

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID J. CHAVEZ,

APPELLANT

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH
CAROLINA

COUNTY OF OCONEE

) IN THE COURT OF GENERAL
) SESSIONS
)
) INDICTMENT NO: 2010-GS-37-00020

STATE OF SOUTH
CAROLINA

PLAINTIFF,

-VS-

DAVID CHAVEZ,

DEFENDANT.

)
)
)
) TRANSCRIPT OF RECORD
) TRIAL VOLUME I
) (PAGES 1 THROUGH 99)
)
)
)
)

NOVEMBER 15, 2010
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

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

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1 AFTERNOON PROCEEDINGS

2

3 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE
4 BEFORE WE BEGIN?

5 MR. WAGNER: YOUR HONOR, MR. DAY AND I MET PRIOR, A
6 LITTLE WHILE AGO PRIOR TO LUNCH, AND IT'S MY
7 UNDERSTANDING BASED ON HIS CONVERSATIONS WITH HIS CLIENT
8 THAT THEY WOULD AGREE TO ENTER INTO A STIPULATION AS FAR
9 AS THE S.L.E.D. EVIDENCE AND THE CHAIN OF CUSTODY, AND IF
10 SO, THAT MIGHT SPEED UP THE TRIAL TOMORROW BECAUSE I'VE
11 GOT MOST OF THEM TOMORROW AFTERNOON SET UP FOR THEM. BUT
12 I WANTED TO PUT IN THE RECORD.

13 THE COURT: HAS IT BEEN MARKED AS FAR AS EACH
14 EXHIBIT?

15 MR. WAGNER: YES, SIR. THE THREE EXHIBITS THAT WE
16 WOULD BASICALLY BE TALKING ABOUT WOULD BE STATE'S EXHIBIT
17 NUMBER 6, THAT IS THE MOUTH SWAB OF THE VICTIM THAT THEY
18 USED FOR HER D.N.A.

19 THE COURT: LET'S DO THIS. PUT THEM IN AN ORDER
20 THAT YOU WANT TO PUT THEM ON THE RECORD AND WE'LL GO
21 THROUGH EACH ONE JUST TO BE SURE THERE IS NO OBJECTION.

22 MR. WAGNER: I HATE TO DO IT IN REVERSE ORDER, YOUR
23 HONOR, BUT THAT WOULD BE STATE'S EXHIBIT NUMBER 6.

24 THE COURT: AND THAT IS?

25 MR. WAGNER: AND THAT IS THE MOUTH SWABS THAT WERE

1 TAKEN AT THE AUTOPSY FROM THE VICTIM.

2 THE COURT: IS THERE ANY OBJECTION TO STATE'S
3 EXHIBIT 6 COMING IN? NOW, THE THING IS IT'S COMING IN AS
4 FAR -- WHEN I SAY COMING IN, I'M TALKING ABOUT THE
5 AUTHENTICITY OF IT, NOT THE WEIGHT OF IT, BECAUSE THAT'S
6 TO BE DETERMINED BY THE JURY.

7 MR. DAY: YOUR HONOR, WE HAVE NO OBJECTION TO THAT.
8 I HAVE DISCUSSED WITH MY CLIENT ON THE CHAIN OF CUSTODY,
9 WHAT THAT MEANS, ADVISED HIM AS TO THE EVIDENCE WE
10 DISCUSSED. HE ADVISES ME THAT HE GOES ALONG WITH THE
11 RECOMMENDATION THAT WE NOT FIGHT ABOUT THE CHAIN OF
12 CUSTODY AND STIPULATE THIS IS, IN FACT, WHAT IT SAYS IT
13 IS AND WE DON'T NEED CHAIN OF CUSTODY TESTIMONY TO PROVE
14 THAT.

15 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT. SO
16 THAT'S AS TO STATE'S EXHIBIT 6 --

17 MR. WAGNER: YES, SIR.

18 THE COURT: -- WILL BE ADMITTED FOR THAT PURPOSE.

19 (STATE'S EX. # 6, DNA MOUTH SWABS TAKEN AT
20 AUTOPSY FROM VICTIM, HAVING PREVIOUSLY BEEN
21 MARKED FOR IDENTIFICATION, WAS RECEIVED IN
22 EVIDENCE BY STIPULATION OF COUNSEL.)

23 MR. WAGNER: STATE'S EXHIBIT NUMBER 5 IS PART OF THE
24 T-SHIRT THAT CAME FROM THE DEFENDANT'S PERSON. IT HAD
25 BLOOD ON IT. THEY MATCHED THE CUTTINGS OFF OF STATE'S

1 EXHIBIT NUMBER 5, WHICH IS THE CUTTINGS FROM THE T-SHIRT;
2 THEY MATCHED IT TO STATE'S EXHIBIT NUMBER 6 WHICH MATCHED
3 THE VICTIM'S D.N.A. ON HIS T-SHIRT.

4 THE COURT: AND WHAT DOES THE DEFENDANT SAY?

5 MR. DAY: SAME THING, YOUR HONOR.

6 (STATE'S EX. # 5, DNA CUTTINGS FROM
7 DEFENDANT'S T-SHIRT, WAS RECEIVED IN EVIDENCE
8 BY STIPULATION OF COUNSEL.)

9 MR. WAGNER: AND, YOUR HONOR, LAST WOULD BE THE
10 ACTUAL KNIFE FOUND AT THE SCENE THAT WAS SENT TO S.L.E.D.
11 WITH NEGATIVE RESULTS, THEY DIDN'T FIND ANYTHING ON THE
12 BLADE. BUT TECHNICALLY IT WAS SENT TO S.L.E.D. AND
13 THAT'S WHAT S.L.E.D. WOULD SAY.

14 (STATE'S EX. # 30, KNIFE, WAS RECEIVED IN
15 EVIDENCE BY STIPULATION OF COUNSEL.)

16 MR. DAY: SAME THING, YOUR HONOR, WITH THE REPORTS
17 FROM S.L.E.D., AND AS FAR AS THE S.L.E.D. REPORTS
18 THEMSELVES; WE HAVE NO OBJECTION TO THOSE BEING ADMITTED,
19 AS WELL.

20 MR. WAGNER: YOUR HONOR, AND THAT'S STATE'S EXHIBIT
21 30 FOR THE RECORD.

22 THE COURT: WHAT IS NUMBER 30 FOR THE RECORD?

23 MR. WAGNER: THE ACTUAL KNIFE ITSELF. JUST FOR
24 PURPOSES OF THE COURT THEY REMOVED IT FROM THE BOX HERE
25 AND PUT IT IN THE PLASTIC BAG SO IT WAS CLEAR.

1 JUST FOR THE RECORD, YOUR HONOR, WE WOULD JUST LIKE
2 TO PUT ON THE RECORD THAT WE HAD ALL THE CHAIN WITNESSES
3 FOR THESE PIECES OF EVIDENCE THAT WERE SUBPOENAED AND
4 WERE COMING TO COURT TOMORROW OR TODAY, THERE'S ONE OUT
5 HERE TODAY, THAT THEY WERE ALL AVAILABLE FOR COURT, AND
6 WOULD BE HERE TOMORROW TO TESTIFY THAT THEY HANDLED THE
7 EVIDENCE IN THE PROPER MANNER.

8 I BELIEVE THAT IN ORDER TO SAVE TIME, TO KEEP ALL
9 THESE PEOPLE FROM COMING INTO COURT AND TAKING MOST OF
10 THE AFTERNOON TOMORROW, THAT THEY WILL STIPULATE AS TO
11 THE RESULTS IN THE FORM OF THE ACTUAL S.L.E.D. REPORT
12 BEING PUT INTO EVIDENCE INSTEAD OF THE ACTUAL EVIDENCE
13 TECH HAVING TO COME UP HERE AND TESTIFY.

14 THE COURT: IS THAT CORRECT, MR. DAY?

15 MR. DAY: THAT IS CORRECT, YOUR HONOR.

16 THE COURT: VERY GOOD. THE REPORTS, ARE THEY
17 IDENTIFIED?

18 MR. WAGNER: I DON'T HAVE THEM. IT SLIPPED MY MIND
19 TO DO THAT. I WOULD HAVE TO MARK THOSE.

20 THE COURT: I WOULD RATHER GO AHEAD AND DO IT IF
21 IT'S NOT TOO VOLUMINOUS IN ORDER TO BE SURE THAT IT WOULD
22 NOT BE NECESSARY TO HAVE THE CUSTODY OF THEM WITH YOU.

23 MR. WAGNER: YES, SIR, I'M GETTING THAT RIGHT NOW.

24 (COUNSEL CONFER.)

25 (MARKED FOR IDENTIFICATION WAS STATE'S

1 EXHIBIT NUMBER 32, S.L.E.D. REPORT.)

2 MR. WAGNER: YOUR HONOR, I'VE GOT A COPY OF THAT
3 REPORT. IT HAS NOW BEEN MARKED AS STATE'S EXHIBIT NUMBER
4 32, AND IT IS A SOUTH CAROLINA LAW ENFORCEMENT DIVISION
5 FORENSICS LABORATORY REPORT, WHICH BASICALLY SAYS WHAT WE
6 DISCUSSED HERE, THAT THEY MATCHED THE D.N.A. FROM THE
7 VICTIM TO THE SHIRT.

8 THE COURT: ALL RIGHT. ANY OBJECTION, MR. DAY?

9 MR. DAY: NO, YOUR HONOR.

10 THE COURT: AND THAT'S 32?

11 MR. WAGNER: YES, SIR.

12 THE COURT: STATE'S EXHIBIT 32 WILL BE ADMITTED. IT
13 WILL NOT BE NECESSARY TO HAVE THE AUTHENTICITY OF A
14 WITNESS.

15 (STATE'S EX. # 32, S.L.E.D. REPORT, WAS
16 RECEIVED IN EVIDENCE BY STIPULATION OF
17 COUNSEL.)

18 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
19 STATE?

20 MR. WAGNER: NO, YOUR HONOR.

21 THE COURT: ANYTHING FROM THE DEFENDANT BEFORE WE
22 BEGIN?

23 MR. DAY: NO, YOUR HONOR.

24 (DISCUSSION OFF THE RECORD.)

25 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US,

1 PLEASE.

2 (THE JURY ENTERED THE COURTROOM AT
3 APPROXIMATELY 2:42 P.M.)

4 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT
5 THE JURY AND ALTERNATES ARE IN THE JURY-BOX.

6 MADAM CLERK, IF YOU WOULD PLEASE SWEAR THE JURY.

7 (WHEREUPON, THE JURY WAS SWORN BY THE CLERK
8 OF COURT.)

9 THE CLERK: PLEASE HAVE A SEAT.

10 THE COURT: MR. FOREMAN, WHILE THE STATUS OF
11 FOREPERSON IS THE SAME AS ANY OTHER JUROR, THE FOREPERSON
12 DOES ACT AS THE SPOKESPERSON FOR THE TRIAL JURY. IT IS
13 THE RESPONSIBILITY OF THE FOREPERSON TO PRESIDE OVER THE
14 TRIAL JURY'S DELIBERATION WHEN THE JURY RETIRES TO REACH
15 A DECISION ON THE ISSUES OF THIS CASE. AS THE JURY
16 DELIBERATES ITS VERDICT, THE FOREPERSON HAS A DUTY TO SEE
17 THAT EACH JUROR HAS A FULL AND FAIR OPPORTUNITY TO
18 EXPRESS HIS OR HER OPINIONS AND VIEWS ON ALL ASPECTS OF
19 THE CASE.

20 FROM TIME TO TIME IT MAY BE NECESSARY TO ASK YOU TO
21 RETIRE TO YOUR JURY ROOM FOR THE COURT TO TAKE UP SOME
22 MATTERS OF LAW WITH THE ATTORNEYS. WHEN YOU RETURN TO
23 THE COURTROOM, AS FROM LUNCH OR ANY EVENING RECESS, THE
24 FOREPERSON WILL MAKE SURE THAT ALL MEMBERS OF THE JURY
25 ARE READY TO COME BACK TOGETHER. THE REASON FOR THAT IS,

1 OF COURSE, FROM THIS POINT ON, YOU ARE THE SOLE AND ONLY
2 JUDGES OF THE FACTS IN THIS CASE AND YOU MUST MAKE YOUR
3 DECISION BASED ON THE FACTS AND THE LAW OF THE CASE. THE
4 LAW IS MY PREROGATIVE; THE FACTS ARE YOURS; SO THEREFORE
5 YOU WANT TO BE SURE EVERYBODY HAS THE SAME OPPORTUNITY TO
6 HEAR THE SAME WITNESSES AND HEAR THE SAME TESTIMONY AND
7 THE OTHER EXHIBITS THAT ARE INTRODUCED INTO EVIDENCE AT
8 THE SAME TIME. SO IF SOMEBODY IS NOT QUITE READY TO COME
9 BACK WHEN YOU RETURN FROM THE JURY ROOM TO THE COURTROOM,
10 JUST WAIT UNTIL EVERYBODY IS READY AND THEN COME IN
11 TOGETHER.

12 I'M SURE THAT EACH OF YOU NOW FULLY APPRECIATES THAT
13 THIS COURT, THE COURT OF GENERAL SESSIONS FOR OCONEE
14 COUNTY, EXISTS FOR THE PURPOSE OF RESOLVING QUESTIONS
15 INVOLVING ALLEGED CRIMINAL CONDUCT THAT ARISES BETWEEN
16 THE STATE OF SOUTH CAROLINA AND THE DEFENDANT. IT IS A
17 GUARANTEED RIGHT OF EVERY CITIZEN THAT A CHARGE MUST BE
18 PRESENTED IN OPEN COURT ACCORDING TO THE SAME RULES OF
19 PROCEDURE. THE STATE HAS NOT ONLY AN EQUAL RIGHT, BUT
20 THE DUTY TO PRESENT A CHARGE OF CRIMINAL CONDUCT IN OPEN
21 COURT ACCORDING TO THE SAME RULES OF PROCEDURE. EACH OF
22 THE PARTIES, THEREFORE, BOTH THE STATE AND THE DEFENDANT,
23 THEN HAVE AN EQUAL RIGHT TO THE OPPORTUNITY OF THIS
24 JUDICIAL PROCEEDING AND TO HAVE YOU AS THE JURY SELECTED
25 AND NOW SWORN FOR THE TRIAL OF THIS CASE.

1 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTIES, AS
2 I'VE SAID, AS JURORS LIES ESSENTIALLY IN THE OATH THAT
3 YOU HAVE NOW TAKEN TO WELL AND TRULY TRY AND DETERMINE
4 THE FACTS OF THIS CASE. THAT OATH IN A VERY ESSENTIAL
5 WAY SAYS THAT YOU ARE THE SOLE JUDGES OF THE FACTS IN
6 THIS CASE. OBVIOUSLY ANY CASE TRIED IN COURT WILL
7 INVOLVE A QUESTION ABOUT WHAT HAPPENED OR HOW SOMETHING
8 CAME TO HAPPEN OR WHOM, IF ANYONE, DID ANYTHING IN A
9 PARTICULAR OCCURRENCE OR CIRCUMSTANCE.

10 FROM THIS POINT FORWARD THEN NO ONE CONCERNED WITH
11 THIS TRIAL HAS THE RIGHT TO DECIDE ANY QUESTION OF FACT
12 IN THIS TRIAL OR THE TRUTH OF IT EXCEPT YOU, THE JURY.
13 THE FACTS THEN ARE FOR YOUR RESOLUTION AND YOUR DECISION
14 AND YOURS ALONE. AND AFTER YOU HEAR ALL THE EVIDENCE IN
15 THE CASE, THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND
16 JOINT DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY
17 DECIDING THE WEIGHT AND THE BELIEVABILITY OF EACH PART OF
18 THE EVIDENCE AND BY APPLYING THE LAW OF THE CASE THERETO.

19 AS THE TRIAL JUDGE I AM THE JUDGE OF THE LAW IN THIS
20 CASE. IT IS ALSO MY RESPONSIBILITY, AMONG OTHER DUTIES,
21 TO PRESIDE OVER THIS TRIAL; TO RULE ON THE ADMISSIBILITY
22 OF EVIDENCE OFFERED DURING THE PROGRESS OF THE TRIAL, AND
23 TO STATE TO YOU, THE JURY, THE LAW APPLICABLE TO THE
24 CASE.

25 THE CONSTITUTION OF SOUTH CAROLINA MANDATES THAT I

1 AS THE TRIAL JUDGE CANNOT DIRECTLY OR INDIRECTLY COMMENT
2 ABOUT THE FACTS OF THIS CASE. THE PROCESS OF A VERDICT,
3 THEN, IS SIMPLY THAT YOU, THE JURY, FIRST DETERMINE WHAT
4 IS THE TRUTH OF THE FACTS, AND THEN APPLY TO THAT TRUE
5 STATE OF FACTS THE PRINCIPLES OF THE LAW APPLICABLE. AND
6 BY THAT PROCESS, DETERMINE AND REPORT TO THE COURT YOUR
7 FINAL VERDICT IN THE CASE, SPEAKING THE TRUTH OF THE CASE
8 AS YOU DETERMINE IT.

9 I WILL MORE FULLY AND COMPLETELY STATE TO YOU THE
10 PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN THIS CASE
11 BEFORE THE CASE IS SUBMITTED TO YOU FOR YOUR DECISION.
12 HOWEVER, THERE ARE CERTAIN PRINCIPLES OF LAW APPLICABLE
13 TO THE FRAMEWORK OF EVERY CASE IN GENERAL SESSIONS COURT.

14 FIRST, THE DEFENDANT HAS ENTERED A PLEA OF NOT
15 GUILTY TO THE CHARGES IN THE INDICTMENT. AN INDICTMENT
16 IN A CASE IS NOT EVIDENCE. IT IS SIMPLY THE WRITTEN
17 INSTRUMENT THAT CONTAINS THE CHARGE OR CHARGES AGAINST
18 THE DEFENDANT, AND IT SERVES AS A FORMAL DOCUMENT BY
19 WHICH THIS CASE IS PROCESSED INTO THIS COURT. THE PLEA
20 OF NOT GUILTY PLACES UPON THE STATE THE BURDEN OF PROOF
21 IN THIS CASE.

22 AS FAR AS WHAT IS MEANT BY THE BURDEN OF PROOF, THE
23 DEFENDANT IS PRESUMED IN LAW INNOCENT OF ALL CHARGES
24 CONTAINED IN THE INDICTMENT. THE BURDEN OF PROOF
25 REQUIRES THE STATE TO PROVE THE GUILT BEYOND A REASONABLE

1 DOUBT AND, THEREFORE, CONSISTENT WITH THAT BURDEN, THE
2 DEFENDANT OR THE ACCUSED PARTY SHALL BE PRESUMED INNOCENT
3 AND THAT PRESUMPTION OF INNOCENCE IS SUFFICIENT TO COMPEL
4 A VERDICT OF NOT GUILTY OR A VERDICT OF ACQUITTAL UNLESS
5 YOU, THE JURY, CONCLUDE THAT THE STATE HAS SATISFIED ITS
6 OBLIGATION TO PROVE THE DEFENDANT GUILTY BEYOND A
7 REASONABLE DOUBT.

8 NOW, THE TERM "REASONABLE DOUBT" MEANS THE KIND OF
9 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
10 ACT.

11 THIS CASE WILL BE OPENED BY THE SOLICITOR AFTER
12 WHICH THE SAME OPPORTUNITY WILL BE AFFORDED TO THE
13 DEFENDANT TO MAKE AN OPENING STATEMENT. WHEN ALL
14 EVIDENCE HAS BEEN RECEIVED BY THE COURT, COUNSEL FOR THE
15 STATE AND COUNSEL FOR THE DEFENDANT WILL STATE TO THE
16 JURY THEIR RESPECTIVE POSITIONS, AFTER WHICH THE COURT
17 WILL FULLY STATE THE APPLICABLE LAW IN THIS CASE.

18 OBVIOUSLY ALL PARTS OF THE CASE ARE IMPORTANT. YOU
19 DO NOT KNOW WHICH WITNESS IN THE CASE WILL MOST IMPRESS
20 YOU, WHETHER THE FIRST WITNESS OR THE LAST WITNESS. IN
21 REACHING YOUR FINAL CONCLUSIONS YOU WILL NEED THE
22 GUIDANCE AND THE JUDGMENT OF THE OTHER JURORS, YOU WILL
23 NEED THE GUIDANCE OF THE PRINCIPLES OF LAW THAT WILL BE
24 STATED TO YOU BY THE COURT.

25 FOR ALL THESE REASONS, THEN, IF WE HAVE ANY RECESS

1 PERIODS WHEN YOU RETIRE TO YOUR JURY ROOM OR DURING AN
2 OVERNIGHT OR MEAL RECESS, I INSTRUCT YOU THAT YOU MUST
3 NOT UNDERTAKE TO DISCUSS THIS CASE AMONG YOURSELVES UNTIL
4 THIS CASE IS FINALLY GIVEN TO YOU FOR YOUR DELIBERATION.
5 NOR ARE YOU TO DISCUSS THIS CASE WITH ANYONE OR PERMIT
6 ANYONE ELSE TO DISCUSS THE CASE WITH YOU. IF ANYONE
7 SHOULD, AS I SAID EARLIER, TRY TO DISCUSS THIS CASE OR
8 ANY CASE THAT MIGHT BE PENDING DURING THIS TERM OF COURT,
9 YOU ARE IMMEDIATELY TO REPORT THEM TO THE COURT SO I
10 MIGHT TAKE THE APPROPRIATE ACTION.

11 NOW, OBVIOUSLY THE VERDICT OF THIS CASE MUST BE A
12 UNANIMOUS VERDICT OF ALL 12 MEMBERS OF THE JURY THAT WILL
13 SIT IN JUDGMENT ON THIS CASE.

14 NOW THERE ARE A FEW OTHER COMMENTS I NEED TO MAKE
15 BEFORE WE BEGIN. AS I MENTIONED EARLIER, ALTHOUGH I AM
16 THE ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU AND
17 YOU ALONE ARE THE ONLY ONES WHO CAN DETERMINE THE FACTS.
18 I DO NOT HAVE THE RIGHT TO INDICATE HOW I MAY FEEL ABOUT
19 THE EVIDENCE PRESENTED, AND THROUGHOUT THIS TRIAL MY
20 INTENTION WILL BE TO ACT IMPARTIALLY TOWARDS EACH PARTY.

21 NOW, FROM TIME TO TIME AN ATTORNEY MAY OBJECT TO
22 SOME BIT OF TESTIMONY OR EVIDENCE WHICH THE OTHER SIDE IS
23 SEEKING TO PRESENT. AS IN SPORTS OR BUSINESS OR ANY
24 OTHER STRUCTURED ACTIVITY, THERE ARE CERTAIN RULES THAT
25 BOTH SIDES MUST OBSERVE IN PRESENTING EVIDENCE. THESE

1 RULES HAVE A DEFINITE PURPOSE. THEY ENSURE THAT THE
2 INFORMATION THAT YOU RECEIVE IS THE MOST TRUSTWORTHY AND
3 RELIABLE EVIDENCE AVAILABLE.

4 AN OBJECTION IS A PROCEDURE WE USE FOR AN ATTORNEY
5 TO CALL A POSSIBLE VIOLATION OF THOSE RULES TO THE
6 COURT'S ATTENTION. FOR THIS REASON YOU SHOULD NOT HOLD
7 AN ATTORNEY'S OBJECTION AGAINST HIS CLIENT, NOR SHOULD
8 YOU CONCLUDE FROM MY RULING ON THE OBJECTION THAT I FAVOR
9 ONE SIDE OVER THE OTHER.

10 FINALLY, I WOULD ASK YOU PAY THE CLOSEST ATTENTION
11 POSSIBLE TO THE EVIDENCE PRESENTED TO YOU. I WILL ASK
12 THAT YOU NOT TAKE NOTES FOR IF THE NOTE TAKER MAKES AN
13 ERROR, THOSE NOTES CAN BE MORE DETRIMENTAL THAN HELPFUL
14 DURING YOUR DELIBERATIONS. THE TIME-TESTED SYSTEM IS FOR
15 EACH OF YOU TO LISTEN CAREFULLY, AND I'M SURE EACH OF YOU
16 WILL DO THAT.

17 NOW, I SUGGEST THAT YOU NOT TAKE NOTES. THE REASON
18 FOR THAT IS, AS I'VE SAID, YOU MUST MAKE YOUR DECISION
19 BASED ON THE TESTIMONY FROM THE WITNESSES ON THIS WITNESS
20 STAND, AND ANY EXHIBITS OR OTHER EVIDENCE INTRODUCED IN
21 THIS COURTROOM. AND WE HAVE A TENDENCY WHEN WE TAKE
22 NOTES THAT WE CONCENTRATE ON THE NOTES RATHER THAN WHAT
23 IS HAPPENING. SO WE'RE CONCERNED ABOUT SPELLING, EVEN
24 THE STRUCTURE OF THE SENTENCE OR SOMETHING LIKE THAT.

25 BUT MORE IMPORTANT, WE WANT TO BE SURE THAT WE COPY

1 DOWN WHAT WE THINK WE HEAR. AND IF WE MISS SOMETHING,
2 THOSE NOTES CAN BE MORE DETRIMENTAL THAN HELPFUL, AS I
3 SAID, AND MORE DETRIMENTAL THAN HELPFUL: A GOOD EXAMPLE
4 IS IF WE FORGET A WORD OR MISS A WORD, A SIMPLE WORD.
5 WE'RE WRITING DOWN SOMETHING THAT WE THINK WE HEARD, AND
6 WE MISS THE WORD. FOR EXAMPLE, "NOT". IT CHANGES THE
7 ENTIRE MEANING OF THE NOTE AND THE INTENT OF WHAT WE
8 THINK WE HEARD.

9 THE PROBLEM ALSO IS THAT A NOTE OR SOMETHING IN
10 WRITING HAS MORE SIGNIFICANCE OR HAS A TENDENCY, SAY,
11 WELL, I'VE GOT IT WRITTEN DOWN RIGHT HERE. IT IS BETTER
12 TO RELY ON THE COLLECTIVE RECOLLECTION AND WHAT YOU HEARD
13 BY EACH OF THE 12 MEMBERS, AND THEN TAKING NOTES, AS I
14 SAY, BECAUSE YOU CAN MAKE AN ERROR IN WHAT YOU THINK YOU
15 HEARD.

16 NOW, HAVING SAID ALL THAT, I DO TAKE NOTES. IT'S
17 NOT ONE OF THOSE THINGS, DO AS I SAY, NOT AS I DO. WE
18 HAVE ENTIRELY DIFFERENT PURPOSES IN THIS COURTROOM. AS I
19 SAID, YOU AND YOU ALONE ARE THE ONLY ONES THAT CAN DECIDE
20 THE EVIDENCE IN THIS CASE. I AM NOT CONCERNED ABOUT THE
21 TRUTH, THE VERACITY, OR THE RELIABILITY OR THE WEIGHT OF
22 THE EVIDENCE, AS WE SAY.

23 I AM ONLY CONCERNED ABOUT IF SOMETHING OCCURS. I AM
24 JOTTING DOWN WHAT HAPPENS. THE SIGNIFICANCE OF WHAT
25 HAPPENS IS FOR YOU. SO, THEREFORE, I WILL BE TAKING

1 NOTES BUT ALL I'M DOING IS COPYING DOWN WHAT IS OCCURRING
2 AT THE TIME. SO, THEREFORE, PLEASE DO UNDERSTAND THAT I
3 WOULD RECOMMEND THAT YOU NOT TAKE NOTES.

4 NOW, WITH THAT THE TRIAL WILL NOW BEGIN. I
5 RECOGNIZE THE SOLICITOR FOR HIS OPENING STATEMENT.

6 MR. WAGNER: THANK YOU, JUDGE.

7 THE COURT: MR. WAGNER.

8 OPENING STATEMENT BY THE SOLICITOR:

9 MR. WAGNER: ON OCTOBER 14, 2009, ROUGHLY A LITTLE
10 OVER A YEAR AGO, THE VICTIM, WENDOLI CHAVEZ, SHE HAD BEEN
11 LIVING WITH HER ESTRANGED, I CALL IT HER ESTRANGED
12 HUSBAND, BUT SHE HAD LEFT THE RESIDENCE ABOUT A MONTH
13 PRIOR TO THIS.

14 THEY HAD BEEN MARRIED FOR SOME POINT IN TIME. THEY
15 HAD THEIR ISSUES AND THEIR PROBLEMS AND SHE MOVED OUT
16 ABOUT A MONTH PRIOR TO THIS INCIDENT.

17 BUT ON OCTOBER THE 14TH SHE MADE THE MISTAKE OF
18 GOING OVER TO HER HOUSE TO GET HER MAIL. SHE EXPECTED
19 I'M SURE TO GO GET HER MAIL AND LEAVE. SHE WAS SUPPOSED
20 TO BE AT WORK AT 3:00. HER SISTER YOU'RE GONNA HEAR FROM
21 WILL TELL YOU THAT SHE LEFT ABOUT 2:15 TO GO OVER THERE
22 TO GET HER MAIL, AND SHE NEVER CAME HOME.

23 AT SOME POINT IN TIME THE DEFENDANT, DAVID CHAVEZ,
24 STRANGLED HER TO DEATH AND STABBED HER. YOU'RE GOING TO
25 HEAR FROM THE PATHOLOGIST. HE'S GOING TO TELL YOU THAT

1 INITIALLY, THE OFFICERS INITIALLY THOUGHT IT WAS A
2 STABBING-TYPE OFFENSE, A STABBING DEATH, BUT ACTUALLY THE
3 DOCTOR IS GONNA TELL YOU THAT SHE WAS STRANGLED BEFORE
4 SHE WAS ACTUALLY STABBED.

5 THE DEFENDANT IS CHARGED WITH MURDER, MURDERING HIS
6 WIFE. MURDER IS THE UNLAWFUL KILLING OF ANOTHER WITH
7 MALICE AFORETHOUGHT. THAT'S WHAT THE JUDGE IS GONNA TELL
8 YOU LATER ON IN THE CASE. MALICE IS OFTEN DEFINED AS
9 HATRED, ILL WILL TOWARDS SOMEBODY. IT DOESN'T
10 NECESSARILY HAVE TO BE AN ILL WILL TOWARDS SOMEBODY, BUT
11 OFTENTIMES IT IS. I THINK IN THIS CASE YOU'LL FIND THERE
12 WAS MALICE THERE IN THE DEFENDANT'S HEART. HE STRANGLED
13 HER AND HE STABBED HER AND HE KILLED HER.

14 YOU'RE GONNA HEAR FROM A NUMBER OF WITNESSES, I
15 ANTICIPATE SOME PEOPLE THAT HE WORKED WITH. IT'S AN
16 UNUSUAL CASE IN THAT THE DEFENDANT ACTUALLY CALLED 9-1-1
17 AND REPORTED WHAT HE DID. YOU'RE GONNA HEAR THAT
18 SHORTLY. THERE WERE A NUMBER OF OFFICERS INVOLVED.
19 HAPPENED AT 501 SOUTH DEPOT STREET IN THE SENECA CITY
20 LIMITS.

21 I ANTICIPATE IT BEING A FAIRLY QUICK CASE. WE WON'T
22 BE DONE TODAY, PROBABLY BY TOMORROW OR MAYBE EVEN
23 WEDNESDAY, BUT WE WILL TRY TO SPEED IT UP AS BEST WE CAN
24 RATHER THAN PUT YOUR LIVES ON HOLD TO BE HERE. OF COURSE
25 WE APPRECIATE IT. MY NAME IS DAVID WAGNER, THE

1 PROSECUTOR. AND IF YOU WOULD, I'D APPRECIATE YOU GIVE
2 BOTH SIDES YOUR UTMOST ATTENTION, LISTEN TO THE EVIDENCE
3 AS IT COMES FROM THE STAND, AND LISTEN TO WHAT THEY SAY.
4 AND I THINK AT THE END OF THE CASE, AND WE'VE GOT THE
5 BURDEN OF PROOF, WE'RE GOING TO ASK YOU, AND YOU'LL BE
6 ABLE TO FIND, THE DEFENDANT MURDERER HIS WIFE, WENDOLI
7 CHAVEZ. THANKS.

8 MR. DAY: MAY IT PLEASE THE COURT?

9 THE COURT: MR. DAY.

10 OPENING STATEMENT ON BEHALF OF THE DEFENDANT:

11 MR. DAY: I'M DANNY DAY, I WORK IN THE PUBLIC
12 DEFENDER'S OFFICE, AND I REPRESENT DAVID CHAVEZ WHO IS
13 SITTING HERE. THIS IS HIS DAY IN COURT. THIS IS A
14 LITTLE BIT DIFFERENT FROM WHAT YOU MAY HAVE BEEN THINKING
15 ABOUT AS A DAY IN COURT. IT'S A TIME FOR A PERSON TO
16 ANSWER THE CHARGES AGAINST HIM. THIS IS THE ONLY
17 OPPORTUNITY HE'S EVER HAD TO BE ABLE TO STAND IN FRONT OF
18 ANYONE TO ANSWER THIS HEINOUS CHARGE THAT'S BEEN MADE
19 AGAINST HIM.

20 AND, LIKE I SAID, IT'S A LITTLE BIT DIFFERENT. AND
21 THE REASON IS THIS ISN'T A CASE OF WHODUNIT. WE KNOW
22 WHODUNIT. WHAT HAPPENED WAS DAVID CHAVEZ CAUSED THE
23 DEATH OF HIS WIFE. THAT HAPPENED. HE'S ADMITTED THAT.
24 THE QUESTION COMES DOWN AS BEING PRESENTED TO YOU
25 AND THE REASON WHY WE ARE HERE TODAY IS ONE QUESTION:

1 WAS IT MURDER? IN ORDER TO PROVE MURDER THE STATE OF
2 SOUTH CAROLINA MUST PROVE BEYOND A REASONABLE DOUBT EACH
3 ELEMENT OF THE CHARGE OF MURDER.

4 ONE OF THOSE ELEMENTS IS THAT THERE WAS MALICE,
5 SOMETIMES CALLED HAVING A BLACK HEART, MEANING TO DO
6 EVIL, AND THAT IS A QUESTION THAT IS BEING PRESENTED TO
7 YOU. THIS ALL OCCURRED OCTOBER THE 14TH. AS THE
8 SOLICITOR HAS TOLD YOU, DAVID CALLED 9-1-1.

9 YOU WILL HEAR TESTIMONY OF THE OFFICERS THAT WHEN
10 THEY ARRIVED, HE WAS THERE WAITING FOR THEM. WHEN HE
11 ARRIVED HE DIDN'T FIGHT WITH HIM, HE HADN'T RUN FROM
12 THEM. HE HAD AN OPPORTUNITY, IF HE WANTED TO, TO MAKE
13 HIMSELF EXTREMELY SCARCE AND TO BE GONE AND THEY WOULD
14 HAVE HAD TO FIND HIM OR FIND OUT WHAT'S GOING ON.

15 HE COULD HAVE NOT CALLED 9-1-1 AT ALL AND WOULD HAVE
16 HAD QUITE A BIT OF TIME IN ORDER TO GET AWAY. HE CHOSE
17 NOT TO DO THAT. HE CHOSE NOT TO. DAVID CHAVEZ -- EXCUSE
18 ME, I'M GONNA MISPRONOUNCE HIS NAME SIX TIMES EVERY HOUR
19 WHEN I'M SAYING IT, EXCUSE ME -- IS 24 YEARS OLD, IS A
20 UNITED STATES CITIZEN BORN IN THE STATE OF WASHINGTON.
21 HE MOVED HERE BECAUSE HIS WIFE'S FAMILY WAS HERE. HE MET
22 HIS WIFE OUT IN WASHINGTON STATE WHEN SHE CAME OUT TO
23 VISIT SOME FAMILY OUT THERE. AND THEN SHE RETURNED AND
24 HE WANTED TO RETURN WITH HER. HE LEFT A GOOD JOB OUT
25 THERE TO COME HERE. HE WAS WORKING FOR *THE SENECA*

1 JOURNAL, WORKED THERE FOR A COUPLE OF YEARS, AND WAS A
2 GOOD, GOOD EMPLOYEE. HE WORKED HERE. THEN THEIR
3 MARRIAGE WENT BAD.

4 AS A RESULT, SOMETHING HAPPENED AND WE ARE HERE. AS
5 YOU GO THROUGH THE TRIAL YOU WILL LISTEN TO THE EVIDENCE.
6 BUT THE FIRST THING YOU WILL NOT HAVE TO WORRY ABOUT IS
7 TRYING TO FIGURE OUT WHO DID IT. HE GAVE A STATEMENT.
8 IT WAS TAPED. IT WAS WRITTEN DOWN FOR HIM. ALL OF THESE
9 THINGS. HE ADMITTED TO WHAT HAPPENED.

10 WHEN THE OFFICER ARRIVES YOU WILL HEAR HIM TESTIFY,
11 LIKE I SAID, HE DIDN'T FIGHT WITH HIM, HE DIDN'T RUN FROM
12 THEM. THEY TOOK HIM INTO CUSTODY. AND HERE WE ARE
13 TODAY. THE JUDGE WILL EXPLAIN THE LAW TO YOU AND YOU
14 MUST DETERMINE IS THIS MURDER OR NOT. THAT IS THE
15 QUESTION. AND THAT'S WHY WE'RE HERE.

16 THERE ARE A LOT OF THINGS THAT YOU WILL BE LOOKING
17 AT. THE JUDGE WILL EXPLAIN TO YOU ABOUT MURDER. HE'LL
18 EXPLAIN TO YOU ABOUT WHAT YOU HAVE TO LOOK FOR, WHAT THE
19 LAW REQUIRES FOR YOU TO DETERMINE THAT, IN FACT, IT WAS
20 MURDER, AND YOU WILL HEAR ALL THE EVIDENCE. THERE'S ALL
21 SORTS OF THINGS UP HERE. SOME OF THIS IS GOING TO BE
22 FAIRLY GRUESOME, IT'S GONNA BE HARD TO LISTEN TO. IT'S
23 GONNA BE HARD FOR DAVID TO LISTEN TO. DAVID AND HIS WIFE
24 HAVE BEEN MARRIED SINCE 2006. IN 2007 THEY LOST A SON.
25 HE WAS STILLBORN. THEY'VE BEEN THROUGH A LOT.

1 BUT THIS, TODAY, IS THE SECOND WORST THING THAT'S
2 EVER HAPPENED TO HIM IS BEING IN THIS COURTROOM, THE
3 SECOND WORST THING. THE WORST THING IS WHEN HE LOST HIS
4 WIFE AND HE'S THE ONE THAT CAUSED IT. THAT'S WHY WE'RE
5 HERE.

6 AS THE SOLICITOR SAYS, WE HAVE TAKEN GREAT PAINS TO
7 TRY TO KEEP THIS FROM BEING AN EXHAUSTIVE TRIAL WHERE YOU
8 WILL HEAR HOURS AND HOURS OF TESTIMONY AND LOOKING AT
9 NUMEROUS EXHIBITS AND THINGS LIKE THAT. WE HAVE
10 ATTEMPTED, THE SOLICITOR, THE STATE AND THE DEFENDANT TO
11 TRY TO BOIL IT DOWN SO WE STICK TO THE ISSUE AT HAND, AND
12 THIS WILL ALL BE PRESENTED TO YOU.

13 ALL WE ASK IS THAT YOU LISTEN, WHICH I THINK YOU
14 WILL CERTAINLY DO, AND I THINK YOU WILL SEE THAT THIS
15 DOES NOT RISE TO MURDER.

16 THERE WILL BE OTHER MATTERS PRESENTED TO YOU AT THE
17 END OF THE TRIAL. AT THAT TIME YOU WILL BE ABLE TO MAKE
18 A DETERMINATION. THAT IS WHAT WE ARE LOOKING FOR, MAKE
19 THE RIGHT DECISION.

20 WE THANK YOU FOR BEING HERE. WE'RE SORRY WE HAD TO
21 MESS UP YOUR WEEK. BUT THIS IS, LIKE I SAID, THIS IS
22 DAVID CHAVEZ' ONLY OPPORTUNITY FOR THIS MATTER TO BE
23 DETERMINED. THANK YOU.

24 THE COURT: MR. SOLICITOR, YOU MAY CALL YOUR FIRST
25 WITNESS.

1 MR. WAGNER: THANK YOU, YOUR HONOR. WE CALL DIAN
2 SHOOK.

3 WHEREUPON,

4 DIAN SHOOK,

5 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. WAGNER:

7 Q. MA'AM, COULD YOU GIVE US YOUR NAME, SPELL YOUR
8 LAST NAME FOR THE RECORD, PLEASE?

9 A. DIAN SHOOK, S-H-O-O-K.

10 Q. WHERE DO YOU WORK, MS. SHOOK?

11 A. OCONEE SHERIFF'S DEPARTMENT, THE 9-1-1 CENTER.

12 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

13 A. FIVE YEARS LAST MONTH.

14 Q. WERE YOU WORKING THERE BACK ON OCTOBER 14TH OF
15 LAST YEAR, 2009?

16 A. YES.

17 Q. AND WHAT DO YOU DO AS A 9-1-1 OPERATOR? I THINK
18 IT'S PROBABLY SELF-EXPLANATORY. BUT EXPLAIN TO US JUST
19 SO WE KNOW KIND OF --

20 A. WHEN THE CALLS COME IN THE FIRST THING YOU ASK IS
21 WHERE, WHO, WHAT'S HAPPENED AND YOU TRY TO DETERMINE IF
22 YOU NEED IMMEDIATE ACTION OR IT'S DELAYED, THAT TYPE OF
23 THING.

24 Q. ABOUT 5:26 OR SO ON OCTOBER 14, 2009 WERE YOU IN
25 YOUR CHAIR AT THE 9-1-1 CENTER?

1 A. I WAS.

2 Q. AND DID YOU GET A CALL FROM SOMEBODY PURPORTING TO
3 BE A DAVID CHAVEZ?

4 A. YES.

5 Q. YOU LISTENED TO THAT CALL PRIOR TO COURT TODAY?

6 A. YES.

7 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
8 NUMBER 1 FOR IDENTIFICATION (HANDING).

9 A. OKAY.

10 Q. DO YOU RECOGNIZE THAT?

11 A. YES, I DO.

12 Q. AND WHAT IS THAT?

13 A. IT'S A COPY OF THE CALL AND I INITIALED IT.

14 Q. OKAY. DID YOU LISTEN TO THAT AND LISTEN TO THE
15 ACTUAL DISK?

16 A. YES, I DID.

17 Q. IS IT AN ACTUAL AND CORRECT COPY OF THE CALLS THAT
18 CAME IN TO YOU THAT DAY?

19 A. IT IS.

20 Q. HAS IT BEEN ALTERED OR TAMPERED WITH IN ANY WAY?

21 A. NO.

22 Q. AND DOES THIS STILL REPRESENT THE CALL AS YOU
23 HANDLED IT?

24 A. YES.

25 Q. THANK YOU.

1 A. (HANDING).

2 MR. WAGNER: YOUR HONOR, AT THIS TIME WE WOULD MOVE
3 TO INTRODUCE STATE'S EXHIBIT NUMBER 1 AND ASK IF WE COULD
4 GO AHEAD AND PLAY THAT.

5 THE COURT: ANY OBJECTIONS?

6 MR. DAY: NO OBJECTION IN THAT IT HAS PREVIOUSLY
7 BEEN PROVIDED TO US.

8 THE COURT: VERY WELL. STATE'S EXHIBIT NUMBER 1 IS
9 ADMITTED WITHOUT OBJECTION.

10 (RECEIVED IN EVIDENCE AFTER PREVIOUSLY BEING
11 MARKED FOR IDENTIFICATION WAS STATE'S EXHIBIT
12 NUMBER 1, 9-1-1 DISK.)

13 (STATE'S EXHIBIT NUMBER 1, 9-1-1- DISK, WAS
14 PLAYED FOR JURY BY MR. WAGNER.)

15 BY MR. WAGNER:

16 Q. IS THAT THE END OF YOUR CALL?

17 A. YES.

18 Q. IS THAT YOUR VOICE ON THE LINE WITH DAVID CHAVEZ?

19 A. IT IS, YES.

20 Q. DO YOU ALL ALSO DO -- DO YOU GO BACK THROUGH AND
21 LIKE TYPE OUT WHAT WAS SAID?

22 A. WE TYPE OUT AS WE'RE SPEAKING TO THE PERSON.

23 Q. MOST OF THAT WAS AUDIBLE. THERE WERE GARBLED
24 PORTIONS. IS THAT YOUR TYPICAL DAY IN YOUR 9-1-1 CALLS?

25 A. YES, IT IS.

1 Q. WHY DID YOU KEEP THAT CALL INSTEAD OF SENDING IT
2 TO THE SENECA POLICE DEPARTMENT? DO THEY HAVE A, SENECA
3 CITY LIMITS, DO THEY HAVE THEIR OWN 9-1-1?

4 A. THEY DO. BUT HE WANTED TO TALK AND I WAS
5 CONCERNED ABOUT HIM STAYING ON THE SCENE UNTIL THE
6 OFFICER GOT THERE.

7 Q. SO YOU KEPT THE CALL?

8 A. YES.

9 Q. AND IS THAT EXACTLY THE CALL AS IT WAS WHEN YOU
10 TOOK IT?

11 A. YES.

12 MR. WAGNER: THANK YOU. THAT'S ALL THE QUESTIONS I
13 HAVE.

14 THE COURT: CROSS-EXAMINATION.

15 MR. DAY: I HAVE NO QUESTIONS FOR MS. SHOOK, THANK
16 YOU.

17 THE COURT: YOU MAY STEP DOWN. THANK YOU, MA'AM.

18 MR. WAGNER: MAY MS. SHOOK BE EXCUSED?

19 MR. DAY: NO OBJECTION.

20 THE COURT: ALL RIGHT. WITHOUT OBJECTION YOU MAY BE
21 EXCUSED. THANK YOU VERY MUCH.

22 (WHEREUPON, THE WITNESS WAS EXCUSED.)

23 MR. WAGNER: I CALL MARK BOLDEN.

24

25

1 WHEREUPON,

2 MARK BOLDEN,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. WAGNER:

5 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
6 LAST NAME FOR THE RECORD?

7 A. MARK ANTHONY BOLDEN, B-O-L-D-E-N.

8 Q. WHAT KIND OF WORK ARE YOU IN?

9 A. I'M IN LAW ENFORCEMENT.

10 Q. WHO DO YOU WORK FOR?

11 A. CENTRAL POLICE DEPARTMENT AT THIS TIME.

12 Q. BACK ON OCTOBER 14, 2009, WERE YOU EMPLOYED BY THE
13 SENECA POLICE DEPARTMENT AS AN OFFICER?

14 A. I WAS.

15 Q. DID YOU GET A CALL TO GO OUT TO 501 SOUTH DEPOT
16 STREET IN THE SENECA CITY LIMITS?

17 A. I DID.

18 Q. IS THAT IN OCONEE COUNTY?

19 A. IT IS.

20 Q. WHEN YOU GOT THERE, WHAT KIND OF CALL WERE YOU
21 GOING OUT THERE FOR? I MEAN, DID YOU GET LIKE A
22 DISPATCH? WERE YOU OUT IN A UNIT WHEN THIS HAPPENED?

23 A. YES, SIR. DISPATCH ADVISED ME THAT THERE WAS A
24 STABBING AT 501 OAK STREET.

25 Q. DEPOT STREET?

1 A. DEPOT STREET, EXCUSE ME, DEPOT STREET.

2 Q. WHAT TIME DID YOU START WORKING THAT DAY?

3 A. CLOSE TO 5:30. MY SHIFT STARTED AT SIX. I COME
4 IN EARLY. SO AROUND 5:30.

5 Q. DID YOU GO STRAIGHT THERE? WHAT DID YOU SEE? WHO
6 ELSE WAS WITH YOU?

7 A. WHEN I RECEIVED THE CALL AND I RESPONDED TO THAT
8 AREA. IT WAS HARD TO LOCATE THE HOUSE BECAUSE IT WAS IN
9 THE VERY BACK OF ANOTHER HOUSE. OFFICER HOOVER ARRIVED
10 ON SCENE WITH ME AND WE BOTH RAN UP THE GRAVEL DRIVEWAY.

11 I NOTICED TWO HISPANIC MALES AND A HISPANIC FEMALE
12 HOLDING AN INFANT CHILD. AND BEFORE I GOT TO THE TWO
13 MALES, I HOLLERED OUT, WHO MADE THE CALL? ONE GENTLEMAN
14 SPOKE UP AND SAID, I MADE THE CALL, I STABBED MY WIFE.
15 AND AT THAT PARTICULAR TIME WE KEPT GOING UP TOWARD THE
16 STEPS AND THE SUSPECT WAS PLACED IN HANDCUFFS.

17 AND OFFICER KEN KIRBY ARRIVED ON SCENE AND WE BOTH
18 ENTERED INTO THE HOUSE. WE WALKED AROUND AND HOLLERED
19 FOR THE FEMALE BECAUSE WE DIDN'T KNOW IF SHE WAS ALIVE OR
20 NOT. WE WERE JUST CALLING HER NAME. HEARING NO
21 RESPONSE, I ASKED THE SUSPECT AGAIN WHAT ROOM, AND HE
22 SAID IN THE BACK ROOM. SO WE PROCEEDED TO THE BACK LEFT
23 ROOM. I PUSHED THE DOOR OPEN AND IT HIT SOMETHING AND I
24 KIND OF PEEKED AROUND AND I SAW THE FEMALE ON THE DOOR --
25 ON THE FLOOR. OFFICER KIRBY WENT IN AND CHECKED HER

1 PULSE AND HE REPLIED TO ME THERE IS NO PULSE, SHE IS
2 COLD.

3 MR. DAY: OBJECT TO WHAT OFFICER KIRBY WAS SAYING.

4 THE COURT: ALL RIGHT. SUSTAINED.

5 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, WHAT
6 WE HAVE IS AN OBJECTION AS TO HEARSAY, OR WHEN A WITNESS
7 TESTIFIES YOU WANT TO HEAR THE WITNESS TESTIFY OF
8 SOMETHING THEY KNOW OF THEIR OWN KNOWLEDGE, AND HEARSAY
9 APPLIES AS THE TERM. IT'S NOT WHAT WE KNOW OF OUR OWN
10 KNOWLEDGE, IT'S WHAT WE THINK WE HEARD SOMEBODY ELSE SAY.
11 SO THEREFORE, WHEN I SAID THAT WE HAVE RULES OF EVIDENCE
12 TO MAKE SURE THAT WHATEVER INFORMATION AND EVIDENCE YOU
13 RECEIVE IS MOST RELIABLE AND TRUSTWORTHY, THE HEARSAY
14 RULE IS ONE OF THOSE. IT SAYS THAT IF YOU ARE GOING TO
15 HAVE SOMEBODY TESTIFY AS TO SOMETHING THEY KNOW, THEN
16 THEY COULD DO IT THEMSELVES. THAT WAY YOU CAN NOT ONLY
17 BE SURE IT'S PUT IN CONTEXT BUT ALSO THEY ARE SUBJECT TO
18 CROSS-EXAMINATION AS TO WHETHER OR NOT THEY ACTUALLY SAID
19 IT AND AT WHAT THEY MEANT BY WHAT THEY SAID. THIS IS A
20 RULE OF EVIDENCE WHICH APPLIES TO BOTH THE STATE AND THE
21 DEFENSE.

22 SO RESTATE YOUR QUESTION, IF YOU WOULD,

23 MR. SOLICITOR.

24 BY MR. WAGNER:

25 Q. NOT WHAT SOMEBODY ELSE SAID, BUT AT THAT POINT IN

1 TIME WHEN Y'ALL SAW THE BODY AND OFFICER KIRBY CHECKED
2 HER PULSE, DID YOU ALL I GUESS BACK OUT OF THE HOUSE? OR
3 WHAT DID YOU DO NEXT?

4 A. AT THAT PARTICULAR TIME I BACKED OUT OF THE HOUSE;
5 I BACKED OUT OF THE HOUSE AND TOUCHED BASES WITH OFFICER
6 HOOVER.

7 Q. OKAY. THE GUY, THE HISPANIC MALE THAT WAS ON THE
8 FRONT PORCH THAT YOU HEARD WHEN YOU ASKED WHO MADE THE
9 CALL?

10 A. YES, SIR.

11 Q. YOU SAID HIS RESPONSE WAS, I MADE THE CALL, I
12 STABBED MY WIFE.

13 A. YES, SIR.

14 Q. IS HE HERE IN COURT TODAY?

15 A. YES, SIR, HE IS.

16 Q. COULD YOU POINT HIM OUT FOR US AND IDENTIFY HIM?

17 A. THAT GENTLEMAN RIGHT THERE.

18 Q. LET THE RECORD REFLECT HE'S IDENTIFIED THE
19 DEFENDANT.

20 THE COURT: THE RECORD WILL SO REFLECT.

21 MR. WAGNER: LATER ON -- YOUR HONOR, I'M DONE WITH
22 HIM, BUT I'LL NEED TO RE-CALL HIM FOR A HEARING TOMORROW
23 ON SOME OTHER STUFF THAT HADN'T COME UP YET, BUT AS FAR
24 AS HIS TESTIMONY TODAY, I JUST WANTED TO TELL YOU THAT.

25 THE COURT: VERY WELL.

1 MR. WAGNER: NO FURTHER QUESTIONS.

2 CROSS-EXAMINATION BY MR. DAY:

3 Q. MR. BOLDEN, WHEN YOU ARRIVED, WHERE DID YOU SEE
4 DAVID STANDING?

5 A. I SAW TWO HISPANIC MALES ON THE TOP PORCH AND A
6 FEMALE HOLDING AN INFANT.

7 Q. ON THE PORCH TOP STEPS?

8 A. YES, SIR.

9 Q. RIGHT AROUND THE FRONT DOOR?

10 A. YES, SIR.

11 Q. WHEN Y'ALL ARRIVED I TAKE IT YOU HAD YOUR BLUE
12 LIGHTS ON --

13 A. YES, SIR.

14 Q. -- RESPONDING TO WHAT APPEARED TO BE AN EMERGENCY?

15 A. YES, SIR.

16 Q. AT ANY TIME DID MR. CHAVEZ ATTEMPT TO EVADE OR
17 ESCAPE FROM YOU?

18 A. NO, SIR, HE DID NOT.

19 Q. DID HE COOPERATE WITH YOU?

20 A. HE DID.

21 Q. WHEN IT CAME TIME FOR OFFICER HOOVER TO PUT ON THE
22 HANDCUFFS, DID HE RESIST IN ANY WAY?

23 A. NOT TO MY KNOWLEDGE. I WAS INSIDE THE HOUSE.

24 Q. OKAY. BUT WHEN YOU CAME BACK OUT HE HAD HANDCUFFS
25 ON?

1 A. HE DID.

2 Q. HE WAS STANDING THERE I THINK WITH OFFICER HOOVER?

3 A. YES, SIR.

4 Q. HOW WOULD YOU, HOW WOULD YOU DESCRIBE MR. CHAVEZ'
5 DEMEANOR: WAS HE LAUGHING, CRYING, WHAT?

6 A. HE WAS VERY CALM.

7 Q. ALL RIGHT. DID HE APPEAR TO HAVE BEEN CRYING?

8 A. I COULDN'T TELL.

9 Q. OKAY. YOU WEREN'T LOOKING THAT CLOSE AT HIM?

10 A. NO, SIR.

11 Q. I TAKE IT Y'ALL WERE THE FIRST CAR TO DRIVE UP THE
12 DRIVEWAY?

13 A. WE STOPPED ON THE ROADWAY AND WE RAN UP THE GRAVEL
14 DRIVEWAY.

15 Q. SO NO ONE ACTUALLY DROVE UP THE DRIVEWAY TO THE
16 HOUSE?

17 A. NO.

18 Q. AT LEAST NOT WHILE YOU WERE THERE?

19 A. NOT WHILE I WAS THERE.

20 Q. OKAY. Y'ALL WENT UP THE DRIVEWAY, WENT RIGHT UP
21 TO THEM, HE ACKNOWLEDGED THAT HE WAS THE ONE THAT HAD
22 CALLED 9-1-1?

23 A. BEFORE I GOT THERE I HOLLERED OUT, "WHO MADE THE
24 CALL?" BECAUSE THERE WAS TWO INDIVIDUALS AND I DIDN'T
25 KNOW. AND THEN HE SPOKE UP.

1 Q. AND AGAIN, LIKE I SAID, HE WASN'T ATTEMPTING TO
2 GET AWAY FROM Y'ALL, HE WASN'T TRYING TO HIDE OR
3 ANYTHING, WAS HE?

4 A. HE WAS NOT.

5 Q. OKAY.

6 MR. DAY: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE.
7 THANK YOU, SIR.

8 THE COURT: REDIRECT?

9 MR. WAGNER: NOTHING, YOUR HONOR, BUT WE WILL NEED
10 TO RE-CALL HIM TOMORROW.

11 THE COURT: DO YOU WANT TO EXCUSE HIM FOR TODAY?

12 MR. WAGNER: YES, YOUR HONOR.

13 MR. DAY: NO OBJECTION.

14 THE COURT: ALL RIGHT. WITHOUT OBJECTION. YOU MAY
15 BE EXCUSED FOR TODAY SUBJECT TO RE-CALL TOMORROW.

16 (WHEREUPON, THE WITNESS WAS EXCUSED.)

17 MR. WAGNER: I CALL TREACO HOOVER.

18 WHEREUPON,

19 TREACO HOOVER,

20 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. WAGNER:

22 Q. OFFICER, COULD YOU GIVE US YOUR FULL NAME AND
23 SPELL YOUR LAST NAME FOR THE RECORD?

24 A. TREACO D. HOOVER, H-O-O-V-E-R.

25 Q. HOW LONG HAVE YOU BEEN WITH THE SENECA POLICE

1 DEPARTMENT?

2 A. AS OF OCTOBER 7TH OF THIS YEAR, TWO YEARS.

3 Q. PRIOR TO THAT YOU HAVE BEEN IN LAW ENFORCEMENT
4 OTHER PLACES?

5 A. YES, SIR.

6 Q. YOU USED TO WORK FOR THE SHERIFF'S OFFICE?

7 A. I DID, FOR THREE YEARS.

8 Q. BACK ON OCTOBER 14, 2009, DID YOU GET DISPATCHED
9 OUT TO 501 SOUTH DEPOT STREET IN SENECA?

10 A. YES.

11 Q. AND WHO DID YOU ARRIVE, OR WHO DID YOU GO OUT
12 THERE WITH?

13 A. MYSELF AND OFFICER BOLDEN ARRIVED PRETTY MUCH AT
14 THE SAME TIME.

15 Q. WERE Y'ALL IN SEPARATE CARS?

16 A. YES, WE WERE.

17 Q. DID YOU HAVE TROUBLE INITIALLY -- I DON'T WANT TO
18 SAY TROUBLE, BUT WAS IT HARD TO FIND THAT HOUSE?

19 A. YES, IT WAS. IT WAS ACTUALLY BEHIND ANOTHER HOUSE
20 IN A WOODED AREA, AND THE NUMBERS ON THE MAILBOX WERE NOT
21 THERE OR VISIBLE TO WHERE WE COULD SEE IT FROM THE
22 ROADWAY BECAUSE WE WERE ACTUALLY COMING FROM THE NORTH
23 HEADED SOUTH.

24 Q. WAS IT A YELLOW HOUSE?

25 A. YES, IT WAS A YELLOW HOUSE.

1 Q. GRAVEL DRIVEWAY?

2 A. GRAVEL DRIVEWAY.

3 Q. I GUESS THE HOUSE WAS DOWN ALONG THE GRAVEL
4 DRIVEWAY, THEN?

5 A. IT WASN'T TOO LONG, BUT IT WAS FAR ENOUGH OFF THE
6 ROAD TO WHERE YOU COULDN'T SEE THE HOUSE UNLESS YOU
7 ACTUALLY KNEW WHERE IT WAS AT.

8 Q. WHERE DID YOU ALL PARK?

9 A. WE PARKED ON THE ROADWAY ADJACENT TO THE GRAVEL
10 DRIVEWAY.

11 Q. WHAT DID YOU ALL SEE NEXT OR WHAT DID YOU DO NEXT?

12 A. MYSELF AND OFFICER BOLDEN, LIKE I SAID, ARRIVED
13 PRETTY MUCH AT THE SAME TIME. WE BOTH GOT OUT OF THE
14 VEHICLES. OFFICER BOLDEN WAS TO THE LEFT OF ME, I WAS ON
15 THE RIGHT. WE APPROACHED TWO HISPANIC MALES AND A
16 HISPANIC FEMALE ON THE TOP PORCH.

