

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

Apr 05 2021

S.C. SUPREME COURT

ANDRES ANTONIO TORRES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000842

APPENDIX

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THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

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Robert Talanges - Direct examination
By Solicitor Barnette

1 Exhibit 305 through 314, and 316 through 320, and 322
2 through 325, and 327 through 328, and then 330 through it's
3 gonna be 377. Sir, if you would, take a look at those
4 pictures and see if they fairly represent what you saw that
5 day, sir, and what was done.

6 A Yes, they do.

7 SOLICITOR BARNETTE: Your Honor, like to enter these
8 exhibits into evidence at this time, the pictures including
9 the diagram 1-A.

10 MRS. HODGES: Your Honor, defense has no objection to
11 diagram 1-A. Subject to any previous objections, we have no
12 additional objections, objection to the other photographs
13 which we've already reviewed.

14 THE COURT: They'll be admitted then as marked.

15 (Whereupon, State's Exhibit Nos. 1-A and 305 through
16 314, 316 through 320, 322 through 325, 327, and 328, and 330
17 through 377 were received into evidence at this time.)

18 SOLICITOR BARNETTE: Your Honor, may I publish these to
19 the jury?

20 THE COURT: You may do so.

21 Q If you would, sir, just come down for a second.

22 A (Witness comes down from the stand.)

23 Q Just showing the jury here, this is a diagram of a
24 house.

25 Is this the bedroom area?

Robert Talanges - Direct examination
By Solicitor Barnette

1 A Yes, it is.

2 Q And does these numbers here where you have pieces of
3 evidence, they correspond to the label that you have over
4 here?

5 A That is correct.

6 Q Let me show you what's been marked as State's Exhibit
7 No. 305.

8 If you would, sir, what was this item here, sir?

9 A That's a claw hammer that was located on top of the
10 television in the bedroom that was covered in blood.

11 Q Okay. And State Exhibit 306, can you tell us what that
12 is, sir?

13 A That's the same hammer on top of the television.

14 Q State Exhibit 307, can you tell us what this is, sir?

15 A That's an overall general view of coming through the
16 bedroom door the, from the living room showing all the
17 evidence that's marked on top of the bed and in the bedroom.

18 Q Was this Mr. Emery here?

19 A Yes, sir.

20 Q Let me show you State Exhibit 308.

21 Is that a picture closer, sir?

22 A Yes, it's a closer view of the same.

23 Q Okay. Then you took pictures of these items
24 individually, is that right?

25 A That is correct.

Robert Talanges - Direct examination
By Solicitor Barnette

1 Q Let me show you what's been marked State's Exhibit 309.
2 What was these items right here, sir?

3 A Those are drawers that were removed and emptied out of
4 the jewelry box that was in the bedroom.

5 Q And what is this number three here, sir?

6 A That is a, a breathing machine for I guess people who
7 have a, sleep apnea.

8 Q Did Mr. Emery have the mask on?

9 A Yes, he did.

10 Q Let me show you what's been marked State Exhibit 310.
11 Is this a close-up picture of the boxes that you was
12 talking about or the drawers that you was talking about
13 earlier?

14 A Those are closer pictures of the, the items removed
15 from the jewelry box.

16 Q And were they emptied?

17 A Yes, sir, they were emptied.

18 Q State Exhibit 311.

19 What is this a picture of, sir?

20 A That is the machine, the breathing machine that you see
21 number three. It's a blood swipe just in the scaled area on
22 the machine.

23 Q Let me show you State Exhibit No. 4.

24 What was that, sir?

25 A It's a clear plastic container number four, and to the

Robert Talanges - Direct examination
By Solicitor Barnette

1 right of it you'll see like a greenish---

2 Q I'll let you use the pointer there.

3 A This area here was the petroleum based liquid product.

4 Q And obviously it had some smell to it?

5 A Yes, it does.

6 Q And I misquoted. That's State Exhibit 312. That's
7 item four shown in there.

8 Showing you State Exhibit 313, what was this, sir?

9 A That's a box top that, that the perpetrator, when he
10 was ransacking the bedroom, had removed that and placed it
11 on the bed.

12 Q And what are these here, sir?

13 A Those are photos that were located in the top, inside
14 the box top.

15 Q Showing you State Exhibit No. 6, I mean State Exhibit
16 314, item six, what is that, sir?

17 A That's an empty container box that was located in the
18 bedroom.

19 Q Showing you State Exhibit 316.

20 What was this a picture of, sir?

21 A It's a blue or black color pair of plants that was
22 located on the bed, on the bed.

23 Q Showing you State Exhibit 317, sir.

24 What is this a picture of, sir?

25 A Evidence number seven, which would, which was the white

Robert Talanges - Direct examination
By Solicitor Barnette

1 shirt that had blood on it.

2 Q Now, this is where Mr. Emery was located?

3 A Yes, sir, he's up towards the left of the photograph.

4 Q Is this where Mrs. Emery was located?

5 A Yes, sir.

6 Q Showing you State Exhibit 318.

7 what is that a picture of, sir?

8 A That's another blanket that's on top of a box top that
9 was actually placed on the bed and on top of the victim.

10 Q Showing you State Exhibit 319.

11 what is this a picture of, sir?

12 A It's a picture of a, a indentation in blood of the claw
13 hammer.

14 Q Was that on Mr. Emery?

15 A That's on his back, yes, sir.

16 Q Showing you State Exhibit 320.

17 Is that a picture of the same general area from a
18 farther view?

19 A Yes, it is.

20 Q And this here, what is that, sir?

21 A That is the breathing machine. That's the, I guess the
22 hose connection and that's the machine that connects to the
23 mask.

24 Q Okay. Showing you State Exhibit 322.

25 what is that a picture of, sir?

Robert Talanges - Direct examination
By Solicitor Barnette

1 A It's a little notebook pad and it had blood on it
2 located in the floor.

3 Q Let me show you State Exhibit 323.

4 What was that, sir?

5 A That's a partial bloody shoe track.

6 Q And State Exhibit 324.

7 A That's another partial bloody shoe track that was on a,
8 this piece of card stock.

9 Q Showing you 325.

10 What was that, sir?

11 A That's the same piece of card stock with the bloody
12 shoe track on it.

13 Q Showing you State Exhibit 327.

14 A That's a close-up of the bloody shoe track that was
15 located in the bedroom floor.

16 Q And State Exhibit 328.

17 What was that, sir?

18 A Those are white -- I believe they're white panties.
19 But they had the partial shoe track in blood.

20 Q Showing you State Exhibit 330.

21 What was that, sir?

22 A Picture of the pajamas that was located in the floor.

23 Q State Exhibit 331.

24 What is that a picture of, sir?

25 A That's an overall or I guess an overall photograph of

Robert Talanges - Direct examination
By Solicitor Barnette

- 1 the bedroom area with the victim laying in the bed.
- 2 Q And State Exhibit 322.
- 3 A That's taken from the right side underneath the, the
- 4 bed where the victim is arm, victim laying in the floor.
- 5 Her arm was underneath the bed.
- 6 Q So, this is Ann Emery you're talking about here?
- 7 A Yes, sir.
- 8 Q State Exhibit 333.
- 9 What is that a picture of, sir?
- 10 A That is cast-off or spatter from being struck with an
- 11 object and that's what the blood spatter on the wall was,
- 12 what it indicates.
- 13 Q Showing you 334.
- 14 A That's more spatter. That's showing direction of the,
- 15 the cast-off.
- 16 Q And was the blood on all the walls in the bedroom?
- 17 A Walls and ceiling.
- 18 Q Show you 335.
- 19 What is that, sir?
- 20 A It's another wall with the blood spatter on it.
- 21 Q And you show the placards being in different areas?
- 22 A Different areas, that's correct.
- 23 Q 336.
- 24 A It's a close-up of it. Close-up.
- 25 Q Showing you 337.

Robert Talanges - Direct examination
By Solicitor Barnette

1 What is that, sir?

2 A That's another wall to, to the left of, left side of
3 the headboard. That's showing more cast-off, blood cast-off
4 on the wall.

5 Q Showing you 338.

6 What is that a picture of, sir?

7 A That's a close-up of the cast-off.

8 Q And showing you 339.

9 What is that a picture of, sir?

10 A More blood cast-off on the wall.

11 Q Is that a different wall or different area?

12 A Different area.

13 Q Showing you 340.

14 A That's a close-up photograph.

15 Q Okay. I'm showing you 341.

16 What is that, sir?

17 A That's gonna be the wall left, on the left side of the,
18 the room if you're facing the headboard, footboard and it's
19 more cast-off.

20 Q Showing you 342.

21 What is that a picture of, sir?

22 A That's gonna be a close-up of the previous picture
23 showing you cast-off.

24 Q Showing you 343, State Exhibit, what is that a picture
25 of, sir?

Robert Talanges - Direct examination
By Solicitor Barnette

- 1 A That's the doorway leading into the hallway towards the
2 bathroom and that's a, a, actually blood drop or blood
3 spatter on the, the door frame.
- 4 Q And 344, what is that a picture of, sir?
- 5 A That's a close-up of it.
- 6 Q Okay. Showing you 345.
7 what is that a picture of, sir?
- 8 A That's blood on the door.
- 9 Q Showing you 346, what is that a picture of, sir?
- 10 A That is blood on, blood on the, the back wall of the
11 bedroom.
- 12 Q And 347.
- 13 A That's a close-up of the blood on the wall.
- 14 Q Okay. 348.
15 what is that a picture of, sir?
- 16 A That's more blood on the wall.
- 17 Q 349, what is that a picture of, sir?
- 18 A That's a close-up of blood that's on the wall.
- 19 Q Okay. 350.
- 20 A That is more blood that was located on the wall.
- 21 Q And the different placards show different locations?
- 22 A That's correct.
- 23 Q Okay. 351, what is that a picture of?
- 24 A That's a close-up of the blood that's on the wall.
- 25 Q Okay. 352, what is that a picture of, sir?

Robert Talanges - Direct examination
By Solicitor Barnette

1 A That's the window in the bedroom. That's the curtain,
2 and it's, also has blood on -- there's blood on the, the
3 curtain.

4 Q 353, what is that a picture of, sir?

5 A That's a close-up of the previous picture showing the
6 blood on the curtain.

7 Q And 354, what is that a picture of, sir?

8 A That's blood that was located on the floor.

9 Q Okay. 355, what is that a picture of, sir?

10 A That's blood in the droplets that were in the carpet in
11 the hallway area.

12 Q 356?

13 A That's a close-up.

14 Q 357?

15 A That is more blood that's located in the floor.

16 Q Okay. This is gonna be 358.

17 What is that picture of, sir?

18 A That's a swipe mark on the -- it's on the door frame to
19 the bedroom. It's here and here.

20 Q And that's 359.

21 A That's a close-up.

22 Q Okay. 360.

23 A That is more of the blood on the wall, and it's a swipe
24 mark, yes, sir. Right there.

25 Q And 361 and 362, are these just close-ups of the same

Robert Talanges - Direct examination
By Solicitor Barnette

1 picture?

2 A Yes, they are.

3 Q Okay. 363.

4 A Showing that there was a unique collectible dollar bill
5 there. I think it's a silver certificate is what they call
6 it. It's a photograph taken of that.

7 Q And this room, was it ransacked or was it, was it gone
8 through?

9 A Yes, it was.

10 Q 364.

11 A That's just a close-up of the previous picture.

12 Q And 365.

13 A This area here is the, I guess the den or computer
14 room, and these are items that were entered at some point
15 and we processed this room.

16 Q Did it appear that these items had been looked through?

17 A Yes, it did.

18 Q And 366.

19 A Close-up of the metal box processed for prints.

20 Q 367.

21 A That's a stack of photographs on top of a box.

22 Q 368.

23 A It's a close-up of the previous photo.

24 Q 369.

25 A It was like a plastic type bag that was on top of the

Robert Talanges - Direct examination
By Solicitor Barnette

1 desk area I guess you would call it.

2 Q 370.

3 A Close-up of the previous photograph.

4 Q 371.

5 A It's a box on top of like a vanity.

6 Q 372.

7 A That is a computer desk or the desk that was in that
8 computer area. It's a calendar area.

9 Q 373.

10 A Close-up of the previous photograph.

11 Q 374, what was this, sir?

12 A This is the red gas can I talked about earlier. When I
13 first walked into the residence, it was lying in the living
14 room floor.

15 Q And what is also on the rug?

16 A Pardon me?

17 Q What else is on the rug that you see in the picture?

18 A I see a glove.

19 Q 375, the nozzle on that gas can, where did they find
20 it?

21 Where was that nozzle to that gas can or nozzle, gas
22 nozzle found?

23 A The nozzle for this plastic gas can was found next to
24 the victim lying in the floor in the bedroom.

25 Q Then 375, what's that a picture of, sir?

Robert Talanges - Direct examination
By Solicitor Barnette

1 A That's a cell phone that was found in the front, front
2 yard of the residence.

3 Q Showing you State Exhibit 370 or 376.

4 What is that a picture of, sir?

5 A This is a -- after picking up or removing lots of items
6 of evidence, we used a chemical called amido black to stay
7 protein blood, and we were stating all the, the shoe tracks
8 that we found in the location.

9 Q And did Investigator Baird come back later and look at
10 those footprints and collect, and collect pieces of the
11 floor?

12 A The shoe tracks were actually cut out of -- the, the
13 boards were actually cut out for physical evidence. We took
14 those.

15 Q Okay. But Investigator Baird was involved with that,
16 is that right?

17 A Yes. Yes, he was.

18 Q And State Exhibit 377.

19 What was that, sir?

20 A This is the hallway. The bedroom would be located, if
21 you're looking at the photograph, to the right. It's the
22 hallway leading towards the kitchen.

23 Q And all these numbers would correspond with the numbers
24 here in that area?

25 A All these numbers -- that is correct. Correspond with

Robert Talanges - Direct examination
By Solicitor Barnette

1 every piece of evidence that was collected on the diagram.

2 Q And the way they were located would be listed on your
3 diagram?

4 A That is correct.

5 Q So, for example, where was the hammer found, number
6 one?

7 A Right in this location right here in the bedroom.

8 Q And where was the breathing machine?

9 A In the evidence number three here.

10 Q And both their bodies, both victim's bodies, Ray and
11 Ann Emery, are located on the diagram?

12 A Yes, Mr. Emery is lying in bed the, on his stomach.
13 Mrs. Emery is on her back here in the floor area.

14 Q Okay. And where was the gas can that you saw or the
15 gas container that you saw, where was it located at?

16 A The gas container would be located in this area right
17 there.

18 Q Okay. And that's marked by 43, which is the black---

19 A That's correct.

20 Q And then where was the nozzle found at?

21 A The nozzle would be this location here right, right by
22 17.

23 Q And so, all the items we described, all the blood
24 spatter and everything would be located by the numbers?

25 A That is correct.

Robert Talanges - Direct examination
By Solicitor Barnette

1 Q And where did you find the cell phone, Number 44?

2 A This area here in front of the residence.

3 Q If you would, sir, just have a seat for the second
4 please.

5 (Witness returns to the stand.)

6 Q And now, did you collect several pieces of this
7 evidence too, sir?

8 A Yes, I did.

9 Q Let me show you what's been marked as I believe State
10 Exhibit 17, sir. If you would, take a look at it and see if
11 you recognize that item.

12 A Evidence Marked 17 is the plastic yellow nozzle, gas
13 can nozzle.

14 Q State Exhibit 43, what was that, sir?
15 Maybe it's 44. Let me make sure.

16 A 43.

17 Q It's 43.

18 A It's gonna be a red gas can.

19 SOLICITOR BARNETTE: Your Honor, I'd like to enter
20 these two exhibits into evidence at this time.

21 THE COURT: Allow the defense to review them please.

22 SOLICITOR BARNETTE: Your Honor, it's gonna be State
23 Exhibit 49 is the gas can. Like to enter State Exhibit 49
24 and State Exhibit 17 into evidence.

25 MRS. HODGES: Without object, Your Honor.

Robert Talanges - Direct examination
By Solicitor Barnette

1 THE COURT: Without objection, they'll be received into
2 evidence as marked.

3 (Whereupon, State's Exhibit Nos. 17 and 49 were
4 received into evidence at this time.)

5 Q Sir, the gas, I call it can, but the gas container
6 found in the house?

7 A Yes, it is.

8 Q And you collected that item?

9 A Yes, I did.

10 Q And then you also collected the gas nozzle?

11 A Yes, the yellow gas nozzle.

12 Q Okay. And where was that located again?

13 A The red can is located in the, in the living room area,
14 and this here was located right next to Mrs. Emery at, at
15 her buttock area in the floor.

16 Q And does this appear to be the same nozzle that came
17 from this gas container?

18 A I believe it is.

19 Q Let you put that back in there.

20 (Witness complies.)

21 Q Sir, did you also collect the hammer?

22 A Yes, I did.

23 Q Let me show you what's been marked as State Exhibit No.
24 3.

25 was that the hammer that you collected from the crime

Robert Talanges - Direct examination
By Solicitor Barnette

1 scene?

2 A Yes, it is.

3 SOLICITOR BARNETTE: Your Honor, I'd like to move this
4 into evidence at this time.

5 THE COURT: Allow the defense to review the item.

6 MRS. HODGES: No objection, Your Honor.

7 THE COURT: Without objection, it will be received into
8 evidence as it's been marked.

9 (Whereupon, State's Exhibit No. 3 was received into
10 evidence at this time.)

11 Q And this was the claw hammer that you found?

12 A That is the claw hammer.

13 Q At the scene, did you also collect Buccal swabs from
14 both victims, Mr. and Mrs. Emery?

15 A Yes, I did.

16 Q Go ahead and open that, sir, and take a look at it and
17 see if those are the two Buccal swabs you collected.

18 A Yes, they are.

19 Q And when you collect Buccal swabs, you collect it --
20 where do you collect those at, sir?

21 A Buccal swabs will be collected from the mouth area.

22 Q Mrs. Emery, was you, was you able to collect a Buccal
23 swab from her?

24 A Yes, I did.

25 Q The injuries to her face or anything didn't affect

Robert Talanges - Direct examination
By Solicitor Barnette

1 that?

2 A Everything was above I guess, I guess the mouth line in
3 this area here is all the injuries were.

4 Q And when you secured those items and was they placed in
5 a secure area at the Sheriff's Department?

6 A Yes, sir, they were.

7 Q And they were sealed by you, sealed in those containers
8 and envelope?

9 A Yes, sir.

10 Q And was it later given to evidence to be taken down to
11 SLED?

12 A Yes, it was.

13 SOLICITOR BARNETTE: Your Honor, at this time I'd like
14 to move State's Exhibits -- let me see. State Exhibit 8 and
15 7 into evidence at this time.

16 MRS. HODGES: No objection, Your Honor.

17 THE COURT: Without objection, they'll be received into
18 evidence as marked.

19 (Whereupon, State's Exhibit Nos. 7 and 8 were received
20 into evidence at this time.)

21 Q Let, let you look -- I believe this is marked as
22 State's Exhibit 47.

23 If you would, sir, take a look and see what that is,
24 sir.

25 A It's the broken cell phone that was located at, at the

Robert Talanges - Direct examination
By Solicitor Barnette

1 location, the same location.

2 SOLICITOR BARNETTE: Your Honor, I'd like to move this
3 into evidence at this time.

4 MRS. HODGES: No objection.

5 THE COURT: Without objection, it will be received as
6 marked.

7 (Whereupon, State's Exhibit No. 47 was received into
8 evidence at this time.)

9 Q Let me ask you, sir, does it appear that the back of
10 the phone is gone?

11 A The phone back is gone.

12 Q Is there a battery in it?

13 A No, there's not.

14 Q Is the front flip part on it?

15 A It is gone as well.

16 Q Was you able to find those items anywhere near the
17 house or in the yard?

18 A No, sir.

19 Q And obviously you tried to take fingerprints off all
20 items, items inside the house?

21 A Yeah, everything is -- if you look at it, everything
22 that's got like black powder all over it, that's where we
23 processed it for prints.

24 Q Is it often -- do you get prints at crime scenes or do
25 you pull prints very often at crime scenes?

Robert Talanges - Direct examination
By Solicitor Barnette

1 A Sometimes you do. Sometimes you don't.

2 Q But they're hard to get at times, is that right?

3 A Yes.

4 Q And I know we went through it with other witnesses. I
5 won't go through it with you if you don't mind.

6 One moment, Your Honor, please.

7 THE COURT: Yes, sir.

8 (Pause.)

9 SOLICITOR BARNETTE: Please answer any questions the
10 defense may have for you, sir. Thank you.

11 THE COURT: Mrs. Hodges, it's your witness.

12 MRS. HODGES: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MRS. HODGES:

15 Q Officer Talanges, my understanding is that -- did, did
16 you actually dust each of these items for prints or did
17 another officer?

18 A They were dusted for prints.

19 Q Okay. But, but did you do it or did another officer or
20 do you remember?

21 A I don't recall.

22 Q Okay. Fair to say though that, as far as you know,
23 there was no fingerprint or anything found on the gas can or
24 on the, the yellow spout to the gas can?

25 A Not that I know of. But the agent's report would

Robert Talanges - Cross-examination
By Mrs. Hodges

1 stipulate that.

2 Q Okay. So, if the agent -- so, it's, it's not -- so, if
3 the agent's report says it's not there, then it's not there?

4 A Correct.

5 Q Okay. We have looked at a picture. I think it was
6 374.

7 Do you still have those?

8 A Yes, ma'am.

9 Q Great. I'm just gonna put this up on the screen so we
10 can all see the same thing.

11 THE COURT: Lower the lights for me please, sir.

12 Q This takes a little bit of time to figure out how to do
13 this.

14 But essentially we've got the gas can here as well as
15 Marker Number 43, which I guess is on a -- do it this way.
16 I can't quite get on all of us.

17 All right. So, we got Marker 43 is on a chair, is that
18 right?

19 A That's a couch.

20 Q A couch.

21 Okay. And then there's also a glove.

22 A Yes, ma'am.

23 Q What is a significance of the glove in the picture?

24 Do you know?

25 A Ma'am, I don't know.

Robert Talanges - Cross-examination
By Mrs. Hodges

1 Q Do you have any idea how that glove got there?

2 A It could be from one of the investigators or one of
3 the, somebody at the scene had dropped it on the floor.

4 Q Okay. But do you -- you didn't drop it on the floor?

5 A No, ma'am.

6 Q Okay. And no idea how the glove, glove got there?

7 You don't have any idea how the glove got there?

8 A No, ma'am, do not.

9 Q Do you have any idea as to when this picture was taken?

10 A That was taken after, after my arrival.

11 Q Okay. And did you, did -- were all the pictures taken
12 on the same day on, on -- I mean did you process, get to the
13 scene, start processing it, take your photographs, collect
14 your evidence all in the same time, all in the same day?

15 A We were there from early, early that morning till
16 almost midnight.

17 Q Okay. Had all the evidence then been taken from the
18 scene at the time you left at midnight in terms of all the
19 evidence that was collected in, in -- do you know?

20 A The only thing I know wasn't collected was the cuttings
21 of the, the floor that were cut out with the shoe tracks.

22 Q Was that cause -- and we saw the pictures of the, of
23 the amido black on the, some of the actual, cuttings from
24 the actual floor were actually taken?

25 A Correct.

Robert Talanges - Cross-examination
By Mrs. Hodges

1 Q Okay. So, this would of been on May the 11th?

2 The, the, the photographs -- this particular
3 photograph, Exhibit No. 34 showing the glove, would of been
4 taken on May the 11th?

5 A Correct.

6 Q Okay. When you processed a crime scene, obviously you
7 wear gloves?

8 A Yes, I do.

9 Q Okay. And what's the purpose of that?

10 A We don't leave any latent prints behind.

11 Q Don't want your fingerprints in the crime scene?

12 A That is correct.

13 Q Okay. You also are exposed to crime scenes with all
14 sorts of materials, and chemicals, and potentially hazardous
15 things that you don't want to be coming into contact with?

16 A Yes, ma'am.

17 Q By the same token, do you, each time that you collect
18 pieces of evidence, do you change your gloves or do you just
19 collect the evidence as you go?

20 A Depending on the evidence.

21 Q Okay.

22 A If the, if the evidence is say, soaked in blood, it
23 would be changed. If they're not soaked in blood, then they
24 would not.

25 Q Okay. Do you remember changing your gloves in this

Robert Talanges - Cross-examination
By Mrs. Hodges

1 particular crime scene?

2 A The only time I changed them would be if I, if I left,
3 left the exterior of the house and went outside.

4 Q Okay. So, you leave the crime scene, go actually
5 outside, take your gloves off---

6 A Okay.

7 Q ---put a new pair on---

8 A Come back with a new.

9 Q ---and come back inside?

10 A Correct.

11 Q Do you use any sort of coverings on your feet, any sort
12 of slippers or foot coverings or anything like that, in
13 this, in this type of crime scene?

14 A In this type of scene---

15 Q Okay.

16 A ---were used, no, they were not.

17 Q Okay. Do you--all -- but you know what I'm talking
18 about in terms of coverings?

19 A It, it all depends how, like I said, how much, how
20 bloody the scene actually is. If, if we're wading in blood,
21 then we would. If, if, like this scene here, there's lot of
22 blood underneath---

23 Q Uh-huh. (Affirmative).

24 A ---all the items that were---

25 Q Okay. So, if it's underneath the item?

Robert Talanges - Cross-examination
By Mrs. Hodges

1 A Correct.

2 Q Okay.

3 A So, no, we would not.

4 Q Okay. All right. So, you weren't tramping through
5 blood?

6 A Correct. We're not tramping through blood.

7 Q Thank you, sir. That's all I have.

8 THE COURT: Redirect?

9 SOLICITOR BARNETTE: No, sir, we'd ask that this
10 witness be excused.

11 THE COURT: Any objection?

12 MRS. HODGES: No, sir, no objection.

13 THE COURT: Sir, you may step down and you are free to
14 go at this time.

15 WITNESS: Thank you.

16 THE COURT: Thank you.

17 State may call its next witness.

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

19 The State would call Investigator Dominick Baird.

20 Your Honor, might I have permission to approach in
21 search of an exhibit?

22 THE COURT: Oh, certainly.

23 Sir, come forward to be, to my right to be sworn.

24 DOMINICK BAIRD, being first duly
25 sworn, testified as follows:

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1 THE COURT: Sir, state your name for the record please.

2 WITNESS: I'm Dominick Baird.

3 THE COURT: Mr. Gowdy, he's your witness.

4 SOLICITOR GOWDY: Your Honor. Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY SOLICITOR GOWDY:

8 Q Good morning, Investigator Baird.

9 A Good morning.

10 Q Can you introduce yourself to the jury and tell them
11 where you work and how long you've been there?

12 A I'm Dominick Baird, Spartanburg County Sheriff's
13 office. I've been employed for a little over 13 years.

14 Q What division or department are you currently assigned
15 to?

16 A I'm currently with the criminal investigations
17 division.

18 Q And in May of 2007, what division or department were
19 you assigned to?

20 A I was with the forensics unit.

21 Q All right. With specific reference to May the 11th,
22 2007, what was your role at a crime scene at [REDACTED] Montgomery
23 Street?

24 A I was the team leader for the crime scene unit.

25 Q Tell the jury what it means to be the team leader.

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1 A I basically oversee the processing and collecting of
2 the evidence at the crime scene.

3 Q All right. Is another word the boss?

4 Were you the boss at the crime scene at ■ Montgomery
5 Street?

6 A As far as the process on the crime scene, yes, sir.

7 Q From a forensics standpoint, you were the leader?

8 A Yes, sir.

9 Q All right. Were there other members of your team
10 present?

11 A Yes, sir.

12 Q Such as whom?

13 A Investigator Talanges was there, and Investigator Nix,
14 Investigator Bogan. I can't think who else. We had quite a
15 few people there.

16 Q When, when you got to the crime scene, tell the jury
17 the first thing that you did.

18 A Met up with the investigators and officers on the
19 scene, the detectives that were there. Got an explanation
20 of what we had at the scene and then took a walk through.

21 Q Investigator Baird, tell the jury what precautions you
22 take to safeguard or protect the integrity of the crime
23 scene.

24 A We wear gloves, try and limit where, watch where we
25 walk, watch what we handle. Gloves, like I said, are a big

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1 part of that, watching what we do handle.

2 Q If you see a liquid on the floor or on carpet, are you
3 gonna make a conscious effort to avoid it?

4 A Yes, sir.

5 Q All right. Tell the jury how you work a crime scene
6 like a house that would have multiple rooms.

7 A We do initial photographs of the scene starting from
8 the exterior, go around the house photographing it, work our
9 way inside, photograph 360 around the residence, every room
10 in there. Go back and videotape the scene doing the same as
11 the photographs. From the outside worked our way in. Do
12 everything again. Then we go through and mark evidence and
13 rephotograph it with evidence prior to collecting it.

14 Q Investigator Baird, can you tell the jury or describe
15 for the jury the crime scene when you got there using all of
16 your senses?

17 A Yes, sir, when I, I first arrived, walking up to the,
18 the sliding glass door, which was, was left ajar by the
19 officers who initially arrived there, we walked in and you
20 get an overwhelming smell of gasoline that was in the
21 residence. It's a very powerful smell. It had been there
22 for a while it seemed like.

23 The house was in a state of disarray. The living room
24 furniture was turned over. A chair was turned over in the
25 living room. Gas can was sitting there near that chair.

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1 walked down the hallway, you could see some blood. The
2 computer room off the hallway had been ransacked.

3 Going further down the hallway to where the victims
4 were found in the master bedroom, that room had been
5 ransacked. It was in complete disarray. Gasoline had been
6 spread, strung around all over the place. Observed the
7 victims. Mr. Emery was laying on the bed face down. Mrs.
8 Emery was on the floor near the bed. Let's see. Gasoline
9 was poured everything, over everything. There was blood all
10 over the walls.

11 Q Investigator Baird, I am going to show you a large
12 grouping of photographs, and what I want you to do is just
13 look at them and, and, at the end, indicate whether or not
14 you are familiar with them and whether or not they are
15 relevant to this case. We will not describe them.

16 And for purposes of Madam Court Reporter, you are
17 looking at Exhibits 1, 52 and 53, 159, 168 through 181
18 inclusive, 184, 188, 190, 192 through 199 inclusive, 201
19 through 204 inclusive, 206 through 239 inclusive, 378
20 through 382 inclusive, 326, 384 through 442 inclusive.

21 (Pause.)

22 SOLICITOR GOWDY: Your Honor, may I show these to
23 defense counsel?

24 THE COURT: Yes, you may.

25 SOLICITOR GOWDY: Your Honor, we would move the items

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1 that I cited to Madam Court Reporter into evidence at this
2 point.

3 THE COURT: Mrs. Hodges.

4 MRS. HODGES: Your Honor, we specifically have an
5 objection to Item Number 326 previously. We'd renew our
6 objection to that exhibit. The other exhibits we have no
7 additional objections. So, subject to the previous
8 objections.

9 THE COURT: All right. The Court will make the same
10 ruling as to the previous objections, and they'll be
11 admitted as marked.

12 SOLICITOR GOWDY: Thank you, Your Honor.

13 (Whereupon, State's Exhibit Nos. 1, 52, 53, 59, 168
14 through 181, 184, 188, 190, 192 through 199, 201 through
15 204, 206 through 239, 326, 378 through 382, and 384 through
16 442 were received into evidence at this time.)

17 SOLICITOR GOWDY: Permission to publish some of these
18 exhibits to the jury?

19 THE COURT: You may do so.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 Q Investigator Baird, would you be more comfortable
22 turning to look at the screen or, or would you be more
23 comfortable if you were actually---

24 A I'm fine here, sir.

25 Q Okay. I'm gonna give you a laser pointer. I think you

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1 push the red button. I think it works. If that would, if
2 that would help.

3 I want to show you State's 1, Investigator Baird, which
4 is a general outlay. They're no placards down there, I
5 don't believe, that I can see.

6 Tell the jury what they're looking at.

7 A That is a diagram of the residence at [REDACTED] Montgomery
8 Street.

9 Q All right. And that is the residence that you and your
10 forensics team worked?

11 A Yes, sir.

12 Q I noticed some outbuildings.

13 Did you also go into the outbuildings?

14 A Yes, sir, we did.

15 Q Let me show you what is marked as State's Exhibit 52.

16 Did you go into or investigate State's Exhibit 52?

17 A We did not enter that. It was locked up and secured.
18 We went all the way around the building and everything was
19 secured on that. There was nothing showing any type of
20 entry into that building.

21 Q All right. Let me move to State's 53 and ask you to
22 tell the jury what they're looking at.

23 A That looks like one of the wood sheds behind the
24 residence.

25 Q All right. We're gonna talk in some detail about tread

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1 patterns in just a minute. But let me ask you generally --
2 you were at that crime scene for how long?

3 A We spent a few days out there.

4 Q How many different types of tread patterns did you see
5 at the crime scene?

6 A We observed two different types, sir.

7 Q Were you able to identify what one of those two type --
8 well, let me, let me ask you a different way.

9 Do law enforcement officers wear similar treaded shoes?

10 A Yes, sir, they do.

11 Q Did you identify a tread pattern consistent with law
12 enforcement tread?

13 A Yes, sir, we did.

14 Q Did you identify any other tread patterns?

15 A Yes, sir.

16 Q Can you generally describe the other tread pattern you
17 identified?

18 A It was a sneaker type pattern. It had the squiggly
19 lines and circles on it.

20 Q All right. Now, you have described a law enforcement
21 tread pattern and a sneaker type.

22 A Yes, sir.

23 Q That's two.

24 Did you see any other evidence of any other tread
25 patterns --

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1 A No, sir.

2 Q -- at the home?

3 A (Witness nods negatively.)

4 Q Did there come a point, while you were processing [REDACTED]
5 Montgomery Street, that you received information that a
6 suspect or the suspect was on Houston Street?

7 A Yes, sir.

8 Q And what did you do in response to receiving that
9 information?

10 A I was advised by detectives that they had a suspect in
11 custody and I needed to get a, a crime scene officer over to
12 their residence and collect the clothing.

13 Q And did you send one of your team members to Houston
14 Street?

15 A Yes, sir, I sent Investigator Nix over there.

16 Q And did Investigator Nix return from Houston Street?

17 A Yes, sir, he did.

18 Q And did he bring something with him and show it to you?

19 A Yes, sir, I requested that the shoes be brought to me
20 and what I could compare the pattern on the bottom of the
21 shoes to the tennis shoe pattern that we saw at the
22 residence.

23 Q Let me show you State's Exhibit 159.

24 Are you familiar with that?

25 A Yes, sir.

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1 Q Ask the attorneys to approach briefly.

2 (Whereupon, a bench conference was held out of the
3 hearing of the jury at this time.)

4 THE COURT: Okay, sir. Thank you.

5 SOLICITOR GOWDY: Thank you, Your Honor.

6 THE COURT: You may proceed.

7 SOLICITOR GOWDY: Thank you, Your Honor.

8 Q Investigator Baird, I'll just -- you were describing
9 whether or not you were familiar with what was depicted in
10 State's 159.

11 A Yes, sir, those were the shoes that were brought back.

12 Q Okay.

13 MRS. HODGES: Your Honor, I hate -- excuse me, Your
14 Honor. I just need to, for the purposes of preserving the
15 record, I need to object to motions that we made previously
16 regarding some of the clothing.

17 THE COURT: Can you be a little more specific?

18 MRS. HODGES: Judge, it was the motions we made
19 regarding the clothing and whether it should or should not
20 be excluded, which I think the Court has ruled on that
21 motion. We just need to preserve the record at this time.

22 THE COURT: All right. We'll preserve your objection.

23 MRS. HODGES: Thank you.

24 THE COURT: Mr. Gowdy, you may proceed.

25 SOLICITOR GOWDY: Thank you, Your Honor.

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By Solicitor Gowdy

1 Q Detectives Baird, can you tell the jury where you were
2 when Investigator Nix came back to ■ Montgomery Street?

3 A I was at ■ Montgomery Street, sir.

4 Q Okay. And how were the shoes packaged when he brought
5 them to you?

6 A They were packaged, they were packaged in their
7 individual own packaging when he brought them to me. I had
8 changed out gloves, took the shoes, and compared them
9 visually to the patterns.

10 Q You mentioned changing out gloves.

11 A Yes, sir.

12 Q Why would you do that?

13 A That way we don't cross-contaminate any evidence.

14 Q And you would do that whenever there was any danger of
15 cross-contamination?

16 A Yes, sir.

17 Q All right. And you took State's 159 and compared it to
18 what?

19 A We had developed some shoe patterns using amido black
20 and we also had some patterns that you could see even
21 without amido black enhancement and compared them to the
22 patterns that we developed.

23 Q Were you involved at all when the arson investigators
24 took custody of the shoes?

25 A Yes, sir, I handed the shoes over to them.

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1 Q Were you involved when the arson dog was presented with
2 the shoes?

3 A I, I did not observe the dog work on the shoes or hit
4 on the shoes. I was advised about what happened. But I, I
5 wasn't there when that happened. I was at the house. But
6 that happened outside.

7 Q That's my point.

8 A Yes, sir.

9 Q That happened outside the residence, correct?

10 A Yes, sir, we would not put the shoes down inside the
11 residence.

12 Q All right. Thank you.

13 Let me show you and what -- I'm going to move -- we're
14 going to do this somewhat hurriedly because the jury's
15 already seen some of this.

16 A Yes, sir.

17 Q So, 168, general description.

18 A Blood spatter on the wall.

19 Q All right. Without going through each one of these
20 again, let me show you 170 because the texture appears to be
21 a little bit different in 170.

22 A I believe that is blood spatter up on the ceiling.

23 Q So, you found blood spatter not only on the walls, but
24 on the ceiling?

25 A Yes, sir, it was on all four walls, the ceiling, the

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1 floor, everywhere.

2 Q All right. Again, without dwelling, 173.

3 A It would be -- it looks like the headboard of the bed
4 as well as the wall behind it.

5 Q Did you find evidence of blood spatter on the headboard
6 and the wall?

7 A Yes, sir.

8 Q Let me show you State's 194.

9 Are you familiar with 194?

10 A Yes, sir, it looks familiar if I can make it out here.

11 Q Let me ask you this.

12 Were photographs taken both while the bodies were in
13 the bedroom and after the bodies were removed?

14 A Yes, sir, it looks like a photo from after the body was
15 moved.

16 Q And does that appear---

17 A Looks like the bedding. Kind of hard to tell just
18 where it's at right now.

19 Q Do you see hardwood floors on either side of the room?

20 A Right now I can't tell. Looks like possibly it's the
21 floors right there. But like I said---

22 Q Right.

23 All right. Well, let me show you 195. That may give a
24 better prospective for you and the jury.

25 A Okay. That looks better there, sir. Yes, sir,

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1 that's -- looks like where we found Mrs. Emery on the floor.
2 The bed would be over there, dresser there. She was laying
3 up in here.

4 Q Okay. Let me show you 197.

5 Did you find evidence that a drawer was, that, that --
6 would that have been how the drawer was left or would y'all
7 of opened it?

8 A That's how we found the drawer.

9 Q Okay. Let me show you 198.

10 what do you see in 198?

11 A Appears to be a pattern of, a shoe pattern in blood
12 right in there.

13 Q Let me show you 204.

14 A Yes, sir, that's the, the victim's living room, and
15 the, the hammer that we found with blood on it sitting on
16 top of the TV.

17 Q How would you categorize generally the state of the
18 house, the bedroom, and the other rooms?

19 A It looked like the house had been ransacked.

20 Q State's 208, is that a fair depiction of the way the
21 computer room looked?

22 A Yes, sir.

23 Q State's 210, do you note the drawer open for, from the
24 bedside dresser?

25 A Yes, sir, right there.

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1 Q Would that have been opened by law enforcement or would
2 that have been depicted just as it was found?

3 A That's depicted as it was found, sir.

4 Q Let me show you 211.

5 What is that?

6 A That would be the edge of the shoe print in blood on a
7 piece of paper.

8 Q All right. In addition to doing a visual comparison---

9 A Yes, sir.

10 Q ---and let me just ask directly, did you hold one of
11 those black tennis shoes and compare it to what you were
12 looking at on the floor?

13 A Yes, sir, I held the shoe to my hand and the exact
14 comparison back and forth looking at it.

15 Q And what did it appear to you?

16 A They appear to be the same pattern.

17 Q Despite that appearance with your naked eye, did you
18 send it down to SLED?

19 A Yes, sir.

20 Q For what purpose?

21 A We were sending the shoes down to SLED for analysis for
22 any type of blood or DNA on the shoes, and we figured while
23 it was down there we might as well have their experts take a
24 look and do a comparison as well.

25 Q Okay. State's 212.

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1 A Yes, sir, that's another shoe pattern in blood.

2 Q State's 213 is a broader view of that post-it note,
3 what, what you described as tread pattern?

4 A Yes, sir, and the paper there with tread pattern in it
5 is more blood shoe prints up there.

6 Q State's 218, what do the conditions of the drawer
7 denote to you?

8 A Leads me to believe that the house was gone through and
9 burglarized.

10 Q Same question with respect to 222, condition of the
11 chest of drawers.

12 A Same circumstances. Look likes the home had been
13 burglarized.

14 Q 223, let me see if I can get this a little better.
15 Can you tell---

16 A I think that's the one with the money drawer I believe.

17 Q That's exactly right.

18 A Money drawer's right there.

19 Q It's hard to make out. You can see it a little bit
20 now.

21 A Yes, sir, you can see where the money goes in there,
22 sir.

23 Q All right. 224 would be the drawer as found it?

24 A Yes, sir.

25 Q Let me show you 229.

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1 What is that?

2 A That is the metal building behind the residence. We
3 went in there and we found a hammer or right there it looked
4 just like the one that we found inside the master bedroom
5 where the victims were found.

6 Q Did it appear to be a similar make and model with---

7 A Yes, sir.

8 Q ---the naked eye?

9 A Yes, sir.

10 Q What else did you find in that particular outbuilding?
11 What other kinds of materials were in there?

12 A Just there was tools, and a, a vehicle, stuff like
13 that.

14 Q Did you find any outbuildings that had either two cycle
15 motor oil---

16 A Yes, sir, the -- not this building here. But another
17 one back there. There's a wooden -- there's a wooden
18 building. We observed a, an empty spot on a shelf. Looked
19 like maybe where a gas can would go, and there was some, a
20 little bottle of two cycle oil sitting there on that shelf.

21 Q All right. And this is -- I'm going to show you
22 quickly 230 and 231, which are other pictures for which you
23 have already testified to.

24 A Yes, sir.

25 Q Now, you mentioned, as well as Investigator Talanges,

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1 amido black.

2 A Amido black, yes, sir.

3 Q Okay. Tell the jury what that is and what it does and
4 why you use it.

5 A Amido black is a chemical used to help enhance blood
6 prints. Sometimes if somebody walks through blood, as the
7 further they walk, the less visible the blood will become
8 till it gets to the point where you can't even see it. The
9 proteins left by the blood, amido black will enhance those
10 and turn them a bluish color. And it helps them enhance the
11 details that you can see and sometimes even stuff you can't
12 see by the naked eye. Once you spray the area with amido
13 black, it will develop detail that you can observe.

14 Q Let me show you State's 234.

15 would that be an example of what something looks like
16 after Amido black has been applied?

17 A Yes, sir, it is.

18 Q Do you see a certain tread pattern to the left of that
19 exhibit?

20 A There is pattern up, up through here and there's
21 patterns down in through here, sir.

22 Q With respect, specific reference to the pattern you've
23 just pointed to on the left---

24 A Down here.

25 Q Right.

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1 What is that pattern consistent with?

2 A That would be consistent with law enforcement boots.

3 Q Do the men and woman who work for your forensic unit
4 wear the same kind of shoes?

5 A Yes, sir.

6 Q And they would have the same tread patterns?

7 A Yes, sir.

8 Q And you pointed to another tread pattern on the right.

9 A Yes, sir, up and through here.

10 Q And that would not be consistent with the kind of shoes
11 that your men and women wear?

12 A No, sir, we don't wear sneakers.

13 Q And those are the only two tread patterns you found in
14 the entire scene?

15 A That is correct, sir.

16 Q Let me show you 238 because it may actually help you
17 more.

18 Do you see the tread pattern at the top below 50?

19 A Right in there, sir.

20 Q Yes, sir.

21 A Yes, sir, that is law enforcement boots.

22 Q Okay. And do you see 49?

23 A Right in there, sir.

24 Q Okay. You found a red gas can or did you see a red gas
25 can?

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1 A Yes, sir, that was in the living room.

2 Q Do you recall whether or not the spout from the gas can
3 was still on?

4 A It was not.

5 Q Do you recall where the spout was?

6 A Yes, sir, it was in the master bedroom below Mrs. Emery
7 on the floor.

8 Q Let me show you 326 and ask you whether or not that is
9 where you found the spout to the gas can.

10 A That is, sir.

11 Q Investigator Baird -- bear with me, Your Honor, just,
12 just one moment.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q Did you take what is known as a buccal or buccal swab
16 from the defendant?

17 A Yes, sir, I did.

18 Q Let me show you State's 48, an envelope that contains
19 it, and ask you whether or not you recognize that.

20 A Yes, sir, this would of been the buccal swab kit that I
21 collected.

22 Q And you did that yourself?

23 A Yes, sir.

24 Q Can you, in general terms without having to be terribly
25 specific, but in general terms, can you tell the ladies and

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1 gentlemen of the jury how you go about taking a buccal or
2 buccal swab from anyone?

3 A Very simple task. The kit contains two large Q-tips
4 basically, and you swab the inside cheek, both cheeks. Swab
5 it for a little bit and throw it in a container, and you
6 basically just collected DNA that way.

7 Q And do you seal it at that point?

8 A Yes, sir.

9 Q And then what did you do with it, Investigator Baird?

10 A It was packaged up and sent to SLED.

11 SOLICITOR GOWDY: Okay. Your Honor, we would move
12 State's 48 into evidence.

13 MRS. HODGES: Your Honor, we renew our objections we
14 made at a pretrial hearing months ago as to State's No. 48.

15 THE COURT: Any other objections?

16 MRS. HODGES: No, sir. That -- no, sir.

17 THE COURT: Okay. Your previous objections are noted.
18 It is admitted as marked.

19 MRS. HODGES: Thank you, Your Honor.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 (Whereupon, State's Exhibit No. 48 was received into
22 evidence at this time.)

23 Q All right. Investigator Baird, while I realize you did
24 not collect a lot of evidence at [REDACTED] Montgomery Street
25 because Investigator Talanges did that --

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1 A Yes, sir.

2 Q -- did you collect a portion of a cell phone?

3 A Yes, sir, I did.

4 Q Let me show you what has been marked as State's Exhibit
5 133 and ask you whether or not you recognize what is in
6 there.

7 A Yes, sir, that's a face plate to a cell phone.

8 Q Do you recall where you recovered that from?

9 A We recovered it there at the residence. I believe this
10 was found in the grass area below a porch swing. Not a
11 porch swing. But a swing in the yard.

12 SOLICITOR GOWDY: Your Honor, we would move State's 133
13 into evidence.

14 MRS. HODGES: No objection, Your Honor.

15 THE COURT: Without objections, it will be admitted
16 into evidence as marked.

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 (Whereupon, State's Exhibit No. 133 was received into
19 evidence at this time.)

20 Q Investigator Baird, did you become aware that there
21 were items found in a van in, in Union that might be related
22 to this investigation?

23 A Yes, sir.

24 Q Furthermore, did you become aware that there were items
25 in a pocketbook in the van?

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1 A Yes, sir.

2 Q Did you take those items out and swab any of them for
3 the presence of any forensic evidence?

4 A Yes, sir, there were two purses that had two old
5 jewelry boxes in them and they had blood on them. So, I
6 went ahead and swabbed the, took blood swabs from both of
7 those.

8 Q Let me show you what is State's 43 and 44, and ask you
9 whether or not you recognize what is in that envelope and
10 what role you played in securing that evidence.

11 A Yes, sir, these are the blood swabs I collected from
12 the little jewelry boxes.

13 Q Okay. And again, that jewelry box would of already
14 been in evidence at the time?

15 A Yes, sir.

16 Q Okay. And the van was processed by another forensic---

17 A Yes, sir.

18 Q ---member?

19 A Yes, sir, Investigator Bogan.

20 Q But you went and swabbed the jewelry box after it was
21 in evidence?

22 A Yes, sir, we had, had it secured in our evidence room.

23 Q Okay. And ultimately what did you have done with the
24 swabs that you collected?

25 A I had them tested and compared to the submitted

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1 standards.

2 SOLICITOR GOWDY: Your Honor, we would, at this point,
3 move State's 43 and 44 into evidence subject to being or
4 conditioned upon additional facts becoming relevant.

5 MRS. HODGES: On that condition, no objection, Your
6 Honor.

7 THE COURT: Be admitted for that purpose.

8 SOLICITOR GOWDY: Thank you, Your Honor.

9 (Whereupon, State's Exhibit Nos. 43 and 44 were
10 received into evidence at this time.)

11 Q Investigator Baird, in the interest of time, and
12 because of the thoroughness that you have already explained
13 part of this process, I am going to go through the
14 collection of tread wear impressions---

15 A Yes, sir.

16 Q ---or shoe prints.

17 okay?

18 A Yes, sir.

19 Q Let me show you State's 379 and ask you whether --
20 describe, again, for the jury what that is and what process
21 you would of needed to go through to make that illuminate.

22 A Tread wear patterns were found there and there on the
23 linoleum. Initially photographed it and then went back and
24 cut it out of the floor.

25 Q All right. Let me show you State's 382, which is

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1 representative of one of the placards, Placard Number 15.

2 A That is another pattern that was developed using amido
3 black and it was photographed and then later cut out of the
4 floor and submitted.

5 Q I want to show you what is representative of Placard
6 Number 51.

7 A And that would be, be the same surface, another,
8 another pattern that we, we photographed and compared.

9 Q And again, let me ask you again, because this is so
10 distinct to the left, what do you do?

11 A That would be the law enforcement boot.

12 Q Okay. Let me show you State's Exhibit 52 or State's
13 Exhibit 406, which is Placard 52.

14 Tell the jury what that is.

15 A That appears to be another shoe pattern developed with
16 amido black.

17 Q Let me show you State's Exhibit 41, which is Placard
18 54.

19 A And that is another one on the -- that would be on the
20 linoleum floor there.

21 Q Okay. And again, you have described for the jury or
22 you have made reference to cutting out.

23 A Yes, sir.

24 Q What did you mean by that?

25 A Basically with the linoleum, we cut around the shoe

Dominick Baird - Direct examination
By Solicitor Gowdy

1 tread pattern and pulled linoleum off the floor and
2 collected that and turned it into evidence, and that would
3 be sent to SLED for analysis. On hardwood floors, like I
4 said, they were photographed. And when -- we went ahead and
5 cut the hardwood floor off, and packaged it with tape around
6 the edges to keep the floor together, and that was sent to
7 SLED.

8 Q All right. 413 is representative of the linoleum?

9 A Yes, sir, that is.

10 Q All right. 427.

11 A That would be the hardwood floors.

12 Q All right. And you would of actually physically cut
13 that out?

14 A Yes, sir, we used a saw to cut that out.

15 Q All right. I show you 428, which---

16 A That's another hardwood floor.

17 Q All right. So, Investigator Baird, you visually
18 compared that tread pattern to the tennis shoe you had in
19 your hand?

20 A Yes, sir.

21 Q You also photographed it, documented it?

22 A Yes, sir.

23 Q You also cut it out and sent it to SLED?

24 A Yes, sir.

25 Q All right. Let me show you -- I'll try to do it with

Dominick Baird - Direct examination
By Solicitor Gowdy

1 some -- let me show you State's Exhibit 46, and ask you if
2 you're familiar, familiar with that, and, if so, how.

3 A Yes, sir, this is a CD of the photos that we had taken
4 of the shoe prints and sent down to SLED.

5 SOLICITOR GOWDY: All right. Your Honor, we would move
6 State's 46 into evidence.

7 MRS. HODGES: No objection, Your Honor.

8 THE COURT: Without objection, it will be admitted as
9 marked.

10 SOLICITOR GOWDY: Thank you, Your Honor.

11 (Whereupon, State's Exhibit No. 46 was received into
12 evidence at this time.)

13 Q Investigator Baird, let me move to State's 29.

14 A Yes, sir, this is a cutting from the linoleum floor.
15 One of the shoe prints.

16 Q And that would of been sent to SLED?

17 A Yes, sir.

18 SOLICITOR GOWDY: Your Honor, we would move State's 29
19 in evidence.

20 MRS. HODGES: No objection, Your Honor.

21 THE COURT: Without objection, it will admitted as
22 marked.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 (Whereupon, State's Exhibit No. 29 was received into
25 evidence at this time.)

Dominick Baird - Direct examination
By Solicitor Gowdy

1 Q I want to pull this out carefully.

2 State's 26, what is that and do you recall what was
3 done with it?

4 A This is a cutting from the hardwood floor that would of
5 been photographed. This was cut out and then sent to SLED.

6 Q Literally that is actually the hardwood floor from [REDACTED]
7 Montgomery Street?

8 A Yes, sir.

9 SOLICITOR GOWDY: Your Honor, we would move State's 26
10 into evidence.

11 MRS. HODGES: We have no objection, Your Honor.

12 THE COURT: Without objection, it will be received as
13 marked.

14 (Whereupon, State's Exhibit No. 26 was received into
15 evidence at this time.)

16 Q Show you a piece of paper that has, is State's 27 and
17 28.

18 Can you look at that and tell me what is in that bag
19 and whether or not you collected it?

20 A Yes, sir, this is a cutting from the linoleum floor as
21 well.

22 Q From [REDACTED] Montgomery Street?

23 A Yes, sir.

24 Q And it was sent to SLED for comparison?

25 A Yes, sir.

Dominick Baird - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, we would move State's 27
2 and 28---

3 MRS. HODGES: We have no objection, Your Honor.

4 THE COURT: Without objection, it's received as marked.

5 SOLICITOR GOWDY: Thank you, Your Honor.

6 (Whereupon, State's Exhibit Nos. 27 and 28 were
7 received into evidence at this time.)

8 Q I'm gonna show you State's 25 and ask you whether or
9 not you are familiar with that, Investigator Baird?

10 A This is another cutting from the hardwood floors.

11 Q Hardwood floor from [REDACTED] Montgomery Street?

12 A Yes, sir.

13 Q Which would of been sent --?

14 A It would of been sent to SLED.

15 Q Thank you.

16 Your Honor, we would move State's 25 into evidence.

17 MRS. HODGES: Thank you.

18 Your Honor, we have no objection.

19 THE COURT: Without objection, it will be received as
20 marked.

21 (Whereupon, State's Exhibit No. 25 was received into
22 evidence at this time.)

23 SOLICITOR GOWDY: Your Honor, could Mrs. Hodges and I
24 approach the bench for one second?

25 THE COURT: Yes, you may.

Dominick Baird - Direct examination
By Solicitor Gowdy

1 (Whereupon, a bench conference was held out of the
2 hearing of the jury at this time.)

3 SOLICITOR GOWDY: Your Honor, we would also move
4 State's Exhibit 30 into evidence at this point.

5 MRS. HODGES: We have no objection, Your Honor.

6 THE COURT: Without objection, it will be received.

7 SOLICITOR GOWDY: Thank you, Your Honor.

8 (Whereupon, State's Exhibit No. 30 was received into
9 evidence at this time.)

10 Q Investigator Baird, this crime scene remained open and
11 active for how long?

12 A We held to the scene for two days, and then we secured
13 the residence after it was released.

14 Q Investigator Baird, please answer any questions the
15 defense attorney may have for you.

16 A Yes, sir.

17 THE COURT: Your witness.

18 MRS. HODGES: Thank you, Your Honor.

19 May it please the Court?

20 THE COURT: Yes, ma'am.

21 CROSS-EXAMINATION

22 BY MRS. HODGES:

23 Q What time did you arrive on the scene, investigator?
24 Do you remember?

25 A It was at 9:10 in the morning.

Dominick Baird - Cross-examination
By Mrs. Hodges

1 Q Okay. And when you arrived on scene, what was your
2 understanding of which other officers had already been into
3 the residence when you, before you got there?

4 A My understanding was Sergeant, Lieutenant Valentine,
5 Valentine and Sergeant Danny Jones had been in the residence
6 and had found the victims deceased.

7 Q Okay. Had EMS or anybody else been in---

8 A Yes, ma'am, they---

9 Q ---the scene?

10 A ---called EMS in.

11 Q Do you know how many EMS workers went in?

12 A No, ma'am, I do not. I could only guess.

13 Q Okay. But at least one?

14 A Yes, ma'am.

15 Q And what about any of the homicide or violent crimes
16 unit investigators, have any of those folks been in yet?

17 A I believe they had.

18 Q Do you have any idea as to how many of those folks
19 you---

20 A No, ma'am, it would of been limited.

21 Q Okay. When you got to the scene and, and you basically
22 did a walk around the scene, is that right?

23 A I did a walk around the outside and as well as through
24 the inside.

25 Q Okay. And when you did your walk through for the

Dominick Baird - Cross-examination
By Mrs. Hodges

1 inside, was there anybody else with you?

2 A Yes, ma'am, I believe -- we went through with Detective
3 Lindsey.

4 Q Okay. And, and just you and Detective Lindsey?

5 A Best of my recollection, yes, ma'am.

6 Q Did you -- while you were processing the scene and
7 while you were on scene, did you wear any sort of foot
8 coverings?

9 A No, ma'am, not at that one.

10 Q All right. Do you know if anybody wore any foot
11 coverings with law enforcement at the scene?

12 A No, ma'am.

13 Q All right. Do you know whether EMS wore any foot
14 coverings when they went in?

15 A I highly doubt it.

16 Q Had the coroner already been there as well?

17 A No, they don't go in until we do.

18 Q Okay. So, does the coroner go in with you during your
19 investigation?

20 A Later, yes, ma'am.

21 Q Okay. So, so, you went in later, but you didn't go in
22 with you at the time that you initially walked in?

23 A We did a -- I'm trying to remember if we did an initial
24 walk through with him or without him. I'm thinking he, he
25 came in later.

Dominick Baird - Cross-examination
By Mrs. Hodges

1 Q Okay. In terms of the time that was spent in the crime
2 scene, are you-all kind of working continuously basically
3 from the time you got there to the time that you released
4 it---

5 A No.

6 Q ---for those full two days?

7 A No, ma'am, we, we worked well into the night on the
8 first day securing our evidence, the scene was held secure
9 with an officer there, and then we came back the following
10 day.

11 Q Okay. Do you have any idea as to approximately how
12 long you were there the second day?

13 A Not right off, ma'am.

14 Q Okay. The processing that you did with the amido
15 black---

16 A Yes, ma'am.

17 Q ---was that done towards the end of the processing,
18 towards the beginning of it?

19 Tell me when that would of been done.

20 A That would of been done after most of the, after all of
21 the evidence as far as stuff we can easily pick up and
22 transport. That would of been done later.

23 Q Okay. Were you present when the arson investigators,
24 Captain Means and, and Mr. Easler, were, were present?

25 A Yes, ma'am.

Dominick Baird - Cross-examination
By Mrs. Hodges

1 Q Yeah, I think they said they got there about 10:45 in
2 the morning.

3 So, would that be -- you had already been on the scene?

4 A Yes, ma'am.

5 Q Had you started any processing at the time that the
6 arson team got there?

7 A No, we were, we would of still been in the process of
8 photographing, working on the diagram, and noting evidence
9 that we were gonna mark and collect.

10 Q How long does that process take?

11 A It can take quite a time, quite a while.

12 Q Like hours?

13 A Hours, yes, ma'am.

14 Q Okay. The -- we saw several pictures I think with
15 Investigator Talanges as well as with you in terms of
16 spatter, blood spatter, blood evidence that was on the
17 scene.

18 It'd be fair to characterize this as a, as a pretty
19 bloody scene?

20 A Yes, ma'am.

21 Q In fact, you-all even took photographs of what you saw
22 visually with Mr. and Mrs. Emery there as well as then
23 taking photographs of any blood evidence after they had been
24 taken from the home to the morgue?

25 A Yes, ma'am.

Dominick Baird - Cross-examination
By Mrs. Hodges

1 Q Okay. No evidence that you were able to recover as to
2 any, any sort of amount of money or anything that, that may
3 or may not have been in that money draw?

4 A No, ma'am.

5 Q Don't know whether there was any money or not in it?

6 A I do not, no, ma'am.

7 Q Okay. The law enforcement tread wear, while law
8 enforcement tends to wear similar tread wear, not only law
9 enforcement wears foot apparel that has that tread wear?

10 Is that true?

11 A I'm sure it's quite possible that EMS or anybody, you
12 know, could have that, that same type.

13 Q Okay. Cause I mean it's not basically their tread
14 wear.

15 I mean law enforcement can buy their, their, you know,
16 work boots from lots of different places?

17 A Yes, ma'am.

18 Q I mean lots of retail stores, lots of folks go to
19 retail stores to buy their tread, you know, their work
20 boots?

21 A We don't. Ours are ordered.

22 Q Okay. Yours are ordered?

23 A Yes, ma'am.

24 Q Where are yours ordered from?

25 A That I'm not really sure. You'd have to talk to our

Dominick Baird - Cross-examination
By Mrs. Hodges

1 supply.

2 Q what brand are they?

3 Do you know?

4 A Original SWAT.

5 Q Okay. But that is something that, that can be ordered?

6 I mean in terms of -- it's something that, that

7 somebody else could possibly order?

8 A I would say probably. I don't know. I've never looked
9 for them on the after market myself. I mean I would guess
10 it could. But I couldn't tell you.

11 Q Okay. But there's nothing so, so, absolutely unique to
12 law enforcement tread wear that it's not possible that it
13 could belong to somebody else?

14 A I wouldn't say that, no, ma'am.

15 MRS. HODGES: Okay. Bear with me just one moment.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MRS. HODGES: Thank you, sir. That's all I have.

19 THE COURT: Redirect?

20 SOLICITOR GOWDY: No, sir, Your Honor.

21 THE COURT: All right, sir. You may step down.

22 WITNESS: Thank you, sir.

23 THE COURT: Wish to have him excused?

24 SOLICITOR GOWDY: Yes, sir, Your Honor.

25 MRS. HODGES: No objection, Your Honor.

1 THE COURT: You may be excused.

2 Ask the attorneys to approach please.

3 (Whereupon, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: Ladies and gentlemen of the jury, I think
6 now would be the appropriate time for us to break for lunch.
7 I know that your lunch orders have been taken. It should be
8 delivered to you shortly if it's not already there. So, at
9 this point in time we are gonna break for lunch.

10 As I always instruct you when you leave the courtroom,
11 please don't begin any discussions concerning the case until
12 I've advised you to begin your deliberations.

13 At this point in time I'll ask that everyone remain
14 seated while the jury retires.

15 Thank you very much.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Please, please remain seated while the
19 defendant retires.

20 (Pause.)

21 THE COURT: We'll be in recess until about a quarter
22 till 2:00. I suspect -- lunch is suppose to be delivered
23 around one o'clock. So, depending on when it comes, but
24 I'll say about a quarter till 2:00. So, be prepared to
25 start back at a quarter till 2:00.

1 SOLICITOR GOWDY: Yes, sir.

2 THE COURT: Thank you very much.

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

4 THE COURT: Is the State ready to proceed?

5 SOLICITOR GOWDY: Yes, sir, Your Honor.

6 THE COURT: Defense ready?

7 MR. ALLEN: Yes, Your Honor.

8 THE COURT: Bring the jury in.

9 (Whereupon, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. The record will reflect that
12 the jury has returned to the courtroom. And when we broke
13 earlier the State was in the process of presenting its
14 evidence.

15 You may call your next witness.

16 SOLICITOR GOWDY: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 SOLICITOR GOWDY: The State would call Detective Jason
19 Bryant.

20 THE COURT: Sir, come forward to the front---

21 WITNESS: Yes, sir.

22 THE COURT: ---to be sworn.

23 JASON BRYANT, being first duly
24 sworn, testified as follows:

25 THE COURT: Sir, once you're seated, I'd ask that you

Jason Bryant - Direct examination
By Solicitor Gowdy

1 state your name for the record.

2 WITNESS: Yes, sir. Jason Bryant.

3 THE COURT: Mr. Gowdy, it's your witness.

4 SOLICITOR GOWDY: Thank you, Your Honor.

5 May it, may it please the Court?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY SOLICITOR GOWDY:

9 Q Detective Bryant, can you introduce yourself to the
10 jury?

11 Tell them where you work and how long you've been
12 there.

13 A Absolutely. My name is Jason Bryant. I'm with the
14 Spartanburg County Sheriff's Office, and I work for the
15 violent crimes division.

16 Q How long have you been with the violent crimes
17 division?

18 A Since 2004.

19 Q Are you considered a detective with the violent crimes
20 division?

21 A That's correct.

22 Q And part of your duties and responsibility would be to
23 investigate homicides?

24 A Yes, sir.

25 Q Were you part of the investigation team into a double

Jason Bryant - Direct examination
By Solicitor Gowdy

1 homicide in May of 2007?

2 A That's correct.

3 Q Were you the lead detective?

4 A No, sir, I was not.

5 Q Were, were you in an assisting role?

6 A That's correct, yes, sir.

7 Q Some -- but at some point, on May the 11th, did you
8 go to -- were you sent in search of a suspect named Andres
9 Torres?

10 A That's correct, yes, sir.

11 Q And where did you go to, Detective Bryant?

12 A [REDACTED] Houston Street.

13 Q Let me show you what has been marked as State's 157 and
14 158, and ask you just whether or not you were familiar with
15 what's depicted in those photographs and whether it's
16 relevant to this case.

17 A Yes, sir, I'm familiar with these.

18 SOLICITOR GOWDY: Your Honor, we would move State's 157
19 and 158 into evidence.

20 MR. ALLEN: No objection.

21 THE COURT: Without objection, they'll be received into
22 evidence as marked.

23 (Whereupon, State's Exhibit Nos. 157 and 158 were
24 received into evidence at this time.)

25 THE COURT: You may proceed, Mr. Gowdy.

Jason Bryant - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Thank you, Your Honor.

2 Permission to publish to the jury?

3 THE COURT: You may do so.

4 Q All right. Detective Bryant, tell the jury what
5 they're looking at.

6 A That is the residence of Ruth Rogers. That's the front
7 of her house---

8 Q Okay.

9 A ---on Houston Street.

10 Q Let me show you one more angle.

11 Is that the same house?

12 A Yes, sir.

13 Q Okay. And you were sent there looking for the suspect?

14 A That's correct.

15 Q All right. And tell the jury what happened when you
16 got there.

17 Tell them who, tell them who you went with and what
18 happened when you got there.

19 A Myself and Investigator Lindsey responded to [REDACTED]
20 Houston Street at about 2:00 p.m. on that afternoon. When
21 we arrived there, we went to the front door and knocked on
22 the door where we were invited in by Mrs. Rogers.

