24 Q How long do you think it took you to say, "Oh, gosh  
25 something's going on"?

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- 1 A Seconds.
- 2 Q Okay. Tell me -- retrace your steps about what occurred  
3 in seconds.
- 4 A As I was getting closer to the house I heard more screams  
5 and they were getting louder and more frantic, and I tried to  
6 look in a window. I couldn't see nothing in there. Then I  
7 heard a man's voice yell back.
- 8 Q Now, what is she saying? What are you hearing?
- 9 A "Get the fuck off me."
- 10 Q Okay. Are you hearing anything else?
- 11 A "Get off me."
- 12 Q Okay. Now, you said you heard a man's voice. What did  
13 you hear?
- 14 A Just a man's voice yelling.
- 15 Q Do you remember anything that was being said?
- 16 A Like shut up.
- 17 Q Okay. Now, are you at the front of your mobile home at  
18 this point?
- 19 A Yes.
- 20 Q Okay. Now, did you go to the front door?
- 21 A Yes.
- 22 Q Did you open the front door?
- 23 A No.
- 24 Q Can you see into your front door?
- 25 A No. I cannot.

- 1 Q I'm going to show you what's been marked as State's  
2 Exhibit Number 67. Is this your front door?
- 3 A Yes.
- 4 Q All right. This looks kind of black.
- 5 A It's painted black.
- 6 Q Okay. So can you see in or out of that?
- 7 A No. You cannot.
- 8 Q Okay. So if you were at the front would you be able to  
9 see anything?
- 10 A Nothing.
- 11 Q Okay. So tell me after that what did you do?
- 12 A I ran around the back of the house.
- 13 Q Now, did you sprint? Did you walk briskly? Did you run?
- 14 A Sprinted.
- 15 Q Okay. At this point where are the gloves?
- 16 A On my hands.
- 17 Q Okay. Did you put them on?
- 18 A As I was going to the back door.
- 19 Q Okay. Do you keep a knife in your truck or anything like  
20 that?
- 21 A Nothing.
- 22 Q Do you keep a tire iron in your truck --
- 23 A No.
- 24 Q -- that you could get to? You had any weapons in your  
25 truck?

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- 1 A None.
- 2 Q Okay. So you put on the gloves; is that right?
- 3 A Yes.
- 4 Q Why did you put on the gloves?
- 5 A It's the only thing I had to put on.
- 6 Q Okay. Did you think you were about to get into a fight?
- 7 A Yes. I did.
- 8 Q So you get to the back door, and tell me, tell me what --
- 9 did anything happen before you get to the back door?
- 10 A Yes.
- 11 Q What?
- 12 A I see there was a baseball bat on the back porch.
- 13 Q Now, the back porch, is it very big or is it just a, a
- 14 stoop?
- 15 A It's just a stoop.
- 16 Q Okay. Anything else on the back porch?
- 17 A I don't know if the dog's chain is still there or not.
- 18 Q Okay. The, the baseball bat being on the back porch, Ms.
- 19 Durkin yesterday said that that baseball bat was back there
- 20 because you used to hit balls to your dog?
- 21 A Yes. I did.
- 22 Q Okay. Now, you didn't have a dog right when this
- 23 occurred though; did you?
- 24 A No.
- 25 Q Okay. What happened to your dog?

- 1 A I gave it to my landlord.
- 2 Q And who's your landlord?
- 3 A Maggie Fogner.
- 4 Q Okay. Now, you're at the back door. You realize there's
- 5 a bat. You pick up the bat at that point?
- 6 A Yes.
- 7 Q Tell me your next steps.
- 8 A I open up the back door and looked in.
- 9 Q Okay. Did you kick in the back door?
- 10 A No.
- 11 Q Okay. Was the back door unlocked?
- 12 A Yes.
- 13 Q Okay. Is it unusual for the back door to be locked or
- 14 unlocked, excuse me?
- 15 A No.
- 16 Q Do you lock everything up before you go to bed?
- 17 A Yes.
- 18 Q You go in the back door. Well, let me, let me hear this
- 19 -- let me ask you this, are you still hearing screaming at
- 20 that point?
- 21 A Yes.
- 22 Q How far is the back door from where Ms. Durkin was and
- 23 let's just say between me and you, is it this far, is it --
- 24 A About like that.
- 25 Q So from about here to where you're sitting is the back

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- 1 door to where Ms. Durkin --
- 2 A That sounds about right.
- 3 Q Okay. Now, when you open the door, what did you see?
- 4 A I seen a naked man pulling her hair, and it seemed to me
- 5 like he was trying to force her to perform oral sex.
- 6 Q Okay. Was she still screaming at that point?
- 7 A Yes.
- 8 Q Do you remember what she was wearing?
- 9 A She was clothed.
- 10 Q Okay. Was -- as far as her clothing you're saying she,
- 11 she had on a top, she had on a bottom?
- 12 A Yes.
- 13 Q Do you remember? Did he have on a shirt?
- 14 A No.
- 15 Q Did he have on a hat?
- 16 A No. He did not.
- 17 Q Now, you heard -- I think they asked Ms. Durkin yesterday
- 18 a question about clothing being folded?
- 19 A Yes.
- 20 Q Did you ever see any clothing folded?
- 21 A Never.
- 22 Q Okay. Did you look around to see if there was clothing
- 23 folded or anything like that?
- 24 A No. I did not.
- 25 Q All right. So how many seconds are you saying the minute

1 you opened this door till the minute you're here? Is it as  
2 fast as you can get there?

3 A Yeah.

4 Q So in that we'll say one or two seconds you're having to  
5 process everything you're seeing?

6 A Yes.

7 Q Okay. Now, is there any doubt in your mind that he was  
8 assaulting her?

9 A No.

10 Q You could see it?

11 A Yes.

12 Q And you could hear it?

13 A Yes.

14 Q Did she seem to be in a state where she could defend  
15 herself?

16 A No.

17 Q Tell me what you did at that point.

18 A I, I, I -- when I ran I grabbed the bat and I swung the  
19 bat at him. I told him to get the fuck off of her and I hit  
20 with the head -- in the head with the bat.

21 Q Now, is this -- this bat was introduced yesterday as  
22 evidence. Now, is this the bat that you swung?

23 A Yes.

24 Q And it looks kind of like a maybe a kid's bat. The -- as  
25 far as the bat goes, it's your testimony that you hit him in

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- 1 the head with the bat?
- 2 A Yes. It is.
- 3 Q Was he, was he still on top of Diane when you hit him in
- 4 the head?
- 5 A Yes.
- 6 Q When you hit him in the head did you hit him just once?
- 7 A I don't think so.
- 8 Q Okay. How many times do you think you hit him?
- 9 A Maybe three.
- 10 Q Okay. Now, so when we're talking about that is it bang,
- 11 bang, bang or is it bang and then a pause and then bang, bang?
- 12 How, how --
- 13 A Yeah. A pause. It was a pause between it.
- 14 Q Did you two have any exchange at that point after you hit
- 15 him the first time?
- 16 A Yes.
- 17 Q What was the exchange?
- 18 A Well, when I hit him he told me he was going to fucking
- 19 kill me.
- 20 Q Now, as far as the bat goes, so you come in, hit him.
- 21 Does he fall down? Does he stagger back?
- 22 A Staggered back.
- 23 Q Was there blood at that point?
- 24 A Yes.
- 25 Q Okay. Tell me about the blood.

1 A In front of his -- in the front of his forehead where I  
2 hit him --

3 Q Okay.

4 A -- it opened up a cut on his head and blood sprayed out.

5 Q Did you give him a little tap or did you really try to  
6 hit him?

7 A No. I hit him.

8 Q Okay. Now, as far as after that what did he say to you?

9 A He said, "I'll fucking kill you".

10 Q Okay. At that point what did you do?

11 A Hit him again.

12 Q Okay. Now, do you remember where you hit him that time?

13 A Somewhere in the head.

14 Q Okay. Did he fall down?

15 A No.

16 Q At some point after that did you and he end up in some  
17 type of mutual combat where you're both on the ground?

18 A Yes. We were tussling over the bat.

19 Q Do you remember how many times you all were on the floor?

20 A No.

21 Q Was it more than once?

22 A Yes.

23 Q Did you tell law enforcement you were on the floor more  
24 than once?

25 A I believe I did.

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1 Q The -- at some point in this altercation do you remember  
2 him getting the bat?

3 A Yes. I do.

4 Q Okay. Did he have the bat for very long?

5 A No.

6 Q Okay. Now I'm going to show you a couple of pictures.

7 MR. HYMAN: Your Honor, Ms. Livesay says she's got one of  
8 them that's already in that I was going to introduce. Let me  
9 --

10 MS. LIVESAY: Judge, these are the same pictures we put  
11 in only they're in color, but if you want to let the Defense  
12 put them in with color we have no objection.

13 MR. HYMAN: Judge, I don't know if all of them are in but  
14 --

15 THE COURT: Well, I mean, let's get it -- they haven't  
16 been identified or --

17 MR. HYMAN: That's correct.

18 THE COURT: -- marked or tendered into evidence so --

19 MR. HYMAN: Judge, I'm not planning on --

20 THE COURT: -- I don't have anything to rule on at this  
21 point.

22 MR. HYMAN: -- I'm not planning on putting them all in at  
23 one time.

24 THE COURT: All right.

25 BY MR. HYMAN:

1 Q Mr. Rosenbaum, I'm going to show you this picture right  
2 here. Can you tell me what that is?

3 A That is my, that is my kitchen.

4 Q Okay. Is there blood on the floor of the kitchen?

5 A Yes. There is.

6 Q I'm going to ask you again what this question or this  
7 picture is?

8 A That's the kitchen floor.

9 Q All right. And what is that on the refrigerator?

10 A That is blood on the refrigerator.

11 Q Okay. And how about this?

12 A That's the sink.

13 Q Okay. And as far as these pictures they all accurately  
14 depict your house?

15 A Yes. They do.

16 Q Is this how you remember it that night?

17 A Yes.

18 MR. HYMAN: Your Honor, I would move to introduce these  
19 into evidence. I need to mark them as Defendant, Defendant  
20 Rosenbaum's Two, Three and Four.

21 THE COURT: All right. Any objection?

22 MS. LIVESAY: Just that they're duplicates in color, Your  
23 Honor, but we, we don't have any other objection.

24 THE COURT: So that's an objection that they're into  
25 evidence already?

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1 MS. LIVESAY: We don't mind him putting them in. We  
2 wanted to put our color pictures in. So, we're, we're not  
3 going to object, but they are duplicates to what we already  
4 put in.

5 THE COURT: All right. Defendant's Exhibits -- Defendant  
6 Rosenbaum's Exhibits Two, Three and Four are admitted into  
7 evidence without objection from the State. As I understand  
8 she says she does not object to it. So okay.

9 MR. HYMAN: I think so.

10 THE COURT: Okay.

11 (Defendant Rosenbaum's Exhibit Numbers Two, Three and  
12 Four [Photographs] admitted into evidence and appropriately  
13 marked for purposes of the motion hearing.)

14 BY MR. HYMAN:

15 Q Mr. Rosenbaum, this picture right here, that's your  
16 kitchen. There appears to be a good bit of blood on the  
17 floor?

18 A Yes.

19 Q Do you remember you and Mr. Davis fighting on the floor?

20 A Yes. I do.

21 Q Okay. Were you all laying on the floor?

22 A Yes.

23 Q Were you on top of him?

24 A Yes.

25 Q Okay. Now, I'm going to show you this picture, which is

1 your sink and counter?

2 A Yes.

3 Q And can you see what all these things are in here? What  
4 are those?

5 A Knives.

6 Q Okay. All right. And then this picture right here I'm  
7 going to show you, what's this right here?

8 A That's a drawer.

9 Q Okay. Is there blood on the drawer?

10 A Yes. There is.

11 Q Is there blood on the refrigerator?

12 A Yes. There is.

13 Q Is that your blood or is that Mr. Davis' blood?

14 A It's Mr. Davis' blood.

15 Q And what are these things over here?

16 A Knives.

17 Q Is that a knife block?

18 A Yes.

19 Q During the altercation that you all had were -- during  
20 the altercation when you all were fighting back and forth, you  
21 all are on the floor, did he get up?

22 A Yes.

23 Q Did you get up?

24 A Yes.

25 Q Were there potential weapons in that kitchen?

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- 1 A Yes. There was.
- 2 Q I believe you just pointed out knives in the sink?
- 3 A Knives in the sink.
- 4 Q And I think you pointed out knives in the knife block?
- 5 A Yes.
- 6 Q Is there any doubt in your mind that you and he were in  
7 that kitchen together at some point?
- 8 A No. We were in there together.
- 9 Q Okay. Now, Ms. Durkin said yesterday that she doesn't  
10 remember exactly at what point in the altercation she called  
11 911. Do you know what time she called 911?
- 12 A No.
- 13 Q Was it right at the very beginning of the altercation?
- 14 A I'm not sure.
- 15 Q Okay. You've heard the 911 tape?
- 16 A Yes.
- 17 Q And did you hear it yesterday?
- 18 A Yes.
- 19 Q Have you and I gone over the 911?
- 20 A Yes. We have.
- 21 Q Listening to the 911 tape do you think that it covers the  
22 entire fight?
- 23 A No.
- 24 Q Okay. Is there a portion of the altercation that is not  
25 covered with the 911 tape?

1 A Yes.

2 Q Okay. Now, it -- and I -- you know, you and I have gone  
3 over the 911 tape and I've listened to it again yesterday, and  
4 there are hit sounds where it sounds like the bat is hitting  
5 the floor. What are your floors made of?

6 A The kitchen's tile and --

7 Q Like a porcelain tile?

8 A Yes.

9 Q Are all the hit sounds that you hear on that head shots  
10 to him?

11 A No.

12 Q Okay. The, the times that you hit him in the head, now  
13 you admit to hitting him in the head?

14 A Yes.

15 Q Okay. Is it your testimony that you did not stand over  
16 him and beat him in the head?

17 A Never.

18 Q Okay. Now, going through the 911 tape, I want to go over  
19 kind of a detailed list of what occurred on there because we  
20 were able to hear things yesterday and I took some notes.  
21 Now, do you remember, and it was at a minute and 58 seconds,  
22 do you remember saying, "Get the gun"?

23 A Yes.

24 Q Who were you telling that to?

25 A Diane.

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- 1 Q Okay. Now, what gun are you referring to?
- 2 A The 25-caliber.
- 3 Q Is this the firearm? This has been marked as State's
- 4 Exhibit Number Three?
- 5 A Yes.
- 6 Q All right. Now, what type of gun is this?
- 7 A It's an Air Force pellet rifle, 25 caliber.
- 8 Q But it's not a rifle or not a traditional --
- 9 A It's not a firearm. No.
- 10 Q Okay.
- 11 A It's an air rifle.
- 12 Q Now, you said a 25 and I think on the 911 tape you say 22
- 13 as well, a 22?
- 14 A I don't think so. I think I said get -- I just said get
- 15 the gun.
- 16 Q How many firearms do you have at your home?
- 17 A I have two.
- 18 Q What are they?
- 19 A A 22 pellet rifle and a 25-caliber pellet rifle, that one
- 20 right there.
- 21 Q So they're both pellet rifles?
- 22 A Yes.
- 23 Q No traditional centerfire?
- 24 A No.
- 25 Q Okay. No shotguns?

- 1 A Nothing.
- 2 Q No pistols?
- 3 A No.
- 4 Q Okay. Well, did Ms. Rosenbaum go and retrieve, or excuse  
5 me, Ms. Durkin go and retrieve the firearm for you?
- 6 A Yes.
- 7 Q The pellet gun?
- 8 A Yes.
- 9 Q Okay. Did you shoot Mr. Davis with the pellet gun?
- 10 A Yes. I did.
- 11 Q I'm sorry. Now, as far as when you shot him I really  
12 couldn't hear when the pellet gun goes off on the 911 tape.  
13 Do you remember when that was?
- 14 A No.
- 15 Q After listening to the 911 tape does it help to refresh  
16 your memory as to what occurred that night?
- 17 A Yes.
- 18 Q Have you -- did you give prior statements to law  
19 enforcement based off what you remembered?
- 20 A Yes.
- 21 Q Is the testimony since you've heard the 911 tape or your  
22 recollection since you've heard the 911 tape does it help you  
23 remember exactly what went on?
- 24 A Not exactly but it gives me a clear idea what went on.
- 25 Q Okay. Does it kind of ring a bell as far as, you know,

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1 stuff that occurred?

2 A Yes. Yes.

3 Q All right. I also hear you say at three minutes and 40  
4 seconds it, it sounds as if you're saying get the cops here.

5 Do you remember saying that?

6 A I said that several times.

7 Q In fact, it appears at 4:00 o'clock or four minutes in  
8 you say get the cops out here?

9 A Yes.

10 Q And then it also appears at four minutes and 17 you say  
11 get the fucking cops.

12 A Yes. I did.

13 Q Who were you saying that to?

14 A Diane.

15 Q Were you aware she was on the phone with 911?

16 A No.

17 Q Okay. Were you trying to get her to make sure she was  
18 getting the cops there?

19 A Yes.

20 Q Okay. At portions of that altercation it, it sounds like  
21 Diane is not in the same room. Is that accurate?

22 A Yes.

23 Q Was the pellet gun in the room that you all were fighting  
24 in?

25 A No.

1 Q Okay. Where was the pellet gun?

2 A In the bedroom.

3 Q Okay. Now, at four minutes and 45 seconds in there we  
4 can hear Diane say, "There's blood all over my kitchen"?

5 A Correct.

6 Q So is it safe to say that prior to that four minutes and  
7 45 seconds you all had been fighting in the kitchen?

8 A Yes.

9 Q Okay. Now, do you remember why you said to get the gun?

10 A Yeah. Because he had a bat.

11 Q At, at one minute and almost 10 seconds you hear Diane  
12 say, "My boyfriend has him on the floor"?

13 A Right.

14 Q Now, did you have him like your foot on him?

15 A No. I was laying on top of him.

16 Q Okay. Now, did you have the bat at that point?

17 A No. We were tussling over it.

18 Q Okay. Now, and again, at four minutes and 50 seconds she  
19 says, "He's on the floor. My boyfriend is holding him down."  
20 At that point are you still holding him down?

21 A Yes.

22 Q Okay. At some point did you get up between those two  
23 times and shoot him with the pellet gun?

24 A Yes.

25 Q Did you all struggle again after you shot him with the

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1 pellet gun?

2 A Yes.

3 Q When you shot him with the pellet gun did he stay down?

4 A No.

5 Q Okay. After you got the pellet gun it appears from Diane  
6 stating in the 911 call, "He's on the floor, my boyfriend is  
7 holding him down," that's at four minutes and 50 seconds?

8 A Okay.

9 Q Something happens directly after that at five minutes  
10 because she begins yelling, "We need a cop here now. Please.  
11 Please." Do you remember what that was?

12 A Not offhand.

13 Q Okay. Also at that point Diane is saying, "Give me that  
14 bat. Give me that bat." Is she saying that to you?

15 A No. She's talking to Roy.

16 Q All right. Is she trying to get the bat from Roy?

17 A Yes.

18 Q Okay. At that point were you and Roy both standing or do  
19 you remember?

20 A I'm not sure.

21 Q Okay. At that point do you remember Diane hitting Roy  
22 with the bat?

23 A Vaguely.

24 Q Okay. Would you agree that at some point she did hit him  
25 with the bat?

- 1 A Yes.
- 2 Q Did you ever see her hit him in the head with the bat?
- 3 A No.
- 4 Q Did you ever -- do you remember seeing her hit him in the  
5 chest with the bat?
- 6 A Yes.
- 7 Q Okay. Now, was it at that point or was it later?
- 8 A I think it was later.
- 9 Q Now, did you ever hit Roy in the chest with the bat?
- 10 A No. I hit him in the chest with the gun, the butt of the  
11 gun.
- 12 Q The butt of the gun, did you tell law enforcement that?
- 13 A Yes.
- 14 Q Okay. And that's this right here?
- 15 A Yes. Yes. It is.
- 16 Q That's pretty hard?
- 17 A Yes.
- 18 Q Did you ever swing this at him?
- 19 A No.
- 20 Q Why didn't you shoot him again and again and again and  
21 again to try to keep him down?
- 22 A It's a single shot.
- 23 Q Okay. So it being a single shot you have to reload it  
24 each time?
- 25 A Yes.

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1 Q Okay. Now, I'm going to show you -- do you remember if  
2 there was blood on the gun?

3 A No. I don't remember.

4 Q You don't remember if there was?

5 A No.

6 Q As far as that five-minute period when she starts  
7 yelling, "Give me the bat, give me the bat, give me the bat"

8 --

9 A Yes.

10 Q -- do you remember ever having the bat after that?

11 A No. I don't.

12 Q Okay. Did you have that?

13 A Yes. I did.

14 Q Okay. Now, at six minutes and 50 seconds you hear Diane  
15 say, "You move I swear to God." Where was Roy during that?

16 A Laying down.

17 Q Okay. Was he laying down, sitting up, where, what was he  
18 on the couch, was he on the floor or do you remember?

19 A I believe he was on the floor.

20 Q Okay. Was he sitting up at that point?

21 A Yes.

22 Q Now, there's something really vague that it sounds like  
23 you say at seven minutes and 10 seconds. It sounds like

24 you're saying get away. It sounds really, really hazy. Do

25 you remember that?

- 1 A Yes.
- 2 Q Okay. Who were you telling to get away?
- 3 A Diane.
- 4 Q Why were you telling her to get away?
- 5 A Because he was getting up.
- 6 Q Okay. Now, that's at seven minutes and 10 seconds. Now,  
7 right after that at seven minutes and 35 seconds in you keep  
8 hear Diane saying, "Don't you move, don't you move, don't you  
9 move." How many times throughout this do you recall -- do you  
10 recall that you all said don't move a lot?
- 11 A I told him a lot of times not to move, stay down.
- 12 Q Okay. Why did you want him to stay down?
- 13 A Because the police were on the way.
- 14 Q Why did you want the police there?
- 15 A Because, I mean, he's an intruder in my house. He's  
16 trying to rape my girlfriend and --
- 17 Q Did you want the police there to arrest him?
- 18 A Absolutely.
- 19 Q All right. Now, there's something else that happens that  
20 night and this is about eight minutes and 20 seconds in. You  
21 hear Roy start saying, he's saying, "I can't move. I can't  
22 move." Are you on top of him at that point?
- 23 A Yes.
- 24 Q Okay. Now, a little bit after that you can hear you make  
25 a statement to him, "Why aren't your pants on?" What are you

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1 referring to?

2 A Why he was -- had his pants down around his ankles.

3 Q Now, are you saying -- was that something you saw when  
4 you came in?

5 A Yes.

6 Q And at any point did he add clothing?

7 A No.

8 Q Okay. Now, again, at, at -- between the five-minute  
9 period that altercation where Diane got the bat and you can  
10 hear some yelling there's kind of an ebb and flow wave in, in  
11 the 911 tape. There's an altercation at the very beginning.  
12 There appears to be another one about five minutes where  
13 there's a lot of yelling, a lot of screaming. It sounds like  
14 there's fighting and then there's another one about 10 minutes  
15 and then after that there's, there's not a whole lot of  
16 fighting after that. Now, between the five-minute period and  
17 the ten-minute period, are you standing over him with the gun?

18 A Yes.

19 Q If he's trying to get up, what are you doing?

20 A Hitting him with the stock.

21 Q Where do you hit him?

22 A Chest.

23 Q Could you have hit him in the head?

24 A Yes.

25 Q Do you remember hitting him in the head during that time?

- 1 A No.
- 2 Q Were you hitting him just to hit him?
- 3 A No. I was hitting him to stay down.
- 4 Q Okay. Now, at 10 minutes into that phone conversation
- 5 you can vaguely hear you. It sounds like you're calling
- 6 someone on the phone. Who are you calling?
- 7 A My friend Paul.
- 8 Q What's Paul's last name?
- 9 A Ridgley.
- 10 Q Okay. Now, why were you calling Paul?
- 11 A I had nothing left in me. I mean, I was exhausted. I
- 12 was scared, and I knew Paul had a handgun permit.
- 13 Q Okay. Do you know a lot of people down here?
- 14 A No.
- 15 Q Are you kind of a homebody for the most, most part?
- 16 A Yes.
- 17 Q Now, how did you meet Paul?
- 18 A I believe I met him at a pawn shop, Dick's Pawn Shop when
- 19 I first moved here. As a matter of a fact I was looking for a
- 20 new place to live and he actually told me what newspaper to
- 21 get and helped me look around, you know, to find a place to
- 22 rent.
- 23 Q So would you consider Paul a friend?
- 24 A Yes.
- 25 Q Okay. Now, when you call Paul you say, "Get over here

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1 with your 40"?

2 A Yes.

3 Q Do you remember what Roy did the minute you said that?

4 A Yeah. He freaked out, tried to run out the house.

5 Q All right. What did you do at that point?

6 A Tackled him.

7 Q Are you holding the phone or is the phone -- what --

8 where's the phone while you're on the phone with Paul?

9 A Oh, it's on speakerphone.

10 Q Okay. Are you holding it or is it on a counter?

11 A No. It's on the couch.

12 Q All right. Now, as far as that goes, do you remember at  
13 some point during that taking a picture of Roy?

14 A Yeah. Before I called Paul.

15 Q Okay. Are you positive it was before you called Paul or  
16 are you guessing?

17 A I'm guessing.

18 Q Okay. Why did you take a picture of him?

19 A In case he did get out of the house at least I had a  
20 picture of him for the police.

21 Q Do you remember law enforcement telling you that if they  
22 came home and talked about, you know, that -- there was a law  
23 enforcement officer that talked with you about catching your  
24 old lady cheating on you and how he'd just take a picture?

25 A Yeah.

1 Q Do you remember them saying that? The -- as far as this  
2 goes you, you admit though you took a picture of him?

3 A Yes.

4 Q It's your testimony you took that in case he got away?

5 A Yes. It is.

6 Q Okay. Did you know who this guy was?

7 A No. I did not.

8 Q I think you've testified that with law enforcement, I  
9 think when you gave them a statement and said, "I do not know  
10 who that -- who he is".

11 A Correct.

12 Q How old would you have thought he was?

13 A Thirties.

14 Q Okay. Now, as far as what happens at the, the ten minute  
15 when he -- you say, "Paul, get your 40" and you say he hops  
16 up, is he trying to get to the door?

17 A Yes.

18 Q Okay. Now, when he's trying to get to the door what do  
19 you do?

20 A I grab him and I have him against the wall.

21 Q I'm going to show you what's been marked State's Exhibit  
22 Number 67. All right. Now, there's some, some blood on the,  
23 the wall there. Is this where you're referring to?

24 A Yes. It is.

25 Q All right. How long do you think you all were up against

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1 the wall or if, if you remember?

2 A I'm not sure.

3 Q Were you all wrestling?

4 A Yes.

5 Q Okay. The -- during that point when you've got him up  
6 against the wall, are you, are you kind of -- are you bear  
7 hugging him? Are you wrestling? How, how -- what are you all  
8 doing?

9 A I'm just squeezing him against the wall, bear hugging  
10 him.

11 Q Do you have -- who has the bat at that point?

12 A Diane.

13 Q Okay. Now, you can also hear Diane at that point saying,  
14 "How does it feel?" Do you remember what she was doing?

15 A Kicking him.

16 Q Okay. Do you remember if she was hitting him or anything  
17 like that?

18 A No. I don't believe she was.

19 Q After that tell me what happens.

20 A After I take him down to the ground he's like -- I'm out  
21 of breath, he's out of breath and I get up. He stands up, and  
22 he walks over and collapses on the, on the mattress.

23 Q So he was kind of, I guess, where, where we were looking  
24 at it in that picture that mattress is pretty close to that  
25 door. Will that door even open with the mattress there?

1 A That mattress must have got pushed back because it was  
2 never -- yeah, that door opens up.

3 Q Okay. But this is a very short -- would you say this is  
4 a very short space?

5 A In that picture it is. Yeah.

6 Q Okay. A couple of feet?

7 A Yes.

8 Q So what you're stating then is that you had him up  
9 against this, that Diane was kicking him or hitting him, you  
10 can't really remember. Do you think she was kicking him or  
11 hitting him in the head or just --

12 A No.

13 Q You don't remember?

14 A I don't remember.

15 Q Okay. As far as this, it's your testimony that he went  
16 from there to there though?

17 A Yes.

18 Q Did anybody hit him there or anything like that?

19 A No.

20 Q Did he -- at any point was there like a, a deathblow, I  
21 mean a, you know, a final blow that that was it?

22 A Not that I know of.

23 Q Okay. Did he essentially pass out?

24 A Yes.

25 Q I think you told law enforcement that earlier that he

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1 passed out?

2 A Yes. He did.

3 Q Did you think he was dead?

4 A No.

5 Q Okay. Now, after that there's about seven minutes where  
6 it sounds like you're still on the phone with Paul. You sound  
7 excited. You sound stressed.

8 A Yes.

9 Q Is that accurate?

10 A Yes.

11 Q Are you trying to tell Paul what happened?

12 A Yes.

13 Q Do you come over and check on Diane?

14 A Yes. I do.

15 Q Okay. Do you remember saying, "Are you going to get an  
16 ambulance here"?

17 A Yes.

18 Q Okay. When you left your house that night, and we're  
19 talking about approximately nine, 9:10, whatever time that  
20 was, did you leave with the intention of coming back home and  
21 killing somebody?

22 A Never.

23 Q When you walked in that house was it your intention to  
24 kill this guy?

25 A No. It was not.

1 Q Was it your intention to hold him there?

2 A Yes.

3 Q At any point during this altercation did you want to kill  
4 him?

5 A Never.

6 Q At any point in this altercation do you feel like you  
7 took it too far?

8 A No. I do not.

9 Q Okay. Now, I'm going to show you a picture of you and I  
10 want you to identify it. Is this you?

11 A Yes. It is.

12 Q All right. Do you know when that picture was taken?

13 A That night at the police department.

14 Q Okay. Now, as far --

15 MS. LIVESAY: Without objection.

16 MR. HYMAN: Your Honor, we would move to have this marked  
17 as Defense's -- Defense -- Defendant Rosenbaum Exhibit Five.

18 BY MR. HYMAN:

19 Q What is -- what's all over your shirt?

20 A Roy's blood.

21 Q Okay. Now, it doesn't appear to be like spatter. It, it  
22 appears to be more like a saturation. Do you know what that's  
23 from?

24 A Me holding him down.

25 Q Okay. At any point did you have him in a headlock?

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1 A I was on top of him.

2 Q Okay. Do you remember if you all were moving around when  
3 you were on top of him or --

4 A Yes.

5 Q -- anything like that? So these, these circular areas  
6 right here would, would it be reliable to say that that's  
7 probably his head, where his head was on there?

8 A Yes. It is.

9 Q Okay.

10 THE COURT: Did you move that into evidence?

11 MR. HYMAN: I did, Your Honor.

12 THE COURT: I never did hear you move it.

13 MR. HYMAN: Oh, I'm sorry.

14 THE COURT: You just got it marked for identification.

15 MR. HYMAN: I'm sorry, Your Honor. We would move this  
16 into evidence as Defendant's Exhibit -- Defendant Rosenbaum's  
17 Exhibit Number Five.

18 THE COURT: All right. Defendant Rosenbaum Exhibit Five  
19 admitted into evidence without objection.

20 MR. HYMAN: My apology. I thought I'd already.

21 THE COURT: All right.

22 (Defendant Rosenbaum's Exhibit Number Five [Photograph]  
23 admitted into evidence and appropriately marked for purposes  
24 of motion hearing.)

25 BY MR. HYMAN:

1 Q Mr. Rosenbaum, I'm going to ask you to identify two more  
2 pictures. Can you tell me what that is?

3 A That's Mr. Davis.

4 Q Okay. And is that inside your house?

5 A Yes. It is.

6 Q Is that on the mattress inside of your living room?

7 A Yes.

8 Q Can you tell me what this is?

9 A That's me.

10 Q Okay. Do you know when that picture was taken?

11 A That night at the police department.

12 MR. HYMAN: Your Honor, we would move to have these  
13 marked as Defense Exhibits Number Six and Seven and also  
14 admitted into evidence.

15 THE COURT: Any objection?

16 MS. LIVESAY: No, sir.

17 THE COURT: All right. Defendant Rosenbaum Exhibits Six  
18 and Seven admitted into evidence without objection.

19 (Defendant Rosenbaum's Exhibit Numbers Six and Seven  
20 [Photographs] admitted into evidence and appropriately marked  
21 for purposes of the motion hearing.)

22 BY MR. HYMAN:

23 Q All right. Jimmy, I'm going to ask you a little bit  
24 about what you see in this picture right here. All right.

25 Now, this is Mr. Roy Davis; right?

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1 A Yes. It is.

2 Q Can you tell me where his pants are in location to his  
3 body? Are they pulled up?

4 A They're like hanging off of him.

5 Q Would that be where you'd wear pants?

6 A No.

7 Q Okay. Now, did you find it interesting that he had his  
8 shoes on?

9 A I really wasn't paying attention, but yeah.

10 Q Okay. Now, I'm going to ask you what -- you, you  
11 identified this as you. I see there's a lot of blood here.  
12 Is that Mr. Davis' blood?

13 A No. That's mine.

14 Q Do you know exactly how that, that injury happened?

15 A I believe I was struck with the bat there.

16 Q Are you 100 percent sure that's what it was though?

17 A Pretty much so.

18 Q Okay. Now, Jimmy, we spoke about this a little bit  
19 earlier about how there may have been some inconsistencies in  
20 your prior statements as to what occurred, things like that.  
21 As far as those inconsistencies, were at any point you  
22 purposely misleading anybody?

23 A No.

24 Q Again, we discussed that going over the cell phone  
25 records, going over the 911 and that kind of stuff, it's your

1 testimony that helped you to remember things?

2 A Yes.

3 Q Okay. Could that explain some of the -- any, you know,  
4 some of the possible inconsistencies?

5 A Yes. It would.

6 Q Okay. Now, I want to talk with you a little bit about  
7 your time in jail. When you got to the jail and they served  
8 you with the warrant, where did they put you first?

9 A They put me in detox cell.

10 Q Okay. How long were you in detox?

11 A One week.

12 Q Okay. Now, do you remember who you were in detox with?

13 A Lynndale Lewis.

14 Q Now, your time in detox was it for drug addiction? What,  
15 what, what did they have you in detox for?

16 A Prescription drugs.

17 Q Okay. And what prescription drugs were those?

18 A Oxycodone and Valium.

19 Q Okay. And did you have a prescription for those?

20 A Yes. I did.

21 Q As far as your time in detox, do you remember talking  
22 with Lynndale Lewis?

23 A Yes. I do.

24 Q Do you remember if he seemed interested in your case?

25 A Yes. He did.

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1 Q Do you remember if you told him the same story that  
2 you've told us today?

3 A I told him similar. Yes.

4 Q Okay. Now, similar or did you tell him what you  
5 remembered at that time?

6 A Yes.

7 Q Okay. Did he ask you at different points in the  
8 conversation what the police said?

9 A Yes. He did.

10 Q Did he ask you certain things about what the police may  
11 have as their theory?

12 A Yes.

13 Q Did you tell him?

14 A Yes.

15 Q Did you think this guy was helping you, trying to?

16 A Yes. I did.

17 Q Okay. Now, at any point during that -- how long were you  
18 in there with Lynndale?

19 A Three or four days.

20 Q At any point during that time with Mr. Lewis did you tell  
21 him anything else other than what you've told us here today or  
22 what you remembered at that time?

23 A No.

24 Q Did you tell him, tell him that you committed a crime and  
25 that you orchestrated the crime or anything like that?

- 1 A No.
- 2 Q Did you ever tell him that you knew Roy Davis?
- 3 A No..
- 4 Q Did you know Roy Davis?
- 5 A No. I did not.
- 6 Q Okay. Had you ever seen Roy Davis?
- 7 A No.
- 8 Q Not that you remember or not that you know of?
- 9 A Correct.
- 10 Q All right. With Mr. Lewis did it appear that he was  
11 almost over -- overly eager to find out about your case?
- 12 A Yes. At, at one point he even asked me if he could  
13 borrow a couple of hundred dollars to bond out.
- 14 Q Did you let him have the \$100?
- 15 A No.
- 16 Q Is where everything -- is everything that you're telling  
17 us here today to the best of your recollection what happened?
- 18 A Yes.
- 19 Q Has this been the consistent statement that you've  
20 maintained?
- 21 A Yes.
- 22 Q Did you ever tell law enforcement anything else other  
23 than that when you came in she was being attacked?
- 24 A Never.
- 25 Q Have you ever denied hitting Roy with the bat?

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1 A No. I did not.

2 MR. HYMAN: Your Honor, just one moment.

3 THE COURT: All right.

4 MR. HYMAN: Your Honor, just a couple of more questions.

5 BY MR. HYMAN:

6 Q At times when Roy did not have the bat and you did not  
7 have the bat, were there still punches being thrown? We, we  
8 keep -- we keep maintaining this stuff about somebody having a  
9 weapon and not having a weapon and that kind of thing. Were  
10 there times that you remember punching Roy?

11 A Yes.

12 Q Was there times you remember Roy punching at you or  
13 punching you?

14 A Yes. At one point he almost bit my finger off.

15 Q Did -- as far as the bite to your hand, I'm going to ask  
16 you to identify this. I'll tell you what, as far as your  
17 altercation with him though, it's your testimony that just  
18 because he didn't have a bat and even when you didn't have a  
19 bat it doesn't mean that you all still weren't fighting?

20 A Correct.

21 Q Was the bulk of the fight that you had with Roy, meaning  
22 when actual blows were being thrown, do you think that was  
23 before the 911 or at the beginnings of the 911?

24 A I'm not sure.

25 Q Okay. But you would admit that there were some -- there

1 was definitely fighting before the 911 call?

2 A Oh, absolutely.

3 Q At any point -- well, let me change it around, correct  
4 that. Were you scared for Diane's safety?

5 A Yes. I was.

6 Q Were you fearful for her?

7 A Very.

8 Q Did she appear fearful?

9 A Very.

10 Q Were you, were you afraid?

11 A I was afraid, too.

12 Q Okay. When you came in and you hit him and he said,  
13 "I'll kill you motherfucker", were you fearful?

14 A Very.

15 Q You just hit a guy with a bat and he took it?

16 A Yes.

17 Q Okay. Did you feel like you were protecting Diane?

18 A Yes.

19 Q Did you also feel like you were protecting yourself?

20 A Yes.

21 MR. HYMAN: Your Honor, no further questions at this time.

22 THE COURT: All right. Let's take about a 10 or 15  
23 minute break. Then we'll do cross examination. All right.

24 OFF THE RECORD

25 (On the record.)

1 THE COURT: All right. Anything from the Defense before  
2 we proceed?

3 MR. HYMAN: No, Your Honor.

4 THE COURT: Anything from the State?

5 MS. LIVESAY: Thank you, Judge.

6 THE COURT: All right.

7 MS. LIVESAY: I have a few questions.

8 THE COURT: All right. Mr. Rosenbaum, you're still under  
9 oath. Cross-examination.

10 CROSS EXAMINATION

11 BY MS. LIVESAY:

12 Q I'm going to show you now what's State's 71. Now, first  
13 of all, Mr. Rosenbaum, you want me to call you Jimmy?

14 A That's fine.

15 Q Okay. Now, Jimmy, all these pictures that you went over  
16 with your lawyer, One through Seven, that's how many pictures  
17 you all went through it looks like. Now, all of these  
18 pictures were after everything was said and done; is that  
19 correct? After you were out of the house?

20 A Yes.

21 Q Okay. So this was after the altercation?

22 A Yes.

23 Q Okay. And the police came in and took these pictures?

24 A I guess they did.

25 Q Okay. And the only people in the house during the

1 altercation was you, Roy and Diane?

2 A Correct.

3 Q Okay. And you, luckily, actually snapped a little video  
4 of him in the house?

5 A Uh-huh.

6 Q Is that correct?

7 A Yes.

8 Q Okay. So that is before the police got there?

9 A No.

10 Q You mean the video you took before you called Paul the  
11 police were already there?

12 A Oh, the video was before they got there. I'm sorry. I  
13 misunderstood you.

14 Q Okay. It's okay. It's okay. Just relax. You want  
15 something to drink?

16 A No. I'm fine.

17 Q So you actually took the best picture. You took the  
18 picture of him while this was all going on before the police  
19 got there?

20 A Sometime before they got there. Yes.

21 Q Okay. Okay. Now, I'm going to show you a still shot  
22 from it. It's State's 71. Do you recognize that? You want  
23 to put your glasses on?

24 MR. HYMAN: Your Honor, I believe that was not put into  
25 evidence if that's what --

1 Q You see the mattress?

2 THE COURT: Yeah.

3 A Yes. I do.

4 THE COURT: It's not in evidence. Excuse me. It's not  
5 in evidence now but she's moving to get him to identify it  
6 now. I sustained the objection the last time because the  
7 improper foundation. I think she's doing that now.

8 MR. HYMAN: Your Honor, my only, my only issue with this  
9 is she's holding up a photo and asking him about a video. Is  
10 she -- those are two different things. I mean, I don't  
11 necessarily have a problem with it. I just one or the other,  
12 is it a photo or is it a video?

13 THE COURT: Overruled. I'll allow it. Go ahead.

14 MS. LIVESAY: Thank you, Judge.

15 BY MS. LIVESAY:

16 Q Do you recognize the pattern in your couch in the  
17 picture?

18 A Yes.

19 Q Okay. And you recognize that mattress on the floor?

20 A Yes.

21 Q And that's Roy sitting on the mattress?

22 A Yes.

23 Q Okay. And can you see when you look at that mattress  
24 that there's blood already on the mattress?

25 A Yes.

1 Q Okay. And this is from the video you took?

2 A Yes.

3 Q Okay.

4 MS. LIVESAY: So at this time I'm going to admit State's  
5 71 into evidence.

6 THE COURT: Any objection?

7 MR. HYMAN: Your Honor, only best evidence rule. The,  
8 the video, I, I believe the video is one second. That is a  
9 still from the video.

10 THE COURT: All right. State's Exhibit 71 admitted into  
11 evidence over Defendant's objection.

12 (State's Exhibit Number 71 [Photograph] admitted into  
13 evidence and appropriately marked for the purposes of the  
14 motion hearing.)

15 Q Okay. So you're telling me and this Court --

16 MR. GARDNER: Judge, I'm, I'm sorry. I want to just make  
17 sure that I object -- we're not arguing with you but make sure  
18 the objection is clear. The objection is that that is not  
19 fair and accurate without the sound for the one minute video,  
20 I mean, the one second video.

21 THE COURT: Right. Admitted into evidence over  
22 Defendant's objection.

23 BY MS. LIVESAY:

24 Q And again, this is from the video you took?

25 A Yes.

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1 Q Okay. Good. Good. Good. Good. And that's Roy sitting  
2 on the mattress?

3 A Yes.

4 Q Okay. And there's already blood all over the mattress?

5 A Correct.

6 Q Okay. And he's still talking at this time; correct?

7 A Yes.

8 Q Okay. He's sitting up. I mean, his -- he's, he's beat  
9 to hell but he is sitting up; wouldn't you agree?

10 A Yes.

11 Q Okay. Good. Good. So this picture here I'm going to  
12 show the Judge because it's in evidence. This is the guy that  
13 you're telling this Court is just coming at you, going crazy  
14 to the point you got to beat him with a bat, shoot him with a  
15 pellet gun and beat him with your UFC gloves; is that right?

16 A Yes.

17 Q Okay. That guy sitting on a mattress that is the great  
18 threat that you, you had to kill him?

19 A Right about there the threat's been eliminated.

20 Q I'm sorry?

21 A The threat's been eliminated there. In other words  
22 that's after we tussled around for a while. That's not when I  
23 first came in the house.

24 Q Okay. Well, it's interesting because this picture of him  
25 sitting here he's still sitting up and I'm going to show you

1 State's evidence 67. Obviously, you would agree he's in a  
2 different position and unable to move at this point?

3 A Yes.

4 Q Okay. So tell this Court why you had to keep beating him  
5 after he is laid out on the mattress like this, unarmed,  
6 sitting there. Why, why keep beating him until he looks like  
7 this. Why?

8 A Who said I kept beating him?

9 Q Something happened to him.

10 A From that point in that video is when I called my friend  
11 Paul, and when I said, "Come over with your 40," and that's  
12 when he tried to run out the door.

13 Q That's when what?

14 A That's when he tried to run out the door.

15 Q Okay. So this is when he tried to run out the door?

16 A Yes.

17 Q Okay. And he heard you talking because you heard him on  
18 the 911, we heard it together, at that point he's still  
19 talking because you say, "Bring your 40," and Roy's in the  
20 background saying, "Please don't kill me"?

21 A I didn't hear that.

22 Q You want me to play the tape?

23 A It's not necessary.

24 Q Okay. Now, when you're telling him to bring the 40  
25 that's when Roy is sitting on this bed like this; isn't it?

1 A I'm not sure.

2 Q Okay. Well, you've called him. You told your Defense  
3 attorney you called him after you took this video?

4 A Yes.

5 Q Okay. So then he would agree this conversation you had  
6 with Paul was after you took the video of Roy looking like  
7 this?

8 A Yes.

9 Q Okay. And you just told your Defense attorney that you  
10 were on the phone with Paul saying bring your 40?

11 A Yes.

12 Q Okay. So you could kill the guy?

13 A No.

14 Q Okay. But you hear Roy saying, "Please don't kill me"?

15 A I didn't hear it at the time.

16 Q You didn't hear that, but you certainly understand after  
17 this picture Roy tries to leave?

18 A Yes.

19 Q Okay. And then when he tries to leave he ends up looking  
20 like this picture, State's evidence 67?

21 A Yes.

22 Q So the question is when he's clearly, clearly no longer a  
23 threat, he's trying to get out of the house, why do you  
24 continue to beat him to death?

25 A I didn't continue to beat him to death.

1 Q Then what happened?

2 A I told you he tried to run out and I pinned him up  
3 against the wall and we went down to the ground and we fought  
4 some more and then he staggered and collapsed on the mattress.

5 Q Okay. Let's listen to the tape and you tell me what  
6 that sound is because you can hear you talking to Paul and  
7 then we hear something that sounds like this in the  
8 background. So you want to listen to it and then you tell me  
9 what that sound is as he's trying to get out the door?

10 A No.

11 Q Well, you would know what the sound is; right? You were  
12 in the house talking to Paul?

13 A Yes.

14 Q Okay. Okay. Well, let's play it and you can tell me  
15 what it is.

16 A Okay.

17 Q Can we play the tape?

18 MR. HYMAN: Judge, let me see if I can get it up.

19 THE COURT: Well, let's play the one that's in evidence.

20 MR. HYMAN: Judge, we put a disk into evidence and I  
21 played it from my laptop.

22 THE COURT: Okay. Well then, as long as everybody agrees  
23 that it's the --

24 MR. HYMAN: Do we have a --

25 THE COURT: -- the 911 call.

1 MR. HYMAN: -- a time, a --

2 THE COURT: Just go ahead and play it. She wants to play  
3 it. Play the, play the 911 call.

4 MS. LIVESAY: I can play it, Judge.

5 MR. HYMAN: And what I mean is are we playing the whole  
6 thing or is there a --

7 THE COURT: That's what you want?

8 MR. HYMAN: Is that what you're wanting?

9 THE COURT: Okay.

10 MS. LIVESAY: You want our crowd to play it, Judge? We  
11 will.

12 THE COURT: That's got more than just the 911 call on it.

13 MS. LIVESAY: Yes, sir.

14 THE COURT: So do not play anything other than the 911  
15 call.

16 MS. LIVESAY: Right. That's right.

17 THE COURT: That'll be fine.

18 MR. HYMAN: I've got it up. I didn't know if you wanted  
19 to play the entire 911.

20 MS. LIVESAY: Yes, please.

21 MR. HYMAN: Or just where you were talking about.

22 MS. LIVESAY: Yep. Just the entire tape. That way we  
23 can just figure out.

24 THE COURT: All right. She needs that exhibit back up  
25 here.

1 (Defendant Durkin's Exhibit Number Two played in open  
2 court.)

3 Q Did you hear this?

4 A Yes. I heard.

5 Q Okay. What was that sound when he was trying to get out  
6 the door? You heard that?

7 A When he's trying to get out the door I didn't have a bat  
8 on me. I had the gun.

9 Q So you were hitting him with the gun?

10 A But as -- prior to that, yes. I believe as he was going  
11 out the door I had him against the wall and we went down to  
12 the ground.

13 Q But you hear something banging; right?

14 A Yes.

15 Q Okay. So I guess my question is when he's trying to get  
16 out of the door he's staggering, he's already down on the  
17 mattress, what is that banging?

18 A I'm not sure.

19 Q But you're hitting him with something?

20 A I have a gun in my hand.

21 Q I'm sorry?

22 A I'm hitting, I'm hitting him in the chest with the stock.

23 Q Okay. But you are hitting him?

24 A Yes.

25 Q Okay. Okay. And shortly after that is when he's laid

1 out on the mattress?

2 A He gets up and collapses on the mattress.

3 Q So how does he get on the mattress? You throw him on the  
4 mattress because you're hitting him with the butt of the gun.  
5 So as your hitting him are you -- obviously trying to get him  
6 away from the door, are you hitting him like that with the  
7 gun?

8 A I'm trying to hold him down.

9 Q You're holding him down?

10 A I'm trying, I'm trying to hit him and to keep him down.

11 Q Okay. And you keep him in the house because he's such a  
12 threat that's why you keep beating him and won't let him  
13 leave?

14 A I won't let him leave because the police are on the way.

15 Q Okay. And you took that picture of him after he's just  
16 sitting on the mattress; correct?

17 A Yes.

18 Q Okay. And you would agree if you feel comfortable enough  
19 to break your phone out and video him he's certainly not a  
20 threat at that point?

21 A At that point.

22 Q Not at that point. Okay. So we are all in agreement on  
23 that?

24 A Yes.

25 Q Okay. And you videoed him, why, just to keep it,

1 memories?

2 A No. Not memories. I answered that question before in  
3 case he got out the door I'd have a picture of him for the  
4 police.

5 Q Okay. But you never told the police about that video?

6 A Yes. I did.

7 Q When did -- you told them at the police station?

8 A I'm pretty sure I did.

9 Q You didn't.

10 A Okay. If you said I didn't I didn't, but a lot of things  
11 I forgot.

12 Q And you would agree that you have -- certainly know from  
13 receiving discovery you've already seen all these pictures;  
14 right?

15 A Yes.

16 Q Okay. And so you found out through the discovery that we  
17 found that video on your phone?

18 A No.

19 Q Your attorney didn't tell you that?

20 A I told my lawyer I took a picture of him.

21 Q Okay. So then you would agree you never told the police  
22 and we never heard about that until today?

23 A Possibly. Yes.

24 Q Okay. And you would agree that you did get all the phone  
25 records and what we got off your phone in discovery?

- 1 A Yes.
- 2 Q Okay. Okay. So you knew when you rolled in here today  
3 that we already had that video off your phone?
- 4 A Yes.
- 5 Q Okay. Good. Good. Now, there's something else that I  
6 find strikingly strange. When I look at these pictures --  
7 this is, let's see -- I'm trying to find. Okay. Here's you.  
8 We got one of Diane in here, too. All right. Sorry. There's  
9 a lot that's been introduced. I'm going to try to keep it all  
10 straight. Thank you. I appreciate it. Now, you know what I  
11 find curious, would you agree with me, I'm showing you now  
12 State's evidence 13, Diane is fully clothed?
- 13 A Yes.
- 14 Q Okay. Shoes on?
- 15 A Yes.
- 16 Q Okay. Ready to go?
- 17 A Yes.
- 18 Q Okay. Good. Now, and in this picture of you you're  
19 fully clothed?
- 20 A Yes.
- 21 Q Shoes on?
- 22 A Yes.
- 23 Q Ready to go?
- 24 A Yes.
- 25 Q Okay. And Roy, ironically, was the only person in the

1 house that was in a vulnerable position, had his shirt off,  
2 his hat off, relaxed, shirt folded up in the house, somehow  
3 Roy was the only one that didn't know to be fully clothed.  
4 Why, why is that?