17 Q. OKAY.

18 A. OFFICER BOLDEN WALKS UP THE STEPS. I DID HEAR HIM
19 ASK WHO CALLED OR SOMETHING TO THAT EFFECT. AT THAT TIME
20 I WALKED ON UP THE STEPS, AND MR. CHAVEZ TURNS, FROM WHAT
21 I CAN REMEMBER AND LOOKS AT THE HISPANIC FEMALE AND THE
22 OTHER HISPANIC MALE AND SAYS, I'M SORRY FOR WHAT I DID.

23 AT THAT TIME WE THOUGHT THERE WAS A STABBING PRIOR
24 TO GOING OVER THERE. AT THAT TIME I PLACED HANDCUFFS ON
25 MR. CHAVEZ AND DETAINED HIM.

1 Q. OKAY. DID YOU STAY OUTSIDE WITH HIM UNTIL OFFICER
2 BOLDEN GOT BACK OUT?

3 A. I DID.

4 Q. AND WHO TRANSPORTED HIM BACK TO THE SENECA POLICE
5 DEPARTMENT?

6 A. TO THE BEST OF MY KNOWLEDGE, OFFICER BOLDEN
7 TRANSPORTED HIM.

8 Q. DID THAT END YOUR INVOLVEMENT WITH THE CASE?

9 A. YES. THAT ENDED MY INVOLVEMENT.

10 Q. HAD ANYBODY ELSE ARRIVED AT THE SCENE FROM THE
11 POLICE DEPARTMENT?

12 A. STAFF SERGEANT WINCHESTER ALONG WITH OFFICER KIRBY
13 ARRIVED ON THE SCENE AS WELL. IT WAS PROBABLY WITHIN
14 APPROXIMATELY TWO AND A HALF MINUTES AFTER WE DID, THREE
15 MINUTES, SOMETHING LIKE THAT.

16 Q. THEY PARKED ON THE ROAD, ALSO?

17 A. YES, THEY PARKED ON THE ROAD ALSO.

18 MR. WAGNER: THAT'S ALL THE QUESTIONS I HAVE.

19 THE COURT: CROSS-EXAMINE?

20 CROSS-EXAMINATION BY MR. DAY:

21 Q. WHEN YOU WENT TO PUT THE HANDCUFFS ON MR. CHAVEZ,
22 DID HE COOPERATE WITH YOU?

23 A. YES.

24 Q. GIVE YOU ANY RESISTANCE?

25 A. NONE AT ALL.

1 Q. DID HE FOLLOW YOUR INSTRUCTIONS?

2 A. YES, HE DID.

3 Q. I TAKE IT NORMALLY IN SITUATIONS SUCH AS THIS YOU
4 WANT TO MAKE SURE THE SCENE IS SECURE. DID YOU SEARCH
5 HIM AT THAT TIME, PATTED HIM DOWN?

6 A. WELL, OF COURSE WE PATTED HIM DOWN FOR SAFETY
7 REASONS.

8 Q. DID YOU FIND ANY WEAPONS ON HIM?

9 A. NO.

10 Q. AT ANY TIME WHILE YOU WERE THERE DID MR. CHAVEZ
11 ATTEMPT TO RESIST OR ESCAPE, GET AWAY OR DO ANYTHING?

12 A. NOT AT ALL.

13 Q. HOW WOULD YOU DESCRIBE HIS DEMEANOR?

14 A. I, I WOULD SAY THAT HE WAS NOT UPSET, I MEAN, YOU
15 KNOW, HE WAS KIND OF I'D SAY CALM, TO BE HONEST WITH YOU.
16 I MEAN, HE DIDN'T HAVE ANY KIND OF EXPRESSION ON HIS FACE
17 THAT I COULD TELL.

18 Q. HE SEEMED TO BE RESIGNED TO THE FACT OF WHAT WAS
19 HAPPENING?

20 A. WHAT DO YOU MEAN BY RESIGNED?

21 Q. THAT YOU WERE THERE, OFFICERS WERE THERE, HE WAS
22 NOW IN CUSTODY, AND THIS IS THE WAY IT IS?

23 A. PRETTY MUCH.

24 Q. HE WASN'T CURSING AT ANYONE OR MAKING ANY THREATS
25 OF ANY KIND?

1 A. NO, HE WASN'T.

2 Q. WERE YOU THERE WHEN IT CAME TIME TO MOVE HIM TO
3 THE CAR, DO YOU REMEMBER THAT?

4 A. UM, MYSELF AND OFFICER BOLDEN ACTUALLY WALKED HIM
5 TO OFFICER BOLDEN'S CAR.

6 Q. AND AGAIN, DURING THAT HE COOPERATED?

7 A. YES, SIR, HE DID.

8 Q. WASN'T MAKING NOISE, WASN'T SCUFFLING OR PUSHING
9 AWAY OR ANYTHING?

10 A. HE WASN'T SCUFFLING OR PUSHING AWAY.

11 Q. HE WENT INTO THE CAR AND SAT DOWN?

12 A. PRETTY MUCH, YES, SIR.

13 Q. HAD HIS HEAD HANGING DOWN?

14 A. I CAN'T REMEMBER THAT.

15 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE. THANK
16 YOU, SIR.

17 MR. WAGNER: NOTHING FURTHER. I ASK THIS WITNESS BE
18 EXCUSED.

19 MR. DAY: NO OBJECTION.

20 THE COURT: WITHOUT OBJECTION YOU MAY BE EXCUSED.
21 THANK YOU, SIR.

22 (WHEREUPON, THE WITNESS WAS EXCUSED.)

23 MR. WAGNER: KEN KIRBY.

24

25

1 WHEREUPON,

2 KEN KIRBY,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. WAGNER:

5 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
6 LAST NAME FOR THE RECORD?

7 A. SURE. MY NAME IS KENNETH H. KIRBY, THE SPELLING
8 IS K-I-R-B-Y.

9 Q. WHAT ARE YOUR CURRENT JOB DUTIES?

10 A. CURRENTLY I'M AN INVESTIGATOR WITH THE SENECA
11 POLICE DEPARTMENT.

12 Q. DOES THAT MAKE YOU SERGEANT, SERGEANT KIRBY, THEN?

13 A. IT'S ACTUALLY JUST DETECTIVE.

14 Q. JUST DETECTIVE?

15 A. YES, SIR.

16 Q. WERE YOU WORKING IN THAT SAME CAPACITY BACK ON
17 OCTOBER 14TH OF LAST YEAR?

18 A. NO, SIR; I WAS IN ROAD PATROL AT THAT TIME.

19 Q. DID YOU GET A CALL TO GO OUT TO 501 SOUTH DEPOT
20 STREET FOR A STABBING INCIDENT?

21 A. YES, SIR, I DID.

22 Q. AND ABOUT WHAT TIME DID YOU GET THERE AND WHAT DID
23 YOU SEE WHEN YOU DID?

24 A. THE CALL CAME IN RIGHT AROUND 5:30, AND THAT'S
25 WHEN I WAS SUPPOSED TO GO HOME, SO I REMEMBER THAT VERY

1 WELL.

2 I LEFT THE SENECA POLICE DEPARTMENT ON NORTH DEPOT
3 STREET AND WENT TO THE ADDRESS OF 501 SOUTH DEPOT STREET.
4 MYSELF AND STAFF SERGEANT WINCHESTER WERE BOTH TOGETHER
5 IN SEPARATE CARS GOING THERE. WE PARKED OUR VEHICLES ON
6 THE ROADWAY SOUTH DEPOT RIGHT AT THE BASE OF THE DRIVEWAY
7 DOWN AT THE HOUSE IN QUESTION. BY THE TIME IT WAS
8 DISPATCHED, IT WAS DISPATCHED AS A STABBING CALL, THE
9 REASON WHY WE WERE RESPONDING.

10 WE WENT UP THE DRIVEWAY. THE HOUSE WAS LOCATED
11 ABOUT HALFWAY UP THE BLOCK UP ON THE HILL, THE DRIVEWAY
12 WAS A COUPLE HUNDRED FEET UP THE HILL. MYSELF AND
13 SERGEANT WINCHESTER GOT OUT OF THE CAR AT THE SAME TIME
14 AND RAN UP THE DRIVEWAY. AND OFFICER HOOVER AND BOLDEN
15 WERE STANDING ON THE FRONT PORCH ALONG WITH TWO HISPANIC
16 MALES AND ONE HISPANIC FEMALE.

17 Q. WAS THE DEFENDANT IN HANDCUFFS AT THAT POINT?

18 A. I CAN'T RECALL, SIR, TO BE HONEST WITH YOU.

19 Q. WHAT DID YOU DO?

20 A. I DON'T REMEMBER WHO OR RECALL WHO ASKED THE
21 QUESTION. SOMEBODY ASKED THE QUESTION, WHERE'S THE
22 VICTIM? AND SOMEONE RESPONDED, IN THE HOUSE IN THE
23 BEDROOM.

24 SO I ENTERED THE HOUSE WITH SERGEANT WINCHESTER,
25 OFFICER BOLDEN, AS I SAY, WENT IN, AND WE STARTED

1 CHECKING THE HOUSE LOOKING FOR A VICTIM IN THE HOUSE. WE
2 WENT TO THE BACK LEFT BEDROOM. THE DOOR WAS OPENED AND
3 IT BUMPED. OFFICER BOLDEN LOOKED IN, SAID THAT SHE'S
4 RIGHT THERE.

5 I WAS ABLE TO ENTER THE DOOR. I WAS A LITTLE
6 LIGHTER THEN, I WASN'T AS BIG AS I AM NOW. I WAS ABLE TO
7 SQUEEZE THROUGH THE CRACK IN THE DOOR AND OBSERVE THE
8 FEMALE LAYING ON THE FLOOR DIRECTLY BEHIND THE DOOR.

9 Q. AND WHAT DID YOU DO NEXT?

10 A. NEXT I CHECKED HER PULSE AT HER WRIST AND CHECKED
11 HER PULSE AT HER ARTERY ON THE NECK. SHE HAD A PIECE OF
12 CLOTH COVERING HER FACE UP. I LIFTED UP HER CHIN TO GET
13 TO HER NECK AND CHECK THE PULSE. HER BODY WAS COLD.
14 THERE WAS NO PULSE. I INFORMED SERGEANT WINCHESTER.

15 I STAYED IN THE ROOM UNTIL E.M.S. ARRIVED. THEY
16 CAME IN. I REQUESTED THAT THEY NOT MOVE THE BODY IF THEY
17 DID NOT HAVE TO. THEY RAISED HER SHIRT UP, PLACED A
18 COUPLE LEADS ON HER, RAN THEIR E.K.G. STRIPPING THAT THEY
19 DO, DETERMINED THAT SHE WAS DECEASED. AND THEY REMOVED
20 THEIR QUILTS AND THEY LEFT THE ROOM.

21 I LEFT THE ROOM AT THAT TIME BACK INTO THE LIVING
22 ROOM. SERGEANT WINCHESTER POINTED OUT TO ME A KNIFE
23 LAYING UNDER THE COUCH. THE COUCH WAS LOCATED RIGHT
24 BESIDE THE FRONT DOOR IN THE LIVING ROOM. THERE WAS ALSO
25 A DOG IN THE HOUSE. AND DUE TO THE DOG RUNNING LOOSE IN

1 THE HOUSE AND MAKING SURE HE DIDN'T DISTURB ANYTHING, I
2 STAYED IN THE HOUSE UNTIL I WAS RELIEVED BY SERGEANT
3 MOORE.

4 Q. AND BASICALLY WHILE YOU WERE STAYING THERE, WHAT
5 WAS YOUR ROLE?

6 A. TO SECURE THE HOUSE, MAKE SURE THAT THE DOG DIDN'T
7 DISTURB ANYTHING IN THE HOUSE, DIDN'T MOVE THE KNIFE,
8 KNOCK ANYTHING AROUND. WE HAD CLOSED THE BEDROOM DOOR
9 BACK SO WE KNEW THE DOG COULDN'T GET IN THERE. SO I JUST
10 STOOD AT THE FRONT DOOR IN THE LIVING ROOM UNTIL I WAS
11 RELIEVED.

12 Q. AND THEN YOU TURNED IT OVER TO SERGEANT MOORE?

13 A. SERGEANT MOORE TOOK MY PLACE IN THAT POSITION, AND
14 I WENT HOME THAT DAY.

15 Q. YOUR INVOLVEMENT ENDED AT THAT POINT?

16 A. THAT WAS THE END OF MY INVOLVEMENT, YES, SIR.

17 MR. WAGNER: THANK YOU. THOSE ARE ALL THE QUESTIONS
18 I HAVE.

19 THE WITNESS: YES, SIR.

20 THE COURT: CROSS-EXAMINATION.

21 CROSS-EXAMINATION BY MR. DAY:

22 Q. LET ME TRY TO UNDERSTAND SOMETHING. I WAS LOOKING
23 AT YOUR REPORT THAT YOU DID ON OCTOBER 15, 2009, THAT'S
24 THE NEXT DAY I TAKE IT, WHEN YOU RETURNED TO WORK YOU
25 WROTE IT UP?

- 1 A. YES, SIR, I BELIEVE SO.
- 2 Q. WHEN IT WAS FRESH IN YOUR MIND?
- 3 A. SOMEWHAT.
- 4 Q. CERTAINLY FRESHER THAN NOW?
- 5 A. YES, SIR.
- 6 Q. YOU SAID A MINUTE AGO SOMETHING ABOUT THE BODY WAS
- 7 COLD, BUT YOU WROTE UP WAS THAT HER NECK WAS STILL WARM
- 8 AND YOU SAID THAT HER ARMS WERE COLD?
- 9 A. YES. HER ARMS WAS COLD. HER NECK WAS WARM, WHEN
- 10 I TOUCHED IT WITH MY HAND UP THERE, IT FELT LIKE IT HAD A
- 11 LITTLE WARMTH TO IT, MORE THAN WHAT THE COLD THE WRIST
- 12 AND HANDS HAD.
- 13 Q. OKAY. SO THAT'S WHAT YOU WROTE DOWN AND WHAT YOU
- 14 CHECKED WHEN YOU CHECKED THE PULSE YOU NOTICED ARM BUT
- 15 THE NECK WAS STILL WARM WHEN YOU CHECKED AND CAROTID
- 16 ARTERIES? YOU SAID THERE WAS NO PULSE, NO BLEEDING --
- 17 EXCUSE ME -- NO BREATHING?
- 18 A. NO BREATHING.
- 19 Q. ALL RIGHT. AND THEN YOU MADE SURE THAT THE HOUSE
- 20 STAYED INTACT AS BEST YOU COULD?
- 21 A. YES, SIR.
- 22 Q. AND MAKE SURE THE DOG COULDN'T GET IN THERE OR
- 23 ANYTHING ELSE?
- 24 A. THE DOG WAS ON A WINDOW LEDGE ON THE BACK OF THE
- 25 COUCH AND THAT'S WHERE IT STAYED THE WHOLE TIME I WAS

1 THERE.

2 Q. ALL RIGHT. WHEN YOU CAME IN DID YOU SEE
3 MR. CHAVEZ?

4 A. I NOTICED THERE WERE PEOPLE ON THE PORCH, BUT I
5 DIDN'T KNOW MR. CHAVEZ FROM THE OTHER MALE. I HAD NO
6 IDEA, SIR.

7 Q. AT ANY TIME DID YOU SPEAK TO MR. CHAVEZ OR CHECK
8 ON HIM OR ANYTHING?

9 A. NO, SIR.

10 Q. SO WHEN SERGEANT MOORE CAME, THEN, YOU SIGNED OUT
11 AND HEADED ON HOME?

12 A. YES, SIR.

13 Q. OKAY. ANY TIME YOU WERE THERE WAS THERE ANY KIND
14 OF A SCUFFLE OR ANYTHING WITH MR. CHAVEZ THAT YOU
15 REMEMBER?

16 A. I WAS INSIDE THE HOUSE, SIR; I COULDN'T SAY.

17 Q. WHEN YOU CAME BACK TO GO, WAS MR. CHAVEZ STILL
18 THERE?

19 A. HE WAS GONE.

20 Q. BY THEN THEY HAD ALREADY REMOVED HIM?

21 A. EVERYBODY WAS GONE. NOBODY WAS OUTSIDE.

22 Q. OKAY. LET ME ASK YOU ABOUT THE CRACK IN THE DOOR.
23 WAS THE DOOR NEAR MS. CHAVEZ' HEAD OR FEET?

24 A. THE DOOR WAS NEAR HER HEAD. WHEN YOU OPENED THE
25 DOOR, IT KIND OF BUMPED UP AGAINST HER AND IT WAS HER

1 HEAD THAT WAS CLOSE TO THE DOOR ABOUT THAT FAR
2 (INDICATING).

3 Q. ALL RIGHT. OKAY. AND THE KNIFE AS FAR AS YOU
4 KNOW WASN'T DISTURBED WHILE YOU WERE THERE IN ANY WAY?

5 A. NO, SIR, IT WAS NOT.

6 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE. THANK
7 YOU, SIR.

8 THE WITNESS: YES, SIR.

9 THE COURT: REDIRECT?

10 MR. WAGNER: YOUR HONOR, I ASK THIS WITNESS BE
11 EXCUSED.

12 MR. DAY: NO OBJECTION, YOUR HONOR.

13 THE COURT: ALL RIGHT. WITHOUT OBJECTION YOU MAY BE
14 EXCUSED. THANK YOU, SIR.

15 (WHEREUPON, THE WITNESS WAS EXCUSED.)

16 THE COURT: SOLICITOR, YOU MAY CALL YOUR NEXT
17 WITNESS.

18 MR. WAGNER: THE STATE CALLS KELLY WINCHESTER.
19 WHEREUPON,

20 KELLY WINCHESTER,

21 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
22 DIRECT EXAMINATION BY MR. WAGNER:

23 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
24 LAST NAME FOR THE RECORD, PLEASE?

25 A. KELLY B. WINCHESTER, W-I-N-C-H-E-S-T-E-R.

1 Q. AND YOU ARE CURRENTLY EMPLOYED WITH THE SENECA
2 POLICE DEPARTMENT?

3 A. YES, SIR.

4 Q. AND HOW LONG HAVE YOU BEEN WITH THE SENECA POLICE
5 DEPARTMENT?

6 A. ALMOST SIX YEARS.

7 Q. WERE YOU ON DUTY ON THE 14TH OF OCTOBER, 2009?

8 A. YES, SIR, I WAS.

9 Q. WERE YOU CALLED OUT TO THE SCENE OF THE STABBING
10 INVOLVING THE DEFENDANT AND THE VICTIM, HIS ESTRANGED
11 WIFE?

12 A. YES, SIR, AT 501 SOUTH DEPOT STREET.

13 Q. WHAT DID YOU SEE WHEN YOU GOT THERE?

14 A. WHEN I ARRIVED ON SCENE, MYSELF AND OFFICER KIRBY,
15 LIKE HE TESTIFIED TO, ARRIVED ABOUT THE SAME TIME. WE
16 RAN UP THE DRIVEWAY, SAW TWO HISPANIC MALES, A HISPANIC
17 FEMALE HOLDING AN INFANT CHILD, AND OFFICER BOLDEN AND
18 OFFICER HOOVER WAS ALREADY UP THE DRIVEWAY WITH THEM WHEN
19 WE ARRIVED ON SCENE.

20 Q. WHAT DID YOU DO NEXT?

21 A. MYSELF AND OFFICER KIRBY ENTERED THE RESIDENCE
22 LOOKING FOR THE VICTIM.

23 Q. DID YOU FIND HER?

24 A. YES, SIR, WE DID.

25 Q. WHERE WAS SHE?

1 A. SHE WAS IN THE BEDROOM, WHEN YOU GO IN THE FRONT
2 DOOR AND YOU GO TO THE LEFT, IT WAS A BACK BEDROOM TO THE
3 SOUTHWEST OF THE FRONT DOOR.

4 Q. DID YOU FIND HER RIGHT OFF THE BAT OR DID YOU HAVE
5 TO LOOK THROUGH THE WHOLE HOUSE?

6 A. WELL, ONCE WE FOUND OUT FROM OUTSIDE WHEN THEY
7 TOLD US WHERE SHE WAS, THAT'S WHEN WE WENT IN AND FOUND
8 HER LAYING IN THE BEDROOM.

9 Q. WHEN YOU GOT THERE, WAS THE DEFENDANT IN HANDCUFFS
10 YET?

11 A. I'M NOT SURE.

12 Q. OKAY. WERE, WHAT OTHER OFFICERS WERE ON THE PORCH
13 WITH HIM?

14 A. IT WAS OFFICER HOOVER AND OFFICER BOLDEN.

15 Q. WHAT WERE THE OTHER TWO, THE OTHER PEOPLE THERE,
16 WHAT WERE THEY DOING?

17 A. TO MY KNOWLEDGE THEY WERE JUST STANDING THERE.

18 Q. ALL RIGHT. AND THEN YOU SAY Y'ALL FOUND THE
19 VICTIM. DID YOU GO IN THE ROOM, DID KEN KIRBY GO IN THE
20 ROOM?

21 A. I STUCK MY HEAD IN THE DOOR, ACTUALLY, BECAUSE IT
22 WAS OPEN AT APPROXIMATELY ABOUT A 45-DEGREE ANGLE.
23 OFFICER KIRBY WAS ABLE TO SLIDE THROUGH THE DOOR, AND
24 ONCE HE GOT IN THE ROOM, THAT'S WHEN I, INSTEAD OF
25 ENTERING THE ROOM MYSELF, THAT'S WHEN I STUCK MY HEAD IN

1 THE DOOR AND WAS WATCHING WHAT HE WAS DOING.

2 Q. AND HOW LONG DID YOU STAY AT THAT SPOT?

3 A. UNTIL HE ADVISED THAT HE COULDN'T FIND A PULSE AND
4 THAT'S WHEN I CALLED DISPATCH AND GAVE THEM FURTHER
5 INFORMATION TO CALL E.M.S. WITH.

6 Q. DID YOU STAY ON THE SCENE TILL E.M.S. GOT THERE?

7 A. YES, SIR.

8 Q. ABOUT HOW LONG DID IT TAKE THEM TO GET THERE?

9 A. I'M NOT SURE. IT WASN'T LONG.

10 Q. WERE YOU THERE WHEN THEY CAME INTO THE HOUSE?

11 A. YES, SIR.

12 Q. WERE YOU THERE WHEN THEY WERE --

13 A. I ACTUALLY INSTRUCTED THEM WHERE TO GO. I WAS
14 STANDING IN THE LIVING ROOM AND OFFICER KIRBY WAS STILL
15 THERE IN THE BEDROOM WITH THE VICTIM.

16 Q. DID ANYBODY ELSE STAY THERE -- YOU STAYED THERE
17 UNTIL THEY LEFT?

18 A. YES, SIR.

19 Q. WERE YOU THERE WHEN THE CORONER GOT THERE?

20 A. YES, SIR.

21 Q. WHAT ELSE WAS GOING ON WHILE YOU WERE THERE? WERE
22 YOU JUST MAINLY CONCERNED WITH PROTECTING THE INTEGRITY
23 OF THE CRIME SCENE?

24 A. RIGHT. YES, SIR. ONCE OFFICER KIRBY ADVISED HE
25 COULDN'T FIND A PULSE, THAT'S WHEN I WENT OUT INTO THE

1 LIVING ROOM AND DISPATCHED E.M.S. WITH THE FINDINGS WE
2 HAD. THAT'S WHEN I WENT TO THE FRONT DOOR AREA THAT WAS
3 STANDING OPEN AND ADVISED OFFICER HOOVER TO TAKE
4 MR. CHAVEZ DOWN TO THE PATROL CAR AND SECURE HIM AND
5 ASKED OFFICER BOLDEN TO GO THERE WITH HIM.

6 Q. DID YOU TELL THEM WHAT YOU HAD?

7 A. YES, SIR, I DID.

8 Q. DID THEY DISPATCH THE INVESTIGATOR OR ANYBODY ELSE
9 OUT THERE?

10 A. YES, SIR. I ADVISED THEM TO -- THAT I NEEDED THE
11 ON-CALL INVESTIGATOR AND ALSO SERGEANT NICHOLSON FROM
12 FORENSICS.

13 Q. WERE YOU STILL THERE WHEN THEY ARRIVED?

14 A. YES, SIR.

15 MR. WAGNER: NOTHING FURTHER. THANK YOU.

16 THE COURT: CROSS-EXAMINE?

17 CROSS-EXAMINATION BY MR. DAY:

18 Q. MS. WINCHESTER, YOU STARTED THE LOG THAT IS DONE?

19 A. UH-HUH.

20 Q. WHAT'S THAT CALLED?

21 A. THE CRIME SCENE LOG.

22 Q. AND WHAT IS THE PURPOSE OF THAT?

23 A. THAT'S TO NOTE WHO COMES INTO THE CRIME SCENE.
24 THAT WAY WE HAVE A LOG OF IT.

25 Q. AND IS IT JUST WHO ARRIVES AND WHEN THEY LEAVE OR

1 IS IT WHAT THEY DO OR IF THEY HAVE TAGGED EVIDENCE OR
2 THAT SORT OF THING?

3 A. WELL, NORMALLY IT'S JUST WHAT, LIKE WHAT
4 DEPARTMENT THEY WORK WITH, E.M.S. OR THEY'RE POLICE
5 DEPARTMENT PERSONNEL.

6 Q. WHAT ABOUT EVIDENCE? DO YOU NOTE EVIDENCE WAS
7 TAKEN OR FOUND OR BAGGED OR HANDED OVER TO SOMEONE OR
8 ANYTHING LIKE THAT?

9 A. NO, SIR. NO. ONCE WE CALL OUT FORENSICS, THEY
10 HANDLE ALL THE EVIDENCE.

11 Q. SO UP UNTIL THAT TIME, UNTIL FORENSICS ARRIVED NO
12 ONE MESSES WITH THE EVIDENCE?

13 A. RIGHT.

14 Q. I BELIEVE YOU WERE THERE WHEN E.M.S. ARRIVED?

15 A. RIGHT.

16 Q. WHAT DID E.M.S. DO?

17 A. I INSTRUCTED THEM WHERE OFFICER KIRBY WAS WITH
18 MS. CHAVEZ AND SHOWED THEM WHERE TO GO AND THEN THEY WERE
19 IN THE ROOM WITH HIM. I STAYED IN THE LIVING ROOM WHERE
20 I SAW THE KNIFE UNDER THE COUCH.

21 Q. SO YOU WERE IN EFFECT GUARDING THAT PORTION OF THE
22 SCENE IN THE LIVING ROOM?

23 A. YES, SIR.

24 Q. NOW, WHEN YOU ARRIVED, DID YOU SEE MR. CHAVEZ?

25 A. I DID.

1 Q. AND WHERE WAS HE?

2 A. HE WAS ON THE PORCH WITH THE TWO OFFICERS AND THE
3 OTHER HISPANIC MALES AND THE HISPANIC FEMALE THAT WAS
4 THERE.

5 Q. THAT WAS BOLDEN AND HOOVER?

6 A. YES, SIR.

7 Q. WAS HE IN HANDCUFFS?

8 A. THAT I'M NOT SURE OF.

9 Q. DID YOU SEE HIM RESISTING OR FIGHTING BACK OR
10 ANYTHING?

11 A. NO, SIR.

12 Q. MAKING ANY KIND OF A FUSS AT ALL?

13 A. NO, SIR.

14 Q. WERE YOU THERE WHEN MR. CHAVEZ WAS REMOVED FROM
15 THE SCENE?

16 A. I WAS, I WAS THE ONE THAT ADVISED OFFICER HOOVER
17 AND OFFICER BOLDEN TO TAKE HIM DOWN TO SECURE HIM, SO
18 THAT PART I DID SEE. BUT OTHER THAN WHEN HE WAS ACTUALLY
19 ESCORTED IN THE CAR AND TAKEN TO THE POLICE DEPARTMENT,
20 NO, I DID NOT SEE THAT.

21 Q. YOU WERE THE ONE THAT INSTRUCTED HIM TO GO AHEAD
22 AND SECURE HIM INSIDE A VEHICLE?

23 A. YES, SIR.

24 Q. DID YOU SEE MR. CHAVEZ AGAIN?

25 A. NO, I DID NOT.

1 MR. DAY: THOSE ARE ALL THE QUESTIONS I HAVE. THANK
2 YOU.

3 THE COURT: RE-EXAM?

4 MR. WAGNER: NOTHING FURTHER, YOUR HONOR. I ASK SHE
5 BE EXCUSED.

6 MR. DAY: NO OBJECTION.

7 (WHEREUPON, THE WITNESS WAS EXCUSED.)

8 MR. WAGNER: I CALL WESLEY MOORE.

9 WHEREUPON,

10 WESLEY MOORE,

11 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. WAGNER:

13 Q. WOULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
14 LAST NAME FOR THE RECORD?

15 A. WILLIAM WESLEY MOORE, M-O-O-R-E.

16 Q. ARE YOU CURRENTLY EMPLOYED WITH SENECA POLICE
17 DEPARTMENT?

18 A. YES, SIR, I AM.

19 Q. HOW LONG HAVE YOU BEEN WORKING FOR THEM?

20 A. EIGHT YEARS.

21 Q. WERE YOU WORKING BACK ON OCTOBER THE 14TH, 2009?

22 A. YES, SIR.

23 Q. DID YOU GO TO THE SCENE OF 501 SOUTH DEPOT STREET
24 IN SENECA?

25 A. YES, SIR, I DID.

1 Q. AND WHAT BASICALLY DID YOU DO THERE?

2 A. I WAS CALLED TO THE SCENE AND ASKED TO RELIEVE
3 OFFICER KIRBY AT THE TIME WHICH WAS STANDING AT THE DOOR
4 ALONG WITH SERGEANT WINCHESTER TO TAKE OVER THE CRIME
5 SCENE LOG SO THEY COULD GET BACK TO DOING WHAT THEY
6 NEEDED TO DO.

7 Q. WAS HE FIXING TO GO OFF SHIFT?

8 A. YES, SIR.

9 Q. ALL RIGHT. YOU WERE COMING ON SHIFT?

10 A. YES, SIR.

11 Q. YOU WORKED 12-HOUR SHIFTS AT THE POLICE
12 DEPARTMENT?

13 A. YES, SIR.

14 Q. WHICH PROBABLY IS MORE THAN 12 HOURS, IS IT NOT,
15 USUALLY?

16 A. I'M SORRY?

17 Q. USUALLY YOU END UP WORKING OVER 12 HOURS, YOU WORK
18 OVER SOMETIMES?

19 A. A LOT OF TIMES, YES, SIR.

20 Q. OKAY. AT THE END OF A 12-HOUR SHIFT ARE YOU READY
21 TO GO HOME?

22 A. VERY MUCH SO.

23 Q. SO YOU TOOK OVER THE CRIME SCENE LOG FROM KEN
24 KIRBY?

25 A. YES, SIR.

1 Q. DID YOU STAY THERE UNTIL EVERYTHING WAS COMPLETED?

2 A. UNTIL EVERYTHING WAS COMPLETED.

3 Q. DID YOU MONITOR WHO CAME IN OR OUT?

4 A. I DID. I DID.

5 MR. WAGNER: I THINK THAT'S THE ONLY QUESTIONS I
6 HAVE.

7 THE COURT: CROSS-EXAMINE?

8 CROSS-EXAMINATION BY MR. DAY:

9 Q. OFFICER, THIS CRIME SCENE LOG THAT WINCHESTER IS
10 TALKING ABOUT YOU TOOK OVER?

11 A. YES, SIR.

12 Q. AND AGAIN I ASK YOU, IS IT JUST WHO COMES AND GOES
13 OR DOES THAT KEEP UP WITH ANYTHING THAT WAS FOUND?

14 A. IT DOES NOT KEEP UP WITH ANYTHING THAT'S FOUND.
15 IT'S WHO COMES, WHO GOES, THE TIME THEY ENTER THE CRIME
16 SCENE AND THE TIME THEY EXIT THE CRIME SCENE.

17 Q. IT'S KIND OF LIKE THE GATEKEEPER?

18 A. YES.

19 Q. WERE YOU INVOLVED IN ANYTHING ELSE DURING THAT
20 TIME AS FAR AS THE CRIME SCENE GOES?

21 A. NO, SIR.

22 Q. WAS MR. CHAVEZ THERE WHEN YOU ARRIVED?

23 A. NO, SIR. THIS IS THE FIRST TIME I'VE SEEN
24 MR. CHAVEZ.

25 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE. THANK

1 YOU, SIR.

2 THE COURT: RE-EXAM?

3 MR. WAGNER: NOTHING FURTHER, YOUR HONOR, AND ASK
4 THAT HE BE EXCUSED.

5 MR. DAY: WITHOUT OBJECTION, YOUR HONOR.

6 THE COURT: WITHOUT OBJECTION YOU MAY BE EXCUSED.
7 THANK YOU, SIR.

8 THE WITNESS: YES, SIR.

9 (WHEREUPON, THE WITNESS WAS EXCUSED.)

10 MR. WAGNER: TED ROUNDY.

11 WHEREUPON,

12 TED ROUNDY,

13 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. WAGNER:

15 Q. GIVE US YOUR FULL NAME AND SPELL YOUR LAST NAME
16 FOR THE RECORD, PLEASE.

17 A. THEODORE ROUNDY, R-O-U-N-D-Y.

18 Q. WHAT IS CURRENTLY YOUR JOB?

19 A. I'M RETIRED.

20 Q. WERE YOU STILL WORKING WITH SENECA POLICE
21 DEPARTMENT BACK ON OCTOBER 14, 2009?

22 A. YES, I WAS.

23 Q. WHAT WAS YOUR JOB DUTY THERE?

24 A. I WAS ASSIGNED IN INVESTIGATIONS.

25 Q. WERE YOU SHORT-TIMING, SO TO SPEAK, AT THAT TIME?

1 A. YES. I HAD FIVE MONTHS LEFT TO DO.

2 Q. HOW MANY YEARS HAD YOU BEEN IN LAW ENFORCEMENT?

3 A. 39 YEARS.

4 Q. OKAY. BEING THAT YOU WERE SHORT-TIMING, AND I
5 GUESS BACK, AND I'M JUST REFERRING TO SHORT TIME BECAUSE
6 YOU ONLY HAD FIVE MONTHS LEFT, DID THEY ASSIGN YOU AS
7 LIKE THE CHIEF LEAD INVESTIGATOR IN THE CASE OR WERE YOU
8 THE FIRST ONE THAT GOT THERE? EXPLAIN TO ME WHAT
9 HAPPENED?

10 A. I RECEIVED A CALL ABOUT 5:45 I BELIEVE IT WAS, AND
11 WHILE ON THE WAY TO THE SCENE I WAS INFORMED BY MAJOR
12 PETE NORMANDIN THAT THE SUSPECT WAS IN CUSTODY AND THEY
13 ASKED ME WHAT THEY WANTED DONE. I SAID, GO AHEAD AND
14 TRANSPORT HIM TO THE SENECA POLICE DEPARTMENT.

15 I WAS ALSO TOLD THAT SERGEANT RORY JONES WAS
16 RESPONDING AND THAT SERGEANT TIM WILLIAMSON, THE OTHER
17 INVESTIGATOR, WAS ON THE SCENE. I SAID TO HAVE RORY, WHO
18 IS QUITE CAPABLE, TO CONDUCT THE INTERVIEW OF THE
19 DEFENDANT AT THE POLICE DEPARTMENT, AND I WAS ALSO AWARE
20 THAT THERE WERE TWO OTHER WITNESSES, A MALE AND FEMALE,
21 AND I HAD SERGEANT TIM WILLIAMSON CONDUCT THE INTERVIEWS
22 OF THEM.

23 Q. OKAY. DID YOU ACTUALLY GO TO THE SCENE?

24 A. YES, I DID. I WENT TO THE SCENE TO OBTAIN THE
25 INFORMATION FOR THE SEARCH WARRANT FOR THE CRIME SCENE.

1 Q. EXPLAIN TO ME WHY WOULD YOU DO THAT?

2 A. BASICALLY TO PREVENT ANY QUESTIONS COMING UP IN
3 REGARDS TO THE GATHERING OF THE EVIDENCE, THE LEGALITY OF
4 IT, TO GIVE US AUTHORIZATION BY THE COURTS TO ENTER THE
5 PREMISES.

6 Q. AND WHAT KIND OF INFORMATION DO YOU NEED TO SUBMIT
7 TO A MAGISTRATE FOR A SEARCH WARRANT?

8 A. ONE, THAT A CRIME HAD OCCURRED, WHAT TYPE OF
9 CRIME; A DESCRIPTION OF THE PROPERTY TO BE SEARCHED, AND
10 BASICALLY THAT'S IT.

11 Q. AND DID YOU GO ON AND TAKE CARE OF THAT, THAT
12 PORTION?

13 A. YES. I OBTAINED THE INFORMATION NEEDED FOR THE
14 SEARCH WARRANT. I THEN LEFT THE SCENE. IT WAS TAPED
15 OFF. I NEVER ENTERED. AND THEN LEFT THE SCENE AND WENT
16 TO THE POLICE DEPARTMENT WHERE BEFORE I TYPED UP THE
17 SEARCH WARRANT I WENT TO THE INTERVIEW ROOM OR TRAINING
18 ROOM WHERE THE INTERVIEW WAS TAKING PLACE, AND SERGEANT
19 JONES WAS AT THAT TIME TALKING TO THE DEFENDANT ASSURING
20 THAT HE WAS ADVISED OF HIS RIGHTS, HE UNDERSTOOD HIS
21 RIGHTS, AND THAT HE HAD, IN FACT, SIGNED A RIGHTS WAIVER
22 FORM THAT WE USE, AND HE ACKNOWLEDGED THAT HE WAS ADVISED
23 OF HIS RIGHTS, HE ACKNOWLEDGED THAT HE UNDERSTOOD HIS
24 RIGHTS AND THAT HE DID SIGN THE FORM. WHILE HE WAS
25 STARTING HIS INTERVIEW, I WENT AND CONDUCTED MY BUSINESS

1 WITH THE SEARCH WARRANT.

2 Q. DID YOU TAKE THE SEARCH WARRANT AFTER YOU GOT
3 IT -- YOU HAD TO DRAW IT UP, THEN DID YOU GET IT SIGNED
4 BY A MAGISTRATE?

5 A. I CALLED THE CITY JUDGE TO COME IN. HE SIGNED THE
6 SEARCH WARRANT AND I TOOK THE SEARCH WARRANT TO THE SCENE
7 WHERE OFFICERS WERE PREPARING TO CONDUCT A CRIME SCENE
8 INVESTIGATION AND I GAVE THEM THE SEARCH WARRANT.

9 Q. WHO WAS THERE TO DO THAT?

10 A. ONE, NICHOLSON.

11 Q. AT THAT POINT DID YOUR INVOLVEMENT IN THE CASE
12 END?

13 A. BASICALLY YES. I BASICALLY JUST STOOD BACK AND
14 WATCHED OVER RORY, WHO REALLY DIDN'T NEED ANY WATCHING
15 OVER; AND WAS THERE TO ASSIST THEM IF THEY NEEDED IT, AND
16 TO ANSWER ANY QUESTIONS IF THEY HAD ANY.

17 MR. WAGNER: THANK YOU, OFFICER ROUNDY, THOSE ARE
18 ALL THE QUESTIONS I HAVE.

19 THE COURT: CROSS-EXAMINE?

20 CROSS-EXAMINATION BY MR. DAY:

21 Q. AS I UNDERSTAND IT, WHEN YOU ARRIVED ON SCENE, WAS
22 EVERYBODY JUST BRIEFED ON WHAT WAS GOING ON?

23 A. YES.

24 Q. AND THAT WAS AT THE SCENE?

25 A. THAT WAS AT THE SCENE IN THE STREETS.

1 Q. WAS MR. CHAVEZ THERE WHEN YOU ARRIVED?

2 A. NO.

3 Q. WHERE WAS HE?

4 A. HE WAS AT THE POLICE DEPARTMENT.

5 Q. AFTER YOU BECAME APPRISED OF WHAT WAS GOING ON,
6 WHOSE DECISION WAS IT TO GO AHEAD AND HAVE A SEARCH
7 WARRANT DONE?

8 A. THAT'S STANDARD PROCEDURE. FROM THE CHIEF OF
9 POLICE AND MAJOR NORMANDIN, PETE NORMANDIN, THAT THEY
10 ALWAYS WANT A SEARCH WARRANT TO BE EXECUTED.

11 Q. I THINK I REMEMBER LOOKING AT YOUR REPORT, AND YOU
12 SAID YOU ARRIVED APPROXIMATELY 6:03 P.M. THAT'S WHAT IT
13 SAYS IN YOUR INCIDENT REPORT. AND THEN AFTER YOU WERE
14 THERE AND APPRISED HIM, YOU HEADED BACK TO THE POLICE
15 DEPARTMENT?

16 A. YES.

17 Q. WHO PREPARED THE ACTUAL SEARCH WARRANT, WHO TYPED
18 IT UP?

19 A. I DID.

20 Q. AND THEN YOU ASKED THE CITY JUDGE TO COME DOWN AND
21 SEE WHETHER HE WOULD ISSUE A SEARCH WARRANT SO Y'ALL
22 COULD PROCEED WITH YOUR INVESTIGATION?

23 A. YES, SIR.

24 Q. I WAS JUST LOOKING. IT SAYS THE JUDGE CAME AT
25 7:59 AND YOU LEFT HIS OFFICE AT 8:03, SO IT DIDN'T TAKE

1 LONG, DID IT?

2 A. NO, SIR.

3 Q. YOU WENT BACK TO THE SCENE WITH THE SEARCH
4 WARRANT. DID YOU ACTUALLY EXECUTE THE SEARCH WARRANT, DO
5 THE SEARCH YOURSELF?

6 A. NO. I GAVE THE SEARCH WARRANT TO THE CRIME SCENE
7 OFFICER, BUT I DID GO INSIDE SO I WOULD KNOW WHAT THE
8 CRIME SCENE LOOKED LIKE.

9 Q. AS FAR AS THAT GOES THE REST OF COMPLETING THE
10 SEARCH WARRANT, EXECUTING IT, DOING WHATEVER, AFTER THAT,
11 AFTER YOU TURNED IT OVER TO THE OFFICERS ON THE SCENE,
12 LOOKED AT THE SCENE, AND YOU LEFT?

13 A. NO. I STAYED AROUND TO SEE IF THEY NEEDED MY
14 ASSISTANCE ON ANYTHING.

15 Q. FROM THERE YOU WENT, WHAT, BACK TO THE STATION?

16 A. I THINK I WENT BACK TO THE STATION AND STARTED MY
17 PAPERWORK, YES.

18 Q. OKAY. DID YOU SEE MR. CHAVEZ?

19 A. ONLY THAT ONE TIME THAT I CAN RECALL.

20 Q. HE WAS AT THE SENECA POLICE STATION?

21 A. AT THE SENECA POLICE DEPARTMENT, YES.

22 Q. ANY TIME DURING THIS WAS HE ACTING UP IN ANY WAY?

23 A. NO, SIR.

24 Q. HE WASN'T RESISTING, CURSING, CALLING OUT NAMES,
25 DOING ANYTHING LIKE THAT?

1 A. NO, SIR.

2 Q. DID HE APPEAR TO BE COOPERATING WITH WHAT WAS EVER
3 ASKED OF HIM?

4 A. THE ONE TIME THAT I SAW HIM, YES, SIR.

5 Q. OKAY. I NOTICE IN THE, ON YOUR REPORT IT SAYS YOU
6 TOOK PICTURES?

7 A. YES, SIR.

8 Q. WHAT WERE YOU TAKING PICTURES OF?

9 A. THE CRIME SCENE, SO I WOULD HAVE MY OWN COPIES.
10 AND I GAVE THE OTHERS, THE -- I ALWAYS TAKE CRIME SCENE
11 PHOTOS FOR MYSELF SO I CAN KEEP THEM WITH MY RECORDS, AND
12 THEN I GIVE THE ORIGINAL CRIME SCENE PHOTOS TO THE CRIME
13 SCENE OFFICER.

14 Q. ALL RIGHT, SIR. WERE YOU THERE WHEN THE CORONER
15 ARRIVED?

16 A. I BELIEVE I WAS.

17 MR. DAY: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE.
18 THANK YOU, SIR.

19 THE COURT: RE-EXAM.

20 REDIRECT EXAMINATION BY MR. WAGNER:

21 Q. WHEN YOU WENT INTO THE HOUSE, WHAT DID YOU SEE,
22 WHAT DID THE SCENE LOOK LIKE?

23 A. A LITTLE SMALL, IT LOOKED LIKE A TWO-BEDROOM
24 SINGLE-FAMILY DWELLING. THE SCENE WHERE THE FEMALE WAS
25 WAS IN THE SOUTHWEST CORNER OF THE HOUSE. HER HEAD WAS

1 TOWARDS THE DOOR, IT WAS VERY HARD TO GET IN. YOU HAD TO
2 BASICALLY SQUEEZE IN TO GET INSIDE THE BEDROOM. THE
3 BEDROOM WAS IN A DISARRAYED CONDITION.

4 THERE WAS MAIL ON A BED POST. THERE WERE KICK
5 MARKS IT LOOKED LIKE ON THE WALL NEAR THE VICTIM'S FEET.
6 THERE WAS A NUMBER OF DOGS IN THE HOUSE, THIS WAS DAVE
7 GURLEY'S (PHONETIC) I BELIEVE. AND THE BEDROOM WAS IN
8 QUITE A MESS WITH DOG FECES AND URINE; IT STUNK.
9 SPARSELY FURNISHED.

10 Q. OKAY. DID YOU NOTICE ANYTHING ABOUT THE VICTIM'S,
11 ABOUT HER APPEARANCE?

12 A. WELL, SHE WAS -- FROM WHAT I COULD SEE HER, BUT
13 SHE WAS LAYING ON HER BACK. I DIDN'T DISTURB HER BECAUSE
14 THAT WAS GONNA BE KARL'S JOB, THE CORONER. HER CLOTHES
15 WERE IN A DISARRAYED SHAPE, CONDITION.

16 THERE APPEARED TO BE SOME BRUISING BUT I DON'T
17 RECALL WHERE. I DO REMEMBER SEEING IT BECAUSE I PUT IT
18 IN MY REPORT, I REMEMBER THAT, BUT I DON'T REMEMBER
19 EXACTLY WHERE THE BRUISING WAS.

20 Q. AT THAT POINT WHEN YOU HAD TURNED THE CRIME SCENE
21 OVER AND SERGEANT NICHOLSON GOT THERE AND BEGAN
22 PROCESSING IT, AT THAT POINT IN TIME DID YOU LEAVE?

23 A. NO. LIKE I SAID, I STAYED AT THE SCENE TO SEE IF
24 I COULD ASSIST THE CRIME SCENE OFFICER. IT WAS A FAIRLY
25 MAJOR CRIME, AND I STAYED TO SEE IF THERE WAS ANYTHING

1 THAT I COULD POSSIBLY DO TO HELP HER, YOU KNOW, SOMETIMES
2 IT'S A MATTER OF HOLDING A LIGHT IN A CERTAIN POSITION
3 WHEN YOU ARE LOOKING AROUND AT SOMETHING OR HELPING HER
4 TAKE MEASUREMENTS OR SOMETHING LIKE THAT, BUT THAT WOULD
5 BE MY BASIC INVOLVEMENT.

6 MR. WAGNER: THANK YOU. THAT'S ALL THE QUESTIONS I
7 HAVE.

8 THE COURT: RECROSS?

9 MR. DAY: NO, YOUR HONOR, THANK YOU.

10 THE COURT: YOU MAY STEP DOWN. THANK YOU.

11 MR. WAGNER: WE WOULD ASK IF HE CAN BE EXCUSED.

12 MR. DAY: NO OBJECTION.

13 THE COURT: WITHOUT OBJECTION, THE WITNESS MAY BE
14 EXCUSED. THANK YOU, SIR.

15 (WHEREUPON, THE WITNESS WAS EXCUSED.)

16 THE COURT: DO YOU WANT TO APPROACH?

17 (DISCUSSION AT SIDEBAR.)

18 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
19 JURY, WE MOVED RATHER QUICKLY THIS AFTERNOON ON OUR
20 WITNESSES. AND I DO HAVE SOMETHING TO TAKE UP BEFORE WE
21 START BACK IN THE MORNING. NORMALLY I DON'T BREAK THIS
22 EARLY. I HAVE A POLICY, YOU MIGHT SAY. BUT WE USUALLY
23 HAVE TWO LIVES. ONE BEGINS EARLY IN THE MORNING, AND
24 GOES TO ABOUT 5:00, AND THEN ANOTHER ONE STARTS AT 5:00
25 AND SEEMS TO GO ON FOREVER. BUT THE POINT IS, USUALLY I

1 LIKE TO BREAK ABOUT 5:00 BUT IT'S ONLY 4:00 NOW. BUT, AS
2 I SAY, I HAVE GOT SOME THINGS I'VE GOT TO TAKE UP BEFORE
3 WE START IN THE MORNING. AND RATHER THAN TAKING THE
4 CHANCE OF LASTING TOO LONG AND NOT BEING ABLE TO DO THAT,
5 I'M GOING TO SUGGEST THAT WE DO BREAK FOR THE EVENING AT
6 THIS TIME AND COME BACK AT 10:00 IN THE MORNING AND WE'LL
7 START THE TRIAL AT THAT TIME.

8 I TELL PEOPLE THIS IS THE MOST DIFFICULT PART OF THE
9 TRIAL FOR YOU. BECAUSE YOU'RE GOING HOME AND SOMEBODY IS
10 GOING TO ASK YOU, WHAT ARE YOU DOING?

11 YOU'LL SAY, WELL, I GOT DRAWN ON A JURY.

12 AND THEY'LL SAY, WELL, WHAT'S IT ABOUT?

13 AND YOU'RE GOING TO SAY, WELL, I CAN'T TELL YOU.

14 AND THEY'RE GOING TO SAY, WELL, WHY NOT?

15 AND YOU'LL SAY, BECAUSE THE JUDGE SAID SO.

16 AND THEY'LL PROBABLY SAY SOMETHING LIKE, WELL,
17 THAT'S RIDICULOUS.

18 I THINK YOU UNDERSTAND NOW THAT THIS, AS I SAID
19 EARLIER IN THE DAY, THAT THIS IS AN IMPORTANT CASE FOR
20 EVERYBODY INVOLVED AND IT NEEDS TO BE RESOLVED IN A
21 PROPER FASHION, AND NO ONE WHO IS NOT SITTING WHERE YOU
22 ARE RIGHT NOW OR WILL BE WITH YOU IN THAT JURY ROOM WHEN
23 YOU DO COME TO THE DECISION THAT YOU WILL HAVE TO MAKE
24 CAN HELP YOU BECAUSE THEY HAVE NOT HEARD THE FIRST
25 WITNESS'S TESTIMONY OR SEEN THE FIRST EXHIBIT OR OTHER

1 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2 COUNTY OF OCONEE) INDICTMENT NO: 2010-GS-37-00020
 3)
 4)
 5)
 6 STATE OF SOUTH)
 CAROLINA)
 7 PLAINTIFF,) TRANSCRIPT OF RECORD
 8 -VS-) TRIAL - VOLUME II
 9 DAVID CHAVEZ,) (PAGES 100 THROUGH 285)
 10 DEFENDANT.)
 11)
 12)
 13)
 14)
 15)
 16)
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 21)
 22)
 23)
 24)
 25)

NOVEMBER 16, 2010
 WALHALLA, SOUTH CAROLINA

14 B E F O R E :

15 THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
 16 JURY.

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

19 DAVID WAGNER, ESQ.
 20 DEPUTY 10TH CIRCUIT SOLICITOR
 21 ATTORNEY FOR THE STATE

22 R. DANIEL DAY, ESQ.
 23 ATTORNEY FOR THE DEFENDANT

24 ROBIN SUE HILD, FCRR, RPR
 25 CIRCUIT COURT REPORTER
 POST OFFICE BOX 9
 WALHALLA, SC 29691

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1 (WHEREUPON, THE PROCEEDINGS CONTINUED, WITH
2 ALL PARTIES BEING PRESENT, ON NOVEMBER 16,
3 2010, AT APPROXIMATELY 9:25 A.M.)

4 (MARKED FOR IDENTIFICATION WAS STATE'S
5 EXHIBIT 34, PHOTO.)

6 (MARKED FOR IDENTIFICATION WAS STATE'S
7 EXHIBIT 35, PHOTO.)

8 (MARKED FOR IDENTIFICATION WAS STATE'S
9 EXHIBIT 36, PHOTO.)

10 JACKSON V. DENNO HEARING:

11 THE COURT: BACK ON THE CASE OF STATE OF SOUTH
12 CAROLINA VERSUS DAVID CHAVEZ, 2010-GS-37-20. IT IS MY
13 UNDERSTANDING THERE IS AN ISSUE ABOUT THE STATEMENT AND
14 WE NEED A JACKSON V. DENNO HEARING.

15 IS THAT CORRECT, MR. SOLICITOR?

16 MR. WAGNER: YES, SIR.

17 THE COURT: IS THAT CORRECT, MR. DAY?

18 MR. DAY: YES, YOUR HONOR.

19 THE COURT: VERY WELL. YOU MAY PRESENT YOUR MOTION.

20 MR. WAGNER: THANK YOU, JUDGE. I CALL MARK BOLDEN.

21 WHEREUPON,

22 MARK BOLDEN,

23 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. WAGNER:

25 Q. STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR

1 LAST NAME, PLEASE.

2 A. MARK ANTHONY BOLDEN, B-O-L-D-E-N.

3 Q. AND YOU TESTIFIED YESTERDAY YOU WERE WORKING WITH
4 THE CENTRAL POLICE DEPARTMENT NOW?

5 A. YES, SIR, THAT'S CORRECT.

6 Q. BACK ON OCTOBER 14, 2009, WERE YOU WORKING AS A
7 POLICE OFFICER WITH THE SENECA POLICE DEPARTMENT?

8 A. I WAS.

9 Q. DID YOU GO TO THE SCENE OF A STABBING AT 501 SOUTH
10 DEPOT STREET THAT DAY?

11 A. I DID.

12 Q. DID YOU END UP TRANSPORTING THE DEFENDANT BACK TO
13 THE SENECA POLICE DEPARTMENT?

14 A. I DID.

15 Q. WHERE DID YOU TAKE HIM AND WAS HE -- I GUESS HE
16 WAS IN CUSTODY, CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND WAS HE HANDCUFFED?

19 A. HE WAS.

20 Q. OKAY. WHERE DID YOU TAKE HIM IN THE SENECA POLICE
21 DEPARTMENT?

22 A. TO THE INTERROGATION ROOM.

23 Q. AND IS THAT A BIG ROOM?

24 A. IT IS A BIG ROOM.

25 Q. YOU ALSO USE IT FOR MEETINGS AND THINGS LIKE THAT?

1 A. WE DO.

2 Q. OKAY. LET ME SHOW WHAT'S BEEN MARKED STATE'S
3 EXHIBIT NUMBER 3 FOR IDENTIFICATION. DO YOU RECOGNIZE
4 THAT?

5 A. I DO.

6 Q. WHAT IS THAT?

7 A. THAT'S A STATEMENT OF *MIRANDA* RIGHTS.

8 Q. OKAY. DID YOU ADVISE THE DEFENDANT OF HIS *MIRANDA*
9 RIGHTS ON THAT DATE AND TIME?

10 A. I DID.

11 Q. OKAY. HOW DID YOU DO THAT?

12 A. MYSELF AND OFFICER HOOVER WAS TRANS-, WALKING HIM
13 TO MY PATROL CAR. AND AT THAT PARTICULAR TIME THE
14 SUSPECT BEGAN TO TALK, AND WE THOUGHT IT WOULD BE IN THE
15 BEST INTERESTS TO GO AHEAD AND MIRANDIZE HIM. SINCE HE
16 WAS IN MY CAR, I RETRIEVED THE FORM AND I BEGAN TO ADVISE
17 THE SUBJECT OF HIS RIGHTS.

18 Q. IS THAT THE FORM THAT YOU USED THAT DAY?

19 A. IT IS.

20 Q. AND IS IT STILL IN THE SAME CONDITION THAT IT WAS
21 THE DAY THAT YOU DID, THAT YOU FILLED IT OUT?

22 A. IT IS.

23 Q. AND HAS IT BEEN ALTERED OR TAMPERED WITH IN ANY
24 MANNER?

25 A. NO, SIR.

1 Q. IN YOUR TIME IN LAW ENFORCEMENT -- HOW LONG HAVE
2 YOU BEEN IN LAW ENFORCEMENT?

3 A. A LITTLE OVER THREE YEARS.

4 Q. -- HAVE YOU HAD A CHANCE TO OBSERVE PEOPLE THAT
5 HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?

6 A. I HAVE.

7 Q. AND DID HE APPEAR TO BE UNDER THE INFLUENCE OF
8 ALCOHOL OR DRUGS OR ANYTHING THAT DAY?

9 A. HE DID NOT.

10 Q. WHEN YOU TALKED TO HIM, WHEN YOU ASKED HIM, WHEN
11 YOU READ HIM HIS *MIRANDA* RIGHTS, DID HE SEEM TO
12 UNDERSTAND YOU?

13 A. YES, SIR. I ASKED HIM WHAT GRADE DID HE COMPLETE.
14 HE TOLD ME HE COMPLETED THE 11TH GRADE.

15 Q. DID YOU ASK HIM IF HE COULD READ OR WRITE?

16 A. NO, SIR.

17 Q. DID YOU READ THAT FORM TO HIM?

18 A. I DID.

19 Q. AND COULD YOU GO ABOUT, TELL US HOW DID YOU GO
20 ABOUT ADVISING HIM OF HIS *MIRANDA* RIGHTS, WORD FOR WORD,
21 HOW YOU DID IT?

22 A. WHEN I WALKED HIM TO MY PATROL CAR I ADVISED HIM
23 IN SOME STEPS. I SAID I'M GONNA READ YOU YOUR RIGHTS,
24 I'M GONNA READ FROM THIS SHEET, FROM A SHEET OF PAPER.

25 THE FIRST ONE WAS, YOU HAVE THE RIGHT TO REMAIN

1 SILENT. I ASKED HIM DID HE UNDERSTAND IT AND HE SAID
2 YES.

3 THE SECOND ONE I ASKED WAS, ANYTHING YOU SAY CAN
4 AND WILL BE USED AGAINST YOU IN A COURT OF LAW. DO YOU
5 UNDERSTAND? HE SAID YES.

6 THIRDLY, YOU HAVE A RIGHT TO TALK TO A LAWYER AND
7 HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
8 DO YOU UNDERSTAND? HE SAID YES.

9 FOURTH ONE IS, IF YOU CANNOT AFFORD TO HIRE A
10 LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY
11 QUESTIONING IF YOU WISH. DO YOU UNDERSTAND? HE SAID
12 YES.

13 THE FIFTH ONE IS, YOU CAN DECIDE AT ANY TIME TO
14 EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR
15 MAKE ANY STATEMENTS. HE STATED YES.

16 AT THE BOTTOM I ASKED HIM, DO YOU UNDERSTAND YOUR
17 RIGHTS AS THEY HAVE BEEN EXPLAINED TO YOU? HE STATED
18 YES.

19 AND AT THAT PARTICULAR TIME I ASKED HIM TO INITIAL
20 EACH ONE THAT HE UNDERSTOOD, AND HE INITIALED IT AND THEN
21 SIGNED IT AT THE BOTTOM.

22 Q. OKAY. SO HE INITIALED EACH QUESTION AND THEN HE
23 SIGNED THAT HE WANTED TO WAIVE HIS RIGHTS?

24 A. THAT'S CORRECT.

25 Q. AT ANY TIME DID YOU OFFER HIM ANY HOPE FOR REWARD

1 TO GET YOU TO -- TO GET HIM TO WAIVE HIS RIGHTS?

2 A. I DID NOT.

3 Q. DID YOU EVER THREATEN HIM?

4 A. NO.

5 Q. DID YOU EVER TRY TO COERCE HIM IN ANY MANNER,
6 PHYSICALLY, MENTALLY, THREATEN HIS FAMILY; DID YOU DO
7 ANYTHING LIKE THAT TO TRY TO COERCE HIM INTO WAIVING HIS
8 RIGHTS?