23 Q And Mrs. Rogers, to your understanding, was whom?

24 A That is the homeowner.

25 Q All right. But was she or were you led to believe or

Jason Bryant - Direct examination
By Solicitor Gowdy

1 did you have reason to believe that she may be related to
2 the suspect?

3 A That was the grandmother of Mr., Mr. Torres.

4 Q Okay. And you're invited into the home and you are
5 with whom?

6 A Myself and Investigator Lindsey.

7 Q Okay. Detective Bryant, had you been involved with the
8 case throughout the course of the day?

9 A I had.

10 Q Were you advised by any of your colleagues in law
11 enforcement of what clothing the suspect may have been seen
12 in earlier in the day?

13 A Yes, sir, that's correct.

14 Q When you saw him at [REDACTED] Houston Street, was he dressed
15 like that?

16 A No, sir, he was not.

17 Q Was the question posed to him where were the clothes
18 you were in earlier?

19 A That's correct.

20 Q And what was his response.

21 A He stated that the clothes---

22 MR. ALLEN: Your Honor, if I may?

23 THE COURT: Just one second.

24 MR. ALLEN: Again, we renew our objections to motions
25 as previously made and ruled upon on the same grounds as

Jason Bryant - Direct examination
By Solicitor Gowdy

1 previously stated.

2 THE COURT: You objection, your objection is noted.

3 The Court would make the same ruling.

4 You may proceed, Mr. Gowdy.

5 SOLICITOR GOWDY: Thank you, Your Honor.

6 Q Detective Bryant, I think I had asked you -- you had
7 just said, a question was posed with respect to where the
8 clothes were and you were getting ready to say what the
9 suspect had said.

10 A He had stated that the clothes were in the washing
11 machine.

12 Q After -- and do you see the suspect in the courtroom?
13 Do you see the person that, that you heard made that
14 comment?

15 A Yes, sir, he's sitting right there.

16 Q Okay. After he made that comment, what did Mrs. Rogers
17 do?

18 A She stated that she'd go get them for us.

19 Q All right. And you did what with Mr. Torres?

20 A We, we walked out.

21 Q Detective Bryant, please answer any questions the
22 defense attorney may have for you.

23 THE COURT: Mr. Allen, your witness.

24 MR. ALLEN: Thank you, Your Honor.

25 (Pause.)

Jason Bryant - Direct examination
By Solicitor Gowdy

1 MR. ALLEN: No questions.

2 THE COURT: Anything further from the State?

3 SOLICITOR GOWDY: No, sir, Your Honor.

4 THE COURT: Do you wish to have the witness excused?

5 SOLICITOR GOWDY: Yes, sir, Your Honor.

6 THE COURT: Any objection?

7 MR. ALLEN: No, Your Honor.

8 THE COURT: Sir, you're -- you can step down and you're
9 free to go. Thank you very much for coming today.

10 WITNESS: Thank you, sir.

11 THE COURT: State may call its next witness.

12 SOLICITOR CRICK: Thank you, Your Honor.

13 The State calls Deputy Phillip Chappel.

14 THE COURT: Sir, come forward to the front to be sworn
15 right here.

16 PHILLIP CHAPPEL, being first duly
17 sworn, testified as follows:

18 THE COURT: Sir, if you would please, state your name
19 for the record.

20 WITNESS: It's Deputy Phillip Chappel.

21 THE COURT: Mrs. Crick, your witness.

22 SOLICITOR CRICK: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY SOLICITOR CRICK:

25 Q where do you work, Deputy Chappel?

Phillip Chappel - Direct examination
By Solicitor Crick

1 A I work for the Spartanburg County Sheriff's Department.

2 Q How long have you been with the Sheriff's Department?

3 A Eight years.

4 Q What do you do there at the Sheriff's Department?

5 A I'm assigned to the uniform patrol division.

6 Q Were you assigned to uniform patrol on May 11th of
7 2007?

8 A I was.

9 Q Do you recall being called to assist at a scene at [REDACTED]
10 Houston Street?

11 A Yes, ma'am, I do.

12 Q And did you go out to [REDACTED] Houston Street?

13 A I did.

14 Q While you were there, did you receive any evidence in
15 this case?

16 A I received a plastic bag with some clothing in it.

17 Q Who gave that to you?

18 MR. ALLEN: Your Honor?

19 A An elderly lady.

20 THE COURT: Just one second, sir.

21 MR. ALLEN: This line of questioning is subject to the
22 motions previously made and ruled upon based, again, on the
23 same grounds.

24 THE COURT: Your objection and previous motions are
25 noted. The Court still makes the same ruling.

Phillip Chappel - Direct examination
By Solicitor Crick

1 You may proceed.

2 SOLICITOR CRICK: Thank you, Your Honor.

3 Q If you could repeat that for the jury?
4 Who did you get the bag of clothing from?

5 A An elderly lady that lived at the home.

6 Q And how was it packaged when you got it?

7 A When I got it, it was a white plastic type grocery bag.

8 Q Where were you when you received that plastic bag?

9 A Just off, off the front porch just outside the home.

10 Q Okay. And after you received it from her, what did you
11 do with it?

12 A I took it to my patrol car that was parked out front
13 and secured it in my back seat.

14 Q Now, when you got it, did you touch anything inside the
15 bag or rearrange anything inside the bag?

16 A No, ma'am.

17 Q Okay. I'm gonna show you what have been marked as
18 State's 160, 161, and 162.

19 Your Honor, may I approach the witness?

20 THE COURT: You may approach the witness.

21 Q Just tell me if you, generally if you recognize those
22 items.

23 A Yes, ma'am, I do recognize them.

24 SOLICITOR CRICK: Your Honor, at this time the State
25 would offer these into evidence, 160 through 162.

Phillip Chappel - Direct examination
By Solicitor Crick

1 THE COURT: Any objection?

2 MR. ALLEN: Again, subject to the objections made in a
3 pretrial, pretrial hearing and motions on the same grounds.

4 THE COURT: All right. Subject to those objections,
5 the Court will admit those as marked.

6 (Whereupon, State's Exhibit Nos. 160 through 162 were
7 received into evidence at this time.)

8 THE COURT: You may proceed.

9 SOLICITOR CRICK: Your Honor, may I publish these to
10 the jury?

11 THE COURT: You may do so.

12 Q I'm gonna show you what's marked as State's 160 and let
13 me try to bring that in for you.

14 Can you tell the jury what they're looking at there?

15 A It appears to be a pair of tennis shoes and I think a
16 pair of like under shorts as far as I can tell.

17 Q Is that the plastic bag you received from the lady at
18 Houston Street?

19 A Yes, ma'am, it is.

20 Q And let me show you State's 161.

21 Can you tell us where those, where that bag of clothing
22 is located in that photo?

23 A It's located in the back rear passenger seat of a
24 marked patrol car.

25 Q Is that your patrol car?

Phillip Chappel - Direct examination
By Solicitor Crick

1 A Yes, ma'am.

2 Q And then I'll show you another one. Just might be a
3 little easier to see.

4 Is that the same bag of clothing in your patrol car?

5 A Yes, ma'am, it is.

6 Q Now, did you keep that clothing?

7 What did you do with it?

8 A I secured it in my rear car, rear back seat, and waited
9 for the forensic technician to arrive to take control of it.

10 Q Were you aware that somebody was coming to collect that
11 from you?

12 A Yes, ma'am.

13 Q And was that Shawn Nix?

14 A Yes, ma'am.

15 Q Did Officer Nix actually arrive at Houston Street?

16 A Yes, ma'am, he did.

17 Q And what did you do once he got there?

18 A I unlocked the back door and he retrieved the items
19 from my back seat and then conducted his investigation.

20 Q So, he retrieved the plastic bag that was in your back
21 seat?

22 A Yes, ma'am.

23 Q And after that, I believe you left?

24 A Yes, ma'am.

25 Q And you didn't have any further involvement in this at

Phillip Chappel - Direct examination
By Solicitor Crick

1 all?

2 A No, ma'am.

3 Q Okay. Your Honor, nothing further at this time.

4 THE COURT: Mrs. Crick, those photos are in evidence.
5 They'll need to be placed up here.

6 SOLICITOR CRICK: Yes, sir.

7 THE COURT: Thank you, ma'am.

8 Mr. Allen, your witness.

9 MR. ALLEN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ALLEN:

12 Q Officer Chappel, as I understand from your testimony,
13 you did not go into the home at [REDACTED] Houston Street, is that
14 correct?

15 A Yes, sir, I did.

16 Q You stayed on the porch?

17 A I was outside when I got the clothes, yes, sir.

18 Q Okay. And from where you were standing then, you could
19 not see where the clothes were retrieved from --

20 A That's correct.

21 Q -- or in what manner they were retrieved?

22 A That's correct.

23 Q The pictures show that the clothes were all, I mean
24 everything was just sort of lumped together in one, in one
25 bag, right?

Phillip Chappel - Cross-examination
By Mr. Allen

1 A Yes, sir.

2 Q Not individually wrapped?

3 A No, sir.

4 Q Is that correct?

5 Sort of all jumbled up together?

6 A All in one bag.

7 Q Okay. Thank you, officer.

8 THE COURT: Anything on redirect from this witness?

9 SOLICITOR CRICK: No, sir.

10 THE COURT: All right. Any objection to his being
11 excused?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: Sir, you may step down. You're free to go.
14 Thank you very much.

15 State may call its next witness.

16 SOLICITOR GOWDY: Please the Court, Your Honor.

17 The State would call Investigator Shawn Nix.

18 THE COURT: Sir, come forward to the front to be sworn.

19 SHAWN NIX, being first duly sworn,
20 testified as follows:

21 THE COURT: All right, sir. Please state your name for
22 the record.

23 WITNESS: My name is Shawn Nix. Spartanburg County
24 Sheriff's Office.

25 THE COURT: Thank you, sir.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 Mr. Gowdy, it's your witness.

2 SOLICITOR GOWDY: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY SOLICITOR GOWDY:

5 Q Good afternoon, Detective Nix.

6 A Good afternoon, sir.

7 Q Could you introduce yourself to the ladies and
8 gentlemen of the jury?

9 Tell them how long, where you work and how long you've
10 been there.

11 A My name is Michael Shawn Nix. I'm Spartanburg County
12 Sheriff's Office employed by them. I work in the forensic
13 division. I have worked at the Sheriff's Office for almost
14 eight years and been in the forensic division two.

15 Q So, if you have been in the forensic division for two,
16 you would of been in the forensic unit in May of last year?

17 A That is correct, sir.

18 Q Investigator Nix, did you respond to [REDACTED] Montgomery
19 Street on the morning of May the 11th, 2007?

20 A Yes, sir.

21 Q Were you part of a forensic investigation team?

22 A Yes, sir.

23 Q Can you tell the jury generally what your
24 responsibilities were during the morning hours?

25 A My responsibilities at the scene would of included

Shawn Nix - Direct examination
By Solicitor Gowdy

1 documenting all evidence through photographs. I also ran
2 the video on scene. I assisted Investigator Baird and
3 Talanges with anything that they required at the scene. And
4 later on, I responded out to an address different from [REDACTED]
5 Montgomery Street in order to collect evidence at the
6 request of detectives at that scene.

7 Q All right. Investigator Nix, you made reference to
8 Investigator Baird and Talanges.

9 A Yes, sir.

10 Q But was Investigator Baird the supervisor on scene?

11 A Yes, sir, he was my supervisor at the scene.

12 Q And Investigator Talanges is what, part of the forensic
13 unit?

14 A Yes, sir, he is.

15 Q All three of you, at one point, were working the same
16 crime scene?

17 A Yes, sir, we were.

18 Q What precautions do you take, Investigator Nix, when
19 you work crime scenes that you don't contaminate the scene
20 itself?

21 A We wear latex type gloves and our uniforms as well as
22 our Sheriff's office issued boots.

23 Q Do you also further take precautions not to step in
24 what you believe to be evidence?

25 A Yes, sir.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 Q You mentioned taking photographs.

2 Did you take photographs at the crime scene?

3 A Yes, sir, I did.

4 Q All right. You referenced going to another residence.

5 How did you come to go to another residence?

6 Who asked you to go?

7 A Investigator Baird asked me to go after receiving a
8 phone call from investigators.

9 Q And do you know which residence you responded to?

10 A I responded to a residence on Houston Street. I
11 believe it's [REDACTED] Houston Street.

12 Q All right. Let me find three exhibits really quick.

13 Thank you, Your Honor.

14 These are already in evidence. But I am making
15 specific reference to State's 157.

16 Does that look familiar?

17 A Yes, sir, that's a photograph of the front of the
18 residence of [REDACTED] Houston Street.

19 Q And is that a little further out picture of the same?

20 A That is correct, sir.

21 Q Investigator Nix, when you responded to this scene, you
22 had just left the other crime scene?

23 A Yes, sir.

24 Q All right. Would you have done anything with your
25 gloves?

Shawn Nix - Direct examination
By Solicitor Gowdy

1 A Upon immediately leaving [REDACTED] Montgomery Street, I would
2 of discarded the gloves that I had on.

3 Q Okay. What vehicle did you take from [REDACTED] Montgomery
4 Street to Houston Street?

5 A I took my Sheriff's Office issued forensics truck.

6 Q When you got to Houston Street, what did you do?

7 A When I got to Houston Street, I spoke with Deputy
8 Phillip Chappel who was on the scene. I asked him exactly
9 what they needed for me to do there. He advised that there
10 was a bag of clothing that needed to be collected into
11 evidence.

12 Q Investigator Nix, let me show you State's Exhibit 161.
13 Do you recognize that?

14 MRS. HODGES: Your Honor, we renew our objections
15 previously made and ruled upon on the same grounds.

16 THE COURT: Objection is noted.

17 You may proceed, Mr. Gowdy.

18 SOLICITOR GOWDY: Thank you, Your Honor.

19 Q Investigator Nix, can you tell the jury what we're
20 looking at?

21 A That is a picture of the bag of clothing sitting in the
22 back of Deputy, Deputy Chappel's patrol car on the passenger
23 side of the back seat. The bag is a plastic grocery type
24 bag with clothes in it.

25 Q And this is May 11th, 2007?

Shawn Nix - Direct examination
By Solicitor Gowdy

1 A That is correct, sir.

2 Q All right. I think the jury can see the black and
3 white to the left of this patrol car.

4 A That is correct, sir.

5 Q Okay. Let me show you State's 160.

6 Is that a slightly different angle of the same thing?

7 A Yes, sir, that's a closer up shot of the same thing.

8 Q Let me show you 162.

9 Investigator Nix, do you see anything inside the tennis
10 shoes?

11 A There is a wallet and a pack of cigarettes.

12 Q Do you notice anything unusual about the tennis shoes?

13 A They have no shoe laces on them.

14 Q Okay. What did you do with this bag?

15 A Prior to -- well, after photographing the bag and prior
16 to picking it up, I returned to my Sheriff's Office vehicle
17 and put on a fresh pair of latex gloves. I then got two
18 brown paper evidence bags and a banker's box from the rear
19 of the vehicle. As I was setting these up to put the
20 evidence into them, I remembered that the, that, that there
21 was a print in blood at the crime scene. So, I decided to
22 turn over the shoes to check to see if there was any
23 similarity to the tread on the bottom of the shoes pictured
24 in this bag to the print in blood at the crime scene.

25 When I turned them over, I noticed that they were very

Shawn Nix - Direct examination
By Solicitor Gowdy

1 similar to the ones at the crime, the tread on the shoes was
2 very similar to the ones at the crime scene. I took a quick
3 photo of the bottom of the shoes. I then placed the shoes
4 in a brown paper evidence bag by themselves, and then I
5 placed the remaining items that were in the plastic bag, you
6 can see here, in a brown paper bag all together. Did not
7 remove any of them with the exception of the wallet and
8 cigarette pack to put them in the same bag as the clothing.
9 I then put those two bags in the banker's box and then set
10 them in the back of my evidence truck and secured them.

11 Q All right. You take the shoes and put them in a
12 separate evidence bag?

13 A Yes, sir.

14 Q You take the wallet and cigarettes and put them with
15 the clothes?

16 A Yes, sir.

17 Q In a separate evidence bag?

18 A Yes, sir.

19 Q And you put both evidence bags in a banker's box?

20 A Yes, sir.

21 Q And then you put it where in your truck?

22 A In the back of my evidence truck.

23 Q All right. And then you do what -- you drive from
24 where to where?

25 A Prior to going back to the crime scene, I'd first

Shawn Nix - Direct examination
By Solicitor Gowdy

1 removed my gloves that I had on that I was handling this
2 evidence with. I then contacted Investigator Baird by phone
3 and advised him that I had just come into possession of a
4 pair of shoes that had similar tread pattern to the print
5 that was in blood at the crime scene. He asked me to return
6 to the crime scene in order to have these shoes and make a
7 better visual comparison and also to assist with processing
8 the rest of the crime scene out. I then took my vehicle and
9 responded back to [REDACTED] Montgomery Street.

10 Q When you got to [REDACTED] Montgomery Street, and you've
11 already told the jury the shoes were in one bag and the
12 clothes were in another, did you type, take either one of
13 the bags into [REDACTED] Montgomery Street and, if so, why?

14 A I took only the bags with the shoes in, with the shoes
15 in them into [REDACTED] Montgomery Street because that was what was
16 requested by Investigator Baird. The other bag with the
17 clothing in it stayed inside my vehicle locked in the back
18 of the vehicle and I'm the only person who has a key for
19 that vehicle.

20 Q All right. Investigator Nix, we're back at [REDACTED]
21 Montgomery Street. You have a bag with black tennis shoes
22 in it.

23 You were walking inside [REDACTED] Montgomery Street to give
24 them to whom?

25 A Prior to walking back into the crime scene, I put on a

Shawn Nix - Direct examination
By Solicitor Gowdy

1 fresh pair of gloves and then I go into the crime scene to
2 give them to Investigator Baird.

3 Q Did you drop the shoes at any point while they were in
4 your possession?

5 A No, sir.

6 Q Did you give them to anybody else or did you give them
7 straight to Investigator Dominick Baird?

8 A I gave them straight to Investigator Dominick Baird.

9 Q Did you stand with him while he did his visual
10 comparison between the floor and the tread?

11 A Yes, sir, I did.

12 Q At some point were the arson investigators involved?

13 A Yes, sir, they were involved after Dominick, or I'm
14 sorry, Investigator Dominick Baird compared the shoe tread
15 and the print in the floor.

16 Q All right. Investigator Nix, tell the jury how the
17 arson investigators came to become involved with the shoes
18 and what happened.

19 A The -- I'm sorry. The decision was made that they
20 wanted the arson investigators to perform a test on the
21 shoes to see if there was a possible detection, be able to
22 possibly detect for the presence of an accelerant. That was
23 done by the arson investigators, K-9 unit, which is a dog.

24 The shoes were then placed back into the bag that they
25 had been in. They were carried outside of the house,

Shawn Nix - Direct examination
By Solicitor Gowdy

1 carried all the way to the back of the property next to a
2 large metal garage. Those shoes were then placed on top of
3 arson investigation cans. They're silver metallic cans the
4 arson investigators use.

5 The dog was used to do whatever test the arson
6 investigators do with that test, and they concluded whatever
7 they found in their report.

8 Q You're not an arson investigator, but did -- that was
9 what Easler and Means and, Captain Means were doing,
10 correct?

11 A That's what, yes, Phil Easler, one of the arson
12 investigators, and, yes, Roger Means, yes, sir.

13 Q Okay. Did you retake possession of the black tennis
14 shoes?

15 A No, sir, after that, after they were done, they were
16 turned over to the arson investigation team, which would of
17 been Detective Phil Easler and Lieutenant Ashley Harris.

18 Q Okay. Let me show you what's been marked as State's
19 Exhibit 241 through 269 inclusive, and all I want you to do
20 is tell me whether or not these photographs are relevant to
21 your investigation and whether or not you recognize what's
22 depicted in there without saying what it is.

23 Just whether you recognize it and whether or not it's
24 relevant.

25 A Okay. Yes, sir, they are relevant.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, we would move the,
2 State's 241 through 267 inclusive into evidence at this
3 point.

4 MRS. HODGES: Your Honor, if we could just have a brief
5 minute?

6 THE COURT: Yes, sir.

7 (Pause.)

8 MRS. HODGES: Your Honor, may the solicitor and I
9 approach?

10 THE COURT: You may.

11 (Whereupon, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: All right. Subject to the objections noted
14 at the bench by the defense---

15 SOLICITOR GOWDY: Thank you.

16 THE COURT: ---those will be admitted as marked.

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 MRS. HODGES: Thank you, Your Honor.

19 (Whereupon, State's Exhibit Nos. 241 through 267 were
20 received into evidence at this time.)

21 SOLICITOR GOWDY: Your Honor, permission to display to
22 the jury?

23 THE COURT: You may.

24 SOLICITOR GOWDY: Thank you, Your Honor.

25 Q Detective Nix, Investigator Nix, excuse me, you made

Shawn Nix - Direct examination
By Solicitor Gowdy

1 reference to a photograph that you took of the bottoms of
2 the shoes?

3 A Yes, sir.

4 Q Let me show you State's 159.

5 Does that appear to be a photograph that you took?

6 A Yes, sir, it is.

7 Q Okay. And you mentioned banker's box.

8 Is that the banker's box underneath it?

9 A Yes, sir, that's a picture of the banker's box
10 underneath it.

11 Q All right. You testified there was a wallet inside one
12 of the shoes.

13 A That is correct, sir.

14 Q Let me show you State's 241.

15 What is that?

16 A That appears to be a Social Security card with the name
17 Andres Torres on it and the wallet that it came out of.

18 Q And is that the same wallet that was in the bag with
19 the shoes?

20 A Yes, it is, sir.

21 Q Let me show you 243.

22 A That is a South Carolina ID card with the name Andres
23 Antonio, Antonio Torres on it and it also came out of that
24 wallet.

25 Q Let me show you 246.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 A That is a yellow Polo shirt that came out of the
2 plastic grocery bag, bag. I'm sorry.

3 Q Let me show you 247.

4 A That's just some kind of dark colored substance on one
5 of the sleeves.

6 Q And you would of noted that and photographed it and
7 ultimately what would of been done with that shirt?

8 A I photographed it, noted it, and ordered or rather the
9 shirt would of been sent down to SLED for testing to see if
10 it may have been blood.

11 Q 248, same question.

12 A Pretty much the same answer. Just photograph it,
13 document it so it will be sent down to SLED for testing.

14 Q State's 250, where were those found?

15 A Those are also found in the plastic bag, pair of white
16 socks.

17 Q State's 251.

18 A Again, that is a dark colored area and photographed it,
19 noted it, in order to send it down to SLED for testing.

20 Q State's 257.

21 A Pair of black shoe strings.

22 Q Now, Investigator Nix, did you take the shoe strings
23 out of the shoes or is that the way you found it?

24 A That is the way I found them, sir.

25 Q State's 258.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 A A pair of khaki pants, sir.

2 Q State's 260.

3 A What we're, what I'm trying to show here is a
4 discolored area on the pants pockets and we took photos and
5 documented it also and sent it off for testing as well.

6 Q State's 262.

7 A A pair of blue boxer shorts.

8 Q State's 264.

9 A There's a slightly red area on the band of the boxer
10 shorts photographed and noted and sent to SLED for testing.

11 Q All right. So, you got the bag out of Deputy Chappel's
12 back seat, took it, and took it -- it stayed in your car.

13 And then when you got back in your car, where did you
14 take it?

15 A Leaving from Houston Street, sir?

16 Q No, leaving from, from [REDACTED] Montgomery.

17 A Oh, okay.

18 Q Leaving from [REDACTED] Montgomery, where did you go after you
19 left there?

20 A Okay. After we left [REDACTED] Montgomery and we were done for
21 the crime scene that day, we all met back at the Sheriff's
22 office lab in order to put all the evidence together, look
23 at what we had, take close-up photos of anything that we
24 needed to, and also to bag it up separately so that it may
25 be sent off at a later time for SLED.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 Q Do y'all make great efforts and take great pains to
2 eliminate one piece of evidence from touching another one?

3 A Yes, sir.

4 Q Absent these articles of clothing being bundled up in a
5 plastic bag that you received them, is that how you would of
6 processed them had you been the one collecting them?

7 A I would of -- I'm sorry. Say the question again, sir.

8 Q They -- you, you received them in a plastic bag?

9 A Yes, sir.

10 Q And so, you kept them in the plastic bag?

11 A Yes, sir.

12 Q Had you been processing that crime scene yourself,
13 would you have packaged them separately individually?

14 A Oh, no, no, sir. I -- if we had found the clothes just
15 out and about at a scene and stuff, they would have been
16 processed. They would of all been placed in bags on, on
17 scene by themselves.

18 Q Agreed.

19 The white bag is how you got it?

20 A Yes.

21 Q That's how you kept it?

22 A Yes, sir, that's how I kept it. I'm sorry.

23 Q You did separate the shoes out?

24 A Yes, sir, I was concerned that they may fall out of the
25 bag.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 Q Okay. Now, from -- did you, on May the 12th, 2007,
2 attend the autopsy of Mrs. Ann Emery?

3 A Yes, I did.

4 Q Did you receive something from Doctor John David Wren
5 during the course of that autopsy?

6 A Yes, I did.

7 Q Let me show you State's 34 and ask you whether or not
8 he gave you the sex assault collection kit.

9 A Yes, sir, he did. He gave me the sexual assault
10 collection kit.

11 Q Was it sealed when he gave it to you or did you seal
12 it?

13 A It was sealed when he gave it to me. It was in a box.

14 Q Did it remain sealed in a box?

15 A Yes, it did.

16 Q And what did you do with it, Investigator Nix?

17 A After attending the autopsies of both Charles and Ann
18 Emery and collecting the evidence of that autopsies, I then
19 responded back to the Sheriff's Office lab and immediately
20 put the sexual assault kit in the evidence refrigerator at
21 the lab, which has a padlock on it and it's secured.

22 Q With the ultimate intention of it being delivered
23 where?

24 A With the ultimate intention it be delivered at SLED at
25 a later, at a later time.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 Q Okay. Let me show you what's been marked as State's
2 Exhibit 163, and ask you whether or not you recognize that.

3 A That is -- both items, sir.

4 Q Both items.

5 A Okay. That is the wallet and the pack of cigarettes
6 that was originally in the black shoes that were in the
7 plastic bag.

8 Q Did you collect those items?

9 A Yes, I did, sir.

10 Q Did you secure those items?

11 A Yes, I did, sir.

12 SOLICITOR GOWDY: Your Honor, we would move State's 163
13 into evidence.

14 MRS. HODGES: Your Honor, we renew our objection that
15 was made previously and ruled on by the Court.

16 THE COURT: Objections are noted.

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 THE COURT: It will be admitted as marked.

19 SOLICITOR GOWDY: Thank you, Your Honor.

20 (Whereupon, State's Exhibit No. 163 was received into
21 evidence at this time.)

22 Q Let me show you what's been marked as State's Exhibit
23 42 and ask you whether or not you recognize this, and, if
24 so, how.

25 A These are the -- oh, sorry. These are the black shoes

Shawn Nix - Direct examination
By Solicitor Gowdy

1 that were in the plastic bag.

2 Q Did you put them in that evidence sac?

3 A Yes, sir, I did.

4 Q Did you secure it?

5 A Yes, sir, I did.

6 Q Did you put it, give it to your evidence custodian?

7 A Yes, sir, they all, all items of evidence were turned
8 into evidence.

9 SOLICITOR GOWDY: Your Honor, we would move this into
10 evidence.

11 (Pause.)

12 SOLICITOR GOWDY: Your Honor, I am going to withdraw
13 this and do it through another witness.

14 THE COURT: Thank you, sir.

15 SOLICITOR GOWDY: Your Honor, let me get this, if I
16 could, marked by Madam Court Reporter as 155.

17 (Whereupon, a white shirt was marked as State's Exhibit
18 No. 155 for identification purposes only at this time.)

19 SOLICITOR GOWDY: Thank you.

20 Q Let me show you State's 155 and ask you whether or not
21 you recognize what is in there.

22 A Okay. There -- it's a shirt covered with what I
23 believe to be blood.

24 Q And you recovered that from whom and where?

25 A That would be the shirt recovered from Ann Emery at the

Shawn Nix - Direct examination
By Solicitor Gowdy

1 autopsy or I'm sorry. Not Ann Emery. Yeah, I'm sorry. Ann
2 Emery at the autopsy.

3 SOLICITOR GOWDY: Your Honor, we would move State's 155
4 into evidence.

5 MRS. HODGES: No objection, Your Honor.

6 THE COURT: Without objection, it will be admitted as
7 marked.

8 (Whereupon, State's Exhibit No. 155 was received into
9 evidence at this time.)

10 Q Let me show you State's 152, Investigator Nix, and ask
11 you whether or not you recognize that and where did you
12 receive that from.

13 A That is a breathing mask that was removed from Charles
14 Emery at the autopsy.

15 Q And that was recovered from where?

16 A From the autopsy of Charles Emery.

17 Q By you?

18 A Yes. Yeah.

19 Q And packaged accordingly?

20 A Yes, sir.

21 SOLICITOR GOWDY: Your Honor, we would move State's 152
22 in evidence.

23 MRS. HODGES: I have viewed the evidence previously.
24 So, we have no objection.

25 THE COURT: Without objection, it will be received as

Shawn Nix - Direct examination
By Solicitor Gowdy

1 marked.

2 SOLICITOR GOWDY: Thank you, Your Honor.

3 (Whereupon, State's Exhibit No. 152 was received into
4 evidence at this time.)

5 SOLICITOR GOWDY: Could I have one moment of the
6 Court's time?

7 THE COURT: Yes, you may.

8 (Pause.)

9 SOLICITOR GOWDY: Let me have this marked as State's
10 36.

11 (Whereupon, a yellow shirt was marked as State's
12 Exhibit No. 36 for identification purposes only at this
13 time.)

14 SOLICITOR GOWDY: Thank you, Madam Court Reporter.

15 Q Let me ask you whether or not you recognize that and
16 where that came from.

17 A It says it's the yellow Polo shirt and that's the
18 yellow Polo shirt that was recovered from the plastic---

19 MRS. HODGES: Your Honor, at this time we would object
20 to this exhibit as well as I'm sure the next several
21 exhibits based on our objections previously made and ruled
22 upon by the Court.

23 THE COURT: Those objections will be noted.
24 You may proceed, Mr. Gowdy.

25 SOLICITOR GOWDY: Thank you, Your Honor.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 We would move State's 36 into evidence, Your Honor.

2 THE COURT: Subject to the previous objections, it is
3 admitted.

4 SOLICITOR GOWDY: Thank you, Your Honor.

5 (Whereupon, State's Exhibit No. 36 was received into
6 evidence at this time.)

7 SOLICITOR GOWDY: Ask Madam Court Reporter for No. 39.

8 (Whereupon, a pair of khaki pants was marked as State's
9 Exhibit No. 39 for identification purposes only at this
10 time.)

11 Q Investigator Nix, let me show you what's been marked as
12 State's 39 and ask you whether or not you recognize that and
13 what that is.

14 A It's the khaki pants that were recovered from the
15 plastic bag.

16 Q Are those the khaki pants that were in the white bag
17 you---

18 A Yes, sir.

19 Q ---described to the jury?

20 A Yes, sir, that is.

21 Q And you secured them and put them in evidence?

22 A Yes, sir, I did.

23 SOLICITOR GOWDY: Your Honor, we would move State's 39
24 into evidence.

25 THE COURT: Subject to your previous objections, it

Shawn Nix - Direct examination
By Solicitor Gowdy

1 will be admitted.

2 MRS. HODGES: Yes, sir.

3 (Whereupon, State's Exhibit No. 39 was received into
4 evidence at this time.)

5 SOLICITOR GOWDY: If I could ask Madam Court Reporter
6 to trouble her for 37, 41, and 42-A.

7 (Whereupon, a pair of socks was marked as State's
8 Exhibit No. 37. A pair of shoe laces was marked as State's
9 Exhibit No. 41. More cuttings were marked as State's
10 Exhibit Nos. 42-A. All of the above exhibits were for
11 identification purposes only at this time.)

12 Q And finally, Investigator Nix, let me show you what's
13 marked as State's 37, 41, and 42-A, and ask you whether or
14 not you recognize what is in those three packages.

15 A Black shoe -- I'm sorry. Black shoe laces, white
16 socks, and blue boxer underwear.

17 Q And are -- were those three items the items recovered
18 from the plastic bag --

19 A That is correct, sir.

20 Q -- that you took out of Deputy Chappel's car?

21 A That is correct, sir.

22 Q Did you secure those items?

23 A That is correct, sir.

24 Q Did you place them in evidence yourself?

25 A Yes, sir.

Shawn Nix - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, we would move State's 37,
2 41, and 42-A into evidence.

3 THE COURT: Subject to your previous objections,
4 they'll be admitted.

5 SOLICITOR GOWDY: Thank you, Your Honor.

6 MRS. HODGES: Thank you, Your Honor.

7 (Whereupon, State's Exhibit Nos. 37, 41, and 42-A were
8 received into evidence at this time.)

9 SOLICITOR GOWDY: One moment of the Court's time, Your
10 Honor.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q Investigator Nix, please answer any questions that the
14 defense counsel may have for you.

15 A Yes, sir.

16 THE COURT: Mrs. Hodges, your witness.

17 MRS. HODGES: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MRS. HODGES:

22 Q Investigator Nix, my understanding is that you were not
23 on scene when these clothing items were actually obtained
24 from Mrs. Rogers, from, from the home, is that correct?

25 A I'm sorry. Who's Mrs. Rogers?

Shawn Nix - Cross-examination
By Mrs. Hodges

1 Q The person that actually -- you, you don't know who
2 Mrs. Rogers is?

3 A I know that there was a grandmother present. I don't
4 know her name.

5 Q All right. Don't know -- you were not there when the
6 clothes were taken out of the washing machine, which is what
7 the prior testimony was, and handed to Deputy Chappel?

8 A No, I was not.

9 Q All right. So, you don't know where the clothes came
10 from, anything about, anything about them until you saw them
11 for the very first time in the back of Deputy Chappel's
12 patrol car?

13 A Not till my arrival, no.

14 Q Okay. And in fact, you had indicated that you would
15 have packaged all of the clothing, had you been taking it
16 into evidence, you would of actually packaged each
17 individual piece of clothing in its own bag, is that right?

18 A That is correct.

19 Q All right. But in this particular instance, you took
20 the shoes out of the plastic bag and packaged them
21 separately, is that right?

22 A That is correct.

23 Q And at that particular time you left all the clothing
24 in the white bag?

25 A That is correct.

Shawn Nix - Cross-examination
By Mrs. Hodges

1 Q All right. And at some point later then you
2 transferred all the remaining clothing that had been in the
3 white bag into individual paper bags or into one paper bag?

4 A We, we wrapped them up in brown paper and then entered
5 them into evidence. I, I don't recall if they were in one
6 paper bag or not.

7 Q All right. So, you wrapped them all in, in brown paper
8 individually?

9 A Yes.

10 Q All right. Did you wrap them -- I think some of the
11 testimony, evidence items shows that some of it has some of
12 the white butcher paper also wrapped around it.

13 Did you wrap it in white butcher paper too?

14 A Yes.

15 Q All right. So, you wrapped them both in the white
16 paper and then again in brown paper?

17 A On some of them, yes.

18 Q On some of them.

19 A Uh-huh. (Affirmative).

20 Q But not all of them?

21 A No, ma'am.

22 Q Okay. Where were the shoe laces found?

23 A Inside the bag.

24 Q So, they were just -- I mean but where inside the bag?

25 A They were inside the plastic bag with the rest of the

Shawn Nix - Cross-examination
By Mrs. Hodges

1 clothing.

2 Q Okay. Were they inside the shoes?

3 Were they inside, at the bottom of the bag, middle of
4 the bag, where inside the bag were they found?

5 A I don't remember, ma'am.

6 Q Okay. And you were not present when -- well, we've
7 already asked that question already.

8 (Pause.)

9 Q Thank you, sir.

10 THE COURT: Redirect?

11 SOLICITOR GOWDY: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY SOLICITOR GOWDY:

14 Q Investigator Nix, at any -- I'm not going to gather up
15 all these items. But imagine that I had all the items from
16 the back seat of Deputy Chappel's car in my arms right now.

17 A Uh-huh. (Affirmative).

18 Q At any point did any of those items come in contact
19 with anything that you recovered in [REDACTED] Montgomery Street?

20 A No, they did not, sir.

21 Q All right. They were always separate from anything
22 taken out of [REDACTED] Montgomery Street?

23 A That is correct, sir.

24 Q Thank you, Investigator Nix.

25 THE COURT: Recross?

Shawn Nix - Redirect examination
By Solicitor Gowdy

1 MRS. HODGES: No, sir. Thank you.

2 THE COURT: Any objection to this witness being
3 excused?

4 MRS. HODGES: No, sir.

5 THE COURT: Sir, you may step down. You're free to go
6 if you care.

7 WITNESS: Thank you, sir.

8 THE COURT: The State may call its next witness.

9 SOLICITOR CRICK: Your Honor, the State calls Ashley
10 Harris.

11 THE COURT: Sir, come forward to be sworn.

12 ASHLEY HARRIS, being first duly
13 sworn, testified as follows:

14 THE COURT: Sir, state your name for the record.

15 WITNESS: Yes, it's Ashley Harris.

16 THE COURT: Mrs. Crick, your witness.

17 SOLICITOR CRICK: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY SOLICITOR CRICK:

20 Q Are you Lieutenant Ashley Harris?

21 A Yes, ma'am.

22 Q Where do you work?

23 A I work for the Spartanburg County Sheriff's Office.

24 Q Can you explain to the jury what you do at the
25 Sheriff's Office?

Ashley Harris - Direct examination
By Solicitor Crick

1 A Yes, ma'am, I'm responsible for the forensic lab at the
2 Sheriff's Office. We are responsible for testing controlled
3 substances and fire debris for the presence of accelerants
4 or ignitable liquids in the event there's an arson or a
5 suspicious fire has occurred.

6 Q How long have you been with the Sheriff's Office?

7 A I've been with the Sheriff's Office since 1999, January
8 or March of 1999.

9 Q How long have you been involved with the lab at the
10 Sheriff's Office?

11 A I was -- the, the reason I was hired by Spartanburg was
12 to start the lab at the Sheriff's Office.

13 Q So, you actually started that lab yourself?

14 A Yes, ma'am.

15 Q Do you have any certification through SLED to do
16 chemical analysis?

17 A Yes, ma'am, I was with the South Carolina State Law
18 Enforcement Division, SLED, in Columbia. I was originally
19 hired for drug analysis in 1997. After Spartanburg received
20 their grant to open their own lab, I came up here to start
21 that lab, and I went back to SLED, not too long after coming
22 to Spartanburg, to get my certification in fire debris
23 analysis.

24 Q Do you have any specialized training in that kind of
25 analysis?

Ashley Harris - Direct examination
By Solicitor Crick

1 A Yes, ma'am, in addition to a Bachelor of Science in
2 Chemistry and a Master's Degree in Analytical Chemistry, I
3 received certification through SLED for forensic fire
4 degrees analysis. I received my certification in June of
5 2000, and I've had continuing education classes every year
6 since then to stay up on new processes and changes in
7 different types of ignitable liquids in the groups they
8 belong to.

9 Q So, do you normally receive evidence provided by the
10 folks at the Sheriff's Office to test?

11 A Yes, ma'am, we receive ignitable liquid cases and arson
12 cases from the county and also the city. We receive
13 approximately 40 to 60 a year.

14 Q Do you ever actually go out to an arson scene?

15 A Yes, ma'am, I am just recently became a part of the
16 arson bomb unit for the Sheriff's Office and I actually
17 respond to a lot of arsons now. But over the, over the
18 years, I responded to some that were difficult cases, cases
19 that were gonna involve sampling of a lot of items. Go out
20 and help them determine what might be a good thing to
21 submit, what they may need to submit in addition to that to
22 find proper things or control and comparison samples.

23 Q Lieutenant Harris, have you ever been qualified as an
24 expert in Court before?

25 A Yes, ma'am.

Ashley Harris - Direct examination
By Solicitor Crick

1 Q Do you know about how many times?

2 A In forensic drug analysis, in excess of 85 times. In
3 forensic fire debris analysis, one before today.

4 SOLICITOR CRICK: Your Honor, at this time I'd like to
5 have him qualified as an expert in fire debris analysis.

6 MRS. HODGES: No objection.

7 THE COURT: Any objection?

8 MRS. HODGES: No, sir.

9 THE COURT: All right. He'll be qualified as an expert
10 within that field.

11 You may proceed.

12 SOLICITOR CRICK: Thank you, Your Honor.

13 Q I'm gonna go back to May 11th of 2007.

14 Did you, at some point, become involved in an
15 investigation at ■ Montgomery Street?

16 A Yes, ma'am.

17 Q What -- how did you become involved?

18 Let me ask it this way.

19 A Investigator Easler phoned me and, and kind of
20 explained to me that he had, he was on a scene that was
21 rather large, that they were looking at obtaining a lot of
22 samples. He asked if I would be willing to come out to the
23 scene, help him process it, make sure that all the samples
24 that needed to be taken were taken, and samples that weren't
25 really pertinent, would, could kind of weed through and make

Ashley Harris - Direct examination
By Solicitor Crick

1 sure we didn't get an abnormally large number of samples.

2 Q Did you actually go out to the scene?

3 A Yes, ma'am.

4 Q What did you do when you got there?

5 A When I arrived, Investigator Easler was already on the
6 scene and I believe the person from the North Spartanburg
7 Fire Department, who had the accelerant dog, was already on
8 the scene. They had already gone through the house and
9 placed markers where the dog hit and they were in the, in
10 the process of taking the final few samples, and we
11 discussed combining a few samples and I just kind of got a
12 walk through of the scene, kind of see the layout of the
13 scene.

14 Q And in walking through the scene, what did you notice?

15 A There was a strong odor of gasoline throughout the
16 house. I saw where they had put markers down on the floor.
17 They had already taken some samples up, placed those in, in
18 cans, and I also noticed the fact that, that -- they kind of
19 just let me see the rest of the scene. I saw where the,
20 where the bodies were in that bedroom, and we walked back
21 through and they were in the middle of processing the
22 kitchen for ignitable liquids.

23 Q When you say processing the kitchen, were they doing
24 the swabs of the controls on the stove and oven?

25 A Yes, ma'am, the stove had been turned on. All of the

Ashley Harris - Direct examination
By Solicitor Crick

1 burners on the stove and the actual oven itself had been
2 turned on. And so, they were -- they determined that it
3 would be a good idea to see if anybody who had handled the
4 gas actually touched those knobs and left any residues on
5 them.

6 Q Now, were you at [REDACTED] Montgomery Street when the, what a
7 pair of shoes was bought to the scene?

8 A Yes, ma'am, I was. After all the samples were taken
9 from the house, we took them outside to let the dog run over
10 them again to see if the dog was gonna hit, and at that
11 point, I tried, I don't remember exactly who brought them,
12 but another officer brought the shoes back to the house, and
13 submitted them over to Investigator Easler and then
14 Investigator Easler gave me custody of all of the items in
15 evidence including the shoes.

16 Q So, you received all the samples that were taken from
17 the home?

18 A Yes, ma'am.

19 Q And those were all individually sealed and given to
20 you?

21 A Yes, ma'am.

22 Q I'm gonna show you what actually has already been
23 entered into evidence just for you to identify. I'll give
24 them all to you. This is gonna be State's 71, 72, 76, 78,
25 79, 73, and 77, and, and State's 75 and you may have a

Ashley Harris - Direct examination
By Solicitor Crick

1 better order than me.

2 A That's fine.

3 Q State's 80 and 74 and 81. If you'll bear with me one
4 second. There's one other item. I think it's 42. I'm just
5 gonna sit that here.

6 A Okay.

7 Q That might fall over.

8 If you would take a look at all those items and tell me
9 if you recognize what those are.

10 A Yes, ma'am. Starting here and working around, these
11 are the items that were submitted for ignitable liquid
12 residue, to be analyzed for ignitable liquid residue.
13 They're marked with the item numbers from the lab.

14 Okay. And these are the shoes that have been taken out
15 of -- they were in, originally in these two cans, Item
16 Number 13 and 14, and placed in a, in a bag. They've been
17 removed from the cans.

18 Q So, the shoes that are in that bag, actually when you
19 got them, were in those two cans?

20 A Yes, ma'am, the way we analyze for ignitable liquid
21 residues is we suspend a piece of activated carbon, which is
22 the equivalent to the same active ingredient in Odor Eaters.
23 That carbon, activated carbon will hang on very tightly to
24 ignitable liquids that are present in these, and then we
25 heat the can up. The ignitable liquids that are left will

Ashley Harris - Direct examination
By Solicitor Crick

1 adhere themselves to that, and we rinse those off and we run
2 those for the presence of those ignitable liquids in the
3 samples.

4 So, all of the items were originally sealed in air
5 tight containers such as these cans and these individually
6 packaged bottles, and the shoes were removed after I did the
7 analysis for ignitable liquids.

8 Q Did you do an analysis on the other items that were
9 there as well?

10 A Yes, ma'am, every one of these is, has been analyzed.

11 Q Can you take us through the samples there, what
12 analysis you performed---

13 A Yes, ma'am.

14 Q ---on each one of those.

15 A Performed a, a flame test on a couple of the items.
16 But they each, every item had a G.C. Masspec run on them,
17 and that's -- it's a gas chromatograph coupled to a
18 massspectrometer and it's a, a hyphenated technique where one
19 half of the instrumentation separated the component items
20 and the other half of the instrument analyzes them and tells
21 you what they are. Gasoline, diesel fuel, kerosene, most
22 ignitable liquids have a very very large number of
23 components. Gasoline has in excess of 300 components, and
24 those components need to be separates, and then identified
25 and you use the ratios, and the, and the pattern to

Ashley Harris - Direct examination
By Solicitor Crick

1 determine what the ignitable liquid present in that sample
2 is, and that's the form of analysis that was used on all of
3 these.

4 Item Number -- would you like me to go through
5 individual items?

6 Q Yeah, if you would for the jury please.

7 A Item Number 1 was the swab that was taken from a marker
8 number four that was found in the main bedroom.

9 Q Uh-huh. (Affirmative).

10 A And it was negative for an ignitable liquid.

11 Q Okay.

12 A Item Number 3 was a swab taken from the living room
13 where marker number three was found, and it was negative for
14 ignitable liquid.

15 Item Number 5 contained some metal, a board, and a
16 piece of gauze that was at Marker Number 3. They used a,
17 taken a larger sample, and it was present, gasoline was
18 found to be present in that sample.

19 Q Did it indicate which room that, those cuttings came
20 from?

21 Is that from the living room/fireplace area?

22 A Yes, ma'am, it's marked main living room near
23 fireplace.

24 Q Okay.

25 A I apologize for that.

Ashley Harris - Direct examination
By Solicitor Crick

1 Q That's okay.

2 A Item Number 6, which is this gallon can---

3 Q Uh-huh. (Affirmative).

4 A ---was carpet that was removed from the living room cut
5 out of the living room floor, and it was, gasoline was
6 present in that carpet. And again, that came from the
7 living room.

8 Item Number 7, which is this gallon can here, came from
9 the main living room. It was part of the -- it was a sample
10 taken from the back of the recliner.

11 Q Uh-huh. (Affirmative).

12 A And gasoline was found in this sample also.

13 Item Number 8, there was a red can found -- let's see
14 exactly where it was found. It was in the living room near
15 Marker Number 1. There was a liquid taken out of that
16 sample, and it was present, it had -- it was identified as
17 gasoline, and, again, it was in a red gas can.

18 Q Okay.

19 A Item Number 9 is this quart can here. It contained
20 material from the couch, a pillow on the couch again in the
21 living room I believe. Yes.

22 Q Uh-huh. (Affirmative).

23 A And it tested positive for a mixture of gasoline and a
24 heavy petroleum product. The pillow could of had some kind
25 of, a protective placed on it, an anti-stain protectant or

Ashley Harris - Direct examination
By Solicitor Crick

1 Scotch Guard, something like that. But gasoline was found.
2 It was an additional heavy ignitable, heavy petroleum
3 product found also.

4 Q Okay.

5 A Sample Number 11 are three swabs that were taken off of
6 the right-hand controls of the kitchen oven. They actually
7 use three individual separate swabs, placed them all into
8 one sample. They were negative for ignitable liquids.

9 Q Okay.

10 A Item Number 12 is the swab from the left-hand controls
11 of the oven. They, again, were negative for ignitable
12 liquids.

13 Item Number 13 and 14 were the shoes of Mr. Torres.
14 Item Number 13 was his right shoe, and gasoline was found on
15 those, on this shoe. Item Number 14 is the left shoe and no
16 ignitable liquid was identified on that shoe.

17 Q Is there a reason the shoes would be in separate cans?

18 A Yes, ma'am, in the event of, of a shoe, something
19 that's manufactured from synthetic, sometimes natural and
20 sometimes a combination of the two, a lot of times ignitable
21 liquid is the manufacturing of those items. When they glue
22 the sole on, when they do the, the staining, the dying,
23 protective coatings, a lot of times those contain ignitable
24 liquids.

25 By separating those shoes, putting one in each bucket,

Ashley Harris - Direct examination
By Solicitor Crick

1 in each can, you can actually use one as a controlled sample
2 or a comparison sample for the other. If one tests positive
3 for ignitable liquids and the other one doesn't, you can
4 tell for sure that that was not something that was used in
5 the manufacturing process. If they both, if you put them in
6 the same can and they test positive, you can't rule out the
7 fact that that particular ignitable liquid was used when
8 they actually manufactured the shoe. By having them
9 separated, you have a built in comparison sample.

10 Q So, in this case, you found gasoline on one shoe, but
11 not on the other one. So, it would of been introduced from
12 an outside source and not in manufacturing.

13 A That's correct.

14 Q Okay. After you tested all these items, what did you
15 do with them?

16 A After they were all tested, I sealed them back up with
17 evidence tape to make sure that they wouldn't be tampered
18 with, and I held them in the lab, and then I eventually
19 returned them back to the Spartanburg County Sheriff's
20 office evidence room.

21 Q And that would of included the shoes as well?

22 A Yes, ma'am, everything would of been returned at the
23 same time.

24 SOLICITOR CRICK: Just one moment please.

25 (Pause.)

Ashley Harris - Cross-examination
By Mrs. Hodges

1 SOLICITOR CRICK: Your Honor, I have no further
2 questions at this time.

3 THE COURT: Mrs. Hodges, your witness.

4 MRS. HODGES: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MRS. HODGES:

7 Q Lieutenant Harris, my understanding, from your
8 testimony, is that there were swabs that were taken in the
9 kitchen from the knob controls on the kitchen stove?

10 A Yes, ma'am, that is correct.

11 Q And those were negative for gasoline or any petroleum
12 product?

13 A That's correct.

14 Q Okay. When -- what -- do you know about approximately
15 what time you arrived at the crime scene?

16 A It was immediately after lunch to my recollection.
17 There was already food that had been, had been delivered to
18 the, to the guys at the crime scene.

19 Q Okay. And had -- may -- I mean if I understand your
20 testimony right, Investigator Easler and Captain Means had
21 already gone through the scene with the accelerant dog?

22 A Yes, ma'am, there were already markers in the living
23 room and I believe in the, in the bedroom also, yes, ma'am.

24 Q Okay. And when you said that you, that, the, the, the
25 three of you talked about combining samples, I mean, I mean

Ashley Harris - Cross-examination
By Mrs. Hodges

1 were you putting samples together or what, what were you
2 talking about?

3 A Oh, the, the main thing I was in reference to was when
4 they were swabbing the, the knobs on, the control knobs on
5 the, on the oven, they had taken three swabs and they were
6 gonna package each one of those swabs individually for the
7 three knobs to the left and they were gonna do three
8 additional knobs on the right. And I told them that the
9 possibility of finding ignitable liquid is relatively low
10 from a transfer from an organic substance, a hand to
11 plastic. So, I recommended that they do those three swabs
12 combined as one for the, I believe it was the right-hand
13 side. Yeah, the right-hand side, and then taking one swab
14 and just doing that one swab for all three of the controls
15 on the left-hand side so there wouldn't be six individual
16 items with a lesser chance, if there was an ignitable liquid
17 there, finding it for combining them into two separate
18 samples, one from the left and one from the right, to limit
19 the number of samples and increase the changes if there is
20 something there it would test positive.

21 Q And the cloth in the main bedroom was negative for
22 gasoline.

23 That's Item Number 1.

24 A Item Number 1, yes, ma'am. That one was negative for
25 ignitable liquids. The swab that was used as a, is about

Ashley Harris - Cross-examination
By Mrs. Hodges

1 the size of a Q-tip. We have some larger swabs, but that's
2 just the one that was used in that case, but it was negative
3 for ignitable liquids.

4 Q Okay. And were you present when that swab was actually
5 collected?

6 A I don't -- I believe that one was collected before I
7 ever got to the scene.

8 Q Okay. You were not presented any additional evidence
9 to test in this case other than what you've testified to
10 today, is that correct?

11 A There were two items that weren't present. They were
12 comparisons samples for -- Item Number 2 from my report was
13 a comparison sample for Item Number 1, and Item Number 4 was
14 a comparison sample for Item Number 3. But everything else
15 was -- that's all I have was the, the addition of those two.

16 Q And that answers my question.

17 I guess what I was trying to get at is that on any
18 other date or any later date you weren't ever provided any
19 other sort of samples to, to test?

20 A No, ma'am, I don't recall receiving anything else.

21 Q Cause that won't provide a swab from like the nozzle of
22 the gas can?

23 A No, ma'am.

24 Q Okay. Weren't provided any items from the autopsy to
25 test?

Ashley Harris - Cross-examination
By Mrs. Hodges

1 A No, ma'am.

2 Q And you had been told that the oven was turned on, is
3 that correct, and that the, the stove was turned on?

4 A Yes, ma'am, when I got there they said the, all the
5 electrical controls on the oven were on and that they had
6 already cut them off by the time I got there. I don't --
7 they said that, I believe it was Investigator Easler I
8 believe. I remember somebody saying specifically that they
9 used a pair of tongs to cut them off. But I believe it was
10 Investigator Easler that had cut them off. I'm not a
11 hundred percent sure on that.

12 Q Okay. Don't know who cut them off, but they were not
13 on when you were there?

14 A That's correct.

15 Q And are you familiar with the, the term pour pattern?

16 A Yes, ma'am, I am.

17 Q And did you observe any sort of pour pattern in the
18 kitchen area?

19 A I don't recall seeing a pour pattern in the kitchen. I
20 do recall seeing one in the living room, but I'm not a
21 hundred percent. I don't recall seeing one in the kitchen.

22 Q Okay. And did you actually enter into the bedroom
23 itself?

24 A Yes, ma'am, I, I made it to the threshold of the door.
25 Because of the, trying to make sure that the blood, blood

Ashley Harris - Cross-examination
By Mrs. Hodges

1 spatter patterns and things like that were not damaged, I
2 didn't actually go into that room at all.

3 Q Okay. You didn't actually enter into the bedroom other
4 than the threshold?

5 A That's correct.

6 Q Okay. Thank you, sir. That's all I have.

7 THE COURT: Redirect?

8 SOLICITOR CRICK: No, sir.

9 THE COURT: Any objection to this witness being
10 excused?

11 MRS. HODGES: None, sir. Thank you.

12 THE COURT: Sir, you may step down. You're free to go.

13 WITNESS: Thank you, sir.

14 THE COURT: State may call its next witness.

15 SOLICITOR BARNETTE: Yes, sir, we'd like to call
16 Margaret Greer to the stand please.

17 THE COURT: Come forward, ma'am, to be sworn.

18 MARGARET GREER, being first duly
19 sworn, testified as follows:

20 SOLICITOR BARNETTE: Your Honor, if I could take a
21 minute to pick that up?

22 THE COURT: Sure.

23 State your name for the record please, ma'am.

24 WITNESS: My name is Margaret Greer.

25 THE COURT: Your witness, Mr. Barnette.

Margaret Greer - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q Mrs. Greer, where do you work at, ma'am?

5 A I work for the Spartanburg County Sheriff's Office.

6 Q And how long have you been with the Sheriff's
7 Department, ma'am?

8 A I've been in law enforcement for sixteen years and I've
9 worked at the Sheriff's Office for four.

10 Q Okay. And where was you in law enforcement prior to
11 that?

12 A At Spartanburg City.

13 Q And back in May of 2007, was you an evidence officer at
14 that time, ma'am?

15 A Yes, sir, I was.

16 Q And as part of the evidence officers, is it y'all's job
17 to secure evidence and be able to transport it to SLED at a
18 later date?

19 A That's correct.

20 Q Did you receive several items -- I guess the majority
21 of these items was secured by the evidence department?

22 A Yes, sir.

23 Q And did you transport, I guess, every one but one of
24 them that I'm looking at to SLED---

25 A I did.

Margaret Greer - Direct examination
By Solicitor Barnette

1 Q ---in this case?

2 I can pull out the specific -- I know you went through
3 the paperwork. I'm gonna try to make this go a little
4 faster. I'm gonna read the number and the items.

5 A Okay.

6 Q And you confirm with me if that's the items that you
7 took down.

8 State's Exhibit No. 3, which was the hammer.

9 A I did.

10 Q State Exhibit 7, which is the, the Buccal swab from
11 Charles Ray Emery.

12 A Yes, sir.

13 Q State Exhibit No. 8, which is the Buccal swab from Mary
14 Ann Emery.

15 A I did.

16 Q State Exhibit 25, which is -- well, 25, 26, 27, and 28,
17 and 29, and 30, which was the cuttings, cuttings of the
18 floor where they had the shoe prints on them?

19 A Yes, sir.

20 Q 31, the jeans with the belt in them?

21 A Yes, sir.

22 Q State Exhibit No. 32, the swabs with the white planter
23 found in the van and 33 was also another swab with the white
24 planter found in the van.

25 A Yes, sir.

Margaret Greer - Direct examination
By Solicitor Barnette

1 Q No. 34, which is a sexual assault evidence kit that was
2 collected.

3 A Yes, sir.

4 Q And the items inside that kit -- that kit was sealed,
5 is that right?

6 A That's correct.

7 Q Okay. 36 was a yellow polo shirt.

8 A Yes.

9 Q 37, which was white socks?

10 A Yes, sir.

11 Q 38, which was the white -- 38, which was the shoe
12 laces, white shoe laces.

13 A Yes, sir.

14 Q All right. 39, which is the brown khaki pants?

15 A Yes.

16 Q 41, which was the boxer shorts blue in color?

17 A Yes, sir.

18 Q 42, which was the tennis shoes, the black tennis shoes?

19 A Yes.

20 Q 43, which was the swabs from the jewelry box that was
21 found on the brown purse as well as No. 44 which is another
22 swab from another box.

23 A Yes, sir.

24 Q 46, which was a CD with photos of shoe prints.

25 A Yes, sir.

Margaret Greer - Direct examination
By Solicitor Barnette

1 Q And you transported all those to SLED, is that right?

2 A I did.

3 Q And when you transported those, did you transport them
4 on June 5th, 2007?

5 A I believe so.

6 Q And when you registered them in, tell us the
7 procedures, tell the jury the procedure when you registered
8 those items in with the State Law Enforcement Division.

9 A Basically what happens is the evidence comes in either
10 in an evidence envelope or an evidence bag. It's sealed.
11 Comes with an evidence sheet. When I go to SLED, I have a
12 list of what all needs to go, match that up with the
13 evidence sheets, carry that down there to SLED, work with
14 one of the SLED intake, evidence intake people. They take
15 each individual item, put it in a heat sealed bag and heat
16 seal it. I have to sign on the front and then sign on the
17 seal. So, I watch them seal it in the heat sealed bags.

18 Q So, these items were obviously secured by, by the
19 evidence department which is enclosed in bags or in boxes at
20 the time?

21 A Yes, sir.

22 Q And you took them down to SLED and they were put into
23 heat sealed bags?

24 A They are or if it's a bigger item, they put it into a
25 box and then they put evidence tape across all the corners

Margaret Greer - Direct examination
By Solicitor Barnette

1 and you have to sign all the corners.

2 Q We have -- well, for example, you, you're talking about
3 like a box like this?

4 A Yes, sir, that's correct and the yellow tape is the
5 SLED tape.

6 Q Right.

7 And they seal it there and that makes sure it's secure
8 at that time?

9 A That's correct.

10 Q And this was done all in your presence?

11 A Yes, sir.

12 Q So, did you see anybody tamper with the evidence or do
13 anything with the evidence?

14 A No, sir, I did not.

15 Q And when it was sealed in the bag, was it sealed when
16 you left?

17 A Yes, sir, it was.

18 Q And did you initiate, initial that bag?

19 A I did.

20 Q Okay. And it was left and sealed and secured, and no
21 evidence was tampered with when you saw any of these items?

22 A That's correct.

23 Q Please answer any questions that the defense may have
24 for you.

25 MR. ALLEN: No questions, Your Honor.

Margaret Greer - Direct examination
By Solicitor Barnette

1 THE COURT: Ma'am, you may step down.

2 Any objection to her being excused?

3 MR. ALLEN: No, Your Honor.

4 THE COURT: You're free to go. Thank you very much,
5 ma'am.

6 WITNESS: Yes, sir.

7 THE COURT: Your Honor, I'd like to call Jack
8 Westmoreland to the stand please.

9 THE COURT: Come forward and be sworn, sir.

10 WITNESS: Yes, sir.

11 JACK WESTMORELAND, being first duly
12 sworn, testified as follows:

13 THE COURT: Once you're seated, sir, I'm going to ask
14 that you state your name---

15 WITNESS: Yes, sir.

16 THE COURT: ---for the record please.

17 WITNESS: Jack Westmoreland.

18 DIRECT EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Where do you work at, sir?

21 A Spartanburg County Sheriff's Office.

22 Q And how long have you been with the Sheriff's
23 Department, sir?

24 A Twenty-five years two months.

25 Q Okay. And what is your present position, sir, with the

Jack westmoreland - Direct examination
By Solicitor Barnette

1 Sheriff's Department?

2 A Evidence officer.

3 Q And back in January of 2008, was you working as an
4 evidence officer then, sir?

5 A Yes, sir.

6 Q And not to get the item out, but Item Number 4 in this
7 case, the, 49, which is the Buccal swab of the defendant in
8 this case, Mr. Torres, did you take that item to SLED, sir?

9 A I did, sir.

10 Q And was that item secured by our evidence department?

11 A Yes, sir, it was.

12 Q And was there any evidence, any tamper or anything?

13 A No, sir.

14 Q Did you transport this to SLED?

15 A I did.

16 Q And was that item sealed in a heat sealed bag in your
17 presence?

18 A At SLED. Yes, sir, it was.

19 Q And when it was sealed, did you initial it, initial
20 that?

21 A I signed and initialed it and dated it.

22 Q And it was left sealed when you left SLED?

23 A Yes, sir.

24 Q And there was no evidence of tampering or anything with
25 that?

Jack Westmoreland - Direct examination
By Solicitor Barnette

1 A No, sir.

2 Q Please answer any questions the defense may have for
3 you.

4 MR. ALLEN: No, no questions.

5 THE COURT: You may step down, sir.

6 WITNESS: Thank you, sir.

7 THE COURT: State may call its next witness.

8 SOLICITOR BARNETTE: Your Honor, like to call Jan
9 Bryson to the stand please.

10 THE COURT: Ma'am, come forward to the front to be
11 sworn.

12 JAN BRYSON, being first duly sworn,
13 testified as follows:

14 THE COURT: Ma'am, once you're seated, I'd ask that you
15 please state your name for the record.

16 WITNESS: My name is Janice Bryson.

17 THE COURT: Your witness, Mr. Barnette.

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q Mrs. Bryson, where do you work at, ma'am?

22 A I'm employed by the South Carolina Law Enforcement
23 Division.

24 Q And what is your position there, ma'am?

25 A I'm a forensic evidence technician in the evidence

Jan Bryson - Direct examination
By Solicitor Barnette

1 processing department.

2 Q And could you tell the jury a little bit about your
3 duties, ma'am?

4 A Whenever items of evidence are submitted to the lab
5 with a request to look for hair, fiber, blood, or semen,
6 it's my responsibility to collect the evidence and make sure
7 that it's sent to the appropriate department.

8 Q And how long have you been doing this position again?

9 A I've been at SLED for 19 years and I've been processing
10 for 12.

11 Q And how many items have you processed in your career?

12 A I---

13 Q I understand.

14 A I don't have a clue.

15 Q I understand.

16 Was you asked to process some items in this case,
17 ma'am?

18 A Yes, sir, I did.

19 Q Let me show you what's been marked as State Exhibit
20 539.

21 If you would, take a look.

22 Is that a copy of part of your report in this case?

23 A Yes, sir.

24 SOLICITOR BARNETTE: Your Honor, I'd like to enter this
25 into evidence at this time, time.

Jan Bryson - Direct examination
By Solicitor Barnette

1 MRS. HODGES: Your Honor, we renew our objections
2 regarding the items that are contained in 539 based on our
3 previous objections that's been ruled on by the Court.

4 THE COURT: Objection's noted. It's admitted.

5 (Whereupon, State's Exhibit No. 539 was received into
6 evidence at this time.)

7 SOLICITOR BARNETTE: Your Honor, may I publish this to
8 the jury at this time?

9 THE COURT: You may do so.

10 Q Let me ask you this, Mrs. Bryson.

11 Did you receive some blue jeans, a yellow Polo shirt, a
12 pair of white socks, a pair of khaki pants, brown khaki
13 pants, and some blue boxer shorts?

14 A Yes, sir.

15 Q And did you process those items?

16 A Yes, I did.

17 Q If you would, come down for me, ma'am, and show this to
18 the jury.

19 (Witness comes down from the stand.)

20 Q If you can describe to them what you did, and just to
21 show the jury here quickly, this is State Exhibit 31. Let
22 me ask you to look at this, ma'am.

23 Are these the blue jeans shorts that you received,
24 ma'am?

25 Let you look at them on the outside.

Jan Bryson - Direct examination
By Solicitor Barnette

1 A Yes, sir.

2 Q And how do you enter that, ma'am?

3 A These are my initials, the SLED lab number, the item
4 number, and the date that I processed the evidence.

5 Q Okay. So, is this your diagram of what items you
6 processed off the jeans?

7 A Yes, sir, Item 31 was the blue jeans with the brown
8 braided belt.

9 Q And if you would, ma'am, describe on the diagrams what
10 you did, ma'am.

11 A The request was made to look for blood on the jeans and
12 what I do is I do a visual first. I look for any areas on
13 the jeans that appear to be blood, and I do a presumptive
14 test. It's a fanal faline test. And if that test is
15 positive, I know to cut that area out and send it to DNA for
16 further examination. And I took four cuttings from the
17 jeans, the pocket area, two from the pocket area, and the,
18 the back of the jeans that was positive for the presumptive
19 test of blood.

20 Q Let's look at these jeans here.

21 Could I have the lights one second, sir?

22 (Bailiff complies.)