5 A I wasn't there.

6 Q Okay. But you would agree Diane was fully clothed?

7 A Yes.

8 Q She had her shoes on?

9 A Yes.

10 Q Ready to roll, and you would agree you were fully  
11 clothed?

12 A Yeah. I was just coming home from the gym. I mean,  
13 you'd be fully clothed, too.

14 Q Okay. So you would admit somehow Roy was the only one  
15 that had his shirt off?

16 A Yes.

17 Q Okay. In a vulnerable position?

18 A She was in a vulnerable position when I came home.

19 Q But you would agree she was fully clothed?

20 A Yes.

21 Q Okay. Okay. Somehow Roy was the only one that didn't  
22 know what was going to happen later on or I think he would  
23 have kept his clothes on.

24 MR. HYMAN: Your Honor, this has been asked and answered.

25 Q Now, let me ask you this.

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1 THE COURT: Sustained. All right.

2 MS. LIVESAY: I understand, Your Honor.

3 THE COURT: No commentary, just ask questions.

4 BY MS. LIVESAY:

5 Q Let me ask you this. You put these gloves on before you  
6 came in the house?

7 A Yes. I did.

8 Q Okay. So you hear her, you claim, allegedly, you claim  
9 that you hear her screaming?

10 A Yes.

11 Q Okay. So you are just absolutely in this panic mode, "I  
12 have got to get to my girlfriend". So you go out to your car  
13 and put on some fighter gloves?

14 A No. They were in my hand.

15 Q So you, you put on the gloves before you go in there?

16 A Yes.

17 Q Okay. So you --

18 A On my way to the back door I put them on.

19 Q Okay. So you had enough forethought to, to put on not  
20 just any gloves, I like that they're U -- UFC fighter gloves?

21 A They're weightlifting gloves, also.

22 Q Okay. So when you roll in the house you already got the  
23 gloves on and you got the bat in your hand?

24 A Yes.

25 Q Okay. Now, you had your phone with you because you had

1 talked to Diane earlier?

2 A Yes.

3 Q Okay. So you when you walk back in the vehicle you  
4 thought, "Well, I've got my phone, my girlfriend is screaming,  
5 I could call 911," but you didn't call 911. You went out  
6 there and put your gloves on and got ready to rumble?

7 A Yes.

8 Q Okay. So you would admit when you go out the phone is  
9 sitting there and it never occurs to you to call the police?

10 A The phone was in my pocket.

11 Q I'm sorry?

12 A The phone was in my pocket.

13 Q Okay. And you never got it out and called the police?

14 A Never.

15 Q Okay. Okay. Now, you made some phone calls earlier in  
16 the evening before you showed up; right?

17 A Yes.

18 Q Now, hold on now, let me get this straight. I think I'm  
19 confused. So now you're saying you were coming home from the  
20 gym?

21 A Yes.

22 Q Okay. So we -- you're -- and you signed in, you go to  
23 Planet Fitness?

24 A I never went -- I already answered this. I never went  
25 inside the gym.

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1 Q Okay. That's convenient because you would agree when you  
2 go inside you've got to sign up for Planet Fitness?

3 A Yes. You do.

4 Q Okay. So your signature wouldn't be that you showed up  
5 at Planet Fitness; correct?

6 MR. HYMAN: Your Honor, asked and answered. He said he  
7 didn't go in.

8 THE COURT: Sustained. Asked and answered. Let's move  
9 on.

10 Q So when you talk to Diane and she called you and said,  
11 "Hey, I got this black man in the car and I'm going to give  
12 him \$20", where were you?

13 A She didn't call me up and say, "I got a black man in my  
14 car." She said, "I got a guy in my car."

15 Q What now?

16 A She says, "I have a guy in the car that I'm going to give  
17 a ride."

18 Q Okay. And "I'm going to give him \$20"?

19 A She asked me, "Can I loan him \$20," and I said, "For  
20 what?" She says, "He wants to borrow. I'm going to be  
21 working at the farm up here with the horses. He'll pay me  
22 back Friday."

23 Q Okay. And where were you because that phone call  
24 happened around 8:40?

25 A I was home.

- 1 Q Okay. And she was at the store on 378?
- 2 A I guess.
- 3 Q And how far is that from your house?
- 4 A Seven miles maybe.
- 5 Q Okay. And did she tell you when she was on the phone,  
6 "I'm coming home"?
- 7 A She said she was giving him a ride.
- 8 Q Okay. And she didn't tell you where she was giving him a  
9 ride?
- 10 A No.
- 11 Q And you didn't ask?
- 12 A No. I told her I was going out.
- 13 Q Okay. And where were you going?
- 14 A I told her I was going out with a friend.
- 15 Q Okay. So your girlfriend has picked up this man from a  
16 farm and she's giving him \$20 and all of a sudden you say at  
17 8:40, she's on her way home, you say, "I'm going to leave the  
18 house"?
- 19 A Yes.
- 20 Q Okay. And where do you go?
- 21 A I go to the gym.
- 22 Q The gym where?
- 23 A In Conway.
- 24 Q Planet Fitness?
- 25 MR. HYMAN: Your Honor, again, asked and answered.

1 She's, she's asked him.

2 THE COURT: I'll let her go. I'll allow that. Go ahead.

3 Q And then you get some phone calls from Diane; correct?

4 A Correct.

5 Q Okay. And she's at home?

6 A I don't know where she is.

7 Q Okay. What does she say?

8 A I didn't talk to her after 8:41.

9 Q When she called your phone you didn't talk to her?

10 A No.

11 Q Okay. She called you twice. You didn't talk to her

12 either time?

13 A No.

14 Q Let's see. So when she called you at 9:07 you didn't  
15 talk with her?

16 A No. I did not.

17 Q Okay. So you just let the phone ring for 25 seconds?

18 A Yes.

19 Q And where were you at that time?

20 A On my way to the gym.

21 Q And then you come home?

22 A Shortly after that.

23 Q Okay. So just so I'm straight on it, on the timeline  
24 because I think this is important and I want to get it right  
25 to be fair to you. When she gets Roy in the car and they're

1 getting \$20 she calls you?

2 A I call her.

3 Q Okay. You call her?

4 A I believe so.

5 Q And you all speak?

6 A Yes.

7 Q Okay. And all of a sudden after this phone call you  
8 mysteriously get up at 8:40 at night on a Monday night and,  
9 and leave the home?

10 A Yes.

11 Q Okay. And then mysteriously she calls your phone two  
12 more times?

13 A Yes.

14 Q Okay. And then mysteriously after those phone calls you  
15 shortly arrive back home at this key time when she's  
16 screaming?

17 A Yes.

18 Q Okay. Did you know when you talk on the phone it hits a  
19 tower?

20 A Yes.

21 Q Okay. And did you know your phone is looking for Wi-Fi  
22 data when you're moving around?

23 A Yes.

24 Q Okay. So then I guess the question we have is why are  
25 you hanging around the house for the entire time from when she

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1 picks Roy up until you get home?

2 A I wasn't hanging around the house.

3 Q What?

4 A After 8:41 I left.

5 MR. HYMAN: Your Honor, the statement she's making is not  
6 into evidence.

7 THE COURT: All right. I understand that. Go ahead.

8 Q So you would be surprised if the phone records said  
9 something else?

10 A Yes.

11 Q Okay. And about how long were you gone?

12 A 20, 25 minutes.

13 Q Okay. Now, how long do you talk to Paul on the phone?

14 A About six, seven minutes.

15 Q And during that time on 911 and you're talking to Paul,  
16 do you ever ask Diane, "Are you okay, are you okay, how are  
17 you, are you okay?" Do you ever ask?

18 A No. No.

19 Q Okay. Okay. Did Roy ever have a knife, a gun, any kind  
20 of weapon?

21 A No.

22 Q I'm showing you now --

23 MR. HYMAN: Your Honor, my, my only -- Your Honor, my, my  
24 only objection, again, unless he made that.

25 THE COURT: Well, there's nothing to rule on.

1 MR. HYMAN: Right.

2 THE COURT: They haven't tendered anything. Raise, save  
3 your objection for when --

4 MR. HYMAN: Thank you.

5 THE COURT: -- it's appropriate. Okay. All right. Go  
6 ahead.

7 Q I'm showing you now State's evidence 73. Do you remember  
8 the layout of that mobile home?

9 A Yes.

10 Q Okay. Good. And those pictures your attorney showed you  
11 were from inside the mobile home?

12 A Yes.

13 Q And you were showing him where the kitchen knives were  
14 and where everything was?

15 A Yes.

16 Q Okay. Good. I'm going to show you a little sketch. Can  
17 you tell me if, if this is the layout of your mobile home?

18 A Yes. It is.

19 Q Okay. And this accurately reflects the sketch of where  
20 the bedrooms were, the sofa and all that in your mobile home?

21 A Yes.

22 Q Okay.

23 MS. LIVESAY: Your Honor, at this time I'd like to put in  
24 State's evidence Number 73.

25 THE COURT: Objection?

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1 MR. HYMAN: Your Honor, the only objection is if, if it's  
2 sometime -- some how she's trying to use it to scale. We  
3 don't know what the scale is, but as far as for identification  
4 purposes and him saying, "That is the layout of my home," I  
5 don't have a problem with it, but there'd be no objection.  
6 Now, if she starts trying to say a foot here, a foot there.

7 THE COURT: All right. All right. That's fine.  
8 Admitted into evidence over Defendant's objection.

9 MS. LIVESAY: Thank you.

10 (State's Exhibit Number 73 [Diagram of Mobile Home]  
11 admitted into evidence and appropriately marked for purposes  
12 of motion hearing.)

13 BY MS. LIVESAY:

14 Q Now, is this the mattress?

15 A Yes.

16 Q Okay. And this is the front door?

17 A Yes.

18 Q Okay. And this is the back door?

19 A Yes.

20 Q And this is the kitchen here, this kitchen area?

21 A Yes.

22 Q That's the little stove, the -- that little counter area?

23 A Yes.

24 Q Okay. Good. Good. Good. Good. And you saw the  
25 pictures your attorney showed you earlier of the den and the

1 kitchen?

2 A Yes.

3 Q Just covered with blood?

4 A Yes.

5 Q Okay. And would you agree those were the only rooms that  
6 were covered in blood?

7 A The whole area from what I seen from the kitchen to the  
8 front door was covered in blood.

9 Q Okay. So you would agree then the kitchen and the den  
10 these areas here were covered in blood?

11 A Yes.

12 Q Okay. And would you agree that both of these areas that  
13 are covered in blood are also near an outlet of the house,  
14 this is near the front door; right?

15 A Yes.

16 Q And the kitchen, this area here that's covered in blood  
17 is on the way to the back door?

18 A Yes.

19 Q Okay. And you know from the 911 tape that he's going out  
20 the front door; correct?

21 A Yes.

22 Q Okay. So the blood in the kitchen is for you chased him  
23 down where he was getting out the back door; isn't that right?

24 A No.

25 Q But there's no blood anywhere else but near an outlet,

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1 either the back door or the front door?

2 A There's blood through the entire place.

3 Q Well, here's -- let's show a picture your attorney put in  
4 here. Let's see the weight room. Did you see that picture of  
5 the weight room?

6 A Yes.

7 Q Was there any blood in there?

8 A No.

9 Q Okay. So there's no sign he was trying to get anywhere  
10 else but the front door or the back door?

11 A We fought through the whole entire place from the kitchen  
12 to the living room. All right. He took control of the bat.  
13 I had control of the bat.

14 Q But all the blood is in the kitchen and the den for the  
15 most part?

16 A Yes.

17 Q Okay. And both of those areas are near an outlet from  
18 the trailer?

19 A Yes.

20 Q Okay. I'm sorry, the mobile home. Okay. Good. I'm  
21 glad you agree on that. Now, did you talk to the police and  
22 did they offer you a bottle of water?

23 A Yes.

24 Q Did they let you go to the bathroom?

25 A Yes.

- 1 Q Did -- were you ever restrained in handcuffs?
- 2 A No.
- 3 Q Okay. And did they read you Miranda?
- 4 A Yes.
- 5 Q Okay. And did you sign that form?
- 6 A Yes. I did.
- 7 Q Okay. Good. So you knew your rights?
- 8 A Yes.
- 9 Q Okay. And did you talk with them?
- 10 A Yes. I did.
- 11 Q Okay. And did you tell them what happened that night?
- 12 A Yes.
- 13 Q Okay. Okay. Now, because you by then had already kind
- 14 of talked this out with Paul on the phone; right? You called
- 15 your friend, Paul?
- 16 Q Yes. I did. We know this. We already know this.
- 17 Q So you had already spoken with him?
- 18 A Yes.
- 19 Q Okay. So you clearly had your wits about you to be able
- 20 to pick up the phone, take a picture and then pick up the
- 21 phone and call a friend of yours?
- 22 A Yes.
- 23 Q Okay. Good. Now, when you talk to the police do you
- 24 remember when you were telling them, "I hit him with the bat"?
- 25 A Yes.

James Rosenbaum - Cross by Ms. Livesay

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- 1 Q Okay. "And I shot him with the gun"?
- 2 A Yes.
- 3 Q And you kept saying, "It didn't even faze him, it didn't  
4 even faze him"?
- 5 A Right.
- 6 Q Okay. Well, does he look fazed here in State's evidence  
7 number 71?
- 8 A There he does.
- 9 Q Okay. So he was fazed?
- 10 A After a while.
- 11 Q Okay. So when you were telling the police, "It didn't  
12 faze him, it didn't faze him," why didn't you tell him then,  
13 "Look, I got a picture of what Roy looked like that night."  
14 Did you -- why didn't you tell them then?
- 15 A I didn't think about it.
- 16 Q But you would agree now that we've got this picture?
- 17 A Yes.
- 18 Q He was fazed. Now, you told your attorney that you  
19 didn't know when Diane was on the 911 tape? Do you remember?
- 20 A Correct.
- 21 Q When she called. Okay. Well, do you remember to tell  
22 the police -- you told them, "You can hear me yell on the 911  
23 tape, stay down, stay down"?
- 24 A Yes.
- 25 Q And you told them, "Listen to the tape. You can hear me

1 says stay down, stay down." You remember that?

2 A Yes.

3 Q Okay. And did you remember telling them that the victim  
4 kept threatening you, "I'll kill you, motherfucker"?

5 A Yes.

6 Q Okay. Did you ever hear that on the tape, the victim  
7 threaten you?

8 A No.

9 Q Okay. Now, and you also told the police, they were  
10 asking you as it was going on, "Was he talking trash the whole  
11 time," and you said, "He was talking trash all the way to the  
12 end." You remember that?

13 A Yes.

14 Q Okay. Now, we've listened to the tape. So you classify  
15 Roy in there, "Don't kill me, help me, I can't move," that's  
16 what you consider him talking trash all the way to the end  
17 saying, "I'm going to kill you"?

18 A No.

19 Q Okay. Good. So tell this Court who was cussing who till  
20 the very end?

21 A He was cussing me. I was cussing him. She was cussing  
22 him.

23 Q And that's what you heard on that tape?

24 A No. I know that's what happened when I first came  
25 through that back door.

- 1 Q Okay. On the tape we've all heard --
- 2 A Right.
- 3 Q -- who was calling who a motherfucker saying, "I'll kill  
4 you myself"?
- 5 A The entire, the entire fight isn't on that tape.
- 6 Q Okay. Okay. Well, you had ample time to get it on tape.  
7 Didn't you have your phone before you walked in the house?
- 8 A I told you yes.
- 9 Q Okay. And you decided not to call 911?
- 10 A I had other things to do.
- 11 Q Okay. But you would agree that if you had called 911  
12 right then we would have had the complete tape?
- 13 A Who's thinking about calling 911 and get the complete  
14 tape? I'm thinking about saving my girlfriend.
- 15 Q And putting on your UFC fighting gloves?
- 16 A Yes.
- 17 Q Okay. But you would agree that if you had called 911  
18 right then this crowd would have had the entire incident on  
19 tape?
- 20 A If I did, yes.
- 21 Q Yes. If you did, but you didn't. So tell us when did  
22 you decide to call 911? Was it after you had done whatever it  
23 is the hell you wanted to do and nobody know about it?
- 24 A No.
- 25 Q When did you decide to call 911?

1 MR. HYMAN: Your Honor, I'm going to object. He, he's  
2 testified he did not call 911, that Ms. Durkin called 911.

3 THE COURT: Sustained.

4 Q When, when did you decide to call 911?

5 MS. LIVESAY: I just want to know, Judge.

6 THE COURT: I sustain the objection. He never called  
7 911.

8 MS. LIVESAY: Okay.

9 THE COURT: Ms. Durkin called 911.

10 BY MS. LIVESAY:

11 Q Did you have your phone?

12 A You already asked me that.

13 MR. HYMAN: Your Honor, again, asked and answered.

14 THE COURT: Sustained.

15 MS. LIVESAY: That's fine.

16 BY MS. LIVESAY:

17 Q And Diane had her phone?

18 A Yes.

19 Q Did Roy have a phone?

20 A I don't know.

21 Q Did you ever see him with a phone?

22 A No.

23 Q When you talked to the police you told the police all  
24 this about she had picked him up, the \$20, the full nine  
25 yards; correct?

James Rosenbaum - Cross by Ms. Livesay

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1 A I told, I told the police that she told me -- she asked  
2 me if she could loan somebody \$20 and give them a ride.

3 That's what I told the police.

4 Q Okay. Okay. But you would agree you already knew  
5 basically everything that had gone on, she had picked him up,  
6 taken him to the house, all of that, you knew that Roy worked  
7 at the farm; right?

8 A Yeah. She told me this guy worked at the farm.

9 Q Okay. When did you move that mattress into that den  
10 area?

11 A That couch that is in the picture that, I believe, goes  
12 to that. It's a pullout.

13 Q When?

14 A That's a pullout. That mattress came off that couch.  
15 That's one of them pullout beds, and we put it on the floor so  
16 we could both lay on the floor and watch TV.

17 Q Okay. When did you pull it out from the couch and put it  
18 on the floor?

19 A It's been on there for a few months.

20 Q A few months?

21 A Yes.

22 Q Okay. You try to write Diane from the jail?

23 A Yeah.

24 Q Okay. Good. So you would recognize your letter?

25 A Yes. I would.

1 Q Okay. Good.

2 MR. HYMAN: Your Honor, I would have objection at the  
3 appropriate time.

4 THE COURT: All right.

5 Q This is State's evidence 74. You said you would  
6 recognize it?

7 A Yeah.

8 Q What you wrote. You got your glasses. Look at this  
9 letter to Diane. That look familiar to you?

10 A My father wrote this.

11 Q Did he write it for you?

12 A Yes.

13 Q Okay. Good. So you wrote your dad and said, "Send this  
14 letter to Diane"?

15 A Yes. But I mean, there's, there's a question of if he  
16 copied it correctly.

17 Q But you would agree you wrote this to your dad?

18 A Yes.

19 Q And said, "Give it to Diane"?

20 A I never put in there, "Please remember this carries  
21 life".

22 Q Okay. So the rest of it you did?

23 A Huh?

24 Q The rest of it you did?

25 A "Remember you had a black eye", no.

James Rosenbaum - Cross by Ms. Livesay

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1 Q Well, did you put in here, "Diane, listen to me"?

2 A My father put that in there. I, I wrote a letter to my  
3 father.

4 Q True.

5 A And I told him to copy it and send it.

6 Q Right. To Diane?

7 A Yes.

8 Q Because you --

9 A But he's 82 years old and he always don't copy things the  
10 correct way.

11 Q I understand, and you did that because you cannot  
12 communicate with Diane at the jail; right?

13 A Right.

14 Q Because Codefendants cannot have contact?

15 A Correct.

16 Q So you decided you would write to your dad and you --  
17 your dad would send a letter to Diane?

18 A I just said yes.

19 Q Okay. Because that's the only way she could get it?

20 A Right.

21 Q Okay. So is this the letter you sent to your 83 year old  
22 dad and said, "Hey, send this to my Codefendant"?

23 MR. HYMAN: Your Honor, I'm going to object.

24 THE COURT: Hold for a second.

25 MR. HYMAN: Your Honor, I'm, I'm going to object. He has

1 said that he did send his dad a letter and that that's not  
2 everything that he told his dad.

3 THE COURT: So what are you objecting to, the question or  
4 the --

5 MR. HYMAN: Well, Your Honor, I'm going to object to him  
6 -- I mean, he, he has, he has answered that's not a letter  
7 that he's --

8 MS. LIVESAY: We're trying to get it figured out, Judge.

9 MR. HYMAN: Judge, I think he's got it figured out. He  
10 says his father wrote the letter.

11 THE COURT: But what is your objection to her question,  
12 to the introduction of evidence or to what?

13 MR. HYMAN: Your Honor, my, my objection would be, one,  
14 as far as identifying it he has said that it is, is not his  
15 letter. I would object to her then trying to put it into  
16 evidence saying that it is a letter that he has written.

17 THE COURT: Okay. Overruled. I'll allow it. Go ahead.

18 MS. LIVESAY: Thank you.

19 THE COURT: Ask your question.

20 BY MS. LIVESAY:

21 Q Just so we're on the same page, okay.

22 A Okay.

23 Q Because these things get confusing. You wrote this  
24 letter; correct?

25 A I wrote a letter, not that letter.

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1 Q Okay. So none of this is what you wrote your dad?

2 A Some of it is.

3 Q Okay. Well, why don't you tell me what part you, you did  
4 write?

5 A I don't remember. That was over two years ago.

6 Q Okay. Well, did you -- certainly your dad wouldn't know  
7 to tell Diane to, "Tell the detective I heard you screaming"?

8 THE COURT: Okay. No. Don't get into the contents of  
9 the letter. Okay. It's not in evidence. You haven't  
10 introduced it yet. Don't get into the contents. You got to  
11 lay the foundation.

12 MS. LIVESAY: Yes, sir.

13 THE COURT: And proceed that way.

14 BY MS. LIVESAY:

15 Q So portions of this you wrote your dad?

16 A Portions of it.

17 Q Okay. Well, can you identify -- certainly if you know  
18 which portion -- you can say portions were written you can  
19 know which portions those are; right?

20 A Yeah. But I don't remember. It's been two years ago.

21 Q Okay. So, so you remember that you did write portions of  
22 this letter?

23 A I said yes.

24 Q Okay. Well certainly if you know that you can identify  
25 which portions you wrote.

1 MR. HYMAN: Your Honor, I'm going to object.

2 THE COURT: That's asked and answered. He's already  
3 said, no, he can't. It's been two years ago.

4 MS. LIVESAY: Okay.

5 THE COURT: So let's move on.

6 BY MS. LIVESAY:

7 Q Just one last question about this letter, could you tell  
8 this Court which portions of it you wrote?

9 A No.

10 Q But you would definitely agree that you were trying to  
11 write Diane?

12 A I said that. Yes.

13 Q Okay. And you would agree you were trying to write her  
14 about the facts of this case?

15 A Yes.

16 Q Okay. And you were doing that to circumvent the jail,  
17 you sent it to your dad?

18 A I already answered you.

19 Q Okay. Well, then tell this Court what it is you want  
20 Diane to know, what -- to go through all that trouble to talk  
21 to the Codefendant, what is it that you needed to tell her?

22 A Just to remind her what happened.

23 Q Okay. Because she didn't know what happened or you  
24 wanted to make sure she knew what to say to the detectives?

25 A This is way after she spoke to the detectives. So at

James Rosenbaum - Cross by Ms. Livesay

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1 that point it's kind of pointless.

2 THE COURT: She needs that letter.

3 Q Since you've been in jail has your dad been putting money  
4 on your account?

5 A Yes.

6 Q Has he been putting money on Diane's account?

7 A It's my money.

8 Q I'm sorry?

9 A It's my money. It's my military money.

10 Q Okay. Okay. But he's -- so he's using that to put money  
11 on both you all's account?

12 A Yes.

13 Q Okay. Is, is your dad here today?

14 A No.

15 Q Okay. Do you have children?

16 A Yes.

17 Q How many?

18 A Two.

19 Q Are they here today?

20 A No.

21 Q Okay.

22 MR. HYMAN: Your Honor, I'm going to object to relevancy.

23 THE COURT: Overruled. Go ahead.

24 Q Now, earlier you said you were out with Mark?

25 A Yes.

- 1 Q Okay. And certainly Mark would know what you were out  
2 doing earlier in the day if you were with him; is that  
3 correct?
- 4 A Yes.
- 5 Q Okay. Is Mark here?
- 6 A No.
- 7 Q Okay. What's his last name?
- 8 A I'm not sure.
- 9 Q Okay. Where does he live?
- 10 A 548.
- 11 Q Where on 548?
- 12 A About a mile and a half away from my house where I was  
13 living.
- 14 Q Okay. About a mile and a half?
- 15 A Yes.
- 16 Q In a mobile home park?
- 17 A Yes.
- 18 Q Okay. And you got his phone number?
- 19 A I had it.
- 20 Q Would you recognize it on your phone records?
- 21 A Yes.
- 22 Q Okay. Good. Here, I'll give you, and you, you were  
23 talking with him; right, on the 11th when all this happened?
- 24 A Yes.
- 25 Q Okay. Can we mark this? I'm not going to put it in,

1 just letting him identify the phone number. I'm showing you  
2 now State's 75. Just go through there and tell me which phone  
3 number is his. Here, you want to hold it? Here you go.

4 A I believe it's this number right here.

5 Q That -- which --

6 A I believe it's right here.

7 Q Just read it out to me. That way it'll be on the record.

8 A 843-489-0838.

9 Q Thank you.

10 THE COURT: She needs that phone record, the court  
11 reporter.

12 Q So, do you know Kelly?

13 A Yes.

14 Q Okay. And what's Kelly's last name?

15 A Altman.

16 Q And where did she live?

17 A Singing Pines.

18 Q Okay. Did you ever call her?

19 A Yes.

20 Q Would you recognize her phone number on them records?

21 A No.

22 Q Okay. How long did you know Kelly?

23 A Eight months.

24 Q Okay. And she lived right up the road?

25 A A couple of miles away.

1 Q Okay. And did you ever party at her mobile home? She  
2 live in a mobile home or a house or a what?

3 A Trailer.

4 Q Okay. And did you ever go to her trailer?

5 A No.

6 Q Okay.

7 A I've been to her trailer. Yes.

8 Q Okay. You have. How many times have you been to her  
9 trailer?

10 A I didn't keep count.

11 Q Okay. Okay. And you were in the VA Hospital for a while  
12 before this happened?

13 A Eleven months before this happened.

14 Q How far?

15 A Eleven months.

16 Q Okay. So not recent?

17 A No.

18 Q Okay. Now, you talked for about 30 minutes with your  
19 lawyer about, you know, working, your past, when you were  
20 born, kind of leading up from when you were probably 17 or 18  
21 until now. You remember that?

22 A Yes.

23 Q Okay. Now, you also had some run-ins with the law during  
24 that time. Didn't you?

25 A Several.

1 Q Okay. Okay. Do you mind, those kind of got left out  
2 earlier, do you mind filling in those gaps for the Court?

3 A Certainly not.

4 MR. HYMAN: Your Honor, I'm going to object. This is the  
5 portion where I was talking about as far as what of these  
6 crimes, these past crimes are actually, under the rules of  
7 evidence whether -- what they can actually cross him on as far  
8 as these. He has not said he's been convicted of any crime.  
9 That hasn't been brought in. I'm -- Judge, I believe they're  
10 -- she is is going to be talking about stuff that, one --

11 THE COURT: Well, and I've got to do a balancing test.

12 MR. HYMAN: I understand.

13 THE COURT: I know what the Rules of Evidence say and  
14 they're geared towards, more towards undue influence of a  
15 jury. Even if they were trying to get it in in a jury setting  
16 I would have to know what the charges were, when they were.

17 MR. HYMAN: Sure.

18 THE COURT: Whether they were crimes of moral turpitude  
19 or whether or not they weren't, whether they -- whether he was  
20 released from jail during the last 10 years. So the Judge is  
21 going to know about it.

22 MR. HYMAN: Sure.

23 THE COURT: I don't know whether to rule admissible or  
24 inadmissible without hearing what they are and when they were.

25 MR. HYMAN: Judge, the, the one issue I have with that is

1 what we've been provided is an NCIC. At multiple bond  
2 hearings they have addressed this, and we believe incorrectly  
3 saying -- said that he was convicted of a crime that he was  
4 not convicted of.

5 THE COURT: Okay. Well you can bring that out on  
6 redirect.

7 MR. HYMAN: Okay.

8 THE COURT: The problem is if I --

9 MR. HYMAN: I understand.

10 THE COURT: -- you're asking me to rule in your favor  
11 without even knowing what the charges are --

12 MR. HYMAN: Sure.

13 THE COURT: -- when they were or what they were and I  
14 can't do that.

15 MR. HYMAN: I understand.

16 THE COURT: All right. Go ahead. Overruled.

17 MS. LIVESAY: And Judge, I'll just -- I'll just tell you  
18 what the charges are and then you can make your objection or  
19 which ones you object to. Okay. In 2003, Judge, he had a  
20 burglary third. In '97 he had an interfering with law  
21 enforcement, three larcenies and a failure to appear. In '96  
22 he had a VOP, violation of a protection order, cruelty to  
23 animals and larceny. In 2010 -- I'm sorry, he had a violation  
24 of protection order and in '07 he had a sexual assault and a  
25 violation of probation.

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1 THE COURT: And when did he get out of jail on that?

2 MS. LIVESAY: The, the only things I think I can get in,  
3 Judge, are probably the burglary and the larcenies because  
4 they go to, obviously, his --

5 THE COURT: Well, you've already got, you've already told  
6 me about them.

7 MR. HYMAN: And that, that just --

8 THE COURT: I mean, they're already -- the cat's already  
9 out of the bag. So go ahead and ask your questions. I'll  
10 give them the consideration that they're due.

11 MR. HYMAN: And Judge, the, the sexual assault is what  
12 keeps getting brought up but there's no evidence of a  
13 conviction.

14 THE COURT: Okay.

15 MR. HYMAN: In fact, the NCIC says quite the opposite.

16 THE COURT: When was, when was the sexual assault  
17 conviction? Give me the -- what kind of sentence did he get  
18 and when did he get out of jail on that?

19 MS. LIVESAY: I'm sorry, Judge?

20 THE COURT: I said sexual assault, when was it, when was  
21 it convicted?

22 MS. LIVESAY: Yes. The assault was --

23 MR. HYMAN: Your Honor --

24 THE COURT: No. Let her tell me and then you can  
25 respond, where it says convicted and what the crime was

1 convicted of.

2 MS. LIVESAY: Yes, sir. What we've got here is 2007.

3 THE COURT: All right. What is the date of conviction?

4 MS. LIVESAY: Let's see, and let me, I've got -- hold on  
5 one second. It looks like the date of this --

6 THE COURT: No. It's going to say on there date of  
7 arrest, date of disposition, conviction, guilty or not guilty  
8 or how it was disposed of and it's going to have a date. Show  
9 me or tell me where it says convicted and the date.

10 MS. LIVESAY: It says the date is -- of disposition is  
11 February 6, 2007, and it was a conviction and five jail --  
12 five years jail minimum.

13 THE COURT: Okay.

14 MR. HYMAN: And Judge, I think I can -- if I, if I can  
15 approach.

16 MS. LIVESAY: Here's what I've got, Judge.

17 THE COURT: All right. Well, let me see.

18 MS. LIVESAY: Here you go. It's at the bottom and it  
19 goes on --

20 THE COURT: All right. Now, this says charge, offense,  
21 risk of injury. Wait a minute. Where -- show me the -- show  
22 me where is the criminal.

23 MS. LIVESAY: It says sexual assault.

24 MR. HYMAN: Look, look what it says. That says the  
25 original charge and then he pled to a different charge, the

1 drug charge. If you look on the next page he also pled to  
2 risk of injury and it says original and then under it where it  
3 says the SUB is risk of injury.

4 THE COURT: Okay.

5 MR. HYMAN: He is not saying that he did not plead guilty.  
6 He is saying he did not plead guilty to any sexual charge.  
7 He's not a sex register, offender register. I mean, I --

8 MS. LIVESAY: He's saying he pled guilty to the lesser  
9 included.

10 MR. HYMAN: He said -- no. He said he pled guilty to a  
11 sale of narcotics.

12 MS. LIVESAY: Can you -- I'll look further into it,  
13 Judge, before trial.

14 THE COURT: Well, yeah, because you have told the Court  
15 that he has a conviction for a sex offense and unless you're  
16 sure that he has conviction for a sex offense.

17 MS. LIVESAY: No. Not for a sex offense. Not for a sex  
18 offense.

19 THE COURT: That's what you just told me.

20 MS. LIVESAY: I said sexual assault was what was on this.  
21 That was my understanding.

22 THE COURT: Okay. Sexual assault. All right. So you're  
23 saying -- you have told the Court that he has a conviction for  
24 a sexual assault. That is what the State has told the Court.  
25 All right.

1 MS. LIVESAY: That's my understanding, yes, sir.

2 THE COURT: Well, it's not your understanding. It's  
3 either true or you've given the Court false information.

4 MS. LIVESAY: Well, certainly, I wouldn't give the Court  
5 false information. It's on the --

6 THE COURT: Okay. Well, then that's fine. Okay. Well,  
7 then you're going with that and he can address it on redirect  
8 and then I'll decide whether or not the State is correct or  
9 whether or not the State is incorrect and has provided the  
10 Court with false information. When you bring up these charges  
11 that's why I have to make a decision before it gets to a jury  
12 because once it gets out of the bag to a jury you can't put it  
13 back in.

14 MS. LIVESAY: I understand.

15 THE COURT: And so that's why the State before you  
16 reference a charge as a conviction you better be sure that it  
17 is a conviction of that crime.

18 MS. LIVESAY: I will, Judge.

19 THE COURT: All right. Go ahead.

20 BY MS. LIVESAY:

21 Q Jimmy, who was the last person to strike Roy that night?

22 A I'm not sure.

23 Q And at some point were both of you all striking him?

24 A At the same time?

25 Q You -- yes.

James Rosenbaum - Cross by Ms. Livesay

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- 1 A No.
- 2 Q Okay. At some point did you hit Roy?
- 3 A Yes.
- 4 Q Okay. And at some point did you hit him, put your hands  
5 on him or do something when he was going for the door?
- 6 A I already answered this.
- 7 Q And let me ask you this, did Diane hit him when he was  
8 going for the door?
- 9 A I answered that, too.
- 10 Q So would you agree both of you did hit him when he was  
11 going for the front door?
- 12 A Yes.
- 13 Q Okay. I just asked you if both of you were striking him  
14 at the same time. So are you saying now that did happen when  
15 he went for the door?
- 16 A I tackled him when he went for the door. When I was  
17 holding him Diane hit him in the legs.
- 18 Q After you all put your hands on him after he went for the  
19 front door, did he ever move or talk again?
- 20 A Yes.
- 21 Q He did?
- 22 A I believe so.
- 23 Q What did he say?
- 24 A I don't remember what he said.
- 25 Q Okay. When the police got there was he moving or

1 talking?

2 A No.

3 Q You talked earlier about giving your dog to the landlord?

4 A Yes.

5 Q Who's the landlord you gave it to?

6 A Maggie Fogner.

7 Q Okay. And what kind of dog was it?

8 A A mutt.

9 Q Okay. And you gave it to her several months before?

10 A I didn't say several months before.

11 Q Okay. When did you give it to her?

12 A A couple of months before this.

13 Q No further questions.

14 THE COURT: Redirect.

15 MR. HYMAN: Your Honor, just briefly.

16 REDIRECT EXAMINATION

17 BY MR. HYMAN:

18 Q When Ms. Livesay questioned you about Mark and talking to  
19 Mark and everything like that, when was the actual last time  
20 you were around Mark for any extended period of time?

21 A Extended period of time?

22 Q Right.

23 A When I took him to the store.

24 Q Around 3 p.m.

25 A Between three and five.

James Rosenbaum - Redirect by Mr. Hyman

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1 Q And I think your testimony was you were around him maybe  
2 five minutes at I think it was seven, somewhere, somewhere  
3 around there?

4 A Correct.

5 Q The -- you know, Ms. Livesay asked you about whether or  
6 not you would be surprised to know that your Wi-Fi was pinging  
7 and all that kind of stuff?

8 A Yes.

9 Q Would you actually be surprised to know that it stopped  
10 pinging around your house at 8:42? Is that about the time you  
11 think you left or somewhere around about it?

12 A Yes.

13 Q Okay.

14 A Could I add something else?

15 Q Yes.

16 A I'd like to address the Judge.

17 THE COURT: No. Just answer questions.

18 MR. HYMAN: Your Honor, just one more second.

19 THE COURT: All right.

20 BY MR. HYMAN:

21 Q During the -- there's a time period there that there's  
22 some confusion about phone calls going back and forth about if  
23 it's 25 seconds and that kind of thing. Now, Ms. Livesay, I  
24 think she marked something. I'm going to -- I'm going to --  
25 let's look at this right here, see if I can find the

1 appropriate time. Okay. Here it is. All right. This is  
2 universal time so this is actually 9:06. How long is that?  
3 A 12 seconds.  
4 Q Does it even ping off of a tower?  
5 A No.  
6 Q All right. And then there's another one here that's  
7 showing for how many seconds?  
8 A Zero.  
9 Q What's this little thing right here say?  
10 A Voicemail.  
11 Q Okay. There's another one right here that's how long?  
12 A Six seconds.  
13 Q And what's that say?  
14 A Voicemail.  
15 Q And now is that you trying to call her back?  
16 A Yes.  
17 Q And so did it go to voicemail?  
18 A Didn't even hit a tower.  
19 Q Okay. Now, again, right here there's a six second one?  
20 A Uh-huh.  
21 Q Now, if you'll look, that's actually at the same time.  
22 So that's the same call; correct?  
23 A Correct.  
24 Q Okay. And then down here it's one second after you're  
25 calling her and if your call is six seconds, so that would

1 mean she's calling you while you're calling her; correct?

2 A Yes.

3 Q Okay. And how long is that?

4 A 25 seconds.

5 Q All right. Now, did you answer that?

6 A No.

7 Q Okay. And then there's, again, what is this? Is another

8 one --

9 A Voicemail.

10 Q And then?

11 A Voicemail, voicemail.

12 Q Okay. So again right here and this is all within a one-  
13 minute time period; right?

14 A Yes.

15 Q Okay. And this one, again, she's calling you, Diane, and  
16 is there a cell tower?

17 A No.

18 Q At any point during that did you talk with Diane?

19 A No.

20 Q Did she talk with you?

21 A No.

22 Q Okay. Now, do you know how long it would take normally  
23 for a -- say a cell phone to go to voicemail?

24 A No. I don't.

25 Q Okay. Would it surprise you that it's 25 to 30 seconds?

1 A No.

2 Q Okay. But again, it's your testimony that absolutely  
3 during that period when there's it appears to be eight or nine  
4 different times you all were trying to call each other back  
5 you all never actually talked?

6 A Correct.

7 Q Okay.

8 MR. HYMAN: Judge, I don't know if -- and I'm, I'm -- if  
9 I need to straighten out the criminal record because it was  
10 actually never asked. I know it's been put before you.

11 THE COURT: Just move on.

12 MR. HYMAN: Okay. Your Honor, I --

13 THE COURT: I mean, I already know what the charges are.  
14 I know what they say's happened. It's not in front of a jury.  
15 So go ahead.

16 MR. HYMAN: Your Honor --

17 MS. LIVESAY: Your Honor --

18 THE COURT: They don't know if it's a conviction or not.

19 MS. LIVESAY: -- can I ask just a couple of questions on  
20 his follow-up?

21 THE COURT: No.

22 MR. HYMAN: Your Honor, I don't have --

23 THE COURT: We go direct, cross and redirect and that's  
24 it.

25 MR. HYMAN: No further questions.

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1 sworn by the clerk and testifies as follows.

2 MR. RIDGLEY: Paul Ridgley, P-A-U-L, R-I-D-G-L-E-Y.

3 THE COURT: All right.

4 MR. HYMAN: May it please the Court?

5 THE COURT: All right, sir.

6 BY MR. HYMAN:

7 Q Good morning or I guess it's afternoon now. How are you?

8 A I'm here.

9 Q You look like you may have been in better conditions  
10 times before?

11 A I have been.

12 Q Can you state your name, please, for the record?

13 A Paul Allen Ridgley.

14 Q Okay. Mr. Ridgley, where are you from?

15 A Originally Maryland, but I've been here probably 14  
16 years.

17 Q 14 years, okay. And where do you reside in Conway?

18 A [REDACTED] Highway 134.

19 Q Highway 134?

20 A Yes, sir.

21 Q Okay. And how long have you resided there?

22 A About 14 years.

23 Q About 14 years. Okay.

24 THE COURT: Sir, if I could get you to move a little  
25 closer to the microphone and speak up.

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1 A I'm sorry.

2 THE COURT: All right. Thank you. Go ahead.

3 MR. HYMAN: Thank you.

4 BY MR. HYMAN:

5 Q Is it Ridgley? I want to make sure I'm --

6 A Yes. Ridgley.

7 Q Ridgley. Okay. Mr. Ridgley, I know you haven't been here  
8 all, all week, but do you know my client, Jimmy Rosenbaum?

9 A Yes, sir.

10 Q How about do you know Ms. Diane Durkin?

11 A Yes, sir.

12 Q Now, do you know why they're here?

13 A Yes, sir.

14 Q Okay. Did you know a man named Roy Davis?

15 A No. I do not.

16 Q Okay. Now, on July the 11<sup>th</sup> do you remember speaking with  
17 -- this is 2016. Do you remember speaking with Jimmy?

18 A Yes. I do.

19 Q Do you remember if you talked to him earlier in the day?

20 A No. I can't say that I did.

21 Q You don't remember?

22 A No. I don't remember.

23 Q Well, when you -- let's talk about when you actually  
24 spoke to him. I believe that when you actually spoke to him  
25 was, and I want to make sure I'm exact on this, about 9:45?

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1 A That sounds correct.

2 Q Okay. And we've already listened to a 911 tape. So we  
3 could -- we actually heard the conversation that you all had.  
4 Why did Jimmy call you?

5 A I guess because he didn't know who else to call.

6 Q Okay. Did Jimmy tell you that he had tried -- that they  
7 had called the police?

8 A Yes. He did.

9 Q Do you recall Jimmy telling you to bring a gun?

10 A No, sir.

11 Q Okay. Now, on the 911 tape you can hear him say, "Paul,  
12 bring your 40." Are you saying that that didn't happen or you  
13 just don't remember hearing that?

14 A There was so much noise in the background I couldn't  
15 hardly hear everything so.

16 Q Could you tell that he was excited or in an excited  
17 state?

18 A Yes, sir.

19 Q Did he sound like he was scared?

20 A Yes. He did.

21 Q Did he tell you what was going on?

22 A He said things went on and the police were on their way.

23 Q Okay. Did he tell you that there was a man there that  
24 had attempted to assault Diane?

25 A Yes.

- 1 Q Did he tell you that he was trying to fight that guy?
- 2 A Yes. He did.
- 3 Q Okay. Did he tell you that he had gotten in a fight with
- 4 the guy?
- 5 A Yes.
- 6 Q Did he tell you where Mr. Davis was at that point?
- 7 A No.
- 8 Q Okay. Now, again, how long have you known Roy, or excuse
- 9 me, known Jimmy?
- 10 A Before then probably about eight months to a year.
- 11 Q Okay. Would you all talk fairly frequently?
- 12 A A couple of times a week.
- 13 Q Okay. Now, in the time that you had known him, have you
- 14 ever heard him in that state of mind?
- 15 A No, sir.
- 16 Q Have you ever heard him scared like that?
- 17 A No, sir.
- 18 Q Now, when he asked you about the 40, I know you didn't
- 19 hear it, but would, would he have known that you had a 40?
- 20 A Probably.
- 21 Q Okay. Do you have a 40?
- 22 A I did.
- 23 Q You did. Okay. Do you remember if he'd ever seen that
- 24 gun or anything like that?
- 25 A I mean, it's possible, yeah. I mean, my son and I shoot

Paul Ridgley - Direct by Mr. Hyman

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1 all the time so.

2 Q Had, had he ever shot it?

3 A No.

4 Q Okay. So it's possible and is it likely that he would  
5 have known that you had a 40?

6 A It's probably come up in conversation.

7 Q Got you. Got you. Now, would you consider Jimmy a friend?

8 A Yes.

9 Q Okay. Did you ever have him over for dinner or anything  
10 like that?

11 A Him and Diane been to the house a couple of times had  
12 dinner with me and my son.

13 Q Okay. Did you ever see him do any drugs?

14 A No, sir.

15 Q Okay. When they came over to, to your house, did they  
16 bring food?

17 A Yes.

18 Q Okay. When they've come over have you ever heard them  
19 argue?

20 A No, sir.

21 Q Okay. Do you know of any times where in the past where  
22 he's -- where -- and I say he, when Jimmy has, has mentioned  
23 any aggravation or anything like that with Diane?

24 A No. More the VA.

25 Q Okay. Do you ever remember any times when Jimmy has

1 expressed any aggravation with someone named Roy Davis?

2 A No. I don't who that is. I have no clue who that is.

3 Q But you've never had an instance where Jimmy has ever  
4 even brought up the name Roy Davis?

5 A No.

6 Q Has Jimmy ever talked to you about Diane cheating on him  
7 or anything like that?

8 A No, sir.

9 Q Are you aware of any times when Diane has?

10 A No.

11 Q Did you come to his house that night?

12 A No, sir.

13 Q You stayed home?

14 A Yes.

15 Q Okay. And again, it's your testimony that -- do you  
16 think he was calling you because he was scared and needed  
17 help?

18 A That would be my assumption. Yes, sir.

19 Q Do you remember him telling you to try to get the cops  
20 there?

21 A No. If I remember correctly I think it was Diane had  
22 already called them.

23 Q Okay.

24 A And he was on the phone till they got there and then that

25 --

Paul Ridgley - Cross by Ms. Livesay

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1 Q Were you on the phone with him until the police arrived?

2 A Yes. I was. Excuse me.

3 MR. HYMAN: Your Honor, just one moment.

4 THE COURT: All right.

5 MR. HYMAN: Your Honor, I have no further questions at  
6 this time.

7 THE COURT: All right. Cross-examination.

8 MS. LIVESAY: Thank you, Judge.

9 CROSS EXAMINATION

10 BY MS. LIVESAY:

11 Q Hey, Mr. Ridgley, how are you?

12 A Okay.

13 Q Good. Now, can you identify your phone number if I read  
14 it out to you?

15 A Yes, ma'am.

16 Q 843-458-3213?

17 A That's mine.

18 Q Is that it right there? I'm showing you now just for  
19 identification State 75.

20 A That's me.

21 Q Okay. And did you talk to him about seven minutes and 46  
22 seconds?

23 A I couldn't tell you how long it was.

24 Q Okay. But it was for a while?

25 A It, it was for a little bit. Yes.

- 1 Q Okay. And how long have you known Jimmy?
- 2 A Like I said, about eight, eight months to a year or so
- 3 prior to that.
- 4 Q And where did you all meet?
- 5 A Dick's Pawn Shop.
- 6 Q Okay. And how did you know Diane?
- 7 A I met Diane through Jimmy.
- 8 Q Okay. And you've been good friends with him since you
- 9 met him at the pawn shop?
- 10 A We grew as time went on.
- 11 Q Okay. Did you help him out after he got arrested? Did
- 12 you go see him?
- 13 A I got his dad because they're not from here and got him
- 14 over to J. Reuben Long and all.
- 15 Q Okay. So you did go try to handle some stuff for him --
- 16 A Yes.
- 17 Q -- after he was arrested? Okay. Now, had you been over
- 18 to his mobile home --
- 19 A Yes.
- 20 Q -- over there on Five? You had?
- 21 A Yes.
- 22 Q And had you been over there shortly before this incident?
- 23 A No.
- 24 Q Okay. Had you been over there to put in a washer and
- 25 dryer?

Paul Ridgley - Redirect by Mr. Hyman

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1 A Yes. I was there with a friend of mine.

2 Q Okay. And had you been over there a handful of times?

3 A Yeah.

4 Q Okay. Just because you all are friends --

5 A Right.

6 Q -- back and forth? And you did go put his washer and  
7 dryer in?

8 A Yes, ma'am.

9 Q Okay. So you had to go all in the house to put that in.  
10 Did you see a mattress laying down in the den?

11 A No.

12 Q Okay. Did you go into the mobile home after he was  
13 arrested?

14 A Yes, ma'am.

15 Q Okay. And is that the first time you had ever seen a  
16 mattress in the den?

17 A Yes.

18 MS. LIVESAY: I got nothing else for Mr. Ridgley. I know  
19 he's got things to do.

20 THE COURT: All right. Redirect.

21 MR. HYMAN: Your Honor, just a couple of questions.

22 REDIRECT EXAMINATION

23 BY MR. HYMAN:

24 Q Did you all bring a washer and dryer in in the back?

25 A Yes, sir.

1 Q Okay. And that's -- this is State's Exhibit 73. So if  
2 you came in the back door --

3 A Yes. It would have been right there.

4 Q -- would this have been the washer and dryer?

5 A Yes, sir.

6 Q Did you go throughout the house and everything?

7 A Was in the kitchen and probably in the living room.

8 Q Now, are you there every day?

9 A No, sir.

10 Q Okay. And you said it wasn't necessarily that recent  
11 that you were or recent as to September 11<sup>th</sup>, 2016, that you  
12 were over there?

13 A Maybe a week or so beforehand. I'm not sure.

14 Q Got you. Now, so you wouldn't have known if there was a  
15 mattress there that night?

16 A No.

17 Q Or the night before?

18 A No.

19 Q Or the week before?

20 A No.

21 Q Okay.

22 MR. HYMAN: Your Honor, I may have said for the record  
23 September 11<sup>th</sup>. I meant July 11<sup>th</sup> if I did when I --

24 THE COURT: All right.

25 MR. HYMAN: -- was speaking. Your Honor, no further

1. questions.

2. THE COURT: All right. You may step down.

3. A Thank you.

4. THE COURT: All right. The Defense can call your next  
5. witness.

6. MR. HYMAN: Your Honor, as far as Mr. Rosenbaum, the  
7. Defense would rest.

8. THE COURT: All right. Anything further?

9. MR. BOUCHETTE: No further, no further witnesses for Ms.  
10. Durkin, Your Honor.

11. THE COURT: All right. Does the State have anything?

12. MS. LIVESAY: Judge, normally what we've done in the past  
13. with these stand your ground hearings is because the burden is  
14. theirs we then make some sort of motion kind of similar to a  
15. directed verdict.