9 A. NO.

10 Q. DID HE TELL YOU THAT HE UNDERSTOOD WHAT HE WAS
11 DOING?

12 A. HE UNDERSTOOD -- HE TOLD ME HE UNDERSTOOD HIS
13 RIGHTS, YES.

14 Q. WAS ANYBODY ELSE IN THE ROOM WITH YOU?

15 A. AT THAT PARTICULAR TIME OFFICER HOOVER WAS AT THE
16 VEHICLE WITH ME.

17 Q. AND DID HE SIGN AS A WITNESS, TOO?

18 A. WELL, WHEN HE CAME -- WHEN OFFICER HOOVER AND I
19 WERE THERE, THEN THE SERGEANT OF THAT SHIFT CAME DOWN AND
20 SHE SIGNED IT.

21 Q. AND THEN LATER DID DETECTIVE JONES COME IN A FEW
22 MINUTES LATER?

23 A. AFTER I TRANSPORTED HIM TO THE POLICE DEPARTMENT,
24 CORRECT, OFFICER JONES SIGNED IT.

25 Q. DID THIS HAPPEN AT THE POLICE DEPARTMENT?

1 A. NO, SIR. THIS HAPPENED WHILE HE WAS BEING PUT
2 INTO THE VEHICLE ON THE SCENE.

3 Q. ON THE WAY TO THE POLICE DEPARTMENT?

4 A. UH-HUH.

5 Q. WHEN YOU GOT HIM TO THE POLICE DEPARTMENT, WHERE
6 DID YOU ALL GO?

7 A. I PULLED INTO THE SALLY PORT, CHECKED THE SUSPECT
8 OUT OF THE VEHICLE, AND WE ENTERED DOWNSTAIRS INTO THE
9 INTERROGATION ROOM.

10 Q. AT THAT POINT DID RORY JONES COME IN?

11 A. HE DID.

12 Q. DID RORY ASK HIM HAD HE BEEN READ HIS *MIRANDA*
13 RIGHTS AND DID HE UNDERSTAND?

14 A. HE DID.

15 Q. AT THAT POINT DID RORY SIGN ON AS A WITNESS TO THE
16 WAIVER OF RIGHTS, THAT HE WANTED TO WAIVE THEM?

17 A. HE DID.

18 Q. AT THAT POINT IN TIME DID YOU TURN THIS FORM OVER
19 TO RORY JONES?

20 A. I DID.

21 Q. DID YOUR INVOLVEMENT END AT THAT TIME?

22 A. IT DID.

23 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

24 MR. DAY: I HAVE NO QUESTIONS. ALSO, I ADVISE THE
25 COURT I THINK EXHIBIT NUMBER 3, WE HAVE NO OBJECTION TO

1 IT BEING ENTERED SO THE OFFICER WILL NOT HAVE TO BE
2 RE-CALLED AGAIN DURING THE TRIAL IN ORDER TO DISCUSS IT
3 AGAIN, TO GO AHEAD AND ADMIT IT NOW.

4 MR. WAGNER: IF THAT'S THE CASE, JUDGE, WE'LL ASK TO
5 MOVE THAT IN AND ASK IF HE CAN BE EXCUSED.

6 THE COURT: STATE'S EXHIBIT NUMBER 3 IS ADMITTED
7 WITHOUT OBJECTION AND THE OFFICER WILL NOT HAVE TO VOUCH
8 FOR IT. VERY GOOD.

9 (STATE'S EX. # 3, MIRANDA RIGHTS 10-14-09,
10 WAS RECEIVED IN EVIDENCE.)

11 MR. DAY: I HAVE NO QUESTIONS, YOUR HONOR.

12 THE COURT: YOU MAY BE EXCUSED.

13 MR. DAY: NO QUESTIONS.

14 THE COURT: HE MAY BE EXCUSED, THOUGH.

15 MR. DAY: YES.

16 THE COURT: THANK YOU, SIR.

17 THE WITNESS: THANK YOU, SIR.

18 (WHEREUPON, THE WITNESS WAS EXCUSED.)

19 THE COURT: CALL YOUR NEXT WITNESS.

20 MR. WAGNER: I CALL RORY JONES.

21 WHEREUPON,

22 RORY JONES,

23 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. WAGNER:

25 Q. COULD YOU GIVE US YOUR NAME AND SPELL YOUR LAST

1 NAME FOR THE RECORD?

2 A. MY NAME IS RORY RICHARD JONES, J-O-N-E-S.

3 Q. AND WHAT ARE YOUR JOB DUTIES?

4 A. MY CURRENT JOB DUTIES, I'M LIEUTENANT OVER
5 CRIMINAL INVESTIGATION, OF CID. I MAN CASES AS WELL AS
6 ASSIST OTHER INVESTIGATORS AND EVIDENCE TECHS IN THEIR
7 POSITIONS.

8 Q. DID YOU GET ASSIGNED THIS CASE AGAINST DAVID
9 CHAVEZ FOR STABBING HIS WIFE?

10 A. I DID.

11 Q. AS A RESULT OF THAT DID YOU RESPOND TO THE SENECA
12 POLICE DEPARTMENT ON OCTOBER 14, 2009, TO CONDUCT AN
13 INTERVIEW OF MR. CHAVEZ?

14 A. YES, SIR, I DID.

15 Q. WHERE DID THIS OCCUR?

16 A. IT WAS, I CALL IT THE TRAINING ROOM. THAT'S WHERE
17 WE HAVE OUR TRAINING ONCE A MONTH AS WELL AS WE DID
18 CONDUCT INTERVIEWS AND MEETINGS AND OTHER THINGS IN THE
19 ROOM ON OCCASIONS.

20 Q. WHEN YOU GOT THERE, DID YOU ASK HIM ANYTHING? DID
21 YOU ASK HIM IF HE HAD BEEN ADVISED OF HIS RIGHTS?

22 A. I DID. I WAS ADVISED BY OFFICER BOLDEN THAT
23 MR. CHAVEZ HAD ALREADY BEEN ADVISED OF HIS *MIRANDA*
24 RIGHTS. I SHOWED HIM THE FORM. I SAID, I UNDERSTAND YOU
25 HAVE ALREADY BEEN EXPLAINED TO YOU YOUR RIGHTS? HE SAID

1 YES. AND I SAID, DO YOU UNDERSTAND THEM AND ARE YOU
2 WILLING TO TALK TO ME? HE SAID "YES" AGAIN.

3 Q. DID YOU SIGN AS A WITNESS ON EXHIBIT 3?

4 A. I DID.

5 Q. AT THAT POINT IN TIME DID YOU BEGIN TO QUESTION
6 HIM?

7 A. YES. I BEGAN TO TALK TO HIM. I WAS THE ONE THAT
8 GOT A STATEMENT FROM HIM. I SOON SEEN THAT IT WAS GONNA
9 BE, I GUESS HE WAS WANTING TO TALK MORE THAN, FASTER THAN
10 I COULD WRITE SO I ASKED HIM IF I COULD TAKE NOTES
11 BEFOREHAND.

12 Q. BASICALLY WHAT DID HE TELL YOU?

13 A. HE TOLD ME THAT HIM AND HIS WIFE, WENDOLI CHAVEZ,
14 HAD BEEN SEPARATED FOR ABOUT A MONTH. AND SHE CAME OVER
15 THAT DAY, ON OCTOBER 14TH, TO RETRIEVE HER MAIL. HE HAD
16 TALKED TO HER, OR WAS TRYING TO TALK TO HER. HE ASKED
17 HER IF SHE THOUGHT ABOUT HIM, IF THEY COULD GET BACK
18 TOGETHER.

19 AND I DON'T HAVE THE STATEMENT IN FRONT OF ME OR
20 MY NOTES. BUT BEST OF MY MEMORY AS OF RIGHT NOW, I ASKED
21 IF THEY WANTED TO GET BACK TOGETHER. SHE SAYS NO. AND I
22 BELIEVE SHE STATED SHE HAD FOUND SOMEONE ELSE. AND THEN
23 HE WENT ON TO TELL ME HE SNAPPED. HE FUCKED UP. I MAY
24 BE GETTING THIS OUT OF ORDER IN THE STATEMENT FORM,
25 BUT...

1 Q. I'LL GIVE YOU THE STATEMENT HERE IN A SECOND. DID
2 YOU, IN TALKING TO HIM, DID HE APPEAR TO BE UNDER THE
3 INFLUENCE OF ALCOHOL OR DRUGS?

4 A. ABSOLUTELY NOT. IN ONE PART OF THE INTERVIEW I
5 ASKED HIM GENERAL QUESTIONS SOMETIMES I ASK JUST TO SHOW
6 THAT PEOPLE ARE COGNIZANT OF WHERE THEY ARE AT AND WHAT
7 THEY ARE DOING, THE POSITION THEY ARE IN. I ASKED HIM
8 THE DATE, THE DAY OF THE WEEK, AND THE PRESIDENT OF THE
9 UNITED STATES, AND HE ANSWERED ALL THREE CORRECTLY.

10 Q. SO HE RESPONDED TO YOUR QUESTIONS IN AN
11 APPROPRIATE MANNER?

12 A. THAT'S CORRECT, SIR.

13 Q. DID, DID HE APPEAR TO UNDERSTAND WHAT YOU WERE
14 ASKING HIM TO DO?

15 A. ABSOLUTELY.

16 Q. OKAY. AND HAVING ALREADY BEEN ADVISED OF HIS
17 RIGHTS, WAS HIS SPEECH COHERENT?

18 A. YES.

19 Q. DID HE EVER ASK FOR AN ATTORNEY OR EVER WANT TO
20 STOP, STOP QUESTIONING?

21 A. NOT AT ALL.

22 Q. DID HE TALK TO YOU IN A FREE AND VOLUNTARY KIND OF
23 MANNER?

24 A. YES. EVEN WHEN I FIRST ENTERED THE ROOM AND
25 THROUGHOUT THE INTERVIEW WE BOTH RECOGNIZED EACH OTHER

1 AND WE BOTH MADE THE COMMENT, I RECOGNIZE YOU, I
2 RECOGNIZE YOU, BUT WE COULDN'T FIGURE OUT WHERE. AND
3 LATER ON I WAS ABLE TO FIGURE OUT WHY AND HOW WE HAD
4 KNOWN EACH OTHER, AND HAD MET IN THE PAST. AND JUST KEPT
5 ON CONVERSATION DURING AND EVEN AFTER THE INTERVIEW.

6 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
7 EXHIBIT NUMBER 2. DO YOU RECOGNIZE THAT?

8 A. I DO.

9 Q. WHAT IS THAT?

10 A. THAT'S THE STATEMENT MR. CHAVEZ GAVE ME THAT I HAD
11 WRITTEN FOR HIM UPON HIS REQUEST.

12 Q. NOW, WHILE THIS WAS GOING ON DID YOU HAVE A TAPE
13 RECORDER GOING?

14 A. I DID.

15 Q. WHERE WAS THE TAPE RECORDER?

16 A. IT WAS IN MY -- I HAD A WINDBREAKER FOR A SLIGHT
17 WIND OR MAYBE RAIN LIKE TODAY, LABELED WITH A BADGE, SAYS
18 "SENECA POLICE DEPARTMENT" ON A BADGE, AND IT HAD A FRONT
19 POCKET IN IT AND I HAD IT IN MY POCKET.

20 Q. SO YOU WERE TAPE RECORDING THE INTERVIEW AS YOU
21 TALKED TO HIM?

22 A. THAT'S CORRECT, SIR.

23 Q. ALL RIGHT. DID HE ALSO DRAW YOU A DIAGRAM?

24 A. HE DID.

25 Q. AND DID YOU START OFF WITH THAT OR DID YOU DO THAT

1 FIRST OR DO THAT LAST?

2 A. IT WAS -- I DON'T REMEMBER THE EXACT TIME DURING
3 THE INTERVIEW, BUT IT WAS ONE OF THE FIRST THINGS UPON ME
4 ASKING HIM TO HELP ME UNDERSTAND WHAT HAPPENED TODAY. HE
5 WAS TRYING TO EXPLAIN THE KNIFE THAT HE HAD USED, AND I
6 ASKED HIM, I SAID, CAN YOU PUT IT ON PAPER FOR ME, CAN
7 YOU DRAW IT?

8 HE REPLIED I CAN'T DRAW GOOD, I SAID I'M NOT MUCH
9 OF AN ARTIST MYSELF. BUT HE DEPICTED WHAT HE RECALLED
10 THE KNIFE AS BEING AS WELL AS THE BEDROOM AND THE
11 ACCOUNTS OF WHERE HE AND HIS WIFE WERE STANDING.

12 Q. DID HE AGREE TO GO AHEAD AND GIVE YOU A WRITTEN
13 STATEMENT?

14 A. YES.

15 Q. DID YOU AT ANY TIME USE ANY KIND OF COERCION TO
16 TRY TO GET HIM TO GIVE YOU A STATEMENT?

17 A. I DID NOT. IN FACT, TWO OCCASIONS THROUGHOUT THE
18 INTERVIEW I ASKED HIM, I SAID, DO YOU FEEL THREATENED OR
19 COERCED AT ANY TIME DURING THIS INTERVIEW? AND HE
20 ADVISED NO.

21 Q. DID YOU EVER PROMISE HIM ANYTHING OR HOLD OUT ANY
22 HOPE FOR A REWARD OR A LESSER PUNISHMENT OR ANYTHING LIKE
23 THAT IF HE GAVE YOU A STATEMENT?

24 A. NO. THE ONLY THING HE ASKED FOR WAS A CIGARETTE,
25 AND I TOLD HIM AFTER WE FINISHED UP, I'D MAKE SURE HE GOT

1 A CIGARETTE, WHICH I DID.

2 Q. DID YOU USE ANY PHYSICAL FORCE OR MAKE THREATS TO
3 HIS FAMILY OR ANYTHING LIKE THAT?

4 A. ABSOLUTELY NOT.

5 Q. AND DID HE GIVE YOU THE STATEMENT?

6 A. HE DID.

7 Q. COULD YOU TELL US WHAT HE SAID?

8 A. THE FIRST LINE OF THE STATEMENT SAYS, THIS
9 STATEMENT IS WRITTEN BY SERGEANT JONES UPON MY REQUEST.
10 I'M SORRY FOR WHAT I HAVE DONE. I APOLOGIZE FOR
11 EVERYTHING. WENDOLI CAME TO GET HER MAIL AND I WANTED TO
12 TALK TO HER TO SEE HOW SHE WAS DOING. I ASKED HER IF SHE
13 STILL THOUGHT ABOUT ME AND IF WE COULD GET TOGETHER. SHE
14 SAID NO, SHE HAD FOUND SOMEBODY ELSE. SHE SAID SHE
15 DIDN'T WANT TO SEE ME NO MORE.

16 I TOLD HER SHE FUCKED ME OVER. I DID EVERYTHING
17 FOR HER, AND I SNAPPED, I FUCKED UP. I DON'T REMEMBER IF
18 I ALREADY HAD THE KNIFE OUT OR IF I PULLED IT OUT FAST.
19 I DON'T REMEMBER HOW MANY TIMES I STABBED HER OR WHERE I
20 STABBED HER.

21 I REALLY WANT TO SAY I'M SORRY FOR WHAT I DID.
22 AFTER A FEW MINUTES I SAW WENDOLI LAYING ON THE FLOOR, I
23 KNEW SHE WOULDN'T GET BACK UP. I CALLED MY MOM TO TELL
24 HER TO GET EVERYONE TOGETHER SO I COULD APOLOGIZE TO
25 EVERYBODY AND TELL THEM WHAT I DID.

1 I THEN CALLED 9-1-1 THAT MY WIFE WAS ON THE FLOOR
2 BECAUSE I THINK I STABBED HER. I DON'T THINK SHE EVEN
3 SAW IT COMING OR WOULD HAVE THOUGHT I WOULD HAVE DONE
4 THAT. I DON'T THINK I SAID ANYTHING WHEN I STABBED HER.

5 AND THEN I ASKED HIM, I ADVISED HIM I WAS GONNA
6 ASK HIM SEVERAL QUESTIONS ON THE STATEMENT AND GIVE HIM A
7 CHANCE TO RESPOND IN HIS OWN HANDWRITING, SINCE I HAD
8 WRITTEN THE REST, I CHOOSE TO PREFER TO LET THEM ANSWER
9 THE PARTICULAR QUESTIONS IN THEIR OWN HANDWRITING JUST TO
10 PREVENT ANYTHING HAPPENING FURTHER SAYING THAT I COERCED
11 HIM OR ANYTHING ELSE, BUT HE ANSWERED THESE QUESTIONS IN
12 HIS OWN WORDS.

13 THE FIRST ONE WAS, ON 10-14-09, DID YOU STAB
14 WENDOLI CHAVEZ?

15 I STABBED HER, I DID NOT KNOW I KILLED HER.

16 THE SECOND ONE: DID YOU CALL 9-1-1 ABOUT STABBING
17 YOUR WIFE?

18 HIS RESPONSE WAS "YES."

19 I ASKED, WHAT KIND OF WEAPON DID YOU USE?

20 HE REPLIED, "KNIFE."

21 I THEN ASKED, WHY DID YOU STAB WENDOLI CHAVEZ?

22 HE REPLIED, I DON'T KNOW.

23 AT THIS TIME I ASKED HIM IF THERE WAS ANYTHING
24 ELSE HE WANTED TO ADD TO HIS STATEMENT, ANYTHING, MAYBE
25 WHEN THE JUDGE SAW THIS, FOR THE JUDGE TO SEE OR HER

1 FAMILY TO SEE, AND I DID ASK AGAIN, DO YOU WANT ME TO
2 CONTINUE WRITING THIS?

3 HE ANSWERED YES. AND HE ASKED ME TO WRITE
4 (READING): I WOULD LIKE TO APOLOGIZE TO HER PARENTS,
5 TELL THEM I'M SORRY FOR WHAT I'VE DONE. I LOVED HER AND
6 THEY LOVED HER. I JUST DIDN'T WANT IT TO HAPPEN. THEY
7 WERE THE ONLY FAMILY I HAD DOWN HERE. I WISH I COULD
8 HAVE KILLED MYSELF.

9 AT THIS TIME I ASKED HIM IF HE WOULD LIKE TO END
10 HIS STATEMENT AND HE ANSWERED "YES". I THEN ASKED HIM, I
11 SAID, IS EVERYTHING -- I READ THE, I READ THE STATEMENT
12 COMPLETELY WORD FOR WORD THAT I HAD WRITTEN DOWN THAT HE
13 HAD ASKED BACK TO HIM AND ASKED IF IT WAS TRUE AND
14 ACCURATE TO WHAT HE ASKED ME TO WRITE, AND HE ANSWERED
15 "YES."

16 I GAVE HIM THE OPPORTUNITY TO LOOK OVER IT AND
17 INITIAL MY INCORRECTIONS OR WORDS SCRATCHED OUT, WHICH HE
18 DID. HE INITIALED AT THE END OF THE FIRST PAGE AS WELL
19 AS THE END OF THE SECOND PAGE AND THE BEGINNING OF THE
20 QUESTIONS AND SIGNED HIS NAME AT THE BOTTOM OF THE
21 STATEMENTS.

22 Q. OKAY. AND DID HE EVER REFUSE TO ANSWER ANY MORE
23 QUESTIONS OR DID HE EVER WANT TO QUIT TALKING TO YOU?

24 A. NO.

25 Q. IF HE HAD, WOULD YOU HAVE STOPPED THE INTERVIEW?

1 A. ABSOLUTELY.

2 Q. THERE'S ALSO A THIRD PAGE ATTACHED TO THE
3 STATEMENT, TECHNICALLY IT'S PART OF THE STATEMENT, THIS
4 DIAGRAM THAT HE TALKED TO YOU ABOUT?

5 A. YES, SIR.

6 Q. EXPLAIN THAT.

7 A. THE DIAGRAM IS ON A LEGAL, LEGAL PIECE OF -- LEGAL
8 NOTEBOOK PIECE OF PAPER, REGULAR NOTEBOOK PAPER, IT'S
9 WHAT I HAD IN FRONT OF ME. LIKE I SAID, ON ONE PHOTO
10 PICTURE HE DREW THE KNIFE FOR ME UPON MY REQUEST BECAUSE
11 HE WAS TRYING TO EXPLAIN TO ME AND HE COULDN'T THINK
12 OF -- HE WAS TRYING TO EXPLAIN THE KNIFE WAS MULTICOLORED
13 AND HE COULDN'T THINK OF THE WORD. WE -- MY
14 UNDERSTANDING WAS CHAMELEON, THEY CHANGE COLORS AND STUFF
15 LIKE THAT. SO I HAD HIM DRAW IT FOR ME.

16 AND THEN WHERE HE ALSO DEPICTED A PICTURE OF WHERE
17 MS. WENDOLI CHAVEZ WAS STANDING AND WHERE HE WAS STANDING
18 INSIDE THE BEDROOM, AND ABOUT WHERE THE BED WAS IN THE
19 BEDROOM.

20 Q. OKAY. DID HE SAY ANYTHING ELSE ABOUT THE DIAGRAM?
21 DID HE DRAW WHERE HE WAS AND WHERE SHE WAS?

22 A. HE DID DRAW WHERE HE WAS AND WHERE SHE WAS, AND HE
23 DID DRAW -- BOTH OF THESE PICTURES ARE IN HIS OWN WRITING
24 AND DOING.

25 Q. AT ANY TIME DID YOU EVER TRY TO COERCE HIM INTO

1 SAYING ANY OF THIS STUFF?

2 A. ABSOLUTELY NOT.

3 Q. IN THE STATEMENT, PAGE 1, WHICH IS THE PART YOU
4 WROTE FOR HIM, IS THAT IN ESSENTIALLY WHAT HIS WORDS
5 WERE?

6 A. YES. AND THROUGHOUT THE INTERVIEW ON AUDIO
7 RECORDING YOU CAN HEAR, IT IS, WHERE I HAD IT IN MY
8 POCKET, IT IS SCRATCHY AT TIMES, BUT A LOT IS REAL CLEAR.
9 AND AGAIN I WOULD WRITE A FEW LINES, READ BACK OVER THE
10 LINES, AND ASKED IF THAT'S WHAT HE STATED. AND I'D GET
11 HIS APPROVAL AND THEN WE'D MOVE FORWARD THROUGHOUT THE
12 STATEMENT. AND AGAIN, SEVERAL TIMES I ASKED HIM IF HE
13 FELT THREATENED OR COERCED IN ANY WAY, AND HE REPLIED NO.

14 Q. IN THE MIDDLE OF STATEMENT ONE THERE WHERE IT SAYS
15 "SHE REPLIED", AND "REPLIED" IS CROSSED THROUGH. HE
16 INITIALED IT. WHY IS THAT?

17 A. THAT IS BECAUSE WHEN HE WAS, HE WAS GIVING ME HIS
18 STATEMENT, I WAS TRYING TO KEEP UP, YOU KNOW, I GUESS
19 TALKING CAN GO A WHOLE LOT FASTER THAN I CAN WRITE. AND
20 I REALIZED I HAD MESSED UP. HE HAD SAID THE WORD "SAID"
21 AND I WROTE "REPLIED." SO I CAUGHT THAT, SCRATCHED IT
22 OUT, TOLD HIM WHAT I HAD DONE, AND ASKED HIM IF HE AGREED
23 WITH THAT, IF HE WOULD INITIAL IT, RECOGNIZING THAT I
24 CHANGED THAT.

25 MR. WAGNER: THANK YOU, OFFICER. THOSE ARE THE ONLY

1 QUESTIONS I HAVE.

2 CROSS-EXAMINATION BY MR. DAY:

3 Q. MR. JONES, JUST A COUPLE OF THINGS. WHEN YOU CAME
4 INTO THE ROOM WHERE HE WAS SITTING, HE HAD BEEN TAKEN
5 THERE BY OFFICERS HOOVER AND BOLDEN, THEY WERE THE ONES
6 THAT BROUGHT HIM INTO THE ROOM?

7 A. I CAN'T SAY FOR SURE WHO BROUGHT HIM OTHER THAN
8 OFFICER BOLDEN.

9 Q. AND HE WAS IN THERE, COOPERATIVE?

10 A. YES, HE WAS.

11 Q. NOT ARGUMENTATIVE?

12 A. NO, SIR.

13 Q. DURING HIS LISTENING TO THE AUDIO PORTION, HE
14 BROKE DOWN AND CRIED SEVERAL TIMES?

15 A. HE CRIED PRIMARILY WHEN WE GOT TO THE PART TO
16 APOLOGIZE, HE WANTED TO APOLOGIZE TO HER FAMILY, HE
17 REALLY BROKE DOWN. AND THROUGHOUT THE INTERVIEW, WE WAS
18 IN NO HURRY, I DIDN'T WANT HIM TO FEEL HURRIED. I SAID,
19 YOU KNOW, TAKE YOUR TIME. TRIED TO MAKE HIM FEEL
20 COMFORTABLE AS I COULD.

21 Q. BUT HE DID BREAK DOWN AND CRY?

22 A. YES, HE DID.

23 Q. SO HE WAS SOMEWHAT EMOTIONAL DURING THIS, AND AS
24 HE WOULD REGAIN COMPOSURE, AND THAT'S WHEN YOU WOULD GO
25 BACK TO DISCUSSING WITH HIM, TALKING TO HIM, GETTING DOWN

1 WHAT HE WANTED TO SAY?

2 A. THAT'S CORRECT.

3 Q. WHEN YOU WROTE OUT THE STATEMENTS FOR HIM TO
4 ANSWER, YOU WANTED HIM TO WRITE THESE HIMSELF; IS THAT
5 CORRECT?

6 A. THAT'S CORRECT, SIR.

7 Q. AND WHAT HE DID WAS ON THE FIRST QUESTION ON
8 10-14-09, DID YOU STAB AND KILL WENDOLI CHAVEZ?

9 A. THAT'S CORRECT.

10 Q. AND THEN YOU ASKED HIM TO WRITE OUT WHAT IT WAS,
11 HIS ANSWER TO THAT?

12 A. THAT'S CORRECT, SIR.

13 Q. AND I BELIEVE YOU SAID ON THE ANSWER, I STABBED
14 HER, I DID NOT KNOW I WOULD KILL HER -- K-E-L-L I BELIEVE
15 IS HOW HE SPELLED IT?

16 A. THAT'S CORRECT.

17 Q. AND THAT WAS WHAT YOU, THEN YOU SAID THAT MOVED ON
18 TO THE SECOND ONE, "DID YOU CALL 9-1-1," THAT SORT OF
19 THING?

20 A. THAT'S CORRECT.

21 Q. WHEN YOU FINISHED ALL OF THIS, YOU WENT BACK AND
22 YOU READ IT OVER TO HIM?

23 A. THAT'S CORRECT.

24 Q. AND YOU WENT THROUGH IT.

25 JUST, IF I CAN, I THINK WE'VE GOT A PLAYER ON THAT

1 FIRST QUESTION WHEN YOU WERE READING THAT BACK TO HIM.
2 NOW LET'S SEE IF I CAN MAKE THIS WORK.

3 (PART OF TAPE RECORDED STATEMENT OF DEFENDANT
4 PLAYED FOR WITNESS BY MR. DAY.)

5 BY MR. DAY:

6 Q. THAT WAS A QUESTION THERE AND WHEN YOU READ IT
7 BACK TO HIM?

8 A. THAT'S CORRECT, SIR.

9 Q. OKAY. ALL RIGHT, SIR. IN FACT, DURING THE
10 STATEMENT HE SAID SEVERAL TIMES AND YOU WROTE DOWN WHERE
11 HE SAID, ONE, I SNAPPED, SAYS THAT I DON'T REMEMBER HOW
12 MANY TIMES OR WHERE I STABBED HER. I THINK I STABBED
13 HER. THOSE WERE THE WORDS HE USED; IS THAT CORRECT?

14 I'M SORRY. "I SNAPPED" IS ABOUT 40 PERCENT DOWN.

15 A. (READING): I TOLD HER SHE FUCKED ME OVER, I DID
16 EVERYTHING FOR HER, AND I SNAPPED, I FUCKED UP.

17 Q. RIGHT.

18 A. I DON'T REMEMBER IF I ALREADY HAD A KNIFE OUT OR
19 IF I PULLED THE KNIFE OUT FAST. I DON'T REMEMBER HOW
20 MANY TIMES I STABBED HER OR WHERE I STABBED HER. I
21 REALLY WANT TO SAY I'M SORRY.

22 Q. AND THEN ON THE THIRD LINE FROM THE BOTTOM OF THAT
23 PAGE?

24 A. I THEN CALLED 9-1-1 THAT MY WIFE WAS ON THE FLOOR
25 BECAUSE I THINK I STABBED HER. I DON'T THINK SHE EVEN

1 SAW IT COMING OR WOULD HAVE THOUGHT I WOULD HAVE DONE
2 THAT.

3 MR. DAY: ALL RIGHT, SIR. I THINK THAT'S ALL THE
4 QUESTIONS I HAVE. THANK YOU.

5 THE COURT: RE-EXAM?

6 MR. WAGNER: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN. THANK YOU, SIR.

8 THE WITNESS: THANK YOU, YOUR HONOR.

9 (WHEREUPON, THE WITNESS WAS EXCUSED.)

10 MR. DAY: I WOULD CALL DAVID CHAVEZ.

11 THE COURT: LET'S SEE ABOUT THE STATE. ANYTHING
12 ELSE FROM THE STATE?

13 MR. WAGNER: NO, SIR.

14 THE COURT: ALL RIGHT. THE STATE RESTS.
15 YOU MAY PROCEED.

16 WHEREUPON,

17 DAVID CHAVEZ,

18 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. DAY:

20 Q. MR. CHAVEZ, I'VE EXPLAINED TO YOU THE PURPOSE OF
21 THIS HEARING ---

22 THE COURT: LET'S GET HIS FULL NAME FOR THE RECORD.
23 BY MR. DAY:

24 Q. I'M SORRY. GIVE ME YOUR FULL NAME FOR THE RECORD,
25 SPELLING YOUR LAST NAME.

1 A. DAVID JOSUE CHAVEZ, C-H-A-V-E-Z.

2 THE COURT: WHAT IS THE MIDDLE NAME?

3 BY MR. DAY:

4 Q. SPELL YOUR MIDDLE NAME.

5 A. J-O-S-U-E.

6 Q. J-O-S-U-E.

7 THE COURT: VERY GOOD. THANK YOU, SIR.

8 BY MR. DAY:

9 Q. ALL RIGHT, SIR. WE'VE EXPLAINED, OR TALKED ABOUT,
10 I'VE EXPLAINED TO YOU THE PURPOSE OF THIS HEARING AND YOU
11 DO UNDERSTAND THAT WHAT WE'RE TALKING ABOUT MERELY GOES
12 TO THIS STATEMENT? DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. YOU HAVE TO SPEAK UP.

15 A. YES.

16 Q. DO YOU WANT TO PULL THAT A LITTLE CLOSER TO YOU?

17 A. (COMPLIES.)

18 Q. NOW, YOU REMEMBER OFFICER BOLDEN TESTIFIED HE WENT
19 OVER YOUR *MIRANDA* RIGHTS WITH YOU AND YOU UNDERSTOOD YOUR
20 RIGHTS?

21 A. YES.

22 Q. YOU KNEW THAT YOU DIDN'T HAVE TO ANSWER ANY
23 QUESTIONS, YOU COULD HAVE REMAINED SILENT; IS THAT
24 CORRECT?

25 A. YES, SIR.

1 Q. AGAIN, YOU'VE GOT TO SPEAK UP. YOU HAVE A VERY
2 SOFT VOICE.

3 A. YES, SIR.

4 Q. AND WHEN MR. JONES CAME INTO THE ROOM, HE AGAIN
5 ADVISED YOU YOU COULD REMAIN SILENT AND YOU DIDN'T HAVE
6 TO SAY ANYTHING, BUT IF YOU WANTED TO TALK TO HIM, HE WAS
7 READY TO TALK TO YOU; IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AFTER YOU ALL, I THINK THE AUDIO IS
10 FORTY-SOMETHING MINUTES LONG THAT Y'ALL WERE IN THE ROOM
11 THERE, AND WENT OVER, YOU TALKED BEFORE HE STARTED
12 WRITING THIS; IS THAT CORRECT?

13 A. YES, SIR.

14 Q. AS HE WENT THROUGH THIS, DID HE USE YOUR WORDS
15 CORRECTLY? I'M TALKING ABOUT AT THE BEGINNING. I WANT
16 TO HAND YOU STATE'S EXHIBIT NUMBER 2. THIS IS A
17 STATEMENT. AFTER HE WROTE IT OUT, DID HE ALLOW YOU TO
18 LOOK AT IT?

19 A. YES.

20 Q. DID HE READ IT TO YOU?

21 A. YES.

22 Q. AND THE WORDS YOU USED IN THERE ARE THE WORDS THAT
23 YOU USED WITH HIM?

24 A. YES.

25 Q. OKAY. IN THAT, AS WE SAID A MINUTE AGO, YOU SPOKE

1 OF THE FACT THAT YOU DON'T REMEMBER PORTIONS OF IT, OF
2 WHAT HAPPENED, PARTICULARLY THE STABBING, AND, AS IT
3 STATED IN HERE, "I THINK I STABBED HER." IS THAT
4 CORRECT?

5 A. YES, IT IS.

6 Q. THEN HE DID OUT SOME QUESTIONS FOR YOU. HE WROTE
7 THOSE OUT AND ASKED YOU TO RESPOND TO THOSE -- I'LL KEEP
8 THESE TOGETHER.

9 ON PAGE 2 OF EXHIBIT NUMBER 2 HE WROTE OUT THE
10 QUESTIONS, OKAY? THE FIRST QUESTION WAS (READING): ON
11 10-14-09 DID YOU STAB AND KILL WENDOLI CHAVEZ?

12 TELL ME WHAT YOU WROTE DOWN.

13 A. (READING): I STABBED HER, I DIDN'T THINK I WOULD
14 KILL HER.

15 Q. ALL RIGHT. WHAT WAS IT YOU WERE TRYING TO CONVEY
16 TO MR. JONES WHEN YOU WROTE THAT DOWN? WHAT WERE YOU
17 TRYING TO TELL HIM?

18 A. I DIDN'T KNOW I WOULD KILL HER.

19 Q. ALL RIGHT. AND THEN YOU ANSWERED THE OTHER ONE
20 ABOUT CALLING 9-1-1 AND YOU ANSWERED THOSE; IS THAT
21 CORRECT?

22 A. YES.

23 Q. AND THEN AT THE END HE ASKED YOU, IS THERE
24 ANYTHING ELSE YOU WANT TO SAY TO BE ADDED TO THIS
25 STATEMENT? AND THAT'S WHEN Y'ALL DID THE LAST PARAGRAPH;

1 IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. OKAY. AGAIN, ON THE ANSWER TO THAT QUESTION,
4 NUMBER 1, WHAT WAS IT YOU WERE TRYING TO CONVEY?

5 DON'T COVER YOUR MICROPHONE.

6 WHEN YOU WERE ANSWERING THIS QUESTION AND YOU
7 WROTE THIS OUT, WHAT WERE YOU TRYING TO SAY? WHAT IS IT
8 YOU BELIEVE THAT SAID?

9 A. I DIDN'T MEAN TO KILL HER.

10 Q. ALL RIGHT. AND YOU USED WORDS "I DIDN'T KNOW I
11 WOULD KILL HER"?

12 A. UH-HUH.

13 Q. ARE YOU TRYING TO SAY YOU DID NOT KNOW YOU --

14 A. I DIDN'T, YEAH, I DID NOT.

15 Q. ALL RIGHT.

16 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE, YOUR
17 HONOR.

18 THE COURT: CROSS-EXAM?

19 CROSS-EXAMINATION BY MR. WAGNER:

20 Q. MR. CHAVEZ, YOU, YOU ADMIT THAT THEY MIRANDIZED
21 YOU AND YOU WAIVED YOUR RIGHTS, RIGHT?

22 A. YES, SIR.

23 Q. WHICH IS STATE'S EXHIBIT NUMBER 3. I DON'T THINK
24 YOU GOT A CHANCE TO SEE THAT. BUT LET ME SHOW YOU
25 STATE'S EXHIBIT NUMBER 3.

1 A. YES.

2 Q. OKAY. IS THAT YOUR SIGNATURE THERE? DID YOU
3 UNDERSTAND THOSE RIGHTS AS HE READ THEM TO YOU, MARK
4 BOLDEN DID THAT DAY?

5 A. YES, I DID.

6 Q. OKAY. AND DID YOU VOLUNTARILY WAIVE YOUR RIGHTS
7 AND AGREE TO TALK TO RORY JONES?

8 A. YES.

9 Q. DID YOU TALK TO HIM AT LENGTH, TELL HIM BASICALLY
10 EVERYTHING THAT WAS IN THE STATEMENT ON STATE'S EXHIBIT
11 NUMBER 2, ON THE FRONT; AND IS EVERYTHING ON THAT
12 CORRECT?

13 A. YES, IT IS.

14 Q. BUT YOUR TESTIMONY HERE TODAY IS THAT THIS FIRST
15 QUESTION IS NOT CORRECT?

16 A. YES.

17 Q. BUT YOU WROTE THAT AND IT'S IN YOUR WRITING,
18 RIGHT?

19 A. YES.

20 Q. OKAY. AND YOUR RESPONSE TO HIM, HIS QUESTION:
21 (READING): ON 10-14-09, DID YOU STAB AND KILL WENDOLI
22 CHAVEZ?

23 A. UH-HUH.

24 Q. AND YOU WROTE YOUR RESPONSE?

25 A. YES.

1 Q. OKAY. AND CAN YOU READ AND WRITE?

2 A. YES.

3 Q. YOU WROTE (READING): I STABBED HER, I DID KNOW I
4 WOULD KILL HER?

5 A. WHAT I MEANT TO SAY IS I DIDN'T KNOW I KILLED HER.
6 I WRITE KIND OF FAST AND SOMETIMES I DO MISS A COUPLE
7 WORDS HERE AND THERE.

8 Q. IS THIS THE KNIFE YOU STABBED HER WITH?

9 A. YES.

10 Q. OKAY. AND A BLADE THAT LONG, YOU STABBING HER,
11 YOU'RE NOW SAYING YOU DIDN'T THINK IT WOULD KILL HER?
12 THAT'S NOW WHAT YOU SAID.

13 A. YES.

14 Q. AND WHERE IN HERE DID YOU PUT ABOUT STRANGLING
15 HER?

16 A. I DON'T THINK I DID.

17 Q. OKAY. SO YOU LEFT THAT OUT?

18 A. YEAH. IT'S NOT IN THE STATEMENT.

19 Q. OKAY. BUT YOU DID STRANGLE HER?

20 A. I DON'T KNOW.

21 Q. SO YOU DON'T KNOW WHETHER YOU STRANGLED HER?

22 A. NO, SIR.

23 Q. AND YOU STABBED HER WITH THAT KNIFE, BUT YOU NOW
24 SAY THAT YOU DIDN'T KNOW YOU WERE GONNA KILL HER, OR YOU
25 DIDN'T THINK YOU WERE GONNA KILL HER?

1 A. YES.

2 Q. BUT EVERYTHING ELSE IN HERE IS CORRECT?

3 A. YES, SIR.

4 Q. JUST THAT ONE LINE?

5 A. YES, SIR.

6 Q. OKAY. NOTHING FURTHER, JUDGE.

7 MR. DAY: NO MORE QUESTIONS, YOUR HONOR.

8 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK
9 YOU VERY MUCH.

10 (WITNESS LEAVES STAND.)

11 ANYTHING ELSE FROM THE DEFENSE?

12 MR. DAY: NOTHING FURTHER, YOUR HONOR.

13 THE COURT: REPLY?

14 MR. WAGNER: NOTHING IN REPLY. AT THIS POINT WE
15 WOULD MOVE TO INTRODUCE STATE'S EXHIBIT NUMBER 2 IS THE
16 STATEMENT, YOUR HONOR. JUST FOR THE RECORD IT'S A
17 THREE-PAGE STATEMENT, THE THIRD PAGE BEING THE DIAGRAM
18 THAT WAS PART OF THE STATEMENT ESSENTIALLY WROTE, AND I
19 DON'T KNOW IF WE SHOULD DIVIDE THAT UP.

20 THE COURT: IT WAS PART OF THE STATEMENT?

21 MR. WAGNER: YES, SIR.

22 THE COURT: ANY THOUGHTS ABOUT THAT, MR. DAY?

23 MR. DAY: I WOULD SAY KEEP THEM TOGETHER.

24 THE COURT: I WOULD THINK IT'S ALL CONTEMPORANEOUS,
25 PART AND PARCEL. DO YOU WANT TO STAPLE THEM TOGETHER?

1 MR. WAGNER: YES, SIR. HE MAY NEED TO PULL THEM
2 APART LATER FOR HIS TESTIMONY.

3 THE COURT: VERY WELL. WE'RE GOING TO IDENTIFY IT
4 AS ONE EXHIBIT.

5 MR. WAGNER: YES, SIR.

6 THE COURT: SO WE NEED TO BE SURE IT'S NOT ATTACHED.

7 MR. WAGNER: YES, SIR.

8 THE COURT: BUT IT WILL GO WITH A PAPER CLIP NOW,
9 BUT AT ONE TIME ON STATE'S EXHIBIT NUMBER 2 IS THREE
10 PAGES, ONE PAGE BEING A, IT LOOKS LIKE A LINE PAPER
11 DRAWING.

12 MR. WAGNER: ONE PAGE IS AN ACTUAL FORM THAT OFFICER
13 JONES WROTE IN THE DEFENDANT'S WORDS. THE SECOND PAGE IS
14 THE SECOND PAGE OF THAT FORM THAT'S BASICALLY STATEMENTS
15 WRITTEN BY OFFICER JONES WHERE THE DEFENDANT RESPONDED IN
16 HIS WRITING. AND PAGE THREE IS A SIMPLE DIAGRAM DRAWN BY
17 THE DEFENDANT OF THE KNIFE USED AND HOW IT HAPPENED
18 BASICALLY IN THE ROOM.

19 THE COURT: ALL RIGHT. THERE'S NOT ANY OBJECTION TO
20 ANY OF THAT BEING CONTAINED IN ONE DOCUMENT?

21 MR. DAY: NO OBJECTION TO BEING ONE DOCUMENT, NO,
22 YOUR HONOR.

23 THE COURT: ALL RIGHT. VERY GOOD.

24 ANY OBJECTION TO ITS ADMISSIBILITY?

25 MR. DAY: YOUR HONOR, WE DON'T OBJECT TO THE

1 STATEMENT EXCEPT FOR THAT ONE LINE WHICH WE QUESTIONED
2 AND WHICH THE DEFENDANT HAS TESTIFIED THAT WHAT HE WAS
3 TRYING TO CONVEY THERE WITH HIS LIMITED ABILITY TO WRITE
4 WHAT HE SAID.

5 THE COURT: AGAIN, WHAT'S YOUR OBJECTION? YOU'RE
6 NOT SAYING TO KEEP IT OUT. YOU'RE SAYING IT DESERVES
7 EXPLANATION?

8 MR. DAY: THE STATEMENT ITSELF AS WRITTEN THERE OR
9 AS SUBMITTED, BASED UPON THE TESTIMONY OF THE PERSON WHO
10 WROTE IT, THAT IT IS NOT WHAT IT SAYS IN HIS LIMITED
11 GRASP OF THE LANGUAGE WAS THAT IT DID NOT MEAN TO KILL
12 HER.

13 THE COURT: I UNDERSTAND. WELL, THE POINT IS,
14 THOUGH, YOU ARE NOT ASKING TO BE REDACTED AS MUCH AS YOU
15 WANT THE COMPLETENESS TO BE SURE THAT AN EXPLANATION, THE
16 DEFENDANT BE PERMITTED TO GO INTO AN EXPLANATION OF IT.

17 MR. DAY: YES, SIR.

18 THE COURT: SINCE YOU JUST REPRESENTED, THAT COULD
19 BE DONE THROUGH CROSS-EXAMINATION. OR AS I UNDERSTAND
20 THE RULE, AT THE TIME THE EXHIBIT IS PROFFERED.

21 IS THAT CORRECT, MR. WAGNER?

22 MR. WAGNER: YOUR HONOR, I'M NOT SURE WHAT HE'S
23 ASKING FOR.

24 THE COURT: WELL, I THINK THE CASE THAT DECIDES IT
25 IS CABRERA-PENA. YOU MIGHT SAY CABRERA-PENA STANDS FOR

1 THE PROPOSITION THAT ONCE THE STATE RELIES ON A STATEMENT
2 BY THE DEFENDANT, THEN THE TOTALITY OF THE STATEMENT,
3 BEING WRITTEN OR ORAL, COMES IN. IN OTHER WORDS, THE
4 DEFENDANT BE ENTITLED TO CROSS -- DOESN'T HAVE TO WAIT
5 FOR CROSS-EXAMINATION BUT CAN AT THE TIME THE STATEMENT
6 IS PUT IN THERE TO ADDRESS THE WITNESS WHO, UPON WHOSE
7 TESTIMONY IS PROFFERING THE STATEMENT, CAN BE ASKED AS TO
8 CIRCUMSTANCES SURROUNDING THE STATEMENT.

9 MR. WAGNER: YES, SIR.

10 MR. DAY: THAT IS CORRECT, YOUR HONOR.

11 THE COURT: BY THE WAY, *CABRERA-PENA, STATE V.*
12 *CABRERA-PENA*, 361, S.C. 372, 605 S.E.2D 522, SUPREME
13 COURT 2004. SO WE UNDERSTAND NOW. IN OTHER WORDS, WHEN
14 THE STATEMENT IS PROFFERED, THE DEFENDANT DOES NOT HAVE
15 TO WAIT FOR CROSS-EXAMINATION, HE CAN ASK AT THAT TIME
16 WAS THERE ANYTHING ELSE, IN OTHER WORDS, IT'S RAISED IN
17 THE SAME SENSE AS YOU WOULD AN OBJECTION. IN OTHER
18 WORDS, WE'RE GOING TO MOVE IT IN WITHOUT OBJECTION, BUT
19 WHEN WE DO THAT, THE DEFENDANT WILL BE PERMITTED TO ASK
20 QUESTIONS AS TO THE IN THIS CASE MEANING OF THE
21 STATEMENT.

22 MR. WAGNER: YES, SIR.

23 THE COURT: IS THERE ANYTHING ELSE ON THAT ISSUE,
24 MR. DAY?

25 MR. DAY: NO, YOUR HONOR.

1 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

2 IS THERE ANYTHING ELSE FROM THE STATE?

3 MR. WAGNER: NO, SIR.

4 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

5 MR. DAY: NO, YOUR HONOR.

6 THE COURT: VERY WELL. LET'S SEE.

7 LET'S TAKE A VERY SHORT BREAK AND THEN COME BACK AND
8 WE'LL CONTINUE WITH THE TRIAL. ALL RIGHT. WE'LL STAND
9 AT EASE FOR ABOUT FIVE MINUTES.

10 (A RECESS WAS TAKEN.)

11 THE COURT: IS THERE ANYTHING FROM THE STATE BEFORE
12 WE BRING IN THE JURY?

13 MR. WAGNER: NO, YOUR HONOR.

14 THE COURT: ANYTHING FROM THE DEFENSE?

15 MR. DAY: NO, YOUR HONOR.

16 THE COURT: VERY GOOD. ASK THE JURY TO JOIN US,
17 PLEASE.

18 (THE JURY ENTERED THE COURTROOM AT
19 APPROXIMATELY 10:15 A.M.)

20 THE COURT: LET THE RECORD REFLECT THE FOREMAN AND
21 ALTERNATES ARE IN THE JURY-BOX.

22 I APPRECIATE YOUR PATIENCE WITH THE COURT. WE HAVE
23 USED THE TIME TO SOME ADVANTAGE IN THE SENSE THAT WE WERE
24 ABLE TO REDUCE THE NUMBER OF WITNESSES WHO WOULD BE
25 TESTIFYING BY AGREEMENT OF THE PARTIES, AND WE WILL NOW

1 CONTINUE WITH THE STATE'S CASE.

2 MR. SOLICITOR?

3 MR. WAGNER: THANK YOU, JUDGE. I CALL KARL ADDIS.

4 WHEREUPON,

5 KARL ADDIS,

6 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. WAGNER:

8 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
9 LAST NAME FOR THE RECORD?

10 A. KARL EDWARD ADDIS; KARL SPELLED WITH A K, LAST
11 NAME A-D-D-I-S.

12 Q. WHAT ARE YOUR CURRENT JOB DUTIES?

13 A. I'M THE CORONER OF OCONEE COUNTY.

14 Q. AND HOW LONG HAVE YOU BEEN DOING THAT?

15 A. 15-PLUS YEARS.

16 Q. HOW MANY SCENES HAVE YOU GONE OUT TO TO CONDUCT
17 YOUR BUSINESS WHERE SOMEBODY HAS DIED WHERE YOU GOT TO GO
18 OUT?

19 A. NUMEROUS.

20 Q. ANY IDEA HOW MANY?

21 A. A THOUSAND.

22 Q. OKAY. BACK ON OCTOBER 14, 2009, DID YOU GET
23 CALLED TO 501 SOUTH DEPOT STREET IN SENECA?

24 A. YES, SIR. I WAS CALLED AT APPROXIMATELY 5:40 P.M.
25 TO RESPOND TO THAT LOCATION.

1 Q. WHAT TIME DID YOU GET THERE?

2 A. SHORTLY AFTER 6:00.

3 Q. WHEN YOU GOT THERE, WHAT DID YOU FIND OUT, WHAT
4 DID YOU SEE?

5 A. WELL, SENECA POLICE OFFICERS WERE PRESENT AT THE
6 SCENE. AND I RECALL IT WAS PROBABLY AROUND 6:10 THEY HAD
7 ESTABLISHED A PERIMETER AT THIS DEATH SCENE. I WAS
8 INFORMED A FEMALE HAD DIED AT THAT SCENE FROM A REPORTED
9 STAB WOUND.

10 Q. WAS HER NAME WENDOLI CHAVEZ?

11 A. THAT IS CORRECT, SIR.

12 Q. ALL RIGHT. WHAT DID YOU DO? WHAT GENERALLY DO
13 YOU DO WHEN YOU GO IN TO A SCENE LIKE THAT, WHAT IS YOUR
14 JOB?

15 A. I START GATHERING THE INFORMATION REGARDING HOW
16 THAT INDIVIDUAL CAME TO HER DEATH. I DID ENTER THE
17 RESIDENCE AND OBSERVE THE DECEDENT IN WHAT I WOULD
18 DESCRIBE AS THE MASTER BEDROOM OF THAT HOME, AND TRIED TO
19 OBVIOUSLY CONFIRM DEATH HAD OCCURRED, ESTABLISH AN
20 ESTIMATED TIME FRAME FOR TIME OF DEATH AND HOW THAT
21 INDIVIDUAL CAME TO HER DEATH.

22 Q. AND WHAT WERE YOUR INITIAL CONCLUSIONS AS TO HOW
23 SHE DIED?

24 A. WELL, OBVIOUSLY I FOUND HER LYING SUPINE OR ON HER
25 BACK IN THE BEDROOM. THERE WAS SOME BLOOD PRESENT ON HER

1 CLOTHING IN THE LOWER LEFT CHEST, LEFT UPPER ABDOMEN AREA
2 WITH VERY MINIMAL BLOOD OBSERVED, CONSISTENT WITH A
3 REPORTED STAB WOUND.

4 Q. OKAY. DID YOU NOTICE ANYTHING ABOUT HER PERSON?

5 A. SIR?

6 Q. DID YOU NOTICE ANY OTHER INJURIES OR ANYTHING
7 ABOUT HER PERSON?

8 A. WELL, INITIALLY WHEN WE WALKED IN THERE, OBSERVED
9 HER, SHE WAS FULLY CLOTHED. AN ARTICLE OF CLOTHING WHICH
10 I BELIEVE WAS A SWEATSHIRT WAS LAID OVER HER FACE, HEAD.
11 I COULD NOTICE EVENTUALLY SHE HAD LIKE A CONTUSION, A
12 BRUISE TO THE RIGHT SIDE OF HER FACE AND SHE HAD SOME
13 MARKS BENEATH, ON THE ANTERIOR OR FRONT SIDE OF HER NECK
14 AND BELOW HER CHIN THAT WERE IN MY OPINION RAISED
15 SPECULATION THAT SHE MAY HAVE BEEN STRANGLED TO DEATH.

16 Q. DO YOU FEEL LIKE THE BODY HAD BEEN MOVED FROM WHAT
17 YOU SAW?

18 A. NO, SIR. SHE WAS LYING AGAIN ON HER BACK. HER
19 HEAD WAS IN THE GENERAL DIRECTION OF THE ENTRANCEWAY INTO
20 THE BEDROOM. I UNDERSTAND THE POLICE OFFICER INITIALLY
21 HAD SOME RESISTANCE WHEN HE WENT INTO THE ROOM. HER FEET
22 WAS TOWARD THE WALL OF, TO A DOORWAY THAT GOES TO AN
23 ADJACENT BATHROOM OFF THE BEDROOM.

24 Q. WHAT WOULD YOU LOOK AT FROM YOUR STANDPOINT TO TRY
25 TO DETERMINE IF THE BODY ESSENTIALLY LAY WHERE SHE DIED?

1 A. OKAY. I OBSERVED, AND AGAIN, FROM WHAT I RECALL,
2 AGAIN SHE WAS ON HER BACK. HER LEGS WERE FLEXED UP AT
3 THE KNEES WITH KNEES SORT OF IN AN UPRIGHT POSITION, FEET
4 ON THE FLOOR. I NOTICED THAT HER BODY WAS COOL TO THE
5 TOUCH. SHE HAD NO RIGORMORTIS OR STIFFENING OF THE
6 SMALLER MUSCLES LIKE THE FINGERS OR THE JAW. BLOOD HAD
7 SETTLED, WHAT WE CALL LIVIDITY, BLOOD SETTLING TO,
8 GRAVITY, BLOOD SETTLING TO THE LOWER PART OF THE BODY.

9 Q. AND DID THAT TELL YOU SHE PROBABLY LAID IN THE
10 SAME PLACE WHERE SHE HAD DIED?

11 A. YES, SIR.

12 Q. WERE YOU ABLE TO GIVE AN ESTIMATE AS TO TIME OF
13 DEATH?

14 A. I ESTIMATED HER TIME OF DEATH WAS PROBABLY AROUND
15 3:00 P.M. OBVIOUSLY THE ONLY WAY TO ACTUALLY DOCUMENT
16 THE EXACT TIME IS SOMEONE BEING PRESENT. BUT I WOULD SAY
17 TWO TO THREE HOURS.

18 Q. AND YOU WERE THERE ABOUT TEN AFTER SIX?

19 A. YES, THAT'S CORRECT, SIR.

20 Q. WERE YOU ABLE TO NOTIFY HER FAMILY AT THAT TIME?

21 A. LATER, LATER IN THE EVENING. SHORTLY, I BELIEVE
22 IT WAS AROUND 10 OR A LITTLE BEFORE 11:00 I MADE DIRECT
23 CONTACT WITH HER MOTHER IN NEWRY.

24 Q. DID YOU TAKE POSSESSION OF HER BODY AT THAT TIME?
25 I MEAN, DID YOU ALL...

1 A. AFTER DOCUMENTING THE SCENE WITH PHOTOGRAPHS, I,
2 WITH ASSISTANCE, WE PLACED HER BODY INTO A BODY BAG. AN
3 IDENTIFICATION BRACELET WAS PLACED ON HER, AND THEN ONCE
4 WE CLOSED THE BAG, THE BAG WAS SEALED WITH AN
5 IDENTIFICATION BRACELET THAT ATTACHED THROUGH THE ZIPPERS
6 TO PREVENT THE BODY BEING TAMPERED WITH.

7 Q. THEN WHAT DID YOU DO NEXT?

8 A. THE BODY WAS TRANSPORTED TO THE OCONEE MEDICAL
9 CENTER MORGUE FOR SHELTERING. I HAD SPOKEN WITH
10 DR. WOODARD EARLIER FROM THE SCENE -- HE'S THE FORENSIC
11 PATHOLOGIST WHO DOES THE AUTOPSIES FOR MY OFFICE -- AND
12 ARRANGEMENTS WERE MADE FOR A FORENSIC AUTOPSY TO BE
13 PERFORMED THE FOLLOWING MORNING AT THE AN-MED MEDICAL
14 CENTER IN ANDERSON, SOUTH CAROLINA.

15 MR. WAGNER: THANK YOU, MR. ADDIS, THOSE ARE ALL THE
16 QUESTIONS I HAVE.

17 THE WITNESS: THANK YOU.

18 MR. DAY: I HAVE NO QUESTIONS, YOUR HONOR, THANK
19 YOU.

20 THE COURT: YOU MAY STEP DOWN. MAY THE WITNESS BE
21 EXCUSED?

22 MR. DAY: NO OBJECTION.

23 MR. WAGNER: YES, SIR.

24 THE COURT: VERY GOOD. THANK YOU. YOU MAY BE
25 EXCUSED.

1 THE WITNESS: THANK YOU, JUDGE.

2 (WHEREUPON, THE WITNESS WAS EXCUSED.)

3 MR. WAGNER: I CALL DR. WOODARD.

4 WHEREUPON,

5 BRETT WOODARD,

6 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. WAGNER:

8 Q. DOCTOR, COULD YOU GIVE US YOUR FULL NAME AND SPELL
9 YOUR LAST NAME FOR THE RECORD?

10 A. YES. BRETT HOUGHTON WOODARD, W-O-O-D-A-R-D.

11 Q. AND WHAT ARE YOUR CURRENT JOB DUTIES, DR. WOODARD?

12 A. I'M A PATHOLOGIST, I WORK WITH PIEDMONT PATHOLOGY
13 ASSOCIATES IN ANDERSON, SOUTH CAROLINA, AND I DO
14 SUBSPECIALTY WORK IN THE FIELD OF FORENSIC PATHOLOGY.

15 Q. HOW LONG HAVE YOU BEEN DOING THIS WORK?

16 A. SINCE 1982.

17 Q. ARE YOU LICENSED TO PRACTICE MEDICINE IN SOUTH
18 CAROLINA?

19 A. I'M LICENSED IN NORTH CAROLINA, SOUTH CAROLINA AND
20 GEORGIA.

21 Q. WHERE DID YOU GO TO MEDICAL SCHOOL?

22 A. I ATTENDED TULANE UNIVERSITY SCHOOL OF MEDICINE
23 AND RECEIVED MY MEDICAL DEGREE. I DID AN INTERNSHIP AT
24 THE CHARITY HOSPITAL OF NEW ORLEANS, I DID A RESIDENCY
25 TRAINING IN PATHOLOGY AT DUKE UNIVERSITY MEDICAL CENTER

1 AND I DID FELLOWSHIP TRAINING AT THE NORTH CAROLINA
2 MEDICAL EXAMINERS' OFFICE IN CHAPEL HILL.

3 Q. ARE YOU MEMBERS OF ANY PROFESSIONAL ORGANIZATIONS
4 OR THINGS LIKE THAT?

5 A. YES. I'M A MEMBER OF THE AMERICAN ASSOCIATION OF
6 FORENSIC SCIENCES, THE COLLEGE OF AMERICAN PATHOLOGISTS,
7 THE SOUTH CAROLINA PATHOLOGY SOCIETY, AND THE NORTH AND
8 SOUTH CAROLINA PATHOLOGY SOCIETIES.

9 Q. SO YOU ARE CERTIFIED IN PATHOLOGY?

10 A. I RECEIVED MY BOARD-CERTIFICATION BY THE AMERICAN
11 BOARD OF PATHOLOGY AND ANATOMIC AND CLINICAL PATHOLOGY,
12 AND I RECEIVED BOARD CERTIFICATION FROM THE AMERICAN
13 BOARD OF PATHOLOGY AND FORENSIC PATHOLOGY.

14 Q. WHAT IS A PATHOLOGIST?

15 A. A PATHOLOGIST IS A PHYSICIAN SPECIALIST WHO
16 EXAMINES SAMPLES, BE THEY BLOOD OR CULTURES OR FLUIDS
17 FROM THE HUMAN BODY OR PIECES OF TISSUE AND DETERMINES
18 THE PRESENCE OR ABSENCE OF INJURY OR DISEASE.

