

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES RICHARD ROSENBAUM,

APPELLANT

APPELLATE CASE NO. 2018-002240

RECORD ON APPEAL

SUSAN B. HACKETT  
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON  
Attorney General

WILLIAM F. SCHUMACHER  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3713

JIMMY RICHARDSON  
Solicitor, Fifteenth Judicial Circuit  
Post Office Box 1276  
Conway, SC 29528  
(843) 255-5880

ATTORNEYS FOR RESPONDENT

**INDEX**

|                                                                       |     |
|-----------------------------------------------------------------------|-----|
| INDEX .....                                                           | i   |
| PRE-TRIAL HEARING ON MOTION FOR IMMUNITY DATED JULY 16-17, 2018 ..... | 1   |
| TESTIMONY                                                             |     |
| DIANE DURKIN                                                          |     |
| Direct Examination by Mr. Bouchette .....                             | 4   |
| Cross Examination by Ms. Livesay .....                                | 32  |
| JAMES ROSENBAUM                                                       |     |
| Direct Examination by Mr. Hyman .....                                 | 100 |
| Cross Examination by Ms. Livesay .....                                | 169 |
| Redirect Examination by Mr. Hyman .....                               | 216 |
| PAUL RIDGLEY                                                          |     |
| Direct Examination by Mr. Hyman .....                                 | 221 |
| Cross Examination by Ms. Livesay .....                                | 227 |
| Redirect Examination by Mr. Hyman .....                               | 229 |
| ARGUMENT BY MS. LIVESAY .....                                         | 231 |
| ARGUMENT BY MR. BOUCHETTE .....                                       | 237 |
| ARGUMENT BY MR. HYMAN .....                                           | 241 |
| REPLY BY MS. LIVESAY .....                                            | 245 |
| RULING BY THE COURT .....                                             | 246 |
| TRIAL TRANSCRIPT DATED DECEMBER 3-10, 2018 .....                      | 249 |
| MOTION TO SUPPRESS STATEMENT .....                                    | 251 |
| OPENING STATEMENT BY MR. RICHARDSON .....                             | 268 |
| OPENING STATEMENT BY MR. BOUCHETTE .....                              | 277 |
| OPENING STATEMENT BY MR. HYMAN .....                                  | 284 |
| TESTIMONY                                                             |     |
| WILLIAM BURHANS                                                       |     |
| Direct Examination by Mr. Richardson .....                            | 296 |

|                                                               |     |
|---------------------------------------------------------------|-----|
| Cross Examination by Mr. Hyman .....                          | 300 |
| MARK JOHNSON                                                  |     |
| Direct Examination by Mr. Richardson .....                    | 301 |
| Cross Examination by Mr. Bouchette .....                      | 308 |
| Cross Examination by Mr. Hyman .....                          | 313 |
| Redirect Examination by Mr. Richardson .....                  | 316 |
| MICHAEL HODGE                                                 |     |
| Direct Examination by Mr. Helms .....                         | 318 |
| CHRISTOPHER HAGER                                             |     |
| Direct Examination by Mr. Helms .....                         | 323 |
| Cross Examination by Mr. Hyman .....                          | 330 |
| RULING BY THE COURT ON THE MOTION TO SUPPRESS STATEMENT ..... | 331 |
| TESTIMONY                                                     |     |
| JILL DOMOGAUER                                                |     |
| Direct Examination by Mr. Helms .....                         | 336 |
| Cross Examination by Mr. Bouchette .....                      | 392 |
| Cross Examination by Mr. Hyman .....                          | 400 |
| DENNIS LEWIS                                                  |     |
| Direct Examination by Mr. Helms .....                         | 413 |
| Cross Examination by Mr. Hyman .....                          | 419 |
| SANDY LOWE                                                    |     |
| Direct Examination by Mr. Helms .....                         | 422 |
| Cross Examination by Mr. Bouchette .....                      | 434 |
| Cross Examination by Mr. Hyman .....                          | 436 |
| JAMES PERRY                                                   |     |
| Direct Examination by Mr. Richardson .....                    | 439 |
| Cross Examination by Mr. Hyman .....                          | 447 |
| LORI DUDLEY                                                   |     |
| Direct Examination by Mr. Richardson .....                    | 452 |
| Cross Examination by Mr. Hyman .....                          | 458 |
| LYNNDALE LEWIS (proffer)                                      |     |
| Direct Examination by Mr. Richardson .....                    | 465 |
| RULING BY THE COURT .....                                     | 480 |

|                                              |     |
|----------------------------------------------|-----|
| BRIDGETT BRILES (proffer)                    |     |
| Direct Examination by Mr. Richardson .....   | 481 |
| RULING BY THE COURT .....                    | 490 |
| TESTIMONY                                    |     |
| EDWARD PROCTOR JR.                           |     |
| Direct Examination by Mr. Helms .....        | 491 |
| Cross Examination by Mr. Hyman .....         | 502 |
| Cross Examination by Mr. Bouchette .....     | 511 |
| BRIDGETT BRILES                              |     |
| Direct Examination by Mr. Richardson .....   | 517 |
| Cross Examination by Mr. Hyman .....         | 529 |
| Cross Examination by Mr. Bouchette .....     | 529 |
| LYNNDALE LEWIS                               |     |
| Direct Examination by Mr. Richardson .....   | 541 |
| Cross Examination by Mr. Hyman .....         | 553 |
| Redirect Examination by Mr. Richardson ..... | 563 |
| LACEY MILLER                                 |     |
| Direct Examination by Mr. Helms .....        | 565 |
| Cross Examination by Mr. Hyman .....         | 572 |
| Cross Examination by Mr. Bouchette .....     | 573 |
| Redirect Examination by Mr. Helms .....      | 580 |
| RANDY HUCKS                                  |     |
| Direct Examination by Mr. Helms .....        | 583 |
| Cross Examination by Mr. Hyman .....         | 590 |
| Cross Examination by Mr. Bouchette .....     | 591 |
| Redirect Examination by Mr. Helms .....      | 594 |
| MANGET SINGH                                 |     |
| Direct Examination by Mr. Helms .....        | 595 |
| PAUL RIDGLEY                                 |     |
| Direct Examination by Mr. Richardson .....   | 600 |
| Cross Examination by Mr. Hyman .....         | 610 |
| Redirect Examination by Mr. Richardson ..... | 615 |
| DEAN BRIGGS                                  |     |
| Direct Examination by Mr. Helms .....        | 618 |
| Cross Examination by Mr. Hyman .....         | 630 |
| Redirect Examination by Mr. Helms .....      | 638 |



|                                                                               |     |
|-------------------------------------------------------------------------------|-----|
| AARON EDENS                                                                   |     |
| Direct Examination by Mr. Richardson .....                                    | 640 |
| Cross Examination by Mr. Hyman .....                                          | 660 |
| Redirect Examination by Mr. Richardson .....                                  | 674 |
| PAULETTE SUTTON                                                               |     |
| Direct Examination by Mr. Richardson .....                                    | 677 |
| Cross Examination by Mr. Bouchette .....                                      | 714 |
| Cross Examination by Mr. Hyman .....                                          | 720 |
| STATE RESTS .....                                                             | 728 |
| TESTIMONY                                                                     |     |
| JAMES ROSENBAUM                                                               |     |
| Direct Examination by Mr. Hyman .....                                         | 730 |
| Cross Examination by Mr. Richardson .....                                     | 781 |
| Cross Examination by Mr. Bouchette .....                                      | 830 |
| Redirect Examination by Mr. Hyman .....                                       | 837 |
| ROBERT LIVINGSTON                                                             |     |
| Direct Examination by Mr. Hyman .....                                         | 842 |
| Cross Examination by Mr. Richardson .....                                     | 847 |
| Redirect Examination by Mr. Hyman .....                                       | 852 |
| DEFENDANT ROSENBAUM RESTS .....                                               | 853 |
| DEFENDANT DURKIN RESTS .....                                                  | 853 |
| DEFENDANT ROSENBAUM RENEWS MOTION FOR DIRECTED VERDICT .....                  | 854 |
| DEFENDANT DURKIN RENEWS MOTION FOR DIRECTED VERDICT .....                     | 854 |
| RULING BY THE COURT .....                                                     | 855 |
| CHARGE CONFERENCE .....                                                       | 856 |
| DIANE DURKIN ENTERS PLEA PURSUANT TO <u>NORTH CAROLINA V. ALFORD</u><br>..... | 875 |
| SENTENCING OF DIANE DURKIN .....                                              | 888 |
| CLOSING ARGUMENT BY MR. HELMS .....                                           | 890 |
| CLOSING ARGUMENT BY MR. HYMAN .....                                           | 916 |

|                                                                        |      |
|------------------------------------------------------------------------|------|
| REPLY ARGUMENT BY MR. HELMS .....                                      | 953  |
| CHARGE ON THE LAW .....                                                | 961  |
| QUESTION FROM THE JURY .....                                           | 981  |
| VERDICT .....                                                          | 983  |
| SENTENCING .....                                                       | 984  |
| MOTION FOR IMMUNITY FROM PROSECUTION .....                             | 985  |
| MOTION FOR RECONSIDERATION FILED JULY 24, 2018 .....                   | 988  |
| STATE'S RESPONSE TO MOTION FOR RECONSIDERATION FILED JULY 25, 2018.... | 992  |
| ORDER DENYING MOTION FOR RECONSIDERATION FILED AUGUST 15, 2018.....    | 998  |
| INDICTMENT AND SENTENCE SHEET .....                                    | 1000 |
| CERTIFICATE OF COUNSEL FOR APPELLANT .....                             | 1003 |

**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**

Edward Proctor, Jr. - Cross by Mr. Alex Hyman

533

1 little bit again. Now, you said that I think you called the,  
2 the pellet wound superficial?

3 A That's correct.

4 Q That it kind of just went through the skin.

5 A Uh-huh.

6 Q So that didn't pierce any organs or anything like that?

7 A It did not. It did not penetrate the chest cavity or the  
8 abdominal cavity, just was in -- under the skin through the  
9 soft tissue underlying the skin.

10 Q Now, the, the, the wounds that are on his head would you  
11 also classify those as superficial?

12 A They are, they are superficial in, in that, yes, it  
13 lacerated that skin, it extended to the calvarium because  
14 it's, it's very close.

15 Q Right.

16 A Did not penetrate the calvarium.

17 Q Now, when you say didn't penetrate the calvarium I know  
18 what you mean, but are you saying that there was no skull  
19 fracture?

20 A That is correct.

21 Q Was there any bleeding on the brain?

22 A No.

23 Q Did anything from here up cause his death?

24 A No.

25 Q Okay. So if someone was to say that he was beaten to

1 death by being hit in the head with a bat that would not be  
2 accurate?

3 A He -- it would be part of a series of injuries, but those  
4 injuries in and of themselves were survivable injuries. Yeah.

5 Q Okay. So that's not what caused him to die?

6 A No.

7 Q Okay. Now, is the arm, did that cause him to die?

8 A The arm is a fracture of the elbow, in all likelihood may  
9 have been a defense wound, but no, that did not kill him.

10 Q And you're saying could have, may have?

11 A That's correct.

12 Q But you don't know for sure?

13 A I cannot tell you for sure.

14 Q Now, in your report you, you mentioned something about a  
15 baseball bat. That's not something you determined on your  
16 own; is it?

17 A I was, I was asked could this correspond to a baseball  
18 bat and the dimensions are such that, yes, it could. It is  
19 certainly possible.

20 Q I'm going to show you what's been marked as State's 78,  
21 and this is a pellet gun that was allegedly used, and I want  
22 to show you the end of this. Now, the bruises on the chest,  
23 could they have been caused by this?

24 A They could have been caused by any -- the, the, the  
25 contusion that I measured had -- measured had a rounded

Edward Proctor, Jr. - Cross by Mr. Alex Hyman

535

1 contour to it with an elongated thing, yes, and looking at  
2 that it's certainly possible.

3 Q Rounded and elongated.

4 A Yes. It certainly could. Uh-huh.

5 Q So if somebody was to do that, that could have caused  
6 that?

7 A It could have. Yes.

8 Q Now, as far as, and again, that's your testimony is not  
9 that that -- you don't know?

10 A It, it, it's certainly possible that it could.

11 Q Now, as far as the ribs, again, can you tell me, all  
12 right, there were three, four and five with -- on -- was that  
13 on the right?

14 A On the right. That was on the right.

15 Q On the right side and then one on the left?

16 A Posterior on the left. Uh-huh.

17 Q Okay. So the one right here I'm assuming is what  
18 lacerated that thoracic aorta possibly?

19 A It -- possibly, uh-huh.

20 Q Okay. Now, certainly, when somebody breaks a rib it  
21 doesn't always mean that their thoracic aorta is lacerated?

22 A No. It does not.

23 Q And in fact, that's fairly rare?

24 A A rib fracture, per se, may or may not. I mean, we see  
25 blunt force injuries that do not have aortic lacerations.

1 Q Right. Now, and, and it's your, it's your testimony that  
2 it was not a, a rupture. It was a small or a, or a tear?

3 A It was, it was a significant tear on both the -- I think  
4 I've described it anteriorly, let me -- hold on. I've  
5 described it. Here it is, there was -- the aorta shows, let's  
6 see, I've got it, I've described a laceration of the aorta on  
7 the anterior aspect, anterior and -- okay, here it is.  
8 There's hemorrhage within the chest and there was adjacent to  
9 the thoracic aorta as well as a laceration of the anterior and  
10 left lateral aortic wall.

11 Q Okay.

12 A So that anterior and left lateral aortic wall was blunt  
13 force causing a laceration and hemorrhage.

14 Q Now, it appears that bilateral hemothoraces.

15 A Hemothoraces.

16 Q Okay. Hemothoraces. That's the sac that holds the  
17 lungs?

18 A Actually, it's the whole chest cavity.

19 Q Okay.

20 A Uh-huh.

21 Q So it's not in the lung. It's --

22 A No. It's outside of the lungs.

23 Q Okay. Now, you had, had noted that there were about 2000  
24 milliliters of total fluid in there, and --

25 A Uh-huh.

Edward Proctor, Jr. - Cross by Mr. Alex Hyman

537

1 Q -- and it's my understanding, I may be wrong, but it's my  
2 understanding that the human body on average is about five to  
3 7,000 milliliters a minute that it, that it pumps?

4 A That's, that's a -- that's what we call a total blood  
5 volume.

6 Q Okay.

7 A That's correct. Uh-huh.

8 Q Now, as far as that goes -- so this wasn't all of his  
9 blood into his chest.

10 A No.

11 Q Okay.

12 A It was not.

13 Q Now, is it likely that at some point during that, and,  
14 and I think -- and I may be wrong but I think I've read where  
15 it's about 1500 milliliters where you start just kind of start  
16 getting dizzy?

17 A After -- 1500 milliliters is about three full units of  
18 blood or a little bit more. At that level, yes.

19 Q Now, at, at that point if, if that's what's happening,  
20 the heart is beating, you've been in some form of altercation,  
21 so it's assumable that your heart's probably beating faster?

22 A The heart is probably beating faster as a consequence of  
23 what's happening. Once the aorta is lacerated the heart beats  
24 even faster from the standpoint it's trying to keep blood  
25 volume up and keep blood to the brain. That is correct.

1 Q And cocaine can keep, I mean, can enhance your heart rate  
2 as well?

3 A Cocaine, marijuana, those all can enhance heart rates.

4 Q So all that being said, if it's got a small laceration or  
5 a large laceration --

6 A Uh-huh.

7 Q -- anything like that, it's not an immediate death  
8 though. It's probably a few minutes, I think you said?

9 A It could be.

10 Q Right.

11 A Now, with a laceration of the aorta you've got to  
12 understand every time that heart beats it's spewing blood into  
13 that chest cavity.

14 Q That's right.

15 A Was he going to run, run a hundred yard dash, no.

16 Q Now --

17 A Could he have walked around a little bit, it's certainly  
18 possible.

19 Q And there are --

20 A Could he have done any kind of heavy stuff, no.

21 Q Okay. And there are certainly times when someone has a  
22 laceration to the thoracic aorta where they don't die?

23 A Very rare.

24 Q Got you. But it, it's possible?

25 A Possible.



Edward Proctor, Jr. - Cross by Mr. Alex Hyman

539

1 Q Got you. Now, so it is likely though would you say that  
2 at some point rather than just a -- that he probably could  
3 have gotten dizzy, could have fallen over, almost just passed  
4 out, faint, that's it? Would that be inconsistent with the  
5 injuries that he had?

6 A With the injuries that he had consisting of, even though  
7 they were superficial, their impact was enough to cause  
8 lacerations to the skull, I mean, to the scalp, fracture to  
9 the elbow, fractured ribs and the aorta, those are significant  
10 injuries. He, he was not, you know, I cannot quantitate how,  
11 how much he'll --

12 Q How long.

13 A How long. I can't quantitate how long, but with those  
14 injuries and the injuries that were sustained to that aorta he  
15 would not to be resisting very much.

16 Q Is it possible, though, if there was testimony -- let me  
17 change that. If there was testimony that he was standing and,  
18 again, looking like he was dizzy and fell, would that be  
19 consistent with, I guess at that point losing maybe over that  
20 1500 milliliters?

21 A It, it certainly would be. Yes. Uh-huh.

22 Q No facial fractures at all?

23 A There were, there were no fractures.

24 Q Okay. So no broken nose?

25 A Huh-uh.

1 Q No knocked out teeth? I didn't see any.

2 A To my knowledge, no. I didn't -- to my knowledge, no.

3 Q Okay. And even I think there was one on his -- I think  
4 you said is it the mandible?

5 A Mandible. Uh-huh. That's the angle of the jaw.

6 Q Even that there was no broken jaw?

7 A No, just a laceration.

8 MR. ALEX HYMAN: The Court's indulgence.

9 THE COURT: All right.

10 BY MR. ALEX HYMAN:

11 Q Just, just a -- one or two more, when you view a body  
12 like this and perform an autopsy, you can't really do a  
13 timeline of when this hit occurred, when this hit occurred or  
14 anything like that?

15 A I cannot tell you which came first, no.

16 Q Okay. All right. And again, it's your testimony that  
17 the actually what caused the death was that, that, I guess,  
18 laceration of the thoracic aorta?

19 A The most significant injury in this man was the traumatic  
20 laceration of that aorta with massive hemorrhage.

21 Q Which is not going to have external bleeding?

22 A It will not. That is correct.

23 Q So really any blood around the house while it is caused  
24 by those hits, what actually caused the death was internal?

25 A The, the, the internal bleeding caused the death. Now, a

Edward Proctor, Jr. - Cross by Mr. Bouchette

541

1 scalp laceration, anyone who's ever sustained one will know it

2 --

3 Q It bleeds.

4 A -- it looks like there is a tremendous amount of blood  
5 because it does bleed.

6 Q But it's not life-threatening?

7 A Untreated it can be --

8 Q Right.

9 A -- over a period of time, but certainly, no, not in the  
10 short term.

11 MR. ALEX HYMAN: No further questions at this time, Your  
12 Honor.

13 THE COURT: All right. Mr. Bouchette.

14 MR. BOUCHETTE: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. BOUCHETTE:

17 Q Good afternoon, Dr. Proctor.

18 A Hi.

19 Q Just I know you've had a long day. I think we all have.  
20 So I'm going to try to keep this brief, but I do want to --  
21 there was a lot of technical discussion a moment ago. I want  
22 to see if I can kind of summarize this.

23 A Uh-huh.

24 Q It's been presented or at least insinuated that Roy Davis  
25 died by essentially having his, his head bashed in. Would

1 that be an accurate way to describe how Roy Davis died?

2 A Roy Davis died as a result of multiple blunt force  
3 injuries, the most significant being the blunt force trauma to  
4 the chest. There were no skull fractures. He had injuries to  
5 his head --

6 Q Right.

7 A -- but did not cause a quote bashed in skull.

8 Q Right.

9 A The skull was not fractured.

10 Q What I wanted and I don't want to duplicate too much, but  
11 the, the severing or the piercing of the thoracic aorta  
12 essentially you have a rib break; right? That's what he had.

13 A That's correct.

14 Q The rib breaks, the rib breaks and that, that punctures  
15 or at least tears into the thoracic; is that right?

16 A No.

17 Q Okay. Correct me.

18 A The rib was fractured as a consequence of the injury --

19 Q Right.

20 A -- to the rib.

21 Q Exactly.

22 A Now, the force of the injury is what lacerated the aorta.  
23 There was no --

24 Q Okay.

25 A -- no, in this case, no distinct displacement of the rib

Edward Proctor, Jr. - Cross by Mr. Bouchette

543

1   that lacerated that aorta.

2   Q     Okay. I understand.

3   A     The, the laceration occurred as a result of just the  
4   force of the impact.

5   Q     Now, I think it was testified to a moment ago that given  
6   that injury the person receiving the injury would have  
7   maintained consciousness for some period of time; right?

8   A     It's certainly possible that he could.

9   Q     And we don't know really how long that could have been.  
10   It could have been as short as a couple of minutes; right?

11   A     It, it, it certainly was not more than several minutes.

12   Q     Okay. But it could have been --

13   A     If that.

14   Q     -- and it could have been longer than that; right?

15   A     No.

16   Q     Couldn't have been, okay. Now, during that time he  
17   would've maintained control of his physical facilities at  
18   least for some period of time; correct? Well --

19   A     Well, it's possible.

20   Q     Okay.

21   A     And if you mean -- do you mean able to fight and defend  
22   himself?

23   Q     Well, I mean --

24   A     It would certainly not be much time at all. No.

25   Q     Okay. But there's, there's some period of time. We just

1 can't ascertain how long it would be; correct?

2 A Very short.

3 Q Okay. Now, the -- and again, this injury that caused the  
4 death this is not the injury that caused the -- well, I tell  
5 you what, let me back up and ask you a different question.

6 The injuries to the head, these were also I think you said a  
7 moment ago that had they not been treated eventually that  
8 could have resulted in death; correct?

9 A Had, had those not been treated he would have lost a  
10 significant amount of blood over a period of time.

11 Q Right. Okay.

12 A Yes.

13 Q So we've essentially got one injury that actually caused  
14 the death, you've got another injury or maybe set of injuries  
15 that caused the massive bleeding; is that an accurate  
16 statement?

17 A No.

18 Q Okay.

19 A No.

20 Q All right.

21 A All of these injuries were a consequence of the same  
22 incident.

23 Q Right.

24 A Blunt force to the head, blunt force to the chest and as  
25 I've testified I can't tell you which came first, which came

Edward Proctor, Jr. - Cross by Mr. Bouchette

545

1 second, but as a consequence all of these were an integral  
2 part of what happened to this man, the most significant being  
3 the impact injury to his chest that lacerated his aorta and  
4 caused him to bleed to death.

5 Q Right. Well, the, the laceration of the aorta, I guess,  
6 is what you contribute to be the most significant?

7 A That's the most significant.

8 Q And we don't have a skull fracture; right?

9 A There is no skull fracture.

10 Q All right.

11 A I don't know where that came from. There is no skull  
12 fracture.

13 Q Okay. Very good. Thank you. I'm trying to see what,  
14 what, what we have or haven't discussed. Now, you did this  
15 -- you performed this examination the day after the incident;  
16 correct?

17 A That is correct.

18 Q And how long does that normally take for you to, to  
19 compile the information and gather it up and determine a cause  
20 of death?

21 A We do a preliminary at the time of autopsy.

22 Q Okay. So is it --

23 A And I do not have the tox and all toxicology is performed  
24 by National Medical Services which is a national forensic  
25 laboratory in Pennsylvania and their turnaround times on

1 providing our toxicology can be anywhere from six to eight  
2 weeks.

3 Q All right. Well, disregarding the toxicology though,  
4 your, your examination and your determination as to cause of  
5 death how long is that?

6 A My, my, my preliminary cause and manner of death was the  
7 day of the autopsy.

8 Q Okay.

9 A Which was relayed to the coroner.

10 Q All right. Now, given that, did, did Detective Brad  
11 Thompson contact you on July 12<sup>th</sup> whenever you performed the  
12 autopsy?

13 A I -- he may have been at the autopsy. I don't know.

14 Q Okay. You don't recall him talking to you or contacting  
15 you regarding or having questions regarding the --

16 A No.

17 Q -- autopsy?

18 A Huh-uh.

19 Q And just for clarity, the toxicology report had both  
20 cocaine and marijuana?

21 A Cocaine and marijuana.

22 Q Okay.

23 A That's correct.

24 MR. BOUCHETTE: No further questions, Your Honor.

25 THE COURT: All right. Redirect?



Bridgett Briles - Direct by Mr. Richardson

547

1 MR. HELMS: Nothing, Your Honor, and I would respectfully  
2 request that Dr. Proctor be released.

3 THE COURT: Any objection?

4 MR. ALEX HYMAN: No objection.

5 THE COURT: All right. Any objection?

6 MR. BOUCHETTE: No objection.

7 THE COURT: All right. You may step down. You're free  
8 to go.

9 A Thank you, Your Honor.

10 THE COURT: Thank you.

11 All right. You can call your next witness.

12 MR. RICHARDSON: Your Honor, the State would call  
13 Bridgett Briles.

14 THE COURT: All right.

15 Whereupon, Bridgett Briles is called to the stand, duly  
16 sworn by the clerk and testified as follows:

17 THE CLERK: Please state your name and spell your name.

18 MS. BRILES: My name is Bridgett Briles, B-R-I-D-G-E-T-T,  
19 B-R-I-L-E-S.

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q Ms. Briles, how old are you?

23 A I am 32.

24 Q And do you live here in Horry County?

25 A Yes. I just recently bought a house here in Little

- 1 River.
- 2 Q Oh, good.
- 3 A Yes.
- 4 Q How long have you lived in Horry County?
- 5 A I just moved here a month ago, but I grew up on the state
- 6 line right here in Brunswick County, lived there my whole
- 7 life.
- 8 Q Well, we're glad to have you.
- 9 A Thank you.
- 10 Q You married?
- 11 A I'm engaged.
- 12 Q Good. When is this wedding date?
- 13 A It's December 23<sup>rd</sup> next year.
- 14 Q A Christmas wedding, huh?
- 15 A Yes.
- 16 Q Where are you currently working?
- 17 A I work for Wyndham Worldwide in North Myrtle Beach. I'm
- 18 a manager over the four towers.
- 19 Q Is --
- 20 A It's on Ocean Boulevard.
- 21 Q Okay.
- 22 A Yes.
- 23 Q Wyndham Resorts?
- 24 A Yes, sir.
- 25 Q You ever been in trouble with the police?

Bridgett Briles - Direct by Mr. Richardson

549

1 A Yes. I have.

2 Q All right. Tell the Court what you've been convicted of,  
3 Bridgett.

4 A I have been in trouble for simple possession of  
5 marijuana. I have some traffic violations, speeding and a  
6 driving with no license. I have an open container from when I  
7 was about 18 and that's about it.

8 Q The -- now, let's talk about the marijuana charge.

9 A Okay.

10 Q When was that?

11 A That was, the charge itself was in 2007. I was arrested  
12 on the charge on a warrant for the charge after I'd already  
13 paid it off in 2016 of July.

14 Q So you got arrested in 2007, charged with simple  
15 possession of marijuana?

16 A Yes, sir.

17 Q You paid the fine --

18 A Uh-huh.

19 Q -- and somebody failed to put that into the system?

20 A Yes, sir.

21 Q All right. And of course a bench warrant was issued?

22 A Yes, sir.

23 Q And that bench warrant ended up putting you in jail back  
24 at J. Reuben Long --

25 A Yes, sir.

1 Q -- for approximately how long?

2 A I was there for about six days.

3 Q Then what happened with that charge?

4 A I hired a -- well, my family hired an attorney for it and  
5 the charge was dismissed because of the ticket already being  
6 paid.

7 Q All right. So he figured out that the ticket had been  
8 paid --

9 A Yes.

10 Q -- and the charges were dismissed?

11 A Yes, sir.

12 Q All right. Let me ask you, during that three weeks  
13 anytime before that or since did anybody from the State reach  
14 out to you regarding that charge or any other charge and say,  
15 "Bridgett, if you'll testify or you'll tell us something the  
16 State will help you with your marijuana charge"?

17 A No, sir. Never.

18 Q Did you receive any help from the State?

19 A No. I did not.

20 Q Okay. Let's talk about the little bit of time that you  
21 were in jail.

22 A Okay.

23 Q On marijuana charges?

24 A Yes.

25 Q Were -- did you get to meet anybody that was charged with

Bridgett Briles - Direct by Mr. Richardson

551

1 murder?

2 A Yes. My cellmate Diane.

3 Q Diane Durkin?

4 A Yes.

5 Q Did you feel that odd to be in there on marijuana?

6 A Yes. I did. I thought it was very odd that they put me  
7 in a cell with somebody who committed murder or somebody who  
8 had just --

9 Q Been accused?

10 A -- accused of, yeah.

11 Q And when you came to our attention how did that happen?

12 Who --

13 A I was speaking to my lawyer about the situation of me  
14 being in jail with somebody who had told me that they were a  
15 murderer and how uncomfortable it made me to sleep next to  
16 somebody every night knowing that she had told me that she was  
17 a murderer and that I was just in there for a simple  
18 possession charge. So my attorney asked me if I'd be willing  
19 to speak to a detective about some of the things that Diane  
20 had told me while I was in the cell with her.

21 Q Okay. And did you meet with Detective Rhodes on July  
22 20<sup>th</sup>, 2016?

23 A Yes. I did.

24 Q All right. Now, I want you to slow down.

25 A Okay.

- 1 Q And I want you to talk about just Diane.
- 2 A Okay.
- 3 Q Okay.
- 4 A Okay.
- 5 Q Think about everything I ask you just Diane?
- 6 A Okay.
- 7 Q All right. You were with Diane Durkin at the J. Reuben
- 8 Long Detention Center for approximately how long?
- 9 A For six days.
- 10 Q Six days?
- 11 A Yes, sir.
- 12 Q Did she ever -- did you ever tell her you were in there
- 13 on marijuana?
- 14 A Yes. I did.
- 15 Q Did she ever tell you what she was in there for?
- 16 A Yes. The very first day I was there.
- 17 Q All right. Tell me what Diane -- first, had you ever
- 18 heard of Roy Davis before?
- 19 A Actually I had.
- 20 Q All right.
- 21 A I did hear about Roy Davis. I was in the police station
- 22 here in Conway picking up my fiancé's belongings because he
- 23 had passed away a couple of days before, and as I was in there
- 24 I was waiting for his belongings and I heard a man standing at
- 25 the window asking for Roy Davis' belongings, and at that time

Bridgett Briles - Direct by Mr. Richardson

553

1 a police officer came out and arrested me. So I had heard Roy  
2 Davis' name then. When I got into the cell and I was carrying  
3 on the conversation of why I was there, Diane had brought up  
4 Roy Davis' name to me, and when she did, I didn't speak that I  
5 had heard his name before to her. I just knew at that point  
6 that I had heard that name just now and now it was awkward for  
7 me to be in a cell with somebody who were -- who was saying  
8 that they had murdered Roy Davis so.

9 Q Tell us how that went down. What did Diane tell you  
10 about her involvement with Roy Davis?

11 A Her -- she told me that she had known Roy Davis for about  
12 two years, that they did drugs together, that they would do  
13 crack cocaine together and that she would always give him like  
14 \$20 to go and get the drugs and he would come back and she  
15 would shoot up but that Roy didn't, that he would just smoke  
16 it, and that they had been having sex off and on for about two  
17 years and that she told me that she took the kill shot that  
18 murdered Roy Davis.

19 Q Okay. Did she tell you about the night of July 11<sup>th</sup>,  
20 2016?

21 A She, she, she told me in and out things that happened.  
22 She changed her story a lot, but --

23 Q What was her first story about?

24 A Her first story was that Roy Davis raped her and that she  
25 murdered him for or she beat him to death with a baseball bat

1 for raping her and who --

2 Q How long did that story stick?

3 A Just the first day, just the first day I was there and  
4 then the more comfortable she came with me and the other  
5 cellmate that was in there she told us more about how she had  
6 an off and on relationship with Roy Davis and how she had  
7 known Roy Davis for a while.

8 Q Okay. And on the night of July 11<sup>th</sup> she told you that she  
9 took the kill shot of Roy Davis?

10 A Yes, sir. She did.

11 Q Did she tell you how -- what instrument was used to do  
12 that?

13 A She told me it was a baseball bat.

14 Q All right. When she told you this, did she ever have any  
15 paperwork or anything with her? Did she ever show you any  
16 paperwork?

17 A No, sir.

18 Q Otherwise known as discovery?

19 A No, sir. I never seen any paperwork.

20 Q So she was just telling you from her mouth to your ear?

21 A Verbally. Yes, sir.

22 Q And she backed away from the story of him trying to rape  
23 her --

24 A Yes.

25 Q -- day two. Day one she told you that.



Bridgett Briles - Direct by Mr. Richardson

555

1 A Yes. Day one she told me that and by day two she started  
2 to open up and tell about her relationship with Roy and how  
3 long she knew him. Within the third and fourth day Diane  
4 continued to speak of wanting to bleach the house and for her  
5 to throw his body into a river and she would have never been  
6 caught for it. She talked about how she wishes she could have  
7 just gotten rid of the body. She continued to talk about  
8 being a murderer and how she kills people and that if anybody  
9 in the jail decided they wanted to mess with her she would  
10 just look at them and say, "I murder people".

11 Q Okay. Did, did she ever talk with you about the oddity  
12 of Roy's clothing?

13 A Yes. She told me that she folded Roy's clothes, that she  
14 was worried that the police would realize that Roy's clothes  
15 were folded and then they would know that -- the police would  
16 know that she had something to do with murdering Roy.

17 Q And way before anything else you gave this statement to  
18 the police at the advice of your lawyer?

19 A Yes, sir.

20 Q And then I think you talked with the police a second time  
21 on July 24<sup>th</sup> and basically did you tell them -- was there any  
22 inconsistencies in what you were trying to tell them?

23 A No, sir. It's all the same.

24 Q And all of that information was gained from Diane Durkin  
25 to you without any paperwork or anything else?

1 A Yes, sir.

2 Q You knowing -- did you know anything about this before  
3 going in there --

4 A No, sir. I didn't.

5 Q -- except hearing the name?

6 A Just the name. I didn't -- I wasn't aware that Roy Davis  
7 was -- that his life had been taken until she had told me. I  
8 didn't know if his brother was there just to pick up  
9 belongings because he was in jail or what the reason was.

10 Q And the nature of Diane Durkin and Roy's relationship was  
11 sex and drugs?

12 A Yes.

13 MR. RICHARDSON: The Court's indulgence one moment.

14 THE COURT: All right

15 BY MR. RICHARDSON:

16 Q Ms. Briles --

17 A Yes, sir.

18 Q -- you stated earlier that your first statement to police  
19 was on July 20<sup>th</sup>, 2016?

20 A It was, it was during July. Yeah. I would say it's  
21 probably around that time because when I think back and my  
22 fiancé died December 8<sup>th</sup> and I went like a week afterwards to  
23 pick up his belongings. So it was probably about the 20th,  
24 around the 20th to the 25th.

25 Q And you were in J. Reuben Long between -- for

Bridgett Briles - Direct by Mr. Richardson

557

1 approximately four days; is that right?

2 A I think I was six. I think it was six days that I was in  
3 there. If it was four it was the longest four days of my  
4 life.

5 Q All right. So you think it was six days, but it was  
6 sometime --

7 A Yeah.

8 Q -- July --

9 A Right.

10 Q -- when you had gone to pick up your boyfriend's personal  
11 effects?

12 A Yes, sir.

13 Q All right. All right. Let me ask you about this,  
14 presently, you've got charges pending against you in Brunswick  
15 County?

16 A Yes, sir.

17 Q And those are pending?

18 A Yes. They are pending charges. They're charges of  
19 identity theft where my sister stole my name and used it and  
20 I'm in the process of -- she's actually incarcerated in South  
21 Carolina now. So the charges are pending to be transferred  
22 over to her name.

23 Q Okay. The -- those charges, the North Carolina charges,  
24 is anybody from this office or that office --

25 A No.

1 Q -- talked with you, "Hey, tell us what we want to hear  
2 and we'll" --

3 A No, sir.

4 Q -- "help you," or anything like that?

5 A No, sir.

6 Q Have you asked for any?

7 A I don't think anybody knew about those charges here until  
8 today.

9 Q Okay. And you didn't get any help -- you didn't ask for  
10 any help on the --

11 A No, sir.

12 Q -- marijuana charges?

13 A No, sir.

14 Q I believe that that is all I have for you, Ms. Briles.

15 If you would answer any questions that the Defense attorneys  
16 might have.

17 THE COURT: All right. Let's go with Mr. Hyman first.  
18 Any questions?

19 MR. ALEX HYMAN: Your Honor, considering much of this  
20 statement is concerning Mr. Bouchette, I, I can maybe ask just  
21 a couple.

22 THE COURT: Okay. Because I was going to let him follow-  
23 up after you.

24 MR. ALEX HYMAN: Sure.

25 MR. BOUCHETTE: Okay.

Bridgett Briles - Cross by Mr. Alex Hyman

559

1 CROSS EXAMINATION

2 BY MR. ALEX HYMAN:

3 Q Ms., Ms. Briles?

4 A Yes.

5 Q My name's Alex Hyman. I represent Mr. Rosenbaum.

6 A Yes, sir.

7 Q You ever met him?

8 A No, sir.

9 Q Okay. You know him from Adam's house cat?

10 A No, sir.

11 Q No further questions.

12 THE COURT: All right. All right. Mr. Bouchette.

13 CROSS EXAMINATION

14 BY MR. BOUCHETTE:

15 Q Ms. Briles, you said you had been originally picked up on  
16 a marijuana charge; right?

17 A Yes.

18 Q That's why, that's why you ended up at J. Reuben Long?

19 A Yes, sir. Well, it was a bench warrant.

20 Q A bench warrant?

21 A Yes, sir.

22 Q I understand, but you also -- you had a background with  
23 methamphetamines; did you not?

24 A No. That's one of the charges that my sister had in my  
25 name that's also in the pending of being switched over. It's

1 her picture on the charges, but my name.

2 Q Well, didn't you, in fact, tell Diane that you knew how  
3 to -- that you could tell her how to make methamphetamines?

4 A No. I've never told her that.

5 Q You never told her that?

6 A No, sir.

7 Q Is that the truth?

8 A That is the truth.

9 Q Is everything you've told us today been the truth?

10 A Yes, sir.

11 Q Put your hand on that Bible and you've sworn before us,  
12 you've sworn before God and you've sworn before everybody else  
13 that that was the truth; right?

14 A Yes, sir.

15 Q You've told us that she had no paperwork with her;  
16 right?

17 A Right. She did not.

18 Q You told us that there was no way that you could know who  
19 Roy Davis was; right?

20 A I told you that I knew the name Roy Davis, but I do not  
21 know Roy Davis.

22 Q Okay. But you had no way of knowing how Roy Davis would  
23 have been connected with Diane Durkin any way whatsoever;  
24 right?

25 A Only what she told me.

Bridgett Briles - Cross by Mr. Bouchette

561

1 Q Only what she told you. Okay. Well, I want to -- see,  
2 these folks don't know how jail intake works. When you get  
3 arrested, what happens?

4 A You go to jail.

5 Q You go to jail.

6 A Uh-huh.

7 Q And they have a bond hearing after that; right?

8 A I didn't go for a bond hearing.

9 Q I understand, but you'd been to jail before; right?

10 A This was my time in jail, this J. Reuben time.

11 Q I understand, but you know from being in jail they have  
12 this thing called a bond hearing; right?

13 A Okay. They have a bond hearing.

14 Q Okay. You've never heard of that?

15 A I've heard, I mean, on TV and stuff, yeah. I've never  
16 been up for a bond hearing so.

17 Q And when you're sitting there and talking people are  
18 always talking about, "What my bond was set at and how I got  
19 bond," and things like that. Don't they say that?

20 A I guess. Yeah. Sure.

21 Q Well, I mean, you, you were in jail, not me.

22 A I mean, but I wasn't -- but I didn't go up for a bond is  
23 what I'm saying.

24 Q You're telling -- I understand.

25 A So it wouldn't be relevant to me.

Bridgett Briles - Cross by Mr. Bouchette

562

1 Q I'm just saying that no -- you're telling me that nobody  
2 ever talked about bond or what bond?

3 A I'm sure people talk about it all the time.

4 Q Okay. All right. So then you would know and you've  
5 probably heard that when they have a bond hearing it's out  
6 there in the room at the, at the jail; right?

7 A Sure.

8 Q All right. And as part of the bond hearing somebody from  
9 the Solicitor's Office states to a magistrate what the charges  
10 are; right?

11 A Sure.

12 Q All right. And so somebody from the Solicitor's Office  
13 effectively stands up and says, "Your Honor, the allegation  
14 against this person is X, Y and Z," and then the judge sets a  
15 bond; right?

16 MR. RICHARDSON: Your Honor, I'm going to object. She  
17 saying she wasn't at any bond hearing.

18 THE COURT: I sustain the objection.

19 MR. BOUCHETTE: Okay. Thank you.

20 BY MR. BOUCHETTE:

21 Q All right. You also said there was no paperwork; right?

22 A No. I never seen any paperwork. I'm sure everybody gets  
23 paperwork when they go into jail; right.

24 Q Exactly.

25 A And I'm sure she had some kind of papers, but never did I



Bridgett Briles - Cross by Mr. Bouchette

563

1 see papers from Diane.

2 Q Well, I think you testified that there was some  
3 discussion about whether or not there was what's referred to  
4 as discovery, right? You remember that discussion?

5 A What? I'm, I'm sorry.

6 Q Okay. I'll say it again. I believe Solicitor Richardson  
7 asked you a moment ago if you had ever reviewed or, or if  
8 Diane had had any paperwork which we call discovery. Do you  
9 remember speaking about --

10 A Right. And I don't remember ever seeing any paperwork  
11 from Diane.

12 Q Okay. I'm going to show you a document here. I'm going  
13 to show you a document here. Do you recognize that? What is  
14 that?

15 A Arrest warrant.

16 Q Okay. And who's the arrest warrant for?

17 A For Diane Durkin.

18 Q And does it have a little paragraph on there about what  
19 the arrest warrant's pertaining to?

20 A I'm sure it does, but I don't care to read it because  
21 I've never seen it and I don't care to have --

22 Q Well, I'm not asking you to --

23 A -- anything to do with it because --

24 Q I'm just --

25 A -- my statement's going to stay the same.

1 Q Well, I understand.

2 A So.

3 Q Well, I'm here asking the questions. So that's what it's  
4 going to be.

5 A I'm just answering for you.

6 THE COURT: All right. Wait, wait, wait.

7 A I've never seen them before.

8 THE COURT: You all are talking over each other.

9 Q I understand.

10 THE COURT: Ask a question. Do not ask another question  
11 till she's fully responded.

12 MR. BOUCHETTE: Absolutely, Your Honor.

13 THE COURT: Don't -- wait until he finishes asking the  
14 question before you start to answer it.

15 A Yes, sir.

16 THE COURT: We've got a court reporter and she can't pick  
17 it up when both of you talk.

18 A Yes, sir.

19 MR. BOUCHETTE: My, apologies, Your Honor.

20 THE COURT: All right. So go ahead.

21 BY MR. BOUCHETTE:

22 Q I'm just going to -- I just direct your attention then to  
23 the bottom of this document where it says -- has a date on  
24 here regarding the service, where this warrant was served upon  
25 her?

Bridgett Briles - Cross by Mr. Bouchette

565

1 A That's --

2 Q Do you see that there?

3 A That is okay. Yes. I understand that, but I have never  
4 seen this paper until you handed to me if that's what you're  
5 getting at.

6 Q I'm just --

7 A This paper shows nothing about the fact that Diane  
8 murdered a man or that she folded his clothes to cover up, try  
9 to cover up for him.

10 MR. RICHARDSON: What --

11 A I just don't understand what that's pertaining to.

12 MR. RICHARDSON: -- number is that, Your Honor? I'm  
13 sorry.

14 THE COURT: He hasn't gotten it marked. Let's mark it.

15 A I'm not --

16 MR. BOUCHETTE: I'll mark it for -- Defense One for ID  
17 purposes, Defendant Durkin's One for ID purposes.

18 BY MR. BOUCHETTE:

19 Q And I'm not going to, I'm not going to make you answer.  
20 I'm not going to force you to. All I'm asking is do you see  
21 the date on the bottom of that?

22 A I've never seen this paper until you showed it to me  
23 today and that's all I have to say about that paper.

24 Q Well, like I say, I'm not going to, I'm not going to  
25 force you to, to answer it. We'll, we'll address that at a

- 1 later time.
- 2 A I feel a little forced.
- 3 Q Okay.
- 4 A I'm just --
- 5 Q Well, and that's why --
- 6 A You're forcing.
- 7 Q -- that's why we're stopping right now.
- 8 A Uh-huh.
- 9 Q So your -- you were in incarceration because effectively
- 10 a paperwork mix-up; is that correct? Is that a correct way to
- 11 put it?
- 12 A Sure.
- 13 Q I mean, it's your testimony.
- 14 A That's -- yeah. Sure.
- 15 Q Is that what, what it is?
- 16 A Sure.
- 17 Q So it was a paperwork mix-up that resulted in either four
- 18 or six days in a county jail; is that correct to say?
- 19 A Yes.
- 20 Q And you hired a lawyer shortly thereafter; right?
- 21 A My mother did.
- 22 Q Okay. Somebody hired you a lawyer. All right. So I
- 23 imagine having spent four or six days in jail when according
- 24 to you you shouldn't have that was a pretty traumatic
- 25 experience; right?

Bridgett Briles - Cross by Mr. Bouchette

567

1 A Not really. I was trying to get over the loss of my  
2 fiancé. So I was going to enjoy, actually enjoy the peace and  
3 quiet and the, you know, time to pull my emotions together  
4 honestly because I have three kids. You know, it was --

5 Q So you were, you're, you're enjoying the four to six days  
6 then?

7 A No. I was, I was enjoying the peace and quiet that I  
8 thought I would get that I didn't because I had nightmares  
9 about somebody killing somebody who was sleeping next to me  
10 every night.

11 Q Okay. Well, let's talk about it. That lawyer you talked  
12 to when you got out -- so you get out and you tell a lawyer,  
13 you say, "Hey, I've, I've spent four, either six days in jail  
14 for something I shouldn't have." Is that right?

15 A Sure.

16 Q Okay. All right. Do you know what a 1983 claim is?

17 A No, sir.

18 Q Okay. Well, that's the claim where, and again, I've told  
19 these folks I'm a civil lawyer. So that's a claim usually  
20 whenever you try to sue the jail or sue somebody for wrongful  
21 arrest. You talk to your lawyer about that?

22 A No. I did not.

23 Q Didn't you talk to your lawyer that if you'd been in jail  
24 with somebody that got convicted of murder that you'd have a  
25 better civil case?

1 A Well, I didn't ever think about suing the jail. It never  
2 crossed my mind to do that because I was in jail with somebody  
3 who committed murder. So I wasn't thinking about suing a  
4 jail. I was thinking about getting, getting home to my family  
5 and away from somebody who committed murder.

6 Q Okay. But, but you, you got out of jail. You talked to  
7 your lawyer and then you contacted the Solicitor's Office or  
8 the police department; right?

9 A No.

10 Q Okay. At, at the point when you got out, you had talked  
11 to your lawyer and --

12 A Yes.

13 Q -- and he talked to you about all your ramifications;  
14 right, because you hired a good lawyer?

15 A Yes.

16 Q He talked to you about everything that would be  
17 pertaining to your case; right?

18 A Yes.

19 Q How to get out your -- how to resolve this matter that  
20 you were incarcerated from and probably talked to you about  
21 any other remedies you may have, civil or otherwise; right?

22 A No. He -- I don't know where you're going with it. I  
23 mean, he talked to me about my simple possession case.

24 Q Okay.

25 A So, yeah, and he helped me with my simple possession

Bridgett Briles - Cross by Mr. Bouchette

569

1 case.

2 Q Okay.

3 A But --

4 Q But you --

5 A -- my lawyer shouldn't have anything to do with it.

6 Q Well, I, I, I understand.

7 A I'm just -- I don't know where you're going with all of  
8 it. I'm just trying to gather it myself.

9 Q Give me just, give me just a couple of minutes.

10 A Sure.

11 Q Just a couple of other things. You would agree with me  
12 jail can be kind of a tough place; right?

13 A I'm sure. Yeah.

14 Q All right.

15 A I'm sure it can be.

16 Q So like I say, I mean, I mean, you were there. It can be  
17 a tough place; right?

18 A Uh-huh. I said sure.

19 Q Okay. All right. So isn't it common when people are in  
20 a jail, particularly if they've never been arrested before,  
21 they kind of bolster what happened, kind of act tough, kind of  
22 build credibility, try to, you know, be intimidating, that  
23 kind of thing?

24 A Not, not I, not -- I mean, that was my first time in  
25 jail. I didn't go in jail and try to boost myself up like I

1 was ah, you know.

2 Q But I mean, it's, it's, it's your testimony does that  
3 never happen, does that never happen?

4 A I don't know.

5 Q You don't know?

6 A I don't know. I'm not in jail enough to know.

7 Q Okay. And you testified that, I think, according to you,  
8 that supposedly her and Roy Davis had had this ongoing  
9 relationship of some kind for I think you said over two, two  
10 years; right?

11 A Yeah. She had met him on the side of the road, picked  
12 him up.

13 Q Okay.

14 A Yeah.

15 Q Well, would it surprise you to learn they had not even  
16 lived in Horry County past 14 months?

17 A I'm just going by what Diane told me.

18 Q I understand.

19 A She said about two years, 14 months. That's almost -- I  
20 mean, that's a year and a half. So you're getting up to two  
21 years.

22 Q Okay.

23 MR. BOUCHETTE: No further questions for this witness,  
24 Judge.

25 THE COURT: All right. Redirect.



Lynndale Lewis - Direct by Mr. Richardson

571

1 MR. RICHARDSON: No, sir, Your Honor.

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

3 A Thank you.

4 MR. RICHARDSON: May she be released from her subpoena,  
5 please?

6 THE COURT: Any objection?

7 MR. ALEX HYMAN: No, Your Honor.

8 THE COURT: Any objection?

9 MR. BOUCHETTE: No objection.

10 THE COURT: She's free to go. All right. The State can  
11 call your next witness.

12 MR. RICHARDSON: Yes, sir, Your Honor. The State would  
13 call Lynndale Lewis.

14 Whereupon, Lynndale Lewis is called to the stand, duly  
15 sworn by the clerk and testified as follows:

16 THE CLERK: Please state your full name and spell your  
17 name for the Court.

18 MR. LEWIS: My name's Lynndale Lewis, L-Y-N-N-D-A-L-E, L-  
19 E-W-I-S.

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q Lewis, you've got to be from Horry County?

23 A Most definitely.

24 Q Where are you from?

25 A Loris.

1 Q All-right. Have you lived in Horry County your whole  
2 life?

3 A There and the edge of North Carolina, Tabor City.

4 Q Okay. You currently working?

5 A No, sir.

6 Q All right. How long you been without work?

7 A For not quite two months.

8 Q And when you were living here in Horry County, did there  
9 come a time that you got arrested back in July of 2016?

10 A Yes, sir.

11 Q Tell the jury a little bit about why you got arrested.  
12 What'd you get in trouble for?

13 A It was a -- I got arrested for a misdemeanor charge. I  
14 had a dispute with my aunt, and it was over she owed me some  
15 money and all for doing some work for her and she didn't ever  
16 pay me and I went and took it upon myself to, to, to take  
17 revenge on it and tear the stuff back down and I got in  
18 trouble for it and got put in jail, and they, they -- and with  
19 that they, they give me, because my wife was terminally sick  
20 at the time, they let me go and was giving me weekend time,  
21 and like I said, my wife was sick, and each weekend come up  
22 they were saying that she wasn't going to make it through it.  
23 So I didn't never do my weekend time, and they, they arrested  
24 me, was going to make me do my time or pay the fines to, to  
25 have the stuff rebuilt for her or, or so forth, so I got

Lynndale Lewis - Direct by Mr. Richardson

573

1 locked up for, I think I was there like a couple of weeks or  
2 so. I'm not exactly sure how long now, but I ended up paying  
3 my fines and, and getting out.

4 Q And that was in magistrate's court?

5 A Magistrate.

6 Q So, you know, this is General Sessions or, or felony type  
7 court. Did anybody from my office promise you anything, any  
8 hope of reward on that magistrate level offense that you were  
9 in jail on?

10 A No, sir.

11 Q All right. Did we tell you, you know, if you'll come in  
12 here and, and testify that we would call anybody or do  
13 anything or let you out of jail early, you get any reward from  
14 the State?

15 A No, sir. I did not.

16 Q About how many days did you stay in J. Reuben Long before  
17 they let you out after paying the fine?

18 A Like I said, it's been so long, my memory is not a  
19 hundred percent on it, but I think it was somewhere around 12  
20 to 14 days I think.

21 Q Okay. While you were in J. Reuben Long, did you meet or  
22 do you know Jim Rosenbaum or James Rosenbaum?

23 A Yes, sir.

24 Q Did you ever know James Rosenbaum before --

25 A No.

1 Q -- going to J. Reuben Long?

2 A No, sir. Never met him.

3 Q You ever heard of Roy Davis?

4 A No, sir.

5 Q All right. When you -- were you housed with Jim

6 Rosenbaum?

7 A Yes, sir. They -- from the very first day I think I was

8 housed with him for I think it was somewhere around four or

9 five days, something like that, about five days, I think.

10 Q All right. Now, you're in there on a misdemeanor,

11 tearing up something that you had put up, shed or

12 something.

13 A Yes, sir. A porch.

14 Q Did it surprise you that you could be housed with

15 somebody accused of murder?

16 A Well, the -- I knowed [sic] it. I'd been in jail before,

17 and I know that they don't, they don't regularly separate them

18 like that. So they -- it, it kind of bothered me that I was

19 laying beside him every night like that, but I know that the,

20 the jail didn't, didn't separate them.

21 Q Was anybody else in the room with you all?

22 A They was a couple of times they was a, like I said, it's

23 been so long it's hard for me to remember. I don't remember

24 the names of the other people, but I know that they was

25 another guy and they was a, a black guy that was also that

Lynndale Lewis - Direct by Mr. Richardson

575

1 they brought in there I think one time.

2 Q So you and -- what, what did you call -- did you call him  
3 Jim, James, Richard?

4 A Yeah. If I, if I remember it right it was either Jim or,  
5 or James. I think it was Jim though.

6 Q Okay. And you and him were in there together the whole  
7 time you were there, but then other people would kind of come  
8 and go?

9 A Yes, sir.

10 Q All right. Did Jim tell you anything about his charges?

11 A Yes, sir. He, he opened up to me and told me a good bit  
12 about them.

13 Q All right. When did he tell you this all started?

14 A It started the very first day we was, when we was there.

15 Q I know, but when did Jim tell you -- when did he start  
16 with what's got him in here on murder?

17 A They, like I said, the very first day we started talking  
18 about our charges together and what I was in there for and  
19 what he was in there, and the first day, like I said, it, it  
20 -- he was a little bit quieter but the second day it seems  
21 like when he really started opening up and started talking  
22 about everything that had happened and all.

23 Q Did he tell you anything about his medical history?

24 A Yes, sir. Well, he told -- what he'd told me that he'd  
25 -- he hadn't been long got out of a VA Hospital that he'd been

Lynndale Lewis - Direct by Mr. Richardson

576

1 in, I can't remember if he said for a couple of months or a  
2 few weeks, but he said he'd just got out.

3 Q All right. And did he tell you what happened when he got  
4 out of the VA?

5 A Yes, sir. He, he had told me a little bit. He'd said  
6 that he'd, he'd heard some news and all that had angered him  
7 and made him very jealous, that with -- very angry with, I  
8 think it was Mr. Roy.

9 Q Roy, so he was mad and jealous with Roy?

10 A Yeah.

11 Q About whatever news he had received while he was in the  
12 VA hospital?

13 A Yes, sir.

14 Q All right.

15 A Well, no, that he didn't receive the news till after he  
16 got out the hospital.

17 Q Okay. And then he got some news that made him jealous  
18 and angry?

19 A Yes, sir.

20 Q All right. Did he tell you -- now, I want you to be  
21 careful. Okay. Did he tell you what he did as a result of  
22 being angry or jealous of Roy?

23 A Yes, sir. He, he sure did. He had, he had told me that  
24 he'd basically was waiting for Roy to come over to his house,  
25 and he, he basically set down the road and waited for him to

Lynndale Lewis - Direct by Mr. Richardson

577

1 get there, and that, that he was going to pretty much roll up  
2 on him while he was in his house, and what he had told me that  
3 he rolled up into his driveway with his lights off and he got  
4 out his truck and grabbed his -- he, he was kind of proud that  
5 he had some kind of fighting gloves, and he said he grabbed  
6 his gloves and he went around the back of the house and come  
7 in the back door and had a ball bat. He said when he come in  
8 there he said Roy was already naked and he said that when he  
9 come in he said he, he commenced to beating the man.

10 Q When he said beating him, did he tell you with -- was  
11 that with his fist or with the bat?

12 A No. He went to beating him with the bat. He, he told  
13 me the, the very first blow he said he struck him across the  
14 head.

15 Q All right. Did he give you any information about how  
16 many times he hit him or --

17 A He didn't say how many times, but I mean, he, he was very  
18 detailed on when he was hitting the man what it, what it  
19 looked like and, and that sort of thing and the man's  
20 reactions and stuff when he'd hit him.

21 Q Was he surprised at how long -- well, did he -- I'm  
22 trying to be careful with this, too. Well, let me ask you any  
23 more details as to James beating Roy with the bat? Did he  
24 ever say he punched him with the gloves or anything like that?

25 A No. He never said anything about punching with the

Lynndale Lewis - Direct by Mr. Richardson -

578

1 gloves or anything like that. The only other thing that I can  
2 remember him being specific on is he said he had a air rifle  
3 and he'd talked about how that air rifle that they -- that,  
4 that style one is the type that they'd kill hogs and stuff  
5 like that with, and that he shot him. He told me he shot him  
6 several times with that air rifle, but he never mentioned  
7 anything with his hands or anything like that beating him.

8 Q Did you ever, at the beginning of this, did you ever --  
9 did you ask him for this information?

10 A No. They -- I actually said a time or two that I didn't  
11 really care to hear about it.

12 Q Did Richard -- excuse me, did Richard or James or Jim  
13 have any -- did you, did you get this from any discovery? Did  
14 he show you any photographs or any documents?

15 A No. He never showed me any type of documents or anything  
16 like that. If he had those he had them up under his mat or  
17 somewhere like that, but I never seen anything like that, but  
18 he was just talking to me straight out of his mouth, you know,  
19 just.

20 Q Do you recognize Jim, the man that you spent several days  
21 in jail with?

22 A Yes, sir.

23 Q Is he in court today?

24 A Yes, sir.

25 Q Could you point him out for us?



Lynndale Lewis - Direct by Mr. Richardson

579

- 1 A He's sitting right over here.
- 2 Q Okay. All right. Let me, and thank you. Let me ask you
- 3 about your record. You've had some, some problems before.
- 4 A Yes, sir. I've had quite a few misdemeanors. I, like I
- 5 said, I've been in jail before.
- 6 Q You ever spent any long time in jail?
- 7 A The longest time I spent was like 40 days in jail.
- 8 Q 48?
- 9 A 40.
- 10 Q 40, and you -- do you have anything pending now?
- 11 A They -- I do have a, a charge pending in North Carolina.
- 12 It's a misdemeanor charge. It's where me and my girl busted
- 13 up and she took out charges on me where we was arguing over
- 14 the phone. It was a communicating threats and trespassing.
- 15 Q Okay. Have you asked -- obviously, it ain't -- you
- 16 hadn't got nothing in our office?
- 17 A No, sir.
- 18 Q Have you asked us for any help? You asked me or anybody
- 19 to call North Carolina on your behalf?
- 20 A No, sir. I just -- I've just recently got those about a
- 21 year ago. So that wouldn't even --
- 22 Q Wouldn't have nothing to do with it?
- 23 A No, sir.
- 24 Q How about the thing with your aunt, did you reach out and
- 25 tell us, "Hey, will you help me with these charges against my

1 aunt?" Did, did you ask for or receive anything of benefit  
2 for --

3 A No, sir. I, I never asked for any kind of help on it  
4 because, like I said, they -- I reached out to you all  
5 because, like I said, I was very uncomfortable laying beside  
6 the guy because you don't never know what's in a man's head  
7 that's done that, and they, like I said, it, it was wrong, so.

8 Q All right. Back in 2004, Lynndale, did you have a, a  
9 breach of trust over \$1000?

10 A Yes, sir.

11 Q Did you -- did you have a receiving stolen goods under  
12 2000 in 2011?

13 A Yes, sir.

14 Q You pled guilty to that?

15 A Yes, sir.

16 Q Did you pay a fine?

17 A Yeah. I believe it was a fine.

18 Q All right. In 2011 did you have a forgery less than  
19 10,000?

20 A Yes, sir.

21 Q Put on probation for it?

22 A Yes, sir. I did.

23 Q 2012, no, well, looks like the court date is 2013, breach  
24 of trust less than 2000, a misdemeanor?

25 A Yes, sir.

Lynndale Lewis - Direct by Mr. Richardson

581

1 Q Did you have another misdemeanor, let's see, obtaining  
2 goods by signature or false signature or something less than  
3 2000?

4 A Yes. Yeah. Like false pretense. Yes, sir. I sure did.

5 Q Magistrate's court?

6 A Yes, sir.

7 Q Breach of trust in 2016? Doesn't show a disposition, but  
8 under 2000, magistrate court, do you remember anything about  
9 that?

10 A In 2016 a breach of trust?

11 Q Yes, sir. Well, it doesn't show a disposition, but --

12 A I think, it seems like I do, yes, sir. I'm sure if it's  
13 there they -- I mean, I take ownership of what's on my record,  
14 so, I mean.

15 Q Yeah. They didn't make it up, and then this thing that  
16 you were sitting in jail where they put you in there with Jim,  
17 was that a contempt of magistrate's court?

18 A I think it was.

19 Q Because the magistrate had told you to come in and serve  
20 so many days weekend time?

21 A Yes, sir.

22 Q And you just because of your wife did not finish out your  
23 jail time --

24 A That's --

25 Q -- or weekends?

- 1 A That's correct.
- 2 Q So they told you to come pull it all or pay a -- pay to
- 3 fix that shed?
- 4 A Yes, sir.
- 5 Q All right. Well, Lynndale, do you -- look here, the
- 6 North Carolina charge, harassing phone calls, a misdemeanor?
- 7 A Yes, sir.
- 8 Q And that's the one there against your girlfriend?
- 9 A Yes, sir.
- 10 Q And you got a court date set?
- 11 A Yes, sir, January the 8<sup>th</sup>.
- 12 Q January 8<sup>th</sup>. Okay.
- 13 MR. RICHARDSON: The Court's indulgence.
- 14 THE COURT: All right.
- 15 BY MR. RICHARDSON:
- 16 Q Lynndale, I keep saying you reached out to me with this,
- 17 but actually, do you remember a Detective Jernigan, Horry
- 18 County Police Detective Jernigan?
- 19 A It seems like that was the one I spoke to.
- 20 Q Was that July 25<sup>th</sup>, 2016, or do you remember?
- 21 A I don't remember the exact date. I know it was right in
- 22 that area somewhere.
- 23 Q They wrote it down as July 25<sup>th</sup>, 2016. Do you -- you
- 24 think that's right or --
- 25 A That -- yes, sir. That sounds, that sounds about the

Lynndale Lewis - Cross by Mr. Alex Hyman

583

1 right time, right date.

2 Q All right. I have no further questions, but I'd ask you  
3 to answer any questions that the Defense might have. Okay?

4 A I sure will.

5 THE COURT: All right. Mr. Bouchette, do you have any or  
6 you're going to let Mr. Hyman go after you?

7 MR. BOUCHETTE: No, no questions, Your Honor.

8 THE COURT: All right. Mr. Hyman.

9 CROSS EXAMINATION

10 BY MR. ALEX HYMAN:

11 Q Lynndale, you been honest today?

12 A Yes, sir.

13 Q You sure about that?

14 A Positive.

15 Q Positive. Put your hand on the Bible, said you were  
16 being honest today?

17 A That's what I said. Yes, sir.

18 Q What did you say you were in jail for?

19 A The -- which time?

20 Q Well, when you were in there talking with my client.

21 A They -- I think that time was when I had the trouble with  
22 my aunt.

23 Q You said it was trouble with your aunt. Do you remember  
24 how you got in touch with law enforcement?

25 A Yes, sir.

1 Q How'd you do that?

2 A They -- I put it on the what they call it's a kiosk in  
3 the jailhouse.

4 Q You sent an email?

5 A Yeah.

6 Q All right. And you said what, "I got to talk to you."

7 A I need to speak to them. Yes, sir.

8 Q You got to, got to, "I got to get out," I think that's  
9 what you said, "I got to get out"?

10 A I don't remember if that's exactly right. Like I said,  
11 it's been --

12 Q Well, I tell you what, that -- that thing is recorded.  
13 When you talked to Jernigan do you remember telling him, "I've  
14 got to get home. I've got to get home"?

15 A Well, if it was recorded then I probably did say it then.  
16 I mean, like I said, it has been a good while.

17 Q Do you remember telling Detective Jernigan, too, that you  
18 could help with other stuff like opiates, heroin, Fentanyl,  
19 that kind of stuff?

20 A Yes, sir.

21 Q Okay. Now, I believe you said that you spent a total of  
22 how many days?

23 A I, I think it was somewhere around two weeks or so. It's  
24 been a good while.

25 Q Would it, would it surprise you that the first thing that

Lynndale Lewis - Cross by Mr. Alex Hyman

585

1 came out of your mouth when you came up here was not the  
2 truth? You weren't in there for anything with your aunt? You  
3 remember what that breach of trust was about?

4 A Like I, like I said I been in trouble several times. I'm  
5 not very good with dates, that if you --

6 Q Well, what I've got written here --

7 MR. RICHARDSON: Your Honor, objection. I don't think he  
8 can get into the specifics, just the conviction.

9 THE COURT: Well, no, he testified he was in jail for  
10 something that happened with his aunt. So, I'm going to allow  
11 the cross-examination. Go ahead.

12 Q Do you remember being charged with running a fake raffle?

13 A Yes, sir.

14 Q Yep. And do you remember the fake raffle you were  
15 saying that you were raising money for your sick wife?

16 A We did do a raffle, wasn't no fake one, but yes, sir.

17 Q Well, why is it then that the church that was associated  
18 that the pastor said that he had nothing to do with it and  
19 neither did the church?

20 A He didn't have nothing to do with it.

21 Q Okay.

22 A They -- we, we had a raffle and we had a -- the steak  
23 dinner and all we had at the church.

24 Q When did you have the steak dinner?

25 A I don't remember the exact date.

1 Q Okay.

2 A I mean, we had the, the raffle and all at the same time.

3 Q Now, you had -- so you're saying there was a raffle?

4 A Yes, sir. We had a raffle.

5 Q Let me read this right here.

6 A We got a winner and all, too.

7 Q I'm going to read this to you. It says, "Upon arrival I  
8 met with victim one who stated that the suspect who he  
9 previously knew sold him two 50-50 raffle tickets for three  
10 dollars, one raffle ticket for five dollars with a drawing for  
11 each raffle to be held on April the 15<sup>th</sup>. He added that the  
12 suspect told him the raffle was being conducted by -- it was a  
13 Baptist church in Green Sea to benefit a woman who had been  
14 diagnosed with stage IV cancer. He stated there were other  
15 victims who had also purchased tickets located next door who  
16 had become suspicious after they found the other half of the  
17 tickets which were supposed to be drawn at the raffle on the  
18 ground. He said that they had contacted the church pastor who  
19 advised that the church was not conducting this raffle." It  
20 says, "I went next door and I located three additional victims  
21 who relayed to the suspect he sold them the same story.  
22 Victim two advised that he had purchased one raffle ticket for  
23 a shotgun for eight dollars. Victim three advised he had  
24 purchased two 50-50 raffle tickets for five dollars. Victim  
25 four advised that he had purchased one 50-50 raffle ticket for



Lynndale Lewis - Cross by Mr. Alex Hyman

587

1 three dollars and one raffle ticket for a shotgun." Looks  
2 like they found all of these on the ground. You were charged  
3 with obtaining property under false tokens. You're also  
4 charged with breach of trust. Now, is that why you were being  
5 held there?

6 A They -- if it was at that time then it could have been.

7 Q Well, it was that time.

8 A But --

9 Q So what you said earlier was wrong. Correct?

10 A Well, it was not of my knowledge because like I said I'm  
11 not good with dates. I don't -- I cannot remember dates good,  
12 but --

13 Q Well, you can remember notifying law enforcement that you  
14 had to talk to them, "I got to get out, I got to talk to you."

15 A Yeah. But my misdemeanors ain't what's on trial here  
16 today.

17 Q Your misdemeanors. Okay. Now, as far as that goes,  
18 let's also talk about that a little bit. Now, I've noticed  
19 that you've been able to get everything down to just about a  
20 misdemeanor. It looks like you kind of know how to work the  
21 system. Is that right?

22 A I know how to work the system, I've not worked nothing.

23 Q Yeah. You've been in the system quite a bit. Wouldn't  
24 you admit that?

25 A I've, I've had some trouble, yes, sir.

1 Q Had some trouble. Now, let me ask you something. Do you  
2 have a drug problem?

3 A I had in the past.

4 Q You don't right now?

5 A No, sir.

6 Q So if we brought somebody in here and said you had a drug  
7 problem they'd be wrong?

8 A Bring it, bring the test on. I'll piss it right now or  
9 whichever one you want.

10 Q Now, tell me this, when you got out of jail did you go  
11 home and take care of your wife?

12 A I did to start with.

13 Q You sure?

14 A Me, me and my wife we -- yeah, I did.

15 Q Okay.

16 A I went home, went straight home right there and it was  
17 several days later they brought hospice in and they -- I, I  
18 couldn't stay there with her like that because she was staying  
19 at her momma and daddy's.

20 Q Uh-huh.

21 A I took care for my wife almost a year.

22 Q Did -- but she was staying at her mom and dad's?

23 A Yeah. Me and her both was.

24 Q Okay. All right. Well, let's talk a little bit more  
25 about some of this other stuff. Now, as far as, as, as you

Lynndale Lewis - Cross by Mr. Alex Hyman

589

1 are concerned when you're in jail, I'll notice that the, the  
2 email you sent said that you had a pending warrant and two  
3 bench warrants. Now, you've been in the system enough to know  
4 that when you have a bench warrant for you it's tough to get  
5 out; right?

6 A Yeah.

7 Q All right. You need to call law enforcement to say, "I  
8 can give you something in order to get out"?

9 A No. You don't have to do that.

10 Q You don't have to do that?

11 A No. You don't.

12 Q Well, how did you get it then?

13 A You're trying to get, you're trying to get me to say  
14 something there that ain't true.

15 Q Well, then why were you trying to contact them?

16 A To tell what I knowed, exactly what I knew.

17 Q To tell what you knew. So all those times when you're on  
18 the recording where you said, "I got to get out. I got to get  
19 out. I'll tell you anything you need to know about this.  
20 I'll help you with opiates. I'll help you with heroin. I'll  
21 help you with Fentanyl"?

22 A Yeah.

23 Q Okay. You said that; correct?

24 A Yeah.

25 Q Okay. So you're not desperate to get out?

1 A Yeah. I was desperate to get out. My wife was fatally  
2 ill.

3 Q Okay. And again, you were so desperate to get out that  
4 you had to get in touch with them, you went on the kiosk to  
5 reach out to them and you did that within, what, ten days of  
6 this?

7 A Now, now that I don't remember.

8 Q Okay. Because you're not good with dates; right?

9 A I'm not good with times, sure not.

10 Q That's right. And you're not good with what seems like  
11 maybe telling the truth?

12 A That's -- no. That's not true either.

13 Q That's not. So you wouldn't say that creating a raffle  
14 that is fake would not be -- you're saying that would be  
15 truthful?

16 A It was not fake.

17 Q It was not fake?

18 A No. It was not.

19 Q So all those people were wrong? The pastor was wrong?

20 A Do you want the -- you want the lady's name that won the  
21 raffle, you can go ask her if she won or not?

22 Q Well, the -- I know the pastor's name is Chuck Graham?  
23 He's on the witness list.

24 A No. He's not the pastor.

25 Q Okay.

Lynndale Lewis - Cross by Mr. Alex Hyman

591

- 1 A The pastor's name is the -- he's a Watson boy, Neil  
2 Watson. Chuck Graham was a guy that went to our church.
- 3 Q Okay. Was Chuck one that bought a ticket?
- 4 A I think Chuck did buy some tickets.
- 5 Q Now, let me get back to this right here, and let's talk  
6 about the stuff with your aunt. Is that where you ended up  
7 trying to take the combine?
- 8 A Ain't no combine.
- 9 Q Never a time where you tried to take a combine from a  
10 family member?
- 11 A No. There wasn't no combine there for --
- 12 Q You're sure about that?
- 13 A I'm positive of that.
- 14 Q If we brought somebody in that said that?
- 15 A No. No. Me and, me and my father-in-law we had some  
16 trouble where I took some equipment and all.
- 17 Q Okay. So you stole from him?
- 18 A But they --
- 19 Q Did you steal from him?
- 20 A He didn't -- by -- I got charged with it. Yeah.
- 21 Q Okay. So you're not going to admit that you stole from  
22 him; is that right?
- 23 A I just said I got charged with it. I was convicted for  
24 it.
- 25 Q Okay.