16. THE COURT: Right.

17. MS. LIVESAY: And then you make a decision and then we  
18. put our case up for purposes of the record. Would you like  
19. for us to do that now or you need a break or --

20. THE COURT: No. No. I can go ahead and hear your motion  
21. now.

22. MS. LIVESAY: Okay. Certainly, Your Honor. The State  
23. then is going to argue basically parallel to what a directed  
24. verdict is for the Defense when the burden is on the State,  
25. and what the State argues is under State v. Oates, which is

1 421 S.C. 1, that was a case involving a tow truck, and what  
2 the court said during that case was that once there's no  
3 longer a force or there's no longer a threat then the attack  
4 has to stop. It says the court will not interpret the  
5 language of the statute to mean that a person may shoot and  
6 kill another when the perceived attack has ended. That case  
7 there was involving a case where there had been a assumed  
8 prior attack on the victim previously, and what that case says  
9 is while the Defendant was in a place that he was allowed to  
10 be, which is just like this case, they're going under  
11 subsection C because Roy was invited in, so he had the right  
12 to be there, his use of deadly force against the victim was  
13 not necessary to prevent his own death or injury or commission  
14 of a violent crime, and assuming that there was an attack by  
15 the victim previously, there was no such event at the time of  
16 the shooting, and thus there was no force to meet as the  
17 victim was walking away from the Defendant when the victim was  
18 shot. I think that case is right on point with the case that  
19 we have. The question of whether or not there was an attack  
20 before is kind of moot because what this case is saying is  
21 assuming there was an attack, that attack had ended. There  
22 was no longer a threat. So the victim was shot when that  
23 threat no longer existed. What the State is arguing is Ms.  
24 Durkin and Mr. Rosenbaum, both Defendants testified that there  
25 was a point in time and a picture was taken and entered into

1 evidence that was taken by the Defendant. The victim is down.  
2 He is clearly down. Both agreed with me. He was no longer a  
3 threat. Mr. Rosenbaum said, yes, at that time he is no longer  
4 a threat. He is talking at that time. He is sitting on the  
5 mattress. He then gets up by her own testimony and Mr.  
6 Rosenbaum's testimony and tries to get out the front door.  
7 Both of them at that time testified there was no weapon in his  
8 hands. He had no phone. He had no vehicle. He was  
9 absolutely vulnerable and beat. He's bleeding in the picture  
10 on the mattress. So he is definitely no threat. He goes for  
11 the door. At the time he goes for the door, Mr. Rosenbaum  
12 testifies that he puts his hands on the victim. She  
13 testifies. She's then by the 911 tape, "You ain't going  
14 nowhere motherfucker. You ain't leaving," and you hear that  
15 bat on Roy as Roy is hollering, hollering, hollering. He is  
16 by all evidence alive and trying to get out. By -- between  
17 the time he is there and trying to get out the door he is  
18 killed in his attempt of trying to leave the residence. That  
19 is not what stand your ground was meant for. Stand your  
20 ground was meant for being able to protect yourself, which you  
21 should have the right to do. I am fully aware and agree with  
22 that. If I'm being attacked, yes, I should be able to defend  
23 myself, but then when the attack ends it's no longer stand  
24 your ground. When the person is trying to leave, he is  
25 obviously injured, there's blood everywhere, and he's trying

1 to get out the door, "Please, don't kill me. Please don't  
2 kill me. I can't move," trying to get out the door and they  
3 attack him unarmed is nothing short of an unlawful killing at  
4 that point. It cannot be stand your ground. It cannot be.  
5 There is a difference between stand your ground and killing  
6 someone, and when Roy was down, unarmed, trying to leave and  
7 they killed him, that is nothing short of an unlawful killing.  
8 It cannot be stand your ground. It cannot be self-defense  
9 because he's no longer a threat. They are at that time  
10 videoing him, which I have still shots when he is down,  
11 basically mocking him at that point and calling their friend  
12 to tell him what happened. Now, in those instances there is a  
13 difference between, yes, I am fighting for my life. By their  
14 own admission that has ended. That has stopped. There is no  
15 longer a threat. We cannot use stand your ground as a  
16 aggressive. It's not meant to be on the offensive. Stand  
17 your ground is meant to be a defensive position. I am on the  
18 defense, fighting for my life. It is not admit -- it is not  
19 meant to excuse an offensive attack on the victim. There is  
20 no doubt about it that they have gone, if they ever were on  
21 the defense, now to the offense. Stand your ground is not  
22 meant to cover being on the offense against somebody. It's  
23 not. That's what the case says. It is meant to protect. Ten  
24 minutes on that tape is going on while they are absolutely  
25 nothing short of torturing that man. We never hear one word

1 from Roy for 10 minutes other than, "Help me, help me, I can't  
2 move," hollering, and for 10 minutes we hear them cussing him  
3 and beating him with that bat. Whatever went on the first 10  
4 minutes, I don't know. They chose not to call 911 then. He  
5 had his phone, but when they did call, we heard then what went  
6 on. We saw from the picture what went on. There's not one  
7 shred of evidence to show from the time he was sitting there  
8 until the time he was going for the door he was ever a threat,  
9 and that is the time when he was killed. He is still up  
10 talking when he's going for the door. It's that, "Oh, oh,"  
11 you still hear Roy talking. He's still alive at that point.  
12 It is not until after he goes for the door that by the very  
13 evidence of the 911 tape we never hear from him again, and by  
14 the very evidence of the pictures, the guy that we see sitting  
15 there on the mattress before he goes to the door is not beat  
16 to hell. The guy we find on the mattress after he goes for  
17 the door is brutally beaten and no longer moving or talking.  
18 The State contends at this point this is a question for the  
19 jury. It is clearly not stand your ground, not when he is  
20 trying to leave. He is unarmed, and he is no longer a threat.  
21 It is not meant to excuse a killing. It is not meant to allow  
22 someone to lure someone else in their home for whatever  
23 reasons, mad, whatever is going on and use that almost as a  
24 reason to kill somebody. It does not excuse it. It does not  
25 allow for an offensive attack on anybody. I don't think there

1 is preponderance of the evidence. I don't think there's any  
2 evidence that shows anything other than Roy is no longer a  
3 threat and they continuously attack him, not only when he's no  
4 longer a threat, I'm not even arguing that Roy is just sitting  
5 there. I'm arguing that Roy is trying to leave. Not only is  
6 he not a threat, but he is trying to leave the premise, and  
7 they are chasing him out the door, beating him until he's  
8 killed. I don't believe that that is stand your ground. I  
9 believe that is an unlawful killing. Now, whether it's  
10 manslaughter, whether it's murder, whatever it is, I believe  
11 it's a question for the jury, but I do not believe that this  
12 statute and this law and by the very case of Oates tells us it  
13 is not meant to be an aggressive reason to kill somebody. So  
14 the State argues that no evidence and the burden has not been  
15 met by the sheer fact the threat is gone. This case clearly  
16 points out that it is not there to use as an offensive  
17 grounds. It is used defensively to stand your ground. I  
18 think to allow stand your ground to stand in these sort of  
19 facts would be an inappropriate setting excusing really what  
20 is an unlawful killing. I don't believe this is stand your  
21 ground. If it was, at some point, like in this case, once he  
22 was down trying to leave, it's no longer stand your ground.

23 THE COURT: All right. Who wants to go first?

24 MS. LIVESAY: Thank you, Judge.

25 MR. BOUCHETTE: Thank you, Your Honor.

1 THE COURT: Mr. Bouchette.

2 MR. BOUCHETTE: May it please the Court? Your Honor, the  
3 Solicitor made a lot of statements regarding what was going on  
4 in that room or what these sounds were on the 911 tape, but I  
5 guess it's just by virtue of imagination but she was not  
6 there. She is imposing what she thinks is going on on that  
7 audiotape. You heard from the only two people that were in  
8 that room as to what was going on, and Mr. Rosenbaum testified  
9 in succinct order, in a time fashion at least generally  
10 speaking what was happening. Now, before I get -- I want to  
11 draw one distinction. What's unique in this case and what's  
12 distinguishable from Oates is that Oates and a lot of those  
13 type of cases have a distinct kill shot. There's a point at  
14 which this, this fire was pulled or this gun was pulled and  
15 that caused the kill. This case the testimony was that it was  
16 a period of trying to subdue him, trying to hold him down, a  
17 mutual fight, then a re-engaging in the fight that went on  
18 consistently, that the, the last fight occurred towards the  
19 entryway to the door, and then Roy stumbled, went down, and at  
20 some point deceased. This is not a situation that's akin to a  
21 shooting in the back or trying to get somebody -- causing a  
22 kill shot as they are leaving, even to the extent that that's  
23 necessarily relevant. Now, because even under the Solicitor's  
24 theory and I'd contend that if you enter a residence under  
25 improper representations then you would not be an invitee, but

1 for the purposes of this argument, we can presume that Roy was  
2 an invitee, and so you treat 16-11-440, subsection C as to  
3 what we proceed under, and State v. Douglas makes very clear  
4 that if -- even if they're initially an invitee and at some  
5 point they engage in an attack they now become an attacker and  
6 you don't waive your privileges under the stand your ground at  
7 that point. It's the same thing as if they had come in with  
8 an aggressive posture. They're now in your house. They have  
9 now converted from an accepted invitee to an aggressor, to an  
10 attacker, and that's the whole point of what the statute's  
11 meant to prevent. There's no -- doesn't appear to be any  
12 dispute that an attack occurred in a residence where she had  
13 the right to be. There doesn't appear to be any dispute that  
14 she was in fear for her safety. Doesn't appear to be any  
15 dispute that Mr. Rosenbaum was acting for her safety, as well  
16 as at a later point for his own safety. Now, it appears to be  
17 the only question is do you waive your rights under stand your  
18 ground if or rather are you obligated at some point to once  
19 you've subdued an attacker in your residence are you then  
20 obligated to allow him to leave with potentially to go obtain  
21 a weapon to further cause harm? I think that would not only  
22 negate the whole point of the statute, but the Castle Doctrine  
23 which this statute codified. I mean, it would --

24 THE COURT: So you're saying you can use deadly force to  
25 detain a person even though the threat of death or great

1 bodily harm is no longer there?

2 MR. BOUCHETTE: I'm not saying the, the deadly force to  
3 detain them because in this case the deadly force, the  
4 detaining of him was not deadly force. There was a detaining  
5 that occurred that reengaged into a mutual combat at the end  
6 while he's attempting to detain him while they're engaged in  
7 that last combat, at that point Roy tumbles, he falls. He  
8 goes down. Like I say, that's distinguishable from like in  
9 Oates or some of these cases where there is a -- what amounts  
10 to a, a shooting in the back, a kill shot type of thing.  
11 Roy's death at this point was clearly the result of a  
12 substantial or of continuous blows that occurred over this  
13 period of time where he was trying to use least deadly means  
14 where they were engaged in a mutual combat after responding to  
15 the initial threat. I mean, if we're to impose a duty on  
16 somebody responding to an attacker, then that negates the  
17 whole, the whole statute because the whole point of the  
18 statute is that it's a self-defense crime or a self-defense  
19 defense absent the duty element, the fourth phrase. So all  
20 you have to show is that, that there's an attack, that a  
21 Defendant was without fault in bringing on the difficulty.  
22 There's no testimony that she engaged Roy in a fight, that she  
23 caused the fight. The whole testimony is that he attacked her  
24 unprovoked. So she is without fault. The second is that the  
25 Defendant must have actually believed her or she was in

1 imminent danger of losing his life or sustaining serious  
2 bodily injury. Okay. That's what the testimony is. It  
3 appears to be un-refuted from both parties, and then the, the,  
4 the last element is if defense is based on an actual belief  
5 that the reasonable prudent man would feel the same under the  
6 circumstances. I don't think anybody's testified that there's  
7 anything that considers that somebody else under their  
8 circumstances would not feel threatened either for their life  
9 or for their physical safety, and under normal self-defense  
10 theory you then have to prove a duty to seek some kind of less  
11 deadly remedy, and that's what this statute seeks to  
12 eliminate. So if we're to, to read it in the way in which the  
13 Solicitor says though then you're imposing the very duty that  
14 they tried to remove when they enacted the statute, but I  
15 don't think we even need to get there because this is not a  
16 causing a death as he's trying to leave. The death occurred  
17 while they were fighting on the way out, but this is not a, a  
18 sort of kill shot type case. All right. The entire testimony  
19 is throughout the course of this he tried to subdue him, they  
20 -- he got loose. They reengaged in some kind of mutual combat  
21 back-and-forth and at some point some of those blows caused  
22 the death.

23       There's another issue particularly as to Ms. Durkin.  
24 There doesn't appear to be any contradicting evidence or no  
25 evidence has been put up contradicting what Ms. Durkin's role

1 is. I mean, her testimony as well as Mr. Rosenbaum's  
2 testimony was that the blow she delivered were to the legs and  
3 to the groin. Now, to me there's no evidence in the record  
4 that she committed the actus reus that actually caused the  
5 death and unless we're going to get into some kind of scheme  
6 or plan or conspiracy I don't see how you get in a hand of one  
7 hand of all type of defense when there's nothing in the record  
8 to contradict that the only blows that she would have  
9 delivered would have been to the leg and to the groin which  
10 would not have caused the death. So on those basis we'd ask  
11 that the motion be granted.

12 THE COURT: All right. Mr. Hyman.

13 MR. HYMAN: Your Honor, much of my argument, and I --  
14 I'll just -- I'll try to be brief, mirrors Mr. Bouchette's.  
15 There are some changes a little bit. Obviously, my client  
16 does admit to hitting Mr. Davis. The biggest issues with that  
17 is, I mean, the statute on its own says have the right to meet  
18 force with force, including deadly force. Had he had a gun he  
19 would have had the right to go in and presumably under the  
20 Castle Doctrine and, and to shoot him and kill him on the spot  
21 if he believed that he was protecting another person from  
22 great bodily injury or himself from great bodily injury.  
23 Judge, the other issue at this, at this juncture is there's  
24 been no testimony as to the manner of death. The only  
25 testimony has been that my client says he fell over. Now, the

1 manner of death that actually occurred was not a skull  
2 fracture. It was not brain bleeding or anything like that.  
3 The manner of death was, it was, excuse me, a laceration to  
4 the thoracic aorta in the chest.

5 THE COURT: Well, there's no evidence.

6 MR. HYMAN: And I, I understand that. Judge, my, my point  
7 being is there's, there's been no evidence at all as to what  
8 actually caused the death. My client --

9 THE COURT: But isn't the burden of proof on the Defense  
10 --

11 MR. HYMAN: Well --

12 THE COURT: -- to prove by a preponderance of the  
13 evidence --

14 MR. HYMAN: What I would -- what I was --

15 THE COURT: -- their entitlement to immunity?

16 MR. HYMAN: My, my client's last portion of his testimony  
17 was that when that last thing happened 10 minutes into the 911  
18 call was that when he fell over he said while he was not  
19 talking that he believed he was still alive. I believe it was  
20 his statement that he, he believed that he was still alive at  
21 that point. We don't know that he wasn't still alive at that  
22 point. You know, it's very similar to if somebody was to come  
23 in and be stabbed and run out of the house and die later,  
24 would, would that be, well, they were trying to get away, and  
25 in this instance you've got Ms. Durkin and my client multiple

1 times, multiple times saying, "When are you coming, are the  
2 police coming, are they here, are they coming, are they  
3 coming, are they coming, stay down, stay down, stay down."  
4 Now, under Ms. Livesay's theory I'm assuming they're supposed  
5 to just let him go. That to me when you call the police and  
6 you have a --

7 THE COURT: Well, no, the question and that's the  
8 distinction here.

9 MR. HYMAN: Correct.

10 THE COURT: I'm not saying they have to let him go. The  
11 question though is are they entitled to immunity under this  
12 statute.

13 MR. HYMAN: Correct.

14 THE COURT: I mean, this doesn't mean -- the ruling here  
15 today doesn't mean they're guilty of a crime. The ruling here  
16 today is just to determine whether or not they're immune from  
17 prosecution.

18 MR. HYMAN: Uh-huh. I, I believe in his testimony, again  
19 claiming, "I was trying to hold him down", he -- according to  
20 Mr. Rosenbaum the hits to the head and the hits from him with  
21 the bat were in that first portion. He was subdued after  
22 that. He says that he laid on him, he held him down. We  
23 don't know it -- I mean, if what the manner of death was  
24 caused by the first hits. There's nothing, and, and I think  
25 that Mr. Bouchette makes a good point, the distinction with

1 Oates is there's a difference between pulling out a gun and  
2 shooting someone as they're trying to evade you and a death  
3 that occurred that we -- that could have been actually caused  
4 by some of the very first blows that were later brought on and  
5 he, and he died. It was his testimony that when he, he laid  
6 -- "When he was on the ground, I thought he was still alive,"  
7 not, "He was dead, I hit him, beat him to death and he was  
8 dead right there." There's been no testimony of that. I  
9 think in, in a case like this I think there's been ample  
10 testimony that he believed that he was protecting someone  
11 else, and at times he also said that he believed that he was  
12 acting in self-defense to prevent Roy Davis from assaulting  
13 him and hurting him. Your Honor, I think under the 16-11-44  
14 -- 440(C) exception in regards to that when you're talking  
15 about whether or not the person was an invitee I think it, it  
16 falls under that, it falls under that, but also Ms. Durkin  
17 testified that the minute he got naked she said, "Get the fuck  
18 out." That was what she said. At that point she is  
19 rescinding that invitation. He's no longer an invitee. Your  
20 Honor, all that being said, along with what Mr. Bouchette  
21 said, I do believe that, that we have met our burden to at  
22 least move forward with this rather than you making a ruling  
23 at this point.

24 THE COURT: All right. Anything in reply? Nothing in  
25 reply? All right.

1 MS. LIVESAY: Yes, sir, Your Honor, just briefly, and I  
2 should have brought this up the first time. I'm sorry I  
3 didn't do as good a job as I should have. The State's  
4 argument is first of all that the issue he was no longer a  
5 threat, but also to be immune under stand your ground you  
6 cannot bring on the difficulty. Once that threat is over and  
7 he tries to leave, they brought on everything that happened  
8 after that. He's trying to leave and they're the ones that  
9 are beating him, "You ain't fucking leaving. You ain't  
10 leaving." That's bringing on whatever happens next. So by  
11 their very actions at that time they are at fault for bringing  
12 on the difficulty. They can't even meet prong one at that  
13 time. The guy's no longer a threat and you go over there,  
14 he's trying to leave. He's not doing anything wrong and you  
15 take the initiative and you're at fault for bringing on  
16 whatever altercation and whatever happens next. So they can't  
17 even meet prong one, and the essence of it is they've got to  
18 be in fear. They've not in fear. They cannot meet the  
19 elements by the sheer fact that the altercation's over. He's  
20 trying to leave. Then you bring on the fight by keeping him  
21 from leaving and starting this altercation with him. So just  
22 from the elements of self-defense and stand your ground they  
23 can't even meet element one from the sheer fact that they  
24 bring on the altercation.

25 As far as the cause of death, they had the burden to show

1 what the cause of death was. All we've got is the evidence in  
2 the record. So that's all we can look at at this point, and  
3 what we know is that Roy was up, talking and staggering out  
4 the door at that point trying to get help. He is alive. From  
5 that point to the point they cause everything that happens,  
6 put their hands on him, they cause whatever happens next, and  
7 after that is when we no longer hear from Roy again. So the  
8 evidence that we have is he's alive, and after this happens  
9 when he tries to leave and they attack him is on that 911 tape  
10 when we never hear from Roy again. If they wanted to put  
11 something up on cause of death that was their burden, but the  
12 evidence that they've put in here is showing that he wasn't a  
13 threat. They brought on the difficulty when Roy tried to  
14 leave. He's alive. Whatever happens between when he's trying  
15 to get out the door and when the police gets there he's  
16 killed. He's no longer heard from again. He's heard from for  
17 eight minutes until he tries to leave and then he's no longer  
18 heard from.

19 THE COURT: All right. All right. As I said earlier,  
20 the sole purpose of this hearing is to determine whether or  
21 not the Defendants are immune from prosecution under the  
22 Protection of Persons and Property Act and the Defendants bear  
23 the burden of proving their immunity under the statutes by a  
24 preponderance of the evidence. There is no evidence as to the  
25 manner of death. I don't know if it was the first blow when

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1 Mr. Rosenbaum walked in to the mobile home. I don't know if  
2 it was the blow to the leg when Ms. Durkin hit him as, under  
3 the State's theory, as he was trying to leave. I don't know  
4 if it was a combination of the entire fight, but the  
5 Defendants do bear the burden of proving their immunity by a  
6 preponderance of the evidence. Not having that, I'm going to  
7 deny the motion for immunity. I agree. Had Mr. Rosenbaum  
8 walked in, witnessed this sexual assault, hit him in the head,  
9 that blow caused the death right there, there would be an  
10 immunity. The way it is now, the statute, as I said, this  
11 does not determine guilt or innocence for this crime in any  
12 fashion. This is just to determine whether or not they're  
13 immune from prosecution under the act. The act does not say  
14 anything about how much force you can use when you're trying  
15 to detain somebody until the police arrive, and I don't know  
16 the answer to that. There may not be guilt here. I mean,  
17 where you come in and you witness a sexual assault and you try  
18 to hold the person there until the police arrive, how much  
19 force can you use, I don't know, but that's for another date  
20 and time and that's why we'll have to have a trial in this  
21 case. So I'm going to deny a motion. All right. Do you want  
22 a written order to that effect or is my explanation on the  
23 record sufficient for the Defendants?

24 MR. HYMAN: I think the explanation is sufficient for me.

25 MR. BOUCHETTE: I think that's fine, Judge.



STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY )

The State, )

Plaintiff, )

vs. )

2017-GS-26-5268

Diane Marie Durkin, )

Defendant. )

The State, )

Plaintiff, )

vs. )

2017-GS-26-5269

James Richard Rosenbaum, )

Defendant. )

Trial Transcript  
December 3-10, 2018

B E F O R E:

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

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1 THE COURT: All right. Anything from the Defendant  
2 Rosenbaum before we bring the jury in?

3 MR. ALEX HYMAN: Judge, we may have one motion concerning  
4 the statements. I'll let Travis take that.

5 THE COURT: All right

6 MR. TRAVIS HYMAN: Yes, sir, Your Honor, while we're on  
7 the topic of the statements, we did have a concern, obviously,  
8 since the two Defendants are being tried jointly and there are  
9 statements given to law enforcement, several statements given  
10 to law enforcement for both of them, we have concerns that Ms.  
11 Durkin will not be testifying. Of course, that's her decision  
12 to make and she'll make that decision at the time, but you  
13 can't undo the introduction of these statements. So we're  
14 asking the Court to make a preliminary ruling pretrial that  
15 the State be unable to introduce any statements made by Ms.  
16 Durkin to police during her interviews under the case Crawford  
17 versus Washington, which is directly on point with the facts  
18 of this case, Your Honor, in the sense that in that case it  
19 was a wife who was in interrogation by police which the U.S.  
20 Supreme Court has made very clear that is a testimonial  
21 statement for which the Sixth Amendment confrontation clause  
22 does apply. So as far as Ms. Durkin's statements, the video  
23 recordings that we watched today, it seems to be clear that  
24 it's testimonial, it invokes the Sixth Amendment right to  
25 confront the witnesses against you, and there's really no way

1 that they can introduce this statement and it not violate Mr.  
2 Rosenbaum's Sixth Amendment rights to confront the witnesses.

3 THE COURT: Well, and I, and I understand that. I'm  
4 going to be honest with you, there's a lot of Ms. Durkin's  
5 recorded statement that I don't understand what she's saying.  
6 I don't understand what's being asked. Do you have anything  
7 specific that does --

8 MR. TRAVIS HYMAN: As far as --

9 THE COURT: -- prejudice your, your client and violates  
10 the confrontation clause?

11 MR. TRAVIS HYMAN: Which statement? I just need clarity  
12 as to, to the inquiry that you're referring to that's  
13 inaudible.

14 THE COURT: The one that they -- we had the Jackson v.  
15 Denno on last night.

16 MR. TRAVIS HYMAN: The entire thing, in, in our opinion,  
17 the entire thing needs to be suppressed because if any of the  
18 statement comes in, it's testimonial, so Sixth Amendment  
19 applies. Mr. Rosenbaum hadn't had an opportunity to cross  
20 examine Ms. Durkin on those statements that she's making. You  
21 know, the, the interrogation goes on for several -- a long  
22 period of time, I mean, two to three hours, and there's no way  
23 to redact a statement like that. It can't be redacted in any  
24 way. Even if it alludes to a Codefendant then it violates the  
25 Sixth Amendment right to confront the witnesses that are

1 brought before him.

2 THE COURT: Well, I mean, but there are, there are parts  
3 of that statement that are not prejudicial to your client. I  
4 mean, where she says she's at the farm. She picks him up.  
5 She takes him to the ATM. They get \$20. They go back to the  
6 house, all of that. Now, because there's a large portion of  
7 that statement that does not involve Mr. Rosenbaum at all, and  
8 I think that that is admissible. There are parts where she is  
9 saying what Mr. Rosenbaum does that I agree with you. There's  
10 a confrontation problem there, a Bruton issue there. However,  
11 there is a large part of that that I don't understand what  
12 anybody's saying, and I -- and it's almost like I -- the jury  
13 might pick up on something that I didn't understand and I --  
14 and it's almost like we're going to have to go back through  
15 this thing piecemeal to determine what creates a confrontation  
16 problem and which doesn't.

17 MR. TRAVIS HYMAN: Well, Your Honor, I think that under  
18 the case law of Crawford v. Washington and, and several South  
19 Carolina Supreme Court cases that go and talk about Bruton  
20 issues, I mean, the State v. Jackson case, there are, there  
21 are several cases that talk about the insufficiency of  
22 redacting a statement, and they're more, more dealing with a  
23 Codefendant, a non-testifying Codefendant's confessions and  
24 then one statement implicates the other Defendant. As far as  
25 the Sixth Amendment goes, I think there are several

1 interrelated issues. So I mean, our first request to the  
2 Court is to make a preliminary ruling that any of her  
3 statements to police in that videotape be inadmissible in  
4 court unless she takes the stand, and then if she takes the  
5 stand and she says something inconsistent, the State has the  
6 video to try to impeach her with that. So they lose nothing  
7 by us asking the Court to make that ruling, and, and I think  
8 the case law makes it clear that it's not just the statements  
9 that Diane would make to police that implicate Mr. Rosenbaum  
10 that create a Sixth Amendment issue, it's all of her statements  
11 that he's not given the opportunity to confront the witnesses  
12 that the State's putting up there. I mean, by, by them  
13 playing the video there are pieces of her statement that  
14 they're going to try to use against Mr. Rosenbaum to convict  
15 him of murder.

16 THE COURT: And I understand that, and that's what I'm  
17 trying to identify, what parts of that statement.

18 MR. TRAVIS HYMAN: Well --

19 THE COURT: Or is it your argument that it's so  
20 intermingled that it makes the whole statement inadmissible?

21 MR. TRAVIS HYMAN: I think there are, there are several  
22 parts of that statement that would need to be redacted  
23 alternatively not only for Sixth Amendment violations but for  
24 several other violations like the police officers misstating  
25 facts and narrating hearsay to her throughout the thing,

1 throughout the entire interview. I'm looking at my notes from  
2 yesterday. We played the, the statement, Your Honor, and I  
3 mean, at 24:18 she's mirandized, and then from there on there  
4 are several parts. It looks like at 28 they talk about her  
5 being raped previously and molested by her father. It's not  
6 exactly a confrontation clause problem, but that would need to  
7 be redacted if her statement came in.

8 THE COURT: Well, how does that prejudice your client?  
9 How does that violate any of his, Mr. Rosenbaum's rights to --

10 MR. TRAVIS HYMAN: As far as the, the entire recording  
11 goes, that particular segment I wouldn't be arguing violate  
12 his Six Amendment rights. I'd be arguing that it should be  
13 redacted because it violates the rules of evidence. It's a --  
14 it's irrelevant. It violates 403, and it has to do with  
15 things that are just completely unrelated to the case, but  
16 then getting to 36:30 this is where we start talking about my  
17 client's rights, more specifically where they start discussing  
18 Mr. Rosenbaum's temper and him being disabled, at 40:21  
19 talking about his schedule that day, even, even things as  
20 slight as that, he's not given the opportunity to cross  
21 examine her on, and she's -- he's, he's having his Sixth  
22 Amendment rights violated. If the jury gets to hear her  
23 statements and he's not given the opportunity to cross examine  
24 her on them, no matter if it's directly or indirectly  
25 implicating him in a crime, it'd be a Sixth Amendment

1 violation under Crawford. I mean, I'm not, I'm not contesting  
2 the 911 tape where she makes statements because that is more  
3 of a non-testimonial. I mean, in the Crawford opinion they  
4 talk specifically about the difference between the testimonial  
5 nature of statements and the non-testimonial nature. So a 911  
6 tape, if there's an ongoing emergency or a reason to be  
7 talking to the non-testifying Codefendant it may be non-  
8 testimonial, so the confrontation clause doesn't apply, but  
9 like Crawford court says when a police interrogation is  
10 ongoing, the entire statement is testimonial, so the Sixth  
11 Amendment applies, if the statement's played and she doesn't  
12 testify, not just the, the small segments of the statement  
13 where she talks about him, but I'd, I'd be glad to talk about  
14 the entirety of the videotape as well and go through the parts  
15 that I was taking notes of yesterday that alternatively if for  
16 some reason the tape was played to the jury that we would  
17 object to certain portions of it coming in not only for  
18 confrontation clause violations, but for several evidentiary  
19 objections that we would make to portions of that tape needing  
20 to be redacted. So I mean, essentially, at this time, it, it  
21 hasn't come up yet. Of course, during the trial, we would  
22 object to it coming in, and that may be the time where you  
23 would want to look more closely at redactions of the tape  
24 being, being made, but I'd be glad to hand up a copy of the  
25 Crawford case or any of these other cases to the Court if you

1 would like to consider looking at it, but I, I just think that  
2 it's, it's clearly directly on point with the case at hand,  
3 and, and Crawford, again, this was a situation where the  
4 police interrogated the wife of the Defendant about a  
5 stabbing, and she gave information to the police, and the  
6 court goes on to explain how later at the trial the wife  
7 invoked the spousal privilege and didn't testify. The tape  
8 was played. U.S. Supreme Court said that that entire tape's  
9 testimonial, the introduction of it and the jury being allowed  
10 to see those statements and a Defendant not having an  
11 opportunity to cross examine her on the statements violates  
12 the confrontation clause because it's testimonial in nature,  
13 no matter if it violates the rules of evidence or not. So I  
14 think that in regards to her tape and that videotape there are  
15 just several not only constitutional issues, but also  
16 evidentiary issues, and you know, alternatively, like I said,  
17 we would be making a motion that several portions of that tape  
18 be redacted, but first and foremost, while we're talking about  
19 the, the tape, it just seemed to be in the, the Court's more  
20 efficient manner for us to address the Crawford motion because  
21 if the Court's inclined to make a preliminary finding that the  
22 introduction of Diane Durkin's videotape interrogation to  
23 police should be inadmissible because it would violate Mr.  
24 Rosenbaum's Sixth Amendment rights to confront the witnesses.  
25 If, if that's the Court's ruling, then it's kind of

1 unnecessary for us to focus on the exact time periods of the  
2 tape that we have to redact. You know, so that was -- that's  
3 kind of the reason that I wanted to bring it up early on  
4 pretrial so that we can, can address this matter and have an  
5 idea how the Court would be inclined to rule on it preliminary  
6 before we get the jury in here and the State starts calling  
7 their witnesses.

8 THE COURT: All right. Mr. Bouchette, any argument?

9 MR. BOUCHETTE: Your Honor, just so the record's clear,  
10 we essentially join in that motion and make a separate motion  
11 on behalf of Diane for the inverse for that statement which is  
12 that Mr. Rosenbaum gives. Now, I don't know if Mr. Rosenbaum  
13 will or won't testify, but the point to make is and I don't  
14 know that we'd have as many evidentiary objections with regard  
15 to Mr. Rosenbaum's that they may have of ours, but under  
16 Crawford, I think the analysis is, you know, is it testimonial  
17 and are they -- is it a non-testifying party, in which case if  
18 those two factors are met, then the whole interview's thrown  
19 out, just as if Your Honor had made a finding that the  
20 statements or that the interrogation was not voluntary then it  
21 wouldn't be the purview of the Court to go in and try to  
22 figure out which sections were prejudicial or those statements  
23 that weren't prejudicial. If the, if the interview is done  
24 under those factors, then it doesn't come in, and so, like I  
25 said, I think we're in the same, we're in the same boat.

1 Obviously, if he testifies then it's a non-issue and they can  
2 play it, but or if, or if it was to be a rebuttal type  
3 situation they can play it, but we make the same motion on  
4 essentially the same grounds as it would relate to Mr.  
5 Rosenbaum's interview testimony.

6 THE COURT: All right. What's the State's position?

7 MR. HELMS: Yes, sir, Your Honor. I think there's a lot  
8 that we can agree on here. One, that Bruton is an issue. All  
9 parties agree with that. I think in terms of Crawford, the  
10 general -- the, the ruling in Crawford was that a Defendant  
11 has a right to confront those who offer testimony against that  
12 person. So if we do consider her, and I, I, I think we can,  
13 her statement to law enforcement testimonial. I think  
14 Crawford says that. The rule goes on with a caveat. It said  
15 if it's testimony -- if a statement is testimonial in nature,  
16 first of all, it has to be inculpatory against the  
17 Codefendant. So Ms. Durkin's statement would have to be  
18 inculpatory against Mr. Rosenbaum. If that's the case, and  
19 that is testimonial in nature, he has to have a right to  
20 confront her. If he's not allowed to confront her, there is a  
21 caveat. It has to -- there has to be a valid hearsay  
22 exception, and at that time we would argue that there is an  
23 applicable hearsay exception. However, Bruton does exist, and  
24 he does have a right to confront her against statements that  
25 she made against him generally speaking. For that reason, I

1 don't foresee us, and we're aware of that, attempting to  
2 introduce those type of statements -- portions of those  
3 statements, portions of her statement that do implicate him in  
4 a crime. I think that we could actually before we attempt to  
5 make those kind of introductions during the course of this  
6 trial get together with Defense counsel and resolve a lot of  
7 these issues amicably.

8 With regard to statements that she made that are only  
9 inculpatory against herself, I think those are, are, frankly,  
10 fair game, and I think case law supports that. Bruton says  
11 that it's dealing with statements that she would make that  
12 implicate him on their face. For example, if she said, "We  
13 both went to Burger King together," and it turns out Burger  
14 King was robbed that day that's not inculpatory on its face.  
15 If she says something to the effect of, "We both went to  
16 Burger King together and robbed the Burger King," there, there  
17 we're dealing with Bruton. So that's our position. First and  
18 foremost, we can resolve a lot of these I honestly think by  
19 agreeing to redact a lot of that stuff because --

20 THE COURT: Well, they're, they're arguing that it's not  
21 within the Court's purview to redact, that if it's testimonial  
22 and the Codefendant is not taking the stand, they don't have a  
23 chance to cross examine, that the State could not use any part  
24 of the statement. They're telling me that's what Crawford  
25 says.

1 MR. HELMS: That is not my interpretation of Crawford,  
2 Your Honor.

3 THE COURT: Okay.

4 MR. ALEX HYMAN: Judge, I, I can tell you as far as  
5 Crawford goes, that case is, I mean, almost exactly on point.  
6 It involves a, a wife who was attempted to be raped. Her  
7 husband came home. She led her husband to this place. She  
8 led him there, then gave a statement that she did that, and  
9 the whole statement was held out. The Jackson case they even  
10 argue in that. The Jackson case is a South Carolina case.

11 THE COURT: So they said the whole statement in its  
12 entirety.

13 MR. ALEX HYMAN: The whole statement, and in fact, in --  
14 that, that State v. or, excuse me, the, the Crawford v.  
15 Washington case is -- it's a Washington case, Judge, and they  
16 actually let the statement in based on a hearsay exception.  
17 The Supreme Court said no, absolutely not.

18 THE COURT: All right. Well, you have just handed up  
19 about a 35-page case. We're going to have to take a recess,  
20 let me read it and I'll let you know.

21 MR. HELMS: If I may add one more thing, Your Honor,  
22 we're not talking about a Codefendant that is also charged in,  
23 in a joint trial. We're talking about a potential witness.  
24 This is a statement -- these would be statements against  
25 interest against Ms. Durkin, for example, and that's the

1 distinction, I believe, between the wife's potential  
2 testimony, who is not a Codefendant, there would be no hearsay  
3 exception, and Ms. Durkin's statements. She is an indicted  
4 Codefendant on trial today who made statements against  
5 interest, and I think that's what's applicable here.

6 THE COURT: All right.

7 MR. ALEX HYMAN: Judge, may I hand up the Jackson case  
8 because that is a Codefendant on a murder trial.

9 THE COURT: All right. All right. Let's take a break.  
10 Let me read the law, see what it says. Do I need to go ahead  
11 and cut the jury loose until tomorrow?

12 MR. TRAVIS HYMAN: Your Honor, could I add one thing to,  
13 to clarify some of this?

14 THE COURT: All right.

15 MR. TRAVIS HYMAN: I'm not asking you to, to read every  
16 case on, on Crawford, of course, but just to clarify, after  
17 Crawford the Supreme Court came out with the case of Davis  
18 versus Washington. So the Crawford opinion is the U.S.  
19 Supreme Court, the first time they go in and change the  
20 standard from whether or not the statement's reliable to  
21 whether or not it's testimonial. So in that court that's what  
22 we're arguing is directly on point because it's the, the  
23 statement of non-testifying wife that was interrogated. They  
24 make it clear that that's testimonial. They don't define  
25 testimonial and that's where Davis v. Washington comes into

1 play and, and some of these other Bruton issues are really  
2 more on point with the confessions where they allude to the  
3 Codefendant in one, one or two words and they can redact maybe  
4 that name to make it not a violation of the confrontation  
5 clause and, and those are more non-testimonial type  
6 statements. So this is, again, not really pertaining to the  
7 911 statements but all the police interrogations.

8 THE COURT: Well, initially, the only thing I see from my  
9 initial review is that it's inadmissible if the person making  
10 the statement is unable, is unavailable, and therefore, not  
11 subject to cross examination. So I think before we even get  
12 into this both Defendants are going to have to assert their  
13 Fifth Amendment right and choose not to testify. I don't  
14 think I can rule preliminarily because under the definition of  
15 an unavailable witness it's they can't be found, they don't  
16 know where they are or it is, as your clients, indicted people  
17 who are exercising their right.

18 MR. ALEX HYMAN: I don't think they can exercise that  
19 until the end of the State's case. Now, if they were to not  
20 exercise that right, certainly the statements would come in  
21 because there would be a chance to cross examine.

22 THE COURT: And I understand that. So the critical  
23 question is not whether they're unavailable. The critical  
24 question is they're here -- well, I mean, the critical  
25 question is can I make a ruling on this motion before we know

1 whether or not the Defendants are unavailable, in other words,  
2 before we know whether or not they're going to exercise their  
3 right --

4 MR. ALEX HYMAN: And, and quite honestly --

5 THE COURT: -- not to testify.

6 MR. ALEX HYMAN: -- I, I don't know if my client is going  
7 to testify. I mean, I never make that decision until it's  
8 there, but Judge, the Jackson case specifically says the trial  
9 court's admission of Codefendant's redacted statements during  
10 joint murder trial violated Defendant's right of  
11 confrontation, confrontation. That's a Codefendant.

12 THE COURT: But did the court do that before the  
13 Codefendant exercised their right?

14 MR. ALEX HYMAN: Well, they, they didn't do it at all. I  
15 mean, that's -- that -- it ended up going to the Court of  
16 Appeals. So in, in that one they let the statement come in.  
17 They, they said, "Well, it's redacted. It's fine." It came  
18 in. They said -- the Court, the Court of Appeals said trial  
19 court's admission of Codefendant's statements to police was  
20 not harmless error, and that's the first two holdings on the  
21 very first page of Jackson.

22 THE COURT: And I understand that, but when did the court  
23 make the ruling to redact, I mean, or was this a case where  
24 the Defendant did not testify and did the Court know that the  
25 Codefendant was not going to testify when it made its ruling?

1 MR. ALEX HYMAN: I mean, look right here, Judge.

2 MR. HELMS: Judge, I don't think you could know that.  
3 They could always exercise that right even if they say they  
4 don't want to in the beginning.

5 THE COURT: And that's, that's the problem I'm having  
6 here. I don't know --

7 MR. HELMS: Judge --

8 THE COURT: -- because the definition of an unavailable  
9 witness, one of the definitions of an unavailable witness is a  
10 Codefendant who exercises his or her right under the Fifth  
11 Amendment not to testify.

12 MR. HELMS: But I would just like to remind everybody, we  
13 will not get into this early on in this trial. This will be  
14 much later. I think we have plenty of time to flesh this out.  
15 While we have witnesses here and a jury here, I think we could  
16 proceed. I don't, I don't think a pretrial ruling is  
17 necessary. I don't think our positions are going to change.  
18 I think we could begin the trial today.

19 THE COURT: So you're saying before there is any even  
20 reference whatsoever to Mr. Rosenbaum --

21 MR. HELMS: Those statements.

22 THE COURT: -- or Ms. Durkin being taken to the police  
23 station and put in an interrogation room and questioned and  
24 the contents of that, none of that'll be brought up until  
25 we've had an opportunity to address it?

1 MR. RICHARDSON: That is exactly what we're saying. The  
2 only thing --

3 THE COURT: Okay.

4 MR. RICHARDSON: -- and we need to flesh it out here is  
5 Mark Johnson, the, the last statement that you heard, the -- I  
6 don't think there was any objection, that's the only thing  
7 that would come up today. That is a statement by Ms.  
8 Rosenbaum [sic] about the facts, but nothing --

9 THE COURT: And I, and I don't view that as a testimonial  
10 statement. I think, I think that that comes in because that's  
11 not -- that's -- to me that's not testimonial. He didn't even  
12 ask a question.

13 MR. RICHARDSON: Exactly.

14 THE COURT: That's almost an excited utterance on her  
15 part.

16 MR. ALEX HYMAN: And Judge, I, I think that, I mean,  
17 that, that's completely different from what we're talking  
18 about --

19 THE COURT: Yeah.

20 MR. ALEX HYMAN: -- as far as the testimonial statements.

21 MR. HELMS: Agreed.

22 MR. RICHARDSON: We're just talking about the statements  
23 that were given at the police station, the two hour.

24 THE COURT: All right. Well, based upon the State's  
25 assurance that there's not going to be any reference to either

1 Defendants' detention, questioning, statements made until I've  
2 had an opportunity to read these cases and make a decision, I  
3 say let's go ahead and go now rather than keeping the, the  
4 jury back in the room any longer. All right.

5 MR. RICHARDSON: Thank you.

6 MR. ALEX HYMAN: Thank you, Your Honor.

7 THE COURT: All right. So I'm going to take your motion  
8 under advisement and I'll let you know. Okay?

9 MR. TRAVIS HYMAN: Thank you, Your Honor.

10 THE COURT: All right. Anything further from the Defense  
11 Rosenbaum before we bring the jury in?

12 MR. ALEX HYMAN: No, Your Honor.

13 THE COURT: Anything from the Defense Durkin?

14 MR. BOUCHETTE: No, Your Honor.

15 THE COURT: All right.

16 MR. ALEX HYMAN: Your Honor, from housekeeping, I do  
17 believe that Jarrett and I had talked and he would like to go  
18 first as far as us two. I just didn't want to get any out of  
19 order if you were asking me or that kind of thing.

20 THE COURT: You talking about as far as cross  
21 examinations or opening statements?

22 MR. ALEX HYMAN: Openings, no, openings.

23 THE COURT: Okay.

24 MR. ALEX HYMAN: Yes, sir, just openings.

25 THE COURT: All right. So opening statements State, Ms.

1           THE COURT: All right. Ladies and gentlemen, we'll begin  
2 the trial of this case with the opening statements, and as I  
3 told you, these opening statements are not evidence. It is  
4 simply the attorneys' contention as to what they feel the  
5 issues in this case are. All right.

6           MR. RICHARDSON: Your Honor, if it please the Court?

7           THE COURT: Yes, sir.

8           MR. RICHARDSON: Ladies and gentlemen, what you're going  
9 to hear about today, it's Tuesday, and the rest of this week  
10 about murder, and murder in the most gruesome manner  
11 imaginable. This just doesn't happen in the movies, doesn't  
12 happen in some gangster film or some horror flick, doesn't  
13 even happen all the time in your worst dreams. Sometimes it  
14 happens in real life, and that's what happened to Roy Davis on  
15 July 11<sup>th</sup>, 2016.

16           See, over the course of the next few days, this is not  
17 going to be a whodunit. This is so different than most cases  
18 you may have heard about on TV or we may have prosecuted.  
19 It's not a whodunit. The evidence will show clearly that  
20 James Rosenbaum and Diane Durkin used a steel bat to beat Roy  
21 Davis to death in their trailer on July 11<sup>th</sup>, 2016. That is  
22 going to be uncontroverted. This not a whodunit. This is a  
23 what-is-it because, ladies and gentlemen, what took place is  
24 there was a plan to make this look like something else. There  
25 was a plan to make this look like Roy Davis was over there and

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1 was assaulting Diane Durkin and James Rosenbaum or Jim  
2 Rosenbaum came home and started beating him to death. This is  
3 not a whodunit. This is a what-is-it.

4 You're going to, immediately, from the first witness,  
5 you're going to hear this 911 tape. Again, like no other case  
6 that you have ever been involved in, a portion of this murder  
7 was caught on this tape.

8 Let's back up for just a minute and let me introduce you  
9 to someone that can't be here today. His name is Roy Davis.  
10 Roy is a farmhand. He has lived his whole life in Aynor and  
11 in -- excuse me, in Conway and Marion, locally, and Roy was  
12 working at a local farm right if you're going toward Aynor  
13 turn left at Tractor Supply and down that way. That road is  
14 548. That leads into a bunch of roads back there, Bottle  
15 Branch Road and, and those heading back toward 378.

16 Roy worked on a farm and had been there for several  
17 years. Roy worked very hard. He was a very tiny man, about  
18 145, 150 pounds, worked very hard, partied very hard. He had  
19 met Diane Durkin who constantly went up there and picked up  
20 Roy. See, Roy, you'll hear evidence, couldn't drive, didn't  
21 have a license, never had a license, never had a car, never a  
22 reason to have a license, but Diane would go and pick up Roy,  
23 and she had done this numerous times. She would pick him up.  
24 They would go somewhere. They would party for a little while.  
25 They would have sex, and then she would bring him back to the

1 farm. He didn't have any other way to get where he was going.  
2 That's all well and good when James is out of town. There  
3 were times that James would be in Charleston or other places  
4 and couldn't be around, and she would go and pick him up at  
5 that farm, and there are witnesses that will come in and tell  
6 you about the times that Diane had come and picked up Roy in  
7 the past and would stay gone for an hour or so and then she  
8 would bring him back.

9 James had been out of town for a while. He gets out,  
10 finds out that Roy is in the picture. This infuriates James,  
11 and James make the call, evidence will be that James tells  
12 Diane, "It's either you're going to get out of this house or  
13 we're going to get rid of Roy." Okay? Diane weighs these  
14 options. Now, the first option, getting out of the house, it  
15 ain't just getting out of the house. Everything she puts on  
16 her back is provided by Jim Rosenbaum. When it's hot he cools  
17 -- he pays to have the place cooled down. When it's cold he  
18 has the place heated. Her car, her insurance, everything  
19 she's got is tied up in Jim Rosenbaum.

20 Roy is just a side attraction, fine to have fun with but  
21 compared with the other, she takes the more convenient and  
22 that is to stay with Jim. Evidence will be that, "If that is  
23 to happen you've got to get him back over here one more time,"  
24 and that date happened to be July 11<sup>th</sup>, 2016, where she goes to  
25 the farm, picks him up, brings him back to the trailer.

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1 You'll hear evidence that James, Jim Rosenbaum was parked  
2 about 200 yards in a side lot. You'll see some maps. It'll  
3 make a little bit more sense to you, but about 200 yards  
4 parked and waiting for him to come in.

5 When enough time has passed for Roy to have his clothes  
6 off, Jim comes in the back door with a pair of these MMA, not  
7 really boxing gloves, but the, the gloves that are -- that  
8 come up about here, a new type of boxing kind of mixed martial  
9 arts, comes in with a pair of those and a baseball bat, and  
10 you'll hear on this tape that bat striking Roy Davis over and  
11 over and over again, and you will hear Diane Durkin take the  
12 bat through part of this and hit him, also.

13 Now, a multitude of weapons were used. You'll hear about  
14 that. The MMA gloves, Jim Rosenbaum come in loaded for bear,  
15 several pellet guns, and not just a regular old pellet gun  
16 but, but almost like a small caliber rifle.

17 Make no mistake about it, the reason Roy Davis is dead is  
18 that he was beat about the head with a baseball bat, and you  
19 will hear him on this tape begging for his life. In all of  
20 those last things you'll hear him die on the phone. You'll  
21 hear him say through the functions of death, "I can't move."  
22 You'll hear all of that, and you got to pay pretty good  
23 attention because, you know, phones, especially speaker phones  
24 when you're talking into them it sounds kind of like a barrel,  
25 but pay attention because that really is what this case is

1 about, and you've got to ask yourself because I've been  
2 straight up and, and front with you. You're going to have to  
3 make the determination is this self defense? Is this a plan?  
4 Is this a plot? Is it really self defense or is this cold-  
5 hearted murder, and you're going to have to listen to Diane as  
6 she speaks on the phone and ask yourself is this a person  
7 normally? Does this sound like a victim of some sort of a  
8 crime or does this sound like somebody that's enraged and  
9 looking to kill somebody, and ask yourself when you listen to  
10 James or Jim, does this sound like he's out of his mind or is  
11 he walking around and stalking a now defenseless victim in Roy  
12 Davis when Roy is saying, "I can't move."

13 You'll hear from pathologists, and you'll hear sort of  
14 the function of death, how the body shuts down, and you got to  
15 ask yourself, is this a plot and a plan? Are they setting  
16 this young man up or is this some sort of a crazy rapist  
17 that's broke in and trying to assault somebody and then the  
18 husband just happens home on it.

19 Now, remember, you'll hear evidence that he's parked  
20 right down the road laying in wait watching. You'll hear  
21 evidence that she brought him over. You'll hear evidence that  
22 he even took his shirt off and had folded it up, and you've  
23 got to ask yourself when you're listening to this does that  
24 sound like somebody attempting a rape or does that sound like  
25 somebody that's been here before because that's what it's all

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1 about. There is no other people. You won't hear about  
2 anybody else that just happened in there. You got to ask  
3 yourself does this make more sense that Roy had been there  
4 numerous times and that this was just a payback. Does this  
5 sound like jealousy or does this sound like a very aggrieved  
6 husband that's coming in to say, "Wow, what in the world's  
7 taking place here?" Look at the injuries. Look at all of  
8 this stuff because at the end of the day it's, it's pretty  
9 simple, and the Judge'll tell you it's -- we're getting the  
10 cart ahead of the horse a little bit, but if it's self  
11 defense, that is a complete defense. If it's defense of  
12 others you have got to turn them loose. If it is murder it is  
13 murder. It really is that simple. You're going to have to  
14 determine it, and there's going to be a lot of witnesses, but  
15 right out of the gates you're going to hear that 911, and just  
16 because it's the first witness I really need you to pay  
17 attention to it. You need to hear the sounds. You need to  
18 hear what is being said. You need to hear how it's being  
19 said. You need to hear the victim as he dies. Does, does  
20 this sound like a, a rapist? I think she calls him a  
21 pedophile, names a whole long list of stuff against Roy as an  
22 indictment against him as to why he should die. All of that's  
23 on the tape.

24 You're going to hear from several other witnesses, but  
25 the first one's a big one. You're going to hear from the guy

1 that, that owns the farm that Roy works at. His name's Randy  
2 Hucks, and he'll tell you that this has been going on for a  
3 long time. She's always over there picking up Roy. Roy knows  
4 her. She knows Roy. Randy Hucks knows her. This isn't out  
5 of the blue. This isn't out of the blue at all.

6 You're going to hear from Officer Johnson, one of the  
7 first witnesses. He'll tell you what it looked like, but  
8 shoot, he didn't know anything. He pulls up because he gets a  
9 call, and he'll describe a little bit about the scene. CSI  
10 people like you see on TV, they collected blood. It's  
11 important to know that when the blood was collected, when the  
12 -- when they came through and swabbed stuff, it was already  
13 clotting. That tells you that they didn't call 911  
14 immediately. Roy was in bad shape when they called 911  
15 because they didn't want but one story told here and that was  
16 to be their story, and they accomplished that. Roy is dead,  
17 and that's why they're here on, on murder.

