

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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Roger L. Couch, Circuit Court Judge

Appellant Case No. 2017-002417
Lower Court Case No. 2013-CP-42-0007

S.C. SUPREME COURT

Larry Brent Horton, # 329065 Petitioner,

vs.

State of South Carolina Respondent.

APPENDIX
VOLUME I

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2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5) 2008-GS-42-950
6 Larry Brent Horton,)
7 Defendant.) June 16 - 18, 2008
8) Spartanburg, South Carolina

9 B E F O R E:

10 HONORABLE J. DERHAM COLE, JUDGE; and a jury
11

12 A P P E A R A N C E S:
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22 Circuit Court Reporter
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1 (Proceedings June 16, 2008)

2 THE COURT: All right. Do y'all have any witness
3 lists or voir dire requests or anything you need to address
4 before the jury comes around?

5 MR. VIETH: I've got a witness list I will hand up.

6 MR. GOWDY: Your Honor, the Court's standard voir dire
7 is sufficient for us.

8 THE COURT: Okay.

9 MR. VIETH: Ours too, Your Honor. I assume that goes
10 into law enforcement, being related, whether married to law
11 enforcement.

12 THE COURT: Well, if requested.

13 MR. VIETH: Yes, sir.

14 THE COURT: I don't have what's called a standard
15 request. I usually ask questions that y'all want to me to
16 ask. Otherwise, it's a pretty simple process.

17 MR. VIETH: Well, okay, yes.

18 THE COURT: I will ask about relationship to law
19 enforcement if you want me to.

20 MR. VIETH: Yes, sir. I would like that.

21 THE COURT: Okay. I'll ask if anybody's convicted of
22 or accused of commission of a violent crime. How about
23 that?

24 MR. VIETH: Yes, sir.

25 THE COURT: Any others?

1 MR. VIETH: Your Honor, the only other question, this
2 may have -- I'd like to ask the question has anyone been
3 the victim of spousal abuse or neglect if that's an
4 appropriate question to ask.

5 THE COURT: Is that --

6 MR. VIETH: It's not a conviction. I realize it's
7 just a question, if anyone's been the victim of what would
8 be considered spousal abuse or neglect.

9 THE COURT: Is that what's involved in this case?

10 MR. VIETH: This case involves the death of
11 Mr. Horton's wife. Yes, sir. That'll be it.

12 THE COURT: Okay. I'll ask it.

13 MR. GOWDY: In light of that, would the Court consider
14 asking whether or not anyone's been charged with it?

15 THE COURT: Okay. Victim of or accused of.

16 MR. GOWDY: Thank you.

17 MR. VIETH: That's fine.

18 THE COURT: All right. Any other matters we need to
19 address before the jury panel is brought around?

20 MR. GOWDY: No, sir. If the Court wanted to know for
21 afternoon scheduling purposes, Mr. Vieth and I can tell you
22 what pretrial motions we anticipate, or we can wait and do
23 that later.

24 THE COURT: Well, what do you have? Is it going to
25 be -- is it going to take us to lunch or after lunch?

Jury qualification

1 MR. GOWDY: I -- after lunch. It would think there's
2 a Denno hearing, Your Honor. And there are a couple of
3 motions in limine. But I don't expect them to take a long
4 time.

5 THE COURT: All right. Well, we'll get the jury
6 picked and then see how much time we have left.

7 MR. GOWDY: Okay.

8 THE COURT: All right. Bring the jury panel around,
9 please.

10 Where did this event allegedly occur?

11 MR. GOWDY: Campobello, Your Honor, off Highway 11 on
12 Underwood Drive.

13 THE COURT: Is this the residence of the defendant?

14 MR. GOWDY: Yes, sir, and the victim.

15 (The following takes place in the presence of the jury
16 venire.)

17 THE COURT: Ladies and gentlemen, we are ready to
18 begin with the trial of the first case that's going to
19 require some of your participation. And the title of the
20 case is the State vs. Larry Brent Horton.

21 Mr. Horton has been accused by the state with having
22 committed the crime of murder. The state alleges that that
23 occurred on or about January the 2nd of 2007.

24 And the way a case is brought into this court, it's
25 brought by way of a document referred to as an indictment.

Jury qualification

1 The indictment is simply a document that I'm going to read
2 from. It states the charge that has been brought against
3 the defendant.

4 The state alleges that on January the 2nd of 2007
5 Mr. Horton did intentionally and with malice aforethought
6 cause the death of Erika Horton by cutting and/or stabbing
7 her with a knife, and that she died as a proximate result
8 of those injuries.

9 Now, as to the allegations in the indictment and as to
10 the charge of murder the defendant has entered a plea of
11 not guilty. And a plea of not guilty places upon the state
12 the burden of proving the allegations that they have set
13 forth in the indictment, the burden of proving each of the
14 essential elements of the crime alleged against the
15 defendant; and therefore the burden is upon the state to
16 establish the defendant's guilt to the satisfaction of 12
17 jurors beyond a reasonable doubt before a verdict of guilty
18 could be returned.

19 And so we're going to be selecting 13 of you.
20 There'll be 12 primary jurors and one additional juror to
21 serve as an alternate. And by way of your participation
22 you're simply going to be called upon to listen to
23 testimony and to consider other evidence received during
24 the trial of the case.

25 At the trial's conclusion you'll be asked to go back

Jury qualification

1 and to deliberate the case. And after you've considered
2 all of the evidence you'll decide the facts. That is
3 you'll determine what, if anything, you believe occurred
4 back on January the 2nd of 2007 as it relates to these
5 allegations.

6 Once you decide those facts, you'll then apply the law
7 that I will have provided you. And you will determine
8 whether or not the defendant has been proven guilty beyond
9 a reasonable doubt. And if he has, then your verdict would
10 be guilty. If I has not, then your verdict would be not
11 guilty.

12 Now, as we begin with jury selection I'm going to be
13 asking you some questions. And the purpose of the
14 questions is to determine whether or not there's any reason
15 why any one of you jurors should not be selected to
16 participate in the trial of this particular case.

17 And so as these questions are asked if you need to
18 respond to them, I'm going to ask that you please stand.
19 And I'll address those matters with you individually in the
20 event that should become necessary.

21 Now, first of all, as I told you, the defendant, the
22 person who is accused of having committed the crime alleged
23 in the indictment in this case, the crime of murder, is
24 Larry Brent Horton.

25 Mr. Horton, if you will, stand and face the jury

Jury qualification

1 panel, please, sir.

2 (Whereupon, the defendant and Mr. Vieth stood.)

3 THE COURT: Mr. Horton is the gentleman to your left
4 in the blue shirt. The gentleman to your right is Rick
5 Vieth who is his lawyer. He'll be assisting him in the
6 trial of this case.

7 You may be seated.

8 In this case, as I have previously told you, the
9 person who is alleged to have been the victim is Erika
10 Horton. Erika Horton was the wife of the defendant, Larry
11 Brent Horton.

12 In this case the state is being represented by
13 Solicitor Trey Gowdy and Assistant Circuit Solicitor Cindy
14 Crick.

15 (Whereupon, Mr. Gowdy and Ms. Crick stood.)

16 THE COURT: This is an offense that the state alleges
17 occurred on January the 2nd of 2007. It is alleged to have
18 occurred up in the Campobello community on Underwood Drive
19 at the residence of the defendant and Erika Horton.

20 Now, I'm going to recite a list of the potential
21 witnesses. The reason I'm introducing these people to you
22 as well as reciting a witness list is because I need to
23 find out if any member of the jury panel is connected by
24 blood or marriage or has any social, personal,
25 professional, business or any other type of relationship

Jury qualification

1 with any of these people that I'm identifying for your
2 benefit. And the following is a list of potential
3 witnesses to be called during the trial of the case.

4 If you have any connection with any person that has
5 been identified or any one on these potential witness
6 lists, as the name is called I'll ask that you please stand
7 so that we can address what that relationship is and
8 whether or not it would affect your judgment in any way in
9 a case.

10 So the following are potential witnesses: Freddie
11 Thompson, employed with Spartanburg County Communications.

12 These following individuals are each employed by the
13 Spartanburg County Sheriff's Department. And they include
14 Tim Davis; Shawn Nix; William Gary; Russell Holthaus;
15 Demetric Glenn; Dennis Maloata; Darren Dukes; Michael
16 Wilhere; Allen Wood; and Robert Rosenberg.

17 The following individuals are employed by the
18 Spartanburg County Coroner's Office. They include Randy
19 Bogan; Mike Shaw; and Joseph Stewart.

20 Mike Jones is a potential witness. He's employed at
21 the Spartanburg County Detention Center.

22 The following witnesses are employed by the state law
23 enforcement division. They include Robin Taylor; Amy
24 Stephens; Betty Butler; Melissa Skipper; Teresa Hooks;
25 Denisa Eargle; Emily Rhinehart; Selena Kinard; Sheree

Jury qualification

1 Brown; Brandon Williams; Tony Broom; and Karonda Williams.

2 We also have individuals not connected with the
3 department. But we have Tony Sellers; Brandon Jacobs; and
4 Brenda Horton.

5 And we also have John David Wren, a pathologist,
6 Spartanburg Regional Medical Center.

7 JUROR NO. 114: I'm juror -- I'm sorry. I know
8 Dr. Wren.

9 THE COURT: All right. And if you don't mind, give me
10 your juror number, please, and your name.

11 JUROR NO. 114: Juror 114, Susan Moore.

12 THE COURT: And how do you know Dr. Wren?

13 JUROR NO. 114: I work under him at Spartanburg
14 Regional Medical Center.

15 THE COURT: All right. Would it have any bearing upon
16 your decision in the case?

17 JUROR NO. 114: No, sir.

18 THE COURT: Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 154: I'm 154. And I used to work with
21 Brenda Horton.

22 THE COURT: And where was that?

23 JUROR NO. 154: Chapman High School.

24 THE COURT: Would that have any bearing upon your
25 decision in this case?

Jury qualification

1 JUROR NO. 154: It could.

2 THE COURT: It could. All right. We'll excuse Juror
3 154 from serving in the case. But don't leave yet.

4 JUROR NO. 85: Juror 85.

5 THE COURT: Yes, ma'am.

6 JUROR NO. 85: I work with Brenda Horton at Chapman
7 High School.

8 THE COURT: All right. Would it have any bearing upon
9 your decision in this case?

10 JUROR NO. 85: Yes, sir. I think it could.

11 THE COURT: All right. We'll excuse Juror No. 85 from
12 service. But don't leave yet.

13 Yes, ma'am.

14 JUROR NO. 76: I know Brenda Horton a little bit. I
15 used to be one of her trainers at a gym. But I don't know
16 her that well. So I just wanted to --

17 THE COURT: A personal trainer like physical training?

18 JUROR NO. 76: Yes.

19 THE COURT: Okay. And what's your number?

20 JUROR NO. 76: Seventy-six.

21 THE COURT: All right. Would that fact have any
22 bearing upon your decision in this case?

23 JUROR NO. 76: No.

24 THE COURT: Thank you. Be seated.

25 Now, I've got some more witnesses. I've got Larry

Jury qualification

1 Horton, Sr.; Charlie Horton; Charlie Harris; Wyatt Brown;
2 Margaret Melikian. A Corporal Perkins with what
3 department?

4 MR. VIETH: He is with the Beaufort sheriff's
5 department.

6 THE COURT: Beaufort County Sheriff's Department. And
7 Jeremy Ritz with what department?

8 MR. VIETH: He's with Spartanburg County, Your Honor.

9 THE COURT: Spartanburg County Sheriff's Department.
10 All right. Those are all the witnesses, potential
11 witnesses.

12 I need to know if any juror has any connection
13 whatsoever or met any of these people. That includes all
14 of the witnesses; that includes the defendant; that
15 includes the lawyers. Or any members of their respective
16 families.

17 Yes, ma'am.

18 JUROR NO. 155: I'm Juror 155. Rick Vieth followed by
19 divorce nine years ago.

20 THE COURT: All right. And would that have any
21 bearing upon your decision in the case?

22 JUROR NO. 155: No.

23 THE COURT: All right. Thank you. Be seated.

24 Anyone else?

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 174: I'm Juror No. 174. My husband is
2 employed with the Spartanburg County Sheriff's Office. I
3 recognize most of the names, but I just thought you should
4 be aware.

5 THE COURT: Would it have any bearing upon your
6 decision?

7 JUROR NO. 174: No, sir.

8 THE COURT: Okay. Thank you. Be seated.

9 Anybody else?

10 (No response.)

11 THE COURT: All right. As I told you, this is an
12 event that the state alleges occurred on January the 2nd of
13 2007 at the home of Larry Brent Horton, the defendant, and
14 Erika Horton, the person alleged to have been the victim of
15 this event.

16 The state alleges that the defendant killed
17 Mrs. Horton, his wife, and that that occurred at their
18 residence on Underwood Drive in the Campobello community.

19 Has any member of the jury panel heard, seen, read or
20 discussed this case with any person, or have you received
21 any information from any source whatsoever, media or
22 otherwise? Anyone think you have been exposed to any type
23 of information that relates to this case? If so, please
24 stand.

25 (No response.)

Jury qualification

1 THE COURT: Is there any member of the jury panel or
2 any member of your immediate family -- and I'm going to
3 define an immediate family member as a parent, a spouse, a
4 child or a sibling -- parent, spouse, child or sibling.

5 Have you or any members of your immediate family ever
6 been the victim of or ever been accused of having committed
7 any type of violent crime or, and/or, been involved in any
8 type of spousal abuse?

9 So I need to know if you or an immediate family member
10 has ever been the victim of a violent crime or spousal
11 abuse, or have you or a family member ever been accused of
12 having committed a violent crime or having committed
13 spousal abuse? If so, please stand.

14 And those who stand, if you'd prefer not to respond to
15 the question where you are, feel free to come down here.
16 And I'll discuss it with you privately.

17 If you don't mind responding to the question where you
18 are, you can just stand where you are and respond to the
19 question from there.

20 JUROR NO. 153: I'm Juror 153. My brother was
21 murdered in the city of Spartanburg.

22 THE COURT: And how long was that?

23 JUROR NO. 153: In 1976.

24 THE COURT: And was that case resolved? Someone --

25 JUROR NO. 153: Eventually, yes, sir.

Jury qualification

1 THE COURT: Okay. And is there anything about that
2 event that would affect your ability to be fair and
3 impartial in this particular case?

4 JUROR NO. 153: I felt like it should have been
5 investigated a lot earlier than it was and solved a lot
6 earlier than it was.

7 THE COURT: I understand. What I'm just trying to
8 find out is do you think that your personal experience
9 would affect your judgment in this case.

10 JUROR NO. 153: I hope not, no, sir.

11 THE COURT: Well, are you able to say that you could
12 put that experience aside and not allow it to influence
13 your judgment?

14 JUROR NO. 153: I will; I will.

15 THE COURT: Okay. Thank you, ma'am. Juror 153.
16 Yes, sir.

17 JUROR NO. 149: Juror 149. I have a family member
18 that has been convicted of a violent crime.

19 THE COURT: And what was the nature of the crime?

20 JUROR NO. 153: Domestic violence.

21 THE COURT: And what was the relationship to you?

22 JUROR NO. 153: Son.

23 THE COURT: All right. Would that have any bearing
24 upon your decision in this case?

25 JUROR NO. 153: No, sir.

Jury qualification

1 THE COURT: Okay. Thank you. Be seated.

2 Anyone else you or a family member has been the victim
3 of any type of violent crime or ever been accused of any
4 type of violent crime, including any type of spousal abuse?

5 (No response.)

6 THE COURT: All right. Is there any member of the
7 jury panel who is -- who yourself has previously been or is
8 now employed as a law enforcement officer, and also whether
9 or not you have a family member who has previously been or
10 is now employed as any type of law enforcement officer?

11 That includes both civilian law enforcement agencies,
12 town, municipal, state or federal, and also would include
13 civilian, as well as military. I need to know if you or a
14 family member are now or have ever been employed as a law
15 enforcement officer.

16 All right. 174.

17 JUROR NO. 174: I'm 174, Abee Chappell. My husband is
18 Phillip Chappell. He's a deputy sheriff of Spartanburg
19 County. He's worked there for seven years.

20 THE COURT: Okay. Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 117: Juror No. 117, Sabra Morrow. My uncle
23 was a police officer in Union County.

24 THE COURT: Thank you. Be seated.

25 Yes, sir.

Jury qualification

1 JUROR NO. 108: I'm Juror 108. I'm retired from the
2 Department of Corrections. And my step-daughter is in the
3 Spartanburg County Jail.

4 THE COURT: And What's her name?

5 JUROR NO. 108: Sabrina Gist.

6 THE COURT: All right. Thank you. Be seated.

7 Yes, sir.

8 JUROR NO. 87: Juror No. 87. I have a nephew that
9 previously worked with Spartanburg County who is now a
10 current highway patrolman in South Carolina.

11 I have two uncles that retired from the Spartanburg
12 County Police Department and an aunt and a couple of
13 cousins that's also worked for the county and the city.

14 THE COURT: All right. If you don't mind, tell us
15 what their names --

16 JUROR NO. 87: Bill Norris; Bill Norris, Jr.; Bronson
17 Smith.

18 THE COURT: Okay. All right. Thank you. Be seated.
19 Yes, ma'am.

20 JUROR NO. 25: I'm Juror No. 25. My grandfather was
21 employed by the Abbeville County Sheriff's Department.
22 He's retired now.

23 THE COURT: Okay. Thank you. Be seated.

24 Anyone else?

25 (No response.)

Jury qualification

1 THE COURT: I told you a little bit about what the
2 allegations are as far as what the case is about. That's
3 not intended to be any in-depth recitation of the facts in
4 the case.

5 But I need to find out -- the reason I told you that
6 is because I need to find out if there's any juror who
7 thinks you could not be fair and impartial based upon the
8 nature of the allegations or based upon the nature of the
9 case that has been brought.

10 Is there any juror who believes you could not be fair
11 and impartial to either or both the defendant and the state
12 simply based upon the nature of the case itself? If so,
13 please stand.

14 (No response.)

15 THE COURT: Has any member of the jury panel already
16 made up your mind or formed any opinion as to what you
17 think the ultimate outcome ought to be in this case based
18 upon what you've heard up to this point or based upon other
19 consideration? I just need to know if you've already kinda
20 made up your mind about the case. If so, please stand.

21 (No response.)

22 THE COURT: Does any juror know of any reason
23 whatsoever why you think you could not be fair and
24 impartial if you were called upon to serve as a juror in
25 the case? Any reason whatsoever why you could not be fair

Jury qualification

1 and impartial? If so, please stand.

2 (No response.)

3 THE COURT: Any other questions requested by the
4 state?

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

6 THE COURT: By the defendant?

7 MR. VIETH: No, sir, Your Honor.

8 THE COURT: All right. As your names are called
9 you're going to be asked to come forward.

10 If you are closer to the wall, you can come around
11 that side. If you're closer to the center, you can come
12 down the center aisle.

13 I'm going to ask you to take a stance right there in
14 front of the desks where the lawyers are seated and look
15 towards your fellow jurors. The bailiff will stand there
16 where you need to stand.

17 Each side has a chance to have you excused from
18 service in the case or to have you seated for service in
19 the case. If either side asks that you be excused from
20 serving, just go back and have a seat where you are now.
21 If both agree to have you seated for service in the case,
22 you'll be having a seat in that jury box to your right and
23 to my left.

24 So please simply come forward as your name is called.
25 You'll be instructed if you're to be seated for service in

Jury qualification

1 the case or excused from service in the case.

2 (Whereupon, a jury was impanelled.)

3 THE COURT: All right. Those who have been selected,
4 I'll ask you to please go with a bailiff to a jury room.
5 And I'll bring you back in just a few minutes to begin with
6 the trial.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: Are there any matters that need to be
10 addressed regarding jury selection by the state?

11 MR. GOWDY: Not from the state, Your Honor.

12 THE COURT: From the defendant?

13 MR. VIETH: No, sir, Your Honor.

14 (Whereupon, the remaining members of the jury venire
15 were excused.)

16 THE COURT: All right. What matters do we have to
17 address that we need to do before the jury is sworn?

18 MR. GOWDY: Your Honor, there is a Denno hearing. It
19 should not take long. That's a single-witness hearing from
20 our standpoint.

21 There are motions in limine. Mr. Vieth, as he always
22 is, is very, very easy to deal with in pretrial matters.
23 We have both laid our cards on the table, so to speak, from
24 both perspectives.

25 We have objections to certain what we consider to be

1 character evidence and otherwise irrelevant episodes that
2 we would kind of like an indication. I know the Court
3 can't always give us one, but an indication of whether or
4 not that's going to be relevant, whether or not it will be
5 addressed in opening statement, whether or not it's
6 something we need to prepare for.

7 I don't think it's going to take long. It's all under
8 the, kinda rubric of character and incidents that took
9 place months earlier in other parts of the state, and
10 whether or not they're relevant; and, if so, whether the
11 incident itself is relevant or the details are relevant.

12 THE COURT: All right. Well, how much time do you
13 think we're going to need to do that?

14 MR. VIETH: Your Honor, I really think out of an
15 abundance of caution if you're going to break at 1:00,
16 we're going to need at least until then to cover the
17 issues. Maybe 30 or 40 minutes, maybe.

18 THE COURT: All right. Bring the jury back for me.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Ladies and gentlemen, I have got some
22 matters I'll need to address before we can actually begin
23 with the trial of the case. So we're going to excuse you
24 at the present time for lunch.

25 I'll ask you to please report back to the jury room

1 that you've just been shown to not later than 2:30. We'll
2 begin at 2:30.

3 In the meantime and until the case has been decided by
4 you, you can't discuss the case except during
5 deliberations.

6 Do not permit yourselves to be exposed to any type of
7 media coverage that might relate to the case; do not permit
8 yourselves to be exposed to any type of discussions that
9 others might be having about the case. And you yourself
10 can't discuss the case with anyone. That includes your
11 fellow jurors.

12 Also, do not conduct any research or do your own
13 investigation into any issue that might arise during the
14 trial.

15 Do have a good lunch. Please report back to your jury
16 room at 2:30 this afternoon, 2:30 this afternoon. I'm
17 talking about the jury room that you just left. If you're
18 not sure how to get there, discuss it with the bailiff.
19 They'll provide you with those directions.

20 Okay. Have a good lunch. We'll see you at 2:30.

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

23 MR. GOWDY: Your Honor, would the Court be good enough
24 to give us just a couple of moments before we start
25 addressing them?

Motions

1 THE COURT: Okay.

2 MR. GOWDY: Thank you.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. What would you like to begin
5 with?

6 MR. VIETH: Do you want me to do it, or how do you
7 want it? It doesn't matter.

8 MR. GOWDY: Take it away; take it away.

9 MR. VIETH: All right. Judge, a couple of things that
10 need to be addressed.

11 The purpose of laying some foundation for the Court,
12 you don't obviously know a thing about this case.

13 My client is charged with murder. He makes a 9-1-1
14 call to the sheriff's department indicating that he thinks
15 he may have killed his wife.

16 When I go to see him, he does not recall the events
17 exactly in that night. He can -- and has amnesia from that
18 event itself.

19 Of course I understand Mr. Gowdy can cross-examine on
20 all of that, but I'm just telling you from a foundation
21 standpoint some of the in-limine issues where we're
22 heading.

23 He cannot recall the exact events of him taking his
24 wife's life. And we'll have Margaret Melikian who is a
25 very credible forensic psychiatrist who will be up here

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1 midweek to testify that she finds that to be not
2 malingering and credible that he has amnesia as to that
3 event.

4 So for purposes of me trying to determine what
5 happened in her life, you try to look outside the realm of
6 that. And one of those things, they were separated for a
7 period of time. She was living in Beaufort County. And
8 yet they made constant contact with each other. But they
9 were separated.

10 In November of '06, a month and a half before her
11 death, and wound up November the 8th, they're communicating
12 on the phone or whatever. And he becomes alarmed that she
13 may commit suicide, and so alarmed that he calls the
14 Beaufort County Sheriff's Department to ask them to go see
15 her, that he's concerned she's going to kill herself.

16 And so we have an officer under subpoena to come up
17 here Wednesday from Beaufort with his incident -- well, we
18 would ask if we could stipulate to the incident report.
19 Mr. Gowdy indicated that we could stipulate to the report.
20 So we've got the report. And he's going to come up and
21 testify.

22 The issues that we feel relevant that go to mind-set
23 and so forth is that the officer will testify that dispatch
24 advised the complainant, Brent Horton -- advised them his
25 wife Erika Horton had threatened to kill herself. He

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1 advised he was not in town at the time, that he and Erika
2 are separated at the time.

3 They will then go into what was observed when the
4 officers arrived at the residence, which was basically, and
5 I am paraphrasing, that she was on her cell phone and
6 crying and emotionally upset.

7 And in an interview with the officer and Mrs. Horton,
8 says, "Erika stated she had been separated from her husband
9 and has multiple scoliosis that is preventing her from
10 taking care of her children. She is depressed and she
11 wants to go to the hospital for help. She stated she was
12 tired of the pain and that she wanted to hurt herself."
13 And that would be essentially what -- we would redact some
14 of the other issues about her taking drugs and cocaine. I
15 would agree that we can redact that part and not have the
16 officer testify to that.

17 And then the officers' actions as a result of that was
18 that they entered the residence, made contact with Erika.
19 Stated that she wanted to her hurt herself. She was
20 detained and transported to Beaufort Memorial Hospital
21 Emergency Room by the officer, Perkins, who will be up
22 here, and that the residence was secured; and they take her
23 to the Beaufort Hospital and Coastal Mental Health staff.

24 So that would be something that we feel important, not
25 to show her character, just to show when he testifies, and

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1 we fully expect that he will -- Brent will testify -- that
2 he cared about her, was concerned about her enough that in
3 November he felt she was a threat to herself and he called
4 out for help. And they, in fact, received that call and
5 went there and got her to a facility, not to attack Erika's
6 character whatsoever, just to show his -- what he did.

7 And then we have the records from the Coastal Empire
8 Community Mental Health Center.

9 I'll take it, I guess, in steps. That'll be our
10 position on the incident or the testimony of Officer
11 Perkins to be able to come up and testify as to why they
12 responded to go to her house. It will basically
13 corroborate the fact that he made that call and made the
14 efforts to get her help.

15 We then have stipulated, Mr. Gowdy and I and
16 Mrs. Crick, that the medical records of Coastal Empire
17 Community Mental Health Center, if the Court deems
18 relevant, would be admitted without us having to bring a
19 custodian of records up here.

20 The records are what they are. It's just a question
21 of whether or not the Court finds that they would be
22 relevant to continue our theory of our case, and also
23 similarly medical records of Inman Family Practice in
24 Inman. The follow-up treatment or follow-up appointments
25 that she had in Inman, again, would stipulate that the

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1 records speak to what she said and what the diagnosis was.
2 And I'll be glad to hand those up to the Court, but these
3 are records that we feel are important in our case in the
4 defense of this case.

5 We would agree that any mention of drug use, alcohol
6 use and so forth, I have no problem redacting. There's no
7 knowledge that occurred personally.

8 But, for example, the Inman report says, "This
9 26-year-old returned with severe depression. She is here
10 with her husband. She states for well over a year she's
11 had trouble mainly with motivation and her ability to care
12 for her children and to care at all about her life or
13 consequences."

14 They give a severe depressive episode assessment, most
15 likely bipolar disorder with substance abuse. And I don't
16 even mind taking out the substance abuse issue; and that
17 she needs to be watched closely with her thoughts of
18 suicide. And that's from Inman, November the 14th,
19 approximately six weeks before her death.

20 The records down in, at the Coastal Empire Community
21 Mental Health Center indicate, of course, that she did go
22 there after the officers went to Beaufort. "She has no
23 motivation. A 26-year-old black female separated from
24 husband and two daughters. He lives in Inman. She was
25 diagnosed with M. S. a year ago and states she's been in

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1 denial about it."

2 They wanted to follow up, for her to come back. And
3 there was a no-show. And eventually Brent goes down to get
4 her and bring her back home. And then within a matter of
5 days she's deceased.

6 And with him having amnesia, actually it hurts me more
7 than it helps me because I don't know what happened that
8 night.

9 I know that her death is a result of his action, but I
10 don't know anything else. I don't have any argument of
11 self-defense because he can't remember. I don't have any
12 argument of anything except to show this big picture that
13 we think is highly relevant to his posturing of this case
14 that he would not have done anything to hurt her
15 intentionally and with malice aforethought.

16 There is, judge, a second issue that'll be addressed
17 only through Brent, and that is that he feels like his wife
18 was into witchcraft, and significantly so, and that she was
19 possessed, had some demonic type possessions within her,
20 and that his only talk to me when I met with Brent and said
21 what happened, and he said, Rick, you're not going to like
22 this but while I know it was my hand that probably did
23 this, I feel like she put the demon from her into me to
24 take her life because she couldn't take her own. She was
25 suicidal, ideations, couldn't commit suicide and asked me

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1 to do it at some point in time, and I didn't, and on this
2 occasion all I can say is it must have happened because I
3 don't know. I would never have hurt my wife.

4 Now, that's not got anything to do with the reason I
5 want these reports in except to show that she was depressed
6 and she did have this suicidal ideation.

7 We have no expert to say anything about the fact that
8 he was possessed or anything of that nature, but he's going
9 to testify that that's the only thing he can come up with
10 in his mind.

11 So, and Margaret Milikian will not address that issue.
12 I mean, we may discuss some issues about dissociative
13 disorders and so forth. But no expert is going to walk in
14 this courtroom and say someone was demonically possessed.

15 We do have some interesting issues, not issue, but we
16 do have some interesting comments from a pastor who will
17 testify later in the week.

18 But the root of this issue that we're dealing with
19 here is the admissibility of the Inman records that we can
20 hand the Court up and look at over lunch, whatever you want
21 to do, and the records of the Coastal Empire Community
22 Mental Health Center and the incident report.

23 Again, we've got him under subpoena. So the report's
24 not being offered. But he will be up here to testify to
25 what happened and what he did.

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1 And we'll be glad to introduce those to the Court and
2 let you look at them at your leisure.

3 THE COURT: Well, let me be sure I understand.

4 You're telling me that the defense in this case is not
5 self-defense and the defense in this case is not that she
6 committed suicide.

7 MR. VIETH: The defense in this case is not
8 self-defense because I've got -- let me go back.

9 When I first got involved with Mr. Horton and the
10 amnesia became an issue, competency to stand trial became
11 issue to me because he couldn't relate to whether there was
12 any legal provocation, if you will, or anything of that
13 nature that took place the night of this incident.

14 So I immediately think, well, how can I represent him
15 with him having amnesia and I don't know what happened that
16 night. But the law is very clear that that's not a
17 competency issue. If he understands what the charges are
18 against him and he can communicate with his lawyer, then
19 he's deemed to be competent to stand trial.

20 We had him evaluated as you well expected I would from
21 a psychologist and a psychiatrist -- and the psychiatrist
22 being Margaret Melikian -- and found him competent to stand
23 trial on the -- the case law is.

24 Nonetheless, I'm limited in what I can find out about
25 the facts of that case. So you're right. I have no

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1 self-defense because he can't testify to it. That's what
2 I'm saying. The amnesia hurts more than it helps him and
3 so --

4 THE COURT: And you're not claiming that she committed
5 suicide.

6 MR. VIETH: We're not claiming she took her own life,
7 no, sir.

8 THE COURT: Okay.

9 MR. GOWDY: Your Honor, may it please the Court.

10 I do think any discussion or testimony of her demonic
11 possession, of witchcraft, of her bipolar disorder, of
12 suicide is, is her bad character. And that's why they want
13 to show it, that this person died, but who cares because
14 she was a troubled person.

15 As to the defendant wanting to put in his good
16 character, in the 400 Series of the Rules of Evidence if
17 it's a pertinent or relevant character trait, then I think
18 the Court has to engage in an analysis of whether or not
19 it's admissible. I have not heard yet what pertinent
20 relevant character trait this good character purports to
21 show.

22 What this defendant wants to do is mitigate murder to
23 manslaughter because two months prior he showed an act of
24 kindness to someone. And I don't think that's what the 400
25 Series of Character Rules is for. And even if it were, if

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1 the Court will analogize prior acts of amenest between
2 parties as to who the primary aggressor is, that could be
3 relevant as to who the primary aggressor is.

4 This is prior acts of kindness that he showed at some
5 point in the past to mitigate murder down to manslaughter.
6 And I don't think you can do that under the 400 Series by
7 showing prior episodes of his good character.

8 So with respect to what they purport to put in
9 evidence from Beaufort and from Inman, it is her bad
10 character. I don't think the Inman records have anything
11 to do with his good character.

12 He wants to call a police officer two months prior to
13 say that because he intervened in the suicide he's
14 incapable of having malice aforethought.

15 And, Your Honor, Mr. Vieth was very fair and very
16 accurate with his assessment of facts. But make no mistake
17 about it. Her head was almost cut off. There are six
18 knife wounds that go down into the spinal column. And she
19 was unconscious at the time she was killed.

20 So it's not self-defense; it's not suicide. It's
21 suicide by proxy, by demon possession of someone who really
22 should have been killed anyway because she is bipolar.
23 That's the defense.

24 And I feel the frustration of having amnesia. But I
25 don't think the way to cure that is to let in bad character

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1 of the victim and his efforts to show that he couldn't have
2 had malice aforethought because he did something nice for
3 her two months before.

4 So that's why we object to all of that series of both,
5 both the episode in Beaufort, her prior psychological
6 history and anything relating to his good character to
7 mitigate murder to manslaughter.

8 THE COURT: Do you need to reply?

9 MR. VIETH: Your Honor, I don't know how someone being
10 depressed and intentionally -- suicidal ideations.
11 Depression certainly, suicidal ideation, the Court may have
12 some concern with.

13 I don't see how that is a character trait that's bad.
14 I mean, people take medication for depression. That's not
15 saying you're a bad person.

16 We're just trying to show without -- he's going to
17 testify. And he's going to say that he had a good
18 relationship with her.

19 They were on and off. They did separate. They'd get
20 back together. They had two children from this marriage;
21 and that she went to Beaufort as a part of the separation
22 and during the -- right before he went to get her he had
23 concern that she was going to commit suicide and called the
24 police and they went to help her.

25 I mean, we're going -- he's going to be able to

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1 testify to that. There is no question about that. That's
2 what he did.

3 I just anticipate that someone is going to say, well,
4 why didn't they corroborate that and why didn't they bring
5 up an officer, bring in an incident report, bring in
6 medical records, how do we know what he said is true.
7 Because it's outlined as being true.

8 Whether the jury wants to take that as a bad guy and
9 good guy, we're not offering it. I'm not offering it to
10 say he's a good guy. I'm offering it to say that this
11 doesn't fit the pattern of what he's going to be portrayed
12 as.

13 Why would he even call down there if he thought his
14 wife was committing suicide if he wanted her to die? It
15 just doesn't fit the profile of him and I'm not -- that's
16 it.

17 It's a marriage that was on and off and on the rocks.
18 And he made some effort. He even takes time off from work.
19 We've got the records from where he worked when he took a
20 leave of absence, November the 8th, the day that he made
21 that call down there, for 30 days so he could be going back
22 and down, and back and down and make sure she's okay.

23 That's going to come in through him, through his
24 family. I'm not trying to attack her character whatsoever.

25 THE COURT: Well, as I understand it, the evidence is

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1 not being offered as evidence of character; the evidence is
2 not being offered on the issue of whether or not
3 self-defense exists; and the evidence is not being offered
4 on the issue of whether or not the deceased has committed
5 suicide.

6 Because, as I understand it, the evidence will be that
7 the defendant did kill the deceased. So the issue as to
8 whether it's murder or some other type of homicide, and
9 maybe I'm missing y'all's point, but I don't understand the
10 relevance of the evidence. I mean, what's it relevant to?

11 If it's not character and it's not establishing a
12 defense such as self-defense, it's not establishing it's
13 more likely that she committed suicide than anybody else
14 killed her, if it's not being offered for any of those
15 purposes, what is the purpose of it?

16 MR. VIETH: Judge, it goes to me -- malice. It goes
17 to -- the solicitor has got to prove malice aforethought.

18 THE COURT: I understand. But as you well know, of
19 course that's a complicated issue in South Carolina.
20 Malice can be inferred of course. It doesn't have to be.

21 But even a killing in sudden heat of passion without
22 sufficient legal provocation is murder. So it's not
23 manslaughter. It's murder. It's not -- I don't know -- I
24 don't know -- of course I don't know what the facts of the
25 case are. I haven't heard anything. But I assume you're

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1 not trying to establish that it was an accident or that he
2 was actually lawfully but with a reckless disregard.

3 I mean, I don't know. I don't know what the evidence
4 is going to reveal, so it's for me to determine what
5 evidence ought to be admitted.

6 And I don't know what the other evidence is going to
7 be. But from what y'all have told me up to this point, I
8 fail to see the relevance of that evidence. And it
9 certainly confuses the issues.

10 MR. VIETH: Judge, I mean, to me just the relevance is
11 the totality of the circumstances of the case. I wish my
12 client didn't have amnesia. I mean, I cannot go in there
13 so --

14 THE COURT: What I'm saying is is the jury supposed to
15 be able to -- in other words, if you introduce that type of
16 evidence, is the purpose of it so the jury can speculate
17 that it must have been some other reason other than the
18 defendant's own conduct that caused this lady's death?

19 In other words, are they to speculate that, well,
20 since she threatened suicide before or was depressed and
21 she's dead, it must have been suicide; or if they weren't
22 getting along on some occasions and she's now dead, if he
23 did it, it must be self-defense. That's what I'm having --
24 that's what I'm confused about.

25 MR. VIETH: No, no. What I'm trying to establish by

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1 it is that January -- well, the 9-1-1 call is not that in
2 my opinion of some cold-blood killer that picks up the
3 phone and says how about sending someone out here, I think
4 I killed my wife.

5 It is a screaming, crying plea for help to send
6 someone out here. I mean, it is a -- like
7 I-can't-believe-what-has-happened-here type of phone call.
8 And that in itself may give a jury some pause to concern
9 whether he intentionally killed her or not with malice
10 aforethought.

11 I mean, I don't know. But you've got to develop it in
12 the whole line of describing their relationship, how was
13 that relationship leading up to the time of death.

14 His parents will testify that they were looking
15 forward to seeing them together again New Year's Eve and
16 getting back together.

17 And you can't just paint a brush in just one section
18 of the room and say you've got a knife, you've got a dead
19 person and you've got a guy with blood on your hands,
20 therefore it's murder. I mean, you've got to be able to
21 listen to something else. And he can't testify to what
22 happened right there at the scene because of the amnesia.

23 So when they sit there and say I wouldn't have done
24 this, I tried to help my wife, not hurt her, go check this
25 out and see that I called Beaufort and that we got her

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1 help, we got her treatment.

2 THE COURT: Well, I understand. Well, I understand
3 what you want to show. But my question is what is it
4 relevant to.

5 MR. VIETH: The absence of malice.

6 THE COURT: The absence of malice. So that's the sole
7 issue that you wish to introduce that evidence, is to show
8 that he loved his wife and therefore -- or shared and cared
9 for her, shared concern for her and cared for her, and
10 therefore could not have had malice at a time that she was
11 killed.

12 MR. VIETH: That would be one. That would be clearly
13 my legal position, yes, the absence of malice, now.

14 THE COURT: All right. So then what is it?

15 MR. VIETH: Well.

16 THE COURT: Is it manslaughter or involuntary
17 manslaughter? Is it accident? What's the theory? What's
18 the defense's theory?

19 MR. VIETH: No. I think the defense theory would
20 either be it's voluntary manslaughter or probably -- if we
21 don't get a charge to manslaughter, if the Court listens to
22 the whole trial and says I don't find that you should even
23 get a charge to it, then it's either malice or not guilty.
24 But if manslaughter --

25 THE COURT: Well, is there going to be evidence of

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1 sudden heat of passion based upon sufficient legal
2 provocation?

3 MR. VIETH: That brings me back to the amnesia issue
4 on competency to stand trial. I cannot get there. I know
5 factually -- well, never mind.

6 THE COURT: Now, I realize -- I realize you might not
7 be able to establish it. Of course you don't have to
8 through direct testimony of the defendant or anybody else.
9 I mean, you can do it through a cross-examination of the
10 state's witnesses if such evidence is available.

11 But I guess my point is before you're entitled to an
12 instruction on voluntary manslaughter, as you well know,
13 there's got to be evidence of a killing, an intentional
14 killing, in sudden heat of passion based upon sufficient
15 legal provocation. As I understand it from you, based upon
16 what you know of the evidence, there is no such evidence.

17 MR. VIETH: As a result of the amnesia, that's
18 correct.

19 THE COURT: As a result of whatever. I mean, I'm just
20 talking about in a legal sense. There's either evidence
21 existing in the record or there's not.

22 MR. VIETH: That's correct. And due to me not being
23 able to know what happened immediately before that 9-1-1
24 call, I don't know if there was any sufficient legal
25 provocation, because my client doesn't recall the events.

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1 THE COURT: All right. Then in that event you would
2 agree, would you not, that there's no instruction on
3 voluntary manslaughter because there's no evidence to
4 support it?

5 MR. VIETH: Well, again, we're going to see how this
6 thing plays out in a trial.

7 As a legal person, as a lawyer speaking from what I
8 know the law is, I have got to agree with the Court because
9 I don't have any -- well, I don't have any evidence other
10 than what happened that night. There's nothing new that's
11 going to be gleaned that he called 9-1-1, sent help out
12 there after he realized what had happened.

13 And he -- it's not a collateral issue to him. Okay.
14 And that is this demonic possession issue. It is a real
15 thing to him and to other people that this in his belief
16 was the primary reason of her death.

17 That's not going to be a legal defense. I mean, we're
18 not going to be able to go to a book and say he's excused
19 of this crime due to demonic possession. That's not going
20 to be something you're going to charge a jury.

21 THE COURT: Well, let me be sure I understand. Now,
22 there's no issue in this case of insanity or mental
23 illness.

24 MR. VIETH: There is none. We sent him to the state
25 hospital. And that was for a competency evaluation, which

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1 I didn't do a criminal responsibility examination. But I
2 have no expert testimony that would refute the state
3 hospital coming back and saying he was responsible, okay,
4 so.

5 THE COURT: There's been an evaluation on M'Naughten?

6 MR. VIETH: No. Been an evaluation just on competency
7 to stand trial.

8 We sent him down for the dual purpose of getting that
9 done, and they sent him back and said you had to have a
10 separate order and they're not --

11 THE COURT: Well, you do. But, now, what I'm hearing
12 from you is that the defendant's position is that he
13 doesn't know what he was doing at the time he did it, or he
14 knew what he was doing but he had no control over it.

15 MR. VIETH: His position, and I don't speak for him --
16 but my position is that his position is I don't remember
17 doing what happened, I can't -- no, I see her, I know it
18 happened, so I can't tell you why it happened, I can only
19 surmise that if I did this thing it had to be because she
20 couldn't commit suicide and was demonically possessed and
21 put that demon in me to do it, because otherwise I would
22 never, ever have done this to her.

23 But because he has amnesia, I can't even get an expert
24 to say that, yes, he was demonically possessed because he
25 has amnesia. He can address that, did he feel something

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1 come into his body, did he feel anything of that nature.
2 If you're going into demonic possession, you go into some
3 interesting, interesting things in the law and in fact.

4 For example, I have a pastor who will testify that
5 they would go to church. And when they were sitting at the
6 church, she sometimes would get up and go to the other end
7 of the pews.

8 And at the end of the service he asked her why did you
9 move. And she said because this person that was sitting
10 next to me had demons in them and I could feel it and I had
11 to leave.

12 She was from Jamaica and was apparently into this
13 stuff. And whether you believe in the Bible or you believe
14 in Satan or you don't is an issue that I had to get up to
15 speed on, if you will, or at least understand to some
16 degree what they're talking about to even address the
17 issue, because you walk out of a jail. And what are you
18 talking about?

19 THE COURT: Well, I understand. But, anyway, I'm back
20 to where I was initially. Nothing's altered my opinion,
21 and that is if the evidence is not being offered as
22 character evidence, if the evidence is not being offered as
23 proof of suicide on behalf of the deceased, if the evidence
24 is not being offered as some evidence of self-defense on
25 the part of the defendant, then I don't see the relevance

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1 of it, simply because you can't introduce evidence of her
2 prior depression or attempted suicide for the purpose of
3 allowing the jury to speculate, then in this case it must
4 have been a suicide instead of an intentional act on the
5 part of the defendant, because as I understand it you don't
6 deny it was an intentional act on the part of the
7 defendant. You just assert that there was no malice at the
8 time it was committed because he cared for her.

9 So what I'm saying is to allow that type of evidence,
10 it really confuses a jury because then they are simply
11 permitted to speculate as to how this death occurred based
12 on some prior history of the deceased.

13 And clearly the prejudicial effect in the state's case
14 outweighs any probative value that it would be to the
15 defense, because it's not being offered as a defense.

16 MR. VIETH: Yes, sir. Again, it's being offered as a
17 defense to the malice issue. I mean, it is a totality
18 issue that I've got to deal with either for the record --

19 THE COURT: Well, I understand. But, I mean, I guess
20 my point is, you know, you could be married for 35 years
21 and get along famously and then one day kill somebody.
22 Well, the fact that, you know, the fact that you've been,
23 loved each other for 35 years doesn't mean you can't
24 develop malice. Whether it exists or not, I don't know.

25 MR. VIETH: I would agree with the Court.

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1 THE COURT: In this case we are talking about an act,
2 as I understand it, that's 30 days remote from the date of
3 death. I mean, an act of concern that's 30 days from the
4 date of death, I mean.

5 MR. VIETH: Well, she was in Beaufort. We can't help
6 the day she was in Beaufort. She was in Beaufort when that
7 call came in and they talked about her being depressed and
8 might commit suicide and he calls to get help. I mean, the
9 Court is not going to keep us from at least attempting to
10 testify that he did that.

11 THE COURT: He can testify that he loved his wife if
12 he wants to. He can testify under no circumstances would
13 he ever kill her or wish her harm. Sure, he can testify to
14 it.

15 MR. VIETH: And what happened in the timeframe leading
16 up to this getting back together.

17 THE COURT: Well, no. I'm not saying -- I'm not
18 saying the testimony of the suicide thing comes in. I've
19 already said I don't know what the relevance of that is.

20 I mean, just him testifying that, well, in fact, she
21 tried to commit suicide one time and I called the police
22 because I cared and I had concern for her.

23 MR. VIETH: We think that is relevant to his case.

24 THE COURT: Well, I understand you do. But I don't --
25 I don't understand what the relevance is. Again, I know

Motions

1 you're saying it's to disprove or to show a lack of malice
2 but --

3 MR. VIETH: That's right.

4 THE COURT: I think that might be too remote.

5 MR. VIETH: All right.

6 THE COURT: So but listen. Y'all are asking me to
7 decide something without me knowing the context of this
8 case from evidence that's being presented. So anything
9 that I say here pretrial, I mean, it all is dependent upon
10 what evidence comes out during the course of the trial.

11 Now, it might be that you have evidence or testimony
12 that might become relevant based on some other witness or
13 some other evidence coming in. I don't know.

14 I'm just saying I wouldn't permit you to go into those
15 evidentiary matters in an opening statement with the idea
16 that it might very well be excluded by the Court because
17 there's no evidence or corroboration to support it and it's
18 not relevant to any issue.

19 So I don't know what your client might testify to.
20 There are some things he might make relevant by his own
21 testimony. I don't know. I don't know what it is. I
22 mean, I don't know what his testimony is going to be.

23 MR. VIETH: Well.

24 THE COURT: It might be that you can't develop it into
25 your case, is all I'm saying. And then, again, you might

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1 not be able to develop it at all. But there are some
2 things we might have to readdress outside the jury's
3 presence. We'll just have to see.

4 But I'm just saying since we're not in agreement that
5 the evidence is admissible, we're not going to be
6 discussing it in the statements to the jury knowing that it
7 might likely not come in later.

8 MR. VIETH: All right. The fact that he made a call
9 to the sheriff's department to go check on her, period, is
10 that something that you say is not important?

11 THE COURT: I don't whether it's important or not.
12 But I'm just saying right now it's not relevant. It might
13 become sometime, but it's not relevant now because there's
14 no evidence. There's no evidence in the record. There's
15 nothing else to make it relevant.

16 If we're talking about opening statements, then, you
17 know, that, as I say that, evidence might not come in. You
18 can't tell the jury about evidence that there is a very
19 good likelihood is not going to be admitted.

20 And right now I'm telling you it's not going to be
21 admitted unless it's otherwise made relevant.

22 MR. VIETH: And that relevancy is the issues you
23 addressed -- suicide, accident.

24 THE COURT: Well, I'm not trying to develop your case.
25 I'm just saying I fail to perceive the relevance of that

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1 call now.

2 MR. VIETH: All right. So, so for our opening
3 statements we're not to address anything with her
4 hospitalizations or anything of that nature.

5 THE COURT: Unless it's something that y'all have
6 agreed you're not going to object to and it's coming in.

7 MR. VIETH: No, no. The records were going to come in
8 if relevant. I mean, that's always been something we've
9 agreed to on that. And we always agreed that that would be
10 an argument that the Court would have to decide. So I just
11 don't know. Like the Court said, bring it up.

12 And I'm sure those records -- I mean, to cover the
13 bases, if I need to bring this detective up to put on the
14 record what he did to cover my record on some subsequent
15 appeal or P. C. R., I'll have him here.

16 THE COURT: Is he going to testify to anything that's
17 not in an incident report?

18 MR. VIETH: No, sir.

19 THE COURT: Well, will y'all -- can y'all agree that
20 he would testify as to what he put in his incident report?

21 MR. GOWDY: Yes, sir.

22 THE COURT: Well, that protects you unless there's
23 something else in addition to that. But that should
24 protect the record.

25 In other words, y'all are in agreement that if the

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1 deputy was called and permitted to testify he would testify
2 as to what is contained in the incident report. That
3 report can be made a court's exhibit.

4 MR. VIETH: Yes, sir. Okay. And the same with the
5 medical records.

6 THE COURT: The same with the medical records.

7 In other words, it is agreed upon that if the
8 custodian of the records came and was permitted to testify,
9 they could testify as to what's in those records or testify
10 that those are records made contemporaneous at the time
11 they were produced.

12 MR. VIETH: All right, sir.

13 MR. GOWDY: Your Honor, my other concern, just because
14 it is so incendiary, just to even mention it, is the whole
15 discussion of the paranormal, of her being demonically
16 possessed, of her engaging in witchcraft to the extent that
17 sanity is not an issue, a guilty but mentally ill is not an
18 issue.

19 I don't know, and I've done a little bit of research.
20 I'm not suggesting I've done as much as Mr. Vieth, but
21 Ms. Crick and I have researched what relevance demonic
22 possession would have in a murder case where insanity is
23 not being argued.

24 So I understand the Court's ruling on suicide, but the
25 witchcraft and demonic possession, if that's mentioned in

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1 opening, I mean, I can't unring a bell with respect to --

2 THE COURT: Well, I understand.

3 Is that an issue in the case? I mean, that's --

4 MR. VIETH: Well, I'll leave it alone.

5 THE COURT: What I'm trying to address right now is
6 what the information or the evidence that the defense seeks
7 to admit is relevant to something and --

8 MR. VIETH: I'll leave all of that out.

9 THE COURT: Unless the demonic possession is relevant
10 to her taking her own life, then I don't see how it's
11 relevant to these charges against the defendant.

12 I mean, you can't -- you can't kill somebody who is
13 possessed by the devil either, even if they are.

14 MR. VIETH: I'll leave that out of any opening
15 statement. I'm sure we'll deal with other relevant issues
16 as we get into our case. But I'll leave it out of opening
17 statement.

18 MR. GOWDY: Your Honor, just this is just to remind
19 Mr. Vieth and myself. We've already agreed on this, and I
20 have informed Mr. Gary.

21 This is another one of those Miranda-ask situations
22 where an interview was stopped, and being mindful of the
23 Court and other appellate courts' rulings on not commenting
24 on the fact that an interview was stopped, we plan to not
25 even go into -- from a chronological standpoint, an oral

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1 statement was taken. And then they attempted to reduce it
2 to writing.

3 And midway through the written statement Mr. Horton
4 asked for counsel. So Detective Gary who took the
5 statement is not even going to go into the written
6 statement. We don't -- I don't want to risk a comment
7 being made that it was stopped.

8 If Mr. Vieth does ask him on cross why didn't you
9 reduce this to writing, why doesn't the jury have a chance
10 to see this, then he's been around long enough to know
11 where not to go.

12 But I want the Court to know that's why we're not
13 going into the written statement. It's because he stopped
14 it midway through and invoked his right.

15 THE COURT: All right. With regard to the oral
16 statement, is there an issue of it being voluntary?

17 MR. VIETH: No, sir.

18 THE COURT: You concede or agree that it was a
19 voluntary statement?

20 MR. VIETH: Yes, sir.

21 THE COURT: All right. Mr. Horton, do you
22 understand -- you and your lawyer have discussed this based
23 on what I hear -- but you have a right any time the state
24 attempts to introduce a statement that a defendant -- in
25 this case you -- have made to law enforcement at a time

Motions

1 that you were in their custody, you have a right to have a
2 hearing for the Court to determine whether or not that
3 statement was, in fact, voluntarily made.

4 In other words, if there was any pressure, promises,
5 coercion or any other reason why a statement was provided
6 but it was not voluntarily made by you, you've got a right
7 for the Court to conduct a hearing for me to determine
8 whether or not a statement was made, and if it was, was it
9 voluntarily made.

10 And Mr. Vieth has just told me that you don't contest
11 the voluntariness of the statement. In other words, he's
12 saying that at the time you made that oral statement you
13 understood fully what you were doing, you understood the
14 consequences of that act.

15 And was Miranda provided in this case?

16 MR. GOWDY: Yes, sir, Your Honor.

17 THE COURT: That you were advised of your right to
18 remain silent; to have a lawyer; that you didn't have to
19 say anything; if you did, whatever you said could be used
20 against you; that you could answer questions; and you could
21 stop the questioning at any time if you wished to. Even if
22 you wished to talk to them some, you could quit.

23 So those are your Miranda rights. Those are your
24 constitutional rights with regard to statements while
25 you're in custody.

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1 You've got a right for me to conduct a hearing to
2 determine if you were advised of those rights, if you
3 understood those rights, if you waived those rights, and if
4 any statement you provided to law enforcement was otherwise
5 voluntary.

6 As I say, Mr. Vieth has stated that you and he are in
7 agreement that you did provide an oral statement, and that
8 you did so freely and voluntarily. Nobody made you; nobody
9 coerced you; nobody pressured you; nobody tricked you;
10 nobody -- it was done so with an understanding of what your
11 rights were.

12 Now, do you agree? Is Mr. Vieth's assessment correct
13 on that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You do agree that the oral statement you
16 provided to Mr. Gary was freely and voluntarily made by
17 you?

18 THE DEFENDANT: I guess I really have no recollection
19 of it, Your Honor. I can't say whether it was -- was or
20 wasn't.

21 THE COURT: All right. Well, do you wish for me to
22 conduct a hearing to determine whether or not it was, in
23 fact, voluntarily made?

24 MR. VIETH: Your Honor, based on his last answer, I
25 would request it.

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 THE COURT: Okay.

2 MR. VIETH: I'm sorry.

3 THE COURT: All right. How long? You've got one
4 witness?

5 MR. GODFREY: Yes, sir.

6 THE COURT: Let's go ahead and call him.

7 MR. GOWDY: Your Honor, the state would call Detective
8 William Gary.

9 (Preinterrogation waiver form marked State's
10 Suppression Exhibit No. 1 for Identification; voluntary
11 statement marked State's Suppression Exhibit No. 2 for
12 Identification.)

13 WILLIAM GARY, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. GOWDY

16 Q Good afternoon, Detective Gary.

17 A Good afternoon.

18 Q Can you introduce yourself to the Court and tell them
19 how long you've been in law enforcement?

20 A My name is William Gary. I've been with sheriff's
21 office a little over 13 years.

22 Q And during the course of those 13 years how many times
23 have you interviewed suspects in homicide cases?

24 THE COURT: Just estimate.

25 A It's probably 40 to 50 at least.

William Gary (In-camera)
Direct examination by Mr. Gowdy

- 1 Q All right. On January the 2nd or in the early morning
2 hours of January the 3rd of 2007 did you become involved in
3 the investigation into the death of Erika Horton?
- 4 A Yes, I did.
- 5 Q What role did you play?
- 6 A I was the lead investigator on the case.
- 7 Q All right. Did you go to the crime scene?
- 8 A I did.
- 9 Q Where was it?
- 10 A At 570 Underwood Road.
- 11 Q And what did you find when you got there?
- 12 A When I got there Mr. Horton was sitting on a, in a
13 chair out under the carport. And crime scene tape was up
14 to secure the scene so no one unauthorized could come in or
15 out. And he was covered with a blanket, and he was already
16 detained at that point.
- 17 Q Did you Mirandize him verbally on the spot?
- 18 A Yes, I did.
- 19 Q And how do you Mirandize suspects verbally? Do you do
20 it on a card or off of memory?
- 21 A Off a card. I have to keep it in my wallet.
- 22 Q All right. Did you ask him any questions there at the
23 scene?
- 24 A I did, yes, sir.
- 25 Q Did he appear alert, oriented and seem to understand

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 his Miranda warnings when you gave them to him?

2 A He did. We didn't -- it was a very brief interview
3 there. And I advised him that I was going to have him
4 transported to the sheriff's office, because it was a very
5 cold night, because it was warmer. And plus we had some
6 things that we were going to do at the office.

7 Q So you verbally Mirandized him on the scene.

8 A Yes.

9 Q Whatever interview might have taken place there was
10 nondescript and short. And you left to go to the
11 Spartanburg County Sheriff's Office to conduct a more
12 complete interview?

13 A Yes, I did.

14 Q All right. Just so the Court is aware, although there
15 is an agreement for both parties not to discuss it in the
16 jury's presence, he did indicate to you that he had used
17 what that day?

18 A He had stated that he had had a couple of shots of
19 tequila and did a couple of lines of cocaine.

20 Q A couple of lines of cocaine and a couple of shots of
21 tequila?

22 A Yes, sir.

23 Q Did he appear alert and oriented when you were talking
24 to him?

25 A Yes, he did.

William Gary (In-camera)
Direct examination by Mr. Gowdy

- 1 Q Did he seem to understand the word that you used?
- 2 A Yes, sir.
- 3 Q Did you understand him?
- 4 A Yes, sir.
- 5 Q All right. And you transported him to the sheriff's
- 6 department.
- 7 A I did not. Another officer did. He was transported
- 8 to the office.
- 9 Q When you got to the sheriff's department did you go
- 10 over his Miranda warnings with him again?
- 11 A Yes, sir. This time on paper.
- 12 Q Let me show you State's Exhibit No. 1 and ask you
- 13 whether or not you recognize that.
- 14 A Yes, sir. This is a preinterrogation waiver form
- 15 that's used by the sheriff's office.
- 16 Q Who signed it?
- 17 A Brent Horton signed it in two places. I notarized it.
- 18 And it was witnessed by another officer.
- 19 Q All right. And did you administer or go over his
- 20 rights with him?
- 21 A Yes, I did.
- 22 Q And did you do so individually?
- 23 A Yes, sir.
- 24 Q Did you give him -- did you ask him whether or not he
- 25 understood them either one by one or at the conclusion?

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 A Yes, sir.

2 Q And did he indicate to you by signing that he
3 understood his rights?

4 A He did.

5 Q Did he also indicate to you by signing that he wished
6 to waive them?

7 A Yes, sir.

8 MR. GOWDY: Your Honor, we would move State's 1 into
9 evidence.

10 MR. VIETH: Without objection.

11 (Preinterrogation waiver form marked State's
12 Suppression Exhibit No. 1.)

13 Q All right. Detective Gary, tell the Court about your
14 verbal or your oral interview with the statement that you
15 took from the defendant, Mr. Horton.

16 A During that interview I started out with some
17 background questions about how long he and Erika had been
18 together, how long they were married, what was going on in
19 the relationship.

20 And then it went into what happened that evening, and
21 which Mr. Horton originally said he didn't remember what
22 had happened. He told me about earlier in the evening,
23 about going to get diapers, getting the wrong size. They
24 got into an argument about that.

25 At one time she was at the house, said she was

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 leaving. He got in her car in order to stop her from
2 leaving. He had actually taken her phone from her. And he
3 said that she had bit him in order to get the phone back.

4 And that's when I asked him about a mark on his hand.
5 He said that was from a prior event, her biting him in
6 order to get the phone.

7 Then when he was saying he didn't know what happened
8 inside and that they were fussing, that's when I played a
9 tape for him which was of the 9-1-1 call. I called the
10 communication center and asked them to play the call for me
11 so that I could hear it, because I'd already been advised
12 of the call. And I recorded it to have for this purpose.

13 I played it in interview. And that's when he stated
14 that -- let's see. He said he wouldn't do it, that he
15 wouldn't do that. Then we went through asking. I went
16 through asking him what happened up to that point, you
17 know, what happened before. He said he didn't know.

18 He just got kind of a blank stare on his face. Parts
19 of it, he told me that he beat her. He kept saying that
20 over and over, I just beat her, I beat her, four or five
21 times in a row.

22 He actually stated that he got physical in there and
23 that it all happened real fast. He couldn't remember if
24 she was standing up or on the floor when he was hitting her
25 or grabbed her hair. He couldn't remember that.

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 Q Detective Gary, had you seen the crime scene by the
2 time you interviewed him?

3 A Yes.

4 Q So you had both the benefit of the 9-1-1 tape and the
5 crime scene.

6 A Yes, sir.

7 Q All right. And he acknowledged to you. In fact, I
8 think you put in your notes he repeated four times that he
9 had beaten her.

10 A Right.

11 Q All right. Did you see evidence that a weapon was
12 used?

13 A Yes, sir.

14 Q So did you begin to question him specifically about
15 the use of a weapon?

16 A Yes, sir.

17 Q And what did he say?

18 A Let me look here.

19 THE COURT: Let me say this.

20 It doesn't really matter what he said. The issue is
21 whether or not what he said was voluntarily made. So let's
22 focus on the voluntariness.

23 MR. GOWDY: Okay.

24 Q Did you offer him anything?

25 A I offered him -- sure. I offered him something to eat

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 and drink.

2 Q Did you offer him anything in exchange for his talking
3 to you?

4 A No.

5 Q Did you threaten him?

6 A No, sir.

7 Q Did you tell him that charges would or would not be
8 levied based on whatever he said?

9 A No, sir.

10 Q Did he ask for medical attention? Did you deny him
11 medical attention?

12 A No. He did not ask for it.

13 Q This was the oral statement.

14 A Yes, sir.

15 Q Did you take a written statement from him?

16 A I told him that I would like to get his, this story
17 that he just told me on paper so that it's documented. I
18 offered for him to write it or for me to write it out for
19 him. He asked for me to write it.

20 I started writing the statement out. I got to the
21 point -- trying to exactly where it stopped -- where they
22 were fussing in the bedroom. I asked him again about the
23 details, about what happened in the bedroom.

24 Then at that point the statement -- writing the
25 statement ended when Mr. Horton decided to elect his rights

William Gary (In-camera)
Direct examination by Mr. Gowdy

1 to counsel.

2 Q All right. So when I show you State's Exhibit 2, what
3 is that?

4 A This is the partial written statement that I was doing
5 that night.

6 Q Okay. And did you write that out for him, or did he
7 write it out?

8 A I wrote this statement.

9 Q And did you write it out verbatim or according to what
10 he told you?

11 A Yes, sir. It's not a hundred percent verbatim. This
12 is what he told me.

13 Q All right.

14 MR. GOWDY: Your Honor, we would move State's 2 into
15 evidence for purposes of this hearing only.

16 MR. VIETH: That's the written statement.

17 MR. GOWDY: Partial written.

18 MR. VIETH: There's some more?

19 MR. GOWDY: Yeah.

20 MR. VIETH: No objection.

21 (Voluntary statement marked State's Suppression Exhibit
22 No. 2.)

23 Q Please answer any questions Mr. Vieth or the Court may
24 have for you.

25

William Gary (In-camera)
Cross-examination by Mr. Vieth

1 CROSS-EXAMINATION

2 BY MR. VIETH

3 Q Officer, briefly. He didn't sign the written
4 statement, is that correct?

5 A No, sir, he did not.

6 Q Was there a reason for that that you recall?

7 A Once he had invoked his right to a counsel, I stopped
8 all of my contact with him, to include asking him to sign
9 what I'd already written out for him.

10 Q All right. Under the, your experience taking 40 or 50
11 statements, you've seen people that were obviously under
12 the influence of drugs and/or alcohol, I assume. Is that
13 fair to say?