23 Q Just showing the jury, where did you take your cuttings
24 at or can you show the cuttings to them, ma'am?

25 A This is the, the jeans were Item Number 31. And it,

Jan Bryson - Direct examination
By Solicitor Barnette

1 when it, whenever I make a cutting, I give the cutting a
2 sub-item number. So, this is the first cutting I took. It
3 was 31.1. I believe that one is 31.4, 31.2, and I believe
4 the other one is 31.3. I try to take a representative
5 sample off the jeans.

6 Q And you also mark that on the jeans?

7 A Yes, sir, I do. I labeled the, with the sub-item
8 number.

9 Q And was that the only blood you saw on these jeans,
10 ma'am?

11 A No, sir, there were other areas.

12 Q Okay. And could you show some of the other areas
13 there, ma'am, that you can see?

14 I'm sorry. I've got the light right in your face.

15 A There's a possible stain there, there, possible stain
16 there.

17 Q And then on the front of the jeans too, ma'am?

18 A There's some stains on the right leg as well.

19 Q And once you get those items, do you make those
20 cuttings -- who do you submit those to, ma'am?

21 A When I make the cuttings, I place the cuttings in a
22 gold coined envelope. I seal the back of the envelope. I
23 initial and date it and I placed those cuttings in a heat
24 sealed pouch to be forwarded to the DNA analyst for further
25 testing.

Jan Bryson - Direct examination
By Solicitor Barnette

1 Q Let me show you here, ma'am. These has -- this has
2 been marked 3.1, 3.12.

3 A Thirty-one.

4 Q Oh, excuse me. 31.2.

5 A Right.

6 Q 31.3, 31.4.

7 A Right, these are the gold coin envelopes that I placed
8 my cuttings in, and they're labeled with the sub-item
9 numbers.

10 SOLICITOR BARNETTE: Your Honor, I'd like to introduce
11 these into evidence at this time.

12 MRS. HODGES: We renew our objections previously made
13 and ruled upon by the Court.

14 THE COURT: All right. Subject to those objections,
15 objection, they're admitted as marked.

16 (Whereupon, State's Exhibit Nos. 31.1 through 31.4 were
17 received into evidence at this time.)

18 SOLICITOR BARNETTE: May I publish them to the jury,
19 Your Honor?

20 THE COURT: You may do so.

21 Q So, like 31.1, this was the cutting they just saw that
22 was taken from this area right here?

23 A Yes, sir.

24 Q And that's submitted for DNA testing?

25 A That's correct.

Jan Bryson - Direct examination
By Solicitor Barnette

1 Q And then, of course, we had 31.2, which came from the
2 knee area.

3 A Right.

4 Q And 31.3, which came from the, I guess the left pocket
5 area?

6 A Right.

7 Q And then 31.4 -- I guess 31.4 came from the pocket
8 area?

9 A Right.

10 Q 31.3 came from the back of the pants?

11 A That's correct.

12 Q And these are all secure and these -- who was the DNA
13 analyst person in this case, ma'am?

14 A Matt Fitts.

15 Q And he did the testing on these?

16 A Yes, sir.

17 Q Okay. Going to the next item, I believe this is Item
18 36.

19 If you would, tell me what you did on this and for what
20 purposes.

21 A The request was made to look for blood, and I do, do
22 the same thing with each item. I do a visual looking for
23 any stains. And if I see any stains, I do a presumptive
24 test for blood. And if I get a positive, I'll cut that area
25 out and send it to DNA, and I took one cutting from the

Jan Bryson - Direct examination
By Solicitor Barnette

1 inside of the shirt on the back on the sleeve area.

2 Q Okay. Let me show you 36.1, ma'am.

3 Was this the cutting you took from that shirt, ma'am?

4 A Yes, sir, it is.

5 SOLICITOR BARNETTE: Your Honor, I'd like to introduce
6 36.1 into evidence at this time.

7 MRS. HODGES: Your Honor, we renew our objections
8 previously.

9 THE COURT: Subject to your prior objections?

10 MRS. HODGES: Yes, sir.

11 THE COURT: It will be admitted.

12 (Whereupon, State's Exhibit No. 36.1 was received into
13 evidence at this time.)

14 SOLICITOR BARNETTE: May I publish Items 36 and 36.1 to
15 the jury, Your Honor?

16 THE COURT: Yes, sir.

17 SOLICITOR BARNETTE: Thank you.

18 Q All right, ma'am. Is this the item that you saw?

19 A Yes, sir, it is.

20 Q Are those your initials on it?

21 A Yes, sir, the sleeve, and item number, and the date
22 that I sealed it.

23 Q I'll put this inside, and if you would, ma'am?

24 A These are my initials with the item number, and I took
25 a cutting from the inside of the shirt on the sleeve, the

Jan Bryson - Direct examination
By Solicitor Barnette

1 sleeve area right there.

2 Q And did it test positive for blood?

3 A Yes, sir.

4 Q And is -- 36.1 is the item that you got from the
5 sleeve, is that right?

6 A Yes, sir.

7 Q And was that given to Matt Fitts?

8 A Yes, sir.

9 Q Going to the next item, State Exhibit No. 37, did you
10 test a white sock from this pair of white socks, ma'am?

11 A Yes, sir, I did.

12 Q And did you find any blood on that, on one of the
13 socks?

14 A Yes, sir, I took two cuttings that were positive for
15 the presumptive test of blood.

16 Q Is 37.1 and 37.2, State Exhibits, are those the
17 cuttings that you took from the socks, ma'am?

18 A Yes, sir, they are.

19 SOLICITOR BARNETTE: Your Honor, I'd like to introduce
20 37.1 and 37.2 into evidence at this time.

21 THE COURT: Subject to your prior objections?

22 MRS. HODGES: Yes, sir.

23 THE COURT: They'll be admitted.

24 (Whereupon, State's Exhibit Nos. 37.1 and 37.2 were
25 received into evidence at this time.)

Jan Bryson - Direct examination
By Solicitor Barnette

1 Q I'm not going to pull the socks and everything else
2 out. We just keep going each time.

3 37.1 came from the up, the top part of the sock?

4 A Yes, sir.

5 Q And 37.2 came from the under part of the sock?

6 A That's correct.

7 Q And those were also submitted to Matt Fitts?

8 A Yes, sir.

9 Q Showing you State Exhibit 39.

10 If you would, tell us what this item was, ma'am.

11 A This item was a pair of khaki pants. I took three
12 cuttings that were positive for the presumptive test of
13 blood, and cutting 39.1, I made a note that the stain was on
14 the inside of the pants. Not the outside of the pants. And
15 I took a representative sample from the pants, pants.

16 Q Okay. So, State Exhibit 39.1, 39.2, and 39.3, was
17 those the three cuttings from the khaki pants?

18 A Yes, sir.

19 SOLICITOR BARNETTE: Your Honor, I'd like to enter
20 those into evidence at this time.

21 THE COURT: Subject to your previous objections.

22 MRS. HODGES: Yes, sir.

23 THE COURT: They'll be admitted.

24 (Whereupon, State's Exhibit Nos. 39.1 through 39.3 were
25 received into evidence at this time.)

Jan Bryson - Direct examination
By Solicitor Barnette

1 Q Is this matching up -- 39.1 came from that area
2 there---

3 A Right.

4 Q ---on the diagram?

5 And 39.2 came from that area?

6 A That's correct.

7 Q And then 39.3 came from that area?

8 A Right.

9 Q And these also were secured and sent to Matt Fitts?

10 A Yes, sir.

11 Q State Exhibit 41, did you also have cuttings on, on
12 that item?

13 A Yes, sir, I took two cuttings that were positive for
14 the presumptive test of blood.

15 Q And what were they, ma'am?

16 A I took it from the front and I made a note that the
17 stain was on the inside of the boxers, and I took another
18 cutting from the front leg area of the boxer shorts.

19 Q And State Exhibit 41.1 and 41.2 came from that item?

20 A Yes, sir.

21 SOLICITOR BARNETTE: Your Honor, I'd like to enter
22 those into evidence at this time.

23 THE COURT: Subject to your previous objections?

24 MRS. HODGES: Yes, sir. Thank you.

25 THE COURT: They'll be admitted.

Jan Bryson - Direct examination
By Solicitor Barnette

1 (Whereupon, State's Exhibit Nos. 41.1 and 41.2 were
2 received into evidence at this time.)

3 Q And, of course, those came -- 41.1 came from the area
4 you pointed out on your diagram?

5 A 41.1, yes, sir.

6 Q And 41.2 came from the other area of that diagram?

7 A That's correct.

8 Q And these were secured and given to Matt Fitts also?

9 A Yes, sir.

10 Q And there was no way that these was tampered with or
11 anything in your presence?

12 A No, sir, I placed all those cuttings in a heat sealed
13 pouch, I sealed the heat sealed pouch, pouch, initial and
14 date it.

15 Q And was these given directly to Matt Fitts?

16 A Yes, sir.

17 Q If you would, have a seat, ma'am.

18 A (Witness returns to the stand.)

19 Q And was there any evidence of these items being
20 tampered or anything when you received them?

21 A No, sir.

22 Q They were sealed when you received them?

23 A Yes, sir.

24 Q Please answer any questions that Mrs. Hodges or the
25 defense may have for you. I don't know who.

Jan Bryson - Cross-examination
By Mrs. Hodges

1 THE COURT: Mrs. Hodges, your witness.

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

3 CROSS-EXAMINATION

4 BY MRS. HODGES:

5 Q Good afternoon, Mrs. Bryson

6 A Good afternoon.

7 Q My understanding, from the terminology that you used,
8 you called the chemical test that you run a presumptive
9 test, is that correct?

10 A That's correct.

11 Q And that, basically that means that there is some
12 indication that there's some sort of human blood there, but
13 it can not, is not a definitive analysis that it is, in
14 fact, human blood?

15 A That's correct.

16 Q All right. The clothing that you looked at, and I
17 think the shirt -- you've seen a picture of that shirt.
18 Is this it?

19 SOLICITOR BARNETTE: It is.

20 Q This yellow Polo shirt. We've actually seen pictures
21 of it, and there was a picture of the stain on the front of
22 that shirt that you'd gotten circled and marked, is that
23 correct?

24 A That's correct.

25 Q All right. And you did not take a cutting of that

Jan Bryson - Cross-examination
By Mrs. Hodges

1 stain though?

2 A The test was negative for the presumptive test of
3 blood.

4 Q Okay. And so, in fact, you've got actually on the
5 shirt your handwriting. It looks like it says PHEM, which I
6 assume is your abbreviation of fanal faline.

7 A That's correct.

8 Q And then it's got two, sort of looks like an equal sign
9 that then, then -- and, and it's circled.

10 Is that basically what you do to show that it's
11 negative?

12 A That's correct.

13 Q Okay. And let me see if the solicitor's fancy machine
14 will actually show us what I'm talking about.

15 Okay. So, in fact, this areas that's circled is what
16 you ran your presumptive test on and then it shows that it's
17 negative for blood?

18 A That's correct.

19 Q Okay.

20 A It was negative for blood.

21 Q And so, the only thing that you really found on here
22 that would, that looks like it might possibly be, came from
23 the, basically the inside of this sleeve?

24 A Yes.

25 Q The back of it?

Jan Bryson - Cross-examination
By Mrs. Hodges

1 A That's correct.

2 Q And do you mark all the clothing that you've processed
3 kind of the same way?

4 If, if it's something that's shown that you test it,
5 but it's negative, do you, you mark it and, and, and show
6 that on the, on the clothing?

7 A That's correct.

8 Q Okay. Thank you, ma'am. That's all I have.

9 THE COURT: Redirect?

10 SOLICITOR BARNETTE: Have no other questions of this
11 witness, Your Honor. We'd ask for her to be excused.

12 THE COURT: Any objection?

13 MRS. HODGES: We have no objection, Your Honor.

14 THE COURT: Ma'am, you may step down. You're free to
15 go. Thank you very much.

16 All right. Ladies and gentlemen of the jury, we've
17 been going a little over an hour and a half, and I always
18 tell you we try to take a break in, along between an hour
19 and a half to two hours. So, we're gonna do that at this
20 time. As I'll tell you every time you leave the courtroom,
21 please don't begin any discussions concerning this case
22 until such time as I've advised you to begin deliberations.

23 I'll ask that everyone remain seated while the jury
24 retires.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Everyone remain seated while the defendant
3 retires.

4 (Pause.)

5 THE COURT: All right. Court's in recess for about ten
6 to fifteen minutes.

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

8 THE COURT: All right. State ready?

9 SOLICITOR BARNETTE: Yes, sir.

10 THE COURT: Is the defense ready?

11 MRS. HODGES: Your Honor, there's one matter we need to
12 take up before the jury is brought back in --

13 THE COURT: Yes, ma'am.

14 MRS. HODGES: -- regarding the testimony that the
15 solicitor proffered from I believe it was -- I can't
16 remember if it was Shawn Nix, Investigator Nix or, and/or
17 Investigator Chappel. But I believe that Investigator Nix
18 was the one who actually testified regarding State's
19 Exhibits 241 and 243. I think State's Exhibit 242 would
20 also be enclosed, included in this.

21 Essentially there was a, several of, series of several
22 pictures that were published to the jury. We approached the
23 bench. We had a bench conference about the fact that the
24 wallet that was seen in the shoe along with the Newport
25 cigarettes was not dealt with in the pretrial motions

1 earlier this week when we objected to the admission of the
2 clothing that had been provided to the Sheriff's Office by
3 Mrs. Rogers out of the home at [REDACTED] Houston Street.

4 I -- there is no testimony and no knowledge, has been
5 no testimony as to where that wallet was actually found.
6 That wallet clearly would belong, be the personal property
7 of Mr. Torres and there was no testimony regarding the fact
8 that he had volunteered that wallet to law enforcement nor
9 any testimony that they had obtained a search warrant for
10 it.

11 We would ask that, that, and objected at the bench that
12 wallet be excluded as the fruits of a warrantless search
13 conducted by the Sheriff's Office under the same basic
14 premise that it was his personal affects and that his
15 grandmother did not have authority to give it to a, law
16 enforcement when she gave the rest of the clothes. I think
17 the solicitor graciously agreed to allow us to make the
18 objection now, preserving the issue that, that
19 contemporaneous objection at the time that it was made.

20 THE COURT: Solicitor, anything you want to say on the
21 subject?

22 SOLICITOR GOWDY: Your Honor, I, I do think that, in
23 fairness to the Court, that the Court may not know that
24 Mrs. Rogers is legally unavailable.

25 MRS. HODGES: She is deceased, Your Honor.

1 SOLICITOR GOWDY: She's deceased. So, the best
2 evidence we have is what His Honor heard at pretrial motions
3 and again in Court, which is the bag was transferred from
4 her to a law enforcement officer. The State would argue
5 that she had actual authority. It was her home.

6 Certainly law enforcement legitimately believed that
7 she had apparent authority to transfer all of those items to
8 law enforcement. It was done in this defendant's presence
9 and he lodged, lodged no objection, which is a tacit concept
10 and that would be the State's position.

11 THE COURT: Well, the -- it was not mentioned in the
12 pretrial conference. However, the testimony that I've heard
13 thus far and the only, only testimony I've heard was that
14 the items that were contained in the bag were turned over by
15 Mrs. Rogers from her home to the police officer. I believe,
16 at that time, he was stepped, stepping off the porch or
17 going off the porch. He was outside of the house. But that
18 she brought it to him and turned it over.

19 My ruling would be the same, that she either had
20 authority or had apparent authority, as far as the police
21 were concerned, to turn over items contained within her
22 home. There was -- there's been no evidence presented,
23 either at the pretrial conference or during the trial, that
24 those items were taken from the person or the actual
25 presence of the defendant since they were delivered outside

1 by Mrs. Rogers to the police officer. So, my ruling would
2 be the same as to that item as well.

3 MRS. HODGES: Thank you, Your Honor. And if we could
4 just have our exceptions noted for the record.

5 THE COURT: Exceptions are noted. Thank you very much.

6 MRS. HODGES: Thank you, Your Honor.

7 THE COURT: And you did raise that contemporaneously
8 with it being discussed during the trial.

9 MRS. HODGES: Yes, sir. Thank you.

10 THE COURT: Anything further before we proceed?

11 SOLICITOR GOWDY: No, sir, Your Honor.

12 THE COURT: Bring the jury back.

13 (Whereupon, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect that
16 the jury has returned to the courtroom. The State continues
17 to call witnesses at this time.

18 And you may call your next witness.

19 SOLICITOR BARNETTE: Like to call Mrs. Hallman please
20 to the stand.

21 THE COURT: Ma'am, come forward to be sworn.

22 VICKI HALLMAN, being first duly
23 sworn, testified as follows:

24 THE COURT: Ma'am, once you're seated, if you would,
25 move closer, closer to the microphone.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 (Witness complies.)

2 THE COURT: There we go.

3 State your name please.

4 WITNESS: Vicki Hallman.

5 THE COURT: Your witness, Mr. Barnette.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY SOLICITOR BARNETTE:

9 Q Ma'am, if you would, tell us where you work at.

10 A I'm a special agent assigned to the crime scene unit at
11 the South Carolina Law Enforcement Division, which is also
12 known as SLED.

13 Q And how long have you been with the Law Enforcement
14 Division, ma'am?

15 A I've been at SLED for four and a half years.

16 Q And was you in law enforcement prior to that?

17 A Yes, sir, I have 13 years of experience prior to SLED
18 at the Lexington County Sheriff's Office.

19 Q And is one of the areas that you work in, ma'am, is it
20 tread wear or working with foot prints/impressions like
21 that?

22 A Yes, sir, our four disciplines at SLED are crime scene,
23 processing, latent fingerprint processing and comparison,
24 foot wear/tire tread comparison, and blood stain pattern
25 analysis.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 Q If you would, tell the jury a little bit about that
2 training that you received, ma'am.

3 A On -- the, the whole training for the crime scene unit
4 at SLED is basically a two year in-house training program
5 with other Court qualified examiners. We spend
6 approximately six months, give or take, on each discipline
7 where we're trained. We do extensive reading. We take
8 outside courses. I know I've had a least one course that's
9 been a week long on footwear comparison, and we continue to
10 update our training every year, and I'm also required to
11 take a proficiency test every year in all of the, the areas
12 that I hold a discipline in.

13 Q And you, and you do that to this day?

14 A Yes, sir.

15 Q And how many footprint comparisons have you made,
16 ma'am?

17 A Over a hundred.

18 Q And how many times have you been qualified in State
19 Court, ma'am?

20 A I've been qualified as an expert in footwear three
21 other times.

22 SOLICITOR BARNETTE: Your Honor, at this time I'd move
23 her as an expert in footwear comparison at this time.

24 MR. RECKENBEIL: No objection, Your Honor.

25 THE COURT: Without objection, she's qualified in that

Vicki Hallman - Direct examination
By Solicitor Barnette

1 area.

2 You may proceed.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 May I approach the witness?

5 THE COURT: You may.

6 Q Let me show you Item 42, ma'am, if I can.

7 A Yes.

8 Q Are these the pair of shoes that you received in this
9 case?

10 A Yes, sir, they are. They actually are identified by me
11 by the lab number that was assigned by SLED, my initials,
12 and an item number on both shoes.

13 Q And was they -- was it secure?

14 Was there any evidence of tampering or anything been
15 done to those shoes by the time you received them?

16 A No, sir.

17 Q And you was the one that opened it and did the analysis
18 on those?

19 A Yes, sir.

20 SOLICITOR BARNETTE: Your Honor, at this time I'd like
21 to enter State Exhibit 42 into evidence at this time.

22 MR. RECKENBEIL: No objection.

23 THE COURT: Any objection?

24 MR. RECKENBEIL: No objection. It will be admitted as
25 marked.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 (Whereupon, State's Exhibit No. 42 was received into
2 evidence at this time.)

3 A And these bags were actually -- they were all received
4 together.

5 Q And the items in the bag, was they inside of these bags
6 individually too, ma'am, the bags you just put in there too
7 and those bags?

8 A Let's see how we do it.

9 Q Let you look real quick.

10 A Yes, sir, one was -- the left shoe was put in one bag,
11 and the right shoe was put in another bag.

12 Q All right. Let me ask you, before you did your
13 analysis and everything, ma'am, did you do some swabbings
14 off the shoes before you did anything to them?

15 A Yes, sir, I swabbed them for DNA or for blood.

16 Q Let me show you what's been marked as 42.3, State
17 Exhibit 42.5, 42.6.

18 Did you collect those three swabs for those shoes,
19 ma'am?

20 A Yes, sir, I did.

21 Q And did you secure those from the shoes?

22 A Yes, sir.

23 Q And where did it come off of the shoes?

24 A Let's see. Forty -- let me start. 42.3 was taken from
25 the top of the left shoe. 42.5 was taken from the insole of

Vicki Hallman - Direct examination
By Solicitor Barnette

1 the left shoe. And 42.6 was taken from the insole of the
2 right shoe.

3 SOLICITOR BARNETTE: Your Honor, at this time, Your
4 Honor, I'd like to enter these items into evidence.

5 THE COURT: Subject to your previous objections?

6 MR. RECKENBEIL: Yes, sir.

7 THE COURT: Okay. They'll be admitted.

8 (Whereupon, State's Exhibit Nos. 42.3, 42.5, and 42.6
9 were received into evidence at this time.

10 Q Okay. And let me do this prior to you getting the shoe
11 work.

12 Did you also process a hammer, ma'am?

13 A Yes, sir, I received a red and black plumb Primo Round
14 claw hammer.

15 Q Let me show you what's been marked or been entered into
16 evidence as State's Exhibit No. 3. Let you take a look at
17 that hammer.

18 Do you need to open it, ma'am?

19 A I'm good because actually my, my initials are on the
20 top of the bottom seal. So, it shows that I actually sealed
21 this container and it hasn't been opened since then.

22 Q Okay. And let me show you what's been marked as
23 state's Exhibit 3.1, 3.2, 3.3, and 3.4.

24 Was those items you swabbed from that hammer?

25 A Yes, sir, they are.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 Q And once you, once you did these swabs, was these
2 submitted to Matt Fitts?

3 A They were placed in a heat sealed envelope, all the
4 swabs together. They're individually sealed on the back
5 with my initial and the date also, and then that was
6 submitted to the DNA Department, and I believe Matt Fitts is
7 the examiner who did get those.

8 SOLICITOR BARNETTE: Okay. I'd like to enter State's
9 Exhibit 3.1, 3.2, 3.3, and 3.4 into evidence, Your Honor.

10 MR. RECKENBEIL: No objection, Your Honor.

11 THE COURT: Without objection, they'll be admitted.

12 (Whereupon, State's Exhibit Nos. 3.1 through 3.4 were
13 received into evidence at this time.)

14 Q And can you tell us where you got those from, the
15 hammer there, ma'am?

16 A Item 3.1 or 3.1 came from the, what I call the hitting
17 end of the head. Exhibit 3.2 came from the claw end of the
18 head. 3.3 came from the side of the hammer head. And 3.4
19 came from the handle of the hammer.

20 Q Thank you, ma'am.

21 Your Honor, can I place these over to Mrs. Crick cause
22 she's gonna use them for the next witness if that's okay
23 with you?

24 THE COURT: Be fine.

25 Q After you did the swabbing off the hammer and the

Vicki Hallman - Direct examination
By Solicitor Barnette

1 footprint, did you do a comparison on the footprints?

2 A Yes, sir, I did.

3 Q Did you receive several pictures of, from the Sheriff's
4 Department?

5 A Yes, sir.

6 Q And I believe that came in State Exhibit 46.

7 Did you receive a CD that was pictures?

8 A Yes, I did.

9 Q And before you actually started working with those
10 pictures, did you do a -- let me show you what's been marked
11 as State's Exhibit five, 541.

12 Is that a picture of the bottom of the shoes that y'all
13 took before you started processing them?

14 A Yes, sir.

15 SOLICITOR BARNETTE: Your Honor, I'd like to enter
16 State Exhibit four, 541 into evidence at this time.

17 THE COURT: Any objection?

18 MR. RECKENBEIL: No objection.

19 THE COURT: Without objection, it will be admitted as
20 marked.

21 (Whereupon, State's Exhibit No. 541 was received into
22 evidence at this time.)

23 A Can I just --?

24 Q Yes, ma'am.

25 A This -- when we send them over, actually our

Vicki Hallman - Direct examination
By Solicitor Barnette

1 photography department does the photographs, for us, and a
2 lot of times what they'll do is they'll actually do two
3 photographs for us. They'll do one that you can tell which
4 is the right and the left, and then they'll flip them over
5 and reverse them. So, when I look at this shoe, this is the
6 left shoe and this is the right shoe whereas normally -- in
7 other words, they reverse the negatives. So, what's left is
8 left and what's right is right. And that -- this one is the
9 one that's been reversed.

10 Q And this picture fairly represents what the bottom of
11 the shoes look like?

12 A Yes, sir, they do.

13 Q Okay. Also I notice on the bottom this has like a red
14 pinkish material on the bottom of the shoes?

15 A Yes, sir.

16 Q And let me show you what's been marked as State's
17 Exhibit 544 and 543.

18 Are these impressions that you did from the bottom of
19 these shoes?

20 A Yes, sir, these my test impression.

21 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
22 enter these into evidence at this time.

23 MR. RECKENBEIL: No objection.

24 THE COURT: Without objection, they'll be admitted as
25 marked.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 (Whereupon, State's Exhibit Nos. 543 and 544 were
2 received into evidence at this time.)

3 Q Let me show -- so, these impressions was done from the
4 bottom of these shoes onto these---

5 A Yes.

6 Q ---pieces?

7 A Yes, sir.

8 Q Okay. Now, you'd received several pictures -- you
9 actually got pieces of the floor itself too on some of
10 these, some of these prints?

11 A Yes, sir.

12 Q And did you look at all the photographs and the
13 pictures that was given to you?

14 A Yes, sir.

15 Q In looking at all these pictures and everything, did
16 you find -- in looking at the prints, how many types of
17 shoes did you see in the prints?

18 A There's actually one photograph that there's actually
19 a, a, two different types of tread designs. Everything else
20 has basically one tread design.

21 Q Okay. And the one that's, the ones that you saw was
22 different, is it consistent with the type of tread you'd
23 seen before?

24 A Yes, sir.

25 Q And what kind of tread have you seen that before?

Vicki Hallman - Direct examination
By Solicitor Barnette

1 A It's typical for a law enforcement officer, particular
2 brand of boots.

3 Q Okay. And everything else was consistent with this,
4 this one other print, I mean the majority or all of them,
5 but one was consistent with one, one type of tread?

6 A Yeah. Yes, sir.

7 Q Let me show you what's been marked as State's Exhibit
8 542 and 543.

9 Are those copies of the pictures that was taken from
10 the prints that you received?

11 A Yes, sir.

12 Q Do these pictures fairly represent those prints?

13 A Yes, sir.

14 SOLICITOR BARNETTE: Your Honor, I'd like to enter
15 State's Exhibit 542 and 543 into evidence at this time.

16 MR. RECKENBEIL: No objection.

17 THE COURT: Any objection, without objection, they'll
18 be received as marked.

19 (Whereupon, State's Exhibit Nos. 542 and 543 were
20 received into evidence at this time.)

21 Q And you have your report, ma'am?

22 A Yes, sir, I do. The actual---

23 Q Again, I think this is a copy of it. Actual -- thank
24 you.

25 Let me show you State Exhibit 540.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 Is this your actual report?

2 A Yes, sir, it is.

3 SOLICITOR BARNETTE: Your Honor, I'd like to enter
4 State Exhibit 540 into evidence at this time.

5 MR. RECKENBEIL: Your Honor, the only objection we have
6 is that there's a bunch of information on there that's not
7 gonna, not gonna come in through this witness.

8 SOLICITOR BARNETTE: Your Honor, I'll have her testify
9 to the report.

10 THE COURT: why don't, why don't you have it marked for
11 identification, and then if there's additional evidence that
12 needs to be corroborated by another witness, we'll allow you
13 to do that at a later time.

14 It's marked for identification purposes as?
15 What's the number?

16 SOLICITOR BARNETTE: 540, Your Honor.

17 THE COURT: All right. You may proceed.

18 SOLICITOR BARNETTE: Thank you.

19 Q If you would, ma'am, please step down.

20 (Witness comes down from the stand.)

21 SOLICITOR BARNETTE: Your Honor, for the record, there
22 was one, two items was marked the same number. We're
23 correcting one of those to 545. It is the shoe print from
24 the floor, which has Number 13 on it.

25 THE COURT: All right, sir.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: We'll actually do that.

2 THE COURT: Noted for the record.

3 Q If you would, step down here please, ma'am.

4 Showing you State Exhibit 42, and ask you if you would
5 come over here for a second.

6 What type of tennis shoes are these, ma'am?

7 A They're Converse.

8 Q Okay. And this is the bottom of those shoes?

9 A Yes, sir.

10 Q And this was the picture that y'all took of the bottom
11 of the shoes?

12 A Yes, sir.

13 Q And it's basically one-to-one?

14 A Yes, sir.

15 Q One-to-one ratio?

16 A Correct, which means the photograph, the picture and
17 the shoe -- this is the same size as this. The photograph
18 is the same size as the shoes.

19 Q And 544 and 543, which have been entered into evidence,
20 these are the two prints, I guess impressions you got from
21 the bottom of the tennis shoes?

22 A Yes, they are.

23 Q One of them is the right shoe and one of them is the
24 left shoe?

25 A Yes.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 Q And just showing, for, for example here, 542 and 540,
2 545, excuse me, these are pictures that you received that
3 the Sheriff's Department took from the floor of the house?

4 A That's correct. 545 is actually a photograph that they
5 submitted to us, and 542 is actually a photograph that was
6 done in our lab. I actually had this piece of floor.

7 Q Okay. And you actually -- no, you didn't have this
8 piece of floor, but you had the photographs?

9 A I had the photograph, but not the piece of floor, yes,
10 sir.

11 Q All right. If you would, come over here and I'm gonna
12 let you do this so I don't mess this up. Let you go ahead
13 and just -- may we publish these to the jury, Your Honor?

14 THE COURT: Yes, you may.

15 Q And please tell the jury what you're doing.

16 A The way we do our comparisons is we use these test
17 impressions that we complete. My photograph is also then
18 made one-to-one, which means it's a true size. The thing
19 that I'm looking for is, to see if this is consistent with
20 this.

21 There are several different ways or several different
22 things that we look for when we do a footwear comparison.
23 We look to see if it is the same size, if it's the same
24 shape, if it's the same tread design. If it meets those
25 three criteria, then the, the -- they're consistent in

Vicki Hallman - Direct examination
By Solicitor Barnette

1 class, which is basically a big category. Like all Converse
2 with this sole, out, sole would fall into that class.

3 We also look for what's called identifying
4 characteristics, which would be like a name on the bottom of
5 the shoe or a big cut that would never be found in another
6 shoe in that exact same location. Another thing that we
7 also look for is wear patterns. Everybody's feet are
8 different. So, everybody wears, everybody wears their shoes
9 out in different areas. So, I -- what I'm looking for are
10 the class characteristics, wear patterns, and for any type
11 of identifying marks, and those will usually repeat in the
12 test impression, and I also will usually have the photograph
13 hanging up front of me or the shoes actually out so I can
14 compare between the three and make sure that what I see on
15 one I see on the other two also.

16 Q We're taking Exhibits, State Exhibit 545, we're sitting
17 that down on the projector and then you're gonna overlay
18 State Exhibit 5---

19 A 544, which is the right show. And basically what I do
20 is I'll sit down and I'll basically do this. Let me come
21 over this way, and I'll match them up like that.

22 Q Is this shoe print consistent with the print off the
23 bottom of this tennis shoe or off the right shoe?

24 A It's consistent in class. There's no markings that
25 would make this totally identifiable and exclusive to this

Vicki Hallman - Direct examination
By Solicitor Barnette

1 one shoe. But I can tell you that this, this shoe is
2 consistent in size, shape, and tread design with the
3 impression that's left on Exhibit 5---

4 Q 545.

5 A ---545. So, they are consistent in out, sole, shape,
6 and size.

7 Q Let me let you take a look at State Exhibit 42. This
8 is another shoe print, and you got the actual board on this
9 one I believe?

10 A Yes, sir.

11 Q And this is Item 26. Let me also, let you do it on
12 that print too.

13 A This is also a right shoe.

14 Q I may have to lighten that for you.

15 A Spin it around this way. And what I did basically is
16 the same thing with this one that I did with the other one.
17 And I'm looking at these three bars basically to start the
18 lining up procedure that I do. And that lines up and
19 matches.

20 And what I -- the conclusion that I came to with this
21 one is that it is consistent in size, shape, and tread
22 design, but wear is also consistent on this shoe with the,
23 with the shoes that were submitted for me to examine. And
24 the area that I'm looking at for the wear is this area right
25 over in here. If you look on the, the impression underneath

Vicki Hallman - Direct examination
By Solicitor Barnette

1 on the photograph, that's consistent. You can see that
2 there's some areas that are kind of voided out, and that
3 would be consistent with the wear that's on the shoe.

4 Q So, the wear's another thing you can use to, use to
5 compare these impressions?

6 A Yes, sir.

7 Q So, the wear on this shoe is consistent with the print
8 that was found there at the scene?

9 A Yes, sir.

10 Q So, that's merely also, almost an absolute?

11 You can't say that's an absolute match, but very close
12 to it?

13 A Correct.

14 Q And you did this on all the pictures that you received
15 from the Sheriff's Department?

16 A Yes, sir.

17 Q And was all the prints very similar to class and, and
18 size --

19 A Yes, sir.

20 Q -- in this situation?

21 A Yes, sir.

22 Q And there was only one print that was consistent with
23 law enforcement that was different from this?

24 A Correct. And the only thing that I could say when I
25 did the comparison is that it was not consistent with the,

Vicki Hallman - Direct examination
By Solicitor Barnette

1 with the class characteristics or it was not identified with
2 these shoes because I had no other shoes to compare them to.

3 Q But you've seen that tread pattern before?

4 A Yes, sir.

5 Q And what tread -- where was that found again?

6 A At another scene that I had worked for law enforcement,
7 with law enforcement.

8 Q Thank you, ma'am. If you would, have a seat.

9 A (Witness returns to the stand.)

10 And ma'am, I'll let you look at -- if you would, look
11 at State's Exhibit, State's Exhibit 26. If you would come
12 over to the, if you would -- can we publish this to the jury
13 also, Your Honor?

14 THE COURT: Yes, you may.

15 (Witness comes down from the stand.)

16 Q If you would, just bring that with you, ma'am. I'll
17 carry it.

18 A I got it.

19 Q You got it.

20 Okay. So, is this the actual floor that you received
21 from the Sheriff's Department?

22 A Yes, it is.

23 Q And State Exhibit 542 is a picture of that floor?

24 A Correct, and the picture's done for me to do my
25 comparison.

Vicki Hallman - Direct examination
By Solicitor Barnette

1 Q And you could also use these items to compare to that
2 also?

3 A Yes, sir.

4 Q And you want to do that -- the glare, I think we tried
5 to do it earlier. The glare is too hard.

6 A Right shoe. Basically it's the same way. You can --
7 it matches up like that.

8 Q If you would, move down here, ma'am, and let them see
9 it. I apologize. I can't put it on the projector. It's
10 too---

11 A Basically it matches up.

12 Q Thank you, ma'am.

13 And you did this with every floor that you received and
14 everything in the same type houses?

15 A Yes, sir.

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

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q I apologize. I missed three swabs that I didn't get
20 earlier. Let me show you 42.1, 42.2, 42-4.

21 Are those swabs you collected off these shoes before
22 you started processing them?

23 A Yes, sir, they are.

24 Q And these were submitted to Matt Fitts for analysis
25 also---

Vicki Hallman - Direct examination
By Solicitor Barnette

1 A Yes, sir.

2 Q ---once you seal them?

3 A Yes, sir.

4 SOLICITOR BARNETTE: Your Honor, I'd like to enter
5 these exhibits into evidence at this time.

6 MR. RECKENBEIL: No objection.

7 THE COURT: Without objection, they'll be admitted as
8 marked.

9 (Whereupon, State's Exhibits Nos. 42.1, 42.2, and 42.4
10 were received into evidence at this time.)

11 Q I'll give these back to Mrs. Crick please.

12 Please answer any questions the defense may have to
13 you. Thank you very much.

14 THE COURT: Mr. Reckenbeil.

15 MR. RECKENBEIL: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. RECKENBEIL:

19 Q Mrs. Hallman, you can't say absolutely that those shoes
20 created that footprint, can you?

21 A No, sir, not absolutely.

22 Q Okay. Cause that's exactly what, in fact, your report
23 says is that could have been caused by that, correct?

24 A That's correct.

25 Q Or another shoe---

Vicki Hallman - Cross-examination
By Mr. Reckenbeil

1 A That's---

2 Q ---that's close to that?

3 A That bears the same characteristics, yes, sir.

4 Q Okay. Now, you said something on direct examination
5 that you have noticed, in one other analysis, a law
6 enforcement print at a scene before. I think when Mr.
7 Barnette was questioning you you said how do you know that
8 that's a law enforcement print, and you said well, I saw it
9 one other time.

10 Do you remember your testimony on that?

11 A I don't know that I specifically said one other time.
12 But I know that I have seen it before, yes, sir.

13 Q Okay. In your experience, ma'am, are police officers
14 taught to walk through blood at a crime scene?

15 A No.

16 Q Okay. They're, they're taught to walk around it?

17 A Yes, sir.

18 Q Specifically cause they want to make sure that that
19 crime scene is protected and not contaminated in any way
20 whatsoever?

21 A Correct.

22 Q Right?

23 A Yes.

24 Q Now, isn't it true, ma'am, that that board that you
25 have right there to your right --

Vicki Hallman - Cross-examination
By Mr. Reckenbeil

1 A Uh-huh. (Affirmative).

2 Q -- contains another shoe print than the one that you're
3 suggesting is the one created by these Converse shoes,
4 correct?

5 A Yes, it does.

6 Q All right. And your opinion is that it's law
7 enforcement?

8 A Yes, sir.

9 Q But what we've just talked about is the fact that law
10 enforcement is taught to walk around blood, isn't that true?

11 A Yes.

12 Q And you can't say definitively, cause you weren't
13 there, that, in fact, law enforcement shoes created that
14 footprint, can you?

15 A No, I can not.

16 Q It could of been caused by somebody else's shoes?

17 A Possibility, yes, sir.

18 Q All right. Thank you.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q However, you've seen it before, haven't you, in cases
23 where you've worked before --

24 A Yes, I have.

25 Q -- and that type print?

Vicki Hallman - Redirect examination
By Solicitor Barnette

1 And these -- what's the most popular tennis shoes that
2 you-all do analysis that you---

3 A The most popular shoe that I see is a Nike Air Force
4 One.

5 Q Do you often -- do you see Converse as often?

6 A No, sir, not very often at all.

7 Q Okay. Thank you.

8 MR. RECKENBEIL: One second, Your Honor.

9 THE COURT: Recross?

10 MR. RECKENBEIL: No further questions.

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

12 I assume you'd like to have her excused?

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: Any objection?

15 MR. RECKENBEIL: No objection.

16 THE COURT: You free to go, ma'am. Thank you for
17 coming today.

18 WITNESS: Thank you, sir.

19 THE COURT: Your Honor, may I approach the bench to put
20 some---

21 THE COURT: You may. I think you have a little
22 housekeeping to do there.

23 SOLICITOR BARNETTE: Yes, sir.

24 All right. State may call its next witness.

25 SOLICITOR CRICK: Thank you, Your Honor.

Matt Fitts - Direct examination
By Solicitor Crick

1 The State calls Matt Fitts.

2 THE COURT: Sir, come forward to, to be sworn please.

3 MATT FITTS, being first duly sworn,
4 testified as follows:

5 THE COURT: Sir, state your name for the record please.

6 WITNESS: I'm Matthew Graham Fitts, F-I-T-T-S.

7 THE COURT: Mrs.---

8 MR. ALLEN: May we approach the bench before---

9 THE COURT: You may.

10 (Whereupon, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: Mrs. Crick, it's your witness.

13 SOLICITOR CRICK: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY SOLICITOR CRICK:

16 Q Mr. Fitts, where do you work?

17 A I work with SLED Forensic DNA Department.

18 Q Can you explain to the jury what you do there at SLED?

19 A Basically we receive biological evidence, primarily
20 blood or semen, recovered from crime scenes, and we attempt
21 to develop DNA profiles from that evidence. And then we
22 also receive standards from victims and subjects, develop
23 their DNA profiles, compare those to see if we can either
24 include or exclude someone as a possible contributor to that
25 biological piece of, you know, that evidence from that crime

Matt Fitts - Direct examination
By Solicitor Crick

1 scene.

2 Q So, you work in the DNA Department at SLED?

3 A That's correct.

4 Q How long have you been with SLED?

5 A I was with them for nine years and then I left for
6 three and then I've been back for about three.

7 Q And how long have you been in DNA?

8 A All those years was in, in DNA. So, about 12 years in
9 the DNA department.

10 Q Can you tell the jury a little bit about your
11 background and training in DNA analysis?

12 A I, I have my B.S. and Ph.D. degrees from Clemson
13 University in Microbiology. And then I -- when I
14 received -- after my Ph.D., I was at, three years at St.
15 Judge Children Research Hospital in the Department of
16 Immunology. After that, five years at the National
17 Institute of Healths in the laboratory and molecular
18 immunogenetics and then nine years at SLED in which I have
19 internal training in forensics, proficiency testing in
20 forensics going to meetings and taking short courses related
21 to forensic applications of, of molecular biology, and then
22 for three years I was on faculty at Clemson and then
23 rejoined SLED.

24 Q You mentioned proficiency testing, is that something
25 you do on an annual basis or---

Matt Fitts - Direct examination
By Solicitor Crick

1 A Yes, it's a, it's twice a year.

2 Q Have you ever been qualified as an expert in Court?

3 A Yes, I have.

4 Q Do you know about how many times?

5 A I may be approaching 50, something like that.

6 SOLICITOR CRICK: Your Honor, at this time I'd like to
7 have him qualified as an expert in DNA analysis.

8 MR. ALLEN: No objection, Your Honor.

9 THE COURT: Without objection, he'll be qualified as an
10 expert within that field.

11 You may proceed, Mrs. Crick.

12 SOLICITOR CRICK: Thank you, Your Honor.

13 Q I want to start, Mr. Fitts, by just explaining to the
14 jury a little bit about what DNA is.

15 A DNA is a very large molecule that's in all of your
16 cells except red blood cells. Half of which you inherited
17 from your mother, the other half you inherited from your
18 father. And this large molecule serves as a code that your,
19 your cells read which dictates your development into a human
20 being.

21 Q Is DNA ever the same in two people?

22 A Yes, in identical twins their, their DNA would be
23 identical.

24 Q And it is your job to do what in terms of receiving a
25 sample and testing for DNA?

Matt Fitts - Direct examination
By Solicitor Crick

1 what do you do with the sample?

2 A We -- I ideally -- we run a serology test if necessary
3 if we're looking to identify it as whether it's human blood
4 or semen or urine or something of, of that nature, and then
5 we attempt to purify the DNA from that sample and develop a
6 DNA profile.

7 Q And after you develop a profile, if you just have a
8 profile, can you look at a profile and, and determine whose
9 profile it is?

10 A If I have a standard to compare it to.

11 Q So, you're gonna need something to compare that profile
12 to---

13 A That's correct.

14 Q ---in order to test it?

15 what do you look for when you do a comparison of DNA
16 samples or profiles?

17 A Well, when, when we develop a DNA profile, we're
18 looking at, in this particular case, we're looking at 16
19 different genetics sites, and we -- and looking at all 16 of
20 those, we develop at each site that person's profile, which
21 would be referred to as their genotype, and the genotype is
22 reduced to a set of numbers just saying -- and then we
23 compare those numbers to the genotype or the profile that's
24 been developed from either a standard or from another piece
25 of evidence.

Matt Fitts - Direct examination
By Solicitor Crick

1 Q If you do compare the profile, do you ever come up with
2 a statistic or a number?

3 A Yes, if, if you can include someone as a possible
4 contributor to that, to that profile, then you want to know
5 how unique that particular profile is in the population, and
6 we use the FBI's database to calculate the frequency you
7 would expect to see this, that particular profile in the
8 human population.

9 Q So, essentially the number would tell you --?

10 A If I started -- the number tells you -- if I started
11 randomly testing people, it's gonna tell me what I would,
12 the, what I would expect, how many times I'd expect to see
13 that particular profile in the population.

14 Q Okay. I'm gonna go to some samples you may of received
15 from Spartanburg County regarding the murders of Ray and Ann
16 Emery. I'm gonna show you some things that have already
17 been entered into evidence, and ask you if you recognize
18 those. This is gonna be State's 3.1, 3.2, 3.3, and 3.4.
19 Also State's 42.3, 42.5, and 42.6.

20 And if you can start with those and tell me if you
21 recognize your signature on those.

22 A Yes, each, each of these have my initials and a date
23 that I actually opened these up to examine the contents.

24 Q And you can tell that you tested these because of your
25 initials and the date?

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1 A Correct.

2 Q Okay.

3 A Or at least that I examined them.

4 Q Okay. Let me ask you specifically about the ones that
5 we were just referring to now.

6 who did you receive those from?

7 Are you aware?

8 A These, these -- the movement of evidence through the
9 SLED forensic facility, in particular for DNA, they're
10 certain bins that are, are, that DNA evidence are, are --
11 evidence is targeted for, for DNA analysis. They're placed
12 in these bins, and technicians that work for our department
13 will take the evidence that's in a heat sealed pouch and
14 bring it up to our laboratory, and each analyst, there's a
15 secure walk-in refrigerator, and each analyst has a box in
16 which the evidence is placed in.

17 And so, that's where the evidence was and I get the
18 paperwork. When the paperwork shows up, I go into that
19 walk-in refrigerator and pull out the heat sealed pouch with
20 the, with the evidence.

21 Q And these swabs specifically appear to be from shoes as
22 well as a hammer, is that correct?

23 A That's correct.

24 Q And which -- are you familiar with which scientist or
25 technician you would of received those from?

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1 A I'm -- I -- we're right now with only one technician.
2 I would think Sherry Brown in our department is who I'm
3 thinking. I don't have the chain of custody report in front
4 of me. But I would say the bulk of the movement of the
5 evidence, she does, she does that for us, our technician.

6 Q Let me ask you this.

7 If Vicki Hallman tested or did shoe print impressions
8 and fingerprints on the hammer and the shoes, is it possible
9 she would of swabbed those for you?

10 A Yes.

11 Q Okay. And it may help you if I show you the bag that
12 those came in. I don't mean to confuse you too much.

13 Okay. If you received all those in that bag, and
14 looking at the bag, can you tell who those came from, who
15 would of sealed them and given them to you?

16 A No, I really can't tell because I can't read the
17 initials.

18 Q Let me---

19 A If, if another department generated, you know, these
20 swabs, if another department, they, they would put it into
21 the DNA bin, which would get moved into my laboratory. So,
22 I -- it can either come from evidence processing. You know,
23 it could come from latent prints. And it would be -- they
24 would be placed in a heat sealed pouch and seal. So, I
25 would not know who actually placed it in this pouch and

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1 sealed it.

2 Q Is there an area on the front of that bag that says---

3 A Sealing official.

4 Q Sealing official. Yes.

5 A Yes.

6 Q Whose name is indicated there?

7 A I see Hallman at the end of it is what it looks like to
8 me.

9 Q Okay. That would be Vicki Hallman?

10 A Okay.

11 Q I'm asking.

12 All right. Now, I'm going to show you some samples,
13 I'm trying to find out what I did with them, and another bag
14 that have already been entered into evidence as well. And
15 let me read those out for the record before I give them to
16 you. It's 39.1, 39.2, 39.3, 37.1, 37.2, 36.1, 31.1, 31.2,
17 31.3, 31.4, 41.4, and 41.2.

18 And to make this easier, I'm gonna put these back in
19 the bag, and tell me if you recognize those.

20 A Yes, I do. Again, like the other envelopes, my
21 initials and, and date are, and the data that I examined the
22 contents are on each of those envelopes.

23 Q And those would include some cuttings from some
24 clothing?

25 A That's correct.

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1 Q Can you, by looking at that bag, determined who you got
2 those samples from?

3 A On this one I, actually I do because I went down and
4 had it transferred to me in person, and I, I picked this up.
5 I received this from Jan Bryson---

6 Q Okay.

7 A ---and from the evidence processing.

8 Q So, she would of done the actual cuttings for you?

9 A That's correct.

10 Q Okay. I'm gonna also show you State's 32 and 33, which
11 are already in evidence.

12 If you can take a look at those and tell me if you
13 recognize what they are.

14 A I -- you know, they obviously are two cartons that
15 contained swabs. And I, again, I initialed and dated these
16 two items. And it says a cotton swab of a reddish dried
17 substance from the top of the white flower pot for one item,
18 and then the other is a cotton swab of a reddish dried
19 substance from the top of the white flower pot.

20 Q And those would of been sealed when they came to you?

21 A Yes.

22 Q And I'm also gonna show you what's been marked as
23 State's 34.4 and 34.6, and I'm gonna ask you just first if
24 you can identify what those are.

25 A Yes, these are envelopes from the sexual assault kit

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1 that was submitted, and this is the envelope for the vaginal
2 swabs, and this is the envelope with the rectal swabs.

3 Q And you tested those two items?

4 A Yes, I did.

5 Q Would those have been sealed when they came to you from
6 intake?

7 A Yes.

8 Q Take those back.

9 At this time, I'd like -- I think these are the only
10 two that have not been entered into evidence. If I could do
11 that at this time.

12 MR. ALLEN: No objection, Your Honor.

13 THE COURT: Any -- they'll be admitted as marked.

14 (Whereupon, State's Exhibit No. 34.4 and 34.6 were
15 received into evidence at this time.)

16 Q And finally, let me show you a couple of things and ask
17 if you recognize what they are. This is State's 7 and 8.
18 I'll do that one first. Tell me if you recognize that.

19 A Yes, these are again the cartons that contained swabs,
20 a Buccal swab from Charles Emery and a Buccal swab from Mary
21 Ann Emery.

22 Q Okay. And then also I'm gonna ask you if you can
23 identify what these two items are.

24 A Yes, these, these, again, are cartons containing swabs
25 of -- one swab from a jewelry box and another one from, a

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1 swab from the jewelry box. These were items 43 and 44.

2 Q And those would of been sealed when you received them?

3 A That's correct.

4 Q And then I'm also gonna show you an envelope and ask
5 you -- you actually may be able to look at the exterior.

6 See if you can identify what that is. And if not, you
7 may---

8 A Yeah, this is a Buccal swab collection kit with a, also
9 with a fingerprint card.

10 Q And would you have tested, or not tested, but developed
11 a profile from that sample?

12 A Yes.

13 Q And would it have been sealed when you received it?

14 A Yes.

15 Q And that's from the defendant?

16 A Yes.

17 Q All right. All right. So, all the items that I just
18 showed you you initialed and you tested in one way or
19 another?

20 A That's correct.

21 Q Okay. Did you, after testing the items, did you
22 generate a report of your findings?

23 A Yes, I did.

24 Q Do you have a copy of your report with you that you can
25 refer to?

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1 A I do.

2 Q Okay. If you don't mind starting with your initial
3 report, will you just let the jury know what results of your
4 testing were.

5 A Okay.

6 Q If you don't mind, we'll start with Item 3.1, which is
7 a swab from the hitting end of the hammer.

8 Can you tell us what your results were in that case?

9 A I ran a test for the presence of blood, which was
10 positive. So, blood was indicated from that---

11 Q And can I---

12 A ---from that swab.

13 Q I'm sorry to interrupt you. But there was a question
14 about this earlier.

15 Do you do a presumptive test for the blood or a
16 definitive test?

17 A In this case, I did just presumptive tests for blood.

18 Q So, blood was indicated?

19 A That's correct.

20 Q And what did you find?

21 A And then I developed a profile from, from that blood
22 and is -- so, do you want that---

23 Q Yes.

24 A ---result as well?

25 Q Yes, sir.

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1 A From 3.1, it was a mixture of at least two individuals.
2 Mary Ann Emery and Charles Emery could not be excluded as
3 possible contributors to this mixture. Andres Torres can be
4 excluded as a contributor to the mixture.

5 Q So, let's take a second right here and kind of explain
6 to the jury what it means when you have a mixture, and what
7 it means when you can not exclude somebody.

8 Can you generally explain what that means to them?

9 A I don't know if you can put -- do you have the table by
10 any chance?

11 Q I do have the table. It is not entered into evidence.
12 Your Honor, if we could approach?

13 THE COURT: You may be -- you may approach.

14 (Whereupon, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: All right. Mrs. Crick, it's my
17 understanding that you'd, you'd like to use the chart
18 that's, that's in your possession for demonstrative
19 purposes.

20 Mr. Allen, my understanding is you may have some
21 objections. If you'd place that on the record please, sir.

22 MR. ALLEN: Yes, Your Honor. Again, we will object to
23 those items that we have previously made objections to at
24 pretrial hearings and throughout the course of this trial
25 which have been previously ruled on by the Court. Again---

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1 THE COURT: So, that would be items that may appear on
2 there that you were tested, that were taken from the items
3 which you have objected to their admission thus far?

4 MR. ALLEN: That's correct. That's correct.

5 THE COURT: Okay. Having noted that, the, the Court
6 has ruled those, those items admissible. For purposes of
7 that chart, I'll allow you to mark it for identification
8 purposes and we'll -- I think we have an agreement to use
9 them for demonstrative purposes.

10 Is that right, Mr. Allen?

11 MR. ALLEN: That we do, Your Honor. If we -- if the
12 record just reflects going back to the objections and not to
13 the main point.

14 THE COURT: Yes, sir, the subject of your previous
15 objections.

16 MR. ALLEN: Yes, sir.

17 THE COURT: Okay.

18 MR. ALLEN: Yes, sir.

19 THE COURT: You want to mark that then for
20 identification purposes, Mrs. Crick.

21 SOLICITOR CRICK: Yes, sir, and I think it's No. 546 if
22 I'm not mistaken.

23 (Whereupon, the chart was marked as State's Exhibit No.
24 546 for identification purposes only at this time.)

25 SOLICITOR CRICK: Your Honor, may I go ahead and show

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1 it -- put it on the overhead?

2 THE COURT: Yes, ma'am. You can use it for
3 demonstrative purposes.

4 Go ahead and lower the lights please, sir.

5 Q I'm going to try to zoom in as much as I can. If you
6 need me to move this, just let me know.

7 A No, that's okay. I thought this would be helpful in
8 terms of explaining what a mixture is, and how we know when
9 you see a mixture.

10 THE COURT: Sir, if you'd be more comfortable, you can
11 move down there so you can look back at it.

12 WITNESS: Okay.

13 THE COURT: And I think they have a laser pointer.
14 There we go.

15 Q All right.

16 A Okay. This is a table -- this is the Buccal swab from
17 Charles Emery, and these are each of the genetic sites that
18 we tested for, and the table keeps going, and it's 15
19 different genetic sites only at the end they'll be one, one
20 site for the X and Y chromosome. This is -- we know this is
21 just from a single source, and we looked at this genetic
22 site, and he typed as 11, 12. One of these -- the one he
23 either got from his mom or his father. The 12 he got from
24 his mom or father. And as you go down, you, you're only
25 gonna get two. In some cases, you'll just get one because

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1 that means they got an eight allele, that's what these are
2 called, an eight allele from the mother, and, and eight
3 allele from the father as well.

4 So, when you have a single source, for the most part,
5 you're only gonna see two alleles or maybe just one. So,
6 when you start developing profiles like this, which is 3.1
7 that we're talking about, you're seeing up in, at some loci,
8 three and four alleles, you already, you know you have a
9 mixture. And that, and that's what we're -- when I'm
10 starting to determine who, you know, we can compare the
11 profiles, I look at these series of numbers and go down this
12 series here and see if they could be included or excluded or
13 not as contributors.

14 Q So, when you're talking about there's a mixture on 3.1
15 on the hitting end of the hammer, what do you see in this
16 particular situation?

17 A You'll see that, on the hitting end of the hammer,
18 there's the allele ten and fifteen. Mary Ann Emery is a ten
19 and a fifteen. There's an 11 and 12. But both Andres
20 Torres and Charles are both 11 and 12. So, it could be
21 either one of them.

22 Q Okay.

23 A So, you go to the next site. You'll see a 27, a 29,
24 and a 31. And if it was a mixture of these two, you'd see a
25 27, a 29, a 29, and a 31. You don't see the 30, and I

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1 believe that's a 28. You don't see those two alleles at the
2 present. And then you can continue down each site. You see
3 an eight, a ten, and eleven. There's eight for Charles, a
4 10/11 for, for Mary Ann. There's a 9/10. There isn't a
5 nine here.

6 So, we continue going down. And in looking at that
7 data, I include Charles and Mary Ann as possible
8 contributors to this, and exclude Andres as possible
9 contributors---

10 Q Okay.

11 A As a possible contributor.

12 Q And you can have a seat now. You can hold on to that.

13 (Witness returns to the stand.)

14 Q How about 3.2, which is the claw end of the hammer?

15 A Also blood was indicated on, on that item, on that swab
16 as well, and a lot of times mixtures aren't even, a 50/50
17 mixture. So, a lot of times it will be ninety percent one
18 person, ten percent another person. So, when you develop a
19 profile, you can see who the major contributor is, and then
20 you'll see evidence of a, of a minor contributor.

21 And then on Item 3.2, the DNA profile of the major
22 contributor to that mixture also matched the DNA profile of
23 Mary Ann Emery. Charles Emery could not be excluded as a
24 possible contributor, the minor profile, profile, and Andres
25 Torres could be excluded as a possible contributor to this

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1 mixture.

2 Q So, kind of like 3.1, definitely you could tell it was
3 not the defendant. He's excluded.

4 A That's correct.

5 Q And then you do have a mixture of possibly both Ann and
6 Ray Emery?

7 A Especially on Item 3.1. I believe the, the mixture was
8 fairly even. And so, if I had actually taken their DNA and
9 mixed it, that's the exact pattern I would expect to see.

10 Q And when you say you have a major contributor and a
11 minor, does that just kind of refer to how much DNA is
12 present?

13 A And that, and that's, that's correct. When this, this
14 typing, this reaction that we do works very well. We're
15 trying to look at 16 different sites all at one time.

16 Q Uh-huh. (Affirmative).

17 A And it works very well if you have enough DNA to do
18 this. And I don't think we have it on this table. We might
19 have it on another one. When the quantity of DNA starts to
20 get, to drop, and it gets into very low levels of DNA, we
21 have a -- what happens is we'll get a partial profile. Some
22 of these sites won't even type. They won't even show up.
23 And sometimes you'll have what's called allelic drop out.
24 You'll, you'll see maybe the -- I can't read these numbers.

25 Is that a 9/12?

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1 Q Yes, sir.

2 A You could, you -- sometimes you'll see a nine. That
3 will actually drop out. And a lot of times when you see
4 these parenthesis we put on there---

5 A Yes, sir.

6 Q ---that's telling me that these are coming in at very
7 low levels, and that this is a, that this could, could very
8 well have allelic dropout occurring, whoever's contributing
9 to this minor profile.

10 Q All right. I'm gonna go on to 3, 3 which is swab from
11 the side of the hammer head.

12 Did you have a result in that case?

13 A That blood was indicated, but I didn't extract it. I
14 just -- that was my call. I felt that it wasn't gonna be
15 much different from the swabs everywhere else on that
16 hammer.

17 Q That you already did?

18 A Right.

19 Q How about 3.4?

20 A Yes, blood was indicated on that.

21 Q And when you say that, it's a swab from the handle of
22 the hammer?

23 A That's correct.

24 Q What did you find in that case?

25 A Again, it was a mixture, and there was -- you could

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1 identify a major contributor. The DNA profile of the major
2 contributor of this mixture also matched the DNA profile of
3 Mary Ann Emery, and Charles Emory and Andres Torres could
4 not be excluded as possible contributors to the minor
5 profile of, of that mixture.

6 Q So, you really couldn't tell -- you definitely could
7 tell the DNA of Ann Emery, but you couldn't exclude either
8 Ray Emery or the defendant on the hammer?

9 A That, that's correct.

10 Q Okay. I'm gonna move on to -- I know some of these are
11 repetitive. So, I'm gonna move on to No. 32 where you did
12 indicate blood, which is a swab from a white planter found
13 in the van.

14 Can you tell the jury what the result was in that case
15 from that swab?

16 A Yes, it matched the DNA profile of Charles Emery.

17 Q So, blood was indicated and that blood matched Charles
18 Ray Emery?

19 A That's correct.

20 Q How about No. 33?

21 A 33.

22 Q Yes, sir, I believe that's also a swab---

23 A Blood---

24 Q ---from a white planter found in the van?

25 A And blood was indicated on that swab as well, and this

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1 is Item 33 and it matched Mary Ann Emery.

2 Q So, the blood that was indicated on the white planter
3 on that swab actually matched Ann Emery?

4 A That's correct.

5 Q Okay. I'm gonna go now to 34.4, which is a vaginal
6 swab from Ann Emery.

7 Can you tell us what your results were in that case?

8 A In this we obviously tested for the presence of semen
9 and semen was indicated. And we were able to get a male
10 profile from that semen, and, and the male profile from the
11 semen matched Andres Torres.

12 Q Were you able to develop a statistic or a number for
13 that particular test?

14 A Yes, it was a complete profile, and if -- again, if I
15 started randomly testing individuals in the population to
16 see how often I would see that particular profile, it would
17 be approximately one in one hundred and ten quadrillion.

18 Q One in one hundred ten quadrillion?

19 A That's correct.

20 Q Do you happen to know how many people are on the
21 planet?

22 A Approximately six and a half billion people are on the
23 planet. That's, that's -- 6.5 with a zero, with eight zeros
24 at the end of it, and this is a hundred and ten with 15
25 zeros on the end of it.

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1 Q I'm gonna draw your attention now to 34.6, which is a
2 rectal swab taken from Ann Emery.

3 what were your results, if any, in that case?

4 A Semen was indicated on the rectal swab as well. But I
5 was -- I did not develop any male profiles from that swab.

6 Q Can you explain to the jury why that might happen?

7 A When we run serology tests, we're looking for a
8 particular protein that's in the fluid of semen at, at
9 relatively high concentrations that tells us semen is
10 presence. But in order to develop a male profile, we need
11 to have the sperm cells and enough sperms cells that we can
12 recover enough DNA to get a, get a male profile. So, a, a
13 male who happened to have a vasectomy, we could easily test
14 positive for the presence of semen, but we would not get a,
15 a male profile because we get that from the sperm cells, get
16 the DNA from the, from the sperm cells.

17 Q Now, what if you just have a very tiny amount of, of
18 semen?

19 A If -- well, there's a new test that we don't, SLED
20 doesn't currently offer. They're are -- if there's small
21 amounts, if there's small amounts of sperm cells or if
22 there's just some male epithelial contribution, you know
23 from the process, there's a test for, that's called Y Fire
24 that tests for just genetics sites on the Y chromosome.

25 Q So, in this particular case, I guess what you're, if

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1 I'm understanding you correctly, there may not have been any
2 actual sperm present in this small amount of semen?

3 A Well, there could be a lot of semen. It's just not a
4 very many sperm cells.

5 Q I got you.

6 So, you would not be able to develop a profile in that
7 case?

8 A Correct.

9 Q I got you.

10 All right. I'm gonna take you to 42.5, which is a swab
11 from the inside of a left shoe.

12 Can you tell us what your results were in that case?

13 A 42.5. I don't -- these -- like swabs from a lot of
14 articles of clothing, because of the sensitivity of testing,
15 we refer to these as touch DNA. So, obviously we weren't
16 looking for blood or semen or anything. These -- they'll
17 swab an article of clothing to see if, see if, if some
18 epithelial cells have come off or anything like that cause I
19 don't -- on those, I didn't do any serology testing.

20 And this is 42.5 you're saying.

21 Q Yes, sir, it's a swab from the inside of a left shoe.

22 A And it -- the profiles developed from it were a mixture
23 of at least two individuals.

24 Q Okay.

25 A There was a major contributor, and the major

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1 contributor of, matched the DNA profile of Mary Ann Emery.

2 Q Okay.

3 A Andres Torres could not be excluded as a possible
4 contributor to the minor profile. Charles Emery could be
5 excluded as a possible contributor to the mixture.

6 Q So, as far as the minor profile, it would of been a
7 smaller amount and what was there was consistent with the
8 defendant, but not enough to match?

9 A That's correct.

10 Q I'm gonna ask you about now 42.3, which is a swab from
11 the top of the left shoe.

12 What can you tell us about that?

13 A 42.3?

14 Q Yes, sir.

15 A That was a, an example where we had very little DNA
16 that was recovered. So, we had a partial profile, which I
17 was describing to you as with the---

18 Q Let me see if I can pull it up here for you to look at.
19 That might help. There you go.

20 A All right. 42.3. So, you can see -- the dashes just
21 mean, at those genetic sites, nothing showed up. And then
22 at this site here, we had, you know, an allele show up, two
23 show up here, one here, and it was coming in at very low
24 levels. So, we could have things like allelic dropout and
25 sites not showing at all. And we look at this partial

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1 profile. And the, the result was Mary, Mary Ann Emery could
2 not be excluded as a possible contributor to that partial
3 profile.

4 Q So, it wasn't enough there to call it a match, but what
5 was there was consistent with her DNA profile?

6 A That's correct.

7 Q Is that another way to say that?

8 A Yes.

9 Q Okay. I'm gonna go next to 42.6, which is a, another
10 swab from the inside of the right shoe.

11 Can you tell us what you found in that case?

12 A Yes, it was similar to 42.5. It was a mixture of at
13 least two individuals. The major contributor of, of, also
14 matched the profile of Mary Ann Emery, Andres Torres could
15 not be excluded as a possible contributor to the minor
16 profiles, and Charles Emory could be excluded as, as a
17 contributor, contributor to the mixture.

18 Q Okay. Number 43 is a swab from a jewelry box and a tan
19 purse in a van.

20 Can you tell us what the results were in that
21 situation?

22 A Item 43?

23 Q Yes, sir.

24 A Yes, the DNA profile developed for Item 43 matched
25 Charles Emory.

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1 Q So, that was, and I'm gonna look at your report, were
2 you able to determine what type of DNA it was, whether it
3 was blood or semen, or something like that?

4 A Oh, I'm sorry.

5 Q That's okay.

6 A Blood was indicated from that swab as well.

7 Q So, blood on the jewelry box found on the purse matched
8 Ray Emery?

9 A That's correct.

10 Q Did you develop a statistic in that particular case?

11 A Yes, like before, look, calculating the frequency
12 you'll expect to see, see that profile in the population, it
13 was approximately one in four hundred twenty quadrillion.

14 Q Okay. And I'm gonna take your attention to No. 44,
15 which is also a swab from a different jewelry box, box in a
16 brown purse in the van.