1 A I, like I said, I took ownership of what all was in my  
2 record.

3 Q Okay. Well, my, my point is with this is you have a, a  
4 distinct, I mean, and I mean, a distinct pattern of  
5 dishonesty, theft, breach of trust, obtaining goods through  
6 false pretenses. Your past is littered with them, but you  
7 expect us to trust you today?

8 A I'm not here for, for you or anything. I'm for here  
9 because I was told what I would do. It bothered me enough I  
10 reached out to say something. Whether you believe me or  
11 anybody else is their choice.

12 Q I don't, but I'm telling you, the breach of trust that  
13 you were in there for, what happened to that?

14 A Which one?

15 Q The breach of trust that you were in there for that you  
16 forgot about.

17 A I ain't forgot about one.

18 Q The raffle, do you remember that one, the one we just  
19 talked about?

20 A Yeah.

21 Q All right. What happened to that after you talked to  
22 them?

23 A I don't remember what all had went on.

24 Q It was dismissed. Would you also admit that both bench  
25 warrants that you were let off of those? Yeah? You can say

Lynndale Lewis - Redirect by Mr. Richardson

593

1 it.

2 A I didn't go to them for help if that's what you trying to  
3 ask. I did not go to them asked them to help me on nothing.

4 Q When you go to them and say, "I got to get out. I'll do  
5 anything," that's asking for help.

6 A I didn't say I'd do anything.

7 Q You didn't say you'd help them?

8 A I -- no. I did not. I said I had some information.

9 Q You didn't tell them you'd help them with opiates and  
10 Fentanyl and heroin and all that?

11 A Yeah.

12 Q Yeah. You've already said you did.

13 A I, I, I sure, I sure did, but I didn't, I didn't ask for  
14 nothing in return.

15 Q When you're saying, "I got to get out," you're asking for  
16 something in return?

17 A That, that's your opinion on that.

18 MR. ALEX HYMAN: The Court's indulgence.

19 THE COURT: All right.

20 MR. ALEX HYMAN: No further questions, Your Honor.

21 THE COURT: All right. Redirect.

22 REDIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q Lynndale, do you have anything pending with our office  
25 now?

1 A No, sir.

2 Q Is there anything for you to gain by testifying here? Is  
3 there anything I can give you even if you don't ask for it?

4 A No, sir.

5 Q I have no further questions, Your Honor.

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

7 MR. RICHARDSON: Your Honor, may he be released from his  
8 subpoena.

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. He's free to go. All right. I  
14 think we're going to go ahead and break for the day. It's  
15 5:30. Ladies and gentlemen, we're going to go ahead and break  
16 for the day, allow you to go home. Please be back at 9:15  
17 tomorrow morning. Leave your notepads in the jury box. Do  
18 not take them with you. Now, as far as tomorrow, I've got to  
19 talk to the attorneys. I don't know what the schedule is. If  
20 you've got something to do later tomorrow evening you might  
21 want to go ahead and make arrangements. I don't know if we're  
22 going to be able to get this case in this week or not, but if  
23 there is a chance we can get it in by going a little bit later  
24 tomorrow that's what I want to do, but I don't know at this  
25 point in time. So please, if you've got to do something at



Lacey Miller - Direct by Mr. Helms

597

1 THE CLERK: Please state your name and spell your name  
2 for the Court.

3 MS. MILLER: Lacey Miller, M-I-L-L-E-R.

4 DIRECT EXAMINATION

5 BY MR. HELMS:

6 Q Ma'am, where do you work?

7 A For the 15th Circuit Solicitor's Office.

8 Q And how long you been there?

9 A Seven years.

10 Q And do you know me?

11 A I do.

12 Q How you know me?

13 A You work right outside my office.

14 Q What's your position at our office?

15 A I'm an administrative assistant.

16 Q I call you a paralegal; don't I?

17 A Uh-huh.

18 Q And as a paralegal or administrative assistant, what do  
19 your duties entail?

20 A I perform secretarial and paralegal duties for the two  
21 Solicitors I'm assigned to as well as assist the other  
22 attorneys on my team.

23 Q Like me?

24 A Yep. Like you.

25 Q Does our office keep records?

Lacey Miller - Direct by Mr. Helms

598

1 A Yes.

2 Q Can you tell me what kind of records we keep, generally  
3 speaking?

4 A We keep case reports, interviews, anything that would  
5 have to pertain to a case.

6 Q Defendants commonly call that stuff discovery?

7 A Yes.

8 Q The evidence in a case?

9 A Uh-huh.

10 Q We maintain those?

11 A Yes.

12 Q Do we maintain those records in the ordinary course of  
13 business?

14 A Yes.

15 Q And in our office are they kept in a manner by you and  
16 other paralegals and administrative assistants that cannot be  
17 tampered with?

18 A Yes.

19 MR. HELMS: The Court's indulgence, Judge.

20 THE COURT: All right.

21 BY MR. HELMS:

22 Q Ma'am, I'm going to show you what's been marked now --  
23 we'll start with the first one. It's State's Exhibit 110.  
24 Take a look at that and that's for identification purposes.  
25 Tell me after you look at those two pieces of paper if you

Lacey Miller - Direct by Mr. Helms

599

1 recognize what I just handed you.

2 A Yes.

3 Q What did I just hand you?

4 A This is the discovery sheet that we send to the Defense  
5 attorney that indicates everything that we've sent, a title  
6 for the document and how many pages.

7 Q When you say everything we sent you mean the evidence?

8 A Yes.

9 Q For what Defendant?

10 A This is for James Rosenbaum.

11 Q Okay. And now, I know during the course of a case,  
12 especially one as complicated as this, we send stuff along the  
13 way, but would that be the first time we sent anything to the  
14 Defense?

15 A Yes.

16 Q And that -- those are things of substance regarding the  
17 case?

18 A Yes.

19 Q Case reports?

20 A Uh-huh.

21 Q All that good stuff?

22 A Yes.

23 Q And is that document kept in the ordinary course of  
24 business?

25 A Yes.

Lacey Miller - Direct by Mr. Helms

600

1 Q Has that document right there that you're seeing been  
2 tampered with in any way?

3 A No.

4 MR. HELMS: Your Honor, at this time I would tender  
5 State's 110 into evidence.

6 THE COURT: Any objection?

7 MR. ALEX HYMAN: No, Your Honor.

8 MR. BOUCHETTE: No, Your Honor.

9 THE COURT: All right. State's Exhibit Number 110  
10 admitted into evidence without objection.

11 MR. HELMS: Thank you, Your Honor.

12 (State's Exhibit Number 110 [Discovery Sheet] introduced  
13 into evidence and appropriately marked.)

14 BY MR. HELMS:

15 Q Ms. Miller, I want you to do me a favor and I want you to  
16 tell me by looking at this document when discovery, and if you  
17 can, you may, may not be able to, but when discovery -- and  
18 well, what Defendant is that for?

19 A James Rosenbaum.

20 Q When was discovery for James Rosenbaum prepared?

21 A It was prepared September 14<sup>th</sup>, 2016.

22 Q And that was done by our office?

23 A Yes.

24 Q And when was that transmitted?

25 A That was mailed to the attorney on September 16<sup>th</sup>, 2016.

Lacey Miller - Direct by Mr. Helms

601

1 Q So it's not possible for the Defense -- the Defendant,  
2 the Defense attorney to have had, been in possession of  
3 discovery previous to that date?

4 A No, sir.

5 Q Wouldn't have had it in July; would they?

6 A No.

7 Q Of that year?

8 A No.

9 Q Okay. I'm now handing you what's been marked for  
10 identification as State's 111. Take a look at that one and  
11 tell me if you know what that is.

12 A Yes.

13 Q What is that one?

14 A This is the discovery sheet for Diane Durkin.

15 Q And is that pretty much the same thing as it was for  
16 James Rosenbaum?

17 A Yes.

18 Q And would that have been the first time we sent discovery  
19 to the Defense on Diane Durkin?

20 A Yes.

21 Q And I want you to -- well, first and foremost, is that  
22 kept in the ordinary course of business?

23 A Yes. It is.

24 Q Has it been tampered with?

25 A No.

Lacey Miller - Direct by Mr. Helms

602

1 MR. HELMS: Your Honor, I would tender State's 111.

2 THE COURT: Any objection?

3 MR. ALEX HYMAN: Your Honor, can we step forward just for  
4 a second?

5 THE COURT: All right.

6 (Whereupon, a bench conference is held in the presence  
7 but out of the hearing of the jury.)

8 MR. HELMS: Your Honor, at this time I would tender  
9 State's 111 into evidence.

10 THE COURT: All right. State's Exhibit 111 admitted into  
11 evidence over the Defendant's objection.

12 (State's Exhibit Number 111 [Discovery Sheet] introduced  
13 into evidence and appropriately marked.)

14 BY MR. HELMS:

15 Q All right. Ma'am, going back to State's 111, I'll let  
16 you hold both of those. Tell me what 111 is specifically  
17 again.

18 A This is the discovery sheet sent regarding Diane Durkin.

19 Q And looking at that document can you tell us when that  
20 was transmitted to the Defense?

21 A It was prepared September 14<sup>th</sup>. It was mailed to the  
22 Defense September 16<sup>th</sup>, 2016.

23 Q Who was that sent to?

24 A This one was sent to Johnny Gardner.

25 Q Mr. Gardner in the courtroom?

Lacey Miller - Direct by Mr. Helms

603

1 A Yes.

2 Q Is that what we do -- is that what you normally do, you  
3 send it to their assigned attorney?

4 A Yes.

5 Q Whether they're retained or appointed?

6 A Yes.

7 Q And then is -- to the best of your knowledge is the  
8 attorney free to transmit that at that time to the Defendant  
9 if he so wishes?

10 A Yes.

11 Q How do you send it?

12 A U.S. Postal Service, regular mail.

13 Q And again, you sent Ms. Durkin's the same day as -- Ms.  
14 Durkin's was sent the same day that Mr. Rosenbaum's discovery  
15 was sent?

16 A Yes.

17 Q So, again, it would not have been possible for Ms. Durkin  
18 to be in possession of her discovery prior to you sending it  
19 obviously?

20 A Yes.

21 Q So she wouldn't have had it in July of '16 either?

22 A No.

23 Q Please answer any questions the Defense may have, ma'am.

24 THE COURT: All right. Mr. Hyman.

25 CROSS EXAMINATION

1 BY MR. ALEX HYMAN:

2 Q Just a couple of questions, Lacey. The, the document to  
3 Mr. Rosenbaum, who is that addressed to?

4 A Attorney E. James Irvin.

5 Q Who?

6 A James Irvin.

7 Q Am I James Irvin?

8 A No. You are not.

9 Q Okay. Is Jim Irvin still with us?

10 A No. He's not.

11 Q Okay. The -- now as far as this goes, this is just  
12 something you send to the attorney. This isn't something you  
13 send, I think you said that you don't send it to Defendants?

14 A No.

15 Q But you would agree that when a Defendant is arrested and  
16 taken before a judge they are given a warrant?

17 A I really have no idea. I've never been arrested.

18 Q Okay. Have you ever been at a bond hearing?

19 A No. I have not.

20 Q Okay. The -- I have no further questions at this time.

21 THE COURT: All right. Mr. Bouchette.

22 MR. BOUCHETTE: Okay.

23 CROSS EXAMINATION

24 BY MR. BOUCHETTE:

25 Q Lacey, good morning.



Lacey Miller - Cross by Mr. Bouchette

605

- 1 A Good morning.
- 2 Q And you know me; right?
- 3 A I do.
- 4 Q We see each other a lot?
- 5 A Uh-huh.
- 6 Q Talk all the time?
- 7 A We do.
- 8 Q When I can't get in touch with Chris I talk to you;
- 9 right?
- 10 A A lot of times.
- 11 Q When I'm looking for something I talk to you?
- 12 A Yes, sir.
- 13 Q All right. Okay. Now, we've had a lot of discussion
- 14 here about the discovery and when discovery comes out. These
- 15 folks probably don't really understand that it's -- when we
- 16 refer to discovery you've compiled essentially the evidence
- 17 that you've got or that the State has gotten at that time and
- 18 you send it to Defense; right?
- 19 A Yes.
- 20 Q All right. But that's compiled -- that's once it comes
- 21 to your office; right?
- 22 A Yes.
- 23 Q In other words, when somebody's charged with a crime
- 24 they're arrested initially by law enforcement; correct?
- 25 A Yes.

1 Q All right. And then at some point when law enforcement  
2 makes the decision to arrest they forward that file and that  
3 evidence compiled to the Solicitor's Office; right?

4 A Yes.

5 Q And the Solicitor takes it from there and he starts to  
6 try to prosecute the case.

7 A Yes.

8 Q And that's when you start turning over evidence and  
9 things of that nature; right?

10 A Yes.

11 Q All right. Now, part of the documents that you routinely  
12 send to Defense would contain something called an arrest  
13 warrant; right?

14 A Yes.

15 Q Okay. And an arrest warrant is a document that basically  
16 sets forth the grounds for which a Defendant is being charged;  
17 right?

18 A Yes.

19 Q So an arrest warrant would have the basic information  
20 about, for example, who the decedent is in a murder trial --

21 A Yes.

22 Q -- or a decedent in a murder case? Who the parties are,  
23 in other words if there were other Codefendants; right?

24 A Yes.

25 Q Okay. And that document, the arrest warrant is typically

Lacey Miller - Cross by Mr. Bouchette

607

1 given by the arresting officer and served upon the Defendant  
2 at or around the time of arrest; correct?

3 A I'm not really sure how law enforcement serves their  
4 warrants.

5 Q Okay. Well, I'm not asking you necessarily how they go  
6 about their service, but they do it at the time of arrest,  
7 right, because it's an arrest warrant or shortly thereafter?

8 A I don't know how the Defendant would get a copy of the  
9 warrant. I'm --

10 Q Okay. Well, I'm just saying do -- let me ask it to you  
11 this way, by the time you get the file the arrest warrant has  
12 already been signed and delivered; correct, it's already been,  
13 I mean, that's you wouldn't have a file for a case if somebody  
14 hadn't been issued an arrest warrant; right?

15 A Correct.

16 Q Okay.

17 MR. BOUCHETTE: And Your Honor, can I gather Defendant's  
18 -- Defendant Durkin's One for ID purposes?

19 THE COURT: All right.

20 MR. BOUCHETTE: Okay.

21 BY MR. BOUCHETTE:

22 Q And you're, and you're familiar with the discovery in the  
23 file and all in this case; right?

24 A Yes.

25 Q Okay. I'm going to show you what's been pre-marked as

1 Defendant's Number One for ID purposes. Do you recognize  
2 that?

3 A Yes. It's the arrest warrant for Diane Durkin.

4 Q Okay. And does that arrest warrant set forth the  
5 allegations against Diane? I know it's not in great detail,  
6 but are there several sentences there or a paragraph about  
7 what the allegations are?

8 A Yes.

9 Q Okay. And let me take a look at that real quick. All  
10 right. It identifies the victim as Roy Davis?

11 A Yes.

12 Q Right? It identifies James Rosenbaum as the Codefendant?

13 A Yes.

14 Q Okay. Has the date on when the alleged incident  
15 occurred; right?

16 A Yes.

17 Q Okay. There's a reference there to a bat; is it not?

18 A Yes.

19 Q Okay. That that's and obviously the charge is listed as  
20 murder; correct?

21 A Yes.

22 Q Okay. And if you look here on the bottom there's a date  
23 here where it says that it was signed and served upon the  
24 Defendant. What is that date?

25 A July 12<sup>th</sup>, 2016.

Lacey Miller - Cross by Mr. Bouchette

609

1 Q Okay. So you had not sent out the full packet of  
2 discovery at that point, but your document or that document  
3 shows that that arrest warrant containing the nature of the  
4 allegations and the Codefendant and the victim was, in fact,  
5 served upon both Diane and Richard Rosenbaum basically the day  
6 after they were arrested; right? That's what that shows?

7 A It is dated July 12<sup>th</sup>, 2016.

8 Q Okay.

9 MR. BOUCHETTE: Your Honor, at this time I would move to  
10 submit Defendant Durkin's Exhibit One into evidence.

11 THE COURT: Any objection?

12 MR. ALEX HYMAN: No, Your Honor.

13 THE COURT: Any objection from the State?

14 MR. HELMS: No objection, Your Honor.

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

17 (Defendant Durkin Exhibit Number One [Arrest Warrant]  
18 admitted into evidence and appropriately marked.)

19 MR. BOUCHETTE: And may I publish to the jury?

20 THE COURT: All right.

21 BY MR. BOUCHETTE:

22 Q Lacey, just briefly, if, if you know, and I imagine  
23 working at the Solicitor's Office and compiling these  
24 documents and doing things of that nature are you familiar  
25 with a bond hearing at all? Do you know what a bond hearing

1 is?

2 A I know what a bond hearing is. I don't attend them  
3 usually.

4 Q Usually. You've been to them before; right, at some  
5 point?

6 A When they've happened in plea court, but --

7 Q Okay. You've been to a bond hearing. So what is a, what  
8 is a bond hearing generally because these folks probably don't  
9 know?

10 A They go before the judge asking for a bond to try and get  
11 released from jail.

12 Q Okay. So, for example, if somebody -- when somebody gets  
13 arrested they have a little courtroom out at the jailhouse;  
14 right?

15 A I've never attended a bond hearing at the jail.

16 Q I understand, but is, is there a room where they conduct  
17 bond hearings at the jail, at J. Reuben Long?

18 A I assume, but like I said, I've never been to the jail  
19 for a bond hearing.

20 Q Okay. I understand. In the course of duties do you know  
21 if they have a, a magistrate's office or a bond court at the  
22 jail?

23 A There is a magistrate's office at the jail, yes, and they  
24 do hold bond court there.

25 Q Okay. So when they hold bond court at the magistrate's

Lacey Miller - Cross by Mr. Bouchette

611

1 office located in the jail that is where somebody is seeking  
2 to have bond set so they may be released pending the outcome  
3 of their case; correct?

4 A Yes.

5 Q That's what that is? All right. And so the nature of  
6 how that process goes is at some point the Prosecution lays  
7 out the allegations against the Defendants; right?

8 A Yes.

9 Q They lay out the allegations and they say, "Judge, we  
10 want no bond or we want a high bond," or whatever the State's  
11 position may be; right?

12 A Yes.

13 Q And that's done in open court; right?

14 A Yes.

15 Q And they usually bring about several folks at one time.  
16 They don't have just one person doing a bond hearing; right?

17 A During plea court that's the way it is. I don't know  
18 about the jail.

19 Q Okay. Well, they would have, generally speaking, whoever  
20 may have been arrested in that time period between bond court  
21 at 9:00 o'clock and bond court at 2:00 o'clock they all come  
22 in and they conduct bond hearings in the same timeframe;  
23 right? Isn't that how they do that?

24 A I've never been to the jail for a bond hearing.

25 Q Okay. Well, if you don't know you don't know. You're

1 not aware of how bond court's conducted?

2 A No. I'm not.

3 Q Okay. All right.

4 MR. BOUCHETTE: Your Honor, I know the Solicitor and I  
5 said we were going to ask Ms. Lacey about a number of topics  
6 here today while we got her on the stand and while we got her  
7 under oath, but I think I'm going to stop my questioning right  
8 now and let her, let her get off the stand.

9 THE COURT: All right. Thank you. Redirect?

10 MR. HELMS: Yes, sir, very briefly.

11 Madam Juror, can I borrow that from you for one minute.  
12 I'll give it right back. I promise, ma'am.

13 REDIRECT EXAMINATION

14 BY MR. HELMS:

15 Q Lacey, very briefly, this is Defense Exhibit One. They  
16 just entered it into evidence.

17 A Uh-huh.

18 Q I want you to look closely at that narrative, and I'm  
19 going to give it back to the jury after you read that  
20 narrative. Tell me when you're done.

21 A Okay.

22 Q First let me ask you this, who is Jim Irvin?

23 A He was the original Defense attorney for Mr. Rosenbaum.

24 Q Is that why we sent discovery to Jim Irvin?

25 A Yes.



Lacey Miller - Redirect by Mr. Helms

613

1 Q And are you aware of what happened to Mr. Irvin?

2 A He passed away.

3 Q Okay. In that narrative right there does it say anything  
4 about boxing gloves?

5 A No. It does not.

6 Q In that narrative in that warrant does it say anything  
7 about a pellet gun?

8 A No. It does not.

9 Q In that narrative you just read does it say anything  
10 about James Rosenbaum waiting on Roy Davis at his house?

11 A No. It does not.

12 Q And Lacey, in that narrative right there does it say  
13 anything -- you were in here for Lynndale Lewis, Bridgett  
14 Briles' testimony?

15 A Yes.

16 MR. ALEX HYMAN: Your Honor, I'm going to object. The  
17 warrant is Ms. Durkin's. She's referring to Mr. Rosenbaum.  
18 He's asking questions about Rosenbaum, but it's Ms. Durkin's  
19 warrant. Of course it's not going to have.

20 THE COURT: What's the relevancy?

21 MR. HELMS: The relevancy, Your Honor, the, the witnesses  
22 that testified before gave great detail.

23 THE COURT: Yeah, but I mean, you're talking about Ms.  
24 Durkin's warrant.

25 MR. HELMS: I'll withdraw that as, as to Mr. Rosenbaum.

1 I apologize, Your Honor.

2 THE COURT: All right. Sustained.

3 BY MR. HELMS:

4 Q As to Ms. Durkin's warrant right there that's been  
5 entered into evidence, does it say anything about her stating  
6 she delivered the kill shot?

7 A No. It does not.

8 Q Thank you, Lacey. No further questions.

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

10 MR. HELMS: Oh, she's going to stay, but may she be  
11 released from her subpoena, Judge?

12 THE COURT: Any objection?

13 MR. ALEX HYMAN: No objection.

14 THE COURT: Any objection?

15 MR. BOUCHETTE: No, Your Honor.

16 THE COURT: All right. She's released from her subpoena.  
17 All right. The State can call your next witness.

18 MR. HELMS: Your Honor, oh, I'm sorry, madam. At this  
19 time we'd call Randy Hucks, Your Honor.

20 THE COURT: All right.

21 Whereupon, Randy Hucks is called to the stand, duly sworn  
22 by the clerk and testified as follows:

23 THE CLERK: Please state your name and spell your name  
24 for the record.

25 MR. HUCKS: Spell it? Randy Hucks, R-A-N-D-Y, H-U-C-K-S.

Randy Hucks - Direct by Mr. Helms

615

1 DIRECT EXAMINATION

2 BY MR. HELMS:

3 Q Mr. Hucks, in the words of my boss, you must be from  
4 Horry County. Are you?

5 A Yes, sir.

6 Q Where you from specifically?

7 A Out Jordanville Community, Highway 378.

8 Q And where do you, where do you work, sir?

9 A I now work for ASAP Construction.

10 Q Have you always worked for ASAP?

11 A And I farm.

12 Q A farm?

13 A Yeah.

14 Q Have you always pretty much done that?

15 A Pretty much farmed most of my life.

16 Q In Horry County?

17 A Yes, sir.

18 Q And, and where do you live? Whereabouts do you live?

19 A On Ford Taylor Road, [REDACTED] Ford Taylor Road.

20 Q I actually went out there to see you; didn't I?

21 A Yes, sir.

22 Q I went out there with Mr. Richardson and my investigator,  
23 Mr. Steve Brown; didn't I?

24 A Yes, sir.

25 Q And you spoke to us out in the soybean field?

1 A Yes, sir.

2 Q Do you have any farm property in Horry County?

3 A Yes, sir.

4 Q And is it on Ford Taylor?

5 A In the area, yeah.

6 REPORTER: Can he slip up to that mike a little bit?

7 THE COURT: Yes. Please speak into the microphone.

8 Thank you.

9 Q And how long have you owned that property, Mr. Hucks?

10 A It's been in our family 50 years probably.

11 Q Do you have people that work for you on the farm?

12 A Yes, sir.

13 Q Doing what kind of work?

14 A We did work tobacco. Now it's just beans and corn.

15 Q And who was working for you back in July of 2016?

16 A Had a lot of people, but Roy Davis did work for me.

17 Q How long did Roy work for you?

18 A Probably worked for me four or five years, worked for my  
19 cousin several years before that.

20 Q Okay. For the jury, describe Roy for us. Tell us about  
21 Roy, what you know about him, what you remember.

22 A He hard worker, I mean, he was a good fellow, willing to  
23 do most anything, liked to joke a lot and pick, just simple  
24 average guy.

25 Q Where did Roy live while he worked for you?

Randy Hucks - Direct by Mr. Helms

617

1 A He lived on the farm there I had on Bottle Branch Road.

2 Then he moved over off of Ford Taylor Road.

3 Q Did he have a car?

4 A No, sir.

5 Q How'd he get around?

6 A Bicycle, moped, my tractor, you know, to the store or  
7 something like that.

8 Q He drove the tractor to the store?

9 A Oh, yeah.

10 Q You know you in the country. Let me ask you this, do you  
11 remember the last day Roy worked for you?

12 A I don't know the date specific, but yes, sir.

13 Q How do you remember that day?

14 A We were working there behind my house, and Roy was, and I  
15 was running some errands, and he was just cleaning up, doing  
16 some stuff around behind the house, and Ms. Diane came over  
17 and pulled up in the yard as I was sitting in the truck fixing  
18 to leave and she asked me if Roy was around, and I said,  
19 "Yeah. He's back there working," and she asked if she could  
20 speak with him and I said, no, you know, he's working. You  
21 have to get with him later, and in the process of me telling  
22 her that, we talked about she used to work with horses of some  
23 sort, asked me if I needed any help with that, and I told her,  
24 no, we didn't really train, we just pleasure ride, and I don't  
25 know, just a short brief conversation about horses and stuff,

1 and in the process of that conversation Roy left from the back  
2 of the field and was coming out and as he came out and hit the  
3 road and started to where his new house was, which was right  
4 down the road from me, and she backed out and left and got in  
5 behind him and followed him, and so I was going the same  
6 direction and they pulled up to his residence, her following  
7 him.

8 Q And shortly after that did they leave?

9 A Yep.

10 Q Okay. Had, had you -- well, let me ask you this, can you  
11 identify that person that came to pick up Roy, point her out  
12 in this courtroom?

13 A That looks like Ms. Diane sitting over here.

14 Q Okay. Had you ever seen Ms. Diane before that day?

15 A I had seen her over at my farm a couple of times or so,  
16 not many, but she had been over there to see Roy a time or two  
17 at the farm.

18 Q So -- well, let me ask you this, that, that time you're  
19 talking about that she came and picked him up and followed him  
20 on the tractor, was that the last time you ever saw Roy?

21 A Uh-huh.

22 THE COURT: I need you to give a verbal -- in other words  
23 --

24 A Yes. Yes, sir.

25 THE COURT: -- the court reporter can't --

Randy Hucks - Direct by Mr. Helms

619

1 A Yes, sir. I'm sorry.

2 THE COURT: That's fine.

3 Q But that definitely wasn't the first time you ever saw  
4 her come and, and hook up with or get with Roy?

5 A No. I had seen her a couple of times or so. I don't  
6 remember exact number.

7 Q Okay. Do you remember how she was acting that day?

8 A That day she was, I don't know, just real talkative and  
9 just fidgety and, I mean, that might have been her demeanor  
10 because I don't know her that well, but I mean, she was just  
11 real --

12 Q Based on your knowledge do you know the nature of their  
13 relationship?

14 A Well, me and Roy had talked about it and, I mean, he told  
15 me that they were more than just friends to put it in a polite  
16 way.

17 Q What time of day was it that she came and got him that  
18 last time you saw Roy? Was it early in the morning?

19 A No. It was -- I don't know. That's been two years.  
20 Seem like it was after lunch if I'm not mistaken sometime,  
21 over in the afternoon.

22 Q Do you remember if it was daylight or dark?

23 A Oh, it was, it was daylight.

24 Q Okay. And that was back in, in the summer. So it would  
25 have been daylight, later in the day?

1 A Yeah. Yes, sir.

2 Q I'm going to show you what's been marked or entered into  
3 evidence somewhere as State's Nine. Can you point out on this  
4 map where that was that she came and, where she came and  
5 picked him up from?

6 A Hampton Road, Bottle Branch, yeah.

7 Q Is that it right there that little red dot?

8 A Yep. That's where I live.

9 Q Okay.

10 A He was working back here.

11 Q And Roy lived on the ranch, on the farm?

12 A Not at the time that this took place.

13 Q Do you know where he lived at this time?

14 A Right here off of Ida Lane.

15 Q So just down the road?

16 A Right here. Yep.

17 Q Okay. Okay. Had you ever had any conversations -- you  
18 -- what you told Roy did you ever tell him anything about his  
19 extracurricular activities?

20 A Well, you know, you spend a lot of time with people and  
21 Roy was a lady's man, just have to put it where it is.

22 Q Right.

23 A He loved women. He was nothing about him gay if you  
24 would say that to the form and he, you know, I asked him about  
25 this lady because she'd been up there a time or two and it's



Randy Hucks - Direct by Mr. Helms

621

1 my place and I was curious and he told me they were --

2 MR. BOUCHETTE: Your Honor, I'm going to have to object  
3 on hearsay grounds.

4 THE COURT: Sustained.

5 Q Don't tell me what Roy told you. You just tell us what  
6 you told Roy. How about that?

7 A Okay. So I told -- I knew she had a friend, husband,  
8 whatever because we had had the discussion. I told him, I  
9 said, "Roy", I said, "You know, you need to be careful, can  
10 get yourself in trouble with that," and he -- so that's what I  
11 told him.

12 Q To the best of your knowledge did Roy heed your warning?

13 A Well, like I said, Roy likes -- he liked women, and he  
14 was a little bit hardheaded. So he kind of did what he wanted  
15 to do. So, no.

16 Q You said Roy drove your tractor?

17 A Yes, sir.

18 Q Did he take care of your tractor?

19 A Oh, yeah.

20 Q Did he ever leave it anywhere it wasn't supposed to be?

21 A No. If, if he drove it during the day or something while  
22 he was working because he didn't have a license and he could  
23 drive it to the store he'd always get it back to the farm or  
24 to the house and, you know, where it should be.

25 Q Was it supposed to be at his place at the end of the day?

1 A No, sir.

2 Q Did he ever leave it at his place at the end of the day?

3 A This day he did.

4 Q Was this the only time he ever did that?

5 A Yes, sir.

6 Q Please answer any questions that the Defense may have,  
7 sir.

8 THE COURT: All right. Mr. Hyman.

9 MR. ALEX HYMAN: Your Honor, just, just a couple.

10 CROSS EXAMINATION

11 BY MR. ALEX HYMAN:

12 Q Mr. Hucks, I, I don't know if we've ever met, but we  
13 probably should have. I think you and I might be cousins.

14 A Oh, Lord, you look like a Hyman.

15 Q Well, that's right. The, the new piece of property you  
16 had before Taylor that -- was that Uncle Henry's?

17 A Yes, sir.

18 Q Okay. As far as, as your interactions go, you said that  
19 Roy was kind of hardheaded and he liked the ladies and that  
20 kind of stuff. Did you know of any other times Roy, you know,  
21 maybe that had got him in trouble or anything like that?

22 Remember him getting in any other fights or anything like  
23 that?

24 A I -- not that I know of, but I mean I, you know, he, he  
25 liked the ladies. It could have been possible, but I can't

Randy Hucks - Cross by Mr. Bouchette

623

1 answer that --

2 Q Got you.

3 A -- truthfully.

4 Q Now, my client, Mr. Rosenbaum --

5 A Yes, sir.

6 Q -- you're not testifying that he was there that day or  
7 anything like that?

8 A No, sir. To my knowledge I've never seen this gentleman.

9 Q All right.

10 MR. ALEX HYMAN: The Court's indulgence. No further  
11 questions at this time, Your Honor.

12 THE COURT: All right. Mr. Bouchette.

13 MR. BOUCHETTE: The Court's indulgence, Judge.

14 CROSS EXAMINATION

15 BY MR. BOUCHETTE:

16 Q Mr. Hucks, just a couple of questions. You said Roy  
17 liked the ladies; right?

18 A Yes, sir.

19 Q So did he have a lot of girlfriends?

20 A Well, I mean, I don't know, but I mean, he, you know, I'm  
21 sure he did, ladies guy.

22 Q He was a, he was a sexual guy; right?

23 A Well, I don't know about sexual, but he liked the women.

24 Q Okay. Well, okay, but you said he was hardheaded. Now,  
25 tell us -- when you say hardheaded, you mean once he gets

1 something in his mind about what he wants to do kind of tough  
2 to get him to stop it; right?

3 A Well, I won't say that, but I mean, he just if he --

4 Q If he wants something?

5 A He's like us if he, you know, wants to try something or  
6 whatever he does, but as far as me saying physically taking  
7 something, no, I can't say that.

8 Q Well, when you say hardheaded you mean if he, if he wants  
9 something he goes for it; right? Is that what you mean?

10 A We're all that.

11 Q Yeah. I understand. What about -- let me ask you this,  
12 you've been here this -- for -- first time you spoke with or  
13 actually let me withdraw that question. Give me just a  
14 moment. You first spoke with police what was it two years  
15 ago; right?

16 A Probably something.

17 Q A while back?

18 A Whenever it happened, yeah.

19 Q It's, it's been a while?

20 A Yes, sir.

21 Q All right. And these folks had already been arrested and  
22 charged by the time somebody came and spoke with you; right?

23 A That I don't know because I -- I mean, I weren't -- I  
24 don't really know that answer.

25 Q Okay. All right. Well, is your memory, is your memory

Randy Hucks - Cross by Mr. Bouchette

625

1 clearer now?

2 A What you mean clear?

3 Q Do you recall, do you recall these incidences clearly?

4 A Yes, sir.

5 Q The only reason I'm asking it's been a long time.

6 A Yes, sir.

7 Q Do you drink? Do you consume alcohol?

8 MR. HELMS: Objection, Your Honor. Relevance.

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

10 Q Do you consume any alcohol, Mr. Hucks?

11 A I may go out on the weekend and have a drink when I eat.

12 Q I understand.

13 A Yes, sir.

14 Q Okay.

15 A I don't drink every day or nothing like that, no, sir.

16 Q Okay. Don't you drink frequently during the week?

17 A Do I drink frequently?

18 Q Yeah.

19 A No, sir.

20 Q Not, not at all? Okay. All right. Mr. Hucks, do you  
21 recall when you spoke to law enforcement telling them that Roy  
22 had a phone?

23 A Yes, sir.

24 Q Okay. And you gave them Roy's phone number; right?

25 A Yes, sir.

1 MR. BOUCHETTE: No further questions of this witness.

2 THE COURT: All right. Redirect?

3 REDIRECT EXAMINATION

4 BY MR. HELMS:

5 Q With regards to that phone, Mr. Hucks, did you ever find  
6 that phone after Roy went missing?

7 A No, sir.

8 Q Okay.

9 MR. HELMS: Nothing further, Your Honor.

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

11 MR. HELMS: Judge, may Mr. Hucks be excused?

12 THE COURT: Any objection?

13 MR. ALEX HYMAN: No objection, Your Honor.

14 THE COURT: Any objection?

15 MR. BOUCHETTE: Not at all, Judge.

16 THE COURT: He's free to go. Thank you.

17 All right. The State can call your next witness.

18 MR. HELMS: Yes, sir, Your Honor. At this time we'd call

19 Mr. Victor Singh.

20 THE COURT: All right.

21 Whereupon, Manget Singh is called to the stand, duly  
22 sworn by the clerk and testified as follows:

23 MR. SINGH: Good morning, sir.

24 THE CLERK: Please state your name, please state your  
25 name and spell your name for the record.

Manget Singh - Direct by Mr. Helms

627

1 MR. SINGH: My name is Manget Singh, M-A-N-G-E-T or short  
2 name is Victor.

3 DIRECT EXAMINATION

4 BY MR. HELMS:

5 Q Victor.

6 A Uh-huh.

7 Q That's, that's how I know you.

8 A Okay.

9 Q Mr. Singh --

10 THE COURT: Could you spell your, spell your name?

11 A Victor or M-A-N-G-E-T. That's my real name.

12 Q M-E-N-G?

13 A M, A, like apple, M-A-N like Nancy, G like George, E like  
14 Edward, T.

15 Q And how do you spell your last name?

16 A S-I-N-G-H.

17 THE COURT: All right. Thank you.

18 A My nickname is Victor.

19 Q Okay. Thank you, Victor.

20 A Yes, sir.

21 Q Mr. Singh, where do you work, sir?

22 A Highway 378 store Money Saver.

23 Q The Money Saver on Highway 378?

24 A Yes, sir.

25 Q And how long have you worked there?

- 1 A About eight years.
- 2 Q And you say it's on 378?
- 3 A Yes, sir.
- 4 Q If I showed you a map could you point it out, you think?
- 5 A Sure.
- 6 MR. HELMS: This is State's Nine, Your Honor.
- 7 THE COURT: All right.
- 8 BY MR. HELMS:
- 9 Q Could you point it out? This is Highway 378 over here.
- 10 A Yeah.
- 11 Q Is it over, over here? You think that's it?
- 12 A By 134. Yeah, 4062, yeah.
- 13 Q That's, that's your store right there?
- 14 A Yeah. Yes, sir. Yeah.
- 15 Q Okay. Mr. Singh, does, does your store have video
- 16 surveillance?
- 17 A Yes, sir.
- 18 Q And would you recognize a video from your store?
- 19 A Sure.
- 20 Q I'm showing you now what's been marked for identification
- 21 as State's Exhibit 112. Do you see that disc?
- 22 A Yes, sir.
- 23 Q Do you know what that disc is?
- 24 A Yeah. That's --
- 25 Q What's on that disc?



Manget Singh - Direct by Mr. Helms

629

1 A One I -- that's my store movies, whatever recording and  
2 any like customer came in, out, going out, everything  
3 recording.

4 Q Okay. And did you provide this to, to law enforcement?

5 A Yes, sir. Yes, sir.

6 Q And this is the same disc you provided?

7 A Yes. That same one.

8 Q Okay. Has it been tampered with or messed with in any  
9 way?

10 A No, sir.

11 MR. HELMS: Your Honor, at this time I would tender  
12 State's 112 into evidence.

13 MR. BOUCHETTE: Your Honor, may we approach?

14 THE COURT: All right.

15 (Whereupon, a bench conference is held in the presence,  
16 but out of the hearing of the jury.)

17 THE COURT: All right. Ladies and gentlemen, we've got a  
18 matter of law we need to take up outside the presence of the  
19 jury. Leave your notepads in the jury box. I'll excuse you  
20 to the jury room. Do not discuss the case. Thank you.

21 (Whereupon, the following takes place outside the  
22 presence of the jury.)

23 THE COURT: All right. Mr. Bouchette, what's your  
24 objection to State's Exhibit 112?

25 MR. BOUCHETTE: Well, Your Honor, at this point my

1 (State's Exhibit Number 112 [DVD - Store Video] admitted  
2 into evidence and appropriately marked.)

3 THE COURT: All right. Mr. Helms, you can continue.

4 MR. HELMS: Thank you, Your Honor. Your Honor, at this  
5 time I would seek permission to publish to the jury State's  
6 112.

7 THE COURT: All right. Go ahead.

8 (State's Exhibit Number 112 played in open court.)

9 BY MR. HELMS:

10 Q Mr. Singh, you saw that video?

11 A Yes, sir.

12 Q You saw the woman on the video?

13 A Yeah.

14 Q Did you see the woman go to the ATM?

15 A Yeah.

16 Q Did you see her talk on the telephone?

17 A I did --

18 Q You don't know. Okay. Had you ever seen that woman  
19 before?

20 A She -- yes.

21 Q How, how -- when have you seen her before?

22 A She always came in the store to use the ATM.

23 Q Did you see that woman come in your store and purchase  
24 anything on that video? Did she buy anything?

25 A No. Only ATM. She always came to use the ATM. That's

Manget Singh - Direct by Mr. Helms

636

1 it.

2 Q Do you see that woman in this courtroom today?

3 A No.

4 Q No. Okay. Did you know Roy Davis, Mr. Singh? Did you  
5 know Roy Davis?

6 A No. I don't know.

7 Q You didn't know him? Okay. Please answer any questions  
8 the Defense may have.

9 THE COURT: All right. Mr. Hyman.

10 MR. ALEX HYMAN: None from me.

11 THE COURT: All right.

12 MR. BOUCHETTE: Your Honor, I don't have any questions  
13 for this witness.

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

15 A All right. Thank you.

16 THE COURT: Thank you.

17 A You're welcome.

18 MR. ALEX HYMAN: Your Honor, no objection to him being  
19 released.

20 MR. BOUCHETTE: No objection.

21 THE COURT: All right. He's free to go.

22 MR. HELMS: Thank you, Judge.

23 A You're welcome.

24 MR. HELMS: Thank you, Mr. Singh.

25 A You're welcome.

Paul Ridgley - Direct by Mr. Richardson

637

1 THE COURT: All right. The State -- let me see the  
2 attorneys.

3 (Whereupon, a bench conference is held in the presence,  
4 but out of the hearing of the jury.)

5 THE COURT: All right. The State can call your next  
6 witness.

7 MR. RICHARDSON: The State calls Paul Ridgley.

8 THE COURT: All right.

9 Whereupon, Paul Allen Ridgley is called to the stand,  
10 duly sworn by the clerk and testified as follows:

11 THE CLERK: State your full name and spell your last  
12 name.

13 MR. RIDGLEY: Paul Allen Ridgley, R-I-D-G-L-E-Y.

14 THE COURT: How do you spell Allen?

15 MR. RIDGLEY: A-L-L-E-N.

16 THE COURT: All right. Thank you. All right, sir.

17 DIRECT EXAMINATION

18 BY MR. RICHARDSON:

19 Q Paul.

20 A Sir.

21 Q Please tell the jury where you're from.

22 A I'm originally from Maryland.

23 Q How long you lived in Horry County?

24 A About 16 years.

25 Q 16 years, in what part of the county?

Paul Ridgley - Direct by Mr. Richardson

638

- 1 A I'm on Highway 134.
- 2 Q Where's that? Is that around Conway or --
- 3 A Cates Bay and 134.
- 4 Q Yes, sir. Yes, sir. Are you friends with Jim Rosenbaum?
- 5 A Yes.
- 6 Q How do you refer to him, James or Jim?
- 7 A Jimmy.
- 8 Q Jimmy, okay. How long have you been friends with Mr.
- 9 Rosenbaum?
- 10 A I would say probably about a year.
- 11 Q Yes, sir. Where'd you meet him?
- 12 A Dick's Pawn Shop on 501.
- 13 Q Through Jimmy did you meet Diane Durkin?
- 14 A Yes, sir.
- 15 Q All right. Have you ever been over to their house?
- 16 A Yes, sir.
- 17 Q You ever eat over there with them?
- 18 A Once or twice, yes.
- 19 Q All right. They ever been to your house?
- 20 A Yes, once or twice.
- 21 Q You all ever go out to restaurants or whatnot?
- 22 A No, sir.
- 23 Q So when it's -- you've been to his house more than once
- 24 or twice, but as far as eating or dinner you've had dinner
- 25 with him once or twice at his house?

- 1 A Yes, sir.
- 2 Q Once or twice at your house?
- 3 A Yes, sir.
- 4 Q You married, Paul?
- 5 A No.
- 6 Q When you go over there do you go by yourself?
- 7 A No. My son was with me one time, and then I went with
- 8 another friend of mine. We put a washer and dryer in for
- 9 them.
- 10 Q Okay. All right. And when we're talking about Jimmy and
- 11 Diane's house it's [REDACTED] Highway 548?
- 12 A That sounds correct.
- 13 Q Back behind Tractor Supply?
- 14 A Yes, sir.
- 15 Q Okay. Did you go to Jimmy's house on July 11<sup>th</sup>, 2016?
- 16 A I don't think so, but --
- 17 Q The date of Roy's murder?
- 18 A No, sir.
- 19 Q Okay. Did you receive a call from Mr. Rosenbaum on 7-11-
- 20 16?
- 21 A Yes, sir.
- 22 Q Paul, what's your phone number?
- 23 A The house phone or my cell phone?
- 24 Q The one that he called you on.
- 25 A That would be I think if I remember right my cell phone,

Paul Ridgley - Direct by Mr. Richardson

640

1 843-458-3213.

2 Q Give me just a second, Paul. All right. Do you know  
3 Jimmy's cell phone number?

4 A No, not right off the bat.

5 Q Do you have your cell phone on you?

6 A Yes, but it wouldn't be in that one.

7 Q Okay. All right. Tell us about that call from him to  
8 you on 7-11-16.

9 A He called me pretty much in a panic and saying that  
10 something had happened over there at the house and I could  
11 hear Diane in the background. I guess she was talking to the  
12 police, and I said, "The only thing I can do stay on the phone  
13 with you till they get there. That's about all I can do."

14 Q All right. And that -- have you listened to that 911  
15 tape?

16 A No, sir.

17 Q Okay. But when you were on the phone with Jimmy  
18 Rosenbaum did you know Diane to be on the phone with the  
19 police or 911?

20 A Yes, sir. She was on the phone with 911 I believe.

21 Q Okay. And you were on the phone with --

22 A With Jimmy.

23 Q -- Jimmy during this time.

24 A Right.

25 Q You said that he sounded excited?

Paul Ridgley - Direct by Mr. Richardson

641

1 A Yeah. He sound pretty upset.

2 Q Okay. Before July 11<sup>th</sup>, had you been over to their house  
3 you said a couple of times to eat, one time to put in a washer  
4 and dryer.

5 A I would say it was probably a month before that with the  
6 washer and dryer.

7 Q All right. Total would you say ten times or --

8 A Nah, not that many.

9 Q Not that many?

10 A No, sir.

11 Q Four or five, two times, four or five times?

12 A Four or five.

13 Q Okay. And a month before, so we're talking about the  
14 middle of June is when you put in that dryer. Is that about  
15 right?

16 A That's to the best of my recollection.

17 Q Yes, sir. Paul, who went over there with you to put in  
18 the dryer? Was Jimmy and Diane over at the house when you did  
19 that?

20 A Yes, sir.

21 Q Did anybody else go with you to help you handle --

22 A My friend Marcus.

23 Q Okay. All right. After the middle of June but before  
24 July 11<sup>th</sup>, did you talk with Jimmy on, on the phone or over  
25 there at the house?



Paul Ridgley - Direct by Mr. Richardson

642

- 1 A Probably on the phone.
- 2 Q All right. Did he ever tell you about having to go to
- 3 the VA in Charleston?
- 4 A Yes, sir.
- 5 Q All right. Do you remember about when he was in the VA
- 6 at Charleston?
- 7 A I couldn't give you a date.
- 8 Q Okay. Was it around the time you put in the dryer, after
- 9 that, before that?
- 10 A I couldn't tell you if it was before or after.
- 11 Q All right. After getting back from the VA and do you
- 12 remember if you ever saw him face to face after that?
- 13 A I could have.
- 14 Q Could have, could have been on the phone?
- 15 A Could have been on the phone.
- 16 Q Do you remember Jimmy ever telling you anything about
- 17 being jealous of Roy Davis?
- 18 A No, sir.
- 19 Q All right. Had he ever told you anything about having to
- 20 get at Roy Davis?
- 21 A No, sir.
- 22 Q Had you ever heard of Roy Davis' name before?
- 23 A No, sir.
- 24 Q But he told you he had been in the hospital?
- 25 A Yes.

Paul Ridgley - Direct by Mr. Richardson

643

1 Q Or was going to the hospital? Was that -- without  
2 getting into the specifics of it, but did he go to the VA  
3 hospital quite a bit?

4 A I can't answer that.

5 Q Don't know?

6 A No.

7 Q All right. Do you know if Jimmy was out of town quite a  
8 bit?

9 A No, sir. Not to my knowledge.

10 Q Do you know of any time that he would have been out of  
11 town outside of going to the VA Hospital --

12 A No, sir.

13 Q -- in Charleston? Do you remember if you saw Jimmy after  
14 getting out of the VA Hospital, but before July 11<sup>th</sup>, 2016?

15 A No.

16 Q And if you talked with him during that critical time,  
17 that -- between getting out of the VA and July 11<sup>th</sup> when he  
18 called you, if you talked with him, it would have been over  
19 the phone?

20 A Most likely. I mean, I could have seen him in person at  
21 the corner store or someplace else, but --

22 Q Right. But he never mentioned anything that was going on  
23 to you about anything that would have made him jealous or  
24 upset or anything like that?

25 A No, sir.

Paul Ridgley - Direct by Mr. Richardson

644

1 Q Ever talked with you about Diane spending a lot of his  
2 money, 20 bucks at the time or --

3 A No.

4 Q Did you ever know them to have any problems?

5 A No, sir.

6 Q Be safe to say he never told you about anything like  
7 that?

8 A No.

9 Q If it was going on you didn't know about it.

10 A No. I didn't know anything about it. No, sir.

11 Q All right. When you went to put in that washer and dryer  
12 with Marcus tell us about, tell us about that. Where did you  
13 park? Where did you bring the washer and dryer in?

14 A In the back of the trailer.

15 Q Okay.

16 A In the back step.

17 Q Come in the back of the trailer and then right at the  
18 door would that be where the washer and dryer was?

19 A With, yep, that -- right there, yes, sir.

20 Q All right. Did -- was -- do you remember if Jim or Diane  
21 was home during that time?

22 A They were both home.

23 Q They were both home?

24 A Yes, sir.

25 Q Okay. Do you remember anything about there being a

1 mattress in the den?

2 A No, sir.

3 Q All right. And, and all the times that you've been over  
4 there to, to Jimmy and Diane's house had you ever seen a  
5 mattress in the den?

6 A No, sir.

7 Q After Roy was killed and Mr. Rosenbaum and Ms. Durkin was  
8 arrested, did you and Mr. Rosenbaum's dad go back to the  
9 trailer?

10 A Yes, sir.

11 Q Is that the first time you had ever seen a mattress in  
12 the den?

13 A Excuse me?

14 Q Did you see a mattress in the den that day?

15 A That's the first time I ever saw it.

16 Q That was the first time --

17 A Yes, sir.

18 Q -- you had ever seen it. All right. I'm going to pass  
19 to you what's been marked as State's -- what's already in  
20 evidence as State's Exhibit 28 and State's Exhibit 33, and  
21 Paul, I want you to look at those and tell me if you recognize  
22 those photographs.

23 A Yes. That's the inside of the trailer.

24 Q That's the inside of the trailer?

25 A Uh-huh.

Paul Ridgley - Direct by Mr. Richardson

646

1 Q Is that basically the way that it appeared -- I'm sure  
2 the bat wasn't there at the time, but is that basically the  
3 way it appeared when you went?

4 A Pretty much.

5 Q Blood everywhere?

6 A Yeah.

7 Q And you'd never seen that mattress in there before?

8 A No, sir.

9 Q Did you help clean up some of this stuff?

10 A Yes.

11 Q Tell us what you went over there for, Paul.

12 A I took Jim's dad over to get whatever they were going to  
13 get out of the house and --

14 Q Did they, did they lose the house? Did --

15 A I can't --

16 Q Or you don't know?

17 A I can't answer that.

18 Q Well, do you know why you were taking stuff out of the  
19 house?

20 A I guess we're -- that's what they wanted to do so.

21 Q That's what Jim's dad --

22 A Yes, sir.

23 Q -- wanted to get some stuff out? Okay. Paul, since Jim  
24 and Diane have been in jail have you gone out to visit Jim at

1 the J. Reuben Long?

2 A I was out once with his dad.

3 Q All right. Did he mention anything to you about what had  
4 taken place that night?

5 A No, sir.

6 Q Okay.

7 MR. RICHARDSON: The Court's indulgence.

8 BY MR. RICHARDSON:

9 Q Paul, wait one second.

10 THE COURT: All right.

11 BY MR. RICHARDSON:

12 Q I have no further questions, Paul. If you'd answer any  
13 questions that the Defense might have for you.

14 A Okay.

15 THE COURT: All right. Mr. Hyman.

16 MR. ALEX HYMAN: Yes, Your Honor.

17 CROSS EXAMINATION

18 BY MR. ALEX HYMAN:

19 Q Paul, how are you doing?

20 A Doing good. How about yourself?

21 Q You and I have talked a couple of times on, on --

22 A Yes, sir.

23 Q And now, I understand, correct me if I'm wrong, you used  
24 to have a federal job; is that right, when you were up in  
25 Maryland?

Paul Ridgley - Cross by Mr. Alex Hyman

648

- 1 A Yes, sir.
- 2 Q And kind of retired down here?
- 3 A Yes, sir.
- 4 Q Now, and you -- what do you do now?
- 5 A I work on cars part-time.
- 6 Q You've got a -- what's the name of your business?
- 7 A Repair and Technical Services.
- 8 Q Okay. Got you. Now, as, as far as that goes, I know
- 9 from talking with you, you and Jimmy did talk a good bit. He
- 10 considered you a friend. Do you remember him venting about
- 11 Diane needing to get a job?
- 12 A Yeah. I remember something about that.
- 13 Q Okay. And you said you had dinner with them a few times?
- 14 A Yes.
- 15 Q I think you -- did they bring over food to your house
- 16 sometimes?
- 17 A Yeah. And we went to theirs and --
- 18 Q Okay. Now, are you positive that when you went to do
- 19 the, the washing machine that it was in June or could it have
- 20 been earlier?
- 21 A It could have been earlier. It's been quite a while.
- 22 Q Could it have been March, February?
- 23 A No. It was warm.
- 24 Q Okay. So maybe May?
- 25 A It could be.

1 Q But you're not positive?

2 A No. I couldn't give you an exact date.

3 Q Okay. Now, as far as that goes, when Jim called you, did  
4 it seem like he was calling to brag or did he seem like he was  
5 calling to get help that night?

6 A It seemed to me that he was scared to death, but --

7 Q Okay. Was he calling you and asking if you could come  
8 over and help?

9 A No. Not to my knowledge.

10 Q Okay. Did he -- you said he seemed like he was scared to  
11 death. Did -- and you said that the only way -- I think your  
12 testimony was the way only you could help him was to stay on  
13 the phone till help arrived.

14 A The phone till, right.

15 Q Were you on the phone with him until law enforcement got  
16 there?

17 A Well, yeah. Somebody hung the phone up. So I --

18 Q Got you. Now, as, as far as that goes it's your  
19 testimony that you do remember Jimmy talking about, you know,  
20 some issues about wanting Diane to get a job, but you don't  
21 ever remember Jimmy ever talking to you about Diane cheating  
22 on him --

23 A No, sir.

24 Q -- or anything like that or that he wanted to hurt  
25 somebody named Roy --



Paul Ridgley - Cross by Mr. Alex Hyman

650

- 1 A No.
- 2 Q -- or anything like that? Had you ever even heard the
- 3 name Roy come out of Jimmy's mouth?
- 4 A No.
- 5 Q Okay. Now, would he come over and stop by your house
- 6 and, and stuff like that sometimes?
- 7 A Sometimes, yeah.
- 8 Q Okay. Just kind of to talk?
- 9 A Well, he'd be in the neighborhood and we'd chitchat about
- 10 whatever.
- 11 Q Now, as far as the neighborhood, how far away do you
- 12 live?
- 13 A From --
- 14 Q Where he used to live.
- 15 A Oh, Lord, I don't know maybe seven miles.
- 16 Q Okay. So it's not, not real far?
- 17 A No.
- 18 Q Okay. Now, it's your testimony that you absolutely were
- 19 not at the house that night?
- 20 A No, sir.
- 21 Q Were you ever accused of being at the house?
- 22 A Yeah.
- 23 Q Okay. Do you remember who accused you?
- 24 A I don't know who it was.
- 25 Q Was it a law enforcement officer?

1 A It could have been.

2 Q Okay. Did that kind of upset you some?

3 A Well, yeah, because I mean you obviously know where I was  
4 at because the phone was pinged to my house, so.

5 Q Right. Right. Now, as far as that goes, the fact that  
6 you're friends with Jimmy, would that in any way make you lie  
7 here today?

8 A No, sir.

9 Q Okay. Are you telling the truth?

10 A Yes, sir.

11 Q Did you -- did it really seem when you're on the phone,  
12 you know, the thing about, about you that makes you special is  
13 you know Jimmy better than probably anybody in here other than  
14 his father.

15 A Right.

16 Q And when you're testifying that his, his voice and that  
17 he seemed scared you would know that better than anybody.

18 A Okay.

19 Q And so it's your testimony though that he sounded scared,  
20 fearful?

21 A Yes. He did.

22 Q Kind of like he needed help?

23 A Yeah.

24 Q Did he tell you that Diane was on the phone with law  
25 enforcement?

Paul Ridgley - Redirect by Mr. Richardson

652

1 A Yes. And I could hear her.

2 Q Okay.

3 MR. ALEX HYMAN: The Court's indulgence.

4 THE COURT: All right.

5 MR. ALEX HYMAN: No further questions, Your Honor.

6 THE COURT: All right. Mr. Bouchette.

7 MR. BOUCHETTE: Judge, I don't have any further

8 questions.

9 THE COURT: All right. Redirect?

10 MR. RICHARDSON: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. RICHARDSON:

13 Q Paul, on the phone call back on July 11<sup>th</sup>, do you remember  
14 him ever asking you to come over there and bring a 40-caliber?

15 A No, sir.

16 Q All right. If it was said it was said, but you don't  
17 remember anything like that?

18 A No. I couldn't hear real good. There was a lot of -- a  
19 lot going on in the background and then my house at the same  
20 time so.

21 Q Yes, sir.

22 MR. RICHARDSON: I have no further questions, Your Honor.

23 THE COURT: All right.

24 MR. RICHARDSON: I would ask that he be released from his  
25 subpoena.

1 THE COURT: All right. You may step down. Any  
2 objection?

3 MR. ALEX HYMAN: No, Your Honor.

4 MR. BOUCHETTE: No objection.

5 THE COURT: All right. He's free to go.

6 A Thank you, sir.

7 THE COURT: All right. Ladies and gentlemen, we're going  
8 to take a short break. We've been at it a little while.  
9 It'll give you an opportunity to stretch your legs, use the  
10 restroom, get something to drink, whatever the case may be.  
11 Please leave your notepads in the jury box. Do not discuss  
12 the case even among yourselves, don't conduct any independent  
13 investigations. We'll take about a 10 or 15-minute break and  
14 then we'll come back and resume. Thank you very much.  
15 Everyone else please remain seated while the jury's excused.

16 (Whereupon, the following takes place outside the  
17 presence of the jury.)

18 THE COURT: All right. Anything from the State before we  
19 recess?

20 MR. RICHARDSON: No, sir, Your Honor.

21 THE COURT: Anything from the Defendant Rosenbaum?

22 MR. ALEX HYMAN: No, Your Honor.

23 THE COURT: Anything from the Defendant Durkin?

24 MR. BOUCHETTE: No, sir.

25 THE COURT: All right. Let's take about a 15-minute

Dean Briggs - Direct by Mr. Helms

654

1 break and then we'll come back and get started.

2 OFF THE RECORD

3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: All right. Anything from the State before we  
6 bring the jury in?

7 MR. HELMS: No, Your Honor.

8 THE COURT: Anything from the Defendant Rosenbaum?

9 MR. ALEX HYMAN: No, Your Honor.

10 THE COURT: Anything from the Defendant Durkin?

11 MR. BOUCHETTE: No, Your Honor.

12 THE COURT: All right. Let's bring the jury in.

13 (Whereupon, the following takes place in the presence of  
14 the jury.)

15 THE COURT: All right. Ladies and gentlemen, welcome  
16 back. Make sure you have your own notepads and don't have  
17 anyone else's. The State can call your next witness.

18 MR. HELMS: Your Honor, at this time the State would call  
19 Mr. Dean Briggs.

20 THE COURT: All right.

21 Whereupon, Dean Briggs is called to the stand, duly sworn  
22 by the clerk and testifies as follows:

23 THE CLERK: Please state your name and spell your last  
24 name.

25 MR. BRIGGS: My name is Dean Briggs, D-E-A-N, last name

Dean Briggs - Direct by Mr. Helms

655

1 Briggs, B-R-I-G-G-S.

2 DIRECT EXAMINATION

3 BY MR. HELMS:

4 Q Mr. Briggs, where are you employed?

5 A AT&T.

6 Q And how long have you been with AT&T?

7 A A little over seven years.

8 Q And what's your title?

9 A I'm a manager of the retail location.

10 Q Okay. What are your responsibilities at AT&T?

11 A Pretty much the whole operation day to day of the entire  
12 store.

13 Q Okay. Are part of your duties at AT&T to keep and  
14 maintain records?

15 A Yes.

16 Q Okay. And, and you do that. Have you provided records  
17 to me and my office?

18 A Yes.

19 Q Did you provide records for phone numbers 203-802-0282?

20 A Yes.

21 Q Did you provide records for phone number 843-742-7705?

22 A Yes.

23 Q Are those records kept by AT&T?

24 A Yes.

25 Q I'm going to show you what's been marked for

Dean Briggs - Direct by Mr. Helms

656

1 identification as State's 113. Do you recognize that  
2 document?

3 A Yes.

4 Q And what is that document?

5 A This is records for phone number 203-802-0282.

6 Q And I'm going to show you what's been marked for  
7 identification as State's 114 now. Do you recognize that  
8 document?

9 A Yes.

10 Q What is that document?

11 A This is records for phone number 843-472-7705.

12 Q And are those records kept in the ordinary course of  
13 business?

14 A Yes.

15 Q Secure by AT&T?

16 A Yes.

17 Q Have those records been tampered with in any way?

18 A No.

19 Q Okay. And those are the records you provided to me?

20 A These are the records.

21 MR. HELMS: Your Honor, at this time I would tender  
22 State's 113 and 114.

23 THE COURT: Any objection?

24 MR. ALEX HYMAN: Can I just see one --

25 MR. HELMS: Oh, I'm sorry. Yes, sir.

Dean Briggs - Direct by Mr. Helms

657

1 MR. ALEX HYMAN: No objection. I, I misheard the numbers  
2 that he said. That was --

3 THE COURT: All right. Any objection?

4 MR. BOUCHETTE: No objection.

5 THE COURT: All right. State's Exhibits 113 and 114 are  
6 admitted into evidence without objection.

7 (State's Exhibit Numbers 113 and 114 [Phone Records]  
8 admitted into evidence and appropriately marked.)

9 BY MR. HELMS:

10 Q All right, sir. I'm going to hand you State's 113 and  
11 114 for your reference. Now, once again -- thank you, Tonya  
12 -- once again, I'd like you to remind us what's the first  
13 record for, State's 113, what number is that for?

14 A It's 203-802-0282.

15 Q And what -- and, and we know from prior testimony from  
16 Ms. Sandy Lowe that that's a number assigned to Mr. James  
17 Rosenbaum. What's the second record for?

18 A For phone number 843-742-7705.

19 Q She testified that's for Ms. Diane Durkin. Okay. And  
20 what's the date range on those records, sir?

21 A For 113 is 7-1-2016 through 7-12-2016.

22 Q All right.

23 MR. HELMS: Ma'am, can we mark this, please, if you don't  
24 mind.

25 BY MR. HELMS:



Dean Briggs - Direct by Mr. Helms

658

1 Q Sir, I'm going to show you now what's been marked for  
2 identification as State's 115. Have you seen this?

3 A Yes.

4 Q Well, let me ask you like this, do the phone records to  
5 the best of your knowledge, and you've reviewed those records.

6 A Yes.

7 Q Do those phone records illustrate communication between  
8 the two numbers on those that you just read to us?

9 A Yes.

10 Q Does it -- do they illustrate communication on the late  
11 hours of July 11<sup>th</sup>, 2016 --

12 A They do.

13 Q -- between those two numbers?

14 A Yes.

15 Q What does this chart illustrate?

16 A That illustrates the records that I have in front of me  
17 for communication between the two lines.

18 Q Now, correct me if I'm wrong, but the records you have in  
19 front of you, State's 113 and 114, tell -- what kind of time  
20 is that in?

21 A That's in Universal Time.

22 Q What is, what is Universal Time?

23 A That's basically a time that's used around the world.  
24 It's like a standard time.

25 Q Okay. It's not the same as Eastern Standard Time?

1 A Correct.

2 Q So for us to know what time is on that in Eastern  
3 Standard Time we would have to convert; correct?

4 A Yes.

5 Q How do you convert Universal Time to Eastern Standard  
6 Time?

7 A Basically Universal Time is in military time and based on  
8 the time of the year you would subtract four hours from the  
9 military time to make it Eastern Time.

10 Q So minus four hours. Does this chart accurately reflect  
11 the calls and those records translated into Eastern Standard  
12 Time?

13 A Yes.

14 MR. HELMS: Your Honor, at this time I would tender,  
15 tender State's 115 into evidence.

16 THE COURT: Any objection?

17 MR. ALEX HYMAN: Let me see it?

18 MR. HELMS: Yes, sir.

19 MR. ALEX HYMAN: I'll obviously have some questions, but  
20 as far as this I don't have any objection.

21 THE COURT: All right. Mr. Bouchette, any objections?

22 MR. BOUCHETTE: No objection, Judge.

23 THE COURT: All right. State's Exhibit 115 admitted into  
24 evidence without objection.

25 (State's Exhibit Number 115 [Chart] admitted into

Dean Briggs - Direct by Mr. Helms

660

1 evidence and appropriately marked.)

2 MR. HELMS: Your Honor, I'd like permission to publish  
3 State's 115 if I may.

4 THE COURT: All right.

5 MR. HELMS: Is this okay, Judge, right here?

6 THE COURT: Yeah.

7 BY MR. HELMS:

8 Q Well, we can do it like this way so that you can see it,  
9 Mr. Briggs. Can you see that Mr. Briggs?

10 A I can see it now without that there, yeah.

11 Q Without that there?

12 A Uh-huh.

13 Q Okay. Mr. Briggs, I want to draw your attention to the  
14 records for the number assigned to Mr. James Rosenbaum, and  
15 that number is the 203-802-0282 number. Do you have that in  
16 front of you?

17 A I do.

18 Q And what State's Exhibit is that, remind us, please?

19 A 113.

20 Q Okay. And you said that those records do reflect these  
21 communications?

22 A They do.

23 Q I want to specifically draw your attention and, and  
24 they're, they're separated by line numbers; is that correct?

25 A Uh-huh. Yes.

Dean Briggs - Direct by Mr. Helms

661

1 Q To line 598 to 599, can you find that in that document  
2 for me, sir?

3 A I have it right here.

4 Q You got it there?

5 A Yes. Uh-huh.

6 Q Okay. I want to ask you this question, do those records  
7 reflect a phone call made on September [sic] 11<sup>th</sup> at 8:41 p.m.?

8 A Yes.

9 Q And where'd that call originate from?

10 A 203-802-0282.

11 Q And where did that call go to?

12 A The 843-742-7705.

13 Q Now, do those records tell you -- what else do they tell  
14 you? Other than the time that the call was made what else do  
15 they tell you? Do they tell you how long it took to connect  
16 to the call?

17 A Yes.

18 Q And what is that listed as on, on those records?

19 A Seizure time.

20 Q Seizure time?

21 A Right.

22 Q All right. Do they also tell you the duration and the  
23 length of the call or the connection?

24 A It does.

25 Q And what is that on there as?

Dean Briggs - Direct by Mr. Helms

662

1 A The ET or estimated time.

2 Q Estimated time, and that's basically the call length; is  
3 that correct?

4 A Correct. That's the call length.

5 Q So for lines 598 and 599 can you tell us the length of  
6 the call at 8:41 p.m. on, on July 11<sup>th</sup>?

7 A It says two minutes, 36 seconds.

8 Q Okay. I want to now direct your attention to line 601.

9 Can you tell us if a call was made at 8:56 p.m.?

10 A You said line 601?

11 Q Yes, sir.

12 A Yes. There was a call attempted.

13 Q Attempted, what do you mean attempted?

14 A So it rang for 21 seconds and went to voicemail.

15 Q And what number was doing the dialing and what number was  
16 doing the receiving?

17 A It originated from 843-74 -- yeah, 742-7705 and ended the  
18 203-802-0282.

19 Q And again, that went to voicemail?

20 A Correct.

21 Q Was there a call made back to back to that one at line  
22 602?

23 A 602 there was another call made, rang for 26 seconds.

24 There was a connection for three seconds from the 843-742-7705  
25 and terminated at the 203-802-0282.

1 Q And that was just back to back to the voicemail call  
2 right before it?

3 A That was approximately 22 seconds after the call  
4 previously.

5 Q Okay. How about line 603 and 604 at 9:06 p.m. Was there  
6 a call from the 203 to the 843 number?

7 A There was.

8 Q And how long did that call last?

9 A 12 seconds.

10 Q Okay. Let's go to line 605. Was there a call made at  
11 9:07 p.m.?

12 A There was.

13 Q And who, who was doing the dialing?

14 A That is from -- you said that's on line 606?

15 Q 605.

16 A Or 605, from the 843 to the 203.

17 Q Okay. And what happened there?

18 A That was sent to voicemail.

19 Q Voicemail. Keep moving along at 606 and 607. Now, let  
20 me ask you this, why are 606 and 607 together?

21 A That's just the way that it flows through our system,  
22 basically.

23 Q Now, are those two separate calls on 606 and 607 or is  
24 that the same call?

25 A That's the same call.

Dean Briggs - Direct by Mr. Helms

664

- 1 Q Okay.
- 2 A Yeah.
- 3 Q At 606 and 7 was there another call made at 9:07 right
- 4 after the 605 call?
- 5 A Yes.
- 6 Q And, and who was doing the dialing there?
- 7 A The 203.
- 8 Q Okay. So 203 was basically calling back the 843 number;
- 9 right?
- 10 A That's what it looks like.
- 11 Q Yeah. And, and what happened there?
- 12 A That was sent to voicemail.
- 13 Q Okay. I want to talk about line 608 at 9:07. Man, these
- 14 are back to back, 60 -- 608 at 9:07 p.m. Was the call
- 15 returned from the 843 to the 203 number?
- 16 A There was a call from the 843 to 203, yes.
- 17 Q Now, did that one connect?
- 18 A It did.
- 19 Q For how long?
- 20 A 25 seconds.
- 21 Q Okay. How about line 612 and 613 at 9:08 and one minute
- 22 later, was the call made from 843 to 203?
- 23 A Which line?
- 24 Q 612 and 613.
- 25 A From 843 to 203.

Dean Briggs - Direct by Mr. Helms

665

1 Q From 843 to 203, Diane to Jim. How long did that call  
2 last?

3 A Which line 112 or 612?

4 Q 612 and 13.

5 A 19 seconds.

6 Q All right. And finally at 614, line 614 at 9:45 p.m. was  
7 a call made from 203 to 843?

8 A Yes.

9 Q How long did that call last?

10 A Seven minutes, 46 seconds.

11 Q And that was at 9:45 p.m.?

12 A Correct.

13 Q Okay. I want to now draw your attention to the other  
14 exhibit. Can you tell us the number on that exhibit?

15 A 114.

16 Q And that is a record for what phone number?

17 A The 843-742-7705.

18 Q Okay. Okay. And I want to draw your attention to 9:35  
19 p.m. I want you to find that on that record for me.

20 A Okay.

21 Q You got 9:35 p.m.?

22 A Yes.

23 Q And I want you to tell this jury what number that 843-  
24 742-7705 dialed at 9:35 p.m.

25 A Dialed 911.



Dean Briggs - Direct by Mr. Helms

666

1 Q And how long did that call last?

2 A 17 minutes, eight seconds.

3 Q Let me ask you this question, other than call length and  
4 call phone numbers and all that stuff, what else do those  
5 records indicate? Do they, do they indicate which towers, for  
6 example, the, the phones are using?

7 A On the document it says cell location. That's an --

8 Q And what does that mean?

9 A That's an approximate location of the towers they  
10 connected to.

11 Q And how, how is that developed? Is that using latitude  
12 and longitude?

13 A Correct.

14 Q Okay.

15 MR. HELMS: The Court's indulgence, Your Honor.

16 THE COURT: All right.

17 BY MR. HELMS:

18 Q I want to draw your attention back to the exhibit with  
19 the -- for the 203-802 number and I want you to reference line  
20 614 if I can hold that for one second if you don't mind. I  
21 want to make sure I'm referencing the right thing because  
22 these can get confusing. No. That's all right. I don't want  
23 to confuse anybody anymore.

24 MR. HELMS: Your Honor, I think that's all I have for Mr.  
25 Briggs at this time.

1 THE COURT: All right.

2 MR. HELMS: Do you want me to leave this up here?

3 MR. ALEX HYMAN: Yes.

4 THE COURT: All right. Mr. Hyman.

5 CROSS EXAMINATION

6 BY MR. ALEX HYMAN:

7 Q Mr. Briggs, you and I, I think, met maybe a few months  
8 ago just briefly, but -- and, and we talked a little bit about  
9 some of these phone calls and there's some discrepancies  
10 about, you know, if somebody answers a phone and that kind of  
11 thing. Now, on the records that -- do you have them up here?

12 A Uh-huh.

13 Q All right. It appears that like on some of these it  
14 references two latitude and longitude points, let's see, like  
15 on, on this one right here, 595. It's got a latitude and  
16 longitude on top, and then it's got a latitude and longitude  
17 on the bottom.

18 A I see that.

19 Q Okay. Does that mean that, that it's, it's gotten both  
20 cell phones their -- the record as far as where both of them  
21 are?

22 A That I would not be able to, to say.

23 Q Okay. So can you say whether or not -- as far as these  
24 phone calls whether there was any talking?

25 A I cannot say what happened during the duration of those

Dean Briggs - Cross by Mr. Alex Hyman

668

1 connections.

2 Q Well, and I -- let's kind of go over, and if you don't  
3 mind if you'll pull up -- if you'll -- you've got right in  
4 front of you, is this Rosen -- this is 203 number?

5 A This is 203.

6 Q Okay. Let's start with, let's see, let's start with 601.  
7 Now, you're stating by looking at this that it appears that  
8 742 called the 203 number and it went to voicemail.