14 A Oh, yes, sir.

15 Q And if you personally felt that someone was impaired
16 through the use of drugs and/or alcohol, what would your
17 normal course be when you're talking to someone about
18 giving a statement?

19 A If there's someone that is obviously impaired from
20 either alcohol or drugs, that is not the time to get a
21 statement from them.

22 I would, if there was enough, either have them
23 arrested and come to them the next morning and talk to them
24 at the jail or probably take them away from that scene and
25 find them once they could have sobered up or recovered from

William Gary (In-camera)
Cross-examination by Mr. Vieth

1 it.

2 Q All right. And based on your experience that was not
3 the issue in this case, is that correct?

4 A No, sir, it was not. Even though he did talk about
5 the drugs and the alcohol use, nothing about his speech,
6 his demeanor, his ability to understand what I was
7 saying -- is very coherent. That indicated to me that he
8 was not under a direct influence of it to inhibit his
9 ability to communicate.

10 Q Okay. Did you find by your comment he had a blank
11 stare and so forth in your report, that he was very much
12 traumatized when you were there?

13 A It would be hard to classify it as traumatized, or was
14 he thinking, was he trying to create something. I don't
15 know. It was just like you would, just go into a blank
16 stare.

17 Q And stare straight out?

18 A Actually just focus like -- it was almost like
19 focusing on one point. It's like he was looking at the
20 desk from what I remember that was in between us.

21 Q Okay. And were these reports taken at the sheriff's
22 department?

23 A Yes, sir.

24 MR. VIETH: That's all the questions I have of him.

25 THE COURT: You may step down.

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 Anything else on behalf of the state?

2 MR. GOWDY: No, sir, Your Honor.

3 THE COURT: The defense?

4 MR. VIETH: No, sir.

5 THE COURT: Mr. Horton, do you understand you've got a
6 right to testify at this hearing if you wish to? Because
7 I'm going to base my decision as to whether or not the
8 statement should be submitted on the evidence presented.

9 So if you have any additional evidence you'd like to
10 present, now is the opportunity to do so.

11 MR. VIETH: Come on. Let's come up to the stand. Let
12 me call him real quick, judge.

13 LARRY BRENT HORTON, having
14 been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. VIETH

16 Q Larry, you are Larry Brent Horton. You're currently
17 charged with murder in this case, is that right?

18 A Yes, sir.

19 Q And you've heard the testimony of the officer relating
20 to the voluntariness of you giving a statement to them,
21 both orally and then partially in writing. You've been in
22 here for this testimony, is that right?

23 A Yes, sir.

24 Q And I don't want to put words in your mouth at all,
25 and Mr. Gowdy can stop me. But is it your position that

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 you can neither admit or deny the voluntariness of that
2 statement, what that officer said?

3 A Yes, sir.

4 Q And that's what you want the judge to know. You're
5 not either admitting that the officer is correct or denying
6 that the officer is correct.

7 A That's correct.

8 Q You don't recall what happened, is that --

9 A No, sir.

10 Q Okay.

11 MR. VIETH: That's all the questions I have, Your
12 Honor.

13 THE COURT: Step down.

14 Anything else?

15 MR. VIETH: No, sir.

16 THE COURT: All right. Based upon the testimony
17 presented, I do find the state has established by the
18 greater weight of the evidence that the statement provided
19 to Mr. Gary pursuant to an interview after the defendant
20 was in custody was freely, voluntarily and intelligently
21 made; that he was advised of his constitutional rights
22 pursuant to Miranda; that he understood the rights; that he
23 knowingly waived the rights. In fact, he invoked his right
24 to have counsel. Obviously he understood the rights.

25 So based upon the totality of the circumstances

1 surrounding the taking of the statement, I do find the
2 statement to have been voluntarily made. It shall be
3 admitted.

4 Anything else?

5 MR. GOWDY: Not from the state, Your Honor.

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

7 Your Honor, we can do it later. I was going to make
8 sure we introduced these documents.

9 THE COURT: We can do it after lunch.

10 Court is in recess until 2:30.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Are we ready for the jury?

13 MR. GOWDY: The state is, Your Honor.

14 MR. VIETH: Yes, sir.

15 THE COURT: All right. Bring them in.

16 Ask Mr. Blackman to take the foreperson's seat.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Good afternoon, ladies and gentlemen.

20 We are ready to begin with the trial of the case for
21 which you have each been selected.

22 Mr. Blackman, I'm going to ask you to serve as the
23 foreperson of the jury. And as the foreperson you'll have
24 three specific duties that none of the other jurors will
25 have.

1 Number one, you'll be asked to serve as the
2 spokesperson for the jury. And so if during the trial
3 something arises that needs to be brought to my
4 attention -- you or some fellow juror has any difficulty,
5 problem or question -- if you'll let the bailiff know,
6 he'll let me know, and I'll address those issues should
7 they arise.

8 Secondly, you'll be asked to preside over jury
9 deliberations when the time comes. That of course won't be
10 until the end of the trial after all of the evidence has
11 been received and I have instructed you on the law that's
12 applicable in the case.

13 But when the time comes for deliberations you will
14 preside over that process in the jury room simply to ensure
15 that those deliberations are carried out in some orderly
16 fashion.

17 And, thirdly, you'll actually write the verdict or the
18 decision of the jury. You'll do that on a verdict form
19 that I'll provide you at the trial's conclusion on which
20 you will indicate the jury's unanimous decision.

21 Now, the foreperson has those specific duties that
22 I've indicated. That does not however mean that he is any
23 more important than any of you other jurors, because the
24 decision of a jury is the unanimous consensus opinion of
25 all 12 jurors. So all of you are going to have an equal

1 say and an equal vote in what the ultimate decision in this
2 case will be.

3 Someone simply has to be delegated those
4 responsibilities that I have just indicated, and I have
5 delegated those to Mr. Blackman in appointing him as the
6 foreperson.

7 But all of you jurors are equally important so far as
8 the ultimate decision in this case is concerned, because,
9 as I've stated, the verdict has to be unanimous. All of
10 you must be in agreement.

11 Now, Mr. Simmons, you've been selected as an alternate
12 juror. And your function is to take the place of one of
13 the original 12 jurors. If during the trial one of these
14 original 12 cannot continue to serve for some reason, if
15 one becomes ill or an emergency precludes that juror from
16 continuing to serve, then you would be called upon to take
17 that person's place. In that event you would become the
18 12th juror.

19 Now, when the time for deliberations is to begin if
20 the original 12 are able to participate, your service ends.
21 You can't participate any further because the verdict of a
22 jury is that of 12. No more than 12 are permitted to
23 engage in that process.

24 But it is important that you pay just as careful
25 attention as we ask of all of the jurors in this case

Jury sworn

1 because it does occur from time to time for one reason or
2 another one of the original 12 may be called away. In that
3 event you become the 12th.

4 So we do appreciate your participation as an alternate
5 juror, just as we appreciate the participation of each of
6 you jurors who have been selected for the purpose of
7 deciding the verdict in this particular case.

8 You may swear the panel.

9 (Whereupon, the jury was duly sworn.)

10 THE COURT: Ladies and gentlemen, as you are well
11 aware, you have been selected to decide the verdict in the
12 case of the State vs. Larry Brent Horton.

13 Mr. Horton has been accused of the crime of murder.
14 The allegations setting forth that offense are contained in
15 the indictment. The indictment is that document I referred
16 to prior to your selection from which I read the charge.

17 The indictment is not evidence in this case. It's not
18 proof of anything. It's simply the means by which a person
19 who is accused of a crime is brought into this court to
20 stand trial on that particular charge.

21 The indictment will be in the jury room at the time
22 that you go back to deliberate, because it is on the back
23 of the indictment, Mr. Foreman, that you're going to
24 indicate the jury's unanimous decision. But other than
25 serving as the verdict form, the indictment serves no

1 purpose so far as you 12 jurors are concerned. It is not
2 evidence in this case.

3 Now, as you know, the defendant is charged with
4 murder. And as to that charge and those allegations he has
5 entered a plea of not guilty. And, as I've told you, that
6 plea of not guilty therefore places upon the state the
7 burden of proving the allegations that they have set forth
8 in that indictment.

9 The state has the burden of proving each of the
10 essential elements of the crime of murder. The state has
11 the burden of proving the defendant's guilt to your
12 satisfaction beyond a reasonable doubt before any such
13 verdict could be returned.

14 Every person who is accused of a crime, and it doesn't
15 matter how serious the offense might be -- any person
16 accused of a crime under the law is presumed to be
17 innocent.

18 That presumption of innocence remains with any
19 defendant, as it does with this defendant, from the time
20 that he is placed under arrest and throughout the course of
21 the criminal process and even throughout the course of the
22 actual trial in the case.

23 That presumption of innocence will be with Mr. Horton
24 even as you go back at this trial's conclusion to begin
25 with your deliberations in this case. That presumption of

1 innocence will be with the defendant in that jury room.
2 And it'll be with him forever unless you 12 jurors
3 determine that he's no longer entitled to the presumption
4 of innocence.

5 That is after you've carefully considered all of the
6 evidence in the case, and from that evidence you've decided
7 the facts, and after deciding those facts you apply the law
8 that I will have provided you, if you 12 jurors unanimously
9 determine that his guilt has been proven beyond a
10 reasonable doubt, then he would no longer be entitled to
11 the presumption of innocence. But it's only if, unless and
12 until you are satisfied of his guilt beyond a reasonable
13 doubt that the presumption of innocence would no longer be
14 applicable.

15 Now, the way the trial will proceed is that in a
16 moment the lawyers are going to address you in what are
17 called opening statements.

18 There are two occasions in the trial of a case where
19 lawyers are permitted to address the jury, and that is at
20 the beginning of the trial before any evidence has been
21 introduced and then again at the conclusion of the trial
22 after all of the evidence has been received.

23 Keep in mind, as I've just stated, the evidence upon
24 which you will base your decision comes in between the
25 opening and the closing statements.

1 The opening and the closing statements of the lawyers
2 are not evidence, and you cannot consider those as such.
3 But you should listen to what they have to say because
4 those statements do serve a purpose.

5 The opening statements will serve to provide you with
6 a basic understanding as to what this case is about from
7 the perspective of the state and the defendant so that
8 you'll have some context in which to place the evidence
9 that we will be receiving shortly thereafter.

10 The closing statements afford the lawyers an
11 opportunity to discuss with you the evidence that you've
12 seen and heard during the trial. And through that
13 discussion each will be trying to persuade you or to
14 convince you that evidence does or does not support a
15 particular decision. And, as I have stated, it's in
16 between those statements that we actually receive the
17 evidence upon which you will base your decision.

18 The state will go forward first because the state has
19 brought the charge. The state has the burden of proof.
20 The state must establish the defendant's guilt beyond a
21 reasonable doubt before any verdict of guilty could be
22 returned. And so they'll go forward first in their
23 presentation of evidence.

24 Once the state has concluded in their presentation of
25 evidence a defendant has the same opportunity to testify

1 and to present evidence. But a defendant in a trial is
2 under no obligation to testify or to present evidence,
3 because the defendant has no burden of proof in a case. A
4 defendant does not have to prove that he or she is not
5 guilty or that he or she is innocent because in some cases
6 that wouldn't even be possible.

7 The burden is always upon the state in bringing a
8 charge to prove a person's guilt beyond a reasonable doubt.
9 Nevertheless, a defendant is afforded an opportunity to
10 testify and to present evidence should he or she wish to do
11 so.

12 After all of the evidence has been received and after
13 you've heard the final summations of the lawyers, I will
14 then instruct you fully on the law as it relates to the
15 charge of murder, as well as to the criminal law in
16 general.

17 And after you receive that legal instruction you'll
18 then be asked to go back and begin with your deliberations
19 in the case. Through that process you will examine all of
20 the evidence.

21 From that evidence you will decide what you believe to
22 be the true facts as they relate to these allegations.
23 Once you decide those facts you will then apply the law
24 that I will have provided you, and you will determine
25 whether or not the evidence in this case establishes the

1 defendant guilty beyond a reasonable doubt.

2 Now, all that we ask for you to do is to pay careful
3 attention throughout the course of the trial. Give every
4 witness the same degree of attention as those witnesses
5 testify before you, because oftentimes there may be a
6 conflict in witnesses' testimony. That conflict may relate
7 to a material issue of fact that you must resolve in order
8 to arrive at a decision in the case.

9 One of your prerogatives as jurors is to determine
10 what is the most credible and believable testimony and
11 other evidence in the case.

12 But in order for you to be in a proper position to be
13 able to evaluate each witness' testimony it's important
14 that you give each witness the same careful consideration
15 as they testify so that when you go back to deliberate the
16 case you'll be in a proper position to fairly evaluate the
17 credibility of a witness' testimony in light of not just
18 that witness' testimony but in light of all of the other
19 testimony and other evidence received during the trial of
20 the case.

21 It's also important that you keep an open mind
22 throughout the course of the trial. And by that I simply
23 mean that you are not to begin making up your minds or
24 formulating your opinions as to what you think the ultimate
25 decision in this case ought to be until all of the evidence

Opening statements

1 has been received, until I have instructed you on the law
2 that's applicable and until you've been asked to go back
3 and begin with your deliberations in the case. That is the
4 process that is designed for you 12 jurors to arrive at a
5 fair and just decision in this case.

6 So I do want to thank you in advance for your
7 participation in the trial and for your careful attention.
8 I would ask that you please give the lawyers your attention
9 now as they give you their opening statements.

10 Solicitor.

11 MR. GOWDY: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 MR. GOWDY: It's January the 2nd of 2007. It's
14 between 10:30 and 11:00 o'clock p.m. at a house in the
15 northern part of Spartanburg County outside a town we call
16 Campobello. 9-1-1 has been called and a sheriff's deputy
17 is on his way.

18 As we get in front of the house we notice that there
19 is a car parked at an angle to the driveway, catty-corner,
20 perpendicular to the driveway. There's a car parked, and
21 it's still running. In fact, you can see the exhaust from
22 the tailpipe against the cold January night.

23 We continue walking up the driveway past that running
24 car. And in the carport there's a man sitting in a chair
25 with a cell phone.

Opening statements

1 We walk into the house. The first house you walk
2 into -- the first part of the house you walk into, the
3 first room from the carport, is the kitchen. And in the
4 kitchen we notice that one of the drawers is partially
5 opened and there's a little bit of blood on the outside of
6 that kitchen drawer.

7 And then we continue walking down the hallway where
8 there are other drops of blood on the floor to a back
9 bedroom. And we see Erika Bell Horton. She's laying on
10 her back with her arms outstretched.

11 There is blood everywhere. It is on the floor and it
12 is on the wall. We walk closer and we see a kitchen knife.
13 And there's blood all over the kitchen knife.

14 And we see two over-the-counter vitamin bottles. One
15 is off to the side and another lays between her legs. And
16 there are clothes off to the side, and one of her shoes is
17 off. And in her hand are necklaces. Wrapped around her
18 fingers are necklaces, in her outstretched hand.

19 She's been beaten. Her face is blue; her lip is
20 swollen. The frenulum, the part of your mouth that
21 connects the lip to the front of your mouth, is torn.

22 Her eyeball has been collapsed. Her neck has cuts
23 that are 6 inches long and 2 and a half inches wide. Both
24 of her carotid arteries have been severed. Both of her
25 jugular veins have been severed. Her esophagus has been

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1 severed. Her larynx has been severed. In fact, some of
2 the knife wounds go all the way to her backbone. Her head
3 is almost cut off.

4 She's been beaten; she's been cut. There are what the
5 doctor will tell you are hesitation cuts even on her
6 shoulders. She's beaten. Her head is very nearly cut off.
7 She lays outstretched in a back bedroom with jewelry
8 wrapped around her fingers.

9 The man in the carport that you walked past is the
10 defendant. He's got blood on his hands almost up to his
11 elbows. There's blood on his feet; there's blood on his
12 face.

13 9-1-1 was called. The defendant called 9-1-1. And he
14 said please come, I beat my wife. He says nothing about
15 cutting her head off or a knife. He says I beat my wife,
16 there's blood everywhere, please come.

17 The car at the end of the driveway that you walked
18 past when you first got there is Erika Horton's car. The
19 blood on his feet and hands and face is Erika Bell Horton's
20 blood.

21 So police come, and the defendant is taken into
22 custody, and he is interviewed by law enforcement. You'll
23 hear the 9-1-1 tape. You'll hear it in this trial.

24 Law enforcement takes him back to the sheriff's
25 office. He tells law enforcement that he and his wife had

Opening statements

1 been married for nearly ten years. They had two children
2 together.

3 Their marriage is on and off. And that day they had
4 been fussing over something as meaningless as diapers. And
5 she left. She left.

6 And while the defendant is sitting there in the home
7 with his two children, his mother comes and gets the two
8 children. So he's there by himself.

9 And Erika Horton comes back. She comes back. The
10 car's running in the front end of the driveway. She goes
11 back inside.

12 He tells law enforcement that they started fussing
13 again. And he says he beat her. And he repeats to law
14 enforcement four different times that he beat her. Eyeball
15 collapsed, bruises on the lip. Her frenulum is separated.
16 And when law enforcement presses him on the knife, he says
17 he must have gone and gotten a knife.

18 Ladies and gentlemen, you will hear the 9-1-1 call.
19 You will hear from the police officer who interviewed this
20 defendant; you will hear from the police officers who
21 processed the crime scene.

22 You will see a diagram of the house, and you will see
23 pictures from inside the house. And you'll be able to
24 gauge the distance from the kitchen where the drawer was
25 open and the blood on the outside of the drawer, how long

Opening statements

1 it might take to walk to that back bedroom. You'll see a
2 diagram and you'll see pictures.

3 You'll hear from a D. N. A. expert from SLED, which is
4 our state lab. A D. N. A. expert will tell you that it was
5 Erika Bell Horton's blood on his hands and feet and face
6 and on the knife.

7 You will hear from a forensic pathologist named David
8 Wren. And Dr. Wren will describe for you in graphic but
9 necessary detail the injuries, both the beating and the
10 knife wounds. He will describe them.

11 Ladies and gentlemen, this defendant is charged with
12 murder. All homicides in South Carolina aren't murder.
13 There are accidents; there is self-defense. The criminal
14 justice system is never implicated in any of those. Those
15 aren't even part of the criminal justice system.

16 Within the criminal realm under the heading of
17 homicide there's involuntary, there's voluntary and there's
18 murder.

19 Judge Cole who is the sole judge of the law will tell
20 you at the end of this trial which of those are applicable.
21 He'll charge you on the ones that are applicable.

22 This defendant is charged with murder. And murder in
23 South Carolina is an unlawful killing with malice
24 aforethought, malice aforethought.

25 Malice is a word that we don't use in our everyday

Opening statements

1 lives. It means a heart fatally bent on mischief. It
2 means an evil spirit, and in layman's terms malice is the
3 conscious doing of a wrong act or bad intentions. That's
4 malice.

5 Aforethought. Because in South Carolina law it's
6 malice aforethought for murder. Aforethought, I believe
7 Judge Cole will tell you, means at the time the fatal blow
8 was struck or the instant right before the fatal blow was
9 struck that malice existed in the heart of the actor.

10 Aforethought does not mean premeditated or preplanned.
11 It means the instant before the fatal blow was struck that
12 malice existed in the heart of the actor. He is charged
13 with murder.

14 Ladies and gentlemen, I will tell you that serving on
15 a jury may seem like a daunting task under any
16 circumstances. It may seem more daunting in a murder case,
17 separating the truth from what's not true and deciding
18 which witnesses to believe and how much they say to
19 believe.

20 Ladies and gentlemen, the only thing I know to tell
21 you is that the tool that you need to be a good juror you
22 have ready now.

23 Whether you are a spouse or a child or a parent or a
24 grandparent or a friend or a coworker, every day you make
25 decisions where you weigh and balance information. You

Opening statements

1 decide what to believe and how much of it to believe. And
2 you do it using that innate sense we call common sense.
3 And I submit to you that the only quality you need to be an
4 effective juror you already have.

5 Sometimes, sometimes in life we have a tendency to
6 want to make things more complicated than they are. We
7 will abandon the simple and straightforward while we pursue
8 the obtuse only to come back to the simple and the
9 straightforward. We want things to be complicated
10 sometimes.

11 And, ladies and gentlemen, I can tell you the evidence
12 that will be presented before you in this trial is very
13 straightforward. This defendant beat his wife unconscious.
14 He walked to the kitchen, he got a kitchen knife, he walked
15 back to the bedroom and he cut her throat at least six
16 times, some of which were down to her spinal column.

17 She was leaving. The car was running. The clothes
18 were being gathered up. The jewelry was in her hand. She
19 was leaving. He just didn't give her a chance to do it.

20 In just a minute we're going to call the first
21 witness. We're going to go through the trial, and at the
22 end the judge, Judge Cole, will ask you to return a
23 verdict. That's just a word that means the truth. Verdict
24 just means the truth.

25 And all I ask you as I sit down, to do the only thing

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1 I've ever asked a jury to do in my 15 years as a
2 prosecutor, which is be fair to the defendant, be fair to
3 the state of South Carolina. And in the end may you reach
4 a verdict that provides accountability for what he's done
5 and justice for Erika Bell Horton.

6 MR. VIETH: May it please the Court.

7 THE COURT: Mr. Vieth.

8 MR. VIETH: Mr. Foreman and ladies and gentlemen of
9 the jury, I'll introduce myself again. My name is Rick
10 Vieth. I practice law with a law firm here in Spartanburg
11 County. It's Brandt and Vieth. And throughout my career
12 I've had occasions to represent people in criminal court,
13 and this is one of those occasions.

14 On January 2, as Mr. Gowdy told you, at approximately
15 10:58 p.m., and this is known because her cell phone
16 records that I'm sure either Mr. Gowdy or myself will be
17 introducing into the trial of this case, the cell phone
18 came from Brent's cell phone to 9-1-1 twice within a couple
19 of minutes of each other.

20 On that cellphone call is one of the most chilling
21 cries for help that I have ever heard on a 9-1-1 tape,
22 especially when you're the one being accused of the crime,
23 when you're the one who had a lot to do with the crime or
24 with the offense that took place.

25 You will hear Brent's voice, and I would imagine that

Opening statements

1 when you hear that voice you're going to say what in the
2 world happened, this does not sound like some cold-blooded
3 killer, this does not sound like something I would expect
4 to hear.

5 What happened? What brought us to that event? What
6 brought us to this courtroom? What brought him facing the
7 rest of his life in prison on a murder charge? What
8 brought these people to this point in life?

9 When his parents came to see me and asked me would I
10 represent his interest, and I knew the early parts of this
11 case that I heard -- by reading the newspaper. Someone
12 called 9-1-1 and says he killed his wife and so forth. You
13 think there's not much that can be done. Why waste your
14 money on me? Why waste your time?

15 So I go to see Brent. And he doesn't have to testify,
16 as the judge told you. And he has a right not to. But as
17 I stand here before you right now, unless something
18 remarkable changes, and I don't expect it will, he will
19 testify. He'll talk to you. He'll be under the scrutiny
20 of Mr. Gowdy on cross-examination.

21 But when I met with him I said, Brent, what happened.
22 The response is I don't know, I don't recall, I don't
23 remember. So you mean you got, got amnesia, you can't
24 remember what happened. And he said, no, I can't, I cannot
25 remember exactly what happened in there. I remember the

Opening statements

1 fighting and the fussing. I don't even remember calling
2 9-1-1.

3 Now, that amnesia, when you first hear about it, the
4 inclination is to say, oh, that's a bunch of junk, you
5 selectively decide if you don't want to remember something.
6 But I can tell you in the practice of law that him not
7 being able to help himself is not something I wish were the
8 situation. It doesn't help me that a client has amnesia.

9 If we could make up a story, if we could tell you
10 something, if we could tell the truth or even make it up,
11 it would be better than having amnesia.

12 So I've got to anticipate either someone saying he
13 doesn't have amnesia, he just don't want to tell you the
14 truth, but I want you to understand that hurts me. I can't
15 come forward and say, hey, she came after me with a knife,
16 hey, she came after me with a gun. I can't bring that to
17 you, so I have no self-defense argument. I can't tell you
18 what happened.

19 And there'll be a psychiatrist later in the week that
20 will testify. Of course we had him evaluated. We want to
21 know what's going on. And that evaluation, that
22 psychiatrist will tell you, is that she does find that he
23 has amnesia most like any war veteran or anyone that could
24 be in a hostile, traumatic situation can forget that kind
25 of traumatized event.

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1 Again, you don't have to believe the psychiatrist.
2 You can ignore that too. But the common sense, as Mr.
3 Gowdy talks about, is applicable when you say why would he
4 want to tell his lawyer or anyone else that he can't
5 remember the facts when he could make up facts that would
6 help him.

7 So I think that gives credibility to the fact that he
8 truly can't recall. He can't recall the phone call. He
9 can't recall talking to the officers. But it's his
10 blood-curling voice on that 9-1-1 saying please send
11 somebody here, I think I've killed my wife. And you'll
12 hear it.

13 So when you go back and say what happened -- what
14 happened, we don't know. And it's going to be an easy
15 case, easy case for the state to come in here and show a
16 horrific death, him covered with blood, him calling 9-1-1
17 and saying why do we even have to deliberate this case,
18 what's the deal, it's murder.

19 But the facts building up to that case shed some
20 concerns, even though I can't go into what happened at the
21 exact moment. The day of that incident, you'll have
22 testimony of his mother and father who are seated in the
23 courtroom behind him -- his brother. That they were all
24 working that day. Not Erika. But that Brent was over at
25 his mom and daddy's house and they were working on some bus

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1 to get some scrap metal or something to take to Mintz to
2 scrap.

3 And throughout the day there's cell phone traffic
4 between him and Erika, which apparently was consistent with
5 them at this point in time. They have been separated for
6 some period of time, got back together, separated, been
7 separated. They reconciled and got back together right at
8 about the end of December of '06, right into the time of
9 her death.

10 They do have two young boys -- two young girls. And
11 they were back together. And you will hear from his father
12 saying he was so delighted to know that his family was back
13 together.

14 And that day they were all going to go to Fatz to eat.
15 And his brother was coming in from out of state where he
16 was sent here to come back to work for a while. They were
17 all going to get together.

18 And these cell phone records that obviously speak the
19 truth, they show that. It's one right after another.
20 They're text messaging each other. Erika to Brent; Brent
21 to Erika. Back and forth.

22 And then there was a period of time where there's no
23 text messages where they obviously were together at the
24 house. And then there was another series of text messages.

25 And in this timeframe of these latter text messages

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1 and phone-call records in the evening of January 2 --
2 Brenda Horton, his mother, will testify that Erika came to
3 their house, to Brenda and Larry's house, and told them
4 that there'd been a fight, she was being kicked out of the
5 house and that she was going to go stay with some friends
6 in Greenville. This was kind of in the 8:00 o'clock hour,
7 somewhere in that timeframe. Again, there's some records.
8 And of course Brent will testify to this.

9 So she invites her to stay the night at her house.
10 And she says, no, that's okay, I'm going to stay with some
11 friend in Greenville.

12 So Brenda calls Brent and says -- well, I think the
13 first thing first is Brent called the mother and said I've
14 got to bring the kids over in the morning at 6:00 o'clock,
15 I've got to go to work, is that okay.

16 Then when Erika comes and says I've been kicked out,
17 why don't you get the kids, she or the mother calls back to
18 Brent and says, look, do you want us to come and get the
19 kids tonight. And he says, yeah, that'll be fine.

20 So his brother and Brenda drive over to get the
21 children, on this night that Erika says she's going to stay
22 with a friend in Greenville.

23 When they're driving over there they see Erika's car
24 at or near the driveway of Brent and Erika's house. They
25 wonder why she might be there, but they don't know. They

Opening statements

1 just take it she's there to make sure they're going to get
2 the kids or something.

3 They go in and get the children and then they leave.
4 His brother's concerned about him. He don't feel
5 comfortable with about the situation. He don't feel
6 comfortable about what's going on. So he has cell phone
7 records where he's calling back again just to make sure his
8 brother is okay.

9 Brent is saying, yeah, he's fine. As a matter of
10 fact, he's in pajamas getting ready to go to bed. And when
11 he is found that night, he is in pajamas. He was there
12 ready to go to bed.

13 When Brenda and his brother have the children in the
14 car driving back to their house they see Erika following
15 them a part of the way. Now, whether she was trying to
16 make sure those children were out of harm's way or not, I
17 don't know.

18 But whatever it was, she ends up going back to the
19 house. And obviously, as Mr. Gowdy indicates, there was --
20 he gave a statement that they were fussing. Whether that
21 fuss was a fight, kiss, cuts, who knows? Apparently
22 someone got hit because her eye was punctured out almost.
23 There was a fight.

24 But she comes back there after she makes sure those
25 children have left the scene. And that's where we go

Opening statements

1 blank, and that's where I end the story, because I don't
2 know what happened then.

3 Is it clear murder? Is it something less than that?
4 Is he traumatized beyond any comprehension with these 9-1-1
5 calls that he can't believe what has happened? That's what
6 you're going to have to decide.

7 It's not cut and dried. There's a reason she came
8 back to that house. And we don't know what it is. Very
9 much of an evidentiary issue that she had jewelry in her
10 hand and she might be packing to leave.

11 Well, she had already been by Brenda and Larry's house
12 saying I've been kicked out, I'm heading to Greenville. So
13 why did she come back that night? Those are issues we'll
14 have to deal with forever. So that's where the amnesia
15 hurts me more.

16 But over the next two or three days, and it shouldn't
17 be an extremely long trial. I don't have a lot of
18 cross-examination questions of these officers. I mean, we
19 don't deny. It's not a who-done-it case. We're not going
20 to sit there and say we were in South America when this
21 took place.

22 We made the call. We're in pajamas. We're ready to
23 go to bed. The children have been taken. And Erika comes
24 back to the house. And whatever happened there is the
25 reason we're here. Whether the proof in your mind, again,

Fred David Thompson
Direct examination by Ms. Crick

1 at the end of the day is that he committed cold-blooded,
2 intentional malice, murder, will be your decision. And at
3 that time we will receive that verdict, whatever it may be.
4 Thank you.

5 THE COURT: Solicitor.

6 MS. CRICK: Thank you, Your Honor. The state calls
7 Freddie Thompson.

8 FREDDIE DAVID THOMPSON, having
9 been duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. CRICK

11 Q Mr. Thompson, could you tell the jury your full name,
12 please?

13 A Fred David Thompson.

14 Q Where do you work?

15 A Spartanburg County Communications, 9-1-1 department.

16 Q What is your job at Spartanburg County Communications?

17 A Job title is assistant director.

18 Q And are you also custodian of the records there?

19 A Yes, I am.

20 Q And when I say custodian of records, what do you
21 actually do? What's your job duty?

22 A Any and all calls that come into the 9-1-1 center are
23 automatically recorded into what's similar to a computer
24 hard drive.

25 The person taking the call does not have a choice but

Fred David Thompson
Direct examination by Ms. Crick

1 to record it. It's done automatically. And it's -- all
2 telephone and radio calls are automatically recorded.

3 Q And they are kept in a database where you can pull
4 them when necessary.

5 A Yes, they are.

6 (C. D. marked State's Exhibit No. 3 for
7 Identification.)

8 MS. CRICK: Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 Q I'm going to show you what has been marked as State's
11 Exhibit 3. And can you tell the jury if you recognize what
12 that is?

13 A C. D. And it's a recording of a call to 570 Underwood
14 Road.

15 Q A 9-1-1 phone call?

16 A Yes, it is.

17 Q And that is made from what location?

18 A 570 Underwood Road.

19 MS. CRICK: Your Honor, at this time I would like to
20 offer State's 3 into evidence.

21 MR. VIETH: Without objection.

22 THE COURT: It is admitted.

23 (C. D. marked State's Exhibit No. 3.)

24 MS. CRICK: May we publish it, Your Honor?

25 THE COURT: You may.

Randall Eugene Bogan
Direct examination by Mr. Gowdy

1 (Whereupon, the C. D. was played for the jury.)

2 MS. CRICK: Your Honor, I think that's the dispatch
3 information. So unless Mr. Vieth -- I would have no
4 further questions at this time.

5 THE COURT: Okay.

6 MR. VIETH: Nothing further.

7 THE COURT: You may step down. Thank you.

8 We are ready.

9 MR. GOWDY: Your Honor, I am sorry. The state would
10 call Randy Bogan. And just 30 seconds of the Court's
11 indulgence to get this up. We would call Randy Bogan from
12 the coroner's office, Your Honor.

13 RANDALL EUGENE BOGAN, having
14 been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. GOWDY

16 Q Good afternoon, Mr. Bogan.

17 A Good afternoon.

18 Q Can you introduce yourself to the jury and tell them
19 where you work?

20 A I'm Randall Eugene Bogan. I work with the Spartanburg
21 County Coroner's Office.

22 Q You are currently with the coroner's office. Where
23 did you work prior to that?

24 A I worked with the Spartanburg County Sheriff's Office
25 and retired after 25 years.

Randall Eugene Bogan
Direct examination by Mr. Gowdy

1 Q And you retired in what month and year?

2 A I retired in December of last year.

3 Q All right. And for the 25 years prior to that you
4 were in law enforcement.

5 A That is correct.

6 Q And during your last several years with the
7 Spartanburg County Sheriff's Department, what department or
8 division were you assigned to?

9 A I was assigned to the forensic division.

10 Q Can you give the jury just a general sense of what
11 your forensic division would do?

12 A Yes, sir.

13 We would get called to crime scenes. We would take
14 photographs of the location of the crime scene, also if
15 there was a need to do diagrams of the crime scene; verify
16 any evidence at the crime scene or any potential evidence
17 at the crime scene, and collect that evidence.

18 Normally, we take photographs and we mark the evidence
19 with placards and rephotograph and then collect the
20 evidence. The evidence that we collect is sent to SLED.
21 We'd also process for fingerprints, take blood swabs and
22 send those off to SLED as well.

23 Q Investigator Bogan, is it fair to say that the
24 forensic unit works as a team and different people have
25 discrete responsibilities at any particular crime scene?

Randall Eugene Bogan
Direct examination by Mr. Gowdy

1 A Yes, sir. That's correct.

2 Q Were you called to 570 Underwood on January the 2nd of
3 2007?

4 A Yes, I was.

5 Q And were you called there along with other sheriff's
6 deputies that were part of the crime scene unit?

7 A Yes, sir. I was actually in charge of the crime scene
8 unit and would call other investigators within the crime
9 scene unit to assist me. And I would give them their
10 duties.

11 MR. GOWDY: Beg the Court's time to have some exhibits
12 marked, Your Honor.

13 (Photographs marked State's Exhibits Nos. 4 through 12
14 for Identification; diagram marked State's Exhibit No. 13
15 for Identification.)

16 Q Investigator Bogan, let me show you what's been marked
17 as State's Exhibits 4 through 12, which are photographs,
18 and State's Exhibit 13, and ask you whether or not the
19 photographs fairly and accurately depict what you saw on
20 the evening of January the 2nd of 2007.

21 A Yes, sir, they do.

22 Q All right. Now let me ask you with specific reference
23 to State's Exhibit 13. Did you create that diagram, and
24 does it fairly and accurately, although it's not to
25 scale -- is it a fair and accurate representation of the

Randall Eugene Bogan
Direct examination by Mr. Gowdy

1 dimensions of the home at 570 Underwood?

2 A Yes, sir, it is.

3 MR. GOWDY: Your Honor, we would move State's 4
4 through 13 inclusive into evidence.

5 MR. VIETH: No objection, Your Honor.

6 THE COURT: They're admitted.

7 (Photographs marked State's Exhibits Nos. 4 through 12;
8 diagram marked State's Exhibit No. 13.)

9 MR. GOWDY: Permission to publish to the jury, Your
10 Honor?

11 THE COURT: You may.

12 Q Let me start, Investigator Bogan, with State's 13.
13 Tell the jury what they're looking at.

14 A This is a diagram of the residence that we were sent
15 to. It is on the right-hand side, you can see I had the
16 carport marked.

17 There's a storage area at the back side of the
18 carport. To the left is a side entrance which leads into
19 the kitchen. And from the kitchen there's an opening that
20 leads into the den area where there was a table.

21 To the right you can see another door opening, which
22 went into the hallway. To the left and right are bedrooms.
23 Straight ahead almost is the bathroom. And the victim was
24 lying in the left-side bedroom at the back -- back right
25 wall right here. There was some items that were here that

Randall Eugene Bogan
Direct examination by Mr. Gowdy

1 were collected.

2 And this is a living room, which basically there was
3 nothing disturbed in the living room. Nothing disturbed or
4 what appeared to be disturbed in the bedroom.

5 And we collected -- each one of these numbers
6 represent an item that was collected from the residence.

7 Q All right. And Deputy Shawn Nix and Deputy Tim Davis
8 were you at the crime scene and in addition to you would
9 have processed the crime scene, correct?

10 A Yes, sir, that's correct.

11 Q Let me show you State's Exhibit 5. What is that?

12 A That is the front side of the residence. Here is the
13 carport which I was speaking of. And the door is to the
14 left. As you walk into the carport, it's on the left-hand
15 side.

16 Q Let me show you State's Exhibit 11. What is the jury
17 looking at?

18 A All right. This vehicle was parked in the front yard
19 and was running. We took a photograph of it, and of course
20 then cut the car off. But the tag we ran that night came
21 back to the victim.

22 It was located in the front yard fairly close to the
23 roadway at the edge of the driveway. And, like I said,
24 here is another photograph of the house. And this is just
25 the distance between the house and the vehicle, the

Randall Eugene Bogan
Direct examination by Mr. Gowdy

1 victim's vehicle.

2 Q You say you ran the tag and it came back to Erika
3 Horton.

4 A Yes, sir.

5 Q All right. Let me show you State's Exhibit 10. Is
6 that another angle of the car in front of the house?

7 A Yes, sir, it is. This is just a different angle.
8 Here is the residence, and of course here is the car.

9 Q And your testimony is, Investigator Bogan, that the
10 car was running.

11 A Yes, sir. It was.

12 Q It was running even when you processed it.

13 A Yes, sir.

14 Q Okay. Was the victim still on scene when you got
15 there, or had she -- the body been removed?

16 A No, sir. The victim was still on the scene.

17 Q All right. Can you describe for the jury what the
18 back left bedroom looked like?

19 A Basically, there -- the bed was at this angle. The
20 victim was here lying on her back face up.

21 There was a window right here in this area right at
22 the head. Above her head, of course, as she was laying on
23 the floor, which had blood against the wall, also against
24 the blinds. And there was a lot of saturation of blood on
25 the floor beneath the victim at or about her head.

Randall Eugene Bogan
Cross-examination by Mr. Vieth

1 This I believe was a shoe. There were some other
2 items over in this area, which I didn't put on this
3 diagram, just so not to clutter it up. However photographs
4 were taken of this room.

5 Q Would you describe the amount of blood as significant
6 in that back bedroom?

7 A Very significant. I actually attended the autopsy.
8 And there was not much blood left in the body.

9 Q Thank you, Investigator Bogan. Please answer any
10 questions the defense attorney may have for you.

11 A Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. VIETH

14 Q Officer Bogan, did you ever see Mr. Horton, you
15 personally?

16 A No, sir.

17 MR. VIETH: No questions, no other questions.

18 THE COURT: You may step down.

19 MS. CRICK: Your Honor, the state calls Officer Tim
20 Davis.

21 TIM DAVIS, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. CRICK

24 Q Can you please give the jury your full name?

25 A Tim Davis.

Tim Davis
Direct examination by Ms. Crick

- 1 Q Where do you work, Officer Davis?
- 2 A Spartanburg County Sheriff's Office.
- 3 Q How long have you been with the sheriff's office?
- 4 A Approximately 15 years now.
- 5 Q What exactly do you do for the sheriff's office?
- 6 A I'm working with the crime scene unit.
- 7 Q When you say crime scene unit, what does that unit do?
- 8 A We basically will respond to the scene and process
- 9 that scene by photographs, process it for latent prints,
- 10 collecting evidence that's located at the scene.
- 11 Q Were you part of the crime team that processed the
- 12 house at 570 Underwood?
- 13 A Yes, I was.
- 14 Q So you were involved in the investigation of the death
- 15 of Erika Horton.
- 16 A Yes, ma'am.
- 17 Q How did you get involved in that?
- 18 A I was requested to respond to that location after road
- 19 officers had arrived on the scene to find out what they had
- 20 up there. And they requested for what we call I. D. or the
- 21 crime scene unit, and also the investigators.
- 22 Q What was your function there at the scene that night?
- 23 A During this particular scene I was responsible for the
- 24 photographs of the scene.
- 25 Q So did you actually go inside the home, the crime

Tim Davis
Direct examination by Ms. Crick

1 scene?

2 A Yes, ma'am.

3 Q What did do you while you were inside the home?

4 A I assisted in the investigation with taking
5 photographs, digital photos, of the crime scene.

6 Q So anything in the bedrooms you took pictures of?

7 A Yes, ma'am.

8 Q Took pictures of the house?

9 A Yes, ma'am.

10 Q Did you actually see the defendant while you were at
11 the crime scene?

12 A Yes, ma'am, I did.

13 Q At what point did you see the defendant?

14 A That was right as I arrived. He was still on the
15 scene.

16 Q Were you asked to take photographs of the defendant?

17 A Yes, ma'am.

18 MS. CRICK: Your Honor, I'm going to get some
19 photographs for the clerk.

20 (Photographs marked State's Exhibits 14 through 16 for
21 Identification.)

22 Q Officer Davis, how did he look to you when you first
23 saw him on the scene?

24 A He was sitting down in a chair. His head was slightly
25 lowered upon my arrival. Other than that, he did appear

Tim Davis
Direct examination by Ms. Crick

1 calm in nature as far as he wasn't fidgety or didn't appear
2 to be fidgety, things of that nature.

3 Q Did you notice anything about his physical appearance?

4 A He did have what appeared to be blood on some of his
5 clothing and hands and things of this nature.

6 Q I'm going to show you what's been marked as
7 State's 14, 15 and 16.

8 MR. VIETH: No objection, Your Honor.

9 Q If you could, tell the jury if you recognize these
10 photographs and what they are.

11 A This will be photographs of the defendant at the scene
12 itself.

13 Q And this is how he appeared that night when you saw
14 him in the garage area, the carport area?

15 A Yes, ma'am.

16 MS. CRICK: Your Honor, at this time I'd like to offer
17 State's 14 through 16 into evidence.

18 THE COURT: They are admitted without objection.

19 (Photographs marked State's Exhibits Nos. 14, 15 and
20 16.)

21 MS. CRICK: Can I publish them, Your Honor?

22 THE COURT: You may.

23 Q Can you tell the jury what we're looking at in this
24 picture?

25 A That would be the defendant's feet and bottoms of his

Tim Davis
Direct examination by Ms. Crick

1 legs.

2 Q And what are we seeing on his feet or the bottom of
3 his legs?

4 A It was what appeared to be blood at the time.

5 Q Okay. And how about this picture?

6 A This will be a shot of his back showing his hands and
7 arms around behind him, and also in his hands and arms,
8 appeared what, to be blood.

9 Q What are we looking at here, Officer Davis?

10 A A closerup shot of his hands and, again, what appeared
11 to be blood that was present.

12 Q Did you see any vehicles while you were out at the
13 crime scene?

14 A Yes, ma'am, I did.

15 Q What vehicles did you see?

16 A It was found it was the victim's vehicle that was
17 parked closer to the roadway. That was the first vehicle I
18 seen upon arriving on the scene.

19 Q And when you saw it did you notice anything about the
20 vehicle?

21 A It appeared to be was running or operating at the
22 time.

23 Q When you saw it, it was still running?

24 A Yes, ma'am.

25 MS. CRICK: Your Honor, no further questions at this

Tim Davis
Cross-examination by Mr. Vieth

1 time.

2 CROSS-EXAMINATION

3 BY MR. VIETH

4 Q Officer, you agree those were pajama bottoms that he
5 had on at the time. You would agree that those were his
6 pajamas that he had on.

7 A Yes, sir.

8 MR. VIETH: That's all.

9 THE COURT: You may step down.

10 MR. GOWDY: Your Honor, could Mr. Vieth and I borrow
11 ten seconds of the Court's time?

12 THE COURT: Yes.

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 THE COURT: All right. Ladies and gentlemen, we need
16 to take a short break before we go any further.

17 So I'll ask you to please go to your jury room. Do
18 not discuss the case. I'll bring you back after that
19 break.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Okay. Do you have the photographs?

23 MR. GOWDY: Yes, sir.

24 (Bench conference held off the record.)

25 THE COURT: Court's in recess for ten minutes.

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 (Photographs marked State's Exhibits Nos. 17 through 36
2 for Identification; knife marked State's Exhibit No. 37 for
3 Identification; blood swabs marked State's Exhibit No. 38
4 for Identification.)

5 THE COURT: Are we ready for the jury?

6 MR. GOWDY: Yes, sir, Your Honor.

7 THE COURT: All right. Bring them back.

8 MR. VIETH: Your Honor, in the interest of time, we
9 have been through photographs and he doesn't need to get me
10 to look at them again.

11 THE COURT: You don't have any objection to them?

12 MR. VIETH: No, sir. Not the ones that are going in
13 now.

14 THE COURT: Okay.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: All right. Solicitor.

18 MR. GOWDY: May it please the Court, Your Honor. The
19 state would call Deputy Shawn Nix.

20 MICHAEL SHAWN NIX, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. GOWDY

23 Q Good afternoon, Deputy Nix.

24 A Hello, sir.

25 Q Can you introduce yourself to the ladies and gentlemen

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 of the jury? And keep your voice up good and strong where
2 the last gentleman and the last lady can hear you.

3 A Yes, sir. Michael Shawn Nix, Spartanburg County
4 Sheriff's Office.

5 Q How long have you worked for the sheriff's department?

6 A Approximately seven years.

7 Q What department or division are you currently assigned
8 to?

9 A Crime scene unit.

10 Q How long have you been there?

11 A Approximately a year and a half right at this time.

12 Q And what are some of your duties and responsibilities
13 as a member of the crime scene unit?

14 A Processing crime scenes, which can include taking
15 photographs, evidence collection, various other things.

16 Q Did you respond to 570 Underwood in the Campobello
17 area on January the 2nd of 2007?

18 A Yes, sir.

19 Q Did you assist then Deputy Randy Bogan and Deputy Tim
20 Davis in processing that crime scene?

21 A Yes, sir, I did.

22 Q I want to show you some photographs and ask you
23 whether or not you are familiar with what is depicted in
24 them.

25 A Yes, sir. I am.

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 Q Do all of these photos which are numbered 31, 21, 27,
2 17, 18, 25, 23, 24, 30, 28, 26, 32, 29, 35, 34, 19 and
3 20 -- do they all relate to the crime scene you processed
4 at 570 Underwood?

5 A Yes, sir, they do.

6 Q All right. Using what has been previously introduced
7 at State's Exhibit 13, which is the diagram of the house,
8 I'm going to show you a series of photographs. And you
9 tell the jury what they are and where you found them.
10 Okay?

11 A Yes, sir.

12 Q Let's start with State's Exhibit 31. What is that?
13 And using this, show the jury the general vicinity in which
14 you found that or discovered it.

15 A Photo appears to be a silver in color cell phone and
16 what appears to be blood on it.

17 THE COURT: Excuse me just a minute.

18 You've got your back to the microphone and the court
19 reporter.

20 THE WITNESS: I'm sorry, Your Honor.

21 THE COURT: You're going to have to speak up loudly.

22 THE WITNESS: I'm sorry, Your Honor.

23 A The photo appears to be a silver in colored cell
24 phone, and what appears to be blood on it, and it's
25 located right where No. 1 is on the --

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 THE COURT: You've got to speak louder, please.

2 THE WITNESS: Yes, sir, Your Honor.

3 A The photograph appears to be a silver in colored cell
4 phone with what appears to be blood on it. And it's
5 located at the No. 1 position where the carport is.

6 Q All right. Deputy Nix, keeping that voice up good and
7 strong, let me show you what's State's Exhibits 27 and 21.
8 What is the jury looking at?

9 A The jury is looking at photos of what appears to be
10 the screen door in between the carport and the kitchen, and
11 is located right about there where it says side entrance.
12 And the substance on that door appears to be blood.

13 Q All right. So that is the screen door that would lead
14 from the carport into the home?

15 A Yes, sir.

16 Q All right. Keeping that voice up good and strong,
17 State's Exhibit 17, what's the jury looking at?

18 A Photograph is a picture of the main wooden door
19 between the kitchen and the carport. And it appears to be
20 blood on the interior facing side door handle.

21 Q Right in there?

22 A Yes, sir. That's the doorknob I'm talking about. And
23 it is the door behind the screen door at the side entrance.

24 Q Okay. So coming into the carport, what goes into the
25 kitchen, is that correct?

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 A Yes, sir.

2 Q All right. I'm going to show you a series of three
3 photographs. And you tell the jury what they are looking
4 at. This is State's Exhibit 25.

5 A That is the photograph of a person opening the kitchen
6 drawer, the right-hand most drawer if you're facing the
7 sink in the kitchen. And it appears to have blood on the
8 exterior of the drawer face. And that is located as No. 3
9 in this diagram.

10 Q Looking at State's 23, does that three correlate to
11 the three on your diagram?

12 A Yes, sir.

13 Q And you processed that drawer for what?

14 A I processed that drawer by collecting a swab of what
15 we thought was blood on the outside of the drawer.

16 Q And that would be -- show the jury where that would
17 be.

18 A Right about there.

19 Q Okay. And you process it and collect it and do what
20 with it?

21 A Collect it with a swab, seal the swab in a swab
22 container, which is then sealed in the evidence envelope,
23 which is then sent down to SLED for processing.

24 Q Okay. Let me show you State's Exhibit 28. What is
25 the jury looking at?

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 A It appears to be a spot of blood on the linoleum floor
2 in the dining room area.

3 Q And would you have placed a placard beside it?

4 A Yes, sir.

5 Q And can you find a placard for us that correlates with
6 your diagram?

7 A Yes, sir. It's right there in front of the microwave.

8 Q Okay. What appears from the diagram, that the bedroom
9 where Ms. Horton's body was found is the furthest point
10 from the kitchen, is that correct?

11 A Yes, sir.

12 Q All right. And you found a substance which you sent
13 to be tested that appeared to be blood in the kitchen and
14 in a hallway, is that correct?

15 A Yes, sir.

16 Q Okay. Now, let me show you State's Exhibit 35. It is
17 dark, and I may not can make it any lighter. But can you
18 make out what that is?

19 A Yes, sir. It appears to be the closet in the main
20 bedroom or master bedroom.

21 Q Okay. Let me show you State's 26. What is that?

22 A That is a picture of just above that same closet you
23 showed me with what appears to be the blood above it.

24 Q Blood was that high up the wall?

25 A Yes, sir, it was.

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 Q Let me show you State's Exhibit 34. What is that?

2 A That appears to be the victim's legs, but it also --
3 there is a vitamin pill bottle between her legs.

4 Q Did you swab various places that you have identified
5 to the jury, turn them into evidence with the expectation
6 it would be sent to SLED to be analyzed?

7 A Yes, sir, I did.

8 Q And let me show you State's Exhibit 38 and ask you
9 whether or not you recognize that.

10 A This is an evidence envelope containing the various
11 swabs that we took throughout the house and sent down to
12 SLED for processing.

13 Q And can you give the jury a sense of which places they
14 are looking at those swabs came from?

15 A Yes, sir. This particular evidence envelope has the
16 following -- contains the following swabs from the
17 following areas. Right there.

18 Q Has it given out on you?

19 A Yes, sir, I think it has given out on me.

20 (Referring to marker.)

21 Q Let's try this one.

22 A The No. 2 is a swab from the carport floor. No. 3 is
23 a swab from the kitchen, exterior of the kitchen drawer.
24 No. 4 is a swab from the floor of the dining room in front
25 of the microwave.

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 No. 5 is also a swab of the linoleum floor just before
2 going into this short hallway area.

3 No. 7 is a swab from the wooden floor in that short
4 hallway area.

5 Q All right. So you collect the swabs, you package it,
6 you turn it into evidence and it is sent to SLED, is that
7 correct?

8 A Yes, sir.

9 MR. GOWDY: Your Honor, we would move State's 38 in
10 subject to further testimony.

11 MR. VIETH: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Blood swabs marked State's Exhibit No. 38.)

14 MR. GOWDY: Thank you, Your Honor.

15 Q Looking at this diagram, Deputy Nix, what is placard
16 No. 8?

17 A Placard No. 8 is the knife that was retrieved from the
18 master bedroom.

19 Q Let me show you what's been marked as State's
20 Exhibit 37 and ask you whether or not you collected the
21 knife, packaged it and also asked that it be sent to SLED
22 for analysis.

23 A Yes, sir. It is.

24 Q And is that what is contained in that exhibit?

25 A Yes, sir; yes, sir, it is.

Michael Shawn Nix
Direct examination by Mr. Gowdy

1 MR. GOWDY: Your Honor, we would move State's 37 in
2 subject to further testimony.

3 MR. VIETH: No objection.

4 THE COURT: It's admitted.

5 (Knife marked State's Exhibit No. 37.)

6 Q Finally, Deputy Nix, in the back bedroom. Let me show
7 you State's Exhibit 19. Tell the jury what is in that
8 picture.

9 A That is a photo of the victim's body, Erika Bell
10 Horton.

11 Q All right. Can you see the knife in that photograph?

12 A Yes, sir, I can.

13 Q Can you point it out to the jury?

14 A Appears to be it right there.

15 Q Okay. And that is the knife that you just testified
16 you collected and sent to SLED, correct?

17 A That is correct, sir.

18 Q All right. Let me show you finally State's
19 Exhibit 20. What is the jury looking at?

20 A That would be a necklace in the hand of the victim.

21 Q And those necklaces would not have been collected by
22 the Spartanburg County Sheriff's Department but by the
23 coroner's office, is that correct?

24 A That is correct, sir.

25 Q And that is as the body was, how you found it on

William Robert Gary
Direct examination by Mr. Gowdy

1 January the 2nd.

2 A That is correct, sir.

3 MR. GOWDY: One moment, Your Honor.

4 (Pause.)

5 Q Deputy Nix, please answer any questions the defense
6 attorney may have for you.

7 A Yes, sir.

8 MR. VIETH: Your Honor, I have no questions for him.

9 THE COURT: You may step down.

10 MR. GOWDY: May it please the Court, Your Honor. The
11 state would call Deputy William Gary.

12 WILLIAM ROBERT GARY, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. GOWDY

15 Q Good afternoon, Deputy Gary.

16 A Good afternoon.

17 Q Can you introduce yourself to the jury? Tell them how
18 long you've been in law enforcement.

19 A My name is William Robert Gary, and I've been with the
20 Spartanburg County Sheriff's Office for a little bit over
21 13 years.

22 Q Deputy Gary, what division or department within the
23 sheriff's department are you currently assigned to?

24 A I'm assigned to the violent crimes unit. More
25 specifically, now I'm assigned to the cold case unit.

William Robert Gary
Direct examination by Mr. Gowdy

1 Q In January of 2007, what unit were you assigned to?

2 A I was assigned to the violent crimes division working
3 any violent crimes that came in, including homicides.

4 Q Were you directed to investigate the death of Erika
5 Bell Horton on January the 2nd of 2007?

6 A Yes, sir, I was.

7 Q Can you tell the jury what part -- first of all, what
8 county you responded to on Underwood, and what part of the
9 county it is.

10 A I responded to 570 Underwood Road after being called
11 by dispatch and advised of the call. Underwood Road,
12 specifically 570 Underwood Road, is in Spartanburg County.
13 It is from directly off Highway 11 right outside the city
14 limits of Campobello.

15 Q Detective Gary, when you got to 750 Underwood was the
16 victim's body still on the scene?

17 A Yes, it was.

18 Q And were you present with the photographs that were
19 just shown to the jury?

20 A Yes.

21 Q Does that fairly and accurately depict how you found
22 the body when you went to the back and looked?

23 A Yes, it does.

24 Q All right. Was the defendant also on the scene when
25 you arrived?

William Robert Gary
Direct examination by Mr. Gowdy

1 A Yes, he was.

2 Q Can you describe his clothing and what, if anything,
3 he may have had on his hands or feet?

4 A When I arrived the defendant was handcuffed. He was
5 sitting in a chair in the carport with a blanket over him.

6 It was a very cold night. And he had on a t-shirt,
7 some lounge type pants, a flannel type lounge pants. He
8 had a large amount of blood on his hands, his feet and
9 about his face. There was spatter of blood, what appeared
10 to be blood on the face.

11 Q All right. Did you Mirandize the defendant or read to
12 him his rights at the scene?

13 A I did. When I, what I told him before I said
14 anything, I have a card that I carry in my wallet that has
15 Miranda rights on it as you've probably heard on T. V., you
16 have the right to remain silent, so on and so forth.

17 And I read that to him from the card and asked him if
18 he understood the rights that I read to him.

19 Q And did you commence to interview him on the scene, or
20 did you have him relocated to the sheriff's department?

21 A I asked some brief questions at the scene and told him
22 that I was going to have him transported to the sheriff's
23 office. It was colder. It was cold -- somewhere we could
24 be warm because I didn't want to be out there in the cold
25 either. So I had him transported to the sheriff's office

William Robert Gary
Direct examination by Mr. Gowdy

1 where it was warm. Plus, there are things that need to be
2 processed at the office from him.

3 Q All right. Once he got to the Spartanburg County
4 Sheriff's Department did you go over his Miranda warnings
5 with him again?

6 A Yes, sir, I did. This time I did the sheriff's office
7 preinterrogation waiver form.

8 Q Let me show you what has been marked as State's
9 Exhibit 1 and ask you whether or not you recognize that.

10 A I do. This is. Yes, sir, I do.

11 Q What is it?

12 A This is a copy of the Spartanburg County
13 Preinterrogation Waiver Form that is used whenever someone,
14 a suspect in a case, is going to be given their rights.
15 It's the form that we use to advise them of their rights.
16 And it has a place for them to sign that they understand
17 what their rights are, and then another place for them to
18 sign that they waive or give up their rights.

19 Q And did you go over that form with the defendant,
20 Larry Brent Horton?

21 A Yes, I did.

22 Q And did he indicate to you he understood his rights?

23 A Yes, sir, he under -- he signed that he understood
24 what his rights were.

25 Q Did you offer him anything in exchange for his

William Robert Gary
Direct examination by Mr. Gowdy

1 signature?

2 A No, I did not.

3 Q Did you threaten him in any way?

4 A No, I did not.

5 Q Did you deny him food, medical attention, water any of
6 the basic necessities of life?

7 A No, sir.

8 Q Is, in fact, his signature on that document twice?

9 A Yes, it is.

10 MR. GOWDY: Your Honor, we would move State's 1 into
11 evidence.

12 MR. VIETH: No objection, Your Honor.

13 THE COURT: It's admitted.

14 MR. GOWDY: Thank you, Your Honor.

15 (Preinterrogation waiver form marked State's Exhibit
16 No. 1.)

17 Q Did you begin interviewing him about what happened at
18 570 Underwood Road?

19 A Yes, sir, I did.

20 Q Can you tell the jury about your interview of the
21 defendant?

22 A When I first started talking with Mr. Horton I went
23 into a background of his and Erika's relationship. He had
24 told me that they had been together for approximately ten
25 years, married for five of those ten, and they had two

William Robert Gary
Direct examination by Mr. Gowdy

1 children together. At the time they were two years and
2 four years old.

3 They had met when they were in Charleston, and they
4 had been separated for about a year; that Erika was living
5 in Beaufort and working down there. He said she was dating
6 somewhere down there. He and the children stayed at his
7 mother's house while she was in Beaufort.

8 He said that she had come back up and they were trying
9 to work their relationship out. And so I asked him about
10 the events of that night, what had happened.

11 And he told me he was at his mother and father's house
12 helping them to clean up when Erika called him and asked
13 him to get some things from the store. And he said that he
14 went to the Bi-Lo in Inman and got the items. He said when
15 he got, when he home they got into an argument and Erika
16 was fussing at him because he had got the wrong size
17 diapers.

18 He said he left and went back to the Bi-Lo and
19 exchanged the diapers and returned home and she was fussing
20 at him some more.

21 He said that she was going to leave and that her car
22 was parked in the driveway and he went and got in the car
23 to stop it and he had gotten her cell phone.

24 During this I had noticed a bite mark on his hand and
25 asked him about that. And it was between the thumb and the

William Robert Gary
Direct examination by Mr. Gowdy

1 index like in the medium part of your hand. I asked him
2 about that, and he said that's where she had bit his hand
3 to get her cell phone back from a previous altercation.
4 And that's when she left the house.

5 He said that a little bit later his mother and brother
6 came to the house and got their two girls and left with
7 them.

8 He said that a little while after that he had gotten
9 dressed for bed and was sitting on the couch in the dark
10 and Erika came in the house and they were fussing some
11 more. She was getting things together, and they were
12 fussing.

13 And he told me at that point the next thing he
14 remembered was being in the carport on the phone. That's
15 what happened.

16 And he stated the fussing stopped. He just kept
17 saying we were just fussing, we were just fussing, I love
18 her, I would never hurt her. I asked him what happened
19 once the fussing stopped. He told me he doesn't remember.

20 At this point I had a tape recorder with them while I
21 was at the scene. And I'd called our dispatch and had them
22 play the 9-1-1 call for me because I wanted to hear it.
23 Also, I wanted the officer to tape record it while they
24 were playing it for me so that I could use it in my
25 interview.

William Robert Gary
Direct examination by Mr. Gowdy

1 At this point I played the 9-1-1 call back for
2 Mr. Horton so that he could hear it. And he just kept
3 saying he wouldn't do that, he wouldn't do that.

4 I asked him if he was at home alone, and he stated
5 that, yes, he was. I asked him if Erika came there alone,
6 and he said that he didn't know, that she came in by
7 herself, he wasn't sure if anyone else was in the car but
8 she came into the house alone.

9 And he kept telling me he couldn't remember anything
10 that happened from the fussing to being out on the carport.
11 And at this point I asked him if he saw her on the floor,
12 and he just, he paused and he'd stop up for a minute and
13 said, yeah, I saw her in there. I asked him how that
14 happened to her, and he said he didn't know.

15 He just kind of started staring at the bottom of the
16 table. And I just kept looking at him just about a minute.
17 And I said, Brent, are you with me, and he said, yeah, I'm
18 with you.

19 And I told him, you know, the way it looked in the
20 house, whether they got into a fight, he got a knife, he
21 hurt her. And I asked him if he could tell me about what
22 happened with that. He said they did get physical and they
23 did hit each other.

24 He said he grabbed her by the hair. And I asked him
25 if they were standing up or if she was on the ground when

William Robert Gary
Direct examination by Mr. Gowdy

1 he grabbed her by the hair. And he told me that he didn't
2 remember, he said it all happened so fast.

3 This is another pause for about another 30 seconds to
4 a minute. And then he just started saying I kept hitting
5 her, I kept hitting her, I kept hitting her, I kept hitting
6 her. And he said he got the knife. So then I asked him
7 where the knife was in the room, was it in the kitchen on a
8 counter, in a drawer. He said he didn't know, but it was a
9 kitchen knife.

10 He never did tell me exactly how any of the injuries
11 were caused, which ones were caused first, the first cut,
12 you know, what was the first wound. And he never would go
13 into any details with that.

14 Q So he was not able to distinguish for you which of the
15 injuries that she suffered were as a result of the beating
16 and which ones were caused by the knife.

17 A No, he wasn't.

18 Q And how many times did he repeat the phrase "beating
19 her" to you?

20 A Four times. He kept saying I kept hitting her four
21 times in a row.

22 Q And ultimately, despite the lapses in time, he did
23 recollect walking to get a -- or going to get a knife and
24 using the knife.

25 A Yes.

William Robert Gary
Cross-examination by Mr. Vieth

1 Q Deputy Gary, please answer any questions the defense
2 attorney may have for you.

3 MR. VIETH: May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. VIETH

6 Q Officer, well, briefly.

7 The statements that you take when you -- when you did
8 your interview, you basically just sat down with him, I'm
9 sure, and just tried to calm the situation down and just
10 talked to him initially at the house. And then you go to
11 the sheriff's department, or is that what happened?

12 A Yes. In this instance we talked to him at the house
13 basically to introduce myself because I knew it would be
14 maybe an hour or so, maybe even a little bit longer, before
15 I got to the office. So I just wanted him to know who I
16 was when I showed back up there when -- when I just met him
17 there I just got very general information.

18 Q All right. And do you know about what time this was?

19 A I'm not sure exactly what time he was transported from
20 the house but when the --

21 Q Do you know what time you got to the house?

22 A I was called at 11:08 p.m. My best guess would be
23 probably by 11:30 or 11:45.

24 Q So if the last 9-1-1 call was made right around 11:00
25 clock, in that timeframe, then historically I guess 9-1-1

William Robert Gary
Cross-examination by Mr. Vieth

1 calls go to a dispatch.

