

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Edward W. Miller, Circuit Court Judge

MICHAEL ANTHONY ROGERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002116

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

CHELSEY MARTO
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Michael Anthony Rogers,) 2011-GS-42-1933
7 Defendant.) September 2, 2011
8) Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 DANNY FULMER, ESQUIRE
17 Attorney for the State

18 CLAY T. ALLEN, ESQUIRE
19 Attorney for the Defendant
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	Photograph		98
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1		<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	D-1	Autopsy report		5
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5	D-3	Photograph		45
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7	D-5	Photograph		45
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1 (Autopsy report marked Defendant's Exhibit No. 1; SLED
2 report marked Defendant's Exhibit No. 2.)

3 THE COURT: This is State vs. Michael Anthony Rogers.
4 Mr. Allen, you represent the defendant.

5 MR. ALLEN: Yes, Your Honor.

6 THE COURT: Assistant Solicitor Fulmer is here on
7 behalf of the state.

8 This is the defendant's motion.

9 MR. ALLEN: Yes, Your Honor. If it please the Court.

10 At this time we're prepared to present evidence in
11 support of our motion.

12 The first thing is I have -- the solicitor and I have
13 agreed to stipulate to the admissibility of the autopsy
14 report, which I have marked as Defense Exhibit 1, the
15 autopsy report of Dr. Wren of John William Ryan. That's
16 the decedent in this case.

17 And we've also agreed to stipulate for the purpose of
18 this hearing the blood toxicology report of Robert Sears of
19 SLED that's dated December 1 of 2010. That's marked as
20 Defense Exhibit 2 as well. This is the blood of the
21 decedent, John Christopher Ryan, the toxicology report.

22 And I offer them into evidence at this time for this
23 hearing as Defense Exhibits 1 and 2.

24 May it please the Court. At this time we are prepared
25 to call Tonya Lowery to the stand.

Tonya Lowery
Direct examination by Mr. Allen

1 THE COURT: Okay.

2 TONYA LOWERY, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. ALLEN

5 Q You are of course Tonya Lowery, is that correct?

6 A Yes, I am.

7 THE COURT: Spell your last name for the benefit of
8 the reporter.

9 THE WITNESS: L-O-W-E-R-Y.

10 Q Ms. Lowery, if you would, just try to talk loud enough
11 to reach all the way over here. You don't necessarily have
12 to lean into the microphone to do that, and hopefully if I
13 can hear you, I think the Court can hear you as well.

14 How old are you, ma'am?

15 A Forty-five.

16 Q Where do you live in Spartanburg County?

17 A [REDACTED].

18 Q Now, we're here today in connection with the case of
19 Michael Anthony Rogers and the demise of John William Ryan
20 or John Christopher Ryan, is that correct?

21 A Yes.

22 Q Were you present on -- when this event occurred?

23 A Yes, I was.

24 Q Where was that?

25 A It was at my Michael Roger's address, [REDACTED]

Tonya Lowery
Direct examination by Mr. Allen

- 1 [REDACTED] [REDACTED].
- 2 Q [REDACTED] [REDACTED] [REDACTED]?
- 3 A In Roebuck also.
- 4 Q In Roebuck, South Carolina, Spartanburg County?
- 5 A Uh-huh. It's right down the street from me, about
- 6 four doors down.
- 7 Q All right. Did he live with anyone at that address?
- 8 A No.
- 9 Q Mr. Ryan did not live there?
- 10 A No.
- 11 Q Now, I want to talk to you about that day.
- 12 Well, did this occur in the nighttime or in the
- 13 daytime?
- 14 A In -- it was at night.
- 15 Q At night. Tell us. That was on the 12th of November,
- 16 I believe --
- 17 A Yes, it was.
- 18 Q -- the past year. Now, when I ask you a question you
- 19 have to answer out loud. Okay?
- 20 A Yes.
- 21 Q Just nodding the head -- we have to have a verbal
- 22 response for the court reporter.
- 23 A Okay.
- 24 Q Thank you.
- 25 Now, tell me. When did you arrive at [REDACTED] [REDACTED]

Tonya Lowery
Direct examination by Mr. Allen

1 [REDACTED] [REDACTED]?

2 A I'm not exactly sure what time it was that evening.
3 It was -- the news was on. I don't know. I think it was
4 the 11:00 o'clock news. I'm not sure, because my daughter
5 had the T.V. on, my daughter and my mom. And they shared
6 the same room.

7 And I wanted to get a cigarette. I was going to walk
8 were over there and get a cigarette, and they were over
9 there. And I decided I'd walk over there because my
10 daughter had the light on and I couldn't sleep.

11 Q When you say you were going to walk over there, where
12 was over there?

13 A To Michael Rogers.

14 Q Michael Rogers' home.

15 A Yes. That's where they all were.

16 Q And what type of home is this?

17 A It's a trailer.

18 Q Mobile home?

19 A Yes.

20 Q Now, how far away did you live from this address?

21 A Just walking distance. I'm not sure. I was on -- I
22 live on one street, and it's a street beside the street I
23 was on. It's just walking distance. It ain't a half a
24 block.

25 Q Now, when you arrived was anyone there at [REDACTED] [REDACTED]

Tonya Lowery
Direct examination by Mr. Allen

- 1 [REDACTED]
- 2 A Yes.
- 3 Q Who was that?
- 4 A Michael was there, Jackie, and Ryan -- John.
- 5 Q When you say Michael, you meant, of course, the
- 6 defendant, Michael Rogers.
- 7 A Yes.
- 8 Q And Jackie -- you're referring to whom?
- 9 A Jackie Lance -- I believe is her last name.
- 10 Q And --
- 11 A And John Ryan.
- 12 Q John Ryan. Did you stay for any length of time there?
- 13 A Yes. When I come in, I come in. Like I said, I was
- 14 going to get a cigarette and everything. And they had been
- 15 talking and drinking and stuff, which I don't drink.
- 16 And I was talking to them and everything. And -- and
- 17 I kept asking for a cigarette. And Michael -- and Mike and
- 18 Jackie were talking and stuff and -- and I just sat there
- 19 and talked to them for a few minutes. And -- and I started
- 20 talking to Mike over the bar and all.
- 21 Q Now, how long had you known Mr. Rogers?
- 22 A I met him, I believe, in June this past year.
- 23 Q Okay. What was the nature of your relationship? Were
- 24 y'all dating; were you seeing each other; or just friends?
- 25 A Yeah. We were seeing each other.

Tonya Lowery
Direct examination by Mr. Allen

1 Q And by seeing each other you meant like you were going
2 out in a romantic type situation, or dating in other words?

3 A Yeah. We were close, yeah.

4 Q And how long have you known Mr. Ryan?

5 A Approximately the same amount of time.

6 Q Okay. What was the nature of your relationship with
7 Mr. Ryan?

8 A I was just a friend of his. I -- I met him through
9 another friend of mine. He used to take my brother back
10 and forth to work. And I was over at my friend's house one
11 day, and he walked up behind me and everything, and we
12 started talking and -- and I just -- when I was over there,
13 I would go over there with my friend to visit.

14 I've -- I've lived with mom like 20 something years.
15 So I like to have friends and I like to listen to music and
16 stuff. And my friend -- he would work from like 2:30 to
17 12:00, so I'd go to his house to listen to music, and have
18 many times. And that's how I run into, met John. He come
19 up behind me one day and we started talking and just became
20 friends.

21 Q Did you have a romantic --

22 A No.

23 Q -- relationship with John?

24 A No.

25 Q Now, let's go back to the night that you came in. You

Tonya Lowery
Direct examination by Mr. Allen

1 said there had been some -- they had been drinking and
2 maybe some talking, right?

3 A Uh-huh.

4 Q And what, if anything, unusual happened?

5 A Well, when me and Mike -- we were talking, and they
6 were across the bar. I didn't know it, but John had
7 approached from behind, and I didn't see him or anything.
8 I didn't even hear him supposedly, which shocked me. And
9 he come up from behind me, and he had put his arms around
10 below my chest. And I asked him to please take his hands
11 off, you know, because that just wasn't appropriate,
12 especially in front of Mike.

13 And then Mike come around, and the next thing I know
14 they got into it. He pushed him. And he was -- John fell
15 where the stereo was, and Mike was on top of John at the
16 time. And I asked Mike to get off because, you know, they
17 didn't need to be fighting. He proved his point, you know.

18 So, and then he had got off of John. And then Mike
19 had just had surgery not too long ago. And he was over
20 there. And John kicked Mike between the legs, and they
21 started fighting again. And Jackie helped me get them
22 separated and --

23 Q Let me interrupt a second here.

24 Before Michael pushed John were there any words
25 exchanged or did anybody say anything?

Tonya Lowery
Direct examination by Mr. Allen

1 A The only thing that Mike said is, you know, get
2 your -- you know, get your hands off my woman, you know,
3 she told you to get your hands off. That's all that I
4 remember. I don't know if John swung or nothing, because
5 he was behind me, but I do know that he was pushed into the
6 stereo.

7 Q Okay. You mentioned that Michael had had surgery. Do
8 you know the general nature?

9 A Prostate surgery.

10 Q Now, after the kick between the legs -- and I think
11 you said Michael -- did he fight back?

12 A Yeah. They -- they got into it again and -- and
13 Jackie was there at the time, and so she helped me separate
14 them.

15 And I told them, I said, "Mike," I said, "come back
16 here. You need to clean up." Because he had blood on his
17 face. And I told him, I said, "You need to clean up and
18 everything and calm down." And I got him a cigarette and
19 everything. And I said let's just go in here and calm down
20 and talk.

21 And Jackie wanted to go to the store, and I didn't
22 know why she wanted to go to the store because they had
23 been fighting. And I didn't want her to leave, but she
24 insisted on going to the store all of a sudden.

25 Q Did she leave?

Tonya Lowery
Direct examination by Mr. Allen

1 A Yeah.

2 Q Do you know how she left?

3 A In John's truck. She wanted the keys, and John
4 said -- gave her the okay to take his truck. And she had
5 his phone I believe because I couldn't find his phone. She
6 was talking on a phone, so I assume she had his phone too.

7 Q Now, after you -- after Jackie left what, if anything,
8 happened?

9 A Well, we come into the kitchen, and she had left. And
10 Mike asked John to leave. And he said -- he told John he
11 wanted him out of his house. And John -- and I told Mike.
12 I said he can't leave, he ain't got a way to go. And --
13 and he kept telling him I want you out of my house. He
14 asked Mike three times.

15 And then John swung. And I was in the kitchen. And
16 when he swung I was right there at the kitchen. I couldn't
17 go out to the living room because they were right there. I
18 had to go down the hall.

19 And I went out the back door because I -- like I said,
20 I couldn't get to the living room. And I was upset. So I
21 went out the back door. And I couldn't handle the fact
22 that they were fighting. And I'm not used to being around
23 people fighting. And I went out the back door. And I was
24 upset. And I didn't know how long Jackie was going to be.

25 But I went around, and went around to the front door

Tonya Lowery
Direct examination by Mr. Allen

1 because I knew they were in the kitchen. And that's when I
2 walked in the front. And Mike said dial 9-1-1, I
3 accidentally stabbed him. And John was in the floor.

4 Q Now, at the time right before you went out the back
5 door -- at the time you said that you saw John swing -- did
6 you see anything else like how he was swinging? Did he
7 have -- was he swinging with his fist?