9 A Correct.

10 Q Okay. Now, it appears that 601 that the amount of time  
11 on the voicemail was zero.

12 A Says the connection was zero time.

13 Q Okay. So it, it hit a tower, and I guess put it on that,  
14 but it's connected for zero time to voicemail.

15 A After it rang zero time.

16 Q Right. Now, and when it rings that and, you know, if it  
17 rings for 25 seconds before it hits voicemail --

18 A Uh-huh.

19 Q -- it'll show that as the seizure time; is that right?

20 A Seizure time is the amount of time it rang.

21 Q Right. Now, so I know sometimes my wife will call me and  
22 I'll try to call her right back and it -- it'll go right to --  
23 it, it -- sometimes it's not a voicemail. Sometimes it's a,  
24 you know, a some other type of message, you know, basically  
25 when she's calling me and I'm trying to call her at the same

1 time. Now, as far as that would that be seizure time as well  
2 or estimated time?

3 A Well, seizure time is the amount of time that it took to  
4 ring --

5 Q Okay.

6 A -- before it was either terminated or whatever happened  
7 at that point.

8 Q So it could be terminated, the call terminated?

9 A Could have been declined.

10 Q Okay. Now, as far as let's go down to 603, 604.

11 Actually, first, let's go to 602. I see on 602 it says 26  
12 seconds is what it shows as the seizure time and three seconds  
13 as the length of the connection, but it does not appear to  
14 even hit a tower. Is that correct?

15 A The records do not show a cell location.

16 Q Okay. So more than likely it didn't even hit a tower and  
17 you have to have a tower to make a phone call; correct?  
18 Something has to send a signal?

19 A Well, I can't say that it didn't hit a tower. It just  
20 was not recorded.

21 Q Okay. But that's what that's for though; correct,  
22 recording these things --

23 A Correct.

24 Q -- locations?

25 A Uh-huh.

Dean Briggs - Cross by Mr. Alex Hyman

670

1 Q Okay. Now, as far as this 604 that's the same as 603?

2 Is that the, the assumption on that?

3 A Correct.

4 Q But 603 shows voicemail.

5 A Correct.

6 Q Okay. So this 604 right here where it says 12 seconds

7 that's actually voicemail if 603 and 604 are the same;

8 correct?

9 A I cannot say that was the amount of time for the

10 voicemail. All I can say is it was the amount of time that

11 there was a connection after it rang.

12 Q But it does say on 603 voicemail?

13 A 603 shows voicemail, correct.

14 Q Okay. So that would have been going to voicemail is my

15 point.

16 A That call went to voicemail.

17 Q Okay. So we have voicemail, voicemail, voicemail,

18 voicemail, then there's -- let's go down to 608 and check that

19 out. 608 shows 25 seconds, but it never hits a tower;

20 correct?

21 A My records do not indicate a tower location.

22 Q Okay. So and, and what I mean by that is, on these other

23 calls where -- let's see right here. There's a 57 minute

24 phone call at -- it's 595. Right? That shows towers;

25 correct?

1 A Correct.

2 Q All right. Now, at 600, which is not on that, of course,  
3 but 600 also shows towers; right?

4 A Correct.

5 Q My point is is you've got on this voicemail, voicemail,  
6 voice -- well, well, three seconds but it's three seconds that  
7 doesn't hit a tower. So no tower, voicemail, voicemail,  
8 voicemail, no tower and then let's look at 612 and 613. On  
9 that it appears you've got something at -- at 9:08 and it  
10 looks like the seizure time is three seconds and then there's  
11 a -- an estimated of, of 19 seconds, but you can't say whether  
12 that's any talking or anything like that; correct?

13 A Right. I can't say what happened during the connection.

14 Q And then down here at 6:14 that's a different number that  
15 he's calling; correct? That's not that same 843-742 number?

16 A Correct.

17 Q Okay. That would be the 843-458-3213. So over all of  
18 these we have possibly a phone conversation that lasts 19  
19 seconds, but you're not sure if there was a phone conversation  
20 at all or anything like that.

21 A I cannot say.

22 Q So if, if I make a phone call and it goes to voicemail  
23 all that shows up on the records; correct?

24 A Correct.

25 Q And there's nothing I can do on my phone to delete your

Dean Briggs - Cross by Mr. Alex Hyman

672

1 records; correct?

2 A Correct.

3 Q Okay. So if I didn't want a text message to be in there  
4 or I didn't want anything like that or I didn't want a phone  
5 call to be in there I can't delete it out of my phone and then  
6 expect it to be deleted on your records?

7 A Correct.

8 Q Okay. Now, as far as the, the cell locations what do you  
9 know about the, I guess the, the accuracy of those? Do you  
10 know anything about the accuracy of cell locations?

11 A It's an approximation.

12 Q Okay. And these are locations of the towers, not the  
13 person.

14 A On my key it says cell site.

15 Q Okay. So that I, I see you keep referring to something  
16 there. That's just a key that tells you what some of these  
17 things are?

18 A Correct.

19 Q So as far as this goes, you're just kind of answering  
20 based off the key, not necessarily personal knowledge?

21 A Correct.

22 Q Okay. Again, let's kind of go over this one more time.  
23 You've got the 598, 599 where you have a two minute and 36  
24 seconds and that's at 8:41 p.m. At 8:56 there's a call that  
25 goes to voicemail. At 602 there appears to be -- it doesn't

1 hit any type of cell tower; correct?

2 A There's no cell tower location reported.

3 Q At 603 and 604 you have a voicemail. I think we have on

4 604 as a -- yeah, 603 and 604 is actually listed as voicemail

5 not 12 seconds. Now, it may have been 12 seconds on the

6 voicemail, but it went to voicemail; correct?

7 A Went to voicemail.

8 Q Yes. All right. And then 605 went to voicemail. 606

9 and 607 went to voicemail. 608 there's no tower listed

10 whatsoever, which probably indicates there was no conversation

11 there, and then on 614 it's a call to somebody completely

12 different. Correct?

13 A 614 call to different number, correct.

14 Q That's right. And, and it looks to me like this is

15 something I get caught in all the time. Looks like kind of

16 playing phone tag. Would you agree with that or calling back

17 --

18 A I would say that those are call records between the two

19 numbers.

20 Q But it appears they're kind of bouncing back and forth

21 that you call me, I call and get --

22 A They are calling each other.

23 Q Right.

24 A Right.

25 Q But what you're seeing is there's very, very little in



Dean Briggs - Cross by Mr. Alex Hyman

674

1 the way of actually talking. There's voicemail that may be  
2 something left or not; correct?

3 A Whether they were talking or not I can't, I can't say,  
4 but there are voicemails and connection times on there.

5 Q But you can honestly say that if there's a voicemail left  
6 they didn't carry on a conversation; right?

7 A There was not a two-way communication there.

8 Q That's right. That's what I'm trying to get at. Okay,  
9 And again, this 603 and 604 even though it's listed as a --  
10 some type of 12-second communication the records actually show  
11 that it's voicemail, 603, 604.

12 A It did go to voicemail.

13 Q Yeah.

14 A There was a connection time for 12 seconds. So whether  
15 that was -- that would have been the time for the voicemail  
16 being left I would imagine.

17 Q And 602 and 608 there was -- it didn't even register on a  
18 cell tower.

19 A There's no cell tower listed.

20 Q Do you know what NELOS is?

21 A I'm unaware of NELOS.

22 Q Okay. So there's something used in you all's records  
23 with NELOS you wouldn't know anything about?

24 A I can reference in my key to see what that means. I  
25 don't have that anywhere in my key.

Dean Briggs - Redirect by Mr. Helms

675

1 Q So you wouldn't know about the accuracy of NELOS or  
2 anything like that?

3 A Correct.

4 MR. ALEX HYMAN: The Court's indulgence.

5 THE COURT: All right.

6 MR. ALEX HYMAN: Your Honor, no further questions.

7 THE COURT: All right. Mr. Bouchette?

8 MR. BOUCHETTE: Judge, I don't think I have anything  
9 further for this witness.

10 THE COURT: All right. Redirect?

11 MR. HELMS: Just one question, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. HELMS:

14 Q I'm glad Mr. Hyman pointed out number 614. I want you to  
15 look at that again because I forgot to differentiate. On, on  
16 the records for 203, please, the 203 number, I want you to  
17 look at line 614 and tell me at 9:45 what number did 203 dial?

18 A That is 843-458-3213.

19 Q And you may not have been in here, but maybe you were,  
20 were you in here when Paul Ridgley said that was his phone  
21 number?

22 A I was not in here.

23 Q Okay.

24 MR. HELMS: No further questions, Your Honor.

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

Dean Briggs - Redirect by Mr. Helms

676

1 MR. HELMS: Your Honor, may he be excused?

2 THE COURT: Any objection?

3 MR. ALEX HYMAN: No, Your Honor.

4 THE COURT: Any objection?

5 MR. BOUCHETTE: No objection.

6 THE COURT: All right. He's free to go.

7 MR. HELMS: Thank you, Mr. Briggs.

8 A Thank you.

9 THE COURT: The State can call your next witness.

10 MR. HELMS: Your Honor, at this time I would ask and I  
11 hate to do this, but I have to, for a brief recess. We've got  
12 some technical matters to take up briefly.

13 THE COURT: All right.

14 All right. Ladies and gentlemen, we're going to take a  
15 short break, excuse you back to the jury room. Leave your  
16 pads in the jury box. Do not discuss the case.

17 (Whereupon, the following takes place outside the  
18 presence of the jury.)

19 THE COURT: All right. Mr. Helms.

20 MR. HELMS: Yes, Your Honor.

21 THE COURT: You said you had some technical difficulties.  
22 What do you need?

23 MR. HELMS: Yes, sir, and we just for our next witness we  
24 just need to set up some equipment. It won't take real long I  
25 can't imagine because --

Aaron Edens - Direct by Mr. Richardson

715

1 THE COURT: All right.

2 Whereupon, Aaron Edens is called to the stand, duly sworn by  
3 the clerk and testified as follows:

4 THE CLERK: Please state your name and spell your full  
5 name for the Court.

6 MR. EDENS: Good afternoon. My name is Aaron Edens, A-A-  
7 R-O-N, E-D-E-N-S.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q Mr. Edens, where are you from, please?

11 A I am from California.

12 Q And how long have you lived in California?

13 A 49 years.

14 Q Will you give this jury some information about where you  
15 work and, and how long you've been at each place, basically a  
16 resume? Where do you work now?

17 A I'm an intelligence analyst with the San Mateo County  
18 Sheriff's Office.

19 Q Where's San Mateo?

20 A San Mateo is -- it borders San Francisco and San Jose,  
21 California.

22 Q All right. And what is your title there?

23 A I'm an intelligence analyst assigned to the gang, gang  
24 intelligence and investigations unit.

25 Q Tell the jury what that entails, being an intelligence

Aaron Edens - Direct by Mr. Richardson

716

1 analyst.

2 A I assist the detectives who are assigned to the -- to our  
3 unit with complex gang investigations, drug cartels. I help  
4 analyze call detail records, financial records, location  
5 history records.

6 Q All right. And where did you begin your career, Mr.  
7 Edens?

8 A I started my career as a police officer with the City of  
9 Hayward, California in 2001.

10 Q Following that time what did you do next?

11 A I was a peace officer with the City of Hayward for 12  
12 years. I was medically retired in 2013. From 2013 to 2016 I  
13 worked as an independent contractor teaching law enforcement  
14 officers around the United States and then, then started with  
15 the sheriff's office as an intelligence analyst.

16 Q Besides your work with Hayward County, did you have any  
17 other assignments that involved other law enforcement  
18 agencies?

19 A I did.

20 Q And what was that?

21 A For six years I was assigned to the Federal Bureau of  
22 Investigations Joint Terrorism Task Force out of the Oakland  
23 office.

24 Q Is that commonly referred to as the FBI?

25 A Yes.

1 Q Out of Oakland?

2 A Correct.

3 Q What was the purpose of that joint task force?

4 A The purpose of the task force was to investigate  
5 international terrorism incidents in and around the northern  
6 district of California.

7 Q And you were with them for about six years?

8 A Correct.

9 Q Mr. Edens, are you familiar with the area of forensic  
10 calls or forensic cell phone examinations?

11 A I am.

12 Q Do you have any certifications in that profession?

13 A I do.

14 Q All right. Tell the jury where you got that  
15 certification.

16 A I was first certified in 2005 as a forensic examiner by,  
17 by a private training company based out of California.

18 Q Tell the jury, please, what cell phone forensic  
19 investigation entails.

20 A There's several components to investigations involving  
21 mobile devices. One involves a forensic examination of the  
22 phone itself in an attempt to extract data from the device.  
23 Another field involves looking at the records that are  
24 maintained by the cellular service providers or the phone  
25 companies. There's an additional discipline involved in

Aaron Edens - Direct by Mr. Richardson

718

1 examining applications to see what information those  
2 applications collect and store.

3 Q And when you say cell phone providers you're talking  
4 about AT&T and T-Mobile?

5 A That's correct.

6 Q Okay. As far as operating system providers, what are the  
7 two main operating systems in cell phones?

8 A Those are the Android operating system developed by  
9 Google or Google LLC and iOS which is Apple's operating  
10 system.

11 Q What prior training have you had on forensic cell phone  
12 investigations?

13 A I have over 600 hours of training in the field of cell  
14 phone investigations, including the forensics involving the  
15 device itself, analyzing records from the cellular service  
16 providers, cell site location information and as well as  
17 investigation of applications and operating systems.

18 Q Do you, do you or have you taught any of those classes on  
19 phone forensics?

20 A I do.

21 Q All right. Tell us about that.

22 A I started teaching cellular device investigations or cell  
23 phone investigations starting in 2008 for the California  
24 Narcotic Officers Association. I have taught for numerous  
25 other law enforcement agencies including the New York Police

1 Department, Dallas Police Department, Kentucky Prosecutors  
2 Association, Georgia Narcotic Officers Association, Utah  
3 Narcs. I've been to multiple areas training other law  
4 enforcement officers on how to perform these types of  
5 investigations.

6 Q Tell the jury, please, about any publications or articles  
7 that you've written in the area of cell phone forensics.

8 A I have two published articles, and I'm the author of 13  
9 books on cell phone investigations and high technology crimes  
10 investigations.

11 Q Are those in the area of cell phone forensics?

12 A I have a couple in the area of cell phone forensics and  
13 then others covering specific social media topics like  
14 Facebook, Instagram, you know, focused on individual topics.

15 Q How about with regard to location information of cell  
16 phones, talk with us a little bit about that. Is that a  
17 subclass of cell phone forensics?

18 A It, it is. It's, it's kind of its own evolved  
19 discipline. It involves taking the location -- taking  
20 location information, whether it's from the phone, from the  
21 cell phone company or from the operating system provider and  
22 incorporating that into a timeline to show the movements of a  
23 phone over a particular period of time.

24 Q All right. Have you had any extensive training in that  
25 area?



Aaron Edens - Direct by Mr. Richardson

720

1 A I have.

2 Q All right. Tell us about that.

3 A Well, that would, that would be a component of the --  
4 like my 600 plus hours of, of training because many of the --  
5 many times it's difficult to separate the forensic examination  
6 from the examination of the phone company's records because  
7 there can be location information on the device that  
8 supplements the information that we get from the phone  
9 company.

10 Q Tell us just in layman terms how are we tracked or how  
11 are our phones tracked as we move about?

12 A Well, generally, when -- and in -- a lot of it varies on  
13 what cell phone provider you have, but when you make or  
14 receive a phone call on your cell phone the locations of the  
15 cell sites or the cell towers that handle that communication  
16 are recorded by the cellular service provider. Different  
17 companies will collect and store additional information. For  
18 example, some companies will record cell site location  
19 information for text messages or when you access the internet  
20 from your device. That's one location, that's one location  
21 technology using cell sites. Many of the providers also have  
22 additional location technologies used to supplement the cell  
23 site location information and those vary from provider to  
24 provider.

25 The operating system provider, particularly the android

1 operating system, collects and stores location information at  
2 a, at a much greater frequency and with much greater  
3 precision, but it requires an android device.

4 Q You ever been qualified as an expert in location  
5 technology before?

6 A I have.

7 Q How many times have you, you been qualified as an expert  
8 in location technology?

9 A Between 15 and 20 times.

10 Q Okay. How about in the State of South Carolina?

11 A I have twice.

12 Q Okay. Have you been qualified as an expert in other  
13 fields regarding cell phone technology?

14 A I have been qualified as an expert in the forensic  
15 examination of mobile devices.

16 Q Okay. Out of those times, the ten times that you were an  
17 expert, ten or 15 times, how many of those have you testified  
18 about the location of cell phone services?

19 A The location of cell phone services or the location of  
20 the phone?

21 Q The phone at issue?

22 A Every time was about where was the device.

23 Q And I know you said you've been qualified as an expert in  
24 South Carolina. Have you ever been qualified as an expert in  
25 Horry County?

Aaron Edens - Direct by Mr. Richardson

722

1 A Yes. I have.

2 Q All right. Do you remember a case name for that?

3 A That was the --

4 MR. ALEX HYMAN: Your Honor, we object.

5 MR. GARDNER: Your Honor, we'd object. I think we're  
6 going too far afield on this.

7 THE COURT: I'll sustain that objection.

8 Q Okay. But you have been qualified as an expert in Horry  
9 County?

10 A Yes.

11 MR. RICHARDSON: Your Honor, I think it would be time now  
12 we would offer Mr. Edens as an expert in location technology,  
13 but I think it's time for cross examination as to that.

14 THE COURT: All right. Any challenges or questions from  
15 Mr. Rosenbaum?

16 MR. ALEX HYMAN: No, Your Honor.

17 THE COURT: Any challenges or questions from Ms. Durkin?

18 MR. BOUCHETTE: No, Your Honor.

19 THE COURT: All right. I find this witness to be an  
20 expert -- is it cell phone location technology?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: All right. I find this witness to be an  
23 expert in the field of cell phone location technology.

24 MR. RICHARDSON: Your Honor, may I approach?

25 THE COURT: Yes.

1           (Whereupon, a bench conference is held in the presence,  
2 but out of the hearing of the jury.)

3           THE COURT: All right. Ladies and gentlemen, I'll remind  
4 you that -- I'll charge you with the law on expert testimony  
5 when I charge you on the law, but all you need to know is at  
6 this point in time is that this witness is qualified as an  
7 expert, and therefore, can render an opinion in the field in  
8 which he is qualified as an expert in addition to any other  
9 information that he might have personal knowledge of. All  
10 right.

11 BY MR. RICHARDSON:

12 Q All right. Mr. Edens, with regard to this case, State  
13 versus James Rosenbaum, were you asked to review any  
14 information?

15 A I was.

16 Q And who asked you to review that information?

17 A That was Assistant Solicitor Nancy Livesay.

18 Q With our office?

19 A With, with, yes.

20 Q All right. And did you -- what did you review in  
21 preparation for coming and testifying here today?

22 A I looked at the AT&T cell phone records and I also looked  
23 at location history records from Google.

24 Q All right. Tell the jury a little bit -- I know you've  
25 talked a little bit about it, but what's the difference

Aaron Edens - Direct by Mr. Richardson

724

1 between a cell phone location history and the Google location  
2 history?

3 A Okay. So the location records that come from AT&T show  
4 the beginning and ending cell site that were used during voice  
5 phone calls, but AT&T is also one of the companies that  
6 records that cell site location information when a text  
7 message is sent or received and also when the device is --  
8 when there's a data event on the phone. We don't know -- we  
9 don't -- we can't specify what type of data event it could  
10 have been them accessing a social media service or a game, but  
11 we know that that phone accessed the, accessed the internet  
12 and was used to send or receive data from the phone. Google's  
13 location history is separate and independent from what AT&T  
14 collects location information on. The Google, the android  
15 operating system developed by Google collects and stores  
16 location history essentially anytime something happens on the  
17 phone or anytime there's an event on the phone. When they  
18 unlock the phone, when they turn the phone off or on, when an  
19 application that touches the internet is accessed or sometimes  
20 when there's even simple things like directional changes the  
21 device will update its location and that information is  
22 collected and stored by Google.

23 Q All right. And is this like for billing purposes or why  
24 do they take such information?

25 A They, they say they do it for the, the benefit of the

1 consumer, which is to bring you location aware search engine  
2 results and advertisements. So for example when I, I search  
3 for places to eat when I'm in Horry County, it will, it will  
4 determine my location and then bring the closest, the closest  
5 restaurants to me instead of showing the ones from Oakland,  
6 California, which is where I'm from.

7 Q Okay. And like with the Google do they keep up with  
8 that? Has that got something to do with the maps that you  
9 have in your phone where you're trying to drive from one  
10 location to the other?

11 A It's certainly when you access a location, a where  
12 application, I mean, it definitely updates your location and,  
13 and continuously updates your location. However, what most  
14 people don't realize is that that location information  
15 collection continues in the background even when you're not  
16 using applications like Google Maps or something else that  
17 would rely on an accurate location.

18 Q When I'm driving down the road not using internet or  
19 anything else on my phone, is my phone keeping up with where  
20 I'm going? Is it, is it keeping up with what cell towers are  
21 nearby?

22 A Two different, two different classes of information and  
23 my answer would also be contingent on what kind of phone you  
24 have. If you have an android phone and you're just driving  
25 down the road, then, yes, the operating system is periodically

Aaron Edens - Direct by Mr. Richardson

726

1 updating your location even if you're not using it.

2 Q I think the -- are these, State's Number 13 and 14 are  
3 already in evidence, I want to ask you is this a part of what  
4 you based your opinion on?

5 A These, these appear to be printouts of an electronic  
6 version of, of the records that I looked at.

7 Q Okay. Can you tell who's the service, service provider  
8 on that phone?

9 A It's AT&T is the service provider for both phones.

10 Q All right. Do you have a phone number on there for the,  
11 the phone that the information was captured from?

12 A I, I have one for each set of records, sir.

13 Q All right. And do you see a 203 number?

14 A Yes, sir.

15 Q All right. What's that phone number?

16 A That is 203-802-0282.

17 Q Okay. And does it say what type of phone that is or  
18 would that record include that?

19 A This record does include that and it indicates that the  
20 phone is a Samsung SGH-T399, capital N.

21 Q Oh, yeah. With that Samsung, can you tell if that would  
22 use android or Apple, iOS?

23 A Only, only iPhones use Apple's operating system. So and  
24 Samsung uses the android operating system.

25 Q Okay. And how does that -- now, you were talking a

1 little bit earlier about depending on what kind of phone. Now  
2 we've narrowed it down that it was an android system. Can you  
3 tell the jury how that would work with that particular phone?

4 A Certainly. If the Samsung phone is associated with a  
5 Gmail account or a Google mail account, then that location  
6 information is going to be collected as part of that Gmail  
7 account.

8 Q Okay. We've talked about searching for towers, the, the  
9 phone searching for towers and different reasons for it, but  
10 let me ask you, if I were, if I were to have an android phone  
11 and go by a particular site that has internet services, in  
12 other words, McDonald's sometimes has free Wi-Fi or a neighbor  
13 down the road has free, has free or locked Wi-Fi, would my  
14 android hit on that Wi-Fi location?

15 A There, there are a couple of variables in that scenario.  
16 One would be if the Wi-Fi was turned on on your device. The  
17 android operating system will try and use whatever, whatever  
18 means it can, whatever means it has available to determine a  
19 location. So if for example GPS is turned off, but Wi-Fi is  
20 turned on, then it will -- it will use that as its best  
21 available location technology. If both GPS and Wi-Fi are off  
22 it'll try and use the area cell sites to figure out where  
23 you're located. If all of those are turned off it still uses  
24 additional technologies built into the phone to try and  
25 establish your location, and those other technologies include



Aaron Edens - Direct by Mr. Richardson

728

1 Bluetooth sensors on the device, as well as the motion sensors  
2 on the phone.

3 Q All right. If I've got an android phone and I leave my  
4 house in Conway and come to work and pass by 20 houses with  
5 Wi-Fi in, inside the houses would it leave like a breadcrumb  
6 of where I had gone?

7 A Mostly likely it's not. As you're traveling through  
8 areas we don't see that Wi-Fi location information is  
9 gathered. However, if you stopped at McDonald's for ten  
10 minutes and, and ate your breakfast there, we do tend to see  
11 Wi-Fi based location information.

12 Q And that's called Wi-Fi based?

13 A Well, it's, it's Wi-Fi based location information, but  
14 it's, it's all part of the same location data collection  
15 that's done by Google. They call the -- their product or the,  
16 the category that they collect that information is known as  
17 Google location history.

18 Q And with regards to that 203 number and that you were  
19 asked to look at, were you able to find any Google location  
20 history on that at or around the time of July 11<sup>th</sup>, 2016?

21 A That, that was provided to me as a separate record by the  
22 Solicitor's Office.

23 Q Okay. Did you review that?

24 A I did.

25 Q Were you able to put together a presentation that may be

1 able to help the jury? First of all, did you find anything  
2 with regard to Google location or what we had talked about Wi-  
3 Fi?

4 A I did.

5 Q All right. Were you able to put together any  
6 illustrations that may be able to help the jury based upon the  
7 records that the Solicitor's Office sent you?

8 A I did.

9 Q All right. Would, would you be willing to share that  
10 with the, with the jury?

11 A Certainly.

12 Q Would it -- do you need me to do anything?

13 A Sir, I'm not sure that the television is turned on.

14 Q Hold on just a second.

15 MR. RICHARDSON: Your Honor, may I?

16 THE COURT: All right.

17 A We're good on my end, Counselor. I'm not sure why it's  
18 not displaying. All my stuff's good. Might I suggest if on  
19 the remote if there's an input that we attempt to --

20 MR. HELMS: Your Honor, our IT lady, Ms. Root, had a  
21 doctor's appointment this afternoon.

22 A May I, may I approach, Your Honor?

23 THE COURT: Yeah.

24 Q You're not an expert in TV?

25 A No. I'm not an expert in TV.

Aaron Edens - Direct by Mr. Richardson

730

1 MR. HELMS: Your Honor, we might need a five-minute break  
2 just to set this up. It won't take long.

3 THE COURT: Well, let's go ahead and while we're trying  
4 to see what we can do.

5 All right. Ladies and gentlemen, rather than having you  
6 sit out here in the jury box while they're trying to set this  
7 up, I'm going to excuse you back to the jury room, give you a  
8 little break. Please leave your notepads in the jury box. Do  
9 not discuss the case even among yourselves.

10 (Whereupon, the following takes place outside the  
11 presence of the jury.)

12 THE COURT: All right. We're going to take about a 10 or  
13 15-minute break. If you don't get it working by then we'll  
14 just have to proceed without it; okay?

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: All right. Let's take a short break.

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 in?

22 MR. RICHARDSON: No, sir, Your Honor.

23 THE COURT: Anything from --

24 MR. ALEX HYMAN: No, Your Honor.

25 THE COURT: -- either Defendant?

Aaron Edens - Direct by Mr. Richardson

731

1 MR. BOUCHETTE: No, Your Honor.

2 THE COURT: All right, sir. All right. Mr. Edens, if  
3 you'd want to come back or are you going to, you going to go  
4 from there?

5 MR. EDENS: Yes, Your Honor. We had to switch cords out  
6 and was much shorter so I'd be able to testify.

7 THE COURT: Okay. Is, court reporter, and is he near a  
8 microphone where it's all right?

9 REPORTER: Yes, Judge. He is. Yes, sir. Thank you.

10 THE COURT: All right. That'll be fine. All right.  
11 Let's go ahead and bring the jury in.

12 (Whereupon, the following takes place in the presence of  
13 the jury.)

14 THE COURT: All right. Ladies and gentlemen, welcome  
15 back. Please make sure you have your own notepads. All  
16 right. Mr. Richardson, you can continue.

17 MR. RICHARDSON: Thank you, Your Honor.

18 DIRECT EXAMINATION (CONTINUED)

19 BY MR. RICHARDSON:

20 Q All right. Mr. Edens, now, when we, when we left before  
21 the technical difficulties, and we did switch out cords, so  
22 I'm hoping it'll work, but tell the jury what we're looking at  
23 here. Pull it up and tell us what we're looking at.

24 THE COURT: Excuse me.

25 A The, the, the following slides are, are graphic depiction

Aaron Edens - Direct by Mr. Richardson

732

1 of the information, the location information provided by  
2 Google, so it's, it's basically a -- just a -- an illustration  
3 of that data.

4 Q What phone numbers is associated with?

5 A It's not associated with the phone number. It's  
6 associated with the Gmail account.

7 Q Gmail account associated with Mr. Rosenbaum?

8 A That's correct.

9 Q All right. So and you know -- there you go.

10 A So there were a total of four location records, all of  
11 which were derived from Wi-Fi location information. The first  
12 one is 7-11-2016 at 8:46 and 22 seconds p.m., and this is a  
13 location record that was derived from Wi-Fi, and what it  
14 shows, what the data that's provided to us is a GPS  
15 coordinate, but then a display radius around that and what,  
16 what Google tells us is that we believe the device was located  
17 here at these GPS coordinates. However, given whatever  
18 location technology, it could be somewhere within the circle.  
19 So I'm unable to specify whether the device was, was here,  
20 here or here, but it was somewhere within the green circle.

21 On 7-11-2016 at 8:48 23 seconds p.m. there was another  
22 Wi-Fi location record. Again, what was provided was a GPS  
23 coordinate puts it right at the middle of the circle and the  
24 display radius which Google tells us is I believe the phone --  
25 they believe the phone to be here. However, it could be

1 anywhere within the green circle.

2 Q Let me ask you something, Aaron, before you move on to  
3 the next slide. You've got a pin drop there labeled, what is  
4 that?

5 A That is [REDACTED] State Highway 548 in Conway, South Carolina.

6 Q All right. So the green circle is -- do you know  
7 approximately how far to the center from that pin mark?

8 A It, it's about 250 feet between the blue pin and the  
9 center of the circle.

10 Q Is there anything that'd be a -- in the middle of that  
11 field between the two?

12 A I'm sorry. What was that?

13 Q Is there any, anything blocking the sight line on that  
14 between [REDACTED] and the, the green circle?

15 A Not, not to my knowledge. No.

16 Q All right.

17 A All right. 7-11-2016, 8:50:37 p.m. another Wi-Fi  
18 location record. Again, the device is somewhere within the  
19 green circle and then 7-11-2016, 8:52 and 42 seconds p.m. the  
20 final Wi-Fi location record, which again, indicated that the  
21 device was located somewhere within the green circle.

22 Q I think the location services that you captured was  
23 between -- what was the first time you captured one?

24 A So 8:46:22 p.m. to 8:52:42 p.m.

25 Q All right. And how, in your expert opinion, how likely

Aaron Edens - Direct by Mr. Richardson

734

1 is it that that device was in that green circle?

2 A It, it's highly likely that the device is somewhere  
3 within that green circle.

4 Q All right. Is this Wi-Fi connection, is that more  
5 accurate than the cell phone tower stuff that you were talking  
6 about earlier?

7 A Yeah. The cell site location information, depending on  
8 the provider and the service, can get us anywhere between --  
9 the best I've ever seen is about 50 meters, but more  
10 traditionally it's within the 500, 1000 to 2000 meter range,  
11 so good enough to put somebody in a city, but not good enough  
12 to put them, you know, at a particular address.

13 Q So you're basically saying that device was in the front  
14 yard of that trailer, not the trailer behind it or the trailer  
15 in front of it?

16 A I'm, I'm just -- I'm saying that that device was  
17 somewhere within that green circle. As far as specifically  
18 where it was, I can't determine that, but it was somewhere  
19 within the green circle.

20 Q All right. All right. And would it have had to have  
21 been there for a while to pick up that location service?

22 A So again, simply, simply driving down the road and  
23 turning around is not going to generate these kinds of  
24 location records. The device typically has to be stationary  
25 for somewhere between three and, and five minutes before we'll

1 start to see a location record generated. So it's not simply  
2 a matter of, of driving by, driving down, turning around or  
3 anything else. The device was stationary long enough to get  
4 the location record.

5 Q And certainly from what you're picking up between 8:46  
6 and 8:52 it was within that green circle?

7 A Yes.

8 MR. RICHARDSON: Your Honor, that's all the questions  
9 that we would have for Mr. Edens.

10 BY MR. RICHARDSON:

11 Q If you would take the stand and answer any questions the  
12 defense might have for you.

13 MR. RICHARDSON: Alex, do you want this up?

14 MR. ALEX HYMAN: No. I've got mine.

15 CROSS EXAMINATION

16 BY MR. ALEX HYMAN:

17 Q Okay. Mr. Edens, I'm going to pull up for you -- I want  
18 to talk to you a little bit about what you said. Now, it was  
19 your testimony that that little green circle, how did you  
20 formulate that little green circle?

21 A I plotted it. You mean the dimensions of the green  
22 circle?

23 Q Yeah.

24 A So that information is provided by Google.

25 Q You got anything that says that?



Aaron Edens - Cross by Mr. Alex Hyman

736

1 A I don't have the records in front of me, no.

2 Q Okay. Do you have anything from Google that says that  
3 that's how big it's supposed to be?

4 A Those -- that was contained within the records that I  
5 used to formulate my opinion.

6 Q So your testimony is that if that pinged in that little  
7 area that you said he had to have been there or the device had  
8 to have been there?

9 A I said that there's a high probability that the device  
10 was there.

11 Q Well, is it high probability or is it that it's there?

12 A You want me to put a number on it, Counselor?

13 Q Yeah.

14 A 98, 99 percent chance.

15 Q So if you were wrong you'd be 98, 99 percent wrong; is  
16 that right?

17 A No. If I was wrong I'd be a hundred percent wrong.

18 Q Okay. Well, let's look right here because you were given  
19 the Wi-Fi for the entire day; right?

20 A Correct.

21 Q Okay. Did you check any earlier in the day?

22 A I believe I did but for court purposes I was asked to  
23 illustrate those particular records.

24 Q Well, how about after?

25 A After what?

1 Q Well, there was a 911 call at 9:35. Did you check then?

2 A I don't believe so.

3 Q Okay. So you checked basically at the time that they  
4 wanted you to?

5 A The time that they asked me to. Yes.

6 Q Okay. Well, let's look at a couple of things here. All  
7 right. I'm going to do this right here if I can get this  
8 working. Sometimes our Wi-Fi here doesn't work that great.  
9 You have to turn it off and then turn it back on. There we  
10 go. All right. Now, what I've got here is the Google  
11 coordinates from 10:41 that morning, and again, I kind of did  
12 like you did and I put the house here and this is the Google  
13 coordinates that are showing and this is a Wi-Fi coordinate at  
14 10:41:43 a.m. In fact, I wrote right there 10:41 a.m. All  
15 right. Now, I didn't have anything in my stuff I got from  
16 Google that said that I'm supposed to put a green circle  
17 around it right here and say that that's where it was, but  
18 would you admit that's over in this same general area where it  
19 could have been right here?

20 A I'm sorry. Was that a question?

21 Q Yeah. Would you admit that this is the same general  
22 area?

23 A Oh, yeah. Yeah. I'm sorry. I didn't understand the  
24 question, Counselor.

25 Q And that's at 10:41 a.m. that morning?

Aaron Edens - Cross by Mr. Alex Hyman

738

1 A Okay.

2 Q Not at 8:46 or anything like that, and let's go check  
3 some more. All right. Let's look at this one because this is  
4 at 12:08 p.m. Did you see that when you did yours?

5 A I don't recall. I wasn't asked to focus on that  
6 timeframe.

7 Q Okay. But again, you would admit that that's in the same  
8 area?

9 A Yes.

10 Q Okay. Let's move on to maybe 2 p.m. Surely he's not  
11 sitting there all day. Oh, I guess he is. Is that the same  
12 place or similar?

13 A It's the similar, general area.

14 Q Okay. And that's 2 p.m. All right. Do you see a  
15 pattern?

16 A I see that the, the location information that you've  
17 illustrated is in the same general area as the ones I looked  
18 at.

19 Q Okay. Well, let's look at a couple more. I'm sorry.  
20 I'm trying to hold too many things in my hand. Well, let's go  
21 to 3:45 p.m. Just so we're not stuck, let's see where this  
22 goes. All right. It's not showing up well, but would you  
23 admit that this is a completely different area?

24 A It's kind of --

25 Q Here, we'll do this. This appears to be 501. Would you

1 admit that? Do you see where it says 501 right here?

2 A I'll, I'll have to take your word for it, Counselor.

3 Q Okay. Come --

4 A I can't see.

5 Q All right. Well, I tell you what, we'll go to the next  
6 one then. Let's look at 6:46:43 p.m. Now, Google, Google  
7 will just not do the Wi-Fi thing. They'll do the GPS, too;  
8 right?

9 A That's correct.

10 Q But it's not always. I mean, it -- they don't give you a  
11 every second of every day with the GPS. So every once in a  
12 while you do get them to match up; correct?

13 A Yes.

14 Q Okay. Now, as far as this goes at 6:46:43 p.m. is it  
15 showing there that he's kind of in that same area again?

16 A Could you zoom in just like one or two clicks, please?

17 Q Sure.

18 A Yes.

19 Q Well, all right, and the time I have on that is 6:46:43.  
20 I'm going to show you, just so I'm reading this right, this  
21 says GPS and this is Wi-Fi; right?

22 A Yes.

23 Q Okay. So the one that I just input, the 6:46:43, is the  
24 Wi-Fi?

25 A Correct.

Aaron Edens - Cross by Mr. Alex Hyman

740

1 Q All right. The one underneath it that says GPS it's just  
2 a matter of seconds before; would you admit that?

3 A I'm sorry. We're talking about this record right here?

4 Q Yeah.

5 A Yes.

6 Q Okay. So it's --

7 A Actually, Counsel, could I see it one more time?

8 Q Sure.

9 A Yes.

10 Q Okay. So it's just seconds. So he should be over there  
11 because this is the GPS one which is the most accurate; right?

12 A Tends to be. Yes.

13 Q Okay. Let's check it out. Uh oh, where is that showing?

14 A It says address.

15 Q An address?

16 A Yes.

17 Q Yes.

18 Q Not at the neighbor's where the Wi-Fi was pinging?

19 A Well, Counselor, it's, it's kind of difficult to tell  
20 because the data that and the sheet that you had me look at is  
21 not the original format from Google, that there's -- some of  
22 the columns are missing. So I'm really not able to say that,  
23 and without having that display radius around it --

24 Q I understand.

25 A -- it's really difficult to tell because sometimes you'll

1 see an intersection between GPS and Wi-Fi which would, you  
2 know, would then be, you know, much more indicative of the  
3 location, but without having the, the radius around the GPS  
4 points it's, it's kind of difficult to tell.

5 Q Well, I mean, they give you a direct latitude and  
6 longitude; don't they?

7 A They do, and then they also give you the display radius  
8 around it which is where the device could be somewhere within  
9 that display radius.

10 Q Okay. So again, though, right here where it was -- I  
11 don't know if you'd call it pinging or Wi-Fi'ing or what, at  
12 the same time or within seconds it's showing his GPS is right  
13 in the middle of his house; would you admit that?

14 A Yes. But I -- again, I would say that without having the  
15 display radius around it, even with GPS hits we sometimes get  
16 data that's 50, a hundred meters out because in order for GPS  
17 to work you have to -- you -- the phone has to have a clear  
18 line of sight with the sky, and it has to be able to  
19 communicate with no less than four satellites in  
20 geosynchronous orbit around the planet. If your mobile device  
21 is communicating with four GPS satellites it's less accurate  
22 than if your device is communicating with 10 or 12. So again,  
23 without that, it's, it's -- I, I can't really give you a good  
24 answer to that question, Counselor.

25 Q Well, I guess my, my point is is you never showed us

Aaron Edens - Cross by Mr. Alex Hyman

742

1 anything that had any display radiuses on there.

2 A I did, Your Honor. I'm sorry, Counselor, the four  
3 slides, that, that circle is the display radius.

4 Q You, you had your display radius.

5 A No. That --

6 Q No, no, no. I'm asking you a question. Did you bring  
7 anything in court today from Google that says this is the  
8 radius?

9 A No. I did not.

10 Q Okay. So what you're saying then is you made those green  
11 lines based off of what you deem as the radius?

12 A No.

13 Q But you'll admit that quite a few times now he has shown  
14 up supposedly on the Wi-Fi of a neighbor's house even though  
15 his GPS is pinging in his living room?

16 A That's correct.

17 Q Okay. Well, let's look some more. Are you aware of what  
18 time this happened?

19 A I am not.

20 Q Okay. Well, I'll, I'll tell you, there was a 911 call at  
21 9:35. So anytime after that police called or police arrived.  
22 We've heard testimony that Officer Mark Johnson came in, my  
23 clients were sitting there and then they were taken to the law  
24 enforcement building, the M.L. Brown Building, which is on  
25 Main Street. Now, as far as that goes, I don't think there's

1 any controversy at all in me saying that at 12 a.m. my client  
2 was nowhere to be around his home. Let's check then. Well,  
3 there it is again. Now, that is at 12 a.m. where my client is  
4 nowhere around and the phone is in the house with the CSI  
5 investigators. They've already testified to that.

6 A Okay.

7 Q Again, it is showing up over on the Wi-Fi at the  
8 neighbor's house?

9 A Okay.

10 Q Would you admit that's odd?

11 A I would.

12 Q Okay. And two people have testified already that that  
13 phone -- where is that phone -- this phone was in their  
14 possession. They also testified that they didn't go to a  
15 single one of these houses and question anybody. So again,  
16 how does that happen?

17 A You --

18 Q I'm asking you.

19 A Are you asking me to --

20 Q Yeah. You're the cell phone expert that came from  
21 California.

22 A Okay. So, again, without looking at the display radius  
23 it's very difficult to say. Now, it is -- it does happen  
24 occasionally that when a device is registered with a location  
25 and then moves away and is no longer able to get a location,



Aaron Edens - Cross by Mr. Alex Hyman

744

1 it will revert back to its last known or last known location.

2 Q Well, let's check at 12:13 a.m. see if things changed.

3 Nope. So another 13 minutes go by, the phone is still in his

4 house, in his home; [REDACTED], with the crime scene investigators,

5 but yet, you want this jury to think he must be hiding

6 somewhere in here. You've said that his phone must be over

7 there. That's what you testified to; right?

8 A Yes.

9 Q That the device must be over there?

10 A Yes.

11 Q Let's look a little bit further. Now, I think you

12 testified that -- I think your direct testimony was that the

13 device has to be stationary for three to five minutes before

14 it'll pick up on a Wi-Fi; is that what you said?

15 A Generally, in order to get a Wi-Fi location record the

16 device has to be stationary.

17 Q I think you said that it usually does not pick up

18 anything as you're driving or anything like that?

19 A That's correct.

20 Q Okay. Now, I'm not guessing that you'll know where this

21 road is, but anybody who's from around here might. Now, if

22 you can see that flyby, that is Cultra Road. Cultra Road is

23 where Dennis Lewis said he drove to take the phone. You know

24 what's not on Cultra Road, the police station, is how you get

25 there, but at no point did he ever say he stopped on Cultra

1 Road or anything like that, but yet we have a GPS point or,  
2 excuse me, a Wi-Fi point. I'm going to show you where Horry  
3 County Police Department is. All right. That's where the  
4 police department is. That's where the evidence is kept.  
5 That's where Dennis Lewis brought the phone. Let me show you  
6 something. You just saw how he was driving, and it did ping  
7 on Cultra Road.

8 A Uh-huh.

9 Q But then we have something right here at 12:57 a.m.  
10 Look where that is. You know what we'd call that up there?  
11 That's the post office. You think he was dropping it off at  
12 the post office? That's a question.

13 A Again, Counselor, without the display radiuses shown it's  
14 -- you're asking me a question that I can't answer.

15 Q I'm showing you the longitude and latitude that Google  
16 says where that device is, and you're talking about a display  
17 radius that you haven't brought or shown of any type other  
18 than you put up a slide and said, "This is the display radius,  
19 it has to be in here," but yet, you can't tell me that on any  
20 of these other ones. Am I correct in saying that?

21 A Because I don't have the records, Counselor.

22 Q Well, why didn't you bring the records? You had a  
23 subpoena to be here; didn't you?

24 A I did.

25 Q Okay. You brought your little slideshow all the way from

Aaron Edens - Cross by Mr. Alex Hyman

746

1 California; right?

2 A I did.

3 Q Okay. All right. Well, let's look the next day. All  
4 right. Because surely the next it would not still be at the  
5 post office. Still is. You've got to admit these are  
6 inconsistent with what you testified to. They're  
7 inconsistent. You testified in this court and you want this  
8 jury to believe that he was -- his device was in some way  
9 hidden down this road. They've based everything they've told  
10 this jury off of you and now you're looking at this and you're  
11 having to realize you're wrong, not 98 percent, not 99  
12 percent. Are you a hundred percent wrong? You can answer  
13 that.

14 A Which question do you want me to answer, Counselor,  
15 because it seemed like there was a couple buried in there.

16 Q You said that you were 98 to 99 percent positive that  
17 that phone was in what you called the radius?

18 A Yes.

19 Q Do you still feel that way?

20 A Well, without being able to view the radius I can't  
21 answer that question.

22 Q You were given all of these documents; were you not?

23 A I was.

24 Q But you handpicked four of them thinking maybe I wouldn't  
25 look at all these other ones?

- 1 A No.
- 2 Q That's not what happened?
- 3 A No.
- 4 Q Okay. You're being paid by who to be here?
- 5 A The San Mateo County Sheriff's Office.
- 6 Q The who?
- 7 A The San Mateo County Sheriff's Office.
- 8 Q So you're telling me that Mr. Richardson and the
- 9 Solicitor's Office is not paying you a penny to be here?
- 10 A No.
- 11 Q Who paid for your flight?
- 12 A The Solicitor's Office.
- 13 Q Okay. Who paid for your room?
- 14 A The Solicitor's Office.
- 15 Q Who've paid for your food?
- 16 A I believe I am.
- 17 Q Okay. The last time you testified here you're saying you
- 18 didn't receive a penny?
- 19 A No.
- 20 Q Not a penny?
- 21 A From the Solicitor's Office?
- 22 Q Yeah.
- 23 A No.
- 24 Q Did they pay the San Mateo Sheriff's Department?
- 25 A I believe they reimburse them for my salary.

Aaron Edens - Cross by Mr. Alex Hyman

748

1 Q Okay. You're a hired gun that's been brought here and  
2 you brought four slides. You're hiding every bit of this that  
3 I just showed you. You're hiding it. You didn't bring your  
4 stuff and you're trying to blame it on, "Well, I don't know  
5 what the radiuses are. I don't know what the radiuses are,"  
6 but yet, you say you know the radiuses on those four?

7 A I did. I displayed the radiuses on those four.

8 Q Would you admit that what you've said here has been  
9 misleading to the jury?

10 A No.

11 Q After all of that that I just showed you you don't think  
12 what you've testified to is misleading to these people?

13 A No.

14 MR. ALEX HYMAN: The Court's indulgence.

15 THE COURT: All right.

16 BY MR. ALEX HYMAN:

17 Q You didn't bring any of your Google stuff and we haven't  
18 heard anybody from Google here; have we?

19 A Did I bring any of my Google stuff?

20 Q Yeah. Your -- all these Google documents that I have,  
21 but that you didn't bring?

22 A No. And then the second question was did I hear anyone  
23 from Google and no.

24 Q Okay. So there's nobody here from Google to actually  
25 talk about how reliable or how accurate this stuff is, just

1 you?

2 A Correct.

3 Q Okay. You've never worked for Google; have you?

4 A No.

5 MR. ALEX HYMAN: Your Honor, I have no further questions  
6 at this time.

7 THE COURT: All right. Mr. Bouchette?

8 MR. BOUCHETTE: Your Honor, I think Alex took all my  
9 questions. There will be no questions from Ms. Durkin.

10 THE COURT: All right. Redirect?

11 MR. RICHARDSON: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q I know it's off now, but you were careful to say earlier  
15 that it could be anywhere in that cone, even when I directed  
16 you to the front of the trailer. Is there -- without having  
17 that up there is there any way that that post office could  
18 have been within the cone?

19 A Yes.

20 Q Because I'm -- are you assuming -- was that GPS  
21 coordinates or Wi-Fi coming from what Mr. Hyman was showing  
22 you?

23 A I, I, I didn't catch what the Defense attorney said that  
24 location technology was coming from, but if it was Wi-Fi it  
25 certainly could have covered the Horry Police Department.

Aaron Edens - Redirect by Mr. Richardson

750

1 Q Had -- have you seen the document that he presented there  
2 to you today before today?

3 A The, the paper that he had in his hand?

4 Q Yes, sir.

5 A Show what that looks to me like is the records that we  
6 get from Google location history. However, the -- they're  
7 formatted slightly differently. So it looks similar to Google  
8 location history records, but they're not identical.

9 Q All right. But it's nothing that we would have sent you?

10 A No.

11 Q Because the bar, the columns are, are different or  
12 whatever?

13 A Correct.

14 Q Not saying that there's anything nefarious about the GPS  
15 coordinates?

16 A Correct.

17 Q What you were testifying to is cones or area of  
18 locations, the, the green dots that you were talking about?

19 A Yes.

20 Q All right. And again, do you know where the post office  
21 is at?

22 A I don't.

23 Q Do you know where the police station's at?

24 A I -- I've not been. I've seen it on a map.

25 Q Okay. Would it surprise you to know that the post office

1 and the police department are right beside each other?

2 A No.

3 Q All right. If you would have had the, the green cones --  
4 do, do you make those, those areas up or is that given to you  
5 by Google?

6 A So the records are uploaded, and the data is  
7 automatically read, and those locations are automatically  
8 plotted.

9 Q All right. So you, you didn't plot them but my -- what  
10 they had given you?

11 A Yeah. I didn't manually enter or draw the circles.  
12 It's, it's done automatically. I upload the records and, and  
13 then analyze them from there.

14 Q Is there any doubt in your mind that the phone, that  
15 Samsung phone was in the general location as to what you  
16 testified to before?

17 A To those four slides I don't have any doubt.

18 Q Okay. And with regard to the M.L. Brown versus the post  
19 office, is there any indication that they would be anywhere  
20 else but -- well, you didn't have a cone to look at in those?

21 A Yeah. I -- there, there was no display radius on any of  
22 those, and so it's, it's difficult to make any kind of  
23 statement about could the phone have been here or could the  
24 phone have been there without seeing the actual data.

25 Q Okay. I have no further questions. Thank you, Mr.



Paulette Sutton - Direct by Mr. Richardson

752

1 Edens.

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

3 MR. RICHARDSON: May he be released from his subpoena?

4 THE COURT: Any objection?

5 MR. ALEX HYMAN: No, Your Honor.

6 THE COURT: Any objection?

7 MR. BOUCHETTE: No, Your Honor.

8 THE COURT: All right. He's free to go.

9 All right. The State can call your next witness.

10 MR. RICHARDSON: Thank you, Your Honor. The State would  
11 call Ms. Paulette Sutton.

12 Whereupon, Paulette Sutton is called to the stand, duly  
13 sworn by the clerk and testified as follows:

14 MS. SUTTON: Thank you.

15 THE CLERK: Please state your name and spell your name  
16 for the record.

17 MS. SUTTON: Yeah. Sure. My name is Paulette Sutton.  
18 It is P-A-U-L-E-T-T-E. Last name is S-U-T-T-O-N.

19 THE COURT: All right.

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q Ms. Sutton, please tell the jury where you're from.

23 A I am from Memphis, Tennessee.

24 Q All right. And are you in law enforcement?

25 A I am retired from the medical examiner's office in

1 Memphis which was for most of my career the state medical  
2 examiner.

3 Q What kind of training did you get in law enforcement in  
4 the ME's office?

5 A My degree, my bachelor's is in medical technology and  
6 that is actually how I started work at the medical examiner's  
7 office. From medical technology, what we traditionally do is  
8 analyze blood at a doctor's office or at a hospital or  
9 whatever. Our medical examiner wanted medical technologists  
10 to analyze the evidence from sexual assault kits and also to  
11 do the medical examiner's lab work. Then we contracted to the  
12 Memphis Police Department to do the forensic evidence, the,  
13 the, the kind of evidence that came from their crime scenes,  
14 and so a medical technologist was cut out for the kind of goal  
15 that he had in mind. That's how I started with the medical  
16 examiner's office. I, as you might can tell from my hair,  
17 that was a long time ago, and there really weren't but maybe  
18 two traditional college programs at that time. So I trained  
19 at the North Louisiana Crime Lab, at the FBI Academy and then  
20 on the bench in the laboratory. Since I started there I also  
21 got a master's degree in engineering.

22 Q How long was your career in law enforcement, Ms.  
23 Paulette?

24 A 30 years.

25 Q And currently you -- do you have a company that you work

Paulette Sutton - Direct by Mr. Richardson

754

1 for or where are you?

2 A I, I work privately consulting on cases that people might  
3 have a question about or lecturing or teaching.

4 Q Let me ask you about your training in blood spatter.

5 A Okay.

6 Q Give us the benefit of your training there.

7 A Well, my first class was what is called a basic course in  
8 bloodstain pattern analysis, and I took that course from Herb  
9 MacDonell. Herb is out of Corning, New York, and after that  
10 course I also took the advanced course from Herb and also from  
11 Dr. Henry Lee that you might have heard of from Connecticut.  
12 Since I took those classes I have actually taught for, for  
13 both Herb and Dr. Lee. In fact, I got an email from Dr. Lee  
14 today. I'm late on a book chapter, but I have maintained my  
15 association with both of the people that did most of my  
16 bloodstain pattern analysis training and then I have also had  
17 courses in crime scene reconstruction that utilizes some of  
18 the bloodstain pattern analysis as well.

19 Q Tell us about that. What does blood spatter got to do  
20 with crime scene analysis in criminal cases?

21 A Well, what we're looking at with the -- with bloodstain  
22 pattern analysis my traditional background would be to analyze  
23 that blood and be able to tell you that it is blood and not  
24 something that just looks like blood and then to tell you that  
25 it's human blood or it's animal blood. I've worked cases

1 where that was in question. It might be from an animal. It  
2 might be a poaching case, and then to go from that step at, at  
3 one time we did the ABO types of that blood, and of course,  
4 now we do the DNA analysis of that blood to tell you who the  
5 blood belongs to. So it's blood. It's human blood. Who does  
6 it belong to. That's what we do in the biology section of our  
7 laboratory.

8 What the bloodstain pattern analysis does is take that a  
9 step further and tell you not just whose blood this is but how  
10 did that blood get there? What kind of activities occurred,  
11 what was the sequence of these activities, where were people  
12 located, were they standing, sitting or lying down, were they  
13 over here, were they over there. It adds that other part of  
14 the puzzle as to how the blood got there in the first place.  
15 So that's, that's putting the two pieces together, the biology  
16 and the analysis of the patterns.

17 Q Were you asked in this particular case to do anything  
18 with the DNA or was it just you asked about blood spatter  
19 analysis?

20 A I was asked only about bloodstain pattern analysis. I  
21 don't do any consulting on DNA.

22 Q Okay. How many books and articles have you written  
23 regarding blood spatter or blood pattern analysis?

24 A I think the, the total is 31.

25 Q Books or publications?

Paulette Sutton - Direct by Mr. Richardson

756

1 A Publications and books, one, two, three, four, five, six,  
2 seven, eight, nine books and about five chapters and the rest  
3 are articles.

4 Q And you've told this jury that you, that you teach. Tell  
5 us about the makeup of your classes. Who takes those classes?

6 A The, the classes are a lot of the participants are law  
7 enforcement. Some of the participants are prosecutors or  
8 defense attorneys or also medical examiners or pathologists or  
9 death investigators that are involved in that aspect of a, of  
10 a forensic case. Those are largely the people that would take  
11 our courses.

12 Q Ms. Paulette, have you ever been qualified as an expert  
13 in blood spatter analysis?

14 A Yes, sir. I have.

15 Q About how many times?

16 A I -- it's in the hundreds. Our laboratory was very  
17 careful that every time we testified they kept a record of how  
18 many times we testified. When I retired I didn't get that  
19 record. So I can only tell you I testified an average of  
20 about 20 times a year for 30 years, and then I've testified,  
21 of course, since then as well.

22 Q How about here in South Carolina, have you ever been  
23 qualified as an expert?

24 A I have, indeed, yes.

25 Q In Horry County?

1 A Yes. Once in Horry County and once I think in Columbia,  
2 but I'm not positive.

3 Q All right.

4 A But I know another case in South Carolina.

5 Q Have you ever been qualified in federal court?

6 A Yes, sir.

7 Q And are you familiar --

8 MR. RICHARDSON: Well, first of all, Your Honor, we would  
9 move Ms. Paulette Sutton to be recognized as an expert in  
10 blood spatter analysis.

11 THE COURT: Is it blood spatter analysis or bloodstain  
12 pattern analysis?

13 A We, we call it bloodstain pattern analysis now.

14 Q Okay.

15 THE COURT: All right. Any questions or challenges?

16 MR. ALEX HYMAN: Your Honor, there's no, no, no further  
17 questions and we would certainly admit that she's an expert.

18 THE COURT: All right. Mr. Bouchette?

19 MR. BOUCHETTE: Same thing for Defendant Durkin.

20 THE COURT: All right. I find this witness to be an  
21 expert in the field of bloodstain pattern analysis.

22 BY MR. RICHARDSON:

23 Q Ms. Paulette, are you familiar with the case that we have  
24 here today, James Rosenbaum and Diane Durkin?

25 A Yes, sir. I am.

Paulette Sutton - Direct by Mr. Richardson

758

1 Q Tell this jury what you reviewed in this case.

2 A What -- I'm sorry, what I reviewed?

3 Q In your preparation for this case, yes, ma'am.

4 A What was submitted to me initially was the photographs of  
5 the scene, the 911 call audio-recording and the autopsy  
6 report. Right after that, about two weeks later, I received a  
7 copy of the interview videos and then I requested photographs  
8 of the Defendants' clothing, both of the Defendants' clothing,  
9 and also of the blue baseball bat to be taken and those were  
10 submitted.

11 Q Okay. And in reviewing those items did you analyze the  
12 bloodstain pattern analysis? Did you do a review of that?

13 A Yes, sir. I did.

14 Q And did you put together a presentation for this jury  
15 based on your review of that evidence that you just mentioned?

16 A Yes, sir. I did. I prepared a report and also a, a  
17 PowerPoint presentation that reflects the findings of my  
18 report, and I might add that in accordance with the guidelines  
19 in my field, the report that I prepared was also peer-reviewed  
20 by another qualified analyst. So it's, it's not just my  
21 review, but it's also a secondary review as well.

22 Q Thank you very much.

23 Ms. Sutton, I'm going to pass to you what's been marked  
24 as State's Exhibit 116. Take a look at that and tell me if  
25 you recognize what that is.

1 A This is a, a DVD that has the names Rosenbaum and Durkin  
2 and also my name.

3 Q Is that the DVD -- excuse me, the PowerPoint that you  
4 prepared for this jury?

5 A I, I do not know, I sent it via Dropbox.

6 Q Yes, ma'am.

7 A So it, it may be. It may not be.

8 Q I'll put it on the first slide and you tell if you  
9 recognize it.

10 A All right.

11 Q Yeah. There you go. Yeah. It's up. All right. Click  
12 on that first slide, Lacey. Okay. It's showing view. Yeah.  
13 Go down. There you go, down one more. There you go.

14 A Yes, sir. That is the --

15 Q Do you recognize that?

16 A -- that is the PowerPoint I prepared.

17 Q All right.

18 MR. RICHARDSON: Your Honor, the State would move State's  
19 Exhibit 116 into evidence and ask to publish.

20 THE COURT: Any objection?

21 MR. ALEX HYMAN: Judge, are, are all the photos that are  
22 in that I think, I think they're already all in evidence.

23 MR. RICHARDSON: I don't know.

24 MR. ALEX HYMAN: We've been given that. I wouldn't  
25 object, Your Honor.



Paulette Sutton - Direct by Mr. Richardson

760

1 THE COURT: All right. Any objection?

2 MR. BOUCHETTE: No, Your Honor.

3 THE COURT: All right. State's Exhibit 116 admitted into  
4 evidence without objection.

5 (State's Exhibit Number 116 [PowerPoint Presentation]  
6 admitted into evidence and appropriately marked.)

7 BY MR. RICHARDSON:

8 Q All right. Ms. Sutton, I'm going to -- you tell us when,  
9 when it needs to be clicked and educate us on bloodstain pattern  
10 analysis. All right. There you go.

11 A All right. May I step down and -- or, or have a pointer?

12 THE COURT: Yes. As long as you're near a microphone.  
13 Now, these are microphones --

14 A All right.

15 THE COURT: -- that are on the railing there. As long as  
16 you're near a microphone so that you can respond or there's  
17 one right there on the desk, the, the State's desk, too.

18 A No. no. You can go ahead and advance, please. Thank  
19 you. So for 30 years the university --

20 THE COURT: Hold for a second. Is she -- hold for a  
21 minute. She's got to get near a microphone. The court  
22 reporter can't pick her up.

23 A Okay. I'm sorry. For 30 years the university told me if  
24 I wanted to keep living that I had to teach. So I kind of  
25 fall back into teaching mode, but I thought it would help you

1 understand a little better if I take you back and explain to  
2 you how somebody that does what I do, how do we do this, and  
3 it's based on physics and math, just really what you wanted to  
4 hear this afternoon I'm sure, but if you have a drop of blood  
5 forming from your fingertips we'll say, like this person here  
6 does, something is pulling that drop away and that something  
7 is gravity. That's what's pulling it down. If you notice  
8 that this drop of blood has a kind of a neck in between the  
9 heavy part of it, that tells me in terms of physics that  
10 there's a force that's pushing it back, and that force is  
11 surface tension. You know -- do you, do you ever see a water  
12 bug scooting around on a pond? Well, how it does it is  
13 surface tension. He doesn't know it, but that's how he's, how  
14 he's scooting around. Water has a tension across the surface,  
15 and that tension makes it like a skin, and that's how that bug  
16 can stay on top. Now, if he ever pushes his foot through he  
17 may sink, but surface tension is holding him up and that's  
18 what's, that's what's doing this. That's what's pushing it  
19 back.

20 Now, when a person is bleeding, the blood will continue  
21 to accumulate, and we have the examples of this person's  
22 finger, and it's accumulating. Eventually the weight of the  
23 drop gets heavy enough that it pulls away or it exceeds the  
24 upward force of surface tension, and when that weight gets  
25 heavy enough that drop will break free, and when it breaks

Paulette Sutton - Direct by Mr. Richardson

762

1 free it becomes a ball. One of our students took this  
2 photograph in, in class. It becomes a ball, and the reason  
3 that it becomes a ball is, again, surface tension. It goes  
4 back up into the most compact form, and the most compact form  
5 is a ball.

6 Now, as it goes through the air it may oscillate a little  
7 bit, but it has what's called a damping effect, and with blood  
8 it dampens a lot, which is a fancy way of saying the  
9 oscillations don't amount to much. The majority of its  
10 lifetime it's a ball.

11 So I've got this drop breaking free, and if I stand  
12 directly over a surface, say this piece of paper on this  
13 table, and that drop falls from my finger directly onto the  
14 surface, what we will see is a round stain because it fell  
15 straight down.

16 Now, if I start decreasing the angle, which means I'm  
17 moving my hand over here and it's being forced out, the  
18 stains become progressively more elongated to the point that  
19 if I'm, I'm close to this wall and it's dripping off of me and  
20 hitting the wall, it's going to look like something in the 10  
21 to 20 degree angle, real close. The individual or the source  
22 is real close, so the stains are real elongated, and that's  
23 one of the things that we're going to look at in this  
24 particular case. So I wanted to show you how I reach these  
25 conclusions.

1        So the first thing I'm going to do when I look at a case  
2        is I look at, at the decedent, and I look at how they are  
3        found. Mr. Davis was found on this mattress. He doesn't have  
4        a shirt on. He has on a pair of shorts and a pair of  
5        underwear that are partially down and he has on tennis shoes.  
6        That's how he is, is found. The reason that this becomes  
7        important to me is that clothing can contain blood and keep it  
8        from spattering. Lack of clothing or injuries to heads they,  
9        they'll spatter quite readily because there's nothing to  
10       contain the blood, nothing to hold it down.

11       Okay. So I'm going to look at that photograph and then  
12       I'm going to start thumbing through the rest of the photos  
13       from the crime scene, and in this case what I noted initially,  
14       very quickly is that there are a lot of shoe patterns that are  
15       moving through this scene. Just visually looking at these  
16       patterns there's, there's evidence that there's more than one  
17       person moving around in the blood. So now I've got to stop  
18       and go back and see what the shoes on the known participants,  
19       what does the bottom of their shoes look like, and that's the  
20       reason that I called back down here and said, "You know what,  
21       I'm going to need photographs of the shoe bottoms on everybody  
22       that was walking around in there." So that's the next thing I  
23       do.

24       Now, Mr. Davis' shoe soles, these are Adidas brand, and  
25       Adidas brands are zig-zaggy, a real tight zigzag pattern or

Paulette Sutton - Direct by Mr. Richardson

764

1 they're real close together on the bottom of his shoe sole.  
2 You'll notice something else, too, in looking at his shoe sole  
3 you can see that there is an apparent bloodstain on the bottom  
4 of it and that's something that we look at, too, look at the  
5 bottom of somebody's shoes to see if they've been walking  
6 around, is there evidence that they're walking around, and  
7 there is, just that simple.

8 Mr. Rosenbaum's shoe soles are a New Balance pattern, and  
9 I don't know exactly how to describe these other than it's  
10 kind of like a waffle but then they're, they're around an  
11 oval, but the waffles themselves are in a linear type pattern.

12 Okay. And Ms. Durkin's shoes were Sketchers, and this  
13 looks like a waffle pattern that's got a bit of a zigzag going  
14 across, but that's what I'm looking for is what do these  
15 patterns look like so I can go back and compare it to what I  
16 see at the scene.

17 All right. Now, the next thing I'm going to mention a  
18 whole lot is impact spatter. So I'm going to do what the  
19 university told me I had to do if I wanted to get a paycheck  
20 from them and that's teach. So what impact spatter means is  
21 that there is a source of blood. What we're looking at is a  
22 bloody person, a person that is injured and there's blood on  
23 them and that source receives an impact. If it is a small  
24 impact or a slow-moving force, then the majority of the stains  
25 that are created are going to be relatively large. Conversely

1 if you hit somebody really hard or even a gunshot, then the  
2 force is moving more quickly and the spatters are going to be  
3 even smaller than what you saw before.

4 Now, these small guys can't travel far away because once  
5 they, once they are created they have all the energy they're  
6 ever going to have. So they're in the air. They've got  
7 everything they're going to have and now they're building up  
8 friction in the form of air resistance. So they can't travel  
9 far away until they drop straight down. Go ahead.

10 And because of that, the real small ones won't travel as  
11 far away as the larger stains. In a beating case or a low  
12 velocity gunshot we're looking at the bigger type of spatters,  
13 and that's primarily what you're going to see in this case is  
14 the larger spatters.

15 Okay. To give you an idea of what I'm talking about, the  
16 kind of impact that it takes to create these spatters, I  
17 wanted to show you what we use when we teach a class about  
18 this. It's a, it's a fancy contraption but it's a rattrap is  
19 what it is, and we put blood on the, on the platform, and we  
20 allow the rattrap to close this down and impact the blood and  
21 that's what divides the blood into the smaller stains and  
22 that's what I'm looking at, how big are these stains. That's  
23 the first characteristic.

24 Okay. So in this case I've got two potential sources or  
25 two mechanisms that can create impact spatter. One is the

Paulette Sutton - Direct by Mr. Richardson

766

1 blows either to the head or to the body, and the second is the  
2 gunshot to the torso because both of these are forces.

3 Now, I told you as well that in order to create spatter  
4 we have to have a source of exposed blood. There are several  
5 sources in this particular case. Any place that there is a  
6 bleeding injury those are places that the spatter can come  
7 from, the two cuts right above the left or above the left eye  
8 on the forehead, the left occipital region right back here,  
9 the mandibular ridge and also the entrance and exits of the  
10 gunshots, but frankly, these are not the -- these kinds of  
11 wounds are not going to cause a lot of external bleeding  
12 because it never even penetrated inside.

13 Okay. So when I say impact spatter what I am telling you  
14 is that there was a blow or a force delivered and that blood  
15 has already been exposed in order for that to happen. So the  
16 first blow is not going to create any spatter. It's when the  
17 person starts to bleed and they get another blow that spatter,  
18 impact spatter will be created.

19 Okay. So now we're back to where we started. Let's look  
20 at the surface of that mattress. These are what we call  
21 saturation stains, these real heavy stains, simply means that  
22 blood is soaking into that surface. That's what those are.  
23 These are drip stains. They're much larger stains, and  
24 they're just blood dripping onto the surface, just passively  
25 dripping. Now you get down into these smaller stains and

1 they're frankly everywhere, those are impact spatter because  
2 I'm looking at the ones that got subdivided. Okay. That  
3 tells me that there's a blow and then there are transfer  
4 stains and what transfer stains mean is that I've got blood on  
5 my hand and I touch this surface or I touch that railing and I  
6 will transfer blood onto that surface.

7       Underneath his buttocks is a real heavy saturation stain.  
8 Now, this image down here is taken at a different angle, but  
9 this is this stain in image 109. It's turned up here. That's  
10 where his buttocks were, and I, I went back to the autopsy  
11 report to see what's creating this saturation stain and there  
12 is no injury to correspond to his buttocks to that heavy  
13 saturation stain there. So that tells me that either he has  
14 moved from that surface or he has been moved. I can tell you  
15 this is not a dragging kind of movement because you don't see  
16 any smearing from here to there. Okay. If, if you drag --  
17 you think about it, you drag a bloody something you're going  
18 to leave a streak going across there.

19       Okay, Lacey. The other thing I did because I worked  
20 crime scenes with the police department is I, I often put in  
21 my reports and I did this time things that I noted that I  
22 thought were of investigative value and that was that as close  
23 as this pencil holder is to his arm, to Mr. Davis' arm it's  
24 not overturned. There's also a pack of cigarettes there. I  
25 see one thing that looks like it might be a spatter on that



Paulette Sutton - Direct by Mr. Richardson

768

1 and a Dum Dum sucker lying real close to his arm and yet it's  
2 not overturned.

3       Conversely, on this edge, now there's where the pencil  
4 holder is, and you can see it's kind of just laying on its --  
5 a bit of a slant here. There's an ashtray, a glass, a remote  
6 control and what may be ice, I'm not sure, looks like it could  
7 be ice, a lanyard with keys that are overturned right out  
8 there right beside of the mattress. On the mattress itself on  
9 this surface and also on the black and white pillow, these are  
10 impact spatters. So another indication of, of a blow around  
11 -- being deposited on that mattress on the edge of the  
12 mattress and also on the floor.

13       On the wall behind the mattress these are transfer  
14 stains, again, just a bloody object touching that wall, but  
15 these transfers are associated with what we call a flow  
16 pattern. It simply means that the object that touched that  
17 wall that created that transfer was so bloody that more blood  
18 was deposited than would stay on the wall. So you begin to  
19 have the flow lines being created.

20       On the inside of the door, now, to, to help orient you,  
21 the mattress that you were just looking at would be right over  
22 here about the right corner, right lower corner of this  
23 photograph, and this is the inside surface of the door. There  
24 is an impact pattern right up here, and what I mean by a  
25 pattern if I get -- when I showed you the rattrap, okay, and I

1 put a piece of paper in front of that, what I will see is a  
2 radial type pattern or the V-shaped kind of a pattern that  
3 these are, are traveling away, and as they continue down  
4 you'll see them right down here as well, that's a pattern.  
5 All of these can be traced back to one source or one area.  
6 The blue lines in image 71 this is the way these things are  
7 traveling when I enlarge them and look at them, and you see  
8 that's the thing I showed you when they got progressively more  
9 elongated that's what I'm looking at, and I don't have a scale  
10 in this photograph, but I can track it back to right around  
11 where that yellow circle is above the doorknob on the inside  
12 of that door. Now, what that tells us is that's approximately  
13 the location of the source of blood, whether it's somebody's  
14 bloody hand or bloody head, bloody hand, whatever it is,  
15 that's where it originated and an impact was delivered. In  
16 the floor directly related to that you can see drip patterns  
17 and transfers and smears in that floor. So someone is there  
18 for a period of time, but there's also evidence of walking  
19 through stains and smearing them around.

20 On the wall right beside the door, this wall right here,  
21 I'm going to show you that a little bit closer, but I wanted  
22 you to see that in relationship to this door and its location.  
23 On this wall what you will see are transfer patterns, transfer  
24 stains and also stains that are resulting from another impact  
25 or another blow.

Paulette Sutton - Direct by Mr. Richardson

770

1           Here you see it a little bit closer. See how small these  
2 are? Those are impact spatters. That's why they're so small.  
3 These are transfer stains. In fact, this one is a  
4 continuation of what's on the edge of that light switch cover  
5 and it's traveling from your left to your right because of  
6 this gap right here, this -- the void in that pattern. If it  
7 had been traveling from right to left, the bloody object would  
8 have hit the edge of that light switch pattern. So we use  
9 simple things like that to give us indicators of movement.

10           These stains here, these, these started out as being  
11 impact spatters, and they're so heavy that they also have a  
12 flow pattern associated with them. Again, they're very close  
13 to this wall to make such an elongated stain.

14           We look at the size. We look at the shape of the stains,  
15 but we also look at the stain's appearance, what does it look  
16 like. These stains that I've drawn the yellow circle around  
17 these stains are darker than the other stains that you see in  
18 that image, and they, they kind of got a thicker look.  
19 They're -- a lot of people describe it as being three  
20 dimensional. What that is is a blood clot. Okay. It's a  
21 normal thing that happens. When we're injured and we're  
22 bleeding our bodies know to start making this blood clot to  
23 keep us from bleeding to death, and it does it automatically.  
24 It doesn't do it instantaneously though. It takes a little  
25 while from the time you're injured until you can begin to form

1 a clot. What we say in the hospital is normal is six to eight  
2 minutes after you're injured before you can form a blood clot.  
3 So you've got to be injured and then six to eight minutes has  
4 to elapse. All right.