17 Can you tell us what you found in that case?

18 A Yes, it was a mixture of at least two individuals. We
19 had a major and a minor contributor. The DNA profile of the
20 major contributor also matched Charles Emery, and the minor
21 profile was insufficient for comparison purposes or reliable
22 interpretation.

23 Q And does that just mean you didn't have enough DNA to
24 determine?

25 A Of that minor contributor, correct.

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1 Q Got you.

2 Okay. I'm gonna now draw your attention -- I think you
3 did a supplemental report, is that correct?

4 A That's correct.

5 Q I'm gonna ask you now to look at that.

6 These would be referenced to cuttings from clothing
7 that you received from Jan Bryson, is that correct?

8 A That's correct.

9 Q I'm gonna ask you about 31.1, which is a cutting from
10 jeans.

11 Can you tell us what you found in that case?

12 A Blood was identified on, on these and on this
13 supplemental report, I did a confirmatory test for the
14 presence of blood, and that blood was identified from 31.1,
15 and the DNA profile from that matched the DNA profile of
16 Mary Ann Emery.

17 Q The blood matched Ann Emery?

18 A That's correct.

19 Q Did you develop a statistic?

20 A Yes, that profile, you would expect to see it once in
21 approximately two hundred and ten trillion times.

22 Q How about 31.2, another cutting from the jeans, what
23 did you find?

24 A Blood was identified from that, and it also matched
25 Mary Ann Emery.

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1 Q Same number or same statistic?

2 A That same statistic.

3 Q 31.3, the other cutting from the jeans, what did you
4 find?

5 A Blood was identified and, and it also matched Mary Ann
6 Emery.

7 Q How about 31.4, which is a different cutting from
8 jeans, what did you find?

9 A Blood was identified on Item 31.4, and it matched the
10 DNA profile of Charles Emery.

11 Q Did you develop a statistic in that case?

12 A Yes, it would be approximately one in four hundred and
13 twenty quadrillion.

14 Q That that blood matched Charles Ray Emery?

15 A That it would match anybody that I started randomly
16 testing.

17 Q How about 36.1, which is a cutting from a shirt, what
18 did you find?

19 A Blood was identified on that item, and it matched the
20 DNA profile of Andres Torres.

21 Q Okay. And 37.1, which is a cutting from a sock, what
22 did you find in that case?

23 A That it, it was a mixture of at least two individuals.
24 The profile of the major contributor to this mixture also
25 matched Charles Emery, and no conclusive statement could be

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By Solicitor Crick

1 made regarding including or excluding Mary Ann Emery or
2 Andres Torres as a possible minor contributor.

3 Q And again, is that because you didn't have enough DNA
4 to be able to get a full profile?

5 A Enough information to, to competently make an inclusive
6 or exclusive statement.

7 Q But what was there matched Charles Ray Emery?

8 A Yes.

9 Q 37.2, which is another cutting from a sock, can you
10 tell us what you found?

11 A It was also a mixture of at least two individuals. The
12 DNA profile of the major contributor also matched Mary Ann
13 Emery, and the minor partial profile was insufficient.

14 Q Not enough to get a full, to get the full profile to
15 match?

16 A Correct.

17 Q Got you.

18 How about 39.1, which is a cutting from khaki pants,
19 what did you find in that case?

20 A It was also a mixture of at least two individuals. The
21 major contributor, the DNA profile of the major contributor
22 matched the DNA profile of Mary Ann Emery. And again, no
23 conclusive statement be made, could be made about the minor
24 contributor to this mixture.

25 Q For the same reason as---

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1 A For the same reason.

2 Q 39.2 is cutting from a pants.

3 What is that result?

4 A It would be 39.2. 39.2, the DNA profile for it also
5 matched Andres Torres.

6 Q Now, did you indicate blood in that situation or was
7 that just DNA?

8 A No, I, I did not do any -- I didn't do any serology
9 testing on that.

10 Q Okay. But it was consistent with the defendant's DNA?

11 A That's correct.

12 Q How about 39.3, were you able to get any results on
13 that one, cutting from pants?

14 A There was a partial DNA profile for 39.3, but it was
15 insufficient for comparison purposes.

16 Q Just not enough DNA there---

17 A Right.

18 Q ---to be able to make a call?

19 A That's correct.

20 Q I'm gonna go to 41.1, which is a cutting from boxer
21 shorts.

22 Can you tell us what you found in that case?

23 A I was wondering.

24 Is that up there?

25 Well---

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By Solicitor Crick

1 Q No, sir.

2 A 41.1 is a mixture of at least three individuals as
3 opposed to before when I was saying, this one, when we saw
4 that there were four alleles present here, that I know at
5 least two people are contributing. This -- well, on Item
6 41.1, they're some loci you can see up to six alleles. So,
7 I know there's -- or five or six alleles. So, I know at
8 least three people have contributed to that mixture. And
9 Charles Emery, Mary Ann Emery, and Andres Torres are
10 included as possible contributors to that mixture.

11 Q And when you say they're included as possible
12 contributors, you're seeing some of their numbers, some of
13 their alleles, but it's not enough to be able to
14 conclusively develop a whole profile, is that accurate?

15 A Yes, and, and that's pretty complicated when you're
16 talking about three people contributing to a mixture. So,
17 we pretty much reverse it to an include or exclude
18 statement.

19 Q Now, on 41.2, which is also a cutting from the boxers,
20 did you discover anything different in that case?

21 A It was also a mixture of at least three individuals.
22 But there was a major contributor to the mixture, and the
23 DNA profile of the major contributor matched Charles Emery.
24 And then no conclusive statement could, could be made about
25 including or excluding Mary Ann or Andres Torres as minor

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1 contributors.

2 Q After you complete your testing, does anybody have to
3 review your work?

4 A Yes, after all the testing is done and I write up my
5 report, it goes through what's call a technical review,
6 which is another DNA analyst reanalyzes all the data, reads
7 the report, and has to agree with the conclusions and
8 findings, and then they'll sign off on it. And then after
9 that technical review, it will also go through an
10 administrative review by either a, a team leader or
11 supervisor, and they'll do an administrative review, and
12 they'll sign off on it if, you know, they're in agreement
13 with the findings and the, the conclusions.

14 Q So, they look at your work and then they have to agree
15 with it and sign off on it.

16 Is that accurate?

17 A That's correct.

18 Q And when you are done with all your testing, do you
19 repackage that to be returned to the agency?

20 A Yes, I do.

21 Q Okay. Just one moment.

22 (Pause.)

23 Q I have nothing further at this time.

24 THE COURT: Mr. Allen.

25 MR. ALLEN: Thank you, Your Honor.

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By Solicitor Crick

1 THE COURT: You want the lights up or down?

2 MR. ALLEN: Let's keep the lights down.

3 THE COURT: Keep down them.

4 MR. ALLEN: Your Honor, if I may use portions of---

5 THE COURT: Yes, sir.

6 MR. ALLEN: ---the exhibit.

7 CROSS-EXAMINATION

8 BY MR. ALLEN:

9 Q You said that DNA is a large molecule, right?

10 A That's correct.

11 Q And in a forensic setting, you're testing 16 alleles I
12 believe, is that---

13 A Or genetic loci.

14 Q Or loci. Excuse me.

15 A Correct.

16 Q I'm -- and, of course, one loci, put this up, the -- I
17 hope I pronounce this word correctly. It's the ana---

18 A Amylogenic.

19 Q I'm sorry?

20 A Amylogenic.

21 Q Amylogenic.

22 A Right there.

23 Q I was putting the accent on the wrong, the action on
24 the wrong syllable, right, as my professor use to say.

25 But the amylogenic is, identifies the sex of the

Matt Fitts - Cross-examination
By Mr. Allen

1 individual, correct?

2 A The X and Y chromosomes.

3 Q X and Y chromosomes. X -- Y of male.

4 A Correct.

5 Q X for female?

6 A Correct.

7 Q And then you have, in a forensic setting, you're
8 testing 15 non-gender related loci.

9 Would that be a correct statement?

10 A Yes.

11 Q Now, you've indicated that only identical twins have
12 the same DNA, correct?

13 A That's correct.

14 Q And that's based on the testing of these 15 non-gender
15 related loci, correct?

16 A Well, it's from the fact that they, identical twins and
17 even identical triplets come from the same fertilized egg
18 and sperm. So, they arrive from the same DNA. So, that's,
19 that's where the -- it's known that identical twins or
20 triplets have the same set of DNA.

21 Q All -- the complete molecule DNA has never been fully
22 analyzed in this manner, correct?

23 A Well, we're looking at -- if, if, for instance, a good
24 analogy is if you, if your, your whole DNA, if you think of
25 it as a very huge book, it's your personal book, but it's,

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1 it's got a million pages in there because it's, it's got a
2 lot of information, and on those, the million pages, they
3 have been on one individual completely looked, looked at in,
4 in the research setting.

5 But 99 percent of that book is the same among us
6 because we're all humans. One percent of it, there's
7 variation in there and we know that at these particular
8 sites, these are pages of that book that we look at that we
9 know that people differ at. And so, we look at very
10 specific pages in the book. Not the entire book. That's
11 impractical.

12 Q Okay. And the, and the point is that, of that
13 one percent, that still leaves millions of base pairs,
14 correct?

15 A Correct.

16 Q From which you look at these -- and that's what you're
17 looking at in these locis is based pairs, correct?

18 A Where -- yes, yes, yes, sir.

19 Q All right. So, in actuality, you're looking at a very
20 small portion of the DNA molecules when you've got them
21 spread out in these 59 non-gender?

22 A Extremely small portion.

23 Q Okay. Now, DNA does not indicate or the DNA that
24 you're looking at does not indicate the race of the donor?

25 A (Witness nods negatively.)

Matt Fitts - Cross-examination
By Mr. Allen

1 Q Or the age, of course, correct?

2 A That's correct.

3 Q Okay. And by the way, I know that you shook your head
4 no on my, on my question concerning the race.

5 Your answer was no, it does not indicate race?

6 A That's correct.

7 Q Okay. We do have to get a verbal response and I forget
8 to ask you for a verbal response---

9 A Okay.

10 Q ---when you did that. I'm so sorry.

11 And DNA results do not indicate as to how the sample
12 got on the evidentiary surface or the surface on which
13 you're testing, correct?

14 A That's correct.

15 Q And the results do not really tell us how the DNA got
16 on that surface either, correct?

17 A That's correct.

18 Q You're just testing for the presence---

19 A That's correct.

20 Q ---of DNA?

21 And in the case of a -- well, any, any DNA will remain
22 for any lengthy period of time on a particular surface, is
23 that correct?

24 A It, it can last for a long time under the right
25 conditions.

Matt Fitts - Cross-examination
By Mr. Allen

1 Q And it doesn't -- so, the DNA results do not tell you
2 when something was placed -- I think I asked that.

3 A That's correct.

4 Q Okay. Or how long it had been there?

5 A That's correct.

6 Q Okay. Now, you were submitted, as far as what I, what
7 I call known samples, the, you were only submitted profiles
8 that, from three known individuals, correct?

9 A That's correct.

10 Q Okay. And would it be true to say that you were
11 starting from the presumption that these three people were
12 not genetically related?

13 would that be a fair statement?

14 In other words, they are not related through common
15 ancestors?

16 A That's correct.

17 Q Okay. Now, however, it's true that Charles, the sample
18 for Charles Emery and Andres Torres has the same DNA result
19 in the, the eight loci.

20 would that be correct?

21 A That's correct.

22 Q And also in the, I think the, the 16 loci, they have
23 the same DNA result?

24 A That's correct.

25 Q In fact, Charles Emery and Mary Emery have the same DNA

Matt Fitts - Cross-examination
By Mr. Allen

1 result in the D-19 loci.

2 would that be correct?

3 A That's correct.

4 Q As well for Charles and Mary Ann in the, the same DNA
5 result in the, what I call the T-pox loci?

6 A Yes, it is.

7 Q Okay. In that loci?

8 A Yes.

9 Q And of course, in the D-5, I believe it's called Loci
10 11, 12, were both Charles and Mary Ann Emery, is that
11 correct?

12 A That's correct.

13 Q And, of course, because Charles Emery and Andres Torres
14 are both males, they're always gonna have the same in the
15 melochain loci?

16 would that be a fair statement?

17 A Yes.

18 Q Now, even though these folks are not related in, by
19 genetics, they're not related by a common ancestor, they do
20 have, in this small sample of three individuals, the same
21 DNA results in certain specific loci, correct?

22 A That's correct.

23 Q All right. These are, again, in just this sample of 15
24 non-gender loci that is tested forensics, we're finding this
25 similarity with people who are not related, correct?

Matt Fitts - Cross-examination
By Mr. Allen

1 A That's correct.

2 Q Furthermore, even though these folks are not related,
3 they may also share the identical gene, say, say one of
4 those genes in certain specific loci. For example, Charles
5 Emery, which -- excuse me. For example, in the -- let me
6 find it. The -- looking down at my paper and I'm looking up
7 here.

8 So, for example, let's take this one, in the throw one
9 I believe it's called.

10 A Okay.

11 Q Is that correct?

12 A That's correct.

13 Q Again, we see the same DNA results for Charles and Mary
14 Ann in six and nine, and there's also a shared gene with Mr.
15 Torres, correct?

16 A That's correct.

17 Q Now, there is a different gene for Mr. Torres in that,
18 in that loci?

19 A That's correct.

20 Q Correct.

21 And there are -- basically, they share some of the same
22 result genes?

23 In other words, they may have one number in the, even
24 though we have the same pair numbers, they may have the same
25 gene in certain specific loci, correct?

Matt Fitts - Cross-examination
By Mr. Allen

1 A Correct. There's -- at each individual loci, there's
2 not a tremendous variation by, by itself. So, you are going
3 to get overlapping alleles in the general population.

4 Q Okay.

5 A That is why we look in as many as 15 genetic loci
6 because that's what gives you the uniqueness of the profile.
7 And a good analogy would be is, if this first genetic site
8 would determine eye color, and we tested it and it said this
9 person has blue, blue eyes, well, you know, by itself, you
10 know, one in ten people could have blue eyes. So, Charles
11 could have blue eyes, Andres could have blue eyes. And so,
12 they would share the same alleles for that. So, by itself,
13 it's not very unique.

14 But then you go to the next site, and let's say it
15 determined an individual height, and it said they're 6'7".
16 And so, now we're saying someone's got blue eyes and they're
17 6'7", and then you can say okay, well, maybe one in a
18 hundred are, are gonna have blue eyes and six foot seven.
19 But again, by itself, how many people are six foot seven.
20 Well, maybe one in 50.

21 And so, you continue. You're going to find, in the
22 general population within these loci, that you're gonna have
23 shared alleles, which is what you pointed out. And that
24 doesn't necessarily mean relatedness and each little genetic
25 site is not gonna have tremendous variation. There may be,

Matt Fitts - Cross-examination
By Mr. Allen

1 you know, in, in each site, and then there's also that 11
2 allele, for instance. I don't have these numbers. But
3 within the population, that could be one of the more, more
4 frequent alleles identified.

5 Q Okay.

6 A So that when you test the population, you could say 20
7 percent of the population is gonna have that 11, but maybe
8 five percent is gonna have this, whatever, the 12 over here.
9 But that's what the entire calculations are for. It takes
10 into account the frequency of each of those alleles into the
11 population.

12 Q Okay. And now, of course, you know, you're just using
13 that example about, you know, the blue eyes and the height
14 as an example.

15 A Illustrative.

16 Q You're, you're not saying that any of these specific
17 loci---

18 A It does not.

19 Q ---stand for that?

20 Okay. Good.

21 By the same token, that's very -- I mean you don't have
22 just a few numbers ever. For example, in the VA, it shows
23 11/12 for two people and it shows 10/15 for two other
24 people, and there are -- I mean there's just a few numbers
25 that would be in that particular loci in the population, in

Matt Fitts - Cross-examination
By Mr. Allen

1 the overall population, correct?

2 A That's correct.

3 Q Okay. It's not necessarily one through 100, for
4 example?

5 They will be found in that---

6 A Each -- yeah, but each of these loci will have a set
7 number of variations that we're measuring, measuring.

8 Q Right.

9 A But -- and, and they will differ from one. Some loci
10 have more variability than other loci.

11 Q Okay. And that variability can be kind of small as far
12 as numbers?

13 A Yes.

14 Q Okay. Now, when we talk about the handle of the
15 hammer, for example, you're not saying -- when you say you
16 can not -- I think you said that you can not exclude Mr.
17 Torres, is that right?

18 Was that your, was that your conclusion on---

19 A This is Item 3.4.

20 Q 3.4. And Charles Emery and Andres Torres could not be
21 excluded as possible contributors to the minor profile.

22 Q You're not saying, therefore, that for, in the case of
23 Mr. Torres, that he was a contributor?

24 A No, I'm not saying he was, but I could not exclude him.

25 Q Okay. Matter of fact, isn't it true that you see a

Matt Fitts - Cross-examination
By Mr. Allen

1 number unique to him in only four locations.

2 would that be correct?

3 when we're talking about 3.4 is the handle of the
4 hammer. We're only talking about at, at the two, at the 31,
5 and I think it's called D-13, the one right next to that,
6 and also and the D-19, is that correct?

7 A Yes, those -- at those sites, yes, he matches those
8 alleles.

9 Q Now, also note that on the handle of the hammer, 3.4,
10 again, you've got -- I've lost my page here. You've got an
11 X in the melanogenic indicating female, correct?

12 A That's correct. Well, we know, we know that the major
13 contributor to that item is, is Mary Emery. So, the
14 presence of the X there, the minor contributor as I
15 mentioned to you before, when you have low amounts of DNA,
16 which is the minor contributor, is the low amounts of DNA,
17 you -- it will fall out at certain spots, and it very well,
18 if the minor contributor is a male, his Y could drop out as
19 well, and that's big, recovering at a minor contributor, you
20 just don't get a full profile from minor contributors.

21 Q Okay. Now, you're not suggesting that that particular
22 portion of the DNA is dropping off the item that you're
23 testing or off the sample, right?

24 A That, that's correct.

25 Q I mean if, for example, if, if, if it were male there,

Matt Fitts - Cross-examination
By Mr. Allen

1 you're not saying that the Y has just dropped off the sample
2 or was---

3 A No.

4 Q ---gone off?

5 A It's, it's a known -- it's, it's -- in the reaction
6 that we set up, when we're trying to test for all 16 of
7 these genetics sites, when the DNA con -- this is done for
8 validation studies. When the DNA concentration starts
9 dropping and getting very low, we know randomly sites will
10 stop dropping out. We just won't pick them up in the
11 reaction.

12 Q Okay.

13 A So, we know that -- and so, we know that the Y, the Y
14 will, can possibly drop out if, as well.

15 Q Okay. So, it's the technology that doesn't detect---

16 A That's correct.

17 Q ---that line is what you're saying?

18 A That's correct.

19 Q Now, when you conduct these tests in the, in the
20 laboratory, you wear gloves?

21 A That's correct.

22 Q And whenever anyone in your laboratory is handling
23 samples to, that were submitted for DNA, those individuals
24 are also required to wear gloves?

25 A Yes, they are.

Matt Fitts - Cross-examination
By Mr. Allen

1 Q Okay. And that is so that they do not contaminate the
2 evidence?

3 A That's correct.

4 Q And by contaminate, we're talking about so that skin
5 cells from that tester does not end up on the sample, is
6 that correct?

7 A That's correct.

8 Q And it -- because if their skin cells would end up on
9 the sample, they may be a contributor, correct?

10 A It could possibly show up.

11 Q And it could possibly show up?

12 A Uh-huh. (Affirmative).

13 Q Your machines are, therefore, quite sensitive?

14 A Yes, they are.

15 Q Correct?

16 And it can detect DNA on a substance that may then
17 transfer from another individual or another surface?

18 A Yes, it can. Like what, what I referred to earlier is
19 we call touch DNA, that someone handled, you know, an object
20 and then just the transfer of skin cells.

21 Q When you're testing an area, what you're picking up
22 whatever DNA is on that particular sample in that area,
23 correct?

24 A Correct.

25 Q And whether it's blood, or saliva, or skin cells,

Matt Fitts - Cross-examination
By Mr. Allen

1 correct?

2 A Correct.

3 Q And that is the reason that, of course, you wear the
4 gloves and that is the reason that the people who handle
5 these samples are required to package them separately,
6 correct?

7 A That's correct.

8 Q Cause you don't want any DNA---

9 A Cross---

10 Q ---one sample getting on another sample?

11 A Cross-contamination.

12 Q Would that be a fair distinction?

13 Cross-contamination we call it.

14 A Uh-huh. (Affirmative).

15 Q Now, you -- when an individual is, you know, when
16 people are, are trained to, to process items for DNA
17 sampling, they're trained, are they not, to take them
18 separately, package them separately?

19 Would that be a fair statement?

20 A Yes.

21 Q Because you don't want the cross-contamination?

22 A Correct.

23 Q Right. Cross-contamination can occur if items are
24 taken from a, one common container, correct, and if some
25 items are just sort of put all together?

Matt Fitts - Cross-examination
By Mr. Allen

1 A Right.

2 Q There can be cross-contamination from those items,
3 correct?

4 A That's correct.

5 Q And they -- and if they're put in say a plastic bag
6 such as you might find from a grocery store here, those two
7 handle type of bags, there can be cross-contamination at
8 that point, correct?

9 A You're saying if multiple items are put in the same bag
10 the possibility of cross-contamination?

11 Q Yes. Thank you for correcting me.

12 If you, you take say a shirt, a pair of pants, some
13 shoes, socks, and other items like that, could there be
14 cross-contamination from those items?

15 A A possibility, yes.

16 Q And if in that sample that you're testing, there's been
17 that cross-contamination, you would not know that, would
18 you?

19 A No, I would not.

20 Q And your machines will not be able to pick that up and
21 tell you, could, would they?

22 A No, they could not.

23 Q You -- let's see. Did you test some shoes in
24 connection with this case for DNA?

25 A I think there were some swabbings from some shoes, yes.

Matt Fitts - Cross-examination
By Mr. Allen

1 Q Swabbings from some shoes and let's see if I can find
2 it real quick.

3 Isn't it true that from one of those swabs you found
4 some DNA that is foreign to the swabs you had from Mr.
5 Emery, Mrs. Emery, and Mr. Torres?

6 A Yes, there was -- Item 42.1 and, which was a, a swab
7 from the bottom of the left shoe, and 42.2 was a swab from
8 the bottom of the right shoe were from an unknown
9 individual, and it was a, it was a partial DNA profile. And
10 it was from an unknown individual.

11 Q By unknown individual, we're talking about in this
12 number was not in the known samples of Ray Emery or Charles
13 Emery, Mary Ann Emery, or Andres Torres, Torres that were
14 submitted you as numbers I believe it's seven, eight, and
15 49, would that be correct?

16 A That's correct.

17 Q You've got no idea whose DNA that was?

18 A I do not.

19 Q Okay. Thank you, Mr. Fitts. This is the -- I guess
20 it's been marked for identification.

21 THE COURT: Yes, it has.

22 MR. ALLEN: And I'll hand it back to you---

23 THE COURT: Return it to her.

24 MR. ALLEN: ---to the solicitor. Thank you.

25 THE COURT: Redirect?

Matt Fitts - Redirect examination
By Solicitor Crick

1 SOLICITOR CRICK: Thank you, Your Honor. Just very
2 briefly. I want to put this back up here actually.

3 THE COURT: Yes, ma'am.

4 SOLICITOR CRICK: Make sure we're clear.

5 REDIRECT EXAMINATION

6 BY SOLICITOR CRICK:

7 Q Mr. Allen was asking you, woops, I'm sorry, about the
8 handle of that hammer. And I don't know. If you need to
9 step down to look at that that would be fine. And maybe
10 bring the pointer.

11 (Witness comes down from the stand.)

12 Q Now, you had mentioned to the jury earlier I believe
13 that the numbers in parenthesis indicate what?

14 A That the minor contributor is coming in at very low
15 levels. And so, we, we have, we know that we can have
16 what's referred to as allelic dropout, and, you know, so
17 that, you know, clearly here at this site we're not seeing
18 the minor contributor---

19 Q Uh-huh. (Affirmative).

20 A ---you know, and that other sites we're not seeing a
21 minor contributor. So, we can have the allelic dropping,
22 dropout occur for this minor contributor on the handle.

23 Q So, I'm looking at that second column, and I'm seeing
24 this 28 and a 30, is that correct?

25 A That---

Matt Fitts - Redirect examination
By Solicitor Crick

1 Q In parenthesis.

2 A Is that -- yes, 28 and 30.

3 Q And then when I look up at Mr. Torres in the same
4 column, what numbers are we seeing?

5 A He's a 38 and 30.

6 Q Okay. So, that would be consistent with his DNA on
7 that particular---

8 A Correct.

9 Q ---allele?

10 A That's correct.

11 Q Okay. So, if we go on down a line to the, I guess it's
12 the fifth one maybe.

13 A This one here.

14 Q The next one. We see a 16.

15 A That is correct.

16 Q Okay. And then if we go to the next one, we see a 9.3
17 in parenthesis, is that correct?

18 A That's correct.

19 Q And if you go up and look at Mr. Torres, and Ann Emery
20 and Charles Emery, who has a 9.3?

21 A Andres Torres.

22 Q Okay. And I'm looking down to, keep going, to the
23 right, to the right, yes, sir. I see in parenthesis a 14.2,
24 in that column as well as a 14 in parenthesis.

25 Is that correct?

Matt Fitts - Redirect examination
By Solicitor Crick

1 A That's correct.

2 Q And what is Andres Torres number on that allele?

3 A He's a 14 and 14.2.

4 Q Correct.

5 And then I guess that would continue on down. So, I
6 guess, sir, tell me if I'm interpreting this wrong, you did
7 have numbers consistent with just his DNA profile, but the
8 amounts were so small you could not completely include him
9 in that particular category, is that correct?

10 A That's correct.

11 Q Okay. I'm gonna also go back to another one.

12 Mr. Allen I think was talking about female and male. I'm
13 looking at the vaginal swab, 34.4F and 34.4M.

14 A Yes.

15 Q Of course, 34.4F is a female portion, is that accurate?

16 A That, that's correct. And when we are dealing with a
17 vaginal swab with suspected presence of sperm cells, we do
18 what's called a differential extraction. We -- the
19 epithelial cells are like a big balloon. It's easier to pop
20 than the sperm cells that are, are, are smaller thicker
21 balloons. So, we, we try to enrich for the male fraction by
22 initially popping the, the epithelial cell, vaginal
23 epithelial cells and then trying to enrich for the sperm
24 cells. And, of course, it's not always a hundred percent.
25 So, you'll get the female fraction is what we call that, and

Matt Fitts - Redirect examination
By Solicitor Crick

1 then the male fraction is where the sperm cells should be.

2 Q And when you have the male fraction there, I mean is it
3 reasonable to believe that you're also gonna, since it's
4 from the female vaginal area, that you're also gonna have
5 the numbers from the female?

6 A Yes, it is.

7 Q So, that's what we're seeing there?

8 A That's correct.

9 Q The numbers that do not correspond with Ann Emery
10 you're saying match the defendant, Andres Torres?

11 A That's correct.

12 Q A hundred and ten quadrillion to one?

13 A I don't recall. I don't recall the stat.

14 Q Okay. Just tell you---

15 A That's correct. One in one hundred ten quadrillion.

16 Q And I think the last thing Mr. Allen asked you about
17 was something found on the bottom -- I think I asked you
18 about something found inside the shoe and maybe on top of
19 the shoe. He was asking you about the bottom of the shoe,
20 that there may of been a foreign profile, is that correct?

21 A That's correct.

22 Q Now, if somebody had well, gone to Union, walked
23 through Li'L Cricket, gone to Spartanburg Regional, walked
24 around town in the shoes, is it possible there may be some
25 DNA picked up on the bottom of the shoe?

Matt Fitts - Redirect examination
By Solicitor Crick

1 A Yes, there is.

2 Q That could be touch DNA, that could be spit, that could
3 be any fluid or body fluid you could think of?

4 A That's correct.

5 SOLICITOR CRICK: Your Honor, that's all I have at this
6 time.

7 THE COURT: Recross?

8 MR. ALLEN: Briefly, Your Honor.

9 THE COURT: Yes, sir.

10 RECROSS EXAMINATION

11 BY MR. ALLEN:

12 Q Again, you're not saying, with respect to the handle of
13 the hammer, that there was a match to Mr. Torres, are you?

14 A No, I'm, I'm not. I'm just -- there was a major
15 contributor that there was a match to. The minor
16 contributor, no, I was just saying that they could not be
17 excluded is all, all I'm saying.

18 Q Okay. Which is not to say it's necessarily Mr. Torres
19 DNA?

20 A He just could not be excluded.

21 Q Okay. Based on the numbers?

22 A Correct.

23 Q Okay. And -- thank you.

24 Nothing further, Your Honor. Thank you.

25 THE COURT: Sir, you may step down.

1 SOLICITOR CRICK: Your Honor, we ask that this witness
2 be excused.

3 THE COURT: Any objection to his being excused?

4 SOLICITOR CRICK: No, Your Honor.

5 THE COURT: Ask the attorneys to approach.

6 (Whereupon, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, and looking at the clock above your heads, behind you,
10 it is past five o'clock obviously. So, we're going to break
11 for the evening at this point in time.

12 As I instructed you yesterday, I will instruct you
13 again today, not to discuss this case with anyone. Not to
14 gather any information outside of the courthouse from any
15 other source, and don't listen to, watch, or read any media
16 reports. Don't again, discuss the case with anyone. Should
17 anyone attempt to discuss the case with you during the
18 break, please report that to me upon your return to the
19 courthouse in the morning.

20 Mr. Foreman, you're a little, kind of behind that thing
21 over there.

22 How are you doing, sir?

23 FOREMAN: Fine, sir.

24 THE COURT: My understanding is that the jury didn't
25 want any special time for religious activities. But will

1 conduct some before Court convenes in the morning if you
2 care to do so, is that correct?

3 FOREMAN: Yes, Your Honor.

4 THE COURT: The SLED agents informed me that that was
5 your decisions. So, what we will do then is we will
6 reconvene at nine o'clock in the morning here in the
7 courthouse.

8 So, at this point in time you're free to go for the
9 evening.

10 I'll ask that everyone remains seated while the jury
11 retires.

12 Thank you very much.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: And I would ask that everyone remain seated
16 while the defendant retires.

17 (Pause.)

18 THE COURT: Be sure we don't have any jurors out there
19 as he goes out.

20 Thank you very much.

21 And Court is in recess now until nine o'clock in the
22 morning.

23 Thank you very much.

24 SOLICITOR GOWDY: Thank you, Your Honor.

25

1 (Whereupon, Court was in recess for the evening.)

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1 Sunday, October 19th, 2008

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3 THE COURT: State ready to proceed this morning?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MR. ALLEN: Yes, Your Honor.

7 THE COURT: Yesterday afternoon the State indicated
8 that it may not be calling any additional witnesses.

9 Is that the case?

10 SOLICITOR GOWDY: Yes, sir, Your Honor.

11 THE COURT: Then I'll take up any matters before we
12 bring the jury in from the defense that would be appropriate
13 at this time.

14 MR. ALLEN: Yes, Your Honor. Thank you.

15 Your Honor, at this time we raise a motion for a
16 directed verdict based on the grounds of the objections, the
17 motions that we have made throughout the course of this
18 trial and which have been ruled adversely to the defense
19 including, Your Honor, but not limited to the Court's
20 rulings concerning the search issues specifically dealing
21 with the clothing of, of the defendant, which have been
22 admitted into evidence, as well as the Court's ruling
23 concerning the statement of our client, the one that's been
24 testified to by Investigator Bryant and made in the home.
25 Again, these are based on the same grounds that we earlier

1 stated, which I don't think I need to reiterate in full here
2 at this point.

3 And also, and, and also because the facts and
4 circumstances, as taken together, is not sufficient to bring
5 the issues, taken together, does not prove that our client
6 committed the offenses. Specifically I'm talking about the
7 offenses concerning the charges of, of murders, burglary,
8 and the armed robbery, and the intent to burn. It may raise
9 a suspicion, but it does not -- it's not sufficient to put
10 forth to the jury at this time and for that reason we ask
11 for directed verdicts of not guilty on those charges.

12 THE COURT: Hear from the State.

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

14 It strikes me that every conceivable genre of evidence
15 exist in this case against this defendant, keeping in mind
16 that all reasonable inferences the State is entitled to at
17 this point, there is more than enough evidence to, to put
18 these indictments to a jury.

19 THE COURT: All right. The Court does not change its
20 prior rulings to begin with, and does find, taking the
21 evidence in the light most favorable to the non-moving
22 party, does find that there is sufficient evidence for all
23 indictments to go to the jury at this time.

24 I do wish to go over with your client his right to
25 testify at this point in time, and I would ask the clerk to

1 please swear the defendant.

2 (Whereupon, the defendant was placed under oath at this
3 time.)

4 THE COURT: You can be seated, sir.

5 Mr. Torres, at this time I'm going to explain to you
6 certain of your Constitutional rights. If you do not
7 understand what I go over with you now, I will give you an
8 opportunity to ask me to further explain in more detail and
9 I will be happy to do that.

10 Do you understand, sir, what we're doing?

11 DEFENDANT: Yes, sir.

12 THE COURT: We've reached the stage of this trial where
13 you may present your defense. You have the right to, to
14 claim the protections which are afforded to you under the
15 Fifth Amendment to the Constitution of the United States.
16 That amendment reads, in part, that no person shall be
17 compelled, in any criminal case, to be a witness against
18 himself. This means that you can not be required to testify
19 in this case. You certainly have the right to testify on
20 your own behalf. However, no one can make you testify. The
21 right to remain silent is a personal right and no one can
22 waive or give up that right except you.

23 If you decide to testify, you will be subject to the
24 same rules that govern the testimony of any other witness
25 who might testify in this case. What that means is you

1 would be examined by your attorneys. You would be
2 cross-examined by the State's attorneys. In addition to
3 that cross, that cross-examination, should you have any
4 convictions in, on your record involving dishonesty or false
5 statements or for crimes which were punishable by
6 imprisonment for more than ten, more than one year, and
7 your, and the Court determines that the probative value of
8 admitting that evidence outweighs its prejudicial affect to
9 you, then the solicitor would be able to introduce your
10 criminal record to attack your credibility.

11 Now, if you decide to testify in this case, the, that
12 decision must be made on your part freely, voluntarily, and
13 intelligently with knowledge of the protections given to you
14 by the Fifth Amendment to the Constitution and the
15 consequences also of your decision to testify.

16 If you decide not to testify, I will instruct the
17 jurors that they can not give the fact that you did not
18 testify in the case, case any consideration whatsoever, and
19 that there's to be absolutely no prejudice to you because
20 you did not testify. The decision as to whether or not to
21 testify is left entirely up to you. You have the right to
22 talk with your attorneys, your family, your friends, or
23 anyone else in making that decision. However, the final
24 decision will be left entirely up to you.

25 Now, Mr. Torres, do you understand what I have

1 explained to you?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you have any questions about what I have
4 explained to you?

5 DEFENDANT: No, Your Honor.

6 THE COURT: Have you had an opportunity to discuss this
7 question with your attorneys and anyone else that you wish
8 to discuss it with?

9 DEFENDANT: Yes, Your Honor.

10 THE COURT: Now, do you wish any more time to talk with
11 your lawyers or anyone else concerning this decision?

12 DEFENDANT: No, Your Honor.

13 THE COURT: Do you wish to the, testify in this case?

14 DEFENDANT: No, Your Honor.

15 THE COURT: Anything further before we bring the jury
16 in, from the State?

17 SOLICITOR GOWDY: No, sir, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. ALLEN: Your Honor, we, at this time, we renew our
20 request to present the evidence of, excuse me, third party.

21 THE COURT: Need some water. There we go.

22 MR. ALLEN: Apparently I do, Your Honor.

23 THE COURT: All right.

24 MR. ALLEN: I'm sorry.

25 THE COURT: That's okay.

1 Yes, sir.

2 MR. ALLEN: Thank you, Your Honor.

3 At this time we renew our request to present the
4 testimony and evidence of third party guilt as we previously
5 discussed and which the Court has previously ruled
6 inadmissible. But we, we renew our request to present this
7 evidence at this time.

8 We believe, again, briefly, we believe that it meets
9 the standards of State v. Holmes and also that its exclusion
10 would deny our client the right to a fair trial and the
11 right to present his defense as guaranteed by the United
12 States Constitution, the Fifth, excuse me, the Sixth and
13 Fourteenth Amendments as well as the corresponding sections
14 of the South Carolina Constitution which I believe are
15 Article 1 Sections 3 and 14 at this time. We would
16 respectfully renew that request.

17 THE COURT: I'll hear from the State on that request.

18 SOLICITOR GOWDY: Your Honor, I think it's even more
19 clear now than it was during pretrial hearings that nothing
20 the defense proffered exonerates or exculpates this
21 defendant. It is speculative. It is conjectural. And it
22 doesn't rise to the level of our Supreme Court cases or the
23 United States Supreme Court cases with respect to third
24 party guilt.

25 THE COURT: I -- in reviewing the evidence at this

1 stage of the proceeding, I, my ruling would still stand, and
2 I will not change the rulings concerning third party guilt.

3 MR. ALLEN: Your Honor?

4 THE COURT: Yes, sir.

5 MR. ALLEN: We would like to inform the Court that, at
6 this stage, based on the Court's rulings, and we, therefore,
7 rest.

8 THE COURT: All right. Do we need any time before we
9 go into closing arguments?

10 MR. ALLEN: If I may briefly renew my motions and, and
11 bring up a couple other matters before we do that, Your
12 Honor.

13 THE COURT: Yes, sir.

14 MR. ALLEN: Okay. Again, I renew my motions or my
15 motion for directed verdict not only based on the grounds
16 that I stated in my motion for directed verdict at the close
17 of the State's case, but also include the grounds as I
18 stated in my request for the, to present the evidence of
19 third party guilt and, of course, the Court's ruling
20 therefore. Again, based on the same grounds and basis as I
21 previously stated and which the Court has previously ruled.
22 But we do renew our request for a directed verdict on those
23 grounds at this time.

24 THE COURT: Okay. Those motions are noted and the
25 Court makes the same rulings.

1 MR. ALLEN: In considering the charge, Your Honor, I --
2 we would respectfully request the charge, the Court charge,
3 as a lesser offense to the charge of armed robbery, the
4 charge of larceny. We believe that the evidence that the
5 jury -- because there's been no testimony, there's been no
6 evidence which definitively places Mr. Torres at the scene
7 at, at the time of the murders of these individuals, that it
8 is highly possible the jury may consider that he came from
9 the scene later. And if they believe that he came upon the
10 scene, and that he took items that was not necessarily armed
11 robbery. Therefore, therefore, it would be a larceny or
12 that he came across the van in some other way.

13 There's not been any testimony presented as to where
14 the van was before it was seen in Union County nor was there
15 any evidence presented as to, no definitive evidence as to
16 how Mr. Torres, if the jury believes he was in possession of
17 that van or came into possession of that van which had a
18 number of items in the, in it belonging to both Mr. and Mrs.
19 Emery. So, therefore, I believe that a lesser included
20 offense of larceny would be appropriate.

21 SOLICITOR GOWDY: Your Honor, may it please the Court?

22 THE COURT: Hear from the State, yes, sir.

23 SOLICITOR GOWDY: I would invite the Court's attention,
24 Your Honor, to State versus Helen Marie Douglas. We've
25 got -- give the Court the Lexus cite. But I don't have the

1 Southeast Second cite at this moment. But I can tell the
2 Court it is a 2004 case which stands for the proposition
3 that you can, in fact, commit an armed robbery against a
4 dead person if it is part of one continuous set of events or
5 circumstances. Our Appellate Courts don't reward people for
6 killing the victims before they rob them, which is what that
7 would be tantamount to doing. If you killed them and then
8 robbed them, then it's not armed robbery, and our, and our
9 Appellate Courts have specifically rejected that in State
10 versus Douglas.

11 THE COURT: Yes, sir.

12 MR. ALLEN: Your Honor, and while I'm not disagreeing
13 with the Appellate Court ruling as cited by the solicitor,
14 that's, of course, assuming that the State's theory that
15 this is all been one continuous course of conduct. But I
16 mean because there's not been any testimony or evidence as
17 to when, if ever, Mr. Torres entered the residence and
18 there's not been any testimony as to how he came into
19 possession of that van and those contents, I mean it, it
20 very well could have been during this span of time.

21 It's different offenses. I mean it's highly unlikely
22 that, that someone else committed these offenses inside the
23 house concerning the killings and the loading up of the van
24 and it's highly, and it's just as likely circumstantially
25 that if my client came in possession of the van that he came

1 to it later at a separate course of events and that's why we
2 request that charge.

3 THE COURT: Anything further from the State on that
4 point?

5 SOLICITOR GOWDY: Only, Your Honor, that, that his
6 blood is on the, that the victim's blood is on his clothing
7 and his semen is found in the, in the vagina of the female
8 victim. So, I, I do think he's actually tied to the crime
9 scene, and actually fairly significantly.

10 THE COURT: All right. If you'll give me moment, I'm
11 gonna step down and, and review State versus Douglas. And
12 once I've had an opportunity to do that, and I'll make a
13 ruling on that point.

14 We'll be in recess for just a few minutes.

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

16 THE COURT: All right. In reviewing the Douglas case,
17 I find it does stand for the proposition that the State can
18 charge armed robbery in the case of a murder. The greater
19 question, however, is whether or not a lesser included
20 should be charged in this case. It is -- and I've reviewed
21 the most recent case. They're several cases on the subject.
22 The most recent case is State versus Franks, and that
23 indicates that the mere contention by a defendant that the
24 jury might accept the State's evidence in part or reject it
25 in part is insufficient to satisfy the requirement that some

1 evidence tends to show the defendant was guilty of only the
2 lesser offense.

3 And in this particular case, it's my finding there is
4 insufficient evidence to require the charging of the lesser
5 included offense. So, we will not do that. I refuse to do
6 that and deny the motion.

7 Anything else that we need to take up?

8 MR. ALLEN: Yes, Your Honor.

9 We would also request the charge of mere presence
10 again. The -- while the State is relying primarily on
11 circumstantial evidence the, to prove, in their attempt to
12 prove that my, that my client's guilty of the offenses,
13 specifically I'm talking about murder and the armed robbery,
14 and burglary, but by the same token, while there may have
15 been some evidence presented that he was present at the
16 scene, that does not, in and of itself, we would argue,
17 prove that he was involved in the murder. Again, it doesn't
18 exclude the probability that another individual was involved
19 or may have actually committed the murders.

20 Now, consequently, we would ask for the charge of mere
21 presence. That he was simply present, but not participating
22 than he would not be guilty of those charges, and we would
23 ask the Court to charge mere presence as well.

24 THE COURT: Hear from the State.

25 SOLICITOR GOWDY: Your Honor, I would defer to the

1 Court's wisdom. But it strikes me if mere presence is
2 charged in this case, then it's gonna be charged in every
3 criminal case in South Carolina before time and memorial.
4 There is no evidence that anyone else committed this crime.
5 I, I -- whatever the Court thinks. But if mere presence is
6 applicable in this case, then it's applicable in every
7 criminal case for the rest of eternity.

8 THE COURT: Motion will be denied on that point.
9 Anything else from the defense?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: Anything else from the State?

12 SOLICITOR GOWDY: No, sir, Your Honor.

13 THE COURT: I do intend to return, when the jury
14 returns, to call on the State to call its final witness so
15 that you can rest on the record.

16 SOLICITOR GOWDY: Yes, sir.

17 THE COURT: I will turn to the defense and give you an
18 opportunity to present any witnesses and I assume you will
19 rest on the record at that point in time. It's my
20 understanding the State will be going first in this case,
21 and the defense will be arguing last.

22 Is that correct?

23 SOLICITOR GOWDY: Yes, sir, Your Honor.

24 THE COURT: All right. Anything further before we go
25 into that phase?

1 MR. ALLEN: Just so that I don't have to stumble over
2 the words that we've been saying in the presence of the
3 jury, subject to motions and objections, if it could be
4 noted that when I stand up to stay we rest, that that is
5 understood.

6 THE COURT: It will be noted that you have protected
7 yourself concerning all prior motions that have been made,
8 and the Court will not change any rulings at that time. So,
9 you've been protected on that point.

10 MR. ALLEN: Thank you, Your Honor.

11 THE COURT: Your Honor, can Mr. Allen and I approach
12 for one, for one---

13 THE COURT: You may.

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

15 MR. ALLEN: We're ready to proceed.

16 THE COURT: Mr. Torres, at this point in time I want to
17 go over one matter with you to be sure you understand this.

18 Under the South Carolina Code you have the right to
19 participate in the closing arguments if you choose to do so
20 at this phase of the trial. You, you have to have
21 considered that right. And again, as I indicated concerning
22 your earlier right as to whether or not to testify, make a
23 knowingly, knowing and intelligent decision concerning this
24 right.

25 Now, sir, have you had an opportunity to discuss this

1 right with your attorney?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Is there anyone else that you would like to
4 speak to concerning this right?

5 DEFENDANT: No, Your Honor.

6 THE COURT: All right, sir. Do you wish to participate
7 in the closing arguments at this phase of the trial?

8 DEFENDANT: No, sir, Your Honor.

9 THE COURT: Okay, sir. I will ask counsel, Mr. Allen,
10 you have had an opportunity to discuss this with your
11 client, is that correct?

12 MR. ALLEN: That is correct, Your Honor.

13 THE COURT: Do you think that he understood the
14 discussions that you had with him?

15 MR. ALLEN: I believe -- yes, Your Honor, he does.

16 THE COURT: And do you agree with his decision that, to
17 not participate in the closing arguments---

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

19 THE COURT: ---at this phase of the trial?

20 MR. ALLEN: Excuse me. Yes, Your Honor, I do.

21 THE COURT: And is it your belief that he is knowingly
22 and intelligently waiving that right?

23 MR. ALLEN: Yes, Your Honor, he is.

24 THE COURT: All right. Anything further before we
25 bring the jury in?

1 SOLICITOR GOWDY: No, sir.

2 THE COURT: All right. Bring the jury back.

3 (Whereupon, the following takes place within the
4 presence of the jury.)

5 THE COURT: The record will reflect the jury has
6 returned to the courtroom.

7 I trust everyone had a good evening and you're ready to
8 continue with the trial at this time.

9 First of all, let me tell you it's not our intention to
10 freeze you to death today. But obviously the weather has
11 caught the heating and air system somewhat by surprise. So,
12 we're in -- we're making an effort to get the temperature
13 regulated as soon as possible. So, I do apologize for that
14 problem this morning.

15 When we broke yesterday afternoon the State was calling
16 its witnesses. And at this time, the State may call its
17 next witness.

18 SOLICITOR GOWDY: May it please the Court, Your Honor.
19 The State of South Carolina rests.

20 THE COURT: All right. That completes the presentation
21 of evidence to be presented by the State concerning the
22 charges that are before the Court. At this time, the
23 defense has the right to call any witnesses if they so
24 choose.

25 Does the defense wish to proceed with calling any

1 witnesses?

2 MR. ALLEN: No, Your Honor. The defense rests.

3 THE COURT: All right. Ladies and gentlemen, that, in
4 fact, completes now the evidence portion of this trial. I
5 told you, when we began the case, that once we had reached
6 this stage of the trial the attorneys would be allowed to
7 present their closing or final arguments concerning the
8 case. As we have indicated in the past, the State has the
9 burden of proof. Therefore, the State will go first
10 followed by the defense.

11 The State may proceed with its closing argument.

12 Mr. Gowdy.

13 SOLICITOR GOWDY: May it please the Court, Your Honor.

14 THE COURT: Yes, sir.

15 SOLICITOR GOWDY: It's May the 11th, 2007, just
16 before the school hour starts. In Union county, a van
17 wrecks. Inside the van are the personal belongings, the
18 life and times, if you will, of a couple from Spartanburg.
19 They're women's purses, jewelry, clothes. There's a
20 computer. There's a checkbook that belongs to Ann Emery,
21 and a wallet that belongs to Ray Emery. And the law
22 enforcement officers in Union County call the law
23 enforcement officers in Spartanburg County and request what
24 we call a welfare check. A welfare check at ■ Montgomery
25 Street, a little community called Drayton.

1 And Deputies Danny Jones and Jeff Valentine go to ■
2 Montgomery Street in Drayton. And they go to the front door
3 and it's locked. And they walk around the house and they're
4 looking for signs of forced entry. And they come to a
5 sliding glass door, which is unsecured.

6 And they go into the sliding glass door, and the smell
7 of gasoline permeates that house. And the heat hits them
8 like somebody has turned the furnace to high. And they walk
9 past the toppled chair. And they walk past a gasoline can
10 into the bedroom of Ann and Ray Emery.

11 And Ray Emery is laying on his stomach on the bed with
12 his breathing machine still strapped to his head, his left
13 arm reaching towards his wife. His wife is in the floor
14 with her knees up around her chest lying in the most
15 vulnerable exposed position that a woman can be in. And a
16 plastic gasoline spout lay inches from her unclothed body.
17 And a single hammer sits on top of the television.

18 Ladies and gentlemen, you are judges. Judge Couch is
19 the judge of the law and he will give you the law in just a
20 moment. But you are judges too. You don't have on a black
21 robe, and this may be the only time you ever sit in a
22 courtroom. But you are judges of the facts.

23 You and you alone decide what happened to Ann and Ray
24 Emery. You and you alone decide who murdered them, who
25 raped her, who burglarized them, who robbed them, and who

1 tried to burn the house.

2 Ladies and gentlemen, from a very very real sense, your
3 over arching job, as a judge, is to determine who is telling
4 the truth and who is not, to determine believability or, or
5 credibility, to decide which witnesses to believe, and which
6 pieces of evidence to assign value to, and how much value to
7 assign to those pieces of evidence. You're judges of the
8 facts. You will separate what is true from what is not
9 true, what is fact from what is fiction.

10 And at first blush that may seem like a daunting task.
11 It may seem like a daunting task to be charged to deciding
12 what is true.

13 But ladies and gentlemen, if you are a spouse, if you
14 are a sibling, if you are a parent, or a grandparent, or a
15 coworker or an employer, you make those decisions every
16 single day. There's not a prosecutor there with you to do
17 it, and there's not a judge there when you do it. It's just
18 your common sense, and your life experience, and your
19 education, and your background that serves you so well in
20 your everyday lives as you separate what is true from what
21 is not true.

22 Ladies and gentlemen, if only we knew when death was
23 gonna come, maybe we would be a little better prepared.
24 Maybe we would turn all the lights on, double-check the
25 doors. We wouldn't put our breathing machine on this night

1 if there was any warning at all that death is coming.

2 Ann and Ray Emery had no reason and no way to foresee
3 that the early morning hours of May 11th, 2007, were gonna
4 be the last hours of their life. They did nothing to bring
5 this crime about. They were complicit in this crime. They
6 were in the safest place in the world, the sanctuary of your
7 own home, the security of your own bed lying beside someone
8 you love, and as still night air is shattered by the blunt
9 force trauma of one end of a hammer, and the piercing
10 sharpness of the other end of the hammer.

11 And every single piece of direct and circumstantial and
12 forensic evidence points to one and only one person.

13 I want to go back to the van that's on the roadside
14 down in Union. Two witnesses, Michelle Burgess and Eric
15 Vinson, saw this defendant run away from that van and I
16 think it's instructive, ladies and gentlemen, to remember
17 that human nature, when they see someone in an accident,
18 their first impulse is to call 9-1-1. And Michelle Burgess
19 called 9-1-1.

20 And do you remember what the defendant said to her?

21 You remember what he said?

22 Don't call the police. Don't call the police.

23 And he offers them a hundred dollars to give them a
24 ride, to give him a ride and they refuse. So, he hops in
25 the car. And inside that van that he just left is a flower

1 pot with his fingerprint and Ann and Ray Emery's blood. And
2 there's blood on the blue jeans. Their personal belongings,
3 the things from their home on [REDACTED] Montgomery Street -- ladies
4 and gentlemen, this is hours, mere hours after their death.
5 And their personal belongings and their jewelry and their
6 purses and wallets are in the van. And there's blood on the
7 flower pot and his fingerprints on the flower pot and
8 there's blood on the blue jeans. And there's blood on the
9 jewelry boxes. Ray Emery's blood is on a jewelry box inside
10 his wife's purse.

11 In a very real sense, ladies and gentlemen, everything
12 you need to convict this defendant is inside a van wrecked
13 on the roadside in Union, South Carolina. But there's more
14 than just that.

15 This defendant flees to the Li'L Cricket and he walks
16 in and the surveillance camera catches him with his yellow
17 shirt and his khaki pants and his black shoes on and he's
18 pacing and he's frantically walking around trying to get
19 somebody to give him a ride back to Spartanburg. And he
20 comes up to a nice older man named Henry Richardson who's
21 there to get coffee for himself and his wife.

22 You can see him on that surveillance tape taking that
23 hundred dollar bill and handing it to Henry Richardson, and
24 he says Mr., and he tells Henry Richardson I got to get back
25 to Spartanburg because my wife's gonna have a baby, and I

1 want you to focus on the dualism of what just happened. The
2 dichotomy of Andres Torres lying about the advent of life,
3 the birth of a child, juxtaposed with the reality of what he
4 had just done two hours ago. He's lying about going to
5 celebrate life and mere hours before he had brought two
6 beautiful lives to a crushing cracking end.

7 But Henry Richardson doesn't know this and he takes
8 Andres Torres at his word and he gives him a ride to
9 Spartanburg Regional and Andres Torres walks in one door and
10 you see him on the surveillance tape with those, that yellow
11 shirt and those khaki pants and those black shoes. And he's
12 talking on a cell phone. And he walks in and he lingers for
13 just a moment and then he walks back out another door.

14 He's got on the yellow shirt and the khaki pants and
15 black shoes. He doesn't go to his home because his home is
16 right beside the Emery home. And he can't go back there.

17 So, he goes to his grandmother's house on Houston
18 Street, and that's where the police catch up with him. And
19 in the washing machine at grandmama's house is a yellow
20 shirt, and khaki pants, and black tennis shoes. And when
21 she hands it to law enforcement, there's also his wallet
22 inside the shoes. That's the house on Houston Street.

23 And meanwhile, law enforcement's back on Montgomery
24 Street processing the crime scene. There's blood
25 everywhere. I think Joseph Steward from the Coroner's

1 office, who's now with the Highway Patrol, described it as
2 360 blood. It's on that wall and that wall and that wall
3 and that wall and the ceiling, and they're looking for tread
4 prints. They're looking for pour patterns.

5 It takes them days to process that crime scene. And
6 what they find, ladies and gentlemen, early on is a hammer.
7 A single solitary hammer.

8 You know, hammers can build. They can do good. Some
9 of our earliest memories in life are maybe building a dog
10 house with our father or learning to drive a nail with my
11 grandfather. Hammers do good. They build. They enhance.
12 But this hammer, this hammer was destructive.

13 You heard the testimony of John David Wren. Ray Emery,
14 on his stomach, eight blows with the hammer. Imagine
15 hitting a human being one time with a hammer. Imagine what
16 we do when we hit our fingers with a hammer. We recoil and
17 we promise ourselves we're never gonna do that again.
18 Imagine hitting another human being in the head with a
19 hammer that's done nothing to you.

20 He's asleep. But that impulse in us that wants to
21 fight back was in Ray Emery, and he rose his arms because
22 David Wren said he had defensive wounds on his arms. He
23 rose his arm. He raised his arms. But we couldn't do
24 anything. He was caught from behind. He didn't hear it.
25 He had a breathing machine on. Eight times that hammer hit

1 Ray Emery's skull and head and face and the result was the
2 force of those blows were so powerful that it caused Ray
3 Emery's brain to stop working and he died.

4 And as bad as Ray Emery's, Emery's injuries were, Ann
5 Emery's injuries were worse. Her face was literally gone.
6 Doctor Wren could not find her left eye. The bridge that's
7 suppose to be in her mouth was in her neck and her knees
8 were up around her chest, and she was exposed because she
9 had just been raped.

10 Is it not enough to take her life?

11 Is it not enough to take her husband's life?

12 Is it not enough to take her jewelry and her personal
13 belongings?

14 But must you take her dignity?

15 She's left in the most vulnerable and exposed way a
16 woman can be left.

17 Ladies and gentlemen, I heard Friday morning and I
18 underlined it twice because I wanted to make sure that I
19 heard it correctly, amid a chorus of not guilty pleas by the
20 defense counsel, I heard the comment that there were no eye
21 witnesses as if that somehow means a crime doesn't occur
22 because they're no eye witnesses.

23 Ladies and gentlemen, I beg to differ. There were eye
24 witnesses. There were two of them. He just killed them.
25 He just made it where they couldn't talk with their mouths.

1 But their blood screams out and Ann Emery's body will
2 testify. There are eye witnesses.

3 There's blood on the blue jeans in the van he was
4 driving. There's blood on this flower planter. There's
5 blood on the khaki pants that he stuck in his grandmother's
6 washing machine that he had on that surveillance tape and
7 that surveillance tape and in the van when the witnesses saw
8 him. The khaki pants, the yellow shirt, the socks, the
9 shoes, both of their blood is on those items and that speaks
10 as loudly as if they were here telling you what happened
11 themselves. And law enforcement, when they're processing
12 the house, they're looking for tread patterns.

13 Ladies and gentlemen, you heard about fingerprints and
14 how all of our fingerprints are different. And, of course,
15 his fingerprints are on the flower pot. His fingerprints
16 are on the van. And I'm not putting tread prints up there
17 with fingerprints in DNA.

18 I will tell you this though, ladies and gentlemen. It
19 is more than coincidental that you can overlay, like that
20 expert from SLED, a tread print from his tennis shoes from
21 his grandmother's house. Not only is the make and the model
22 the same, the size is the same, the wear pattern is the
23 same, and there's blood and gasoline on his tennis shoes.
24 So, you have blood. You have fingerprints. You have tread
25 prints, and you have semen.

1 You have Ann Emery's body to do what defense counsel
2 said couldn't be done, to be an eye witness to what
3 happened. This defendant's semen was found inside the body
4 of a murdered woman one hundred and ten quadrillion to one.
5 Those are numbers that stagger the human mind. A hundred
6 and ten quadrillion to one it's Andres Torres' semen inside
7 Ann Emery.

8 Ladies and gentlemen, every piece of circumstantial,
9 direct, and forensic evidence that you can have in a
10 criminal case you have in this case. And every single
11 solitary piece of it implicates Andres Torres.

12 You will have several indictments in the jury room with
13 you. You will have two indictments for murder, and you will
14 have two indictments for armed robbery. You'll have an
15 indictment for burglary. You'll have an indictment for
16 criminal sexual conduct in the first degree, and you'll have
17 and indictment for intent to burn.

18 And Judge Couch is the judge of the law. I'm not gonna
19 give you the law. And to the extent you think I do, you
20 listen to what Judge Couch says. I'm merely gonna go
21 through the indictments and I'm gonna go through it quickly.

22 Murder is the unlawful killing of another human being
23 with malice aforethought. Malice, ladies and gentlemen, is
24 walking into a storage shed to retrieve a hammer. Malice is
25 taking the steps necessary to walk back into a residence and

1 find two people sleeping in the bed and beat them to death.
2 If you want malice, there's malice.

3 Burglary is going into someone's home with intent to
4 commit a crime without their permission. The best way to
5 determine what somebody's intention is, ladies and
6 gentlemen, is to see what they did once they got there. He
7 walked into the Emery home with a hammer, he raped her, he
8 robbed them, and he killed both of them. That is burglary.

9 Armed robbery, it doesn't matter whether they were
10 alive or dead at the time he took the belongings. It's
11 armed robbery under the law of the State of South Carolina.
12 And all of their belongings are in a van that he just got
13 through wrecking. That is armed robbery.

14 Criminal sexual conduct, ladies and gentlemen, I don't
15 need to go over that. You saw the way that her body was
16 left. You saw his attempt to cover-up his crime. You saw
17 the gasoline spout right beside her. Criminal sexual
18 conduct in the first degree and attempt to burn.

19 In just a minute when Judge Couch gives you the law you
20 are going to retire to your jury room and you're going to
21 have what we call a verdict, and verdict is a Latin word
22 that means to speak the truth. And when I hear, when I hear
23 the definition of verdict, I'm reminded of what Socrates
24 says, which is more than beauty, more than pain, more than
25 riches, I desire the truth. And the truth is that a

1 beautiful couple was murdered in their own home on May the
2 11th, 2007, and that every single piece of evidence points
3 towards Andres Torres as committing these crimes.

4 I would ask, ladies and gentlemen, respectfully that
5 when you come back into this courtroom that you have truth
6 in one hand and you have justice in the other for Ann and
7 Ray Emery.

8 THE COURT: The defense may proceed.

9 MR. RECKENBEIL: Thank you, Your Honor.

10 May it please the Court?

11 THE COURT: Yes, sir, Mr. Reckenbeil.

12 MR. RECKENBEIL: Good morning.

13 First of all I'd like to say thank you cause this is a
14 very very grueling process. You have been through the
15 toughest of the toughest cases that you have ever been
16 called to, summoned for jury service. You have been taken
17 away from your families to provide a service for this
18 county, for this state, and for this country. And I say
19 thank you.

20 As an officer of this court, we have certain
21 responsibilities. And as jurors and citizens, you have met
22 your responsibility, your summons head on, and I appreciate
23 that.

24 Cornerstones of this country have been founded on
25 several judicial purposes and processes. One of them is

1 that a person in the United States of America is innocent
2 until proven guilty. Also, the fact the, what the judge is
3 gonna tell you, is, is that the defendant, in a criminal
4 case, has the right to remain silent. That the fact --
5 because a person does not get on the witness stand and does
6 not tell you he or she didn't do it can not even be taken
7 into consideration. You have an absolute right, under the
8 Fifth Amendment of the Constitution of the United States, to
9 remain silent, and because of the fact that an individual
10 exercising their Constitutional right can never be taken
11 against them in a court of law or outside the court of law.

12 Taking into consideration those constitutional rights,
13 I want to talk about May the 11th, 2007. As you heard
14 these officers come into these courtroom, every one of them
15 well trained, well spoken, talked about what their
16 responsibilities are when they come to a crime scene.

17 What did every single one of them talk to you about?

18 Number one, preserve the crime scene. You make sure --
19 you don't want to contaminate the evidence. You want to
20 make sure you do all you can to walk around if you see a
21 puddle, if you see droplets on the floor. You don't want to
22 do anything to contaminate a crime scene. You heard all
23 those officers come in here and testify to that.

24 You heard the fact that over and over again that that
25 is what they're taught to do. You heard all the officers

1 that were out there at [REDACTED] Montgomery Street. There were a
2 bunch. And you're here to say that, in fact, that there are
3 two tread prints. One which they claim is the defendant,
4 and one that they claim is law enforcement.

5 well, ladies and gentlemen, all those officers that you
6 heard, Valentine, Jones, we got to the door and we stopped.
7 We didn't go in.

8 The coroner comes here and testifies I got to the door
9 and I stopped and what did I see?

10 Shoe prints, plural, in blood. Prints.

11 And we see, from the cuttings of the floor that you
12 have in evidence, that it is clear that there are two shoe
13 prints. well, State wants you to believe that, in fact,
14 circumstantially it is law enforcement. But that is
15 contrary to everything that they have been taught and
16 everything that they have been preaching. It is against
17 what they do to preserve the crime scene.

18 SLED agent comes here and testifies about the prints of
19 the shoes. Says oh, I've seen it before. It's law
20 enforcement. When I questioned her, yeah, it's possible.
21 It's possible it's not law enforcement. Consider that when
22 taking into consideration the other evidence that I'll talk
23 about in just a second.

24 You have the fact that gasoline is poured just in the
25 living room. The dog doesn't alert to anything in the

1 kitchen. That's where the burners are. The burners are on
2 high. The oven is on high. There's no gasoline in that
3 kitchen. There's nothing in there that is trying to ignite
4 that stove. You just have some pours in the living room
5 cause that's where the gas can is found.

6 Now, moving to the van in Union County. No question
7 that police officers claim that they pulled two prints out
8 of that van.

9 Number one, off of the door on the outside.

10 Number two, off of this vase. Matched the defendant.

11 A couple things that come out of Union that we want you
12 to consider. Number one, three eye witnesses. They don't
13 see blood on his clothes.

14 One man, Mr. Richardson, who is kind enough to give him
15 a ride back in, I asked him point blank, sir, would you
16 allow an individual to come up to you in a store, covered in
17 blood, offer you a hundred dollars, and drive them 30
18 minutes?

19 Would you let him in your van?

20 No, sir.

21 Would any of us?

22 No, we wouldn't.

23 Not one eye witness in Union after that accident say
24 that they see any blood on Andres Torres.

25 Now, coming back from the retrieval of the shoes, from

1 the retrieval of the clothes, they're all put in one bag.
2 That's significant. DNA, cross-contamination, blood,
3 cross-contamination.

4 what are we having when we have everything jumbled up?
5 Contrary to what the police have talked about, it
6 contaminates.

7 Is it possible?

8 Is there some other way that that blood got on those
9 clothes?

10 Is there some possible way that, in fact, that those
11 clothes are splattered or transferred?

12 Spatter or transfer?

13 solicitor Gowdy got up here and said 360-degree blood.
14 That's what Coroner Steward said when he came into that room
15 when he saw all that blood.

16 Ladies and gentlemen, I'm not gonna put this on the
17 blowups, but I invite you to look at these exhibits when you
18 have the opportunity to have all the evidence back in that
19 room. You see the amount of blood on the walls. You see
20 the amount of blood on the ceiling. You see the amount of
21 blood on the headboard, on the floor. Compare that with the
22 droplets of what Andres Torres supposedly had on his
23 clothes.

24 Is that consistent with an individual hammering away?

25 Is that consistent with what Doctor Wren has described

1 of the amount of fractures that an individual had?

2 All that blood being splattered around after an
3 individual is hammering away at these people?

4 Well, why don't you just change clothes?

5 Just change clothes.

6 Well, if that's true, where is it?

7 The jeans were put into evidence, and where were they
8 found?

9 In the van.

10 So, where's the shirt that contains all the blood?

11 It was never presented. I invite you to look at those
12 pants and have the shirt that, that Tony Torres supposedly
13 was wearing when they were pulled out of the washing
14 machine, never washed, and what they, in fact, had on them.

15 Going back to the scene, and again, these officers,
16 trained, professional, doing their job. I invite you to
17 look at Picture 374. Glove laying on the ground right next
18 to that gas can.

19 Do you think these police officers would have just
20 dropped that glove, oops, on the ground and take a picture
21 of it?

22 This glove was never introduced into evidence. This
23 glove was never tested for DNA. This glove was never
24 fingerprinted. This glove was never to be found.

25 You have two fingerprints off of the planter, off of

1 the car. Those are your two. But you remember the third
2 one.

3 You remember when I cross-examined that fingerprint
4 expert, Officer Murphy?

5 Said, sir, did you do any more?

6 Yeah, there was three. There was three submitted. But
7 that wasn't even produced in trial. There was three
8 fingerprints pulled. If you remember his testimony, there
9 was three fingerprints. We got two. We got one there, and
10 we got one from the car.