19 Q. AND HOW LONG HAVE YOU BEEN DOING THAT FOR ANDERSON
20 AND OCONEE COUNTIES, THE UPSTATE?

21 A. SINCE THE MID 1980'S I STARTED DOING AUTOPSIES FOR
22 OCONEE COUNTY AND IN THE EARLY EIGHTIES I STARTED DOING
23 THEM FOR ANDERSON COUNTY. I ALSO DO THEM FOR ABBEVILLE
24 AND GREENWOOD COUNTIES.

25 Q. AND APPROXIMATELY, AND I DON'T KNOW IF YOU CAN

1 GIVE ME A SPECIFIC NUMBER OR NOT, HOW MANY AUTOPSIES HAVE
2 YOU DONE?

3 A. I DO ROUGHLY 250 EXAMINATIONS A YEAR FOR OVER 20
4 YEARS.

5 Q. HAVE YOU TESTIFIED AS AN EXPERT IN PATHOLOGY IN
6 CIRCUIT COURT HERE IN SOUTH CAROLINA?

7 A. YES, I HAVE.

8 Q. AND APPROXIMATELY HOW MANY TIMES HAVE YOU DONE
9 THAT?

10 A. HUNDREDS.

11 MR. WAGNER: YOUR HONOR, AT THIS TIME WE WOULD
12 PROFFER THE DOCTOR AS AN EXPERT IN PATHOLOGY.

13 THE COURT: ANY VOIR DIRE?

14 MR. DAY: NONE, YOUR HONOR.

15 THE COURT: ALL RIGHT. THE WITNESS IS QUALIFIED IN
16 THE AREA OF FORENSIC PATHOLOGY BY REASON OF HIS
17 BACKGROUND, TRAINING AND EXPERIENCE. THAT MEANS THAT
18 THIS WITNESS WILL BE PERMITTED TO GIVE AN OPINION. MOST
19 WITNESSES ARE LIMITED TO WHAT THEY KNOW OF THEIR OWN
20 KNOWLEDGE, WHAT THEY SEE BY THE EXERCISE OF THEIR OWN
21 SENSES. HOWEVER, WHEN THERE IS A PARTICULAR EXPERTISE IN
22 AN AREA, BY REASON OF BACKGROUND, TRAINING AND
23 EXPERIENCE, THEN THAT WITNESS WILL BE PERMITTED TO GIVE
24 THAT OPINION IN THAT PARTICULAR AREA.

25 HOWEVER, ALL WITNESSES, BE THEY EXPERT WITNESSES OR

1 LAY WITNESSES, THEIR TESTIMONY IS FOR YOUR EVALUATION AND
2 DETERMINATION WHAT VALUE BE GIVEN.

3 YOU MAY PROCEED.

4 BY MR. WAGNER:

5 Q. DOCTOR, DID YOU DO THE AUTOPSY ON WENDOLI CHAVEZ,
6 THE VICTIM IN THIS CASE?

7 A. YES, I DID. I DID IT ON THE 15TH OF OCTOBER AT
8 APPROXIMATELY 10:00 A.M. IN THE MORNING.

9 Q. AND AT WHOSE REQUEST DID YOU DO THAT?

10 A. IT WAS DONE AT THE REQUEST OF CORONER KARL ADDIS
11 OF THE OCONEE CORONER'S OFFICE.

12 Q. DO YOU DO THAT IN THE MORGUE, YOUR LIKE OPERATING
13 ROOM THERE IN ANDERSON?

14 A. YES, WE DID IT AT A MORGUE FACILITY AT THE
15 ANDERSON HOSPITAL.

16 Q. WHAT WERE YOUR INITIAL IMPRESSIONS ON LOOKING AT
17 THE VICTIM? TELL US WHAT YOU SAW.

18 A. WELL, SHE WAS A SMALL-SIZED LADY, APPROXIMATELY
19 135 POUNDS, SIX [SIC] FOOT FIVE. AND SHE HAD EVIDENCE OF
20 WHAT WE CALL BLUNT INJURY TO HER FACE, AROUND HER NECK,
21 AND SHE HAD EVIDENCE OF SHARP INJURY, SOMETHING CAUSED BY
22 A KNIFE-LIKE OBJECT, BENEATH HER RIB CAGE ON THE LEFT
23 SIDE OF HER UPPER ABDOMEN.

24 Q. WERE YOU ABLE TO DETERMINE DURING THE COURSE OF
25 THE AUTOPSY WHAT CAUSED HER DEATH?

1 A. YES. SHE DIED FROM WHAT WE REFER TO AS ASPHYXIA.
2 ASPHYXIA IS A LACK OF BLOOD FLOW TO THE BRAIN, AND THIS
3 WAS CAUSED BY PRESSURE BEING APPLIED AROUND HER NECK LONG
4 ENOUGH TO PRODUCE DEATH OF THE BRAIN. THE STAB WOUNDS
5 DID NOT PRODUCE SIGNIFICANT ENOUGH BLEEDING TO PRODUCE
6 DEATH.

7 Q. SO WHAT DID THAT TELL YOU? HOW LONG DOES SOMEBODY
8 HAVE TO STRANGLE HER TO KILL HER?

9 A. IT ROUGHLY TAKES ABOUT TEN TO 15 SECONDS OF
10 15-TO-20-POUND PRESSURE ON THE ANTERIOR PORTION OF YOUR
11 NECK TO PRODUCE UNCONSCIOUSNESS. APPROXIMATELY ONE
12 MINUTE WILL BE SUFFICIENT TO PRODUCE BRAIN INJURY, ABOUT
13 A MINUTE AND A HALF TO PRODUCE IRREVERSIBLE BRAIN INJURY.

14 Q. LOOKING AT HER INJURIES, THE WAY THEY WERE AND THE
15 MARKINGS ON HER, WERE YOU ABLE TO FORM AN OPINION AS TO
16 HOW SOMEBODY STRANGLED HER?

17 A. THEY USED A BROAD OBJECT SUCH AS A FOREARM,
18 WRAPPED IT AROUND THEIR NECK, AND PUT PRESSURE ON THE
19 NECK.

20 Q. WOULD THAT HAVE HAD TO COME FROM SOMEBODY COMING
21 UP FROM BEHIND THEM?

22 A. IT WOULD BE CONSISTENT WITH A POSTERIOR PERSON
23 BEHIND HER REACHING AROUND HER NECK, EITHER WITH RIGHT OR
24 LEFT ARM.

25 Q. OKAY. AND THAT WAS THE ACTUAL CAUSE OF DEATH?

1 A. THAT'S CORRECT.

2 Q. SHE HAD A STAB WOUND, TOO, I BELIEVE YOU SAID.
3 WHAT KIND OF STAB WOUND AND WHERE WAS IT?

4 A. IT WAS BELOW THE EDGE OF THE RIB CAGE ON THE LEFT
5 SIDE. IT WENT IN AN UPWARD DIRECTION CUTTING THROUGH THE
6 BONES OF THE RIB CAGE AND PUTTING A CUT INTO THE LIVER.

7 Q. OKAY. WOULD THAT WOUND IN AND OF ITSELF BE FATAL?

8 A. IF NOT MEDICALLY ATTENDED IT WOULD HAVE THE
9 POTENTIAL TO BE FATAL.

10 Q. WAS THERE ANYTHING ABOUT THAT WOUND THAT STRUCK
11 YOU AS ODD?

12 A. WELL, THE CUT INJURY WENT THROUGH THE BONY
13 STRUCTURES OF THE RIBS, WHICH WOULD INDICATE THAT A
14 SIGNIFICANT AMOUNT OF FORCE WAS PLACED ON THE KNIFE IN
15 ORDER TO CUT THROUGH THOSE BONES.

16 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT NUMBER 30 (HANDING). I DON'T KNOW IF YOU
18 HAVE SEEN THAT BEFORE, BUT WOULD THAT BE CONSISTENT WITH
19 SOMETHING THAT WOULD CAUSE THE INJURIES AS FAR AS THE
20 KNIFE WOUND THAT YOU SAW?

21 A. YES, IT WOULD.

22 Q. WHY WOULD THAT BE?

23 A. THE GENERAL SHAPE AND CHARACTER OF THE KNIFE, THE
24 FACT THAT ONE EDGE OF THE CUT INJURY HAD A BLUNT QUALITY
25 TO IT WOULD BE CONSISTENT WITH THE LITTLE SERRATIONS,

1 WHICH INSTEAD OF LEAVING A SHARP GROOVE, THEY WOULD MAKE
2 A BROADER OR FLATTER AREA ON THE CUT.

3 Q. DID YOU NOTICE ANY DEFENSIVE WOUNDS ABOUT THE
4 VICTIM?

5 A. SHE HAD BRUISES ON HER HANDS WHICH WOULD BE
6 CONSISTENT WITH HER HANDS HAVING STRUCK SOMETHING, THE
7 PALM SURFACE OF HER HAND. SHE DID NOT HAVE ANY CUT
8 INJURIES TO HER HANDS.

9 Q. WOULD THE BRUISES BE CONSISTENT WITH SOMEBODY
10 STRUGGLING?

11 A. ABSOLUTELY.

12 Q. OKAY. AND WERE THEY FRESH BRUISES?

13 A. YES.

14 Q. DID SHE HAVE PETICHIAL HEMORRHAGES IN HER FACE?

15 A. YES. SHE HAD PETECHIAE SHOWERS OVER HER FACE AND
16 THE WHITE PART OF EYE, AND THEN IF YOU PULLED YOUR EYELID
17 DOWN AND LOOKED AT THE LITTLE PINK AREA UNDERNEATH THERE,
18 WHERE THERE ARE SMALL CAPILLARIES OR BLOOD VESSELS THAT
19 YOU COULD SEE IF YOU LOOKED IN THE MIRROR, THOSE WERE
20 BROKEN AND BLEEDING IN THE PATTERN OF PETECHIAE.

21 Q. AND WHAT WOULD CAUSE THAT?

22 A. WHEN THE VENOUS PRESSURE IS RAISED AND THE
23 ARTERIAL PRESSURE IS STILL COMING IN, THE CAPILLARIES
24 BECOME ENGORGED AND THEY'LL BREAK UNDER THE PRESSURE OF
25 THAT ENGORGEMENT. THAT'S USUALLY ASSOCIATED WITH WHEN

1 PRESSURE IS PLACED AROUND THE VASCULAR STRUCTURES IN THE
2 NECK, IT CAN BLOCK THE VEINS MORE EASILY THAN THE
3 ARTERIES. AND IF SOMEONE STRUGGLES OR IF THE INDIVIDUAL
4 APPLYING THE PRESSURE LOOSENS IT AND THEN REPLIES IT, WE
5 WILL OFTEN SEE THESE PETECHIAL HEMORRHAGES.

6 Q. AND HOW MUCH FORCE WOULD IT TAKE TO STICK A KNIFE
7 THROUGH SOMEONE'S RIB CAGE? WOULD IT TAKE CONSIDERABLE
8 FORCE, LIGHT FORCE?

9 A. IT WOULD TAKE A CONSIDERABLE FORCE TO CUT A BONE
10 EVEN WITH A VERY SHARP KNIFE.

11 Q. WAS HER BONES, THE RIB CAGE BONES CUT?

12 A. THAT'S CORRECT.

13 Q. DID ANYTHING AS FAR AS THE AMOUNT OF BLOOD THAT
14 WAS IN HER STAB WOUND, DID THAT RAISE ANY -- WHAT DID
15 THAT TELL YOU?

16 A. THERE WAS ABOUT A HUNDRED CC'S OF BLOOD IN HER
17 STAB WOUND AND SOME BLOODY STAINING OF HER SHIRT WHERE
18 THERE WAS A DEFECT IN THE SHIRT AS IT CAME THROUGH INTO
19 THE SKIN. THAT IS A SMALL AMOUNT OF BLOOD AND WOULD TELL
20 ME THAT THE HEART HAD STOPPED EITHER VERY CLOSE TO THE
21 TIME THE STAB WOUND WAS APPLIED OR BEFORE THE STAB WOUND
22 WAS APPLIED WHILE THERE STILL WAS SOME PRESSURE OF THE
23 VEINS. IT WOULD TELL ME THAT THAT WAS NOT A LETHAL WOUND
24 IN AND OF ITSELF.

25 Q. ARE YOU SAYING THAT SHE WAS DEAD WHEN SHE WAS

1 STABBED?

2 A. SHE WAS DEAD OR CLOSE TO DEATH.

3 Q. OKAY. AND SHE, BASED ON WHAT YOU ARE SAYING HERE,
4 SHE WOULD HAVE BEEN DEAD FROM THE STRANGULATION?

5 A. THAT'S CORRECT.

6 Q. THEN SHE WAS STABBED?

7 A. THAT'S CORRECT.

8 Q. AND IT'S YOUR EXPERT OPINION THAT HER DEATH WAS
9 CAUSED BY STRANGULATION?

10 A. YES, IT IS.

11 Q. AND IT IS A HOMICIDE?

12 A. THAT'S CORRECT.

13 Q. AND THAT THE STAB WOUND WOULD IN AND OF ITSELF BE
14 FATAL IF LEFT UNTREATED?

15 A. THAT'S CORRECT.

16 MR. WAGNER: THANK YOU, DOCTOR, THOSE ARE ALL THE
17 QUESTIONS I HAVE.

18 THE COURT: CROSS-EXAMINATION.

19 CROSS-EXAMINATION BY MR. DAY:

20 Q. GOING BACK TO THE KNIFE, DID YOU TEST OR COMPARE
21 THAT KNIFE TO THE WOUND AT THE TIME OF AUTOPSY?

22 A. NO, I DID NOT.

23 Q. THIS IS THE FIRST TIME YOU'VE SEEN THE KNIFE?

24 A. THAT'S CORRECT.

25 Q. SO YOU DIDN'T DO ANYTHING DURING YOUR AUTOPSY TO

1 TRY TO MATCH THE KNIFE, THIS ONE, TO THE WOUND THAT YOU
2 SAW ON MS. CHAVEZ?

3 A. I WAS NEVER PRESENTED THE KNIFE, I'D NEVER SEEN IT
4 BEFORE.

5 Q. YOU SPOKE A MINUTE AGO OF THE CHOKING, YOU SAID IT
6 COULD BE RIGHT OR LEFT ARM?

7 A. THAT'S CORRECT.

8 Q. SO THE BRUISING CONTUSIONS, ET CETERA, NONE OF
9 THOSE WERE READILY INDICATIVE OF ONE OR THE OTHER OR ONE
10 OVER THE OTHER?

11 A. NO, THEY WOULD NOT INDICATE IF THE PERSON APPLIED
12 THEIR RIGHT ARM AROUND THE NECK OR THEIR LEFT ARM AROUND
13 THE NECK. IT COULD BE ACHIEVED EITHER WAY.

14 Q. OKAY.

15 MR. DAY: THAT'S ALL THE QUESTIONS I HAVE. THANK
16 YOU, SIR.

17 THE COURT: RE-EXAM?

18 MR. WAGNER: NOTHING FURTHER. WE WOULD ASK THIS
19 WITNESS BE EXCUSED.

20 MR. DAY: NO OBJECTION.

21 THE COURT: THANK YOU, DOCTOR, YOU MAY BE EXCUSED.

22 (WHEREUPON, THE WITNESS WAS EXCUSED.)

23 MR. WAGNER: I CALL CLARENCE MAYES.

24

25

1 WHEREUPON,

2 CLARENCE MAYES,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. WAGNER:

5 Q. SIR, COULD YOU STATE YOUR FULL NAME AND SPELL YOUR
6 LAST NAME FOR THE RECORD?

7 A. CLARENCE E. MAYES.

8 Q. WHERE ARE YOU FROM, MR. MAYES?

9 A. HERE IN SENECA.

10 Q. WHERE DO YOU WORK?

11 A. I WORK AT *THE DAILY JOURNAL* AND VALLA NINE SHOES.

12 Q. COULD YOU SPEAK UP A LITTLE BIT? I'M HAVING
13 TROUBLE HEARING YOU FROM BACK HERE.

14 A. I WORK AT *THE DAILY JOURNAL* AND VALLA NINE SHOES.

15 Q. OKAY. AND HOW LONG HAVE YOU WORKED TWO JOBS?

16 A. PROBABLY 10, 12 YEARS OR MORE.

17 Q. BACK ON -- BACK IN OCTOBER-SEPTEMBER 2009, PRIOR
18 TO THAT, DID YOU WORK WITH THE DEFENDANT IN THIS CASE,
19 DAVID CHAVEZ?

20 A. YES, I DID.

21 Q. WHAT WAS YOUR RELATIONSHIP WITH HIM? WERE Y'ALL
22 FRIENDS?

23 A. YES, SIR. HE WAS A VERY GOOD EMPLOYEE, VERY GOOD
24 TO WORK WITH. NEVER HAD ANY PROBLEMS OUT OF HIM OR
25 NOTHING.

1 Q. OKAY. HOW LONG DID YOU WORK WITH HIM?

2 A. TWO OR MORE YEARS, I'D SAY.

3 Q. OKAY. AROUND THE MONTH OF OCTOBER, WHEN HE HAD
4 MOVED OUT OR WHEN HIS WIFE HAD MOVED OUT FROM THEIR
5 HOUSE, DID HE TALK TO YOU ABOUT THAT?

6 A. YEAH, HE WAS VERY UPSET ABOUT IT.

7 Q. DO YOU REMEMBER TALKING TO RORY JONES HERE?

8 A. YES.

9 MR. WAGNER: BEG THE COURT'S INDULGENCE ONE SECOND.

10 (THERE WAS A PAUSE IN THE PROCEEDINGS.)

11 BY MR. WAGNER:

12 Q. DO YOU REMEMBER TALKING TO SERGEANT JONES ON
13 OCTOBER 16, 2009?

14 A. YES.

15 Q. DO YOU REMEMBER GIVING HIM A STATEMENT ABOUT THAT?

16 A. YES.

17 Q. DO YOU REMEMBER EXACTLY WHAT YOU SAID?

18 A. PRETTY MUCH. PRETTY MUCH.

19 Q. TELL US WHAT YOU SAID AND IS THAT STILL ACCURATE.

20 A. WELL, LIKE I SAID, THAT DAVID, HE WAS UPSET.

21 Q. I DON'T MEAN TO INTERRUPT YOU, BUT COULD YOU SPEAK
22 UP JUST A LITTLE BIT?

23 A. HE WAS VERY CONCERNED ABOUT HIS WIFE BEING GONE
24 AND HE WANTED HER BACK HOME, AND HE WANTED TO GET HIS
25 LIFE BACK ON TRACK WITH HER AND EVERYTHING.

1 Q. OKAY. DID HE EVER MAKE ANY STATEMENTS ABOUT WHAT
2 WOULD HAPPEN IF HE FOUND OUT SHE WAS SEEING SOMEBODY
3 ELSE?

4 A. JUST TALK, JUST TALK.

5 Q. WHAT DID HE SAY?

6 A. HE JUST SAID THAT HE WOULD HATE TO -- YOU KNOW, HE
7 WOULD HATE TO FIND OUT THAT SHE WAS SEEING SOMEBODY ELSE
8 AND STUFF LIKE THAT.

9 Q. WOULD YOU LIKE ME TO HAND UP YOUR STATEMENT AND
10 LET YOU LOOK AT IT?

11 A. HE JUST, HE EVEN MORE OR LESS, MORE OR LESS SAID
12 HE WOULD KILL HER IF HE FOUND OUT SHE WAS SEEING SOMEBODY
13 ELSE.

14 Q. AND AGAIN, I'M SORRY, I'M HAVING A HARD TIME
15 HEARING.

16 A. SAID HE WOULD KILL HER IF HE FOUND OUT SHE WAS
17 SEEING SOMEBODY ELSE.

18 Q. HOW MANY TIMES DID HE TELL YOU THIS OVER THE MONTH
19 PRIOR TO HER DEATH?

20 A. HE MIGHT HAVE SAID IT A COUPLE OF TIMES.

21 Q. WOULD YOU LIKE AGAIN TO LOOK AT YOUR STATEMENT?

22 A. HE SAID IT SEVERAL TIMES.

23 Q. WOULD FOUR TO FIVE TIMES AT LEAST BE CONSISTENT
24 WITH WHAT YOU TOLD THE OFFICERS?

25 A. YEAH.

1 Q. AND IT'S YOUR TESTIMONY THAT IF HE EVER FOUND OUT
2 HE WAS SEEING SOMEBODY ELSE HE WOULD KILL HER?

3 A. YES.

4 Q. YOU ARE STILL FRIENDS WITH HIM TODAY?

5 A. YEAH. I JUST CAN'T BELIEVE THAT HAPPENED, THAT'S
6 ALL.

7 Q. WHAT DID YOU TELL HIM?

8 A. I JUST TOLD HIM IT WOULDN'T BE WORTH THAT, IT
9 WOULDN'T BE WORTH HIS LIFE, OF TAKING HER LIFE WOULDN'T
10 BE WORTH HIS LIFE.

11 Q. HAVE YOU TALKED TO HIM AGAIN SINCE THEN, SINCE SHE
12 DIED?

13 A. NO, I HAVEN'T.

14 MR. WAGNER: THANK YOU, MR. MAYES, THOSE ARE ALL THE
15 QUESTIONS I HAVE.

16 THE COURT: CROSS-EXAMINE?

17 CROSS-EXAMINATION BY MR. DAY:

18 Q. MR. MAYES, WHERE DID THESE CONVERSATIONS TAKE
19 PLACE?

20 A. AT WORK.

21 Q. AND I BELIEVE THE TERM YOU USED WHEN THE SOLICITOR
22 ASKED THE QUESTION ABOUT WHAT HE SAID WAS JUST TALK.
23 THAT'S THE TERM YOU USED?

24 A. YEAH. WE WAS TALKING.

25 Q. YOU SAID THE THINGS HE SAID WERE JUST TALKING.

1 A. THE WAY HE WAS TALKING. HE WAS UPSET ABOUT IT.

2 Q. BUT YOU PUT THAT PHRASE ON IT MEANING YOU DIDN'T
3 BELIEVE THAT WHAT HE WAS SAYING WOULD BE TRUE?

4 A. NO, I DIDN'T, I DIDN'T THINK HE WOULD DO ANYTHING
5 LIKE THAT.

6 Q. WAS HE JUST, WAS HE REACTING TO BEING UPSET?

7 A. YES.

8 Q. AND I BELIEVE -- I THINK YOU USED THE TERM WHEN
9 YOU WERE SPEAKING TO MR. JONES, I THOUGHT HE WAS BLOWING
10 SMOKE?

11 A. RIGHT.

12 Q. IN OTHER WORDS, IT WAS THE WORDS OF SOMEONE WHO
13 WAS UPSET AND JUST VOICING BEING UPSET?

14 A. RIGHT.

15 Q. AT ANY TIME DID YOU ACTUALLY BELIEVE THAT HE WAS
16 SERIOUS ABOUT ANY THREAT?

17 A. NO. JUST WORKING WITH HIM, NO, I DIDN'T THINK HE
18 WOULD DO ANYTHING LIKE THAT.

19 Q. AND I BELIEVE ONE THING YOU MENTIONED THAT YOU HAD
20 MENTIONED TO DAVID THAT YOU WERE HOPING THEY WOULD JUST
21 BE ABLE TO WORK IT OUT AND MOVE ON WITH THEIR LIVES?

22 A. RIGHT.

23 Q. AND THAT'S WHAT YOU COUNSELLED HIM TO DO AS A
24 FRIEND?

25 A. YEAH.

1 Q. OKAY. ANY TIME HE SAID ANY OF THIS, DID IT CAUSE
2 YOU TO BELIEVE YOU NEEDED TO WARN HIS WIFE ABOUT
3 ANYTHING?

4 A. NO, I DIDN'T THINK OF DOING THAT. I DIDN'T THINK
5 OF DOING THAT.

6 Q. YOU DIDN'T THINK IT WOULD BE NECESSARY?

7 A. NO, I DIDN'T.

8 Q. OR WARN ANYONE ELSE?

9 A. NO.

10 Q. OKAY. ALL RIGHT, SIR. THAT'S ALL THE QUESTIONS I
11 HAVE. THANK YOU, SIR.

12 REDIRECT EXAMINATION BY MR. WAGNER:

13 Q. YOU THOUGHT HE WAS JUST BLOWING SMOKE. BUT DID
14 YOU NOT FIND IT ODD THAT HE WOULD SAY IT FOUR OR FIVE
15 TIMES OVER THE COURSE OF A MONTH, THAT IF SHE WAS SEEING
16 SOMEBODY ELSE, HE WAS GONNA KILL HER?

17 A. HE WAS VERY UPSET AND I BELIEVE HE LOVED HIS WIFE
18 AND I THINK HE REALLY JUST WANTED HER BACK HOME.

19 Q. WAS HE CONTROLLING OF HER?

20 A. I DIDN'T HAVE NO PERSONAL RELATIONSHIP WITH HIM
21 AND HIS WIFE AS A WHOLE, BUT I MEAN, YOU KNOW, THAT'S
22 MORE OR LESS WHAT IT WAS.

23 Q. SO HE WAS CONTROLLING OVER HER?

24 A. IN A LOT OF WAYS, YEAH.

25 Q. DO YOU REMEMBER ASKING HIM TO CUT HER SOME SLACK?

1 A. YEAH.

2 Q. THANK YOU, MR. MAYES.

3 MR. DAY: NOTHING FURTHER, YOUR HONOR.

4 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK
5 YOU, SIR.

6 (WITNESS LEAVES STAND.)

7 MR. WAGNER: YOUR HONOR, I ASK THAT THE WITNESS BE
8 EXCUSED.

9 MR. DAY: NO OBJECTION, YOUR HONOR.

10 THE COURT: YOU MAY BE EXCUSED. THANK YOU, SIR.

11 (WHEREUPON, THE WITNESS WAS EXCUSED.)

12 MR. WAGNER: I CALL DARRYL ROBINSON.

13 WHEREUPON,

14 DARRYL ROBINSON,

15 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. WAGNER:

17 Q. SIR, COULD YOU STATE YOUR NAME FOR THE RECORD AND
18 SPELL YOUR LAST NAME?

19 A. DARRYL ROBINSON, R-O-B-I-N-S-O-N.

20 Q. MR. ROBINSON, WHERE DO YOU LIVE?

21 A. I LIVE IN PENDLETON.

22 Q. OKAY. AND WHERE DO YOU WORK?

23 A. I WORK AT HIGH (PHONETIC) DAIRY IN LIBERTY, SOUTH
24 CAROLINA.

25 Q. DID YOU USED TO WORK WITH MR. DAVID CHAVEZ?

- 1 A. YES.
- 2 Q. WHERE DID YOU ALL WORK TOGETHER?
- 3 A. WE WORKED AT *SENECA JOURNAL*.
- 4 Q. DID YOU WORK FOR CLARENCE MAYES WHO JUST
- 5 TESTIFIED?
- 6 A. YES, SIR.
- 7 Q. BOTH OF Y'ALL DID?
- 8 A. YES, SIR.
- 9 Q. YOU AND THE DEFENDANT?
- 10 A. YES, SIR.
- 11 Q. BUT YOU ARE NOT WORKING THERE NOW?
- 12 A. NO, SIR.
- 13 Q. DO YOU REMEMBER TALKING TO RORY JONES BACK ON 20TH
- 14 OF OCTOBER, 2009, THE DETECTIVE HERE?
- 15 A. YES.
- 16 Q. DO YOU REMEMBER GIVING HIM A STATEMENT?
- 17 A. YES.
- 18 Q. DID HE ASK YOU STUFF ABOUT -- AND LET ME ASK YOU
- 19 THIS. WHAT WAS YOUR RELATIONSHIP WITH DAVID CHAVEZ?
- 20 A. WE WAS GOOD FRIENDS.
- 21 Q. GOOD FRIENDS?
- 22 A. YEAH.
- 23 Q. ARE YOU STILL GOOD FRIENDS?
- 24 A. YEAH.
- 25 Q. HAVE YOU TALKED TO HIM SINCE --

1 A. NO, SIR.

2 Q. -- THIS CASE STARTED?

3 A. (SHOOK HEAD.)

4 Q. BACK WHEN IT HAPPENED, BACK PRIOR TO THIS
5 HAPPENING, DID YOU SEE ANY SIGNS OF THIS SORT OF THING
6 COMING?

7 A. NO, NOT REALLY. I MEAN, HE WOULD TELL ME STUFF
8 BUT I DIDN'T BELIEVE IT.

9 Q. WHEN HE WOULD TELL YOU STUFF, WHAT DID HE SAY?

10 A. WELL, THE LAST THING HE TOLD ME THAT HE WAS GONNA
11 KILL HIS WIFE, AND THAT WAS LIKE A MONTH PRIOR TO THAT.
12 BUT I DIDN'T BELIEVE HIM 'CAUSE HE TOLD ME THAT HE WAS
13 OVER HER, YOU KNOW, THAT HE --

14 Q. WOULD YOU LIKE ME TO SHOW YOU A COPY OF YOUR
15 STATEMENT? WOULD YOU LIKE TO REVIEW IT?

16 DO YOU REMEMBER GIVING DAVID A RIDE ONE DAY?

17 A. YEAH, I USED TO GIVE HIM A RIDE BACK AND FORTH TO
18 WORK.

19 Q. AND DO YOU REMEMBER HIM GETTING OUT OF THE CAR AND
20 MAKING A COMMENT TO YOU? IF YOU WOULD SPEAK UP A LITTLE
21 BIT, PLEASE. IT'S HARD TO HEAR BACK HERE.

22 A. WHAT WAS THE QUESTION?

23 Q. ALL RIGHT. DID YOU GIVE DAVID A RIDE ABOUT A
24 MONTH PRIOR TO THIS, AND AS YOU LET HIM OUT OF THE CAR
25 DID HE MAKE A COMMENT TO YOU?

1 A. YES. HE TOLD ME THAT, HE SAID TELL EVERYBODY IN
2 THE MAIL ROOM THAT HE'S GONNA KILL HIS WIFE; THEY'RE
3 GONNA SEE HIM ON THE FRONT PAGE OF THE PAPER.

4 Q. THEY'RE GONNA SEE HIM ON THE FRONT PAGE OF THE
5 PAPER. HE WAS GONNA KILL HIS WIFE. SPEAK UP. I'M SORRY
6 TO HAVE TO KEEP ASKING YOU TO. I KNOW. I'M SOFT-SPOKEN,
7 TOO. I HAVE THE SAME THING. IF YOU WOULD TALK INTO THAT
8 MICROPHONE BECAUSE IT WILL COME BACK HERE. WHAT DID HE
9 SAY?

10 A. HE SAID, GO BACK AND TELL EVERYBODY IN THE MAIL
11 ROOM THAT THEY WAS GONNA SEE HIM ON THE PAPER BECAUSE HE
12 WAS GONNA KILL HIS WIFE. HE WAS SEEING HER I GUESS THAT
13 NIGHT.

14 Q. DID HE TELL YOU THAT MORE THAN ONE TIME THAT HE
15 WAS GONNA KILL HER?

16 A. JUST THAT ONE TIME THAT NIGHT.

17 Q. OKAY. DID HE SEEM CONTROLLING AND POSSESSIVE OF
18 HER TO YOU?

19 A. NOT EVERY, NOT WHEN I WAS AROUND, YOU KNOW, THAT'S
20 -- NO.

21 Q. DID HE EVER TELL YOU ANYTHING ABOUT FINDING A
22 KNIFE?

23 A. WELL, YEAH. I THINK, YEAH, HE THOUGHT HE HAD LOST
24 A KNIFE.

25 Q. WHAT DID IT LOOK LIKE?

1 A. IT WAS KIND OF GREENISH BLUISH LOOKING, I GUESS.

2 Q. LET ME SHOW YOU STATE'S EXHIBIT 30, IT'S RIGHT IN
3 FRONT OF YOU. IF YOU WOULD TAKE A LOOK AT STATE'S
4 EXHIBIT 30 AND SEE IF YOU RECOGNIZE THAT.

5 A. YEAH.

6 Q. DOES THAT LOOK LIKE THE KNIFE HE HAD?

7 A. YES.

8 Q. WHEN HE WOULD MAKE THOSE COMMENTS ABOUT KILLING
9 HIS WIFE, WHAT WAS HIS DEMEANOR LIKE?

10 A. HE WAS CALM.

11 Q. CALM ENOUGH TO WHERE YOU DIDN'T THINK HE WOULD DO
12 IT?

13 A. NEVER THOUGHT.

14 Q. ARE YOU STILL FRIENDS WITH HIM TODAY?

15 A. I HAVE NO PROBLEM WITH HIM. I'M JUST DISAPPOINTED
16 WITH WHAT HE DID.

17 MR. WAGNER: THANK YOU, MR. ROBINSON. THOSE ARE ALL
18 THE QUESTIONS I HAVE.

19 CROSS-EXAMINATION BY MR. DAY:

20 Q. MR. ROBINSON, YOU SAID WHEN MR. CHAVEZ MADE THAT
21 REMARK ABOUT TELL EVERYBODY AND EVERYTHING, YOU REALLY
22 DIDN'T BELIEVE HIM?

23 A. NO, SIR.

24 Q. YOU DIDN'T BELIEVE IT, SO IT WASN'T NECESSARY TO
25 EVEN TALK TO ANYBODY ABOUT IT OR WARN ANYONE OR DO

1 ANYTHING?

2 A. NO, SIR.

3 Q. YOU DON'T THINK IT WAS REALLY A CREDIBLE THREAT?

4 A. NO.

5 Q. I TAKE IT HE WAS SOMEWHAT UPSET BECAUSE HIS
6 MARRIAGE HAD BROKE UP?

7 A. YES, SIR.

8 MR. DAY: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE
9 OF MR. MAYES. THANK YOU, SIR.

10 REDIRECT EXAMINATION BY MR. WAGNER:

11 Q. IF YOU THOUGHT HE WAS JUST BUFFALOING OR JUST
12 BLOWING SMOKE -- I DON'T REMEMBER YOUR EXACT WORDS THERE,
13 BUT THAT'S THE GIST OF WHAT I GOT FROM WHAT YOU SAID --
14 DID YOU NOT FIND IT ODD THAT HE -- DIDN'T HE TELL YOU
15 THAT HE WAS GONNA KILL, NOT ONLY KILL HER BUT KILL HER
16 FAMILY?

17 MR. DAY: OBJECTION, YOUR HONOR, HE'S GOING INTO
18 MATTERS THAT WERE NOT GONE INTO BEFORE.

19 THE COURT: WELL, YOU ASKED ABOUT A CREDIBLE THREAT.
20 I'M GOING TO OVERRULE THE OBJECTION.

21 BY MR. WAGNER:

22 Q. DO YOU REMEMBER TELLING THE OFFICER THAT HE NOT
23 ONLY THREATENED TO KILL HER BUT HE SAID HE WAS GONNA KILL
24 HER WHOLE FAMILY, TOO?

25 A. YES, SIR.

1 Q. YOU DIDN'T FIND THAT ODD?

2 A. WELL, I -- YEAH, I -- WE TALKED AND I TOLD HIM
3 THAT, BOUGHT HIM A BEER AND CIGARETTES, AND TOLD HIM TO
4 JUST CALM DOWN, YOU KNOW, JUST STAY AT THE HOUSE AND CALM
5 DOWN.

6 MR. WAGNER: THANK YOU, SIR. THOSE ARE ALL THE
7 QUESTIONS I HAVE.

8 THE COURT: RECROSS?

9 MR. DAY: NO FURTHER QUESTIONS.

10 THE COURT: VERY GOOD. YOU MAY STEP DOWN. THANK
11 YOU, SIR.

12 MAY THE WITNESS BE EXCUSED?

13 MR. WAGNER: YES, PLEASE.

14 THE COURT: ANY OBJECTION?

15 MR. DAY: NO OBJECTION.

16 THE COURT: WITHOUT OBJECTION, YOU MAY BE EXCUSED.
17 THANK YOU, SIR.

18 (WHEREUPON, THE WITNESS WAS EXCUSED.)

19 THE COURT: LET'S TAKE A MORNING BREAK. DO NOT
20 UNDERTAKE DISCUSSION IN ANY WAY AMONG YOURSELVES. BUT
21 WHEN YOU'RE READY TO COME BACK, JUST KNOCK ON THE DOOR
22 AND YOU MAY COME BACK AT THAT TIME. WE'LL BE EXCUSED
23 UNTIL YOU ARE READY. YOU CAN TAKE THIS, AS I SAY, AS THE
24 MORNING BREAK.

25 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES

1 FROM THE COURTROOM.

2 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
3 APPROXIMATELY 10:56 A.M.)

4 THE COURT: ANYTHING FROM THE STATE BEFORE WE TAKE A
5 BREAK?

6 MR. WAGNER: NO, SIR.

7 THE COURT: DEFENSE?

8 MR. DAY: NO, YOUR HONOR.

9 THE COURT: VERY GOOD.

10 (A RECESS WAS TAKEN.)

11 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE
12 BEFORE WE BRING THE JURY BACK?

13 MR. WAGNER: NO, SIR.

14 THE COURT: FROM THE DEFENDANT?

15 MR. DAY: NONE, YOUR HONOR.

16 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

17 (THE JURY ENTERED THE COURTROOM AT
18 APPROXIMATELY 11:15 A.M.)

19 THE COURT: LET THE RECORD REFLECT THE JURY AND
20 ALTERNATES ARE IN THE JURY-BOX.

21 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, WE'LL
22 CONTINUE THE STATE'S CASE.

23 MR. WAGNER: MELINDA NICHOLSON.

24

25

1 WHEREUPON,

2 MELINDA NICHOLSON,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. WAGNER:

5 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
6 LAST NAME FOR THE RECORD?

7 A. MELINDA W. NICHOLSON, N-I-C-H-O-L-S-O-N.

8 Q. AND WHO ARE YOU EMPLOYED WITH, MS. NICHOLSON?

9 A. THE SENECA POLICE DEPARTMENT.

10 Q. WHAT ARE YOUR JOB DUTIES THERE?

11 A. I AM A CRIME SCENE INVESTIGATOR AND EVIDENCE
12 CUSTODIAN.

13 Q. AND HOW LONG HAVE YOU BEEN DOING IT?

14 A. I'VE BEEN WITH THE SENECA POLICE DEPARTMENT 13
15 YEARS. I'VE WORKED IN CRIME SCENE PART-TIME
16 APPROXIMATELY 12 YEARS AND FULL-TIME A LITTLE OVER A
17 YEAR.

18 Q. OKAY. WHAT KIND OF SCHOOLS HAVE YOU GONE TO TO
19 BECOME A CRIME SCENE SPECIALIST?

20 A. I HAVE BEEN TO HOMICIDE INVESTIGATION, I HAVE BEEN
21 TO CRIMINAL DOMESTIC VIOLENCE TRAINING, I HAVE ALSO BEEN
22 TO CRIME SCENE PHOTOGRAPHY, FINGERPRINT IDENTIFICATION
23 AND RECOGNITION. THE LIST IS NUMEROUS.

24 Q. WERE YOU WORKING IN THIS CAPACITY BACK ON OCTOBER
25 14, 2009?

1 A. I WAS.

2 Q. DID YOU GET A CALL TO GO OUT TO 501 SOUTH DEPOT
3 STREET, THE SCENE OF THE STABBING?

4 A. I DID.

5 Q. WHAT TIME DID YOU RESPOND?

6 A. I HAD JUST SIGNED OFF DUTY HEADING TO -- IT WAS
7 APPROXIMATELY AROUND 6:00 P.M. WHEN I RESPONDED.

8 Q. OKAY. AND DID YOU IMMEDIATELY GO IN AND START
9 PROCESSING THE SCENE OR DID YOU HAVE TO WAIT?

10 A. NO, SIR, I DID NOT. WHEN I ARRIVED ON SCENE,
11 SERGEANT KELLY WINCHESTER, SHE BRIEFED ME ON WHAT HAD
12 HAPPENED. SHE HAD TOLD ME THE VICTIM, WENDOLI CHAVEZ,
13 WAS DECEASED AND LYING IN THE MASTER BEDROOM. SHE ALSO
14 TOLD ME THAT MR. CHAVEZ HAD ALREADY BEEN TAKEN INTO
15 CUSTODY AND THAT DETECTIVE -- WELL, HE WASN'T A DETECTIVE
16 AT THE TIME -- THAT KEN KIRBY WAS MAINTAINING THE
17 SECURITY OF THE RESIDENCE UNTIL DETECTIVE TED ROUNDY
18 OBTAINED THE SEARCH WARRANT. SO I WAITED OUTSIDE UNTIL
19 DETECTIVE ROUNDY ARRIVED WITH THE SEARCH WARRANT AND THAT
20 WAS APPROXIMATELY A LITTLE BIT AFTER 8:00, I BELIEVE.

21 Q. SO YOU WAITED UNTIL HE HAD OBTAINED A SEARCH
22 WARRANT BEFORE YOU WENT BACK IN THERE?

23 A. YES, SIR.

24 Q. WHAT ARE YOU LOOKING FOR WHEN YOU PROCESS A CRIME
25 AND WHAT, HOW DO YOU PROCESS THE SCENE?

1 A. WELL, FIRST OF ALL, THE RESPONDING OFFICER GIVES
2 ME A WALKTHROUGH TO SHOW ME WHAT CRIME HAS OCCURRED,
3 WHERE THE VICTIM IS, EXACTLY WHERE THE CRIME TOOK PLACE,
4 AND WE ARE LOOKING -- I AM LOOKING FOR ANYTHING OF
5 EVIDENTIARY VALUE THAT CAN ESTABLISH THE FACTS THAT THE
6 CRIME DID TAKE PLACE.

7 Q. OKAY. AND WHAT DID YOU SEE IN THIS CASE?

8 A. UPON ENTERING THE RESIDENCE, AFTER COMING OFF OF
9 THE FRONT PORCH AND GOING INTO THE RESIDENCE, I NOTICED
10 ON THE FLOOR TO THE RIGHT UNDER THE EDGE OF THE SOFA THE
11 KNIFE.

12 Q. OKAY. LET ME SHOW YOU -- DID YOU TAKE ANY
13 PICTURES?

14 A. YES, SIR, I DID, I TOOK NUMEROUS PICTURES.

15 MR. WAGNER: YOUR HONOR, IF I MAY, THE WAY WE GOT
16 THIS THING KIND OF HOOKED UP RIGHT NOW, I GOT TO GO BACK
17 THERE AND TALK TO DO THAT THING, SO I JUST WANT TO GIVE
18 YOU A HEAD'S UP.

19 THE COURT: VERY WELL.

20 MR. DAY: YOUR HONOR, IF I MAY, EXCUSE ME, I HATE TO
21 INTERRUPT BEFORE WE START DOING THAT. I WONDER IF WE
22 MIGHT APPROACH FOR JUST A SECOND.

23 (DISCUSSION AT SIDEBAR.)

24 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
25 JURY, SOMETHING HAS JUST COME UP THAT I NEED TO ADDRESS,

1 SO I'M GONNA ASK YOU TO RETIRE TO YOUR JURY ROOM JUST FOR
2 A SHORT WHILE WHILE I TAKE CARE OF THE MATTER. AGAIN, DO
3 NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN
4 ANY WAY.

5 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
6 APPROXIMATELY 11:22 A.M.)

7 THE COURT: ALL RIGHT, MR. DAY, I UNDERSTAND YOU
8 HAVE SOMETHING TO BRING TO THE COURT'S ATTENTION?

9 MR. DAY: YES, YOUR HONOR, AND I APOLOGIZE FOR
10 TAKING UP EXTRA TIME. THIS WITNESS IS GONNA PUT IN
11 CERTAIN PICTURES THAT HAVE ALREADY BEEN SHOWN TO ME. I
12 WENT THROUGH THAT. I DISCUSSED THOSE WITH MY CLIENT, AND
13 PRIOR TO TRIAL HE HAD INDICATED TO ME THAT IF THERE WERE
14 ANY AUTOPSY PICTURES, HE DID NOT WANT TO SEE THOSE.

15 AND I THOUGHT THAT WAS WHAT WE WERE NOT GOING TO DO.
16 THEY DID NOT INTRODUCE ANY OF THOSE, SO I WASN'T
17 EXPECTING THAT. BUT HE TELLS ME THAT HE JUST DOESN'T
18 FEEL EMOTIONALLY THAT HE CAN SEE PICTURES OF HIS WIFE.

19 AS A RESULT OF THAT I'VE EXPLAINED TO HIM HE HAS A
20 RIGHT TO BE PRESENT IN THIS COURTROOM. THAT IS AN
21 INVIABLE RIGHT THAT ONLY HE CAN WAIVE OR CAUSE TO BE
22 CHANGED. BUT HE SAYS HE WOULD LIKE TO BE OUT OF THE ROOM
23 WHEN THOSE PICTURES WERE INTRODUCED INTO EVIDENCE.

24 I TOLD HIM I HAD TO BRING THAT TO THE COURT. HE
25 SAYS HE DOES NOT MIND BEING IN THE OTHER ROOM; HE DOESN'T

1 WANT TO LOOK, DOESN'T WANT TO SEE, AND DOESN'T WANT TO
2 HEAR. AND IT WOULD ONLY BE DURING THE TIME OF THESE
3 PICTURES THAT I'M AWARE OF. I'M NOT AWARE OF ANYTHING
4 ELSE THAT WOULD CAUSE HIM TO WANT TO LEAVE THE ROOM.

5 THE COURT: MR. WAGNER?

6 MR. WAGNER: YOUR HONOR, I THINK HE'S GOT A RIGHT TO
7 BE HERE OR NOT TO BE HERE, AND I TEND TO THINK IT'S, YOU
8 KNOW, HE WAS PRESENT IN THE ROOM WHEN THESE PICTURES WERE
9 TAKEN OR WHEN THE THING HAPPENED. I CAN'T IMAGINE IT
10 BOTHERS HIM THAT MUCH NOW. BUT THAT'S NOT MY CALL, SO...

11 THE COURT: ALL RIGHT, MR. CHAVEZ, IF YOU WOULD
12 PLEASE STAND. RAISE YOUR RIGHT HAND.

13 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
14 COURT.)

15 THE COURT: ALL RIGHT. YOU HAVE HEARD YOUR ATTORNEY
16 ADVISE THE COURT THAT YOU DO NOT WISH TO BE IN THE
17 COURTROOM WHEN THIS WITNESS IS TESTIFYING. I'M NOT SURE
18 HOW MUCH OF HER TESTIMONY HAS TO DO WITH PHOTOGRAPHS OR
19 ANYTHING THAT YOU MIGHT FIND DIFFICULT TO VIEW. BUT YOU
20 HAVE THE RIGHT -- OBVIOUSLY HAVE THE RIGHT TO BE PRESENT
21 AND TO CONFRONT THE WITNESS DURING HER TESTIMONY, IN
22 OTHER WORDS, TO SEE HER TESTIFY AS WELL AS TO HEAR HER
23 TESTIFY.

24 NOW, YOU CAN WAIVE THAT RIGHT, ONLY YOU CAN WAIVE
25 THE RIGHT, AND IT HAS TO BE DONE FREELY, VOLUNTARILY,

1 KNOWINGLY AND INTELLIGENTLY. NOW, WHAT IS YOUR OBJECTION
2 OR WHAT DO YOU WANT THE COURT TO DO?

3 THE DEFENDANT: I JUST DON'T WANT TO BE PRESENT
4 WHILE THERE'S PICTURES SHOWN.

5 THE COURT: ALL RIGHT. HOW ABOUT WHEN SHE
6 CONTINUES, AND OF COURSE YOUR ATTORNEY IS A PART OF THE
7 CONFRONTATION PROVISION IN OUR CONSTITUTION IS THAT YOUR
8 ATTORNEY CAN CROSS-EXAMINE THE WITNESS ABOUT HER
9 TESTIMONY AND ANY EXHIBITS WHICH ARE INTRODUCED. DO YOU
10 UNDERSTAND THAT WOULD EXTEND TO THAT AS WELL?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: SO YOU WOULD NOT BE HERE TO HEAR THE
13 TESTIMONY, TO SEE THE WITNESS TESTIFY, TO PARTICIPATE IN
14 THE CROSS-EXAMINATION, AND BE THERE TO ADVISE YOUR
15 ATTORNEY AND COUNSEL WITH HIM. YOU WISH TO WAIVE THAT
16 RIGHT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: ANY QUESTIONS, MR. DAY?

19 MR. DAY: NO, YOUR HONOR.

20 THE COURT: MR. WAGNER, ANYTHING FROM THE STATE?

21 MR. WAGNER: NO, YOUR HONOR.

22 THE COURT: IF I GRANT YOUR MOTION TO BE, TO
23 EXERCISE YOUR RIGHT NOT TO BE PRESENT, I CAN'T ASSURE YOU
24 THAT YOU WILL BE BROUGHT BACK AT ANY PARTICULAR TIME. I
25 WOULD HAVE TO RELY ON THE JUDGMENT OF THE ATTORNEYS AS TO

1 WHEN WHATEVER MATTER MIGHT BE, AS I SAY, DIFFICULT FOR
2 YOU TO VIEW OR WOULD BE PAST AND NOT BROUGHT UP AGAIN.
3 IT WOULD BE ONLY AT THAT TIME YOU WOULD BE BROUGHT BACK.
4 IN OTHER WORDS, I CAN'T JUST SEND YOU OUT FOR A MINUTE OR
5 TWO AND THEN BRING YOU BACK. IT COULD BE FOR AN EXTENDED
6 TIME. BUT I'M GONNA HAVE TO RELY ON YOUR ATTORNEY,
7 MR. DAY, TO TELL ME THE TIME AND OF COURSE IN COOPERATION
8 WITH MR. WAGNER, THE TWO WOULD HAVE TO CONSULT WITH
9 WHAT'S GONNA BE AVAILABLE OR BE EXPECTED. DO YOU HAVE
10 ANY QUESTIONS ABOUT THAT?

11 THE DEFENDANT: NO, SIR.

12 THE COURT: ALL RIGHT. I FIND THAT THE DEFENDANT
13 FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVES
14 HIS RIGHT TO BE PRESENT AND TO PARTICIPATE IN THE
15 CROSS-EXAMINATION AND EXAMINATION OF THIS WITNESS, TO
16 INCLUDE HIS FIFTH AMENDMENT RIGHT TO CONFRONT THE WITNESS
17 AND THE EVIDENCE AS IT IS BEING PRESENTED. THAT'S ALL
18 ASPECTS. CONFRONTATION MEANING TO HEAR, SEE, AND
19 PARTICIPATE IN CROSS-EXAMINATION. ALL RIGHT. YOU CAN GO
20 AHEAD AND RETIRE TO THE --

21 LET'S SEE. ANYTHING ELSE FROM THE STATE, THOUGH?

22 MR. WAGNER: NO, SIR.

23 THE COURT: ANYTHING ELSE FROM DEFENSE?

24 MR. DAY: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. I DO FIND THIS BEING FREELY,

1 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE.

2 (DEFENDANT LEAVES COURTROOM AT APPROXIMATELY
3 11:28 A.M.)

4 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
5 STATE?

6 MR. WAGNER: NO, SIR.

7 THE COURT: ANYTHING ELSE FROM THE DEFENDANT?

8 MR. DAY: NO, YOUR HONOR.

9 THE COURT: LET ME ASK YOU. DO YOU WANT ME TO
10 COMMENT ON IT? I WOULD THINK IT BEST. I'LL DO WHATEVER,
11 I'LL CONSIDER WHATEVER THE DEFENDANT WOULD HAVE ME DO.

12 MR. DAY: YOUR HONOR, I HAVE EVERY CONFIDENCE THE
13 COURT CAN EXPLAIN TO THE JURY IN A BRIEF WAY WHY THE
14 DEFENDANT IS NO LONGER IN COURT --

15 THE COURT: NO, I CAN'T DO THAT BECAUSE THAT'S A
16 COMMENT ON THE FACTS. I MEAN IF IT WAS -- I CAN COMMENT
17 ON THE FACT THAT FOLLOWING THE LAW THAT THE DEFENDANT HAS
18 A RIGHT OF CONFRONTATION, BUT HE CAN WAIVE THAT RIGHT AND
19 DECLINE TO BE PRESENT DURING TESTIMONY.

20 MR. DAY: THAT WOULD BE FINE WITH ME, YOUR HONOR.

21 THE COURT: ANY OTHER SUGGESTIONS?

22 MR. WAGNER: YES, THAT'S FINE.

23 THE COURT: BUT THE ONLY THING I CAN COMMENT ON IS
24 THE LEGAL RIGHTS OF A -- THAT NATURE IS INVOLVED.

25 ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

1 (THE JURY ENTERED THE COURTROOM AT
2 APPROXIMATELY 11:30 A.M.)

3 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT
4 THE JURY AND ALTERNATES ARE IN THE JURY-BOX.

5 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, EVERY
6 DEFENDANT IN EVERY CRIMINAL CASE IS BROUGHT, IN THE
7 UNITED STATES AND IN SOUTH CAROLINA IN PARTICULAR, HAS
8 CERTAIN RIGHTS AND PROTECTIONS THAT ARE PROVIDED THAT
9 DEFENDANT, AND ONE OF THOSE IS CONFRONTATION, IN OTHER
10 WORDS, CONFRONT ANY WITNESS CALLED AGAINST THE DEFENDANT,
11 AND THAT CONFRONTATION INCLUDES THE RIGHT TO SEE, HEAR,
12 AND CROSS-EXAMINE THE WITNESS OR BE PRESENT WHEN A
13 WITNESS IS CROSS-EXAMINED.

14 HOWEVER, ALL RIGHTS, EVEN THE RIGHT TO BE PRESENT
15 DURING THE TRIAL OF THE CASE OR A PORTION OF IT IS A
16 RIGHT THAT THE DEFENDANT CAN WAIVE. AND IN THIS
17 PARTICULAR CASE THE DEFENDANT HAS WAIVED HIS RIGHT TO BE
18 PRESENT DURING THIS WITNESS'S TESTIMONY. AND SO THAT THE
19 WITNESS [SIC] HAS REMOVED HIMSELF FROM THE COURTROOM
20 DURING THIS PARTICULAR TESTIMONY.

21 ALL RIGHT, MR. WAGNER.

22 MR. WAGNER: THANK YOU, YOUR HONOR.

23 THE COURT: OH, BY THE WAY, THAT WAIVER HAS TO BE
24 FOUND TO BE FREELY, VOLUNTARILY, KNOWINGLY AND
25 INTELLIGENTLY; IN OTHER WORDS, ONLY THE DEFENDANT CAN

1 WAIVE THAT RIGHT, NO ONE CAN WAIVE IT FOR HIM.

2 YOU MAY PROCEED.

3 BY MR. WAGNER:

4 Q. MS. NICHOLSON, THIS IS STATE'S EXHIBIT 21 --

5 THE COURT: NOW, HAVE THESE EXHIBITS BEEN ADMITTED
6 INTO EVIDENCE?

7 MR. DAY: I DON'T THINK WE HAVE YET, YOUR HONOR, BUT
8 I'M NOT GONNA HAVE ANY OBJECTION TO THEM. WE HAVE
9 DISCUSSED THEM --

10 THE COURT: YOU HAVE SEEN THEM?

11 MR. DAY: YES, SIR.

12 THE COURT: AND ARE THERE ANY OBJECTIONS TO THEM?

13 MR. DAY: NO, SIR. WE'VE REVIEWED THEM, AND I HAVE
14 NO OBJECTION TO ANY OF THE PICTURES HE'S GOT THERE.

15 THE COURT: ALL RIGHT. WHAT ARE THOSE NUMBERS?

16 MR. WAGNER: YOUR HONOR, ON THE SCREEN ARE STATE'S
17 EXHIBIT NUMBER 21, 11, 12 -- I'M SORRY THEY'RE OUT OF
18 ORDER.

19 THE COURT: THAT'S ALL RIGHT.

20 MR. WAGNER: -- 10, 9, 15, 16, 17, 18, 19, 20, 26,
21 25, 24, 23, 22, AND 34 AND 35.

22 THE COURT: ALL RIGHT. STATE'S EXHIBITS NUMBERS 21,
23 11, 12, 10, 9, 15, 16, 17, 18, 19, 20, 26, 25, 24, 23,
24 22, 34 AND 35 ARE ADMITTED WITHOUT OBJECTION.

25 (STATE'S EXHIBITS NUMBERS 21, 11, 12, 10, 9,

1 15, 16, 17, 18, 19, 20, 26, 25, 24, 23, 22,
2 34 AND 35, HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WERE RECEIVED IN EVIDENCE.)

4 THE COURT: VERY WELL. YOU MAY PROCEED.

5 BY MR. WAGNER:

6 Q. STATE'S EXHIBIT 21, WHAT DOES THAT REPRESENT,
7 OFFICER NICHOLSON?

8 A. THAT IS THE SWITCH-BLADE-TYPE KNIFE THAT I FINALLY
9 LOCATED UNDER THE SIDE EDGE OF THE SOFA UPON ENTERING THE
10 RESIDENCE.

11 Q. IF YOU WOULD LOOK DIRECTLY IN FRONT OF YOU AT
12 STATE'S EXHIBIT 30?

13 A. OH, YES, SIR.

14 Q. DO YOU RECOGNIZE THAT?

15 A. YES, SIR. THIS IS THE KNIFE.

16 Q. IS THIS THE EXACT SAME KNIFE ON THE PICTURE?

17 A. YES, SIR, THAT'S CORRECT.

18 Q. DID YOU PICK THAT UP AND TAKE THAT INTO EVIDENCE?

19 A. I DID.

20 MR. WAGNER: YOUR HONOR, AT THIS TIME WE'D MOVE
21 STATE'S EXHIBIT 30 ALSO IN, THE KNIFE.

22 THE COURT: ANY OBJECTION?

23 MR. DAY: NO OBJECTION.

24 THE COURT: ALL RIGHT. WITHOUT OBJECTION STATE'S
25 EXHIBIT NUMBER 30 IS ALSO ADMITTED.

1 (RECEIVED IN EVIDENCE WAS STATE'S EXHIBIT 30,
2 KNIFE.)

3 BY MR. WAGNER:

4 Q. DID YOU SWAB THE BLADE?

5 A. I DID.

6 Q. ANYTHING FOUND?

7 A. NO, SIR. ACCORDING TO THE S.L.E.D. REPORT THERE
8 WAS NO BLOOD FOUND.

9 Q. LET ME BACK UP JUST A SECOND. AND THAT'S STATE'S
10 EXHIBIT 26. WHAT DOES THAT REPRESENT?

11 A. THAT IS THE RESIDENCE, THE CHAVEZ RESIDENCE AT 501
12 SOUTH DEPOT STREET.

13 Q. DOES THAT SHOW THE DRIVEWAY THAT THE OFFICERS HAD
14 A HARD TIME INITIALLY FINDING LEADING UP TO THE HOUSE?

15 A. YES, SIR. IT IS A GRAVEL DRIVEWAY.

16 Q. ANOTHER PICTURE HERE, STATE'S EXHIBIT 22?

17 A. YES, SIR. THAT, I WAS JUST, I WAS TAKING
18 MEASUREMENTS SHOWING THAT THAT, THE KNIFE WAS LOCATED
19 UNDER THE EDGE OF THE SOFA INSIDE THE ENTRANCE TO THE
20 RESIDENCE.

21 Q. WHERE DID YOU FIND THE VICTIM'S BODY?

22 A. THE VICTIM'S BODY WAS, IF YOU GO INTO THE LIVING
23 ROOM AND GO OFF TO THE LEFT, HER BODY WAS IN THE MASTER
24 BEDROOM RIGHT INSIDE THE DOOR.

25 Q. DID YOU PHOTOGRAPH HER BODY?

1 A. I DID. I TOOK A TOTAL OF 96 CRIME SCENE
2 PHOTOGRAPHS.

3 Q. MANY OF THEM ARE SIMILAR, THOUGH, ARE THEY NOT?

4 A. YES, SIR.

5 Q. OKAY. WHAT DOES THIS REPRESENT?

6 A. UPON ENTERING THE BEDROOM, THE DOOR, THERE WAS A
7 VERY SMALL AMOUNT OF SPACE, AND TRYING TO GET THROUGH,
8 THROUGH THE DOOR OPENING, THERE WAS ABOUT A TWO-FOOT DOOR
9 OPENING TO GET THROUGH. HER HEAD WAS RIGHT ON THE OTHER
10 SIDE OF THE DOOR, AND I ACTUALLY BUMPED HER HEAD BARELY
11 GOING IN. SHE WAS LYING AS YOU CAN SEE ON THE
12 PHOTOGRAPH, THERE WAS A RED T-SHIRT OVER HER FACE. SHE
13 WAS LYING ON HER BACK WITH HER ARMS ALONGSIDE HER BODY.
14 SHE HAD HER LEGS BENT AT A 45-DEGREE ANGLE TOWARD THE
15 SHEETROCK, THE BLUE SHEETROCK WALL.