2 A It does.

3 Q Is that correct?

4 A Yes, sir.

5 Q And they, as we heard to the tape -- they were sending
6 somebody out there.

7 And then in the second call that we heard he's talking
8 to 9-1-1 and says someone is here. So within a matter of a
9 couple of minutes the initial wave, if you will, of law
10 enforcement or person or persons had made the scene within a
11 very short time, is that right?

12 A It wasn't a long time, but I'm not sure of the exact
13 time from call to dispatch to arrival.

14 Q Well, suffice it to say, if the Verizon records show a
15 9-1-1 call at, say 10:58, the initial call, the first call,
16 and then a second call within two minutes after that, and
17 at that time that someone's arriving, then somewhere within
18 three minutes or four minutes of initiating that first call
19 someone was there.

20 A If those times are correct, yes, sir.

21 Q Okay. And then whoever is the first responder type
22 person, are they notifying to send an investigator or
23 detective out? Is that how it works?

24 A What they would do on the radio, they would call our
25 dispatcher and tell them to advise violent crimes that they

William Robert Gary
Cross-examination by Mr. Vieth

1 had a homicide, whatever type of call it is.

2 We rotate calls. I was on call when this happened, so
3 they called me first. Once I find out some generalities,
4 what's going on, I would contact my supervisor, and we
5 would try to figure out how many people we think we would
6 need to come out and work the scene, which that was going
7 on while I was on my way to the house, to the home.

8 Q Okay. And so then really within about 30 minutes
9 you're there. It's around 30 or so.

10 A It was probably closer to 30 minutes or so.

11 Q And when you arrived, how did you find Brent? Where
12 did you find him?

13 A The house had been taped off with crime scene tape,
14 the yellow tape we saw in some of the pictures. And
15 Mr. Horton was sitting in the carport in a chair clothed in
16 a t-shirt and lounge type pants with a blanket or comforter
17 or something around to help keep him warm. Again, it was a
18 cold night. That's where he was sitting when I arrived.

19 Q Was he being detained at that time, do you know? Was
20 there officers there --

21 A He was detained, yes, sir.

22 Q Okay. So he's detained at that point in time.

23 A Yes, sir.

24 Q And you come and take over that part of the
25 investigation of talking to him.

William Robert Gary
Cross-examination by Mr. Vieth

1 A Yes, sir.

2 Q And then as you talked to him and take him back to the
3 station and get out of the cold, and that's where you sit
4 down and get the oral recitation of his history and so
5 forth. Is that how it happened?

6 A Yes, sir.

7 Q And then in your records that I'm sure you referred to
8 when you testified and I am referring to, you indicated he
9 was coherent and so forth and when you went into the
10 background that they had been together about ten years, as
11 you testified, and married for five and had two children,
12 two and four years of age.

13 A Yes, sir.

14 Q This is common background information. That they had
15 met in Charleston and had been living in a house for only a
16 couple of weeks and had been separated for about a year
17 prior to getting back together.

18 A Correct.

19 Q That's what your notes reflect.

20 A Yes, sir.

21 Q And she had been living in Beaufort and working with
22 someone, dating someone down there, and had left the
23 children with him and that he stayed at his mother's house
24 with the children while she was gone.

25 A Yes, sir.

William Robert Gary
Cross-examination by Mr. Vieth

1 Q That was the historical background you had.

2 A Yes, sir, from Mr. Horton.

3 Q All right. And they were trying to work things out
4 and got back together. And then as best you know from what
5 he was able to tell you, on January the 2nd there was
6 fussing. And I think you said what you had documented that
7 there was a fight. They were fighting and fussing, and
8 that it may have been over minor stuff, but there was
9 fussing and fighting. Isn't that what you wrote down? Is
10 that what you have?

11 A Yes, sir, the first time earlier in the day, yes, sir.

12 Q And you had noticed a bite mark on his right hand that
13 he said came from an earlier incident that evening when he
14 tried to get the cell phone out of car when she was
15 leaving. Is that what he told you?

16 A Actually he told me he had the cell phone and she --
17 because he was sitting in the car, and that she bit him and
18 that's what caused the mark on the hand, for her to get her
19 cell phone back from him.

20 Q Okay. And then continuing with your notes, just he
21 said we just kept fussing and fussing, I love her and I
22 would never hurt her. And then you go into the 9-1-1 call
23 and him going into this blank stare, is that correct?

24 A Yes, sir.

25 Q All right. And then I believe you said as a result of

William Robert Gary
Redirect examination by Mr. Gowdy

1 your conversation with him and the evidence that you found
2 you actually transported him to the jail and got a judge to
3 sign a warrant for murder. Is that basically what
4 happened?

5 A Yes, sir, that's correct.

6 MR. VIETH: Thank you. That's all I have.

7 MR. GOWDY: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GOWDY

10 Q Deputy Gary, other than the bite mark that happened
11 sometime previous, previous visit, did you see any injuries
12 to the defendant while you were talking to him?

13 A No. By the time -- when I got back to the office to
14 interview him, he'd already cleaned -- you saw the pictures
15 of the blood. All of that had been cleaned off him. He
16 actually had on different clothing at that point that was
17 provided to him by us because his clothes were taken into
18 evidence. And I saw no injuries on him other than the bite
19 mark that I could see on his hand.

20 Q Thank you, Deputy Gary.

21 MR. VIETH: Nothing further.

22 THE COURT: You may step down.

23 MR. GOWDY: Your Honor, can Mr. Vieth and I approach
24 for one moment?

25 THE COURT: Yes.

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 THE COURT: All right. Ladies and gentlemen, that's
4 as far as we're going to be able to go today. So we'll
5 recess now.

6 Keep in mind the caution I've previously given you.
7 Don't discuss the case with any person in any fashion. No
8 investigation or research into any issue. Do not permit
9 yourselves to be exposed to any type of media coverage --
10 television, radio or newspaper.

11 Have a good evening, and please report to your jury
12 room at 9:30 in the morning, 9:30 in the morning. Have a
13 good evening.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Court is in recess until 9:30 in the
17 morning.

18 END OF PROCEEDINGS JUNE 16, 2008
19
20
21
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23
24
25

1 (Proceedings June 17, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters to address before
5 the jury is brought in?

6 MR. GOWDY: Not from the state, Your Honor.

7 MR. VIETH: Not from us.

8 THE COURT: Okay. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: All right. Mr. Simmons, I'm going to let
12 you move over one seat. One of your fellow jurors was in a
13 car accident. He's not hurt. But, nevertheless, he's
14 going to be unable to continue as a juror. So you'll be
15 the 12th juror now and will continue as such throughout the
16 course of the trial.

17 As you know, when we recessed yesterday the state was
18 in the midst of their presentation. So we'll continue with
19 that presentation of evidence this morning.

20 Mr. Gowdy.

21 MR. GOWDY: Thank you, Your Honor. The state would
22 call Mr. Russell Holthaus.

23

24

25

Russell Holthaus
Direct examination by Mr. Gowdy

RUSSELL HOLTHAUS, having been
first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. GOWDY

4 Q Good morning, sir.

5 | A Good morning.

6 | 0 Can you introduce yourself to the jury?

7 A I'm Officer Russell Holthaus with the Greer Police
8 Department.

9 Q How long have you been with the Greer Police
10 Department?

11 A Twenty-three years.

12	0	Twenty-three?

13 A Twenty-three years.

14 | 0 All right. In January of 2007 where did you work?

15 A I worked with the forensics division of the sheriff's
16 office as part of a forensic task force. I was assigned to
17 the sheriff's office by the city and worked in cooperation
18 with them.

19 Q Did you assist deputies Bogan, Nix and Davis in
20 processing of the crime scene, or were you otherwise
21 involved in the investigation into the death of Erika Bell
22 Horton?

23 | A Yes, I was.

24 Q All right. Let me show you what's been marked as
25 State's Exhibits 39 and 40 and ask you whether or not you

Russell Holthaus
Direct examination by Mr. Gowdy

1 recognize that.

2 A Yes. Those are pictures that I have taken.

3 Q And you took those in the early morning hours of
4 January the 3rd.

5 A Yes, I did.

6 Q Okay. And those are pictures of the defendant's
7 hands?

8 A Correct.

9 MR. GOWDY: Your Honor, we would move State's 39 and
10 40 into evidence.

11 MR. VIETH: No objection, Your Honor.

12 THE COURT: You said 39 and 40?

13 MR. GOWDY: Yes, sir, Your Honor.

14 (Photographs marked State's Exhibits Nos. 39 and 40.)

15 MR. GOWDY: Permission to publish to the jury.

16 THE COURT: You may.

17 Q Now, you -- let's see. The palms and the back of
18 whose hands?

19 A Mr. Horton's.

20 Q All right. Let me show you what's been introduced as
21 State's 16. Is that the way they looked before they were
22 cleaned up?

23 A Yes, sir. They did.

24 Q Okay. And those are the pictures you took after they
25 were cleaned up, correct?

Anthony Sellers
Direct examination by Ms. Crick

1 A That's correct.

2 Q Please answer any questions the defense attorney may
3 have for you.

4 MR. VIETH: No questions, Your Honor.

5 THE COURT: You may step down.

6 MS. CRICK: Your Honor, the state calls Tony Sellers.

7 ANTHONY SELLERS, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. CRICK

10 Q Good morning, Mr. Sellers.

11 A Good morning.

12 Q Could you tell the jury your full name, please?

13 A My name is Anthony Sellers.

14 Q Where do you work, Mr. Sellers?

15 A At Toyota of Greer in Greer, South Carolina.

16 Q How long have you been with Toyota of Greer?

17 A Four and a half years.

18 Q What do you do there?

19 A I'm the general sales manager.

20 Q And how long have you been the general manager of
21 Toyota of Greer?

22 A Recently promoted about -- I guess it's been four
23 months.

24 Q Were you working there in January of 2007?

25 A Yes. I was the used car manager at the time.

Anthony Sellers
Direct examination by Ms. Crick

1 Q During your work there at Toyota of Greer did you ever
2 have occasion to meet Erika Horton?

3 A Yes.

4 Q Can you tell the jury when and how you met Erika
5 Horton?

6 A She was employed by us, I guess, two years, maybe a
7 little more than two years, as a sales person.

8 Q And when you say sales person, selling?

9 A Selling cars.

10 Q And you were --

11 A I was one of her supervisors at the time.

12 Q So you worked directly with her?

13 A Yes.

14 Q At some point -- you said she was there two years.
15 Did she leave and go somewhere else?

16 A Yes. She left and went down to, I think it was,
17 Beaufort, South Carolina, and worked for another Toyota
18 store.

19 Q And did you hear from her while she was down in
20 Beaufort?

21 A She came and visited the store, I guess, a couple of
22 times. I recall seeing her in the store, I guess, when she
23 came back to the Greer area.

24 Q Did you see her in January of 2007?

25 A She came if I am not mistaken, maybe, maybe in the

Anthony Sellers
Direct examination by Ms. Crick

1 beginning of January. I think she came to the store and
2 visited everybody, you know, just to say hello.

3 Q And I'm going to ask you specifically about
4 January the 2nd of 2007. Did you hear from her that day?

5 A Yes.

6 Q And can you tell the jury what you were doing that
7 day?

8 A Working.

9 Q And at what point did you hear from Erika?

10 A Well, I noticed when I got off, because a lot of times
11 when I'm at work I keep my cell phone on silent, because if
12 I'm with a customer or something. So I noticed when I got
13 off I had a couple of missed calls from Erika. And when I
14 left work on my way home I said let me call her back and
15 see, you know, see what she wanted.

16 Q Well, let me stop you for a second. What was your
17 phone number at that time?

18 A (864) 525-7867.

19 Q And do you know about what time she initially called
20 you?

21 A I'm going to say somewhere between 8:00 and 8:30, I
22 would think.

23 Q Those were the missed calls.

24 A Yes.

25 Q What time -- you said you called her when you were

Anthony Sellers
Direct examination by Ms. Crick

1 leaving work. Do you know about what time you would have
2 called her?

3 A It had to be somewhere around 9:00 or 9:15-ish.

4 Q So you called her back. And how did she sound once
5 you got her on the phone?

6 A Well, I could tell her voice was a little distraught.

7 MR. VIETH: Your Honor, I object to the
8 characterization of that.

9 THE COURT: Sustained.

10 MS. CRICK: Your Honor, may we approach briefly?

11 THE COURT: Yes.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 Q What did you -- what did she say to you once you got
15 her on the phone?

16 A Just casual conversation initially. And what had
17 happened was my phone -- I dropped the call because it was
18 over by the airport. That's the route that I take home.
19 It tends to drop calls over there.

20 So I called her back and we started, you know,
21 talking, hey, how are you doing kind of thing. And at that
22 time she asked me, said, Tony, I was calling you to ask you
23 if I could possibly get my job back with you.

24 Q Did she tell you why she wanted her job back?

25 A Well, what she said was she said, yeah, I need to get

Anthony Sellers
Direct examination by Ms. Crick

- 1 a job, I need to make some money so that I can get out and
2 get me a place. And at that time, you know, I started
3 talking with her. I said is everything all right with you.
4 Q And what did she say when you asked her if everything
5 was all right?
6 A Can I use the exact words she said?
7 Q Yeah.
8 A She said -- I said, "Erika, is everything all right
9 with you?" She says, "Well, my husband just beat my ass
10 and threw me out of the house."
11 Q Did she say what she was going to do?
12 A Well, at that time I asked her was she okay.
13 Q What did she say?
14 A She said, yeah, I'm okay.
15 Q Did she tell you what she was going to do next?
16 A Well, I said, "Are you going to be all right?" And
17 she said, "Yeah, Tony, I'm going to be all right." I said,
18 "Is there anything I could do for you?" And at that time
19 she stated that she was going to go stay with a friend.
20 Q Did she say anything about her children?
21 A Yeah. She said that she -- one of the reasons -- the
22 conversation lasted quite a while. And she said that she
23 wanted to get her kids but she couldn't, he wouldn't, her
24 husband wouldn't, let her get her kids.
25 Q So she didn't have them with her.

Anthony Sellers
Direct examination by Ms. Crick

- 1 A No.
- 2 Q Did she tell you she was going straight to a friend's
3 house, or was she going somewhere else first?
- 4 A Actually, she said that she was going to go back and
5 get some things. And at that time I asked her, I said,
6 "Well, do you need some help with anything, Erika? Just
7 let me know if you need me to, you know, get you somewhere
8 to stay, just call me where you're at and I'll give you my
9 credit card and charge the room or whatever you need to do.
10 Just let me know." She said, "No, no. I'll be okay. I'm
11 going to stay at a friend's house."
- 12 Q But she told you before she went to the friend's house
13 she was going back to her house?
- 14 A Yes.
- 15 Q For what reason?
- 16 A To get some things, is what she said.
- 17 Q Did you hear from her again that evening?
- 18 A No.
- 19 Q When was the next time you heard anything about her?
- 20 A The next morning. I was off the next day. And my
21 usual, I get up and watch News 4. And I'm listening to the
22 television and I hear about Erika Horton was murdered. And
23 I am just sitting there, and I'm like this has got to be
24 somebody else.
- 25 So the next time the news ran, I saw it again. And I

Anthony Sellers
Cross-examination by Mr. Vieth

1 saw the car that she owned that she bought from us.

2 Q Which was what kind of car?

3 A It was a black Honda if I'm not mistaken. And I said,
4 oh, my God, I ain't believing this.

5 So at that time immediately I called the police, and I
6 told them what had transpired the night before, didn't know
7 whether it would be useful or helpful. I mean, this is a
8 girl that I just talked to that worked with me for a couple
9 of years, and felt that was the thing to do.

10 Q And that's what you did.

11 A Yes.

12 MS. CRICK: Your Honor, no further questions at this
13 time.

14 MR. VIETH: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. VIETH

17 Q Good morning, Mr. Sellers.

18 A Good morning.

19 Q I'm Rick Vieth. Good to see. Are you still in
20 Greenville?

21 A Greer. I work in Greer.

22 Q In Greer.

23 A Yes, sir.

24 Q What kind of relationship did you have with Erika
25 other than employer-employee? Did y'all date at all?

Anthony Sellers
Cross-examination by Mr. Vieth

- 1 A No.
- 2 Q Never did?
- 3 A No.
- 4 Q You never called her Ms. Sellers or anything around
5 the place where you worked wanting to marry her?
- 6 A What?
- 7 Q No relationship with her except employer?
- 8 A No, no.
- 9 Q All right. So when she calls you by -- she -- let's
10 go back. Did she leave your employment to go to Beaufort?
- 11 A I really don't know if that's the reason she left.
- 12 Q All right. Do you know when she left?
- 13 A I couldn't give you the exact dates without --
- 14 Q How about a month or a year?
- 15 A I'd say maybe a year, half a year.
- 16 Q Okay. So she's been gone from at least your
17 employment for about a year.
- 18 A Yes.
- 19 Q Okay. And during that time do you know what she was
20 doing?
- 21 A From my understanding, she was selling cars at
22 Beaufort, because a gentleman that worked at my place also
23 works at that Toyota store.
- 24 Q Okay. So two employees of yours ended up working for
25 some period of time in Beaufort --

Anthony Sellers
Cross-examination by Mr. Vieth

- 1 A Yes, sir.
- 2 Q -- at a car business.
- 3 A Yes, sir.
- 4 Q All right. And did she keep in touch with you after
- 5 she left you?
- 6 A She would call or come by the store, like I said,
- 7 occasionally. But, no, really no contact.
- 8 Q Okay. Why would she come by the store occasionally?
- 9 A I guess to see everybody. Everybody there liked her,
- 10 and she liked us, I guess.
- 11 Q Do you know where she was from originally?
- 12 A No, sir.
- 13 Q All right. So when you come into January of '07 -- as
- 14 a matter of fact, it's January 2, is when she died. So
- 15 when you say you saw her early in January, you're probably
- 16 mistaken, I would assume. You didn't see her January 1st,
- 17 did you?
- 18 A You know, it was, I guess, I don't know, a couple of
- 19 weeks or a few weeks before. I really couldn't. Sir, I
- 20 couldn't pinpoint.
- 21 Q Probably back in December then.
- 22 A Maybe.
- 23 Q All right. And did she come back in December to ask
- 24 for her job back?
- 25 A No. When she was there the last time I saw Erika in

Anthony Sellers
Cross-examination by Mr. Vieth

1 the store, she was really just being friendly and saying
2 hello to everybody.

3 Q All right. Did you inquire from her in December
4 whether she had left her job in Beaufort or was going back
5 down there? Did you have any idea?

6 A No.

7 Q Didn't have any idea what she was doing.

8 A No, sir.

9 Q All right. So then the first time you get a call in
10 January to ask for a job back is this night.

11 A Yes, sir; yes, sir.

12 Q Okay. And the phone records to your call -- let's
13 see. I mean, I've got them marked on mine. I don't want
14 to dirty it up. So let me.

15 MR. VIETH: Your Honor, we have stipulated, the
16 solicitor and I, the cell phone records do not have to be
17 authenticated. They're in evidence by agreement and by
18 stipulation.

19 THE COURT: Okay.

20 Q Let me see if I can find what I want without telling
21 about that. I need -- your number was 525-7867.

22 A Yes, sir.

23 Q Okay. Even though I've got your name on here, Tony,
24 to the side -- I'm going to try and move that off -- but
25 going down to, going to, and I will get over to my writing,

Anthony Sellers
Cross-examination by Mr. Vieth

1 this Tony Sellers, Tony Sellers, Tony Sellers, we go across
2 to this line. The 525-7867, that's your number.

3 A Yes, sir.

4 Q Okay. So that was at 9:00 o'clock. You see on the
5 far left column that one, two, go across here,
6 9:00 o'clock, 16, right above the ten, mobile originating
7 to your number.

8 A Yes, sir.

9 Q Okay. And then there was a call again about two lines
10 down to the same number at 9:14, is that correct?

11 A Yes, sir.

12 Q Okay. And then looks like the last call looking down
13 at 7867 right there, and that originated at 9:27, do you
14 see that on the call?

15 A Yes, sir.

16 Q All right. And would that -- that would be a mobile
17 originating to you where you talked to her, is that right,
18 or you called her back?

19 A Like I said, the call got dropped. And either she
20 called me or I called her back. I can't really recall.
21 But we did converse twice.

22 Q Okay. And that timeframe would have been between
23 9:00 o'clock, and the last one being at 9:27. That's what
24 these records reflect.

25 A Yes.

Anthony Sellers
Cross-examination by Mr. Vieth

1 Q Okay. And you said the first call or so was just
2 general conversation, how are you doing.

3 A Yeah.

4 Q Okay. So the first call didn't reference anything
5 about, "I got beat up or anything."

6 A No.

7 Q Okay. So would that first call be a calm
8 conversation?

9 A When you say calm, it's, hey, how you doing, hey,
10 Erika, yeah, I mean.

11 Q Correct. I mean, you had no reason to believe
12 anything was wrong at that moment.

13 A No, no.

14 Q Okay. And so then, let's see, that's 9:00 o'clock.
15 At 9:14 there's another, the other call. And what -- does
16 that call then talk about getting hit?

17 A I don't know, you know, which call got dropped or this
18 or that. Whichever calls on there is lengthy is when we
19 had the -- when we had the longest conversation.

20 Q All right. Then let's go back here a minute.

21 THE COURT: Excuse me just a minute while you're doing
22 that.

23 Let me ask the bailiffs to remove the rope and let the
24 jurors move down one seat. That way those on the end can
25 see a little bit better.

Anthony Sellers
Cross-examination by Mr. Vieth

1 (Pause.)

2 Q All right. Now to focus in, I guess, for you and for
3 us to see it. But let's go back out here where I marked
4 Tony Sellers, Tony Sellers and Tony Sellers. And that's
5 the first call I've got right there. Looks like 3:00. And
6 then you've a 2:24 and then a 7:37.

7 And up here in the large print I can assure you that
8 word there says duration. Okay. I don't know whether
9 that's -- okay. So you have one call and then a second call
10 and then a longer call. Do you see? Which substantiates
11 what you're saying, you had an initial call about
12 9:00 o'clock where everything was fine, talking about
13 everything. And then 14 minutes later you have a longer
14 call. And that call is to ask to get the job back?

15 A Yes, sir.

16 Q Okay. And then about 15 minutes later there's a
17 longer call, and that call is where he had beat me up.

18 A And, like I said, it was a dropped call. I couldn't
19 tell you which one was the dropped call.

20 Q Dropped call?

21 A Yes.

22 Q Where you dropped your cell?

23 A No, no, no.

24 Q What does that mean? Oh, you were just disconnected?

25 A Yeah. When you're going by the airport, sometimes

Anthony Sellers
Cross-examination by Mr. Vieth

1 you'll lose a signal.

2 Q Oh, okay. And then you call someone right back?

3 A Right.

4 Q Okay. Well, then that -- all right. So the closest
5 two together would be the 3-minute call, 3-second, I guess,
6 to the 2:24. That would be the closest to you, because
7 then you drop down to 9:27, is the longest. Okay. So
8 probably that one that's only about three seconds in
9 duration must have been a dropped call, the very first one.

10 A I would, I would say.

11 Q You would assume so anyway. And then you called back
12 about 12 minutes later, so. And then talked for some time.
13 So that would be the call that was casual asking for the
14 job back, correct?

15 A I would say.

16 Q Okay. And then you disconnect and say good-by. What
17 did you say -- come by and start to work?

18 A No. Basically, I told her, said, "You're more than
19 welcome to come back. Just come by and see me, Erika."

20 Q Okay. And then did the next call initiate by her or
21 you?

22 A Actually, you know, I can't remember if she called me
23 back or I called her. And I'm thinking I called her. I
24 mean, I could be wrong. That's been a year ago, you know.

25 Q I understand. All right. And you gave a statement,

Anthony Sellers
Cross-examination by Mr. Vieth

1 Tony, or Mr. Sellers. I'm sorry. May I approach you a
2 second?

3 A Sure, yes.

4 Q You gave a statement back the following day, January
5 the 3rd, which would be right after this incident. And
6 that just said you told her she absolutely could have the
7 job back, "I lost my signal. Called her back." And so
8 that was the initiated call back.

9 A Yeah.

10 Q Okay. And so the third call -- the first call is a
11 disconnect; the second call is a casual one about a job,
12 come by and see me whenever you can; and then the third
13 call was her saying that she was going -- had been kicked
14 out and got beaten up. And you asked her if she needed a
15 place to stay.

16 A I asked her was everything okay because -- well, I
17 got -- she -- things just didn't sound right with her. I
18 mean, you know, this is someone you worked with for a
19 couple of years. And I said, "Is everything okay?" And
20 she just sounded. She didn't sound herself. And, again,
21 she, you know, stated to me that her husband had beat her
22 ass and kicked her out of the house.

23 And at that time I'm saying, oh, God, you know. We
24 conversated a little bit more, and she started telling me
25 that she needed to make some money or whatever so that she

Anthony Sellers
Cross-examination by Mr. Vieth

1 can get out of the house and just what I just told you
2 earlier.

3 Q Okay. And that was the last conversation you had with
4 her.

5 A Yeah. And, of course, again, like I said, I did offer
6 if she needed somewhere to stay. And I wish she had have
7 done that but --

8 Q Well, did she tell you in response to your offer to
9 have a place to stay that she had a place to stay?

10 A She told me that she was going to stay with a friend.
11 Who that was, she didn't say.

12 Q Didn't go into where or anything like that?

13 A No, sir.

14 Q All right. Thank you.

15 MR. VIETH: That's all the questions I have.

16 MS. CRICK: Your Honor, we don't have anything further
17 and ask that he be excused.

18 THE COURT: You may step down.

19 (Whereupon, the witness was excused.)

20 MR. GOWDY: Your Honor, we would call Investigator
21 Mike Shaw with the coroner's office.

22

23

24

25

Mike Shaw
Direct examination by Mr. Gowdy

- 1 MIKE SHAW, having been first
2 duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. GOWDY
4 Q Morning, sir.
5 A Good morning.
6 Q Can you introduce yourself to the jury? And keep your
7 voice up good where the last gentleman and lady can hear
8 you.
9 A My name is Mike Shaw. I work for the Spartanburg
10 County Coroner's Office. I've been employed for three
11 years and two months with the coroner's office.
12 Q You've been there three years?
13 A Yes, sir.
14 Q As part of your duties as an investigator with the
15 coroner's office do you respond to death scenes?
16 A Yes, sir. That's correct.
17 Q And you are separate and apart from the sheriff's
18 department, right?
19 A That is correct. We conduct a separate independent
20 but a joint investigation.
21 Q Okay. So your purpose in responding to a death scene
22 is what?
23 A Determine the manner and cause of death.
24 Q Okay. Did you personally respond to a crime scene in
25 Campobello on January the 2nd of 2007?

Mike Shaw
Direct examination by Mr. Gowdy

1 A I did.

2 Q And what did you do at that crime scene?

3 A Upon arrival at the scene, obviously I signed in with
4 the crime-scene-log officer, myself and Investigator Ken
5 Tony, who was a non-paid investigator, at which point I
6 directed Investigator Tony to photograph and document the
7 scene as he saw it on entry.

8 Q Let me show you what's been introduced as State's
9 Exhibits 19 and 10 and ask you whether or not those are, in
10 fact, photographs that were taken by your photographer,
11 Mr. Tony.

12 A They are.

13 Q All right. I will publish these to the jury again.
14 Is this State's Exhibit 19, is this the way that the
15 victim's body appeared when you got there?

16 A It is.

17 Q Okay. What role does the coroner's office have with
18 bodies of deceased people?

19 A Once everything is documented and photographed the
20 body is then taken into custody of the coroner's office.
21 There is a chain of custody established with the body which
22 is transported to the Spartanburg Regional Medical Center
23 Morgue.

24 On most cases any valuables or personal items are
25 collected at the scene. However, in this particular case

Mike Shaw
Direct examination by Mr. Gowdy

1 due to blood contaminants it was impractical to recover the
2 items at the scene, thus they were recovered at the
3 Spartanburg Regional Medical Center.

4 Q I want to make sure I understand you correctly. You
5 typically gather evidentiary items that would be on the
6 body at the scene.

7 A Correct, unless it's impractical due to the lighting,
8 weather or contaminating conditions.

9 Q And you didn't do it in this case.

10 A Correct.

11 Q Because of what?

12 A Because of the amount of blood located around the
13 body, contaminants.

14 Q All right. This is State's Exhibit 20 which is
15 already in evidence. Is that the way her hand appeared
16 when you were at the crime scene?

17 A It is.

18 Q And because of the amount of blood you did not recover
19 what was in her hand there. You did it at the morgue?

20 A Correct.

21 Q All right. And did you bring with you what was
22 recovered from her hand?

23 A I did.

24 Q Is this it in this? Let me have this marked.

25 (Jewelry marked State's Exhibit No. 41 for

Mike Shaw
Direct examination by Mr. Gowdy

1 Identification.)

2 Q This is your envelope, and it contains State's
3 Exhibit 41. Let me ask if you recognize what is in that
4 plastic bag.

5 A Yes, sir. This is part of the items recovered from
6 the individual's hand, as well as the other items that are
7 not in that photograph.

8 Q That were on her body.

9 A Correct.

10 MR. GOWDY: Your Honor, we would move State's 41 into
11 evidence.

12 MR. VIETH: Without objection.

13 THE COURT: It's admitted.

14 (Jewelry marked State's Exhibit No. 41.)

15 Q This jewelry was in the hand.

16 A Correct.

17 Q You collected that at the morgue, right?

18 A Correct.

19 Q Okay. One second, investigator.

20 (Pause.)

21 Q Investigator Tony, please answer any questions the
22 defense attorney may have for you.

23 MR. VIETH: None, Your Honor.

24 THE COURT: You may step down.

25 MS. CRICK: Your Honor, the state calls Joseph

Joseph Stewart
Direct examination by Ms. Crick

1 Stewart.

2 JOSEPH STEWART, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. CRICK

5 Q Mr. Stewart, could you give the jury your full name,
6 please?

7 A Yes, I can. My name is Trooper Joseph Stewart.

8 Q What's your current occupation?

9 A I'm a state trooper with the state of South Carolina.

10 Q How long have you been a state trooper?

11 A Since January the 4th of this year.

12 Q January of 2007, where were you working?

13 A I worked with the Spartanburg County Coroner's Office
14 as an investigator.

15 Q And did you become involved in the investigation of
16 the death of Erika Horton?

17 A My involvement with this investigation was to make
18 sure that the blood from the victim reached SLED where it
19 would be analyzed.

20 Q So did you go at any point to Pathologist David Wren's
21 office?

22 A I went to the morgue.

23 Q Okay. What did you recover from the morgue?

24 A I recovered the blood that was recovered from autopsy
25 from the victim.

Joseph Stewart
Direct examination by Ms. Crick

- 1 Q When you got that blood, how was it given to you?
2 What was it in?
3 A It would be sealed in a container, which is a vial
4 that's made for the blood.
5 Q Already sealed?
6 A Correct.
7 Q What did you do with it after you got it?
8 A I would take this blood and I would make sure that the
9 blood was labeled with the victim's name, match it with the
10 records, at the chain of custody at the morgue at the
11 hospital. I would bring it to the office at the
12 Spartanburg County Coroner's Office where I would seal it
13 in a SLED evidence pack, which would then be mailed to the
14 SLED forensics lab in Columbia.
15 Q For D. N. A. testing.
16 A For D. N. A. and toxicology, yes, ma'am.
17 Q And in this case you did seal it and you did send it
18 to SLED.
19 A That is correct.
20 MS. CRICK: Nothing further, Your Honor, at this time.
21 MR. VIETH: I have no questions. Nothing.
22 THE COURT: You may step down.
23 MS. CRICK: Your Honor, the state calls Robert
24 Rosenberg.
25

Robert Rosenberg
Direct examination by Ms. Crick

1 ROBERT ROSENBERG, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. CRICK

4 Q Officer Rosenberg, could you give the jury your full
5 name, please?

6 A I'm Master Deputy Robert Rosenberg.

7 Q Can you tell the jury where you work?

8 A I'm currently employed with the Spartanburg County
9 Sheriff's Office.

10 Q How long have you been with the sheriff's office?

11 A Approximately right at 25 years.

12 Q What do you do there?

13 A Currently I'm assigned to the evidence as the evidence
14 custodian.

15 Q When you say evidence custodian, what is your primary
16 function?

17 A Our primary function is to, when investigators go out
18 and obtain evidence on a crime scene, they package it,
19 bring it to us, and we store it. We catalog it in a
20 computer and then store it in a secured area.

21 Q Did you receive evidence in this particular case?

22 A Yes, I did.

23 Q Can you tell us what you received?

24 A Numerous pages.

25 Q Can you summarize what you received?

Robert Rosenberg
Direct examination by Ms. Crick

1 A Numerous swabs, a knife, additional swabs, clothing,
2 fingernail scrapings.

3 Q Okay. That's fine. Once you got the swabs and the
4 knife and all of that sort of thing, when they bring the
5 evidence to you, what do you do with it?

6 A It only counts what type of evidence. If it's
7 something that needs to be refrigerated, it's secured and
8 placed in a refrigerator. If it's something -- when I
9 receive it, I itemize it to make sure everything's there.
10 And then we set up a category box where we put a homicide
11 number on it, the victim and the suspect. And we store it
12 in a secured area.

13 Q Were you asked to transport evidence in this case down
14 to SLED?

15 A Yes, I was.

16 Q Did you do that?

17 A Yes, I did.

18 Q At any point during the time you got it and
19 transported it did you ever unseal anything that was in
20 evidence, or was it still sealed when you took it to SLED?

21 A No. When it's SLED evidence, it comes to me sealed.
22 And I take it sealed to SLED and turn it over to SLED.

23 Q And when you turn it over to SLED, is that somebody in
24 the intake department at SLED?

25 A Yes, it is.

Robert Rosenberg
Cross-examination by Mr. Vieth

1 Q In that case, in this case, I'm sorry, do you know who
2 that was?

3 A Amy Stephens.

4 Q At SLED.

5 A At SLED. I think, yeah, she took all things.

6 MS. CRICK: I have nothing further at this time, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. VIETH

10 Q When did you take those, officer?

11 A Do what, sir?

12 Q When did you take those?

13 A I took those items down on January the 19th of 2007.

14 Q Thank you. That's all.

15 THE COURT: You may step down.

16 MS. CRICK: Your Honor, the state calls Robin Taylor.

17 ROBIN KAY TAYLOR, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. CRICK

20 Q Good morning, Ms. Taylor. Could you give the jury
21 your full name, please?

22 A My name is Robin Kay Taylor.

23 Q Ms. Taylor, where do you work?

24 A I work for the South Carolina Law Enforcement
25 Division, commonly known as SLED.

Robin Kay Taylor
Direct examination by Ms. Crick

1 Q What do you do there at SLED?

2 A I am a forensic D. N. A. analyst.

3 Q Okay. When you say you're a forensic D. N. A.
4 analyst, you receive evidence from law enforcement agencies
5 across the state?

6 A Yes, I do, along with known standards from persons
7 involved in a crime, in a criminal case. And at that point
8 we perform D. N. A. analysis on both the evidence and the
9 known standards and make comparisons.

10 Q How long have you been with SLED?

11 A Over 18 years.

12 THE COURT: Could you use that microphone, please?
13 You just have to speak up a little bit louder.

14 Q Could you tell the jury just briefly what your
15 educational background is and what your training is?

16 A I have a bachelor of science degree in medical
17 technology from the University of South Carolina. I
18 graduated from the Baptist Medical Center School of Medical
19 Technology in Columbia.

20 I worked in clinical laboratories, including
21 Greenville Memorial Hospital, for about two and a half
22 years prior to joining SLED. And, as I said, I've been at
23 SLED for over 18 years now. During that time I completed
24 training programs in the fields of forensic serology,
25 forensic R. F. L. P. D. N. A. analysis and P. C. R. D. N.

Robin Kay Taylor
Direct examination by Ms. Crick

1 A. analysis.

2 Q Have you ever testified in court before as an expert
3 in D. N. A. analysis?

4 A Yes, in excess of 60 times.

5 Q In this state?

6 A Mostly in this state. I believe once in Georgia and
7 once in North Carolina.

8 MS. CRICK: Your Honor, at this time I'd like to
9 qualify Robin Taylor as an expert in D. N. A. analysis.

10 MR. VIETH: Your Honor, we have no objection to her
11 qualifications.

12 THE COURT: She is so qualified.

13 Q Can you briefly tell the jury? What is D. N. A.?

14 A Well, D. N. A. is a chemical substance found in most
15 of the cells in the body, and it conveys genetic
16 information from one generation to the next.

17 THE COURT: Excuse me just a minute.

18 I know we've got a bad setup here. You're looking at
19 the jury, but the court reporter is behind you. So what I
20 need for you, if you'll look at Ms. Crick so that the court
21 reporter can at least see your profile, and the microphone
22 will pick up what you say. Okay?

23 THE WITNESS: I'm sorry.

24 A I forgot where I was.

25 THE COURT: You can just start over if you need to.

Robin Kay Taylor
Direct examination by Ms. Crick

1 Q Just tell them just generally. What is D. N. A.?

2 A It conveys genetic information from one generation to
3 the next. And you get half from your mother and half from
4 your father.

5 And in forensics, of course, we don't test all of your
6 D. N. A. We test certain portions that are known to be
7 highly variable from person to person. And the only
8 instance where two people would have the same D. N. A.
9 would be in the instance of identical twins.

10 Q Where do you normally find D. N. A. in human beings?

11 A Well, it's found in nucleated cells. And in forensics
12 most of the time that will include blood, semen or saliva.
13 It can also include sweat or skin cells as well though.

14 Q And generally you receive some form of that blood,
15 semen, cells from law enforcement to test?

16 A Yes. Our evidence generally -- we do have a crime
17 scene unit at SLED that works some crime scenes. But most
18 of the time a crime scene is worked by a local agency. And
19 they will organize and submit evidence to us for analysis.

20 Q Once you get that evidence you develop a profile, a D.
21 N. A. profile?

22 A Yes. Initially when necessary we'll identify a body
23 fluid, but then it progresses very quickly if necessary for
24 D. N. A. analysis.

25 Q Can you tell whose D. N. A. it is just by looking at

Robin Kay Taylor
Direct examination by Ms. Crick

1 that one profile?

2 A No. You need a known sample of D. N. A. from the
3 persons involved in order to make a comparison or a match
4 or an exclusion, as happens in some cases.

5 Q In this particular case that you're here to testify
6 about today, what evidence did you receive in this case?

7 A I received several swabs that appeared to be from the
8 scene; some swabs from a knife; and some other swabs
9 collected from, I believe, the person, excuse me, the
10 defendant; some cuttings from a pajama, a pair of pajama
11 bottoms; and some right and left hand fingernail scrapings.

12 Q I'm going to ask you in general first about the swabs
13 from the scene. When you received those were they still
14 sealed up?

15 A Certainly. I know what my evidence is going to look
16 like when I get it. I know what it should look like, the
17 sealed package. And if there's any indication of any
18 irregularity, I'm not going to do the testing. I'm going
19 to make a phone call and find out what's going on and
20 straighten out anything before testing even begins.

21 Q And in this case everything looked all right.

22 A Everything was normal.

23 Q I'm going to ask you. Once you received this
24 evidence, what did you do with it?

25 A Well, I look at the case. I look at the incident

Robin Kay Taylor
Direct examination by Ms. Crick

1 report that we require the local agency to submit. And I
2 try to get as much information as I can, because I need my
3 testing to be educated. I need it to do what is necessary
4 for the case. And in this instance it was indicated that I
5 needed to test for blood. So I just did a preliminary or
6 presumptive test for blood and almost -- I believe all of
7 the swabs. And then blood was indicated on all of the
8 swabs, and took them forward to D. N. A. testing.

9 Q Okay. Let me talk to you about Items 1 and 9 first of
10 all. What are those two items in your report?

11 A Item 1 -- well, actually on my report it's reflected
12 as 1.1. It's a blood standard from Erika Bell Horton.

13 Q That would be a sample of her blood recovered at
14 autopsy?

15 A That's correct. I believe in this instance just
16 looking at this, I can presume that one sample came down to
17 SLED and that we divided it between departments. And
18 usually it will go to toxicology first. And they will give
19 us -- we don't need much blood at all to do our testing.
20 So they will give us a small sample of the blood. And in
21 the computer instead of being Item No. 1 it will be Subitem
22 1.1 because it's actually a separate sample. They took a
23 small portion of it and sent it to us.

24 Q So that's how you developed her D. N. A. profile.

25 A That's correct. I used that sample.

Robin Kay Taylor
Direct examination by Ms. Crick

1 Q And how about No. 9?

2 A Item No. 9 is a buccal swab, and this is a common form
3 that we receive known D. N. A. standards. It's simply a
4 sterile swab that is rubbed on the inside of a person's
5 cheek just to gather up skin cells from the inside of their
6 cheek. And, again, it's a common form of known standard.

7 Q And that was how you developed the profile, D. N. A.
8 profile, for the defendant?

9 A Yes. I did.

10 Q All right. No. 2 was a swab from carport floor?

11 A Yes, it was.

12 Q What did you find in that particular case?

13 A As I said before, I did presumptive testing for blood.
14 And blood was indicated. But then I took it on for D. N.
15 A. analysis.

16 Q Uh-huh.

17 A And the D. N. A. profile developed from Item 2, along
18 with several others, matches the D. N. A. profile of Erika
19 Bell Horton. And the probability of randomly selecting an
20 unrelated individual having this same profile is
21 approximately one in 77 quadrillion.

22 Q So you found the swab from the carport floor to be
23 blood that matched Erika Bell Horton.

24 A That is correct.

25 Q Looking at No. 3, that's a swab from a kitchen drawer.

Robin Kay Taylor
Direct examination by Ms. Crick

1 What did you find in that case?

2 A The result from Item No. 3 was exactly the same as
3 two. Blood was indicated. And the D. N. A. profile
4 matched Erika Bell Horton.

5 Q How about No. 4, the kitchen floor in front of the
6 microwave? What did you find in that instance?

7 A The same result.

8 Q No. 5, a swab from the dining room floor. What did
9 you find in that case?

10 A That D. N. A. profile also matched Ms. Horton.

11 Q And there was one on a bathroom drawer in a hallway
12 floor, No. 6 and 7. What did you find in those cases?

13 A Again, those were the same result with the D. N. A.
14 profile that matched Ms. Horton.

15 Q Okay. I'm going to Items 8.1, 8.2, and 8.3, swabs
16 from a knife. 8.1, what did you find, which was the swab
17 from the knife?

18 A 8.1, I also indicated the presence of blood. And the
19 D. N. A. profile recovered from that item was, in fact,
20 also matched the D. N. A. profile of Erika Horton.

21 Q And how about -- I'm going to skip down to 8.3, which
22 is the swab from the blade of the knife. What did you
23 find?

24 A That was the same result. The blood on the knife
25 matched the D. N. A. profile of Erika Horton.

Robin Kay Taylor
Direct examination by Ms. Crick

1 Q And 8.2, which was from the handle of the knife, what
2 did you find in that case?

3 A It was a partial profile. I didn't get all of the
4 information I was trying to get. But it was a mixture of
5 at least two individuals.

6 Q And who? I'm sorry.

7 A Often when we find a mixture on samples we can
8 determine who gave the most, who donated the most D. N. A.,
9 and that we term that the major contributor. And then
10 there's often at least one, often more, minor contributors.
11 And the D. N. A. profile of the major contributor to this
12 partial profile also matched Erika Horton.

13 But on the minor contributor it was very low. I had
14 very little information. So I was unable to make any
15 conclusive statement as to whether or not Larry Horton
16 could be included as a contributor to that profile.

17 Q Just not enough there to determine.

18 A There wasn't enough information there for me to come
19 to a scientifically sound conclusion on that.

20 Q Okay. Let me ask you about 10, 11, 12 and 13, which
21 are swabs from Mr. Horton's face and right and left foot.
22 What did you find in those cases?

23 A Item No. 10 was, I indicated, the presence of blood.

24 And the D. N. A. profile from that item matched Erika
25 Horton. And that Item No. 10 was swabs from the right face

Robin Kay Taylor
Direct examination by Ms. Crick

1 of the suspect.

2 Q Was blood indicated on that swab?

3 A Yes, it was.

4 Q How about No. 11?

5 A Item No. 11 were, was swabs from the left side of the
6 face of the suspect. And Item No. 11 was a mixture, again,
7 of at least two individuals. The major contributor -- and
8 I did indicate blood on this swab. But the major
9 contributor to this profile matched Erika Horton. And the
10 minor contributor was consistent with being from Larry
11 Horton.

12 And the reason I would term it like that is because
13 this swab was taken from his body. It would not be an
14 unexpected finding to find his D. N. A. on a swab taken
15 from his body.

16 Q How about No. 12 and 13, the swabs from his right and
17 left foot?

18 A Twelve is the same as the one I just talked about.
19 It's consistent with being a mixture. I had a major
20 contributor that matched Erika Horton. And the minor
21 contributor was consistent with Larry Horton.

22 Q Okay.

23 A And --

24 Q That's fine. I think I asked you about a number
25 that's not on here. I meant to say the swabs for 14 and

Robin Kay Taylor
Direct examination by Ms. Crick

1 15, 16 and 17, which are swabs from the palms and backs of
2 his hands. What did you find in those cases?

3 A On Item No. 14, which were swabs from the right palm
4 of the suspect, I did indicate the presence of blood. And
5 the D. N. A. profile matched Erika Horton.

6 On Swab No. 15, I did indicate the presence of blood,
7 but I didn't carry that forward to D. N. A. simply because
8 I had represented samples from both of his hands already.
9 And it wasn't deemed necessary that every single swab be
10 tested.

11 And I did the same thing for 16. The presence of
12 blood was indicated on the back of his right hand and his
13 left palm. But I didn't take them forward to D. N. A.
14 because I was going to have two other swabs from each of
15 his hands.

16 Q So how about No. 17?

17 A No. 17 was a set of swabs from the back of the left
18 hand of the suspect. And I did indicate the presence of
19 blood. And the D. N. A. profile did match Erika Horton.

20 Q No. 19.1, 19.2 and 19.3 were cuttings from his pajama
21 bottoms. You received those?

22 A I did.

23 Q What did you find in those cases?

24 A On all three of those cuttings from the pajama bottoms
25 I was able to indicate the presence of blood. And the D.

Robin Kay Taylor
Cross-examination by Mr. Vieth

1 N. A. profile from all three matched the D. N. A. of Erika
2 Horton.

3 MS. CRICK: I have no further questions at this time,
4 Your Honor.

5 CROSS-EXAMINATION

6 BY MR. VIETH

7 Q Ma'am, when did you get those to analyze? When were
8 those sent down to you, do you know?

9 A I need to refer to my notes. Do you want me to go --

10 Q I just -- when you may have received them and when you
11 may have analyzed it. I've got --

12 A It looks like I actually took possession of the known
13 standard from Erika Horton on March the 7th of '07, and I'm
14 sorry. I have to look at several pages.

15 Q Well, I've got a SLED report, I guess, that says D. N.
16 A. analysis, February 1 of 2008. Would that --

17 A That's the final, my final, of at least two reports
18 that I generated.

19 Q That would be the final report, would be about a year
20 later.

21 A Right. Well, I'm sorry. I'll have to pull out my
22 original. Some items were tested in this case and resulted
23 out January the 11th of 2008. I believe it was my first
24 report. And then I did some additional testing and
25 generated another report February of 2008.

Robin Kay Taylor
Cross-examination by Mr. Vieth

1 Q Okay. And so from the time that they were delivered
2 to SLED did it set in some kind of cooler or where do
3 y'all --

4 A Yes, sir. They were frozen.

5 Q Now, when you mentioned D. N. A. results, are you
6 talking only -- are we talking only of blood? I mean, when
7 you say something was consistent with the defendant's D. N.
8 A., is that the defendant's blood?

9 A I honestly have no way of knowing that. I have -- I
10 can indicate the presence of blood on a swab. But when I
11 run the D. N. A., I don't know exactly where all of that D.
12 N. A. is coming from. I know some of it's from blood, and
13 usually the blood is the major portion of that contributing
14 D. N. A.

15 But any time a sample is taken from someone's skin or
16 from anywhere on their body, it's not unusual at all that
17 perhaps some of that D. N. A. could be from skin cells.
18 But I really have no way of knowing whether it was his
19 blood or his skin cells.

20 Q Okay. Thank you. That's all I have. Could have been
21 either one as far as you know.

22 A It could have been.

23 Q All right.

24 MS. CRICK: Your Honor, I have nothing further at this
25 time.

Dr. David Wren
Direct examination by Mr. Gowdy

1 THE COURT: You may step down.

2 MR. GOWDY: Your Honor, the state would call Dr. David
3 Wren.

4 DR. JOHN DAVID WREN, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. GOWDY

7 Q Good morning, Dr. Wren.

8 A Good morning.

9 Q Can you tell the jury where you work and how long
10 you've been there?

11 A I'm the laboratory medical director at Spartanburg
12 Regional Medical Center. I'm employed by Spartanburg
13 Pathology Consultants of which I am the president. And
14 I've actually been working in Spartanburg as a pathologist
15 since October the 18th of 1982.

16 Q Dr. Wren, can you give the jury the benefit of your
17 educational background?

18 A Well, I have a bachelor's degree, a master's degree
19 and a doctor of philosophy degree in chemical engineering.
20 I have a medical degree from the Medical University of
21 South Carolina.

22 MR. VIETH: Your Honor, I've known Dr. Wren a long
23 time. I don't have any problem with his qualifications as
24 a pathologist if that's okay. You're welcome to go forward
25 but I --

Dr. David Wren
Direct examination by Mr. Gowdy

1 THE COURT: You stipulate to his qualifications as a
2 forensic pathologist?

3 MR. VIETH: Yes, sir, I do.

4 THE COURT: Okay. Do you wish to go any further with
5 it?

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

7 THE COURT: Okay.

8 Q Dr. Wren, how many autopsies have you performed in
9 your career?

10 A About 3,000.

11 Q Did you perform an autopsy on Erika Bell Horton?

12 A I performed an autopsy on an individual identified as
13 Erika Elaine Horton to me on January the 4th of 2007 in the
14 Spartanburg Regional Medical Center Autopsy Room beginning
15 at 8:45 a.m.

16 Q Can you tell the jury, can you describe for the jury,
17 the injuries that you found on her body?

18 A She had multiple injuries. She had bruises and
19 contusions to her scalp. She had lacerations and incised
20 wounds to her eye, left eye. She had a broken nose. She
21 had incised wounds and lacerations to both shoulders. And
22 she had multiple incised wounds of her neck that extended
23 all the way through to her vertebral column and actually
24 severed both internal jugular veins and both common carotid
25 arteries in the neck, as well as her esophagus and her

Dr. David Wren
Direct examination by Mr. Gowdy

1 trachea.

2 Q Dr. Wren, you mentioned injury to her eye. Did you
3 find that one of her eyeballs had collapsed?

4 A Yes, into the maxillary sinus, which is the sinus
5 inferior to the eye.

6 Q Dr. Wren, do you have an opinion to a reasonable
7 degree of medical certainty whether or not some of the
8 injuries that she suffered could have been caused by a
9 beating as opposed to a knife?

10 A Definitely. She had bruises and contusions to her
11 lips, as well as the broken nose, and contusions about her
12 eye, as well as on her scalp diffusely.

13 Q Dr. Wren, you mentioned a torn frenulum. Can you tell
14 the jury what a frenulum is?

15 A The frenulum is the little piece of tissue that
16 extends down inside the mouth behind the lips. It's a
17 little piece of supporting tissue for your upper lip.

18 Q The evidence of the beating that you found, do you
19 have any opinion, Dr. Wren, on whether or not the trauma
20 she suffered as a result of the beating could have been
21 sufficient to render her unconscious?

22 A Yes.

23 Q Did you find evidence of a hemorrhage in her head?

24 A Do you mean internally or in the scalp?

25 Q Either one.

Dr. David Wren
Direct examination by Mr. Gowdy

1 A In the scalp she had contusions, which is hemorrhage,
2 in the frontal region of the scalp and forehead. She had
3 it in the temporalis muscles, which are the muscles in the
4 temporal region above and anterior to the ear. And she had
5 a moderate amount of hemorrhage posteriorly in her scalp.

6 She did not have any contusions or contrecoup
7 contusions, which are bruises to the brain itself, although
8 she had what's called subarachnoid congestion, which is the
9 thin layer of covering over -- the thinnest layer of
10 covering just against the brain. It's called the
11 pia-rachnoid. And there was extreme congestion in that
12 area which can come from trauma.

13 Q Dr. Wren, you mentioned, and we will talk in more
14 detail, about the injuries to her neck. Did you also find
15 evidence of knife injuries to her shoulders?

16 A Yes, both shoulders. She had superficially incised
17 wounds to her shoulders.

18 Q Dr. Wren, I believe that you used the word of
19 hesitation in conjunction with those injuries. Can you
20 tell the jury what you would have meant by hesitation
21 marks?

22 A Well, basically a hesitation wound, incised wound, is
23 if someone decides to cut their wrist. As a simple
24 example, most people it hurts, and so they'll start and
25 then they'll hesitate. And then the weapon may move over

Dr. David Wren
Direct examination by Mr. Gowdy

1 just a little bit. And then you'll see a deeper wound
2 there. Or it will be redirected in the skin, will start
3 out and then make a turn. That's what a hesitation wound
4 is.

5 Q And you found evidence on both of her shoulders of
6 hesitation marks made by a knife.

7 A As I recall, I did definitely say there were
8 hesitation wounds.

9 Q Dr. Wren, can you tell the ladies and gentlemen of the
10 jury what defensive wounds are?

11 A A defensive wound is one in which someone is expecting
12 an assault and as a defense mechanism either voluntarily or
13 involuntarily, they will throw their hands or arms up to
14 ward off that blow. And the blow instead of being in, say,
15 to your head, it would be to your arms or your hands.

16 Q Did you find, Dr. Wren, any evidence of defensive
17 wounds on Erika Horton's hands, wrists, forearms?

18 A No.

19 Q Do you have an opinion to a reasonable degree of
20 medical certainty, Dr. Wren, whether or not someone who was
21 conscious and being attacked by a knife, you would expect
22 to find defensive wounds?

23 A I would expect it if they could get their hands up.

24 Q All right. With respect to the injuries to her neck,
25 were you able to find the dimensions of the knife wound in

Dr. David Wren
Direct examination by Mr. Gowdy

1 terms of length and width?

2 A An incised wound does not leave a length, or it can
3 leave a width. But most incised wounds are with sharp
4 edges. So one usually can't tell.

5 These wounds were so large and so long that there was
6 no way of telling exactly what did it except it was
7 probably -- well, I can't say that. It could be a little
8 type knife. I can't tell, but it was -- it was most
9 definitely probably a knife.

10 I did -- I think I found a -- what I thought was a
11 stab wound to the right neck. It was four-tenths or
12 two-fifths of an inch in length, and it had minimal width.
13 That -- and it wasn't very deep. So that doesn't tell you
14 much about it except that it probably had a sharp point and
15 that at least in some place it would be between
16 three-tenths and a half-inch in the blade length. I'm
17 sorry. The blade, what we'll call the length, which is the
18 distance from the sharp edge to the blunt edge.

19 And as everyone knows, knives can be very sharp and
20 actually go to a large length as it moves back toward the
21 handle, or they can be long and slender.

22 The fact that it only penetrated a short distance
23 doesn't give you much more information except that it was
24 definitely between three-tenths and a half inch at one
25 point in its length.

Dr. David Wren
Direct examination by Mr. Gowdy

1 And the reason I say that is because skin being
2 elastic, depending on the stretching or collapse of the
3 skin when a wound is, is inflicted, once that wound relaxes
4 it can be either longer or shorter.

5 So, generally speaking, if you took a 1-inch blade and
6 stuck it in something if the skin were taut when it
7 happened and it collapsed, it will be shorter.

8 If it were loose and it went back to its natural
9 position, it would be longer than an inch. And, generally
10 speak, it's about 25 percent, plus or minus, of the length
11 of the knife.

12 Q Dr. Wren, you found both carotid arteries --

13 A Actually, I correct myself. That should be what is
14 all of these lengths I've been talking about, should be
15 widths because there's the length of the knife, which is
16 the long dimension. There's a width, which is the, the
17 blunt edge to the sharp edge if it's a single-edge blade.
18 And then there's a thickness to the blade. So there's a
19 length, which I've been calling length, which I really
20 meant width.

21 Q You found evidence that both carotid arteries had been
22 severed?

23 A Yes.

24 Q Both jugular veins had been severed?

25 A Yes.

Dr. David Wren
Direct examination by Mr. Gowdy

1 Q The esophagus had been severed?

2 A Yes.

3 Q The trachea had been severed?

4 A Yes, and all the muscles in the neck anteriorly.

5 Q What was holding her head on, Dr. Wren?

6 A The skin and musculature in the back of the neck and
7 her spinal, I mean, her vertebral column.

8 Q Did you find evidence of a knife striking the
9 vertebral column?

10 A Yes. I found five incised wounds to the vertebral
11 column itself. One of them was a fifth of an inch in
12 depth.

13 Q So five of the wounds went all the way to what we
14 refer to as the backbone.

15 A Yes.

16 Q How much blood was left in her body, Dr. Wren?

17 A Probably very little. I had difficulty getting any
18 blood at all to send for toxicology. Most of it was on the
19 body and very little within the vasculature itself.

20 Now, that doesn't say there's not some left in the
21 capillaries and venules and arterials of the body. But at
22 least none of the great vessels, which are the aorta,
23 carotid arteries, the femoral artery, the brachial artery
24 in the arms. None of those had any blood in them hardly.

25 Q So there was evidence of a beating or injury with

Dr. David Wren
Direct examination by Mr. Gowdy

1 blunt force trauma. There are hesitation or knife wounds
2 to both shoulders.

3 A Yes.

4 Q And at least five cuts with a knife deep enough to go
5 to a backbone.

6 A Yes.

7 Q Thank you, Dr. Wren. Please answer any questions the
8 defense attorney may have for you.

9 MR. VIETH: Your Honor, I have no questions of
10 Dr. Wren.

11 THE COURT: You may step down.

12 MR. GOWDY: That would be the state's case, Your
13 Honor.

14 THE COURT: All right. Ladies and gentlemen, that is
15 all of the testimony or evidence to be offered by the
16 state, at least in their case in chief.

17 Before we go further I've got some matters I'll need
18 to address with the lawyers. So I'll ask you to please go
19 to your jury room. Do not yet discuss the case. I'll
20 bring you back after that break.

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

23 THE COURT: All right. Any motions or other matters
24 to address?

25 MR. VIETH: Your Honor, pursuant to Rule 19, I move

Motion

1 for a directed verdict at this time.

2 THE COURT: All right. That motion is denied.

3 Other matters to address?

4 MR. VIETH: Nothing from the defense, Your Honor.

5 THE COURT: All right. We'll take 15 minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. Mr. Vieth.

8 MR. VIETH: If Your Honor please, before we get
9 started, a couple of things to make sure I've covered in
10 light of your rulings of yesterday.

11 I've got to make either as a court's exhibit or as a
12 defense exhibit -- I want to introduce it while I've got it
13 on my mind, the incident report from the Beaufort County
14 Sheriff's Office of an incident November the 8th of 2006
15 that we referred to yesterday at length wherein Mr. Horton
16 called the sheriff's department to ask them to go check on
17 his wife, that she had threatened to kill herself, and the
18 results of that inquiry. And I've got a tab as Exhibit B.

19 And then I have the record of the Coastal Empire
20 Community Mental Health Center, a letter sent to me from
21 Julia Seacrest, medical records at that location, May 2 of
22 2008, that enclosed the medical records of her, of Erika's
23 appearance at Costal Empire Community Mental Health Center,
24 November 8 of '06. And the documents are one, two, three,
25 four, five, six, seven pages. All of this has been given

1 to the solicitor.

2 And then finally the records of November 14, 2006,
3 November 21 of 2006, from Inman Family Practice indicating
4 that they have seen her for severe depression and other
5 matters.

6 And these I understand are not going to be something
7 that we can delve into, at least my understanding of your
8 ruling, and that we're making these an exhibit at this
9 time.

10 THE COURT: Okay. Court's exhibits.

11 (Incident report marked Court's Exhibit No. 1; Coastal
12 Empire Community Mental Health Center records marked Court's
13 Exhibit No. 2; Inman Family Practice records marked Court's
14 Exhibit No. 3.)

15 MR. VIETH: Also, Judge, again in light of the
16 discussions we had yesterday dealing with demonic
17 possession and the testimony that we would otherwise intend
18 to produce related to Erika being involved in witchcraft,
19 and I wouldn't say possessed by demons, but at least she
20 had demonic control of demons or she had control of demons,
21 I brought a witness down from North Carolina, Charlie
22 Harris, who is here whose testimony would be extremely
23 brief.

24 I recognize that this court is going to rule it's
25 inadmissible, but I still think I need to proffer it. And

Charlie James Harris III (In-camera)
Direct examination by Mr. Vieth

1 I would like to call him. It will not take more than five
2 minutes.

3 THE COURT: Okay.

4 MR. VIETH: And then if he is excused, he can go back.
5 Mr. Harris, if you will, come around, please, sir.

6 THE WITNESS: I don't swear on the Bible.

7 THE COURT: You don't have to. Do you solemnly affirm
8 to tell the truth?

9 THE WITNESS: Indeed.

10 THE COURT: All right. Have a seat.

11 CHARLIE JAMES HARRIS, III,
12 having first duly affirmed, testified as follows:

13 DIRECT EXAMINATION BY MR. VIETH

14 Q Mr. Harris, would you state your complete name?

15 A Charlie J. Harris, III, Charlie James Harris III.

16 Q Mr. Harris, where do you reside?

17 A I live in Newport, North Carolina.

18 Q And that is approximately how far from Spartanburg?

19 A About eight hours.

20 Q An 8-hour drive?

21 A Yes.

22 Q And did you drive down here last night to testify in
23 this trial today?

24 A Yes.

25 Q And today was the first day I met you, is that

Charlie James Harris III (In-camera)
Direct examination by Mr. Vieth

1 correct?

2 A Yes.

3 Q And you and I had a telephone conversation about a
4 month or so ago related to this case.

5 A Yes.

6 Q And based on that telephone call did you inform me
7 that you had a relationship or knowledge of the marriage
8 between Erika and Larry Horton?

9 A Yes, I did.

10 Q How did you come to know them?

11 A I met Brent through my brother. And we do the same
12 type of work, Brent and I, home building, home repair. And
13 that's how we began to work together, fellowship together.
14 We even went to the same church for a little while.

15 Q And what church was that?

16 A Calvary Redemption Center here in Spartanburg.

17 Q All right, sir. How long would you estimate that
18 you've known Brent?

19 A All together three years, three or four years. But I
20 haven't seen him in five years or so, or six years, up
21 until visiting him and this.

22 Q All right. But, I mean, the first, your first
23 acquaintance with him would have been about when?

24 A Nine years ago.

25 Q Okay. All right. And did you meet Erika Horton, his

Charlie James Harris III (In-camera)
Direct examination by Mr. Vieth

1 wife?

2 A Yes.

3 Q And when did you meet her?

4 A Within the same two months, I believe.

5 Q Same two months of meeting Brent?

6 A Yes, if I remember correctly.

7 Q Okay. Where was that meeting? Where were you living
8 at that time?

9 A I was living in Cherokee County.

10 Q Okay. And so you met in South Carolina.

11 A Yes, Spartanburg, South Carolina, yes, sir.

12 Q Okay. All right. What was the nature of your
13 relationship with Brent and Erika after the meeting? Did
14 you spend time with them? Were you together at all? Tell
15 me a little bit about that.

16 A Well, we spent a lot of time together. We
17 fellowshipped together; we went on outings together,
18 restaurants together; went to visit each other's homes,
19 church.

20 Q In the capacity that you knew Erika, did you ever have
21 any conversations with her related to her involvement in
22 either the cult or witchcraft or anything of that nature?

23 A Well, not any one-on-one conversation but general
24 conversation within a group of people, some of my family,
25 what not, my wife. She did, you know, indeed, you know,

Charlie James Harris III (In-camera)
Direct examination by Mr. Vieth

1 said she was a practicing witch.

2 Q That she was a practicing witch?

3 A Yes, and that it was sort of jokingly, but she even --
4 that's how she got Brent as a husband. She used witchcraft
5 on him.

6 Q Okay. And do you have any timeframe when this
7 conversation may have been?

8 A I'm sure within a year and a half after the first
9 meeting between us.

10 Q Was there any other issues involved in that other than
11 that conversation? Any other concerns that you may have
12 ever had about it?

