

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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ANDRES ANTONIO TORRES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000842

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APPENDIX

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NOTICE AND MOTION PURSUANT TO SCRCP 59  
(DATED DECEMBER 18, 2019).....5343

RETURN TO MOTION PURSUANT TO SCRCP 59  
(DATED JANUARY 2, 2020).....5353

FORM 4 DECISION BY THE COURT DENYING APPLICANT’S  
SCRCP 59 MOTION (DATED MAY 8, 2020).....5364

INDICTMENTS .....5365

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

**APPLICANT'S EXHIBIT #1 (PHOTOGRAPHS), APPLICANT'S EXHIBIT #8 (PHOTOGRAPHS), APPLICANT'S EXHIBIT #14 (PHOTOGRAPHS OF THE APPLICANT), APPLICANT'S EXHIBIT #15 (PHOTOGRAPHS OF THE APPLICANT'S BODY), APPLICANT'S EXHIBIT #31 (DEPOSITIONS OF H. WAYNE TOBIN, M.D., DATED 4/2/14 AND 7/23/14; ORIGINAL OF THE 4/2/14 DEPOSITION WAS UNOPENED IN THE CLERK'S OFFICE), APPLICANT'S EXHIBIT #33 (DEPOSITION OF JOHN EDWARD SPENCE, M.D. DATED 3/26/15; ORIGINAL WAS UNOPENED IN CLERK'S OFFICE), STATE'S EXHIBIT #3 (PHOTOGRAPH—S-366 TRIAL EXHIBIT), STATE'S EXHIBIT #7 (PHOTOGRAPH—S-327 TRIAL EXHIBIT), STATE'S EXHIBIT #8 (PHOTOGRAPH—S-328 TRIAL EXHIBIT), COURT'S EXHIBIT #1 (DEPOSITION OF ROGER KIRBY DATED 2/20/14; ORIGINAL WAS UNOPENED IN CLERK'S OFFICE), AND COURT'S EXHIBIT #3 (DEPOSITION OF CHRISTOPHER KEVIN BIGGERSTAFF DATED 2/21/14; ORIGINAL WAS UNOPENED IN CLERK'S OFFICE)**

## Individual Juror Qualification

1 Q Good morning, Mrs. Thomas, by about two minutes it's  
2 still morning.

3 A Okay.

4 Q How are you this morning?

5 A Great. Thank you.

6 Q All right. Mrs. Thomas, first of all, let me thank you  
7 for your continued cooperation with our process. I realize  
8 sometimes it can be an inconvenience and sometimes a trying  
9 experience. And, again, I thank you for your cooperation.

10 This morning we're going to, it looks like into the  
11 afternoon for you, we're going to be asking you some  
12 questions and the questions will, first of all, come from  
13 me. And then I'll allow the attorneys to follow-up on any  
14 questions they want to follow-up on. The purpose of our  
15 questioning is to find out your views, your opinions, your  
16 positions, and how you would handle certain situations.

17 For that reason, there are no right or wrong answers to  
18 any questions that I ask you today. It's simply how you  
19 would handle certain things and what your beliefs are. And  
20 so, I hope you understand that there's no reason to be  
21 nervous about it. That's easy for me to say sitting here  
22 and you sitting over there I know.

23 So, if, at anytime during the process, you feel, in any  
24 way, concerned or threatened or whatever, just let me and  
25 we'll try to alleviate that situation.

## Individual Juror Qualification

1           Okay, ma'am?

2   A       Yes, sir.

3   Q       I have to remind you that you are still under oath from  
4 our previous discussions. That continues now.

5           Okay?

6   A       Okay.

7   Q       All right.

8   A       Yes, sir.

9   Q       Now, the first question I have for you, since we talked  
10 on Monday, has anyone contacted you about the case or have  
11 you heard, read, or seen anything or been exposed to any  
12 information---

13   A       No, sir.

14   Q       ---that would cause you to form an opinion?

15   A       No, sir.

16   Q       Okay. Have you ever participated in any blogs or other  
17 Internet sites or anything of that nature in connection with  
18 the death penalty?

19   A       No, sir.

20   Q       Ever, you ever participated in any political activities  
21 either for or against the death penalty such as rallies,  
22 demonstrations, or meetings?

23   A       No, sir.

24   Q       Just before you came into the courtroom I believe the  
25 bailiffs let you look at a list of witnesses.

## Individual Juror Qualification

1 Is that right?

2 A Yes, sir.

3 Q Did you get a chance to look that over?

4 A Yes, sir.

5 Q Now, I'm going to instruct you not to name any of those  
6 people by name.

7 Okay. My first question, after reading the list and  
8 after going over it, do you believe that you have any  
9 social, business, or personal connections with anyone on  
10 this list?

11 A No, sir.

12 Q Do you believe that you're related by blood or  
13 marriage, now or formerly, with anyone on that list?

14 A No, sir.

15 Q So, I take it that you know of no connections that you  
16 have with anyone listed as a witness?

17 A No, sir.

18 Q All right. Good.

19 Now, ma'am, I'm going to be asking you now some  
20 questions that are a little more personal in nature that  
21 have to do with your beliefs and your feelings about things  
22 and how you would handle certain situations. We're not  
23 trying to imply, pry into your privacy. But these are  
24 issues that are important to this case because they're  
25 involved in the case and they will allow us to make good

## Individual Juror Qualification

1 decisions selecting a jury in just a few minutes or later  
2 today perhaps.

3 So, do you understand what we're doing?

4 A Yes, sir.

5 Q Again, I don't want you to feel threatened. It seems  
6 like to me that you're a strong enough individual that we  
7 can talk about your opinions and, and you won't feel  
8 threatened in any way.

9 Is that correct?

10 A Yes, sir.

11 Q Okay. Now, one thing I do want to point out to you,  
12 later on in my questioning I'm going to get to some  
13 questions concerning the death penalty because that's an  
14 issue that's, that could come up in this case. It may not.  
15 But it could. And that's because they're several charges  
16 lodged against the defendant.

17 One of which is a charge of murder for which the state  
18 has sought a death penalty. And only if the defendant is  
19 found guilty of the murder would we even talk about the  
20 penalty.

21 Do you understand that?

22 A Yes, sir.

23 Q But we've got to talk about the penalty today because  
24 the same jury that hears the guilt or innocent part of the  
25 trial will also decide the appropriate penalty should he be

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1 found guilty of murder. And we won't get another chance to  
2 talk to you before then. So, we'll talk about it now.

3 So, we may be putting the cart in front of the horse  
4 talking about penalties before there's ever been a  
5 determination of guilt or innocence. We've just got to do  
6 it now cause it's the only time we have to do it.

7 A Okay.

8 Q Please don't hold the fact that we've talked about  
9 penalties concerning this case, don't hold that against the  
10 defendant in any way or any defense that he might raise.

11 Do you understand what I'm saying?

12 A Yes, sir.

13 Q Okay. Now, ma'am, the first questions I have for you  
14 have to do with your application of the law in the case.  
15 And I'll tell you, if you're selected as a juror in any  
16 criminal case, at some point in time the judge will instruct  
17 the jury concerning what laws are to be applied.

18 Do you understand that?

19 A Yes, sir.

20 Q And would you be willing to listen to the law as given  
21 to you by the judge?

22 A Yes, sir.

23 Q Would you be willing to accept the law as given by the  
24 judge and apply it to the facts as you find them to be?

25 A Yes, sir.

## Individual Juror Qualification

1 Q Now, is that true even if when the judge is telling you  
2 or instructing you on the law that you realize that you may  
3 not agree with what the law says or you may not like what it  
4 says, could you put those feelings aside and take the law as  
5 the judge gives it to you?

6 A Yes, sir.

7 Q And apply it to the facts?

8 A Yes, sir.

9 Q Okay. Now, I do know there has been some pretrial  
10 publicity about this case in the local print and TV.

11 And the first question is have you been exposed to any  
12 of that?

13 A No, sir.

14 Q All right. Now, are you the kind of juror who could  
15 put aside anything you may have heard, read, or seen about  
16 the case and decide the case solely upon the evidence that's  
17 presented during the trial in the courtroom?

18 A Yes, sir.

19 Q Okay. Two concepts I want to be sure you understand  
20 and that we are clear on. So, let me go over these with  
21 you.

22 The first concept is that, under the law and the  
23 Constitution of our state and the United States, anyone  
24 who's charged with the commission of a crime is always  
25 presumed to be innocent.

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1 Now, what that means is that someone who is a defendant  
2 in a criminal case does not have any burden of proof. They  
3 do not have to prove anything to you.

4 Do you understand that as well?

5 A Yes, sir.

6 Q Also, there is, under the same rules, the State does  
7 have the burden of proof. The State has the burden of  
8 proving the allegations that have been claimed in the  
9 charges by proof of guilt beyond a reasonable doubt before a  
10 defendant can be found guilty. So, the burden of proof is  
11 always upon the State.

12 Do you understand that?

13 A Yes, sir.

14 Q And could you accept those principles and apply it to  
15 any case that you're a jury, juror on?

16 A Yes, sir.

17 Q Okay. Now, ma'am, is it your belief that just because  
18 someone has been arrested, accused of a crime, or even  
19 indicted of a crime, that they must automatically be guilty  
20 of that crime?

21 A No, sir.

22 Q So, ma'am, I take it then that, that it's your position  
23 that just because someone is been arrested in that  
24 situation, that you would have to listen to the facts and  
25 circumstances before you could reach a decision as to the

## Individual Juror Qualification

1 guilt or innocence of someone?

2 A Yes, sir.

3 Q Is that true?

4 A Yes, sir.

5 Q Now, ma'am, in that situation, if you found that the  
6 State did not meet its burden of proof in a case, that means  
7 they did not prove the defendant guilty beyond a reasonable  
8 doubt, could you find someone innocent of the crime or not  
9 guilty of the crime?

10 A Yes.

11 Q And by the same token, if the State does meet its  
12 burden of proof and does establish guilt beyond a reasonable  
13 doubt, could you render a verdict of guilty against a fellow  
14 citizen?

15 A Yes, sir.

16 Q So, I take it, ma'am, that you would make up your mind  
17 depending upon the strength of the evidence that you heard  
18 and what the testimony or evidence showed to you and you  
19 could find someone either guilty or not guilty based on how  
20 you find that evidence to be?

21 A Yes, sir.

22 Q Is that true?

23 A Yes, sir.

24 Q All right. Now, we're going to reach the stage of my  
25 questioning where we are gonna talk about the death penalty.

## Individual Juror Qualification

1 I told you it would get here.

2 Let me explain again. We only reach this question when  
3 a defendant, the State has requested that penalty, and a  
4 defendant has been found guilty of the murder. The same  
5 jury that hears that part of the case then will come back  
6 and decide the question of the most appropriate punishment.

7 There's only two choices at that second hearing, and  
8 those choices are life in prison without parole or death  
9 because the defendant's already been found guilty. So,  
10 those are the two possible sentences and the jury would have  
11 to hear new evidence, perhaps from new witnesses who haven't  
12 testified in the other part of the trial, because the issues  
13 are different. It's not guilt or innocence. It's the  
14 question of how, what the appropriate punishment is.

15 So, you would hear what is called aggravating evidence  
16 or circumstances from the State. That's evidence that tends  
17 to make the alleged offense or the murder more serious and  
18 cause for more serious punishment.

19 From the defense, you could hear, and again, remember  
20 the defendant is not required to prove anything in a case,  
21 but you could hear evidence of mitigating factors. Those  
22 are factors which tend to make the crime less serious or  
23 require less serious punishment for the crime and possibly  
24 mercy evidence.

25 Do you understand what would be presented at that

## Individual Juror Qualification

1 second trial?

2 A Yes, sir.

3 Q Now, ma'am, I want you, want to, you to put yourself in  
4 a situation in your mind for just a minute for me. Let's  
5 assume that you have been called to jury duty and you've  
6 been selected as a juror in a murder case where the State is  
7 seeking the death penalty. You've heard the guilt phase of  
8 the trial, and you, and you've heard all the evidence, been  
9 charged with the law. You and your fellow jurors went back  
10 to the jury room and you deliberated. And based on your  
11 deliberations, you unanimously found the defendant guilty of  
12 the murder.

13 So, the question of whether or not the defendant was  
14 innocent of the murder or not or not guilty of the murder or  
15 not has been ended. You -- the defendant has been found  
16 guilty of the murder. Because the State now is seeking the  
17 death penalty, you must come back to the courtroom and make  
18 a decision concerning the appropriate punishment and that's  
19 unusual because, in our state, usually the judge makes the  
20 decision on punishment. In this case the jury would do  
21 that.

22 So, do you understand the situation that I've now said  
23 you're in?

24 A Yes, sir.

25 Q You're with your fellow jurors. You're getting ready

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1 to come back to the courtroom to decide that issue.

2 Now, I gave you another sheet of paper to read outside.

3 Do you remember that sheet of paper?

4 A Yes, sir.

5 Q There were three jurors described on that paper, and  
6 I'm gonna go over them with you so I'm sure you and I agree  
7 on what that said.

8 A Okay.

9 Q The first juror is somebody, as they walk down the hall  
10 to walk into the courtroom, has already made up his or her  
11 mind because that juror believes that anytime someone is  
12 found guilty of a murder, that the only appropriate  
13 punishment is the death sentence. So, that juror, walking  
14 in, in all situations, will always find for the death  
15 sentence.

16 The second juror I described is someone who also has  
17 already made up his or her mind. That juror believes the  
18 State never has the right to take the life of someone in  
19 punishment for a crime. So, that juror will never vote for  
20 the death penalty. That juror is already made up his or her  
21 mind to vote for life in prison without parole and that  
22 juror will do that in every situation like that.

23 The third juror I described is one, who walking down  
24 that hallway, doesn't know exactly what they're going to do.  
25 That juror has not yet made up his or her mind as to what

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1 the appropriate punishment is. And in fact, that juror is  
2 going to have to wait and listen to the testimony, weigh the  
3 testimony, and only after hearing all of the evidence, both  
4 aggravating and mitigating evidence, make a decision as to  
5 what the appropriate punishment might be.

6 Now, do you understand the, the, the three jurors that  
7 I've described?

8 A Yes, sir.

9 Q Now, ma'am, I've put you in the position of walking  
10 down the hall with the rest of the jurors to come back in  
11 the courtroom.

12 And as you come into the courtroom, which of those  
13 three jurors would most closely describe your situation?

14 A The, the second juror would most describe it, but it's  
15 not because I don't believe in it. I just don't think that  
16 I have the conscious of being able to live with making a  
17 decision like that.

18 Q Okay. That's all right.

19 So, you're saying juror number two would be most likely  
20 to describe your situation?

21 A Yes, sir.

22 Q And you would, most likely, in all situations, vote for  
23 life imprisonment---

24 A Yes, sir.

25 Q ---without parole?

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1 A Yes, sir.

2 Q All right. I'm gonna allow the attorneys to follow-up  
3 with questions of you if they wish to.

4 Any from the defense?

5 MRS. HODGES: Just briefly, Your Honor.

6 EXAMINATION

7 BY MRS. HODGES:

8 Q Mrs. Thomas, my understanding is, is that, in listening  
9 to your answer to the judge's questions, that you could  
10 follow the law---

11 A Uh-huh. (Affirmative).

12 Q ---as the, the judge would instruct you. And in this  
13 type of a case, when we're talking about the death penalty,  
14 there are circumstances that the State would produce. We  
15 call them aggravating circumstances. And those are things  
16 that basically, are designed to show why this particular  
17 crime that you-all would be considering is necessarily, not  
18 necessarily, but is worse than, you know, other similar  
19 situated murders.

20 Can you think of any circumstance at, at some sort, of  
21 any sort of aggravating circumstance or type of murder that  
22 you could vote for the death penalty on?

23 A I just personally couldn't vote for it. I've been in  
24 the circumstance and I've sat as a victim of losing someone.  
25 And as much as I wanted it to be, I don't think I could of

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1 voted for it because I feel like -- I don't feel like God  
2 has given me that right. I believe in it. I know that  
3 there are things that entitle it.

4 I just don't know if I could lay down at night and know  
5 that I did that in my mind. I don't think that my conscious  
6 could handle that or my heart. So, it's not that I'm not  
7 for it. I believe that things have to be done in the right  
8 way. But I just don't know, as a person, if I could be the  
9 one to do it.

10 Q And we appreciate your being here, Mrs. Thomas. You  
11 know, we appreciate you candor and willingness to talk to us  
12 about your feelings.

13 A Thank you.

14 Q Thank you, ma'am.

15 THE COURT: Any questions from the State at this time?

16 SOLICITOR GOWDY: No, sir, Your Honor.

17 THE COURT: All right. Mrs. Thomas, that completes our  
18 discussion with you at this point in time. You will be  
19 getting a call from the Clerk's Office concerning your  
20 status as a juror. Thank you very much.

21 WITNESS: Thank you.

22 THE COURT: You're free to go.

23 WITNESS: Thank you.

24 (The following takes place outside the presence of the  
25 juror.)

## Individual Juror Qualification

1 THE COURT: All right. The Court finds Mrs. Thomas not  
2 qualified to sit on this jury.

3 Next is Annette Ledford, Number\*167.

4 ANNETTE LEDFORD, having been previously  
5 sworn, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q Good afternoon.

9 Mrs. Ledford, is that, is that correct?

10 A Yes, sir.

11 Q All right. Mrs. Ledford, thank you very much for your  
12 willingness to continue, to continue to assist us in this  
13 process. I understand it's an inconvenience. But we  
14 appreciate your willingness to come forward.

15 Now, Mrs. Ledford, I'm going to be going over some  
16 matters with you this afternoon. I will tell you that we're  
17 going to be asking about your positions concerning certain  
18 things or how you would handle certain situations. There  
19 are no right or wrong answers to my questions. So, don't  
20 think that we're looking for any particular answer. There  
21 are only your answers. You'll have to tell us your  
22 positions and how you would handle these situations.

23 I understand that sitting in that seat's not where  
24 you're use to being. And so, don't feel intimidated or  
25 nervous in any fashion. We -- if you have a problem in that

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1 regard, let me know. We'll try to take care of that for  
2 you.

3 A Okay.

4 Q Now, also, ma'am, I will tell you that you were placed  
5 under oath on Monday to tell us the truth, and that oath  
6 continues during this discussion.

7 All right, ma'am. Do you understand that?

8 A Yes, sir, I do.

9 Q All right. Thank you, ma'am.

10 Now, my first question to you, has anyone contacted  
11 you, have you gathered any information, or have you heard or  
12 been exposed to any information about the case which would  
13 have caused you to form an opinion since Monday?

14 A No, sir.

15 Q Have you ever participated or responded to any Internet  
16 site or blog that might have as its subject the death  
17 penalty?

18 A No, sir.

19 Q Have you ever participated in any political rallies,  
20 meetings, or demonstrations in which one of the main issues  
21 would have been the death penalty?

22 A No, sir.

23 Q Now, ma'am, when you're waiting outside, there was a  
24 list of witnesses, potential witnesses shown to you.

25 A Yes, sir.

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1 Q Have you had a chance to look at that?

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q Don't name any of those people by name in the  
6 courtroom.

7 okay?

8 A Okay.

9 Q But, after having reviewed that list, do you believe  
10 that you have any social, business, or personal connections  
11 with anyone listed on that list?

12 A No, sir.

13 Q So, and are -- do you believe that you're related,  
14 either by blood or marriage or formerly by marriage, to  
15 anyone on that list?

16 A No, sir.

17 Q So, you know of no connections that you have with  
18 anyone on the witness list?

19 A No, sir.

20 Q All right. Now, ma'am, I'm going to ask you some more  
21 personal questions about your opinions on certain things.  
22 We're not trying to invade your privacy and my preliminary  
23 questions to you indicate that you're someone who can  
24 discuss your opinions without feeling threatened.

25 Is that a correct statement, ma'am?

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1 A Yes, sir.

2 Q So, again, no right or wrong answers. We just want to  
3 know where you are standing on certain things that are  
4 important in this case and should be known before we select  
5 a jury.

6 Now, one thing we're gonna ask you about, I'll get  
7 there eventually, is the death penalty cause that is an  
8 issue in this case. I will tell you now and I've explained  
9 on Monday, in a case where the State is, has charged someone  
10 with murder, and they've requested that the death penalty be  
11 imposed, a case goes through two phases. There's a phase  
12 where we determine guilt or innocence of that crime. If the  
13 defendant is found innocent, that's the end of the matter.  
14 If the defendant, however, is found guilty of that crime,  
15 then we must have a second hearing or trial to determine the  
16 appropriate punishment.

17 A Yes, sir.

18 Q So, in this case, for the crime, there is a two phase  
19 trial. Same jury handles both.

20 I'm telling you that because we're going to be  
21 discussing potential penalties today before we've ever  
22 decided the first question, which is kind of putting the  
23 cart in front of the horse, but I hope you understand this  
24 is the only opportunity that we'll have to discuss this with  
25 potential jurors before the case starts.

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1           And I will tell you now that the fact that we're  
2 discussing penalties should not, in any way, be held against  
3 the defendant or any defenses that he raises to the initial  
4 charges. It's only simply our only opportunity to discuss  
5 these things and we must do it now.

6           So, do you understand what I'm saying?

7 A       Yes, sir, I do.

8 Q       Okay. Now, ma'am, I'm gonna to ask you about how you  
9 would apply the law first. In any case where you're  
10 selected as a juror in a criminal case, the judge, at some  
11 point in time, will charge you concerning the law to be  
12 applied in that case.

13          Would you be willing to listen to that charge?

14 A       Yes, sir.

15 Q       Would you be willing to accept the law as given to you  
16 by the judge and apply it to the facts as you find them to  
17 be?

18 A       Yes, sir.

19 Q       Is that still true if, when you're hearing the judge  
20 charge you with the law, you realize that maybe you don't  
21 agree with what the law says, or maybe you don't like what  
22 the law says?

23          Would you be willing to set those factors aside and  
24 still take the law as charged to you and apply it to the  
25 facts as you find them to be?

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1 A Yes, sir, you'd have to.

2 Q Okay. Now, the next question I have, have is  
3 concerning pretrial publicity that may have happened.

4 Were you exposed to any information about this case  
5 before you came in on Monday?

6 A I found out more on Monday than I had ever known.

7 So --.

8 Q Okay.

9 A And it was right in your courtroom. So --.

10 Q All right. That's fine.

11 And you've told me you haven't heard anything since  
12 that time, is that correct?

13 A No, sir.

14 Q Okay. My, my question then will be a general one. I  
15 won't get specific on anything.

16 Are you the kind of juror who could set aside any  
17 information that you might have heard outside of the  
18 courtroom either before or during a trial and decide the  
19 case purely based on what you hear in the courtroom?

20 A Yes, sir.

21 Q Two concepts we talked about Monday. But I want to be  
22 sure to emphasize them and be sure we have an understanding  
23 on them.

24 The first one is, under the laws and Constitution of  
25 our state, a defendant is presumed to be innocent. The

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1 defendant is always presumed to be innocent throughout the  
2 trial and never has the burden of proving himself innocent  
3 and has no burden of proof whatsoever in a criminal trial.

4 Do you understand that?

5 A Yes, sir.

6 Q The second concept I want to be sure you understand is  
7 that the State always has the burden of proof. That means  
8 the State, once they've charged someone with a, with a  
9 crime, has the duty to prove that, guilt of that crime  
10 beyond a reasonable doubt, and that burden of proof remains  
11 upon the State throughout the trial.

12 Do you understand those two concepts?

13 A Yes, sir.

14 Q Are you willing to apply those to this particular case?

15 A Yes, sir.

16 Q Now, are you -- do you believe that just because  
17 someone has been arrested, accused of a crime, maybe even  
18 indicted, that they must automatically be guilty of the  
19 crime?

20 A No, sir.

21 Q So, ma'am, you're telling me that, that you would be  
22 willing to listen to the facts in the case, the evidence  
23 that's presented, and based upon what, those things, you  
24 could find a person not guilty of a crime.

25 Is that correct?

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1 A Yes, sir.

2 Q By the same token, if you heard the same evidence, the  
3 law, and the, and the facts, and you determined that the  
4 State had proved guilt beyond a reasonable doubt, would you  
5 be willing to return a verdict of guilty against a fellow  
6 citizen?

7 A Yes, sir.

8 Q So, you're the kind of person, from what I can tell,  
9 would listen to the facts and circumstances, dependent upon  
10 the strength of the evidence and what the law says, you  
11 could find someone either guilty or not guilty of a crime  
12 that they've been charged with.

13 Is that true?

14 A Yes, sir.

15 Q We're now gonna get to that point in my questioning  
16 where we're going to talk about the death penalty. I've  
17 indicated to you, in the beginning of the trial on Monday,  
18 that the State is seeking the death penalty in this case. I  
19 want you to be aware, as I told you just a minute ago, that  
20 should the defendant be found guilty of the murder, we would  
21 conduct then a separate second trial or second phase of the  
22 trial to determine the appropriate punishment. And at that  
23 hearing, the only two choices that a jury has, and the jury  
24 is the one who decides that punishment, would be life in  
25 prison without parole or the death penalty.

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1 Do you understand that situation?

2 A Yes, sir.

3 Q Now, at that second trial, there will be or second  
4 hearing there will be perhaps new witnesses because there's  
5 new issues. You're no longer concerned with guilt or  
6 innocence of the defendant. That's been established.  
7 The -- at the second trial we are concerned with the  
8 appropriate punishment to be enforced.

9 And so, we would have witnesses on that subject. And  
10 during that hearing, the state would be allowed to present  
11 evidence which is called aggravating circumstances, the  
12 evidence that it thinks makes the situation worse and  
13 perhaps justifies a worse punishment.

14 The defense has the right to, but is not required to,  
15 present what is called mitigating circumstances or  
16 mitigating evidence. That would be evidence that would tend  
17 to show a jury that punishment should be lessened or that  
18 mercy should be granted.

19 Do you understand the difference between those two  
20 types of evidence?

21 A Yes, sir.

22 Q And that that would or could be presented at that  
23 second trial?

24 A Yes, sir.

25 Q All right. And it would be the jury's job then to

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1 determine the appropriate punishment.

2 Now, I want you to put yourself in a situation.

3 Imagine that you have been selected to serve on a jury in a  
4 murder trial where the State is seeking the death penalty.

5 You and your fellow jurors hear all of the evidence, all of  
6 the facts, and the law. You deliberate and you make a  
7 decision that the State has met its burden of proof, and you  
8 find the defendant guilty of the murder. Because the State  
9 is seeking the death penalty, that same group of jurors that  
10 you're one of must come back to the courtroom and hold  
11 another hearing. That hearing is to determine the  
12 appropriate punishment to be considered.

13 Do you understand the situation I've put you in?

14 A Yes, sir.

15 Q Okay. I gave you a sheet of paper to read outside the  
16 courtroom that described three different jurors.

17 A Yes, sir.

18 Q Did you read that paper?

19 A Yes, sir, I did.

20 Q All right. Now, let's assume that, as you're walking  
21 down the hall, and I'm gonna go over what those, those mean.

22 There -- the first juror that was described there would  
23 be a juror, coming down the hall with you, whose already  
24 made up his or her mind. That juror believes that the only  
25 appropriate, appropriate punishment for someone found guilty

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1 of a murder is death, and that juror is planning and will  
2 vote every time, regardless of the evidence presented during  
3 the sentencing phase of the trial, for the punishment of  
4 death.

5 The second juror coming down that hall, number two, is  
6 one who's also already made up his or her mind before  
7 hearing the evidence on the subject. That juror believes  
8 that the state never has the right to take someone's life in  
9 punishment of a crime. And so, therefore, that juror has  
10 already made up his or her mind to vote for life  
11 imprisonment without parole, and would do so in every case  
12 regardless of the proof that's presented in that hearing.

13 The third juror coming down that hall is someone who  
14 hasn't yet made up his or her mind. That juror does not  
15 know exactly what punishment should be, should be required,  
16 and is going to have to wait and listen to the testimony and  
17 evidence presented in that part of the trial before making a  
18 decision, and will listen to that evidence and then make a  
19 decision based upon that evidence. Both aggravating  
20 evidence and mitigating evidence.

21 Now, ma'am, of the three jurors I've described in that  
22 situation, which one would most closely describe you, you  
23 coming down the hall?

24 A Number three.

25 Q So, ma'am, what you're telling me is that you would be

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1 willing, in that third hearing, to listen to the evidence  
2 and consider the evidence presented by both sides before  
3 reaching a decision.

4 Is that correct?

5 A Yes, because I would want the same treatment myself.

6 Q And ma'am, I assume then based on that evidence, if you  
7 found that the penalty was justified of death, that you  
8 could issue a verdict against someone for the death penalty?

9 A Yes, sir.

10 Q And by the same token, if you found, for any reason  
11 whatsoever, that the, the penalty of death was not  
12 warranted, was not proper, you could also issue a, a  
13 judgment or a verdict in favor of life without parole?

14 A Yes, sir.

15 Q And that would all depend upon your findings or  
16 determination of the facts during that phase of the trial?

17 A Solely, yes, sir.

18 Q Now, ma'am, the -- I, I want to go over one other thing  
19 with you and be sure I understand it, and this is kind of  
20 personal. I indicated that if you were selected to serve on  
21 a jury that you would be sequestered during that period of  
22 time.

23 A Yes, sir.

24 Q What that means is that you would be staying with the  
25 juror, jury in the courtroom during the day working on the

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1 case. And in the evenings, you would go to a hotel. You  
2 would be housed there. There would be law enforcement  
3 officers there to watch over you and be sure you don't have  
4 to, no one has contact with you. Your communications with  
5 the outside world would be limited, but not totally cut off.  
6 And you'd have the right to watch some television and that  
7 sort of thing. But we would be sure that it didn't contain  
8 any information about the trial or what's going on here.

9 Do you understand what sequestration means?

10 A Yes, sir.

11 Q Okay. Now, ma'am, my question to you is if you -- and  
12 let me also mention, we expect or estimate the case to last  
13 for five to seven days. We're not sure exactly how long  
14 it's gonna last once we start the actual trial.

15 Now, ma'am, if you were in the situation of being  
16 sequestered, would that, in any way, pose any serious risk  
17 to your health or well being?

18 A No, sir.

19 Q And if you were also in that situation, would that pose  
20 a serious risk to the health or well being of anyone who is  
21 dependent upon you?

22 A No, sir.

23 Q We've reached the point in time where I'm going to let  
24 the attorneys ask some questions of you and we allow the  
25 defense to go first. I see Mr. Allen's standing up.

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1           So, Mr. Allen, you may proceed.

2           MR. ALLEN: Thank you, Your Honor.

3           EXAMINATION

4           BY MR. ALLEN:

5           Q     Good afternoon, Mrs. Ledford.

6           A     Good afternoon.

7           Q     My name is Clay Allen and I, along with John Reckenbeil  
8           and Kathy Hodges, are representing Tony Torres in this  
9           matter. We appreciate your service. We appreciate you  
10          being here and I know you've been waiting more than you want  
11          to I'm sure. But, but I appreciate your willingness to  
12          serve and to answer our questions. I've also been provided  
13          a, a copy of your questionnaire, which I've gone over as  
14          well.

15          If I recall correctly, you indicated that you had heard  
16          something about this case when general questions were being  
17          asked on Monday.

18          Is that true?

19          A     Yes, you know, I, I read the news a lot, but if there's  
20          not something that ties me to a situation, either based on  
21          geographic location or knowing the people or something, I  
22          just, I just let it go. You know, if it's, if it's  
23          something my feelers need to be out because it happened in  
24          my neck of the woods, then I'll retain that.

25          But you know, so, so, vaguely, I remember. But I, when

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1 the indictments were read, was, was where it, it, I heard  
2 what I, what I now know.

3 Q Okay. I see. So, you don't remember any, having read  
4 serious -- nothing stands out in your mind---

5 A Nothing.

6 Q ---about what you read in the newspaper?

7 A No detailed, no, sir.

8 Q Okay. And was that some time ago before you walked  
9 into the Court on Monday that you read about it or was it,  
10 had that been recently or do you remember?

11 A That was back when it, I guess, when it originally  
12 happened, and I couldn't even have told you when it  
13 happened. It's just one of those passing things that I  
14 read.

15 Q Okay. But nothing -- I mean -- so, you don't really  
16 remember anything---

17 A No, sir.

18 Q ---about it.

19 Okay. Now, also you indicated that you had a family  
20 member that was murdered?

21 A Yes.

22 Q In 2002 I believe?

23 A Yes.

24 Q Was it in your -- did that offense occur in Spartanburg  
25 County?

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1 A No, it did not.

2 Q Did it occur in South Carolina?

3 A Yes, it did.

4 Q Is there anything about that experience that might  
5 affect you at this time as a potential juror?

6 A No, because actually we weren't -- we were shielded  
7 from a lot of that. It was, it was actually my husband's  
8 brother. But his family is like in, in two sections.  
9 There's, there's the three older ones and then a gap and  
10 then the three younger ones, and the three older ones were  
11 really close, and I guess they just tried to limit our  
12 exposure.

13 My husband didn't want to ask questions and he didn't  
14 want to know. And out of respect for him, I didn't ask  
15 questions either. So, our information, both on how it  
16 happened and all, was, was just extremely limited.

17 Q Okay.

18 A And I guess that's a case where ignorance is bliss.

19 Q I see.

20 Do you know if anyone was arrested or charged?

21 A I know the -- I know that he was arrested. He is doing  
22 time as manslaughter.

23 Q Okay. And was that as a result of a, of a trial or was  
24 that as a result of a plea bargain or do you have any  
25 ideas---

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1 A I know---

2 Q ---or do you know?

3 A I know there was a trial involved. There again, it was  
4 in the lower part of the State. We did not, we did not  
5 go---

6 Q Okay.

7 A ---cause my husband just didn't want to hear what was  
8 going to come out. And so, we're really ignorant of, of, of  
9 a lot of the facts. But I do think that there was some,  
10 some plea bargaining made. But there again, that's just my  
11 personal -- I, I don't know. I wasn't there.

12 Q So, you just don't really know what happened in that  
13 case because, as you said, that y'all were---

14 A Right.

15 Q ---not really given a lot of information and you  
16 weren't really asking for it?

17 A No, I, I know his name. I know he's doing time. I  
18 know he's eligible for parole around 2012. That's all I  
19 really know.

20 Q Okay. Now, let me take you back, and again, we do have  
21 to talk about the penalty at this time cause, as the judge  
22 explained, this is the only time we get to ask those  
23 questions.

24 But---

25 A Sure.

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1 Q ---how do you feel about the death penalty as an  
2 appropriate penalty for murder?

3 A For years my, my feeling has been that if someone  
4 can -- if, if the facts can be stated and if proof can be  
5 shown beyond a reasonable shadow of a doubt, don't, I don't  
6 have a problem with removing that person from society  
7 whether it be by the death penalty or life imprisonment.

8 Q Now -- okay. So, do you have -- I don't know if I want  
9 to say it's a preference, but do you have a feeling more  
10 towards one form of removing the person from society?

11 Again, I think you mentioned life imprisonment or the  
12 death penalty.

13 A Right. I, I don't have a preference, and, you know,  
14 it's just -- all I can say is things are different when you  
15 think about it before you're actually put into the  
16 situation. I was in a, in a zone on Monday totally focused  
17 on everything that the judge was saying, everything that was  
18 going on. And it wasn't until I got home and started  
19 thinking about things that the reality of a lot of it even  
20 hit me.

21 And you know, I've always said that if I were ever  
22 called to be on a jury, that I wanted to be the most fair  
23 that I could because if I were ever in that person's shoes,  
24 I wouldn't want people coming in with preconceived notions  
25 about me. I would want them to listen to the facts as

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1 handed out.

2 So, I -- they would just have to prove to me that, that  
3 that was the punishment that, that would be suitable and  
4 that the other just -- I don't know. That's just, that's --  
5 having never been in this position, I mean that's all I can  
6 say. I just---

7 Q Uh-huh. (Affirmative).

8 A You know, it's serious stuff to, to have the fate of  
9 someone in your hands, and I would not take that lightly.

10 Q We appreciate your candor. We appreciate you, your  
11 thoughtful responses.

12 I'm, I'm just gonna ask it this way.

13 Okay. Again, putting yourself in the position where  
14 you and the other 11 jurors have unanimously found beyond a  
15 reasonable doubt---

16 A Right.

17 Q ---that an individual is guilty of murder, by that the  
18 willful killing of another with malice aforethought, do you  
19 have a feeling, at this point, that the death penalty is the  
20 only appropriate punishment in, in that situation?

21 A There again, no. It's just -- it just would be having,  
22 having to weigh everything as, as given. And I'm -- I can't  
23 be swayed by, by their thoughts because, at the end of the  
24 day, I have to answer for myself. So, I've, I've got to be  
25 satisfied.

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1 Q Okay. Now, do you also understand or -- excuse me.

2 Even if the State, in the presentation of its case, and  
3 I'm talking about the second phase as the judge was  
4 mentioning---

5 A Right.

6 Q ---after a jury has found an individual guilty of  
7 murder, and the State is putting up evidence, the  
8 aggravating evidence that the judge mentioned in order to  
9 justify or authorize the death penalty, do you feel that if  
10 the State can prove aggravating circumstances, in other  
11 words, make this murder seem or, worse or, than other murder  
12 cases, and which would then authorize the imposition of the  
13 death penalty, do you believe that, at that point, the death  
14 penalty would be the only appropriate punishment?

15 A I'm just getting really stuck on that word only.

16 Q Okay. Explain that to, to me then.

17 A Because again, as, as the judge mentioned, there's  
18 gonna be the aggravating, aggravating and the mitigating  
19 circumstances. And, and I guess you just -- to really be  
20 fair, you've just got to listen -- and, and see, and it's  
21 hard because we're, we're missing that step there. We've  
22 jumped from -- we've, we've jumped a whole step.

23 Q Right.

24 A So, I don't have the benefit of, of knowing, of having  
25 all that information in my head.

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1 Q Right.

2 A And I guess what I'm trying to say is, is there may be  
3 some case, there still could be an out with the less, with  
4 the lesser punishment.

5 Q Okay. If I hear you correctly, then you will, you  
6 would not make up your mind as to the penalty, whether it be  
7 death penalty or life in prison without the possibility of  
8 parole, until you've heard everything?

9 A Correct.

10 Q Including mitigating circumstances that the judge is  
11 indicated, is that right?

12 Is that a fair statement?

13 A That's the only way for him to get a fair trial.

14 Q All right.

15 A Anybody that's charged with anything.

16 Q Now -- and again, we're talking in generalities and  
17 it's hard---

18 A Correct.

19 Q To talk in generalities.

20 A I know.

21 Q And I appreciate your working with me on this.

22 Have you, have you come about your opinion concerning  
23 the death penalty and life without the possibility of parole  
24 over a period of time?

25 A It's, it's been my feeling, for, for a long time, that,

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1 you know, if, if the crime is, is truly heinous and there is  
2 no, no circumstances where the person is judged mentally  
3 incompetent or not aware of what they were doing, they were  
4 in their right mind, and, and committed something like this,  
5 then, then I feel like that would be an appropriate  
6 punishment.

7 Q Okay.

8 A There again, assuming there's no evidence to the  
9 contrary that, that he wasn't in his right mind, he or she,  
10 or, you know --.

11 Q Is there a circumstance where you would not consider  
12 the possibility of life without parole as an appropriate  
13 punishment for a murder case?

14 A There again, without having all the facts, you know, I,  
15 I can't say that I wouldn't consider that and I can't say  
16 that I, that I would. I mean, to me, it should be on the  
17 table as an option until the very end.

18 Q Okay. If you came to an opinion as to the appropriate  
19 punishment, as to what, in your mind, is appropriate  
20 punishment, and I understand that you've heard all the  
21 evidence, and you've had the opportunity to deliberate with  
22 the other jurors, but if you came to an opinion as to what  
23 you believe is the appropriate punishment, and if the other  
24 11 jurors disagreed with you, can you tell me what you're  
25 likely to do in such a situation?

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1 A There again, I have to, I have to answer to myself and  
2 not go along with the crowd, whichever way it happens to be.  
3 Knowing full well that there is a responsibility on our  
4 shoulders to bring closure to both the accused as well as  
5 the victim's families, I can be a pretty hard cookie to  
6 sway.

7 So, you know, there again, it's just -- I don't, I  
8 don't see getting information in the deliberation that could  
9 affect what I heard when, when all the facts were brought  
10 out. I mean I realize that there's -- this is my first,  
11 first time being called for jury duty. But I realize, in  
12 the deliberations, they, they bring up things. But I  
13 just -- it's got to be something in my head and in my heart  
14 that they---

15 Q Okay.

16 A ---have to answer for themselves. I have to answer for  
17 me.

18 Q So, if you felt as if your opinion was correct, you,  
19 you would stick by that?

20 A Yes, sir.

21 Q Even in the face of others?

22 A I'm not real easily intimidated by others.

23 Q Okay. I didn't think you were.

24 One second.

25 (Pause.)

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1 MR. ALLEN: Thank you very much, Mrs. Ledford.

2 THE COURT: Okay. Mr. Gowdy.

3 SOLICITOR GOWDY: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 EXAMINATION

6 BY SOLICITOR GOWDY:

7 Q Good afternoon, Mrs. Ledford.

8 A Hello.

9 Q I will be briefer because His Honor asked you so many  
10 questions I wanted to ask.

11 Let me start by thanking you for the thoughtful  
12 responses that you gave not only to His Honor, but also to  
13 defense counsel and the forthright way that you completed  
14 your questionnaire, which was tremendously helpful to us.

15 A You're welcome.

16 Q So, thank you for your service, for your service and  
17 also for your service that your husband gave to our country.

18 A Thank you.

19 Q You worked briefly for Family Court in Greenville?

20 A Yes, sir.

21 Q How would you describe that experience?

22 A Stressful.

23 Q Okay. Agreed. We'll move to another area.

24 Defense counsel asked you a number of questions, and I,  
25 if I may, I mean I'm reluctant and hesitant to go back into

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1 your brother-in-law's situation.

2 I just want to ask which county did the homicide take  
3 place in?

4 A I'm not sure of the county, but it was North Augusta.

5 Q Okay. But in South Carolina?

6 A In South Carolina.

7 Q So, that would probably be Aiken?

8 A Right.

9 Q Okay. Any part of that process that left you with a  
10 bad taste in your mouth for either law enforcement or for  
11 prosecutors?

12 A No, like I say, we were, we were pretty much in the  
13 dark. I wanted to know more than my husband did because I'm  
14 just a fact gather.

15 Q Right.

16 A But out of respect for him, I was not going to delve  
17 into things that he didn't want delved into. So, we -- like  
18 I say, we, we did not go. His, his sister, his, some of his  
19 other siblings did go to the Court. We, we never went.

20 Q Yes, ma'am.

21 A We -- and we didn't, we didn't ask them questions.  
22 They didn't want to talk about it. We didn't delve.

23 Q Yes, ma'am. Thank you.

24 So, this is one reason people may not like lawyers a  
25 whole lot. Of course, I'm getting ready to ask you. You

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1 used the phrase shadow of a doubt. His Honor will give you  
2 the phrase reasonable doubt.

3 A Right.

4 Q To lots of people they're the same thing.

5 Are they the same thing to you?

6 A Yes.

7 Q Okay. All right. Because you understand I know that,  
8 that it's very hard for anybody to prove anything to a  
9 hundred percent certainty.

10 A Exactly.

11 Q Okay. All right. Fair enough.

12 Lastly, I think you refer to yourself as a hard cookie  
13 to sway, which is fair.

14 But, would you, if you were back in a jury room, either  
15 in the guilt phase or the sentencing phase, would you have  
16 an open mind and listen to the, to the considered reasoning  
17 and logic of your fellow jurors?

18 A Yes.

19 Q All right. So, you would participate in the  
20 deliberative process and, and the give and take that may  
21 exist in the jury room?

22 A Yes, sir.

23 Q All right. But if you, in your well of souls, believe  
24 that life were the appropriate punishment, you would stick  
25 to that?

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1 A Yes, sir.

2 Q And correspondingly, if you believe that death was the  
3 appropriate punishment, could you stick to that?

4 A Yes, sir.

5 Q All right. Final question and I'm gonna sit down and  
6 thank you again for your patience.

7 Are you convinced that, if you had found someone guilty  
8 and after hearing the aggravating circumstances and  
9 mitigating circumstances, if any, that you could vote to put  
10 a person to death?

11 A Yes.

12 Q Thank you.

13 THE COURT: Any follow-up questions from the defense?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: Mrs. Ledford, a couple things I have to go  
16 over with you at this time. We're in a position where we're  
17 going to be selecting a jury fairly soon. I will tell you,  
18 you will receive a call from the clerk's office as to  
19 whether you need to come back to the courthouse or not or  
20 where to report.

21 If you receive that call, you should come back prepared  
22 to stay for a week because that means that you're either in  
23 the jury pool or still in the jury pool and you could be  
24 staying for that week. And so, be prepared to do so once  
25 you come, if you're asked to come back to the courthouse.

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1 WITNESS: Okay. So, I will hear one way or the other?

2 THE COURT: Yes, ma'am.

3 WITNESS: Okay.

4 THE COURT: We'll be contacting everyone who has been  
5 interviewed and, and get in touch with them as to where they  
6 stand once we've completed the process.

7 WITNESS: Okay.

8 THE COURT: Also, ma'am, the contact information we  
9 have concerning you I assume is correct?

10 WITNESS: Yes, sir.

11 THE COURT: And the final thing is, on Monday, I issued  
12 an order for you not to gather any information outside of  
13 the courthouse and not to listen to, read, or watch any kind  
14 of news media reports, and that order, in all its  
15 particulars, still applies until we tell you differently.

16 WITNESS: Yes, sir.

17 THE COURT: Okay.

18 WITNESS: Yes, sir, I understand.

19 THE COURT: Thank you. You're free to go.

20 WITNESS: Thank you.

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

23 THE COURT: State's position regarding Mrs. Ledford?

24 SOLICITOR GOWDY: State would believe that she's  
25 qualified, Your Honor.

1 THE COURT: Defense's position regarding Mrs. Ledford?

2 MR. ALLEN: Subject to the other objections, no further  
3 objections.

4 THE COURT: The Court would find Mrs. Ledford to be  
5 qualified. She will be added to the list.

6 THE COURT: All right. I'll ask the attorneys to  
7 approach.

8 (Whereupon, a bench conference was held at this time.)

9 THE COURT: All right. We'll be -- Court is in recess  
10 now until two o'clock.

11 Thank you very much.

12 (Whereupon, Court was in recess for the lunch hour.)

13 THE COURT: First of all, I, I want to put on the  
14 record the, the bench conference that we had an agreement  
15 that was reached among counsel. Based on our bench  
16 conference, it was agreed that we would strike the jury from  
17 a paper list as opposed to having the jurors appear in  
18 court.

19 At that time I indicated that we will strike the list  
20 as we would normally strike a juror by starting with the  
21 first name on the list and working down the list numerically  
22 until we reach 12 jurors seated. Then we would immediately,  
23 continuing down the list, in order to pick the first  
24 alternate and the second alternate. There will be two  
25 alternates picked. We will do it in alternate fashion as we

1 normally do it in court with the State striking first  
2 followed by the defense.

3 The State, in this case, having five strikes. The  
4 defense having ten strikes. And two strikes for the defense  
5 and one for the State for each alternate.

6 Does that -- does that state our agreement at the bench  
7 conference for the State?

8 SOLICITOR GOWDY: Yes, sir, Your Honor.

9 THE COURT: Does that state our agreement from the---

10 MR. ALLEN: Yes, sir, Your Honor.

11 THE COURT: Okay. For the defense.

12 Now, I will ask the attorneys, when the, when we begin  
13 to strike the jury, that you use the name, I mean, excuse  
14 me, the numbers to the left of the names as opposed to juror  
15 numbers. I do not want the jurors to be identified by name  
16 or number until such time as they've been notified and  
17 sequestered.

18 So, at this point in time we will use the name, the  
19 number on the left. That would be the number in which they  
20 were selected from the computer for identifying them during  
21 Court proceedings.

22 I indicated I would give counsel about 15 minutes to  
23 review the list prior to beginning the strike. I just  
24 wanted to be sure we had the agreement on the record, and  
25 Court will be in recess while you review the strike list.

1 Thank you very much.

2 SOLICITOR GOWDY: Thank you.

3 MR. ALLEN: Thank you.

4 (Whereupon, a short recess was taken at this time.)

5 THE COURT: All right. Is the State ready to proceed?

6 SOLICITOR GOWDY: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. ALLEN: Yes, Your Honor.

9 THE COURT: All right. Madam Clerk, we will begin the  
10 jury selection process with the State striking first.

11 CLERK: Your Honor, would you like for me to use the  
12 number to the left also?

13 THE COURT: Use, use the numbers to the left. I don't  
14 want the, the potential jurors identified in the courtroom.

15 CLERK: Yes, sir, you may proceed.

16 SOLICITOR GOWDY: Present Juror Number One.

17 MR. ALLEN: Swear Juror Number One.

18 CLERK: The State, for Number Two?

19 SOLICITOR GOWDY: The State would strike Juror Number  
20 Two.

21 CLERK: Defense, Juror Number Two?

22 MR. ALLEN: They struck.

23 CLERK: I'm sorry.

24 Defense for Number -- State for Number Three?

25 SOLICITOR GOWDY: Present Number Three.

1 CLERK: Number Four.

2 THE COURT: Well, let's see what the defense says about  
3 Number Three.

4 CLERK: I'm sorry. I'm ahead of myself.

5 THE COURT: We're, we're not use to doing it this way.  
6 Go ahead, defense, on Number Three.

7 MR. ALLEN: Yes, Your Honor. Please swear Number  
8 Three.

9 CLERK: Okay. State on Number Four?

10 SOLICITOR GOWDY: Present Number Four.

11 CLERK: Defense on Number Four?

12 MR. ALLEN: Please strike, or excuse me, please excuse  
13 Number Four.

14 CLERK: State on Number Five?

15 SOLICITOR GOWDY: Present Number Five.

16 CLERK: Defense on Number Five?

17 MR. ALLEN: Please seat Number Five.

18 CLERK: State on Number Six?

19 SOLICITOR GOWDY: Please excuse Number Six.

20 CLERK: State on Number Seven?

21 SOLICITOR GOWDY: Please seat Number Seven.

22 CLERK: State, defense on Number Seven?

23 MR. ALLEN: Your Honor, we renew our challenge for  
24 cause on Juror Number Seven after we made it on the same  
25 grounds that we made it at the conclusion of that juror's

1 qualification.

2 THE COURT: I understand. Same ruling.

3 MR. ALLEN: Strike number -- may we -- please excuse  
4 Number Seven.

5 CLERK: State for Number Eight?

6 SOLICITOR GOWDY: Present Number eight.

7 CLERK: Defense for Number Eight?

8 MR. ALLEN: Please swear Number Eight.

9 CLERK: State for Number Nine?

10 SOLICITOR GOWDY: Present Number Nine.

11 CLERK: Defense for Number Nine?

12 MR. ALLEN: Please swear Number Nine.

13 CLERK: State for Number Ten?

14 SOLICITOR GOWDY: Present Number Ten.

15 CLERK: Defense for Number Ten?

16 MR. ALLEN: Please excuse Number Ten.

17 CLERK: State for Number Eleven?

18 SOLICITOR GOWDY: Present Number Eleven.

19 CLERK: Defense for Number Eleven?

20 MR. ALLEN: Please excuse Number Eleven.

21 CLERK: State for Number Twelve?

22 SOLICITOR GOWDY: Please excuse Number Twelve.

23 CLERK: State for Number Thirteen?

24 SOLICITOR GOWDY: Present Number Thirteen.

25 CLERK: Defense for Number Thirteen?

1 MR. ALLEN: Please seat Number, please seat Number  
2 Thirteen.

3 CLERK: State for Number Fourteen?

4 SOLICITOR GOWDY: Present Number Fourteen.

5 CLERK: Defense for Number Fourteen?

6 MR. ALLEN: Please seat Number Fourteen.

7 CLERK: State for Number Fifteen?

8 SOLICITOR GOWDY: Present Number Fifteen.

9 CLERK: Defense for Number Fifteen?

10 MR. ALLEN: Please seat Number Fifteen.

11 CLERK: State for Number Sixteen?

12 SOLICITOR GOWDY: Present Number Sixteen.

13 CLERK: Defense for Number Sixteen?

14 MR. ALLEN: Please seat Number Sixteen.

15 CLERK: State for Number Seventeen?

16 SOLICITOR GOWDY: Present Number Seventeen.

17 CLERK: Defense for---

18 MR. ALLEN: Your Honor, we renew our challenge for  
19 cause for Number Seventeen based on the same grounds as we  
20 stated in that juror's qualification.

21 THE COURT: The Court will make the same ruling.

22 MR. ALLEN: Please excuse Number Seventeen.

23 CLERK: State for Number Eighteen?

24 SOLICITOR GOWDY: Present Number Eighteen.

25 CLERK: Defense---

1 MR. ALLEN: Your Honor -- I'm sorry. We would renew  
2 our challenge for cause of Number Eighteen based on the same  
3 ground we stated at the conclusion of that juror's  
4 qualification.

5 THE COURT: The Court will make the same ruling.

6 MR. ALLEN: Please excuse Number Eighteen.

7 CLERK: State for Number Nineteen?

8 SOLICITOR GOWDY: Present Number Nineteen.

9 CLERK: Defense---

10 MR. ALLEN: Please seat Number Nineteen.

11 CLERK: State for Number Twenty?

12 SOLICITOR GOWDY: Please excuse Number Twenty.

13 CLERK: State for Number Twenty-One?

14 SOLICITOR GOWDY: Please excuse Number Twenty-One.

15 THE COURT: That is five strikes for the State, is that  
16 correct?

17 SOLICITOR GOWDY: Yes, sir.

18 THE COURT: All right.

19 CLERK: State for Number Twenty-Two?

20 THE COURT: Well, they have the right to seat,  
21 disqualification for cause. So, they'll need to have their  
22 name called.

23 SOLICITOR GOWDY: Present Number Twenty-Two.

24 CLERK: Defense for Number Twenty-Two?

25 MR. ALLEN: Your Honor, we renew our challenge for

1 cause of Juror Twenty-Two based on the same grounds stated  
2 at the conclusion of that juror's qualification.

3 THE COURT: And the Court will not change its ruling.

4 MR. ALLEN: Please excuse Number Twenty-two.

5 CLERK: State for Number Twenty-Three?

6 SOLICITOR GOWDY: Present Number Twenty-Three.

7 CLERK: Defense for Number Twenty-Three?

8 MR. ALLEN: Your Honor, we'd renew our challenge for  
9 cause on Number Twenty-Three at the conclusion of that  
10 juror's qualification.

11 THE COURT: And the Court will make the same ruling.

12 MR. ALLEN: Please excuse Number Twenty-Three.

13 CLERK: State for Number Twenty-Four?

14 SOLICITOR GOWDY: Present Number Twenty-Four.

15 CLERK: Defense for Number Twenty-Four?

16 MR. ALLEN: Please excuse Number Twenty-Four.

17 CLERK: State for Number Twenty-Five?

18 SOLICITOR GOWDY: Present Number Twenty-Five.

19 CLERK: Defense for Number Twenty-Five?

20 MR. ALLEN: Please excuse Number Twenty-Five.

21 CLERK: State for Number Twenty-Six?

22 SOLICITOR GOWDY: Present Number---

23 THE COURT: That will be ten strikes for the defense,  
24 is that correct?

25 MR. ALLEN: Yes, Your Honor.

1 THE COURT: All right. We're Number Twenty-Six I  
2 believe?

3 CLERK: Yes, sir.

4 SOLICITOR GOWDY: Yes, Your Honor.

5 THE COURT: I'm sorry. I didn't mean to interrupt.

6 SOLICITOR GOWDY: No.

7 Present Number Twenty-Six.

8 CLERK: Defense for Number Twenty-Six?

9 MR. ALLEN: Please seat Number Twenty-Six.

10 THE COURT: How many jurors do we have?

11 CLERK: Eleven so far.

12 THE COURT: Eleven.

13 Okay. You may proceed.

14 CLERK: State for Number Twenty-Seven?

15 SOLICITOR GOWDY: Present Number Twenty-Seven.

16 CLERK: Defense for Number Twenty-Seven?

17 MR. ALLEN: Please seat Number Twenty-Seven.

18 THE COURT: All right. That will complete the  
19 selection of the jury. We now are selecting alternate  
20 number one starting with Juror Number Twenty-Eight on the  
21 list with the State having one strike and the defense having  
22 two.

23 CLERK: State for Number Twenty-Eight?

24 SOLICITOR GOWDY: Present Number Twenty-Eight.

25 CLERK: Defense for Number Twenty-Eight?

1 MR. ALLEN: Please seat Number Twenty-Eight.

2 THE COURT: That is the first alternate.

3 CLERK: State for Number Twenty-Nine?

4 SOLICITOR GOWDY: Present Number Twenty-Nine.

5 CLERK: Defense for Number Twenty-Nine?

6 MR. ALLEN: Please excuse Number Twenty-Nine.

7 CLERK: State for Number Thirty?

8 SOLICITOR GOWDY: Present Number Thirty.

9 CLERK: Defense for Number Thirty?

10 MR. ALLEN: Please excuse Number Thirty.

11 CLERK: State for Number Thirty-One?

12 SOLICITOR GOWDY: Please excuse Number Thirty-One.

13 CLERK: State for Number Thirty-Two?

14 MR. RECKENBEIL: What -- I'm sorry. You said---

15 MR. ALLEN: State for Number Thirty-Two.

16 CLERK: Thirty---

17 MRS. HODGES: And, and you---

18 SOLICITOR GOWDY: I'm sorry. I thought I said present  
19 Number Thirty-Two. I'm sorry.

20 MRS. HODGES: I thought we were down to Thirty-One.

21 THE COURT: Number Thirty-One was struck by the State.

22 CLERK: And I went to Thirty-Two for the State.

23 THE COURT: And we've used all strikes. So, any other  
24 strikes would have to be for cause. I understood the State  
25 to say Number Thirty-Two should be seated. So, we're to the

1 defense.

2 MR. ALLEN: Your Honor, we renew our challenge for  
3 cause on Number Thirty-Two as we previously stated at the  
4 conclusion, at the conclusion of that juror's qualification.

5 THE COURT: The Court will make the same ruling that  
6 the juror's qualified. So, Thirty-Two will be Alternate  
7 Number Two.

8 Now, Madam Clerk, if you would, please call out the  
9 numbers to the left of those jurors who have been, or excuse  
10 me, of the state -- well, just call out the, the numbers for  
11 those jurors who have been seated using the numbers to the  
12 left.

13 CLERK: I have seated Number, Juror -- to the left of  
14 the juror number, Number One, Number Three, Number Five,  
15 Number Eight, Number Nine, Number Thirteen, Number Fourteen,  
16 Number Fifteen, Number Sixteen, Number Nineteen, Number  
17 Twenty-Six, Number Twenty-Seven. First alternate, Number  
18 Twenty-Eight. Second alternate, Number Thirty-Two.

19 Does that agree with the State's records?

20 SOLICITOR GOWDY: Yes, sir, Your Honor.

21 THE COURT: Does that agree with the defense records?

22 MR. ALLEN: It does, Your Honor.

23 THE COURT: All right. Now, is there any objection to  
24 the jury selection process from the state?

25 SOLICITOR GOWDY: No, sir, but in all candor, I have

1 not had even an opportunity to look at---

2 THE COURT: Well, why don't I give you a moment and be  
3 sure that you have had a chance to look at it.

4 SOLICITOR GOWDY: It won't take me but just a moment.

5 THE COURT: Oh, I understand. Let me know when you're  
6 ready.

7 MRS. HODGES: Can I just confer with Mr. Allen on a  
8 subject?

9 THE COURT: Sure.

10 MRS. HODGES: Thank you.

11 (Pause.)

12 MRS. HODGES: Thank you, judge.

13 SOLICITOR GOWDY: No objections, no exceptions,  
14 exceptions to the selection of the jury, Your Honor.

15 THE COURT: All right. From the State.

16 Now, from the defense, I understand that there have  
17 been previous objections. Those objections, objections are  
18 preserved at this time.

19 So, are there any additional objections to the jury  
20 selection process from the defense?

21 MR. ALLEN: No, Your Honor.

22 THE COURT: All right. Then the jury selection has  
23 been completed. I have indicated that the jury will be  
24 sequestered as soon as we have contacted them in the  
25 morning. And we will begin the trial as soon as they have

1 been seated here at the courthouse. I expect that to be  
2 around 9:30 in the morning.

3 I understood that there were some pretrial motions that  
4 needed to be addressed.

5 Are we ready to proceed with those?

6 SOLICITOR GOWDY: The State is, Your Honor.

7 THE COURT: Is the defense ready to proceed?

8 MR. ALLEN: Yes, Your Honor.

9 THE COURT: All right. State have any pretrial  
10 motions?

11 SOLICITOR GOWDY: Your Honor, we have a motion to  
12 exclude third party guilt until and unless such time as the  
13 defense has met the burdens. Burden's probably not the  
14 right word. But foundation required by the United States  
15 Supreme Court and our Supreme Court.

16 So, while it's our motion, I think, if I understand the  
17 jurisprudence, have, have to proffer evidence that would  
18 tend to show their client's innocence and rise above mere  
19 speculation with respect to someone else.

20 THE COURT: All right. Defense's position concerning  
21 that motion?

22 MR. RECKENBEIL: Judge, we will be more than happy to  
23 put live testimony on the witness stand because I understand  
24 that's our burden of proof and we need to proffer that  
25 information.

1 First off, in, that in response, I, I think that our  
2 Supreme Court, as well as the United States Supreme Court,  
3 has given pretty good guidance on that, and I think the last  
4 case in which was decided, Justice Pleicones was very kind  
5 enough to give a very good dissertation as to exactly what  
6 the rule is as well as the footnote talks about exactly what  
7 the U.S. Supreme Court did for South Carolina.

8 Judge, I think that what the solicitor has, has said  
9 is, is close to being accurate. But then, again, I do not  
10 believe that South Carolina nor does, does the U.S. Supreme  
11 Court mean to say to a defendant that you have to bring in a  
12 third party as the smoking gun.

13 Obviously, in this situation, judge, I'm gonna be going  
14 into some facts of the case. Your Honor has not heard  
15 anything. You, you, you have the indictments. But you  
16 don't have any sort of background of the facts.

17 But what I'd like to present to the Court is just a  
18 brief history as to what we feel are some of the facts that  
19 we would be able to demonstrate and then live testimony if  
20 that's okay with the Court.

21 THE COURT: Yes, sir.

22 MR. RECKENBEIL: Okay. First off, judge, there is  
23 significant circumstantial evidence as to what the  
24 defendant, or excuse me, what the prosecution plans on  
25 presenting for the guilt of our client. First off is that

1 there is a shoe print that the prosecution plans on bringing  
2 into evidence to demonstrate that, in fact, my client was  
3 wearing shoes and tracked blood and thus presented a shoe  
4 print on the floor.

5       However, judge, as you will see presented in the  
6 evidence, is once they bring over this huge carton of all  
7 from the storage room, there isn't a shoe print going the  
8 other way. And if I could kind of come out here is that if  
9 I put my feet going two opposite directions, there are two  
10 different shoe prints demonstrating that they were tracked  
11 in blood because my understanding is, is that what SLED does  
12 is that they put some spray paint down or they put some sort  
13 of chemical, which is way beyond my education level, but  
14 what I do understand is, is that it brings out the shoe  
15 prints if you track it in blood.

16       So, the first piece of evidence that we would show that  
17 there is another individual in that house during the murder  
18 is the fact that there are two separate shoe prints kind of  
19 going the other way. So, that's our first piece of evidence  
20 that we would demonstrate that there's another person.

21       Secondly, talking about SLED evidence, there was a  
22 tremendous amount of swabs being done getting DNA from all  
23 over the place to blood swabs. We have evidence from SLED  
24 that shows there is an unidentified DNA sample. That's what  
25 we plan on presenting when there is a SLED agent coming in

1 here to testify is, is that they swabbed something and it's  
2 unidentified.

3 The third thing that we want to talk about with the DNA  
4 is, is that there was substantial, again, DNA, blood all  
5 over this. And Your Honor hasn't seen the crime scene.

6 THE COURT: I think I saw some photos at a previous  
7 hearing on gathering evidence.

8 MR. RECKENBEIL: Right. We were -- we did, we did, we  
9 did demonstrate and show some of that.

10 Well, kind of feel like I'm tipping my hand here, but  
11 it's, it's no secret. DNA evidence has certain alleles. It  
12 has a configuration of what it shows and what it doesn't  
13 show. And there's a huge scientific explanation to it.

14 Bottom line is, judge, is, is that when you look at one  
15 category of the DNA of a, it says matching the handle of the  
16 hammer to the DNA, it says it can not specifically exclude  
17 Tony Torres. Doesn't include him. But it says it can't  
18 exclude him.

19 But the key factor that I think this Court needs to  
20 look at is it says what is the genome on that handle of DNA  
21 when it says it's an X chromosome. X chromosome we know,  
22 Your Honor, comes from our mother. That's what makes a  
23 female. There is no XY chromosome on that SLED report  
24 showing that the DNA on the handle of the hammer, which is  
25 the murder weapon in this case, comes from a male.

1           So, again, that is what we plan to present and I don't  
2 think it's disputable is the fact that that genome is an X.  
3 That's our, of what consists with the DNA.

4           Now, we plan on presenting a, a witness who was an eye  
5 witness who is Tammy Hughey. Tammy Hughey is gonna come  
6 before the Court and she's given a couple of statements.

7           One of the statements that we're able to get from Tammy  
8 Hughey was the fact that, at 6:30 in the morning, the  
9 morning after the murders took place or the morning of the  
10 murders, she saw different individuals, to include Chuck  
11 Emery and Holly Melton, coming out of their house, coming  
12 out of the Emery's house, freshly showered, and coming out  
13 into that front yard.

14           If Your Honor saw the murder scene and saw the way that  
15 this house was ransacked, blood everywhere, there is no way  
16 an individual coming out of that house could not have seen  
17 what had happened. Circumstantial evidence we know. But  
18 again, circumstantial evidence is what this state plans on  
19 presenting the guilt of our client.

20           So, we have, we have one individual who will be there.  
21 We have another independent because Tammy Hughey probably,  
22 is a relationship. We have Mandy MacKinnish who is a  
23 separate eye witness who works in a dentist office here in  
24 Spartanburg. She's under subpoena. She will testify that  
25 at 6:30 in the morning, between 6:30 and 6:45 she was

1 leaving to go to the dentist office to go to work. She sees  
2 Chuck Emery, Holly Melton.

3 She actually stops and speaks with them and he  
4 describes the fact that, of -- well, she asked what are you  
5 doing out here. He says well, we're sorting out some  
6 S-H-I-T. I'm just paraphrasing what she's about to say.  
7 But again, the thing, we have two eye witnesses putting  
8 Chuck Emery outside of the, the victim's house at 6:30 in  
9 the morning after supposedly these murders took place.

10 Moving about another couple hours -- now, I, I will say  
11 this, is that if you look at the statements that have been  
12 given by Chuck Emery, they're completely inconsistent. He  
13 doesn't talk about the fact that 6:30 in the morning that  
14 he's around that house at all. So, we would feel, again,  
15 that if we have these independent witnesses coming in to  
16 testify fully against him, that would give some sort of  
17 inconsistencies.

18 Other piece of evidence. Chuck Emery, at about  
19 9:00 a.m., is called by Tammy Hughey to come to the  
20 residence because of something happens. Tammy Hughey's  
21 gonna testify that she didn't explain exactly what was  
22 wrong. She just said you need to come to the house.