18 You're going to hear from different people to say where  
19 the phones are at during these times, the location of the  
20 phones, showing Jim right across the, the road about 150, 200  
21 yards away. You're going to hear that Jim and Diane Durkin  
22 talked for seven, eight, nine times during the time that Roy  
23 was with them. There was no surprise here, no surprise at  
24 all. They all knew who -- they had video of Diane, you'll see  
25 that, in the Money Saver after she picks up Roy getting money

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1 out, getting \$20.

2       You're going to hear from quite a few witnesses. This is  
3 not going to take long. It's not going to go into next week,  
4 but I submit to you the first witness in that tape is pretty  
5 doggone important because that is the words and the manner of  
6 speaking them coming from Jim Rosenbaum in the background, Roy  
7 Davis in the background, "Man, she's lying to you. I promise.  
8 This, this isn't what it appears. This is, this isn't it,"  
9 begging for his life, but the story that he was telling is not  
10 a story that they wanted to hear, and you'll hear Diane also  
11 take the bat and hit Roy several times. Roy was dead when the  
12 police got there. You'll hear from a doctor telling you, you  
13 know, his wounds, what he as an expert believes is the manner  
14 and cause of death, but it ain't got nothing to do with the  
15 pellet gun. It ain't got nothing to do with the boxing  
16 gloves. That just shows the intent of James Rosenbaum as he  
17 came into that house, intent to do a very destructive work, a  
18 very destructive work and it worked. Roy is dead. Roy is  
19 dead at their hands. That's why I'm telling you this is  
20 murder, cold-blooded murder. You need to listen and hear it  
21 for yourself. It's going to be tough to listen to, but  
22 please, you will probably only get to hear it once in the  
23 trial, then you'll be able to take it back with you in the  
24 jury room and listen to it as much as you want to, but in  
25 trial you'll only get to hear it once, and it's, it's pretty,

1 pretty important. There'll be other experts. There will be  
2 people to talk about blood spatter and how different stuff  
3 appeared. The great thing for you guys is we don't have to  
4 figure it out. There's not going to be anybody say, "Wasn't  
5 me." It's going to say, "Was me, but I had an excuse to do  
6 it." Is it planned out murder or is it just happenstance,  
7 bringing a guy home, that guy decides to rape, the husband  
8 decides to come home, all of that working together.

9 I thank you for your willingness to sit on this jury. I  
10 promise it's not going to be a very long trial, but it is a  
11 very important trial to the Davis family, to the people of  
12 South Carolina, to the people of Horry. I appreciate your  
13 willingness to hear this case, and just please listen intently  
14 and listen to the Judge's instruction. Listen to the Defense.  
15 Don't make up your mind after we've finished our case. If  
16 they choose to put something up you it owe to them, too. You  
17 need to listen to both sides, but it's not a whodunit. It's a  
18 what-is-it. Thank you, and I look forward to seeing you over  
19 the next two, maybe, maybe three days. Thank you.

20 THE COURT: Mr. Bouchette.

21 MR. BOUCHETTE: Your Honor, may it please the Court?

22 THE COURT: Yes, sir.

23 MR. BOUCHETTE: Ladies and gentlemen of the jury, good  
24 morning to you. That was an interesting story we just heard  
25 by our Solicitor, and before I take a few moments and tell you

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1 what you're going to hear, I want to take a few moments and  
2 tell you why you're here, and as part of that I want to extend  
3 my most sincere gratitude for you all's willingness to serve  
4 here today. You know, this trial got started, or excuse me,  
5 this trial got requested over two and half years ago, and I on  
6 behalf of Diane Durkin and Mr. Hyman on behalf of James  
7 Rosenbaum, when we first got the evidence in this case, and we  
8 did it because it was clear to us Diane Durkin was a victim of  
9 an assault that occurred in her own home. It was only for the  
10 grace of God that James Rosenbaum came home, and not only  
11 prevented the -- stopped the assault, he prevented a rape from  
12 occurring that night, and so why are you here? Why has, why  
13 has that created the need for you all to be sitting where  
14 you're sitting, and I guess the quickest way to explain it or  
15 the best way to explain it is like this, see, I'm primarily a  
16 civil lawyer. I spend most of my days arguing about money,  
17 and some of the times when I'm not arguing about money, I'm  
18 arguing or dealing with somebody from the government, the tax  
19 department, the zoning department, the highway department,  
20 whoever the case may be, and what I've learned is, you know,  
21 once the government kind of makes up its mind about what it  
22 wants to do, you don't have a lot of say in the matter.  
23 You're stuck, and that's what kind of what happened here. You  
24 see, within the first hour, couple of hours in this case,  
25 these other witnesses you're talking about they weren't in the

1 picture, but Detective Brad Thompson with the Horry County  
2 Police Department he'd made up his mind, and that was over two  
3 and half years ago, and these folks have been stuck with that  
4 decision since then, but thankfully, you're accused of a crime  
5 in this country, you don't have to be stuck with it forever.  
6 There is some hope on that horizon, and there is some light at  
7 the end of the tunnel, hope you all are that light and you all  
8 are that hope that Diane Durkin and James Rosenbaum have been  
9 holding onto for the past two years, and it's my honor and  
10 privilege to be here. Let me say that again, I'm honored to  
11 represent Diane Durkin. I'm, I'm a young lawyer, and in civil  
12 cases we don't go to trial that much because everybody's  
13 afraid, well, "I might lose, and if I, if I lose I might have  
14 to pay some money." Diane Durkin is not worried about losing  
15 any money here today, folks. She's risking the loss of a  
16 whole lot, whole lot more than that. She's put her faith in  
17 me as her advocate and her faith in you all as members of this  
18 community that you're going to do your job and uphold that  
19 sworn duty.

20 Let's talk a little bit about the facts in this case. I  
21 want you to imagine for a moment the following scenario, and I  
22 want you to imagine that you're law enforcement. You get a  
23 call. It's a 911 call. The caller is screaming, begging for  
24 help. She tells the operator that she's been assaulted and  
25 that the assailant is attempting to rape her, says that her

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1 boyfriend is there and struggling with the assailant. You  
2 hear in the background constantly, "Come quick, please come.  
3 When are you getting here? Come quick." This goes on for  
4 around 20 minutes while the woman and man struggle with the  
5 altercation.

6 When you arrive on the scene, find a woman, her eye is  
7 blackened, her shirt's torn, she's hysterical. She's clearly  
8 been in a traumatic event. The house is in shambles. Her  
9 boyfriend's there. He's out of breath. He's battered. He's  
10 beaten. He has injuries, and there's a third person. He's a  
11 partially clothed male and he is unresponsive.

12 You talk to, to the female and she tells you that she had  
13 gone out and looked for a job on a farm that was nearby, said  
14 she saw Roy, spoke to Roy, and she gave him a ride home that  
15 night. She'll tell you that she dropped him off at a  
16 residence kind of down the street that was nearby, and at some  
17 point Roy returns to her house, and at this time he asks for  
18 another ride. He asks to go to another location to which she  
19 declines, but while he's there he asks if he can come in, and  
20 it's once he comes in that he asks for water. There's some  
21 dispute about what happens to him there, but at some point it  
22 becomes clear that he disrobes, throws her down, he assaults  
23 her and it's that point that James Rosenbaum comes in, and  
24 this is what he tells you when he arrives, that he comes home,  
25 you hear screaming. He runs to the back door where he opens

1 the back door, he grabs a bat that's nearby and he strikes  
2 Roy, and then holds him down. The initial strike does not  
3 debilitate him. It does not knock him out, and we're going to  
4 hear some testimony about this, but he knocks him down and he  
5 holds him. He's pinning him down, and he tells Diane, "Call  
6 911." That's what she does, and that's what, that's what you  
7 hear on the phone.

8 Now, again, you're law enforcement. What would you  
9 expect to happen next? What would you be thinking would  
10 happen? I imagine just based on what you know or what you may  
11 have seen you'd imagine it to go something like this, and that  
12 the parties been taken to the hospital, maybe a rape kit being  
13 offered or performed, and also doing something to the effect  
14 of, "Hey, listen, you all get, you all get squared away and  
15 then we might come and we need to have some questions for you,  
16 need to talk about it," and they may say -- after that you may  
17 expect that, "Well, let's go talk to the CSI people. Let's go  
18 -- let's see if we can talk to neighbors. Let's, let's, let's  
19 get data, whatever the case may be, let's go figure this out  
20 and then we may have to come back and talk to you again," but  
21 none of that happened. Law enforcement jumped to a conclusion  
22 almost immediately in this case. The officers didn't gather  
23 as much evidence as they could and then come to a conclusion,  
24 and honestly, maybe it's easy to see how that could happen.  
25 You see, they made their decision before the cause of death

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1 determined, before the crime scene people had completed their  
2 review, but when they arrived it was a chaotic scene. There  
3 was a lot of stuff going on. It wasn't clear, you know, what  
4 all had, had happened, and so if you're Detective Thompson,  
5 the lead investigator on this case, you're eager, they ask you  
6 a question, maybe you don't think about things like a rape  
7 kit, maybe you don't think about the hospital because, you  
8 know, you've had other things going on that day and you've had  
9 this, this scene. So you want to get your questions answered  
10 as soon as possible.

11 So Detective Thompson gets to the police station where  
12 Diane had already been taken, and he starts talking to her.  
13 Then he gets word that the 911 call is in. Folks, this is the  
14 one piece of evidence at this point, the one piece of hard  
15 evidence that Detective Thompson has reviewed up to this  
16 point, and folks, our, our esteemed Solicitor and myself agree  
17 on one thing, this case is about that 911 call. The reason  
18 why I know that is that is the only evidence that Detective  
19 Thompson reviewed before he made the decision to arrest, and  
20 you're going to see that. You're going to listen to the  
21 interview. That's the reason why charges were filed in this  
22 case and that's the reason why you all are sitting here. So  
23 how is it that Detective Thompson, Solicitor Richardson, how  
24 is it that they could hear this 911 tape where they weren't  
25 there, nobody'd been interviewed, they hadn't evaluated

1 evidence on the scene, how is it that they can hear that and  
2 be so sure that they're hearing a murder when you and I are  
3 going to hear it and hear two people in a fight for their  
4 life?

5 I guess I can kind of explain it like this, and some of  
6 you all may have seen this. In this image, statistically  
7 speaking, about half of you are going to look at it and you're  
8 going to see a rabbit profile that way and the eye, the back  
9 of the hair. The other half of you are going to look at it at  
10 first glance and you're going to see a duck. All right. We  
11 all have our natural inclinations, our initial perceptions,  
12 our -- the way we see things, and Detective Thompson, being in  
13 law enforcement and being a, a violent crimes detective, I  
14 don't, I don't blame him for seeing one or the other. What I  
15 blame him for is not doing what you all are going to do and  
16 that's ask that next question. I mean, you're in a search for  
17 the truth, you, you go, you gather it all before you make your  
18 conclusion, and you really don't have to take my word for it.  
19 Detective Thompson is going to tell you that when he, when he  
20 ordered her arrest, this was the only thing he had reviewed.  
21 He'd had -- there'd been no crime scene put together. There  
22 had not been any -- there had been none of that. All he knew  
23 was that he had heard this 911 tape and that made his decision  
24 about, about what was going to happen, and ever since then  
25 what we've seen is two and half years of the State trying to

Opening by Mr. Bouchette

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1 gather people to weave together some kind of narrative to try  
2 to justify why Detective Thompson made that arrest so early on  
3 in this case. The reality is that if Detective Thompson had  
4 allowed himself at least to be open to see both images, he'd  
5 allowed himself to wait till the evidence came all the way  
6 through, he would have seen that the evidence supports Diane's  
7 and Jimmy's version of events.

8 And see, like I said, you and I are here in a search for  
9 the truth. We're going to put as much evidence into this case  
10 as possible, and you all are going to wait till the very end  
11 before you start your deliberations and make a, make a final  
12 decision. So you can kind of think of this case as a, as a  
13 transaction. I'm going to ask for something from you, and in  
14 exchange I'm going to give you something.

15 I ask that you just listen to the facts and evidence as  
16 presented, apply the law that the Judge gives you and use your  
17 own common sense in between. If you do that, I'm going to  
18 give you the opportunity, I'm going to give you the peace of  
19 mind of knowing that years from now you won't be sitting  
20 around worried about whether or not there's two people sitting  
21 in jail that shouldn't be. More importantly than that, I'm  
22 going to give you the opportunity to send two people home and  
23 I want to thank you for your time and your service.

24 THE COURT: Mr. Hyman.

25 MR. ALEX HYMAN: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. ALEX HYMAN: I'm going to scoot up here a little bit.  
3 Good afternoon. The -- I know you all have probably seen us  
4 scurrying around some yesterday while we were picking this  
5 jury. So we didn't actually get a proper chance to introduce  
6 ourself. My name's Alex Hyman. The gentleman over here in  
7 the suit with the red and blue tie is my co-counsel. He  
8 happens to be my cousin. His name's Travis Hyman. He, along  
9 with my, my younger brother and myself, we run a firm here in  
10 Conway called the Hyman Law Group. We're about a block  
11 northwest.

12 The gentleman sitting next to Travis is James Richard  
13 Rosenbaum, and you've heard a little bit about him so far, but  
14 I want to tell you a little bit more. You're going to hear  
15 him be called Jimmy. You can call him James. You can call  
16 him Jim. You can call him Richard. You'll hear people call  
17 him Rosenbaum, but one thing you can't call him is guilty, and  
18 the reason being is that the law, the evidence, the facts they  
19 don't simply allow it. It's that simple.

20 Now, I understand that this time of year it's between  
21 Thanksgiving and between Christmas there's probably a thousand  
22 different places you all would rather be. If you're like me  
23 and my wife, there's a thousand things you need to do, but  
24 you're here, and I appreciate that. My client has been  
25 waiting for two and half years for this opportunity. This is

Opening by Mr. Alex Hyman

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1 his time to tell you what he saw.

2 Now, over Thanksgiving I was preparing for this trial,  
3 and I was actually trying to spend a little time with my  
4 family, and it was spending time with my family that kind of  
5 gave me a little bit of a realization with this case, and what  
6 that is is for Thanksgiving my family, my grandparents, my  
7 parents, my brother and his children and my cousins and their  
8 children, we have a family farm. We always go down to the  
9 family farm. We cook, and the kids get to play. It's a big,  
10 big ordeal. We've got a little outside kitchen thing there, a  
11 cook shed, but throughout all of it, you know, the kids are  
12 running around. The adults are trying to get everything  
13 ready, but throughout all of it, I remember my mom came out.  
14 She said, "Okay, it's time to eat," and we've got this big  
15 bell there, and whenever we have family down there, all the  
16 kids run over and they want to ring the bell. That's the big  
17 thing, ring the bell. So the kids run over and they ring the  
18 bell, and kids do what kids want to do, they run to the line  
19 to fix their plate because they want to eat so they can get  
20 back to playing, and that's what they do, and I remember -- I  
21 have two children. I have a nine-year-old who's going on 19  
22 and I have a four-year-old who keeps me on my toes daily, but  
23 the four-year-old is the one who actually kind of made me have  
24 this realization. He's pitching a fit. All the kids are at  
25 the line. They're fixing their plate. He's standing up on a

1 chair and he's, wah, wah, wah, and I'm, I'm assuming he's  
2 doing something bad because that's the norm, but he proved me  
3 wrong. I walked over and I said, "Benjamin, son, what, what  
4 is the matter," and he said, "Daddy, you can't have supper  
5 before you say grace," proved me wrong. I thought he was  
6 doing something wrong. He actually kind of made me proud.  
7 Needless to say, all the kids got together, and they said  
8 grace, and we ate supper, but it kind of made me think, I  
9 said, you know, there's an, an order to do certain things.  
10 Everything has an order. You know, you can't cook rice  
11 without boiling some water. If any of you all in this  
12 community farm or anything like that, you're not harvesting  
13 any crops without planting the seed and preparing the soil  
14 first. You can't have supper before you say grace.

15       Unfortunately, that's what we've got here. Law  
16 enforcement in this case and my -- the Codefendant's counsel,  
17 Jarrett Bouchette, kind of hit on this saying things were  
18 rushed, steps weren't followed, procedure wasn't followed. I  
19 think you heard him say that the 911 call was all that was  
20 listened to before the charges were even brought up. That's  
21 facts. That's exactly what happened here. The problem with  
22 that is when you do that is you jump to conclusions, and when  
23 you jump to conclusions and you don't lay that foundation and  
24 do the things that you're supposed to do, you're somewhat left  
25 with a mess. The State in this situation is left with a mess

Opening by Mr. Alex Hyman

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1 that they're trying to clean up. For the past two and half  
2 years they've tried to scramble to build a case against James  
3 Rosenbaum and Diane Durkin.

4 Now, you heard what the State said and our esteemed  
5 Solicitor who I consider a friend. You heard everything that  
6 he said. Those are the things he hopes and he prays that he  
7 can prove, but I'm here to tell you, the facts don't lie.  
8 They don't, and I'll promise you something, at the end of the  
9 case we're going to go over his statement. We're going to  
10 nitpick it and we're going to see what about his statement can  
11 actually be proven beyond a reasonable doubt.

12 These facts that he's talking about, these things that  
13 he's talking about are not supported by facts. They may be  
14 supported by rumors, gossip, speculation, theories, but not  
15 facts. The facts will show something completely different.  
16 See, the problem in life is that facts don't cease to exist  
17 just because you ignore them, and I want you all to hear that.  
18 Facts don't cease to exist just because you ignore them.

19 Now, a man is dead and for that I'm truly, truly sorry.  
20 This is a horrible tragedy, and I can assure you that Roy  
21 Davis' death is not what my client nor Ms. Durkin wanted.

22 Now, what you're going to hear is so much more than what  
23 they're claiming. Now, they talk about the 911 case -- tape,  
24 and I'll tell you, it is bad. You hear -- you'll hear rage.  
25 You'll hear fear. You'll hear this whole gamut of emotion,

1 and it's tough to listen to, but what you'll hear and you'll  
2 see through the testimony is that on July 11<sup>th</sup>, 2016, Roy Davis  
3 died after attempting to sexually assault Diane Durkin.

4 Now, my client on July 11<sup>th</sup>, 2016 did not wake up and say,  
5 "You know what, I'm going to be ready today to account for  
6 every minute, every detail I'm going to need to know." He  
7 didn't do that. None of us do, and I'll go ahead and tell you  
8 right now I want you to think of sometime in your life, the  
9 birth of your children, your wedding date, a significant  
10 birthday, something like that, but I want you to think about  
11 that day and try to say, you know, if it's a -- if it's the  
12 day you gave birth to your children, "Do I remember who was in  
13 the room? Do I remember the first person to give me a hug?  
14 At my wedding day, do I remember the first hand I shook?" You  
15 know, those are days that are supposed to be ingrained in your  
16 mind, and they're going to try to tell you that this, this day  
17 should be so ingrained in my client's mind that there's no  
18 possible way he could get any detail confused, but we know  
19 that's not how facts work.

20 Now, I want you to think about this, now. You wake up.  
21 It's July 11<sup>th</sup>, 2016, get up at your normal time. You have  
22 your coffee. You have your breakfast and just kind of hang  
23 around the house really until 3:00 o'clock. You're with your  
24 girlfriend. You watch TV. 3:00 o'clock a friend calls -- a  
25 friend calls and says, "Hey, can you take me to the store?"

Opening by Mr. Alex Hyman

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1 "Sure." Go to the locker plant, go to Walmart, head back to  
2 the house, having a great day, but when you get home you and  
3 your girlfriend get into an argument. You get into an  
4 argument that's basically just like any other couple gets in  
5 an argument, money, money, an argument you want her to get a  
6 job, she hasn't gotten a job. You get so ticked off about the  
7 argument you storm out the door and you leave. You go down to  
8 what's known as Savannah Bluff. If you're not from Conway,  
9 Savannah Bluff is a landing right past where used to be the  
10 Grainger Steam Plant. You go down there and you sit on your  
11 tailgate for 15 minutes, you clear your head. "Okay. I'm  
12 going home." You go home.

13 When you get there, your girlfriend's not there. At some  
14 point after that you all call each other, you actually make  
15 up, you especially make up because you find out she's out  
16 looking for a job. You talk with her for approximately 50  
17 minutes where you find out that she's gone to this place and  
18 this place and this place and, you know, there's a couple of  
19 times when she puts the phone on the, on the -- down on the  
20 seat and goes out and talks to somebody and then comes back  
21 and says, "Well, they're not hiring, but I'll go to the next  
22 spot." You've got hope though, and at the end of the  
23 conversation she says, "Look, I think I may have a job.  
24 There's this guy here, he works here, says he can help me get  
25 a job, but he needs a ride. I'm going to give them a ride."

1 "Okay. Fine."

2 Call back 10 minutes later, "Look, this guy needs to  
3 borrow 20 bucks but he says he'll pay me, that they get paid  
4 on Friday. Do you care?" "If you're getting a job, I don't  
5 care if you loan him a hundred bucks." You don't talk after  
6 that. You're happy. You call your friend from earlier in the  
7 day and say, "Hey, I'm going to go work out. I like to work  
8 out at Planet Fitness. I'm going to go there this afternoon  
9 or this evening and work out. Do you want to go?" "No. Man,  
10 it's too late." You look at your watch. It's about 9:00  
11 o'clock, 9:15. You say, "Well, I'm going to go."

12 Well, you go to Planet Fitness. You pull in the parking  
13 lot, and like me quite a few times, you just say, "I don't  
14 have the motivation. It looks crowded. I don't think I'm  
15 going to go." You pull back through, head back to the house.  
16 It's raining. You're not thinking anything of it though. You  
17 get home, and when you open the door what you hear is terror.  
18 You hear screaming. You hear yelling, and it takes you a  
19 minute, but you say, "Wait a minute, what -- is that coming  
20 from my house," and then you recognize the voice. It's your  
21 girlfriend. You hear her screaming. You hear her yelling.  
22 You can tell something's wrong.

23 So you run to the front of the door -- front of the house  
24 but you can't see in. So you run around to the back of the  
25 house. You're thinking, "What do I have? Do I have a gun?"

Opening by Mr. Alex Hyman

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1 Do I have a knife? Do I have anything in my car, a tire iron,  
2 anything I can use," but all you can think of is, "I've got my  
3 workout gloves."

4 Put your gloves on. You get to the back door, and there  
5 at the back door you see a youth baseball bat, a bat that you  
6 use to hit tennis balls to your dog for. Take the bat, you go  
7 in and what you see is probably one of the most horrific  
8 things you could possibly see, you see your girlfriend on the  
9 ground. She's screaming. She's crying. She's yelling, and  
10 you have an almost nude male with an erect penis standing on  
11 top of her. He's got her by the hair and he's yelling at her  
12 to shut up.

13 You take the bat. You hit him. Doesn't seem like it  
14 phases him. You're involved in a struggle. This struggle  
15 seems to go on forever, 15, 20 minutes. You call a friend  
16 saying, "Help, bring your gun," because you don't have one.  
17 You have a pellet gun.

18 During this altercation you tell your girlfriend, "Call  
19 911. Get the pellet gun, get me anything." This guy's trying  
20 to leave. You've got him down, and at this point he's not a  
21 threat. So you -- you're telling 911, "Get here quick. I've  
22 got him down. Come here and arrest this man. Come here and  
23 arrest him."

24 You take your phone out. You take a picture of him  
25 because you say, "Hey, if I take a picture of him, if he gets

1 away from me, at least he'll know who this guy is," because  
2 you don't know him.

3 When you call your friend and tell your friend to bring  
4 his gun over, he makes one last dash to get to the door. You  
5 grab him. You throw him on the ground. He tries to stand up,  
6 gets woozy and falls down.

7 Minutes later the police arrive. Now, you're thinking,  
8 finally, the police arrive, but instead of relief, you're  
9 separated from your girlfriend. You're not allowed to talk to  
10 her. You're put in the back of police cars. You're taken to  
11 the, the M.L. Brown Building, which is our police station, and  
12 you're interrogated for three hours. You're confused. You  
13 feel like a victim, but you're thinking to yourself, "I'm  
14 being treated like a criminal." You're being asked over and  
15 over and over and over to recall every single minute of a 911  
16 call, every single minute of your day, where had you been, how  
17 many times did you hit him. "Well, I, I don't know how many  
18 times I hit him. I'm telling you I hit him. I hit him, but I  
19 can't tell you how many times I hit him." "Well, did you hit  
20 him six times?" "I can't remember. I can't remember," and  
21 every time you give them the wrong answer you're mocked,  
22 you're belittled, you're lied to and then you're peppered with  
23 more questions. Accusations are being thrown at you, and all  
24 you can say is, "I'm trying to tell you what happened. I  
25 don't want to say the wrong thing. I'm not trying to lie. I

Opening by Mr. Alex Hyman

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1 just can't remember every single detail," but nobody's  
2 listening to your story because they've already written your  
3 ending, but, folks, as far as the endings go that's not the  
4 end. You guys are here to be the ears that my client and that  
5 Diane Durkin didn't have on that night.

6 Now, I want to talk to you a little bit about the burden  
7 of proof in this case. Your Honor talked about it some, but I  
8 want to go into a little bit more detail just because I think  
9 that the burden in our country is what makes our country so  
10 great. We have an extremely high burden of proof, beyond a  
11 reasonable doubt. Now, the thing about that is it reveals a  
12 belief, a belief in our system that it is far worse to convict  
13 an innocent man than it is to let a guilty man go free. That  
14 is the basis of that. That is the foundation. Our founders  
15 recognized that, "Hey, you know what, citizens don't have the  
16 resources, they don't have the money, the people, the help to  
17 go up against the government and prove their innocence. They  
18 don't." You think about it, who has more money than the  
19 government. Who has more resources than the government?  
20 Because of that, the burden is not on the people. The burden  
21 is on the government. They're the ones that have to prove  
22 their guilt beyond a reasonable doubt.

23 Now, I want to make a couple of points to you. I was  
24 thinking about this this morning. Now, my wife, we'll sit  
25 around sometimes and drink coffee and we'll run across stuff

1 and she'll say, "Man, thank goodness," and we all do that, and  
2 what I mean by that is if you're having coffee and you're  
3 going over your newspaper or you're watching the news or most  
4 people now seem to flip through Facebook, and you see some  
5 news headline that says, you know, "Police apprehend someone  
6 for some serious crime." Your first inclination at that point  
7 is to say, "Thank goodness. Thank God." I do it. It's a  
8 natural occurrence. It is absolutely something natural that  
9 you do, but the problem in that is that you've already  
10 exhibited prejudice. You've presumed that not only did the  
11 police catch the right guy but that that guy committed a crime  
12 and that there was no defense for it, and again, that's okay  
13 when you're having your coffee, but when you're picked on this  
14 jury that all changed. It all changed. Your role in this  
15 world changed dramatically when you were selected to serve.  
16 The oath that Your Honor had you take makes you swear that  
17 you'll uphold the law, and the law is that my client and Ms.  
18 Durkin are presumed innocent. Now, you're going to have to  
19 shed yourself, excuse me, shed yourself, that's kind of a  
20 tongue tie -- twister, of that natural instinct, that natural  
21 inclination to assume that because he's sitting there and that  
22 she's sitting there that they must be guilty, they must have  
23 done something, they must have committed a crime. You'll have  
24 to shed that. It's your job by taking that oath to say, "I  
25 can do that. I can shed those inclinations. I can presume

Opening by Mr. Alex Hyman

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1 them innocent, and if the facts are not there I can find them  
2 not guilty." That is your job by taking that oath. Your  
3 other job is to look at the evidence in a skeptical fashion.  
4 When you take the evidence and you look at it in a skeptical  
5 fashion, you are doing nothing more than presuming that they  
6 are innocent. You are looking at the evidence that the State  
7 provides and you're saying, "Is that trustworthy? Is it  
8 likely?" Use your good common sense, but I also want you to  
9 look at this, I want you to look at the or think about this,  
10 it is not their job to show you everything. It is their job  
11 to convict those two people. That's their job. You need to  
12 have that same skeptical eye and look and you need to  
13 continuously ask yourself during this case, "Why didn't they  
14 show that? What's missing here? Are they trying to hide  
15 something from us? Why didn't they do that?" That skeptical  
16 eye, that skeptical look of, "Hey, we need to critique every  
17 piece of evidence that is given to us," you need to remind  
18 yourself, "I can do that."

19 Now, I apologize if I've been long-winded. That  
20 certainly wasn't my intention, but this is my first or my  
21 client's first time to tell his story. I thank you so much  
22 for your willingness to serve, and again, I want you just to  
23 remember that duty that you swore to in your oath, not the cup  
24 of coffee view but the view where you shed any presumptions.  
25 Thank you.

William Burhans - Direct by Mr. Richardson

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1 THE COURT: All right. Ladies and gentlemen, we'll now  
2 begin the evidentiary portion of this case with the State's  
3 case. The State can call your first witness.

4 MR. RICHARDSON: Thank you, Your Honor. William Burhans.  
5 Whereupon, William Burhans is called to the stand, duly  
6 sworn by the clerk and testified as follows:

7 THE CLERK: Please state your full name and spell your  
8 name for the record.

9 MR. BURHANS: William Burhans, W-I-L-L-I-A-M, B-U-R-H-A-  
10 N-S.

11 DIRECT EXAMINATION

12 BY MR. RICHARDSON:

13 Q Mr. Burhans, where do you work, please?

14 A I work at Horry County E-911.

15 Q How long have you been with E-911?

16 A 16 years.

17 Q And will you tell this jury your position with emergency  
18 911?

19 A I'm a quality assurance specialist, and part of my duties  
20 are records custodian.

21 Q How long have you been in quality assurance?

22 A Over four years.

23 Q Okay. And how long have you been with 911?

24 A Since May of 2002, so 16 and a half years.

25 Q Very good. Will you tell the jury briefly about your

William Burhans - Direct by Mr. Richardson

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1 responsibilities or the responsibilities at 911?

2 A Well, I, I administer our emergency medical dispatch,  
3 emergency fire dispatch programs. I'm also the records  
4 custodian. So if there are any Freedom of Information Acts or  
5 records requests from detectives, the Solicitor's Office, any  
6 records that are requested, 911 tapes, computer-aided dispatch  
7 reports, I produce the reports and get them, get them out to  
8 the requester.

9 Q And when you say reports, tell us a little bit about the  
10 reports that are kept at 911.

11 A Each call for service, we record every telephone call  
12 completely from the, from the beginning of the time it comes  
13 in. It's recorded on a digital base. It's on a recorder  
14 that's protected in a locked room with limited access  
15 password-protected. So only a certain amount of people in our  
16 agency can get into it, and then as a call taker takes a  
17 telephone call, they enter information into the computer-aided  
18 dispatch like the address, the phone number, the name of the  
19 person calling and document what's happening during the call.

20 Q Okay. And that's known as the notes?

21 A The notes. Yes, sir.

22 Q I want to pass to you what's been marked as State's,  
23 State's Exhibit Number Five. Tell me if you recognize that.

24 A Yes, sir. This is a CAD report for the incident that  
25 occurred at [REDACTED] Highway 548 on the -- I don't -- let's see

1 the date here, July 11<sup>th</sup>, 2016.

2 Q All right. Are those reports kept in the ordinary course  
3 of business for E-911?

4 A Yes, sir.

5 Q All right. I want to pass you what's been marked as  
6 State's Exhibit Number Six, and please, you can open this.  
7 Tell me if you recognize that.

8 A Yes, sir. This is the disc I listened to in the  
9 Solicitor's Office two weeks ago in preparation for this, and  
10 it -- this is the standard disc that we issue recordings on,  
11 and I've initialed this disc as the 911 call that corresponds  
12 with that CAD report.

13 Q And that is corresponding to the event on July 11<sup>th</sup>, 2016?

14 A Yes, sir.

15 Q Thank you. And are these kept in the normal, ordinary  
16 course of business, the disc?

17 A The, the recording is kept. So, and when we issue the  
18 report out to the Solicitor or the detective, it's on -- it's  
19 put on a disc you can't tamper. You can't do anything to it.  
20 Only the records custodian has access to put it out.

21 Q And you've looked at these notes and you've listened to  
22 this disc and you've put your initials on it. Had it been  
23 tampered with from the time that it left 911 until now?

24 A No, sir.

25 MR. RICHARDSON: The Court's indulgence.

William Burhans - Direct by Mr. Richardson

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1 THE COURT: All right.

2 MR. ALEX HYMAN: No objection, Your Honor.

3 MR. RICHARDSON: No objection?

4 MR. GARDNER: No objection.

5 MR. BOUCHETTE: No objection.

6 MR. RICHARDSON: Your Honor --

7 THE COURT: Putting it into evidence?

8 MR. RICHARDSON: Your Honor, without objection the State  
9 would move State's Exhibit Number Five and State's Exhibit  
10 Number Six into evidence.

11 THE COURT: All right. State's Exhibits Number Five and  
12 Six admitted into evidence without objection.

13 (State's Exhibit Number Five [Notes - 911 - CAD Report]  
14 and State's Exhibit Number Six [911 - DVD] admitted into  
15 evidence and appropriately marked.)

16 MR. RICHARDSON: Your Honor, the State would like to  
17 publish State's Exhibit Number Six.

18 THE COURT: All right.

19 MR. RICHARDSON: Just let us know if you can't hear it.

20 (State's Exhibit Number Six played in open court.)

21 MR. RICHARDSON: Your Honor, no further questions of this  
22 witness.

23 THE COURT: All right. Who wants to go first with cross  
24 examination?

25 MR. ALEX HYMAN: Just a couple of quick questions.

1 CROSS EXAMINATION

2 BY MR. ALEX HYMAN:

3 Q That's obviously not you that he's talking to or that  
4 she's talking to; is that right?

5 A Yes, sir.

6 Q Okay. And as far as what went on in that, the only thing  
7 that you know is what you -- you've heard, don't know any --  
8 have any other evidence other than that?

9 A Just that we provided the recording. The recording is  
10 not tampered with.

11 Q No further questions.

12 THE COURT: All right. Mr. Bouchette?

13 MR. BOUCHETTE: No questions for this witness, Judge.

14 THE COURT: Redirect?

15 MR. RICHARDSON: No, sir.

16 THE COURT: All right. You may step down.

17 MR. RICHARDSON: May he be released from his subpoena?

18 THE COURT: Any objection?

19 MR. ALEX HYMAN: No objection, Your Honor.

20 THE COURT: Any objection?

21 MR. BOUCHETTE: No objection.

22 THE COURT: All right. He's free to go.

23 All right. Let me see the attorneys.

24 (Whereupon, a bench conference is held in the presence  
25 but out of the hearing of the jury.)

Mark Johnson - Direct by Mr. Richardson

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1 THE COURT: All right. The State can call your next  
2 witness.

3 MR. RICHARDSON: Your Honor, the State would call  
4 Corporal Mark Johnson.

5 Whereupon, Mark Johnson is called to the stand, duly  
6 sworn by the clerk and testified as follows:

7 THE CLERK: Please state your name and spell it for the  
8 record.

9 MR. JOHNSON: Mark Johnson, M-A-R-K, J-O-H-N-S-O-N.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Corporal Johnson, will you tell this jury where you're  
13 employed, please?

14 A Horry County Police Department.

15 Q And how long have you been with Horry County?

16 A Five years.

17 Q What kind of training have you been -- have you received  
18 at Horry County PD?

19 A I've been to the police academy, radar, DUI detection,  
20 SFST detection, drug detection, I been on the street crime  
21 unit, on the bloodhound team, so.

22 Q What position do you currently hold with Horry County PD?

23 A I'm a supervisor over about five patrol officers.

24 Q Was that your position then? So you're a corporal, too?

25 A Yes, sir. I'm a corporal now.

1 Q And were you a supervisor and corporal back in July of  
2 2016?

3 A No, sir. I was not.

4 Q All right. Were you working on July 11<sup>th</sup>, 2016?

5 A Yes, sir.

6 Q And you -- were you in the west precinct?

7 A No, sir. I was in central precinct, which is the Conway,  
8 Conway area, Horry County.

9 Q Okay. Did you have an occasion to -- did you get called  
10 out to [REDACTED] Highway 548?

11 A Yes, sir. I did.

12 Q All right. Tell us what you saw when you got there, the  
13 weather conditions, just tell us what was going on.

14 A I was -- I just left a call off of Highway 905. That  
15 night it was storming real bad, thundering and lightning. It,  
16 it struck the tower at dispatch causing us not to have  
17 communication with dispatch no more. So everything I was  
18 getting was on the computer was the updates on the computer.  
19 So I'm trying to drive in the rain. I could barely see a foot  
20 in front of me, you know, I was driving 30, 25 miles per hour  
21 trying to get there. It was probably about a, you know, it's  
22 -- driving in the rain it, you know, I was trying just to  
23 focus on getting there and getting there safely and also  
24 reading the updates on the computer, and what dispatch gave  
25 was an altercation taking place at the [REDACTED] Highway 548, and

Mark Johnson - Direct by Mr. Richardson

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1 it involved a baseball bat, maybe a potential sexual assault.

2 So I get there. I make it on scene, and I almost passed  
3 by the house, but I stopped because I just happened to -- just  
4 the house caught, caught me, you know, it just stood out. So  
5 I jumped out. I un-holstered my weapon because I'm going  
6 into, to an unknown. I don't know what I'm going into. So I  
7 run up to the house and I noticed the, I noticed the door to  
8 the residence partially open. So I pushed the door to, and I  
9 come up, you know, I'm holding a weapon, but I'm not pointing  
10 it at anybody. I'm just trying to see what I got inside the  
11 house, and as I go to step inside the house I stop and I just  
12 see, you know, a tremendous amount of blood inside the house,  
13 and I was just -- stopped myself from going inside the house.  
14 I looked down on a mattress which is in the living room and I  
15 observe Mr. Roy on the, on the mattress, appeared to me to be  
16 deceased, and I observed Mr. Rosenbaum and Ms. Durkin sitting  
17 on the couch and beside Mr., Mr. Rosenbaum was a, a baseball  
18 bat and I happen to -- I was able to see in the corner to the  
19 kitchen I was able to see it looked like to me a -- like a  
20 little bow and arrow that you shoot, but I guess it was a, a  
21 pellet gun at the time, and I just was, you know, was watching  
22 them, waiting for my backup to get there and before I started,  
23 you know, figuring out what was, what was going on, what  
24 happened.

25 Q All right. With regard to Roy Davis you didn't, you

1 didn't know him at the, at the time?

2 A No, sir.

3 Q All right. You said that he appeared dead?

4 A He, he appeared to me deceased.

5 Q Not moving?

6 A Not moving. He was -- when I observed Mr. Roy he was  
7 curled up to me like in a fetal position like, curled up. I, I  
8 observed a, to me looked like his brains hanging out his head,  
9 and you know, I was -- looked at that and I also observed Ms.  
10 Durkin and Mr. Rosenbaum, you know, over there by -- in the  
11 living room sitting on the couch.

12 Q All right. How did, how did they appear, Diane Durkin  
13 and Jim Rosenbaum?

14 A They, I mean, they appeared in a heightened state, you  
15 know, like excited. Ms. Durkin started telling me, you know,  
16 about what, what happened that day, that she, you know, that  
17 she picked up Roy from the horse farm. They come to the  
18 house. They got in the house. He started smoking crack and  
19 then, then he attempts to sexually assault her.

20 Q And that's what she told you, and when she said smoking  
21 crack she said Roy was trying to smoke crack?

22 A She said he was, he was trying to smoke crack.

23 Q Okay. How long -- did, did you ever go inside?

24 A No, sir. I was just, just -- the amount of blood inside  
25 the house I didn't want to contaminate the scene. I was just

Mark Johnson - Direct by Mr. Richardson

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1 -- I didn't want to walk inside the house.

2 Q You stood out on the front porch?

3 A I stood in the rain on the front porch.

4 Q Okay. What -- okay. I think you've told us that she's  
5 -- tell us what she said had happened earlier in the day, how  
6 Roy got over there and whatnot?

7 A She said she went to a horse farm on Bottle Branch Road  
8 and Mr. Roy asked for a ride. So she gives him a ride, and  
9 they came back to their house, started smoking crack and he  
10 took off his clothing is what she was, you know, telling me.

11 Q Did you ever, did you ever see any drugs? Well, you  
12 didn't go inside?

13 A No, sir.

14 Q All right. I'm going to pass to you what has been marked  
15 as State's Exhibit Number Seven and State's Exhibit Number  
16 Eight and tell me if you recognize those photographs.

17 A Yes, sir. That's the, the clothing he was wearing the  
18 night of July the 11<sup>th</sup>, 2016.

19 Q Now, that -- where was that photograph taken?

20 A This photo was taken at the M.L. Brown Building which is  
21 the police department.

22 Q But those -- who are the people in those photographs?

23 A This is Ms. Durkin and Mr. Rosenbaum, the two Defendants.

24 Q What number is Rosenbaum?

25 A Seven, Exhibit Number Seven and Ms. Durkin is Exhibit

1 Number Eight.

2 Q All right. And does that fairly and accurately depict  
3 Mr. Rosenbaum and Ms. Durkin as they were to have been that  
4 night when you saw them?

5 A Yes, sir.

6 Q Okay.

7 MR. RICHARDSON: Your Honor, the State would move State's  
8 Exhibit Seven and Eight into evidence.

9 THE COURT: Any objection?

10 MR. ALEX HYMAN: No, Your Honor.

11 THE COURT: Any objection?

12 MR. BOUCHETTE: No objection.

13 THE COURT: All right. State's Exhibit Seven and State's  
14 Exhibit Eight admitted into evidence without objection.

15 (State's Exhibit Number Seven [Photograph - Rosenbaum]  
16 and State's Exhibit Number Eight [Photograph - Durkin]  
17 admitted into evidence and appropriately marked.)

18 MR. RICHARDSON: Your Honor, permission to publish.

19 THE COURT: All right.

20 BY MR. RICHARDSON:

21 Q Pass to you what has been marked as State's Exhibit  
22 Number Nine and please tell me if you recognize State's  
23 Exhibit Nine.

24 A Yes, sir. I do. It's, it's part of my sector area I  
25 patrolled in -- back in July 11, 2016.

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1 Q Is the address, yeah, [REDACTED] marked?

2 A Yes, sir.

3 Q All right. Do you see which route you would have come  
4 in?

5 A It's, it's not on the map, but I came in off of 501 onto  
6 -- turned left on 548 coming from Conway.

7 Q Back this way?

8 A Yes, sir. It's back, back that way.

9 Q Tell them as, as far as a landmark coming from downtown  
10 Conway on 501 where would you turn to go on 548?

11 A The Tractor Supply in Conway, right there by the Tractor  
12 Supply. It's right there by Four Mile Road, the road right  
13 across from Four Mile by the Tractor Supply. It's -- the,  
14 the, the road is behind the Tractor Supply. That's the road  
15 to get back there to the address.

16 Q So turn left behind Tractor Supply --

17 A Yes, sir.

18 Q -- off of 501 --

19 A If you're coming from --

20 Q -- going from Conway to Aynor.

21 A -- Conway to Aynor, turn left by Tractor Supply, and  
22 that's Highway 548.

23 THE COURT: Wait a minute. Is that in evidence?

24 MR. RICHARDSON: Oh, excuse me, Your Honor. The State  
25 would move State's Exhibit Number Nine into evidence.

1 MR. BOUCHETTE: The only objection I have is that, number  
2 one, as to relevance, number two, as to I think the officer  
3 said he was coming from a direction that's not on the map. So  
4 I think given that it may -- what he's presenting at least may  
5 be more confusing than beneficial to the jury.

6 THE COURT: All right. Mr. Hyman?

7 MR. ALEX HYMAN: Your Honor, the same objection.

8 THE COURT: All right. State's Exhibit Nine is admitted  
9 into evidence over Defendants' objection.

10 (State's Exhibit Number Nine [Poster] admitted into  
11 evidence and appropriately marked.)

12 MR. RICHARDSON: Thank you, Your Honor. Your Honor, I  
13 have no further questions for Corporal Johnson.

14 BY MR. RICHARDSON:

15 Q If you'd answer any questions that the Defense might have  
16 for you.

17 THE COURT: All right. Mr. Bouchette.

18 MR. BOUCHETTE: Thank you, Judge.

19 CROSS EXAMINATION

20 BY MR. BOUCHETTE:

21 Q Corporal Johnson, I know we're kind of tight on time  
22 here. I'll try to get you out of here just as soon as  
23 possible, try to be brief.

24 Whenever you responded on the scene, based on all the  
25 information you had up until the time when you arrived at the

Mark Johnson - Cross by Mr. Bouchette

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1 residence, it was your understanding that the victims in this  
2 case were Diane Durkin and James Rosenbaum; right?

3 A Yes, sir.

4 Q And that the decedent was, in fact, the -- a suspect; is  
5 that an accurate assessment?

6 A Yes, sir.

7 Q Okay. And it had been indicated to you that the -- that  
8 Roy, the decedent, who at that time was a suspect, that he had  
9 allegedly committed an assault on one or both of these folks;  
10 is that what you indicated?

11 A Yes, sir.

12 Q All right. Now, now, you arrived at the residence  
13 because obviously 911 dispatched, dispatched a call to county  
14 police; right?

15 A Correct.

16 Q All right. And who called county police?

17 A At the time of the initial call I had no clue who called,  
18 but later on, I guess, through the investigation determined  
19 Ms., Ms. Durkin was the one that made the phone call.

20 Q And in the routing of a 911 call to police department, is  
21 that something that's generally known by the public that if I  
22 called 911 that they'll send police, is that --

23 A Yeah.

24 Q -- in your experience that's safe to say?

25 A Yes, sir.

- 1 Q Okay. All right.
- 2 A Yes.
- 3 Q So you, you, you came there, you as the initial officer  
4 and this -- all the, the police officers that followed you,  
5 you came because Diane called you and asked you to be there;  
6 right?
- 7 A Yes, sir.
- 8 Q Indirectly through 911?
- 9 A Correct.
- 10 Q All right. And you talked briefly about their state,  
11 their state. You said that I think it was an excited?
- 12 A Heightened, excited --
- 13 Q Right.
- 14 A -- state.
- 15 Q So they had clearly been in a, in a very tense, high  
16 anxiety situation for some period of time?
- 17 A Yes, sir.
- 18 Q Is that accurate to say?
- 19 A That's accurate.
- 20 Q Okay. Now, we'll talk about -- could -- at that point  
21 did you notice or make note of any visible injuries to either  
22 one of the parties?
- 23 A No, sir. I didn't see any.
- 24 Q Okay. But at least with -- and I know a lot was going on  
25 and, and -- but I tell you what, let me back that up. How

Mark Johnson - Cross by Mr. Bouchette

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1 long were you directly on the front porch with Diane and Jimmy  
2 before the, the next --

3 A Before another officer arrived, a couple of minutes, two  
4 or three minutes, maybe.

5 Q Okay. Okay. So you're sitting there with them for just  
6 a few minutes but I understand later on you had another  
7 interaction with at least Mr. Rosenbaum; is that right?

8 A Later on in the night. Yes, sir.

9 Q Okay. And, and tell us what that was.

10 A Is that like --

11 Q Yeah.

12 A -- you know, once -- you --

13 Q Well, well, at some point --

14 A Could you --

15 Q -- you got, you got dispatched to transport James  
16 Rosenbaum --

17 A Okay.

18 Q -- from the M.L. Brown Building to J. Reuben Long  
19 Detention Center; right?

20 A Okay. Yeah. I was -- on scene I transported him from  
21 the residence to the M.L. Brown Building. At that point I was  
22 done with my part of the investigation. At the point after  
23 the detectives, you know, investigated whatever they needed to  
24 ask, I was, you know, he was placed under arrest at that  
25 point. He was taken to J. Reuben Long Detention Center.

1 Q And, and I -- and that's where I want to touch base with  
2 you.

3 A Okay.

4 Q You took him to J. Reuben Long Detention Center. It's my  
5 understanding that they -- that the detention center directed  
6 you to take him to Conway Medical Center; correct?

7 A After he was, you know, they made him take a shower  
8 because all of the blood on him. After the shower, he  
9 realized he had a laceration to his leg and J. Reuben Long  
10 they won't accept anybody that has a cut or open wound. So at  
11 that point they requested me to take him to Conway Hospital.

12 Q Right. So he had a, and in fact, if I'm not mistaken,  
13 and we'll get to the pictures later, but I believe the, the  
14 laceration was to the lower part of his leg, of his leg?

15 A It was, it was somewhere on his shin. Yes, sir.

16 Q Okay. And at that point you then noticed it once you  
17 were forced to transport him from J. Reuben to the Conway  
18 Medical because that's what they directed; right?

19 A Right. That's they asked us to.

20 Q Okay.

21 A They won't accept it. So they asked us to transport.

22 Q Okay. So I, I know you didn't spend much time with Diane  
23 and other than that transport didn't spend a lot of time with  
24 Jimmy, but during that short period you are aware of at least  
25 this, this injury to Jimmy's leg that you saw; right?

Mark Johnson - Cross by Mr. Alex Hyman

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1 A I saw it once I was at J. Reuben Long.

2 MR. BOUCHETTE: I'm sorry. No further questions, Your  
3 Honor.

4 THE COURT: All right. Mr. Hyman.

5 MR. ALEX HYMAN: Yes, Your Honor. May it please the  
6 Court?

7 CROSS EXAMINATION

8 BY MR. ALEX HYMAN:

9 Q Mr. Johnson, just a couple of questions for you. Now,  
10 when Solicitor Richardson showed you this and when you said --  
11 what precinct were you working?

12 A I worked the central precinct.

13 Q Central. So this is part of central precinct?

14 A It's a portion of central precinct.

15 Q Okay.

16 A Yes, sir.

17 Q Now, why do we have precincts?

18 A You're asking why do we have precincts?

19 Q Yeah.

20 A I guess because Horry County is a huge county, and I  
21 guess so it's quicker to get somewhere if you need to get  
22 there if somebody calls because you have certain officers in  
23 certain areas, certain sectors, and you have officers assigned  
24 to -- I think there's 22 sectors in the county. So there's  
25 one officer assigned to each sector. So there's different

1 precincts in the county so the officers can basically go to to  
2 do reports or do anything they need to do police related wise.

3 Q Okay. So, so that you can get there quicker?

4 A Right.

5 Q So you're not coming from North Myrtle Beach so --

6 A I'm not coming from Nichols all the way to Conway or, or  
7 somewhere like that to a call.

8 Q So you would have been somewhere in this general  
9 vicinity?

10 A I was on -- that night I was on Highway 905 when I  
11 received the call.

12 Q Okay. Now, as far as that goes you said you, you came up  
13 and you saw the two Defendants, that they were inside, said  
14 they were sitting down. You said they were in a heightened  
15 state. Now, what other investigation did you do while you  
16 were there?

17 A I just watched them until another officer got there, and  
18 Ms. Durkin was, you know, making these, you know, statements  
19 to me about what happened, what occurred and I was just  
20 basically listening.

21 Q Who, who was the other officer that showed up?

22 A Officer Helfinstine.

23 Q Helfinstine, okay. Now, what did the two of you do at  
24 that point?

25 A We -- I contacted my, my sergeant and supervisor and I

Mark Johnson - Cross by Mr. Alex Hyman

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1 advised him, hey, he needed to get over here quick, and at  
2 that point he came and basically started directing us what we  
3 needed to do.

4 Q Did he direct you to separate them, put them in different  
5 cars?

6 A Yes, sir.

7 Q Okay. Now, did he direct you to go and talk to any  
8 neighbors?

9 A No, sir. I didn't talk to no neighbors.

10 Q So he didn't tell you, "Hey, there's a neighbor there,  
11 why don't you go see if maybe they heard something"?

12 A No, sir.

13 Q Okay. Across the street, behind it, anything like that?

14 A No, sir.

15 Q So, there was no other statements that you got, and  
16 really what you did there is you came up, you saw them, waited  
17 for them to tell you to put them in the cars?