13 A Well, yes. Always I wondered, you know, and I can't
14 remember whether I talked to Brent about this or not it's
15 been such a while back. But I know my brother and I, we
16 talked about it. And we always wondered, you know, this
17 seemed like it can't work, Brent being a believer in Jesus
18 and she being a witch. It just seemed like it couldn't mix
19 to me.

20 Q Okay. Did you believe her?

21 A Did I believe her? On the onset, you know, I took it
22 kind of light. But, you know, certain little things, some
23 of the jewelry, some of the charms that she would wear and
24 some special relationship with cats and different little
25 things like that right there, as, seemed like as Brent got

Charlie James Harris III (In-camera)
Direct examination by Mr. Vieth

1 closer to giving his life over to living for Jesus that
2 sort of really irritated her.

3 Q And why do you say that? What conclusions? What's
4 happened to make you have that opinion?

5 A Well, light and darkness can't dwell in the same
6 space. That's --

7 Q I mean, did you -- did she manifest anything to you to
8 make you believe that she couldn't stay with him in that?

9 A Well, Brent and I, we was always talking about the
10 word of God. And the more we talked about it, the more
11 Brent was leaning towards giving himself totally over to
12 going that way.

13 And it got to be where she didn't want me talking to
14 Brent any more. She didn't want me to have a relationship
15 with Brent. And Brent relayed that to me.

16 And we, Brent and I, broke fellowship behind us, not
17 in anger or anything. He just told me, said my wife just
18 don't want me, want me around because of our relationship.
19 And our relationship was basically always talking about the
20 things of the Lord.

21 Q Things of the Lord?

22 A Yes, things of the Lord.

23 Q All right. When you heard about this incident on
24 January 2 of 2007, how did you react to that?

25 A Well, it was a very devastating thing there. It was

Charlie James Harris III (In-camera)
Direct examination by Mr. Vieth

1 just like something or other just hit me in the chest. And
2 tears flowed from my eyes, and I was just very sad that
3 Satan got the advantage over my brother Brent in this
4 situation here, because Brent is about the most gentle man
5 that I've known, you know. I've known him.

6 We worked close together. We talked about, I guess,
7 everything up under the sun. He's a very loving man, very
8 kind and gentle. It just, it just was unbelievable that
9 such a thing would happen.

10 Q All right. And you visited him since he's been
11 incarcerated?

12 A Once, yes.

13 Q One time?

14 A Yes.

15 MR. VIETH: Your Honor, that's all the questions that
16 I would have. And, again, it would be tying into other
17 things, but which we discussed yesterday.

18 THE COURT: Okay. Thank you. You may step down.

19 Any other proffer you need to make?

20 MR. VIETH: Well, the only other proffers would come
21 from, from Brent. And we're going to put him on the stand
22 to testify at some point. But right now we're restricted
23 to what he can say in that vein. So if we're going to go
24 into what he can say, if at all anything in that vein, then
25 I would proffer it now.

1 THE COURT: Well, he can testify, and you can proffer
2 any additional testimony afterwards if you like.

3 MR. VIETH: Right. I don't have any other witnesses
4 here at this time.

5 His pastor, Wyatt Brown, I'm hoping he'll be in my
6 office at 1:30 today. But he would be the only other
7 person that I would proffer on his entire testimony.

8 THE COURT: But you've got some other witnesses that
9 are going to be called?

10 MR. VIETH: I've got witnesses I'm going to call
11 before lunch, just on fact witnesses, yes, sir.

12 THE COURT: Okay. Will the defendant testify before
13 lunch?

14 MR. VIETH: No, sir.

15 THE COURT: Okay. Bring the jury back, please.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Let me ask somebody on the front row to
19 take a back-row seat so we'll be even. Okay. Not the
20 foreperson though. I just need somebody on the front row
21 to take the back row. There you go.

22 (Pause.)

23 THE COURT: All right. Ladies and gentlemen, as you
24 know, the state has rested in their presentation. So we'll
25 now proceed with any to be offered by the defense.

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 MR. VIETH: May it please the Court. We call Larry
2 Horton, Sr.

3 LARRY RAY HORTON, SR., having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. VIETH

6 Q Mr. Horton, state your full number, please, sir.

7 A Larry Ray Horton.

8 Q Mr. Horton, you've got a hearing problem, is that
9 right?

10 A Yes, sir.

11 Q Okay. If you can't hear me --

12 A Yes, sir.

13 Q -- please tell me. Can you hear me all right from
14 here?

15 A Yes, sir.

16 Q All right. Mr. Horton, where do you live?

17 A Campobello. Really, Inman.

18 Q Okay.

19 A 770 Howard Gap Road.

20 Q All right. And who do you live with?

21 A My wife.

22 Q And her name is Brenda?

23 A Brenda Underwood Horton.

24 Q Okay. And, Mr. Horton, how long have you and Brenda
25 been married to each other?

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 A Forty-one years.

2 Q And do you have a particular line of work that you do?

3 A I used to buy and remodel houses. But over the years
4 I've got wore out and had to retire and have back surgery.

5 Q All right. So you're on disability now?

6 A Yes, sir.

7 Q Okay. And do you do any kind of side jobs, any other
8 kind of work at all?

9 A Well, my son, Brent, had got into scraping buses and
10 cars to make extra money to help, you know, pay some extra
11 bills that he had to help with and everything. And it was
12 going good. We, he had bought a big bus, a touring bus.
13 And we was out there tearing it apart and stuff and --

14 Q All right. Before we get to the actual day, let me
15 ask you one or two other questions about your family. How
16 many children do you and Brenda have?

17 A We have two boys.

18 Q Okay. And his brother, Brent's brother's name is?

19 A Charles Herbert Horton.

20 Q And he's been here all week in a blue shirt back
21 there, is that right?

22 A Yes sir; yes, sir.

23 Q And where does he live?

24 A He lives in Lyman now. They, he had got married and
25 moved back here and bought them a home in Lyman.

Larry Horton, Sr.
Direct examination by Mr. Vieth

- 1 Q Okay. And how old is Brent, do you know?
- 2 A Thirty-eight.
- 3 Q Thirty-eight years old.
- 4 A Yes, sir.
- 5 Q And what was his highest level of education if you
- 6 remember?
- 7 A I think he went two or two and a half years of college
- 8 down at the University of South Carolina.
- 9 Q Do you know, remember, when he and Erika got together?
- 10 A Yes, sir.
- 11 Q Would that be about ten years ago or so, do you know?
- 12 A Yes, sir, in the neighborhood of that.
- 13 Q And did they have any children from that marriage?
- 14 A They do now. They have two girls.
- 15 Q Okay. Let me. Does he have, does Brent have, other
- 16 children?
- 17 A Yes, sir. He has two boys by a previous marriage.
- 18 Q Are these -- that's a picture of Brent. Is that your
- 19 two granddaughters from his marriage?
- 20 A Yes, sir, that's our two granddaughters, yes, sir.
- 21 Q And do you know their ages now?
- 22 A Miranda is five; Bethany is four.
- 23 Q Okay. Now, during the course of the marriage, I
- 24 assume it's fair to say based on the police reports and
- 25 when they took a statement from Brent, he said they had

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 been separated on and off. And I assume that's accurate,
2 is that right?

3 A Yes, sir; yes, sir.

4 Q How long had that separation been to your recollection
5 prior to them resuming their marriage for the last time?

6 A I believe it was around a year and a half at this last
7 time they were separated, because Brent and the girls had
8 come to our house, I believe December, I believe December
9 the 15th of '05, I believe, and --

10 Q And do you know where they were living at that time
11 together before the separation? Were they living --

12 A In Greenville. I don't actually know the address. I
13 know how to get over to where their apartment was.

14 Q Okay. Now, once that separation took place when they
15 were in Greenville, what happened to the family dynamics?
16 Where did she go, where did he go, where did the children
17 go?

18 A Well, Brent and Miranda and Bethany moved in with us,
19 because Brent that night come and asked if he could, him
20 and the girls could, come and stay for a few months
21 because --

22 Q All right.

23 A -- Erika --

24 Q Go ahead.

25 A Erika had told him --

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 MR. GOWDY: Objection, Your Honor.

2 THE COURT: Sustained.

3 Q You can't go into what Erika may have told him.

4 But the living arrangement was that you and your wife
5 and Brent and the two children started living together.

6 A Yes, sir. At the time we had my wife's mother living
7 with us too, yes, sir.

8 Q Okay. And during that period of time did Brent and
9 Erika maintain any communication lines between each other?

10 A They, they talked. Brent carried the girls over to
11 Greenville when Erika wanted them to come. Sometimes Erika
12 would come back to the house and bring the girls and
13 everything. And it just, you know, kept going that way,
14 back and forth and stuff and, and --

15 Q Did she subsequently leave Greenville to go to
16 Beaufort?

17 A Yes, sir. They said that she had left to get her a
18 job in Beaufort, down there at the Toyota, Toyota place in
19 Beaufort.

20 Q All right. And when she went down to Beaufort did
21 your living arrangements stay the, say, same way, the two
22 children, Brent, and you and Brenda?

23 A Yes, sir; yes, sir.

24 Q All right. And then was there a time in late '06 --
25 and we are going into the November-December timeframe --

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 when they apparently reconciled or got back together?

2 A Yes, sir. Brent had called up and wanted to bring
3 Erika to live in granny's house -- that's my wife's
4 mother's house -- because my youngest son and my wife had
5 purchased it, purchased the house from her estate. And so
6 Brent brought Erika back up to where she'd have a place to
7 live. And we, we agreed to it, you know.

8 Q Okay. And was this the latter part of 2006?

9 A Yes, sir; yes, sir.

10 Q And so then they resumed living with the children and
11 each other at a residence owned by your family.

12 A Yes, sir, sort of off and on, you know, some, you
13 know, two or three days, something like that, maybe four
14 but --

15 Q So did Brent then still mainly stay with you, or was
16 he back and forth?

17 A He would stay with her with the girls and stuff. And
18 then Brent would come to the house and maybe stay one night
19 or something.

20 Q Okay. All right. Was it your understanding or your
21 impression that they had gotten back together as husband
22 and wife?

23 A Well, I knowed they was back together. They was
24 trying to work things out.

25 Q Okay. All right. Then directing your attention back

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 to January the 2nd, the day this incident took place, what
2 do you recall about the events? And let's start with just
3 that morning. What did y'all do that day?

4 A Well, Brent had took the day off from work. And he
5 was wanting to try to get as much done on taking the bus
6 apart. And we worked all, well, from, I say from, 9:30,
7 because he got there about 9:00. We worked from 9:30 until
8 about 3:00 scraping and taking stuff apart and separating
9 it and loading it up on, on our dump truck.

10 And at 3:00 o'clock he told me, he said, "Daddy,"
11 said, "I've got to get to Mintz and everything so we'll
12 have time to unload it."

13 And like I say, that's, that day everything just
14 seemed to fall in place. We worked good. Everybody was,
15 seemed to be happy and everything, and because my youngest
16 son and his wife was coming back for about a week from
17 Mandan, North Dakota, and we was, I was looking forward to
18 it, to have my whole family together, because we was all
19 supposed to go out to supper that night with my son's,
20 Charlie's, in-laws.

21 And Brent and Erika and the girls was going to go out
22 with us that night. And so we, you know, hadn't been
23 together. My family hadn't been together in six months.

24 And so I called Brent up on the phone and told him, I
25 said, "Son," I says, "Charlie's home." I says, "He's over

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 at the airport." And I says, "You just come on home." And
2 I said, "You get, go and get, dressed and get cleaned up
3 and get the girls cleaned up and get Erika. We're all
4 going down to Fatz for supper."

5 And so by the time he got back my youngest son,
6 Charlie, was there, him and his wife. And Charlie asked
7 Brent if he could ride his motorcycle to supper that night.
8 And Brent said yes. You know, they sat out there and
9 talked for about ten minutes. This was around 4:30,
10 somewheres, to 5:00, something like that.

11 And so Brent told me. He said, "Daddy," he says, "I
12 haven't been able to get ahold of Erika yet," says, "I
13 don't know if we're going to be able to come and eat supper
14 with you." I says, "Son," I says, I says, "We'll get us,
15 save an extra table." I said, "We'll just wait on you." I
16 said, "Just call me up."

17 And so he left and went home. And that was the last I
18 seen of him that day.

19 Q Okay. Did anything happen that afternoon or in the
20 early evening at your house that involved Erika?

21 A Yes, sir; yes, sir.

22 We had just got home probably about 30 minutes to an
23 hour earlier before she got there. I done took my shoes
24 off and got in my chair and was watching television. And
25 where, where the television is, I have a window and steps.

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 And I seen Erika come up the steps, so I told my wife. I
2 says, "Honey," I says, "Erika's here, go make sure the back
3 door is unlocked," because usually when we come in for the
4 night we unlocked the door unless we know one of the boys
5 was going to be out late or something. We'd leave it
6 unlocked.

7 So Brenda. She had went to the, went to the, to the
8 back porch or back deck and was talking to Erika. I had
9 got my shoes on and got out there. And about the time I
10 got out there Erika said --

11 MR. GOWDY: Objection, Your Honor.

12 THE COURT: Let me see y'all just a minute.

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 Q Mr. Horton, going back to you hearing Erika was at the
16 back of the porch and talking. Now, I want to make sure.
17 There's rules that we have to go within courts. Okay? So
18 hearsay is one of them. You can't go into a lot of things
19 that people may have said that you heard. Okay? So I'm
20 going to lead you through some things here.

21 Did -- when you talked to Erika did you hear what Erika
22 had ever said to your wife, Brenda?

23 A Oh, that night?

24 Q I don't want you to say what it is. That's what I'm
25 saying. Did you hear their conversation?

Larry Horton, Sr.
Direct examination by Mr. Vieth

- 1 A Yes, sir; yes, sir.
- 2 Q Okay. And stay within my questions.
- 3 Did that conversation have anything to do with her
- 4 having left the, what I would call the, marital home?
- 5 A Yes, sir.
- 6 Q Okay. And did that conversation indicate that she had
- 7 been told to leave the marital home?
- 8 A Yes, sir.
- 9 Q Okay. And did she indicate what she thought might
- 10 should happen to the children at that time? Was there any
- 11 indication about the children when she made that
- 12 conversation?
- 13 A Yes, sir; yes, sir. She told me and my wife. We were
- 14 standing out on the porch. And she says, "I want y'all to
- 15 go get the girls because I --"
- 16 Q I want to go into something else. That's what she
- 17 told you.
- 18 Okay. All right. Did you and/or your wife either one
- 19 invite her to stay with you that evening?
- 20 A My wife did.
- 21 Q Okay. And did she accept that invitation?
- 22 A No, sir.
- 23 Q Okay. At the time you saw her did she appear to have
- 24 been hit or beaten or anything physically wrong with her?
- 25 A No, sir.

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 Q Okay. And this was about an hour or so after you
2 returned from eating at Fatz?

3 A Yes, sir.

4 Q All right. So after that conversation, whether it
5 included more or not, we're limiting ourselves to this,
6 okay, what you and I talked about.

7 As a result of that conversation did she stay or did
8 she leave?

9 A She left.

10 Q Okay. And then right after that conversation what
11 happened next related to you or your wife? What did y'all
12 do as a result of that conversation?

13 A Oh, after she left?

14 Q Yes, sir.

15 A We went back in the house and --

16 Q Did -- where was your other son at this time?

17 A Him and his wife had went upstairs in his old room to
18 go to bed early that night. And he came down and asked
19 what was going on.

20 Q Okay. Let me stop you again. Was there any phone
21 calls made from your house to Brent's cell phone after that
22 meeting with Erika, either before or after?

23 A Well, I had called Brent up. Brent had called us and
24 wanted, wanted to bring the girls by the house the next
25 morning as he went to work, and because he had to be at

Larry Horton, Sr.
Direct examination by Mr. Vieth

1 work at, I believe, 6:00 o'clock that morning.

2 So the wife told him, says, why don't we just come up
3 there and get the girls tonight to where they don't have to
4 get up so early in the morning and they can, you know, not
5 disturb them.

6 Q All right. And who went to get the girls?

7 A My son, Charlie, and my wife.

8 Q Okay. And did they bring the girls back to the house
9 that night?

10 A Yes, sir.

11 Q Okay. And was that the last time you heard from
12 Erika? Is that the last conversation you had when she came
13 there?

14 A Yes, sir; yes, sir.

15 Q And was that the last conversation you had with your
16 son, Brent?

17 A No, sir. I called Brent up and asked him, because
18 with Erika, she seemed awful upset that night. And I asked
19 him what was the problem.

20 Q You can't go into what he may have said, now. Okay.
21 But you asked him that question.

22 A Yes, sir.

23 Q And did he give you a response, without saying what it
24 is?

25 A He said everything's fine.

Larry Horton, Sr.
Cross-examination by Mr. Gowdy

1 Q Okay. All right. And was that the last conversation
2 you had?

3 A Yes, sir; yes, sir.

4 Q Okay. All right, all right, sir. I'm going to let
5 you answer any questions the solicitor may have of you.

6 Okay. Thank you.

7 A Thank you, sir.

8 CROSS-EXAMINATION

9 BY MR. GOWDY

10 Q Mr. Horton, this is a picture of your late
11 daughter-in-law, correct?

12 A Yes, sir.

13 Q With your two grandchildren?

14 A Yes, sir.

15 MR. GOWDY: Do you object?

16 MR. VIETH: No, I do not.

17 Q She was 14 years old when she moved into your house?

18 A Yes, sir.

19 Q And your son would have been what, 24?

20 A Yes, sir.

21 Q When you were working with your son on January the
22 2nd of 2007, he wasn't having any trouble remembering
23 anything, was he?

24 A No, sir.

25 Q No amnesia.

Larry Horton, Sr.
Cross-examination by Mr. Gowdy

1 A No, sir.

2 Q Wasn't having trouble remembering details.

3 A No, sir.

4 Q He was fine, right?

5 A Right, sir.

6 Q Are you sure Erika didn't have any injuries when she
7 came by your house?

8 A She did not have a hair out of place on her head, sir.
9 I'm telling the truth.

10 Q But she told you she had been kicked out.

11 A She told me she was asked to leave the house, her
12 house, their house, at granny's.

13 Q And she would have had to have been asked to leave by
14 your son, right, because those were the only two people
15 there?

16 A As far as I know, he was the only one up there with
17 the girls.

18 Q And these two little girls were at your house when
19 your former daughter-in-law was killed, right?

20 A Yes, sir.

21 MR. GOWDY: Those are all the questions I have, Your
22 Honor.

23 MR. VIETH: That's all.

24 THE COURT: You may step down.

25 MR. VIETH: Your Honor, the next witness may be a

Brenda Horton
Direct examination by Mr. Vieth

1 little while. It's not going to be the defendant, but I
2 didn't know where you were on lunch. If you want me to go
3 ahead, I will.

4 THE COURT: Let me see y'all just a minute.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 MR. VIETH: Call Brenda Horton.

8
9 BRENDA HORTON, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. VIETH

12 Q Brenda, you're of course Brenda Horton, the mother of
13 Brent, is that correct?

14 A Yes, sir.

15 Q And excuse me. I'm going to put this up. You live
16 with your husband.

17 A Yes, sir.

18 Q And what has been your occupation throughout your
19 career?

20 A School teacher.

21 Q Where have you been a school teacher?

22 A In Spartanburg District Seven for 13 years, and
23 Spartanburg District One for 17, ten years part time at
24 Spartanburg Community College.

25 Q Okay. Are you retired or do you still teach?

Brenda Horton
Direct examination by Mr. Vieth

1 A Retired from public school, teach part time at
2 Spartanburg Community College, yes, sir.

3 Q Okay. And you've been in here. You've heard your
4 husband testify --

5 A Yes, sir.

6 Q -- about your family dynamics and so forth.

7 A Yes, sir.

8 Q Is that correct, what he says?

9 A Yes, sir.

10 Q Okay. Brenda, I want to direct your attention back to
11 January the 2nd and deal with the issues of that day as
12 best we can. And I know some of it may require
13 duplication.

14 I think the easiest thing instead of just going
15 question and answer is for you to tell us in your mind what
16 happened throughout the meat of the day, not when we get
17 into you meeting Erika or anything like that.

18 A Right.

19 Q Just what happened that day.

20 A Well, Brent came to the house and worked that day with
21 his dad. They were mostly outside. They came in and ate
22 lunch, went back outside and worked.

23 We were excited because our younger son was coming
24 back because he had been gone for six months living and
25 working in North Dakota. He was coming in for two weeks,

Brenda Horton
Direct examination by Mr. Vieth .

1 to work here for two weeks with a plant. And we were, of
2 course, excited that he was coming in and we were going to
3 have everybody together.

4 Q. Okay. And Erika and Brent had gotten back together as
5 far as you were concerned?

6 A Yes, sir. They were. They were working. They were
7 working on it as far as I was concerned, yes, sir.

8 Q They had asked permission to stay at a house that was
9 in your family, is that correct?

10 A Yes, sir.

11 Q And prior to them going back, prior to them going to
12 that residence, he was staying with you.

13 A Yes, sir.

14 Q With the children.

15 A With the children, yes, sir.

16 Q And that had been for over a year?

17 A Yes, sir.

18 Q And the last period of time before she came back with
19 him, she was in Beaufort, South Carolina?

20 A Yes, sir.

21 Q Okay. Did he have occasions that he would go to
22 Beaufort?

23 A Yes, sir. He would take the girls and go to Beaufort
24 on the weekends, or he would take the girls to meet. They
25 would meet half way. And the girls would go on to Beaufort

Brenda Horton
Direct examination by Mr. Vieth

1 with Erika. And then she would bring them back half way.
2 And they would meet in Columbia and exchange the children
3 after a weekend. But most of the time he carried them to
4 Beaufort so they could see their mother.

5 Q All right. And this was without any kind of court
6 orders requiring that.

7 A Yes.

8 Q They just worked it out themselves.

9 A Right. So this was with no court order. This was
10 Brent wanting them to be able to see their mother.

11 Q Okay. Did he, in fact, take a leave of absence in
12 November of '06 for 30 days or so to be going to Beaufort
13 to help with her?

14 A Yes, sir; yes, sir.

15 Q So then when they came back -- well, let me rephrase
16 it.

17 Were you surprised when they got back together? Did it
18 surprise you at all, or were you glad about it, or what was
19 your feelings about it?

20 A I guess I was more surprised than anything. We, I
21 guess we, thought that the divorce -- there were papers
22 that just never got signed. But due to Erika's health,
23 Brent felt he needed to take care of her.

24 Q Okay. So they came back.

25 A They came back.

Brenda Horton
Direct examination by Mr. Vieth

- 1 Q All right. Now, going back to January the 2nd. They
2 went through. Brent was with you for most of the day.
3 Apparently y'all were getting ready to try to go out to
4 supper as a group, and he couldn't ever hook up with her
5 sufficiently to go eat or something to that effect, isn't
6 that right?
- 7 A Right.
- 8 Q When did you see Erika that night for the first time?
- 9 A For the first time it would have been somewhere
10 8:00 o'clock, 8:15.
- 11 Q Would this be before or after you went to eat?
- 12 A This was after we had gone to supper. We went on to
13 supper fairly early at 5:30. We were back home probably
14 6:30 or a quarter till 7:00.
- 15 Q Okay. Brent didn't go to supper with you.
- 16 A No, sir. He did not.
- 17 Q Okay. So when he left, y'all went to supper.
- 18 A Yes, sir.
- 19 Q Okay. And then you see Erika. And what happens then
20 as far as seeing her? What, what? Where did you see her?
- 21 A She was on our back porch.
- 22 Q And were you here when I went through a line of
23 questions with your husband --
- 24 A Yes.
- 25 Q -- about the conversation?

Brenda Horton
Direct examination by Mr. Vieth

1 A Yes, sir.

2 Q And staying in that vein of questions and not going
3 outside of those questions, what did she tell you? What
4 was that conversation about?

5 A She just told me that she had been asked to leave the
6 house. She asked us to take care of the children, the two
7 girls.

8 Q Okay.

9 A She said she needed to take care of them.

10 Q All right. Did you extend an invitation to her to
11 stay?

12 A I did. We asked her. We asked her if she would come
13 and stay. We had plenty of room in our house. We asked
14 her to come in and stay with us and see if we could do
15 something in the morning, because this was, like I said,
16 between 8:00 and 8:30. It was kind of late for her to be
17 out going to try to find some place else to be.

18 Q And what was the response to the invitation?

19 A She said no, she was going to stay with a friend in
20 Greenville.

21 Q Okay. All right. Prior to that meeting with Erika or
22 just after -- you tell us which it was -- did you contact
23 Brent, or Brent contact you about the children?

24 A Brent had called me about, I thought about, 7:30 and
25 simply said, "Mama, can I bring the children over in the

Brenda Horton
Direct examination by Mr. Vieth

1 morning? They need a place to stay. I have to be at work
2 at 6:00 o'clock. I'll be at your house about 5:00 so I can
3 get them there and get on to work."

4 And I said of course, because the children had been,
5 even though Brent and Erika were back together, and Erika
6 was here, the girls would stay two or three days with Erika
7 at the house on Underwood Road. And then they'd come and
8 stay a couple of days with us. And that was how December
9 had kind of gone.

10 Q All right. So that call was before Erika comes to the
11 house.

12 A Yes, that's before Erika came.

13 Q Did that call give you any cause for concern, that
14 call from Brent to you?

15 A No, sir. I had just assumed Erika had -- they had had
16 supper with us the evening before, and something had been
17 said about a job. So I just assumed something had worked
18 out and she was going to be either going to do some
19 applying for a job or something had worked out about a job.
20 And I really didn't think anything about Brent calling and
21 asking to bring the girls, because the girls had been at
22 our house for the most part of the year before.

23 Q Okay. So she was not working at that moment in time.

24 A Right. She was not working during December.

25 Q All right. And then after that call is when Erika

Brenda Horton
Direct examination by Mr. Vieth

1 comes by.

2 A Erika comes by.

3 Q Did you see anything about her that caused you any
4 concerns about beating or whipping or being hit or struck?

5 A No, sir, I did not.

6 Q How was her demeanor?

7 A It was sided, I guess, would be a good way to describe
8 it. She simply said that she had been asked to leave. She
9 wanted us to get the children.

10 Q Okay.

11 A And she left.

12 Q Okay. And as a result of any of those conversations,
13 why did you decide to get the children that night, or what
14 happened?

15 A Well, my husband and my, our younger son at home
16 talked about it, and we said, well, it's going to be better
17 to go get the children tonight. That was a fair -- it
18 wasn't -- at that point in time at 8:00 o'clock it wasn't
19 so cold. And we said, well, it will be better to bring the
20 children out at 8:30 tonight than it will be for their
21 daddy to have to get them out at 5:00 o'clock in the
22 morning and it be really cold and put them in the car or
23 the truck and bring them over to the house and then get
24 them out again and get them in at our house and things.

25 So we -- I called Brent and said can we just come and

Brenda Horton
Direct examination by Mr. Vieth

1 pick the girls up tonight. And he agreed.

2 Q Okay. All right. And so you and who went to get the
3 children?

4 A My other son, Charlie; our younger son, Charles.

5 Q Okay. And tell us what happened on the way there and
6 the way back.

7 A We rode to Campobello, the house on Underwood Road.
8 We got there. We went in. We were getting the girls'
9 clothes and shoes and things together. And Erika drives
10 into the driveway. And our son said we just needed to take
11 the girls and --

12 MS. CRICK: Your Honor, I'm going to object to
13 hearsay.

14 THE COURT: Sustained.

15 Q Okay. Don't go into what your son said. He can
16 testify later.

17 A Oh, okay. Anyway, we just picked the girls up and
18 took them to our house, got in the car and left. Charlie
19 and I and the girls did.

20 Q Did you see her? Did you see her physically?

21 A I saw her car.

22 Q Okay. Is that the car she was in when she came to
23 your house?

24 A Yes, sir. The little black car. I assumed it was
25 Erika driving it. It was, like I said, it appeared to be

Brenda Horton
Direct examination by Mr. Vieth

1 her car.

2 Q Okay. All right. Did she ever come in the house?

3 A No, sir.

4 Q Okay. So tell us what happened next.

5 A Okay. We left and went out Underwood Road and down
6 Highway 11 to 176 through Campobello.

7 When we got to -- there's a blinker light in
8 Campobello where Highway 357 crosses 176. And as we went
9 past under that blinker light, we had the right of way on
10 176.

11 Erika was pulling out of Highway 357. She got behind
12 us and followed us on down through the edge of town of
13 Campobello. We went on straight down 176. She went. She
14 took a left and went down the road that's called Old Mill
15 Road.

16 Q All right. And then you went ahead and went on home.

17 A We went on home with the girls, yes, sir.

18 Q So you saw her twice more that night from when your
19 husband saw her. You saw her at the house.

20 A Well, yes. We saw her when she was at the driveway
21 and then when she pulled out and followed us down the road,
22 yes, sir.

23 Q Okay. What else happened that evening? When did you
24 learn about this, or what took place?

25 A Well, our younger son, Charlie, had called Brent a

Brenda Horton
Direct examination by Mr. Vieth

1 couple of times to make sure things were okay. It was just
2 sort of like things didn't feel right. And I'm sure that's
3 probably not something I should say. But things just
4 didn't feel right at our house that night.

5 And Charlie had called Brent a time or two and had
6 spoken to him maybe once. But it must have been about
7 11:00 o'clock. Our phone, well, our phone rang.

8 A friend called and said who lives in granny's house.
9 Everybody in Campobello knows that the house at 570
10 Underwood Road was my mother's. And everybody around there
11 called my mother granny. So everybody just knew that was
12 granny's house. And they called and said who lives in
13 granny's house. And my husband told them, and they hung
14 up. And then later that friend -- some folks came by and
15 told us what had happened.

16 Q Okay. Were you contacted at all by law enforcement
17 about any knowledge you may have about this case?

18 A Yes, sir. On, 1:30 or 2:00 o'clock, sometime later.

19 Q In the morning?

20 A Early, on earlier in the morning, some police officers
21 came to the house.

22 Q Okay. And they interviewed you.

23 A Yes, sir.

24 Q Okay. What was your -- what? Had you learned about
25 what had happened at this time?

Brenda Horton
Direct examination by Mr. Vieth

1 A Well, at that point I knew that my daughter-in-law was
2 dead and that my son had been brought to the sheriff's
3 department.

4 Q Okay. And I assume they asked if you had any
5 information or knowledge about this case.

6 A Yes, sir. They just asked about a statement.

7 Q Okay. And you gave a statement to them, I believe,
8 Brenda, January the 3rd at 2:30 a.m.

9 A Yes, sir.

10 Q If that's what the statement says, would that be
11 right? And that statement indicates a lot less than what
12 you're telling us today, doesn't it?

13 A Yes, sir, it does.

14 Q It doesn't indicate about her following you back,
15 doesn't indicate anything about you seeing her at the
16 house, not in the house.

17 A Right, outside.

18 Q But outside. It doesn't deal with those issues, is
19 that right?

20 A That's right.

21 Q And obviously the question of why this is coming forth
22 after this statement was given at 2:30 in the morning can
23 be a concern. So I'm asking you how it came to be.

24 A I guess at 2:30 in the morning I was, I thought I was,
25 writing down what had happened. They asked me what

Brenda Horton
Direct examination by Mr. Vieth

1 dealings we had had with Brent that day. And I wrote those
2 things down. And that was the statement that I signed.
3 And on that statement it said Erika was not at the house.
4 She was not inside of the house with Brent and the
5 children.

6 Q Okay. And it doesn't indicate anything about her
7 following you back to the house or anything of that nature,
8 does it?

9 A No, sir.

10 Q All right. Did you at some point the next day realize
11 about the statement you had given and what things you might
12 can shed that you didn't?

13 A Yes, sir. We -- the next morning we -- the family got
14 together. We looked at the statement. We realized that it
15 had nothing about Erika coming by the house.

16 We had several things to do that morning, one of which
17 was to go tell Brent's other children what had happened.
18 We made a trip to Rock Hill.

19 Q Who is in Rock Hill?

20 A Chase and Nicholas, Brent's older children by a former
21 marriage. But we did not want them to hear it on the news.
22 We wanted to tell them.

23 But, again, Charlie and I went to Rock Hill. When we
24 got back from Rock Hill we went to the sheriff's
25 department. We asked for the officers whose names were on

Brenda Horton
Direct examination by Mr. Vieth

1 the report. We were told they were not in, that it would
2 probably be a couple of hours before they got there. And I
3 was going to, if they would allow me to, I was going to
4 amend my statement. And, like I said, they were not there.

5 We had some other issues, including now that we were
6 the custodians of these two minor children, that we needed
7 to be able to, were they sick, we needed to have some
8 custody papers so that we could take them to the doctor and
9 care for them, as we needed to be able to care for them.

10 So we went to see an attorney who had been working
11 with Brent otherwise to get her -- to see what we could do
12 to get the children into our custody so that we could do
13 things for them and be able to take care of them and
14 whatever else had to be done for them.

15 Q All right. So the statement was never supplemented,
16 never --

17 A Right. The statement was never amended.

18 Q Did you consult with an attorney about, about that
19 issue?

20 A Yes, sir, we did. The custody attorney asked us if we
21 had a defense attorney. And at that point we did not. And
22 she gave us some names. She, in fact, called one attorney.
23 Can I say the name or not?

24 Q Sure.

25 A Okay. Andy Johnston. She gave us his name. She

Brenda Horton
Direct examination by Mr. Vieth

1 called him for us. And he was able to see us that day for
2 a few minutes. And he told us that -- we told him that we
3 were trying to amend the statement and fix my mistake on
4 the evening before. And he said --

5 MS. CRICK: I'm going to object, Your Honor.

6 THE COURT: Sustained.

7 Q As a result of that conversation were you less
8 concerned about going to get it fixed?

9 A Yes, sir, I was.

10 Q All right. Let me. At the sheriff's department, was
11 that where Brent was housed, was he in the custody of?

12 A No, sir.

13 Q That would be --

14 A We were not at the detention center. We were out at
15 the sheriff's department on Howard Street. I guess that's
16 still Howard Street.

17 Q Okay. So there is a difference between the sheriff's
18 department and the jail.

19 A Yes, sir.

20 Q And when your son was at the jail, you went to the
21 sheriff's department.

22 A Yes, sir. We went to the sheriff's department because
23 that's where we assumed the detectives would be that we
24 needed to talk to.

25 Q Okay. Did you see anyone in law enforcement that you

Brenda Horton
Cross-examination by Ms. Crick

1 knew when you went to the sheriff's department?

2 A Yes, sir, we did. It was a young man that had lived
3 up the street that we had known. He had been one of my
4 students at school. We had known them since they were
5 little cub scouts.

6 Q Who was that?

7 A That was Jeremy Ritz.

8 Q Jeremy Ritz?

9 A Yes, sir.

10 Q Answer any questions the solicitor may have.

11 CROSS-EXAMINATION

12 BY MR. CRICK

13 Q Ms. Horton, the defendant is your son, right?

14 A Yes, ma'am.

15 Q And the law enforcement came to your home right after
16 this happened and asked you to tell them what you knew
17 about this incident, isn't that right?

18 A Well, they asked me to tell them what had happened
19 that day, what we had seen, how we had seen Brent that day,
20 yes, ma'am.

21 Q And you, in fact, did give a very detailed statement
22 to law enforcement, did you not?

23 A Well, I wrote, I wrote that page statement.

24 Q You remembered that he came over to your house that
25 day, didn't you?

Brenda Horton
Cross-examination by Ms. Crick

- 1 A Yes, ma'am.
- 2 Q You remembered specifically what he was doing that
- 3 day, which is scraping an old bus.
- 4 A Uh-huh.
- 5 Q You just remembered that he came in and got some
- 6 lunch.
- 7 A Yeah.
- 8 Q You remembered specifically what time he left, about
- 9 5:30, isn't that correct?
- 10 A Yes, ma'am.
- 11 Q And that's pretty specific, wouldn't you say?
- 12 A Yes, ma'am.
- 13 Q You remembered specifically what time he called you
- 14 later that evening at 8:00 p.m., isn't that correct?
- 15 A Well, those times have come from the fact that we have
- 16 talked about phone records.
- 17 Q I guess what I'm asking you, ma'am, when you gave your
- 18 statement you specifically told law enforcement that he
- 19 called you about 8:00 p.m. and said he needed to bring the
- 20 children when he went to work the next morning.
- 21 A Okay. I did not remember that I put a time in that
- 22 statement.
- 23 Q But, in fact, this is your statement, is that correct?
- 24 A If that's -- yes, ma'am.
- 25 MR. VIETH: Your Honor, let's make sure we clarify.

Brenda Horton
Cross-examination by Ms. Crick

1 There's a written statement and then there's an oral
2 recitation. I think they're confused. She's thinking of
3 about a 6-line or 7-line written statement.

4 I think you're talking about an oral statement, aren't
5 you?

6 MS. CRICK: No, sir. I'm referring to a written
7 statement.

8 MR. VIETH: Then go ahead. I'm sorry.

9 THE COURT: Continue.

10 Q You told law enforcement that he called you around
11 8:00 p.m., isn't that correct?

12 A Yes, ma'am.

13 Q Go ahead.

14 A I just said if that's what's written there, yes,
15 ma'am, it is..

16 Q And, in fact, when we were talking about phone
17 records, they do show an 8:03 p.m. call between you and
18 your son. So you were right about that 8:00 p.m. call,
19 correct?

20 And then you specifically remembered what he told you,
21 which is that he would need to bring the children when he
22 went to work at 6:00 a.m. That's what he specifically told
23 you.

24 A Yes, ma'am.

25 Q And that's what you wrote in your statement.

Brenda Horton
Cross-examination by Ms. Crick

- 1 A Yes, ma'am.
- 2 Q And then you remembered that you called him back to
3 say we'll pick the girls up tonight so they don't have to
4 be out early in the morning. And that's specifically what
5 you remembered at that time.
- 6 A Yes, ma'am.
- 7 Q You remembered that you and your son, Charles, went
8 and picked the girls up.
- 9 A Yes, ma'am.
- 10 Q You remembered that Brent seemed fine when you got the
11 girls.
- 12 A Yes, ma'am.
- 13 Q And, Ms. Horton, I'm going to show you, and I'll show
14 this to Mr. Vieth first.
- 15 MR. VIETH: No objection to that, Your Honor.
- 16 MS. CRICK: Your Honor, may I approach the witness?
- 17 THE COURT: Yes, ma'am.
- 18 Q Ms. Horton, if you can, take a look at this and tell
19 me if you recognize what that is.
- 20 A Yes, ma'am. That's the statement I wrote.
- 21 Q And you wrote this statement yourself.
- 22 A Yes, ma'am.
- 23 Q Can you tell us what the last line of that statement
24 says?
- 25 A It says, "Erika was not at the house when we picked

Brenda Horton
Cross-examination by Ms. Crick

1 the girls up." And I said a minute ago she was not inside
2 the house.

3 Q Well, hang on, now. Does that say Erika was not
4 inside the house when we went to pick the girls up?

5 A No, ma'am, it doesn't.

6 Q It says Erika was not at the house when we went to
7 pick the girls up, does it not?

8 A Yes, ma'am. And when we first got there to pick the
9 girls up she was not there.

10 Q Ma'am, after you wrote this statement, you signed that
11 statement, did you not?

12 A I did.

13 Q The officers gave you a chance to read the statement
14 and look over the statement, did they not?

15 A Yes, ma'am, at 2:30 in the morning.

16 Q Well, they gave you an opportunity to review it and
17 correct it, did they not?

18 A Yes, ma'am.

19 Q And you signed that statement that said Erika was not
20 at the house when we went to pick up the girls.

21 A Yes, ma'am.

22 Q It wasn't until you reviewed the statement with your
23 other family members that you decided you needed to add
24 something to it, is that correct?

25 A We discussed, yes, ma'am. We, we read back over it

Brenda Horton
Cross-examination by Ms. Crick

1 the next morning and realized that nothing had been
2 mentioned about Erika coming by the house. And we were
3 going to go on in.

4 Q And you remembered every other single thing about that
5 night except the fact that Erika came by the house. This
6 is -- ma'am, you agree or disagree with me? This is
7 probably one of the more memorable nights of your life
8 where your son has been accused of killing your
9 daughter-in-law. And you did not remember to put in the
10 statement -- everything else, but not that she came by your
11 house and followed you in your car that evening. Is that
12 what you're telling this jury?

13 A I did not put it in that statement, yes, ma'am.

14 MS. CRICK: Nothing further, Your Honor.

15 MR. VIETH: I have nothing further, Your Honor.

16 THE COURT: You may step down.

17 Ladies and gentlemen, we're going to break for lunch.

18 Remember my caution previously given you. No
19 discussions about the case. Allow no one to discuss it
20 with you. No research or investigation. No exposure to
21 any type of media coverage.

22 Do have a good lunch. Please report to your jury room
23 at 2:30 this afternoon, 2:30 this afternoon.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: Mr. Vieth, based upon my previous ruling
2 from in the case, do you have any additional testimony you
3 need to proffer from either Mr. Horton, Sr. or Mrs. Horton?
4 MR. VIETH: No, sir.
5 THE COURT: Okay. Any other matters we need to
6 address before we quit for lunch?
7 Court is in recess until 2:30.
8 (Whereupon, a recess was taken.)
9 THE COURT: All right, sir. Any matters we need to
10 address with Horton before the jury is brought back in?
11 MR. VIETH: Your Honor, I know you kept the jury out.
12 You may not want to do it any longer. I will leave it to
13 your discretion.
14 I do have Pastor Wyatt Brown here to take some
15 testimony outside the presence of the jury. I can do it
16 now or at your convenience.
17 THE COURT: Well, who is the other witnesses?
18 MR. VIETH: The other witnesses will be Brent Horton
19 and --
20 THE COURT: Well, is he going to be up next?
21 MR. VIETH: Was going to -- the pastor. I met --
22 THE COURT: Well, I'm going to wait on him.
23 MR. VIETH: Okay. Yeah. I'll put Mr. Horton up next.
24 THE COURT: Okay. Have you discussed with him his
25 right to testify or not testify?

1 MR. VIETH: He understands his right to testify or not
2 testify, Your Honor.

3 Stand up, Mr. Horton.

4 THE COURT: Ms. Mann, let me ask you if you'll move
5 around that corner, please, so I can see Mr. Horton.

6 UNIDENTIFIED PERSON: I'm sorry, sir.

7 THE COURT: Mr. Horton, your lawyer has indicated that
8 he has discussed with you your right to testify or not
9 testify during the trial of this case. Is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand you have a right to
12 testify or not?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that only you can make
15 the decision?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: When you're charged with a crime you have
18 an absolute right to remain silent. Nobody can make you
19 take the witness stand. At the same time, if you want to
20 take the witness stand, now is the only chance you'll have
21 to do so.

22 Do you understand that if you choose to take the
23 witness stand you'll have to answer not only your lawyer's
24 questions but you'll have to answer the prosecutor's
25 questions even if those responses might tend to prove you

1 guilty of the crime they've alleged against you?
2 THE DEFENDANT: Yes, sir.
3 THE COURT: If you elect not to testify I will
4 instruct the jury they can't hold that against you. They
5 can't consider it in any way in their deliberations or in
6 their determination as to whether or not your guilt has
7 been proven beyond a reasonable doubt.
8 Now, have you had sufficient opportunity to discuss
9 with your lawyer the advantages and disadvantages of
10 testifying, as well as not testifying?
11 THE DEFENDANT: Yes, sir.
12 THE COURT: And do you appreciate what those
13 advantages and disadvantages are?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: And have you had time to reflect upon your
16 decision as to whether or not you'll testify?
17 THE DEFENDANT: Yes, sir.
18 THE COURT: Have you made a decision?
19 THE DEFENDANT: Yes, sir.
20 THE COURT: What is that decision?
21 THE DEFENDANT: I'll testify.
22 THE COURT: And is that a decision that you made of
23 your own free will and accord?
24 THE DEFENDANT: Yes, sir.
25 THE COURT: Did anybody force you into it?

1 THE DEFENDANT: No, sir.
2 THE COURT: Has anybody suggested that's the decision
3 that you need to make?
4 THE DEFENDANT: No, sir.
5 THE COURT: You made that on your own?
6 THE DEFENDANT: Yes, sir.
7 THE COURT: You're satisfied with it?
8 THE DEFENDANT: Yes, sir.
9 THE COURT: Okay. Thank you. Be seated.
10 All right. Are we ready for the jury?
11 MR. VIETH: Yes, sir.
12 THE COURT: All right. Bring them in.
13 (The following takes place in the presence of the
14 jury.)
15 THE COURT: Good afternoon, ladies and gentlemen.
16 I apologize for the delay. I had some other matters
17 that had been scheduled. They took longer than I had
18 anticipated they would take. They don't relate to this
19 case in any way. Nevertheless, they had to be
20 accomplished. So that's why you've been waiting. And we
21 appreciate your patience.
22 As you know, when we recessed for lunch the defense
23 had begun with their presentation of evidence. So we will
24 continue with that presentation at this time.
25 Mr. Vieth.

Larry Brent Horton
Direct examination by Mr. Vieth

1 MR. VIETH: May it please the Court. We would call
2 Larry Brent Horton.

3 LARRY BRENT HORTON, having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. VIETH

6 Q Mr. Horton, state your name, please, sir.

7 A Larry Brent Horton.

8 Q You're the person charged in an indictment with
9 murder, is that correct?

10 A Yes, sir.

11 Q How old are you?

12 A Thirty-seven.

13 Q Thirty-seven years old.

14 A Yes, sir.

15 Q When were you born?

16 A September the 4th, 1970.

17 Q Okay. Are you from the Spartanburg area all of your
18 life?

19 A Yes, sir.

20 Q And give us a little bit of your educational
21 background. Where did you go to school?

22 A I went to Chapman High School. I went to U. S. C. for
23 a couple of years. I came back to U. S. C. S. I went to
24 Spartanburg Tech for a couple of years.

25 Q All right. And what about your job situation? Tell

Larry Brent Horton
Direct examination by Mr. Vieth

1 us about your jobs over the years.

2 A Me and daddy worked together carpentering. My last
3 job was at Boiler Tube. I've been there seven years.

4 Q You were at Boiler Tube in Spartanburg County?

5 A Yes, sir. It's in Lyman.

6 Q And what did you do with them?

7 A I was a vendor. I helped fabricate plate and boiler
8 parts. I drove a truck some for them. I did about
9 whatever they asked me to do.

10 Q All right. And did you get paid by the hour?

11 A Yes, sir.

12 Q And what was your last hourly wage?

13 A It was 23 and some change.

14 Q And you last were able to work, I guess, prior to
15 January 2, 2007.

16 A Yes, sir.

17 Q Okay. And since that date you've been pending this
18 trial, is that right?

19 A Yes, sir.

20 Q Prior to your marriage to Erika, have you been married
21 previously?

22 A Yes, sir.

23 Q And when was that marriage?

24 A We got married in 1989, me and Rena. We had two sons,
25 Chase and Nicholas. And in '95 we separated and got

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 divorced.
- 2 Q In '95?
- 3 A Yes, sir.
- 4 Q Okay. And so you have two, two young, two boys from
5 that marriage and two daughters from this marriage with
6 Erika, the marriage you had with Erika.
- 7 A Yes, sir.
- 8 Q And the boys lived with their mother?
- 9 A Yes, sir.
- 10 Q And that's in Rock Hill?
- 11 A Yes, sir.
- 12 Q And you had a relationship with them?
- 13 A Yes, sir.
- 14 Q A good parent-child relationship, I guess, of course
15 until this incident.
- 16 A Yes, sir. I had them every other weekend and every
17 other week during the summer. I did see them whenever I
18 wanted to. Prior to this incident my child support was
19 ahead. I mean, I have taken care of my children.
- 20 Q Okay. How old are they now?
- 21 A They're 17 and 15.
- 22 Q Okay. When did you meet Erika?
- 23 A We met on-line and we talked a while. And I went down
24 to meet her and --
- 25 Q Where, when you say on-line, are you talking about

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 some internet type communication?
- 2 A Yes, sir.
- 3 Q Is that kind of a dating service of some sort, or how
4 did you meet?
- 5 A We -- I guess the same chat room. And she I. M.'d me
6 one time and we started talking from there.
- 7 Q Okay. And you said you went down and met her. Where
8 is down?
- 9 A To Charleston.
- 10 Q Charleston. That's where she was when you met her?
- 11 A Yes, sir.
- 12 Q And how old was she when you met her?
- 13 A Sixteen.
- 14 Q And how old would you have been at that time?
- 15 A Twenty-five.
- 16 Q Okay. And as a result of that meeting did y'all have
17 a relationship?
- 18 A Yes, sir. She moved up with me a few months later.
19 Her mom moved up about ten days after that.
- 20 Q Okay. She and her mom lived together in Charleston at
21 that time?
- 22 A Yes, sir.
- 23 Q All right. So tell us. Well, let me just ask this.
24 How long did you stay together in Spartanburg County before
25 getting married?

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 A About four years.
- 2 Q Okay. Were your children born actually during the
- 3 marriage or prior to the marriage or --
- 4 A They were born after the marriage.
- 5 Q After you got married.
- 6 A Yes, sir.
- 7 Q So once she moved up from Charleston to be with you,
- 8 you two were together from then on?
- 9 A Yes, sir.
- 10 Q Okay. And where did you reside mostly?
- 11 A We lived in Inman for a couple of years, and then we
- 12 bought a house in Wellford, and then we moved to a bigger
- 13 house and some acreage in Woodruff. Erika started a
- 14 business in Greenville.
- 15 Q What was the nature of that business?
- 16 A She was in a grooming business.
- 17 Q A grooming business?
- 18 A Yes, sir, grooming dogs.
- 19 Q Grooming dogs.
- 20 A Yes, sir.
- 21 Q Okay.
- 22 A And then we moved to an apartment just a mile or two
- 23 from the business.
- 24 Q Okay. Did anything happen with her health that caused
- 25 her to not be able to groom dogs?

Larry Brent Horton
Direct examination by Mr. Vieth

1 A She developed M. S. and she was shaking. She couldn't
2 groom.

3 Q And how about -- do you know about what year or so
4 that might have happened?

5 A I want to say the end of 2004 or early 2005.

6 Q Okay.

7 A She had been having headaches and went to the doctor.
8 And they accidentally caught it on M. R. I. And it was
9 progressive, so she started treatment for it.

10 Q All right. So that would have caused her not to be
11 able to groom the dogs because of her health condition.

12 A Yes, sir.

13 Q Okay. Where did she work after that?

14 A Toyota of Greer.

15 Q Okay. And Mr. Sellers who testified earlier today,
16 was he her employer at that time, do you know?

17 A He was -- there were several managers there. He was
18 the used car manger there. She sold new and used cars. So
19 I guess he was one of them.

20 Q All right. She started working there then in mid 2005
21 or so after, after she was no longer able to groom dogs.

22 A Yes, sir.

23 Q Okay. And all of this time you were at Boiler Tube.

24 A Yes, sir.

25 Q All right. Without going into any detail, Brent, was

Larry Brent Horton
Direct examination by Mr. Vieth

1 the marriage one that had some periods of separation in it?

2 A We had our rough spots, yes, sir.

3 Q Okay. Did you always resolve those spots, rough
4 spots?

5 A Yes, sir.

6 Q Did you get back together?

7 A Yes, sir. Usually they were just a day or two. The
8 longest before this was a month. And that was right before
9 Miranda was born or she got pregnant with Miranda.

10 Q So it would just be short-term separations.

11 A Yes, sir.

12 Q Okay. And during those times what would you do?
13 Would you go to your mom's house or would she go somewhere?

14 A Different things at different times. I had a friend
15 that had a house during the month separation. So I stayed
16 at the house he had. I guess I tried not to let my folks
17 know that I had another rocky marriage.

18 Q Okay.

19 A I mean, so I didn't go stay with them until the last
20 of December of 2005.

21 Q And the last separation was over a year in duration,
22 is that right?

23 A Well, we, we physically separated December the 15th.
24 And then she came back up here the end of November. So it
25 was close to a year, but not quite.

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 Q Okay. So December of '05 separation.
- 2 A Yes, sir.
- 3 Q All right. And were you separated? Tell us
- 4 logistically who went where.
- 5 A Me and the girls went to stay at my folks' house. She
- 6 stayed at the apartment that we had in Greenville.
- 7 Q Okay. And from that, where did she end up going?
- 8 A She stayed there. And then when her lease expired she
- 9 went to Beaufort to a Toyota down there.
- 10 Q All right. Did she go there if you know because of
- 11 job?
- 12 A To take a job?
- 13 Q Yes, sir.
- 14 A Yes, sir.
- 15 Q Okay. And did anyone else go with her?
- 16 A There were a couple of people from Toyota of Greer
- 17 that went. So she knew folks down there.
- 18 Q All right. And during this period of time did you and
- 19 she work together with regards to your children?
- 20 A Yes, sir.
- 21 Q And what did you do during that period of time?
- 22 A I would meet her with the kids. I would take them
- 23 there. She would come and see them sometimes.
- 24 I guess ultimately I was trying to work the marriage
- 25 out, I mean, I, so I would, whatever I thought I could do

Larry Brent Horton
Direct examination by Mr. Vieth

1 to make things better for the marriage, I would try to do.

2 Q All right. Going into November of 2006, were there,
3 was there an occasion where you decided to take an extended
4 leave of absence from work?

5 A Yes, sir.

6 Q And was that leave of absence from Boilerplate
7 granted?

8 A Yes, sir.

9 Q I was trying to find that.

10 A The whole time we were separated Erika and I had a
11 good, I mean, we weren't screaming and cussing at each
12 other every week. We had a good relationship. I mean, we
13 communicated.

14 Q Brent, I'm going to ask you if you can identify this
15 document.

16 A That's the paperwork I filled out for the leave of
17 absence.

18 MR. VIETH: Your Honor, at this time I would move into
19 evidence Defendant's Exhibit 1.

20 MR. GOWDY: I don't object.

21 THE COURT: It's admitted.

22 (Request marked Defendant's Exhibit No. 1.)

23 Q And, Brent, just in case -- of course the jury will
24 have it. But it is a document that requests a leave of
25 absence dated 11/16/06, is that correct?

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 A Yes, sir.
- 2 Q And did you take that leave of absence for your
3 marriage?
- 4 A Yes, sir. And Erika was having health issues.
- 5 MR. GOWDY: Objection. It begins to stray outside the
6 Court's previous rulings.
- 7 Q Well, you know the perimeters. So, I'm just talking
8 about health issues. That's all it does.
- 9 A That's --
- 10 Q Okay. I'm going to ask the question again.
- 11 A All right.
- 12 Q Did you take that leave of absence for health issues
13 of your wife?
- 14 A Yes, sir.
- 15 Q Okay. And in that period of time did you go back and
16 forth to Duke?
- 17 A Yes.
- 18 Q Okay. And during that timeframe how did -- did the
19 marriage get better or worse? During the timeframe of
20 November 16th until you came back.
- 21 A We discussed getting back together, and she told me
22 that I was the only one that loved her unconditionally and
23 that we would try to work it out.
- 24 Q And did you, in fact, love her?
- 25 A Yes, sir.

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 Q And was there any other reason you would be going to
2 Duke but for her?
- 3 A No, sir.
- 4 Q Okay. And so after this period of time, how often
5 would you go down to Duke during this 30 days?
- 6 A Initially, I stayed down there for, I think it was, it
7 was ten or 12 days. And then I went back. I carried the
8 girls down at least one time during that 30 days. And then
9 we went down and moved everything back.
- 10 Q Okay. And when you moved everything back, was that
11 under any kind of force or threat or anything of that
12 nature?
- 13 A No, sir.
- 14 Q Both of you wanted, wanted to do it.
- 15 A Yes, sir.
- 16 Q And she had left her job down there.
- 17 A Yes, sir.
- 18 Q Had she left her job before you went down there?
- 19 A Yes, sir.
- 20 Q So when you went she was unemployed.
- 21 A Yes, sir.
- 22 Q Do you know, I mean --
- 23 A Yeah. She had health issues.
- 24 Q Okay. So she wasn't working.
- 25 A No, sir.

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 Q Okay.
- 2 A She left Toyota of Greer because she couldn't work out
3 on the lot because the heat would mess up her M. S. She
4 went to Beaufort because they were going to give her a job
5 inside and the commissions were working like they said --
- 6 Q And you moved back to Spartanburg?
- 7 A Yes, sir.
- 8 Q And moved in a house that belonged to your family?
- 9 A Yes, sir.
- 10 Q Okay. And do you know about when this would have
11 been, say, in relation to Christmas?
- 12 A The beginning of December.
- 13 Q The beginning of December.
- 14 A Yes, sir.
- 15 Q So about two or three weeks after you took your leave
16 of absence.
- 17 A They gave me the leave of absence until the first of
18 December. And then I had to be back at work the beginning
19 of December.
- 20 Q Okay. And all of that, I think, is reflected on the
21 second and third pages of that document.
- 22 A Yes, sir.
- 23 Q So you're back at work and she's back in Spartanburg
24 County.
- 25 A Yes, sir.

Larry Brent Horton
Direct examination by Mr. Vieth

1 Q Okay. Now, did you stay together through the month of
2 December?

3 A Yes, sir.

4 Q No separations.

5 A No, sir.

6 Q And how would you characterize the marriage during
7 that month of December?

8 A It was good.

9 Q Okay. Did y'all do things together?

10 A We went out and we would go shoot pool. I mean, Erika
11 was tired. So we stayed at home a lot. And we just -- she
12 had M. S. M. S. had taken a toll on her.

13 Q Okay. All right. So when you go into then the end of
14 December, early January, do you recall the events of
15 January the 2nd of 2007? I know some of them, you do.

16 A No, sir.

17 Q And I understand we're going to go, but do you
18 understand the day of January the 2nd?

19 A Yes, sir.

20 Q All right. On the day of January 2nd what were you
21 doing?

22 A We went over. We were finishing up scraping out a bus
23 over at daddy's house. We did that. Erika and I texted
24 back and forth all day. And we, we finished up the bus. I
25 carried it to the scrap yard.

Larry Brent Horton
Direct examination by Mr. Vieth

1 We were going to go out. We had had supper at mama
2 and daddy's the night before. Erika was, Erika was tired,
3 so, about it, so.

4 Q All right. Larry, I'm going to go through some of
5 these phone records with you if I can if you'll indulge me
6 a second.

7 Your cell phone number, I believe, was (864)497-8581.

8 A Yes, sir.

9 Q And hers was 497-8580, is that right?

10 A Yes, sir.

11 Q So looking at these phone records, okay, the top part,
12 which is hard to read, indicates that the time, the date,
13 the time, the type of call. The next one is calling and
14 the next one is called. Okay. That's what these top --
15 it's in kind of a gray area you can't see.

16 So going through there, your number is 81. I'm just
17 going to take one, for example, at 9:46 in the morning.
18 You're at the top, 8581. So here we have some calls
19 originating from you to like 8580.

20 Do you see that right up there? It's hard to see.
21 That's an 80. I'll try to zoom in on it. Let's see if we
22 can get it down.

23 Okay. Now, all of these calls where we're starting
24 around 9:00, let's take, let's take the 10:44 to 12:00. Do
25 you see? Can you see where you're sitting?

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 A Yes, sir.
- 2 Q Okay. 1/2/07, 10:44:12, mobile originating S. M. S.
- 3 8581 to 8580. What does S. M. S. mean?
- 4 A I assume that's a text message.
- 5 Q That's a text message.
- 6 A Yes, sir.
- 7 Q Okay. And if it doesn't have the S. M. S., it's just
- 8 a call. Is that what you understand these records to say?
- 9 A Yes, sir.
- 10 Q All right. So looking out through today, do you see
- 11 numerous 8581's to 8180's, and numerous 8580's back to
- 12 8581, throughout most of that sheet of paper of the Virozen
- 13 records?
- 14 A Yes, sir.
- 15 Q Is that right?
- 16 A Yes, sir.
- 17 Q What is that? What were y'all doing?
- 18 A We were just texting back and forth, I mean, what
- 19 folks do. I mean, we was friendly and --
- 20 Q This is just constant throughout the day text
- 21 messaging. Were y'all arguing with each other, or was this
- 22 kind of a normal thing that y'all would to do if you
- 23 weren't together?
- 24 A Our previous dealing with text messaging --
- 25 THE COURT: Excuse me. Use the microphone, please,

Larry Brent Horton
Direct examination by Mr. Vieth

1 sir.

2 THE WITNESS: I'm sorry.

3 A The previous amount of our text messages, me and her
4 went over the bill. And my two teenage sons stayed -- I
5 mean, we texted all of the time and once --

6 Q All right. So this is all during the day that day
7 when you two are communicating with each other. Every time
8 you see 8580 or 8581, it's either a text message or a call.
9 For example, you go up to here, 5051, doesn't have S. M. S.
10 And you guys are talking at that time.

11 A Yes, sir.

12 Q Okay. And you go into 4:27. Do you know whose number
13 the 590-5727 is?

14 A That's daddy's cell phone number.

15 Q Okay. And that's a call to you from his cell phone,
16 is that right?

17 A Yes, sir.

18 Q Okay. Do you recall what that 4:27 call would have
19 been about?

20 A Probably about supper, I assume.

21 Q About supper. Okay. So by that time you had left
22 working at the house, is that right?

23 A Yes, sir.

24 Q At, by 4:27, somewhere in that time. Otherwise, up
25 into the day, that's when you're at your dad's house?

Larry Brent Horton
Direct examination by Mr. Vieth

1 A Yes, sir. I guess that was between Mintz, and me
2 dropping the trailer back off and then going home.

3 Q Okay. All right. Then there's a text message at
4 4:49 to her, 581 to 8550.

5 Do you recall what that call or that text message would
6 have been about? Were you going on any kind of errands?

7 A Yes. She texted me a grocery list. And I was going
8 to go pick up a few things in the grocery store.

9 Q Okay. And then let's go down to the 5:10. The 0 -- I
10 think it's a 580-1200.

11 A That's Chuck. That's my brother.

12 Q That's your brother.

13 A Yes, sir.

14 Q Okay. That's 5:10. And that, he was coming into
15 town, is that right?

16 A Yes, sir.

17 Q Your parents testified he was coming into the downtown
18 airport. And that's the first you heard from him on this
19 day.

20 A Yes, sir.

21 Q Okay. All right. Now, going into the evening, you're
22 still having 5:25, text messages back and forth, 5:25,
23 5:26, 5:27:19, 5:27:50, 5:27:54, 5:30:39; 5:32:02, 5:36:47,
24 5:50:18, 5:54 at 36, 5:55:21. Those are all between you
25 and Erika, correct?

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 A Yes, sir.
- 2 Q Okay. Some one, two, three, four, five, six, seven,
3 eight, nine, ten, 11 phone calls from 5:25 to 5:55, or text
4 messages. Every one of them is a text message.
- 5 A Yes, sir.
- 6 Q Going back and forth.
- 7 A Yes, sir.
- 8 Q Okay. All right. Then we have a phone call at 6:03,
9 you to 2772. And that is?
- 10 A My folks.
- 11 Q Your folks.
- 12 A Yes, sir.
- 13 Q Okay. And then your mom or your dad at 5:13 is
14 calling back to you. And then the 0298, do you know who
15 that is? If you don't, that's fine. I just want to know
16 if you do. I'm looking at --
- 17 A That's, I guess that's, mama's cell phone number,
18 00298.
- 19 Q And then we start a series again of 81. I'm looking
20 at, looks like we're now at 8:16, the 0298 to 8581, which
21 is your dad's cell number, is that right, the 0298?
- 22 A Yes, sir.
- 23 Q Okay. So he or your mom, one or the other, is calling
24 you at 8:16.
- 25 A Yes, sir.

Larry Brent Horton
Direct examination by Mr. Vieth

1 Q Okay. Do you know what that call would have been
2 about?

3 A About coming to get the girls that night instead of in
4 the morning.

5 Q Okay. Tell us how that conversation ever began with
6 when to pick up the girls. Who? How did it start?

7 A Me and Erika had an argument, and she told me to
8 leave. Well, she told me to go back to my mama's house. I
9 told her I wasn't going anywhere, that she could go. And
10 she, she walked over and hugged the girls and left, well,
11 went outside. And I was -- she had got mad because I got
12 the wrong kind of diaper. She wanted pampers and I got the
13 store brand.

14 And I was trying to find out what was wrong. She
15 didn't say hey or anything. And we'd been talking all day.
16 And then with M. S., there were a lot of issues with M. S.

17 And she went outside. We went to the car, and she was
18 going to leave. I reached in to try to get the cell phone.
19 And that's when she grabbed my hand. And she left.

20 I went in and called mama and daddy. I didn't want
21 them to think that we were having trouble already. So I
22 just told them I'd bring the girls by in the morning. And
23 then they called back and said that they would come and get
24 the girls.