16 SHE HAD A -- I OBSERVED A STAIN ON THE LEFT SIDE
17 OF HER SHIRT BELOW HER RIB CAGE. THERE WAS A CUTTING ON
18 HER SHIRT. AND THEN HER SHIRT WAS PULLED UP. WHEN I
19 PULLED HER SHIRT, WITH GLOVED HANDS PULLED HER SHIRT
20 DOWN, THE PATTERN, I NOTICED THERE WAS A STAB WOUND ON
21 HER BODY AND THE PATTERN ON HER BODY MATCHED THE CUT ON
22 HER SHIRT.

23 Q. DID YOU NOTICE ANY SIGNS OF A STRUGGLE?

24 A. YES, SIR, I DID. ONE OF THE THINGS I NOTICED WERE
25 SHOE IMPRESSIONS ON THE BLUE SHEETROCK WALL. HER LEFT

1 FOOT WAS ABOUT FIVE INCHES AWAY FROM --

2 THE COURT: EXCUSE ME. WHAT WAS THE NUMBER OF THAT
3 PHOTOGRAPH.

4 MR. WAGNER: YOUR HONOR, THAT'S NUMBER 17.

5 MR. DAY: WHAT WAS THAT NUMBER? I'M SORRY.

6 MR. WAGNER: 17.

7 BY MR. WAGNER:

8 Q. LET ME HOW SHOW YOU STATE'S EXHIBIT NUMBER 18.
9 WHAT DO YOU SEE THERE?

10 A. THAT IS ONE OF THE SHOE IMPRESSIONS ON THE WALL
11 THAT WERE SIMILAR, THAT HER SHOE TREAD ON HER SHOES, SHE
12 WAS ACTUALLY WEARING TAN-COLORED BOOTS, AND THE TREAD ON
13 THE BOTTOM OF HER SHOES MATCHED THE TREAD ON THE WALL.

14 Q. WHAT DID IT APPEAR TO YOU TO LOOK LIKE? WHY DO
15 YOU SAY THERE WERE SIGNS OF A STRUGGLE? EXPLAIN, PLEASE.

16 A. IT APPEARED TO ME THAT THERE WAS A SIGN OF A
17 STRUGGLE, THAT AS SHE WAS, AS SHE WAS BEING CHOKED, THAT
18 SHE WAS STRUGGLING FOR HER LIFE. SHE WAS KICKING AND,
19 AND DUE TO HER KICKING IT LEFT BOOT COMPRESSIONS ON THE
20 WALL THAT CAME FROM THE BOOTS THAT SHE WAS WEARING.

21 Q. LET ME SHOW YOU STATE'S EXHIBIT 16 -- STATE'S 33.
22 I DON'T KNOW IF YOU HAVE SEEN THIS, OFFICER NICHOLSON.
23 IS THAT THE ACTUAL DRYWALL OF THE BOOT PRINT THAT YOU CUT
24 OUT?

25 A. YES, SIR, IT IS.

1 Q. WHY DID YOU DO THAT AND DID YOU ALSO GET THE
2 BOOTS?

3 A. YES, SIR, I DID TAKE THE BOOTS. WE CUT THE
4 DRYWALL OUT TO SHOW THAT THE PATTERN ON HER BOOTS THAT
5 SHE HAD ON AT THE TIME OF THE STRUGGLE AND AT THE TIME OF
6 DEATH MATCHED THE PATTERN ON THE, THE SHOE IMPRESSION ON
7 THE DRYWALL.

8 MR. WAGNER: YOUR HONOR, AT THIS TIME WE WOULD MOVE
9 STATE'S 33 INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MR. DAY: NO OBJECTION, YOUR HONOR.

12 THE COURT: WITHOUT OBJECTION STATE'S EXHIBIT NUMBER
13 33 IS ADMITTED.

14 (RECEIVED IN EVIDENCE WAS STATE'S EXHIBIT
15 33.)

16 MR. WAGNER: ALONG WITH 31, YOUR HONOR.

17 (RECEIVED IN EVIDENCE WAS STATE'S EXHIBIT
18 31.)

19 BY MR. WAGNER:

20 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 31 THERE.

21 A. (WITNESS OPENS SEALED PAPER BAG, STATE'S EXHIBIT
22 31.)

23 Q. WHAT IS STATE'S EXHIBIT 31?

24 A. STATE'S EXHIBIT 31 ARE THE BOOTS THAT WENDOLI
25 CHAVEZ WAS WEARING AT THE TIME OF THE STRUGGLE AND AT THE

1 TIME OF HER DEATH.

2 MR. WAGNER: YOUR HONOR, IF WE COULD ASK THE WITNESS
3 TO STEP DOWN?

4 THE COURT: CERTAINLY.

5 BY MR. WAGNER:

6 Q. COULD YOU SHOW US HOW YOU MATCHED -- WHAT LED YOU
7 TO BRINGING THE DRYWALL AND THE BOOTS? COULD YOU SHOW US
8 HOW YOU MATCHED THEM?

9 THE COURT: IF YOU WOULD, PLEASE STAND ON THE OTHER
10 SIDE SO YOU ARE LOOKING BACK TOWARDS THE COURT REPORTER
11 AS WELL AS TO THE JURY.

12 THE WITNESS: YES, SIR.

13 THE COURT: THANK YOU, MA'AM.

14 THE WITNESS: AS I ENTERED THE ROOM, AS I SAID HER
15 LEGS WERE AT A 45-DEGREE ANGLE TO THIS DRYWALL. HER LEFT
16 FOOT WAS FIVE INCHES AWAY, APPROXIMATELY FIVE INCHES AWAY
17 FROM THE WALL. AND THE TREAD ON THE BOOTS INDICATE THAT
18 THERE WAS, THAT SHE WAS KICKING AS SHE WAS GOING DOWN AS
19 SHE WAS BEING CHOKED. AND AS THE BREATH WAS LEAVING HER
20 BODY SHE WAS KICKING AND STRUGGLING AND FIGHTING FOR HER
21 LIFE.

22 AS YOU CAN SEE (DEMONSTRATING) THE PATTERN HERE, A
23 PATTERN HERE. HERE, HERE, HERE, HERE, AND I'M TRYING TO
24 TURN AROUND SO THE COURT REPORTER CAN HEAR AS WELL. AND
25 ALSO THE PATTERN HERE. THERE WERE NUMEROUS IMPRESSIONS

1 ON THIS DRYWALL TO INDICATE THAT SHE WAS KICKING AND
2 STRUGGLING FOR HER LIFE.

3 MR. WAGNER: OKAY. THANK YOU. YOU CAN TAKE YOUR
4 SEAT BACK, PLEASE. (WITNESS RESUMES STAND.)
5 BY MR. WAGNER:

6 Q. OFFICER NICHOLSON, REFERRING BACK TO STATE'S 18,
7 WAS HER BOOTS, WERE THEY WITHIN RANGE OF THE MARKS ON THE
8 WALL? AS FAR AS HER LEGS, WAS WHERE HER BOOT WAS ON THE
9 GROUND THERE AND HER FOOT, WAS IT WITHIN RANGE OF WHERE
10 THE KICK MARKS WERE?

11 A. YES, SIR, IT WAS.

12 Q. IS THAT HOW YOU ARRIVE AT THAT CONCLUSION?

13 A. YES, SIR, IT WAS.

14 Q. DID YOU ALSO SEE SIGNS THAT LED YOU TO BELIEVE
15 THAT SHE WAS STRANGLED ON HER BODY?

16 A. YES, SIR. SHE HAD MARKINGS AROUND HER NECK. SHE
17 ALSO HAD PETECHIAE IN HER EYES. SHE HAD BRUISING UNDER
18 HER EYE. BUT MOSTLY THE PETECHIAE AND VARIOUS MARKINGS
19 AROUND HER NECK.

20 Q. LET ME SHOW YOU STATE'S NUMBER 20, WHEN YOU SAY
21 PETECHIAE. BRUISING AND MARKS?

22 A. YES, SIR, THAT'S CORRECT.

23 Q. IS THAT WHAT YOU SAW?

24 A. YES, SIR, THAT'S WHAT I SAW AND THAT'S WHAT I
25 PHOTOGRAPHED.

1 Q. DID YOU ALSO SEE ANY SIGNS THAT SHE HAD GONE OVER,
2 IN FACT, TO GET HER MAIL?

3 A. YES, SIR. WHEN I ENTERED -- AFTER I, I LOOKED AT
4 WENDOLI AND PHOTOGRAPHED HER, I STARTED LOOKING AROUND
5 THE BEDROOM. AND ON THE RIGHT REAR, I CALL IT THE RIGHT
6 REAR BED POST, NOT THE ONE UP AT THE HEADBOARD BUT AT THE
7 FOOT BOARD, THERE WERE FOUR PIECES OF MAIL THERE, AND IT
8 APPEARED THAT SHE HAD GONE THERE TO GET HER MAIL OFF OF
9 THE BED POST.

10 AND AS SHE WAS TRYING TO GET HER MAIL, I BELIEVE
11 THAT IS WHEN MR. CHAVEZ CAME UP, AS DR. WOODARD TESTIFIED
12 ABOUT THE ARM COMING AROUND HER NECK. AND I BELIEVE THAT
13 AS SHE WAS LOOKING AT HER MAIL, MR. CHAVEZ CAME UP BEHIND
14 HER AND PUT HIS ARM AROUND HER AND DRAGGED HER BACK AND
15 BEGAN CHOKING THE LIFE OUT OF HER, HENCE THE STRUGGLE,
16 HENCE THE SHOE IMPRESSIONS ON THE SHEETROCK.

17 Q. LET ME SHOW YOU STATE'S EXHIBIT 23. IS THIS
18 BASICALLY WHAT YOU SAW?

19 A. YES, SIR. THAT WAS THE MAIL ON THE FOOTBOARD OF
20 THE POSTER BED.

21 Q. DID YOU OPEN IT SO YOU COULD SEE THE NAME AND
22 ADDRESS, IS THIS STATE'S EXHIBIT 24?

23 A. YES, SIR.

24 Q. WAS IT HER MAIL, THE VICTIM'S MAIL?

25 A. YES, SIR. IT WAS MAIL BELONGING TO WENDOLI

1 CHAVEZ.

2 Q. DID YOU ALSO NOTICE THAT SHE HAD BEEN STABBED?

3 A. YES, SIR. BELOW THE LEFT RIB CAGE I NOTICED A
4 STAB WOUND. I DID NOTICE THAT THERE WAS VERY LITTLE
5 BLOOD ON HER OR IN THE AREA OF HER BODY. AND AS I HAD
6 PREVIOUSLY TESTIFIED, HER SHIRT, I PULLED HER SHIRT DOWN
7 AND NOTICED THE CUTTING ON HER SHIRT MATCHED THE PATTERN
8 OF THE STAB WOUND WHERE THE KNIFE HAD GONE INTO THE SHIRT
9 AND INTO HER BODY.

10 Q. DOES THIS PICTURE DEPICT WHAT YOU SAW?

11 THE COURT: WHICH ONE IS THAT?

12 MR. WAGNER: I'M SORRY, JUDGE. 25.

13 THE WITNESS: YES, SIR, IT DOES DEPICT WHAT I SAW.

14 BY MR. WAGNER:

15 Q. THIS IS STATE'S EXHIBIT NUMBER 9. WHAT DOES THAT
16 REPRESENT?

17 A. YES, SIR. THAT IS THE STAB WOUND, THE PATTERN OF
18 THE KNIFE GOING UP AS A RESULT OF THE STABBING ON HER
19 BODY.

20 Q. DID YOU TAKE ANY PICTURES FROM THE OUTSIDE LOOKING
21 INTO THE BEDROOM? LET ME SHOW YOU STATE'S 34. LET ME
22 HAND THEM TO YOU. 34 AND 35.

23 A. YES, SIR. I DID TAKE THESE PHOTOGRAPHS. IT
24 SHOWED THE DISARRAY OF THE BEDROOM. THE HOUSE HAD AN
25 ODOR OF ANIMAL FECES AND URINE. THE HOUSE WAS VERY

1 UNTIDY. THE HOUSE HAD NUMEROUS STAINS ON THE CARPET. A
2 LOT OF THE STAINS I BELIEVE WERE ANIMAL FECES AND IN THE
3 CLOSET AREA THE CLOSET WAS OPEN AND THERE WERE VISIBLE
4 ANIMAL FECES ON THE CARPET IN THE CLOSET.

5 THERE WAS ALSO AN AREA IN THE MASTER BEDROOM
6 FACING THE BED TO THE RIGHT SIDE OF THE BED THAT HAD BEEN
7 PORTIONED OFF THAT LOOKED LIKE MAYBE ANIMALS WERE KEPT IN
8 THE BEDROOM.

9 Q. DID YOU SEIZE ANY PHYSICAL EVIDENCE YOU LATER
10 DECIDED WASN'T NEEDED?

11 A. OH, YES, SIR. THE CARPET, WE ACTUALLY TOOK A
12 PORTION OF THE CARPET WITH US, A LARGE PORTION OF THE
13 CARPET FOR ME TO EXAMINE BY THE POLICE DEPARTMENT THAT
14 REALLY PROVED NO EVIDENTIARY VALUE. AND ON ALMOST ALL
15 CASES I TAKE MORE EVIDENCE THAN WHAT I ACTUALLY USE
16 BECAUSE YOU ONLY GET ONE SHOT AT TAKING THE EVIDENCE ONCE
17 YOU'RE ON SCENE. MOST OF THE TIME THEY DON'T LET YOU GO
18 BACK UNLESS YOU HAVE TO GET ANOTHER SEARCH WARRANT. YOU
19 TAKE BASICALLY EVERYTHING YOU POSSIBLY MAY NEED AT THE
20 TIME YOU ARE THERE. SO I DID TAKE EVIDENCE THAT WE ENDED
21 UP NOT USING.

22 MS. CHAVEZ WAS LYING ON THE FLOOR, AND UNDER HER
23 HEAD WAS A VACUUM CLEANER CORD AND ALSO A HOSE. IT WAS
24 ONE OF THE HAND-HELD VACUUM CLEANERS. AND BECAUSE SHE
25 HAD SIGNS OF STRANGULATION, AT THAT POINT IN TIME I DID

1 NOT KNOW IF MAYBE THE VACUUM CLEANER CORD MAY HAVE BEEN
2 THE ITEM USED TO STRANGLE HER. SO I TOOK THE VACUUM
3 CLEANER INTO EVIDENCE WHICH WAS LATER DETERMINED NOT TO
4 HAVE ANY EVIDENTIARY VALUE. SO YES, I DO HAVE SEVERAL
5 ITEMS THAT WERE NOT USED.

6 Q. DID YOU GET THE ACTUAL MAIL?

7 A. YES, I DID GET THE MAIL.

8 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
9 28 AND 29 (HANDING). WHAT IS 28?

10 A. 28 IS THE MAIL THAT, IT WAS ONE PIECE OF MAIL
11 ADDRESSED TO WENDOLI CHAVEZ THAT I FOUND ON THE KITCHEN
12 COUNTER INSIDE THE RESIDENCE.

13 Q. IT'S STILL IN THE SAME CONDITION AS IT WAS WHEN
14 YOU GOT IT?

15 A. YES, SIR, IT IS.

16 Q. AND 29, PLEASE?

17 A. STATE'S EXHIBIT 29, THE FOUR PIECES OF MAIL THAT I
18 FOUND ON THE RIGHT BEDPOST ON THE BED.

19 Q. IS IT STILL IN THE SAME CONDITION AS IT WAS WHEN
20 YOU FOUND IT?

21 A. YES, SIR, IT WAS.

22 MR. WAGNER: YOUR HONOR, AT THIS TIME WE MOVE
23 STATE'S EXHIBIT 28 AND 29 IN.

24 MR. DAY: NO OBJECTION.

25 THE COURT: WITHOUT OBJECTION, STATE'S EXHIBITS 28

1 AND 29 ARE ADMITTED.

2 (RECEIVED IN EVIDENCE WERE STATE'S EXHIBITS
3 28 AND 29.)

4 BY MR. WAGNER:

5 Q. DID YOU LATER GET POSSESSION OF THE DEFENDANT'S
6 SHIRT?

7 A. I DID.

8 Q. AND WAS THERE ANY BLOOD STAINS ON IT THAT YOU
9 SUSPECTED?

10 A. YES, SIR, THERE WAS. AND I ACTUALLY TOOK THE
11 DEFENDANT'S SHIRT TO THE SOUTH CAROLINA LAW ENFORCEMENT
12 DIVISION FOR ANALYSIS, THE D.N.A. ANALYSIS.

13 Q. AND DID YOU COMPARE HIS SHIRT OR PORTION OF HIS
14 SHIRT, DID THEY COMPARE IT WITH -- DID YOU ALSO TAKE
15 MOUTH SWABS FROM THE VICTIM?

16 A. FROM THE VICTIM?

17 Q. YEAH.

18 A. YES.

19 Q. WHERE DID YOU DO THOSE?

20 A. I OBTAINED THE MOUTH SWABS FROM THE, FROM THE
21 AUTOPSY. I GOT THOSE FROM THE AUTOPSY.

22 Q. OKAY. AND DID YOU SEND THOSE TO S.L.E.D. FOR
23 TESTING?

24 A. I DID.

25 Q. DID YOU GET A REPORT BACK FROM S.L.E.D. ABOUT

1 THOSE TWO ITEMS?

2 A. I DID.

3 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
4 NUMBER 32 (HANDING). WHAT IS STATE'S EXHIBIT 32?

5 A. STATE'S EXHIBIT 32 IS THE D.N.A. ANALYSIS REPORT
6 DATED OCTOBER THE 18TH, 2010, FROM THE SOUTH CAROLINA LAW
7 ENFORCEMENT DIVISION. IT SHOWS THAT SWABS FROM THE KNIFE
8 THAT I TOOK FROM INSIDE THE RESIDENCE THAT WAS LOCATED
9 UNDER THE SOFA, THAT THERE WAS NO BLOOD INDICATED ON THE
10 KNIFE. IT ALSO SHOWS THE BLOOD FROM THE CUTTINGS ON THE
11 SUSPECT'S SHIRT, MR. CHAVEZ, THAT THE BLOOD CAME BACK TO
12 WENDOLI CHAVEZ.

13 Q. SO THEY MATCHED IT BY D.N.A.?

14 A. YES, SIR, THEY DID.

15 MR. WAGNER: YOUR HONOR, I BELIEVE THAT REPORT IS
16 ALREADY IN, BUT WE WOULD MOVE IT JUST IN CASE AS STATE'S
17 32.

18 MR. DAY: IS THAT THE ONE DATED OCTOBER 28TH?

19 THE WITNESS: THIS ONE, SIR, IS DATED OCTOBER THE
20 18TH.

21 MR. DAY: I MIGHT HAVE A PROBLEM WITH THAT.

22 LET ME SEE IT.

23 THE WITNESS: (HANDING).

24 MR. DAY: I'VE SEEN THAT. THAT'S THE ONE WE TALKED
25 ABOUT BEFORE. I HAVE NO OBJECTION, YOUR HONOR.

1 THE COURT: THAT'S THE S.L.E.D. REPORT?

2 THE WITNESS: YES, SIR.

3 THE COURT: AND THE DATE ON IT?

4 THE WITNESS: THE DATE ON THIS IS OCTOBER THE 18TH,
5 2010.

6 THE COURT: VERY GOOD. THANK YOU.

7 BY MR. WAGNER:

8 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 5 AND 6 IF
9 YOU WOULD REFER TO THEM IN THAT ORDER, NUMBER 5 FIRST.

10 A. I BELIEVE NUMBER 5 IS THE CUTTING FROM HIS SHIRT.

11 Q. IS THAT STILL SEALED UP?

12 A. YES, SIR, IT IS STILL SEALED.

13 Q. IS THAT WHAT YOU SENT TO S.L.E.D.?

14 A. YES, SIR.

15 Q. AND WHAT IS NUMBER 6?

16 A. NUMBER 6 IS THE KNOWN MOUTH SWABS FROM WENDOLI
17 CHAVEZ.

18 Q. DID YOU ALSO SEND THAT TO S.L.E.D.?

19 A. YES, I DID.

20 Q. THAT'S WHAT IS REFERRED TO IN THE REPORT FROM
21 STATE'S EXHIBIT NUMBER 33?

22 A. YES, SIR, THAT'S CORRECT. THOSE TWO ITEMS.

23 MR. WAGNER: YOUR HONOR, IF I COULD, I'D LIKE TO GO
24 AHEAD AND MOVE IN STATE'S EXHIBIT 5 AND 6. I THINK THEY
25 HAVE ALREADY BEEN ADMITTED.

1 THE COURT: ANY OBJECTION?

2 MR. DAY: NO OBJECTION.

3 THE COURT: STATE'S 5 AND 6 ARE ADMITTED WITHOUT
4 OBJECTION.

5 (RECEIVED IN EVIDENCE WERE STATE'S EXHIBITS 5
6 AND 6.)

7 BY MR. WAGNER:

8 Q. AFTER PROCESSING THE CRIME SCENE, DID YOU ATTEND
9 TO THE VICTIM AT THE AUTOPSY?

10 A. AFTER PROCESSING THE CRIME SCENE?

11 Q. YES.

12 A. I DID ATTEND THE AUTOPSY.

13 Q. OKAY. AND IS THAT WHERE YOU GOT HER MOUTH SWABS,
14 FROM HER BODY?

15 A. YES, SIR, THAT'S CORRECT.

16 Q. DID YOU MAINTAIN CUSTODY OF THE EVIDENCE EXCEPT
17 WHEN IT GOT SENT TO S.L.E.D.?

18 A. I DID.

19 Q. HAS IT BEEN IN YOUR POSSESSION SINCE THEN?

20 A. YES, SIR.

21 Q. HAVE YOU ALTERED OR TAMPERED WITH IT IN ANY
22 MANNER?

23 A. NO, SIR.

24 MR. WAGNER: THANK YOU, OFFICER NICHOLSON, THOSE ARE
25 ALL THE QUESTIONS I HAVE.

1 CROSS-EXAMINATION BY MR. DAY:

2 Q. DON'T LEAVE QUITE YET.

3 A. OH, SORRY.

4 THE COURT: YES, MA'AM. THANK YOU.

5 MR. DAY: I DO HAVE A FEW QUESTIONS FOR YOU.

6 Q. LET ME FIND THE -- ARE THE PICTURES BACK HERE?

7 MR. WAGNER: I PUT THEM ALL BACK THERE IN THAT STACK
8 OVER THERE.

9 BY MR. DAY:

10 Q. I SHOW YOU WHAT IS MARKED AS STATE'S EXHIBITS
11 NUMBER 10, 23 AND 24. I BELIEVE THOSE INDICATE THE MAIL;
12 IS THAT CORRECT?

13 A. YES, SIR, THAT'S CORRECT.

14 Q. AND THESE ARE PART OF THE PICTURES THAT YOU TOOK,
15 OR WHO ELSE TOOK THOSE?

16 A. I TOOK THOSE.

17 Q. YOU TOOK THOSE. AND THAT'S WHEN YOU FOUND THE
18 MAIL WHEN YOU ENTERED THE ROOM?

19 A. YES, SIR. IT WAS ON THE RIGHT FOOTBOARD POSTER
20 BED.

21 Q. ON THAT POSTER, OR UNDERNEATH IT RIGHT THERE?
22 THIS THING UNDERNEATH IT, THAT'S WHAT IT WAS ON?

23 A. IT WAS ON TOP OF IT, YES, SIR.

24 Q. RIGHT. OKAY. AND NO ONE INDICATED TO YOU THAT
25 THAT MAIL HAD BEEN MOVED OR ANYTHING?

1 A. NO, SIR.

2 Q. SO YOU TOOK PICTURES OF IT THERE TO MAKE SURE THAT
3 THAT'S WHERE IT WAS AS FAR AS YOU KNEW AND ALL THE
4 OFFICERS KNEW FROM THE ENTIRE TIME THAT YOU ALL WERE ON
5 THE SCENE UNTIL YOU ACTUALLY GATHERED THEM UP AND TOOK
6 THEM AND PUT THEM INTO CONTAINERS?

7 A. YES, SIR, THAT'S CORRECT.

8 Q. AND THAT'S IN THE BEDROOM?

9 A. YES, SIR, IN THE BEDROOM WHERE MS. CHAVEZ WAS.

10 Q. OKAY. ALL RIGHT.

11 A. (HANDING BACK TO COUNSEL.)

12 Q. YOU TESTIFIED A MINUTE AGO THAT YOU BELIEVE THAT,
13 I THINK YOU PUT IT -- LET ME LOOK AT MY NOTES AGAIN --
14 YOU BELIEVE SHE WAS LOOKING AT THE MAIL WHEN IT HAPPENED?

15 A. YES, SIR.

16 Q. SO WHEN MS. CHAVEZ APPARENTLY WAS IN THE THROES OF
17 THIS ATTACK, WHATEVER, YOU ARE SAYING SHE HAD TIME THEN
18 TO RESTACK THE MAIL ON TOP OF THE BEDPOST?

19 A. NO, SIR, I DIDN'T SAY THAT AT ALL. I BELIEVE SHE
20 HAD JUST BEGAN LOOKING AT THE MAIL. HE CAME UP BEHIND
21 HER, PUT HIS ARM AROUND HER, PULLED HER BACK, AND SHE DID
22 NOT HAVE A CHANCE TO ACTUALLY GO THROUGH THE MAIL. SHE
23 BEGAN LOOKING AT THE MAIL I BELIEVE WHEN HE APPROACHED
24 HER FROM BEHIND.

25 Q. YOU HAVE NOTHING WHATSOEVER TO SHOW THAT THE MAIL

1 APPARENTLY WAS NOT DISTURBED, STILL STACKED?

2 A. IT WAS NOT STACKED UNDER EACH OTHER. IF YOU LOOK
3 AT PICTURES, THEY WERE FANNED OUT A LITTLE. SO THEY
4 WEREN'T STACKED IN UNIFORM UNDER EACH OTHER. SO SHE,
5 THERE IS A POSSIBILITY THAT SHE COULD HAVE BEGAN LOOKING
6 AT IT WHEN HE CAME UP FROM BEHIND HER.

7 Q. BUT THE MAIL WAS NOT ON THE FLOOR?

8 A. NO, IT WAS NOT ON THE FLOOR.

9 Q. AND IT WAS NOWHERE NEAR THE BODY?

10 A. NOT ON THE FLOOR. IT WAS IN THE VICINITY OF THE
11 BODY BECAUSE OF THE BED BEING IN THE SAME ROOM, BUT IT
12 WAS NOT ON THE FLOOR WITH THE BODY, NO.

13 Q. OKAY.

14 MR. DAY: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE,
15 YOUR HONOR, THANK YOU.

16 THE COURT: RE-EXAM?

17 MR. WAGNER: NO, SIR.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK
19 YOU, MA'AM.

20 THE WITNESS: YES, SIR.

21 (DISCUSSION OFF THE RECORD.)

22 (WITNESS LEAVES STAND.)

23 (COUNSEL CONFER.)

24 MR. WAGNER: BEG THE COURT'S INDULGENCE, JUDGE.

25 THE COURT: CERTAINLY.

1 MR. WAGNER: JENNIFER PEREZ.

2 MR. DAY: BEFORE SWEARING THE WITNESS, MAY I HAVE
3 THE DEFENDANT COME BACK IN?

4 THE COURT: CERTAINLY.

5 (WHEREUPON, THE DEFENDANT RETURNED TO THE
6 COURTROOM AT APPROXIMATELY 1:11 P.M.)

7 WHEREUPON,

8 JENNIFER PEREZ,

9 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. WAGNER:

11 Q. MA'AM, COULD YOU GIVE US YOUR FULL NAME AND SPELL
12 YOUR LAST NAME FOR THE RECORD?

13 A. JENNIFER L. PEREZ, P-E-R-E-Z.

14 Q. IF YOU COULD, JENNIFER, WOULD YOU PLEASE TRY TO
15 SPEAK RIGHT IN THE MICROPHONE?

16 A. JENNIFER L. PEREZ, P-E-R-E-Z.

17 Q. THANK YOU. JENNIFER, WHERE DO YOU LIVE?

18 A. WALHALLA.

19 Q. OKAY. AND ARE YOU RELATED TO THE DEFENDANT?

20 A. YES. SHE'S MY SISTER.

21 Q. THE VICTIM WAS YOUR SISTER?

22 A. OH, NO, NO. HE'S MY BROTHER-IN-LAW.

23 Q. AND YOU WERE RELATED TO THE VICTIM, SHE'S YOUR
24 SISTER?

25 A. YES.

1 Q. AND IF YOU WOULD SPEAK UP BECAUSE IT'S HARD TO
2 HEAR BACK HERE. I'M SORRY.

3 A. THE DEFENDANT WAS MY BROTHER-IN-LAW AND THE VICTIM
4 WAS MY SISTER.

5 Q. WERE YOU CLOSE WITH YOUR SISTER?

6 A. SOMEWHAT.

7 Q. BACK ON OCTOBER 14, 2009, DID YOUR SISTER COME TO
8 YOUR HOUSE?

9 A. YES, SHE ARRIVED, SHE ARRIVED THERE AT 10:30.

10 Q. WHAT DID SHE DO?

11 A. SHE HAD GOT THERE AND WE WERE TALKING FOR A FEW
12 MINUTES. THEN SHE WENT TO GO TAKE A SHOWER. AND WHEN
13 SHE WENT TO GO TAKE A SHOWER, DAVID HAD CALLED MY PHONE
14 ASKING FOR --

15 Q. WHEN YOU SAY DAVID, ARE YOU REFERRING TO THE
16 DEFENDANT?

17 A. YES -- HE, HE HAD CALLED MY PHONE ASKING FOR
18 WENDOLI, AND I HAD TOLD HIM, I HAD TOLD HIM THAT SHE WAS
19 TAKING A SHOWER, THAT SHE COULDN'T TALK. AND THEN I HAD
20 HUNG UP. THEN AFTER WENDOLI HAD FINISHED TAKING HER
21 SHOWER, SHE HAD CALLED HIM BACK, AND HE WAS, HE WAS
22 SCREAMING AT HER AND HE WAS TELLING HER IF HE COULD GO --
23 IF SHE COULD GO OVER THERE TO GO GET HER MAIL. AND AFTER
24 THAT, THEY WERE JUST ARGUING BACK AND FORTH, AND I COULD
25 HEAR HIM YELLING AT HER. AND SHE HAD TOLD ME THAT HE

1 SAID THAT IF HE, IF HE, IF THEY WOULD EVER, YOU KNOW --

2 MR. DAY: OBJECTION, YOUR HONOR, I'M SORRY. SHE'S
3 TALKING ABOUT WHAT SOMEBODY ELSE SAID.

4 THE COURT: MR. WAGNER?

5 MR. WAGNER: I'M NOT SURE WHAT SHE SAID, JUDGE.

6 THE COURT: I THINK SHE SAID THAT SHE WAS TALKING
7 ABOUT A CONVERSATION OR A STATEMENT WAS MADE BY SOMEONE
8 ELSE.

9 I'M GONNA HAVE TO SUSTAIN THE OBJECTION.

10 MR. WAGNER: LET ME REPHRASE.

11 BY MR. WAGNER:

12 Q. SHE WAS TAKING A SHOWER?

13 A. YES.

14 Q. THE DEFENDANT CALLED?

15 A. MY PHONE.

16 Q. YOUR PHONE LOOKING FOR HER?

17 A. YES, SIR.

18 Q. YOU SAID THAT SHE WAS IN THE SHOWER?

19 A. YES, SIR.

20 Q. YOU HUNG UP ON HIM?

21 A. YES, SIR.

22 Q. HE CALLED BACK. DID HE CALL YOUR PHONE AGAIN OR
23 DID SHE CALL HIM?

24 A. NO. SHE CALLED HIM.

25 Q. AND YOU SAY YOU COULD HEAR HIM SCREAMING AT HER?

1 A. YES. I COULD HEAR HIM SCREAMING. SHE WAS TALKING
2 TO HIM ON THE PHONE AND I COULD HEAR HIM SCREAMING AT
3 HER.

4 Q. HE WANTED HER TO COME GET HER MAIL?

5 A. YES, SIR.

6 Q. OKAY. THEN WHAT HAPPENED? DID SHE LEAVE?

7 A. YEAH. SHE LEFT AROUND 2:00, 2:15, I'M NOT REALLY
8 SURE.

9 Q. AND WHERE WAS SHE GOING?

10 A. SHE WAS GONNA GET HER MAIL.

11 Q. THAT'S THE LAST YOU SAW HER ALIVE ABOUT TWO OR
12 2:15 THAT DAY?

13 A. YES, SIR.

14 MR. WAGNER: THANK YOU, MA'AM. THAT'S ALL THE
15 QUESTIONS I HAVE.

16 CROSS-EXAMINATION BY MR. DAY:

17 Q. MS. PEREZ, TO MAKE SURE I UNDERSTAND THIS, WAS
18 WENDOLI LIVING WITH YOU ALL?

19 A. YEAH, SHE WAS LIVING WITH US.

20 Q. AND SHE CAME IN FROM WHERE?

21 A. SHE CAME BACK FROM HER BOYFRIEND'S HOUSE WHERE SHE
22 WAS, WHERE SHE WAS AT.

23 Q. OKAY.

24 A. THAT NIGHT.

25 Q. AND THAT'S WHERE SHE HAD ACTUALLY BEEN STAYING

1 MOST OF THE TIME?

2 A. YES, SIR.

3 Q. OKAY. AND YOU RECEIVED A PHONE CALL FROM DAVID
4 ASKING FOR HER?

5 A. YES, SIR. HE CALLED MY PHONE.

6 Q. FROM WHAT I UNDERSTAND, YOU SAID SHE'S IN THE
7 SHOWER, SHE CAN'T TALK NOW, ENDED THAT CONVERSATION?

8 A. YES, SIR.

9 Q. WHEN SHE GOT OUT OF THE SHOWER, SHE THEN CALLED
10 DAVID, RIGHT?

11 A. YES, SIR.

12 Q. YOU SAID APPARENTLY THERE WAS SOME LOUD WORDS
13 BETWEEN THEM?

14 A. YES, SIR.

15 Q. AND YOU COULD HEAR THAT?

16 A. YES, SIR.

17 Q. OKAY. THAT WAS, WHAT, AROUND 10, 10:30, SOMETHING
18 LIKE THAT?

19 A. WELL, SHE GOT THERE AT 10:30, HAD TAKEN A SHOWER,
20 AND THEN AFTER THAT I'M NOT REALLY SURE WHAT TIME.

21 Q. SO THIS WOULD HAVE BEEN SOMETIME AROUND 11, YOU
22 SAY, AND SHE LEFT AROUND 2:00 TO GO TO THE HOUSE?

23 A. YES, SIR.

24 Q. OKAY.

25 MR. DAY: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE.

1 THANK YOU, MA'AM.

2 MR. WAGNER: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: YOU MAY STEP DOWN. THANK YOU, MA'AM.

4 (WITNESS LEAVES STAND.)

5 MR. WAGNER: I CALL CARLOS PEREZ.

6 WHEREUPON,

7 CARLOS PEREZ,

8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. WAGNER:

10 Q. COULD YOU GIVE US YOUR FULL NAME AND SPELL YOUR
11 LAST NAME FOR THE RECORD?

12 A. MY NAME IS CARLOS R. PEREZ, P-E-R-E-Z.

13 Q. MR. PEREZ, WHERE DO YOU LIVE?

14 A. I LIVE IN WALHALLA.

15 Q. AND WHERE DO YOU WORK?

16 A. I WORK AT COMMUNITY (PHONETIC) IN SENECA.

17 Q. WERE YOU WORKING THE SAME -- AND YOU ARE RELATED
18 TO THE VICTIM?

19 A. YES, THAT'S MY DAUGHTER.

20 Q. WERE YOU WORKING AT THE SAME COMPANY AS YOUR
21 DAUGHTER?

22 A. YES, I WAS.

23 Q. WHAT TIME WAS SHE SUPPOSED TO BE BACK TO WORK BACK
24 IN OCTOBER OF 2009?

25 A. SHE WORKED SECOND SHIFT, SO SHE'S USUALLY THERE,

1 SHE'S GOT TO BE THERE BY THREE.

2 Q. SO WHEN SHE LEFT THE HOUSE WHERE YOUR OTHER
3 DAUGHTER WAS AT TWO, SHE HAD TO BE AT WORK AT 3:00 THAT
4 DAY?

5 A. YES.

6 Q. WERE YOU AROUND THAT DAY AT ALL, WERE YOU AT WORK
7 OR --

8 A. I WAS AT WORK THAT DAY. I HAD TO WORK.

9 Q. DO YOU KNOW THE DEFENDANT?

10 A. YES, I DO.

11 Q. HE'S YOUR SON-IN-LAW?

12 A. YES.

13 Q. OKAY. DID YOU NOTICE ANYTHING AROUND THE TIME
14 THEY SEPARATED ABOUT THEIR RELATIONSHIP?

15 A. UM, A LOT OF THINGS I NOTICED IS THAT WHILE SHE
16 WAS LIVING WITH HIM, SHE NEVER REALLY WORE MAKEUP OR
17 NOTHING, SHE WAS KIND OF MORE, SHE WAS CONTROLLED. AFTER
18 SHE MOVED IN WITH US, WHICH WAS ABOUT A MONTH AND A HALF
19 BEFORE THIS HAPPENED, SHE WOULD COME TO WORK WITH MAKEUP
20 ON, DIFFERENT CLOTHES, STUFF LIKE THAT. SO WHEN SHE GOT
21 AWAY FROM HIM SHE STARTED LIVING HER LIFE, WEARING MAKEUP
22 AND STUFF LIKE THAT, STUFF THAT SHE NEVER WORE BEFORE
23 THAT, BEFORE SHE HAD LEFT THERE.

24 Q. WHAT DID YOU FEEL THE REASON FOR THAT WAS?

25 A. I JUST THINK HE'S REAL CONTROLLING.

1 MR. DAY: OBJECTION, YOUR HONOR, HE'S NOW
2 SPECULATING.

3 THE COURT: SUSTAINED. UNLESS YOU CAN SHOW A
4 FOUNDATION FOR THAT OPINION.
5 BY MR. WAGNER:

6 Q. HOW LONG HAVE YOU KNOWN THE DEFENDANT?

7 A. ABOUT THREE YEARS.

8 Q. AND HAVE YOU HAD CONTACT WITH HIM OVER THOSE THREE
9 YEARS AS YOUR SON-IN-LAW?

10 A. I THINK IF I TALKED TO HIM TWICE, THAT'S ABOUT IT.
11 THE WHOLE THREE YEARS THEY WERE DOWN HERE, TWO OR THREE
12 TIMES I TALKED TO HIM, THAT'S IT.

13 Q. YOU WEREN'T CLOSE WITH HIM?

14 A. NO.

15 MR. WAGNER: THANK YOU. THAT'S ALL THE QUESTIONS I
16 HAVE.

17 MR. DAY: I HAVE NO QUESTIONS. THANK YOU, SIR.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK
19 YOU, SIR.

20 (WITNESS LEAVES STAND.)

21 MR. WAGNER: YOUR HONOR, WE'VE PROBABLY GOT ONE MORE
22 WITNESS. I DIDN'T KNOW IF YOU WANT TO TAKE THAT UP NOW
23 OR AFTER LUNCH.

24 THE COURT: YOU'VE GOT ONE YOU CAN DO BEFORE LUNCH?

25 MR. WAGNER: YES, SIR, IT WOULD BE OFFICER JONES.

1 DISCUSSION OF THE CASE AMONG YOURSELVES OR PERMIT ANYONE
2 ELSE TO DISCUSS THE CASE WITH YOU.

3 EVERYONE REMAIN SEATED WHILE THE JURY RETIRES FROM
4 THE COURTROOM.

5 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
6 APPROXIMATELY 12:20 P.M.)

7 THE COURT: AT THE SIDE-BAR I DISCUSSED WITH THE
8 ATTORNEYS DURING THE COURSE OF THE TRIAL AND HOW MANY
9 MORE WITNESSES AND ALL AND ALSO WHETHER OR NOT THE
10 DEFENDANT WOULD BE TESTIFYING. IT'S MY UNDERSTANDING
11 THAT WE HAVE AT THIS TIME ONE WITNESS, AND THEN OF COURSE
12 THE STATE WOULD REST. AND INASMUCH AS THE DECISION AS TO
13 WHETHER OR NOT THE DEFENDANT WOULD TESTIFY IS THE
14 DEFENDANT'S ENTIRELY SOLE DECISION.

15 EXAMINATION OF DEFENDANT BY COURT RE TESTIFYING:

16 THE COURT: I THOUGHT I WOULD TAKE THIS TIME TO
17 EXPLAIN TO HIM HIS RIGHTS TO TESTIFY OR NOT TESTIFY SO HE
18 WILL HAVE TIME TO CONSIDER IT.

19 IS THERE ANYTHING FROM THE STATE BEFORE I DO THAT?

20 MR. WAGNER: NO, SIR.

21 THE COURT: MR. DAY, IS THERE ANYTHING YOU WOULD
22 OFFER BEFORE I EXAMINE MR. CHAVEZ?

23 MR. DAY: NOT AT THIS TIME, YOUR HONOR, NO.

24 THE COURT: ALL RIGHT. MR. CHAVEZ, IF YOU WOULD
25 PLEASE STAND AGAIN. STAND.

1 NOW, YOU UNDERSTAND YOU ARE STILL UNDER OATH?

2 THE DEFENDANT: YES.

3 THE COURT: I PUT YOU UNDER OATH FOR THE EXERCISE OF
4 YOUR OTHER CONSTITUTIONAL RIGHT SO I DO NOT NEED TO
5 RE-SWEAR YOU. DO YOU UNDERSTAND THAT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: AT THIS TIME I'M GOING TO EXPLAIN TO YOU
8 CERTAIN OF YOUR RIGHTS. IF YOU DO NOT UNDERSTAND
9 ANYTHING I SAY, PLEASE LET ME KNOW. IF YOU WANT ME TO
10 EXPLAIN ANYTHING IN MORE DETAIL, PLEASE LET ME KNOW. DO
11 YOU UNDERSTAND THIS?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: WE HAVE NOW REACHED OR ARE APPROACHING
14 THE STAGE OF THE TRIAL WHERE YOU MAY PRESENT YOUR
15 DEFENSE. YOU HAVE THE RIGHT TO CLAIM THE PROTECTIONS
16 GIVEN TO YOU BY THE FIFTH AMENDMENT OF THE CONSTITUTION
17 OF THE UNITED STATES. THIS AMENDMENT STATES IN PART, NO
18 PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A
19 WITNESS AGAINST HIMSELF. THIS MEANS THAT YOU CANNOT BE
20 REQUIRED TO TESTIFY IN THIS CASE. YOU HAVE THE RIGHT TO
21 TESTIFY ON YOUR OWN BEHALF; HOWEVER, NO ONE CAN MAKE YOU
22 TESTIFY. THIS IS A PERSONAL RIGHT AND NO ONE CAN WAIVE
23 THIS RIGHT EXCEPT YOU.

24 WHETHER YOU TESTIFY OR NOT TESTIFY IS ENTIRELY UP TO
25 YOU. YOU MAY TALK WITH YOUR ATTORNEY, YOUR FRIENDS OR

1 FAMILY OR ANYONE ELSE. BUT THE FINAL DECISION WILL BE
2 LEFT ENTIRELY UP TO YOU. DO YOU UNDERSTAND WHAT I'VE
3 EXPLAINED TO YOU?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT
6 I'VE EXPLAINED TO YOU?

7 THE DEFENDANT: NO.

8 THE COURT: ALL RIGHT. AS I SAY, YOU HAVE THE
9 OPPORTUNITY TO DISCUSS WITH ANYONE AS TO WHETHER OR NOT
10 YOU WANT TO TESTIFY OR NOT, AND I'LL ASK YOU AGAIN. I
11 MIGHT ALSO NOTE THAT IF YOU DECIDE TO EXERCISE YOUR RIGHT
12 NOT TO TESTIFY, THEN I WILL INSTRUCT THE JURY THAT IT
13 CANNOT BE CONSIDERED BY THE JURY YOUR EXERCISE OF THAT
14 RIGHT NOT TO TESTIFY IN ANY WAY WHATSOEVER. THEY CAN'T
15 EVEN DISCUSS IT IN THE JURY ROOM. DO YOU UNDERSTAND
16 THAT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS
19 WHATSOEVER ABOUT WHAT I'VE BEEN OVER?

20 THE DEFENDANT: NO, SIR.

21 THE COURT: VERY GOOD. WE'LL RECEDE FOR LUNCH AND
22 COME BACK AT 1:30. VERY GOOD.

23 (A LUNCHEON RECESS OCCURRED.)

24

25

1 AFTERNOON PROCEEDINGS

2

3 THE COURT: IS THERE ANYTHING FROM THE STATE BEFORE
4 WE PROCEED?

5 MR. WAGNER: NO, SIR.

6 THE COURT: FROM THE DEFENSE?

7 MR. DAY: NONE, YOUR HONOR.

8 THE COURT: ALL RIGHT. BEFORE WE BROKE FOR LUNCH I
9 WAS ADVISING THE DEFENDANT OF HIS RIGHT TO TESTIFY OR NOT
10 TO TESTIFY AND I LEFT A FEW THINGS OUT. SO IF HE -- I
11 THINK I'M GONNA HAVE TO DO IT AGAIN, IF YOU WOULD PLEASE.
12 IT'S NOT GONNA CHANGE ANYTHING OTHER THAN AS FAR AS IT IS
13 YOUR DECISION AND YOURS ALONE, BUT THERE ARE CERTAIN
14 OTHER THINGS I NEED TO ADVISE YOU OF.

15 AS I SAID EARLIER, I'M GOING TO EXPLAIN CERTAIN OF
16 YOUR RIGHTS. IF YOU DO NOT UNDERSTAND ANYTHING I SAY,
17 PLEASE LET ME KNOW. IF YOU WANT ME TO EXPLAIN ANYTHING
18 IN MORE DETAIL, PLEASE LET ME KNOW. DO YOU UNDERSTAND
19 THIS?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: AS I'VE SAID, WE ARE APPROACHING THE
22 STAGE OF THE TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE.
23 YOU HAVE THE RIGHT TO CLAIM THE PROTECTIONS OF THE FIFTH
24 AMENDMENT OF THE CONSTITUTION WHICH PROVIDES IN PART, NO
25 PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A

1 WITNESS AGAINST THEMSELVES. THIS MEANS THAT YOU CANNOT
2 BE REQUIRED TO TESTIFY IN THIS CASE. YOU HAVE THE RIGHT
3 TO TESTIFY ON YOUR OWN BEHALF. HOWEVER, NO ONE CAN MAKE
4 YOU TESTIFY. THIS IS A PERSONAL RIGHT AND NO ONE CAN
5 WAIVE THIS RIGHT EXCEPT YOU.

6 IF YOU DECIDE TO TESTIFY -- AND THIS IS THE PART I
7 FORGOT TO GIVE YOU -- IF YOU DECIDE TO TESTIFY YOU WILL
8 BE SUBJECT TO THE SAME RULES THAT GOVERN OTHER WITNESSES.
9 YOU MAY BE EXAMINED AND CROSS-EXAMINED ON ANY RELEVANT
10 ISSUES IN THIS CASE. IN ADDITION, IF YOU HAVE ANY
11 CONVICTIONS INVOLVING DISHONESTY OR FALSE STATEMENT OR
12 CRIMES PUNISHABLE BY IMPRISONMENT MORE THAN ONE YEAR, AND
13 THIS COURT DETERMINES THAT THE PROBATIVE VALUE OF
14 ADMITTING THIS EVIDENCE OUTWEIGHS ANY PREJUDICIAL EFFECT
15 TO YOU, THE SOLICITOR WILL BE ABLE TO USE YOUR RECORD TO
16 ATTACK YOUR CREDIBILITY.

17 IF YOU DECIDE TO TESTIFY, THIS DECISION ON YOUR PART
18 MUST BE FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY
19 MADE WITH KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY
20 THE FIFTH AMENDMENT AND THE CONSEQUENCES OF YOUR DECISION
21 TO TESTIFY.

22 IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE
23 JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
24 TESTIFY ANY CONSIDERATION WHATSOEVER, THAT THERE IS TO BE
25 ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT

1 TESTIFY. IT IS LEFT ENTIRELY UP TO YOU WHETHER OR NOT
2 THAT YOU TESTIFY. YOU MAY TALK WITH YOUR ATTORNEY, YOUR
3 FAMILY AND FRIENDS OR ANYONE ELSE, BUT THE FINAL DECISION
4 WOULD BE ENTIRELY UP TO YOU. DO YOU UNDERSTAND WHAT I'VE
5 EXPLAINED TO YOU?

6 THE DEFENDANT: YES.

7 THE COURT: AND YOU DO UNDERSTAND YOU ARE STILL
8 UNDER OATH?

9 THE DEFENDANT: YES.

10 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I
11 HAVE EXPLAINED TO YOU?

12 THE DEFENDANT: NO, YOUR HONOR.

13 THE COURT: VERY GOOD. THANK YOU VERY MUCH. WE
14 WILL PROCEED. OKAY.

15 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

16 MR. WAGNER: NO, SIR.

17 THE COURT: FROM THE DEFENSE?

18 MR. DAY: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT, VERY GOOD, ASK THE JURY TO
20 JOIN US.

21 (THE JURY ENTERED THE COURTROOM AT
22 APPROXIMATELY 1:41 P.M.)

23 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE
24 JURY AND ALTERNATES ARE IN THE JURY-BOX.

25 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, WE

1 WILL NOW CONTINUE WITH THE STATE'S CASE.

2 SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

3 MR. WAGNER: THANK YOU, YOUR HONOR. WE WOULD CALL
4 LIEUTENANT RORY JONES.

5 WHEREUPON,

6 RORY JONES,

7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MR. WAGNER:

9 Q. LIEUTENANT JONES, COULD YOU GIVE US YOUR FULL NAME
10 AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

11 A. MY NAME IS RORY RICHARD JONES, LAST NAME SPELLING
12 IS J-O-N-E-S.

13 Q. AND WHO DO YOU WORK FOR?

14 A. I WORK FOR THE CITY OF SENECA.

15 Q. HOW LONG HAVE YOU BEEN WORKING WITH THE CITY OF
16 SENECA?

17 A. APPROXIMATELY SEVEN YEARS.

18 Q. HAS ALL THAT BEEN IN LAW ENFORCEMENT?

19 A. I'M SORRY?

20 Q. YOU WERE WORKING FOR THE POLICE DEPARTMENT FOR
21 SEVEN YEARS?

22 A. THAT'S CORRECT.

23 Q. DID YOU WORK IN LAW ENFORCEMENT OTHER PLACES
24 BEFORE SENECA?

25 A. YES, SIR. I WORKED FOR THE CITY OF WALHALLA FOR

1 APPROXIMATELY THREE YEARS, AS WELL.

2 Q. ARE YOU FROM AROUND HERE?

3 A. ORIGINALLY FROM NORTH CAROLINA.

4 Q. YOU LIVED DOWN HERE A LONG TIME, THOUGH?

5 A. I'VE BEEN HERE FOR A LONG TIME, YES, SIR.

6 Q. OKAY. WERE YOU WORKING AS A DETECTIVE FOR THE
7 CITY OF SENECA POLICE DEPARTMENT BACK ON OCTOBER 14,
8 2009?

9 A. YES, I WAS.

10 Q. AND DID YOU GET ASSIGNED THIS STABBING CASE?

11 A. YES, I DID.

12 Q. WERE YOU EN ROUTE TO THE SCENE AND GOT REDIRECTED?

13 A. I WAS CONTACTED VIA PAGE FIRST FROM THE SENECA
14 POLICE DEPARTMENT DISPATCH. UPON MY ARRIVAL HEADED
15 TOWARDS THE SCENE I WAS CONTACTED BY MAJOR NORMANDIN. HE
16 ADVISED ME TO GO TO THE POLICE DEPARTMENT AND INTERVIEW
17 THE SUSPECT, MR. CHAVEZ.

18 Q. ABOUT WHAT TIME WAS THAT?

19 A. APPROXIMATELY I WAS NOTIFIED I THINK 5:50
20 ORIGINALLY BY DISPATCH, ARRIVED AT THE POLICE DEPARTMENT
21 A LITTLE AFTER SIX.

22 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 3 -- EXCUSE
23 ME, STATE'S EXHIBIT NUMBER 2 -- NO RIGHT. WAIT A MINUTE,
24 I'M RIGHT, NUMBER 3. DO YOU RECOGNIZE THAT?

25 A. I DO.

1 Q. WHAT IS THAT?

2 A. THAT'S A STATEMENT OF *MIRANDA* RIGHTS WHICH IS USED
3 FOR ADVISING A SUSPECT OR SOMEONE WE HAVE DETAINED OR
4 UNDER ARREST OF THEIR *MIRANDA* RIGHTS WHICH EVERYBODY HAS
5 A RIGHT TO KNOW AND BE READ BEFORE THEY ARE ASKED ANY
6 QUESTIONS CONCERNING AN INCIDENT OR A CRIME THEY'VE
7 COMMITTED.

8 Q. WAS HE IN CUSTODY AT THAT TIME?

9 A. HE WAS.

10 Q. WAS HE HANDCUFFED WHEN YOU GOT IN THERE?

11 A. HE WAS.

12 Q. AND HAD OFFICER BOLDEN GONE OVER THOSE RIGHTS WITH
13 HIM?

14 A. OFFICER BOLDEN, WHEN I FIRST ARRIVED AT THE POLICE
15 DEPARTMENT, HE ADVISED THAT MR. CHAVEZ HAS BEEN ADVISED
16 HIS *MIRANDA* RIGHTS. I SAT DOWN WITH MR. CHAVEZ,
17 INTRODUCED MYSELF, LAID THIS SAME PAPER IN FRONT OF HIM,
18 AND I SAID I UNDERSTAND YOU HAVE ALREADY BEEN ADVISED OF
19 YOUR *MIRANDA* RIGHTS. DO YOU UNDERSTAND THEM AND DO YOU
20 WISH TO TALK TO ME? HE SAID "YES" TO ALL THREE
21 QUESTIONS.

22 Q. AND AT THAT TIME DID HE SAY WAIVE HIS RIGHTS AND
23 TALK TO YOU?

24 A. HE DID AGREE TO TALK TO ME.

25 Q. DID YOU TALK TO HIM, DID YOU QUESTION HIM?

1 A. I DID.

2 Q. WHERE DID THIS OCCUR, WAS IT IN LIKE A MEETING
3 ROOM?

4 A. SOME CALL MIGHT IT A MEETING ROOM. IT'S A
5 TRAINING ROOM WHERE WE HAVE OUR MONTHLY TRAINING,
6 MEETINGS. SOME INTERVIEWS AND INTERROGATIONS MAY GO ON
7 IN THIS ROOM. JUST A MULTIPURPOSE ROOM FOR THE POLICE
8 DEPARTMENT.

9 Q. HOW BIG A ROOM IS IT?

10 A. IF I HAD TO GUESS -- I'VE NEVER MEASURED IT, BUT
11 IF I HAD TO GUESS, 25 BY 25 OR SO, JUST BALLPARKING IT.

12 Q. IT'S A BIG ROOM?

13 A. IT'S A BIG ROOM, YES.

14 Q. HOW MANY PEOPLE CAN SIT IN THERE ON AN AVERAGE
15 TRAINING SESSION?

16 A. COMFORTABLY, PROBABLY 30 OR MORE.

17 Q. AND WAS HE SITTING IN THERE WITH MARK BOLDEN,
18 OFFICER MARK BOLDEN THERE?

19 A. HE WAS.

20 Q. WHAT INITIALLY DID YOU TELL HIM? HOW DID YOU GO
21 ABOUT TALKING TO HIM? WHAT DID YOU SAY?

22 A. WHEN I FIRST ENTERED THE ROOM, MY FIRST WORDS OUT
23 OF MY MOUTH WERE "I RECOGNIZE YOU." HE SAID, "YOU LOOK
24 FAMILIAR, TOO." WE COULDN'T EVER FIGURE OUT WHAT IT WAS
25 SO I KIND OF WENT AWAY FROM THAT, EXPLAINED TO HIM WHY I

1 WAS THERE AND WHO I WAS, AND THEN IMMEDIATELY WENT INTO
2 THIS. THEN WE STARTED TALKING ABOUT THE CASE OR THE
3 INCIDENT LOCATION AND THE SCENE AND WHAT HAPPENED.

4 Q. DID YOU AT ANY TIME, DID YOU ALL EVER THREATEN
5 HIM, TRY TO COERCE HIM, THREATEN HIS FAMILY, BEAT A
6 CONFESSION OUT OF HIM; DID YOU EVER DO ANYTHING TO FORCE
7 HIM INTO GIVING A STATEMENT?

8 A. ABSOLUTELY NOT.

9 Q. DID YOU TALK TO HIM FOR A WHILE BEFORE HE ACTUALLY
10 GAVE THE STATEMENT?

11 A. WE TALKED TO HIM. AT ONE POINT I REALIZED THIS
12 WOULD BE OUR CONVERSATION AND THE INTERVIEW WOULD BE MORE
13 THAN JUST A STATEMENT TAKEN. SO I ASKED HIM IF I COULD
14 TAKE NOTES. HE SAID THAT WOULD BE FINE. WE JUST TALKED
15 IN GENERAL. JUST LIKE A CONVERSATION. AND THEN I TALKED
16 ABOUT THE, AGAIN WENT BACK TO THE CASE AND QUESTIONED
17 HIM.

18 Q. AND DID HE AGREE TO GO AHEAD AND WRITE YOU A
19 STATEMENT?

20 A. HE DID. I ASKED HIM IF HE WANTED TO WRITE IT OR
21 IF HE WANTED ME TO WRITE IT, AND HE ASKED THAT I WRITE
22 IT.

23 Q. LET ME SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
24 NUMBER 2. DO YOU RECOGNIZE THAT?

25 A. I DO.

1 Q. AND WHAT IS THAT?

2 A. THIS IS A VOLUNTARY STATEMENT THAT I HAVE WRITTEN
3 UPON REQUEST OF MR. DAVID CHAVEZ IN REFERENCE TO THE
4 INCIDENT IN QUESTION, AS WELL AS A DIAGRAM THAT HE DREW
5 FOR ME.

6 Q. ONCE AGAIN, TO THE BEST OF YOUR KNOWLEDGE, DID HE
7 FREELY AND VOLUNTARILY GIVE YOU THAT STATEMENT?

8 A. YES, HE DID.

9 Q. OKAY.

10 MR. WAGNER: YOUR HONOR, AT THIS TIME I BELIEVE
11 STATE'S EXHIBIT NUMBER 2, THE STATEMENT, AND NUMBER 3,
12 THE RIGHTS WAIVER, 2 BEING THE STATEMENT. I THINK THEY
13 ARE IN, BUT AT THIS TIME I MOVE TO HAVE THOSE ADMITTED.

14 THE COURT: ALL RIGHT. MR. DAY, ANYTHING?

15 MR. DAY: NO, YOUR HONOR. THE *MIRANDA* RIGHTS WE'VE
16 ALREADY AGREED THAT SHOULD BE GOING IN. THE STATEMENT,
17 SUBJECT TO CROSS-EXAMINATION.

18 THE COURT: ALL RIGHT, VERY GOOD.

19 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THE
20 COURT GENERALLY DETERMINES THE ADMISSIBILITY OF EVIDENCE.
21 I INSTRUCT YOU THAT IN REGARD TO ANY ALLEGED STATEMENT
22 MADE BY THE DEFENDANT, THAT YOU, THE MEMBERS OF THE JURY,
23 MAKE THE ULTIMATE DETERMINATION OF WHETHER OR NOT THE
24 DEFENDANT MADE THE STATEMENT. IF HE DID MAKE THE
25 STATEMENT, WHETHER THE STATEMENT WAS MADE OF THE

1 DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL AND
2 ACCORD; AND FINALLY, WHAT WEIGHT SHOULD BE GIVEN TO THE
3 ALLEGED STATEMENT. I CHARGE YOU THAT YOU MUST DETERMINE
4 THAT THE ALLEGED STATEMENT WAS A PRODUCT OF AN
5 ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY ITS MAKER.
6 IF YOU DETERMINE IT WAS, THEN THE BURDEN IS UPON THE
7 STATE TO PROVE THIS FACT AS ALL OTHER FACTS BEYOND A
8 REASONABLE DOUBT. THEN YOU MAY GIVE THE STATEMENT SUCH
9 FURTHER CONSIDERATION AS YOU DEEM PROPER.