8 A He swung with his fist. He had punched Mike in the
9 face. That's why I exited out back, because I was afraid I
10 was going to get hit because they were right there fighting
11 with each other.

12 Q Is this kitchen -- is this a big kitchen or a small
13 kitchen?

14 A No. It's a small kitchen.

15 Q And when you saw the swing --

16 A I was on the left side of Mike. I mean, that's the
17 only way I had to go, was out the hall because they were
18 right there.

19 Q How far -- how far away do you think you were from
20 Michael or John?

21 A I mean, I was right there with both of them. The
22 kitchen table's there. There's just a little hall and the
23 refrigerator. There's no room.

24 Q All right. Now, you -- now, you left, and you ran
25 around the home and came in the front door?

Tonya Lowery
Direct examination by Mr. Allen

1 A Yeah. I went around and went in the front door. I
2 don't know how -- exactly how long I was outside because I
3 was upset, but, I mean, I didn't leave or nothing. I went
4 around the front, and I was dreading going in. And I went
5 in because I figured they was still fighting.

6 And, like I had said, I went in. And that's when Mike
7 said I accidentally stabbed him, dial 9-1-1. And John was on
8 the floor. And I -- and I picked up the phone and I dialed
9 9-1-1. And then John stood up. And that's when I saw the
10 stab wounds.

11 And -- and he told me -- I told him he needed to sit
12 down or lay down, because there was a lot of blood. And he
13 said, no, I'm fine, I'll be okay. And I said, no, you're
14 not. I said you're not.

15 And then he kept -- and he walked over to the bar and
16 he put his cell phone on the bar. And I said you're not
17 going to be okay. And -- and he fell in the floor.

18 Q And where did you see -- where did you see the wound
19 at?

20 A Right here.

21 Q Right here. And you're indicating --

22 A On the left side.

23 Q On the left side. Was it between the shoulder --

24 A I -- it was just right here. That's all I know. It's
25 just --

Tonya Lowery
Direct examination by Mr. Allen

1 Q All right. And as I understand, you said that John
2 stood up. And was he -- where was he standing at?

3 A Right there -- the refrigerator.

4 Q Okay. Was he propping himself up on anything?

5 A No. He was standing on his own.

6 Q Okay. And what caused him if you know -- what caused
7 him to fall again?

8 A He didn't -- he, he -- he walked. He took like two or
9 three steps, and he put his elbow on the bar. And when he
10 put his elbow on the bar he just fell over. I think it was
11 from loss of blood, because he lost a lot of blood.

12 Q Now, when you -- referring to a bar, is this a
13 built-in --

14 A Yeah, it was.

15 Q -- counter-type thing?

16 A Yeah.

17 Q Has cabinets underneath it in the kitchen. Does it
18 separate --

19 A The -- the kitchen from the living room.

20 Q The kitchen from the living room. After John fell,
21 what then did you do?

22 A I was still on the phone with the paramedics. They
23 kept waiting to see if they were coming. And I was
24 standing at the door. And Mike said, he said tell them to
25 hurry. And said I did. And he -- Mike got a towel. His

Tonya Lowery
Direct examination by Mr. Allen

1 towels hung in the kitchen. And he got a towel and put it
2 over his wound.

3 And he started coughing. And then he stopped
4 breathing. And Mike did mouth to mouth. And he come back,
5 and he was breathing again. And he -- and he stopped
6 again, and he did it again. And then finally the
7 paramedics come.

8 And I walked out, and I said would y'all please come
9 on, because the police hadn't got there. And the
10 paramedics were just sitting in the ambulance, you know.
11 And they finally come in. And I said can I come out, I
12 just want out of here. And they said yeah.

13 And I was -- I was sitting at the table outside on the
14 porch. And I was trying to call home, because I didn't
15 want to get locked out. I couldn't find my key, and I --
16 and I couldn't get the phone to work. Mike's phone
17 wouldn't work long enough to make -- to get the paramedics
18 on there. It had been on charge.

19 And the paramedic come to the door, and I jumped
20 because I thought it was John. I thought he maybe had
21 stood back up at the door. And she let -- she said can I
22 help you. I said, yeah, can I use your phone. I said I
23 got to call home. I said I didn't want to get locked out.
24 And she dialed the number for me.

25 Q Well, let me ask you. At any time that evening did

Tonya Lowery
Cross-examination by Mr. Fulmer

1 you see any cuts or wounds on Mike?

2 A No. I wasn't looking. I mean, he had on a shirt.
3 John didn't. John didn't have a shirt on.

4 MR. ALLEN: One second, please, Your Honor.
5 (Pause.)

6 Q When you saw John -- I'm talking about back in the
7 kitchen before you left out the back door -- when you saw
8 John swing at Mike did you see if there was any connection,
9 if he -- if he hit Mike?

10 A Yeah. He -- he hit him in the face. That's -- that's
11 why -- that's why I exited out the door, because they were
12 fighting.

13 MR. ALLEN: One second, please, Your Honor.
14 (Pause.)

15 MR. ALLEN: No other questions for the purpose of this
16 motion.

17 CROSS-EXAMINATION

18 BY MR. FULMER

19 Q Ms. Lowery, had -- had John ever hugged you before or
20 touched you in a way that you didn't think was appropriate
21 before?

22 A No, not that inappropriate, no.

23 Q Do you think the way that he -- the way that you say
24 he hugged you, do you think that was inappropriate, what he
25 did?

Tonya Lowery
Cross-examination by Mr. Fulmer

1 A It might have been to Mike because he was my
2 boyfriend, but, I mean, he just come up from behind me and
3 I wasn't expecting it, and he'd been drinking. But, I
4 mean, John used to drink. But normally he didn't hug me or
5 nothing, but, I mean.

6 Q I guess -- did he do it in a sexual way, I guess is
7 what I'm asking.

8 A Well, if -- if you weren't from my position, you might
9 would have thought so, because you couldn't see. He didn't
10 touch my breasts, no, but, I mean, nobody else could have
11 seen that, you know, because I was leaning on the bar.

12 But as far as John trying to harm me, no, I mean, I
13 know that personally. I mean, me and John were close. He
14 was a good friend of mine. All I wanted him to do was quit
15 drinking.

16 Q Had you been around him earlier that -- this same day?

17 A I had been over at Mike's house earlier that day, but
18 I was only over there for just a few minutes.

19 Q Was -- were -- was John drinking at that time earlier
20 in the day?

21 A Yes, I think so.

22 Q Had he been over at John -- at Mike's the day before
23 drinking as well?

24 A Yes, but it wasn't until later on that evening around
25 five or six, I believe.

Tonya Lowery
Cross-examination by Mr. Fulmer

1 Q So -- so the previous night did John spend the night
2 at Mike's house?

3 A Yes.

4 Q So this was the second day that John spent at Mike's
5 house.

6 A Yes.

7 Q The previous night did you spend the night at Mike's
8 house?

9 A I stayed until early in the morning, and then I left
10 because my daughter had been sick, and I told him I
11 couldn't stay any longer.

12 Q The previous evening was there drinking going on
13 throughout that evening?

14 A Yes.

15 Q Were you included, or just John?

16 A No. I don't drink.

17 Q You don't drink at all?

18 A Once in a rare blue moon I might have a drink, but
19 it's very -- I mean, I -- it's been like three years. I
20 promised my daughter I would quit.

21 Q Okay. Let's go to the night of the fight. When Mike
22 became angry because John put his arm around you, Mike
23 pushed John first?

24 A As far as I know, yes. I mean, like I say, I have no
25 idea if John swung, but I doubt it. But, I mean, he was

Tonya Lowery
Cross-examination by Mr. Fulmer

- 1 behind me. As far as I know Mike pushed him, because he
2 was behind me. I mean, I don't know.
- 3 Q And John fell?
- 4 A Yeah.
- 5 Q Once John was on the ground did Mike hit him?
- 6 A Yes.
- 7 Q Where did he hit him?
- 8 A In the face.
- 9 Q More than once?
- 10 A Yes.
- 11 Q Be fair to say repeatedly?
- 12 A But they were both -- they were both. I mean, John
13 was punching too. But, I mean, that's why I told them both
14 to quit, because Mike had a busted lip and stuff. And I
15 told him they needed to quit, they needed to quit fighting.
16 I felt bad. I mean, all of this was going on over a hug.
17 That's what I felt. And it just was senseless.
- 18 Q During this first episode while John was on the floor,
19 I guess Mike was on top of him?
- 20 A Yeah.
- 21 Q Was Mike getting the best of John at that point?
- 22 A I think it was about both -- about the same. That's
23 what I told him, because his -- his lip was busted and
24 stuff, so.
- 25 Q When you say his, who do you mean?

Tonya Lowery
Cross-examination by Mr. Fulmer

1 A Mike's.

2 Q What about John? Was he bleeding at this point?

3 A A little bit, but not much. I don't know why because
4 I guess -- because he was -- I don't know. It just seems
5 like he was bleeding more. I don't know if he -- I don't
6 know, because he had cut teeth or something. I don't know.

7 Q Okay. After -- after the first fight did they get up
8 and separate?

9 A Yeah. I got them separated. They -- they stopped
10 fighting that first time, and they started again the second
11 time.

12 Q How long do you think between the first fight and the
13 second fight?

14 A Just a few minutes, I guess. I don't know.

15 Q Okay. Were any words exchanged between the two of
16 them during this time?

17 A No.

18 Q Did they appear to be cooling off?

19 A They really didn't have any cooling-off periods. It
20 just didn't seem like they -- they just stopped. I mean,
21 they just continued.

22 The only time there was cooling-off periods is when I
23 took Mike to the bathroom and told him to rinse off and get
24 him a cigarette, because I couldn't understand why Jackie
25 was leaving.

Tonya Lowery
Cross-examination by Mr. Fulmer

- 1 Q That was after the second fight?
- 2 A Yeah.
- 3 Q So would you describe the second fight basically as a
4 continuation of the first fight?
- 5 A Yeah.
- 6 Q Okay. After the second fight, is that when you took
7 Mike to the bathroom?
- 8 A Uh-huh.
- 9 Q Was he bleeding at that point?
- 10 A Mike, yeah. That was from the first fight. He had
11 blood on his lip and on his hands.
- 12 Q Did you notice a cut on Mike at that point?
- 13 A I -- no, I didn't notice no cut, no, I mean U don't --
14 uh-uh.
- 15 Q He didn't complain of being cut to you?
- 16 A No.
- 17 Q While this was going on what was Jackie doing?
- 18 A She helped separate them the first two fights, but she
19 left. Like I said, after that she decided she was going to
20 go to the store. I didn't know what she was going to the
21 store for. And she asked Mike if he needed anything.
- 22 Q And what did Mike say?
- 23 A And I don't remember if he said anything. I told him
24 he needed some cigarettes, because he didn't have no
25 cigarettes, have any there.

Tonya Lowery
Cross-examination by Mr. Fulmer

1 Q While this was going on was there a dispute between
2 Mike and John about cigarettes?

3 A Not that I know of, no.

4 Q Mike actually had John's keys at this point, is that
5 right?

6 A Yes.

7 Q Were they in his pocket?

8 A I don't remember.

9 Q But when Jackie was looking for John's keys it was
10 Mike who had them?

11 A That's who she went to for them, yeah.

12 Q Was Jackie already gone before the -- what you're
13 describing as the third fight started?

14 A Yes. She left.

15 Q How long had she been gone?

16 A Not long at all.

17 Q A few seconds, maybe a minute, something like that?

18 A No. I -- probably ten minutes maybe. I'm not sure.

19 I don't know. I -- I don't know.

20 Q What was going on?

21 A I just know it just seemed like, I mean, after it
22 happened, because thinking, God, where is she, because I
23 was waiting on the paramedics because I figured she would
24 pull up. And she -- she didn't pull up. And I couldn't
25 figure out where she was. I figured she'd be back from the

Tonya Lowery
Cross-examination by Mr. Fulmer

1 store by now and couldn't figure out why she was gone so
2 long.