23 She's gonna testify the second that Chuck Emery pulls  
24 up to the house, gets out of the car, and says I know who  
25 did this S-H-I-T. It was Tony Torres. Circumstantially,

1 judge, he never was told exactly what happened, didn't know  
2 what was wrong with his parents, absolutely nothing.

3 while he's being questioned, at that point in time,  
4 he's eating a whopper from Burger King. Just told, in fact,  
5 that his parents were murdered or killed. He's sitting  
6 there eating a whopper. Circumstantially, we feel that  
7 there is something there that has, going to show that  
8 there's some culpability.

9 Last thing that we plan on presenting is, is that I  
10 have pulled the probate records and it demonstrates that  
11 Chuck Emery did receive everything from the probate records  
12 of the house. His sister, Tammy Whaley, she signed an  
13 agreement where she gave up her rights and Chuck Emery did  
14 inherit the proceeds from the estate of the Emery's.

15 Judge, it would be our position that there is no  
16 question there is another shoe print in that house. There  
17 is no question that there is different DNA on the handle of  
18 that hammer. There is no question that this individual is  
19 coming outside of the house of where these individuals lie  
20 killed.

21 Judge, we would feel that we do not have the burden of  
22 proof of beyond a reasonable doubt like the State does.

23 But it is impossible for us to say, to show that if  
24 there is another individual that does a crime, how can we  
25 show the absolute innocence of our client?

1 I think that the State is putting a, a burden on us  
2 that we don't have to prove. The inconsistencies that we  
3 are showing is that there is another individual that is in  
4 the location. There is another footprint. There is  
5 inconsistent DNA, and that there is definitely  
6 circumstantial evidence that this individual could of done  
7 this. Therefore, we feel that we can meet our, our burden  
8 of when we, when we have the opportunity to put these people  
9 on the witness stand of a proffer, and thus we should be  
10 allowed to introduce third party guilt.

11 THE COURT: State wish to make any statement?

12 SOLICITOR BARNETTE: Yes, sir, two things, Your Honor.

13 The first thing is, even listening to Mr. Reckenbeil,  
14 there is not a shred of evidence that connects Chuck Emery  
15 to this scene. I know they say in the front yard. Got one  
16 witness say that he came out of the house. But that witness  
17 obviously has a bias, I mean a bias. There's no question  
18 about that in this situation.

19 And the other thing is how is this all inconsistent  
20 with his guilt?

21 You have his DNA at the scene. You have where he raped  
22 this lady. You have him having the van, taking all their  
23 items out of that. They have to show just not, not there's  
24 a connection to Chuck Emery or any other evidence there.

25 They keep talking about the separate shoe prints

1 showing a different way. That doesn't show anything. The  
2 footprint -- like I said, I know Your Honor hasn't seen the  
3 evidence from that standpoint, and that's the reason they  
4 haven't proffered it for you to see it. But the shoe print  
5 they're saying is consistent with law enforcement or  
6 emergency personnel that arrived there, they have to show  
7 more than just saying there's just a footprint there.

8       They talk about the DNA, the different DNA on the  
9 hammer. Well, we know that anybody that used that hammer  
10 that DNA could be on it. They're trying to show suspicion  
11 there. Through these witnesses, they can not show that  
12 Chuck Emery had a connection there.

13       They keep saying circumstances or whatever, and I know  
14 we handed a memo up I think last week to the Court and also  
15 give them a copy of it. If you look at the case, just  
16 because there's a motive possibly, that possibly this  
17 person's been connected to it, you know, circumstantially or  
18 whatever, you have to show that evidence. You just can't  
19 cast a bare suspicion on somebody or just say because  
20 they're there.

21       So, if you read the cases, for example, Beckham talks  
22 about basically two people walk by a scene. You have the  
23 different type cases. I can go through those cases if Your  
24 Honor wants me to. I know we handed that up in the memo to  
25 the Court.

1 But all those cases, basically they have two points  
2 they have to make, and I can, right now -- of course, we  
3 haven't heard their proffer yet. They haven't met either  
4 one of them. The first evidence showed that there's a  
5 connection there. Just not mere suspicion or just cast some  
6 kind of suspicion on the individual or some kind of  
7 evidence.

8 They have to do that first. But the second thing, they  
9 have to show it's inconsistent with the own defendant's  
10 guilt and I don't think they can show that in using the case  
11 law and everything.

12 So, obviously, we object to this third party guilt. I  
13 know they have, you know, they can proffer it to us and we  
14 can take a look at it. But at this point they haven't shown  
15 anything and shouldn't be allowed to enter that evidence in  
16 at this point with the argument they made.

17 And Your Honor, and Your Honor, another thing too is I  
18 know you don't have the facts in front of you at this point.  
19 But just since we're talking about that, Your Honor---

20 THE COURT: Yes, sir.

21 SOLICITOR BARNETTE: ---at 5:15, Torres is on Ann  
22 Emery's phone, the dead lady's phone in this case. He's on  
23 this phone at 5:15. He is in Union at seven o'clock where  
24 he's wrecked the van and he's asking somebody to take him,  
25 to give him a ride.

1           So, 6:30's not really relevant in this situation. I  
2 don't understand how they're going to connect anything to  
3 Chuck Emery or anybody else in this crime. Obviously they  
4 can argue that maybe the DNA's different, the shoe prints,  
5 or whatever. They can't point at a certain individual. The  
6 case law won't let them do that, and the reason why you  
7 don't let them do that is to keep from just pointing fingers  
8 at anybody they want to in this situation.

9           THE COURT: All right. I'm gonna take about a five to  
10 ten might break before we actually begin to take testimony  
11 on this.

12           Are you prepared to present your testimony on this  
13 matter?

14           MR. RECKENBEIL: Your Honor, we have one witness in the  
15 courtroom and then, in fact, we're gonna get on the cell  
16 phone to the other witness and she's on standby.

17           THE COURT: All right. We'll take about a five minute  
18 break.

19           Thank you very much.

20           MR. RECKENBEIL: Thank you, judge.

21           (Whereupon, a short recess was taken at this time.)

22           THE COURT: All right. Is the defense ready to  
23 proceed?

24           MR. RECKENBEIL: Yes, Your Honor, we are.

25           THE COURT: You may call your first witness.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 MR. RECKENBEIL: Your Honor, we would call, at this  
2 time, Tammy Hughey.

3 THE COURT: Come forward, please, to be sworn.

4 TAMMY HUGHEY, being first duly  
5 sworn, testified as follows:

6 MR. RECKENBEIL: Judge, you know, we haven't put any,  
7 any more -- I think it's time for us to make -- we would  
8 make a motion to sequester all witnesses. I think, at this  
9 point in time, just for the guilt and innocence phase at  
10 least.

11 THE COURT: State oppose?

12 SOLICITOR BARNETTE: No, sir, we agree. We do have a  
13 witness in the back. We'll have to ask him to leave though.

14 THE COURT: All right. Anyone who intends to be a  
15 witness in this trial should leave the courtroom. Before  
16 you do, I will caution you that you should, from this point  
17 forward, not discuss your testimony that you're about to  
18 give or have given after you've finished with anyone. You  
19 should not be present in the courtroom during any portion of  
20 the trial. And violation of this order is punishable by the  
21 contempt powers of the Court.

22 I do understand that there are certain victims present.

23 Do, does this apply to anyone who would be exempt under  
24 the Victim's Rights Act?

25 SOLICITOR GOWDY: I don't see Crystal in here right

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 now.

2 Did she just leave?

3 That is the only family member that I believe will  
4 testify in this case, Your Honor.

5 THE COURT: All right. You understand that she has a  
6 right to be present?

7 MR. RECKENBEIL: Oh, absolutely, Your Honor.  
8 Absolutely.

9 THE COURT: Okay. Anyone else that that would apply  
10 to?

11 SOLICITOR GOWDY: Not on this side of the courtroom. I  
12 see one on that side of the courtroom.

13 THE COURT: Okay.

14 SOLICITOR GOWDY: At least one. They're law  
15 enforcement officers in the back. So, I'll get them to---

16 THE COURT: If you'll step up if you intend to be a  
17 witness in the case please.

18 MR. ALLEN: Thank you.

19 THE COURT: All right, ma'am. State your name for the  
20 record please.

21 WITNESS: Tammy Hughey.

22 THE COURT: All right. Your witness, Mr. Reckenbeil.

23 MR. RECKENBEIL: Thank you, Your Honor.

24 Please the Court.

25 DIRECT EXAMINATION

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 BY MR. RECKENBEIL:

2 Q Mrs. Hughey, we're just gonna focus on -- cause I know  
3 you have significant information in this case.

4 A Uh-huh. (Affirmative).

5 Q But we are at a specific point in time where we are  
6 trying to establish certain things. So, I want to move to  
7 the morning of, and I might bounce around a little bit, but  
8 I'm gonna cherry pick specific pieces of evidence that I  
9 want you to be able to tell the court.

10 So, the morning -- I guess it's the morning after,  
11 right, cause we're talking about what date?

12 A May the 11<sup>th</sup>, 2007.

13 Q All right. And make sure that you speak loud and clear  
14 cause I got to hear you---

15 A Okay.

16 Q ---and also that the judge is gonna have to hear you.

17 A Okay. Did you hear May 11<sup>th</sup>, 2007?

18 Q I can hear you now. Okay.

19 A Okay.

20 Q Good.

21 All right. So, May 11<sup>th</sup>, 2007.

22 where do you reside?

23 A At the time then I resided at ■ Floyd Street, which is  
24 in Drayton.

25 Q Okay.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 A Now, right now I reside at [REDACTED] Cleveland Street, which is  
2 in Drayton.

3 Q All right. But at the time frame of when we're talking  
4 about, the night of the murders---

5 A Uh-huh. (Affirmative.)

6 Q ---you are the next door neighbor to the Emery's?

7 A Yes, sir.

8 Q All right. You, you might -- you're on Floyd Street,  
9 but Montgomery Street is right next to it?

10 A Well, it's, it's the corner of Floyd and Montgomery.

11 Q And can you give an estimation to this Court about how  
12 far your houses are apart from each other?

13 A That's kind of a hard one. I'm a woman. I'm not good  
14 with distances.

15 Q Okay.

16 A But I'd say from my back-door to his -- he had an upper  
17 driveway and a lower driveway.

18 Q Uh-huh. (Affirmative).

19 A I'd say two, 250 feet.

20 Q Okay. If that?

21 A Uh-huh. (Affirmative).

22 Q All right. So, the morning of --

23 A Yes.

24 Q -- take -- I'm not gonna direct you any way.

25 A Okay.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 Q I just want you to start like the morning of the second  
2 day.

3 A Okay.

4 Q Tell the judge what you did.

5 A Okay. Well, my grandson had, had awoke me. I'm not  
6 sure exactly what time. I do remember at one point outside  
7 looking at my cell phone. Once I got outside, it was about  
8 6:45. So, I had went out there before then.

9 The reason I did is, I don't know who the car belonged  
10 to, I believe it was Holly Melton's mother's car. It was a  
11 gold Ford Escort. I noticed out my side window -- we have  
12 what's called a fire stump where we burn wood and brush and  
13 stuff like that. I could see the tail end of the car, and I  
14 thought, you know, it's unusual for somebody to be out there  
15 that early in the morning.

16 So, I went out to, to see what they were doing. I was  
17 first approached by Mrs. Melton. She was kind of just  
18 kicking around in the grass bordering my yard and Mr.  
19 Emery's yard, and I asked her, I said, what are you doing.  
20 She said I lost a pair of sunglasses. I didn't think  
21 nothing about it. I just started, you know, looking around,  
22 gonna help her, and I asked her, I said where's Chuck. She  
23 said inside looking for them.

24 Q Okay.

25 A And at that point he was not out there.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 Q All right.

2 A We continued to kind of mill around a little bit  
3 working our way back, and there's this, I guess it's a cedar  
4 tree, I'm not sure, cedar, spruce tree, and once I got past  
5 it, he was standing with his hand on the door knob, let go  
6 of it, and walked towards us.

7 Q And when you're saying he's on the door knob, which  
8 door knob of which house is his hand on?

9 A It's the door knob of a breezeway between the Emery's  
10 garage and where it enters the house. It's kind of like a  
11 break in-between the house and the garage, but it's the  
12 breezeway door.

13 Q Okay. So, he's coming from the Emery's house?

14 A Uh-huh. (Affirmative).

15 Q All right. Now, can you first give the appearance of  
16 what Mrs. Melton looks like that morning?

17 A Actually other than the dry clothes, she looked like  
18 somebody has just squirted her down with a hose pipe.

19 Q All right.

20 A Her hair was, was wet. She -- it looked -- it appeared  
21 to me at the time to look like sweat. But then I thought  
22 well, if her hair's wet, she's probably just showered and  
23 that's how it appeared to me. Her hair was wet enough that  
24 it dampened her top at her shoulders.

25 Q Okay. All right. And when you saw Chuck Emery coming

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 from the Emery's house, can you give a physical description  
2 of what he looked like?

3 A He appeared that he was flustered. I mean just like he  
4 was in a, in a panic because I don't know. He came out and  
5 asked me do you mind if I look through your car, and I  
6 didn't think nothing about at, that at the time. He  
7 appeared like he had just showered, shirt was wet. He was  
8 sweating. He was sweating profusely. He always -- that's  
9 how he was when he got hot.

10 Q Okay. All right. And so, we're talking about at 6:45  
11 in the morning?

12 A Uh-huh. (Affirmative).

13 Q Do you have any other conversations with Chuck or Holly  
14 at that point in time?

15 A No, actually that's right when my neighbor pulled up.  
16 Well, the neighbor down the street, she pulled up and asked  
17 what was going on. I said just looking for a pair of  
18 sunglasses and then she looked at him, he said something, I  
19 didn't hear what he said because I was down in the grass  
20 looking.

21 Q Okay. And that neighbor that pulled up was whom?

22 A Mandy MacKinnish.

23 Q Mandy MacKinnish.

24 Okay. And she was driving in her vehicle?

25 A Yes.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 Q Do you see, do you remember where the vehicle was  
2 going?

3 A She was going up the road. She had her children in the  
4 car. I assumed she was going to work. She, she works at,  
5 for Doctor Dunbar.

6 Q Here in Spartanburg?

7 A Yes.

8 Q Okay. All right. After Mrs. MacKinnish leaves the  
9 area, what happens next?

10 A I, I, I told her then, and it just popped into my head  
11 all of a sudden -- you know, cause when I first went out, I  
12 was just kind of still groggy. I said, as a matter of fact,  
13 you left the sunglasses on the porch. Let me go in and see  
14 what Jessica done with them and I went in long enough to  
15 rouse her up and she told me they were on the shelf above  
16 the TV. I got them and gave them to them, and they both  
17 hurriedly, you know, just kind of real fast walked around  
18 the house.

19 Q Okay. Did you remember seeing them after they left  
20 your house with the sunglasses?

21 A No.

22 Q All right. Moving forward a, a couple hours, kind of  
23 proceed forward if you would with your testimony.

24 A Okay. I'm, I'm not sure about the time frame. I'm  
25 thinking it was about 8:45. When I went back in, I got to

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 try to get my grandson back to sleep. He suffers from night  
2 terrors, and when he wakes up a lot during the night he will  
3 do that. So, I just hear a knock on the door, and I just  
4 kind of raise up and I said who is that. My mother says I  
5 don't know. She got up and opened the door and it was a  
6 neighbor from on Floyd, but up the, the other way across  
7 from the church that sits there.

8 Q Okay.

9 A And she asked my mother, she said do y'all have any  
10 idea what is happened at the Emery's. I said no. I said  
11 what's going on. She said there's police everywhere.

12 Q Okay.

13 A So, I got my shoes on and I went outside. And as I go  
14 down the road, Mrs. Lindsey stopped maybe 10, 15 feet behind  
15 me. She didn't go on down there. And I was -- I approached  
16 a female officer. I'm not sure who she was, and I asked  
17 her, I said can you tell me what's going on. She said not  
18 at this time. And I said well, I'm concerned. I said my  
19 nephew left from here last night. I have not seen him and  
20 I'm worried about him. And said is it a male Hispanic. I  
21 said yes, ma'am. And she continued to ask me, she said do  
22 you know the Emery's. And I said yes, ma'am.

23 And she said something about the male Hispanic son. I  
24 thought she might have meant that we were talking about the  
25 same person, that maybe I was related.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 Q Okay. Let me stop you there and ask you a question.

2 Can you give me a physical description of Chuck Emery?

3 A I would say probably about 5'10", 5'11", maybe between  
4 220, 230, somewhere along in there.

5 Q Okay. All right. Does he look like Tony?

6 A They, they favor in some instances, but his skin tone  
7 is a lot darker.

8 Q Whose skin tone is darker?

9 A Chuck's is a lot darker.

10 Q Okay. So, when you heard the female officer talk about  
11 a male Hispanic son---

12 A Uh-huh. (Affirmative).

13 Q ---what popped in your mind?

14 A Chuck.

15 Q Okay. If you were to describe him, would that be an  
16 accurate description or could it be an accurate description  
17 of him?

18 A The first time I ever met him I thought he was Mexican.

19 Q Okay. Okay. All right. So, going back into what that  
20 officer was saying is, is that they were looking for, seen a  
21 male Hispanic son --

22 A Uh-huh. (Affirmative).

23 Q -- what happened next?

24 A That's when it got crazy. It was just really a flurry  
25 of things, and then that's when she went into asking why I

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 was worried about him, my nephew. I told her there had been  
2 a confrontation the night before, and I explained about the  
3 confrontation between Chuck and Holly.

4 Q Right.

5 A And she just more or less just said give me a brief run  
6 down, write down, if you will, you know, what, what you know  
7 and I did. And then I got jerked in this direction, that  
8 direction, every which direction, and then one of them  
9 finally asked me if I knew where he was. I says well, I can  
10 call him from the last number he called me from.

11 Q Okay. And so, when you're talking about he---

12 A Chuck.

13 Q Okay. So, you go on your cell phone from the last  
14 number that Chuck called you the night before?

15 A Yeah.

16 Q All right. Proceed.

17 A Didn't, didn't ring more than once or twice and he  
18 immediately answered.

19 Q Okay.

20 A And I told him, I says I don't know what's going on,  
21 but you need to get to your father's house immediately.

22 Q Okay.

23 A He says why. I said I don't, I don't know what's going  
24 on, but something's happened, get here. It was, might of  
25 been five to seven minutes. That's, that's how quick it

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 took him to get there.

2 Q Okay.

3 A Holly was driving. He was in the passenger side. She  
4 didn't get to a complete stop, and which I found alarming  
5 because we had to jump back up off the road on to the  
6 sidewalk. He jumps out and that's the first thing he  
7 screams is I know who did this shit, it was Tony.

8 Q Okay.

9 A And then I, I immediately got upset then cause I was  
10 sitting here thinking done what. I didn't, didn't question  
11 it anymore. They talked to him. He got pulled in this  
12 direction, that direction, Chuck did. Holly got pulled in  
13 one direction, and I mean it was just kind of like total  
14 chaos after that.

15 Q Okay. Can you describe to me how many officers were in  
16 that area at that point in time?

17 A When I first went out I saw---

18 Q I'm talking, when -- I'm talking when Mr., when Chuck  
19 Emery and Holly come to the scene---

20 A Uh-huh. (Affirmative).

21 Q ---how many officers were in that area?

22 A I don't know how many were inside, but outside I  
23 probably seen anywhere from probably six to eight.

24 Q Okay. And how many police cars were there?

25 A Now, that's, that's a hard one to tell. I saw three or

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 four. But if they're parked kind of like lined up in a  
2 single file, as it goes on down, the road slopes, I really  
3 didn't pay attention.

4 Q Sure.

5 A I just seen the ones in, in front of the house.

6 Q Okay. And did you observe Chuck Emery being questioned  
7 by the police officers?

8 A Not all of them. Only, only when he was being talked  
9 to by two of them.

10 Q Do you recall whether or not Mr. Emery was eating  
11 anything, when Chuck Emery was eating anything while he was  
12 being questioned?

13 A He was. He was sitting in a truck. I don't know, you  
14 know, which officer, which investigator it was, and he was  
15 sitting there eating a whopper.

16 Q Okay. All right. And after that, do you have any  
17 other information?

18 A Only, only the fact that -- I don't, I don't know who  
19 the girl is. I don't know her personally. I seen her a  
20 couple of times. She came upon what was going on, and asked  
21 what happened. She did state to, to Chuck, in front of one  
22 of the officers, you know, well, I called. I was looking  
23 for you last night, and it was about 3:15. Your dad  
24 answered the phone.

25 Q Do you remember this girl's name?

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 A I know her as Jennifer King. Someone else told me her  
2 last name was different. So, I don't know.

3 Q Okay.

4 A And---

5 Q So, Jennifer King is coming to the scene around this  
6 same time?

7 A Well, it was about an hour after that, and she stated  
8 to him, she said well, I talked to your dad. He answered  
9 the phone about 3:15 and said that you weren't there, and  
10 Chuck replied to her, he said I heard the phone ring, and if  
11 I had known it was you, I was on the porch, I would of went  
12 in and answered it.

13 SOLICITOR CRICK: Your Honor, I'm gonna object. I'm  
14 trying to be very patient. I know this is a hearing on a  
15 matter that calls for hearsay, but I'm gonna have to object  
16 to it at this point.

17 MR. RECKENBEIL: We understand it's hearsay. We also  
18 have a situation where there's an unavailable witness which,  
19 at the appropriate time, we will make, we will make  
20 available to the Court the fact that we have done a diligent  
21 search for this individual, and I feel that she's  
22 intentionally avoiding service.

23 THE COURT: Well, at this point in time, until it's  
24 been demonstrated, I'll have to sustain the objection---

25 MR. RECKENBEIL: Okay.

Tammy Hughey - Direct examination  
By Mr. Reckenbeil

1 THE COURT: ---and limit you from presenting hearsay.

2 Q All right. So, after Mrs. King comes to the scene, is  
3 there anything else that you can say that you observed?

4 A Just, just later on the fact when I actually spoke with  
5 Tony. I don't remember, when my husband came out, if it was  
6 my cell phone, his cell phone, what.

7 Q Okay.

8 A And---

9 Q Well, we don't want to get into---

10 A Okay.

11 Q ---questions about that.

12 But pretty much, at that point in time, can you give an  
13 estimation as to when Mrs. King showed up to the scene, at  
14 what time?

15 A That's, that's kind of hard to say cause I really, I  
16 really -- time was just -- it was, it was crazy.

17 Q Right.

18 A It was.

19 Q Okay. All right. Thank you.

20 A Uh-huh. (Affirmative).

21 THE COURT: State's witness.

22 SOLICITOR CRICK: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY SOLICITOR CRICK:

25 Q Mrs. Hughey, I'm not gonna get into all, all the

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 details of your previous statements cause that's not what  
2 we're here about right now.

3 A Okay.

4 Q What I do want to ask you, as it pertains to this  
5 hearing, is what evidence do you have that Chuck committed  
6 this crime?

7 A Previous statements that he had made to me, my family.  
8 I mean---

9 Q Well, I didn't hear any of that.

10 A Okay.

11 Q I'm asking you what you just testified to. You said  
12 you saw Chuck Emery about 6:45.

13 A Uh-huh. (Affirmative).

14 Q I think in your statement you had said about 7:00 in  
15 the morning, correct?

16 A Uh-huh. (Affirmative).

17 Q Are you also aware that the defendant was in Union  
18 County, 9-1-1 was called at 7:08 a.m. with him in the  
19 Emery's van, right?

20 A That's, that's what I read in the paper and I was told.

21 Q Okay. But you're aware of that?

22 well, you talked to, to Mr. Torres, haven't you?

23 A It's been a while.

24 Q You talked to him when he was in jail?

25 A Over a year ago.

Tammy Hughey - Cross-examination  
By Solicitor Crick

- 1 Q You talked to him on the phone?
- 2 A Uh-huh. (Affirmative).
- 3 Q You went to visit him?
- 4 A Uh-huh. (Affirmative).
- 5 Q Okay. So, again, I'm gonna ask you what evidence do  
6 you have that Chuck Emery committed this crime --
- 7 A I mean---
- 8 Q -- other than you say you saw him at 7:00 in the  
9 morning when the crime had already been committed?
- 10 A It, it wasn't quite 7:00. I mean---
- 11 Q 6:45. I'll give you that.
- 12 A Well, I seen him at about 15, ten minutes till 4:00 in  
13 my backyard --
- 14 Q Okay.
- 15 A -- which happened, happened before that.
- 16 Q So, in your backyard?
- 17 A In my backyard.
- 18 Q Okay.
- 19 A And then I mean, you know, it just seems strange to me.  
20 I mean I know at one point, before their argument, he said  
21 if he had to, he would hide and wait for him to come back  
22 and beat the shit out of him, talking about Tony.
- 23 Q This was at about 12:00 though?
- 24 A Yeah.
- 25 Q I'm talking about---

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 A No, no.

2 Q ---later.

3 A Their argument, it was, it was later, but I'm saying I  
4 just assumed he thought, you know, when Tony left, that  
5 maybe he was gonna come back and try to jump him. But he  
6 stayed in that area the whole time.

7 Q Correct. I understand what you're saying, and like I  
8 said, I don't want to get into all the details. I'm looking  
9 for one thing, the answer to one question, and that's what  
10 we're here to find out right now, which is what evidence  
11 there is that Chuck Emery committed this crime, and I'm not  
12 hearing anything from you except that you saw Chuck at about  
13 6:45 in the morning.

14 A Well, after finding out the facts later that day, it  
15 appeared to me if -- he came out of that house. I, I saw  
16 him coming out of that house.

17 Q At 6:45?

18 A And he mentioned nothing about seeing anything inside.

19 Q So, he didn't mention anything?

20 A No, he -- but he was flustered. He was nervous. He  
21 was --.

22 Q Well, let me ask you this.

23 Did you see Mr. Torres at 4:00 in the morning?

24 A No, I did not.

25 Q Did he live with you at the time?

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 A Yes, ma'am, he did.

2 Q Did you see him at five o'clock in the morning?

3 A No, ma'am, I did not.

4 Q How about six o'clock in the morning?

5 A No, ma'am.

6 Q 7:00?

7 A No, ma'am.

8 Q So, you didn't see him at all?

9 A No, all I, all -- I did previously the night before.

10 The last time I saw him was approximately 3:00 a.m.

11 Q So, that was the last time you saw him?

12 A Uh-huh. (Affirmative).

13 Q Do you know how he got Ann Emery's telephone?

14 A I would not know that. I was, I was not there.

15 Q Do you know how his semen ended up in Ann Emery's  
16 vaginal opening?

17 A I would not know that either.

18 Q One second.

19 (Pause.)

20 Q I did forget one thing.

21 You sent a text message to Chuck Emery at about 2:00,  
22 after 2:00 in the morning, right?

23 A Yes.

24 Q Telling him to call the police?

25 A Yes.

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 Q And you sent that because you knew the defendant was  
2 about to do something?

3 A No, he had previously phoned me. I could not hardly  
4 understand what he was saying cause of Holly in the  
5 background screaming. I had previously called 9-1-1 about  
6 midnight because he had just more or less beat the crap out  
7 of her.

8 Q But you---

9 A And I thought they were arguing. I said I'm not  
10 listening to it. I hung up. So, when he texted me and  
11 asked me why did you hang up, I texted back and said, said  
12 call the police. I thought if he had a problem, let them  
13 handle it. I wasn't dealing with their fight anymore.

14 Q So, you called Chuck to tell him to call the police on  
15 himself?

16 A No, I didn't call him.

17 Q You texted him?

18 A He called me and I texted him back when he asked, when  
19 he texted me why did you hang up.

20 Q So, at 2:00 in the morning you texted Chuck to tell him  
21 to call 9-1-1 about himself?

22 A Yes, because I wasn't dealing with it anymore. It was,  
23 you know, it was ridiculous.

24 Q Yeah, I'll agree with that.

25 One minute.

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 (Pause.)

2 Q Okay. Now, he, he lived with you, correct, Mr. Torres?

3 A Yes.

4 Q So, he kept his things at your house?

5 A Yes.

6 Q Correct?

7 Let me ask you another question then cause you might  
8 know the answer to this.

9 Do you have any idea how the Emery's blood would of  
10 ended up on his clothing found in his clothes in his  
11 grandmother's washing machine?

12 MR. RECKENBEIL: Objection, Your Honor. Just outside  
13 the scope.

14 A All his clothes---

15 THE COURT: Just one second. I have an objection.

16 MR. RECKENBEIL: That's just the relevancy as to  
17 they're going into questioning of her of evidence that is  
18 just outside the scope of what we're talking about. And  
19 it's just mere speculation. She doesn't have any idea about  
20 that. She's talking about a grandmother's washing machine.  
21 It's not even her house. Just -- all it is is conjecture  
22 just to pile on to what the State is just trying to  
23 demonstrate as circumstantial evidence just like what we  
24 are.

25 But we're talking about a specific point in time, and

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 the state is going into something completely different and  
2 irrelevant outside of the scope of---

3 THE COURT: All right. I'll hear from the State.

4 SOLICITOR GOWDY: Well, Your, Your Honor, I, I, I  
5 understand. I do think it's relevant. But the whole reason  
6 she's testifying is to suggest that somebody other than Tony  
7 Torres committed this crime. Because if they committed it  
8 together, then that doesn't establish his actual innocence.  
9 He's complicit and he's still guilty and they can't go into  
10 third party guilt. So, he has to be innocent and somebody  
11 else has to be guilty or this is an exercise that's not  
12 gonna be in front of the jury.

13 So, I think the question is does she have any knowledge  
14 of how, someone who lived in the home, why he's at somebody  
15 else's house with the victim's blood on his clothes.

16 THE COURT: I'll overrule the objection.

17 Q Do you know?

18 A The previous night before, when Chuck was sitting on my  
19 porch, he was having a conversation with Tony on the phone.  
20 There was an argument. He hung up and he was pissed. He  
21 shoved me out of the way, stormed into my house. When Tony  
22 was released from Kirkland, Chuck helped him and gave him a  
23 lot of clothes. He took everything. He took everything out  
24 of my house that he had given him.

25 Q well, I guess what I'm specifically referring to are

Tammy Hughey - Cross-examination  
By Solicitor Crick

1 the clothes he had on in the surveillance video that very  
2 morning at 7:20.

3 A Uh-huh. (Affirmative).

4 Q Those clothes that were found in his grandmother's  
5 washing machine.

6 A Uh-huh. (Affirmative).

7 Q Those are the ones. Not the ones that Chuck took.  
8 But the clothes that he was wearing on the surveillance  
9 video, how did the Emery's blood end up on those clothes?

10 A I don't know.

11 SOLICITOR CRICK: Okay. One moment, Your Honor.

12 (Pause.)

13 SOLICITOR CRICK: I think that's it, Your Honor.

14 MR. RECKENBEIL: One question to follow-up.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. RECKENBEIL:

18 Q Mrs. Crick is asked you what evidence do you have that  
19 Chuck Emery committed this crime.

20 Any prior conversations that you have overheard Chuck  
21 Emery talk about the fact that his stepmother and his  
22 father---

23 A Uh-huh. (Affirmative).

24 Q ---about what his feelings were?

25 Tell us about those.

Tammy Hughey - Redirect examination  
By Mr. Reckenbeil

1 A I mean they were, they were directed to me.

2 Q Okay. Tell the court about that.

3 A He did not care for Ann. He called her "a Martha  
4 Stewart Bitch" because she was -- she liked to keep things  
5 neat---

6 Q Right.

7 A ---and nice and she was, she was very meticulous about  
8 that.

9 Q Right.

10 A And he had made a comment, on a prior conversation that  
11 we had had, about his dad. It was around the time I believe  
12 his dad had had a defibrillator put in --

13 Q Correct.

14 A -- that if his father had died, it was really gonna  
15 piss him off because he wouldn't get what was coming to him  
16 unless she died too.

17 Q Okay. Now, how long before -- how long ago would you  
18 say this?

19 A This was, this was months before.

20 Q Months before.

21 Okay. Thank you.

22 SOLICITOR CRICK: Just briefly on redirect.

23 THE COURT: Yes, ma'am.

24 RE-CROSS EXAMINATION

25 BY SOLICITOR CRICK:

Tammy Hughey - Recross examination  
By Solicitor Crick

1 Q Where is that in any of your, I think it's two, three,  
2 or four statements that you gave to law enforcement and to  
3 Mr. Reckenbeil's secretary?

4 A I mean that, that wasn't asked about at the time.

5 Q It slipped your mind?

6 A No, it wasn't asked about at the time.

7 SOLICITOR CRICK: Okay. Nothing further, Your Honor.

8 THE COURT: You may step down, ma'am.

9 Defense may call its next witness.

10 MR. RECKENBEIL: Your Honor, if we could have a brief  
11 second?

12 (Pause.)

13 MR. RECKENBEIL: Judge, the only, the only thing that  
14 we would have would be the evidence that we spoke of and I  
15 don't know if the State's gonna object to it. But there is  
16 a block in evidence that has the shoe prints that was talked  
17 about, and then there's the DNA evidence that the SLED agent  
18 would have to -- I, I could proffer that and put it up. I  
19 think we could, you could look at it.

20 THE COURT: Let me ask the attorneys to approach  
21 briefly.

22 (Whereupon, a bench conference was held at this time.)

23 SOLICITOR GOWDY: Your Honor, can I have permission to  
24 check on one thing?

25 THE COURT: Come up here for just one second.

1 (Whereupon, a bench conference was held at this time.)

2 SOLICITOR BARNETTE: Your Honor, can we mark this I  
3 guess as a Court's Exhibit is what we thought we would do?

4 THE COURT: I'm not sure what that is.

5 SOLICITOR BARNETTE: It's the DNA report. I'm sorry.  
6 It does talk about the bedroom.

7 THE COURT: All right. Any objection to that being  
8 marked as a Court's Exhibit for purposes of this hearing?

9 MR. RECKENBEIL: No. No, Your Honor.

10 THE COURT: All right. It will be marked then as  
11 Court's Exhibit No. 1 for purposes of this hearing.

12 SOLICITOR BARNETTE: Your Honor, it would be  
13 actually---

14 THE COURT: It will be No. 4 then.

15 (Whereupon, the SLED Report was marked as Court's  
16 Exhibit No. 4 for identification purposes only at this  
17 time.)

18 (Whereupon, a bench conference was held at this time.)

19 THE COURT: Okay.

20 (Whereupon, a bench conference was held at this time.)

21 THE COURT: All right. Mr. Reckenbeil, do you need to,  
22 to call your next witness?

23 MR. RECKENBEIL: The next witness the defense would  
24 call would be Mandy MacKinnish.

25 THE COURT: All right. Thank you.

Mandy MacKinnish - Direct examination  
By Mr. Reckenbeil

1 Come forward, ma'am, over to my right to be sworn.

2 MANDY MACKINNISH, being first duly  
3 sworn, testified as follows:

4 THE COURT: Ma'am, have a seat in the witness stand.  
5 (Witness complies.)

6 THE COURT: State your name for the record please,  
7 ma'am.

8 WITNESS: Mandy MacKinnish.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MR. RECKENBEIL:

12 Q Mrs. MacKinnish, my name is John Reckenbeil.

13 Have you and I ever met in person?

14 A No, sir.

15 Q Okay. We've talked on the phone once before?

16 A Uh-huh. (Affirmative).

17 Q I appreciate you coming.

18 Understand that you're under subpoena?

19 A Right.

20 Q Okay. Back in May of 2007, where did you reside?

21 A I lived at [REDACTED] Montgomery Street.

22 Q All right. And was that across from the Emery, the  
23 Emery residence?

24 A It was across.

25 Q Okay. And at that point in time back in 2007, who did

Mandy MacKinnish - Direct examination  
By Mr. Reckenbeil

1 you work for?

2 A Doctor John Dunbar.

3 Q Do you still work for Doctor Dunbar?

4 A I do.

5 Q I, I just thought you normally wear that outfit.

6 Okay. Are you at work right now?

7 A I am.

8 Q Okay. All right. I'm gonna be real brief. I just want  
9 to get to the point of the, of the morning that you and I  
10 previously talked about.

11 If you could, can you tell the judge what you remember  
12 and the time frame that morning coming out in, in May of  
13 2007?

14 A Earlier that morning, it was a Thursday. No, it was a  
15 Friday morning. I would of had to of been at work at 7:00.  
16 So, I would of let my dog out about 6:30, and probably left  
17 with my children about quarter till 7:00.

18 Q Okay. Quarter till 7:00, about 6:45, you and your  
19 children are in your vehicle leaving your driveway?

20 A Right, we were.

21 Q Can you tell the Court what you observed when you were  
22 leaving your driveway?

23 A When I left, I saw two people outside kind of piddling  
24 through the grass with their feet like you would if you  
25 dropped a car key or something. So, I stopped and I said

Mandy MacKinnish - Direct examination  
By Mr. Reckenbeil

1 what are you doing out here. It's a little early.

2 Q And who were those two people that you observed?

3 A It was Chuck and his girlfriend.

4 Q Okay. Is that Chuck Emery?

5 A Uh-huh. (Affirmative).

6 Q Do you know what his girlfriend's name was?

7 A I believe it was Holly.

8 Q Okay. All right. And do you recall what they said to  
9 you when, when you asked them what they were doing?

10 A Yeah, he said um, we're looking for something. Some  
11 shit went down last night, and I rolled up my window and  
12 left.

13 Q Okay. You proceeded on to work?

14 A Right. Well, I took my children to day care and went  
15 on to work.

16 Q All right. Did you find out later that day as to what  
17 happened?

18 A Yes.

19 Q All right.

20 A It was probably---

21 Q Can you tell the Court about that?

22 A It was probably about 10:30. My husband called. He  
23 works the, had worked the night shift, and when he got home,  
24 it was probably around 7:30, and he had tried to lay down  
25 and some commotion had, you know, woken him back up and he

Mandy MacKinnish - Direct examination  
By Mr. Reckenbeil

1 went outside and saw some stuff going on and he called.

2 Q Okay. Did he tell you what he saw?

3 A He just said there was, you know, a lot of police out  
4 there and an ambulance and --.

5 Q Okay. Do you remember if you came home?

6 A I did.

7 Q Do you remember what you saw when you came home?

8 A When I come home, I had to park up in the church  
9 parking lot just to get down to my house. I mean there's  
10 just media and police cars and yellow tape and an ambulance.

11 Q Okay.

12 A And I think the K-9 unit might of been there too.

13 Q All right. And that morning, at 6:45, Chuck and Holly  
14 were in whose yard?

15 A They're actually like in the side yard between --  
16 there's not a house on the -- if you're facing the road,  
17 there's not a house right here on the left. Kind of maybe  
18 in that area. Still about the corner of the Emery's house,  
19 but not directly in front of it.

20 Q Mrs. MacKinnish, thank you so much for coming. Answer  
21 any questions that the State may have.

22 THE COURT: Mr. Gowdy.

23 SOLICITOR GOWDY: May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

Mandy MacKinnish - Cross-examination  
By Solicitor Gowdy

1 BY SOLICITOR GOWDY:

2 Q Good afternoon, ma'am.

3 A Good afternoon.

4 Q My name is Trey Gowdy.

5 You said 6:45 is when you saw Chuck Emery and Holly  
6 Melton?

7 A If I, if I, if I remember correctly, I saw them out  
8 there when I took my dog out because he barked at them and I  
9 kind of hushed him to go back in the house cause I just  
10 didn't want to be seen out there if anything was going on.

11 Q And the time would of been?

12 A Probably about 6:30. Right before I would of loaded  
13 the children up in the car and left.

14 Q Okay. And they're in the grass?

15 A Uh-huh. (Affirmative).

16 Q All right. And they're, they told you they were  
17 looking for car keys sounds like?

18 A No, that's how it appeared to me like if you would  
19 like -- if you drop something, you shuffle your foot with  
20 the grass.

21 Q Right.

22 A But they just said they were looking for something. I  
23 don't know what.

24 Q Did you notice one of the Emery's van missing?

25 A I didn't pay attention.

Mandy MacKinnish - Cross-examination  
By Solicitor Gowdy

1 Q You didn't pay attention to that?

2 A No.

3 Q You don't know, and it's, it's gonna sound like a  
4 stupid question, maybe it is, you don't know what time Ann  
5 and Ray Emery were killed?

6 A No, I have no idea.

7 Q You saw Chuck and Holly in the grass outside the house  
8 at 6:45?

9 A That would of been about the time I would of left for  
10 work.

11 Q Okay. Thank you.

12 THE COURT: Any further questions from the witness?

13 MR. RECKENBEIL: That would be all the questions. I  
14 understand that this witness---

15 THE COURT: Ma'am, you may step down. Thank you very  
16 much.

17 WITNESS: Thank you.

18 MR. RECKENBEIL: Your Honor, she remains under  
19 subpoena, and if I just, for the record, Mrs. MacKinnish, is  
20 that there's been an order by this Court that you---

21 THE COURT: I will explain it to her.

22 Ma'am, I have issued an order sequestering witnesses in  
23 the case. That means that you should not discuss your  
24 testimony, either current testimony or your future testimony  
25 with anyone from this point forward. You're not to be in

1 the courtroom accept when delivering your testimony in the  
2 case.

3 WITNESS: Yes, sir.

4 THE COURT: Do you understand that order?

5 WITNESS: I do.

6 THE COURT: And it is punishable by contempt of Court  
7 if you fail to abide by that.

8 WITNESS: Okay.

9 THE COURT: Thank you, ma'am.

10 Defense may call the, its next witness on this issue.

11 MR. RECKENBEIL: We are just waiting on the tread on  
12 the---

13 SOLICITOR GOWDY: I know that it is on its way, Your  
14 Honor, from the Sheriff's Department with Investigator  
15 Baird.

16 THE COURT: All right. If you want to check outside  
17 and see if he's here. Since he's sequestered, he could be  
18 out there.

19 (Pause.)

20 SOLICITOR GOWDY: Your Honor, given the, the  
21 investigator is coming from Greer and the Sheriff's  
22 Department is not as close as it once was, I do have two  
23 photographs, State's 383 and State's 397, that if Mr.  
24 Reckenbeil would agree to these, that's, that's what he  
25 wants to show the Court, I'm happy to move it in. I guess

1 it would be my portion to, to explain it, and Investigator  
2 Baird is on the way. It---

3 THE COURT: Is there any objection to that being made a  
4 part of this record?

5 MR. RECKENBEIL: State's Exhibit 383, Your Honor, is  
6 exactly I think the cut of wood that would demonstrate it.  
7 It's just a cut of wood. It shows it a lot better than this  
8 photo. But absolutely 383, we have no problem with that.

9 THE COURT: Okay. It will be made a part of this  
10 record.

11 (Whereupon, State's Exhibit Nos. 383 and 397 were  
12 received into evidence for purposes of this hearing only.)

13 SOLICITOR GOWDY: Your Honor, permission to pass 383 to  
14 the Court?

15 THE COURT: You may. Thank you.

16 (Pause.)

17 THE COURT: All right. Anything else, Mr. Reckenbeil?

18 MR. RECKENBEIL: Judge, I have passed a copy to the  
19 State. It's a complete copy of the probate record in the  
20 matter of Charles Ray Emery, Case Number 2008-42-0819 just  
21 like---

22 THE COURT: Any objection to the probate record coming  
23 in for purposes of this hearing?

24 SOLICITOR GOWDY: No. No, sir, Your Honor. No, sir.

25 THE COURT: All right. Be made a part of this record.

1 (whereupon, the probate records were marked as Court's  
2 Exhibit No. 5 and received into evidence for purposes of  
3 this hearing only.)

4 THE COURT: Yes, sir.

5 SOLICITOR GOWDY: I'm sorry. I thought the Court had  
6 asked me a question.

7 THE COURT: No, I said we'll make that a Court's  
8 Exhibit of this record for this particular hearing.

9 SOLICITOR GOWDY: Yes, sir.

10 THE COURT: The probate record.

11 All right. Anything else you wish to introduce on this  
12 matter, Mr. Reckenbeil?

13 MR. RECKENBEIL: Your Honor, that would be the evidence  
14 besides if the block, the block of wood is submitted in.

15 THE COURT: That's what is shown in State's 283, is  
16 that right?

17 MR. RECKENBEIL: 383.

18 THE COURT: I mean 383. I'm sorry.

19 MR. RECKENBEIL: Yes, sir, that would be the defense's  
20 showing.

21 THE COURT: All right. Does the State wish to make any  
22 showing at this time?

23 SOLICITOR GOWDY: Your Honor, may it please the Court.

24 I would, in the interest of time, the State is happy to  
25 go into the Denno hearing rather than the Court wait on

1 Investigator Baird to drive from Greer. We would also ask  
2 the Court to leave the record open so we can bring the SLED  
3 footprint expert up here if needed, the SLED DNA expert up  
4 here, if needed, to explain or to give, for want of a better  
5 explanation, an innocent explanation of the anomalies that  
6 Mr. Reckenbeil may have pointed out.

7 The other thing that, that we would, you know, do  
8 whenever the Court directs, as I understand third party  
9 guilt, it has to exonerate the defendant and tend to show  
10 that somebody else did it. I know we're getting ready to  
11 embark on the guilt phase trial. If the Court wants us to  
12 proffer the evidence we have that shows it doesn't exonerate  
13 him, we can do that. It would take a large period of time  
14 for me---

15 THE COURT: I don't, I don't know that that will be  
16 necessary at this time.

17 SOLICITOR GOWDY: Okay.

18 THE COURT: I will leave the record open for you to  
19 produce whatever evidence concerning these items that you  
20 wish to produce.

21 SOLICITOR GOWDY: Yes, sir.

22 THE COURT: I have reviewed the Court's Exhibit, what  
23 is Court's Exhibit No. 4 as -- and I think the portion that  
24 you were focusing on was the DNA testing or, or attempted  
25 testing on the handle of the hammer that was recovered?

1 MR. RECKENBEIL: Yes, sir, there was two portions that  
2 we looked at, the handle of the hammer and then in the, I  
3 think it's 41.1, it says that it was two unknowns found.

4 THE COURT: All right, sir.

5 MR. RECKENBEIL: Yes, sir.

6 THE COURT: All right. Let's go on -- we'll leave the  
7 record open till you're ready to proceed on that---

8 SOLICITOR GOWDY: Yes, sir, Your Honor.

9 THE COURT: ---run into this.

10 The Jackson v. Denno, I'll hear from the defense. I  
11 believe that's a defense motion.

12 Any other State's motions?

13 SOLICITOR GOWDY: No, sir, Your Honor.

14 THE COURT: Okay. We'll move on to defense motions. I  
15 believe there is a Jackson v. Denno issue.

16 MRS. HODGES: Thank you, Your Honor.

17 Yes, sir, there is a Jackson v. Denno issue. Your  
18 Honor, Mr. Torres was Mirandized I think by initially  
19 Investigator Jason Bryant, and then there was -- and that  
20 was done actually, my understanding was, in a patrol vehicle  
21 or an investigator's vehicle, wasn't a marked unit, but an  
22 unmarked unit, patrol car of the Sheriff's Office. And then  
23 he was questioned at the Spartanburg County Sheriff's Office  
24 on May the 11<sup>th</sup>, 2007, regarding this case.

25 Essentially, Your Honor, the, the, the statement was,

1 that was taken was not taken as a written statement. It  
2 would of been an oral statement only, at least that's my  
3 understanding of what's been presented to us in discovery.  
4 Our biggest concern is that, at the very end of the  
5 statement, there is a, what I mean is Investigator Lindsey's  
6 summary of the statement, there is a expression by  
7 Investigator Lindsey indicating that he met with Mr. Torres,  
8 that he had killed Ray and Ann Emery and that Mr. Torres did  
9 not deny that. His response was "prove it" and at that  
10 point he requested an attorney and the interview was  
11 stopped.

12 Our biggest concern, Your Honor, is the, is the, would  
13 be any proposed testimony regarding obviously the  
14 voluntariness of the statement. I think there would be some  
15 evidence regarding some drug and alcohol use that may of  
16 been involved that, that evening prior to the statement  
17 being taken as well as I think there's some, very serious  
18 concerns impinging on Mr. Torres' rights under the Fifth  
19 Amendment to the United States Constitution regarding his  
20 right not to receive, not to incriminate himself, and those  
21 would be incapsulated in the case of State versus Brown,  
22 which is a State of South Carolina case, as well as Doyle  
23 versus Ohio, which is a United States Supreme Court case,  
24 Your Honor.

25 THE COURT: Anything from the State before we go

1 forward?

2 SOLICITOR GOWDY: Your Honor, there are, there are  
3 pre-arrest, pre-Miranda comments that this defendant made.  
4 There are post-Miranda comments that this defendant made.  
5 And I'm -- is, is the defense -- does the defense object to  
6 the prove it comment?

7 In fact, I want to know how, how much to go into. I  
8 mean they're also, they're pre-arrest comments that, that  
9 this defendant made.

10 MRS. HODGES: For the purposes of the, of the record in  
11 this case, Your Honor, and given the, the nature of this  
12 case, and posture of this case, the State in this case, Your  
13 Honor, I think we actually would need the Court to go, in  
14 all fairness, go into all the, all of the statements that  
15 the State intends to introduce in evidence either---

16 THE COURT: Maybe you should put on the record the  
17 statements that you do intend to introduce.

18 SOLICITOR GOWDY: Certainly, Your Honor.

19 THE COURT: Yes, sir.

20 SOLICITOR GOWDY: There -- I'm -- I, I want to tell the  
21 Court verbatim what was said, and I, and the best evidence  
22 of, of the verbatimness is the officers themselves and their  
23 notes, who are outside, and their---

24 THE COURT: well, if you can indicate when and where  
25 the statements were taken. I, I would assume that there's

1 been some summary of those provided in discovery to the  
2 defense. So---

3 SOLICITOR GOWDY: Yes, sir.

4 THE COURT: ---I think we'd just like to identify them  
5 to begin with.

6 SOLICITOR GOWDY: There, there were comments made at  
7 Mr. Torres' grandmother's house where he was first located  
8 after these crimes had occurred. I think the Court's  
9 already heard some testimony about Union. There's a trip  
10 back to Spartanburg, and then he was located on Houston  
11 Street, which is where his grandmother lived. Law  
12 enforcement had interaction with him. It was noncustodial,  
13 but interaction with him. There were comments made at that  
14 point which are reflected in the investigative notes.

15 There were also comments made in the car after verbal  
16 Miranda. And when they got back to the Sheriff's  
17 Department, they Mirandized him in writing with a second  
18 waiver, but the first written waiver, and there was colloquy  
19 between the investigators and Mr. Torres at that point.

20 So, there are, near as I can tell, three issues and  
21 three categories of comments.

22 THE COURT: All right. And those are the ones the  
23 State intends to use?

24 SOLICITOR GOWDY: Yes, sir, Your Honor.

25 THE COURT: And you are objecting to or trying to

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 suppress all of those statements, is that correct?

2 MRS. HODGES: Yes, sir. Yes, sir.

3 THE COURT: All right. You ready to go forward with  
4 your proof?

5 SOLICITOR GOWDY: Yes, sir.

6 SOLICITOR BARNETTE: State's ready, Your Honor. I'd  
7 like to call Investigator Reid Lindsey.

8 THE COURT: All right.

9 SOLICITOR BARNETTE: I believe he's outside.

10 THE COURT: Thank you.

11 SOLICITOR BARNETTE: And, Your Honor, I plan just to go  
12 into the part about the statements. Obviously there's other  
13 things, testimony. But just the statements, just the  
14 statements themselves.

15 THE COURT: Sir, come forward to my right to be sworn.

16 REID LINDSEY, being first duly  
17 sworn, testified as follows:

18 THE COURT: Sir, have a seat in the witness stand.

19 (Witness complies.)

20 THE COURT: State your name for the record.

21 WITNESS: William Reid Lindsey.

22 THE COURT: Your witness.

23 SOLICITOR BARNETTE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY SOLICITOR BARNETTE:

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 Q Where do you work at, sir?

2 A Spartanburg County Sheriff's office.

3 Q And what is your position there, sir?

4 A Currently assigned to the white collar sexual assault  
5 division of the detective division.

6 Q And how long have you been at the Sheriff's Department,  
7 sir?

8 A Approximately -- a little over ten, about ten and a  
9 half years, ten and a half, eleven years.

10 Q Was you, was you involved in the case involving the  
11 death of the Emery's?

12 A Yes, I was.

13 Q And did you meet with Tony Torres on the day of May  
14 11<sup>th</sup>, 2007?

15 A Yes, I did.

16 Q And where did you first come in contact with him?

17 A I first came in contact with him at, I believe it's [REDACTED]  
18 Houston Street.

19 Q Okay. And who was with you, sir, when you went to the  
20 door?

21 A Detective Bryant specifically. There were a couple  
22 other deputies there. I believe Sergeant Jones, Glen Hayes,  
23 and Phillip Chapman.

24 Q And when you went up to the door, what, what happened?

25 A When we went to the door, I went up with Detective

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 Bryant. We went in my car. As we approached the door, it's  
2 a screen door. So, you could see in. I knocked on it.

3 Q Yeah, one thing. We're just talking about the  
4 statements that was made at that time---

5 A Okay.

6 Q ---is what we're talking about.

7 Go ahead, sir.

8 A Right. I went to the door, knocked on the door. We  
9 were let in by the grandmother. Her name was Ruth and I  
10 could see Mr. Torres sitting on the couch to my right.

11 Q Now, Ruth, Ruth was whose grandmother?

12 A That's Mr. Torres grandmother.

13 Q Okay. Do you see Mr. Torres in the courtroom here  
14 today?

15 A Yeah, he's sitting right there.

16 Q Okay. And that was the gentleman that you saw there at  
17 the house?

18 A That's correct.

19 Q And when y'all went in, did you, did you ask anything  
20 or what, did he say anything to you?

21 A Yeah. Let me look at my notes real quick.

22 (Pause.)

23 Q As -- after we walked in, I introduced myself, he -- I  
24 introduced myself and Detective Bryant and he asked me if we  
25 was there for him and I told him yes and I asked him if he

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 knew why.

2 Q Did he make any statements to you then?

3 A He told me we probably needed to question him.

4 Q And at that time did you place him under arrest?

5 A No, I did not.

6 Q Did you have him placed in custody or anything at that  
7 point?

8 A No, sir.

9 Q Later on, did you and Investigator Bryant talk to him?

10 A Yes, we did.

11 Q Okay. And did he agree to go with you to the Sheriff's  
12 Department?

13 A Yes, we did. We asked him if he would accompany us.

14 Q Okay. Was he in, under, under arrest at that point?

15 A No, he was not.

16 Q Was he in custody at that point?

17 A No, he was not.

18 Q Okay. Before y'all started talking to him, who advised  
19 him -- was he given his rights?

20 A He was read his rights by Detective Bryant in the car  
21 on the way to the Sheriff's Office.

22 Q And where did he read those rights from?

23 A He has a pocket card. We both have the same pocket  
24 card. It's a -- it has your -- I have it in my back pocket.  
25 Same thing he has. Just a little plastic card, laminated

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 card.

2 Q And do you have that card with you?

3 A Yeah. Yes, sir.

4 Q Okay. Are these the rights that were read to him?

5 MRS. HODGES: Your Honor, objection. That's not the  
6 testimony that Investigator Lindsey gave. The testimony  
7 that Investigator Lindsey gave is that Investigator Bryant  
8 read them from Detective Bryant's card.

9 SOLICITOR BARNETTE: Okay. We'll, we'll do that, Your  
10 Honor.

11 THE COURT: Okay.

12 Q But he read those rights to him.

13 Is that your testimony, sir?

14 A Yes, sir.

15 Q Did he seem to understand those rights?

16 A Yes, he did.

17 Q Was he threatened in any way?

18 A No, he was not.

19 Q Was he promised anything?

20 A No, he was not.

21 Q Was there any statements made in the car that you  
22 remember?

23 A I was driving. I don't remember too much about what  
24 they were talking about. I was listening, but I was more  
25 concentrating on driving.

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 Q And when y'all got to the Sheriff's Department, was he  
2 given his Miranda rights again?

3 A Yes, he was.

4 Q And do you have a copy of the waiver form that was  
5 done?

6 A Yes, I do.

7 SOLICITOR BARNETTE: Your Honor, I'd like to mark this  
8 as Court's Exhibit No. 5 at this time.

9 THE COURT: Any objection?

10 MRS. HODGES: No objection, Your Honor.

11 THE COURT: Without objection, it will be so marked.

12 (Whereupon, the pre-interrogative waiver form was  
13 marked as Court's Exhibit No. 6 and received into evidence  
14 for purposes of this hearing only.)

15 SOLICITOR BARNETTE: I apologize, Your Honor. That's  
16 Court Exhibit 6.

17 THE COURT: Thank you.

18 Q Okay. I show you what's been marked as Court Exhibit  
19 No. 6. I apologize. I said five. I meant to say six.

20 Is that the waiver form that you filled out with Mr.  
21 Torres?

22 A Yes, it is.

23 Q And was those the rights that you gave him?

24 A Yes, sir, I read this entire form to him.

25 Q Okay. And who was the witness on that?

Reid Lindsey - Direct examination  
By Solicitor Barnette

1           who witnessed this been given to him?

2   A       Jason Bryant.

3   Q       And was he present when this was given to him?

4   A       Yes, he was in the room with me.

5   Q       And also, did you notarize this form?

6   A       Yes, I did.

7   Q       At the time you was talking to him, was you talking to  
8   him about the stolen car?

9   A       Yes, sir.

10   Q       And what was that stolen car about?

11   A       That's how the investigation, the investigation  
12   started. There was a, the van, which was wrecked in Union  
13   County, started out. That's what caused us to send officers  
14   to the residence, and that's where I started with -- that's  
15   where I became involved in it because that stolen car was  
16   used, the Chevy van that belongs to the Emery's.

17   Q       That does belong to the Emery's?

18   A       It belongs to the Emery's, yes, sir.

19   Q       And later on, through your investigation, not too, go  
20   too much into detail, but later there was a, a, a check or  
21   the Union County Sheriff's Department called Spartanburg  
22   County Sheriff's Department?

23   A       Yeah, they had requested to have deputies sent out to  
24   the address on Montgomery Street, which I forget the numbers  
25   offhand. But that's where the deputies made entries and

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 found the victims.

2 Q And in talking to them, did he understand all these  
3 rights?

4 A Yes, he did.

5 Q Did y'all threaten him in any way?

6 A No, we did not.

7 Q Did y'all promise him anything?

8 A No, we did not.

9 Q Did he appear to be under the influence of anything at  
10 that time or not?

11 A No, he was not.

12 Q Did he talk to y'all after that?

13 A Yes, he did.

14 Q What statement or what statements did he make or stated  
15 to y'all afterwards?

16 A He told us he had been drinking that night. He had  
17 been in an argument with Jonathan Howard. He admitted to  
18 getting into an argument with Chuck that night. He said  
19 that after he left, Chuck, he walked around Spartanburg and  
20 went to the graveyard to his sister's grave, which he  
21 referred to as Lealu. He stated that he was called by  
22 someone and told that Chuck's mom and dad had been killed  
23 and they had been beaten.

24 He wouldn't give a name of who called. The person told  
25 him that Chuck was saying that Tony had did this. During

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 the time -- let's see. He was asked about -- well, I asked  
2 him about the witnesses to pick him out, confronted him with  
3 some of the evidence that we had at the time during the  
4 interview. The only other statement I noted was that he  
5 told me at the end to prove it.

6 Q And just for purposes of this hearing, why did the  
7 interview end?

8 A He requested an attorney.

9 SOLICITOR BARNETTE: Okay. Your Honor, I would hand,  
10 read this form, but I think that the Court can read it just  
11 as easy.

12 Approach the bench without objection from the defense?

13 MRS. HODGES: No objection, Your Honor.

14 THE COURT: All right. Thank you very much.

15 Q Now, that is all the statements he made to y'all?

16 A Yes, sir.

17 SOLICITOR BARNETTE: One moment, Your Honor, please.

18 THE COURT: Yes, sir.

19 (Pause.)

20 Q What specific questions -- he said prove it to you,  
21 what was the question you asked him?

22 What---

23 A I was asking him about committing the murders. He said  
24 prove it.

25 Q Okay. That was to the murders of the Emery's?

Reid Lindsey - Direct examination  
By Solicitor Barnette

1 A I accused him of committing the murder.

2 Q And then he said for you to prove it?

3 A Prove it.

4 Q Okay. If you would, please answer any questions Mrs.  
5 Hodges may have for you.

6 THE COURT: That was, that statement, last statement  
7 was made at the police station?

8 WITNESS: Yes, sir, that was made in the interview  
9 room, yes, sir.

10 THE COURT: At the, after the signing of the written  
11 waiver?

12 WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 You may proceed.

15 MRS. HODGES: Thank you, Your Honor.

16 May it please the Court?

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MRS. HODGES:

20 Q Investigator Lindsey, my understanding of the  
21 statements that you're saying that Mr. Torres gave to you  
22 were, number one, first time you had any contact with him  
23 was at the great grandmother's house, ■ Houston Street, is  
24 that correct?

25 A I think it's his grandmother. It could be his great

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 grandmother. But it was [REDACTED] Houston Street.

2 Q Ruth Roger's house?

3 A That's correct.

4 Q Okay. And what time did you get to Mrs. Rogers  
5 approximately?

6 A I don't remember. I -- if I could see that Miranda  
7 form and see what time I read his rights I would probably  
8 have a better idea.

9 Q I'm handing you Court's Exhibit 6.

10 A Well, I read him his rights at 2:38. So, if you take a  
11 guess, I'd give you a guess, fifteen, twenty minutes before  
12 that. I don't, I don't know.

13 Q Okay. How far is it from Montgomery Street to the  
14 Sheriff's Office approximately?

15 A Montgomery Street?

16 Q I mean, excuse me, Houston Street.

17 A It's not far. It's -- depends on if you got caught by  
18 the red lights and stuff. Maybe five, maybe a little over  
19 five minutes, something like that, maybe.

20 Q Okay. And approximately how much time would you have  
21 spent at Mrs. Rogers house prior to leaving to come to, with  
22 Mr. Torres to go to the Sheriff's Office?

23 A We weren't there long. It wasn't an extended time. I,  
24 I can't give you an exact time of how long we were there.

25 Q Okay. Five, ten minutes, longer than that?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A It, it could be longer than that. It's not -- you  
2 know, it wasn't, it wasn't an hour.

3 Q Okay.

4 A I don't, I don't---

5 Q So, less than an hour?

6 A Yes.

7 Q Probably longer than ten minutes or so?

8 A It could be, yes.

9 Q Okay. And when you, you come in, you come up to the  
10 door at -- what was your purpose for going to Mr. Rogers  
11 house?

12 A Find Tony Torres.

13 Q Okay. So, at that point Mr. Torres was already a  
14 suspect that you-all were looking for?

15 A That's correct.

16 Q Okay. And he was a suspect from the stolen car  
17 incident in Union that, that had been wrecked from early  
18 that morning?

19 A Several factors from that. But yes.

20 Q Okay. But he, but the -- I mean he was at least a  
21 suspect in the, in the dealing with that stolen vehicle?

22 A Yep. Yes, ma'am.

23 Q Okay. And he was also a suspect in the murders of the  
24 Emery's at that point when you were going to Mr. Rogers  
25 house, right?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A Absolutely, yes, ma'am.

2 Q Okay. So, he's already a suspect in your mind of, of  
3 somebody that you're coming to talk to about the stolen car  
4 and a double homicide, a burglary, and potential sexual  
5 assault?

6 A That's correct.

7 Q Okay. And when you get to the house, tell me  
8 exactly -- do you talk to Mr. Rogers first?

9 A Yeah, she, she came to the door and let us in.

10 Q Okay. And when she let you in, did you approach Mr.  
11 Torres or, or tell me exactly what happened?

12 A Okay. Knocked on the door. She came and opened the  
13 door. The couch is probably relative to where you and I are  
14 right now.

15 Q Okay.

16 A That's where he was sitting.

17 Q Okay. So, he was sitting on the couch?

18 A But the door's here. He's off to the right and that's  
19 the entrance into the living room.

20 Q So, to the door, he's sitting like this?

21 A He's sitting perpendicular this way.

22 Q Okay.

23 A The couch, the couch is this -- say the couch is that  
24 rail.

25 Q Okay.

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A When we come to this door, he'll be sitting right here.

2 Q Sitting on the couch?

3 A Uh-huh. (Affirmative).

4 Q Okay.

5 A And you could see him right there.

6 Q Okay. You talked to him first or he talks to you  
7 first?

8 A No, I introduced myself and I said I'm Detective  
9 Lindsey, this is Detective Bryant, and he asked if we were  
10 there for him.

11 Q Okay.

12 A I said yes.

13 Q All right. And then what else did he say specifically?

14 A I asked him if he knew why.

15 Q Okay.

16 A And he said---

17 Q You here for me, yes we are, and you asked do you know  
18 why?

19 A Uh-huh. (Affirmative).

20 Q Okay. And what does he say?

21 A Yeah, we probably needed to question him.

22 Q Okay. Did he say anything to you about why you needed  
23 to question him?

24 He didn't say you need to question me about and ask  
25 why?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A I don't remember him saying, asking why, no.

2 Q Okay.

3 A I asked him---

4 Q All right. And so, you need to question me.

5 And then what do you do?

6 A Well, I asked him where his clothes he was wearing---

7 Q Okay.

8 A ---the night before was at.

9 Q Okay. And then, at, at that point, the clothes that,  
10 that was -- what does he tell you about the clothes?

11 A He said they're in the washing machine.

12 Q Okay. They are at Mrs. Rogers house?

13 A Correct.

14 Q Okay. And when he tells you the clothes are there at  
15 Mrs. Rogers house, what happens?

16 A I walked with -- she started walking towards the  
17 washing machine, which is -- the living room's here.  
18 There's a hallway that runs to your left.

19 Q Uh-huh. (Affirmative).

20 A It's just like right around the corner. You have like  
21 some double doors or -- and the washing machine -- there's  
22 like a little laundry area. I walked with her. She opened  
23 up the washing machine.

24 Q Uh-huh. (Affirmative).

25 A The top -- I looked in and I could see in the -- the

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 clothes I'm referring to is we knew he was wearing a yellow  
2 shirt and khaki pants.

3 Q Okay.

4 A And I saw those in the washing machine.

5 Q Okay. But she gave you the clothes, right?

6 A She asked me if I wanted them. I said yes. At that  
7 time he had walked by to get his shoes. Jason Bryant was  
8 over there, in the room.

9 Q Okay.

10 A I wasn't far from him. But he was -- it was actually  
11 in another room---

12 Q Okay.

13 A ---off the hall.

14 Q Okay.

15 A He came by. I went back and then when he came back he  
16 was putting on his shoes and I came back in the room with  
17 him.

18 Q Okay.

19 A As he was walking out, I turned. I was -- Jason was  
20 walking out with him.

21 Q Uh-huh. (Affirmative).

22 A When I turned around, she had the clothes in a bag---

23 Q Okay.

24 A ---a plastic bag and was trying to hand them to me.

25 Q All right. At any point did you ask Mr. Torres if you

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 could take his clothes?

2 A No.

3 Q Okay. Did you ever get a search warrant for Mr. Torres  
4 clothes?

5 A No, that was my intention.

6 Q It was your intention to get a search warrant, but you  
7 never got a search warrant?

8 A I did not.

9 Q Okay. So, at this point you, and Tony, and Mr. Torres,  
10 and Jason Bryant are walking out of the house?

11 A I never -- at that point, I never -- when, when the  
12 clothes, when she -- that occurred right there at the porch  
13 door area.

14 Q Okay.

15 A Jason and, and Mr. Torres are actually down a little  
16 bit. My car's in the driveway there and they're more in  
17 front of me.