25 Q Okay. So at that time she had left.

Larry Brent Horton
Direct examination by Mr. Vieth

1 A Yes, sir.

2 Q All right, and all right. We're at like 8:00. Let me
3 make sure I'm right around. 8:16. All right. Then at
4 8:18:54, 8:18:54, there's a call from 8180. That would
5 be -- tell us who that is and who it's to.

6 A That's me calling Erika.

7 Q All right. At 8:21:23 there's another originating of
8 you calling Erika, is that right?

9 A Yes, sir.

10 Q Okay. And then at 9:17 there's a call from you again
11 to your house, is that right, 2772? Is 2772 your family?

12 A Yes. That's their house.

13 Q 472-2772.

14 A Yes, sir.

15 Q Okay. And then we get into 9:58. At 9:58 there's a
16 text message, you to her.

17 A Yes, sir.

18 Q At 9:58:57 there's a text message. Well, no. There's
19 a call from you to her.

20 A Yes, sir.

21 Q At 9:59 there's a call from you to her.

22 A Yes, sir.

23 Q And that call was some 29 -- 29 seconds. And this
24 call up here from your, to your family is like 189 seconds,
25 so.

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 Okay. And then we get to 10:00 o'clock, 39 seconds --
2 excuse me, ladies and gentlemen, I'm sorry. 10:39, you
3 to --
- 4 A Erika.
- 5 Q Okay. That's at 10:00 o'clock, correct? 10:00 p.m.
- 6 A Yes, sir.
- 7 Q At 10:29 there's a call from 1200 who is?
- 8 A Joe.
- 9 Q Your brother?
- 10 A Yes, sir.
- 11 Q To you.
- 12 A Yes, sir.
- 13 Q At 10:29. At 10:30 there's a call from who to who?
- 14 A From me to Erika.
- 15 Q All right. So at 10:30:33 you two are not together.
- 16 A No, sir.
- 17 Q Correct?
- 18 A Yes, sir.
- 19 Q And you're trying to reach her.
- 20 A Yes, sir.
- 21 Q The next thing is the 10:58:48 when you dial 9-1-1,
22 correct?
- 23 A Yes, sir.
- 24 Q So it's clear by these records that your last attempt
25 to get her was at 10:30. And within sometime shortly after

Larry Brent Horton
Direct examination by Mr. Vieth

- 1 10:30, and 33, and sometime before 10:58, is when she came
2 back to the house.
- 3 A Yes, sir.
- 4 Q Okay. And then 11:03, you call 9-1-1 again.
- 5 A Yes, sir.
- 6 Q Then at 11:11:55 there's a call, and that's from your
7 brother.
- 8 A Yes, sir.
- 9 Q To you.
- 10 A Yes, sir.
- 11 Q And then again at 11:19 there's a call from your
12 brother to you.
- 13 A Yes, sir.
- 14 Q And that's the last transactions, correct?
- 15 A Yes, sir.
- 16 Q So it's fairly clear to say the time of death in this
17 case was somewhere after 10:30 but before 10:58.
- 18 A Yes, sir.
- 19 Q Okay. And throughout that day there were numerous
20 attempts by you to get her into that evening hour.
- 21 A Yes, sir.
- 22 Q What were you doing? Well, let me. What were you
23 doing when you first saw Erika again that night after your
24 10:30 phone call to her? What do you recall from then on?
- 25 A I was sitting on the couch. I had dozed off. And she

Larry Brent Horton
Direct examination by Mr. Vieth

1 knocked on the door, and I went and answered the door, and
2 she came in.

3 I asked her what was going on. And we went, went to
4 the bedroom. And I just kept asking her what was going on,
5 and she never would give me an answer.

6 She was going through a drawer and turned around and
7 like she threw something at me. Everything kind of went
8 gray. I lunged her for. Everything kinda went gray. I
9 heard her yell my name one other time. And that's the last
10 time I remember of the evening.

11 Q Okay. What do you next have a recollection about?

12 A I guess it's just spots until I'm at the detention
13 center. I mean, it's just little things here and there.

14 Q Do you even remember calling 9-1-1?

15 A No, sir.

16 Q When that officer who testified yesterday said he let
17 you hear the tape, the 9-1-1 tape, is that something you
18 did not recall?

19 A No, sir.

20 Q Do you have any knowledge, Brent, whether anyone else
21 was in that house other than you and her?

22 A As far as I know, we were the only ones.

23 Q Okay. Was there any arguing or fighting or anything
24 of that nature?

25 A I was just trying to find out what was going on. I

Larry Brent Horton
Direct examination by Mr. Vieth

1 mean, like I said, I remember she turned around and I
2 remember lunging for her.

3 Everything went gray. She yelled my name, and that
4 was it. I don't know what happened. It was like she just
5 didn't want to talk to me when I got home. And we'd been
6 talking the whole day.

7 I guess M. S. is one of the weirdest diseases nobody
8 knows nothing about. But she would have mood swings from
9 that. She, one day she, could get up, and one day she
10 couldn't. She, she wasn't predictable from minute to
11 minute with the M. S.

12 Nothing that happened -- the argument, the discussions
13 of her leaving -- wasn't something that hadn't happened a
14 million times before. I mean, it was no different.

15 Why things ended up the way they did, I don't know.
16 But like when she left, I figured a day or two we would be
17 talking again and --

18 Q When, when you were making those calls, how were you
19 dressed?

20 A I had got ready for bed. I put on pajama bottoms and
21 a t-shirt.

22 Q You weren't planning on going out and looking for her
23 or anything of that nature?

24 A I had to be at work at 6:00 o'clock the next morning.

25 Q Brent, did you love her?

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 A Yes, sir.

2 Q Do you in your own mind feel like you would have done
3 anything as malicious as this episode that the coroner
4 described to us?

5 A No, sir.

6 Q Answer any questions the solicitor might have.

7 THE COURT: Could we have the lights back there,
8 please? Mr. Bailiff, would you turn the light on?

9 THE BAILIFF: Yes, sir.

10 THE COURT: Thank you, sir.

11 CROSS-EXAMINATION

12 BY MR. GOWDY

13 Q Mr. Horton, the wife that you described that you loved
14 so unconditionally, was she conscious or unconscious when
15 you went to get the knife in the kitchen?

16 A I have no idea.

17 Q Mr. Horton, we're going to have to do better than
18 that.

19 A I can't remember.

20 Q You can remember a text message that you received on
21 the way to a scrap metal dealer but you can't remember
22 cutting your wife's head off?

23 A I guess that's the way it is, sir.

24 Q You want these 13 or 12 people to believe you don't
25 remember cutting your wife's head off.

Larry Brent Horton
Cross-examination by Mr. Gowdy

- 1 A The truth is what it is, sir.
- 2 Q Well, we'll let them decide what it is.
- 3 Did she put up a fight?
- 4 A I don't recall, sir.
- 5 Q Well, there are no defensive wounds on her hands.. You
- 6 remember her throwing a sock at you. Did she put up a
- 7 fight?
- 8 A I don't think I said a sock. And I don't remember.
- 9 Q You don't remember whether she put up a fight or not.
- 10 A No, sir.
- 11 Q You'll agree with me there are no defensive wounds on
- 12 her hands, right?
- 13 A Yes, sir.
- 14 Q And you'll also agree with me that there's still
- 15 jewelry wrapped around her hand in the picture where she's
- 16 laying dead on your bedroom floor, right?
- 17 A Yes, sir.
- 18 Q So she didn't put up a fight. Agree?
- 19 A I agree.
- 20 Q Here's a diagram of your house. And that's your
- 21 wife's body in the back bedroom. And we'll put that right
- 22 there. And there's the drawer in the kitchen with her
- 23 blood on it. You will agree with me that the farthest
- 24 point away from her body is that kitchen drawer and still
- 25 be in the same house. They're on opposite ends of the

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 house, correct?

2 A Yes, sir.

3 Q So you would have had to have beaten her bad enough
4 for her to bleed before you walked to the kitchen to get
5 the knife. Agreed?

6 A Yes, sir.

7 Q Do you remember breaking her nose?

8 A No, sir.

9 Q Do you remember collapsing her eye?

10 A No, sir.

11 THE COURT: Use the microphone, please.

12 A No, sir.

13 Q What about the hesitation marks on her shoulders? Do
14 you remember starting to cut her and then stopping?

15 A No, sir.

16 Q You'll agree with me that you beat her in that back
17 bedroom severely enough for her to become unconscious,
18 correct?

19 A Yes, sir.

20 Q And then you walked as far as you can walk and still
21 be in the same house with her blood on your hand and got a
22 kitchen knife.

23 A Yes, sir.

24 Q Did you ever stop, think about stopping, and saying
25 what am I doing?

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 A I don't recall, sir.

2 Q You remember the instant messaging; you remember a
3 scrap metal dealer. You don't remember whether or not you
4 stopped and said am I really going to walk to the kitchen
5 and get a knife and cut my wife's head off.

6 A No, sir.

7 Q You do remember beating her, right?

8 A I remember lunging toward her.

9 Q No, no, no. You told the 9-1-1 operator that you beat
10 her.

11 A I don't remember making a call, sir.

12 Q Well, you'll agree with me that's your voice.

13 A Yes, sir.

14 Q And you'll agree with me that the 9-1-1 call shows up
15 on your cell phone.

16 A Yes, sir.

17 Q So you'll agree with me that you called 9-1-1.

18 A Yes, sir.

19 Q And you told the 9-1-1 operator that you beat her.

20 A Yes, sir.

21 Q All right. And you told William Gary that you beat
22 her. And you repeated it four different times during your
23 interview with him, right?

24 A According to what you presented, yes, sir.

25 Q So you remember beating her.

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 MR. VIETH: Your Honor, he is not saying he remembers
2 it. He's saying it's according to what you presented. I'm
3 sorry.

4 THE COURT: Is that an objection?

5 MR. VIETH: Yes, sir, it's an objection.

6 MR. GOWDY: I'll rephrase it.

7 THE COURT: Okay.

8 Q Do you remember beating her?

9 THE COURT: Excuse me just a minute.

10 Let me ask you to please use the microphone. You've
11 got to speak up louder just like you were earlier so that
12 the microphone will pick up what you say.

13 Q Do you remember beating her?

14 A No, sir.

15 THE COURT: Will you adjust that microphone, please?
16 I think there's something wrong.

17 THE WITNESS: Is that better?

18 THE COURT: Yes.

19 (Pause for noise with air conditioner.)

20 THE BAILIFF: He'll fix it back there.

21 THE COURT: Well, that's not the problem.

22 I don't think that's going to work either. Just turn
23 it like it was. No. Turn it down towards his face.

24 Now, just speak louder and it'll pick it up. Just
25 speak like I'm speaking right now and it'll pick up.

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 THE WITNESS: Okay.

2 Q You don't remember beating her?

3 A No, sir.

4 Q You don't remember walking to the kitchen to get a
5 knife?

6 A No, sir.

7 Q Do you remember whether or not you had to pick among
8 different knives to get the one that you wanted?

9 MR. VIETH: Your Honor, that's just a -- that question
10 is just a loaded question.

11 THE COURT: Well, let me see y'all just a minute.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 Q Do you remember going to your father's house that
15 afternoon, the afternoon you killed her?

16 A Yes, sir.

17 Q Do you remember her, your wife, calling you and asking
18 you to go to the store?

19 A Yes, sir.

20 Q You remember that right.

21 A She texted the grocery list.

22 Q Okay. You remember getting a text.

23 A Yes, sir.

24 Q You remember her telling you to go get diapers.

25 A Yes, sir.

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 Q You even remember the name of the store that you went
2 to.

3 A Yes, sir.

4 Q You remember the name of the town that the store is in
5 that you went to, right?

6 A Yes, sir.

7 Q You remember getting the wrong kind of diapers.

8 A Yes, sir.

9 Q You remember going home and arguing with your wife.

10 A Yes, sir.

11 Q You remember taking her cell phone.

12 A Yes, sir.

13 Q You remember her having to bite your hand to get her
14 cell phone back, right?

15 A Yes, sir.

16 Q And you remember her leaving.

17 A Yes, sir.

18 Q And all of this is just a couple of hours before you
19 killed her, right?

20 A Yes, sir.

21 MR. VIETH: Your Honor, again phrased a couple of
22 hours before you killed her is an assumption that he killed
23 her. I mean, he can say before she died.

24 THE COURT: Overruled.

25 Q Do you remember your mother coming to pick up the

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 daughters?

2 A Yes, sir.

3 Q Are you absolutely sure, Mr. Horton, that when you
4 called your mother and asked her to come and get your
5 lawyers you had not already decided what you were going to
6 do?

7 A No, sir. I had not. I would never do anything to
8 hurt my wife.

9 Q Well, how do you remember that so well and you don't
10 remember anything else?

11 A I would never do anything to hurt my wife.

12 Q That wasn't my question, Mr. Horton.

13 A What was your question, sir?

14 Q My question is are you sure you hadn't decided what
15 you were going to do to your wife when you called her mom
16 and told her to come and get the kids.

17 A I called my mom and told her I would bring the kids by
18 in the morning. She called back and said that she would
19 come and get them tonight.

20 Q And you remember that in excruciating detail, right?

21 A Yes, sir.

22 Q Those cell phone records that your attorney just went
23 over with you, there's not a single effort by your wife to
24 contact you after 6:00 o'clock. Not one, right?

25 A Okay.

Larry Brent Horton
Cross-examination by Mr. Gowdy

- 1 Q Do you disagree with that?
- 2 A If that's what it says, that's what it says.
- 3 Q That's what it says. You were trying to get her, but
- 4 she wasn't responding.
- 5 A It happened before.
- 6 Q Had you already beat her, Mr. Horton?
- 7 A No, sir.
- 8 Q Did you hear Tony Sellers testify?
- 9 A Yes, sir.
- 10 Q Are you sure you hadn't already beat her, Mr. Horton?
- 11 A Yes, sir.
- 12 Q Do you remember that?
- 13 A That when she left I hadn't beat her?
- 14 Q You remember that. You remember everything at that
- 15 point, right?
- 16 A Yes, sir.
- 17 Q You just don't remember -- you remember everything in
- 18 vivid high-definition detail up until when?
- 19 A She came back. She turned like she was going to throw
- 20 something. I lunged at her. Things went gray. She yelled
- 21 my name, and that was that.
- 22 Q Well, you told this detective right here that you
- 23 remembered going to get the knife during the interview.
- 24 A I realize that's what was in the report, sir. I don't
- 25 remember talking to him.

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 Q You remember changing clothes and getting ready for
2 bed, right?

3 A Yes, sir.

4 Q Remember sitting there in your pajamas.

5 A Yes, sir.

6 Q And remember your wife walks in. Do you remember her
7 going in the back bedroom to start collecting some of her
8 things?

9 A Yes, sir.

10 Q Do you remember her getting the jewelry and putting
11 the jewelry in her hands?

12 A I guess that's what she was getting out of the drawer,
13 sir.

14 Q Well, that's what the picture shows, isn't it?

15 A Yes, sir.

16 Q And then that's when your memory just goes blank,
17 right?

18 A Yes, sir.

19 Q Well, at what point do you remember, because you
20 repeated it four times -- hitting her, hitting her, hitting
21 her, hitting her? Four different times you repeated it to
22 the detective. How do you remember that?

23 A I don't know. I don't remember the incident to this
24 day. I pray to God I never remember the incident because I
25 loved my wife.

Larry Brent Horton
Cross-examination by Mr. Gowdy

- 1 Q Well, let's talk about that for a second, Mr. Horton.
2 Those are your hands, right?
3 A Yes, sir.
4 Q That's you.
5 A Yes, sir.
6 Q That's you that night --
7 A Yes, sir.
8 Q -- with blood on your hands almost up to your elbows.
9 And you don't remember how it got there?
10 A No, sir. I'll pray that you never have to go through
11 this.
12 Q Oh, I'm quite sure I won't.
13 A That's what I used to say.
14 Q You said, told the 9-1-1 operator that you were --
15 that you beat her because she was going to take the
16 children. Do you remember that?
17 A According to the call you played.
18 Q Well, is that why you did it?
19 A She couldn't take care of the kids.
20 Q Is that why you killed your wife, Mr. Horton? That's
21 my question.
22 A I was not afraid of my wife taking the kids. She'd
23 already told me she couldn't take care of them.
24 Q Then why did you do it?
25 A I don't know. It doesn't make sense.

Larry Brent Horton
Cross-examination by Mr. Gowdy

1 Q Were you mad because she didn't return your text
2 messages?

3 MR. VIETH: Your Honor -- Your Honor, let me approach
4 for a minute if I can.

5 THE COURT: Okay.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 Q Do you remember sitting down with Detective Gary? Is
9 that your signature?

10 A That's my signature.

11 Q Do you remember talking to him?

12 A No, sir.

13 Q You don't remember talking to him.

14 A No, sir.

15 MR. GOWDY: Your Honor, can we approach one more
16 minute?

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 Q Mr. Horton --

20 A Yes, sir.

21 Q -- in the days and weeks and months after your wife
22 was killed you requested help with sleep apnea, right?

23 A I have had sleep apnea for a while.

24 Q And you requested help with a mask or a machine so you
25 could breathe better, right?

Larry Brent Horton
Cross-examination by Mr. Gowdy

- 1 A That's what the doctor prescribed.
- 2 Q It's a simple question, Mr. Horton. You requested
- 3 something for sleep apnea, right?
- 4 A I got it because I snored.
- 5 Q I'm not trying to get into --
- 6 A Are you talking about when --
- 7 Q It's a very simple question.
- 8 A Are you talking about when I originally got it or
- 9 after I was --
- 10 Q You requested help with your sleep apnea, correct?
- 11 A Yes, sir.
- 12 Q Okay. It is not a complicated question. You
- 13 requested a special diet, right?
- 14 A Yes, sir.
- 15 Q You requested help with anger, right?
- 16 A Yes, sir.
- 17 Q Not one single word about amnesia.
- 18 A I have no desire to remember the events I can't
- 19 remember.
- 20 Q Was she 14 or 15 when you moved her up to Spartanburg?
- 21 A She was 16, sir.
- 22 Q She was 16.
- 23 A Yes, sir.
- 24 Q I thought you told the jury she was 15.
- 25 A I said 16.

Larry Brent Horton
Cross-examination by Mr. Gowdy

- 1 Q How about when you met her? Was she 14 or 15?
- 2 A She was 16.
- 3 Q So you don't remember any -- you don't remember how
- 4 your wife was killed.
- 5 A No, sir.
- 6 Q You don't remember that plight in time.
- 7 A Yes, sir, correct.
- 8 Q You remember what led up to it.
- 9 A Yes, sir.
- 10 Q You remember it afterwards.
- 11 A Yes, sir.
- 12 Q You don't deny calling 9-1-1.
- 13 A No, sir.
- 14 Q You don't deny that that's your voice.
- 15 A No, sir.
- 16 Q You don't deny telling 9-1-1 that you beat her because
- 17 you thought she was going to take the children.
- 18 A Correct.
- 19 Q You don't deny telling William Gary that you beat her,
- 20 and repeated it four times for emphasise.
- 21 A Correct.
- 22 Q And you don't deny telling William Gary that you went
- 23 to get a knife.
- 24 A Correct.
- 25 Q Okay.

Larry Brent Horton
Redirect examination by Mr. Vieth

1 MR. GOWDY: One minute, Your Honor.

2 (Pause.)

3 MR. GOWDY: That's all I have.

4 REDIRECT EXAMINATION

5 BY MR. VIETH

6 Q Brent, in response to that, he keeps saying you don't
7 admit it. Neither do you deny it. I mean, you don't know.

8 A No, sir.

9 MR. VIETH: That's all the questions.

10 THE COURT: You can step down.

11 Who is next?

12 MR. VIETH: It will be a real quick one, an officer.

13 It will be less than two minutes.

14 Officer. Where is he? Come on around.

15 JEREMY RITZ, having been first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. VIETH

18 Q Officer, state your name please, sir.

19 A Jeremy Ritz.

20 Q And you are obviously by the uniform employed with the
21 Spartanburg County Sheriff's Department.

22 A Yes, sir.

23 Q How long have you been employed in that capacity?

24 A Sixteen months.

25 Q Okay. Do you know Brenda Horton?

Jeremy Ritz
Direct examination by Mr. Vieth

- 1 MR. VIETH: Brenda, stand up, please.
- 2 (Whereupon, Brenda Horton stood.)
- 3 Q Do you know Brenda Horton?
- 4 A Yes, sir.
- 5 Q How do you know Brenda?
- 6 A I've known Ms. Horton and the Horton family all of my
- 7 life. I grew up down the street from her.
- 8 Q Okay. Do you recall seeing her on January the 3rd of
- 9 2007?
- 10 A Yes, her and Charlie.
- 11 Q Her and Charlie. Charlie is her son?
- 12 A Yes, sir.
- 13 Q Tell us where you saw her.
- 14 A In the front office at the sheriff's office.
- 15 Q In the front office at the Spartanburg County
- 16 Sheriff's Office?
- 17 A Yes, sir.
- 18 Q Okay. Is that a location where you would house an
- 19 inmate?
- 20 A No, sir.
- 21 Q Okay. If you were going to house an inmate -- her son
- 22 was incarcerated at that time and charged with a crime. He
- 23 would be at the Spartanburg County Detention Facility?
- 24 A Correct. If he was being housed he would be at the
- 25 Spartanburg County Detention Center.

Jeremy Ritz
Cross-examination by Mr. Gowdy

1 Q And what were you doing? What were your duties that
2 day?

3 A Working the front desk.

4 Q Okay. So people that come in go through you.

5 A Yes, sir.

6 Q And that's where you saw her that morning.

7 A Yes, sir.

8 Q Did you and she have any communication at all?

9 A No, sir.

10 Q Okay. But you distinctly remember her being there.

11 A Yes, sir.

12 Q Did I serve a subpoena on you just for that purpose
13 today?

14 A Yes, sir.

15 MR. VIETH: That's all the questions I have.

16 CROSS-EXAMINATION

17 BY MR. GOWDY

18 Q So there was no conversation about changing a
19 statement.

20 A No, sir. The only conversation was between myself and
21 Charlie.

22 Q Sir?

23 A The only conversation was between myself and Charlie.

24 Q All right. And was that conversation about how to
25 change a statement if you think you --

Jeremy Ritz
Cross-examination by Mr. Gowdy

1 A No, sir, it wasn't.

2 Q Okay. Do you have Detective William Gary's contact
3 information?

4 A Yes, I do.

5 Q Okay. If you wanted to get in touch with Detective
6 Gary or Demetric Glenn or Cato or Bogan or anybody else at
7 the sheriff's department that investigated the crime the
8 night before, you would know how to do it. Don't you?

9 A Yes, I do.

10 Q Had you been asked to do it, you would have done it,
11 right?

12 A Yes, sir.

13 Q Nobody asked you anything about changing the
14 statement.

15 A No, sir.

16 Q You agree. Thank you.

17 MR. VIETH: That's all the questions I have. Thank
18 you, officer.

19 THE COURT: Let me see y'all just a minute.

20 MR. VIETH: You may be excused. I appreciate it.

21 (Whereupon, the witness was excused.)

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24

25

Charles Herbert Horton
Direct examination by Mr. Vieth

1 MR. VIETH: Call Charlie Horton.

2 CHARLES HERBERT HORTON, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. VIETH

5 Q Sir, would you state your name, please, sir?

6 A Charles Herbert Horton.

7 Q And you go by Charlie?

8 A Yes, sir, or Chuck.

9 Q Chuck.

10 A Yes, sir.

11 Q I'll call you Chuck. Is that all right with you?

12 A That will be fine.

13 Q And where do you live, Chuck?

14 A I live in Wellford.

15 Q And are you the brother of Brent Horton?

16 A Yes, sir.

17 Q Real briefly, where were you prior to January of 2007
18 as far as employment goes? Where were you?

19 A I had taken a job at a sister company of my present
20 employer in Mandan, North Dakota.

21 Q Okay. At that time when you left for North Dakota
22 were you married, single?

23 A Yes, sir. I had got -- came back here and got
24 married. And my wife and I had lived in North Dakota for
25 about six months.

Charles Herbert Horton
Direct examination by Mr. Vieth

1 Q Okay. And were you coming home for the holidays?

2 A No, sir. Actually, we were coming home because the
3 company that I was running in North Dakota, we were going
4 to open up a branch of the same company in Duncan. And so
5 I was coming home to set that facility up. And my plans
6 was to be home for about two weeks and then go back to
7 North Dakota.

8 Q Okay. So you were actually coming in, I guess,
9 January the 2nd. And you came in.

10 A Yes, sir, the day of January the 2nd, yes, sir.

11 Q Okay. How old are you? Are you the younger, or
12 oldest?

13 A I am the younger brother.

14 Q And what is your age?

15 A I am 35.

16 Q Okay. Do have any children from your marriage?

17 A Yes, sir. We have one 14-month-old daughter.

18 Q Okay. So after you come in from North Dakota, you
19 went back and then came back to stay?

20 A Yes, sir.

21 Q And how long have you been here as a resident in
22 Spartanburg County?

23 A I was here for two weeks. I went back to North
24 Dakota, and for about three days to pack my stuff up in a
25 U-Haul and move back. And I have been a resident of South

Charles Herbert Horton
Direct examination by Mr. Vieth

1 Carolina ever since.

2 Q All right. And directing your attention back to
3 January the 2nd -- let me brief -- let me stop a minute and
4 go back a minute.

5 The six months you were gone, obviously your brother
6 and Erika were separated at that time. I guess you knew all
7 of that.

8 A Yes, yes.

9 Q Prior to you coming back here.

10 A Yes, sir.

11 Q All right. And when you came back did you have an
12 understanding of what the relationship was with him and
13 Erika at that time?

14 A Yes, sir. My parents had both called me and let me
15 know that they were getting back together and they were
16 moving back to Campobello.

17 Q Okay. All right. When you flew in on January 2, you
18 seem -- you've been in here this afternoon, is that right?

19 A Yes, sir.

20 Q And you saw us going through cell phone records.

21 A Yes, sir.

22 Q And did you, in fact -- were those phone records
23 related to you, some of them, about phone calls that you
24 made?

25 A Yes, sir. 680-1200 would have been cell phones from

Charles Herbert Horton
Direct examination by Mr. Vieth

1 my phone.

2 Q Okay. And while some of it is not relevant, I believe
3 you called at 5:10. This is the 5:10. This is your number
4 here, I think.

5 A Yes, sir.

6 Q The -- this 87, excuse me. This 85, 81.

7 A Yeah.

8 Q Chuck calling. Do you see that?

9 A Yes. The very bottom one.

10 Q The very bottom one is you.

11 A Yes, sir.

12 Q That was at 5:10.

13 A Yes, sir.

14 Q And what were you doing at 5:10?

15 A I was trying to find a jacket I could wear because
16 Brent had told me I could ride his motorcycle to supper
17 that night.

18 Q Okay. All right. And you didn't -- he didn't go to
19 supper with you that night.

20 A No, sir. He ended up not going to supper, correct.

21 Q And you had two other calls. And I'm just going to
22 talk about them in a couple of minutes. You had a -- the
23 other call at 1200 and 1200 -- it's 11:05 and 11:19.

24 A Yes, sir.

25 Q That's you. I wrote out there Chuck, Chuck. Is that

Charles Herbert Horton
Direct examination by Mr. Vieth

1 right?

2 A Yes, sir.

3 Q And we'll come back to those in just a second.

4 On that evening you go to eat and come home. And then
5 what do you and your wife do?

6 A My wife was six months pregnant at that time, and we
7 had been traveling all day. So of course we were tired.
8 We left North Dakota at like 4:00 o'clock that morning.

9 So we pretty much got home from supper and took our
10 baths. And we went upstairs and went to bed.

11 Q Okay. Did anything get you up that evening?

12 A Yes, sir. There was a phone call. And then, you
13 know, I thought it odd that people don't usually call when
14 I lived at home, which was just prior to my leaving to go
15 to North Dakota. People just didn't call the folks' house
16 that late. So that kind of perked me up.

17 And then there was a knock at the door. And I was
18 like there's somebody here. That really don't happen that
19 late at night. I mean, it's 8:00 something, but it's dark
20 in January.

21 So I kind of jumped up and put on some clothes and ran
22 downstairs. And by the time I got down the stairs mama and
23 daddy were telling me it was Erika had stopped by the house
24 and had asked to go get the girls and take care of the
25 girls.

Charles Herbert Horton
Direct examination by Mr. Vieth

1 Q Okay. And as a result of that what did y'all do?

2 A As a result of that I just told mama, I said, well,
3 just said let me go with you, because I was already mostly
4 dressed. And so just shortly after that we finished
5 getting dressed. And we drove up to Campobello and picked
6 the girls up.

7 Q All right. Did your mother and/or father relate to
8 you the fact that Erika said to Brenda that she had been
9 told to leave the house? Do you recall whether that was
10 made?

11 A I do not recall.

12 MS. CRICK: Your Honor, I'm going to object. That's
13 hearsay anyway. I don't know.

14 THE COURT: Sustained.

15 Q Well, let's go back here to where it was.

16 When you went with your mom, who drive drove the car?

17 A I drove.

18 Q Okay. Were you at all familiar with Erika's car
19 whatsoever?

20 A No, sir.

21 Q Okay. What recollection, if any, do you have about
22 any vehicles that night when you went to pick up the child,
23 the children?

24 A When mama and I pulled in and Brent came to the door.
25 And we just said, you know, hey, we're here to get the

1 girls.

2 And we went in and started getting stuff together.
3 Brent was cooking supper for the girls. We put some
4 clothes together. The girls were watching a little cartoon
5 on T. V.

6 And then about that time Brent said Erika's in the
7 yard. And we looked outside and saw the black car that's
8 been being referenced several times.

9 And we started taking the girls out. And Brent just
10 said get them in the car.

11 MS. CRICK: Your Honor, I'm going to object to
12 hearsay.

13 Q Don't go into what Brent said.

14 A Okay.

15 Q Go in -- I mean. Well, you got them in the car.

16 A So we got them in the car.

17 Erika pulled out before we did. And then we backed
18 out. And as my mother stated earlier, we went back out to
19 Highway 11 and hit 176 coming towards Inman.

20 And when we got to the crossroads at 357, mama said
21 there's Erika and pointed to the black car that had been in
22 the driveway earlier. And we continued to drive.

23 The car got behind us and followed us to the city
24 limit of Campobello and actually pulled in, because I
25 watched the car pull in, and turned around and went back

Charles Herbert Horton
Direct examination by Mr. Vieth

1 towards downtown Campobello, did a complete 180-degree turn
2 and back towards Campobello.

3 And we headed on towards Inman. Took the girls by
4 Burger King because they had yet to eat, and picked them up
5 some, some food and went and dropped them off. Dropped
6 them off and got everybody in and went and spoke to my
7 wife.

8 And I went back to the house at Campobello. I was
9 concerned for Brent and his safety. And I just went up
10 there and confirmed with him if he thought everything was
11 all right. And he said everything's fine.

12 And then I went back home to mama and daddy's house
13 and called Brent again. Again, to ask is everything okay.
14 And then called again. And I think that would be the first
15 phone call that you said we would reference in a minute.

16 Q That's the 11:00. There's an 11:11:55 call and then
17 an 11:19 call.

18 A Yes, sir.

19 Q So why did you call twice in that 8-minute span?

20 A I did not -- I did not get an answer the first time,
21 and then I did not get an answer the second time.

22 And being concerned for Brent and his safety, I got
23 back in the car and drove back to the residence at
24 Campobello. And when I arrived the officers were there.

25 And I got out. And one of the officers there knew me

Charles Herbert Horton
Direct examination by Mr. Vieth

1 and put me in his car and said here's what's happened. And
2 he sat me in his car and just kept me there for a little
3 while. And then I went home.

4 Q Okay. All right. Answer any questions the solicitor
5 may have.

6 MS. CRICK: Your Honor, I don't have any cross.

7 THE COURT: You may step down.

8 MR. VIETH: Thank you.

9 Your Honor, I've got a witness that's scheduled to be
10 here tomorrow morning. I don't have no one else. That
11 will be my last witness.

12 THE COURT: All right. Ladies and gentlemen, we've
13 got a witness out of pocket who is unavailable this
14 afternoon. That witness will be here in the morning.

15 So we're going to recess now. I've got some other
16 matters to address anyway.

17 Remember my caution previously given you. Don't
18 discuss the case with anybody; don't permit anyone to
19 discuss it with you; don't allow yourselves to be exposed
20 to any type of media coverage relating to the case; don't
21 conduct any research or do your own investigation into any
22 issue, internet or otherwise.

23 Also, in a given case there are a number of people
24 around the courtroom -- witnesses, spectators and the like,
25 even employees at the courthouse. And they might be out in

1 the lobby and the hallway talking about the case. And it
2 might be their speculation about things or it might be
3 their opinion about things.

4 And obviously your decision has to be based upon what
5 you see and hear during the trial. You're not to be
6 influenced by any outside consideration. That's why I've
7 given you the previous instruction about discussions and
8 media exposure and the like.

9 So in order to avoid any potential or inadvertent
10 discussions by other people, I want you when you leave to
11 please leave directly and go down the hallway like you're
12 going to the jury assembly room. And go down the back
13 stairwell. I'm sure most of you have used that before.

14 But don't come back around through the courthouse
15 because people might be out there talking about the case
16 and you might be exposed to it. It might be something
17 that's not accurate, it's not correct. And it might have
18 some influence on you.

19 So in order to avoid any inadvertent discussion of the
20 case, I'm going to ask that you follow those instructions.
21 Just go down the hallway. The bailiff will show you. Go
22 down the rear stairwell. You'll be able to find your way
23 to your cars from there.

24 Okay. Have a good evening. We'll see you at 9:30 in
25 the morning, at 9:30 in the morning.

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: All right. Let's take ten minutes or so,
4 until 4:30, 4:30. And then we'll come back and take the
5 proffered testimony.

6 MR. VIETH: All right.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. Mr. Vieth, you've got some
9 testimony you'd like to proffer?

10 MR. VIETH: Yes, Your Honor. I guess I need to call
11 Brent back to the stand.

12 THE COURT: Okay. All right. You are Larry Brent
13 Horton. You're still under oath for the purpose of these
14 questions also.

15 LARRY BRENT HORTON, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. VIETH

18 Q Mr. Horton, you and I met at the jail sometime during
19 my representation of you. And we were indicating to each
20 other any defense limitations that I had due to your
21 amnesia. Do you recall that?

22 | A Yes, sir.

23 Q And do you recall telling me that I may not want to
24 hear this but that you felt that the reason of your wife's
25 death was the result of demonic possession involving her

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 putting a demon in you? Do you recall telling me that?

2 A Yes, sir. I used the term indwelling instead of
3 possession.

4 Q Okay. I'm sorry. You used the term what?

5 A Dwelling instead of possession.

6 Q Dwelling. And what does that mean to you?

7 A If you're a Christian, you can't be possessed
8 completely by a demon; your body or your soul, but not your
9 spirit.

10 So while you can't commune with a demon, a spirit,
11 whatever you want to call it, it can't totally possess you.

12 Q Okay. Let's go back in time a little bit. When, what
13 was, where was your wife from?

14 A She was born in Springfield, Massachusetts. Her
15 family had roots in Jamaica though.

16 Q What did she confide to you about this type of area of
17 her life?

18 A They said they came from a family that the -- I guess
19 it was her great-grandmother was, I guess, the village
20 doctor, medicine woman or whatever.

21 Her and her mom both told me that her mom had a curse
22 from a neighboring, I guess, medicine woman, witch doctor,
23 whatever. So witchcraft and spirits and such as that were,
24 I guess, part of her life.

25 Q Okay. And was this something discussed early on in

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 your relationship?

2 A Yes, sir.

3 Q Okay. Did you observe any manifestations of her
4 being -- and for the phrase that we're using here --
5 demonically possessed? Did you see any manifestations of
6 that during your marriage?

7 A Not until there at the end.

8 Q Not until what?

9 A Not until Beaufort did I see any manifestations or --

10 Q Okay. This was the time that you are separated.

11 A Yes, sir.

12 Q All right. And tell the Court what you observed that
13 caused you to see these manifestations. Just go through
14 any detail you want to.

15 A We were laying in bed. She told me she had a headache
16 and couldn't sleep. I said do you want to pray. We
17 started praying, and I laid my hands on her head. And her
18 face started contorting, and she was making like groaning
19 noises.

20 She told me to stop. I kept praying. And then she
21 hollered the girls, because the girls were asleep in
22 another room.

23 When I looked up the bedroom door was closing. When I
24 stopped praying it started opening back up. And she asked
25 me why I didn't stop praying that time, that I had always

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 stopped praying before. And then we discussed what
2 familiar spirits she had.

3 Q And what were they?

4 A She said she had had it all of her life, basically,
5 that she would be popular. She was extremely shy. But
6 that she would be popular but she would be tormented.

7 And as far as I could tell with being sick, and Erika,
8 if she took medication, she always had the worst side
9 effect.

10 And these are examples that she gave me. She would
11 have the worst side effects. And she said with the M. S.
12 things just got worse.

13 She told me -- I said, well, what about the girls.
14 And she said not to worry about it, that she knew how to
15 control the demons and that it would be okay.

16 Q Okay. What else manifested itself in Beaufort? Was
17 there an issue about a lake?

18 A We -- the night that she was going to move back, I got
19 down there with the U-Haul. She wanted to go riding. It
20 was late. So she wanted to go riding around instead of
21 going ahead and loading the U-Haul.

22 We went to a place called Pigeon Point. The moon was
23 full. And she said she got power from the water. We were
24 standing on the little pier there at Pigeon Point. And she
25 looked up and kinda -- her hands were kinda like this.

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1 And she, she was just looking out. And we just stood
2 there for a few minutes. Then she said do you see that.
3 And there were like some cranes over here that were like
4 wading toward us. And it was like you could hear just
5 wildlife noises coming toward us. She said that's one of
6 my powers.

7 And she's always been able to like -- butterflies
8 would come and land on her hand, or like if and Poojoe come
9 in to be groomed, she could pet the dog, and the dog would
10 just like calm down.

11 I touched her. I touched her hands on the back sides,
12 and she asked me if I felt that. And I felt some energy.
13 But I had never. I believed in witchcraft, but I knew as a
14 Christian it was not a temptation that getting to know I
15 needed to be bothered with.

16 And then over to the left in some high grass there was
17 like a muffled laugh. And the best thing, it sounded like
18 a large dog or something coming toward us.

19 And up until this point in our whole relationship I
20 had never seen Erika scared. But she grabbed my arm. And
21 she said let's get back in the car. And I said don't you
22 want to see what's in the bushes. And she said, no, we
23 don't need to see everything.

24 And we -- she dragged me by the arm. And we got back
25 in the car and she sped off and...

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 Q Okay. Any other observations in Beaufort that you can
2 recall or want to address?

3 A Later that night we were laying in bed, and she said I
4 looked like I was getting agitated. And she said she did a
5 peace ball. And I'm not, I'm not sure what that is. She
6 said it was supposed to calm me down.

7 But then the next morning I woke up. She was on the
8 couch. And she said she had left to go see her friend.
9 She said that I started choking her. That could have just
10 been sex -- after we got back together sex got rough. It
11 was different. I have no recollection of that.

12 We talked about it. And she said everything will be
13 fine. I mean, and that was like right before we loaded the
14 van up to come back.

15 Q All right. Let's address visits to your church. Tell
16 me about your church.

17 A After the one -- after I prayed and the door opened
18 and closed, I went back and talked to Pastor Wyatt about
19 it. And he suggested that we take care of that before we
20 consider getting back together and if -- that the children
21 didn't need to be around while, while the demon would be
22 expelled.

23 Q While the demon would be expelled?

24 A Yes, sir.

25 Q Now, was it -- was there anything that she did that,

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 other than what you described -- I mean, was there a daily
2 routine, or was there anything that she would do that would
3 make you realize she was into witchcraft?

4 A She talked about it when we first got together. But
5 she said that she accepted Jesus and that she knew it was
6 wrong and she was going to quit practicing it.

7 And then she told me before she went to Beaufort that
8 she had started practicing again, doing money spells and
9 stuff so she would have money at the car lot, I guess,
10 while she and I were separated.

11 Q Okay. Now, you had a conversation apparently with her
12 November the 8th, I think it is. And you ended up calling
13 the Beaufort Sheriff's Department, is that right?

14 A Yes, sir.

15 Q Tell me about that.

16 A She called and said that she was going to kill
17 herself, that she couldn't call the police, would I do it.

18 And I called down there and tried to explain the
19 situation to them. They got somebody out there. They -- I
20 communicated between her and the police officer because she
21 didn't want to be put, handcuffs put on her to put in the
22 car.

23 And I tried to keep her calm. And then I found out
24 where the hospital was. And I went down there to see if
25 everything was all right.

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 Q Is that when you took your leave of absence?

2 A Yes, sir.

3 Q Okay. So when you testified before a jury as to M. S.
4 and that type of stuff, that was also because of the
5 suicide that we've been instructed not to talk about in
6 front of the jury?

7 A Yes, sir.

8 Q Okay. And as a result of that did you -- you brought
9 her. She went and received some hospitalization -- not
10 hospitalization. She went to a facility down there in
11 Beaufort, is that right?

12 A She went to the emergency room and then to a, a
13 counseling. They couldn't prescribe any medication. So
14 she was just in counseling.

15 Q And then you moved back up here after these episodes
16 that you --

17 A I stayed down there about ten days or so. She mostly
18 slept. And we talked.

19 Q Okay. All right.

20 A One time --

21 Q Go ahead.

22 A -- she got in the kitchen floor on her knees and told
23 me she was tired of hurting people and tired of hurting
24 people in her life and asked me to kill her.

25 Q When? What timeframe are you talking about?

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 A That was right after I went down there from the --
2 from when I called and she went to the hospital till I went
3 down there so, I mean, it was --

4 Q Okay. Where were you when she got on her knees and
5 said that?

6 A It was in the kitchen in her house in Beaufort.

7 Q All right. What happened from that conversation, if
8 anything?

9 A I just -- we just talked. I tried to calm her down.
10 I mean, I told her everything would be okay, we'll work
11 this out.

12 There were medical issues; there were spiritual
13 issues. All of them needed to be taken care of.

14 Erika was not a bad person. And it seems like that
15 we've been pitted against each other during this whole
16 thing. As messed up as it sounds, we were on the same
17 team.

18 She had problems. I was not capable of handling
19 mental or spiritual issues whatsoever. I guess I thought I
20 could more so than I could.

21 Q All right. Now, on the 2nd, on the day this happened,
22 again, you indicated to me early on you couldn't remember
23 the events that took place.

24 A Yes, sir.

25 Q And then I think you said, in effect, Mr. Vieth, you

Larry Brent Horton (In-camera)
Direct examination by Mr. Vieth

1 don't want to hear this but, and then you told me what you
2 felt had happened if -- I mean, not that it did happen, but
3 what you felt must have happened for you to hurt her.

4 A I guess -- a few days earlier she and I were talking,
5 and I told her -- I get -- we had an argument. But, I
6 mean, it's not like they've been made to sound in here.

7 I told her that I would sell my soul to Satan to have
8 a happy marriage with her. And she told me not to say
9 anything like that again because I still had a chance to be
10 a good Christian man and that I was the believing parent
11 and the children would be redeemed through me.

12 She told me that she had made this agreement with her
13 familiar spirit. It wasn't like I was asking somebody who
14 didn't know. At that moment in time I was willing to give
15 my soul to Satan for a happy marriage with her.

16 I don't know. I don't know what that opened up, but
17 all that I can figure that would happen -- in our
18 relationship I never raised my hand to Erika. So for this
19 to happen -- I've never been in a fight my entire life.
20 And for this to happen, it's all I can figure.

21 Q And what is that?

22 A That the demonican -- well, and I was, I guess as much
23 as possible, under the influence of a demon.

24 Q Okay. Anything else that you want to say in that
25 regard?

Rev. Wyatt Allen Brown (In-camera)
Direct examination by Mr. Vieth

1 A No, sir. I think --

2 Q Do you feel that she wanted to commit suicide?

3 A Erika was tired of being tormented. I'm sure
4 everybody gives up.

5 Q Okay. Thank you.

6 THE COURT: Now, enlighten me on how that is relevant
7 in this case.

8 MR. VIETH: Your Honor, can I put the pastor up first
9 and then --

10 THE COURT: Okay. All right. Step down.

11 REV. WYATT ALLEN BROWN, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. VIETH

14 Q Pastor, would you please state your name?

15 A Wyatt Allen Brown.

16 Q And you are an ordained minister?

17 A Yes, sir. I've been an ordained minister for a little
18 over 28 years.

19 Q And tell me something about you. Where is your church
20 and what other outreach do you do, if any?

21 A I'm the pastor of Grace Christian Church in
22 Greenville, South Carolina. I have pastored that church
23 since November of 1990.

24 Prior to that I was involved in missionary evangelism
25 work in the United States, different parts of the African

Rev. Wyatt Allen Brown (In-camera)
Direct examination by Mr. Vieth

1 continent, Western and Eastern Europe, Scandinavia, Mexico
2 and the Caribbean.

3 Q Okay. In the broad sense do you feel like you have
4 come in contact with people that profess to be demonically
5 possessed?

6 A Yes, sir. I have come into contact with those people.

7 Q And briefly give us some array, an example, of what
8 you refer to when you say demonic possession. What is that
9 in your mind?

10 A I'll tell one story, Your Honor.

11 A number of years in Ghana, West Africa -- this is not
12 the kind of thing that I go looking for. It's not a
13 comfortable situation. It's not a normal part of what I
14 do. But we were doing an evangelism open-air meeting and
15 preaching just a very simple message, a Christian message,
16 if you accept Jesus as your Savior, that's how you receive
17 eternal life and have a heavenly future.

18 I was conducting it in an open-air area in a fish
19 market, marketplace, in a community on the coast, Ghana,
20 West Africa.

21 There was -- while we're, while I'm up on an open-air
22 platform preaching there was a lady I guessed to be in her
23 late 30's, a local Ghanaian woman, who she walked and made
24 her way to the front of the crowd.

25 I had never personally seen something like this

Rev. Wyatt Allen Brown (In-camera)
Direct examination by Mr. Vieth

1 before. She stood about ten feet in front of me. The
2 crowd backed up from around her. Evidently folks in that
3 area were aware of her from the past.

4 Her feet stayed in one position. Her eyes rolled up
5 into the back of her head until -- although her eyes were
6 widely opened, all you could see was the white part of her
7 eyes.

8 She began to convulse, and she bent back over
9 backwards until her head touched the ground behind her.
10 Feet never moved. Then came right up again until her head
11 went over and touched the ground in front of her. Came
12 back up and went over to touch on one side, to the left, to
13 the right rather. Then back over to the other side. And
14 then began to do all of that in rapid succession. Feet
15 never moved.

16 It got everyone's attention. It certainly got mine.
17 It's eerie. What I noticed with this, and, again, I
18 recognize that as there was a demonic spirit operating.
19 The technical side, possession, whatever, I don't know.
20 But I do know this. It was not human.

21 And I also know this. When they said come out of her
22 in the name of Jesus, there was an unseen force took this
23 lady's body as though she were a rag doll. And she was
24 instantly propelled about 15 feet back up into the crowd,
25 feet and hands straight out with her back leading the way.

Rev. Wyatt Allen Brown (In-camera)
Direct examination by Mr. Vieth

1 She landed in a heap. I then went on and finished
2 preaching the gospel.

3 That lady came up on the platform at the end of that.
4 And her testimony was she said she had had a demonic spirit
5 since, for the over 20 years, and that often it would take
6 her and that it would throw her and she would have these
7 episodes.

8 She said that that night it left her. And she
9 accepted Jesus that evening. Her eyes were clear and she
10 was back in her right mind. That's one episode. There's
11 others, but they're along that line.

12 Q All right, sir. You agree that the historical book,
13 the Bible, is complete with issues of demonic possession,
14 demon possession.

15 A Yes, sir. The Matthew, Mark, Luke and John and the
16 Book of Acts all give accounts throughout the scriptures of
17 Jesus Christ dealing with people who were demon possessed,
18 as well as in the book of Acts with the Apostles, the
19 original 12 Apostles, and the Apostle Paul dealing with
20 people who were demon possessed.

21 Q Do you believe in that?

22 A I believe it exists, absolutely.

23 Q Now, bringing it into this trial of this case, do you
24 have an occasion to know Brent and Erika Horton?

25 A They attended our church for a period of three to four

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1 years. Both of them attended together for the first part
2 of that time. And then they -- and then Brent would come
3 to church by himself with their girls.

4 Q All right. Now, when we met in my office at lunch
5 today you were going to relay something to the Court that
6 was relayed to you by your wife.

7 A Yes, sir.

8 Q Okay. If the Court finds this to be relevant
9 testimony, she can be here to testify to what you're going
10 to say.

11 A Yes, sir.

12 Q All right. Go ahead and tell us about any
13 communication either you or your wife may have had with
14 either Brent or Erika.

15 A My own observation is during just the course of a
16 normal Sunday morning service there were a number of times
17 when Erika would, she would be sitting next to someone else
18 on a, on a, seats.

19 And then she would get up in the course of just a
20 sermon. And I didn't think too much of it. But she would
21 get up and move two or three seats down and sit further
22 away from someone. And then she would get up and simply
23 leave the auditorium. I, again, didn't think anything of
24 it.

25 Later -- that happened a number of times. Later my

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1 wife had a conversation with Erika. Erika told my wife
2 that she had a -- she told the story a little bit earlier.
3 She said that her great-grandmother had been a voodoo
4 witchcraft doctor; that it had come upon her, skipped a
5 couple of generations. And her grandmother said she had
6 that same spirit.

7 Erika then said that -- told my wife that she was
8 uncomfortable whenever she sat near people because she
9 would feel their pain. It would cause her to physically
10 hurt. She would know what they were thinking and feel
11 their presence. And so she would get up to leave to get
12 away from it.

13 My wife came back from that meeting. And of course
14 you can imagine. Her eyes were big. And she immediately
15 told me that.

16 Q Do you know what timeframe that is, what we're talking
17 about maybe?

18 A That would have been, and I am basing it off of -- it
19 would have been the end of September or October of 2006
20 when Brent came to speak to me that he referred to.

21 It would have been probably six to eight months prior
22 to that. So that would put it around the beginning of
23 2006.

24 Q Okay. And then what was the meeting that you had with
25 Brent in the fall of '06?

Rev. Wyatt Allen Brown (In-camera)
Direct examination by Mr. Vieth

1 A In the fall of '06 Brent called our church office and
2 asked if he could have a private meeting with me, and so we
3 met at the church offices.

4 He, he then told me. He repeated it. It was the same
5 thing as repeated earlier just a moment ago. He said that
6 his -- that she was in Beaufort. He told me about some of
7 the -- told me about the strange things that had happened
8 when he was in the house that night with her. The door had
9 opened and shut. Told me that she thought she had a
10 spirit. And I was aware of that already from her talking
11 with my wife.

12 And so his, his questions were concerned about their
13 two daughters, that. And he told me that day that he was
14 concerned whether that spirit would hurt their daughters or
15 effect their daughters. He told me Erika had said the
16 daughters would be okay because of him and his spiritual
17 relationship.

18 And then he asked was it safe for them to get back
19 together. I had observed that Erika, just when I had seen
20 her myself in services, at the very least you'd say she
21 appeared to be someone who was disturbed.

22 And after he described that she and he both had had
23 these experiences that were outside of normal things, my
24 advice to him was to get all of that taken care of before
25 you move back in together and your daughters are in the

Rev. Wyatt Allen Brown (In-camera)
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1 house with you.

2 Q All right. Did you find that conversation to be
3 somewhat fanciful or contrive?

4 A My perception was he genuinely believed what he was
5 saying. My perception was this was someone that was being
6 frank and honest with me about what their reality was.

7 It wasn't -- it did not appear that someone was --
8 I've been a minister for 30 years. After a while you spot
9 folks. You get better at it, spotting people who are
10 making up a story and telling you something. He came
11 across as honest and truthful.

12 Q Okay. Thank you.

13 THE COURT: You may step down. Thank you.
14 Anything else?

15 MR. VIETH: No, sir.

16 THE COURT: All right.

17 Now, if you will, tell me the -- let me first ask
18 this.

19 MR. VIETH: Yes, sir.

20 THE COURT: Are you proposing in this case that you'll
21 be offering expert testimony on the phenomenon of demonic
22 possession and that under the facts of this case that
23 expert will testify within a reasonable degree of
24 professional certainty that the defendant was possessed by
25 a demon and was unable to control his conduct and that a

1 demon committed these acts that resulted in the death of
2 Mrs. Horton?

3 MR. VIETH: No, sir.

4 THE COURT: Okay. All right. That being the case,
5 tell me how this is relevant.

6 MR. VIETH: Your Honor, obviously we don't have an
7 expert on demonic possession saying that he was possessed.

8 Its relevancy from a defense of that part of this case
9 is that Mr. Horton genuinely believes that, as he told me,
10 it is his hand that took her life but not his mind, that he
11 was not in his opinion controlled by his own mind, that he
12 had to be demon possessed, that she put the demon into him
13 to fulfill the obligation she couldn't fulfill herself, and
14 that is to take her life because of depression and suicide
15 ideation as outlined in the medical reports; and that he
16 says -- and I'll cover all the bases -- while the amnesia
17 is there and he can't say that a demon entered his body
18 because of the amnesia, his portrayal is that he loved her,
19 this would not have happened, he can't understand how it
20 happened.

21 And this would be the only explanation that he could
22 possibly give, is that it was controlled by demonic
23 possession. Am I stating it correctly?

24 THE DEFENDANT: Yes, sir.

25 MR. VIETH: Okay. So it goes, if nothing else, in his

1 state of mind to mitigating malice. He would never have
2 taken her life with malice aforethought.

3 THE COURT: Well, I don't think -- I'm not aware of
4 any legal or factual defense that allows for introduction
5 of evidence of demonic possession or indwelling which
6 causes a person to engage in conduct that otherwise would
7 be criminal.

8 So unless you've got some law somewhere in the
9 universe that might establish such a theory, I don't think
10 that's the case in South Carolina. I may be incorrect.

11 MR. VIETH: You're correct, sir.

12 In South Carolina, you know, obviously there's a
13 difference between a cultural issue and a legal issue.

14 Culturally if he thinks it was -- if they think it's
15 witchcraft and they believe in it, and these things
16 happened that he portrayed, the manifestations, it's real
17 to them.

18 I agree you don't have any defense of self-defense,
19 accident, demonic possession. You don't have that in South
20 Carolina. But we had to proffer it because I've got a
21 client to defend on that.

22 THE COURT: Well, I understand.

23 MR. VIETH: Yes, sir.

24 THE COURT: That's why I'm going to allow you to
25 proffer whatever you want to. I don't have a problem with

1 that.

2 The other issue I want to address is your client, of
3 course, has testified. And as I understand it, he's
4 testified that he has no recollection up until the time
5 that he lunged toward his wife until, I guess, after he
6 called 9-1-1. He has no recollection of any of the events
7 between those time periods.

8 MR. VIETH: That's correct.

9 THE COURT: And so what you're telling me is that I
10 should allow a jury -- allow him to testify as to a
11 speculation and allow a jury to consider a speculation that
12 because he doesn't remember anything between those time
13 periods it must have been a demon that caused those acts
14 that resulted in the death of his wife.

15 MR. VIETH: Well, and that gets us back into the very
16 first day, yesterday in this trial, the
17 competency-to-stand-trial issue.

18 I'm stuck with what I've got, amnesia, whether it's
19 contrive or whether it's real. He can't say I felt a demon
20 come in me or I felt this happening because of the amnesia.
21 I wish he could sit there and say he felt something --

22 THE COURT: Well, let me ask you this.

23 You're familiar with the concept of third-party guilt.
24 Wouldn't it be just as appropriate and relevant and
25 admissible that he could say, well, I don't remember

1 anything that occurred during that time period so my
2 next-door neighbor must have come over and killed my wife?

3 MR. VIETH: Your Honor, I totally understand how
4 amnesia checkmates me, yes, sir.

5 THE COURT: Okay. Well, as I have said, and I'll say
6 it once more, I don't see any relevance to that testimony
7 in this case. I don't see how it can be made relevant.

8 Nevertheless, even if it were relevant, I do find that
9 the probative value is substantially outweighed by the
10 prejudicial effect of allowing such testimony. And it
11 would lead simply to confusion and misleading of the jury.

12 And so under the Rules of Evidence, 403, I'm going to
13 decline to allow such testimony to be admitted.

14 MR. VIETH: All right, sir. And so in light of that
15 then to make sure for tomorrow, Charlie Harris who has
16 testified earlier from North Carolina, as to Brown who just
17 testified, and, again, Corporal Perkins down in Beaufort,
18 would be not able to testify in the presence of a jury to
19 what we just heard.

20 THE COURT: That's true.

21 MR. VIETH: Okay, sir. In that case, Your Honor, we
22 have one witness in the morning, and that's Margaret
23 Milikian from Charleston. And I will call her and instruct
24 her to be here by 9:30.

25 THE COURT: Okay. Anything further?

1 MR. VIETH: No, sir.

2 THE COURT: Does the state wish to put any position on
3 the record?

4 MR. GOWDY: None other than what the Court has already
5 so artfully said.

6 THE COURT: Court is in recess until 9:30 in the
7 morning.

8 END OF PROCEEDINGS JUNE 17, 2008

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1 (Proceedings June 18, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters that need to be addressed
5 before the jury is brought in?

6 MR. VIETH: Your Honor, Mr. Gowdy and I, we had
7 mentioned earlier in the trial and stipulated to allow the
8 Singular records or phone records of Mr. and Mrs. Horton.
9 We have marked those as Defendant's Exhibits 2 and 3 into
10 evidence.

11 (Cell phone records of Erika Horton marked Defendant's
12 Exhibit No. 2; cell phone records of Larry Brent Horton
13 marked Defendant's Exhibit No. 3.)

14 THE COURT: Okay.

15 MR. VIETH: Nothing further.

16 THE COURT: All right. Bring the jury in, please.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Good morning, ladies and gentlemen.

20 As you know, when we recessed yesterday the defense
21 was still in the midst of its presentation of evidence. So
22 we'll continue with that presentation this morning.

23 MR. VIETH: May it please the Court. The defense
24 calls Dr. Margaret Milikian.

25

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 DR. MARGARET MILIKIAN, having
2 been duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. VIETH

4 Q Dr. Milikian, I'm over here in the corner over here.
5 I've got a lot of equipment that I'm trying to get behind
6 but still have the jury be able to see you.

7 Would you please state your name and occupation?

8 A My name is Margaret Milikian. And I'm a forensic
9 psychiatrist and assistant professor at the Medical
10 University of South Carolina.

11 Q And what qualifications have you -- do you have for
12 your profession?

13 A I have a degree in osteopathic medicine from Oklahoma
14 State University. I completed a residency in general
15 psychiatry at the Medical University of South Carolina in
16 Charleston. I then completed a fellowship in forensic
17 psychiatry at the University of South Carolina in Columbia.

18 MR. GOWDY: Your Honor, we would be delighted to
19 stipulate her qualifications as a forensic psychiatrist.

20 THE COURT: All right. Do you wish to go into any
21 further qualifications?

22 MR. VIETH: No, sir. That's fine. She's stipulated
23 as a forensic psychiatrist.

24 THE COURT: Okay. She is so qualified.

25 Q All right. Doctor, in your capacity as a forensic

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 psychiatrist, briefly tell the jury what that is.

2 A Forensic psychiatry is a subspecialty of psychiatry
3 that deals with any legal issues that would come up where
4 the court would need additional information that a
5 psychiatrist would have.

6 That could be whether somebody is competent to stand
7 trial, whether they can help their attorney. It might be
8 whether they would be not guilty by reason of insanity.
9 Those would be in criminal cases.

10 In civil cases it might be whether someone has had a
11 psychiatric injury and would be disabled, or malpractice
12 cases. So just in general any time that the Court would
13 need questions answered in regard to legal application of
14 any psychiatric information.

15 Q All right. And in that capacity have you testified in
16 courts in South Carolina?

17 A Yes, I have.

18 Q In both civil and criminal matters?

19 A Yes. That's correct.

20 Q And in your capacity did I ask you if you had time to
21 get involved in your practice to meet with and evaluate my
22 client, Brent Horton?

23 A Yes, you did.

24 Q Okay. And do your records reflect when that happened
25 and what you did?

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 A I met with Mr. Horton and his family on April the
2 2nd and spent several hours with Mr. Horton and with his
3 family. I reviewed some records and some testing of
4 Mr. Horton.

5 Q Okay. And were you specifically looking for something
6 in your evaluation?

7 A Yes. You had asked me to evaluate his amnesia for the
8 event.

9 Q Okay. And was there an issue that I had with amnesia
10 as being not able to help me?

11 A That is one issue, of whether he would be able to
12 assist you in his defense if he was unable to remember what
13 had happened.

14 Q All right. And as a result of your evaluation can you
15 share with us what your observations were and how you came
16 to those conclusions and also if you consulted with any
17 research materials to reach those conclusions?

18 A After meeting with Mr. Horton and discussing what had
19 happened, his life in general, we discussed his amnesia for
20 the events.

21 In looking at a person who's been charged with a crime
22 and claims they have amnesia, you look at several factors
23 about why the person could have amnesia, amnesia being just
24 you can't remember what had happened.

25 It could be several factors, different types of

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 amnesia. You would like to see whether someone would have
2 an organic amnesia, meaning had they had a head injury or a
3 seizure that would make them unable to remember. I didn't
4 find any organic illness or reason, that reason for him not
5 to be able to remember.

6 Another thing you would look for was whether somebody
7 was psychotic at the time that it happened and that was why
8 they couldn't remember, psychosis meaning they didn't,
9 couldn't differentiate reality at the time. They might be
10 delusional. They might have hallucinations, hearing
11 voices, seeing things. I didn't find any information that
12 led me to believe that Mr. Horton was psychotic around the
13 time that it happened.

14 Another thing you would consider when someone has said
15 they have amnesia is whether it's malingered. And
16 malingered is the medical word for are they faking what
17 they're telling you. I didn't find evidence that
18 Mr. Horton was malingering his amnesia.

19 You would look to see whether not remembering would
20 actually help you, is one of the reasons somebody might say
21 they had amnesia when they didn't.

22 They would also usually try to fake other symptoms of
23 mental illness. I didn't find any evidence of that.

24 The last type of amnesia is dissociative amnesia, or
25 psychogenic amnesia is what they used to call it. And this

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 is an amnesia that occurs when something is so traumatic
2 and has so much emotion reckoned with it that the person
3 can't remember it.

4 And after speaking with Mr. Horton, that was my
5 conclusion, that he did suffer from a dissociative amnesia.

6 I also reviewed some testing done by a psychologist
7 who gave him personality tests and intelligence tests. And
8 that testing showed that he had the ability to dissociate.

9 Dissociation means the ability to not be in the
10 moment. That's the easiest way to put it.

11 People who dissociate often can't remember driving
12 some place or, you know, they just blank out and have gone
13 somewhere else in their mind.

14 Mr. Horton on his personality test had some
15 indications that he would do that on occasion, which led me
16 to believe more that my diagnosis of the dissociative
17 amnesia was correct.

18 Q . Thank you.

19 What can -- you mentioned an event or a traumatic event
20 can cause amnesia. I want you to go into a little bit more
21 of that as it relates to this case. And particularly, did
22 you have an occasion to listen to a 9-1-1 tape generated by
23 Mr. Horton?

24 A Yes, I did. I've heard the 9-1-1 tape, which
25 certainly sounds traumatic at the time. Mr. Horton's

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 behavior around the time, he appeared to be in a daze and
2 couldn't follow police commands right away.

3 The tape, on the tape, he is obviously emotionally
4 distraught, having a difficult time being able to even
5 understand him on the tape when I've spoken to him. And he
6 speaks clearly at other times. And so the emotional
7 turmoil at the time would be indicative of a dissociative
8 amnesia.

9 Q Doctor, there's a journal called the Journal of
10 American Academy of Psychiatry and the Law. Is that a
11 learned treatise? Is that a document of medical
12 significance?

13 A That's the journal from the American Academy of
14 Psychiatry and the Law, which is the association of
15 forensic psychiatrists. That includes research,
16 editorials, things that would have to do with forensic
17 psychiatry in general.

18 I did consult with -- there was an article in that
19 journal having to do with amnesias. And it discussed the
20 types of amnesia I had already spoken about, whether
21 someone would be faking an amnesia, whether they would be
22 psychotic or dissociative amnesia.

23 Their research showed that dissociative amnesias are
24 often involved when the crime that took place was with
25 intimate partners, people who knew each other.

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 There's also an association for dissociative amnesia
2 when -- it's very emotional that we already spoke of. And
3 also when the amount of violence is high the person is more
4 likely to dissociate.