10 IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE
11 FREE AND VOLUNTARY WILL AND EXPRESSION OF THE DEFENDANT,
12 THEN YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL. IN
13 DETERMINING WHETHER THE DEFENDANT'S WILL WAS OVERCOME BY
14 OBTAINING THE STATEMENT, YOU SHOULD CONSIDER BOTH THE
15 CHARACTERISTICS OF THE ACCUSED AND THE DETAILS OF THE
16 INTERROGATION, WHICH IS REFERRED TO IN THE LAW AS THE
17 TOTALITY OF THE CIRCUMSTANCES.

18 SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE THE
19 AGE OF ACCUSED, HIS EDUCATION OR LACK THEREOF, HIS MENTAL
20 ABILITY OR CAPACITY, HIS I.Q. OR INTELLIGENCE, HIS
21 BACKGROUND AND ENVIRONMENT; THE ADVICE OR LACK THEREOF TO
22 THE ACCUSED OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT
23 NOT LIMITED TO THE PROCEDURAL SAFEGUARDS KNOWN AS *MIRANDA*
24 WARNINGS CONCERNING THE RIGHT TO REMAIN SILENT, THAT A
25 STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW,

1 THE RIGHT TO HAVE A LAWYER PRESENT, IF INDIGENT AND COULD
2 NOT AFFORD A LAWYER, THEN A LAWYER WOULD BE APPOINTED TO
3 REPRESENT HIM WITHOUT COST AND THAT HE COULD STOP THE
4 STATEMENT AT ANY TIME. OTHER FACTORS ARE THE PLACE AND
5 LENGTH OF DETENTION AND THE NATURE OF THE QUESTIONING.

6 YOU, THE JURY, MUST CAREFULLY SCRUTINIZE ALL OF THE
7 SURROUNDING CIRCUMSTANCES BEFORE YOU CAN GIVE ANY WEIGHT
8 TO AN ALLEGED STATEMENT. YOU MUST BE SATISFIED BEYOND A
9 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE
10 ACCUSED, UNINFLUENCED BY A PROMISE OF REWARD OR THREAT OF
11 INJURY OR DIMINUTION OF HIS RIGHTS.

12 WITH THAT YOU MAY PROFFER YOUR STATEMENT.

13 BY MR. WAGNER:

14 Q. GOING TO STATE'S EXHIBIT NUMBER 2, THE FIRST PART
15 OF THAT I BELIEVE YOU SAID YOU WROTE IT FOR HIM?

16 A. YES.

17 Q. TELL US HOW YOU DID THAT. HOW DO YOU GO ABOUT,
18 HOW DO YOU WRITE IT FOR HIM, YOU WRITE HIS WORDS? WHAT
19 DO YOU DO?

20 A. WHEN I GIVE A -- ANYTIME I INTERVIEW SOMEBODY,
21 INCLUDING THIS CASE, I ASK THEM IF THEY WOULD LIKE TO
22 WRITE IT OR IF THEY WOULD LIKE ME TO WRITE IT. THE
23 REASON I GIVE THEM AN OPTION IS, TOO, A LOT OF TIMES A
24 LOT OF INCIDENTS ARE GOING THROUGH THEIR MIND AND JUST TO
25 GET EVERYTHING WRITTEN OUT THAT IS NEEDED FOR THEM AND

1 THEIR BENEFIT ALSO, NOT JUST OURS. AND I CAN ASK THEM
2 QUESTIONS THROUGHOUT THE STATEMENT TO ALSO BE TO THEIR
3 BENEFIT AS WELL AND GIVE THEM ANYTHING THAT THEY'RE NOT
4 THINKING ABOUT TO GIVE THEM AN OPPORTUNITY TO WRITE DOWN
5 THEIR STATEMENT FREELY AND VOLUNTARILY. AND HE DID ASK
6 ME TO WRITE IT.

7 THE FIRST LINE OF THIS STATEMENT IT SAYS, THIS
8 STATEMENT IS BEING WRITTEN BY SERGEANT JONES UPON MY
9 REQUEST. AND THROUGHOUT THE STATEMENT I WOULD WRITE A
10 LINE OR TWO, GO BACK AND ADVISE HIM WHAT I WROTE, ASK HIM
11 IF HE AGREES, HE DID. HE SIGNED THE FRONT PAGE AS WELL
12 AS THE SECOND PAGE, INITIALED IN NUMEROUS LOCATIONS, JUST
13 STATING THAT HE UNDERSTOOD WHAT I HAD WRITTEN AND AGREED
14 WITH IT.

15 Q. DID YOU WEAR A RECORDER ON YOUR PERSON WHILE
16 YOU'RE TALKING TO HIM?

17 A. I DID.

18 Q. SO YOU RECORDED IT ALSO?

19 A. THAT'S CORRECT.

20 Q. WHAT DID THE DEFENDANT SAY?

21 A. CAN I READ THE STATEMENT?

22 Q. YES, PLEASE.

23 A. THIS STATEMENT IS BEING WRITTEN BY SERGEANT JONES
24 UPON MY REQUEST. I'M SORRY FOR WHAT I HAVE DONE. I
25 APOLOGIZE FOR EVERYTHING. WENDOLI CAME OVER TO GET HER

1 MAIL AND I WANTED TO TALK TO HER TO SEE HOW SHE WAS
2 DOING. I ASKED HER IF SHE STILL THOUGHT ABOUT ME AND IF
3 WE COULD GET TOGETHER. SHE SAID NO, SHE HAD FOUND
4 SOMEBODY ELSE. SHE SAID SHE DIDN'T WANT TO SEE ME NO
5 MORE.

6 I TOLD HER SHE FUCKED ME OVER, I DID EVERYTHING
7 FOR HER, I SNAPPED, I FUCKED UP. I DON'T REMEMBER IF I
8 ALREADY HAD THE KNIFE OUT OR IF I PULLED IT OUT FAST. I
9 DON'T REMEMBER HOW MANY TIMES I STABBED HER OR WHERE I
10 STABBED HER. I REALLY WANT TO SAY I'M SORRY FOR WHAT I
11 DID.

12 AFTER A FEW MINUTES I SAW WENDOLI LAYING ON THE
13 FLOOR, I KNEW SHE WOULDN'T GET BACK UP. I CALLED MY MOM
14 TO TELL HER TO GET EVERYONE TOGETHER SO I COULD APOLOGIZE
15 TO EVERYBODY AND TELL THEM WHAT I HAD DID. I THEN CALLED
16 9-1-1 THAT MY WIFE WAS ON THE FLOOR BECAUSE I THINK I
17 STABBED HER. I DON'T THINK SHE EVEN SAW IT COMING OR
18 WOULD HAVE THOUGHT I WOULD HAVE DONE THAT. I DON'T THINK
19 I SAID ANYTHING WHEN I STABBED HER.

20 AND AT THAT POINT I WROTE, ADVISED MR. CHAVEZ I
21 WAS GONNA ASK HIM SEVERAL QUESTIONS ON THE STATEMENT AND
22 GIVE HIM A CHANCE TO ANSWER IN HIS OWN WRITING. THE
23 FIRST QUESTION BEING: ON 10 -14-09 DID YOU STAB AND KILL
24 WENDOLI CHAVEZ? HIS ANSWER WAS, I STABBED HER, I DIDN'T
25 KNOW I WOULD KILL HER.

1 QUESTION TWO: DID YOU CALL 9-1-1 ABOUT STABBING
2 YOUR WIFE? HE APPLIED YES.

3 QUESTION THREE. WHAT KIND OF WEAPON DID YOU USE?
4 HIS RESPONSE WAS KNIFE.

5 QUESTION FOUR: WHY DID YOU STAB WENDOLI CHAVEZ?
6 HE REPLIED I DON'T KNOW.

7 AT THIS TIME I ASKED HIM IF THERE WAS ANYTHING
8 ELSE HE WOULD LIKE TO ADD TO THE STATEMENT. HIS RESPONSE
9 WAS YES AND AGREED THAT I CONTINUE TO KEEP WRITING.

10 I WOULD LIKE TO APOLOGIZE TO HER PARENTS TELL THEM
11 I'M SORRY FOR WHAT I HAVE DONE. I LOVED HER AND THEY
12 LOVED HER. I JUST DIDN'T WANT IT TO HAPPEN. THEY WERE
13 THE ONLY FAMILY I HAD DOWN HERE. I WISH I COULD HAVE
14 KILLED MYSELF.

15 AT THIS POINT HE CHOSE TO END HIS STATEMENT. I
16 ASKED HIM ON THE AUDIO RECORDING IF -- AND I READ IT BACK
17 TO HIM COMPLETELY, THE QUESTIONS AS WELL AS THE
18 STATEMENT, AND ASKED HIM IF IT WAS TRUE AND ACCURATE TO
19 WHAT HE ASKED ME TO WRITE, AND HE AGREED YES. AND I
20 SIGNED AS WELL AS HE SIGNED. AND ANY INCORRECT RESPONSE
21 I HAD OR SCRATCHED OUT I SCRATCHED THROUGH AND HE
22 INITIALED STATING THAT HE RECOGNIZED THAT I HAD SCRATCHED
23 THESE OUT.

24 Q. DID YOU EVER USE ANY FORCE OR COERCION OR TRY TO
25 DO ANYTHING TO UPSET HIM OR PRESSURE HIM INTO GIVING YOU

1 THAT STATEMENT?

2 A. I DID NOT AND, IN FACT, I ASKED HIM TWO SEPARATE
3 OCCASIONS THROUGHOUT THE INTERVIEW IF HE FELT THREATENED
4 OR COERCED AT ANY TIME DURING THIS INTERVIEW, AND TWICE
5 HE TOLD ME "NO."

6 Q. HAVE YOU HAD A CHANCE TO SEE PEOPLE UNDER THE
7 INFLUENCE OF ALCOHOL OR DRUGS OR ANY KIND OF
8 MIND-ALTERING SUBSTANCE IN YOUR COURSE OF WORK AS A
9 POLICE OFFICER?

10 A. I HAVE. I HAVE HAD A STINT IN NARCOTICS WORK AND
11 SEE HOW PEOPLE ACT ON ALCOHOL AND DRUGS. IN FACT, BY
12 KNOWING THIS I ASKED FOR THREE QUESTIONS IN THE
13 INTERVIEW: WHAT THE DATE WAS, WHAT THE DAY OF THE WEEK
14 WAS, AND WHO THE PRESIDENT OF THE UNITED STATES WAS, AND
15 AT THIS TIME HE ANSWERED THEM ALL THREE CORRECT. I FELT
16 LIKE HE WAS IN HIS RIGHT MIND AND HE JUST, I FELT LIKE HE
17 JUST DROVE THAT HOME WHEN HE TOLD ME THE ANSWERS TO THE
18 THREE QUESTIONS THAT I ASKED.

19 Q. SO YOUR OPINION WAS HE WASN'T UNDER THE INFLUENCE
20 OF ANYTHING?

21 A. NO.

22 Q. AND HE DID RESPOND TO YOUR QUESTIONS AND ANSWER
23 THEM APPROPRIATELY?

24 A. YES, SIR, HE DID.

25 Q. THAT'S THE FIRST TWO PAGES OF THAT STATEMENT.

1 THERE'S ALSO A THIRD PAGE THAT WAS A DIAGRAM?

2 A. THAT'S CORRECT.

3 Q. ACTUALLY PART OF STATE'S NUMBER 2 AND I WOULD LIKE
4 TO SHOW YOU IT ON THE OVERHEAD RIGHT THERE. CAN YOU
5 EXPLAIN IT? IF YOU WOULD, CAN YOU EXPLAIN THAT TO US?

6 A. YES, SIR. WHAT THAT IS IS A PICTURE DIAGRAM OF
7 TWO SEPARATE ITEMS. THE FIRST ONE DOWN AT THE BOTTOM,
8 MR. CHAVEZ WAS TRYING TO EXPLAIN TO ME HOW THE KNIFE
9 LOOKED AS WELL AS THE COLORS OF IT. I ASKED HIM IF HE
10 WOULD DRAW IT, AND HE ADVISED, YOU KNOW, HE WASN'T A GOOD
11 DRAWER AND I SAID I'M NOT MUCH OF AN ARTIST MYSELF. BUT
12 HE DID ATTEMPT THE FIRST TIME AND SCRATCHED IT OUT. AND
13 THE SECOND ONE HE SHOWED ME HOW THE KNIFE OPENED BY HIS
14 ARROWS THERE SHOWED ME THE SERRATED BLADE ON THIS LOWER
15 SIDE HERE, AND AS WELL AS THE CLIP ON THE OUTSIDE, AND HE
16 DESCRIBED IT AS A MULTI-COLORED KNIFE THAT CHANGES WHEN
17 YOU TURNED IT.

18 THE SECOND THING IS, IS A, THE SQUARE THING WITH
19 THE TWO ROUND SPOTS ON THE END IS THE BED AND A BEDPOST
20 THAT WERE TESTIFIED TO EARLIER. WHAT HE WAS DEPICTING
21 HERE WAS THE FIRST X NEXT TO THE BED THAT'S ACTUALLY
22 TOUCHING THE BED WAS WENDOLI CHAVEZ. THE SECOND X IS
23 MR. DAVID CHAVEZ BEHIND WENDOLI CHAVEZ. THE TWO LITTLE
24 WORDS THAT'S WRITTEN UP THERE TO THE RIGHT, THE LOWER
25 RIGHT, WAS THE BATHROOM DOOR AND THE OTHER IS THE BEDROOM

1 DOOR IS WHAT THAT SHOWS.

2 AND WHEN WE WERE TALKING -- AND THE FACT AND THE
3 PART OF THE STATEMENT WHERE SHE SAW IT COMING, HE SAID
4 SHE DID NOT AND ADVISED HE WAS STANDING BEHIND HER. AND
5 I ASKED, WHEN I ASKED IF SHE SAW IT COMING, I ASKED HIM
6 IF SHE WAS FACING HIM OR FACING AWAY; AND HE, IN FACT,
7 SAID THAT SHE WAS FACING AWAY FROM HIM.

8 MR. CHAVEZ DID DRAW THESE FREELY AND VOLUNTARILY.
9 I DID NOT THREATEN OR COERCE HIM IN ANY WAY, AND AGAIN
10 THIS WAS HIS OWN HANDS DRAWING THIS.

11 Q. WERE THESE EXHIBITS THE ORIGINALS THAT YOU DID
12 THAT DAY?

13 A. THESE ARE ALL ORIGINALS, YES, SIR.

14 Q. ARE THEY ALL SUBSTANTIALLY THE SAME CONDITION AS
15 THEY WERE?

16 A. YES, SIR.

17 Q. HAVE YOU ALTERED OR TAMPERED WITH THEM IN ANY
18 MANNER?

19 A. I DID NOT.

20 MR. WAGNER: YOUR HONOR, AT THIS TIME THAT ENDS MY
21 DIRECT ON THE STATEMENT. PROFFER FOR CROSS-EXAMINATION.
22 I HAVE MORE QUESTIONS FOR HIM ON OTHER STUFF, BUT --

23 MR. DAY: HE CAN JUST DO IT ALL AT ONE TIME, YOUR
24 HONOR.

25 THE COURT: VERY WELL.

1 BY MR. WAGNER:

2 Q. THE DIAGRAM THAT WE JUST SAW ON THE BIG T.V., DID
3 THAT, THE DIAGRAM THAT HE DREW YOU, EXPLAIN HOW THAT
4 MATCHED UP WITH WHAT YOU ALL FOUND AT THE SCENE?

5 A. THE DIAGRAM THAT HE DREW IS EXTREMELY CONSISTENT
6 TO ME WITH A KNIFE. FROM WHAT I REMEMBER, THE KNIFE DOES
7 HAVE A CLIP WHICH HE DESCRIBED, AS WELL AS A SERRATED
8 BLADE WHICH HE DESCRIBED AND DEPICTED IN HIS HAND-DRAWN
9 PICTURE.

10 Q. LET ME INTERRUPT YOU AND LET ME HAND YOU STATE'S
11 EXHIBIT NUMBER 30. IS THAT THE KNIFE THAT YOU ALL FOUND
12 IN THE HOUSE?

13 A. YES, SIR.

14 Q. DOES THAT MATCH WHAT HE TOLD YOU IT LOOKED LIKE?

15 A. YES, SIR. IT ACTUALLY MATCHES VERY MUCH SO.

16 THE SECOND PICTURE HE HAS DRAWN, AS YOU HAVE HEARD
17 THIS MORNING, IT'S ALSO CONSISTENT WITH THE WAY
18 MS. CHAVEZ, THE VICTIM, WAS LOCATED UPON BEING DECEASED.
19 THE WALL, THE SHEETROCK THAT WE HAD TAKEN DOWN OUT OF THE
20 BEDROOM WAS RIGHT NEXT TO HER FEET. AND AS YOU CAN SEE
21 RIGHT HERE, THE BATHROOM, THERE'S ACTUALLY A WALL THAT
22 COMES DOWN HERE. THIS IS WHERE THE SHEETROCK WAS TAKEN
23 FROM. AND HER FEET AND HER HEAD WAS RIGHT HERE AT THE
24 BEDROOM DOOR AS EVERYBODY TESTIFIED TO. HER FEET WAS
25 JUST PAST THE BATHROOM DOOR WHICH IS IN, YOU KNOW,

1 TOUCHING DISTANCE FROM THE EDGE OF THE BED WHERE THE MAIL
2 WAS LOCATED ON THAT POST AND EVERYTHING ELSE.

3 Q. HOW BIG AN AREA ARE WE TALKING ABOUT, THE AREA
4 FROM THE CORNER OF THE BEDPOST TO LIKE THE BATHROOM DOOR
5 WHERE HER BODY LAY? WOULD YOU LOOK OVER THAT WALL THERE,
6 IS IT SOMETHING SIMILAR TO WHAT'S IN FRONT OF YOU RIGHT
7 HERE?

8 A. SAY FOR EXAMPLE THE CORNER POST THERE IS THE
9 BEDPOST WHERE THE MAIL WAS LAYING. SHE WAS LAYING --
10 CAN I COME DOWN?

11 THE COURT: CERTAINLY. NOW BE SURE YOU SPEAK BACK
12 IN THIS DIRECTION TOWARDS THE COURT REPORTER AS WELL AS
13 TO THE JURY.

14 THE WITNESS: YES, SIR.

15 A. AGAIN, SAY FOR EXAMPLE THIS IS THE BEDPOST WHERE
16 THE MAIL WAS LAYING RIGHT HERE. THE BATHROOM DOOR WAS
17 APPROXIMATELY RIGHT HERE. THE BEDROOM DOOR IS RIGHT HERE
18 AND HER HEAD WAS RIGHT HERE AND HER FEET WAS LAYING
19 APPROXIMATELY RIGHT IN HERE. YOU CAN PROBABLY, YOU CAN
20 TOUCH HER KNEE AND THE END OF THE BEDPOST.

21 BY MR. WAGNER:

22 Q. AND THE PIECE OF DRYWALL HERE, STATE'S EXHIBIT
23 NUMBER 33, WOULD HAVE BEEN WHERE?

24 A. IT WOULD HAVE BEEN, IF THE BATHROOM DOOR IS RIGHT
25 HERE, IT WOULD HAVE BEEN JUST THIS SIDE OF THE BATHROOM

1 DOOR.

2 Q. OKAY. NOW, WERE YOU ABLE TO DETERMINE IN YOUR
3 INVESTIGATION WHO THE OTHER PEOPLE WERE IN THE HOUSE?

4 A. YES. DURING MY INVESTIGATION IT WAS DISCOVERED
5 THROUGH INTERVIEW WITH MR. CHAVEZ AS WELL AS THROUGHOUT
6 MY INTERVIEW, THE FEMALE THAT HAS BEEN SPOKEN OF IS HIS
7 HALF-SISTER, VANESSA GONZALES, AND THE OTHER HISPANIC
8 MALE THAT'S BEEN SPOKEN OF WAS PHILIPPE MONTOYA, WHICH WAS
9 HER BOYFRIEND AND BABY'S DADDY.

10 Q. WHERE ARE THEY FROM?

11 A. THEY'RE FROM WASHINGTON STATE.

12 Q. WERE YOU ABLE TO CONVINCE THEM TO COME BACK HERE
13 FOR COURT THIS WEEK?

14 A. NO.

15 Q. DID YOU FIND OUT ANYTHING UNUSUAL THAT HAPPENED
16 INVOLVING THE TWO OF THEM THAT WENT BACK TO WASHINGTON
17 AND HIM AFTER THE KILLING TOOK PLACE?

18 A. YES. DURING MY INVESTIGATION IT WAS FOUND OUT
19 THAT MR. CHAVEZ ALONG WITH HIS SISTER AND HER BOYFRIEND
20 HAD ACTUALLY AFTER THE MURDER HAD TAKEN PLACE HAD TOOK
21 TIME TO TAKE PHOTOS OF THEMSELVES BEFORE HE CALLED THE
22 POLICE, AS WELL AS HAD ACTUALLY HAD TAKEN HER CAR,
23 MS. WENDOLI CHAVEZ, THE DECEASED, HAD TAKEN HER CAR AND
24 DROVE TO WAL-MART AND USED HER PERSONAL DEBIT CARD AND
25 WITHDREW MONEY WHICH HAPPENED AT ABOUT 4:02.

1 LATER CAME BACK HOME AND CONTACTED THE POLICE.
2 THE TIME LAPSE WAS PROBABLY A LITTLE OVER TWO HOURS AFTER
3 THE MURDER HAD TAKEN PLACE UNTIL MR. CHAVEZ CALLED AND
4 TRIED TO RENDER AID AND TURN HIMSELF IN AFTER HE HAD DONE
5 ALL THIS OTHER STUFF.

6 Q. AND IN ALL FAIRNESS, WAS HIS PAYCHECK GOING INTO
7 THAT ACCOUNT, TOO?

8 A. IT WAS DISCOVERED AT FIRST WE DIDN'T REALIZE THAT
9 IT HAD WENT IN THERE BUT IT DID ON THE 19TH OF THAT MONTH
10 HIS CHECKS FROM THE *SENECA JOURNAL* I BELIEVE IT WAS
11 HAYWARD PUBLISHING, HAD ACTUALLY WENT INTO THE SAME
12 ACCOUNT.

13 Q. DID THAT EXPLAIN THE DISCREPANCY IN THE TIME THE
14 9-1-1 CALL CAME IN AND THE TIME THE CORONER REPORTED THE
15 APPROXIMATE TIME OF DEATH?

16 A. YEAH. MS. CHAVEZ, SHE WAS SUPPOSED TO BE AT WORK
17 AT 3:00. SHE ACTUALLY, WHEN I COLLECTED HER TIME SHEETS
18 AND SOME THINGS OF THAT NATURE, SHE HAD PERFECT
19 ATTENDANCE UNTIL THAT DAY. SHE WAS SUPPOSED TO BE THERE
20 AT 3:00. THE MONEY WAS TAKEN OUT, ACCORDING TO THE
21 RECEIPT AT 4:02, AND THE POLICE WERE CONTACTED AT ABOUT
22 5:30.

23 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
24 EXHIBIT 27. DO YOU RECOGNIZE THOSE?

25 A. I DO.

1 Q. WHAT ARE THEY?

2 A. THIS IS A WOODFOREST DEBIT MASTER CREDIT CARD IN
3 THE NAME OF WENDOLI CHAVEZ THAT WAS TAKEN FROM MR. DAVID
4 CHAVEZ'S PROPERTY AT THE OCONEE COUNTY LAW ENFORCEMENT
5 CENTER AFTER HIS ARREST, AND THIS IS THE WOOD FOREST BANK
6 A.T.M. RECEIPT WHERE THE MONEY HAD BEEN TAKEN FROM OUT
7 OF THE ACCOUNT, AGAIN AT 4:02 ON THE SAME DAY THAT SHE
8 WAS MURDERED.

9 Q. WERE YOU ABLE TO GET COPIES OF THE SISTER OR
10 WHATEVER THE --

11 A. YES, I WAS. IT'S THE HALF-SISTER, VANESSA. I
12 CONTACTED HER, SHE GAVE ME CONSENT, WHICH I ISSUED HER A
13 PROPERTY RECEIPT. SHE TURNED OVER HER CAMERA AS WELL AS
14 HER CELL PHONE TO ME. AND LOOKING THROUGH IT, I FOUND
15 THE PICTURES THAT THEY HAD TAKEN TOGETHER BEFORE THE
16 9-1-1 WAS CONTACTED AFTER THE INCIDENT OCCURRED.

17 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
18 EXHIBIT 14 -- 13 AND 14. AND WHAT ARE THOSE?

19 A. 13 IS A PICTURE WITH MR. CHAVEZ STANDING OR POSING
20 WITH HIS HALF SISTER VANESSA AND HER YOUNG CHILD. I'M
21 SORRY, I DON'T KNOW HIS NAME, IN THE LIVING ROOM OF THE
22 INCIDENT LOCATION WITH WENDOLI CHAVEZ DECEASED ONE ROOM
23 OVER.

24 Q. WERE THOSE TAKEN THAT DATE?

25 A. YES, THEY WERE.

1 Q. HOW COME THE DATE ON THE PICTURE IS DIFFERENT?

2 A. UM, I CAN'T SAY FOR SURE. BUT I'M JUST LIKE
3 ANYBODY ELSE. IF YOU CHECK MY CAMERAS AT HOME, MY DATE
4 HAS NOT BEEN SET OR ANYTHING ELSE. SO JUST HUMAN ERROR,
5 NOT KEEPING UP WITH IT.

6 Q. BUT THAT WAS TAKEN AFTER SHE DIED?

7 A. THAT IS CORRECT. AND STATE'S EXHIBIT 14 IS
8 MR. DAVID CHAVEZ WITH PHILIPPE MONTOYA AGAIN WITH THE
9 MINOR CHILD POSING, WITH MS. WENDOLI CHAVEZ AGAIN JUST
10 ONE ROOM OVER, DECEASED, BEFORE 9-1-1 WAS CALLED.

11 Q. DID YOU ALSO GO TO WAL-MART AND OBTAIN VIDEO
12 PICTURES OF THE DEFENDANT AT WAL-MART THAT TIME FRAME?

13 A. I DID. I OBTAINED PICTURES OF ALL THREE, THE
14 SUSPECT AS WELL AS MONTOYA GONZALES GOING TO WAL-MART
15 AFTER THE DEATH HAD OCCURRED AND BEFORE 9-1-1 WAS
16 CONTACTED, YES.

17 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
18 EXHIBIT NUMBER 7 AND 8.

19 A. NUMBER 7 SHOWS OCTOBER 14, 2009, AT 4:02. THE
20 SUSPECT, DAVID CHAVEZ; HIS SISTER, AND HER BOYFRIEND IN
21 WAL-MART, SENECA WAL-MART, AFTER THE DEATH HAD OCCURRED
22 AND BEFORE 9-1-1 WAS CONTACTED.

23 NUMBER 8 SHOWS MR. DAVID CHAVEZ IN THE SENECA
24 WAL-MART ON OCTOBER 14, 2009, AT 1603, AFTER THE DEATH
25 HAD OCCURRED AND BEFORE 9-1-1 WAS CONTACTED.

1 MR. WAGNER: I JUST WANT TO BE SURE. I DON'T KNOW
2 IF I MOVED IN -- THE STATE WOULD SEEK TO MOVE IN THESE
3 FOUR PICTURES. I THINK THEY WERE IN AS WELL AS THE
4 STATE'S EXHIBIT 13, 14, 7 AND 8, STATE'S EXHIBIT NUMBER
5 27, WHICH WAS THE CREDIT CARD RECEIPT AND BANK CARD. WE
6 WOULD MOVE TO INTRODUCE THOSE TWO, JUDGE, AND I THINK
7 THAT TAKES CARE OF EVERYTHING I'VE GOT UP THERE BUT I
8 NEED TO CHECK BEFORE I REST. BUT THAT BEING SAID, THAT'S
9 ALL THE QUESTIONS I HAVE FOR OFFICER JONES.

10 THE COURT: CROSS-EXAMINATION.

11 MR. DAY: I THINK WE ALREADY AGREED ON THOSE
12 PICTURES, ET CETERA, THAT THEY WOULD BE NOT ONLY COMING
13 IN, BUT THEY WOULD BE WITHOUT OBJECTION.

14 THE COURT: ALL RIGHT. THAT'S STATE'S EXHIBITS 7,
15 8, 13, 14, 27 AND WHAT?

16 MR. WAGNER: THAT'S RIGHT, THOSE FIVE.

17 THE COURT: ADMITTED WITHOUT OBJECTION.

18 (RECEIVED IN EVIDENCE WERE STATE'S EXHIBITS
19 7, 8, 13, 14, AND 27.)

20 CROSS-EXAMINATION BY MR. DAY:

21 Q. OKAY, MR. JONES, JUST A COUPLE THINGS. THE
22 PICTURES MARKED STATE'S 13 AND 14 SHOW PICTURES OF THE
23 DEFENDANT WITH MEMBERS OF HIS FAMILY?

24 A. YES, THAT'S CORRECT.

25 Q. AT LEAST HIS SISTER AND BOYFRIEND AND NEPHEW?

1 A. THAT'S CORRECT.

2 Q. AND THESE WERE TAKEN WITH THE PHONE APPROXIMATELY
3 SOMETIME THAT DAY?

4 A. ACCORDING TO MR. CHAVEZ, AS WELL AS MS. GONZALES,
5 THEY WERE TAKEN AFTER THE MURDER.

6 Q. OKAY. AFTER MRS. CHAVEZ WAS DECEASED, RIGHT?

7 A. AFTER THE MURDER, YES, SIR.

8 Q. I THINK WE'LL LET THE JURY DECIDE THAT.

9 THE PICTURES HERE THAT ARE 8 AND 7, IS THIS WHEN
10 HE WITHDREW THE MONEY OUT OF THE BANK?

11 A. THAT'S CORRECT.

12 Q. OKAY. AND THAT'S WHAT THAT SHOWS?

13 A. YES, SIR.

14 Q. OKAY. NOW, WHEN YOU ARRESTED MR. CHAVEZ OR WHEN
15 YOU FIRST SAW HIM AND SUBSEQUENTLY WENT THROUGH HIS
16 PAPERWORK, ET CETERA, POSSESSIONS AND ALL, HE HAD NO
17 MONEY ON HIM, DID HE?

18 A. NO, SIR, HE DID NOT.

19 Q. OKAY. NOW, SIR, I WANT TO TALK ABOUT THE
20 STATEMENT.

21 A. OKAY.

22 Q. OKAY? AT THE TIME WHEN YOU CAME INTO THE ROOM,
23 YOU IDENTIFIED YOURSELF, TOLD HIM WHAT YOU WERE THERE
24 FOR, DID HE COOPERATE WITH YOU?

25 A. HE DID.

1 Q. DID HE ANSWER YOUR QUESTIONS?

2 A. HE DID.

3 Q. WHEN YOU ASKED HIM QUESTIONS AS TO WHAT HAPPENED,
4 DID HE ARGUE WITH YOU OR POINT TO SOMEONE ELSE OR
5 ANYTHING ELSE?

6 A. HE DID NOT.

7 Q. SO HE CARRIED YOU ALL THE WAY THROUGH THERE, HE
8 TOLD YOU WHAT HAPPENED?

9 A. THAT'S CORRECT.

10 Q. ALL RIGHT. AND I BELIEVE, AS YOU WENT THROUGH IT,
11 YOU WERE TRYING TO FIND OUT WHAT HAPPENED?

12 A. THAT'S CORRECT.

13 Q. THAT'S THE PURPOSE OF YOUR QUESTIONS?

14 A. THAT'S CORRECT, SIR.

15 Q. I BELIEVE HE STATED, I SNAPPED?

16 A. HE DID.

17 Q. HE USED THAT WITH YOU AND HE ALSO SAID, I DON'T
18 REMEMBER HOW MANY TIMES I STABBED HER OR WHERE I STABBED
19 HER?

20 A. HE DID.

21 Q. ALL RIGHT. DID YOU GO INTO ANY DEEPER DISCUSSION
22 WITH HIM ON THAT OR SUGGEST TO HIM ANYTHING ELSE OR WHAT
23 COULD HAVE BEEN A BETTER ANSWER OR ANYTHING?

24 A. I DON'T RECALL SUGGESTING ANYTHING.

25 Q. DID YOU ASK HIM SPECIFICALLY ABOUT THOSE, THOSE

1 PARTICULAR RESPONSES ABOUT, WELL, HOW MANY TIMES WAS SHE
2 STABBED? I KNOW SHE WAS STABBED SO MANY TIMES OR
3 ANYTHING LIKE THAT?

4 A. ABSOLUTELY NOT. ACTUALLY, MR. DAY, I DIDN'T KNOW
5 HOW MANY TIMES SHE WAS STABBED. I WAS NEVER AT THE SCENE
6 YET. I CAME DIRECTLY TO THE SENECA POLICE DEPARTMENT SO
7 I DIDN'T KNOW IN FACT HOW MANY TIMES SHE WAS STABBED, OR
8 ANYTHING LIKE THAT, TO SWAY YOUR CLIENT.

9 Q. HE ALSO SAYS, I THEN CALLED 9-1-1 BECAUSE I THINK
10 I STABBED HER?

11 A. THAT'S WHAT HE STATED, YES.

12 Q. OKAY. NOW, YOU WENT THROUGH THAT AND HE DREW OUT
13 PICTURES FOR YOU AND ALL THAT, BUT THEN HE GOT DOWN AND
14 SAID YOU WROTE OUT THE QUESTIONS YOU ASKED HIM AT THAT
15 POINT TO ACTUALLY BE THE ONE TO WRITE OUT THE ANSWER?

16 A. YES, SIR.

17 Q. AND THAT'S WHEN HE PUT DOWN IN THERE YOUR QUESTION
18 TO THE ANSWERS ON 10-14-09, DID YOU STAB AND KILL WENDOLI
19 CHAVEZ?

20 A. YES, SIR.

21 Q. AND WHAT YOU ARE SAYING HE WROTE DOWN I STABBED
22 HER, I DIDN'T KNOW I WOULD KILL HER?

23 A. HIS RESPONSE WAS, I STABBED HER, I DIDN'T KNOW I
24 WOULD KILL HER. THAT'S WHAT YOUR CLIENT WROTE.

25 Q. AT THIS TIME WHEN YOU WERE GOING THROUGH THIS, YOU

1 AND I HAD TALKED ABOUT THIS BEFORE, MR. CHAVEZ BROKE DOWN
2 AND CRIED QUITE A FEW TIMES DURING THE TIME THAT YOU WERE
3 WITH HIM?

4 A. HE WAS UPSET SOME. HE DID BECOME MORE UPSET AT
5 THE VERY END OF THE STATEMENT TO WHERE I WOULD CALL THE
6 APOLOGY TO THE PARENTS, TO MS. CHAVEZ' PARENTS, YES, SIR.

7 Q. BUT HE WAS CRYING?

8 A. YES, SIR.

9 Q. AND HE WAS CRYING AT THE BEGINNING AND PARTS OF
10 THAT?

11 A. HE WAS CRYING. I GAVE HIM, ON SEVERAL OCCASIONS
12 TOLD HIM, YOU KNOW, TAKE YOUR TIME, I JUST WANTED HIM TO
13 BE COMFORTABLE, I DIDN'T WANT HIM TO FEEL LIKE HE WAS
14 RUSHED OR ASKED OR, TO DO ANYTHING THAT HE DIDN'T WANT TO
15 DO.

16 Q. OKAY. AND DO YOU REMEMBER LISTENING TO THE
17 RECORDING? YOU DID STOP SEVERAL TIMES, LET HIM COMPLETE
18 CRYING OR WHATEVER, COMPOSE HIMSELF, AND THEN YOU TOLD
19 HIM TAKE YOUR TIME, AND THEN YOU STARTED, AND THEN YOU,
20 AFTER YOU DID THAT, THEN YOU WOULD ASK HIM, ARE YOU READY
21 TO GO AGAIN, AND STARTED ASKING QUESTIONS?

22 A. THAT'S CORRECT.

23 Q. TRYING TO MAKE SURE HE UNDERSTOOD YOUR QUESTIONS
24 AND THAT HIS ANSWERS WERE CORRECT?

25 A. THAT'S CORRECT. TRYING TO MAKE HIM FEEL

1 COMFORTABLE DURING AN INTERVIEW.

2 Q. THAT PORTION ON THE STATEMENT HERE -- AUDIO
3 RECORDING, EXCUSE ME -- WHEN YOU READ THAT BACK AND I'LL
4 TRY TO MAKE THIS WORK. I CAN MAKE MY COMPUTER WORK,
5 PARTICULARLY WHEN I'M PLAYING JEWEL QUEST, SO HOLD ON.
6 LET ME SEE IF THAT WORKS?

7 (DEFENDANT'S STATEMENT PORTION WAS PLAYED FOR
8 THE WITNESS AND THE JURY.)

9 Q. THAT'S WHEN YOU CONTINUED READING IT TO HIM; IS
10 THAT RIGHT?

11 A. YES, THAT'S CORRECT, SIR.

12 Q. OFFICER, AGAIN LET ME MAKE SURE I UNDERSTOOD THAT.
13 WHEN HE WAS THERE WITH YOU, HE ATTEMPTED AS BEST HE COULD
14 TO COOPERATE WITH YOU?

15 A. THAT'S CORRECT.

16 Q. HE GAVE THE STATEMENT FREELY AND VOLUNTARILY?

17 A. HE DID.

18 Q. YOU GAVE HIM AN OPPORTUNITY -- I THINK THE
19 RECORDING IS 40 SOMETHING MINUTES LONG -- THAT'S HOWEVER
20 LONG YOU WERE ACTUALLY IN THE ROOM?

21 A. I BELIEVE SO.

22 Q. AND DURING THAT TIME HE GAVE YOU INFORMATION THAT
23 YOU THEN USED IN YOUR INVESTIGATION?

24 A. YES, SIR.

25 MR. DAY: THANK YOU VERY MUCH. THAT'S ALL MY

1 QUESTIONS.

2 THE WITNESS: THANK YOU, SIR.

3 REDIRECT EXAMINATION BY MR. WAGNER:

4 MR. WAGNER: YOUR HONOR, I BELIEVE SINCE PART OF
5 THAT CALL WAS PLAYED, I BELIEVE THE STATE WOULD MOVE TO
6 INTRODUCE THE ENTIRETY. I DON'T KNOW IF IT IS NECESSARY
7 TO PLAY IT. SINCE IT'S BEEN PLAYED I THINK WE PROBABLY
8 NEED TO MOVE TO PUT IT IN.

9 MR. DAY: I HAVE NO OBJECTION, YOUR HONOR. ACTUALLY
10 THAT PARTICULAR RECORDING THERE WAS THE ONE THAT WAS
11 PROVIDED TO ME BECAUSE THEIRS COULDN'T GET STARTED
12 WORKING BUT THAT'S THE SAME ONE I LISTENED TO.

13 THE COURT: THE STATE HAS MOVED FOR ITS ADMISSION.
14 DO YOU OBJECT?

15 MR. DAY: I HAVE NO OBJECTION.

16 THE COURT: VERY WELL. THAT WILL BE EXHIBIT,
17 STATE'S EXHIBIT 37 WILL BE ADMITTED WITHOUT OBJECTION.

18 (RECEIVED IN EVIDENCE WAS STATE'S EXHIBIT 37,
19 DISK OF DEFENDANT'S STATEMENT.) -- NOT
20 TRANSCRIBED --

21 BY MR. WAGNER:

22 Q. AT THE TIME YOU INTERVIEWED HIM DID YOU HAVE ANY
23 IDEA ABOUT THE VICTIM BEING STRANGLED?

24 A. AGAIN, IT WAS DISPATCHED OUT AS A STABBING CALL, I
25 WAS PAGED AS STABBING CALL. UPON INTERVIEWING HIM I HAD

1 SPOKEN TO NO OTHER INVESTIGATORS OR OFFICERS AT THE SCENE
2 OTHER THAN WHO THE SUSPECT WAS, JUST GENERAL INFORMATION.
3 I HAD NO CLUE UNTIL WHEN I SAW MRS. CHAVEZ IT APPEARED
4 THAT SHE HAD BEEN STRANGLED, HAD MARKS AROUND HER NECK
5 AREA, UNTIL IT WAS CONFIRMED BY DR. WOODARD AT THE
6 AUTOPSY THE FOLLOWING DATE. SO I DIDN'T GO INTO THE
7 STRANGULATION QUESTIONS DURING THE INTERVIEW BECAUSE I
8 DID NOT KNOW. I WAS GOING ON BY THE EVIDENCE AND THE
9 FACTS THAT I -- I WAS GOING IN THE DIRECTION THAT THE
10 EVIDENCE TOOK ME BECAUSE I DIDN'T KNOW, YOU KNOW, THAT
11 ANOTHER MEANS OF THIS INCIDENT HAD TAKEN PLACE.

12 Q. DID THE DEFENDANT EVER SAY ANYTHING ABOUT
13 STRANGLING HER?

14 A. NO, HE DID NOT.

15 MR. WAGNER: YOUR HONOR, IF I COULD HAVE A MINUTE TO
16 GO OVER THE EXHIBITS TO MAKE SURE THEY'RE IN.

17 THE COURT: CERTAINLY.

18 MR. WAGNER: YOUR HONOR, CAN WE TAKE ABOUT FIVE
19 MINUTES?

20 THE COURT: CERTAINLY.

21 MR. FOREMAN, LADIES AND GENTLEMEN, WE'LL TAKE A
22 SHORT RECESS RIGHT NOW TO SEE IF WE CAN GET EVERYTHING
23 ORGANIZED. AGAIN, RETIRE TO YOUR JURY ROOM AND DO NOT
24 UNDERTAKE DISCUSSIONS OF THE CASE IN ANY WAY.

25 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES

1 FROM THE COURTROOM.

2 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
3 APPROXIMATELY 2:25 P.M.)

4 MR. DAY: I THINK WE'VE GOT THEM ALL, YOUR HONOR.

5 THE COURT: IS THE STATE GONNA REST NOW?

6 MR. WAGNER: IF I CAN. WE'RE DONE.

7 THE COURT: LET'S JUST TAKE A SHORT BREAK.

8 MR. WAGNER: WE'RE DONE WITH HIM. BUT I WANTED TO
9 CONFER WITH HIM BEFORE I RESTED, BUT AS FAR AS
10 QUESTIONING.

11 THE COURT: THE THING IS HE WAS ON THE STAND WHEN
12 THE JURY LEFT AND HE SHOULD BE THERE WHEN THEY GET BACK.

13 (DISCUSSION OFF THE RECORD.)

14 THE COURT: ALL RIGHT. BEFORE WE BRING THE JURY
15 BACK, IT'S MY UNDERSTANDING THAT THE STATE HAS A,
16 SOMETHING THEY WANT TO BRING TO THE COURT'S ATTENTION.

17 MR. WAGNER: I JUST WANTED TO MAKE SURE WE'RE ON THE
18 SAME PAGE AS FAR AS WHAT HAD BEEN ADMITTED. IT IS MY
19 UNDERSTANDING EVERYTHING, EXHIBITS 1 THROUGH 37 HAVE BEEN
20 ADMITTED INTO EVIDENCE EXCEPT FOR ONE THAT WAS JUST FOR
21 I.D., WHICH WAS A DUPLICATE PICTURE, AND THAT WAS NUMBER
22 36.

23 THE COURT: IS THAT YOUR UNDERSTANDING, TOO,
24 MR. DAY?

25 MR. DAY: THAT'S CORRECT, YOUR HONOR. JUST ONE

1 PICTURE, A SMALL PICTURE WAS A DUPLICATE, SO THAT ONE
2 DIDN'T COME IN. ALL THE REST DID.

3 MR. WAGNER: THAT BEING SAID WE INTEND TO REST WHEN
4 THE JURY GETS BACK.

5 THE COURT: ALL RIGHT. MR. DAY, ANYTHING FROM YOU?

6 MR. DAY: YOUR HONOR, WE WOULD ADVISE THE COURT.

7 THE COURT: ARE YOU MOVING NOW FOR A DIRECTED
8 VERDICT?

9 DIRECTED VERDICT MOTION ON BEHALF OF DEFENDANT:

10 MR. DAY: WE WOULD MOVE BRIEFLY FOR THE COURT TO
11 MAKE A FINDING THAT THE EVIDENCE DOES NOT MEET THE
12 REQUIREMENTS HAVING INDICATED MALICE FOR THE PURPOSE OF A
13 MURDER CONVICTION, THAT WHAT HAS BEEN PRESENTED WOULD
14 RISE TO A MANSLAUGHTER CHARGE AND WE WOULD ASK THE COURT,
15 ONE, TO FIND THAT THE STATE HAS FAILED TO MEET ITS BURDEN
16 OF PROOF AS TO PROVING MALICE AS A REQUISITE ELEMENT OF
17 MURDER AND THAT THE MATTER PROCEED FORWARD AS A
18 MANSLAUGHTER.

19 OR, IN THE ALTERNATIVE, THAT THE MATTER BE PRESENTED
20 TO THE JURY AS A LESSER-INCLUDED MANSLAUGHTER WITH THE
21 MURDER, THAT BOTH CHARGES WOULD GO TO THE JURY BASED UPON
22 THE EVIDENCE AS PRESENTED.

23 THE COURT: ALL RIGHT. MR. SOLICITOR, WHAT DO YOU
24 HAVE TO SAY ABOUT THAT?

25 MR. WAGNER: YOUR HONOR, I FEEL THAT THE EVIDENCE OF

1 MURDER BEING KILLING WITH MALICE AFORETHOUGHT. I DO
2 THINK WE HAVE PROVED MALICE. THERE WAS TWO WITNESSES
3 TESTIFIED THAT HE HAD TALKED ABOUT KILLING HIS WIFE EVEN
4 SEVERAL DAYS WITHIN THE MONTH PRIOR TO THAT. THEY HAD
5 OBVIOUS DIFFICULTIES. HE CALLED HER OVER THERE TO COME
6 GET HER MAIL AND HE MURDERED HER. I DON'T THINK THERE'S
7 ANYTHING HERE BUT MURDER. I DON'T SEE ANY OF THE
8 ELEMENTS OF VOLUNTARY MANSLAUGHTER. I DO RECOGNIZE THAT
9 HE DID SAY IN HIS STATEMENT THAT HE LOST IT -- I CAN'T
10 REMEMBER HOW HE WORDED IT -- YOUR HONOR, AND I DO THINK
11 THAT -- I MEAN, I THINK THERE'S AN ARGUMENT THERE --

12 THE COURT: I THINK THAT'S WHAT THE ANSWER IS TO
13 BOTH YOUR MOTION AND YOUR OBJECTION AND THAT IS IF THERE
14 IS A QUESTION OF FACT FOR THE JURY TO DECIDE, THE COURT
15 IS NOT CONCERNED WITH THE WEIGHT OF THE EVIDENCE, ONLY
16 WHETHER OR NOT THERE IS ENOUGH EVIDENCE TO GO FORWARD. I
17 WILL SAY THIS, ALTHOUGH YOU HAVEN'T ADDRESSED YET,
18 MR. WAGNER, YOU DO HAVE A MORE PERSUASIVE ARGUMENT
19 AGAINST, I DO THINK THAT VOLUNTARY MANSLAUGHTER UNDER THE
20 FACTS OF THIS PARTICULAR CASE WOULD BE AN ISSUE FOR THE
21 JURY AS A LESSER-INCLUDED. I DO NOT FIND INVOLUNTARY
22 MANSLAUGHTER OR ACCIDENT OR ANYTHING LIKE THAT. I DO
23 FEEL THAT THE QUESTION OF MALICE, THEY COULD FIND THAT
24 THAT WAS NOT SUFFICIENTLY ESTABLISHED.

25 MR. WAGNER: YES, SIR.

1 THE COURT: IN OTHER WORDS, I'M GONNA CHARGE --
2 LET'S SEE, WE'VE GOT A VERDICT FORM HERE?

3 MR. DAY: YOUR HONOR, IF I MAY, BRIEFLY, ON THE JURY
4 CHARGE WE HAVE TO SUBMITTED TO YOUR LAW CLERK WE HAVE
5 SUBMITTED WHAT WE THINK WHAT WE WANT. I WOULD ASK THE
6 COURT CONSIDER THE CHARGE UNDER *BELCHER* THAT MAY NOT
7 IMPLY MALICE BUT --

8 THE COURT: THE ONLY THING IS, I'M NOT GONNA IMPLY
9 MALICE AND USE OF A DEADLY WEAPON ON THE MURDER CHARGE,
10 HOWEVER, ON THE INVOLUNTARY MANSLAUGHTER, WHERE THAT IS A
11 PART OF THE DEFINITION, USE OF A DEADLY WEAPON. BUT I AM
12 GOING TO GIVE -- BECAUSE *BELCHER* ALSO SAYS NOTHING CAN BE
13 DONE TO MAKE IT A CHARGE OF LAW, IN OTHER WORDS, IT IS
14 SOMETHING A JURY COULD CONSIDER -- I AGREE WITH YOU ON
15 THE MURDER CHARGE.

16 BUT ON THE VOLUNTARY CHARGE, I WOULD GIVE THE
17 DEFINITION I DO ON THAT ON THE VOLUNTARY IS THE GENERAL
18 ONE ABOUT WHAT IS A DEADLY WEAPON, PISTOL, SHOTGUN,
19 RIFLE, DIRK, BUT NOT ANY INFERENCES OR PRESUMPTIONS, BUT
20 I USE THEM AS SOLELY WITH THE DEFINITION OF VOLUNTARY
21 MANSLAUGHTER, WHICH IS WORDS ALONE, HOWEVER VULGAR OR
22 INSULTING, ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE
23 DEATH IS CAUSED BY USE OF A DEADLY WEAPON, THE WORDS MUST
24 BE ACCOMPANIED BY THE OCCURRENCE OF AN ASSAULT OR
25 THREATENING ACT WHICH WOULD PRODUCE EITHER FASHION.

1 THAT'S A STATEMENT OF LAW, NOT OF FACT, WHICH IN *BELCHER*
2 WAS A STATEMENT OF FACT. AND THAT'S WHERE I'LL GIVE THAT
3 DEFINITION OF A DEADLY WEAPON.

4 NOW, I ALSO HAVE WHERE A FIST IS NOT NORMALLY
5 CONSIDERED AS A DEADLY WEAPON, HOWEVER, UNDER SOME
6 CIRCUMSTANCES DEPENDING ON THE MEANS OF ITS USE ...

7 SO I'LL NOTE YOUR OBJECTION TO THAT CHARGE, BUT I
8 WILL CHARGE DEADLY WEAPON SOLELY IN THE CONTEXT OF
9 VOLUNTARY MANSLAUGHTER LESSER-INCLUDED.

10 MR. WAGNER: YOUR HONOR, IF I COULD, THE NEW CASE
11 THAT JUST THAT JUST CAME OUT, THE *STATE VERSUS NORMAN*
12 *STARNES*, 698 S.E.2D 604, WHICH WAS JUST DECIDED IN AUGUST
13 OF THIS YEAR. JUST FOR THE RECORD, IT SAYS BOTH THE HEAT
14 OF PASSION AND SUFFICIENT LEGAL PROVOCATION MUST BE
15 PRESENT AT THE TIME OF THE KILLING TO SUPPORT A JURY
16 INSTRUCTION ON VOLUNTARY MANSLAUGHTER IN A MURDER
17 PROSECUTION.

18 AND I GUESS OUR ARGUMENT WOULD BE THAT THE FACT THAT
19 SHE WASN'T GONNA GO BACK AND SEE HIM ANYMORE IS NOT
20 ENOUGH TO GET THE SUFFICIENT LEGAL PROVOCATION, IT'S NOT
21 LIKE HE CAUGHT HER IN BED WITH ANOTHER MAN AND FLASHED
22 HOT LIKE THAT. THEY HAD HAD AN ONGOING ARGUMENT FOR SOME
23 TIME. IN FACT, THEY WERE ARGUING ON THE PHONE BEFORE SHE
24 EVEN CAME OVER THERE. HE WAS ALREADY MAD.

25 THE COURT: I'M NOT FAMILIAR WITH THAT PARTICULAR

1 CASE. DO YOU HAVE A COPY OF IT?

2 MR. WAGNER: I'LL HAND YOU MY COPY, YOUR HONOR. I
3 WAS JUST TRYING TO RESEARCH IT AT LUNCH (HANDING).

4 THE COURT: WHAT DO YOU SAY, MR. DAY?

5 MR. DAY: YOUR HONOR, IN READING THROUGH STARNES, IT
6 IS A SELF-DEFENSE CASE AND ONE IN WHICH THERE WAS A
7 QUESTION OF A GUN, THERE'S A QUESTION OF REACTION TO THAT
8 FEAR, BUT I NOTICE IN STARNES IT ALSO SAYS, THAT IT
9 STATES FORWARD AS IT GETS DOWN INTO THE LATTER PART OF
10 THAT, THAT IF THERE IS ANY BASIS FOR THE CHARGE, THEN THE
11 COURT SHOULD GIVE THEM THAT CHARGE.

12 THE COURT: ALL RIGHT. IT DOES SEEM, AS IN MOST
13 DOMESTIC CASES, AND THAT'S WHERE WE FIND THIS ONE, THERE
14 ARE CERTAIN ISSUES THAT CAN APPARENTLY OVERCOME ORDINARY
15 REASON AND RAGE AND CAUSE AN INDIVIDUAL TO LOSE CONTROL
16 TEMPORARILY, AND I'M GONNA FIND RATHER THAN IF WHATEVER
17 OCCURRED AS THE EVIDENCE WOULD REFLECT BETWEEN THE
18 PARTIES AT THE TIME THAT IT'LL BE FOR THE JURY TO
19 DETERMINE IF THERE WAS SUFFICIENT PROVOCATION TO OVERCOME
20 ORDINARY REASON AND CAUSE A PERSON TO LOSE TEMPORARY
21 CONTROL. SO I'M GONNA OVERRULE YOUR OBJECTION AND CHARGE
22 AS A LESSER-INCLUDED VOLUNTARY MANSLAUGHTER.

23 ANYTHING ELSE?

24 MR. DAY: YES, YOUR HONOR. THE DEFENSE RESTS.

25 THE COURT: AND YOU RENEW YOUR MOTIONS?

1 MR. DAY: YES, SIR.

2 COURT QUESTIONING OF DEFENDANT RE TESTIFYING:

3 THE COURT: WE'VE COME TO THAT POINT NOW,

4 MR. CHAVEZ, THAT YOUR ATTORNEY ADVISES THAT THE DEFENSE

5 DOES NOT WISH TO PUT UP ANY EVIDENCE TO INCLUDE YOUR

6 TESTIMONY. HAVE YOU HAD AN OPPORTUNITY TO FULLY CONSIDER

7 THIS?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: HAVE YOU DISCUSSED WITH YOUR LAWYER

10 WHETHER OR NOT YOU SHOULD OR SHOULD NOT TESTIFY?

11 THE DEFENDANT: YES.

12 THE COURT: DO YOU WISH TO TALK TO YOUR LAWYER ANY

13 MORE ABOUT THIS MATTER AT THIS TIME?

14 THE DEFENDANT: NO, NO.

15 THE COURT: DO YOU WISH TO TESTIFY.

16 THE DEFENDANT: NO, SIR.

17 THE COURT: ALL RIGHT. I FIND THAT THE DEFENDANT

18 FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVES

19 HIS RIGHT TO TESTIFY AND DECLINES TO TESTIFY -- YOU MAY

20 SIT DOWN.

21 IS THERE ANY FURTHER MATTER FROM THE DEFENSE?

22 MR. DAY: NONE, YOUR HONOR.

23 THE COURT: ALL RIGHT. UNDERSTAND WHEN WE COME

24 BACK, I'M GOING TO LET YOU OFF THE STAND. BUT WHEN WE

25 COME BACK THE STATE WILL ANNOUNCE THAT IT RESTS, THE

1 DEFENSE WILL ANNOUNCE THAT IT RESTS. I WILL INSTRUCT THE
2 JURY NOT TO TAKE INTO ANY, GIVE ANY CONSIDERATION TO THE
3 RIGHT TO REMAIN SILENT AND NOT TO PUT UP ANY EVIDENCE
4 AGAINST THE DEFENDANT.

5 THEN, INASMUCH AS THE DEFENDANT HAS NOT PUT UP ANY
6 EVIDENCE, THEN WE WILL GO TO THE JURY IN ARGUMENT. THE
7 STATE WILL OPEN AND THEN THE DEFENSE WILL CLOSE.

8 MR. WAGNER: THANK YOU, JUDGE.

9 THE COURT: ALL RIGHT. NOW, WHAT ELSE? THIS IS THE
10 VERDICT FORM THAT I'LL USE IF YOU WANT TO LOOK AT IT.

11 MR. DAY: YOUR HONOR, WE HAVE NO OBJECTION TO THE
12 VERDICT FORM.

13 THE COURT: ALL RIGHT. ANY OBJECTIONS TO THE
14 VERDICT FORM?

15 MR. WAGNER: NO, YOUR HONOR.

16 THE COURT: SUBJECT TO, OF COURSE, TO THE PRIOR
17 MOTIONS AND THE COURT'S RULINGS.

18 ASK THE JURY TO JOIN US, PLEASE.

19 (THE JURY ENTERED THE COURTROOM AT
20 APPROXIMATELY 3:00 P.M.)

21 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE
22 JURY AND ALTERNATES ARE IN THE JURY-BOX.

23 MR. WAGNER, YOU MAY PROCEED.

24 MR. WAGNER: YOUR HONOR, THOSE ARE THE ONLY
25 QUESTIONS WE HAVE FOR OFFICER JONES.

1 MR. DAY: NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

3 THE WITNESS: THANK YOU, YOUR HONOR.

4 (WITNESS LEAVES STAND.)

5 MR. WAGNER: YOUR HONOR, WITH THAT THE STATE RESTS.

6 THE COURT: MR. DAY?

7 MR. DAY: THANK YOU, YOUR HONOR. THE DEFENDANT
8 RESTS.

9 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
10 JURY, A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
11 SILENT AND TO PUT UP NO EVIDENCE AND REQUIRE THE STATE TO
12 MEET ITS BURDEN OF PROOF BEYOND A REASONABLE DOUBT. THE
13 ASSERTION OF THE CONSTITUTIONAL RIGHT NOT TO TESTIFY OR
14 PRESENT EVIDENCE MUST NOT BE CONSIDERED BY YOU IN YOUR
15 DELIBERATIONS. UNDER YOUR OATH YOU ARE TO DRAW NO
16 CONCLUSIONS WHATSOEVER FROM THE FACT THAT THE DEFENDANT
17 IN THIS CASE DID NOT TESTIFY OR PUT UP ANY EVIDENCE.

18 AS I STATED, THE DEFENDANT IS NOT REQUIRED TO PROVE
19 HIS INNOCENCE, AND THE BURDEN OF PROOF REMAINS UPON THE
20 STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

21 WITH THAT I'LL RECOGNIZE MR. WAGNER FOR HIS CLOSING
22 ARGUMENT.

23 MR. WAGNER?

24 CLOSING ARGUMENT ON BEHALF OF THE STATE:

25 MR. WAGNER: WE REACHED THE END OF THE CASE HERE AND

1 THIS IS THE LAST TIME YOU'RE GONNA HEAR FROM ME. I WANT
2 TO SAY ONE THING JUST UP FRONT. ANYTHING I SAY TO YOU OR
3 ANYTHING THE DEFENSE SAYS TO YOU IS NOT EVIDENCE. THE
4 EVIDENCE IS WHAT YOU HEARD FROM THE WITNESS STAND AND
5 WHAT'S BEEN PRESENTED HERE. BASICALLY ALL WE ARE DOING
6 IS ARGUING OUR CASE, AND WHAT WE SAY IS NOT EVIDENCE.
7 THIS IS THE ONLY TIME YOU'LL HEAR FROM ME SO I'LL BRIEFLY
8 TRY TO GO OVER THE LAW WITH YOU. IF I MISSTATE ANYTHING,
9 THE JUDGE WILL CHARGE YOU THE LAW AND READ YOU WHAT THE
10 LAW IS ON MURDER AND WHAT THE LAW IS ON VOLUNTARY
11 MANSLAUGHTER, AND HE'S GONNA CHARGE YOU THAT YOU HAVE A
12 CHOICE BETWEEN MURDER, VOLUNTARY MANSLAUGHTER, OR NOT
13 GUILTY.