11 Ladies and gentlemen, they talked about how they dust
12 and look for fingerprints. The black stuff that they put on
13 and then they try to pull off the fingerprints cause you're
14 gonna see the dust. If you look at the evidence that has
15 been presented already with those fingerprints cards, those
16 placards, dust.

17 Where's that third print that was pulled off of?

18 Where is that third print that was pulled off of it?

19 Where is that third print that was pulled off of it?

20 Still at the scene, ladies and gentlemen, there was
21 absolutely no forced entry. Every window, every door was
22 checked by the police officers as you heard on their
23 testimony. Every single door and window was locked except
24 the back-door. But there was no forced entry.

25 Use your common sense, ladies and gentlemen, as the

1 solicitor asked you to do as to having no forced entry.

2 what would that mean to you, that there's no forced
3 entry?

4 My co-counsel questioned the DNA, DNA expert, and by no
5 means am I a scientist. But I'm gonna try to get it down to
6 where I think, in fact, what he was trying to say.

7 The solicitor talked about the fact that one in one
8 hundred ten quadrillion that DNA in the vagina of Ann Emery
9 matches Tony Torres.

10 But do you know what also was questioned and talked
11 about, about the DNA?

12 We can not exclude Tony Torres from the handle of the
13 hammer. Well, you remember when Profession Fitts and Doctor
14 Fitts talked about the fact of how we go about finding out
15 DNA and matches. We enter it into an FBI database. That's
16 how we find out about our matches. Well, one hundred and
17 ten quadrillion, there ain't enough people on this planet to
18 figure that one out. Six billion people.

19 well, did they do that with the fact of the matches for
20 and exclude Tony Torres from the handle of the hammer?

21 No.

22 Because you couldn't include him. Because the DNA that
23 Doctor Fitts talked about didn't have enough matches to
24 those alleles. And do you remember when Mrs. Crick got back
25 up there on cross-examination and she's putting her pen

1 there and she's talking about oh, well, this number matches,
2 this number matches. Well, they were cherry picking. They
3 were trying to say well, there's a couple of numbers that
4 matches.

5 Well, you know what?

6 We might have that DNA. I might have that DNA.

7 Who know who has that DNA of those specific alleles?

8 But that's not how it works.

9 Doctor Fitts talked about how you go about matching DNA
10 is you look at the whole span across, and that's how they
11 include people. Well, you know, if you can't exclude him,
12 you can not include him. Because if you look at the last
13 part of that DNA, it gives you the X and the Y chromosome.
14 You get your X from mom, Y from dad.

15 What was on the handle of that hammer, ladies and
16 gentlemen?

17 An X chromosome.

18 Not a Y chromosome. Not an X/Y chromosome. An X
19 chromosome.

20 Taking into consideration the facts and evidence of
21 that third fingerprint, of the fact that there is no DNA to
22 specifically include Tony Torres, the fact that this State
23 has gone to the fact of DNA that is a scientific, and I want
24 to make sure I get this right because Mrs. Crick used this
25 in opening statement, an amazing scientific tool. That's

1 what Mrs. Crick said in opening statement, an amazing
2 scientific tool.

3 well, the State has gone to all their tools. They have
4 used everything that they can, fingerprints, DNA.

5 And you know what?

6 They can't come up with the fact that the defendant's
7 DNA, the defendant's fingerprints are on the murder weapon.

8 Ladies and gentlemen, I submit to you that that is a
9 reasonable doubt. The State must prove to you, beyond a
10 reasonable doubt, each and every element of the crime. And
11 with reasonable doubt, you can not convict.

12 I would ask that you take a look at all this evidence
13 and I know it's a lot. There's some that you might use and
14 there's some that you might not use.

15 But ladies and gentlemen, look at all this evidence.
16 Think about both sides. And trust me, this is an emotional
17 case. This is an emotional situation. Two people are dead.
18 They were good people. But just for the sheer fact of
19 emotion doesn't mean that you can convict an individual in
20 this country.

21 Look at all the evidence, think about it, use your
22 common sense.

23 And is there reasonable doubt?

24 And if there is, you must acquit.

25 Thank you.

1 THE COURT: Ladies and gentlemen of the jury, that
2 completes the closing arguments in the case, and I told you
3 that when we reached this stage of the trial it would be my
4 duty and responsibility to charge you concerning the law to
5 be applied in this case. Several days ago when we began,
6 began this process we went over the indictments with you,
7 and the defendant is charged with seven indictments. I
8 remind you that I've told you that the fact that a defendant
9 has been arrested, charged, and indicted in this case is not
10 evidence in the case, and can not be considered by you as
11 evidence of guilt in the case nor does it create any
12 presumption or inference of guilt.

13 The indictment is simply the formal written instrument
14 which contains the charges made against the defendant. It's
15 the formal document that brings this case into Court.

16 Now, there are multiple charges as I indicated in this
17 case. In fact, there are, as I indicated, seven different
18 indictments. I'm going to go over the indictments with you
19 in numerical order so that you'll understand the offenses
20 that have been charged against the defendant.

21 The first Indictment is in Case 07-GS-42-2773. That
22 indictment is for the offense of armed robbery. The
23 indictment states that the defendant, Andres Antonio Torres,
24 did, in Spartanburg County, on or about May 11 of 2007,
25 while armed with a pistol, dirk, slingshot, metal knuckles,

1 razor knife, hammer, or other deadly weapon, or while
2 engaging, either by actions or words, excuse me, while
3 alleging, either by actions or words, that he was armed
4 while using a representation of a deadly weapon or any
5 object which a person present during the commission of the
6 robbery reasonably believed to be a deadly weapon,
7 feloniously take from the person or presence of Ann Emery,
8 by means of force or intimidation, goods or monies of Ann
9 Emery described as follows, clothes, jewelry, and
10 miscellaneous items, with the intent to deprive the owner
11 permanently of such property in violation of Section
12 16-11-330(a) of the Code of Laws of South Carolina, 1976 as
13 amended, against the peace and dignity of the State and
14 contrary to the statute in such case made and provided.

15 The next indictment is Case Number 2007-GS-42-2775.
16 This indictment is also for armed robbery, and the
17 indictment states that Andres Antonio Torres did, in
18 Spartanburg County, on or about May 11 of 2007, while armed
19 with a pistol, dirk, slingshot, metal knuckles, razors,
20 knife, hammer, or other deadly weapon, or while alleging,
21 either by actions or words, that he was armed while using a
22 representation of a deadly weapon, or any objection which a
23 person present during the commission of the robbery
24 reasonably believed to be a deadly weapon, feloniously take
25 from the person or presence of Charles Ray Emery, by means

1 of force or intimidation, goods or monies of Charles Ray
2 Emery, described as follows, clothing, clothes or jewelry,
3 and miscellaneous items, with the intent to deprive the
4 owner permanently of such property, in violation of section
5 16-11-330(a) of the Code of Laws, 1976, as amended, against
6 the peace and dignity of the State, and contrary to the
7 statute in such case made and provided.

8 The third indictment in the case is 07-GS-42-2776.
9 That indictment is for burglary first degree dwelling. The
10 indictment states that the defendant, Andres Antonio Torres,
11 did, in Spartanburg County, on or about May 11 of 2007,
12 willfully and intentionally enter the dwelling belonging to
13 Charles Ray Emery and Ann Emery located at [REDACTED] Montgomery
14 Street, Spartanburg, South Carolina, without consent and
15 with the intent to commit a crime therein. And either one,
16 the defendant did enter in the nighttime, and/or armed with
17 a deadly weapon, and/or caused physical injury to any person
18 who is not a participant in the crime, and/or threatened,
19 uses or threatens the use of a dangerous instrument, and/or
20 displays what appears to be a knife, pistol, revolver,
21 rifle, shotgun, machine gun, or other firearms in violation
22 of section 16-11-311 and Section 16-1-57 of the Code of Laws
23 of South Carolina, 1976 as amended, against the peace and
24 dignity of the State and contrary to the statute in such
25 case made and provided.

1 The next indictment in this case is 07-GS-42-2777. The
2 charge in that indictment is murder. The indictment states
3 that Andres Antonio Torres did, in Spartanburg County, on or
4 about May 11 of 2007, feloniously and willfully and with
5 malice aforethought kill one Charles Ray Emery by beating
6 the victim with a hammer about the face and body and the
7 victim died as a proximate result thereof in violation of
8 section 16-3-10 and 20 of the Code of Laws of South
9 Carolina, 1976 as amended, against the peace and dignity of
10 the State and contrary to the statute in such case made and
11 provided.

12 The next indictment is Case Number 07-GS-42-2778. That
13 charge is murder. The indictment states that the defendant,
14 Andres Antonio Torres, did, in Spartanburg County, on or
15 about May 11, 2007, feloniously, willfully, and with malice
16 aforethought, kill one Ann Emery by beating the victim with
17 a hammer about the face and body. The victim died as a
18 proximate result thereof in violation of Section 16-3-10 and
19 20 of the Code of Laws of South Carolina, 1976 as amended,
20 against the peace and dignity of the State and contrary to
21 the statute in such case made and, and provided.

22 The next indictment is 08-GS-42-880. The indictment is
23 for criminal sexual conduct first degree. This indictment
24 states that the defendant, Andres Torres, did, in
25 Spartanburg County, on, on or about May 11, 2007, engage in

1 sexual battery, to wit, by use of aggravated force to
2 overcome the victim of one Ann Emery without her consent to
3 accomplish a sexual battery. Such sexual battery was
4 accomplished by the use of force of a high and aggravated
5 nature. To wit, by use of aggravated force to overcome the
6 victim and/or the victim, Ann Emery, submitted to a sexual
7 battery by the defendant under circumstances where the
8 victim is also the victim of a forcible confinement,
9 kidnapping, robbery, extortion, burglary, house breaking, or
10 any other similar offense or act in violation of Section
11 16-3-652 of the Code of Laws of South Carolina, 1976 as
12 amended, again, against the peace and dignity of the state
13 and contrary to the statute in such case made and provided.

14 The final indictment is for the offense of attempt to
15 burn. It is Case Number 08-GS-42-4677. The indictment
16 states that on or about May 11, 2007, Andres Antonio Torres
17 did, in Spartanburg County, unlawfully and maliciously
18 attempt to set fire to or aid, counsel, or procure the
19 burning of the home and/or property, buildings or property
20 mentioned in Section 16-11-10 and 16-11-140 of the South
21 Carolina Code of Laws of Charles Ray Emery and Ann Emery
22 located at [REDACTED] Montgomery Street, Spartanburg, South Carolina
23 or committed an act in furtherance of burnings of the
24 buildings in violation of Section 16-11-190 of the Code of
25 Laws of South Carolina, 1976 as amended, against the peace

1 and dignity to the state and contrary to the statute in such
2 case made and provided.

3 Each indictment charges a separate and distinct
4 offense. You, the jury, must decide each indictment
5 separately, separately on the evidence and the law that's
6 applicable to it uninfluenced by your decision as to any
7 other indictment. The defendant may be convicted or
8 acquitted on any or all of the offenses charged. You will
9 be asked to write a separate verdict of guilty or not guilty
10 as to each indictment that I've just gone over with you.

11 I indicated then the defendant has pled not guilty to
12 the indictments. That plea puts the burden on the State to
13 prove the defendant guilty. A person charged with the
14 committing of a criminal offense in South Carolina is never
15 required to prove himself innocent.

16 I charge you that it is an important rule of law that
17 the defendant, in a criminal trial, no matter what the
18 seriousness of the charge may be, will always be presumed to
19 be innocent of the crime for which the indictment was issued
20 unless guilt has been proven by evidence that satisfies you
21 of that guilt beyond a reasonable doubt. The presumption of
22 innocence does not end when you begin your deliberations.
23 It continues and accompanies the defendant throughout the
24 trial until such time as you reach a verdict of guilt which
25 is based upon evidence which satisfies you of that guilt

1 beyond a reasonable doubt.

2 The presumption of innocence has sometimes been
3 described somewhat like the robe that I wear into the
4 courtroom. It's placed about the shoulders of the
5 defendant. It remains with the defendant until it has been
6 striped from the defendant by evidence which satisfies you
7 of the defendant's guilt beyond a reasonable doubt.

8 The presumption of innocence is not a mere legal
9 theory. It's not just a legal phrase. It is a substantial
10 right to which all defendants, each and every defendant, is
11 entitled unless you, the jury, are satisfied, from the
12 evidence, of the defendant's guilt beyond a reasonable
13 doubt.

14 Now, probably you can tell from what I've already told
15 to, told you that the, that the standard of proof of proof
16 beyond a reasonable doubt is an important concept and
17 requirement in our criminal law, and the State does have the
18 burden of proving the defendant guilty beyond a reasonable
19 doubt.

20 Some of you may have served as jurors or been involved
21 in cases which were civil in nature, and in those cases the
22 standard of proof is different. The standard of proof in a
23 civil case, that's where someone's seeking monetary damages
24 from one person or others, is proof by the greater weight or
25 the preponderance of the evidence. Kind of like the scales

1 of justice tipping ever so slightly one way or the other.

2 That's not the standard of proof in a criminal case
3 such as these cases. The State's burden of proof is more
4 powerful than the preponderance of the evidence. It is
5 proof beyond a reasonable doubt. Now, proof beyond a
6 reasonable doubt is proof that leaves you firmly convinced
7 of the defendant's guilt.

8 There are very few things that a, in this world that we
9 know of by absolute certainty, and in criminal cases the law
10 does not require proof that overcomes every possible doubt.
11 If, based on your consideration of the evidence, the
12 defendant is guilty of the crime charged, you must find the
13 defendant guilty. If, on the other hand, you think there's
14 a real possibility that the defendant is not guilty, then
15 you must give the defendant the benefit of the doubt and
16 find him not guilty.

17 A reasonable doubt has been defined as that kind of
18 doubt which would cause a reasonable person to hesitate to
19 act. Now, I remind you that during this trial you and I
20 have had certain duties to perform. As the trial judge, it
21 has been my responsibility to preside over the trial. It's
22 been my duty to rule on the admissibility of evidence that
23 came into the trial, and concerning the appropriateness of
24 questions that are, that were asked. And I will charge you
25 that you should consider only the competent evidence before

1 you.

2 If there was anything during the trial that I ordered
3 out of order or stricken from the record, you must disregard
4 those matters in their entirety. You are to consider only
5 the evidence which is presented in this case. That is the
6 sworn testimony of witnesses who have testified from the
7 witness stand and any exhibits which have been made a part
8 of this record, and any stipulations or agreements to, to
9 evidence as made by the attorneys involved in the trial.

10 I now have the additional duty of charging you
11 concerning the applicable law, and as the presiding judge, I
12 instructed you at the beginning of the trial I am the sole
13 judge of the law in the case. And it's your duty, as
14 jurors, to accept and apply the law as I now state it to
15 you. If you've already had an idea as to what the law is or
16 what the law ought to be in any of these circumstances, I
17 will tell you now to disregard that notion.

18 The law does not allow me to disagree with you
19 concerning your determination of the facts in this case, and
20 the law does not allow you to disagree with me concerning
21 the law that you must apply in this case because you are
22 sworn to accept the law and apply it exactly as I state it
23 to you.

24 Now, in every case tried in front of a jury in this
25 state and, and in the United States, the jury is the sole

1 and exclusive judges of the facts. I can not indicate,
2 state, or comment, or make any statement to a trial jury
3 about the facts in this case. Since you, the jury, are the
4 sole judges of the facts in this case, you should not infer
5 from anything that I have said in the discharge of my duties
6 that I have any opinion whatsoever as to how you determine
7 the facts in this case.

8 The law doesn't allow me an opinion as to how you
9 determine the facts in this case. I can assure you I have
10 no opinion on that subject. It's a matter solely for you,
11 the jury, to determine. As jurors, it's your duty to
12 determine the effect, the value, the weight, and the truth
13 of the evidence which has been presented during the trial.

14 Now in doing so, there are two types of evidence that
15 you, a jury, have the right to consider and this, this, the
16 two types of evidence is the types of evidence presented
17 during a trial. They are described as direct evidence and
18 circumstantial evidence.

19 Direct evidence is testimony of a person who claims to
20 have actual knowledge of a fact such as an eye witness. It
21 is evidence which immediately establishes the main fact to
22 be proven. Circumstantial evidence is proof of a chain of
23 facts or circumstances that indicate the existence of some
24 other fact. It's evidence which immediately establishes
25 what we call collateral facts from which some main fact

1 might be reasonably inferred.

2 Circumstantial evidence, therefore, is based on
3 inference and not on personal knowledge or observation. The
4 law makes absolutely no distinction between the weight or
5 the value that you, as jurors, can give either to direct or
6 circumstantial evidence. Nor is there a greater degree of
7 certainty required of circumstantial evidence than that of
8 direct evidence. You can weigh all the evidence in the
9 case. And if, after weighing all the evidence, you're not
10 convinced of the defendant's guilt beyond a reasonable
11 doubt, you must find the defendant not guilty. If, however,
12 on the other hand, you are firmly convinced of the
13 defendant's guilt beyond a reasonable doubt, then you must
14 find the defendant guilty.

15 Now, I like to use a fairly common example of what is
16 meant by circumstantial evidence, and this is one that I
17 use, I use quite often and I'll give it to you, I'll give it
18 to you to give you some idea of what I'm talking about when
19 I say proof of collateral facts from which a main fact can
20 be inferred.

21 Let's say that you were at your home last night, and
22 you went to bed and looked outside of your window, and the
23 driveway was drive, the street in front of the house was
24 dry, and you slept all night well, didn't wake up, and when
25 you woke up in the morning you looked out. And even though

1 the sun was shining, there were puddles in the driveway.
2 There was water dripping from the trees. The grass was wet
3 outside. Now, you didn't see it rain and you didn't hear it
4 rain. But from the facts that you know to be true, you
5 could reasonably infer that at some time during the night it
6 did rain. That's what we mean by proof of collateral facts
7 from which someone might reasonably infer a main fact. That
8 is proof of matters by collateral evidence.

9 Now, necessarily, you, the jury, must determine the
10 credibility of the witnesses who testified in this case and
11 credibility simply means believability. It becomes your
12 duty, as jurors, to analyze and evaluate the evidence, to
13 determine which evidence convinces you of its truth.

14 In determining the believability of the witnesses, you
15 have the right to believe one witness against all the others
16 or all the others against one. You can believe all of what
17 a witness told you, part of what a witness told you, or none
18 of what a witness told you. You may believe -- you may, as
19 the jury, consider any witness, what they have exhibited to
20 you.

21 You have the right to consider such things as whether
22 or not they have an interest in the case, a bias, or a
23 prejudice, or some other motive. You have the right to
24 consider the appearance of the witness on the witness stand
25 as the witness testified.

1 Also, there have been witnesses who testified during
2 the trial who were designated as an, expert witnesses. The
3 rules of evidence, as I indicated to you when they
4 testified, do not permit witnesses, ordinarily witnesses to
5 testify about their opinions or conclusions. An exception
6 to the rule exists for witnesses that we call expert
7 witnesses. That is somebody who, because of their education
8 or experience, has become an expert in some field, science,
9 profession, or calling, and those witnesses may state an
10 opinion as to any relevant matter in which the witness
11 claims to be an expert and also state the reasons for that
12 opinion.

13 You should consider the testimony of the expert
14 received in evidence in this case like any other evidence or
15 testimony. You give it the weight you think it deserves.
16 If you decide that the opinion of the expert is not based on
17 sufficient education or experience or you conclude that the
18 reasons given by the expert in support of the opinions are
19 not sound or that the opinion is outweighed by other
20 evidence, you have the right, as the sole judges of the
21 facts, to disregard the opinion in its entirety.

22 An expert witness' testimony is to be given no greater
23 weight than that of any other witness simply because the
24 person's been designated as an expert. Therefore, you
25 should weigh it like any other testimony that you've read,

1 received, and further you're not required to accept an
2 expert's opinion even though it might not be contradicted.

3 Now, I instruct to you and I will emphasize to you the
4 fact that the defendant did not testify is not a factor to
5 be considered by you in any way in your deliberations and
6 your consideration on the question of guilt or innocence of
7 the defendant. It must not be considered by you in any
8 manner whatsoever. A defendant has the constitutional right
9 to remain silent, and the assertion of the right must not be
10 considered by you in your deliberations.

11 I repeat to you that, under the oath that you have
12 taken, you are not to draw any conclusion whatsoever from
13 the fact the defendant did not testify and that fact should
14 not even be discussed by you in your deliberations in the
15 jury room. The burden of proof, as I have stated to you, is
16 on the State. The defendant is not required to prove his
17 innocence. The burden of proof remains upon the State
18 throughout the trial to prove guilt beyond a reasonable
19 doubt.

20 I've gone over the alleged crimes in this case, the
21 indictments which have been alleged in this case, and I'm
22 now going to go over with you the fact that in order to
23 establish criminal liability criminal intent is required.
24 For example, the mental state required to be proven by the
25 State for a particular crime might be intent, knowledge,

1 reckless, criminal negligence.

2 Criminal intent must be proven by the State beyond a
3 reasonable doubt. Criminal intent is always a matter that
4 must be determined by the jury from the circumstances
5 surrounding the situation. There's no way to prove criminal
6 intent to a mathematical certainty because there's no way we
7 can open up someone's head and look inside and see what they
8 intended to do in any given situation. So, criminal intent
9 can not be proven by direct evidence.

10 Intent, therefore, may be inferred from the
11 circumstances that were shown to have existed. That's how
12 you make a determination of whether or not the element
13 requiring intent was present. It's not necessary to
14 establish intent again by direct or positive evidence. It
15 may be established by inference the same way as any other
16 fact can be proven by taking into consideration the acts of
17 the parties and all the facts and circumstances of the case.

18 Criminal intent is a mental state. It's a conscious
19 wrongdoing. It's up to you to determine what the defendant
20 intended to do based on the circumstances that have been
21 shown to you to have existed at that time.

22 Criminal intent can arise from a failure to act. Also
23 from negligence, recklessness, or indifference to duty or
24 consequences. That also is considered by the law to be the
25 equivalent of criminal intent.

1 Now, I'm going to go over with you the charges in this
2 case and. And because there are a couple charges which are
3 repeated -- there is two different indictments for armed
4 robbery. There is also two different indictments for the
5 offense of murder. So, we'll be going over just the charges
6 in general. Not specifically as they relate to each victim.
7 But in general.

8 The first offense I'm going to discuss with you is the
9 offense of armed robbery. The defendant is charged with
10 armed robbery. And in order to prove this offense, the
11 State must prove, beyond a reasonable doubt, that the
12 defendant took personal property from the person or the
13 presence of another person. The property, property is in
14 the presence of a person if it's within their reach,
15 inspection, observation, or control so that the person
16 could, if not overcome with violence or prevented by fear,
17 keep possession of the property.

18 The State must also prove, beyond a reasonable doubt,
19 that the defendant carried away the property intending to
20 permanently deprive the owner of the property and to keep
21 the property for the defendant's own use.

22 The slightest removal of property or the complete
23 possession of the property, even if for an instant by a
24 defendant, is sufficient to show a taking and carrying away
25 of the property. Taking and carrying away of the property

1 must have been done with violence or by putting the owner of
2 the property in fear of violence. Finally, the State must
3 prove, beyond a reasonable doubt, that the defendant was
4 armed with a deadly weapon during the robbery.

5 Now, I'm going to be talking about deadly weapons in
6 several of the charges and generally a deadly weapon is any
7 article or instrument or substance which is likely to cause
8 death or great bodily harm. Whether an instrument has been
9 used as a deadly weapon depends upon the facts and
10 circumstances of each case.

11 The following are examples which may be deadly weapons.
12 Such things as a pistol, shotgun, rifle, dirk, dagger,
13 knife, slingshot, metal knuckles, razors, gasolines, bombs,
14 Molotov cocktails. All of those things have been determined
15 to be deadly weapons. And I will tell you that ordinary
16 objects may become deadly weapons when the facts show that
17 they have been used to inflict serious bodily harm or death,
18 and I'll be -- when I talk about deadly weapons throughout
19 these charges, that definition will apply to that, to deadly
20 weapons as we go through this.

21 The next charge is the charge of first degree burglary.
22 The defendant is charged with first degree burglary, and in
23 that case the State must prove, beyond a reasonable doubt,
24 that the defendant entered a dwelling without consent.

25 Now, a dwelling is any building or portion of the

1 building which a person ordinarily sleeps. A building
2 constructed as a dwelling that is never been occupied can
3 not be considered as a dwelling. But a dwelling is a
4 dwelling even if the residents are temporarily absent.

5 Now, in order to prove that the defendant entered the
6 dwelling, the State does not have to show that the
7 defendant's entire body entered the dwelling. The slightest
8 intrusion or entry is sufficient.

9 If a person enters a dwelling by using deception,
10 artifice, trick, or misrepresentations to get consent to
11 enter, that's an, also an entry without consent. Next the
12 State must prove, beyond a reasonable doubt, that the
13 defendant intended to commit a crime, either a felony or a
14 misdemeanor, at the time of the entry. The mere entry of,
15 into a dwelling without consent is not a burglary. If the
16 intent to commit a crime is formed after the entry, it's not
17 a burglary. On the other hand, if a defendant intended to
18 commit a crime at the time of the entry, it is a burglary
19 even if that intent was abandoned after the entry.

20 Now, intent may be shown by acts and conduct and other
21 circumstances from which you might naturally and reasonably
22 infer intent and I've talked about intent already, how you
23 go about proving that. Finally, the State must prove,
24 beyond a reasonable doubt, that the, when entering or while
25 in the, the dwelling or when fleeing, the defendant, or

1 accomplice, was armed with a deadly weapon or explosive.

2 Now, I've already defined to you what is meant by, under the
3 law by a deadly weapon or while in the dwelling, or when
4 fleeing, the defendant or an accomplice used or threatened
5 to use a dangerous object or the entry or the remaining in
6 the dwelling occurred during the nighttime. Nighttime is
7 the period between sunset and sunrise during which there is
8 not enough daylight to recognize a person's face except by
9 artificial light or moonlight.

10 Now, that is the charge on the charge of first degree
11 burglary.

12 The next offense that I will discuss with you is the
13 charge of murder. And again, there are two different
14 indictments on murder. But I'll just discuss the offense of
15 murder in general.

16 The defendant is charged with murder in two of the
17 indictments, and the State must prove, beyond a reasonable
18 doubt, that the defendant killed another person with malice
19 aforethought. Malice is hatred, ill will, or hostility
20 toward another person. It's the intentional doing of a
21 wrongful act without just cause or excuse and with intent to
22 inflict an injury or under circumstances that the law will
23 infer an evil intent.

24 Now, malice aforethought does not require that the
25 malice exist for any particular length of time before the

1 act is committed. But malice must exist in the mind of the
2 defendant just before and at the time the act is committed.
3 Therefore, there must be a combination between the previous
4 evil intent and the act is committed.

5 Now, malice aforethought may be expressed or inferred.
6 These terms, expressed or inferred, do not mean different
7 kinds of malice, but merely the manner in which the malice
8 was shown to have existed. That is either by direct
9 evidence, we talked about direct evidence earlier, or by
10 inference from the facts and circumstances which are proved
11 which is how, when we discussed circumstantial evidence.

12 Express malice is shown when a person expresses or
13 speaks words which express hatred or ill will for another or
14 when a person is prepared beforehand to do the act which was
15 later accomplished. For example, lying in wait for a
16 person or any other acts of preparation that go to show that
17 the deed was within the defendant's mind would constitute
18 express malice.

19 Now, inferred malice -- malice may be inferred from
20 conduct showing a total disregard for human life. Inferred
21 malice may also arise when the deed is done with a deadly
22 weapon. Now, again, there's that phrase deadly weapon and
23 I've already defined for you what can be meant by a deadly
24 weapon under the law.

25 The final offense that I will charge you concerning --

1 well, not the final. The next to the last is first degree
2 criminal sexual conduct. That's the, another one of the
3 indictments that's before the Court and he is charged with
4 criminal sexual conduct in the first degree. The first
5 element which the State must prove, beyond a reasonable
6 doubt, is that the defendant engaged in a sexual battery
7 with the victim. A sexual battery is sexual intercourse,
8 cunnilingus, fellatio, anal intercourse, or any intrusion,
9 however slight, of any part of a person's body or any object
10 into the genital or anal openings of another person's body
11 except when the intrusion is accomplished for a medically
12 recognized treatment or diagnostic purpose.

13 If you find that the State has not shown, beyond a
14 reasonable doubt, that a sexual battery occurred, you would
15 stop deliberating and your verdict would have to be not
16 guilty. If you find that a sexual battery did occur, then
17 you must decide whether the State has proven, beyond a
18 reasonable doubt, that one, that the defendant used
19 aggravated force to accomplice the sexual, sexual battery.
20 Aggravated force means the use of physical force or violence
21 of a high and aggravated nature to overcome the victim.
22 This includes the threat of using a deadly weapon. Two, the
23 victim submitted to the sexual battery while the victim was
24 also the victim of forcible confinement, confinement,
25 kidnapping, robbery, extortion, burglary, house breaking, or

1 any similar act or offense.

2 The final offense that I will charge you is the attempt
3 to burn. The defendant is charged with the attempt to burn
4 and the State must prove, beyond a reasonable doubt, that
5 the defendant willfully and malicious attempted to set fire,
6 burn, or aid, or counsel, or procure the burning of a
7 building, structure, or any property which is specified in
8 the Code of Laws or an act in the furtherance of burning
9 those buildings and those buildings include such things as
10 houses and dwellings.

11 Now, in this case, there are two possible verdicts to
12 each indictment that I've gone over with you. Those
13 indictments are either guilty or not guilty, and there's no
14 significance whatsoever in the order in which I state those
15 possible verdicts. They're simple two choices and I have to
16 state one before the other.

17 Ladies and gentlemen, your verdict must be a unanimous,
18 unanimous, excuse me, unanimous verdict as to each of these
19 indictments before the Court and the charges before the
20 Court.

21 Mr. Foreperson, when the jury agrees on the verdict,
22 you will write the verdict on, on a form that I will be
23 providing with you and also it will be recorded on the back
24 of the indictment for each crime. You will then, once all
25 the verdicts have been reached, knock on the jury room door,

1 inform the bailiff that you have reached a verdict as to all
2 charges that were presented to you, and at that time we will
3 ask you and the jury to return to the courtroom to receive
4 the verdict.

5 Now, if, during your deliberations, you should have
6 some question that you would like to ask the Court, I'd ask
7 the jury to agree upon the form of that question. I'd ask
8 the foreperson to put that question in writing on a piece of
9 paper, knock on the door, inform the bailiff that you have a
10 question. The bailiff will deliver the question to me and I
11 will consider my response.

12 I'm not allowed to answer each and every question that
13 you might have because I am not allowed to enter into your
14 deliberations or participate in any decisions concerning the
15 facts. But I can assist you concerning matters of law,
16 procedure, and questions concerning the evidence and of that
17 nature.

18 Also, there are several items that have been placed
19 into evidence which will require the use of some type of
20 device to play those such as the audiotapes of certain 9-1-1
21 calls were placed into evidence, the videotapes of
22 surveillance cameras, and the jury room is not equipped to
23 play those for you.

24 So, Mr. Foreman, if the jury finds it necessary to
25 review any of those items, you will need to inform the Court

1 and, through the bailiff again, and we will make
2 arrangements to see that those items are played for you for
3 your consideration. The evidence will be presented to you
4 during the jury room otherwise and you'll have a right to
5 look that over in the jury room during that period of time.

6 Now, I'm going to ask you at this time to retire to the
7 jury room one more time. And again, my instruction will be
8 not to begin any discussions or deliberations concerning the
9 case until I've brought you back into the courtroom and
10 given you your final instructions. I have to go over my
11 instructions with the attorneys, and we have to be sure that
12 only the proper evidence is presented to you for your
13 consideration.

14 So, there's some things we have to take care of. So,
15 don't begin your deliberations at this time. We'll bring
16 you back into the courtroom for final instructions shortly.

17 At this time, you may retire with a bailiff to the jury
18 room.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Any exceptions to the charge from the
22 State?

23 SOLICITOR GOWDY: No exceptions. No objections.

24 THE COURT: Any exceptions or objections from the
25 defense?

1 MR. ALLEN: Yes, Your Honor.

2 In addition to renewing the request to charge that I've
3 previously made, in, when the Court charged on the charge of
4 murder, the Court, I don't think you charged on willfully,
5 the element of willfulness, which, which is obviously
6 alleged in the indictment and we would request the Court to
7 charge that element as well.

8 THE COURT: I'll consider that request.
9 Anything else?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: All right. I have a verdict form. It's
12 not printed at this point in time. We've got to step back
13 and do that. We'll do that.

14 While we're in our brief recess, I'll ask the attorneys
15 to get together with the court reporter and go over the
16 exhibits to be sure that only properly admitted exhibits are
17 submitted to the jury in the jury room, and I'll return and
18 we'll go over those matters shortly.

19 Court's in recess.

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

21 THE COURT: All right. Just a couple of things before
22 we bring the jury in.

23 I have reviewed the statutes concerning the defense's
24 request on the charge and I'm gonna leave the charge as I
25 gave it to the jury. I do not see in the statutes a

1 requirement of willfulness. I know the indictment states
2 that. But I'm gonna charge the law. And so, I'm refusing
3 that request.

4 I have gone over with the attorneys the verdict form.
5 Any objection from the State?

6 SOLICITOR GOWDY: No, sir, Your Honor.

7 THE COURT: Any objection from the defense?

8 MR. ALLEN: No, Your Honor.

9 THE COURT: Also, I went over with the attorneys, in
10 chambers, the fact that two jurors have requested that they
11 be allowed to retrieve their personal notes from their hotel
12 rooms. They weren't expecting this to go quite this
13 quickly, and the counsel and I have agreed to allow the SLED
14 agents to accompany those two jurors, jurors back to the
15 Court, to the hotel to retrieve their personal notes, and to
16 return them to begin deliberations.

17 I have instructed -- I have informed the attorneys I
18 will instruct that those notes can only be used to, to
19 refresh those juror's memories. And I'll go over that with
20 the jury.

21 Is that a correct statement of our, our in camera
22 discussion?

23 SOLICITOR GOWDY: Yes, sir, it is, Your Honor.

24 THE COURT: And Mr. Allen?

25 MR. ALLEN: Yes, Your Honor. It is.

1 THE COURT: All right. Now, have we got an agreement
2 on the evidence to be sent to the jury room?

3 MR. ALLEN: We're still working on that.

4 SOLICITOR GOWDY: No, sir.

5 THE COURT: Oh, I'm sorry. I interrupted you. Go
6 ahead and finish and let me know when you're ready.

7 (Pause.)

8 THE COURT: All right. Let's bring the jury in please.

9 (Whereupon, the following takes place within the
10 presence of the jury.)

11 THE COURT: It has come to my attention that perhaps
12 there are a couple of you who are keeping some personal
13 notes back in your room that you'd like to have before
14 deliberations begin. I'm going to ask that the SLED agent
15 accompany those who would like to go pick those up back to
16 the hotel before we begin deliberations.

17 who in the group does wish to return?

18 (Whereupon, two jurors raise their hands at this time.)

19 THE COURT: I'm not sure -- there's two of you.

20 Okay. Is there anyone else?

21 (No response.)

22 THE COURT: Before we begin deliberations, the SLED
23 agents will accompany you back to pick those up and return.
24 I will caution you, however, those notes can only be used
25 for your purposes only. Not to influence other jurors.

1 It's okay to use them to refresh your own memory. But they
2 shouldn't be used by you as some type of a, I guess a tool
3 to, to, with other jurors. So, they would be for your
4 purposes only.

5 So, I'm gonna go ahead and let the SLED agents do that.
6 And since they'll be gone, there will be no deliberations
7 during that period of time until they get back and I'll
8 instruct you to begin.

9 Also, we're going to, at this time, separate the
10 alternates. You will be seated in a separate jury room and
11 you'll be remaining there until and if a verdict is reached,
12 and then we'll have you rejoin the jury. But you will not
13 be participating in deliberations.

14 But don't begin your deliberations again until
15 everyone's returned, I'm turned over the evidence to you,
16 and the verdict form.

17 So, at this time I'll ask the jury again to retire to
18 the jury room. If some of you would like to take a smoke
19 break during this period, the bailiffs will accompany you
20 for that purpose as well.

21 Okay. Thank you very much.

22 You can return to the jury room.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Court will remain in recess

1 until the two jurors have returned and you've completed
2 going through the evidence.

3 Thank you very much.

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

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

6 SOLICITOR GOWDY: Yes, sir, Your Honor.

7 THE COURT: Defense ready?

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

9 THE COURT: Bring the jury in.

10 (Whereupon, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. Mr. Foreman, the first thing, I
13 will let you know we got somebody coming to get the air
14 changed to heat I hope. Weekends it's hard to get people to
15 do it. But we're working on that. I think it's better in
16 the jury room than it is in here I have been told. So, I
17 hope that's the case.

18 Now, sir, I've given the bailiff a verdict form.

19 You want to pass that, pass that to him please.

20 (Bailiff complies.)

21 THE COURT: I'll go over this with you briefly. It, it
22 is, of course, the top of it indicates the State and county
23 in which we're located and the case, the court that we're
24 in, the caption of the case, indicates the numbers of the
25 indictments, and it does indicate it's a verdict, verdict

1 form. Below that, as to the different indictments, there
2 are separate verdicts for each indictment, and they're
3 numbered. And the -- each -- like number one indicates that
4 the verdict in number one is for the specific case number,
5 armed robbery of Ann, Mary Ann Emery, and the two choices
6 are not guilty and guilty. Please don't take from the fact,
7 again, that I've put them in any order that I have a
8 preference. There's two choices and that's the order that
9 they're in.

10 If you would check the appropriate blank for that
11 particular verdict and then move, move on. And there's no
12 particular order really that you have to consider them in.
13 This is just the order that I have placed them in. There
14 should be a separate verdict form for each of the different
15 indictments that have been presented.

16 And the final page just is some instructions telling
17 you to check the appropriate line, and I've already told you
18 that. Of course, again, you must find guilt beyond a
19 reasonable doubt in order to reach a verdict and it must be
20 unanimous before you can record the verdict for each
21 particular indictment. Once the form's been completed,
22 you'll sign it and date it at the end of that particular
23 form.

24 The exhibits have been placed in the boxes. They'll be
25 delivered to you in the jury room for your consideration. I

1 again tell you the items that require playing such as the
2 DVD's and the CD's of the different recordings of 9-1-1 and
3 the surveillance tapes, if you wish to see those, you'll
4 have to return to the courtroom to do that. Just inform the
5 bailiff. We'll be happy to see that that's set up for you
6 and played during your deliberations. Again, should you
7 have a question, submit it in writing through the bailiff
8 and I will consider the appropriate response.

9 Now, lunch will be served shortly. It will be coming
10 in. When, when someone from the bailiff or, or someone
11 comes into the jury room, the SLED agents or bailiffs,
12 please don't discuss the case with them and suspend your
13 deliberations until they have served your meal, gotten
14 everything in order, and left the room. They should not be
15 present or participate in any deliberations that the jury is
16 conducting.

17 At this point in time I'll advise you to retire to the
18 jury room to begin your deliberations.

19 Thank you very much.

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

22 THE COURT: All right. I want to be sure, the exhibits
23 as contained in -- I think they're in boxes in front of me.

24 Does the State agree that those are the appropriate
25 exhibits to be submitted to the jury?

1 SOLICITOR GOWDY: Yes, sir, Your Honor.

2 THE COURT: And does the defense agree that those are
3 the appropriate exhibits?

4 MR. ALLEN: Yes, Your Honor.

5 THE COURT: All right. Any exception to my final
6 instructions to the jury from the State?

7 SOLICITOR GOWDY: No, sir, Your Honor.

8 THE COURT: Any from the defense?

9 MR. ALLEN: No, Your Honor.

10 THE COURT: All right. I'll ask the bailiffs to
11 deliver the exhibits to the jury. Court will be in recess
12 until such time as a verdict might be reached.

13 Thank you very much.

14 (Whereupon, the jury began deliberations at 12:19 and
15 returned with a question at 2:35.)

16 THE COURT: All right. Court is back on the record in
17 the case of The State versus Torres.

18 The jury has sent an inquiry to the Court and I'll
19 respond to that shortly.

20 During our break I received a report from Mr. Rick
21 McLead, who is the head of the SLED contingency that's
22 handling the jury, that one of the alternate jurors had
23 indicated that there might be a problem with someone who was
24 serving on the jury. The juror indicated that to Mr. McLead
25 was Gregory Pappas.

1 I'd ask the bailiff, if you would, have Mr. Pappas
2 return to the courtroom for me please.

3 BAILIFF: Yes, sir.

4 (Whereupon, Juror Pappas comes into the courtroom at
5 this time.)

6 THE COURT: Mr. Pappas, just have a seat in the witness
7 stand. That's the most convenient seat for you.

8 How, how are you doing, sir?

9 JUROR: Doing good.

10 THE COURT: I'll remind you that you've been placed
11 under oath to respond truthfully to my questions. So, I
12 just want to remind you of that fact.

13 During our break, I was speaking with one of the SLED
14 agents who's handling the jury, and he indicated that you
15 had, he and you had a discussion between each other
16 concerning a juror who might of had some problem in the jury
17 box this morning or are, you may of experienced a problem
18 with that individual.

19 Can you tell me what you had related to Mr. McLead?

20 JUROR: Just falling asleep.

21 THE COURT: And which juror was that?

22 Was that Mrs. Belzer?

23 Can you describe the lady to me?

24 JUROR: The older lady with a pink sweater.

25 THE COURT: Uh-huh. (Affirmative).

1 JUROR: It was yesterday. It wasn't today, today.

2 THE COURT: Okay, sir. You had trouble with her
3 sleeping yesterday?

4 JUROR: Yes, sir.

5 THE COURT: And can you tell me what you, what you
6 experienced?

7 JUROR: She would just fall asleep and we would hit her
8 with our elbow to wake her up.

9 THE COURT: Okay. You had to do that on a couple of
10 occasions?

11 JUROR: Yes, sir.

12 THE COURT: More than once?

13 JUROR: Yes, sir.

14 THE COURT: All right, sir. Any of the -- does the
15 State wish to ask any questions of Mr. McLead concerning
16 this matter, excuse me, Mr. Pappas?

17 SOLICITOR GOWDY: No, sir, Your Honor.

18 THE COURT: Defense wish to submit any questions?

19 MR. ALLEN: No, Your Honor.

20 THE COURT: All right, sir. Thank you very much for
21 joining us.

22 JUROR: Okay.

23 THE COURT: You're free to go.

24 JUROR: Thank you.

25 THE COURT: I mentioned this to the attorneys in

1 chambers, and at that time the attorneys related their
2 beliefs concerning this juror to me.

3 And I'll ask the State, if you would, have any comment
4 on that?

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

6 Regrettably I, I did notice the juror asleep during,
7 particularly during closing argument, briefly during, when I
8 glanced over there during a portion of Your Honor's charge,
9 other members on this side of the, of the courtroom observed
10 the same thing. And it was the same juror that Alternate
11 Pappas made reference to.

12 THE COURT: And the defense, I'll give you an
13 opportunity to comment. I'd like for you to comment at this
14 time on the record.

15 MR. RECKENBEIL: Yes, sir, Your Honor. I was the
16 attorney giving the defense closing argument and I can
17 definitely tell during my close as well as the State's close
18 that she was nodding off. One time I did glance over there
19 when Your Honor was charging the jury and I did see her eyes
20 closed with her arms folded and her head, her chin down
21 towards her arms.

22 THE COURT: And the Court will state that, during
23 yesterday's trial, on several occasions when matters or
24 items were placed on the screen or viewing, I noticed that
25 that juror was not turning her head in such a fashion so as

1 to be able to observe the proceedings, and that was of some
2 concern to me at the time.

3 I mentioned to both sides that if they wish to make a
4 motion concerning this particular juror that I would be
5 happy to entertain.

6 And I believe the defense indicated that you did wish
7 to take action?

8 MR. ALLEN: Your Honor, at this time we would make a
9 motion to have that juror removed and then an alternate
10 selected and whichever way that the Court feels that our
11 statute needs be to replace that juror.

12 THE COURT: State have any objection to that motion or
13 wish to be heard on the motion?

14 SOLICITOR GOWDY: No, sir, we have no, no objection.
15 In fact, we concur with it.

16 THE COURT: All right. All right. I will deal with
17 that once we have responded to the jury's inquiry. And in
18 response to the inquiry, I've received -- the inquiry stated
19 may we obtain the definition by law of each of the seven
20 indictments. I have printed out my charge on, on the seven
21 indictments on the law and have submitted a copy of that
22 written or printed version of my charge to both the State
23 and the defense.

24 The State had an opportunity to review that printed
25 version?

1 SOLICITOR GOWDY: Yes, sir, Your Honor.

2 THE COURT: Any objection from the State to that being
3 submitted to the jury?

4 SOLICITOR GOWDY: No, sir, Your Honor.

5 THE COURT: Defense had an opportunity to review the
6 printed version of the charge?

7 MR. ALLEN: The defense has had an opportunity to
8 review it and there are no objections to the printed charge
9 or to providing the jury the written instructions.

10 THE COURT: All right. I then will have this copy
11 that's gonna be submitted to the jury marked as a Court's
12 Exhibit.

13 (Whereupon, the copy of the charge was marked as
14 Court's Exhibit No. 7 for identification purposes only at
15 this time.)

16 MR. ALLEN: May I also add I've discussed presenting
17 the written charge to the jury with Mr. Torres and he agrees
18 with our decision to have the written charge presented to
19 the jury.

20 THE COURT: And also have you discussed with Mr., Mr.
21 Torres the situation with the juror that's in question?

22 MR. ALLEN: I have, Your Honor, and he also has agreed
23 with our motion to have that juror dismissed.

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

25 All right. Just one second. I'm having my law clerk

1 check on the statutory authority for replacing a juror, and
2 I'll put that on the record as soon as she's returned. So,
3 we'll be at ease for a moment.

4 (Whereupon, the note from the jury was marked as
5 Court's Exhibit No. 8 for identification purposes only at
6 this time.)

7 THE COURT: Mr. Humphries, would you approach please?

8 BAILIFF: Yes, sir.

9 (Whereupon, a bench conference was held with the
10 bailiff.)

11 MR. ALLEN: Your Honor, if it please the Court?

12 THE COURT: Yes, sir.

13 MR. ALLEN: The -- I thought I had Title 14 here. But
14 I do not. But I do want to bring to the Court's attention,
15 and I realize this is in the Rules of Civil Procedure, Rule
16 47(b), it indicates, and I grant and I understand this is
17 Criminal Court, but I can't find a similar rule in the
18 criminal rules, that the Court may direct that not more than
19 six jurors in addition to the regular petit jury panel be
20 called and impaneled to sit as alternate jurors. Alternate
21 jurors in the order in which they are called shall replace
22 jurors who, prior to the time of the jury retires, considers
23 the verdict becomes or are found may be disqualified to
24 perform their duties. .

25 That's the first sentence of that---

1 THE COURT: Just one second.

2 (Pause.)

3 THE COURT: All right. Go ahead.

4 MR. ALLEN: That's the first sentence. So, I can pass
5 the whole rule up to the Court. And again, I, I do not have
6 Title 14 in here.

7 THE COURT: My concern is I think that has to do with
8 the, before the jury retires.

9 Is that not correct?

10 MR. ALLEN: That's what the sentence says, Your Honor,
11 prior to the time the jury retires to consider its verdict.

12 THE COURT: I think there's a Code Section that has to
13 do with this situation, and we're getting that. Just give
14 me a second.

15 MR. ALLEN: Yes, sir.

16 THE COURT: We'll be in recess for just a second. I'll
17 be right back.

18 (Whereupon, a short recess was taken at this time
19 followed by an in-chambers discussion with Juror Belzer.)

20 THE COURT: Mr. Humphries, I need for you to bring
21 Number 23, Mrs. Belzer, back here.

22 BAILIFF: I'll also tell the rest of them do not talk
23 about the case while she's out.

24 THE COURT: That's a good idea. Suspend deliberations
25 until I talk to her.

1 (Whereupon, Juror Belzer comes into Judge Couch's
2 chambers at this time.)

3 THE COURT: Ma'am, come in and have a seat please.
4 Thank you for stepping back.

5 Your name is Marcella Belzer?

6 JUROR: Yes, sir.

7 THE COURT: All right. Mrs. Belzer, I will tell you
8 that there has been some concern raised by a fellow juror,
9 as well as through counsel and the Court has some concern,
10 that perhaps, during the last couple of sessions of Court,
11 that you have been, you've had some trouble in maintaining
12 your attention during Court.

13 Is that---

14 JUROR: I apologize for that.

15 THE COURT: Is that true?

16 JUROR: Yes. Not because I've planned on doing it. It
17 just was -- I don't know whether it was this cold or what it
18 was. But it just happened.

19 THE COURT: And---

20 JUROR: It happened.

21 THE COURT: ---did you fall asleep?

22 JUROR: Not, not for very long.

23 THE COURT: But you did fall asleep?

24 JUROR: A slight, slight time.

25 THE COURT: Okay. And ma'am, do you have some kind of

1 a medical condition or something?

2 Are you taking any medication?

3 JUROR: Only at night.

4 THE COURT: Only at night.

5 JUROR: Yes.

6 THE COURT: So, you take medication at night for sleep
7 purposes?

8 JUROR: No, just my routine medication.

9 THE COURT: Okay. All right. Well, but you do
10 acknowledge that on occasion you may have---

11 JUROR: A couple of times.

12 THE COURT: ---nodded off during this trial?

13 JUROR: Just enough, you know, my head kind of falling
14 to my right and I come up. But I don't feel like I've
15 missed anything. But I do---

16 THE COURT: Beg your pardon?

17 You do have that problem?

18 JUROR: I don't feel like I missed anything.

19 THE COURT: Uh-huh. (Affirmative).

20 JUROR: But I do have a question about that one.

21 THE COURT: About what one?

22 JUROR: The issue about the armed robbery.

23 THE COURT: Well, ma'am, we can't discuss the case or
24 the deliberations.

25 JUROR: Oh, I thought that's what this is about. I'm

1 sorry.

2 THE COURT: It's just been reported to me that, that
3 one of the jurors said they had to awaken you on a couple of
4 occasions, and I've already interviewed that juror.

5 JUROR: Uh-huh. (Affirmative).

6 THE COURT: And, and in talking with the attorneys and
7 I'll, quite frankly, I observed yesterday a couple times,
8 when things went up on the screen, your head didn't turn to
9 watch. Your head stayed down.

10 JUROR: Some -- yes, sir, yesterday some---

11 THE COURT: And that was of a concern to me as well.

12 JUROR: Yesterday there was something in the, in the,
13 there that was burning my eyes. And a lot of time I kept it
14 down to keep, to keep it there.

15 THE COURT: Uh-huh. (Affirmative).

16 JUROR: And I have had to pull like this and I pulled
17 like that. Sometimes I just used Kleenex and other times I
18 just had to keep my head down and kind of move like that.

19 THE COURT: All right. Well, ma'am---

20 JUROR: But I---

21 THE COURT: But you do acknowledge that you did maybe
22 nod off on a couple of occasions?

23 JUROR: Yes, sir.

24 THE COURT: Okay. Thank you very much, much.

25 Let me ask, do either of the, any of the attorneys wish

1 to ask any questions?

2 SOLICITOR GOWDY: No, sir.

3 MR. RECKENBEIL: No, Your Honor.

4 THE COURT: All right. Thank you, you, ma'am. You're
5 free to step back in the -- thank you. Back in the jury
6 room for right now.

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

9 THE COURT: All right. Any comments from the State?

10 SOLICITOR GOWDY: Only that in addition to yesterday I
11 noticed today as well. So --.

12 THE COURT: Okay.

13 MR. RECKENBEIL: And I would agree with Solicitor Gowdy
14 on that one absolutely.

15 THE COURT: And it's very difficult for someone who's
16 nodding off to know the length of time that they had nodded
17 off, and I did notice yesterday sometimes she didn't turn to
18 pay attention.

19 I think the Court's gonna make a finding that
20 Mrs. Belzer is not capable of continuing as a juror in the
21 case. We did discuss the procedure for replacing that
22 juror. I don't, I don't know the defense's position.

23 Do you wish to go to the next name on the list?

24 MR. ALLEN: Yes, Your Honor, that's our---

25 THE COURT: And I have explained that the statutory

1 procedure, and the for -- the statutory procedures appears
2 to be draw at lots. The civil rule appears to be to go to
3 the next name on the list.

4 And so, State have a position in regard to that?

5 SOLICITOR GOWDY: I would defer to defense counsel and
6 let them pick the manner in which the alternate is selected.

7 THE COURT: All right. The Court then will find that,
8 that, by stipulation of counsel, then we'll just go to the
9 next name on the list, which appears to be Mr. Ricky Hardy.

10 Any objection to Mr. Ricky Hardy being seated from
11 either party?

12 SOLICITOR GOWDY: No, sir.

13 MR. ALLEN: No, Your Honor.

14 THE COURT: Any objection to our procedure thus far?

15 SOLICITOR GOWDY: No, sir, Your Honor.

16 THE COURT: From the defense?

17 MR. ALLEN: No, Your Honor.

18 THE COURT: Thank you very much. We'll return to the
19 courtroom.

20 (Whereupon, the following takes place back in the
21 courtroom.)

22 THE COURT: All right. Mr. Bailiff, I would ask that
23 you bring Mrs. Belzer into the courtroom please.

24 BAILIFF: Yes, sir.

25 (Juror Belzer comes into the courtroom at this time.)

1 THE COURT: Mrs. Belzer, if you'll come over here
2 please, ma'am.

3 JUROR: Thank you.

4 THE COURT: Mrs. Belzer, based on the information that
5 I've been able to gather concerning the situation we
6 discussed in my chambers, I'm going to excuse you from the
7 jury at this point in time. If you'll step outside, the
8 sheriff, the SLED agents will be willing to help you.

9 And I would ask that you return Mr. Hardy to the
10 courtroom please.

11 (Juror Hardy comes into the courtroom at this time.)

12 THE COURT: Mr. Hardy, I'm going to ask you to have a
13 seat in the jury box.

14 And Mr. Humphries, I'd ask that you bring the remainder
15 of the jury into the courtroom please.

16 (Whereupon, the following takes place within the
17 presence of the jury.)

18 THE COURT: And, Mr. Foreman, you're gonna have to have
19 a seat down front still. Thank you.

20 All right. Ladies and gentlemen of the jury, I have
21 found it necessary to declare one of the jurors to be unfit
22 to continue and have excused her from the jury panel.
23 Mr. Hardy has, is the next alternate and he has been
24 assigned to enter deliberations with the jury panel.

25 I am going to submit to you, based on the question that

1 you asked, Mr. Foreman, a written copy of my charge
2 concerning the law on all the, all the crimes that we're
3 submitted. I have presented this to both counsel. They
4 have agreed to present it to you in this fashion.

5 Mr. Bailiff, if you'll hand this to the foreman.

6 (Bailiff complies.)

7 THE COURT: Now, sir, that document has been marked as
8 a Court's Exhibit. It will need to be returned with the
9 other exhibits to the courtroom when you've completed your
10 deliberations. I am going to ask you, since Mr. Hardy has
11 now joined the jury, that you begin your deliberations brand
12 new over again. I'm resubmitting the case to you at this
13 point in time. Mr. Hardy is a regular member of the jury
14 panel, and you can continue at this time to -- well, you
15 begin again with deliberations.

16 You may retire.

17 Thank you very much.

18 FOREMAN: Thank you, Your Honor.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Any objection from the State to our
22 procedure?

23 SOLICITOR GOWDY: No, sir, Your Honor.

24 THE COURT: Or to the resubmission to the jury?

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. We'll remain in recess then
4 until a verdict is reached.

5 Thank you very much.

6 (Whereupon, the jury began deliberations again at
7 2:36 and returned with a question at 4:21.)

8 THE COURT: I have received a request from the jury
9 that they would like to watch the CD from the Li'L Cricket
10 and the hospital.

11 Are we ready to put those up?

12 SOLICITOR GOWDY: We are optimistic that we are, Your
13 Honor. We have it cued up to the right time. This one
14 is---

15 THE COURT: Do you need to run a little trial?

16 I'll wait until you're sure you're ready to go.

17 SOLICITOR GOWDY: That might be the better course of
18 wisdom.

19 THE COURT: Okay.

20 (Pause.)

21 SOLICITOR GOWDY: I think that's as big as we're going
22 to be able to get it, judge. But let me try one other
23 thing.

24 THE COURT: Ready?

25 SOLICITOR GOWDY: Yes, sir.

1 THE COURT: All right. Bring the jury in.

2 (Whereupon, the following takes place within the
3 presence of the jury.)

4 THE COURT: Be sure to sit far enough back that you can
5 see clearly. I don't know if that's -- if you can see
6 there, that's fine. I want you to sit as close as you can
7 and see, and we can put a -- put a chair there in the front
8 for the other, for another one.

9 All right. Pursuant to your request, we are going to
10 play -- I believe this is the video from the Li'L Cricket
11 store first.

12 Lower the lights for me, sir.

13 SOLICITOR GOWDY: Shall I start, Your Honor?

14 THE COURT: Yes, sir, you can start.

15 (Whereupon, the two videos were played for the jury at
16 this time.)

17 THE COURT: Is that all of the two exhibits?

18 SOLICITOR BARNETTE: Yes, sir.

19 THE COURT: Does that respond to your request, Mr.
20 Foreman?

21 FOREMAN: Your Honor, can the, the defendant, the
22 prosecuting attorneys or, and the defendant clarify that the
23 first person that walked into the hospital was not the
24 suspect?

25 THE COURT: I can't let them comment on the evidence

1 any further. Whatever you have is what you have. I can't
2 discuss that with you. I can just show you the exhibit at
3 this point in time.

4 FOREMAN: Thank you, Your Honor.

5 THE COURT: All right, sir. Anything further at this
6 point in time?

7 FOREMAN: No, sir.

8 THE COURT: All right. I'll ask you to retire to the
9 jury room. Continue your deliberations.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Any objections to the Court's response from
13 the State?

14 SOLICITOR GOWDY: No, sir, Your Honor.

15 THE COURT: Any from the defense?

16 MR. ALLEN: One second please, Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. ALLEN: No, Your Honor. Thank you.

20 THE COURT: All right. The request will be made a
21 Court's Exhibit.

22 (Whereupon, the note from the jury was marked as
23 Court's Exhibit No. 9 for identification purposes only at
24 this time.)

25 THE COURT: We'll remain in recess then until a verdict

1 is reached.

2 Everyone remain seated while the defendant retires.

3 (Whereupon, the jury began deliberations again at
4 4:29 and returned a verdict at 5:09.)

5 THE COURT: First of all, I have been advised that a
6 verdict has been reached. I will advise those in the
7 courtroom, if you have problems in controlling your
8 emotions, I'd advise you to leave the courtroom at this time
9 because the Court will not tolerate any outburst. Should
10 that occur, they will be, be dealt with as contempt of
11 Court.

12 So, anyone who has any problem with controlling your
13 emotions in regard to this verdict should leave at this
14 time.

15 Bring the jury back.

16 (Whereupon, the following takes place within the
17 presence of the jury.)

18 THE COURT: Mr. Foreman, I have been advised by the
19 bailiff that a verdict has been reached.

20 Is that true?

21 FOREMAN: Yes, Your Honor.

22 THE COURT: Pass the verdict form to the bailiff
23 please.

24 (Foreman complies.)

25 THE COURT: The defendant will stand and face the

1 Court.

2 In the case of The State of South Carolina versus
3 Andres Antonio Torres, as to indictment number one, armed
4 robbery of Mary Ann Emery, the verdict is guilty.

5 As to indictment number two, armed robbery of Charles
6 Ray Emery, the verdict is guilty.

7 As to indictment number three, burglary first degree of
8 a dwelling, the verdict is guilty.

9 As to indictment number four, the murder of Charles Ray
10 Emery, the verdict is guilty.

11 As to indictment number five, the murder of Mary Ann
12 Emery, the verdict is guilty.

13 As to indictment number six, criminal sexual conduct in
14 the first degree of Ann Emery, the verdict is guilty.

15 As to indictment number seven, attempt to burn home
16 and/or property of Charles Ray Emory and Mary Ann Emery, the
17 verdict is guilty.

18 You can be seated.

19 Now, to the members of the jury, if this is your
20 verdict and still your verdict let it be known by raising
21 your right-hand.

22 (Whereupon, all jurors raise their hands at this time.)

23 THE COURT: All right. Madam Clerk, I'd ask that you
24 poll the jury concerning the verdicts.

25 CLERK: Ladies and gentlemen of the jury, at this time

1 I will pose a question to you. The question being is this
2 your verdict and still your verdict, and I will call your
3 juror number individually, and you, you will respond to the
4 question and then be seated.

5 Juror Number 167, Annette Ledford, is this your verdict
6 and still your verdict?

7 JUROR: Yes, it is.

8 CLERK: Juror Number 209, Richard Pack, is this your
9 verdict and still your verdict?

10 JUROR: It is.

11 CLERK: Juror Number 124, Kyra Gregory, is this your
12 verdict and still your verdict?

13 JUROR: Yes, it is.

14 THE COURT: Juror Number 101, Benjamin Frick, is this
15 your verdict and still your verdict?

16 JUROR: Yes, it is.

17 THE COURT: Juror Number 3, Kenneth Akins, is this your
18 verdict and still your verdict?

19 JUROR: Yes, it is.

20 THE COURT: Juror Number 18, Melissa Ballard, is this
21 your verdict and still your verdict?

22 JUROR: Yes, it is.

23 THE COURT: Juror Number 105, Andrew Gilpin, is this---

24 JUROR: Yes, it is.

25 THE COURT: Juror Number 46, Shoshanna Burnett, is this

1 your verdict---

2 JUROR: Yes, it is.

3 THE COURT: Juror Number 135, Bradson Harrison.

4 JUROR: Yes, it is.

5 CLERK: Juror Number 139, Lee Hembree.

6 JUROR: Yes, it is.

7 CLERK: Juror Number 289, Troy Williams.

8 JUROR: Yes, it is.

9 CLERK: Juror Number 132, Ricky Hardy.

10 JUROR: That would be correct.

11 THE COURT: Thank you.

12 Anything further from the State before I ask the jury
13 to retire?

14 SOLICITOR GOWDY: No, sir, Your Honor.

15 THE COURT: Anything further from the defense before I
16 ask the jury to retire?

17 MR. ALLEN: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, I'm gonna
19 ask that you return to the jury room. There's some matters
20 I need to take up with the attorneys. I'll be returning you
21 shortly to the courtroom for some further instructions.

22 You may retire to the jury room.

23 Thank you very much.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Post-trial motions from the State?

2 SOLICITOR GOWDY: There is none, Your Honor.

3 THE COURT: Post-trial motions from the defense?

4 MR. ALLEN: Yes, Your Honor.

5 If the Court please, we request that a or make a motion
6 for a new trial based upon the grounds that we've previously
7 stated throughout the pretrial hearings and the, the motions
8 and objections made during the course of this trial and
9 ruled adversely to our client including but not limited to
10 the objections and motion that we made during the pretrial
11 hearing concerning the taking of the, of our client's Buccal
12 swab, the motions that were made at the pretrial hearing
13 concerning our client's statement made at the house. Also
14 the search in which resulted in the seizure of our client's
15 clothing and shoes. And also concerning our motion made at
16 the pretrial hearing concerning the request to present
17 evidence of third party guilt.

18 All these or this motion is based on the same grounds
19 and the, and the same basis that I cited in the prior
20 hearings and during the course of the trial.

21 THE COURT: Motions are considered by the Court and are
22 denied.

23 Mr. Allen, your client, I assume, is aware of his right
24 to a 24 hour delay before we begin the, the sentencing phase
25 of the trial?

1 MR. ALLEN: He is, Your Honor.

2 THE COURT: Does he wish to exercise that right?

3 MR. ALLEN: Yes, Your Honor, he does.

4 THE COURT: All right. Anything further before I bring
5 the jury in to instruct them further from the State?

6 SOLICITOR GOWDY: No, sir, Your Honor.

7 THE COURT: Anything further from the defense?

8 MR. ALLEN: No, Your Honor.

9 THE COURT: We're going to need the alternate to join
10 the jury in the jury room. He'll need to be here in too.
11 So, if you'll retrieve him and then retrieve the jury.

12 (Whereupon, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, we will be beginning the sentencing phase of this
16 trial on Tuesday morning. South Carolina law requires at
17 least a 24 hour waiting period before we begin that period
18 of the trial, that phase of the trial. So, the sentencing
19 phase will begin at that point in time.

20 You will remain sequestered during that period of time
21 until such time as we have completed the case. The
22 instructions that I've given you concerning your
23 sequestration shall continue during this period of time.
24 Again, no contact concerning this case. I'll advise you not
25 to discuss this case among yourselves during that period of

1 time or with anyone else. Do not attempt to gather any
2 information outside of the courtroom, courtroom concerning
3 the matter, and don't allow anyone to discuss the case with
4 you. Should that occur, please report that to this Court as
5 soon as possible.

6 You'll remain under the supervision of the State Law
7 Enforcement Division as indicated earlier. And at this
8 point in time I'll allow them to retire with you to your
9 hotel.

10 You may take them, Mr. McLead.

11 FOREMAN: Thank you, Your Honor.

12 THE COURT: Thank you, sir.

13 Everyone remain seated while the jury retires.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. I would like for the attorneys
17 to advise me as to whether there's any additions or
18 amendments to the, for the, in the case of the State, the
19 aggravating circumstances which have been submitted to the
20 Court.

21 SOLICITOR GOWDY: No, sir, Your Honor. I'm, I'm trying
22 to recollect. I think we filed a document with Your Honor.

23 THE COURT: Yes, sir, we have a, we have a, a document.
24 we'll be glad to let you take a look at that if you'd like
25 to.

1 SOLICITOR GOWDY: Could I approach just---

2 THE COURT: She'll need to retrieve it in just one
3 minute.

4 SOLICITOR GOWDY: Thank you.

5 THE COURT: And if you would, get the defense
6 submissions as well.

7 If the State and defense would approach.

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

9 THE COURT: All right. Mr. Gowdy, you've had a chance
10 to review the submission.

11 Does the State have any additions or amendments?

12 SOLICITOR GOWDY: No, sir, Your Honor.

13 THE COURT: And from the defense's submission or
14 proposed mitigating circumstances?

15 MR. ALLEN: Yes, Your Honor. In my proposed mitigating
16 circumstances on number five, I would like to add the words
17 age or before the word mentally to read the age or
18 mentality.

19 THE COURT: Any objection from the State?

20 SOLICITOR GOWDY: Not with respect to that mitigator,
21 no, sir. But at the appropriate time the State would like
22 to inquire with respect to another mitigator.

23 THE COURT: We'll take that up at the appropriate time.
24 I just wanted to see if there were any amendments or
25 additions at this point in time.