5 Q And, as a matter of fact, you have that journal with
6 you today, do you not?

7 A Yes, I do.

8 Q And I might just ask you to just briefly read that
9 section from that journal.

10 A This is discussing dissociative amnesias.

11 "Dissociative amnesia is associated with crimes that
12 are committed in a state of extreme emotional arousal and
13 in which the victim is known intimately by the offender.

14 "Frequently, the crime is unplanned and no motive is
15 discernible. The incidents of amnesia claims increase with
16 the severity of violence."

17 Another important factor in evaluating Mr. Horton's
18 case is, "The personality factors in crime-related amnesia
19 found that offenders who claimed partial amnesia for their
20 crimes scored higher than non-amnestic offenders for
21 measures of introversion and lower on measures of
22 impulsivity and hostility."

23 Mr. Horton's psychological testing, his personality
24 profile, shows him to be somewhat introverted, have some
25 other beliefs that keep him from relating to other people

Dr. Margaret Milikian
Direct examination by Mr. Vieth

1 too much.

2 Another point in the article is that it has been noted
3 that offenders who claim crime related dissociative amnesia
4 are often the ones who alert the police to their crime.
5 And they are less likely to deny the offense than those who
6 do not have amnesia.

7 Q Okay. And that was one of the studies that you
8 reviewed, along with your education.

9 A Yes.

10 Q And also, Dr. Milikian, there is a, I guess the, Bible
11 of mental disorders called the Diagnostic Statistical
12 Manual of Mental Disorders, commonly referred to as the
13 DSM-IV, is that correct?

14 A Yes. That's the diagnostic manual that psychiatrists
15 use to give names to diagnoses and are able to speak to one
16 another by a common language so that somebody -- if you
17 diagnose somebody with depression, every psychiatrist who
18 would go to that manual would recognize the symptoms that
19 you, in particular, are talking about for depression.

20 Q And in that regard, I think there's a section, 300.12,
21 that's called dissociative amnesia. Is that found in this
22 book?

23 A Yes, it is.

24 Q And based on your expert opinion and consulting with
25 these manuals, do you have an opinion as to whether or not

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 he had true amnesia during this event?

2 A It is my opinion that he does have dissociative
3 amnesia, that he is not malingering, he is not faking his
4 inability to recall the events.

5 Q Okay. Let me -- one follow-up question. What other
6 types of events can cause this type of amnesia?

7 A This type of amnesia could be caused by any kind of
8 emotionally traumatic event.

9 It could come about from people who have been in
10 combat, in war, and can't recall exactly what happened. It
11 can be -- it's often associated with the victims of abuse,
12 severe abuse. They can dissociate during the times that
13 they are being abused and don't actually remember what is
14 going on. Seeing a loved one killed or injured can in
15 certain people cause dissociative amnesia. They just are
16 unable to remember what had happened.

17 Q Thank you, Doctor. If you will, answer any questions
18 the solicitor might have.

19 CROSS-EXAMINATION

20 BY MR. GOWDY

21 Q Good morning, Dr. Melikian.

22 A Good morning.

23 Q Just so I am clear, and more importantly the jury is
24 clear, you are not telling this jury that this defendant
25 did not know the difference between right and wrong.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A No, I'm not.

2 Q And you are not telling this jury that even if he
3 didn't know the difference between right and wrong that he
4 could not conform his conduct.

5 A No, I'm not.

6 Q All right. You mentioned being asked by courts on
7 different occasions to come to court. You were asked by
8 the defendant to come to court today, correct?

9 A I was asked by his attorney, yes.

10 Q Okay. Mr. Vieth, right. How many times did you
11 evaluate the defendant?

12 A I met him on only one occasion.

13 Q And his parents were with him?

14 A No. I met with his parents separately. I met with
15 his parents separately.

16 Q Okay. And how long did that meeting last, that single
17 meeting you had with him?

18 A With Mr. Horton?

19 Q Yes.

20 A Three hours and 15 minutes.

21 Q And can you list for me all the tests that either you
22 did or the clinical psychologist that worked with you did?

23 A I did not do testing, perform testing of my own.

24 Q And in fairness to you, it is not unusual for a
25 psychiatrist to have a psychologist do the testing,

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 correct?

2 A That is correct. I'm not actually qualified to
3 administer those tests as a psychiatrist.

4 Q Fair enough. What tests did the clinical psychologist
5 working with you do?

6 A He performed an intelligence test.

7 Q Stanford-Binet or the Wechsler?

8 A Wechsler.

9 Q Okay.

10 A A personality assessment inventory.

11 Q The Minnesota Multiphasic Personality Inventory?

12 A No. The P. A. I.

13 Q Okay.

14 A He administered the Reitan Neuropsychological Test
15 Battery.

16 Q Okay.

17 A Integrated Visual and Auditory Continued Performance
18 Test.

19 Q Okay.

20 A Logical Memory and Fascist Subtest.

21 Q All right.

22 A Controlled Oral Word Association Test.

23 Q Okay.

24 A And a Rorschach.

25 Q The inkblot test.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A Yes.

2 Q Okay. All right. Now, you have diagnosed him with
3 amnesia. That is your diagnosis.

4 A Yes.

5 Q Okay. Are you aware that he remembers details right
6 up until the time of the crime?

7 A Yes.

8 Q All right. Are you aware that he remembers details
9 even minutes before the crime?

10 A Yes.

11 Q You've heard the 9-1-1 tape.

12 A Yes, I have.

13 Q Did you hear him on the 9-1-1 tape tell the 9-1-1
14 operator that he just beat his wife?

15 A I heard him say he had beat his wife after several
16 times being asked how was his wife dead.

17 Q All right. Well, we'll lay that aside for just a
18 second. We're talking about amnesia.

19 A Yes.

20 Q Which is the inability to recall.

21 A Yes.

22 Q And, and seconds or minutes after his wife was killed
23 he just told a 9-1-1 operator that he had beaten her.

24 A Yes.

25 Q Agreed.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

- 1 A Yes.
- 2 Q So that's a detail that he remembered.
- 3 A Yes.
- 4 Q All right. He remembered his address.
- 5 A Yes.
- 6 Q He remembered his name.
- 7 A Yes.
- 8 Q Remembered that there was blood everywhere.
- 9 A Yes.
- 10 Q All right. Do you know this detective right here,
- 11 William Gary?
- 12 A No, I do not.
- 13 Q You have not met with him in preparation for court.
- 14 A No.
- 15 Q All right. He interviewed the defendant hours after
- 16 the alleged crime. Do you think it would have been helpful
- 17 to you as a diagnostician to have talked to him about his
- 18 interview of the defendant?
- 19 A It may have been. I don't know what information there
- 20 would be. I had police records also before evaluating him.
- 21 Q So you had a summary. You had a summary of his
- 22 interview with the defendant.
- 23 A I don't believe I had a summary. I had an incident
- 24 report.
- 25 Q All right.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A Is what I think it is. I will check to be sure.

2 Q Well, it's not fair to you for me to ask you specific
3 questions if you don't have it in front of you. So let me
4 just ask use general questions.

5 Do you think it would have been helpful in your
6 diagnosis of amnesia to have talked to someone who
7 interviewed the defendant if the defendant told him
8 specifically that he went to get a knife?

9 A It may have been. Remembering those details
10 immediately after and making the phone call is not
11 contradictory with my diagnosis.

12 While he could state that information at the time, his
13 ability to recall it later doesn't -- those two things can
14 happen at the same time, is that he was able to state that
15 information then and does not remember it now.

16 Q But you can understand the curiosity that one might
17 have in how you can remember details right up and to a
18 crime, you can remember details right after the crime, you
19 just can't remember the crime. You can appreciate
20 someone's scepticism of that, can't you?

21 A I can appreciate the scepticism. And as a forensic
22 psychiatrist a large part of our training is based on
23 trying to tell whether someone is malingering or not.

24 Q All right. I'm glad you mentioned that. I'm not
25 going to use the word Bible, but I'm going to use the word

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 gold standard. How is that? This is the gold standard for
2 your profession.

3 A I would say it's our diagnostic manual.

4 Q All right. Fair enough. The highlighted portion,
5 would you read the highlighted portion for the jury?

6 A "Amnestic disorder must be distinguished from
7 malingering and from factitious disorder. This difficult
8 distinction can be assisted by systematic memory testing
9 which often yields inconsistent results in factitious
10 disorder or malingering and by the absence of a general
11 medical condition or substance use that etiologically
12 relates to the memory impairment. Amnestic disorder should
13 be distinguished from the less efficient memory
14 characteristic of age-related cognitive decline, which is
15 within the expected age adjustment normative range for the
16 individual."

17 Q All right. The very first sentence in the gold
18 standard diagnostic manual for your profession says must.
19 Not maybe, not shall. Must be distinguished from
20 malingering.

21 A Correct.

22 Q All right. And I would imagine it says must because
23 it is very, very important when you are dealing with not
24 otherwise specified amnesia to rule out that the person is
25 faking.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A Correct.

2 Q Okay. And the difference between malingering and
3 factitious disorders?

4 A Malingering is faking when there is an obvious gain to
5 be had. Someone might fake an illness to receive
6 disability. And you realize that the money they would
7 receive from a disability payment is the reason they are
8 faking their symptom.

9 A factitious disorder is also faking the symptoms.
10 But the reason they are faking it is to have the sick role.
11 And that's what they get out of -- they enjoy the attention
12 and those things. You don't have a specific gain, monetary
13 gain, or something else that you could say, well, this is
14 why they're doing it. They do it to play the sick role.

15 Q They are both conscious decisions.

16 A Correct.

17 Q There's dishonesty or faking involved in both.

18 A Yes.

19 Q One you can point to what the objective in doing so
20 is; and the other you cannot point to what the objective in
21 doing the faking is.

22 A Correct.

23 Q All right. With malingering would you agree with me
24 that a fairly common objective among malingerers is to get
25 out of trouble?

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

- 1 A Yes.
- 2 Q Would it be the most common reason that people fake
3 symptoms in a criminal-justice-system context, is to get
4 out of trouble?
- 5 A Yes.
- 6 Q You -- I'm going to mispronounce his name, so correct
7 me. All right. It's not intentional. Kaplan and Sadock.
- 8 A Sadock.
- 9 Q Synopsis of Psychiatry?
- 10 A Yes.
- 11 Q Are you familiar with that?
- 12 A Yes.
- 13 Q Is it well respected?
- 14 A Yes.
- 15 Q Is it something that you rely on?
- 16 A It is part of my book shelf, yes.
- 17 Q Well, I mean --
- 18 A I rely on a lot of things, sir.
- 19 Q You're the expert. I'm not an expert. Is it well
20 regarded?
- 21 A Yes, it is.
- 22 Q All right. Would you agree with me that they say
23 there's no way to distinguish between malingering and
24 malingering amnesia?
- 25 A There, there are no functional tests. We can't do M.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 R. I.'s or PET scans and tell if someone has amnesia, or
2 they don't. Unfortunately, we don't have any blood tests.
3 We don't have any type of definitive test to rule that out.

4 For my evaluation, looking at his other testing that
5 he did with the psychologist, his testing came out normal
6 for the most part. He didn't malingering on any of those
7 tests.

8 He didn't appear to be malingering during my
9 evaluation. He didn't try to enhance other symptoms of
10 illness. And part of malingering is the obvious secondary
11 gain. There's not really a clear secondary gain by his not
12 being able to remember this event.

13 Q You don't think so?

14 A Not in particular.

15 Q Well, you don't think it's a gain to not have to
16 answer the prosecutor's questions about what happened?

17 MR. VIETH: Your Honor, can we approach a minute on
18 that question?

19 THE COURT: Okay.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 Q Dr. Melikian, you don't think that it is an advantage
23 to not have to answer the prosecutor's questions about what
24 happened?

25 A I suppose it could be an advantage, but the defendant

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 doesn't have to take the stand anyway. So I didn't --

2 Q I agree with you. But when they do, as he did, you
3 have to answer questions just like any other witness would
4 have to answer them.

5 A Correct.

6 Q Agreed?

7 A Correct.

8 Q All right. And since he did, let me ask you again.

9 Do you not think it is an advantage to a defendant claiming
10 amnesia not to have to answer the prosecutor's questions
11 about what he did and why he did it?

12 A That could be seen as an advantage. When malingering
13 is faking, he could also testify falsely, I suppose.

14 Q Well, that's different from malingering though.
15 That's perjury.

16 A Perjury.

17 Q Right. So you would agree with me that not having to
18 answer the prosecutor's questions about what you did --
19 have you seen Dr. Wren's autopsy report?

20 A Yes, I have.

21 Q Have you seen the number of injuries to the victim?

22 A Yes, I have.

23 Q You don't think it's an advantage to not have to
24 answer the prosecutor's question about each and every one
25 of those injuries?

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A It could be an advantage.

2 Q Well, it is an advantage. I'm not playing games with
3 you. It is an advantage. Agreed? It's a huge advantage
4 to just say I don't remember.

5 A I, I -- it could be --

6 Q What could be a good reason? What could be a good
7 explanation for cutting your wife's throat? There is no
8 good explanation. So the best thing you can do is say I
9 don't remember. Agreed?

10 (Pause.)

11 Q I'll move on; I'll move on.

12 I'm going to ask you about another name, Dr. William H.
13 Reid, forensic and clinical psychiatrist outside of Austin,
14 Texas, past president of the American Academy of Psychiatry
15 and the Law. Are you familiar with him?

16 A No, I'm not.

17 Q All right. Then I won't ask you about him
18 specifically. But let me ask you in a general sense the
19 Pritchard Test. Do you know what the Pritchard Test is?

20 A No. I'm not familiar with that.

21 Q And, again, I may mispronounce this. The Hiscock
22 test.

23 A No.

24 Q Let me show it to you. I may be mispronouncing these.
25 I highlighted that portion right there.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A The -- are you talking about the recognition memory
2 test?

3 Q No, ma'am.

4 A Oh.

5 Q Test for malingering itself.

6 A Those would not be tests that I would usually rely on.

7 Q Okay. Fair enough. So you disagree with him that
8 those are tests for malingering.

9 A They may be tests for malingering. They're not ones
10 that I commonly use.

11 Q Do you disagree with him and other experts that
12 interviews alone are not sufficient to diagnose amnesia
13 and/or malingering?

14 A At times that is what you're going to have to work
15 with. I had other psychological testing in Mr. Horton's
16 case. So I did not solely rely on interviewing.

17 Q Fair enough.

18 This question may seem disrespectful. It is not
19 intended that way.

20 Do you believe that psychiatrists are better than any
21 other group at detecting who is lying?

22 A Research has shown that they are not significantly
23 better than the general public.

24 Q Okay.

25 A Forensic psychiatry, as I said before, we have

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 additional training in trying to detect malingering. But,
2 as I said, we don't have lab tests or brain scans. We have
3 other psychological tests to attempt to detect malingering.

4 Q And you are first and foremost a medical doctor.

5 A Yes.

6 Q And is it farfetched to believe that when someone goes
7 to see a medical doctor the medical doctor wants to help
8 them?

9 A That is correct.

10 Q And to help them you have to believe that something
11 really is wrong with them.

12 A That is correct in a treatment setting. In a forensic
13 setting malingering is always very high on your list of
14 possibilities for why a person would be telling you
15 something.

16 Q It is high on your list of possibilities because it is
17 so common in the criminal justice context that people would
18 fake symptoms to get out of trouble.

19 A That is why we spend so much time trying to detect it
20 and honing our skills to be able to detect malingering,
21 yes.

22 Q Well, speaking of spending time detecting it and
23 honing skills, have you looked at any records after
24 January the 2nd of 2007 to see whether or not Mr. Horton
25 has requested any medical help for his amnesia?

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 A No, I have not.

2 Q Would it be instructive to you as a medical doctor
3 whether or not he had actually sought help for his amnesia?

4 A Well, in my interview with him, part of the, you know,
5 emotional trauma that goes along with this is that

6 Mr. Horton's amnesia is psychologically protected. And so
7 reliving that amount of trauma is something that his brain
8 has put away he doesn't want to recall. So it would be an
9 unlikely thing that he would be seeking treatment for.

10 Q So you're saying amnesia can impact both the victim of
11 trauma and the perpetrator of trauma.

12 A It's more often the victim of trauma, but it can have
13 to do with the perpetrator also, yes.

14 Q Well, there's no allegation in this case that he's the
15 victim of trauma, is there?

16 A No.

17 Q So he would be the perpetrator of trauma, right?

18 A Yes, yes.

19 Q And the article that you just read for Mr. Vieth --
20 could you read that again? I may stop you, and I apologize
21 ahead of time. But I may stop you when you get to a
22 certain word.

23 A Okay.

24 Q All right.

25 A "Dissociative amnesia is associated with crimes that

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

- 1 are committed in a state of extreme emotional arousal."
2 Q All right. Let me stop you right there. All right.
3 We're talking about the perpetrator of the crime, right?
4 A Yes, sir.
5 Q All right. Keep going.
6 A "And in which the victim is known intimately by the
7 offender."
8 Q Let me stop you there. That's true here.
9 A Yes.
10 Q Okay.
11 A "Frequently the crime is unplanned and no motive is
12 discernible."
13 Q Okay.
14 A "The incidents of amnesia claims increase with the
15 severity of violence."
16 Q Okay. Amnesia claims. Is that the word?
17 A Yes.
18 Q Okay. Dr. Melikian, I'm going to finish with this.
19 Well, I say I'm going to finish. I'm going to finish in
20 just a second.
21 You have to look at malingering when you are dealing
22 with not otherwise specified amnesia. Agreed?
23 A Yes. You do.
24 Q The word is must.
25 A I did not give him a diagnosis of not otherwise

7

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 specified amnesia.

2 Q Well, whatever kind of amnesia, would you agree with
3 me that the word is must? You must eliminate malingerling.

4 A And in my opinion, I did.

5 Q Right. And the reason you must is because it is such
6 a common thing for criminal defendants to claim they can't
7 remember.

8 A It is common.

9 Q All right. And you would agree with me now that he
10 does receive benefit or gain for his not remembering.

11 A Some, yes.

12 Q A lot. He doesn't have to answer the questions of the
13 prosecutor about that window of time that he claims he
14 can't remember.

15 A Correct.

16 Q Agreed? He remembers getting a text message on the
17 way to a metal recycler and he remembers things afterwards.
18 He just doesn't remember any aspect of the crime.

19 A Yes.

20 Q That's a benefit to him. Do you not agree?

21 A It has some benefit to him.

22 Q Okay. All right. Laying the amnesia aside, whether
23 or not he has amnesia, whether or not he does, has nothing
24 to do with whether or not he committed this crime.

25 A Correct.

Dr. Margaret Milikian
Cross-examination by Mr. Gowdy

1 Q Agreed. Even if he does have amnesia, that does not
2 mean he did not do everything he is alleged to have done,
3 correct?

4 A Correct.

5 Q Thank you. Let me grab my book back from you.
6 Thanks.

7 MR. VIETH: Your Honor, I have no follow-up questions.

8 THE COURT: Okay. You may step down.

9 MR. VIETH: And I ask that she be excused.

10 THE COURT: She may be.

11 (Whereupon, the witness was excused.)

12 MR. VIETH: I need to hold her a minute, but that's --
13 I mean, you can come down.

14 That's the defense case, Your Honor.

15 THE COURT: Any reply?

16 MR. GOWDY: No, sir, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, that is
18 all of the testimony and evidence to be received in the
19 trial of the case.

20 What remains to be done are the lawyers' final
21 summations, after which I'll instruct you on the law. And
22 then you'll begin with your deliberation.

23 I've got a couple of matters I'll need to address
24 before we do that. So I'll ask you to please go to your
25 jury room. Do not yet discuss the case. I'll bring you

7
Motion

1 back in a few minutes to conclude.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any motions or other matters to address?

5 MR. VIETH: Your Honor, just renew my earlier motion
6 for a directed verdict.

7 THE COURT: All right. That motion is denied.

8 Any requests for jury instructions from the state?

9 MR. GOWDY: No, sir, Your Honor.

10 We would like if the Court would allow us to be heard
11 on voluntary manslaughter at the appropriate time, but
12 there are no requests for charge other than the Court's
13 standard charges on malice and malice aforethought.

14 THE COURT: All right. Mr. Vieth.

15 MR. VIETH: I agree with Mr. Gowdy.

16 We would ask for a charge of murder, voluntary
17 manslaughter to be given to the jury. Otherwise, it will
18 be your standard charges on those.

19 THE COURT: And what evidence is there, do you
20 believe, that would support a jury instruction on voluntary
21 manslaughter?

22 MR. VIETH: Your Honor, I believe, of course,
23 Dr. Melikian, I believe, has touched to some degree on just
24 the fact of, of more of a heat-of-passion aspect of what
25 causes amnesia, just what she read to the Court.

1 A legal-provocation issue is, Judge, found, I think,
2 in an officer's testimony when he said that -- and let me
3 find Mr. Williams' testimony. I think it was his where he
4 said that when he talked with my client that he
5 acknowledged they had been fighting.

6 And of course there is case law that fighting -- hold
7 on one second. That under the State vs. Pamela Grubbs
8 case, and then there's fighting is sufficient legal
9 provocation to warrant giving a voluntary manslaughter
10 charge, State vs. Davis, a 1983 case. And that was cited
11 in a 2003 case, State vs. Pamela Grubbs. There is evidence
12 of fighting that night.

13 Obviously, Judge, if you look circumstantially at the
14 case, the cell phone records indicate when she came back in
15 that house and in about 20 or 25 minutes this episode was
16 over.

17 There had to be something very quick and very
18 traumatic for this event to have taken place. There's no
19 question about whether she came in and a fight ensued right
20 away. Nothing.

21 I mean, it would almost have to be like she walks in
22 the door and he punches her out. I mean, it's that -- just
23 for no reason whatsoever.

24 I just think from looking at the totality of the
25 circumstances of this case, even if you look at Tony

1 Sellers, and you say, okay, he says she called him and said
2 that he had beat her, and then she goes back anyway at
3 10:00 o'clock at night, something was happening in that
4 timeframe besides her wanting to get a piece of jewelry.

5 And I just think that when you couple all you can see
6 together, you've got a 25-minute window for all of this to
7 happen, and that the heat of passion and the provocation
8 had to be there just on, just on just the facts that we
9 have here.

10 That is why on the other side of the coin amnesia
11 hurts me because I cannot give you a specific incident in
12 that 25-minute window what may have happened.

13 THE COURT: All right. Mr. Gowdy.

14 MR. GOWDY: Your Honor, the state does not believe
15 that there is evidence of either sudden heat of passion or
16 sufficient legal provocation.

17 As the Court knows, words alone, no matter how
18 propitious, are never sufficient legal provocation.
19 Fighting is a synonym for fussing, which is the word that
20 he used when he testified. He did not say one word.

21 The only episode of physical contact between the two
22 of them was when he got her cell phone and she tried to get
23 it back, which, as the Court knows, is the exercise of a
24 legal right. She's entitled to use force to get that back.
25 And that was hours before. So there was sufficient cooling

1 off.

2 He testified he was sitting there in his pajamas and
3 the next thing he knows he's lunging at her. There is
4 no -- whether there is provocation or not, there is no
5 sufficient legal provocation. And, frankly, there's no
6 evidence of sudden heat of passion such that would overcome
7 someone's will.

8 So I think he's over too on the elements of voluntary
9 manslaughter.

10 THE COURT: Well, Mr. Vieth, even assuming from the
11 evidence in the case that you could reasonably infer heat
12 of passion, I think the record in this case is lacking in
13 any evidence that would support that heat of passion based
14 upon a sufficient legal provocation.

15 Maybe you can help me with that difficulty. I don't
16 recall any evidence in the case, direct or circumstantial,
17 from which you could reasonably find that there was a
18 sufficient legal provocation.

19 MR. VIETH: Your Honor, again, that would have to come
20 from the officer talking to him when he said they had been
21 fighting.

22 THE COURT: Well, that might give rise to heat of
23 passion, but that doesn't give rise to sufficient legal
24 provocation. I'm talking about the legal provocation.
25 What evidence is there of that?

1 MR. VIETH: Well, and that's -- I have, I have no
2 pinpoint evidence because she's deceased and he purportedly
3 can't remember. So I don't know what happened from
4 10:00 to 10:30.

5 THE COURT: Well, I don't disagree with that, and I
6 don't disagree that there might be some evidence from which
7 you could reasonably infer anger or heat of passion. But I
8 don't -- I can't recall any evidence from which you could
9 reasonably infer that there was a sufficient legal
10 provocation for that heat of passion.

11 So based upon that lack, I think an instruction on a
12 voluntary manslaughter would be inappropriate. So I'm
13 going to decline that request.

14 MR. VIETH: All right. Before we get into any
15 arguments, I do need to again proffer Dr. Melikian briefly
16 on other matters.

17 THE COURT: Okay.

18 MR. VIETH: Whenever you want to do that.

19 THE COURT: Right now.

20 You're still under oath for the purpose of these
21 questions.

22 THE WITNESS: Yes, Your Honor.
23
24
25

Dr. Margaret Milikian (In-camera)
Direct examination by Mr. Vieth

1 DR. MARGARET MILIKIAN, having
2 been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. VIETH

4 Q Dr. Melikian, you and I met earlier this morning. I
5 gave you some direction that this court has ruled against
6 going into demonic possession and things of that nature in
7 front of this jury. So we are allowed to proffer your
8 testimony for what it may be worth at some matter date.
9 Okay?

10 A Yes.

11 Q So in that regard, when I contacted you not only was
12 my interest in the amnesia aspects of helping me with the
13 trial, but did I discuss with you his comments that he felt
14 that he might have been demonized at the time of this
15 episode?

16 A Yes, you did explain to me at that time that
17 Mr. Horton believed that his wife's demon had been
18 transferred to him and was the reason he committed the
19 crime.

20 I also gathered that information in speaking with his
21 family and with him directly.

22 Q Okay. What did you glean from his family?

23 A From his family I gleaned that they were not a family
24 that had these type of religious or cultural beliefs to
25 begin with, but had grown to believe them over time or in

Dr. Margaret Milikian (In-camera)
Direct examination by Mr. Vieth

1 association with his deceased wife.

2 Q All right. Now, and also when you talked to
3 Mr. Horton at the jail, what did you glean from those
4 conversations?

5 A Mr. Horton explained to me that he did not initially
6 believe his wife when she explained that she was possessed
7 by a demon and that over time some unusual experiences --
8 having doors close, being able to summon animals, led him
9 to believe that she did, in fact, possess a demon.

10 He further believed that because she had wanted to
11 commit suicide in the past that the likely reason for this
12 incident was her transferring her demon or being able to
13 control him to make him commit this act.

14 Q Okay. Now, certainly in your profession there is no
15 book we can go to on defense of demonic possession, is
16 there?

17 A That's correct.

18 Q Okay. Did you evaluate these findings to determine,
19 A, competency-to-stand-trial issues, and, B, insanity type
20 issues?

21 A Yes, I did.

22 I evaluated for competency to stand trial, also, in
23 addition to the amnesia. Neither of those issues would
24 make him not competent to stand trial. I evaluated in
25 terms of criminal responsibility.

Dr. Margaret Milikian (In-camera)
Direct examination by Mr. Vieth

1 I did not diagnose Mr. Horton with a mental illness
2 regarding his beliefs about demonic possession. After
3 speaking with his family and speaking with him, I felt
4 those could be a religious and cultural belief as opposed
5 to a product of a mental illness.

6 Q All right. So in a sense -- let me. A pastor
7 testified yesterday, Doctor, that among other things
8 Mr. Horton had scheduled an appointment with him about four
9 months prior to this incident in September, I believe, of
10 '06 and wanted to have a meeting with him concerning his
11 concerns about his children and maybe being demonized or
12 problems with his wife.

13 And I asked the minister did you find that to be
14 fanciful or capricious or something. And he said, no, I
15 found him to be very honest and confirmed in his beliefs.

16 How do you take that characterization and apply it to
17 what your observations are?

18 A In my evaluation with both Mr. Horton and his family,
19 these did appear to be religious beliefs.

20 I considered the possibility that it was a delusional
21 disorder. For Mr. Horton's case it would be a shared
22 psychotic disorder if you consider that his wife was
23 mentally ill in believing that she was demonically
24 possessed.

25 He reluctantly came to believe that. It was a shared

Dr. Margaret Milikian (In-camera)
Direct examination by Mr. Vieth

1 delusional disorder where a person without a mental illness
2 who has a close relationship with someone who has a
3 delusion comes to believe the delusion themselves. That
4 was a possibility. I did not make that diagnosis and so
5 did not feel like it had an impact on criminal
6 responsibility.

7 Q Okay. In essence, you, you don't feel he believes
8 what he's saying.

9 A He believes what he's saying. And it's my opinion
10 that it's a religious and cultural belief and that it is
11 not a product of a mental illness.

12 Q Thank you.

13 THE COURT: Thank you. You may step down.

14 MR. VIETH: Your Honor, I would ask that she be
15 excused.

16 THE COURT: She may be.

17 MR. VIETH: And we rest, Your Honor.

18 Thank you very much, Doctor. Have a safe trip back.

19 (Whereupon, the witness was excused.)

20 THE COURT: Are y'all ready to argue?

21 MR. GOWDY: Ms. Crick is, Your Honor, yes.

22 MR. VIETH: Yes.

23 THE COURT: All right, sir. The court reporter wants
24 ten minutes before we start. Ten minutes.

25 (Whereupon, a recess was taken.)

Closing arguments

1 THE COURT: All right. Bring the jury in, please.

2 Is the state going to open, or not?

3 MR. GOWDY: No, sir.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: All right. Ladies and gentlemen, as you
7 know, all of the evidence has been received.

8 What remains to be done are the lawyers' final
9 summations. Then I'll instruct you on the law. Then
10 you'll begin with your deliberations in the case.

11 Please give the lawyers your attention now as they
12 give you their final summations.

13 Mr. Vieth.

14 MR. VIETH: May it please the Court.

15 Mr. Foreman and ladies and gentlemen of the jury, I'm
16 going to play this tape one more time before my computer
17 goes out, because there's something I want you to hear in
18 this tape. .

19 The tape's in evidence. So you'll -- if you want to
20 hear it again, you can. But sometimes you go back in
21 deliberations you don't want to hear things, or you may
22 want to hear things. But I want to make sure you hear this
23 tape.

24 One of the issues on this tape that I found fairly
25 instructive besides his demeanor is the comment about

Closing arguments

1 taking the children. And I think it could be confusing if
2 I don't play this tape as to whether or not it could be
3 conceived that this battle was over her taking the
4 children.

5 And I think if you listen to this tape, and I can
6 rewind it or whatever, it doesn't say that. It says you'll
7 take my children. He's referring to the police officers.
8 And he is concerned that he's going to lose his children
9 because of this, not because Erika is going to take them,
10 but because the police will take them based on this
11 incident that took place.

12 So there's a point in here, and I listened to it again
13 this morning to make sure I was correct. And if I hear
14 something and you hear it differently, then you're the
15 jurors. You take it the way you want to. But I want you
16 to hear this tape one more time if my computer will work.
17 Just a second. Let me come up to speed on it.

18 (Pause.)

19 MR. VIETH: It doesn't work. I am going to play it at
20 some point in time, so I'll see if we can get it back up to
21 speed.

22 Y'all don't have one, do you?

23 Well, I'm not going to waste the time waiting for it.
24 I would ask you. You can have one of these laptops back
25 there to listen to that. But I think that's going to be

Closing arguments

1 something to consider in this case on what that tape was.

2 At least you'll have the ability to wind it and rewind it.

3 But it's not working for me right now. I'm going to
4 leave it up here. And if it comes up, I'll stop myself and
5 let you play it.

6 But, anyway, ladies and gentlemen, we'll go back to
7 that. But I think it's important. I think the whole tape
8 itself is important.

9 You know, when I was in law school, which is a lot
10 further back in my rear-view mirror now that I don't have
11 life in front of me, I never, ever thought some day I'd
12 stand in front of 12 people representing someone charged
13 with probably the most serious offense we have in this
14 state, which is murder.

15 I can't conceive of the obligation that I have. And I
16 just want to make sure, at least I hope, that I give you
17 what I need to give you for you to deliberate and reach a
18 verdict that you think speaks the truth.

19 As Mr. Gowdy mentioned to you in his opening
20 statement, he mentioned three degrees of killing -- an
21 involuntary manslaughter, voluntary manslaughter and
22 murder. And he said of course they're seeking an
23 indictment on murder. So they're going for, for
24 everything, which is murder, which is the intentional
25 killing of somebody with malice aforethought.

Closing arguments

1 So an intentional killing is one thing. The malice
2 aforethought is the other thing. And malice aforethought
3 is not just a legal term. It's -- you use your common
4 sense.

5 Mr. Gowdy and I both have done these things for some
6 period of time. And you ask a jury to use common sense and
7 decide whether, in fact, this was a case of malice
8 aforethought.

9 Was there an intentional killing in this case? Well,
10 let's look at what I've got. There's no question she
11 didn't kill herself. There's no doubt about that. We're
12 not here to try to tell you that.

13 I told you in my opening statement that the issue of
14 amnesia hurts me more than it helps me. And I realize Mr.
15 Gowdy jumped all over Dr. Melikian about amnesia. And I
16 think after hearing Mr. Gowdy give his argument about it,
17 that there is no such thing as amnesia, because it always
18 would be contrive and always would be malingering.

19 So probably all of these books ought to just be erased
20 of amnesia. Under that theory of cross-examination, it's
21 just a joke.

22 Well, you can consider it, whether it's a joke or not,
23 and you can consider whether you've ever driven somewhere
24 and forgotten when you got there or not. And you can
25 consider whether you've lost your glasses and don't know

Closing arguments

1 where they are.

2 And, finally, you can consider whether he's lying as
3 he took that stand. You can decide whether he was lying
4 when he talked to me. Those are your decisions. That's
5 why you're jurors.

6 But I sought Dr. Melikian to see if she could help me
7 to find out why he can't help me, why he can't tell me what
8 happened between 10:30 and 10, about, 33. What happened?

9 I brought this to your attention in my opening
10 statement. Why are we here? What brought us to this
11 situation in our lives for someone that's faced with the
12 most serious offense the state of South Carolina has? What
13 did it?

14 And that's where I was upset that I couldn't bring you
15 stuff as to what happened, because there are certain things
16 that lead you to have a pause to just walk out and say why
17 did we waste three days in this case, this is such an easy
18 case. It's murder. I did it intentionally. If there were
19 malice aforethought, why waste our time with this case?
20 Because there's a lot more to it when you are seeking
21 murder, when you're seeking that malice aforethought.
22 There's other things to consider.

23 And you're going to be asked to render a verdict in
24 this case. And it's going to be harder for you to say not
25 guilty of murder than it is for you to say guilty of murder

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1 because of the mind-set that we have.

2 We've got a horrendous crime. We've got blood; we've
3 got a head that's barely on; we've got a gruesome, horrible
4 life that has been taken. The children will never have a
5 mother. And that's not through Erika's own hand. We know
6 that.

7 But is it murder? Does it rise to that degree that
8 you're going to find intentional killing with malice
9 aforethought?

10 And I want to bring us into things that the state
11 provides, is what we call discovery. We have no trial by
12 ambush. We're supposed to know what they've got, and
13 they're supposed to know what we've got, and put it up.

14 The tape is one of them, the 9-1-1 tape. There are
15 things that I'm glad exist. I'm glad that 9-1-1 does
16 exist, because that 9-1-1 tape does a lot of things. It
17 goes toward the trauma; it goes toward him and his
18 attitude. Does it portray a person who is a cold-blooded
19 killer?

20 These things are great evidentiary things for you to
21 consider. It's like a breathalyzer. In a camera when you
22 see someone under the influence of alcohol and they tape
23 it, well, you can tell is the guy impaired, or isn't he?
24 It's the kind of a picture that speaks a thousand words.

25 Officers and people can say anything. They can get up

Closing arguments

1 here and put their hand on the Bible and say anything they
2 want to say. But evidence kind of speaks the truth. And
3 so you look at that and say does that indicate to me a
4 malicious act or was it intentional without being malice?
5 Was it something that happened through, through a fighting,
6 an argument, something that just got way out of hand real
7 quick and when it was over he realized what in the world
8 had happened and the deed was done and it was over? And
9 was it a cold, calculating murder, or was it some kind of
10 hot-blooded out of some kind of passion or arguments that
11 we don't know about?

12 And that's not my burden. I can't prove. Even if he
13 had no amnesia and I didn't put him on the stand, which is
14 his right under the constitution, it wouldn't be my burden
15 to prove anything.

16 They have to prove the elements of the crime, not me.
17 I just now have to look for what I can give you to help you
18 reach this verdict of whether they've proved malice
19 aforethought.

20 To do that I've got to go through an additional tape
21 that I want you to hear, is some of these phone records and
22 some of the things -- I'm not going to do it all.

23 And, by the way, we put the phone records in evidence
24 outside of your presence this morning. We agreed that
25 they're records. So they are now marked as my exhibits.

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1 A-1 I put Mr. Horton, and, A, I put Ms. Horton. So if you
2 go back and you want to go through these, they're there for
3 you to look at.

4 But we look at the state's Tony Sellers who is a
5 curiosity to me -- Tony. Tony is the person that worked at
6 the car dealership that got on the stand and said he was
7 just an employer and she was just an employee and that she
8 had been gone for several months and that out of the blue
9 on June the 2nd she calls him on a cell phone.

10 Those records are indicative of that phone call being
11 done. And, again, you'll have these. I've marked them in
12 yellow. Those phone calls started originating around 9:00
13 clock.

14 We've got Tony Sellers. I wrote that down. Tony
15 Sellers and Tony Sellers and Tony Sellers. Four calls to
16 Tony Sellers between 9:00 o'clock and 9:27. And those
17 calls, the first one you'll see up there, is that three.
18 And that's the one that Tony said was a disconnect or they
19 lost it.

20 Then we get town to one that's 224. I assume that's
21 seconds. And then you get one that's 99. And then you get
22 one that's 737. All of this between 9:00 and 9:27.

23 Now, what does Tony tell us? Tony tells us that the
24 first call was a disconnect. The second call -- and there
25 was four on here, but we mainly talked about three. So I'm

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1 not that concerned about that. But the second call was a
2 casual conversation. It was casual. Like her job back if
3 she can get. He said, sure, be glad to give it back to
4 you. And it was just a casual conversation. So that
5 conversation of some 224 seconds or so was at 9:14, the
6 first call after the disconnect. 9:14.

7 Okay. The next call, which I assume is the last call,
8 the 9:27 time, an hour before 9-1-1 was called, lasted a
9 considerable bit of time, 737 seconds after all of these.

10 And I asked him, I said did y'all have anything going
11 on besides employer-employee relationships, and he said no.

12 But that next call she had said that she had been
13 beaten. That last call at 9:30, and that is the last time
14 they talked, 9:27, 28 seconds. She then says I've been
15 beaten by my husband. And he says, gosh, do you need a
16 place to stay. And she's saying, no, I've already made
17 contact with someone, I'm going to stay with someone in
18 Greenville.

19 Okay. So this is 9:27. So are we to assume that
20 between 9:14 and 9:27 she gets beaten? That doesn't make
21 sense, because there's a lot of telephone traffic going on
22 in this timeframe.

23 So why didn't she say it the first time? Why a casual
24 conversation with someone when you want them to know you've
25 been beaten? But you don't tell them until about 12

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1 minutes later, 12 or 13 minutes later. That's one of the
2 curiosities of this case.

3 Why would she say that? Why would she say I've been
4 beaten? And even more importantly, if she had been beaten,
5 why in the world would a half hour later you go back into
6 the place at 10:00 o'clock at night, go back home to get
7 jewelry from someone who just beat you up without a cop
8 going with you?

9 Now, you've got common sense, and you're going to use
10 it. And you're going to decide what's true in this case.
11 But you've got to look and say what in the world. We've
12 got records. We don't have to make up stuff. We've got
13 the footage.

14 She's telling somebody, Tony Sellers, at 9:27 I've
15 been beaten up. And the first time Tony hears it is after
16 a 224-second phone call earlier where she never mentions
17 it.

18 Now, those are credibility issues. So it begs to me
19 when I first got involved in this thing and I heard about
20 this, I'm sitting there saying why would she go back to
21 that house, why would she go back there if she just got
22 beaten up without a cop to get some necklaces? It just
23 doesn't have some truth to it. Something is wrong.

24 So then you go back and say, well, what else have we
25 got. We've got people that either you're going to believe

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1 or you're not going to believe.

2 We've got his brother, his mother and his dad. And
3 they tell you that somewhere around 8:00 o'clock or so that
4 night Erika knocks on the door and says that she's been
5 made to leave.

6 And of course Brent testified. He said that they had
7 an argument and she wanted him to leave. And he said, no,
8 if you're going to go to leave, you go ahead and leave. So
9 they had an argument. And that's what I just -- the biting
10 of the hand when he reached in to get the cell phone in the
11 car. She was leaving. And that's all around 8:00 o'clock
12 or so.

13 But we know that she left then, and then unless you
14 just want to take every one of their testimonies and just
15 say we believe none of it because they're relatives and
16 they're going to lie for their son and we're just going to
17 discount every single thing they ever said in this
18 courtroom, which is your prerogative, but if you believe
19 them, if you believe any or all of what they say, they saw
20 Erika that night. They -- she came to the house and said
21 Brent's kicked me out, why don't y'all go get the children.

22 Brent testified to you yesterday that he called his
23 family, which is documented by these records in that
24 timeframe, somewhere around -- we've got Brent's call to
25 house, 8:03, which is going to be 8:03. And that's Brent's

Closing arguments

1 number to his parents' house. 8:03. Okay. And then we
2 have another call at 9:17 from him to his house.

3 Okay. So in this timeframe of an hour and 15 minutes,
4 I submit to you that that's when they -- that he calls them
5 about can he leave the children the next morning at
6 6:00 o'clock -- and that's the 81 call to the house --
7 because he didn't want the parents to know that they were
8 in an argument and split up for the night. So he said he
9 just called and said can I take them to your house in the
10 morning, because she wasn't going to be there.

11 And then ten minutes later at 8:13 they're calling him
12 back to basically say we'll just come and get the children
13 instead of you having to bring them in the morning.

14 And in that 10-minute window, 8:03 to 8:13, is when I
15 submit to you Erika came over there and told them that she
16 was being kicked out of the house or whatever words she
17 wanted to use -- she had a place in Greenville -- and to go
18 get the kids. And they called Brent then and say, look,
19 we'll come and get them. And he says, fine, I am just
20 cooking supper.

21 And they tell you that she wasn't hurt at that time
22 and they offered her a place to stay at their house at that
23 time.

24 This marriage had been separated for some period of
25 time. And as his father told you, he was glad to get this

Closing arguments

1 family back together, his children. So they're doing
2 everything to make it work.

3 And then they start driving over there and find Erika
4 in the drive to that house when they pick up the children.
5 Both Chuck and Brenda see the car. It's identified, the
6 car, by Brenda saying that's her. They pick the children
7 up. And on the way home she's following them.

8 Again, this is where Brenda's credibility is going to
9 be attacked by the solicitor's office, and rightly so,
10 because she gave a statement of minimal length about three
11 hours after she had heard of this case and didn't indicate
12 that stuff had happened.

13 Now, whether she felt it important at that moment in
14 time or whether she was nervous or whether she was scared
15 to death of her son being charged with this and her
16 daughter-in-law being dead, you don't know what happens
17 three hours after something this traumatic happens to you.

18 But she told you the next day when she was talking to
19 a domestic attorney about the kids' situation and asked who
20 some lawyers were to contact, she went to the first one
21 that was available. And based on what he told her about
22 that statement, she felt a little more relaxed that she
23 could get it done at a later date.

24 She then goes to the sheriff's department, not where
25 her son is housed. If she wanted to see her son, she'd go

Closing arguments

1 to the jail. She goes to the sheriff's department, she
2 says, to see the detectives in the case to see about
3 supplementing her statement and telling what happened.

4 They weren't there. They weren't going to be there
5 for a couple of hours or so. And she had kids in Rock Hill
6 that were his family they had to take care of and see and
7 didn't want them to read about it or hear about it in the
8 paper. So that statement never got done.

9 I brought the officer in here yesterday for two
10 seconds just to corroborate that she was, in fact, at the
11 sheriff's department.

12 You try to make sure you cover some bases. And you
13 can believe the officer or not believe the officer. You
14 can say I don't believe the officer either, he said he knew
15 them people for a long time so I think he's lying too.

16 But if you believe the officer, she was at the
17 sheriff's department with her brother -- with her son. And
18 there's no reason to go to the sheriff's department except
19 to do what she said, to give a more full and complete
20 statement.

21 And she knew this was going to happen. When she told
22 me about what had happened, I say, boy, you're going to get
23 ripped because it's not in a report somewhere.

24 And then you have to decide, well, is it true or not
25 true, is it protecting her son, would the solicitor get up

Closing arguments

1 and say what do you expect a parent to do and move on.

2 Well, that's your decision, but if it's truthful.

3 Now, we know Erika wanted those kids out of the house.

4 She went to the parents to make sure they were out of the
5 house. She followed them. She went over to that house to
6 make sure they picked them up. And she made sure they had
7 left the area, and then did a 180-degree, as the brother
8 said, and went back that direction at some point in time.

9 And now why. Why did she go back and make sure those
10 kids were out of harm's way? What was going on? I don't
11 know. What caused that?

12 He has a bunch of phone calls going to her trying to
13 find her after 8:00 o'clock, none of which were responded
14 to. In the meantime, she's telling Tony reportedly I've
15 been beaten, when we know common sense tells you unless
16 you're a battered wife or something like that, and there's
17 no evidence of that in any of these cases, why would you go
18 right back into harm's way after someone just beat you up
19 at 10:00 o'clock? It just doesn't have some credibility to
20 it as to you going back just to get jewelry and making sure
21 these kids are gone.

22 So was there a fight? Was there? Was he sitting
23 around in pajamas ready to go to bed and she comes in in a
24 hostile manner and something bad happened more than anybody
25 could expect? Because otherwise, why don't you just call

Closing arguments

1 9-1-1 and say, look, guys, I've got to go back to the house
2 and get some jewelry, do you mind coming over there with
3 me, my husband is going to beat me up. And he could have
4 been charged with criminal domestic violence before she
5 ever went back over there. So there's something about it
6 that gives you some pause to think.

7 The calls from Chuck that came in at 11:11 and 11:39,
8 excuse me, 11:11 and 11:19 from Chuck, the brother, we
9 asked him why were you calling at 11:00 something. And he
10 said because I was concerned for my brother's safety,
11 something just didn't seem right.

12 He even went over there before he made those calls.
13 He had just flown in that day. He had just flown in. He
14 has no reason to be concerned about anything.

15 So what is it? What was the lay of the land that
16 night? And that's where as much as the solicitor says
17 amnesia helps my client, it doesn't. It helps no one. It
18 doesn't help Brent, because I didn't have to put him up.
19 There is no incentive to put someone up unless they're
20 going to say something good.

21 And we're not sitting here saying it was self-defense
22 or anything, because we don't know. That's when the
23 amnesia hurts me. I don't know what happened.

24 There's blood everywhere. It is a brutal murder.
25 It's a brutal killing. And murder is a term that I use

Closing arguments

1 that just means an intentional killing. And we're not
2 denying that she died. We don't deny that it was at his
3 hand.

4 The question is whether it was intentional without
5 malice. Or-and if it is, then it's nothing in this case,
6 because murder is the only verdict you can find. You can't
7 find anything less. So whether it is less or not less is
8 not an issue for you. You've just got to decide have they
9 proved their case in toto, completely and without
10 equivocation.

11 The tape I'm going to get back to work on, and I am
12 about through. But one other -- yeah. Sometimes I hate to
13 make notes. But I'm glad I did on one case.

14 The contact with the Greenville person that we're
15 going to spend, I've got a place to stay, it was a
16 curiosity to me last night when I started going through
17 these records and found no cell phone call from Erika to
18 anyone else in Greenville but Tony Sellers. None.

19 And if they had have been someone that said you can
20 stay with me, they would have had them on this stand this
21 week. They would have been there. So that's another
22 issue.

23 There's not a cell phone record to someone else to say
24 can I stay with you because I've just gotten beaten up and
25 kicked out of my house. And you look for those records and

Closing arguments

1 you look where Tony Sellers fits in. There's nothing in
2 between and nothing before.

3 And if that person had been a real person, could have
4 put on that stand yesterday or Monday to say that happened.
5 Again, evidence besides testimonial sometimes says a lot
6 more than testimony does. And I think that's something
7 totally to consider.

8 This D. N. A. evidence, we didn't make any bones about
9 the blood being everywhere. There's blood on the doors and
10 the handles. And I assume that the solicitor's argument
11 can be and should be what favors him on the crime scene
12 investigation. Did you knock her out?

13 Dr. Wren said he could have punched her with some
14 severity enough to render her unconscious. He can't say
15 for sure. But he says that's the likelihood, that it could
16 be.

17 So I guess theoretically he could have punched her out
18 in the bedroom and walked off to get the knife and come
19 back and then just do a carving job on her while she laid
20 on the ground. But there's blood splatters everywhere. So
21 that doesn't really help us.

22 There's blood splatters all through the house on the
23 ceiling, the walls and everywhere. There was a bad scene
24 in that house. And what we know from that bad scene, it
25 was not, it was not a boiling thing from the home front

Closing arguments

1 because from the home front he's trying to get her at
2 10:33, excuse me, yeah, 10:33. He's calling her. He's
3 trying to find her. All through here you see he's trying
4 to get her.

5 So at 10:30:33 he makes his last effort to find his
6 wife. After that she's in the house, after the kids have
7 been safely taken away at her request, and after she had
8 followed them to make sure those kids were gone. She was
9 in that house.

10 Within a matter of less than 30 minutes he's calling
11 9-1-1, excuse me, at 10:58:48 is that first phone call.
12 And he's not satisfied with one call, because he's not
13 getting anybody out there. He called again at 10 -- at
14 11:03.

15 And then the officers say when they found him he was
16 in a state of shock sitting in a lounge chair in his
17 pajamas covered in blood.

18 And that's this case. And it's an easy case for you
19 or a difficult case. But you've got to look at the
20 totality of the facts surrounding this case and see if you
21 believe in the totality of it that she just went there to
22 get some jewelry after being beaten up.

23 Does it make sense, or did she want to make sure those
24 kids were gone and she went back to that house for whatever
25 purpose that I'll never know?

Closing arguments

1 And I can't do more than tell you that you must find
2 guilt beyond a reasonable doubt. It's not by all stretch
3 of doubt. I'm not trying to go there.

4 Our law is clear that in a criminal case the doubt has
5 much more significance than a civil case you commonly would
6 hear if you were in a trial. Sometimes lawyers do it, and
7 I'll do it now.

8 In a civil case if you're in an automobile wreck,
9 medical malpractice case, breach of contract case, someone
10 sues somebody, we call the burden of proof, the burden,
11 someone has to prove their case.

12 The burden of proof is on the person who sues to prove
13 guilt by a preponderance of the evidence. What we call
14 greater weight is what you should always say. Greater
15 weight.

16 So effectively you have the old blind lady with the
17 hands of justice. And you put a pen on it. And it tips
18 that scale ever so slightly. That's the greater weight.
19 If you do that, then the person that got injured at the
20 intersection, collision, wins money from State Farm or
21 somebody. They win.

22 In the criminal case they say, hey, that's, you've got
23 someone's freedom at stake. And that burden is a lot more.
24 That burden is beyond a reasonable doubt. We're going to
25 make you load up, flat tops, discovery material and books

Closing arguments

1 and tilt that scale significantly to find guilt beyond a
2 reasonable doubt.

3 And that's the burden. That's what the judge will
4 instruct you. And if you had a doubt as to whether this
5 murder took place or an intentional killing without malice
6 took place or nothing took place, whatever you come up
7 with, you reach a verdict that you're satisfied which
8 speaks the truth. And we'll accept that verdict.

9 A lot of things in this case are unique. I haven't
10 seen amnesia in a long time. And, again, it doesn't make
11 someone not guilty of a crime. We never contended that. I
12 just felt I had to cover that base with a doctor to see why
13 he can't help me.

14 And if you don't want to believe it, then you don't
15 have to. Everything goes to the credibility that sits on
16 that side of the jury post. You're the triers of the
17 facts. The judge is the trier of the law. We present the
18 case. And that's what the system is all about. And it
19 works beautifully.

20 So we ask you. I'm sorry about this tape. But I
21 really feel like you need to listen to that tape back there
22 one time. I'm not telling you to, but I'm asking you to,
23 because there is an important part in that tape where it
24 says you're going to take my children. It doesn't say
25 she's going to take my children. Thank you.

Closing arguments

1 MS. CRICK: May it please the Court, Your Honor.

2 THE COURT: Ms. Crick.

3 MS. CRICK: Erika Horton went back to her house on
4 January the 2nd of 2007 after her husband had already hit
5 her.

6 She was not planning to stay there that night. The
7 only reason she went back is because she wanted to get a
8 few things for the night.

9 She'd already arranged to get her old job back. She'd
10 already arranged to stay with a friend. She was getting
11 out of a bad situation.

12 She tried to make it work. It didn't work. She was
13 leaving. She did not anticipate her husband waiting,
14 sitting on their living room sofa.

15 The kids were already at his parents' house, but he
16 was angry. He was angry because she had left. He was
17 angry because he kept calling her and calling her and
18 calling her and texting her. And she wasn't picking up the
19 phone.

20 He was angry because she didn't want to talk to him
21 when she came back in that house. She was packing some
22 things for the night in a plastic bag, but he wasn't going
23 to have that. He was not going to let her leave. So he
24 hit her. He stopped her.

25 He lunged at her. He grabbed her by the hair. And he

Closing arguments

1 kept kitting her, he kept hitting her, and he kept hitting
2 her until he knocked her out.

3 And while she lay unconscious on that bedroom floor,
4 he intentionally walked to his own kitchen and reached in
5 the drawer and got a knife. And then he methodically and
6 maliciously slit her throat down to the spine.

7 Because of his actions and because of the choices he
8 made, he is here before you today facing a murder charge.

9 And Mr. Vieth was very good in telling you what we've
10 got to prove. Murder is simply the intentional killing of
11 another person with malice aforethought.

12 Malice has been defined as a wicked heart bent on
13 mischief, evil or bad intentions, the conscious doing of a
14 wrong act.

15 Judge Cole is even going to tell you, I believe, that
16 you can infer malice simply by the use of a deadly weapon,
17 simply by the use of a knife, an aforethought.

18 Now, I want you to get away from this idea that a
19 murder has to be preplanned and premeditated and it's
20 something you've got to be thinking about for a year or a
21 month or a week or a day or even an hour before you do it.

22 That's not what the law requires. All it means is
23 that you have to have malice in your mind in the instant
24 before you commit the act. That's it.

25 What was in his mind in the instant he did the act?

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1 What was in his mind when he walked to that kitchen and got
2 a knife and walked back and cut his wife's throat?

3 It is very simple. Mr. Vieth told you when he did his
4 opening statement that this is not a who-done-it. He did
5 it. He got the knife. He held the knife. He killed her
6 with the knife, and that's not controverted. He cut her
7 throat. Nobody else.

8 But he says what the issue now is is malice
9 aforethought. He's saying, listen, he's got amnesia, he's
10 the victim.

11 He can't remember. And so all we can assume is that
12 he didn't have any malice aforethought. And of course we
13 can't go back in time and jump into his brain and try to
14 figure out what he was thinking or what he wasn't thinking.

15 But you know what we can do? We can look at what he
16 did before he killed her. We can look at what he did after
17 he killed her.

18 And what was one of the first things he did after he
19 killed her? What do we have that we can look at? It's
20 that 9-1-1 tape. It's the 9-1-1 call that tells us what
21 was on his mind right after he sliced his wife's throat.

22 And what he said was I think I just killed my wife. I
23 beat her. She was going to take my kids. She was going to
24 take my kids. He didn't say I don't know why I did it, I
25 have amnesia, I can't remember.

Closing arguments

1 He, what he did was he gave her an excuse for what he
2 had just done. And that's not all he said, because then he
3 talked to Detective William Gary. And he gave some more
4 details about what he had done.

5 He said he was working at his parents scraping an old
6 bus. There was an argument over some diapers earlier that
7 day. He even told them the store that he went to. And he
8 came back and he had the wrong ones, and then he went back.

9 He said that we argued. She tried to leave and I
10 tried to stop her. I got her cell phone from her. She bit
11 my hand to get it back. She left, but she came back later
12 after I changed for bed. We argued some more. She was
13 getting some things together.

14 He told Detective Gary, "I grabbed her by the hair. I
15 kept hitting her, I kept hitting her, I kept hitting her.
16 Then I went and got the knife."

17 Nothing about amnesia, nothing about everything going
18 great. He expects you to believe that now he cannot
19 remember what happened that night. Or he remembered when
20 he called 9-1-1, and he remembered when he spoke to
21 Detective Gary.

22 He remembered a whole lot of details when he got on
23 the stand yesterday and testified. He remembered getting a
24 phone call when he was at the scrap metal place. He
25 remembered getting a grocery list over a text message. He

Closing arguments

1 remembered arguing earlier in the day and trying to stop
2 Erika from leaving.

3 He remembered changing clothes. He remembered her
4 coming back. He remembered that she knocked on the door
5 and he wouldn't answer it and that she came in. He
6 remembered that she walked to the bedroom and he kept
7 trying to ask her, hey, what's going on and she wouldn't
8 answer him.

9 He remembered going into the bedroom. He remembers
10 her packing some things. He remembers her opening a drawer
11 and remembers her turning around. And he remembers lunging
12 at her. And then he remembers her yelling his name.

13 But the one thing he doesn't remember is cutting her
14 throat. That is extremely convenient, because the one
15 thing he doesn't remember is the one thing that makes him a
16 murderer.

17 Make no mistake. He remembers. He even gave us an
18 excuse as to why he did it. She was going to take my kids.
19 That's what was on his mind at the time this happened.

20 And what was on Erika's mind at the time this
21 happened? Mr. Vieth told you in his opening she went back
22 to her house. But we don't know why she bent back there.
23 Yes, we do; yes, we do.

24 No. Erika Horton didn't come in this courtroom and
25 she didn't get on the stand and testify. But we do know

Closing arguments

1 some things about what was going on and what was in her
2 mind at the time based on the actions, based on what she
3 did that night.

4 She tells us through her actions. And we know what
5 was on her mind because she told Tony Sellers on the
6 telephone. I left the house. He just beat my ass. I left
7 the house. He just beat my ass.

8 She said she wanted her old job back. She was going
9 to go stay with a friend. What she's telling us is she's
10 making plans to leave. She's making plans to support
11 herself.

12 She does not have any intention of staying in that
13 home that night. And she also tells us she's not intending
14 on reconciling with him tonight, because after he called
15 her and called her and blew up his phone calling and
16 texting her, you will not see one phone call on those phone
17 records from her to him, not one single telephone call,
18 because she was not interested in reconciling.

19 We do know she went back to the house. She told Tony
20 Sellers why she was going back to the house. Listen, I'm
21 just going to get a few things for the night, I'm going to
22 go back. And she probably thought she was going to be
23 okay.

24 But we know that she wasn't planning to stay there
25 very long. Her car was running still when the officers got

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1 to the scene. We know she wasn't going to be there very
2 long. And you can look at this picture in the back. But
3 because her purse or her wallet is setting on the seat and
4 the car window is down, she was just going in to get a few
5 things for the night.

6 She had a plastic bag, and you can see it right beside
7 her arm. And she was packing her things. She was filling
8 it with vitamins; she was filling it with some of her
9 clothing; and she was filling it with jewelry; and she was
10 intending to leave. She was packing her bags when she was
11 attacked.

12 And you know what? She couldn't fight back because
13 she was unconscious. She is telling us that because she is
14 lying on the bedroom floor with her arms completely
15 outstretched. Her things are scattered all around her.
16 Her jewelry is still clutched in her hand.

17 She is telling that, us that, because she didn't have
18 any blood on the inside of her hand. She didn't have any
19 defensive wounds on her hands or anywhere else on her body.
20 She didn't let go of that necklace to grab that knife or to
21 fight him off. That's how we know. That's what she's
22 telling us.

23 Her eye was collapsed. Her nose was fractured. The
24 frenulum was torn away underneath her lip. She was
25 unconscious. And he had not so much as a nick after this

Closing arguments

1 happened.

2 She lay there on the floor completely limp while that
3 defendant sawed through her throat all the way to her
4 backbone. We know because that's what she tells us
5 happened. We know because that's what the evidence tells
6 us happened.

7 What is malice? Let me tell you what I think malice
8 might be. Malice is after you beat your wife to the point
9 that her eye ball is collapsed and her nose is fractured
10 and her skin around her eye split open, her lip is swollen
11 and torn.

12 Malice is while she lays unconscious and bleeding on
13 the bedroom floor. It is walking to the kitchen on the
14 opposite side of the house.

15 And then with her blood still dripping off your hands,
16 malice is reaching over and opening up your knife drawer
17 and picking out a knife.

18 Malice is walking back to the other end of the house
19 and putting that knife to your wife's throat as she lay
20 there unconscious, defenseless, and then cutting through
21 the first layer of skin.

22 And then malice is cutting again through all of her
23 arteries and veins. And malice is cutting another time
24 through her esophagus where we swallow food and then
25 cutting again through her trachea, the windpipe, and

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1 cutting again all the way down to the spine at least five
2 times hitting the backbone.

3 Malice to me is hesitation marks. It's taking that
4 knife, putting it to your wife's skin and starting to cut
5 and stopping and thinking about it and then cutting again
6 anyway.

7 Malice is the amount of force and determination it
8 took to cut through every organ and every muscle and every
9 vein and every artery of her neck with a common kitchen
10 knife.

11 You can infer malice from the use of a deadly weapon,
12 but do you really have to infer it when he nearly cut her
13 head entirely off? Surely that's an act that requires
14 malice, a heart bent on mischief, evil or bad intentions.
15 Surely it's the conscious doing of a wrong act.

16 And how about aforethought? That's what was in his
17 mind in the instant before he did the killing. We do know
18 that he walked from one end of his home to the other end of
19 his home. He walked from the bedroom to the kitchen.

20 That means he had to get up and walk out of his
21 bedroom and into the hallway. He had to walk down the
22 hallway and into the living room or the den. Excuse me.

23 He had to walk through that den and into the kitchen.
24 And then he had to walk over to that drawer, open it up,
25 take out a knife.

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1 Then he had to take that knife and walk back out of
2 the kitchen, walk back through the den, back into the
3 hallway and back into the bedroom.

4 His wife, the mother of his children, is lying
5 unconscious on the floor. And then he had to take the time
6 to go over, bend over, kneel down and start cutting. And
7 he cut her over and over and over until there was virtually
8 nothing left to cut.

9 Every single step he took on the way to that kitchen,
10 after every single one of them he had a chance to think
11 about what he was doing. After every single step he took
12 on the way from that kitchen back to the bedroom he had an
13 opportunity to think about what he was doing.

14 After every single cut he made to her throat he had
15 the chance to think about what he was doing. And he had an
16 opportunity to stop. There was plenty of time for
17 aforethought, but he wasn't going to be stop. He wasn't
18 going to stop until he did exactly what he intended to do,
19 which was kill her so she wouldn't leave him and there
20 would be no possibility that she might get custody of their
21 children.

22 At the opposite end of this courthouse, actually on
23 this floor on the opposite end, is a courtroom. It's
24 called family court. And that's a place where a civilized
25 society goes to deal with issues related to marriage,

Closing arguments

1 children and custody.

2 We do not slit our husbands and wives' throats because
3 we're afraid they're going to leave us or because we're
4 afraid they might get custody of our children. You handle
5 those issues on the second floor in family court, not on
6 your bedroom floor with a knife.

7 There is no way on this planet that a human being
8 could possibly do this and there not be any kind of malice.
9 To cut somebody, the most intimate and personally, you can
10 kill somebody. To have her blood all over his hands, all
11 the way up his elbows, has got to be malicious.

12 And all he can say is I don't know what happened but
13 there's got to be some good reason for it. I don't know
14 what it is, but there's got to be some good reason.

15 I want to ask you all, ladies and gentlemen, think
16 very long and think very hard. And you tell me if you can
17 conjure up in your mind any scenario, any scenario at all,
18 that would justify nearly cutting the head off of your
19 unconscious wife.

20 Is there anything he could remember that would justify
21 doing that, anything at all he could possibly remember to
22 justify doing that?

23 I know all of this has sounded complicated. I know
24 the law may seem a little bit complicated. The emotions of
25 this case are certainly complicated. But I'm telling you

Closing arguments

1 this really is a very, very simple case.

2 Choice. The greatest power a person has is the power
3 to choose. And with every twist we make there's an end
4 result. Every choice we make, there's a consequence.

5 You can choose good or you can choose evil; you can
6 choose family court or you can choose murder. The
7 defendant made his choice. Her choice was to leave him.