14 HERE WE'VE GOT A CASE BACK, AS YOU HEARD MANY TIMES,
15 OCTOBER 14, 2009, THE DEFENDANT IS CHARGED WITH MURDER
16 FOR STABBING AND STRANGLING HIS ESTRANGED WIFE. AND I
17 THINK THE EVIDENCE FROM THAT IS THAT HE KILLED HER,
18 OBVIOUSLY. THE QUESTION IS GONNA BE WHETHER YOU FIND HIM
19 GUILTY OF MURDER OR MANSLAUGHTER.

20 MURDER IS THE KILLING OF ANOTHER PERSON WITH MALICE
21 AFORETHOUGHT. MALICE IS OFTEN DEFINED AS THE DOING OF A
22 WRONGFUL ACT INTENTIONALLY WITHOUT JUST CAUSE OR EXCUSE,
23 MEANING YOU DO IT ON PURPOSE. DID HE KILL HER ON
24 PURPOSE?

25 VOLUNTARY MANSLAUGHTER IS ESSENTIALLY THE UNLAWFUL

1 KILLING OF ANOTHER IN THE SUDDEN HEAT OF PASSION, LEGALLY
2 SUFFICIENT PROVOCATION WITHOUT MALICE AFORETHOUGHT.

3 IN THIS CASE THE ONLY EVIDENCE THAT'S BEEN PRESENTED
4 IS THAT SHE WE WENT OVER THERE TO GET HER MAIL. HE
5 CALLED HER. YOU HEARD HER SISTER TESTIFY. HE CALLED HER
6 AND THEY ARGUED ON THE PHONE. HE WAS HOLLERING AT HER ON
7 THE PHONE. HE HAD BEEN MAD FOR A MONTH AND A HALF WHEN
8 SHE MOVED OUT.

9 HE HAD MADE NUMEROUS COMMENTS TO HIS TWO FRIENDS WHO
10 TESTIFIED THAT HE WAS GONNA KILL HER. HE THOUGHT SHE WAS
11 SEEING SOMEBODY ELSE AND HE WAS GOING TO KILL HER. THEY
12 SAID THEY JUST BLEW IT OFF AS HIM JUST BLOWING SMOKE, BUT
13 HE SAID IT NUMEROUS TIMES AND NUMEROUS TIMES. AND
14 FINALLY WHEN HE SAID TO A SECOND FRIEND ABOUT KILLING HER
15 FAMILY, HE TOOK HIM DOWN AND THEY HAD A BEER AND HE TOLD
16 HIM TO CALM DOWN. THIS IS NOT SOMETHING THAT JUST, HE
17 FLASHED HOT, NO MATTER WHAT HE WANTS TO SAY IN HIS
18 STATEMENT.

19 IT HAD BEEN BREWING. HE WAS MAD. HE HAD MALICE IN
20 HIS HEART. HE HAD MALICE AFORETHOUGHT. HE THOUGHT ABOUT
21 IT. HE TOLD THEM, I'M GONNA KILL HER. LOTS OF PEOPLE
22 SAY STUFF LIKE THAT AND LOTS OF PEOPLE BLOW SMOKE ALL THE
23 TIME. BUT IN THIS CASE HE ACTUALLY DID.

24 BUT HE SAID IT TO THEM ENOUGH TIMES, HIS OWN
25 SUPERVISOR SAID FOUR OR FIVE TIMES OVER THE PREVIOUS

1 MONTH AND A HALF, HE TOLD THEM THAT HE WAS GONNA KILL
2 HER. SO HE CALLED HER UP THAT DAY AND TOLD HER TO COME
3 GET HER MAIL. HER SISTER HEARD HIM HOLLERING ON THE
4 PHONE. THEY ARGUED. SHE SAID, WELL, I'M GONNA GO OVER
5 THERE TO GET MY MAIL. SHE WENT UP THERE TO GET HER MAIL.
6 SHE LEFT AROUND 2:00, 2:15. SHE WAS DUE TO WORK AT 3:00.
7 HAD PERFECT ATTENDANCE UP UNTIL THAT DAY. I'M SURE SHE
8 DIDN'T THINK SHE WASN'T GONNA SHOW UP FOR WORK THAT DAY,
9 BUT SHE WAS WRONG.

10 SOMETIME SOON THEREAFTER SHE GOT HER MAIL, SHE TOOK
11 THE MAIL SHE PUT IT ON THE BEDPOST. WHETHER SHE WAS
12 GOING THROUGH IT OR FIXING TO GO THROUGH IT OR GO IN
13 THERE TO GO THROUGH IT, THAT'S ONE THING THAT NEVER
14 HAPPENED. WE HAVE LOTS OF EVIDENCE TO TELL US WHAT
15 HAPPENED. WE'VE GOT HIS STATEMENT, NUMBER ONE. WE'VE
16 GOT HIS DIAGRAM THAT HE DREW.

17 AND THE POLICE DID A GOOD JOB COVERING THEIR BASES.
18 THEY HAD TO MIRANDIZE HIM, THEY HAD TO READ HIM HIS
19 RIGHTS, AND HE HAD TO WAIVE THOSE RIGHTS OR VOLUNTARILY
20 GIVE THEM UP, WHICH HE DID, AND HE INITIALED THROUGH HIS
21 RIGHTS. SAID THAT HE SIGNED IT, THE OFFICER SIGNED IT,
22 RORY JONES SIGNED IT. SAID THAT HE WANTED TO GO AHEAD
23 AND TALK TO HIM.

24 AND ALL THIS STUFF YOU WILL GET TO VIEW BACK IN THE
25 JURY ROOM. HE SAID HE WANTED TO GIVE A STATEMENT. SO HE

1 SAID (READING):

2 THIS STATEMENT IS BEING WRITTEN BY SERGEANT JONES
3 UPON MY REQUEST. I'M SORRY FOR WHAT I'VE DONE. I
4 APOLOGIZE FOR EVERYTHING. WHEN WENDOLI CAME OVER TO GET
5 HER MAIL, AND I WANTED TO TALK TO HER AND SEE HOW SHE WAS
6 DOING. I ASKED HER IF SHE STILL THOUGHT ABOUT ME. SHE
7 SAID NO. SHE FOUND SOMEBODY ELSE. SHE SAID SHE DIDN'T
8 WANT TO SEE ME NO MORE. I TOLD HER THAT SHE FUCKED ME
9 OVER. I DID EVERYTHING FOR HER.

10 AND I STABBED HER. I FUCKED UP. I DON'T REMEMBER
11 IF I ALREADY HAD THE KNIFE OUT OR IF I PULLED IT OUT
12 FAST. I DON'T REMEMBER HOW MANY TIMES I STABBED HER OR
13 WHERE I STABBED HER. I REALLY WANT TO SAY I'M SORRY FOR
14 WHAT I DID. AFTER A FEW MINUTES I SAW WENDOLI LYING ON
15 THE FLOOR. I KNEW SHE WOULDN'T GET BACK UP. I CALLED
16 HER MOM TO TELL HER TO GET EVERYONE TOGETHER SO I COULD
17 APOLOGIZE TO EVERYBODY AND TELL THEM WHAT I DID.

18 I CALLED 9-1-1. MY WIFE WAS ON THE FLOOR. I
19 STABBED HER. I DON'T THINK SHE EVEN SAW IT COMING OR
20 WOULD HAVE EVER THOUGHT I WOULD HAVE DONE THAT.. I DON'T
21 THINK I SAID ANYTHING WHEN I STABBED HER.

22 QUESTION NUMBER ONE: ON 10-14-09, DID YOU STAB AND
23 KILL WENDOLI CHAVEZ? AND HIS ANSWER, IN HIS OWN
24 HANDWRITING, I STABBED HER, I DIDN'T KNOW I WOULD KILL
25 HER.

1 AND I SUBMIT TO YOU, TO TAKE A KNIFE -- AND I ALSO
2 SUBMIT TO YOU THAT THE KNIFE ACTUALLY, AS DR. WOODARD
3 TOLD YOU, THE KNIFE IS ACTUALLY KIND OF -- WE ALL CALL IT
4 A STABBING CASE, BUT HE CHOKED HER TO DEATH BEFORE HE
5 STUCK THIS KNIFE IN HER, AS THE DOCTOR TESTIFIED. SHE
6 HAD NO BLOOD PRESSURE OR VERY LITTLE BLOOD PRESSURE. SO
7 HE HAD ALREADY KILLED HER. HE WALKED UP BEHIND HER AND
8 HE CHOKED HER TO DEATH BECAUSE SHE WANTED TO SEE SOMEBODY
9 ELSE AND DIDN'T WANT TO BE WITH HIM.

10 AND I SUBMIT TO YOU THAT THAT IS NOT SUFFICIENT
11 PROVOCATION. IT WASN'T LIKE HE CAME HOME AND THEY WERE
12 HAPPILY MARRIED AND HE CAUGHT HER WITH ANOTHER MAN IN HIS
13 BEDROOM AND SHE SLAPPED HIM AND HE WENT OFF. SOMETHING
14 LIKE THAT MIGHT BE SUFFICIENT PROVOCATION.

15 BUT HE KNEW THIS WAS COMING FOR A LONG TIME. HE
16 CALLED HER OVER THERE AND HE AMBUSHED HER.

17 AND YOU CAN READ THIS AGAIN. BUT THAT WAS IN HIS
18 OWN WORDS IN HIS OWN HANDWRITING.

19 SO IT'S PRETTY EVIDENT THAT HE DID IT. HER BLOOD
20 WAS ON THE SHIRT. THERE WAS PHYSICAL EVIDENCE AT THE
21 SCENE AND THE OFFICER PACKED IT UP. THERE'S NO DOUBT
22 WHAT HE DID. IT'S GONNA COME DOWN TO WHAT YOU BELIEVE.
23 WHAT HE DID WAS MURDER, OR WHAT HE DID WAS VOLUNTARY
24 MANSLAUGHTER. AND I SUBMIT TO YOU THE STATEMENTS THAT HE
25 ALREADY MADE, THE TROUBLE THAT HE ALREADY HAD WITH HER,

1 THE FACT THAT HE CALLED HER OVER THERE, IT JUST SIMPLY
2 WHAT HE SAYS THEY TALKED ABOUT. WHAT THEY TALKED ABOUT
3 IS NOTHING MORE THAN ANY OTHER BOY-GIRL PROBABLY A LOT OF
4 TIMES YOU BREAK UP WITH A GIRLFRIEND, BUT YOU DON'T
5 STRANGLE THEM AND STAB THEM. WHAT HE DID WAS MURDER.

6 AND ANYTHING I SAY TO YOU IS NOT EVIDENCE NOR IS IT
7 WHAT THE DEFENSE SAYS. I WON'T HAVE ANY CHANCE TO REBUT
8 WHAT'S SAID THERE. BUT YOU HAVE LOTS OF TOOLS HERE. THE
9 DRYWALL SHOWING THE STRUGGLE. SHE FOUGHT FOR HER LIFE
10 BASICALLY. DR. WOODARD SAID IT'S PROBABLY 10 OR 15
11 SECONDS OF PRESSURE AROUND HER NECK. AND AS HE SAID, HE
12 SNUCK UP BEHIND HER AND PUT HER IN A HEAD LOCK AND HE
13 CRUSHED THE LIFE OUT OF HER. AND AT SOME POINT IN TIME
14 HE STILL HAD ENOUGH MALICE TO WHERE HE GOT A KNIFE OUT.
15 AND WHETHER SHE WAS LAYING ON THE FLOOR OR HE HAD A KNIFE
16 IN HIS HAND AND CHOKED HER WITH THIS HAND AND STABBED HER
17 WITH THAT HAND, HE HAD ENOUGH TIME TO THINK ABOUT WHAT HE
18 WAS DOING.

19 SO I WOULD SUBMIT TO YOU IT'S NOT A HEAT OF PASSION.
20 THERE'S NO SUFFICIENT PROVOCATION HERE. WHAT WE HAVE
21 HERE IS COLD-BLOODED MURDER. IT'S BEEN SAID THAT YOU
22 TAKE A PERSON'S LIFE, YOU NOT ONLY TAKE EVERYTHING THEY
23 HAVE, YOU TAKE EVERYTHING THEY'RE EVER GONNA HAVE. AND
24 THAT'S WHAT HE DID.

25

1 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT:

2 MR. DAY: LADIES AND GENTLEMEN OF THE JURY, I'LL BET
3 YOU DIDN'T THINK A MURDER TRIAL COULD ACTUALLY TAKE TWO
4 DAYS. HERE WE ARE THE SECOND DAY, AND WE'RE FINISHING IT
5 UP. IT IS NOT LIKE TELEVISION OR SOME OTHER STATES WHERE
6 THEY TAKE FOREVER. IN SOUTH CAROLINA WE GET IT DONE.
7 BECAUSE YOU HAVE TO MAKE THE DECISION, WE WANT YOU TO GET
8 THE INFORMATION, THE FACTS AND EVERYTHING SO THAT YOU
9 WILL BE ABLE TO MAKE THAT DECISION, SO THAT YOU WILL BE
10 ABLE TO GO BACK IN THAT ROOM, WHERE NO ONE CAN FOLLOW YOU
11 AND NO ONE CAN LISTEN, AND TO MAKE A DECISION.

12 AS I TOLD YOU AT THE BEGINNING, THIS IS NOT A
13 QUESTION OF WHODUNIT, THERE'S NO QUESTION WHO DID IT. NO
14 QUESTION WHAT HAPPENED IN THAT REGARD, THAT WENDOLI
15 CHAVEZ DIED AS A RESULT OF WHAT HER HUSBAND DID. THE
16 QUESTION IS, WAS IT MURDER, OR ARE WE TALKING ABOUT
17 MANSLAUGHTER?

18 THE JUDGE IS GONNA EXPLAIN TO YOU THE DIFFERENCE
19 BETWEEN THOSE THINGS, AND BOTH OF THEM A LIFE HAS BEEN
20 TAKEN THAT SHOULDN'T HAVE BEEN. AND I THINK THERE'S NO
21 QUESTION, I DON'T THINK ANYONE IN THIS ROOM BELIEVES THAT
22 THERE WAS ANY KIND OF PROVOCATION THAT WOULD HAVE LED TO
23 THIS. BUT WE HAVE TO LOOK AT THE FACTS TO BE SURE AS TO
24 WHAT HAPPENED.

25 WHEN YOU LOOK AT WHAT OCCURRED ON OCTOBER 14, 2009,

1 YOU HAD TWO PEOPLE WHO HAD BEEN TOGETHER FOR A WHILE, WHO
2 STARTED THEIR LIFE OUT VERY YOUNG TOGETHER. AS A RESULT
3 OF THAT, YOU HEARD ME SPEAK OF THE FACT THEY HAD A
4 STILLBORN CHILD, I SAID 2007. I MEANT 2008 IS WHEN IT
5 OCCURRED. THEY'D BEEN THROUGH A LOT TOGETHER.

6 THEY RESIDED IN WASHINGTON STATE AND THEY CAME HERE
7 BECAUSE WENDOLI'S FAMILY WAS HERE. SHE WANTED TO COME
8 HERE, HE WANTED TO COME WITH HER, SO THEY CAME HERE.

9 UNFORTUNATELY, VERY UNFORTUNATELY IN OUR SOCIETY
10 TODAY, TOO MANY MARRIAGES BREAK UP. THEY'RE ALL
11 DIFFERENT, EACH ONE IS UNIQUE, AND HOW IT HAPPENS OR WHY
12 IT HAPPENS OR WHATEVER. SOME PEOPLE ARE ABLE TO TAKE IT
13 DIFFERENTLY THAN OTHERS. SOME PEOPLE REACT DIFFERENTLY.
14 THEY STOP AND LOOKED AT ALL OF WHAT'S GOING ON HERE.

15 ONE OF THE THINGS THE JUDGE WILL TELL YOU IS THE
16 WORD "AFORETHOUGHT" COMES IN WITH MURDER. TALK ABOUT
17 PREMEDITATION, THE PLANNING ON KILLING SOMEONE, PREPARING
18 FOR IT, GOING AFTER SOMEONE FOR WHATEVER REASON. NOW,
19 THAT'S WHAT WE ALL THINK OF WHEN WE THINK OF MURDER, THAT
20 YOU GO AFTER SOMEONE AND YOU KILL THEM BECAUSE THAT'S
21 WHAT YOU WANTED TO DO. THAT'S WHAT YOU INTENDED TO DO.
22 AND THAT WORD "INTENDED" IS VERY, VERY IMPORTANT.

23 BECAUSE LET'S FACE IT. IF I DECIDE I'VE HAD ENOUGH
24 OF DAVID WAGNER, THAT I'M JUST FED UP WITH HIM AND I WANT
25 TO GET RID OF HIM AND I GO AFTER HIM AND I CAUSE HIS

1 DEATH, THAT'S MURDER, BECAUSE I INTENDED FOR THAT TO
2 HAPPEN, THAT'S WHAT I WANTED TO HAPPEN, AND I WENT AFTER
3 HIM.

4 BUT WHAT IF DAVID AND I GO BACK AND FORTH, AND I
5 THINK YOU'VE SEEN DAVID IS PRETTY MUCH A GENTLEMAN, HE
6 DOESN'T GET UPSET, HE DOESN'T POINT FINGERS, YELL, SCREAM
7 AND HOLLER, BUT WE GET MAD AT EACH OTHER ONE DAY AND WE
8 COMMENCE TO FIGHTING. AND WE'RE A PRETTY FAIR SIZE.
9 WE'RE GONNA DO SOMETHING TO EACH OTHER.

10 WHAT HAPPENS, THOUGH, IF DURING THAT ALTERCATION I
11 HIT DAVID, HE FALLS -- IF I HIT HIM HARD ENOUGH -- AND HE
12 HITS HIS HEAD AND HE DIES? I DIDN'T GO AFTER HIM AND TRY
13 TO KILL HIM. THAT WAS NOT MY INTENTION TO KILL HIM.
14 THAT'S NOT WHAT I WANTED TO DO. WHAT I WANTED TO DO WAS
15 GET HIS ATTENTION. I WANTED TO GET IT OUT OF MY SYSTEM,
16 HE DID, TOO AT THE TIME. BUT, UNFORTUNATELY, WHAT I DID
17 RESULTED IN THE DEATH OF ANOTHER HUMAN BEING. THAT'S NOT
18 MURDER. THAT CERTAINLY DOES RISE TO MANSLAUGHTER. AND
19 THAT WOULD BE THE ISSUE THAT I WOULD BE PRESENTED WITH
20 WHEN I REALIZE THAT I CAUSED THE DEATH OF ANOTHER PERSON.

21 IN THIS REGARD A LOT OF THE FACTS YOU HAVE SEEN
22 EVIDENCE OF WHAT WENT ON, YOU'VE HEARD ALL THE MEDICAL
23 EVIDENCE. WE WEREN'T FIGHTING ABOUT THE MEDICAL
24 EVIDENCE.

25 YOU SAW HIS STATEMENT. YOU'VE HEARD HIS STATEMENT.

1 YOU WILL HAVE THIS BACK THERE WITH YOU WHEN YOU GO BACK.
2 THAT IS HIS STATEMENT THAT HE MADE TO RORY JONES. RORY
3 SAYS, OF COURSE, THAT HE MAY HAVE BEEN CRYING, HE WAS
4 UPSET, HE WAS EMOTIONAL. BUT HE TOOK HIM THROUGH IT.
5 FOR 40-SOMETHING MINUTES HE SAT IN THE ROOM WITH HIM AND
6 GENTLY TOOK HIM THROUGH IT. HE DIDN'T HARASS HIM,
7 THREATEN HIM, BEAT UP ON HIM OR ANYTHING LIKE THAT. HE
8 DID HIS JOB, AND HIS JOB WAS TO FIND OUT WHAT HAPPENED.

9 AND SO HE ASKED HIM AND HE WENT THROUGH IT AND HE
10 WROTE DOWN WHAT HE TOLD HIM. HE SAYS HE SNAPPED WHEN HE
11 REALIZED FINALLY THAT HIS MARRIED LIFE WAS OVER. THIS
12 WAS HIS WIFE. SHE WASN'T COMING BACK. THEY WERE NOT
13 GONNA GET TOGETHER. HE SAYS HE DIDN'T KNOW EXACTLY WHAT
14 HAPPENED. HE SAYS, I THINK I STABBED HER. I STABBED
15 HER. I DON'T KNOW. I DON'T KNOW WHAT HAPPENED.

16 YOU CAN USE ALL SORTS OF TERMS. WHAT IT ALL COMES
17 DOWN TO WHEN HE SAYS HE SNAPPED, HE LOST IT, HE WASN'T
18 THINKING OR WHATEVER. BUT, UNFORTUNATELY, AS A RESULT OF
19 THAT HIS WIFE DIED. BUT WAS THAT MURDER? IS THERE
20 PREMEDITATION, IS THERE AFORETHOUGHT?

21 SHE WAS COMING OVER TO GET HER MAIL. YOU HEARD THE
22 TESTIMONY THAT THEY SPOKE AT 10, 10:30 IN THE MORNING ON
23 THE TELEPHONE. ACCORDING TO THE WITNESS, THEY WENT BACK
24 AND FORTH. BUT SHE WASN'T UPSET. SHE DIDN'T SAY
25 ANYTHING TO THE WITNESS, HER SISTER. SHE DIDN'T SAY

1 ANYTHING ABOUT IT OTHER THAN THE FACT SHE HUNG UP THE
2 PHONE ON HIM.

3 THEN OVER THREE HOURS LATER SHE GOES TO THE HOUSE.
4 THREE HOURS LATER. THAT SHOWS SHE DIDN'T HAVE ANY FEAR
5 OF HIM. APPARENTLY THERE HAD NOT BEEN ANYTHING BETWEEN
6 THEM THAT WOULD HAVE CAUSED HER TO HAVE FEAR. SHE WENT
7 OVER THERE TO GET HER MAIL. AND YOU WILL SEE THE MAIL IN
8 THERE THAT'S BEEN PUT INTO EVIDENCE, THE MAIL THAT WAS AT
9 THE HOUSE THAT SHE WENT TO, AND YOU WILL NOTICE IT WAS
10 RECENT MAIL. THEY HAVE BEEN SEPARATED FOR A MONTH OR A
11 MONTH AND A HALF. SHE'S BEEN GETTING HER MAIL ALL DURING
12 THAT TIME. BUT NOTHING HAD HAPPENED. SHE WASN'T SCARED
13 OF HIM. NOTHING.

14 SHE DROVE OVER THERE. IT WAS A HORRIBLE THING THAT
15 HAPPENED THAT DAY. PLEASE UNDERSTAND IN NO WAY AM I
16 DOWNPLAYING THE LOSS TO THIS FAMILY. IT'S A HORRIBLE
17 TRAGEDY, AND THERE'S NOTHING THAT CAN CHANGE WHAT
18 HAPPENED THAT DAY.

19 BUT DID -- DID DAVID CHAVEZ ACT LIKE A MURDERER?
20 YOU'VE SEEN THE EVIDENCE, YOU'VE SEEN THE TIME LINE,
21 FIGURED THAT OUT. APPARENTLY AFTER IT OCCURRED HE
22 REALIZED THAT HIS LIFE HAD JUST CHANGED FOREVER. BUT DID
23 HE ACT LIKE A MURDERER? DO YOU THINK A MURDERER WOULD
24 HAVE STUCK AROUND, SOMEONE WHO HAD PLANNED ON IT,
25 INTENDED TO KILL SOMEONE WOULD STICK AROUND, SOMEONE WITH

1 A HEART THAT DEVOID OF PASSION, THAT DEVOID OF ANYTHING
2 TO TAKE A PERSON'S LIFE DELIBERATELY, HE AIN'T GONNA
3 STICK AROUND.

4 HE HAD HOURS, HOURS. HE COULD HAVE GOTTEN AWAY,
5 TAKEN OFF, GONE WHEREVER, AND MAY NEVER HAVE BEEN FOUND,
6 OR MAYBE NEVER FOUND UNTIL A LONG TIME LATER BUT HE
7 DIDN'T DO THAT. WE CAN'T GET INSIDE OF HIS HEAD. WE
8 DON'T KNOW EXACTLY WHY HE DID WHAT HE DID.

9 WHAT HE DID DO IS HE GOT MONEY OUT OF HIS ACCOUNT
10 THAT HE AND HIS WIFE HAD, AND YOU WILL NOTICE THAT THE
11 TESTIMONY WAS THAT THAT WAS BOTH OF THEIR ACCOUNTS, THEIR
12 PAYCHECKS WENT INTO THAT ACCOUNT; THAT'S WHAT THEY USED
13 FOR THEIR MONEY AND WAS STILL DOING THAT.

14 HE GAVE THAT MONEY THAT WAS IN THAT ACCOUNT TO HIS
15 SISTER AND FOR HER SON, BOYFRIEND FOR WHATEVER REASON,
16 MOST PROBABLY TO GO BACK HOME, BECAUSE HE KNEW HE
17 COULDN'T TAKE CARE OF THEM ANYMORE. HE WASN'T GONNA BE
18 AROUND, HE KNEW THAT.

19 AFTER HE DID THAT, HE CAME BACK, HE CALLED HIS
20 PARENTS, CALLED HIS MOTHER, CALLED HIS SISTER'S FATHER
21 AND TOLD THEM WHAT HAPPENED AND WHAT HE HAD DONE. HE
22 DIDN'T CALL THEM AND TELL THEM THAT, I'VE GOT TO GET OUT
23 OF HERE. I'M HEADING OUT, I'M COMING BACK TO WASHINGTON
24 OR I'M HEADING SOMEPLACE ELSE. HE SAID, I'VE DONE A
25 TERRIBLE THING. HE TOLD THEM WHAT HE DID.

1 HE THEN CALLED 9-1-1 AND HE SAT AND HE WAITED. AS
2 YOU HEARD FROM THE 9-1-1 CALL, HE KEPT TELLING MS. SHOOK
3 THAT THE POLICE OFFICERS HAD COME BY HIS HOUSE AND DID
4 NOT SEE THE DRIVEWAY WHERE TO DRIVE IN. THIS HOUSE SITS
5 BACK BEHIND ANOTHER ONE, IT'S A LONGER DRIVEWAY THERE ON
6 DEPOT STREET. HE TOLD THEM, HE TOLD THE DISPATCHER, THEY
7 MISSED THE HOUSE. THEY WENT BY.

8 SHE KEPT TALKING TO HIM ON THE PHONE. WHERE ARE
9 THEY?

10 THEY WENT BY THE HOUSE. HE TELLS HER THEY MISSED
11 THE HOUSE.

12 THEY COME BACK, AND WHEN THEY CAME BACK, SAID, ARE
13 THEY THERE?

14 HE SAYS YES, AND THEN HE HUNG UP THE PHONE. I SEE
15 THE POLICE, THEY'RE HERE, HE HANGS UP THE PHONE. DOES HE
16 RUN? DOES HE FIGHT? NO.

17 THEY ASK WHO MADE THAT 9-1-1 CALL? HE SAID, I DID.
18 I STABBED MY WIFE. AGAIN, IS THAT THE ACTION OF A
19 MURDERER? IT'S CERTAINLY THE ACTION OF SOMEONE WHO MADE
20 JUST AN ABSOLUTELY HORRIBLE MISTAKE IN THEIR LIFE THAT
21 CAUSED THE DEATH OF SOMEONE ELSE.

22 THAT'S WHAT HAPPENED THAT DAY. WE CAN'T CHANGE IT.
23 BUT LET'S DON'T PILE UP ON HIM. THERE'S NO QUESTION IT
24 WAS A MANSLAUGHTER. THAT'S WHAT THE JUDGE WILL INSTRUCT
25 YOU AS TO THE LAW YOU ARE TO LOOK AT, AND MAKE A

1 DETERMINATION AS TO MURDER OR MANSLAUGHTER, YOU ARE ASKED
2 TO LOOK AT THAT AND SEE THAT, IN FACT, THAT'S WHAT IT
3 WAS.

4 HE DIDN'T ACT LIKE A MURDERER. IT WASN'T UP TO HIM
5 TO TRY TO ESCAPE FROM THIS. IT WASN'T UP TO HIM TO NOT
6 FACE IT. HE FACED IT, ADMITTED TO IT, KNOWING THAT HE
7 WAS FORFEITING A TREMENDOUS PORTION OF HIS LIFE, IF NOT
8 ALL OF IT. HE KNEW THAT. HE SAID, HERE I AM.

9 REMEMBER LOOKING AT THAT, SAID THE STATEMENT GOES
10 THROUGH, AND YOU'LL HAVE A CHANCE TO LISTEN -- YOU HEARD
11 THE READING OF THAT WHEN HE SPOKE ON THOSE QUESTIONS THAT
12 RORY JONES WROTE OUT FOR HIM, SAYS, DID YOU STAB AND KILL
13 WENDOLI CHAVEZ.

14 HE SAID, I STABBED HER. I DID NOT KNOW I KILLED
15 HER.

16 THAT'S WHAT IT SOUNDED LIKE ON THE AUDIO ON THE C D
17 WHEN HE SAID THAT.

18 AND THE FOURTH QUESTION: WHY DID YOU STAB HER? I
19 DON'T KNOW. BECAUSE AT THE MOMENT WHEN HE SNAPPED HE HAD
20 LOST THAT REASON THAT ALL OF US HAVE TO KEEP US FROM
21 DOING SOMETHING LIKE THIS, TO KEEP US FROM DOING
22 SOMETHING STUPID. FROM LITTLE THINGS TO BIG THINGS. BUT
23 HE DIDN'T HAVE IT AT THAT MOMENT. HE'S GOT TO PAY FOR
24 THAT, AND HE KNOWS THAT AND THAT'S WHY HE STAYED HERE.

25 WHEN YOU LOOK AT ALL OF THIS, EVEN THE PEOPLE WHO

1 TESTIFIED WHO WERE HIS FRIENDS SAID THEY DIDN'T BELIEVE
2 HE WOULD DO SOMETHING LIKE THAT. THE GENTLEMAN WHO
3 WORKED WITH HIM SAID I DON'T BELIEVE HE WOULD HAVE DONE
4 THAT. THEY KNEW HIM.

5 THEY KNEW HE WAS UPSET BECAUSE HIS -- AND LET'S FACE
6 IT. DIVORCE IS AN EXTREMELY EMOTIONAL THING. IT'S A
7 BREAKING UP OF A UNION, SOMETHING THAT STARTED OUT IN
8 LOVE, TOGETHERNESS, AND ALL OF A SUDDEN IT SOURS. IT'S
9 EXTREMELY EMOTIONAL. EVERYONE REACTS DIFFERENTLY. THIS
10 WAS THE WORST.

11 I ASK THAT YOU LISTEN TO THE JUDGE'S CHARGE, HE'LL
12 EXPLAIN TO YOU ABOUT THE LAW. WE ASK YOU TO BRING BACK A
13 VERDICT OF GUILTY OF MANSLAUGHTER BECAUSE THAT'S WHAT
14 THIS WAS. HE KNOWS HE MUST BE PUNISHED. BUT JUSTICE IS
15 SUPPOSED TO BE FAIR. JUSTICE IS FOLKS TRYING TO DO THE
16 RIGHT THING. THAT'S ALL WE'RE ASKING FOR IN THIS CASE:
17 TO GIVE JUSTICE.

18 I WISH THERE WAS SOME WAY WE COULD DO SOMETHING FOR
19 WENDOLI, BUT WE CAN'T. BUT WE MUST DO THE RIGHT THING.
20 THANK YOU.

21 THE COURT'S CHARGE ON THE LAW:

22 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
23 JURY, AS JURORS IN THIS CASE YOU HAVE CERTAIN FUNCTIONS
24 AND RESPONSIBILITIES TO PERFORM WHICH ARE ENTIRELY
25 DIFFERENT AND SEPARATE AND DISTINCT FROM THOSE OF MINE AS

1 THE TRIAL JUDGE. I AM PROHIBITED BY THE CONSTITUTION OF
2 OUR STATE FROM CHARGING YOU ON THE FACTS OF THIS CASE.
3 I'M ALSO PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE
4 WITH YOU OR IN ANY WAY INTIMATING WHAT MY FEELINGS, IF
5 ANY, ARE ABOUT THE FACTS OF THIS CASE. IT IS YOUR
6 RESPONSIBILITY AND YOURS ALONE TO PASS UPON ALL ISSUES OF
7 FACT PRESENTED IN THE CASE.

8 I WOULD, THEREFORE, CHARGE YOU THAT IF DURING THE
9 COURSE OF THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN
10 GIVEN OR LEFT WITH AN IMPRESSION OR FEELING THAT I DO
11 HAVE A PERSONAL FEELING ABOUT THE FACTS OF THE CASE, I
12 WOULD SPECIFICALLY INSTRUCT YOU TO DISREGARD THAT FEELING
13 OR IMPRESSION.

14 MOREOVER, YOU ARE THE SOLE JUDGES OF WHAT THE
15 TESTIMONY WAS AND NOT THE ARGUMENT OF COUNSEL. IT'S ALSO
16 YOUR DUTY AND YOURS ALONE TO WEIGH THE TESTIMONY AND
17 EVIDENCE IN THE CASE AND TO PASS UPON THE CREDIBILITY OR
18 BELIEVABILITY OF THE WITNESSES. IN THIS CONNECTION YOU
19 HAVE THE RIGHT TO BELIEVE ALL THAT A WITNESS TELLS YOU OR
20 DISBELIEVE ALL THAT A WITNESS TELLS YOU. YOU HAVE THE
21 RIGHT TO BELIEVE A PART OF WHAT A WITNESS TELLS YOU OR
22 DISBELIEVE A PART OF WHAT A WITNESS TELLS YOU.

23 YOU HAVE THE RIGHT TO TAKE INTO CONSIDERATION ANY
24 BIAS, PREJUDICE, OR INTEREST YOU FEEL THE WITNESS MIGHT
25 HAVE IN THE CASE. I SAY THIS MERELY TO EMPHASIZE THAT

1 THE WEIGHT YOU SEE FIT TO GIVE TO THE TESTIMONY, THE
2 CREDIBILITY OF THE WITNESSES AS WELL AS ALL ISSUES OF
3 FACT ARE FOR YOUR SOLE DETERMINATION.

4 AS JUDGES OF THE FACTS YOU ARE THE SOLE JUDGES OF
5 THE CREDIBILITY, THAT IS THE BELIEVABILITY OF THE
6 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN PASSING
7 UPON THEIR CREDIBILITY YOU MAY TAKE INTO CONSIDERATION
8 MANY THINGS, SUCH AS THE APPEARANCE AND MANNER OF THE
9 WITNESS ON THE STAND, SOMETIMES REFERRED TO AS THE
10 DEMEANOR OF THE WITNESS.

11 WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS THE
12 WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN
13 DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO
14 KNOW THE FACTS ABOUT WHICH HE OR SHE TESTIFIED? DID THE
15 WITNESS HAVE A CAUSE OR REASON TO BE BIASED OR PREJUDICED
16 IN FAVOR OF THE TESTIMONY THAT HE OR SHE GAVE? WAS THE
17 TESTIMONY OF THE WITNESS CORROBORATED OR MADE STRONGER BY
18 OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE WEAKER OR
19 IMPEACHED BY SUCH OTHER TESTIMONY AND EVIDENCE?

20 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A SMALL
21 PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE LARGER,
22 OR VICE VERSA, YOU MAY BELIEVE ALL OF A WITNESS'S
23 TESTIMONY OR NONE.

24 NOW, THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT
25 WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN

1 EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL
2 EXPERT WITNESSES, A WITNESS WHO BY EDUCATION OR
3 EXPERIENCE HAS BECOME AN EXPERT IN SOME ART, SCIENCE,
4 PROFESSION OR CALLING, MAY STATE AN OPINION AS TO A
5 RELEVANT OR MATERIAL MATTER IN WHICH THE WITNESS CLAIMS
6 TO BE AN EXPERT. THEY MAY ALSO STATE THE REASONS FOR
7 THAT OPINION.

8 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
9 EVIDENCE IN THIS CASE, AND LIKE ANY OTHER EVIDENCE, GIVE
10 IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THE
11 OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT
12 EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE
13 REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR
14 THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY
15 DISREGARD THE OPINION ENTIRELY.

16 AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO
17 GREATER WEIGHT THAN ANY OTHER WITNESS SIMPLY BECAUSE THE
18 WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO
19 ACCEPT AN EXPERT OPINION EVEN THOUGH IT IS NOT
20 CONTRADICTED.

21 THROUGHOUT THIS ENTIRE PROCESS YOU HAVE BUT ONE
22 SINGLE OBJECTIVE AND THAT IS TO SEEK THE TRUTH,
23 REGARDLESS FROM WHAT WITNESS THE TESTIMONY MAY HAVE COME.

24 NOW, I INSTRUCT YOU AND EMPHASIZE THE FACT THAT THE
25 DEFENDANT DID NOT TESTIFY OR PUT UP EVIDENCE IS NOT A

1 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
2 DELIBERATIONS AND IN YOUR CONSIDERATIONS OF THE QUESTION
3 WHETHER THE STATE HAS PROVEN THE GUILT AND THE DEFENDANT
4 IS GUILTY OR NOT GUILTY OF THE CHARGES, AND MUST NOT BE
5 CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. THE
6 DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT,
7 AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY
8 YOU IN DELIBERATIONS.

9 I REPEAT: UNDER THE OATH THAT YOU TOOK YOU ARE TO
10 DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE
11 DEFENDANT IN THIS CASE DID NOT TESTIFY OR PRESENT
12 EVIDENCE. THE FACT THAT THE DEFENDANT DID NOT TESTIFY
13 SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.

14 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON
15 THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
16 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
17 PROVE GUILT BEYOND A REASONABLE DOUBT.

18 NOW, BY THE SAME CONSTITUTION AND LAW WHICH MAKES
19 YOU THE FACT-FINDERS OF FACTS AND THE EVIDENCE, AS I'VE
20 DISCUSSED WITH YOU, I AM AS THE JUDGE MADE THE SOLE AND
21 ONLY INSTRUCTOR OF THE LAW. YOU MUST ACCEPT AS CORRECT
22 THE LAW WHICH I CHARGE AND APPLY IT TO THE EVIDENCE AS
23 YOU FIND IT AND REACH YOUR VERDICT.

24 IF I SHOULD MAKE AN ERROR IN THE LAW AS I INSTRUCT
25 IT TO YOU, THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN

1 BE CONSIDERED AND IF NECESSARY CORRECTED. BUT FOR THE
2 PURPOSES OF THIS CASE TODAY YOU MUST ACCEPT THE LAW AS I
3 CHARGE IT TO BE CORRECT LAW.

4 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO THIS
5 INDICTMENT AND THAT PLEA PUTS THE BURDEN OF PROOF ON THE
6 STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED
7 WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS
8 NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU
9 THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE
10 DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE
11 SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED
12 INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED
13 UNLESS THE GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING
14 YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

15 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
16 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE
17 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT
18 OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF THAT GUILT
19 BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE
20 IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE
21 SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE
22 DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT
23 BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT
24 BEYOND A REASONABLE DOUBT.

25 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL

1 THEORY, IT'S NOT A LEGAL PHRASE. IT IS A SUBSTANTIAL
2 RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU,
3 THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE
4 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

5 WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT IS
6 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
7 HESITATE TO ACT.

8 NOW, THERE HAS BEEN ADMITTED INTO THE RECORD IN THIS
9 CASE A STATEMENT ALLEGEDLY MADE BY THE DEFENDANT. THE
10 FACT THAT THE COURT HAS ADMITTED A STATEMENT INTO
11 EVIDENCE SHOULD NOT BE CONSIDERED BY YOU AS ANY EVIDENCE
12 WHATSOEVER THAT THE DEFENDANT MADE SUCH STATEMENT OR THAT
13 THE REQUIRED CONSTITUTIONAL SAFEGUARDS WERE, IN FACT,
14 PROVIDED AND WAIVED BY THE DEFENDANT OR THAT THE
15 STATEMENT WAS VOLUNTARILY GIVEN, BECAUSE THESE ISSUES ARE
16 FOR YOU, THE JURY, TO DETERMINE, AND THE STATE MUST PROVE
17 EACH OF THE FOLLOWING REQUIREMENTS:

18 ONE, DID THE DEFENDANT ACTUALLY MAKE THE STATEMENT?
19 TWO, WAS THE STATEMENT -- WAS THE DEFENDANT WARNED OF HIS
20 CONSTITUTIONAL RIGHTS BEFORE MAKING THE STATEMENT?
21 THREE, DID THE DEFENDANT KNOWINGLY AND INTELLIGENTLY
22 WAIVE HIS CONSTITUTIONAL RIGHTS? AND FOUR, WAS THE
23 STATEMENT GIVEN VOLUNTARILY?

24 THE STATE MUST PROVE EACH OF THESE FOUR REQUIREMENTS
25 BEYOND A REASONABLE DOUBT BEFORE YOU MAY CONSIDER THE

1 STATEMENT AS EVIDENCE FOR ANY PURPOSE WHATSOEVER.

2 NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
3 GENERALLY PRESENTED DURING THE TRIAL: DIRECT EVIDENCE
4 AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
5 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE
6 OF A FACT SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH
7 IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

8 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
9 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT
10 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL
11 FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.

12 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND
13 NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. IT IS PROOF
14 THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN QUESTION BUT
15 ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY
16 EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST
17 REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE
18 FACT IS TRUE.

19 FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO
20 WARRANT A FINDING OF FACT, THE CIRCUMSTANCES MUST LEAD TO
21 A FACT WITH REASONABLE CERTAINTY. THE FACTS AND
22 CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY
23 EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF A FACT
24 CANNOT BE BASED ON SPECULATION, SURMISE OR CONJECTURE.

25 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE

1 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
2 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
3 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
4 DIRECT EVIDENCE.

5 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE,
6 AND AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT
7 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
8 REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

9 I CHARGE YOU THAT SUSPICION, HOWEVER STRONG, IS NOT
10 ENOUGH TO SUSTAIN A CONVICTION. EVIDENCE PRESENTED BY
11 THE STATE MUST BE SUBSTANTIAL EVIDENCE THAT TENDS TO
12 PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
13 DOUBT.

14 IN ORDER TO ESTABLISH CRIMINAL LIABILITY CRIMINAL
15 INTENT IS REQUIRED. CRIMINAL INTENT MUST BE PROVEN BY
16 THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS
17 ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM
18 THE CIRCUMSTANCES SURROUNDING THE SITUATION.

19 THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
20 CERTAINTY, THERE IS NO MEDICAL SCIENCE -- THERE IS NO WAY
21 MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND
22 DETERMINE WHAT THE PERSON HAD IN MIND. SO THE LAW SAYS
23 THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
24 CIRCUMSTANCES SHOWN TO HAVE EXISTED.

25 THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR

1 NOT THE ELEMENT REQUIRING INTENT IS PRESENT. IT IS NOT
2 NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE
3 EVIDENCE, BUT INTENT MAY BE ESTABLISHED THE SAME WAY AS
4 ANY OTHER FACT, BUT TAKING INTO CONSIDERATION THE ACTS OF
5 THE PARTIES AND THE FACTS AND CIRCUMSTANCES OF THE CASE.
6 CIRCUMSTANTIAL EVIDENCE IS A MENTAL STATE, A CONSCIOUS
7 WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE
8 DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN
9 TO HAVE EXISTED.

10 CRIMINAL INTENT IS A STATE OF MIND THAT OPERATES
11 JOINTLY WITH AN ACT OR OMISSION IN THE COMMISSION OF A
12 CRIME. CRIMINAL INTENT IS A MENTAL STATE. CRIMINAL
13 LIABILITY IS NORMALLY BASED UPON THE CONCURRENCE OF TWO
14 FACTORS: AN EVIL MEANING MIND AND AN EVIL DOING HAND.
15 PROOF OF INTENT NECESSARILY RESTS ON INFERENCE FROM
16 CONDUCT.

17 IN INDICTMENT NUMBER 2010-GS-37-20 THE DEFENDANT,
18 DAVID J. CHAVEZ, IS CHARGED WITH MURDER UNDER SOUTH
19 CAROLINA CODE SECTION 16-3-10 WHICH DEFINES MURDER AS A
20 KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER
21 EXPRESS OR IMPLIED. I REMIND YOU THAT THE FACT THE
22 DEFENDANT WAS ARRESTED, CHARGED, AND INDICTED IN THIS
23 CASE IS NOT EVIDENCE IN THE CASE AND CANNOT BE CONSIDERED
24 BY YOU AS EVIDENCE OF GUILT IN THE CASE, NOR DOES IT
25 CREATE ANY PRESUMPTION OF INFERENCE TOWARD GUILT. AN

1 INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH
2 CONTAINS THE CHARGE MADE AGAINST THE DEFENDANT. IT IS
3 THE FORMAL DOCUMENT BY WHICH THE CASE IS BROUGHT INTO
4 COURT.

5 NOW, THE DEFENDANT, DAVID J. CHAVEZ, IS CHARGED WITH
6 MURDER. TO PROVE MURDER THE STATE MUST PROVE BEYOND A
7 REASONABLE DOUBT THE DEFENDANT KILLED ANOTHER PERSON WITH
8 MALICE AFORETHOUGHT. MALICE IS HATRED, ILL WILL, OR
9 HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL
10 DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE WITH
11 AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES
12 THAT THE LAW WILL INFER AN EVIL INTENT.

13 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
14 EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS
15 COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE
16 DEFENDANT JUST BEFORE AND AT THE TIME THAT THE ACT IS
17 COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE
18 PREVIOUS EVIL INTENT AND THE ACT.

19 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED.
20 THESE TERMS, EXPRESSED OR INFERRED, DO NOT MEAN DIFFERENT
21 KINDS OF MALICE, BUT MERELY MEANS THE MANNER IN WHICH
22 MALICE MAY BE SHOWN TO EXIST, THAT IS EITHER BY DIRECT
23 EVIDENCE OR THE INFERENCE FROM THE FACTS OR CIRCUMSTANCES
24 WHICH ARE PROVED.

25 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS

1 WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE
2 PERSON PREPARES BEFOREHAND TO DO THE ACT WHICH WAS LATER
3 ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A PERSON,
4 OR ANY OTHER ACTS OF PREPARATION GO TO SHOW THE DEED WAS
5 DONE WITHIN THE DEFENDANT'S MIND, THAT WOULD BE EXPRESSED
6 MALICE.

7 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
8 DISREGARD FOR HUMAN LIFE. IF FACTS ARE PROVED BEYOND A
9 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
10 MALICE FOR YOUR SATISFACTION, AND IN THIS INSTANCE WOULD
11 SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO
12 CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER EVIDENCE
13 IN THE CASE. YOU MAY GIVE IT SUCH WEIGHT AS YOU
14 DETERMINE IT SHOULD RECEIVE. FINALLY, THE STATE MUST
15 PROVE THE DEATH OF THE VICTIM WAS PROXIMATELY CAUSED BY
16 THE MALICIOUS ACT OR ACTS OF THE DEFENDANT.

17 UNDER SOUTH CAROLINA LAW WE DO HAVE A PRINCIPLE
18 KNOWN AS LESSER-INCLUDED OFFENSES. SOME CRIMES OF A
19 LESSER DEGREE ARE INCLUDED IN CRIMES WHICH ARE OF A
20 GREATER DEGREE. IN THIS PARTICULAR CASE THERE IS ONE
21 LESSER-INCLUDED OFFENSE FOR YOU TO CONSIDER. INDICTMENT
22 NUMBER 2010-GS-37-20 CHARGES THE DEFENDANT WITH THE
23 MURDER OF WENDOLI CHAVEZ. THE OFFENSE OF MURDER INCLUDES
24 THE LESSER-INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER.
25 THEREFORE, YOU MAY CONSIDER THE LESSER-INCLUDED OFFENSE

1 OF VOLUNTARY MANSLAUGHTER ON INDICTMENT 2010-GS-37-20.

2 IF YOU FIND THE STATE HAS FAILED TO PROVE BEYOND A
3 REASONABLE DOUBT THE DEFENDANT COMMITTED MURDER, YOU MAY
4 CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE
5 DOUBT THAT THE DEFENDANT COMMITTED VOLUNTARY
6 MANSLAUGHTER. TO PROVE VOLUNTARY MANSLAUGHTER THE STATE
7 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
8 TOOK THE LIFE OF ANOTHER IN THE HEAT, IN THE SUDDEN HEAT
9 OF PASSION BASED ON SUFFICIENT LEGAL PROVOCATION. BOTH
10 HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION MUST BE
11 PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE
12 VOLUNTARY MANSLAUGHTER.

13 SUDDEN HEAT OF PASSION MAY FOR A TIME AFFECT A
14 PERSON'S SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S
15 REASON. SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT
16 WOULD MAKE AN ORDINARY PERSON UNABLE TO COOLY REJECT OR
17 REFLECT ON HIS ACTIONS AND WOULD REDUCE AN UNCONTROLLABLE
18 IMPULSE TO DO VIOLENCE. SUFFICIENT LEGAL PROVOCATION
19 MUST BE OF THE TYPE THAT WOULD MAKE A PERSON OF ORDINARY
20 REASON AND CAUTION BECOME ENRAGED AND TO LOSE CONTROL
21 TEMPORARILY.

22 PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER MUST
23 COME FROM SOME ACT OF OR RELATED TO THE VICTIM. WORDS
24 ALONE, HOWEVER VULGAR OR INSULTING, ARE NOT ENOUGH TO BE
25 LEGAL PROVOCATION. WHEN DEATH IS CAUSED BY THE USE OF A

1 DEADLY WEAPON, THE WORDS MUST BE ACCOMPANIED BY THE
2 APPEARANCE OF AN ASSAULT, OF SOME OVERT THREATENING ACT
3 WHICH WOULD HAVE PRODUCED THE HEAT OF PASSION.

4 THE EXERCISE OF A LEGAL RIGHT, NO MATTER HOW
5 OFFENSIVE IT IS TO ANOTHER, IS NEVER SUFFICIENT LEGAL
6 PROVOCATION FOR VOLUNTARY MANSLAUGHTER. IF THE HEAT OF
7 PASSION HAS COOLED OR WHERE THERE WAS ENOUGH TIME BETWEEN
8 THE PROVOCATION, IF ANY, AND THE KILLING FOR THE PASSION
9 OF A REASONABLE PERSON TO COOL, THE KILLING WOULD NOT BE
10 VOLUNTARY MANSLAUGHTER.

11 IN DECIDING WHETHER A REASONABLE PERSON WOULD HAVE
12 HAD ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL OF
13 THE CIRCUMSTANCES SURROUNDING THE KILLING, YOU MAY
14 CONSIDER THE NATURE OF THE PROVOCATION, IF ANY, THE
15 DEFENDANT'S MENTAL AND PHYSICAL STATE, AND THE
16 CIRCUMSTANCES AND RELATIONSHIPS BETWEEN PARTIES.

17 A DEADLY WEAPON IS ANY ARTICLE OR INSTRUMENT OR
18 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
19 HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY
20 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH
21 CASE. THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH
22 MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A
23 DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A
24 RAZOR, GASOLINE, A FIRE BOMB, MOLOTOV COCKTAIL, OR
25 LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT'S

1 NOT OPERATING. A HAND OR FIST IS NOT NORMALLY CONSIDERED
2 A DEADLY WEAPON; HOWEVER, UNDER SOME CIRCUMSTANCES,
3 DEPENDING ON THE MANNER AND MEANS OF ITS USE, A HAND OR
4 FIST MAY BE CONSIDERED A DEADLY WEAPON.

5 IT IS FOR YOU TO DECIDE IN THIS CASE BEYOND A
6 REASONABLE DOUBT WHETHER OR NOT A HAND OR FIST IS A
7 DEADLY WEAPON.

8 ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE
9 FACTS SHOW THAT THEY ARE USED TO INFLICT SERIOUS BODILY
10 HARM OR INJURY. THE STATE MUST PROVE EACH CHARGE OF THE
11 OFFENSE BEYOND A REASONABLE DOUBT. YOU SHOULD RENDER
12 YOUR VERDICT BASED ON YOU ARE SATISFIED THE STATE HAS
13 ESTABLISHED BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF
14 THE CHARGED OFFENSE.

15 IF YOU, THE JURORS, HAVE A REASONABLE DOUBT AS TO
16 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF AND
17 SHOWN ALL THE ELEMENTS OF THE CHARGED OFFENSE, YOU WOULD
18 FIND THE DEFENDANT NOT GUILTY UNDER THE INDICTMENT.

19 ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT
20 OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE
21 EVIDENCE, YOU MUST FIND THE DEFENDANT GUILTY.

22 IF YOU AS JURORS HAVE A REASONABLE DOUBT AS TO
23 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF AND
24 SHOWN ALL THE ELEMENTS OF THE CRIME OF MURDER, YOU SHOULD
25 THEN CONSIDER THE LESSER-INCLUDED OFFENSE OF VOLUNTARY

1 MANSLAUGHTER. THEN IF YOU HAVE A REASONABLE DOUBT AS TO
2 WHETHER OR NOT THE STATE HAS MET ITS BURDEN AND SHOWN ALL
3 THE ELEMENTS OF THE CRIME OF VOLUNTARY MANSLAUGHTER, YOU
4 WOULD THEN FIND THE DEFENDANT NOT GUILTY.

5 NOW, MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
6 YOU HAVE BEEN SWORN AS FAIR AND IMPARTIAL JURORS SWORN TO
7 IMPARTIALLY DETERMINE THE FACTS OF THIS CASE. WHEN YOU
8 COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE THE
9 RIGHT TO CONSIDER YOUR VERDICT AND YOU WILL HAVE FULLY
10 DISCHARGED YOUR DUTY AS JURORS. YOU SHOULD NOT BE
11 INFLUENCED BY OPINIONS OR EXPRESSION OF OPINIONS, IF ANY,
12 WHICH YOU MAY HAVE HEARD ON THE OUTSIDE. YOU ARE TO
13 DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HAVE
14 HEARD FROM THE LIPS OF THE SWORN WITNESSES ALONG WITH
15 OTHER EVIDENCE THAT MAY HAVE BEEN INTRODUCED IN THIS
16 TRIAL.

17 AS I SAID EARLIER, YOU ARE THE JUDGE OF THE FACTS IN
18 THIS CASE, AND YOU ARE TO DETERMINE ONLY IF THE DEFENDANT
19 IS GUILTY OR NOT GUILTY BASED UPON THE TESTIMONY AND
20 EVIDENCE PRESENTED IN THE TRIAL AND AFTER APPLYING THE
21 LAW AS I HAVE GIVEN IT TO YOU. IF FROM THE EVIDENCE YOU
22 HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THE
23 DEFENDANT IS GUILTY. IT IS YOUR DUTY TO ACQUIT HIM AND
24 WRITE THE TWO WORDS "NOT GUILTY." UNDER THE OATH YOU
25 TOOK YOU SWORE TO TRY THIS CASE BASED ONLY AND SOLELY ON

1 THE TESTIMONY AND THE EVIDENCE AND LAW PRESENTED AND
2 HEARD IN THIS COURTROOM. IT IS YOUR DUTY TO LAY ASIDE
3 ALL BIAS, PREJUDICE, AND SYMPATHY YOU MAY HAVE IN
4 REACHING YOUR VERDICT. YOU HAVE NO FRIENDS TO REWARD OR
5 ENEMIES TO PUNISH IN THIS CASE.

6 I MIGHT NOTE THAT THE WORD "VERDICT" COMES FROM THE
7 LATIN TERM, *VEREDICTO*, WHICH MEANS TO SPEAK THE TRUTH.
8 ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH DOES SPEAK
9 THE TRUTH.

10 NOW, MR. FOREMAN, I HAVE PREPARED A VERDICT FORM FOR
11 YOU TO USE DURING THE TRIAL OF THE CASE. AS I MENTIONED
12 EARLIER, WHATEVER VERDICT YOU REACH MUST BE A UNANIMOUS
13 VERDICT AND IT MUST BE THE VERDICT OF ALL 12 MEMBERS OF
14 THE JURY.

15 AS TO WHICH VERDICT IS THE VERDICT OF THE JURY, YOU,
16 MR. FOREMAN, WILL CHECK THE APPROPRIATE BLANK. IF YOU
17 WILL NOTE, IT SAYS, INDICTMENT 2010-GS-37-20, MURDER.
18 PLEASE CHECK ONE OF THE FOLLOWING VERDICTS. WE, THE
19 JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, DAVID J.
20 CHAVEZ, IS GUILTY OF MURDER OR GUILTY OF THE
21 LESSER-INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER OR NOT
22 GUILTY.

23 AS I SAID, WHATEVER VERDICT YOU REACH, IT MUST BE A
24 UNANIMOUS VERDICT, BUT WHATEVER VERDICT THAT IS,
25 MR. FOREMAN, YOU WOULD CHECK THE APPROPRIATE BLOCK AND

1 ONCE THE VERDICT FORM HAS BEEN COMPLETED, SIGN YOUR NAME
2 ON THE LINE PROVIDED.

3 NOW I'M GONNA HAVE TO ASK YOU TO RETURN THE VERDICT
4 FORM TO ME AND RETIRE TO THE JURY ROOM ONE MORE TIME AND
5 DO NOT BEGIN DELIBERATIONS UNTIL I SEND IN THE VERDICT
6 FORM TOGETHER WITH ALL THE EXHIBITS. ONCE YOU RECEIVE
7 THAT FROM THE BAILIFF, THEN YOU CAN COMMENCE YOUR
8 DELIBERATIONS. ONCE YOU REACH A VERDICT, KNOCK ON THE
9 DOOR AND WE WILL RETURN AND RECEIVE YOUR VERDICT.

10 I'LL ASK YOU NOW, AS I SAY, TO RETURN ONE MORE TIME
11 AND THEN YOU WILL RECEIVE THE VERDICT FORM TOGETHER WITH
12 THE EXHIBITS AND YOU MAY START YOUR DELIBERATIONS THEN.
13 I'LL HAVE TO ASK THE ALTERNATES TO STAY WITH US, THOUGH.
14 YOU MAY, THE JURY, RETIRE.

15 (WHEREUPON, THE 12 MEMBERS OF THE JURY LEFT
16 THE COURTROOM AT APPROXIMATELY 3:48 P.M.)

17 THE COURT: ANY EXCEPTIONS TO THE CHARGE, OR ANY
18 ADDITIONAL REQUESTS FROM THE STATE.

19 MR. WAGNER: NO, SIR.

20 THE COURT: FROM THE DEFENDANT?

21 MR. DAY: NONE, YOUR HONOR.

22 THE COURT: LET'S BE SURE THAT ALL THE EXHIBITS ARE
23 TOGETHER THAT GO BACK AND NONE THAT ARE NOT SUPPOSED TO
24 GO BACK AND WE PROBABLY NEED SOME HELP GETTING IT ALL
25 BACK THERE. ALL RIGHT.

1 (DISCUSSION OFF THE RECORD AMONG THE COURT
2 AND THE ALTERNATE JURORS, AFTER WHICH THE
3 ALTERNATE JURORS WERE EXCUSED BY THE COURT.)
4 (WHEREUPON, THE JURY BEGAN THEIR
5 DELIBERATIONS AT APPROXIMATELY 3:50 P.M.,
6 UNTIL 6:04 P.M., WHEN THERE WAS A NOTE FROM
7 THE JURY.)
8 (MARKED FOR IDENTIFICATION AND RECEIVED IN
9 COURT'S EVIDENCE WAS COURT'S EXHIBIT 2, JURY
10 QUESTION.)

11 THE COURT: ALL RIGHT. I HAVE RECEIVED A NOTE FROM
12 THE JURY: PLEASE BRING A LAPTOP/CD PLAYER TO LISTEN TO
13 THE INTERVIEW OF MR. CHAVEZ. SIGNED BY THE FOREPERSON.
14 WHAT DOES THE STATE SAY?