18 Q Okay.

19 A And I'm actually -- Mr. Chappel and the -- it would be  
20 me, Mr. Chappel, and Mrs. Rogers still kind of in and out of  
21 the house.

22 You understand what I'm saying?

23 Q Uh-huh. (Affirmative).

24 A At the door area.

25 Q Uh-huh. (Affirmative).

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A Door portion area.

2 Q All right. But are any statements made by Mr. Torres  
3 from the time that you asked him where are your clothes,  
4 Mrs. Rogers, he tells you they're in the washing machine,  
5 Mrs. Rogers says, gives them to you, and say -- you know,  
6 obviously gives them to you and you-all are walking.

7 Are there any other statements in the house?

8 A Not that I remember. But I was there with Mrs. Rogers.  
9 I wasn't really---

10 Q Okay.

11 A ---paying attention to them.

12 Q So, you didn't hear anything else in the house?

13 A Not that I remember, no.

14 Q Okay. Okay. Do you remember anything from the  
15 conversation in the car between him and, and Detective  
16 Bryant?

17 A Not really, no.

18 Q Okay. But the first time that he's actually read his  
19 rights is by Detective Bryant in the, in your patrol car?

20 A Yes, ma'am.

21 Q Okay. And you take him to the Sheriff's Office  
22 directly from Mrs. Rogers house?

23 A Yes, ma'am.

24 Q When you go upstairs, you actually go upstairs to the  
25 investigations office, portion of the Sheriff's Office?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A Yes, ma'am.

2 Q Okay. And there's several small kind of cubical rooms  
3 that have doors and stuff and, and, at, at the Sheriff's  
4 Office interview rooms, right?

5 A Yes, ma'am, but I don't think we had those built at  
6 that time. I remember interviewing him in the big office,  
7 which is now the unsolved office.

8 Q Is now what?

9 A The unsolved homicide office.

10 Q Okay. All right. So, there's a larger office is an  
11 office that has actually a door that shuts?

12 A Yes. Yes, ma'am.

13 Q Okay. And who all is in the room, you---

14 A Myself, and Detective Bryant, and Mr. Torres.

15 Q Just the three of you?

16 A Yes, ma'am.

17 Q Okay. And you read him his rights from the, the  
18 Miranda sheets?

19 A Yes, ma'am.

20 Q Okay. And you told him you wanted to talk about a  
21 stolen car?

22 A Yes, ma'am.

23 Q All right. At that point had you mentioned anything to  
24 him about the Emery's deaths and that, that he was a suspect  
25 at that point?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A Not when we first walked in, no.

2 Q Okay. Did he say anything to you about the stolen car?

3 A No.

4 Q Okay. He told you that, that he had been drinking that  
5 night and that he had been in a argument with Jonathan  
6 Howard, is that correct?

7 A Yes, ma'am.

8 Q Did he tell you -- did you ask him how much he had to  
9 drink?

10 A I may have. I don't remember.

11 Q Okay.

12 A I don't remember hearing a number or anything like  
13 that.

14 Q All right. Do you remember asking him, prior to  
15 reading the Miranda waiver to him, if he'd been drinking or  
16 taking any sort of drugs or anything that night?

17 A No.

18 Q Okay. So, once he tells you that he's been drinking  
19 with Jonathan Howard, you don't ask him how much he had to  
20 drink?

21 A Do I -- I'm sorry?

22 Q Once he tells you that he had been drinking with  
23 Jonathan Howard the night prior to you taking his statement,  
24 he doesn't tell you how, you don't ask him how much he had  
25 to drink, do you?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A That's correct.

2 Q Okay. Didn't ask him if he'd used any drugs at that  
3 point?

4 A That's correct.

5 Q All right. They -- then the next statement he says is  
6 that he got into an argument with Chuck?

7 A That's correct.

8 Q All right. Did he tell you anything other than he got  
9 into an argument with Chuck, about, about the argument with  
10 Chuck?

11 A About -- specifically about the argument with Chuck?

12 Q Right.

13 A I think he mentioned something like it was over a cell  
14 phone.

15 Q Okay.

16 A That it's something, a bag, or a cell phone, I think it  
17 was something like that. I can't remember.

18 Q All right. But you didn't write down specifically what  
19 he said?

20 A No.

21 Q All right. You didn't videotape this, this statement?

22 A That's correct.

23 Q You didn't audiotape this statement?

24 A That's correct.

25 Q So, we -- all we know is that there was -- he has an

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 argument with Jonathan Howard?

2 He has an argument with Chuck?

3 A That's correct.

4 Q We don't have any specifics, right?

5 A That's correct.

6 Q All right. That he states after he, after he, being  
7 Mr. Torres, left Chuck, he walked around Spartanburg and  
8 went to his sister's grave, right?

9 A That's correct.

10 Q Okay. Sister's grave doesn't have anything to do with  
11 either the stolen car or the Emery's murders, right?

12 A That's correct.

13 Q Okay. He states he's called by someone.

14 He doesn't -- does, does he ever tell you who he's  
15 called by?

16 A He wouldn't give me the name.

17 Q Okay. And states Chuck's mom, that person states  
18 Chuck's mom and dad had been killed and that they had been  
19 beaten?

20 A That's correct.

21 Q All right. Does he tell you when this phone call  
22 happened?

23 A No.

24 Q All right. Did you ask?

25 A I don't remember. I don't remember specifically asking

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 what time.

2 Q Okay.

3 A I probably would have.

4 Q But you don't have any notes as to what, what time you  
5 asked him or whether you asked him?

6 A That's correct.

7 Q So, we can only guess as to whether you asked him and,  
8 and, if you did, what, you know, what time he said?

9 A That's correct.

10 Q Okay. Is it possible, is it not, since you talked to  
11 Mr. Torres at 2:38 in the afternoon, is it possible that he  
12 received that phone call some time after the Emery's body  
13 had been discovered, is it not?

14 A Is it possible he received the phone call---

15 Q After the Emery's bodies had been discovered?

16 A ---according to him?

17 According to what he told me, yes.

18 Q Okay. All right. So, you don't have any idea as to  
19 when this time, timing of this phone call is, do you?

20 A - No, ma'am.

21 Q Okay. And Tony would not give a name.

22 I assume that that means he would not give a name as to  
23 the person that's calling him.

24 Is that what that refers to?

25 A That's correct.

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 Q But that this person told him that Chuck was saying he  
2 did this?

3 A That Tony had did this, correct.

4 Q Right.

5 Okay. Did he give you any response, when you asked him  
6 about being picked out of line-ups by witnesses in Union  
7 County, about the van that had been wrecked in Union County?

8 A That was all, that was all part of the same series of  
9 things that I confronted with him as far as the, being  
10 picked out, the accelerants, and basically accusing him of  
11 the murder, and that would be---

12 Q And so, at that point---

13 A His statement was proven.

14 Q Okay. So, at that point, before we get to, to, to the  
15 statements to prove it, at that point he's told you he got  
16 in an argument with Jonathan Howard, got in an argument with  
17 Chuck, he got a phone call from somebody, and then, at that  
18 point, you start telling him look, we've got the evidence on  
19 you, you've been picked out of line-ups, you know, there's  
20 accelerant found, I smell accelerant or whatever on your  
21 shoes or about your clothes or whatever, and you basically  
22 start telling him what you think the evidence is against  
23 him?

24 A Correct.

25 Q All right. And at that point, does he make any

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 statement to you at all?

2 A Prove it.

3 Q He just says prove it?

4 A (Witness nods affirmatively.)

5 Q Okay. And then he asked for an attorney immediately  
6 after that?

7 A That's correct. I know the time on the form. I think  
8 it was---

9 Q And the form says 2:58.

10 A ---2:58 p.m.

11 Q Okay. All right. Any other statement that you, you  
12 have any knowledge of made by Mr. Torres in relationship to  
13 this case.

14 A I'm sorry?

15 Q Any other statement that you have knowledge of that was  
16 made by Mr. Torres in this case that we haven't talked about  
17 already this afternoon?

18 A No.

19 Q All right. Thank you, sir.

20 Oh, actually, if I could have just a moment?

21 THE COURT: Okay.

22 (Pause.)

23 Q When you went to Mrs. Rogers house, was it your  
24 intention that, if Mr. Torres was there, to have him in your  
25 custody or, or with you?

Reid Lindsey - Cross-examination  
By Mrs. Hodges

1 A My intention was to get him to come with us  
2 voluntarily.

3 Q Okay. But if he had refused to go with you  
4 voluntarily, would you have left him there at the, at the  
5 grandmother's house?

6 A Absolutely not.

7 Q Absolutely not.

8 You would of arrested him?

9 A That's correct.

10 Q All right. So, your intention, from the time that,  
11 that you went to Mrs. Rogers house, if Tony Torres was  
12 there, number one, you'd try to get him to come with you  
13 voluntarily, but if you didn't do that, then you would have,  
14 put him under arrest and take him to the Sheriff's office?

15 A That's correct. We didn't have to do that because he  
16 agreed to come with us.

17 Q Okay. But it was your intention that, that if he  
18 didn't do that -- I mean he was a suspect and you were gonna  
19 talk, try and talk to him one way or the other?

20 A That's correct.

21 Q Okay. Thank you.

22 SOLICITOR BARNETTE: Have no further questions of this  
23 witness, Your Honor. We call Investigator Bryant to the  
24 stand.

25 THE COURT: Sir, you may step down. I call -- you, you

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 are still under the sequestration order. You should not  
2 discuss your testimony now or in the future with anyone.

3 Thank you, sir.

4 Come forward to be sworn.

5 JASON BRYANT, being first duly  
6 sworn, testified as follows:

7 THE COURT: Have a seat in the witness stand, sir. And  
8 once you're seated, I'd ask that you state your name for the  
9 record please.

10 WITNESS: Yes, sir, Your Honor.

11 My name is Jason Bryant.

12 THE COURT: Your witness, Mr. Gowdy.

13 SOLICITOR GOWDY: May it please the Court, Your Honor?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY SOLICITOR GOWDY:

17 Q Investigator Bryant, I want to go back to May of 2007.

18 Were you part of the investigation into a double  
19 homicide on Montgomery Street?

20 A Yes, sir, I was.

21 Q Were you aware, through either other police information  
22 or your own observance of surveillance tapes, of the  
23 clothing that the person that you believed, the assailant,  
24 to have on?

25 A I was, yes, sir.

Jason Bryant - Direct examination  
By Solicitor Gowdy

- 1 Q All right. Were you directed to go to Houston Street?
- 2 A I was, yes, sir.
- 3 Q All right. And who were you with?
- 4 A Investigator Lindsey.
- 5 Q Okay. Were you dressed in a police uniform?
- 6 A No, sir, I was not.
- 7 Q Were you a part of a SWAT unit?
- 8 A No, sir.
- 9 Q Did you have your weapon drawn?
- 10 A No, sir.
- 11 Q Did you approach the house in a tactical SWAT like
- 12 manner?
- 13 A No, sir.
- 14 Q All right. Once you got to the front porch on Houston
- 15 Street, what did you do?
- 16 A We knocked on the door, sir.
- 17 Q And who answered it?
- 18 A It was a, I believe Mr. Torres' grandmother, Mrs. Ruth.
- 19 Q All right. And were you hostile with her?
- 20 A Not at all.
- 21 Q Did you use any menacing words?
- 22 A No, sir.
- 23 Q Did you draw your weapon?
- 24 A No, sir.
- 25 Q what did you ask her?

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 A If Mr. Torres was there. She invited us in.

2 Q Okay. And did you find Mr. Torres?

3 A We did, yes, sir.

4 Q Where was he?

5 A He was sitting to a couch to the right of the door if  
6 you go in.

7 Q And upon seeing Mr. Torres for the first time, did you  
8 draw your weapon?

9 A No, sir.

10 Q Did you place him under arrest?

11 A No, sir.

12 Q In fairness and full candor with the Court, he was a  
13 suspect, correct?

14 A Absolutely.

15 Q He was the focus of your investigation?

16 A Yes, sir.

17 Q All right. What did you say to Mr. Torres?

18 A He had advised us, when we had come in, that he had, he  
19 had known why we were there, and I think Investigator  
20 Lindsey had asked where were the clothes you had on last  
21 night or something to that effect, and---

22 Q Was he -- and, and the reason -- again, I don't want to  
23 put words in your mouth.

24 The reason that question was asked -- well, let me just  
25 ask you directly.

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 Had you received information which specific regard to  
2 what kind of clothes he had on earlier in the day?

3 A Absolutely, yes, sir.

4 Q Were those the same clothes he had on when you walked  
5 into his grandmother's house?

6 A No, sir.

7 Q All right. Which prompted you and Investigator Lindsey  
8 to ask what?

9 A Where were the clothes he had had on earlier.

10 Q Okay. And who answered that, to the best of your  
11 recollection?

12 A Mrs. Ruth.

13 Q Mrs. Ruth answered and what did she say?

14 A She had said that they were in the washing machine.  
15 She'd go get them for us.

16 Q Okay. Did she appear to be the owner of the home?

17 A I'm sorry, sir. I didn't understand you.

18 Q Did you appear to be the owner of the home?

19 A Yes, sir, she was.

20 Q Did she appear to be in possession of the home?

21 A Yes, sir, she was.

22 Q Did she appear to you to have authority to walk about  
23 the home?

24 A Absolutely.

25 Q Did she appear to you to have authority to go retrieve

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 the clothes?

2 A Yes, sir.

3 Q All right. And did she go do so?

4 A Yes, sir.

5 Q Who went with her?

6 A Investigator Lindsey had walked back there to the back  
7 with her.

8 Q Okay. And you stayed where?

9 A I stayed in the living room area speaking with Mr.  
10 Torres.

11 Q All right. And what was the general nature of your  
12 conversation with Mr. Torres inside the house?

13 A We were just exchanging, trying to build a rapport with  
14 him, as a matter of fact, for the interview, which was to  
15 come later.

16 Q How was he dressed?

17 A To my recollection, he was wearing a, a pair of shorts  
18 and was, was sitting on the couch. He may of had like an  
19 undershirt, a ribbed undershirt. I, I can't recall the  
20 shirt part. But I do recall just wearing some shorts.

21 Q Did you ask him to come to the Sheriff's Department  
22 with you?

23 A I did, yes, sir, we did.

24 Q Did he request to put on some shoes?

25 A He did.

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 Q Did you allow him to go put on those shoes?

2 A Absolutely. He had, he had asked also about getting a  
3 shirt and Mrs. Ruth had brought him a shirt, and then he  
4 wanted to go get some shoes, which he walked into another  
5 room in the house and got the shoes.

6 Q Did you even accompany him into the other room?

7 A No, sir.

8 Q So, he was free to walk about that private residence  
9 and go get shoes?

10 A Yes, sir.

11 Q All right. Once he got the shoes, what happened next?

12 A I asked him to step outside.

13 Q And did he do so?

14 A He did.

15 Q And y'all stepped where, to the yard or to the porch?

16 A We stepped to the yard area, which would be to the  
17 right, if you're facing the residence, to the right of the  
18 porch area.

19 Q Let me ask you this. Let me back up cause I forgot to  
20 ask you.

21 When Investigator Lindsey asked about the clothes, was  
22 Mr. Torres in the room?

23 A He was.

24 Q Was he within listening distance?

25 A Yes, sir, he was.

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 Q Did he lodge any objection whatsoever to the retrieval  
2 of those clothes by his grandmother?

3 A Not at all.

4 Q All right. Now, you moved outside.

5 Investigator Lindsey's still inside?

6 A Yes, sir, he's still inside with Mrs. Ruth.

7 Q And Mr. Torres is outside?

8 A That's correct.

9 Q Did you handcuff him?

10 A No, sir.

11 Q Did you draw your weapon?

12 A No, sir.

13 Q Was there a show of force?

14 A No, sir.

15 Q Was there a tactical move?

16 A No, sir.

17 Q All right. What happened after that?

18 A Then, Investigator Lindsey and Mrs. Ruth had come out  
19 and Mrs. Ruth had packaged the clothing in a, a, a plastic  
20 grocery sac as a matter of fact. And she, she had tried to  
21 give them to Investigator Lindsey, and he told her to hold  
22 on, just wait one second. And he had went and I think he  
23 had obtained a consent to search form and filled it out, and  
24 Mr. Chappel or Deputy Chappel had recovered the clothing---

25 Q Did you watch---

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 A ---due to the fact that we were -- I'm sorry. Go  
2 ahead.

3 Q No, you go ahead.

4 A Due to the -- we were, we were gonna go to the  
5 Sheriff's Office and interview Mr. Torres.

6 Q Did you watch the transfer of clothes from the  
7 defendant's grandmother to Deputy Chappel?

8 A I was talking to Mr. Torres. I was in the area, but I,  
9 I did not see the exchange of the bag, no, sir.

10 Q Okay. All right.

11 A But that was, that was what happened.

12 Q How far away were you and Mr. Torres from where this  
13 exchange would of taken place?

14 A Me and Mr. Torres, I would state, were, were less than  
15 15, 20-foot maybe.

16 Q Okay.

17 A At the most. We were at the top of the driveway to the  
18 front porch, stairs area.

19 Q Okay. You asked Mr. Torres to come down to the  
20 Sheriff's Department to talk to you?

21 A Yes, sir.

22 Q Did you tell him the nature of what you wanted to talk  
23 to him about?

24 A He had actually told us he knew why we were there, and  
25 it was in regards to the Emery's, and we, and we did affirm

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 that, yes, sir.

2 Q All right. Did you place him in a patrol car?

3 A He, he got in the back seat.

4 Q Okay. Was he handcuffed?

5 A No, sir.

6 Q Did you sit in the back seat with him?

7 A No, sir.

8 Q All right. So, he's in the back seat by himself?

9 A Yes, sir.

10 Q He's not handcuffed?

11 A Correct.

12 Q Do you read him his Miranda warnings?

13 A I did read him his Miranda rights from a pocket card.

14 Q Do you have that pocket card with you?

15 A I do.

16 Q Would you read those Miranda warnings into the record  
17 please?

18 A Yes, sir, and I, I read it to him from the pocket card,  
19 and it says, states that you have a right to remain silent.  
20 Anything you say can and will be used against you in a court  
21 of law. You have the right to talk to an attorney and have  
22 him or her present while you're being questioned. If you  
23 can not afford to hire an attorney, one will be appointed to  
24 represent you before any questioning if you wished. You can  
25 decide, at any time, to exercise these rights and not answer

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 any questions or make any statements.

2 Do you understand each of these rights as I've  
3 explained to you and he did affirm that he did. And having  
4 these, and having these rights in mind, do you wish to talk  
5 to us now, and we began to speak.

6 Q Did he appear to have any difficulty understanding you?

7 A No, sir, not at all.

8 Q Did there appear to be a language barrier?

9 A No, sir, not at all.

10 Q Did he appear to you to be under the influence of drugs  
11 or alcohol?

12 A No, sir.

13 Q Have you talked to people under the influence of drugs  
14 or alcohol?

15 A Absolutely.

16 Q Did he appear to understand your words and phraseology?

17 A He did.

18 Q Did you understand his?

19 A Yes, sir.

20 Q what, relevant to this case, did he tell you in the  
21 patrol car---

22 A well---

23 Q ---if anything?

24 A while we were -- if I can refer to my notes. I just  
25 want to make sure I get the wording right.

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 (Pause.)

2 A while we were traveling to the Sheriff's Office, he, he  
3 did state that he did understand why we were there again,  
4 and we had had a conversation in regards to some telephone  
5 calls that he had received. And he stated that they did  
6 state that he was responsible for the death of the Emery's.  
7 And that he wouldn't tell me who those phone calls came  
8 from.

9 Q And the, he, the article he, that's used, goes with  
10 Torres, doesn't it?

11 A That's correct. That's Mr. Torres. That's correct.

12 Q That -- and you asked him who called him?

13 A I did.

14 Q And he would not tell you?

15 A That's correct.

16 Q Okay. And once you got to the Sheriff's Department,  
17 was he Mirandized again?

18 A He was Mirandized from a pre-interrogation waiver form.

19 Q Were you present when that was done or was it done by  
20 Detective Lindsey?

21 A It was done by Detective Lindsey, but I was present and  
22 witnessed it.

23 Q Okay. Were there any other questions asked of him  
24 subsequent to the written Miranda waiver?

25 A There was.

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 Q Relevant to this investigation or this case, what was  
2 asked and what was said?

3 A He was asked -- if I can refer to my notes one more  
4 time.

5 (Pause.)

6 A He stated that he and, he and the Emery's were like  
7 family, and that -- he stated that he and Chuck had got into  
8 a disagreement and he also stated that he and Jonathan  
9 Howard had gotten into a disagreement. Stated that was  
10 after they had had a few drinks, and he had went walking  
11 around Spartanburg, and he went to a graveyard at the  
12 Hillcrest area, and he had went to the grave of an  
13 individual he had called his sister, but he stated that it,  
14 they were not related.

15 And he did -- we then talked to him in regards to some  
16 of the physical evidence at the scene, and the evidence at  
17 the scene, and he stated that he was not responsible for the  
18 beating death of the Emery's, and---

19 Q Did he specifically use the word beating?

20 A That's correct. He did.

21 Q Why did that strike you as interesting?

22 A We had not released that information to anyone.

23 Q You had not released the, the manner of death to  
24 anyone?

25 A That's correct.

Jason Bryant - Direct examination  
By Solicitor Gowdy

1 Q Are you absolutely sure he used the word beating?

2 A Beating, yes, sir.

3 Q All right. Detective Bryant, please answer any  
4 questions that the defense attorney may have for you.

5 THE COURT: Mr. Allen.

6 MR. ALLEN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ALLEN:

9 A Hey.

10 Q Good afternoon.

11 A How you doing, sir?

12 Q I'm doing well.

13 You went to the home at, on Houston Street, Mrs. Rogers  
14 home?

15 A That's correct. Mrs. Ruth.

16 Q And you went to that home at what time?

17 A I would say we, and it's an approximate time, I would  
18 say we, we got there around two o'clock in the afternoon.

19 Q Two o'clock in the afternoon.

20 You had first been called out and notified about this  
21 case at what time?

22 A That would of been earlier that morning. Shortly after  
23 we'd arrived at work, around 8:30, nine o'clock probably.

24 Q 8:30, nine o'clock in the morning?

25 A In the morning, that's correct.

Jason Bryant - Cross-examination  
By Mr. Allen

1 Q And from the point that you were notified of this, I'm  
2 gonna, of this homicide and this murder of the, on  
3 Montgomery, ██████ Montgomery Street, is that right?

4 A That's correct, yes, sir.

5 Q From the moment that you were notified of that, you  
6 began working on this case?

7 A Yes, sir.

8 Q And this case only?

9 A Yes, sir.

10 Q Developing whatever leads you could find about this  
11 matter, right?

12 A I'm sorry. I didn't understand.

13 Q Developing whatever leads you could---

14 A Oh, yes, sir.

15 Q ---to find out about this?

16 A That's correct.

17 Q Is that correct?

18 You're not the only one who was working on this case?

19 A No, sir, not at all.

20 Q There were other officers working on this case?

21 A Absolutely.

22 Q Mr. Lindsey?

23 A Yes, sir.

24 Q And other officers who went to Union?

25 A That's correct.

Jason Bryant - Cross-examination  
By Mr. Allen

1 Q Okay. And so, from 8:30 or nine o'clock in the morning  
2 until you arrived at Mrs. Rogers house at around two  
3 o'clock---

4 A Yes, sir.

5 Q ---you had done nothing but work on this case?

6 A That's correct.

7 Q And you developed a lead that led you to believe that  
8 Mr. Torres was involved, is that correct?

9 A That's correct.

10 Q And that -- can you tell me at what time you or other  
11 officers began to suspect Mr. Torres was involved in this  
12 homicide?

13 A It was very early during the course of the  
14 investigation, information had come from Union County that,  
15 that the victim's minivan was involved in an auto accident  
16 in Union, and that an individual was seen fleeing the scene  
17 and such as that.

18 Q And, and just jumping ahead a little bit, at some  
19 point, was it early that morning, that you were led to  
20 believe that it was Mr. Torres that was in that van?

21 A That's correct.

22 Q Okay. Can you give me an approximation about what time  
23 it was that his name first came up in your investigation?

24 A I can tell you that it was early enough in the  
25 investigation that I, that at, upon my arrival at ■

Jason Bryant - Cross-examination  
By Mr. Allen

1 Montgomery Street, I didn't even go inside the scene or the  
2 residence at the time. I was sent directly to Spartanburg  
3 Regional Medical Center to, in an attempt to try to locate  
4 Mr. Torres at that location.

5 Q Okay. So, you were looking for Mr. Torres early on in  
6 the morning, is that correct?

7 A That's correct.

8 Q Soon after your notification of being, to get, to get  
9 you involved in the case?

10 A Yes, sir.

11 Q Soon after your notification at around 8:30 or nine  
12 o'clock or so in the morning?

13 A Yes, sir.

14 Q And you were looking for Mr. Torres so that you could  
15 question him about this case?

16 A Yes, sir.

17 Q You were looking for Mr. Torres so that you could  
18 apprehend him about this case, is that correct?

19 A Could speak with him, that's correct, yes, sir.

20 Q Speak to him.

21 You've already -- he was developed as a suspect in the  
22 theft of the, of the van, is that right?

23 A He, he was a suspect absolutely.

24 Q Okay. So, you wanted to find him, is that correct?

25 A That's correct.

Jason Bryant - Cross-examination  
By Mr. Allen

- 1 Q And arrest him for the theft of the van?
- 2 A And speak with him, yes, sir.
- 3 Q And to speak with him?
- 4 A To speak with him, that's correct.
- 5 Q Just to speak to him.
- 6 A Yes, sir.
- 7 Q Just because he was a suspect?
- 8 A Absolutely.
- 9 Q Because he was suspected that he has stolen the van?
- 10 A He was responsible for the crime, that's correct.
- 11 Q And for, responsible for -- and you wanted to talk to
- 12 him because you believed, at that point, that he was
- 13 responsible for the murders of---
- 14 A He, he was a suspect in the murder, absolutely.
- 15 Q He was a suspect in the murders?
- 16 A Yes, sir.
- 17 Q Okay.
- 18 A Yes, sir.
- 19 Q Now -- and when you found him, you were gonna stay with
- 20 him, right?
- 21 A I'm sorry?
- 22 Q When you found him, you were gonna stay with him,
- 23 right?
- 24 A Yes, sir. Yes, sir.
- 25 Q You weren't gonna let him go?

Jason Bryant - Cross-examination  
By Mr. Allen

- 1 A Oh, yes, sir, that's correct.
- 2 Q I mean he was gonna be in your custody, is that right?
- 3 A That's correct. He wasn't, he wasn't gonna leave.
- 4 Q He wasn't gonna leave one way or the other?
- 5 A Yes, sir.
- 6 Q Okay. Now -- and you finally did find him, is that
- 7 right?
- 8 A Yes, sir.
- 9 Q After hours of searching for him?
- 10 A Yes, sir, it was a while, yes, sir.
- 11 Q And you were searching for him since the morning, is
- 12 that right?
- 13 A Correct.
- 14 Q Soon after you got involved?
- 15 A Correct.
- 16 Q And your best guess is that you arrived at Mrs. Rogers
- 17 house around two o'clock?
- 18 A Around two o'clock.
- 19 Q And that was the first time, when you arrived in that
- 20 house or after you arrived in that house, was the first time
- 21 you had contact with Mr. Torres in connection with this
- 22 case?
- 23 A Yes, sir.
- 24 Q Okay. Now, you were invited into the house by Mrs.
- 25 Rogers?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A Yes, sir, I was.

2 Q And Mr. Lindsey was with you?

3 A That's correct.

4 Q And after you were you -- you -- Mr. Lindsey was  
5 invited into the house of Mrs. Rogers as well, is that  
6 correct?

7 A That's correct.

8 Q And did you enter first or did Mrs. or did Mr. Lindsey  
9 enter first or do you remember?

10 A I, I can't recall.

11 Q Okay. Well -- but you both entered that pretty much  
12 the same time?

13 A Oh, well, yes, sir.

14 Q Okay. One right after the other?

15 A We were together right.

16 Q Is that correct?

17 A Yes, sir.

18 Q Okay. Now, when Mr. Lindsey entered, he -- well, let  
19 me get this right.

20 When you were entering through the front door, you  
21 could see Mr. Torres from the front door, is that correct?

22 A Oh, yes, sir, just -- it was actually a, a storm door  
23 type deal.

24 Q Okay.

25 A The front door wasn't even, wasn't even---

Jason Bryant - Cross-examination  
By Mr. Allen

1 Q All right. And so, as you were standing on the porch  
2 before you were invited in, you could see Mr. Torres was in  
3 there?

4 A No, sir, I didn't see him until I actually walked  
5 inside. But he was right there at the door.

6 Q Okay. Right there at the door sort of at a -- was it  
7 kind of perpendicular to the door, is that right?

8 A He was just to the, a couch to the right of the door.

9 Q A couch to the right of the door?

10 A Yes, sir.

11 Q Was the couch facing the opposite way that you were  
12 entering?

13 In other words, if you were entering the house,  
14 would -- if somebody that's been sitting on that couch,  
15 would they be facing the opposite wall from the way you were  
16 entering?

17 A Yes, he'd, he'd be perpendicular facing.

18 Q Okay. Now, did you -- and did you hear Mr. Lindsey ask  
19 him where the clothes were that he had been wearing?

20 A We had, we had walked in and, and introduced ourself.

21 Q Yes, sir.

22 A And then Mr. Lindsey had asked, from the information  
23 that we had had from earlier, he asked where the clothes  
24 were from earlier, that he was wearing earlier.

25 Q And that caused Mr. Torres to make that statement about

Jason Bryant - Cross-examination  
By Mr. Allen

1 the washer, the clothes were in the washer?

2 A That's correct.

3 Q And Mr. Torres made the statement that the clothes were  
4 in the washer?

5 A No, Mrs., Mrs. Ruth did.

6 Q Okay. Okay. You're, you're positive about that?

7 You're positive that Mrs. Ruth made the comment about  
8 the washer or was it Mr. Torres?

9 A I believe it was Mrs. Ruth who had made the comment.

10 Q Okay. You made an incident -- you made a report in  
11 connection with this case, is that right---

12 A That's correct.

13 Q ---is it not?

14 And at the time that you made -- you made this report  
15 on the 11<sup>th</sup> of May, is that correct?

16 A That's correct.

17 Q That's why these events were fresh in your mind?

18 A That's correct. Mr. Torres had made the comment. I  
19 apologize.

20 Q Okay.

21 A I see, I see that in my note.

22 Q Okay. That's in your report?

23 A I see that in my notes now. You're correct, Mr. Torres  
24 made that comment.

25 Q So, when you earlier testified that Mrs. Ruth made the

Jason Bryant - Cross-examination  
By Mr. Allen

1 comment about the clothes in the washer you were mistaken?

2 A I was.

3 Q Okay.

4 A Absolutely.

5 Q It's been -- some time's gone by.

6 A Absolutely.

7 Q So, Mr. Torres made the comment?

8 A Mr. Torres made that comment, that's correct.

9 Q And this was entered, in answer to a question that he  
10 had been asked by Mr. Lindsey?

11 A That's, that's correct.

12 Q Okay. Now---

13 A Mr., Mr. Torres had made that comment.

14 Q He didn't---

15 A And Mrs. Ruth had stated I'll go get them. That's,  
16 that's how---

17 Q Okay. I got you.

18 A Okay.

19 Q And when Mrs. Ruth went to go get them, you had Mr.  
20 Torres step outside?

21 A No, sir, we, we stepped out later.

22 Q You stepped out later?

23 A Just momentarily later.

24 Q Yes, sir.

25 what, a minute or so?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A If, if that much.

2 Q Okay.

3 A Because he had had enough time -- he requested to get  
4 some clothing of his self. And I think, if I recall  
5 correctly, Mrs. Ruth had got him a shirt and he had went to  
6 another room to get some shoes.

7 Q All right.

8 A So, that much time had went by before we had, we had  
9 went out.

10 Q But you went -- but Mr. Torres went out of the house  
11 because you asked him to, you told him to?

12 A At a later time, yes, sir.

13 Q Okay. But he didn't leave the house on his own?  
14 well, excuse me.

15 He didn't leave the house because he wanted to?

16 He left the house because you wanted him to?

17 A I asked him to, yes, sir.

18 Q You asked him to.

19 You wanted to take him outside?

20 A Uh-huh. (Affirmative).

21 Q Cause you did not want him to remain in that house?

22 A I just spoke to him outside, yes, sir.

23 Q You wanted to speak to him outside?

24 A Correct.

25 Q And he went outside?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A Yes, sir.

2 Q And of course, you had already identified yourself as a  
3 police officer?

4 A Oh, yes, sir.

5 Q You already told him that you were there to talk to him  
6 or---

7 A I'm sorry. I didn't understand what you were asking  
8 me.

9 Q You told him you were there to talk to him?

10 A Yes, sir.

11 Q About?

12 A He stated that he knew why we were there, and that we  
13 wanted to talk to him in regard to the Emery's.

14 Q But he stated he knew why you were there in answer to  
15 Mr. Lindsey's questions, right?

16 A He, he just stated that, that he knew why we were  
17 there. He wanted to talk to us in regard or he wanted to  
18 talk to him in regard to the Emery's.

19 Q All right. And at the moment that you walked in that  
20 house and saw that Mr. Torres was there, you were not gonna  
21 let him leave without you?

22 A That's correct.

23 Q You did not advise him of his rights while you were  
24 inside that house?

25 A No, sir.

Jason Bryant - Cross-examination  
By Mr. Allen

1 Q I mean about his rights, I'm talking about the Miranda  
2 rights.

3 A That's correct.

4 Q Now, the -- you didn't advise him of his Miranda rights  
5 at all you, until you were in the police vehicle, is that  
6 right?

7 A That's correct.

8 Q And now were you both in the police vehicle at that  
9 time or just him, him?

10 A Myself and Investigator Lindsey, yes, sir.

11 Q Okay. Now, you put Mr. Torres in the back seat of the  
12 vehicle?

13 A He got in the back seat. We didn't put him anywhere.

14 Q Okay. Now, did -- when you took him out of that or  
15 when you took him to the vehicle, did you guide him to the  
16 vehicle?

17 A No, sir.

18 Q Was there several vehicles around or just one?

19 A It was just ours. Well, no, there were other marked  
20 patrol cars there.

21 Q Right.

22 A But he got in ours.

23 Q Okay. And this was a county vehicle, right?

24 A It was.

25 Q Not a marked vehicle, but a county vehicle, right?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A Right.

2 Q And when an individual -- I mean are, are these the  
3 kind of vehicles where the inside door latches do not  
4 operate?

5 In other words, once you get in the back seat you can't  
6 get out from the inside?

7 A They have child locks, but I don't know if they were  
8 engaged or not.

9 Q Okay. Often times they are engaged?

10 A Mine are. I got a six year old daughter.

11 Q Okay. But what I mean is on the, on the police vehicle  
12 that you were in, are they often engaged?

13 A Wasn't my vehicle. I couldn't testify to whether his  
14 child locks were engaged.

15 Q Whose vehicle was it?

16 A Investigator Lindsey's.

17 Q After he got in the vehicle, you did not leave the  
18 vehicle?

19 A I'm sorry?

20 Q After Mr. Torres got in the vehicle in the back seat,  
21 you did not leave the vehicle?

22 A No, sir.

23 Q You, you, and kept watch over Mr. Torres?

24 A He rode in the back seat to the Sheriff's office.

25 Q Okay. After he got into the police vehicle, did you

Jason Bryant - Cross-examination  
By Mr. Allen

1 pretty much immediately get into the police vehicle  
2 yourself?

3 A Yes, sir.

4 Q And so did Mr. Lindsey?

5 A Yes, sir.

6 Q So, I mean he got in, you and Mr. Lindsey got in, and  
7 off y'all went to the Sheriff's Department?

8 A We got all in and left, yes, sir.

9 Q Now, you went upstairs.

10 Are, are -- you saying you took him to the interview  
11 room when you got to the Sheriff's Department, is that  
12 correct?

13 A That's correct.

14 Q And when you take someone to the Sheriff's Department,  
15 you go in a series of doors, is that correct?

16 A Yes, sir.

17 Q And where you took Mr. Torres, you took him through --  
18 can you tell how many closed doors there were?

19 A We went through one door, and then the elevator, and  
20 then to a room.

21 Q Okay. And if it gets -- for those who, who haven't --  
22 excuse me.

23 For those who don't know their way around the Sheriff's  
24 Department, it might get a little confusing, right?

25 A It's five, six steps to the elevator. It's probably

Jason Bryant - Cross-examination  
By Mr. Allen

1 ten, fifteen steps to the room. It's, it's---

2 Q Okay. You were with Mr. Torres all the time?

3 A Yes, sir.

4 Q All the way into the interview room?

5 A Oh, yes, sir.

6 Q And you did not leave him in the interview room by  
7 himself?

8 A No, sir.

9 Q You stayed with him?

10 A Myself and Investigator Lindsey.

11 Q Okay. Now, you read him his rights from the  
12 pre-interrogation waiver form?

13 A Investigator Lindsey did.

14 Q Investigator Lindsey did, but you witnessed it, is that  
15 correct?

16 A I either witnessed it or notarized it. I was present  
17 during the---

18 Q You don't remember, at this time, without having looked  
19 at the---

20 A If I could, if I could see it, I could tell you that --  
21 I was there and present and witnessed the---

22 Q You were there and present?

23 A Yes, sir.

24 Q All right. And it shows that you witnessed this, is  
25 that correct?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A That's correct.

2 Q But you, you, you remember, you remember that you did  
3 not actually read the rights?

4 A I did not. Investigator Lindsey did.

5 Q Okay. Did you help fill out the form?

6 A I -- when I signed the witness signature and that was  
7 it.

8 Q Okay. I think I should of asked a better question.

9 Other than signing your signature, did you fill out any  
10 of the other---

11 A No, sir.

12 Q ---printing?

13 Is that all Mr. Lindsey's---

14 A That is.

15 Q ---handwriting with the exception of the other  
16 signature on there?

17 A That's correct.

18 Q Okay.

19 A And Mr. Torres' signature.

20 Q It says on the form, of course -- of course, maybe I  
21 should hand that back to the court. I'm sorry.

22 THE COURT: Thank you.

23 Q It says on the form that you are, he was only advised  
24 or that y'all wanted to talk to him about a stolen car, is  
25 that right?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A That's---

2 Q Do you need to see the form again?

3 A If I could see it, yes, sir.

4 Q You want to see the -- would you accept this as a copy  
5 of the form?

6 A I can tell you if I -- that's it, yes, sir.

7 Q Okay. Stolen car.

8 A That's correct.

9 Q Doesn't say anything about murder?

10 A Correct.

11 Q Now, it was in the Sheriff's Office that he told you  
12 about this telephone call---

13 A He told us---

14 Q ---and said something about---

15 A He told me about that while we were on the way to the  
16 Sheriff's Office, and then we talked about it again while we  
17 were at the Sheriff's Office.

18 Q Okay. And just to get it straight, when he talked to  
19 you about the telephone call that he received saying that,  
20 that he -- he told you that he had received a telephone  
21 call?

22 A That's right.

23 Q And that, in the telephone call, he was told that Chuck  
24 had said that he was responsible for the beating deaths?

25 A That Mr. Torres was responsible -- no, sir, was

Jason Bryant - Cross-examination  
By Mr. Allen

1 responsible for the death or the deaths of the Emery's.

2 Q Okay. Are you sure about that?

3 A Let me, let me refer to my notes.

4 Q Please. Second page first or second paragraph. First,  
5 first paragraph I believe.

6 (Pause.)

7 A while we were outside at his grandmother's residence,  
8 that's when he advised me of the calls, and he then told me  
9 that, that's when -- he, he didn't tell me who had, who had  
10 originated these calls or who had called him, and then --  
11 that's, that's correct. That was the first time.

12 Q Okay. What I'm getting at is the substance of what Mr.  
13 Torres said was that he had been called and he was told in  
14 the call that Chuck had said he was responsible for the  
15 beating deaths of the Emery's?

16 A No, sir, that took place at the Sheriff's Office in the  
17 interview room.

18 Q Okay. But that's what the substance of what Mr. Torres  
19 told you that---

20 A The substance of what he had told me---

21 Q was told to him in a telephone call---

22 A ---on the way to the Sheriff's Office was that he was  
23 responsible for the incident with the Emery's, and then at  
24 the Sheriff's Office, during the interview, he stated that  
25 he was responsible for the death, the beating death of the

Jason Bryant - Cross-examination  
By Mr. Allen

1 Emery's.

2 Q Maybe -- isn't it true, and I'm going to look at your,  
3 have you look at your, the second page of your---

4 A Right.

5 Q ---statement.

6 A It's right there. Beating death.

7 Q And it says, does it not, he has advised us that he had  
8 been called and that, and Chuck had stated that he was  
9 responsible for the beating death of the Emery's?

10 A That -- what was---

11 Q Is that what your, is that what your notes say?

12 A That was at the Sheriff's Office. Not when you were  
13 asking me about what he said on the way to the office.

14 Q Okay, sir. Okay. But he did make the statement that  
15 Chuck had called and said that he was responsible for the  
16 beating deaths?

17 A He had said -- yes, sir, that he was responsible for  
18 the beating deaths. That is absolutely correct.

19 Q You don't have it, divided it up in your report, do  
20 you, that what was said in the car and what was said at the  
21 Sheriff's Office?

22 A Well, about ten or fifteen lines up above it says he  
23 come upstairs to the interview room, which the  
24 pre-interrogation waiver form was done and signed by Mr.  
25 Torres. So, that comment was made at the Sheriff's Office.

Jason Bryant - Cross-examination  
By Mr. Allen

1 Q Okay. You don't have anything in your report that you  
2 made on the 11<sup>th</sup> or so of May, when your memory was still  
3 fresher than it is today, about what was said in the car?

4 A I, I know that that was made in the Sheriff's office  
5 because I didn't do a pre-interrogation waiver form---

6 Q Thank you.

7 A ---at the scene.

8 MR. ALLEN: One second.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q Yes, sir.

12 During the interrogation, you and Mr. Emery accused him  
13 of committing this offense, right?

14 A I was not in the interview room with a Mr. Emery.

15 Q Excuse me. I misspoke. Thank you.

16 A All right.

17 Q During the interview with Mr. Torres, you and Mr.  
18 Lindsey accused him of committing these offenses?

19 A That's right.

20 Q Is that correct?

21 A Yes, sir.

22 Q And that's when he said prove it?

23 A Absolutely.

24 Q And that's when he said he wanted to talk to an  
25 attorney?

Jason Bryant - Cross-examination  
By Mr. Allen

1 A (Witness nods affirmatively.)

2 Q Is that right?

3 A Yes, sir.

4 MR. ALLEN: Thank you, Your Honor.

5 THE COURT: And did that end, did that end the  
6 interview?

7 WITNESS: Yes, sir, it was over.

8 THE COURT: Okay.

9 SOLICITOR GOWDY: Nothing on redirect, Your Honor.

10 THE COURT: You may step down, sir. Thank you.

11 WITNESS: Yes, sir, thank you.

12 THE COURT: Anything further from the State on this  
13 issue?

14 SOLICITOR GOWDY: No, sir, Your Honor.

15 THE COURT: Defense wish to present any witnesses?

16 MRS. HODGES: No, sir.

17 THE COURT: All right. I'll be happy to hear from the  
18 defense in argument on the point.

19 MRS. HODGES: Your Honor, our position is that the  
20 officers started suspecting Mr. Torres very early on in that  
21 morning of these incidents that we're here for today. He  
22 was developed as a suspect. Both officers testified that,  
23 when they found him at whatever point they found him during  
24 that day, be it the morning at the Spartanburg Regional  
25 Medical Center or be it at the house on Houston Street, or

1 wherever it was they found him, he was not going to be  
2 allowed to leave. He was gonna be taken, either  
3 involuntarily, he was gonna be taken into custody and  
4 arrested for the offenses.

5       It is entirely reasonable for Mr. Torres to, you know,  
6 see two officers coming to his grandmother's house, it  
7 makes -- basically telling him that, you know, we want to  
8 talk to you, asking him where his clothes are, and you --  
9 for him to be, you know, basically taken to a patrol car,  
10 and taken to the Sheriff's Office, taken upstairs in the  
11 Sheriff's Office to an interview room is entirely  
12 conceivable and reasonable for him to assume that he was not  
13 free to leave.

14       The officers testified that that was their intent, that  
15 he was not free to leave, they were not going to, you know,  
16 allow him to leave. And although he was Mirandized in the  
17 car and then again from a, a card, and then---

18       THE COURT: So, the question of custody simply is the,  
19 the point at which time the Miranda requirements are  
20 triggered is the way I understand the law. So, the issue  
21 prior to the Miranda having been given is the question of  
22 whether or not he was in custody at the time those  
23 statements were made.

24       After Miranda warnings were given, I'm not sure what,  
25 what your argument is on that point. I'll hear you. But

1 that's the -- custody, taking him into custody is the  
2 triggering event for Miranda.

3 MRS. HODGES: And Your Honor -- and, and our, our  
4 argument is that he was not -- one of the issues in terms of  
5 whether somebody's considered to be in custody is whether,  
6 you know, whether he's free to leave. You know, whether the  
7 suspect is basically free to, to walk away from a police  
8 officer and say, you know, I don't want to talk to you, I'm  
9 not going to talk to you, or whether, you know, whether he  
10 is of, is of -- the impression that he is, he is, he is  
11 basically free to leave, and our argument is that he  
12 basically, essentially from, from the beginning of the  
13 confrontation and, and, or, you know, interaction with a  
14 police officer is you're not free to leave at this point.

15 And so that we would ask that, that, that, you know,  
16 that whatever the state, the statements that were made at  
17 Mrs. Rogers house on Houston Street, that, that those  
18 statements be suppressed because that, that would be, that  
19 he simply wasn't free to leave.

20 Now, in terms of statements that were made after  
21 Miranda was given, we have some concerns in terms of  
22 relevance as to those statements. I don't see, you know,  
23 argument in terms of an argument with Jonathan Howard, how  
24 that's relevant to, to the issues in this particular case as  
25 to how that, you know, proves the, the issues in

1 controversy. You know, tend, tend to, tend to prove it,  
2 tend to disprove it. An argument we have with, with  
3 Jonathan Howard doesn't appear to be relevant. As to his  
4 assertions that---

5 THE COURT: We're not arguing necessarily admissibility  
6 at this time. We're just arguing whether or not the State  
7 has the right to use those in their case, and, of course, I  
8 don't know in what regard they intend to use them or for  
9 what purposes at this point in time. I don't know if it, if  
10 I'm determining relevancy at this point in time. Jackson v.  
11 Denno has to do with the voluntariness of the statement and  
12 whether or not it was, Miranda warnings were given properly  
13 and I don't know that that would get into relevance until I  
14 know in what context it's trying to be used.

15 MRS. HODGES: Well, at some point, Your Honor, we're  
16 gonna need to have a hearing as to relevance of some of  
17 these statements.

18 THE COURT: Well, we, we may. But I -- and I'm, I'm  
19 not sure at this point in time -- I know how they intend to  
20 use it.

21 MRS. HODGES: Yes, sir.

22 THE COURT: What -- this, this hearing is to determine  
23 though whether it was voluntarily given, whether the  
24 warnings were properly given, and whether the State could,  
25 could later use it in court during the trial.

1 MRS. HODGES: All right. Well, then, you know, that,  
2 that's our showing on, on that, that limited portion of the  
3 evidence---

4 THE COURT: Well, I mean are you disagreeing with me?  
5 I mean---

6 MRS. HODGES: I don't disagree with you.

7 THE COURT: I, I don't know what---

8 MRS. HODGES: I don't disagree with you.

9 THE COURT: Oh, I know---

10 MRS. HODGES: But the record -- I was trying to do it  
11 in---

12 THE COURT: Well, I'm not asking you to agree that how  
13 it's going to be used is relevant. I'm not asking you to do  
14 that. But I don't know the context in which these  
15 statements might later be introduced. It could be  
16 credibility purposes. I don't, I don't know. I mean I  
17 can't, I can't rule on that until I know the context.

18 MRS. HODGES: I understand, judge. In all fairness,  
19 judge, I was, I was just trying to use, make the most  
20 economical use of our time.

21 THE COURT: And I agree.

22 All right. Yes, sir. Yes, sir, I'll hear from you,  
23 you, Mr. Gowdy.

24 SOLICITOR GOWDY: Thank you, Your Honor.

25 May it please the Court.

1           The Court, I think, put his finger precisely on the  
2 compartments that we're dealing with. One is whether or not  
3 the first comments were while he was in custody. I would  
4 just point out to the Court, and the Court already knows, is  
5 that the police officers arrived in plain clothes. There  
6 were no weapons drawn. Mr. Torres was not placed in  
7 handcuffs. He was not taken down. He was not placed under  
8 arrest. There were not menacing words use. There was no  
9 tactical assault. There was no SWAT unit used, and most  
10 significantly, he left that room to go to another room. He  
11 was free to walk about the house unaccompanied by law  
12 enforcement and go get his clothes.

13           I think Oregon versus Mathison is most on, on point,  
14 which says ordinarily, ordinary crime scene interviews do  
15 not meet the level of a formal arrest. Therefore, they  
16 don't trigger Miranda, and, and I say that, Your Honor,  
17 cause we can see he was a suspect, but being a suspect  
18 doesn't trigger Miranda. Even knowing, the police knowing  
19 that they're going to arrest someone does not trigger  
20 Miranda.

21           There's a United States Supreme Court case, which I'm  
22 happy to give the Court, that even being the sole focus of  
23 the investigation does not trigger Miranda. What matters is  
24 whether or not he was in custody, and I would, I would  
25 invite the Court's attention to Beckwood versus United

1 States where the Court declined to extend Miranda to a  
2 setting where a suspect was interviewed in a private home.  
3 I would also direct the Court's or invite the Court's  
4 attention to United States versus Parker, which is a Fourth  
5 Circuit case, and the fact pattern is strikingly similar.  
6 It was a suspect interviewed in a private home. There were  
7 no weapons drawn. There were no handcuffs used. The  
8 defendant was not placed under arrest and there were family  
9 members present. And that's at 262 F.3rd 415. Beckwood  
10 versus United States is 425 U.S. 341. It's a 1976 case.  
11 Both of those are private home setting cases.

12 He was in his grandmother's house. She was present and  
13 he was free to move about the house. The fact that they,  
14 the investigation did focus on him did not mean he was in  
15 custody. He wasn't. He moved about the house. That, with  
16 respect to the comments made at the home, would be the  
17 State's showing on whether or not he was in custody.

18 THE COURT: Anything further from the defense on those  
19 issues?

20 MRS. HODGES: Just respectfully, Your Honor, the  
21 officer -- the testimony was that not only did two plain  
22 clothes officers arrive, but there were also -- I believe  
23 Investigator Lindsey gave at least officers, three other  
24 officers that were in marked cars and that, that, and that I  
25 think it was clear from the testimony that Mr. Torres was

1 not even free to leave his grandmother's house at that time  
2 under his own volition, to, to not talk to the police  
3 officers, and I think that is the heart at which, whether  
4 he's in custody or not, is whether he's free to leave and we  
5 would argue that he's not, was not at that point.

6 SOLICITOR GOWDY: With respect to that, Your Honor, I  
7 would merely point out there's nothing in the evidence to  
8 suggest that Mr. Torres knew there were any other officers  
9 there. Had the questions been asked, which they were not on  
10 cross-examination, those uniform officers, some of them,  
11 were positioned strategically where he would not see them.  
12 So, there's nothing in the record to indicate that he knew  
13 that there were uniform police officers there.

14 With respect to the second point, which I have since  
15 forgot what Mrs. Hodges second point was, which is more a  
16 function of my age than her eloquence, but -- what was the  
17 second point?

18 THE COURT: Do you want to share with him your second  
19 point?

20 MRS. HODGES: Where he's free to leave, ring a bell?

21 SOLICITOR GOWDY: Yes, sir, thank you.

22 Yes, ma'am.

23 But that is immaterial. What is material is whether or  
24 not a reasonable person would of believed that they were in  
25 custody. The fact that the police were gonna arrest him, I,

1 I believe, in part, her -- and Beckwood, they wound up being  
2 arrested or else there wouldn't, there wouldn't be Miranda  
3 issues.

4 THE COURT: Well, I'm looking, I'm looking at some  
5 cases, one in particular, indicates a policeman's  
6 unarticulated plan has no bearing on the question of whether  
7 a suspect is in custody at a particular time. The only  
8 relevant, relevant inquiry is how a reasonable man in the  
9 suspect's position would of understood the situation.

10 SOLICITOR GOWDY: Yes, sir.

11 THE COURT: That's Berk, Berkmurrar versus McCarty, a  
12 U.S. Supreme Court case.

13 But anyway, I'll, I'll be happy to review this and I'll  
14 announce my decision in the morning.

15 Anything else on the Jackson v. Denno?

16 MRS. HODGES: Not on the Jackson v. Denno issue itself,  
17 and I mean I'm at the Court's, you know, pleasure in terms  
18 of, of -- but there, there are gonna be issues regarding,  
19 you know, depending on the Court's ruling, there are gonna  
20 be issues regarding relevance as well as -- the, the, the --  
21 our biggest concern I think in all these statements is, is  
22 the phrase prove it and I mean I think they're very  
23 significant Constitutional implications under the Fifth  
24 Amendment as well as the Sixth Amendment issues that, that  
25 will need to be addressed before any of that is brought in

1 front of a jury.

2 SOLICITOR GOWDY: Well, Your Honor, I would agree he  
3 has a Fifth Amendment right to say nothing. But he waived  
4 that, and he said prove it. And I think it is entirely  
5 reasonable for a jury of 12 to determine whether or not that  
6 is an, an innocent reaction to being accused of a violent  
7 double homicide. If they do, then, then we'll have no  
8 relevance at all and the jury can disregard it. And I, I  
9 don't think that is how most folks would react to being  
10 accused of a double homicide.

11 It is not the most inculpatory statement I have ever  
12 heard, but it is also not silence. Had he said nothing, we  
13 wouldn't be having this conversation. But he said prove it.  
14 And I do think it's reasonable, in the face of that kind of  
15 accusation, to not deny it, to not say I wasn't there, but  
16 to merely just say prove it.

17 THE COURT: Yes, ma'am.

18 MRS. HODGES: Your Honor, he has been Mirandized. He  
19 had been -- basically was at the point where he put -- he  
20 basically was inserting a Constitutional right to have the  
21 state be put on, put the burden on the state to prove the  
22 allegations that the officers were throwing at him that  
23 afternoon in that interrogation room. And essentially said  
24 prove it and then asked for an attorney.

25 Number one, it's not relevant to anything other than

1 for the State to try to claim that it's an admission or a  
2 confession. The fact that he did not deny it, Your Honor,  
3 is, is not relevant because he, at that point, is not  
4 obligated to give them any sort of statement whatsoever, and  
5 the Miranda specifically says you can stop answering  
6 questions, you can ask for an attorney, you can stop  
7 answering questions.

8 He has absolutely no obligation, at that point, to do  
9 anything other than follow his own conscious as to what he  
10 wants to do. He tells them prove it. State versus Brown,  
11 South Carolina Supreme Court case, stands for the  
12 proposition that it's impermissible for the State to argue  
13 in favor of guilt or punishment based on an accused's  
14 assertion of a Constitutional right. I would argue to the  
15 Court that, you know, expecting the State to fulfill its  
16 obligations to prove the case against him is the assertion  
17 of a Constitutional right, and, you know, and, you know,  
18 that that simply should not be allowed to be brought in  
19 front of the jury for any reason other than -- I mean the  
20 only case -- the only way it's relevant is for them to try  
21 and say that, therefore, he didn't deny it, therefore, you  
22 know, you need, the jury needs to consider it as an  
23 admission or a confession.

24 THE COURT: I understand your positions.

25 SOLICITOR GOWDY: We will withdraw it, Your Honor. We

1 won't, we won't use it.

2 THE COURT: Yes, sir.

3 SOLICITOR GOWDY: Unless he testifies -- if, if he  
4 testified, then I think it's relevant. But out of a super  
5 abundance of caution, we will not---

6 THE COURT: All right. That, that statement is now  
7 withdrawn and off the table.

8 MRS. HODGES: Thank you, Your Honor.

9 Your Honor, and I, and I cast no aspersions on the  
10 officers in this case by my next statement, however, we do  
11 need to insure that the officers know that they are not to  
12 say anything about the defendant's indication of his rights  
13 to an attorney, that that's gonna be critical---

14 THE COURT: I, I think that the, the State will  
15 instruct the officers that that would not be proper.

16 SOLICITOR GOWDY: Yes, sir.

17 THE COURT: And it would not be proper.

18 SOLICITOR GOWDY: No, sir, and, and we have and will  
19 have again that conversation.

20 THE COURT: Okay. Anything else -- any other issues  
21 that should be raised concerning the Jackson v. Denno  
22 hearing at this point in time?

23 MRS. HODGES: No, sir. Thank you.

24 SOLICITOR GOWDY: All right. Other defense motions?

25 MR. ALLEN: Your Honor, we did have a motion concerning

1 the admissibility of the DNA analyst's opinion as to what  
2 may or may not be excluded. In other words---

3 THE COURT: I'm sure, sure he'd be available at this  
4 time.

5 Is he?

6 SOLICITOR BARNETTE: He's not, Your Honor.

7 SOLICITOR GOWDY: No, sir.

8 THE COURT: Before that evidence would be allowed in,  
9 we'll take that issue up.

10 MR. ALLEN: Thank you.

11 THE COURT: Any other motions from the defense  
12 pretrial?

13 MR. ALLEN: May we have one moment to review our notes?

14 THE COURT: Yes, sir.

15 SOLICITOR GOWDY: We do have Investigator Baird  
16 whenever---

17 THE COURT: We'll take him in a moment.

18 MRS. HODGES: Your Honor, this is an issue that we  
19 talked about in our pretrial conference, and quite frankly  
20 occurred to me as I was talking to Investigator Lindsey, and  
21 I don't, I don't think any additional testimony is  
22 necessary. However, I think there was an issue that I would  
23 be remiss and, and would hear about it at some later  
24 proceeding if I did not make the motion today regarding  
25 suppressing the clothing that was taken out of the washing

1 machine. It was Mr. Torres clothing and he was not asked  
2 permission, you know, for consent---

3 THE COURT: My understanding is that Mr. Torres  
4 actually lived at some other location?

5 MRS. HODGES: Your Honor, it is, in all honesty, Mr.  
6 Torres, sometimes stayed with, at Mrs. Rogers house at [REDACTED]  
7 Houston Street. At some point he stayed at Mrs. Hughey's  
8 house. His mother actually lived at Houston Street.

9 THE COURT: I gather, from the testimony though, that  
10 he was there infrequently?

11 It was not his normal place of residence, is that the  
12 way you characterize it?

13 MRS. HODGES: Judge, actually no.

14 THE COURT: Well, what was his place of residence?  
15 What is the argument of the defense on that point?

16 MRS. HODGES: To be honest, judge, I don't know that he  
17 necessarily had a fixed place of residence. There was---

18 THE COURT: All right. So---

19 MRS. HODGES: He, he, he stayed some time at his  
20 grandmother's house quite a -- a good portion of the time he  
21 stayed at Mrs. Hughey's house. But, you know, the thing is,  
22 is that even though he was at Mrs. Rogers house, the  
23 clothing was still his and his personal property. Obviously  
24 there were other clothes and other things there cause he  
25 went to another room to get his shoes, another room was gone

1 in, or another -- Mrs. Rogers was able to bring other  
2 clothing to him.

3 THE COURT: Do you plan to introduce any other evidence  
4 on that point?

5 MRS. HODGES: No, sir.

6 THE COURT: All right. I'll hear from the State on  
7 that.

8 SOLICITOR GOWDY: Your Honor, may it please the Court.

9 Mrs. Rogers had actual authority to relinquish items in  
10 the home. She had apparent authority. And I would invite  
11 the Court's attention to State versus Flowers, which is  
12 598 S.E.2d 725, which I believe is the case that is directly  
13 on point. To the extent he had an expectation of privacy in  
14 the clothes in a third parties' home where he did not live,  
15 she had either the actual or apparent authority to go get  
16 those clothes and give them to law enforcement, which is  
17 exactly what she did, and I don't think it's insignificant  
18 that it was done in his presence and he did not object to  
19 it.

20 She signed a consent to search. And so, if he gets  
21 over the expectation of privacy hurdle, she had authority to  
22 do it. If he gets over that, he consented to the authority  
23 because it was done in his presence and I guess the State's  
24 safety net in all of this is inevitable discovery. Reid  
25 Lindsey testified he was going to get a search warrant when

1 she was handing him the clothes.

2 So, I think, under four different legal theories, those  
3 clothes were properly transferred to law enforcement.

4 THE COURT: Last word on this, Mrs. Hodges.

5 MRS. HODGES: Well, judge, since we're contesting the,  
6 the, the voluntariness and, and/or admissibility of it, and,  
7 and whether Miranda should of been read on the statements at  
8 the, at the home, and planning on how the Court rules on  
9 that at all, could, could, the statement would be fruit of  
10 the poisonous tree because the statement was taken from his  
11 statement by the police officer, and is essentially, you  
12 know, he tells them, he's tells them that -- you know, quite  
13 frankly, Your Honor, I think he has an expectation of  
14 privacy in his personal belongings no matter where he is. I  
15 mean---

16 THE COURT: All right.

17 MRS. HODGES: I mean it's the person's papers,  
18 person's, you know, people, person's papers, personal  
19 affects.

20 THE COURT: Okay. I'll make a ruling on that at the  
21 same time I rule on the admissibility of the statement.

22 Now, are you ready to present the, the additional  
23 evidence on the third party guilt question?

24 SOLICITOR GOWDY: Yes, sir, Your Honor.

25 The State would call Investigator Dominick Baird.

Dominick Baird - Direct examination  
By Solicitor Gowdy

1 THE COURT: Thank you.

2 SOLICITOR BARNETTE: Your Honor, one thing.

3 Is it okay if the evidence officer comes in with him?

4 I know they're, they're sequestered.

5 But he's got a piece of evidence that he needs to bring  
6 with him.

7 MRS. HODGES: Yeah.

8 SOLICITOR GOWDY: Absolutely.

9 THE COURT: I'll allow him to stay in the room since he  
10 has to be in his, with it in his custody.

11 SOLICITOR BARNETTE: May I approach the bench just one  
12 second?

13 THE COURT: You may do so.

14 (Whereupon, a bench conference was held at this time.)

15 THE COURT: Sir, if you, if you would, step up and be  
16 sworn please.

17 DOMINICK BAIRD, being first duly  
18 sworn, testified as follows:

19 THE COURT: State your name for the record please, sir.

20 WITNESS: Dominick Baird.

21 THE COURT: Thank you.

22 Your witness.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 May it please the Court?

25 THE COURT: Yes, sir, Mr. Gowdy.

Dominick Baird - Direct examination  
By Solicitor Gowdy

1 DIRECT EXAMINATION

2 BY SOLICITOR GOWDY:

3 Q Investigator Baird, I am not gonna go through all the  
4 things you did at the Emery home because this is a pretrial  
5 hearing. I want to direct your attention specifically to  
6 State's No. 30 if I -- is this the -- has it been marked?

7 SOLICITOR BARNETTE: It has not been marked yet.

8 SOLICITOR GOWDY: That will be State's No. 30, and I  
9 hate to ask Madam Court Reporter to do because we have  
10 marked the others. But I have not marked State 30.

11 THE COURT: It will need to be marked for this hearing.

12 (Whereupon, the shoe print was marked as State's No. 30  
13 for identification purposes only at this time.)

14 Q Let me ask you, Investigator Baird, whether or not you  
15 recognize what is depicted in State's No. --.

16 A Yes, sir, I do.

17 Q What is that?

18 A Be a cutting of a shoe print that was developed using  
19 amido black that we cut from the hardwood floor in the  
20 bedroom.

21 Q Investigator Baird, how much time did you spend in the  
22 Emery residence investigating the crime scene?

23 A We were out, we were out there and back several days.

24 Q Were you principally charged with the responsibility of  
25 either recovering or analyzing tread wear patterns found in

Dominick Baird - Direct examination  
By Solicitor Gowdy

1 the home?

2 A That was part of what I did, yes, sir.

3 Q Right.

4 But I know that, I know you did a lot of other things.

5 But was that part -- did anyone else collect it or did  
6 you collect, did you exclusively collect the tread wear  
7 samples?

8 A I collected the tread wear.

9 Q Including the one that's supplied?

10 A Yes, sir.

11 Q Okay. While you were there, how many distinct tread  
12 wear patterns did you find in the residence?

13 A Observed two.

14 Q Two.

15 In the entire residence?

16 A Yes, sir.

17 Q Can you describe -- well, describe both to the Court.

18 A One set was a, we determined was to be law enforcement  
19 based on the pattern, and the other set that was not. It  
20 was a sneaker type.

21 Q We won't get now into, unless the Courts want us to, we  
22 will not get into a comparison of that sample with what else  
23 you found.

24 But just with respect to the law enforcement tread  
25 pattern, do law enforcement officers wear the same footwear

Dominick Baird - Direct examination  
By Solicitor Gowdy

1 when they go into a crime scene?

2 A They are issued -- all law enforcement officers are  
3 issued the same type of boot, yes, sir.

4 Q And---

5 A So, the tread pattern is the same.

6 Q And does it have a very distinctive tread pattern?

7 A Yes, sir.

8 Q Other than the tread pattern that you, that you  
9 associated with law enforcement and the tread pattern from  
10 what appeared to be a tennis shoe, did you find any other  
11 tread patterns in that home?

12 A No, sir.

13 SOLICITOR GOWDY: That would be our showing, Your  
14 Honor.

15 THE COURT: Your witness, Mr. Reckenbeil.

16 CROSS-EXAMINATION

17 BY MR. RECKENBEIL:

18 Q Sir, it is possible that somebody could buy a boot  
19 that's similar to what law enforcement wears?

20 A Yes, sir, that's possible.

21 Q Absolutely.

22 And it's possible that, that, in fact, that's not a law  
23 enforcement boot?

24 A I'd say it's possible. But I doubt it.

25 Q And sir, we're looking at this, this, and there's two

Dominick Baird - Cross-examination  
By Mr. Reckenbeil

1 different shoe prints, correct?

2 A There is a -- looks like a pattern for one of the law  
3 enforcement boots right down here in the corner.

4 Q And one shoe print here?

5 A Yes, sir.

6 Q And one shoe print there?

7 A Yes, sir.

8 Q Two different ones?

9 A Yes, sir.

10 Q And amido black, what does that do?

11 A Amido black enhances blood prints.

12 Q Okay. Thank you, sir.

13 SOLICITOR GOWDY: Nothing on redirect, Your Honor.

14 THE COURT: Okay, sir. You may step down. Thank you  
15 very much.

16 WITNESS: Thank you, sir.

17 THE COURT: Does that complete the, complete the  
18 State's showing on the third party guilt issue?

19 SOLICITOR GOWDY: Yes, sir, Your Honor. With one  
20 caveat of, of, of the SLED DNA. If the Court wanted to hear  
21 an explanation other than a third party assailant for what  
22 was found of the hammer. I know it was a female. I don't,  
23 I don't know how, I don't know how hard---

24 THE COURT: I'll, I will let you know if I think  
25 additional evidence is necessary.

1 THE COURT: Yes, sir.

2 All right. Anything else, ladies and gentlemen, before  
3 we rest for the evening?

4 MR. RECKENBEIL: Nothing else from the defense, Your  
5 Honor.

6 THE COURT: All right. I will indicate the to  
7 attorneys that the Court will be convening at 8:30 in the  
8 morning for the purpose of swearing the bailiffs and other  
9 Court personnel that will be involved in the trial. Whether  
10 you wish to be present for that swearing, I, I don't know.  
11 But certainly you have a right to be. But -- and then I  
12 expect to convene the trial of the case around 9:30. I will  
13 be in a position to announce my decisions at that time on  
14 these issues.