8 But what he said was, you know, what, Erika, uh-uh.
9 I'm not going to let you leave me. I'm deciding that
10 you're not going to do that, you're not going to have an
11 opportunity to do that.

12 And, Erika, instead of going to family court, I'm just
13 not. I'm not going to do that. I'm going to take you from
14 your children. I'm going to take you from them. I don't
15 want you to leave me again and get a divorce, even though
16 you may be one hundred percent justified in getting one. I
17 don't want you to file for divorce, so I choose to take
18 your life. It is that simple. He chose to take her life.

19 And now you have a choice to make. He sets before you
20 today to face the consequences of his choices. He chose
21 evil. And although he claims he can't remember what
22 happened, and, by God, I bet you he wishes he couldn't
23 remember, he remembers. I guarantee you he has not
24 forgotten one punch, one lunge. He hasn't forgotten one
25 cut.

Jury charge

1 Erika's family hasn't forgotten; Erika's children
2 haven't forgotten. Don't you all forget. Don't you forget
3 the details he gave to 9-1-1; don't you forget the details
4 he gave to Detective William Gary; don't you forget the
5 details he gave when he came in here and got on this
6 witness stand.

7 And above everything else, don't forget Erika. She
8 told us what really happened. And now you tell her we've
9 listened.

10 THE COURT: Mr. Foreman and ladies and gentlemen of
11 the jury, you of course have heard and seen all of the
12 evidence in the case.

13 Can y'all turn that projector off, please?

14 (Pause.)

15 THE COURT: You've heard the final summations of the
16 lawyers; and therefore it now becomes my obligation to
17 instruct you on the law that's applicable in the case. And
18 then you'll be asked to go back and begin your
19 deliberations. And through that process you'll examine the
20 evidence, decide the facts, apply the law and arrive at a
21 fair and just decision.

22 It is your exclusive duty to determine what the facts
23 are. You do that through your own common sense examination
24 and evaluation of all of the testimony and other evidence
25 received during the trial of this case.

Jury charge

1 You 12 jurors alone will decide what weight, value and
2 effect to give to any particular testimony or other
3 evidence in the case.

4 Your sole objective is to simply reach the truth in
5 the matter, and by doing that you will have fulfilled your
6 obligations as jurors. And that is to simply give both the
7 state and the defendant a fair and impartial trial.

8 Now, in this case, as you are aware, the defendant has
9 been accused by the prosecution of having committed the
10 crime of murder.

11 The allegations setting forth that charge are
12 contained in that document called the indictment which I
13 referred to prior to and after your selection.

14 The indictment alleges that Larry Brent Horton did
15 here in Spartanburg County on or January the 2nd of 2007
16 intentionally and with malice aforethought cause the death
17 of one Erika Horton by cutting and/or stabbing her with a
18 knife and that she died as a proximate result of those
19 injuries.

20 As I told you, the indictment is not evidence in the
21 case. It's not proof of anything. It's simply the means
22 by which a person is brought into this court and is
23 formally put on notice as to a crime the state has alleged
24 that they have committed.

25 The indictment will be in the jury room, because, as I

Jury charge

1 have indicated to you, Mr. Foreman, it will be on the back
2 of the indictment that you will indicate the jury's
3 unanimous decision. But other than serving as the verdict
4 form, the indictment serves no purpose so far as you jurors
5 are concerned.

6 Now, as to the allegations in the indictment and as to
7 the charge set forth the defendant has entered a plea of
8 not guilty. And, as I told you, that plea of not guilty
9 has therefore placed upon the state the burden of proving
10 the allegations that are set forth in the indictment, the
11 burden of proving each of the essential elements of the
12 crime alleged against the defendant; and therefore the
13 burden is upon the state to establish the defendant's guilt
14 to the satisfaction of you 12 jurors beyond a reasonable
15 doubt before a verdict of guilty could be returned.

16 You are instructed that the burden is never upon a
17 defendant to prove that he is not guilty or to prove that
18 he is innocent, because in some cases that might not be
19 possible.

20 The burden is always upon the state in bringing a
21 charge against another to establish that person's guilt
22 beyond a reasonable doubt.

23 You are also further instructed that it is a vital,
24 important and cardinal rule of law that every defendant in
25 a criminal trial, and it doesn't matter how serious the

Jury charge

1 offense might be, every person who is accused of a crime is
2 presumed innocent of that charge.

3 That presumption of innocence remains with any
4 defendant, as it does with this defendant, from the time
5 that he is placed under arrest and throughout the course of
6 the criminal process and even throughout the course of the
7 actual trial in the case.

8 And, as I've told you, that presumption of innocence
9 will be with this defendant even as you go back into your
10 jury room to begin with your deliberations in this case.
11 And that presumption of innocence will be with him in that
12 jury room, and it'll be with him forever unless you 12
13 jurors determine that he's no longer entitled to that
14 presumption of innocence.

15 That is after you have carefully considered all the
16 evidence in the case, from that evidence you have
17 determined the facts as you believe them to be, and after
18 deciding those facts you apply the law that I will have
19 provided you, if you 12 jurors unanimously determine that
20 his guilt has been proven beyond a reasonable doubt, then
21 he would no longer be entitled to that presumption of
22 innocence. But it's only if, unless and until you are
23 satisfied of his guilt beyond a reasonable doubt that the
24 presumption of innocence would no longer be applicable.

25 Now, while the state does have the burden of proving

Jury charge

1 the defendant's guilt to your satisfaction beyond a
2 reasonable doubt, that doesn't mean that the state has to
3 prove his guilt beyond all doubt or beyond any possible
4 doubt. But it does require the state to prove the
5 defendant's guilt to your satisfaction beyond a reasonable
6 doubt.

7 The term reasonable doubt should be given its plain
8 and ordinary meaning. A reasonable doubt is the kind of
9 doubt that would cause a reasonable person to hesitate to
10 act upon the information provided.

11 A defendant in a criminal trial is entitled to any
12 reasonable doubt that arises from the evidence or lack of
13 evidence in a case. And if upon any factual issue
14 essential to a finding of a verdict of guilty you have some
15 reasonable doubt as to how that issue should be resolved,
16 it would be your duty to resolve that reasonable doubt in
17 favor of the defendant.

18 And therefore if upon your consideration of the whole
19 case you have a reasonable doubt as to his guilt, you must
20 resolve that reasonable doubt in his favor and return a
21 verdict of not guilty.

22 And, on the other hand, after you have carefully
23 considered all of the evidence and decided the facts and
24 applied the law, if you have no reasonable doubt as to the
25 defendant's guilt, then of course it would be your

Jury charge

1 corresponding duty to convict the defendant where you are
2 satisfied of his guilt beyond a reasonable doubt.

3 Now, the same law that provides that you are the
4 judges of the facts also provides that I am the judge of
5 the law. And that simply means that nobody is going to
6 tell you how to arrive at your determination of fact in
7 this case.

8 You do that, as I have already stated, through the
9 exercise of good judgment and common sense conscientiously
10 applied to the testimony and other evidence received during
11 the trial of the case.

12 You must however under your oath as a juror accept the
13 law as I provide it to you as being the law that is
14 applicable in this particular case.

15 In other words, you're not to concern yourself with
16 what you thought the law was before you came to serve as a
17 juror this week or what you think the law ought to be.

18 Under your oath you must accept the law as I provide
19 it to you as being the law that is applicable in this
20 particular case. Then you simply take that law and you
21 apply it to the facts as you 12 jurors determine those
22 facts to be based upon your own common sense examination
23 and evaluation of all of the testimony received during the
24 trial of the case.

25 Now, because you are the judges of the facts you are

Jury charge

1 therefore necessarily the sole judges of the credibility of
2 each witness that has testified during the trial of this
3 case.

4 And as I told you at the beginning of the trial, there
5 may be a conflict in testimony. And where that conflict
6 relates to a material fact which you must resolve in order
7 to make a decision in the case, it is your prerogative to
8 evaluate and to assess the credibility of witness'
9 testimony.

10 You are the judges of the facts. You are the judges
11 of each witness' credibility. And so there are a number of
12 factors which you should consider in arriving at your
13 assessment as to a particular witness' credibility, and I'm
14 going to list those factors for you.

15 You may consider the demeanor of the witness, that is
16 how the witness appeared to you when the witness testified
17 from the witness stand.

18 Was the witness straightforward in responding to
19 questions, or was the witness hesitant or evasive in
20 responding to questions that were asked of a particular
21 witness?

22 Simply put, did the witness appear to you to be
23 telling the truth and to have knowledge of the facts to
24 which that witness has testified.

25 You may also consider whether or not the testimony of

Jury charge

1 a witness is consistent, or is it inconsistent with that
2 witness' own testimony provided in court or with other
3 statements made outside of court? And you may consider
4 whether or not the testimony of a witness is consistent or
5 inconsistent with other witnesses' testimony or other
6 evidence received during the trial.

7 You may also consider how the witness came to know the
8 facts to which that witness has testified. That is what
9 was that witness' opportunity and ability to perceive the
10 existence of those facts to which that witness has
11 testified by having previously used his or her senses. And
12 then what is that particular witness' ability to be able to
13 come into court and to accurately recollect to you as to
14 what they have previously seen or heard?

15 You may also consider any bias, prejudice or interest
16 that a witness might have in a case. In other words, do
17 you find some reason that a particular witness would come
18 into court and would testify one way or another to help or
19 to hurt one side or the other?

20 And you may consider any interest that a witness might
21 have in the outcome of a case if you determine that a
22 witness does have such an interest and you find that that
23 interest would bear upon that particular witness'
24 credibility.

25 You may also consider whether or not the testimony of

Jury charge

1 a witness is strengthened, or is it weakened by other
2 testimony or other evidence received during the trial?

3 Now, because you are the judges of the credibility of
4 each witness you are permitted to believe as much or as
5 little of what a witness has testified to as you deem is
6 appropriate.

7 And you are permitted to evaluate and assess the
8 credibility of expert-witness testimony just as you do
9 lay-witness testimony.

10 And while the Court determines whether or not a
11 witness can testify during a trial as an expert, the jury
12 still has the duty and obligation to assess the credibility
13 of that testimony.

14 Simply put, you must evaluate the testimony of expert
15 witnesses just as you do the testimony of any other witness
16 that has testified during the trial.

17 And in that regard you may believe everything that a
18 witness has testified to. You may choose to believe none
19 of it. You may believe one portion of a witness' testimony
20 and reject some other portion of that same witness'
21 testimony.

22 And in a given case you can believe one witness as
23 opposed to several, or several as opposed to one. Whatever
24 your good judgment and common sense tells you is the most
25 believable and credible testimony is the testimony you

Jury charge

1 should accept. And you should reject any testimony or
2 other evidence that you find not to be credible or
3 believable.

4 Again, your sole objective is to simply reach the
5 truth in the matter. And by doing that you will have
6 fulfilled your obligations as jurors, and that is to simply
7 give both the state and the defendant a fair and impartial
8 trial.

9 Now, while there are various forms of evidence such as
10 testimony, photographs, documents, charts and other types
11 of physical exhibits, there are really only two types of
12 evidence. And either or both of those types of evidence
13 may be used to prove any fact in issue. The two types of
14 evidence are direct evidence and circumstantial evidence.

15 Now, direct evidence is the testimony of a person who
16 testifies from actual knowledge of a fact. It is testimony
17 by a person who has perceived the existence of a fact by
18 means of their senses. And then they come into court and
19 they testify as to what they have previously seen or heard,
20 or felt for that matter.

21 Circumstantial evidence, on the other hand, is the
22 proof of some other fact or set of facts which taken either
23 singly or collectively may prove the existence of a fact in
24 question as a necessary consequence, that is through an
25 inference.

Jury charge

1 An inference is simply a deduction of fact which may
2 logically and reasonably be drawn from the proof of some
3 other fact or set of facts.

4 In other words, it's not a fact proven by the direct
5 testimony of a witness based upon personal perception, but
6 it is a conclusion which might reasonably be drawn from the
7 proof of other facts.

8 In other words, you may infer that a particular event
9 occurred or that a particular fact exists based upon the
10 proof of sufficient factual circumstances which would
11 reasonably warrant your arriving at such a conclusion.

12 Now, the law makes absolutely no distinction between
13 the weight or the value to be given to direct evidence as
14 opposed to circumstantial evidence, nor is a greater degree
15 of certainty required of circumstantial evidence as opposed
16 to direct evidence.

17 Whatever the type of evidence used to prove any fact
18 in issue, you should consider all of the evidence presented
19 during the trial of this case. And after carefully
20 considering all of that evidence in your minds if you are
21 not convinced of the guilt of the defendant beyond a
22 reasonable doubt, then you must resolve that doubt in his
23 favor and return a verdict of not guilty.

24 Now, as you are aware, the defendant in this case has
25 been charged with the crime of murder.

Jury charge

1 Murder is a crime that is set forth statutorily in a
2 provision of law which defines what the crime of murder is.
3 And that statute is Section 16-3-10.

4 That statute provides that murder is defined as the
5 killing of any person with malice aforethought either
6 expressed or implied -- expressed or implied referring to
7 the term malice aforethought. So murder is defined as the
8 killing of any person with malice aforethought either
9 expressed or implied.

10 Now, in order for you to find the defendant to be
11 guilty of the crime of murder it would be necessary that
12 the evidence in this case established to your satisfaction
13 beyond a reasonable doubt that the defendant did commit
14 some act or acts which proximately caused the death of the
15 decedent, in this case Erika Horton, and that the killing
16 was done with malice aforethought.

17 Malice aforethought is an essential element of the
18 crime of murder. Malice as an essential element of the
19 crime of murder is a term connoting an ill will and having
20 the intent to do harm.

21 Malice is a technical term importing wickedness and
22 excluding just cause or legal excuse. It is something
23 which springs from depravity, from a heart devoid of social
24 duty and fatally bent on mischief. It is a state of mind
25 indicating an extreme disregard for or an extreme

Jury charge

1 indifference to human life.

2 Malice may be likewise defined as a state of mind
3 which indicates a formed purpose and design to commit a
4 wrongful act under circumstances that exclude any legal
5 right to do it.

6 The words expressed or implied malice do not mean
7 different kinds of malice but merely the manner in which
8 malice may be shown to have existed, that is to say either
9 by direct evidence or by circumstantial evidence implying
10 or inferring the existence of malice.

11 Malice may be expressed as where there is an expressed
12 threat to kill or a lying in wait or where the
13 circumstances show directly that an intent to kill was
14 entertained by the killer.

15 Malice may be inferred, though no expressed intent to
16 kill is proven by direct evidence, where the facts and the
17 circumstances which have been proven by the evidence in the
18 case satisfy you beyond a reasonable doubt that malice was
19 present in the mind of the slayer at the time any killing
20 took place.

21 The existence of malice may be inferred from the
22 circumstances shown to have existed at the time of the
23 event, as often the state of a person's mind can only be
24 proven by circumstantial evidence.

25 Therefore you are permitted to infer the existence of

Jury charge

1 malice from proof of an unlawful and an intentional killing
2 of another person without justification or legal excuse.
3 You are permitted to infer the existence of malice from
4 proof of a wrongful intent to injure another person through
5 the infliction of serious bodily harm indicative of a
6 wicked or depraved spirit.

7 You are permitted to infer the existence of malice
8 from proof of the intentional use of a deadly weapon. You
9 are permitted to infer the existence of malice from proof
10 of the intentional commission of an act or acts which is or
11 are inherently dangerous to human life.

12 You are permitted to infer the existence of malice
13 from proof of the commission of a reckless act or acts
14 which is or are inherently dangerous to human life and
15 which is or are done so recklessly as to manifest a
16 depravity of mind signifying an extreme disregard for or an
17 extreme indifference to human life.

18 Now, malice as an essential element of the crime of
19 murder does not necessarily require proof of an actual or a
20 specific intent to take human life, but rather it means a
21 state of mind accompanying conduct which signifies a
22 general malignant recklessness and an extreme disregard for
23 or indifference to human life.

24 Now, even if the facts proven are sufficient to give
25 rise to an inference of malice, such an inference would

Jury charge

1 simply be an evidentiary fact to be taken into
2 consideration by you 12 jurors along with all of the other
3 evidence in the case. And you shall give such inferences
4 such weight, if any, that you determine they should
5 receive, if any.

6 Simply stated, you are permitted to infer the
7 existence of malice from proof of any one or more of those
8 circumstances that I have just described, as well as from
9 any other evidence introduced in the trial of the case
10 reasonably tending to prove that fact. But you are in no
11 way required to make such an inference.

12 The state is required to prove malice, just as it must
13 prove any other essential element of the crime charged.
14 And it is for you 12 jurors to determine whether or not the
15 evidence in this case establishes the element of malice
16 beyond a reasonable doubt.

17 You must determine whether or not malice existed based
18 upon your consideration of all of the evidence introduced
19 during the trial of the case and any reasonable inferences
20 that might be drawn from that evidence.

21 It is also essential that there exist not only malice
22 but that there exist malice aforethought.

23 Now, the law does not require that malice must exist
24 for any appreciable length of time before the commission of
25 an act or acts proximately causing a fatal result. Indeed,

Jury charge.

1 it may be conceived at the very moment that the fatal act
2 or acts are committed.

3 It is sufficient in the law so long as the state has
4 proven beyond a reasonable doubt both the existence of
5 malice and the commission of an act or acts by the
6 defendant which proximately caused the fatal result.

7 Now, while the state must prove beyond a reasonable
8 doubt that a killing did occur accompanied by the element
9 of malice aforethought in order to establish the crime of
10 murder, it is not necessary that the state prove any motive
11 for such a killing.

12 Motive is not an essential element of the crime of
13 murder which must be proven, although there may be evidence
14 relating to that fact introduced during the trial of the
15 case.

16 Now, Mr. Foreman and ladies and gentlemen of the jury,
17 I am not in any way concerned with what your decision is,
18 but you are instructed that the verdict has to be
19 unanimous. All 12 of you must be in agreement before any
20 verdict may be returned to the Court.

21 Mr. Foreman, as you know, you'll have this indictment
22 with you. It's on the back of the indictment in the lower
23 left-hand corner you'll see the word verdict. It's beneath
24 that word that you'll indicate the jury's unanimous
25 decision.

Jury charge

1 In this particular case you have two potential verdict
2 forms. If the state has proven the crime of murder against
3 this defendant beyond a reasonable doubt, the verdict form
4 would be guilty.

5 If the state has failed to satisfy you of any one or
6 more of the essential elements of the crime of murder
7 beyond a reasonable doubt, then your verdict form would be
8 not guilty.

9 So whatever that decision is, guilty or not guilty,
10 indicate it in the space provided. Also, sign your name as
11 the foreperson and place the appropriate date in the space
12 provided.

13 A couple or three other things. If we have any
14 smokers on the jury, you can smoke during deliberations if
15 you find it necessary to do so. You cannot smoke in the
16 jury room. You have to go outside to accomplish that
17 purpose. So if anybody needs to smoke, let the bailiff
18 know. They'll take you outside to accomplish that task.

19 You are instructed however that deliberations must
20 stop if any juror is absent from the jury room for any
21 authorized purpose. And deliberations may only resume when
22 all 12 jurors are present so that all may participate in
23 those deliberations.

24 Your lunch has been ordered. It may be here, it may
25 not. I don't know. But in any event, when you begin

Jury charge

1 deliberations, you can deliberate while you eat, you can
2 eat first and then deliberate. Whatever you want to do
3 about that, I'll leave it up to you. I'm not going to
4 instruct you about that. We'll leave that to your
5 discretion.

6 With regard to evidence, all of the evidence that
7 you're going to receive in this case has been presented.
8 Now that you are going back to begin with your
9 deliberations no additional evidence may be submitted or
10 received even if it did exist.

11 So don't inquire as to the possibility of any
12 additional evidence being available, because even if it
13 were available or even if it did exist, it could not be
14 received by you now, now that you are going back to begin
15 deliberations.

16 If at any time during your deliberations you need an
17 additional explanation as to the law that's applicable, I
18 can answer questions that relate to the law. I cannot
19 answer any questions that relate to the evidence or facts
20 in the case.

21 However, if you have a question about the evidence or
22 the facts and you think that question can be answered by
23 having testimony replayed in whole or in part, we can bring
24 you back into the courtroom to have testimony replayed in
25 whole or in part.

Jury charge

1 We do not have transcripts of witnesses' testimony
2 available for you to take to the jury room. But if you
3 need to hear a witness' testimony replayed, let us know.
4 And we can bring you back to have it played in whole or in
5 part.

6 As I say, if you need an additional explanation as to
7 the law or you need a clarification or an additional
8 instruction, if you'll let me know of that fact, I can
9 always provide that additional explanation or provide you
10 any clarification that might be necessary.

11 So while I can't answer questions as they relate to
12 the facts, you can hear testimony if you need to. I can
13 answer questions that relate to the law that's applicable
14 should you have a question about the law.

15 There is an audio tape, as you know, that's been
16 played. And if you wish to have that, if you wish to
17 rehear that audio, let me know. And we'll have to make
18 arrangements either to bring you back in here to do it or
19 if we can -- if we have the equipment, we can send it back
20 there so that you can replay it in the jury room. Just let
21 me know if you wish to replay that audio, and I'll make
22 those arrangements for you.

23 I think that covers everything. I hope.

24 I'll ask you now to please go to your jury room. But
25 do not begin your deliberations yet. I've got some matters

Jury charge

1 I'll need to address with the lawyers.

2 If I don't need to bring you back for any reason, I'll
3 simply send word by way of the bailiff that you can begin
4 your with your deliberations. In the event he'll bring to
5 the jury room all of the exhibits which have been
6 introduced in the trial.

7 And to you, Mr. Foreman, he'll also bring the
8 indictment which will serve as the verdict form.

9 So please retire to your jury room. But do not begin
10 deliberations until I send you word to do so.

11 (Whereupon, the jury retired to deliberate at
12 12:22 p.m.)

13 THE COURT: Are there any exceptions to the
14 instruction or requests for additions to the instruction by
15 the state?

16 MR. GOWDY: No objections, no exceptions.

17 THE COURT: By the defense?

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

19 Of course the record would reflect our objection not
20 to charge voluntary manslaughter.

21 THE COURT: All right. That exception is noted.

22 Let me ask y'all to very the exhibits before they go
23 back, please.

24 (Pause.)

25 THE COURT: All of the exhibits are accounted for?

1 MR. GOWDY: Yes, sir, Your Honor.

2 THE COURT: Okay. Send them back and tell the jury to
3 begin their deliberations and notify us when they've
4 concluded.

5 We will be at ease while they are deliberating.

6 (Whereupon, the exhibits were submitted to the jury at
7 12:37 p.m.)

8 (Whereupon, a recess was taken.)

9 THE COURT: The jury wants to rehear testimony of
10 Detective Gary and of the defendant. So we are going to
11 bring them back to have that replayed.

12 Bring them in.

13 (Whereupon, the jury returned to the courtroom at
14 2:10 p.m.)

15 THE COURT: Mr. Foreman, I understand that you and
16 your fellow jurors would like to have the testimony
17 replayed of two witnesses. One is William Gary; the other
18 is Larry Brent Horton.

19 So we'll begin with Detective Gary's testimony. And
20 we're going to play the whole thing unless you tell me you
21 want to stop it at any point.

22 So I don't know what you want to hear. You may want
23 to hear it all. If you do, we'll just start at the
24 beginning and it'll be played right through.

25 If at any time you've heard enough and you want it

1 stopped, you just let the bailiff know. We'll stop it and
2 then continue with the other. Okay.

3 (Whereupon, the testimony was began to be replayed.)

4 THE COURT: Can everybody hear?

5 (Pause for bad tape.)

6 THE COURT: Let me ask the jury to go back to the jury
7 room. We'll try to sort this out and bring you back.

8 (The following takes place outside the presence of the
9 jury.)

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Bring the jury in, please,
12 sir.

13 (Whereupon, the jury returned to the courtroom at
14 2:30 p.m.)

15 THE COURT: All right. I think we have got it sorted
16 out. We'll see in a moment. But the court reporter has
17 the tape player over there near you.

18 So she'll come over and begin playing it. If for some
19 reason you can't hear or you have a problem, just let her
20 know. Okay.

21 (Whereupon, the testimony of William Gary and the
22 defendant was replayed for the jury.)

23 THE COURT: All right. Please return to your jury
24 room and continue with your deliberations.

25 (Question from the jury marked Court's Exhibit No. 4.)

Verdict

1 (Whereupon, the jury retired to deliberate at

2 3:40 p.m.)

3 THE COURT: All right. We will continue to be at ease
4 while the jury is deliberating.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. I'm told the jury has reached
7 a decision.

8 Are we ready to receive the verdict?

9 MR. VIETH: Yes, sir.

10 MR. GOWDY: The state is, Your Honor.

11 THE COURT: Okay. Bring them in.

12 (Whereupon, the jury returned to the courtroom at
13 3:58 p.m.)

14 THE COURT: Mr. Foreman, have you and your fellow
15 jurors reached a unanimous decision?

16 THE FOREMAN: We have.

17 THE COURT: Have you indicated that decision on the
18 back of the indictment as requested?

19 THE FOREMAN: Yes, I have.

20 THE COURT: Did you sign your name as the foreperson
21 and date it?

22 THE FOREMAN: Yes, sir.

23 THE COURT: All right. If you will, please hand that
24 verdict form up by way of the bailiff.

25 You may publish the verdict.

Verdict

1 THE CLERK: In the State of South Carolina, County of
2 Spartanburg, Indictment No. 2008-GS-42-0950, the State vs.
3 Larry Brent Horton, indicted for murder, the jury has
4 found -- a unanimous decision by the jury is a verdict of
5 guilty. Signed by the foreperson, dated 6/18 of '08.

6 Ladies and gentlemen of the jury, is this your verdict
7 and still your verdict? If so, please raise your right
8 hand.

9 (Whereupon, all responded in the affirmative.)

10 THE COURT: All right. All jurors have responded in
11 the affirmative.

12 Does the defendant wish to have the jury polled?

13 MR. VIETH: Yes, Your Honor.

14 THE COURT: All right. Poll the jury, please, ma'am.

15 THE CLERK: Ladies and gentlemen of the jury, I will
16 pose a question to you, after which I will ask you to stand
17 individually and respond to my question, the question being
18 is this your verdict and still your verdict.

19 Juror No. 16, Laurel Brown, is this your verdict and
20 still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: No. 111, Kevin Miller.

23 THE JUROR: Yes, ma'am.

24 THE CLERK: No. 4, Joseph Anderson.

25 THE JUROR: Yes, ma'am.

Verdict

1 THE CLERK: No. 136, Jaime Rodriguez.
2 (Whereupon, the juror stood in response.)
3 THE CLERK: No. 115, William Moore.
4 THE JUROR: Yes.
5 THE CLERK: No. 11, Porter Blackman.
6 THE JUROR: Yes.
7 THE COURT: No. 90, Erin Luc.
8 THE JUROR: Yes.
9 THE CLERK: No. 15, Laura Bright.
10 THE JUROR: Yes.
11 THE CLERK: No. 63, Leslie Hembree.
12 THE JUROR: Yes.
13 THE CLERK: No. 123, Natiesha Paige.
14 THE JUROR: Yes.
15 THE CLERK: No. 42, Kevin Duthie.
16 THE JUROR: Yes.
17 THE CLERK: No. 146, Robert Simmons.
18 THE JUROR: Yes.
19 THE CLERK: Your Honor, the jury has been polled.
20 THE COURT: Any other matters to address with the jury
21 present?
22 MR. GOWDY: Not from the state, Your Honor.
23 MR. VIETH: No, sir.
24 (Whereupon, the trial jury was excused.)
25 THE COURT: Any matters to address prior to the

Motion and sentence

1 imposition of sentence?

2 MS. CRICK: Your Honor, I have a sentencing sheet I'll
3 provide.

4 MR. VIETH: Your Honor, we just renew all motions that
5 we've made previously. And if there's any posttrial
6 motions I need to make, I would wish to have time in which
7 to file those. But other than that, no. I'll file
8 whatever time limits -- I can't remember what I need, what
9 motions may need to be filed at this point.

10 THE COURT: Well, do you want to reserve your right to
11 make a motion for a new trial, or do you want to make it
12 now?

13 MR. VIETH: Well, I'll make that motion now, reserve
14 the right for a new trial, yes, sir.

15 THE COURT: You're going to make the motion for a new
16 trial now?

17 MR. VIETH: I'll make that motion now.

18 THE COURT: All right. That motion is denied.

19 MR. VIETH: Thank you, sir.

20 THE COURT: Any others?

21 MR. VIETH: No, sir.

22 THE COURT: Okay. All right. Anything further on
23 behalf of the state?

24 MR. GOWDY: No, sir, Your Honor.

25 This may not be the appropriate time, Your Honor, but

Sentence

1 at the appropriate time whenever the Court directs, I think
2 Ms. Erika's Horton's mother would like to briefly address
3 the Court.

4 THE COURT: All right. Now is the time.

5 MR. GOWDY: Okay. Tell her your name and speak.

6 ERIKA HORTON'S MOTHER: Okay. I am Monica Aileen
7 Samuos Wint Bell.

8 MR. GOWDY: Speak in a good strong voice.

9 ERIKA HORTON'S MOTHER: Your Honor --

10 THE COURT: Ma'am, if you will, please just step back
11 so I can be able to see you as you speak to me. I can't --
12 they need to hear too. So if you will, just step back
13 there next to the solicitor.

14 Okay. That's good right there. Thank you.

15 ERIKA HORTON'S MOTHER: Thank you for the opportunity
16 to speak.

17 I have been plagued with one question, among many
18 questions, as to why Brent Horton would murder my beloved
19 daughter leaving his children without a mother and robbing
20 me of my daughter and destroying all of our lives -- my
21 life, his children's lives, his parents' lives and his own
22 life. Thank you.

23 THE COURT: Well, ma'am, I don't know if you'll ever
24 get the answer to that question, but I wish you the very
25 best. Thank you.

Sentence

1 All right. Anything else?

2 MR. GOWDY: No, sir, Your Honor.

3 THE COURT: All right. Mr. Vieth.

4 MR. VIETH: May it please the Court.

5 Your Honor, you've heard two trials in this case, one
6 trial the jury heard and one trial they didn't. And I
7 can't add to what you've heard.

8 I would like to say this, is that the legislature
9 certainly in their wisdom has given some discretion to a
10 judge in sentencing someone for murder, and that discretion
11 goes from 30 years to life. And there's a huge difference
12 in the two.

13 Mr. Horton -- I believe he has no prior record.
14 There's no indication that this event would ever have taken
15 place. They had a rocky marriage to say -- you know,
16 there's no question they talked about it and got back
17 together.

18 He's got a support staff of people here that spent
19 from 8-hour drives to North Carolina to Georgia. He's got
20 pastors who believe in him who have been in this courtroom
21 to testify on his behalf.

22 It's just uncharacteristic of his life. And it's a
23 shock to me that he's in this position. It's not a shock
24 to me of a verdict. It's a shock to me that he was ever in
25 this position.

Sentence

1 But I would ask this court in its discretion to please
2 consider a sentence where he can get out at some point in
3 his lifetime.

4 He's 37 years old. And I realize the argument can be
5 made that the children will not have a mother because of
6 him. But I also -- I would ask the Court to consider
7 letting the children have some life with him upon his
8 release and to give consideration to the magnitude of
9 discretion that you have in sentencing him.

10 I know Mr. Horton would like to address the Court and
11 Mr. Bell if it is appropriate.

12 THE COURT: Okay. Mr. Horton.

13 MR. VIETH: You can come up here if you would like.

14 THE DEFENDANT: I just want to thank you for writing
15 the letter forgiving me.

16 I don't know why this happened. I can't, I can't tell
17 you. I'm sorry it happened. I miss Erika as much as
18 anybody. I thank you for your forgiveness.

19 THE COURT: Mr. Vieth, let me get you and Mr. Horton
20 to fill out that information at the top.

21 MR. VIETH: And also at least ask if any of his family
22 members would like to address the Court, Your Honor.

23 THE COURT: Okay.

24 MR. VIETH: Mr. Horton or Brenda, or would anyone like
25 to address the Court before sentencing? If you do, you're

Sentence

1 welcome to come up and say anything you'd like to say if
2 feel capable of doing it.

3 Yes, ma'am. Come up and give the court reporter your
4 full name.

5 AUDREY UNDERWOOD TOLSON: I'm Audrey Underwood Tolson,
6 T-O-L-S-O-N.

7 I guess this is one of the hardest things I've ever
8 had happen. But I would just like to ask you, judge, to
9 please be lenient. I've got two children, and this is
10 really tearing my heart out that this is happening to our
11 family.

12 THE COURT: I understand that. Good luck to you.

13 MR. VIETH: Anyone else?

14 Yes, ma'am.

15 DONNA CLEMONS: Donna Clemons, C-L-E-M-O-N-S.

16 I'd just like to say that I'm a former licensed
17 professional counselor. I'm on inactive status because
18 I've been diagnosed with a chronic illness. I have lupus.
19 And Brent is my cousin. And I just recognize the strain
20 and the difficulty on a spouse that I've placed on my
21 spouse from being chronically ill, and that every day with
22 me is a different day, and that my family has to adjust
23 their day a lot of the time based on if I'm able to get up
24 and if I'm able to function or not.

25 And I would just like for you to take that into

Sentence

1 consideration, that, you know, I truly believe Brent was
2 trying to do all he knew to do to help the situation. But
3 in a chronic condition like that it's just things is very,
4 very difficult for the caretaker, to take care of somebody
5 that is chronically sick and in need of help. And I'd just
6 like for you to consider that.

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

8 MR. VIETH: Is that all? One more.

9 All right. Come on up. Your Honor, Brenda has
10 testified. It is the mother.

11 THE COURT: Ms. Horton.

12 BRENDA HORTON: I really don't know anything to say.
13 I didn't realize I would be allowed to say anything, Your
14 Honor. I just thought we would be -- have to sit and just
15 listen to what was happening all this week.

16 This action was so truly uncharacteristic of my son.
17 I have -- and as we've said, we have no idea what had
18 happened. But he didn't, does have two, well, he has four
19 children who love him. He has two very small ones who need
20 to be able to see and know and hug their daddy when they
21 can. And I understand they can't do that with their mama,
22 and I am so truly sorry for that too. But I would, as the
23 others have said, I would beg for mercy for my son. Thank
24 you.

25 THE COURT: Thank you, ma'am.

Sentence

1 MR. VIETH: Go ahead. Give the name to the court
2 reporter, please.

3 GERALD HAWKINS: Gerald Hawkins.

4 Judge, I had a son that was in an automobile accident
5 when he was 31 years old, and I lost him. And I know what
6 it is to lose a son.

7 And any leniency you could give to him would be
8 appreciated. I know both his mother and his father have to
9 live with it for the rest of their lives. Thank you.

10 THE COURT: Thank you, Mr. Hawkins.

11 STEVE MORGAN: My name is Steve Morgan.

12 I have had the privilege of serving as the pastor of
13 several members of this family, including Brent's mother
14 and father and younger brother and sister-in-law. And I've
15 had the privilege of communicating with Brent, and Brent
16 with me, over the course of this last year and a half.

17 While I am as grieved as anyone in this courtroom, at
18 the same time I stand before you, Your Honor, as one who
19 has over the last year and a half actually received
20 encouragement from Brent. And I would stand before you and
21 beg you for mercy on his behalf, and behalf of his family,
22 sir.

23 THE COURT: Thank you, sir.

24 MR. VIETH: Come around if you want to. Yes, sir.

25 LARRY BRENT HORTON, SR.: Your Honor, Larry Brent

Sentence

1 Horton is my son.

2 We've raised him in the church. He was a good boy,
3 hard worker. We lived on a farm. He loved his wife,
4 Erika -- he loved his wife, Erika. He done all he could
5 for her. And I loved her and I miss her.

6 My son and my daughter-in-law, Erika, has left us two
7 beautiful granddaughters. And I just want to thank Erika
8 and my son for them. And I hope and pray that you would
9 have mercy on my son, because my two granddaughters ask us
10 every day when is daddy coming home. And I say, baby, when
11 the Lord is ready for him to come.

12 Monica loves the granddaughters. They're special to
13 her. And I don't know what I'm going to tell them when I
14 get home tonight. I don't know.

15 But I hope, I hope and pray, that you will be merciful
16 to my son, because along with his two daughters, his two
17 sons, they, they are so tore up about this.

18 But again, sir, as from a father to a father, please
19 have mercy on my son. Thank you, sir.

20 THE COURT: Let me say that I do have a great deal of
21 sympathy and empathy for the families on both sides, both
22 Erika Horton's family and Larry Brent Horton's family. But
23 I am unable to ignore the brutality of this crime.

24 All right. On Indictment 2008-950, the State vs.
25 Larry Brent Horton, an indictment for murder, wherein you

Sentence

1 have been found guilty by a jury of that offense, the
2 Sentence of the Court is you, Larry Brent Horton, be
3 confined to the South Carolina Department of Corrections
4 for the period of your natural life.

5 END OF REQUESTED TRANSCRIPT OF RECORD

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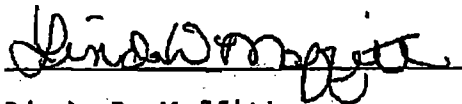
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 16th, 17th and 18th days of June 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 3, 2009



Linda D. Moffitt
Circuit Court Reporter

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge**

THE STATE,

Respondent,

V.

LARRY B. HORTON,

Appellant

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by refusing to instruct the jury on voluntary manslaughter.

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

The trial judge did not commit reversible error in refusing to instruct the jury on voluntary manslaughter under the facts of this case.

RESPONDENT'S STATEMENT OF THE CASE

Erika Horton was murdered between 10:30 and 11:00 p.m. on January 2, 2007 at her home in Campobello, S.C. Appellant, Larry Brent Horton, was arrested for the murder shortly after midnight on January 3, 2007. Appellant was subsequently indicted by the Spartanburg County grand jury for murder (2008-GS-42-950). Appellant was represented on the charge by Rick Vieth, Esq. The State was represented by Solicitor Harold W. "Trey" Gowdy. Appellant proceeded to trial on January 16, 2008 before the Honorable J. Derham Cole, Circuit Court Judge, and a jury. On January 18, 2008, the jury returned a verdict of guilty of murder. Judge Cole sentenced Appellant to life in prison for the murder of Erika Horton.

RESPONDENT'S STATEMENT OF FACTS

On January 2, 2007, Larry Brent Horton ("Appellant") severely beat his wife Erika Bell Horton ("Erika") until she was unconscious or helpless. (R. 16, 25, 32, 79-81, 82, 148, Tr. pp. 114,123, 130, 179-181,182, 261). The beating was so severe one of Erika's eye balls collapsed into her sinus. (R. 80, 148, Tr. p. 180, 261). Additionally, Erika's nose was broken, and she had bruises and contusions to her lips, about her eye, her forehead, and to her scalp. (R. 79-81, 148, Tr. pp. 179-181, 261). Her frenulum, the piece of supporting tissue inside the upper lip, was also torn. (R. 80, Tr. p. 180). She also had extreme congestion of the thinnest layer covering the brain. (R. 81, Tr. p. 181). Prior to the attack on her by Appellant on January 2, 2007, Erika had been diagnosed with multiple sclerosis. (R. 127, 134, Tr. pp. 240, 247).

After beating his wife until she was unconscious or helpless, Appellant then walked the length of his home dripping Erika's blood from the bedroom, where the beating took place, to the kitchen. (R. 65-78, 147-48, Tr. pp. 165-178, 260-261). Once there, Appellant opened a kitchen drawer, took out a kitchen knife, and returned to the other end of the home to the bedroom where Erika lay. (R. 32, 65-78, 79-86, Tr. pp. 130,165-178, 179-186). Appellant then stabbed the victim at least five (5) times in the neck with the kitchen knife. (R. 85, Tr. p. 185).

Several of the stab wounds penetrated to the victim's spine. (R. 79, 85, Tr. pp. 179, 185). The victim's jugular veins, both common carotid arteries in the neck, as well as her esophagus, trachea, and all of the muscles of the front of her neck were severed. (R. 84-85, Tr. pp. 184-185). There were also hesitation stab wounds to the victim's shoulders. (R. 79, 81-82, 148, Tr. pp. 179, 181-182, 261). After the stab wounds to her neck were inflicted, the only thing holding Erika's head onto her body was the skin and musculature of the back of the neck and her vertebral column. (R.

85, Tr. p. 185). There were *no defensive stab wounds* to Erika's hands or forearms indicating that at the time she was stabbed she was either unconscious or could not get her hands up to defend herself. (R. 82, 147, Tr. p. 182, 260). Erika died from blood loss as a result of the stab wounds. (See R. 84-85, 8-9, 79-82, Tr. pp. 184-185, 106-107, 179-182).¹

After murdering his wife, Appellant called 911 and told the operator he thought he might have killed his wife. When asked how he killed her, Appellant responded that he beat her.² When asked by the operator why he had done this, Appellant stated *his wife was going to take their children away from him*. (State's Exhibit 3, 911 tape).

When police arrived at the crime scene, Appellant was sitting in the carport of the home. In addition to finding the trail of blood from the bedroom to the kitchen drawer where the knife was selected, police found the murder weapon laying on the bedroom floor. There was blood everywhere in the bedroom where Erika's body was found, on Appellant's clothing, and on Appellant's hands and forearms. (R. 65-77, Tr. pp. 165-177). The pathologist and an investigator testified that at the autopsy there was very little blood left in Erika's body. (R. 84-85, 8-9, Tr. pp. 184-185, 106-107).

Appellant was taken into custody and read his Miranda rights at the scene but was not questioned there regarding the crime. Appellant was then transported from the crime scene in

¹While the pathologist did not specify the cause of death, the fact the victim died from blood loss from the stab wounds is the only reasonable inference from the record, including the exhibits offered at trial, the testimony of the pathologist, the testimony of the officers who worked the crime scene, the testimony of the officer who attended the autopsy, and the cross-examination of Appellant and is readily apparent from the record. (R. 78-86, 8-9, 10-13, 20, 22-23, 25-2638, 40, 57-60, 146-160Tr. pp. 178-186, 106-107, 107-111, 118, 120-121, 123-124, 136, 140, 157-160, 259-273).

²Portions of the 911 tape are unintelligible and Appellant also may have stated "and stabbed her." (See State's Exhibit 3). In fact, upon Respondent's review of the 911 tape it does sound like Appellant said "and stabbed her."

Campobello to the Spartanburg County Sheriff's Office located in Spartanburg, S.C. At the Sheriff's Office, Appellant was again read his Miranda rights and at that time agreed to talk with an investigator.

Appellant told the investigator that he could not remember what happened as far as the murder. Appellant stated he and his wife had separated but had gotten back together several weeks before her death. Appellant stated they were living together in the home where Erika's body was found. Appellant told the investigator that earlier in the evening there was an altercation between he and his wife and she left. Appellant stated his mother then came and picked up the couple's children.

Appellant stated that later he was sitting on the couch in the dark when Erika returned to the home. Appellant stated Erika was getting some of her things together, and they were fussing. (R.30, Tr. p. 128). At that point in the interrogation, Appellant stated the next thing he remembered was being in the carport on the phone with 911. (R. 30, Tr. p. 128). When the investigator played the 911 tape for Appellant, Appellant just kept saying "he wouldn't do that, he wouldn't do that," i.e. kill his wife. However, Appellant admitted that he and his wife were alone in the house at the time of her death. (R. 31, Tr. p. 129).

Appellant continued to assert that he could not remember anything that happened between the fussing and being out in the carport talking to the 911 operator. (R. 31, Tr. p. 129). Appellant was then asked if he saw the victim on the floor in the bedroom. Appellant admitted he saw the victim on the floor but said he didn't know how that happened to her. (R. 31, Tr. p. 129). When the investigator told Appellant "the way it looked in the house, whether they got into a fight, he got a knife [sic], he hurt her." Appellant stated "they did get physical and they did hit each other."

(R. 31, Tr. p. 129). Appellant did not state who was the aggressor, who hit who first, or why they got physical. (R. 31-31, Tr. pp. 129-130). The investigator testified there were no injuries to Appellant that he could see other than a bite mark to his hand, which Appellant admitted was from an altercation much earlier in the evening. (R. 38, Tr. p. 136).³

Appellant never told the investigator his wife hit him first. In fact, Appellant admitted he grabbed the victim by the hair. (R. 31-32, Tr. p. 129-130). Appellant also admitted to the investigator four times in a row, "I kept hitting her." (R. 32, Tr. p. 130). Appellant then stated he got the knife. (R. 32, Tr. p. 130). Appellant initially denied knowing where the knife came from. (R. 32, Tr. p. 130). Appellant eventually admitted to the investigator the knife was a kitchen knife, and he had retrieved the knife and used it. (R. 32, Tr. p. 130). Appellant subsequently invoked his right to counsel and the questioning ceased.⁴

At trial, Appellant testified in his own defense. Appellant testified that he could not remember anything about beating his wife or walking the entire length of the home, obtaining a knife from the kitchen drawer, and walking all the way back to the bedroom and stabbing his wife at least

³Respondent has reviewed the photographs of Appellant's hands taken after the victim's blood was washed off. There does appear to be a mark on Appellant's left knuckle, which would be consistent with hitting the victim, if even related to this incident. (See State's Exhibit 39). Appellant admitted he spent part of the day removing scrap metal from a bus. On the Appellant's right arm, it looks like there is a scratch on the forearm and palm, possibly from the victim defending herself, if related to the murder at all. (See State's Exhibit 40). At trial, Appellant did not testify to any injuries to himself, other than the bite mark, which occurred earlier in the evening. (R. 122-160, Tr. pp. 235-273).

⁴The jury was not informed of the invocation of the right to counsel. This testimony was elicited only during a Jackson v. Denno hearing. The jury only heard those statements made by Appellant up to the point he invoked his right to counsel. While the investigator was writing out a written statement, the statement was not signed because Appellant invoked his right to counsel. The written statement was not introduced in evidence, but was in the Denno hearing.

five (5) times in the neck with the kitchen knife. Appellant claimed amnesia about the events of the murder itself and claimed amnesia about what he had told the police and the 911 operator. Appellant also called a psychiatric expert who testified that in her opinion Appellant suffered from amnesia.

However, in his trial testimony, Appellant testified he clearly remembered all the events that led up to his beating and eventual stabbing of his wife to death. Appellant testified the couple was having marital difficulties and his wife was leaving him. Appellant testified that earlier in the evening when his wife was leaving the home *the first time*, he took his wife's phone away from her and she bit his hand in an attempt, that proved successful, to retrieve her telephone. Appellant testified that after retrieving her phone, the victim left the home in her car.

Appellant's mother testified that around 8:00 to 8:30 p.m., Erika came to her house. Appellant's mother and father testified Erika told Appellant's mother she had been asked or told to leave her home by Appellant. (R. 96, 100, 106, Tr. pp. 205, 209, 215). Appellant's mother testified that Erika was concerned about her children and asked her, the mother-in-law, to get the children from Erika's home. (R. 106-07, Tr. pp. 215-217). Erika told her mother-in-law she was planning on staying with a friend in Greenville.⁵

Appellant testified that after Erika initially left the marital home, he subsequently talked to his mother on the phone, and his mother volunteered to come pick up their children. Appellant testified his mother and brother came and picked up the two children. Appellant's mother and brother testified that when they picked up the children, Erika was parked at the road in her car and

⁵Appellant's mother was impeached regarding this testimony and some later testimony because she did not include anything in her statement to police about seeing Erika on the night she was murdered, whether at her home or later when she picked up the children at the victim's marital home. (R. 116-121, Tr. pp. 225-230).

followed them in her car for a little while and then turned off on another road. (R. 109-110, Tr. pp. 218-219). Appellant's brother testified that when Appellant saw the victim's car outside the home, he told his mother and brother to "get them [the children] in the car." (R. 170, Tr. p. 283). Appellant's brother was so concerned about Appellant that after he dropped the children off at his mother's home, he drove back to Appellant's home to check on his brother.⁶ (R. 171, Tr. p. 284). Appellant told his brother he was fine. (R. 171, Tr. p. 284). After leaving Appellant's home, the brother admitted he called Appellant again several times to check on him. (R. 171, Tr. p. 284).

A former employer of the victim testified he received two calls from Erika around 8:15 p.m., however, he could not answer the calls because he was busy at work. He finally spoke with Erika around 9:15 p.m. on her cell phone. During the phone conversation, Erika asked her former employer if she could have her old job back. She stated she needed a job so she could get a place of her own. At that time, Erika was clearly alive. However, she told her former boss that her husband "had just beat her ass," and thrown her out of the house, but she had to go back to the house to pick up some of her personal things she had left behind. (R. 45-46, Tr. pp 145-146). She told her former boss that she was planning on staying with a friend. The former employer asked the victim if she needed any assistance, and she stated no and said she was going to be alright. (R. 45-46, Tr. pp. 145-146). Erika also told her former employer that she wanted "to get her kids but she couldn't, he wouldn't, her husband wouldn't let her get the kids." (R. 45, Tr. p. 145, ll. 20-25).⁷

⁶Appellant's brother never spoke with Erika. It is reasonable to infer from his testimony the reason he returned to Appellant's home and called his brother several times thereafter was because he was concerned about his brother's state of mind.

⁷The morning following Erika's murder, her former employer saw on the news where Erika had been murdered. He contacted the Spartanburg County Sheriff's Office and told them about his conversation with Erika just before her death. (R. 47, Tr. p. 147).

According to the cell-phone records introduced at trial, during the time period from when Erika first left the home, there were numerous cell phone calls or text messages *from* Appellant to Erika that were not answered or returned. (R. 153-57, Tr. pp. 266-270). There were no calls from Erika to Appellant. (R. 153-57, Tr. pp. 266-270).

Appellant testified that after the children were gone, he was sitting on the couch in the dark, when his wife returned to retrieve some things from their home.⁸ (R. 155, Tr. p. 268). Appellant testified he followed his wife to the bedroom and was asking her "what was going on." (R. 144, Tr. p. 257). Appellant testified he continued to ask her what was going on, and she would not answer him. (R. 144, Tr. p. 257). Appellant testified: "[s]he [Erika] was going through a drawer and turned around and like she threw something at me." (R. 144, Tr. p. 257). Appellant testified he lunged for her, "everything went gray," and he heard his wife call out his name. (R. 144, Tr. p. 257). Appellant testified he remembered everything up until the point that he lunged into his wife. (R. 144-45, 149, 154, 155, Tr. p. 257-258, 262, 267, 268). On direct examination, Appellant was asked the following question and gave the following answer regarding what occurred before he lunged at his wife:

Q: Okay. Was there any arguing or fighting or anything of that nature?

A: I was just trying to find out what was going on. I mean, like I said, I remember she turned around and I remember lunging for her.

Everything went gray. She yelled my name, and that was it. I don't know what happened. It was like she just didn't want to talk to me when I got home. And we'd been talking the whole day.

⁸When police arrived at the crime scene, Erika's car was sitting at the end of the driveway and the engine was still running. (R. 7-8, 13, Tr. pp. 105-106, 111). When the police found Erika's body in the back bedroom, she had jewelry in her hand. (R. 59-60, Tr. pp. 159-160).

(R. 144-45, Tr. p. 257, l. 23 - p. 258, l. 6). After discussing problems with the victim's multiple sclerosis, Appellant testified as follows:

Nothing that happened - - the argument, the discussions of her leaving - - wasn't something that hadn't happened a million times before. I mean, it was no different.

(R. 145, Tr. p. 258, ll. 12-14). Appellant testified that he did not remember anything else about the incident. (R. 144, Tr. p. 257). On cross-examination, Appellant testified as follows:

Q: You just don't remember - - you remember everything in vivid high-definition detail up until when?

A: She came back. She turned *like* she was going to throw something. I lunged at her. Things went gray. She yelled my name, and that was that. . . .

(R. 154, Tr. p. 267)(emphasis added). On cross-examination Appellant also testified as follows:

Q: You don't deny calling 911?

A: No, sir.

Q: You don't deny that that's your voice?

A: No, sir.

Q: You don't deny telling 9-1-1 that you beat her because you thought she was going to take the children?

A: Correct.

Q: You don't deny telling William Gary that you beat her, and repeated it four times for emphasise [sic]?

A: Correct.

Q: And you don't deny telling William Gary that you went to get a knife?

A: Correct.

(R. 159, Tr. p. 272, ll. 12-24). On cross-examination Appellant was asked several times if the

victim fought back, and he stated he did not remember. (R. 147, Tr. p. 260, ll. 3-10). Upon further questioning, based on the physical evidence, Appellant agreed with the Solicitor the victim did not put up a fight. (R. 147, Tr. p. 260, ll. 11-19). However, Appellant continued to assert, he did not recall anything after he lunged into his wife. (R. 148-159, Tr. pp. 261-272)

At trial, Appellant contended he was entitled to a charge on voluntary manslaughter. Appellant contended his statements to the investigator, that they had been "fighting," was sufficient to justify a charge of voluntary manslaughter under State v. Davis, 278 S.C. 544, 298 S.E.2d 778 (1983) and State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003).⁹ However, the officer who conducted the interrogation testified statements Appellant made regarding "fighting" and "fussing" referred to earlier in the evening. (R. 37, Tr. p 135, ll. 3-11). In his argument to the trial court requesting a charge on voluntary manslaughter, Appellant's attorney conceded he had no pinpoint evidence of what occurred when the victim returned to the house, because the victim was deceased and he, Appellant, purportedly could not remember. (R. 203, Tr. p. 341, ll. 1-10). However, this is not entirely correct, as shown above. Appellant remembered in detail what occurred before he attacked his wife.

The trial judge considered the request and declined to charge voluntary manslaughter on the grounds there was no evidence that would support a charge that Ericka's murder was in the heat of passion upon adequate legal provocation. (R. 202-03, Tr. pp. 340-341). Specifically, the trial

⁹In his brief, of the two cases cited to the trial court, Appellant relies only on State v. Davis. He does not rely on or cite State v. Grubbs. In Grubbs, this Court found a charge on voluntary manslaughter was required where the jury could have believed Grubbs' statement that the victim pushed her and hit her in the eye, and there was a long term history of abuse of the defendant by the victim. Id. In this case, there is no history of long term abuse of Appellant by Ericka. Nor is there any testimony the victim hit or pushed Appellant before he lunged into her or grabbed her by the hair.

court found that while there *might* be some evidence from which one could infer heat of passion, he saw no evidence of sufficient legal provocation for that heat of passion. (R. 202-03, Tr. p. 340-341). This is the sole issue raised on appeal from Appellant's conviction for the brutal stabbing murder of his wife.

ARGUMENT

The trial judge correctly declined to charge voluntary manslaughter under the facts of this case.

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). If the instructions given to the jury afford the proper test for determining the issues, the failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 452, 529 S.E.2, 721, 728 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in the light most favorable to the

defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). For a court to refuse to charge a jury on manslaughter, there must be no evidence in the record tending to reduce the crime from murder to manslaughter. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008). However, “[a]n instruction should not be given unless it is justified by the evidence.” State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). “Only the law applicable to the case should be charged to the jury.” State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). “If a jury instruction is provided that does not fit the facts of the case, it may confuse the jury.” Id. Furthermore, a trial judge must be cautious in charging a lesser included offense. If a trial judge improperly charges the jury on a lesser included offense that is not supported by the facts, and the jury returns a verdict of guilty on the lesser included offense, then upon reversal of the conviction of the lesser included offense, the Double Jeopardy clause prevents retrial of the defendant on the greater offense. *See* Price v. Georgia, 398 U.S. 323 (1970); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)(discussing fact that prosecution on retrial of greater offense than that for which defendant was convicted would constitute a violation of the Double Jeopardy Clause); Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)(finding trial counsel ineffective for falsely informing defendant he could be convicted of murder on retrial if he appealed and succeeded in vacating his manslaughter conviction). This Court will not reverse the trial court’s ruling regarding jury instructions unless the trial court abused its discretion. State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005). “When the record contains no evidence to support it, a voluntary manslaughter charge should not be given.” State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005), *referencing* State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-69 (2000).

Voluntary Manslaughter

Voluntary Manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007). The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway or reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. Id. In order for voluntary manslaughter to exist, there must be both heat of passion and sufficient legal provocation present at the time of the killing. State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009) *citing Pittman*. Where death is caused by the use of a deadly weapon, there must be some appearance of an assault – by some overt, threatening act – which could have produced the heat of passion. State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420 (2000), *cert denied* 121 S.Ct. 817 (2001), *citing State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993) *citing State v. Judge*, 208, S.C. 497, 38 S.E.2d 715 (1946). Even if sufficient legal provocation has aroused a defendant's passion, "if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter." State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001). "It is proper for a trial judge to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." Locklair, 341 S.C. at 360.

Analysis

Judge Cole did not abuse his discretion in refusing to charge voluntary manslaughter under

the facts of this case. First, Appellant told the operator on the 911 tape that he killed his wife because he was afraid she was going to take their children away from him. (State's Exhibit 3, 911 tape). Even if the victim had threatened to take the children, which there is no testimony that she did, this would certainly not be "sufficient legal provocation" to reduce murder to manslaughter, but would instead provide the motive for the murder. State v. Rogers, 320 S.C. 520, 525, 466 S.E.2d 360, 362 (1996)("[M]ere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon.").

Additionally, Appellant testified there were no blows exchanged between he and the victim before he lunged into her. He testified the victim was removing personal items from her dresser when they started arguing, and she picked up something and threw it at him or *acted like* she was going to throw it at him. Appellant never testified the victim hit him with anything. (R. 122-160, Tr. pp. 235-273). Appellant testified that after she threw something at him or acted like she was going to throw something at him, he lunged into the victim, everything went gray, and he remembered nothing else. So, according to Appellant's sworn testimony, the first physical contact was made by Appellant, not the victim. The victim's earlier alleged action of picking up a personal item and throwing it at Appellant or acting like she was going to throw it at him does not constitute sufficient legal provocation which would naturally render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence. State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000)("Finally, throwing a cigarette case [at the defendant] would not naturally render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence."), *citing* State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951).

Similarly, even if the victim attempted to defend herself after Appellant attacked her, this

would not constitute sufficient legal provocation to reduce murder to manslaughter. State v. Ivey, 325 S.C. 137, 142, 481 S.E.2d 125, 127 (1997)(“The exercise of a legal right, not matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence.”); State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001)(“A victim’s attempts to resist or defend himself from a crime cannot satisfy the sufficient legal provocation element of voluntary manslaughter.”); State v. Holland, 682 S.E.2d 898, 2009 WL 2591257 (Ct App. 2009)(victim’s wrestling with the defendant showed nothing more than the victim’s attempt to defend himself from the defendant’s aggression), *citing Ivey, Shuler, and referencing State v. Tyson*, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984)(holding trial court properly refused charge on voluntary manslaughter because evidence of a struggle was from victim defending himself).

Furthermore, assuming Appellant’s statement to police that he and the victim got physical and hit each other, was referring to the last incident, Appellant’s trial testimony is not wholly inconsistent with nor does it completely contradict his statement to police that “they got physical” and hit each other.¹⁰ In fact, it explains it. Appellant made clear at trial that he and the victim did not get physical until after he lunged into and attacked the victim. (R. 144-45, Tr. p. 257-258). As previously set forth, even assuming the victim fought back, which Appellant testified he could not remember and only conceded based on the physical evidence, her protective action in defending herself is not sufficient provocation to reduce murder to manslaughter. The trial judge correctly

¹⁰Appellant was asked three (3) times by the Solicitor whether the victim fought back. (R. 147, Tr. p. 260, ll. 3-10). Appellant stated three (3) separate times that he did not remember. (R. 147, Tr. p. 260, ll. 3-10). Based on the physical evidence, Appellant agreed with the Solicitor that the victim did not fight back. (R. 147, Tr. p. 260, 11-19). However, even after this exchange, Appellant continued to assert that he did not remember anything after he lunged into his wife. (R. 148-160, Tr. p. 261-273).

declined to charge voluntary manslaughter on the grounds there was no evidence that would support a charge that Ericka's murder was in the heat of passion upon adequate legal provocation. (R. 202-203, Tr. pp. 340-341). Appellant's statements to police are not wholly inconsistent his trial testimony, but illumine what actually occurred, vis-a-vis the sequence of events. See State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001)(finding where defendant's statements to police conflicted and defendant recanted earlier statements at trial, defendant was entitled to manslaughter charge where if jury believed one of his conflicting statements defendant was entitled to manslaughter instruction because in one statement defendant claimed victim armed herself with a knife and threatened and cut him with a knife); State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003)(finding where defendant's statements to police conflicted defendant was entitled to manslaughter charge where if the jury believed one of her conflicting statements defendant was entitled to manslaughter instruction because in one statement defendant claimed that victim pushed her and punched her in the eye, and in light of testimony of long term abuse of the defendant by the victim). There was no such claim in this case. Appellant never stated to police the victim pushed or hit him first. Appellant did not claim he was a battered spouse. Appellant did not recant his earlier statements to police; he testified only that he could not remember what he told police. Appellant testified he clearly remembered what occurred up to his lunging into the victim.

Appellant relies solely on State v. Davis as justification that he should be given a new trial. In Davis, the defendant argued the charge of voluntary manslaughter should not have been submitted to the jury. Without discussing the particular facts of the case, the Court upheld the trial court's submission of the charge of voluntary manslaughter to the jury finding that a witness' testimony that he saw the victim and the defendant fighting before the killing was sufficient evidence of legal

provocation and heat of passion.

Even though Davis and Grubbs stand for the general proposition that “fighting” is sufficient evidence to submit a charge of voluntary manslaughter, neither this Court nor our Supreme Court has required the submission of voluntary manslaughter in every case where there is evidence of fighting or a struggle between the defendant and the victim. See State v. Holland, 682 S.E.2d 898, 2009 WL 2591257 (Ct. App. 2009)(wrestling between victim and defendant was initiated by defendant and did not justify manslaughter charge); Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006), fn. 1 (voluntary manslaughter instruction was erroneously given where defendant admitted “to firing on Harrison multiple times after the alleged struggle, under no circumstances could we conclude that Simpson acted without malice or had sufficient legal provocation to use deadly force.”) State v. Ivey, 325 S.C. 137, 142, 481 S.E.2d 125, 127 (1997)(evidence of struggle showed victim was defending himself from a crime); State v. Tyson, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984)(evidence of struggle showed victim was defending himself from a crime).

Whether a charge of voluntary manslaughter is required depends on the facts of each particular case. See Holland, *supra* (“The requirement that we view the evidence in the light most favorable to the defendant does not allow us to throw out all reason from our analysis or ignore the overwhelming, clear evidence of Holland’s mission of violence against Koehler- a state of mind that began before Koehler even stepped out of Caruther’s vehicle.”); Grubbs, (charge of voluntary manslaughter was required where one of defendant’s statements was that the victim was the aggressor and punched her in the stomach and hit her in the eye and there was a history of abuse of the defendant by the victim). In the present case, there is no evidence that any of the victim’s actions posed a *genuine threat* to Appellant. Holland, *supra*. Appellant’s generic statement to police that

he and the victim got physical and hit each other, without more, including some explanation of who was the aggressor, or who hit who first, does not entitle Appellant to a voluntary manslaughter charge. See Holland. There was no evidence the victim first pushed or hit Appellant before the deadly assault or that Appellant was a battered spouse. Judge Cole did not abuse his discretion in declining to charge voluntary manslaughter under the facts of this case.

Finally, even assuming *arguendo* that the victim's actions in throwing something or acting like she was going to throw something at Appellant constituted sufficient legal provocation, or the contents of Appellant's statement to police somehow constituted sufficient legal provocation to hit the victim, Appellant beat the victim unconscious or rendered her completely helpless. (R. 16, 25, 32, 79-81, 82, 148, Tr. pp. 114, 123, 130, 179-181, 182, 261). The evidence established that only after beating the victim unconscious or helpless, Appellant walked the length of his home to the kitchen dripping the victim's blood as he went, took a kitchen knife out of the drawer, leaving blood on the drawer, and walked back the length of the home to where the unconscious and helpless victim lay. (R. 32, 65-78, 78-86, 147-48, Tr. pp. 130, 165-178, 178-186, 260-261). The evidence established Appellant then stabbed the helpless and defenseless victim not once but five (5) times in the neck, almost severed her head from her body, and caused most of the blood to drain from her body. (R. 86, Tr. p. 186). There was sufficient time for any passion caused by the victim's actions to have cooled such that a deadly assault was not necessary or justified under our case law. State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)(finding defendant had a sufficient time period to cool where fight occurred between victim and the defendant in the appellant's home and the defendant's actions in going next door to get a gun and returning to fatally shoot the victim from appellant's yard indicated "cool reflection"); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)(finding as a

matter of law defendant's actions in obtaining a gun, going to his room and loading it, and then going to his grandfather's room and shooting his grandfather and grandmother showed he did not act in heat of passion entitling him to a voluntary manslaughter charge), referencing State v. Walker, 324 S.C. 257, 261, 478 S.E.2d 280, 281-82 (1996)(finding the defendant demonstrated cool reflection through his actions between the alleged provocation and the killing), and State v. Byrd, 323 S.C. 319, 322-23, 474 S.E.2d 430, 432 (1996)(holding that the defendant's actions between the alleged provocation and killing did not support a finding of sudden heat of passion) *other citation omitted*.¹¹ The trial judge did not err in refusing to charge voluntary manslaughter under the facts of this case.