18 A Yes, sir.

19 Q Okay. Now, the sergeant that got there who was that?

20 A My sergeant at the time, Sergeant Crocker.

21 Q Sergeant Crocker?

22 A Yes, sir.

23 Q Okay. Now, he told you all to put them in the cars and  
24 where did he tell you to take them?

25 A To the M.L. Brown Building, the police department.

1 Q He didn't tell you, you know, maybe go take them into one  
2 of their bedrooms so you all could talk or anything like that?

3 A No, sir.

4 Q Told you to immediately take them to the police station?

5 A We took them to the police department.

6 Q Separate?

7 A Yes, sir.

8 Q Okay. Do you know if Sergeant Crocker would have talked  
9 to anybody around the neighborhood or anything like that?

10 A I don't know.

11 Q Okay. He didn't tell you that he was going to?

12 A No, sir.

13 Q It was raining. So he would have gotten wet if he did  
14 that; right?

15 A It, it was pouring down rain.

16 MR. ALEX HYMAN: No further questions at this point.

17 THE COURT: All right. Redirect?

18 MR. RICHARDSON: Very quickly.

19 REDIRECT EXAMINATION

20 BY MR. RICHARDSON:

21 Q When you took them, when you took Jim Rosenbaum to the  
22 hospital, were you able to take him from there back to, to the  
23 jail?

24 A Yes, sir. I did.

25 Q So he was treated and released?

1 A Yes, sir.

2 Q Do you know what took place at the hospital?

3 A I think they put a Band-Aid on it.

4 Q Okay. But any of the injuries that we're talking about  
5 going to the hospital was a scratch on the leg?

6 A Yes, sir.

7 Q And it would be documented in State's Exhibit Seven?

8 A The only one I can see I guess right there on the, on the  
9 shin, but I didn't see it at the, at the time until he  
10 mentioned something about it at the jail.

11 MR. RICHARDSON: No further questions, Your Honor.

12 THE COURT: All right. You may step down. All right.  
13 Let me see you all for a second.

14 MR. HELMS: Your Honor, may the corporal be released from  
15 his subpoena?

16 THE COURT: Any objection?

17 MR. ALEX HYMAN: No objection, Your Honor.

18 MR. BOUCHETTE: No objection.

19 THE COURT: All right. He's free to go.

20 A Thank you, sir.

21 THE COURT: Thank you.

22 (Whereupon, a bench conference is held in the presence  
23 but out of the hearing of the jury.)

24 THE COURT: All right. The State can call your next  
25 witness.

1 MR. HELMS: Your Honor, at this time, the State would  
2 call Mr. Michael Hodge with Horry County Fire Rescue.

3 Whereupon, Michael Hodge is called to the stand, duly  
4 sworn by the clerk and testified as follows:

5 THE CLERK: Please state your name and spell your name  
6 for the Court.

7 MR. HODGE: Michael Hodge, M-I-C-H-A-E-L, H-O-D-G-E.

8 DIRECT EXAMINATION

9 BY MR. HELMS:

10 Q Mr. Hodge, I think I already let the cat out of the bag,  
11 but why don't you tell these folks where you work?

12 A I work for Horry County Fire Rescue.

13 Q And how long have you worked there?

14 A Sixteen years.

15 Q What do you do there?

16 A My job title is technology support specialist and part of  
17 that job duty is records custodian.

18 Q Okay. Were you working -- so you've worked there 16  
19 years. Obviously you were working there back in 2016?

20 A Yes, sir.

21 Q Please tell the jury briefly your basic responsibilities.

22 A My basic responsibilities is to maintain the records  
23 management system for the fire EMS sides, along with GIS data  
24 and all the technology associated with fire rescue department,  
25 iPads, computers and such.

Michael Hodge - Direct by Mr. Helms .

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1 MR. HELMS: The Court's indulgence, Your Honor.

2 THE COURT: All right.

3 BY MR. HELMS:

4 Q Let me ask you this. When one of your folks goes out on  
5 a call, do they fill out some kind of report for that call?

6 A Yes. The medic units fill out a records management on  
7 our records management system and submit it in.

8 Q So when there's a patient involved is there a patient  
9 care record?

10 A Yes. A patient care report.

11 Q Okay. And there's certain information they put in these  
12 records that they gather while on the scene?

13 A Correct.

14 Q May be the name of the victim or the, the patient, the  
15 weight, age, things like that maybe?

16 A Yes. The name if available, the weight and the location  
17 of the call or the basic information they start with.

18 Q When you say the name if available, what if it's not  
19 available?

20 A Then they, they put in either unknown, John Doe or  
21 something else until a later time when the information is  
22 available from either the patient themselves, the hospital,  
23 police or the coroner's office.

24 Q But they do have to put something in that block to  
25 complete the record?

- 1 A Correct.
- 2 Q What's the scenario -- give us a scenario where a patient  
3 name wouldn't be available?
- 4 A Patient -- the patient name would not be available a  
5 scenario would be simply there's nobody there who knows the  
6 patient's name, they have no driver's license, they have no ID  
7 with them and the medical crew has no way to identify who they  
8 are they'll mark them down as John Doe, unknown patient.
- 9 Q Did you have an opportunity to do anything on the case  
10 we're here about today?
- 11 A Other than print out the record through your subpoena.
- 12 Q And you did that at the Solicitor's Office request?
- 13 A Yes.
- 14 Q And did you provide a record to us?
- 15 A Yes. I did.
- 16 Q I'm going to show you what's been marked for  
17 identification as State's 10. Take a look at that document if  
18 you don't mind, sir. Can you tell us what that document is,  
19 sir?
- 20 A That is a printout of a patient care record that was  
21 provided to the Solicitor's Office per subpoena.
- 22 Q Okay. I want you to look at the top of that document and  
23 tell me if there's a name for that patient.
- 24 A Name of Roy Davis.
- 25 Q Is there a date that that record was generated?

Michael Hodge - Direct by Mr. Helms

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1 A The record was generated on 7-11-2016.

2 Q Does it tell you who generated that record initially?

3 A It will say that the lead person is a Christopher Hager.

4 Q Okay. And would he have been the person that responded  
5 to that patient?

6 A Yes.

7 Q For treatment and then he comes back and obviously  
8 generates that record?

9 A Correct.

10 Q Now, is that record kept in the normal course of  
11 business?

12 A Yes.

13 Q Is it kept secure?

14 A Yes.

15 Q Does it appear to be altered in any way from when you  
16 provided it to me and my office?

17 A No, sir.

18 MR. HELMS: Your Honor, at this time I would tender  
19 State's 10 into evidence.

20 THE COURT: Any objection?

21 MR. BOUCHETTE: No objection.

22 MR. ALEX HYMAN: No, Your Honor.

23 THE COURT: All right. State's Exhibit Number 10  
24 admitted into evidence without objection.

25 (State's Exhibit Number Ten [Patient Care Report])

1 admitted into evidence and appropriately marked.)

2 BY MR. HELMS:

3 Q I want to ask you two more questions about that record.

4 Does it show a date of birth for the patient on that record?

5 A It shows a date of birth of [REDACTED].

6 Q Does it show a weight for the patient on that paper?

7 A It shows a weight of 150 pounds.

8 Q Please answer any questions that the Defense may have,

9 sir.

10 THE COURT: All right. Mr. Hyman.

11 MR. ALEX HYMAN: Your Honor, none from Defendant

12 Rosenbaum.

13 THE COURT: All right. Mr. Bouchette.

14 MR. BOUCHETTE: No questions, Judge.

15 THE COURT: All right. You may step down.

16 MR. HELMS: Your Honor, may he be released from his

17 subpoena?

18 THE COURT: Any objection?

19 MR. ALEX HYMAN: No objection, Your Honor.

20 MR. BOUCHETTE: No objection.

21 THE COURT: All right. He's free to go. The State can

22 call your next witness.

23 Your Honor at this time we would call Mr. Christopher

24 Hager.

25 WHEREUPON, Christopher Hager is called to the stand, duly

Christopher Hager - Direct by Mr. Helms

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1 sworn by the clerk and testifies as follows:

2 THE CLERK: Please state your name and spell your name.

3 MR. HAGER: All right. Christopher Hager, C-H-R-I-S-T-O-  
4 P-H-E-R, H-A-G-E-R.

5 DIRECT EXAMINATION

6 BY MR. HELMS:

7 Q Mr. Hager, where, where are you employed?

8 A Currently with Air Evac Lifeteam. It's an air medical  
9 company based out of Harlan, Kentucky.

10 Q And where were you employed before that?

11 A Horry County Fire Rescue.

12 Q What was your position with Horry County Fire and Rescue?

13 A Firefighter, paramedic.

14 Q What were some of your duties as a firefighter/paramedic?

15 A Fire suppression, and on the medical side, patient care,  
16 anything to do with patient care.

17 Q Did you have special -- can you tell the jury what kind  
18 of training, I'm sure you did, what you had?

19 A It -- it's two years of schooling to become a paramedic.  
20 Then on top of that there's a lot of specialty certification  
21 such as ACLS, which is advanced cardiac life support, CPR,  
22 AED's, things of that nature, and with the fire side you have  
23 to go through fire school, also, which is run by Horry County.  
24 It's a -- they call it recruit school.

25 Q Let me ask you this, the job you have now, how long have

1 you held that one?

2 A This one for less than a year.

3 Q How about the job with Horry County Fire and Rescue?

4 A Roughly three and a half.

5 Q Okay. And specifically in July of 2016 obviously you  
6 were employed with Horry County Fire and Rescue?

7 A Yes.

8 Q And your position was?

9 A Firefighter paramedic.

10 Q Did you have an opportunity -- were you working on  
11 September 11<sup>th</sup>, 2016, I mean, July 11<sup>th</sup>, 2016?

12 A Yes.

13 Q And did you respond to any calls on that day?

14 A Quite a few I would assume.

15 Q Specifically, did you respond to one on [REDACTED] Highway 548  
16 in the Conway Section of Horry County?

17 A Yes.

18 Q Do you remember responding to that call?

19 A Vaguely.

20 Q Okay. If I showed you a report you drafted would that  
21 help refresh your memory?

22 A Yes.

23 MR. HELMS: Permission to approach, Your Honor.

24 THE COURT: All right.

25 BY MR. HELMS:

Christopher Hager - Direct by Mr. Helms

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1 Q I'm showing you now what's been entered into evidence as  
2 State's Exhibit Ten. I want you to take a look at the front  
3 and the second page and take your time. Do you recognize that  
4 document, sir?

5 A Yes. That's my report.

6 Q Okay. And you drafted that document?

7 A Yes, sir.

8 Q And how about going to the narrative that you wrote.

9 MR. HELMS: And just permission to publish that to the  
10 jury at this time, Your Honor, that narrative.

11 THE COURT: All right. Go ahead.

12 BY MR. HELMS:

13 Q And, and, and, and tell the jury what your narrative says  
14 on that second page.

15 A You want the whole narrative read?

16 Q Please.

17 A Okay. [As read], "Medic 29 responded non-emergent to the  
18 report of an assault. PD in route. Response was delayed due  
19 to weather. Upon arrival medic 29 was met by officers, stated  
20 he only needed the medic and the monitor to confirm what he  
21 already knows. Paramedic Hager grabbed the monitor and  
22 followed the officer starting near the alpha and delta corner  
23 of the yard walking diagonal to the front door. The officer  
24 and Paramedic Hager spoke on the front porch about route of  
25 entry and officer stated it doesn't matter, it's a mess

1 anyway. From the door -- from the doorway patient was lying  
2 motionless on a mattress directly in front of the doorway  
3 wearing shorts but no shirt. No chest rise and fall was  
4 noted. Officer stated that he had not seen any movement  
5 whatsoever while he had been on scene. Copious amount of  
6 blood was noted on the floor. Paramedic Hager took a few  
7 steps to the left facing the door of the mattress. Assessment  
8 up close revealed patient was apneic. A large wound was noted  
9 to the top of the patient's head which was covered in blood.  
10 Due to the awkward position of the patient it was unknown if  
11 multiple fractures were noted or if it was the position.  
12 Monitor was applied without moving the patient at all.  
13 Asystole was noted on the monitor. Leads were removed leaving  
14 all four electrodes on the patient's limbs. Paramedic Hager  
15 then proceeded back out of the residence with the officer,  
16 walked out the same way as we did in and dispatch type three  
17 was notified of 10-7 and corner was notified. Corner was  
18 advised of the 10-7 and he was advised he would be there in a  
19 bit, but might be delayed due to storms. Officers did not  
20 have any info on the patient. So this report is labeled John  
21 Doe. Medic 29 return to service with scene left with Horry  
22 County PD."

23 Q Well, let me start with this, why was it labeled John  
24 Doe?

25 A I didn't have any current info on him.

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1 Q Why not?

2 A I didn't go searching for his pockets or anything try to  
3 find a wallet. We wasn't even sure there was one in there and  
4 there was no one there that knew his current name.

5 Q He couldn't tell you what his name was?

6 A No.

7 Q Why not?

8 A Because he was unresponsive with no pulse.

9 Q At that time did you declare him deceased?

10 A Yes.

11 Q What does asystole mean?

12 A Asystole means there is no electrical activity in the  
13 heart whatsoever.

14 Q So in laymen's terms when you arrived on the scene -- at  
15 what time, can you tell me on that report what time it was?

16 A I arrived on scene at 2203.

17 Q What time is that nonmilitary time?

18 A That is 10:03.

19 Q 10:03 p.m.?

20 A Yes.

21 Q So in laymen's terms would you said that Roy Davis was  
22 dead when you arrived on the scene?

23 A Yes.

24 Q I'm going to show you and I don't want you to show the  
25 jury these, what's been marked for identification as State's

1 11 through 16, and again, keep these to yourself and just  
2 slide them across and tell me if you know what those pictures  
3 are of, yes or no?

4 A Yes.

5 Q What are those pictures of? Just tell, tell, tell the  
6 court.

7 A Those are the pictures of Roy laying on a mattress like I  
8 stated in my report.

9 Q Are those pictures of him representative of how he  
10 appeared on September [sic] 11<sup>th</sup> when you arrived on scene?

11 A Yes.

12 Q Is that exactly how he appeared when you arrived on  
13 scene?

14 A Yes.

15 Q Do they and does his position or, or body appear to be  
16 altered in any way from the way you saw him when you arrived  
17 on scene that night?

18 A No.

19 MR. HELMS: Your Honor, with the Court's permission at  
20 this time I would like to enter State's 11 through 16 into  
21 evidence.

22 THE COURT: Any objection?

23 MR. ALEX HYMAN: Your Honor, there would be an objection.  
24 It probably needs to be brought up outside the presence of the  
25 jury.

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1 MR. HELMS: No, sir.

2 THE COURT: Anything from Defense Rosenbaum?

3 MR. ALEX HYMAN: No, Your Honor.

4 THE COURT: Anything from the Defendant Durkin?

5 MR. BOUCHETTE: No, Your Honor.

6 THE COURT: All right. Here's these -- those when they  
7 get back in. Let's go ahead and bring the jury in.

8 MR. RICHARDSON: Thank you, sir.

9 (Whereupon, the following takes place in the presence of  
10 the jury.)

11 THE COURT: All right. Ladies and gentlemen, welcome  
12 back. We're ready to resume the trial of the case. I'm going  
13 to admit State's Exhibits 11, 12, 13, 14, 15 and 16 into  
14 evidence over Defendants' objection.

15 MR. HELMS: Thank you, Your Honor.

16 (State's Exhibits Number 11 through 16 [Photographs]  
17 admitted into evidence and appropriately marked.)

18 THE COURT: All right. Mr. Helms, you can continue.

19 MR. HELMS: And Your Honor, at this time I would just ask  
20 to be able to publish State's 11 through 16.

21 THE COURT: All right.

22 BY MR. HELMS:

23 Q Mr. Hager, you removed the leads after your examination  
24 of the patient?

25 A Yes. The cables.

1 Q And did you do that because you made the determination he  
2 could not be revived?

3 A Yes.

4 Q Please answer any questions the Defense may have.

5 THE COURT: All right. Cross examination.

6 MR. ALEX HYMAN: Just a couple of questions.

7 CROSS EXAMINATION

8 BY MR. ALEX HYMAN:

9 Q I apologize, Chris Hager?

10 A Yes.

11 Q Mr. Hager, the -- you were working with fire rescue at  
12 this point or EMS?

13 A It was fire rescue when I was here. Yep.

14 Q Got you. Now, as far as the photos that we have here,  
15 you did not take those pictures?

16 A I did not.

17 Q Okay. Did you talk with law enforcement that night?

18 A As it says in my report, when I was going to enter.

19 Q Do you remember who you talked to?

20 A Not 100 percent.

21 Q Do you remember if a detective called you later that  
22 night or the next day or anything like that?

23 A I do not remember.

24 No further questions at this time, Judge.

25 THE COURT: All right. Mr. Bouchette.

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1           (On the record, December 5, 2018. The following takes  
2 place outside the presence of the jury.)

3           THE COURT: All right. Ladies and gentlemen, before we  
4 bring the jury in I need to let the attorneys know the bailiff  
5 has told me that a couple of them want to take notes. So I  
6 generally do allow them to take notes. I'll give them some  
7 instructions on note-taking when I bring them in and we'll  
8 hand out the notepads and proceed in that way.

9           Anything from the State before we bring the jury in?

10          MR. RICHARDSON: Your Honor, with regard to the Crawford  
11 issue, do you want to take that up before the jury?

12          THE COURT: Yeah. If you want to go ahead and take -- if  
13 you all are going to, going to do it now. I mean, if you all  
14 are going to be introducing or attempting to introduce the  
15 statements.

16          MR. RICHARDSON: We're not. I was just talked -- talking  
17 to Travis about it. I do believe that it's testimonial --

18          THE COURT: It is.

19          MR. RICHARDSON: -- the two statements. Therefore, we  
20 understand we would never be putting in anything that Jim said  
21 about her at all. If we put in anything it would be much  
22 later. There's nothing coming up today, but if it was Jim  
23 saying, "I went to town," I believe that could come in as a  
24 statement against Jim as long as it didn't involve her in any  
25 way.

1 THE COURT: Well, and as I read Jackson, State v.  
2 Jackson, that's the one that I'm finding controlling, I agree.  
3 It's -- both statements are testimonial. If the Defendants  
4 wind up taking the stand, it's open game, it can come in. If  
5 they don't take the stand, I don't know that anything can come  
6 in if it in any way points to the other Defendant.

7 MR. RICHARDSON: I agree.

8 THE COURT: That's the way Jackson -- I read it. I mean,  
9 even though they redacted Jackson and they said other person  
10 and stuff like that, they said it was obvious who they were  
11 talking about. So any reference to a Codefendant or  
12 participation by a Codefendant or identification of a  
13 Codefendant in any way I think is inadmissible.

14 MR. RICHARDSON: Well, Judge, you remember how, how we  
15 used to do it.

16 THE COURT: Okay.

17 MR. RICHARDSON: It would be Jim and Travis and I would  
18 have somebody up there and say, "Now, don't tell me what  
19 Travis did," through the investigator.

20 THE COURT: Right.

21 MR. RICHARDSON: And he would say, "Jim said we went."

22 THE COURT: Right.

23 MR. RICHARDSON: Jim and someone else. I think obviously  
24 we're going to stay away from all of that.

25 THE COURT: Okay.

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1 MR. RICHARDSON: And it would just be Diane as to what  
2 she did, nothing'd even come against Jackson or Bruton, but I  
3 don't see any of that coming up. I, I was just telling them I  
4 do agree that it is testimonial. There's no reason to try to  
5 muddy the waters with any of that Crawford.

6 THE COURT: I agree. All right. That sounds good.

7 MR. TRAVIS HYMAN: Your Honor, if I may, just to make  
8 sure that I'm on the same page with Mr. Richardson here before  
9 we proceed, it, it is the State's intention not to offer  
10 Diane's recorded statement, and so we don't need to address  
11 redacting, and then are you talking about Mr. Rosenbaum's as  
12 well?

13 MR. RICHARDSON: We would never enter the statement. It  
14 would be too hard to redact. If we wanted to get anything out  
15 of the statement, and it wouldn't take place today, but if we  
16 were going to get anything out of the statements it would be  
17 by putting the detective up and asking him specifically, "Did  
18 Diane tell you where she was at 5:00 o'clock"?

19 MR. TRAVIS HYMAN: Okay.

20 MR. RICHARDSON: You know, that's --

21 THE COURT: So in other words, rather than introducing  
22 the audio you would have the officer testify as to what was  
23 said?

24 MR. RICHARDSON: Yes, sir.

25 MR. ALEX HYMAN: Judge, I think there's still a --

1 MR. RICHARDSON: But not, not any -- not any question  
2 that Diane would say --

3 MR. TRAVIS HYMAN: Okay. I got you.

4 THE COURT: Right. Right. In other words -- yeah. I  
5 understand what you're saying, in other words, have the  
6 officer take the stand -- well, but still --

7 MR. TRAVIS HYMAN: Your Honor, I think that's back to the  
8 Jackson case you were talking about. They, they made it  
9 specific in that case that it was unpreserved, but where the  
10 officer, the sergeant testified that not, not exactly to the  
11 substance or content that the non-testifying person talked  
12 about in their interrogation, but even when he alluded to,  
13 "After we spoke to Ms. Diane Durkin," for example, "we  
14 arrested Mr. Jimmy Rosenbaum," under Jackson that would even  
15 be implicitly incriminating on Mr. Rosenbaum's behalf. So I'd  
16 just like --

17 THE COURT: Yeah.

18 MR. TRAVIS HYMAN: -- to try to stay away from that as  
19 well.

20 MR. RICHARDSON: I do agree with that.

21 THE COURT: Yeah. Let's do this, if you get to that  
22 point, before we get into that testimony we might want to do  
23 it outside the presence of the jury so that we can dot our I's  
24 and cross our T's because I don't know -- I know during the  
25 course of a trial certain things come up and I don't want --

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1 what I want to make sure of is that the cat doesn't get out of  
2 the bag because we can't put it back in.

3 MR. RICHARDSON: Yes, sir. We'll proffer it.

4 THE COURT: I'm not -- yeah, because, because even under  
5 Bruton it does say that there are exceptions. I don't know if  
6 there is an exception here or not. I do agree with the  
7 defense that under State v. Jackson both statements are  
8 testimonial.

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: We have Codefendants. At this point in time  
11 there's no indication that either one is going to take the  
12 stand and testify. So under Bruton and Jackson any statement  
13 by any Codefendant that implicates the other Codefendant in  
14 any way, shape or form violates the confrontation clause and  
15 we can't get into it.

16 MR. RICHARDSON: Totally agree. Yes, sir.

17 THE COURT: All right. All right.

18 MR. TRAVIS HYMAN: Thank you.

19 THE COURT: Aside from that, anything from the State  
20 before we bring the jury in?

21 MR. RICHARDSON: Nothing from the State, Your  
22 Honor.

23 THE COURT: All right. Anything from the Defendant  
24 Rosenbaum?

25 MR. ALEX HYMAN: No, Your Honor.

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1 MR. HELMS: Your Honor, at this time the State would call  
2 Jill Domogauer to the stand.

3 THE COURT: All right.

4 Whereupon, Jill Domogauer is called to the stand, duly  
5 sworn by the clerk and testified as follows:

6 THE CLERK: Please state your name and spell it.

7 MS. DOMOGAUER: Jill Domogauer, D-O-M-O-G-A-U-E-R.

8 DIRECT EXAMINATION

9 BY MR. HELMS:

10 Q Ma'am, where do you work?

11 A I'm currently employed at the Horry County Police  
12 Department as a crime scene investigator.

13 Q And how long have you been employed there?

14 A I've been employed with Horry County for over 10 years.

15 Q And when you say you're with Horry County, where did you  
16 work before crime scene?

17 A I started my law enforcement career with the City of  
18 Conway.

19 Q And how long did you work with them?

20 A Over 11 years.

21 Q So you've been a police officer in total?

22 A 19 to 20 years.

23 Q Okay. What do you do as a crime scene investigator?

24 A With crime scene investigations I am -- get called out to  
25 scenes and document the scenes for photography, sketching,

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1 collecting evidence, documenting the crime scene in other  
2 forms, writing up reports and I also assist other crime scene  
3 agents on scenes.

4 Q Do you receive any special kind of training to do what  
5 you do?

6 A Yes. I have a college degree, an Associates in Criminal  
7 Justice. I've also attended numerous college courses with the  
8 University of West Virginia. I've also done training with the  
9 Medical Examiner's Office at New York. I've also done  
10 training with the National Forensic Training Center in  
11 Florida.

12 Q And again, just to recap, when you -- how, how are you  
13 called out to a scene? When, when something happens how, how  
14 are you engaged?

15 A Generally, the patrol officers will get on scene first,  
16 and if it's a -- deemed to be a major scene or a death  
17 investigation they call the detective division and my  
18 supervisor is contacted and that supervisor then calls out  
19 crime scene.

20 Q When you get there, what do you do?

21 A When you get on scene you usually get a, a brief what  
22 happened prior to scene. You acknowledge if the scene is  
23 secure, you acknowledge crime scene logs and then you start  
24 documenting the scene.

25 Q Were you employed in this capacity on July 11<sup>th</sup> of 2016?

- 1 A Yes. I was.
- 2 Q And did you have an opportunity to respond to a crime  
3 scene on July 11<sup>th</sup>, 2016?
- 4 A I responded to a crime scene off of Highway 548.
- 5 Q And who told you to go there?
- 6 A I was, I was advised to go there by my lieutenant, myself  
7 and Investigator Dennis Lewis, who is also a crime scene  
8 investigator.
- 9 Q And did he respond with you?
- 10 A Yes. He did.
- 11 Q And did you process this crime scene?
- 12 A We both did. Yes.
- 13 Q Did you -- I mean, was it reserved as a crime scene?
- 14 A Yes. It was.
- 15 Q Tell the jury a little bit about what you saw when you  
16 got there.
- 17 A We -- when we first arrived on scene, Highway 548 is like  
18 a rural highway. The scene was secured. He had patrol  
19 officers standing posts. We pretty much got on scene. It was  
20 a, a mobile home was the location. There was some vehicles  
21 out in the, in the yard. The mobile home was offset from the  
22 highway. It's not like I had to turn down any roads. It was  
23 right there on 548. We respond to the scene, and we were  
24 briefed quickly by patrol, and then we took over the  
25 investigation.

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1 Q All right. So from the time you took over the  
2 investigation just tell us a little bit, and I know it's been  
3 a while, but tell us a little bit about what you did next.

4 A Well, we, we start off by, you know, annotating our entry  
5 on crime scene logs, and then we start documenting the outside  
6 photography, the exterior of the residence, and then we'll --  
7 we move inside documenting the interior of the residence and  
8 then focusing on the scene itself and evidentiary value of  
9 items and photograph, collect and document those things, make  
10 notes of, you know, weather conditions, temperatures or any  
11 other conditions that may be relevant to the case.

12 Q In laymen's terms, what did the crime scene appear to be  
13 like?

14 A It was a death investigation. There was a death inside  
15 the residence.

16 Q Okay. And was the body still on scene when you got  
17 there?

18 A Yes. It was.

19 Q Okay. I'm going to show you now what's been marked,  
20 numerous items, for identification purposes only. I don't  
21 want you to publish these to the jury. I want you to put  
22 those down and take a look at them and tell me if you  
23 recognize what's been marked as State's 21 through 76. Ma'am,  
24 do you recognize those photographs?

25 A Yes. I do.

- 1 Q And what are those photographs of?
- 2 A Those are photographs -- these are photographs that were  
3 taken that day.
- 4 Q Are all those photographs of the crime scene?
- 5 A I'm almost --
- 6 Q You're not done; are you?
- 7 A No. I'm almost.
- 8 Q I apologize.
- 9 A They're photographs of the crime scene that day.
- 10 Q All of them?
- 11 A Yes, sir.
- 12 Q Are these photographs that you took?
- 13 A Investigator Lewis took them in my presence.
- 14 Q Okay. So you were with him the entire time?
- 15 A Yeah. I was standing beside him so I wouldn't be in the  
16 picture.
- 17 Q Excellent. And is that common, one of you take pictures,  
18 one of you maybe document or stand beside each other and --
- 19 A Yes.
- 20 Q Okay. Is this how you commonly document a crime scene by  
21 taking photographs?
- 22 A Part of it. Yes.
- 23 Q And these photographs were taken of that scene on July  
24 11<sup>th</sup>, '16.
- 25 A Yes. It was.

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1 Q And do they fairly and accurately represent the scene as  
2 you and Investigator Lewis saw it that night?

3 A Yes.

4 Q Have those photographs been altered in any way since they  
5 were taken?

6 A No.

7 MR. HELMS: The Court's indulgence, Your Honor.

8 THE COURT: All right.

9 BY MR. HELMS:

10 Q And did your CSI unit provide those photographs to my  
11 office?

12 A Yes. We did.

13 THE COURT: Hold for a second while they're looking over  
14 that.

15 MR. HELMS: Oh, yes, sir. Yes, sir. I'm sorry.

16 MR. ALEX HYMAN: Judge, I think we'll have a matter to  
17 take up outside the presence of the jury.

18 THE COURT: All right. All right. Ladies and gentlemen,  
19 as we did yesterday, we've got a matter of law that I need to  
20 address with the attorneys. So I'm going to excuse you back  
21 to the jury room. Please leave your notepads in your seat.  
22 Do not discuss the case even among yourselves and we'll bring  
23 you back in just a few minutes.

24 (Whereupon, the following takes place outside the  
25 presence of the jury.)

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1 63, 65 through 70 and 72 through 76 [Photographs] admitted  
2 into evidence and appropriately marked.)

3 THE COURT: All right. Mr. Helms, you can continue with  
4 your direct examination.

5 MR. HELMS: Your Honor, at this time I would ask to be  
6 allowed to publish those exhibits that were admitted into  
7 evidence to the jury.

8 THE COURT: That'll be fine. All right.

9 BY MR. HELMS:

10 Q Ms. Domogauer, I'm going to hand you those exhibits that  
11 were admitted into evidence and what I'd like to do at this  
12 time is for you to reference each one by number as you tell  
13 the jury vaguely what it is because they can see it on the  
14 screen as you do that.

15 A Okay. Didn't know if you wanted me to wait for them.

16 Q Whenever you're ready, ma'am.

17 A Okay. What we're looking at here is State's Exhibit  
18 Number 21, and it's going to be the vehicles that are parked  
19 in the yard of the residence that we responded out to.

20 Q Yes, ma'am.

21 A What we're looking at here -- see if I can find that  
22 picture.

23 Q Is it the front of the house, ma'am?

24 A It -- yes. I don't know what exhibit that picture is.

25 Q Is that not matching what you have there?

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1 A No, sir. This is my next one.

2 Q Okay. That's, that's the front of the house and that's  
3 the front of the house. I referenced that with Mr. Hyman and  
4 he didn't have any objection. It's just a slight angle  
5 different.

6 THE COURT: Well, I mean, for the record what is it?  
7 What --

8 Q Ma'am. What is --

9 THE COURT: Oh, she's referencing State's Exhibit what?

10 A I'm referencing State's Exhibit Number 22.

11 THE COURT: And what is on the screen?

12 MR. HELMS: It's a different angle, Judge. It's, it's  
13 still the front of the house but it's a different angle. I  
14 showed Mr. Hyman. I don't know how the different angle got  
15 there, but we can move through that and just publish this.

16 THE COURT: Okay.

17 MR. HELMS: That, that -- which is what I'm seeking to  
18 do.

19 BY MR. HELMS:

20 Q Hold that up for the jury, ma'am, if you don't mind and  
21 tell them what you're looking at.

22 MR. ALEX HYMAN: Judge, he did speak with me. We don't  
23 object to that. I mean, we don't object to that.

24 MR. BOUCHETTE: That's fine.

25 THE COURT: All right.

1 A This is State's Exhibit Number 22. This is a further  
2 picture with a lot of the darkness. What you're seeing on the  
3 screen is a close-up picture. You can see the numerical  
4 address here, the wooden porch here, and the open door which  
5 you can also see in that photograph. It's just closer and  
6 brighter.

7 Q Okay. Thank you, ma'am.

8 A I'm now looking at State's Exhibit Number 23. Again, it  
9 shows the numerical on the front of the residence.

10 Q And what is the number on the front of the residence?

11 A [REDACTED].

12 Q Thank you, ma'am.

13 A I'm looking at State's Exhibit Number 24. It's going to  
14 be a driver's license for Mr. Rosenbaum that was inside the  
15 residence.

16 Q Please continue.

17 A Oh, it's just -- it's just a -- it's the driver's license  
18 found for Ms. Rosenbaum [sic] having the matching numerical  
19 address of [REDACTED] Highway 548.

20 Q Yes, ma'am.

21 A Which was the location we were at. This is going to be a  
22 driver's license that was on scene, State's Exhibit Number 25.  
23 I'm sorry. It's a driver's or, excuse me, not a driver's  
24 license, an identification card.

25 Q And who's that identification card for?

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1 A. Diane Durkin, also showing a numerical address of [REDACTED]  
2 Highway 548, which was at the address we were responding to.

3 This is going to be State's Exhibit Number 26. This is  
4 the back side of the, excuse me, the back side of the  
5 residence. The residence faces Highway 548. This is the back  
6 side kind of faces like woods and grass and everything else  
7 like that, and this is just a shot of that.

8 This is State's Exhibit Number 27. It is a picture of  
9 the front door of the residence.

10 This is State's Exhibit Number 28. This is going to be  
11 -- if you can see that -- the living room. Once you come  
12 right into the front door you see this mattress or pallet,  
13 whatever you want to call it. This is where we found the  
14 victim. He was on that. This picture was taken after the  
15 victim was removed from the scene.

16 Q Okay.

17 A This is State's Exhibit Number 29. This is the ceiling  
18 above the front door in the living room area showing blood  
19 spatter.

20 Q And that's the blood spatter is on the ceiling in front  
21 of the front door?

22 A Yes. Yes. That's what those, those dots are.

23 Q And tell -- what is blood spatter? You know what blood  
24 spatter is?

25 A Yes.

1 Q What is blood spatter? What does that mean?

2 A Blood spatter other people who don't know the terminology  
3 will call it spatter, but blood or, excuse me, splatter, when  
4 an object is bleeding for various different reasons it can  
5 create a pattern or a design when you shed your blood, and  
6 it's referred to as the spatter. It can be high velocity,  
7 medium velocity. It can be castoff. It can be, I'm sorry, it  
8 can be castoff. It can be 90 degree droplets, angles. It can  
9 be swipes and wipes and transfers, those kinds of things.

10 Q Okay. Thank you.

11 A This is just inside the front door, I'm sorry, State's  
12 Exhibit Number 30. I apologize. We're in the living room  
13 area. You can see the couch area. That window you just saw,  
14 the top of the curtain, this would be the floor of the area.  
15 Taking the picture there showing we're right there by the door  
16 and it's showing a bit of that blood spatter on the floor.

17 Q By the front door?

18 A Front door, yes, sir. We're in the living room at the  
19 time. Yes.

20 Q I understand.

21 A This is State's Exhibit Number 31. It's just a little  
22 bit further into the room, the living room area. You can see  
23 again that curtain, the shoes, the floor. This is the couch  
24 area. You see a cell phone and a baseball bat and the legs of  
25 a chair.

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1 Q Let me ask you this about this picture, were these items  
2 that you would have collected at the scene?

3 A We did collect them at the scene.

4 Q Did you collect that right -- item right there?

5 A If you're pointing to the cell phone, yes, sir.

6 Q Do you remember what kind of cell phone it was by any  
7 chance?

8 A I would have to look back at my notes to give you  
9 specifics.

10 Q If I showed you notes would it refresh your recollection?

11 A Yes, sir.

12 Q Do you remember how many phones you collected?

13 A I collected two phones, sir. I believe that's going to  
14 be what we marked as exhibits, or excuse me, evidence item  
15 number three, crime scene three.

16 Q What is that?

17 A It's a black in color Samsung cell phone model SGHT399N  
18 in a case. I also have a serial number, and it was located on  
19 the sofa arm, which you can see on the photograph that's where  
20 that phone is.

21 Q Thank you, ma'am.

22 A That's going to be State's Exhibit Number 32. Again,  
23 we're in the living room, same area. It's just a different  
24 angle and a closer shot showing the baseball bat, a cell phone  
25 and blood spatter on the couch.

1 Q Okay. Okay.

2 A Excuse me. This is State's Exhibit Number 33. You can  
3 see a little bit more into the room of the living room. My --  
4 mine and Investigator Lewis' back is towards that back wall  
5 where the front door is.

6 Q Uh-huh.

7 A You can see the baseball bat. You see a, a coffee table  
8 of some sort turned over. You see a shirt folded on the other  
9 side of the table. You see the white mattress, remote  
10 controls and just general overall picture of the living room  
11 area.

12 Q Let me ask you. You just referenced a, a shirt. Is that  
13 the shirt right there?

14 A Yes, sir. It's folded behind the coffee table.

15 Q When you say folded, what -- is it folded like it would  
16 be in a retail store for sale?

17 A A retail store or your laundry.

18 Q Did you collect that shirt?

19 A Yes.

20 Q Okay. Thank you.

21 A This is a picture, this is State's Exhibit Number 30, I  
22 believe that 34. It's just an overall picture going from the  
23 living room space just beyond to the kitchen space. There was  
24 no wall separating those two rooms, you just kind of walk from  
25 one to the other. The couch is used as a separation and the

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1 countertop.

2 Q Open floor plan?

3 A Pretty, yeah, open floor plan I guess you would say, and  
4 this is just a picture of the transitioning from one room to  
5 the other documenting the blood spatter and also documenting  
6 the rooms.

7 This is State's Exhibit Number 35. You can see in the  
8 one corner or on the top the open door of the front door. You  
9 can see the back side of the couch area and the mattress.  
10 We're now standing inside the kitchen area looking back to  
11 where we were in the living room. You can see the, the blood  
12 spatter, the one area where there's a pooling of blood right  
13 there in the threshold break of the two different rooms where  
14 you see the, the transitioning from the wood to the tile.

15 Q What's a pooling of blood mean?

16 A Generally a pooling of blood means something stayed there  
17 for a substantial time bleeding in that general area.

18 This is State's Exhibit Number 36. It's just another  
19 photograph of the floors with the spatter showing that, that  
20 pooling of blood in the one area.

21 This would be State's Exhibit 37. This is more of the  
22 kitchen area. We're now moving into the kitchen. I'm  
23 standing on or, excuse me, me and Investigator Lewis are  
24 standing on the back wall of the kitchen looking towards the  
25 front of the residence showing the front side of the kitchen,

1 again just showing the spattering on the floor.

2 This is State's Exhibit Number 38. This is a picture of  
3 the kitchen itself from the distance on that back wall like I  
4 was saying, excuse me, to where you can see the flooring and  
5 also see the sink area and the countertop. It's an overview  
6 picture. You have a rifle on the countertop. There's  
7 spatter, pooling of spatter on the floor right by the sink and  
8 the spatter on the floor and on the appliances and the  
9 cabinets, also. You can also see if you look closely the  
10 faucet in the kitchen sink is in the running position. The  
11 water is on.

12 This is State's Exhibit Number 39. It's just the other  
13 side of the kitchen area. You see a dining room table. On  
14 that table and the one chair you can see another cell phone.  
15 You also see the blood pooling like I said by the sink area,  
16 and again the water running in the sink and the spatter on the  
17 cabinets and appliances and on the floor.

18 Q Let me ask you this, you said there's a cell phone. Did  
19 you collect that cell phone as well?

20 A Yes. I did.

21 Q Do you remember what kind of phone it was generally  
22 speaking?

23 A I would call, laymen's terms, a flip phone.

24 This is State's Exhibit Number 40. It's just a close-up  
25 picture of the kitchen area showing the blood pooling and the

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1 spatter on the floor, cabinets and appliances.

2 State's Exhibit Number 41 showing the spattering, the  
3 droplets and everything on the floor and on the appliances.

4 Q Droplets different than pooling?

5 A Yes.

6 Q Why?

7 A Droplets can be from various different angles, can be  
8 motion, can mean several different things. Pooling you can  
9 see the difference in the size between a pooling area. You  
10 have two pooling areas in this photograph. You have smears  
11 and you have droplets.

12 Q What's a smear mean?

13 A It was -- I mean, exactly how it's -- it, it was smeared.

14 Q Fair enough.

15 A Okay.

16 Q Thank you.

17 A 42, again, is showing the, the spatter and on the  
18 cabinets, the flooring and the appliances in the kitchen.

19 Q Now, just to clarify, these terms you're using, pooling,  
20 droplets, smears, these are actual technical terms?

21 A Yes. They are.

22 Q Thank you.

23 A And that's State's Exhibit 42, the one I was just looking  
24 at.

25 This is State's Exhibit Number 43. These are just close-

1 up images of what we were discussing before in the kitchen,  
2 the pooling, the droplets and the spattering that's on the  
3 appliances and on the cabinets.

4 Q State's Exhibit Number 44 is showing you the picture of  
5 the -- I would call it a rifle, the kitchen sink. The water  
6 has been, I think at this time, turned off. We turned off the  
7 water. When we first entered the residence it was running.  
8 We documented that with a photograph, and this is State's  
9 Exhibit 44 that we're looking at.

10 This is State's Exhibit 45. This is showing the, like I  
11 said, I would call it a rifle on a countertop. There's some  
12 blood on the countertop. Also you can see something in the  
13 sink.

14 Q What is that in the sink?

15 A They're weighted -- they're weighted UFC like fight  
16 gloves.

17 Q Let me ask you this on this picture, on the butt of this  
18 rifle did you see blood?

19 A Yes.

20 Q And is that -- what kind of rifle is it?

21 A It's an Airsoft type pellet type rifle.

22 Q Okay. Go ahead, Tonya.

23 A Before we turned the water off we did a close-up picture.  
24 This is what this is going to be. This is State's Exhibit 46.  
25 You can see the water's running on these pair of gloves and

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1 they're padded UFC fight gloves.

2 Q So the water -- let me ask you this, did, did you turn  
3 the water on?

4 A No. The water was running. When we entered the  
5 residence we turned it off.

6 Q Do you know if any law enforcement officers are the ones  
7 that turned the water on?

8 A No. Nobody touches that. Nobody indicated they touched  
9 it. This is how the scene was found.

10 Q Was there anything else on the gloves? Did you see any  
11 blood or anything on the gloves?

12 A I was preparing to package those gloves myself. As we  
13 were packaging the evidence, myself and Investigator Lewis, as  
14 we're holding it up it is dripping and it's dripping a clear  
15 pinkish liquid from them.

16 Q Okay.

17 A This is State's Exhibit Number 47. Again, this is a  
18 photograph of the other side of the kitchen close up to the  
19 cabinets and the stove and the flooring showing the spatter of  
20 the blood.

21 This is State's Exhibit Number 48 showing the spatter on  
22 the floor, the spatter on the cabinets and on the  
23 refrigerator.

24 Q Is that spatter on the refrigerator or smear?

25 A Both.

1 Q Okay.

2 A You have smear on the front and there's spatter on the  
3 lower half of it.

4 Q Okay.

5 A This is State's Exhibit Number 49. This is the back side  
6 of the kitchen. These are going down the hallway to the one  
7 side of the residence towards the bedroom area and the back  
8 door.

9 This is State's Exhibit 50. This is that flip phone that  
10 I was telling you about on the table.

11 Q You collected that; right?

12 A Yes. We did.

13 This is State's Exhibit 51. It's just showing the blood  
14 on the floor of the kitchen going back towards the bedroom  
15 area. You can see the edge of the sofa, which is the living  
16 room area.

17 This is State's Exhibit 52. I am now standing or we are  
18 standing in the entrance of a back bedroom. You can see the  
19 cracked opening of the back door of the residence. You also  
20 see the laundry area and if you look off in the distance  
21 towards the top you can see the, the light where the couch and  
22 the kitchen area is and you can see some light faint blood on  
23 the floor.

24 Again, this is the same bedroom. We just backed up a  
25 little bit to see the threshold of the bedroom. That's

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1 State's Exhibit 53. I apologize. Again, you can see the  
2 blood marking almost like faint shoe wear impression or of  
3 some kind of pattern, but it's blood on the floor of that --  
4 towards the entrance of that bedroom area.

5 This is State's Exhibit 54. This is the back bedroom  
6 we're now inside just showing another rifle and just the back  
7 bedroom area.

8 Q Now, did you collect that rifle as well?

9 A No. We did not.

10 Q Okay. And is that because you didn't find any blood on  
11 it?

12 A Well, the rifle was clean and it wasn't in the immediate  
13 area where all the, the incidents took place.

14 Q So you -- I, I guess what I'm asking, did you determine  
15 if it had any evidentiary value to this case?

16 A At this time that rifle had no evidentiary value. It  
17 didn't even look like it was moved from that specific  
18 location. There was nothing on it. There was no blood or  
19 anything to indicate that that was not where it was originally  
20 placed in the residence.

21 Q Thank you.

22 A Again, this is State's Exhibit 55 showing that on the  
23 other side is, is a walk-in like master bathroom, again,  
24 showing that the gun in place. Near the gun was also things  
25 for weaponry, pellets and such.

1 Q Now, did you find any blood in this room?

2 A No.

3 Q Okay.

4 A This is State's Exhibit Number 56. You can see the tip  
5 of the weapon on the one side. Also, on, on the dresser you  
6 see a container with pellets. You see a pellet actually out  
7 on the open on a piece of tissue, and in the background you  
8 see other containers that contain pellets or rounds for these  
9 type of weapons.

10 This is State's Exhibit 58. We're on the other side of  
11 the house now. This is a, a back bedroom area that's been  
12 converted to kind of like a -- an exercise storage area.  
13 They've got weights in there, fishing pole, you know, a couch.

14 Q Now, those weights, did you pull those out of a closet?

15 A No, sir. This is how it was found.

16 Q They were found in the middle of that room?

17 A Yes, sir.

18 Q Okay.

19 A This is State's Exhibit Number 59 on the other side of  
20 the house like I said where the weight room was. There is  
21 also a bedroom. This bedroom contained clothing, mostly of a  
22 female nature.

23 Q Okay.

24 A State's Exhibit 60, in between those two rooms the, the  
25 bedroom that's like a weight room and the other bedroom that

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1 has the female clothing there's a bathroom in between. This  
2 is that bathroom.

3 Q Now, in the weight room, the female's bedroom or the  
4 bedroom where female articles were found, in this bathroom did  
5 you find any blood?

6 A No, no, sir.

7 Q Okay.

8 A This is State's Exhibit 63. This is a photograph of the  
9 -- I'm just going to call it a mattress, the bedding area  
10 right by the front door. As you can see the front door is  
11 right there by it. The victim has been removed from the scene  
12 already. This is a picture of that area after the victim was  
13 removed showing the blood and, and some of the spatter on the  
14 walls.

15 Q Up on the wall above that bed how would you classify  
16 that?

17 A A smear.

18 Q A smear.

19 A This is State's Exhibit Number 65. As you can see the  
20 victim is still on scene in this particular photograph. Also,  
21 you have other type of contents. On the bed with him you have  
22 some kind of glass pen container that's upright, a pack of  
23 cigarettes and such. Over towards just beyond his head area  
24 on the floor area you have a cup, an ashtray, a remote control  
25 car, just keys and such and, of course, a table in the one

1 area that's turned over.

2 Q Okay.

3 A This is State's Exhibit 66. Again, you can see that the  
4 victim is still on scene and it gives you a shot of that wall  
5 shot that you saw a minute ago after he was removed from  
6 scene. You also see the victim's wearing shoes and he's got  
7 his shorts are down in the back but they're up in the front.

8 Q Okay. Has he got his shirt on?

9 A No, sir. He has no shirt on.

10 This is State's Exhibit 67. Again, it's just a different  
11 angle. Again, the victim is still on scene in this particular  
12 photograph. You see the, the baseball bat on the one side.  
13 You see on the mattress that pen thing that I was telling you  
14 about. It's upright. On the other side that's the pack of  
15 cigarettes. You see the victim's wearing shoes, no shirt.  
16 His shorts are up in the front but down in the back. You do  
17 see what's called medical leads on his leg and his arm. EMS  
18 when they assessed him they stuck those on there and he did  
19 not have signs of life. They leave those on scene. They're  
20 not to move them or touch the victim any further.

21 Q What do you mean any further, once they determine he's  
22 deceased they --

23 A He was in a position where you can put the leads on his  
24 body without having to move him.

25 Q I understand.

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1 A And that's what that picture showed that the leads were  
2 put on him without having to move him from the position he was  
3 moved in in order to take the lead off of him because a very  
4 sticky substance, by taking that off, if anybody's ever had  
5 it, it's worse than a band aid and you could have the chance  
6 of actually moving him. So they leave it as it is. They just  
7 disconnect the wires from their equipment.

8 Q I understand.

9 A This is State's Exhibit Number 68. This is on the, the  
10 one side of the hallway. You can see the back of the front  
11 door. That's -- the, the door opens inward towards the  
12 residence. So this is the back side. The kitchen area is,  
13 without having to point it, the kitchen area is just beyond  
14 where his feet are pointing in that direction. Where you see  
15 the different transitioning of the floor we're now going to  
16 the hallway where that other -- those other bedrooms and  
17 hallway bathroom that's back this way, and that's --

18 Q Towards me, basically, towards me and the jury?

19 A Towards you, yes, sir, exactly.

20 Q Okay. I understand.

21 A And that's just a photograph of there's a shoe there and  
22 the, the blood on the floor and on the back of the door, and  
23 that was State's Exhibit 68.

24 This is State's Exhibit 69. You can see a little bit  
25 more of the back side of the door. You can also see the

1 victim in the position he was located in by us and officers.  
2 The pen dish it looks like ear plug and so that's just stuff  
3 that was on the, on the mattress with him as well. Again,  
4 he's not wearing a shirt. He does have shoes on, underwear  
5 and shorts. The shorts are pulled down on the back side but  
6 are up in the front.

7 Q All right. Let me stop you right there. This pen dish,  
8 did you get a good look at it?

9 A Yes. I had to move it.

10 Q Did it -- I'm sorry?

11 A We moved it when we moved him.

12 Q After this photo was taken?

13 A Well, yes. I mean, once we, we got to the position where  
14 we can move him like you saw in the one photograph you see the  
15 mattress there's nothing on it. All of that stuff was removed  
16 as we were removing the victim.

17 Q But here's my question. It's a very specific question.  
18 Was the -- did you touch that pen dish before this photograph  
19 was taken?

20 A No.

21 Q Okay. So it was in that position when you arrived?

22 A Yes, sir.

23 Q Did it seem like something that would be easily moved if  
24 there was a lot of commotion on that mattress?

25 A No. It, it, it had to be moved because -- when were

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1 moving the victim and putting him in the body bag we had to --

2 I had to step on that side.

3 Q Uh-huh.

4 A Investigator Lewis was on the other side. So we're

5 stepping partly on the mattress.

6 Q Uh-huh.

7 A Now, we've got covers and booties over our feet so we

8 can't transfer anything onto the mattress, but if you take one

9 step that thing's knocking over.

10 Q Okay. So it would have easily fell over?

11 A Yes.

12 Q That's what I'm asking. Okay. And let me ask you this,

13 here at the victim's backside, lower back area, what would you

14 call that right there?

15 A It's a blood pooling.

16 Q Blood pooling? Did you notice, and I'm just asking if

17 you noticed, yes or no, you may not have, any injuries to this

18 area of the victim when you were taking a picture?

19 A Not when I took that picture, no, sir. I can't see

20 what's on the backside of him.

21 Q Okay.

22 A The side he's laying down on.

23 Q But -- did anything stick out to you as far as injuries

24 in that area of the victim?