3 Q But you think it was about ten minutes between the
4 time that -- after Jackie left before they started fighting
5 again?

6 A Uh-huh, yeah, that long.

7 Q Okay. What was going on in that ten minutes?

8 A Huh?

9 Q Can you tell me what happened during that time?

10 A The only thing, like I said, I took him back there to
11 rinse off, rinse his face and his hands. And I gave him a
12 cigarette. I just told him just to calm down, you know.

13 Q And this was while you were in the bathroom at this
14 time.

15 A Uh-huh.

16 Q So was -- did Mike spend those ten minutes in the
17 bathroom?

18 A No. I mean, afterwards we come in the kitchen.

19 Q And where was John then?

20 A He was in there.

21 Q In the kitchen?

22 A Uh-huh.

23 Q Were they speaking to each other?

24 A As soon as he come in there he wanted to leave, kept
25 asking him to leave. And that's when I told him he

Tonya Lowery
Cross-examination by Mr. Fulmer

1 couldn't leave, that Jackie had taken his truck.

2 Q When you said that did Mike have a response?

3 A He just kept telling him to leave. He kept telling
4 him he wanted him out of there.

5 Q Did John ever say anything?

6 A No. The only thing he did was swing. And I couldn't
7 understand why he was swinging. I mean, I didn't know why
8 they -- it just didn't make sense to me.

9 Q So immediately --

10 A I tried --

11 Q Immediately after Mike asked John to leave, John swung
12 at Mike?

13 A Yeah. He asked him like three times, and then he
14 swung.

15 Q And what did you do at that point?

16 A I had to exit out the back door because it was right
17 there at the kitchen. I didn't have a choice.

18 Q Why didn't you try to break them up this time?

19 A Because they were right there. They were swinging
20 right there. They were swinging. I mean, before it --
21 they kicked and stuff. And I had somebody else to help me.
22 And they were right there. I mean, he just swung.

23 I just would've been punched in the face if I'd done
24 something. I was scared to try to do it by myself. But
25 I'd had all I could take that night.

Tonya Lowery
Cross-examination by Mr. Fulmer

1 They kept fighting and kept fighting, and I didn't
2 think they were going to stop. They just kept on fighting.
3 And I figured Jackie would be pulling up any minute and we
4 could separate them again. But, I mean, she didn't. I
5 never dreamed it was going to end up like this.

6 Q Did you ever see a knife before you went out?

7 A No. I didn't see one when I come in. I didn't see
8 one when I come in.

9 Q Mike ever tell you he had a knife?

10 A No. I mean, he didn't have to. I mean, when I come
11 in there I saw he was stabbed, I mean. I didn't why know
12 where the weapon went. All I knew was he was stabbed and
13 he was bleeding. I assumed it was under the refrigerator
14 because we's right there at the refrigerator, is where John
15 was.

16 Q When you went out the back door of the trailer were
17 Mike and John still on their feet fistfisting?

18 A I -- yeah.

19 Q They were both standing up?

20 A Yeah. I assume. I mean, like I said, they swung. I
21 don't know. Once he swung I went out the side because I --
22 I was scared. I mean, it's right there. And I just
23 couldn't deal with it any more. My nerves were shot.

24 Q How long do you think it took you to get from the back
25 door to walk around the trailer to come in the front door?

Tonya Lowery
Cross-examination by Mr. Fulmer

1 A I don't know. I have no idea. I just -- I just
2 walked. I just -- I had no idea. Not long. Maybe -- all
3 I know is they were just fighting. I went around the back
4 and went around to the side and come in the front door. I
5 mean, it wasn't.

6 Q Did you stop along the way?

7 A I stopped at the back steps when I first got out
8 because I was upset because I was thinking I couldn't
9 handle this, the fighting all the time. I couldn't stand
10 it any more. I wanted to go home. I wanted to just go
11 home. And I said I can't go home, I can't leave them
12 fighting. So I come back around.

13 Q Do you think it was less than a minute that it took
14 you to walk around the trailer?

15 A I -- no. It was -- I imagine it was more. I don't
16 know how long. I don't know.

17 Q Did you hear anything inside the trailer while you
18 were walking around?

19 A Yeah. I mean, I could hear them rumbling around.
20 That's why, you know, I just --

21 Q Did you hear any yelling?

22 A No. They just -- I could just hear them fighting.
23 That's all I could hear. And I -- and I couldn't handle it
24 any more. I can't handle watching people fight.

25 Q When you came in the front door, what did you see?

Tonya Lowery
Cross-examination by Mr. Fulmer

- 1 A I saw Mike. He was standing over John, and he said
2 dial 9-1-1, I accidentally stabbed him.
- 3 Q He said accidently?
- 4 A Uh-huh.
- 5 Q Did you see a knife at that point?
- 6 A No, I didn't see a knife. All I did, as soon as he
7 said that I grabbed the phone and I started dialing because
8 I saw John in the floor, and then I saw blood. And then I
9 knew it wasn't good when he stood up. I knew it wasn't.
- 10 Q Did you ever see Mike walk down the hallway to the
11 dryer?
- 12 A No.
- 13 Q Ever see him place a knife under the dryer?
- 14 A No.
- 15 Q Did you ever see him go to the bedroom across from the
16 dryer?
- 17 A No, I never saw that, no.
- 18 Q Did you ever see Mike pick up a glass bottle of
19 Canadian whiskey in a paper sack?
- 20 A He had a bottle of whiskey that he had brought into
21 the kitchen back when him and Jackie and them were there
22 drinking. But I don't -- you know, I don't even remember,
23 you know, him putting it up or -- or if he left it on the
24 table or what. I remember him pouring that. He poured
25 that one. I was there. I don't know what it was. It

Tonya Lowery
Cross-examination by Mr. Fulmer

1 was -- it was in a paper bag, but, I mean...

2 Q Did he drink any of that after he was cut?

3 A I have no idea.

4 Q Did you see him?

5 A No, I didn't see him drink nothing, no. I saw him
6 pour it in a glass, him and Jackie, a glass, you know,
7 prior, you know, to everything happening. But, you know,
8 no.

9 Q Do you have any idea how the -- the bottle with blood
10 on that bottle got into the bedroom drawer?

11 A No, I don't.

12 Q After this happened did you ever tell anybody that
13 John killed Mike -- I mean, I'm sorry -- Mike killed John
14 for you because he loved you?

15 A No.

16 Q Never made that statement?

17 A No.

18 Q Have you ever told a version of this story where you
19 were actually inside the trailer --

20 A No, I haven't.

21 Q -- when the stabbing took place?

22 A No, I haven't. I wasn't inside the trailer.

23 MR. FULMER: One moment, Your Honor.

24 (Pause.)

25 MR. FULMER: That's all, Your Honor.

Tonya Lowery
Redirect examination by Mr. Allen

1 REDIRECT EXAMINATION

2 BY MR. ALLEN

3 Q You talked to the officers early that morning after it
4 happened, correct, the 13th of November?

5 A Yeah.

6 Q Do you recall writing a statement? I've got part of
7 the statement here.

8 A No. I didn't write it. The officer wrote it.

9 Q The officer wrote it.

10 A Yes.

11 Q You signed it.

12 A Yeah.

13 Q And you told the officers what had happened?

14 A Uh-huh.

15 Q Okay. I'm going to point to a line that's on page
16 three of four where you're talking about John swinging and
17 hitting Mike in the face and you tried to separate them but
18 you couldn't. And then what's that next line say, or that
19 sentence say?

20 A "I went out the back door and walked around --

21 Q The trailer.

22 A -- to the front."

23 Q Came back in the front door.

24 MR. ALLEN: That's all I have, Your Honor, on
25 redirect.

Michael Anthony Rogers
Direct examination by Mr. Allen

1 THE COURT: Okay. You can step down.

2 MR. ALLEN: Your Honor, for the purposes of this
3 motion we do call Mr. Rogers.

4 THE COURT: Okay.

5 MICHAEL ANTHONY ROGERS, having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. ALLEN

8 MR. ALLEN: Your Honor, I neglected to ask. Can
9 Ms. Lowery be excused? I don't think we have any further
10 need of her for this hearing.

11 THE COURT: She can be if they have sufficient
12 officers to take her back.

13 (Whereupon, the witness was excused.)

14 Q You are Michael Anthony Rogers, correct?

15 A Correct.

16 Q Mr. Rogers, on the night of the 12th of November of
17 2010 where did you live?

18 A [REDACTED]

19 Q In Roebuck?

20 A Roebuck, South Carolina.

21 Q Of course that's in Spartanburg County, correct?

22 A Yes, sir.

23 Q What type of home was it?

24 A A mobile single-wide trailer -- mobile home.

25 Q Were you purchasing it, renting it?

Michael Anthony Rogers
Direct examination by Mr. Allen

1 A I was renting it. I had been there over a year, over
2 a year.

3 Q Over a year?

4 A Yes, sir.

5 Q Who else lived with you at that mobile home?

6 A I had no -- no one else but myself.

7 Q Now, the night of the 12th of November up to -- well,
8 let's just start a little bit earlier.

9 Was John Ryan over at your mobile him on the night of
10 this incident the 12th of November?

11 A Yes, he was.

12 Q And how long had he been there?

13 A He was there 24 hours prior. He was there a day
14 earlier.

15 Q A day earlier?

16 A Yes, sir.

17 Q He spent the night?

18 A Yes, sir.

19 Q Okay. Had he moved his stuff in?

20 A No, sir.

21 Q Was he residing there as his permanent place?

22 A No, sir. The only reason he spent the night, because
23 he -- he was too drunk to drive and I didn't want him to
24 drive home. And that's the only reason why I let him stay
25 at my home that night.

Michael Anthony Rogers
Direct examination by Mr. Allen

- 1 Q How long have you known John?
- 2 A I had just met him that day through Tonya.
- 3 Q And Tonya being who -- Tonya Lowery?
- 4 A Tonya Lowery, yes, correct.
- 5 Q And what was your relationship with Ms. Lowery?
- 6 A We were more than friends. We were -- we were seeing
- 7 each other in a romantic way.
- 8 Q Now, up to the time before Tonya -- or did Tonya come
- 9 to your home that evening?
- 10 A Which evening is that, sir?
- 11 Q The 12th, the night this happened.
- 12 A Yes. He did.
- 13 Q Tonya?
- 14 A Yes, yes, she did; yes, she did, yes.
- 15 Q When she arrived was there anyone else in your home?
- 16 A Yes, Jackie. I don't know, really know, her last
- 17 name. I had just met her also that day.
- 18 Q Okay. From the time that -- let's just take it from
- 19 the time that Tonya arrived at your home that night.
- 20 A Okay.
- 21 Q What happened?
- 22 A Well, Tonya come in. You know, and there was -- we
- 23 were just all talking, sitting around just really talking.
- 24 Q We being who?
- 25 A Jackie, myself and Tonya.