15 Thank you very much.

16 SOLICITOR GOWDY: Thank you, Your Honor.

17 MRS. HODGES: Thank you, Your Honor.

18 SOLICITOR BARNETTE: Your Honor, may I approach for one  
19 second?

20 THE COURT: Yes, sir.

21 (Whereupon, a bench conference was held at this time  
22 and Court was in recess for the evening.

23

24

25

1 Friday, October 17<sup>th</sup>, 2008

2  
3 (Whereupon, numerous State's Exhibits were marked  
4 before the trial started by the solicitor's office. All  
5 exhibits were for identification purposes only.)

6 THE COURT: All right. First of all, if I could have  
7 the agents from SLED, if you could form a line right here in  
8 front of me please, and I'd ask -- we'll start over here  
9 with Agent McLead, and if you'll put your name on the record  
10 please.

11 AGENT MCLEAD: Rick McLead. M-C-L-E-A-D.

12 AGENT STALLWORTH: Beatty Stallworth.

13 S-T-A-L-L-W-O--T-H.

14 AGENT LONG: I'm Reid Long. L-O-N-G.

15 AGENT JENKINS: Robert Jenkins.

16 AGENT COCKRELL: Buck Cockrell. C-O-C-K-R-E-L-L.

17 THE COURT: All right. I'd ask that each of you raise  
18 your right-hand.

19 (Whereupon, all SLED agents were place under oath at  
20 this time.)

21 THE COURT: Now, if any of you failed or refused to  
22 take the oath just administered by the clerk, please step  
23 forward.

24 (No response.)

25 THE COURT: The record will reflect that all of you are

1 sworn. Thank you very much.

2 And if you would, step over to the Marriott for me.

3 I'd ask that the bailiffs and officers who are going to  
4 be handling the case come forward. And I will -- starting  
5 on my left, if you would state your name for the record.

6 OFFICER COLE: Corey Cole.

7 OFFICER SMITH: Anthony Smith.

8 OFFICER TURLEY: Deputy Floyd Turley.

9 BAILIFF: Lorance Bogan.

10 BAILIFF: Bill Hipp.

11 BAILIFF: Volmey Hawkins.

12 BAILIFF: Dexter O'Shields.

13 BAILIFF: Jim Humphries.

14 THE COURT: I'd ask that each of you raise your right  
15 hand.

16 (Whereupon, all bailiffs were placed under oath at this  
17 time.)

18 THE COURT: Now, if any of you either failed or refused  
19 to take the oath just administered by the Court, please step  
20 forward.

21 (No response.)

22 THE COURT: The record will reflect that they are all  
23 sworn.

24 Thank you very much.

25 Court will be in recess until the jury is assembled.

1 (Whereupon, a short recess was taken at this time.)

2 THE COURT: I'd ask that the attorneys approach  
3 briefly.

4 (Whereupon, a bench conference was held at this time.)

5 THE COURT: All right. Is the State ready?

6 SOLICITOR GOWDY: Yes, sir, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. ALLEN: Yes, sir, Your Honor.

9 THE COURT: All right. Concerning the pretrial motions  
10 that I heard yesterday, I will announce my rulings.

11 As to the motion to exclude certain items of clothing  
12 that were retrieved by the police department, those items of  
13 clothing belonging to the defendant, it's my ruling that  
14 those items of clothing will not be excluded from evidence.  
15 It's my finding that they were voluntarily surrendered by  
16 someone having control over the residence, and who had the  
17 authority or the apparent authority to do so. So, I will  
18 not exclude those items of clothing from evidence.

19 As to the Jackson v. Denno hearing concerning the  
20 voluntariness and admissibility of statements, it is my  
21 finding and ruling that the only statements that will be  
22 excluded from evidence would be -- just one second. Let me  
23 let him get that fixed.

24 (Pause.)

25 THE COURT: Thank you, sir.

1           The statements that would be excluded would be any  
2 statements which were given by the defendant from the time  
3 that he was asked or requested by the police officers to  
4 step out of the home and at the time that he was given his  
5 Miranda warnings in the police car going to the police  
6 station for further questioning. It will be my finding that  
7 that would of been an in-custodial statement without Miranda  
8 warnings simply because of the fact that he was under the  
9 direction, at that point in time, of the police officers.  
10 It's my understanding, from the facts, that there were  
11 additional police officers outside of the dwelling and he  
12 would have, at that point in time, been somewhat in the  
13 presence of multiple officers. By multiple I mean many  
14 officers and that, would consider himself, at that point in  
15 time, to be in custody.

16           So, that would be the only statements that would be  
17 excluded. All others I find to either be given voluntarily  
18 by him in a noncustodial statement in the home, in a  
19 noncustodial setting, or after having been given proper  
20 Miranda warnings.

21           As to the evidence of third party guilt, it's my  
22 finding that it does not rise to the level provided for by  
23 our Courts for introduction, and, therefore, I'll be  
24 excluding that evidence.

25           Anything further from the State concerning our pretrial

1 motions?

2 SOLICITOR GOWDY: No, sir, Your Honor.

3 THE COURT: Anything further from the defense?

4 MR. RECKENBEIL: Your Honor, we just -- we respect the  
5 Court's decision. Just for the record, obviously we'd like  
6 to put on that the U.S. Constitution affords a defendant the  
7 opportunity to present a fair defense under the Sixth  
8 Amendment as well as the Fifth Amendment and the  
9 Fourteenth Amendment and the flip side of the South Carolina  
10 Constitution provides the same thing. So, we would just  
11 like to make exceptions to that.

12 THE COURT: Exceptions are noted.

13 MR. RECKENBEIL: Thank you, Your Honor.

14 MRS. HODGES: Your Honor?

15 THE COURT: Yes, ma'am.

16 MRS. HODGES: Your Honor, briefly as to the items of  
17 clothing as well as the Jackson v. Denno statements, we do  
18 respectfully respect the Court's decision and would ask that  
19 our exceptions under the applicable, applicable provisions  
20 of the South Carolina Constitution and Federal Constitution  
21 be noted. I also understand that, that the solicitor has  
22 agreed that there are certain statements that were discussed  
23 yesterday that are not gonna be included and those are not  
24 covered by the Court's ruling.

25 THE COURT: Yes, my, my understanding is that the State

1 withdrew its intention to introduce certain statements made  
2 at the close of the questioning during the in, in-custody  
3 interview or interrogation.

4 Is that correct, Mr. Solicitor?

5 SOLICITOR GOWDY: Yes, sir, Your Honor.

6 THE COURT: Okay.

7 MRS. HODGES: Thank you, Your Honor.

8 THE COURT: So, yes, those would be excluded by  
9 agreement.

10 MRS. HODGES: Okay. We just ask that our exceptions be  
11 noted for the record.

12 THE COURT: All right. Thank you very much.

13 All right. Anything further from the State before we  
14 swear the jury?

15 SOLICITOR GOWDY: No, sir, Your Honor.

16 THE COURT: Anything further from the defense before  
17 the jury is sworn?

18 MR. ALLEN: Just a point of clarification for myself.

19 As to the statements that are admissible as ruled by  
20 the Court, I want to make sure that I understand it.

21 THE COURT: Certainly.

22 MR. ALLEN: We're talking about the statements that  
23 were made inside the home and at the police station or---

24 THE COURT: Yeah, after the Miranda warnings were  
25 applied. The only evidence that was presented in the

1 evidence, in the, in that hearing yesterday that a Miranda  
2 warning was given in route to the police station or office.  
3 From that point forward, he was properly, the Court's  
4 finding he was properly warned and any statements that he  
5 gave thereafter were voluntarily given with warnings.

6 MR. ALLEN: So, in the car at, at, after the warnings  
7 were given?

8 THE COURT: In the car. Anything done after the first  
9 warning in the car.

10 MR. ALLEN: Yes, sir.

11 THE COURT: There was a verbal warning -- I received no  
12 evidence to the contrary that he received that warning.

13 MR. ALLEN: I understand.

14 Thank you, Your Honor.

15 THE COURT: All right. Again, anything further from --  
16 the State has nothing further before the jury is sworn.

17 Anything from the defense?

18 MR. ALLEN: Nothing further from the defense.

19 THE COURT: All right. Let's bring the jury in.

20 (Whereupon, the following takes place within the  
21 presence of the jury.)

22 THE COURT: Good morning, ladies and gentlemen.

23 I trust everyone was checked in okay and we're ready,  
24 ready to begin the trial of the case this morning.

25 The very first thing that we're going to go over with

1 you is I know that -- .

2 Mr. Bailiff, could you move that cart over to the side?

3 It -- it's blocking my view of one of the jurors, and I  
4 want to be able to see everybody while I'm talking to them  
5 to begin with. It's plugged in. So, it's only gonna go so  
6 far. That's good. It's out of the way.

7 Thank you, sir.

8 And before we begin the actual trial of this case, I  
9 know that you've taken a couple of different oaths already  
10 during the jury selection process and what we've done thus  
11 far. But it is necessary that you be sworn for purposes of  
12 this trial. This oath has to do with your duties and  
13 responsibilities as jurors in this case.

14 Madam Clerk, at this time I'd ask that you swear the  
15 jury panel.

16 Please stand and raise your right hand.

17 (Whereupon, the jury panel was placed under oath at  
18 this time.)

19 THE COURT: Now, if any member of the jury panel either  
20 failed or refused to take the oath just administered by the  
21 clerk, please stand.

22 (No response.)

23 THE COURT: The record will reflect that all jurors  
24 have been sworn for purposes of our trial.

25 All right. Ladies and gentlemen, there's a few things

1 I'm going to go over with you this morning before we  
2 actually begin the trial of the case. At this time, you  
3 have already met the detail from the State Law Enforcement  
4 Division that will be assisting you during your  
5 sequestration, and they will be having custody. I will  
6 assure you that you are in very capable hands as far as that  
7 group is concerned. They are an experienced group of SLED  
8 agents. They will escort you to and from the courtroom.  
9 They will be with you during your stay in the hotel, and see  
10 to your security, comfort, and your convenience as far as  
11 they can do during this process. Of course, they will be  
12 taking you to meals and bringing you to Court, and you'll  
13 get to know them very well.

14 As I've indicated, they are a, very experienced at  
15 doing this. They have done this time, many times before in  
16 many locations around our state. And during that period,  
17 the period of time that you will be with them, you will  
18 probably get to know them very well and perhaps as friends,  
19 and they're there obviously for your benefit, protection,  
20 comfort, and convenience.

21 Mr. Rick McLead is the detail leader. I think you've  
22 already met him this morning, and you've met the other  
23 people as you checked into the hotel. And, of course, I  
24 hope you appreciate their responsibilities and duties.

25 They have all taken an oath this morning before the

1 Court to assist the Court in your care. Part of that oath  
2 is that they not allow you to communicate with anyone or  
3 anyone to communicate with you concerning any of the matters  
4 that are involved in this case, and I hope that you  
5 understand their responsibilities and duties and will assist  
6 them in performing their duties in connection with this  
7 trial.

8 The entire process that we have been about since you  
9 got here on Monday morning has been designed to seek 12  
10 jurors and two alternates who are going to be able to try  
11 this case as fair and impartial jurors and who have not been  
12 influenced by anything that has gone on outside of the  
13 courtroom. And I hope you understand that the SLED agents  
14 are here to see to it that you are, are able to continue to  
15 carry out your duties in that regard.

16 Everything that we have done up to this point has been  
17 to assure that this case go forward and go over as designed  
18 by the laws and that the integrity of the judicial system  
19 and the jury process will continue. The oath that they have  
20 taken is to keep you free from outside influences and to see  
21 that no one discusses the case with you and that you don't  
22 discuss the case with anyone including your fellow jurors  
23 until such time as the Court directs you to begin your  
24 discussions concerning this case.

25 Now, I will tell you now and I will tell you every time

1 that you leave this courtroom that you are not to discuss  
2 any aspects of the case, anything about the case with anyone  
3 else including your fellow jurors. That order would  
4 continue until such time as I direct you to begin your  
5 deliberations concerning this matter at the close of the  
6 case.

7 Now, I will tell you that we, this system is designed  
8 to see to it that you aren't influenced by anything outside  
9 of this courtroom. If, in inadvertently, something should  
10 come to your attention that you think should be brought to  
11 the Court's attention concerning the duties and  
12 responsibilities I've described to you, I want you to let  
13 that be known to me and, immediately upon your return to the  
14 courthouse. I have to know about those things and I have to  
15 deal with them as soon as possible. So, if anything should  
16 occur in that regard, again, please report it upon your  
17 return to the courthouse should that occur.

18 Now, ladies and gentlemen, before we begin the trial of  
19 this case I want to tell you some things about the case and  
20 go over some preliminary matters with you. Probably, for  
21 most of you, and in our discussion, I'm aware that some of  
22 you have been involved in jury service before. But for most  
23 of you this may be your first experience in actually  
24 attending Court sessions.

25 what you're doing now and what you are going to be

1 involved in, you may think, from watching television,  
2 movies, or reading books, that trials are always full of  
3 high drama, intense action, and rivetting circumstances.  
4 And while that may be true at times during this trial, this  
5 trial is going to be different from those other sources of  
6 information you may have about our system such as movies and  
7 television. Those are intended for your entertainment.  
8 This trial is intended for anything but your entertainment.

9       You're involved in a fundamental part of our democracy.  
10 what you're involved in is a search for the truth. It's an  
11 effort to see that justice is done between the parties that  
12 are before this Court.

13       As you can appreciate, searching for the truth and  
14 making sure that justice is done is often a slow and  
15 deliberate and sometimes it's a repetitive process. It's  
16 probably the opposite of what you've seen on television or  
17 movies or read about in books.

18       This particular courtroom, and this courtroom, in  
19 general, these courtrooms in general are places of honor and  
20 they're dedicated to the protection and preservation of  
21 citizen's rights through what many people believe to be one  
22 of the greatest justice systems ever created. Not a perfect  
23 justice system. Nothing instituted by man would be perfect.  
24 But again, an effort to see that justice is done between the  
25 parties that are before the Court and to seek the truth in

1 any matter that's before this Court.

2 The attorneys who are going to appear before you during  
3 this trial are advocates for their parties, for their  
4 parties that they represent. But first and foremost, those  
5 attorneys are also officers of this Court. They have taken  
6 an oath and are sworn to uphold the integrity and the  
7 fairness of our judicial system and to help you in your  
8 search for the truth. And you can expect, and I'm, I'm  
9 confident that they will be professional, competent, and  
10 ethical in the presentation and representation of their  
11 cases, and the representations of their client's interest.

12 I want to remind you too now that you have also taken  
13 an oath in this case to reach a fair and a just verdict in  
14 the case. You are also expected to be professional,  
15 reasonable, and ethical in your dealings in this court.  
16 I've said it on a couple of occasions, and I can't say it  
17 enough, I want to thank you very much for your willingness  
18 to come forward and serve in our system because if it were  
19 not for citizen's such as yourselves who are willing to do  
20 so, our system couldn't function as it was designed by our  
21 forefathers, our forefathers.

22 What I'm telling you now is intended to serve as a  
23 charge concerning the law. I will do that at the close of  
24 the evidence. It is an introduction to the trial of this  
25 case and these remarks are for that purpose. I will

1 instruct you concerning the applicable law to be applied at  
2 the case at the end of the evidence before you retire to  
3 begin your deliberations and consider your verdict. what  
4 I'm telling you now is merely an explanation of the  
5 procedure that we're going to follow in the trial and of  
6 this case so that you might better understand what is  
7 happening as we go along during the trial.

8 I told you, or I went over with you when we began the  
9 jury selection process, the indictments that exist in this  
10 case, and I'm going to go over those in a brief fashion  
11 today to remind you of the cases that are before this Court.

12 The indictments filed in this case are Case Number  
13 08-GS-42-4677. The indictment is for the crime of attempt  
14 to burn.

15 The next indictment is 07-GS-42-773. That indictment  
16 is for armed robbery.

17 The next indictment is 07-GS-42-2775. That indictment  
18 is also for armed robbery.

19 The next indictment is 08-GS-42-880. That indictment  
20 is for criminal sexual conduct in the first degree.

21 The next indictment is 07-GS-42-2776. That's for  
22 burglary in the first degree.

23 The next indictment is 07-GS-42-2777. That indictment  
24 is for the crime of murder.

25 The next indictment is 07-GS-42-778. That indictment

1 is also for the crime of murder.

2 Now, I read those indictments to you earlier. I'm not  
3 going to read them at this time. I will later in the trial  
4 when I give you my charge concerning the law, and the  
5 elements of those crimes will be explained to you at that  
6 time.

7 I've already told you though that an indictment is  
8 simply the charge by which the case has been brought to this  
9 Court. It's not, in any sense, evidence of any of the  
10 allegations contained in those indictments, and indictments  
11 can not used by a jury in any fashion as evidence of guilt.

12 The defendant has pled not guilty to those indictments.  
13 Because of that plea and under the laws and the Constitution  
14 of our state, the State, therefore, has the burden of  
15 proving each of the elements contained in the indictments by  
16 proof beyond a reasonable doubt. At the close of this phase  
17 of the trial it will be your duty to decide if the state has  
18 met that burden of proof as to each indictment and each  
19 indictment will be decided by you separately on its own  
20 merits.

21 Under the law of South Carolina where the State seeks  
22 the death penalty for the charge of murder as it does here,  
23 then the trial on that charge will be what is called a  
24 bifurcated one. That is to say it can and possibly will be  
25 held in two parts.

1 First, a trial is held before you to determine the  
2 guilt of the defendant on that charge. That is the phase of  
3 the trial that we are beginning at this point in time. At  
4 the conclusion of the first trial, should the verdict on  
5 that charge be guilty, and I make no recommendation of  
6 sentence to you, then a second proceeding will be held. The  
7 second proceeding is a sentencing proceeding at which  
8 extenuating, aggravating, and mitigating circumstances may  
9 be introduced into evidence and considered by you at that  
10 time. Should that proceeding be necessary, I will give you  
11 an additional instruction concerning that phase of the trial  
12 at that time.

13 I will ask you to please take no inference from what I  
14 have told you as to what your verdict should, what I've told  
15 you at this time as an inference as to what your verdict  
16 should be in this phase of the trial. My purpose, in  
17 telling you about this at this time, is to emphasize to you  
18 that you are not to consider any issue concerning penalties  
19 at this stage of the proceedings. You are only to consider  
20 the guilt or the innocence of the defendant in this phase of  
21 the proceeding as to the indictments I just went over with  
22 you.

23 Now, your purpose, as jurors, is to find and determine  
24 the facts in the case. I will tell you now and I will tell  
25 you at other stages of the trial that our law makes you the

1 sole judges of the facts. I am the presiding officer of  
2 this trial, and it will be my responsibility to conduct the  
3 trial as we move along through it. I will tell you now if  
4 you believe that, from any comment that I might make in the  
5 discharge of my duties in this case, that I have any opinion  
6 whatsoever as to how you should consider the facts, you  
7 should disregard that notion in its entirety.

8       You are to determine the facts from the testimony you  
9 hear and from the other evidence introduced into the court.  
10 It is up to you to determine the inferences which you feel  
11 might be properly drawn from the evidence introduced. It's  
12 especially important that you perform your duties of  
13 determining the facts diligently and conscientiously because  
14 ordinarily there's no way to correct an erroneous  
15 determination of facts made by a jury in our system.

16       On the other hand and with equal emphasis, the same law  
17 that makes you the sole judges of the facts makes me the  
18 sole judge of the law. The law, as I give it to you, is the  
19 only law that you may consider. You must accept it and  
20 follow it even though you might disagree with it.

21       The law doesn't allow me to tell you what the facts are  
22 and you are, can not disagree with me about what the law is  
23 or what the law should be. Your job is to take the law as I  
24 give it to you and apply it to the facts as you find them  
25 from the testimony of the witnesses and from other evidence

1 introduced. After doing that, you will render your verdict,  
2 a true and a just verdict, under the solemn oath that you  
3 just took as jurors.

4 Now, until I advise you to begin your deliberations,  
5 you must not discuss this case with anyone, as I've already  
6 told you, including your fellow jurors, family members,  
7 friend, or anyone else involved in the case. After the case  
8 is submitted to you for your consideration and deliberation,  
9 then you must discuss it only in the jury room with your  
10 fellow jurors.

11 The attorneys and the parties in this case have advised  
12 that they are not to talk to you at all. So, if you see  
13 anyone involved in this case and they don't even say the  
14 word hello, they're not being unfriendly. They're following  
15 the instructions of this Court not to discuss any matter  
16 whatsoever with you.

17 During the trial I will caution you and we'll take the,  
18 the appropriate procedures to see to it that you do not  
19 read, listen, or watch any news reports about the case.  
20 This includes anything that might be in newspapers,  
21 Internet, radio, television, any other source. It's  
22 important to keep an open mind and not to decide any issue  
23 in the case until you've heard all the evidence, all the  
24 evidence has been presented, and the parties have made their  
25 closing and final arguments and I have instructed,

1 instructed you concerning the law in the case. It's your  
2 solemn responsibility to determine the guilt or the  
3 innocence of the defendant and your verdict must be based  
4 solely upon the evidence as it's presented to you in the  
5 trial and on the law as I instruct you during and at the  
6 close of the trial.

7 In a few minutes our procedure allows the attorneys to  
8 make what is called an opening statement. During the  
9 opening statement the attorneys will explain to you the  
10 issues in the case or at least what they think the issues  
11 are in the case. Both sides will be allowed to make the  
12 opening statement although they are not required to do so.

13 what the tell, the attorneys tell you during their  
14 opening statements is not evidence in the case. It is only  
15 their contention as to what the issues might be or what the  
16 issues are. The only evidence you're going to hear in this  
17 case will be presented to you by the testimony of sworn  
18 witnesses who will testify from this witness stand, and any  
19 exhibits that may be introduced in evidence through that  
20 testimony, or by the agreements, agreement of the parties  
21 through their counsel.

22 From time to time, during the trial, you may hear us,  
23 us, being the judge and the attorneys, discussing a matter  
24 or a question of law, and you may hear the attorneys say  
25 something to the effect may they approach the bench or

1 sometimes I myself may find it necessary to exclude you from  
2 the, the courtroom. I hope you understand that if it  
3 becomes my belief that the discussions concerning some point  
4 of law or evidence might involve a discussion concerning  
5 some matter that might not be admissible into evidence that  
6 I might ask you to step out while those discussions take  
7 place.

8 Don't take any inference from the fact that I've asked  
9 you to step outside the courtroom while those discussions  
10 take place that, again, that I have any opinion as to how  
11 you determine the facts. It's simply me doing my job to see  
12 to it that you consider only properly admitted evidence in  
13 reaching your verdict and that you do not listen to matters  
14 which might not be admissible into evidence, and, therefore,  
15 shouldn't be considered by you under the rules of evidence  
16 and the laws that govern the operation of this Court.

17 Once I've completed that discussion and have made a  
18 ruling on that issue, you'll be asked to step back into the  
19 courtroom. I'll announce whatever rulings were made and  
20 we'll proceed with the trial.

21 Now, you are the sole judges of the facts. And in  
22 determining what the true facts are in the case, therefore,  
23 it will be necessary for you to decide whether or not the  
24 testimony of a witness is believable. It will be my  
25 responsibility, as a matter of law, to rule on whether the

1 attorney, the testimony is admissible at all. But once it's  
2 admitted, the, the question of whether or not you believe  
3 the testimony is solely up for up, to you for you to  
4 determine.

5 In deciding whether to believe a witness, you have the  
6 right to consider any of the following factors such as the  
7 interest of any witness in the outcome of the case, the bias  
8 that any witness might have toward or against one side of  
9 the case or the other, the prejudice any witness might have,  
10 the actual opportunity that the witness may have had to see  
11 the matters and things about which the witness is  
12 testifying, and the way and the manner in which the witness  
13 delivers the testimony from the stand.

14 You, as jurors, have the right to consider anything  
15 that's in the record that will help you evaluate the  
16 testimony of witnesses. That means it's your duty, during  
17 the trial, to pay close attention to these witnesses, to  
18 observe the witnesses, listen to the witnesses, pay close  
19 attention to the attorneys and to the Court. Try not to let  
20 your thoughts wonder, but give strict attention to the  
21 testimony in the case so at the end of all the testimony,  
22 after the arguments of counsel and the charge on the law by  
23 the Court, you'll be in a position to determine what the  
24 true facts are and apply the law to those facts and thus  
25 render a just and a true verdict in the case.

1 All right. I'd ask that Mr. Troy D. Williams raise  
2 your hand.

3 (Juror complies.)

4 THE COURT: Sir, you're gonna be the foreperson of this  
5 jury. You can remain seated in that seat. But as you come  
6 and go from the jury box, you'll be seated in the front left  
7 corner, from my prospective, of the jury box.

8 Let me explain to you that you will, before the jury  
9 begins deliberations, serve as the spokesperson for the jury  
10 here in the court. That means that if you have anything  
11 that you feel like needs to be communicated to the Court  
12 from the jury's prospective, it would need to come through  
13 you. At the close of the trial you will have additional  
14 responsibilities. That will be presiding over the  
15 deliberations of the jury and also assisting in the  
16 preparation of the verdict forms and submission of those to  
17 the Court. I'll go over that with you in detail at that  
18 time. But at this point in time you will serve as the  
19 person who would serve as the spokesperson for the jury if  
20 or should that become necessary during the progress of the  
21 trial.

22 Now, in order to be sure that I have not violated  
23 anyone's rights from my opening comments to you, I'll ask,  
24 is there any objection to my comments from the State?

25 SOLICITOR GOWDY: No, sir, Your Honor.

1 THE COURT: Any from the defense?

2 MR. ALLEN: No, Your Honor.

3 THE COURT: All right. Now, ladies and gentlemen, I  
4 indicated that the defendant in this case has pled not  
5 guilty to the charges. That places the burden upon the  
6 State to prove its allegations beyond a reasonable doubt.  
7 Because the State has the burden of proof, our procedure  
8 allows the State to be first in making its arguments  
9 followed by the defense. And again, either side has the  
10 right to waive or not make those statements. And when we  
11 begin to present, present the evidence, the witnesses and  
12 other evidence, the State would go first again followed by  
13 whatever evidence or defense the defense wishes to present  
14 at that time.

15 Since the State has that burden of proof, the State, at  
16 this time, may proceed with its opening statement.

17 SOLICITOR CRICK: Thank you.

18 THE COURT: Mrs. Crick.

19 SOLICITOR CRICK: May it please the Court.

20 THE COURT: Yes, ma'am.

21 SOLICITOR CRICK: May 11<sup>th</sup>, 2007, a 9-1-1 calls come  
22 in to dispatch in Union County. It was early in the morning  
23 and folks were out and about. Some of them dropping their  
24 children off at school, and you're gonna find that a couple  
25 of those folks saw something pretty unusual that morning.

1           They noticed a van driving erratically. Noticed that  
2 it was swerving all over the road. Saw it hit a fire  
3 hydrant and then crash into a fence.

4           The guy that was driving the van stumbled out and  
5 immediately frantically began trying to get a ride to  
6 Spartanburg. In fact, he even was offering a hundred bucks  
7 to anybody that would drive him back to Spartanburg.

8           The people on the scene tell him look, we've called  
9 9-1-1, police are coming, just hang tight. But he wasn't  
10 interested in waiting for the police. You'll find out that  
11 he hitched a ride with somebody who just happened to be  
12 driving by. And by the time the police got out there to the  
13 scene he was long gone.

14           You're gonna find out that the driver of that van was  
15 the defendant, and the police soon discover, by running the  
16 tag number, the license plate number, that that van does not  
17 belong to the defendant. It's packed full of household  
18 items, full of personal items, none of which belong to the  
19 defendant. There are lady's purses in there. There are  
20 wallets in there. There are people's driver's licenses in  
21 there. There's a computer, stacks of clothes, food, and  
22 none of it belongs to the defendant. The van and every  
23 single thing in it belongs to Ann and Ray Emery.

24           And while the defendant is riding back to Spartanburg  
25 with the guy he caught a ride with, the officers in Union

1 decide to call down to Spartanburg and ask those officers if  
2 they'll just do a welfare check at Ray and Ann Emery's home.  
3 Well, they just go by and make sure that everything is okay  
4 at the Emery's home.

5 Well, Deputy Jones and Deputy Valentine of Spartanburg  
6 County were on-duty that morning, and you're gonna find out  
7 that they were the first ones that got to the Emery house  
8 that day. They go up to the front door and knock and nobody  
9 answers. They get the phone number for inside the home.  
10 They call. They can hear it ringing, but nobody answers.

11 So, they start looking around the exterior of the home  
12 and actually they find that there's a sliding glass door  
13 that's open. So, they go inside the home and immediately  
14 you'll find out the smell of gasoline hits them in the face.  
15 They also notice that it is extremely hot in the house and  
16 soon discover that every eye on the stove is turned up full  
17 blast. They'll also tell you that stove was turned on  
18 broil.

19 So, they walk in a little further into the living room  
20 and they notice on the living room floor a red gas can.  
21 They notice in the living room a recliner that's overturned.  
22 The officers will tell you that they continued down the  
23 hallway and came to a bedroom in the back.

24 They looked into the bedroom and they saw Ray Emery.  
25 He was face down on his bed. He was still wearing the

1 breathing machine, the sleep apnea machine that he has to  
2 wear at night to sleep. It was still strapped to his head.  
3 He was face down. He was beaten. There was blood, and  
4 there were bruises, lacerations, and cuts all over his body.

5       They saw that his arm was draped over one edge of the  
6 bed and at the other end of his arm near his hand on the  
7 floor was his wife, Ann Emery. You're gonna find out that  
8 her face was unrecognizable, and that there was blood  
9 everywhere. There was blood on the ceiling. There was  
10 blood on the walls. There was blood on the floor. There  
11 was blood on Ray and Ann Emery and Ann was naked. Her legs  
12 were posed up above her head, and all around them, the  
13 entire house was ransacked.

14       Just down the hallway in that living room on top of the  
15 TV was the murder weapon, a bloody hammer. And while these  
16 officers were still there looking at this scene, you're  
17 gonna find out that the defendant was being dropped off in  
18 Spartanburg, but he didn't go to his house. He went to his  
19 grandmother's house. And while he was there, he took the  
20 clothes off that he had been wearing and the shoes off that  
21 he had been wearing and he put them in her washing machine.

22       And then when the police came by to talk to him later,  
23 he was sitting on his grandma's sofa, and they were able to  
24 get those clothes and those shoes out of his grandmother's  
25 washing machine, and they were able to send that stuff to be

1 tested with the rest of the evidence. And that's exactly  
2 what was going on at the same time, a forensic team from the  
3 Sheriff's Office was back at the Emery's house looking at  
4 and collecting evidence and they're gonna tell you and  
5 describe to you where the blood was found, where evidence  
6 was found, and what they did with it.

7 They looked for and look at bloody shoe prints or tread  
8 prints, and you're gonna find out that the prints in the  
9 Emery house, the shoe tread prints, were consistent with the  
10 shoes that the officers pulled out of the defendant's  
11 grandmother's washing machine. You're also gonna hear about  
12 an arson dog. This is a dog that's trained to sniff out  
13 gasoline and other accelerants. You're gonna find out that  
14 that dog came to the house and actually detected gasoline  
15 throughout the Emery's house, and detected gasoline on that  
16 right shoe that was pulled out of the defendant's  
17 grandmother's washing machine. You're also gonna find out  
18 that Ann and Ray Emery's blood was found on the clothing  
19 pulled from the defendant's grandmother's washing machine,  
20 and the blood on that hammer matched the victims.

21 Sometimes, in life, we have a tendency to make things  
22 very complicated and overlook the obvious. But I think what  
23 you're gonna find out in this case that it's not that  
24 complicated. All of the forensic evidence that you will  
25 hear about points to one person and only one person. And

1 that person is the defendant.

2 And there's one more thing. Just as people go out to  
3 the actual crime scene and collect evidence, Doctor Wren,  
4 who's a forensic pathologist, collects evidence from the  
5 bodies of the victims. Doctor Wren will explain to you what  
6 that process was like and what he did. But in addition to  
7 just looking at the bodies and collecting evidence, he did  
8 what's known as a rape collection examination, and he'll  
9 describe for you that process.

10 It involves taking swabs from the mouth, from the  
11 vaginal area, and from the rectal area. And that's what he  
12 did in this case to Ann Emery's body. And after he  
13 collected that evidence in the hopes of finding some DNA or  
14 forensic evidence, he packaged it up, sealed it up, and sent  
15 it off to SLED to be tested by their scientist.

16 DNA, I know you know, is on TV a lot these days. If  
17 you watch CSI or any of that stuff, you've heard about DNA  
18 and it is an amazing scientific tool. There are many many  
19 crimes that have been solved by DNA, and there are many many  
20 people who have been exonerated by DNA. And I think what  
21 the expert is gonna tell you is DNA essentially is a genetic  
22 fingerprint. Just like all of us have fingerprints that are  
23 unique to us, we also have a genetic fingerprint that is  
24 unique to us unless we have an identical twin.

25 We've got our own unique genetic fingerprint, and I

1 think what you'll also hear is DNA can be found in body  
2 fluids like blood, like saliva, and like semen. And in this  
3 case, that evidence that Doctor Wren collected from the body  
4 of Ann Emery. It turns out there was some DNA, some  
5 forensic evidence on one of those swabs. Specifically,  
6 semen.

7 The scientist at SLED found semen on the vaginal swab  
8 that Doctor Wren collected. And from that semen, the  
9 scientist developed that genetic fingerprint, that DNA  
10 profile, and what they did was compare it to the defendant's  
11 DNA profile. And what they found is that the, the semen  
12 Doctor Wren found in Ann Emery's body matched the defendant  
13 one hundred and ten quadrillion to one. It matched the  
14 defendant.

15 So, it's gonna be my job, along with Trey Gowdy and  
16 Barry Barnette, to bring forth all this evidence to you, and  
17 present all the important evidence to you. But you're gonna  
18 have the most important job of anyone else in this courtroom  
19 today.

20 You alone, and only you, have to decide what happened  
21 on May 11<sup>th</sup>, 2007, that caused the Emery's to be beaten to  
22 death with a hammer in their own bedroom, and we're gonna  
23 give you almost every single thing you need to make that  
24 decision. But there's one thing we can't give you. Good  
25 news is it's something you already have. That is good old

1 fashion common sense especially in this case.

2 Common sense is the tool that will serve you the best  
3 as you sit in here, listen to the evidence, and then go back  
4 in that jury room, and start to deliberate. And if you use  
5 your common sense, I have no doubt justice will be done in  
6 this case.

7 Justice is a very simple word. It's a very very  
8 powerful word and that's really the only thing anyone will  
9 ask of you is that you be fair to the State, be fair to the  
10 defendant, and at the end of day, when all this is over,  
11 simply do justice.

12 THE COURT: The defense may offer its opening  
13 statement, Mrs. Hodges.

14 MRS. HODGES: Thank you, Your Honor.  
15 May it please the Court?

16 THE COURT: Yes, ma'am.

17 MRS. HODGES: Do you remember Monday morning?  
18 It's a long time ago it seems, doesn't it?

19 First thing you heard Monday morning, in an official  
20 capacity in this case, was that The State calls the case of  
21 Andres Antonio Torres charging him with seven indictments,  
22 attempt to burn, armed robbery, another count of armed  
23 robbery, burglary in the first degree, criminal sexual  
24 conduct in the first degree, murder, and a second count of  
25 murder.

1           These indictments, ladies and gentlemen, these pieces  
2 of paper, at this point, are just that, pieces of paper.  
3 And I don't say that to belittle the criminal justice  
4 system. I say that to uphold the criminal justice system  
5 because the State, in this case, is the one that has decided  
6 which crimes to charge. The State, in this case, has, will  
7 choose which witnesses to present to you. The State, in  
8 this case, is going to choose, chose whether to make this a  
9 capital crime or not. The State, in this case, goes first  
10 because the State, as the judge told you, has the burden of  
11 proof. They must prove to you each and every element in  
12 these indictments. When I say elements, I'm talking about  
13 factors that the laws of our state have said make a  
14 particular action by one person unlawful or illegal, makes  
15 it a crime, and they're elements.

16           We've already talked for days now about the elements of  
17 murder. The unlawful killing of another person with malice  
18 aforethought.

19           The most important thing for you to realize in this  
20 particular case is that it's the state's burden to prove  
21 each of those elements to you. And if they do not prove a  
22 particular element to you, and a particular charge, it is  
23 your, you have the right and, in fact, it is your duty to  
24 consider that as to whether the State has proven that case  
25 to you beyond a reasonable doubt.

1 Tony Torres is pled not guilty to each and every one of  
2 these indictments. He's put the State on notice that they  
3 have to prove their case to you. He's asked for the right  
4 to a jury trial.

5 As the judge told you, our criminal justice system is  
6 probably the best in the world. The very heart and  
7 foundation, the cornerstone, if you will, of that criminal  
8 justice system is the right to a jury trial and the  
9 defendant's presumption of innocence.

10 And they're essentially two points I want to make to  
11 you about the presumption of innocence. The first is it  
12 goes, again, to the heart of the fact that the State has the  
13 burden of proof in this case. The first thing about  
14 presumption of innocence is that this is a case of  
15 circumstantial evidence.

16 I could go outside, you see me now, I could go outside,  
17 could come back in. But if my clothes were wet, even though  
18 you didn't see it raining outside, you could understand that  
19 most, more than likely it was raining outside. That's  
20 basically the case that the state is bringing to you. It's  
21 a case based on circumstantial evidence. They're not gonna  
22 provide it to you, any direct proof from the elements  
23 involved in these indictments. No live witness testimony.

24 Ladies and gentlemen, the fact that a man may of been  
25 in a stolen car in Union County is not evidence that crimes

1 occurred in Spartanburg County. You're not gonna see any  
2 evidence proving to you that Tony Torres poured gasoline  
3 throughout that house. You're not gonna have any evidence  
4 proving to you that he was the one that turned on the stove.  
5 You'll have evidence that the stove was turned on, but  
6 there's no fingerprint evidence from the stove. You're not  
7 hearing any evidence about fingerprints from the stove.

8       There's no signs of forced entry to support the  
9 allegation of a burglary. One of the issues you're gonna  
10 have to consider on a burglary is whether the home was  
11 entered without consent. That's going to be up to you to  
12 determine, but they're not going to be able to prove to you  
13 that the home was entered without any sort of unlawful  
14 force.

15       You're not going to see any quantity of blood, any  
16 evidence or testimony of a quantity of blood that was on  
17 Tony Torres to corroborate the amount of blood that you're  
18 gonna see. And you're gonna see pictures I'm sure. And  
19 you're gonna hear descriptions of the scene I'm sure, and  
20 you're gonna hear that it is a bloody scene.

21       It's blood spatter basically throughout this bedroom.  
22 You're gonna see it on evidence. You're gonna see it on  
23 pictures. You're gonna hear testimony about it.

24       But what you're not gonna hear?

25       You're not gonna hear any evidence that corroborates

1 blood on him. You're gonna hear an incomplete analysis of  
2 the evidence. Evidence was collected, evidence was sent to  
3 the State laboratory for investigation, for analysis, and  
4 much of that evidence they didn't even analyze. Some of  
5 that evidence they claimed to have been submitted wasn't  
6 even submitted.

7 You are not going to hear any definitive evidence that  
8 the alleged murder weapon, the hammer, was in his hand.  
9 They're going to ask you to try and draw an inference that  
10 the murder weapon was in his hand. But you are not going to  
11 hear any definitive evidence that the weapon was in his  
12 hand. And all that brings me to my second point about  
13 presumption of innocence because the bottom line, the  
14 presumption of innocence means that Tony Torres is not  
15 guilty.

16 He was not guilty on May the 11<sup>th</sup> of 2007 when the  
17 police officers arrested him. He was not guilty when he was  
18 served notice of the state's intent to seek the death  
19 penalty. He was not guilty on Monday when this case was  
20 called to court. He was not guilty on the days that you  
21 were here being questioned individually. He's not guilty  
22 today. He's not guilty tomorrow. He's not guilty each and  
23 every day unless and until you find that the state has met  
24 their burden.

25 That, ladies and gentlemen, is why we're here. It's

1 because Tony Torres is not guilty.

2 Thank you.

3 THE COURT: The State may call its first witness.

4 SOLICITOR GOWDY: Your Honor, may it please the Court.

5 The State would call Deputy Danny Jones and ask for a  
6 moment of the Court's indulgence to set up.

7 THE COURT: Certainly.

8 SOLICITOR GOWDY: Thank you, Your Honor.

9 THE COURT: while we're doing that, ladies and  
10 gentlemen of the jury, one thing I want to point to you and  
11 ask you, during the course of the trial, you're not to take  
12 notes. The -- one of the things I mentioned to you during  
13 my opening statement was that it's your responsibility to  
14 observe what's going on in the courtroom, and how evidence  
15 is presented. If you're looking down at a note pad, you  
16 won't be able to pay attention to those things.

17 So, generally we do not allow you to take notes during  
18 the proceeding. Pay close attention. We'll take breaks and  
19 we'll give you a chance to refresh yourselves. But please  
20 don't, don't busy yourself with taking notes. Just pay  
21 attention as the trial goes along.

22 Officer, you can come forward to be sworn.

23 DANNY JONES, being first duly  
24 sworn, testified as follows:

25 THE COURT: Sir, once you're seated in the witness

1 stand, I'd ask that you state your name for our record.

2 WITNESS: I'm Danny James Jones.

3 THE COURT: Mr. Gowdy, it's your witness.

4 SOLICITOR GOWDY: Thank you, Your Honor.

5 May it please the Court?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY SOLICITOR GOWDY:

9 Q Good morning, Deputy Jones. I'm gonna get you to speak  
10 in a good strong clear voice so the last two gentlemen in  
11 the jury box can hear you.

12 okay?

13 A Yes, sir.

14 Q Tell the jury how long you've been in law enforcement.

15 A I've been in law enforcement a little over 20 years.

16 Q Which division are you currently assigned to?

17 A Uniform patrol division.

18 Q And how long have you been assigned uniform patrol?

19 A The majority of my career.

20 Q Can you give the jury a sense of what some of the  
21 duties and responsibilities of a uniform patrol deputy would  
22 be?

23 A Yes, respond to 9-1-1 calls, fill out incident reports,  
24 assist other agencies with any, anything that may be in our  
25 jurisdiction that they need help with.

Danny Jones - Direct examination  
By Solicitor Gowdy

1 Q Deputy Jones, when I use the, the term, term welfare  
2 check or wellness check, do you know what I mean by that?

3 A Yes, I do.

4 Q Would that be one of the duties and responsibilities of  
5 a uniform patrol deputy?

6 A Yes, it would be.

7 Q All right. I'd like to go specifically to May the  
8 11<sup>th</sup>, 2007.

9 Were you working that morning?

10 A Yes, I was.

11 Q Did you receive a request to perform a welfare check?

12 A Yes, I did. I got a message from communications center  
13 to call a Corporal Jeff Wright with Union County Sheriff's  
14 office. When I called him, he told me they had, they had a  
15 van in their jurisdiction that been involved in a hit and  
16 run accident.

17 MR. ALLEN: Your Honor, I would object to any, any  
18 elaboration of the, of what another officer told him as  
19 being inadmissible hearsay.

20 SOLICITOR GOWDY: Your Honor, I, I have a specific case  
21 on point that to the extent he used this as information to  
22 explain what he did next, next, there's an exception to the  
23 hearsay rule.

24 THE COURT: Yes, sir, you don't need to quote the case.  
25 I'll overrule the objection. As long as it's introduced for

Danny Jones - Direct examination  
By Solicitor Gowdy

1 that purpose and not for the truth of the matters asserted.

2 SOLICITOR GOWDY: Yes, sir, Your Honor.

3 THE COURT: You may proceed.

4 A Corporal Wright explained that they had a van in their  
5 jurisdiction that had been involved in a hit and run  
6 accident. The driver had fled the scene. The van was  
7 registered to a Emery subject at [REDACTED] Montgomery Street.  
8 There was jewelry and a purse in the van and the, the purse  
9 also had ID showing the [REDACTED] Montgomery Street address. He  
10 asked us to go by and try to make contact with someone in  
11 reference to the van.

12 At that point I called over the radio and asked for  
13 communications to send the closest officer to that location  
14 to check. Lieutenant Valentine heard my transmission and  
15 started that way also and I responded also.

16 Q To the best of your recollection, Deputy Jones, what  
17 time did you receive that initial request to perform a  
18 welfare check?

19 A That was at approximately 8:15 in the morning.

20 Q And you and Deputy Valentine both responded to [REDACTED]  
21 Montgomery Street?

22 A Yes, we did. Lieutenant Valentine arrived shortly  
23 before I did. I arrived at about 8:29. And when I got  
24 there, he was already on the scene.

25 Q Tell the jury what you did when you got to [REDACTED]

Danny Jones - Direct examination  
By Solicitor Gowdy

1 Montgomery Street.

2 A When I got there, I saw Lieutenant Valentine at the  
3 front door of the residence. As he came down the front  
4 steps to me, told me he didn't get a response, and that he  
5 had seen a cell phone laying on the ground.

6 MR. ALLEN: I would object to what that officer said as  
7 also inadmissble hearsay.

8 THE COURT: I'll sustain that objection.

9 You may proceed.

10 A We proceeded around the residence checking the  
11 residence to see if we could find any signs of forced entry  
12 or make contact with anyone. When we got around to the far  
13 side of the residence, I did find a sliding glass door that  
14 was unsecured.

15 Q When you say unsecured, Deputy Jones, tell the jury  
16 what you mean by that.

17 A When I looked at the door, there were no obvious signs  
18 of forced entry. And when I tried to open the door, the  
19 door did come open.

20 Q But it wasn't open, it wasn't opened the way that I  
21 would, might think of a door as being opened, as being  
22 literally opened?

23 It was unsecured is the word you used?

24 A That's correct. The door was closed. But when I  
25 reached up to open it, it was not stopped by the lock.

Danny Jones - Direct examination  
By Solicitor Gowdy

1 Q Okay. After you found the unsecured door, what did you  
2 do?

3 A Opened the door and announced that I was with the  
4 Sheriff's Office, and tried to get someone to respond to me.  
5 Did not get any response and I entered the residence with  
6 Lieutenant Valentine behind me.

7 Q All right. And walk the jury through what you found  
8 inside the residence.

9 A Okay. The first thing that I noticed when I opened the  
10 door was the heat that hit me, and the odor of either  
11 kerosene or gasoline. When we went into the residence, I  
12 was focused ahead of me and to my right. And to the right I  
13 saw a, a clear pool on the hardwood floor, and beyond that  
14 an overturned small gas can, red gas can and an overturned  
15 chair. So, I proceeded on toward the back of the house is  
16 when I saw Mr. Emery in the bed face down with blood on his  
17 back.

18 Q Did you go into the bedroom, Deputy Jones?

19 A Went to the doorway of the bedroom, and that's as far  
20 as I went in.

21 Q And when you retreated from that area, what did you do?

22 A We went to the left, checked that part of the residence  
23 to see if we saw anyone else. We did not. And then we went  
24 back out of the residence the same way we had entered.

25 Q Did you notice anything out of the ordinary with

Danny Jones - Direct examination  
By Solicitor Gowdy

1 respect to furniture or things that may have been on the  
2 floor?

3 A In the bedroom I did not. The only thing I saw in what  
4 may be considered the living room where I saw the gas can,  
5 there was a chair that was overturned.

6 Q Okay. When you -- did you suspect that you had a  
7 homicide?

8 A Yes, I did.

9 Q All right. And, and what is the proper protocol for a  
10 uniform patrol deputy when you suspect you have a homicide?

11 A The most important thing is to disturb the crime scene  
12 as little as possible. We do need to get EMS in there to  
13 verify that the person is dead. Need to homicide, notify a  
14 homicide investigator and it goes from there and secure the  
15 crime scene.

16 Q Deputy Jones, let me show you Exhibits 22, 38, 54, 56,  
17 57, 200, and 167, ask me whether -- let me show you that and  
18 ask you whether or not those pictures are relevant to this  
19 case.

20 A The first picture I'm looking at, State's Exhibit 22,  
21 is the front of the residence at [REDACTED] Montgomery Street. The  
22 next photograph I'm looking at, No. 38, is gonna be the  
23 driveway and these are the two vehicles that were there in  
24 the driveway that day when I arrived on the scene.

25 Q In the interest of time, and don't let me interrupt

Danny Jones - Direct examination  
By Solicitor Gowdy

1 you---

2 A Certainly.

3 Q But let me just ask you if they're relevant and then  
4 we're gonna actually perhaps show them to the jury to, to  
5 save you from having to describe them.

6 A Certainly.

7 (Pause.)

8 A Okay. Yes, they, they are most definitely relevant to  
9 the case.

10 SOLICITOR GOWDY: Your Honor, we would move those  
11 exhibits into evidence at this point.

12 THE COURT: Allow the defense to take a look at them  
13 please.

14 MR. ALLEN: No objection to these exhibits, Your Honor.

15 THE COURT: without objection, they'll be admitted into  
16 evidence as marked.

17 (Whereupon, State's Exhibit Nos. 22, 38, 54, 56, 57,  
18 167, and 200 were received into evidence at this time.)

19 THE COURT: You may proceed, Mr. Gowdy.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 Permission to publish to the jury?

22 THE COURT: Yes.

23 Ladies and gentlemen, the solicitor's asking for the  
24 right to publish these. That means they'll be shown to you.  
25 I don't know if he wants to use, by projector, or be handed

Danny Jones - Direct examination  
By Solicitor Gowdy

1 to you. But publish simply means you'll be allowed to view  
2 them.

3 You may proceed, Mr. Solicitor.

4 SOLICITOR GOWDY: Thank you, Your Honor.

5 Q Deputy Jones, let me show you first State's Exhibit No.  
6 22.

7 Can you see that okay?

8 A Yes, I can.

9 Q Can you -- first of all, tell the jury which county  
10 that residence is in.

11 A That is in the Drayton area of Spartanburg County.

12 Q Okay. And what is the jury looking at?

13 A The front of the residence, Number [REDACTED] Montgomery  
14 Street.

15 Q Okay. Let me show you State's 38.

16 What is the jury looking at?

17 A That's the driveway that's to the right side of the  
18 residence as you're facing the residence, and the building  
19 in the back I believe is the photo studio.

20 Q Okay. Let me show you State's 54.

21 What is that?

22 A That's the sliding glass door that I found unsecured  
23 and made entry into.

24 Q Let me show you State's 56.

25 A As I came into the kitchen area, that is gonna be the

Danny Jones - Direct examination  
By Solicitor Gowdy

1 room to the right where I saw the fluid on the floor and a  
2 small red gas can. That's the overturned chair I was  
3 speaking on.

4 Q Okay. Let me show you State's 200, which may actually  
5 include both the items you've just described.

6 A Yes, it does. That is the gas can I was referring to.

7 Q And Deputy Jones, is that just as it appeared when you  
8 initially walked into the crime scene?

9 A Other than the cones marking it as evidence, yes, it  
10 is.

11 Q Okay. Let me show you State's Exhibit 167.

12 Tell the jury what they're looking at.

13 A That is the bed in the bedroom where I found Mr. Emery.  
14 That is from a different angle than, than my prospective  
15 was.

16 Q Your prospective was further to the left?

17 A Further to the left, yes.

18 Q All right. And you may of touched upon this, but if  
19 you didn't, let me ask you.

20 when you first went into the bedroom, you believed it  
21 was a single homicide?

22 A Yes, I did.

23 Q And you left the crime scene and called EMS, is that  
24 correct?

25 A Yes, I did.

Danny Jones - Direct examination  
By Solicitor Gowdy

1 Q All right. Thank you, Deputy Jones. Please answer any  
2 questions the defense attorney may have for you.

3 THE COURT: You wish to have the lights up or down, Mr.  
4 Allen?

5 MR. ALLEN: Up, up please, Your Honor.

6 THE COURT: Bring the lights up please.

7 Mr. Allen, your witness.

8 MR. ALLEN: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. ALLEN:

12 Q You, you do not go up to the front door, is that  
13 correct?

14 A No, sir, I do not go to the front door.

15 Q That was Officer Valentine I believe you said?

16 A Yes, sir, Lieutenant Valentine.

17 Q Okay. Now, when you arrived at the home at about 8:29  
18 I believe you said, right?

19 A Yes, that's correct.

20 Q In the morning, of course.

21 officer valentine had already been up to the front door  
22 apparently?

23 I mean he was coming back?

24 A Yes.

25 Q And you met him out in the yard of the house?

Danny Jones - Cross-examination  
By Mr. Allen

1 A Sidewalk, yes.

2 Q Sidewalk in front of the house.

3 okay. Over to the right of the house is a, as you're  
4 facing the house -- okay. This is the, essentially the  
5 street view of the front of the house?

6 A Yes.

7 Q Is that correct?

8 A Yes.

9 Q And over to the right of that house is the driveway  
10 area, is that correct?

11 A Yes.

12 Q Over to the left, as you're facing the house, is a  
13 breezeway, is that correct?

14 A I believe there is.

15 Q I mean a little past through in other words, and, of  
16 course, a garage is attached to that breezeway or -- is that  
17 right?

18 A Yes.

19 Q Okay. When you arrived, I mean did you go to the right  
20 of the house towards the driveway or did you go towards the  
21 left towards the breezeway?

22 A To the right toward the vehicle.

23 Q Toward the vehicles.

24 And you saw, was it two vehicles, or how many vehicles  
25 did you see in the driveway?

Danny Jones - Cross-examination  
By Mr. Allen

1 A Two vehicles.

2 Q Two vehicles.

3 One being a van, is that correct?

4 A Yes. Yes, there was a van there.

5 Q And the other one was a sedan, is that correct?

6 A Right.

7 Q Now, the -- then you proceeded around towards the back  
8 of the house?

9 A Yes.

10 Q Okay. Were you checking doors as you went around?

11 A We were looking at windows, yes, and checking doors as  
12 we went.

13 Q When you're looking at windows, you're looking for --  
14 were you looking, at that time, for signs of any kind of  
15 forced entry?

16 A That is correct.

17 Q Okay. Did you see any?

18 A No, I did not.

19 Q Okay. And you -- were the doors on the back of the  
20 house?

21 A I don't recall the doors on the back of the house. But  
22 as we would go by them, we would check them to make sure  
23 they were secure.

24 Q Okay. And as far as you remember, at this time, they  
25 were all secure?

Danny Jones - Cross-examination  
By Mr. Allen

1 A Yes, because we would of stopped at that point to check  
2 from there.

3 Q And of course, when you say secured, you mean closed,  
4 is that right, and locked?

5 A Correct. Both.

6 Q Unable to be opened from the outside by you?

7 A Correct.

8 Q Okay. Then the sliding glass door that you were  
9 talking about is in the -- is that the breezeway portion of  
10 the house or on that side of the breezeway?

11 A Yes, it's on that side of the house, yes.

12 Q It's not at the, not at the breezeway, but on that  
13 side, is that correct?

14 A Correct.

15 Q Okay. Now, when you saw what I believe you said that  
16 the door was, at that time, closed?

17 A It was closed.

18 Q Is that correct?

19 Of course, these pictures were made after all what you  
20 testified had gone on, right?

21 A Correct.

22 Q And that's why the door is opened, right?

23 A (Witness nods affirmatively.)

24 Q Okay. But that door was unlocked you said?

25 A It was unsecured. I can't---

Danny Jones - Cross-examination  
By Mr. Allen

1 Q It was closed, but not locked?

2 A It was -- I was able to open it freely. Whether it was  
3 unlocked or not, I don't know.

4 Q Okay. Did this door have, on, on the inside of, of  
5 that door, a knob where you twist to---

6 A I did not check that.

7 Q You did not check.

8 Okay. So, as far as you could tell, the door was  
9 unlocked?

10 A I can not tell if the door was unlocked or not. The  
11 only thing I can tell you is I was able to open the door.

12 Q It was closed all the way as far as you could tell?

13 A Yes, it seemed to be.

14 Q As you walked in the house, the kitchen was to the left  
15 as you were walking through the sliding glass door, is that  
16 correct?

17 A That is correct, yes, sir.

18 Q And the stove was well -- to the left, you've got a,  
19 like a, a counter or I mean anything you can sit at and look  
20 through?

21 A Yes.

22 Q Okay. And that separates that portion of the house  
23 from the kitchen in part, correct?

24 A Yes.

25 Q Okay. The stove is on, is alongside the wall where

Danny Jones - Cross-examination  
By Mr. Allen

1 this sliding glass door is, correct?

2 A Which, which wall?

3 Q The -- okay. The wall where we're seeing here where  
4 the sliding glass door is --

5 A Uh-huh. (Affirmative).

6 Q -- essentially the stove is facing that same wall.  
7 Would that be correct?

8 A The wall that would run perpendicular to the sliding  
9 glass closest -- that actually would not be in the  
10 photograph.

11 Is that what you're trying---

12 Q Well, yeah.

13 A Yes.

14 Q The stove would not be in the, in the photograph?

15 A Right, but I'm -- you're talking about the wall?

16 Q But the wall---

17 A As we're facing that sliding glass door, you're talking  
18 about the wall, that would be to our left?

19 Q That's correct.

20 A Yes, that's correct.

21 Q Now, in the living room, that would be the room to the  
22 right as you walked through the sliding glass door?

23 A Yes.

24 Q Other than the gas can and chair, you did not see  
25 anything else misplaced or out of order, did you?

Danny Jones - Cross-examination  
By Mr. Allen

1 A The gas can, overturned chair, the only things that I  
2 recall.

3 Q Yes, sir.

4 Okay. One second please, Your Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q As you proceeded through the house, I think you had  
8 said that after you noticed things in the, in the kitchen  
9 and the stove, right?

10 A No, I didn't notice the stove.

11 Q You didn't notice the stove.

12 Okay.

13 A That was Lieutenant---

14 Q You just felt the heat, is that right?

15 A I felt the heat.

16 Q And you, you smelled the odor of---

17 A Gasoline.

18 Q As you -- were you the first one that walked down the  
19 hall?

20 A I was the first officer in and Lieutenant Valentine was  
21 behind me.

22 Q Was behind you.

23 And that's the way y'all proceeded through?

24 I mean, in other words, you were the first one down,  
25 walking down the hallway of this house towards the bedroom?

Danny Jones - Cross-examination  
By Mr. Allen

1 A Yes.

2 Q Okay. And I believe you indicated that you stopped at  
3 the door of the bedroom where you saw Mr. Emery?

4 A That's correct.

5 Q And you did not go into the bedroom?

6 A That's correct.

7 Q And Officer Valentine was, was behind you, is that  
8 right?

9 A Yes.

10 Q He did not go into the bedroom either?

11 A Not at that point.

12 Q Not at that point.

13 Not until you get EMS or anyone, is that right?

14 A He, he advised me later on.

15 Q Well -- okay. But as long as he was with you, you did  
16 not see him go into the bedroom?

17 A That's correct.

18 Q Okay. Thank you, officer.

19 THE COURT: Redirect?

20 SOLICITOR GOWDY: No further questions, Your Honor.

21 THE COURT: Sir, you may step down. Thank you very  
22 much.

23 SOLICITOR GOWDY: Your Honor, may we request that  
24 Deputy Jones be released from his subpoena just for the  
25 purposes of going back to work?

Danny Jones - Cross-examination  
By Mr. Allen

1 THE COURT: Any objection?

2 MR. ALLEN: No objection to that.

3 THE COURT: You're free to go, sir.

4 WITNESS: Thank you, Your Honor.

5 SOLICITOR GOWDY: Thank you, Your Honor.

6 THE COURT: You may call your next witness.

7 SOLICITOR GOWDY: Your Honor, may it please the Court.

8 The State would call Deputy Jeff Valentine.

9 THE COURT: Officer, come forward to my right to be  
10 sworn please.

11 JEFF VALENTINE, being first duly  
12 sworn, testified as follows:

13 THE COURT: Sir, once you're seated in the jury box, if  
14 you would, I mean in the witness box, please state your name  
15 for the record please.

16 WITNESS: Jeffery Scott Valentine.

17 THE COURT: Mr. Gowdy, your witness.

18 SOLICITOR GOWDY: Thank you, Your Honor.

19 May it please the Court?

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY SOLICITOR GOWDY:

23 Q Good morning, Deputy Valentine.

24 A Good morning.

25 Q I'll get you to, to speak in as good and strong clear

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 voice as you can so the last two gentlemen can hear you.

2 okay?

3 A Yes, sir.

4 Q Tell the jury how long you've been in law enforcement.

5 A Been in law enforcement eleven years.

6 Q And how many of those eleven years have you spent in  
7 uniform patrol?

8 A All of it.

9 Q So, in May of 2007 you were in uniform?

10 A Yes, sir.

11 Q I want to go specifically to the morning of May the  
12 11<sup>th</sup>, 2007.

13 Did you overhear a radio transmission related to a  
14 welfare check?

15 A Yes, I did.

16 Q And what did you do in response to that?

17 A I answered up that I was close and informed dispatch  
18 that I was in route.

19 Q And where were you headed?

20 Do you recall the address?

21 A Number ■ Montgomery Street.

22 Q And did you arrive there first?

23 A I did.

24 Q What did you do when you got there, deputy?

25 A I -- when I arrived on the scene, I went to the front

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 door and knocked on the front door. Did not get a response.

2 Q All right. Was Deputy Jones there at this point?

3 A As I was coming off of the front porch, Sergeant Jones  
4 pulled up. And as I was walking down steps, I saw him pull  
5 up and then I saw a cell phone, a small silver cell phone  
6 with, with the back off of it and the battery off of it  
7 laying on the ground.

8 Q And this is walking down the front steps of the house  
9 where you saw this?

10 A Yes, sir.

11 Q This exhibit is already into evidence. So, let me  
12 republish it just in hopes that it might help you orient  
13 yourself.

14 Does that look familiar?

15 A That's the front house of ■■■, front door of ■■■  
16 Montgomery Street.

17 Q Okay. We'll come back to the cell phone in just a  
18 second.

19 But you walked down the steps.

20 Deputy Jones is arriving at this time?

21 A Yes, sir.

22 Q All right. Tell the jury what happened after that.

23 A I came down the steps. I went around to the -- there's  
24 a shop at the end of the driveway of the house. I went to  
25 the shop, knocked on the door, and nobody answered. At that

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 point I asked for the telephone number into the residence.

2 I called into the residence on my mobile phone and the  
3 answering machine picked up. So, I just hung the phone up.

4 Q Did y'all continue to walk around the house or what did  
5 you do at that point?

6 A We were, we were walking around the house looking for  
7 obvious signs of there, if there was a problem, broken  
8 windows, broken doors that had been kicked open, anything  
9 that might indicate that there was trouble in the residence.

10 Q Did you ultimately find a door that was unsecured?

11 A Sergeant Jones found an unlocked sliding glass door.  
12 He notified me. So, we went to the sliding glass door,  
13 announced ourselves that we were with the Sheriff's Office,  
14 and that's a typical procedure when we find a house  
15 unsecured. We'll yell inside Sheriff's Office to make sure,  
16 see if we get a response. We did not get a response. So,  
17 we went in the house.

18 Q Let me show you what has previously been introduced as  
19 State's 54.

20 Do you recognize that?

21 A That's the sliding glass door that we entered.

22 Q Okay. Deputy Valentine, when you walked through that  
23 sliding glass door, I want you to tell the jury what you  
24 saw, felt, smelled, all the senses?

25 what, what hit you when you walked through that sliding

Jeff valentine - Direct examination  
By Solicitor Gowdy

1 glass door?

2 A The first thing that struck me was when we went in the  
3 house it was warm. It was warmer than you would expect to  
4 find walking into a, into a house. As we got inside, I  
5 noticed a smell of, of a petroleum product. I thought it  
6 was gasoline, but it was, it was pretty strong. And as I  
7 looked down the hall, I could see puddles in the floor where  
8 it looked like some, something had evaporated. When I  
9 looked to my right into the living room area, there was a  
10 overturned chair and a red gas can and more puddles that,  
11 that appeared that they had been evaporating for a, for a  
12 time.

13 Q How would you describe the smell of gasoline---

14 A It was---

15 Q ---in that house?

16 A It was extremely strong. You -- I mean it, it wasn't  
17 overwhelming. It wasn't, it wasn't, didn't make you feel  
18 faint. But it was, it was extremely strong.

19 Q Let me show you what's been previously introduced as  
20 State's 200. Imagine that those cones are not there.

21 Is that how the room appeared when you went in?

22 A Yes, sir, it is.

23 Q All right. You've described the heat. You've  
24 described the smell. You've described what you believed to  
25 be liquid on the floor.

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 A Yes, sir.

2 Q All right. What's the first thing you did once you  
3 noticed all that, took awareness of all that?

4 Where did you go next?

5 A As I started looking to the left, I noticed an orange  
6 glow coming from my left. I looked into what, what turned  
7 out to be the kitchen area. When I saw the stove, I saw the  
8 burners on the stove were turned on. I went to the stove.  
9 All the burners were turned on high. I turned those burners  
10 off. They were pans sitting on the two back burners. I,  
11 I -- then I saw the broiler was turned on in the oven, the  
12 oven, oven door was opened and the broiler was turned on.  
13 So, I turned that off.

14 Q All right. When you secured and, and took those  
15 precautions in the kitchen, where did you go?

16 A About -- as soon as I got the oven turned off, I saw  
17 that the, the burners were cooling down. They were turning  
18 back, going back black. Sergeant Jones informed me that it  
19 appeared we had a homicide. So, I immediately went down the  
20 hall where I knew Sergeant Jones was.

21 When I got to the back bedroom on the right, the  
22 bedroom door was standing open, I looked and there was a  
23 body laying on, face down on the mattress that I believed it  
24 was a male and I did see some blood on the left shoulder,  
25 what I thought was blood.

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 Q I want to show you State's 167.

2 And accepting that this may not have been the precise  
3 vantage point or it may of been, is that what you saw on  
4 the, on the bed?

5 A Yes, sir.

6 Q All right. At this point, how many homicides did you  
7 believe you were working?

8 A From, from what I saw, we had, we had one body in the  
9 residence.

10 Q And what is the protocol for the Sheriff's Department  
11 when you suspect that you have a homicide?

12 A The first thing we want to do is make sure we clear the  
13 house and make sure we, as, as good as we can, without  
14 disturbing anything, go through the rest of the house, make  
15 sure we don't find anything else, any more bodies, anybody  
16 that needs help, and then we exit and secure the house as  
17 quickly as we can not letting anyone in or out.

18 And so, that's what we did. We, we walked through the  
19 other rooms, briefly looked around, didn't see any, anybody  
20 else, came back outside the house. As we came back outside  
21 the house, Sergeant Jones informed the, the communications  
22 center that we needed violent crime detectives and also EMS.

23 At that point I started securing the crime scene,  
24 getting crime scene tape up, and doing what we call a crime  
25 scene log to log in anybody who walks in or, in or out of

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 the house.

2 Q Did EMS ultimately come to [REDACTED] Montgomery Street?

3 A Yes, they -- EMS arrived shortly after. Paramedic Bill  
4 Price was there on the scene. He and I went back into the  
5 house.

6 Q Tell the jury what you saw when you and Paramedic Price  
7 went back into the house.

8 A As we were going back into the house, I explained to  
9 him where the body was, pointing out, you know, where,  
10 trying not to step in the puddles. He walked in the room to  
11 check on the, the body that was laying on the bed, and he  
12 pointed to me and kind of to my left and in the floor, and I  
13 looked down there and I found another -- I saw another body,  
14 a female body.