1 SOLICITOR GOWDY: Yes, sir.

2 THE COURT: All right. Anything further, gentlemen,
3 before we recess until Tuesday morning?

4 SOLICITOR GOWDY: There was a housekeeping matter that
5 I think Mr. Allen and I might like perhaps to discuss with
6 the Court at---

7 THE COURT: In chambers?

8 SOLICITOR GOWDY: In chambers with the Court's
9 preference.

10 THE COURT: All right. The Court then is in recess
11 until Tuesday morning in this case.

12 Thank you very much.

13 SOLICITOR GOWDY: Thank you, Your Honor.

14

15 (Whereupon, Court was in recess for the evening.)

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1 Tuesday, October 21st, 2008

2
3 THE COURT: All right. Good morning.

4 SOLICITOR GOWDY: Morning, Your Honor.

5 MR. ALLEN: Morning.

6 THE COURT: Is the State ready?

7 SOLICITOR GOWDY: Yes, sir, Your Honor.

8 THE COURT: Is the defense ready?

9 MR. ALLEN: Yes, Your Honor.

10 THE COURT: All right. I understand there's some, some
11 issues or potential issues that may be coming up. I've
12 received a motion from the State in limine. And so, I'd
13 like to hear from the State in regards to that matter.

14 SOLICITOR GOWDY: Your Honor, that would be a -- we
15 would anticipate that as a sentencing, as a defense
16 sentencing witness. I, I don't know that this, that they're
17 going to go that route. But if they are, particularly in
18 light of Burkhart, with Boman before that, I, we think that
19 there's some pretty strict parameters placed on both what we
20 can do with respect to prison conditions, but also what the
21 defense can do, and we just wanted those parameters
22 enforced.

23 THE COURT: Well, I'll hear from the defense
24 concerning -- my understanding is there's some evidence that
25 was developed recently that the State intends to introduce.

1 I received an email from the State that was sent to the
2 defense.

3 Is that what we're talking about?

4 SOLICITOR GOWDY: I'm sorry, Your Honor. I thought you
5 were, I thought you were talking about the, the prison
6 conditions.

7 With respect to -- and that was Mr. Aiken. I don't
8 know whether they're calling him or not. There was an
9 incident Sunday night. Not of the magnitude of the Freddie
10 Owens case. But the same issue with respect to character.
11 And frankly, prison adaptability Sunday night. I think
12 defense counsel actually had the video before we did. When
13 we got it, we placed them on notice. And again, since it
14 happened Sunday night, we're all operating under 24 hours
15 notice.

16 THE COURT: Yes, sir.

17 I'll hear from the defense if there's any issues you
18 think I should consider before we begin this phase of the
19 trial.

20 MR. ALLEN: Yes, Your Honor.

21 With respect to the video, we did receive that late
22 yesterday, some time shortly after four o'clock,
23 approximately the same time I think the solicitor's got it
24 cause we -- it wasn't ready until that time. I've reviewed
25 it.

1 I will agree that it doesn't rise the, obviously to the
2 level of the Owens case. I'm not sure if it rises to the
3 level of discussing or talking about prison adaptability,
4 Your Honor. The -- essentially -- I mean I don't, I don't
5 need any additional time, if that's the Court's question, to
6 be prepared for that particular event as far as
7 investigating---

8 THE COURT: All right. Well, my, my question is, is
9 there any matter you wish for me to consider concerning that
10 potential evidence pretrial or do you wish to take that up
11 when and if it is, there's an effort to introduce it?

12 I'm just trying to get all the pretrial matters out of
13 the way at this point in time. So --.

14 MR. ALLEN: Your Honor, we would ask the Court to take
15 that matter up pretrial and move to exclude it. I don't
16 think that it would be admissible. In the event that I
17 don't think that the incident itself rises to the level of,
18 of prison adaptability. Essentially, there's, in the video,
19 if I can---

20 THE COURT: Well, I have not seen it. So, I have no
21 idea of exactly what it shows. So, maybe if -- I don't know
22 if you want me to view it. I'll be happy to, to review it
23 before we discuss it. Again, I haven't seen it. So, I
24 don't know what it shows.

25 MR. ALLEN: Yes, sir, I would ask the Court to review

1 it. I mean I'm not sure what portions the State intends to
2 play. I mean it's approximately 29 minutes in length,
3 almost 30 minutes in length. There's a portion of the,
4 essentially the incident itself and then it moves into
5 following my client and the officers afterwards for a period
6 of time while he's being essentially checked out and---

7 THE COURT: Is it on a DVD?

8 SOLICITOR GOWDY: Yes, sir, Your Honor.

9 THE COURT: All right. What I'm going to do then is
10 I'm going to recess while I retire to chambers. If you can
11 bring whatever portion of the video you intend to introduce.
12 Invite the attorneys back, and I'll review it on a computer
13 in my office.

14 So, anything else, Mr. Solicitor, before we break for
15 that?

16 SOLICITOR GOWDY: Only, Your Honor, that, that given
17 the, when we got it last night, it is on one DVD, and I
18 would tell the Court and let defense counsel know we would
19 purport to play no, no, no more than when he was taken down.
20 The, the trip to the nurse and the shower and all that I
21 don't think is relevant. What would be relevant is this
22 interaction with the guards and the fact they had to pepper
23 spray him and take him down. We would purport to end the
24 video at that point. Although I do concede it goes farther.
25 We have not had a chance to edit the video.

1 MR. ALLEN: If the Court would, if the, if the Court's
2 going to allow the portion up to that portion, I think it
3 would also be relevant. And again, if the Court is gonna
4 allow any portion of it, I would ask the Court to allow it
5 to be played further. I'm not gonna get all the way---

6 THE COURT: Well, again, let's take the DVD into
7 chambers. Let's review it---

8 MR. ALLEN: Yes, sir.

9 THE COURT: ---so I can see what you intend to
10 introduce. I can review what you think ought to be also
11 introduced if it comes in.

12 MR. ALLEN: Yes, sir.

13 THE COURT: And then we can make a ruling. I haven't
14 seen it and I'd like to see it. So, Court's gonna be in
15 recess. I'll ask the attorneys to retire to my chambers so
16 I can review those, that DVD.

17 MR. ALLEN: Yes, sir.

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

19 MR. ALLEN: Your Honor, may the solicitor and I
20 approach?

21 THE COURT: Yes, you may.

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

23 THE COURT: All right. As to the, the video, I have
24 reviewed the video. The defense has requested the right to
25 review jail policies concerning use of force. I have

1 granted that request and ask the State to provide those to
2 them, and we will, I will defer making a decision on that
3 issue until such time as those documents have been reversed,
4 reviewed and we can discuss that further.

5 So, we will take that up once that's been taken care
6 of.

7 MR. ALLEN: Yes, sir.

8 THE COURT: Now, as to the motion in limine, defense's
9 response to the motion, motion in limine.

10 MR. ALLEN: Your Honor, at this time we do intend to
11 put up a witness to talk about what's known as prison
12 adaptability of the, my client. While we are aware,
13 obviously of Burkhart decided in 2007, what we intend to do,
14 and if we get into some of the matters, I think that the
15 solicitor has specifically, and on his motion Pages 2 and 3,
16 ask that we not get into, but nonetheless, this witness is
17 reviewed the prison and jail records of Mr. Torres and has
18 come to certain conclusions and we're gonna establish his
19 qualifications obviously to make those conclusions.

20 While I don't intend to get into any specific prison
21 condition, but I do think that in this witness' testimony
22 and in his, in making his opinions, that he will have to
23 talk in general about some prison conditions and about how
24 Mr. Torres has acted while in the custody of both the
25 Spartanburg County Detention Center and the Department of

1 Corrections in the past and to, and to also characterize
2 that.

3 Furthermore, that in his discussion he will also be
4 able to, and I think will have to in a way, be able to
5 explain to the jury that, of course, he is not, if he were
6 sentenced to life without the possibility of parole, that,
7 again, we're not talking about rehabilitation or release to
8 society, but essentially being put in prison and his, and
9 his prognosis for that, as far as his adaptability, future
10 adaptability.

11 I think the discussion of, will have to, in a way,
12 indicate the Department of Corrections ability or their
13 capacity to manage his behavior and I think it will also,
14 because we'll also be putting up evidence concerning some
15 mental difficulties and that Mr. Torres has had, I think
16 that will also necessarily require an opinion from our, our
17 prison adaptability expert as to the prison's ability to get
18 him necessary medications. And again, their ability to
19 control his behavior.

20 THE COURT: Well, my understanding of the cases,
21 Mr. Allen, is that the evidence that you present though must
22 be narrowly tailored to the defendant's personal needs,
23 personal behavior, and not to prison life in general.

24 Do you follow what I'm saying?

25 MR. ALLEN: Yes, Your Honor.

1 THE COURT: And I'm not, I'm not sure I can tell
2 exactly what you're saying.

3 will this witness' testimony be limited to your
4 client's adaptability that the factors as far as he's
5 concerned and how they would relate to prison life in
6 general?

7 Is that what you're saying that witness is gonna
8 testify to?

9 MR. ALLEN: He will have to discuss a little bit about
10 prison conditions in order to explain how in my, in my
11 client's---

12 THE COURT: Well, in the context though of your
13 client's behavior---

14 MR. ALLEN: Right.

15 THE COURT: ---in those conditions I would think?

16 MR. ALLEN: Yes, sir. Right. That's what I'm trying
17 to get it.

18 THE COURT: All right.

19 MR. ALLEN: We're going to try to keep him obviously to
20 my client and we're not -- I mean I'm not going to
21 continue---

22 THE COURT: Well, I will try to keep you there too.

23 MR. ALLEN: Yes, sir.

24 THE COURT: Now, what I'm going to say is it's very
25 difficult for me to rule pretrial on exactly what that

1 witness might say when I've not read the report. I don't
2 know where that witness is going.

3 I will announce though that I will require that the
4 witness testify concerning your client's particular
5 conditions or personality or behavior traits and how those
6 relate to prison life in general. And I realize that may
7 require an explanation of what prison life in general is
8 like.

9 But testimony concerning prison conditions, things of
10 that nature, should not be extensive and should only be used
11 to explain those conditions in light of your client's
12 conditions. And again, I'll have to -- I, I think we'll
13 have to do that on an issue-by-issue basis once it comes up
14 with that witness, and I'll ask the State to make
15 contemporaneous objections on those. But I will tell you
16 that I do intend to limit it to that type of testimony.

17 MR. ALLEN: Yes, Your Honor.

18 THE COURT: Okay. Now, anything further from the State
19 that I need to take up pretrial?

20 SOLICITOR BARNETTE: Your Honor, we do have a
21 stipulation. It's Court Exhibit No. 10 concerning some
22 phone records that we, both sides have agreed to it and I do
23 have the stipulation here. We would ask---

24 THE COURT: Is it, is it in writing?

25 SOLICITOR BARNETTE: Yes, sir, I'd like to submit it to

1 the Court. We do not want to submit this back to the jury
2 though. I think the Court will keep it as a Court's
3 Exhibit.

4 THE COURT: As a Court's Exhibit.

5 Have you reviewed the stipulation, Mr. Allen?

6 MR. ALLEN: We have reviewed the stipulation. We've
7 reviewed it with our client and all parties including all
8 attorneys and our client have signed the stipulation.

9 THE COURT: All right. I'll allow then you to enter
10 that into the record as a Court's Exhibit.

11 SOLICITOR BARNETTE: Thank you, Your Honor.

12 (Whereupon, the stipulation was marked as Court's
13 Exhibit No. 10 for identification purposes only at this
14 time.)

15 THE COURT: Any other issues from the State before we
16 begin this phase of the trial?

17 SOLICITOR GOWDY: No, sir, Your Honor.

18 THE COURT: Any other issues from the defense?

19 MR. ALLEN: No, Your Honor.

20 THE COURT: No issues concerning proper notice of
21 seeking the death penalty, anything of that nature, is that
22 correct?

23 MR. ALLEN: No, Your Honor.

24 THE COURT: Okay. All right. Let's bring the jury
25 back.

1 (Whereupon, the following takes place within the
2 presence of the jury.)

3 THE COURT: The record will reflect that the jury has
4 returned to the courtroom.

5 Good morning, ladies and gentlemen. I trust everyone
6 has had a good rest and is ready now to begin with the
7 second phase of this trial. The defendant, Andres Antonio
8 Torres, has been convicted of the crime of murder on two
9 separate indictments and of the defenses, the other offenses
10 of burglary, criminal sexual conduct in the first degree,
11 attempt to burn, and armed robbery on two indictments.

12 Because of the conviction for the crime of murder on
13 two separate indictments, we must conduct an additional
14 proceeding to determine the punishment that the Court is to
15 impose upon the defendant for the crime of murder. South
16 Carolina Code Section 16-3-20 provides, in part, that a
17 person who is convicted of murder must be punished by death
18 or by imprisonment for life. That section, as further
19 amended, also provides, in part, that upon conviction of a
20 defendant for murder the Court shall conduct a separate
21 sentencing proceeding to determine whether the defendant
22 should be sentenced to death or life imprisonment.

23 So, our purpose in conducting the proceeding in which
24 we are now engaged is to determine whether the defendant,
25 Andres Antonio Torres, should be sentenced by the Court to

1 death or life imprisonment.

2 with respect to your particular role in this
3 proceeding, you will be asked to recommend to the Court
4 whether it should sentence the defendant, Andres Antonio
5 Torres, to death or life imprisonment. Should you recommend
6 a sentence of life imprisonment or should you recommend a
7 sentence of death, that's the only issue that's involved in,
8 in this phase of the trial.

9 You will be hearing testimony of aggravating
10 circumstances, if any, surrounding the murders, and
11 testimony in mitigation or extenuation. When that testimony
12 has been completed, each side will present arguments for and
13 against the death penalty and I will give you certain
14 instructions of the law and then you will retire and decide
15 whether to return a sentence of death or life imprisonment.

16 In this particular case, as in the other case, the
17 State will be going first with the presentation of its
18 evidence followed by the defense. It will also go first in
19 connection with the opening statements or arguments.

20 Does the State wish to make an opening statement in
21 this case?

22 SOLICITOR BARNETTE: It does, Your Honor.

23 THE COURT: All right. You may proceed.

24 SOLICITOR BARNETTE: May it please the Court, Your
25 Honor.

1 THE COURT: Yes, sir.

2 SOLICITOR BARNETTE: Mr. Foreman, ladies and gentlemen
3 of the jury, what you've already heard and what you're
4 getting ready to hear in this phase is just like a horror
5 movie that you watch on TV. But unfortunately it happened.
6 It's real.

7 You've heard what happened on May 11th, 2007. You've
8 seen the evidence concerning that. But we're going to bring
9 you more. But we submit the evidence you've already heard
10 is already proved the aggravating circumstances in this
11 case.

12 We have six aggravating circumstances that we're gonna
13 be presenting to you. One of them is death of two people in
14 the commission of this act. The second one is the
15 commission of murder when burglary first occurs. A murder
16 with criminal sexual conduct in the first degree occurs.
17 Murder when an armed robbery occurs. Murder with a larceny
18 of a deadly weapon occurs, and the last one is when a murder
19 occurs and something of value is taken.

20 We just have to prove one of those to your satisfaction
21 beyond a reasonable doubt. We feel like the evidence
22 already proved all six of them. But we want to bring you
23 more.

24 The first thing you're gonna hear about is the
25 defendant, Mr. Torres. This is not his first visit to the

1 criminal justice system, ladies and gentlemen. You're gonna
2 hear how many times he's been convicted in our criminal
3 courts here in South Carolina.

4 Just not merely one time. Not five times. Not ten
5 times. Not twenty times. Not thirty times. Not forty.
6 He's been convicted of 46 separate offenses counting the
7 seven he was convicted of Sunday night.

8 We'll be showing those convictions to you. It ranges
9 from public disorderly conduct to burglary in the second
10 degree violent, breaking into cars, larcenies that he's
11 done. The forgery was done even on his own grandmother.
12 And the last one you'll go through, and we'll go through
13 those time periods with you, going back to February 28th,
14 2002, when he pled to 28 different counts or convictions at
15 that time.

16 He was given a sentence of ten years suspended to time
17 served and probation. On May 31st, 2002, he violated that
18 probation a little bit over three months into it. He's
19 given another year in prison. Of course, that year he don't
20 serve the full year because he's eligible to get back out on
21 probation. He gets back out on probation.

22 On May 13th, 2003, he commits a burglary and grand
23 larceny. Has other violations you'll be hearing about. He
24 is revoked on May 31st, 2003, or May 30th, 2003, to five
25 years in prison. The burglary second and larceny is also

1 dealt with at that time. He's eligible for parole. So, he
2 gains parole on December 20th, 2006. Given another
3 chance.

4 And you'll hear, during that time on parole, he had
5 three different chances to go to drug treatment and complete
6 it. He's referred three different times. Even when he's
7 violated the drug test for marijuana, for amphetamines or
8 meth, he's given three chances. And finally, a citation is
9 ordered because he won't follow the instructions of the
10 agent after he's given three different chances. Testing
11 positive for the drugs. Not paying the restitution for the
12 previous victims. He had \$11,000. He's over \$3,000 in
13 arrearages. The citation was issued on May 8th, 2007. And,
14 of course, we know what happened on May 11th, 2007.

15 We're gonna bring that evidence to you showing you that
16 he had every chance to turn his life around and instead of
17 going down the path that he went. From public disorderly
18 conduct, giving false information to officers, breaking into
19 motor vehicles, committing larcenies, committing burglaries,
20 he just kept going.

21 You're also gonna hear about the victims in this case.
22 You got a glimpse of a little bit. You look at the
23 pictures. You remember the picture of the front of the
24 house. It's like any other house in Spartanburg. Lying out
25 front are the two chairs on the porch. Very neat. Just

1 like you see in a picture.

2 Ann Emery and Ray Emery are those type of people.
3 People every day here in Spartanburg. You'll hear about how
4 it affected people, how they helped people. And one thing,
5 you remember Ann Emery was very meticulous about her house,
6 and you can just tell that in that one picture, and some of
7 the other pictures of the house before he ransacked it.

8 And Ray Emery, a man that's made his living for 25
9 years taking photographs, taking photographs of weddings,
10 taking photographs of birthday parties, people's children as
11 they grow up through their lives. Every important moment of
12 a person's lives.

13 The thing that we hate to bring to you, ladies and
14 gentlemen, but you need to know this. In your heart of
15 hearts, in your soul, you need to see this evidence. We're
16 gonna be showing you -- you heard, you heard people describe
17 what happened to them that night. You're gonna see it.
18 You're gonna see what this man did to them that night. And
19 I apologize up front for it. But you need to know.

20 And it's a man that took pictures all his life, the
21 last thing you're gonna see are pictures of him and his wife
22 that night the way they looked in that bedroom, the way they
23 was at the autopsy. You're gonna see that because you need
24 to know that.

25 Like I said, the State has proven this case -- if you

1 have the evidence to this point, you have enough evidence to
2 give the death penalty right now. But you're gonna have
3 this additional evidence to character of the defendant.
4 You're gonna have what he did that night, and you're gonna
5 see it right here on the screen.

6 Mrs. Crick told you about justice. We talked to you --
7 solicitor Gowdy, after we presented our case, and after you
8 hear all this sentencing phase from both sides, he's gonna
9 come back and talk to you. You bring your common sense.
10 You bring your everyday experiences in this courtroom. But
11 the one thing that we're gonna ask you for is justice in
12 this case. You know what justice is.

13 All 12 of you, when we went up and was questioning you
14 during the process, we told you these things will be coming.
15 And we're gonna ask you to look in the heart of hearts, into
16 your soul, and ask you to give the appropriate sentence in
17 this case when we come back to you after that, Mr. Gowdy
18 will. After you hear everything, we ask you give a verdict
19 that this case deserves.

20 Thank you very much.

21 THE COURT: Does the defense wish to make an opening
22 statement?

23 MR. ALLEN: Yes, Your Honor.

24 THE COURT: You may proceed, Mr. Allen.

25 MR. ALLEN: You have indeed heard evidence about

1 horrible crimes that Tony Torres committed. Nothing that I
2 can say and nothing that the defense can present during this
3 phase can take away from that part. But what we're gonna
4 try to demonstrate between this portion of the trial is to
5 try to give you some understanding and some background into
6 why Tony Torres did this.

7 And I want you to understand that what we intend to
8 show is not meant to excuse his conduct. It is not meant to
9 justify at all what he did for those crimes that you have
10 found him guilty of that he committed. But what we do want
11 to try to do is to give you some understanding about Tony
12 Torres and to show you why the death penalty, by killing
13 Tony Torres will not be the appropriate punishment for him.

14 What we want to show you, we want to show you something
15 about some things about his background. We want to show you
16 that, from a very early age, that he went into what his
17 mother would probably call fits where he had difficulty,
18 difficulty controlling himself, and more than just simply
19 difficulty. That's just a -- I'm not sure what the proper
20 word is. But that he essentially could not or did not
21 control himself.

22 You will also hear how his mother, since he was at a
23 very early age, sought help for him and went to a variety of
24 agencies, a variety of people to try to get some help for
25 her son with this problem. You will hear from, from her

1 about the institutions and about the places that he had been
2 institutionalized since a very very young age. You will
3 hear about some of the diagnoses that have been, that Tony
4 has been diagnosed with over the years. And you will hear
5 about what was done in an attempt to help.

6 what we're gonna try to show is that Tony was not
7 correctly diagnosed. What we're gonna try to show is that,
8 try to show you the condition that Tony was in on May
9 11th when he committed these horrible crimes. And all
10 this is meant to try to give you some understanding and to
11 show you why life in prison without the possibility of
12 parole is an appropriate sentence for Tony for these crimes.

13 I appreciate your attention in this case. I know
14 you've paid close attention throughout this case, and I know
15 that this is not an easy case for you or for anyone. But of
16 course, as you've been reminded, and will be reminded again,
17 and you've taken an oath and you've also promised to keep an
18 open mind throughout this case, to listen to all of the
19 evidence. Not just the evidence that the State presents.
20 But any evidence that we may present to try to show you what
21 happened with Tony in an attempt to show you what happened
22 in these crimes. But more importantly, an attempt to show
23 you what the appropriate punishment would be in this case.

24 That would be a very big decision for each and every
25 one of you, and I know you take that seriously, and I just

1 simply ask you to keep an open mind while we show you, after
2 the State goes first, while we show you Tony's life and what
3 happened with Tony.

4 Thank you.

5 THE COURT: State may call its first witness.

6 SOLICITOR BARNETTE: Your Honor, like to make a motion
7 to move all the evidence from the guilt phase into the
8 sentencing phase at this time.

9 THE COURT: Any objection?

10 MR. ALLEN: Subject to motions and objections
11 previously made on the same grounds.

12 THE COURT: Subject to the prior objections though, all
13 evidence from the prior trial will be admitted into
14 evidence.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 Like to call Mrs. Tinsley as our first witness, Your
17 Honor.

18 THE COURT: Come forward please, ma'am, to my right to
19 be sworn.

20 CHARLENA TINSLEY, being first duly
21 sworn, testified as follows:

22 THE COURT: Ma'am, state your name for the record
23 please.

24 WITNESS: My name is Charlena Tinsley.

25 THE COURT: Mr. Barnette, your witness.

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q Mrs. Tinsley, where do you work at, ma'am?

5 A I work for the Spartanburg County Clerk of Court's
6 office.

7 Q And what's your position there, ma'am?

8 A I'm the supervisor of the General Sessions/Common Pleas
9 area.

10 Q Is part of your duties maintaining prior convictions or
11 indictments in the Clerk's Office?

12 A Yes, sir.

13 Q And let me let you look at -- I believe they've been
14 marked State's Exhibits 499 through 537. If you would, let
15 me let you look at those and see if those are prior
16 convictions of the defendant in this case, Mr. Torres.

17 A Yes, sir, this appears to be prior convictions of
18 Mr. Andres Torres.

19 Q Matter of fact, you got a chance to review those
20 earlier, is that right?

21 A Yes, sir, briefly.

22 SOLICITOR BARNETTE: Your Honor, I'd like to move these
23 into evidence at this time.

24 THE COURT: Objections from the defense?

25 MR. ALLEN: No, Your Honor.

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 THE COURT: All right. Without objection.

2 Do you wish to have those marked separately or is it --
3 I think you indicated they are already marked separately?

4 SOLICITOR BARNETTE: They are marked separately. We
5 remarked them, Your Honor.

6 THE COURT: All right. They'll be admitted then as
7 marked.

8 (Whereupon, State's Exhibit Nos. 499 through 537 were
9 received into evidence at this time.)

10 THE COURT: You may proceed.

11 SOLICITOR BARNETTE: May I publish these to the jury,
12 Your Honor?

13 THE COURT: You may.

14 Q If you would, Mrs. Tinsley, please step down. Step
15 over here.

16 (Witness comes down from the stand.)

17 Q Showing you State Exhibit 499, and Mrs. Tinsley,
18 showing you this first one, ma'am, was this a conviction for
19 public disorderly conduct?

20 A Yes, it was.

21 Q And it was on Mr. Torres?

22 A Yes, it is.

23 Q And it was on October 2nd, 2000?

24 A That's correct.

25 Q That's State Exhibit 499.

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 Going to State Exhibit No. 500, is this a conviction
2 for giving false information to law enforcement?

3 A That is so.

4 Q And was that the violation dated December 25th, 2000?

5 A Yes, sir.

6 Q And it was disposed of January 4th, 2001?

7 A That's correct.

8 Q Showing you what's been marked as State Exhibit 501.

9 Is this another conviction for public disorderly
10 conduct?

11 A Yes.

12 Q And was he convicted of November 1st, 2001?

13 A That is correct.

14 Q All right. Showing you State Exhibit 502.

15 Was this an indictment for forgery, ma'am?

16 A Yes, sir.

17 Q And on Page 3 of this exhibit, was he convicted of
18 forgery?

19 A Yes, he was.

20 Q And was he sentenced to five years suspended upon the
21 time served, 167 days---

22 A That's correct.

23 Q ---and probation?

24 A Uh-huh. (Affirmative).

25 Q And on the second page, which is the back of the

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 indictment, was Ruth Rogers the victim in this case?

2 A That is correct.

3 Q Showing you State Exhibit 503.

4 Was this Indictment 02-GS-42-5133?

5 Was this indictment for forgery?

6 A That's for forgery, yes.

7 Q And was he convicted of forgery on this case?

8 A Yes, he was.

9 Q And the date he was convicted I believe is the same on
10 the next several we got?

11 A 2/28/02.

12 Q That's February 28th, 2002?

13 A Yes, sir.

14 Q And on this one, showing you the second page, which is
15 the back of the indictment, was the victim again Ruth
16 Rogers?

17 A That's correct.

18 Q Showing you State Exhibit 504, Indictment 02-GS-42-870,
19 is this an indictment for petty larceny?

20 A It was.

21 Q And was this a conviction for petty larceny?

22 A It was.

23 Q And this, this also occurred on February 28th, 2002?

24 A That's correct.

25 Q And I'm not going to go through each indictment, but

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 the body of the indictment contains the information and the
2 victim and so forth, is that right?

3 A Yes.

4 Q And the date that it occurred?

5 A Right.

6 Q Showing you State Exhibit 505.

7 A Uh-huh. (Affirmative).

8 Q And this is Indictment Number 02-GS-42-875.

9 what was this an indictment for, ma'am?

10 A Breaking into motor vehicle.

11 Q Was he convicted of it, ma'am?

12 A He was. He -- breaking into motor vehicle, he was
13 convicted also.

14 Q And was the sentence the same, five years suspended to
15 157 days?

16 A That is correct.

17 Q And he was given credit for his time he served?

18 A That's correct.

19 Q And he was suspended on the probation?

20 A Uh-huh. (Affirmative).

21 Q And again, the same date?

22 A Same date, February 28th, 2002.

23 Q Showing you what's been marked as State's Exhibit 506,
24 Indictment 02-GS-42-872, what was that indictment for,
25 ma'am?

Charlena Tinsley - Direct examination
By Solicitor Barnette

- 1 A Petty larceny.
- 2 Q Was he convicted of it, ma'am?
- 3 A He was convicted of petty larceny.
- 4 Q And the same date?
- 5 A February 28th, '02.
- 6 Q Showing you State Exhibit 02-GS-42-873.
- 7 What's this indictment for, ma'am?
- 8 A Breaking into motor vehicle.
- 9 Q Was he convicted of it?
- 10 A Yes, sir, he was.
- 11 Q And given the same sentence?
- 12 A The same sentence.
- 13 Q Showing you 02-GS-42-874.
- 14 What was this indictment for, ma'am?
- 15 A Breaking into motor vehicle.
- 16 Q That's State Exhibit 508.
- 17 And I can keep going through these, but was he
- 18 convicted of this also?
- 19 A Yes, he was.
- 20 Q Same sentence?
- 21 A Same sentence.
- 22 Q Showing you State Exhibit 509, what was he convicted
- 23 of, ma'am?
- 24 A Malicious injury to personal property.
- 25 Q And was he convicted of that, ma'am?

Charlena Tinsley - Direct examination
By Solicitor Barnette

- 1 A He was convicted of the same, yes.
- 2 Q And he received 30 days credit for time served?
- 3 A That's correct.
- 4 Q Same date?
- 5 A Same date.
- 6 Q Showing you State Exhibit No. 10, Indictment
- 7 02-GS-42-861, what was that indictment for, ma'am?
- 8 A Breaking into motor vehicle.
- 9 Q Was he convicted of that, ma'am?
- 10 A He was.
- 11 Q Same sentence?
- 12 A Same sentence, yes.
- 13 Q Showing you State Exhibit 511, Indictment 02-GS-42-884,
- 14 what was the indictment for, ma'am?
- 15 A Breaking into motor vehicle.
- 16 Q Was he convicted of that, ma'am?
- 17 A Yes, he was.
- 18 Q Same sentence, same date?
- 19 A Same sentence, same date.
- 20 Q State Exhibit 512, 02-GS-42-866, what is this
- 21 indictment for, ma'am?
- 22 A Breaking into motor vehicle.
- 23 Q Was he convicted of that, ma'am?
- 24 A Yes, he was.
- 25 Q State Exhibit 513, which is Indictment 02-GS-42-860,

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 what was he -- what was the indictment for, ma'am?

2 A Breaking into motor vehicle.

3 Q Was he convicted of that, ma'am?

4 A Yes, he was.

5 Q Showing you State Exhibit 514, Indictment Number
6 02-GS-42-867, what's that indictment for, ma'am?

7 A Breaking into motor vehicle.

8 Q Was he convicted of that?

9 A Yes, he was.

10 Q Showing you State Exhibit 515, Indictment 02-GS-24-868,
11 what is that indictment for, ma'am?

12 A Breaking into motor vehicle.

13 Q Was he convicted of that, ma'am?

14 A Yes, he was.

15 Q Showing you State Exhibit 516, Indictment 02-GS-42-888,
16 what was that indictment for, ma'am?

17 A Breaking into motor vehicle.

18 Q Was he convicted of that, ma'am?

19 A Yes, he was.

20 Q Showing you State Exhibit 02-GS-42-869, what was he
21 convicted of or what was the indictment for, ma'am?

22 A The indictment was for breaking into motor vehicle.

23 Q And was he convicted of that, ma'am?

24 A Yes, he was.

25 Q Showing you State Exhibit 518, Indictment Number

Charlena Tinsley - Direct examination
By Solicitor Barnette

- 1 02-GS-42-887, what's that indictment for, ma'am?
- 2 A Breaking into motor vehicle.
- 3 Q Was he convicted of that, ma'am?
- 4 A He was convicted of the same, yes.
- 5 Q Showing you State Exhibit 519, Indictment Number
- 6 02-GS-42-865, what was that indictment for, ma'am?
- 7 A Breaking into motor vehicle.
- 8 Q Was he indicted of that, ma'am?
- 9 A He was convicted of it, the same.
- 10 Q I mean convicted of it. I apologize.
- 11 A Yes, sir.
- 12 Q Showing you State Exhibit 520, Indictment 02-GS-42-877,
- 13 what's that indictment for?
- 14 A For petty larceny.
- 15 Q Was he convicted of that, ma'am?
- 16 A Yes, he was.
- 17 Q Showing you State Exhibit 512, 02-GS-42-886, what's
- 18 that indictment for, ma'am?
- 19 A Breaking into motor vehicle.
- 20 Q Was he, was he convicted of that, ma'am?
- 21 A Yes, he was.
- 22 Q Showing you State Exhibit 522, Indictment 02-GS-42-889,
- 23 what's that indictment for, ma'am?
- 24 A Breaking into motor vehicle.
- 25 Q Was he convicted of it?

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 A Yes, he was.

2 Q Showing you State Exhibit 523, which is Indictment
3 02-GS-42-878, what's that indictment for, ma'am?

4 A Petty larceny.

5 Q Was he convicted of it, ma'am?

6 A Yes, he was.

7 Q Showing you State Exhibit 529, which is Indictment
8 Number 02-GS-42-890, what is that indictment for, ma'am?

9 A Breaking into motor vehicle.

10 Q Was he convicted of it, ma'am?

11 A Yes, he was.

12 Q Showing you State Exhibit 525, which is Indictment
13 02-GS-42-882, what's that indictment for, ma'am?

14 A Breaking into motor vehicle.

15 Q And has he been convicted of it, ma'am?

16 A Yes, he was convicted of the same.

17 Q Showing you State Exhibit 526, which is 02-GS-42-880,
18 what's that indictment for, ma'am?

19 A Breaking into motor vehicle.

20 Q Was he convicted of it, ma'am?

21 A Yes, he was.

22 Q Showing you State Exhibit 527, Indictment zero,
23 02-GS-42-88, 863, what's that indictment for, ma'am?

24 A Petit larceny.

25 Q Was he convicted of that?

Charlena Tinsley - Direct examination
By Solicitor Barnette

- 1 A Yes, he was.
- 2 Q Showing you State Exhibit 528, Indictment 02-GS-42-896,
3 what's that indictment for, ma'am?
- 4 A Breaking into motor vehicle.
- 5 Q Was he convicted of that, ma'am?
- 6 A Yes, he was.
- 7 Q Showing you State Exhibit 529, Indictment Number
8 02-GS-42-862, what was this indictment for, ma'am?
- 9 A It's grand larceny.
- 10 Q Showing you the second page, which is the back of the
11 indictment, was the grand larceny for the value of what?
- 12 A \$5,000.
- 13 Q And was it a 1999 Ford Contour?
- 14 A It was.
- 15 Q Showing you a third page of this exhibit, was he
16 convicted of grand larceny greater than \$5,000?
- 17 A Yes, he was.
- 18 Q And was the sentence -- tell us what the sentence was
19 on this, ma'am.
- 20 A Looks like -- can I look at this, please?
- 21 Q Yes, ma'am, you can.
- 22 A Ten years suspended to 157 days and he was given credit
23 for 157 days.
- 24 Q And how much probation was it?
- 25 A Five years probation.

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 Q Let the jury see this.

2 So, he was sentenced to ten years, but that was
3 suspended to the time served?

4 A That's correct.

5 Q And five years probation?

6 A Uh-huh. (Affirmative).

7 Q And also there was conditions for his probation also,
8 is that right?

9 A Correct.

10 Q And those are conditions that he has to do that for?

11 A Yes.

12 Q I don't know if you read that or not. Maybe I need to.

13 A Look at the document -- I can read it. Refer for
14 evaluation and mental health as directed by the department.
15 Six months intensive supervision with electronic monitoring.

16 Q And, of course, this is sent to probation?

17 A That's correct.

18 Q Let me show you State Exhibit 30, Indictment
19 02-GS-42-885, what was that indictment for, ma'am?

20 A Breaking into motor vehicle.

21 Q Was he convicted of that, ma'am?

22 A Yes, he was.

23 Q Showing you State Exhibit 531, it's Indictment
24 02-GS-42-883, what was that indictment for, ma'am?

25 A Breaking into motor vehicle.

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 Q Was he convicted of that, ma'am?

2 A Yes, he was.

3 Q Showing you State Exhibit 532, Indictment 02-GS-42-895,
4 what was this indictment for, ma'am?

5 A Grand larceny.

6 Q And was the value between one thousand and five
7 thousand dollars of that?

8 A Yes, it was.

9 Q And was the victim in this case George Rice?

10 A That's right.

11 Q Was he convicted of that, ma'am?

12 A Yes, he was.

13 Q Showing you State Exhibit 533, Indictment Number
14 02-GS-42-891, what was he convicted of, ma'am?

15 A Breaking into motor vehicle.

16 Q I mean what was he indicted for.

17 I'm sorry.

18 A Breaking into motor vehicle.

19 Q And was he convicted of that, ma'am?

20 A Yes, he was.

21 Q Okay. Showing you State Exhibit 534, Indictment
22 02-GS-42 I believe that's 876, and what was this indictment
23 for, ma'am?

24 A Grand larceny.

25 Q which is also between one thousand and five thousand

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 dollars?

2 A Yes.

3 Q And the victim in this case was Alfredo R.V.?

4 A That's correct.

5 Q Was he convicted of that offense?

6 A Yes, he was.

7 Q Showing you what's been marked as State's Exhibit 535,
8 was he convicted of injury to real property in this case?

9 A Yes, sir. Yes, sir.

10 Q Was he given time served on that?

11 A Time served sentence.

12 Q And the conviction date was May 9th, 2003?

13 A That's correct.

14 Q Showing you what's been marked as State Exhibit 536,
15 this is Indictment 04-GS-42-2282, what was this indictment
16 for, ma'am?

17 A Burglary in the second degree building.

18 Q Okay. Showing you the second page, which is the back
19 of the indictment, when did this occur, ma'am?

20 A Between May 13th of 2003 and May 14th of 2003.

21 Q And who did the building belong to, ma'am?

22 A Matthew Brown.

23 Q And where was it located?

24 A [REDACTED] Sloan Street, Spartanburg, South Carolina.

25 Q And could you read the rest of the indictment for me,

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 ma'am?

2 A That -- starting what part?

3 Q After the Sloan Street.

4 A And either when, in effecting entry, or while in the
5 building or in immediate flight therefrom, he or another
6 participant in the crime was armed with a deadly weapon or
7 explosive or the burglary is committed by a person with a
8 prior record of two or more convictions for burglary of
9 housekeeping or a combination or both or entering and
10 remaining occurs in the nighttime in violation of
11 16-11-312(b).

12 Q And, ma'am, was he convicted of this offense?

13 A Yes.

14 Q And was it considered a violent offense?

15 A Yes, it was.

16 Q Showing you State Exhibit 537, Indictment
17 04-GS-42-2281, what was this indictment for, ma'am?

18 A Grand larceny.

19 Q And if you would, read the second page, which is the
20 back of the indictment, to the jury please?

21 A That Andres Torres did, in Spartanburg County, between
22 May 13th of 2003, and March 14th, 2003, I'm sorry, it's
23 March 13th, feloniously take and carry away goods of
24 Matthew Brown valued at more than \$1,000 but less than
25 \$5,000 described as follows, a 300 Magnum rifle, 35

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 Remington rifle, SKS 7.62 mm by 39 mm rifle, and one
2 Mossburg shotgun with the intent to deprive the owner
3 permanently of such property all in violation of
4 16-13-30(b)(1).

5 Q Ma'am, showing you the third page of that exhibit, was
6 he convicted of that, ma'am?

7 A He was.

8 Q If you would, ma'am, just have a seat.

9 A (Witness returns to the stand.)

10 MR. RECKENBEIL: Judge, can we approach a second?

11 THE COURT: You may.

12 (Whereupon, a bench conference was held out of the
13 hearing of the jury at this time.)

14 MR. RECKENBEIL: Your Honor, we wouldn't have any
15 objection except in the case---

16 SOLICITOR BARNETTE: Your Honor, I just showed---

17 THE COURT: All right. Well, we probably, if you're,
18 if you're gonna do that, we need to put that on the record.

19 MR. RECKENBEIL: Exactly.

20 THE COURT: So, if you would, tell me your objection.

21 MR. RECKENBEIL: Yeah, for the record -- we have no
22 objections to this list except for the fact that
23 4/15/2005 there's a listing for a conviction of burglary
24 second degree violent. The only thing we object to is the
25 fact that it is not necessarily a violent physical act.

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 It's just classified under the law of South Carolina. We
2 would only object to that.

3 THE COURT: What I, what I explained to you at the
4 bench conference was that, that particular crime is
5 classified under South Carolina law as a violent offense.
6 There's certain classifications for crimes in this state,
7 which include serious, most serious, and violent crimes. It
8 does not necessarily describe the event, but that crime is
9 classified as a violent crime, and that is the proper
10 classification on, on the list.

11 So, I'm going to allow the list to be admitted subject
12 to your objection. Certainly you have the right to argue
13 that at a later time.

14 (Whereupon, State's Exhibit No. 538 was received into
15 evidence at this time.)

16 THE COURT: You may proceed.

17 SOLICITOR BARNETTE: Thank you, Your Honor.

18 I'd like to approach the witness. State Exhibit 538 is
19 what we were talking about.

20 THE COURT: Yes, sir.

21 Q Ma'am, if you would, take a look at this and is that a
22 summary of all the convictions that the defendant has,
23 ma'am?

24 A Yes.

25 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to

Charlena Tinsley - Direct examination
By Solicitor Barnette

1 enter this as a summary of those convictions and pose---

2 THE COURT: Subject, subject to the defense's
3 objections, it will be admitted as marked.

4 Q And, Mrs. Tinsley, this list is a list -- I can go --
5 we've already been through all the indictments.

6 But this is a listing of all the convictions that the
7 defendant has prior to the convictions that he received on
8 Sunday night?

9 A Yes, it appears to be, yes.

10 SOLICITOR BARNETTE: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 You may cross-examine.

13 MR. RECKENBEIL: Can you leave the lights down please?

14 CROSS-EXAMINATION

15 BY MR. RECKENBEIL:

16 Q Ma'am, Deputy Solicitor Barnette just -- I'll get it
17 right one of these days.

18 On 4/15/2005 there's a burglary second degree and you
19 see dash violent.

20 A Yes, uh-huh. (Affirmative).

21 Q Do you have information in the Clerk of Court's
22 office -- you've heard what we discussed with my objection
23 to Judge Couch.

24 Does that necessarily mean that a person was convicted
25 of performing a physical violent act or in South Carolina

Charlena Tinsley - Cross-examination
By Mr. Reckenbeil

1 law classify convictions as most serious, serious, and
2 violent?

3 would that be---

4 A Well, I'm not that familiar with the South Carolina
5 law. But according to our records, that's what is indicated
6 on our records and that it was a violent---

7 Q Right.

8 Okay. And are you familiar, ma'am, that on the
9 sentencing sheets that you have gone through with
10 Mr. Barnette, do you see where it says nonviolent, violent,
11 serious, most serious 17-25-45?

12 A Do you mind if I step down so I can see it?

13 Q Yes. Absolutely. I'm sorry.

14 A Thank you.

15 (Witness comes down from the stand.)

16 A Yes, it has -- yes.

17 Q Okay. So, this is what we're looking at here as the
18 4/15/2005 that's in your summary sheet. This is the actual
19 sheet that's filled out by the judge, filled out by the
20 solicitor, and filled out by the defendant, and the defense
21 attorney, right?

22 A Correct.

23 Q And you see the classifications where it says
24 nonviolent, violent, serious, most serious?

25 A That's correct.

Charlena Tinsley - Cross-examination
By Mr. Reckenbeil

1 Q And is your information, ma'am, is that just a
2 classification under our law in South Carolina?

3 A That's my understanding.

4 Q Okay. Thank you.

5 A Uh-huh. (Affirmative).

6 Q And why don't you just stay there for a second.

7 Now, you, you had an opportunity to read, a couple
8 minutes ago, the bottom part of the indictment.

9 A Uh-huh. (Affirmative).

10 Q And your understanding, and again, I just want to make
11 sure that you understand this, is that when you were reading
12 the bottom part of this indictment where it says was armed
13 with a deadly weapon or explosive or burglary is committed
14 by a person with a prior record of two or more convictions
15 for burglary or house breaking or the combination of both --

16 A Uh-huh. (Affirmative).

17 Q -- when you read that, does that necessarily mean that
18 that's exactly what happened or do you know if that is just
19 the elements of the law that South Carolina has for that
20 crime?

21 A I would assume it's the elements of the law.

22 Q Okay. Because if you look at the, because if you look
23 at here, ma'am, I want to make sure that this burglary
24 second degree coordinates with this grand larceny.

25 March 13th, 2003, Matthew Brown is the victim.

Charlena Tinsley - Cross-examination
By Mr. Reckenbeil

1 well it's different time frames. It's different.

2 Okay. That's fine, ma'am. You can have a seat back on
3 the witness stand.

4 A (Witness returns to the stand.)

5 Q Solicitor Barnette talked to you about a string of
6 convictions for the, February 2002.

7 Do you remember when you were talking about the
8 breaking into the motor vehicle --

9 A Uh-huh. (Affirmative).

10 Q -- those petty larcenies and those sort of things?

11 A Correct.

12 Q Does the Clerk of Court keep copies of notes that the
13 solicitor might have dialogue with the defense attorneys in
14 negotiating a plea deal?

15 A No.

16 Q You wouldn't keep notes of that?

17 A No.

18 Q If the solicitor offered any sort of plea deal to the,
19 to the defendant, would you keep notes on that?

20 A The only way we keep it is if it's documented on that
21 indictment or that sentencing sheet.

22 Q Okay. And then also, this is just one representative
23 of that string that you were showing -- and if you need to
24 step down, ma'am, I'm sorry to keep you walking back and
25 forth getting your exercise this morning.

Charlena Tinsley - Cross-examination
By Mr. Reckenbeil

1 A (Witness comes down from the stand.)

2 Q There was no jury trial in this, am I right?

3 A No, that appears to be a plea.

4 Q Right.

5 Because you look here on the sentencing sheet that is
6 signed by solicitor Jennifer wells.

7 It's actually a plea?

8 A Plea, right.

9 Q Pleads.

10 And then, ma'am, you see the box where it says
11 recommended by the State?

12 You go down right above the signature---

13 A Yes.

14 Q ---for the attorney.

15 A Yes.

16 Q Now, wasn't there a recommendation by Mr. Gowdy's
17 office, which, in fact, this man received probation?

18 Do you remember that?

19 A By looking at that document, I would think that there
20 was a recommendation. But I have no personal recollection
21 of that.

22 Q Well, you remember you kept reading all the facts that
23 he received time served of 157 days and then ten years
24 suspended to probation?

25 A Uh-huh. (Affirmative).

Charlena Tinsley - Cross-examination
By Mr. Reckenbeil

1 Q Do you remember?

2 Do you recall that testimony---

3 A I remember that.

4 Q ---that you gave?

5 A Yes.

6 Q And here you go. Here's one of them. I want to make
7 sure. Right. This is one of the sheets signed by Judge
8 Clary in which, in fact, the recommendation by the State,
9 Mr. Gowdy's office, was 157 days time served and the
10 recommendation of probation.

11 A Are you asking me if that was their recommendation?

12 Q Well, I'm saying there's a recommendation by the
13 State---

14 A Right.

15 Q ---and that's what he received?

16 A Right.

17 Q All right. Thank you very much. I appreciate you
18 answering my questions.

19 SOLICITOR BARNETTE: Just a few questions on redirect,
20 Your Honor.

21 THE COURT: All right.

22 REDIRECT EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q Mrs. Tinsley?

25 A Uh-huh. (Affirmative).

Charlena Tinsley - Redirect examination
By Solicitor Barnette

1 Q You don't -- just because the box is marked, it don't
2 mean that was the recommendation in the case?

3 A No, I don't have any knowledge of what the negotiations
4 are between the prosecutor and the defense. We only go by
5 what the actual sentencing sheet is marked and indications
6 on the sentencing sheet.

7 Q The petty larceny he asked you about, I want to make
8 sure, I think this is the one he showed you, and I
9 appreciate you handing that directly back to me, was 504
10 State Exhibit.

11 On the petty larceny, it was 30 days on that sentence,
12 right?

13 A That's correct.

14 Q So, it could be a recommendation concurrent. You don't
15 know.

16 A I have no, no way of knowing, no.

17 Q And I know you've been in Court and I know he's asked
18 you these questions, but I think you probably know the
19 answer, does the judge have to follow the recommendation?

20 A No, he doesn't.

21 Q Okay. So, it's really up to the judge to follow the
22 recommendation if there is one?

23 A That's right.

24 Q And we don't know what the recommendation was?

25 It could be concurrent time, just run the charges

Charlena Tinsley - Redirect examination
By Solicitor Barnette

1 together?

2 A Yes, it could be. I'm am not a part of those
3 negotiations. I have no way of knowing.

4 Q Thank you, ma'am.

5 THE COURT: Recross.

6 MR. RECKENBEIL: No, thank you, Your Honor.

7 THE COURT: Ma'am, you may step down. Thank you very
8 much.

9 Any objection to the witness being excused?

10 MR. RECKENBEIL: No, no objection.

11 THE COURT: She's free to go.

12 State may call its next witness.

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

14 The State would, would call Detective Jason Bryant.

15 THE COURT: Sir, come forward to the witness stand to
16 be sworn.

17 JASON BRYANT, being first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat in the witness stand please,
20 sir.

21 WITNESS: Thank you, sir.

22 THE COURT: And once you're seated, I'd ask that you
23 state your name for the record.

24 WITNESS: My name is Jason Bryant.

25 THE COURT: All right. Mr. Gowdy, it's your witness.

Jason Bryant - Direct examination
By Solicitor Gowdy

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

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY SOLICITOR GOWDY:

5 Q Detective Bryant, you've testified Thursday, Friday,
6 Saturday, one day earlier in this, in the guilt phase,
7 correct?

8 A Yes, sir, Saturday.

9 Q And I asked you a series of questions specifically
10 related to the Spartanburg Regional and your interaction you
11 may of had.

12 A That's correct, yes, sir.

13 Q Did you give the security department at Spartanburg
14 Regional a general description of what you were looking for?

15 A I did, yes, sir. That was that morning.

16 Q From a clothing standpoint?

17 A That's, that's correct, yes, sir.

18 Q Okay. And did Spartanburg Regional give you -- well,
19 let me just ask you.

20 What did they give you?

21 A They gave me a DVD that had a couple of different files
22 on it.

23 Q Okay. And did you look at that DVD?

24 A I did.

25 Q And did you see one video surveillance tape that

Jason Bryant - Direct examination
By Solicitor Gowdy

1 appeared to have him on it?

2 A Absolutely, yes, sir.

3 Q Did you see one that had someone else on it?

4 A It had someone else on it, but it had, didn't have
5 anything to do with the case.

6 Q Well, that's my question to you.

7 The other one---

8 A Right.

9 Q ---does it have anything to do with this case?

10 A Not at all. Not at all.

11 Q Thank you, Detective Bryant.

12 THE COURT: Any cross-examination?

13 MR. ALLEN: No, Your Honor.

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

15 WITNESS: Thank you, sir.

16 THE COURT: Any further need of this witness from the
17 State?

18 SOLICITOR GOWDY: No, sir, Your Honor.

19 THE COURT: May he be excused?

20 MR. ALLEN: Yes, Your Honor.

21 THE COURT: You're free to go, sir. Thank you for
22 coming.

23 WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 SOLICITOR GOWDY: Very brief, literally, a second

Ashley Harley - Direct examination
By Solicitor Crick

1 bench, bench conference.

2 (Whereupon, a bench conference was held out of the
3 hearing of the jury at this time.)

4 THE COURT: Solicitor, you may proceed.

5 SOLICITOR CRICK: Thank you, Your Honor.

6 The State calls Ashley Harley.

7 THE COURT: Ma'am, come forward to the witness stand to
8 be sworn.

9 ASHLEY HARLEY, being first duly
10 sworn, testified as follows:

11 THE COURT: Ma'am, move as close to the microphone as
12 you can, and please state your name for the record.

13 WITNESS: Ashley Harley.

14 THE COURT: Mrs. Crick, your witness.

15 SOLICITOR CRICK: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY SOLICITOR CRICK:

18 Q Mrs. Harley, do you work?

19 A I'm sorry?

20 Q Do you have a job?

21 A No, I go to school.

22 Q So, you're in school currently?

23 A Yeah.

24 Q I'm gonna ask you some specific questions.

25 Do you know the defendant, Tony Torres?

Ashley Harley - Direct examination
By Solicitor Crick

1 A I do.

2 Q Have you ever had occasion to speak with him on the
3 telephone?

4 A I have.

5 Q Would you say more than once, once?

6 A More than once.

7 Q So, it is not a problem for you to recognize his voice
8 on a telephone call or message, is that correct?

9 A That's correct.

10 Q Did you actually receive a phone call from him on May
11 11th of 2007, and that's the date that refers to the
12 murder of Ray and Ann Emery?

13 A I do.

14 Q Do you -- can you tell the jury what the nature of the
15 phone calls were initially?

16 A It stated that I better not go to sleep or else he
17 would kill me in my sleep.

18 Q Did you actually -- now, was that a message or did you
19 talk to him directly?

20 A That was, that was a voice mail left.

21 Q A voice mail?

22 A I had spoken to him maybe two times and then I turned
23 my phone off, and the next morning when I checked my voice
24 mail that was left on there.

25 Q So, you had spoken with him actually on the phone

Ashley Harley - Direct examination
By Solicitor Crick

1 earlier that evening?

2 A Yes.

3 Q When you spoke with him earlier that evening, the
4 nature of the phone call was what?

5 A I don't remember.

6 Q You don't remember what he said to you at that time?

7 A No, ma'am.

8 Q But something caused you to turn your phone off?

9 A He was just real angry.

10 Q So, at that point, you cut your cell phone off?

11 A After -- we talked once and I hung up and he called
12 back, and then I cut it off I believe.

13 Q Okay.

14 A After the second time.

15 Q And you said you received some phone messages.
16 Were they from the defendant?

17 A It was just one message.

18 Q And you got that message the next morning---

19 A Yes.

20 Q ---is that correct?

21 I'm gonna first show this to the defense. But it's
22 State 44.

23 I believe we've agreed by stipulation, Your Honor, that
24 this would come into evidence.

25 MR. RECKENBEIL: No objection, Your Honor.

Ashley Harley - Direct examination
By Solicitor Crick

1 THE COURT: Without objection, it will be admitted.
2 Has it already been marked?

3 SOLICITOR CRICK: It has, Your Honor.

4 THE COURT: All right. You may proceed. As marked.
5 (Whereupon, State's Exhibit No. 44 was received into
6 evidence at this time.)

7 SOLICITOR CRICK: Thank you, Your Honor.
8 May I publish it to the jury?

9 THE COURT: Yes, ma'am, you may.

10 Q Mrs. Harley, I'm gonna put something up on this
11 overhead.

12 THE COURT: Get the lights for me, Mr -- thank you,
13 sir.

14 Q And this is what's been entered and stipulated to as
15 being Ann Emery's cell phone records, and I hope that's big
16 enough for you to see.

17 Tell the jury what your phone number is.

18 A [REDACTED] 75.

19 Q I want you to take a look on this screen.

20 THE COURT: Ma'am, if you need to step down so you can
21 look at it---

22 WITNESS: I can see.

23 THE COURT: ---you can.

24 You can see it. Okay.

25 Q [REDACTED] 75, is that your phone number right there?

Ashley Harley - Direct examination
By Solicitor Crick

1 A Yes, ma'am.

2 Q Having received a phone call at 7:20 a.m. on
3 5/11/07 from Ann Emery's cell phone, does that look correct
4 to you?

5 MR. RECKENBEIL: Judge, can we approach for a second?

6 THE COURT: You may.

7 (Whereupon, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: Ladies and gentlemen of the jury, there's a
10 matter that I need to take up with the attorneys outside of
11 your hearing, and I told you that would happen on,
12 occasionally. I'm going to ask you to retire to the jury
13 room.

14 As always during the trial, I will instruct you don't
15 begin any discussions concerning the case until you've heard
16 all the evidence and I've charged you concerning the
17 applicable law.

18 At this time you may retire to the jury room.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Mr. Reckenbeil, I think you have indicated
22 that on the phone records that has been placed into evidence
23 and has been now put on the screen that there is a number
24 that perhaps is your belief your stipulation indicated it
25 would not be discussed, is that correct?

Ashley Harley - Direct examination
By Solicitor Crick

1 I, I haven't actually read the stipulation verbatim.

2 MR. RECKENBEIL: Sure.

3 THE COURT: So, maybe you can help me with what your
4 position is.

5 MR. RECKENBEIL: Yes, judge. Our stipulation was, is
6 that we agreed we would not contest the 5:14 phone call, and
7 then the prosecution agreed that they would not discuss the
8 subject of that phone call being a sex line. I don't know
9 if a juror -- because before I got into this case 1-900
10 didn't really mean a lot to me.

11 THE COURT: Well, it doesn't mean a lot to me either.
12 But I---

13 MR. RECKENBEIL: Good. Well, I'm, I'm hoping that,
14 like me, they didn't focus on that 1-900 number. But what I
15 would like to do is if we could just redact the 1-900 number
16 because if it does give a connotation, then it, it might---

17 THE COURT: Any objection to redacting that from the
18 exhibit from the State?

19 SOLICITOR BARNETTE: Your Honor, I think the problem is
20 gonna be it's gonna draw more attention to it if you take
21 that off that document because what did -- I was -- I put --
22 I have the stipulation here and I'll hand it up to the
23 Court.

24 THE COURT: Thank you.

25 SOLICITOR BARNETTE: We agree we wouldn't discuss the

Ashley Harley - Direct examination
By Solicitor Crick

1 subject matter of that, but I did put on there that the,
2 that they agreed that at 5:15 that number was called.

3 THE COURT: Just one second. Let me look at it.

4 SOLICITOR BARNETTE: Yes, sir. Yes, sir.

5 (Pause.)

6 THE COURT: All right. The, the relevant portion of
7 the stipulation indicates that the State stipulated that it
8 will not offer any testimony concerning the sex phone line
9 that the defendant called at 5:14 a.m. on May 11, 2007, at
10 phone number 1-900-938-3338, and will not mention the sex
11 phone information in the case, in the trial of this case. I
12 guess the only thing -- the stipulation first said though
13 that you would stipulate to and agree to the attached two
14 pages of phone numbers, which are the records from Mrs.
15 Emery's phone for a period of May 10th through May 11th.

16 I'll hear from you on it, Mr. Reckenbeil.

17 MR. RECKENBEIL: Absolutely.

18 Your Honor, I think any testimony, testimony would be
19 this exhibit being offered in evidence. Again, not having
20 the information of the, automatically clicking in the head
21 of 1-900 means a sex line. But it could. So, I think what
22 the State would be doing is they'd be violating kind of the
23 purpose of their stipulation.

24 They said that they stipulated that they would not
25 bring any testimony. Well, let's not give a chance for the

Ashley Harley - Direct examination
By Solicitor Crick

1 jury to infer what, in fact, that was. If we're putting on
2 the broadcast there 1-900 number and a juror knows what that
3 is, then they violated their stipulation because they
4 presented testimony to the jury that, in fact, that was a
5 sex line call. So, I---

6 THE COURT: I take it -- I'm assuming, from your
7 argument, that all 1-900 numbers are of that ilk, is that
8 correct?

9 MR. RECKENBEIL: I think they are.

10 SOLICITOR BARNETTE: I, I didn't know that, judge.

11 THE COURT: Well, I don't know that either for a fact.
12 Then I mean I don't know -- I'm not sure that I can take
13 judicial notice of that.

14 MR. RECKENBEIL: Let's not give it a chance, judge, for
15 it to be inferred.

16 THE COURT: All right. Let's step up just a second.

17 (Whereupon, a bench conference was held out of the
18 hearing of the jury at this time.)

19 THE COURT: All right. I have discussed with counsel
20 and, and we have agreed to white out the 1-900 portion of
21 that number so that it, and recopy the document so that it
22 does not appear. And so, we'll take about a five to ten
23 minute break at this time to allow that to take place.

24 Is that a correct statement of our bench conference,
25 Mr. Gowdy?

Ashley Harley - Direct examination
By Solicitor Crick

1 SOLICITOR GOWDY: Yes, sir, Your Honor.

2 THE COURT: And Mr. Allen, and Mr. Reckenbeil?

3 MR. RECKENBEIL: Yes, sir, Your Honor.

4 MR. ALLEN: Yes, Your Honor.

5 THE COURT: All right. Ma'am, I'm going to caution

6 you, during the recess, you should not discuss your

7 testimony with anyone. You'll be able to step down from the

8 stand if you wish to do so. We'll take this as a break for

9 the jury.

10 Mr. Humphries, if you would, if any of them would like
11 to smoke, do, take the appropriate action. We'll take about
12 a five to ten minute break.

13 Thank you very much.

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

15 THE COURT: All right. Has the, the portion of the
16 exhibit been redacted?

17 SOLICITOR CRICK: Yes, sir.

18 THE COURT: And does that comply with your request, Mr.
19 Reckenbeil?

20 MR. RECKENBEIL: Yes, it does, Your Honor.

21 THE COURT: All right. Mr. Barnette.

22 SOLICITOR BARNETTE: We marked the one that we whited
23 out as Court Exhibit No. 11 for the Court's record and just
24 substituted the redacted copy of State's Exhibit 444.

25 THE COURT: All right. The record will note that that

Ashley Harley - Direct examination
By Solicitor Crick

1 has been taken care of.

2 (Whereupon, State's Exhibit No. 444 was now marked as
3 Court's Exhibit No. 11 for identification purposes only at
4 this time.)

5 THE COURT: All right. Anything further before we
6 bring the jury in?

7 SOLICITOR GOWDY: Your Honor, from a, a mechanic's
8 standpoint, there's a portion of that stipulation that we
9 would like to verbally advise the, the jury of specifically
10 that, that the defendant concedes he made the phone call at
11 5:14. So, I guess I would ask, is it okay if Mrs. Crick --
12 how would you like the jury to be informed?

13 THE COURT: Well, it can be published unless there's
14 some objection to the portion of the stipulation being
15 submitted.

16 Is there any objection to that portion of the
17 stipulation being published?

18 MR. ALLEN: No, Your Honor. I was -- we were -- I was
19 speaking with Mrs. Crick. It's my understanding that she
20 would like to read that the, the, the, he agrees that these
21 record's are authentic and true phone calls or will
22 stipulate these records. I can tell they've already been
23 admitted as evidence. I'm not sure if that portion needs to
24 be read. We also agree that me made the phone call from
25 cell phone number, which, which is listed here, at 5:14 on

Ashley Harley - Direct examination
By Solicitor Crick

1 May 11th.

2 THE COURT: Is that sufficient, Mr., Mrs. Crick,
3 Mr. Gowdy?

4 SOLICITOR CRICK: Yes, sir.

5 THE COURT: That's sufficient.

6 All right. When the time comes, if you'll just request
7 from the Court the right to publish the stipulation. I'll
8 explain what that means and allow you to do so.

9 All right. Anything else?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: Anything further, Mr. Reckenbeil, before we
12 bring the jury in?

13 MR. RECKENBEIL: No.

14 THE COURT: Mr. Humphries, bring in the jury.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, we have resolved the matter that was raised before the
19 Court by agreement, and, of course, we went, we decided to
20 go on and take our morning break. And so, we're ready to
21 continue with this witness.

22 Mrs. Crick, I believe you were in the process of
23 examining the witness.

24 SOLICITOR CRICK: Yes, sir. Thank you, Your Honor.

25 THE COURT: You may continue.

Ashley Harley - Direct examination
By Solicitor Crick

1 CONTINUED DIRECT EXAMINATION

2 BY SOLICITOR CRICK:

3 Q Mrs. Harley, just briefly, looking back at this phone
4 record, I think you had said that you -- this was your phone
5 number right here, [REDACTED] 75, is that correct?

6 A Yes, ma'am.

7 Q And that would of been at about 7:23 a.m.

8 And the way you -- you stated that you had received a
9 message from the defendant on your voice mail---

10 A Yes, ma'am.

11 Q ---that morning?

12 And tell the jury again what was stated in that
13 message.

14 A That I better not go to sleep or he would kill me in my
15 sleep.

16 Q Thank you.

17 Your Honor, at this time I'd ask permission to publish
18 a stipulation to the jury regarding cell phone records.

19 THE COURT: Ladies and gentlemen, let me explain to you
20 that a stipulation is an agreement between counsel that
21 certain facts do exist, and, therefore, it's not required
22 that proof be offered on those particular facts that are
23 agreed to because both parties have agreed that certain
24 facts exist.

25 So, what the counsel is doing now is publishing an

Ashley Harley - Direct examination
By Solicitor Crick

1 agreement between counsel as to the existence of certain
2 facts, and that's already been discussed with the defense.

3 Any objection at this time to going forward with
4 publication?

5 MR. RECKENBEIL: No objection. We just -- we had
6 talked about the verbal stipulation.

7 THE COURT: All right. Mrs. Crick, you may proceed.

8 SOLICITOR CRICK: Thank you, Your Honor.

9 The defendant agrees, through his attorneys, that these
10 records, being phone records, are the authentic and true
11 phone call records for Ann Emery and will stipulate that
12 these records can be submitted as evidence in the trial.
13 The defendant also agrees that the defendant made the phone
14 call from the cell phone number [REDACTED] 24 at 5:14 a.m. on
15 May 11th, 2007.

16 THE COURT: Thank you, ma'am.

17 SOLICITOR CRICK: And I have nothing further, Your
18 Honor, at this time for this witness.

19 THE COURT: Cross-examination.

20 MR. RECKENBEIL: Yes, Your Honor.

21 THE COURT: Mr. Reckenbeil.

22 CROSS-EXAMINATION

23 BY MR. RECKENBEIL:

24 Q Mrs. Harley, did you ever contact the police on May the
25 11th, 2007, in regards to this voice mail?

Ashley Harley - Cross-examination
By Mr. Reckenbeil

1 A I don't believe so.

2 Q No.

3 Do you remember giving a statement to the police back
4 on the 24th of May, 2007?

5 A I do.

6 Q Okay. Cause, ma'am, that's the first time that you
7 notified the police in regards to what was put on your voice
8 mail from Tony, right?

9 A Yes.

10 Q Okay. And do you remember, in your statement, that you
11 were talking about the fact that he was drinking and he was
12 drunk and he was rude?

13 A He just sounded -- that's what I thought. He
14 sounded -- he just sounded really mad.

15 Q Really mad?

16 A I just assumed he was drunk.

17 Q Okay. Have you been around an individual that's been
18 intoxicated before?

19 A Yes.

20 Q And you made mention of it in your statement.

21 was that kind of your conclusion of what Tony was like
22 that evening that he was drinking and he was drunk?