25 A Not in that particular area. No, sir.

1 Q Okay.

2 A And again, fabrics, I mean fabric's fabric. It's going  
3 to soak it in.

4 Q Sure. Okay. Thank you.

5 A This is State's Exhibit 70. This is as we rolled him  
6 where you saw that area a minute ago on the mattress is now we  
7 rolled him kind of over that --

8 Q Okay.

9 A -- on his back, and you can see some trauma to the  
10 victim's chest area, a contusion up there by his, his breast,  
11 and you see gunshot type wounds to the lower side of him.

12 Q Okay.

13 A And you can see that the pants are up in the front. This  
14 is State's Exhibit 70.

15 Q Tonya, go back one, please. Okay. Here's what I'm going  
16 to ask you to do on this second to last picture. No, keep  
17 going if you don't mind, ma'am, and tell, tell the jury what  
18 you're looking at here in this picture not on the screen but  
19 in, in -- on your hand -- in your hand.

20 A This is State's Exhibit Number 72.

21 Q Okay. And what is that of?

22 A This is the wall and the entranceway, basically living  
23 room. You've got the, the mattress is over here. This is  
24 where those shoes are. This is the mate to the shoe that was  
25 found on the other side.

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1 Q Will you publish that to the jury, ma'am? Thank you.

2 A And that referenced State Exhibit Number 72.

3 This is State's Exhibit 73. This is that other shoe mate  
4 that I was telling you about. Its, its mate is on the other  
5 side of the door in that little area by the window. This is  
6 the shoe coming back towards those other two bedrooms and hall  
7 bathroom, the back side of the door, and of course, you can  
8 still see the victim's feet. This is State's Exhibit Number  
9 73.

10 Q Okay.

11 A This is State's Exhibit Number 74. This is the wall just  
12 beside the front door where you see the window. This is a  
13 photograph of the spatter that's going to be on the wall. You  
14 have smears. You have castoffs. You have -- it's just  
15 there's, there's blood on the wall, but you can see the big  
16 what I would call a smear pattern.

17 Q Let me ask you this, in your experience and training,  
18 what does this picture indicate to you right here?

19 A In my experience and training and also I have had blood  
20 spatter training --

21 MR. BOUCHETTE: Your Honor, I've got an objection to  
22 that. I think that's beyond the scope of her expertise.

23 THE COURT: Yeah. You haven't qualified her as an  
24 expert.

25 MR. BOUCHETTE: Not qualified to talk about that.

- 1 THE COURT: Sustain the objection.
- 2 MR. HELMS: Understood, Judge.
- 3 THE COURT: All right.
- 4 MR. HELMS: Understood.
- 5 BY MR. HELMS:
- 6 Q And just tell, again, tell us what you see. Just tell us  
7 what you see.
- 8 A Blood spatter on the wall in a smearing pattern.
- 9 Q Thank you, ma'am. And that's the -- beside the, what,  
10 the front door?
- 11 A You can see the front door right there. That's the door  
12 that's open, and you can see the window with that purple  
13 curtain.
- 14 Q And do you see any smearing or spatter on the door jamb?
- 15 A Yes.
- 16 Q Okay.
- 17 A This is State's Exhibit Number 75. This is the front  
18 door, the exterior portion of the front door because it opens,  
19 like I said, into the residence.
- 20 Q I understand.
- 21 A And you can see the kitchen in the background. This is  
22 just showing the blood spatter on the door.
- 23 This is State's Exhibit 76. This is, again, the door.  
24 I'm sorry, different angle. It's the inside part of the door.  
25 I apologize.

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1 Q The interior. I understand.

2 A Yes.

3 Q Okay.

4 A And that's the, the 75 is the same way. I apologize.

5 It's the interior side of the door. So it's the door that  
6 faces, if you were to shut it that's what's on the inside of  
7 the house.

8 Q Let me ask you this, where is the concentration of blood  
9 on this door?

10 A You have it up towards like the handle. There's, there's  
11 more I would say quantity-wise and smear-wise by the handle  
12 and you have some on the lower part of the door.

13 Q So you do see blood on the actual knob of this door?

14 A Yes.

15 Q Okay. Thank you very much. And is that the last one,  
16 ma'am?

17 A That was.

18 Q All right. Thank you. I'll just leave that there.

19 Thank you, Tonya.

20 So that was your documentation of the crime scene, ma'am?

21 A Part of it, yes.

22 Q What do you mean part of it?

23 A We also do sketching.

24 Q Okay. And you do sketching. Let me ask you this

25 question, did you, did you ever document anything else at any

1 other time at that crime scene? Did you take more pictures?

2 A Well, I mean, we have more pictures that we took than the  
3 ones that we've seen.

4 Q Well, let me ask you this, I'll, I'll get into that. I'm  
5 going to show you now what's been entered into evidence  
6 already through Mr. Mark Johnson, who was the initial  
7 responding officer, State's 11 through 16. Are these -- I  
8 want you to look at those pictures and tell me if those are  
9 also pictures that you took on, on July 11<sup>th</sup>.

10 A Yes, sir. These are pictures that were taken.

11 Q And what are those pictures of?

12 A They're pictures of the victim, close-up shots various  
13 different angles of the victim.

14 Q And why did you feel the need to take close-up shots of  
15 various different angles of the victim?

16 A We always do that and you want to kind of do a overview.  
17 You want to go 360 around the victim. If the victim has  
18 injuries or trauma to him that you can see you want to take  
19 close-up photographs of those, documenting how the scene is  
20 found position-wise and anything near the victim.

21 Q So these were taken at the same time all those others we  
22 just entered into evidence?

23 A Yes.

24 Q Okay. And so basically in these photos you were  
25 documenting the injuries to the victim?

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1 A The injury to the victim and things that were within  
2 close proximity to the victim.

3 Q And had, had his body been moved by any of you up to this  
4 point?

5 A Nobody had touched him except for when they put the leads  
6 on him by EMS.

7 Q Okay. I'm now showing you what's been marked for  
8 identification purposes as State's 17, 18, 19 and 20. I want  
9 you to take a look at those and tell me if you recognize those  
10 photographs.

11 A Yes. I do.

12 Q And what are those photos of?

13 A These are photos of -- that I took of the shirt that was  
14 folded and the hat that was folded. If you remember seeing in  
15 the original photographs the folded shirt, this would be that  
16 shirt unfolded. That's State's Exhibit or --

17 Q No. No. No. Don't --

18 A Okay.

19 Q -- don't get too specific. Just tell me if you recognize  
20 the photographs.

21 A I recognize the photographs. I took them and were inside  
22 the residence of [REDACTED] Highway 548.

23 Q Do you remember when you took those?

24 A I believe on the 12<sup>th</sup>.

25 Q Okay.

1 A Later on that day.

2 Q Okay. So you went back and took them?

3 A Yes.

4 Q But you -- did you say you, you took them of the unfolded  
5 shirt. Did you unfold that shirt?

6 A I fold -- I unfolded the shirt. I remembered where the  
7 shirt was. So I went right to it and unfolded it.

8 Q And are those a fair and accurate representation of those  
9 pictures, of the pictures you took that, that next day?

10 A Yes.

11 Q Have they been altered in any way?

12 A No.

13 MR. HELMS: The Court's indulgence, Your Honor.

14 THE COURT: All right.

15 MR. ALEX HYMAN: Your Honor, I think we're going to have  
16 to have a matter outside the presence of the jury.

17 THE COURT: All right. Ladies and gentlemen, we've got  
18 another matter of law we need to address. Please leave your  
19 notepads in the jury box and do not discuss the case. We'll  
20 bring you back in just a minute.

21 (Whereupon, the following takes place outside the  
22 presence of the jury.)

23 THE COURT: All right. Mr. Hyman.

24 MR. ALEX HYMAN: Your Honor, State's Exhibits 18, 19 and  
25 20 it appears to be some type of sex pump, penis pump that I

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1 Q Ma'am, I want you to hold this up, show it to the jury  
2 and tell them what you see.

3 A Your Honor, could I stand, please, sir?

4 THE COURT: Yeah.

5 A This is State's Exhibit 17. In the previous photographs  
6 was a folded shirt by the coffee table. This is the shirt and  
7 the hat was under it. This is it unfolded and put up on the  
8 couch.

9 Q Why is it unfolded?

10 A I unfolded it.

11 Q Okay. But it was folded when you got to the scene.

12 A Yes.

13 Q Remind the jury, was the victim wearing a shirt?

14 A No. He was not.

15 Q Thank you, ma'am. Ma'am, do you know what's in this box?

16 A Yes. I do.

17 Q What's in this box?

18 A Those gloves and that rifle and a baseball bat.

19 MR. HELMS: Your Honor, I don't know how you want to  
20 proceed with this. There are multiple items in this box as  
21 far as marking it for identification purposes.

22 THE COURT: Well.

23 MR. HELMS: I can open it up and mark each individual item.

24 BY MR. HELMS:

25 Q They're preserved in, in bags; right?

1 THE COURT: Let me see the attorneys. Let me see the  
2 attorneys.

3 A Yes. Everything is packaged separately inside that box.

4 (Whereupon, a bench conference is held in the presence,  
5 but out of the hearing of the jury.)

6 BY MR. HELMS:

7 Q Ma'am, could you go ahead and open that? Do you have  
8 something to open that box with?

9 A Yes. I do.

10 Q Okay. Could you please open that box if you don't mind?  
11 Let me move that -- would it be easier on this side?

12 A I'm opening it towards you. It's just an awkward box.

13 Q All right. Do you need gloves?

14 A No. Everything's in a plastic wrap seal.

15 Q Go ahead and open the box for me. Ma'am, I'm showing you  
16 what's been marked for identification as State's 77. Tell me  
17 what that is, please.

18 A State's Exhibit 77 is the metal baseball bat that we  
19 collected from that scene.

20 Q Why you got it wrapped up for?

21 A It's biohazardous. It has blood on it.

22 Q It doesn't look like it. Why doesn't it look like it  
23 from here really?

24 A You have to know what you're looking at.

25 Q Oh, okay.

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1 A It's, it's --

2 Q Well, let me ask you this, when, when you first saw it  
3 was it more readily evident that there was blood on this bat?

4 A Probably, yeah.

5 Q How long has it been since you collected this bat?

6 A We collected in July of 2016. It's 2018.

7 Q So is that pretty standard that the blood would kind of  
8 dissipate or change color or --

9 A It can. This is also a surface where if you handle it in  
10 this bag it's going to -- like me touching it right now I  
11 could be rubbing it. So that's why I'm trying to hold it  
12 here.

13 Q I understand. Was there a significant amount of blood on  
14 this bat when it was collected, ma'am?

15 A Yes.

16 Q Thank you very much.

17 MR. HELMS: And Your Honor, I don't know, I don't know  
18 there was no objection, but now I'm moving State's 77 into  
19 evidence.

20 THE COURT: Any objection?

21 MR. ALEX HYMAN: No, Your Honor.

22 MR. BOUCHETTE: No, Your Honor.

23 THE COURT: All right. State's Exhibit 77 admitted into  
24 evidence without objection.

25 (State's Exhibit Number 77 [Bat] admitted into evidence

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1 and appropriately marked.)

2 BY MR. HELMS:

3 Q Thank you. Ma'am, I'm now showing you what's been marked  
4 for identification as State's 78. Please tell the jury what  
5 this is.

6 A State's Exhibit Number 78 is that rifle that was on the  
7 countertop that you saw. It is also in a plastic bag. It is  
8 also considered biohazardous. There is -- blood was located  
9 on this -- on the soft butt portion of it.

10 Q Okay. And this is the gun that you collected from the  
11 top of the sink, above the sink?

12 A Yes. That's the only one we collected.

13 Q And are both these items items you collected from the  
14 scene that night on July 11<sup>th</sup>?

15 A Yes. It is.

16 Q Okay.

17 MR. HELMS: And Your Honor, I'm moving State's 78 into  
18 evidence.

19 THE COURT: Any objection?

20 MR. ALEX HYMAN: No, Your Honor.

21 MR. BOUCHETTE: No, Your Honor.

22 THE COURT: All right. State's Exhibit 78 admitted into  
23 evidence without objection.

24 (State's Exhibit Number 78 [Pellet Gun] admitted into  
25 evidence and appropriately marked.)

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1 MR. HELMS: Thank you, Your Honor.

2 A If you don't mind, I'll put this over here, sir.

3 THE COURT: All right.

4 Q Ma'am, do you know what's in this box?

5 A I believe there are cell phones in that box, sir.

6 Q All right. If you don't mind, go ahead and open that box  
7 as well, please.

8 Q All right. And, and you have those wrapped up in  
9 envelopes?

10 A Yes, sir. I do.

11 Q Are those biohazard as well?

12 A No, sir. They're not necessarily.

13 Q Do you need gloves for those?

14 A No, sir. I do not.

15 Q Okay. Can you open those up, please? And what are you  
16 holding there, ma'am?

17 A It's the flip phone that was from the sink -- I mean, on  
18 the table.

19 Q All right. Can I hold that for a second, please? And  
20 this is State's identification 79. Tell, tell us exactly  
21 where you got that phone from.

22 A The -- if you recall me telling you in the pictures the  
23 kitchen table, if you look through one of the photographs in  
24 the chair you can see this flip phone is sitting on that  
25 table. We collected it from that location, State's Exhibit

1 79.

2 MR. HELMS: Your Honor, I'm moving 79 into evidence at  
3 this time.

4 THE COURT: Any objection?

5 MR. ALEX HYMAN: No, Your Honor.

6 MR. BOUCHETTE: No objection.

7 THE COURT: All right. State's Exhibit 79 admitted into  
8 evidence without objection.

9 MR. HELMS: Thank you, Judge.

10 (State's Exhibit Number 79 [Phone] admitted into evidence  
11 and appropriately marked.)

12 BY MR. HELMS:

13 Q All right. Ma'am, what'd you just open up there?

14 A It is a -- the second cell phone we collected on that  
15 scene that was on the arm of the couch.

16 Q And this is the -- what kind of phone is that?

17 A It's a Samsung.

18 MR. HELMS: The Court's indulgence, Judge.

19 BY MR. HELMS:

20 Q And is this the phone that you collected from the scene  
21 that night?

22 A Yes. State's Exhibit 80 was collected if you remember  
23 the photograph of the phone that was on the armchair next to  
24 the bat that would be that phone.

25 MR. HELMS: Your Honor, at this time I would move State's

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1 Exhibit 80 into evidence.

2 THE COURT: Any objection?

3 MR. BOUCHETTE: No objection, Your Honor.

4 MR. ALEX HYMAN: No objection, Your Honor.

5 THE COURT: All right. State's Exhibit 80 admitted into  
6 evidence without objection.

7 (State's Exhibit Number 80 [Phone] admitted into evidence  
8 and appropriately marked.)

9 BY MR. HELMS:

10 Q Ma'am, do you know what's in this box?

11 A Several things are in that box.

12 Q Can you tell us before we open it what's in it?

13 A Clothing, shoes, t-shirts.

14 Q Okay.

15 A Those kinds of things.

16 Q Can you go ahead and open that box for us? Do you need  
17 gloves for this?

18 A I might. Can I put it down on there?

19 Q Sure.

20 MR. HELMS: Your Honor, while she's doing that I'd like  
21 to publish State's 78 to the jury.

22 THE COURT: All right.

23 A Is that the item you want first?

24 MR. HELMS: Your Honor, permission to publish State's 77  
25 to the jury.

1 THE COURT: All right.

2 A And I'm sorry. I don't need gloves. I put them in  
3 plastic protective.

4 Q That makes it easier. Ma'am, I'm now showing you what's  
5 been marked for identification as State's 18 -- 81, not 18.  
6 Do you recognize that item?

7 A Yes. I do.

8 Q And what is that item?

9 A These are the padded gloves that were in the sink  
10 collected from that scene, State's Exhibit 81.

11 Q Is that -- are those the gloves that had the water  
12 running over them?

13 A Yes. It's biohazardly marked because the -- when I  
14 collected them and they were dripping, the water that was  
15 coming from them wasn't clear. It was pink. So indicated  
16 there had been blood.

17 MR. HELMS: Your Honor, at this time I would move State's  
18 81 into evidence.

19 THE COURT: Any objection?

20 MR. ALEX HYMAN: No, Your Honor.

21 MR. BOUCHETTE: No, Your Honor.

22 THE COURT: State's Exhibit 81 admitted into evidence  
23 without objection.

24 (State's Exhibit Number 81 [Gloves] admitted into  
25 evidence and appropriately marked.)

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1 MR. HELMS: Permission to publish, Your Honor.

2 THE COURT: All right.

3 BY MR. HELMS:

4 Q All right. Ma'am, what else do we have here? Well,  
5 let's just go with -- start with that right there. Just  
6 identify it for me.

7 A The shirt that was folded that I went back and unfolded  
8 and the hat that's these items here.

9 Q All right. And these are items you collected from that  
10 same scene?

11 A Yes.

12 Q These are the items you photographed?

13 A I photographed and I collected it later on.

14 Q Okay. Have they been altered in any way since you  
15 collected them?

16 A Other than being put in those bags, no.

17 Q And who did that?

18 A I did.

19 MR. HELMS: Your Honor, permission to enter into evidence  
20 State's 82 into evidence.

21 THE COURT: Any objection?

22 MR. ALEX HYMAN: No, Your Honor.

23 MR. BOUCHETTE: No, Your Honor.

24 THE COURT: State's Exhibit 82 admitted into evidence  
25 without objection.

1           (State's Exhibit Number 82 [Shirt and Hat] admitted into  
2 evidence and appropriately marked.)

3           MR. HELMS: Permission to publish.

4           THE COURT: All right.

5           BY MR. HELMS:

6           Q All right. Ma'am, next?

7           A These items were, I believe, collected from the  
8 Defendants.

9           Q And what are these items, these specifically right here?

10          A They're clothing.

11          Q Why were they collected from the Defendants?

12          A They had blood on them.

13          Q Were they the clothing worn that night?

14          A Yes.

15          Q Okay. And have they been altered in any way since they  
16 were collected?

17          A Other than being pulled and put in a bag for court  
18 presentation, no. They originally in the paper bag. That's  
19 why those paper bags are in those plastic bags.

20          Q And who put them in the plastic bag?

21          A I did.

22          MR. HELMS: Your Honor, I would like to enter into  
23 evidence State's 83 at this time.

24          THE COURT: Any objection?

25          MR. ALEX HYMAN: No, Your Honor.

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1 MR. BOUCHETTE: No, Your Honor.

2 THE COURT: State's Exhibit 83 admitted into evidence  
3 without objection.

4 (State's Exhibit Number 83 [Clothing] admitted into  
5 evidence and appropriately marked.)

6 BY MR. HELMS:

7 Q And ma'am, I'll wait on that. The next item, please.

8 A Khaki pants and a belt.

9 Q And where, where were these items collected from?

10 A I believe they were collected from the police department.

11 Q And why? What are they? I mean, whose --

12 A Clothing from Mr. Rosenbaum, I believe.

13 Q And have they been altered in any way since they were  
14 collected?

15 A Again, other than taking them out of the paper bags and  
16 placing them into the plastic, no, sir.

17 MR. HELMS: Your Honor, permission to enter into evidence  
18 State's 84.

19 MR. ALEX HYMAN: No objection.

20 MR. BOUCHETTE: No objection.

21 THE COURT: State's Exhibit 84 admitted into evidence  
22 without objection.

23 (State's Exhibit Number 84 [Clothing] admitted into  
24 evidence and appropriately marked.)

25 MR. HELMS: Your Honor, at this time I would like to

1 publish to the jury State's 83 and 84.

2 THE COURT: All right.

3 BY MR. HELMS:

4 Q All right. Ma'am, let's keep going.

5 A These are his shoes.

6 Q Who's he?

7 A I'm sorry. Shoes belonging to Mr. Rosenbaum.

8 Q And these were collected from him simultaneous with the  
9 other items?

10 A Yes, sir.

11 MR. HELMS: Your Honor, at this time I would enter  
12 State's 85.

13 THE COURT: Any objection?

14 MR. ALEX HYMAN: No, Your Honor.

15 MR. BOUCHETTE: No objection.

16 THE COURT: State's Exhibit 85 admitted into evidence  
17 without objection.

18 (State's Exhibit Number 85 [Shoes] admitted into evidence  
19 and appropriately marked.)

20 MR. HELMS: And permission to publish.

21 THE COURT: All right.

22 BY MR. HELMS:

23 Q Now, Ms. Domogauer, these are all in biohazard bags. Why  
24 is that?

25 A There was blood on them, sir.

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1 Q On these shoes?

2 A Yes, sir. You can see the red on the fabric. You want  
3 me to tell you what it is?

4 Q Please.

5 A Bagging of clothing that was collected from Diane Durkin  
6 or collected at J. Reuben Long.

7 Q And those were the clothes she was wearing that night?

8 A Yes, sir.

9 Q And can you put this one --

10 A Like out of the bag?

11 Q Yes, please.

12 A Labeled State's Exhibit 86.

13 Q And have those been altered in any way since they were  
14 collected?

15 A No.

16 MR. HELMS: Your Honor, I would enter State's 86 in  
17 evidence.

18 THE COURT: Any objection?

19 MR. ALEX HYMAN: No, Your Honor.

20 MR. BOUCHETTE: No objection.

21 THE COURT: State's Exhibit 86 admitted into evidence  
22 without objection.

23 (State's Exhibit Number 86 [Clothing] admitted into  
24 evidence and appropriately marked.)

25 MR. HELMS: Permission to publish to the jury, Judge.

- 1 THE COURT: All right.
- 2 A This is a blouse that she was wearing that evening.
- 3 Q Okay.
- 4 A A pair of leggings or pants.
- 5 Q Ms. Domogauer, what else is in that bag specifically? Do  
6 you know right offhand?
- 7 A Undergarments.
- 8 Q Okay. We don't want to publish that. Thank you very  
9 much, ma'am.
- 10 A I will use caution. There is biohazard on these  
11 clothing.
- 12 Q Okay. What I'm going to ask you to do is if you'll just,  
13 if the Judge doesn't mind, if you'll just bring them down here  
14 and set them right up in front right here apart from  
15 everything else so nobody else has to touch them while you  
16 have the gloves on, please.
- 17 A Outside of the bag?
- 18 Q No. No. No. No. Just the bag, please.
- 19 MR. HELMS: Is that all right, Judge?
- 20 THE COURT: That'll be fine.
- 21 MR. HELMS: Thank you, sir.
- 22 BY MR. HELMS:
- 23 Q Sit them down right there, ma'am, if you don't mind.  
24 Thank you. And the undergarments, just tell me, tell me what  
25 kind of undergarments they are, what are they?

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1 A Socks, bra.

2 Q Panties?

3 A I don't know if there are panties in there or not.

4 Q Okay.

5 A I would have to look.

6 Q That's fine. What else you got there?

7 A The shoes, shoes from Ms. Durkin, the socks.

8 Q All right. Tell me what that is, ma'am.

9 A This is a belt.

10 Q And, and who was that collected from?

11 A I believe it was collected from -- it's a lady's belt.

12 So I would assume Ms. Durkin.

13 Q And, and, and has that been altered since you received  
14 it?

15 A No.

16 Q And this was collected simultaneous with all the other  
17 items?

18 A Yes, sir.

19 MR. HELMS: Your Honor, I would enter State's 87 into  
20 evidence.

21 THE COURT: Any objection?

22 MR. ALEX HYMAN: No, Your Honor.

23 MR. BOUCHETTE: No objection.

24 THE COURT: State's Exhibit 87 admitted into evidence  
25 without objection.

1           (State's Exhibit Number 87 [Belt] admitted into evidence  
2 and appropriately marked.)

3           MR. HELMS: That's all I seek to enter, Judge, as far as  
4 physical evidence.

5           THE COURT: All right.

6 BY MR. HELMS:

7 Q       Ma'am, I'm now showing you what's been marked for  
8 identification as State's 88. Can you tell me what this is?

9 A       State's Exhibit -- you said 88?

10 Q       Yes, ma'am.

11 A       State's Exhibit 88 is the hand drawn rough sketch of the  
12 immediate incident location, the incident rooms that day that  
13 had the most evidentiary value as drawn by Investigator Lewis  
14 --

15 Q       All right.

16 A       -- that day.

17 Q       And does this fairly and accurately depict the crime  
18 scene?

19 A       It depicts a portion of it. Yes, sir.

20 Q       All right. And why only a portion again?

21 A       Because that's the portion where the main incident  
22 occurred. It shows the living room and the kitchen area.

23 Q       And what was left off?

24 A       The bedrooms on this side and the bathroom and the back  
25 bedroom, laundry room, back door on that side.

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1 Q But again, was any blood found in any of those rooms?

2 A There weren't found in the rooms, but there was faint  
3 blood going down the hallway towards that one bedroom on that  
4 side.

5 Q But this does fairly and accurately depict this portion  
6 of the crime scene?

7 A Yes.

8 MR. HELMS: Your Honor, at this time I would seek to  
9 enter State's 88 into evidence.

10 THE COURT: Any objection?

11 MR. ALEX HYMAN: No, Your Honor.

12 MR. BOUCHETTE: No, Your Honor.

13 THE COURT: State's Exhibit 88 admitted into evidence  
14 without objection.

15 (State's Exhibit Number 88 [Sketch] admitted into  
16 evidence and appropriately marked.)

17 MR. HELMS: And permission to publish, sir.

18 THE COURT: All right.

19 BY MR. HELMS:

20 Q All right. Ma'am, just give us a brief overview because  
21 I think we, we get the idea of, of the orientation of things  
22 starting with the front door, please.

23 A Sorry. If you were to look at this, we also did a sketch  
24 of the entire floor plan of the residence. This is just a  
25 portion of that in close up, so to speak. Over here in this

1 area would be Highway 548, the front yard. This is the front  
2 door opening into the house. That's that mattress with the  
3 victim. This is the couch with the baseball bat, and again,  
4 I'll remind you this is not to scale. You can see the coffee  
5 table in this area and it's knocked over here. This is just a  
6 location thing. This is the sink showing the, the rifle and  
7 the sink where the gloves were found just a, a hand drawn  
8 sketch of that with measurements, indicating the rooms, that's  
9 all that is.

10 Q But again, and this -- well, let me ask you, this right  
11 here beside the baseball bat was the, the phone you collected  
12 was that right there?

13 A Yes. This is a, like I said, just a rough sketch, not  
14 everything is --

15 Q And is State's 80 the phone that was collected from that  
16 location?

17 A That phone was collected here. The LG phone was  
18 collected in the kitchen area there was a table here.

19 Q And that's State's 79?

20 A Yes. That's documented in the photographs.

21 Q Is it fair to say that the vast majority of blood was in  
22 this area right here?

23 A Yes.

24 Q Okay.

25 A Between, between --

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1 Q And that's why this sketch was done this way?

2 A -- these two rooms.

3 Q Okay. About how far from the door was the victim, ma'am?

4 A I would have to -- I don't know if we --

5 Q Ballpark.

6 A -- measured it. Ballpark, I could stand over here with  
7 maybe my hand on the mattress and probably it wasn't arm --  
8 within an arm span.

9 Q Okay.

10 A The door once you opened it barely cleared the end of  
11 that mattress. So there was fairly close to the door.

12 Q Tell me about the weather that night you arrived on  
13 scene.

14 A It was bad. It -- we --

15 Q Be specific.

16 A We pulled up on the scene. It was gray overcasty skies  
17 with like a mist, and sure enough, the minute both myself and  
18 Investigator Lewis stepped out of the car the raining started.  
19 It started intermittently raining heavy at times, but a steady  
20 rain nonetheless.

21 Q We're almost done. I just want to go back and recap one  
22 thing about the victim. You collected a shirt and he wasn't  
23 wearing a shirt; right?

24 A No, sir. He was not.

25 Q Did you collect any items from the victim such as a phone

1 or wallet?

2 A I didn't find any. No, sir.

3 Q Okay. How about a weapon, did you find a weapon on the  
4 victim?

5 A No, sir.

6 Q Knife, gun?

7 A No, sir.

8 Q So he was unarmed, had no identification, no telephone?

9 A No. He was -- he, I mean, he was just wearing that  
10 basketball shorts, a pair of underwear and sneakers. There  
11 was nothing in his hands.

12 MR. HELMS: The Court's indulgence, Judge.

13 THE COURT: All right.

14 By MR. HELMS:

15 Q I'm going to show you what's been entered into evidence  
16 as State's Exhibit Nine. Okay?

17 A Yes, sir. Excuse me.

18 Q And it's already in evidence, but I want you to tell me  
19 if you recognize this area.

20 A That's the Conway area, sir. You see 548, Hampton Road.  
21 It's just that one side of town.

22 Q And remind the jury where the -- what road the crime  
23 scene was on.

24 A Highway 548.

25 Q Is that -- is the address that it was located marked on

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1 this map?

2 A Yes. It is, sir.

3 Q Okay. Well, I might as well turn it this way. It's  
4 already been entered. Can you point to that address?

5 A It would be where the red dot is over here. This is  
6 Highway 548. So in this area is where it is. If you're  
7 familiar with the Conway area, you know where Four Mile Road  
8 and Tractor Supply is, beside of the Tractor Supply that's  
9 Highway 548, the side of the store is Four Mile Road. You go  
10 a little bit further down to the traffic light you'll get to  
11 Walmart in town.

12 Q Let me ask you this, during the course of you all's  
13 investigation were you able to make a determination as to the  
14 address for the victim?

15 A I believe we were, sir.

16 Q Do you remember it right offhand?

17 A Off the top of my head, no, I believe he stayed on the  
18 grounds of a farm.

19 Q If I showed you, if I showed you your report would that  
20 refresh your memory?

21 A It possibly would, yes, sir. Yes. We have it listed as  
22 Ida Lane in Conway.

23 Q All right. And can you point to Ida Lane on this map?

24 A Over here.

25 Q Okay. So this is the crime scene?

1 A Yes.

2 Q That's Ida Lane?

3 A Yes.

4 Q Okay. Thank you, ma'am.

5 MR. HELMS: The Court's indulgence, Judge.

6 THE COURT: All right.

7 BY MR. HELMS:

8 Q Ms. Domogauer, I thank you very much and I want you to  
9 answer any questions that either Defense may have.

10 A Yes, sir.

11 Q Thank you.

12 A Your Honor, may I ask for a small break?

13 THE COURT: All right. Let's go ahead, we're going to  
14 take about a five or 10-minute break, then we'll come back and  
15 resume. Ladies and gentlemen, leave your notepads in the jury  
16 box. Do not discuss the case even among yourselves. It'll  
17 give you an opportunity to stretch your legs, whatever the  
18 case may be. We'll be back in just a minute. If everyone  
19 else please remain seated while the jury's excused. Oh, you  
20 can go ahead. No, no. Hold up. Hold up. Hold up. Hold up.  
21 No. You all go ahead. I want everybody else to hold up while  
22 you all are excused.

23 (Whereupon, the following takes place outside the  
24 presence of the jury.)

25 THE COURT: All right. Ms. Domogauer, we're still in the

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1 middle of your testimony. So you cannot discuss your  
2 testimony with anyone, whether that be what you've testified  
3 to thus far or anticipate testifying to in the future. Okay?

4 A Yes, sir.

5 THE COURT: I'll allow you to step down, but don't  
6 discuss your testimony with anyone.

7 A Thank you.

8 THE COURT: Anything from the State before we take a  
9 short break?

10 MR. HELMS: No, Your Honor.

11 THE COURT: Anything from the Defendant Rosenbaum?

12 MR. ALEX HYMAN: No, Your Honor.

13 THE COURT: Anything from the Defendant Durkin?

14 MR. BOUCHETTE: No, sir.

15 THE COURT: All right. Let's take about a 10-minute  
16 recess and we'll be back.

17 OFF THE RECORD

18 (On the record. The following takes place outside the  
19 presence of the jury.)

20 THE COURT: All right. Anything from the State before we  
21 bring the jury back in?

22 MR. RICHARDSON: No, sir, Your Honor.

23 THE COURT: Anything from the Defendant Rosenbaum?

24 MR. ALEX HYMAN: No, Your Honor.

25 THE COURT: Anything from the Defendant Durkin?

1 MR. BOUCHETTE: No, Your Honor.

2 THE COURT: All right. Who wants to cross examine first?

3 MR. BOUCHETTE: Your Honor, I believe I'd be going first  
4 with a few questions.

5 THE COURT: All right. So we finished direct, cross  
6 examination Durkin, cross examination Rosenbaum and then  
7 redirect. All right. Let's bring the jury back in.

8 (Whereupon, the following takes place in the presence of  
9 the jury.)

10 THE COURT: All right. Ladies and gentlemen, welcome  
11 back. Make sure you have your own notepads and don't have  
12 anybody else's notepads. We're ready to resume with the trial  
13 of the case. All right. Ms. Durkin, cross examination.  
14 Mr. Bouchette.

15 MR. BOUCHETTE: Thank you, Judge. If it please the  
16 Court?

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. BOUCHETTE:

20 Q Good afternoon, Ms. -- am I saying it right, is it  
21 Domogauer?

22 A Yes.

23 Q Okay. Is that correct?

24 A Uh-huh.

25 Q All right. Ms. Domogauer, I was trying to take my notes

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1 from whenever you were testifying earlier. How long have you  
2 been in law enforcement generally?

3 A Generally almost about 20 years.

4 Q About 20 years and how long in CSI field or in that  
5 specialty?

6 A When I worked for the City of Conway I was probably six  
7 years their crime scene investigator and with Horry County  
8 I've been in it probably now over five. So the majority of my  
9 career has been in the crime scene capacity.

10 Q Okay. All right. And just for the benefit of the jury  
11 that may not know exactly what it is you do, I mean,  
12 essentially when you get to the scene it's to document and  
13 compile and make a record of what was going on at the scene;  
14 right? Is that an accurate statement?

15 A That amongst other things. I can do reconstruction,  
16 things of that nature as well.

17 Q Okay. And that's a pretty involved process; right?

18 A Yes. It is.

19 Q I mean, it's a -- there's a lot going on. You've got for  
20 example in this case documenting if there's blood; right?

21 A Yes.

22 Q Document any other items of evidence that you may come  
23 across; right?

24 A Yes, sir.

25 Q And on this -- what we've seen here you're down to the

- 1 driver's license photos that you've seen; right?
- 2 A Yes, sir.
- 3 Q Okay. And, and given all the things you have to put  
4 together that takes a lot of time; right?
- 5 A Yes. It does.
- 6 Q And you document so much because you're not exactly sure  
7 what may be important down the road or, or a year from now  
8 when you come to trial or as other evidence may be uncovered,  
9 so you try to get as much as you can; right?
- 10 A Yes, sir.
- 11 Q That'd be safe to say?
- 12 A Uh-huh.
- 13 Q Okay. I want to talk about this -- first off, I'm going  
14 to reference this diagram here which has been marked as --  
15 this is State's 88 that I'm referring to for the record.
- 16 A Uh-huh.
- 17 Q I see some measurements here and this, so that we're  
18 clear, this is strictly the area containing the kitchen and  
19 the living room; correct?
- 20 A Yes, sir.
- 21 Q All right. Now, the -- where this occurred, this was a  
22 single-wide trailer; correct?
- 23 A A single wide or a double wide, but yes, sir. It was a  
24 mobile home.
- 25 Q It was a mobile home. So this -- within this mobile home

Jill Domogauer - Cross by Mr. Bouchette

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1 you have what, two bedrooms; correct?

2 A It was a single wide. Yes. You had on one side --

3 Q I'm sorry. Let me stop you there. Your, your notes do  
4 indicate it was a single wide?

5 A Yes.

6 Q Okay. So it was a single wide and within the single wide  
7 you had two bedrooms?

8 A Three.

9 Q Three bedrooms. Within the single wide you had three  
10 bedrooms and there were bathrooms; correct?

11 A Two bathrooms.

12 Q Laundry rooms?

13 A Laundry room area.

14 Q Laundry room area.

15 A I wouldn't call it a room. It's separate.

16 Q And so, what we're referring to as the living area,  
17 kitchen, that is where, if I understood you correctly, that's  
18 where the, the struggle or where most of the evidence that you  
19 compiled was contained; is that correct?

20 A Yes.

21 Q Okay. That's where most all the blood was found; right?

22 A Yes. We still document the others.

23 Q Okay.

24 A Other rooms of the residence.

25 Q Absolutely. And I'm, I'm wanting to look on here and

1 note the, the length -- there's a notation here for looks like  
2 23 feet 11 inches. Is that what that indicates?

3 A Yes.

4 Q So that's indicating that this area is 23 feet, 11 inches  
5 wide and I'm, I'm guessing that this mark here for 15 --

6 A Uh-huh.

7 Q -- that's indicating 15 feet wide; is that correct?

8 A An approximate, yes, sir.

9 Q Okay. So 23 feet wide by -- or excuse me, 23 feet long  
10 by 15 feet wide, that is a fairly small area; is it not?

11 A I would say so, yes, sir.

12 Q I believe if my math is right that's 345 feet; right?

13 A Yes, sir.

14 Q Okay. That's probably not much bigger than that jury box  
15 right there, safe to say?

16 A I would say it's a bit bigger, but not by much.

17 Q Okay. Not by much, but that area that's not much bigger  
18 than the jury box that's where the entirety of this or at  
19 least I won't say the entirety, that's where the vast majority  
20 of the struggle appeared to have taken place based on what you  
21 reviewed; is that safe to say?

22 A The mass -- well, the blood-shedding, yes.

23 Q Okay. Also take a point and note the -- I was looking at  
24 your pictures that you submitted earlier, how about the floor  
25 covering throughout this house, what was the -- what type of

Jill Domogauer - Cross by Mr. Bouchette

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1 floor covering was there?

2 A You have various different floor coverings from a  
3 laminate, I guess laminate, hardwood. I'm not a --

4 Q Sure.

5 A I mean, it wasn't real hardwood but those kinds of  
6 things.

7 Q Sure. It was, it was a wood surfacing of some kind  
8 through about -- pretty much all the living area; correct?

9 A Yeah. Safe to say and then tile type laminate.

10 Q Okay. So it was, it was hard flooring throughout the  
11 entire area that we're discussing right now; correct?

12 A Yes.

13 Q All right.

14 A I believe you had a, a throw rug in there somewhere.

15 Q Okay.

16 A Maybe a living area.

17 Q But at least where we're talking about here it's not  
18 carpet and padding or shag or either one of those scenarios?

19 A No. No, sir.

20 Q Okay. And one more thing, did you -- what about with  
21 regard to DNA testing, did you take swabs for DNA from -- I'm  
22 going to start off with the mattress that was found. Did you  
23 take DNA swabs?

24 A Swabs were collected.

25 Q Okay. To your knowledge have they been tested?

- 1 A Not to my knowledge, no.
- 2 Q Okay. How about was there any fingerprinting done on any  
3 of these areas? I mean, you showed the pictures of the door,  
4 the front door coming into the back was -- any of those areas  
5 fingerprinted?
- 6 A No, sir.
- 7 Q Not fingerprinted. Okay. What about with regard to were  
8 any DNA swabs taken of the area outside of this 300 some odd  
9 square foot area?
- 10 A Were any swabs taken from outside those areas? No, sir.
- 11 Q Correct. And what I'm -- well, I guess what I'm asking  
12 for is no testing or, or search for DNA was done on the say  
13 the bedroom handle; correct, bedroom doorknob, to be clear?  
14 That wasn't done; right?
- 15 A Which the back bedroom?
- 16 Q Correct.
- 17 A No. We identified that room by whose contents were  
18 inside of it.
- 19 Q Okay. Was DNA swab or, or testing taken from the other  
20 bedroom door handle?
- 21 A No, sir.
- 22 Q Was any DNA testing or swab done from either the master  
23 or one of the other showers or bathrooms?
- 24 A No, sir.
- 25 Q Was any DNA testing or swabbing done of the, the bed

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1 sheets that were on the -- that were in the bed that was in  
2 the one bedroom? In other words, I know there was bedrooms  
3 that had basically not -- didn't have a bed in it, but in the  
4 room that had the bed in it did you?

5 A No.

6 Q None of that. Okay. So if, so if Roy Davis had been in  
7 that house before, if he had been in the bedroom, he had been  
8 in a shower or had been anywhere else other than in this area  
9 that we're talking about, your investigation would not have  
10 uncovered any DNA evidence of that because it wasn't tested;  
11 is that safe to say?

12 A I'm -- his, his DNA throughout the house, is that what  
13 you're saying or --

14 Q I'm just, I'm just going back to what we just talked  
15 about. So the DNA, you didn't, you didn't search for it, you  
16 didn't do a swab or test for DNA on the other bedroom door  
17 handles; right?

18 A No, sir.

19 Q And you didn't do it in the say for example the  
20 bathrooms, the showers.

21 A No, sir.

22 Q And you didn't do it in the bed that was in the bedroom;  
23 correct?

24 A No, sir.

25 Q Okay. So after this investigation, nothing that we have

1 would indicate whether or not he had ever been in any of those  
2 rooms before; right, because we don't have that? Is that safe  
3 to say?

4 A I, I would, I would assume not.

5 Q Okay.

6 A I'm, I'm trying, I'm trying to understand what you're  
7 asking but based on your question --

8 Q I understand.

9 A -- no.

10 Q Okay. Okay. That's, that's fine. And you found there  
11 was no -- during your investigation there was no drugs or, or,  
12 or crack or anything to that effect that was found; correct?

13 A No.

14 Q Okay.

15 MR. BOUCHETTE: Your Honor, I don't have any further  
16 questions of this witness.

17 THE COURT: All right. Mr. Hyman, cross examination?

18 MR. ALEX HYMAN: Yes, Your Honor. Thank you.

19 CROSS EXAMINATION

20 BY MR. ALEX HYMAN:

21 Q I want to go over a couple of the pictures that -- I'm  
22 sorry.

23 A There's one behind it.

24 Q No. Not one of those. Let me see, 27. I'm going to get  
25 them out of order, but --

Jill Domogauer - Cross by Alex Hyman

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1 A No, that's it.

2 Q Okay. This is 27. Now, you identified this as what?

3 A The front door of the residence or what I would presume  
4 to be the front door of the residence.

5 Q Okay.

6 A It's the door that faces Highway 548.

7 Q Was there any blood out there?

8 A I don't recall. If there was any it'd be very minute  
9 amount, and again, it was pouring.

10 Q Now, if, if there was blood though you would have taken a  
11 picture?

12 A Yes.

13 Q Okay. Now, on what's been marked as State's Exhibit 29,  
14 you noted as blood on the ceiling.

15 A Yes.

16 Q Is that correct?

17 A Uh-huh.

18 Q Now, as far as that goes, this is the door over here.

19 A This is the front door.

20 Q Okay.

21 A This is the window area. The mattress would be kind of  
22 over in this area here.

23 Q Okay. Is there like a TV over here, is that kind of --  
24 do you remember?

25 A No.

- 1 Q Okay.
- 2 A That's the front. There's the curtain. There was like  
3 shoes there.
- 4 Q Okay.
- 5 A And the couch was here. There was nothing against that  
6 wall but maybe shoes.
- 7 Q Now, as far as this, you didn't ever test this or  
8 anything like that, the blood up here? Did you take any  
9 samples from up there?
- 10 A No. I did not take any samples.
- 11 Q Now, let me turn here -- okay. This is State's 31, but  
12 instead of 31 let's talk about State's it says Two there, but  
13 I believe it's actually State's 77.
- 14 A Yes. Uh-huh.
- 15 Q You testified that this was the bat that is seen in 31?
- 16 A Yes.
- 17 Q Okay. Did you ever do any DNA samples on this?
- 18 A Not that I know of, no, sir.
- 19 Q Okay. Did you ever fingerprint it?
- 20 A The grips have a tape around it which is not conducive  
21 for fingerprinting.
- 22 Q Okay. But how about up here?
- 23 A That would be yes.
- 24 Q But did you fingerprint that?
- 25 A No, sir.

Jill Domogauer - Cross by Alex Hyman

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1 Q Okay. Now, on the picture, I'm looking at this picture  
2 of State's 31 and State's 32, and you had testified earlier  
3 that there was a lot of blood on the bat, but I'm, I'm not  
4 really seeing it.

5 A I didn't say a lot of blood. I said there was blood on  
6 the bat. I'm sorry if you -- if --

7 Q And I may have misunderstood you.

8 A Yeah.

9 Q But is your -- is it your testimony that --

10 A There's blood on the bat. Is it dripping of it, no.

11 Q Okay. Now, and the same thing with Number 32, is that  
12 correct, because I'm not really seeing a whole lot of blood on  
13 it there either.

14 A It -- you wouldn't be able to in this picture. It's very  
15 far away. I mean, there is blood on the bat. Is there an  
16 exorbitant amount to where you would hold it up and it would  
17 be dripping from it, no.

18 Q Okay.

19 A It's nothing like that.

20 Q Now, as far as this 32, now, I believe it was your  
21 testimony that this over here is the --

22 A It's the area where the shirt, on the shirt.

23 Q Okay. Did you take another picture of the shirt folded  
24 up or anything?

25 A No. I did not unfortunately.

- 1 Q So the only two pictures of it are what appear to be kind  
2 of a black area over here.
- 3 A And this over here. Yes, sir.
- 4 Q And again in, in 33.
- 5 A Uh-huh.
- 6 Q Which is on the other side of a table.
- 7 A Uh-huh.
- 8 Q Okay. Now, as, as far as that goes, I want to go to, to  
9 Number 40, which is of the kitchen, take a lot of pictures.  
10 On Number 40 here can you tell me, all right, right here --
- 11 A Uh-huh.
- 12 Q -- there's, there's blood on the sink. Is that correct?  
13 Am I correct in saying that?
- 14 A Are you talking about this area here?
- 15 Q Yeah.
- 16 A Yes.
- 17 Q Okay. And, and then that's the sink right here; right?
- 18 A Yes.
- 19 Q Okay. Can you tell me what seems to be in the sink?
- 20 A From this photograph I can't tell you what's in the sink.  
21 I know that the gloves are in the sink and there's a rag over  
22 the faucet.
- 23 Q Well, would you say that those are -- they look like they  
24 might be knives, but like they're in the little area where you  
25 dry?

Jill Domogauer - Cross by Alex Hyman

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1 A Are you talking about the second portion of the sink?

2 Q Yeah.

3 A It's a, it's a dish --

4 Q A drying rack.

5 A -- drying rack, I suppose, yes, and with dishes in it.

6 Q But it's -- you're saying that those, that those are not  
7 knives?

8 A No. I didn't know which one you were talking about.

9 Q Yeah.

10 A I thought you were talking about this sink.

11 Q Yeah. I'm talking about --

12 A Yes. That's a drying rack. Yes, sir.

13 Q Okay. But are those knives in the drying rack?

14 A They're utensils, yes.

15 Q Okay. But I asked you are they knives?

16 A I can only see the handles.

17 Q Okay.

18 A So.

19 MR. ALEX HYMAN: Your Honor, I'd like to maybe hand this  
20 to the jury and let -- the jury and let them take a look at it  
21 so that they can maybe see what we're talking about.

22 THE COURT: All right.

23 A Here, let's do this for a minute.

24 Q Yeah. Yeah. I'm sorry.

25 A That might be a closer picture.

1 Q All right. This is State's 44 that also kind of shows  
2 just what we were talking about.

3 A Yes, sir.

4 Q Okay. Can you tell what those appear to be?

5 A Like I said, I can only see the handle portion areas.  
6 Based upon handles that I've, I've seen in my career they  
7 would exhibit knives.

8 Q Okay. Now, let's also go to what's been marked as  
9 State's Exhibit Number 48. All right. Now, back here there  
10 appears to be some kind of -- I don't know if it's a, a block  
11 or if it's a cylinder of some type, but it's still on this  
12 counter back here.

13 A I, I don't know if it's what you would call your  
14 traditional knife block or just utensil block, but it has  
15 handles of kitchen utensils, possibly being knives as well.

16 Q Possibly knives as well.

17 A Uh-huh.

18 Q Now, you didn't test any of those knives or anything like  
19 that?

20 A No.

21 Q Okay. Would you admit though that the knives if the  
22 alleged victim was standing right here, that those knives  
23 would be within his reach?

24 A They're with -- I guess within anybody's reach. There's  
25 no indication. I mean, the water bottles are standing

Jill Domogauer - Cross by Alex Hyman

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1 straight up. If --

2 Q Well, I'm not saying that -- you don't -- I'm not asking  
3 you to testify that he did that.

4 A Okay.

5 Q I'm simply asking would they be in his reach?

6 A Possibly. Yes.

7 Q And when he's standing next to the sink, would those that  
8 are in the sink been in his reach?

9 A Possibly, yes.

10 Q Now, a couple of other things I wanted to ask you. Now,  
11 whenever you do crime scenes it sounds like you also went to  
12 the M.L. Brown Building?

13 A I did not. No, sir.

14 Q You did not?

15 A I mean, I, I did eventually. That's where I'm stationed  
16 at.

17 Q Well, and, and as far as the clothing that was taken off  
18 of my client and Ms. Durkin --

19 A Uh-huh.

20 Q -- do you remember who, who collected that?

21 A I don't know. I'd have to look at the chains of custody.

22 Q Was it someone in CSI or in crime scene?

23 A Again, without looking at the chain I don't want to  
24 misspeak.

25 Q At some point you all would have gotten it?

- 1 A Yes, sir.
- 2 Q Okay. Now, I think you testified that you go to these  
3 kind of calls because was it your lieutenant tells you?
- 4 A Yes.
- 5 Q Okay. And is that --
- 6 A Somebody calls us to, and we don't just say, "Hey, I'll  
7 go out tonight."
- 8 Q Right. Now, was that Lieutenant -- is it Dennis?
- 9 A Cestare.
- 10 Q Cestare, that was Pete, okay.
- 11 A Uh-huh.
- 12 Q Now, Pete was the one who called that night, Lieutenant  
13 Cestare?
- 14 A If I can reflect on my records here.
- 15 Q Sure.
- 16 A Yes. Lieutenant Cestare called both myself and  
17 Investigator Lewis.
- 18 Q Okay. And so he's the one who, who sent you all out  
19 there. Did he ever send you to maybe collect anything from  
20 Ms. Durkin or Mr. Rosenbaum?
- 21 A I know he didn't send me.
- 22 Q Okay.
- 23 A So.
- 24 Q So he didn't send you to, you know, maybe check under her  
25 fingernails to see if there was DNA or anything like that?

Jill Domogauer - Cross by Alex Hyman

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1 A No, sir. I, I didn't process either one of the, the  
2 Defendants.

3 Q Are you aware if they got DNA off of Roy?

4 A DNA?

5 Q Yes.

6 A I know they did a cheek swab and took a blood sample from  
7 him.

8 Q Okay. So that's in law enforcement's records?

9 A I believe so, yes, sir.

10 Q And you said you took blood samples from the crime scene;  
11 is that correct?

12 A They -- we took some items, yes.

13 Q Okay. Now, but it's your testimony that you don't know  
14 if any of that stuff was ever tested?

15 A I don't believe any of it went to SLED if that's what  
16 you're asking.

17 Q Okay. Now, and again, it's also your testimony that you  
18 weren't requested to fingerprint the bat or anything like  
19 that?

20 A No.

21 Q Okay. And you went out the next day, too; right?

22 A I was -- it -- the day -- my day never stopped.

23 Q That's correct. Got you.

24 A From -- so it, it was later in -- we went to the scene at  
25 night --

- 1 Q Uh-huh.
- 2 A -- carried on over to the morning hours, cleared and then
- 3 I went back that same day so to speak.
- 4 Q Okay. So you, you went to the house twice?
- 5 A Yes.
- 6 Q Okay. And so at that point did you talk to any
- 7 detectives or anything like that?
- 8 A Detectives have spoken with me.
- 9 Q Okay. Now, as far as that goes, is, is that when you
- 10 retrieved the t-shirt?
- 11 A I was asked about seeing a shirt.
- 12 Q Okay.
- 13 A And I said, yes, I remembered seeing one.
- 14 Q Do you know if there was any testing done on any of Roy's
- 15 clothes?
- 16 A Not that I'm aware of, no, sir.
- 17 Q And the reason I ask that is, you know, there was an
- 18 allegation of a sexual assault, and it just seems like maybe
- 19 testing may have been done on his shorts to see if there was
- 20 any semen, any other bodily fluids of his, but you don't know
- 21 if there was any testing like that ever done?
- 22 A Item was -- the items were collected. No testing like
- 23 that was requested.
- 24 Q Any drugs found?
- 25 A Other than I would say prescribed or --

Jill Domogauer - Cross by Alex Hyman

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1 Q Any, any illegal?