15 Q Deputy Valentine, tell me if you can---

16 THE COURT: You want us to lower the lights so that---

17 SOLICITOR GOWDY: Your Honor, that'd be wonderful if  
18 they---

19 THE COURT: If you will do so please, bailiff.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 THE COURT: Yes, sir. Just one second and we'll get  
22 that going.

23 SOLICITOR GOWDY: Yes, sir.

24 If, if you can bring them down on this side, it may  
25 help the screen a little bit.

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 Deputy Valentine, can you tell the jury or do you know  
2 what I am illuminating with this laser pointer?

3 A That, that was where the body of the female was laying.

4 Q Can you describe how the body was laying?

5 A The body was laying the -- she was on her back kind of  
6 turned a little bit sideways, and her legs were pulled up  
7 kind of almost in a, in a fetal type position, and she was  
8 covered up with some, some covers or a, a cushion of some  
9 sort. I could see her genital area and part of her torso.

10 Q So, she was unclothed from the waist down?

11 A Yes, sir.

12 Q Covered with items?

13 A Yes, sir.

14 Q Were you able, accepting that you, you weren't EMS and  
15 you don't work for the Coroner's Office, but were you able  
16 to see the injuries to her?

17 Were you at a vantage point where you could see them?

18 A I did not, I did not see any injuries. I did see some,  
19 some blood splatter, but nothing -- no, no injuries.

20 Q Okay. I want to show you what have been marked as  
21 State's 165, 23, and 29, 35, 166, and 164, and ask you  
22 whether or not you're familiar with them and whether or not  
23 they are relevant to this case.

24 A This is the cell phone that I found, I saw laying on  
25 the ground situated to the right of the steps as you come

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 off the front porch. The battery's missing off the back of  
2 it and the cover.

3 Q I'm gonna -- don't let me interrupt you, but I, I'm  
4 gonna eventually get you to describe those when I put them  
5 up on the screen---

6 A Okay.

7 Q ---if they come into evidence.

8 So, do, do all of those pictures appear to be relevant  
9 to this case?

10 A Yes, they do.

11 Q And are you familiar with all of those pictures?

12 A Yes, I am.

13 Q All right. Thank you. And I'm gonna see if I can get  
14 them in and then we'll put that one up.

15 Your Honor, we would move these exhibits into evidence.

16 THE COURT: Can you bring the lights back up so that  
17 they, the defense can look at those please?

18 (Bailiff complies.)

19 THE COURT: All right. That's good. That's good.

20 MR. ALLEN: No objection.

21 THE COURT: without objection, they'll be admitted into  
22 evidence as marked.

23 SOLICITOR GOWDY: Your Honor, may it please the Court.

24 I miss read my own handwriting, and I think I said that  
25 it was one, that it was 29 which really it's 24.

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 THE COURT: Okay, sir.

2 SOLICITOR GOWDY: I apologize to the Court and Madam  
3 Court Reporter.

4 THE COURT: Again, they will be admitted as marked.  
5 (Whereupon, State's Exhibit Nos. 23, 24, 35, and 164  
6 through 166 were received into evidence at this time.)

7 THE COURT: You may proceed.

8 SOLICITOR GOWDY: Thank you, Your Honor.  
9 Permission to publish to the jury?

10 THE COURT: Yes, sir, you may do so.

11 SOLICITOR GOWDY: Thank you, Your Honor.

12 Q Deputy Valentine, you and I, a little while ago, were  
13 walking down these front steps.

14 A Yes, sir.

15 Q You were explaining to the jury what you saw, and I  
16 want you to look at 60, 165.

17 Are those, those same steps?

18 A Yes, sir, those are the steps off the front porch.

19 Q And there's a placard there that wasn't there when, I  
20 assume wasn't there, but what, what is that placard mark?

21 A That marks the location of the cell phone that I  
22 noticed when I came off the steps.

23 Q All right. Let me show you State's 35.

24 Is that a close-up of the same cell phone?

25 A Yes, it is.

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 Q And let me show you State's 23.

2 what did you notice about the cell phone?

3 A That the back, the, the back cover was missing off of  
4 it and also the battery.

5 Q Okay. Let me show you State's 24.

6 All of those are pictures of the same cell phone that  
7 you found descending the stairs at ■ Montgomery Street?

8 A I didn't, I didn't see the front of it, but that  
9 appears to be the same phone.

10 Q Okay. Let me show you State's 166.

11 Tell the jury what they are looking at.

12 A That's the kitchen area of the, of the home.

13 Q Can you see the stove in that picture?

14 A I believe it's to the left of that bar there behind the  
15 bar.

16 Q Okay. well, let me show you State's 164.

17 Is that the stove that's at ■ Montgomery Street?

18 A Yes, it is.

19 Q All right. And you, your testimony is that all four  
20 eyes were fully lit?

21 A Yes, sir.

22 Q And that there were pans on the back?

23 A Yes, sir.

24 Q And that the oven was turned on to broil?

25 A Yes, sir.

Jeff Valentine - Direct examination  
By Solicitor Gowdy

1 Q After EMS responded and you realized that it was two  
2 homicides, what role, as a uniform patrol officer, did you  
3 play in the subsequent investigation?

4 A Basically, at that point, it became my point, my, my  
5 job to make sure that the crime, crime scene was secured  
6 until the investigators and, and the coroner and the, the,  
7 excuse me, the forensic people came. I insured that the  
8 whole, the house was roped off with crime scene tape so we  
9 could control who entered and exited. I -- as I had started  
10 the crime scene log when another, when another deputy  
11 arrived, I turned the crime scene log over to him and made  
12 sure that there were deputies posted all around the house so  
13 we could make sure that the front and back were both secure.

14 Q Is it a protocol, Deputy Valentine, for a coroner's  
15 investigator to respond to a homicide scene?

16 A Yes, sir.

17 Q And ultimately did the sheriff himself, as well as his  
18 violent crimes investigators, come to [REDACTED] Montgomery Street?

19 A Yes, sir, they did.

20 Q Thank you, Deputy Valentine. Please answer any  
21 questions the defense attorney may have for you.

22 THE COURT: Mr. Allen, your answer.

23 MR. ALLEN: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

Jeff Valentine - Cross-examination  
By Mr. Allen

1 BY MR. ALLEN:

2 Q You arrived at approximately, I think you said, 8:27

3 or---

4 A Yeah, that's, that's the time that, that I was informed  
5 by the dispatch I had called on the scene.

6 Q When you received a -- did you receive the call --  
7 okay. Wait a minute.

8 Did -- you received the call at 8:27 and then you went  
9 or---

10 A I arrived on the scene at 8:27.

11 Q Okay. That's what I thought.

12 A Okay. I'm sorry.

13 Q Okay. Then I think you said that before any other  
14 officer arrived, arrived you had gone to the front door?

15 A Yes, sir, I, I went to the front door.

16 Q And determined that that was secure?

17 A Yes, sir.

18 Q And of course, that means closed and---

19 A It was closed and locked.

20 Q Closed and locked?

21 A Yes, sir.

22 Q You could not, you could not get in from the outside?

23 A Right.

24 Q Then you also, before any other officer had arrived,  
25 you had gone to the shop I believe you said?

Jeff Valentine - Cross-examination  
By Mr. Allen

1 A No, that was, that was after Sergeant Jones had  
2 arrived. As I was coming off of the porch, Sergeant Jones  
3 was arriving.

4 Q Okay. And you and Sergeant Jones proceeded to the, as  
5 you're looking at the house from the street, you proceeded  
6 to the right, is that correct?

7 A The building that I checked was straight down the  
8 driveway. The driveway's running -- if you're looking at  
9 the house, the driveway is to the right and the building  
10 that I checked is at the end of the driveway.

11 Q Okay. All right. Is that's -- again, that's Exhibit  
12 22, State's 22 that I'm showing you on the screen, that's  
13 the front door, right?

14 A Yes, sir.

15 Q This is the front door of the house?

16 A That's correct.

17 Q From the street view, correct?

18 A That's correct.

19 Q And you went towards the right as it appears in that  
20 picture?

21 A Correct.

22 Q Driveway area was on the right, and then straight down  
23 the driveway is the shop?

24 A Yes, sir.

25 Q Okay. It is behind the house, but obviously to the

Jeff Valentine - Cross-examination  
By Mr. Allen

1 side of the house, but behind a little bit?

2 A That's correct.

3 Q Does not sit up as close to the street as the house  
4 does?

5 A No, sir, it is, it is behind the house.

6 Q Okay. And, and the shop was also secured?

7 A Yes, sir.

8 Q As you walk around the house, of course, you were  
9 looking for any other signs of forced entry?

10 A Yes, sir.

11 Q Okay. Didn't find any?

12 A No, sir.

13 Q Okay. The windows, I don't know if you -- you didn't  
14 check every window, did you?

15 A Briefly. We were, we did -- we were walking around the  
16 house just looking for broken glass is what I was looking  
17 for.

18 Q All right. But you didn't try to raise every window  
19 from the outside?

20 A No, sir.

21 Q That's what I'm getting at.

22 But you were looking to see if like a window had been  
23 opened or broken in---

24 A Correct.

25 Q ---or anybody get into?

Jeff Valentine - Cross-examination  
By Mr. Allen

1           Didn't see any?

2   A       No, sir.

3   Q       And checked the -- did you check any doors in the back?

4   A       Sergeant Jones did.

5   Q       Okay. And didn't notice any -- I mean they were all  
6   secure?

7   A       The, the sliding glass door was unlocked.

8   Q       Okay. I was actually talking about the back -- is the  
9   sliding glass door on the side of the house?

10   A       If you went, if you walk around, if you walk around  
11   the -- if you walk around the back of the house, there's --  
12   it's kind of L-shaped in the back I guess is the best way to  
13   describe it. If you walk around the back of the house,  
14   you're looking at the back of the house, there's a wall that  
15   goes right here on the right-hand side and that's where the  
16   sliding glass door was, and then there's like a little  
17   breezeway going to kind of a garage type building that's  
18   set, offset to the side of the house if you're looking at it  
19   from the back.

20   Q       Okay. As you're looking at the sliding glass door, as  
21   you're looking at the sliding glass door, and, again, I'm  
22   putting up State's 64, this is the sliding glass door you're  
23   talking about, right?

24   A       That's correct.

25   Q       Okay. And the breezeway is --?

Jeff Valentine - Cross-examination  
By Mr. Allen

1 A If you pan on around to the right, that's where the --  
2 that's the breezeway I'm talking about.

3 Q Pan to the right as you're looking at this picture?

4 A Correct.

5 Q And this is to the side -- but this is like  
6 perpendicular to the front of the house from the sliding  
7 glass door is or is that the actual back of the house like  
8 parallel to the front?

9 A This -- the back, the back of the house -- this is --  
10 if you're standing at the back of the house, this would be  
11 the right side wall going up to that where that breezeway  
12 area starts.

13 Q Okay. I got you.

14 Now -- but were there any doors on the actual back part  
15 of the house on another wall other than this?

16 A I don't remember one being back there.

17 Q Okay. When you got to the sliding glass door, had the,  
18 had Officer Jones already gone through or was he standing  
19 there?

20 A No, he, he had opened, he had opened the, slid the door  
21 opened.

22 Q Okay.

23 A He found, he found the door unlocked and partially  
24 opened and that's when he called out to me and then we made  
25 entry together.

Jeff Valentine - Cross-examination  
By Mr. Allen

1 Q You made entry together?

2 A Yes, sir.

3 Q Now, when you, you went in, I believe you indicated  
4 that you saw, or did you, in an overturned chair, and a gas  
5 can in the living room, is that right?

6 A Right, to my, to my right as I walked through the door  
7 in the living room area to my right.

8 Q So, to your right as you're walking in that sliding  
9 glass door?

10 A Yes, sir.

11 Q And other than those two items, everything else  
12 looked -- nothing else looked out of order---

13 A Not in the living room.

14 Q ---at that point?

15 In the living room?

16 A Right, the, the chair was overturned and the gas can  
17 was laying there. But everything else appeared to be  
18 sitting upright.

19 Q Okay. And I believe you indicated that you proceeded  
20 into the kitchen, is that right?

21 A Yes, sir.

22 Q Okay. And you noticed the items on, on the, on the,  
23 the stove, is that correct?

24 A Yes, sir.

25 Q Okay. Other than turning off the stove, you did not

Jeff Valentine - Cross-examination  
By Mr. Allen

1 move any other items, is that correct?

2 A No, I just -- all I did was touch the dials, the  
3 control dials.

4 Q Right.

5 You, you didn't knock anything over, didn't move any  
6 pans?

7 A No, sir.

8 Q You just left the stove pretty much as it was?

9 A I left everything as it was other than turning the  
10 stove off.

11 Q Turning it off?

12 A Yes, sir.

13 Q All right. Now, when you went in, you and, and Officer  
14 Jones proceeded down the hall into the bedroom, is that  
15 correct?

16 A I was in the kitchen as Officer, as Sergeant Jones was  
17 going down the, the hallway.

18 Q Okay.

19 A Almost exactly the same time that I got the stove  
20 turned off and I realized it was cooling down, I heard him  
21 say it appears, it looks like we've got a homicide.

22 Q Okay.

23 A So, that's when I went down the hallway.

24 Q He was -- when you went down the hallway, he was  
25 already at the door of the, the bedroom?

Jeff Valentine - Cross-examination  
By Mr. Allen

1 A Yes.

2 Q And you went towards that---

3 A Yes, sir.

4 Q ---area?

5 And at that point, you did not go into the bedroom?

6 A No, sir, neither one of us went in the bedroom.

7 Q You, and you checked the other rooms of the house at  
8 that point as you left?

9 A We went -- if you go, if you go down the hall, the  
10 bedroom where the bodies were is to the right at the very  
11 end of the hall. There's another room to the left -- the  
12 hall turns -- the hall dead-ends there and turns left, and  
13 there's another room in there. We walked in that room,  
14 looked in there briefly to make sure we didn't see any  
15 obvious signs of a body or anybody, anybody that was hurt  
16 and needed help and then that's when we came back out.

17 Q And of course, you didn't find anything like that?

18 A Not, not at that time, no, sir.

19 Q All right. And then I believe you said, you said that  
20 you went back in with the investigator, with the---

21 A With the EMS, yes, sir.

22 Q EMS person.

23 Okay. One second please.

24 THE COURT: Yes, sir.

25 (Pause.)

Jeff Valentine - Cross-examination  
By Mr. Allen

1 Q Let me take you back into the kitchen at the point  
2 where you went in there to turn off the stove.

3 When you saw the stove, was the oven door closed?

4 A The oven door was opened.

5 Q The oven door -- was it opened, all the way opened?

6 A I believe it was.

7 Q Okay. And you didn't touch the oven door?

8 A No, sir.

9 Q You didn't close the oven door?

10 A No, sir.

11 Q Okay. Thank you, officer.

12 THE COURT: Redirect?

13 SOLICITOR GOWDY: No, sir, Your Honor.

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

15 Do you wish to excuse this gentleman from his subpoena?

16 SOLICITOR GOWDY: Yes, sir, Your Honor.

17 THE COURT: Any objection?

18 MR. ALLEN: No, Your Honor.

19 THE COURT: You're free to go, sir. Thank you very  
20 much.

21 WITNESS: Thank you, Your Honor.

22 THE COURT: Solicitor, at this time we're gonna take a  
23 short break.

24 SOLICITOR GOWDY: Yes, sir.

25 THE COURT: Ladies and gentlemen of the jury, we've

1 been going -- I told you back on Monday that we would go for  
2 about an hour and a half to two hours before we took a  
3 break, and this would be a good time to take our first  
4 break. I'll give you a little more detailed instructions at  
5 this point in time than I will on future breaks.

6 But every time you leave the courtroom, I will be  
7 giving you instructions not to begin any discussions  
8 concerning this case. You've heard very little about it.  
9 It would be improper for you to do so. And, of course, in  
10 doing so, you might begin to formulate opinions that could  
11 ultimately color your final decision, and, and we're gonna  
12 ask that you not discuss it. Don't begin to formulate any  
13 opinions. Keep an open mind until you've heard all the  
14 evidence and been charged concerning the law.

15 During the break, the bailiffs will be assisting you.  
16 If you need anything, please let them know. I don't know if  
17 any of you are smokers. If you are smokers, you will have  
18 to be accompanied to a designated area for you to be able to  
19 do that.

20 So, at this point in time we're gonna take about a ten  
21 to fifteen minute break depending on how long it takes to  
22 take care of you folks, and then we'll be resuming the  
23 charge, the trial.

24 So, at this point in time I'll ask everyone to remain  
25 seated until the jury has completely retired.

1 (Whereupon, the following takes place outside the  
2 presence of the jury.)

3 THE COURT: All right. Court will be in recess for  
4 about ten to fifteen minutes.

5 Thank you very much.

6 (Whereupon, a short recess was taken at this time.)

7 THE COURT: Is the State ready to proceed?

8 SOLICITOR GOWDY: Yes, sir, Your Honor.

9 THE COURT: Is the defense ready to proceed?

10 MR. ALLEN: Yes, sir, Your Honor.

11 THE COURT: Bring the jury in.

12 (Whereupon, the following takes place within the  
13 presence of the jury.)

14 THE COURT: All right. The record will reflect that  
15 all jurors have now returned to the courtroom. When we  
16 broke earlier the State was in the process of presenting its  
17 evidence.

18 You may call your next witness.

19 SOLICITOR GOWDY: May it please the Court, Your Honor.

20 The State would call Joseph Steward.

21 THE COURT: Sir, if you would come forward to my right  
22 to be sworn.

23 JOSEPH STEWARD, being first duly  
24 sworn, testified as follows:

25 THE COURT: Have a seat in the witness stand please,

1 sir.

2 (Witness complies.)

3 THE COURT: Please state your name for the record.

4 WITNESS: My name is Joseph B. Steward.

5 THE COURT: Mr. Gowdy, your witness.

6 SOLICITOR GOWDY: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 SOLICITOR GOWDY: May it please the Court.

9 DIRECT EXAMINATION

10 BY SOLICITOR GOWDY:

11 Q Good morning by about five or ten minutes. I said good  
12 morning barely. It's almost noon.

13 A Yes, sir.

14 Q Okay. Can, can you tell the jury who you are and where  
15 you work?

16 A My name Joseph B. Steward. Currently working with  
17 South Carolina Highway Patrol.

18 Q And Trooper Steward, how long have you been with the  
19 Highway Patrol?

20 A I started there in January of this year.

21 Q In May of 2007, how were you employed?

22 A I would of been employed by the Spartanburg County  
23 Coroner's Office here in Spartanburg County.

24 Q And what was your job title or your responsibilities  
25 with the Coroner's office?

Joseph Steward - Direct examination  
By Solicitor Gowdy

1 A I was a coroner's investigator assigned on call and  
2 on-duty to respond to violent suspicious death here in  
3 Spartanburg.

4 Q What are some of the duties and functions and  
5 responsibilities of a coroner's investigator?

6 A Some of the duties of that office would be to respond  
7 to the, the event of a death in this county, to perform a, a  
8 task of identifying, defining a manner and a cause of death.

9 Q Trooper Steward, did you respond to ■ Montgomery  
10 Street on May the 11<sup>th</sup>, 2007?

11 A Yes, sir, I did.

12 Q Can you tell the jury what you found when you responded  
13 to that residence?

14 A On my arrival, there was some deputies there that had  
15 responded prior to my arrival along with EMS.

16 Am I too close?

17 BAILIFF: Yes.

18 A Okay. I'm sorry. EMS was on, on the scene there along  
19 with the other deputies. They were giving me a run down  
20 real briefly of what they had found. No one was in the home  
21 when I got there. They, they described to me that there was  
22 two victims in the home, that I would, they needed my  
23 services for, for identification, mainly cause of death.

24 After arrival of some, some further Sheriff's Office  
25 investigator, we entered the home. A strong odor of

Joseph Steward - Direct examination  
By Solicitor Gowdy

1 gasoline was in the air in the home. Began to see a lot, a  
2 lot of blood on the floors in that home throughout the  
3 hallways and rooms as, as we entered through that home.

4 Going to the back of this home after coming down a  
5 longer hallway, there's a room off -- that was coming down  
6 the hallway to the right. Once we got to that room, right  
7 as the doorway began, there was an extremely large amount of  
8 blood from ceiling to floor, wall to wall just as far as you  
9 could see. 360 degrees in this room there was blood and it  
10 was of a spatter type nature.

11 This room looked like a tornado ran through it. It was  
12 just ransacked. There was drawers and clothes across the  
13 room. There was a male lying face down in the bed covered  
14 with an extreme amount of blood. There was also a female to  
15 my left of this bed in the floor. She was covered in a lot  
16 of blood as well. Both of these were deceased. Later  
17 identified as Charles Emery and Ann Emery.

18 Q Were you able, Trooper Steward, to make the  
19 identification on the scene and what could you tell the jury  
20 about the nature of the injuries that you saw?

21 A Later there was identification of these two individuals  
22 at the hospital. They were not identified immediately on  
23 scene. There was an extreme amount of injuries to each of  
24 these victims making it impossible to identify on the scene.  
25 They were later identified at the hospital, and at the time

Joseph Steward - Direct examination  
By Solicitor Gowdy

1 of autopsy they were definitely identified by that time.

2 Mr. Solicitor, could you ask me the next part of that  
3 question?

4 Q You answered both of them.

5 A Okay. All right.

6 Q You answered both of them.

7 You mentioned, if I understood your testimony  
8 correctly, that you and some Sheriff's Department  
9 investigators went into the crime scene together as a unit.

10 What is your thought process when you go into a crime  
11 scene?

12 What are you trying to do?

13 A Okay. As I enter any scene, any crime scene, my  
14 thought in my head is I don't want to contaminate the scene.  
15 You're obviously gonna bring something in and take something  
16 out every time you go to a scene. My best way of keeping  
17 myself from minimizing that is I just imagine myself as  
18 having my hands in my pockets where I'm not gonna touch  
19 anything, not gonna pick up anything to, to leave any kind  
20 of print or pattern of anything. If there's anything that I  
21 see that I can avoid, I can go around, I go around it to  
22 minimize that risk of leaving anything that I could bring in  
23 to that scene.

24 Q Thank you, Trooper Steward. Please answer any  
25 questions the defense attorney may have.

Joseph Steward - Direct examination  
By Solicitor Gowdy

1 THE COURT: Mr. Allen, your witness.

2 MR. ALLEN: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. ALLEN:

6 Q When you arrived, everyone was already out of the  
7 house, is that correct?

8 A That's correct.

9 Q Okay. All the officers, all the EMS?

10 A That's correct.

11 Q Okay. Did you enter -- you entered through a sliding,  
12 a sliding glass door?

13 A I did. I entered through a rear sliding glass door of  
14 the home.

15 Q Okay. And that sliding glass door led into an area  
16 where the -- do you recall if the kitchen was on the left as  
17 you entered into the sliding glass door?

18 A That would be correct. Entered the sliding glass door,  
19 it went into an open area and the kitchen was immediately to  
20 the left.

21 Q And the living room was to the immediate right?

22 A To the right.

23 Q Okay. And did you walk into any, either of those rooms  
24 to look around or did you go pretty much straight towards a  
25 bedroom?

Joseph Steward - Cross-examination  
By Mr. Allen

1 A On the initial walk through, went straight in. There's  
2 a hallway between the, this open area of the kitchen to the  
3 left. Living room's to the right. There's a hallway. Went  
4 straight down that hallway to the back bedroom where I'd  
5 been told earlier where the victims would be.

6 Q Okay. So, your interest was not in looking around the  
7 whole house, but just to go to where the victims were?

8 Is that -- would that be a correct statement?

9 A That would be a correct statement.

10 Q Okay. Now, and, of course, as you walked through, you  
11 were careful not to, I think you said, to try to avoid  
12 anything that might contaminate the scene, is that correct?

13 A That's correct.

14 Q And by contaminate the scene, we're talking about  
15 leaving any evidence of your presence?

16 A That's correct.

17 Q Okay. Or to change the scene in any material way?

18 Is that -- would that be a correct statement?

19 A That would be correct.

20 Q Now, you entered the bedroom where you saw the victims,  
21 is that correct?

22 A I made it to the doorway.

23 Q To the doorway?

24 A Of this, of this room without going in. I -- the  
25 reason I didn't go in any further is a lot of blood in the

Joseph Steward - Cross-examination  
By Mr. Allen

1 floor.

2 Q Okay. I want to talk a, a little bit about that.

3 You said there was a lot of blood on the floor?

4 A Throughout that whole room.

5 Q Throughout that -- okay. There was a lot of blood on  
6 the floor as well as on the walls did you say?

7 A The ceiling and the walls---

8 Q Okay.

9 A ---as well.

10 Q And you said that that looked as if it was like a, a  
11 spatter type?

12 A That would be correct.

13 Q Okay. And you saw a large amount of blood on the, all  
14 four walls that you could observe?

15 A That'd be correct.

16 Q At the door where you were, you could observe, by  
17 looking in and looking around, all four walls?

18 Would that be a correct statement?

19 A That would be a correct statement.

20 Q Okay. So, you got a good impression that there was a  
21 lot of blood everywhere?

22 Would that be a fair statement?

23 A Yes, sir, that is.

24 Q Okay. Did you go into that room?

25 A My entrance to this room would of been later on in the

Joseph Steward - Cross-examination  
By Mr. Allen

1 afternoon. I'm thinking some time around 3:30.

2 Q Okay. So, you did not go into the room at this time  
3 you were talking about?

4 A That's right.

5 Q Is that---

6 A That's correct.

7 Q Okay. Did you -- could you see both the bodies from  
8 where you were?

9 A Yes, I could.

10 Q Okay. Could you see if the hands of the, of either of  
11 the bodies had been bagged or anything like that?

12 Do you know, do you know what I mean by that---

13 A Yes, I do.

14 Q ---bags over the hands?

15 Had that, had been done?

16 A No, that had not. The -- their bodies had not been  
17 disturbed.

18 Q Okay. You observed -- did you see shoe prints in any  
19 of the blood that you saw on the floor?

20 A There was some prints in the blood in the floor.

21 Q Okay. Could you tell how many?

22 A They were -- recalling right off, I can't tell you how  
23 many.

24 Q Okay. Did you make note of the number or anything like  
25 that?

Joseph Steward - Cross-examination  
By Mr. Allen

1 A I just made mental note that there was shoe prints in  
2 the---

3 Q Okay.

4 A ---blood.

5 Q Did you request that a sexual assault kit be performed  
6 as part of the autopsy of the female body?

7 A Yes, I did.

8 Q Okay. And that was based on the position as you saw at  
9 that time?

10 A The reason I requested this, this, what he's referring  
11 to as the sexual assault kit be done, is because of the  
12 position that the female's body was found in. It, it did  
13 not appear normal at -- using that term loosely. And it, it  
14 give me indication that something had happened there that I  
15 felt of a sexual nature and it needed to be done.

16 MR. ALLEN: One second please, Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q Thank you, Mr. Steward.

20 THE COURT: Redirect?

21 SOLICITOR GOWDY: Very, very briefly, Your Honor.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY SOLICITOR GOWDY:

25 Q Trooper Steward, can you elaborate a little bit for the

Joseph Steward - Redirect examination  
By Solicitor Gowdy

1 jury on what you saw that led you to conclude that a sex  
2 assault kit should be done?

3 A The way the female victim's body was laying, she was on  
4 her back, her legs were raised up and over to the right  
5 resting against a chest of drawers or, or dresser, part of  
6 the furniture in the bedroom. Her clothing had been pushed  
7 up towards her upper body. Therefore, pretty much from her  
8 neck down her body was completely exposed. The victim --  
9 there was a sort of, appeared some sort of fluids were  
10 around her vaginal and rectal areas. Not knowing what they  
11 were and her position of being found, that led me to believe  
12 that, that some kind of sexual assault had, had been  
13 performed.

14 Q Thank you, Trooper Steward.

15 No further questions.

16 THE COURT: Recross?

17 MR. ALLEN: No, Your Honor.

18 THE COURT: You wish for this witness to be released---

19 SOLICITOR GOWDY: May it please the Court, yes, sir.

20 THE COURT: ---from the subpoena?

21 Any objection?

22 MR. ALLEN: No objection.

23 THE COURT: Sir, you may step down. You're free to go.

24 WITNESS: Thank you.

25 THE COURT: State may call its next witness.

Joseph Steward - Redirect examination  
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, the State would call  
2 Michelle Burgess.

3 THE COURT: Ma'am, come forward to be sworn.

4 MICHELLE BURGESS, being first duly  
5 sworn, testified as follows:

6 THE COURT: Ma'am, once you're seated, I'm going to ask  
7 that you state your name for the record please.

8 WITNESS: My name is Michelle Burgess.

9 THE COURT: Mr. Gowdy, your witness.

10 SOLICITOR GOWDY: Your Honor, may it please the Court?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY SOLICITOR GOWDY:

14 Q Good afternoon, Mrs. Burgess.

15 A Hi.

16 Q I'm going to get you to speak up in a good strong  
17 voice, voice where the last two gentlemen can hear you.

18 Okay?

19 A Okay.

20 Q Tell them who you are and tell them what county you  
21 live in.

22 A My name is Michelle Burgess and I live in Union, South  
23 Carolina.

24 Q And how long have you lived in Union, ma'am?

25 A Approximately, approximately forty years.

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 Q All right. Can we go back to May the 11<sup>th</sup>, 2007?

2 In the early morning hours, tell, tell us what you were  
3 doing.

4 Friday would be a school morning, right?

5 A Correct.

6 Q What, what were you doing and what did you see that was  
7 out of the ordinary?

8 A I was on my way that morning to take my daughter to  
9 school. We had stopped to, by the Li'L Cricket that morning  
10 for her to go in and get her a candy bar and a drink. And  
11 as I pulled out of the parking lot, I had gotten into, in  
12 behind a van. And as we were going up -- excuse me. As we  
13 were going up the road, the van was swerving from side to  
14 side.

15 Q And where was, where was this?

16 You said you were in -- you were, you were from Union.  
17 Was this in Union that this was happening?

18 A It's in Buffalo.

19 Q Okay.

20 A It's still part of Union.

21 Q Part of Union County?

22 A Yes, sir.

23 Q Okay. In the community of Buffalo?

24 A Yes, sir.

25 Q Okay. And was this a two lane road, a four lane road?

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 A It's a two lane.

2 Q Two lane road and you were behind the van?

3 A Yes, sir.

4 Q Can you tell the jury what movements the van was making  
5 that, that brought it to your attention?

6 A It was swerving from one side to the other and off the  
7 road, and then he'd catch itself -- when I say he, you know.  
8 But it just kept, it just kept doing that all the way up the  
9 road.

10 Q Okay. And ultimately what happened?

11 A We got to, up to where there's a restaurant called --  
12 it's on the same, it's on the same road. The name of the  
13 restaurant is the Midway Barbecue. And when he got right  
14 there, the van swerved off. He hit a fire hydrant and then  
15 run into a fence and the, the van stopped.

16 Q Okay. And you were how close behind the van when,  
17 when---

18 A I was, I was right in behind him. I was like maybe a  
19 car length at the most behind him.

20 Q No trouble seeing it?

21 A No, sir.

22 Q Okay. After it, the van hit a fire hydrant and a  
23 fence, what did you do?

24 A I immediately pulled over in the parking lot when the  
25 van swerved and hit and immediately called 9-1-1 before I

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 even stepped out of the car.

2 Q Okay. You called 9-1-1 to report the wreck?

3 A Yes, sir.

4 Q Okay. What happened after that?

5 A After that, as -- while I was on the phone with 9-1-1,  
6 I got out of the car. The gentleman from the van got out of  
7 the, out of the van. He come towards me. There was another  
8 vehicle that was -- as, as we was coming up, it was coming  
9 towards us. He out -- he also stopped. He got out of his  
10 vehicle and we approached the gentleman while I was on the  
11 phone with 9-1-1, and I told him, I said that I have called  
12 9-1-1, and that's when the gentleman told me that I didn't  
13 need to, that he was okay. But that he was trying to get to  
14 the hospital. And he pointed up the road to say he heeded  
15 to get to his wife, his wife was in labor.

16 Q Okay. Now, you said -- you used the word gentleman  
17 twice, which denotes to me one person.

18 A Yes, sir.

19 Q Only one person in that van?

20 A Yes, sir.

21 Q Okay. Generally can you describe him and I know it's  
22 been a, a year and a half.

23 A This gentleman is five, I'm not good on height, maybe  
24 5'2", 5'3" maybe.

25 Q Shorter than the average male?

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 A I would say so.

2 Q Okay. All right.

3 A He's a little on the heavy set side. He had black  
4 hair, and he was a little tanned. His, his skin was tanned  
5 color.

6 Q Okay. And he got out of the van?

7 A Yes, sir.

8 Q All right. If -- you had testified there was another  
9 car coming the other direction.

10 A Yes, sir.

11 Q And I believe if -- and again, it's your testimony  
12 that, so if I'm wrong you correct me, that the other car  
13 stopped as well?

14 A Yes, sir.

15 Q All right. You're on the phone with 9-1-1?

16 A Yes, sir.

17 Q And what was this gentleman you just described, short  
18 overweight, dark complexed, what did he say?

19 A He told me that I did not need to call 9-1-1, that he  
20 was okay, that he was just trying to get to the hospital,  
21 that his wife was in labor.

22 Q Okay. Did he offer you anything to take him to the  
23 hospital?

24 A He, he did offer me a hundred dollars to take him and I  
25 refused.

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 Q Okay. Well -- and who was in the car with you?

2 A My daughter.

3 Q And you were on your way to school---

4 A Yes, sir.

5 Q ---I presume---

6 A Yes, sir.

7 Q ---when that happened?

8 Okay. All right. Now, I want to show you what's been  
9 marked as State's Exhibits 58, 59, and 60. I'm just gonna  
10 ask you whether or not you recognize what is depicted in  
11 these pictures.

12 Okay?

13 And if you do, we'll talk about it later. If you  
14 don't, we won't.

15 A Yes, sir, I do.

16 SOLICITOR GOWDY: Okay. Your Honor, we would move  
17 State's 58, 59, and 60 into evidence at this point.

18 THE COURT: Allow the defense to review them.

19 (Pause.)

20 MR. RECKENBEIL: No objection from the defense, Your  
21 Honor.

22 THE COURT: Without objection, they'll be admitted into  
23 evidence as marked.

24 (Whereupon, State's Exhibit Nos. 58 through 60 were  
25 received into evidence at this time.)

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, permission to publish to  
2 the jury?

3 THE COURT: You may do so.

4 Q I'm going to get you to look right behind you at  
5 State's 58 and tell the jury where they're at.

6 A That is the van that I was in behind. At this point it  
7 had already hit the fire hydrant and sitting in front of the  
8 fence that had stopped it, and that is the passenger door on  
9 the van that was opened later.

10 Q Let me show you State's 59.

11 Is that another---

12 A That's another view of the same vehicle.

13 Q Okay. And State's 60.

14 A That's the driver's side of the same vehicle.

15 Q Okay. And that's as the van was when you saw it on May  
16 the 11<sup>th</sup>, 2007?

17 A Yes, sir.

18 Q Single person got out of the van?

19 A Yes, sir.

20 Q Okay. Do you remember law enforcement coming to talk  
21 to you either that day or shortly thereafter to ask you  
22 about the person that you saw getting out of the van?

23 A Yes, sir.

24 Q Do you remember if they showed you a series of  
25 photographs?

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 A Yes, sir, they did.

2 THE COURT: Bring the lights up please.

3 Q Let me show you State's Exhibit 12 and 13, and ask you  
4 if you recognize that, and if you do we'll talk about it in  
5 just a second.

6 A Yes, sir.

7 Q Is that your signature?

8 A Yes, sir.

9 SOLICITOR GOWDY: Your Honor, we would move State's 12  
10 and 13 into evidence.

11 THE COURT: Allow the defense to review those please.

12 MR. RECKENBEIL: No objection, Your Honor.

13 THE COURT: Without objection they'll be admitted into  
14 evidence as marked.

15 SOLICITOR GOWDY: Thank you, Your Honor.

16 (Whereupon, State's Exhibit Nos. 12 and 13 were  
17 received into evidence at this time.)

18 Q Mrs. Burgess, when law enforcement came to you, did  
19 they show you a, a, a series of photographs all on one page?

20 A Yes, sir.

21 Q Was there anything suggestive about the way that they  
22 interacted with you?

23 Did they---

24 A No, sir.

25 Q Did they tell you that the person you saw was

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 definitely in that group---

2 A No, sir.

3 Q ---and you just had to find the right person?

4 A No, sir.

5 Q All right.

6 A They just -- all they done was just ask me did I  
7 recognize anyone.

8 Q You had the freedom to say no to all six?

9 A That's correct.

10 Q Okay. Let me show you State's 12.

11 Is that your signature?

12 A Yes, sir.

13 Q All right. And this is a form that you either would of  
14 completed or would of been completed for you by law  
15 enforcement?

16 A Yes, sir.

17 Q But that is your signature---

18 A Yes, sir.

19 Q ---at the bottom?

20 And if I am reading this correctly, you viewed a group  
21 of six photographs and you picked 1098256?

22 A Yes, sir.

23 Q All right. Now, let me show you State's 13 and ask you  
24 is that the 1098256 that you picked?

25 A Yes, sir.

Michelle Burgess - Direct examination  
By Solicitor Gowdy

1 Q And is that the person you saw get out of the van in  
2 Union County on May 11<sup>th</sup> of 2007?

3 A Yes, sir.

4 Q Thank you, Mrs. Burgess. Please answer any questions  
5 the defense attorney may have for you.

6 THE COURT: Bring the lights up please.

7 Mr. Reckenbeil, you may proceed.

8 CROSS-EXAMINATION

9 BY MR. RECKENBEIL:

10 Q Mrs. Burgess, can you give an estimation of how long  
11 you were driving behind that van?

12 A Behind him, I was behind him approximately two, maybe  
13 three minutes at the most.

14 Q Two to three minutes?

15 A At the most.

16 Q And you were driving your daughter to school that  
17 morning?

18 A To school.

19 Q All right. And I remember reviewing your statement and  
20 looking in your statement. I think you said something to  
21 your daughter about we're about to witness an accident.

22 A Yes.

23 Q Remember that?

24 A Yes.

25 Q Okay. Cause I think you testified on direct

Michelle Burgess - Cross-examination  
By Solicitor Gowdy

1 examination that the car was swerving?

2 A Yes, sir.

3 Q Ran off the road?

4 A Yes, sir.

5 Q Then did the actual car hit a fire hydrant on the right  
6 side of the road?

7 A Yes, sir.

8 Q And then careen across and just smash into a fence on  
9 the left side of the road?

10 A No, it stayed -- everything stayed on the right side.

11 Q Stayed on---

12 A It went -- when he hit the fire hydrant to the right---

13 Q Yeah.

14 A ---then it did cross another, like a little back road  
15 right there. But it stayed to the right and hit a fence.

16 Q Okay. What was your impression of the driver?

17 When you're behind watching this happen, what's your  
18 impression?

19 What were you thinking of the driver?

20 A When I was in behind him, I did not know if it was a  
21 man or a woman at the time---

22 Q Okay.

23 A ---until he got out of the van. But I, I made the  
24 statement to my daughter, I said with the way this driver is  
25 driving, we're gonna see a wreck in just a couple of moments

Michelle Burgess - Cross-examination  
By Solicitor Gowdy

1 because of the way that he was swerving. Didn't know if  
2 they had been drinking going on or what.

3 Q Okay. All right. I didn't even suggest that.

4 But I'm gonna ask you now, do you think you were  
5 observing a drunk driver?

6 A To what I have been told and seeing and all, that is  
7 about what I would think that a drunk driver would be  
8 driving.

9 Q All right.

10 A That's my personal opinion.

11 Q Yes, ma'am.

12 Well, you were there that morning.

13 A Right.

14 Q Just want to know what you thought.

15 Okay. Now, when the man got out of the van, I think  
16 you said in his statement he was wearing a yellow shirt with  
17 khaki pants?

18 A Correct.

19 Q Now, I didn't see anywhere in your statement that you  
20 told police that this man was covered in blood.

21 Did you?

22 A No, sir.

23 Q Okay. And you don't remember saying that in your  
24 statement, did you?

25 A No, sir.

Michelle Burgess - Cross-examination  
By Solicitor Gowdy

1 Q All right. And you don't remember seeing him having  
2 any blood on him, do you?

3 A No, sir.

4 Q Okay. Thank you, Mrs. Burgess.

5 A Thank you.

6 THE COURT: Redirect?

7 SOLICITOR GOWDY: Very, very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY SOLICITOR GOWDY:

10 Q Mrs. Burgess, when he asked you not to call the police,  
11 was his speech slurred or did he appear to, to have control  
12 over his faculties?

13 A His speech was not slurred, but he was real hyper.

14 Q Okay. When he offered you a hundred dollars to drive  
15 him back to Spartanburg, did his speech appear to be  
16 slurred?

17 A No, sir, his speech at the, to me, stayed the same.  
18 Just he was real panicky and real hyper from, from, and I,  
19 from what all had happened---

20 Q Okay.

21 A ---that morning.

22 Q Thank you, Mrs. Burgess.

23 A Thank you.

24 THE COURT: Recross?

25 MR. RECKENBEIL: Nothing, Your Honor.

Michelle Burgess - Redirect examination  
By Solicitor Gowdy

1 THE COURT: Ma'am, you may step down.

2 You wish to have this witness released from her  
3 subpoena?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Any objection?

6 MR. RECKENBEIL: No objection.

7 THE COURT: You're free to go, ma'am. Thank you very  
8 much.

9 SOLICITOR BARNETTE: Your Honor, the State would like  
10 to call Stephen Jones.

11 THE COURT: Sir, if you would, come forward to my right  
12 to be sworn.

13 STEPHEN JONES, being first duly  
14 sworn, testified as follows:

15 THE COURT: Once you're seated in the witness stand,  
16 please, if you would, state your name for our record.

17 WITNESS: Stephen Jones.

18 THE COURT: Mr. Barnette, your witness.

19 SOLICITOR BARNETTE: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q Sir, where do you work at?

23 A Union County Emergency Services.

24 Q And what is your position there, sir?

25 A I'm director.

Stephen Jones - Direct examination  
By Solicitor Barnette

1 Q As a part of your duties as director, are you in charge  
2 of the records for 9-1-1?

3 A Yes.

4 Q And you maintain the 9-1-1 records for all Union County  
5 calls coming in and so forth?

6 A Yes.

7 Q If I can show you what's been marked as State's Exhibit  
8 21 and State Exhibit 21-A.

9 Are you familiar with those documents, sir, or that  
10 document?

11 A Yes, it's a printout of your CAD system.

12 Q Okay. And that's part of the records that y'all  
13 maintain with y'all's department?

14 A Yes.

15 Q And 21-A is that a copy of the 9-1-1 call that was  
16 called in on May 11<sup>th</sup>, 2007?

17 A Yes, it is.

18 Q And Exhibit 21, is that a CAD sheet from May 11<sup>th</sup>,  
19 2007?

20 A Yes.

21 Q Concerning 9-1-1 calls that came in that day?

22 A Yes.

23 SOLICITOR BARNETTE: Your Honor, I'd like to enter  
24 these into evidence at this time.

25 THE COURT: Allow the defense to review them please,

Stephen Jones - Direct examination  
By Solicitor Barnette

1 sir.

2 SOLICITOR BARNETTE: May we approach, Your Honor?

3 MR. ALLEN: May we approach?

4 (Whereupon, a bench conference was held out of the  
5 hearing of the jury at this time.)

6 THE COURT: All right. Mr. Allen, it's my  
7 understanding the defense does not object to the exhibits as  
8 far as the three appropriate tracks on the disk, is that  
9 correct?

10 MR. ALLEN: That's correct.

11 THE COURT: All right. They'll be admitted and marked.  
12 And as to the disk, the three appropriate tracks is the  
13 portion of that disk that's being admitted.

14 (Whereupon, State's Exhibit Nos. 21 and 21-A were  
15 received into evidence at this time.)

16 THE COURT: Mr. Barnette, you may proceed.

17 SOLICITOR BARNETTE: Thank you, Your Honor.

18 May I publish No. 21 to the jury, Your Honor?

19 THE COURT: You may, yes, sir.

20 Q Mr. Jones, I don't know if you can see this or not.

21 Let see me if I can get this bigger.

22 Can you see that okay, Mr. Jones, up on the screen?

23 You can step down if you'd like to, sir?

24 A Yeah, I can see it.

25 Q Okay. Was this a record that y'all received a 9-1-1

Stephen Jones - Direct examination  
By Solicitor Barnette

1 call?

2 A Yes, it was.

3 Q And was this call received by -- Michelle Burgess was  
4 the caller's name?

5 A Yes, sir.

6 Q And this call, if I'm reading the record correctly,  
7 received May 11<sup>th</sup> at 7:08 a.m.?

8 A Yes, sir.

9 Q And when they -- when you received a 9-1-1 call, do  
10 they do a narrative on -- is this what they call a CAD sheet  
11 where they record the information from the 9-1-1 call?

12 A Yes, it's a computer automated dispatch system that  
13 they put all the information in when they receive the call.

14 Q Okay. And this is the information that the dispatcher  
15 received?

16 A Yes.

17 Q And she -- that was part of what's on the 9-1-1 call  
18 that was received?

19 A Yes.

20 SOLICITOR BARNETTE: Okay. Your Honor, permission to  
21 publish the 21-A at this time to the jury.

22 THE COURT: Yes, sir, you may play the appropriate  
23 tracks.

24 Bring the lights back up please, sir.

25 (Whereupon, State's Exhibit No. 21-A was played for the

Stephen Jones - Direct examination  
By Solicitor Barnette

1 jury at this time.)

2 Q Mr. Jones, that was the 9-1-1 call that was taken by  
3 your dispatcher that day?

4 A Yes.

5 Q And it started at 7:08:54 on May 11<sup>th</sup>, 2007?

6 A Yes.

7 Q Thank you, sir. Please answer any questions that the  
8 defense may have for you.

9 MR. RECKENBEIL: There's no questions, Your Honor. We  
10 don't have any objection to him being released from the  
11 subpoena.

12 THE COURT: Okay, sir. You may step down and you are  
13 free to go at this time. Thank you very much for coming.

14 SOLICITOR BARNETTE: We ask for the witness to be  
15 excused, Your Honor.

16 THE COURT: They've already agreed to and I'm excusing  
17 him. Thank you.

18 The State may call its next witness.

19 SOLICITOR CRICK: Thank you, Your Honor.

20 The State calls James Eric Vinson.

21 THE COURT: Sir, if you would, come forward down front  
22 to my right to be sworn.

23 JAMES VINSON, being first duly  
24 sworn, testified as follows:

25 THE COURT: Sir, once you're, once you're seated, I'm

James Vinson - Direct examination  
By Solicitor Crick

1 going to ask that you state your name for the record please.

2 WITNESS: James Vinson.

3 THE COURT: Mrs. Crick, your witness.

4 SOLICITOR CRICK: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR CRICK:

7 Q Mr. Vinson, I'm, I'm over here hidden behind some  
8 equipment.

9 A Hi.

10 Q Tell the jury please where you live.

11 A I live in Buffalo, South Carolina.

12 Q How long have you lived in Buffalo?

13 A Forty-four years.

14 Q Do you work?

15 A Yes, ma'am.

16 Q Where do you work?

17 A Whittacker Engineers.

18 Q Do you have any children?

19 A I got two girls.

20 Q I'm gonna jump back a little bit in time.

21 THE COURT: Let me be sure.

22 Can you hear him all right on that side?

23 (Jurors nod negatively.)

24 THE COURT: Sir, if you'll move a little closer to the  
25 microphone and pull it down.

James Vinson - Direct examination  
By Solicitor Crick

1 (Witness complies.)

2 THE COURT: All right. Go ahead.

3 Q I want to go back to May 11<sup>th</sup> of 2007, and ask you  
4 what you were doing early that morning.

5 A I was dropping my daughter off at school.

6 Q What school does she go to?

7 A Buffalo Elementary.

8 Q Do you remember about what time you normally dropped  
9 her off at school?

10 A Possibly around 15 after to 7:30, somewhere right in  
11 that area.

12 Q Some time around 7:00.

13 Did you notice anything out of the ordinary that  
14 morning?

15 A No, ma'am.

16 Q Now, you -- had you already dropped your daughter off  
17 at school when you saw an accident?

18 A Yes, ma'am.

19 Q Where were you when you saw that?

20 A I was fixing to pass right in front of Midway Barbecue.

21 Q Can you tell the jury what you saw when you were  
22 getting to pass in front of Midway Barbecue?

23 A I saw a van hit a fire hydrant, tore it up out of the  
24 ground, swerved and drove right back into a fence, a chain  
25 link fence.

James Vinson - Direct examination  
By Solicitor Crick

1 Q what did you do after you saw that happen?

2 A I stopped my vehicle and got out to see if the fellow  
3 was all right.

4 Q And you say fellow, did you see somebody come out of  
5 the van?

6 A Yes, ma'am, I seen a, a person crawl out of the van  
7 window.

8 Q Was it just one person or was there more than one?

9 A One person.

10 Q what did you do after you saw him crawling out of that  
11 van?

12 A I stood there and looked at him and he started walking  
13 around and, and looking in vehicles.

14 Q Was there anybody else with you that had stopped?

15 A They were a lady. I don't know what her name was. She  
16 had her daughter, was fixing to take her to school.

17 Q So, the guy that you saw was you said looking around at  
18 cars?

19 A Yes, ma'am.

20 Q Where was he doing that?

21 A At Midway Barbecue.

22 Q How -- go ahead. I'm sorry.

23 A And the lady that was there also, her daughter was out  
24 of the car at the time.

25 Q Uh-huh. (Affirmative).

James Vinson - Direct examination  
By Solicitor Crick

1 A And I asked the child to get back in the car and lock  
2 the doors.

3 Q Why did you do that?

4 A I was afraid for her safety.

5 Q How was the guy acting to you?

6 A Real strange.

7 Q What did he do or say?

8 A He, he didn't say a whole lot of anything. He was just  
9 looking around hunting a way to leave. Pretty much I heard  
10 him---

11 Q Hunting a way -- I'm sorry.

12 Hunting -- you said he was hunting a way to leave?

13 A Yes, ma'am.

14 Q How did you know he was trying to leave?

15 A Cause he offered me some money to get him out of Union.

16 Q Did he tell you where he wanted to go?

17 A Spartanburg.

18 Q Do you know why?

19 A No, ma'am.

20 Q Okay. Now, at any point did anybody call the police or  
21 notify 9-1-1?

22 A I think the other lady that was there, she had a cell  
23 phone.

24 Q Did the guy know that 9-1-1 had been notified?

25 A I don't know where he did or not.

James Vinson - Direct examination  
By Solicitor Crick

1 Q what did he do after he was offering money for people  
2 to get him out, out of there?

3 what did he do next?

4 A He went and flagged down traffic. He stopped a white  
5 car, got in, and left.

6 Q He was able to flag somebody down?

7 A Yes, ma'am.

8 Q All right. I'm gonna show you I think what's already  
9 in evidence as State's 58, 59, and 60. Just see if they're  
10 up here. Yeah.

11 First I'm gonna show them to you and see if you  
12 recognize what they are.

13 A Yes, ma'am.

14 Q Okay. Just take a look at all of them.

15 A Yes, ma'am, that's the vehicle.

16 Q Okay. So, what is -- what are these pictures of and I  
17 can put them up here for you if you need them.

18 what is that a photograph of?

19 A It's a photograph of where he had the wreck at.

20 Q Is that the van that you saw that morning?

21 A Yes, ma'am.

22 Q And this is another view of that same van?

23 A Yes, ma'am.

24 Q And then, finally, I think this is just a close-up, but  
25 that's the same van you saw that morning?

James Vinson - Direct examination  
By Solicitor Crick

1 A Yes, ma'am.

2 Q Mr. Vinson, I'm going to show you one last thing, and  
3 I'm going to show the defense attorney first.

4 I'm gonna show you a piece of paper, which is marked as  
5 State's Exhibit No. 11, and just have you look at that and  
6 see if you see your signature on that.

7 A Yeah, at the top and down toward the bottom, yes,  
8 ma'am.

9 Q So, you do recognize that as your signature and you  
10 signed this piece of paper?

11 A Yes, ma'am.

12 SOLICITOR CRICK: Your Honor, at this time I'd like to  
13 enter State's 11 into evidence.

14 THE COURT: Any objection?

15 MR. RECKENBEIL: No objection, Your Honor.

16 THE COURT: Without objection it will be received in  
17 evidence as marked.

18 (Whereupon, State's Exhibit No. 11 was received into  
19 evidence at this time.)

20 SOLICITOR CRICK: Okay. And may I publish it, Your  
21 Honor, to the jury?

22 THE COURT: You may.

23 Q Okay. I'll zoom out a little bit, Mr. Vinson.

24 So, that is your name at the top of that affidavit of  
25 photographic line-up or identification?

James Vinson - Direct examination  
By Solicitor Crick

1 A Yes, ma'am.

2 Q And is that your signature there at the bottom?

3 A Yes, ma'am.

4 Q And it says there I think that you identified a  
5 Photograph Number 1098256. You would of signed that form as  
6 identifying that number.

7 A Yes, ma'am.

8 SOLICITOR CRICK: Your Honor, at this time I have no  
9 further questions for Mr. Vinson.

10 THE COURT: Mr. Reckenbeil.

11 MR. RECKENBEIL: Very briefly.

12 THE COURT: Yes, sir, you need the lights up?

13 MR. RECKENBEIL: Yes, please.

14 THE COURT: All right.

15 CROSS-EXAMINATION

16 BY MR. RECKENBEIL:

17 Q Sir, which way was your car traveling when you saw that  
18 van have an accident?

19 A I was coming back towards home towards Buffalo.

20 Q Okay. And so---

21 A And he was going that way.

22 Q Did he pass by you or did you see, off in the distance,  
23 him actually having the accident?

24 A It's like this.

25 Q So, he came by you?

James Vinson - Cross-examination  
By Mr. Reckenbeil

1 A Just right by me and served and wrecked.

2 Q All right. When you were driving down the road, is 215  
3 a road that you can actually see, see a car far off in a  
4 distance?

5 A Yes, sir.

6 Q Did you have an opportunity to observe the van that had  
7 the accident---

8 A I was---

9 Q ---prior to you came up to it?

10 A I was looking straight at him.

11 Q Looking straight out. I'm sorry, sir. I know very---

12 THE COURT: Speak up, speak up.

13 Sir, if you'll move a little closer to the microphone  
14 and speak up for us.

15 A I was looking at the van as he was coming towards me.

16 Q Okay.

17 A And when he, when he took that fire hydrant out the  
18 ground, he swerved to my left and into my lane and then shot  
19 back across the road into that fence.

20 Q All right. Before he did that, how far can you say  
21 that you saw him before he came into your area where he  
22 started swerving?

23 A Probably -- I don't know. Four or five car lengths.

24 Q All right. And now do you have a -- did you have an  
25 opportunity to see his car swerve before he did the move

James Vinson - Cross-examination  
By Mr. Reckenbeil

1 that hit into the fire hydrant?

2 I want to know if you saw that beforehand.

3 A No, sir.

4 Q So -- the first---

5 THE COURT: sir -- wait.

6 You have to answer that verbally, sir.

7 MR. RECKENBEIL: Okay.

8 A No, sir.

9 Q Thank you.

10 Sorry, judge. Make sure of that.

11 So, the first time you saw basically the erratic move,  
12 he came left of center?

13 A Right.

14 Q Went back into his lane, crashed into the fire hydrant,  
15 and then went into the fence?

16 A Yes, sir.

17 Q All right. Then when he got out of the vehicle, did  
18 you see what he was wearing?

19 A No, sir.

20 Q All right. Cause I don't remember seeing anything in  
21 your statement describing what he was wearing.

22 A No, sir, I don't.

23 Q And I don't remember seeing anything in your statement  
24 saying that you saw him covered in blood, do you?

25 A No, sir.

James Vinson - Cross-examination  
By Mr. Reckenbeil

1 Q All right. Thank you, sir.

2 THE COURT: Redirect?

3 SOLICITOR CRICK: No, sir, I have nothing further.

4 THE COURT: Any objection to this witness being  
5 excused?

6 MR. RECKENBEIL: No objection.

7 THE COURT: Sir, you may step down. You're free to go.  
8 Thank you for coming today.

9 WITNESS: Thank you, sir.

10 THE COURT: Ask the attorneys to approach briefly.

11 (Whereupon, a bench conference was held out of the  
12 hearing of the jury at this time.)

13 THE COURT: All right. State may call its next  
14 witness.

15 SOLICITOR GOWDY: Thank you, Your Honor.

16 May it please the Court.

17 The State would call Mr. Harris Richardson. I'm sorry.  
18 Henry Richardson.

19 THE COURT: Sir, if you would, come down forward to my  
20 right to be sworn. Right down here please, sir. Come on  
21 down. Right here.

22 HENRY RICHARDSON, being first duly  
23 sworn, testified as follows:

24 THE COURT: Sir, once you're seated, I'm going to ask  
25 you to please state your name for the record.

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 WITNESS: Henry Lee Richardson.

2 THE COURT: Move as close to the microphone as you can  
3 please, sir.

4 (Witness complies.)

5 THE COURT: Thank you very much.

6 Mr. Gowdy, your witness.

7 SOLICITOR GOWDY: Thank you, Your Honor.

8 May it please the Court.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY SOLICITOR GOWDY:

12 Q Good afternoon, Mr. Richardson.

13 A Good evening.

14 Q I'm gonna see if I can get you to speak up in a strong  
15 voice as you can where the last two gentlemen in the jury  
16 box can hear you.

17 Okay?

18 A Okay.

19 Q Would you introduce yourself to the jury and tell them  
20 where you live?

21 A I live in Putman, South Carolina, which is roughly  
22 about five miles from Buffalo. It's a small community off  
23 of Highway 215.

24 Q Sir, am I correct to believe that this is in Union  
25 County?

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 A Yes, sir.

2 Q Okay. And sir, if you don't mind my asking, what age  
3 gentleman are you?

4 A I'm sixty years old.

5 Q Do you work?

6 A No, sir.

7 Q I think you told me or that, that you are disabled?

8 A Yeah.

9 Q And prior to your disability, you worked at P&M  
10 Machinery, is that right?

11 A Sir?

12 Q Prior to your disability, where did you work?

13 A I worked for a pipe fitting company P.M., P&M in Union.

14 Q Okay. How long have you lived in Union County?

15 A Fifty-eight years.

16 Q Okay. I want to, I want to go back with you, Mr.  
17 Richardson, to May the 11<sup>th</sup> of last year, 2007.  
18 Specifically in the, in the morning.

19 Can you tell the ladies and gentlemen of the jury what  
20 you were doing in the seven o'clock, 7:00 to 7:30 range?

21 A I had went to the Li'L Cricket there in Buffalo to get  
22 coffee. And matter of fact, I, I was fixing coffee for  
23 myself and my wife and I was gonna take it back to the  
24 house, and this young man come up to me and asked said,  
25 Mister, can you take me to Spartanburg Regional Hospital.

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 And I asked him and I said well, why. He said well, my  
2 wife's having a baby and I need to get up there, and he  
3 offered me a hundred dollar bill.

4 well, it was folded up. I didn't unfold it. I just  
5 stuck it in my shirt pocket. Then I went up and paid for my  
6 coffee and the young man wanted to pay for the coffee and,  
7 you know, I, I wouldn't allow that. So, I paid for my  
8 coffee and we left and went toward, come toward Spartanburg  
9 taking him to Spartanburg.

10 Q I just want to stop you. I want you to keep going.  
11 But I want to ask you a couple of questions before we leave  
12 the store.

13 okay?

14 A okay.

15 Q Where were you when he approached you in the Li'L  
16 Cricket?

17 A I was at the coffee pot.

18 Q Okay. Do you know whether or did you hear him approach  
19 anyone else and ask anyone else for a ride?

20 A I, I saw him walking around in the store and seemed  
21 like he had talked to one other person. And -- but he come  
22 over there, and like I said, it was me and another  
23 gentleman, and he asked me would I take him to Spartanburg.

24 Q You are literally at the coffee?

25 A Yeah, I'm pouring the coffee, you know, and getting it

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 ready. I'm -- usually I don't take on hitchhikers. But  
2 when he told me his wife was having a baby, you know, I can  
3 understand that. I got three children.

4 Q Certainly. Yes, sir.

5 Okay. He asked you for a ride to Spartanburg and he  
6 offers you money?

7 A Yeah.

8 Q And he hands you money?

9 A Yeah.

10 Q Okay. And then you walked into the check out?

11 A Yeah, I walked to the check out. He went up there with  
12 me.

13 Q Okay. And then tell, pick back up where you were  
14 before I interrupted you.

15 A All right. Then I said -- we left. We started towards  
16 Spartanburg. Well, I hadn't paid any attention to my gas in  
17 my truck and I noticed I was low. So, I stopped at Mack's  
18 there in Pauline. I went in there and purchased the gas,  
19 put the gas in. And I left, took him, brought him up here  
20 to Spartanburg Regional.

21 And as he got out, I reached in my shirt pocket and I  
22 handed him the hundred dollar bill back. And I never did  
23 open the hundred dollar bill. But I handed it back to him.  
24 He said no, you take that. I said no, I said because son,  
25 I'm gonna tell you something, if you've got a baby in there

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 right now, you're gonna need that hundred dollar bill. So,  
2 I closed the door and he closed the door and I pulled off.

3 Q Mr. Richardson, on the way from Buffalo to Spartanburg,  
4 was there conversation between you and this person you were  
5 giving a ride to?

6 A We had some conversation. He, he told me, the best I  
7 can remember, his girlfriend's house and that didn't make  
8 sense to me with his wife having a baby, and, you know---

9 THE COURT: Order in the Court please. Thank you.

10 Go ahead, sir.

11 A And I asked him, I said well, is this your first child  
12 he said yeah. But I noticed the whole time up there most of  
13 the way he slept---

14 Q He slept?

15 A ---you know. And, you know, with me and my three  
16 children and as old as I am, things wasn't adding up. They  
17 just wasn't adding up at all.

18 Q Yes, sir.

19 I think you said you stopped at Mack's and you got out  
20 and paid for the gas and pumped the gas and he stayed in the  
21 truck?

22 A Yeah.

23 Q Okay. When you got to Spartanburg Regional, did, did  
24 you drop him off in that loop?

25 A Yeah, right there in the front main exit there, I mean

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 main entrance.

2 Q Okay. Can you generally describe the person that you  
3 gave a ride to?

4 Just in general terms, can you describe him?

5 A He's a stocky little fellow, black headed. He was  
6 pretty well dressed. I mean he wasn't slouchy dressed. You  
7 know, I mean if you looked at him, just looked at him that  
8 morning, you know, you couldn't tell that anything had taken  
9 place.

10 Q Well, speaking of looking at him, I'm going to show you  
11 State's 19, which is a CD of a surveillance tape, and ask  
12 you whether or not you have viewed that surveillance tape?

13 A Yeah, I seen it.

14 Q Does it fairly and accurately depict what happened  
15 inside the Li'L Cricket on May the 11<sup>th</sup> of 2007?

16 A Yeah.

17 Q It's fair and it's accurate?

18 A Yeah.

19 SOLICITOR GOWDY: Your Honor, we would move State's 19  
20 into evidence.

21 THE COURT: Any objection from the defense?

22 MR. RECKENBEIL: No objection.

23 THE COURT: All right. It will be admitted into  
24 evidence as marked.

25 (Whereupon, State's Exhibit No. 19 was received into

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 evidence at this time.)

2 SOLICITOR GOWDY: Your Honor, given the, what is  
3 necessary to play this surveillance tape, I didn't want to  
4 take up---

5 THE COURT: I understand. Well, we discussed that at  
6 the bench.

7 Ladies and gentlemen of the jury, we're gonna pause at  
8 this point in time in the proceedings. It will take a few  
9 moments for that to be set up for you to view that, that  
10 particular tape. And also, I've been told that your lunch  
11 may be arriving in the jury room shortly. So, we're going  
12 to stop at this point in time.

13 The same caution I'll give you every time you leave the  
14 courtroom. Don't begin any discussions concerning this case  
15 until such time as you've heard all the evidence, been  
16 charged with the law, and I've instructed you to do so.

17 We'll retire until lunch has been completed, and then  
18 the Court will resume. We estimate Court to resume about  
19 two o'clock this afternoon.

20 Court is in recess for lunch at this time.

21 Thank you very much.

22 Everyone remain seated while the jury retires.

23 (Whereupon, the following takes place outside the  
24 presence of the jury.)

25 THE COURT: All right. Sir, I'm going to caution you.

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 You're in the middle of your testimony at this point in  
2 time.

3 WITNESS: Yes, sir.

4 THE COURT: It would be improper for you to discuss  
5 your testimony with anyone. It's okay for you to get up,  
6 move around, go get lunch if you'd like. Be back here by  
7 two o'clock to continue your testimony. But do not discuss  
8 your testimony with anyone.

9 WITNESS: Okay.

10 THE COURT: Do you understand my instructions?

11 WITNESS: Yes, sir.

12 THE COURT: All right. Court's in recess. Thank you  
13 very much.

14 (Whereupon, Court was in recess for the lunch hour.)

15 THE COURT: Mr. Gowdy, I gave you a little more, a few  
16 minutes you needed to work out the problem with the machine.

17 Are you ready?

18 SOLICITOR GOWDY: Believe it -- or not.

19 (Pause.)

20 SOLICITOR GOWDY: Yes, sir, we are.

21 THE COURT: All right. Is the State then ready?

22 SOLICITOR GOWDY: Yes, sir, Your Honor.

23 THE COURT: Defense ready?

24 MR. RECKENBEIL: Yes, sir, Your Honor.

25 THE COURT: Let's bring the jury in.

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 SOLICITOR GOWDY: You want Mr. Richardson back up, Your  
2 Honor---

3 THE COURT: Yes. Please.

4 Mr. Richardson, step up and resume the stand please,  
5 sir.

6 (Witness returns to the stand.)

7 THE COURT: All right. The record will reveal that the  
8 jury has returned to the courtroom. I trust everyone had a  
9 good lunch. We're ready to resume with this witness.

10 Mr. Gowdy, you may proceed.

11 SOLICITOR GOWDY: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY SOLICITOR GOWDY:

14 Q Mr. Richardson, before we broke for lunch I had asked  
15 you whether or not you had viewed State's Exhibit 19---

16 A Yes, sir.

17 Q ---and whether or not it fairly and accurately  
18 portrayed what happened at Li'L Cricket, and I believe you  
19 answered that it did.

20 A Yeah.

21 SOLICITOR GOWDY: All right. At this point, Your  
22 Honor, I believe that we are cued up to the right time, and  
23 I would ask permission to publish.

24 THE COURT: All right. Let's lower the lights please.

25 SOLICITOR GOWDY: Thank you, Your Honor.

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 THE COURT: Yes, sir.

2 (Whereupon, State's Exhibit No. 11 was played for the  
3 jury at this time.)

4 Q What, what is the jury looking at, Mr. Richardson?

5 Do you see yourself?

6 Do you see yourself, Mr. Richardson?

7 A Yeah.

8 Q Okay. What, what are you doing?

9 A Fixing coffee where I'm pouring it up and getting ready  
10 to put lids and stuff on it.

11 Q And, and is the person in the khaki pants and light  
12 colored shirt standing behind you---

13 A Yeah, that, that was him.

14 Q Is that the money he just handed you?

15 A Yeah, cause it -- yeah, that's it cause I put it in my  
16 shirt pocket.

17 Q Okay. Do you see someone walking up the aisle, Mr.  
18 Richardson?

19 A Yeah, right yonder.

20 Q Who is that?

21 A That's the young man that I took to Spartanburg.

22 Q Do you recall whether or not he made any cell phone  
23 calls or had a cell phone with him?

24 A Now, as far as I know, he didn't as I can remember. He  
25 didn't make none in my vehicle---

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 Q Okay.