CONCLUSION

For the above stated reasons, Appellant's conviction for murder should be affirmed and his appeal dismissed.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

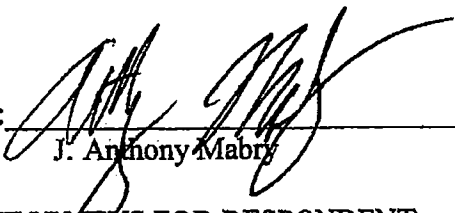
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¹¹But see Carter v. State, 301 S.C. 396, 392 S.E.2d 184 (1990); see also State v. Knoten, *supra*, citing Carter, wherein the dissent distinguished Carter, Burnett, J. dissenting along with Toal, C.J. Carter v. State is also distinguishable from this case because in Carter the victim was not rendered unconscious or completely helpless before the fatal assault. See also State v. Holland, *supra*, distinguishing Carter v. State.

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December 10, 2009

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge**

THE STATE,

Respondent,

V.

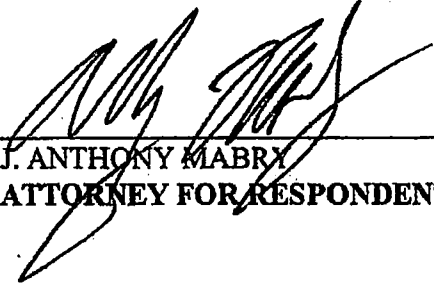
LARRY B. HORTON,

Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 10th day of December, 2009.



J. ANTHONY MABRY
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LARRY B. HORTON,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by refusing to instruct the jury on voluntary manslaughter.

STATEMENT OF THE CASE

On June 16 through 18, 2008, Larry Brent Horton stood trial in Spartanburg County, before Judge J. Durham Cole and a jury, on an indictment charging him with murdering his wife, Erica Horton, by beating her unconscious and then stabbing her and practically decapitating her. Horton testified that he was unable to remember much of the incident due to dissociative amnesia, other than that they had been arguing when:

She was going through a drawer and turned around and like she threw something at me. Everything kinda went grey. I lunged for her. Everything kinda went grey. I heard her yell my name one other time. And that's the last time I remember of the evening.

R. p. 144, lines 6-10; R. p. 154, lines 17-21. In a statement to the police, which was also admitted into evidence, Horton stated that "[he and his wife] did get physical and did hit each other." R. p. 28 line 20 through R. p 32 line 13. The judge refused defense counsel's request to charge voluntary manslaughter based on the evidence "they had been fighting." R. p. 199 line 16 through R. p. 203 line 13; R. 223 lines 19-21. The jury found Horton guilty as charged, and the judge sentenced him to life in prison.

ARGUMENT

The trial judge committed reversible error by refusing to instruct the jury on voluntary manslaughter.

Voluntary manslaughter is unlawful killing of another human being in sudden heat of passion upon sufficient legal provocation. *State v. Damon*, 285 S.C. 125, 328 S.E.2d 628 (1985). A refusal to charge manslaughter is justified only when there is absolutely no evidence which would tend to reduce murder to that lesser-included offense. *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). In deciding whether a charge on voluntary manslaughter is required, the evidence is viewed in the light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996). In *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778, 779 (1983), the Supreme Court held:

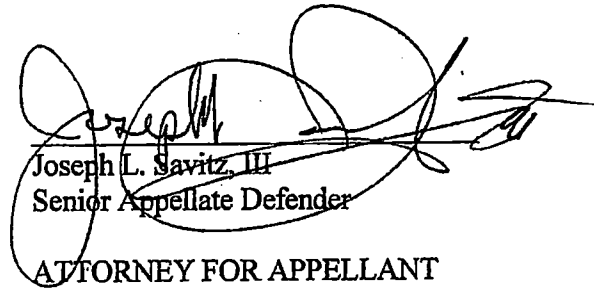
[A] witness testified [the defendant] and the victim had been "fighting." From this circumstance of "provocation" and "heat of passion," guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination.

Horton's statement to the police and testimony at trial likewise supported a jury instruction on voluntary manslaughter.

Horton told the police that he and his wife had been arguing and that "they did get physical and they did hit each other." Horton testified that "she threw something at me. ... I lunged for her. Everything kinda went grey." R p. 144 lines 6-10. Thus, there was evidence of both adequate legal provocation and sudden heat of passion sufficient to require a charge on voluntary manslaughter.

Since the trial judge committed reversible error by refusing to instruct the jury on voluntary manslaughter, the Court of Appeals should reverse Horton's conviction for murder and remand for a new trial.

Respectfully submitted,



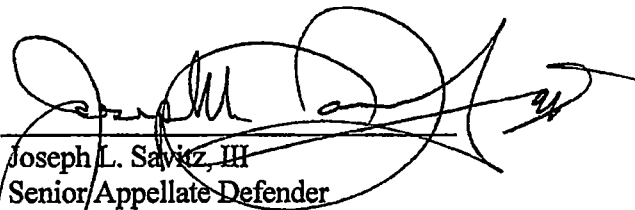
Joseph L. Savitz, III
Senior Appellate Defender
ATTORNEY FOR APPELLANT

This 14th day of December, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 14, 2009



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9-17-10

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Larry Brent Horton,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2010-UP-406
Submitted September 1, 2010 – Filed September 16, 2010

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, Assistant Attorney General Anthony Mabry,

all of Columbia; and Solicitor Harold W. Gowdy, III,
of Spartanburg, for Respondent.

PER CURIAM: Larry Brent Horton appeals his murder conviction and life imprisonment sentence, arguing the trial court erred in refusing to charge the jury on voluntary manslaughter. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008) ("Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. In determining whether voluntary manslaughter should be charged as a lesser offense of murder, the court must view the evidence in the light most favorable to the defendant. The charge need not be given where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. We therefore review the evidence in the light most favorable to appellant, mindful that the charge request is properly rejected only where there is no evidence whatsoever of the lesser offense.") (internal citations and quotations omitted); State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) ("Both heat of passion and sufficient legal provocation must be present at the time of the killing. The provocation must be such as to render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence.") (quoting State v. Cooley, 342 S.C. 63, 67, 563 S.E.2d 666, 668 (2000)).

AFFIRMED.

FEW, C.J., HUFF and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

08-3442

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

V.

LARRY B. HORTON,

ATTORNEY GENERAL'S OFFICE
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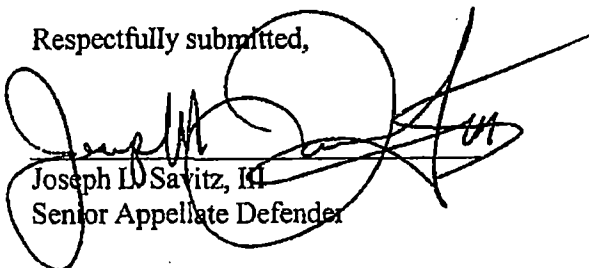
Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

Opinion No. 2010-UP-406

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Larry Brent Horton petitions for rehearing because the Court did not take into account the South Carolina Supreme Court's opinion in *State v. Starnes*, Opinion No. 26868, decided August 16, 2010, rehearing denied September 22, 2010. Since Horton's testimony at trial and his earlier statement to the police contained evidence of both provocation and heat of passion, under *Starnes* he was entitled to an instruction on voluntary manslaughter.

Respectfully submitted,


Joseph L. Savitz, III
Senior Appellate Defender

This 4th day of October, 2010

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ADMINISTRATIVE INSTRUCTIONS

The South Carolina Court of Appeals

The State,

Respondent,

v.

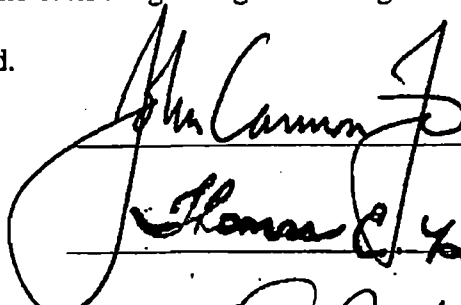
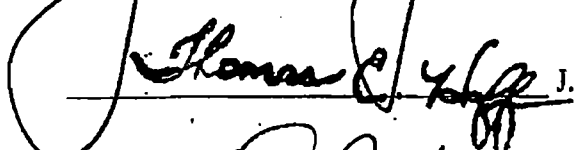
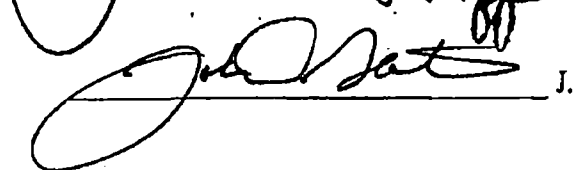
Larry Brent Horton,

Appellant.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2008-GS-42-0950

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

 C. J.
 J.
 J.

Columbia, South Carolina

cc: Senior Appellate Defender Joseph L. Savitz, III
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Anthony Mabry
Harold W. Gowdy, III, Esquire

FILED

OCT. 29 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
J. Derham Cole, Circuit Court Judge

Opinion No. 2010-UP-406 (S.C. Ct. App. filed 9/16/2010)

THE STATE,

RESPONDENT,

V.

LARRY B. HORTON,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

WANDA H. CARTER
Deputy Chief Appellate Defender

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ATTORNEYS FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on October 29, 2010.

QUESTION PRESENTED

The Court of Appeals erred in holding that the trial judge properly denied appellant's motion for a voluntary manslaughter charge at trial because contrary to the Court of Appeals' holding in the case, the evidence established both heat of passion and sufficient legal provocation where appellant and his wife were arguing as she packed to leave the marital home, and where a physical altercation erupted between them after she threw "something" at him during their argument.

STATEMENT OF THE CASE

Petitioner Larry B. Horton was convicted of murder per jury trial held during the January, 2008 term of the Spartanburg County General Sessions Court before the Honorable J. Derham Cole, Judge. Petitioner was sentenced to life imprisonment. Petitioner appealed.

On appeal, petitioner argued that the trial judge erred in denying his request for a voluntary manslaughter charge in the case. After briefing, the Court of Appeals affirmed his conviction and sentence and ruled that the trial judge properly denied the request for a manslaughter charge in effect because the evidence did not indicate that both heat and passion were present in the case. See State v. Horton, Unpublished Opinion No. 2010-UP-406 (S.C. filed September 16, 2010), where the Court held as follows:

PER CURIAM: We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008) ("Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. In determining whether voluntary manslaughter should be charged as a lesser offense of murder, the court must view the evidence in the light most favorable to the defendant. The charge need not be given where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. We therefore review the evidence in the light most favorable to appellant, mindful that the charge request is properly rejected only where there is no evidence whatsoever of the lesser offense.") (internal citations and quotations omitted); State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) ("Both heat of passion and sufficient legal provocation must be present at the time of the killing. The provocation must be such as to render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence.") (quoting State v. Cooley, 342 S.C. 63, 67, 563 S.E.2d 666, 668 (2000)).

Petitioner filed a petition for rehearing in the matter on October 4, 2010. The Court of Appeals denied the petition for rehearing on October 29, 2010. This petition for writ of certiorari follows.

STATEMENT OF FACTS

The marriage between appellant and his wife, Erika Horton, endured frequent fights, one of which ultimately led to Erika Horton's death.

Appellant's parents received a call from police around 1:00 a.m. on January 3, 2007, informing them that their daughter-in-law Erika Horton was dead and that their son (appellant) was in custody of the Spartanburg County Sheriff's Office. R. 111, l. 16 – p. 112, l. 3. Dr. John Wren, who performed the autopsy on appellant's wife, testified that the injuries to her head, neck, and shoulders indicated that a knife had been used by her attacker. R. 78, l. 4 – p. 86, l. 2.

Deputy Sheriff William Gary arrived at appellant's home on January 2, 2007, and found appellant covered with blood on his hands and face. After appellant was transported to the Spartanburg County Sheriff's Office, Detective Gary interviewed him. Detective Gary testified that appellant stated that he and his wife had been separated in 2005 and that they had been working on reconciling during the year 2006. Appellant told Gary that he and his wife had been arguing on January 2, 2007, and that she had left the house, but returned after 9:00 p.m. on that same night and started packing to leave him. Appellant told Gary that he and his wife argued as she packed. Appellant admitted to Gary that the next thing he remembered was that around 11:00 pm on that night, his wife was on the floor in the house and he was under the carport calling the police to report what had happened. However, appellant stated that he could not remember what happened because everything happened so fast. Appellant admitted to Gary that he had a knife and that he and his wife got physical and hit each other. R. 24, R. 33, l. 22 – p. 34, l. 6; R. 28, l. 20 – p. 32, l. 13.

Larry and Brenda Horton, who are appellant's parents, both testified at trial. They stated that on the afternoon on January 2, 2007, appellant's wife visited them and informed that them that appellant had asked her to leave the marital home, and that she needed someone to pick up their two

children. R. 89, l. 23 – p. 98, l. 25; R. 102, l. 10 – p. 113, l. 15. Appellant's mother and brother (Charles Horton) picked up appellant's and his wife's children between 8:00 and 9:00 on January 2, 2007. R. 164, l. 2 – p. 172, l. 3.

Also, appellant testified at trial. Appellant stated that he and his wife Erika separated on December 15, 2005, after five years of marriage, but that they tried to reconcile in the year 2006. Appellant stated that he took a leave of absence from his job in November 2006 in order to care for his ailing wife and try to work through their marital difficulties. Appellant explained that on January 2, 2007, he and his wife argued a lot and that they were arguing on that night as she packed to leave him. Appellant stated that at the point when he asked her what was going on, "she was going through a drawer and [that she] turned around and like she threw something at [me and] everything went gray...[and that he] lunged for her" thereafter. R. 144, l. 3-10; R. 122, l. 3 – p. 146, l. 5.

At the close of the case, defense counsel requested a jury charge on voluntary manslaughter on the ground that heat of passion and provocation existed in the case. R. 199, l. 16 – p. 201, l. 12. The trial judge ruled that the record was "lacking in any evidence that would support that heat of passion based upon a sufficient legal provocation," and denied the request for a voluntary manslaughter charge in the case. R. 202, l. 10 – p. 203, l. 13.

Petitioner was convicted of murder and sentenced to life imprisonment.

ARGUMENT

The Court of Appeals erred in holding that the trial judge properly denied appellant's motion for a voluntary manslaughter charge at trial because contrary the Court of Appeals' holding in the case, the evidence established both heat of passion and sufficient legal provocation where appellant and his wife were arguing while she packed to leave the marital home, and where a physical altercation erupted after she threw "something" at him during their argument.

This tumultuous marriage detonated into its final explosion on January 2, 2007, when appellant and his wife argued over what appeared to be another marital separation while as she packed to leave. Then, as emotions ran high, the arguing escalated into a physical altercation during which time appellant "lunged at her (wife)" after she provoked him by throwing "something" at him. It is presumed that this "something" thrown came from the drawer she was rumbling through at that time.

Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001). Also, as a rule, words alone cannot constitute legal provocation, but rather, both heat of passion and sufficient legal provocation must be present for the killing constitute voluntary manslaughter. State v. Wharton, 367 S.C. 71, 624 S.E.2d 654 (2007); State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). Moreover, the provocation must be such as to render the mind of an ordinary person incapable of cool reflection and to produce an uncontrollable impulse to do violence. State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (2005); State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000). Even if sufficient legal provocation has aroused a defendant's passion, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would not be manslaughter.

In the case at bar, appellant's wife's attempted departure from the home created a volatile setting on the night in question. Appellant had taken a leave of absence from work in November, 2006 in order to care for his wife and try to fix the marriage, but it was of no avail because it all culminated in what appeared to be the dissolution of the marriage on January 2, 2007. The verbal altercation between the appellant and his wife on that night escalated into a physical altercation after his wife threw something at him. See State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998), where the Court held that voluntary manslaughter should have been charged where defendant and the decedent were arguing and the decedent, who possessed a gun, and defendant, who possessed a gun also, positioned themselves for a physical altercation. The Court in Wiggins held that fear can constitute a basis for voluntary manslaughter. In State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010), the court held that this fear must be the result of provocation and cause the defendant to lose control. See similar scenarios in State v. Gilliam, 296 S.C. 395, 373 S.E.2d 597 (1988), where the defendant reacted when the victim threatened and fired a gunshot at him. See also State v. Lowry, 315 S.C. 434 S.E.2d 272 (1993), where the court held voluntary manslaughter was applicable where the defendant and victim argued and the victim made threatening acts indicating the commencement of a physical fight. Compare State v. Knowton, *supra*, where the court held that voluntary manslaughter was applicable where the victim was armed with a knife and threatened to use it. Compare also State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (2004), where the Court held that voluntary manslaughter should have been charged where a battered wife reacted by shooting after her live-in pushed and punched her.

Additionally, after appellant's wife threw something during the verbal altercation, the physical altercation began when appellant responded immediately by lunging at her. Clearly, appellant since he had no opportunity for cool reflection. Appellant told Detective Gary that "it

happened so fast, he could not even remember what happened.” R. 32, lines 1-2. Compare Cooley, supra, where the defendant had no justifiable uncontrollable impulse to do violence simply because he argued with his wife regarding her alleged adultery because he did not actually observe or encounter adulterous behavior. Also, compare State v. Smith, supra, where there was no voluntary manslaughter justification for the defendant’s afternoon shooting of his stepfather since he had all day to cool off after learning earlier on that same day (morning) that his stepfather previously molested his daughter.

In the case at bar, the facts in the case supported a jury charge on voluntary manslaughter. Unless it appears that there is no evidence whatsoever tending to reduce the charge to manslaughter, a trial judge must give a manslaughter charge. State v. Smith, supra. Furthermore, in deciding whether a charge on voluntary manslaughter is required, the evidence is viewed in the light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 479 S.E.2d 430 (1996). The law to be charged is determined from the evidence presented at trial. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). Here, the Court of Appeals erred in holding that the trial judge properly denied petitioner’s motion for a voluntary manslaughter jury charge in the case.

CONCLUSION

Based on the foregoing argument, petitioner’s writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 28th day of January, 2011

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge**

THE STATE,

Respondent,

V.

LARRY B. HORTON,

Petitioner

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

RESPONDENT'S STATEMENT OF THE CASE

Erika Horton was murdered between 10:30 and 11:00 p.m. on January 2, 2007 at her home in Campobello, S.C. Petitioner, Larry Brent Horton, was arrested for the murder shortly after midnight on January 3, 2007. Petitioner was subsequently indicted by the Spartanburg County grand jury for murder (2008-GS-42-950). Petitioner was represented on the charge by Rick Vieth, Esq. The State was represented by Solicitor Harold W. "Trey" Gowdy.

Petitioner proceeded to trial on January 16, 2008 before the Honorable J. Derham Cole, Circuit Court Judge, and a jury. On January 18, 2008, the jury returned a verdict of guilty of murder. Judge Cole sentenced Petitioner to life in prison for the murder of Erika Horton.

Petitioner appealed his conviction and sentence to the Court of Appeals. (See FBOA). The State filed a responsive brief. (See FBOR). On September 16, 2010, the Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. State v. Larry Brent Horton, Unpublished Opinion No. 2010-UP-406 (Ct. App. filed Sept. 16, 2010). Petitioner filed a Petition for Rehearing. On October 29, 2010, after careful consideration of the Petition for Rehearing, the Court of Appeals denied the Petition for Rehearing. This Petition for Writ of Certiorari followed.

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RESPONDENT'S STATEMENT OF FACTS

On January 2, 2007, Larry Brent Horton ("Petitioner") severely beat his wife Erika Bell Horton ("Erika") until she was unconscious or helpless. (R.16, 25, 32, 79-81, 82, 148, Tr. pp. 114,123, 130, 179-181,182, 261). The beating was so severe one of Erika's eye balls collapsed into her sinus. (R. 80, 148, Tr. p. 180, 261). Additionally, Erika's nose was broken, and she had bruises and contusions to her lips, about her eye, her forehead, and to her scalp. (R. 79-81, 148, Tr. pp. 179-181, 261). Her frenulum, the piece of supporting tissue inside the upper lip, was also torn. (R. 80, Tr. p. 180). She also had extreme congestion of the thinnest layer covering the brain. (R. 81, Tr. p. 181). Prior to the attack on her by Petitioner on January 2, 2007, Erika had been diagnosed with multiple sclerosis. (R. 127, 134, Tr. pp. 240, 247).

After beating his wife until she was unconscious or helpless, Petitioner then walked the length of his home dripping Erika's blood from the bedroom, where the beating took place, to the kitchen. (R. 65-78, 147-48, Tr. pp. 165-178, 260-261). Once there, Petitioner opened a kitchen drawer, took out a kitchen knife, and returned to the other end of the home to the bedroom where Erika lay. (R. 32, 65-78, 79-86, Tr. pp. 130,165-178, 179-186). Petitioner then stabbed the victim at least five (5) times in the neck with the kitchen knife. (R. 85, Tr. p. 185).

Several of the stab wounds penetrated to the victim's spine. (R. 79, 85, Tr. pp. 179, 185). The victim's jugular veins, both common carotid arteries in the neck, as well as her esophagus, trachea, and all of the muscles of the front of her neck were severed. (R. 84-85, Tr. pp. 184-185). There were also hesitation stab wounds to the victim's shoulders. (R. 79, 81-82, 148, Tr. pp. 179, 181-182, 261). After the stab wounds to her neck were inflicted, the only thing holding Erika's head onto her body was the skin and musculature of the back of the neck and her vertebral column. (R.

85, Tr. p. 185). There were *no defensive stab wounds* to Erika's hands or forearms indicating that at the time she was stabbed she was either unconscious or could not get her hands up to defend herself. (R. 82, 147, Tr. p. 182, 260). Erika died from blood loss as a result of the stab wounds. (See R. 84-85, 8-9, 79-82, Tr. pp. 184-185, 106-107, 179-182).¹

After murdering his wife, Petitioner called 911 and told the operator he thought he might have killed his wife. When asked how he killed her, Petitioner responded that he beat her.² When asked by the operator why he had done this, Petitioner stated *his wife was going to take their children away from him*. (State's Exhibit 3, 911 tape).

When police arrived at the crime scene, Petitioner was sitting in the carport of the home. In addition to finding the trail of blood from the bedroom to the kitchen drawer where the knife was selected, police found the murder weapon laying on the bedroom floor. There was blood everywhere in the bedroom where Erika's body was found, on Petitioner's clothing, and on Petitioner's hands and forearms. (R. 65-77, Tr. pp. 165-177). The pathologist and an investigator testified that at the autopsy there was very little blood left in Erika's body. (R. 84-85, 8-9, Tr. pp. 184-185, 106-107).

Petitioner was taken into custody and read his Miranda rights at the scene but was not questioned there regarding the crime. Petitioner was then transported from the crime scene in

¹While the pathologist did not specify the cause of death, the fact the victim died from blood loss from the stab wounds is the only reasonable inference from the record, including the exhibits offered at trial, the testimony of the pathologist, the testimony of the officers who worked the crime scene, the testimony of the officer who attended the autopsy, and the cross-examination of Petitioner and is readily apparent from the record. (R. 78-86, 8-9, 10-13, 20, 22-23, 25-2638, 40, 57-60, 146-160, Tr. pp. 178-186, 106-107, 107-111, 118, 120-121, 123-124, 136, 140, 157-160, 259-273).

²Portions of the 911 tape are unintelligible, and Petitioner also may have stated "and stabbed her." (See State's Exhibit 3). In fact, upon Respondent's review of the 911 tape it does sound like Petitioner said "and stabbed her."

Campobello to the Spartanburg County Sheriff's Office located in Spartanburg, S.C. At the Sheriff's Office, Petitioner was again read his Miranda rights and at that time agreed to talk with an investigator.

Petitioner told the investigator that he could not remember what happened as far as the murder. Petitioner stated he and his wife had separated but had gotten back together several weeks before her death. Petitioner stated they were living together in the home where Erika's body was found. Petitioner told the investigator that earlier in the evening there was an altercation between he and his wife, and she left. Petitioner stated his mother then came and picked up the couple's children.

Petitioner stated that later he was sitting on the couch in the dark when Erika returned to the home. Petitioner stated Erika was getting some of her things together, and they were fussing. (R.30, Tr. p. 128). At that point in the interrogation, Petitioner stated the next thing he remembered was being in the carport on the phone with 911. (R. 30, Tr. p. 128). When the investigator played the 911 tape for Petitioner, Petitioner just kept saying "he wouldn't do that, he wouldn't do that," i.e. kill his wife. However, Petitioner admitted that he and his wife were alone in the house at the time of her death. (R. 31, Tr. p. 129).

Petitioner continued to assert that he could not remember anything that happened between the fussing and being out in the carport talking to the 911 operator. (R. 31, Tr. p. 129). Petitioner was then asked if he saw the victim on the floor in the bedroom. Petitioner admitted he saw the victim on the floor but said he didn't know how that happened to her. (R. 31, Tr. p. 129). When the investigator told Petitioner "the way it looked in the house, whether they got into a fight, he got a knife [sic], he hurt her." Petitioner stated "they did get physical and they did hit each other." (R.

31, Tr. p. 129). Petitioner did not state who was the aggressor, who hit who first, or why they got physical. (R. 31-31, Tr. pp. 129-130). The investigator testified there were no injuries to Petitioner that he could see other than a bite mark to his hand, which Petitioner admitted was from an altercation much earlier in the evening. (R. 38, Tr. p. 136).³

Petitioner never told the investigator his wife hit him first. In fact, Petitioner admitted he grabbed the victim by the hair. (R. 31-32, Tr. p. 129-130). Petitioner also admitted to the investigator four times in a row, "I kept hitting her." (R. 32, Tr. p. 130). Petitioner then stated he got the knife. (R. 32, Tr. p. 130). Petitioner initially denied knowing where the knife came from. (R. 32, Tr. p. 130). Petitioner eventually admitted to the investigator the knife was a kitchen knife, and he had retrieved the knife and used it. (R. 32, Tr. p. 130). Petitioner subsequently invoked his right to counsel and the questioning ceased.⁴

At trial, Petitioner testified in his own defense. Petitioner testified that he could not remember anything about beating his wife or walking the entire length of the home, obtaining a knife from the kitchen drawer, and walking all the way back to the bedroom and stabbing his wife at least

³Respondent has reviewed the photographs of Petitioner's hands taken after the victim's blood was washed off. There does appear to be a mark on Petitioner's left knuckle, which would be consistent with hitting the victim, if even related to this incident. (See State's Exhibit 39). Petitioner admitted he spent part of the day removing scrap metal from a bus. On the Petitioner's right arm, it looks like there is a scratch on the forearm and palm, possibly from the victim defending herself, if related to the murder at all. (See State's Exhibit 40). At trial, Petitioner did not testify to any injuries to himself, other than the bite mark, which occurred earlier in the evening. (R. 122-160, Tr. pp. 235-273).

⁴The jury was not informed of the invocation of the right to counsel. This testimony was elicited only during a Jackson v. Denno hearing. The jury only heard those statements made by Petitioner up to the point he invoked his right to counsel. While the investigator was writing out a written statement, the statement was not signed because Petitioner invoked his right to counsel. The written statement was not introduced in evidence, but was in the Denno hearing.

five (5) times in the neck with the kitchen knife. Petitioner claimed amnesia about the events of the murder itself and claimed amnesia about what he had told the police and the 911 operator. Petitioner also called a psychiatric expert who testified that in her opinion Petitioner suffered from amnesia.

However, in his trial testimony, Petitioner testified he clearly remembered all the events that led up to his beating and eventual stabbing of his wife to death. Petitioner testified the couple was having marital difficulties and his wife was leaving him. Petitioner testified that earlier in the evening when his wife was leaving the home *the first time*, he took his wife's phone away from her and she bit his hand in an attempt, that proved successful, to retrieve her telephone. Petitioner testified that after retrieving her phone, the victim left the home in her car.

Petitioner's mother testified that around 8:00 to 8:30 p.m., Erika came to her house. Petitioner's mother and father testified Erika told Petitioner's mother she had been asked or told to leave her home by Petitioner. (R. 96, 100, 106, Tr. pp. 205, 209, 215). Petitioner's mother testified that Erika was concerned about her children and asked her, the mother-in-law, to get the children from Erika's home. (R. 106-07, Tr. pp. 215-217). Erika told her mother-in-law she was planning on staying with a friend in Greenville.⁵

Petitioner testified that after Erika initially left the marital home, he subsequently talked to his mother on the phone, and his mother volunteered to come pick up their children. Petitioner testified his mother and brother came and picked up the two children. Petitioner's mother and brother testified that when they picked up the children, Erika was parked at the road in her car and

⁵Petitioner's mother was impeached regarding this testimony and some later testimony because she did not include anything in her statement to police about seeing Erika on the night she was murdered, whether at her home or later when she picked up the children at the victim's marital home. (R. 116-121, Tr. pp. 225-230).

followed them in her car for a little while and then turned off on another road. (R. 109-110, Tr. pp. 218-219). Petitioner's brother testified that when Petitioner saw the victim's car outside the home, he told his mother and brother to "get them [the children] in the car." (R. 170, Tr. p. 283). Petitioner's brother was so concerned about Petitioner that after he dropped the children off at his mother's home, he drove back to Petitioner's home to check on his brother.⁶ (R. 171, Tr. p. 284). Petitioner told his brother he was fine. (R. 171, Tr. p. 284). After leaving Petitioner's home, the brother admitted he called Petitioner again several times to check on him. (R. 171, Tr. p. 284).

A former employer of the victim testified he received two calls from Erika around 8:15 p.m., however, he could not answer the calls because he was busy at work. He finally spoke with Erika around 9:15 p.m. on her cell phone. During the phone conversation, Erika asked her former employer if she could have her old job back. She stated she needed a job so she could get a place of her own. At that time, Erika was clearly alive. However, she told her former boss that her husband "had just beat her ass," and thrown her out of the house, but she had to go back to the house to pick up some of her personal things she had left behind. (R. 45-46, Tr. pp 145-146). She told her former boss that she was planning on staying with a friend. The former employer asked the victim if she needed any assistance, and she stated no and said she was going to be alright. (R. 45-46, Tr. pp. 145-146). Erika also told her former employer that she wanted "to get her kids but she couldn't, he wouldn't, her husband wouldn't let her get the kids." (R. 45, Tr. p. 145, ll. 20-25).⁷

⁶Petitioner's brother never spoke with Erika. It is reasonable to infer from his testimony the reason he returned to Petitioner's home and called his brother several times thereafter was because he was concerned about his brother's state of mind.

⁷The morning following Erika's murder, her former employer saw on the news where Erika had been murdered. He contacted the Spartanburg County Sheriff's Office and told them about his conversation with Erika just before her death. (R. 47, Tr. p. 147).

According to the cell-phone records introduced at trial, during the time period from when Erika first left the home, there were numerous cell phone calls or text messages *from* Petitioner *to* Erika that were not answered or returned. (R. 153-57, Tr. pp. 266-270). There were no calls from Erika to Petitioner. (R. 153-57, Tr. pp. 266-270).

Petitioner testified that after the children were gone, he was sitting on the couch in the dark, when his wife returned to retrieve some things from their home.⁸ (R. 155, Tr. p. 268). Petitioner testified he followed his wife to the bedroom and was asking her “what was going on.” (R. 144, Tr. p. 257). Petitioner testified he continued to ask her what was going on, and she would not answer him. (R. 144, Tr. p. 257). Petitioner testified: “[s]he [Erika] was going through a drawer and turned around and like she threw something at me.” (R. 144, Tr. p. 257). Petitioner testified he lunged for her, “everything went gray,” and he heard his wife call out his name. (R. 144, Tr. p. 257). Petitioner testified he remembered everything up until the point that he lunged into his wife. (R. 144-45, 149, 154, 155, Tr. p. 257-258, 262, 267, 268). On direct examination, Petitioner was asked the following question and gave the following answer regarding what occurred before he lunged at his wife:

Q: Okay. Was there any arguing or fighting or anything of that nature?

A: I was just trying to find out what was going on. I mean, like I said, I remember she turned around and I remember lunging for her.

Everything went gray. She yelled my name, and that was it. I don’t know what happened. It was like she just didn’t want to talk to me when I got home. And we’d been talking the whole day.

(R. 144-45, Tr. p. 257, l. 23 - p. 258, l. 6). After discussing problems with the victim’s multiple

⁸When police arrived at the crime scene, Erika’s car was sitting at the end of the driveway and the engine was still running. (R. 7-8, 13, Tr. pp. 105-106, 111). When the police found Erika’s body in the back bedroom, she had jewelry in her hand. (R. 59-60, Tr. pp. 159-160).

sclerosis, Petitioner testified as follows:

Nothing that happened - - the argument, the discussions of her leaving - - wasn't something that hadn't happened a million times before. I mean, it was no different.

(R. 145, Tr. p. 258, ll. 12-14). Petitioner testified that he did not remember anything else about the incident. (R. 144, Tr. p. 257). On cross-examination, Petitioner testified as follows:

Q: You just don't remember - - you remember everything in vivid high-definition detail up until when?

A: She came back. She turned *like* she was going to throw something. I lunged at her. Things went gray. She yelled my name, and that was that.

(R. 154, Tr. p. 267)(emphasis added). On cross-examination Petitioner also testified as follows:

Q: You don't deny calling 911?

A: No, sir.

Q: You don't deny that that's your voice?

A: No, sir.

Q: You don't deny telling 9-1-1 that you beat her because you thought she was going to take the children?

A: Correct.

Q: You don't deny telling William Gary that you beat her, and repeated it four times for emphasise [sic]?

A: Correct.

Q: And you don't deny telling William Gary that you went to get a knife?

A: Correct.

(R. 159, Tr. p. 272, ll. 12-24). On cross-examination Petitioner was asked several times if the victim fought back, and he stated he did not remember. (R. 147, Tr. p. 260, ll. 3-10). Upon further

questioning, based on the physical evidence, Petitioner agreed with the Solicitor the victim did not put up a fight. (R. 147, Tr. p. 260, ll. 11-19). However, Petitioner continued to assert, he did not recall anything after he lunged into his wife. (R. 148-159, Tr. pp. 261-272)

At trial, Petitioner contended he was entitled to a charge on voluntary manslaughter. Petitioner contended his statements to the investigator, that they had been “fighting,” was sufficient to justify a charge of voluntary manslaughter under State v. Davis, 278 S.C. 544, 298 S.E.2d 778 (1983) and State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003).⁹ However, the officer who conducted the interrogation testified statements Petitioner made regarding “fighting” and “fussing” referred to earlier in the evening. (R. 37, Tr. p 135, ll. 3-11). In his argument to the trial court requesting a charge on voluntary manslaughter, Petitioner’s attorney conceded he had no pinpoint evidence of what occurred when the victim returned to the house, because the victim was deceased and he, Petitioner, purportedly could not remember. (R. 203, Tr. p. 341, ll. 1-10). However, this is not entirely correct, as shown above. Petitioner remembered in detail what occurred before he attacked his wife.

The trial judge considered the request and declined to charge voluntary manslaughter on the grounds there was no evidence that would support a charge that Erika’s murder was in the heat of passion upon adequate legal provocation. (R. 202-03, Tr. pp. 340-341). Specifically, the trial court found that while there *might* be some evidence from which one could infer heat of passion, he saw

⁹In his brief, of the two cases cited to the trial court, Petitioner relies only on State v. Davis. He does not rely on or cite State v. Grubbs. In Grubbs, this Court found a charge on voluntary manslaughter was required where the jury could have believed Grubbs’ statement that the victim pushed her and hit her in the eye, and there was a long term history of abuse of the defendant by the victim. Id. In this case, there is no history of long term abuse of Petitioner by Erika. Nor is there any testimony the victim hit or pushed Petitioner before he lunged into her or grabbed her by the hair.

no evidence of sufficient legal provocation for that heat of passion. (R. 202-03, Tr. p. 340-341).

This is the sole issue raised on appeal from Petitioner's conviction for the brutal stabbing murder of his wife.

ARGUMENT

The trial judge correctly declined to charge voluntary manslaughter under the facts of this case; therefore, the Petition for Writ of Certiorari to the Court of Appeals should be denied.

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the petitioner were prejudiced. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In criminal cases, the appellate court sits to review errors of law only. Baccus, 367 S.C. at 48, 625 S.E.2d at 220. A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). If the instructions given to the jury afford the proper test for determining the issues, the failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 452, 529 S.E.2, 721, 728 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). *See also* State v. Smith, ___ S.C. ___, 706 S.E.2d 12, 2011 W.L. 382561 (2011). In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in the light most favorable to the defendant. State

v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). For a court to refuse to charge a jury on manslaughter, there must be no evidence in the record tending to reduce the crime from murder to manslaughter. State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010). However, “[a]n instruction should not be given unless it is justified by the evidence.” State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). “Only the law applicable to the case should be charged to the jury.” State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). “If a jury instruction is provided that does not fit the facts of the case, it may confuse the jury.” Id. Furthermore, a trial judge must be cautious in charging a lesser included offense. If a trial judge improperly charges the jury on a lesser included offense that is not supported by the facts, and the jury returns a verdict of guilty on the lesser included offense, then upon reversal of the conviction of the lesser included offense, the Double Jeopardy clause prevents retrial of the defendant on the greater offense. *See* Price v. Georgia, 398 U.S. 323 (1970); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)(discussing fact that prosecution on retrial of greater offense than that for which defendant was convicted would constitute a violation of the Double Jeopardy Clause); Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)(finding trial counsel ineffective for falsely informing defendant he could be convicted of murder on retrial if he appealed and succeeded in vacating his manslaughter conviction). This Court will not reverse the trial court’s ruling regarding jury instructions unless the trial court abused its discretion. State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005). “When the record contains no evidence to support it, a voluntary manslaughter charge should not be given.” State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005), *referencing* State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-69 (2000).

Voluntary Manslaughter

Voluntary Manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007). The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway or reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. Id. In order for voluntary manslaughter to exist, there must be both heat of passion and sufficient legal provocation present at the time of the killing. State v. Smith, ____ S.C. ____, 706 S.E.2d 12, 2011 WL 382561 (2011); State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009) *citing Pittman*. Where death is caused by the use of a deadly weapon, there must be some appearance of an assault – by some overt, threatening act – which could have produced the heat of passion. State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420 (2000), *cert denied* 121 S.Ct. 817 (2001), *citing State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993) *citing State v. Judge*, 208, S.C. 497, 38 S.E.2d 715 (1946). Even if sufficient legal provocation has aroused a defendant's passion, "if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter." State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001). "It is proper for a trial judge to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." Locklair, 341 S.C. at 360.

Analysis

Judge Cole did not abuse his discretion in refusing to charge voluntary manslaughter under the facts of this case. First, Petitioner told the operator on the 911 tape that he killed his wife because he was afraid she was going to take their children away from him. (State's Exhibit 3, 911 tape). Even if the victim had threatened to take the children, which there is no testimony that she did, this would certainly not be "sufficient legal provocation" to reduce murder to manslaughter, but would instead provide the motive for the murder. State v. Rogers, 320 S.C. 520, 525, 466 S.E.2d 360, 362 (1996)("[M]ere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon.").

Additionally, Petitioner testified there were no blows exchanged between he and the victim before he lunged into her. He testified the victim was removing personal items from her dresser when they started arguing, and she picked up something and threw it at him or *acted like* she was going to throw it at him. Petitioner never testified the victim hit him with anything. (R. 122-160, Tr. pp. 235-273). Petitioner testified that after she threw something at him or acted like she was going to throw something at him, he lunged into the victim, everything went gray, and he remembered nothing else. So, according to Petitioner's sworn testimony, the first physical contact was made by Petitioner, not the victim. The victim's earlier alleged action of picking up a personal item and throwing it at Petitioner or acting like she was going to throw it at him does not constitute sufficient legal provocation which would naturally render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence. State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000)("Finally, throwing a cigarette case [at the defendant] would not naturally render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable

impulse to do violence.”), *citing State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951).

Similarly, even if the victim attempted to defend herself after Petitioner attacked her, this would not constitute sufficient legal provocation to reduce murder to manslaughter. *State v. Ivey*, 325 S.C. 137, 142, 481 S.E.2d 125, 127 (1997)(“The exercise of a legal right, not matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence.”); *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001)(“A victim’s attempts to resist or defend himself from a crime cannot satisfy the sufficient legal provocation element of voluntary manslaughter.”); *State v. Holland*, 385 S.C. 159, 682 S.E.2d 898, 2009 WL 2591257 (Ct App. 2009)(victim’s wrestling with the defendant showed nothing more than the victim’s attempt to defend himself from the defendant’s aggression), *citing Ivey, Shuler, and referencing State v. Tyson*, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984)(holding trial court properly refused charge on voluntary manslaughter because evidence of a struggle was from victim defending himself), *cert. pending*.

Furthermore, assuming Petitioner’s statement to police that he and the victim got physical and hit each other, was referring to the last incident, Petitioner’s trial testimony is not wholly inconsistent with nor does it completely contradict his statement to police that “they got physical” and hit each other.¹⁰ In fact, it explains it. Petitioner made clear at trial that he and the victim did not get physical until after he lunged into and attacked the victim. (R. 144-45, Tr. p. 257-258). As

¹⁰Petitioner was asked three (3) times by the Solicitor whether the victim fought back. (R. 147, Tr. p. 260. ll. 3-10). Petitioner stated three (3) separate times that he did not remember. (R. 147, Tr. p. 260, ll. 3-10). Based on the physical evidence, Petitioner agreed with the Solicitor that the victim did not fight back. (R. 147, Tr. p. 260, 11-19). However, even after this exchange, Petitioner continued to assert that he did not remember anything after he lunged into his wife. (R. 148-160, Tr. p. 261-273).

previously set forth, even assuming the victim fought back, which Petitioner testified he could not remember and only conceded based on the physical evidence, her protective action in defending herself is not sufficient provocation to reduce murder to manslaughter. The trial judge correctly declined to charge voluntary manslaughter on the grounds there was no evidence that would support a charge that Ericka's murder was in the heat of passion upon adequate legal provocation. (R. 202-203, Tr. pp. 340-341). Petitioner's statements to police are not wholly inconsistent with his trial testimony, but illumine what actually occurred, vis-a-vis the sequence of events. See State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001)(finding where defendant's statements to police conflicted and defendant recanted earlier statements at trial, defendant was entitled to manslaughter charge where if jury believed one of his conflicting statements defendant was entitled to manslaughter instruction because in one statement defendant claimed victim armed herself with a knife and threatened and cut him with a knife); State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (Ct. App. 2003)(finding where defendant's statements to police conflicted defendant was entitled to manslaughter charge where if the jury believed one of her conflicting statements defendant was entitled to manslaughter instruction because in one statement defendant claimed that victim pushed her and punched her in the eye, and in light of testimony of long term abuse of the defendant by the victim). There was no such claim in this case. Petitioner never stated to police the victim pushed or hit him first. Petitioner did not claim he was a battered spouse. Petitioner did not recant his earlier statements to police; he testified only that he could not remember what he told police. Petitioner testified he clearly remembered what occurred up to his lunging into the victim.

Petitioner relies solely on State v. Davis as justification that he should be given a new trial. In Davis, the defendant argued the charge of voluntary manslaughter should not have been submitted

to the jury. Without discussing the particular facts of the case, the Court upheld the trial court's submission of the charge of voluntary manslaughter to the jury finding that a witness' testimony that he saw the victim and the defendant fighting before the killing was sufficient evidence of legal provocation and heat of passion.

Even though Davis and Grubbs stand for the general proposition that "fighting" is sufficient evidence to submit a charge of voluntary manslaughter, neither this Court, nor the Court of Appeals has required the submission of voluntary manslaughter in every case where there is evidence of fighting or a struggle between the defendant and the victim. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006), fn. 1 (voluntary manslaughter instruction was erroneously given where defendant admitted "to firing on Harrison multiple times after the alleged struggle, under no circumstances could we conclude that Simpson acted without malice or had sufficient legal provocation to use deadly force.") State v. Ivey, 325 S.C. 137, 142, 481 S.E.2d 125, 127 (1997)(evidence of struggle showed victim was defending himself from a crime); State v. Tyson, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984)(evidence of struggle showed victim was defending himself from a crime); State v. Holland, 385 S.C. 159, 682 S.E.2d 898, 2009 WL 2591257 (Ct. App. 2009)(wrestling between victim and defendant was initiated by defendant and did not justify manslaughter charge), *cert. pending.*

Whether a charge of voluntary manslaughter is required depends on the facts of each particular case. See Holland, *supra* ("The requirement that we view the evidence in the light most favorable to the defendant does not allow us to throw out all reason from our analysis or ignore the overwhelming, clear evidence of Holland's mission of violence against Koehler- a state of mind that began before Koehler even stepped out of Caruther's vehicle."); Grubbs, (charge of voluntary

manslaughter was required where one of defendant's statements was that the victim was the aggressor and punched her in the stomach and hit her in the eye and there was a history of abuse of the defendant by the victim). In the present case, there is no evidence that any of the victim's actions posed *a genuine threat* to Petitioner. Holland, *supra*. Petitioner's generic statement to police that he and the victim got physical and hit each other, without more, including some explanation of who was the aggressor, or who hit who first, does not entitle Petitioner to a voluntary manslaughter charge. *See Holland*. There was no evidence the victim first pushed or hit Petitioner before the deadly assault or that Petitioner was a battered spouse. Judge Cole did not abuse his discretion in declining to charge voluntary manslaughter under the facts of this case.

Finally, even assuming *arguendo* that the victim's actions in throwing something or acting like she was going to throw something at Petitioner constituted sufficient legal provocation, or the contents of Petitioner's statement to police somehow constituted sufficient legal provocation to hit the victim, Petitioner beat the victim unconscious or rendered her completely helpless. (R. 16, 25, 32, 79-81, 82, 148, Tr. pp. 114, 123, 130, 179-181, 182, 261). The evidence established that only after beating the victim unconscious or helpless, Petitioner walked the length of his home to the kitchen dripping the victim's blood as he went, took or selected a kitchen knife out of the drawer, leaving blood on the drawer, and walked back the length of the home to where the unconscious and helpless victim lay. (R. 32, 65-78, 78-86, 147-48, Tr. pp. 130, 165-178, 178-186, 260-261). The evidence established Petitioner then stabbed the helpless and defenseless victim not once but five (5) times in the neck, almost severed her head from her body, and caused most of the blood to drain from her body. (R. 86, Tr. p. 186). There was sufficient time for any passion caused by the victim's actions to have cooled such that a deadly assault was not necessary or justified under our case law.

State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)(finding defendant had a sufficient time period to cool where fight occurred between victim and the defendant in the petitioner's home and the defendant's actions in going next door to get a gun and returning to fatally shoot the victim from petitioner's yard indicated "cool reflection"); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)(finding as a matter of law defendant's actions in obtaining a gun, going to his room and loading it, and then going to his grandfather's room and shooting his grandfather and grandmother showed he did not act in heat of passion entitling him to a voluntary manslaughter charge), *referencing* State v. Walker, 324 S.C. 257, 261, 478 S.E.2d 280, 281-82 (1996)(finding the defendant demonstrated cool reflection through his actions between the alleged provocation and the killing), *and* State v. Byrd, 323 S.C. 319, 322-23, 474 S.E.2d 430, 432 (1996)(holding that the defendant's actions between the alleged provocation and killing did not support a finding of sudden heat of passion) *other citation omitted*.¹¹ Judge Cole did not err in refusing to charge voluntary manslaughter under the facts of this case.

CONCLUSION

For the above stated reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

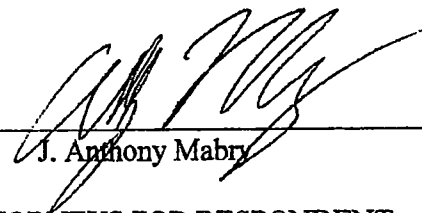
¹¹*But see* Carter v. State, 301 S.C. 396, 392 S.E.2d 184 (1990); *see also* State v. Knoten, *supra*, *citing* Carter, *wherein the dissent distinguished* Carter, *Burnett, J. dissenting along with Toal, C.J.* Carter v. State is also distinguishable from this case because in Carter the victim was not rendered unconscious or completely helpless before the fatal assault. *See also* State v. Holland, *supra*, *distinguishing* Carter v. State.

DONALD J. ZELENKA
Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

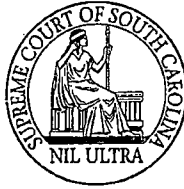
BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

By: _____


J. Anthony Mabry

ATTORNEYS FOR RESPONDENT
P.O. Box 11549
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March 30, 2011



The Supreme Court of South Carolina

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January 11, 2012

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Horton, Larry Brent
Trial Court Case No. 2008-GS-42-00950

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

January 11, 2012."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,


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JAN 11 2012

cc: Assistant Attorney General J. Anthony Mabry
Harold W. Gowdy, III, Esquire
The Honorable M. Hope Blackey
The Honorable Tanya Gee

SC OFFICE OF
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Larry Brent Horton, SCDC# 329065,)
Applicant,)
)
vs.)
)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

Case Number: 203CP-42-00007

APPLICATION FOR
POST-CONVICTION RELIEF

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Applicant is detained at the McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899
2. He was convicted and sentenced in the Spartanburg County Court of General Sessions.
3. There are no co-defendants.
4. Applicant was indicted for murder (2008-GS-42-950). He was tried before the Honorable J. Durham Cole and a jury June 16-18, 2008.
5. On June 18, 2008, Judge Cole sentenced Applicant to life in prison without the possibility of parole for murder.
6. Applicant was found guilty after pleading not guilty.
7. The Applicant appealed the convictions and sentences.
8. Appeals:
 - a. Courts to which applicant appealed:
 - i. The South Carolina Court of Appeals
 - ii. The South Carolina Supreme Court
 - b. Result in each court to which appellant appealed:

Page 1 of 6

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- i. Conviction and sentence were affirmed.
 - ii. Petition for Writ of *Certiorari* denied.
 - c. Date of each such result:
 - i. Conviction and sentence affirmed on September 16, 2010.
 - ii. Petition for Writ of *Certiorari* denied on January 11, 2012.
 - d. Citations of written opinion or orders entered pursuant to such results:
 - i. *State v. Horton*, Ct. App. Unpublished Opinion No. 2010-UP-406.
 - ii. From order dated January 11, 2012.
9. Not applicable.

10 & 11. **GROUND FOR RELIEF WITH SUPPORTING FACTS**

10(a) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, during his jury trial to determine his guilt or innocence.

11(a) Trial counsel's performance was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

- 1) Failure to object to the testimony of Anthony Sellers when this witness' entire testimony was inadmissible and prejudicial hearsay.
- 2) Failure to cross-examine the state's witnesses to reveal evidence that would mitigate the offense from murder to voluntary manslaughter.
- 3) Failure to present available evidence of the victim's conduct and state of mind that would mitigate the offense from murder to voluntary manslaughter.
- 4) Failure to present available evidence of Applicant's conduct and state of mind that would mitigate the offense from murder to voluntary manslaughter.

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- 5) Telling the jurors during Applicant's closing argument that they should question the credibility of the Applicant and his witnesses when this argument was prejudicial by undermining the credibility of the defense.
- 6) Failure to effectively argue the facts and existing law so that the trial court would instruct the jurors about the law of voluntary manslaughter.
- 7) Failure to object to the trial court's erroneous jury instruction on malice aforethought.
- 8) Failure to argue that voluntary manslaughter is the absence of premeditation and not the absence of malice.

10(b) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, during his sentencing hearing.

11(b) Trial counsel's performance was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

- 1) Failure to object to the trial judge's refusal to consider any evidence or circumstances that would mitigate the punishment.
- 2) Failure to present available evidence and circumstances that would mitigate the punishment.

10(c) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, during the appeal of his conviction and sentence.

11(c) Counsel's performance on direct appeal was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

CLERK OF COURT
SPRINGFIELD
2013 JAN - PM 12:46
FREDERICK C. COLEY

- 1) Failure to argue that the trial court erred by not admitting evidence of the victim's state of mind that was relevant to mitigate the offense from murder to voluntary manslaughter.
 - 2) Failure to effectively argue the facts and existing law to show that the trial court erroneously failed to instruct the jurors about the law of voluntary manslaughter.
 - 3) Failure to argue that voluntary manslaughter is the absence of premeditation and not the absence of malice.
12. Applicant appealed directly to the South Carolina Court of Appeals and petitioned the South Carolina Supreme Court for a writ of *certiorari*. Applicant has not previously filed an application for post-conviction relief or a petition for a writ of *habeas corpus* in either state or federal court.
13. Not applicable
- 14 & 15. None of the grounds set forth in paragraphs 10 & 11 have been previously presented to this or any other court, state or federal.
16. Not applicable.
- 17 & 18. Applicant's was previously represented as follows:
- a) At trial by Richard W. Vieth, 360 E. Henry St., Ste.101, Spartanburg, SC 29302.
 - b) On direct appeal to the South Carolina Court of Appeals by Joseph L. Savitz, III, retired from the S.C. Commission on Indigent Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.
 - c) On petition for writ of *certiorari* by Wanda H. Carter of the S.C. Commission on Indigent Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.
19. Applicant seeks the vacation of his conviction and sentence.
20. Applicant is not under sentence from any other court.

Respectfully submitted,

By Larry B. Horton

Page 4 of 6

CLERK OF COURT
SPARTANBURG
2013 JAN -2 PM 12:46
HONORABLE

C. Rauch Wise
301 Main Street
Greenwood, SC 29646
(864) 229-5010

E. Charles Grose, Jr.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Counsel for the Applicant
December **, 2012

CLERK OF COURT
SPARTANBURG, SC
2013 JAN -2 PM 12:46
THOMAS - C. A. GUNLEY

STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

VERIFICATION

I, Larry Brent Horton, being duly sworn on my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground know to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Larry Brent Horton
Larry Brent Horton

SWORN and subscribed before me this 28th
day of December, 2012

[Signature] (L.S.)
Notary Public

My Commission Expires: 12/07/2019

CLERK OF COURT
SPARTANBURG COUNTY
2013 JAN -2 PM12:46
L. H. HORTON - DEPUTY

WITNESSES

W. Gary

Spartanburg County Sheriff Dept.

Anna Fowler

1. SENTENCE MADE

2. REPORT MADE

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

K183925 ASSESSMENT AND
FINE CARD MADE

6. TRAFFIC VIOLATIONS CODE

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: *2/22/08*

VERDICT

Guilty

P. Clate Blackburn

6/18/08

Foreperson of Petit Jury
Date:

6/18/08

DOCKET NO.

08-GS-42-0950

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 25 2008

TERM

THE STATE

VS. .

Larry Brent Horton

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

2008 FEB 27 2:10:51

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

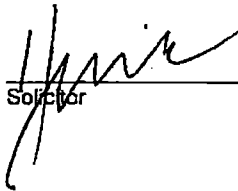
INDICTMENT

At a Court of General Sessions, convened on FEB 22 2008 the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Larry Brent Horton did in Spartanburg County on or about January 2, 2007, intentionally, feloniously, and with malice aforethought, cause the death of one Erika Horton, by cutting and/or stabbing her with a knife, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Larry Brent Horkel
 AKA: _____
 Race: W Sex: M Age: 27
 DOB: 11/11/79 SS#: [REDACTED]
 Address: Undisclosed
 City, State, Zip: Camp 5810, SC 29322
 DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 08-02-0950
 AAW#: 10-5-2008
 Date of Offense: 11-11-07
 S.C. Code §: 16-3-10, 20
 CDR Code #: 116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murder

in violation of § 16-3-10, 20 of the S.C. Code of Laws, bearing CDR Code # 116

☐ 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 initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 months years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS
 Recipient: _____
 *Fino:
 \$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 \$ _____
 \$35.13 (Public Def/Prob) \$500 \$ _____
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 \$50-21-114(BUI Breath Test Fee) \$50 \$ _____
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ 375.00
128.75

PTUP _____ days/hours Public Service Employment
 Obtain 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 weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Court Reporter: T. Camp
Linda McHitt
 Clerk of Court, Deputy Clerk

PRESIDING JUDGE [Signature]
 Judge Code: 2
 Sentence Date: May 18, 2008

SCCA/217 (9/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

**Spartanburg County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME: Cole, J. Derham
TRIAL TYPE: Criminal
PANEL ID: 2008GS4200950
COURTROOM WA

DESCRIPTION: THE STATE VS LARRY HORTON

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Brown, Laurel S	16	W	F	()	()	()	
2 Miller, Kevin R	111	W	M	()	()	()	
3 Anderson, Joseph O	4	W	M	()	()	()	
4 Rodriguez, Jaime M	136	H	M	()	()	()	
5 Moore, William B	115	W	M	()	()	()	
6 Blackman, Porter C	11	W	M	()	()	()	<u>Foreperson</u>
7 Luc, Erin M	90	W	F	()	()	()	
8 Bright, Laura Jean	15	W	F	()	()	()	
9 Hembree, Leslie A	63	W	F	()	()	()	
10 ~~Foster, Kevin M~~	176	B	M	()	()	()	<u>Car Accidents</u>
11 Paige, Natiesha J	123	B	F	()	()	()	
12 Duthie, Kevin A	42	W	M	()	()	()	
13 Simmons, Robert C JR	146	W	M	()	()	()	<u>Alternate</u>

Total Number of Jurors:

13

** END OF REPORT **

**Spartanburg County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME : Cole, J. Derham
TRIAL TYPE : Criminal
PANEL ID : 2008GS4200950
COURTROOM WA

DESCRIPTION : THE STATE VS LARRY HORTON

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Brown, Laurel S	16	W	F	()	()	()	1
2 Miller, Kevin R	111	W	M	()	()	()	2
3 Hill, Gregory L	65	B	M	X	()	()	
4 Anderson, Joseph O	4	W	M	()	()	()	3
5 Rodriguez, Jaime M	136	H	M	()	()	()	4
6 Addison-Jones, Freida L	1	W	F	()	X	()	
7 Foster, Howell J III	52	W	M	()	X	()	
8 Boling, Stephen E	12	W	M	()	X	()	
9 Mckenzie, Carolyn L	100	B	F	X	()	()	
10 Moore, William B	115	W	M	()	()	()	5
11 Setro, Elsje	143	O	F	()	X	()	
12 Blackman, Porter C	11	W	M	()	()	()	6
13 Craig, Joyce M	27	W	F	()	X	()	
14 Luc, Erin M	90	W	F	()	()	()	7
15 Bright, Laura Jean	15	W	F	()	()	()	8
16 Black, Michael V	10	W	M	()	X	()	
17 Hembree, Leslie A	63	W	F	()	()	()	9
18 Foster, Kevin M	176	B	M	()	()	()	10
19 Mickel, Divinity	108	B	M	()	X	()	
20 Paige, Natiesha J	123	B	F	()	()	()	11
21 Houston, Doris A	70	B	F	()	X	()	
22 Duthie, Kevin A	42	W	M	()	()	()	12
23 Simmons, Robert C JR	146	W	M	()	()	()	All
24 Miller, Timothy W	112	W	M	()	()	()	

**Spartanburg County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME : Cole, J. Derham
TRIAL TYPE : Criminal
PANEL ID : 2008GS4200950
COURTROOM WA

DESCRIPTION : THE STATE VS LARRY HORTON

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Copelan, Beth J	25	W	F	()	()	()	
26 Edrington, Reginald K	45	B	M	()	()	()	
27 Moore, Susan G	114	W	F	()	()	()	
28 Ruegger, Mathilde	137	A	F	()	()	()	
29 Tuck, Glennis N	160	W	F	()	()	()	
30 Piccuta, David J	127	W	M	()	()	()	
31 Tucker, Megan M	76	W	F	()	()	()	
32 Milford, Charles O III	109	W	M	()	()	()	
33 Lindsay, Michael D	87	W	M	()	()	()	
34 Spars, Sharon C	155	W	F	()	()	()	
35 Hogan, Walter M	66	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

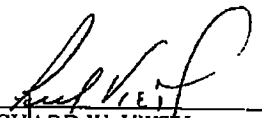
STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) DEFENDANT'S WITNESS LIST
Larry Brent Horton)
Defendant.) CHARGE: Murder
WARRANT: K183925
DATE OF ARREST: January 3, 2007

The Defendant, Larry Brent Horton, by and through his attorney, Richard W. Vieth, lists the following individuals as witnesses for the Defense.

- 1) Larry Brent Horton
- 2) Larry Horton, Sr.
- 3) Brenda Horton
- 4) Charlie Horton
- 5) Charlie Harris
- 6) Pastor Wyatt Brown
- 7) Margaret Melikian, D.O.
- 8) Cpl. M. Perkins
- 9) Officer Jeremy Ritz

HENDERSON, BRANDT & VIETH, P.A.



RICHARD W. VIETH
ATTORNEY FOR THE DEFENDANT
360 E. HENRY STREET, SUITE 101
SPARTANBURG, S.C. 29302-2646
PHONE: (864) 582-2962 FAX: (864) 582-2952

DATE: 6/16/08

**Spartanburg County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME : Cole, J. Derham
TRIAL TYPE : Criminal
PANEL ID : 2008GS4200950
COURTROOM WA

DESCRIPTION : THE STATE VS LARRY HORTON

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
☒ Brown, Laurel S	16	W	F	()	()	()	
☒ Miller, Kevin R	111	W	M	()	()	()	
☒ Anderson, Joseph O	4	W	M	()	()	()	
☒ Rodriguez, Jaime M	136	H	M	()	()	()	
☒ Moore, William B	115	W	M	()	()	()	
☒ Blackman, Porter C	11	W	M	()	()	()	
☒ Luc, Erin M	90	W	F	()	()	()	
☒ Bright, Laura Jean	15	W	F	()	()	()	
☒ Hembree, Leslie A	63	W	F	()	()	()	
☒ ~~Foster, Kevin M~~	176	B	M	()	()	()	<i>Car Wreck</i>
☒ Paige, Natesha J	123	B	F	()	()	()	
☒ Duthie, Kevin A	42	W	M	()	()	()	
☒ Simmons, Robert C JR	146	W	M	()	()	()	

Total Number of Jurors:

13

** END OF REPORT **

COMPLAINT
ARREST WARRANT
K- 183925
STATE OF SOUTH CAROLINA
☐ County/ ☐ Municipality of
SPARTANBURG COUNTY

THE STATE
against

HORTON LARRY BRENT
Address: **CAMPBELL, SC 29322**
Phone: **SSN:**
Sex: **Place:** **Height:** **Weight:**
DL State: **DL #**
DOB: **Agency ORI#:**
Prosecuting Agency: **GARY, W**
Prosecution Officer: **MURDER / MURDER**
Offense: **Offense Code: 0116**
Code/Ordinance Sec: **16-03-0010, 0020**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (LS.)
Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant **HORTON LARRY BRENT**
on **1-3-07**

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
FRER GOWAN
SPARTANBURG COUNTY JAIL
SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
SPARTANBURG COUNTY
AFFIDAVIT CASE # **K183925**
Personally appeared before me the affiant **GARY, W** who
being duly sworn deposes and says that defendant **HORTON LARRY BRENT**
did within this county and state on **01/02/07** violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of **SPARTANBURG**)
in the following particulars:
DESCRIPTION OF OFFENSE: MURDER / MURDER
16-03-0010, 0020
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THE DEFENDANT DID INTENTIONALLY FELONIOUSLY AND WITH MALICE
AFORETHOUGHT CAUSE THE DEATH OF ONE ERIKA HORTON BY CUTTING HER THROAT
WITH A KNIFE.
AFFIANTS RELIEF IS BASED UPON POLICE INVESTIGATION

Signature of Affiant **William R. [Signature]**
Affiant's Address **8045 HOWARD STREET**
SPARTANBURG, SC 29307
Affiant's Telephone **800-0000 800-0000**
STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
SPARTANBURG
ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on **01/02/07** defendant **HORTON LARRY BRENT**
did violate the criminal laws of the State of South Carolina (or ordinance of **SPARTANBURG**)
☐ County/ ☐ Municipality of **SPARTANBURG** as set forth below:
DESCRIPTION OF OFFENSE: MURDER / MURDER
16-03-0010, 0020

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me
on **01/02/07**)
Judge's Address **SPARTANBURG COUNTY JAIL**
SPARTANBURG, SC 29306
Judge's Telephone **800-0000 800-0000**
Issuing Court: ☐ Magistrate ☐ Municipal ☐ Court
FRER GOWAN ORIGINAL