5 Most forensic text actually say something more like ten  
6 to 15 minutes, the theory being that in an assault there's a  
7 continual disruption of this clot that's trying to form. So  
8 it's going to take longer for it to form in an assault than it  
9 would when I was testing it back in a hospital room. Okay?  
10 Either way, whether it's six to eight minutes or 10 to 15  
11 minutes a blood clot tells you that there's a time lapse from  
12 the onset of bleeding until that clot formed and it gives you  
13 an idea of how long.

14 The other thing about a blood clot, and you know this,  
15 you cut your finger. Lord knows, I have. They don't jump off  
16 your hand and wind up over on the wall, not on their own. The  
17 same thing applies in a crime. They don't jump off of  
18 somebody and land on a wall, and these, these clots came over  
19 here because of a blow or because of an impact. Okay. That's  
20 how they left one individual and went to another surface.

21 Okay. On the end of the kitchen counter, and, and I want  
22 to preface this by saying I, I, I have nothing in this case to  
23 tell you that we go from this location to that location to  
24 that location. Sometimes I can. I don't in this case. So  
25 what I did is simply go around the room. All right. I'm not

Paulette Sutton - Direct by Mr. Richardson

772

1 telling you this is the order.

2 On the end of this counter transfer stains and impact  
3 spatters. I don't have photographs of the front of the  
4 cabinets. I would anticipate finding impact spatter there as  
5 well, but there were no photographs submitted to me.

6 Okay. On the long gun, I see stains that are visually  
7 consistent with being blood on the site, on the stock, on the  
8 handle, on the butt. In order for those stains to get there  
9 the gun was not being held at that time.

10 Okay. More dripping patterns, just blood dripping, free  
11 falling, that's what all of these are. They're round. So the  
12 source is directly above. The ones on the front are getting  
13 more elongated. So the source is coming more out here.

14 Now you have a real good comparison of just a free  
15 falling drop and what I'm calling impact spatters. All of  
16 these I have in the green circles those are impact spatters.  
17 You see how much smaller they are. That's because the impact  
18 subdivided that blood.

19 Another image of how small they are, and you'll also see  
20 some that are lighter in color, an indication that they've  
21 been deluded.

22 There are drip stains down this lower cabinet and down  
23 the front of the stove as well. On this surface, on both of  
24 these surfaces, some are drips, some are impact spatters. We  
25 have to enlarge them a good bit to see some of the impacts,

1 but remember, that tells you a source is already bleeding and  
2 a blow or an impact is received.

3 On the floor right in front of the cabinet, this area  
4 here, this is blood dripping into blood. We have a pool of  
5 blood like this one right here. Now the force that is  
6 subdividing the blood isn't somebody's fist or a stick or  
7 anything else. It is the incoming drop. So as drop, drop,  
8 drop hits this pool that drop is enough energy to break these  
9 stains up, and what it does is like you see on this schematic  
10 where it pushes out that strand of blood again, and at the  
11 very end these drops are starting to break free, and when they  
12 do they hit the surface. They might hit the wall. That's  
13 what you see here. These are all satellite spatters. In  
14 fact, along the bottom of that cabinet the higher  
15 concentration you see towards the bottom of the cabinet that  
16 is from nothing more than satellite spatter creating those  
17 stains.

18 There's a transfer stain in that area, same area that  
19 looks especially down, if we crop it down get you a little  
20 closer image looks like the bottom of Mr. Davis' shoes that  
21 zigzag of an Adidas type tennis shoe.

22 Transfer staining on this cabinet right beside the  
23 refrigerator, transfer stains on the left part of the  
24 refrigerator, or I'm sorry, of the freezer and you see all of  
25 these smaller stains.

Paulette Sutton - Direct by Mr. Richardson

774

1           What we have here is impact spatter, and the blue lines  
2 will show you the direction that they're traveling and the  
3 approximate location is right about where I've put the opaque  
4 blue circle, just what may be five, six inches, five or six  
5 inches above the bottom of the freezer door.

6           The blue metal bat was depicted in the images that I was  
7 given as lying against this sofa. There are some spatters on  
8 that pillow that's on the sofa, a few spatters, mostly passive  
9 drops here in the floor and transfer stains here on that rug  
10 that's in front of the -- in front of the sofa.

11          Right on the arm of the sofa is a large transfer stain.  
12 That is certainly consistent with a baseball bat, a bloody  
13 baseball bat making that pattern, but I can't tell you -- I  
14 don't have any individual characteristics. I can just tell  
15 you that could be what made it. A bloody arm can make it as  
16 well. I also noted a cell phone was there on the edge of that  
17 arm. Over here in the floor we've got drip stains, wipes,  
18 transfer stains and you've got some more clotted blood over in  
19 the floor.

20          This white tile is in the kitchen part of that area, and  
21 the wood grain is over in the living room. Right at the  
22 juncture of those two flooring surfaces is a very large pool  
23 of blood, and if you notice around that pool there's no real  
24 smearing. If you impact something that's lying in that pool  
25 what you would see would be very elongated spiny spatters that

1 lie close to the surface. Those are not there. You don't see  
2 the satellite spatters like the one that we looked at just a  
3 minute ago where the blood was dripping into blood. There's  
4 none of that. This pool as large as it is is relatively  
5 undisturbed. So it took a while to accumulate. I can't tell  
6 you exactly how long. It depends on how much a person is  
7 bleeding, but it takes a while to accumulate a pool that large  
8 and there's no indication that it's being disrupted at all.

9 Now, here's the couch in the upper right hand corner, the  
10 edge of the couch. This is the wall, the purple curtain that  
11 I showed you. Against that wall, against the baseboard is  
12 another pool of blood, but look at the appearance of this  
13 blood. You see how much lighter? You can see through it.  
14 That's characteristic of diluted blood, blood that has been  
15 diluted with a clear or a light-colored substance, not milk.  
16 Milk would make it, you know, where you can't see through it  
17 where it's not opaque, but it's something very light. It  
18 could be water. It could be Sprite, that kind of thing.

19 All right. Now, we got to go up, look up at the ceiling.  
20 Anything that is bloody that is in motion blood can come off  
21 of that object and strike a ceiling if you're swinging  
22 overhead and that's what these stains are consistent with.  
23 It's what we call castoff, an object being slung overhead and  
24 the blood is coming off of the object and striking this  
25 surface. Some of these stains may also be the result of an



Paulette Sutton - Direct by Mr. Richardson

776

1 impact because these ceilings are not going to be that  
2 terribly high in a mobile home. So it could be that impact  
3 spatter reaches that height as well, but these bigger stains  
4 these are coming off of a swinging object.

5 Now, a swinging object can be a bloody weapon. It can  
6 be a bloody hand. If you have somebody that has real long  
7 hair it could be bloody hair, so bloody object that's in  
8 motion.

9 Now I'm going to turn you back around, and we're going to  
10 go back over to the refrigerator again, and what I want to  
11 show you here is look at the totality of the stains in that  
12 floor. We've got drip stains, just blood just dripping,  
13 right. We've got impact spatter because we got the small  
14 ones. We've also got transfer stains and there's a lot of  
15 wiping around, and by wiping I, I mean, something's moving  
16 through it, and I told you when, when we started that there's  
17 a lot of evidence of shoe patterns in this floor, people are  
18 moving around. About where that yellow line is, adjacent to  
19 the second chair at that table, past that yellow line I don't  
20 see a lot of wiping activity. I don't see dripping going past  
21 that yellow line. Because of that I really don't have an  
22 indication that a person that was actively bleeding went  
23 beyond about the edge of this table.

24 This is a drip pattern in the yellow circle. The orange  
25 ones are rectangles or the orange rectangles are transfers but

1 I don't have enough characteristics to compare it to a whole  
2 lot. Inside of the yellow rectangle this transfer pattern is  
3 consistent with the tread on Mr. Rosenbaum's shoe on the New  
4 Balance Shoe. Here is a closer image of image 39, DSC 39.  
5 These are the image numbers that were on the photographs when  
6 they were submitted to me, and you look at that enlargement  
7 and compare it to that shoe tread pattern.

8 Okay. When I get it a little bit bigger you can see a  
9 couple of more patterns that are consistent with the bottom of  
10 Mr. Rosenbaum's shoe. I don't believe that they match Mr.  
11 Davis' shoe or Ms. Durkin's shoe, but I've got two here that  
12 they've got the larger squares. So I don't think they're Mr.  
13 Davis' but I can't tell you exactly who they might belong to.

14 Okay. Then going down this hallway there's a laundry  
15 area and it leads into a bedroom. There are transfer stains  
16 that I circle or I've drawn a red square around that are  
17 nondescript. I can't see from this kind of an angle and there  
18 were no photographs taken that were closer. I just can't see  
19 enough of the characteristics to tell you anything other than  
20 they're transfer stains.

21 There is one single drip inside of the green circle in  
22 that photograph, and then the yellow ones are transfer stains  
23 that physically look like shoe patterns or shoe transfers, but  
24 again, without a better photograph I'm not going to venture to  
25 tell you whose shoe it matches to.

Paulette Sutton - Direct by Mr. Richardson

778

1       The entrance to the bedroom, a couple of more transfer  
2 stains, but again, no indication that somebody that is  
3 actively bleeding, especially from a head wound. Head wounds,  
4 because our brains need so much oxygen, our body pushes a lot  
5 of blood up there, and any kind of injury to your head or to  
6 your scalp it bleeds a lot.

7       On the front of Mr. Rosenbaum's shorts or the ones that  
8 were identified to me as being the ones that he wore you can  
9 see impact spatter. You see saturation stains. You also see  
10 transfer stains. On the left leg and some in this area right  
11 here on the right leg appear to be diluted blood, again, based  
12 on the color, the appearance, the light look of it.

13       On the back of the shorts you see some spatters. This  
14 stain right here, this stain trail right here is what we look  
15 for in a castoff where they lay in a line because it comes off  
16 of a bloody object and it'll drop down in that line. Between  
17 the legs these are just transfer stains. This one over here  
18 on the left leg has that thick dark appearance like a blood  
19 clot, but really minimal staining on the back of the shorts in  
20 comparison to what was on the front.

21       The front of the t-shirt, same kind of stuff, impact  
22 spatters, transfers, saturation stains, just the heavy soaking  
23 type stain and then the clotted material.

24       On the back, very little blood staining at all. On the  
25 tops of the New Balance shoes you see real heavy saturation

1 staining on the left shoe, some on the right shoe as well,  
2 right in here, but much heavier on the left shoe.

3 On the medial aspect, so the medial aspect is the middle  
4 of the sole these are spatters. These are impact spatters.  
5 There's a good, good indication of what I mean when I say  
6 that's a clot, see how dark and how thick it looks, and it  
7 actually looks kind of stringy and it, and it looks stringy  
8 because of how we clot. We form strands, and that's why it  
9 looks that way.

10 So what I can tell you from his clothing is that, that he  
11 -- again, they're identified to me as belonging to him, and  
12 these spatters certainly put him in the vicinity of a spatter  
13 producing event. That could be a beating. It could be a  
14 shooting. It's some kind of impact and somebody is bleeding.

15 Ms. Durkin's shoes also have impact spatter on the tongue  
16 of the right shoe. You can see it here on the medial aspect  
17 of the right shoe, on the medial aspect of the inside of the  
18 left shoe, on the back of the left shoe where I've got the  
19 yellow circles, again, impact spatters.

20 Because I really don't have anything other than shoes,  
21 and shoes, well at least around my house, shoes might be on  
22 your feet but they may be off your feet. I'm going to say her  
23 shoes were in the vicinity of a spatter producing event.

24 So there's impact spatters or blows in a lot of different  
25 locations, the surface of the mattress, the side of the

Paulette Sutton - Direct by Mr. Richardson

780

1 mattress, on that black and white pillow on the floor, beside  
2 of it, on the interior surface of the front door, the wall  
3 between the front door and the kitchen counter, the end of the  
4 counter and barrel of that long gun, on top of the counter,  
5 between the sink and the stove, the face of the cabinet, below  
6 the sink, the front of the stove, the front of the  
7 refrigerator and on the floor between the living room and the  
8 kitchen. In all those general locations the bloodstain  
9 evidence says that there was a blow or a force delivered in  
10 those areas and I believe that it is the last slide. Yes,  
11 ma'am.

12 Q Thank you, Ms. Sutton. I want to ask you about if you  
13 have drawn any conclusions from DS0053, it was the large pool  
14 of blood, it's about two-thirds of the way through.

15 A Yeah. The large pool between the kitchen and the living  
16 room area?

17 Q Yes, ma'am.

18 A Yes, sir.

19 Q What if any conclusions can we draw from, from that? Can  
20 we say the producer of that blood was standing up or laying  
21 down?

22 A There's -- if a person -- again, that's a, a fairly large  
23 amount of blood, and if a person were standing up or even  
24 kneeling, if they were above the surface and they were  
25 producing that much blood we would see indications of

1 satellite spattering, and there is none. So that leads me  
2 only to deduce that the source of that blood was either on the  
3 floor or very close to the floor, and I'm talking within  
4 inches at the most.

5 Q Leaving a lot of blood and dropping the blood from --  
6 well, on the floor or very close to the floor.

7 A It could be on the floor or it could be -- it would have  
8 to be, again, it, it could not be over a couple of inches  
9 above or I would see some indications of satellite spattering,  
10 but I can't tell you that it couldn't be a couple of inches,  
11 but it could certainly be on the floor as well, yeah.

12 Q If the -- if the producer of that blood were not on the  
13 floor would it be consistent with on his knees or very --  
14 where was --

15 A No. Not, not on his knees.

16 Q Lower than that?

17 A Lower than that, much lower than that. If it was coming  
18 from a head, the head would have to either be on the floor or  
19 within a couple of inches of the floor.

20 Q And that was between the kitchen and the living room.  
21 That -- could you tell anything from the big pooling of blood  
22 in DSC44 in the kitchen? Do you have this report?

23 A I do. Okay. You're talking about the one in front of  
24 the kitchen cabinet.

25 Q Yes, ma'am.

Paulette Sutton - Direct by Mr. Richardson

782

1 A Okay. I believe you're talking about DSC0052 and if I  
2 may show them my copy.

3 Q Yes, ma'am, or can you pull that back up, Lacey, or is  
4 that --

5 A I don't know if I have the number on the slides.

6 Q Okay. If you'll just step down and show them your copy  
7 so we can all be on the same page.

8 A Six, 12, 18, 24. Try 29, slide 29. It's not opening.  
9 There you go. 20, I think around 29. Okay. There you, there  
10 you go.

11 Q Yes, ma'am.

12 A Yes. Right there.

13 Q Right there. One back.

14 A Perfect.

15 Q Can you deduce anything from that photograph DSC?

16 A That, that is a characteristic of blood dripping into  
17 blood. The source of that I cannot tell you. It, it could be  
18 somebody at some point there was blood dripping on top of the  
19 counter and right directly above that. So the source would  
20 had to have been above the countertop at some point in time.  
21 When this blood was created, when this was dripping into that  
22 pool it could have been anywhere. It could have been somebody  
23 standing up and bending over. They could be on their knees.  
24 They could be -- it would have to be a good distance above the  
25 floor. I'm talking about like a foot or so to make those

1 satellite spatters. So all I can tell you is they were

2 directly over that pool.

3 Q Now, let me ask you again about the castoff.

4 A Okay.

5 Q Would that be consistent with a bat swinging, swinging a

6 bat into a pool of blood or into a producer of blood?

7 A The, the castoff that is around the, the area of the

8 mattress and the front door on the ceiling is not from a bat

9 hitting a pool. It is from a bloody object being swung

10 overhead. That could be a bat. Yes.

11 Q So a bat going back and forth?

12 A Yes.

13 Q In a up to down motion and then back up?

14 A Yes. Overhead.

15 Q All right. Would that indicate that the, the object

16 being struck was lower than chest level if you were -- or can

17 you tell?

18 A I couldn't tell you that, no. I mean, if I swing

19 overhead to hit something I would think it's probably going to

20 be lower than my shoulder, but if I'm swinging overhead.

21 Q And you did see evidence on the back of Mr. Rosenbaum's

22 pants that would indicate castoff from an object say a bat

23 swinging in an arch overhead?

24 A Yes.

25 Q Now, of course, Mr. Rosenbaum had a cut on his leg, and



Paulette Sutton - Direct by Mr. Richardson

784

1 we saw a lot of blood here. Could that have been consistent  
2 with the blood coming from his leg?

3 A To what, the castoff?

4 Q Did you see a -- well, first of all, this pooling of  
5 blood here, could that have come from that cut on his leg?

6 A It -- the, the photographs that I saw, the cut on his  
7 left leg it, it looks like blood has, has gone down the shin  
8 and into the shoe, and if you remember his left shoe has a  
9 heavy saturation of blood. Looking at the photographs of the  
10 side of the shoe though I don't see anywhere that the blood  
11 flowed out, and if you think about it, our shoes are pretty  
12 absorbent, especially tennis shoes. They're made to hold the  
13 sweat. So it doesn't look like the blood flowed outside of  
14 the shoe once it went down into the shoe.

15 Q Would it be safe to say that the vast majority of this  
16 blood that you have documented would have come from a source  
17 other than Mr. Rosenbaum?

18 A Well, I, I think that's fair to say when you consider  
19 that the other bleeding individual in that scene has  
20 lacerations to the head, and head injuries bleed a lot.

21 Q Let me ask you about -- I think you had included a couple  
22 of photographs in here of the front door. Did the front door  
23 area seem to be an area of struggle?

24 A There are transfer stains on the door. I can't tell you  
25 that -- there, there's some smearing of the floor underneath

1 there as well other drops on the floor, not a lot of struggle,  
2 but there could be some.

3 Q Would that be consistent with someone trying to get out  
4 of the door, and I -- what I'm talking about is the transfer  
5 stains on the door?

6 A Sure. Sure. It could be. Yes.

7 Q And the impact spatters here at the door, is that  
8 consistent with a bat or some object making contact with a  
9 blood source?

10 A Yes.

11 Q Okay. And that is impact as opposed to castoff?

12 A That is correct, yes, on the, on the surface of the door,  
13 yes.

14 Q And this is the interior of the door?

15 A Yes. That is correct.

16 Q Okay. And what we'd talked about before this is transfer  
17 patterns or rub, rub marks?

18 A Right.

19 Q A bloody object goes into the door?

20 A Right.

21 Q Do you see any around the door handle?

22 A I don't, I don't recall seeing any, any more than what  
23 you see there on the surface of the door. I, I, I guess maybe  
24 -- let me, let me back up a step. When you say around the  
25 handle I think of the surface that you would touch.

Paulette Sutton - Direct by Mr. Richardson

786

1 Q Yes, ma'am.

2 A There, there is some on the door that's around the  
3 handle, but I don't recall seeing it on the handle.

4 Q Okay. And that -- is that consistent with someone trying  
5 to leave?

6 A It's -- it could be, yes.

7 Q And right across the wall adjacent to the, to the door  
8 where the light switch is.

9 A Okay. I believe the other way. Yeah, oh, whoa, whoa,  
10 whoa.

11 Q 59.

12 A Back up.

13 Q There you go, right there.

14 A Okay. Now, that's right beside of the, the door, yes.

15 Q What, if anything -- is, is that indicative of someone  
16 trying to leave?

17 A It, it could be because of all the transfer stains that  
18 are on that wall. Somebody -- something bloody has come into  
19 contact with that wall.

20 Q Would it be safe to say that, and, this is a photograph  
21 that was sent to you. You didn't take the photograph?

22 A Right.

23 Q But the smears are maybe a foot above the light switch?

24 A Yes, sir.

25 Q All right. And what are -- oh, what did you say these

1    were, Ms. Paulette?

2    A     Those are actually blood clots. That tells us that there  
3    has been a time lapse from the initial injury until those can  
4    be formed and a blow is being received.

5    Q     And you said for blood to start clotting I believe you  
6    said in, in clinical it may be up to nine minutes, but  
7    practical in a fight it would be more like 15 minutes would  
8    have had to pass?

9    A     It -- most forensic texts say 10 to 15 minutes, yes.

10   Q     So the blood would have had to have been there for say 10  
11   or 15 minutes before it would start clotting?

12   A     No, sir. The, the, the blood had to have been shed and  
13   could have been on an individual and then that individual --  
14   for, for 10, 15 minutes maybe and then that individual receive  
15   a blow.

16   Q     Okay.

17   A     That -- there, there is a difference between a clot that  
18   is being knocked off of an individual and clotting on a  
19   surface is why I'm making that distinction.

20   Q     But --

21   A     This is, is the kind of clotting that formed on a person  
22   and then that person was struck.

23   Q     So if I had a clot of blood here from an injury 15  
24   minutes earlier or 10 minutes earlier --

25   A     Right.

Paulette Sutton - Direct by Mr. Richardson

788

1 Q -- and I got hit again 10 minutes after I'd already  
2 clotted, the bat may knock that clot of blood onto a wall?

3 A Yes. Exactly right, and that -- the bat would not or, or  
4 a hand or whatever it is does not have to hit say where your  
5 clot was formed because if, if you, you have a clot here on  
6 your forehead, let's say, and somebody hits you on the back of  
7 the head, that clot that's on your -- that formed on your  
8 forehead may well fly off. Okay. It's translational energy.  
9 It's throwing a rock into a pond and you see the circles come  
10 out. So it can be an impact, does not have to be directly on  
11 the wound.

12 Q It would have took -- that clot would have been formed at  
13 least 10 minutes, between 10 and 15 minutes before he was hit  
14 again and then the clot was removed and no telling how long it  
15 stayed on the wall.

16 A Right. It -- once it hits the wall it -- it's pretty  
17 much going to look like it does in that photograph. Yeah.

18 MR. RICHARDSON: The Court's indulgence just one moment.

19 THE COURT: All right.

20 BY MR. RICHARDSON:

21 Q Ms. Paulette, that's all the questions that I have, but  
22 if you would be kind enough to answer any questions that the  
23 Defense may have of you.

24 A Surely.

25 THE COURT: All right. Who wants to go first? Mr.

1 Bouchette?

2 MR. BOUCHETTE: I think I'll go first, Judge.

3 THE COURT: All right. Go ahead.

4 CROSS EXAMINATION

5 BY MR. BOUCHETTE:

6 Q Paulette, good afternoon. How are you?

7 A Good afternoon. I'm well. Thank you.

8 Q Wonderful. Listen, I've looked through your PowerPoint  
9 and your presentation.

10 A Uh-huh.

11 Q And I think you said it fairly early on, based on what  
12 you reviewed and the information you gathered it's not -- you  
13 don't have enough to be able to tell us sort of a, a play-by-  
14 play, for lack of a better word? You can't give us a sort of  
15 a sequence of events as things unfolded throughout this house?  
16 Is that accurate to say?

17 A That is accurate. I cannot give you a blow-by-blow or a  
18 sequence.

19 Q Right. Do you mind if I ask what, what all you actually  
20 reviewed in compiling your, your presentation and your  
21 PowerPoint and your analysis?

22 A Sure. I had scene photographs.

23 Q Hold on. Just let me pause you there.

24 A Sure.

25 Q I'm trying to jot those down.

Paulette Sutton - Cross by Mr. Bouchette

790

1 A Okay.

2 Q Okay. You got scene photographs.

3 A I was submitted the audio of a 911 call.

4 Q Okay.

5 A An autopsy report. Then later I -- and I can give you  
6 the dates if you'd like.

7 Q I don't need the dates. No, ma'am.

8 A Okay. I received the videos of the interviews.

9 Q Okay.

10 A Then I received 181 photographs of clothing and shoes  
11 identified as belonging to Mr. Rosenbaum, 28 photographs of  
12 Ms. Durkin's slacks and shoes, and three photographs of a blue  
13 baseball bat.

14 Q Okay. Anything else?

15 A That is, that is it. I, I should add the scene photos I  
16 counted those 106.

17 Q Okay. And when were you engaged to begin your review and  
18 investigation?

19 A Let me see. The first submittal was January the 30<sup>th</sup> of  
20 2017, and the subsequent submittals went through August of  
21 2017.

22 Q Okay. So you didn't get engaged and start reviewing your  
23 analysis until somewhere around January of 2017; correct?

24 A That, that would have been the earliest. I actually -- I  
25 might have looked at them right away, but I have quite a few

1 cases backed up.

2 Q Sure.

3 A So I may not have.

4 Q Sure. I understand. And you were engaged by, I believe,  
5 it was Solicitor -- I'm sorry, which, which Solicitor?

6 A Ms. Livesay.

7 Q Ms. Livesay. I'm sorry.

8 A Nancy Livesay. That's correct.

9 Q Okay. I think she was -- she engaged our previous expert  
10 as well. What I want to ask you about, first off, there was a  
11 number of discussions about blood clots and things of that  
12 nature. You're not a medical doctor; correct?

13 A That I am not. No.

14 Q Okay. And also, there's, you know, you told us you can't  
15 follow us with a sequence of events. We can't get a play-by-  
16 play based on what you reviewed. You can just tell us this is  
17 this type of stain here and this type of stain here; right?

18 A That is correct. Yes.

19 Q Okay. And again, you didn't -- you were not able or, or  
20 couldn't inspect the scene personally; right?

21 A I could not. That is correct.

22 Q Okay. And, and again, we're looking at a number of  
23 different stains. Do you have any gauge or any idea as to the  
24 size of the area that we're, that we're looking at?

25 A Other than it's in a mobile home and that's, that's



Paulette Sutton - Cross by Mr. Bouchette

792

1 typically not that large, but nothing -- I did not get a  
2 diagram to give me an area.

3 Q Okay. Because I think, you know, we're talking about the  
4 kitchen or in the living room, then -- and I'm -- when they  
5 were presented to you I guess the pictures were designated,  
6 "Hey, this is the kitchen or this is the living room," that --  
7 is that correct?

8 A No. They were, they were numbers and --

9 Q Okay. You just -- okay. All right.

10 A -- good luck.

11 Q Well, the reason why I ask that is we heard testimony  
12 yesterday that this, this entire area where all these pictures  
13 were taken were only about slightly larger than the size of  
14 this jury box.

15 A Okay.

16 Q So you're -- that's all of this, all of this interaction  
17 would have been in a fairly tight space then?

18 A Sure.

19 Q Right?

20 A Sure.

21 Q Okay. All right.

22 A Not surprising.

23 Q Okay. Now, I noticed also you did not review or analyze  
24 or compile in conjunction with the photos you took any DNA;  
25 right?

1 A It, it was my understanding that there was no DNA  
2 performed.

3 Q Okay. No -- your understanding is no DNA was taken from  
4 the scene at all?

5 A I think --

6 Q Well, I tell you what any --

7 A -- there were no results. I, I think in this case they  
8 might have been collected.

9 Q Okay.

10 A But I'm, I'm not positive, but none -- there were no DNA  
11 results performed, no DNA analysis.

12 Q Okay. And I guess as part before you started reviewing  
13 this you said, "Hey, if you've got DNA" --

14 A Uh-huh.

15 Q -- "analysis, how about send it to me"; right?

16 A Sure.

17 Q Okay. So you couldn't review --

18 A I asked for all lab, all lab analysis, yes.

19 Q Okay. How about were you provided or did you ask for any  
20 type of fingerprint analysis?

21 A No. I didn't ask for that.

22 Q Okay. There was also some discussion about some of the  
23 blood that was up on the ceiling, and I think there was some  
24 discussion that it could have happened by virtue of a -- the  
25 bat swinging; right?

Paulette Sutton - Cross by Mr. Bouchette

794

1 A That is correct.

2 Q Okay. But we really can't say with certainty if that's  
3 what it was; right?

4 A That -- I, I try to be careful on these double negatives.

5 Q I understand. Absolutely.

6 A It, it, it's, it's something that is bloody that is being  
7 swung overhead. I cannot tell you that it was a bat and not a  
8 hand.

9 Q Sure. And, and that was going to be my question. If  
10 you've got two people engaged in a fight, one of whom is, is  
11 bleeding, it is very possible that during the course of that  
12 interaction that a hand going up would also trigger the, the  
13 blood in the same fashion that we saw on the photograph;  
14 right?

15 A Well, yes, yes and no. It depends on how much blood is  
16 on the hand.

17 Q Okay.

18 A But a hand could create castoff on a ceiling. A bloody  
19 bat would tend to release more to actually hit a ceiling, but  
20 a hand --

21 Q Could you do that?

22 A -- a hand could go five times and a bat once.

23 Q Okay. Sure.

24 A Okay.

25 Q Just we're just not in any position to say definitively

1    which, which object it would have come from?

2    A     No.  It is a bloody object in motion.

3    Q     Okay?

4    A     Over, overhead.

5           MR. BOUCHETTE:  No further questions for this witness,  
6    Judge.

7           THE COURT:  All right.  Mr. Hyman.

8           MR. ALEX HYMAN:  Thank you.

9                               CROSS EXAMINATION

10   BY MR. ALEX HYMAN:

11   Q     Ms. Sutton, I believe we've met before.  I was involved  
12   with the last case.  You and I actually had a mutual, I guess  
13   time spent in Arkansas?

14   A     We did, indeed.

15   Q     That's right.  It's good to see you again.

16   A     Good to see you.  I was trying to place your face.

17   Q     Well, I wanted to talk with you a little bit.

18   A     Okay.

19   Q     Now, you -- now, you were provided the 911 tape; right?

20   A     Yes.  Yes.

21   Q     I think you said that you did listen to that?

22   A     Yes.

23   Q     And I took some kind of detailed notes on the 911 tape,  
24   and I want to pull up -- let's see, it was the photo that was  
25   kind of a pool right at the kitchen.  Let's see.

Paulette Sutton - Cross by Mr. Alex Hyman

796

- 1 A Let me see if I can -- I'm, I'm sorry.
- 2 Q I might be able to see it.
- 3 A Mine are not numbered.
- 4 Q Nope. I think down, Lacey.
- 5 A Four. 30?
- 6 Q Yep. I think go down a little bit more.
- 7 A 35?
- 8 Q There we go -- right -- or 34.
- 9 A That it? That's the one.
- 10 Q 34.
- 11 A Yeah.
- 12 Q Yep.
- 13 A Okay.
- 14 Q Okay. Excuse me. Tripped over you. All right. Now,
- 15 this right here I noticed that at about I believe it is four
- 16 minutes and 45 seconds into the 911 tape Ms. Durkin makes an
- 17 utterance that there's blood all over the kitchen. So and it
- 18 -- and she also right after that, in fact, it's five seconds
- 19 after that says, "He's on the floor. My boyfriend is holding
- 20 him down." My question for you is if, if he was on the floor
- 21 and Mr. Rosenbaum was, was on top of him --
- 22 A Uh-huh.
- 23 Q -- would that cause something similar to that? With,
- 24 with Roy on the floor I think it was your testimony that there
- 25 wasn't this drip pattern that might be -- I think Mr.

1 Richardson actually tried to ask you if he was -- could have  
2 been on his knees, and you said no. So he's probably very  
3 close to the floor at that time?

4 A Yes.

5 Q Okay. Now, there's some other times in the 911 tape when  
6 they talk about, you know, "Stay down." I think there's  
7 another utterance in there about, "He's got him on the floor."  
8 Now, some of the stuff on the mattress, can you go back to  
9 that, LaCey. I think it was like number -- it was the one  
10 that you had circled. Right there. Number 14. Okay.

11 A Okay.

12 Q Now, you had said that there's, you know, obviously that  
13 there's no documents to injury to the, the buttocks, but  
14 that's indicative, I believe it was your testimony, that he  
15 has moved, and, and I guess what I'm asking is let's say that  
16 he's down on that and then gets up again. Would that  
17 potentially cause that transfer?

18 A Yes.

19 Q If again he's laying down, okay.

20 A Yes. And, and I, and I believe I said he has moved or  
21 has been moved.

22 Q That's correct.

23 A Right. Yes..

24 Q But it -- I think it was also your testimony that it  
25 doesn't appear that someone drug him up and put him on it?

Paulette Sutton - Cross by Mr. Alex Hyman

798

1 A That is correct. It does not appear that way. Yes.

2 Q Okay. Now, if we can go to the front door, I think it's

3 18 or 19. It's the one -- okay. Let's go to 20. Okay.

4 Now, 20, this kind of shows some of the area where you said  
5 that the -- and I'm sorry if I'm in your way.

6 A No.

7 Q -- the, the clotting was?

8 A Okay. Yes.

9 Q Okay. Now, I believe it was your testimony that  
10 clinically 10 minutes or no, was it -- excuse me.

11 A Clinically is six to eight.

12 Q Clinically six to eight?

13 A Yes.

14 Q Forensic 10 to 15?

15 A 10 to 15.

16 Q Okay. And what I, what I wanted to talk to about that,  
17 there's obvious, obviously some clotting that has touched that  
18 or, or been put there or come off. There is another utterance  
19 from Diane at 10 minutes and 10 seconds into the 911 tape  
20 where she says, "Don't you go out that door", and I think it  
21 was Mr. Richardson's questions to you that said, you know,  
22 "Hey, does this look like somebody could possibly be going out  
23 that door?"

24 A Uh-huh.

25 Q So that would be 10 minutes and 10 seconds into it.

1 Obviously, from the 911 tape something occurred before 911 was  
2 called. Would 10 minutes and 10 seconds give a wound time to  
3 clot?

4 A Yes.

5 Q Okay. Now, you had, and I, I want to talk to you a  
6 little bit about the, the bloodstaining on the bottom of the  
7 shoe, and we, we may not even need to do the pictures, but Mr.  
8 Rosenbaum's New Balances --

9 A Uh-huh.

10 Q -- they looked a lot cleaner than, than Roy Davis'?

11 A Yes.

12 Q Mr. Rosenbaum was taken to the police station. Would  
13 walking kind of get rid of some of that transfer on the, on  
14 the bottoms?

15 A On the bottoms of shoes, yeah.

16 Q Okay.

17 A It will.

18 Q Now, there also -- he used the term diluted and sometimes  
19 diluted almost sounds like you're trying to hide something.

20 A Oh, no.

21 Q Okay. I just wanted to make sure that wasn't the case.  
22 Could the diluteness on his pants, you had mentioned it looked  
23 like some diluted transfers, it was raining that night.  
24 There's been some testimony of that. Could that have caused  
25 some of the diluteness maybe on his pants or something like



Paulette Sutton - Cross by Mr. Alex Hyman

800

1 that?

2 A If, if he were out in the rain, sure.

3 Q Okay. Now, if we can go -- did you have a picture of his  
4 chest or his shirt? I thought there was one.

5 A Mr. Rosenbaum's.

6 Q Yes. Yes.

7 A Yes. Close to the end.

8 Q All right. Let's go to 44. Okay. Now, these, I believe  
9 you said are, are somewhat indicative of transfer stains, kind  
10 of this -- these blotches?

11 A Those, those big blotches are actually what we'd classify  
12 as saturation.

13 Q Okay.

14 A It's, it's a transfer that's been there a while.

15 Q So it wouldn't be something from like underneath his  
16 shirt. It would be something touching him is what I mean,  
17 transfer?

18 A What do you mean underneath? It, it would be something  
19 touching him. Yes.

20 Q It wouldn't -- yeah. So it wouldn't be like him bleeding  
21 underneath his shirt?

22 A Oh, no. no.

23 Q It would be --

24 A No.

25 Q So if he's, he's wrestling with an individual --

1 A Uh-huh.

2 Q -- who has a wound on their head --

3 A Uh-huh.

4 Q -- is that what could have caused, you know, maybe this  
5 and maybe like some of this and some of this? Would that be  
6 consistent?

7 A That's, that's one way you could do that. Yes.

8 Q Okay. Now, as far as the bat, and, and Jarrett mentioned  
9 this a little bit about, you know, could it be something else  
10 other than a bat, you know, other than the bat, and you said,  
11 "Well, it's, it's probably the bat or something like that  
12 being swung," but you don't have any evidence that -- of who  
13 swung it or anything like that?

14 A I do not.

15 Q Okay. So if there was testimony that, you know, somebody  
16 else had a bat, somebody else had a bat, it could be  
17 anybody?

18 A It's, it's, it's a bloody object in motion.

19 Q Got you. You used the term wiping, and again, that's one  
20 of those words that I always feel like -- almost it's kind of  
21 diluted, like are we trying to hide something, but what you  
22 meant by wiping was something similar --

23 A Wiping simply means that blood is on a surface and  
24 something goes through it.

25 Q And I think when you were talking about that it was on

Paulette Sutton - Cross by Mr. Alex Hyman

802

1 the ground, I believe that was in the, in the, in the tile  
2 area?

3 A I, I know there is some on the ground.

4 Q Yeah. And that could be slip, a shoe?

5 A It could be. Yes.

6 Q Okay. It's not indicative necessarily of somebody on  
7 their knees doing that?

8 A Trying to clean up?

9 Q Yes, ma'am.

10 A That's -- no.

11 Q Did you see any of that?

12 A No.

13 Q Okay.

14 A Other than if the, the puddle of water that's in the  
15 floor if -- that's a puddle of water in the floor, you know,  
16 if that's a cleanup.

17 Q If there was -- you know, if somebody was to say that  
18 they had a glass of water there, would that be unusual as to  
19 what could have caused that? I may not have worded that the  
20 best way. A glass of water could have caused that --

21 A A glass of water could have caused that. Yes.

22 Q Okay. All right. Let's see.

23 MR. ALEX HYMAN: Your Honor, I don't believe I have any  
24 other questions.

25 BY MR. ALEX HYMAN:

1 Q Ms. Sutton, it's good to see you as always.

2 A Good to see you, sir.

3 THE COURT: Redirect.

4 MR. RICHARDSON: Nothing, Your Honor.

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

6 A Thank you, sir.

7 THE COURT: Thank you.

8 MR. RICHARDSON: Your Honor, if she can be released from  
9 her subpoena, I don't --

10 THE COURT: Any objection?

11 MR. ALEX HYMAN: No objection.

12 MR. BOUCHETTE: No objection.

13 THE COURT: She's free to go. Thank you, ma'am.

14 A Thank you.

15 THE COURT: Let me see the attorneys for a second

16 (Whereupon, a bench conference is held in the presence,  
17 but out of the hearing of the jury.)

18 THE COURT: All right. The State can call your next  
19 witness.

20 MR. RICHARDSON: Your Honor, the State rests.

21 THE COURT: All right. All right. Ladies and gentlemen,  
22 the State has rested their case, presented their case in  
23 chief, and so now is the time of the trial where I need to  
24 take up some matters of law with the attorneys. Given the  
25 time of day, I think we're going to go ahead and break for the

James Rosenbaum - Direct by Mr. Alex Hyman

825

1 Okay?

2 MR. ALEX HYMAN: Yes, Your Honor.

3 THE COURT: All right. All right. Let's bring the jury  
4 in.

5 (Whereupon, the following takes place in the presence of  
6 the jury.)

7 THE COURT: All right. Ladies and gentlemen, welcome  
8 back. I hope everybody had a good evening. I appreciate  
9 again your promptness in returning on time this morning. I  
10 apologize for keeping you in the jury room. We had two brief  
11 hearings in other cases that I had to go ahead and take care  
12 of before we got back into the trial of this case. Please  
13 make sure you have your own notepads and do not have anybody  
14 else's notepads.

15 When we broke yesterday, the State had rested their case  
16 and so now is the time of the trial for the Defense to present  
17 their defense if they choose to do so.

18 All right. Mr. Hyman, you can call your first witness.

19 MR. ALEX HYMAN: Your Honor, we would call James Richard  
20 Rosenbaum.

21 THE COURT: All right.

22 Whereupon, James Richard Rosenbaum is called to the  
23 stand, duly sworn by the clerk and testified as follows:

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

25 MR. ROSENBAUM: Do what now?

1 THE CLERK: State and spell your name.

2 MR. ROSENBAUM: James Richard Rosenbaum, J-A-M-E-S, R-I-  
3 C-H-A-R-D, R-O-S-E-N-B-A-U-M.

4 MR. ALEX HYMAN: May it please the Court?

5 THE COURT: Mr. Hyman.

6 DIRECT EXAMINATION

7 BY MR. ALEX HYMAN:

8 Q Thank you, Mr. Rosenbaum. Now, you've heard throughout  
9 the last couple of days I've referred to you quite a few times  
10 as Jim or Jimmy. Can I call you that?

11 A Yes, sir.

12 Q Okay. And I want to talk with you a little bit about  
13 first who you are, kind of what your background is, where  
14 you're from, things like that. How old are you?

15 A I'm 55 years old.

16 Q Okay. Where are you from?

17 A I'm from Waterbury, Connecticut.

18 Q Is that where you were born?

19 A Yes, sir.

20 Q Okay. How long did you live in Waterbury, Connecticut?

21 A About a year.

22 Q Okay. And then where did you grow up?

23 A Milford, Connecticut.

24 Q As far as your time in Connecticut, did -- tell me a  
25 little bit more about, I guess, after high school, that kind

James Rosenbaum - Direct by Mr. Alex Hyman

827

1 of stuff. What did you do to make a living?

2 A I painted houses.

3 Q Okay. I'm going to get you to scoot up just a little bit  
4 so -- I know that's kind of tough, but --

5 A Okay.

6 Q You painted houses. So were you a painter by trade?

7 A Yes, sir.

8 Q Did you do anything before you got into painting though?

9 A I went into the Army.

10 Q Okay. Now did you go through boot camp in the Army?

11 A Yes, sir.

12 Q Okay. After your time at the Army were you honorably  
13 discharged?

14 A Yes, sir.

15 Q Now, and this is what year would you say?

16 A 1980.

17 Q Okay. Now, as far as after that, now, it's your  
18 testimony that you were a painter in Connecticut after that?

19 A Yes, sir.

20 Q Okay. Now, as, as far as, as the time you spent there in  
21 -- as painting, things like that, at what point did you move  
22 to South Carolina?

23 A I believe it was March 3<sup>rd</sup>, 2015.

24 Q Okay. Did, did you come alone or did you bring somebody  
25 with you?

- 1 A Ms. Durkin came with me.
- 2 Q Okay. Now, how did you and Ms. Durkin meet?
- 3 A Internet.
- 4 Q Do you remember what that Internet site was?
- 5 A Speed date I believe it was.
- 6 Q Okay. Now, when did you all meet?
- 7 A I believe it was in December 2013.
- 8 Q 2013?
- 9 A Yes, sir.
- 10 Q So you all had dated for some time before you all moved
- 11 down here?
- 12 A Yes, sir.
- 13 Q Okay. What made you decide to come down here?
- 14 A Basically the weather.
- 15 Q Okay.
- 16 A We were having bad winters, and the weather is a little
- 17 better down here for arthritis and stuff like that. So I came
- 18 down here.
- 19 Q Did you and she ever come down on vacation down here?
- 20 A Yes, sir, we did.
- 21 Q Okay. Do you remember when that was?
- 22 A That was January 2015.
- 23 Q Okay. So January 2015 you came down for a vacation and
- 24 then it's your testimony that you moved here in March?
- 25 A March 3rd. Yes, sir.



James Rosenbaum - Direct by Mr. Alex Hyman

829

1 Q Okay. 2015. Okay. Now, when you moved here where did,  
2 where did you live?

3 A When I first moved here we lived on 544.

4 Q Okay. How long did you -- do you think you all lived  
5 there?

6 A Two months.

7 Q Okay. Where after that?

8 A I believe it was Old Tram Road for one month.

9 Q Okay. And then where?

10 A 548.

11 Q To where -- is this [REDACTED] Highway 548?

12 A Yes, sir.

13 Q I'm going to show you what's been marked as State's  
14 Exhibit Nine. Are you familiar kind of with this area?

15 A Yes. I am.

16 Q Can you point out to the jury where your -- where you  
17 lived?

18 A Where's --

19 Q I think that Highway 548 --

20 A That's -- okay. It's up there.

21 Q Where the red dot is?

22 A Yes, sir.

23 Q Okay. Now, prior to the incident for what we are here  
24 today how long did you live there?

25 A I moved in there August 2015.

1 Q And this -- the allegations for which you're here  
2 occurred in July 2016. So that would be 11 months, something  
3 like that?

4 A Yes, sir.

5 Q Okay. Now, as far as, as your time here did you work  
6 here?

7 A No, sir.

8 Q Okay. Why didn't you work here?

9 A I collected disability check from the VA.

10 Q Okay. When did you begin collecting your disability  
11 check from the VA?

12 A I think it was December 2014.

13 Q Okay. So maybe a year and a half before this?

14 A Yes, sir.

15 Q Okay. Now, I want to talk to you a little bit more about  
16 your past. At any point in your past did you have any issues  
17 with drugs?

18 A Yes, sir. I did.

19 Q And when was that?

20 A Eighties and the nineties.

21 Q Okay. Now, during the eighties and nineties what was  
22 your drug of choice?

23 A Cocaine and alcohol.

24 Q Okay. Now, as far as your time with that, had -- did you  
25 continuously kind of struggle?

James Rosenbaum - Direct by Mr. Alex Hyman

831

- 1 A Yes, sir. I did.
- 2 Q Did you go to rehab?
- 3 A Yes. I did.
- 4 Q Okay. Did that seem to help?
- 5 A Yes, sir. It did.
- 6 Q Okay. Now, as far as -- would you say that back then you  
7 were addicted?
- 8 A Yes, I was, sir.
- 9 Q Okay. Now, let's fast-forward until -- to you all moving  
10 here. Was drug addiction a problem which you had once you got  
11 here?
- 12 A No, sir. It was not.
- 13 Q Okay. Would you occasionally still maybe smoke marijuana  
14 or anything like that?
- 15 A Yes, sir.
- 16 Q Okay. Do you remember if you did cocaine at any point  
17 while you were here in South Carolina?
- 18 A Yes, sir. I did.
- 19 Q Okay. And you're trying to be honest today because you  
20 don't want to mislead anybody; correct?
- 21 A Correct, sir.
- 22 Q Okay. Now, on the date July 11<sup>th</sup>, 2016, do you remember  
23 if you did any drugs that day?
- 24 A No, sir.
- 25 Q Okay. The -- let me kind of go back. Now there's been a

1 -- you've heard a lot of testimony about what allegedly  
2 occurred, and you've heard the 911 tape, you've done all of  
3 that. Were you investigated that night? Do you remember  
4 that?

5 A I know I was brought to the Brown Building.

6 Q Okay. And did you talk with a detective that night?

7 A Yes, sir. I did.

8 Q Did you try to answer the questions to your -- best of  
9 your ability?

10 A At that time. Yes.

11 Q Okay. Did, did you, did you try to lie? I mean, were  
12 you trying to lie or anything like that?

13 A No, sir.

14 Q Did you have problems putting together all the pieces?

15 A Yes, sir.

16 Q Okay. Let's go back though to that day, July 11<sup>th</sup>, 2016.  
17 Now, when you woke up that morning were you planning on having  
18 to remember every single detail?

19 A No, sir.

20 Q Okay. I don't think any of us are, but now, we were  
21 provided quite a bit of, of records from the Solicitor's  
22 Office after this, and they were your cell phones, the Google  
23 stuff that the guy came up here and talked about yesterday.  
24 Have you and I gone over that stuff?

25 A Yes, sir. We did.

James Rosenbaum - Direct by Mr. Alex Hyman

833

1 Q Okay. Did that help refresh your recollection of what  
2 occurred that day?

3 A Yes, sir.

4 Q Did it help you remember, you know, where you were that  
5 morning?

6 A Yes, sir.

7 Q That afternoon?

8 A Yes, sir.

9 Q That evening?

10 A Yes, sir.

11 Q Well, let's talk about that a little bit. Do you  
12 remember what time you woke up that morning?

13 A I would say nine or 10.

14 Q Okay. Do you remember what you did the first part of  
15 that day?

16 A Stayed home.

17 Q Were you all -- was Diane there with you?

18 A Yes.

19 Q Okay. You all just hanging out?

20 A Yes, sir.

21 Q Okay. Do you remember when you first left the house that  
22 day?

23 A I believe it was 3:00 o'clock.

24 Q Okay. What did you do?

25 A I picked up a friend.

- 1 Q Who's that person?
- 2 A His name's Mark.
- 3 Q Okay. Now, does Mark -- does he live near you?
- 4 A Yes, sir. He does.
- 5 Q Okay. What did you and Mark do?
- 6 A He asked me to take him to the store. He had to do some
- 7 food shopping.
- 8 Q Do you remember where you all went?
- 9 A I believe it was the meat locker.
- 10 Q Okay. Now, do you remember where the meat locker was?
- 11 A I believe it was 701.
- 12 Q Okay. As far as that, did you all go anywhere else?
- 13 A Yes, sir. We did.
- 14 Q Where did you go?
- 15 A We went to Walmart after that.
- 16 Q All right. How about after that?
- 17 A I believe I brought him home.
- 18 Q Okay. Did you bring him to your house or did you take
- 19 him to his house?
- 20 A I took him to his house.
- 21 Q Okay. Now, is Mark a white man, a black man?
- 22 A Mark is a black man.
- 23 Q Okay. So you dropped Mark off. Tell me what you do
- 24 after that?
- 25 A I went home.

James Rosenbaum - Direct by Mr. Alex Hyman

835

1 Q Okay. Do you remember anything really after that as far  
2 as were you just kind of hanging out at home or did you do  
3 anything at the house?

4 A Well, when I got home there was nobody there.

5 Q Okay. Well, did anybody show up? Did anybody come over?  
6 Did anybody -- were you there alone for the rest of the night  
7 or did somebody else come?

8 A No. Diane showed up about 5:30.

9 Q Okay. Do you remember what she was doing?

10 A She was out food shopping.

11 Q Okay. Well, tell me about what happened after that.

12 A We got in a big fight over her not getting a job.

13 Q Okay. Now, a big fight, do you mean like a fist fight or  
14 an argument?

15 A No. Just an argument.

16 Q All right. Did you -- how long you think this argument  
17 lasted?

18 A 15 minutes, 20 minutes.

19 Q Okay. Had you all had this argument before?

20 A Many a times.

21 Q Okay. Now, I heard Paul Ridgely testify yesterday that  
22 you had talked with him about these same kind of issues. Is  
23 that accurate?

24 A Yes, sir.

25 Q Okay. Had you talked with Paul a couple of times about

1 it?

2 A Yes, sir.

3 Q Well, would you say that Paul was kind of a sounding  
4 board for you?

5 A Yes, sir.

6 Q Okay. Now, so you and Diane get in an argument. What  
7 happens after that?

8 A I stormed out of the house.

9 Q Okay. Where did you go?

10 A I took a ride to what I was told is Savannah Bluff.

11 Q Now, where is that?

12 A That's off of 501.

13 Q What is Savannah Bluff?

14 A It's a boat launch by a hotel.

15 Q Okay. Were you fishing?

16 A No.

17 Q Had you ever gone fishing there before?

18 A Yes.

19 Q Okay. Did you have your fishing poles this day?

20 A I think I did.

21 Q The -- as far as your time at Savannah Bluff how long  
22 would you say you were there?

23 A 15 minutes.

24 Q Where you going to do something or clear your head? What  
25 was it?



James Rosenbaum - Direct by Mr. Alex Hyman

837

1 A I just wanted to let off some steam.

2 Q Okay. Now, where did you go after that?

3 A I went back home.

4 Q Okay. Was Diane there when you got back?

5 A No. She was not.

6 Q Okay. Did you leave the house again shortly after that  
7 or did you stick around?

8 A I called Mark and then I stopped down at his house.

9 Q Okay. Now, this is Mark that you were with earlier?

10 A Yes.

11 Q Okay. Now, what did you and Mark do?

12 A I just asked him if he wanted to go to the gym later on  
13 and he said he'd call me later on.

14 Q Would that have been about 6:40?

15 A It could have been. Yes.

16 Q I'm going to hand you what's been marked as State's 113.  
17 It has a phone call here. I believe this is 6:40. Looks like  
18 you called Mark there and then it looks like you called again  
19 at 6:44. Is this -- did you call Mark before you went over  
20 there?

21 A Yes. I did.

22 Q Okay. Is that Mark's number the 489-0838?

23 A Yes, sir.

24 Q Okay. Did Mark say he was interested in working out at  
25 -- that point?

- 1 A Yes, sir. He did.
- 2 Q Okay. Now, after that you said Diane was not home. Did
- 3 you talk to Diane?
- 4 A Yes, sir. I did.
- 5 Q Okay. Tell me about that phone conversation.
- 6 A I was on the phone with her and she told me she was going
- 7 to look for a job at a horse farm.
- 8 Q Did she necessarily tell you where the horse farm was or
- 9 anything like that?
- 10 A No.
- 11 Q Had you and her talked about her wanting to work at
- 12 someplace like that before?
- 13 A Yes, sir.
- 14 Q Okay. Since you all had been down here had she worked
- 15 any other places?
- 16 A Yes, sir. She has.
- 17 Q Where did she work?
- 18 A I believe she worked at Walmart for three days.
- 19 Q Okay. How about other than that?
- 20 A I put an ad in the newspaper and she detailed one lady's
- 21 car one time. That was it.
- 22 Q But other than that, no continuous employment or
- 23 anything?
- 24 A No, sir.
- 25 Q Okay. So the phone conversation you had with Diane, I'm

James Rosenbaum - Direct by Mr. Alex Hyman

839

1 going to look right back here. It appears to be about 57  
2 minutes, and it likes it occurred, I believe that would be at  
3 7:42. Does that sound accurate?

4 A Yes, sir. It does.

5 Q Now, were you all talking this entire time or were there  
6 breaks in it? What happened?

7 A She pulled over. She said to hang on, and she went to a,  
8 a house, and she knocked on the door and she told me she asked  
9 the lady -- there was a lady that answered the door, and she  
10 asked her if she needed any help with the horses, and she said  
11 the lady said no. I guess they couldn't afford to pay anyone,  
12 and --

13 Q Now, did you, did you hear that or was this what she --

14 A This is what she told me.

15 Q Now, did she tell you that when she got back in the car?

16 A Yes, sir.

17 Q So she didn't tell you that like later or anything like  
18 that, just --

19 A No, sir.

20 Q Okay. Now, did you hear her go somewhere else?

21 A Yes, sir.

22 Q Do you remember how the phone call ended?

23 A No, sir.

24 Q Okay. Do you remember her ever talking about having to  
25 give anyone a ride or anything like that?

- 1 A Yes, sir.
- 2 Q Okay. Tell me about that.
- 3 A She went to another farm and apparently she said she
- 4 talked to a Mr. Randy Hucks.
- 5 Q Okay.
- 6 A And she said that he gave her a job.
- 7 Q Okay. Did she say anything else?
- 8 A Yes. She, she asked me if she could give one of the
- 9 workers up there a ride.
- 10 Q Did she tell you who the worker was?
- 11 A No. She did not, sir.
- 12 Q What did you say?
- 13 A I said yes.
- 14 Q Okay. Now, did you think there was anything funny about
- 15 that, giving anybody a ride?
- 16 A No, sir.
- 17 Q Okay. Now, did she call you again?
- 18 A Yes, sir.
- 19 Q Now, when was that? We can look right here. I believe
- 20 it's this right here. It looks to be -- I believe that's
- 21 8:44. Oh, excuse me. That's, that's the wrong person. Right
- 22 here. 8:41. With that -- do you think that would be
- 23 accurate?
- 24 A 8:44?
- 25 Q Eight -- 8:41 is what it looks like right here because

James Rosenbaum - Direct by Mr. Alex Hyman

841

1 her number was the 742-7705?

2 A I believe so yes.

3 Q Okay. Did she tell you where she was at that point?

4 A She told me she was at a store and she asked me if she  
5 could lend this guy \$20, and I said for what, and she said he  
6 just wants to borrow \$20 and he would pay her back on Friday.

7 Q Okay. Now, was the money that she's talking about was  
8 that in a joint account you all had?

9 A Yes, sir.

10 Q Did you all use that together?

11 A Yes, sir.

12 Q Is that what your disability check went into or no?

13 A No. It did not, sir.

14 Q Okay. So was the -- is that just an account you all just  
15 put money in to spend, is that kind of --

16 A I would take money out of my other account and put it in  
17 that account for me and her for when she had to go shopping  
18 and stuff like that.

19 Q Got you. And so she calls you. She says she's at a  
20 store. Did she say what store?

21 A No. She did not.

22 Q Okay. And said that she wanted to get \$20 out?

23 A Yes, sir.

24 Q And let whoever was with her have the \$20?

25 A Yes, sir.

1 Q Okay. Now, did she tell you at that point the guy's name  
2 or anything like that?

3 A No, sir.

4 Q Okay. Now, after that, do you remember if you called  
5 Mark again?

6 A I believe I did.

7 Q Okay. And were you -- what were you and Mark talking  
8 about?

9 A I believe I spoke to Mark about -- asked him if he wanted  
10 to go to the gym, that I was going to go.

11 Q Do you remember if he said yes or no?

12 A He said he didn't want to go.

13 Q Okay. Now, I'm going to show you -- oops, that's not it  
14 -- this has been marked as State's Exhibit 115, and it's got  
15 some calls. This is the call that we were just talking about  
16 about the -- that you think was when she was at the gas  
17 station or at the store. Now, these other calls because right  
18 here, there's quite a few of them, the voicemail, three  
19 seconds, 12 seconds, voicemail, voicemail, then this one, and  
20 the AT&T guy if you'll remember testified on some of these it  
21 wasn't even picking up a cell tower, and my question to you is  
22 did you talk to her during this?

23 A No, sir.

24 Q Okay. It appears that she tried -- she attempted to call  
25 you and got your voicemail, and it looks like that happened

James Rosenbaum - Direct by Mr. Alex Hyman

843

1 again and it looks like you may have tried to call back, and  
2 during all of that it's your testimony that you, you actually  
3 didn't talk to her through any of this?

4 A No, sir. I did not.

5 Q Okay. Now, there were some phone calls on the log,  
6 excuse me, that were not included, and those phone calls looks  
7 like you were trying to call like a 401 number and it appears  
8 that the 401 number just may be your voicemail. Is that what  
9 you were attempting to do to try to call your voicemail or if  
10 you don't remember that's fine.

11 A I don't remember.

12 Q Okay. But it's your testimony though that you did not  
13 talk to her during any of this time?

14 A Yes, sir.

15 Q Okay. Now, as far as after that, the State's phone  
16 expert got up here yesterday and he said that at 8:40 and at  
17 8:41 that you were hiding down some road. That was what they  
18 were contending. Were you doing that at 8:40 or 8:41?

19 A No, sir.

20 Q Okay. And it appears you actually called Mark I believe  
21 it's after that, and it looks to me like you called Mark at  
22 8:44. So that would've been after they're contending you're  
23 down some road?

24 A Yes, sir.

25 Q The road that they were talking about next to your house,

1 have you ever been down that road?

2 A No, sir.

3 Q Do you know the people who live down that road?

4 A No, sir.

5 Q Okay. Where were you sitting at 8:44?

6 A I was sitting at my house.

7 Q Okay. What time would you say -- did you leave your  
8 house?

9 A Yes, sir.

10 Q Can you -- do you know exactly when you left your house?

11 A No. It was sometime after 9:00 o'clock.

12 Q Okay. Now, we have heard through testimony that there  
13 was a 911 call at 9:35. So would you say that you left  
14 somewhere between nine and 9:30?

15 A Yes, sir.

16 Q Okay. Where did you go?

17 A I went to Planet Fitness.

18 Q Do you have a gym membership at Planet Fitness?

19 A Yes. I do.

20 Q Okay. Now, as far as at Planet Fitness tell me what you  
21 did after -- did you go work out?

22 A No, sir.

23 Q Tell me what happened.

24 A Well, when I drove to Planet Fitness I pulled in by the  
25 Taco Bell and I noticed there was a lot of cars in the parking



James Rosenbaum - Direct by Mr. Alex Hyman

845

1 lot, and I turned around and came back home.

2 Q Okay. Now, as far as you turning around and coming back  
3 home, why, why didn't you want to work out if there was a lot  
4 of cars there?

5 A I like to go into the gym when there's not a lot of  
6 people in there.

7 Q Okay. The -- I'm going to show you what's been marked as  
8 State's Exhibit, I think it's 58. Can you tell me what this  
9 is?

10 A That's the very last bedroom in the trailer that I put  
11 weights in there, and it's kind of like a workout room.

12 Q So do you work out at home sometime, too?

13 A Yes, sir.

14 Q But as far as cardio, walking, that kind of stuff --

15 A Yes, sir.

16 Q -- do you do that more at the Planet Fitness?

17 A Yes, sir.

18 Q Okay. Now, as far as when you get to Planet Fitness it's  
19 your testimony that you get there, it looks like it's crowded,  
20 you thought you were going to be working out with Mark, but he  
21 said he didn't want to work out; is that right?

22 A Yes, sir.

23 Q You turn around and you go home; is that right?

24 A Yes, sir.

25 Q Now, tell me how you drove to Planet Fitness.

1 A I took a left out of my driveway and I went down 548 down  
2 to the Tractor Supply. At the light I took a right, and I  
3 went down 501 till I got to Planet Fitness and turned left  
4 there.

5 Q Now, Planet Fitness, is it very far from your house?

6 A No, sir. It's not.

7 Q How far or how long of a drive do you think it would take  
8 to get there and back to your house?

9 A 15, 20 minutes.

10 Q Okay. So it's not, you know, is it less than five miles  
11 to get there?

12 A I would believe so. Yes, sir.

13 Q Okay. Now, I want to get back to these, these phone  
14 calls because the State seemed to make, make a big deal out of  
15 these. When you and Diane were -- when Diane was trying to  
16 contact you, and you didn't get her, and you called her back  
17 and didn't get her, where, where were you? Do you remember?

18 A I believe I was at my house.

19 Q Okay. Do you know if you were in your car or in the --  
20 inside or do you not really remember?

21 A I don't remember.

22 Q Okay. That's fine. So let me, let me ask you something,  
23 there's been a good bit of ordeal made about these gloves.

24 Now, are these your gloves?

25 A Yes, sir.

James Rosenbaum - Direct by Mr. Alex Hyman

847

1 Q All right. Did you have these on your way to Planet  
2 Fitness?

3 A Yes, sir. I did.

4 Q Okay. What do you use these gloves for?

5 A I use them for lifting weights.

6 Q Okay. Do you use them for punching bags or anything like  
7 that?

8 A No, sir.

9 Q Okay. Now, as far as this goes, it looks like on the top  
10 is this mesh kind of right here?

11 A Yes, sir.

12 Q Okay. And on the bottom it appears to be kind of leather  
13 grip kind of thing?

14 A Yes, sir.

15 Q Why do you have these?

16 A Well, when you're lifting weights they also have a --  
17 which other like a weightlifting gloves they don't have a  
18 wrist support. Them support your wrist, too, when you're  
19 doing like an arm workout.

20 Q Okay.

21 A And it keeps your hands from callusing up and you can  
22 grip the weights better.

23 Q Did you buy these to fight with anybody?

24 A No.

25 Q Okay. How long had you had these would you say?

- 1 A I'd say a couple of months.
- 2 Q Okay. Had you used them a lot or just a couple of times?
- 3 A A few times.
- 4 Q Okay. So you have those with you in the car. Did you
- 5 also have a gym bag?
- 6 A Yes. I did.
- 7 Q Okay. Do you keep clothes and stuff like that in the gym
- 8 bag?
- 9 A Yes, sir.
- 10 Q What were you driving?
- 11 A I was driving my 2008 Nissan pickup truck.
- 12 Q Okay. So you're coming home from the gym. You've got
- 13 your gym bag and everything like that. Are you planning on
- 14 working out inside your house?
- 15 A Yes, sir.
- 16 Q Okay. The -- so you were planning on working out in this
- 17 room?
- 18 A Yes, sir.
- 19 Q Okay. Now, is it -- would you say that you normally work
- 20 out in the evenings or the mornings or anything like that?
- 21 A Most of the time I would say after 6:00 o'clock.
- 22 Q Okay. So in the evenings?
- 23 A Yes, sir.
- 24 Q As far as when you come home, I want to go into a little
- 25 bit of detail about what happens when you come home. What

James Rosenbaum - Direct by Mr. Alex Hyman

849

1 time do you think it is, and if you don't know the exact time  
2 if you could try to guesstimate.

3 A I would say 9:30, 9:35, somewhere around that area.

4 Q The -- there's, there's a 911 call made that we saw that  
5 occurred at 9:35. Did you get there after the 911 call or  
6 before the 911 call?

7 A Before the 911 call.

8 Q Okay. Now, I want you to tell the jury about what  
9 happens when you pulled up.

10 A When I first got out of my truck I heard someone  
11 screaming in my house, and I heard Diane screaming.

12 Q Do you remember what she was screaming?

13 A I believe it was, "Get the fuck off me."

14 Q Okay. Do you -- did you hear anything else, anybody  
15 else?

16 A I thought she was yelling at somebody on the phone at  
17 first, and then I heard a man's voice inside the house.

18 Q Okay. Do you remember what you heard the man say?

19 A No. I do not.

20 Q Okay. Now, tell me what you did next.

21 A I tried to look in the front door to see if I could see  
22 what was going on but I couldn't see because the, the storm,  
23 the, the glass there is painted black so you can't see in.

24 Q Okay. What did you do next?

25 A I ran around the back of the house.

1 Q Okay. Did -- what you were you thinking? You know, I, I  
2 can't -- I don't know what you were thinking, that kind of  
3 stuff. What, what was going through your head at this point?

4 A I knew someone was in there doing something and I kind of  
5 knew I was going to get in a fight.

6 Q Okay. Did -- do you remember if you were thinking, I  
7 mean, do you have any tools in your truck, anything like that?

8 A No, sir.

9 Q Any knives?

10 A No, sir.

11 Q Any guns?

12 A No, sir.

13 Q Okay. Did you have your gym bag?

14 A No, sir.

15 Q Okay. What did you have in your hand as you were walking  
16 up?

17 A My gloves, my workout gloves.

18 Q Now, is that these gloves?

19 A Yes, sir.

20 Q Okay. Now, tell me what happens next.

21 A As I'm running to the back of the house I put the gloves  
22 on and on the left side of the door there was that -- the bat.

23 Q Is that this bat?

24 A Yes, sir.

25 Q All right. Now, as far as this bat, was it on the back

James Rosenbaum - Direct by Mr. Alex Hyman

851

1 porch?

2 A Yes, sir.

3 Q Okay. Tell me why you had a bat on the back porch.

4 A I had a dog and there's a field next to my house and I  
5 used to hit tennis balls to the dog.

6 Q Okay. Did you still have the dog on July 11<sup>th</sup>?

7 A No, sir.

8 Q All right. What happened to the dog?

9 A He had a bad habit of going out into the road, and it's a  
10 busy road. So I gave him away.

11 Q Who did you give him to?

12 A I gave him to my landlord.

13 Q Who is she?

14 A Maggie Fogner.

15 Q Okay. Now, as far as that goes, it's your testimony that  
16 you grab the bat. Tell me what happens next.

17 A I open up the back door, and when I looked in I seen  
18 Diane on the floor like on her knees, and I seen a naked man  
19 in my house pulling her hair. It looked to me like he was  
20 trying to force oral sex on her.

21 Q Okay. Could you see his penis?

22 A Yes, sir.

23 Q Okay. Now, I'm going to show you what's been marked as  
24 State's Exhibit 88. Can you show me where you came in?

25 A Right there.

- 1 Q Okay. So there's a -- the back door is here?
- 2 A Yes, sir.
- 3 Q All right. Now, where were they?
- 4 A In this area.
- 5 Q Okay. So tell me what you did once -- so you see that.
- 6 Does she appear to be putting up a fight?
- 7 A Yes.
- 8 Q Does she appear scared?
- 9 A Yes, sir.
- 10 Q Did it look like this was something she wanted to be
- 11 happening?
- 12 A No, sir.
- 13 Q Tell me what you did next.
- 14 A I ran and yelled and screamed as I was running and I hit
- 15 Roy in the head with the baseball bat.
- 16 Q Okay. When you hit him in the head, what happened?
- 17 A He fell back and staggered. Blood came out of his head.
- 18 Q Okay. Did you hit him again?
- 19 A Yes.
- 20 Q Okay. How many times do you think you hit him in the
- 21 head?
- 22 A About three times.
- 23 Q Okay. Did he stay down?
- 24 A No, sir.
- 25 Q Now, can you tell us from what you remember what happened



James Rosenbaum - Direct by Mr. Alex Hyman

853

1 after that?

2 A As I was helping Ms. Durkin off the floor the bat got  
3 taken away from me and Mr. Davis swung the bat, and as I  
4 backed up I slipped and he caught me under here with the bat.  
5 We tussled around some more. I got hit in the leg. He hit my  
6 left leg with the bat.

7 Q Now, let me grab, we, we listened to the 911 tape. You  
8 were in here and heard that. Now, on the 911 tape your -- you  
9 hear stuff like [hits bat on witness stand]. Are, are those  
10 all times where you're hitting him?

11 A No, sir.

12 Q Okay. Now, as far as the 911 tape, I want to go over  
13 some of it with you. At a minute and 10 into it Diane is  
14 heard saying, "My boyfriend has him on the floor." Do you  
15 remember having Mr. Davis on the floor?

16 A Yes, sir.

17 Q Okay. What were you doing with him on the floor?

18 A I was holding him down.

19 Q Okay. Now, a little bit after that you can hear you on  
20 the tape saying, "Get the gun." Do you remember that?

21 A Yes, sir.

22 Q Okay. What were you telling -- who were you telling that  
23 to?

24 A Ms. Durkin.

25 Q Okay. Now, as far as you telling her to get the gun why

1 were you doing that?

2 A Mr. Davis had control of the bat at that time.

3 Q All right. Did Diane get the gun?

4 A I believe she did.

5 Q Okay. And some of the stuff as far as, you know,  
6 listening to the 911 tape it sounds like there's a lot going  
7 on. Could you hear everything that Diane was saying?

8 A No, sir.

9 Q Okay. So even though you can hear her on the 911 tape  
10 could you hear every word that's coming out of her mouth,  
11 everything that she's saying like that?

12 A No, sir.

13 Q But was it clear though from what you did hear that she  
14 was telling 911 that she'd been assaulted?

15 A Yes, sir.

16 Q And that also, you saw that?

17 A Yes, sir.

18 Q Okay. Were there multiple times during the melee, all of  
19 this, which I think while the 911 is -- I believe it's about  
20 17 minutes long, it seems like the most of it is about a 10  
21 minute period, but was there some fighting prior to the 911  
22 tape?

23 A Yes, sir. There was.

24 Q Is that what you were talking about where you're  
25 struggling, he's got the bat, you're -- you've already hit him

James Rosenbaum - Direct by Mr. Alex Hyman

855

- 1 two or three times, that kind of thing?
- 2 A Yes, sir.
- 3 Q All right. How many times do you think during that that
- 4 you and he were wrestling, tied up, that kind of thing, you
- 5 had him on the ground, that kind of stuff?
- 6 A I'm not sure. I mean it's been two and half years. I'm
- 7 -- it was real confusing.
- 8 Q Would you say it was more than one?
- 9 A Oh, yes.
- 10 Q More than one time?
- 11 A Yes.
- 12 Q Did you ever have him on the ground down in the kitchen?
- 13 A Yes, sir.
- 14 Q How about on the mattress?
- 15 A Yes, sir.
- 16 Q Okay. Do you remember if, if you were falling on the
- 17 ground, too?
- 18 A Yes, sir, I was.
- 19 Q Tell me about that.
- 20 A When I was retreating when he had the bat I slipped and
- 21 fell when we tussled. It, it went back and forth.
- 22 Q Was it slippery on the floor?
- 23 A Yes, sir. It was.
- 24 Q What was that from?
- 25 A Blood.

1 Q Okay. Now, as far as that goes were -- when you had him  
2 on the floor and you're saying you're laying down, in fact, at  
3 four minutes and 50 seconds Diane says, "He's on the floor.  
4 My boyfriend is holding him down." So that's, that's two  
5 times right there where she said that you're holding him down.  
6 Would it, would it be that you hold him down and then he'd get  
7 up. Tell me, tell me how that goes.

8 A Like I said, it was a tussle. I would hold him down.  
9 He'd get up. I'd get up. We were exchanging punches and  
10 wrestling and what you do in a fight.

11 Q Okay. Now, did he seem like at some point like he was  
12 trying to get away?

13 A Yes, sir.

14 Q Okay. Did you want him to get away?

15 A No, sir.

16 Q Why not?

17 A Well, I wanted the police to come and arrest him.

18 Q The -- it, it looks like at three minutes and 40 seconds  
19 in the 911 tape it sounds like you're saying, "Get the cops  
20 here", and then a few seconds later at -- you can hear you  
21 say, "Get the cops out here," and then at four minutes and 17  
22 seconds you're saying, "Get the f'ing cops." Why did you want  
23 the police there again?

24 A I wanted Mr. Davis to be arrested.

25 Q Okay. Did you intend -- did you want him dead, did you

James Rosenbaum - Direct by Mr. Alex Hyman

857

1 want him dead?

2 A No, sir.

3 Q It's your testimony that you wanted him to be arrested?

4 A Yes, sir.

5 Q Okay. Now, I want to move forward a little bit to when  
6 you get the gun. Now, as far as this gun is concerned, I  
7 think that it's been testified to that it's a pellet gun; is  
8 that right?