2 A ---you know, unless he done it after I got out at  
3 Mack's and get gas or something.

4 Q Okay. Did is -- is that, is that you with the, with  
5 the ball cap on?

6 A Yeah, that's me.

7 Q what happens just then Mr. Richardson?  
8 Did he offer to buy your coffee?

9 A Yeah, he was wanting to buy, pay for the coffee and  
10 stuff and I told him no.

11 Q And is that y'all leaving together?

12 A Yes, sir.

13 Q And is that the, the man you gave the ride to  
14 Spartanburg Regional too?

15 A Yes, sir.

16 Q Mr. Richardson, during the course of your ride, ride to  
17 Spartanburg with this individual, I think you said he  
18 slept---

19 A Yeah.

20 Q ---most of the time.

21 when y'all did talk, did he appear to be under the  
22 influence of drugs or alcohol?

23 A No, to be honest with you, no.

24 Q Thank you, Mr. Richardson. Please answer any questions  
25 the defense attorney has for you.

Henry Richardson - Direct examination  
By Solicitor Gowdy

1 A Okay.

2 THE COURT: Mr. Reckenbeil.

3 MR. RECKENBEIL: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. RECKENBEIL:

7 Q Mr. Richardson, what kind of car do you drive?

8 A Depends on which one.

9 Q How about that, that day?

10 what were you driving that day?

11 A I drive my Chevrolet pickup truck.

12 Q Chevy pickup truck?

13 A Yes, sir.

14 Q Is, is it a, a truck where there's just one seat  
15 across?

16 A Yeah.

17 Q So, I'm assuming that you drove obviously to  
18 Spartanburg?

19 A (Witness nods affirmatively.)

20 Q You got to answer verbally, sir.

21 A Yes.

22 Q And the gentleman that you gave a ride to was seated at  
23 the right passenger side, correct?

24 A Yes.

25 Q And before he got into your vehicle, did you have a

Henry Richardson - Cross-examination  
By Mr. Reckenbeil

1 chance to have a pretty good look at him?

2 A Yes.

3 Q All right. Did you notice any sort of blood on his  
4 clothes?

5 A I didn't. I basically looked at his face and stuff  
6 like that and he, you know, it's kind of hard to watch a  
7 person who's constantly pacing.

8 Q Sure.

9 A So, I, I didn't see any, which I didn't look for none.  
10 I mean, you know, if I'd of been looking for it, I would of  
11 seen it.

12 Q Well, sir, would you let an individual who's covered in  
13 blood in your car that you gave a thirty minute ride to  
14 Spartanburg to?

15 A Do what now?

16 Q I'm sorry. That was probably too long of a question  
17 and my Yankee I speak too quickly.

18 Would you let an individual who was covered in blood in  
19 your vehicle that you gave a drive to Spartanburg for thirty  
20 minutes?

21 A No.

22 Q No. I kind of assumed that answer.

23 A Yes.

24 Q I don't think any of us would.

25 A No, they wouldn't.

Henry Richardson - Cross-examination  
By Mr. Reckenbeil

1 Q All right. And lastly, as I said, you said for most of  
2 the time the gentleman slept in your vehicle?

3 A Uh-huh. (Affirmative).

4 Q I see that you, you have your hand---

5 A Yes, sir.

6 Q ---kind of perched against you, yourself as you prop up  
7 your head.

8 A Uh-huh. (Affirmative).

9 Q Did he have a particular sleep pattern?

10 In other words, was he propped against the door?

11 was he just head slumped over?

12 A No, he was, he was, most of the time, just slumped up  
13 against the door.

14 Q Just slumped up against the door?

15 A Yeah.

16 Q Okay. And could you give an estimation as to how  
17 quickly he passed out in your car?

18 A I would, the first time, I'd say probably, maybe  
19 fifteen minutes.

20 Q Okay.

21 A Ten to fifteen minutes.

22 Q And how long of a ride is it to Spartanburg?

23 A Roughly it's about a 35, 45 minute drive. But we had  
24 to stop.

25 Q Yes, sir.

Henry Richardson - Cross-examination  
By Mr. Reckenbeil

1           And do you remember, in your statement, sir, where you  
2 stated that he slept the whole way?

3 A     Hu huh. (Negative).

4 Q     You don't remember that?

5 A     But he didn't sleep the whole way.

6 Q     Okay.

7 A     Cause I told you I talked to him.

8 Q     All right. But do you remember, sir, that you gave a  
9 statement to the police?

10 A    Yeah, I got the statement at the house.

11 Q    All right. And do you remember, in that statement,  
12 that you said that he slept most of the way?

13 A    Most of the way, yeah.

14 Q    Okay. All right. Thank you, sir.

15 A    You welcome.

16       THE COURT: Redirect?

17       SOLICITOR GOWDY: No, sir, Your Honor.

18       THE COURT: Do you wish to have this witness released?

19       SOLICITOR GOWDY: Yes, sir, Your Honor.

20       MR. RECKENBEIL: No objection.

21       THE COURT: Sir, you may step down.

22       WITNESS: Okay.

23       THE COURT: And you are released from your subpoena.  
24 You're free to go, sir. Thank you very much.

25       WITNESS: Thank you.

William Gary - Direct examination  
By Solicitor Gowdy

1 THE COURT: State may call its next witness.

2 SOLICITOR GOWDY: Your Honor, may it please the Court.

3 The State would call Mr. William Gary, and with the  
4 Court's permission, I would quietly have someone switch this  
5 back over to the photo.

6 THE COURT: That will be fine. Yes, sir, come forward  
7 and take care of that for us.

8 Sir, if you would, come forward to my right to be sworn  
9 please.

10 WILLIAM GARY, being first duly  
11 sworn, testified as follows:

12 THE COURT: Sir, once you have been seated, I would ask  
13 that you please state your name for the record.

14 WITNESS: My name is William Gary.

15 THE COURT: Thank you, sir.

16 Mr. Gowdy, it's your witness.

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY SOLICITOR GOWDY:

22 Q Detective Gary, how long have you been in law  
23 enforcement?

24 A I started at the Spartanburg County Sheriff's Office in  
25 March of 1990.

William Gary - Direct examination  
By Solicitor Gowdy

1 Q You are currently assigned to what division or  
2 department?

3 A I'm assigned to the violent crimes homicide unit at the  
4 Sheriff's Office. My current assignment is to work, are to  
5 work unsolved homicides.

6 Q In May of 2007, what division or department were you  
7 assigned to?

8 A I was assigned to the homicide unit at the Sheriff's  
9 Office.

10 Q When homicides occur, is a detective generally  
11 categorized as the lead detective?

12 A Yes, they are.

13 Q Would you have been the lead detective on this case?

14 A No, I was not.

15 Q In cases where you're not the lead detective, do you  
16 also assist and perform other investigative functions?

17 A Yes, when we have a homicide with a lead investigator  
18 that normally that responds to the scene. They try to  
19 establish what they may need as far as manpower at that  
20 time, and I was an assisting investigator in this case.  
21 With another investigator, we went to Union, South Carolina.

22 Q All right. On May the 11<sup>th</sup> in the morning or at some  
23 point on May the 11<sup>th</sup> 2007 you went to Union, South  
24 Carolina?

25 A Yes.

William Gary - Direct examination  
By Solicitor Gowdy

1 Q All right. And for what purpose did you go to Union?

2 A The vehicle that belonged to the Emery's had been  
3 located in Union. And so, we went, myself and Detective  
4 Lauren Williams, went to Union County to deal with the  
5 vehicle and witnesses that were there with this case.

6 Q Detective Gary, had you or someone else run the tag, to  
7 use law enforcement jargon, to see what, who, who that van  
8 belonged to?

9 A It had been run prior. That's how we initially got the  
10 phone call. And then when we got there, we verified the  
11 registration to -- I believe it come back to Mrs. Emery.

12 Q I want to show you what has been marked for  
13 identification purposes as State's 61, 62, 63, 64, 65, 66,  
14 and 67, and just ask simply at the point whether or not  
15 you're familiar with those photos and whether or not they're  
16 relevant to this investigation.

17 A I'm familiar with all but one.

18 Q Okay. Which one?

19 A 67.

20 Q All right. Then we'll set State's 67 aside.

21 How about the rest of them?

22 A Yes, sir, I recognize all these photos.

23 SOLICITOR GOWDY: Okay. Your Honor, we would move  
24 State's 61 through 66 into evidence.

25 THE COURT: Any objection?

William Gary - Direct examination  
By Solicitor Gowdy

1 MR. RECKENBEIL: No objection, Your Honor.

2 THE COURT: Without objection they'll be received into  
3 evidence as marked.

4 (Whereupon, State's Exhibit Nos. 61 through 66 were  
5 received into evidence at this time.)

6 THE COURT: You may proceed.

7 SOLICITOR GOWDY: Thank you, Your Honor.  
8 Permission to publish to the jury?

9 THE COURT: You may do so, yes, sir.

10 SOLICITOR GOWDY: Thank you, Your Honor.

11 Q When you got to Union, Detective Gary, tell the jury  
12 what you found.

13 A When we arrived, the, there was a van that had wrecked  
14 into a fence that's around I believe a power unit substation  
15 in Union, and one of the doors, windows was rolled down.  
16 One of the doors was partially opened. And -- actually  
17 there were a couple of doors opened on the van.

18 There was -- we were told there was a witness there  
19 that had seen the person that got out of the vehicle. So,  
20 Detective Williams, who had just started working with us, I  
21 asked him to take a statement from that person.

22 I looked briefly in the van. I did not search it cause  
23 I knew we were gonna process it later on. So, I  
24 photographed the van, which is where those photos come from.  
25 And then before we had it towed back to Spartanburg by our

William Gary - Direct examination  
By Solicitor Gowdy

1 wrecker, I sealed the doors with evidence tape so that they  
2 would not be able to be opened from there until they were  
3 processed.

4 Q Detective Gary, you mentioned other witnesses that may  
5 of been on the scene.

6 A Yes, sir.

7 Q would you have had a role in talking to either  
8 Mrs. Burgess or Mr. Vinson or would that have been done by  
9 Detective Williams?

10 A I was present for all the interviews there were done  
11 there.

12 Q Okay.

13 A The only thing I wasn't present with was Mr.  
14 Richardson.

15 Q Okay.

16 A That's who Detective Williams took a statement from.  
17 But Mr. Vinson and Mrs. Burgess, I was present for those and  
18 actually took the statement from Mrs. Burgess.

19 Q All right. That was part of your investigative  
20 function that you did in addition to the van?

21 A That -- yes, sir.

22 Q All right. You used the term processing.

23 A Correct.

24 Q Tell the jury what you mean by processing that van.

25 A In, in this, when you process something, you're

William Gary - Direct examination  
By Solicitor Gowdy

1 processing for evidence, processing evidence for additional  
2 evidence. In this case with the van, for it to be  
3 processed, it would be searched for items to be collected  
4 out of the van to determine ownership, where they came from.  
5 Also with this, you're processing for anything from  
6 fingerprints to blood, hair, fibers, anything that would  
7 link this van to a suspect, to victims, or to the original  
8 crime scene, or potentially an additional crime scene.

9 Q And is the processing of a van a function that is best  
10 performed in Spartanburg or would you have done that  
11 roadside in Union?

12 A We -- you could do it either way. In this case, it was  
13 best to be done in Spartanburg. One, because we're on the  
14 side of the road. So, you take out any hazards of onlookers  
15 or whatever. We could secure it, tow it to our shop to  
16 where it could be secured until it could be processed by, by  
17 an evidence, what we call an ID person commonly called a  
18 crime scene investigator or CSI you hear on TV. For --  
19 they're the ones that would process for the prints, take the  
20 blood swabs, and do all that of this van.

21 They could do it at the shop where they could take  
22 their time. Wouldn't have to worry about being on the side  
23 of the road dealing with traffic hazards or hazards or  
24 potential weather. This -- I don't believe there was any  
25 rain this day. That's another reason we might move

William Gary - Direct examination  
By Solicitor Gowdy

1 something, to protect it from the environment.

2 Q Is it fair to categorize your role as documenting the  
3 Union County scene, but not processing the scene?

4 A Correct. I did not process anything out of the van. I  
5 just documented the way it was.

6 Q All right. With that in mind, let me show you what is  
7 already been introduced as State's Exhibit No. 60.

8 Is that the van as you found it when you got there?

9 A Yes, it is.

10 Q Let me show you State's 58, another view of the same  
11 van.

12 A Yes, sir.

13 Q And State's 59.

14 A Yes, sir, those are photographs I took of the van as  
15 the way it was sitting when we arrived in Union County.

16 Q All right. Now, let me go to State's 61.

17 what is the jury looking at?

18 A That is a picture from the -- you can see them on the  
19 other pictures where the passenger door was opened. That's  
20 a picture standing at the doorway taking a picture of the  
21 inside of the passenger compartment of the vehicle.

22 Q Are those deployed air bags that the jury can see in  
23 that picture?

24 A Yes, sir, they are.

25 Q Okay. Let me show you -- and that's the way the van

William Gary - Direct examination  
By Solicitor Gowdy

1 Looked when you got there?

2 A Yes.

3 Q All right. Let me show you State's 62.

4 what is the jury looking at?

5 A That's a driver's license that was laying on the seat.

6 Again, I didn't go in the vehicle and move anything. That's

7 the way it was sitting when we got there. I believe Union

8 had done that to try to establish who owned the van, and

9 that's the -- I took that photograph. It's not very well

10 done, but I took that photograph of a driver's license of

11 one of -- I believe that's -- if I'm not mistaken, that's

12 Mrs. Emery's.

13 Q Okay. Now, let me show you State's 63. I think is

14 another shot of the driver's license, but there's some other

15 items above it.

16 A Correct. There's some jewelry items above the

17 passenger seat. The other one is just a closer view of the

18 license itself. Those are pieces of jewelry laying in the

19 seat.

20 Q Is that -- what is that?

21 A That's jewelry.

22 Q Okay. State's 64.

23 A That is another picture from the passenger side of the

24 vehicle showing items in the back. You can see a computer

25 monitor. The bottom right-hand corner is the back of the

William Gary - Direct examination  
By Solicitor Gowdy

1 computer monitor. I believe that's the printer to the left  
2 there with the clothes basket with several items of  
3 clothing.

4 Q State's 65, I think that's a window.

5 were there clothes in the van?

6 A Yes, there were.

7 Q Did you find -- let me show you State's 66 before I ask  
8 you that.

9 Is that another view of the back seat?

10 A That is. That's from the driver's side with the, the  
11 driver's side sliding door opened.

12 Q By category, but without specific, we don't have to  
13 delineate them specifically, by category, did you find  
14 clothes in the van?

15 A Yes.

16 Q Did you find jewelry in the van?

17 A Yes, sir.

18 Q Did you find what could be characterized as women's  
19 jewelry in the van?

20 A Yes, sir.

21 Q Did you find computer related items in the van?

22 A Yes.

23 Q Did you find pocketbooks in the van?

24 A Yes, sir.

25 Q Do you recall how many pocketbooks you found?

William Gary - Direct examination  
By Solicitor Gowdy

1 A I do not. I remember seeing one. But I'm not -- I  
2 didn't pull anything out down there. So, if there was  
3 something under the clothing that was found when it was  
4 processed, I'm, I'm, I'm not aware of that.

5 Q Detective Gary, would you of had this van sealed or  
6 secured?

7 A I did. What I did is I closed the doors. The driver's  
8 window was partially rolled down. Maybe a fourth of the  
9 way. I did not want to go in the vehicle to roll that up.  
10 So, I had to leave that down cause I did not want to  
11 potentially contaminate or destroy any evidence in it.

12 So, I had gloves on. I closed the doors. And then I  
13 took red evidence tape that, once you apply it with  
14 something, if you try to remove it, it's gonna tear.  
15 There's no way to remove it without it tearing. And so, I,  
16 I put my initials on that after I closed it so that when the  
17 person got there to process it at the shop they would know  
18 if anyone had been in the vehicle. And I did that on all of  
19 the doors even. Including the rear.

20 Q So, you sealed and/or secured the van with a knowledge  
21 that it would be transported to Spartanburg for processing?

22 A Correct.

23 Q All right. Thank you, Detective Gary. Please answer  
24 any questions the defense attorney may have for you.

25 THE COURT: Bring the lights up please.

William Gary - Cross-examination  
By Mr. Reckenbeil

1 Mr. Reckenbeil.

2 MR. RECKENBEIL: Very briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. RECKENBEIL:

5 Q Detective Gary, did you do any fingerprint tests on  
6 that car?

7 A No, I did not.

8 Q Did you see who, in fact, put all those items in that  
9 car?

10 A No, sir.

11 Q Okay. Thank you, sir.

12 THE COURT: Redirect?

13 SOLICITOR GOWDY: No, sir, Your Honor.

14 THE COURT: You may step down.

15 You wish to have the witness excused?

16 SOLICITOR GOWDY: Yes, sir, Your Honor.

17 THE COURT: Any objection?

18 MR. RECKENBEIL: No objection.

19 THE COURT: You're free to go, sir.

20 The State may call its next witness.

21 SOLICITOR BARNETTE: Your Honor, I'd like to call Randy  
22 Bogan to the stand please.

23 THE COURT: Sir, if you'd come forward to my right to  
24 be sworn please.

25 RANDY BOGAN, being first duly

Randy Bogan - Direct examination  
By Solicitor Barnette

1 sworn, testified as follows:

2 THE COURT: Sir, once you've been seated, move as close  
3 to the mic as possible. State your full name for the  
4 record.

5 WITNESS: Randall Eugene Bogan.

6 THE COURT: Mr. Barnette, your witness.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Where do your work or where did you work at back in May  
12 of 2007, sir?

13 A I was employed with the Spartanburg County Sheriff's  
14 Office.

15 Q And what was your position with them at that time, sir?

16 A In the forensic unit. To go to crime scenes, crime  
17 scene investigator.

18 Q And how long had, had, had you worked for the Sheriff's  
19 Department?

20 A Approximately 24 years.

21 Q And where do you work at now, sir?

22 A I work at the Spartanburg County Coroner's Office.

23 Q Are you still in charge of investigations and things  
24 like that?

25 A Yes, sir, I am.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q In this case, there was a white van that was brought in  
2 to processed.

3 Did you process -- did you and Investigator Hogsed  
4 process that van?

5 A Yes, sir, we did.

6 Q And let me show you some pictures from that.

7 where did y'all process it at, sir?

8 A We processed, processed it at the Spartanburg County  
9 maintenance shop.

10 Q Okay. Let me show you these exhibits that's been  
11 marked. It's State Exhibit 105 -- let me see. Might have  
12 them out of order here.

13 (Pause.)

14 Q Okay. 105 through 124. Let you look at those, sir.  
15 And then 135 through what appears to be 154 and then 156.  
16 Let you look at those, sir, and see if you recognize those  
17 photographs.

18 A Yes, sir, I do recognize these photographs.

19 Q Do those pictures fairly represent what you saw?

20 A Yes, sir, they do.

21 Q And did you process that van, sir?

22 A Yes, sir, I did.

23 Q And what kind of van was it?

24 A It was an Aerostar I believe it was. It was a minivan.

25 Q Uh-huh. (Affirmative).

Randy Bogan - Direct examination  
By Solicitor Barnette

1           And Your Honor, at this time I'd like to enter,  
2 introduce the pictures I just announced.

3           THE COURT: Allow the defense to look at them please.

4           MR. RECKENBEIL: No objection, Your Honor.

5           THE COURT: Without objection they'll be received into  
6 evidence as marked.

7           (Whereupon, State's Exhibit Nos. 105 through 124, 135  
8 through 154, and State's Exhibit No. 156 were received into  
9 evidence at this time.)

10          THE COURT: You may proceed, Mr. Barnette.

11          SOLICITOR BARNETTE: Your Honor, I'd like to publish  
12 these to the jury at this time.

13          THE COURT: You may.

14          Lower the lights please.

15 Q       Let me show you what's been marked as State's Exhibit  
16 110 and entered into evidence, sir.

17           Can you tell the jury what that is, sir?

18 A       Yes, sir, that's a photograph of the back side of the  
19 van showing the tag number.

20 Q       And has there been crime scene, scene tape, tape put  
21 around it?

22 A       Yes, sir.

23 Q       Showing you State Exhibit 108.

24           What is that, sir?

25 A       That's a closer picture of the tag number on the van.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q Showing you State Exhibit 111.

2 What is that, sir?

3 A That's the right side of the van.

4 Q And State Exhibit 112.

5 A That's the front left quarter panel of the van showing  
6 the side also.

7 Q State Exhibit 113.

8 A That's a closer view of the same angle you just saw of  
9 the van.

10 Q State Exhibit 114.

11 A That's the back left side of the van.

12 Q State Exhibit 115.

13 A That's the tag number again of the same van.

14 Q So, you took pictures all the way around the van?

15 A Yes, sir, 360.

16 Q Showing you State Exhibit No. 16, can you tell the jury  
17 what that is, sir?

18 A Yes, sir, that's going to be inside the van. If you  
19 open the side door that most minivans have, if you open the  
20 side door, that's a picture of the view looking into the van  
21 from the side.

22 Q And these are all those items that was inside of that?

23 A Excuse me?

24 Q These are all those items that was inside---

25 A Yes, sir.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q ---of the van?

2 And did you collect several of these items later?

3 A Yes, sir, basically almost all the items we collected.

4 Q Let me show you State Exhibit No. 17.

5 Was this an item that y'all found inside the van?

6 A Yes, sir, it is.

7 Q And whose name was on it, sir?

8 A Ann Emery.

9 Q State Exhibit No. 18.

10 Was this just another picture of several of the items  
11 that you found inside the van?

12 A Yes, sir.

13 Q Okay. Showing you what's been marked as State's 19,  
14 119.

15 What is that, sir?

16 A It's kind of zoomed in. But it---

17 Q Zoom back out for you.

18 A Yeah, that's -- that would be better. That's just  
19 showing a different view looking into the vehicle. That is  
20 gonna be the other side of the van. I think actually both  
21 of those doors opened if I'm not mistaken. Some, some  
22 minivans have two doors that open, one on each side, and I  
23 believe that's the opposite door.

24 Q Let me show you what's been marked as State's Exhibit  
25 120.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A All right, sir. That's a photograph of the inside back  
2 seat of the van.

3 Q And the item on top there, was that the part that we  
4 saw earlier?

5 A Yes, sir, that's a pair of blue jeans with the  
6 certificate that had Ann Emery's name on it.

7 Q And these blue jean pants right here---

8 A Yes, sir.

9 Q ---did you take a closer look at them later?

10 A Yes, sir, I did.

11 Q Showing you State's Exhibit 121.

12 what is this, sir?

13 A This is gonna be in the floorboard of the van, and we  
14 basically took that picture just showing that there was  
15 different items in the floorboard.

16 Q Okay. Showing you State Exhibit 122.

17 what is this a picture of, sir?

18 A That's just another picture of the same picture you  
19 viewed before this last one, which shows the, these, the  
20 same jeans are up top, right, and then on the floor. That's  
21 just showing the floorboard more with the jeans.

22 Q And what is this item right here, sir?

23 A That is gonna be a computer that was also located.

24 Q Let me show you State Exhibit 123.

25 what is this a picture of, sir?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A That's a purse that we located in the vehicle.

2 Q And was there several items inside the purse?

3 A Yes, sir, there was.

4 Q And whose personal affects was these that y'all found  
5 out later?

6 A Ann Emery.

7 Q Showing you State Exhibit 124.

8 Is this a different angle?

9 A Yes, sir, that's the, that's the open door of the van  
10 again looking in. The blue jeans are on the opposite side  
11 of the photograph from this, this angle, and this is just  
12 the other side of the van.

13 Q Showing you State Exhibit 120 -- well, 135. Excuse me.  
14 Tell us what that is, sir.

15 A All right, sir. That's looking from the door toward  
16 the back side of the van. You can see the clothes basket  
17 back there in the background.

18 Q Showing you 136, is this just another picture of that  
19 area?

20 A Yes, sir, it is. It's just another photograph also of  
21 the purse that we located.

22 Q And you collected this purse too?

23 A Yes, sir, we did.

24 Q State Exhibit 137.

25 Can you tell me what that is, sir?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A That's the picture from the right passenger door, front  
2 door of the van looking in toward the driver's seat, and it  
3 just shows that the driver's air bag and the passenger air  
4 bag were deployed and they were also some items in the  
5 passenger seat as well.

6 Q Showing you State Exhibit No. 138, what is this a  
7 picture of, sir?

8 A That's a view of the passenger side door looking down  
9 into the small compartment that's on the side of the door.

10 Q Let me show you what's been marked as 139.

11 A That's just a, another picture at a different angle of  
12 the passenger side of the vehicle looking into the  
13 floorboard of the vehicle and also the seat.

14 Q Let me show you State Exhibit, State Exhibit 140.

15 Now, those blue jeans that we saw earlier on the top,  
16 did you take a closer look at those?

17 A Yes, sir, we did. Basically we found out that --  
18 actually we looked at the size. We took sizes of all the  
19 clothing that was in the vehicle, and those particular pants  
20 were larger in size. They were a size 52 by 32. So, we  
21 took a closer look at them and we found small spots on them.

22 Q Okay. And these was laying on top of the clothes---

23 A Yes, sir, they were.

24 Q ---basically?

25 And what do these items appear to be?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A It appeared to be blood to me.

2 Q And what's the white thing that's in the picture?

3 A That's just a piece of tape and it's -- well, no.

4 That's gonna be the test kit for the blood. I'm sorry. And  
5 basically we, we actually take a swab and swab a portion of  
6 the spot that we think is blood. We take it and place it in  
7 a tube. It's a, it's a tube with some chemical in it. I'm  
8 not even sure what kind of chemical it is.

9 But once you take and place it in the tube, you screw  
10 the cap on, break the top off, and it's like a little  
11 dropper. And then you take the dropper and you drop a  
12 sample on this strip. And if there's two lines, it's gonna  
13 be human blood. If one line, it will be animal blood. And  
14 this actually tested positive for human blood.

15 Q So, it's a presumption test to see what kind of blood  
16 it is?

17 A Yes, sir.

18 Q Let me show you State Exhibit 141.

19 Can you tell us about this area right in here, sir?

20 A Yes, sir, that's the back portion of the blue jeans.  
21 That's just also some more spots of blood on the blue jeans.

22 Q Showing you State Exhibit 142.

23 Can you tell us about that, sir?

24 A Yes, sir, that's gonna be the right pocket of the blue  
25 jeans, which also had blood.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q And can you tell us a little bit about this picture.

2 This is 149.

3 A Yes, sir, this is gonna be the side of the pants leg  
4 and the front portion of the pants leg, and it -- or this  
5 could be -- this is the back portion of the pants leg, I'm  
6 sorry, on the right side and it has blood on it as well.

7 Q Showing you State Exhibit 150..

8 A That's just a closer view -- if you can see the pocket  
9 up on the right-hand side, that is the pocket that goes down  
10 the side of the pants.

11 Q And showing you State Exhibit 151.

12 A That's gonna be the pants legs of the pants.

13 Q Okay. And there, there appears to be something on the  
14 bottom too there?

15 A Yes, sir.

16 Q And State's Exhibit 153, is this the pants that you  
17 looked at?

18 A Yes, sir, that's a full picture of the pants with the  
19 belt that was in them.

20 Q Okay. And the belt was in them when y'all took it, was  
21 in the van also?

22 A That is correct.

23 Q State Exhibit 154.

24 what is this a picture of, sir?

25 A That's another picture of the blue jeans with the blood

Randy Bogan - Direct examination  
By Solicitor Barnette

1 on them.

2 Q And 156?

3 A Still another photo, a little bit closer to the blood  
4 spots.

5 Q Sir, do you collect these item out of the van?

6 A Yes, sir, I did.

7 Q Let me show you these items, sir. This is items,  
8 State's Exhibit 68 through 70, then State's Exhibit 82  
9 through 85, and then we got State Exhibit 86 through State,  
10 State Exhibit 98, and State Exhibit 100, State Exhibit 102  
11 through 104.

12 If you would, take a look at those, sir, and see if  
13 they fairly represent what you saw.

14 A Yes, sir, they do.

15 Q Let me show you State Exhibit 67.

16 Does that picture also fairly represent what you saw?

17 A Yes, sir, it does.

18 Q Thank you.

19 MR. RECKENBEIL: We don't have any objection, Your  
20 Honor.

21 THE COURT: Without objection then, those exhibits will  
22 be admitted as marked.

23 (Whereupon, State's Exhibit Nos. 67 through 70, 82  
24 through 98, 100, 102, and 104 were received into evidence at  
25 this time.)

Randy Bogan - Direct examination  
By Solicitor Barnette

1 THE COURT: You may proceed Mr. Barnette.

2 SOLICITOR BARNETTE: Thank you, Your Honor.

3 May I publish these to the jury, Your Honor?

4 THE COURT: You may.

5 Q Let me start with State Exhibit 86.

6 What is this a picture of, sir?

7 A That's gonna be a shirt that was taken from the van.

8 Q And State Exhibit 87.

9 A That's also clothing that -- there's -- it's like a  
10 scarf that was taken from the van.

11 Q State Exhibit 88.

12 A That's also a shirt that was taken from the van. Not  
13 necessarily a shirt. But like a coat type fleece.

14 Q State Exhibit 89.

15 What is that, sir?

16 A That's the computer that you saw in the back of the van  
17 earlier.

18 Q And was it also the key board and the screen and the  
19 mouse with it also?

20 A Yes, sir, everything you see there, along with the  
21 mouse, was taken from the van.

22 Q State Exhibit 90.

23 A That's a CD that belonged to Ray Emery that was taken  
24 from the van.

25 Q State Exhibit 91.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A That's a printer that was also located in the van.

2 Q State Exhibit 92.

3 A That's a black bag. Looked more like a lady's purse  
4 that was taken from the van.

5 Q State Exhibit 93.

6 A That's gonna be a wallet. It was located I believe on  
7 the passenger seat of the van and it contained Mr. Emery's  
8 identification.

9 Q Okay. State Exhibit 94.

10 A That is just gonna be a piece of jewelry, and a, and on  
11 the right side you see a, a holder for jewelry, and the  
12 center, I believe that was an, an ink pen if I'm not  
13 mistaken.

14 Q State Exhibit 95.

15 Is that just another picture of the jewelry we saw  
16 earlier?

17 A Yes, sir, it is.

18 Q State Exhibit 96.

19 A That's a bracelet that was taken actually from one of  
20 the purse -- it was located in the purse that was in the  
21 van.

22 Q State Exhibit No. 97.

23 A That's a necklace which was located in the purse inside  
24 the van.

25 Q State Exhibit 98.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A That's another necklace with a heart shaped pendant on  
2 it which was located in the van as well.

3 Q State Exhibit 100.

4 A That's gonna be another heart shaped locket that was  
5 located in the van.

6 Q State Exhibit 102.

7 A Another necklace that was located in the van.

8 Q State Exhibit 103.

9 A That was a bracelet I believe that was located in the  
10 van, in the van.

11 Q And State Exhibit 104.

12 A That's gonna be the other pocketbook that was located  
13 in the van that had most of the jewelry in it in boxes.

14 Q And we can see it in some of the other pictures? |

15 A Yes, sir.

16 Q And these items came back identified to who?

17 A These came back identified to Carroll or Ann Emery.

18 Q Let me show you what's been introduced as State Exhibit  
19 67.

20 what is this, sir?

21 A That is a piece of pot or actually it's a pot itself.  
22 But it's a, it contained small little items such as small  
23 knives. It, it was used as a planter I'm sure before. But  
24 now, whenever we located it inside the van, it was used as  
25 like a -- most people have a junk drawer. It was used as

Randy Bogan - Direct examination  
By Solicitor Barnette

1 throwing like small items in like small knives, pocket  
2 knives, and change, and things like that.

3 Q when y'all -- when y'all processed the van, did y'all  
4 look for fingerprints?

5 A Yes, sir, we did the inside and outside of the van for  
6 fingerprints.

7 Q If you would, tell the jury a little bit about how you  
8 look for fingerprints.

9 A Basically on some surfaces you can, are acceptable for  
10 fingerprints. The outside of a vehicle is normally pretty  
11 good for fingerprints because it's smooth. Basically we use  
12 dust powder. We sprinkle the powder on there with a brush  
13 and the powder actually adheres to the oils that are in a  
14 person's skin that they leave behind when touching a  
15 surface.

16 These oils, if there is a decent fingerprint, and I  
17 have been to school and actually have looked at thousands of  
18 fingerprints, if they are identifiable to me, I will lift  
19 the fingerprint and turn it into our AFUS operator who then  
20 runs it through the AFUS machine and attempts, attempts to  
21 get a, a hit from it.

22 If they're not, a lot of people's -- when you grab a  
23 surface and you move your hand just a slightest amount, it  
24 could smudge, and that's what we basically call them,  
25 smudges. And those smudges are -- most of the smudges are

Randy Bogan - Direct examination  
By Solicitor Barnette

1 unidentifiable. However, we did lift prints from the van  
2 and also I lifted prints from the ceramic piece.

3 Q Okay. Now, if I touch a surface like this, am I gonna  
4 leave fingerprints, sir?

5 A You could. It's possible you could. Not probable.  
6 It's possible. If you, if you put your finger down like  
7 this and lift it straight up, then I could probably get some  
8 legible prints. However, if you put it down, move it just  
9 slightly, just as much as I did, if you even saw me move my  
10 hand, then it could leave a smudge and you wouldn't be able  
11 to obtain a print.

12 Q So, do you -- when -- all the crime scenes you worked,  
13 do you find fingerprints often?

14 A No, sir, I mean we find fingerprints. But a lot of  
15 them are smudged. And even some that I think are  
16 identifiable, whenever I get them to AFUS, there's not  
17 enough points in them for the point system for them to be  
18 identifiable. The points go along with ridges. They're  
19 certain areas in the fingerprint which they mark as points  
20 and those points they had, they usually use so many points  
21 before they'll actually put them into the AFUS machine.

22 Q So, you was able to get some prints off of this, off  
23 the flower pot?

24 A Yes, sir, I was.

25 Q Let me show you what's been marked as State's Exhibit

Randy Bogan - Direct examination  
By Solicitor Barnette

1 68.

2 If you would, tell us what this is, sir.

3 A This is the flower pot and where I have circled and  
4 marked as P.P., that is a fingerprint that I lifted from the  
5 flower pot. Now, on the flower pot or anything movable or  
6 whenever we process something in the lab, we used Super Glue  
7 to fume it's. Once it's fumed, it makes the fingerprint  
8 adhere more to the surface than it's already on. Therefore,  
9 if it's moved around or anything, it's more than likely not  
10 gonna be smudged. I did fume this and then I dusted it with  
11 powder, and the circle you see at the top left hand portion  
12 is where I circled the fingerprint, and that's where I found  
13 the fingerprint and turned it into AFUS.

14 Q Okay. Was this analyzed later by Hugh Murphy?

15 A Yes, sir.

16 Q And he's with the Sheriff's Department also?

17 A That's correct.

18 Q Okay. Let me show you what's been, State Exhibit 69.

19 Is that just a close-up of the fingerprint that you  
20 took?

21 A Yes, sir, it is and we put scales beside it just to  
22 show you the size of it.

23 Q Okay. State Exhibit 70.

24 Is this just a view from farther out?

25 A At little bit further distance out.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q Okay. Now, State Exhibit 82, if you would, tell me a  
2 little bit about this area right in here, sir.

3 A All right, sir. The, the area that I circled in there,  
4 it appeared to be blood to me. Therefore, I circled that  
5 area and also another area on this pot, and swabbed both of  
6 these areas and sent the swabs to SLED for analysis.

7 Q Okay. State Exhibit 83.

8 Is that just a closer up picture of the area you're  
9 talking about?

10 A Yes, sir, it is. That's one of the areas.

11 Q And State Exhibit 84.

12 Is this that area you was talking about?

13 A Yes, sir, the picture you just saw before that, you saw  
14 close-up of the top right corner. Now this is the other  
15 location that I swabbed.

16 Q And State Exhibit 85.

17 A That's a closer picture of the other area I swabbed.

18 Q And you swabbed it -- and where was that sent to, sir?

19 A That was sent to SLED lab.

20 Q And that's for analysis?

21 A Yes, sir, for DNA analysis.

22 Q Before I go here -- let's turn the lights back on for a  
23 second.

24 THE COURT: Bring the lights up please.

25 Q Show you these real quick.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 State Exhibit 105.

2 Was a fingerprint found by Investigator Hogsed later?

3 A Yes, sir, it was.

4 Q And showing you State Exhibit 105 -- turn that over.

5 THE COURT: I'm sorry.

6 Did you want the lights up or down?

7 SOLICITOR BARNETTE: It is fine, Your Honor. We can --

8 it's just---

9 THE COURT: You're okay with them like they are?

10 SOLICITOR BARNETTE: Yes, sir.

11 THE COURT: Leave them alone.

12 All right.

13 Q And did he find a usable print outside later?

14 A Yes, sir, that's the fingerprint on the driver's side  
15 of the van, the---

16 Q And Investigator---

17 A ---door portion.

18 Q And was that sent later to Hugh Murphy also?

19 A Yes, sir, it was.

20 Q State Exhibit 107.

21 A That's a closer photograph of that same picture you  
22 just saw.

23 Q And State Exhibit 106, that's just another picture of  
24 the van itself?

25 A That's correct.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q And 109.

2 A That's a closer photograph of that.

3 Q Let me show you these two, and I believe these have  
4 been premarked State's Exhibit 32 and 33.

5 Was these the two swabs that you took from the flower  
6 pot that we saw in the pictures earlier?

7 A Yes, sir, they are.

8 SOLICITOR BARNETTE: Your Honor, I'd like to enter  
9 these into evidence at this time.

10 MR. RECKENBEIL: No objection, judge.

11 THE COURT: Without objection, they'll be admitted as  
12 they're marked.

13 (Whereupon, State's Exhibit Nos. 32 and 33 were  
14 received into evidence at this time.)

15 Q So, these are the two swabs you took from the flower  
16 pot and they were sent to SLED?

17 A That's correct. They're labeled B-1 and B-2, which  
18 coincide with the flower pot B-1 and B-2.

19 Q And of course, these are secured in these boxes?

20 A Yes, sir, they are.

21 Q And they were sent to evidence?

22 You took them to evidence?

23 A Yes, sir, I placed them into evidence at the Sheriff's  
24 office and the evidence custodian takes them to SLED for  
25 analysis.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q To maintain the chain and make sure that no tampering  
2 occurs?

3 A That's correct.

4 SOLICITOR BARNETTE: One moment.

5 (Pause.)

6 Q Sir, if you would, look at State Exhibit No. 5.  
7 What is that, sir?

8 A This is the actual fingerprint that I lifted from the  
9 flower pot.

10 Q And that's what was submitted to Hugh Murphy to, to  
11 look at and do analysis, analysis on?

12 A Yes, sir, that's correct.

13 SOLICITOR BARNETTE: Your Honor, I'd like to enter  
14 State's Exhibit No. 5 into evidence at this time.

15 MR. RECKENBEIL: No objection.

16 THE COURT: Without objection, it will be received into  
17 evidence as marked.

18 (Whereupon, State's Exhibit No. 5 was received into  
19 evidence at this time.)

20 SOLICITOR BARNETTE: May I publish it to the jury, Your  
21 Honor?

22 THE COURT: You may.

23 Q And is this the actual print that you got of the ridge  
24 detail?

25 A Yes, sir, it is.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q Okay. Let me show you some items, sir, if I can.

2 There were several items that y'all collected out of  
3 the van, is that right?

4 A That's correct.

5 Q Let me show you first what's been marked as State  
6 Exhibit 143.

7 If you would, take a look at that, sir.

8 A All right, sir.

9 Q Is that one of the purses that you collected out of the  
10 van?

11 A Yes, sir.

12 SOLICITOR BARNETTE: Your Honor, I'd like to enter  
13 State Exhibit 143 into evidence at this time.

14 MR. RECKENBEIL: No objection.

15 THE COURT: Without objection, it will be admitted.

16 (Whereupon, State's Exhibit No. 143 was received into  
17 evidence at this time.)

18 Q If you would, sir, look inside and see if there's a  
19 planner or a book in there, items in there, sir. If you  
20 would, pull those items out and identify them as being --  
21 the purse I mean.

22 A (Witness complies.)

23 There's a check, like a checkbook receipt. There's a  
24 checkbook and register.

25 A Okay.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 SOLICITOR BARNETTE: Your Honor, if I could publish  
2 these items from inside the purse to the jury?

3 THE COURT: Any objection?

4 MR. RECKENBEIL: No objection, Your Honor.

5 THE COURT: You may do so.

6 Q Showing you this, sir, what does this appear to be from  
7 inside the purse?

8 A That's a check that belongs to Ann Emery or Ray Emery  
9 drawn on their personal account.

10 Q And what was the address, sir?

11 A The address is [REDACTED] Montgomery Street, the address that  
12 we went to --

13 Q Okay.

14 A -- or that officers went to.

15 Q Yes, sir.

16 And that's Drayton, South Carolina also?

17 A Yes, sir, it is.

18 Q And how many checks does it appear that was left in  
19 that checkbook?

20 A 644 through check 650, 6650. 6644 or 6648 through 6650  
21 is what it says.

22 Q Let me go ahead and show this to you, sir. You seen  
23 this, sir.

24 what is this, sir?

25 what does that say?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A That's a, an account from Skylyn UMC Breakfast Club at  
2 1415 Skylyn Drive, and that's the, their checking account.

3 Q Is that United Methodist Church?

4 A Yes, sir, it is.

5 Q And both of these came from inside the purse?

6 A Yes, sir, they did.

7 Q If you would, please see what else there is in, inside  
8 there, sir.

9 A There's a female's wallet with credit cards and  
10 identification belonging to Mary Ann Emery.

11 SOLICITOR BARNETTE: Your Honor, if I can take a moment  
12 the have this marked?

13 THE COURT: Yes, sir.

14 (Whereupon, the wallet was marked as State's Exhibit  
15 No. 144 for identification purposes only at this time.)

16 SOLICITOR BARNETTE: Your Honor, I believe this is  
17 entered into evidence. I'll let the defense see it. I  
18 think they've seen it already.

19 MR. RECKENBEIL: We've seen it, Your Honor.

20 THE COURT: Any objection?

21 MR. RECKENBEIL: No objection.

22 THE COURT: Without objection.

23 What's it marked?

24 SOLICITOR BARNETTE: 144, Your Honor.

25 THE COURT: All right. It will be admitted as marked.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 (Whereupon, State's Exhibit No. 144 was received into  
2 evidence at this time.)

3 SOLICITOR BARNETTE: Your Honor, may I publish it to  
4 the jury?

5 THE COURT: You may.

6 Q If you would, sir, looking at the inside of the wallet,  
7 what do you see first, sir?

8 A That is a photograph of Mrs. Emery.

9 Q And is this her driver's license?

10 A Yes, sir, it is.

11 Q All right. And that was found inside the purse inside  
12 this wallet?

13 A That's correct.

14 Q Okay, sir. What is this or what does it appear to be?

15 A The---

16 MR. RECKENBEIL: Your Honor, can we approach a second?

17 THE COURT: You may.

18 (Whereupon, a bench conference was held out of the  
19 hearing of the jury at this time.)

20 SOLICITOR BARNETTE: Thank you, Your Honor.

21 THE COURT: You may proceed.

22 SOLICITOR BARNETTE: Thank you, Your Honor.

23 Q Other items, sir.

24 what does that appear to be, sir?

25 A That's the Office Depot card belonging to Ann Emery.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q And what does that appear to be, sir?

2 A That's Ann Emery's Master Card, Capital One Master  
3 Card.

4 Q And what is that, sir?

5 A That's the insurance card for a Grand Prix belonging to  
6 Mary Ann Emery.

7 Q And obviously there's several other type cards that's  
8 within this wallet?

9 A Yes, sir, there's various cards.

10 Q And who did they belong to or appear to belong to?

11 A Mrs. Emery.

12 Q And let's see what else we have here.

13 Let me show you what's been marked as State's Exhibit  
14 147, 138, 129.

15 Okay. Are these items that you collected from the van,  
16 sir?

17 A Yes, sir, they are.

18 Q State Exhibit 49, State Exhibit 130 and 127, State  
19 Exhibit 146, State Exhibit 124-A, State Exhibit 148.

20 Was these all the items that you found inside the van,  
21 sir?

22 A Yes, sir, they were.

23 SOLICITOR BARNETTE: Your Honor, I'd like to move these  
24 into evidence at this time.

25 MR. RECKENBEIL: No objection.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 THE COURT: Without objection, they'll be admitted into  
2 evidence as marked.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 (Whereupon, State's Exhibit Nos. 49, 124-A, 127, 129,  
5 130, 138, 146, 147, and 148 were received into evidence at  
6 this time.)

7 Q If you would, put those back inside the -- may I  
8 publish some of these to the jury, Your Honor?

9 THE COURT: You may.

10 Q If you would, sir, just come over here for a second.

11 (Witness complies.)

12 Q On State Exhibit 146, if you would, sir, just show the  
13 jury generally what you did on this.

14 A All right, sir. I actually, as I said earlier, fumed  
15 this. And once the -- oh, I'm sorry. Once it was fumed, I  
16 dusted it with black powder and lifted the fingerprint which  
17 you saw on the screen. This is the same fingerprint that I  
18 lifted and I lifted it from here.

19 I also saw what appeared to be blood in this area, in  
20 this area, and swabbed both of those. And those I put in  
21 the cartons that you saw me holding up and sent them to our  
22 evidence custodian, who actually took, in turn, took them to  
23 SLED.

24 Q Is this area over here was the other spot that you were  
25 looking at?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 A That's correct. It -- these two areas right here were  
2 the blood spots and this one was the fingerprint.

3 Q Thank you, sir.

4 A Yes, sir.

5 Q Showing you State Exhibit 148, was this the item that  
6 we saw on top that you photographed in the van?

7 A That's correct. The, the item that was located on the  
8 top of the blue jeans.

9 Q And whose name is on that, sir?

10 A Ann Emery.

11 Q Show you State Exhibit 130.

12 What was that, sir?

13 A That is gonna be a registration that belonged to  
14 Charles Ray Emery and Mary Ann Emery, and it's gonna be a, a  
15 Chevy, 2000 Chevy.

16 Q And was that---

17 A It's a Venture, a van. That's what it was.

18 Q So, it was a van itself.

19 This is the registration for that van?

20 A Yes, sir.

21 Q And is that -- whose van it was?

22 A Yes, sir, that's correct.

23 Q Showing you State Exhibit 146, what does this appear to  
24 be, sir?

25 A That's a credit union booklet that belongs to Charles

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Ray Emery.

2 Q Was this a payment book it appeared to be?

3 A Yes, it is.

4 Q State Exhibit 132.

5 what was this, sir?

6 A That is the, what I call wallet belonging to Mr. Emery.

7 It had his identification in it along with credit cards and  
8 other paperwork belonging to him.

9 Q State Exhibit 124-A.

10 That is -- was that the keys to the van?

11 A Yes, sir, and they were, they were in the van.

12 Q And State Exhibit 127, what did this appear to be?

13 A A broken cell phone.

14 Q Okay. And what -- does it appear to be the back of the  
15 cell phone?

16 A Yes, sir, it, it appears to be the, the, the flip part  
17 of the cell phone, right.

18 Q Okay. And was this a battery or appeared to be a  
19 battery?

20 A Yes, sir.

21 Q And you -- like you said, this appeared to be the flip  
22 part of the back of it too?

23 A That's correct.

24 Q And that was found in the van?

25 A Yes, sir, it was.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q And showing you what's entered as State Exhibit 129,  
2 whose driver's license was that, sir?

3 A That's Mr. Emery, Mr. Charles Emery.

4 Q And was that also found in the van?

5 A Yes, sir, it was.

6 THE COURT: Bring the lights up please.

7 Q Let me show you---

8 MR. RECKENBEIL: Judge, can we approach again?

9 THE COURT: You may.

10 THE COURT: Mr. Barnette.

11 SOLICITOR BARNETTE: Yes, sir.

12 (Whereupon, a bench conference was held out of the  
13 hearing of the jury at this time.)

14 Q Let me hand this back to you, sir. If you would, put  
15 that back in the purse---

16 A Yes, sir.

17 Q ---where it came from.

18 This over here, the -- if you would, sir, take a look  
19 at these and see what that is inside there, sir.

20 A All right, sir.

21 Q Okay. What are those, sir?

22 A These are the blue jeans that we located in the van,  
23 the van, which were size 52/32. Levi pants.

24 Q Are these items---

25 A Blue jeans.

Randy Bogan - Direct examination  
By Solicitor Barnette

1 Q ---you collected?

2 A Yes, sir.

3 Q And these jeans, were they sent to SLED?

4 A Yes, sir.

5 Q And was some of these cuttings taken from those jeans?

6 A Yes, sir, I was fixing to say these blue jeans have  
7 been cut. They were not cut by me. I sent them to SLED.  
8 SLED actually takes specific portions of the material and  
9 analyzes them.

10 Q I believe that's gonna be State Exhibit 31.

11 And I'd like to enter this into evidence at this time,  
12 Your Honor.

13 THE COURT: Any objection?

14 MR. RECKENBEIL: We viewed them, Your Honor. No  
15 objection.

16 THE COURT: Without objection, they'll be admitted as  
17 marked.

18 (Whereupon, State's Exhibit No. 31 was received into  
19 evidence at this time.)

20 Q You might want to take those out and take, take them  
21 out.

22 If you would, sir, come over to the jury at this time.

23 (Witness comes down from the stand.)

24 SOLICITOR BARNETTE: May we publish these to the jury,  
25 Your Honor?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 THE COURT: You may.

2 Q Investigator Bogan, just show these to the jury and  
3 just describe what you saw, and, of course, the cuttings  
4 that were made?

5 A These are the back of the pants, and the photographs  
6 that you saw are of the back of the pants that, that I, I  
7 showed you or you saw on the screen. Here are the front of  
8 the pants and the legs. These small cuttings were done by  
9 SLED. Instead of taking the entire set of pants out and  
10 looking at them under a microscope, a little by little they  
11 take small portions like this right here and they do the DNA  
12 testing and everything they need to do for that, and these  
13 are the pants that were located inside of the van.

14 Q Let me ask you about these items right over here, sir.  
15 I don't know if you can see them or not.

16 what does that appear to be on the front of the leg  
17 there that wasn't cut?

18 A That also appears to be blood as well. You can see  
19 that.

20 Q If you would, sir, please put them back in here along  
21 with all the packaging.

22 A (Witness complies.)

23 Q Thank you, sir.

24 A Yes, sir.

25 SOLICITOR BARNETTE: One moment, Your Honor, please?

Randy Bogan - Direct examination  
By Solicitor Barnette

1 THE COURT: Yes, sir.

2 (Pause.)

3 SOLICITOR BARNETTE: Can I look at one thing, Your  
4 Honor, just to make sure that is all the evidence?

5 THE COURT: Yes, sir.

6 (Pause.)

7 SOLICITOR BARNETTE: Thank you for your patience, Your  
8 Honor. I apologize.

9 THE COURT: I understand.

10 Q Please answer any questions that I guess Mr. Reckenbeil  
11 has for you.

12 A Yes, sir.

13 THE COURT: Mr. Reckenbeil.

14 MR. RECKENBEIL: Thank you, judge.

15 THE COURT: Your witness.

16 CROSS-EXAMINATION

17 BY MR. RECKENBEIL:

18 Q Investigator Bogan, did you wrap that in white plastic  
19 paper or just brown plastic paper?

20 A Did I wrap---

21 Q When you first got those jeans.

22 Do you remember?

23 A Those jeans?

24 Q Yes, sir.

25 A They were put in a brown paper bag actually when I

Randy Bogan - Cross-examination  
By Mr. Reckenbeil

1 first got them.

2 Q All right.

3 A Because I, I would take items from the van and place  
4 them into plastic, into paper bags. Then whenever I got  
5 back to the office, then is whenever I actually packaged  
6 them, so to speak, to be sent for evidence.

7 Q Did you package with that white---

8 A With the butcher paper, normally what I do is I take a  
9 piece of butcher paper, lay them out, photograph them, and  
10 then wrap them in that same butcher paper, and then put them  
11 in another bag and send them to SLED.

12 Q Correct.

13 But you don't know what you did in this specific case,  
14 sir, do you?

15 A I don't recall now, sir. That's just my procedure as  
16 far as doing clothing.

17 Q Make sure we got that right.

18 Showing you what's marked as 121, and, sir, you're  
19 saying is that's how it appeared to you when you first  
20 arrive at the scene?

21 A That is the way it was at the county maintenance shop,  
22 yes, sir, when I began to process the vehicle.

23 Q Okay. And that vase that is next to the Mountain Dew  
24 12 pack, that's the thing in front of you?

25 A Yes, sir, it is.

Randy Bogan - Cross-examination  
By Mr. Reckenbeil

1 Q And that's the floorboard of the driver's side?

2 A I believe it, if I'm not mistaken, it is the floorboard  
3 of the driver's side.

4 Q Where the pedals are?

5 A Yes, sir.

6 Q Where the gas and the break is?

7 A That's correct.

8 Q Okay. Would you agree with me, sir, that if items like  
9 that are there you would have to move them in order to drive  
10 a vehicle?

11 A Actually -- do you want my opinion?

12 Q Well, I'm -- not your opinion, sir.

13 But just from looking at it there, just tell me would  
14 you not have to move that box in order for you to drive that  
15 vehicle if that's parked up against the---

16 A The way it sits now, correct.

17 Q Okay. And did you actually review the -- you can put  
18 the lights back up.

19 THE COURT: Bring the lights back up please, sir.

20 (Bailiff complies.)

21 THE COURT: Thank you.

22 Q Did you actually do the results of the fingerprints?

23 In other words, did you actually find out who those  
24 fingerprints were?

25 A No, I -- as I stated earlier, took them off the vase,

Randy Bogan - Cross-examination  
By Mr. Reckenbeil

1 turned them into Hugh Murphy with Spartanburg County  
2 Sheriff's Office who does our analysis on fingerprints and  
3 enters the fingerprints into AFUS.

4 Q Okay. So, the only two prints that you say that you  
5 pulled off on the van or items out of the van were the vase  
6 and the driver, the passenger side just above getting in the  
7 entrance?

8 A That's correct.

9 Q Nothing off computers?

10 A No, sir.

11 Q Nothing off---

12 A They're very hard to get off of.

13 Q Well, you didn't get any, did you?

14 A No, sir, it's because of the surface.

15 Q Okay. Nothing off of what you got there next to you?

16 A This?

17 Q No, the purses.

18 A No. But you can see the, they're not smooth either.

19 Q All right. And I know we're both males, but would it  
20 be odd for a female to keep her wallet in her purse?

21 A Would it be odd for a female---

22 Q Yes.

23 A ---to keep her wallet in her purse?

24 Q In her purse.

25 A No, sir.

Randy Bogan - Cross-examination  
By Mr. Reckenbeil

1 Q Okay. would it be odd for an individual to keep the  
2 license that they drive in their wallet in their purse?

3 Mrs. Emery's---

4 A No, sir.

5 Q ---items that are in that purse?

6 A No, sir.

7 Q That be out of the ordinary?

8 A No, sir.

9 Q would it be out of the ordinary for an individual to  
10 keep checkbooks in their purse?

11 A No, sir.

12 Q All right. sir, did you have an opportunity to view  
13 the person that actually put all these items in this  
14 vehicle?

15 A No, sir, I never met the suspect.

16 Q okay. Did you actually see an individual -- I know  
17 you're talking about a suspect.

18 But did you see an individual who put every single one  
19 of those items in that car?

20 A I didn't see anyone put any items into the car.

21 Q Oh, okay.

22 A They were in there whenever I arrived at the  
23 Spartanburg County Maintenance Shop.

24 Q Yes, sir. Thank you.

25 THE COURT: Any other questions of the witness?

Randy Bogan - Cross-examination  
By Mr. Reckenbeil

1 Mr. Reckenbeil?

2 MR. RECKENBEIL: No, that's it, Your Honor.

3 THE COURT: Redirect?

4 Yes, sir.

5 SOLICITOR BARNETTE: Yes, just a couple on redirect,  
6 Your Honor.

7 THE COURT: All right.

8 SOLICITOR BARNETTE: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Obviously you don't know whether these items was in the  
12 van before the wreck or anything like that?

13 A No, sir, I don't.

14 Q So, if they were somewhere else, in the front seat or  
15 in the back seat, could you---

16 MR. RECKENBEIL: Objection, Your Honor. He's calling  
17 for speculation. He wasn't there before the accident. He's  
18 taken photos of what he saw and he's gonna be asking him to  
19 speculate as to where other items were in the vehicle.

20 THE COURT: He never finished the question. So, I'm  
21 not sure exactly what he was gonna ask. So, I'm gonna  
22 withhold my ruling until I understand exactly what the  
23 question's going to be.

24 Q I know Mr. Reckenbeil asked you what you see in the  
25 picture, and see, did you see the person that puts these

Randy Bogan - Redirect examination  
By Solicitor Barnette

1 items in the van.

2 well, my was, question is do you know where they were  
3 before the accident occurred?

4 A No, sir.

5 Q So, you don't know if they were there or not before the  
6 accident?

7 MR. RECKENBEIL: Objection, Your Honor. Calls for  
8 speculation.

9 THE COURT: No, it doesn't. He asked whether he knew  
10 they were there before the accident and he can ask that  
11 question.

12 Go ahead.

13 A No, sir, I do not.

14 Q So, you don't know if they were in the back seat, front  
15 seat, or there?

16 A No, sir.

17 Q You don't know if they was in his lap or anything like  
18 that?

19 A No, sir.

20 Q He's asked you about the fingerprints.

21 Does texture of items effect to get fingerprints?

22 A Yes, sir, as I stated, whenever he was asking me about  
23 a fingerprint being here, and did I find one here, I've  
24 never found a fingerprint on a pocketbook because of the  
25 texture. I've never found a fingerprint -- as smooth as

Randy Bogan - Redirect examination  
By Solicitor Barnette

1 some people may think a refrigerator is, for example, I  
2 haven't found fingerprints on a refrigerator because of the  
3 texture. It all depends on the, the texture. Actually a  
4 lot of times you can't even get it off of wood because of  
5 the texture, and because of the amount of oils in a person's  
6 skin where they leave the fingerprint. My hands stay really  
7 dry. And if I don't put lotion on them, I could touch this  
8 all day long and never leave a, a fingerprint cause I don't  
9 have any oils in my skin.

10 Q And something like a pocketbook, would it absorb the  
11 oil easily?

12 A Oh, without a doubt. Any kind of cloth would. That's  
13 why it's really hard and difficult to get anything off of a  
14 cloth or anything like that. And this is vinyl. And vinyl,  
15 vinyl is smooth. However, it has these small little creases  
16 in it, and there's no way -- I've never gotten anything off  
17 of vinyl even with fuming it, fuming vinyl with Super Glue.

18 Q And you're saying wood too -- is the texture make it  
19 hard for wood?

20 A Yes, sir, I, I think there's only been one time out of  
21 my eight or nine thousand different cases that I've worked  
22 and processed that I've ever gotten anything off of wood.

23 Q How about the steering wheel of the car?

24 A The steering wheel of a car, basically I've never,  
25 never gotten one of a steering wheel because it's basically

Randy Bogan - Redirect examination  
By Solicitor Barnette

1 the same kind of texture that this is. It's, it's a, it's a  
2 vinyl, but it has creases in it, and it's really hard to get  
3 off of a steering wheel. Steering wheel is especially hard  
4 because when people grip it, they turn it. But their  
5 fingers also slide, the steering wheel actually slides  
6 within their fingers as well. So, it's very difficult.

7 SOLICITOR BARNETTE: Excuse me one second, Your Honor.

8 THE COURT: Yes, sir.

9 (Pause.)

10 Q Is there other factors such as sweating and things like  
11 that that could affect the way you leave fingerprints?

12 A Yes, sir, even if it's raining, if this van had of been  
13 rained on, it's possible we'd of never got a fingerprint  
14 from the outside of the van because rain effects it. It can  
15 wash away a fingerprint. If your hands are wet, it just  
16 leaves smudges and you just see where the wet marks are.  
17 You don't actually see a fingerprint. So, the fingerprint  
18 is very hard to lift in a lot of cases.

19 Q Okay. Thank you, sir. Please answer any questions  
20 they have for you.

21 THE COURT: Recross.

22 MR. RECKENBEIL: Nothing, Your Honor.

23 THE COURT: You may step down, sir.

24 WITNESS: Thank you, Your Honor.

25 SOLICITOR BARNETTE: We'd ask for the witness to be

Randy Bogan - Redirect examination  
By Solicitor Barnette

1 excused.

2 THE COURT: Any objection?

3 MR. RECKENBEIL: No objection, Your Honor.

4 THE COURT: Mr. Barnette, if you can take a moment,  
5 we're gonna need to get the exhibits off the witness stand  
6 please.

7 SOLICITOR BARNETTE: Yes, Your Honor.

8 Your Honor, may I move them just to the table over  
9 there?

10 THE COURT: Yes, sir, that will be fine. They're just  
11 gonna be in the way of whoever comes up.

12 SOLICITOR BARNETTE: Yes, sir.

13 (Pause.)

14 THE COURT: State may call its next witness.

15 SOLICITOR BARNETTE: Like to call Mr. Turner to the  
16 stand, Your Honor.

17 THE COURT: Sir, come forward to my right to be sworn  
18 right up here.

19 SOLICITOR BARNETTE: And, Your Honor, I may need to  
20 switch from that back to this computer.

21 THE COURT: Let me know when you're ready.

22 SOLICITOR BARNETTE: Yes, sir.

23 GREG TURNER, being first duly  
24 sworn, testified as follows:

25 THE COURT: Sir, once you're seated in the witness

Greg Turner - Direct examination  
By Solicitor Barnette

1 stand, move as close to the mic as you can and state your  
2 full name for the record.

3 WITNESS: Phillip Greg Turner.

4 THE COURT: Mr. Barnette, your witness.

5 SOLICITOR BARNETTE: Thank you, sir.

6 DIRECT EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Where do you work at, sir?

9 A Spartanburg Regional Medical Center.

10 Q And what is your position there, sir?

11 A Security officer.

12 Q And how long have you been there, sir?

13 A Four and a half years.

14 Q Back on May 11<sup>th</sup>, 2007, did the Sheriff's Department  
15 approach you about a video that was taken at Spartanburg  
16 Regional Medical Center?

17 A Yes, sir, they did.

18 Q And let me show you what's been marked as State Exhibit  
19 20.

20 Is that a copy of the video that, that they received  
21 from you?

22 A Yes, sir, it is.

23 Q And was that the video that was taken at Spartanburg  
24 Regional at the ER area?

25 A Yes, sir.

Greg Turner - Direct examination  
By Solicitor Barnette

1 Q And that was what -- the video that was taken, that was  
2 given to the Sheriff's Department?

3 A Correct.

4 SOLICITOR BARNETTE: Your Honor, I'd like to enter this  
5 into evidence at this time.

6 MR. RECKENBEIL: No objection, Your Honor.

7 THE COURT: Without objection, it will be received as  
8 marked.

9 (Whereupon, State's Exhibit No. 20 was received into  
10 evidence at this time.)

11 SOLICITOR BARNETTE: Your Honor, I'd like to publish it  
12 at this time.

13 THE COURT: You may publish it.

14 (At this time, State's Exhibit No. 20 was published to  
15 the jury.)

16 Q Sir, where is this area right here?

17 A That is in what we call the tower lobby.

18 Q And is the date and time listed in the bottom half of  
19 the video?

20 A Yes, sir, it is.

21 Q Where was this area, again, at Spartanburg Regional,  
22 sir?

23 A That's the tower lobby.

24 Q And this is y'all's security cameras for the area?

25 A That's correct.

Greg Turner - Direct examination  
By Solicitor Barnette

1 Q And that's the video that you had approximately 8:17,  
2 8:20 on May 11<sup>th</sup>, 2007?

3 A That is correct.

4 Q Thank you, sir. If you would, answer any questions the  
5 defense may have for you, sir.

6 MR. RECKENBEIL: No questions, Your Honor, and we have  
7 no objection to release of this witness.

8 THE COURT: Sir, you may step down.

9 Raise the lights please, sir.

10 And you are free to go.

11 State may call its next witness.

12 SOLICITOR CRICK: Thank you, Your Honor.

13 The State calls Crystal Williamson.

14 THE COURT: Come forward to be sworn please, ma'am.

15 CRYSTAL WILLIAMSON, being first  
16 duly sworn, testified as follows:

17 THE COURT: All right, ma'am. State your name for the  
18 record please.

19 WITNESS: Crystal Williamson.

20 THE COURT: Mrs. Crick, it's your witness.

21 SOLICITOR CRICK: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY SOLICITOR CRICK:

24 Q Mrs. Williamson, tell us your full name again.

25 A Crystal Williamson.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 Q And are you married or single?

2 A Married.

3 Q Do you work?

4 A No.

5 THE COURT: Ma'am, if you'll move just a little closer  
6 to the microphone we'll probably hear you better.

7 WITNESS: Okay.

8 THE COURT: Thank you.

9 Q I'm just gonna ask you a direct question.

10 Did you know Ann and Ray Emery?

11 A Ann was my mother. Ray was my stepfather.

12 Q And do you know about how long and when they got  
13 married?

14 A 2003.

15 Q Okay.

16 A April, April 13, 2003.

17 Q Okay. Where did they live in 2007?

18 A ■ Montgomery Street.

19 Q Did you live near them at that time?

20 A Next door.

21 Q So, if you're looking at the front of the house, would  
22 you have lived to the left or the right?

23 A Right.

24 Q Did you happen to know of the defendant during that---

25 A I had seen him around the neighborhood.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 Q He lived in the neighborhood?

2 Do you know if---

3 A Yes.

4 Q Do you know -- I'm sorry.

5 Do you know how close he lived to your mom and  
6 step-dad?

7 A Yeah, their house is here. There's a big yard. Well,  
8 a lot without a house and then they lived in the house at  
9 the corner, but it's facing Floyd Street I think it is.

10 Q So not too far?

11 A No.

12 SOLICITOR CRICK: Okay. Your Honor, if I could beg the  
13 Court's indulgence for a second and find these pictures.

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 SOLICITOR CRICK: I apologize, Your Honor. Thank you.

17 THE COURT: That's all right.

18 Q I'm gonna show you first, Crystal, some pictures that  
19 have already been introduced into evidence and ask you to  
20 tell us what that is.

21 A The front of their house.

22 Q The front of their, your mom and step-dad?

23 A Right.

24 Q Okay. And so, if we're looking at the front of the  
25 house, you would of lived to --

Crystal Williamson - Direct examination  
By Solicitor Crick

1 A The right.

2 Q -- to the right side?

3 And Your Honor, I apologize. That was Exhibit 22. I'm  
4 sorry.

5 THE COURT: Thank you.

6 Q I'm gonna also show you 38, which is already in  
7 evidence.

8 Can you tell the jury what that is?

9 A That's their driveway. It was between mine and their  
10 house. Looking at their house, it was to the right. That's  
11 their driveway and the building there is Ray's studio, and  
12 that's my mom's old car, and this was Ray's van.

13 Q Are those the cars that they usually drove?

14 A The car, yes. The van, well, a good bit.

15 Q Did they have another vehicle that you can not see in  
16 this picture?

17 A Yes.

18 Q What kind of vehicle or can you describe that vehicle?

19 A Gray minivan.

20 Q And that's not here in the picture?

21 A No.

22 Q I'm gonna show you a couple of things that were not  
23 entered into evidence yet. I'm gonna show the defense  
24 attorney first.