2 A -- over counter, but nothing that I located was illicit.

3 Q Okay. So you didn't find any crack pipes or anything  
4 like that or nothing like that?

5 A No, sir.

6 Q And like you said, it was nothing that would have been  
7 illegal. They all appeared to be prescribed?

8 A Yes, sir.

9 MR. ALEX HYMAN: The Court's indulgence.

10 THE COURT: All right.

11 BY MR. ALEX HYMAN:

12 Q Just I think maybe two more questions. You said that it  
13 was raining, you said you got there and it was kind of misty  
14 when you, when you were riding there and then when you got  
15 there it started pouring down and I think you --

16 A It's, it's one of those overcasty days where you know the  
17 skies are gray and then, of course, when you don't want it to  
18 rain it starts to rain, and it was intermittent between heavy  
19 raining, then it would get light, stop, heavy raining. In  
20 some of the photographs you can actually see the raindrops.

21 Q Sure. So kind of a typical summer storm type thing?

22 A Yes, sir.

23 Q Now, you had, had alluded to this as a, as a weapon and a  
24 rifle, and I, and I understand that, but would you admit  
25 though that it is a pellet gun?

1 A It can shoot 22 type rounds. So I would, I would call it  
2 a gun.

3 Q Well now, a 22 is something different. That's a rimfire.

4 A It's -- it shoots a 22 pellet. It's a, it's a pellet  
5 gun. It's not like the Glock I carry under my jacket, if  
6 that's --

7 Q So it's not a 22 rifle is what I'm asking?

8 A No.

9 Q Thank you.

10 MR. ALEX HYMAN: No further questions at this time.

11 THE COURT: All right. Redirect.

12 MR. HELMS: Nothing from the State, Your Honor.

13 THE COURT: All right. You may step down.

14 A What would you like me to do with all this stuff?

15 THE COURT: You can leave them right there.

16 A Yes, sir.

17 THE COURT: Thank you.

18 A May I be excused or --

19 MR. HELMS: I would request that, Your Honor.

20 MR. ALEX HYMAN: No objection, Your Honor.

21 MR. BOUCHETTE: No, no objection.

22 THE COURT: All right. She's free to go.

23 A I apologize. Thank you.

24 THE COURT: Thank you.

25 All right. Let me see the attorneys for a second.



- 1 A About 13 years.
- 2 Q Okay. You been to the academy?
- 3 A Yes, sir.
- 4 Q You've had specific training in CSI?
- 5 A Yes, sir.
- 6 Q What are your responsibilities as an investigator, sir?
- 7 A Well, to arrive at the incident location and to
- 8 document the scene in various ways with the photographs,
- 9 measurements.
- 10 Q You were here for Ms. Domogauer's testimony?
- 11 A I was.
- 12 Q You basically do the same exact thing she does?
- 13 A I did.
- 14 Q Is one of your duties to assist and supervise in crime
- 15 scene investigations?
- 16 A It is.
- 17 Q Did you -- were you working in this capacity on July 11<sup>th</sup>,
- 18 2016?
- 19 A I was.
- 20 Q And were you able to participate in this investigation
- 21 that we're here for today?
- 22 A I did.
- 23 Q And what specifically did you do in that regard, sir?
- 24 A Document the scene from inside and out and pull
- 25 measurements from two fixed locations and also done the

Dennis Lewis - Direct by Mr. Helms

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1 sketch. I collect the evidence.

2 Q When you say sketch, are you referring to this exhibit  
3 which is State's Exhibit 88?

4 A Yes, sir.

5 Q You drafted this?

6 A I did.

7 Q Okay. So you assisted, or not assisted, maybe supervised  
8 or assisted Ms. Domogauer at the scene, crime scene?

9 A We did, worked together, yes, sir.

10 Q Okay. Were you there the entire time with her?

11 A I was.

12 Q Okay. After you documented the crime scene did you do  
13 anything else to further the investigation?

14 A After this crime scene?

15 Q Yes, sir.

16 A Yes, sir. Then I went to an autopsy.

17 Q Whose autopsy?

18 A The, the victim's, Roy Davis.

19 Q Did any other crime scene investigator accompany you?

20 A No, sir.

21 Q You went by yourself?

22 A Yes, sir.

23 Q And what was the purpose of you attending that autopsy,  
24 sir?

25 A To document the injuries.

- 1 Q Were you instructed to do that by anyone?
- 2 A No, sir.
- 3 Q You, you -- well, you are a supervisor; am I right?
- 4 A Yes.
- 5 Q So you took it upon yourself to do that?
- 6 A I did.
- 7 Q To document any injuries to whom?
- 8 A To the victim.
- 9 Q And did you document such injuries?
- 10 A I did.
- 11 Q And how did you do that, sir?
- 12 A By photography.
- 13 Q Is that how you normally document injuries --
- 14 A It is.
- 15 Q -- to the homicide victims?
- 16 A Yes, sir.
- 17 Q So you were following protocol when you did this?
- 18 A It was. Yes, sir. We photograph and then put the scale
- 19 to the photographs, also.
- 20 Q Was anyone else present when you documented these?
- 21 A Well, Dr. Proctor was and assisted by a Leroy Rush and,
- 22 yes, sir.
- 23 Q I'm showing you what's been marked for identification as
- 24 State's 89 through 97. Do not show the jury, but please look
- 25 through those briefly and tell me what you see in those

Dennis Lewis - Direct by Mr. Helms

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1 pictures, if you recognize those pictures.

2 A Those are the photographs that I took that day at the  
3 autopsy.

4 Q Photographs of what, sir?

5 A At the autopsy of the victim.

6 Q So those are photographs of Roy Davis?

7 A It is.

8 Q And did you -- in those photographs did you specifically  
9 focus on the injuries that you saw on Roy Davis?

10 A Yes, sir.

11 Q And just in vague terms what kind of injuries were they?

12 A Just injuries to his head, elbow, chest, bruising.

13 Q Blunt force trauma; is that fair?

14 A Blunt force trauma, yes, that's correct. Yes.

15 Q Were they injuries that you witnessed would have  
16 sustained bloodletting?

17 A Yes, sir.

18 MR. HELMS: Your Honor, at this time --

19 BY MR. HELMS:

20 Q And, and is, is this exactly how Roy appeared to you on  
21 that day?

22 A It is.

23 Q Have they been altered in any way?

24 A They have not.

25 MR. HELMS: Your Honor, at this time I would seek to

1 THE COURT: All right. Let's bring the jury back in.

2 (Whereupon, the following takes place in the presence of  
3 the jury.)

4 THE COURT: All right. Ladies and gentlemen, welcome  
5 back. Make sure you have your own notepads. All right. Mr.  
6 Helms, you can continue.

7 BY MR. HELMS:

8 Q Mr. Lewis, I'll be brief right now. You said you drafted  
9 State's 88; right?

10 A I did.

11 Q And you also drafted one more with -- you said with the  
12 bedrooms on it.

13 A Yes.

14 Q Why did you draft this one without the bedrooms on it?

15 A Just to show the incident location where, where we feel  
16 the, the crime actually happened.

17 Q Because your investigation did it reveal that nothing had  
18 occurred in the bedrooms?

19 A Yes.

20 Q Okay. And the last question, sir, after you attended the  
21 autopsy was that the last thing you did on this case?

22 A Yes, sir.

23 Q Documenting the injuries?

24 A As far as, yes, sir.

25 Q And did you do anything else on this case after that?

Dennis Lewis - Cross by Alex Hyman

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1 A No, sir, other than type up my reports.

2 Q Please answer any questions the Defense may have.

3 THE COURT: All right. Mr. Hyman.

4 MR. ALEX HYMAN: Just briefly.

5 CROSS EXAMINATION

6 BY MR. ALEX HYMAN:

7 Q Mr. Lewis, you were there that night with Investigator  
8 Domogauer; is that correct?

9 A That's correct.

10 Q All right. I know you heard the questions that I asked  
11 her about the DNA, the fingerprinting and everything like  
12 that. Anybody ask you to get any of that stuff?

13 A No, sir.

14 Q Okay. Now, did you go and get DNA evidence from Roy  
15 Davis?

16 A I did.

17 Q And who'd you give that to?

18 A We turned it in to the evidence section.

19 Q Okay. So as far as you know Horry County still has that  
20 evidence?

21 A Yes, sir.

22 Q Do you remember retrieving that kind of evidence from my  
23 client and Ms. Durkin?

24 A No, sir.

25 Q Okay. Now, as far as that goes, later that night I think

1 Ms., Ms. Domogauer said that you all left the next morning; is  
2 that right?

3 A That's correct.

4 Q Do you remember collecting these phones, both of these?

5 A I do.

6 Q And that's State's Exhibit Number 80 and that's also  
7 State's Exhibit Number 79. Now, do you remember who drove  
8 those phones to the, the police station?

9 A I believe it was me.

10 Q You did. Okay.

11 A Yes, sir.

12 Q Do you remember how you got to the police station?

13 A Yes, sir, with my county vehicle.

14 Q I didn't think you ran, but the -- as far as how you got  
15 there, I mean, you left Highway 548, how did you get to the  
16 police station? How'd you -- what, what route would you take?

17 A I'm not certain, sir, probably 501 down to Cultra.

18 Q But you don't remember exactly?

19 A No, sir.

20 Q Okay. Do you remember what time it was?

21 A Yeah. No, sir, not, not to be exactly. It was before 12  
22 we arrived and it was way into the morning when we left.

23 Q And when you say way into the morning, I'm an early  
24 riser. I'm usually up at five. Is that way into the morning?

25 A 5:00 o'clock we was probably either getting close to

Dennis Lewis - Cross by Alex Hyman

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1 finishing or finished. Yes, sir.

2 Q But you're not positive on that?

3 A I'm not a hundred percent, no, sir.

4 Q It's a, it's a detail you don't remember?

5 A Yes, sir. Not.

6 Q But you are pretty sure that it was you that drove the  
7 phones?

8 A Yes, sir.

9 Q Okay.

10 MR. ALEX HYMAN: The Court's indulgence.

11 THE COURT: All right.

12 MR. ALEX HYMAN: I have no further questions at this  
13 time, Your Honor.

14 THE COURT: All right. Mr. Bouchette?

15 MR. BOUCHETTE: Your Honor, I don't have any further  
16 questions for Detective Lewis.

17 THE COURT: All right. Redirect?

18 MR. HELMS: Nothing for Mr. Lewis, Your Honor.

19 THE COURT: All right. You may step down.

20 MR. HELMS: Your Honor, may Mr. Lewis be excused from his  
21 subpoena, sir?

22 THE COURT: Any objection?

23 MR. BOUCHETTE: No, sir, Your Honor.

24 MR. ALEX HYMAN: No, Your Honor.

25 THE COURT: All right. He's free to go.

Sandy Lowe - Direct by Mr. Helms

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1 MR. HELMS: Your Honor, at this time the State would call  
2 Sandy Lowe.

3 THE COURT: All right.

4 Whereupon, Sandy Lowe is called to the stand, duly sworn  
5 by the clerk and testified as follows:

6 THE CLERK: Please state your name and spell your name.

7 MS. LOWE: Sandy Lowe, S-A-N-D-Y, L-O-W-E.

8 THE COURT: All right.

9 MR. HELMS: The Court's indulgence, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. HELMS:

12 Q Ms. Lowe, where do you work?

13 A For Horry County Sheriff's Office at J. Reuben Long  
14 Detention Center.

15 Q Okay. Let's hold on one second so we can let the clerk  
16 mark these.

17 So you work for J. Reuben Long Detention Center?

18 A Yes.

19 Q What do you do there, ma'am?

20 A I am the sergeant in the classification department.

21 Q What does that mean?

22 A We are keeper of the records of the jail.

23 Q How long have you worked there?

24 A 26 years.

25 Q Good night. So keeper of the records. So J. Reuben Long

Sandy Lowe - Direct by Mr. Helms

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1 keeps records?

2 A Yes.

3 Q Hypothetically speaking, what kind of records?

4 A Inmate bookings, all of their information that is taken  
5 on -- from them while they are there, charges, disposition of  
6 charges, things like that.

7 Q So 26 years of keeping records it's probably safe to say  
8 this is not your first time testifying?

9 A No.

10 Q Ma'am, I'm going to show you what's been marked for  
11 identification purposes as State's 104 and 105. Ma'am, I'm  
12 showing you what's now been marked as State's 104 and 105.  
13 Can you tell me what those two documents are?

14 A It is the personal information on two inmates that were  
15 booked in.

16 Q What two inmates?

17 A It is James Rosenbaum and Diane Durkin.

18 Q Now, are these records?

19 A Yes.

20 Q Are these records that are generated and maintained by  
21 you at J. Reuben Long Detention Center?

22 A Yes.

23 Q Are they kept in the ordinary course of business?

24 A Yes.

25 Q And have they been altered in any way?

1 A No.

2 Q Did you provide these records to me and my office?

3 A Yes.

4 MR. HELMS: Your Honor, at this time I would tender  
5 State's 104 and 105.

6 THE COURT: Any objection?

7 MR. ALEX HYMAN: No, Your Honor.

8 THE COURT: Any objection?

9 MR. BOUCHETTE: No, Your Honor. The only thing I spoke  
10 with Chris and it contains some confidential Social Security  
11 numbers. So we'd ask that that be redacted just for identity  
12 purposes.

13 THE COURT: Any objection?

14 MR. HELMS: No, sir.

15 THE COURT: All right. Let's go ahead and do that.

16 BY MR. HELMS:

17 Q Ms. Lowe, I'm going to ask you to mark out those Social  
18 Security numbers, just that information that's on those  
19 documents for me, please. There's no need to publish those.  
20 Thank you, ma'am.

21 THE COURT: All right. State's Exhibits 104 and 105 are  
22 admitted into evidence without objection.

23 (State's Exhibit Number 104 and 105 [J. Reuben Long  
24 Personal Information] admitted into evidence and appropriately  
25 marked.)

Sandy Lowe - Direct by Mr. Helms

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1 BY MR. HELMS:

2 Q Ms. Lowe, what kind of information is on those documents,  
3 those records you got there?

4 A Date of birth, address, phone numbers.

5 Q And where do you get that information from?

6 A From the inmate whenever they are booked in in booking.

7 Q When does that show that they were booked in in booking?

8 A On -- Diane on July 12<sup>th</sup>, 2016, at 2:41 in the morning.

9 Q Yes, ma'am.

10 A And on James July 12<sup>th</sup>, 2016, at 4:59 in the morning.

11 Q Okay. So the same day?

12 A Yes.

13 Q And so you said personal information, but phone numbers  
14 definitely on there?

15 A Right.

16 Q And that information is garnered from the Defendants  
17 themselves?

18 A Yes.

19 Q I want you to do me a favor right now and for James  
20 Rosenbaum I want you to tell this jury what phone number he  
21 provided you on July 12<sup>th</sup>, 2016.

22 A Area code 203-802-0282.

23 Q Now, for Defendant Durkin, ma'am, I'd like you tell the  
24 jury the same thing, please.

25 A Area code 843-742-7705.

1 Q All right.

2 MR. HELMS: I'm not going to seek to publish this at this  
3 time, Your Honor.

4 BY MR. HELMS:

5 Q So those are the phone numbers that they gave the jail.  
6 Ma'am, I'm going to show you now after I show Defense counsel  
7 some more of these. Give me one second. Do you also keep  
8 records for housing?

9 A Yes.

10 Q And by housing what does that mean in jail terms?

11 A Where the inmates are housed within the facility, when  
12 they're put into a cell, when they're taken out of a cell.

13 Q It's that specific?

14 A Yeah.

15 Q And why do you keep those kind of records?

16 A Just for tracking of inmates.

17 Q That makes sense to me. And those are records that are  
18 kept in the ordinary course of business?

19 A Yes.

20 Q Maintained secure?

21 A Yes.

22 Q All right. Ma'am, I'm showing you now what's been marked  
23 as 102 -- 10 -- well, let's do these one at a time. I'm going  
24 to show you State's 102. Do you recognize that document?

25 A Yes.

Sandy Lowe - Direct by Mr. Helms

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1 Q And what is that document?

2 A It is housing for Diane Durkin during a specific time.

3 Q What time?

4 A July 15<sup>th</sup>, 2016, until July 21<sup>st</sup>, 2016.

5 Q Okay. And that's State's 102.

6 A Yes.

7 Q I'm going to show you another document, State's 103.

8 Tell me what that document is.

9 A This is housing, housing for Bridgett Briles during a  
10 specific time.

11 Q What time?

12 A July 15<sup>th</sup>, 2016 to July 21<sup>st</sup>, 2016.

13 Q And, and those are the records that are kept that you  
14 maintain?

15 A Yes.

16 Q Ordinary course of business?

17 A Yeah.

18 MR. HELMS: Your Honor, I would tender State's 102 and  
19 103.

20 THE COURT: Any objection?

21 MR. ALEX HYMAN: No, Your Honor.

22 THE COURT: Any objection?

23 MR. BOUCHETTE: No objection, Your Honor.

24 THE COURT: All right. State's Exhibits 102 and 103 are  
25 admitted into evidence without objection.

1           (State's Exhibit Number 102 [Durkin Housing Information]  
2 and State's Exhibit Number 103 [Briles Housing Information]  
3 admitted into evidence and appropriately marked.)

4 BY MR. HELMS:

5 Q     And ma'am, as it concerns these two inmates, tell me  
6 their names again, Diane Durkin and --

7 A     And Bridgett Briles.

8 Q     Is there any time during that timeframe on that housing  
9 document or that housing record that they were housed  
10 together? Can you tell that information from those documents?

11 A     Yes.

12 Q     Be more specific, tell the jury when and where if you  
13 can.

14 A     All right. They were both housed in cell A2-136. Diane  
15 was in that cell from 7-15, 2016, 8:31 in the morning. She  
16 was moved out on July 19<sup>th</sup>, 2016, at 1:43 in the afternoon.

17 Q     All right. Now, let's put Bridgett's name up here, too,  
18 please. Can you tell me when -- is she -- was she housed in  
19 that same unit at any time?

20 A     Yes. She was housed in A2, cell 136.

21 Q     And tell me the time she was housed in that cell.

22 A     July 15<sup>th</sup>, 2016, 8:30 in the morning, she was in that cell  
23 until 7-21-16 at 11:40 is when she was moved out.

24 Q     So they were in that cell together for at least four  
25 days. Is that what you're telling me?

Sandy Lowe - Direct by Mr. Helms

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1 A Yes.

2 Q Okay. Ma'am, I'm now showing you what's been marked as  
3 State's 101 and 102, 100 and 101 for identification. Can you  
4 tell me what those documents are?

5 A It is the -- 100 is James Rosenbaum's housing from July  
6 16<sup>th</sup>, 2016, till July 18<sup>th</sup> of 2016.

7 Q All right. So James Rosenbaum, and what's the other  
8 document?

9 A The other one is Donald Young's housing from July 16<sup>th</sup>,  
10 2016, to July 18<sup>th</sup> of 2016.

11 Q And are those records kept in the ordinary course of  
12 business?

13 A Yes.

14 Q Have they been tampered with in any way?

15 A No.

16 MR. HELMS: Your Honor, I would seek to tender State's  
17 100 and 101.

18 THE COURT: Any objection?

19 MR. ALEX HYMAN: No, Your Honor.

20 MR. BOUCHETTE: No objection, Your Honor.

21 THE COURT: All right. State's Exhibits 100 and 101  
22 admitted into evidence without objection.

23 (State's Exhibit Number 100 [Rosenbaum Housing  
24 Information] and State's Exhibit Number 101 [Young Housing  
25 Information] admitted into evidence and appropriately marked.)

Sandy Lowe - Direct by Mr. Helms

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1 BY MR. HELMS:

2 Q Ms. Lowe, can you tell me if at any time Defendant  
3 Rosenbaum and a Mr. Don Young were housed in the same unit at  
4 the same time?

5 A Yes.

6 Q Okay. Can you be specific?

7 A Yes. James Rosenbaum was housed in cell -- unit B3, cell  
8 124 from July 13<sup>th</sup>, 2016, at 2100 hours, which is 10:00 o'clock  
9 at night, until July 17<sup>th</sup>, 2016, at 11:20 p.m. at night.

10 Q All right. Now, can you tell me if Mr. Don Young was  
11 housed in that same unit at any of the same time?

12 A Yes. Don was housed in cell B3, 124 from July 17<sup>th</sup>, 2016,  
13 at 4:18 in the afternoon till July 18<sup>th</sup>, 2016, at 12:59 p.m.

14 Q So what we have here is they were housed together for  
15 approximately one day?

16 A Yes.

17 Q All right. I'm now showing you what's been marked for  
18 identification as State's 98 and 99. Can you tell me what  
19 State's 98 is?

20 A Yes. It is housing on James Rosenbaum from July 13<sup>th</sup>,  
21 2016, till February 25<sup>th</sup>, 2017.

22 Q Okay. Can you tell me what State's 99 is?

23 A It's housing for Lynndale Lewis from July 13<sup>th</sup>, 2016, till  
24 February 25<sup>th</sup> of 2017.

25 Q And can you tell me from looking at those two documents

Sandy Lowe - Direct by Mr. Helms

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1 -- well, first let me do this. Are those kept in the ordinary  
2 course of business?

3 A Yes.

4 Q Tampered with in any way?

5 A No.

6 MR. HELMS: Your Honor, I would tender State's 98 and 99.

7 THE COURT: Any objection?

8 MR. ALEX HYMAN: No, Your Honor.

9 THE COURT: Any objection?

10 MR. BOUCHETTE: No objection.

11 THE COURT: State's Exhibits 98, 99 admitted into  
12 evidence without objection.

13 (State's Exhibit Number 98 [Rosenbaum Housing  
14 Information] and State's Exhibit Number 99 [Lewis Housing  
15 Information] admitted into evidence and appropriately marked.)

16 BY MR. HELMS:

17 Q Ms. Lowe, can you tell me and the jury by looking at  
18 those documents if Mr. James Rosenbaum and Mr. Lynndale Lewis  
19 were ever housed together at J. Reuben Long at the same time?

20 A Yes.

21 Q And be specific.

22 A All right. James was housed in cell B3, 124 from July  
23 13<sup>th</sup> of '16 at 2100 hours at night, which is 10:00 o'clock at  
24 night. He was moved out of that cell at -- on July 17<sup>th</sup>, 2016,  
25 at 11:20 at night and Lynndale was housed in cell B3, 124 July

Sandy Lowe - Direct by Mr. Helms

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1 13<sup>th</sup>, 2016, at 2100 hours, and he was moved out on July 17<sup>th</sup>,  
2 2016 at 2321, which is 11:21 at night.

3 Q So it's fair to say that those two gentlemen were housed  
4 together for approximately four days at one period?

5 A Yes.

6 Q When they're housed together are they -- do they talk to  
7 each other generally speaking?

8 A I would assume so.

9 Q Are they prohibited from speaking with one another?

10 A No.

11 Q Okay. Is there a whole lot else to do, but talk to each  
12 other when you're housed in a jail cell?

13 A No.

14 Q Okay. Do you ever get to hear their conversations, yes  
15 or no?

16 A No.

17 Q So what you're saying is based on what you just told me  
18 that Diane Durkin at one time was housed with Bridgett Briles?

19 A Yes.

20 Q That James Rosenbaum was housed once with Don Young?

21 A Yes.

22 Q And that at one time James Rosenbaum was also housed  
23 together with Lynndale Lewis?

24 A Yes.

25 MR. HELMS: The Court's indulgence.

Sandy Lowe - Direct by Mr. Helms

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1 THE COURT: All right.

2 BY MR. HELMS:

3 Q Ma'am, if you don't mind, do me a favor and step down and  
4 with the Judge's permission if you'll step down and initial  
5 this document for me.

6 THE COURT: All right.

7 Q -- if you deem --

8 THE COURT: That'll be fine.

9 Q -- it correct based on the records that you just entered  
10 into evidence for us. I want you to take a look at that, now  
11 if that's what you just told us, if you'll just put your  
12 initials at the bottom of it for me.

13 A (Complies with request.)

14 Q Thank you, ma'am. Now, ma'am, did you just initial that  
15 because it's a fair and accurate representation of the phone  
16 numbers they gave you?

17 A Yes.

18 Q Okay.

19 MR. HELMS: I think that's all I have at this time, Your  
20 Honor.

21 BY MR. HELMS:

22 Q Please answer any questions the Defense may have, Ms.  
23 Lowe. Thank you for your time.

24 THE COURT: All right. Mr. Bouchette.

25 MR. BOUCHETTE: Thank you, Judge, very, very briefly.

1 CROSS EXAMINATION (BY MR. BOUCHETTE)

2 Q Ms. Lowe, I'm going to operate under the assumption the  
3 jury probably doesn't know much about how the, the jail  
4 operations work. So if you'll take us through there's a --  
5 when somebody's initially taken in, they're in sort of one  
6 section of the jail; right?

7 A Yes. They're in the booking.

8 Q Right. They're in the booking section and there's other  
9 people that are in there in the booking section as well;  
10 correct?

11 A Right.

12 Q And then at some point I guess you, you classify them and  
13 you move them to different -- I think they call them pods; is  
14 that right?

15 A Right. Yes.

16 Q And they move them around and sometimes even you transfer  
17 different pods for different reasons; right?

18 A Right.

19 Q Availability, whatever else --

20 A Right.

21 Q -- may be going on, that type of thing?

22 A Yes.

23 Q Okay. And the people obviously going in and out of there  
24 probably changes almost daily to a certain extent; right?

25 A Yes.

Sandy Lowe - Cross by Mr. Bouchette

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1 Q Okay. And so there's records of or you have in your  
2 possession or at least in, in your custody through J. Reuben  
3 Long those documents would be present, right, as to --  
4 essentially if we wanted to we could go back and see everybody  
5 that these folks have shared a cell with or been in at least  
6 close proximity with; is that fair to say?

7 A Yes. Yes, sir.

8 Q But the records you've provided these have -- they're  
9 fairly, fairly small. This is what the Solicitor's Office  
10 asked you to bring with you today?

11 A Yes.

12 Q Okay. But those other ones could be provided if  
13 necessary regarding who else they were in a cell with or who  
14 other -- who else was in proximity --

15 A Yes.

16 Q -- to them during the time that they had been  
17 incarcerated?

18 A Yes.

19 Q Okay.

20 MR. BOUCHETTE: I don't have anything -- the Court's  
21 indulgence. Your Honor, no further questions.

22 THE COURT: All right. Mr. Hyman.

23 MR. ALEX HYMAN: Those documents. Right here.

24 CROSS EXAMINATION

25 BY MR. ALEX HYMAN:

- 1 Q Okay. Now, it's your testimony I think that -- I'm going  
2 to, I'm going to hand you what's been marked as State's 98  
3 and, let's see, what's also been marked as State's 101. Now,  
4 this is the housing record of Donald Dean Young and James  
5 Rosenbaum. All right. Now, I think you, you said that Donald  
6 Dean Young got there at what time?
- 7 A At 4:18.
- 8 Q Okay. So 4:18, that's p.m.
- 9 A Right.
- 10 Q In the afternoon.
- 11 A P.M. That's correct, 16, right.
- 12 Q Okay. And Rosenbaum moved out at what time?
- 13 A He moved out at 23:20, which is 11:20 at night.
- 14 Q Okay. But Mr. Helms asked you and said that they'd been  
15 in a cell together for a day. They weren't in a cell together  
16 for a day; were they?
- 17 A Probably.
- 18 Q About six hours?
- 19 A Six, six, six, yes, give or take six hours.
- 20 Q But not a whole day?
- 21 A Not a whole day.
- 22 Q Okay. And it appears that it's afternoon and into the  
23 evening.
- 24 A Right. Yeah.
- 25 Q Okay.

Sandy Lowe - Cross by Alex Hyman

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1 A Later on in the afternoon.

2 Q Now, I'm going to hand you what's been marked State's 99.

3 Okay. Now, that's for Lynndale Lewis?

4 A Uh-huh.

5 Q All right. Can you tell me how long is it -- Mr. Helms

6 didn't go over this, but how long were Lynndale Lewis and

7 Donald Dean Young, how long were they in a cell together, not,

8 not Rosenbaum, just those two.

9 A Right. About one -- from about 4:18 and this one moved  
10 out at 11:20 that night.

11 Q Okay.

12 A So about the same amount of time.

13 Q The same amount of time. All right. Now, does it say  
14 next where --

15 A This is Rosenbaum.

16 Q Okay.

17 A This is Young.

18 Q Young is still in B pod --

19 A Uh-huh.

20 Q -- at 1:25 and --

21 A It is.

22 Q -- is Lynndale still in B pod next?

23 A Yeah. He moved out to a different cell.

24 Q Right.

25 A Yeah.

1 Q But is he in the same pod?

2 A Yes.

3 Q So he is still in the pod with Young, but Rosenbaum is  
4 not in there with either one.

5 A No. He moves to a different unit.

6 Q Right. Okay. So can you tell me how long Lynndale Lewis  
7 and Donald Young were in the same pod?

8 A Young left the unit on 7-18, 2016, at 2:51.

9 Q Okay. And so he was in there for a couple of days with  
10 Lynndale Lewis?

11 A Yes.

12 Q But only a matter of hours with James Rosenbaum?

13 A Yes.

14 Q Okay. Is there anything special about that pod?

15 A It's just a unit.

16 Q Is it a detox pod?

17 A Yes. It is a kind of a medical. Detox go there also.

18 Q Okay. So it's, it's not your normal one?

19 A No. No, sir.

20 Q So a lot of times are there sick people in there?

21 A Right.

22 Q Okay.

23 MR. ALEX HYMAN: The Court's indulgence.

24 THE COURT: All right.

25 MR. ALEX HYMAN: No further questions, Your Honor.

James Perry - Direct by Mr. Richardson

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1 THE COURT: All right. Redirect?

2 MR. HELMS: Nothing, Your Honor.

3 THE COURT: All right. You may step down.

4 MR. HELMS: Your Honor, may Ms. Lowe be excused from her  
5 subpoena?

6 THE COURT: Any objection?

7 MR. ALEX HYMAN: No objection, Your Honor.

8 THE COURT: Any objection?

9 MR. BOUCHETTE: No objection.

10 THE COURT: All right. She's free to go. The State can  
11 call your next witness.

12 MR. RICHARDSON: Thank you, Your Honor. The State would  
13 call Jim Perry.

14 Whereupon, James Perry is called to the stand, duly sworn  
15 by the clerk and testified as follows:

16 THE CLERK: Please state your name and spell your name  
17 for the record.

18 MR. PERRY: I'm sorry. What?

19 THE CLERK: Please state your name and spell your name  
20 for the record.

21 MR. PERRY: Okay. James Perry, J-A-M-E-S, P-E-R-R-Y.

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q Mr. Perry, where are you employed?

25 A I'm employed with the Greenville County Sheriff's Office.

1 Q How long have you been with Greenville County?

2 A Greenville County I've been 23 years and total law  
3 enforcement I've got 35 years.

4 Q All right. Well, thank you so much for your service.

5 A Thank you.

6 Q What are your current responsibilities and duties at  
7 Greenville Sheriff's Office?

8 A I work in the computer crimes investigations unit, which  
9 we also are a member of the ICAC, which is the Internet Crimes  
10 Against Children Task Force. So we do computer, cell phone  
11 forensic, on-line predators, cases like that. In addition, we  
12 -- any of the homicides, armed robberies, sexual assaults, if  
13 there's a phone or a computer involved we'll do the forensics  
14 on those.

15 Q So you do a good bit of what they would -- phone dumps or  
16 computer dumps? How long have you been doing the phone dump?

17 A Well, we -- I started the computer crimes unit in 2002.  
18 Back then it was like a hundred percent computers, and as  
19 technology changed we changed with it. So I'd say now we're  
20 doing probably 90 percent cell phones, ten percent computers  
21 and I've been doing the cell phones since 2006.

22 Q And since 2006 cell phones for the most part are  
23 basically a computer.

24 A Well, yeah, I mean, the, the new smartphones, iPhones and  
25 everything are -- they are computers. We call them cell

James Perry - Direct by Mr. Richardson

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1 phones, but most people don't even use them for cell phones.

2 Q You got any guess as to how many phones you have tested  
3 since 2002?

4 A Yes. I've, I've done well over 1200.

5 Q Have you testified in court regarding the examination of  
6 these phones?

7 A I have.

8 Q About how many times have you testified in court?

9 A Gosh, it's -- I can't even remember. It's been numerous,  
10 gosh, at least 20 times.

11 Q And obviously it's not just in Greenville. You go across  
12 the state?

13 A Yeah. I've testified in Virginia Beach Federal Court,  
14 testified here in Horry County before, Laurens County,  
15 different counties. We assist.

16 Q Tell the jury how you got involved in this case.

17 A I got a call from Investigator Pop with the Solicitor's  
18 Office, investigator with the Solicitor's Office and she told  
19 me she had a phone involved in a case and they were unable to  
20 get a forensic image of the phone and asked if I would just be  
21 willing to try and see if I could do anything with it. So I  
22 had her send it to me.

23 Q Is that uncommon for say in Horry County you can't get an  
24 image or anything off a phone and you get those cases?

25 A We've had several of those, had them from SLED, had them

1 from other agencies, as well as from our own agency.

2 Q You, you created the lab that they currently use at, at  
3 Greenville?

4 A Correct.

5 Q Were, were you asked to perform any testing on a phone  
6 involved in this case?

7 A That is correct.

8 Q Give me the phone number. Were you able to get the phone  
9 number off of the one that you had to test?

10 A I was.

11 Q What was that number?

12 A The phone number that was associated with the cell phone  
13 forensics that I did come back to, let's see, it's -- here we  
14 go, 203-802-0282.

15 Q All right. And before getting involved with this case,  
16 did you ever hear of a James Rosenbaum or Richard Rosenbaum  
17 before?

18 A No.

19 Q Okay. Did you ever -- have you ever heard of Diane  
20 Durkin?

21 A Never.

22 Q Roy Davis?

23 A No.

24 Q Okay. Did you see anything on that 203 number that  
25 referenced back to the name Richard Rosenbaum?

James Perry - Direct by Mr. Richardson

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1 A In the contacts it did come back that there was an email  
2 connected to it that had the Rosenbaum name.

3 Q Richard Rosenbaum name?

4 A Uh-huh.

5 Q Were you able to get into that phone?

6 A I was. At, at -- when I first connected it to our cell  
7 phone forensic machine, which is called Cellebrite I wasn't  
8 able to get it to connect, and a lot of times we'll have the  
9 -- not a lot of times, but we do have it happen where the port  
10 on a cell phone where you plug it in to charge it won't  
11 exchange data, and when you have that you can't get a cell  
12 phone image done. So what I did is I did it through  
13 Bluetooth. I connect -- I turn the Bluetooth on the phone and  
14 then I did the imaging from Bluetooth to Bluetooth to our cell  
15 Cellebrite machine.

16 Q So even though sometimes you can't get into the phone the  
17 specific Bluetooth that allows us to talk through our speakers  
18 or whatever you can go in other ways --

19 A Correct.

20 Q -- than by the port?

21 A It, it has -- the Cellebrite has the ability to do the  
22 phone image with Bluetooth.

23 Q And is that the way you got into --

24 A Yeah.

25 Q -- James Rosenbaum's phone --

- 1 A That is correct.
- 2 Q -- that 203 number? All right. Were you able, as far as  
3 retrieving items, were you able to retrieve anything off of  
4 that phone?
- 5 A I, I was able to.
- 6 Q All right. And you've already talked about some of it  
7 being email addresses and things like that.
- 8 A Correct.
- 9 Q I don't want to get into everything on the phone, but  
10 were you able to retrieve a video with a date stamp around  
11 July 11<sup>th</sup>, 2016?
- 12 A I, I was able to get a video with that date on it.
- 13 Q Okay. And have you looked at that video -- afterwards  
14 did you -- what did you do when you got the video off of the  
15 phone?
- 16 A Well, what I did is once I got the image done I just  
17 create a report and then I take that -- I took that report and  
18 forwarded it down to the Horry County Sheriff's Office or  
19 Department for their further investigation.
- 20 Q Did you capture that video on, on a disc or place it on a  
21 disc?
- 22 A I put it on a -- well, I put it on a, on a disc for their  
23 use.
- 24 Q And have you seen that disc since?
- 25 A I saw the disc, yes.

James Perry - Direct by Mr. Richardson

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1 Q All right. I'm going to pass you what's been marked as  
2 State's Number 107, and if you can open that up and tell me if  
3 that's the disc that you were able to get off of Mr.  
4 Rosenbaum's phone.

5 A Yes. This is the -- it's got my initials on it that has  
6 the report that I did.

7 Q I also want to pass to you a still shot marked as State's  
8 106 and tell me if you recognize that.

9 A That's a still shot of the video that was on the phone.

10 Q All right. On Mr. Rosenbaum's phone?

11 A Correct.

12 Q Do you know about how long that video was?

13 A Just a matter of seconds.

14 Q Two or three seconds?

15 A At most, yeah.

16 Q Were you able to get a time stamp off of this video?

17 A Time stamp of when the video was captured?

18 Q Yes, sir.

19 A Yes.

20 Q All right. Give us that time, please.

21 A The time it was 7 -- July 11<sup>th</sup>, 2016, at 2144 or 9:44 p.m.

22 MR. RICHARDSON: Your Honor, the State would like to  
23 publish the video. It's about three seconds.

24 THE COURT: That's 107?

25 MR. RICHARDSON: Yes, sir, State's 107 and 106. I've

1 previously given them to the Defense. I don't think there's  
2 any objection.

3 THE COURT: Any objection?

4 MR. ALEX HYMAN: No objection.

5 THE COURT: Any objection?

6 MR. BOUCHETTE: No objection.

7 THE COURT: All right. State's Exhibits 106 and 107 are  
8 admitted into evidence without objection.

9 (State's Exhibit Number 106 [Photograph of Still Shot]  
10 and State's Exhibit Number 107 [DVD - Video from Phone]  
11 admitted into evidence and appropriately marked.)

12 THE COURT: You can publish it.

13 MR. RICHARDSON: Your Honor, I'd like to publish 107.

14 THE COURT: All right.

15 (State's Exhibit Number 107 played in open court.)

16 MR. RICHARDSON: That's it, Your Honor.

17 THE COURT: All right.

18 BY MR. RICHARDSON:

19 Q So it was one second?

20 A Just about.

21 Q And 106 is a screenshot of that one second. Does that  
22 fairly and accurately depict --

23 A Yes.

24 Q -- what you took off of Mr. Rosenbaum's phone?

25 A It is.

James Perry - Cross by Mr. Alex Hyman

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1 MR. RICHARDSON: Permission to publish, Your Honor?

2 THE COURT: All right.

3 BY MR. RICHARDSON:

4 Q So to -- somebody with possession of that phone had to  
5 videotape that, wouldn't you have had to have possession of  
6 the phone to make that video?

7 A Yes. You would have.

8 Q And the video is at 9:44 p.m. on 7-11?

9 A Correct.

10 Q '16, 2016?

11 A 2016.

12 Q All right. I have no further questions. If you'd answer  
13 any questions the Defense may have for you.

14 THE COURT: All right. Mr. Hyman.

15 MR. ALEX HYMAN: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. ALEX HYMAN:

18 Q Mr. Perry, I've, I've only got just a couple of questions  
19 for you, but you did a full report on this thing; right?

20 A Correct.

21 Q Okay. Now, and that picture right there we're in  
22 agreement that that's Mr. Rosenbaum's phone?

23 A Yes.

24 Q Okay. Now, as far as -- you said you've been a police  
25 officer now for --

- 1 A 35 years.
- 2 Q Okay. Would you admit that if you're involved in a  
3 situation and you think that an assailant may get away that  
4 it's a good idea to maybe take a picture?
- 5 A Well, if, if you thought he could get away.
- 6 Q Okay.
- 7 A I don't -- he didn't look like he was going anywhere.
- 8 Q Well, I mean, that's speculation.
- 9 A Yeah.
- 10 Q He's sitting. I've been sitting over there. I could  
11 certainly get away. He was sitting down; correct?
- 12 A Yes. With severe -- what appeared to be severe injuries.
- 13 Q It's pretty dark, but let's, let's talk a little bit  
14 about what happens next.
- 15 A Okay.
- 16 Q You went through that whole phone. Now, you -- it was  
17 your testimony that at 9:44 that was taken --
- 18 A Correct.
- 19 Q -- which was about a second, and at 9:45 do you know what  
20 happens next?
- 21 A No.
- 22 Q Okay. Do you remember seeing him -- there was a phone  
23 call, this is on your report, an outgoing phone call at 9:45  
24 to Paul?
- 25 A No. I, I did not do an investigation of the phone. It

James Perry - Cross by Mr. Alex Hyman

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1 was sent back to Horry County for that.

2 Q You admit that this is made a part of it? I'm just going  
3 to show it -- maybe it'll --

4 A Yeah. It's on -- yeah. Okay. Yeah. There was a phone  
5 call.

6 Q And who does that say right there?

7 A It has a listing of Paul as contact person.

8 Q Paul. All right. So a minute or maybe less after that  
9 was taken there was a phone call made to Paul?

10 A Correct.

11 Q Okay. Now, you went through the phone, the entire phone?

12 A I did the image of it and the report of it.

13 Q Now, image you don't mean taking a picture of it? You  
14 mean --

15 A No. No. It's a forensic image of it. It's like a  
16 complete copy of it.

17 Q Text messages, text messages.

18 A Text messages, all that.

19 Q Other photos, emails?

20 A Don't think there were any emails made on it. There was  
21 an email contact so I -- and again, I don't know without  
22 seeing the --

23 Q Okay.

24 A -- the full report.

25 Q Well, you're here to testify today about your report?

- 1 A Correct. About doing the report, getting the video off.  
2 That was what --
- 3 Q But not about what's on the report other than that?
- 4 A Correct. Yeah. It was sent back to Horry County for  
5 their investigators.
- 6 Q So you didn't see any text messages between my client and  
7 Roy?
- 8 A I, I did not read them. I did not investigate them, no.
- 9 Q Any text messages between my client and Ms. Durkin?
- 10 A Couldn't tell you if there were.
- 11 Q Did you remember seeing other photos on there?
- 12 A There were some other photos.
- 13 Q Were they of the -- like the house, you remember that?
- 14 A I, I couldn't, couldn't tell you.
- 15 Q So the only thing you remember about this entire dump is  
16 the photo they've asked you to remember? Is that it?
- 17 A No. Not that they asked me to remember. They asked if I  
18 could get it off when I was assisting them.
- 19 Q Now, as far as you said they sent the phone to you  
20 because they were having a hard time getting into it.
- 21 A Correct.
- 22 Q But you're not -- it's not your testimony that there was  
23 anything nefarious or anything, anything done to keep you from  
24 getting into the phone; is that correct?
- 25 A Correct. No.

James Perry - Cross by Mr. Alex Hyman

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1 Q Okay.

2 A Huh-uh.

3 Q It's not like he put some special lock --

4 A No.

5 Q -- or anything like that on the phone?

6 A No.

7 Q Sometimes these are just problems?

8 A Right.

9 Q Okay. Did they send you Ms. Durkin's phone to do, too?

10 A No.

11 Q Okay.

12 MR. ALEX HYMAN: The Court's indulgence.

13 THE COURT: All right.

14 BY MR. ALEX HYMAN:

15 Q Do you remember when you were engaged on this, like when  
16 they sent you this phone?

17 A It would have been back July 6 of 2017.

18 Q And so a year after this?

19 A Just about.

20 Q Do you remember, do you remember ever talking to the  
21 detectives or anything like that?

22 A I -- no. Huh-uh.

23 Q No, you don't remember or no, you didn't talk to them?

24 A I don't remember talking to them about this case.

25 MR. ALEX HYMAN: No further questions at this time, Your

Lori Dudley - Direct by Mr. Richardson

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1 Honor.

2 THE COURT: All right. Mr. Bouchette.

3 MR. BOUCHETTE: Nothing, nothing further from Defendant  
4 Durkin, Judge.

5 THE COURT: All right. Redirect?

6 MR. RICHARDSON: Nothing, Your Honor.

7 THE COURT: All right. You may step down.

8 A Thank you.

9 MR. RICHARDSON: May he be released from his subpoena,  
10 Your Honor?

11 THE COURT: Any objection?

12 MR. ALEX HYMAN: No, Your Honor.

13 THE COURT: Any?

14 MR. BOUCHETTE: No, Your Honor.

15 THE COURT: All right. He's free to go. Thank you.

16 MR. RICHARDSON: Your Honor, the State would call Lori  
17 Dudley.

18 Whereupon, Lori Dudley is called to the stand, duly sworn  
19 by the clerk and testified as follows:

20 THE CLERK: Please state your name and spell your name,  
21 please.

22 MS. DUDLEY: Lori Dudley, D-U-D-L-E-Y.

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q Lori, how long have you -- well, where are you employed?

Lori Dudley - Direct by Mr. Richardson

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1 A I'm employed by the Horry County Police Department.

2 Q And how long have you been with Horry County?

3 A 22 years.

4 Q Tell the jury about your current job and your job for the  
5 last good while?

6 A I'm the evidence supervisor for the county police, and  
7 we're assigned to the crime scene unit.

8 Q All right.

9 A I also do data extraction from cell phone and forensic  
10 devices as well.

11 Q So phone dumps?

12 A Yes, sir.

13 Q Certain phones. Do you all have Cellebrite?

14 A We do have Cellebrite.

15 Q Are there times that sometimes you have to send the phone  
16 somewhere else, to SLED or to Jim Perry?

17 A Yes. There are.

18 Q All right. And in this case -- how long have you been  
19 examining phones?

20 A Since 2015.

21 Q Okay. Approximately how many phones have you examined?

22 A About 300.

23 Q You've testified in court before about extractions and  
24 stuff that you --

25 A Yes. I have.

- 1 Q -- got off of phones?
- 2 A Yes. I have.
- 3 Q How many times?
- 4 A Seven.
- 5 Q Okay. Sometimes you're able to get stuff off of phones,  
6 sometimes not?
- 7 A That's correct.
- 8 Q Do you have a better chance depending on what kind of  
9 phone it is?
- 10 A Yes. We do. Some phones are compatible with Cellebrite  
11 which means we can actually extract data from the phones and  
12 some phones that are not more or less internet compatible,  
13 which would not be Cellebrite compatible we're unable to  
14 extract data from.
- 15 Q So sometimes it's harder to get stuff off of cheaper  
16 phones than it would be off of more expensive iPhones or  
17 whatever?
- 18 A The older the phone the harder it is to extract the data,  
19 yes.
- 20 Q Okay. Before this case did you know Jim Rosenbaum or  
21 Diane Durkin or Roy Davis?
- 22 A No. I did not.
- 23 Q Okay. How did you get involved in, in the case?
- 24 A The detectives brought the phone into evidence and asked  
25 us to process the evidence.

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1 Q Okay. And when you were processing it, let me pass you  
2 what's been marked as State's Exhibit Number -- hold on just a  
3 second. Pass you what's been marked as State's Exhibit 108  
4 and 109 and tell me if you recognize these photographs and let  
5 me just go with 108 first.

6 A Yes. I do. My initials are at the bottom.

7 Q Okay. And how about 109?

8 A Yes. My initials are also at the bottom.

9 Q All right. Tell the jury what those photographs are of.  
10 What are you looking at?

11 A The first photograph, which is State's Exhibit 109, is a  
12 list of dialed calls and the photograph of State's Exhibit 108  
13 is a contact listed for Jim of the number 203-802-0282.

14 Q Who took -- is that -- are those photographs --

15 A Yes.

16 Q -- of a phone? Who took those?

17 A I took the photographs.

18 Q Okay. All right. And do they fairly and accurately  
19 represent what you were trying to capture when you took the  
20 photographs?

21 A Yes. They do.

22 Q All right.

23 MR. RICHARDSON: Your Honor, the State would move State's  
24 Number 108 and 109 into evidence.

25 THE COURT: Any objection?

1 MR. ALEX HYMAN: No objection, Your Honor.

2 MR. BOUCHETTE: No objection.

3 THE COURT: State's Exhibits 108 and 109 are admitted  
4 into evidence without objection.

5 (State's Exhibit Number 108 and 109 [Photographs]  
6 admitted into evidence and appropriately marked.)

7 BY MR. RICHARDSON:

8 Q One of those numbers dialed is somebody dialed 911.

9 A Yes, sir. It's an emergency call.

10 Q All right. And what are the other numbers that are  
11 listed there as far as the call?

12 A Do you want me to read the times?

13 Q Yes, ma'am.

14 A There's an emergency call on July 11<sup>th</sup> at 9:35 p.m. There  
15 are two calls to Jim at 9:08 p.m. There's another call to Jim  
16 at 8:55 p.m. and a call to voicemail at 8:40 p.m.

17 Q All right. Were you able to use Cellebrite on that  
18 phone?

19 A No. I was not. It's a flip phone.

20 Q And that's one of those older models?

21 A It's an older phone. It's not compatible to extract  
22 data.

23 Q In examining that phone were you able to find the 203  
24 number that's been previously associated with Jim Rosenbaum or  
25 James Rosenbaum?

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1 A Yes. It's listed in the contacts of the phone and it's  
2 listed as Jim.

3 Q Okay. And were you here earlier when Sandy Lowe listed  
4 the contact information for Diane Durkin?

5 A I was.

6 Q Do you know if that's Diane Durkin's phone that you took  
7 a photograph of?

8 A I don't know.

9 Q Okay. When did you receive that phone to see if you  
10 could get into Cellebrite?

11 A Without looking at the chain of custody I don't remember.

12 Q All right. Was it with -- in conjunction with this July?

13 A Yes. It was, I think, the day after the incident took  
14 place.

15 Q Okay.

16 MR. RICHARDSON: The Court's indulgence just one second,  
17 Your Honor.

18 THE COURT: All right.

19 BY MR. RICHARDSON:

20 Q Ask you to back up to State's Exhibit Number 108 and, Ms.  
21 Dudley, with regard to State's Exhibit 108, can you read out  
22 the number that's associated or entered into that phone under  
23 Jim?

24 A The number for Jim is listed as 203-802-0282.

25 Q Thank you.

1 MR. RICHARDSON: I have no further questions, Your Honor.

2 BY MR. RICHARDSON:

3 Q If you'd answer any questions the Defense might have for  
4 you.

5 THE COURT: Mr. Hyman.

6 CROSS EXAMINATION

7 BY MR. ALEX HYMAN:

8 Q Ms. Dudley, how are you?

9 A Good.

10 Q Just a couple of questions on this. Now, it wouldn't go  
11 through Cellebrite, but it, it obviously looks like you could  
12 open it up and kind of go through it and that the time that  
13 you had this you had the right to go through it?

14 A Yes.

15 Q Okay. Now, I see here there's a couple of different  
16 calls to Jim at 9:08, but you're not aware if those calls were  
17 connected, if they were received or anything like that?

18 A I'm not.

19 Q Okay. Now, as far as this, it looks like this says view  
20 13 of 31. Do you know what that means?

21 A I'm, I'm not a hundred percent positive without looking  
22 at the phone, but I believe it means it's contact number 13 of  
23 31 contacts.

24 Q Okay. So there were 31 contacts in the phone and when  
25 you were looking at this evidence I'm assuming you knew who

Lori Dudley - Cross by Mr. Alex Hyman

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1 the victim was?