Michael Anthony Rogers
Direct examination by Mr. Allen

1 Q What about John?

2 A And John was there, yes. John was there also.

3 Q What had been going on? Had you been drinking?

4 A Yes, we, we -- I -- I had some. John had -- he had
5 his share.

6 Q What do you mean by his share?

7 A Well, when he had gotten up in the morning, which I
8 assumed he was going to leave, he already -- he started
9 drinking before I even got up. And anyway it just -- I
10 guess it just escalated, kept going on, going on and going
11 on. I don't know. I mean, he seemed okay at times, and at
12 other times he didn't. I don't know. It was hard to
13 judge.

14 Q Okay. Now, what about Jackie? Did she drink with
15 y'all?

16 A Yeah. She had -- she had a drink.

17 Q And Tonya?

18 A Tonya didn't. No, she did not.

19 Q Now, so after you were sitting around talking, what
20 if, anything -- I'm talking about something unusual that
21 led up to this incident that we're all here about, what
22 happened up to that point?

23 A I had to go. I had to excuse myself. I had to go to
24 the bathroom. I used the bathroom. On my way out I
25 noticed John leaning against Tonya from behind with his

Michael Anthony Rogers
Direct examination by Mr. Allen

1 arms around her waist.

2 Well, I couldn't really see his arms because of the
3 breakfast nook bar -- is -- is probably a little bit above
4 the waist. It's probably midway. But he was behind her
5 and he had his head -- it was bent into the crit (sic) of
6 her shoulder and head like he was saying something to her
7 and everything, but he was pressed up against her.

8 And I said what the -- I probably swore. And I
9 probably -- and I told him what the -- you think you're
10 doing. And I went up to him and I separated. I pushed
11 him.

12 When I pushed him he fell into my stereo. And when I
13 turned around the corner where the breakfast nook is, they
14 were pressed up, and he was pressed right up against her.
15 And I was angry. I said what do you think you're doing.
16 And I pushed him against the stereo.

17 Q And then what happened?

18 A John fell into the speakers. That's what he fell
19 into. And I said, ah, man, I was mad about him banging
20 into the speakers. So I went over and I kinda tried to get
21 him up to get him off of the speakers. And he swung and I
22 swung. And we got into it. It happened quick.

23 Q Okay. Now, did that swinging between the two of you
24 last for a long time?

25 A No, not really.

Michael Anthony Rogers
Direct examination by Mr. Allen

1 Q Okay. Then what happened?

2 A How that had stopped was -- Tonya was correct when she
3 stated that she's the one that told me to stop. I had told
4 the officers I got the better of him at this time, and
5 which I had done. And I thought it was going to be over
6 with.

7 Q What did you do?

8 A They told me -- I -- they're telling me to let him up,
9 let him up. Past experience, you don't let -- you don't
10 let the person up who just tried to finish doing whatever.
11 But, anyway, I let him up. As soon as I let him up it
12 started all over again. It was the second one.

13 Q And how did that start?

14 A It really -- it was like it never even stopped. It's
15 just one led right into the other.

16 Q Well, what I mean is when you let him up did you start
17 hitting on him again.

18 A No, no.

19 Q What happened?

20 A It was just -- it just -- I can't really say. I mean,
21 he just -- he come back at me. And I just protected
22 myself.

23 I went back at him also. He came at me. I went at
24 him. It was just -- the reason why he just had stopped,
25 because I had let him up. And then if he'd just stood away

Michael Anthony Rogers
Direct examination by Mr. Allen

- 1 it would have been fine. It would have been over with.
- 2 Q You say he came back at you. Do you mean --
- 3 A In an aggressive manner, yes.
- 4 Q Shake your hand, or what?
- 5 A No. In aggressive manner.
- 6 Q Okay. Now, how long did that last?
- 7 A It wasn't long. It was not long at all. We
- 8 exchanged, what 40, 60 seconds, not even -- not even a
- 9 minute. You know, it was just it ended.
- 10 Q And then what did you do after it ended?
- 11 A I went to the bathroom, and I -- I was bleeding.
- 12 Q Where?
- 13 A Just on my lip. That was it, just my face, a little
- 14 bit on my face. It was nothing and -- and I was upset.
- 15 Q And then what happened after you -- did you come out
- 16 of the bathroom?
- 17 A Yes, I did.
- 18 Q Who all was present when you came out of the bathroom?
- 19 A Just Ms. Lowery.
- 20 Q And anybody else?
- 21 A No.
- 22 Q John was not there?
- 23 A John, excuse me, yes, John, yes. I'm sorry.
- 24 Q What about -- what about Jackie? Was she still there?
- 25 A No.

Michael Anthony Rogers
Direct examination by Mr. Allen

- 1 Q Do you know when or how she left?
- 2 A Yes. I know that I had given her the keys. I had
- 3 thrown them to -- thrown them that way.
- 4 Q Why did you do that?
- 5 A They asked for them. John wanted his keys, and I
- 6 wanted him to leave.
- 7 Q How did -- did you --
- 8 A I don't know. Okay.
- 9 Q Did you tell John anything about leaving? And, if so,
- 10 how did that happen?
- 11 A I asked -- I had asked him to leave after the
- 12 confrontation.
- 13 Q After what confrontation?
- 14 A The second one before I went and wiped my face -- to
- 15 leave my home.
- 16 Q Did you ask him to leave?
- 17 A Yeah. I asked him one time to leave.
- 18 Q How did you ask him to leave?
- 19 A I said leave, and leave my fre -- f'ing house.
- 20 Q And what, if anything, did he say or do?
- 21 A He didn't respond.
- 22 Q After you came back from the bathroom -- well, first
- 23 of all, let's talk about, a little bit about, the layout of
- 24 your mobile home. The bathroom is located where in
- 25 connection with the kitchen?

Michael Anthony Rogers
Direct examination by Mr. Allen

1 A It's a -- this is a single -- it's a single-wide.
2 It's right behind -- it's the kitchen, and then it's a
3 little narrow hallway to the right.

4 Q To the right?

5 A Yes, enough for a -- for a -- the hallway's wide
6 enough for a runner of a carpet. And then on the left-hand
7 side, maybe it is about 3 feet, and then on the left-hand
8 side it opens up a little bit where there's a washer and
9 dryer. And right after the -- the dryer -- is my bathroom
10 to the left. And -- and to the right is the door to go
11 back down the stairs to get outta the house.

12 Q Okay. Now --

13 A Say it's about four -- it's about maybe 4 feet.
14 The whole -- the whole thing is probably about six -- 6 to
15 7 feet long, the hallway.

16 Q So when you're coming out of the bathroom you pass?

17 A You pass the dryer. You gotta -- coming outta the
18 bathroom you have to bear a right. The dryer's right
19 there, right in front of the door of the -- of the
20 bathroom. And then you got your washer.

21 You got to bear a right. And then you take maybe
22 three steps, and then you're automatically in the kitchen
23 where the kitchen table is off the left. My refrigerator
24 is off to the right. And it's a narrow -- there was a
25 place where you could walk to get to the living room area.

Michael Anthony Rogers
Direct examination by Mr. Allen

1 Q All right. Now, when you came back out of the
2 bathroom did you go into the kitchen?

3 A Yes, I did.

4 Q And what happened then?

5 A I told John he had to leave. I kept telling him you
6 gotta get out of here. I don't care if Tonya ain't, I
7 mean, Jackie got your truck, leave. You want to wait for
8 her, outta your truck, you wait somewhere else, but I want
9 you out of my house.

10 Q What, if anything, did John do when you told him that?

11 A I don't know. I was -- when I had been saying that I
12 -- I was facing the refrigerator. And when I had turned
13 around he sockered me. He got me right in -- he got me
14 right in the jaw big time.

15 Q With what?

16 A His fist.

17 Q Okay. And then what happened?

18 A I -- I hit him back because I wanted him to stop.

19 I -- why -- why even initiate it all over again?

20 Q What did you hit him with?

21 A I hit him with my hands.

22 Q Okay. And when then what happened?

23 A He started fighting. I mean, I -- he just kept coming
24 at me and coming at me. And knowing me, I was fighting
25 back for the simple reason to get him to stop. I wanted to

Michael Anthony Rogers
Direct examination by Mr. Allen

1 get him off of me.

2 Q Okay. How did it stop?

3 A I don't know how. And I told this to the officers. I
4 don't really know where the knife came in. I only can
5 speculate on that, where it came from. But I had noticed
6 it in his hand. And we fought over it.

7 And the next thing I know there's blood. There's --
8 there's just blood. And I -- I got the knife out of his
9 hand. Eventually I got the knife out of his hand. We had
10 stopped fighting. I got the knife out of his hand.

11 Q Do you know how John received the wounds on his chest?

12 A Again, this is speculation, I mean.

13 Q Well, I can't ask you to speculate. But do you know
14 how he got the wound?

15 A Yeah. Through the fight.

16 Q Do you remember -- do you think you remember cutting
17 him?

18 A No, I do not.

19 Q Did you get cut?

20 A Yes, I did.

21 Q Where?

22 A On my left forearm.

23 Q Okay. Did you get cut anywhere else?

24 A On my right forearm on the top.

25 Q I'm going to show you some pictures.

Michael Anthony Rogers
Direct examination by Mr. Allen

- 1 Let me ask you this. Did you have any other injuries
2 that night or did you get any other injuries that night?
3 A Just besides the beating, I mean, the bruising.
4 Q I'm going to ask you to look at Defense Exhibit 3. Is
5 this -- do you recall -- do you know what this is? There
6 are two pictures. Do you know what these pictures are?
7 A Yes, sir.
8 Q What are they?
9 A They are cuts and they are bruises. They're cuts on
10 my knuckles and they're cuts on my right forearm and near
11 the pinkie side.
12 Q All right. So the -- the top picture is a picture of
13 your right forearm.
14 A Yes, sir.
15 Q And do -- do you know where these were taken? Do you
16 remember when these were taken?
17 A Spartanburg Regional.
18 Q At the hospital?
19 A Yes.
20 Q Okay. Taken when, that --
21 A That evening, I mean, after -- after the altercation.
22 Q Okay. And the bottom picture is a -- shows your hand.
23 A Yes.
24 Q Okay. Defense Exhibit 4, can you tell me what the top
25 picture is?

Michael Anthony Rogers
Direct examination by Mr. Allen

1 A That's a picture of my knuckle. It's a bruise. It's
2 a cut on my right finger.

3 Q Your right finger?

4 A My right pinkie.

5 Q And the bottom picture again, another?

6 A It's cuts on my forearm, on the outside of the
7 forearm.

8 Q Okay. Your right arm?

9 A Yes, my right arm.

10 Q Defense Exhibit 5 are pictures of what?

11 A My left forearm.

12 Q And it shows?

13 A Severe, awful gash on my left forearm of 3 or
14 4 inches.

15 Q Okay. Also on Defense Exhibit 6, the top picture is
16 another picture of that same cut?

17 A Yes.

18 Q What's the -- the bottom picture is a picture of what?

19 A That's my tooth, sir. It got cracked and it got
20 broken from getting punched in the face.

21 Q Okay. And Defense Exhibit 7 is a picture of what?

22 A My jaw -- my teeth again and my jaw where I had gotten
23 hit where you can see the bruise.

24 Q Are all of these pictures a fair and accurate
25 portrayal or representation of what these injuries looked

Michael Anthony Rogers
Direct examination by Mr. Allen

1 like that night?