25 MR. RECKENBEIL: Judge, can we approach a second?

Crystal Williamson - Direct examination  
By Solicitor Crick

1 THE COURT: Yes, you may.

2 (Whereupon, a bench conference was held out of the  
3 hearing of the jury at this time.)

4 THE COURT: You may proceed, Mrs. Crick.

5 SOLICITOR CRICK: Thank you, Your Honor.

6 Q I'm gonna show you photographs that State's 40, 50, and  
7 51.

8 Can you just take a look and tell us if you recognize  
9 what they are?

10 You don't have to be specific right now.

11 A Yes. Yes.

12 Q And those are photographs around your parent's home---

13 A Right.

14 Q ---buildings at their home.

15 Your Honor, at this time I'd like to offer 40, 50, and  
16 51 into evidence.

17 THE COURT: Mr. Reckenbeil?

18 MR. RECKENBEIL: Your Honor, the only objection we  
19 would have is relevance in this matter.

20 THE COURT: I'll overrule the objection.

21 (Whereupon, State's Exhibit Nos. 40, 50, and 51 were  
22 received into evidence at this time.)

23 THE COURT: You may proceed, Mrs. Crick.

24 SOLICITOR CRICK: Thank you, Your Honor.

25 Q All right. I'm gonna show you first State's 40.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 Can you tell the jury what that is?

2 A That sign was at the entrance of the driveway.

3 Q Is that---

4 A Advertising his studio.

5 Q Was his studio actually there at the home?

6 A Yeah, you turn in the driveway and ride down by that  
7 sign and it is at the end of the driveway.

8 Q Okay. And then No. 51 is -- can you tell the jury what  
9 that is?

10 A Just a garage type building behind their, behind their  
11 house.

12 Q Was that also part of the yard or part of the house  
13 area?

14 A It was in the backyard, fenced in backyard.

15 Q Now that he had several outbuildings on the property?

16 A He did.

17 Q Do you know what kind of things he kept out there?

18 A That one I believe -- well, it had a lot of tools in it  
19 and stuff. But I think he had an old El Camino in there.

20 Q Okay. So, in some buildings he kept car stuff?

21 A Yeah.

22 Q Some things were tools?

23 A Right.

24 Q I'll show you State's 50 and I think this is just maybe  
25 a back, back view of some buildings there in the back.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 A That is the left side of the house.

2 Q Uh-huh. (Affirmative).

3 A It's a -- some lattice over a walkway, covered walkway.

4 And there's some buildings, a couple buildings behind the

5 left side of the house. That's the yard in-between their

6 house and the house where the defendant lived.

7 Q And so, as far as keeping things in those back

8 outbuildings, that would of been the same sort of things?

9 A Yes.

10 Q Okay. Okay. I'm gonna show you now -- also these have

11 already been entered into evidence, and I apologize cause

12 I've tried to reshuffle here.

13 But I'm gonna ask you to take a look at State's 59, and

14 tell us if you recognize what that is.

15 A That's my mom's van.

16 Q And I'm gonna show you also State's 60.

17 What is that?

18 A My mom's van.

19 Q The van that we did not see in the driveway?

20 A Right.

21 Q And I'm gonna show you now some pictures and see if you

22 can tell us what that is.

23 Is that the same vehicle?

24 A Yes, looking at the---

25 Q Is that how---

Crystal Williamson - Direct examination  
By Solicitor Crick

- 1 A ---passenger side.
- 2 Q Passenger side of the vehicle?
- 3 A Yes.
- 4 Q Is that how your mom normally kept her vehicle?
- 5 A Not hardly.
- 6 Q How did she normally keep that van?
- 7 A Very very clean.
- 8 Q Had you been in that van recently?
- 9 A Thursday the night before. Thursday evening,  
10 March 10<sup>th</sup>, May 10<sup>th</sup>.
- 11 Q You had been in that van?
- 12 A Right.
- 13 Q Did it look like that when you were in it?
- 14 A No.
- 15 Q Do you recognize what that stuff is?
- 16 A Mom's jewelry.
- 17 Q Okay. And I'll show you something that's a, a little  
18 more focused, but I think it's in the same area, but do you  
19 recognize what that's focused on?
- 20 A Ray's driver's license.
- 21 Q Ray's driver's license?
- 22 A Yes.
- 23 Q And you may or may not know this, but do you recognize  
24 anything in that photo?
- 25 A Bottom left corner is that purse sitting right there I

Crystal williamson - Direct examination  
By Solicitor Crick

1 believe.

2 Q Okay.

3 A Computer stuff.

4 Q And did your mom have those baskets of clothes in the  
5 van when you were with her that day before?

6 A No, that basket was actually in her laundry room.

7 Q That blue basket right there?

8 A Yes.

9 Q Okay. Crystal, I'm going to show you now some things I  
10 think were said to be removed from the van.

11 Do you recognize what that is?

12 A That's my scarf.

13 Q That actually belongs to you?

14 A Yes.

15 Q Was it at your mom's house?

16 A Yes.

17 Q How about this?

18 A I don't know whose shirt that is.

19 Q Okay. That's fine.

20 How about this one?

21 A That's mom's. It's a fleece type jacket.

22 Q Okay. Now, does the name Shine Arthur mean anything to  
23 you?

24 A That was one of Ray's friends.

25 Q So, that would of been a CD that belonged to Ray?

Crystal Williamson - Direct examination  
By Solicitor Crick

1 A Right.

2 Q Okay. How about this?

3 A Their computer equipment.

4 Q That belonged to your mom and step-dad?

5 A Right.

6 Q And I'm gonna show you some things quickly.

7 Do you recognize that?

8 A Yes.

9 Q What is that?

10 A Mom's necklace, mom's bracelet, another one of her  
11 bracelets. She had lots of jewelry. Ray was also giving  
12 her jewelry.

13 Q How about this?

14 A That was something that Ray kept like different kind of  
15 cards in. It was not his wallet that he kept in his back  
16 pocket.

17 Q Okay.

18 A That was a thing that he kept cards and stuff like that  
19 in.

20 Q Like business cards?

21 A He may of kept some business cards in it too.

22 Q Okay. But it belonged to Ray?

23 A Yes.

24 Q How about this thing here, do you recognize that?

25 A Printer.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 Q Okay. And how about this?

2 A Mom's purse.

3 Q Is that the purse she carried everyday?

4 A Well, she had many. So, no, not everyday.

5 Q Okay. So, this is one of her many purses?

6 A Yeah.

7 Q How about this one?

8 A I think that's the one she was carrying at the time.

9 Q Okay. You recognize this?

10 A Her jewelry, her necklace.

11 Q And how about this one?

12 A Another necklace that belonged to her. That's one of  
13 her necklaces. I believe that one was suppose to have a  
14 diamond on it. One of the gold chains had a diamond on it.

15 Q Okay.

16 A I don't know if that was it or not.

17 Q And then I've got this.

18 A A bracelet that belonged to her.

19 Q And can you tell us what this thing is?

20 A She got that -- somebody gave that to her for  
21 Christmas. It had a candle and some bath and body products  
22 in it wrapped up in cellophane with a big old bow.

23 Q Like a little gift?

24 A That's what that was, yes.

25 Q And she continued to use the pot that---

Crystal Williamson - Direct examination  
By Solicitor Crick

1 A It was sitting on the corner of her dresser.

2 Q Okay. And that's, the last time you saw it, where it  
3 was?

4 A Yes.

5 Q When was -- Crystal, when was the last time you talked  
6 to your mom that you can recall?

7 A I walked to her house. It was between 10:00 and  
8 10:30 Thursday night.

9 Q And you had seen her -- you said you'd been in the van  
10 that day?

11 A Yes.

12 Q Did you talk to her on the phone at anytime?

13 A Yes.

14 Q Do you remember what her phone number would of been at  
15 that time?

16 A [REDACTED] 24 I think.

17 Q Okay. How about your phone number?

18 A [REDACTED] 53.

19 Q So, you did talk to her on the phone that day?

20 A Uh-huh. (Affirmative).

21 Yes.

22 Q Do you, do you remember about what time?

23 You can be kind of general.

24 A Several times probably. But the last time was about  
25 somewhere between 9:30 and 10:00 maybe.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 Q Okay. And did you actually see her after you talked to  
2 her on the telephone?

3 A Yes.

4 Q How did that come about?

5 Did you --?

6 A She called me and told me that I had left something up  
7 there at her house --

8 Q Uh-huh. (Affirmative).

9 A -- that I was gonna need the next morning.

10 Q Okay.

11 A So --.

12 Q So, did come---

13 A I'm sorry. I walked -- so, after she called me, I  
14 walked back up there to get it.

15 Q So, you actually walked over to her house?

16 A Yes.

17 Q Do you remember about what time it was?

18 A Between 10:00 and 10:30 I believe.

19 Q When you were in the house at that time, was it neat or  
20 was it in a state of disarray?

21 A Very neat.

22 Q Was that typical of your mom---

23 A Very typical.

24 Q ---to keep it that way?

25 A Yes.

Crystal Williamson - Direct examination  
By Solicitor Crick

1 Q So, did you actually see her and Ray or just her at  
2 about 10:00?

3 A Her and Ray.

4 Q What were they doing when you saw them?

5 A Standing in the doorway between the kitchen and the  
6 living room. They were hugging on each other, hugging and  
7 kissing on each other, and I told them to go to bed.

8 Q Is that what they were planning to do?

9 Did they---

10 A You know, get a room, go to bed.

11 Q Did everything seem okay with them at that point?

12 A Happy as could be.

13 SOLICITOR CRICK: Your Honor, I think that's all for  
14 this witness at this time.

15 THE COURT: Mr. Reckenbeil.

16 MR. RECKENBEIL: Defense has no questions of this  
17 witness, Your Honor.

18 THE COURT: All right, ma'am. You may step down.

19 Ladies and gentlemen of the jury, we have been going  
20 for a little while now. It's time to take our afternoon  
21 break. So, I'm going to allow you to step back to the jury  
22 room, stretch your legs, refresh yourselves. And as always,  
23 I'll instruct you please don't begin any discussions  
24 concerning this case even among yourselves until I've  
25 advised you to do so.

1 You may retire to the jury room.

2 Everyone remain seated while the jury retires.

3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: Court's in recess for about ten to fifteen  
6 minutes.

7 (Whereupon, a short recess was taken at this time.)

8 THE COURT: Ask the attorneys to approach briefly.

9 (Whereupon, a bench conference was held out of the  
10 hearing of the jury at this time.)

11 THE COURT: All right. Is the State ready to proceed?

12 SOLICITOR GOWDY: Yes, sir, Your Honor.

13 THE COURT: Defense ready?

14 MR. RECKENBEIL: Yes, sir, Your Honor.

15 THE COURT: Please bring the jury in.

16 (Whereupon, the following takes place within the  
17 presence of the jury.)

18 THE COURT: All right. The record will reflect that  
19 all jurors have now returned to the courtroom. The State is  
20 still in the process of presenting its evidence.

21 You may call your next witness.

22 SOLICITOR GOWDY: Thank you, Your Honor.

23 May it please the Court.

24 The State would call Doctor John David Wren.

25 THE COURT: Sir, come forward to my right to be sworn.

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 DOCTOR JOHN WREN, being first duly  
2 sworn, testified as follows:

3 THE COURT: Sir, if you would, please state your name  
4 for the record.

5 WITNESS: John David Wren.

6 THE COURT: Mr. Gowdy, it's your witness.

7 SOLICITOR GOWDY: Thank you, Your Honor.

8 May it please the Court?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY SOLICITOR GOWDY:

12 Q Good afternoon, Doctor Wren.

13 A Good afternoon.

14 Q Can you give the jury -- can you tell them where you  
15 work and how long you've been there?

16 A I'm a pathologist at Spartanburg Regional Medical  
17 Center. I actually work and am president of Spartanburg  
18 Pathology Consultants. I've worked for Spartanburg  
19 Pathology Consultants off and on at Spartanburg Regional  
20 since October the 18<sup>th</sup>, 1982, when I came out of residency  
21 back to Spartanburg. I currently work in Spartanburg  
22 Regional Medical Center, and I'm the laboratory medical  
23 director there.

24 Q Doctor Wren, can you give the jury the benefit of your  
25 educational background?

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 A I have a Bachelor's Degree and a Master's Degree and a  
2 Doctor of Philosophy Degree in Chemical Engineering from  
3 Clemson University. I have a medical degree from the  
4 Medical University of South Carolina. I did a combined  
5 anatomic and clinical pathology residency at the Medical  
6 University effectively with research that I'd done both as,  
7 for my doctorate degree and while I was in Medical School.  
8 I finished my residency in -- I started February the 1<sup>st</sup>,  
9 1979, and I finished October the 18<sup>th</sup>, 1982, when I came  
10 to work in Spartanburg.

11 while I was there I was assistant medical examiner of  
12 Charleston County from July of 1980 until the end of January  
13 of 1983 because I went back on, on the weekends to help them  
14 out for a little while. And while I was there, I was, also  
15 did a forensic autopsy one weekend a month at the Medical  
16 University doing autopsies from all over the State that was  
17 sent to the Medical University at that time.

18 And as a result of that experience and as both medical  
19 examiner and as a forensic pathologist on weekends, some  
20 during the week when there were people out of town, I was  
21 able to qualify for forensic pathology boards. I passed my  
22 clinical and anatomic boards on first try. And due to lots  
23 of circumstances, I never took my boards in forensic  
24 pathology, but I have been qualified all over the State as  
25 an expert in forensic pathology.

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 Q Doctor Wren, how many autopsies have you performed in  
2 your career?

3 A I stopped counting at about 2,500. This, this year  
4 alone I've done 204 I believe.

5 Q And I believe you mentioned, Doctor Wren, that you have  
6 previously been qualified as an expert of both generally in  
7 pathology and specifically in forensic pathology how many  
8 times?

9 A About a hundred. Some of the counties include, in the  
10 lower state, Georgetown, Charleston, Orangeburg, Clarendon,  
11 Berkeley, Dillion -- I mean not Dillon. Marlboro and then  
12 on up toward this part of the state, testified in, in  
13 Lexington, Fairfield, Anderson, Greenville, Spartanburg,  
14 Laurens, Greenwood, Chester, Union, and Cherokee just to  
15 name a few.

16 SOLICITOR GOWDY: Your Honor, if it pleases the Court,  
17 the State moves Doctor Wren in as an expert in both  
18 pathology and forensic pathology.

19 THE COURT: Any objection?

20 MR. RECKENBEIL: Nothing from the defense, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, let me  
22 explain the process that we're going through at this point  
23 in time.

24 Generally, under the rules of evidence that this court  
25 operates under, witnesses are not allowed to give their

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 opinions on subject, subjects. Lay witnesses testify  
2 concerning facts they, they know or things that they saw or  
3 experienced, things of that nature. An exception to that  
4 general rule exists for an individual who's been qualified  
5 as an expert within some field or calling or profession.

6 In this case, this witness is being offered as an  
7 expert in the field of, of forensic pathology. There's been  
8 no objection. So, we're gonna qualify his, him as an expert  
9 in that field. That allows him to give his opinions within  
10 that field and state the reasons for those opinions.

11 At the close of this trial when I charge you concerning  
12 the law, I will give you a little more information on how  
13 you can consider or treat testimony given by experts. But  
14 suffice it to say, at this point in time, this individual  
15 has been qualified as an expert and can now give his  
16 opinions and the reasons for those opinions within his  
17 field.

18 You may proceed, Mr. Gowdy.

19 SOLICITOR GOWDY: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 Q Doctor Wren, on May the 12<sup>th</sup> of 2007, did you perform  
22 an autopsy on Ann and Ray Emery?

23 A Yes, I performed autopsies on both of those  
24 individuals. The, the male was identified as Charles Ray  
25 Emery. I did that autopsy on, beginning approximately 10:30

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 a.m. on May the 12<sup>th</sup>, 2007, and I did the autopsy on Mary  
2 Ann Emery on May the 12<sup>th</sup>, 2007, beginning at approximately  
3 9:40 a.m. Those were both done in the Spartanburg Regional  
4 Medical Center autopsy room.

5 Q Doctor Wren, can you describe for the jury the injuries  
6 that you found first on Mr. Ray Emery?

7 A Well, he had, he had lots of injuries about his torso,  
8 but mainly about his head. I'll have to read some of them  
9 and try to explain them because they, they were complicated.  
10 They were also superimposed upon one another.

11 But suffice it to say, he had an obliquely oriented  
12 laceration of his left medial forehead. It was two and a,  
13 2.1, two and one-tenths inch in length and it was gaping  
14 open to approximately three-tenths of an inch in width. It  
15 had surrounding hemorrhage and it was slightly abraded  
16 superiorly along the wound, which indicates that the blow  
17 was coming from the, from the superior portion of the wound  
18 as it caused that laceration.

19 Now, there's a difference between a laceration and an  
20 incised wound. When I'm talking about a laceration, it's  
21 actually where the skin is torn from a blow rather than a  
22 incised wound where there's a sharp edge, and one can tell  
23 that because, if you look down into the wound itself, you'll  
24 see little tissue strands bridging from one side to the  
25 other, and it won't be cleaned down in there like an incised

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 wound or a stab wound would be.

2 He had a bilateral periorbital hematomas meaning he had  
3 black eyes bilaterally. He had, scattered over his body,  
4 and I won't go into that in a lot of detail, but he had  
5 superficial sluffage of the skin, with an odor of gasoline,  
6 which indicated that there were superficial burns to the  
7 skin probably after death because that's when it would sluff  
8 off a lot easier.

9 He had a, lots of lacerations and contusions to his  
10 left ear, which I'll go into in more detail because that was  
11 where, on the left side of his head and posteriorly on the  
12 left, but where the majority of his, his severe wounds were.  
13 He had contusions, which is bruising, with abrasions  
14 extending from the lower border of his left eye adjacent to  
15 the nose all the way to the left ear lobe, and, and extreme  
16 swelling of his left side of his face.

17 He had -- he didn't have any abrasions or lacerations  
18 or contusions to the tissues within his mouth. He had --  
19 palpating his head or his scalp, he had palpable fractures  
20 at the back of his head, and there were multiple irregular  
21 lacerations predominately in the left mid, the lateral  
22 posterior scalp covering an area seven by five inches.  
23 There was super -- there were scattered wounds that I can,  
24 I -- I'll tell this in a minute. But there were more than  
25 one of them there.

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 (Whereupon, a phone begins ringing in the courtroom at  
2 this time.)

3 THE COURT: Just one second.

4 Take that for me, sir.

5 (Bailiff complies.)

6 THE COURT: Thank you very much.

7 A And near the midline at the vertex there was a  
8 irregular laceration with partial evulsion or tearing away  
9 of the skin from the scalp. It measured two and a half by  
10 one and a half inches, and there were palpable as well as  
11 visible fractures in that wound.

12 More laterally, about the same level, there was a more  
13 oval laceration, a more rounded laceration that measured one  
14 and a quarter by three-quarters an inch with abrasion along  
15 the inferior lateral border, and indicating that that wound  
16 was, was being directed upward. And he had, again, palpable  
17 and visible fracture between that wound.

18 He had a more, a more punctate or round, a smaller  
19 round laceration four-tenths of an inch in diameter inferior  
20 to that wound, and then there was a horizontally oriented  
21 laceration that measured a little less than an inch in, in  
22 length by very thin width near the nape of the neck, the  
23 base of the neck there.

24 And in the midline inferiorly, there was a, a, a  
25 irregular laceration with the bridging of the tissues

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 between the edges that measured 1.1 by 0.6 inches with that  
2 abraded area superior and medially indicating that that blow  
3 was coming more from the, his right down from the, from  
4 above.

5 Now, behind his left ear was where the major injuries  
6 was, and it covered an area of three and a quarter by one  
7 and a half inches and he had visible skull fractures or  
8 fragments, bone, fragments of bone within that wound and he  
9 had abrasions of the ear and contusions surrounding that  
10 wound more inferiorly and medially that covered five and a  
11 half by three and a half inches.

12 Now, as I've told you previously, the left cheek was  
13 swollen. He had, he had some evidence of some surgery in  
14 his chest and abdomen, which I won't go into unless it's  
15 necessary. He had three healed stab type wounds, which are  
16 basically from the surgery where they just stab with a  
17 scalpel in the skin to put in a drainage tube. There were  
18 three of those that were from prior surgery.

19 Now, he had a laceration along his left posterior  
20 shoulder with a trailing abrasion superiorly onto the chest  
21 measuring two inches in length by minimal width with  
22 abrasion along both edges there, and they were separated by  
23 approximately one inch. I'm sorry. And separated by  
24 approximately one inch there was an irregular laceration  
25 abrasion, which was mainly superficial, that measured only

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1 three-tenths of an inch in diameter.

2 Now, in the midback on the left side near the scapular,  
3 scapular, there was an arch shaped abrasion that measured  
4 1.3 inches in length by four-tenths of an inch in width  
5 without a contusion or abrasion border beside it indicating  
6 it was a straight on blow. And I believe that was, if I'm,  
7 if I'm not mistaken, that was consistent with the imprint of  
8 a, of a, the, the end of a hammer like device.

9 There were two small superficial abrasions in the left  
10 flank, which were basically inconsequential, and then he had  
11 defense wounds along his dorsal left hand measuring  
12 seven-tenths of an inch in length horizontally with trailing  
13 abrasions superiorly toward the shoulder indicating that he  
14 had thrown his hand up in defense probably reflexly. But  
15 since these blows were, were to the back of his head rather  
16 than, than to the front indicating he was struck from behind  
17 mainly or to his left posterior lateral side, and then he  
18 had a contusion laceration inferior, more inferiorly on the  
19 left hand.

20 Those were basically all the injuries I found  
21 externally. The, the severe blows were found on examination  
22 of the, of the head and the central nervous system where he  
23 had an egg shell type fractures of the calvarium. And when  
24 we talk about egg shell type fractures, it's where, if you  
25 can imagine crushing an egg, how the, how you have fractures

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1 of the shell that's over a, an area that's, but not discrete  
2 single fractures. There's a bunch of them radiating from an  
3 area.

4 Now, I said eight because I could count eight separate  
5 blows to his scalp, and, and when you reflected the scalp  
6 off, then one could see that these fracture lines  
7 intersected with other fracture lines when -- if you have a  
8 fracture in one place, and you have a fracture line, then  
9 you have another that's radiating toward it, it will stop at  
10 that fracture and it won't go any further across that bridge  
11 in the, in the bone. So, he had at least eight of those and  
12 they were concentrated in the left mid-occipital region  
13 about where I'm pointing on my head, and the brain itself  
14 was, was macerated in the left temporal region from the bone  
15 extending into the, to the brain itself.

16 Those were basically the injuries he had. Lots of,  
17 lots of blows to the head. At least eight and probably  
18 more.

19 Q Doctor Wren, you made mention of defensive wounds.

20 A Yeah.

21 Q As an expert in medicine, do you have to be conscious  
22 to, to make that movement or could that be a subconscious  
23 reflexive movement?

24 Do you have an opinion on whether or not he was  
25 conscious for any part of this attack?

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1 A He, he probably, on the initial blow, he probably was  
2 aroused. Now, it depends on which blow came first would be  
3 whether he would of, would of been unconscious shortly  
4 thereafter. But probably halfway through these blows he  
5 well, would of lost consciousness.

6 It, it's hard to say where, where he was struck first.  
7 So one can't say for sure that he was, that he was conscious  
8 at anytime. But he, at least, put his hand up, either  
9 reflexly or, or in partial defense. I would imagine he was  
10 struck unconscious rather quickly because he was described  
11 as being face down in the bed, and all these blows were from  
12 the back. So, he probably definitely didn't turn over.  
13 And, and so, I would say that he lost consciousness shortly  
14 after the first blow.

15 Q Doctor Wren---

16 A But you don't have to be awake to put your hand up.

17 Q Yes, sir.

18 You were able to identify at least I believe you said  
19 eight distinct blows?

20 A To his head.

21 Q All right.

22 A To the back of his head.

23 Q Were the injuries you found, Doctor Wren, consistent  
24 with a hammer being used as the weapon?

25 A Yes, the one in the back I described and a couple of

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1 those on his head. Although they, they weren't absolutely  
2 related to a hammer, hammer. The, the, the ping, the ball  
3 ping of a hammer, but they were consistent with that, and I  
4 think the one on the back was, could be approximated to the  
5 end of the hammer that, that they showed me a picture of.

6 Q Doctor Wren, with respect to Ray Emery, your  
7 conclusion, I believe, was that he died as a result of open  
8 head injuries secondary to sharp and blunt force trauma to  
9 the head and body?

10 A That's correct.

11 Q You already touched upon a finding of gasoline or what  
12 you believed to be gasoline during your autopsy.

13 A Yes.

14 Q Okay. All right. Doctor Wren, if I might now direct  
15 your attention to the autopsy that you performed on Mrs. Ann  
16 Emery, and if you could detail for the jury the injuries  
17 that you found on her?

18 A Well, she was only clothed in a white short sleeve  
19 pullover T-shirt. It definitely had an odor of gasoline to  
20 it. She was a, a rather thin female. Well, I'm sorry. She  
21 wasn't. I, I miss read that. She weighed, she was  
22 67 inches in length and weighed 165 pounds.

23 Her major injuries were to the front of her face. In  
24 fact, the most striking feature was that a bridge had been  
25 dislocated, was partially out of her mouth, and her left

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1 eye, I could not visualize it. It had collapsed from blows  
2 to her face.

3 But starting at the top is where I usually start, and I  
4 go from head to face to neck to the front of the chest and  
5 abdomen, the genitalia, and then to the back, and then to  
6 the upper and then to the lower extremities. So, once  
7 again, I'll have to -- there were lots of injuries. So,  
8 I'll have to read those and try to explain them if there's a  
9 question as to what it is.

10 Palpating her head, she had a laceration near the  
11 vertex of her head, which was a long lacerated area to the  
12 bone that measured three and a, three quarter inches in  
13 length and it was gaping open to a little less than an inch  
14 in width. And it had undermining toward the right side of  
15 her body itself with the wound oriented inferiorly,  
16 anteriorly, and laterally to the left superiorly. So, it  
17 was in the general area I have here.

18 There was an abrasion border along the left side, which  
19 goes along with the blow being directed toward her right  
20 here. There was no fracture beneath that area. There was  
21 an irregular laceration that measured about a inch long and  
22 a tenth of an inch in the left temporal region near the  
23 hairline, and there was a slight tag of tissue along the,  
24 one along the one end of it that would indicate either a  
25 object pulling and tearing that skin or it just tearing from

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1 the blow itself.

2 I said the left eye was not identifiable. There were  
3 bilateral periorbital hematomas. I've described that as  
4 black eyes with lacerations in the area. She had multiple  
5 irregular lacerations from the mid-medial forehead to  
6 slightly below the chin and from the left anterior ear to  
7 the right side of the face that ended directly beneath the  
8 right eye. There were at least six and up to ten blows,  
9 which crushed the face. The face was crushed in  
10 extensively, and there were multiple lacerations to there.

11 Now, it's hard to describe them altogether. So, we  
12 photographed that. But there was one laceration to the  
13 mid-forehead slightly to the left of midline that had a  
14 force, four sided vague star shape. It was not a, it was  
15 not like an, an X with four sides. But it was more  
16 irregular. But it was, it was stellate in shape. It  
17 measured one and a half inches by about an inch in overall  
18 dimensions.

19 The skin was torn with abrasions along, along areas  
20 where the maxillary sinuses, which are the sinuses behind --  
21 the cheek's bilaterally exposed. I could see those through  
22 the lacerations and, and the blows to her, to her mid-face.  
23 There was an abrasion along the left lower cheek that  
24 measured one and a quarter centimeter in diameter, which is  
25 a little, a little less than a half inch.

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1           As I said previously, there was a partial plate  
2 protruding from the left side of her mouth. And when I  
3 removed -- there were maxillary fractures and multiple  
4 fractures of the mandible. Now, the maxilla is a part of  
5 the upper face and the mandible, of course, is the jaw bone.  
6 There were multiple fractures of both of those.

7           She didn't have any acute injuries that I could see  
8 about the chest and abdomen. She didn't have any contusions  
9 and lacerations to her vagina that I could see. But we did  
10 do a rape kit prior to, before, before we started the  
11 autopsy itself and washed the body and removed trace  
12 evidence during that time.

13           There was -- again, she had a little superficial  
14 abrasion to the lower back that was inconsequential, but  
15 nevertheless she had one. There was sluffage of the skin of  
16 the abdomen and legs as well as the arms secondary to  
17 gasoline burns superficially postmortem. Her left arm  
18 contained a contusion near the elbow or bruise near the  
19 elbow. It was an inch in diameter. And she had two  
20 abrasions along the radial surface in the mid-forearm. The  
21 radial surface is the side toward the thumb. They were very  
22 small, but nevertheless there.

23           The right arm contained contusions and bruises along  
24 the radial surface again that measured up to a, less than an  
25 inch in diameter, and there was a contusion with two linear

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1 lacerations of the elbow on that side that measures a little  
2 over a half inch and a little over an inch in length each.

3 There was a confusion about the elbow that measured two  
4 and a half inches in diameter, and then she had some  
5 abrasions along the medial anterior surface of her right  
6 upper knee, and she had a healing contusion, an old, old  
7 healing contusion along her left thigh.

8 Then she had some scratch type abrasions of her lower  
9 portion of her left leg that extended from the, the large  
10 bone there medially and covered like four and a half by two  
11 and seven-tenths inches with two other scratch marks  
12 separated by about one inch, a little over an inch each, and  
13 then she had another abrasion that was lateral to those  
14 abrasions, and it was some old scars.

15 Those were all the injuries that I found. It -- except  
16 on, when I started doing the autopsy, where we reflect the  
17 skin and look at the tissues inside, she had hemorrhage  
18 along the left portion of the Howard bone, which is the bone  
19 that's just above the, the cartilage in the neck up, high up  
20 in the neck, and if you press on your neck you can feel that  
21 bone. It's often broken or contused if somebody will grab  
22 you, and, and, about the neck, and, and exert extreme  
23 pressure on that.

24 She had some hemorrhage there, which could of been from  
25 a blow or either from a, a, pressure to that area. She

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1 didn't have any other injuries that I could see there.

2 Now, when I did the, the further inspection of the  
3 head, there were -- she also had, beside hemorrhage,  
4 surrounding those initial two lacerations that I talked  
5 about, she had a moderately to severe amount of hemorrhage  
6 in the lower forehead about the face that it extended up  
7 above those lacerations that I talked about. She had  
8 fracture lines extending to the left temporal bone from the  
9 injuries to the face. In other words, they came up from  
10 below, and extended into the bone over the, the temporal  
11 region on the left side.

12 She had diffuse subarachnoid hemorrhage to her brain  
13 itself. If, if someone is, fractures their skull, the brain  
14 has a covering over it that's like scar tissue, but it's,  
15 it's really suppose to be there. It's not scar tissue.  
16 It's tissue. It's real tight and tense. It's above the  
17 brain and it's between the brain and the inner bone of the,  
18 of the skull.

19 If you fracture the skull there, and you live long  
20 enough, and it hits a vessel there, you'll get hemorrhage  
21 above that area. It's called epidural hemorrhage. If it's  
22 below that area, adjacent to the brain, and it's in the  
23 space there, it's called subdural hemorrhage. But the brain  
24 has a thin transparent covering over it that's separate from  
25 that dura it's called, and this is called arachnoid

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1 membrane. Blows to the, to the, or injuries or even  
2 bleeding in the brain will cause hemorrhage in the  
3 subarachnoid space. In this case it was from trauma. It  
4 was all, all over the place there. It was from the, the  
5 trauma of, actually the trauma to her face and her sinuses  
6 extending into the brain.

7 The inferior frontal lobes, the, the front portion of  
8 the brain, it sits down on the, the, in the eye region, it  
9 sits over the orbital plates above the eye, and then further  
10 back it extends over the base, the upper portion of the, of  
11 the mandible. Since there were fractures there, she had  
12 maceration or tissue was torn about along the, the inferior  
13 frontal lobes bilaterally all the way back to what's called  
14 where the blood comes into the brain, from the carotid  
15 arteries. That's called the Circle of Willis, and it's,  
16 it's a, a circle of vessels that anastomose or actually  
17 joined together at the base of the brain that feeds blood to  
18 all parts of the brain.

19 It comes up from the carotid arteries or comes up from  
20 the vertebral arteries and at the base of the brain it forms  
21 the basilar artery. And then at the base of the brain it  
22 forms, they all come together and they're joined together to  
23 distribute blood in case one of them becomes compromised.  
24 But that, that injury to the brain extended all the way back  
25 to the, to the Circle of Willis. In other words, the whole

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1 frontal lobes of the brains, all the way to the temporal  
2 lobes were, were torn apart from the, from the basilar skull  
3 fractures that occurred from the blows to the, to the face.

4 She had a basilar skull fracture as I stated, and it  
5 was in the anterior fossa, which is -- they're three  
6 distinct areas at the base of the, of the skull. On each  
7 side, they're three. One's called the anterior, then the  
8 middle, and then the posterior fossa, which it just means a  
9 depression. It extended back across the, the bone that it,  
10 that the middle ear is in. It extended back into the middle  
11 fossa. Like I said, the eye couldn't be, could not be  
12 identified.

13 So, that was the injuries. Mainly the injuries  
14 consisted of those to her face, a few to her scalp, lots of  
15 crush injuries that pushed her face back into the, the back  
16 of her head, and then the brain injuries from that with,  
17 with a few defense wounds on her arms.

18 Q Doctor Wren, were the injuries that you found during  
19 your autopsy consistent with a hammer being used?

20 A Yes, more likely those across her face, a lot of them  
21 were probably from the edge rather. I could not find a nice  
22 round area. Of course, there was so much injuries there it  
23 was hard to tell. But it -- those blows were, were more  
24 linear and actually could of, somebody could of stomped her  
25 in the face and, and done the same thing or crushed her face

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1 up against something. It's really hard, hard to tell  
2 without any patterns there.

3 Q Yes, sir.

4 You mentioned defensive wounds. I, I had a note,  
5 Doctor Wren, and I may be incorrect, that you found blood in  
6 the lungs.

7 Is there any significance to that or is that common  
8 place?

9 A Well, she breathed a few times or blood got into, down  
10 her respiratory tree into her lungs indicating that she, she  
11 started bleeding and, and either probably agonally she  
12 aspirated blood into her lungs.

13 Q Doctor Wren, did you find anything, during your  
14 examination of the genital area, that led you to perform a  
15 sex assault kit?

16 A No, it was, I didn't see -- routinely, when, when  
17 someone's undressed or, or partially nude, we will do a rape  
18 kit just to make sure there's been no sexual activity. I  
19 didn't, as I stated when I was talking, I did not see any  
20 evidence of contusions or laceration. But nevertheless, we  
21 do a, a external exam and we pull head hair, pubic hair,  
22 look for any evidence of semen. We do basically Pap smears  
23 on the vagina, anus, or rectum, and the mouth. And it's a  
24 whole protocol that we go, go through, which is routine in  
25 cases like this especially since she was nude and, and in a

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1 compromising position when she was found.

2 Q Doctor Wren, let me show you generally State's 34, and,  
3 in particular, an envelope inside State's 34, and see if you  
4 see your name or something to indicate that you performed  
5 the sex assault kit.

6 A Yeah. Well, all these are -- well, I'm not sure all,  
7 but I have vaginal swabs, fingernail scrapings. Well, the  
8 vaginal swabs are signed by me. Oral swabs are signed by  
9 me. Rectal swabs are signed by me. These are, are -- those  
10 put on a Pap smear slide, those are labeled by me, part of  
11 it is, and the front of this container is and then a couple  
12 of others are, were filled out by, it doesn't say who filled  
13 them out, but one of them was fingernail scrapings, and the  
14 other were tubes of blood that I removed at autopsy.

15 Q Doctor Wren, when you do the sex assault, do you, and  
16 after you do it, do you either seal it yourself or is it  
17 sealed in the presence of---

18 A I seal it.

19 Q And---

20 A I put, I put them in the appropriate containers and,  
21 and sometimes I don't write onto, on them, but, like I said,  
22 I did write on, on the majority of it.

23 Q And when you complete your sex assault kit, Doctor  
24 Wren, who would you then give the, the, the completed kit  
25 to?

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1 A I either give it to a representative of the law  
2 enforcement or the coroner. I usually sign for it and I  
3 don't remember who I gave it to.

4 Q Okay. But it is common place to have a coroner's  
5 examiner or a sheriff's deputy present while you do an  
6 autopsy?

7 A Yes.

8 SOLICITOR GOWDY: Your Honor, we are not gonna move  
9 State's 34 into evidence at this time because it's  
10 conditioned upon other matters.

11 Doctor Wren, let me show you a series of photographs  
12 269, 270, 268, 272, 273, 275, 274, 271, 277, and 276, and  
13 ask you just generally, at this point, whether or not you  
14 are familiar with what's depicted in them and whether or not  
15 it would help you explain anything to the jury. And if the  
16 answer to both of those is yes, then we will discuss them in  
17 more detail.

18 A Well, they're four pictures of x-rays that were taken  
19 as the x-rays were put on the x-ray film. Two of them show  
20 the position of the bridge that was in Mary Ann Emery, and  
21 the other two, at least one of the other, I think the other  
22 two are, are Charles Emery showing the skull fractures, how  
23 they are, were separate, and then they're, they're  
24 photographs of the arch shaped injury to his back that I  
25 thought was consistent with the, with the end of a hammer,

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1 and then defense wounds to his left-hand and right arms.

2 Q Okay.

3 A They're four of those. And then the abrasion or the,  
4 the laceration to her lower back is -- I think I'd have  
5 to -- I would have to look at my injury description. But  
6 nevertheless, this is an injury to the lower back of, of I  
7 believe her.

8 Q Well, tell you what, out of a super abundance of  
9 caution, let me withdraw 271 and we may discuss the rest of  
10 them.

11 A I'm pretty sure that's her because he didn't have any,  
12 he didn't have anything on but the shorts.

13 Q Yes, sir.

14 A She had a shirt on.

15 SOLICITOR GOWDY: Your Honor, we would move 268, 269,  
16 272, 270, 274, 277, 276, 275, and 273 into evidence.

17 MR. RECKENBEIL: If we can approach, judge?

18 THE COURT: Yes, sir.

19 (Whereupon, a bench conference was held out of the  
20 hearing of the jury at this time.)

21 THE COURT: Ladies and gentlemen of the jury, this is  
22 one of those occasions I'm going to ask you to step into the  
23 jury room for a moment. As I instruct you every time you  
24 leave the courtroom, don't begin any discussions concerning  
25 the case until I've asked you to do so until deliberations.

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1 You may retire to the jury room.

2 Everyone remain seated.

3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: All right. Mr. Reckenbeil, you wanted to  
6 place an objection on the record to those---

7 MR. RECKENBEIL: Yes, sir.

8 THE COURT: ---exhibits that have been offered.

9 MR. RECKENBEIL: Yes, sir, Your Honor.

10 Thank you very much.

11 THE COURT: Yes, sir.

12 MR. RECKENBEIL: With the -- we have no objections to  
13 the x-rays. But as to the other pictures, we feel that 403  
14 is very applicable in this situation is that the prejudicial  
15 effect of those pictures substantially outweigh any  
16 probative value. Doctor Wren has very capably explained in  
17 full of exactly what it is. Now these pictures are merely  
18 for shock factor. So, therefore, under 403, Your Honor, we  
19 would think these would be inadmissible.

20 THE COURT: I'll hear from the State.

21 SOLICITOR GOWDY: Your Honor, may it please the Court.

22 403 says that it has to unfairly prejudice the  
23 defendant. All evidence is prejudicial or he would not be  
24 seeking to introduce it.

25 If I understand, understood the opening statement

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1 correctly, he was not guilty on every element of all seven  
2 offenses, which includes malice. It includes proximate  
3 cause, the injuries related to the death.

4 Your Honor, there are so many pictures in this case  
5 that are more gruesome than these. These do not depict the  
6 face. They do not depict, depict the genitalia. They are  
7 x-rays and they are defensive wounds and there are some that  
8 even to corroborate that the hammer was the murder weapon.  
9 These are the most benign pictures we could find in this  
10 case.

11 THE COURT: I have reviewed, I have reviewed the  
12 pictures, and, and I do not find that the prejudicial effect  
13 would outweigh the probative value of the photographs that  
14 I've seen. I'm going to allow them to be admitted.

15 They're already marked. You've indicated the numbers.  
16 They'll be as admitted as marked.

17 (Whereupon, State's Exhibit Nos. 268 through 270 and  
18 272 through 277 were received into evidence at this time.)

19 SOLICITOR GOWDY: Thank you, Your Honor.

20 THE COURT: Bring the jury back.

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

23 THE COURT: All right. The record will reflect that  
24 the jurors have returned to the courtroom.

25 I have overruled an objection. I have admitted the

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1 exhibits as offered.

2 You may proceed, Mr. Solicitor.

3 SOLICITOR GOWDY: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 SOLICITOR GOWDY: Permission to publish the exhibits to  
6 the jury?

7 THE COURT: You may do so.

8 SOLICITOR GOWDY: Thank you, Your Honor.

9 CONTINUED DIRECT EXAMINATION

10 BY SOLICITOR GOWDY:

11 Q Doctor Wren, I'm gonna hand you a laser pointer which  
12 you may or may not want to use.

13 THE COURT: would you bring the lights down please,  
14 sir?

15 (Bailiff complies.)

16 THE COURT: Thank you.

17 Q Let me first show you State's Exhibit 270 and ask you  
18 whether or not you can tell the jury what that is, Doctor  
19 Wren.

20 A This is a x-ray of the skull of Mary Ann Emery. It is  
21 actually turned backwards as one can see. Her name is, is  
22 right here, and it shows -- it's a portable x-ray. So, this  
23 is her partial bridge that actually, as I described it to  
24 you, was sticking partially out of her mouth, and that was  
25 on the left side. So, one would have to think, as looking

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1 at this x-ray, from the back rather than the front. If you  
2 would be standing behind her, this would be her left side.

3 The x-ray is a little over exposed. But there's a  
4 fracture line across there, and one can't see many others  
5 except that, that the injuries were all in this area. One  
6 can see a fracture there to her, her mandible, another one  
7 there, and that's basically all I can tell you about that  
8 except that's probably a fracture there.

9 Q See if that one works better right there that red---

10 A Oh, you can't see that one?

11 Q Well -- all right. Doctor Wren, let me show you  
12 State's Exhibit 272.

13 A Well, this one's oriented correctly. This is, again,  
14 Mary Ann Emery. One can see the bridge there. One can see  
15 the extensive crushed -- her face should probably come along  
16 like this, and it's crushed in all through here. One can  
17 see fractures here and it was -- there's so many, there's so  
18 many fractures in here one -- it, it's just so much there  
19 that you can't point out anything except to show that her  
20 face is actually caved in all through here with fractures of  
21 the mandible.

22 Q Let me show you State's Exhibit 269.

23 A Oh, this is Mr. Emery. This, again, is a lateral view.  
24 One can see those fractures that are relatively round but  
25 extend toward each other. There's one here, one here, one

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1 here, one there, and the other x-ray -- and this is  
2 evacuation from bleeding of the brain separating from the,  
3 from the, from the skull posteriorly, posteriorly. This is  
4 not a very good x-ray. But nevertheless, that's what you  
5 can see on the other one. You can see a lot better.

6 Q Let me show you 268.

7 A I thought we had -- I thought you had another one  
8 that -- do we have five?

9 Q Just four.

10 A Oh. well, you can't see them very well. But there's  
11 one there, there's one there, there's one, there's one,  
12 that's probably one, fractures to the left side of his head.  
13 I thought they showed up a little bit better than the ones  
14 that I looked at.

15 Q Let me show you State's 274.

16 A Oh, this is the back of Mr. Emery with the, the two  
17 little lacerations I described that were close together, and  
18 then this is the curved fracture. These are two little  
19 abrasions there. These are the two fractures, I mean the  
20 indentation from the edge of what is consistent with the edge  
21 of a, a hammer type device. It's at least round and the  
22 reason it looks, looks like this is because only one side of  
23 that hit him. If it hit him straight on perpendicular, it  
24 would be a nice round abrasion.

25 Q Let me show you 277.

Doctor John Wren - Direct examination  
By Solicitor Gowdy

1 A This is a laceration to his, defense wound to his arm  
2 there that's lacerated and he -- actually one can see here  
3 the blistering of the skin and sluffage of the skin from the  
4 gasoline burns that were there postmortem. If you pour gas,  
5 gasoline on, any type of petroleum derivative on a body  
6 after one's dead, it makes the skin sluff off very quickly,  
7 and that's what's happening there, on up in here.

8 Q Let me show you what's been marked as State's or  
9 introduced as State's Exhibit 276.

10 A This is another wound, one of the defense wounds that I  
11 described on his hand, and I think that's one of the others.  
12 He has keratoses. This is a, actually age related spots.

13 Q All right. 275.

14 A A, a defense type wound here. Probably one there.

15 Q And 273.

16 A You know, just a close-up of, of one of those wounds  
17 there. I think that's on the dorsal portion of his hand.

18 SOLICITOR GOWDY: One moment, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q Doctor Wren, thank you. Please answer any questions  
22 that the defense attorneys may have for you.

23 THE COURT: Bring the lights up please, sir.

24 (Bailiff complies.)

25 THE COURT: Mr. Reckenbeil, your witness.

Doctor John Wren - Cross-examination  
By Mr. Reckenbeil

1 CROSS-EXAMINATION

2 BY MR. RECKENBEIL:

3 Q Doctor Wren, neither Mr. Emery or Mrs. Emery's hands  
4 were bagged, were they?

5 A Not that I recall and I did not state they were.

6 Q Right.

7 In your report, there's nothing indicating in your  
8 report they were?

9 A No.

10 Q Okay. Drawing your attention, sir, to the autopsy  
11 report of Mrs. Emery going down six lines on Page 2, stated  
12 that the, you inspected the vaginal area of Mrs. Emery?

13 A Yes.

14 Q And when you inspected the vaginal area, you noted in  
15 your notes that there was no evidence of contusions or  
16 lacerations, isn't that correct, sir?

17 A I said that twice a while ago, yes.

18 Q Well now you said it for a third time.

19 A Right.

20 Q Thank you, sir.

21 THE COURT: Redirect?

22 SOLICITOR GOWDY: Very briefly.

23 REDIRECT EXAMINATION

24 BY SOLICITOR GOWDY:

25 Q Doctor Wren, do you always find vaginal injuries during

Doctor John Wren - Redirect examination  
By Solicitor Gowdy

1 a sexual assault?

2 A In my experience, you hardly ever find them unless  
3 there's a lot of struggling by the individual.

4 Q Thank you, Doctor Wren.

5 THE COURT: Anything further from the defense?

6 MR. RECKENBEIL: Nothing, Your Honor, and we have no  
7 problem with releasing this witness.

8 THE COURT: All right, sir. You may step down and  
9 you're free to go.

10 THE COURT: Ask the attorneys to approach briefly.

11 (Whereupon, a bench conference was held out of the  
12 hearing of the jury at this time.)

13 THE COURT: State may call its next witness.

14 SOLICITOR BARNETTE: Like to call David Hogsted to the  
15 stand please.

16 THE COURT: Come forward, sir, to be sworn.

17 DAVID HOGSED, being first duly  
18 sworn, testified as follows:

19 THE COURT: Sir, once you're seated and moved close to  
20 the microphone, state your name for the record please.

21 WITNESS: David Hogsted.

22 THE COURT: Thank you.

23 Mr. Barnette, I believe this must be your witness.

24 SOLICITOR BARNETTE: Thank you, Your Honor.

25 THE COURT: Yes, sir.

David Hogsed - Direct examination  
By Solicitor Barnette

1 DIRECT EXAMINATION

2 BY SOLICITOR BARNETTE:

3 Q Sir, where do you work at?

4 A Spartanburg County Sheriff's Office.

5 Q And what is your position there, sir?

6 A I'm an investigator with the crime scene unit.

7 Q And how long have you been with the Sheriff's  
8 Department, sir?

9 A With the Sheriff's Office, a little over three years.

10 Q And were you in law enforcement prior to that?

11 A Yes, I was with the City of Spartanburg for right at 16  
12 years.

13 Q And did you also have some position with them?

14 A Yes, I have been doing this since the end of 1999.

15 Q Was you, along with Investigator Bogan, did you-all  
16 process the van in this case?

17 A Yes, we did.

18 Q And where did you process it at, sir?

19 A At our fleet maintenance shop which is located at 290  
20 Broadcast Drive.

21 Q Later on, did you -- in, in processing everything  
22 was -- and I'm not gonna go through all the items.

23 But y'all find numerous items in there?

24 A Yes, numerous items were taken out of the van.

25 Q And was that collected and put into evidence?

David Hogsed - Direct examination  
By Solicitor Barnette

1 A Yes, they were.

2 Q And later on did you go back to, to do, to do  
3 additional processing of the van?

4 A Yes, I went back on May the 14<sup>th</sup> to collect some  
5 additional items out of the van and also finish processing  
6 the van.

7 Q Let me show you what's been marked as State's Exhibit  
8 No. 5, 105. It's already been entered into evidence  
9 already.

10 Is that a picture of a print you processed, sir?

11 A Yes, it is.

12 Q And where was that print located at?

13 A It's on the exterior, the driver's door, the top of the  
14 door where it slants down back towards the hood. It's on  
15 the outside above where the window is on the frame of the  
16 door.

17 SOLICITOR BARNETTE: Your Honor, may I publish this to  
18 the jury?

19 THE COURT: Yes, sir, you may do so.

20 SOLICITOR BARNETTE: Thank you, sir.

21 Q Showing you State Exhibit 105, is this, is this the  
22 area of the print you located?

23 A Yes, the actual print is the darkened area underneath  
24 the, the tape, the lift tab that's there marked as number  
25 two.

David Hogsted - Direct examination  
By Solicitor Barnette

1 Q And let me show you what's marked as State's Exhibit  
2 No. 14.

3 Is this the actual print that you collected?

4 A Yes, sir, it is.

5 SOLICITOR BARNETTE: Your Honor, I'd like to move this  
6 into evidence at this time.

7 THE COURT: Any objection?

8 MR. RECKENBEIL: No objection, Your Honor.

9 THE COURT: Without objection, it will be admitted as  
10 marked.

11 (Whereupon, State's Exhibit No. 14 was received into  
12 evidence at this time.)

13 THE COURT: You may proceed, Mr. Barnette.

14 Q Okay. And was this print submitted to Hugh Murphy for  
15 analysis?

16 A Yes, it was.

17 Q I know we talked to Investigator Bogan or whatever, but  
18 do you find fingerprints at every scene you go to?

19 A No, we do not.

20 Q Is it often that you find prints that you can identify?

21 A Actually it's not. A lot of prints that we lift are  
22 either once you magnify the print, look at it, they're not  
23 able, of not of what is referred to as AFUS quality or is  
24 not enough points in it to make an identification.

25 Q But -- and obviously there's different factors that

David Hogsed - Direct examination  
By Solicitor Barnette

1 affect prints and everything?

2 A Yes, sir, there are.

3 Q But this is one print that you was able to collect from  
4 the outside of the van?

5 A Yes, I was able to lift that print off the exterior of  
6 the driver's door.

7 SOLICITOR BARNETTE: One moment, Your Honor, please.

8 (Pause.)

9 SOLICITOR BARNETTE: If you would, sir, please answer  
10 any questions the defense may have for you, sir.

11 THE COURT: Bring the lights back up please, sir.

12 (Bailiff complies.)

13 THE COURT: Mr. Reckenbeil, your witness.

14 MR. RECKENBEIL: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. RECKENBEIL:

17 Q Did you do any other dusting besides the one print on  
18 the door?

19 A I did the other side of the car as well.

20 Q Okay. You didn't find anything?

21 A There was ridge detail lifted off the other side of the  
22 car. But I don't know what the results were.

23 Q All right. Did you do any dustings to any of the items  
24 contained inside the van?

25 A No, those were done by Investigator Bogan.

David Hogsed - Cross-examination  
By Mr. Reckenbeil

1 Q All right. You don't have any, any involvement in that  
2 whatsoever?

3 A No, sir.

4 Q Okay. Thank you, sir.

5 THE COURT: Anything on redirect?

6 SOLICITOR BARNETTE: No, sir. We ask that the witness  
7 be excused.

8 THE COURT: Any objection?

9 MR. RECKENBEIL: We have no objection.

10 THE COURT: You may step down. You're free to go, sir.

11 All right. Ladies and gentlemen of the jury, we are  
12 now past five o'clock, and I'm going to break for the  
13 evening. At this point in time I am going to ask you -- of  
14 course, you'll be, you'll have limited contact with the  
15 outside world. But I'll ask you not to discuss the case  
16 with anyone. Not to discuss the case even among yourselves.  
17 You've only heard part of the evidence at this point in  
18 time.

19 And as my instructions previously and in the, in the  
20 future will be, you should not begin any discussions  
21 concerning this case until such time as you have heard all  
22 the evidence, I've charged you with the law, and instructed  
23 you to begin your deliberations in this matter.

24 One thing I do want to take up with you so that you'll  
25 have some idea of where we're going from here as far as how

1 the case will proceed, I do, I do intend to hold Court over  
2 the weekend. That means Saturday and Sunday.

3 I will tell you, however, that on Sunday, if you desire  
4 to have some type of, of a religious meeting or something of  
5 that nature among yourselves is the way I would encourage  
6 that done. That way we don't run the risk of any outside  
7 influences or anything of that happening. But that's what I  
8 would encourage.

9 But at any rate, I'd like, Mr. Foreman, if you would,  
10 discuss that among yourselves as to how you would like to  
11 proceed on Sunday. The Court will allow you time to conduct  
12 a, a religious meeting if you'd like to do that. And,  
13 however, if the jury feels like you'd like to go ahead and  
14 begin and make Sunday a regular day, then we will be happy  
15 to acquiesce, acquiesce in that request as well.

16 I'm gonna leave that up to you. We could start later  
17 in the day if you'd like on Sunday. We will hold, hold some  
18 Court on Sunday. But discuss it, and then in the morning,  
19 I'll be happy to discuss that with you, Mr. Williams, and  
20 you'll let me know how the jury feels on that particular  
21 point.

22 We've had a, finished our opening day. I look forward  
23 to seeing you in the morning. We'll begin again at nine  
24 o'clock in the morning.

25 At this point in time I'd ask everyone to remain seated

1 while the jury retires.

2 Thank you very much. We'll see you in the morning.

3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: All right. The defendant remains in  
6 custody.

7 I'll ask everyone to remain seated while he leaves the  
8 courtroom, and make sure they'll be no contact with the jury  
9 outside. I don't know which way they're taking them.

10 All right. Court is in recess until nine o'clock in  
11 the morning.

12 Thank you very much.

13

14 (Whereupon, Court was in recess for the evening.)

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Randall Johnson - Direct examination  
By Solicitor Barnette

1 THE COURT: State your name for the record.

2 WITNESS: Randall Johnson.

3 THE COURT: Mr. Barnette, it's your witness.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR BARNETTE:

7 Q Sir, where do you work at?

8 A Spartanburg County Detention Facility.

9 Q And what's your position there, sir?

10 A I'm an ID officer.

11 Q And how long have you been there, sir?

12 A Going on three and a half years, sir.

13 THE COURT: Just one second. Let's see if we can  
14 adjust that microphone.

15 (Pause.)

16 Yes, sir, go ahead.

17 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

18 Q Basically what's part of your -- what's your duties  
19 there at the jail, sir?

20 A When an individual comes in, I take the booking report,  
21 fingerprint them and picture them, and then run a criminal  
22 natural history.

23 Q Back on May 11<sup>th</sup>, 2007, was you working that day, sir?

24 A Yes, sir, I was.

25 Q And did you collect a set of fingerprints from the

Randall Johnson - Direct examination  
By Solicitor Barnette

1 defendant in this case?

2 A Yes, sir, I did.

3 Q Let me show you what's been marked as State's Exhibit  
4 10-A.

5 See if you're familiar with that document, sir.

6 A Yes, sir, I am.

7 Q And what is that document, sir?

8 A It's the jail's copy of the fingerprint card.

9 Q Okay. Is these the two sheets, the front and back of  
10 that sheet?

11 A Yes, sir, it is.

12 SOLICITOR BARNETTE: Your Honor, I'd like to move this  
13 into evidence at this time.

14 THE COURT: Any objection?

15 MR. RECKENBEIL: No objection, Your Honor.

16 THE COURT: Without objection it will be received into  
17 evidence as marked.

18 (Whereupon, State's Exhibit No. 10-A was received into  
19 evidence at this time.)

20 THE COURT: Mr. Barnette, you may proceed.

21 SOLICITOR BARNETTE: Thank you, Your Honor.

22 May I publish it to the jury, Your Honor?

23 THE COURT: You may, sir.

24 Q If you would, sir, just come on down and we'll do it  
25 the old fashion way here.

Randall Johnson - Direct examination  
By Solicitor Barnette

1 (Witness comes down from the stand.)

2 Q Is this here, sir, and these are the fingerprints that  
3 you rolled from the defendant that day?

4 A Yes, sir.

5 Q And is this the, entered the records over at the jail?

6 A Yes, sir.

7 Q And on the back here, is this the information when it  
8 was booked, when it was done, and everything?

9 A Yes, sir.

10 Q And are these your initials showing who was the officer  
11 then?

12 A It is.

13 Q Okay. Thank you, sir. Please have a seat.

14 A Back over here?

15 Q Yes, sir.

16 THE COURT: Yes, sir. Have a seat back in the witness  
17 stand.

18 (Witness complies.)

19 SOLICITOR BARNETTE: I'll show it to the jury.

20 THE COURT: Lower the lights for me please, sir.

21 Q Okay. And are these just the, the prints you collected  
22 that day?

23 A Yes, sir.

24 Q And is this the back of the card also?

25 A It is, sir.

Randall Johnson - Direct examination  
By Solicitor Barnette

1 Q And this area right here, is this where you put your  
2 initials showing you was the officer that did that?

3 A Yes, sir.

4 Q And it was done on May 11<sup>th</sup>, 2007?

5 A Yes, sir.

6 Q Thank you, sir. Please answer any questions the  
7 defense would have for you.

8 A Yes, sir.

9 MR. RECKENBEIL: No questions from the defense, Your  
10 Honor.

11 THE COURT: All right.

12 MR. RECKENBEIL: And we have no objection to him being  
13 released.

14 THE COURT: Bring the lights back up.

15 (Bailiff complies.)

16 THE COURT: Sir, you may step down, and without  
17 objection, you are released from your subpoena. You're free  
18 to go. Thank you very much.

19 SOLICITOR BARNETTE: Your Honor, we'd like to call Hugh  
20 Murphy to the stand please.

21 THE COURT: Sir, come forward to my right to be sworn  
22 please, sir.

23 HUGH MURPHY, being first duly  
24 sworn, testified as follows:

25 THE COURT: Sir, once you're seated, move close to the

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 microphone and state your name for the record please.

2 WITNESS: Hugh Murphy.

3 THE COURT: Your witness, Mr. Barnette.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR BARNETTE:

7 Q Where do you work at, sir?

8 A I work at the Spartanburg County Sheriff's Office.

9 Q And what is your position there, sir?

10 A I'm the fingerprint examiner.

11 Q And how long have you been with the Sheriff's  
12 Department, sir?

13 A Twenty-one years.

14 Q And how long have you been involved in fingerprint  
15 analysis?

16 A Six years.

17 Q And have you been qualified in court as a fingerprint  
18 analysis, sir?

19 A I have.

20 Q How many times have you been qualified, sir?

21 A Ten to fifteen, something like that.

22 Q And that's all been in State Court?

23 A I have testified in Federal Court, but I was not  
24 qualified as an expert then.

25 Q And also, have you received schooling concerning

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 fingerprints and---

2 A I have.

3 Q If you would, tell us a little bit about that, sir.

4 A I have had basic fingerprints, advanced fingerprints  
5 taught by the FBI. I've had most all the fingerprint  
6 classes that the State Law, I mean the academy has that  
7 teaches. I've had advanced palm print class, identification  
8 by Ron Smith, and I've had ridgeology taught by David  
9 Osbach.

10 Q Are those people down in, in, considered as experts  
11 here in South Carolina, sir?

12 A They're national experts.

13 Q Yes, sir.

14 Also, sir, how many fingerprints have you looked  
15 through in your career?

16 A Probably hundreds of thousands.

17 SOLICITOR BARNETTE: Okay. Your Honor, at this time we  
18 move him in as an expert in fingerprints, at this time,  
19 analysis.

20 THE COURT: Any objection?

21 MR. RECKENBEIL: No objection.

22 THE COURT: Without objection, this witness will be  
23 qualified as an expert within the field of fingerprint  
24 analysis.

25 You may proceed, Mr. Barnette.

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, Your Honor.

2 Q Sir, let me show you what's, what's already been  
3 entered into evidence at this time State Exhibit 5 and State  
4 14.

5 Was these two fingerprints that you received in this  
6 case?

7 A They are.

8 Q Was one of them from Investigator Bogan and the other  
9 one from Investigator Hogsed?

10 A That's correct.

11 Q And did you receive -- I'm going to show you what's,  
12 what's been entered into evidence as 10, 10-A.

13 Did you receive the prints that was taken from the  
14 defendant at the jail?

15 A I did.

16 Q And did you do an analysis of those prints compared to  
17 the prints that you received from the two officers?

18 A I did.

19 Q Let me show you what's been marked as State's Exhibit  
20 10.

21 Is this a breakdown of the analysis you did on the  
22 fingerprints that you received and compared it to the  
23 defendant's fingerprints?

24 A They are.

25 SOLICITOR BARNETTE: Your Honor, I'd like to enter

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 these into evidence at this time at State Exhibit 10 and  
2 State Exhibit 18.

3 THE COURT: Allow the defense to review them.

4 MR. RECKENBEIL: No objection, Your Honor, with the  
5 stuff that's in Mr. Barnette's left-hand.

6 THE COURT: All right. Have -- the documents that's  
7 current, as it currently exists will be admitted into  
8 evidence without objection as marked.

9 (Whereupon, State's Exhibit No. 10 and 18 were received  
10 into evidence at this time.)

11 THE COURT: You may proceed, Mr. Barnette.

12 SOLICITOR BARNETTE: Thank you, Your Honor.

13 Q And did you do a blowup of these two items that I have  
14 in my hands, sir?

15 A I did.

16 Q And are they State Exhibits 16 and State Exhibit No. 9?

17 A That is correct.

18 Q If you would, sir -- Your Honor, I'd like to enter  
19 these into evidence at this time.

20 MR. RECKENBEIL: That's fine. No objection.

21 THE COURT: Without objection, they'll be received as  
22 marked.

23 (Whereupon, State's Exhibit Nos. 9 and 16 were received  
24 into evidence at this time.)

25 THE COURT: You may proceed, Mr. Barnette.

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 Q Okay. If you would, step down, sir, so you can show  
2 the jury these, and talk to them, talk to them about what  
3 you did.

4 (Witness comes down from the stand.)

5 Q Let me show you the one that was with the white flower  
6 pot, which is State Exhibit 9.

7 If you would, sir, just describe to them, tell them  
8 what you did.

9 If you would, step back because that gentleman needs to  
10 see there.

11 A Okay. I started by overlooking the whole print, picked  
12 out one particular item to---

13 THE COURT: Sir, I'm gonna ask you to speak up so that  
14 the people over at the defense table can hear you as well.

15 A One particular thing that caught my eye, and then  
16 started zooming in, and, and started marking the different  
17 ending lines, bifurcations, anything that might make this  
18 fingerprint unique.

19 Q Now, how many points are you looking for to have a  
20 match?

21 A There's no particular number of, of points you have to  
22 have to make a, a match. It depends on the experience of  
23 the examiner and the education of the examiner. You can go  
24 down to seven, something like that if you're more  
25 experienced.

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 Q So, you can go from seven to ten points that you're  
2 looking for, isn't that right?

3 A Well -- or as high as you want to go.

4 Q Okay. In this case, how many points did you see that  
5 matched the fingerprint, the fingerprint that was taken from  
6 the flower pot that matched the defendant's fingerprint?

7 A Nineteen points.

8 Q Okay. And you can show the jury where you did, where  
9 those points are?

10 Are they located on each diagram?

11 A Right, there's a number on each point. Starting right  
12 here, we got a bifurcation which is two, the lines is  
13 separated like that. Then number two comes on down.

14 Q Let me do this. Let me put something up on the screen.  
15 It might be easier to do it that way. Let you have a seat.

16 A (Witness returns to the stand.)

17 THE COURT: If you'd lower the lights, Mr. Bailiff, for  
18 us.

19 (Bailiff complies.)

20 THE COURT: Thank you.

21 Q Okay. This is the same -- is this the same print that  
22 we was looking at earlier on the blowup, sir?

23 A Right.

24 Q And this is a print that you received from Investigator  
25 Bogan?

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 A That is.

2 Q And you looked at different points on that, is that  
3 correct?

4 A I did.

5 Q And are these the numbers that you gave to the  
6 different points that you saw?

7 A I did.

8 Q And from that print, did you compare it to the print of  
9 the defendant?

10 A I did.

11 Q And does all these 19 points match up with the print,  
12 points that you found on the print you received from  
13 Investigator Bogan?

14 A They do.

15 Q So, this print belonged to who?

16 A The defendant, Torres.

17 Q Mr. Torres.

18 And just attached to this, is this the fingerprint card  
19 that you received and the information you received to  
20 concern on him?

21 A It is.

22 Q Okay. Okay. The print you received from Officer  
23 Hogsed, did you also do an analysis on it, sir?

24 A I did.

25 Q Is this a copy of your analysis, sir?

Hugh Murphy - Direct examination  
By Solicitor Barnette

1 A It is a copy, correct.

2 Q The one to the left side of it, is this the print you  
3 received from Officer Hogsed?

4 A It is.

5 Q And how many points did you locate on that, sir?

6 A Thirteen.

7 Q And did you use those points to compare to the  
8 defendant's fingerprint?

9 A I did.

10 Q And how many points matched up on---

11 A All 13.

12 Q All 13 of them did.

13 So, this print that you received from the van from  
14 Officer Hogsed, who did that print belong to, sir?

15 A Andres Torres.

16 Q So, it's your opinion that both these fingerprints came  
17 from the defendant in this case?

18 A That's a fact.

19 SOLICITOR BARNETTE: One moment, Your Honor, please.

20 (Pause.)

21 Q Please answer any questions the defense may have for  
22 you, sir.

23 THE COURT: Lights up or down, Mr. Reckenbeil?

24 MR. RECKENBEIL: Actually leave it down for just a  
25 second. I'm sorry.

Hugh Murphy - Cross-examination  
By Mr. Reckenbeil

1 THE COURT: Keep the lights down, Mr. Bailiff. Thank  
2 you.

3 SOLICITOR BARNETTE: I'll leave those for you.

4 MR. RECKENBEIL: Yeah. Thank you.

5 CROSS-EXAMINATION

6 BY MR. RECKENBEIL:

7 Q Sir, looking at that, that is the fingerprint that was  
8 submitted to you by the Spartanburg County Sheriff's  
9 Department, correct?

10 A It's upside down though.

11 Q All right. But it was a print, right?

12 A Yes, sir.

13 Q Okay. And then that print right there is one that was  
14 submitted by the detention center, correct?

15 A Correct.

16 Q And that's a, that's a good print, a full print when  
17 you're rolling somebody?

18 A Right.

19 Q Okay. And the other one is just a print that you found  
20 on an object?

21 A Some -- Officer Bogan did.

22 Q Okay. And you don't know where he found it, do you?

23 A It's on the card.

24 Q Correct.

25 But I'm saying you don't know where he found it, like

Hugh Murphy - Cross-examination  
By Mr. Reckenbeil

1 on what, on what object he found it?