23 A That was my opinion.

24 Q Okay. Thanks, Mrs. Harley. I appreciate it.

25 A You welcome.

Ashley Harley - Cross-examination
By Mr. Reckenbeil

1 THE COURT: Anything on redirect?

2 SOLICITOR CRICK: No, sir, Your Honor.

3 THE COURT: Do you wish to have the witness excused?

4 SOLICITOR CRICK: Yes, sir.

5 THE COURT: Any objection?

6 MR. RECKENBEIL: No.

7 THE COURT: Ma'am, you may step down and you're free to
8 go at this time.

9 State may call its next witness.

10 SOLICITOR GOWDY: May it please the Court, Your Honor.

11 The State would call Mrs. Phyllis white.

12 THE COURT: Ma'am, if you would, come forward to the
13 witness stand to my right to be sworn.

14 PHYLLIS WHITE, being first duly
15 sworn, testified as follows:

16 THE COURT: Ma'am, please state your name for the
17 record.

18 WITNESS: I'm Phyllis Adams white.

19 THE COURT: Mr. Gowdy, your witness.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 May it please the Court.

22 DIRECT EXAMINATION

23 BY SOLICITOR GOWDY:

24 Q Good morning, Mrs. white.

25 A Good morning.

Phyllis White - Direct examination
By Solicitor Gowdy

1 Q Can you tell the jury where you work, how long you've
2 been there, and how long you've lived in Spartanburg?

3 A I've lived in Spartanburg my whole life. I was born
4 here in 1950. And I worked at Spartanburg Regional. I'm a
5 retired nurse. And I still work sometimes just as they need
6 me.

7 Q All right. How long have you worked for Spartanburg
8 Regional?

9 A Thirty-two years.

10 Q And do you work as of, as a registered nurse or an LPN?

11 A As a registered nurse.

12 Q Okay. You grew up in Spartanburg?

13 A Yes, I did.

14 Q Where did you go to high school?

15 A Boiling Springs.

16 Q Okay. Do you have a family here?

17 A Yes, I do.

18 Q How many children?

19 A Four children.

20 Q And grandchildren yet?

21 A Eleven.

22 Q Eleven.

23 Okay. Mrs. White, did you know a lady by the name of
24 Ann Emery?

25 A Yes, I did.

Phyllis White - Direct examination
By Solicitor Gowdy

1 Q Tell the jury how you and Ann Emery met one another.

2 A I met Ann Emery in 1960 when my dad was preacher at
3 Carolina, at then the Airport Baptist Church, and I was --
4 Ann was about eleven and I was nine. And so, we grew up
5 together in church, seeing each other. She would come home
6 with us on Sundays, and I would spend a lot of time at her
7 house. And so, our lives have just been parallel ever
8 since.

9 Q You testified you went to Boiling Springs.

10 Now, would Mrs. Emery have gone to Boiling Springs?

11 A No, no, she didn't.

12 Q So, y'all saw each other at church?

13 A Yes, yes.

14 Q Were you also friends outside of the church?

15 A Yes, we were.

16 Q All right. And this is while y'all are little girls,
17 nine and eleven?

18 A This -- that's when it began. But we---

19 Q All right.

20 A ---been friends all our life.

21 Q All right. That's what I want to go to. I want to go
22 to the next stage from meeting as little girls to, to
23 growing up together.

24 A Our lives have always been parallel because being in
25 church and being a close church family, we just had the same

Phyllis White - Direct examination
By Solicitor Gowdy

1 system of beliefs and same kind of life-style, and then my
2 husband, at that time, was in a single group and her husband
3 Danny played the guitar. So, we, you know, we had, we were
4 practicing together and always together. We spent all --
5 our little children kind of played together, and we've just
6 been friends all our life.

7 Q Mrs. White, can you give the jury a sense of, of what
8 kind of person Ann Emery was?

9 A Yes, I can. Ann was the kind of person you would want
10 to know or to have as your friend. She was loyal. She
11 would never talk about you. She was -- even if I'd say
12 something in passing about somebody, Ann would never respond
13 to that. She was just the ideal friend to have.

14 She wouldn't denigrate her other friends or her
15 cousins. She loved everybody and she, she always wanted
16 what was best for everybody. And not only was she loyal to
17 her family and her friends, but to her church. She was very
18 loyal. I don't know what else to say.

19 Q Was she active in her church?

20 Was church a big part of her life?

21 A Yeah, church was a major part of her life. She
22 attended all the three services a week, Sunday mornings,
23 Sunday night, and Wednesday night faithfully, and we always
24 saw each other there. We would talk every service.

25 Ann was the kind of person that, in being with her, you

Phyllis White - Direct examination
By Solicitor Gowdy

1 know, all my life, that I could just look at her and she
2 would know what I was thinking or if I was upset, and she'd
3 come to me or, and put her arm around me and she was very
4 caring and comforting person.

5 Q How did she conduct herself as a, as a woman and as a
6 lady?

7 A Now, Ann was a lady. Ann was a perfect lady. I have
8 never in my whole life, in 58 years that I've lived and
9 knowing her 50 years, I have never seen her dress
10 inappropriately or unbecoming or doing immodest things.
11 That, that's just not Ann. She was not like that. Ann
12 always behaved with decorum. I've never seen her getting
13 verbally abusive to anybody or using foul language. I've
14 never witnessed that in all those years. She was just the
15 perfect christian example of a lady.

16 Q Mrs. White, can you give the jury a sense of Ann's
17 relationship with her daughter, Crystal?

18 A Ann loved Crystal so much. Every, every service that
19 we would go to, Ann would always come to me and talk about,
20 you know, Crystal because that was our common bond, her
21 children and my children, and we would talk about our
22 children. And she would always be saying pray for Crystal,
23 she's having this, or she's feeling bad about something, or
24 she loved her so much. She always provided for her.

25 Thank you.

Phyllis white - Direct examination
By Solicitor Gowdy

1 She never ever talked ugly or bad at all about Crystal
2 ever in my whole life to me. She loved her.

3 Q You mentioned a common bond, Mrs. White, and when you
4 and I met the first time, you mentioned a little girl named
5 Megan.

6 A Yeah.

7 Q Can you tell the jury about Megan?

8 A Megan is my granddaughter. And when she was born, Ann
9 and her mother, Corey, would take care of her. So, I would
10 take her over there every morning, you know, I worked Monday
11 through Friday then, and I would take her over there, over
12 there in the mornings and drop Megan off, and then I'd pick
13 her up. And then Megan has always been part of their life,
14 you know. Ann just loved Megan.

15 And so, when Megan's little boy was born, every, at
16 every church service when he started toddling around, he
17 would walk up to her pocketbook, and I'd say don't look in
18 her pocketbook. And she would always say it's okay, let him
19 get in there because she would have a little something for
20 him. She just loved Megan.

21 Q Tell the jury about her relationship with Ray.

22 A Ann truly loved Ray. You know, she went all those
23 years without being, living alone. And then when she met
24 Ray, all she could talk about was how much she loved him.
25 And then while they were married, there just came a glow

Phyllis White - Direct examination
By Solicitor Gowdy

1 over her. She was so happy.

2 And in fact, the Friday night before she was killed the
3 next week, we were at church and the church had had -- Ray
4 was taking pictures of our church because our church was
5 going on a mission trip. And as part of Ann's and Crystal's
6 donation, Ray was taking pictures, you know, of the church
7 people and contributing some of that money.

8 And so, while we were there, Ann and I were sitting
9 talking to each other when she was taking up the money and
10 we were reviewing the pictures. And I looked at her and I
11 said Ann, you just, you're just so happy, aren't you. And
12 she looked at me and she said if I'd of known I'd be this
13 happy, I would of married him years ago. She was -- she
14 loved him.

15 Q And that conversation was how many days before May the
16 11th?

17 A That was a week. That was the Friday before she was
18 killed the next Friday morning.

19 Q Mrs. White, can you tell the jury what you miss most
20 about Ann?

21 A I miss her so much. I miss the life that we had
22 together, somebody that knew my childhood, who knew all my
23 heartaches, who knew the struggles that I've been through,
24 and she'd been through them too, and, and she sympathized
25 and she knew. I missed being able to, to look at somebody

Phyllis white - Direct examination
By Solicitor Gowdy

1 and know that they knew what I was thinking, somebody who
2 was like me that had the same background, the same beliefs,
3 and stuff.

4 Q If you would---

5 A I miss her loyalty.

6 Q If you had known that Friday or Sunday or Wednesday
7 night at church, whatever your last conversation with Ann---

8 A It was Wednesday before she was killed Friday morning.

9 Q Wednesday at church?

10 A Uh-huh. (Affirmative).

11 Q If you had known that that was gonna be the last
12 conversation you ever had with her, what would you have told
13 her?

14 A Oh, I don't think I would of took it for granted that
15 she would always be there. I think I would of said you know
16 I love you so much. You've been such a friend to me.
17 You've been by my side. I'd had -- a couple years before I
18 had a really hard time and she was always there for me. She
19 was always comforting me and hugging me and helping me
20 through that. And I would, I would have said you are such a
21 friend. I didn't realize how dear a friend you were and I
22 wished that I had told her over and over and over how much I
23 love you.

24 Q Mrs. white, please answer any questions the defense
25 attorney may have for you.

1 THE COURT: Anything from the defense?

2 MR. ALLEN: No, Your Honor.

3 THE COURT: Wish to have this witness excused?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Ma'am, you may step down.

6 Any objection?

7 MR. ALLEN: No, Your Honor.

8 THE COURT: You're free to go if you'd like. Thank
9 you, ma'am.

10 State may call its next witness.

11 SOLICITOR GOWDY: Your Honor, the next witness is in
12 relation to a matter we discussed earlier this morning, and
13 I believe the Court was taking a recess to resolve certain
14 matters.

15 THE COURT: All right. Ladies and gentlemen, I'm going
16 to excuse you again to go to the jury room. I will, as
17 always, advise you not to begin any discussing concerning
18 this matter until you've heard all the evidence, arguments
19 of counsel, and I've charged you concerning the law.

20 You may retire to the jury room.

21 Thank you very much.

22 Everyone remain seated.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Mr. Gowdy, the next witness will be?

1 SOLICITOR GOWDY: From the Spartanburg County Detention
2 Center, Your Honor. It is related to the incident Sunday
3 night.

4 THE COURT: Have you had an opportunity to see those
5 policies?

6 MR. RECKENBEIL: Your Honor, I had. I've had a book
7 that I have reviewed that is a Spartanburg County Detention
8 Center policy manual. We have found the use of force
9 policy. But I do not have the most updated one.

10 THE COURT: Why don't, why don't I give you about a
11 ten, fifteen minute break and let you take a look at those
12 things and if you'll advise the Court when you're ready to
13 start.

14 MR. RECKENBEIL: Thank you.

15 THE COURT: Court will be in recess briefly. Thank
16 you.

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

18 THE COURT: All right. Has the, has the defense had an
19 opportunity to review those procedures?

20 MR. RECKENBEIL: Yes, sir, Your Honor.

21 THE COURT: Are we ready to proceed?

22 MR. RECKENBEIL: Yes, sir.

23 THE COURT: The State may call its next witness.

24 SOLICITOR GOWDY: Your Honor, the State would call
25 officer Anthony Martinez as its next witness.

1 THE COURT: Yes.

2 MR. RECKENBEIL: Just for the record, I'd like to put
3 one thing on the, on the record.

4 THE COURT: All right. Mr. Martinez, if you'll just
5 have a seat.

6 SOLICITOR GOWDY: He's outside.

7 THE COURT: Leave him outside for right now.

8 MR. RECKENBEIL: Your Honor, we've had an opportunity
9 in camera to review the videotape of the State's next
10 witness in which they are claiming that there was a, a
11 mental, a situation there at the detention center---

12 THE COURT: Yes, sir.

13 MR. RECKENBEIL: ---which resulted in pepper spray.

14 Your Honor, we have reviewed the procedures manual and
15 we would just say that in accordance to the procedures
16 manual we feel that their use of pepper spray was not
17 authorized. So, therefore, we would feel that this
18 testimony would not only be irrelevant, but if it was deemed
19 to be relevant, that the prejudicial effect would
20 substantially outweigh the probative value due to the fact
21 that the State violated its own policy in the use of pepper
22 spray.

23 Therefore, I think it might be pertinent that this
24 officer proffer his testimony. We have an opportunity to
25 flesh out whether or not there's a violation of its own

1 internal policy, and then, if the Court deems that there was
2 not and deems that it's relevant, deems that it meets 403,
3 then I think they can present that to the jury.

4 THE COURT: The State ready to make a proffer, if
5 necessary?

6 SOLICITOR GOWDY: Yes, sir, Your Honor. Your Honor, in
7 fact, I have -- Captain Alan Freeman was just out in the
8 hallway. I am delighted to call him as a supervisor to, to
9 explain the use of force policy and allow Mr. Reckenbeil to
10 cross-examine him. I just, I just think that would be more
11 productive than calling an officer who's been there for one
12 year.

13 THE COURT: All right.

14 SOLICITOR GOWDY: I can do either one.

15 THE COURT: Well, you can -- when you make a proffer,
16 you can call anybody you'd like. He's questioned whether or
17 not they have properly applied the proper procedures.

18 SOLICITOR GOWDY: Yes, sir.

19 THE COURT: And if you wish to proffer evidence,
20 testimony on the subject, I'll allow you to do so.

21 SOLICITOR GOWDY: We would call Captain Alan Freeman,
22 and I'm very hopeful that he's still out there.

23 THE COURT: All right.

24 SOLICITOR GOWDY: Your Honor, would the Court allow me
25 to step out?

Alan Freeman - Direct examination
By Solicitor Gowdy

1 THE COURT: Yes, sir, you may step out.

2 SOLICITOR GOWDY: Your Honor, he's securing his weapon
3 and he's coming in.

4 THE COURT: Thank you.

5 Come forward, sir, to the witness stand to be sworn.

6 ALAN FREEMAN, being first duly
7 sworn, testified as follows:

8 THE COURT: Sir, have a seat in the witness stand.
9 (Witness complies.)

10 THE COURT: State your name for the record please.

11 WITNESS: Alan Freeman.

12 THE COURT: Mr. Gowdy.

13 SOLICITOR GOWDY: Thank you, Your Honor.
14 May it please the Court.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY SOLICITOR GOWDY:

18 Q Good morning, Captain Freeman.

19 A Good morning.

20 Q Can you tell the Court how long you have been in law
21 enforcement?

22 A Twenty-three years, six months.

23 Q And you are currently employed where?

24 A Spartanburg County Detention Facility.

25 Q In what capacity?

Alan Freeman - Direct examination
By Solicitor Gowdy

1 A Currently I supervise all the court officers that are
2 assigned to the courthouse as well as ID and property
3 identification in the jail.

4 Q What rank do you hold within the detention facility?

5 A I serve as a captain in the facility.

6 Q And is that considered a leadership position?

7 A It is.

8 Q Are you familiar with your detention facilities use of
9 force policy?

10 A Yes, sir, I am.

11 Q Can you tell the Court what the use of force policy is
12 graduated up if you want to?

13 A Okay. Use of force policy is, is a guide for our
14 officers to follow that at work in the facility as well as
15 the courthouse. Our first, it would be officer's presence,
16 of course, and then verbal commands, soft hand, and then
17 hard hand commands with follow-up at the end with deadly
18 force.

19 Q With deadly force?

20 A Yes, sir.

21 Q All right. If an inmate refuses multiple verbal
22 commands, is the use of ODC spray or pepper spray
23 permissible under your use of force policy?

24 A It is. Yes, it is.

25 Q Is there any talismanic number of how many times

Alan Freeman - Direct examination
By Solicitor Gowdy

1 someone has to refuse a verbal command before it can be
2 used?

3 A No, sir.

4 Q If a, an inmate directly states to an officer do not
5 put your hands on me, would ODC spray be authorized?

6 A It could be, yes, sir.

7 Q All right. Thank you, Your Honor. Those are all the
8 questions I have for Captain Freeman.

9 THE COURT: Mr. Reckenbeil.

10 CROSS-EXAMINATION

11 BY MR. RECKENBEIL:

12 Q Captain Freeman, what part of pepper spray is in the
13 four that you just listed?

14 You said presence, verbal commands, soft hand, hard
15 command, I'm sorry, five, deadly force?

16 A It comes after hard hand tactics, yes, sir.

17 Q All right. What is soft hands tactics?

18 What do you mean by soft hand?

19 A It could be considered an armed bar, wrist lock, or
20 something of that nature.

21 Q Okay. And so, you would do that before you then, in
22 fact, used pepper spray?

23 A Not necessarily. We do not have to go step-by-step
24 before we determine what level of force we're gonna use.

25 Q Did you have the opportunity to review the videotape of

Alan Freeman - Cross-examination
By Mr. Reckenbeil

1 Mr. Torres of the other evenings incident?

2 A I have not, sir.

3 Q You haven't. Okay. Well, let me just talk in
4 generalities with you.

5 If an individual is verbally disagreeing with an
6 officer, is not, not threatening an officer, is not inciting
7 others, he's not threatening the officer in any way, in your
8 opinion, sir, according to your policies, would there be an
9 ability to use pepper spray

10 A If he's not complying with officer's instruction it may
11 be an opportunity. He may have to use pepper spray to get
12 compliance, yes, sir.

13 Q Okay. In what way?

14 A If he's having to go into the cell to remove the inmate
15 from the cell, he's refusing to come out, or if he's
16 refusing to be searched, or whatever the situation may be,
17 he could use pepper spray at that time.

18 Q All right. Let me show you Page 1 of 6. If you would,
19 sir, just take a look at that.

20 A Okay.

21 Q You've had a chance to look at that?

22 A Yes, sir, I have.

23 Q And is that a portion of the pepper spray policy of the
24 detention center that you work for?

25 A Yes, that's the use of force, OC, OC, pepper spray

Alan Freeman - Cross-examination
By Mr. Reckenbeil

1 policy.

2 Q And the questions that I was talking about -- do you
3 see the highlighted portion of that, that piece of paper?

4 A I do.

5 Q Okay. And you would agree with me, sir, that that
6 highlighted portion of the pepper spray says that an
7 individual inmate is not to be, may not be pepper sprayed if
8 the individual is verbally disagreeing, is not inciting
9 violence, not inciting others, and there's a couple other
10 stipulations in that?

11 Would you agree with me, sir, that that's your policy
12 and that's how it's stated?

13 A I'm am reading the parts you highlighted. That's what
14 it says in the highlight, yes, sir.

15 Q Okay. So, if an individual is just verbally
16 disagreeing and they're not, in fact, inciting violence, not
17 inciting others, wouldn't it be fair, sir, that your policy
18 states that that person should not be or may not be pepper
19 sprayed?

20 A According to this policy, it saying it may be
21 expressing verbal disagreement, is not threatened or incite
22 a prisoner, threatened the officer significantly, or
23 obstructing discharge of his or her duties. But, again,
24 they -- he's got to comply with our policies. So, we either
25 have to be hands-on or pepper spray at that point.

Alan Freeman - Cross-examination
By Mr. Reckenbeil

1 Q Okay. But you would -- would you agree with me, sir,
2 that the elevation would be from verbal warning to soft
3 hands, which would be some sort of physical movement of the
4 inmate by a prison guard before pepper spray?

5 A No, sir, I don't because, again, I tell you we do
6 not -- there's not, nothing set in the policies that you
7 have to follow step by step by step on what it takes to get
8 him to comply with your orders.

9 Q All right. But you listed that out, sir, when the
10 solicitor asked you of the steps?

11 A I did, yes, sir.

12 MR. RECKENBEIL: All right. Judge, I don't think we
13 need to make this an exhibit. But if Your Honor -- that
14 would be all the questions that I have.

15 THE COURT: Anything further from the State?

16 SOLICITOR GOWDY: Just very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY SOLICITOR GOWDY:

19 Q But Captain Freeman, I want you to imagine multiple
20 verbal commands. All right. More than ten verbal commands.
21 I want you to imagine three different times a suspect says
22 do not put your hands on me, and the suspect is also warned
23 if you don't comply, you may be sprayed.

24 would the use of pepper spray be authorized in that
25 fact pattern?

Alan Freeman - Redirect examination
By Solicitor Gowdy

1 A Yes, it would.

2 Q Thank you.

3 THE COURT: Any other questions?

4 MR. RECKENBEIL: No other questions.

5 THE COURT: Thank you, sir. You may step down.

6 Any other witnesses in the proffer concerning the
7 policies from the State?

8 SOLICITOR GOWDY: No, sir, Your Honor.

9 THE COURT: Any witnesses from the defense?

10 MR. RECKENBEIL: Nothing, Your Honor.

11 THE COURT: All right. I'll be happy to hear counsel
12 concerning it. The State is offering, but the defense is
13 making the motion to exclude the testimony. So, I'll take
14 it as your motion to exclude.

15 MR. RECKENBEIL: Your Honor, just based upon the fact
16 that I think we have a clear policy which states that an
17 individual is verbally disagreeing. Your Honor's had the
18 opportunity to review that tape. He's clearly verbally
19 disagreeing. Does not threaten, does not incite others, or
20 threaten an officer, or is not significantly delaying or
21 obstructing the discharge of his duties.

22 Judge, we would feel that this would be a situation
23 where there was an elevation past what needed to happen in a
24 highly sensitive situation. So, therefore, we would think
25 that, number one, they violated their own policy. In fact,

1 they were elevating when they didn't need to elevate. And
2 so, therefore, we would ask that this would be excluded
3 under that.

4 THE COURT: Now, Mr. Reckenbeil, let me just ask you a
5 couple of questions about your position. First of all, I
6 did review the, the video in chambers. And during my
7 review, I did hear the defendant, on several occasions,
8 indicate to the officers not to touch him at all.

9 Did you---

10 MR. RECKENBEIL: Yes, sir.

11 THE COURT: Would you agree that that's what the video
12 would reveal?

13 MR. RECKENBEIL: I would, Your Honor.

14 THE COURT: And also the video revealed that, that he
15 received several direct commands to comply with the,
16 allowing the officers to pat him down before he was removed
17 from his cell. I didn't, I didn't count the number, but
18 there were several commands.

19 MR. RECKENBEIL: Yes, sir.

20 THE COURT: All right. The policy that you just read,
21 I have not seen it. But it does indicate that the use of
22 pepper spray shouldn't be employed unless, I think, I don't
23 know the exact wording, but I think the wording was
24 something that the prisoner was delaying the officer in the
25 discharge of his duties.

1 Is---

2 MR. RECKENBEIL: Significantly delaying or obstruction
3 of the officer's duties.

4 THE COURT: Okay, sir. I just want to be sure that I'm
5 clear as to what I've heard.

6 I'll hear from the State on that issue.

7 SOLICITOR GOWDY: Your Honor, in, in all frankness,
8 it's not the pepper spray is what the State is primarily
9 interested in. It is what's precipitated that or leads up
10 to it. And that is immanently relevant when you're
11 discussing the character of, of someone who is just
12 sentenced to a life prison sentence. If, if I understood my
13 distinguished counsel correctly, the detention officer
14 should still be there right now trying to verbally convince
15 him that, that they would never be able to use verbal spray
16 and that, that's just illogical.

17 The Court correctly noted three different times he said
18 don't touch me. They went to pepper spray. But it's the
19 colloquy before the pepper spray I think best demonstrates
20 the character of this defendant.

21 THE COURT: All right. I'm gonna overrule the
22 objection. I will allow it. I do not find the actions of
23 the guards, given the testimony and the policy that I've
24 heard, are, are volitive of the policy per se or at, or at
25 all. And so, I find no reason for it not to be allowed for

1 that reason.

2 Anything further before we bring the jury back?

3 MR. RECKENBEIL: Nothing from the defense, Your Honor.

4 THE COURT: Anything further from the State?

5 SOLICITOR GOWDY: No, sir, Your Honor.

6 THE COURT: Let's bring the jury in, Mr. Humphries.

7 (Whereupon, the following takes place within the
8 presence of the jury.)

9 THE COURT: The record will reflect that the jury has
10 returned to the courtroom. I have overruled an objection
11 from the defense.

12 State may call its next witness.

13 SOLICITOR GOWDY: Your Honor, may it please the Court.
14 The State would call Officer Anthony Martinez.

15 THE COURT: Sir, come forward to the witness stand to
16 my right to be sworn please.

17 ANTHONY MARTINEZ, being first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat in the witness stand please.

20 (Witness complies.)

21 THE COURT: Move forward to the microphone. State your
22 record please, sir, I mean your name for the record please,
23 sir.

24 WITNESS: Jose Anthony Martinez.

25 THE COURT: Mr. Gowdy, it's your witness.

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Thank you, Your Honor.

2 May it please the Court.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY SOLICITOR GOWDY:

6 Q Good afternoon, Officer Martinez.

7 A Afternoon.

8 Q I'm gonna get you to speak in a smooth and strong and
9 clear voice for the last two gentlemen in the jury box can
10 hear you.

11 okay?

12 A Yes, sir.

13 Q Where do you work?

14 A Spartanburg County Detention Facility.

15 Q How long have you been there, sir?

16 A A year and two months.

17 Q And your duties and responsibilities, would they
18 include having interaction with inmates?

19 A Yes, sir.

20 Q I want to take you back to Sunday night, two nights,
21 two nights ago, Sunday night.

22 Did you have occasion to interact with Andres Torres?

23 A Yes, sir.

24 Q Tell the jury what you were trying to get him to do.

25 A I was trying to get him to be patted down also known as

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 a frisk search.

2 Q And I'm gonna lead a little bit in this area just, just
3 I think with defense counsel's permission.

4 He was being moved from one cell to another, correct?

5 A Yes, sir.

6 Q All right. And is it your policy to pat someone down
7 when that is done?

8 A Yes, sir.

9 Q All right. How do you go about requesting an inmate
10 allow himself or herself to be patted down?

11 A We give them instruction and basically it's, sir, if
12 you can, put your hands on the wall, spread your legs, step
13 back, and then we then perform in patting down.

14 Q All right. Now, I'm going to show you what has been
15 marked as State's Exhibit 554 and ask you whether or not you
16 have reviewed that and whether it fairly and accurately
17 depicts what happened Sunday night at the detention center?

18 A Yes, sir.

19 Q Does it -- is it fair and accurate?

20 A Yes, sir.

21 SOLICITOR GOWDY: Your Honor, I would ask permission to
22 publish 554 to the jury.

23 THE COURT: Are you offering it as an exhibit?

24 SOLICITOR GOWDY: Yes, Your Honor. I apologize. I'm
25 offering it in evidence, Your Honor.

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 THE COURT: Subject to your prior objection?

2 MR. ALLEN: Subject to the prior objections, yes, sir.

3 THE COURT: All right. The objection is noted. It
4 will be admitted as marked.

5 (Whereupon, State's Exhibit No. 554 was received into
6 evidence at this time.)

7 THE COURT: You may proceed.

8 SOLICITOR GOWDY: Thank you, Your Honor.

9 Q All right. Officer Martinez, before the jury views
10 this, somebody came in with a video camera, correct?

11 A Yes, sir.

12 Q Were you having interaction with Mr. Torres before the
13 video camera was turned on?

14 A Yes, sir.

15 Q Were you at -- did you ask him to comply with your
16 verbal commands even before this videotape started?

17 A Yes, sir.

18 Q So, I guess what I'm saying is this videotape does not
19 capture the beginning of your interaction with him?

20 A Yes, sir.

21 Q There was a period of time -- tell the jury how long
22 you were interacting with Mr. Torres before this video
23 camera ever came into play.

24 A About a minute.

25 Q And had you asked him in that minute or had you given

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 him a verbal command that he need be patted down?

2 A Yes, sir.

3 Q Officer Martinez, is it the policy of your institution
4 to pat inmates down when they're being moved?

5 A Yes, sir, it is the policy.

6 Q Were you doing anything more than enforcing the policy
7 of your institution?

8 A I was just enforcing the policy.

9 SOLICITOR GOWDY: Your Honor, we would ask permission
10 to publish it at this time.

11 THE COURT: You may do so.

12 (Whereupon, a small portion of State's Exhibit No. 544
13 was played for the jury at this time.)

14 Q Officer Martinez, that is -- tell the jury what they're
15 looking at right now.

16 A Right there he's asking me for his property after I got
17 done asking him to get his hands on the wall so I could pat
18 him down.

19 Q That is you that's in the video that the jury's looking
20 at?

21 A Yes, sir.

22 Q All right. And then shortly after someone arrived with
23 a videotape?

24 A Yes, sir.

25 Q But you had been discussing this with him even prior to

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 that?

2 A I'd been discussing it.

3 Q Okay.

4 THE COURT: Mr. Solicitor, I'm going to ask you to stop
5 it for just a moment and ask the attorneys to approach.

6 (Whereupon, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: Ladies and gentlemen of the jury, I hate to
9 interrupt us at this point in time, but I'm going to ask you
10 to step back to the jury room on one more occasion. Again,
11 don't begin any discussions until I've advised you to do so.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Mr. Allen, are there any
15 additional objections you may have to the playing of the
16 videotape?

17 MR. ALLEN: Yes, Your Honor.

18 In addition to the objections as stated previously in
19 the camera hearing, we also object to the admission of the
20 videotape inasmuch as it shows our, my client responding to
21 questions from the officer. Clearly he's in custody. I
22 don't think there was ever any indication that he was
23 advised of his Miranda rights or anything of that nature,
24 and we believe that admitting the videotape as it is,
25 especially with the sound showing the, the, showing the

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1 interrogation, and the, and his responses would be volitive
2 of his Fifth and Fourteenth Amendment rights under the
3 United States Constitution as well as the corresponding
4 sections of the South Carolina Constitution specifically
5 since they do not advise him of his rights under Miranda.

6 THE COURT: All right. Solicitor, I'll hear you on
7 that point.

8 SOLICITOR GOWDY: Your Honor, please the Court.

9 I, I don't believe that this is the kind of setting
10 that Miranda was entitled, was, was, envisions. It is not
11 an in-custodial interrogation standpoint in trying to elicit
12 information. It is a detention officer trying to get him to
13 comply with the policy. From that standpoint, I would say
14 it's more like United States versus Jamison, which was a
15 hospital emergency room setting.

16 I can see he's in custody. But I also would point out
17 to the Court it wasn't 12 hours earlier that he was advised
18 by this Court in this very courtroom of his right to remain
19 silent. So, he's well aware. He's been advised of his
20 Miranda warnings now three times that I can count in this
21 and, and this case alone.

22 This officer is not trying to elicit information that
23 is damaging from him. He is simply trying to get him to
24 comply. It would be just like going to, to the nurse or
25 going to the dentist in a prison setting. Every

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1 conversation or interaction between detention guards and
2 inmates doesn't require prophylactic Miranda warnings.
3 There is no intent to elicit incriminating information from
4 this defendant. In fact, as you will hear from the tape, he
5 does most of the talking, and he initiates it, and it, it's
6 just not what Miranda was contemplated to cover.

7 MR. ALLEN: We also would---

8 THE COURT: Mr. Allen.

9 MR. ALLEN: Excuse me.

10 THE COURT: Go ahead.

11 MR. ALLEN: But I also think it is important that,
12 that, especially in, in as much as they moved the video
13 camera into view where they can videotape this and videotape
14 my client acting and reacting to the officer's request, they
15 are clearly creating evidence for use against him in Court.

16 I don't, I don't think a blanket advice by the Court in
17 a courtroom setting when we're talking essentially about
18 testimony would cover situations like this or for that
19 matter that when they moved to a different setting and
20 different situation that he should of been advised of his,
21 of his, simply of his rights to remain silent, and sort of
22 bring home to him the fact that this can used as evidence
23 against you in Court, and I think, in fact, creating the
24 video for that purpose. So, I think, in, in that sense,
25 that Miranda rights should of been made.

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, Miranda rights are crime
2 specific. There is no crime he's being interrogated about.
3 He was just convicted of the crimes that are at bar.
4 Miranda warnings -- I mean you don't Mirandize inmates when
5 they go to eat breakfast. You don't Mirandize them when
6 they go to the infirmary. You don't Mirandize them when
7 they go to the pod.

8 He was not interrogating Mr. Torres about any crime.
9 He was simply trying to get him to follow policy. And with
10 respect to the videotaping, I suspect that was the last
11 thing on these guys' minds was this thing being played in
12 Court. That's done for civil liability purposes to show
13 that he wasn't rough housed or mistreated, and it, too, is
14 the policy at the detention counter.

15 THE COURT: All right. I'll take a brief recess while
16 I consider the matter.

17 Thank you.

18 MR. ALLEN: Your Honor, may I lodge an additional
19 objection?

20 THE COURT: Yes, sir. I'm sorry.

21 MR. ALLEN: Any other---

22 THE COURT: I thought you were through.

23 MR. ALLEN: Also I, I believe this will also inject the
24 video to this trial further, would inject arbitrary factor
25 into this case, which would be a violation of state statute

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 and arbitrating factors can not be interjected in this.

2 THE COURT: I'm not sure I understand what you're
3 saying.

4 MR. ALLEN: Let me get the statute, specific statute.
5 (Pause.)

6 MR. ALLEN: Your Honor, I can't find the reference at
7 this time. But generally, in the penalty phase of a death
8 penalty case, that injecting arbitrary factors as
9 essentially a type, you know, that's not specifically keyed
10 to the, the statutory aggravating circumstances is generally
11 inadmissible or improper and this is not tied to a specific
12 statutory aggravating factor that states these two to prove
13 and I mean simply talking about---

14 THE COURT: Okay. I, I think I understand your
15 position. Again, I'll take a recess for a few minutes.

16 Thank you very much.

17 MR. ALLEN: Thank you.

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

19 THE COURT: All right. I've had an opportunity to
20 review several cases. One of which is U.S. Supreme Court
21 case, Pennsylvania versus Muniz, M-U-N-I-Z, 1990 case. It
22 appears that the rule is generally when a defendant is
23 responding, even in a custodial setting, to routine
24 questions, this was a booking procedure as opposed to a
25 incarceration situation, that information that was

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1 voluntarily given by the defendant in response to those
2 routine questions that were not intended to elicit
3 information concerning the case did not violate the Miranda
4 warnings or the, or did not necessitate the need for
5 Miranda. Miranda does not protect against routine questions
6 which are not investigatory in nature.

7 And, so, therefore, I will allow the video. Objection
8 noted and we'll bring the jury back.

9 SOLICITOR GOWDY: Thank you.

10 THE COURT: Yes, sir.

11 MR. ALLEN: Yes, sir, Your Honor, if I could, I finally
12 found what I was talking about.

13 THE COURT: Just one second, Mr. Humphries.
14 Go ahead.

15 MR. ALLEN: Arbitrary factor, 16-3-25(c)(1) that makes
16 reference that, granted on appeal, that the Court shall
17 review the sentence to determine whether or not the sentence
18 of death was imposed under the influence of passion,
19 prejudice, or any other arbitrary factor, and that's what
20 I'm trying to get at when I make my argument that this is
21 injecting an arbitrary factor into the case.

22 THE COURT: Mr. Gowdy, on that particular question?

23 SOLICITOR GOWDY: Your Honor, I think the juris
24 prudence of our state is clear, the character of the
25 defendant is not arbitrary, and future dangerous is not

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 arbitrary. His adaptability to prison is not arbitrary.

2 All of those issues are germane to what this jury is trying
3 to decide.

4 THE COURT: I'd overrule that objection as well.

5 MR. ALLEN: Yes, sir.

6 THE COURT: Bring, bring the jury in.

7 SOLICITOR GOWDY: You want it restarted or pick back
8 up?

9 THE COURT: However you'd like to do it.

10 (Whereupon, the following takes place within the
11 presence of the jury.)

12 THE COURT: Mr. Solicitor, you may proceed.

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

14 THE COURT: Yes, sir.

15 CONTINUED DIRECT EXAMINATION

16 BY SOLICITOR GOWDY:

17 Q Officer Martinez, can you give the jury a sense of what
18 time of the, of the evening this took place?

19 A Around six o'clock.

20 Q Around six o'clock p.m.?

21 A Yes, sir.

22 Q And, again, that's Sunday night?

23 A Sunday.

24 Q The most recent Sunday night?

25 A Yes, sir.

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 Q Okay.

2 (Whereupon, another portion of State's Exhibit No. 544
3 was played for the jury at this time.)

4 Q Officer Martinez?

5 A Yes, sir.

6 Q How many different times did you try to explain to this
7 inmate that you were just following policy?

8 A Oh, several times.

9 Q Did you hear him tell you don't put your hands on me?

10 A Yes, sir.

11 Q Did you hear it more than once?

12 A Yes, sir.

13 (Whereupon, another portion of State's Exhibit No. 544
14 was played for the jury at this time.)

15 Q Officer Martinez?

16 A Yes, sir.

17 Q What the jury just watched all started with what?

18 A Him not wanting to comply.

19 Q You made a verbal command?

20 A Yes, sir.

21 Q To just pat him down?

22 A Yes, sir.

23 Q How long did you spend trying to get him to comply
24 before any force at all was used?

25 A About eight minutes.

Anthony Martinez - Direct examination
By Solicitor Gowdy

1 Q You heard him say ain't nobody gonna touch me?

2 A Yes, sir.

3 Q Officer Martinez, you have worked for the detention
4 center for one year?

5 A Yes, sir.

6 Q In that one year, how many times have you had to pepper
7 spray an inmate?

8 A Once.

9 Q One time.

10 Please answer any questions the defense attorney may
11 have.

12 THE COURT: Mr. Allen.

13 MR. ALLEN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. ALLEN:

16 Q Officer, I believe you said, before the video camera
17 was turned on, you started what we just watched, you had
18 been talking with Mr. Torres for about a minute about
19 patting him down.

20 would that be correct?

21 A When he came into the cell, we gave him the
22 instructions to get on the wall so he could be patted down.

23 Q And this would---

24 A When, when he refused, another officer asked him and he
25 refused also. At that point, the decision to get the camera

Anthony Martinez - Cross-examination
By Mr. Allen

1 was made and nothing was said to him until the camera
2 arrived.

3 Q Okay. And it did not take that long to get the camera.
4 would that be a correct statement?
5 Did not take very long to get the camera?

6 A No, sir.

7 Q Less than a minute?

8 A About a minute.

9 Q About a minute?

10 A Yes, sir.

11 Q Okay. And once the camera was present, started
12 recording, then, of course, you continued with your request,
13 correct?

14 A Yes, sir.

15 Q Okay. Now, I believe you indicated in your testimony
16 earlier that this occurred at about what time?

17 A Six o'clock. I believe it was actually 6:40 when it
18 happened.

19 Q 6:40?

20 A Yes, sir.

21 Q P.M.?

22 A P.M.

23 Q Okay. Now, you were not asking him or wanting to frisk
24 him because you suspected he had done anything wrong, did
25 you?

Anthony Martinez - Cross-examination
By Mr. Allen

1 A It's policy. We pat them down when they come into a
2 pod.

3 Q Okay. Pat them -- just regardless of if they've been
4 from say court coming back, is that correct?

5 A Anytime an inmate leaves a pod, they're to be patted
6 down when they arrive.

7 Q Okay. But again, you did not suspect that he had
8 anything, did you?

9 A It's policy. I got to do it when asked. When they
10 come in, I do it.

11 Q And that policy -- what I'm getting at is you did it
12 strictly because of---

13 A That's my job. I'm suppose to.

14 Q That's your job you're suppose to.

15 A Yes, sir.

16 Q Not because you had any suspicion?

17 A No, sir.

18 Q Okay. Now, matter of fact -- well, I don't recall.
19 You were not with him throughout, is that correct?

20 A What do you mean?

21 Q Were you with him beyond this point of---

22 A Yeah, I stayed with him the entire time.

23 Q You stayed with him.

24 And at some point, of course, he was taking a shower,
25 correct?

Anthony Martinez - Cross-examination
By Mr. Allen

1 A Yes, sir.

2 Q And the purpose of that was, I think y'all call it
3 decontamination?

4 A Yes, sir.

5 Q In other words, to get the pepper spray off his face,
6 correct?

7 A Yes, sir.

8 Q Because it does burn, right?

9 A Yes, sir.

10 Q And, and, of course, doing the shower, his, he took his
11 clothes off, right?

12 A Yes, sir.

13 Q You didn't find anything, did you?

14 A No.

15 Q Okay. As far as policy goes, is there also a policy,
16 to your knowledge, that the detention center has on use of
17 force?

18 A Yes, sir.

19 Q Okay. And, and when you talk about use of force, that
20 includes pepper spray, correct?

21 A Yes, sir.

22 Q And the policy is sort of a graduated use of force?

23 A Yes, sir.

24 Q I mean, in other words, you don't start off with the
25 most severe type of force, correct?

Anthony Martinez - Cross-examination
By Mr. Allen

1 A Correct.

2 Q And, of course, the first type of, of use of force, as
3 we call it, is verbal commands?

4 A Verbal commands.

5 Q Verbal commands, correct?

6 A Yes, sir.

7 Q And also the next step up is presence of other
8 officers, correct?

9 A Yes, sir.

10 Q The idea being that several officers present to
11 encourage the person to comply, correct?

12 A Yes, sir.

13 Q And then there's also use of force known as a soft hand
14 techniques.

15 Is that the next?

16 A Yes, sir.

17 Q Soft hand techniques are what?

18 A Grabbing a hold of the person that's -- grabbing a hold
19 of the person, put them in an escort position. Grabbing a
20 hold of the inmate and putting him in an escort position.

21 Q Put him in an escort position?

22 A Yes, sir.

23 Q And an escort position is---

24 A Holding on to the arm.

25 Q Holding on to the arm and guiding them to the wall,

Anthony Martinez - Cross-examination
By Mr. Allen

1 correct?

2 A Uh-huh. (Affirmative).

3 Q I mean in a situation where you wanted to pat him down,
4 correct?

5 A Yes, sir.

6 Q And that was not done in this case?

7 A No, sir, it wasn't.

8 Q Okay. And then the next level I guess, is, is it
9 called a hard hand technique?

10 A Yes, sir.

11 Q What is that?

12 A It's a -- I mean it's a strike. More of a take down
13 technique---

14 Q Okay.

15 A ---to get the inmate from on their feet on to the
16 floor.

17 Q Okay. So that you could, in the, in the appropriate
18 situation, subdue, is that correct?

19 A Yeah, to be restrained.

20 Q And to restrain.

21 Okay. And that was not done in this case before the
22 pepper spray, was it?

23 A No, sir.

24 Q Okay. And then is the next level of force, what would
25 that be?

Anthony Martinez - Cross-examination
By Mr. Allen

1 A I can't think of it off the top of my head right now.

2 Q Would it be the pepper spray or does that come later?

3 A I believe it would be the pepper spray.

4 Q Okay. And, of course, that was done in this case,
5 correct?

6 A Yes, sir.

7 Q And then, of course, there are other levels of force
8 too, correct?

9 A Yes, sir.

10 Q Okay. But with Mr. Torres, you did not, before using
11 the pepper spray, you did not use a soft hand technique?

12 A No, sir, he did not want to be touched.

13 Q Or hard hand technique?

14 A No, sir.

15 Q Okay. Now, afterwards, he complied, is that correct?

16 A Yes, sir.

17 Q Now, you assisted him up off the floor because,
18 handcuffs behind their backs, it's difficult for any person
19 to get up off the floor in that situation.

20 would that be correct?

21 A Yes, sir.

22 Q And, and he walked where you directed him?

23 A Yes, sir.

24 Q You and the other officer I believe it was directed,
25 correct?

Anthony Martinez - Cross-examination
By Mr. Allen

1 A (Witness nods affirmatively.)

2 Q He did not give you any trouble in the shower?

3 A No, sir.

4 Q Okay. Or in getting dressed into different dry
5 clothes?

6 A No, sir.

7 Q Or in being escorted?

8 I believe he was first escorted to a van, correct, to
9 be take him to the hospital?

10 A I wasn't a part of that.

11 Q You weren't a part of that.

12 At some point he was escorted back to the cell,
13 correct?

14 A Yes, sir.

15 Q Were you present for that part?

16 A I wasn't a part of that.

17 Q You were not part of that.

18 Okay. One second please, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q Thank you, officer.

22 THE COURT: Redirect?

23 SOLICITOR GOWDY: Very briefly, Your Honor.

24 THE COURT: Yes, sir.

25 REDIRECT EXAMINATION

Anthony Martinez - Redirect examination
By Solicitor Gowdy

1 BY SOLICITOR GOWDY:

2 Q Officer Martinez, have you ever been sprayed with
3 pepper spray?

4 A Yes, sir.

5 Q Is it part of what you have to go through to become a
6 prison guard?

7 A Yes, sir.

8 Q Is it fair to say that, that getting your eyes washed
9 out with water is a really high priority after you get
10 pepper sprayed?

11 A Yes, sir.

12 Q And you, you very much want to get your eyes washed
13 out?

14 A Yes, sir.

15 Q Okay. I counted three different officers gave him
16 verbal commands.

17 Did I follow your testimony correctly?

18 A Yes, sir.

19 Q You gave him a verbal command?

20 A Yes, sir.

21 Q Was another officer in the cell before the videotape
22 came on?

23 A There was the officer actually holding the camera.

24 Q Okay. And there was another officer who came in at the
25 very end and gave him a verbal command?

Anthony Martinez - Redirect examination
By Solicitor Gowdy

1 A Yes, sir, that was a supervisor.

2 Q And can you estimate for the jury how many different
3 times this defendant told you don't touch me?

4 A Fifteen, twenty times.

5 Q And you were how close to him when he was saying it?

6 A Two feet away.

7 Q Was he joking when he said don't touch me?

8 A No, sir, every time he said don't touch me he would
9 lean back and look me straight in the face and let me know
10 that he meant what he was saying.

11 Q Does your policy require you to endanger yourself or
12 risk harm to you?

13 A I'm not gonna -- say that again.

14 Q Does your policy -- I mean Mr. Allen is talking about
15 all these steps you have to go through. Is it -- I mean at
16 some point you leave verbal commands cause if you didn't
17 you'd still be there talking to him, right?

18 A Yes, sir.

19 Q You have to go to the next stage and the next stage is
20 to put hands on someone, right?

21 A Yes, sir.

22 Q Did you believe there was gonna be a physical
23 altercation if you put your hands on him?

24 A If I put my hands on him I did.

25 Q Right.

Anthony Martinez - Redirect examination
By Solicitor Gowdy

1 And you're not required by your policy to go in stages?

2 You can go to pepper spray, correct?

3 A Yes, sir, I can go to the next step.

4 Q Did the officer who pepper sprayed him warn him before
5 he pepper sprayed him I'm going to pepper spray you?

6 A Yes, sir.

7 Q Thank you, Officer Martinez.

8 THE COURT: Any more cross-examination?

9 MR. ALLEN: No, sir, Your Honor.

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

11 State wish to excuse the witness?

12 SOLICITOR GOWDY: Yes, sir, Your Honor.

13 THE COURT: Any objection?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: You're free to go, sir. Thank you very
16 much.

17 All right. Ladies and gentlemen of the jury, I have
18 been informed that your lunch has arrived, and it's almost
19 one o'clock as well. So, we will break for lunch. Of
20 course, the people in the courtroom have to get that also.
21 So, we'll break until about two o'clock to give them an
22 opportunity to do that as well.

23 I will advise you, as I always have when you leave the
24 courtroom, don't begin any discussions concerning this case
25 until such time as I've advised you to do so. So, at this

1 point in time, you may retire to the jury room for lunch.

2 Everyone remain seated while the jury retires.

3 FOREMAN: Thank you, Your Honor.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Everyone remain seated while the defendant
7 retires.

8 Court is in recess until two o'clock.

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

10 THE COURT: All right. Is the State ready?

11 SOLICITOR GOWDY: Yes, sir, Your Honor.

12 THE COURT: Is the defense ready?

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

14 THE COURT: Bring the jury in, Mr. Humphries.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 THE COURT: The record will reflect the jury has
18 returned to the courtroom. I trust everyone had a good
19 lunch, and you're ready to continue with the testimony.

20 The State is in the process of presenting its evidence.

21 You may call your next witness.

22 SOLICITOR CRICK: Thank you, Your Honor.

23 The State calls Deputy Randy Gault.

24 THE COURT: Sir, come forward to the witness stand to
25 be sworn.

Randy Gault - Direct examination
By Solicitor Crick

1 RANDY GAULT, being first duly
2 sworn, testified as follows:

3 THE COURT: Have a seat, sir. Move as close to the
4 microphone as you can. State your full name for the record.

5 WITNESS: Randy Gault.

6 THE COURT: Mrs. Crick, your witness.

7 SOLICITOR CRICK: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR CRICK:

10 Q Deputy Gault, where do you work?

11 A Spartanburg County Sheriff's Office.

12 Q And you're working in the courthouse today?

13 A I am.

14 Q Well, I'm not gonna ask about any of your duties as an
15 officer, but I am gonna ask you if you knew Ray and Ann
16 Emery?

17 A I did. I've known Ray all my life.

18 Q When you say you've known Ray all your life, did you
19 grow up together?

20 A Yes, we did.

21 Q What, what community would that have been in?

22 A Ma'am?

23 Q What community did you grow up in?

24 A Over at Drayton.

25 Q And did he pretty much live in Drayton his whole life,

Randy Gault - Direct examination
By Solicitor Crick

1 Ray?

2 A Ray lived in Drayton his whole life ever since I've
3 known him in that one house.

4 Q So, the same house that, that---

5 A ■ Montgomery Street.

6 Q He lived there his entire life?

7 A His entire life, life.

8 Q So, you knew him first and then you met Ann later?

9 A I did.

10 Q Did you actually go to the funeral?

11 A I was a pallbearer for Ray at his funeral.

12 Q Let me ask you just some general questions about Ray
13 since you knew him the longest.

14 Did you know if he was active in the community?

15 A Ray was very active in the community. He was on the
16 board of commissions at the Drayton Fire Department.

17 Q Uh-huh. (Affirmative).

18 A He was with the Cannon's Campground, Cannon's
19 Campground Ruritan Club. He went to Skylyn United Methodist
20 Church in Drayton. He was very active in his church. He
21 ran the video system for them every Sunday in the church.
22 If anything was wrong at the church -- I know one time the
23 little speaker things here, they wanted them moved and Ray
24 and somebody else, they, they went in and moved them for
25 them and he was very active in his community.

Randy Gault - Direct examination
By Solicitor Crick

1 Q So, you knew Ray pretty well.

2 Did he know your family very well?

3 A Yes, he---

4 Q How---

5 A Ray have known our family all of our life cause when I
6 was little we lived in Drayton and my grandmother lived on
7 Floyd Street and her backyard and the Emery's backyard sort
8 of joined together. And Ray's mother passed away when he
9 was after early age. I would say maybe, maybe -- I don't
10 know if Ray might of been in his 20's. I don't know. And
11 my grandmother I guess you could say raised Ray. She
12 helped. When, when Ray's mother passed away, my grandmother
13 just -- my grandmother was his mother. That's the way I
14 looked at it.

15 Q So, they had a pretty good relationship.

16 What or what would you describe your grandmother and
17 Ray's relationship as?

18 A Oh, he was just like her, my, her son. He was just --
19 Ray was just like her son and James was too, his brother.
20 They, they -- my grandmother just raised them.

21 Q So, did they spend time together, Ray and your
22 grandmother?

23 A Everyday.

24 Q Tell me what kind of things they did together.

25 A My grandmother lived to be 93, and she -- Ray would go

Randy Gault - Direct examination
By Solicitor Crick

1 and check on her everyday to come. Everyday Ray was at her
2 house, two and three times a day. He would just walk
3 through his yard to my grandmother's yard. And when she --
4 on the weekends, my grandmother, when she was old, Ray would
5 come and get her at least every Friday, Saturday night. He
6 would take her to the fish camp and it never failed. He
7 would make sure, through the week, if he went and got
8 something to eat, he would call my grandmother to see if she
9 wanted something to eat and he would take it to her.

10 One thing that I know that he did, it was an old mill
11 house my grandmother lived in and she needed some windows
12 put in the front. Ray went and bought those windows and him
13 and I think it was a man by the name of Herman Bishop put
14 those windows in for my grandmother. Didn't charge her a
15 penny.

16 Q Now, when Ray and Ann met, did they continue to
17 interact with your grandmother?

18 A Yes, ma'am. Yeah. Ann's mother, her name was Carla,
19 my grandmother and Ann's mother went to church together
20 years ago. Well, Ann would bring her mother over to my
21 grandmother's house and they would sit and talk and have a
22 good time. My grandmother was the type of person, she loved
23 people. Even in the summertime, they was -- everybody would
24 gang up at my grandmother's house and they would sit and
25 talk on the front porch ten, eleven o'clock at night.

Randy Gault - Direct examination
By Solicitor Crick

1 well, when Ann's mother passed away, Ann still came to
2 my grandmother's house, and then Ray would come out, and I,
3 I, if I'm not mistaken, I believe that's how they met. They
4 just, you know, just talked and Ray would leave and then Ray
5 and Ann would start going to the fish camp some. But they
6 never left -- one thing I can say about Ray, he never left
7 my grandmother behind even though he was dating Ann. He
8 still said come on, you're going to the fish camp with me.

9 Q So, he took your grandma with them on their dates to
10 the fish camp?

11 A Took my grandma with him. My grandmother wound up in a
12 nursing home, and we were busy working all the time. But
13 Ray, he took care of her in that nursing home too. He made
14 sure she had what she needed. Ray was an honest christian
15 man. He was -- Ray was a good man. He had a heart big as
16 this room.

17 Q Did he help take care of other people, other older
18 people in his community---

19 A Yes, ma'am.

20 Q ---as well?

21 A Yes, ma'am. Everybody depended on Ray in that, in that
22 community. I mean all they had to do was call him, and he,
23 if, and he would just -- sometimes he would drop what he was
24 doing and go do for these people. Especially the elderly
25 people. He loved, he loved people. He loved the elderly

Randy Gault - Direct examination
By Solicitor Crick

1 people. And Ray was what we call, I guess you call a jack
2 of all trades.

3 Q Uh-huh. (Affirmative).

4 A I mean he would work on cars. He could do electrical
5 work. He could do plumbing. He could do floor work. He
6 could do anything just about. Yeah, anything those people
7 in the community needed, Ray would be there for them. He
8 was that kind of person.

9 Q Do you remember the last time you saw Ray and Ann?

10 A I do. I saw Ray and Ann about two months on the
11 Saturday morning over at Hardee's on East Main Street at
12 about two months before they passed away.

13 Q And they were together?

14 A They were together. They were together eating
15 breakfast, and I went down and I went over to his table and
16 talked with him.

17 Q And if you had known at that time that that was gonna
18 be the last time you would see Ray or Ann, what would you
19 have said to them or him?

20 A I would of told him that I loved him, and I would of
21 told him that I appreciate everything that he ever done for
22 my grandmother because he loved my grandmother. My
23 grandmother loved him just like it, it was his son, you
24 know. My grandmother loved him. She cherished Ray. She
25 loved him.

Randy Gault - Direct examination
By Solicitor Crick

1 Q And he loved her back?

2 A And he loved her back and he took care of her.

3 SOLICITOR CRICK: Your Honor, I have nothing further at
4 this time.

5 THE COURT: Cross-examination?

6 MR. ALLEN: No, thank you, Your Honor.

7 THE COURT: Sir, you may step down.

8 Any objection to him being excused?

9 MR. ALLEN: No, Your Honor.

10 THE COURT: You're free to go. Thank you very much.

11 WITNESS: Thank you.

12 THE COURT: State may call its next witness.

13 SOLICITOR CRICK: Thank you, Your Honor.

14 The State calls Brandy Dhers.

15 THE COURT: Come forward, ma'am, to the witness stand
16 to be sworn.

17 BRANDY DHERS, being first duly
18 sworn, testified as follows:

19 THE COURT: Ma'am, state your name for the record
20 please.

21 WITNESS: I'm Brandy Dhers.

22 THE COURT: Your witness, Mrs. Crick.

23 SOLICITOR CRICK: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY SOLICITOR CRICK:

Brandy Dhers - Direct examination
By Solicitor Crick

1 Q Agent Dhers, can you tell the jury where you work?

2 A Yes, ma'am. I work for the Department of Probation and
3 Parole in the Spartanburg County office.

4 Q Can you just give a brief explanation as to what your
5 job is there?

6 A Yes, ma'am. I'm a probation and parole officer for --
7 I've been a probation officer for nine years, and I
8 supervise offenders that are released into the community on
9 probation or parole. When they go through the Courts,
10 they're given a sentence and some or all of that sentence
11 can be suspended to be served in the community on probation
12 and that's what I do.

13 I make sure that they follow the Court orders imposed
14 by the judge. And if they do not follow those instructions
15 or those conditions, it's my job to bring that to the
16 Court's attention and they, to be addressed.

17 Q Did you ever have occasion to supervise the defendant,
18 Mr. Torres?

19 A Yes, ma'am.

20 Q Can you give the jury an idea as to when you supervised
21 him?

22 A Yes, ma'am, I supervised him -- he was placed on
23 probation February the 28th of '02, and I supervised him
24 then until May of '03.

25 Q And while he was under your supervision, can you

Brandy Dhers - Direct examination
By Solicitor Crick

1 describe how he was as a probationer I guess?

2 I don't know if that's the proper term, but---

3 A It is. Mr. Torres was released on probation, like I
4 said, earlier February the 28th of '02 on multiple counts
5 of breaking into motor vehicles, and some forgery, some
6 forgeries, grand larcenies. And it was about two months and
7 one week until we had our first violation on him. And we
8 had to go before the judge to address those.

9 Those violations were that he did not comply with the
10 electronic monitoring requirements that he was ordered to
11 do. Electronic monitoring is where you're fitted with
12 bracelets on your leg and you have to be home at a certain
13 time. And he did not follow the curfews. We had multiple
14 violations on that as well as not working and not, not
15 keeping his appointments with vocational rehabilitation to
16 try to get him a job, and not paying the restitution that he
17 owed to multiple victims.

18 So, we went to Court, like I said, about two months and
19 a week after he was first placed on. The judge revoked his
20 probation for one year. What I mean by revoked, it means
21 that he is removed from the community and he is to serve one
22 year in the Department of Corrections minus good time. And
23 upon completion of that one year, he was to, he was, he was
24 released back into the community on probation again with an
25 additional condition to complete the Restitution Center

Brandy Dhers - Direct examination
By Solicitor Crick

1 because he owed so much money. He owed, I think including
2 fees, over \$13,000 to different victims.

3 Q And when you say Restitution Center, can you just give
4 them a brief idea of what that is?

5 A Sure. Yeah. The Restitution Center is located on New
6 Cut Road here in Spartanburg County. It's a center, a
7 residential facility that is manned and operated by our
8 department, and that's where we house probationers or
9 parolees that have restitution obligations. They're housed
10 there. They live there. We provide them transportation to
11 and back from work. And the center collect their, collects
12 their pay checks so we make sure that the victims get
13 compensated somehow.

14 Q Did he have any problems while he was at the
15 Restitution Center?

16 A Yes, ma'am, he was released from that one year
17 revocation in December of '02. He reported to me for about
18 three months, March of '03, and there's a waiting list to go
19 into the center because there's so many people that need to
20 go. He was scheduled to go to the center March the 3rd of
21 '03. He did not go.

22 He claimed that he got scared, didn't want to, didn't
23 want to -- he got scared, didn't want to go. But he came to
24 me and said well, I changed my mind. I really want to go.
25 So, he end up going March the 6th to the Restitution Center.

Brandy Dhers - Direct examination
By Solicitor Crick

1 He got to the center. They went through the evaluation
2 process, and shortly after being admitted to the center he
3 absconded the center. And by absconded, I mean he just
4 left. Because the job they have found him, he lost the job
5 due to some possible criminal activity that was going on at
6 the job. He left the facility I think in April -- yeah,
7 April the 16th of '03 he left the Restitution Center
8 grounds knowing that a warrant would be issued because I
9 mean you can not do that.

10 So, we issued a warrant on the 17th of April. He was
11 arrested shortly after that, about a month or so afterwards.
12 We went to court for that violation, and the judge at the
13 time was Judge Patterson, and he revoked his probation in
14 full meaning that he was no longer granted the privilege to
15 serve his sentence in the community, and that he would have
16 to finish his term in the Department of Corrections. And he
17 had -- he was revoked, a full revocation, which was ten
18 years. And after that he paroled out.

19 Q And would you have been the agent that dealt with him
20 when he got back out on parole or is that someone else?

21 A No, ma'am, that was, that is someone else because, like
22 I said, his probation was over. He was -- it was
23 terminated. He had to do the time since he didn't cooperate
24 while in the community. And when he paroled, it was a
25 parole officer that handled him.

Brandy Dhers - Direct examination
By Solicitor Crick

1 SOLICITOR CRICK: Okay. Nothing further, Your Honor,
2 at this time.

3 THE COURT: Mr. Allen, you wish to ask any questions?

4 MR. ALLEN: Yes, Your Honor.

5 THE COURT: Yes, sir, you may proceed.

6 MR. ALLEN: Thank you.

7 CROSS-EXAMINATION

8 BY MR. ALLEN:

9 Q If I may, as I understand it, the Restitution Center is
10 not a lock down facility, is that correct?

11 A No, sir, there's no barb wire or tall fences, no.

12 Q Okay. And individuals are sent to the Restitution
13 Center, correct?

14 I mean they're, they're housed there?

15 A Right.

16 Q Correct?

17 A They sleep there.

18 Q Then, during the day, they're taken by the center to a
19 job assignment, is that right?

20 A Yes, sir.

21 Q I mean just a, pretty much a regular job that one would
22 find in the community, is that correct?

23 A Yes, sir.

24 Q And if an individual did not have a job, y'all could
25 help locate them, a job while at the center?

Brandy Dhers - Cross-examination
By Mr. Allen

1 A Yes, the center employs an employer coordinator, and
2 his duty is to try to work with local businesses to try to
3 get these, these probationers and parolees some employment
4 in the community.

5 Q Okay. And -- but then -- so, they're, they're taken to
6 their job and they're not guarded by people from the center,
7 is that correct?

8 A That's correct. They are dropped off and picked up.

9 Q I'm sorry?

10 A They are dropped off at their job site and picked up
11 later on.

12 Q Okay. And then when, after they're picked up, they're
13 brought back to the center, but they don't have lock down
14 cells like a jail?

15 A No, they have a dormitory.

16 Q It's a dormitory?

17 A And they do -- the Restitution Center dormitory and
18 grounds are manned by employees of the Department of
19 Corrections.

20 Q Okay. But again, it's not locked down?

21 A No.

22 MR. ALLEN: Okay. One second please, Your Honor.

23 (Pause.)

24 MR. ALLEN: Thank you, Mrs. Dhers.

25 THE COURT: Redirect?

Brandy Dhers - Cross-examination
By Mr. Allen

1 SOLICITOR CRICK: No, sir.

2 THE COURT: You want this witness to be excused?

3 SOLICITOR CRICK: Yes, sir.

4 THE COURT: Any objection?

5 MR. ALLEN: No, Your Honor.

6 THE COURT: Ma'am, you may step down and you're free to
7 go.

8 WITNESS: Thank you, sir.

9 THE COURT: State may call its next witness.

10 SOLICITOR BARNETTE: Like to call Andrew Tomlinson to
11 the stand please, Your Honor.

12 THE COURT: Sir, come forward to the witness stand to
13 be sworn.

14 ANDREW TOMLINSON, being first duly
15 sworn, testified as follows:

16 THE COURT: Sir, once you're seated, move as close as
17 you can to the mic, and I'd ask that you state your name for
18 the record please.

19 WITNESS: Andrew Tomlinson.

20 THE COURT: Mr. Barnette, it's your witness.

21 SOLICITOR BARNETTE: Thank you, sir.

22 DIRECT EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q Where do you work at, sir?

25 A South Carolina Department of Probation and Parole.

Andrew Tomlinson - Direct examination
By Solicitor Barnette

1 Q And what is your position there, sir?

2 A I'm a senior agent with the probation and parole.

3 Q And how long have you been with them, sir?

4 A Eighteen years as of November the 3rd.

5 Q Did you handle the parole status or when the defendant
6 in the case, Mr. Torres, was on parole?

7 A I did.

8 Q When did he get, when did he get paroled, sir?

9 A I believe that was December the 20th of 2006.

10 Q And could you tell the jury a little bit -- well, what
11 is parole?

12 A Parole is the, is a program after they've already been
13 incarcerated for a length of time. It is to make sure, for
14 when they come back into the community, that they do have
15 some footing, to make sure that they comply with rules and
16 regulations of the community, and that they're still
17 responsible to the Department of Corrections at that time.

18 Q Was part of that parole for him to complete substance
19 abuse counseling?

20 A It was. That was one of his conditions.

21 Q And during the time that you supervised him, how many
22 times was he referred or how many chances was he given to do
23 counseling?

24 A He was referred three times.

25 Q Did he ever complete that counseling?

Andrew Tomlinson - Direct examination
By Solicitor Barnette

1 A No, sir, he did not.

2 Q Could he have been revoked after the first time that he
3 didn't complete that counseling?

4 A Well---

5 Q Could he have been revoked because he didn't complete
6 the counseling the first time?

7 A Could have. But we re-referred him and tried to, tried
8 to get him clean and through the counseling since it was so
9 early in his parole.

10 Q So, you gave him three opportunities then?

11 A Yes, sir.

12 Q Did -- was he also drug tested during this time?

13 A He was.

14 Q And did he have positive drug tests?

15 A He did.

16 Q Could you tell the jury when the first one was?

17 A Let me make sure I have the notes correctly. He tested
18 positive for THC, which is marijuana, on January the
19 30th of 2007, and he also tested positive while he was in
20 drug counseling, and according to their records, that was on
21 April the 23rd of 2007.

22 Q And also did he -- was he in arrears on his restitution
23 that he owed?

24 A Yes, sir.

25 Q And how much restitution did he still owe?

Andrew Tomlinson - Direct examination
By Solicitor Barnette

1 A At the issuance of our process, he still owed
2 \$10,944.64 on his restitution.

3 Q So, was a citation or a violation for his parole filed?

4 A Yes, sir, there was a citation.

5 Q And when was that filed, sir?

6 A That was on May the 8th of 2007 and served May the
7 14th, 2007.

8 Q And that was after all these different things that
9 happened, that, these different conditions he had violated?

10 A Yes, sir.

11 Q And also he failed to follow the advice and
12 instructions of your, of you?

13 A Yes, sir.

14 Q And was he later recommended for revocation?

15 A Yes, sir, that is correct.

16 Q And he still has a sentence still available for him to
17 serve off of this previous?

18 A He has already maxed out that sentence because that
19 hearing was in 2007. So, he's already been revoked on that
20 parole.

21 Q Thank you, sir. Thank you, sir. Please answer any
22 questions the defense may have.

23 THE COURT: Mr. Allen.

24 MR. ALLEN: Thank you, Your Honor.

25 THE COURT: Yes, sir.

Andrew Tomlinson - Cross-examination
By Mr. Allen

1 CROSS-EXAMINATION

2 BY MR. ALLEN:

3 Q His parole was revoked, was it June of '07 or July or
4 do you recall?

5 A I would have to look at my notes to get the exact date.
6 (Pause.)

7 A July the 25th of 2007---

8 Q July 25th of '07?

9 A ---was when his parole case was closed.

10 Q And he maxed that out on or about I think it was
11 November 20 something of '07?

12 Would that be correct?

13 A December 20th. December 20th.

14 When, when he made parole?

15 Q No, no, no. When he maxed out the sentence for which
16 the parole was revoked.

17 A Oh, the max out date for the parole case would not have
18 been until February 26th of 2008. But his case was
19 revoked July of '07.