9 A Yes, sir.

10 Q Is it a 22 pellet gun or --

11 A No, sir. It's a 25 caliber.

12 Q Okay. Is it a multi-shot, a single shot?

13 A It's a single shot.

14 Q Okay. Did you shoot Roy Davis with this?

15 A Yes, sir.

16 Q Where did you shoot him?

17 A In the shoulder.

18 Q Okay. Did you shoot him more than once?

19 A Yes, sir.

20 Q Where did you shoot him a second time?

21 A In his side.

22 Q Did you ever hit Roy Davis with this?

23 A Yes, sir.

24 Q Where did you hit him?

25 A In the chest area.

1 Q Okay. What were you hitting him in the chest for?

2 A Mr. Davis had control of the bat at the time.

3 Q Did you ever hit him in the chest trying to get him to  
4 stay down?

5 A Yes, sir.

6 Q Okay. Because I -- during that 911 call you, you hear  
7 you say it and you hear Diane say it, "Don't move, stay down,  
8 don't you move," and then you also hear you saying, "Get the  
9 cops out here. Are they on the way?" Is that consistent with  
10 what you were saying that night?

11 A Yes, sir.

12 Q Is it your testimony that you told her to get the pellet  
13 gun because you no longer had the bat?

14 A Yes, sir.

15 Q Okay. Do you remember ever raising your arms like that  
16 hitting Roy like this [indicating]?

17 A Maybe the first initial hit.

18 Q Okay. Any other time or anything like that?

19 A No.

20 Q At any point during this were you ever standing over him  
21 and just hitting him?

22 A No, sir. I was not.

23 Q Okay. As far as your memory of these events, it's been  
24 two and a half years?

25 A Yes, sir.

James Rosenbaum - Direct by Mr. Alex Hyman

859

1 Q The -- are you trying to remember them as good as you  
2 can?

3 A Yes, sir.

4 Q Are there certain things maybe that you don't, you don't  
5 remember perfectly?

6 A Yes, sir.

7 Q Were you in shock when this happened?

8 A Yes, sir. I was.

9 Q Now, as far as during that it, it sounds like Diane at  
10 some point is also fighting with Roy. Is that accurate?

11 A Yes.

12 Q The -- I, I noticed that during that and it's kind of  
13 vague but you can hear you say something, I think it's at  
14 seven minutes and 10 seconds in you say, "Get away." Are you  
15 talking to Roy or are you talking to Diane?

16 A I was talking to Diane at that time.

17 Q Okay. Now, as far as, as Roy goes, there's a -- and  
18 you've testified that and you heard Paul Ridgely testify that  
19 you called him; is that right?

20 A Yes, sir.

21 Q Okay. Now, prior to calling him did you take and I think  
22 it was a video but they've got it in as State's Exhibit,  
23 State's Number 106. Did you take that?

24 A Yes, sir.

25 Q Okay. Did you know it was a video or did you think it

1 was a photo that you took?

2 A I believe -- I thought it was a photo.

3 Q Okay. The -- why did you take that?

4 A The reason I took that picture is in case he got out the  
5 door --

6 Q Okay.

7 A -- and got away that I could show the police who he was.

8 Q All right. Now, you called Paul. Can you tell me what  
9 you said to Paul?

10 A I told Paul to bring his 40 over.

11 Q Why did you want him to bring his 40 over?

12 A I was scared and I thought maybe if another person was  
13 there with me had a gun he would stay put.

14 Q Okay. Because you didn't have a 40 or anything like  
15 that?

16 A No, sir.

17 Q Okay. Now, I noticed something and I was going to ask  
18 you, did you ever see a folded T-shirt in there?

19 A No, sir.

20 Q Were you looking for a folded T-shirt?

21 A No, sir

22 Q All right. I've got here what's marked as State's  
23 Exhibit Number 40 and State's 39, which appear to be your  
24 kitchen, and we talked with Jill Domogauer, who was the crime  
25 scene investigator, and she said that as far as these



James Rosenbaum - Direct by Mr. Alex Hyman

861

1 pictures, I asked her some questions about knives. You know,  
2 did you have knives in your sink? You can look right there at  
3 State's 40.

4 A Yes, sir. I did.

5 Q And I'm going to show you what's marked as State's,  
6 State's Exhibit Number 39. Is there a knife block there?

7 A Yes, sir. There is.

8 Q So you had knives in your kitchen?

9 A Yes, sir.

10 Q Were you all fighting around the knives?

11 A Yes, sir.

12 Q Was there any concern that maybe he would get a knife?

13 A Yes, sir. There was.

14 Q But did you grab a knife at any point and stab him or  
15 anything like that?

16 A No, sir. I did not.

17 Q Okay. Now, as far as when you're on the phone with Paul  
18 right, right when you say the thing about the 40, it appears  
19 that something happens. Do you remember what that was?

20 A Yes.

21 Q And what I mean by that it sounds like there's a big  
22 commotion on the 911 tape. What happened?

23 A Mr. Davis tried to run out the door.

24 Q Okay. What did you do?

25 A I blocked him.

- 1 Q How did you block him?
- 2 A I shoved him up against a wall.
- 3 Q Okay. Did you hit him?
- 4 A I might have.
- 5 Q Okay. With your hands?
- 6 A Yes.
- 7 Q Okay. Did you grab him? Did you all wrestle?
- 8 A Yes, sir. We did.
- 9 Q Now, looking at the pictures that Ms. Sutton went over,  
10 now, this is State's Exhibit Number 70, and Ms. Sutton in her  
11 blood spatter testimony said that these pools right here,  
12 these, these things right here are called transfer stains and  
13 they would probably be indicative of you and he wrestling. I  
14 asked her that question and see she said yes. Do you think  
15 that's where those came from?
- 16 A Yes, sir.
- 17 Q Would that have been when you were laying on top of him?
- 18 A Yes, sir.
- 19 Q After that you said that he made a dash for the door and  
20 you grabbed him and kept him out, what happened?
- 21 A After we tussled he stood up and he just collapsed and  
22 fell back on the mattress.
- 23 Q All right. Had he been on the mattress earlier?
- 24 A Yes, sir.
- 25 Q Had you held him on the mattress earlier?

James Rosenbaum - Direct by Mr. Alex Hyman

863

1 A Yes, sir.

2 Q Okay. Now, when he collapsed on the mattress did you  
3 think he was dead?

4 A No, sir.

5 Q Okay. And it appears after that happens there's maybe  
6 four or five minutes at the end of the 911 tape where it  
7 doesn't sound like there's any, any struggling. Would that be  
8 somewhat accurate?

9 A Yes, sir.

10 Q Do you remember when law enforcement got there?

11 A Yes, sir. I do.

12 Q Now, you saw Mark Johnson. He was up -- came up and  
13 testified. Do you remember that?

14 A Yes, sir.

15 Q Do you remember seeing him that night?

16 A Yes, sir. He had his gun out when he came.

17 Q Okay. He did testify that he had his gun out. It was  
18 his testimony that you and Diane were sitting on the couch  
19 when he came up. Is that what was -- is that, is that  
20 correct?

21 A No, sir.

22 Q Where were you?

23 A I had the water on in the sink. I was washing my hands.

24 Q Why were you washing your hands?

25 A During the fight Mr. Davis bit my finger and he broke the

1 skin on it and had all the blood. I didn't want any -- I  
2 didn't know if he had AIDS or hepatitis. I was trying to wash  
3 the cut out.

4 Q Did you take the gloves off?

5 A Yes. I did.

6 Q The -- would that have explained why the water and the  
7 gloves were in the sink?

8 A Yes, sir.

9 Q Did you also have the, the gun there, too?

10 A I had it on the, the counter.

11 Q Okay. Were you trying to destroy evidence of any type --

12 A No, sir.

13 Q -- anything like that? After Officer Johnson came in,  
14 did you then go over and sit on the couch?

15 A No, sir.

16 Q What happened?

17 A He asked me what happened, and I explained to him what I  
18 just testified to, and when I told him I went around the back  
19 because I said I didn't want to come through the front door  
20 because I don't know who was in here, if I would have got  
21 shot, he said it was a good idea, and when I explained to him  
22 what happened, he says, "Well, you've got to come outside  
23 now."

24 Q Okay. So did they separate you and Diane at that point?

25 A Yes, sir. They did.

James Rosenbaum - Direct by Mr. Alex Hyman

865

- 1 Q Where did you go?
- 2 A I went into Officer Johnson's vehicle.
- 3 Q Okay. Was Diane put into the same vehicle?
- 4 A No, sir.
- 5 Q Okay. Now, at this point do you remember was it raining
- 6 at this point or was it raining before?
- 7 A It rained that night. It was, it was raining.
- 8 Q Was it kind of off-and-on?
- 9 A Yes, sir.
- 10 Q As far as after that, do you get -- I believe, are you
- 11 taken to the police station?
- 12 A Yes, sir.
- 13 Q And you gave an interview at that point?
- 14 A Yes, sir.
- 15 Q When they took you there did you think that you were a
- 16 suspect in a crime?
- 17 A No, sir. I did not.
- 18 Q Did you think that you were a victim of a crime?
- 19 A Yes, sir.
- 20 Q Okay. Were there questions that they began asking you
- 21 that kind of made you go, "Wait a minute"? Did, did they ask
- 22 you certain questions that kind of started to make you feel
- 23 like you were a suspect in this?
- 24 A Yes, sir.
- 25 Q Okay. Did you try to answer their questions to the best

1 of your knowledge?

2 A Yes, sir.

3 Q Now, I've, you know, as far as those interviews, were  
4 there inconsistencies, and what, what I mean by  
5 inconsistencies, were there things that maybe you told them  
6 that you've looked at now and said, you know, "Wait a minute,  
7 that's not how that happened"?

8 A Yes, sir.

9 Q Okay. Did you tell them that you had been to Savannah  
10 Bluff?

11 A Yes, sir.

12 Q Later on did you remember that when you went to Savannah  
13 Bluff it was light outside?

14 A Yes, sir.

15 Q Okay. So you weren't necessarily misleading anyone?

16 A No, sir. It was just very confusing.

17 Q Okay. As far as that goes did you -- they ask you  
18 questions about the gloves?

19 A Yes, sir.

20 Q Did you initially tell them that you didn't have the  
21 gloves on?

22 A Yes, sir.

23 Q Now, as far as that goes, I mean, is that correct??

24 A No.

25 Q Did, did you have the gloves on?

James Rosenbaum - Direct by Mr. Alex Hyman

867

1 A I did have the gloves on.

2 Q Okay. With that, you know, you're saying now that was  
3 inconsistent; correct?

4 A Yes, sir.

5 Q Okay. Were you trying to mislead anybody or do anything  
6 like that?

7 A No, sir. I just didn't remember at the time.

8 Q Okay. Now, as far as that goes, did they ask you how  
9 many times you hit Roy, that kind of stuff?

10 A Yes. They did.

11 Q Okay. Do you remember, do you remember what you told  
12 them?

13 A I think I told them I hit him one time and then I told  
14 them after that it was possibly three.

15 Q These inconsistencies I'm talking about, did you later in  
16 the same interview correct them?

17 A Yes, sir.

18 Q Okay. So the same interview you ended up telling them,  
19 you know, "Come to think about it, yes, I did have the gloves  
20 on."

21 A Yes, sir.

22 Q Okay. And in the same interview did you also tell them  
23 that you think you hit him three times with the bat?

24 A Yes, sir.

25 Q How many times do you think you, you hit him with the,

1 the butt of this?

2 A I'm not sure.

3 Q Okay. Would, would it be less than five?

4 A Possibly.

5 Q Okay. Now, you heard Dr. Proctor testify, and he said  
6 some pretty technical stuff about the laceration to the  
7 thoracic aorta and stuff like that.

8 A Yes, sir.

9 Q Was it ever your intention to lacerate his thoracic  
10 aorta?

11 A No, sir. It was not.

12 Q Okay. And it's -- was it your statement that you told  
13 them, you told police that night that you didn't intend to  
14 kill him?

15 A Correct.

16 Q That it was not your wish to kill him?

17 A No, sir. It was not.

18 Q Now, you've heard a lot of stuff that's come out. You  
19 heard Randy Hucks testify and things like that?

20 A Yes, sir.

21 Q Insinuating that Roy and Diane knew each other. Were you  
22 aware of them having any kind of sexual relationship?

23 A No, sir.

24 Q Had you ever seen Roy?

25 A No, sir. I have not.



James Rosenbaum - Direct by Mr. Alex Hyman

869

- 1 Q All right. Now, there was some other talk about -- I  
2 think this was from Lynndale Lewis who said that you'd been at  
3 the VA and got a phone call from some friends and, you know,  
4 when you got out it made you mad and then this happened. Do  
5 you remember being at the VA?
- 6 A Yes, sir.
- 7 Q How long prior to this were you at the VA?
- 8 A I believe it was 11 months.
- 9 Q Okay. So the, the incident where he talked about the VA,  
10 you were there 11 months prior?
- 11 A Yes, sir.
- 12 Q Did you receive a phone call about any of that stuff?
- 13 A When you're in the VA you can't receive phone calls.
- 14 Q Okay. Now, your time in the VA you were actually  
15 admitted into the VA hospital; correct?
- 16 A Yes, sir.
- 17 Q And what was that for?
- 18 A I detoxed and I was going through some depression.
- 19 Q Some depression, is that what you said?
- 20 A Yes, sir.
- 21 Q All right. Now, detoxing, are you talking about on legal  
22 stuff or on stuff that --
- 23 A Oh, on, on the legal stuff.
- 24 Q Are you saying illegal or legal stuff?
- 25 A Legal stuff.

1 Q Legal?

2 A Yes, sir.

3 Q What prescriptions were you taking at, at the time with  
4 the VA?

5 A Oxycodone, Valium, Wellbutrin and that's all I remember.

6 Q Okay. Now, who came and got you from the VA?

7 A Ms. Durkin.

8 Q Now, and it's your testimony that the VA issue while you  
9 were actually there was in August of 2015?

10 A Yes, sir.

11 Q So not even remotely close to when this happened?

12 A No, sir. Like I said, it was 11 months.

13 Q Okay. Now, but you heard some of that testimony and that  
14 kind of stuff?

15 A Yes, sir.

16 Q So that would be inaccurate?

17 A Yes, sir.

18 Q Okay. Now, I want to talk a little bit about Randy Hucks  
19 said something to the effect of that Roy told him that he and  
20 Ms. Durkin would see each other when you were out of town.  
21 Were, were you out of town any?

22 A No, sir. I was not.

23 Q Okay. Did you routinely, you know, go out of state or  
24 anything like that?

25 A Yes, sir. Once a, once a month or so --

James Rosenbaum - Direct by Mr. Alex Hyman

871

- 1 Q Okay.
- 2 A -- I went to Connecticut.
- 3 Q Would she go with you?
- 4 A Yes, sir.
- 5 Q Okay. So it's not like you're leaving her home or
- 6 anything like that?
- 7 A No, sir.
- 8 Q Law enforcement asked you the night that this occurred if
- 9 Ms. Durkin had ever been unfaithful to you. Do you remember
- 10 what you told them?
- 11 A Yes. I told her she was.
- 12 Q When was that?
- 13 A In the beginning of our relationship.
- 14 Q Okay. So she cheated on you at the beginning of the
- 15 relationship which would have been three years prior to this?
- 16 A I would -- two, two before this happened.
- 17 Q Okay. About two, two --
- 18 A Yes, sir.
- 19 Q -- years before this happened. Okay. Now, as far as
- 20 that goes, did you have any altercation with that guy?
- 21 A No, sir.
- 22 Q Okay. In fact, did you tell law enforcement that if you
- 23 had caught her cheating you would just -- that'd be it and you
- 24 were gone?
- 25 A I told them I'd close the door and walk away.

1 Q Got you. You wouldn't try to beat the guy to death or  
2 anything like that?

3 A No, sir.

4 Q Okay. Now, let's -- I want to talk a little bit more  
5 about Lynndale because he came in and, and kind of wove this  
6 story and said that you told him this. Do you remember  
7 meeting Lynndale?

8 A Yes, sir. I do.

9 Q Do you remember him asking you a lot of questions?

10 A Yes. He did.

11 Q Okay. And as far as the, the questions he was asking did  
12 he act like he was being your friend?

13 A Yes, sir.

14 Q Okay. Did he -- well, you heard what he said. Did you  
15 tell him that?

16 A No, sir. I did not.

17 Q Did he ask you about certain theories that the, that the,  
18 the detectives may have told you and stuff like that?

19 A Yes, sir.

20 Q Did you tell him what those were?

21 A Yes, sir. I did.

22 Q Okay. Did, did he seem like he was wanting to know a lot  
23 about your case?

24 A Yes. Yes, sir.

25 Q Did that seem odd to you or anything like that?

James Rosenbaum - Direct by Mr. Alex Hyman

873

1 A Not really.

2 Q Okay. Now, as far as your time with Lynndale I think the  
3 jail records show that you were with him for about three days?

4 A That'd be accurate.

5 Q Okay. So it's your testimony that what he stated up here  
6 is false --

7 A Uh-huh.

8 Q -- and what I mean by that is that you had some kind of  
9 plan and hid down the road and all this other stuff?

10 A No, that's -- yes, that's false.

11 Q Okay. Now, what he said about, you know, obviously you  
12 coming home and, and that kind of stuff and that Roy was  
13 allegedly sexually assaulting and all this other stuff, he  
14 didn't really talk about that. He talked more like that this  
15 was some kind of jealousy issue; is that right?

16 A Yes, sir.

17 Q Is any of that true?

18 A No, sir.

19 Q Okay. Did you tell him that that was what the detectives  
20 had kind of mentioned to you?

21 A Yes. I told him that they were implicating that when I  
22 came home she was having sex with this man and she was crying  
23 rape because she didn't want to get caught.

24 Q Okay. Do you think that's what she was doing?

25 A No, sir.

1 Q Did the detectives continuously tell you, you know,  
2 things that were -- we'll just say weren't honest, that  
3 weren't the truth?

4 A Yes, sir.

5 Q Okay. Did your story about that ever change?

6 A No, sir.

7 Q Have you consistently since day one said that when you  
8 walked through that door you believed she was being sexually  
9 assaulted?

10 A Yes, sir.

11 Q Okay. When you were in the cell with Lynndale did he  
12 seem eager to get out?

13 A Very much so.

14 Q Do you feel like he -- seemed to you like he was trying  
15 to figure out a way to get out and that kind of stuff?

16 A Yes, sir.

17 MR. ALEX HYMAN: The Court's indulgence.

18 THE COURT: All right

19 BY MR. ALEX HYMAN:

20 Q There was some questions and I, to be honest with you,  
21 forgot about it because I didn't really think much of it, but  
22 there's been some questions about the mattress, why the  
23 mattress was in the living room. Why was there a mattress in  
24 the living room?

25 A If you look at the layout --

James Rosenbaum - Direct by Mr. Alex Hyman

875

1 Q Uh-huh.

2 A -- there's one couch, and we would both lay on that couch  
3 and watch TV and it wasn't big enough for both of us to lay on  
4 it.

5 Q Okay.

6 A So that couch pulls out into a bed. She took the  
7 mattress out of that couch and put it on the floor so we could  
8 both lay on the floor and watch TV.

9 Q All right. Did you all have cable or anything in any  
10 other room?

11 A No, sir.

12 Q Okay. So that was -- that's why it was?

13 A Yes, sir.

14 Q Was there -- there was no nefarious reason to try to get  
15 somebody over there?

16 A No, sir.

17 Q Okay. James, I just kind of want to ask a couple of more  
18 questions and then I'll let the Solicitor ask you some  
19 questions. As far as your testimony here today, the  
20 statements you've given law enforcement and everything like  
21 that, have you tried to the best of your ability to be  
22 truthful?

23 A Yes, sir.

24 Q The, the times that there have been some types of  
25 inconsistencies, did you end up correcting the

1 inconsistencies?

2 A Yes, sir. I did.

3 Q Okay. This was -- did you ever hear Diane -- known --  
4 know Diane to get in any trouble or anything like that? She  
5 ever been in any trouble that you know of?

6 A No, sir.

7 Q Did you -- there was some talk a little bit about I think  
8 one of the officers was asked if they saw anything on Diane's  
9 face or anything like that as far as an injury. Did you  
10 remember seeing an injury to her?

11 A Yes, sir.

12 Q Okay. And I believe it was your statement that you had  
13 an injury to your leg?

14 A Yes, sir.

15 Q Did you end up having to go to the hospital for that?

16 A Yes, sir.

17 Q Okay. Do you know exactly how that happened?

18 A I was struck in the leg with the baseball bat.

19 Q Okay. And again, it's, it's your testimony that you  
20 didn't want him to die?

21 A Never.

22 Q Was it your intent that he die?

23 A No, sir.

24 Q You wanted him to be arrested?

25 A Yes, sir.



James Rosenbaum - Cross by Mr. Richardson

877

1 Q Did you ever hear Roy ask for the police to hurry?

2 A No, sir.

3 Q So they could, you know, save him from you apparently?

4 A No, sir.

5 Q Got you.

6 MR. ALEX HYMAN: No further questions at this time, Your  
7 Honor.

8 THE COURT: All right. Let me see the attorneys for a  
9 second.

10 (Whereupon, a bench conference is held in the presence  
11 but out of the hearing of the jury.)

12 THE COURT: Hold for a second. All right. Cross  
13 examination by the State.

14 MR. RICHARDSON: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. RICHARDSON:

17 Q Good morning, Mr. Rosenbaum.

18 A Good morning, sir.

19 Q Mr. Rosenbaum, you talked a little bit about this with  
20 Mr. Hyman. You were in the VA hospital in Charleston;  
21 correct?

22 A Yes, sir.

23 Q And you and Ms. Durkin have a joint account?

24 A Yes, sir.

25 Q All right. When you get out of the hospital you notice

1 that your money is getting missing \$20 at a time out of that  
2 joint account; is that correct?

3 A I don't know about at a time but I know there's money was  
4 missing. Yes, sir.

5 Q A good bit of money missing. Does anybody else have  
6 access to that account?

7 A No, sir.

8 Q But you and Ms. Durkin?

9 A That's -- that is correct.

10 Q And you have said before and I think even to Mr. Hyman  
11 that you had used, and this isn't -- we're not the drug  
12 police, but you had used drugs from time to time?

13 A Yes, sir.

14 Q Illegal drugs?

15 A Yes, sir. I did.

16 Q Marijuana and cocaine?

17 A Yes, sir.

18 Q When you buy marijuana what size moneywise bag would you  
19 buy?

20 A \$10, \$20.

21 Q Small amounts?

22 A Yes, sir.

23 Q And cocaine, would you also small amounts?

24 A \$20.

25 Q \$20?

James Rosenbaum - Cross by Mr. Richardson

879

- 1 A \$50.
- 2 Q All right. But nothing like to sell --
- 3 A No, sir.
- 4 Q -- or traffic or anything like that. So when you saw it
- 5 coming out in those small amounts of \$20, you knew that Ms.
- 6 Durkin was using your money to buy cocaine or crack cocaine?
- 7 A I didn't see the small amounts that were taken out, but I
- 8 know she took the money out.
- 9 Q All right. When, when she would go to the Money Saver or
- 10 any other place will it show up on your account each
- 11 transaction?
- 12 A Yes, sir. Yes, sir.
- 13 Q So if they were smaller amounts then it, it would show up
- 14 as small amounts; correct?
- 15 A Yes, sir.
- 16 Q And most have of her amounts taken out would have been in
- 17 \$20 increments?
- 18 A Correct.
- 19 Q Is that correct?
- 20 A Yes, sir.
- 21 Q So you can put two and two together believing if you buy
- 22 small amounts of cocaine and she has a problem with cocaine
- 23 she may be buying cocaine out of your joint account?
- 24 A That is correct.
- 25 Q All right. And out of that joint account the only money

1 going into that account is your money; right?

2 A That is correct. Yes, sir.

3 Q She had worked two or three days at the Walmart but other  
4 than that nowhere?

5 A Correct.

6 Q So the vast amount of that money was yours, and when you  
7 got out I'm sure, just like I would be a little bit perturbed,  
8 you were probably upset about the money leaving that account?

9 A Yes. I was wondering where it went.

10 Q Not so if it's groceries that's one thing, but if it's  
11 crack or coke that's something else?

12 A Yes, sir.

13 Q All right. Because you've got bills to pay. Now, you --  
14 did you rent or own that mobile home on 548?

15 A I rented it.

16 Q Rented it?

17 A Yes, sir.

18 Q Who, who'd you say, I think you told --

19 A Maggie Fogner.

20 Q -- the name?

21 A Maggie Fogner.

22 Q Maggie Fogner, and had a truck payment?

23 A \$309 a month.

24 Q All right. Any other substantial bills coming out?

25 A Just food, electricity, car insurance, Blue Cross Blue

1 Shield for me and Ms. Durkin.

2 Q So you paid -- did you pay for Ms. Durkin's car?

3 A Ms. Durkin didn't have a car.

4 Q What was that white car pulled up there?

5 A That was my car.

6 Q Okay. You drove the truck. She drove the white car when  
7 she went?

8 A I drove the white car a lot --

9 Q Okay.

10 A -- because it's better on fuel and it's older. It's a  
11 1999 Buick. The truck only had like I think it's 50 something  
12 thousand miles on it. It's a 2008. So we used the car more  
13 than anything, but if both of us had to go out, yes, she used  
14 the car.

15 Q On July 11<sup>th</sup> you were driving the truck, she was driving  
16 the car?

17 A Yes, sir.

18 Q All right. Now, at some point did you ask Ms. Durkin  
19 where was this money going?

20 A When we got out of the -- when I, when I got out of the  
21 VA and she picked me up I told her to go to the store and get  
22 cigarettes and she told me that there was no money in the  
23 account and I -- Ms. Durkin, she said there was no money. I  
24 said, "How could there not be no money. There was a couple of  
25 hundred dollars in there," and she said that she lost the card

1 and that somebody had taken the money out the card. So we  
2 went to Conway.

3 Q And you knew that was --

4 A That was fishy. Yeah.

5 Q Yeah.

6 A But we went to the bank and she gave a statement to the  
7 banker and whatnot and they did put the money back on my  
8 account.

9 Q Okay. At some point did you talk with Ms. Kelly Altman?

10 A Yes, sir.

11 Q Did you tell Ms. Kelly or did Kelly tell you where the  
12 money was going?

13 A No, sir.

14 Q Did Kelly tell you that Diane -- she was with Diane and  
15 Roy and that Diane had rode off with Roy?

16 A She told me she gave someone a ride. That was it.

17 Q I'm not talking about on the 11th. I'm talking about  
18 before the 11th with Kelly Altman saying that Diane and her  
19 and Roy --

20 MR. BOUCHETTE: Objection Your Honor. I think that's --  
21 I think we're into hearsay grounds on that.

22 MR. RICHARDSON: Your Honor --

23 THE COURT: Sustained.

24 MR. RICHARDSON: -- it's not for the truth of the -- is  
25 not for the truth -- I'm asking what's in his mind.

James Rosenbaum - Cross by Mr. Richardson

883

1 THE COURT: No. I sustain the objection.

2 MR. RICHARDSON: All right.

3 BY MR. RICHARDSON:

4 Q Were you ever told about how Ms. Durkin was getting her  
5 cocaine?

6 A No, sir.

7 Q When you bought your cocaine, who did you buy it from,  
8 and again, I'm not the dope police. I don't --

9 A Different people. I mean, it didn't happen frequently.

10 Q Yes, sir.

11 A You know, I probably only -- I don't even know how many  
12 times I've done it but it's no -- been no more than eight  
13 times since I was down here in 15 months.

14 Q Did you ever buy it from the trailer park right outside  
15 beside your house?

16 A No, sir.

17 Q Could you have bought it from the trailer park beside  
18 your house?

19 A No, sir.

20 Q Would you have ever bought it from a neighbor like that?

21 A No, sir.

22 Q Because that trailer park is maybe a football field  
23 between your house, maybe a hundred yards or so?

24 A Yes, sir.

25 Q And if any drugs -- if you ever got any drugs out of that

1 trailer park it would've been through a third-party. You  
2 wouldn't have ever bought drugs up there from that trailer  
3 park?

4 A I never bought drugs from that trailer park.

5 Q Exactly, but I mean, you would never have done it. You  
6 wouldn't buy from a neighbor; right?

7 A I didn't know any neighbors.

8 Q Okay. When you told Diane that you knew what was going  
9 on with the drugs, that caused quite a stir I'm sure.

10 A She told me she spent about \$50 of my money on drugs.

11 Q Did you believe that?

12 A Yes and no.

13 Q Okay. Did it seem to go out at a faster rate when you  
14 were away from Diane or when you were with her?

15 A It was only one time I was away.

16 Q All right. And that was the time at the VA?

17 A Yes sir.

18 Q How long did you stay at the VA, Mr. Rosenbaum?

19 A I think two weeks.

20 Q Two weeks. Now, you've heard Randy Hucks say that he has  
21 seen -- are you and Diane together now?

22 A Yes.

23 Q Okay. He had seen her up there numerous times picking up  
24 Roy. You were in court for that statement?

25 A Yes. I was.



James Rosenbaum - Cross by Mr. Richardson

885

1 Q All right. Did you know about that before court?

2 A No, sir.

3 Q All right. Did -- do you believe that that is the case  
4 or do you think --

5 MR. TRAVIS HYMAN: Objection, Your Honor. Pitting.

6 THE COURT: Sustained.

7 Q Had you ever met Mr. Hucks before?

8 A No, sir.

9 Q All right. Let's talk about the time that, and then I  
10 promise we're going to get off the personal stuff, but at some  
11 point when you first met Ms. Durkin she was -- you were living  
12 in Connecticut and she was living in New York; correct?

13 A That is correct.

14 Q And how -- two different states but how long would it  
15 take you to get to her house?

16 A About an hour and a half.

17 Q All right. Pretty good, pretty good drive?

18 A Yes, sir.

19 Q And you found out she was running around with somebody in  
20 New York?

21 A A coworker.

22 MR. BOUCHETTE: Objection, relevance.

23 THE COURT: I'm going to allow it. Go ahead.

24 A Yes, sir. A coworker.

25 Q A coworker. Was that coworker white or black or do you

1 know?

2 MR. BOUCHETTE: Objection, relevance.

3 THE COURT: Overruled. Go ahead.

4 A He was Hispanic.

5 Q Hispanic. Right after that, how many months before you  
6 all moved to South Carolina?

7 A I'm not sure.

8 Q I think you said it was less than a -- you've been to  
9 South Carolina now it was 14 months before, before July 11<sup>th</sup>.  
10 So July, May, maybe May of 2015? Does that sound about right?

11 A Well, I moved here in March, March 3<sup>rd</sup> --

12 Q March? Okay.

13 A -- of 2015.

14 Q Okay. All right. Do you remember when you found out  
15 about her having an affair with a coworker?

16 A Yes. I do.

17 Q When was that?

18 A That was when we were in Connecticut.

19 Q I mean, calendar time?

20 A Oh, I would say in January 2015.

21 Q And then you moved here in did you say March?

22 A Yes, sir.

23 Q Of 2015?

24 A Yes, sir.

25 Q Did she have to leave her job over that?

James Rosenbaum - Cross by Mr. Richardson

887

1 A No.

2 Q So you didn't tell her, "You've got to leave" --

3 A No, sir.

4 Q -- "your place of employment"? But slightly after you  
5 find out the two of you moved to South Carolina?

6 A Yes, sir.

7 Q Did it have anything to do with the affair?

8 A No, sir.

9 Q Okay. All right. After you move to South Carolina you  
10 start painting on the, on the side?

11 A No, sir.

12 Q Okay. Tell me about that. Did you tell Mr. Hyman that  
13 you painted?

14 A I painted in Connecticut.

15 Q Okay. You never -- once you got on disability you didn't  
16 paint anymore?

17 A For my landlord.

18 Q Okay. Did -- do you remember meeting, what was the guy's  
19 name that -- your friend from yesterday?

20 A Paul.

21 Q Paul?

22 A Yes, sir.

23 Q Was that here in South Carolina?

24 A What's that?

25 Q Did you meet Paul in South Carolina?

- 1 A Oh, yes, sir. Yes.
- 2 Q Because he was from New York or somewhere; wasn't he?
- 3 A I, I don't know.
- 4 Q Okay.
- 5 A He said he was from somewhere up north.
- 6 Q Would you agree that you met him at a -- at, at the
- 7 pawnshop?
- 8 A Yes, sir.
- 9 Q And at that point you gave him a card saying that you
- 10 continued to paint?
- 11 A Yes, sir.
- 12 Q And to get up with you if he needed any painting done?
- 13 A I believe so.
- 14 Q All right. Did you ever do anything for Paul?
- 15 A No, sir.
- 16 Q Okay. And while she was down here the only place Ms.
- 17 Durkin worked was at Walmart?
- 18 A Walmart.
- 19 Q When were you in the military, Mr. Rosenbaum?
- 20 A 1980.
- 21 Q '80?
- 22 A Yes, sir.
- 23 Q To '80 what?
- 24 A Till '80.
- 25 Q Just one year?

James Rosenbaum - Cross by Mr. Richardson

889

1 A Just got out of boot camp.

2 Q Okay. And you were honorably discharged?

3 A Yes, sir.

4 Q Tell us about how you were honorably discharged.

5 MR. ALEX HYMAN: Your Honor, objection. We may need to  
6 take up a matter outside the jury.

7 THE COURT: All right. All right, ladies and gentlemen,  
8 I've got a matter of law I need to address with the attorneys.  
9 Leave your notepads in the jury box. Do not discuss the case  
10 among yourselves. I'm going to excuse you to the jury room.  
11 It's probably a good time for us to go ahead and take a short  
12 break anyway. Thank you very much.

13 (Whereupon, the following takes place outside the  
14 presence of the jury.)

15 THE COURT: All right. Mr. Hyman.

16 MR. ALEX HYMAN: Your Honor, we're getting ready to go  
17 into an area of testimony basically talking about the sexual  
18 assault that occurred when he was in the military. I think  
19 that as far as that is concerned, one, relevance. I think  
20 that they're going to try to use that in some way say that  
21 there's some racial issue involved in this. I, I just think  
22 that as far as that's concerned, I mean, you got 403, you've  
23 got a relevancy issue there. Why is this relevant? This is  
24 36 years prior to this. I just don't see how that has  
25 anything to do with this other than --

1 THE COURT: So 36 years prior to this he was honorably  
2 discharged from the military --

3 MR. ALEX HYMAN: Right.

4 THE COURT: -- for what reason?

5 MR. ALEX HYMAN: He was sexually assaulted by other  
6 members of, of the military. He was knocked out, sexually  
7 assaulted.

8 THE COURT: All right. What's the relevancy?

9 MR. RICHARDSON: Your Honor, he is still under -- that is  
10 why he says that he got a hundred percent disability from the  
11 military. You know, he is still -- what he is telling is he  
12 is still under the stress of that situation. He just got out  
13 of the VA for it. Your Honor, what we are trying to say it is  
14 racial. It was one thing for Ms. Durkin to be having an  
15 affair in, in New York, but it is not now. Also, Your Honor  
16 --

17 THE COURT: But I mean, even though it was 36 years ago..

18 MR. RICHARDSON: It doesn't matter if he's still under  
19 the stress of it, Your Honor.

20 MR. ALEX HYMAN: Your Honor, he's hasn't said he's under  
21 the stress of it.

22 MR. RICHARDSON: He did. He told the police. That's why  
23 he got a hundred percent disability for it.

24 THE COURT: Okay.

25 MR. ALEX HYMAN: He hasn't testified to that today.

James Rosenbaum - Cross by Mr. Richardson

891

1 MR. RICHARDSON: Not today, but we can get into that.

2 THE COURT: All right. Well, I'm going to -- I'll allow  
3 it. If that's the State's theory, you can bring out on  
4 redirect that it was 36 years ago, that the assault was on  
5 him, and if they want to somehow try to frame that to show  
6 this is a, a, a racial crime, I mean, that'll be for the jury  
7 to decide, I guess. So I'm going to overrule the objection.  
8 All right. Let's go ahead and take about a five, 10-minute  
9 break. We'll come back and get resumed. All right. Mr.  
10 Rosenbaum, we're in the middle of your testimony. So under  
11 the law you cannot discuss your testimony with anyone, even  
12 your own attorneys. You can't discuss what you've testified  
13 to thus far, nor what you anticipate testifying to in the  
14 future. Okay?

15 A Yes, sir.

16 THE COURT: All right. Let's take about a five-minute  
17 break and we'll come back and get started.

18 OFF THE RECORD

19 (On the record. The following takes place outside the  
20 presence of the jury.)

21 MR. ALEX HYMAN: Judge, before we bring the jury back in,  
22 there may be something else we need to take up.

23 THE COURT: All right.

24 MR. ALEX HYMAN: Judge, it's our understanding that the  
25 State is intending to question Mr. Rosenbaum concerning

1 something that happened at the jail with a guard where other  
2 inmates may have written statements against him. Those  
3 statements or those inmates aren't here. I mean, one, it's a,  
4 it's a hearsay exception. No, there's not -- there's no  
5 exception to that hearsay, and Judge, you have character  
6 evidence being introduced and then there's also a relevance  
7 issue. This is something while he's at the jail after this  
8 incident. It's not him confessing in away to this incident or  
9 any --

10 THE COURT: Well, what are the statements and who said  
11 them?

12 MR. RICHARDSON: Your Honor, during this narrative inmate  
13 Rosenbaum original assessment he made it clear that he did not  
14 want to be housed in the same cells with any African-  
15 Americans.

16 THE COURT: Okay. So that's a statement by the  
17 Defendant.

18 MR. RICHARDSON: Rosenbaum.

19 THE COURT: Okay.

20 MR. ALEX HYMAN: And Judge, that's not what I'm talking  
21 about.

22 THE COURT: Okay.

23 MR. ALEX HYMAN: That it -- what I'm talking about is an  
24 incident between he and a guard.

25 MR. RICHARDSON: His -- all right. This is another



James Rosenbaum - Cross by Mr. Richardson

893

1 incident. This isn't one that Alex is talking about, but  
2 while in B-3 at the officer station an altercation between  
3 Rosenbaum and Valetti [spelled phonetically], this guy named  
4 -- looks like a girl named Meredith Miller who comes in and  
5 speaks with military vets, [as read], "was walking by the desk  
6 and told me to look behind me. When I saw inmates Rosenbaum  
7 and Valetti standing face to face hands clenched, then I  
8 witnessed Rosenbaum throw a punch at Valetti. At that time I  
9 called a code red." I don't -- I agree with Alex on this one.  
10 I don't, I don't see any reason just fighting at the jail, I  
11 don't think that this is relevant.

12 THE COURT: All right.

13 MR. ALEX HYMAN: Judge, the first one he went over I've  
14 never gotten that, that report that he's talking about that's  
15 supposedly my client.

16 THE COURT: Well, I mean, this is --

17 MR. RICHARDSON: And there's one more, Your Honor.

18 MR. ALEX HYMAN: It's, I mean, it's evidence they're  
19 planning on using to somehow impeach him on.

20 THE COURT: That's right.

21 MR. RICHARDSON: It's a statement.

22 THE COURT: It's a statement he used. It gets to come  
23 in.

24 MR. HELMS: There is one more, Judge.

25 MR. ALEX HYMAN:- Judge, I believe the other one is a

1 statement that another inmate wrote about him saying something  
2 about a guard. That's, one, the other inmate's not here.

3 THE COURT: Well, let me find out what they're going to  
4 say and who's going to say it.

5 MR. RICHARDSON: Yes, sir. This statement is Rosenbaum's  
6 statement to the guard, [as read], "When I get out I'm going  
7 to run into you on the street and I will take care of you,"  
8 and that is to Officer Wheeler who is black.

9 THE COURT: Okay. Is Officer Wheeler going to be here to  
10 say that?

11 MR. RICHARDSON: We can call him if he denies making that  
12 statement.

13 MR. ALEX HYMAN: He, he hasn't been put on the witness  
14 list that I know of.

15 THE COURT: Yeah. But I mean, this is in response to, to  
16 the testimony.

17 MR. HELMS: Right.

18 MR. RICHARDSON: It's my understanding if he says, "I did  
19 make that statement", I can't go any further.

20 THE COURT: Well, you're going to have to do more than  
21 show that. You're going to have to show that there was some  
22 racial incentive other than the fact that the guard was black  
23 and he's white.

24 MR. RICHARDSON: Well, that, I can't --

25 THE COURT: I mean, the fact, "Don't house me with any

James Rosenbaum - Cross by Mr. Richardson

895

1 African-American," I can understand that. That comes in. The  
2 fact that he says, "I'll take care of you when I get out of  
3 here," based upon that --

4 MR. RICHARDSON: Well, the only --

5 THE COURT: -- and that alone --

6 MR. RICHARDSON: Well --

7 THE COURT: -- unless you're saying that that is the only  
8 altercation that ever took place while he was or the only  
9 threat and that there was never any threats against any white  
10 people or anything of that nature.

11 MR. ALEX HYMAN: Judge, I --

12 MR. RICHARDSON: Well, and obviously, he --

13 THE COURT: Wait a minute. Only one can talk at one  
14 time. I'll give you an opportunity, Mr. Hyman, when he gets  
15 through to follow up. Okay.

16 MR. RICHARDSON: Yeah, obviously, that isn't true because  
17 he did -- I'm guessing that Valetti is white. So he -- but I,  
18 you know, I don't see any reason --

19 THE COURT: Well, then that would be misleading a jury.  
20 If he made a threat against a white person, he made a threat  
21 against an African-American --

22 MR. RICHARDSON: Well --

23 THE COURT: -- I don't how you can just use the threat  
24 against the African-American to say that it's racially  
25 motivated.

1           MR. RICHARDSON: And I can recall this, but with regard  
2 to the Wheeler statement Lynndale gave a statement but this is  
3 -- but Wheeler's statement that I read to you that's his  
4 words, but then they did go back and talk to his inmates that  
5 were in there with him and Lynndale Lewis says, [as read], "My  
6 roommate, Jim Rosenbaum, has made many threats toward Wheeler  
7 if he gets out of here and runs into him on the outside he is  
8 going to take care of him like this last problem, meaning the  
9 guy he beat to death with the ball bat. Jimmy also said if he  
10 got the chance he would show that N word what he could do to  
11 him, do to Wheeler. Jimmy has a problem" -- well, this is  
12 speculation. He says, "Jimmy has a problem with blacks being  
13 equal to him and he needs help."

14           THE COURT: Yeah. That one's not going to come in. The  
15 "don't house me with any African-Americans," now, you're going  
16 to have to have who he made the statement -- I mean, you can  
17 ask him and if he admits to it then that's -- it comes in.

18           MR. RICHARDSON: And if he doesn't --

19           THE COURT: If he denies it you're going to have to have  
20 whoever he made the statement to come in and testify to it.

21           MR. RICHARDSON: Yes, sir.

22           THE COURT: But the other between -- the altercation  
23 between he and Wheeler, no, that doesn't come in.

24           MR. HELMS: And that was jail staff, Judge. We wouldn't  
25 have a problem getting them here.

James Rosenbaum - Cross by Mr. Richardson

897

1 THE COURT: Well, still, Wheeler doesn't come in.

2 MR. RICHARDSON: Okay.

3 THE COURT: Because you --

4 MR. HELMS: Oh, no, sir. I was talking about when you  
5 said if he denies it we'd have to have the person --

6 THE COURT: Oh, yeah, right.

7 MR. RICHARDSON: -- that wouldn't be a problem. They're  
8 out there. I spoke to them moments ago.

9 THE COURT: Well, you might want to go ahead and get  
10 them, get them lined up for the reply. Okay.

11 MR. RICHARDSON: All right. So that.

12 MR. ALEX HYMAN: So, Judge, your ruling is the one that  
13 does come in is him saying he doesn't want to be housed --

14 THE COURT: "Don't house me with any" --

15 MR. ALEX HYMAN: Okay.

16 MR. HELMS: Yes.

17 MR. RICHARDSON: No. Not that.

18 THE COURT: They said African-Americans. I don't know  
19 what his exact verbiage was but that his statement that he did  
20 not want to be with any African-Americans or housed with any  
21 African-Americans comes in. All right.

22 MR. RICHARDSON: But it's my understanding if he admits  
23 to that then I can't bring anybody in --

24 THE COURT: That's right.

25 MR. RICHARDSON: -- in reply to that.

1 MR. HELMS: Yes.

2 THE COURT: Well, I mean, it, it comes in. If he, if he  
3 admits to it then it's in.

4 MR. HELMS: Right.

5 MR. RICHARDSON: Yes, sir.

6 THE COURT: All right. Anything further from the Defense  
7 before we bring the jury in?

8 MR. ALEX HYMAN: No, Your Honor.

9 THE COURT: Anything further from Ms. Durkin?

10 MR. BOUCHETTE: No, Your Honor.

11 THE COURT: Anything further from the State before we  
12 bring the jury in?

13 MR. RICHARDSON: No, sir.

14 THE COURT: All right. Let's go ahead and bring the jury  
15 in.

16 (Whereupon, the following takes place in the presence of  
17 the jury.)

18 THE COURT: Ladies and gentlemen, welcome back. We're  
19 ready to resume the trial of the case. Make sure you have  
20 your own notepads and no one else's pads. All right. Mr.  
21 Richardson, you can continue with your cross examination.

22 MR. RICHARDSON: Thank you, Your Honor.

23 BY MR. RICHARDSON:

24 Q Mr. Rosenbaum.

25 A Yes.

James Rosenbaum - Cross by Mr. Richardson

899

1 Q We were talking about how you got discharged from the  
2 military?

3 A Yes, sir.

4 Q If you would tell us about that. You were in in 1980?

5 A I was in the shower and I got attacked by two males.

6 Q What color were those males?

7 A They were both black.

8 Q Both black. And that was in 1980?

9 A Yes, sir.

10 Q You were honorably discharged?

11 A Yes, sir.

12 Q Correct? And were those two males prosecuted to your  
13 knowledge?

14 A No, sir.

15 Q Okay. Since then, is the reason for your disability?

16 A Yes, sir.

17 Q I don't want to go deep into this but is that known as  
18 PTSD?

19 A Yes, sir, it is.

20 Q Okay. And it's because of the rape by two black males?

21 A Yes, sir.

22 Q All right. Sorry to go through that. Let me ask you  
23 this, because of that, because of anything in life, are you  
24 racist?

25 A No, sir.

1 Q Okay. Let me ask you, upon being booked in at J. Reuben  
2 Long, and I'm guessing that was on July 11<sup>th</sup> or July 12<sup>th</sup>?

3 A July 12<sup>th</sup>.

4 Q All right. Upon being booked in at J. Reuben Long, they  
5 do booking; right?

6 A Yes, sir.

7 Q And they try to figure out are you in any gangs or any of  
8 that?

9 A They didn't ask me any of them questions.

10 Q Okay. Did you tell them that you didn't want to be  
11 housed in the same cell with any African-American inmates?

12 A What I did tell them is the person I got arrested for  
13 murder was black and I said don't house me with any black  
14 people because I don't want any relative to come at me in  
15 there. That's exactly what I told them.

16 Q Okay.

17 THE COURT: Yes. Please speak into that microphone a  
18 little bit more --

19 A Oh, I'm sorry.

20 THE COURT: -- so the court reporter.

21 A I got to repeat that?

22 Q No.

23 THE COURT: No. That's good. Thank you.

24 A No. Okay.

25 Q All right. You told them, "Don't house me with any



James Rosenbaum - Cross by Mr. Richardson

901

1 African-Americans," but that wasn't because of racism. It was  
2 because of the incident with Roy?

3 A Yes, sir.

4 Q Okay. Had you ever bought or used drugs with Roy before?

5 A I testified I don't know Roy.

6 Q Okay. All right. On that day, July 11, 2016, I think  
7 you've testified with Mr. Hyman that there were a lot of calls  
8 back and forth, and I am passing to you what has been marked  
9 as State's Exhibit 115. Okay. Mr. Rosenbaum, that 203 number  
10 who is that?

11 A That is my number.

12 Q All right. And who is that one there, 843-742-7705?

13 A Ms. Durkin's.

14 Q Is that Diane Durkin's number?

15 A I believe so.

16 Q Okay. So Mr. Hucks testified that Ms. Durkin picked up  
17 Roy right before work was over; right?

18 A Yes.

19 Q And that's Daylight Savings Time in July; isn't it?

20 A I guess so.

21 Q I mean, it gets dark later; right?

22 A Oh, yes, sir.

23 Q Yes, sir. All right. So from the time right before  
24 Diane picked up Mr. Roy Davis there are one, two, three, four,  
25 five, six, seven, eight, eight calls before the 911 call;

1 correct?

2 A That is correct.

3 Q All right. And all eight of those calls are from you to  
4 her or her to you; right?

5 A Yes, sir.

6 Q So all eight of these calls would have been when Roy was  
7 in that white car with her; is that correct?

8 A Yes, sir.

9 Q And one of them we saw on videotape where she was at the  
10 Money Saver, you see her on the phone on that videotape?

11 A Well, I didn't see the video --

12 Q Oh, I'm sorry.

13 A -- because I was sitting over there, but I'm sure she  
14 was.

15 Q Okay. So these are back and forth between you and her.  
16 Some of them went to voicemail; right?

17 A Yes, sir.

18 Q I mean, it's in evidence, but some of them are really  
19 short, length of connection, that means the actual  
20 conversation; doesn't it?

21 A I would assume so. Yes.

22 Q Okay. So you had a two minute and 36 second conversation  
23 with her, a three second conversation with her, a 12 second  
24 conversation with her, a 25 second conversation with her and a  
25 19 second conversation with her. Those last -- well, those

James Rosenbaum - Cross by Mr. Richardson

903

1 last two that I mentioned were at 9:07 and 9:08. Would you  
2 agree with that?

3 A I didn't have a conversation with her during them calls.

4 Q Okay.

5 A We were sort of playing phone tag in between then.

6 Q All right. Well, when you play phone tag though it goes  
7 to voicemail; right?

8 A I guess so.

9 Q But these are ones where actually somebody picked up, and  
10 I know they're short, but these somebody picked up and talked  
11 for that amount or at least --

12 A I never talked, I never talked. I never --

13 Q There was a connection made for 30 seconds and 20  
14 seconds; correct?

15 A Yes.

16 Q Whether you talked or not?

17 A Yes.

18 Q Okay. Somebody answered it before it went to voicemail  
19 and then we don't know whether you talked or not. You said  
20 you didn't talk?

21 A No, sir. I did not.

22 Q Okay. And then at 9:45, so this is right before the  
23 -- Roy got beat; correct, 9:07 and 9:08?

24 A That's before I came home.

25 Q That's before the --

- 1 A Yes, sir.
- 2 Q -- ball bat?
- 3 A That's before I came home.
- 4 Q Okay. Yes, sir. And then 9:45 is, is this the one
- 5 you're talking to Paul about, about a few minutes?
- 6 A Yes, sir. That's it.
- 7 Q Okay. And that's at 9:45. So --
- 8 A Yes, sir.
- 9 Q -- it's basically over at that point?
- 10 A Basically, yes, sir.
- 11 Q Do you mind if I call you Jim or you want me to -- Mr.
- 12 Rosenbaum is fine. Okay?
- 13 A Yes, sir.
- 14 Q Right before that call, and I'm talking about 9:45 to
- 15 Paul, right? About a minute before there there was testimony
- 16 if we had it up here right here was where you tried to take a
- 17 picture but ended up taking a videotape of Roy Davis about a
- 18 minute before this call; right?
- 19 A Yes, sir.
- 20 Q Okay. It's not on here but that you remember the
- 21 testimony that it was one minute, so it'd been 9:44?
- 22 A Correct.
- 23 Q And that, when I'm showing you State's Exhibit 106, is
- 24 the -- was the screenshot of the video; right?
- 25 A Yes, sir.

James Rosenbaum - Cross by Mr. Richardson

905

1 Q Now, you can't hardly tell here because it's blurry but  
2 is he sitting up or is he laying over? Can you tell or do you  
3 remember?

4 A It looks like he's sitting up.

5 Q Okay. So at this point you've struck him several times  
6 with that bat; correct?

7 A No. That's wrong.

8 Q Okay. Tell me what had happened up to this point. How  
9 did he get so bloody?

10 A I told you the first initial hit when I hit him in the  
11 head a lot of blood came out and I hit him probably in the  
12 head with the bat maybe three times altogether.

13 Q But was that before this was taken?

14 A Yes. Yes, sir.

15 Q Okay. So he was hit. That's what I'm saying. He was  
16 hit a bunch of times by the time you took this; right?

17 A Yes, sir.

18 Q He was pretty much incapacitated at this point?

19 A We both were, sir.

20 Q Okay. And you had an injury on your leg, left leg?

21 A Yes, sir.

22 Q You -- how about can you pull your pants up and show the  
23 jury that injury?

24 MR. RICHARDSON: Is that all right, Your Honor?

25 THE COURT: Well, it depends on -- I mean, you're saying

1 the injury is still there. First let's find out if the injury  
2 is still there

3 BY MR. RICHARDSON:

4 Q You still have an injury to your leg?

5 A I got a scar there. Yes, sir.

6 Q You got a scar. Let's pull it up and show the jury the  
7 scar. Can you do that?

8 THE COURT: Well, first point to it on the outside of  
9 your pants. Where is the scar?

10 Q Hold on. Okay. I'm, I'm not going to do that.

11 THE COURT: Okay.

12 Q All right. Very good. You say there's still a scar  
13 there?

14 A Yes, sir.

15 Q All right. So at this point before you call Paul you're  
16 saying you're pretty much incapacitated and he's pretty much  
17 incapacitated?

18 A Yes, sir.

19 Q All right. At that point, Mr. Rosenbaum, had he used --  
20 had you already used the boxing gloves on him?

21 A Yes, sir.

22 Q And did you use the pellet gun on him at that point?

23 A Yes, sir.

24 Q And the bat? The bat was the first thing?

25 A The first thing. Yes, sir.

James Rosenbaum - Cross by Mr. Richardson

907

1 Q Yes, sir. Tell us at that point what would be, if he's  
2 incapacitated, why do you need a 40-caliber pistol?

3 A Just so he don't try to run away.

4 Q Okay.

5 A And he was sitting up. He wasn't laid out or nothing  
6 like that. You see in that picture, you know, he was still --

7 Q See, I can't tell, but if you say he's sitting up, okay.

8 A I believe he was sitting up. It's --

9 Q Either way he's, he's incapacitated at that point  
10 regardless of what he did or didn't do up until then, you all  
11 both are wore out at that point, but --

12 A Yes, sir.

13 Q You needed -- you asked Paul to bring a --

14 A 40-caliber.

15 Q -- 40-caliber over there?

16 A Yes, sir.

17 Q And I believe the testimony was that Paul didn't come?

18 A That is correct.

19 Q Paul ever tell you why he didn't come?

20 A No, sir.

21 Q Did you ever know why Paul didn't come?

22 A No, sir. Well, yes, I do. I mean, after I was talking  
23 to Paul the police pulled up and I told Paul the police were  
24 here.

25 Q Okay. "Don't worry about it." Now, would you agree with

1 me that Mark Johnson was the first officer there?

2 A Yes, sir. Well, actually there was -- he was the first  
3 one at the door with his gun drawn, but there was, I believe,  
4 one or two more Horry County officers there on the scene  
5 because --

6 Q Don't know who got there first. The first guy you saw  
7 was Mark Johnson?

8 A Well, all I seen was Mr. Johnson at the door.

9 Q All right. And Mark says that he was dead at that point?

10 A He said, he testified that he seen a man laying on a  
11 mattress, bloody on a mattress.

12 Q All right. But he didn't or nobody else come in. Did  
13 they get you out of the house before they went in there and  
14 try to attend to Roy?

15 A Yes. They told us both to leave the house.

16 Q All right. When you left the house was Roy alive or  
17 dead?

18 A I thought he was alive. I believe he was alive.

19 Q All right. But certainly he wasn't fighting anymore?

20 A No, sir.

21 Q All right. And you agreed with me on the opening  
22 statement part that this ain't a whodunit; right?

23 A Yes, sir.

24 Q If Roy died it was at the hands of you and Diane Durkin;  
25 correct?



James Rosenbaum - Cross by Mr. Richardson

909

1 A I would assume that's correct.

2 Q Killing of another. Now we got to figure out if it's  
3 malice or if it's self defense; right?

4 A Yes, sir.

5 Q All right. Now, I'm going to ask you a little bit and I  
6 know you didn't see it at the time and have you heard about  
7 Roy's clothes being folded up or his shirt being folded up  
8 before we got in court?

9 A Yes. I did.

10 Q All right. Tell us about that.

11 A When I was talking to I believe it was -- was it  
12 Lieutenant Brandon Strickland.

13 Q That's right.

14 A Okay. He said that his clothes were neatly folded on the  
15 couch and I says, "It couldn't have been. We're fighting all  
16 over that couch."

17 Q Yeah.

18 A And what's kind of funny is if you read the preliminary  
19 report Mr. Thompson said that we told him where to find his  
20 clothes and they had to go out the next day to get his  
21 clothes. So how could his clothes be folded that night on the  
22 couch if he had to go out there the next day and get these  
23 clothes.

24 Q Do you -- it would have been weird to me, too.

25 A I'm just saying that's what's in the report so.

1 Q I got it. But would you agree that, and obviously, you  
2 didn't know that night, but would you agree that it would be  
3 unusual for a rapist to fold his shirt?

4 A Yes. It would.

5 Q And I promise this ain't -- I'm not trying to say you had  
6 this information that night. I'm just asking you hindsight  
7 would it be weird that the rapist still had his shoes on and  
8 his pants on?

9 MR. BOUCHETTE: Objection. Calls for speculation.

10 THE COURT: Sustained.

11 Q When you went in and hit Roy did he have his pants on and  
12 his shoes on?

13 A He had his shoes on.

14 Q Did he have his pants on?

15 A They were down at the bottom of his feet.

16 Q How did his pants get back up?

17 A He pulled them up.

18 Q All right. He pulled them up when you came in. He  
19 pulled them up.

20 A He pulled them up after I hit him.

21 Q All right. So he got hit and then he pulled his pants  
22 up?

23 A Yes, sir.

24 Q All right. Did Diane have her clothes on when you came  
25 in that night?

James Rosenbaum - Cross by Mr. Richardson

911

1 A Yes. She did.

2 Q And did she continue to have them on throughout the  
3 entire time?

4 A Yes, sir.

5 Q Was Diane's belt on?

6 A Oh, I didn't notice that.

7 Q Okay. Was Diane's shoes on?

8 A I believe so.

9 Q Were they tied?

10 A I didn't look.

11 Q All right. Were her pants and panties on?

12 A Well, I'm sure she had panties under her pants but her  
13 pants were on. Yes, sir.

14 Q Okay. And her shirt and bra?

15 A She had a shirt on. Yes, sir, and a bra.

16 Q Did she have a bra on?

17 A I, I believe so.

18 Q Okay. So all that was on when you came in?

19 A Yes, sir.

20 Q All right. Mr. Rosenbaum, do you remember asking -- were  
21 you aware she was on the phone, Diane, when I said she, on the  
22 phone with 911 during this fight?

23 A I don't know when she dialed it.

24 Q Did you --

25 A I mean, I don't, I don't know when she was actually --

1 during the part of the altercation, I don't know when she was  
2 on the phone.

3 Q Do you know how long it was before you first started  
4 hitting Roy until Diane called 911?

5 A Not exactly. No, sir.

6 Q Okay. But it wasn't, it wasn't immediate; was it?

7 A No, sir.

8 Q While she was on the phone with 911, did you realize at  
9 some point she was on the phone with 911?

10 A Yes, sir.

11 Q Do you remember asking the 911 operator, "Is it all right  
12 if I go ahead and kill him"?

13 A No. I said, "Can I shoot him if I'm in fear for my  
14 life?" That's what I said.

15 Q Okay. I'm, I'm sorry. You said if, "If I'm in fear for  
16 my life can I shoot him"?

17 A Correct.

18 Q All right. Did you ever get a response to that?

19 A No, sir. I did not.

20 Q All right. Do you think that the 911 operator could  
21 understand what you were asking her?

22 A Sir, I don't know. I'm not her.

23 Q All right. Did you say it in a clear voice?

24 A I don't know if you -- what do you call clear, but I was  
25 yelling. You can hear me in the background. I was yelling

James Rosenbaum - Cross by Mr. Richardson

913

1 and screaming.

2 Q All right. So whatever, you've heard the tape; right?

3 A Yes, sir.

4 Q And you remember what was the exact words?

5 A I believe it was, "Can I shoot him if I'm in fear for my  
6 life".

7 Q Okay. Mr. Rosenbaum, where was, if you can't remember  
8 just say, "I can't remember," but where was Roy when you asked  
9 that question?

10 A I believe we were in the living room.

11 Q Was he down --

12 A No.

13 Q -- at that point? He was still up?

14 A I don't -- I believe so.

15 Q Is that before you shot him? Did you ask her before you  
16 shot him?

17 A I'm not sure.

18 Q Okay. Mr. Rosenbaum, when you talked with I think you  
19 said Lieutenant Strickland, and I understand about being  
20 confused, but at first you told him you were not wearing those  
21 gloves?

22 A That is correct. Yes, sir.

23 Q All right. And then later you told him you kept those  
24 gloves for punching a bag?

25 A I said for working out --

1 Q Correct?

2 A -- I believe. I don't have a bag. I don't have a  
3 punching bag.

4 Q Okay. Well, at first you had asked Lieutenant Strickland  
5 when he was trying to tell you that you did have the gloves  
6 on, you asked him then, "How does my knuckles get like this if  
7 I had gloves on? Look here," and I'm guessing you showed him  
8 your hands?

9 A No. That's not what I said. I said, "If I had the  
10 gloves on how could he bite my finger?" That's exactly what I  
11 said.

12 Q All right. Let me back up because you're exactly right.  
13 Lieutenant Strickland says, "And you get the baseball bat and  
14 I heard the part about going out with a struggle for the bat  
15 and all that. At what point did you put on your fighting  
16 gloves," and you said, "I didn't put them on. They fell on  
17 the f'ing blood. I threw them in the sink to wash them off.  
18 I said, 'Look at this shit,'" and Lieutenant Strickland says,  
19 "And once again we're at a point there's an issue between you  
20 and what you say and what she says. There's a reason why I  
21 bring the gloves up. I don't pull that out of the sky. At  
22 what, at what point do you put the gloves on, Dude? I'm  
23 looking for honesty. I'm doing everything I can to help you  
24 with this situation but you've got to be honest with me," and  
25 Jim says, "My gloves fell on the floor. I threw them in the

James Rosenbaum - Cross by Mr. Richardson

915

1 sink. I said, 'Look at this shit by the garbage can'." I'm  
2 guessing that's blood by the garbage can?

3 A There was, there was blood a lot of places so.

4 Q "That was it. I was washing off and then took a cup of  
5 water and threw on the blood, on my gun to get the blood off,"  
6 and Strickland said, "Where were they," and you said, "Look,  
7 if I had gloves on how did I get bit up," and Strickland said,  
8 "I don't know, man. I'm just going," and then you said, "How  
9 does my knuckles get like this if I had gloves on, look here,"  
10 and you said, "Yeah," oh, excuse me, Strickland says, "Yeah,  
11 I'm familiar where you can give, where you can give them to  
12 you. You can get them swollen, swollen up from wearing gloves  
13 when you get in a fight. Let me ask you this, do you think  
14 there's a chance that you walked in and came home too early  
15 that night?" So you did mention, but at that point you were  
16 telling him you didn't have those gloves on; right?

17 A That is correct. Yes, sir.

18 Q Okay. And then later on you told him, "Yeah, I did have  
19 them gloves on?"

20 A Yes, sir. I did that.

21 Q Why was that so important to you to not be truthful  
22 about, I mean, he didn't, Roy didn't die from those gloves;  
23 right?

24 A That is correct.

25 Q Why was that so important to you to -- about those gloves

1 to leave that out?

2 A At the time it just didn't cross my mind. I mean, I  
3 wasn't trying to hide anything. I just didn't think of it at  
4 the time. I mean, if you're in a situation like this you  
5 can't remember every little thing you do, but I --

6 Q I know it. But you're making up stuff because you said  
7 they fell in the blood.

8 A I did -- I was, I was honest with them. I did tell them,  
9 yes, I had the gloves on before I came in the house.

10 Q Later, after Strickland --

11 A So I didn't have to be honest with him.

12 Q I know.

13 A I could have kept lying to him.

14 Q I got you.

15 A Okay.

16 Q But I'm, I'm saying why, why are the gloves important?  
17 Why do you, why, I mean, they didn't have anything to do with  
18 the murder; right?

19 A I believe not.

20 Q You think it goes to intent that you would put on  
21 fighting gloves to fight with?

22 A It goes to intent that I knew I was going to get in a  
23 fight when I went in the house and I wanted to protect my  
24 hands.

25 Q Why not, and we can't go and undo this, but why not just



James Rosenbaum - Cross by Mr. Richardson

917

1 tell Brandon that, "Look, I thought it was a rape and I was  
2 going to put these gloves on"?

3 A Well, I, I did afterwards.

4 Q Yeah. So, I mean, the story came together. It did, but  
5 I just didn't understand why you would have thought it was so  
6 important unless it was like, "I didn't want it to appear that  
7 I went in there looking for a fight instead of trying to  
8 defend somebody"?

9 A Uh-huh.

10 Q Tell me about who made the statement several times, when  
11 I say he, I'm talking about Roy, "I can't move. I can't  
12 move." What was going on and if you can't remember just tell  
13 us you don't remember?

14 A I believe I had him on the floor.

15 Q All right.

16 A I believe I was on top of him at that time.

17 Q And he was saying not because of any beating to the head  
18 but because you were on him he was saying, "I can't" -- if he  
19 could have explained it it was that, "I can't move because Jim  
20 is holding me down"?

21 A Well, that's what he said he couldn't move because I was  
22 on top of him.

23 Q Okay. And you had said earlier that day that you got  
24 into a big argument with Diane over her not getting a job.  
25 You remember telling Alex that?

1 A Yes, sir.

2 Q Would that have been after you picked up Mark at 3:00  
3 o'clock?

4 A Yes, it would.

5 Q Okay. So you were frustrated with her earlier in the  
6 day, but that wasn't over any of this stuff. It was over the  
7 job; right?

8 A It's always been about the job.

9 Q Okay. Going up until that point you had multiple  
10 bedrooms in that house; correct?

11 A Yes, sir.

12 Q Did, did you all ever stop staying in the same bedroom?

13 A Well, this might be embarrassing for her, but she started  
14 going through menopause, and she would wake up in the middle  
15 of the night, I mean, the bed would be soaking wet, and I  
16 would be soaking.

17 Q Okay. Well, let's don't get too much into that because  
18 I, I --

19 A Well, that's, that's why she had the other bedroom.

20 Q All right. So during this incident, without going into  
21 detail, you all were not sharing the same room?

22 A Sometimes.

23 Q Okay. How about the night, July 10<sup>th</sup>, do you remember if  
24 you all were in the same room?

25 A No.

1 Q You don't remember?

2 A I'm not sure.

3 Q Okay. After Roy is saying, "I can't move, I can't move,"  
4 at some point you got up. Was that before that photograph was  
5 taken or the video was taken?

6 A I'm not sure.

7 Q Okay. But at some point you got off of him and how did  
8 he get to that couch or the bed? Did he walk hisself over  
9 there or did somebody put him there?

10 A I believe that's where he fell.

11 Q Okay.

12 A Against that.

13 Q All right. So after that while he is sitting on the bed  
14 you call Paul where you videotape him there. Then you call  
15 Paul; right?

16 A Yes, sir.

17 Q And do you remember if after that if he was hit anymore  
18 with the bat?

19 A I didn't hit him with the bat after that. No, sir.

20 Q After that, after you said, "Paul, get over here with  
21 this 40," did Roy ever make an attempt to get out of the door  
22 after that?

23 A Yes, he did. Yes, sir, he did.

24 Q All right. And did you hit him with the bat at that  
25 point?

1 A No, sir.

2 Q All right. What's going on then? Is there -- if, if we  
3 heard a bat during that time because I hadn't listened to it  
4 today, but would that have been just the bat dragging like  
5 Alex said against the corner of the like couch or something,  
6 you know? If we heard a bat again would it just be -- would  
7 -- did you still have the bat at that point?

8 A No, sir. I did not.

9 Q Where was the bat, Jim, or excuse me, Mr. Rosenbaum?

10 A I'm not sure.

11 Q All right. All right. So those blood markings around  
12 the door, those are Roy's to the best of your knowledge?

13 A I believe so, yes.

14 Q In the last few minutes of the 911 tape we don't hear  
15 from Roy anymore. If you don't remember it's fine to say I  
16 don't remember, but do you know why?

17 A He tried to run out the door.

18 Q Yes, sir.

19 A I blocked him. We tussled around briefly and he fell on  
20 the mattress and after that that's shortly after that I  
21 believe the police pulled right up.

22 Q Okay. They talked about -- I think it was Dr. Proctor  
23 say that those strikes to the head may have killed him if  
24 untreated but were you in here when he said that he actually  
25 -- you had broken his rib and it had cut his aorta?

James Rosenbaum - Cross by Mr. Richardson

921

1 A Yes, sir.

2 Q Can you tell us when that happened?

3 A No. I cannot.

4 Q All right. As far as Roy speaking to you or hollering  
5 out, how long did that go on?

6 A I'm not sure.

7 Q Before he died did you notice a time where it sounded  
8 like he was gurgling or any of that?

9 A No, sir.

10 Q Okay. Could you notice was there ever a time that you  
11 focused on his ribs instead of his head with that bat?

12 A The only time I hit him in the chest --

13 Q Yes, sir.

14 A -- was when we had the bat and I used the, the butt of  
15 the gun.

16 Q Okay. So you never hit him with the -- in the chest with  
17 the bat?

18 A No, sir.

19 Q How about that defensive wound that Dr. Proctor was  
20 talking about, the elbow, was that with the gun or with the  
21 bat?

22 A I'm not sure what that was from.

23 Q All right.

24 A That could have been when we went down to the floor. I'm  
25 not sure.

1 Q Do you remember how many ribs Roy had broken?

2 A No. I do not.

3 Q All right. Broken elbow and several?

4 A Three?

5 Q Three?

6 A I think that Dr. Proctor testified three ribs.

7 Q He might have. I don't, I don't know what --

8 A Two or three. I'm not sure.

9 Q But that would be easier to break, I would think, with a  
10 bat than a gun; wouldn't you?

11 A Yeah. It would be.

12 Q That castoff on the roof, do you have any idea where that  
13 came from?

14 A The what?

15 Q You know when Ms. -- did you see Ms. Paulette Sutton's  
16 video?

17 A No. I did not. I was sitting over there. I didn't see  
18 it.

19 Q Oh, okay. I'm sorry. There's no way for you to have  
20 known this at the time, but would it have changed your  
21 opinion, excuse me, would things have been different if you  
22 had known that his shirt was folded up with his hat on top of  
23 it?

24 A If I would have known that?

25 Q Yes, sir.

James Rosenbaum - Cross by Mr. Richardson

923

1 A Yes. It would.

2 Q Mr. Rosenbaum, would it have changed your opinion if  
3 you'd known that night that as far as Roy was concerned the  
4 \$20 was to buy crack because you, you didn't have --

5 A Yes. It would.

6 Q If you had known from -- and I know you didn't know Mr.  
7 Hucks, but if you'd known that Diane picked him up numerous  
8 times going up to that point would that have changed your  
9 outlook on that night?

10 A Yeah. And Diane wouldn't have been living there.

11 Q And Roy would be alive?

12 A I guess, but I know what I saw.

13 Q I got you.

14 A I can only testify to what I saw. I can't testify what  
15 she does when I'm not around, and I believe a lot of people  
16 have testified that they'd never seen me and Roy together,  
17 that I don't know who this man was.

18 MR. RICHARDSON: The Court's indulgence just one moment.

19 THE COURT: All right.

20 BY MR. RICHARDSON:

21 Q Mr. Rosenbaum, I apologize for asking you personal  
22 questions, but I am --

23 A You have a reason for it I'm sure, but.

24 Q Well, thank you for answering them and I am going to step  
25 down and ask that you answer any questions that Jarrett may

1 have for you. Thank you.

2 A Thank you. You're welcome.

3 THE COURT: We're going to break for lunch. All right.

4 It's, it's 10 till one. We've got lunch here for the jury. I  
5 hate to interrupt the middle of the testimony but we're going  
6 to go ahead and break for lunch. Leave your notepads in the  
7 jury box. Do not discuss the case even among yourselves at  
8 this point in time. We'll take about 45 minutes to an hour.  
9 You'll take -- take your time eating lunch. I don't want to  
10 rush you or anything of that nature but we're going to go  
11 ahead and break for lunch and we'll bring you back as soon as  
12 we get done with that. Do not discuss the case. Don't  
13 conduct any independent investigations. All right. Everyone  
14 else please remain seated while the jury's excused.

15 (Whereupon, the following takes place outside the  
16 presence of the jury.)

17 THE COURT: All right. Again, Mr. Rosenbaum, we are in  
18 the middle of your testimony. So you cannot discuss any of  
19 your testimony with anyone, even your own attorneys, you can't  
20 discuss what you've testified to thus far, what you anticipate  
21 testifying to in the future. Okay?

22 A Yes, sir.

23 THE COURT: All right. Anything from the State before we  
24 break for lunch?

25 MR. RICHARDSON: No, sir.



James Rosenbaum - Cross by Mr. Richardson

925

1 THE COURT: All right. Mr. Hyman?

2 MR. ALEX HYMAN: No, Your Honor.

3 THE COURT: All right. Mr. Bouchette?

4 MR. BOUCHETTE: No, sir.

5 THE COURT: All right. I'm looking at about a quarter  
6 till 2. That'll give them not quite an hour before we resume.  
7 Okay. All right. Thank you.

8 OFF THE RECORD

9 (On the record. The following takes place outside the  
10 presence of the jury.)