2 A Yes, it's on the card right here.

3 Q I understand. I understand it's on the card.

4 A I'm sorry.

5 Q But I'm saying did he find it on a, the building?

6 Did he find it on a card?

7 Did he find it on a, a purse?

8 A It's on a purse, on a pot.

9 Q On a pot.

10 Okay. And then the other one, do you know where he  
11 found it?

12 A It's on the driver's door.

13 Q On the driver's door.

14 All right. Now, you say that it only takes about seven  
15 to ten points for you to make an identification, correct?

16 A It -- you can go down to seven or ten. Excuse me.

17 But---

18 Q You can or can't?

19 A Can.

20 Q C-A-N?

21 A Can. According---

22 Q Okay.

23 A ---according to your training and experience.

24 Q With your training and experience, would you have the  
25 ability to go down to seven to ten?

Hugh Murphy - Cross-examination  
By Mr. Reckenbeil

1 A If it was good and clear. If the clarity was good, I  
2 might could.

3 Q All right. And so, the only thing that was submitted  
4 to you were two fingerprints in this case?

5 A No.

6 Q All right. There were more?

7 A Yes.

8 Q But you couldn't make any determination as to what they  
9 were?

10 A I identified one---

11 Q Okay.

12 A ---other.

13 Q One other which you're not presenting that here today,  
14 are you?

15 A No.

16 Q Okay. Now, understanding that if a print is put on an  
17 object, let's just use a car, for example.

18 A Right.

19 Q Can you give a estimation as to how long that print was  
20 there?

21 A No, I can not.

22 Q So, let's say we had a drought like in South Carolina,  
23 and the print was found on the outside of the car and it  
24 didn't rain for a long long period of time, could that print  
25 be there for quite a while?

Hugh Murphy - Cross-examination  
By Mr. Reckenbeil

1 A It could.

2 Q Okay. Thank you, sir.

3 THE COURT: Redirect?

4 SOLICITOR BARNETTE: No further questions of this  
5 witness, Your Honor.

6 THE COURT: Any objection to his being excused?

7 MR. RECKENBEIL: No objection.

8 THE COURT: Sir, you may step down. You're free to go.  
9 Thank you very much for coming this morning.

10 The State may call its next witness.

11 SOLICITOR CRICK: Your Honor, the State calls Phil  
12 Easler.

13 THE COURT: Sir, come forward to my right to be sworn  
14 please.

15 PHIL EASLER, being first duly  
16 sworn, testified as follows:

17 THE COURT: Sir, move close to the mic. State your  
18 full name for the record please.

19 WITNESS: Phillip Easler.

20 THE COURT: Mrs. Crick, your witness.

21 SOLICITOR CRICK: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY SOLICITOR CRICK:

24 Q Where do you work?

25 A Spartanburg County Sheriff's office.

Phil Easler - Direct examination  
By Solicitor Crick

1 Q What do you do there at the Sheriff's Office?

2 A I'm a patrol officer at this time. In May of '07, I  
3 was in the investigations as an arson investigator.

4 Q Did you -- well, let me ask you this.

5 How long have you been in law enforcement?

6 A Twenty years.

7 Q Did you have any special training to develop an  
8 expertise in arson investigation?

9 A I have training through South Carolina Criminal Justice  
10 Academy, through Carolina Fire Investigations, and also  
11 South Carolina Fire Investigations Association where I've  
12 taken numerous courses in arson investigation.

13 Q Do you ever work as part of a team when you investigate  
14 an arson situation or potential arson situation?

15 A I have.

16 Q I'm gonna ask you some general questions. Not yet  
17 about this particular case.

18 But in general, when you get to a potential arson  
19 scene, what do you do?

20 A The first thing we'll do, we'll walk, do a scene survey  
21 to make sure everything's safe for the crew and render it  
22 safe if it's not.

23 Q And then, after that, would you begin your  
24 investigation?

25 A Yes, we would, at that point.

Phil Easler - Direct examination  
By Solicitor Crick

1 Q I'm gonna go back now to May 11<sup>th</sup> of 2007 back when  
2 you were doing arson investigations.

3 Did you get called to assist in an investigation at [REDACTED]  
4 Montgomery Street?

5 A I did.

6 Q Do you remember about what time you got to the scene?

7 A I believe it was around 10:45 a.m.

8 Q Now, on that date, did you go as part of a team or did  
9 you have other people there helping you?

10 A They were other people there helping me. Captain Roger  
11 Means was there to assist in the arson investigation and  
12 other investigators as well.

13 Q When you first got out there to Montgomery Street, can  
14 you tell the jury what you observed using all of your  
15 senses?

16 A Well, as I got to the scene, as I approached the house,  
17 I could smell gas from the, about ten feet away from the  
18 door, the back-door where we went in.

19 Q And did you actually go into the home?

20 A We did. We did a walk through. And as I walked in,  
21 the smell of gas was really a lot.

22 Q At that point -- had the eyes on the stove and oven,  
23 had all of that already been turned off by the time you got  
24 there?

25 A They had been.

Phil Easter - Direct examination  
By Solicitor Crick

1 Q Now, when you did your walk through, did you do that  
2 with Captain Means or did you go by yourself?

3 A Captain Means and my, myself did.

4 Q As you went into the home, can you describe to the jury  
5 what you may of seen in the house?

6 A As I entered the house, like I said, you could smell  
7 the gas was real strong. Approached the archway where the  
8 living room was connected to where the kitchen area would  
9 be. And there was a red gas can turned on its side next to  
10 the couch. I noticed a recliner turned over. As we went on  
11 through the house, and up to the room where the victims  
12 were---

13 Q Now, let me stop you for just one second.

14 Did you actually go into the room where the victims  
15 were or did you look into the room?

16 A We looked into the room. We did not go, due to the  
17 blood and all that was all in the room, and observed the  
18 victims. The female victim was on the floor beside the bed  
19 and the male victim was on the bed.

20 Q After you went to the back of the house, what did you  
21 do next with Captain Means?

22 A We then started our collection process by bringing his  
23 K-9 dog in, which is a tool we use in arson investigations,  
24 potentially arson, to detect flammable liquids.

25 Q So, the K-9 or the dog would be the one detecting the

Phil Easler - Direct examination  
By Solicitor Crick

1 liquids or flammable liquids?

2 A Correct.

3 Q And he had his dog Ranger with him that day?

4 A Yes, he did.

5 Q So, Captain Means was there to use the dog and, and  
6 guide the dog and you were there to do what?

7 A Help collect samples and process the scene.

8 Q How do you know where to collect a sample.

9 A The dog will, will what we call alert to the scent of  
10 the flammable liquids, and we will place a marker cone at  
11 that point and have him go through the scene. And at each  
12 point that he alerts we place a cone.

13 Q Do you use a specially labeled cone for the, for the  
14 arson dog?

15 A It has either letters or numbers on it.

16 Q After you marked the area, do you test the areas?

17 A We go back through and collect the samples and put them  
18 in proper containers and then we have them tested at the  
19 lab.

20 Q Got you.

21 Do you use a standard testing kit to collect your  
22 samples?

23 A Yes, we do.

24 Q And when you do that, is all the swabs or whatever you  
25 use, is that sealed and comes from the manufacturer?

Phil Easler - Direct examination  
By Solicitor Crick

1 A Correct.

2 Q Do you -- well, let me ask you this.

3 what is a controlled sample?

4 A A controlled sample is something we take to show that  
5 if there is a liquid found, that that would not ordinarily  
6 be in that area or should not and also to show that, what  
7 normally would be there.

8 Q So, when you get a controlled sample, your expectation  
9 would be not to find a flammable liquid there?

10 A Correct.

11 MRS. HODGES: Judge, I object to her leading her  
12 witness.

13 THE COURT: well, she is leading. But I'm -- at this  
14 point in time. That's not totally against the rules, and  
15 I'm not going to sustain the objection.

16 I'll allow you to continue.

17 SOLICITOR CRICK: Thank you, Your Honor.

18 Q Is there any way for the samples you collect to  
19 contaminate one another?

20 A It's possible if the liquid, liquid that's been poured  
21 is a large amount and it gets to the area where we took the  
22 controlled sample.

23 Q I got you and I apologize cause I wasn't clear.

24 Just, in general, not even talking about the controlled  
25 samples, once you collect your samples, do you seal them

Phil Easler - Direct examination  
By Solicitor Crick

1 separately?

2 A Yes, we do.

3 Q So, when you do that, there's no way for those samples  
4 to contaminate one another?

5 A No.

6 Q All right. I'm gonna ask you to start with when and  
7 Captain Means came in with Ranger, the arson dog.

8 Can you tell us where you started?

9 A We started at the entrance to the living room where we  
10 found the gas can and he, Ranger alerted at that point, and  
11 we went through the living room all the way to the master  
12 bedroom, and the dog hit at the couch, the recliner, and  
13 near the bedroom/living room doorway.

14 Q With your own eyes, were you able to see any areas  
15 where you thought there might be some kind of a liquid?

16 A Yes, they was liquid next to the fireplace and there  
17 was a greenish liquid on the floor at the master bedroom,  
18 and also you could see a faint line where it had run down  
19 the door of the master bedroom.

20 SOLICITOR CRICK: Your Honor, at this time I'd like to  
21 show the witness what have been marked as State's 278  
22 through 304 and I'll show the defense attorney.

23 (Pause.)

24 MRS. HODGES: No objection, Your Honor.

25 THE COURT: Without objection, they'll be admitted into

Phil Easler - Direct examination  
By Solicitor Crick

1 evidence as marked.

2 (Whereupon, State's Exhibit Nos. 278 through 304 were  
3 received into evidence at this time.)

4 THE COURT: You may proceed, Mrs. Crick.

5 SOLICITOR CRICK: Thank you, Your Honor.

6 May I show the witness?

7 (The Court nods affirmatively.)

8 Q If you could, take a look at these and if you'll keep  
9 them in this order it will keep us straight and tell me if  
10 you recognize what those are.

11 A I do.

12 Q What are they?

13 A Those are the cones that we've marked where the K-9 dog  
14 alerted to the presence of an ignitable liquid at the house  
15 on Montgomery Street.

16 THE COURT: Mrs. Crick, those documents are in  
17 evidence. They need to be put up here.

18 Thank you, ma'am.

19 Q And as you flipped through those, is that depicting  
20 what you did that day at the home?

21 A It is.

22 SOLICITOR CRICK: Your Honor, at this time I would like  
23 to make sure those are entered into evidence and may I  
24 publish those to the jury as well?

25 THE COURT: You may do so. They've been admitted.

Phil Easler - Direct examination  
By Solicitor Crick

1 Q I'm gonna show you first what's marked as State's 278  
2 and let's see if I make this a little clearer for you.

3 Can you tell what that is?

4 A That's showing the living room. The first cone you see  
5 is where the gas can is, and the other cones are showing the  
6 pattern of where the dog went and alerted. You can see the  
7 cone on top of the recliner, it is turned over. The dog  
8 alerted to the presence of ignitable liquid at each of those  
9 spots.

10 Q And those are the cones that you would of placed?

11 A That's where we -- yes.

12 Q Okay. And I'm gonna show you what's marked as State's  
13 279.

14 Is this essentially a closer picture of the same thing?

15 A Correct. It is.

16 Q And these cones that we see right here, is that, is  
17 this the bedroom you were referring to?

18 A That is the bedroom.

19 Q Deputy Easler, is this a closer view of that bedroom  
20 area?

21 A It is.

22 Q Essentially is that a different view of the area?

23 A It is.

24 Q Okay. Can you tell the jury what this is?

25 A That's where the dog alerted to the presence of

Phil Easler - Direct examination  
By Solicitor Crick

1 ignitable liquid right in the doorway, and that's the room  
2 where the victims were at.

3 Q So, it's just inside that doorway?

4 A Just inside, yes.

5 Q Okay. I'm gonna show you a picture.

6 Can you tell the jury what that is?

7 A That's the cone that we use to mark where the dog hits.  
8 That's cone number four.

9 Q Does that area -- well, let me ask you this.  
10 Did you test that area?

11 A I believe we did. Let me take a look.

12 Q You can look at your notes if you need to.

13 A We did test that area.

14 Q And did you do a swab of that area?

15 A We, we used a clean swab or sterile swab that's been  
16 prepackaged, swabbed it, and then placed it into a clean  
17 unused glass vile and sealed it.

18 Q At this time---

19 A And marked it.

20 Q At this time I'd like to show you what's marked as  
21 State's Exhibit 71 and first just tell me if you recognize  
22 that.

23 A I do.

24 Q And can you tell us what that is?

25 A That's the container we placed the glass vile in to

Phil Easler - Direct examination  
By Solicitor Crick

1 protect it.

2 Q And that's from this area?

3 A And that's from that area there.

4 MRS. HODGES: No objection, Your Honor.

5 THE COURT: Without objection, it will be received into  
6 evidence as marked.

7 (Whereupon, State's Exhibit No. 71 was received into  
8 evidence at this time.)

9 THE COURT: You may proceed, Mrs. Crick.

10 SOLICITOR CRICK: Thank you, Your Honor.

11 Q I'm also gonna show you this picture and I hope you can  
12 read that cone that's closest to us.

13 Can you tell us what that is?

14 A That's cone number three. That's the area of the  
15 fireplace where we took three different samples. We took a  
16 sample of the molding, a sample of the, the fireplace, the  
17 top part with the metal. We cut a piece of that away, and  
18 we used a clean sterile gauze that was packaged to absorb  
19 the liquid within that area.

20 Q Okay. And we also -- we placed it, those samples in a  
21 quart size lined can and had it tested as well.

22 Q Okay. Let me show you State's 286.

23 This is the area that you first swabbed, is that  
24 correct, that number three?

25 I guess it's a closer up.

Phil Easler - Direct examination  
By Solicitor Crick

1 A Yes, that's the area.

2 Q I'm gonna show you I believe what's marked as sample  
3 number two, I'm sorry, State's 72.

4 Can you look at that and tell us if you recognize what  
5 this is?

6 A That is the sample we took in the main living room for  
7 cone marker number four.

8 Q Okay.

9 A Or number three. I'm sorry.

10 Q So that would be that cone?

11 A Right.

12 MRS. HODGES: No objection, Your Honor.

13 THE COURT: Assume you're offering into evidence?

14 SOLICITOR CRICK: Yes, sir.

15 THE COURT: Without objection, it will be received as  
16 marked.

17 (Whereupon, State's Exhibit No. 72 was received into  
18 evidence at this time.)

19 Q And in addition to swabbing that area, you said you  
20 also took, I guess from that mantle, a cutting of some sort?

21 A Yes, we did.

22 Q And is this you and I guess that's Captain Means?

23 A That's Captain Means doing the actual cutting of the  
24 metal.

25 Q All right. And what did you do with that after you did

Phil Easler - Direct examination  
By Solicitor Crick

1 the cutting?

2 A The cutting was placed in a quart lined can.

3 Q And I'm gonna show you what's marked as State's 73.  
4 Tell us if you recognize that.

5 A I do. That's, that's the can that we placed those  
6 items into.

7 Q The cuttings that we see in the photograph?

8 A Correct.

9 SOLICITOR CRICK: Your Honor, I'm gonna show this to  
10 the defense and ask that we move this into evidence.

11 THE COURT: You may do so.

12 MRS. HODGES: No objection, Your Honor.

13 THE COURT: Without objection, it's received into  
14 evidence as marked.

15 (Whereupon, State's Exhibit No. 73 was received into  
16 evidence at this time.)

17 Q Okay. Now, can you tell the jury what they're looking  
18 at in this photograph?

19 A That's the carpet area where the area rug that was in  
20 the living room where the dog alerted to the presence of  
21 flammable liquid, and we took a sample of it by cutting it  
22 with a clean razor blade and placing it into a, I believe a  
23 gallon lined can.

24 Q And is this a photograph of you actually doing that  
25 cutting?

Phil Easler - Direct examination  
By Solicitor Crick

1 A It is.

2 Q Okay. I'm gonna show you what's marked as State's 74.  
3 Just tell us if you recognize that one.

4 A I do.

5 Q What is it?

6 A That's the can we placed the cuttings, sample of the  
7 carpet from the house of Montgomery Street.

8 Q And that's what the jury is looking at in that photo?

9 A That is what they're looking at.

10 MRS. HODGES: No objection, Your Honor.

11 THE COURT: Without objection, it will be received as  
12 marked.

13 (Whereupon, State's Exhibit No. 74 was received into  
14 evidence at this time.)

15 Q Can you tell the jury what they're looking at in this  
16 photograph?

17 A That would be the recliner marked with cone number five  
18 showing the presence of ignitable liquid on the recliner.

19 Q And I'm gonna show you this photograph.

20 Can you tell us what we're seeing there?

21 A Where I'm cutting a sample of the carpet, recliner out  
22 with a clean unused razor blade as well and placing it into  
23 a container.

24 Q And that was your sample number four?

25 A That would be -- let me check.

Phil Easler - Direct examination  
By Solicitor Crick

1 (Pause.)

2 A Yes, that would be correct.

3 Q All right. I'm gonna show you what's marked as State's  
4 75 and ask if you recognize that one.

5 A I do.

6 Q And what is that?

7 A That's the sample we took from the recliner at the  
8 house on ██████ Montgomery Street.

9 Q All right.

10 MRS. HODGES: No objection, Your Honor.

11 THE COURT: It will be received into evidence then as  
12 marked.

13 (Whereupon, State's Exhibit No. 75 was received into  
14 evidence at this time.)

15 Q Can you tell the jury what they're seeing in the  
16 photograph?

17 A That is the gas can that was in the living room next to  
18 the couch. We also took a sample from that.

19 Q How did you take a sample from that gas can?

20 A We used a clean unused siphoning device.

21 Q Uh-huh. (Affirmative).

22 A And to describe what that would be, it's kind of like  
23 an eye dropper, but with a long tube on it.

24 Q With a little suction on it?

25 A Right.

Phil Easler - Direct examination  
By Solicitor Crick

1 Q Okay. And so, what did you do after you siphoned a  
2 little bit from that?

3 A We put it in a clean unused glass container.

4 Q And was that your sample number five?

5 A Yes.

6 Q Okay. I'm going to show you State's 76 and ask if you  
7 recognize that.

8 A I do.

9 Q What is it?

10 A That's the sample we took from the gas can.

11 Q Okay.

12 MRS. HODGES: No objection, Your Honor.

13 THE COURT: It will be received into evidence then as  
14 marked.

15 SOLICITOR CRICK: Thank you.

16 (Whereupon, State's Exhibit No. 76 was received into  
17 evidence at this time.)

18 Q I'm gonna ask you to tell the jury what they see in  
19 this photograph.

20 A It's the pillow that was on the couch in the living  
21 room. The cone marks when the, the dog alerted to the  
22 presence of ignitable liquid on the pillow.

23 Q And tell us what we're seeing in this photograph.

24 A Captain Means cutting a sample from the pillow.

25 Q And then this is I'm guessing your arm?

Phil Easler - Direct examination  
By Solicitor Crick

1 A Right.

2 Q So, you were present when he did the cutting of the  
3 pillow?

4 A I was.

5 Q Okay. And then what did you do after you did the  
6 cutting of that pillow?

7 A We placed it into a clean unlined can and then---

8 Q That would be your sample number six.

9 A Correct. 6-A.

10 Q Okay. I'm---

11 A Six. I'm sorry.

12 Q I'm sorry. Six?

13 A Six, yes.

14 Q I'm gonna show you what's marked as State's 77 and tell  
15 me if you recognize that one.

16 A That would be it.

17 Q That's the same---

18 A That's the same---

19 Q ---pillow?

20 A ---sample.

21 MRS. HODGES: No objection, Your Honor.

22 THE COURT: It will be received into evidence then as  
23 marked.

24 (Whereupon, State's Exhibit No. 77 was received into  
25 evidence at this time.)

Phil Easler - Direct examination  
By Solicitor Crick

1 Q At some point did you do swabs on the controls of the  
2 stove or the oven?

3 A We did.

4 Q I'm gonna show you State's 299.

5 what are we, what are we seeing in that photograph?

6 A That's the glass vile we used to put the swabs in after  
7 we take the sample.

8 Q Okay. And how about this?

9 A Excuse me. That is a package of the swabs that we  
10 used.

11 Q sealed swabs?

12 A sealed up.

13 Q And what are we seeing right here?

14 A Actually it's the swabbing of the knobs of the stove.

15 Q And if I'm looking at that correctly, are those the  
16 right-hand controls I guess?

17 A That is the right-hand control.

18 Q Okay. And then how about right here?

19 A That would be the I believe oven control.

20 Q Okay. And that would be the same thing?

21 A Correct.

22 Q what did you do with those swabs?

23 A They were placed in a clean vile.

24 Q were they placed in separate viles on the left side---

25 A Yes.

Phil Easler - Direct examination  
By Solicitor Crick

1 Q ---and the right side?

2 A Yes, they were.

3 Q I'm gonna show you State's 78 and 79, and tell me if  
4 you recognize what those are.

5 A These are the swabs we took from the right-hand side of  
6 the stove.

7 Q Okay.

8 A And this is the swab that we took from the left-hand  
9 side of the stove.

10 THE COURT: Are those being moved into evidence?

11 SOLICITOR CRICK: Yes, sir.

12 THE COURT: All right.

13 MRS. HODGES: No objection, Your Honor.

14 THE COURT: Without objection, they'll be received into  
15 evidence as marked.

16 (Whereupon, State's Exhibit Nos. 78 and 79 were  
17 received into evidence at this time.)

18 Q I think we're in the home stretch.

19 Tell me if you recognize what this is a photograph of.

20 A Those are tennis shoes.

21 Q Now, at some point -- let me back up here for a second.

22 At some point did you receive some shoes while you were  
23 at the crime scene?

24 A I did.

25 Q Tell me who you received those shoes from.

Phil Easler - Direct examination  
By Solicitor Crick

1 A Those shoes were brought to the scene by Officer Nix in  
2 a brown evidence bag.

3 Q Once you got those shoes, what did you do with them?

4 A I took them and placed them into the, in separate clean  
5 unlined, lined gallon cans.

6 Q And after you placed them in the cans, what did you do  
7 with them?

8 A Took them outside away from the house and had the K-9  
9 test---

10 Q So, you had the K-9 see if he could detect any  
11 accelerants?

12 A See if he could detect any ignitable liquids.

13 Q Was he able to do that?

14 A He alerted on the right shoe.

15 Q I'm gonna show you what's been marked now as State's 80  
16 and 81, and just tell the jury if you recognize those?

17 A This will be the left shoe that was brought to the  
18 scene.

19 Q Okay.

20 A This would be the right shoe.

21 Q So, that's the can that the shoes would have been in  
22 when you---

23 A That is the can, the can that the shoes would of been  
24 in.

25 THE COURT: Moving those into evidence?

Phil Easler - Direct examination  
By Solicitor Crick

1 SOLICITOR CRICK: Yes.

2 MRS. HODGES: No objection, Your Honor.

3 THE COURT: Without objection then, they'll be received  
4 into evidence as they've been marked.

5 (Whereupon, State's Exhibit Nos. 80 and 81 were  
6 received into evidence at this time.)

7 Q At some point did you exit the house and actually go to  
8 some outbuildings?

9 A Yes, we did.

10 Q What did you see when you got out there?

11 A They was an area in the shed behind the house that  
12 appeared that they was, a gas can could of been sitting  
13 there.

14 MRS. HODGES: Judge, I'm gonna object to speculation.

15 THE COURT: Ask you to lay a better foundation.

16 I'll sustain the objection at this time.

17 Q What kind of items did you see when you were out in  
18 the, actually see when you were out in that shed?

19 A They was a small container of two cycle oil that was  
20 there that would indicate that that was a shed used to keep  
21 gasoline and other tools there.

22 MRS. HODGES: Judge, I'm gonna object to, to the  
23 speculation as to what else was kept in that shed if he's  
24 not able to see it.

25 THE COURT: The testimony was that it indicated to him

Phil Easler - Direct examination  
By Solicitor Crick

1 that that's the place and he did lay some foundation that  
2 other items that might go with a gasoline can were present.  
3 I'll overrule the objection.

4 You may proceed.

5 MRS. HODGES: Thank you, Your Honor.

6 Q So, you said you saw some oil there?

7 A Correct.

8 Q Did you see any other items in that area?

9 A I don't recall.

10 Q After you collected all these swabs and cans, what did  
11 you do with them?

12 A They were sealed and turned over to Lieutenant Ashley  
13 Harris.

14 Q And Ashley Harris is with, with which agency?

15 A He's with the Spartanburg County Sheriff's Office.  
16 He's our crime lab technician.

17 SOLICITOR CRICK: Just one moment, Your Honor.

18 THE COURT: Yes, ma'am.

19 SOLICITOR CRICK: I have no further questions at this  
20 time.

21 THE COURT: Mrs. Hodges, your witness.

22 MRS. HODGES: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MRS. HODGES:

25 Q Officer Easler, my understanding, from your report, is

Phil Easler - Cross-examination  
By Mrs. Hodges

1 that each time you went in to collect the samples that you  
2 actually changed gloves each time as well?

3 A That's correct.

4 Q Okay. And, and what's the purpose of doing that?

5 A To keep from contaminating the samples we take.

6 Q So, you make, to make sure that the first sample you  
7 take, if any gasoline or whatever got on your gloves, that  
8 that's not gonna then cross-contaminate the next sample that  
9 you take, is that right?

10 A That's correct.

11 Q Did you-all also put on any sort of foot protection  
12 like any sort of coverings on your feet or on your boots or  
13 shoes that you were wearing that day?

14 A No, we didn't.

15 Q You didn't.

16 Okay. And said, you indicated that the dog actually  
17 had gone into, I guess just the beginning of the, kind of  
18 just a little ways into the, into the bedroom where the  
19 Emery's were located, is that right?

20 A Excuse me?

21 I didn't---

22 Q The dog actually alerted just inside the bedroom. The  
23 dog actually went inside the bedroom---

24 A No.

25 Q ---a minimal amount, is that right?

Phil Easter - Cross-examination  
By Mrs. Hodges

- 1 A No, the dog never entered the bedroom.
- 2 Q Okay. How's the dog able to alert on the spot inside  
3 the bedroom if he doesn't go in the bedroom?
- 4 A I may have, I may of misspoken on that, on that cone.  
5 In retro, in reflecting back, that cone was just inside.  
6 That was the point where we seen liquid on the floor. I  
7 misspoke on that.
- 8 Q Okay. So, the dog didn't actually alert at that point?  
9 It's there was -- you just saw liquid on the floor?
- 10 A Right. And we used -- and I, and I forgot that part.  
11 We used that cone to mark that area.
- 12 Q Okay. Well, were there any other cones that were used  
13 to mark areas that you-all saw that the dog did not alert  
14 on?
- 15 A No.
- 16 Q Okay. So, just that one cone?
- 17 A Correct.
- 18 Q Okay. It seems obvious from the pictures that there  
19 was a third person taking the photographs, is that correct,  
20 cause---
- 21 A That's correct.
- 22 Q Okay. Who, who is that other person?
- 23 A That's Officer Nix with Spartanburg County Sheriff's  
24 office.
- 25 Q Okay. Do you know how many people had been into the

Phil Easler - Cross-examination  
By Mrs. Hodges

1 home by the time that you and Captain Means and Officer Nix  
2 were going into the home?

3 A No, I do not.

4 Q Okay. You arrived at the scene about 10:45, is that  
5 right?

6 A That's correct.

7 Q Were the windows, doors to the home opened at that  
8 point?

9 A I remember the doors being opened. The windows, I  
10 can't recall.

11 Q Okay. But you were able to smell the gasoline at some  
12 point outside of the home?

13 A Approximately ten feet from the back-door.

14 Q Okay. And the back-door, it was -- was that like a  
15 sliding glass door?

16 A I don't recall. I believe it was just a regular door.

17 Q Just regular door.

18 Okay. So, when you walked through that door, what part  
19 of the home were you in?

20 A It was kind of like a hallway type that led straight  
21 down the, into the house. You had the kitchen on the left,  
22 living room on the right.

23 Q Okay. All right. And, you know, you said you were  
24 like ten feet on the outside of that door when you first  
25 noticed the smell of gasoline?

Phil Easter - Cross-examination  
By Mrs. Hodges

1 A Approximately.

2 Q Okay. The reason why a K-9 dog is used -- do you know  
3 what, what breed of dog Ranger is?

4 A Pardon?

5 Q Do you know what breed of dog Ranger is?

6 A You'll have to refer the question to Captain Means in  
7 reference to his dog. I believe he's a lab. But I'm not  
8 sure.

9 Q Okay. Well -- and that's, that's fine. If you don't  
10 know, you don't know. That's, that's, that's fair.

11 But I assume the reason why you-all used a dog in arson  
12 investigation is because the, the dog senses are much more  
13 acute than ours?

14 A Uh-huh. (Affirmative).

15 Q He can smell stuff that we can't, right?

16 A That would be my understanding.

17 Q Okay. How long, how long did you work on the arson  
18 team?

19 A I've been around the arson team -- I was assigned to  
20 that division for three years.

21 Q Okay. Okay. And do you have an estimate as to how  
22 many scenes you actually investigated using a K-9?

23 A In the three years I would say five or six scenes.

24 But---

25 Q Okay. Okay. When you got into the kitchen, do you

Phil Easler - Cross-examination  
By Mrs. Hodges

1 remember looking at this stove and, and, and whether the  
2 door was opened on the, on the, on the oven or not?

3 A I don't recall that because officers had, that  
4 initially went to the scene had rendered the scene safe.  
5 So, I don't--

6 Q Okay.

7 A ---recall seeing that.

8 Q Okay. And do you know, I mean of your own personal  
9 knowledge, do you know how long that scene had basically  
10 been active as a crime scene in terms of investigation  
11 before you got on scene?

12 A No, I do not.

13 Q Okay. The shoes that, that the, or the, the one -- the  
14 dog only alerted on one shoe, right?

15 A That's correct.

16 Q Okay. The shoes that that person had, had been wearing  
17 had been exposed to gasoline from some other source, other  
18 than inside the house, the, do you know whether the dog  
19 would of been able to discriminate between the gasoline in  
20 the house versus some other gasoline or other petroleum  
21 product?

22 A I do not know the answer to that.

23 Q Okay. So, you can't tell us whether definitely, you  
24 know, the dog was alerting on this gasoline or something  
25 else, is that right?

Phil Easler - Cross-examination  
By Mrs. Hodges

1 A No, I can not.

2 Q Okay. Thank you, sir.

3 THE COURT: Redirect?

4 SOLICITOR CRICK: Nothing from the State, Your Honor.

5 THE COURT: Any objection to this witness being  
6 excused?

7 MRS. HODGES: No, sir. Thank you.

8 THE COURT: Sir, you may step down. You're free to go.  
9 Thank you very much.

10 Before we bring in the next witness, anybody in the  
11 jury box like water or anything of that nature?

12 (Jurors raise hands.)

13 THE COURT: You help them, Mr. Humphries.

14 BAILIFF: Yes, sir.

15 THE COURT: You may call your next witness.

16 SOLICITOR CRICK: Thank you, Your Honor.

17 The State calls Captain Roger Means.

18 THE COURT: Sir, come forward to my right to be sworn.

19 ROGER MEANS, being first duly sworn,  
20 testified as follows:

21 THE COURT: Sir, once you're seated, move toward the  
22 microphone and state your name for the record please.

23 WITNESS: Rogers Means.

24 THE COURT: Your witness, Mrs. Crick.

25 SOLICITOR CRICK: Thank you, Your Honor.

Roger Means - Direct examination  
By Solicitor Crick

1 DIRECT EXAMINATION

2 BY SOLICITOR CRICK:

3 Q Captain Means, can you tell the jury where you work?

4 A North Spartanburg Fire Department.

5 Q How long have you been with North Spartanburg Fire  
6 Department?

7 A Twenty-two years.

8 Q What is your official role or duty there?

9 A I am the captain on B shift and one of my main  
10 assignments is fire cause and origin.

11 Q When you get fire calls, what is your job?  
12 What do you do?

13 A To determine the cause to see if it's criminal or not.

14 Q Are you a member of any kind of arson team?

15 A Yes, I am a team leader with the Spartanburg County  
16 Fire Investigation Team also.

17 Q Could you give the jury an idea of what kind of  
18 training you've had to be able to do that?

19 A I started training for fire investigation in 1992, and  
20 throughout the years have taken several courses and we also  
21 train monthly.

22 Q Okay. So, you continue your training on a yearly basis  
23 or a monthly basis?

24 A Yes.

25 Q Do you ever use a dog or a K-9 to assist you in your

Roger Means - Direct examination  
By Solicitor Crick

1 investigations?

2 A Yes.

3 Q Were you using a K-9 in 2007?

4 A Yes.

5 Q What was the name of that dog?

6 A Ranger.

7 Q How long had Ranger been with you?

8 A I had Ranger since he was a pup, and he had been in  
9 service since 2000.

10 Q So, about seven years?

11 A Yes.

12 Q What kind of special training did Ranger have to have?

13 A Ranger was trained to be an accelerated K-9 in which you  
14 probably seen drug K-9's work, they worked except that --  
15 the same principle except that that accelerant dogs are used  
16 on accelerants.

17 Q Did he have to receive any special testing, continuing  
18 testing?

19 A Yes, he was certified by an individual and, that used  
20 the ATF certification method.

21 Q Did he have to continue being tested on a yearly basis  
22 or something like that?

23 A Yes.

24 Q And as far as you know, did he pass all of his testing?

25 A Yes.

Roger Means - Direct examination  
By Solicitor Crick

1 Q In your experience with Ranger, did you find him to be  
2 accurate in detecting accelerants?

3 A Yes.

4 Q when I say detecting accelerants, I mean can, is he  
5 able to tell you what kind of accelerant it is?

6 A No, the K-9 only alerts to hydrocarbons, which are  
7 found in the accelerants. He doesn't know the difference  
8 between accelerants.

9 Q So, you would pass that evidence on for a chemist or  
10 someone else to make that determination?

11 A Yes.

12 Q I'm gonna go back to May 11<sup>th</sup> of 2007.

13 Did you get called to assist in an arson investigation  
14 at [REDACTED] Montgomery Street?

15 A Yes.

16 Q Was Ranger working with you that day?

17 A Yes.

18 Q Were there other people working with you that day?

19 A Yes.

20 Q Do you recall who they were?

21 A Detectives and investigators from the Spartanburg  
22 County Sheriff's Office.

23 Q And what was your purpose in being there that day?  
24 why were you called out?

25 A To handle the K-9 to bring the K-9 to assist them.

Roger Means - Direct examination  
By Solicitor Crick

1 Q Was there some question about whether it was an arson  
2 scene?

3 A Yes.

4 Q What did you do first when you got out to ■ Montgomery  
5 Street?

6 A When we arrived, we met with the detectives that were  
7 already there and from that point we, we started to do a,  
8 what we usually do on every scene, is to do a walk around,  
9 and we have to deem the scene safe for myself and the K-9.

10 Q So, when you're doing that initial walk around, did the  
11 K-9 walk with you?

12 A No.

13 Q Once you got into the house, what did you see and what  
14 did you find out?

15 A When we did go inside, we observed, even from the  
16 outside, a large amount, smell of what appeared to be  
17 gasoline. When we walked inside, we seen what appeared to  
18 be pour patterns of a liquid substance on the floor.

19 Q What do you, what do you mean when you say pour  
20 patterns?

21 A A -- just like when you spill water on the floor, it  
22 makes a pattern. That's what a pour pattern would look like  
23 that was unburned.

24 Q What did you do after you did that walk through in the  
25 house?

Roger Means - Direct examination  
By Solicitor Crick

1 A We -- once we walked through, we determined the scene  
2 safe and we decided what, where we were gonna enter and work  
3 the K-9.

4 Q Do you remember where you went in first?

5 A Yes, we went in I believe through the living room.

6 Q What happened when you, when you got into that living  
7 room?

8 A When we started to enter, once the K-9 acclimated  
9 itself to the area, he started to alert in the areas on the  
10 floor.

11 Q Did he alert on any areas in the living room?

12 A Yes.

13 Q Do you recall what they were?

14 A I believe they were on the floor and on some furniture.

15 Q Let me show you what's already in evidence. It is  
16 State's No. 278, and if you can look up on that screen.

17 THE COURT: Mr. Bailiff, if you'll lower the lights for  
18 me, sir.

19 (Bailiff complies.)

20 THE COURT: Thank you.

21 Q Is that the living room area you were talking about?

22 A Yes.

23 Q And what do those cones represent?

24 A The cones are areas where the K-9 stopped and alerted.

25 Q And when you say alerted, what does he do exactly?

Roger Means - Direct examination  
By Solicitor Crick

1 A He is trained to the passive method of alerting, which  
2 means he sits and when he sits, he points with his nose and,  
3 at that point, I feed him.

4 Q Okay. Good job.

5 So, he alerted on several places in that living room?

6 A Yes.

7 Q I'm also gonna show you State's 280, which I think is a  
8 view into the bedroom.

9 Is this indicating other places Ranger indicated or  
10 alerted?

11 A Yes.

12 Q Now, you -- did you let the dog actually go into the  
13 bedroom?

14 A No, we stopped where that doorway ends right there at  
15 that last cone for purposes of evidence of what we saw in  
16 the room that we could have obstructed and from the, some of  
17 the evidence that was in the room the dog did not need to be  
18 in.

19 Q So, he didn't actually go into the room?

20 A No.

21 Q I'm gonna ask you specifically about some things that  
22 we saw in the picture, but also I guess this is another  
23 angle into that living room.

24 Do you collect the sample from every inch of that floor  
25 where you, where Ranger might have alerted?

Roger Means - Direct examination  
By Solicitor Crick

1 A No, the -- what we'll do is take a sample like where he  
2 alerted from one area and because if, if it's a liquid, it's  
3 gonna spread out. So, it's all gonna be there and what we  
4 try to do is take another sample from another area as a  
5 control to show different.

6 Q I got you.

7 So, I'm gonna show you State's 279.

8 When you talked about a pour pattern, is that what's  
9 indicated by the cones in this picture?

10 A Yes, what you do is you, from the training that we  
11 receive, if you'll follow the cones, it's, you can basically  
12 tell where, not maybe in these, not maybe in these photos,  
13 but you can see the pattern that was, the liquid was poured  
14 in.

15 Q And you collect some samples from that general pour  
16 pattern area?

17 A Yes.

18 Q At some point did you exit the home and see some shoes?

19 A Yes.

20 Q Can you tell us what happened with the shoes?

21 A The shoes were brought back to the scene to the  
22 detective I was working with at the scene.

23 Q Uh-huh. (Affirmative).

24 A They were packaged in lined cans and we were asked to  
25 let the K-9 run over these to see if he alerted.

Roger Means - Direct examination  
By Solicitor Crick

1 Q And did Ranger alert on the shoes?

2 A Yes, on one shoe.

3 Q On just one shoe?

4 A Yes.

5 Q Let me ask you this.

6 After you or Deputy Easler collected all of the  
7 samples, do you do something with them before you send them  
8 to Ashley Harris at the Sheriff's office?

9 A Yes, all samples that are collected inside a scene  
10 area, that sample is taken away from that scene to another  
11 area, and it is checked again by the K-9 to make sure that  
12 we did our job in collecting the sample.

13 Q So, you kind of do a double-check by taking it out of  
14 the scene?

15 And in this case---

16 A Yes.

17 Q ---of all the samples you collected, did Ranger alert  
18 again on all of those outside of the scene?

19 A Yes.

20 Q After you finished with Ranger and finished up with the  
21 shoes, did you have any further involvement in this case?

22 A No, at that time the samples were sealed by the  
23 detectives and then passed on through to the chain of  
24 custody.

25 Q Do you indicate on the samples, so that Ashley Harris

Roger Means - Direct examination  
By Solicitor Crick

1 knows, do you put anything on the cans yourself?

2 A Yes, there's a sticker on the cans usually that says  
3 K-9 alert.

4 Q And that let's him know to test those items?

5 A Yes.

6 SOLICITOR CRICK: Okay. Your Honor, have no further  
7 questions at this time.

8 THE COURT: Mrs. Hodges, your witness.

9 MRS. HODGES: Thank you, Your Honor.

10 May it please the Court?

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MRS. HODGES:

14 Q Captain Means, Ranger, is Ranger still in service?

15 A No, actually I had to have him put down the first of  
16 June.

17 Q I'm sorry.

18 How often did you and Ranger train on, on his detection  
19 skills?

20 A Everyday.

21 Q Everyday?

22 A Uh-huh. (Affirmative).

23 Q And when you said that he's accurate, did you ever kind  
24 of measure how accurate he was in terms of percentages and  
25 kind of go back and compare what samples you collected to

Roger Means - Cross-examination  
By Mrs. Hodges

1 what actually got tested?

2 A Yes, we actually get a sheet back from the chemist  
3 whenever, whether it be SLED or Spartanburg County or  
4 whoever does his samples, we get a sheet back that tells us  
5 whether they're positive or negative samples.

6 Q Okay. And did you ever keep records of, of, kind of  
7 his track record for lack of a better word?

8 A Yes.

9 Q Okay. And what, what was his track record?

10 A He was in probably the 94, 95 percent, percentile.

11 Q Okay. The pour pattern that you talked about, you  
12 also -- you made a comment about the ones that were  
13 unburned.

14 You actually did not see any sort of, of any signs of  
15 actual burning in, in the home, is that right?

16 A No.

17 Q Okay. And did the, the -- in Ranger's training, you  
18 had indicated he's passive alert. So, basically sits and  
19 you said he points with his nose.

20 A Yes.

21 Q I mean would he just kind of stick his nose down and  
22 kind of -- okay.

23 A (Witness nods affirmatively.)

24 Q Okay. What kind of dog is Ranger?

25 A A black Labrador.

Roger Means - Cross-examination  
By Mrs. Hodges

1 Q Okay. And he -- and the reason why you use K-9's is  
2 because their senses of smell are, are just that, that much  
3 more acute than, than human beings?

4 A Yes.

5 Q Okay. Is it possible that if somebody had, for  
6 example, stepped in some gasoline at a gas station or  
7 somewhere else, and then, you know, stepped in an area, you  
8 know, separate from that, from that, that, you know,  
9 spillage, would the dog be able to determine, you know, that  
10 there was an indication of gas in that, in that second spot?

11 Say, for example, I stepped in a puddle of gasoline  
12 with my left foot, I came over here and stepped over here,  
13 would the dog be able to alert in the second spot where I,  
14 where my, my foot was?

15 A Yes.

16 Q Okay. So, there's no really an, an -- and there's no  
17 ability really for dogs to determine between, you know, one  
18 set of gasoline versus another set of gasoline?

19 A No.

20 Q Okay.

21 A It's just a hydrocarbon.

22 Q It's, it's just a hydrocarbon smell, and, in fact,  
23 we're not even -- the dogs, they can't even tell if it's  
24 gasoline?

25 It could be some other sort of oil product, petroleum

Roger Means - Cross-examination  
By Mrs. Hodges

1 product?

2 It's basically when the, when the molecules are sort of  
3 just evaporating, that's what he's alerting to is the smells  
4 from the molecules evaporating, right?

5 A When he alerts to the accelerants in the chemistry  
6 determines whether it's a heavy, medium, or light petroleum  
7 product.

8 Q So, all the, all the dog can tell us is that they're  
9 hydrocarbons present?

10 A Yes.

11 Q Okay. It's entirely possible that the shoes or the  
12 shoe rather that, that Ranger alerted on, it's entirely  
13 possible that, that whatever gasoline or hydrocarbon was  
14 that shoe potentially came from, could come from anywhere?

15 A It could have.

16 Q Don't have any, any knowledge, you know, just based on  
17 a dog alerting on the shoe that it came from inside that  
18 particular scene that you-all were investigating?

19 A No.

20 Q Okay. The samples that you take from the house that  
21 you then have the, the K-9 recheck away from the house, away  
22 from the scene, does that include the swabs or we just  
23 talking like the, you know, what, what was actually put into  
24 the cans?

25 A In this case, we did some of the -- we didn't do some

Roger Means - Cross-examination  
By Mrs. Hodges

1 of the swabs because they were taken from areas where the  
2 K-9 did not alert.

3 Q Okay. So, so, the swabs that were taken from areas  
4 where the K-9 did not alert, did you have a K-9 check those  
5 swabs?

6 A No.

7 Q Okay. When you take your, the, the, the dog into the  
8 home, does he wear any sort of protective, you know,  
9 footings or anything on his, on his paws?

10 A We tried it. It didn't work.

11 Q Didn't work.

12 A No.

13 Q Mostly because dogs don't like wearing footies.

14 When you go into a home investigating a scene, I know  
15 that we've heard some testimony already that basically every  
16 time you take a sample you change your gloves to prevent  
17 cross-contamination.

18 Do you-all wear any sort of, of protective covering  
19 over your shoes or your boots?

20 A No.

21 Q Okay. How long were you-all actually on this scene  
22 processing?

23 A I think from probably around maybe, whatever time,  
24 10:00 till probably 6:00. I'm not sure.

25 Q Okay. But several hours?

Roger Means - Cross-examination  
By Mrs. Hodges

- 1 A Yes.
- 2 Q Do you, when you got there, do you remember whether the  
3 doors and windows were opened in the home?
- 4 A Open.
- 5 Q They were.
- 6 Okay. So, basically they are, the other investigators  
7 arrived before you already kind of started, started airing  
8 out?
- 9 A Uh-huh. (Affirmative).
- 10 Q In your experience, would that have any effect on areas  
11 where a dog might be able to pick up detecting hydrocarbons?
- 12 A The dog's gonna alert to the strongest area.
- 13 Q Okay. All right. So, so, their senses are enough to,  
14 to, to discriminate between stronger areas versus not so  
15 strong?
- 16 A Yes.
- 17 Q All right. But you were able to detect the smell of  
18 gasoline from how far outside the home would you say?
- 19 A When we were doing our walk around.
- 20 Q Okay. And how far is that?
- 21 I mean---
- 22 A I mean just right outside the house.
- 23 Q Just outside the house?
- 24 A Yeah.
- 25 Q Like within two feet, five feet?

Roger Means - Cross-examination  
By Mrs. Hodges

1 A Yeah, probably.

2 Q Okay. Bear with me just a minute, Captain Means.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 Q The areas that we've talked, there's no, no gasoline  
6 pour pattern or any pour pattern of any liquid you saw in  
7 the kitchen, is that right?

8 A I don't believe. I'm not sure.

9 Q Okay. Do you remember taking any samples from the  
10 floor, the K-9 alerting to any, any areas in the floor in  
11 the kitchen?

12 A We have a -- I have a record of where the samples were  
13 taken from.

14 Q Okay. I mean if you want to refer to your notes.

15 A No, we didn't take any from the K-9.

16 Q Okay. And, and you don't remember taking the -- are  
17 there any, there any swabs that were done on the, the  
18 control panels of the stove?

19 A Those were done, but not by the K-9.

20 Q Okay. But you-all did take some swabs from the stove?

21 A Uh-huh. (Affirmative).

22 Q Had you been told that the stove had been, had been on?

23 A Yes.

24 Q Okay. And was that the purpose of you taking the swabs  
25 from the stove?

Roger Means - Cross-examination  
By Mrs. Hodges

1 A Yes.

2 Q All right. The oven door, was it open or closed when,  
3 when you got to the scene or do you remember?

4 A Not sure.

5 Q Not sure.

6 Okay. The gas, the, the -- do you remember, from the  
7 scene or from the pictures, the, the fireplace in, in this  
8 home, in the living room?

9 A Yes.

10 Q Was -- this was a gas fireplace?

11 A I believe.

12 Q Okay. And that fireplace was not on, is that correct?

13 A No.

14 Q Okay. Thank you, sir.

15 THE COURT: Redirect?

16 SOLICITOR CRICK: No, sir.

17 THE COURT: Any objection to this witness being  
18 excused?

19 MRS. HODGES: Oh, no, sir.

20 THE COURT: You may step down, sir, and you're free to  
21 go. Thank you very much.

22 Ladies and gentlemen of the jury, we're gonna take a, a  
23 brief break at this time. I'll allow you to stretch your  
24 legs and refresh yourselves.

25 As I instruct you every time leaving the courtroom,

1 don't begin any discussions concerning this case until such  
2 time as I ask you to begin your deliberations.

3 I'll ask that everyone remain seated while the jury  
4 retires.

5 (Whereupon, the following takes place outside the  
6 presence of the jury.)

7 THE COURT: Court will be in recess for about ten  
8 minutes.

9 Everyone remain seated while the defendant is removed  
10 from the courtroom?

11 Do you wish to approach?

12 SOLICITOR GOWDY: Yes, sir, Your Honor.

13 THE COURT: Step forward please.

14 SOLICITOR GOWDY: Thank you, Your Honor.

15 (Whereupon, a bench conference was held at this time  
16 followed by a short recess being taken.)

17 THE COURT: All right. Mr. solicitor, you had  
18 indicated that there was a series of photographs that you  
19 wanted to go over with the defense.

20 Have you had an opportunity to do that?

21 SOLICITOR GOWDY: Yes, sir, Your Honor, we have, and  
22 the defense marked or made note of the pictures that they  
23 had objections to. If the Court would like us to pass them  
24 up.

25 THE COURT: Yes, sir, if you don't mind.

1 SOLICITOR GOWDY: Yes, sir.

2 (Pause.)

3 THE COURT: Mr. Allen.

4 MR. ALLEN: Your Honor, if it please the Court?

5 THE COURT: Yes, sir.

6 MR. ALLEN: And specifically, for the record, we're  
7 objecting to State's Exhibits 315, 326, and 182 through 187  
8 and 189 through 192, and I believe those should be  
9 photographs that the Court has.

10 THE COURT: Yes, sir, they are.

11 MR. ALLEN: Okay. Specifically we believe that, under  
12 403, Rules of Evidence, that it is unfairly and unduly  
13 prejudicial that there, that their probative value is  
14 substantially outweighed by the danger of unfair prejudice.  
15 We believe that these photographs -- there's been a lot of  
16 testimony concerning the placement of the bodies of, of both  
17 these victims, and we don't believe these photographs are  
18 relevant for any particular point being tried in this  
19 particular case.

20 Furthermore, we believe that the shock value of these  
21 photographs, I mean is, is designed -- even though -- I mean  
22 though the shock value of these photographs is designed to  
23 inflame the passions of the jury and we believe that our  
24 client would be unduly and unfairly prejudiced by them.  
25 Specifically at this phase of the, of the trial.

1           There's already been testimony as to the cause of  
2 death, which wasn't questioned. There's been some  
3 photographs of x-rays presented without objection of the  
4 defense, and we just believe that the, the actual  
5 photographs of placement of, of these bodies at this time is  
6 not relevant for any issue that's to be tried at this time,  
7 and it should be excluded pursuant to Rule 453.

8           THE COURT: Be happy to hear from the State.

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

10          I, I made special note of, of my distinguished  
11 counsel's use of the phrase this phase twice. This is the  
12 only phase that we are in and there is no guarantee that  
13 there will be another phase. And yesterday morning I  
14 listened to a chorus of not guiltyies from the defense  
15 counsel in their opening statement. Not guilty on each and  
16 every indictment, which means every element of all seven  
17 offenses the State has to prove beyond a reasonable doubt.

18          In particular, with murder, we have to prove malice.  
19 With criminal sexual conduct, I listened to defense counsel  
20 ask David Wren was there any evidence of trauma. In fact,  
21 the Court may remember Doctor Wren said I've answered that  
22 twice, and defense counsel said well, answer it a third  
23 time. No evidence of trauma. We have to prove that it was  
24 non-consensual.

25          Defense counsel has also made known that you can't date

1 forensic science. Fingerprints, DNA, and other forensic  
2 science, there is DNA found in Ann Emery. We have to prove  
3 that not only that the DNA belongs to this defendant, but  
4 that it was non consensual sex. With, with attempt to burn,  
5 which we've heard a lot about this morning, there's no  
6 gasoline in the kitchen. It could of been the gas  
7 fireplace. He could of stepped in a puddle of gas at Mack's  
8 in Pauline and tracked that into the house. But the truth,  
9 Your Honor, is that the nozzle of the gas can is laying  
10 six inches from the exposed genitalia of this, of what, of  
11 the female victim.

12 So, to talk about this phase, we have to prove every  
13 one of those elements in this phase. They're no pictures of  
14 their faces. The face, he's not turned over in the bed.  
15 You can't see what the hammer did to her face.

16 Your Honor, two weeks ago or less than two weeks ago,  
17 our Appellate Courts decided State versus Martucci. And as  
18 this Court knows, Your Honor has broad discretion with  
19 respect to photographs. In Martucci, they were autopsy  
20 photos showing internal organs. It was a noncapital case.  
21 There was a homicide by child abuse. Autopsy photos of  
22 internal organs and the photos were allowed because they  
23 were relevant to show something other than just passion and  
24 inflame the jury. And I would respectfully submit to the  
25 Court that there are reasons related to, to the seven

1 indictments for each of those photographs.

2 THE COURT: We'll get into that in just a minute.

3 But anything you want to follow-up on that argument?

4 MR. ALLEN: Your Honor, simply the -- my client's  
5 entitled to a Constitutional right to a trial and the  
6 exercise, and the, and the right to, to plead not guilty and  
7 put the State to its, its proof that, that's not, in and of  
8 itself, require the admission of---

9 THE COURT: Oh, I understand that. But, again, I think  
10 the solicitor's correctly stated the, the Martucci case in  
11 that the, if the evidence does show something that's in  
12 controversy, if it has some relevance to those issues, then  
13 the Court should weigh that factor in deciding whether to  
14 admit them.

15 would you agree or disagree with the reading of that  
16 case?

17 MR. ALLEN: I don't disagree with that reading and the  
18 Court should weigh that factor along with other factors,  
19 yes, sir.

20 THE COURT: And so, it's a -- when you quote Rule 403,  
21 it is a balancing test that the Court is suppose to go  
22 through to determine the probative value as opposed to the  
23 prejudicial effect.

24 MR. ALLEN: That's true.

25 THE COURT: That's where we are.

1 MR. ALLEN: That's, that's true.

2 THE COURT: All right. As to the photographs in  
3 question, I don't know that -- I suppose we're gonna have to  
4 go through them one at a time to determine the probative  
5 value unless there is a group that you think that, that --  
6 is there some way we can group these?

7 I'm not sure exactly what you're trying to prove for  
8 each one. So, it's hard for me to be able to analyze it in  
9 that respect. So, I'm gonna pass them back to you.

10 SOLICITOR GOWDY: Yes, sir.

11 THE COURT: And ask if you can go through those and  
12 tell me what, what is the probative purpose of the  
13 photographs that you presented.

14 SOLICITOR GOWDY: Yes, sir.

15 (Pause.)

16 SOLICITOR GOWDY: Your Honor, I -- may it please the  
17 Court.

18 I have grouped -- well, let me first say, Your Honor,  
19 that I have withdrawn 315, 191, 186, 185, 183 not because I  
20 don't think they're relevant. But because I think they are  
21 duplicative of other photographs.

22 THE COURT: It appeared to me several of them basically  
23 showed the same thing. Just a little different angle or  
24 something. But I just wanted to be sure you can review  
25 them.

1 Can you show the ones that you've withdrawn to the  
2 defense---

3 SOLICITOR GOWDY: Yes, sir.

4 THE COURT: ---so we're all talking about the same  
5 thing?

6 SOLICITOR GOWDY: Sure.

7 Those are withdrawn.

8 Your Honor, in terms of grouping them, I think I can  
9 group them in categories. 182, 187, 192, 190, and 189 I  
10 would group under those are pictures of Mr. Ray Emery, and I  
11 would group under the category of malice or with specific  
12 reference to the murder charge.

13 326 is a picture of Mrs. Emery as she was found, but it  
14 is a fairly closely cropped picture. It does show the  
15 exposed genitalia and it shows the plastic gas can, which  
16 would go to not only murder, but also CSC in the first  
17 degree and attempt to burn.

18 MR. ALLEN: Your Honor, with respect to 326---

19 THE COURT: You want to pass that up so I can see what  
20 we're talking about?

21 MR. ALLEN: This is another photograph of in those same  
22 ones.

23 THE COURT: Just, just pass it up and then go back and  
24 make your argument so we can get it on the record. Pass it  
25 up. I need to see it, Mr. Allen.

1 MR. ALLEN: I'm sorry.

2 THE COURT: There we go. Thank you, sir. All right.

3 MR. ALLEN: Okay.

4 THE COURT: Now, sir, I'll be glad to hear you on 326.

5 MR. ALLEN: There is another photograph along the same  
6 lines that we're not objecting to that the State proposes to  
7 offer. I believe it's maybe 325 or thereabouts if the  
8 State---

9 THE COURT: Can I see that one, that one that's in the  
10 unobjected group?

11 MR. ALLEN: Okay. And may not be that. It's one  
12 showing the gas nozzle and it is---

13 THE COURT: All right. Let me get it and then we'll  
14 take argument so I, I can see what we're talking about.

15 MR. ALLEN: I stand corrected. It is State's Exhibit  
16 329.

17 THE COURT: Thank you.

18 MR. ALLEN: Okay. Your Honor, this photograph we do  
19 not object to. It does show the proximity of the gas nozzle  
20 to Mrs. Emery's body or that which would be testified as to  
21 Mrs. Emery's body and that photograph appears to me would  
22 suffice to assist the solicitor in proving those elements  
23 that he's trying to prove in photograph 326 without---

24 THE COURT: Now, the solicitor indicated that 326 also  
25 would not only go toward the intent to burn question, but

1 also as to the CSC.

2 MR. ALLEN: Yes, Your Honor.

3 THE COURT: Be happy to hear from you in that regard.

4 MR. ALLEN: It would appear to me, Your Honor, that  
5 showing the proximity of that nozzle to her body with  
6 accompanying testimony, that's exactly where it was found,  
7 there would not be any need to display 326 to the jury.

8 THE COURT: All right. Now let's talk about the  
9 others.

10 MR. ALLEN: Okay. With respect to the others, which  
11 I'm passing up to the Court --

12 THE COURT: Yes, sir. Thank you.

13 MR. ALLEN: -- there are additional photographs in this  
14 section, in these sections or in, in this section of  
15 defense, State wishes to offer which are not as, quite  
16 frankly, bloody as these, which also we're not objecting to  
17 which would show the placement of the bodies that they're  
18 trying to show in this category. There's been a lot of  
19 testimony concerning the number of hammer blows from the,  
20 from the pathologist, and there's other testimony, and other  
21 testimony from which the State can certainly argue the  
22 aspects that they're trying to argue specifically concerning  
23 the malice.

24 I think these photographs are too shocking to show the  
25 jury. There are other photographs in the State's possession

1 that we have not objected to that would also show some  
2 aspects of Mr. Emery's body and placement on the bed. And  
3 for that reason, these photographs would also be  
4 unnecessarily, I believe, duplicative especially considering  
5 their shock value with the presence of all the blood. And I  
6 would ask the Court to exclude for those reasons.

7 THE COURT: I, I have not seen the unobjected to  
8 photographs again. So, I'm not sure what I'm comparing them  
9 to as far as the cumulative effect. So, if you'll look at,  
10 look at those, Mr. Allen, and tell me which photographs that  
11 you've not objected to that you think would be cumulative.

12 (Pause.)

13 MR. ALLEN: Your Honor, I'm passing up to the Court  
14 State's Exhibits 307, 308, and 309, 317, 319, 320, 321, and  
15 322.

16 THE COURT: Thank you, sir.

17 MR. ALLEN: These are photographs, Your Honor, that we  
18 have not objected to, and we do not believe -- I mean these  
19 also show the placement of the bodies. There's also some  
20 photographs in that group that show certain marks on  
21 specifically Mr. Emery's back and his arm that are, that we  
22 do, are not, again, that we're not objecting to and I  
23 believe that simply placing the, the objected to photographs  
24 in are unnecessarily duplicative and that the photographs  
25 that we've not objected to that the Court's reviewing would

1 be sufficient to, for, for the State to rely upon and to  
2 prove those elements and identified to the Court.

3 Again, with all the other evidence that they already  
4 presented and that these additional photographs can not add  
5 to, the objected to photographs do not add anything to those  
6 elements that they're using the photographs for. Doesn't  
7 really add anything to it other than what I believe to be  
8 shock value. And again, I urge the Court to not admit  
9 State's Exhibits 182, 187, 189, 190, and 192.

10 THE COURT: All right. Mr. Solicitor, I'll hear from  
11 you on that.

12 SOLICITOR GOWDY: Your Honor, may it please the Court.

13 The State's position is that this defendant attacked a  
14 sleeping man who is hooked up to a sleep apnea machine. But  
15 that goes directly to malice. That he was attacked first.  
16 He was attacked from behind. He could not defend himself.  
17 That his wife was attacked subsequently, and that she made  
18 it into the floor where she was beaten to death and raped.

19 I don't want to be duplicative. I don't want to have  
20 five pictures of the same thing and I trust the Court's  
21 discretion to rule them in and out. I just -- I would just  
22 reemphasize what I know the Court already knows.

23 Notwithstanding what Mr. Allen just said about  
24 exercising his Constitutional right, they stood in front of  
25 this jury and said he's not guilty of each and every crime,

1 and, therefore, we have to prove every element of it. And,  
2 and I -- the fact that two pictures are of the same thing I  
3 don't think necessarily means that they're, that either are  
4 inadmissible. But having said that, we will abide by the  
5 Court's discretion.

6 THE COURT: All right. Give me a moment.

7 (Pause.)

8 THE COURT: No. 321, can you tell me what that is  
9 intended to show, Mr. Solicitor, as opposed to the other  
10 photographs?

11 SOLICITOR GOWDY: No, sir, Your Honor. I can not, in  
12 good faith, tell you that there are not other pictures that  
13 don't depict the position of the body and the existence of  
14 the sleep apnea machine.

15 THE COURT: Okay.

16 (Pause.)

17 THE COURT: All right. I'd ask that the solicitor and  
18 Mr. Allen to approach briefly.

19 (Whereupon, a bench conference was held at this time.)

20 THE COURT: All right. All right. As, as to Exhibits  
21 326 and 329, I will exclude 329. Allow 326 based on the  
22 State's argument that the issue of CSC is still in the case,  
23 and -- but I will exclude No. 329.

24 From the other photographs, I will be excluding 187,  
25 321, 182, and 189 as duplicitous, so cumulative, and

1 prejudicial. Primarily though as being cumulative. I will  
2 allow the other photographs in.

3 SOLICITOR GOWDY: Yes, sir.

4 THE COURT: These are the excluded ones. These are the  
5 ones that are allowed.

6 SOLICITOR GOWDY: Would the court allow me to step  
7 forward and retrieve---

8 THE COURT: Yes, sir, please. These are excluded.

9 SOLICITOR GOWDY: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 Anything else concerning the evidence of the next  
12 witnesses before we begin?

13 SOLICITOR GOWDY: Not from the State, Your Honor.

14 THE COURT: Defense?

15 MR. ALLEN: No, Your Honor.

16 THE COURT: Okay. Let's bring the jury back.

17 (Whereupon, the following takes place within the  
18 presence of the jury.)

19 THE COURT: All right. Let the record reflect that the  
20 jury has returned to the courtroom.

21 Ladies and gentlemen of the jury, I don't normally take  
22 breaks quite that long. But I want to let you know we were  
23 going over some matters of evidence that have to do with the  
24 next couple of witnesses that will be testifying. We've  
25 been able to get rulings on certain issues, and I think, in

Robert Talanges - Direct examination  
By Solicitor Barnette

1 the long run, is gonna save us some time.

2 So, I want to let you know we were doing something  
3 other than just taking a break, and that's the reason for  
4 the long, long delay.

5 At this time, the state may call its next witness.

6 SOLICITOR BARNETTE: I call Investigator Talanges  
7 please.

8 THE COURT: Sir, come forward to my right to be sworn.

9 ROBERT TALANGES, being first duly  
10 sworn, testified as follows:

11 THE COURT: Sir, once you're seated, move toward the  
12 microphone and state your full name for the record please.

13 WITNESS: Robert Charles Talanges.

14 THE COURT: Mr. Barnette, your witness.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Sir, where do you work at?

19 A Spartanburg County Sheriff's office.

20 Q And what's your position there, sir?

21 A I'm a forensics ID technician.

22 Q And what duties does that involve, sir?

23 A We respond to any and all crime scenes that's requested  
24 by either patrol or violent crimes or anyone throughout the  
25 agency.

Robert Talanges - Direct examination  
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1 Q And how long have you been in this position, sir?

2 A Just a little over three years.

3 Q And, and prior to that, did you have law enforcement  
4 experience before that, sir?

5 A Yes, sir, worked for the City of Spartanburg for a  
6 little over 15 years.

7 Q And do you have a similar position with them also?

8 A That's correct. The same position.

9 Q Back on May 11<sup>th</sup>, 2007, did you work that day, sir?

10 A I was just getting off that morning.

11 Q Okay. And was you called to a scene by the Sheriff's  
12 Department at ■ Montgomery Street at Drayton, South  
13 Carolina?

14 A Yes, I was.

15 Q And when you, when you got there, could you tell the  
16 jury what you saw and how you approached the house?

17 A When I arrived, there were multiple investigators  
18 there. I, I -- trying to think. I entered the, the  
19 residence through the back-door or through a, a glass  
20 sliding rear door, which entered the, the area where the  
21 kitchen is to the left. Excuse me. To, to the right, there  
22 was a living room, entering the living room. There's some  
23 evidence in there that we observed, which one being a red  
24 gas can, plastic gas can. And going through the living room  
25 to the left, there was a, the bedroom area, and entering the

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1 bedroom was our major crime scene.

2 Q When you entered the house, did you notice any kind of  
3 smell or anything there, sir?

4 A Yeah, entering there, a real strong smell of petroleum  
5 based product.

6 Q And when y'all went inside, obviously the area was  
7 secure and everything?

8 A Excuse me?

9 Q The area was secure and everything by law enforcement?

10 A Yeah, the whole -- the residence was secured by law  
11 enforcement, that's correct.

12 Q And when you went in, who else went in with you?

13 A I was there and Investigator Dominick Baird.

14 Q And before, at the scene, do you take pictures of, of  
15 the scene?

16 A I did, I did take some pictures at that scene. I did.

17 Q Okay. And before you -- you use placards or markers to  
18 mark pieces of evidence for, for later use?

19 A Yes, placard numbers were used.

20 Q And -- but you take pictures of the area prior to  
21 putting the placards down?

22 A It's photographed -- the incident scene is photographed  
23 on the exterior as well as the interior and after  
24 photographing it, evidence is marked at the scene with the  
25 evidence numbers.

Robert Talanges - Direct examination  
By Solicitor Barnette

1 Q And of course, y'all took pictures outside. I think  
2 the jury has seen a lot of those picture. We won't go back  
3 through them.

4 But a lot of these pictures were taken by you and  
5 Investigator Baird?

6 A That's correct.

7 Q Investigator Baird and everything, y'all obviously  
8 photographed everything before you put the placards down.

9 And after the placards were put down, you'll take  
10 photographs again?

11 A That's, that's correct. We do.

12 Q And was you the main person collecting the evidence  
13 that day at the scene?

14 A Yes, I was.

15 Q I show you what's been marked as -- I can't get this.  
16 Let me show you what's been marked as State's Exhibit  
17 1-A.

18 What is that, sir?

19 A This is the crime scene drawing at, at the location,  
20 Number [REDACTED] Montgomery Street.

21 Q Okay. And was the placards and the numbers that's on  
22 that sheet, does that correspond with the placards that  
23 you-all placed for evidence?

24 A Yes, they do.

25 Q Okay. Let me show you what's been marked as State's