2 A Yes, yes, sir.

3 MR. ALLEN: I offer Defense Exhibits 3, 4, 5, 6 and 7
4 into evidence at this time, Your Honor --

5 MR. FULMER: No objection, Your Honor.

6 MR. ALLEN: -- for the purpose of this hearing.

7 (Photographs marked Defendant's Exhibits Nos. 3
8 through 7.)

9 Q Did you -- you say you eventually got the knife away
10 from John, is that correct?

11 A Yes.

12 Q Did you take a look at that knife?

13 A Yeah. I know what knife it was.

14 Q What knife was it?

15 A It belonged to me.

16 Q Where was it before this incident with John began, do
17 you know?

18 A I -- I -- I thought it was in my pocket, but it
19 could'a -- it couldn't have been. I used it for cutting my
20 mail open.

21 Q Where do you keep your mail?

22 A Right on the kitchen table.

23 Q After you told John to leave your home that night did
24 you ever tell him that he could -- that you changed your
25 mind and that he could stay?

Michael Anthony Rogers
Direct examination by Mr. Allen

- 1 A No, sir.
- 2 Q Did he leave?
- 3 A No, sir.
- 4 Q Did John ever kick you that night?
- 5 A Yes, sir.
- 6 Q Do you remember when that occurred?
- 7 A After I pushed him in the stereo.
- 8 Q Where did he kick you?
- 9 A In the groin.
- 10 Q I'm not trying to ask a funny question, but did that
- 11 hurt?
- 12 A Yes, sir.
- 13 Q How bad?
- 14 A Extremely.
- 15 Q Why is that?
- 16 A I just finished having prostate cancer, and I had
- 17 surgery a month prior.
- 18 Q In relationship to your size, how big or small was
- 19 John?
- 20 A John's a bigger man than myself. He's taller than I
- 21 was. I'm only 5'7". At the time I -- I was recovering
- 22 from the cancer. I had lost extremely a lot of weight. I
- 23 weighed only 189 pounds or 184 pounds. I'm sure John was
- 24 over 200 pounds.
- 25 Q How much taller than you was he?

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 A Maybe 6'11", maybe 6'10".

2 Q Six --

3 A I mean, excuse me, five. Excuse me. I'm sorry.

4 Five.

5 Q Five?

6 A Yeah, I believe he might have been. He was taller
7 than myself.

8 Q Okay. And his age? Was it your age, was it --

9 A No. He's -- I'm -- at the time I was 53 and he was
10 44. So I -- I got some years on him -- 11 years.

11 Q You're older than him?

12 A Yes, sir.

13 MR. ALLEN: One second, please, Your Honor.

14 (Pause.)

15 MR. ALLEN: No other questions for the purpose of this
16 motion, Your Honor. Thank you.

17 CROSS-EXAMINATION

18 BY MR. FULMER

19 Q Mr. Rogers, you say you don't remember stabbing John
20 in the chest?

21 A No. It wasn't -- no. I -- no. It wasn't an
22 intentional thing.

23 Q Do you remember stabbing him in the back?

24 A No.

25 Q Do you admit that you stabbed him in the back?

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 A Apparently it was -- yeah. He had wounds on the back,
2 on his back, that I -- that I'm aware of now. But I assume
3 that happened during the altercation and fighting with the
4 knife.

5 Q At what point does -- does your memory cease with
6 regard to the fight?

7 A What do you mean by cease? I don't understand.

8 Q Well, you can remember a lot of things about what's
9 going on that night. But when it comes to how John got
10 stabbed you say you can't remember how it happened.

11 A I'm not -- well, I'm not saying. What I'm saying is
12 that I don't know where the knife came from, how the cuts
13 happened to myself or to him. I don't -- I can't explain
14 it.

15 We were in a (sic) altercation. I know that -- I
16 can't -- I can't explain it. I'm not going to sit here and
17 say that I know exactly how he got stabbed. I was
18 fighting. I was trying to get the knife away from him.

19 Now, if that -- if that took me going across his chest
20 -- that's what apparently happened. I went across his
21 chest. I don't know. I can't say.

22 I didn't take the knife and go like this and stab him
23 purposely like this. It wasn't done that way at all. I
24 never had that knife in my hand to do that.

25 The only time I had gotten that knife to put in my

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 hand was after when he had stopped fighting and resisting
2 me enough that I could overpower him to take it away,
3 period.

4 Q You're sure you didn't stab him in the manner you just
5 suggested, but you don't know exactly how you did stab him?

6 A I -- I didn't have the hand -- the knife in my hand
7 like that at the time. I couldn't have. It happened so
8 fast, everything happened so fast. I spoke this. I told
9 the officers this. I have nothing to hide. I spoke what
10 happened that evening. And go back and look at that. I
11 don't know how it happened.

12 Q When you say you can't explain it, what you mean is
13 you don't have a justification for it.

14 A No. That's not -- that's not true.

15 MR. ALLEN: Objection. Argumentative, Your Honor.

16 THE COURT: Sustained.

17 Q How did the knife get out of your pocket?

18 A I'm not sure. I put it -- I use it. My mail delivery
19 that day, I usually leave it on my -- my kitchen table, and
20 I open my mail with that. But I normally do keep it in my
21 pocket. Yes, I do. I carry it. I have it in my pocket.
22 Yes. That's where I thought it was.

23 Q Do you think he put his hand in your pocket?

24 A No. He did not -- he did not. He never went in my
25 pocket. I had to take it outta my own pocket and put it on

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 the table.

2 Q But you don't have a specific recollection of doing
3 that?

4 A Na. I remember opening my mail that even -- that
5 afternoon. But, you know, that's it. I opened my mail
6 with it that afternoon. I know I did.

7 Q Let's go back in time to the previous day. You say
8 that was the first time you'd ever met John.

9 A The day prior.

10 Q What were y'all doing that day?

11 A How I met him?

12 Q Right, right.

13 A He wanted me -- he came over and he had -- his truck
14 was loaded with -- he thought it was scrap metal, but it
15 was a lot of garbage. I mean, it was just junk. And he
16 needed a hand getting rid of it. So I told him I would
17 help him.

18 Tonya Lowery asked me would I, you know, help him out
19 and give him a hand, and I did. I said yes, I would.

20 Q Was he drinking that day?

21 A Yes, he was. He started drinking. Yes, he was.

22 Q Was he drinking pretty much the whole time he was
23 around you?

24 A Not when I first met him -- not, not, not when I --
25 when I first met him when I was, you know, this is John.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 John, this is, you know --
- 2 Q You don't think he had been drinking at that point
- 3 that day. Is that what you're saying?
- 4 A No, he wasn't. This is -- na. This -- this is the
- 5 day before, yes.
- 6 Q Correct. But after you two got together that day he
- 7 began to drink at some point?
- 8 A Yes, he did.
- 9 Q And he drank until he went to sleep that night, didn't
- 10 he?
- 11 A That's correct.
- 12 Q Did he go to sleep or did he pass out?
- 13 A I can't say. I showed him where the spare bedroom
- 14 was, and he went there. And I didn't hear anything of him
- 15 until I awoke the next morning.
- 16 Q You testified earlier that the reason you let him stay
- 17 the night was because he was too drunk to drive home.
- 18 A Absolutely.
- 19 Q Did his mother call him the previous night?
- 20 A I'm not sure. I -- I'm not aware of the call. I know
- 21 he had spoken with somebody on the phone. I don't know who
- 22 he was speaking with.
- 23 Q Did she offer to come and pick him up and take him
- 24 home?
- 25 A I wasn't aware of that.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 Q Did you tell her not -- that she was not allowed on
2 your property?

3 A No. I never said that.

4 Q She could not come and pick him up?

5 A No. I did not.

6 Q You never made that statement?

7 A No. I did not.

8 Q The police later recovered John's guitar in your
9 trailer. Do you know why he brought his guitar with him?

10 A He knew I played guitar. I showed him my guitars.

11 Q If you just met him, how did he know that you played
12 guitar?

13 A I told him I played guitar. As a matter of fact, I
14 had my acoustic guitar right in my living room when he
15 asked me you play. And I yeah. And I played for him. And
16 he was just learning. And I told him I could teach him a
17 few things.

18 Q And so he shows up with a guitar and then he finds out
19 that you also play guitar?

20 A I don't know about that. I just know that I showed
21 him. I showed -- I played for him. I played for him, and
22 I told him I would teach him. He said he had one.

23 Q Had you known him prior to this?

24 A No, I hadn't known him. I know of him.

25 Q Had --

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 A I knew of him. I knew of him through Tonya. That's
2 the only way. I've never met him personally.
- 3 Q Do you have an automobile?
- 4 A No, I do not.
- 5 Q Do you have a driver's license?
- 6 A No, I do not.
- 7 Q Did you go anywhere else the previous day other than
8 the dump?
- 9 A Yes. I went with John.
- 10 Q Did you drive?
- 11 A Not that day.
- 12 Q Where did you go?
- 13 A We went to the store.
- 14 Q What did you go to the store for?
- 15 A John wanted to get beer.
- 16 Q You're still referring to the previous day?
- 17 A Yes. That's what y'all are referring to, isn't it?
- 18 Q Yes.
- 19 A Okay.
- 20 Q And John drove that day.
- 21 A Yes.
- 22 Q Earlier in your testimony you said from past
23 experience you know not to let a guy up off the ground.
24 Can you tell me what you meant by that?
- 25 A Well, I -- I've let people up and after I've gotten up

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 they come back and wailed on me, and I took a beating. So
2 I think twice about it.

3 Q But in this case you were getting the best of John.
4 Those were your words to the police.

5 A Yes, I was, I was. And I had stopped.

6 Q Well, what do you mean by getting the best? Were you
7 getting ahead?

8 A I'm saying I -- I overpowered him. I -- I -- I -- I
9 would -- was getting the be -- the best of the fighting.

10 Q Were you striking him with your fist in his face?

11 A Yes, yes.

12 Q Did you hit him anywhere else?

13 A I might have. I was probably hitting him more so in
14 the face.

15 Q How long do you think that first altercation lasted?

16 A I can't say. A couple of minutes maybe. I don't
17 know. It wasn't long.

18 Q A couple. Did you each get worn out or --

19 A No.

20 Q -- did John give up?

21 A No.

22 Q But when you -- you say you let him up, was he still
23 trying to hit you at that point in time?

24 A Yes.

25 Q And you let him up anyway?

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 A Yes, because they broke it up. They, Tonya and
2 Jackie, got next to us.
- 3 Q Were they holding John back?
- 4 A No. They didn't have to.
- 5 Q Because he had ceased to fight at that point.
- 6 A When I let him up.
- 7 Q And was it Jackie and Tonya trying to break up this
8 fight?
- 9 A They had spoken to me, said Mike it's enough, he's had
10 enough. And I stopped.
- 11 Q At that point you stand up?
- 12 A I stood up.
- 13 Q Okay. What happened next?
- 14 A John got up himself.
- 15 Q What did he do?
- 16 A We -- it -- it was so -- I don't know -- words were
17 probably said. Next thing you know, another altercation.
18 I mean, maybe pushed. I don't know. I really can't say.
19 It was -- it happened so fast and everything.
- 20 Q You say he kicked you. At what point did he kick you?
- 21 A After hitting the stereo.
- 22 Q Was he laying on the ground at the time he kicked at
23 you?
- 24 A No.
- 25 Q So this was -- did the kick occur -- was that the

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 instigation for the second fight? Would that be fair to
2 say?