11 THE COURT: All right. Anything from the State before we  
12 bring the jury in?

13 MR. RICHARDSON: No, sir.

14 THE COURT: All right. Mr. Hyman, anything from  
15 Defendant Rosenbaum?

16 MR. ALEX HYMAN: No, Your Honor.

17 THE COURT: Anything from the Defendant Durkin?

18 MR. BOUCHETTE: No, Your Honor.

19 THE COURT: All right. Let's go ahead and bring the jury  
20 in.

21 (Whereupon, the following takes place in the presence of  
22 the jury.)

23 THE COURT: All right. Ladies and gentlemen, welcome  
24 back. Hope everybody had a good lunch. Make sure you have

1 your own notepads and don't have anyone else's notepads.

2 We'll resume the trial of the case. Mr. Bouchette, cross  
3 examination.

4 MR. BOUCHETTE: Thank you, Judge.

5 CROSS EXAMINATION

6 BY MR. BOUCHETTE:

7 Q Mr. Rosenbaum, I know Alex calls you Jimmy. Do you mind  
8 if I call you Jimmy as well?

9 A No, sir.

10 Q Let me get over here by this microphone.

11 A No, I'm sorry.

12 Q Okay. Can you hear me okay, Grace? Okay. Jimmy, before  
13 I get going let me tell you I'm sorry that you had to get into  
14 what I'm sure is very difficult memories earlier but I think  
15 every -- I think I can speak on behalf of everybody in the  
16 court and say we're certainly thankful for your service even  
17 though it was unfortunately cut far too short, and I want to  
18 thank you for that. Whenever, whenever you moved here back in  
19 2015, if memory serves me, you and Diane had been together,  
20 what, about two years; is that right?

21 A Yes, sir.

22 Q Okay. And how long did you all -- had, had you all lived  
23 together in total prior to the incident?

24 A We lived about two years together I'd say, yes.

25 Q Okay. And to your knowledge she's not been convicted of

1 any crime; correct?

2 A Not that I know of. No, sir.

3 Q All right. Now, at some point during the, the 911 call  
4 we can hear what sounds like Diane saying, "Get the f'ing  
5 back." Do you remember that? You remember hearing that?

6 A Now I do when I heard it, yeah, but I don't remember when  
7 it would --

8 Q Sure. I know you don't remember it at the time, but  
9 you've heard the 911 tape since then; right?

10 A Yes, sir.

11 Q And you heard Diane say that?

12 A Yes, sir.

13 Q Say, "Get the f'ing back"; right? Now, at that time she  
14 was trying to grab the bat from Roy; isn't that correct?

15 A Yes, sir.

16 Q So Roy had the bat and she's screaming, "Give me that  
17 f'ing bat," she's trying to grab it from him; correct?

18 A Yes, sir.

19 Q All right. And I think you also testified that when Roy  
20 collapsed or went down or when police arrived at least you  
21 didn't believe or you weren't aware whether or not Roy had  
22 passed away at that point?

23 A No. I was not.

24 Q In fact, you thought he was alive; correct?

25 A Yes, sir.

1 Q So it wouldn't have been clear to anybody in that room  
2 what the kill shot was; would that be safe to say?

3 A Yes. It would.

4 Q Because you couldn't tell what the kill shot was; right?

5 A No. Like I said, when, when I blocked him from going out  
6 and we were tussling around he just after that, after we went  
7 down and got up off the floor again he just staggered and  
8 collapsed. I just thought maybe he passed out.

9 Q All right. And, and I guess my point is at, at that  
10 point that it wasn't clear that, one, there was a kill shot;  
11 correct?

12 A I -- yes.

13 Q Right. Okay. Now, I want to talk a little bit, too,  
14 about whenever you came home that night I believe you said it  
15 was about 9:30; correct, whenever you arrived at the house?

16 A Yes, sir. Yes, sir.

17 Q And it's -- so that's late evening. Was it after dark?

18 A Yes, sir.

19 Q It was after dark, and what kind of car did you say you  
20 drove?

21 A Pickup truck.

22 Q Pickup truck had headlights on it?

23 A Yes, sir.

24 Q Did you have the headlights on?

25 A Yes, sir.

1 Q When you came in you pulled up into the front yard?

2 A Yes, sir, in the driveway.

3 Q The same place you always park?

4 A Yes, sir.

5 Q Headlights shining into the residence?

6 A Yes, sir.

7 Q You did not drive around to the back door and park?

8 A No, sir.

9 Q Parked right up there at the front where you always do;  
10 right?

11 A That's where the picture they took of my truck was. Yes,  
12 sir.

13 Q Okay. Now, when they took you to J. Reuben Long did they  
14 take a buccal swab, in other words a --

15 A The next day I believe they did, yes, sir.

16 Q Okay. Were you present -- was Diane with you whenever  
17 they took the buccal swab?

18 A No, sir.

19 Q Do you know if they took a buccal swab with Diane?

20 A I only know from seeing discovery now. That's it.

21 Q Okay. All right. Also there was a lot of discussion  
22 here in your testimony and we keep using these words around  
23 like we're going from the kitchen to the living room, you  
24 know, almost like there's two -- there are two different  
25 spaces, but I think you've heard the testimony that and

1 according to this, this diagram here, and let me, I'm  
2 referencing for the record State's Exhibit Number 88, and you  
3 would agree that this is the -- an accurate depiction of the  
4 dimensions of the inside of the house?

5 A Yes, sir.

6 Q All right. So I think I said earlier that that came out  
7 to about 340 square feet. Does that sound about right? Well,  
8 I'll withdraw the question. I think you -- the testimony was  
9 that it probably wouldn't have been much bigger than this jury  
10 box. Is that safe to say?

11 A Yes, sir.

12 Q Okay. So the kitchen, the living room and the place  
13 where you had the mattress sitting would've been all in a  
14 space about this big; right?

15 A About from the wall to where you're standing. Yes, sir.

16 Q Okay. All right. So safe to say this entire  
17 interaction, this entire melee that you got into was in a very  
18 tight quarters; correct?

19 A Yes, sir.

20 Q There's not a lot of difference between when we're  
21 talking about the kitchen or when we're talking about the  
22 living room, it's basically the same small space; right?

23 A Yes, sir.

24 Q Okay. I want to ask you, obviously, you saw -- when you  
25 got to the jail you saw Diane; right?

James Rosenbaum - Cross by Mr. Bouchette

931

1 A Yes. I did.

2 Q Okay. And you had a bond hearing at the jail; right?

3 A Yes, sir.

4 Q And you saw her at the bond hearing?

5 A Yes, sir.

6 Q Were you able to take a look at her and see her?

7 A Yes, sir. I did.

8 Q Were you able to see her condition?

9 A Yes. I did.

10 Q Physical, her physical condition, physical appearance?

11 A Yes, sir.

12 Q I'm going to mark for identification purposes this is  
13 going to be Defendant Durkin's Two through Four.

14 A Sorry.

15 Q I'm going to show you here what's been pre-marked again  
16 as Defendant Durkin's Two through Four for identification  
17 purposes. You mind taking a look at those? And what I'm  
18 asking you to look for is do those photographs fairly and  
19 accurately depict Diane's physical condition on the night you  
20 were booked into J. Reuben Long?

21 A Yes, sir.

22 Q Okay. And I want you to note, I'm going to -- we'll  
23 reference first before we hand these to the jury, I'll  
24 reference --

25 MR. BOUCHETTE: Well, actually, Your Honor, at this

1 point I'd move to introduce Defendant Durkin's Two through  
2 Four into evidence.

3 THE COURT: Any objection?

4 MR. RICHARDSON: No, sir, Your Honor.

5 THE COURT: Any objection?

6 MR. ALEX HYMAN: No, Your Honor.

7 THE COURT: All right. Defendant Durkin's Exhibits Two,  
8 Three and Four are admitted into evidence without objection.

9 (Defendant Durkin's Exhibits Two, Three and Four  
10 [Photographs] admitted into evidence and appropriately  
11 marked.)

12 MR. BOUCHETTE: And Your Honor, permission to publish to  
13 the jury?

14 THE COURT: All right.

15 BY MR. BOUCHETTE:

16 Q Now, Jimmy, you'll notice on what is her left eye, you  
17 notice any bruising on that eye?

18 A Yes. It's swollen.

19 Q Okay. Did she have that black eye or that bruising the  
20 day before the incident?

21 A No. No, sir.

22 Q On the day of the incident? I guess to be clear, did she  
23 have that bruising before 9:30 on the date of this incident?

24 A No, sir. She did not.

25 MR. BOUCHETTE: Your Honor, I don't have any further



James Rosenbaum - Redirect by Mr.-Alex Hyman

933

1 questions for this witness.

2 THE COURT: All right. Redirect?

3 MR. ALEX HYMAN: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. ALEX HYMAN:

6 Q I know it's kind of been a while since Mr. -- Solicitor  
7 Richardson was, was talking with you, but I did make a couple  
8 of notes, and I kind of forgot some of the stuff, but he kept  
9 going over this with you and talking about 19, 25, three, two,  
10 12, that kind of stuff, but you never talked to Diane during  
11 this; did you?

12 A No, sir. I did not.

13 Q And you don't deny talking to her up here?

14 A No. I do not.

15 Q And I believe that was when she was supposedly at the  
16 store?

17 A That's what I was told, she was at a store.

18 Q And this phone call down here is not her; correct?

19 A No. That's Mr. Paul Ridgely's phone number right there.

20 Q Now, Solicitor Richardson kind of went into the finance  
21 stuff and you said you all had a joint account and that you  
22 would put money in it for --

23 A I would put about 300 a month in there for --

24 Q Okay.

25 A -- in case she needed something or I needed something at

1 the store, let her go get it.

2 Q And I think it was your testimony that or through Mr. --  
3 through Solicitor Richardson that I guess 11 months prior to  
4 this there was \$50 that was missing out of it?

5 A 50, a hundred or --

6 Q Something like that?

7 A Something like that.

8 Q Was that like continuous or was it just that time?

9 A No. It was just that time.

10 A Okay. Would you plan to kill someone for 50 or \$100?

11 A No. I would not.

12 Q Okay. Did you all talk about that 50 or \$100?

13 A I told the Solicitor we went to Conway National Bank when  
14 I got out and she told me that she lost the card and somebody  
15 took the money out. So we went to the bank, and she reported  
16 it to the banker there and I think in about five days they  
17 put, I think it was between 50 and \$75 back on the checking  
18 account.

19 Q Now, so --

20 A And reported the card stolen, of course.

21 Q It's your contention then and your testimony that you  
22 don't know what happened to that money?

23 A No. I do not.

24 Q Okay. Now, as far as Solicitor Richardson went into a  
25 little bit about PTSD in the military --

James Rosenbaum - Redirect by Mr. Alex Hyman

935

1 A Yes.

2 Q -- and what caused that. That was 38 years ago. Did  
3 that have any bearing on what happened that night?

4 A No. It did not. No, sir.

5 Q Okay. If you had walked in and there was a white man  
6 there would it have been any different?

7 A No, sir. Not at all.

8 Q How about an Asian guy? No?

9 A No, sir.

10 Q Did race have anything to do with this?

11 A No, sir. It did not.

12 Q Okay. Now, what you said, the Solicitor asked you about  
13 your request to not be housed with anyone that was African-  
14 American when you got there. Was there a reason for that?

15 A Yes. There was.

16 Q Have you been threatened while -- since you've been at  
17 the jail, while you were at the jail?

18 A A couple of times.

19 Q Okay. Now, one of the questions that he asked you was  
20 about this picture, and I think it's your testimony or I'm  
21 just asking you, you never hit him with the bat after this?

22 A No, sir. I did not.

23 Q Did you -- you never hit him with the gun after this?

24 A No, sir. I did not.

25 Q It's your testimony that after this he got up, you tried

1 to stop him from leaving, and then that's when he --

2 A I blocked him. Yes, sir.

3 Q And it does appear -- your testimony earlier was that  
4 he's sitting up at that point?

5 A That's what it looks like to me. Yes, sir.

6 Q Okay. You know, the Solicitor kind of went into some of  
7 the stuff with Brandon Strickland, and now, you were  
8 questioned for how many hours you think?

9 A Well, I was in the car in front of my house for  
10 approximately one hour.

11 Q Well, how about the times that you were at -- the amount  
12 of time you were actually with the detectives?

13 A Three hours I would think.

14 Q Okay.

15 A Three, maybe little more.

16 Q And the only thing he could pull out of that was that  
17 little spot right there about the gloves?

18 A Yes. Yes, sir.

19 Q And again, you actually told Brandon minutes later;  
20 correct?

21 A Yes, sir.

22 Q Okay. You know, the Solicitor made a good point, he  
23 said, you know, the gloves had nothing to do with the death.  
24 Did you ever deny one time to any law enforcement officer that  
25 you hit him with a bat?

- 1 A No. It's the first thing I told them.
- 2 Q Okay. When you put the gloves on did you know anything
- 3 about the -- did you -- were you thinking that there was a bat
- 4 there?
- 5 A No.
- 6 Q Or did you put the gloves on thinking that was all you
- 7 had?
- 8 A I, I forgot completely about the bat.
- 9 Q And again, the bat was on the porch, the back porch, back
- 10 there with some tennis balls and stuff?
- 11 A Yes. They should have photographs of that.
- 12 Q Well, I mean, they wouldn't, they wouldn't have had a
- 13 photograph of the back porch with the bat but because the bat
- 14 -- the photographs were taken afterwards is what I'm saying?
- 15 A Right. No. I understand that but the back porch and --
- 16 Q Got you.
- 17 A -- set up with the balls and all that.
- 18 Q The -- and again, I just want to kind of get in this one
- 19 more time. It was never your intent to kill him.
- 20 A No. Never. As a matter of a fact, we were closer than
- 21 me and you when I shot him. I didn't shoot him in the head.
- 22 I shot him in the shoulders to drop the bat. That was it.
- 23 Q And it's your testimony that you truly believed that she
- 24 was being assaulted?
- 25 A Yes, sir.

1 Q Okay.

2 MR. ALEX HYMAN: No further questions, Your Honor.

3 THE COURT: All right. You may step down. Mr. Hyman,  
4 you can call your next witness.

5 MR. ALEX HYMAN: The Defense would call Robert  
6 Livingston.

7 THE COURT: All right.

8 THE COURT: I'm assuming he's in the hallway?

9 MR. ALEX HYMAN: He, he was in one of the side rooms.

10 THE COURT: Oh, okay.

11 MR. ALEX HYMAN: My investigator just went and got him.

12 THE COURT: Okay.

13 MR. ALEX HYMAN: My apologies, Judge.

14 THE COURT: That's all right.

15 Whereupon, Robert Livingston is called to the stand, duly  
16 sworn by the clerk and testified as follows:

17 THE CLERK: Please state your name and spell your name.

18 MR. LIVINGSTON: Okay. My name is Robert Livingston, R-  
19 O-B-E-R-T, L-I-V-I-N-G-S-T-O-N.

20 DIRECT EXAMINATION

21 BY MR. ALEX HYMAN:

22 Q Thank you, Mr. Livingston. Now, you haven't been here  
23 all week. So I probably need to catch you up to speed a  
24 little bit. Two days ago Lynndale Lewis came in and  
25 testified. He testified that my client told him a lot of

Robert Livingston - Direct by Mr. Alex Hyman

939

1 stuff, and we contend that what he said was not true.

2 MR. HELMS: Objection, Your Honor. I mean, that's a  
3 whole lot of leading. Does he have a question or is he going  
4 to give them a narrative?

5 THE COURT: What's your objection?

6 MR. ALEX HYMAN: I'll, I'll ask him a question.

7 THE COURT: Don't lead.

8 MR. HELMS: Leading.

9 THE COURT: All right. Just state your objection on the  
10 record. Go ahead.

11 BY MR. ALEX HYMAN:

12 Q Do you know anything about my client?

13 A I don't know him at all, never seen him.

14 Q Okay.

15 A Never seen him before.

16 Q Do you know Lynndale Lewis?

17 A Yes, sir.

18 Q Tell me how you know Lynndale.

19 A He is a former son-in-law.

20 Q Okay. Now, Lynndale testified that he had to get out of  
21 jail to go take care of his wife.

22 MR. RICHARDSON: Objection, Your Honor. Leading.

23 THE COURT: No. That's not. I'll allow that. Go ahead.

24 Q Was his wife your daughter?

25 A Yes. She was, Dana.

1 Q Who was your daughter living with?

2 A My daughter was living with me, my wife.

3 Q Now, this, this incident that we're here today for took  
4 place in July of 2016. Do you remember Lynndale being locked  
5 up during that time?

6 A Yes, sir.

7 Q Now, do you remember what he was locked up for?

8 A Yes, sir. He had some raffle tickets printed up that  
9 were totally fake, bogus, and he was selling the raffle  
10 tickets.

11 Q Did you and your family actually have a raffle for your  
12 daughter?

13 A Well, we didn't have a raffle. We had a benefit dinner  
14 for her. Yes, sir. We did.

15 Q Now, so when Lynndale was testifying to a raffle that was  
16 completely made up?

17 A That was completely made up. I knew nothing of a raffle.

18 Q And to your knowledge was there ever a raffle for your,  
19 your, your daughter?

20 A No, sir. Not that I knew anything about.

21 Q And your daughter was actually living with you under your  
22 care; is that what you're saying?

23 A Yes, sir.

24 Q Okay. Can you tell the jury -- would you say that  
25 Lynndale is a trustworthy person?



Robert Livingston - Direct by Mr. Alex Hyman

941

- 1 A No. Absolutely not.
- 2 Q Okay.
- 3 A No.
- 4 Q Now at times did Lynndale live with you?
- 5 A Yes. He did.
- 6 Q Okay. Did he steal from you?
- 7 A Yes. He did.
- 8 Q Did he steal from your daughter?
- 9 A Yes. He did.
- 10 Q Would you classify Lynndale as a con man?
- 11 A I most certainly would.
- 12 Q Okay. Now, when he got out of jail in July 2016 did you
- 13 find it kind of odd?
- 14 A Sir?
- 15 Q When, when he got out of jail in July of 2016 did you
- 16 find that it was odd?
- 17 A I didn't know how he got out of jail. I knew --
- 18 absolutely did not know how he got out of jail.
- 19 Q Did you know him to have a lawyer?
- 20 A No. Not that -- not to my knowledge did he have a
- 21 lawyer, did he have anything.
- 22 Q Tell me about -- did you all have to do anything to
- 23 protect yourself, to protect belongings when he came around?
- 24 A Yes. We would.
- 25 Q Like?

1 A My daughter's medicine I had, I had to keep it in my  
2 pocket.

3 Q Again, why was that?

4 A Because he would take it. He would take her pain pills  
5 and her with cancer.

6 Q Okay. And is that around the same time as what we're  
7 talking?

8 A Yes, sir.

9 Q Is his reputation in the community as someone that is  
10 untrustworthy?

11 A Yes, sir.

12 Q Okay. Do you think that he would lie in order to maybe  
13 get out of jail?

14 A Yes, sir.

15 Q Do you --

16 A He would manipulate to get things that he wanted.

17 Q Have you seen that before?

18 A Yes, sir.

19 Q Has he tried to manipulate you and your family?

20 A Yes, sir.

21 Q Have you seen Lynndale lately?

22 A No, sir.

23 Q So he hasn't been around the family or anything?

24 A No, sir.

25 Q Were you ever a victim in a crime that Lynndale

Robert Livingston - Cross by Mr. Richardson

943

1 committed?

2 A Yes, sir, on several occasions, one, one proven occasion.

3 Q Okay.

4 MR. ALEX HYMAN: The Court's indulgence.

5 THE COURT: All right.

6 BY MR. ALEX HYMAN:

7 Q The thing that was proven stolen was that a cultivator or  
8 a combine? It was a cultivator?

9 A It was a cultivator.

10 Q So again, it's your testimony that you think that  
11 Lynndale would lie and manipulate if it meant that he  
12 benefited from it?

13 A Yes, sir.

14 Q I have no further questions. If you can answer any  
15 questions that the Solicitor might have.

16 A Yes, sir.

17 Q Thank you.

18 THE COURT: All right. Cross examination.

19 MR. RICHARDSON: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. RICHARDSON:

22 Q Mr. Livingston, are you familiar with the proceedings out  
23 at J. Reuben Long, bond hearings, that sort of thing?

24 A Not very much.

25 Q Have you ever been arrested?

- 1 A Yes, sir.
- 2 Q All right. When you were arrested did you have a bond
- 3 hearing?
- 4 A No, sir.
- 5 Q No?
- 6 A No, sir.
- 7 Q How'd you get out?
- 8 A I paid the fine.
- 9 Q Paid the fine?
- 10 A Yes, sir.
- 11 Q All right. Let me ask you, and I don't want to get into
- 12 the details of it, but are you familiar with the concept of
- 13 discovery?
- 14 A I think so. Yes, sir.
- 15 Q All right. You know that anything that the police have
- 16 against you they would make a copy of it and turn it over to
- 17 our office?
- 18 A Yes, sir.
- 19 Q All right. And then we take that paperwork and send it
- 20 over to your Defense attorney; correct?
- 21 A Correct. Yes, sir.
- 22 Q All right. And when your Defense attorney gets a copy of
- 23 that paperwork, then he goes over it with you?
- 24 A Yes, sir.
- 25 Q All right. Now, would you agree with me that if you were

Robert Livingston - Cross by Mr. Richardson

945

1 going to -- if you discuss your case without the benefit of  
2 discovery because it's not instantaneous; right?

3 A Uh-huh.

4 Q Any discussion that you would have would have to come  
5 from your own knowledge; right?

6 A That's correct.

7 Q All right. So if, and I don't want to get into your  
8 situation at all. I'm just talking hypotheticals. Okay. If  
9 you were to tell me before getting discovery that your crime  
10 involved a pink elephant, that's something that nobody could  
11 have known but you; right?

12 A Uh-huh.

13 Q And if you were to tell me that that pink elephant was  
14 wearing stockings, and you didn't have discovery, the only  
15 person that could have known that were you and the police;  
16 right?

17 A That would be correct.

18 Q So for Lynndale to have known anything about boxing  
19 gloves or BB guns or baseball bats without discovery it would  
20 have had to come --

21 MR. TRAVIS HYMAN: Objection, Your Honor. He, he doesn't  
22 have the knowledge to give an opinion on that question.

23 MR. ALEX HYMAN: He doesn't know the basis of the facts  
24 of the case.

25 THE COURT: Well, you're going to get redirect. I'll

1 allow it. Go ahead.

2 Q What? I'm sorry. I'll ask it again. If we talked about  
3 boxing gloves or BB guns or baseball bats and you didn't have  
4 discovery that would have to come straight from somebody that  
5 knew about it; right?

6 A That would be correct.

7 Q All right. And Lynndale, as awful as he is, you're not  
8 claiming he was psychic or clairvoyant?

9 A No.

10 Q Had a lot of problems but that wasn't one of them; right?

11 A Not that I have any knowledge of.

12 Q Right. Right. And he never told you any -- I'm, I'm  
13 guessing by this time it was all over. He never mentioned  
14 anything about this to you?

15 A I knew absolutely nothing on --

16 Q Yes, sir.

17 A -- how he got out.

18 Q Now, in terms of murder weapons, boxing gloves ain't  
19 something you usually hear about; is it?

20 A Not a whole lot.

21 Q Or baseball bats?

22 A Not a whole lot with baseball bats.

23 Q Or never a BB gun?

24 A No.

25 Q Most of the time you hear about pistols or knives or

Robert Livingston - Cross by Mr. Richardson

947

1 stuff like that; right?

2 A That would be correct.

3 Q And if Lynndale, excuse me, unless he had something that  
4 me and you didn't know about he would have had a hard time  
5 guessing about that stuff; wouldn't he?

6 A I would say he would have a hard time. Yeah.

7 Q All right. And obviously you don't like Lynndale at all?

8 A No.

9 Q How long ago has that been, Mr. Robert, about that raffle  
10 that never went down?

11 A I think that was in July.

12 Q 2016?

13 A Yes, sir.

14 Q Is your daughter still alive or --

15 A Yes. She was.

16 Q I mean now?

17 A No. No. She's not.

18 Q Well, I'm sorry, very sorry. You all did have a steak  
19 dinner type thing to raise money?

20 A Yes, sir.

21 Q Where are you from?

22 A I'm from right outside of Loris.

23 Q Okay. All right. Bear with me just one second. Okay?

24 A Yes, sir.

25 Q Mr. Robert, I have no further questions. If you would

1 answer any questions Mr. Jarrett might have for you.

2 A Okay.

3 THE COURT: Mr. Bouchette?

4 MR. BOUCHETTE: Your Honor, I don't have any questions  
5 for this witness.

6 THE COURT: All right. Redirect.

7 REDIRECT EXAMINATION

8 BY MR. ALEX HYMAN:

9 Q Mr. Livingston, you and I talked about your record before  
10 and that certainly made it out to be worse than it was. Tell  
11 the Court what you were charged with?

12 A Sir?

13 Q You, you and I talked about your record one time before?

14 A Uh-huh.

15 Q And the way that that came across made it a lot worse  
16 than what it sounded like.

17 A Yes, sir.

18 Q What do you have on your record?

19 A I, I have an open container charge.

20 Q Do you have anything else on your record?

21 A No, sir.

22 Q Okay. The -- let me ask you something, if you gave  
23 Lynndale some facts is it likely he could turn them around on  
24 somebody?

25 A Yes, sir.



## Motions

949

1 Q I have no further questions.

2 A Very manipulative.

3 THE COURT: All right. You may step down. Thank you.

4 All right. You can call your next witness.

5 MR. ALEX HYMAN: Your Honor, the Defense rests.

6 THE COURT: Let me see the attorneys for a second.

7 (Whereupon, a bench conference is held in the presence  
8 but out of the hearing of the jury.)

9 THE COURT: All right. Mr. Rosenbaum has rested. Does  
10 the Defendant Diane Durkin have anything she wants to present?

11 MR. BOUCHETTE: Your Honor, we don't have anything  
12 further to add.

13 THE COURT: All right.

14 MR. BOUCHETTE: The Defense rests.

15 THE COURT: All right. Ladies and gentlemen, the State  
16 has presented their case in chief. The Defense has rested.  
17 So just like at the close of the State's case I have to take  
18 up some matters of law with the attorneys. So I'm going to  
19 excuse you to the jury room. Please leave your notepads in  
20 the jury box. Do not discuss the case even among yourselves  
21 and we'll bring you back out in just a few minutes. Thank you  
22 very much.

23 (Whereupon, the following takes place outside the  
24 presence of the jury.)

25 THE COURT: All right. Motions.

1           MR. ALEX HYMAN: Your Honor, in the Defense's case we  
2 would renew our original motion for directed verdict. I think  
3 at the, the end of all of this, you know, they're charged  
4 with murder. There's been no testimony whatsoever of some  
5 kind of premeditation.

6           Judge, that also being said, I think the evidence is  
7 clear from what my client has said, what we've seen on the  
8 stand, this is not a situation where he laid in wait, anything  
9 like that. Judge, I think this is a situation where he came  
10 home and acted on what he saw, whether that was that she was  
11 actually being raped or that she said she was being raped. I  
12 do feel like at this time though on the charge of murder the  
13 directed verdict would be appropriate.

14          THE COURT: All right. Any other motions?

15          MR. BOUCHETTE: Your Honor, at this point Diane Durkin  
16 renews her motion for a directed verdict. Again, in regards  
17 to this case, the issue is I don't think there's any dispute  
18 that while Mr. Rosenbaum was engaged in this fight, he engaged  
19 in the conduct that ultimately caused the death. That's  
20 backed up by the medical examiner. The medical examiner says  
21 the, the injury that caused the death was the strike to the  
22 chest that caused the severing of the thoracic aorta. That  
23 has been corroborated by Mr. Rosenbaum. That has not been  
24 contradicted by anybody in the record. To the extent this  
25 jailhouse informant says that my client says she had the kill

Motions

951

1 shot, well, the testimony is pretty clear based on the  
2 timeframe when the examiner did his examination that, number  
3 one, nobody knew what the kill shot, it wasn't apparent what  
4 the kill shot was. So even viewing it in the light most  
5 favorable to the State, assuming she did say that, then that's  
6 really not what's at issue here at this point. The issue is  
7 that the cause of death, the actual actus reus, the cause of  
8 death of Roy Davis was done by Mr. Rosenbaum, and there's no  
9 evidence to contradict that to show that Diane took any  
10 physical actions to cause the death, and so, the only way  
11 they're going to try to loop it in is try to get in some kind  
12 of conspiracy, and there's no, no evidence in the record to  
13 indicate some kind of coordination or planning or anything to  
14 that effect that would bring her into it. So on that basis we  
15 would move for a directed verdict, renew our motion for a  
16 directed verdict again.

17 THE COURT: All right. I'm going to note your motions.  
18 I'm going to deny them. All right. Anything further?

19 MR. HELMS: No, Your Honor.

20 THE COURT: All right. Are you all putting up any reply  
21 testimony?

22 MR. HELMS: No, Your Honor, nothing in rebuttal.

23 THE COURT: Okay. All right. It's 2:30. I don't want  
24 to, number one, I don't want to give this to a jury after 4:00  
25 o'clock. My -- and I -- and again, and I don't want to cut

1 you all short on your closing arguments. My suggestion would  
2 be for us to go ahead, break for the day, come back Monday and  
3 finish up. That's my suggestion. I'll, I'll hear from you  
4 all. I can tell you right now, if we bring them back in, we  
5 do closing arguments because it'll be State closes in full,  
6 Defense closes in full and then any brief reply by the State  
7 only as to matters addressed in the Defendant's closing that  
8 you did not address in your original closing, conservatively,  
9 if each one of you takes 30 minutes, that's 4:00. Then if I  
10 charge you're looking at 4:30 before they even start  
11 deliberations, and I hate for a jury to start deliberating at  
12 4:30 on a Friday afternoon.

13 MR. ALEX HYMAN: Your Honor, we'd be fine coming back  
14 Monday.

15 MR. RICHARDSON: The same for the State, Your Honor.

16 THE COURT: Okay.

17 MR. BOUCHETTE: Fine with me, Judge.

18 MR. HELMS: Your Honor, can I just say, and, and, and I  
19 think we all agree with that. Is there any way we're going to  
20 get -- we are going to get your charges today or is that going  
21 to wait till next week?

22 THE COURT: Well, I mean, I've got some charges already  
23 prepared. I haven't -- I've been tweaking them because I  
24 didn't know how far we were going to go, but yeah, I can go  
25 ahead and give you what I've got. As far as charging in this,

State v. Rosenbaum, Durkin

953

1 I was going to charge the normal, you know, presumption of  
2 innocence, direct and circumstantial evidence, credibility. I  
3 was going to charge aiding and abetting, failure of Ms. Durkin  
4 to testify, hand of one. Then I was going to charge murder  
5 and voluntary manslaughter and self-defense.

6 MR. TRAVIS HYMAN: Your Honor, if I may be heard on, on a  
7 couple of issues on the jury charges. We had a couple of  
8 things that we think would be appropriate to add to that list  
9 if now'd be the time --

10 THE COURT: Well --

11 MR. TRAVIS HYMAN: I'd like to discuss it.

12 THE COURT: All right. Let me, let me hear from you.

13 MR. TRAVIS HYMAN: Your Honor, first matter in regards to  
14 the voluntary charge, we, we would ask that involuntary  
15 manslaughter be charged, and I'm looking at the case State  
16 versus Meckler [spelled phonetically] from 2007 where it was a  
17 situation where it was self-defense and self -- defense of  
18 others, and it was sent back for not charging on involuntary  
19 manslaughter and it said that the trial court should charge  
20 the lesser included only where there's no evidence the  
21 Defendant committed the lesser rather than the greater  
22 offense, and they specifically said in this case stated  
23 another way if there's any evidence from which the jury could  
24 infer the Defendant committed a lesser rather than a greater  
25 offense it should be charged. So in that regard, the elements

1 of involuntary manslaughter, the first element is that it's  
2 the unintentional killing of another person without malice.  
3 Specifically in this case after Dr. Proctor testified that the  
4 head wounds were survivable injuries and that the gunshot  
5 wounds were superficial, to no vital organs, he wasn't shot in  
6 the heart or anything like that, the evidence presented shows  
7 that he didn't beat him to death with the steel bat by hitting  
8 him over and over in the head, but that this was a lacerated  
9 thoracic valve in the heart, which looks a lot more like an  
10 unintentional killing without malice, and as far as the malice  
11 goes, you know, I think under the circumstances evidence has  
12 been presented that we have a guy who was about 53 years old  
13 with bad shoulders, bad knees, PTSD, disabled. So the fact  
14 that there was a bat involved doesn't necessarily go to show  
15 malice especially in light of his testimony that he had a bat  
16 back there because he's got bad shoulders and was using a bat  
17 to hit a ball so his dog could retrieve it. So we would argue  
18 that the use of the bat and under all the circumstances and  
19 the fact that the cause of death was not from any blows to the  
20 head I think if he would have beaten him to death to where his  
21 brains were oozing out of his head and his skull was fractured  
22 it would look like intentional killing, but Dr. Proctor made  
23 it clear that he didn't have a skull fracture. So then as to  
24 the other two ways to get to involuntary, if he was -- if he  
25 unintentionally killed someone without malice but he was

State v. Rosenbaum, Durkin

955

1 engaged in an unlawful activity not naturally tending to cause  
2 death, that would basically be if they find this isn't self-  
3 defense because maybe he wasn't under the imminent belief of  
4 death at the time Roy died, maybe he had used excessive force,  
5 then it would be he was committing an unlawful activity. He  
6 was, he was assaulting him but he hit him in the chest with  
7 the butt of a pellet gun and that's not really the type  
8 activity that I would imagine is so foreseeable to kill  
9 somebody. So I do think that there's been some evidence  
10 presented that this is absolutely involuntary manslaughter.  
11 So that, that's one issue that I wanted to take up, Your  
12 Honor, but also we wanted to talk about a citizen's arrest  
13 charge based on State v. Cooney and the South Carolina statute  
14 on citizen's arrest, but just to go in pecking order --

15 THE COURT: Let me ask --

16 MR. TRAVIS HYMAN: -- in regards to the involuntary  
17 manslaughter first.

18 THE COURT: Well, let me ask, Mr. Bouchette, any argument  
19 regarding an involuntary manslaughter charge?

20 MR. BOUCHETTE: Your Honor, and, and just for, just for  
21 time sake and then for clarity on the record, we're  
22 essentially joining in the same motion, requesting the same  
23 charge and kind of incorporating Travis's argument on behalf  
24 of Ms. Durkin as well.

25 THE COURT: All right. All right. What the State's

1 position on involuntary manslaughter?

2 MR. HELMS: Your Honor, a, a bat, first and foremost, can  
3 certainly be a deadly weapon. As a matter of a fact in this  
4 case it was. Now, we know you can't infer --

5 THE COURT: Well, I don't know if the bat was the deadly  
6 weapon.

7 MR. HELMS: I'm sorry?

8 THE COURT: I don't know if the bat was the deadly  
9 weapon. They could find that, but they could also find that  
10 it was the hit in the chest by the pellet gun.

11 MR. HELMS: Fair enough, Judge. Something that they did  
12 with those weapons caused his death. We know that, but I  
13 would argue, and, and while you can't infer malice from the  
14 use of a weapon, a deadly weapon, I would argue that the use  
15 of multiple weapons you could. Furthermore, we don't know  
16 which injury killed or we don't know when the injury that  
17 killed Roy Davis came, but I don't think Dr. Proctor testified  
18 that the head wounds couldn't have caused his death. I think  
19 he testified to just the opposite, they could, they just  
20 didn't in this case. I think he testified -- he did testify  
21 that this was the -- but he said untreated that man could have  
22 easily bled to death.

23 THE COURT: Yeah, but I mean, he said in this case the  
24 blows to the head did not cause Roy Davis's death.

25 MR. HELMS: I, I understand that, Judge, but my point is



State v. Rosenbaum, Durkin

957

1 they could have, and that goes --

2 THE COURT: Well, they could have, yeah, but I mean, the  
3 -- yeah, but it didn't. There's no evidence that shows it  
4 did. You don't have them charged with attempted murder. You  
5 have them charged with murder.

6 MR. HELMS: And I agree with you, but I, I think that  
7 goes towards intent to try and kill him and they accomplished  
8 that goal.

9 THE COURT: Okay. It might have something to do with  
10 that, but --

11 MR. HELMS: Yes, sir. My point is this wasn't an  
12 accidental killing. They beat him until he didn't move  
13 anymore. He tried to leave and could have left and they kept  
14 beating him.

15 THE COURT: So you're saying there shouldn't even be a  
16 voluntary manslaughter.

17 MR. HELMS: No. No. I'm saying voluntary I'm not  
18 opposed to but to say this was an accidental killing is just  
19 contrary to what we have on the record.

20 MR. TRAVIS HYMAN: Your Honor, may I interject just  
21 briefly on this?

22 THE COURT: Well, I'm going to give you a minute to  
23 reply.

24 MR. TRAVIS HYMAN: Thank you.

25 THE COURT: All right. Anything else?

1           MR. HELMS: No, Your Honor. That's, I mean, that's  
2 pretty much my argument. I, I think the evidence here clearly  
3 shows that this man was beat until he couldn't be beat  
4 anymore.

5           THE COURT: All right.

6           MR. HELMS: And I think that negates an accident.

7           THE COURT: All right. Anything in reply?

8           MR. TRAVIS HYMAN: Yes, sir, thank you. At the start of  
9 the case it was very clear in openings from the State that  
10 this was a case of premeditated murder where he hid 200 yards  
11 from -- behind the house and waited on Roy to get there and  
12 waited on Diane to get him undressed and then he comes in and  
13 beats him to death with a bat. Now we've got several reasons  
14 I went over to justify why the bat was there to make it look a  
15 lot less planned, premeditated or intentional. We've gone  
16 over the fact that he was at Planet Fitness working out which  
17 make the gloves look much less incriminating. So their  
18 premeditated murder case is starting to get nitpicked apart in  
19 those regards.

20           The expert from, from California on the cell phone  
21 records, Alex made it abundantly clear yesterday that he did  
22 not go through all the cell phone records. They said he was  
23 in this green circle 200 yards behind the house, but all day  
24 his phone while he was inside, he's on disability, he sits in  
25 the house most of the day, early in the morning it was very

1 clear that when we know his phone was inside the house he  
2 still was at the same longitude and latitude coordinates that  
3 would put them in that green circle. So that's not malice.  
4 This is him actually coming in the back door. The evidence  
5 has been presented where he pulls up in the, in the front  
6 driveway, hears his wife screaming she's getting raped, "Get  
7 off of me." He comes in the back door because he doesn't know  
8 if the guy's gonna' have a gun, a knife, what he's coming in  
9 on. So it's not malicious, and then it's his home. So maybe  
10 the jury hears the evidence and says he possibly used  
11 excessive force, but since it's his house and he's got a right  
12 to defend others, under the second part of involuntary  
13 manslaughter that would make him with the first blow to the  
14 head with the bat he, he could be arguably engaged in a lawful  
15 activity, and it could have been in reckless disregard of the  
16 safety of others. So I think the evidence would support an  
17 involuntary charge under, under both of the possible ways.

18 THE COURT: All right. I understand. I'm going to --  
19 I'll include it. All right. I'm going to charge murder,  
20 voluntary manslaughter and involuntary manslaughter. All  
21 right. Anything else?

22 MR. TRAVIS HYMAN: Yes, sir, Your Honor. Citizen's  
23 arrest. I'd like to pass up -- I've prepared a charge. I  
24 can't, I can't print it here but I could possibly email it to  
25 you guys, but essentially, citizen's arrest is very

1 appropriate for this case based on the evidence after hearing  
2 the 911 call.

3 THE COURT: Well, what is it you want me to charge? What  
4 is -- tell me the charge.

5 MR. TRAVIS HYMAN: The proposed charge?

6 THE COURT: Right.

7 MR. TRAVIS HYMAN: A citizen may arrest, and let me back  
8 up, this is on State versus Cooney. The citation is 320 S.C.  
9 107. The State statute is 17-13-20, and also 17-13-10. So  
10 all this language comes straight from the statutes and  
11 straight from the U.S. Supreme Court case State v. Cooney from  
12 1995, and, and just briefly, that was a case where two guys  
13 had a plumbing business or something along those lines. Their  
14 copper wire kept getting stolen. So they find it buried in  
15 the woods a quarter mile behind the shop. They set up there  
16 with guns at night thinking, "Well, the thief comes back we'll  
17 be here." The thief comes back. They detain that guy. Then  
18 he tries to flee. They start shooting at him, and the next  
19 morning come back and he's dead. They claimed they were  
20 shooting warning shots. He's got two shots in the hip. It  
21 went to trial and he was convicted of voluntary manslaughter.  
22 South Carolina Supreme Court said it was reversible error not  
23 to charge citizen's arrest, and it's a very, very interesting  
24 case, and I, I admit, I'd never read it until we started  
25 researching it for this case, but this is a very interesting,

State v. Rosenbaum, Durkin

961

1 unusual set of facts, and when we listen to the 911 tape it  
2 makes it clear that he's saying, "Get the cops here, get the  
3 cops here."

4 THE COURT: Well, what is the charge you want?

5 MR. TRAVIS HYMAN: Okay. [As read], "A citizen may  
6 arrest a person in the nighttime by efficient means as the  
7 darkness and the probability of escape render necessary, even  
8 if, even if the life of the person should be taken, when the  
9 citizen has certain information that the person has committed  
10 a felony, has entered a dwelling house without express or  
11 implied permission or fled when held, if there are certain  
12 circumstances which raise a suspicion that the person had the  
13 intent to commit a felony. In this case Defendants allege the  
14 deceased, Roy Davis, committed criminal sexual conduct against  
15 Defendant Diane Durkin. I hereby instruct you that criminal  
16 sexual conduct is a felony. Actual guilt of the suspect is  
17 not required to justify citizen's arrest. The right to make a  
18 citizen's arrest may be based on Defendants having certain  
19 information that a felony has been committed. If after notice  
20 the suspect attempts to flee or forcibly resists arrest the  
21 Defendant may use reasonable means to affect the arrest based  
22 on the darkness and the probability of escape. A citizen's  
23 arrest is a complete defense to murder. Whether the force  
24 used was reasonable depends on the facts of the case and is a  
25 question for you to decide. You must look at the

1 circumstances that appeared to the person making the arrest at  
2 the time the deadly force was used and decide whether an  
3 ordinary and reasonable person acting within the same  
4 knowledge," and then the -- how do you get that to move to the  
5 bottom there, Alex? I'm sorry.

6 THE COURT: Well, I can go ahead and cut you off right  
7 there. I'm going to -- I'll need to read the case. I don't  
8 know. I don't know if -- if the Supreme Court said that it  
9 was reversible error not to charge it and I think the facts  
10 warrant it in this case I'll charge it, but I need to read the  
11 case. I don't know.

12 MR. RICHARDSON: That's all.

13 MR. TRAVIS HYMAN: And I think I have a copy for you I'd  
14 be glad to hand up.

15 MR. ALEX HYMAN: That -- I believe that is from the  
16 judicial -- you all's charge thing. The, the only change has  
17 been the lights part.

18 MR. TRAVIS HYMAN: It, it's -- no, it's, it's slightly,  
19 included one or two sentences --

20 MR. ALEX HYMAN: Yeah.

21 MR. TRAVIS HYMAN: -- straight from State v. Cooney but  
22 here are the statutes and State v. Cooney if I may  
23 approach.

24 THE COURT: All right.

25 MR. RICHARDSON: And Your Honor, it's a real unusual

State v. Rosenbaum, Durkin

963

1 request. We hadn't looked at it. That's the only thing we  
2 would ask is let's just look over it.

3 THE COURT: Yeah. I'm not going to make a decision on  
4 this yet. I'll wait. I'm going to have to read these and see  
5 what it says.

6 MR. TRAVIS HYMAN: And it's, it's just about a two-page  
7 case, Judge. I didn't give you a 34 page one this time.

8 THE COURT: All right. All right. What else?

9 MR. TRAVIS HYMAN: Okay. As far as murder goes, we were  
10 just on the topic of malice. I'd like to discuss that  
11 briefly.

12 THE COURT: All right.

13 MR. TRAVIS HYMAN: I think the court is clear that if  
14 evidence has been presented that there may be a justifiable  
15 killing whether it's self-defense, citizen's arrest, self-  
16 defense of others, that the malice can be inferred from the  
17 use of a deadly weapon charge.

18 THE COURT: Yeah. I'm, I'm not, I'm not putting that in  
19 there.

20 MR. TRAVIS HYMAN: Okay.

21 THE COURT: I think that's -- they've adequately said --

22 MR. TRAVIS HYMAN: And --

23 THE COURT: -- where there's a claim of self-defense, use  
24 of deadly force you can't infer malice from the use of a  
25 deadly weapon.

1 MR. TRAVIS HYMAN: Okay. Your Honor, self-defense, and  
2 self-defense of others, we would also ask that self-defense of  
3 others be charged.

4 THE COURT: Yeah. I'm charging that.

5 MR. TRAVIS HYMAN: And no duty to retreat.

6 THE COURT: I'm charging that.

7 MR. TRAVIS HYMAN: And I think the case of State versus  
8 Bradley, and the language in there -- I think the jury needs  
9 to understand under the elements of self-defense I think the  
10 first element is that he was without fault. In this case the  
11 evidence presented says that he had permission to enter the  
12 house. So he wasn't breaking into the house, but then he  
13 attacked her and he was told to leave and he didn't leave. So  
14 the Bradley case says a man who attempts to force himself in  
15 another's dwelling or who being in the dwelling by invitation  
16 or license refuses to leave when the owner makes that demand  
17 is a trespasser, and I think it's State versus Dickey as well  
18 that just makes it clear that, that the jury be advised that  
19 he's not -- he is without fault in bringing on this situation  
20 if he's in his house and doesn't have a duty to retreat.

21 THE COURT: Well, I mean, he doesn't have a duty to  
22 retreat from his own house, but whether or not he brought on  
23 the situation depends on whether or not you take the State's  
24 theory of the case or the Defense theory of the case. If you  
25 take the State's theory of the case where he laid in wait and



State v. Rosenbaum, Durkin

965

1 then busted in on them with the intention of beating up the  
2 guy and killing him, then he is at fault in bringing on the  
3 conflict.

4 MR. TRAVIS HYMAN: Well, I would just request the one  
5 sentence to include, add to the self-defense charge to  
6 instruct the jury that even though he was an invited guest  
7 that at the time he is asked to leave and refuses to leave I  
8 think it goes --

9 THE COURT: He was never asked to leave. As a matter of  
10 a fact he was kept from leaving. He tried under -- even under  
11 Mr. Rosenbaum's testimony he wasn't letting him leave.

12 MR. TRAVIS HYMAN: Okay. I, I see the point. The  
13 request to leave that I was alluding to was when he was in the  
14 house with Ms. Diane and they were doing drugs and then he  
15 pulls his pants down and comes onto her, and I believe it was  
16 alluded to that by Bridgett Briles that she -- that Diane gave  
17 her two stories, and the first story was, "He was trying to  
18 rape me," she told him to leave and all, and --

19 THE COURT: Well, I'm not going to charge that. I mean,  
20 I'm going to charge that he doesn't have -- you don't have a  
21 duty to retreat from your own residence, but I'm not going to  
22 charge anything that leads a jury to believe that Roy Davis  
23 was a trespasser or an uninvited guest into the, into the  
24 residence because he was there with consent. --

25 MR. TRAVIS HYMAN: Yes, sir.

1 THE COURT: All right.

2 MR. TRAVIS HYMAN: I think an expert -- did you include  
3 expert --

4 THE COURT: Yeah.

5 MR. TRAVIS HYMAN: -- just the general instruction on  
6 expert testimony? Okay.

7 THE COURT: As a matter of a fact, before we go on, let  
8 me go ahead and get the jury in here so we -- so they don't  
9 just sit out. Okay. And then we'll go over this as soon as I  
10 excuse the jury. All right. Let's go ahead and bring them  
11 in.

12 MR. TRAVIS HYMAN: Judge, could I email you that charge  
13 and copy Jimmy on it?

14 THE COURT: That'll be fine.

15 (Whereupon, the following takes place in the presence of  
16 the jury.)

17 THE COURT: All right. Ladies and gentlemen, welcome  
18 back. The State's rested their case. The Defense has rested  
19 their case. The State does not have anything in reply, and so  
20 all of the evidence and testimony to be presented in this case  
21 has now been presented. The only thing remaining is for the  
22 attorneys to make their closing arguments, for me to charge  
23 you on the law to be applied in this case and for you to  
24 conduct your deliberations. Given the time of day, it's 3:00  
25 o'clock, so I'm going to go ahead and we're going to break for

State v. Rosenbaum, Durkin

967

1 today. I'm going to ask that you please be back Monday. I'm  
2 going to give you till 10:00 o'clock. Be back Monday at 10:00  
3 o'clock and we'll resume the trial at that time. Leave your  
4 notepads in the jury box. Please do not discuss the case with  
5 anyone. Please do not conduct any independent investigations.  
6 Don't go looking through the newspaper. Don't go looking  
7 through the Internet. Don't try to find out anything about  
8 the case. I hope everybody has a good weekend and we'll see  
9 you back Monday at 10:00 o'clock. Okay. Thank you very much.

10 (Whereupon, the following takes place outside the  
11 presence of the jury.)

12 THE COURT: All right. Mr. Hyman, anything else?

13 MR. ALEX HYMAN: Have a good weekend?

14 THE COURT: Okay. Anything else, and I'll, you know,  
15 I'll -- I'm not going to have the proposed charges today.  
16 I've got a good many of it -- a good bit of it done but I've  
17 got to add involuntary manslaughter. I've got to check their  
18 request on -- about charging citizen's arrest. Certainly if  
19 you come up with anything else over the weekend let me know  
20 and let's get together say 9:15 Monday morning and we'll go  
21 over it, go over it then. Okay?

22 MR. ALEX HYMAN: Judge, I just emailed those and I, I  
23 sent it to your clerk as well and I also sent it to Mr.  
24 Bouchette, Mr. Gardner.

25 THE COURT: All right.

1 MR. ALEX HYMAN: Chris, I'm sorry. I'll send it to you  
2 right now.

3 THE COURT: All right. Anything before we -- anything?

4 MR. TRAVIS HYMAN: Judge, I think you already mentioned  
5 this. I just want to make sure. The limiting instruction on  
6 Diane's testimony that -- didn't you say you were including a  
7 limiting instruction about the statements to be used only  
8 against --

9 THE COURT: No. Her -- what I'm saying I'm including the  
10 statement that they cannot hold Ms. Durkin's failure to  
11 testify as evidence against her or -- well, I mean, it's, it's  
12 the charge on a failure of a Defendant to testify, exercising  
13 their Fifth Amendment Right. That's what I'm talking about.

14 MR. TRAVIS HYMAN: Well, the last thing that we would ask  
15 to take under consideration is to include a limiting  
16 instruction that in this case we've had two jailhouse  
17 witnesses testify, one specifically you ruled that Bridgett  
18 Briles could testify to things that basically incriminated  
19 more so Diane but we left out any testimony that incriminated  
20 Mr. Rosenbaum, specifically the, the word planned, and I think  
21 that's really important hand of one hand of all is, is going  
22 to be charged that we include a limiting instruction that to,  
23 to explain that the testimony against one Defendant can't be  
24 used against the other if we didn't have an opportunity to  
25 cross examine Ms. --

1           THE COURT: You give me case law that says I have to  
2 charge that and I'll take a look at it.

3           MR. TRAVIS HYMAN: Yes, sir. I've got one. It's, it's  
4 just under the confrontation clause cases that we talked about  
5 since we --

6           THE COURT: But I mean, there's a -- I need -- I want to  
7 see an appellate decision that says that the Court has a duty  
8 to charge that a statement can only be used against one  
9 Defendant when the other one --

10          MR. TRAVIS HYMAN: I think it was that Jackson --

11          THE COURT: And I don't remember anything coming out from  
12 --

13          MR. RICHARDSON: We didn't say anything about a plan,  
14 Your Honor.

15          THE COURT: Yeah.

16          MR. RICHARDSON: That was your ruling.

17          MR. HELMS: Yeah. And we abided by it pretty good and  
18 the witnesses did as well.

19          THE COURT: Yeah.

20          MR. RICHARDSON: I think that solves that confrontation  
21 clause issue.

22          THE COURT: I think so, too. I don't remember any, any  
23 -- I always use the term Bruton issue. I don't know that it  
24 necessarily always apply but I think that we all know what I'm  
25 talking about, but I don't remember a Bruton issue coming up

1 in this case because Mr. Lynndale Lewis' testimony against Mr.  
2 Rosenbaum was only against Mr. Rosenbaum and didn't implicate.

3 MR. TRAVIS HYMAN: And they got a right to cross examine  
4 Mr. Rosenbaum so.

5 THE COURT: But the other and what was her name?

6 MR. RICHARDSON: Britney [sic] Briles.

7 THE COURT: Yeah, Britney Briles --

8 MR. ALEX HYMAN: Bridgett.

9 MR. RICHARDSON: Bridgett Briles.

10 THE COURT: She was available for cross examination.

11 MR. TRAVIS HYMAN: Judge, I think it was that Jackson  
12 case we were talking about Monday.

13 THE COURT: Yeah. I don't, I don't think there was any  
14 violation. I'm not going to charge any of that.

15 MR. TRAVIS HYMAN: All right.

16 THE COURT: All right.

17 MR. TRAVIS HYMAN: That's the last thing I had. Thank  
18 you, Your Honor.

19 THE COURT: All right.

20 MR. RICHARDSON: Thank you, Your Honor.

21 THE COURT: All right. Thank you. Well, you still have  
22 the weekend to think about it. Let me know. We'll get  
23 together Monday morning and we'll go from there.

24 MR. HELMS: Yes, sir.

25 MR. TRAVIS HYMAN: Thanks.

Durkin Plea

972

1           (On the record, December 10, 2018. The following takes  
2 place outside the presence of the jury.)

3           THE COURT: All right. Good morning, ladies and  
4 gentlemen. I understand from our conferences this morning  
5 that the Defendant, Diane Durkin, is entering a plea. Is that  
6 correct?

7           MR. BOUCHETTE: That is correct, Your Honor.

8           THE COURT: All right. And what is she pleading to?

9           MR. RICHARDSON: Your Honor, Ms. Durkin is pleading to  
10 voluntary manslaughter, a negotiated sentencing range of five  
11 to 15. Your Honor, of course, this is categorized as a most  
12 serious offense, which means that it's a non-parolable  
13 offense. She's pleading as indicted, and the only  
14 negotiations is the range between five and 15 years.

15          THE COURT: All right. Violent, most serious, carries up  
16 to not more than 30; correct?

17          MR. RICHARDSON: Yes, sir. Zero to 30.

18          THE COURT: All right. And as I understand from our  
19 conferences she is entering -- is she pleading straight up?

20          MR. RICHARDSON: She's pleading under Alford, but she's  
21 pleading between a five and a 15-year range.

22          THE COURT: All right. And is that agreeable to the  
23 State for her to enter an Alford plea?

24          MR. RICHARDSON: Yes, sir.

25          THE COURT: All right. Are we ready to go forward at

1 this time?

2 MR. RICHARDSON: Yes, sir.

3 THE COURT: All right. If we --

4 MR. BOUCHETTE: Okay. And it, and it is a negotiated  
5 plea, Your Honor, in that range.

6 THE COURT: Right. All right. If you would place the  
7 Defendant under oath.

8 (Whereupon, Diane Durkin is sworn by the clerk.)

9 THE COURT: All right. Mr. Bouchette, or Mr. Gardner,  
10 which one wants to respond?

11 MR. BOUCHETTE: I'll respond, Your Honor.

12 THE COURT: All right. All right. Mr. Bouchette, you  
13 represent Diane Marie Durkin on the charge of voluntary  
14 manslaughter?

15 MR. BOUCHETTE: I do, Your Honor.

16 THE COURT: Have you discussed with your client the  
17 charge against her, her rights as a Defendant and the  
18 consequences of being convicted of this crime?

19 MR. BOUCHETTE: At length, Your Honor.

20 THE COURT: In your opinion does your client understand  
21 the charge against her, her rights as a Defendant, and the  
22 consequences of being convicted of this crime?

23 MR. BOUCHETTE: She does.

24 THE COURT: And does she wish to plead guilty or not  
25 guilty?



Durkin Plea

974

1 MR. BOUCHETTE: She tells me she wishes to plead guilty.

2 THE COURT: And do you agree with that decision?

3 MR. BOUCHETTE: I do.

4 THE COURT: Based upon the information you have if this  
5 case proceeded to trial do you feel that the State could prove  
6 your client's guilt beyond a reasonable doubt?

7 MR. BOUCHETTE: I do.

8 THE COURT: Has your client received a competency  
9 evaluation?

10 MR. BOUCHETTE: No, sir, she has not and I've not seen  
11 any evidence to indicate that one would be necessary.

12 THE COURT: All right. Ma'am, your name is Diane Marie  
13 Durkin?

14 MS. DURKIN: Yes, sir.

15 THE COURT: All right. Ms. Durkin, you have been charged  
16 and indicted by the grand jury with murder. Now, this  
17 indictment covers all lesser included offenses of which  
18 voluntary manslaughter is a lesser included offense, and  
19 according to your attorney you wish to plead guilty under the  
20 Supreme Court case of Alford versus North Carolina to the  
21 lesser charge of voluntary manslaughter; is that correct?

22 MS. DURKIN: Yes sir.

23 THE COURT: All right. Before I can accept your guilty  
24 plea I've got to go over some questions with you to be sure  
25 that you understand the charge against you, that you

1 understand your rights as a Defendant, that you understand the  
2 consequences of pleading guilty, and I must be sure you're  
3 pleading guilty voluntarily. Now, during the past 72 hours  
4 have you taken any medication, consumed any alcohol or drugs  
5 or been under influence that would affect your ability to know  
6 why you're here?

7 MS. DURKIN: No, sir.

8 THE COURT: Do you understand why you're here today?

9 MS. DURKIN: Yes, sir.

10 THE COURT: Is there anything about this hearing that you  
11 want to ask your lawyer or ask me before we proceed?

12 MS. DURKIN: No, sir.

13 THE COURT: All right. First of all, I understand that  
14 you are entering a guilty plea pursuant to the Supreme Court  
15 case of Alford versus North Carolina or what's commonly  
16 referred to as an Alford plea. Now, there are two ways in  
17 which you can plead guilty to a crime. Number one is under an  
18 admission that you committed the crime. Another is an Alford  
19 plea. Under an Alford plea you are still pleading guilty to a  
20 crime but you're doing so not necessarily under an admission  
21 that you committed the crime but because the State has made a  
22 concession to you and you're accepting that concession and  
23 pleading guilty. As I understand in this case rather than  
24 going forward on -- your -- with the trial of your case on the  
25 charge of murder, which carries up to life in prison, you have

Durkin Plea

976

1   accepted the State's offer to let you plead guilty to  
2   voluntary manslaughter with a negotiated sentence of not less  
3   than five years, no more than 15 years in prison. Is that  
4   correct?

5           MS. DURKIN: Yes, sir.

6           THE COURT: All right. Now, you understand that there is  
7   no legal distinction between an Alford plea and an admission  
8   of guilt. You're going to have the same record. You're  
9   subject to the same sentence and there is no legal distinction  
10   between the two pleas. It will go down as a guilty plea  
11   against you. Do you understand that?

12          MS. DURKIN: Yes, sir.

13          THE COURT: And knowing that do you still wish to plead  
14   guilty?

15          MS. DURKIN: Yes, sir.

16          THE COURT: All right. Now, even though you've been  
17   indicted by the Grand Jury under the Constitution of the  
18   United States you're presumed innocent of this crime and you  
19   have the right to have your guilt or innocence determined by a  
20   jury trial of your peers. The State bears the burden of  
21   proving your guilt beyond a reasonable doubt. You do not have  
22   to prove your innocence and you cannot be compelled to testify  
23   against yourself. You also have the right to confront and  
24   cross examine anybody who testifies against you. If you  
25   choose, you can present a defense to this charge, but when you

1   plead guilty you give up all of those rights. Do you  
2   understand that?

3           MS. DURKIN: Yes, sir.

4           THE COURT: And do you want to give up those rights and  
5   plead guilty to this charge?

6           MS. DURKIN: Yes, sir.

7           THE COURT: All right. I understand that you have  
8   reached a negotiated sentence with the State which means that  
9   if I accept the guilty plea and I accept the negotiated  
10   sentence I will sentence you to a term of imprisonment. That  
11   term will be no less than five years, no more than 15 years.  
12   Do you understand that?

13          MS. DURKIN: Yes, sir.

14          THE COURT: Do you understand that I'm not obligated to  
15   accept this negotiated sentence, but if I do not except it you  
16   can withdraw your guilty plea. Please keep in mind that if  
17   you withdrew your guilty plea and if you went forward with the  
18   trial of this case, on a murder charge you could be sentenced  
19   to a mandatory minimum sentence of 30 years in prison up to a  
20   maximum sentence of life in prison without parole. Do you  
21   understand that?

22          MS. DURKIN: Yes, sir.

23          THE COURT: And do you understand that if you are  
24   convicted of voluntary manslaughter then you could be  
25   sentenced up to 30 years in prison? Do you understand that?

Durkin Plea

978

1 MS. DURKIN: Yes, sir.

2 THE COURT: Do you understand that by pleading guilty to  
3 this crime it is classified as a violent crime. Now, what  
4 that means is if you're ever convicted of another violent  
5 crime then that subsequent violent crime conviction you would  
6 not be eligible for parole and you would not be eligible for  
7 probation. Do you understand that?

8 MS. DURKIN: Yes, sir.

9 THE COURT: Do you also understand that this crime is  
10 classified as a most serious crime? What that means is if  
11 you're ever convicted of another crime classified as a most  
12 serious crime then that subsequent most serious crime  
13 conviction the sentence can be enhanced to life in prison  
14 without the possibility of parole and the State'll use this  
15 guilty plea against you to show a most serious crime  
16 conviction on your record to enhance that sentence. Do you  
17 understand that?

18 MS. DURKIN: Yes, sir.

19 THE COURT: Knowing all of that, do you wish to plead  
20 guilty or not guilty to voluntary manslaughter?

21 MS. DURKIN: Guilty.

22 THE COURT: Has anybody promised you anything other than  
23 this negotiated sentence to get you to plead guilty?

24 MS. DURKIN: No, sir.

25 THE COURT: Has anybody threatened you to plead guilty?

1 MS. DURKIN: No, sir.

2 THE COURT: Are you pleading guilty voluntarily?

3 MS. DURKIN: Yes, sir.

4 THE COURT: Are you satisfied with your lawyers?

5 MS. DURKIN: Yes, sir.

6 THE COURT: Are you pleading guilty to this crime because  
7 you would rather plead guilty to this crime than go forward on  
8 the murder charge?

9 MS. DURKIN: Yes, sir.

10 THE COURT: All right. I need you to listen carefully  
11 while the Solicitor, even though we've been through the trial,  
12 let's go ahead and give a brief recitation of what the facts  
13 are in this case.

14 MR. RICHARDSON: Yes, sir, Your Honor. Ms. Durkin is  
15 charged that on July 11<sup>th</sup>, 2016, while working in conjunction  
16 with Mr. James Rosenbaum they lured Roy Davis over to the  
17 house that they shared together on the pretense that they  
18 would make this look like a home invasion, rape type case.  
19 While in there the two of them used a baseball bat to beat Mr.  
20 Roy Davis to death. Your Honor, it's the State's  
21 understanding and it's always been our argument that even  
22 though Ms. Durkin apparently has said that she believes that  
23 she could have created the kill shot it's inconsistent with  
24 the evidence that was put forth by Dr. Proctor and that none  
25 of the strikes to the head caused Roy Davis to die, but we do

Durkin Plea

980

1 believe that she worked in conjunction with James Rosenbaum to  
2 kill Roy Davis with malice aforethought and, Your Honor, this  
3 is a lesser included of that murder charge.

4 Your Honor, at the proper time Ms. Betty Davis and some  
5 people from the Roy Davis' family would like to address Your  
6 Honor.

7 THE COURT: All right.

8 MR. RICHARDSON: One other thing, Your Honor, she has no  
9 prior record.

10 THE COURT: All right. All right. Ms. Durkin, you  
11 understand what the allegations are against you?

12 MS. DURKIN: Yes, sir.

13 THE COURT: All right. And are those the allegations  
14 that you're pleading guilty to?

15 MS. DURKIN: Yes, sir.

16 THE COURT: All right. Mr. Bouchette, anything in  
17 mitigation?

18 MR. BOUCHETTE: Thank you, Your Honor, if it please the  
19 Court. I apologize if I'm still getting prepared here. We  
20 were prepared to argue closing arguments whenever we came into  
21 court today. Obviously, the Court has heard not only the  
22 testimony this week but the testimony at the stand your ground  
23 hearing, and it's safe to say that that night when Mr. Davis  
24 unfortunately did lose his life there was a lot going on and  
25 we're looking here at a voluntary manslaughter plea, and so,

1 we're looking at what type of heat of passion was there, what  
2 type of sufficient legal provocation was there. I think  
3 whatever the Court or whatever we may think happened it's  
4 clear that there was a physical altercation of some kind  
5 between Mr. Davis and Ms. Durkin. That's evidenced by the  
6 photographs that were in evidence. That obviously caused this  
7 particular reaction in her. I'll point out, Your Honor, it  
8 didn't come up during trial because she didn't take the stand,  
9 but I think it may have come up in either the Jackson v. Denno  
10 or the stand your ground hearing that, you know, Ms. Durkin  
11 and I've got some medical records here, but I don't want to  
12 dump them on top of the Court, that back in 2015 she went  
13 inpatient out at the Lighthouse, nothing that would impair  
14 her, her ability to assist or to be competent to accept this  
15 plea, but it does go to the history that she had had with  
16 assault, with sexual assault in particular. It happened when  
17 she was a young girl, but this is something that, that doesn't  
18 just leave you. It's, it's with you your whole adult life.  
19 Even when she's in her late forties she's still getting  
20 treatment for that, and in the context of somebody that's,  
21 that's been through that type of assault, I think you also  
22 heard testimony that there was some history of assault with  
23 Mr. Rosenbaum, and I think that was sort of what bonded them  
24 together, among other things, but when you take into context  
25 somebody that has been a victim, particularly when they're



1 young and when they're at their most vulnerable, to at least  
2 as she was perceiving in her mind at that time to be re-  
3 victimized, to be vulnerable, to be put in danger in the same  
4 situation that she had feared would happen again since she was  
5 a young child, that's what caused that, that fear and that  
6 anger that you heard on the 911 tape, and when we look at it  
7 all in context that it's, it's, I would argue, understandable,  
8 perhaps not legally acceptable, but certainly we would  
9 understand and get a better view of all the facts much better  
10 by doing that.

11 Your Honor, she has no criminal record whatsoever. She's  
12 gone through her entire youth and adult life never being in  
13 trouble. The negotiated sentence is between five to 15. What  
14 are we seeking to, to punish? What are we -- what message are  
15 we seeking to send? And we've got somebody here that's,  
16 that's never caused a problem before. We've got somebody who  
17 was reacting as a victim, and unfortunately, somebody did lose  
18 their life that day, but Your Honor, I would submit to the  
19 Court that a sentence of no more than 10 years would be  
20 necessary to ensure justice in this case and I'd ask that the  
21 Court consider sentencing no more than 10.

22 THE COURT: All right. Ms. Durkin, anything you want to  
23 say?

24 MS. DURKIN: At this time I would like to address my  
25 words to the Davis family. I did not intend for him to die.

1 I'm sorry this happened. I have never harmed anyone but and I  
2 wish I could take it back. I really do.

3 THE COURT: All right. Thank you. You said the victims  
4 wished to speak?

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

6 THE COURT: All right. Please come forward to the  
7 microphone. And your name?

8 MS. DAVIS: Betty Davis.

9 THE COURT: All right. Ms. Davis, what would you like to  
10 say?

11 MS. DAVIS: I would like to say I'm speaking on the  
12 behalf of my siblings and the rest of the family and friends.  
13 For the last two years it has been a struggle. The pain  
14 doesn't go away. It takes a mad person to put another person  
15 through that agony, vicious, gruesome death and that it was  
16 our brother Roy went through. That is a coldhearted person.  
17 There were no sympathy for our brother, Roy. My God, can you  
18 imagine he looking in, in the eyes of one person doing that to  
19 him? I can't. He plead. He beg. He cry. He holler and he  
20 yell for his life, but yet, still, he was continuous beat to  
21 death. This is no excuse for this act of hate. I don't see  
22 it no other way to treat another human being like that. Roy  
23 was someone's brother, uncle, cousin and friends and so on.  
24 Roy was trustworthy. He wasn't a stranger to no one. He was  
25 caring, loving. He was a fun person to be around. Roy was

Durkin Plea

984

1 cool Roy and that was, that was taken away from us, not by  
2 accident but by deliberately. No one had the right to decide  
3 when it was time for -- to end our brother life. You not God.  
4 No one should walk in society again. If you able to do the  
5 crime, you should be able to do the time. It should be a law  
6 no trial for people does a vicious act like this one, never  
7 walk again free. I'm not trying to bore the Court, but in my  
8 conclusion we are the family of Roy Davis seeking justice  
9 today. We are asking for our consideration to find it in your  
10 hearts to take this person out of society because they are a  
11 danger to it. No one should have the right to walk in society  
12 again for this. No one should have to go through that, not  
13 even a dog. Yes, the family still frets over Roy. We will  
14 never get over it, but the ones responsible for our brother  
15 vicious gruesome murder should be punished. Our brother was a  
16 helpless human being, not a dog. This is a coldhearted person  
17 to do anyone like that. So we are asking for justice. If it  
18 was anyone else you would seek justice also for your loved  
19 ones. Life for a life, no, that is not what we want, but  
20 locked up for the rest of their remaining life, rather it was  
21 a hate hit to the head or chest, Roy was continuous beat and  
22 beat until his death. That was a coldhearted, gruesome  
23 murder. Thank you.

24 THE COURT: Thank you. All right. Anything else from  
25 the State?

1           MR. RICHARDSON: Your Honor, I, I can't add anything to  
2 what Miss Betty has said. Obviously, it's the State's  
3 contention that it was murder, but Your Honor has heard the  
4 testimony and we leave it in your very capable hands.

5           THE COURT: All right, Ms. Durkin, I will accept your  
6 guilty plea. I find that it's made knowingly, voluntarily,  
7 fully advised of your rights as a Defendant and the nature of  
8 the charge against you and the consequences of your guilty  
9 plea. I also find that there is a factual basis to support  
10 the charge against you. Likewise, I'll accept the negotiated  
11 sentence reached between you and the State. Therefore, the  
12 sentence of the Court is that you be confined to the State  
13 Department of Corrections for 15 years. You'll be given  
14 credit for time served thus far.

15           MR. RICHARDSON: Thank you, Your Honor.

16           THE COURT: All right. Thank you.

17           All right. We ready to go forward?

18           MR. ALEX HYMAN: Your Honor, I just need to plug this in  
19 over there. So if we could take five minutes before?

20           THE COURT: All right. We can do that. Let me, since we  
21 have had this change of events, I've changed the proposed  
22 charges where I've deleted aiding and abetting. I've deleted  
23 the hand of one is the hand of all and what I've done is I  
24 have added this charge under the section multiple Defendants.  
25 I've stated the trial of this case started with multiple

State v. Rosenbaum, Durkin

986

1 Defendants. However, the case against the Defendant, Diane  
2 Marie Durkin, has been resolved. The case against the  
3 Defendant, James Richard Rosenbaum, and the evidence and the  
4 law concerning him should be considered separately and  
5 individually from the evidence and law concerning the  
6 Defendant, Diane Marie Durkin. Any thoughts you may have  
7 concerning the case against the Defendant, Diane Marie Durkin,  
8 should not control your verdict as to the Defendant, James  
9 Richard Rosenbaum, and that's -- I've just kind of tried to  
10 formulate the charge from multiple Defendants as it would be  
11 if she was still here because they have heard all the evidence  
12 and everything regarding two Defendants. So I've kind of done  
13 that. Any position from the State on that charge?

14 MR. HELMS: No, sir.

15 THE COURT: Any from the Defense?

16 MR. ALEX HYMAN: No, Your Honor.

17 THE COURT: Okay. All right. We'll let it go that way.

18 All right. Take about five minutes and then we'll come in.

19 As I understand it will be close in full, close in full, reply  
20 as to their closing arguments.

21 MR. HELMS: That's my understanding as well, Judge.

22 THE COURT: All right.

23 MR. HELMS: I did have one other thing I'd like to  
24 address with the Court.

25 THE COURT: All right.

1           MR. HELMS: Thank you, Your Honor. Is that all right  
2 there, Judge?

3           THE COURT: Yes.

4           MR. HELMS: It was a long week, you all, and to be  
5 honest with you we're at the point where I think we put more  
6 stock into this part of the trial as lawyers than you all do  
7 as jurors. I'm just guessing, but that's always been my  
8 belief.

9           With that said, I still have a job to do. So I thought  
10 awful hard about what I was going to say to you at the close  
11 of this trial, and then I thought to myself, well, what can I  
12 say to you that you ain't already heard and you ain't already  
13 seen, and the truth is not a whole lot because my job is to  
14 give you what I have, to let you see what I've seen and to  
15 show you what I've seen and let you hear what I've heard. So  
16 there ain't a whole lot about this trial that I could say to  
17 you that you don't already know. So I'm going to say this,  
18 I'm sorry. That is not an empty apology. That is the truth.  
19 I am sorry. I'm sorry to you and I'm sorry to the Davis  
20 family. I'm sorry for asking you to listen to what you  
21 listened to, and I'm sorry I had to show you what I had to  
22 show you, but again, I had no choice, and the truth is as  
23 sorry as I am, and I am, if I had to do it over again I'd have  
24 to do it the same way because my job is to give you what I  
25 have, good, bad or ugly, it's to give you the evidence that I

## Closing Argument by Mr. Helms

991

1 have in my possession and let you make a decision because I  
2 made my decision, but that doesn't matter. Your decision  
3 matters, and for you to make an informed decision you had to  
4 see all that stuff. You had to hear all that stuff, and now  
5 you have, as horrific and, and just awful as it was, and  
6 there's no other way to describe it, you've seen it and you've  
7 heard it.