15 MR. WAGNER: YOUR HONOR, WE'VE GOT A LAPTOP HERE; IF
16 WE COULD GET THAT GOING, THAT WOULD BE FINE.

17 THE COURT: DEFENSE?

18 MR. DAY: I HAVE NO OBJECTION TO THAT, YOUR HONOR.

19 THE COURT: WELL, I DON'T USUALLY SEND BACK AUDIO OR
20 VIDEO TO THE JURY ROOM, BUT I'LL BRING THEM OUT AND
21 REPLAY IT. I UNDERSTAND IT'S ABOUT 40 MINUTES?

22 MR. DAY: 44 MINUTES, YES, SIR.

23 THE COURT: HOW ABOUT IF I ASK THEM IF THERE'S ANY
24 PARTICULAR AREA THEY WANT TO LISTEN TO? BECAUSE THERE
25 WAS A PORTION OF IT THAT WAS PLAYED.

1 MR. DAY: YES, SIR.

2 THE COURT: OR DO YOU WANT THE WHOLE THING?

3 MR. DAY: I THINK THERE'S NOTHING WRONG WITH ASKING
4 IF THERE IS A CERTAIN PORTION THEY WANT TO LISTEN TO AND
5 THAT WOULD TAKE CARE OF IT OR IF THEY ARE INSISTING ON
6 LISTENING TO THE WHOLE THING.

7 THE COURT: WHAT DO YOU SAY, MR. WAGNER?

8 MR. WAGNER: I AGREE WITH THAT, JUDGE; I THINK
9 THAT'S REASONABLE.

10 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US,
11 PLEASE.

12 (THE JURY ENTERED THE COURTROOM AT
13 APPROXIMATELY 6:05 P.M.)

14 THE COURT: LET'S SEE. WE'LL NEED THE CD. HAS
15 SOMEONE CALLED MR. STOUDEMIRE? APPARENTLY YOU NEED HIM.
16 MR. WAGNER?

17 MR. DAY: I'LL STICK IT IN THERE AND SEE WHAT
18 HAPPENS. JUST A MOMENT. GO AHEAD AND GIVE THE CD TO...

19 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
20 JURY, I HAVE A MESSAGE HERE (READING): PLEASE BRING A
21 LAPTOP/CD PLAYER TO LISTEN TO THE INTERVIEW OF
22 MR. CHAVEZ.

23 I DON'T ALLOW AUDIO OR VIDEO TO GO BACK TO THE JURY
24 ROOM. THE REASON IS, FIRST OF ALL, I'M ILLITERATE, I
25 DON'T KNOW HOW TO WORK THIS TECHNOLOGY. BUT ALSO BECAUSE

1 I'M ALWAYS CONCERNED SOMETHING MIGHT HAPPEN TO IT. AND
2 INASMUCH AS ARE REALLY TESTIMONIAL, IN OTHER WORDS, THEY
3 ARE LIKE WITNESSES TESTIFYING, I USUALLY PLAY THEM IN THE
4 COURTROOM SO YOU CAN LISTEN TO IT. AND IF THERE'S
5 SOMEPLACE YOU WANT TO STOP AND GO BACK OR SOMETHING LIKE
6 THAT, THAT WILL BE FINE, TOO.

7 IN THIS PARTICULAR CASE IT WAS MY UNDERSTANDING THAT
8 THE INTERVIEW WAS APPARENTLY 44 MINUTES OR SO. BUT ONE
9 PORTION OF IT WAS PLAYED TO YOU DURING THE TESTIMONY.
10 AND I'M CURIOUS, IS THAT WHAT YOU WANT TO CONCENTRATE ON,
11 OR DO YOU WANT TO LISTEN TO THE WHOLE CD? OF COURSE,
12 ONCE YOU HEAR IT, IF YOU FEEL LIKE YOU NEED TO LISTEN TO
13 MORE...

14 (DISCUSSION OFF THE RECORD AMONG JURORS AND
15 COURT. JURY CONFERS IN JURY-BOX).

16 THE COURT: I'LL TELL YOU WHAT LET'S DO. CAN WE
17 LOCATE ON THE CD THE PORTION THAT WAS PLAYED?

18 THE FOREMAN: YES.

19 THE COURT: AND START A LITTLE BIT BEFORE IT.

20 THE FOREMAN: THAT IS CORRECT, YOUR HONOR.

21 THE COURT: AND SEE IF THAT'S SUFFICIENT. IF NOT,
22 WE CAN PLAY THE PORTION THAT WAS PLAYED AND SEE IF THAT'S
23 SUFFICIENT. IF NOT, WE CAN PLAY ANY PART OR THE WHOLE
24 THING.

25 THE FOREMAN: SURE.

1 MR. DAY: YOUR HONOR, YOU ARE TALKING ABOUT THE PART
2 THAT WAS PLAYED IN THE COURTROOM?

3 THE FOREMAN: IT WAS THE LAST PORTION, THE QUESTIONS
4 WHERE MR. RORY JONES WAS GOING OVER SOME FACTS.

5 THE COURT: BY THE WAY, THANK YOU. THAT HELPS.

6 (DISCUSSION OFF THE RECORD.)

7 (VOLUNTARY STATEMENT CD PLAYED FOR JURY

8 AGAIN, THE SAME PART AS WAS PLAYED BEFORE.)

9 MR. DAY: THAT'S THE END OF IT.

10 THE COURT: THAT'S THE END OF THE INTERVIEW?

11 MR. DAY: YES, SIR. THEY PUT HIM IN HANDCUFFS TO
12 TAKE HIM OUT.

13 THE COURT: ALL RIGHT. COULD YOU HEAR IT?

14 A JUROR: NO. AND I'M NOT SURE THAT'S THE PART I
15 ASKED TO BE PLAYED. IT WAS ALL FUZZY.

16 THE COURT: COULD COUNSEL APPROACH?

17 (DISCUSSION AT SIDEBAR.)

18 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
19 JURY, I UNDERSTAND THAT IT WAS ONLY A SMALL SECTION THAT
20 WAS PLAYED. I THINK IT STARTED ABOUT 35, AND THEN IT WAS
21 NOT MORE THAN, WHAT, A MINUTE OR TWO?

22 MR. DAY: YES, SIR.

23 THE COURT: SO LET'S TRY THAT ONE MORE TIME AND SEE
24 IF THAT'S IT BECAUSE I THINK THAT WAS THE ONLY PART OF
25 THE CD THAT WAS PLAYED.

1 (VOLUNTARY STATEMENT C.D. REPLAYED AGAIN FOR
2 JURY.)

3 MR. DAY: WE STOPPED RIGHT THERE.

4 THE COURT: THAT'S ALL THAT YOU PLAYED?

5 MR. DAY: YES, SIR, AND WE STOPPED RIGHT THERE.

6 THE COURT: ONE MORE TIME?

7 A JUROR: NO.

8 THE COURT: I'LL TELL YOU WHAT. WHAT I'M GONNA DO
9 IS IT'S AFTER 5:00. I'M GONNA ASK YOU TO GO BACK TO THE
10 JURY ROOM AND CONSULT AMONG YOURSELVES AS TO WHAT YOU
11 WOULD LIKE TO DO AS FAR AS REPLAYING IT AGAIN OR PLAY THE
12 WHOLE THING OR MAYBE BREAK FOR THE DAY AND COME BACK IN
13 THE MORNING FRESH AND START OVER -- NOT START OVER BUT I
14 MEAN WITH A NEW ENERGY. BECAUSE YOU HAVE BEEN HERE ALL
15 DAY AND YOU'VE DONE VERY WELL.

16 BUT DO, MR. FOREMAN, IF YOU WOULD PLEASE RETIRE TO
17 THE JURY ROOM AND GIVE US AN IDEA OF WHAT YOU WANT.
18 WE'LL DO WHATEVER YOU WANT. IF YOU WANT TO STAY AND YOU
19 NEED TO MAKE PHONE CALLS, WE'LL HAVE A PHONE AVAILABLE.

20 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
21 APPROXIMATELY 5:16 P.M.)

22 THE COURT: ALL RIGHT. WE'LL STAND AT EASE WAITING
23 FOR THE JURY'S RESPONSE.

24 (AT 6:53 P.M. THERE WAS ANOTHER NOTE FROM THE
25 JURY, AND MARKED FOR IDENTIFICATION AND

1 RECEIVED IN COURT'S EVIDENCE WAS COURT'S
2 EXHIBIT 3, NOTE FROM FOREMAN.)

3 THE COURT: WE HAVE A MESSAGE FROM THE JURY
4 (READING): WE REQUEST TO RETURN IN THE MORNING TO
5 REASSESS THE EVIDENCE. SIGNED THE FOREMAN.

6 OBVIOUSLY WE'RE GOING TO ACCEDE TO THEIR REQUEST.
7 AGAIN, I'M GONNA LEAVE IT UP TO THEM TO DETERMINE WHAT
8 TIME THEY WANT TO RECONVENE. I'LL SUGGEST 9:00, 9:30, OR
9 10:00. ANY PROBLEM WITH THAT FROM THE STATE?

10 MR. WAGNER: NONE, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. DAY: NONE, YOUR HONOR.

13 THE COURT: VERY GOOD. ASK THE JURY TO JOIN US.

14 (THE JURY ENTERED THE COURTROOM AT
15 APPROXIMATELY 6:54 P.M.)

16 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, I'VE
17 BEEN PROVIDED A MESSAGE (READING): WE REQUEST TO RETURN
18 IN THE MORNING TO REASSESS THE EVIDENCE. SIGNED,
19 FOREPERSON.

20 I THINK THAT'S APPROPRIATE. Y'ALL HAVE OBVIOUSLY
21 GIVEN VERY CAREFUL AND CLOSE ATTENTION TO WHAT YOU
22 RECEIVED IN THIS TRIAL, AND PERHAPS MAYBE AN OVERNIGHT
23 REST WOULD HELP TO ASSIMILATE WHAT YOU HAVE LEARNED.

24 AND I'M GOING TO GIVE YOU THE -- YOU'VE HAD TO DO
25 WHAT WE'VE ASKED YOU TO DO. BUT TOMORROW MORNING I'M

1 GOING TO LET YOU DECIDE WHAT TIME YOU WOULD LIKE TO
2 START. I WOULD SUGGEST 9:00, 9:30 OR 10:00. LIKE SO
3 MANY THINGS, THERE ARE THINGS YOU NEED TO DO BEFORE YOU
4 GET HERE AND HOW FAR YOU HAVE TO COME.

5 MR. FOREMAN, IF YOU WOULD JUST CHECK WITH YOUR JURY
6 AND SAY 9:00, 9:30, OR 10:00.

7 (JURY CONFERS IN JURY-BOX.)

8 THE FOREMAN: 9:00, YOUR HONOR.

9 THE COURT: 9:00. SO JUST COME BACK TO THE JURY
10 ROOM THAT YOU ARE IN. DO NOT BEGIN YOUR DELIBERATIONS
11 UNTIL I CAN BRING YOU ALL BACK TOGETHER AT ONE TIME AND
12 UNTIL I HAVE GIVEN YOU FURTHER INSTRUCTIONS.

13 AGAIN, DO NOT UNDERTAKE DISCUSSION OF THIS CASE WITH
14 ANYBODY OR PERMIT ANYBODY TO DISCUSS IT WITH YOU, AND I
15 WILL SEE YOU IN THE MORNING.

16 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
17 FROM THE COURTROOM.

18 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
19 APPROXIMATELY 6:57 P.M.)

20 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE
21 BEFORE WE RECEDE FOR THE EVENING?

22 MR. WAGNER: NO, SIR.

23 THE COURT: FROM THE DEFENSE?

24 MR. DAY: NOTHING FROM THE DEFENSE, YOUR HONOR.

25 THE COURT: ALL RIGHT. I'LL SEE YOU AT 9:00. TRY

1 TO BE HERE A LITTLE BIT BEFORE 9:00 SO WE CAN GET
2 EVERYTHING DONE.

3 MR. WAGNER: YES, SIR.

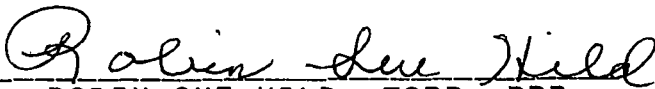
4 (WHEREUPON, DAY 2 OF THE STATE V. CHAVEZ
5 ADJOURNED FOR THE DAY AT APPROXIMATELY 7:00
6 P.M., TO RESUME ON NOVEMBER 17, 2010 AT
7 APPROXIMATELY 9:00 A.M.)
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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED
IN THE TRIAL, VOLUME II OF III, OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
OCONEE COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF
NOVEMBER, 2010,

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

APRIL 1, 2011


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH
CAROLINA

COUNTY OF OCONEE

) IN THE COURT OF GENERAL
) SESSIONS
)
) INDICTMENT NO: 2010-GS-37-00020

STATE OF SOUTH
CAROLINA

PLAINTIFF,

-VS-

DAVID CHAVEZ,

DEFENDANT.

)
)
)
) TRANSCRIPT OF RECORD
) TRIAL - VOLUME III
) (PAGES 286 THROUGH 314)
)
)
)

NOVEMBER 17, 2010
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

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

DAVID WAGNER, ESQ.
DEPUTY 10TH CIRCUIT SOLICITOR
ATTORNEY FOR THE STATE

R. DANIEL DAY, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

1 INDEX

2 WITNESSES PAGE

3

4 NO WITNESSES WERE CALLED.

5

6 ALLEN CHARGE BY COURT TO JURY 299

7 VERDICT OF THE JURY 302

8 SENTENCE OF THE COURT 313

9 CERTIFICATE OF COURT REPORTER 314

10

11

12

13

14

15

E X H I B I T S

16

NUMBER/DESCRIPTION PAGE

17

C4, NOTE FROM JURY FOREMAN 290

18

C5, JURY NOTE DATED NOVEMBER 17, 2010,
REQUESTING INFORMATION 298

19

C6, NOTE FROM THE JURY DATED NOVEMBER 17, 2010 298

20

21

22

23

24

25

1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
3 STATE OF SOUTH CAROLINA VERSUS DAVID CHAVEZ
4 RESUMED, WITH ALL PARTIES BEING PRESENT, ON
5 NOVEMBER 17, 2010, AT APPROXIMATELY 9:20
6 A.M.)

7 THE COURT: ALL RIGHT. WE'RE BACK ON THE CASE OF
8 THE STATE OF SOUTH CAROLINA VERSUS DAVID J. CHAVEZ,
9 2010-GS-37-20.

10 I UNDERSTAND THE JURY IS HERE. IS THERE ANYTHING
11 FROM THE STATE BEFORE I BRING THE JURY IN AND SEND THEM
12 BACK OUT?

13 MR. WAGNER: NO, SIR.

14 THE COURT: FROM THE DEFENSE?

15 MR. DAY: NO, YOUR HONOR, THANK YOU.

16 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US.

17 (THE JURY ENTERED THE COURTROOM AT
18 APPROXIMATELY 9:21 A.M.)

19 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT
20 ALL MEMBERS OF THE JURY ARE IN THE JURY-BOX.

21 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, YOU
22 WILL NOW RETIRE AGAIN TO CONTINUE YOUR DELIBERATIONS. IF
23 THE COURT CAN BE OF ANY ASSISTANCE, IF YOU NEED ANY
24 TESTIMONY PLAYED BACK OR ANYTHING ELSE, PLEASE ADVISE THE
25 COURT AND WE WILL DO THAT FOR YOU, IF POSSIBLE.

1 BUT WITH THAT I WOULD ASK YOU TO RETIRE TO THE JURY
2 ROOM. WELL, LET ME JUST ASK YOU: DO YOU HAVE ANY
3 REQUESTS FOR ANYTHING YOU NEED RIGHT NOW BEFORE YOU
4 BEGIN?

5 THE FOREMAN: NO, SIR, NOT AT THIS TIME.

6 THE COURT: VERY GOOD. THANK YOU, SIR. AND I'LL
7 SEND THE EXHIBITS IN WITH THE VERDICT FORM.

8 THE FOREMAN: OKAY.

9 THE COURT: THANK YOU.

10 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
11 FROM THE COURTROOM.

12 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
13 APPROXIMATELY 9:22 A.M.)

14 THE COURT: ANYTHING FROM THE STATE?

15 MR. WAGNER: NO, SIR.

16 THE COURT: FROM THE DEFENSE?

17 MR. DAY: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. I'M GOING TO ASK THE COURT
19 REPORTER AND THE ATTORNEYS TO BE SURE THAT ALL THE
20 EXHIBITS THAT ARE TO GO BACK, GO BACK; AND THOSE THAT ARE
21 NOT, DON'T. ALL RIGHT. WE'LL STAND AT EASE AWAITING A
22 VERDICT.

23 (WHEREUPON, THE JURORS RESUMED THEIR
24 DELIBERATIONS AT APPROXIMATELY 9:26 A.M.
25 WHILE THE COURT CONSIDERED OTHER MATTERS.)

1 (DISCUSSION OFF THE RECORD.)

2 THE COURT: WE'LL STAND AT EASE.

3 (WHEREUPON, THERE WAS A NOTE FROM THE JURY AT
4 APPROXIMATELY 10:00 A.M.)

5 (COURT'S EX. # 4, NOTE FROM JURY FOREMAN, WAS
6 MARKED FOR IDENTIFICATION.)

7 THE COURT: ALL RIGHT. I'VE RECEIVED A REQUEST FROM
8 THE FOREMAN: WE REQUEST A COPY OF THE SOUTH CAROLINA LAW
9 REGARDING MURDER AND MANSLAUGHTER AND SENTENCES REGARDING
10 EACH.

11 I INTEND TO RECHARGE THEM ON THE SAME LAW AS TO
12 MURDER AND MANSLAUGHTER, WHICH CONTAINS THE LANGUAGE OF
13 THE STATUTES, AT LEAST AS TO MURDER AS THE KILLING OF ANY
14 PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR
15 IMPLIED, WHICH IS THE STATUTORY DEFINITION OF MURDER
16 UNDER SECTION 16-3-10.

17 AS FAR AS MANSLAUGHTER, I INTEND TO GIVE THEM THE
18 SAME DEFINITION THAT WE HAVE AS TO VOLUNTARY MANSLAUGHTER
19 I GAVE YESTERDAY.

20 AS FAR AS PUNISHMENT, YOU HAVE HEARD TESTIMONY
21 CONCERNING THE PENALTY A PERSON CAN SERVE FOR THE CRIMES
22 ALLEGED IN THE INDICTMENTS -- OR YOU HAVE REQUESTED
23 INFORMATION CONCERNING THE PENALTY A PERSON CAN SERVE FOR
24 THE CRIMES ALLEGED IN THE INDICTMENT. IN DETERMINING THE
25 GUILT OR INNOCENCE OF THE DEFENDANT, YOU CANNOT CONSIDER

1 ANY POSSIBLE PENALTY FOR ANY PARTICULAR CRIME. THE
2 PUNISHMENT IS A MATTER FOR ME TO DETERMINE, AND IT SHOULD
3 NEVER BE CONSIDERED BY YOU IN ANY WAY WHATSOEVER IN
4 ARRIVING AT A FAIR AND IMPARTIAL VERDICT REGARDING THE
5 GUILT OR INNOCENCE OF THE DEFENDANT.

6 ANY REQUESTS OR OBJECTIONS FROM THE STATE?

7 MR. WAGNER: NO, SIR. I AGREE WITH THAT. THANK
8 YOU.

9 THE COURT: FROM THE DEFENDANT?

10 MR. DAY: NO, YOUR HONOR.

11 AS FAR AS THE CHARGE ON MURDER, COULD YOU ALSO
12 INCLUDE THE CHARGE AS TO AN INFERENCE AS TO THE USE OF
13 A --

14 THE COURT: I'M NOT CHARGING ANY INFERENCE.

15 MR. DAY: ALL RIGHT.

16 THE COURT: IN FACT, I'M NOT EVEN GOING TO CHARGE IT
17 ON VOLUNTARY AT THIS TIME. I'M LEAVING IT TO THE
18 DEFINITION OF VOLUNTARY.

19 MR. DAY: VERY GOOD. THANK YOU, SIR. I HAVE NO
20 OBJECTION, YOUR HONOR.

21 THE COURT: IN THE NEW STATUTE ON VIOLENT CRIMES
22 THERE IS A DEFINITION IN SECTION 16-3-50 DEALING WITH THE
23 SENTENCE, WHICH IS (READING):

24 A PERSON CONVICTED OF MANSLAUGHTER OR THE UNLAWFUL
25 KILLING OF ANOTHER WITHOUT MALICE, EXPRESS OR IMPLIED,

1 MUST BE IMPRISONED NOT MORE THAN 30 YEARS OR WHATEVER.

2 THE POINT IS, THAT'S COVERED IN THE SAME THING BUT

3 I'M GOING TO JUST SAY THAT VOLUNTARY MANSLAUGHTER,

4 EMPHASIZE THAT VOLUNTARY MANSLAUGHTER IS THE UNLAWFUL

5 KILLING OF ANOTHER WITHOUT MALICE, EXPRESS OR IMPLIED,

6 AND THEN GO ON INTO THE DEFINITION. IN OTHER WORDS, IT'S

7 JUST A ONE-LINE SENTENCE.

8 ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

9 (THE JURY ENTERED THE COURTROOM AT

10 APPROXIMATELY 10:16 A.M.)

11 THE COURT: LET THE RECORD REFLECT THE JURY IS IN

12 THE JURY-BOX.

13 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I'VE

14 RECEIVED YOUR REQUEST FOR A COPY OF THE SOUTH CAROLINA

15 LAW REGARDING MURDER AND MANSLAUGHTER AND THE SENTENCES

16 REGARDING EACH.

17 ACTUALLY, THE STATUTORY DEFINITIONS OF MURDER IS

18 FOUND IN SECTION 16-3-10, WHICH DEFINES MURDER AS, QUOTE,

19 (READING): THE KILLING OF ANY PERSON WITH MALICE

20 AFORETHOUGHT, EITHER EXPRESS OR IMPLIED.

21 THE DEFINITION OF VOLUNTARY MANSLAUGHTER, OR WHAT

22 MANSLAUGHTER IS, PROVIDES IN SECTION 16-3-50 THAT

23 MANSLAUGHTER IS THE, QUOTE, (READING): UNLAWFUL KILLING

24 OF ANOTHER WITHOUT MALICE, EXPRESS OR IMPLIED.

25 SO THAT THE DIFFERENCE BETWEEN MURDER AND

1 MANSLAUGHTER IS IN THE PRESENCE OR THE ABSENCE OF MALICE,
2 MALICE BEING PRESENT IN MURDER BUT NOT PRESENT IN
3 MANSLAUGHTER.

4 NOW, AS FAR AS THE DEFINITIONS CONTAINED IN THE
5 COMMON LAW OF SOUTH CAROLINA IS WHAT I GAVE YOU YESTERDAY
6 IN THE CHARGE, AND I WOULD BE GLAD TO REPEAT THAT FOR
7 YOU.

8 THE DEFENDANT, DAVID J. CHAVEZ, IS CHARGED WITH
9 MURDER. TO PROVE MURDER THE STATE MUST PROVE BEYOND A
10 REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON
11 WITH MALICE AFORETHOUGHT. MALICE IS HATRED, ILL WILL, OR
12 HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL
13 DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND
14 WITH AN INTENT TO INFLICT AN INJURY OR UNDER
15 CIRCUMSTANCES THAT THE LAW WOULD INFER AN EVIL INTENT.

16 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
17 EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS
18 COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE
19 DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS
20 COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE
21 PREVIOUS EVIL INTENT AND THE ACT.

22 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED.
23 THESE TERMS, EXPRESS AND INFER, DO NOT MEAN DIFFERENT
24 KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE
25 MAY BE SHOWN TO EXIST, EITHER BY DIRECT EVIDENCE OR BY

1 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
2 PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS
3 WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER, OR
4 WHEN THE PERSON PREPARES BEFOREHAND TO DO THE ACT WHICH
5 WAS LATER ACCOMPLISHED.

6 FOR EXAMPLE, LYING IN WAIT FOR A PERSON, OR ANY
7 OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS
8 WITHIN THE DEFENDANT'S MIND WHEN HE EXPRESSED MALICE.
9 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
10 DISREGARD FOR HUMAN LIFE.

11 IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT
12 SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
13 SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN
14 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU,
15 THE JURY, ALONG WITH OTHER EVIDENCE IN THE CASE, AND YOU
16 MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD
17 RECEIVE. FINALLY, THE STATE MUST PROVE THAT THE DEATH OF
18 THE VICTIM WAS PROXIMATELY CAUSED BY THE MALICIOUS ACT OR
19 ACTS OF THE DEFENDANT.

20 NOW, UNDER SOUTH CAROLINA LAW WE HAVE A PRINCIPLE
21 KNOWN AS INCLUDED -- LESSER-INCLUDED OFFENSES. SUCH
22 CRIMES WHICH ARE OF A LESSER DEGREE ARE INCLUDED IN
23 CRIMES WHICH ARE OF A GREATER DEGREE. IN THIS CASE THERE
24 IS A LESSER-INCLUDED OFFENSE FOR YOU TO CONSIDER. THE
25 INDICTMENT CHARGES THE DEFENDANT WITH MURDER OF WENDOLI

1 CHAVEZ. THE OFFENSE OF MURDER INCLUDES, HOWEVER, THE
2 LESSER-INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER.
3 THEREFORE, YOU MAY CONSIDER THE LESSER-INCLUDED OFFENSE
4 OF VOLUNTARY MANSLAUGHTER ON THE INDICTMENT.

5 IF YOU FIND THE STATE HAS PROVED BEYOND A REASONABLE
6 DOUBT THAT THE DEFENDANT COMMITTED MURDER, YOU MAY
7 CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE
8 DOUBT THE DEFENDANT COMMITTED VOLUNTARY MANSLAUGHTER. TO
9 PROVE VOLUNTARY MANSLAUGHTER THE STATE MUST PROVE BEYOND
10 A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE LIFE OF
11 ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON SUFFICIENT
12 LEGAL PROVOCATION. BOTH HEAT OF PASSION OR SUFFICIENT
13 LEGAL PROVOCATION MUST BE PRESENT AT THE TIME OF THE
14 KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER.

15 THE SUDDEN HEAT OF PASSION MAY FOR A TIME AFFECT A
16 PERSON'S SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S
17 REASON. SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT
18 WOULD MAKE AN ORDINARY PERSON UNABLE TO DULY REFLECT ON
19 HIS ACTIONS WHICH WOULD PRODUCE AN UNCONTROLLABLE IMPULSE
20 TO DO VIOLENCE.

21 SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE THAT
22 WOULD MAKE A PERSON OF ORDINARY REASON AND CAUTION BECOME
23 ENRAGED AND TO LOSE CONTROL TEMPORARILY. PROVOCATION
24 NEEDED FOR VOLUNTARY MANSLAUGHTER MUST COME FROM SOME ACT
25 OR RELATED TO THE VICTIM. WORDS ALONE, HOWEVER VULGAR OR

1 INSULTING, ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHEN
2 DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON, THE WORDS
3 MUST BE ACCOMPANIED BY EITHER AN APPEARANCE OF AN ASSAULT
4 OR SOME OVERT THREATENING ACT WHICH WOULD HAVE PRODUCED
5 THE HEAT OF PASSION.

6 THE EXERCISE OF A LEGAL RIGHT, NO MATTER HOW
7 OFFENSIVE IT IS TO ANOTHER, IS NOT SUFFICIENT LEGAL
8 PROVOCATION FOR VOLUNTARY MANSLAUGHTER. IF THE HEAT OF
9 PASSION HAS COOLED, OR IF THERE WAS ENOUGH TIME BETWEEN
10 THE PROVOCATION, IF ANY, AND THE KILLING PART TOOK
11 PASSION OF A REASONABLE PERSON, THE KILLING WOULD NOT BE
12 VOLUNTARY MANSLAUGHTER.

13 IN DECIDING WHETHER A REASONABLE PERSON HAD HAD
14 ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE
15 CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY CONSIDER
16 THE NATURE OF THE PROVOCATION, IF ANY, THE DEFENDANT'S
17 MENTAL AND PHYSICAL STATE, AND THE CIRCUMSTANCES AND
18 RELATIONSHIPS BETWEEN THE PARTIES.

19 AGAIN, SO THAT YOU, AS YOU SEE, THE DIFFERENCE
20 BETWEEN MURDER AND MANSLAUGHTER IS THE PRESENCE OR THE
21 ABSENCE OF MALICE, MALICE BEING IN MURDER BUT NOT PRESENT
22 IN MANSLAUGHTER.

23 NOW, YOU HAVE ALSO REQUESTED INFORMATION CONCERNING
24 OR REGARDING THE SENTENCES FOR EACH OF THESE OFFENSES.

25 IN DETERMINING THE GUILT OR INNOCENCE OF THE

1 DEFENDANT YOU CANNOT CONSIDER ANY POSSIBLE PENALTY FOR
2 ANY PARTICULAR CRIME. THE PUNISHMENT FOR THE CRIMES IS A
3 MATTER FOR ME TO DETERMINE AND SHOULD NEVER BE CONSIDERED
4 BY YOU IN ANY WAY WHATSOEVER IN ARRIVING AT YOUR FAIR AND
5 IMPARTIAL VERDICT AS TO THE GUILT OR INNOCENCE OF THE
6 DEFENDANT.

7 NOW, IS THERE ANYTHING FURTHER THAT I CAN INSTRUCT
8 YOU ON?

9 (JURY CONFERS IN JURY-BOX.)

10 THE FOREMAN: THAT'S GOOD, YOUR HONOR.

11 THE COURT: VERY GOOD. IF THERE'S ANYTHING ELSE,
12 JUST LET ME KNOW AND WE'LL RECONVENE. RIGHT NOW I'LL
13 DISCHARGE YOU TO CONTINUE YOUR DELIBERATIONS.

14 THE FOREMAN: THANK YOU.

15 THE COURT: EVERYONE ELSE REMAIN SEATED WHILE THE
16 JURY RETIRES FROM THE COURTROOM.

17 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
18 APPROXIMATELY 10:24 A.M.)

19 THE COURT: ANY EXCEPTIONS OR REQUESTS FROM THE
20 STATE?

21 MR. WAGNER: NO, YOUR HONOR.

22 THE COURT: FROM THE DEFENDANT?

23 MR. DAY: NO, YOUR HONOR.

24 THE COURT: VERY GOOD. THANK YOU.

25 ALL RIGHT. WE'LL STAND AT EASE WAITING ON THE JURY

1 VERDICT.

2 (MARKED FOR IDENTIFICATION WAS COURT'S
3 EXHIBIT 5, JURY NOTE DATED NOVEMBER 17, 2010,
4 REQUESTING THE ABOVE INFORMATION.)

5 (WHEREUPON, THE JURY CONTINUED WITH THEIR
6 DELIBERATIONS WHILE THE COURT CONSIDERED
7 OTHER MATTERS FROM APPROXIMATELY 10:25 A.M.
8 UNTIL THERE WAS ANOTHER NOTE FROM THE JURY AT
9 APPROXIMATELY 11:35 A.M.)

10 THE COURT: ALL RIGHT. MAY I SEE THE ATTORNEYS?

11 (MARKED FOR IDENTIFICATION WAS COURT'S
12 EXHIBIT 6, A NOTE FROM THE JURY DATED
13 NOVEMBER 17, 2010.)

14 THE COURT: ALL RIGHT. I HAVE A MESSAGE FROM THE
15 JURY FOREMAN. WE, THE JURY, CANNOT MAKE A UNANIMOUS
16 DECISION AT THIS TIME REGARDING THIS CASE. SIGNED, THE
17 FOREMAN.

18 I INTEND TO BRING THE JURY OUT, READ THEM AN ALLEN
19 CHARGE, AND SEND THEM BACK FOR A REASONABLE TIME. OF
20 COURSE, IF THEY CANNOT RETURN WITH A VERDICT AND DO NOT
21 REQUEST ANY FURTHER INSTRUCTIONS, THEN UNDER THE STATUTE
22 I WOULD HAVE TO DISCHARGE THEM.

23 ANYTHING FROM THE STATE?

24 MR. WAGNER: NO, SIR.

25 THE COURT: ANYTHING FROM THE DEFENSE?

1 MR. DAY: NO, YOUR HONOR.

2 THE COURT: VERY WELL. ASK THE JURY TO JOIN US,
3 PLEASE.

4 (THE JURY ENTERED THE COURTROOM AT
5 APPROXIMATELY 11:41 A.M.)

6 THE COURT: MR. FOREMAN, I'VE BEEN FURNISHED A NOTE
7 FROM THE JURY (READING): WE, THE JURY, CANNOT MAKE A
8 UNANIMOUS DECISION IN THIS -- AT THIS TIME REGARDING THIS
9 CASE.

10 ALLEN CHARGE BY COURT TO JURY:

11 THE COURT: LADIES AND GENTLEMEN, YOU HAVE STATED
12 THAT YOU HAVE BEEN UNABLE TO AGREE ON A VERDICT IN THIS
13 CASE. AS I INSTRUCTED YOU EARLIER, THE VERDICT OF THE
14 JURY MUST BE UNANIMOUS.

15 WHEN A MATTER IS IN DISPUTE, IT ISN'T ALWAYS EASY
16 FOR EVEN TWO PEOPLE TO AGREE, SO WHEN 12 PEOPLE MUST
17 AGREE, IT BECOMES EVEN MORE DIFFICULT. IN MOST CASES
18 ABSOLUTE CERTAINTY CANNOT BE REACHED OR EXPECTED.

19 HOWEVER, YOU HAVE A DUTY TO MAKE EVERY REASONABLE
20 EFFORT TO REACH A UNANIMOUS VERDICT. IN DOING THIS YOU
21 SHOULD CONSULT WITH ONE ANOTHER, EXPRESS YOUR OWN VIEWS
22 AND LISTEN TO THE OPINIONS OF YOUR FELLOW JURORS. TELL
23 EACH OTHER HOW YOU FEEL AND WHY YOU FEEL THAT WAY.
24 DISCUSS YOUR DIFFERENCES WITH OPEN MINDS.

25 ALTHOUGH THE VERDICT OF THE JURY MUST BE UNANIMOUS,

1 EVERY ONE OF YOU HAS THE RIGHT TO YOUR OWN OPINION. THE
2 VERDICT YOU AGREE TO MUST BE YOUR OWN VERDICT, A VERDICT
3 AS A RESULT OF YOUR OWN CONVICTIONS. YOU SHOULD NOT GIVE
4 UP YOUR FIRMLY HELD BELIEFS MERELY TO BE IN AGREEMENT
5 WITH YOUR FELLOW JURORS.

6 THE MAJORITY SHOULD CONSIDER THE MINORITY'S POSITION
7 AND THE MINORITY SHOULD CONSIDER THE MAJORITY'S POSITION.
8 YOU SHOULD CAREFULLY CONSIDER AND RESPECT THE OPINIONS OF
9 EACH OTHER AND REEVALUATE YOUR POSITIONS WITH
10 REASONABLENESS, DIRECTNESS, AND IMPARTIALITY. YOU MUST
11 LAY ASIDE ALL OUTSIDE MATTERS AND REEXAMINE THE QUESTIONS
12 BEFORE YOU, BASED UPON THE LAW AND EVIDENCE IN THIS CASE.

13 IF YOU DO NOT REACH A VERDICT IN THIS CASE, I MUST
14 DECLARE A MISTRIAL. IN THAT CASE IT DOES NOT MEAN THAT
15 ANYBODY WINS. IT MEANS THAT AT SOME FUTURE TIME I WILL
16 TRY THIS CASE WITH SOME OTHER JURY SITTING WHERE YOU SIT
17 NOW.

18 THE SAME PARTICIPANTS WILL COME AND THE LAWYERS WILL
19 ASK BASICALLY THE SAME QUESTIONS AND GET BASICALLY THE
20 SAME ANSWERS, AND WE WILL GO THROUGH THE WHOLE PROCESS
21 AGAIN.

22 YOU WERE SELECTED IN THE SAME MANNER AND FROM THE
23 SAME SOURCE AS ANY FUTURE JURY WILL BE, AND THERE IS NO
24 REASON FOR ME TO SUPPOSE THAT THE CASE WILL EVER BE
25 SUBMITTED TO 12 MORE INTELLIGENT, IMPARTIAL,

1 CONSCIENTIOUS, OR COMPETENT JURORS THAN YOU, OR THAT MORE
2 OR CLEARER EVIDENCE WILL BE PRODUCED FROM ONE SIDE OR THE
3 OTHER.

4 I THEREFORE ASK YOU TO RETURN TO YOUR DELIBERATIONS
5 WITH THE HOPE THAT YOU CAN REACH A VERDICT WITHIN A
6 REASONABLE TIME.

7 SO I'M GOING TO ASK YOU TO RETIRE TO THE JURY ROOM
8 ONE MORE TIME AND CONTINUE YOUR DELIBERATIONS AND SEE IF
9 YOU CAN REACH OR ARRIVE AT A VERDICT WITHIN A REASONABLE
10 TIME. IF YOU WOULD PLEASE RETIRE TO THE JURY ROOM.

11 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
12 FROM THE COURTROOM.

13 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
14 APPROXIMATELY 11:45 A.M.)

15 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

16 MR. WAGNER: NO, YOUR HONOR.

17 THE COURT: FROM THE DEFENSE?

18 MR. DAY: NO, YOUR HONOR.

19 THE COURT: VERY GOOD. ALL RIGHT.

20 DO YOU HAVE SOMETHING MORE, MADAM SOLICITOR,
21 MR. SOLICITOR?

22 (WHEREUPON, THE COURT CONSIDERED OTHER
23 MATTERS WHILE AWAITING THE VERDICT OF THE
24 JURY FROM APPROXIMATELY 11:45 A.M. UNTIL THE
25 JURY REACHED A VERDICT AT APPROXIMATELY 2:20

1 P.M.)

2 THE COURT: ALL RIGHT. IT IS MY UNDERSTANDING THE
3 JURY HAS REACHED A VERDICT. IS THERE ANYTHING FROM THE
4 STATE BEFORE WE BRING THE JURY BACK?

5 MR. WAGNER: NO, SIR.

6 THE COURT: ANYTHING FROM THE DEFENSE?

7 MR. DAY: NO, YOUR HONOR.

8 THE COURT: VERY GOOD. ASK THE JURY TO JOIN US,
9 PLEASE.

10 (THE JURY ENTERED THE COURTROOM AT
11 APPROXIMATELY 2:28 P.M.)

12 VERDICT OF THE JURY:

13 THE COURT: MR. FOREMAN, I UNDERSTAND THE JURY HAS
14 REACHED A VERDICT?

15 THE FOREMAN: YES, SIR, WE HAVE.

16 THE COURT: IF YOU WOULD PLEASE HAND IT TO THE
17 BAILIFF.

18 MADAM CLERK, IF YOU WOULD PLEASE PUBLISH THE
19 VERDICT.

20 IF THE DEFENDANT WOULD PLEASE STAND.

21 THE CLERK: 2010-GS-37-20, THE STATE OF SOUTH
22 CAROLINA VERSUS DAVID J. CHAVEZ, WE, THE JURY,
23 UNANIMOUSLY FIND THE DEFENDANT, DAVID J. CHAVEZ, IS
24 GUILTY OF MURDER.

25 LADIES AND GENTLEMEN OF THE JURY, IF THIS WAS YOUR

1 VERDICT AND IS STILL YOUR VERDICT, PLEASE SIGNIFY BY
2 RAISING YOUR RIGHT HAND.

3 THE RECORD WILL SHOW THAT ALL 12 RAISED THEIR HANDS.

4 THE COURT: VERY GOOD. THANK YOU VERY MUCH.

5 IS THERE ANYTHING FROM THE STATE BEFORE I DISMISS
6 THE JURY?

7 MR. WAGNER: NO, SIR.

8 THE COURT: ANYTHING FROM THE DEFENSE?

9 MR. DAY: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
11 GENTLEMEN OF THE JURY, I AM NEVER INTERESTED IN A
12 VERDICT, ONLY HOW THAT VERDICT IS REACHED. AND I CAN
13 ASSURE YOU, EVEN THOUGH IT LOOKS LIKE I'M DOING
14 EVERYTHING ELSE IN THE WORLD EXCEPT PAYING ATTENTION, I
15 NOTICED THAT THROUGHOUT THE TRIAL OF THIS CASE EACH OF
16 YOU PAID VERY CAREFUL AND CLOSE ATTENTION TO THE
17 TESTIMONY AND EVIDENCE, THE ARGUMENTS BY COUNSEL. AND
18 ALL OF THOSE MATTERS THAT CONCERN YOU WAS EXPRESSED BY
19 THE FACT THAT YOU DID NOT REACH AN EASY DECISION.

20 YOU SPENT MORE THAN TWO DAYS, OR AT LEAST TWO DAYS,
21 MORE THAN ONE DAY IN YOUR DELIBERATIONS. YOU HAD VERY
22 COGENT AND TELLING QUESTIONS THAT YOU HAD FOR THE COURT.

23 I ALSO NOTICED THAT IT WAS A DIFFICULT DECISION FOR
24 YOU TO MAKE AND THAT YOU HAVE VERY STRONG CONVICTIONS.
25 BUT THERE AGAIN, THAT IS HOW OUR SYSTEM WORKS. IT WORKS

1 THE JURY?

2 THE CLERK: THE CHECK'S IN THE MAIL. SORRY. IF YOU
3 SHOULD HAPPEN TO HAVE TO HAVE A STATEMENT TO GET PAID
4 THIS WEEK, CALL OUR OFFICE, GET THEM TO CALL OUR OFFICE
5 TOMORROW AND WE'LL HAVE TO FAX IT TO YOUR EMPLOYER. IF
6 NOT, YOUR WORK STATEMENT AND YOUR CHECK WILL COME
7 TOGETHER ONE DAY NEXT WEEK.

8 THE COURT: THANK YOU.

9 NOW, MR. FOREMAN, I NEED TO SEE YOU FOR JUST A
10 MOMENT TO CONFORM THE VERDICT. JUST COME THIS WAY,
11 PLEASE.

12 EVERYONE ELSE IS EXCUSED, AND I THANK YOU AGAIN FOR
13 YOUR SERVICE.

14 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
15 APPROXIMATELY 2:35 P.M., AFTER WHICH THE
16 FOREMAN CONFERRED WITH THE COURT OFF THE
17 RECORD, AFTER WHICH THE FOREMAN OF THE JURY
18 WAS EXCUSED, AS WELL.)

19 THE COURT: ALL RIGHT. IS THERE ANYTHING FROM THE
20 STATE?

21 MR. WAGNER: NO, SIR.

22 THE COURT: ANYTHING FROM THE DEFENSE?

23 MR. DAY: NO, YOUR HONOR.

24 THE COURT: DO YOU WANT YOUR TEN DAYS?

25 MR. DAY: YES, SIR, PLEASE.

1 THE COURT: ALL RIGHT. BOTH STATE AND DEFENSE WILL
2 BE GRANTED TEN DAYS FOR POST-TRIAL MOTIONS.

3 IS THE STATE READY TO PROCEED?

4 MR. WAGNER: YES, SIR.

5 THE COURT: IF THE DEFENDANT WOULD COME AROUND.

6 (DISCUSSION OFF THE RECORD.)

7 THE COURT: ALL RIGHT. WHAT DOES THE STATE HAVE TO
8 OFFER?

9 MR. WAGNER: YOUR HONOR, HE DOESN'T HAVE ANY PRIOR
10 ADULT RECORD. HE HAS SOME SORT OF -- I'M NOT ASKING THE
11 COURT TO CONSIDER HIS JUVENILE RECORD. SOMETHING SHOWS
12 UP ON HIS RAP SHEET AS JUVENILE FROM WASHINGTON, BUT I DO
13 NOT EVEN KNOW IF IT'S A CONVICTION. WE ARE NOT ASKING
14 THE COURT TO CONSIDER IT. HE HAS NO PRIOR ADULT RECORD.
15 THE VICTIM'S FAMILY WOULD LIKE TO SPEAK AT THE
16 APPROPRIATE TIME.

17 THE COURT: WELL, THIS IS THE TIME I WOULD LIKE TO
18 HEAR FROM THEM.

19 MR. WAGNER: OKAY.

20 WENDOLI CHAVEZ' FATHER: MY NAME CARLOS PEREZ, I'M
21 THE FATHER OF WENDOLI.

22 WENDOLI CHAVEZ' MOTHER: MY NAME IS MARGARITA PEREZ,
23 THE MOTHER OF WENDOLI.

24 WENDOLI CHAVEZ' FATHER: WE'RE UP HERE TO SAY,
25 JUDGE, THAT JUST -- I UNDERSTAND WHAT HAPPENED. BUT TO

1 ME I THINK HE DESERVES LIFE JUST FOR THE FACT HE TOOK AN
2 INNOCENT LIFE OF A 21-YEAR-OLD GIRL THAT REALLY DIDN'T DO
3 NOTHING. AND WE HAVE A PICTURE OF HER TO SHOW, YOU KNOW,
4 BECAUSE THE PICTURES THAT YOU HAVE SEEN ARE ALL DIFFERENT
5 THAN THESE. (SHOWS PICTURE OF VICTIM TO COURT.)

6 I MEAN, HE TOOK THE LIFE OF A PERSON THAT WE CAN
7 NEVER SEE AGAIN. I MEAN, I MEAN, OUR FAMILY HAS BEEN
8 THROUGH HELL AND WATER ALL THROUGH LAST YEAR. I HAVE ONE
9 DAUGHTER THAT STILL THINKS THAT SHE'S ON VACATION, THAT
10 WENDOLI REALLY DIDN'T PASS AWAY. I MEAN, I'VE GOT --
11 SHE'S SIXTEEN YEARS OLD.

12 MY WIFE HAS GONE THROUGH TRAUMA. I MEAN, THERE'S
13 TIMES I MISSED WORK BECAUSE SHE'S HAD PANIC ATTACKS AND
14 DREAMS AND STUFF. I MEAN, FOR THE WHOLE YEAR, WE'VE JUST
15 BEEN SUFFERING. AND FOR THE REST OF OUR LIVES WE'LL
16 SUFFER. AND TO ME, I THINK HE DESERVES THE SAME, JUST
17 THE FACT OF WHAT HE DID. I MEAN, YOU KNOW, WE CAN'T
18 BRING HER BACK, SO WHY TO ME HE SHOULD HAVE ANY
19 OPPORTUNITY TO SEE THE OUTSIDE OF THE WORLD? HE BELONGS
20 IN JAIL, I MEAN, IN MY VIEW.

21 THE COURT: THANK YOU, SIR.

22 YES, MA'AM. WOULD YOU LIKE TO SPEAK?

23 WENDOLI CHAVEZ' FATHER: SHE DOESN'T WANT TO.

24 THE COURT: I UNDERSTAND. I UNDERSTAND.

25 WOULD ANYONE ELSE LIKE TO BE HEARD?

1 WENDOLI CHAVEZ' SISTER: MY NAME IS NATASHA PEREZ.
2 WENDOLI WAS MY SISTER. SHE -- (CRYING) -- SHE WAS A
3 REALLY GOOD PERSON AND SHE HAD SO MUCH OF HER LIFE. I
4 MEAN, SHE DID EVERYTHING, SHE WAS A VERY GOOD PERSON.
5 LOVING SISTER. I MEAN, AND IT'S NOT FAIR THAT HER LIFE
6 WAS TOOKEN [SIC] AWAY LIKE THIS. AND I JUST WISH HE
7 WOULD GET THE MOST OUT OF EVERYTHING BECAUSE SHE'S NEVER
8 GONNA COME BACK. EVEN THOUGH SHE'LL NEVER BE IN OUR LIFE
9 AGAIN, EVER. SO I JUST WISH HE JUST GETS THE MOST
10 BECAUSE THAT'S WHAT HE DESERVES. THANK YOU.

11 THE COURT: THANK YOU, MA'AM.

12 ANYONE ELSE? (NO RESPONSE.)

13 THANK YOU VERY MUCH.

14 ANYTHING FROM THE STATE?

15 MR. WAGNER: NO, SIR.

16 THE COURT: NO RECOMMENDATION?

17 MR. WAGNER: YOUR HONOR, WE WOULD PROBABLY CONCUR
18 WITH THE VICTIMS' ASSESSMENT, BUT THAT WOULD BE IT.

19 THE COURT: ALL RIGHT. MR. DAY, WHAT DO YOU HAVE TO
20 SAY ON BEHALF OF MR. CHAVEZ?

21 MR. DAY: YOUR HONOR, YOU'VE HAD THE OPPORTUNITY TO
22 HEAR ALL THE EVIDENCE THAT CAME IN BEFORE THE COURT, SO
23 THERE'S NO USE TO REVIEW ANY OF THAT EXCEPT TO SAY THAT,
24 AGAIN, I CALL THE COURT'S ATTENTION TO THE FACT THAT
25 AFTER THIS OCCURRED HE DID NOT ATTEMPT TO RUN, HE STOOD

1 AND WAITED, MADE THE CALL TO 9-1-1, ADMITTED HIS GUILT,
2 ADMITTED TO WHAT HAD OCCURRED, YOUR HONOR, AND CAME AND
3 STOOD BEFORE THE COURT.

4 I WOULD SUBMIT TO THE COURT THAT HE SHOULD BE GIVEN
5 SOME LENIENCY FOR THE FACT THAT HE DID NOT ATTEMPT TO NOT
6 FACE UP TO WHAT HE HAD DONE; SOME LENIENCY AND MERCY FOR
7 THE FACT THAT HE DID NOT RUN AWAY, DID NOT FORCE THE
8 STATE TO HAVE TO CHASE HIM DOWN; THAT HE WAITED,
9 COOPERATED, AND STOOD TO FACE IN THIS CASE HIS MAKER
10 ALMOST FROM THE STANDPOINT OF WHAT HE WAS CHARGED WITH.

11 YOUR HONOR, HE'S HERE WITH HIS MOTHER. HE SAID HE
12 IS -- HE HAS STAYED AROUND. HE DIDN'T POINT ANY FINGERS
13 AT OTHER PEOPLE, HE DIDN'T TRY TO BLAME ANYONE ELSE. HE
14 ACCEPTED IT.

15 YOUR HONOR, THIS YOUNG MAN IS A GOOD EMPLOYEE,
16 HASN'T BEEN IN ANY TROUBLE HERE, NOT EVEN A TRAFFIC
17 TICKET. WE WOULD SUBMIT TO THE COURT THAT -- WE WOULD
18 ASK THE COURT TO BE AS MERCIFUL AND LENIENT AS POSSIBLE.
19 THERE'S NO WAY ANYTHING THAT CAN BE SAID CAN BRING BACK
20 HIS WIFE. HE UNDERSTANDS THAT AND WE ALL KNOW THAT.
21 WE'RE NOT ASKING TO DOWNPLAY THAT IN ANY REGARD.

22 HOWEVER, WE ARE ASKING THAT THE COURT CONSIDER THAT
23 THE STATUTE ALLOWS FOR A SENTENCE OF 30 YEARS. WE WOULD
24 ASK THE COURT TO GIVE THAT SERIOUS CONSIDERATION AND FOR
25 THAT TO BE THE SENTENCE FOR HIM TO -- HE KNOWS HE'S GOT

1 TO PAY THE PRICE. HE STOOD READY TO DO THAT AND SHOWED
2 BY WAITING AND NOT RUNNING AWAY. WE WOULD ASK THE COURT
3 TO GIVE THAT SERIOUS CONSIDERATION AND MERCY FOR THIS
4 YOUNG MAN.

5 THE COURT: VERY GOOD. THANK YOU, MR. DAY.

6 WOULD ANYONE ELSE LIKE TO SAY ANYTHING ON BEHALF OF
7 MR. CHAVEZ?

8 MR. DAY: MS. CHAVEZ, DO YOU WANT TO SAY ANYTHING?

9 UNIDENTIFIED WOMAN: I WOULDN'T EVEN KNOW HOW TO
10 START.

11 THE COURT: IF YOU WOULD PLEASE GIVE US YOUR NAME
12 FOR THE RECORD.

13 DEFENDANT'S MOTHER: MARISSA CHAVEZ. I'M DAVID
14 CHAVEZ' MOTHER. I DON'T KNOW, I DON'T KNOW WHAT TO SAY.
15 I KNOW THAT MY SON -- I KNOW HE DIDN'T MEAN TO. AND
16 IT'S -- YOU KNOW, HE DIDN'T RUN AWAY, LIKE MR. DAY SAID,
17 YOU KNOW? HE WAS VERY COOPERATIVE AND EVERYTHING.

18 AND, I MEAN, I LOVED WENDOLI, ALSO. SHE WAS A VERY
19 GOOD GIRL, I AGREE. I JUST CAN'T PUT EVERYTHING, WHAT
20 I'M FEELING INTO WORDS.

21 BUT MY SON IS A GOOD BOY, HE REALLY IS. I MEAN, I
22 KNOW HE MADE A MISTAKE AND HE KNOWS THIS, ALSO.

23 AND, YOU KNOW, I ALSO WANT TO APOLOGIZE TO THE
24 FAMILY. I MEAN, I LOVED WENDOLI AND EVERYTHING AND, YOU
25 KNOW ... (CRYING) I CAN'T SAY ANYTHING ELSE MORE.

1 THE COURT: THANK YOU, MA'AM.

2 DOES MR. CHAVEZ WISH TO SAY ANYTHING?

3 THE DEFENDANT: FIRST OF ALL, I JUST WANT TO SAY
4 THAT I KNOW THAT THERE ISN'T ANYTHING I COULD SAY OR DO
5 TO CHANGE WHAT HAS HAPPENED. I JUST HOPE ONE DAY THEY
6 FIND SOME CLOSURE IN KNOWING HOW MUCH TIME I WILL BE
7 GETTING. SO ONCE AGAIN, I DO WANT TO APOLOGIZE. I'M
8 SORRY. I KNOW WHAT HAPPENED WAS WRONG, AND I DID TURN
9 MYSELF IN, AND I'M READY TO FACE THE CONSEQUENCES.

10 THE COURT: VERY GOOD. THANK YOU, SIR.

11 ALL RIGHT. AS I UNDERSTAND, UNDER THE STATUTE,
12 16-03-20, THAT THERE'S A MINIMUM MAXIMUM -- A MAXIMUM
13 MINIMUM, RATHER, OF 30 YEARS TO LIFE.

14 IS THAT CORRECT, MR. WAGNER?

15 MR. WAGNER: YES, YOUR HONOR.

16 THE COURT: IS THAT WHAT YOU UNDERSTAND, MR. DAY?

17 MR. DAY: YES, SIR, YOUR HONOR.

18 THE COURT: AND LIFE UNDER THE STATUTE IS LIFE
19 WITHOUT PAROLE. IS THAT CORRECT, MR. WAGNER?

20 MR. WAGNER: YES, SIR.

21 THE COURT: IS THAT CORRECT, MR. DAY?

22 MR. DAY: THAT'S THE WAY THE STATUTE IS WRITTEN,
23 YES.

24 JUST AS THIS JURY, AND I THINK IT WAS A VERY FINE
25 JURY, SAT IN NOT SO MUCH JUDGMENT, IT'S JUST TRYING TO

1 DETERMINE WHAT WOULD BE THE APPROPRIATE CHARGE UNDER THE
2 INDICTMENT. AND THEY CONSIDERED ALL OF THE VARIOUS
3 ELEMENTS OF THE OFFENSES AND THEY DID NOT LIGHTLY COME TO
4 THE DECISION THAT THEY ULTIMATELY REACHED.

5 THE COURT, NOW SITTING IN JUDGMENT, AND THAT'S WHAT
6 IT IS BECAUSE THIS IS THE ULTIMATE FINDING IN THIS
7 MATTER, I ALSO MUST CONSIDER THE ELEMENTS. THE FACTS
8 HAVE BEEN DECIDED, AS FAR AS THE JURY'S RESPONSIBILITIES,
9 IN THEIR, WHAT IS IT, DUTY; AND AS I SAID, THEY DID IT
10 VERY WELL.

11 BUT NOW IT COMES TO ME TO INTERPRET THE LAW AS IT
12 WOULD APPLY TO THIS CASE AND JUDGMENT. THE DIFFERENCE
13 BETWEEN MURDER AND MANSLAUGHTER IS THE ABSENCE OF MALICE.
14 AND A VERY GOOD CASE WAS PLACED BEFORE THE JURY AS TO
15 WHETHER OR NOT THERE WAS MALICE, EXPRESS OR IMPLIED.

16 AND WITHOUT RECITING TOO MANY OF THE ELEMENTS AND
17 THE EVIDENCE OF THOSE ELEMENTS, MY CHARGE HAD THAT
18 MALICE, EXPRESSED, IS SHOWN WHEN A PERSON SPEAKS WORDS
19 WITH EXPRESSED HATRED OR ILL WILL FOR ANOTHER OR WHEN A
20 PERSON PREPARES BEFOREHAND TO DO THE ACT WHICH WAS LATER
21 ACCOMPLISHED.

22 WHAT MIGHT HAVE BEEN DONE AFTER THE ACT WAS
23 ACCOMPLISHED, THE COURT FINDS THAT THERE WAS EXPRESSED
24 MALICE IN THIS CASE. THERE WAS NOTHING THAT WOULD
25 SUGGEST THAT THE VICTIM WAS A THREAT IN ANY FASHION, IN

1 ANY WAY TO THE DEFENDANT. IN FACT, SHE TRUSTED THE
2 DEFENDANT. SO THE EVIDENCE WOULD SHOW OR DID SHOW AND
3 THE JURY FOUND IN THEIR VERDICT.

4 I'M SURE THAT THIS DEFENDANT, IF HE HASN'T ALREADY
5 SAID IT, WOULD SAY IT; AND I THINK HE DID SAY IT IN ONE
6 OF HIS STATEMENTS, THAT HE WISHED HE COULD GIVE HIS LIFE
7 FOR HERS, THE VICTIM.

8 ANYTHING ELSE FROM THE STATE?

9 MR. WAGNER: NO, SIR.

10 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

11 MR. DAY: NO, YOUR HONOR.

12 THE COURT: MR. CHAVEZ, ANYTHING ELSE YOU WOULD LIKE
13 TO SAY?

14 THE DEFENDANT: NO, SIR.

15 SENTENCE OF THE COURT:

16 THE COURT: INDICTMENT NUMBER 2010-GS-37-00020, IT'S
17 THE SENTENCE OF THE COURT THAT THE DEFENDANT, DAVID J.
18 CHAVEZ, BE COMMITTED TO THE STATE DEPARTMENT OF
19 CORRECTIONS FOR A TERM OF LIFE.

20 GOOD LUCK TO YOU, SIR.

21 THE DEFENDANT: THANK YOU.

22 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

23 (THE TRIAL WAS CONCLUDED ON NOVEMBER 17,
24 2010, AT APPROXIMATELY 2:54 P.M.)

25 ** END OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

WITNESSES

JONES, R., Seneca Police Department

[Signature]

ARREST WARRANT NUMBER

J452749

ACTION OF GRAND JURY

William Hangle
Foreperson of Grand Jury
Date: JAN 12 2010

VERDICT

True Bill

Foreperson of Petit Jury
Date:

DOCKET NO. 20100337

00020

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JAN 12 2010

Term

THE STATE

VS.

David J Chavez

DRW

Indictment for

Murder

SC Code: 16-03-0010, 0020
CDR Code: 0116

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2010 JAN 12 P 4:43

STATE OF SOUTH CAROLINA)

INDICTMENT

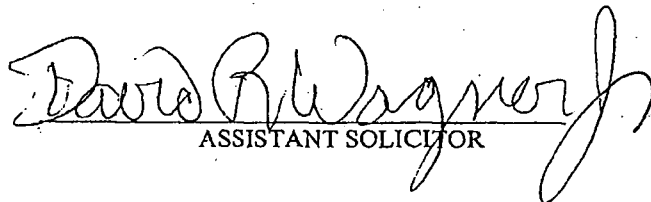
COUNTY OF Oconee)

At a Court of General Sessions, convened on JAN 12 2010, the Grand Jurors of Oconee County present upon their oath:

Murder

That David J Chavez did in Oconee County, on or about October 14, 2009, unlawfully and with malice aforethought kill Wendoli Chavez (DECEASED) by means of, strangulation and also did stab the victim with a knife, and that, Wendoli Chavez (DECEASED) died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

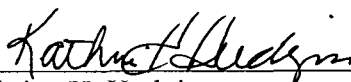
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 11th, 2012



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID J. CHAVEZ,

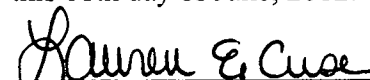
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 11th day of June, 2012.


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of June, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

RECEIVED
JUN 11 2012
SC Court of Appeals