3 A No.

4 Q Can you tell me exactly in time when the kicking
5 occurred?

6 A After he -- after he fell into the stereo.

7 Q He got up and kicked you.

8 A Yes.

9 Q And then you continued to fight.

10 A And then that's -- then we fought.

11 Q Okay. Then you fought again.

12 A Yes.

13 Q And it's at that point that you go into the bathroom,
14 after that fight is over?

15 A The second one, yes, which was very brief.

16 Q And at that point are you cut on your forearm --

17 A No.

18 Q -- when you're in the bathroom?

19 A No, no, sir, no.

20 Q Can you tell me why you told the police that you -- at
21 that point you said your arm was cut and you went in the
22 bathroom?

23 A I ne -- I never stated that.

24 Q You gave the police several versions, but that was the
25 one version of what you told the police.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 A No. I did not.
- 2 Q You never told them that.
- 3 A No, I did not. At the time I told them when I was
4 cut, was when -- after the altercation with John. I told
5 them I did go in the bathroom. I did because I had to wipe
6 the blood. It was coming out -- it was bleeding. I was
7 bleeding all over. That's when I went in the bathroom --
- 8 Q You were bleeding all over?
- 9 A -- the second time. Well, I was getting blood all
10 over my clothes, everything else.
- 11 Q Wait a minute. You went in the bathroom once or
12 twice?
- 13 A I went to the bathroom twice, once with Ms. Lowery
14 when she wiped my face. And I came out, and that's what
15 caused the confrontation the third time when Ms. Lowery was
16 going out of the -- out of the -- out of the trailer.
- 17 I was in the ba -- bathroom prior to that altercation
18 when she went out after the second fight when I we -- I
19 went and my lip was bleeding and I wiped up. And when I
20 came back out in the kitchen, that's when John swung at me
21 after I asked him three or four times to leave, just get
22 out.
- 23 Q Either time when you entered the bathroom was your arm
24 cut?
- 25 A Excuse me?

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 Q Either time when you entered the bathroom, was your
2 arm cut at that time?

3 A Yeah, the second time, the time after -- the last
4 altercation with John when I went to the bathroom that's --
5 that's when my arm was cut. I was -- I was bleeding all
6 over the floor.

7 Q You're talking about now after you stabbed John?

8 A No. I did not stab John.

9 Q How did he get stabbed?

10 A During the altercation.

11 Q Was anybody else there besides you?

12 A No.

13 Q So it was you and John and a knife. And John ends up
14 with a knife in his chest. But you didn't stab him.

15 A There wasn't a knife in his chest, sir.

16 Q Well, he had a wound that was a little over 5 inches
17 long.

18 A Yes.

19 Q Deep. Excuse me.

20 Why did you tell the police that when you came out of
21 the bathroom you had a knife in your hand?

22 A When I came out -- what time did I come out of the
23 bathroom, sir?

24 Q Before you stabbed John.

25 A That's not true.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 Q You didn't tell the police that?
- 2 A No, I did not.
- 3 Q Can you explain how the bottle of liquor with the
4 blood on it got into your bedroom dresser?
- 5 A I put it there.
- 6 Q Why did you do that?
- 7 A I -- to be honest with you, after John was beaten out
8 like that, I grabbed -- I was going to grab everything off
9 the table. There was blood everywhere. I picked that -- I
10 took that up, and I took a hit and I went to my bath -- my
11 bedroom where I put it in the drawer.
- 12 Q Why did you put the knife under the washer -- under
13 the dryer?
- 14 A I didn't -- I didn't mean to. I didn't put it in
15 there underneath the dryer.
- 16 Q You didn't put it there.
- 17 A No. I -- it got kicked underneath there. I told the
18 officers where it was. They thought -- they thought it was
19 looking underneath the washer. I had told them it was --
20 where it was. They assumed it was under the washer. I
21 spoke to them, and I told them specifically where it was.
- 22 Q Well, when the officers found the knife it was closed.
- 23 A That's right. I closed the knife.
- 24 Q And then it got kicked under the washer?
- 25 A I closed the knife.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 Q And kicked it under the dryer.

2 A I took the knife with me when I went into the -- my
3 bathroom to take care of my cut. And I had -- that's when
4 I had closed the knife.

5 Q How did it get underneath the dryer?

6 A My -- my sink and -- and doorways -- it's less than
7 3 -- 3 feet away. And I knew it. It must have fell off
8 the thing, the counter. And I didn't care. And I walked
9 out into the kitchen.

10 The only thing when they say they couldn't find it in
11 the bathroom, that's when I said it was going to be under
12 the dryer.

13 Q Well, did you wash it off before you put it underneath
14 the dryer?

15 A No. I closed it, and I had washed myself.

16 Q But you didn't wash the knife blade off?

17 A No.

18 MR. FULMER: May I approach Your Honor?

19 Q This is a picture of the knife as the police found it.

20 A Yeah.

21 Q It appears to have been washed.

22 A Appears there's a lot of blood on it too.

23 Q Well, I see a few, maybe two drops, of blood.

24 A I did not.

25 MR. ALLEN: Your Honor, I would object to the -- what

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 it appears like. I'm not sure if I would even agree with
2 that assessment, or you can't even tell it's been washed, I
3 mean. I'm not sure if that's an appropriate question, in
4 other words. It's argumentative.

5 THE COURT: Well, he can ask him questions, but you
6 can't testify, Mr. Fulmer.

7 MR. FULMER: Yes, sir, Your Honor.

8 Q Does that knife appear as though it's been washed to
9 you?

10 A Not to me.

11 Q Is it covered in blood?

12 A It's not covered, no.

13 Q Given the amount of blood that was in your -- in your
14 tailer that night and the amount of blood that John lost,
15 would you expect that knife to be covered in blood if that
16 was the knife that was used to stab John?

17 A I can't -- I can't speculate.

18 Q Did you tell the officers where the knife was?

19 A Yes, I did on their arrival. I said I wasn't -- I
20 wasn't sure. I said look in the bathroom. I wasn't sure
21 at first. I wasn't even -- I wasn't even sure, period, at
22 where it was. I said look. I never -- I never
23 specifically said. I said look.

24 Q But you didn't tell them to look under the dryer?

25 A Again, said washing machine or dryer. I don't know --

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 Q The washer and dryer are side by side.
- 2 A Yes, sir.
- 3 Q Okay. But you're still not sure how that knife got
- 4 underneath the dryer.
- 5 A Like I said, I might have kicked it underneath there.
- 6 I didn't place -- I never placed it with my hand underneath
- 7 there.
- 8 Q The day of the stabbing, had John been drinking all
- 9 that day?
- 10 A Yes.
- 11 Q What time did he start drinking?
- 12 A I don't know what time he got up. I got up probably
- 13 about 10:00 or 11:00.
- 14 Q But he started drinking about when he woke up?
- 15 A When I -- when I had gotten up he had had a beer.
- 16 Q What time was -- what time did the police arrive?
- 17 A I'm not sure.
- 18 Q Close to midnight?
- 19 A I imagine.
- 20 Q Had John been drinking all day?
- 21 A Pretty much.
- 22 Q Was he drunk?
- 23 A Yes.
- 24 Q Was he unsteady on his feet?
- 25 A At times.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 Q He really wasn't a match for you, was he, in that
2 condition?

3 A I wouldn't say that, no.

4 Q Well, you said you got the best of him.

5 A Yes. I did.

6 Q So would it be fair to say he really wasn't a match
7 for you?

8 A No. I'm just a better fighter.

9 Q So why would you need a knife then?

10 A A knife for what?

11 Q The knife that you took from John, according to what
12 you say, and stabbed him.

13 A I did not stab John.

14 Q Were you in fear for your safety at this time?

15 A I was in fear of -- yes, I was.

16 Q Even though you just stated that you had gotten the
17 best of him and you were a better fighter.

18 A I got the -- I got the best of John, Mr. Ryan, in the
19 first altercation.

20 Q And apparently you got the best of him in the last
21 altercation. Can you explain how he has knife wounds on
22 his back?

23 A No, I cannot. I guess -- I cannot. To my knowledge
24 they're superficial anyway. I mean, it could have been the
25 wrestling, with the wrestling. He were wrestling over the

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 knife. I'm trying to get -- this man is not -- y'all are
2 trying to portray this man as somebody really smart. He
3 had some strength. I'm trying to get this knife away from
4 him, plain and simple.

5 Q How long was Tonya outside the trailer?

6 A I can't say. To walk around my home it'd probably
7 take about maybe 20 seconds, if that. I can't say.

8 Q Had the knife appeared at the time she left?

9 A Excuse me?

10 Q Had the knife come out? Did you see the knife before
11 Tonya left?

12 A No, I did not.

13 Q So can you describe that sequence of events starting
14 with the time that Tonya leaves out the back door?

15 A I wasn't even aware Tonya had left when I was fighting
16 John until I had seen her come in the front door. When I
17 was fighting John I assumed that she was behind me. I
18 didn't even know.

19 I said -- I seen the front door, walking through the
20 front door, I said what the heck, you know. That's when I
21 told her to call 9-1-1. How did you get there? I mean --
22 I mean, I didn't even know she took off. I thought she was
23 behind me all the time through the whole altercation which
24 probably took -- I don't know. Everything happened so fast
25 it was just minutes. It wasn't really long at all.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 Q But by the time Tonya came around you'd already
2 supposedly gone to the bathroom and washed off the knife
3 and put it underneath the dryer.

4 A No, sir.

5 Q She said she didn't see a knife when she came in the
6 front door.

7 A She did not -- I guess not. I guess she didn't. When
8 I asked Ms. Lowery to call 9-1-1, I hadn't been to the
9 bathroom yet.

10 Q So you still had the knife.

11 A Yes.

12 Q She just didn't see it.

13 A Apparently not. Before I went to that bathroom I
14 tried to stop the bleeding for John. I tried to save his
15 life. I took a rag and I put it on his chest. I told her
16 to call 9-1-1. I didn't want this man to die. I told 'em
17 to hurry up.

18 Q It was too late at that point though, wasn't it?

19 A I don't know when he passed away. I don't know. I
20 have no idea. But I tried. I did my -- my best. I -- God
21 give me the strength to do whatever I have to do to save
22 this man. I did whatever I could do. I gave him mouth to
23 mouth, and I couldn't save him. It's not my fault. It
24 could have been me down there. It just so happened it just
25 wasn't me.

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

- 1 Q Well, just so happened because he didn't stab you.
2 You stabbed him.
- 3 A I did not stab John. He got cut in the altercation.
- 4 Q An altercation with you.
- 5 A With me.
- 6 Q With a knife that was your knife.
- 7 A It was my knife.
- 8 Q Mr. Rogers, you say you didn't stab John. You said he
9 was cut during the altercation. Is that fair?
- 10 A Yes.
- 11 Q Okay. According to the autopsy report this chest
12 wound was 5.6 inches deep.
- 13 A Deep is not -- isn't that long way -- as far as what
14 my attorney told me.
- 15 Q Deep into his body cavity.
- 16 A Said he it was no -- it was no puncture in the body
17 cavity, as far as my attorney told me. It was elec -- a
18 long cut. As far as I -- I'm knowing. I don't -- I don't
19 know. I cannot -- I cannot say -- I cannot say.
- 20 Q Well, I am just reading --
- 21 A They're trying to put words in my mouth, and I cannot
22 say. I don't know. You keep asking me, asking me, asking
23 me. I cannot answer that question for you.
- 24 Q You have a clear recollection of trying to save his
25 life, don't you?