20 Q All right. I believe you said he had a positive drug
21 test in April, is that right, of '07?

22 A April 23rd of 2007, yes, sir.

23 Q That was, that was for---

24 A Amphetamine.

25 Q Which is?

Andrew Tomlinson - Cross-examination
By Mr. Allen

1 What is the street name for amphetamine?

2 A Be meth -- would be meth.

3 Q Meth.

4 Okay. Okay. While on parole, it's not like the
5 Restitution Center, is it?

6 In other words---

7 A He would not have qualified for the Restitution Center
8 due to the, his charges that he was under parole for.

9 Q Right.

10 I guess what I'm saying is he is not taken to a place
11 to live while on parole?

12 A Correct.

13 Q Okay. And he is not taken to a job by the parole
14 office, correct?

15 A Correct. No, sir, we do not have any, anything like
16 that for parole.

17 Q You know me. I'm a little hard of hearing sometimes.

18 A Yes, sir.

19 Q So if you could speak up.

20 THE COURT: Move a little closer.

21 Q Thank you.

22 And unlike the Restitution Center, of course, y'all
23 don't help locate jobs for people on parole, do you?

24 A That is one of the conditions of his parole that he is
25 suppose to have a job---

Andrew Tomlinson - Cross-examination
By Mr. Allen

1 Q Have a job?

2 A ---when he comes out except---

3 Q But you don't have a coordinator to help locate jobs,
4 do you?

5 A Well, he was, he was in the PEP program, which is
6 through voc rehab. So, he did have a voc rehab counselor
7 who had helped locate a job who was trying to get a better
8 job for him.

9 Q Okay. Now -- and also when he was referred to the drug
10 counseling, that means that you, he was instructed to go, is
11 that correct?

12 A Yes, sir, I would of instructed him. We would of given
13 that to him in writing, and he would of had notifications of
14 the dates and times to be there.

15 Q And the dates and times to be there, and it was up to
16 the -- it's up to the individual to get himself there, of
17 course?

18 A Yes, sir.

19 MR. ALLEN: One second please, Your Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 Q Would you agree with me, Mr. Tomlinson, that his
23 actions and Mr. Torres actions, while on parole, is
24 consistent with someone who's addicted to drugs?

25 A I'm not a drug counselor, sir. I'm -- I, I just

Andrew Tomlinson - Cross-examination
By Mr. Allen

1 monitor his parole because he did have, even had a negative
2 drug test at one time.

3 Q Uh-huh. (Affirmative).

4 A So, that shows that he was able to keep himself clean
5 at one time.

6 Q Okay.

7 A So, his actions -- I'm sorry. I'm not a counselor.

8 Q I'm sorry.

9 A I'm not counselor. I could not answer that question.

10 Q Okay. And you, you've dealt with a number of people
11 who, in your line of work, who have had problems with drugs,
12 correct?

13 A Yes, sir.

14 Q And you are aware that part of the addiction process is
15 that there is a relapse?

16 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
17 this point unless he's qualified as an expert in that
18 situation.

19 THE COURT: He's not been offered as an expert in this
20 field.

21 MR. ALLEN: No, Your Honor.

22 THE COURT: Of course, he has the right to, to state
23 whether, within his knowledge, he is aware of those things.
24 So, I will -- he's not been asked for his opinion. Just
25 asked if he's aware of it. So, he can state whether he

Andrew Tomlinson - Cross-examination
By Mr. Allen

1 feels that he's qualified, qualified and competent to answer
2 the question. I'll allow him to do so as long as we don't
3 get in the area of opinions.

4 MR. ALLEN: Very well.

5 Q You will agree that -- excuse me. You -- are you aware
6 that there's, you know, for those who have addiction
7 problems or drugs problems that they can go for a period of
8 time and then there is a relapse or they go back on drugs?

9 A That's what I have been told.

10 Q Okay. Thank you.

11 No other questions, Your Honor. Thank you.

12 THE COURT: Redirect?

13 SOLICITOR BARNETTE: Just one on redirect.

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY SOLICITOR BARNETTE:

17 Q When was the citation for the parole violation filed?

18 A When was it was?

19 Q The citation filed that revoked his parole.

20 A You talking about when we issued it or when did we
21 serve it?

22 Q Yes, sir, when was it issued.

23 A It was issued May the 8th of 2007.

24 Q Thank you, sir.

25 THE COURT: Anything further on recross?

Mark Williamson - Direct examination
By Solicitor Gowdy

1 MR. ALLEN: No, no, Your Honor.

2 THE COURT: Any objection to this witness being
3 excused?

4 MR. ALLEN: No, Your Honor.

5 THE COURT: You may step down. You're free to go.
6 Thank you very much, sir.

7 WITNESS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 The State may call its next witness.

10 SOLICITOR GOWDY: Your Honor, the State would call Mark
11 Williamson.

12 THE COURT: Sir, come forward to the witness stand to
13 my right to be sworn.

14 MARK WILLIAMSON, being first duly
15 sworn, testified as follows:

16 THE COURT: Sir, move as close to the microphone as you
17 can, and I'd ask that you state your name for the record
18 please.

19 WITNESS: Mark Williamson.

20 THE COURT: Your witness, Mr. Gowdy.

21 SOLICITOR GOWDY: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY SOLICITOR GOWDY:

Mark Williamson - Direct examination
By Solicitor Gowdy

1 Q Good afternoon, Mr. Williamson.

2 A Good morning or good afternoon.

3 Q Can you tell the ladies and gentlemen of the jury where
4 you work?

5 A I'm the pastor of Carolina Baptist Church.

6 Q And this is in what community?

7 A That's Spartanburg community over off 221. The area is
8 just a few miles from actually where Ann and Ray live.

9 Q Okay. I have met your wife and I know you have one
10 beautiful son.

11 Do y'all have other children?

12 A That's the only one.

13 Q All right. And how long have you been the pastor at
14 Carolina Baptist?

15 A I've actually been pastor about three years now.

16 Q Was Ann Emery one of your parishioners or a member of
17 your congregation?

18 A Yes, she was.

19 Q Can you tell, pastor, can you tell the jury whether she
20 was heavily involved in your church, and, if so, in what
21 areas?

22 MR. ALLEN: Your Honor, please the Court.

23 May we approach?

24 We have an objection.

25 THE COURT: You may.

Mark Williamson - Direct examination
By Solicitor Gowdy

1 (Whereupon, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: Mr. Gowdy, you may proceed.

4 SOLICITOR GOWDY: Thank you, Your Honor.

5 Q Pastor Williamson, can you tell the ladies and
6 gentlemen of the jury about Ann's involvement with your
7 church?

8 A Ann's been a faithful member of our church as far as I
9 can think back. I actually grew up in the church that I now
10 pastor. And so, she was kind of like having a, an aunt or
11 something in the church that kind of watches you grow up,
12 and then the usual situation where I actually get to become
13 her pastor. But Ann was involved in everything, in any kind
14 of activity.

15 She was one of those that was just a supporter. Not
16 one of those who wanted to be out front and in the
17 spotlight. But just in whatever area she could be just to
18 help and be a part of it. She was there on Sunday night
19 Bible studies, Sunday morning, Sunday night. Most people
20 don't even know they have a Wednesday night service today.
21 But she was there. Anything she could do. Anything you
22 asked, she was a part of.

23 Every function, every event, you'll see her picture in,
24 her face in all the pictures. She was a part -- she was the
25 one that works behind the scenes. Didn't get a lot of

Mark Williamson - Direct examination
By Solicitor Gowdy

1 recognition because she didn't want it. She didn't put
2 herself out front. The things she did was for the Lord
3 Jesus Christ, and it wasn't for her honor or her glory. It
4 was for Him and it just speaks of her character. She was a
5 humble woman who loved the Lord and would do anything for
6 anybody.

7 Q You mentioned her humility.

8 What are some of the other characteristics that you
9 discern that Ann Emery had, pastor?

10 A She was humble like you said. But extremely kind, well
11 mannered, modest, gentle, patient, loving. I wish I had a
12 hundred members like her. If, if the church's were filled
13 with people like her, you'd never have church problems.
14 Everybody always quick -- you don't have every, ever have
15 problems finding someone to find fault. You don't have to
16 look for critics because they're all around. But it's hard
17 to find people like Ann. She always had something good to
18 say. Never heard her say anything negative about anybody,
19 and that's why it's so hard in this situation, of all the
20 people that you'd think this would happen to, you don't
21 expect it to happen to Ann. You just don't.

22 Q Did you have an opportunity, pastor, to observe her
23 relationship with her husband?

24 A On several occasions. They had a unique relationship.
25 He was Methodist, she was Baptist, and neither could convert

Mark Williamson - Direct examination
By Solicitor Gowdy

1 the other. And so, they had a wonderful relationship. He
2 still went to his church and worked diligently in his church
3 while she was still a faithful charter member of our church,
4 and on special occasions he would come and visit with us as
5 well. And on the outings that we had, they would be
6 together.

7 And they loved one another. And I really saw something
8 special about their relationship. It's like their honeymoon
9 never died. They were always joking and laughing and
10 loving, and I think that's probably like one of the only
11 desires that I know she actually received is if Ray was
12 going on, I know she'd want to go with him. And I dare say
13 that she -- I doubt that she'd want to leave him. And so,
14 that's one of the only bright spots is that they are
15 together right now.

16 Q Did you have an opportunity, pastor, to observe her
17 relationship with her daughter, Crystal?

18 A Oh, yeah. You can't be any closer as a mother and
19 daughter than Crystal and Ann were. A mother and daughter
20 that not just when the mother, when the daughter gets older
21 and she leaves the nest, and there's the occasional family
22 gathering. We're talking about a mother and daughter that
23 did everything together.

24 I know it's gonna be quite hard on Crystal because her
25 and her mom saw each other everyday. If you go out, you run

Mark Williamson - Direct examination
By Solicitor Gowdy

1 into them out in town or where they're getting something to
2 eat and they're together. They not only are mother and
3 daughter, they're like sisters, best friends, and that kind
4 of relationship you just don't see of that magnitude.
5 It's -- it was wonderful. It was wonderful.

6 Q Pastor, thank you. Please answer any questions the
7 defense attorney may have for you.

8 THE COURT: Any questions?

9 MR. ALLEN: No, no questions, Your Honor.

10 THE COURT: Any objection to his being excused?

11 MR. ALLEN: No, Your Honor.

12 THE COURT: Sir, you may step down. You're free to go.
13 Thank you for coming today.

14 The State may call its next witness.

15 SOLICITOR CRICK: Thank you, Your Honor.

16 The State calls Crystal Williamson.

17 THE COURT: Come forward please to be sworn.

18 CRYSTAL WILLIAMSON, being first
19 duly sworn, testified as follows:

20 THE COURT: Ma'am, please have a seat in the witness
21 stand. Move as close to the microphone as possible. State
22 your name for the record.

23 WITNESS: Crystal Williamson.

24 THE COURT: Mrs. Crick, your witness.

25 SOLICITOR CRICK: Thank you, Your Honor.

Crystal Williamson - Direct examination
By Solicitor Crick

1 DIRECT EXAMINATION

2 BY SOLICITOR CRICK:

3 Q If I could, I'd like to start out, Crystal, by showing
4 you some photographs and they're marked as State's 466
5 through 475. I want to show them to the defense first.

6 THE COURT: Are you offering those into evidence?

7 SOLICITOR CRICK: I am, Your Honor.

8 THE COURT: Is there going to be any objection to the
9 photographs?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: They'll be admitted as marked.

12 (Whereupon, State's Exhibit Nos. 466 through 475 were
13 received into evidence at this time.)

14 SOLICITOR CRICK: May I publish them, Your Honor?

15 THE COURT: You may.

16 You can lower the lights for me, Mr. Bailiff.

17 (Bailiff complies.)

18 THE COURT: Thank you, sir.

19 Q I want to show you, Crystal, the first, what's been
20 marked as State's 466.

21 Tell me if you recognize that photograph and who those
22 folks are.

23 A Ann and Ray Emery. That was taken at my cousin's
24 wedding in 1995.

25 Q So---

Crystal Williamson - Direct examination
By Solicitor Crick

- 1 A February.
- 2 Q A while ago?
- 3 A Yeah.
- 4 Q Okay. I'm gonna show you what is marked as State's
- 5 468.
- 6 Tell us if you recognize those folks.
- 7 A That's my mom and that's my cousin's little girl,
- 8 Arial. She loved Arial.
- 9 Q They spent some time together?
- 10 A Oh, yeah.
- 11 Q This is State's 469.
- 12 A That's my cousin, Derrick. He's in Iraq right now.
- 13 That was three years ago, maybe three years ago when he
- 14 was -- and that was at Fort Benning, Georgia.
- 15 Q She was just visiting with him there?
- 16 A He was -- what do you call it, graduating?
- 17 Q Uh-huh. (Affirmative).
- 18 A Yeah, we all went down there.
- 19 Q I'm gonna show you State's 470.
- 20 Tell me if you recognize who those folks are.
- 21 A My mom and B. [REDACTED].
- 22 Q Who is B. [REDACTED]?
- 23 A My cousin's baby.
- 24 Q Let me show you State's 475.
- 25 A My mom and Ray on their wedding day. They got married

Crystal Williamson - Direct examination
By Solicitor Crick

1 at Ray's church. It was April 13th, 2003.

2 Q And you were there for the wedding that day?

3 A Yes.

4 Q I'm gonna show you State's 471.

5 Is this from the same---

6 A Yes.

7 Q ---their wedding?

8 A Yes, it was.

9 Q And how about State's 472.

10 If you can, tell us, it's kind of hard to see, but what
11 that is.

12 A Beside Ray is my Aunt Mary, my mom's sister.

13 Q Uh-huh. (Affirmative).

14 A Beside her is my Cousin Tammy. In front of mom is
15 Arial, the one in the other picture.

16 Q Uh-huh. (Affirmative).

17 A Beside mom is my Cousin Tracy and her mother Sandra.

18 Q And they were all there that day for the wedding?

19 A Right.

20 Q How about in State's 474.

21 A That would be Irene Gault. That's Randy Gault's
22 grandmother he was talking about.

23 Q So, that's the one that he had such a relationship
24 with---

25 A Yes.

Crystal Williamson - Direct examination
By Solicitor Crick

- 1 Q Okay. She made it to the wedding?
- 2 A She did.
- 3 Q I'm gonna show you State's 473.
- 4 A Oh, my gosh. This picture tormented her.
- 5 Q I'm sorry.
- 6 What was it?
- 7 A That was the us.
- 8 Q That's you and your mom?
- 9 A Yeah.
- 10 Q What did she not like about this?
- 11 A Well, her eyes closed. She was sweating like a hog.
- 12 Q But you were there with her on her wedding day?
- 13 A I was. There are better ones.
- 14 Q Well, I will not keep that one up there.
- 15 And then finally 467.
- 16 A That's also when we were in Fort Benning to see my
- 17 cousin graduate. They were always hugging.
- 18 Q So, this was your mom and Ray?
- 19 A Yeah, I took that picture.
- 20 Q Okay. You said they were always hugging.
- 21 Tell the jury, just in general, what their relationship
- 22 was like together.
- 23 A They were very sweet, very kind to each other, always
- 24 saying I love you, always hugging, always kissing. They
- 25 always wanted to be together. One of them wouldn't go, go

Crystal Williamson - Direct examination
By Solicitor Crick

1 out the front door without asking the other one if he wanted
2 to go. They were a good couple. Perfect for each other.

3 Q And so, when your mom married Ray, you liked him too?

4 A Oh, yeah.

5 Q How was he as a person?

6 A One of the kindest men I've ever met. He would do
7 anything for you. He was a jokester, dumb jokes. But he
8 would get tickled at himself telling those dumb jokes that I
9 wish I could hear again.

10 Q Tell the jury what your relationship was like with your
11 mom, Crystal.

12 A I loved that woman. We talked about it one day, the
13 last three or four months of her life. I was up under her
14 constantly. I asked her one day do you ever, do you get
15 tired of me being around all the time. She said no, honey,
16 I love you being around all the time. I'd get up in the
17 morning, the first thing I would do is go next door. If she
18 wasn't home, I'd go sit with Ray in the studio. I'd be
19 there when she came home from lunch or if -- and then we'd
20 go, three of us go each lunch together. If we didn't go eat
21 lunch, we'd go eat dinner together. I was there all the
22 time. I now know it was the Lord giving me that time.

23 Q Do you live next door to your mom?

24 A Yes, I did.

25 Q And the defendant also lived close to your parents?

Crystal Williamson - Direct examination
By Solicitor Crick

1 A On the other side.

2 Q When Ray, if he ever interacted with the defendant, was
3 he kind to him?

4 A Yes, he did. As a matter of fact, the week before they
5 died, the week before he killed them, Ray and I were, we
6 were sitting in the studio working on something. We had a
7 knock at the screen. Ray got up. He was gone for a couple
8 of minutes. He came back in and said that's that boy that
9 lives next door. He wants me to take him to the store to
10 pick up some food. So, I looked out the window and it was
11 him. So, Ray stopped what we were working on and took him
12 to the store to get whatever it was.

13 Q So, he helped him out when he needed it?

14 A Yeah, that wasn't the first time he's done stuff like
15 that for him or his family that he was staying with.

16 Q He was helpful to him and his family?

17 A Uh-huh. (Affirmative).

18 Q Was he helpful to other people in the neighborhood too?

19 A He would do anything anybody asked him to do within
20 reason.

21 Q Within what?

22 A Within reason, yeah. Fix this, go get that. He was
23 just a helpful person.

24 Q I'm gonna ask you a little bit about the funeral.

25 A Okay.

Crystal Williamson - Direct examination
By Solicitor Crick

1 Q Were you able to have an open casket?

2 A No.

3 Q Can you describe to the jury what that process was
4 like?

5 A Nobody could tell me any different, but I demanded that
6 I see their bodies. They had already told me that they were
7 gonna have to be closed casket. They were gonna have to
8 keep the caskets closed for the service. But I demanded
9 that I see them.

10 They called me and was asking me some questions, one of
11 the guys from the funeral home was asking me some questions,
12 and I forget what he said. But I said and fix her hair as
13 close to the way it looks in that picture as possible. And
14 if I don't like it, I'll fix it when I get there. He didn't
15 know what to say to me. I know that now. He just sort of
16 got quiet and said well, be here at such and such time.

17 well, when we got there, they informed us that they
18 have, had, had to put the black netting over the caskets
19 because they didn't want anyone touching them. My mom, to
20 this day, I can not believe that was my mom's body laying
21 there and here I thought I might be able to fix her hair.
22 She had no hair to fix. They had to take hair off the back
23 of her head and sort of put it this way. They did the best
24 they could with her.

25 One of her eyes was this way, and her nose was all on

Crystal Williamson - Direct examination
By Solicitor Crick

1 the side of her face, side of her face and the mouth didn't
2 even look -- none of it looked real. It just looked like a
3 kid had used play dough and sort of arranged a face. But
4 they did the best they could with what they had to work
5 with, which was nothing. She didn't have a face. So they
6 tried to build her one just so that I could see her. Like I
7 say, they did the best they could.

8 And then Ray, he was swollen up so bad. I mean it --
9 he was huge. His face was huge. But -- and they were,
10 stood guard at the coffins just to make sure nobody touched
11 anything. If you had seen them you would know why they
12 didn't want you to touch it.

13 Anyway, I stayed in there as long as I could and then I
14 left. It was worse than I -- it was just worse than I
15 thought it would be.

16 Q Crystal, were they able to dress your mom the way you
17 wanted her to be?

18 A Ma'am?

19 Q Were they able to dress your mother the way you wanted
20 her to be dressed?

21 A Well, my aunt had a new dress with the tag still on it,
22 and she said instead of us going out and getting something,
23 what do you think about this, and I said that would be
24 great. A navy blue dress with short sleeves.

25 And when we got to the, when we got to Floyd's, I

Crystal Williamson - Direct examination
By Solicitor Crick

1 noticed that she had sleeves. Her arms was tore up so bad
2 that they had to cut material out of the back of the dress
3 to make sleeves so you couldn't look at her arms.

4 Q So, what you're describing is the way that the family
5 had to view your mom and Ray?

6 A Right.

7 Q And for the rest of the folks that came to the funeral,
8 it was closed?

9 A Had to be, yes. I wouldn't of wanted anybody to see
10 her like that, see either one of them like that.

11 Q Okay. Were you married when your mom and Ray were
12 murdered?

13 A No, I got married in November. well, she would of been
14 so happy. I wish I could of -- I wish she would of been
15 alive to see the look on her face, mom, I'm getting married.
16 No.

17 Q So, you didn't have her with you on that day?

18 A No.

19 Q You've also been through I think a Thanksgiving and a
20 Christmas and a Mother's Day this year.

21 How are those holidays different?

22 A Mother's Day was exactly a year, May 11th. She had
23 been dead a year, and we went to church and she wasn't
24 there. She sat on the same pew for years and years and
25 years and years. The same pew. And I was pretty miserable

Crystal Williamson - Direct examination
By Solicitor Crick

1 that day. But, you know, everybody tried to make me feel
2 better and hug on me and say nice things to me. But I was
3 quite miserable.

4 And Christmas, every Christmas morning, and I'd walk up
5 to her house in my pajamas, and she'd still be in hers and
6 she'd be cooking. She was getting pretty good at it, you
7 know. But we would stay in our pajamas for most of the day,
8 and she would always have mash potatoes for my cousin,
9 Stacy, and sweet potato souffle for somebody else, something
10 for somebody else, ham for Ray even though he wasn't suppose
11 to eat it. She let him have a little piece.

12 And she always had these little green peas. We all
13 hated those little green peas, and I'm like why do you
14 always cook those things. But it just never occurred to me
15 that she cooked those peas because she wanted them.

16 Q If you had to say the thing that you miss most about
17 your mom, what would that be?

18 A I miss walking to her house. I miss lunch with her. I
19 miss her phone calls. She would always call me and say this
20 is your mom and I'd say what do you want, and we started our
21 phone calls out that way every time. Just one more phone
22 call would be just -- I miss shopping with her. I missed
23 arguing with her. I would love to argue with her just one
24 more time.

25 About a couple weeks before they, before they died, it

Crystal Williamson - Direct examination
By Solicitor Crick

1 took her 30 minutes to pick a hair dryer out from Wal-Mart.

2 She -- okay. Maybe 20. But we argued the whole time, me

3 hurry up, hurry up, no, I got to have the right one, and --.

4 Q And Crystal, the last time you said you saw her was the
5 night that they were murdered?

6 A Yes.

7 Q If you had known that they was the last time you were
8 gonna see your mom and Ray, what would you have said to them
9 at that time?

10 A If I had known that was the last time -- you know that
11 night, I left their house about 10:30, and like I said the
12 other day, when I left they were standing in the doorway
13 between the kitchen and the living room hugging on each
14 other. And when I left, I pulled the door to, to make sure
15 and I shook on it to make sure it was locked. But I thought
16 well, gosh, I forgot to tell them I loved them, and I
17 started to turn around and knock, which I've done before, I
18 started to turn around and knock and I didn't. And so, I
19 wish I had turned around and knocked so I could of told them
20 just one more time.

21 But they knew it. I made sure that they knew it. They
22 knew, they knew I loved them and I know they loved me. We
23 had that kind of a relationship. We knew how much we loved
24 each other.

25 SOLICITOR CRICK: Your Honor, I don't think I have any

1 further questions at this time.

2 THE COURT: Defense have any questions?

3 MR. ALLEN: No, Your Honor.

4 THE COURT: Ma'am, you may step down. Thank you.
5 State may call its next witness.

6 SOLICITOR BARNETTE: Like to call Doctor David Wren,
7 Your Honor.

8 MRS. HODGES: Your Honor, Mr. Barnette and I will need
9 to approach the bench for just a minute.

10 THE COURT: Well, why don't we, at this point in time,
11 take a short break.

12 Ladies and gentlemen of the jury, I'll ask that you
13 step back in the jury room. As always, I'll instruct you
14 not to begin any discussions until I've advised you to do
15 so.

16 You may retire to the jury room.

17 Everyone remain seated, seated.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Everyone remained seated while the
21 defendant retires.

22 We'll take about a ten to fifteen minute break.

23 I'll see the attorneys in my chambers.

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

25 THE COURT: All right. During my chambers conference,

1 conference I met with the attorneys concerning certain
2 photographic evidence that the State wishes to present
3 during the next two witnesses. During that period of time,
4 I reviewed that evidence. I will allow the defense to place
5 the objection, their objections on the record.

6 MRS. HODGES: Thank you, Your Honor.

7 May it please the Court.

8 Your Honor, we -- my understanding is that the next
9 series of photographs will be presented by Doctor David Wren
10 as well as Detective Dominick Baird of the Spartanburg
11 County Sheriff's Office. These are gonna be photos that are
12 from the autopsy of Mr. and Mrs. Emery as well as from the
13 home itself of [REDACTED] Montgomery Street, what I guess probably
14 most aptly be termed crime scene photos.

15 Our concern, Your Honor, there has already been several
16 photographs already exhibited to the jury as well as
17 testimony regarding the severity and placement of injuries,
18 and that, that these photos are more graphic than what has
19 been seen previously in the courtroom by this jury.

20 Our concern, Your Honor, is that the exhibition of
21 these photos are going to create a situation, under Rule
22 403, where these are significantly, gonna significantly
23 impair the jury's ability to provide the defendant a, a fair
24 trial, that they are definitely much more prejudicial than
25 probative.

1 In particular, State's Exhibit 551 was a photograph of
2 Mr. Emery from the autopsy. I think that the Court, in
3 chambers, had indicated that it was going to exclude that
4 particular photo. But we do actually object to all the
5 photographs on, on the basis that they, they are much more
6 prejudicial than probative at this point in the trial.

7 In fairness and in candor, as I told the Court in
8 chambers, these are not the worse of the worst photographs.
9 But these are pretty bad, judge.

10 THE COURT: All right. Be happy to hear from the
11 State.

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

13 The, the purposes, as this Court well knows of this
14 proceedings, is to determine the proper punishment and the
15 jury can consider the circumstances of the crime, the
16 character of the defendant, and these photos illustrate
17 both. You know, as I read 403, it says that it's -- it, it
18 speaks to unfair prejudice. He's been convicted of these
19 crimes. This is exactly what he did to these two people.
20 There's nothing unfair about whatever prejudices is headed
21 his way. This is how he left them and that's what this
22 portion of the trial is about.

23 THE COURT: All right. In chambers I reviewed the
24 photographs. There were a couple that I found to be
25 duplicitous. That means that they showed the same thing.

1 The -- you want to hand those to me so I can identify the
2 ones that I reviewed?

3 SOLICITOR GOWDY: Yes, sir.

4 THE COURT: Thank you.

5 I found State's Exhibits 480, 495 to be duplicitous.
6 In other words, there were other photographs that showed the
7 same scene either already in evidence or ones that I would
8 allow into evidence. And then Exhibit No. 551, which is
9 taken from the autopsy reviewed, revealing a portion of the
10 dissection. That information has already been presented to
11 the jury by way of x-rays and other testimony, and I find
12 that to be highly prejudicial as well.

13 So, those three photographs I have excluded. The
14 others I find do fairly depict the scene or the condition of
15 the bodies after the event, and I will allow those into
16 evidence.

17 You want to take these, Mr. Solicitor.

18 SOLICITOR GOWDY: Yes, sir, unless you want them as
19 part of the record, Your Honor.

20 THE COURT: She'll need to have those.

21 SOLICITOR GOWDY: Yes, sir.

22 THE COURT: I'll caution those in the courtroom, the
23 next two witnesses, some of the photographs that will be
24 shown will be very graphic. If you do not wish to view
25 those, now would be the appropriate time for you to leave

1 the courtroom.

2 Anything further from the State before we proceed?

3 SOLICITOR GOWDY: No, sir, Your Honor.

4 THE COURT: Anything further from the defense?

5 MRS. HODGES: No, sir, thank you.

6 Are our exceptions noted for the record?

7 THE COURT: The exceptions are noted and the Court has
8 made its ruling accordingly.

9 You may return the jury to the courtroom.

10 (Whereupon, the following takes place within the
11 presence of the jury.)

12 THE COURT: The record will reveal that the jury has
13 returned to the courtroom.

14 I believe the state, before we rested, indicated,
15 indicated that Doctor Wren would be your next witness, is
16 that correct?

17 SOLICITOR BARNETTE: That's correct, Your Honor.

18 THE COURT: Doctor Wren, if you'll come forward. I see
19 you in the gallery. If you'll step forward to the witness
20 stand to be sworn.

21 DOCTOR DAVID WREN, being first duly
22 sworn, testified as follows:

23 THE COURT: Sir, have a seat in the witness stand. And
24 I'd ask, as before, once you're seated, that you state your
25 name for the record please.

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1 WITNESS: John David Wren.

2 THE COURT: Mr. Barnette, your witness.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY SOLICITOR BARNETTE:

6 Q Doctor Wren, I'd like to show you a series of
7 photographs concerning the two autopsies you did in this
8 case.

9 THE COURT: Just one second, Mr. Barnette.

10 I understand one of the jurors may of left his glasses
11 in the jury room.

12 (Juror raises hand.)

13 THE COURT: Ma'am, I'm sorry. If you want to step out,
14 I'll let you retrieve those before we get started.

15 JUROR: Thank you.

16 (Pause.)

17 THE COURT: All right. Thank you, ma'am.

18 You may proceed, Mr. Barnette.

19 SOLICITOR BARNETTE: Thank you, Your Honor.

20 Q Let me show you the pictures of Ray Emery from the
21 autopsy. State Exhibits 550, 549, 488, 489, 484, 483, 491,
22 and 493.

23 Do those pictures fairly represent what you saw at the
24 autopsy, sir?

25 A Yes, these are the external findings that I saw.

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1 Q Let me show you what's been marked as, for Ann Emery.
2 State Exhibit 553, 552, 485, and 492, sir, and 486.

3 Those pictures fairly represent what you seen, sir?

4 A Yes, these are also the external features.

5 SOLICITOR BARNETTE: Your Honor, at this time I'd like
6 to enter these into evidence.

7 MRS. HODGES: Your Honor, like to---

8 THE COURT: Subject, subject to the former, former
9 objections, any other objections?

10 MRS. HODGES: No, sir, no other objections. Subject to
11 former objections, no other objections.

12 THE COURT: All right. Subject to those objections,
13 they're admitted.

14 (Whereupon, State's Exhibit Nos. 483 through 486, 488,
15 489, 491 through 493, 549, 550, 552, and 553 were received
16 into evidence at this time.)

17 SOLICITOR GOWDY: Thank you.

18 May I publish these to the jury, Your Honor?

19 THE COURT: You may do so.

20 Lower the lights, Mr. Hawkins.

21 Q Doctor, I don't know if you want to step down in this
22 area if you'd like to.

23 A (Witness comes down from stand.)

24 Q Let me show you what's been marked and entered as
25 evidence as State's Exhibit 493. If you would, sir, please

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1 describe the -- yes, sir, I do. If you can point out
2 anything you can see here in this picture.

3 A When I testified previously, I talked about the
4 lacerations with abrasions to his shoulders, which are shown
5 here. This reddish area is some blood, but it's also where
6 gasoline has caused superficial burns. The face shows the
7 extreme distortion of the left side of his face with
8 swelling and abrasion all the way to the ear, which would be
9 right behind the pointer. And this is one of the large
10 lacerations that I found in the forehead, which doesn't show
11 very well, but it starts above the medial left eye and goes
12 into the border of the scalp, and then he has abrasions and
13 periorbital hematomas bilaterally.

14 Q I show you what's been entered, entered into evidence
15 as 491.

16 Can you please tell us about that picture, sir?

17 A This is the laceration with trailing abrasion to the
18 left shoulder, a little bit of surrounding contusion, and
19 then the periorbital hematoma with abrasion extending down
20 to the ear with swelling of the face along that side. This
21 is just blood that was -- this picture was taken before the
22 body was washed.

23 Q Let me show you State Exhibit 483.

24 If you would, tell the jury what they see here, sir.

25 A This is that large laceration in the left side of the

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1 forehead. One can see an abrasion at the top indicating
2 that this injury was inflicted from, from this direction,
3 actually from superior to inferior with the trailing and
4 cause a laceration across here. This -- what you see at the
5 base of this laceration is bone that's actually exposed by
6 this laceration. It extends all the way to the bone.

7 Q Let me show you what's been marked as State's, entered
8 into evidence as State's Exhibit 484.

9 If you would, tell us what we see here, sir.

10 A This is the largest laceration in the back of the scalp
11 with the skin shaved away. As I stated previously,
12 lacerations are from blows rather than incised wounds. One
13 can see that it's gaping open and it has an abrasion on both
14 sides. In this case, you can see the reddish, one can see
15 the reddish areas in which there are abrasions and then
16 there's a little bit of tissue bridging here, and I believe
17 that was one that had fracture beneath that area.

18 Q Let me show you what's been entered in evidence as 489,
19 State's Exhibit.

20 Can you describe this to us, sir?

21 A This is one of the other abrasions, lacerations and
22 abrasions in the -- I think that's the top. Please look
23 at -- fit it like that. Other way.

24 Q Go this way. Sorry.

25 A Near the top of the scalp but more toward the nape of

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1 the neck showing a curved linear abrasion in this case with
2 laceration in this area and contusion and there were
3 fractures beneath that area also.

4 Q Let me show you State Exhibit 488.

5 A One more thing.

6 Q Oh, I'm sorry. Go ahead.

7 A This is another separate blow to, to the scalp. It
8 barely shows up in the side of the picture there.

9 Q Let me show you State Exhibit 488, sir.

10 A Now, this is the one that I described as consistent
11 with a, with the end of a hammer. This was in I believe the
12 left side of the scalp. I can go refer further to my notes.
13 But this, this is a, basically a round punctate laceration
14 that extended to the bone and the, and the skull was
15 fractured beneath that area too. I might add that this is
16 the left ear over here in the lower left-hand corner, and
17 this was one of the more severe injuries -- well, it's over
18 here.

19 Q Sorry.

20 A Yeah.

21 Q Just put it that way.

22 A Yeah, that way. This is a left ear with a gaping
23 irregular at least 5-centimeter diameter laceration behind
24 the ear with bone protruding through that laceration, which
25 crushed the skull in that area, and these fractures that

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1 I've described, it showed on the, the x-rays extended to
2 each other and one could, could tell by counting these
3 different ones that there were probably at least eight,
4 eight separate blows to the head that caused the, all these
5 injuries that you see in the, in the scalp.

6 Q Let me show you what's been entered as State Exhibit
7 549, sir.

8 If you would, tell us about that, sir.

9 A It's kind of hard to orient oneself. But this is
10 the---

11 Q Let you, let you -- move all the other pictures out
12 that way you have---

13 A This is Mr. Emery's left arm underneath as we turned
14 him over, and this is his neck right here is in this area,
15 and one can see, from extending down the left ear, that it's
16 folded forward. Partially one can see the extreme -- no,
17 that's wrong. That needs to go up top.

18 Q That needs to go to the top.

19 Like that?

20 A Okay. Yeah, that's right. That is correct. This,
21 this is a portion of his ear that's folded forward, and one
22 can see the extreme injury that is present that lacerated
23 his ear bone protruding. There's a piece of bone there,
24 piece of bone there protruding through that area, and
25 hemorrhage and abrasion extending all the way down behind

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1 his jaw. And that's why his, his left side of his face was
2 so swollen because he had fractures in his jaw, and, and up
3 into his mandible area there underneath that, that extensive
4 wound there.

5 Q Let me show you what has been entered as State Exhibit
6 550.

7 Can you tell us about this picture, sir?

8 A Oh, this picture is before we turned attention to all
9 of the injuries. This is an external from his waist up. As
10 I stated, he was, he only had on shorts, but one can see
11 here still attached to his neck is the breathing apparatus
12 that he was on that had been dislodged from his nose. These
13 dots that one see are blood splatters over the body.
14 There's another one of those abrasions, wounds that were
15 caused by the gasoline as well as over on this side of the
16 body one can see that also, and in this area I believe there
17 was some defense wounds, but no good pictures of the defense
18 wounds however.

19 Q Going to Mrs. Emery, let me show you what's been
20 entered as State's Exhibit 486.

21 If you would, describe this, sir.

22 A This is partially cleaned up picture of her upper
23 torso. As I stated, she had on, on a T-shirt. One can see
24 there's blood soaked all over the T-shirt. It also had
25 gasoline on it. And one can see at least one, two, three,

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1 four, five, six, probably seven and I think I counted six to
2 at least ten, at least six and possibly up to ten separate
3 blows. Her face was crushed in unrecognizable to who the
4 person was. Her left eye was collapsed and could not be
5 visualized. Her right eye was still there. She had
6 extensive nasal fractures. She had a bridge that is
7 protruding partially through. You can't see it for all this
8 blood here. But there was a, a bridge that had been
9 dislodged from her maxilla that was shown on the x-rays that
10 I showed previously.

11 And then underneath this, she had multiple palpable
12 fractures of her jaw as well as her maxillary sinuses and
13 actually up in the, in the area of where the maxillary
14 sinuses are in front of the cheeks, one could see those
15 through these lacerations if you move the skin around.

16 Q Let me show you what's been entered as State Exhibit
17 552.

18 Can you describe that to us, sir?

19 A This is just a side-view showing another large
20 laceration that extends all the way down behind the ear, and
21 I believe this was the area that I've described as possibly
22 a stellate type appearance. But anyway, this injury goes
23 all the way into the, to the mouth and a laceration through
24 her ear. It's hard to tell exactly how many blows occurred
25 because they're all on top of each other.

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1 Q Let me show you State Exhibit 492.

2 If you would, sir, please describe that.

3 A Shows some defense wounds on her, toward her elbow.

4 Again, another picture of her upper body with the -- I think
5 that is the bridge that's extending. I'm not absolutely
6 sure. But we did have some close-ups that did show the
7 bridge protrude through her mouth. And then these scattered
8 abrasions are actually from the skin being stretched as the
9 fractures started to protrude from the -- as the, as the
10 blows were inflicted, it tears the skin from beneath, and if
11 it doesn't puncture, you'll get these abrasions as the skin
12 actually stretches and causes those superficial abrasions.

13 Q Showing you State Exhibit 485, sir.

14 A This is after all, a lot of the blood had been wiped
15 off, and it shows the laceration extends from the front of
16 her ear all the way across actually passed the bridge of her
17 nose. This is one of the two or three most severe blows
18 that exposed her frontal and maxillary sinuses, and one can
19 see the other injuries that, that occurred. Once again, one
20 probably two, three, probably one over around her ear, four,
21 five, six, and then one of, one or more in the front.

22 Q Let me show you State Exhibit 553, sir.

23 If you would, just describe this.

24 A This is just an overall view showing all the blood all
25 over her body, and the, doesn't show very well, her face.

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1 But like I said, her face was crushed in all the way back to
2 the, the back of her oral pharynx, and the brain injuries
3 that were associated with that were basilar skull fractures
4 as well as fractures of the skull, and the brain itself was
5 macerated or torn partially apart all the way back to what's
6 called the Circle of Willis where the carotid arteries come
7 into the base of the skull almost in the mid-skull, and then
8 the carotid, I mean the basilar artery that, that originates
9 from conjunction of the two vertebral arteries that come up
10 the back of the vertebral column, they actually merge at the
11 base of the skull called the Circle of Willis where there's
12 all these arteries joined together, and it's a demarcation
13 site of where the brain stem extends through that area, and
14 it's, and it's encircled by that complex of vessels that's
15 called the Circle of Willis.

16 So, everything forward from there, she had maceration
17 and hemorrhage of her brain from all these blows as they
18 were damaging her, her brain and most of that anteriorly.

19 Q Thank you, sir. If you would, just have a seat.

20 A (Witness returns to the stand.)

21 Q And I'd like to show you State Exhibit 547 and 548.

22 Are these copies of your autopsy reports on Mary Emery
23 as well as Ray Emery or Charles Ray Emery?

24 A Ninety-seven is Mary Ann Emery autopsy. I dictate the
25 autopsies and sign them and I put my initial on the first

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1 pages and then I sign it at the end so I'll know I've
2 actually read them, and they're five pages on her autopsy
3 and six on Mr. Emery's.

4 Q So, these are copies of both your autopsy reports on
5 it?

6 A Yes.

7 SOLICITOR BARNETTE: Your Honor, I'd like to enter
8 these into evidence at this time.

9 MRS. HODGES: Your Honor, we'd object to the autopsy as
10 they contain information that was not testified to and are
11 duplicitous and contain -- well, as I said, contain
12 information that was, was not testified to.

13 THE COURT: I'm not sure what you mean by information
14 that's not testified to. He's testified to that is his
15 report.

16 MRS. HODGES: Yes, sir. But, but my concern is, I mean
17 it's, by entering that as an exhibit, it, and it, and
18 admitting it for consideration, it, it, essentially is, is
19 continuing testimony allowing in the, in the jury room.
20 He's not testified to all of the findings in his report.
21 He's testified to some of them, but not all of them.

22 SOLICITOR BARNETTE: Your Honor, I think I---

23 THE COURT: Would you like to follow-up with some
24 questions to be sure that everything in the report would
25 reflect his testimony?

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1 SOLICITOR BARNETTE: I would be glad to, Your Honor.

2 Q In looking at these two reports, Doctor Wren, in State
3 Exhibit 547 and 548, do these reports include all the
4 findings that you made concerning the autopsies of these two
5 individuals?

6 A Well, generally speaking, when I do an autopsy for a
7 coroner's case as well as hospital cases, it's a little bit
8 different for coroner's cases. What I usually do is I get a
9 brief history to try to remind me of what, what happened as
10 I finish the autopsy. So, there's a brief history. It's
11 usually -- sometimes it can be controversial exactly. But
12 it's basically what I was told and it's only basically from,
13 from my information.

14 For instance on hers, I said this history was provided
15 by Spartanburg County coroner's investigator Mr. Joseph
16 Steward. Please refer to the details in Autopsy FA07-100,
17 which was Mr. Emery's, and I basically said that they were
18 found dead after they went to their home to investigate the
19 whereabouts of a van that was registered in his name. And
20 when they arrived there, the front door was opened and they
21 smelled gasoline, and then they found them with the hammer
22 at the scene.

23 The next thing I do is describe the clothing if there's
24 any because I insist that the coroner transport the body
25 exactly as they found them. In most cases I want them

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1 exactly like they were found. In other words, if they were
2 face down, I want them face down. But I, at least, look at
3 pictures, when I can see them, to see how they were found.
4 That's the description of the clothing. It's just exactly
5 what I found. Anything on the body, including if they had a
6 watch on, I'll put that in there too.

7 Then I go and do an external description, exactly what
8 I see in as much detail as possible. Now, if the person had
9 a very small abrasion that I might---

10 MRS. HODGES: Your Honor?

11 THE COURT: Yes, ma'am.

12 MRS. HODGES: I'll withdraw the objection at this
13 point.

14 THE COURT: Objection withdrawn. They'll be admitted.

15 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

16 (Whereupon, State's Exhibit Nos. 547 and 548 were
17 received into evidence at this time.)

18 Q Thank you, Doctor Wren. Please answer any questions
19 the defense may have for you.

20 MRS. HODGES: I have no questions for Doctor Wren. He
21 may be excused, Your Honor.

22 THE COURT: Sir, you may step down and you're free to
23 go.

24 State may call its next witness.

25 SOLICITOR GOWDY: May it please the Court, Your Honor.

Dominick Baird - Direct examination
By Solicitor Gowdy

1 The State would call Investigator Dominick Baird.

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

3 DOMINICK BAIRD, being first duly
4 sworn, testified as follows:

5 THE COURT: Sir, once you're seated, move toward the
6 microphone and state your name for the record.

7 Witness: Dominick Baird.

8 THE COURT: Mr. Gowdy, your witness.

9 SOLICITOR GOWDY: May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY SOLICITOR GOWDY:

13 Q Good afternoon, Investigator Baird.

14 A Good afternoon.

15 Q You were the lead crime scene investigator in the
16 double homicide at [REDACTED] Montgomery Street on May the 11th,
17 2007?

18 A Yes, sir.

19 Q Investigator Baird, I want to show you photos that have
20 been marked as State's Exhibits 48, excuse me, 448 to 449,
21 451, 454, 455, 458, 459, 464, 465, 476, 478, and ask you
22 whether or not those fairly and accurately portray the, what
23 you saw at the crime scene and whether or not they are
24 relevant to this case.

25 A Yes, sir, they are.

Dominick Baird - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: Your Honor, we would move these
2 exhibits into evidence.

3 MRS. HODGES: Your Honor, we renew our objections.

4 THE COURT: Subject to your prior objections, they'll
5 be admitted as marked.

6 (Whereupon, State's Exhibit Nos. 448, 449, 451, 454,
7 455, 458, 459, 464, 465, 476, and 478 were received into
8 evidence at this time.)

9 THE COURT: You may proceed.

10 SOLICITOR GOWDY: Thank you, Your Honor.

11 Permission to publish to the jury?

12 THE COURT: Yes, sir.

13 Mr. Hawkins, if you'll lower the lights for me please,
14 sir.

15 Q Investigator Baird, I'm gonna show you State's 476.

16 Is that the way Mr. and Mrs. Emery were when you
17 arrived at the crime scene?

18 A Yes, sir, it is.

19 Q I show you State's 448.

20 What is that wrapped around Mr. Emery's body to the
21 best of your recollection?

22 A That would be a part of his breathing machine.

23 Q And on the, arising in the portion of Mrs. Emery?

24 A Yes, sir, that would be her legs.

25 Q Let me show you State's 455.

Dominick Baird - Direct examination
By Solicitor Gowdy

1 A Yes, sir.

2 Q Is that how you found Mr. Emery?

3 A Yes, sir, it is.

4 Q Let me show you 478.

5 A Yes, sir.

6 Q And is that the blue strapped part of his breathing
7 apparatus?

8 A Yes, sir, it is.

9 Q Show you State's 458.

10 A Yes, sir.

11 Q That was after Mr. Emery would of been turned over on
12 his back?

13 A That is correct, sir.

14 Q Let me show you State's 459.

15 A Yes, sir.

16 Q Is that the way he appeared at the crime scene?

17 A Yes, sir, it is.

18 Q State's 482, after Mr. Emery had been moved?

19 A Yes, sir.

20 Q State's 451.

21 A Yes, sir.

22 Q Does that fairly and accurately depict the way Mrs.
23 Emery's body was at the crime scene?

24 A Yes, sir, it is.

25 Q Let me show you 449.

Dominick Baird - Direct examination
By Solicitor Gowdy

1 A Yes, sir.

2 Q Does it fairly and accurately depict the location of
3 the nozzle from the gas spout?

4 A Yes, sir.

5 Q Let me show you 465.

6 A Yes, sir.

7 Q Let me show you 454.

8 A Yes, sir.

9 Q Let me show you 464.

10 A Yes, sir.

11 Q That is how she looked on May the 11th when you
12 processed the crime scene?

13 A Yes, sir.

14 Q Thank you, Investigator Baird. Please answer any
15 questions the defense attorney may have.

16 MRS. HODGES: I have no questions for Detective Baird,
17 Your Honor. We have no objection to his release.

18 THE COURT: Sir, you may step down. You're free to go.

19 WITNESS: Thank you.

20 THE COURT: State may call its next witness.

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

22 The State of South Carolina rests.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, at this point in time there's some matters that I need
25 to go over with the attorneys. I'm going to ask that you

1 step back to the jury room.

2 And as I always tell you, during the, during the
3 conducting of a hearing, you should not discuss any of the
4 matters involved in this case until such time as I advise
5 you to do so.

6 You may retire to the jury room.

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

9 THE COURT: All right. Anything from the defense
10 before we begin the defense portion of the case?

11 MR. ALLEN: Your Honor, we just simply renew our
12 objections to the evidence as we made throughout the course
13 of this trial and at this --.

14 THE COURT: Okay. That's noted and, and the Court will
15 make the same rulings.

16 As to the defendant, Mr. Torres, if you would, please
17 stand.

18 (Defendant complies.)

19 THE COURT: Mr. Torres, I want to ask the clerk to
20 place you under oath.

21 (Whereupon, the defendant was placed under oath at this
22 time.)

23 THE COURT: Mr. Torres, you can have a seat. But if
24 you would -- Mrs. Hodges, if you'll sit back so I can see
25 Mr. Torres.

1 MRS. HODGES: I'm sorry, judge.

2 THE COURT: Thank you.

3 Mr. Torres, a couple of things I need to go over with
4 you at this point in time. I will explain to you that you
5 do have the right to participate in this part of the hearing
6 on your own behalf and in several regards or a couple of
7 regards.

8 First of all, I'm going to advise, at this time, that
9 at the close of this particular hearing you will be given
10 the opportunity to, to participate in the closing argument
11 to the jury. At this point in time I'm not inquiring as to
12 whether or not you wish to do so. I am simply advising you
13 that you will have that right and I will inquire at the
14 appropriate time of you as to whether or not you do wish to
15 participate in that closing argument to the jury.

16 Do you understand that you have that right?

17 DEFENDANT: Yes, sir.

18 THE COURT: Have you had an opportunity to discuss that
19 with your attorneys or anyone else you wish to discuss that
20 with at this point in time?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. Again, throughout this
23 part of the proceeding you will have opportunities to
24 discuss this matter with your attorneys, and certainly you
25 will, I'm sure, will be in a position, at the close of the

1 hearing, to give me your position in regards to your
2 participation.

3 You understand that, sir?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: Also, sir, I will remind you that we have
6 reached the stage of this hearing when you will begin to
7 present the testimony and evidence that you wish to present.
8 You still have the right to claim the protections given to
9 you by the Fifth Amendment to the Constitution as to any
10 matters that might involve any other type of activity that
11 you may have or could have been involved in.

12 I will tell you that, under the Fifth Amendment to the
13 Constitution, no person is compelled, in any criminal case,
14 to be a witness against himself. That's what that says.
15 What that means is that you can not be required to testify
16 in any court proceeding. You have the right to testify on
17 your own behalf. However, no one can make you testify. The
18 right not to testify is a personal right and no one can
19 waive or give up that right except you.

20 If you decide to testify, I will advise you you're
21 still subject to the same rules that govern the testimony of
22 any other witness. That means that you will be examined by
23 your attorneys. You'll be cross-examined by the State. If
24 there are matters in your criminal record that meet the, the
25 test, as I explained to you earlier at the, at the guilt and

1 innocence phase of this trial, those matters could be used
2 against you to attack your credibility. That's matters
3 concerning your criminal past or criminal record, and that
4 would require finding by this Court that those matters were
5 relevant for that purpose.

6 If you decide to, decision, decide to testify, the
7 decision on your part must be made freely and voluntarily
8 with knowledge of the rights that you have under the Fifth
9 Amendment and the protections afforded to you and the
10 consequences of your decision to testify if you decide to do
11 that.

12 Now, if you decide not to testify, even in this phase
13 of the trial, the jury will be instructed that they should
14 take, give that no consideration. In fact, should not even
15 discuss those matters in their deliberations. Now, the
16 decision as to whether or not to testify again is left
17 entirely up to you. You have the right to talk to your
18 attorney. You have the right to talk with family or
19 friends. But the final decision is left entirely up to you.

20 Now, do you understand again the rights I have
21 explained to you on this occasion?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you have any questions about what I've
24 gone over with you?

25 DEFENDANT: No, sir.

1 THE COURT: All right, sir. Now, have you had an
2 opportunity to discuss your decision as to whether or not to
3 testify in this phase of the trial with your counsel?

4 DEFENDANT: Yes, sir, Your Honor, I have.

5 THE COURT: Sir?

6 DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: You have.

8 All right, sir. Are you in a position to make a
9 decision as to whether or not you do wish to participate by
10 testifying in this portion of the trial?

11 DEFENDANT: I want to remain silent.

12 THE COURT: I'm sorry?

13 DEFENDANT: I'm gonna remain silent.

14 THE COURT: Okay, sir. Thank you very much.

15 All right. Anything further from the defense that we
16 need to go through before we take up your case?

17 Any other matters you wish to raise before the Court?

18 MR. ALLEN: Your Honor, the only other matters that,
19 again, we renew our request to present the evidence of the
20 third party guilt in this phase based, again, on the same
21 grounds as we previously stated. I know they've been ruled
22 upon previously by the Court. But we renew that request.

23 THE COURT: I'll hear from the State on that particular
24 renewal of the motion.

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

1 I, I'm not aware of any more evidence that existed
2 pretrial when Your Honor made his ruling. The evidence of
3 this defendant's guilt, forensically and otherwise, is
4 simply overwhelming and there is nothing, there may be
5 conjecture, but nothing more than conjecture to suggest that
6 someone else committed the crime or frankly that someone
7 else was complicit in the crime.

8 THE COURT: Any additional evidence that the defense
9 wishes to present in this regard?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: All right. My ruling would stay the same.

12 All right. You -- are you ready to call your first
13 witness?

14 MR. ALLEN: Yes, Your Honor, I am.

15 THE COURT: All right. Let's bring the jury in.

16 (Whereupon, the following takes place within the
17 presence of the jury.)

18 THE COURT: I'll wait till the, everyone is seated
19 before we begin.

20 All right. The record will reflect that the jury has
21 returned to the courtroom, and at this time the defense has
22 the right to call its witnesses.

23 Mr. Allen, you may call your first witness.

24 MR. ALLEN: Your Honor, we request permission to call a
25 witness, it might be slightly out of order, and we request

John Shackelford - Direct examination
By Mr. Allen

1 to call John Shackelford to the stand.

2 THE COURT: Yes, sir, you may call him.

3 MR. ALLEN: John Shackelford.

4 THE COURT: Sir, come forward to the witness stand to
5 be sworn please.

6 JOHN SHACKELFORD, being first duly
7 sworn, testified as follows:

8 THE COURT: Sir, have a seat in the witness stand.
9 Move toward the microphone please, and state your name for
10 the record.

11 WITNESS: John Shackelford.

12 THE COURT: Mr. Allen, your witness.

13 MR. ALLEN: Okay.

14 DIRECT EXAMINATION

15 BY MR. ALLEN:

16 Q Mr. Shackelford, if you would, just please speak loudly
17 enough. I mean sometimes you're too close to that
18 microphone it causes all sorts of problems.

19 How are you currently employed?

20 A I'm employed with the Continuum of Care. I'm the
21 director of the agency.

22 Q You're the director of the Continuum of Care?

23 A Right.

24 Q And how do you know or do you know Tony Torres?

25 A I do know Tony.

John Shackelford - Direct examination
By Mr. Allen

1 Q Okay.

2 A I, I know Tony Torres.

3 Q How is it that you know Tony Torres?

4 A I worked directly with Tony -- actually I worked at a
5 program that was funded by Continuum in the 80's, the mid to
6 late 80's, and I worked with Tony. Tony entered into that
7 program. So, I was his counselor I guess for over a couple
8 of years or right at.

9 Q Okay. And since that time, did you have occasion to
10 follow-up with him?

11 A After that period in time, no, I've not spoke to Tony.

12 Q As director, have you had access to records?

13 A I have, I have had access to the records.

14 Q Okay. Have you had a chance to review some of them
15 since that?

16 A Some of the records I have reviewed, yes.

17 Q Okay. Like to get you, if you would please, tell me
18 what is the Continuum of Care.

19 A Continuum actually is a fairly young state agency. It
20 was created as, through a proviso in the Legislature in the
21 mid 80's, and the reason for that was it was in response to
22 a lawsuit in North Carolina where there were no treatment
23 services for severely emotionally disturbed children, and
24 South Carolina saw that, and Continuum was created to
25 actually develop a system for treatment for kids that had

John Shackelford - Direct examination
By Mr. Allen

1 severely emotionally disturbed children.

2 And so, Continuum, at that time, that program that I
3 worked in that was one of those programs that Continuum
4 funded and created. But it created many things. It created
5 an, an entire RAP system meaning behavioral interventions
6 and positive role models and a therapist system and, and
7 residential treatments. So, it, it actually created a
8 system that South Carolina did not have.

9 And currently, what Continuum does, we're -- it's a
10 much more narrow focus. We don't do program development in
11 that the system is developed. And now we do -- and, and
12 they did in the past too. But service coordination.
13 Meaning linking all those services together for individuals
14 that are deemed severely emotionally disturbed. And, and
15 when I say severely emotionally disturbed, it's kids that
16 have fallen through the cracks in the system that have had
17 persistent diagnosis throughout, you know, several years and
18 they have to make application to Continuum and, and would be
19 accepted based on severity.

20 Q Okay. And does any emotionally disturbed child or can
21 any emotionally disturbed child be accepted into the
22 program?

23 A They can be accepted. We have a limited number of
24 slots. So, there could be a waiting list. So, we can only
25 serve so many kids based on our budget and number of staff.

John Shackelford - Direct examination
By Mr. Allen

1 But yes, if they are severe enough, they're assessed,
2 scored. And if deemed severe enough, they're placed on the
3 list and then, you know, who is the most severe is selected
4 at the next selection.

5 Q Okay. So, you, you keep using the word severely
6 emotionally disturbed.

7 Do you have any -- is there any kind of criteria that,
8 to determine severely emotionally, emotionally disturbed
9 from emotionally disturbed children?

10 A With severely emotionally disturbed, it's a, it's a
11 pattern over time. And so, the, the kids that Continuum
12 would serve, as I said before, the persistence. We look at
13 how long has it been going on. In other words, we wouldn't
14 accept a child that maybe just recently had shown problems
15 or behavioral issues. It's kids that really have worked
16 through the Department of Mental Health, and it could, it
17 could be D.J.J. It could be D.S.S. But, but the kids have
18 received treatment, and over and over and over again.

19 And then when things have fallen, and maybe they've
20 fallen through the cracks, we pick these cases up and kind
21 of string that support system back together, and kind of
22 fill in the gaps and work with them on all facets in their
23 life.

24 Q Okay. Now, you indicated that you worked directly with
25 Tony---

John Shackelford - Direct examination
By Mr. Allen

- 1 A I did.
- 2 Q ---Torres?
- 3 A Right.
- 4 Q And that was as a counselor?
- 5 A I was his counselor, yes.
- 6 Q Okay. That's a tricky microphone.
- 7 A I'm sorry.
- 8 Q Where were you his counselor?
- 9 In other words, what program?
- 10 A Like I said before, I was in a program that Continuum
- 11 funded, and it was one of the first programs that they
- 12 developed, and it was a collaboration with the deaf and
- 13 blind school. So, it's placed at the deaf and blind. I had
- 14 several positions there. But at any one time I was a youth
- 15 counselor. But then I became supervisor of the, all the
- 16 residential programs including the deaf S.E.D. children or
- 17 severely emotionally disturbed children. They were also
- 18 placed in that program. And then I became the, the lead
- 19 clinical staff later on. But so, I had worked with Tony in
- 20 many capacities actually.
- 21 Q Okay. Now, what was the name of this program?
- 22 A It's called Pioneer Ridge.
- 23 Q Pioneer Ridge?
- 24 A Correct.
- 25 Q And I think you indicated that it was located at the

John Shackelford - Direct examination
By Mr. Allen

1 South Carolina School for the Deaf and Blind?

2 A That's correct.

3 Q The one here in Spartanburg County?

4 A Correct.

5 Q And -- but it was open to all children?

6 I mean that's to say not sight impaired or hearing
7 impaired children as well?

8 A Yes, the deaf and blind school has multi-handicapped,
9 several areas they served. But in that particular hearing
10 program, there were obviously there -- I think it was a six
11 kid program. So, there were only six slots. So, like I
12 said before, Continuum, it would be a Continuum child that
13 would have that slot. So, if a service coordinator for
14 Continuum felt their child was severe enough, then they
15 would make application to that program and try to get their
16 kid into that program.

17 Q Do you know how old Tony was or approximately how old
18 he was when you became acquainted with him?

19 A I think he was around ten or eleven.

20 Q Ten or eleven years old?

21 A Right. That's correct.

22 Q Okay. And what was your role in helping Tony?

23 In other words, what did you do?

24 A Well, as I said before, I supervised the program. So,
25 I was with him actually during the day and in the evening

John Shackelford - Direct examination
By Mr. Allen

1 over, split over two shifts. And then later on I became his
2 counselor meaning I did one-on-one, and also I conducted
3 group counseling with all the, the kids, and I also went out
4 and worked with the family members in their home.

5 Q Did you work with Tony's family members?

6 A I did.

7 Q Do you remember which family members you worked with?

8 A I worked with Lisa, his mother. I went to the home
9 several times and she would come to the program at times.
10 And I worked with -- I, I'm not sure if he was a boyfriend.
11 But I remember Eddie. I don't remember if it was a
12 step-father or boyfriend at the time. And worked with him.
13 Actually worked with both of them a few times in the home.

14 Q Okay. And when you say you worked with them, what kind
15 of things were you instructing them on or working with them?

16 A Well, I think the focus at that time obviously was a
17 concern. You know, Tony, and it, and it was a goal for him
18 within that program, anger management. It was an issue of
19 how he dealt with anger and how to do it appropriately
20 without lashing out, and there were issues within the home
21 and within the program. But really working with the mom on,
22 you know, how to desolate Tony, how to understand what some
23 of those triggers may be, and see it before, before he would
24 act out.

25 I remember working with him kind of on a contract, how

John Shackelford - Direct examination
By Mr. Allen

1 to set up a program with Tony at home like we were doing in
2 the, in the program to have continuity of care, you know,
3 and I have also trained them how to deescalate. I went -- I
4 remember going into teaching one, how to deescalate Tony,
5 but also to, how to defend yourself if need be, you know, to
6 protect yourself if, if he were to become physical.

7 Q And in part of your teachings, well, did you instruct
8 any of the family members or Lisa, his mother, or anyone
9 else on restraining Tony?

10 A I did show them some restraints.

11 Q And that's essentially for what purpose?

12 A It would be to one -- the, the purpose of restraint is,
13 is to really keep everyone safe. I'm sorry.

14 Q It's okay.

15 A I'm challenged on the microphone.

16 It was really to, to -- it's a safety technique and
17 essentially it would be in order to, to be able to place
18 hands upon him, to, to keep things under control so he could
19 not harm himself nor the parent.

20 Q Okay. So, that would require a holding of an
21 individual down during these techniques of restraint?

22 A It, it would require that although that's trained as a
23 last resort. But yes. So, ultimately they're trained to
24 deescalation, understanding what those triggers are, how to
25 verbally deescalate. And if all else fails, then you, you

John Shackelford - Direct examination
By Mr. Allen

1 know, have to defend yourself, that would be the time that
2 you'd use the, a restraint.

3 Q Okay. Now, during the time that you were Tony's
4 counselor, did you have -- had you been advised or had, did,
5 did you know if he had a particular diagnosis?

6 A I realized Tony had -- probably there were multiple
7 diagnosis, but I know the diagnosis when he entered into our
8 program was intermittent explosive disorder. But probably
9 throughout history he probably had a few diagnosis that,
10 that, that he was given.

11 Q All right. And what types of -- in other words, what
12 would the program do for a severely emotionally disturbed
13 child such as Tony?

14 A I would say the, the typical or the general treatment
15 used for kids with intermittent explosive disorder or, or
16 other particular disorders, it's usually, you know, a
17 behavior modification system. So, it's kind of a level
18 system, a token system, in which they had to, you know,
19 obviously show desired behavior. They would have goals,
20 and, and, of course, a few of Tony's were to control his
21 anger and be able to replace that anger with problem solving
22 techniques to, to look for resolutions, those kind of
23 things.

24 Anyway they could earn points and they earn level,
25 certain levels, and then that would, obviously, give them

John Shackelford - Direct examination
By Mr. Allen

1 more and more freedom, more and more, if they could show
2 they could handle that, and home visits, those kind of
3 things. Earned -- it's kind of an earned system.

4 Q Okay. In, in that type of treatment, did it involve
5 medication?

6 A I do think Tony was on medication while he was in our
7 program. If I recall correctly, I think it was Lithium. A
8 lot of kids might of been on Lithium at that time. That was
9 a popular drug.

10 Q Does this behavior modification program work with all
11 severely emotionally disturbed children?

12 A I, I wouldn't think. And as a matter of fact, that's
13 something that Continuum works very closely with programs
14 now is, is to have individually specific interventions. And
15 so, we really work with programs not to just use the
16 behavior mod system. So, I would, I would say it's not
17 effective with all diagnosis.

18 Q Okay. When Tony was in the program, specifically as
19 when you were his counselor, cause you, I think you said
20 just now that behavior modification was not used for all
21 children, was -- how frequent was behavior modification used
22 when Tony was in the program?

23 A That would of been, you know, a 24-hour system. So,
24 all his waking hours, you know, it, it would of been
25 employed at that time.

John Shackelford - Direct examination
By Mr. Allen

1 Q Okay. If a child were bipolar, would behavior
2 modification work?

3 A Strictly using behavior mod would not work with, with a
4 bipolar child.

5 Q Why is that?

6 A A bipolar diagnosis, it's, it's a lot different than
7 intermittent explosive disorder, and with a bipolar child,
8 successful treatment really would involve the right
9 medication, the right mix of medication. Cognitive therapy
10 can work. But, but the behavior mod system is, is a system
11 that has a lot of expectation, a lot of -- it doesn't vary a
12 lot. It doesn't allow for a lot of room, you know, for
13 choice.

14 And so, that can create a lot of stressors. And with
15 bipolar, probably the biggest technique is to reduce
16 stressors. So, in that respect, if that was solely used
17 could be a trigger at times.

18 Q Now, if you would, explain to me what you mean by
19 stressors and triggers.

20 A Well, when I say stressors particularly with a bipolar
21 diagnosis, a lot of things can be stressors. It can be
22 school. It can be a lot of things, and it is very
23 overwhelming. And, and the reason for lithium. It's one
24 particular drug. But it, it stabilizes mood, the mood
25 swings.

John Shackelford - Direct examination
By Mr. Allen

1 And with bipolar, if they're a lot of stressors,
2 meaning it could be the rules that are in place -- in other
3 words, if they break rules, then it's a fail and it's a
4 stressor, and, you know, that was probably a constant. You
5 either -- you know, you either meet it every moment of the
6 day or you don't. And so, if, if that were to occur, that,
7 that could be a huge stressor along with which I know school
8 is a big stressor for Tony. And all that was enclosed
9 within that group.

10 Q Okay. Now, do you recall if there were any other
11 stressors for Tony?

12 A I remember specifically what we worked with Tony. I
13 know you asked me that earlier. But what some of the
14 specific goals with Tony, you know, working closely with
15 mom. If, you know, he were to earn those levels. And he
16 was able to, at times, to do that. If he was not able to go
17 home, which was the big reward, you usually would have an
18 incident, and, you know, a reaction to that, a severe
19 action.

20 So, so, one was working closely with his mother trying
21 to repair some of those relationships and that trust between
22 them so he could be at home more and eventually live at
23 home. That was the goal, to return him home.

24 Q Okay. Tell me, was Tony, did Tony earn points or did
25 he earn certain levels?