8 Now, in the beginning of this trial Mr. Richardson told  
9 you this ain't a whodunit. We don't get a lot of those but  
10 this is one of those. This ain't a I got to figure out if  
11 they killed Roy Davis. That ain't what this is. Even Mr.  
12 Rosenbaum took the stand and said that. Mr. Richardson asked  
13 him when he was on the stand last week, "If Roy Davis is dead,  
14 is it because of what you and Diane did to Roy Davis?" And he  
15 agreed yes. This is why-done-it. We know he killed, that  
16 they killed him. We just need to determine why.  
17 We've shown you why. We showed you that he killed him out of  
18 jealousy and anger, and she helped because of greed. He  
19 wasn't going to let her get away with sleeping with a black  
20 man, and she wasn't giving up her meal ticket. So they  
21 hatched a plan and they executed it on July 11<sup>th</sup>, 2016. This  
22 ain't a whodunit. We know that. We know they're responsible  
23 for Roy Davis not being here, but obviously the Defense does  
24 not agree with that. If they did we wouldn't be here. You  
25 wouldn't be here. They don't, they don't challenge the fact

1 that Roy Davis is dead. They don't even challenge the fact  
2 that he's dead because of the injuries they inflicted upon  
3 him, but they don't believe that jealousy and greed thing. I  
4 wish I could give you a more original reason for Roy Davis  
5 being murdered, but there's not. I would be making it up.  
6 That is the reason, anger and jealousy as it concerns Mr.  
7 Rosenbaum, but again, they don't agree with that.

8       So what do they say? What's their version of events?  
9 Let's explore that. They say that Roy Davis had to be  
10 pummeled with these MMA gloves. They say that Roy Davis had  
11 to be shot with that high-powered pellet gun, and they say  
12 that Roy Davis on July 11<sup>th</sup>, 2016, had to be bludgeoned to  
13 death with that right there, that 30-inch steel bat because he  
14 was trying to rape a woman that he already knew and had been  
15 having relations with. Just that particular day he decided to  
16 turn into a rapist. So that 120 pound, 56-year-old man was  
17 trying to force her to give him oral sex. How logical is that  
18 to you all? How logical is that? Let's think about it.  
19 Let's think about the circumstances surrounding the alleged  
20 rape. We know Roy Davis didn't have his shirt on, okay. We  
21 know that or they say, you know, let's take it at face value  
22 that he had his pants down. We know he had his shoes on  
23 unless they dressed him after they killed him, and there's no  
24 evidence of that. So Roy Davis is at this woman's house who  
25 we know that he knows and she knows him from the testimony,



1 and undresses himself to rape her. How logical is that?  
2 Think about all the movies you've seen with a rape scene in  
3 it. How many of the perpetrators, the assailants get  
4 undressed before they attack the victim? "Hang on a minute,  
5 lady, I'm going to get undressed and rape you. Just wait  
6 right there," and then he hobbles himself by pulling his pants  
7 down around his ankles with his shoes still on. "Don't go  
8 nowhere. I'm going to rape you. Hang on." How logical is  
9 that? It's not. That's absurd. We know his shirt is found  
10 folded up. I'm not going to search through these crime scene  
11 photos and show you. They're going into evidence and you can  
12 look through them yourself. We know that Investigator Jill  
13 Domogauer took a photograph of it, and you can see it. It is  
14 his shirt folded up beside the knocked over coffee table. How  
15 many rapists fold their clothes? They don't. That's absurd  
16 or you can believe that Diane Durkin folded his shirt. How  
17 many potential rape victims fold their assailant's shirt?  
18 They don't. It's absurd.

19 So what makes sense? Roy went over there because she  
20 took him over there and she took him over there to do what  
21 they always do, have sex and do drugs. Roy Davis was a lot of  
22 things. Randy Hucks called him a ladies' man. He might have  
23 been an occasional drug user, but one thing he was not, ladies  
24 and gentlemen, was a rapist. That little old man at 56 years  
25 old did not decide to suddenly become a rapist because you

1    can't rape the willing. She was willing. How do we know  
2    that?

3        Think about the witnesses that took the witness stand.  
4    Bridgett Briles told you that she told her that when she went  
5    to jail. She told you all that. She said that Diane admitted  
6    to having a relationship with Roy and they would have sex for  
7    drugs. Does that make sense? Absolutely, it does. Bridgett  
8    Briles told you this, whether it's true or not because she's  
9    not a doctor and she has no idea whether she gave the kill  
10   shot or not, but that's what she told Bridgett Briles in jail,  
11   that she gave the kill shot. So we know right there they both  
12   participated in attacking Roy Davis right before he expired.  
13   She told you things that she could not possibly know without  
14   being there when it happened, and we know she wasn't, without  
15   reading the discovery, the detailed supplements and case  
16   reports and documents, which they didn't have yet, or the  
17   third reason, talking to somebody who was there and  
18   participated in the crime. That's the only one that's  
19   available to us. We know she talked to Diane Durkin in that  
20   jail cell.

21        Now, the Defense would say, "Yeah, but you can't believe  
22   her. You can't believe anything that woman said." Why?  
23   Because she was in jail for, for I think she said weed,  
24   possession of marijuana. Do you see the irony in that  
25   argument? You can't believe Bridgett Briles because she was

## Closing Argument by Mr. Helms

995

1 in jail for weed but you could believe Diane Durkin because  
2 she was in jail for murder. How logical is that? That woman  
3 came knowing that she was going to be ridiculed, her past was  
4 going to be brought out, she was going to be called a liar and  
5 she still came to this courtroom for no reason except to tell  
6 you all the truth, and that's what she did.

7 When she was asked if my office helped her in any way,  
8 shape or form, she said no, and she didn't ask for any help,  
9 and we didn't give her any help. I think she said she might  
10 have something pending in North Carolina. You know who ain't  
11 a North Carolina prosecutor, this guy right here, and neither  
12 is that man right there. I can't help her in North Carolina.  
13 So again, why did that woman come here and talk to you?  
14 Because it was true. It could only be true, but you don't  
15 believe Diane [sic]. "I don't know, Mr. Helms, she was in  
16 jail, she did have a criminal record, I don't necessarily  
17 believe her," then you got to believe Randy Hucks who said the  
18 same darn thing basically with the exception of what happened  
19 when Roy was killed, said they had an ongoing relationship,  
20 said she knew Roy because she came to pick him up not once or  
21 twice but multiple times. She'd pick him up and take him  
22 because Roy didn't have a car. If Roy was going somewhere  
23 somebody was coming to get him, oh, or he, he would drive Mr.  
24 Huck's tractor.

25 Now, why is that important? Mr. Hucks said that Roy

1 worked for him for a number of years. I forget exactly how  
2 many, and he said he was allowed to drive that tractor out in  
3 the country. That's still kind of funny for me, to stores and  
4 whatnot, but at the end of the day he would never fail to put  
5 that tractor back where it belonged. Out of all the times Roy  
6 took that tractor there was one time he didn't put it back  
7 where it belonged at the end of the day, one time, and that  
8 was July 11<sup>th</sup>. Now, why is that important? Because, ladies  
9 and gentlemen, Roy thought he was coming home. He thought he  
10 was going to get in that woman's car, go do what it is they do  
11 and come back home. That's why he didn't have his phone.  
12 That's why he didn't have his wallet, identification or a car  
13 for that matter or he would have put that tractor back like he  
14 did so many years, so many times previously, but Roy thought  
15 he was coming back.

16 So we got Bridgett and Randy corroborate each other.  
17 Neither one of them have anything to gain. Neither one of  
18 them have anything to gain to come here and lie to you.  
19 That's something you think about when you're a juror, I hope,  
20 is credibility of the witnesses. "Why would they lie to me?"  
21 There is no why because they weren't.

22 So we know she came and picked him up because that's what  
23 Randy told us. He said she came there and waited on him to  
24 leave the field and followed him to his trailer on that  
25 tractor and then they left. That is undisputed. It's in

1 evidence and nobody got up on the stand and said otherwise.

2       The next thing we see is Diane at the Money Saver, the  
3 little store out there in the country. We see her go in that  
4 store on video. This is the video in evidence. You can watch  
5 it again if you all want to. We see her go in that store and  
6 go over to that ATM and pull out \$20. The whole time she's on  
7 the telephone. Now, why is this important? Think about why  
8 she's on the telephone, and why she's on the telephone in the  
9 Money Saver for two minutes and 36 seconds. Why ain't she --  
10 it's a cellular phone, and it's not a payphone. Why ain't she  
11 on the phone in the car outside? Why does she finish having  
12 that two minute and 36 second conversation standing in the  
13 Money Saver? Because Roy's in the car and Roy can't know  
14 she's on the phone and who she's on the phone with, him,  
15 because if Roy figures out who she's on the phone with and  
16 what they're saying to each other, whatever it was, he's going  
17 to bolt because Roy don't know he's walking into a trap, but  
18 she has to finish that conversation before she leaves that  
19 store, and that's what she does.

20       She pulls that \$20 out, finishes that conversation, gets  
21 in the car and they drive away in that white car. Now, I  
22 know, what was his name, Mr. Singh, took the stand and I said,  
23 "Do you see the woman" -- well, first of all I said, "The  
24 woman in that store did she come to your store a lot?" "Yes.  
25 She did." He, he was a little more colorful than that but

1   that's basically what he said. "Had you seen her before?"  
2   "Yes. I have." "Do you see her in the courtroom?" He said  
3   no and he looked around. Now, I don't know if he couldn't see  
4   her over there or if he didn't recognize her because she does  
5   look different today than she did way back then, clearly, or  
6   if he didn't believe that was her or more than likely he  
7   didn't understand what I was asking him, but I'll let you  
8   watch the video. That's why it's in evidence, and you can  
9   watch that video and see if the person in that video is  
10   wearing those pants right there and if it's that person right  
11   there, and if it was the person sitting at that table all week  
12   last week.

13         She gets in the car and they go. Where do they go? We  
14   know where they go. They go to [REDACTED] Highway 548 where they'd  
15   probably gone many times before. It's just her and him in  
16   that, in that house, and how it develops up to the point where  
17   Mr. Rosenbaum barges in with a baseball bat we don't exactly  
18   know, but again, how logical is it that Roy Davis was trying  
19   to rape this woman who came and picked him up and took her to  
20   his house -- to her house. You all, they didn't go there to  
21   play Monopoly. They went there to do what they always do,  
22   what she told Bridgett Briles they do.

23         The next event, for lack of a better term, involves that  
24   man right there, and that right there, and you hear it on the  
25   911 tape. You heard the whole thing pretty much. Now, they

## Closing Argument by Mr. Helms

999

1 admitted there's a little that goes on beforehand, he cracks  
2 him in the head with that bat before they call 911. I'm going  
3 to tell you what that 911 tape was, it was a script. It was a  
4 script that they had written. It was a poorly written script  
5 and poorly executed but a script nonetheless. Think about  
6 that 911 tape for a minute, but I'll get back to that.

7 As it concerns those phone calls right before they get to  
8 the house, you all we've shown you they're back and forth the  
9 whole time leading up to it. Now, granted, if they do talk  
10 they don't talk long, 12, three, 25. They don't talk long. I  
11 will concede that to Mr. Hyman. They do not talk long.  
12 What's that tell you? They're talking. They're communicating  
13 with each other. Some do go to voicemail, clearly they do,  
14 but when they do talk it's short and it's with a purpose, it's  
15 with a purpose. Somebody knows what they're going to say.  
16 They didn't call to find out, "Hey, honey, how's your day?"  
17 That's a 12 second phone call. Ain't a whole lot could be  
18 said in 12 seconds, but what you can say is, "We're on the  
19 way, we're here, we're ready, Roy's here," this with a  
20 purpose. That's why the length or lack thereof is so  
21 important to those conversations, those phone calls.

22 The AT&T guy got up and told you all that, but again, she  
23 takes him to her home, you all, Roy is no more a rapist than  
24 he was an intruder or a burglar that day, and we know he  
25 wasn't either of those things because she let him in. She

1 took him there.

2 Mr. Rosenbaum is waiting for the right time. How do we  
3 know he's waiting? Lynndale Lewis took the stand and told you  
4 it was a plan, told you he found out when he was either at the  
5 VA or left the VA, "something", quote, "something about Roy  
6 that made him jealous." What do you think that thing was? It  
7 wasn't that Roy had a nice car because Roy didn't have a car.  
8 It wasn't that Roy had a big old house because Roy lived in a  
9 camper. What do you think that thing was that made him so  
10 jealous? "But Mr. Helms, you can't believe Lynndale because  
11 he was in jail." Let me let you in on a little secret, when  
12 you go to jail like James did for murder, when he was arrested  
13 for murder, you don't go to jail with priests, nuns and  
14 rabbis, folks. You go to jail and you converse with people  
15 that are accused of committing crimes. Lynndale Lewis is a  
16 thief. I will concede that point to you. He is a thief as  
17 the day is long, but in my experience even criminals, most of  
18 them, draw a line somewhere. People draw lines somewhere,  
19 things they won't do, lines they won't cross. I will not lie.  
20 I'm a lawyer. I know that sounds counterintuitive, but  
21 believe it or not, if you're caught lying as a lawyer you  
22 ain't gonna' be a lawyer for long. You'll lose your bar  
23 license. That's where we draw the line. Lawyers, we will not  
24 lie.

25 Some people will lie but will not steal. Clearly,



Closing Argument by Mr. Helms

1001

1 Lynndale Lewis is not that person. Some people are willing to  
2 steal from people but they will not hurt a person. That's a  
3 whole 'nother line that people won't cross. That's where  
4 Lynndale is. Some people are willing to hurt people and even  
5 kill, but Lynndale wasn't having no part of that. "Well, Mr.  
6 Helms, he had criminal charges." What'd he tell you? Did my  
7 office help him? Did Mr. Richardson help him? No. And he  
8 didn't ask for help, and even if he would have got help back  
9 then what reason did that man come -- have to come to this  
10 stand last week and tell you what he told you? Because there  
11 ain't a thing right now pending with my office. Just like  
12 Bridgett Briles, no reason. That man had nothing to gain by  
13 coming, taking that stand and being called a liar, a thief,  
14 and a scumbag by his father-in-law and Defense counsel. He  
15 had no reason except one, to tell you the truth. He wasn't  
16 having that on his conscience. He'll steal the rug out from  
17 under you, I will admit that, but Lynndale ain't going to help  
18 kill you and he ain't going to hide it if he knows somebody  
19 that did. Again, you don't go to jail and tell your story to  
20 nuns, priests and rabbis. They are other criminals, quite  
21 frankly, but he had no reason to lie.

22 How else do we know what Lynndale told us was credible?  
23 Folks, he told you stuff just like Bridgett told you that he  
24 could not have possibly known unless he was there when Roy was  
25 killed. We know that ain't the case. There's no testimony of

1 that, didn't even know these guys, unless he read the  
2 discovery or unless he talked to somebody in detail about what  
3 happened to Roy Davis that night. Again, we know he wasn't  
4 there. How do we know he didn't have discovery? I put Lacey  
5 Miller on the stand from my office. Now, if you don't believe  
6 Lacey you ain't never believed a person in your life, but you  
7 don't even have to believe what Lacey told you. She says she  
8 didn't send that discovery from my office to the Defense until  
9 two months after they reported this stuff to the police, to  
10 law enforcement, September of 2016. She showed you the  
11 documents and we entered them into evidence. They're up here  
12 somewhere and you can look at those. The case report with the  
13 details of this crime were not available to Lynndale Lewis  
14 unless they were told to him by Rosenbaum.

15 What did he tell you? He told you that Jimmy Rosenbaum  
16 told him he used gloves, a high-powered pellet gun and a bat  
17 to kill Roy Davis. To counter that Ms. Durkin's attorneys  
18 entered her arrest warrant, which is the same as Richard's,  
19 into evidence and what does it say and, and this is important  
20 because this is the only document he would have had. We'll  
21 admit that. He would have had this. She would have had this.  
22 So this is a potential that somebody could have read and found  
23 out something. What does it say? [As read], "On July 12<sup>th</sup>,  
24 2016, in the Conway Section of Horry County the Defendant, Mr.  
25 James Richard Rosenbaum, along with a Codefendant did with

## Closing Argument by Mr. Helms

1003

1 malice and aforethought assault the victim, Roy Davis, by  
2 striking him with a bat several times about his head and body.  
3 The assault caused significant injuries to the victim and  
4 resulted in death. These facts were confirmed by the  
5 Defendant's statements as well as physical evidence. With  
6 these actions he violated the offense of murder." What did I  
7 just read to you that had anything to do with MMA gloves or a  
8 high-powered pellet rifle? Nothing. It ain't in here. He  
9 couldn't have known about it unless he told him about it.  
10 That's how you know Lynndale Lewis is telling the truth, you  
11 all, because he knew stuff that he wouldn't have known  
12 otherwise. I think I've made my point. Unless the man was  
13 psychic, he told him about that, and that was true, and what  
14 else was true? That he planned to kill Roy Davis. So he  
15 waits until the right time.

16 Aaron Edens took the stand. Aaron Edens testified he was  
17 laying in wait somewhere outside the house, near the house,  
18 and then Mr. Alex Hyman cross examined him on some other  
19 stuff. Look, here's the truth, and, and, and brought out that  
20 he was -- he could've been here at one time or here. Here's  
21 the truth, who cares, who cares where the man waited. I don't  
22 care if he was waiting outside the house. I don't care if he  
23 was in Pawleys Island. I don't care if he was in a darn broom  
24 closet inside that trailer. He waited. Who cares. "So why  
25 did you tell us that, Mr. Helms? Why did you present Aaron

1 Edens?" Remember what I told you my job is? It's to give it  
2 to you, everything, good, bad and ugly, not that that was bad  
3 or ugly, maybe you don't believe that he was standing outside  
4 the house. It doesn't matter. I gave it to you because I had  
5 it. Aaron Edens told me he could tell me where Richard  
6 Rosenbaum was at a given time. I presented that to you.  
7 Maybe it's an exact science, maybe it's faulty, maybe it's not  
8 a hundred percent. I don't care. I gave it to you because I  
9 had it. That's my job.

10 Roy Davis is no less dead than if Richard Rosenbaum  
11 waited in the woods outside that house or if he was at a bar  
12 down the road, comes in and attacks Roy Davis. That is --  
13 that part is undisputed resulting in his death.

14 I want to talk to you -- there's something about lies. I  
15 want to talk to you about lies right now. What else do we  
16 know about Mr. Rosenbaum? He is a liar and he admitted to  
17 being a liar. He took that stand and it came out that when he  
18 talked to law enforcement he lied about those gloves. He  
19 said, "No, I didn't put those gloves on before going in  
20 there." Then he changed his story and said, yes, he did.  
21 Think about this. Why lie about something so small and  
22 insignificant? You got a dead man over here that was  
23 bludgeoned to death, broken, bloody and bludgeoned to death.  
24 Why lie about that insignificant thing? I'm going to tell you  
25 why he lied. He lied about that because he knew that that

Closing Argument by Mr. Helms

1005

1 shows intent. When he put those gloves on before going into  
2 that house he had an intention to do what he did to Roy Davis  
3 and he knew that illustrated that and he couldn't let law  
4 enforcement know that, but then it came out that was not the  
5 case, that he did put them on. He was not telling the truth.  
6 So we know he'll lie to you. We know that because he admitted  
7 it. "Oh, but he, but he fixed it." He got caught. Of course  
8 he fixed it. He had to. So we know he's a liar.

9 Dr. Proctor took the stand, Dr. Edward Proctor, forensic  
10 pathologist. Not that this was any bombshell, but guess what  
11 killed Roy Davis? Blunt force trauma, blunt force trauma  
12 killed Roy Davis. This is important. They made a big deal  
13 about this. Well, turns out his head wasn't bashed in after  
14 all. Congratulations. You didn't bash his head in like we  
15 thought. Instead you hit him so hard his heart exploded, tore  
16 his aorta. He bled out, 2000 milliliters into his chest. So  
17 I don't care, once again, if it was the blow to the head, his  
18 cranium that killed him or what Dr. Proctor said, which is  
19 true, of course, that they tore his heart open. You killed  
20 him. So they'll try to muddy those waters. "Well, his head  
21 wasn't bashed in." Who cares at this point. We know you  
22 killed him.

23 Ms. Sutton, Ms. Paulette Sutton, she took the stand.  
24 Here's why her testimony is important. She testified to a lot  
25 of stuff, and actually I learned a lot of stuff. I didn't

1 know all that stuff, but the thing that I learned that really  
2 shocked me whenever I talked to Ms. Sutton was that whoever's  
3 blood that was that one spot, the pooling, and I don't  
4 remember which one it was there was so much blood everywhere  
5 all over that house, but there was one spot where somebody was  
6 bloodletting and she said it is impossible that they were not  
7 on the ground, that they were at the most -- they couldn't  
8 even be sitting up, you all, is what she said. That's  
9 testimony. They had to be no more than inches above the  
10 ground. Well, I'll promise you, Roy Davis wasn't doing no  
11 push-ups. So what do you think he was doing? He was getting  
12 beat while he was laying down. That's what he was doing.

13 Roy Davis' final resting place before he was buried, of  
14 course, was on a mattress in the living room of a mobile home  
15 in the country in Conway, was on a mattress. Those pictures  
16 are in evidence, and I'm not going to show those to you again  
17 right now. You can look at those at your discretion if you  
18 want to. You'll see that mattress and how bloody it is.  
19 You'll see there's a pooling under his buttocks where there  
20 was no injury. Ms. Sutton said he had to be moved to that  
21 mattress.

22 What else do we know about that mattress? Paul Ridgely  
23 took the stand and he told you about that mattress or what he  
24 didn't know about that mattress. He, he knows it wasn't in  
25 that living room before and he'd been to that house. That

## Closing Argument by Mr. Helms

1007

1 mattress was put there for a reason because Roy Davis thought  
2 he was going to have sex and he wasn't going to do it on a  
3 hardwood floor. He was going to either do it in one of those  
4 bedrooms or on this mattress. Now, why this is important is  
5 because they made a big deal about where this whole area took  
6 place isn't much bigger than this jury box. I'll agree to  
7 that. That's, that's fine. You know what's even smaller than  
8 that? Every other room in that house. Couldn't have Roy  
9 Davis in one of the bedrooms because then you've got too much  
10 distance between him and Richard Rosenbaum when he comes in  
11 the door, too much warning, can close a door, put it between  
12 him, jump out a window. Got to have him right there, got to  
13 walk right in on him, got to be in the biggest space in that  
14 house, and as small as this is, that was the biggest space in  
15 that house. You heard them testify, open floor plan, for lack  
16 of a better term, and that's so when Richard Rosenbaum came in  
17 he could have room to swing away because if you're in one of  
18 those little rooms maybe you hit a wall, a door, but not in  
19 that spot because there's plenty of room. That's why that  
20 mattress was there. Paul Ridgely told you that, and Paul  
21 Ridgely testified he's friends with this man. Is he lying?

22 I want to talk to you for a second about the law, and  
23 this is the law. This part in red up here. This is the law  
24 that we say he violated. You're going to hear a lot of law,  
25 but this is what we say he did. He murdered a man. He killed

1 somebody with malice aforethought. Is there any doubt that  
2 Roy Davis was killed? No. That's admitted. That's done. Is  
3 Roy Davis another individual? Is he another? Well, he's not  
4 a dog. He's not either of them. Check. We'll skip over  
5 malice and go to aforethought. Bridgett Briles and Lynndale  
6 Lewis told you that they thought about it. The circumstances  
7 show you they planned it. Check, and malice, there's a lot of  
8 definitions for malice. Under the law that's some of them.  
9 The one I always go to is ill will or evil intent. Yeah.  
10 They had, they had ill will towards Roy Davis, him even more  
11 than her. He told you that or, well, Lynndale Lewis told you  
12 that, heard something about Roy that made him mad, made him  
13 angry, made him jealous was the word. There's your ill will.  
14 So that's murder. That's what we say the Defendant did in  
15 this case. That's what the evidence shows you he did. If you  
16 don't find he's guilty of murder, you can still find him  
17 guilty of voluntary manslaughter. To me basically it just  
18 means he didn't think about it. It was the heat of passion,  
19 it was inflamed, and the Judge is going to give you all the  
20 law on this stuff. You all, and if I get any of it wrong or  
21 it's my version different you go with him, Judge Culbertson.  
22 You may find voluntary. I still tell you this was murder.  
23 This was planned.

24 Then you can go to involuntary manslaughter. It's an  
25 accident. Do these weapons indicate to you that it was an



## Closing Argument by Mr. Helms

1009

1 accident? Maybe if you use just the gloves on somebody, the  
2 MMA gloves, maybe if you just shoot them with a high-powered  
3 pellet gun that it's actually so strong that it enters and  
4 exits. I didn't even know pellet guns could do that, but not  
5 all that and this. It's no accident.

6 I'm going to tell you about self-defense. You all think  
7 that was self-defense? Do you think that he was defending  
8 himself against that 120 pound 56-year-old man? He's a whole  
9 'nother person more than Roy Davis. Do you think that that  
10 sounds like self-defense to you? Ladies and gentlemen,  
11 there's three people in that house. One is begging for his  
12 life, one. One is praying to God and one is beat all to heck.  
13 Is this self-defense? No. Says he's afraid for his life on  
14 that 911 tape. When are you afraid for your life? When you  
15 took this right before you call Paul Ridgely with Roy Davis  
16 broken and beaten and immobile? Are you afraid for your life  
17 now because he calls 911 after this picture is taken or she  
18 does and he makes that statement after this picture's taken.  
19 Would you be afraid of this man? I wouldn't be afraid of this  
20 man if he was healthy, but my God, would you be afraid of him  
21 at this point? Or were you afraid of him after you did this  
22 and then did this to him? Are you afraid of him here? Does  
23 that sound like self-defense to you all? Does it look like  
24 self-defense?

25 The first thing we hear on that 911 tape is them trying

1 to conceal this, reading that script. "There's a black guy in  
2 my house." A black guy? You mean the guy you been running  
3 around town with for God knows how long. So now he's a black  
4 guy? You know his name, but you ain't going to say it right  
5 away because you know that sounds bad. "Roy is in my house."  
6 That don't sound as threatening, does it? No. She says,  
7 "There's a black guy in my house. My boyfriend has him on the  
8 floor." I promise you all 250 pounds of him had him on the  
9 floor. I guarantee he had him on the floor. At any time did  
10 it sound like Roy wasn't on the floor begging? Did it look  
11 like it other than when he's trying to crawl out the door?  
12 Then we go -- this is so strange, from, "He's trying to rape  
13 me," in so many words to, "He's a pedophile." How much sense  
14 does that make? Now he's a pedophile. The first question is,  
15 if you know this man's a pedophile or you believe he is, why'd  
16 you let him in your house? If it, if it angered you so much,  
17 your belief that he's a pedophile angered you so much to kill  
18 him, why'd you let him in your house except to kill him?  
19 That's the first question with that statement that she says  
20 over and over again in so many colorful ways.

21 The second question and more important is it, which is  
22 it? He's trying to rape you or he's a pedophile. Pick a  
23 motive. Pick a motive. What -- that makes no sense. One  
24 he's attacking you, but now all of a sudden, "He's a pedophile  
25 that I've let into my house." Why are you killing this man?

## Closing Argument by Mr. Helms

1011

1 You -- they want to throw everything out there. They want to  
2 be justified in what they're doing because they know this  
3 man's going to die. He is not going to live through this  
4 ordeal, but "we've got to justify it on this 911 tape," and  
5 you hear that the whole time. You hear that the whole time.  
6 Just as telling as what Diane and, and Jimmy said on that 911  
7 tape is what they did not respond to because, again, it's a  
8 script. So they're not going to respond to what they haven't  
9 practiced. The 911 operator says, "Does anyone need an  
10 ambulance?" Nothing. She does a lot of talking, you all, but  
11 to that question nothing because nobody does need an  
12 ambulance. That cat right there ain't hurt. She's not hurt  
13 and Roy Davis ain't gonna' live and dead people don't ride in  
14 ambulances. So no, they don't need an ambulance. "Did he  
15 break into your house?" Nothing. No answer. Why? Because  
16 no, he didn't break into her house, and two, that's pretty  
17 bad. "No, I know I can't say he didn't break into my house  
18 because then I'm not as justified in killing him." So  
19 nothing, no answer. You can hear this again if you want to.  
20 It's in evidence. Then they continue to recite that script.  
21 "My boyfriend has him on the floor. He's a disabled vet."  
22 What relevance could that possibly have to this situation? If  
23 you've got a guy in there attacking you to the point where it  
24 scares you so bad you've got to kill him, what does him being  
25 a disabled vet have to do with the price of grapes in

1 California. Nothing. But it's a script, more pedophile talk.  
2 "I got a 17-year-old daughter. You're looking in 12 year  
3 olds' windows." What? Again, where does that come from?

4 Then she says, "He was just defending me. That's all."  
5 What is that statement for? Justification for what's about to  
6 happen because Roy ain't dead yet but he's about to be. "He  
7 was just defending me. That's all." If you call 911 why do  
8 you need to defend yourself on that 911 tape? Because what  
9 you're doing's wrong. What you're doing's a crime. What  
10 you're doing's murder. "So we got to lay this script out. He  
11 was just defending me," because she knows what he's doing to  
12 Roy Davis right now.

13 Then Richard goes into his narrative. "He was trying to  
14 rape my girlfriend." First of all, who is he talking to when  
15 he says that? He's in a house where his girlfriend was  
16 supposedly just almost raped but he's worried about defending  
17 himself to the 911 lady. He's not talking to Diane. "He was  
18 trying to rape my girlfriend". By definition he's talking to  
19 the 911 person, operator. Wouldn't, shouldn't he be more  
20 concerned about her well-being. "Honey, are you okay? Are  
21 you fine? Are you hurts in any way?" "No. I'm defending  
22 what I'm doing to Roy Davis right now because I know it's  
23 wrong because I know it's murder. He was trying to rape my  
24 girlfriend."

25 Then we go for round two. That's what I call it when

Closing Argument by Mr. Helms

1013

1 Diane kicks in, "Give me that f'ing bat. Give me that f'ing  
2 bat." Who's she saying this to? Who's she saying this to?  
3 Well, it came out she's saying it to Roy Davis as she grabs  
4 the bat away from Roy Davis. Wait a minute. Richard  
5 Rosenbaum testified that he struggled with Roy Davis and that  
6 bat. He tried to get it away from with all his might. That  
7 250 pound man could not get that baseball bat from that guy  
8 right there. How logical is that to you, but Diane Durkin  
9 could. He couldn't but she could. She must have had her  
10 Wheaties that morning. It starts to fall apart when you think  
11 about it.

12 All the while this is going on they're fighting and  
13 struggling, if you take his word for it, with each other, but  
14 he has time to stop and take that. Why you going to take  
15 that? Why? Well, he says in case he got away, in case he got  
16 away because he wasn't going to let him get away though. You  
17 saw the pictures of the door. You saw the blood smeared all  
18 over the door. So which is it? You don't want him to get  
19 away or he very well might get away? It starts to fall apart.  
20 This wasn't in case he got away. This was a trophy, as sick  
21 as it sounds, it ain't no different than a hunter having a  
22 deer head on the wall. This was a trophy for him because he  
23 knows he's just about to kill a black man.

24 Why is that important? We know what happened to Mr.  
25 Rosenbaum in the military and I'm sorry for that. There's no

1   excuse for that, but I promise you, and, and, and I can  
2   understand how he would have some animosity there. That ain't  
3   excuse for this.

4           What else do we know about Mr. Rosenbaum? Well, when he  
5   got to jail one of the first things he tells the jailers,  
6   "Don't put me in a cell with black people." One, what was his  
7   explanation for that? Because they might be related to Roy  
8   Davis. Because they're black they might be related to Roy  
9   Davis? That ain't why he said that. We know why he said  
10   that.

11           The biggest kicker on that 911 tape for me or one of  
12   them, anyway, and I don't know how else to categorize it. I  
13   don't mean to be flippant about it, believe me, but something  
14   that really stuck out to me, "Don't you go out that door you  
15   MFer. Don't you go out that door you MFer." So again, which  
16   is it? He, he might get away, so I take a picture of him. He  
17   ain't letting him get away. They wasn't letting him get  
18   away.

19           Now, you all, they're going to charge you with  
20   citizen's arrest. You're going to hear the law on what  
21   citizen's arrest is. I want you to think about that, that  
22   911 tape. You ask yourself did it sound like Roy was being  
23   arrested or beat all to hell? It wasn't no arrest. That was  
24   murder.

25           I got to show you that there was malice aforethought in

Closing Argument by Mr. Helms

1015

1 this case. Presented evidence to you that there was  
2 aforethought. I told you why Lynndale and Bridgett are  
3 credible people. Despite all their faults and flaws, I told  
4 you why. So I got to ask you to find that there was malice,  
5 ill will, evil intent. Roy Davis did not deserve what  
6 happened to him on July 11<sup>th</sup>. Nobody deserves what happened to  
7 Roy Davis on July 11<sup>th</sup>, but I got to show you that it was done  
8 with evil intent and ill will. So I want you to listen to  
9 this one more time and you tell me if you hear evil in this  
10 tape.

11 (State's Exhibit Number Six played in open court.)

12 MR. HELMS: Does that sound like self-defense to you all?  
13 At any time does that sound like self-defense to you all?  
14 Because that's what they want you to believe. They want you  
15 to believe it ain't murder, but if you believe he killed him,  
16 he shouldn't have, it's manslaughter, but it really ain't even  
17 that because he's defending himself and her, but if you, if  
18 you don't believe that believe it's a citizen's arrest. It's  
19 murder. It's murder. At one point in the middle of that tape  
20 Richard asks, "If I'm in fear for my life can I shoot him,"  
21 because he wants to shoot him. He wants Paul Ridley to bring  
22 a gun so he can end it to make sure he don't live. There's  
23 your ill will. There's your evil intent. When's he in fear  
24 for his life, you all? Because this is taken before he says  
25 that. Is he in fear for his life right here? Or is he in

Closing Argument by Mr. Alex Hyman

1016

1 fear for his life after that right before this happened? It  
2 ain't manslaughter, involuntary or voluntary. It ain't self-  
3 defense, and it ain't no citizen's arrest. That's what this  
4 is. There's your malice. There's your evil intent. Find him  
5 guilty of murder.

6 THE COURT: All right. Mr. Hyman.

7 MR. ALEX HYMAN: Thank you, Your Honor. It may take me  
8 just a minute. I'm going to push this. Close to how far  
9 that'll go.

10 Okay. You know, after hearing Solicitor Helms talk,  
11 seems like this should be open and shut. The problem is is a  
12 lot of the stuff that he said is not necessarily what the  
13 evidence says and that's what we base our decisions on.

14 Now, I usually in my closings talk to you a little bit  
15 about your time and your service as a juror and how we  
16 appreciate it and everything like that, and I do appreciate  
17 it. You know, as a trial lawyer it is very unlikely that I'm  
18 ever going to get picked as a juror. You saw that there was  
19 an attorney that was in you all's jury panel and he was out  
20 pretty quick. I'll never have the opportunity that you all  
21 have to ever sit where you all sit. I'll never do what you  
22 all are doing, but I wanted to talk with you a little bit  
23 about what we've seen other than just what you heard on the  
24 911 tape. I wanted to go over with you each and everything  
25 you've seen from each witness because rather than talk about



Closing Argument by Mr. Alex Hyman

1017

1 what the theories are, I want to talk with you about what the  
2 facts show because that's what you're to consider.

3 You know, I used to teach at Horry Georgetown Technical  
4 College. I taught criminal justice there, and any time before  
5 exam weeks I would go and do summaries. Basically what I  
6 would say to my students is, okay, this is what we have seen  
7 and I put them in brief summaries, and that's kind of what we  
8 want to do with you all. I'm a visual person. Always not --  
9 not -- maybe I'm not always the best speaker. I don't know,  
10 but the best way that I can show you is basically showing you  
11 what we have already seen.

12 All right. So the first person we heard or first thing  
13 we heard after opening statements was that 911 audio. You all  
14 just heard it again. Now, the thing about 911 audio and the  
15 thing about listening to stuff like that is people hear  
16 different things, and you heard the Solicitor say what he  
17 picked out that they heard, things like that. Now, what I  
18 want to talk with you a little bit is, you know, you don't  
19 hear Jimmy that much on the 911. You hear Diane. Now, the  
20 Solicitor said that was a script. My question is is whose  
21 script was it? You know, at a minute and 10 you hear Diane  
22 say, "My boyfriend has him on the floor." At a minute and 58  
23 you hear Jimmy say, "Get the gun." Now Jimmy testified that  
24 he said get the gun because he had lost control over the bat.  
25 In fact, it was his testimony that, "Why would I ask for a

1 pellet gun if I've got a bat." At three minutes and 40  
2 seconds you hear Jimmy yelling, "Get the cops here." Now, it  
3 sounds like he's in a different room. It sounds distant like  
4 maybe Diane has run into another room. I don't know. I  
5 wasn't there, but that's what it sounds like to me, and then  
6 you hear Jimmy again yell at three minutes and 58 seconds,  
7 "Get the cops out here." Four, four minutes in you hear Diane  
8 say, "We need an officer here now, now," and 17 seconds later  
9 again you hear Jimmy yelling, "Get the F'ing cops." Now, I  
10 don't think that he could see her. I think she was in another  
11 room. Maybe she was getting the pellet gun. I don't know  
12 because he's yelling at her to do something and then she does  
13 respond back to him and says, "They're on their way." I don't  
14 think he is saying this just to say it. He's wanting them  
15 there. Now, at four minutes and 50 seconds you hear Diane  
16 say, "He's on the floor. My boyfriend's holding him down."

17 Now, we're going to talk about Paulette Sutton some in a,  
18 in a little bit, but if you'll remember I asked her specific  
19 questions about the blood, and Solicitor Helms actually  
20 brought it up. He said it's obvious that Roy was on the  
21 ground. It is obvious. Even Diane noticed it. She said,  
22 "He's holding him down." By this point she has come back into  
23 the room.

24 Next slide. Five minutes, you start hearing some kind of  
25 melee, some type of -- there's something going on. I don't

Closing Argument by Mr. Alex Hyman

1019

1 know what that is. I wasn't there, but there's something that  
2 happens when she walks back in and she starts yelling, "We  
3 need a cop here now, please." 10 seconds later she's yelling  
4 it again, "We need a cop here now, please, please." This is  
5 when she's screaming and making all these, these noises and  
6 yelling and everything like that, and five minutes and 20  
7 seconds she says, "Give me the f'ing bat." I will completely  
8 agree with Solicitor Helms. That's exactly what she says.  
9 She yells it's three or four times, and then you hear her out  
10 of breath. It's obvious she's not getting the bat from Jimmy.  
11 He's already gotten the gun. Now, I don't remember Jimmy  
12 testifying that he couldn't get the bat from Roy. I remember  
13 him saying there was a tussle and that Roy had the bat. I  
14 don't remember him saying, "I couldn't get the bat from him."  
15 Now, at six minutes and 50 seconds in you start hearing  
16 Diane with the, "Don't move, don't move. I swear to God."  
17 She's yelling all this stuff about pedophile and everything  
18 else like that. I can tell you and I think Jimmy would agree,  
19 I have no clue where that came from. You never heard Jimmy  
20 say anything about him even knowing Roy. You don't hear Jimmy  
21 on the 911 tape yelling Roy's name, and you sure don't hear  
22 Roy yelling Jimmy's name. If he knew that this was Roy and  
23 knew Roy wouldn't you have at one point during that whole  
24 thing heard him say his name? Not one time.

25 7:15, "I need a cop here now." Again, it's Diane. 7:35,

1 "Don't you f'ing move. Don't you f'ing move," more of Diane.  
2 Seven minutes and 50 seconds, "Don't you f'ing move." Eight  
3 minutes and 15 seconds, "Don't you move." Now, eight minutes  
4 and 23 seconds you can tell in the background that Roy is  
5 trying to say that Diane is lying. He's saying, "She's lying.  
6 She's lying." Diane makes some, makes some statements, "I  
7 ain't lying you scumbag," blah, blah, blah, blah, blah, blah,  
8 blah, but you hear Jimmy say, "Lies, then why are your pants  
9 off?" Now, he's saying that because that's what he seeing.  
10 That's what he walked into. "Why are your pants off, you  
11 know?"

12 Next slide, eight minutes and 30 seconds, the 911  
13 operator says, "Does he still have him restrained?" The 911  
14 operator at this point had been told twice, twice that Jimmy  
15 had him on the ground, was holding him down. Now, Paulette  
16 Sutton pointed out two different areas where that occurred.  
17 You hear that. The 911 operator heard that. Eight minutes  
18 and 45 seconds in Diane for the first time says, "He punched  
19 me in the face," or at least the first time that we can hear.  
20 She says at nine minutes and 27 seconds, "My boyfriend has the  
21 pellet gun." Nine minutes and 30 seconds, again, this whole  
22 thing, "She's saying, she's lying, she's lying," and you hear  
23 Jimmy say, "Lies, lies, then why was she screaming? Why was  
24 she screaming?" You know, you don't hear Roy respond to that  
25 with, "She wasn't screaming." Nine minutes and 40 seconds,

Closing Argument by Mr. Alex Hyman

1021

1 "Don't you get up. Don't you F'ing move. You stay right  
2 there," Diane.

3 Now, Solicitor Helms, I believe, was a little mistaken  
4 when he kept talking about this photo. This photo was not  
5 taken before 911 was called. This photo was taken before Paul  
6 Ridgely was called. Now, 911 was called at 9:35. Paul  
7 Ridgely was called at 9:45. That's a 10-minute difference, 10  
8 minutes, and I'll get back to this in just a second because  
9 they actually had a witness who said that.

10 10:00 o'clock, or excuse me, 10 minutes into the video.  
11 It is on the nose, 10. That's when Jimmy calls Paul says,  
12 "Get over here with your 40." Now, if you'll remember, when  
13 Paul testified he said, "I really couldn't even hear that part  
14 about the 40. There was a lot going on in the background,"  
15 but you can hear it. Now, if this was a planned murder  
16 wouldn't he have gotten the gun beforehand? You know, the  
17 Solicitor is wanting to say that that implies malice. No. It  
18 doesn't. It implies that this isn't a plan. He hadn't  
19 concocted this thing and thought it out, "Well, I'm going to  
20 do this, and I'm going to do this." No. He's wanting Paul to  
21 get there to help.

22 Now, here's something that, that as soon as Jimmy says,  
23 "Get over here with your 40," it's very obvious to me that Roy  
24 makes a dash for the door. I think the Solicitor and I can  
25 agree with that. The pictures where the blood is on the wall

1 and the blood is on the door it's very obvious he's trying to  
2 get to that door, and even at 10:10 Diane yells, "Don't you go  
3 out that door." Jimmy testified, "I grabbed him, threw him on  
4 the ground, he got up and that's when he fell down." Now, one  
5 thing though that you hear after that is Diane, "How does it  
6 feel, how does it feel?" Now, if you all listen to this again  
7 you can hear Jimmy talking to Paul in the background just like  
8 I'm talking right now. He's saying, "Paul, Paul," but what  
9 you also hear is Diane, who has the bat, hitting him. She's  
10 out of breath. You can hear it. I mean, she's going on the  
11 phone. You can absolutely hear her. She's hitting him.  
12 Jimmy's not. Now, I don't know where Jimmy is during this  
13 part other than he's on the phone with Paul, but you can hear  
14 him talking to Paul. That's the last time that you hear Roy  
15 alive is that point though. You hear him make a mad dash and  
16 then you hear Diane hitting him.

17 Now, the first person that they put up, the first officer  
18 that they put up was Officer Mark Johnson. If you'll  
19 remember, he was the one who arrived on the scene first. Now,  
20 he said when he arrived he believed that Rosenbaum and Durkin  
21 were both victims. He said that they were sitting down on the  
22 couch. Now, that differed a little bit from what Jimmy said.  
23 Jimmy said, "No, when he actually got there he had his gun  
24 out. I was over washing my hands." He testified, "I'd gotten  
25 bitten. I didn't know if the skin was broken. I didn't want

Closing Argument by Mr. Alex Hyman

1023

1 that blood to get in my, my finger." Now, we saw photos later  
2 that the water was on. Jimmy's not lying about that. He said  
3 that he was washing his hands when he heard the officer. He  
4 did that and went over to where the officer told him to be.  
5 It's an inconsequential detail, but it's a detail that shows  
6 he's not trying to hide anything, not a single thing. Officer  
7 Mark Johnson said that he didn't investigate or talk to any of  
8 the neighbors, said, "They didn't ask me to. They just asked  
9 me to bring them." So he did. He took Rosenbaum to the  
10 police station and another one took Durkin there. Now, it was  
11 also Mark, though, that took Rosenbaum later on to the  
12 hospital to get his leg checked on.

13 The next one. Why did they put Officer Johnson on the  
14 stand? What did he really say about the case? Nothing. Said  
15 he got there and said what he said. They put him on the  
16 stand, but yet did you ever see the detectives? The detective  
17 was never put on the stand. They're here. He's right there.

18 The next one. Now, we saw Investigator Jill Domogauer.  
19 Now, Jill Domogauer said that she got there about 10:30. Now,  
20 let's remember that 9:35 is when 911 called. So that probably  
21 puts Jimmy getting to his house about 9:30. Jill Domogauer is  
22 there at 10:30 that night. Now, she specifically stated she  
23 collected blood samples. I specifically asked her that, "Did  
24 you get blood samples?" "Yes. I did." "How about  
25 fingerprints on the bat, did you get those?" "No." She

1 admitted that she spoke with the detective that night. So she  
2 knew that there was a struggle over this bat, but yet here we  
3 are no fingerprints on the bat, no touch DNA from the bat, no  
4 blood sample from the bat. You all got to ask yourself why.  
5 Wouldn't you like to know if Roy actually did have the bat? I  
6 would. I'd like to know if Jimmy Rosenbaum's blood's on the  
7 bat because it would again show that he's telling the truth.  
8 It would explain why Diane is yelling, "Give me that f'ing  
9 bat." They didn't do any of that. The problem with that is  
10 they could still do that now, but they haven't. Jill  
11 Domogauer took hundreds of photos and she made a huge deal  
12 about the folded T-shirt. Why is that? You know, the issue  
13 with that -- Travis, the next picture -- they claim that this  
14 is the folded T-shirt, and it may be. I don't know. It's in  
15 a corner on the other side of a flipped over table. Now, you  
16 heard when Jimmy Rosenbaum was up there. Solicitor Richardson  
17 specifically asked him, "Would things have been different that  
18 night if you walked in and saw that folded T-shirt?" Do you  
19 all remember what he said, "Yeah, yeah, absolutely." He asked  
20 him if he knew the \$20 was for crack would things have been  
21 different. "Yeah. It would have." He said, "If you knew  
22 that she was sleeping with Roy would things have been  
23 different," and he's like, "Yeah, absolutely." This t-shirt,  
24 can you see that? Would he have been able to see that? I  
25 think it is absolutely reasonable to think that if he's in



Closing Argument by Mr. Alex Hyman

1025.

1   that house he's probably not seeing that.

2           Now, the next picture is actually the T-shirt. This is  
3   the one that they took. Now again, I don't know if it was  
4   folded or not. I'm not calling Investigator Domogauer a liar.  
5   That's not it at all. I'm just saying that where it was  
6   located, if that was it that was folded, it is highly unlikely  
7   that Jimmy Rosenbaum would have seen it over there, and again,  
8   in his very testimony he said, "Yeah, if I'd known that there  
9   was a folded T-shirt there, things would've been different."  
10   He wouldn't have been trying to do anything with Roy.

11           Now, Investigator Dennis Lewis came. He was on the -- he  
12   was the one that actually seized the phones. Now, we talked  
13   about the phones a good bit. We talked about how he took  
14   them. He said they were with him the entire time. He stated  
15   that he didn't interview any neighbors either. So we've got  
16   three officers now who have haven't interviewed any neighbors  
17   or anything like that. You know, wouldn't it be nice to know  
18   if a neighbor heard somebody scream? Would even be nicer to  
19   know if a neighbor saw somebody supposedly hiding down a road.  
20   That didn't happen.

21           Said that he collected DNA swabs from Roy Davis. Why did  
22   he do that if they're not going to do anything with them? It  
23   was obviously important enough for him to go and get them. He  
24   didn't get them from the scene. He said he testified that he  
25   rode all the way to Grand Strand Hospital to get those DNA

1 swabs, but yet they've never done a single thing with them.  
2 He also stated all that they needed as far as the DNA was  
3 still in the evidence. That stuff doesn't go away. Why  
4 didn't they test it?

5 Now, he also stated he got there around 10:30. He  
6 stated that he thought they were at the house until 5 a.m. He  
7 said that they worked the house and they took all the pictures  
8 and did all that stuff and he said they probably didn't get  
9 back to the police station until 5 a.m. Now, he stated that  
10 he was the one that took them to the police station. You'll  
11 remember he said, "I don't really remember how I drove but I  
12 probably went down Cultra Road. That's probably the easiest  
13 way," but how long was he actually really there? How long  
14 were they at the crime scene? Got there at 10:30.

15 Next slide. 12:55 a.m., just a little over two hours,  
16 that phone is pinging at Horry County Police Department, not 5  
17 a.m., not 3 a.m., 12:55. Next slide.

18 Why lie about that? Two hours the entire crime scene,  
19 maybe, I don't know. I'm not a crime scene investigator, but  
20 why would he say 5 a.m. What did they possibly miss that was  
21 out there? I mean, was there any witnesses who saw anything  
22 down the street? Any people across the street?

23 The next person we had was the Detention Center Officer  
24 Lowe. Now, that was Sandy Lowe. She came in. She talked  
25 about the detention center records about who's housed where,

Closing Argument by Mr. Alex Hyman

1027

1 and I think that's really, really important. She showed that  
2 Lynndale Lewis, colorful Lynndale, was in a cell with Jimmy  
3 for a total of four days, four days total, stated that  
4 Lynndale was also in detox area of the jail.

5 Next thing. This is Mr. Rosenbaum's, the records that  
6 they put in. Now, it shows down here 7-13 to 7-17.

7 Next one. And this is Lynndale Lewis'. I want you to  
8 see this 7-13 to 7-17. Now, here's the other thing I want you  
9 all to look at. I want you to look at this, 7-27, 2016. I  
10 want you all to remember that date, now, 7-27, July 27<sup>th</sup>, 2016.

11 Next slide. Now, Officer James Perry, he's the one that  
12 I wanted to talk with you all about with this. He's the guy  
13 that they brought from Greenville that did a photo shot or how  
14 -- I guess that's what you call it. He says he took a --  
15 basically a picture of everything that was on the camera, but  
16 yet the only thing he could remember was this picture. When I  
17 asked him, "Did you find any emails, text messages, anything  
18 like that where Jimmy Rosenbaum was talking about Roy,  
19 anything like that?" "No. Did not. I don't remember any of  
20 that. I really can't remember," is what he said. Now, he got  
21 this phone a year after this occurred. Again, the only thing  
22 he remembered of that entire report was this, but what he'd  
23 stated if you'll remember is that this was taken about one  
24 minute before Jimmy Rosenbaum called Paul Ridgely. This  
25 wasn't taken before 911 was called like he just said,

1 absolutely not. I can assure you that if there was anything  
2 on that phone that incriminated my client, any text message,  
3 email, any plot, any plan, anything sent to, anything sent to  
4 Diane insinuating that there was trouble in paradise, you  
5 would have seen it. They would have had it up there. They  
6 had his entire phone for the entirety of the time he's had it.  
7 They can tell you everything on that, and that's the only  
8 thing that they could show in a negative light.

9       Next slide. Officer Dudley came up. Now, she introduced  
10 a picture of Diane's call log, if you all remember. It showed  
11 that Diane had a person in her phone named Jim. I think we  
12 can all agree with that. Now, she also stated there were 31  
13 contacts in that, in the phone. It was a flip phone, that  
14 there were 31 contacts, none of which named Roy Davis. I'd  
15 also submit to you that even if it wasn't named Roy Davis I  
16 guarantee you they went and looked at the telephone number.  
17 He was not in that phone. Now, I don't know why that is. I  
18 don't know if it's because she truly wasn't calling him, truly  
19 wasn't having this relationship. I don't know. Maybe she  
20 didn't have it in there because she didn't want Jimmy to see  
21 it. I don't know, but point being is it was not in there.  
22 There was also nothing in there as far as text messages  
23 between her and Jimmy.

24       Now, Lynndale Lewis, what did we learn? Again, he was in  
25 there for four days. You notice that they didn't bring any

1 other cellmate that Jimmy had? Didn't bring anybody else in  
2 who could say anything remotely like that other than Lynndale.  
3 One of the things that the Solicitors don't want to talk about  
4 is this, he was in the cell with Jimmy Rosenbaum on July the  
5 13<sup>th</sup>. You all remember what happened on July the 12<sup>th</sup>? It's  
6 when he's interrogated for three hours. So the very next day  
7 Lynndale is in his jail cell, and I want to pose something to  
8 you, is it really hard, really that hard to, to imagine a  
9 scenario like this. "What are you in for?" "Man, murder."  
10 "Well, what do they say happened?" "Well, I mean, they say  
11 this, they say this, they say this." "Well, what really  
12 happened?" "Well, I came home, thought my girl was being  
13 raped. I had on some gloves. I came in and I remembered that  
14 there was a bat. I grabbed a bat. I hit him. At one point  
15 he gets the bat. I then get the gun." Is that that hard to  
16 believe? How about this, "Well, what is it that the State  
17 believes? I mean, gosh, that, that sounds like self-defense.  
18 What are they saying?" "Well, they're saying that they think  
19 that I must've hid and that they're telling me that she was  
20 involved with this guy and that, that, that he was smoking  
21 crack and all this other stuff." "Man, that's terrible." Do  
22 you know how easy that is to, to change, "What does the State  
23 think," to "Jimmy told me this," because at that point, guess  
24 what, he knows everything that they want to hear. How likely  
25 is it that that can happen? You heard Lynndale's father-in-

1 law talk about how manipulative he was. He's a liar. You  
2 know, here's one thing that kind of irritated me, and if you  
3 all could tell I was a little heated with Lynndale because I  
4 don't like people who lie, and the first thing that came out  
5 of his mouth was a lie. The first question the Solicitor  
6 asked was, "What are you -- what were you in for?" "Oh, I got  
7 in an argument with my aunt." There was no truth in that  
8 whatsoever. He ran a scam and used his wife as bait, his, his  
9 sick terminal wife as bait. You know, and if you'll remember  
10 I read in there, you know, what about this about selling the  
11 tickets, if you will lie to somebody over eight dollars or  
12 five dollars or three dollars what do you think you would do  
13 if it meant getting yourself out of jail? If he'll do  
14 something as despicable as use his terminally ill wife, I  
15 mean, come on. This is the type of guy we're dealing with,  
16 2005 breach of trust with fraudulent intent, 2011 receiving  
17 stolen goods, 2011 forgery, 2013 breach of trust, 2013  
18 obtaining goods under false pretenses and a 2016 breach of  
19 trust, but here's what you don't see on there. You don't see  
20 the breach of trust when he's talking about the scam on the  
21 people. You don't see the bench warrants that he was in there  
22 for. He admitted he still has stuff pending. I've never seen  
23 anybody with a record like him who hasn't served some time.  
24 That dude knows how to work the system, absolutely knows how  
25 to work the system. He was interviewed by law enforcement on

Closing Argument by Mr. Alex Hyman

1031

1 July 25<sup>th</sup>, 2016, and he was out two days later, two days. I  
2 consider myself a pretty good lawyer. I can't get anybody out  
3 in two days, not on bench warrants and everything else like  
4 that, two days after he talks with law enforcement and he's  
5 out, we had two bench warrants and a pending charge but none  
6 of that shows up now. Who was motivated? Come on. And then  
7 they say, "Well, he came up here with nothing to gain." Yeah,  
8 he did. You know what type of trouble you get into if you  
9 provide false information to law enforcement? It's a crime.  
10 His father told you or his father-in-law told you he's a liar,  
11 he's manipulative, he's not to be trusted. He said he  
12 couldn't even trust him to be around his daughter without  
13 stealing her medication. Lynndale Lewis is the only thing  
14 that the State has when it comes to some type of plan. He is  
15 the only thing that the State has when it comes to saying that  
16 Jimmy Rosenbaum was down the street. He's the only thing they  
17 have and the only reason they have that is because he asked  
18 Jimmy, "What does the State think? What do they think  
19 happened?" Guys, it is so easy to manipulate that and flip  
20 it.

21 Bridgett Briles stated she had no information about  
22 Jimmy, never heard of him. You think that's kind of odd?  
23 Notice that she didn't testify about any plan that Diane and  
24 Jimmy had. She testified that Diane was having a relationship  
25 with Roy and that Diane hit the kill shot. She didn't say one

1    thing about Diane having a plan with Roy or anything like  
2    that.  You know, why is that?  If this was a plan wouldn't  
3    Diane have said, "Well, my boyfriend and I we thought we were  
4    going to do this."  No.  Absolutely not.

5           Next one.  Dr. Proctor, he stated something that they  
6    didn't want to hear, that they were a little surprised on, and  
7    that was that these head blows that they had talked about so  
8    much, things that caused all this blood was not actually what  
9    killed him.  You know, we're not in any way contesting that  
10   Roy Davis is dead, but when you say that Roy Davis died from  
11   blunt force trauma to the head, that's not accurate.  That's  
12   not true.  You know, Lee Proctor, and he actually goes by Lee  
13   rather than Ed, but Dr. Proctor stated specifically, "I've not  
14   talked to any detectives.  The detectives didn't call me."  
15   The State's theory the entire time was based on the assumption  
16   that he died from blows to the head, blows that I would say  
17   probably happened right at the very beginning, right at the  
18   very beginning.  Now, as far as the laceration to his thoracic  
19   aorta, I'll be honest with you, the only time I've ever heard  
20   about that is in car wrecks, stuff like that, but it was his  
21   testimony that there was no, nothing that punctured him.  It  
22   wasn't like that, wasn't like his rib did that.  Something  
23   that I found interesting from his testimony is that most of  
24   the broken ribs were on this side, not this side.  You know,  
25   it was Jimmy's testimony, if you'll remember, that hit him



Closing Argument by Mr. Alex Hyman

1033

1 with the butt of the gun trying to get him to stay down. Now,  
2 when I asked Dr. Proctor that he said, "That's, that's  
3 consistent. I could see that as far where this, this bruise  
4 was. I could see that. I asked him. I said, "Well, when you  
5 break ribs is it likely to cause this?" He said, "No. You  
6 absolutely can break ribs and not lacerate your thoracic  
7 aorta." This is an unforeseeable injury. If it was  
8 foreseeable nobody would play football. Nobody would play  
9 baseball. It's not foreseeable. Hitting somebody in the  
10 chest to keep them down it's not foreseeable that you're going  
11 to lacerate their thoracic aorta. It was his testimony that  
12 he probably lived for a few minutes. I don't know if that  
13 happened before this or if it happened after. I don't know.  
14 We do not know that. It could have happened before this but  
15 it could have happened after when you hear Diane hit him.  
16 Again, we don't know.

17 You know, one of the other things that Dr. Proctor talked  
18 about was the cocaine and the cocaine metabolites. Cocaine  
19 metabolites basically mean that it was ingested rather  
20 recently. As far as that goes, it was his testimony that it  
21 does make your heart beat faster. You know, could that have  
22 sped up his death? Heart probably. I don't know, but again,  
23 what we do know is a laceration to the thoracic aorta when you  
24 hit somebody in the chest is unforeseeable.

25 Randy Hucks, Randy openly stated he'd never seen Jimmy,

1 didn't know him, had never heard Roy talk about him, anything  
2 like that. Stated that Roy had a phone and that he gave the  
3 phone number to the police. So the police have had Roy's  
4 phone number but they haven't shown you anywhere where Diane  
5 and Roy called. They definitely haven't shown you anywhere  
6 where Jimmy has called, nothing. Jimmy and Roy didn't know  
7 each other.

8 Now, let's talk about Paul Ridgely. Again, you'll  
9 remember that he received a phone call from Jimmy at 9:45,  
10 9:45. Now, he stated that Jimmy sounded scared to death. In  
11 fact, my exact question to Paul was, "Paul, you know Jimmy  
12 better than anybody in here," and that's the truth other than  
13 maybe Diane. Said, "You've known him. You all are friends.  
14 You all talk. Did he sound scared?" His response was,  
15 "Scared to death." He remembers Jimmy venting to him about  
16 Diane not having a job. You vent to your friends. I'll  
17 submit to you that if you knew -- if Jimmy knew that Diane was  
18 sleeping around with him or had any inclination don't you  
19 think he'd talk to his friend about it? I would. If he'd  
20 even heard about Roy and thought that she was sleeping with a  
21 guy named Roy don't you think at some point in all your  
22 conversations with your best friend you'd maybe mention it?  
23 You would think so. That would be reasonable to think that.

24 Now, the AT&T custodian of the records came in next, and  
25 he talked about the phone calls and they keep going back and

Closing Argument by Mr. Alex Hyman

1035

1    forth -- is this it? Yeah -- about these phone calls and how,  
2    you know, three seconds, but if you'll remember the majority  
3    of these, now, this is Paul down here and this is when she's  
4    in the, the store, two minutes and 36 seconds here, and again,  
5    that's 8:41:19. Now, what's interesting to me though is that  
6    they want you to believe that these phone calls were made and  
7    that people talked, but yet it never even connected to a cell  
8    tower. They didn't talk. Think about what Jimmy said. He  
9    was specifically asked that. "Did you talk during this?" He  
10   said no. "I get a call, I tried to answer it." It's very  
11   obvious that it's going to voicemail. There's phone calls on  
12   that record that aren't listed where he's attempting to call  
13   his voicemail. They didn't put everything on this, but again,  
14   it was his testimony that he did not talk, and there's nothing  
15   that contradicts that other than showing this three second  
16   voicemail, all this other stuff. His testimony was, "Look,  
17   you know, yes, she was calling me. I don't know what she was  
18   calling me about. Tried calling her back."

19        Aaron Edens, he was the cell phone guy. How evasive was  
20   he to me? Any time that I brought up the fact that he was  
21   flat-out wrong, he'd never admit it. "Oh, well, I don't have  
22   the, the radius. I don't have this. I don't have that." Why  
23   didn't he bring it? He flew all the way from California to  
24   testify, was paid to be here, and he didn't bring the stuff  
25   that he would need? Now, I questioned him on some of this

1 stuff. You know, his testimony was that the Wi-Fi was pinging  
2 next door at 8:46. You know, I, I realized something and --  
3 you can go to the next one -- I realized something after I was  
4 looking over all of the stuff that he testified to, and that's  
5 this isn't even 8:46. When I went back and looked at the  
6 records, this is 9:46. He didn't take into account Daylight  
7 Savings Time. I didn't catch it. I wish I would have because  
8 I would have loved to have torched him even more on that  
9 because he was brought here to do nothing but mislead you. He  
10 misled the Court. He misled you all, and I'll be quite honest  
11 with you he misled the Solicitor's Office. You heard Mr.  
12 Helms say, "All I can do is show you what he brought me."  
13 It's obvious that it was wrong, and here's some more stuff I'm  
14 going to show you about why it's wrong. This is the stuff  
15 that I questioned him. At 10:41 a.m. it's showing over here  
16 in this same area with a radius of 27 meters. His home is  
17 located 86 meters away. He was home during this time. Here's  
18 how I know. Next slide.

19 If you'll remember the one thing that Aaron Edens said  
20 that I think I agree with is that GPS locations are more  
21 accurate than Wi-Fi locations. Well, at 10:45 a.m. that  
22 morning look where the GPS was showing. There. In his home.  
23 Look where the Wi-Fi was showing. Okay. The exact same time.  
24 Aaron Edens was wrong.

25 The next one. Remember what I said about 9:46:21 not

Closing Argument by Mr. Alex Hyman

1037

1 8:46:21, 9:46:21. That's where it's showing 135 meters away  
2 from here. Do you know where he was at 9:46? He was on the  
3 phone with Paul. How can he be on the phone with Paul here  
4 and claim that he's over here? No possible way. Aaron Edens  
5 was wrong. At 12 a.m., this is long after he's been taken to,  
6 to the police station. That phone is with Jill Domogauer and,  
7 and Dennis Lewis. The GPS is saying 12 a.m. that he is here  
8 or the phone is here, which is in the house. Look where Wi-Fi  
9 shows, 12 a.m. They weren't even there. I'll show you right  
10 here where that phone was. Right there. They took that photo  
11 around this time. We know that they took it around that time  
12 because at 12:57 that phone was back at M.L. Brown Building,  
13 the police station. There's not a single bit of truth of what  
14 Aaron Edens said and what the Solicitor's Office has contended  
15 about him hiding down the road. None of that, none of that is  
16 true. It is absolutely not true, and I want you to remember  
17 this, Lynndale Lewis said it happened, too. The reason they  
18 said that happened is because that was originally what police  
19 thought, but I'm glad that they gave us this Wi-Fi stuff. It  
20 proves that he's not lying. 12:57 we know that phone is at  
21 the police station but yet it's pinging over here.

22 The next one. 5 a.m. that next morning we know the phone  
23 is here but it's pinging over here. It's consistently about  
24 130 meters, 120 meters away. 11:45 the next day it's still  
25 pinging right there. I'll submit to you you can't believe a

1 single thing that came out of Aaron Edens' mouth.

2 Next page. Now, let's talk about Paulette Sutton. I  
3 spoke with you all a little bit about this, and the fact that  
4 Paulette Sutton is the one who talked about Roy being on the  
5 floor, which is very consistent with what Jimmy testified to  
6 and also to what we heard on the 911. You hear on the 911,  
7 "My boyfriend has him on the ground. He's laying down."

8 The next picture. Paulette Sutton testified, "Yeah, this  
9 is -- that's consistent with holding him on the ground," and I  
10 asked her, I said, you know, "He held him on the ground there  
11 and then he got up and made a dash and came and then he died  
12 here, is that consistent?" "Yes. It is."

13 The next picture. This was right next to the, to the  
14 kitchen. Again, that's consistent with holding him down,  
15 trying to get him to stay down.

16 Next picture. I asked her if these areas right here were  
17 consistent with laying on somebody trying to hold them down,  
18 and she said "Yes, they are." You know, there was nothing  
19 that Paulette Sutton said to me that I took to be anything  
20 other than the truth. She knows what she's doing. She flat  
21 out said, "I can't tell you what happened in there. All I can  
22 tell you is what the blood may show."

23 Next picture. Now, I want to talk with you a little bit  
24 about the next, the next person who testified, and that was  
25 Jimmy. You know, now, Jimmy did not have to get up here and

## Closing Argument by Mr. Alex Hyman

1039

1 testify. One second. Okay. He didn't have to get up here  
2 and testify, but he did. He testified because he's been  
3 waiting two and a half years for somebody to listen to him.  
4 You know, everything in this world has been said about him and  
5 it's been said that he beat this guy to death, that he planned  
6 this, that they had some kind of agreement, some kind of plan  
7 and he's sitting there this whole time saying, "That's not  
8 true. I did not do that. I came home and this is what I saw.  
9 It's not true." So he took the stand, and you heard him. The  
10 Solicitor tried his best to beat him up and try to get him to  
11 say stuff but he stayed consist the entire time, stayed  
12 consistent. Consistently said, "That is not what happened. I  
13 didn't tell Lynndale Lewis that I did it like that." In fact,  
14 he said the opposite, Lynndale Lewis went fishing, asking him  
15 for information. You know, I don't know whether or not she  
16 was having a relationship with Roy. I don't know that for  
17 sure. But I do know something for sure, he didn't know that.  
18 There's been not a single thing put into this record that  
19 shows that he had any inclination of that happening, not one  
20 thing. In fact, it's the opposite. When they asked him about  
21 it, you know, "If you would have known this would it have made  
22 a difference" "Yeah. Sure would have. She wouldn't have  
23 been in that house." You know, that's a likely answer. "You  
24 know, if I'd known she was cheating on me, no. There wouldn't  
25 have been no getting even. Her behind would have been gone."

1 That's the truth. That's what's realistic. That's what's  
2 reasonable to think.

3 One of two things happened that night, one of two. It's  
4 either exactly like he said, that he walked in and Roy Davis  
5 was sexually assaulting his girlfriend, or two, he walked in  
6 or he drove up, Diane saw the lights and went, "Oh crap, I  
7 better make something up." One of those two things happened.  
8 I'm convinced of that. It's very obvious from Diane on the  
9 911 tape that she knew Roy. That's obvious. You know, she  
10 said he was a pedophile, knew his name. What's not obvious  
11 though is that my client even knew who Roy was. Again, like I  
12 asked you, did you ever hear him say, "Roy, you know, Roy you  
13 did this. Why, why are you" -- no. Not one single time. Did  
14 he get home too early that day? I don't know. It was his  
15 testimony that he told her that he was going to go work out,  
16 said he was -- or he actually said, "I was going to go to a  
17 friend's house, go hang out with a friend, but it was to go  
18 work out." Said he came home. Obviously, it was a lot  
19 earlier than probably she was expecting, but again, I don't  
20 know that for sure if that's what happened. I don't know. I  
21 do think it's obvious at some point that she did know Roy, but  
22 there's been no evidence whatsoever that my client did, none,  
23 none whatsoever. You know, and I want to point out a little  
24 detail, and I think it's kind of where Lynndale may have  
25 messed up because he didn't realize this. Lynndale testified,



Closing Argument by Mr. Alex Hyman

1041

1 if you'll remember, he said, "Yeah. He was just in the  
2 hospital and he heard some news that made him mad." Lynndale  
3 forgot to get the piece -- the little detail that my client  
4 was in the hospital 11 months before this happened, not just  
5 in the hospital. If you get bad news about something do you  
6 wait 11 months? No, and there was no news that that, you  
7 know, there was nothing that he testified to that said that  
8 that bad news was that his girlfriend was cheating on him. In  
9 fact, the Solicitor made the, the argument that it was  
10 something about money, \$50 was missing. You remember him  
11 talking about that? You remember Jimmy saying "Yeah, we ended  
12 up going to Conway National and did a dispute form and they  
13 put the money back." If that didn't happen don't you think  
14 they'd have somebody here to say that? Yeah. They absolutely  
15 would.

16 I told you, I made a promise to you at the beginning of  
17 this case. I think my exact words were at the end of this  
18 case we're going to go over exactly what that Solicitor told  
19 you he was going to prove. I said we're going to nitpick it  
20 and see what exactly he proved, and this lady right here, Ms.  
21 Grace, she takes down everything I say. She's probably tired  
22 of hearing me talk. She takes down every single thing that is  
23 said in this courtroom, and I asked Ms. Grace if she would be  
24 so kind as to get me a transcript of the Solicitor's  
25 statement. That way I didn't misquote him. So what I've got

1 here is a couple of the statements that he said. [As read],  
2 "James had been out of town for a while. He gets out, finds  
3 out that Roy is in the picture. This infuriates James, and  
4 James make the call. Evidence will be that James tells Diane,  
5 'It's either you're going to get out of this house or we're  
6 going to get rid of Roy.'" Evidence will be. Did you all  
7 ever hear a single piece of evidence of that ultimatum? No.  
8 Because it never happened.

9 [As read], "James" -- go back. "James had been out of  
10 town for a while." They based that solely on what Lynndale  
11 said, but he hadn't been out of town for a while. That was 11  
12 months prior to this. The Solicitor was wrong on that  
13 statement, and he was certainly wrong on this. "It's either  
14 you're going to get out of this house or we're going to get  
15 rid of Roy." There's absolutely no testimony that that  
16 conversation ever took place, none. You noticed that they  
17 didn't question him on that? When Jimmy Rosenbaum got up  
18 there the Solicitor didn't ask him one question about that  
19 conversation.

20 The next one. [As read], "Roy is just a side attraction,  
21 fine to have fun with but compared with the other, she takes  
22 the more convenient and that is to stay with Jim. Evidence  
23 will be that, 'If that is to happen you've got to get him back  
24 over here one more time,' and that date happened to be July  
25 11<sup>th</sup>." What evidence has shown that Jimmy Rosenbaum said any

1 of that? "Got to get him over here," there's been no evidence  
2 of that whatsoever, not one single stitch of evidence that can  
3 even -- you can even infer that, nothing that Bridgett Briles  
4 said. I mean, come on.

5 The next one. [As read], "You'll hear evidence that  
6 James, Jim Rosenbaum was parked about 200 yards in a side lot.  
7 You'll see some maps. It'll make a little bit more sense to  
8 you, but about 200 yards parked and waiting for him to come  
9 in." Now, I hope that I've done my job and shown that is not  
10 true. I want you to think if they had anything to show that  
11 he didn't actually go to Planet Fitness that night they would  
12 show it? Absolutely they would show it. You know, I told you  
13 about the 8:46 being 9:46 but here's the other thing about  
14 that, too. That's 50 minutes before any of this happens. You  
15 know, let's just say at 8:40 it did ping there. It didn't.  
16 That's 50 minutes. You know what he did after that? You know  
17 what he did after he talked to Diane while she was at the  
18 Money Mart he called his friend Mark and asked about working  
19 out. If you've just concocted a plan why in the world would  
20 you call your buddy and say, "Hey, man, you still want to work  
21 out?" Don't you think if that was not true they'd have Mark  
22 in here saying that? They don't want to bring Mark in here  
23 because he's a black man. Now apparently this has been made  
24 about race. You know, noticed it was never said in the  
25 opening that race had anything to do with it.