Michael Anthony Rogers
Cross-examination by Mr. Fulmer

1 A Yes.

2 Q You have a clear recollection of the fistfight that
3 went on and your cut on your arm.

4 A I don't know how I got that cut. I mean, I don't even
5 remember getting the cut until after. I didn't even know I
6 even had the cut until after when -- when it stopped. I
7 didn't even know I was bleeding until I was trying to stop
8 his bleeding.

9 Q Do you have an explanation as to why your memory gets
10 so fuzzy during the time that John is stabbed and killed?

11 A What I'm stating is that it happened so fast, you're
12 talking minutes. You're talking just minutes. It wasn't a
13 long period of time.

14 We -- it wasn't a round one, you know, waiting for
15 round two. It was nothing like that -- three-minute
16 rounds. It -- it just happened so fast. It was -- I
17 can't. You're asking me to -- to answer you something I do
18 not know.

19 MR. FULMER: That's all the questions I have, Your
20 Honor.

21 MR. ALLEN: No further questions, Your Honor.

22 THE COURT: You may step down.

23 MR. ALLEN: That's the defendant's showing on this
24 motion.

25 THE COURT: All right. Mr. Fulmer.

Jackie Lance
Direct examination by Mr. Fulmer

1 MR. FULMER: Your Honor, the state would call Jackie
2 Lance.

3 JACKIE LANCE, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. FULMER

6 Q Ms. Lance, how old are you?

7 A Twenty-five.

8 Q Where do you live?

9 A I live at [REDACTED], is my mailing address. I
10 just moved to [REDACTED].

11 Q Where were you living back on November the 12th?

12 A [REDACTED].

13 Q And where is that in relation to Carolina Drive
14 Extension?

15 A It's also on the same road. It's just like there's a
16 red light. And I live on the opposite side. There's a few
17 miles difference in his residence and mine.

18 Q Are you --

19 A My sister lived on the other side of Mike.

20 Q She lived on Carolina Drive Extension?

21 A No. She lived on Fortune Drive. That was the little
22 road off to -- to the side of it.

23 Q Okay. So Fortune Drive, Carolina Drive Extension and
24 Horton Drive where Ms. Tonya Lowery lived --

25 A They're all back to back.

Jackie Lance
Direct examination by Mr. Fulmer

- 1 Q All in walking distance of each other?
- 2 A Right.
- 3 Q So you were familiar with Carolina Drive Extension and
- 4 Fortune Drive.
- 5 A Yes, I am, uh-huh.
- 6 Q Can you tell me how you first came in contact with
- 7 John and Mike back on that day?
- 8 A I was walking from my sister's. I did not see John or
- 9 Tonya at the time. And my phone had died. I was trying to
- 10 call my sister to come and pick me up and give me a ride to
- 11 the store. I did not feel like walking. Usually I did.
- 12 It got hot. I was tired. So I just called her. I was
- 13 going to call her. I seen him standing on his porch. He
- 14 had a phone. My phone was dead. I asked him to use his
- 15 phone. He let me. I mean, he was --
- 16 Q You say, he. You're referring --
- 17 A Mike.
- 18 Q Mike.
- 19 A He was nice enough about that or whatever. My sister
- 20 didn't pick up the phone. We stood there and talked for a
- 21 few minutes, but I went on about my business.
- 22 Q Okay. And then what happened?
- 23 A I mean, like what did I do? What else did I do that
- 24 day or --
- 25 Q When did you next see Mike or John?

Jackie Lance
Direct examination by Mr. Fulmer

1 A Later on that day I was walking. I started to walk to
2 the store, there again. Like I said, we lived within
3 walking distance of everything.

4 Everybody knows everybody. We grew up, you know,
5 around the same neighborhood or whatever. And I was
6 speaking to Tonya on the phone telling her I was going to
7 get some cigarettes. And she -- they offered me a ride and
8 they picked me up.

9 I bought Mike a pack of cigarettes because they gave
10 me a ride to my friend's house, a paraplegic, which I
11 cleaned his house. I gave him the cigarettes, a little bit
12 of gas money and they -- we all went back.

13 I wanted to go home. They had to stop at the trash
14 dump. They had another car there, so it was altercation
15 there. And then the police were called. They talked --
16 the guys talked -- the other people out of, you know,
17 talking to the police. They exchanged insurance
18 information or whatever. And there was no talking to the
19 police at that dump right at that time.

20 So then we all go back. And they were both drinking.
21 When they said that, we sat at the table. Yes, I did sit
22 at that table. And there was no knife on that table
23 whatsoever. I will state that because I was sitting there.

24 Q Okay. Well, let's back up a little bit.

25 You knew who Mike was from the neighborhood, is that

Jackie Lance
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- 1 right?
- 2 A Right.
- 3 Q And you knew who John was?
- 4 A No.
- 5 Q You'd never seen John before.
- 6 A No, sir. I'd never met neither one of them prior to
- 7 this, prior to that day.
- 8 Q What about Tonya?
- 9 A I've known Tonya from the neighborhood.
- 10 Q So there was a trip to the dump. Mike's driving at
- 11 that point in time?
- 12 A I really don't remember who was driving.
- 13 Q But it's in John's truck?
- 14 A Yes.
- 15 Q Okay. And then at some point in the evening you're
- 16 back at -- you're with them at Mike's house?
- 17 A Yes.
- 18 Q Okay. Is John drinking at this point?
- 19 A They were both drinking.
- 20 Q Do you remember about what time of the night this was?
- 21 A I don't remember a specific time, no, sir.
- 22 Q Was it dark?
- 23 A Yes, sir.
- 24 Q Were you drinking with them?
- 25 A No, sir. He poured me a shot, Mike did, as well as

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1 hisself. Then that's when I realized that they were all
2 drinking out of the same bottle. I do not drink after
3 people.

4 So there -- and it was not done behind his back. It
5 was not done secretively. No one -- it was not like I
6 slipped anything on him. When he poured that in my drink
7 or whatever he was drinking a mixed drink. So I just
8 looked at him kinda and I reached over and dumped it back
9 in his cup. I never drank anything while I was there.

10 Q Did you see Tonya drinking?

11 A No, sir.

12 Q How long were you there before an altercation broke
13 out?

14 A Not long. Maybe ten or 15 minutes, if that long.

15 Q And tell me who is in the trailer at this point.

16 A Me, Tonya, Mike and John.

17 Q Okay. And what does John do?

18 A I mean, to be honest, that man was so messed up he
19 couldn't even -- he couldn't have defended hisself. And
20 the rage that Mr. Mike was in he, he could not have.

21 Now, and when they keep saying that he put his arms
22 around Tonya in some kind of sexual way, that's not what
23 happened at all.

24 Q Can you tell me what did happen?

25 A Yes, sir, I can. Tonya was on this side of this bar,

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Direct examination by Mr. Fulmer.

1 the side I was standing on. And when John walks up it
2 looked like he leaned on her to catch his balance. He was
3 not trying to touch her in any kind of way.

4 And then that's when Mike come around the corner in
5 such rage I backed away. He scared me. And he jumped on
6 John. He threw him to the ground, his whole head bounced
7 off of a stereo system.

8 Then he jumps on top of him and just keeps hitting him
9 and hitting him and hitting him. And that's when Tonya
10 grabbed the back of his pants. And I'm trying to get him
11 to where they can stop hitting this man. It was obvious he
12 could not fight back. He kept continuing to hit him and
13 yelling you M.F.'r this, you disrespecting my woman. And
14 I'm begging him to please stop.

15 So he finally lets him go. Oh, no, that's -- no. I'm
16 sorry. I stuck my arm in between them trying to get him
17 stop hitting him in the face because by this time he'd done
18 knocked John's glasses off. The man's head was literally
19 bouncing off the floor he kept hitting him so much.

20 And when I put my arm between, he actually hit me
21 trying to hit John again. And when he hit me I threw my
22 hands up. I was like, oh, no, you know, because I did not
23 want to get hurt. I did not know this man.

24 What I was told is they'd known each other for years,
25 they were good friends. So I'm thinking, you know, this is

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1 just going to blow over.

2 If I had any idea that that was -- that he was going
3 to stab him when I walked out of that door I would have
4 called the police while I was leaving. I did not even know
5 that that was that bad.

6 He was violent. And then when John did get to his
7 feet, John did kick him between the legs, which to me was
8 deserved. He had sat there and beat that man in this face,
9 in his head, all in the floor. And we tried to separate
10 him and pull him off of him. And he would not stop. He
11 had every chance to get off of him, and he did not.

12 Once he did get off of him, he just kept jumping back
13 on him. Once he jumped back on him after he kicked him
14 between the legs he got him down again still steady beating
15 him and beating him and calling him all kind of names,
16 yelling at him that he disrespected his woman. And that's
17 what happened. It was not a sexual pass whatsoever. That
18 man was just trying to catch himself.

19 Q How -- how many episodes of fights do you remember?

20 A I remember three.

21 Q So they fought, broke up, fought, broke up.

22 A Right.

23 Q Okay. You think it was three episodes.

24 A The third one -- like I said, the second one was when
25 John kicked him. The third one was he went down the

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1 hallway. Tonya followed behind him. I don't know what
2 they were doing down there. You know, it's not my home. I
3 really ain't never been there before in my life. So I
4 never -- I did not know how the trailer was set up.

5 All I could see was the kitchen and the living room.
6 And there was another door out to like -- where you walk in
7 the front door to the right, maybe a bedroom.

8 And when he come back down the hallway it was, like I
9 said, with such force and rage I there again backed up.
10 And he jumps on him again. This time John was not swinging
11 back. I mean, he couldn't. He couldn't defend hisself
12 against him.

13 Q Because he was drunk?

14 A Yes. And he was taking nerve medication. Like I
15 said, he said they were prescribed to him. And I remember
16 saying you don't need to take 'em while you're drinking,
17 because he was offering them to me, and which I told him
18 no. He was staggering. He could not have defended
19 hisself.

20 Q After this, what you remember being the third
21 altercation, what did you do?

22 A That's when I was -- I kept telling them all they was
23 crazy and I was going home. I don't care if I had to walk.
24 And they keep saying -- he said that he gave me the keys.
25 No, he did not. John did. John said you did not walk

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1 here, you should not have to walk home.

2 He chunked me the keys. He said go on home and wait
3 about ten or 15 minutes and come back, it'll blow over. So
4 I agreed to that.

5 I go to my house. I sat and smoked a cigarette. My
6 nerves were really bad, I mean, from catching them fight
7 the way they did. And, like I say, I just smoked my
8 cigarette. And I went back out the door. I told my
9 roommate that was going back to check on -- you know, to
10 take him his truck.

11 And when I went to pull there was police everywhere by
12 the time I went to my house and smoked a cigarette and came
13 back. They were putting up caution tape out in the yard.
14 And the police motioned me on, you know, to go around them,
15 so I did. And then I went home. I rolled the windows
16 down. I put the keys in the floorboard. That way if he
17 come to get his truck he could have it.

18 I had to work the next morning. I was getting ready
19 to go for work when the officer showed up to tell -- you
20 know, to get my side of what happened.

21 And it was not -- I kept asking was he okay and they
22 kept telling me he was in the hospital. They did not tell
23 me at this time he was dead.

24 After I gave them my testimony and my statement,
25 that's when they told me that he was in the morgue, that

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1 Mike had stabbed him to death -- or after I had walked out
2 the door.