2 A I don't know that I knew her by name or knew him by name.

3 Q Okay. Did you ever see a phone number in there for Roy?

4 A I don't remember looking for Roy.

5 Q I guess my, my point being is at some point somebody  
6 would have, I'm sure, looked in there for a phone number for  
7 somebody named Roy?

8 A I, I, I really don't know.

9 Q The -- as far as that goes, did you happen to see any  
10 text messages between Diane and a guy named Roy?

11 A I, I don't recall.

12 Q Any text messages between Diane and Mr. Rosenbaum?

13 A I don't recall.

14 Q Okay. Nothing that you've taken a picture of or anything  
15 like that?

16 A That's correct.

17 Q Okay. And now, did you try to get into Mr. Rosenbaum's  
18 phone; is that correct?

19 A Yes.

20 Q Okay. And I guess assuming from what Mr. Perry said that  
21 you had some troubles I guess maybe with the port or something  
22 like that?

23 A We had some technical difficulties and so we sent it to  
24 Greenville for them to attempt.

25 Q But it's your testimony as well it wasn't like it had

1 some, you know, golden seal on it or something like that?

2 A No.

3 Q It, it was just simply the technical difficulties?

4 A Yes.

5 Q Okay.

6 MR. ALEX HYMAN: The Court's indulgence.

7 THE COURT: All right.

8 BY MR. ALEX HYMAN:

9 Q Well, last question, Ms. Dudley. You have talked with  
10 detectives; is that correct?

11 A I --

12 Q About this case?

13 A Yes.

14 Q Okay. Did they -- and they didn't ask you to look for a  
15 phone number named Roy, for somebody named Roy?

16 A No.

17 MR. ALEX HYMAN: No further questions, Your Honor.

18 THE COURT: All right. Mr. Bouchette.

19 MR. BOUCHETTE: Your Honor, I don't think I have anything  
20 further to ask at this point.

21 THE COURT: All right. Redirect?

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

23 THE COURT: All right. You may step down.

24 MR. RICHARDSON: May she be released from her subpoena?

25 THE COURT: Any objection?

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1 MR. ALEX HYMAN: No objection, Your Honor.

2 MR. BOUCHETTE: No objection.

3 THE COURT: All right. She's free to go.

4 MR. RICHARDSON: And Your Honor, can we approach very  
5 briefly?

6 THE COURT: Yeah.

7 (Whereupon, a bench conference is held in the presence,  
8 but out of the hearing of the jury.)

9 THE COURT: All right. Ladies and gentlemen, we have a  
10 matter of law I need to address. So I'm going to excuse you  
11 back to the jury room. Please leave your notepads in the jury  
12 box. Do not discuss the case or conduct any independent  
13 investigations. Thank you.

14 (Whereupon, the following takes place outside the  
15 presence of the jury.)

16 MR. ALEX HYMAN: Can Mr. Rosenbaum be taken back there to  
17 use the restroom?

18 THE COURT: All right. Let's go ahead -- we'll take  
19 about a five-minute break and then we'll come back.

20 OFF THE RECORD

21 (On the record. The following takes place outside the  
22 presence of the jury.)

23 THE COURT: All right. Mr. Richardson, you wanted to --

24 MR. RICHARDSON: Yes, sir. I'd like to proffer --

25 THE COURT: -- advise the Court of the next --

Proffer

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1 MR. RICHARDSON: -- a couple of witnesses.

2 THE COURT: All right.

3 MR. RICHARDSON: I'll tell the Court -- Lynndale, come on  
4 up -- tell the Court I've talked with them. Their statements  
5 have been provided to the Defense, but obviously, we're going  
6 to have to narrowly tailor these statements.

7 THE COURT: All right.

8 MR. RICHARDSON: But they're aware of that.

9 THE COURT: Now, these witnesses are who?

10 MR. RICHARDSON: Lynndale Lewis, he was in the jail cell  
11 with Mr. Jim Rosenbaum. Don Young was in the jail cell for a  
12 day and a half with Mr. Rosenbaum, and Bridgett Briles was in  
13 the cell with Diane Durkin.

14 THE COURT: All right. Now, are any of these witnesses,  
15 I mean, are there charges pending against any of these  
16 witnesses?

17 MR. RICHARDSON: Lynndale Lewis has some charges pending  
18 in North Carolina, but none in our office.

19 THE COURT: Okay. Well, I think I'll probably need to  
20 still question anybody that's got some charges pending  
21 against them I need to go over their rights to remain silent  
22 and things of that nature. Okay?

23 MR. RICHARDSON: We'll question all, all of them.  
24 Lynndale, come on up. Can somebody -- need to swear him in?

25 THE COURT: All right. Yeah. Let's -- if you want to

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1 come on around here.

2 Whereupon, Lynndale Lewis is called to the stand, duly  
3 sworn by the clerk and testified as follows:

4 THE COURT: All right, sir, your name?

5 MR. LEWIS: Lynndale Lewis.

6 THE COURT: Can you spell that?

7 MR. LEWIS: L-Y-N-N-D-A-L-E, Lewis, L-E-W-I-S.

8 THE COURT: All right. Mr. Lewis, you have been called  
9 to testify in this case, and I understand that that there are  
10 some criminal charges pending against you; is that correct?

11 MR. LEWIS: Yes, sir.

12 THE COURT: All right. Before you testify I need to  
13 advise you of certain rights you have. I advise you that as a  
14 witness you have the right to invoke the protections given to  
15 you by the Fifth Amendment to the United States Constitution  
16 of the United States that says in part that no person shall be  
17 compelled in any criminal case to be a witness against  
18 himself. This provision means that you cannot be required to  
19 be a witness against yourself. This is a personal right which  
20 can only be claimed by you. You have the right to refuse to  
21 answer any question asked of you which you think gives you  
22 reasonable cause to believe that the answer to the question,  
23 if given, might tend to incriminate you. If you wish to  
24 exercise this right when a question is asked, you will state  
25 to the Court that you refuse to answer the question because

1 the answer may tend to incriminate you. I also advise you  
2 that you're not the final decision maker on this issue of  
3 whether an answer to a question will violate the protections  
4 afforded to you by the Fifth Amendment to the United States  
5 Constitution. It's for the Court to determine if silence on  
6 your part is justified. Now, do you understand that?

7 MR. LEWIS: Yes, sir.

8 THE COURT: All right. Do you have any questions that  
9 you want to ask me about that?

10 MR. LEWIS: No, sir.

11 THE COURT: All right. So if anybody asks you a question  
12 that you think might incriminate you, you need to tell me that  
13 you want to assert your right to remain silent and not answer  
14 that question. I will then decide whether or not you have to  
15 answer the question. Okay?

16 MR. LEWIS: Okay.

17 THE COURT: All right. If you do not assert your right  
18 to remain silent then you are voluntarily answering that  
19 question. Do you understand that?

20 MR. LEWIS: Yes, sir.

21 THE COURT: And you are waiving any right you might have  
22 against self incrimination by answering the question. Do you  
23 understand that?

24 MR. LEWIS: Yes, sir.

25 THE COURT: All right. Anything further the State wants

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1 placed on the record in that regard?

2 MR. RICHARDSON: No, sir.

3 THE COURT: All right. Anything further you want placed  
4 on the record in that regard, Mr. Hyman?

5 MR. ALEX HYMAN: No, Your Honor.

6 THE COURT: All right. Mr. Bouchette?

7 MR. BOUCHETTE: No, sir.

8 THE COURT: All right. We'll go ahead and proffer the  
9 testimony at this time. Okay?

10 MR. RICHARDSON: Yes, sir, and Your Honor, I'm not going  
11 to ask him anything that, that would put him in any of that.

12 EXAMINATION (PROFFER)

13 BY MR. RICHARDSON:

14 Q But obviously if you believe that something you can stop  
15 me and you can ask the Judge and do any of that. I'm not  
16 going to ask anything really about your charges. If you feel  
17 uncomfortable just stop us. All right?

18 A Okay.

19 Q All right. For the record, of course, this is proffered  
20 testimony. The jury is not here, and we talked a little bit  
21 earlier about having to tailor down your statement to leave  
22 out anything about Ms. Durkin. Okay?

23 A Yes, sir.

24 Q So Lynndale, tell the Judge where you're originally from.

25 A Loris, South Carolina.

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- 1 Q And you're living in North Carolina now?
- 2 A Yeah. At the moment. Yeah.
- 3 Q You've got some charges in North Carolina?
- 4 A Yes, sir.
- 5 Q All right.
- 6 A Misdemeanor charge. Misdemeanor charge.
- 7 Q Misdemeanors?
- 8 A Yeah.
- 9 Q In, in North Carolina. Okay. When do you have to go  
10 back to court on that?
- 11 A January the 8<sup>th</sup>.
- 12 Q All right. You got anything pending in South Carolina?
- 13 A No, sir.
- 14 Q All right. Back in July, July 11<sup>th</sup> of 2016, did you have  
15 something pending in South Carolina that caused you to have to  
16 go to the J. Reuben Long?
- 17 A Yes, sir. Yes, sir.
- 18 Q All right. Tell the Judge about that.
- 19 A I had a misdemeanor charge then. I had an incident with  
20 my aunt and all that I ended up getting put in jail and they  
21 ended up giving me weekend time, and my wife was fatally ill  
22 at that time and I ended up missing several weekends and they  
23 issued a warrant on me. So I ended up getting put back in  
24 jail doing my time or to pay my fines and get out, and I  
25 stayed in there for a couple of weeks, I think it was, and I

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1 ended up paying my fines and getting out.

2 Q While you were in jail back in July of 2016, did you meet  
3 Jim Rosenbaum?

4 A Yes, sir.

5 Q Did you ever know Jim before July of 2016?

6 A No, sir.

7 Q You ever heard the name of Roy Davis?

8 A No, sir.

9 Q All right. When you were in there tell the Judge about  
10 any conversations that you had with Jim with regard to these  
11 charges, this murder charge.

12 A Okay. The -- me and Mr. James we got locked up together  
13 and naturally they -- we did, we talked back and forth and  
14 went over my charges and, you know, he told me about his and  
15 all, and but Mr. James he, he kept telling me stuff about his  
16 and I, I wasn't really interested after I found out what the  
17 charge was and all, but he continued to, to be forth with it  
18 and, and really open with what had happened and all, and he,  
19 he, he told me a right good bit about his situation and all,  
20 and he had told me about he'd been in the hospital with the  
21 VA. I'm not exactly sure how long he was in there. I know he  
22 was in there for several weeks and that, that when he got out  
23 that I found out now it's Mr. Roy he -- when James got out of  
24 the hospital and come home, he had some friends and all that  
25 had told him some stuff that had made him jealous and, and had

1 a issue with Mr. Roy.

2 Q All right. Let me ask you something, without getting  
3 into, you know, who all was involved and that sort of stuff,  
4 did he ever tell you about a plan to handle this beef with  
5 Roy?

6 A Yes, sir. He'd -- he told me about the, the, the plan  
7 that he had and what he had carried out.

8 Q All right. Now, what, what was the gist of that plan as  
9 it related to what James was doing?

10 A I'm sorry? The --

11 Q What, what was the plan with regard to what James was  
12 going to do?

13 A The -- well, he had told me that, that he was -- had  
14 planned it out to, to get Mr. Roy to come over to his home and  
15 to get him in the house naked and that he was waiting down the  
16 road and that he was going to come in and well, he -- now,  
17 that's what he told me, that he rolled up in his truck and got  
18 out of his truck and he was kind of proud about some gloves  
19 that he was talking about, some type of fighting gloves or  
20 something there like that, you know, that he grabbed his  
21 gloves and got out the truck and went through the back door,  
22 and when he come through the back door he grabbed a ball bat  
23 and he said when he entered the home that Mr. Roy was in there  
24 naked, and he commenced to, to beating him with the ball bat,  
25 and he, he told me details about the incident there of how

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1 gruesome and all of that that had happened and, and he told me  
2 about how Mr. Roy he'd try to get away and he'd drag him back  
3 and, and you know, all of that, and that he had shot him with  
4 an air rifle of some sort several times and, and all and but  
5 --

6 Q All right.

7 MR. RICHARDSON: That is -- now, obviously, Your Honor,  
8 when he gave the statement to the police, I'll, I'll read that  
9 statement, but we've had -- that is his response to what I  
10 would ask him. His statement to police is, [as read], "He was  
11 in the same cell with James. He advised that James told him  
12 he was in the hospital and that Diane had been partying with  
13 Roy. Mr. Lewis advised that James stated when he got home his  
14 friends told him that Diane had been messing around with Roy.  
15 He advised that James stated that he had made a plan for Diane  
16 to get Roy to the house and get him naked. James advised that  
17 he was hiding down the road from the house. He advised that  
18 he pulled up with the lights off and when he pulled up he put  
19 his gloves on and grabbed a bat. James -- Jim Rosenbaum told  
20 Mr. Lewis that he had seen Roy around the trailer near their  
21 house and Mr. Lewis also advised that James had said that  
22 Diane was talking and that if he got bond he would kill her,"  
23 and that is the extent of the statement that he gave police or  
24 what they recorded. Your Honor --

25 BY MR. RICHARDSON:

1 Q Lynndale, if you would answer --

2 MR. RICHARDSON: Are you going to take questions from the

3 --

4 THE COURT: Well, if they have any -- if you want to  
5 raise any objections now or if you have anything that you want  
6 to ask him. Mr. Hyman?

7 MR. BOUCHETTE: Judge, I've got --

8 THE COURT: Or Mr. Bouchette?

9 MR. BOUCHETTE: Maybe, maybe both of us. I have a few  
10 questions and I think I'll have a motion, but I'd like to get  
11 a little bit more information if that's all right.

12 THE COURT: Well, I mean, if you want to go ahead --

13 MR. TRAVIS HYMAN: Judge, I --

14 THE COURT: -- and do your cross examination. You're not  
15 required to now. They're just proffering what they intend to  
16 put up.

17 MR. BOUCHETTE: Right. Yeah. Well, and I think in  
18 regards to what, I mean, I'm, I'm trying to get just a little  
19 bit more information before I make my objection. So if I can  
20 just go ahead and ask the witness a few questions.

21 THE COURT: Well, what do you mean get more information?

22 MR. BOUCHETTE: Well, for example, before I know whether  
23 or not there's a confrontation clause issue, whether or not it  
24 could be testimonial I'd like to know if Mr. Lewis has ever  
25 testified as a jailhouse informant before. If he had done so

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1 multiple times then we start raising the fact that he's more  
2 of a CI and less of a spontaneous witness, and in that case  
3 you start to trigger more of a -- somebody acting as an agent  
4 of the State, and I believe then you start getting into  
5 whether or not this information is testimonial if that is the  
6 case, and at this point I don't -- I don't know that.

7 THE COURT: Well --

8 BY MR. RICHARDSON:

9 Q Have you ever testified for the State before?

10 THE COURT: But I mean --

11 A Never.

12 THE COURT: I mean, that -- the question here now is  
13 whether or not his testimony -- as I understand they're  
14 tendering it based upon statements made by the Defendant --

15 MR. BOUCHETTE: Right.

16 THE COURT: -- Mr. Rosenbaum.

17 MR. BOUCHETTE: Right. And --

18 THE COURT: So however many times they've used him, if  
19 any, as a prior informant has nothing to do with any objection  
20 you might have as to whether or not his testimony violates any  
21 Bruton issue or any issue like that as it pertains to your  
22 client. That's what I'm --

23 MR. BOUCHETTE: Well --

24 THE COURT: -- wondering if you've got an objection to.

25 MR. BOUCHETTE: Well, the thing is to what I've, what

1 I've heard right now and what I've taken a note, I mean, we  
2 have a -- it appears that we've got a -- sort of a hearsay  
3 within hearsay issue. He is basing his testimony off of what  
4 Defendant Rosenbaum told him, but within that statement  
5 Defendant Rosenbaum is saying what somebody else told him.

6 THE COURT: Well, and I understand that. I'm, I'm not  
7 going to let him testify to that portion where Rosenbaum says  
8 he had a plan --

9 MR. BOUCHETTE: Well --

10 THE COURT: -- to get him in the house and get him naked.  
11 I think that he can testify to Rosenbaum told him he was  
12 jealous of Roy Davis, he was parked down the street, put on  
13 his gloves, that type of stuff, but where he testified that he  
14 was jealous and so he had a plan to get him in the house and  
15 get him naked, I think that, that implicates Ms. Durkin. He  
16 can't do that.

17 MR. RICHARDSON: Yes, sir.

18 MR. TRAVIS HYMAN: Your Honor?

19 THE COURT: Yes, sir.

20 MR. TRAVIS HYMAN: May I elaborate on, on that, and, and  
21 that's some of the things that we were concerned about with  
22 the hearsay within hearsay rule because obviously, you know,  
23 it'd be an admission by a party opponent if he's testifying  
24 what James Rosenbaum told him and then the confrontation  
25 clause issue would be theirs to raise. I mean, I think what,

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1 what Jarrett's getting at is from looking at the NCIC that was  
2 just handed to us looks like has an extensive criminal  
3 history, and whether or not this is testimonial raising the  
4 confrontation clause issue would depend on whether or not he  
5 was a jailhouse snitch or if he was in there fishing for  
6 information and he was more like an informant because then he  
7 would be a police agent. So it would be testimonial.

8 So, the question isn't whether or not he's testified,  
9 it's whether or not he's ever given any information to the  
10 police because it looks like his sentences would be more  
11 consistent with somebody who's -- who knows the system so to  
12 say.

13 THE COURT: Well -- all right. Well, let's -- how did  
14 this come about? How did his statement come about?

15 BY MR. RICHARDSON:

16 Q Mr., excuse me, Mr. Lewis did -- with regard to the  
17 charges that you were in jail on, serving that time, did  
18 anybody promise you anything, any hope of reward, did you get  
19 out one day --

20 THE COURT: Excuse me for interrupting.

21 MR. RICHARDSON: I'm sorry.

22 THE COURT: I guess my question is is this a case --

23 MR. ALEX HYMAN: Judge, Judge, he was emailing saying,  
24 "Come out here. I need to talk to someone about. No one's  
25 talked to me yet," and in like capital letters. I think he

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1 put it in -- is it the grievance box, is that -- there's some  
2 type -- there's something they can do at the jail if they need  
3 to request something, that kind of thing and he's immediately  
4 emailing law enforcement, knew who to email, I guess.

5 THE COURT: So he contacted law enforcement asking them  
6 to come talk to him?

7 MR. BOUCHETTE: That's right.

8 MR. ALEX HYMAN: Saying, "Why has nobody come and talked  
9 to me yet?" It's a --

10 THE COURT: Okay. But I mean regarding this case?

11 MR. ALEX HYMAN: Yes.

12 THE COURT: All right. And so how many times has he  
13 testified for the State before?

14 MR. RICHARDSON: Never. And he --

15 MR. ALEX HYMAN: I would argue that testimony alone, I  
16 mean, they have snitches all the time that don't testify.  
17 They may give statements.

18 THE COURT: How many times has he provided information?

19 MR. ALEX HYMAN: That I don't know.

20 BY MR. RICHARDSON:

21 Q Have you ever provided --

22 A No.

23 MR. RICHARDSON: They'd just been told that a fellow  
24 confessed. I think the, the big thing with Lynndale is what  
25 he'll tell you is not only has he never testified before, it

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1 can't be testimonial because he didn't get a day off, he  
2 didn't get a dollar off of his fine. We didn't give him --

3 THE COURT: But has he routinely provided information to  
4 police in other cases?

5 BY MR. RICHARDSON:

6 Q Have you?

7 A No, sir.

8 MR. TRAVIS HYMAN: And that's the only reliability we  
9 have is his word of it. I think that's the big.

10 THE COURT: Well, now, do you have proof where he's  
11 provided information before?

12 MR. ALEX HYMAN: Your Honor, he does say in his audio  
13 statement, "I can provide information on opiates, heroin and  
14 fentanyl."

15 THE COURT: I can.

16 MR. ALEX HYMAN: Right.

17 THE COURT: But has he?

18 MR. ALEX HYMAN: I, I don't know. We wouldn't have a, a  
19 way to know that.

20 THE COURT: Okay. All right. Well, I'm going to allow  
21 the testimony based upon the parameters I said. He can't say  
22 that Mr. Rosenbaum said that he had a plan.

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: He will be allowed to say that he was jealous  
25 of Roy Davis, that he waited for him to get there.

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1           MR. BOUCHETTE: And Your Honor, may I, may I also address  
2 there was some discussion about that Mr. Rosenbaum had heard  
3 from different people that and I forget where exactly when,  
4 but something to the effect of that he had heard, I believe  
5 his testimony was that Diane was cheating on him or that there  
6 was this other guy in the picture, something to that effect.

7           THE COURT: Well, he's not going to be able to say that  
8 Diane was cheating on him.

9           MR. BOUCHETTE: Well, I, I just --

10          THE COURT: He's going to be able to say that he was in  
11 the hospital. He came out. He heard stuff that made him  
12 jealous and he was jealous of Roy Davis.

13          MR. BOUCHETTE: Okay.

14          MR. TRAVIS HYMAN: And on that, Your Honor, that's,  
15 that's what I was getting at with the hearsay within hearsay  
16 issue because it's two different legal issues, but what he's  
17 saying is, he just testified that James' friends told him  
18 something that made him mad. So he's not testifying to what  
19 James Rosenbaum told him. He's testifying to what some  
20 friends told James Rosenbaum. It's, it's two different  
21 statements.

22          THE COURT: Yeah, but it's not, but it's not being  
23 offered for the truth of the matter asserted. Whether or not  
24 what they told him is true or not true nobody knows, but we do  
25 know whatever they told him made James mad. Now, it could

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1 have been totally false. It could have been wrong, but it  
2 still made James mad. So it's not being offered for the truth  
3 of the matter asserted. It's being offered to show James got  
4 mad at Roy Davis because of it. That's the purpose of the  
5 testimony.

6 MR. TRAVIS HYMAN: And the only other two hearsay within  
7 hearsay issues that I see is where he refers to things, some  
8 other things in his written statement and I think he alluded  
9 to it that the -- about the rape story.

10 MR. RICHARDSON: I'm not getting into that.

11 THE COURT: Yeah. He's not getting into that.

12 MR. TRAVIS HYMAN: We're going to avoid that.

13 THE COURT: As I understand you're not using a written  
14 statement at all.

15 MR. RICHARDSON: No, sir. I'm, I'm going to ask him  
16 basically what I just asked him, but for I'm going to leave  
17 out the part about any plan.

18 THE COURT: All right.

19 MR. TRAVIS HYMAN: And nothing about the -- any  
20 statements from Roy, nothing about him begging for his life or  
21 anything like that because that would be another hearsay  
22 issue.

23 MR. RICHARDSON: Well, I, I haven't heard him say  
24 anything about that, but Roy begging for his life did he --

25 BY MR. RICHARDSON:

1 Q Did James say to you anything about Roy begging for his  
2 life?

3 A Yes, sir. He did, but I didn't, I didn't say anything  
4 about that right then.

5 MR. RICHARDSON: Well, Your Honor, I would -- if he does  
6 get into that I would say that that's a dying declarant. He's  
7 been struck in the head with a bat by all of the evidence  
8 that's in here. He thinks he's going to die. He did die. If  
9 there is hearsay from a decedent that's exactly what a dying  
10 declarant is. It's much more than coming up, being, saying,  
11 "Jimmy killed me," or if, if --

12 THE COURT: Right.

13 MR. RICHARDSON: -- I die he's, he's and that's already  
14 -- Your Honor, that's already caught on the 911 call. They  
15 hear him begging for his life.

16 THE COURT: All right.

17 MR. TRAVIS HYMAN: And we would just ask that the jury be  
18 given the opportunity to, to judge the credibility of the 911  
19 tape for what it says and not get into hearsay within hearsay  
20 and talking about other people's statements. I'm, I'm not in  
21 agreement that it's a dying declaration.

22 THE COURT: Well, if he gets into hearsay within a  
23 hearsay raise your objection. I'll address it then.

24 MR. ALEX HYMAN: Judge, there is one other thing, there  
25 was some -- in the statement there was some talk about an

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1 issue that happened at the jail that had no dealings with this  
2 whatsoever.

3 MR. RICHARDSON: I don't think it's relevant.

4 MR. ALEX HYMAN: Okay.

5 MR. RICHARDSON: Mr. Rosenbaum had said he was going to  
6 hurt a guard or something.

7 MR. ALEX HYMAN: Yeah. I mean, but as far as that goes I  
8 don't find that it's relevant and --

9 MR. RICHARDSON: But he's, he's told me about that and  
10 I've told him not to mention anything about that.

11 MR. ALEX HYMAN: Okay.

12 THE COURT: All right. All right. Mr. Bouchette.

13 MR. BOUCHETTE: Your Honor, if I may just to and I'm,  
14 I'm, I'm trying to make sure I touch all the bases here. I  
15 don't know that his testimony is, is even relevant given that  
16 the State is maintaining the position that this was a, a  
17 conspiracy between the two, based on what he has told -- or  
18 what he has said up to this point is that James was mad for  
19 whatever reason and then James plotted this plan that he was  
20 going to go do it. So it's -- it doesn't even, even taken at  
21 face value it's not comporting with what the State's theory of  
22 the case has been up to this point, and they're only offering  
23 it, I think, to try to, to taint or to, to make the Defendant  
24 Rosenbaum look like an angry guy or a bad guy or something  
25 along those lines. So when you take it in conjunction with

1 what the State's been maintaining during this case, I think  
2 it's just to effect the character, not to further the, the  
3 factual allegations of the case.

4 THE COURT: I disagree. I'll allow it because the only  
5 way it's being limited and not falling right into their theory  
6 of the case is due to the fact that there's an objection to  
7 his testifying to the plot, the plan, the conspiracy between  
8 the two of them.

9 MR. BOUCHETTE: Fine.

10 THE COURT: I mean, that's, as I understand from his  
11 written statement, it falls right into their theory of the  
12 case. It's just the fact that you're objecting to any of this  
13 witness' testimony that implicates your client, and I sustain  
14 it on that grounds.

15 MR. BOUCHETTE: Right.

16 THE COURT: So other than that I'm going to allow the  
17 witness to testify as to the way he's testified during the  
18 proffered testimony with the exception of saying there was a  
19 plan or a plot.

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: All right.

22 MR. BOUCHETTE: Thank you, Your Honor.

23 THE COURT: Anything else anybody wants to put on the  
24 record?

25 MR. BOUCHETTE: Nothing further. We need to -- do we

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1 sworn by the clerk and testified as follows:

2 THE CLERK: Please state your name and spell your name  
3 for the record.

4 MS. BRILES: Okay. My name is Bridgett Briles, B-R-I-D-  
5 G-E-T-T, B-R-I-L-E-S.

6 EXAMINATION (PROFFER)

7 BY MR. RICHARDSON:

8 Q Bridgett --

9 THE COURT: Excuse me.

10 MR. RICHARDSON: I'm, I'm sorry.

11 THE COURT: Before we go forward, Ms. Briles, do you have  
12 any charges pending against you or anything?

13 MS. BRILES: I have a court date in Brunswick County.  
14 It's a stolen identify case where my identity was stolen by my  
15 sister that I'm going to court for. So I don't know if that  
16 would count.

17 THE COURT: Okay, but the -- so the charges are not  
18 pending against you?

19 MS. BRILES: Right.

20 THE COURT: Okay. All right. All right. You can go  
21 ahead.

22 MR. RICHARDSON: All right.

23 BY MR. RICHARDSON:

24 Q Bridgett, were you in jail at J. Reuben Long back in July  
25 of 2016?

- 1 A Yes, sir.
- 2 Q Tell us about that. What were you in jail for?
- 3 A I was arrested on a bench warrant from 2007 for simple  
4 possession of marijuana. I was at the police station picking  
5 up my fiancé's stuff who had just passed away, and when I went  
6 to get his belongings they arrested me underneath a warrant  
7 and the charges were dismissed because it was a mis-arrest  
8 where I had already paid for the, the charge and it just  
9 didn't go in the system I guess. So they issued a warrant for  
10 me.
- 11 Q Simple possession of marijuana?
- 12 A Yes, sir.
- 13 Q Did you -- did the State promise you anything? Did we  
14 dismiss the charges over that?
- 15 A No, sir. The charges were dismissed, but not for  
16 anything that was promised to me or anything.
- 17 Q How did you, how did you reach out to law enforcement or  
18 anybody else to know --
- 19 A I was actually talking to an attorney about my situation,  
20 and an attorney asked me if I would -- he asked me, you know,  
21 what my charges were and stuff to -- and if I had a past  
22 criminal record, and I explained to him that I was in there  
23 for simple possession of marijuana and it bothered me that I  
24 was being held in a cell with somebody who had committed  
25 murder and that it just kind of made me -- it made my skin

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1 crawl at nighttime and made me feel uncomfortable to go to  
2 sleep at night knowing I was sleeping next to a woman who had  
3 told me that she was a murderer. So he asked me if I would  
4 please talk to some detectives.

5 Q So you actually --

6 A So the detectives came to me.

7 Q -- got to them through your defense attorney.

8 A Yes.

9 Q Okay. Let me ask you, what and, and obviously we've  
10 talked earlier and I've asked you to leave out any reference  
11 to James Rosenbaum.

12 A Yes.

13 Q You were housed at some point with Diane Durkin?

14 A Yes. For the full week I was there I was in a cell with  
15 her.

16 Q About a week?

17 A Yes, sir.

18 Q All right. Tell us what if anything you know about this  
19 murder case and how you came to know about it.

20 A When I came into the cell there was another lady that was  
21 in with me and Diane. Her name was Angela, and we were all  
22 talking about what our charges were and why we were there. At  
23 first I didn't pay attention to them. I sat and I read a book  
24 and I just listened to the two of them talk back and forth and  
25 Diane had said that she was in there because they murdered a

1 man and that the man was raping her, and she --

2 Q Hold on.

3 A Okay.

4 Q Let me -- something as simple as this.

5 A Right.

6 Q Diane was in there because she murdered a man?

7 A Yes.

8 Q Okay. Not James.

9 A Yes. She murdered a man. Yes.

10 Q All right.

11 A She told me that she was a murderer. She had first --

12 the first day that I was in there she had told me that the man

13 was raping her and that she had beat him to death with a

14 baseball bat. Throughout the week that I was there her story

15 changed. It went in and out a lot, but it came to Diane

16 telling me that she had known the man for a couple of years

17 and that they did drugs together, that they would shoot or she

18 would shoot crack and he would smoke it and that she'd give

19 him \$20 to go get them drugs and that they had been sleeping

20 together off and on for about two years and that she slept

21 with men for, for drugs. She told me that she believed that

22 she was the one that took the blow to the head to kill the man

23 and that if -- that she was worried that the clothes that were

24 folded on the bed that they would be able to find out that it

25 was planned. She told me that -- I'm sorry. She told me that

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1 if they could have gotten some bleach and cleaned the house  
2 and --

3 Q Not they.

4 A -- well, if she could have gotten bleach and cleaned the  
5 house and tossed the body into the water that they -- that she  
6 would have never been caught.

7 Q All right. Did you give a statement -- did you give two  
8 statements to the police after talking with your attorney?

9 A I did. I give.

10 Q All right. On July 20th, 2016 --

11 MR. RICHARDSON: I'm going to just read this, Your Honor,  
12 to show you what's been edited out.

13 [As read], "Bridgett Briles met with Detective Rhodes at  
14 J. Reuben Long Detention Center. She says that she was with  
15 Ms. Durkin for a few days in jail. Ms. Briles advised that  
16 Diane states that she shoots crack and heroin. She advised  
17 that she describes herself as a murderer. Ms. Briles advised  
18 that the first time they spoke about the case that Diane  
19 stated that the male tried to rape her, but her story changed  
20 a few days later. She said that -- Diane said that she had  
21 known Roy for a while. She advised that -- she advised Diane,  
22 told her that she would sleep with guys for drugs. She  
23 advised that Diane told her that she was the person that hit  
24 the male with the kill shot. She also advised that Diane was  
25 worried that police would see that Roy's clothes were folded.

1 She states Diane told her that James had been raped in the  
2 military by a black man and that he hated black people. Ms.  
3 Briles also advised that Angela Caulder was in the cell and  
4 she may have more information."

5 Then on July 24<sup>th</sup>, [as read], "Met with Diane, I mean,  
6 Bridgett Briles cellmate of Diane Durkin. In, in brief the  
7 meeting revealed the following information. Her statement was  
8 consistent what she had already given law enforcement. The  
9 one thing she did add that hasn't been provided previously is  
10 that Diane told her she is the one who folded Roy's clothes on  
11 the day of the incident. She states that while they were  
12 rooming together with inmate Angela Powell that the three of  
13 them would talk about what Diane did and would play games  
14 together. She states one time they were playing hangman and  
15 Diane's word was nigger killer. She states that Diane told  
16 her boyfriend -- told her her boyfriend was racist and that he  
17 didn't like her socializing with black people. She states  
18 that Diane told her that she and her boyfriend knew Roy before  
19 this happened because of drugs. She states that Diane told  
20 her that she would have sex with Roy for drugs."

21 BY MR. RICHARDSON:

22 Q Do you have any other information with regard to Diane,  
23 not James?

24 A No, sir.

25 THE COURT: All right. Any objections? I, I mean she

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1 certainly cannot get into anything that implicates Mr.  
2 Rosenbaum, but I think --

3 MR. ALEX HYMAN: Well, and Your Honor, just -- I think  
4 there was four different times there where she said they, I  
5 mean, she, like that. I mean, that, that --

6 THE COURT: Yeah. She can't.

7 A I understand I can't -- sorry.

8 MR. ALEX HYMAN: Can't do that.

9 A I understand I can't do that. It was just from the story  
10 that was told to me it includes him and her. So it's just  
11 there to, you know.

12 THE COURT: And I --

13 BY MR. RICHARDSON:

14 Q You got to talk about just her part.

15 A I know.

16 THE COURT: Well, and, and I agree. She can't say they.  
17 She can say she. She can testify about that she knew Roy  
18 Davis ahead of time, that she and Roy Davis did drugs  
19 together, all of the, the relationship between her and Roy  
20 Davis she can testify to. She can testify that she said she  
21 struck the blow that killed him, but there was one thing I was  
22 going to keep out. I kept --

23 MR. ALEX HYMAN: Your Honor, I don't think that she can  
24 get into, "I wish we had bleach and," I mean, that's  
25 insinuating cleaning up a crime scene and, I mean, they're on

1 the phone with 911 and obviously he is present. I mean,  
2 that's insinuating they. I mean, that --

3 THE COURT: Yeah. But that's not what I was thinking  
4 about. There was something else that tended --

5 MR. RICHARDSON: Was it that hangman over --

6 THE COURT: Yeah. Can't get into the fact that her  
7 boyfriend --

8 MR. RICHARDSON: Racist.

9 THE COURT: -- is racist or anything like that.

10 MR. RICHARDSON: Or that he was raped.

11 THE COURT: Or that he was raped. That's what I was  
12 thinking about, can't get into any of that, any of the rape or  
13 any of the boyfriend being racist, but I think as long as she  
14 doesn't mention or implicate Mr. Rosenbaum I think she can  
15 say, "Yeah, she wished she had cleaned up the mess." I think  
16 she can say that. Yes, sir.

17 MR. TRAVIS HYMAN: Your Honor, there was one more thing  
18 that she said, and, and this goes to show how, how delicate  
19 this situation can be because she doesn't even realize it, but  
20 when she's saying things like, "Diane told me that she was  
21 worried they'd find the clothes and know about the plan," like  
22 using the word plan.

23 THE COURT: Yeah. You can't refer --

24 MR. RICHARDSON: Well, Your Honor, that may have been her  
25 plan, not her plan with James.

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1 MR. TRAVIS HYMAN: She doesn't plan with herself.

2 THE COURT: Yeah.

3 MR. TRAVIS HYMAN: I mean, that's clearly incriminating  
4 Mr. Rosenbaum.

5 THE COURT: Yeah. Let's stay away from any reference to  
6 a plan.

7 A Okay.

8 MR. RICHARDSON: Just say --

9 THE COURT: She, she says --

10 MR. RICHARDSON: -- she was worried about them finding  
11 clothes?

12 THE COURT: Finding the folded clothes, and she can say  
13 that Diane admitted to folding the clothes. She can say,  
14 "Yeah, I'm -- Diane folded the clothes and she's worried that  
15 they were going to find the folded clothes," yeah.

16 All right. Anything else you want to put on the record?  
17 And I -- and all of this is a standing objection by the  
18 Defendants --

19 MR. BOUCHETTE: Right.

20 THE COURT: -- to this testimony.

21 MR. BOUCHETTE: Right.

22 THE COURT: I'm just ruling that they can testify.

23 MR. ALEX HYMAN: Yeah.

24 MR. BOUCHETTE: Nothing other than what we've already put  
25 on record, Judge.

1 THE COURT: Okay. All right. Well, I'll allow her to  
2 testify to the implications of Diane Durkin only, the  
3 relationship with Roy Davis, they doing drugs together, any of  
4 the affairs they may have had, striking the blow that killed  
5 him, wished she had cleaned up, she folded the shirt, you can  
6 get into that.

7 MR. RICHARDSON: Your Honor, I know we've spent way too  
8 much time, but can we just go over her record to make sure?

9 THE COURT: All right.

10 MR. ALEX HYMAN: Judge, we didn't get the NCIC on that.

11 MR. BOUCHETTE: Yeah, a copy of that.

12 MR. ALEX HYMAN: At least I didn't.

13 MR. RICHARDSON: That's -- isn't that the one I just --  
14 oh, I'm sorry.

15 MR. BOUCHETTE: I've got, I've Don Young and Lynndale's.

16 MR. RICHARDSON: I passed you Lynndale's, yeah.

17 BY MR. RICHARDSON:

18 Q All right. We know about your marijuana.

19 A Yes.

20 Q But other than that, is this this pending identity theft  
21 thing in North Carolina?

22 A Yes. That's from what I was talking about with my  
23 sister. She's actually in prison right now and they're just  
24 -- here in South Carolina, and they're supposed to be --

25 THE COURT: So is that a charge -- that's not a charge

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1 Proctor.

2 THE COURT: All right.

3 Whereupon, Edward Proctor, Jr., was called to the stand,  
4 duly sworn by the clerk and testified as follows:

5 THE CLERK: Please state your full name and spell your  
6 name for the court.

7 MR. PROCTOR: Yes, ma'am. My name is Edward Proctor,  
8 Jr., and that's P-R-O-C-T-O-R.

9 DIRECT EXAMINATION

10 BY MR. HELMS:

11 Q Sir, what is your current profession?

12 A I am a physician engaged in the practice of pathology.

13 Q And, and so what is your level of education?

14 A Okay., I received a degree from Clemson University, a  
15 medical degree from the Medical University of South Carolina,  
16 did a residency in pathology at Walter Reed Army Medical  
17 Center in Washington, D.C., followed by specialty training in  
18 forensic pathology after that and, and board-certified in both  
19 anatomic, clinical and forensic pathology.

20 Q Great day.

21 MR. ALEX HYMAN: Your Honor, we would stipulate that Dr.  
22 Proctor being an expert in the field of pathology.

23 THE COURT: All right.

24 MR. BOUCHETTE: Absolutely, Your Honor.

25 THE COURT: All right. Do you want to go ahead and

1 qualify him or do you want to continue questioning?

2 MR. HELMS: I just want to continue briefly, but I'm  
3 going to keep it shorter than I would normally.

4 THE COURT: All right. Go ahead.

5 BY MR. HELMS:

6 Q What do you do in, in, in terms of your position, sir?

7 A Okay. As a general pathologist we evaluate specimens and  
8 run a blood bank, run the laboratory at the hospital, which is  
9 in Myrtle Beach. As a forensic pathologist it's the medical,  
10 legal investigation of death, and I do autopsies at the  
11 request of the coroner's office, and in that capacity we do an  
12 external examination, internal examination, combined with the  
13 history we receive from the coroner's office and the  
14 toxicologic evaluation that we do and we formulate a cause and  
15 manner of death.

16 Q Is a layman's way of saying that you perform autopsies?

17 A That is correct.

18 Q Yes, sir. And you do that for Horry and Georgetown  
19 Counties?

20 A Do it for Horry County, Georgetown and Dillon Counties.

21 Q And you've done it for a while?

22 A Yes, sir.

23 Q So I'm not going to pretend I don't know you, Doctor.  
24 You've testified for my office numerous times?

25 A That's correct.

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1 Q And normally we call you at the very end because that  
2 makes sense chronologically, but we're calling you out of  
3 order today because you're a busy man and you've got places to  
4 be.

5 A Thank you. Thank you very much. Appreciate it.

6 MR. HELMS: At this time, Your Honor, I would tender Dr.  
7 Proctor as an expert in forensic pathology.

8 THE COURT: All right. Any questions or challenges?

9 MR. ALEX HYMAN: No, Your Honor, not at all.

10 MR. BOUCHETTE: None at all, Judge.

11 THE COURT: All right. I find this witness to be an  
12 expert in the field of forensic pathology.

13 Now, ladies and gentlemen of the jury, I'll charge you on  
14 the law regarding expert testimony when I charge you on the  
15 law to be applied in this case. All you need to know at this  
16 point in time is that ordinarily a witness can only testify as  
17 to their personal observations, what they saw, what they  
18 tasted, what they smelled, things of that nature. There is an  
19 exception for witnesses who are qualified as experts, which  
20 means that in addition to this witness' personal observations  
21 he can render an opinion in the field in which he is qualified  
22 as an expert. All right. Mr. Helms.

23 MR. HELMS: Thank you.

24 BY MR. HELMS:

25 Q Doctor, did you have an opportunity to examine the

1 decedent in this case, Mr. Roy Davis on July 11<sup>th</sup>?

2 A Yes, sir. I did.

3 Q I think it was actually July 12<sup>th</sup>, the following morning?

4 A I did, did an autopsy on Mr. Davis on July the 12<sup>th</sup>, 2016.

5 Q And were you able to determine his injuries and cause of  
6 death and all that?

7 A Yes, sir. I was.

8 Q Let me ask you this, do you remember, and he testified  
9 earlier, Investigator Dennis Lewis coming and taking pictures  
10 in your autopsy room?

11 A The Horry County Police Department usually sends a crime  
12 scene investigator who takes pictures at virtually all cases.  
13 Yes, sir.

14 Q And, and you were present when those pictures were taken?

15 A Absolutely.

16 Q So you would recognize those pictures?

17 A Yes, sir.

18 Q Now, would they help you to illustrate and identify the  
19 specific injuries that Roy Davis suffered as a result of the  
20 incident that we're here for?

21 A I can always use pictures to confirm my, my thoughts,  
22 yes, sir.

23 MR. HELMS: Your Honor, at this time I would tender  
24 State's 89 through 97 where the -- as the foundation was  
25 previously laid as stipulated by the Court.

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1 THE COURT: All right. That's State's Exhibits, what was  
2 it?

3 MR. HELMS: Judge, those were 89 through --

4 THE COURT: 80 through 9 -- 89 through 97.

5 MR. HELMS: Yes, sir.

6 THE COURT: All right. Any objections?

7 MR. ALEX HYMAN: No, Your Honor, not at this time.

8 THE COURT: Any objections, Mr. Bouchette?

9 MR. BOUCHETTE: None from Defendant Durkin.

10 THE COURT: All right. State's Exhibits 89 through 97  
11 are admitted into evidence without objection.

12 (State's Exhibit Numbers 89 through 97 [Photographs]  
13 admitted into evidence and appropriately marked.)

14 BY MR. HELMS:

15 Q Okay. Dr. Proctor, without publishing these to the jury,  
16 I'm going to ask you to look through those and tell me if you  
17 remember that, being there, recognize those.

18 A Yes, sir.

19 Q I know you brought your notes with you. So I'm going to  
20 ask you to do this, in conjunction with your notes and those  
21 pictures will you please answer a couple of questions? If you  
22 don't mind just give us a -- kind of a general summary of the  
23 victim in this case, his external description as to race, age,  
24 gender, weight, all that good stuff?

25 A This was appeared to be middle age black male probably

1 fiftyish, thereabouts, small stature, weighed about 120 or so  
2 pounds. He was 66 inches in length.

3 Q And how did he appear, generally speaking, externally  
4 when he arrived for you to perform the autopsy?

5 A When I saw him externally there were obvious injuries  
6 which I can certainly described, most significant being there  
7 was traumatic injuries, lacerations at his anterior forehead,  
8 laceration in his occipital area, laceration along the  
9 mandibular ridge. There were contusions, which are bruises,  
10 looked to be from a blunt force type object on his chest.  
11 There was an injury to his elbow and there was what appeared  
12 to be a superficial through and through gunshot wound on his  
13 lateral chest area.

14 MR. HELMS: Your Honor, at this time I would ask that Dr.  
15 Proctor be allowed to publish those photographs that were just  
16 entered into evidence.

17 THE COURT: All right.

18 BY MR. HELMS:

19 Q Dr. Proctor, will you look through those photographs and  
20 one by one if you'll hold them up for the jury and in  
21 conjunction with your notes please describe each injury in the  
22 photographs as you see them, please?

23 A Okay. Okay. This first photograph is a picture of  
24 lacerations to the forehead of the victim.

25 Q Okay.

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1 A Those, those are lacerations that penetrate the skin,  
2 extend to the underlying bone, but do not cause any fractures  
3 at all in the bone.

4 Q And this is State's 97.

5 A Uh-huh. The second one is just a higher or a closer  
6 view.

7 Q Of the same injury?

8 A Of the same injury, uh-huh, yes, sir.

9 Q That's State's 96.

10 A The -- this one is the occipital scalp injury.

11 Q Now, is that a separate injury than the one we just saw?

12 A Yes. That is a separate injury.

13 Q And, and this is on, basically on his cranium, on his  
14 head?

15 A On the back of his head. That is correct. Uh-huh.

16 Q State's 95.

17 A This, this photograph is a photograph of the contusions  
18 on his chest, as well as you can see through and through  
19 superficial.

20 Q Through and through, describe what that means, Doctor.

21 A The gunshot wound that he received was a small caliber  
22 wound. I was told a pellet gun or BB gun, and the projectile  
23 penetrated the skin, passed just under the skin and exited in  
24 the posterior area.

25 Q And this is State's 94.

- 1 A This one is just a higher power view showing the gunshot  
2 wound.
- 3 Q State's 93.
- 4 A This is a picture showing the exit wound from the  
5 gunshot.
- 6 Q State's 92.
- 7 A This is an abrasion, laceration in the back area.
- 8 Q State's 91.
- 9 A These are the contusions on the chest.
- 10 Q State's 90.
- 11 A And the fracture of the elbow.
- 12 Q Do you remember if it was left or right?
- 13 A The left elbow.
- 14 Q State's 89. Doctor, you, you mentioned something about  
15 contusions. What's, what's a contusion?
- 16 A A contusion is a bruise.
- 17 Q Okay. Would you say he suffered multiple injuries?
- 18 A There were multiple injuries, the pattern of which is  
19 consistent with blunt force trauma, i.e., being struck by a  
20 blunt object, whether it's fists, broom handle, pipe,  
21 whatever.
- 22 Q Baseball bat?
- 23 A A baseball bat, any, any blunt object, particularly if  
24 you see the linear lacerations on the forehead and the  
25 occipital area, the one on the occiput it's sort of like a

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1 starburst pattern. That's where the blunt object hits the  
2 skin and it just presses it against the bone and lacerates it.  
3 Those lacerations were there. There were no skull fractures.  
4 There were contusions, which are visible on the chest. There  
5 were a couple of rib fractures underlying those contusions.

6 Q So those rib fractures, those are interior injuries or  
7 internal injuries?

8 A Internal injuries. That's correct.

9 Q So you wouldn't necessarily be able to see those through  
10 the pictures.

11 A Well, you could see the external effect of the blunt  
12 force trauma with the bruise that was there.

13 Q I understand.

14 A That's correct.

15 Q Let me ask you this, after your full examination, what  
16 was your final anatomic diagnosis for this victim, sir?

17 A Okay. Well, after we do the external evaluation we  
18 actually open the body and look and there was a fracture of  
19 rib number three in the left chest, fractures of ribs three,  
20 four and five in the anterior chest, which are underlying  
21 those areas of contusion. He had approximately 2000  
22 milliliters of blood in his chest cavity, and he had a  
23 transection or a laceration of his aorta in the thoracic area.  
24 All of these are consistent with blunt force traumatic  
25 injuries. We did trace the bullet track, which was a very

1 superficial, just underlying the skin, did not penetrate any  
2 body cavity through and through on one side.

3 Q Doc, what did Roy Davis die from?

4 A Mr. Davis died as a result of the blunt force trauma, the  
5 most significant being the traumatic injuries to the chest  
6 resulting in the laceration of his aorta with associated  
7 hemorrhage secondary to that.

8 Q I know you can't tell me how long that would have taken  
9 him to, to, to expire but that type of injury, that most  
10 significant of injury, would that be a quick thing or a slow  
11 thing?

12 A The -- that kind of injury can be a few -- if it  
13 completely transects the aorta it's a very rapid bleed. With  
14 a laceration it's a slower bleed, in terms several minutes,  
15 two or three minutes, possibly. Certainly this injury is not  
16 something that would've allowed him to survive for like an  
17 hour or so.

18 Q How about 20 minutes to, to a half hour?

19 A It would be hard to say. It would be hard to say.

20 Q Did you send off his blood?

21 A Yes, sir. All forensic cases we do a toxicologic  
22 evaluation and we do a blood ethanol as well as a drug screen.

23 Q And did that -- did the analysis result in any indication  
24 there was blood or alcohol in his -- I mean, drugs or alcohol  
25 in his blood?

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1 A He had a negative blood ethanol. The blood drug screen  
2 was positive for cocaine, cocaine metabolite, which is  
3 benzoylecgonine, delta 9 carboxy THC and delta 9 THC, which  
4 are marijuana and the marijuana metabolite.

5 Q In your opinion did that in any way cause his death?

6 A No.

7 Q Doc, I'm winding it up now. Are you familiar with the  
8 term defensive wounds?

9 A Yes, sir.

10 Q Have you testified about defensive wounds before?

11 A I have.

12 Q What is a defensive wound, Doc?

13 A A defensive wound is any type of wound when someone is  
14 being -- say I was trying to hit you or if someone in this  
15 courtroom and you're trying to defend yourself, put your hand  
16 up, and it's a wound sustained while you're trying to ward off  
17 someone else hurting you.

18 Q In your notes did you document any defensive wounds on  
19 Roy Davis?

20 A The wounds I documented the fracture of his arm at the  
21 elbow could very possibly be a defensive action, putting the  
22 elbow up in the light of receiving blunt force injuries.

23 Q Please answer any questions the Defense have, Doctor.

24 THE COURT: Mr. Hyman.

25 MR. ALEX HYMAN: Your Honor, may it please the Court?

1 THE COURT: Yes.

2 CROSS EXAMINATION

3 BY MR. ALEX HYMAN:

4 Q Dr. Proctor, the, the photos that were handed up to you.  
5 They back here?

6 MR. HELMS: I put them up there, Alex.

7 MR. ALEX HYMAN: Thank you. Thank you.

8 BY MR. ALEX HYMAN:

9 Q Now, you know, the, the head wounds look -- they look  
10 pretty bad. I mean, it looks like there's some skin that has,  
11 has come up, that kind of stuff. The -- now, if -- can you  
12 explain a little bit, head injuries are a little different.  
13 What I mean by that is the skin.

14 A Uh-huh. Correct.

15 Q But my head right here I don't have a whole lot of muscle  
16 or fat right here. Does that seem to split and cut, anything  
17 like that, easier, you know, say than the thighs or anything  
18 like that?

19 A A, a blunt force injury to your scalp, my scalp,  
20 anybody's scalp in here, of course, the skin is thin and when  
21 the blunt force instrument hits that it presses it against the  
22 bone underlying and it, it literally just splits the skin  
23 much, much more easily than say hitting someone in the chest;  
24 that is correct. Uh-huh.

25 Q Now, and I, and I want to go over your, your testimony a