1       The next one. [As read], "Make no mistake about it, the  
2       reason Roy Davis is dead is that he was beat about the head  
3       with a baseball bat." Dr. Proctor proved that that is  
4       absolutely not true, absolutely not true. In fact, I think  
5       Dr. Proctor even said, "Why is everybody asking me about the  
6       skull fracture?" I'll tell you why. That's what law  
7       enforcement thought. They just assumed that's what killed  
8       him, but Dr. Proctor said every one of those head injuries was  
9       survivable. Yes. He said that if he didn't get treatment he  
10      could potentially die of that, but they were survivable.

11      The next one. [As read], "You've got to ask yourself.  
12      I've been straight up and front with you. You're going to  
13      have to make the determination is this self defense? Is this  
14      a plan? Is this a plot?" I agree with him on that because  
15      if it's not a plan or a plot then there's no murder. There's  
16      no premeditation. Now, I can't say what was in Diane's head  
17      and she's not here but Jimmy is. He had no plan, no plot,  
18      anything like that. There's been zero evidence that there was  
19      any plan that he was a part of.

20      The next one. This is what the Solicitor said, [as  
21      read], "We're getting the cart ahead of the horse a little  
22      bit, but if it's self defense, that is a complete defense. If  
23      it is defense of others you have got to turn them loose. If  
24      it is murder it is murder. It's really that simple." You  
25      know, the Solicitor really didn't talk about defense of

Closing Argument by Mr. Alex Hyman

1045

1 others, but I will. If the person who's being attacked has  
2 the right to defend themselves against that person, when you  
3 defend that person you have that exact same right. Roy  
4 doesn't have to attack. Jimmy, Jimmy can defend Diane and he  
5 can base that off of what a reasonable person would foresee,  
6 what they would see, what they would hear.

7 The next one. This is again, [as read], "You're going to  
8 hear from different people to say where the phones are at  
9 during the times, location of the phones, showing Jim across  
10 the road right about 150 to 200 yards away. You're going to  
11 hear that Jim and Diane talked for seven, eight, nine times."  
12 Seven, eight, nine times. No, they didn't. Think about what  
13 kind of conversation you could have in three seconds. Hello.  
14 That's probably four seconds right there, and again, as far as  
15 the locations I think we can all agree that was not the case,  
16 absolutely not the case.

17 The next one. [As read], "That's why I'm telling you  
18 this is murder, cold-blooded murder." What happened was  
19 terrible. I'll be the first to admit that. As far as things  
20 go though you can't have murder without malice. There has to  
21 be some premeditation or something of that sort. Just because  
22 he brought different weapons as they call them that doesn't  
23 infer malice. I think it infers the opposite. This wasn't  
24 planned. If it was planned don't you think he would've had a  
25 gun? A gun other than a pellet gun? I can assure you if I'm

1 planning something on that I'm not bringing gloves and a bat.  
2 I think it's likely that what he grabbed was the household  
3 items around him. You heard his testimony. "I was bringing  
4 the gloves in because I was planning on working out." You saw  
5 the weight room in his house. He said he had the gloves with  
6 him on the way to the gym. There's been no evidence  
7 whatsoever that that statement isn't true, none.

8 I want to talk with you a little bit, I'm kind of like  
9 Chris Helms did over there about what he's charged with. You  
10 know, when you're dealing with this and you're talking about  
11 malice I talked with you just a minute ago about that but you  
12 have to infer so many things to think that there's malice,  
13 malice in this. You have to infer that he had some knowledge  
14 of Diane and Roy having this relationship. There's no --  
15 there's been no testimony. There's no evidence of that, none  
16 whatsoever. Now, when you're talking about manslaughter,  
17 voluntary manslaughter, that's sudden heat of passion. You  
18 know, the, the quintessential voluntary manslaughter is you  
19 come home, you see your wife with another man, it's consensual  
20 and you shoot him. That sudden heat of passion, "Can't  
21 control myself, I've got to kill him." One thing you don't do  
22 though with voluntary manslaughter is you don't call the  
23 police. You don't ask for law enforcement to come. You don't  
24 hold him down, none of that. That's not sudden heat of  
25 passion and it sure as heck isn't murder. If this is murder,

Closing Argument by Mr. Alex Hyman

1047

1 this planned event, why didn't they kill him and then call  
2 911? If it's a script you can still say your story. Why call  
3 911 right in the middle of it if it's a planned murder? You  
4 don't. It wasn't planned, absolutely not planned.

5 Now, as far as the self-defense, again, my client is  
6 allowed to react based off of what he sees and what he hears.  
7 It was his testimony that when he came in Roy had her by the  
8 hair. She was yelling, screaming. Now, I don't know if she  
9 was truthfully yelling but she was yelling. You heard Jimmy  
10 Rosenbaum on the 911 tape say then why was she yelling? You  
11 never heard a response she wasn't yelling. You never heard  
12 anything about that. You never heard anything in the evidence  
13 to say that she was not screaming. On the 911 tape you need  
14 to ask yourself who sounds like they're in a rage because it  
15 ain't Jimmy. It's Diane. I don't know why, don't know how,  
16 anything like that, but it's very obvious that there was an  
17 issue that she had. You don't hear Jimmy yelling that stuff,  
18 pedophile, all this other stuff because Jimmy doesn't know  
19 him. Jimmy is basing what he is doing off the fact that when  
20 he came in he heard her screaming, he saw her on the ground.  
21 I don't know if she was lying about that. I have no clue.  
22 Evidence would show you though it doesn't matter if he  
23 believed it. The Judge will charge you that, that if he  
24 believed that and acted on that belief that he's entitled to  
25 be found not guilty for self-defense, but I'll go a step

1 further, because I think this is what happened and his  
2 testimony backs this up. The 911 tape backs this up. I think  
3 he came in, that he hit Roy. He got Roy off of her, and after  
4 that he was doing everything he could to detain Roy. He  
5 wanted Roy arrested. He didn't want Roy to get out that  
6 house. Now, they want to say that he didn't want Roy to get  
7 out that house so that he could continue to beat him. That's  
8 not true. It's not true at all. If that's the case, again,  
9 why do you call 911 before? Why not just call 911 after.

10 Detaining someone and waiting for police to get there is  
11 essentially a citizen's arrest. Now, the Solicitor didn't  
12 want to concede this but a citizen's arrest is an absolute  
13 defense as well, and the Judge is going to charge you what the  
14 law is on citizen's arrest, but the belief is this, if you  
15 believe that a felony was committed, a sexual assault would  
16 certainly be a felony, you have the right to detain that  
17 person even if it means taking their life. The Judge is going  
18 to tell you that.

19 Now, you heard Mr. Rosenbaum. What did he say? "I did  
20 not want that man to die. I did not intend to kill him." I  
21 think the manner of death shows that he did not intend to kill  
22 him. I mean, the way that he died, not blunt force trauma to  
23 the head but rather a lacerated thoracic aorta. He couldn't  
24 do that again if he tried a thousand times. There was no  
25 intent to kill him. Was he mad? I'm sure he was. Did he



Closing Argument by Mr. Alex Hyman

1049

1 want to kill him? No. His statement was that, "No, I didn't  
2 mean to kill him. I didn't mean -- we didn't want him to  
3 die. Well, I didn't want him to die. I don't know what Diane  
4 wanted," but again, I think that shows that there's no plan  
5 here, there's no plan between these two people, and the reason  
6 they're trying to show this plan and to say that there's a  
7 plan is because without a plan this cannot be murder. It  
8 can't be. Without showing death and a sudden heat of passion  
9 it can't be voluntary manslaughter. I think he acted in self-  
10 defense. I think he attempted to make a citizen's arrest.  
11 The 911 and his statement both coincide to say, "I was trying  
12 to hold him down," but if you think that he acted in some way  
13 unlawful the Judge is going to charge involuntary  
14 manslaughter. Involuntary manslaughter is manslaughter where  
15 you lack the intent to kill. It's not an accident as he said.  
16 That is wrong. That's not what the law is and the Judge will  
17 tell you what the law is, but it is the unintentional killing  
18 of someone. If you think he was acting in an unlawful manner,  
19 it is very obvious that it was not his intent for him to die.  
20 His statement was that it was not his intent for him to die  
21 and they haven't put up anything to show otherwise.

22 You know, one of the things that I thought about a good  
23 bit with this case, kind of wrap it up and then let you listen  
24 to the Judge but I thought multiple times about if Roy didn't  
25 die I can assure you that there's nobody that's more

1 remorseful about that than Jimmy is, but if Roy didn't die  
2 would he be on trial today? The injuries were the head and  
3 broken ribs, would he be here on trial today for some type of  
4 sexual assault because at no point in the 911 tape do you hear  
5 Roy yelling for the police, "Yeah, hurry up, hurry up.  
6 They're beating the crap out of me. Hurry up." You don't  
7 hear that. You hear him trying to escape. You hear Jimmy  
8 saying, "Don't move." You hear Jimmy holding him down and you  
9 hear Diane saying all kinds of stuff. Some of those things  
10 you hear her saying though is, "Don't move." You know, I  
11 don't know the answer to that question if he'd be on trial  
12 today. I don't know. But I do know that this isn't murder.  
13 I told you that at the beginning that you can call him a lot  
14 of things but you can't call him guilty.

15 I'm reminded of, of a story I remember hearing about  
16 Abraham Lincoln. Before Abraham Lincoln was a politician he  
17 was actually a very, very skilled attorney, and I remember  
18 reading this story about him, and he was interviewing a  
19 witness that was on the stand, and he asked the witness, he  
20 said, "How many legs do a sheep have," and the witness said  
21 four, and he responded to the witness and said, "Well, what if  
22 I told you a tail was a leg." He said, "Well, then he'd have  
23 five," and he immediately responded, "No. Just because I say  
24 a tail is a leg doesn't make it so. It would have four legs."  
25 Just because they say that it's murder, just because they say,

Closing Argument by Mr. Alex Hyman

1051

1 "Well, if it's not murder then it's manslaughter," that  
2 doesn't make it so. What Diane did and said prior to that  
3 night my client didn't know. He can't be held accountable for  
4 things he didn't know about. If she was having a relationship  
5 with Roy he didn't know about it.

6 Ladies and gentlemen, I told you from the get-go that  
7 there would be doubt about certain things. There'd be pillars  
8 that they're going to try to build their case on but that  
9 there would be doubt in those pillars. Was he 200 yards away?  
10 Can you all say, can you all say that he was 200 yards away  
11 beyond a reasonable doubt? No. Was there a plan? Can you  
12 say that there was a plan beyond a reasonable doubt?  
13 Absolutely not. Absolutely not. Can you say that my client  
14 knew anything about this beyond a reasonable doubt? No. You  
15 cannot. That right there is your doubt, and with that doubt  
16 he is entitled to a verdict of not guilty. Not guilty on all  
17 counts. Thank you.

18 THE COURT: All right. Ladies and gentlemen, it's about  
19 five till two. We're going to go ahead and break for lunch.  
20 We've got lunch for you. I'm going to ask that you leave your  
21 notepads in the jury box. Do not discuss this case. It's  
22 -- still too early for deliberations. The State still is  
23 entitled to make some more closing arguments. I've got to  
24 charge you on the law, but we've been going at it a pretty  
25 good while and I think it's a good time to go ahead and break

1 for lunch. So leave your notepads here. We'll take about an  
2 hour for lunch and then we'll come back and resume the trial.  
3 Thank you very much.

4 (Whereupon, the following takes place outside the  
5 presence of the jury.)

6 THE COURT: All right. I apologize but with it being  
7 2:00 o'clock I had to go ahead and let them break for lunch  
8 because I'm sure we've got at least another hour between  
9 closing, charges, arguments and things of that nature.  
10 Anything from the State before we break for lunch?

11 MR. RICHARDSON: No, sir.

12 THE COURT: Anything from the Defense?

13 MR. ALEX HYMAN: No, Your Honor.

14 THE COURT: All right. We'll take -- we'll break --  
15 let's shoot for 2:45 and we'll see where we are then. Okay?

16 OFF THE RECORD

17 (On the record. The following takes place outside the  
18 presence of the jury.)

19 THE COURT: Anything from the State before we bring the  
20 jury in?

21 MR. HELMS: No, sir.

22 THE COURT: Anything from the Defense?

23 MR. ALEX HYMAN: No, Your Honor.

24 THE COURT: All right. Let's bring the jury back.

25 (Whereupon, the following takes place in the presence of

Reply by Mr. Helms

1053

1 the jury.)

2 THE COURT: All right. Ladies and gentlemen, welcome  
3 back. Hope everyone had a good lunch. Please make sure you  
4 have your own notepad and don't have anyone else's notepad.  
5 We're ready to resume the trial of this case. It is now the  
6 time where the State can make a brief rely to the closing  
7 arguments made by the Defense. Mr. Helms.

8 MR. HELMS: Thank you, Your Honor, and you all, I promise  
9 I'm going to be brief right now, but I just want to address a  
10 few things that Mr. Hyman talked about.

11 One of the last things he asked hypothetically speaking  
12 was, "I can't decide if Roy Davis had survived that beating  
13 that he took on July 11<sup>th</sup> would he be on trial for criminal  
14 sexual conduct?" He asked that rhetorical question to you  
15 all. I can answer it. The answer's no. I work for the  
16 Solicitor's Office. Your elected Solicitor is right there.  
17 The answer is an unequivocal no because he didn't commit  
18 sexual misconduct, and it, it, it doesn't support that. So  
19 the answer to that is no.

20 Talked a lot about what Jimmy said on the stand and how  
21 that just must be the gospel truth. That's right. If Jimmy  
22 says it, it must be true. Oh, except for the glove thing,  
23 except for that, that wasn't true. We know that was a lie  
24 because he admitted that was a lie, and if he's capable of  
25 telling that lie what else -- other lies is he capable of

Reply by Mr. Helms

1054

1   telling? Why do I keep harping on that glove thing because he  
2   admitted on the stand, it shows intent. The truth is he was  
3   putting them gloves on going in there. What does that show  
4   you? He knew somebody was in there and it -- why did he know  
5   somebody was in there? Because it's a plan and it shows  
6   intent. So he had to lie about those gloves.

7           Talked about how what they said on the actual 911 tape  
8   and that five minutes in and I'm going by his numbers on his  
9   presentation, "We need a cop here now." That's the first time  
10   you hear that. That's right. They did say that, five minutes  
11   into that conversation, which started, the, the 911 call five  
12   minutes after the initial confrontation. You're talking about  
13   10 minutes of pure beating before you decide to say we need a  
14   cop there.

15          Testified about the bat and why they got the gun, well,  
16   and said they were tussling. He said -- he testified he got  
17   the gun, wanted the gun because he lost the bat. What are  
18   they tussling over? Roy's lunch money? No. I agree Roy got  
19   the bat. At some point you beat me with it, I'm going to try  
20   and get it from you, too, but still somehow she gets it from  
21   Roy when he couldn't. Something ain't right there, folks. It  
22   just ain't right.

23          Asking, "Why are your pants off?" So we know his pants  
24   are down. He's hobbling. We can see that. We believe his  
25   pants were off because we know why he went there. He went

Reply by Mr. Helms

1055

1 there to have sex.

2 911 operator, talked about what the 911 operator and the  
3 exchange there. Asked, "Does he still have him restrained?"  
4 He's right. She did say that. What's that imply to you?  
5 He's capable of restraining him. Common sense tells us that.  
6 He's a whole person more than Roy Davis, 250 pounds versus 120  
7 pounds. He can restrain him.

8 I want to talk about this, too. He, he alluded to me  
9 saying something about this being taken before the 911 tape or  
10 911 call was made. No, I didn't, and if I did I misspoke  
11 because that ain't at all what I meant. We all agree when  
12 this picture was taken and it was taken after the initial  
13 beating and right before he called Paul Ridgeley. He's a  
14 hundred percent right, but what do you see in this picture?  
15 Do you see somebody who's capable of fighting back? This is,  
16 this is why it doesn't matter about Aaron Edens. Yes, if  
17 Aaron Edens is correct then he was lying in wait, and there's  
18 your malice, there's your malice aforethought, but folks, once  
19 he's incapacitated, even if you believe the mess that they're  
20 spewing about a sexual -- rape, a sexual assault, the threat,  
21 even if you believe that nonsense, the threat has clearly been  
22 removed because he goes from this to this. There's a  
23 significant difference between the condition of this person  
24 between here and here. There's malice. So even if you don't  
25 find that he was lying in wait, malice was formed here, and

Reply by Mr. Helms

1056

1 the Judge is going to tell you about malice, malice  
2 aforethought. That makes you think that it had to be thought  
3 of days and weeks and months in advance. No. It does not.  
4 That is not what the law says. The Judge is going to tell you  
5 and I'm going to tell exactly what he's going to say. Malice  
6 aforethought does not require that malice exist for any  
7 particular time before the act is committed, but malice must  
8 exist in the mind of the Defendant just before and at the time  
9 the act is committed. So it ain't got to be -- he ain't got  
10 to be hiding out in the woods for days and hours on end.  
11 After that picture was taken there's malice formed there as  
12 well. That's murder. That's why it's murder.

13       Talked about how the detective never took the stand. The  
14 detective -- don't you think if that detective could add  
15 anything to this case I'd put him on? Didn't we call enough  
16 witnesses? 20 witnesses? If the detective had anything else  
17 to add he would have taken that stand, I promise you that.

18       Talks about how we don't know where Jimmy was prior to  
19 the murder. I know where he was during the murder, and he was  
20 in that house participating in it. That's uncontroverted. We  
21 know that to be a fact, and there's where your malice is  
22 formed.

23       Said it'd be nice to know if the neighbors, if the  
24 neighbors heard a scream. Well, once again, don't you think  
25 if I had a neighbor that was telling us that they heard



Reply by Mr. Helms

1057

1 anything that we would have put them on that stand? I want  
2 you to look at where that house is, and you tell me how many  
3 neighbors are close to that house. It's not absurd that a  
4 neighbor didn't hear the scream. They live in the country.  
5 Every house is in its own field. There are no neighbors to  
6 hear a scream.

7       Talked about a lack of DNA. You all we don't need DNA.  
8 We know Roy Davis is dead and we know his identity. We know  
9 Richard Rosenbaum killed him and we know his identity and  
10 Diane Durkin helped and we know her identity. Why the heck do  
11 we need DNA? I'm not looking for a missing person, and I  
12 ain't trying to figure out who did this because, remember, it  
13 ain't a whodunit. We don't need DNA.

14       Talked about -- a lot about Lynndale because he's got to  
15 talk about Lynndale because if you believe Lynndale you don't  
16 believe that man right there, and, and said, "I couldn't help  
17 but wonder, well, what if this happened and they had this  
18 conversation in the jail cell instead of the one?" That ain't  
19 what Lynndale testified to. You can wonder about  
20 hypotheticals all day, but the evidence is that he told him he  
21 planned it and did it and then told him details about it that  
22 he shouldn't have known, but I'm not going to beat a dead  
23 horse. You all know what I'm saying.

24       He said Lynndale's hard to believe. It's hard to believe  
25 his version of events. The evidence supports Lynndale's

1 version of events. The facts that he knew supports Lynndale's  
2 version of events.

3 Also said about Lynndale, said, "Well, yeah, he did have  
4 something to gain because if he didn't come testify last week  
5 that would have been giving false information to a law  
6 enforcement officer." Let me explain something to you, that  
7 is absolutely not true. False information is if you lie to a  
8 -- has nothing to do with you coming and testifying in a open  
9 court of law. He didn't have to come here. That is not false  
10 information. Now, if he came here and lied that would be  
11 perjury but those are apples and oranges.

12 Dr. Proctor, talked about Dr. Proctor, again, with the  
13 head shots. Hey, I'll concede that the injury Roy died from  
14 was the one you caused to his, to his ribcage when you broke  
15 multiple ribs and plunged it into his heart. I'll concede  
16 that, but they still want to be congratulated because they  
17 didn't beat his brains out. That's absurd to me, and if we  
18 did say that at any time, again, what we're saying is not  
19 evidence. That's why we bring a medical doctor to come tell  
20 you exactly what's true, what's right or wrong. Okay. Fine.  
21 If I said that at any point I was wrong. He didn't die from  
22 the multiple, multiple blows to the head, but he did die from  
23 an injury they caused.

24 The attorney said he thinks that the, the injury happened  
25 in the beginning. What matters is not what he thinks or I

Reply by Mr. Helms

1059

1 think. It's what that man said and frankly how you interpret  
2 it and believe, and Dr. Proctor said he don't know what injury  
3 happened when but he knows -- does know what he died from,  
4 blunt force trauma and that was the point of putting him on  
5 the stand to let you know that.

6 Compare what happened to Roy Davis I think at one point  
7 to playing football or baseball. Roy Davis would much rather  
8 have been playing football or baseball than go through what he  
9 went through. I think we can all agree on that.

10 He said the phone calls don't really matter because they  
11 didn't talk because, because Richard testified that, to that,  
12 and again, if Richard says it it must be true. AT&T said  
13 something different. He said seizure time is how long it  
14 takes the call to connect and length of connection is how long  
15 the phones were connected. What were you doing? Looking at  
16 each other through the phones? No. These were phone calls.  
17 Somebody was doing something, and again, I'm not saying they  
18 talked for long because they didn't have to. They didn't have  
19 to.

20 Aaron Edens, want to talk about Aaron Edens a little bit.  
21 He says Lynndale's version of events to law enforcement was  
22 that the Defendant was hiding because that's what our theory  
23 of the case was. Lynndale when he told that version of events  
24 has no idea what our version of events are, what our thoughts  
25 about this case are. He don't know what Aaron Edens' position

Reply by Mr. Helms

1060

1 is on the case because guess what, folks, I got Aaron Edens,  
2 my office did. We secured his services and, and that was well  
3 after the fact. So Lynndale had no way of knowing what the  
4 State's version of events were.

5 Asked you all if you ever heard Richard Rosenbaum refer  
6 to Roy as Roy. Did he ever say Roy? No. He didn't. No. He  
7 didn't because that would blow the whole thing up. If he did  
8 one thing right on that 911 call it's rehearse his script when  
9 he asked about being allowed to shoot him even after that and  
10 he didn't refer to him by name because if he referred to him  
11 by name he ain't following this script.

12 Talked about the law, said this is a citizen's arrest.  
13 That's all this is, a citizen's arrest. You tell me if that  
14 sounds like a citizen's arrest. Does he ever say, "Stop until  
15 the cops get here. You wait right there"? No. He commences  
16 to beating his tail, but if it ain't a citizen's arrest and  
17 you don't believe it's a citizen's arrest then it, then it's  
18 self defense and defense of others. So, so it ain't this,  
19 but, but it is this then.

20 Again, that's for you all to decide. I've told you our  
21 position. You know our position. You know what the evidence  
22 says, but if it, if it ain't citizen's arrest and it ain't  
23 defense of others and it ain't self defense, well, it's, it's  
24 got to be involuntary manslaughter. Come on. Come one.  
25 What's, what's, what's your defense here. The truth is they

Charge

-1061

1 murdered him. They murdered him. The evidence says that.  
2 The testimony says that, and now you all need to say that.

3 THE COURT: Thank you.

4 All right. Ladies and gentlemen, all of the evidence has  
5 been presented to you in this case and now is the time of the  
6 trial when I charge you with the law to be applied in this  
7 case.

8 The indictment in this case charges the Defendant with  
9 murder. I remind you that the fact that the Defendant was  
10 arrested, charged and indicted in this case, is not evidence  
11 in this case and cannot be considered by you as evidence of  
12 guilt in this case, nor does the Defendant's arrest, charge or  
13 indictment create any presumption or inference of guilt. This  
14 document is simply the formal written instrument which  
15 contains the charge made against the Defendant. It is the  
16 formal document by which this case is brought into this court.

17 Now, the trial of this case started with multiple  
18 Defendants. However, the case against the Defendant Diane  
19 Marie Durkin has been resolved. The case against the  
20 Defendant James Richard Rosenbaum and the evidence and the law  
21 concerning him should be considered separately and  
22 individually from the evidence and law concerning the  
23 Defendant Diane Marie Durkin. Any thoughts you may have  
24 concerning the case against the Defendant Diane Marie Durkin  
25 should not control your verdict as to the Defendant James

Charge

1062

1 Richard Rosenbaum.

2       The Defendant pleads not guilty to this indictment. That  
3 plea puts the burden on the State to prove the Defendant  
4 guilty. A person charged with committing a criminal offense  
5 in South Carolina is never required to prove his innocence.  
6 I charge you that an important rule of the law is that the  
7 Defendant in a criminal trial, no matter what the seriousness  
8 of the charge may be, will always be presumed to be innocent  
9 of the crime for which the indictment was issued unless guilt  
10 has been proven by evidence satisfying you of that guilt  
11 beyond a reasonable doubt. This presumption of innocence does  
12 not end when you begin your deliberations, but it accompanies  
13 the Defendant throughout the trial until you reach a verdict  
14 of guilt based on evidence satisfying you of that guilt beyond  
15 a reasonable doubt.

16       The presumption of innocence is like a robe of  
17 righteousness placed about the shoulders of the Defendant  
18 which remains with the Defendant until it has been stripped  
19 from the Defendant by evidence satisfying you of the  
20 Defendant's guilt beyond a reasonable doubt. The presumption  
21 of innocence is not a mere legal theory. It is not just a  
22 legal phrase. It is a substantial right to which every  
23 Defendant is entitled unless you, the jury, are satisfied from  
24 the evidence of the Defendant's guilt beyond a reasonable  
25 doubt.

Charge

1063

1        Now, what is a reasonable doubt in the law? A reasonable  
2        doubt is the kind of doubt that would cause a reasonable  
3        person to hesitate to act. Proof beyond a reasonable doubt is  
4        proof that leaves you firmly convinced of the Defendant's  
5        guilt. We know very few things in this world with absolute  
6        certainty, and in criminal cases the law does not require  
7        proof that overcomes every possible doubt. If, based on your  
8        consideration of the evidence, you are firmly convinced that  
9        the Defendant is guilty of the crime charged, you must find  
10       the Defendant guilty. If on the other hand, you think a real  
11       possibility exists that the Defendant is not guilty, you must  
12       give the Defendant the benefit of that doubt and find him not  
13       guilty.

14       I remind you that, during this trial, you and I have  
15       certain duties to perform. As the trial judge, my  
16       responsibility is to preside over the trial of this case. I  
17       also have the duty to rule on the admissibility of the  
18       evidence offered during this trial. You are to consider only  
19       the competent evidence before you. If any testimony was  
20       ordered stricken from the record in this case during this  
21       trial, you must disregard that testimony. You are to consider  
22       only the testimony which has been presented from the witness  
23       stand, any exhibits which have been made a part of the record  
24       in this case, and any stipulations of counsel.

25       I have the additional duty to charge you the law

1 applicable to this case. As the presiding judge, I am the  
2 sole judge of the law of this case. Your duty as jurors is to  
3 accept and apply the law as I now state it to you. If you  
4 have any idea as to what the law is or what the law ought to  
5 be and your idea is different from what I now tell you the law  
6 is, you must disregard your idea of what the law is or ought  
7 to be because you are sworn to accept the law and apply the  
8 law exactly as I state it to you.

9 In every case tried in this court before a jury, the jury  
10 is the sole and exclusive judge of the facts in a case. A  
11 trial judge cannot intimate, state, comment on, or make any  
12 statement to a trial jury about the facts in a case. Since  
13 you, the jury, are the sole judge of the facts in this case,  
14 you're not to infer from what I have said during the progress  
15 of this trial in ruling upon the admissibility of evidence, or  
16 otherwise, or anything that I say now during the course of  
17 this instruction to you, that I have any opinion about the  
18 facts in the case. The law does not allow me to have an  
19 opinion about the facts in this case. This is a matter solely  
20 for you, the jury, to determine. As jurors, your duty is to  
21 determine the effect, value, weight and truth of the evidence  
22 presented during this trial.

23 Now, two types of evidence are generally presented during  
24 a trial: direct evidence and circumstantial evidence.  
25 Direct evidence is evidence that directly proves the existence



Charge

1065

1 of a fact and does not require deduction. It is the testimony  
2 of a person who claims to have actual knowledge of a fact,  
3 such as an eyewitness. Circumstantial evidence is proof of a  
4 chain of facts and circumstances indicating the existence of a  
5 fact. The law makes no distinction between the weight or  
6 value to be given to either direct or circumstantial evidence,  
7 nor is a greater degree of certainty required of  
8 circumstantial evidence than of direct evidence. Crimes may  
9 be proven by circumstantial evidence. However, to the extent  
10 the State relies on circumstantial evidence, all of the  
11 circumstances must be consistent with each other, and when  
12 taken together, point conclusively to the guilt of the accused  
13 beyond a reasonable doubt. If these circumstances merely  
14 portray the Defendant's behavior as suspicious, the proof has  
15 failed.

16 The State has the burden of proving the Defendant guilty  
17 beyond a reasonable doubt. This burden rests with the State  
18 regardless of whether the State relies on direct evidence,  
19 circumstantial evidence, or some combination of the two.  
20 You should weigh all of the evidence in this case. After  
21 weighing all of the evidence, if you are convinced of the  
22 guilt of the Defendant beyond a reasonable doubt, you must  
23 find the Defendant guilty. On the other hand, after weighing  
24 all of the evidence in this case, if you are not convinced of  
25 the guilt of the Defendant beyond a reasonable doubt, you must

1 find the Defendant not guilty.

2 Necessarily, you must determine the credibility of  
3 witnesses who have testified in this case. Credibility simply  
4 means believability. Your duty as jurors is to analyze and to  
5 evaluate the evidence and determine which evidence convinces  
6 you of its truth. In determining the believability of  
7 witnesses who have testified in this case, you may believe one  
8 witness over several witnesses or several witnesses over one  
9 witness. You may believe a part of the testimony of a witness  
10 and reject the remaining part of the testimony of that same  
11 witness. You may believe the testimony of a witness in its  
12 entirety or reject the testimony of a witness in its entirety.  
13 You may consider whether any witness has exhibited to you any  
14 interest, bias, prejudice or other motive in this case. You  
15 may also consider the appearance and manner of the witness  
16 while on the witness stand.

17 Some witnesses in this case have prior criminal records.  
18 A person who has a past criminal record is competent to  
19 testify during a trial. A past record does not affect the  
20 ability of that witness to testify. A witness' past record  
21 may only be considered by you, if at all, in determining the  
22 witness' believability. Remember, you are the sole judges of  
23 the facts in the case and the believability of any and all of  
24 the witnesses.

25 The rules of evidence ordinarily do not permit witnesses

Charge

1067

1 to testify to opinions or conclusions. An exception to this  
2 rule exists for witnesses we call expert witnesses. A witness  
3 who, by education and experience, has become expert in some  
4 art, science, profession or calling may state an opinion as to  
5 relevant and material matter, in which the witness claims to  
6 be an expert, and may also state the reasons for the opinion.  
7 You should consider any expert opinion received in evidence in  
8 this case and, like any other evidence, give it the weight you  
9 think it deserves. If you decide that the opinion of an  
10 expert is not based on sufficient education and experience, or  
11 if you conclude that the reasons given in support of the  
12 opinion are not sound, or that the opinion is outweighed by  
13 other evidence, you may disregard the opinion entirely..  
14 An expert witness' testimony is to be given no greater weight  
15 than that of other witnesses simply because the witness is an  
16 expert. Further, you're not required to accept the expert's  
17 opinion, even though it is not contradicted.

18 Now, in order to establish criminal liability, criminal  
19 intent is required. For example, the mental state required to  
20 be proven by the State for a particular crime might be  
21 purpose, intent, knowledge, recklessness or criminal  
22 negligence. Criminal intent must be proven by the State  
23 beyond a reasonable doubt. Criminal intent is always a matter  
24 that must be determined by the jury from the circumstances  
25 surrounding the situation. There is no way to prove intent to

1 a mathematical certainty. Medical science cannot dissect a  
2 person's brain and determine what the person had in mind, so  
3 the law says that criminal intent may be inferred from the  
4 circumstances shown to have existed. This is how you make a  
5 determination of whether or not the element requiring intent  
6 was present. Intent does not have to be established by direct  
7 and positive evidence. Intent may be established by inference  
8 in the same way as any other fact, by taking into  
9 consideration the acts of the parties and all of the facts and  
10 circumstances of the case. Criminal intent is a mental state,  
11 a conscious wrongdoing. You must determine what the Defendant  
12 intended to do based on the circumstances shown to have  
13 existed. Criminal intent can arise from action or a failure  
14 to act. It may arise from negligence, recklessness or an  
15 indifference to duty or to consequences that is considered by  
16 the law to be the equivalent of criminal intent.

17 The Defendant is charged with murder. To convict the  
18 Defendant of this charge, the State must prove beyond a  
19 reasonable doubt that the Defendant killed another person with  
20 malice aforethought. Malice is hatred, ill will or hostility  
21 towards another person. It is the intentional doing of a  
22 wrongful act without just cause or excuse and with an intent  
23 to inflict an injury or under circumstances that the law will  
24 infer an evil intent. Malice aforethought does not require  
25 that malice exists for any particular time before the act is

Charge

1069

1 committed, but malice must exist in the mind of the Defendant  
2 just before and at the time the act is committed. Therefore,  
3 a combination of the previous evil intent and the act must  
4 exist.

5 Malice aforethought may be express or inferred. These  
6 terms, express and inferred, do not mean different kinds of  
7 malice but merely the manner in which malice may be shown to  
8 exist, that is, that is either by direct evidence or by  
9 inference from the facts and circumstances which are proved.  
10 Express malice is shown when a person speaks words which  
11 express hatred or ill will for another or when the person  
12 prepared beforehand to do the act which was later  
13 accomplished. Acts of preparation going to show that the deed  
14 was within the Defendant's mind would be express malice.

15 Now, if you find that the State has failed to prove  
16 beyond a reasonable doubt that the Defendant committed murder,  
17 you may consider whether the State has proved beyond a  
18 reasonable doubt that the Defendant committed voluntary  
19 manslaughter. Included within the offense of murder is the  
20 lesser offense of voluntary manslaughter. To convict the  
21 Defendant of voluntary manslaughter, the State must prove  
22 beyond a reasonable doubt that the Defendant took the life of  
23 another in the sudden heat of passion based on sufficient  
24 legal provocation. Both heat of passion and sufficient legal  
25 provocation must be present at the time of the killing to

1 constitute voluntary manslaughter. Sudden heat of passion  
2 may, for a time, affect a person's self-control and  
3 temporarily disturb a person's reason. The sudden heat of  
4 passion must be the type that would make an ordinary person  
5 unable to coolly reflect on his actions and would produce an  
6 uncontrollable impulse to do violence.

7       Sufficient legal provocation must be the type that would  
8 make a person of ordinary reason and caution become enraged  
9 and to lose control temporarily. The provocation needed for  
10 voluntary manslaughter must come from some act of, or related  
11 to, the victim. Words alone, however vulgar or insulting, are  
12 not enough to be legal provocation. Some overt, threatening  
13 act which could have produced the heat of passion must exist.  
14 The exercise of a legal right, no matter how offensive it is  
15 to another, is never sufficient legal provocation for  
16 voluntary manslaughter. If the heat of passion had cooled, or  
17 if there was enough time between the provocation, if any, and  
18 the killing for the passion of a reasonable person to cool,  
19 the killing would not be voluntary manslaughter. In deciding  
20 whether a reasonable person would have had enough time to cool  
21 off, you should consider all of the circumstances surrounding  
22 the killing. You may consider the nature of the provocation,  
23 if any; the Defendant's mental and physical state; and the  
24 circumstances and relationships between the parties.

25       If you find that the State has failed to prove beyond a

Charge

1071

1 reasonable doubt that the Defendant committed murder or  
2 voluntary manslaughter, you may consider whether the State has  
3 proved beyond a reasonable doubt that the Defendant committed  
4 involuntary manslaughter. Included within the offenses of  
5 murder and voluntary manslaughter is the lesser offense of  
6 involuntary manslaughter.

7 To convict the Defendant of involuntary manslaughter, the  
8 State must prove beyond a reasonable doubt that the Defendant  
9 unintentionally killed the victim without malice, but while  
10 engaged in an unlawful activity not naturally tending to cause  
11 death or great bodily harm or that the Defendant  
12 unintentionally killed the victim without malice, while  
13 engaged in a lawful activity with reckless disregard for the  
14 safety of others.

15 Excuse me. Unintentional means that the Defendant did  
16 not intend for anyone to be killed or seriously injured.  
17 Reckless disregard for the safety of others is more than mere  
18 negligence or carelessness. Mere negligence or carelessness  
19 is the failure to use the care that a person of ordinary  
20 reason would use under the same circumstances. Recklessness  
21 is a conscious failure to use ordinary care. Reckless  
22 disregard for the safety of others means that the Defendant  
23 was not interested in the consequences of his acts or the  
24 right and safety of others.

25 The State must also prove beyond a reasonable doubt that

1 the Defendant's act was the proximate cause of death.

2 Proximate cause is the direct cause; it is the immediate  
3 cause; it is the efficient cause; it is that cause without  
4 which the death of the victim would not have resulted. A  
5 chain of causation must exist from the time of the injury  
6 inflicted by the Defendant until the time of the, the --  
7 excuse me, victim's death. Proximate cause does not  
8 necessarily mean that the act occurred immediately prior to  
9 death.

10 More than one proximate cause may exist. The acts of two  
11 or more persons may combine together to be a proximate cause  
12 of the death of a person. A Defendant's act may be regarded  
13 as the proximate cause if it is a contributing cause to the  
14 death of the victim. The fact that other causes also  
15 contribute to the death of the victim does not relieve the  
16 Defendants from responsibility. The Defendant's act need not  
17 be the sole cause of the death, but must be a proximate  
18 contributing -- a proximate cause contributing to the death of  
19 the victim.

20 Now, the Defendant raises the defense of self-defense.  
21 Self-defense is a complete defense and, if it is established,  
22 you must find the Defendant not guilty. The State has the  
23 burden of disproving self-defense by proof beyond a reasonable  
24 doubt. The Defendant does not have to prove self-defense.  
25 The State must disprove that the Defendant acted in self-



Charge

1073

1 defense. If you have a reasonable doubt of the Defendant's  
2 guilt after considering all of the evidence, including the  
3 evidence of self-defense, then you must find the Defendant not  
4 guilty. On the other hand, if you have no reasonable doubt of  
5 the Defendant's guilt after considering all of the evidence,  
6 including the evidence of self-defense, then you must find the  
7 Defendant guilty.

8 The following elements are required to establish self-  
9 defense. First, the Defendant must be without fault in  
10 bringing on the difficulty. If the Defendant's conduct was  
11 the type which was reasonably calculated to, and did, provoke  
12 a deadly assault, the Defendant would be at fault in bringing  
13 on the difficulty and would not be entitled to an acquittal  
14 based on self-defense.

15 The second element of self-defense is that the Defendant  
16 was actually in imminent danger of death or serious bodily  
17 injury or that the Defendant actually believed he was in  
18 imminent danger of death or serious bodily injury.  
19 If the Defendant was actually in imminent danger, it must be  
20 shown that the circumstances would have warranted a person of  
21 ordinary firmness and courage to strike the fatal blow to  
22 prevent death or serious bodily injury. If the Defendant  
23 believed that he was in imminent danger of death or serious  
24 bodily injury, it must be shown that a reasonably prudent  
25 person of ordinary firmness and courage would have had the

1 same belief.

2 In deciding whether the Defendant actually was, or  
3 believed he was, in imminent danger of death or serious bodily  
4 injury, you should consider all the facts and circumstances  
5 surrounding the crime, including the physical condition and  
6 characteristics of the Defendant and the victim.

7 A Defendant does not have to show that he was actually in  
8 danger. The Defendant's belief that he was in imminent danger  
9 is sufficient if a reasonably prudent person of ordinary  
10 firmness and courage would have had the same belief. The  
11 Defendant has the right to act on appearances even though the  
12 Defendant's beliefs may have been mistaken. You must decide  
13 whether the Defendant's fear of immediate danger of death or  
14 serious bodily injury was reasonable and would have been felt  
15 by an ordinary person in the same situation.

16 The relative sizes, ages, and weights of the Defendant  
17 and the alleged victim may be considered in deciding the  
18 apparent or actual need for force in self-defense and the  
19 amount of force needed.

20 The final element of self-defense is that the Defendant  
21 had no other probable way to avoid the danger of death or  
22 serious bodily injury than to act as the Defendant did in this  
23 particular instance.

24 However, if the Defendant was on his own premises, the  
25 Defendant had no duty to retreat before acting in self-

Charge

1075

1 defense.

2 A person cannot be required to make an exact calculation  
3 as to the degree or amount of force which may be needed to  
4 avoid death or serious bodily harm. Therefore, in self-  
5 defense, the Defendant has the right to use the force needed  
6 to avoid death or serious bodily harm. The force used in  
7 self-defense does not have to be limited to the degree or  
8 amount of force used by the alleged victim. The Defendant has  
9 the right to use so much force as appeared to be necessary for  
10 complete self-protection and which a person of ordinary reason  
11 and firmness would have believed to be needed to prevent death  
12 or serious bodily harm.

13 If the Defendant was justified in defending himself, then  
14 the Defendant is also justified in continuing to defend  
15 himself until it is apparent that the danger of death or  
16 serious bodily injury has completely ended.

17 Under the law of self-defense, a Defendant may take  
18 another's life in the defense of others. The right to  
19 intervene to protect another person is subject to the same  
20 rights and limitations as the right of self-defense.  
21 The Defendant may take the life of a person who assaults a  
22 friend, relative or bystander if that friend, relative or  
23 bystander would have had the right of self-defense. To show  
24 that the person being defended had the right of self-defense,  
25 it must first be shown that the person being defended and the

1 Defendant were both without fault in bringing on the  
2 difficulty. If the conduct of the person defended or the  
3 Defendant was the type which was reasonably calculated to, and  
4 did, provoke a deadly assault, the person would be at fault in  
5 bringing on the difficulty and would not have the right of  
6 self-defense. Therefore, the Defendant would not have the  
7 right to use deadly force in defending that person.  
8 The defense of another person is excusable if the Defendant  
9 had reasonable grounds to believe, and in good faith did  
10 believe, that the person being defended was in immediate  
11 danger of death or serious bodily harm from the victim.  
12 In deciding whether the person defended actually was, or that  
13 the Defendant actually believed the person was, in immediate  
14 danger of death or serious bodily injury, excuse me, imminent  
15 danger of death or serious bodily injury, you should consider  
16 all of the facts and circumstances surrounding the crime,  
17 including the physical condition and characteristics of the  
18 parties.

19 A Defendant does not have to show that the person in --  
20 that the person the Defendant defended was actually in danger.  
21 A Defendant's belief that the person was in imminent danger is  
22 sufficient. The Defendant has the right to act on appearances  
23 even though the Defendant's belief may have been mistaken.  
24 The Defendant must show that, under the circumstances as they  
25 appeared to the Defendant, the Defendant believed the person

Charge

1077

1 defended was in danger and that a reasonably prudent person of  
2 ordinary firmness and courage would have had the same belief  
3 under the same circumstances. You, the jury, must decide  
4 whether the Defendant's fear of immediate danger of death or  
5 serious bodily injury to the person defended was reasonable  
6 and would have been felt by an ordinary person in the same  
7 situation. The Defendant does not have to wait until the  
8 victim gets the drop on the person defended; the Defendant has  
9 the right to act under the law of self-preservation to prevent  
10 the victim from getting the drop on the person defended.

11 The Defendant also asserts as a defense in this case his  
12 attempt to make a citizen's arrest. Under state law, a  
13 citizen may arrest a person in the nighttime by efficient  
14 means as the darkness and the probability of escape render  
15 necessary, even if the life of the person should be taken,  
16 when the person has committed a felony or; under circumstances  
17 that raise a just suspicion of the person's design to commit a  
18 felony and the person flees when he is hailed.

19 In order to invoke citizen's arrest as a Defendant --  
20 excuse me, as a defense for the justifiable killing in the  
21 apprehension of a fleeing felon, the evidence must show that  
22 the Defendant, at a minimum, had certain information that a  
23 felony had been committed by the person being arrested, and  
24 that the Defendant used reasonable means to effect the arrest.  
25 In this case, the Defendant alleges that the deceased, Roy

Charge

1078

1 Davis, committed criminal sexual conduct against the Defendant  
2 Diane Durkin. Criminal sexual conduct is a felony.  
3 Like all of the charges and defenses in this case, the State  
4 has the burden of disproving the defense of citizen's arrest  
5 by proof beyond a reasonable doubt.

6 Now, there are four possible verdicts which you may find  
7 in this case. No significance whatsoever should be given to  
8 the order in which I state these verdicts to you. I simply  
9 have to state one first, one second, one third and one fourth.

10 The possible verdicts in this case are, first, we, the  
11 jury, find the Defendant guilty of murder; or we, the jury,  
12 find the Defendant guilty of voluntary manslaughter; or we,  
13 the jury, find the Defendant guilty of involuntary  
14 manslaughter; or we, the jury, find the Defendant not guilty.  
15 Ladies and gentlemen, your verdict must be a unanimous one.  
16 Ms. Langford, as foreperson, when the jury agrees on a  
17 verdict, you'll check the appropriate verdict here on the  
18 verdict form and then sign your name, then knock on the door,  
19 tell the bailiff the jury has reached a verdict and we'll  
20 bring you back into the courtroom at that time.

21 Now, you were allowed to take notes during the trial of  
22 this case if you wanted to take notes. You will now be  
23 allowed to take your notes with you for reference during your  
24 deliberations. However, please remember that some people are  
25 better note takers than others. Some people can recall

Charge

1079

1 testimony and evidence adequately without taking notes. Juror  
2 notes should not be given any greater weight than the  
3 recollection of other jurors. The recollections of individual  
4 jurors should be considered as reliable as notes taken by any  
5 other jurors.

6 Now, I'm going to excuse you back to the jury room, allow  
7 you to take your notepads, but please do not begin your  
8 deliberations. I've got to check with the attorneys to see if  
9 there's any additional charges I need to give to you or if  
10 they have any challenges to the charges as I've given to you.  
11 If they do and I deem them appropriate I'll bring you back  
12 into the courtroom and make whatever additional charges or  
13 corrections I need to make. If there are none, then all of  
14 the exhibits will be brought back to the jury room and the  
15 bailiff will instruct you to begin your deliberations, but  
16 please do not begin your deliberations until the bailiff has  
17 instructed you to do so.

18 Thank you very much. You're now excused to the jury  
19 room.

20 (Whereupon, the following takes place outside the  
21 presence of the jury.)

22 THE COURT: All right. Any challenges or additional  
23 charges from the State?

24 MR. RICHARDSON: No, sir, Your Honor,

25 THE COURT: Any from the Defense?

1 MR. ALEX HYMAN: No, Your Honor.

2 THE COURT: All right. Let's make sure we've got all of  
3 the exhibits here and, excuse me.

4 All right. Here's the verdict form. If we've got all of  
5 the exhibits and the verdict form, we can take them back to  
6 the jury room. While they're getting that together if you  
7 could go ahead and bring or we'll wait until you take them  
8 back there to bring the alternates out, hold for just a  
9 second.

10 MR. HELMS: Judge, we probably don't want to send these  
11 clothes back there.

12 THE COURT: Well, whatever you all agree to. They're in  
13 evidence.

14 MR. HELMS: Alex.

15 THE COURT: If you all --

16 MR. HELMS: Well, only because it's biohazard stuff. I  
17 mean, not this stuff on top sealed in plastic, but these  
18 clothes in this bag is the only thing I could think of that we  
19 wouldn't want to send back there, but they're --

20 MR. ALEX HYMAN: Well, Judge, that's, that's Ms. Durkin's  
21 clothes, too, he's talking about.

22 THE COURT: Okay.

23 MR. HELMS: Right.

24 THE COURT: Well, put it this way, they're, they're  
25 exhibits in evidence. If everybody agrees not to send them



Question from Jury

1082

1 MR. HELMS: Judge, can I ask just out of curiosity, do  
2 you intend to send a copy of your charges back?

3 THE COURT: Not unless they ask for them. If you all  
4 want me to I can. Otherwise, I think if they request it I can  
5 send it back to them.

6 MR. HELMS: I defer to the Court, Judge.

7 THE COURT: Okay. Let's wait and see if they ask for a  
8 copy of the charges, then we'll, we'll make a decision.

9 (Alternates released by the Court.)

10 THE COURT: All right. Anything from the State while we  
11 wait on a verdict?

12 MR. RICHARDSON: No, sir, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. ALEX HYMAN: No, Your Honor.

15 THE COURT: All right. We'll be in recess until we hear  
16 from -- something from the jury.

17 (Deliberations begin at 3:42 p.m.)

18 OFF THE RECORD

19 (On the record. The following takes place outside the  
20 presence of the jury. Question from jury received at 4:52  
21 p.m.)

22 THE COURT: All right. We've gotten a request from the  
23 jury. It says, "We want to hear the 911." So we've got the  
24 State's Exhibit Six, which is the 911. I guess they want to  
25 hear it again. So we'll just play it for them again. Is it

Question from Jury

1083

1 set up -- let's go ahead and set it up there so that we can  
2 play it.

3 MR. HELMS: Yes, sir.

4 THE COURT: All right. And I'm going to mark this as  
5 Court's Exhibit Two. All right.

6 (Court's Exhibit Number Two [Question from Jury]  
7 appropriately marked.)

8 MR. HELMS: We're ready, Judge.

9 THE COURT: All right. We ready? Anything from the  
10 State before we bring the jury in?

11 MR. HELMS: No, sir.

12 THE COURT: Anything from the Defense?

13 MR. ALEX HYMAN: No, Your Honor.

14 THE COURT: All right. Let's bring the jury in.

15 (Whereupon, the following takes place in the presence of  
16 the jury.)

17 THE COURT: All right. Ladies and gentlemen, welcome  
18 back. Ms. Langford, I understand the State wants to listen to  
19 -- I mean, excuse me, the jury wants to listen to State's  
20 Exhibit Six, which is the 911 call again; is that correct?

21 FOREPERSON: Yes, please.

22 THE COURT: All right. We've got it -- set it up. Let's  
23 go ahead and play it for the jury. Thank you.

24 (State's Exhibit Number Six played in open court.)

25 THE COURT: All right. Ladies and gentlemen, you can

Verdict

1086

1           THE COURT: All right. If you would please hand it to  
2 the bailiff.

3           (Complies with request.)

4           THE COURT: Thank you.

5           All right. I'll ask the clerk of court if she would  
6 please publish the verdict.

7           THE CLERK: Indictment Number 2017-GS-26-05269, the State  
8 of South Carolina, County of Horry versus James Richard  
9 Rosenbaum, we, the jury, find the Defendant guilty of  
10 voluntary manslaughter, signed by foreperson, Kimberly  
11 Langford, dated December the 10<sup>th</sup>, 2018.

12          Ladies and gentlemen of the jury, if this is your verdict  
13 so signify by raising your right hand.

14          (All jurors raise right hand.)

15          THE COURT: All right. Let the record reflect all jurors  
16 raised their right hand.

17          Polling of the jury by the Defense?

18          MR. ALEX HYMAN: No, Your Honor.

19          THE COURT: All right.

20          (Jury released by Court.)

21          THE COURT: All right. I know the South Carolina Rules  
22 of Criminal Procedure give you time limits to make post-trial  
23 motions, but any post-trial motions at this time?

24          MR. ALEX HYMAN: Not at this time, Your Honor.

25          THE COURT: All right. Any reason why we cannot go ahead

1 -- me and my family would like to ask for the max, 30 years.

2 Thank you.

3 THE COURT: Thank you, ma'am. Thank you.

4 All right. Anything further from the State regarding --

5 MR. RICHARDSON: No, sir, Your Honor. You've, you've  
6 heard all the facts. I couldn't add anything to what Ms.  
7 Davis said or from what you've already heard.

8 THE COURT: All right. Prior record?

9 MR. RICHARDSON: Nothing significant. That 25 year old  
10 is it back in -- maybe a drug charge, nothing significant,  
11 Your Honor.

12 THE COURT: All right. All right. Mr. Rosenbaum, you  
13 have been found guilty by a jury of your peers on the crime of  
14 voluntary manslaughter. The sentence of the Court -- I'm  
15 going to impose the same sentence as I did on the other one.  
16 The sentence of the Court is that you be confined to the State  
17 Department of Corrections for 15 years. You'll receive credit  
18 for any time served thus far. All right.

19 MR. RICHARDSON: Thank you, Your Honor.

20 MR. ALEX HYMAN: Thank you, Judge.

21 THE COURT: Thank you.

22 All right. Anything further?

23 MR. RICHARDSON: No, sir.

24 (Adjourned.)

25



A Defendant has the burden of establishing the applicability of the statute to the facts of the case, and if the statute is applicable, also has the burden of establishing by the greater weight of the evidence that he is factually entitled to immunity. In *State v. Curry*, the South Carolina Supreme Court noted that in order for immunity to attach, "a valid case of self defense must exist, and the trial court must necessarily consider the elements of self defense in determining a Defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). Other than the duty to retreat, the elements of self-defense are: (1) the Defendant was without fault in brining on the difficulty; (2) the Defendant believed he was in imminent danger of death or serious bodily injury or he actually was in such imminent danger; and (3) his defense is based upon his belief of imminent danger, the circumstances would have warranted a reasonable person to strike the fatal blow in order to save himself from death or serious bodily injury.

#### SUMMARY OF THE FACTS

That on July 11, 2016 the Defendant returned and entered his residence. Upon exiting his vehicle, the Defendant heard his girlfriend whom also shared the residence, yelling, "get off me." Once the Defendant approached the room, he saw the decedent on top of his girlfriend while pulling her hair. The Defendant grabbed a baseball bat and struck the decedent with the bat. Thereafter the decedent grabbed the bat from the Defendant and the two began to fight. At that time the decedent did hit the Defendant with the baseball bat. The Defendant fled to his room and obtained a pellet gun and shot the decedent. The decedent continued to attack the Defendant until he became physically unable and later died.

### ANALYSIS

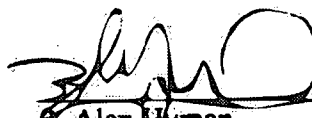
The facts will show that the Defendant meets all three prongs of the Act and is entitled to immunity. First, the Defendant had a legal right to be at his residence. Secondly, the Defendant was not engaged in an illegal activity. Lastly, the Defendant reasonably believed that he was in danger of death or serious bodily injury and was forced to use deadly force to save himself from death or great bodily injury. The facts will show that Diane Durkin gave a statement to police in which she states that the decedent was sexually assaulting her when the Defendant entered his home. It is reasonable for the Defendant to believe that he was in a situation where he and his girlfriend were in imminent danger of death or great bodily injury.

### CONCLUSION

Because the Defendant was not engaged in an unlawful activity, was attacked in a place he had a right to be and he met force with force because he reasonably believed it was necessary to prevent his own death or injury he is entitled to immunity and a dismissal under the Act.

Respectfully Submitted,

The Hyman Law Group, PA



B. Alex Hyman  
1208 3<sup>rd</sup> Avenue  
Conway, SC 29526  
Phone (843) 248-2024  
Fax (843) 248-3230

Date: July 31, 2017  
Conway, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF GENERAL SESSIONS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )

Warrant Nos.:  
2016A2610201791 – Murder/Murder

vs. )

**MOTION FOR RECONSIDERATION**

James R. Rosenbaum, )

Defendant. )

FILED  
Horry County  
2018 JUL 24 PM 3:56  
BENJAMIN ELYS  
CLERK OF COURT  
HORRY COUNTY, SC

TO: THE HONORABLE BENJAMIN J. CULBERTSON, PRESIDING JUDGE &  
NANCEY LIVESAY, ESQ AND CHRISTOPHER HELMS, ESQ. SOLICITORS

You will please take notice that the Defendant, James R. Rosenbaum (hereinafter “Defendant”) by and through undersigned attorney moves this court for a reconsideration of it’s ruling denying Defendant’s motion for immunity pursuant to S.C. Code 16-11-410 et. seq.

### **BACKGROUND**

On July 16<sup>th</sup>, 2018 an evidentiary hearing was initiated at the request of Defendant. Defendant sought immunity from prosecution under S.C. Code 16-11-410 et. seq. At the hearing, which concluded on July 17<sup>th</sup>, 2018, testimony was presented from the Defendant as well as his defendant, Diane Durkin (also charged with murder). Defendant Durkin testified that she allowed an individual named Roy Davis (hereinafter “decedent”) into her home to satisfy his request for a glass of water. She then left the room and when she returned he was completely naked and made a sexual advance upon her. At that point she told the decedent to “Get the F\*\*k out”, to which he did not comply. At that point Defendant Durkin testified that the decedent grabbed her, struck her about the face multiple times, and threw her to the ground. Photographic evidence was introduced



showing bruising to Defendant's eye that she testified was caused by the contact made by the Decedent.

Defendant Rosenbaum testified that he arrived at the residence that he and Defendant Durkin shared and heard screaming. At that point he entered the back door with a baseball bat. Upon entering the residence, he saw Defendant Durkin being held down by the decedent. He then struck the decedent with the bat, and engaged in a lengthy altercation which could partially be overheard on the 9-11 call entered into evidence. Defendant Rosenbaum testified, in effect, that the altercation was marked by several interludes of mutual combat followed by holding the decedent down (in an attempt to hold him until police arrived), and then combat re-engaging between the two parties. Towards the end of the altercation the testimony was that the Decedent had suspended aggressions and was seated in the living room. At that point the Defendants conceded that the decedent was not a threat; however, it was testified to that the decedent made a final push in the direction of the front door and re-engaged in combat the Defendant Rosembaum. It was at the conclusion of that final engagement that the decedent stumbled over and became unresponsive.

At the close of the Defendants' joint motion the Court granted the State's motion to deny Defendants' motions. The Court made effort to note that the Defendants had the burden of proof in it's motion and ruled that because there was no evidence regarding the cause of death in the record, the Defendants' motions must be denied because the Court could not determine which contact made by the Defendants' with the decedent caused the death.

Defendant respectfully requests that the Court re-consider it's decision on the following basis:

**BY FAILING TO APPLY THE REBUTTABLE PRESUMPTION GUARANTEED BY S.C. CODE 16-11-440 (A) THE COURT IMPOSED A BURDEN UPON DEFENDANT WHICH IS NOT REQUIRED UNDER THE STATUTE.**

Defendant concedes that the Defense has the burden of proof when requesting immunity under 16-11-410. However, the issue in this case is: what does the Defendant have the burden of showing? Given that the testimony of Defendant Durkin was that she told the decedent to "Get the F\*\*k out", he did not comply, and then proceeded to attack her, the decedent was both committing an "unlawful entry" and was committing a "unlawful and forcible act". As such, Code §16-11-440 (A)(1) & (2) are applicable, which provide:

(A) A **person is presumed** to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an **unlawful and forcible entry** or **unlawful and forcible act** is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

As such, the Defendant has the burden of establishing those elements identified in 16-11-440 (A) are present. If those elements are presented, then the **Defendant is granted a presumption** that they are acting with a reasonable fear of imminent peril or death and, at that

point, endowed with a presumption that they are acting within their rights under the statute. That presumption can (presumably) be rebutted by contradictory evidence which may create a jury question. However, in this case no evidence was presented by the State in response to the Defense's evidence. Despite this fact, the Court imposed upon the Defendant a burden to establish a cause of death. To the extent its relevant to the analysis, the Defense contends that, once it presented prima facia evidence comporting with 16-11-440 (A), it was then the State's burden to rebut that evidence in some way. The failure to do so means that the only evidence in the record is that which would entitle the Defendants to the presumptions bestowed upon them by the statute.

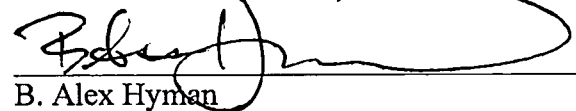
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Horry County  
2018 JUL 24 PM 3:56  
CLERK OF COURT  
Horry County, SC

### CONCLUSION

Therefore, based on the foregoing, Defendant respectfully requests that the Court reconsider its ruling and grant Defendant's motion for immunity.

Respectfully submitted,

HYMAN LAW GROUP, P.A.



B. Alex Hyman  
1208 3<sup>rd</sup> Ave.  
Conway, South Carolina 29526  
Phone: (843) 248-2024  
Fax: (843) 248-3230  
Alex@thehymanlawgroup.com  
Attorneys for the Defendant

July 24<sup>th</sup>, 2018  
Conway, South Carolina

|                         |   |                                  |
|-------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS |
|                         | ) | Warrant: 2016A2610201791         |
| COUNTY OF HORRY         | ) | Indictment: 2017GS2605269        |
|                         | ) | Case: 16H03597                   |
| STATE OF SOUTH CAROLINA | ) |                                  |
|                         | ) |                                  |
| PLAINTIFF.              | ) |                                  |
|                         | ) |                                  |
| VS.                     | ) |                                  |
|                         | ) |                                  |
| JAMES RICHARD ROSENBAUM | ) |                                  |
|                         | ) |                                  |
| DEFENDANT.              | ) |                                  |

FILED  
HORRY COUNTY  
2018 JUL 25 PM 12:18  
KAREN M. ELYS  
CLERK OF COURT  
HORRY COUNTY, SC

This memorandum is to address Defendant's Reconsideration Motion for Protection under South Carolina Code of Laws 16-11-410 et seq. "The Protection of Persons and Property Act," also known as the Castle Doctrine or "Stand Your Ground." The State respectfully requests that Defendant's motion as to murder Indictment 2017-GS26-05268 be dismissed. (Attached Exhibit A) While the State recognizes the purpose of the legislature in allowing, through statutory scheme, a person to protect innocent persons and be secure in his own property, the State does not believe that the legislature intended on the result of its Act to be tantamount to a "license to kill," and the State would argue that under the facts of the present case, the Defendant is not protected by the Act and is unable to prove self-defense as a matter of law.

The Protection of Persons and Property Act Section 16-11-440(C)

The State agrees with the defense's Motion for Immunity filed March 14, 2018 in that the appropriate section is 16-11-440(c) of the Act. (Exhibit B) In Section 16-11-440(A), the main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle. State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) The presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence. S.C. Code § 16-11-440(B). The victim in the above case like the victim in Curry was a social guest and rightfully in the residence, subsection (A) is inapplicable to defendant, and the defendant is therefore defaulted into subsection (C), which deals with the use of force by one who is attacked in another place where he has a right to be. In Section 16-11-440(C), the pertinent "force" section, states:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person....

Therefore, the State agrees with the defense's motion for immunity in only that Section 16-11-440(C) is the appropriate section to applied to the facts in the above case. The evidence is undisputed that co-defendant Durkin gave the victim a ride and invited him into the home which is in evidence by her very testimony and statement to the 911 operator in the recording. So, the State disagrees with the defense's change in stance in their motion for reconsideration that subsection (A) is applicable and that the above defendant is immune under Stand Your Ground. (Exhibit 3 Motion for Reconsideration)

### Facts and Law

The Honorable Judge Benjamin Culbertson held a Stand Your Ground hearing starting July 16, 2018 on the above case. The defense put up two witnesses which included the defendant Richard Rosenbaum to prove preponderance of the evidence that the defendant was immune from being prosecuted for murder under "The Protection of Persons and Property Act". A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). The Act allows a person to stand his ground and meet force with force if he reasonably believes it is necessary to prevent death or great bodily injury or to prevent the commission of a violent crime. In this case, while defendant was in a place that he was allowed to be, his use of deadly force against victim was not necessary to prevent her own death or great bodily injury or the commission of a violent crime. Further, "the General Assembly did not intend" to require the circuit court "to accept the accused's version of the underlying facts" in determining a motion for immunity under the Act. Curry, 406 S.C. at 371, 752 S.E.2d at 266.

In the above case the defendant alleges in brief that he arrived to his house and heard his girlfriend screaming for help. Rosenbaum testified after hearing the screaming instead of calling 911 he went to his truck and put on UFC fighter gloves, got a baseball bat and entered the house from the back door. Defendant further alleges that when he enters the house he saw the victim on top of his girlfriend so he swings the baseball bat and strikes the victim in the head. The defendant throughout his testimony on direct alleges that he is acting in defense of himself and his girlfriend. The evidence conflicts with the defendant's claim of self-defense. First, the defendant admitted to using his phone to video the victim while the victim was clearly injured and admits that the victim was not a threat when he took the video. Secondly, in Rosenbaum's testimony he further admits the victim tried to leave and he would not let the victim leave the residence. Finally, the evidence from the 911 recording was played during the defendant's testimony and depicted even after the defendant took a video at a point when the victim was no longer a threat and after when the victim tried to leave the defendant assaulted the victim even though the victim was no longer a threat and trying to leave.

Therefore, the evidence illustrates that at the time the victim was down and tried to leave there was no action by the defendant that was necessary to prevent the defendant's own death or great bodily injury or the commission of a violent crime when he assaulted the victim who was trying to leave. Prior to the victim trying to leave the residence the evidence from 911 recording shows the victim was talking and the picture of victim taken by

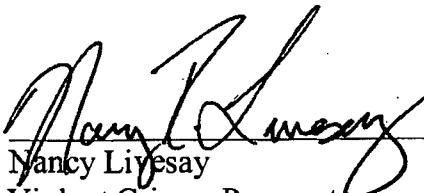
defendant shows the injured victim sitting up on a mattress in the den area of the house. It was not until after the victim tried to leave and was further assaulted that he stopped talking and moving. When police arrived on scene the defendant was without any serious injury and the victim was beaten to death and laying by the front door.

In State v. Oats while defendant was in place that he was allowed to be, his use of deadly force against victim was not necessary to prevent his own death or injury or commission of violent crime, and assuming that there was attack by victim previously, there was no such event at time of shooting and thus there was no force to meet as victim was walking away from defendant when he was shot. Sate v. Oats 421 S.C. 1, 803 S.E.2d 911 (2017) The court will not interpret the language of the statute to mean that a person may shoot and kill another when a perceived attack has ended. Id. Like in Oats when the victim in this case was no longer a threat if he was ever a threat there was no force to meet when the victim was trying to leave from the defendant's house. When the victim tried to leave the defendant held him captive in the house and continuously assaulted him until the victim was no longer speaking or moving.

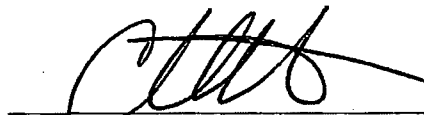
### Conclusion

Therefore, the State ask that the defendant's motion be denied. The defendant did not meet her burden that he was immune under "Stand Your Ground" by preponderance of the evidence. Due to the fact the defendant could not meet the burden the case should go forward for a jury to decide.

Respectfully,

  
Nancy Livesay  
Violent Crimes Prosecutor  
15<sup>th</sup> Judicial Circuit

FILED  
Horry County  
2018 JUL 25 PM 12:18  
RENEE M. ELVIS  
CLERK OF COURT  
Horry County, SC

  
Christopher Helms  
Assistant Solicitor  
15<sup>th</sup> Judicial Circuit

FILED  
HORRY COUNTY  
2018 JUL 25 PM 12:18  
RENEE M. ELYS  
CLERK OF COURT  
HORRY COUNTY, SC

EXHIBIT A

(Indictment 2017-GS-26-05269)

**WITNESSES**

Mark Johnson Horry County Police Department

*Jim Claffield*

**ARREST WARRANT NUMBER**

2016A2610201791

CDR: 0116 16-03-0010, 0020

DOA: 7/13/2016

**ACTION OF GRAND JURY**

**TRUE BILL**

*For* Foreperson of Grand Jury

Date:

NOV 29 2017

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-26-05269

**The State of South Carolina**

**County of Horry**

Nancy Livesay

16H03597

**COURT OF GENERAL SESSIONS**

**November, 2017 TERM**

**THE STATE**

**vs.**

James Richard Rosenbaum

/ M

Highway 548

Conway, SC 29527-4384

DOB:

SSN:

**ATTORNEY: B. Alex Hyman**

**Indictment for**

**Murder**

**Jimmy A. Richardson, II, Solicitor**

**ORIGINAL**

**FILED  
HORRY COUNTY**

**2017 NOV 30 AM 10:48**

**RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC**

**DATE RECEIVED FROM**

**GRAND JURY**



STATE OF SOUTH CAROLINA     )  
                                                   )  
COUNTY OF HORRY             )

## INDICTMENT

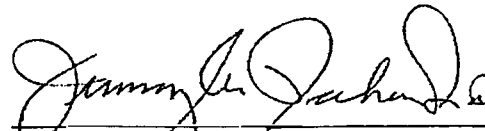
At a Court of General Sessions, convened on November 15, 2017, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That James Richard Rosenbaum did in Horry County, on or about July 11, 2016, willfully, feloniously, and intentionally kill the victim, Roy Davis, with malice aforethought, either express or implied, by means of assault with a deadly weapon, and the victim did die as a proximate result thereof on or about July 12, 2016 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE  
WARRANT(S): 2016A2610201791  
INDICTMENT(S):

State of South Carolina

James R. Rosenbaum  
DEFENDANT(S)

This form order submitted by: Benjamin H. Culbertson  
Presiding Judge

Attorney for : ☐ State ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE

- ☐ DECISION BY THE COURT AFTER HEARING. This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.
- ☐ DECISION BY THE COURT AFTER STATUS CONFERENCE. This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.
- ☒ MOTION: Defendant's Motion for Reconsideration
- ☐ GRANTED ☒ DENIED ☐ CONTINUED ☐ WITHDRAWN
- ☐ WITHDRAWN BY MOVING PARTY: \_\_\_\_\_  
Signature of Moving Party
- ☒ OTHER: Pursuant to Rule 29(a), SCRCrP, this motion is decided on  
briefs without oral arguments.

IT IS ORDERED AND ADJUDGED: ☐ See Order of the Court below ☐ See attached order  
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

|  |
|--|
|  |
|  |

*Benjamin H. Culbertson*  
Circuit Court Judge

2148  
Judge Code

August 10, 2018  
Date

FILED  
2018 AUG 15 PM 3:09  
REBEKAH ELYS  
CLERK OF COURT  
HORRY COUNTY, SC

## For Clerk of Court Office Use Only

This judgment was entered on the 15<sup>th</sup> day of Aug, 20 18 and a copy mailed first class or placed in the appropriate attorney's box on this 15<sup>th</sup> day of Aug, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Livesay

Christopher Helms

**ATTORNEY(S) FOR THE STATE**

B. Alex Hyman

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Renee Elvis  
**CLERK OF COURT**

**Court Reporter:**      None

**FILED**  
2018 AUG 15 PM 3:09  
RENEE N. ELVIS  
CLERK OF COURT  
Horry County, SC

**WITNESSES**

Mark Johnson Horry County Police Department

*Tim Claffield*

**ARREST WARRANT NUMBER**

2016A2610201791

CDR: 0116 16-03-0010, 0020

DOA: 7/13/2016

**ACTION OF GRAND JURY**

**TRUE BILL**

*EBJ LBH*  
Foreperson of Grand Jury

Date: NOV 29 2017

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-26-05269

**The State of South Carolina**

**County of Horry**

Nancy Livesay

16H03597

**COURT OF GENERAL SESSIONS**

**November, 2017 TERM**

**THE STATE**

**vs.**

James Richard Rosenbaum

/ M

Highway 548

Conway, SC 29527-4384

DOB: [REDACTED]

SSN: [REDACTED]

**ATTORNEY: B. Alex Hyman**

**Indictment for**

**Murder**

**Jimmy A. Richardson, II, Solicitor**

**ORIGINAL**

**FILED  
HORRY COUNTY**

**2017 NOV 30 AM 10:48**

**RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC**

**DATE RECEIVED FROM**

**GRAND JURY**

1000

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

## INDICTMENT

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

ORIGINAL

1002  
COUNTY OF Horry  
STATE VS.  
James Richard Rosenbaum  
AKA:  
Race:            Sex: M Age: 55  
DOB:            SS#:             
Address: Highway 548  
City/State/Zip: Conway, SC 29527-4384  
DL#:            SID#:           

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐  
In disposition of the said indictment comes now the Defendant who was  
TO: Voluntary Manslaughter (0-304)

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] SCB75159 Hyman, B. Alex SCB75416  
Livesay, Nancy SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 15 days/month/years or ☐ under the Youthful Offender Act not to exceed X years  
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment  
of \$ X; plus costs and assessments as applicable\*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-25-135.  
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$            plus 20% fee: \$           

Payment Terms:           

☐ Set by SCDPPPS           

Recipient:           

\*Fine: \$             
§ 14-1-206 (Assessments 107.5%) \$             
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$             
§ 56-5-2995 (DUI Assessment) \$12 \$             
§ 56-1-286 (DUI Breath Test) \$25 \$             
Proviso 61.6 (Public Def/Probation) \$500 \$             
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
§ 14-1-213 (Drug Court Surcharge) \$150 \$             
§ 50-21-114 (BUI Breath Test Fee) \$50 \$             
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$             
3% to County (if paid in installments) \$ 3.75

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Renee N. Elvis

Grace Hurley

INDICTMENT/CASE#: 2017GS2605269

A/W#: 2016A2610201791

Date of Offense: 7/11/2016

S.C. Code § 16-03-0010, 0020

CDR Code #: 0116

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSObtain GED ☐Attend Voc. Rehab. or Job Corp.           May serve W/E beginning:           Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weeks/monthly  
pmts. of \$ 25.00 beginning 1/01/2018\$            paid to Public Defender FundOther:           

☐ Appointed PD or appointed other counsel.  
Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Margaret CulbertsonJudge Code: 2148Sentence Date: Dec. 10, 2018

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Susan B. Hackett  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of April, 2020.

**RECEIVED**

APR 08 2020

SC Court of Appeals