3 Q Did you ever see a knife?

4 A No, sir.

5 Q When you left was there a fight going on or was there
6 a break in the action?

7 A There was a break in it.

8 Q How long do you think you were gone before you
9 returned?

10 A Not long. I'll say maybe 12 minutes tops. That's
11 from the time I walked out the door, got to my house,
12 smoked my cigarette and came back. Within minutes he had
13 killed him. And that's why I said when I was sitting right
14 there at the table there was no knife on that table. I
15 never seen a knife, period, throughout the whole night. I
16 never saw a knife.

17 Q Did you ever hear Mike tell John to leave his trailer?

18 A No, sir. I actually heard him tell him he could not
19 leave because he could not drive.

20 Q Because of his drinking?

21 A His state of condition, yes, sir. He actually got
22 mad, even more mad, at John when he gave me his keys and
23 told me I could go.

24 Q Why do you think that was?

25 A I think because he wanted to keep his truck.

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Direct examination by Mr. Fulmer

1 Q Do you think that's why he was hanging out with John?

2 MR. ALLEN: Objection as to what she thinks as being
3 speculative.

4 THE COURT: Sustained.

5 Q Other than the kick between the legs did you ever see
6 John make --

7 A No, sir.

8 Q -- good contact or contact with Mike?

9 A No, sir, I did not. All I saw was him beating on him.
10 And his head just kept bouncing. His glasses had fell off
11 his face during -- before the second altercation I had
12 picked his glasses up, and I handed them back to him. And
13 I kept asking him was he all right. And he was
14 real collective about it like, yeah, I'm okay, I'm okay.
15 He kept telling me he was all right the whole time.

16 Q At this time did you know Tonya to be Mike's
17 girlfriend?

18 A At this time, yes, I did.

19 Q After this happened did you ever have an occasion to
20 hear Tonya talking about what had happened?

21 A Yes, I did.

22 Q What did you hear her say?

23 A She came to my sister's residence on Fortune Drive,
24 and I had pulled up in the yard. I was walking up. She
25 was standing there talking to several people in the

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Direct examination by Mr. Fulmer

1 neighborhood bragging about how John -- Mike had killed
2 John over her and, I mean, that was her man and he had
3 killed -- I mean, it was just terrible.

4 She sat there and described how he was stabbed, where
5 he was stabbed. And that's how I knew about the wounds to
6 back, because she said that he kept stabbing him over and
7 over. I don't know how many times he was stabbed total.
8 She just said it was in the chest and in the back and that
9 he got to his feet near a bar and he fell back down three
10 to four times and he bled to death.

11 But she was telling us that he stabbed him to death,
12 she was there and that she saw him put the knife under the
13 washer or dryer. The only time that she stated towards us
14 that she walked out of the house was when she called 9-1-1,
15 because she walked out on the porch to give them
16 directions.

17 Q So in the version of the story you heard later she
18 never said she walked out of the trailer.

19 A I never heard that, no, sir. From what she said and
20 that everyone stated she was there the whole time. But she
21 witnessed first hand of everything.

22 Q That's all I have. Please answer any questions
23 Mr. Allen may have for you.
24
25

Jackie Lance
Cross-examination by Mr. Allen

1 CROSS-EXAMINATION

2 BY MR. ALLEN

3 Q You've known Tonya for a while, haven't you?

4 A I've known -- well, I mean, I wouldn't say awhile.
5 But I knew her around the neighborhood, yes.

6 Q You've known her for over a year?

7 A Like I said, I really couldn't say. She just lived in
8 the same neighborhood as my sister. We weren't really
9 friends. We were just acquaintances.

10 Q Within walking distance of where you were living,
11 correct?

12 A I mean, you could say that, but that'd be a good
13 little walk.

14 Q Well, correct me if I'm wrong. Didn't you testify
15 earlier that every -- all of these residences were within
16 walking distance?

17 A Well, they are. Back from my sister's residence
18 towards Mike's, it wasn't two blocks. My residence was on
19 down the road through the red light, as I stated.

20 Q Yeah. But when --

21 A So, yes -- well, I mean, yes, I can walk there. It's
22 like 2 or 3 miles --

23 Q Okay.

24 A -- which I do walk a lot. That's nothing to walk to
25 me.

Jackie Lance
Cross-examination by Mr. Allen

- 1 Q And you walked to your sister's before.
- 2 A Several times.
- 3 Q Okay. And you walked to the store before.
- 4 A Several times.
- 5 Q And your sister, you say, lives --
- 6 A She lived on Fortune Drive right below Mike.
- 7 Q Right below Mike.
- 8 A Yes.
- 9 Q Close to Mike.
- 10 A Right.
- 11 Q Near Mike, I mean, like next door to Mike or something
- 12 like that?
- 13 A No, sir. Like a block from him, or two.
- 14 Q A block from him. All right. Now, but you -- is it
- 15 fair to say that -- that you and Tonya do not get along?
- 16 A No, sir. We do not. I mean, well, we have not in the
- 17 past.
- 18 Q I'm sorry?
- 19 A We have not got along in the past. There was one
- 20 incident where we had not gotten along till the whole time
- 21 I had known her. Other than that, yes, we did.
- 22 Q Okay. And at this time you were not getting along
- 23 with her when this event occurred.
- 24 A I was getting along with her because she was the
- 25 reason I was there. I did not know the guys. I did Tonya.

Jackie Lance
Cross-examination by Mr. Allen.

1 Q Tonya was in the truck when they stopped to pick you
2 up earlier that day?

3 A Which time? Because they come twice.

4 Q Okay. Well, the time that you ended up over at Mike's
5 home -- correct me if I'm wrong -- but didn't you get
6 picked up?

7 A No. Tonya was in not in the truck. They had went in,
8 and I was sitting outside in the truck waiting on her to
9 come out. They were taking a really long time.

10 So that's when I got out and went and knocked upon the
11 door. They were all -- when they opened the door there
12 were all sitting there drinking or whatever. And that's
13 when Tonya had walked up. The first words out of her mouth
14 was she wanted a cigarette, which I had got her a pack of
15 cigarettes for taking me to my friend's house.

16 Q So you -- when you went there Tonya was not there.

17 A No. But it was not even five minutes, she had walked
18 up.

19 Q Okay.

20 A Because I had just walked in the door, and she walked
21 up behind me.

22 But earlier that day when I had met Mike, Tonya had
23 walked up there again because I think she thought that I
24 was trying to talk to her boyfriend. And that was not the
25 case. I just needed a phone. And he was nice enough to

Jackie Lance
Cross-examination by Mr. Allen

- 1 let me use his phone, which I did thank him for.
- 2 Q Okay.
- 3 A And then that's when I stated that she was his
- 4 girlfriend and they were seeing each other.
- 5 Q At the time when you used the telephone did you see
- 6 John there?
- 7 A No.
- 8 Q He was not in the home at all?
- 9 A No, sir.
- 10 Q Was his truck there?
- 11 A I didn't see his truck, no.
- 12 Q And that was about what time when you --
- 13 A I can't recall, sir. That was months ago. It was --
- 14 it was still -- it was not dark. It was nowhere near it.
- 15 Maybe three or four. I would say anywhere between two to
- 16 four.
- 17 Q Okay. And that was the day, right, I mean, that was
- 18 the day of the incident, right?
- 19 A Yes, sir.
- 20 Q Okay. It's your testimony that when you went in to
- 21 use Mike's phone to call --
- 22 A I never went inside. It was his cell phone. He was
- 23 standing on his porch.
- 24 Q He was standing on his porch, and you were calling
- 25 your sister --

Jackie Lance
Cross-examination by Mr. Allen

- 1 A Uh-huh, my other sister.
- 2 Q -- who lives --
- 3 A I have two sisters. One stayed on Fortune. One
- 4 stayed right beside me on South Avenue.
- 5 Q Well, you called your sister that lived within a block
- 6 of Mike?
- 7 A No. I was walking from her house.
- 8 Q Towards your house?
- 9 A Towards the mid -- yeah. The little Kangaroo station.
- 10 Q Now, I want to go through this a little bit. So as I
- 11 understand, you're saying that Mike never told John to get
- 12 his hands or to stop leaning on or don't touch --
- 13 A No, sir.
- 14 Q -- Tonya.
- 15 A No, sir.
- 16 Q Okay. You're saying that he just came up and hit you,
- 17 is that correct?
- 18 A No. He come around the bar in a rage. He was
- 19 screaming you M.F.'r, was the first words out of his mouth.
- 20 Q Uh-huh.
- 21 A I dare you disrespect her, and that's when he jumped
- 22 on him.
- 23 Q Okay.
- 24 A He threw him to the ground, and his head bounced off
- 25 of a stereo.

Jackie Lance
Cross-examination by Mr. Allen

- 1 Q John fought back?
- 2 A And then he continued to beat him. No. He couldn't
- 3 fight back.
- 4 Q He couldn't fight back.
- 5 A No, sir. He never even hit him back.
- 6 Q Because he was drunk?
- 7 A They were both drunk but this -- I think it was the
- 8 medication and the alcohol that made him react so slowly,
- 9 because like he was just like slow acting in everything he
- 10 did. It was not just their altercation. It was just in
- 11 general.
- 12 Q All right. Now --
- 13 A I mean, honestly my five-year-old could have beat him
- 14 up.
- 15 Q Your five-year-old could have beaten him up.
- 16 A More than likely, yes, sir.
- 17 Q Okay. Now, you were -- but John got back to his feet.
- 18 A Yes, he did stumbling and staggering the whole time.
- 19 Q And he kicked Mike between the legs.
- 20 A Yes, and he about lost his balance when he kicked him.
- 21 Q And he kicked Mike hard between the legs.
- 22 A No, it was not hard. I mean, if it was hard it would
- 23 have stopped him a little bit.
- 24 Q It's --
- 25 A He went back at him even harder. So when he kicked

Jackie Lance
Cross-examination by Mr. Allen

1 him he basically caught him in his pants.. I mean, he made
2 connection with him, but there was no way he really hurt
3 him.

4 Q Even if -- but Mike had had surgery about a month or
5 so before.

6 A I'm unaware of this. I do not know these people.

7 Q Now, and at this point you wanted to leave the house?

8 A Yeah, I wanted -- yeah, I wanted to leave when they
9 started -- I mean, when he first came around. I could
10 leave anyway. I didn't want to be there. That's why I got
11 out and knocked on the door, because I wanted to go home.

12 Q You didn't really know these folks.

13 A No. I knew Tonya.

14 Q Yeah. But you didn't know the guys fighting.

15 A No.

16 Q So you didn't want to be around them while they're
17 fighting.

18 A No, sir. And they scared me, especially when I tried
19 separate them and he hit me.

20 Q So you certainly would have -- so you wanted to leave
21 even if you had to walk back to where you --

22 A Yeah, I sure would have, yes, sir.

23 Q But you didn't --

24 A Anyone in my position would have.

25 Q But you didn't, you say.

Jackie Lance
Cross-examination by Mr. Allen

- 1 A I didn't what?
- 2 Q You didn't leave.
- 3 A Yes, sir. I left.
- 4 Q Okay. But you didn't walk home.
- 5 A No, sir.
- 6 Q In fact, you asked --
- 7 A I did not ask anyone. I said I'm leaving, you are all
8 crazy, and I will walk, I do not care. That was when John
9 said, like, no, you don't have to walk. He said you didn't
10 walk over here. That was his exact words to me.
- 11 Q And did John hand you the keys?
- 12 A Yes, he did.
- 13 Q So you left in his truck --
- 14 A Yes, I did.
- 15 Q -- to go back to your house.
- 16 A I sure did.
- 17 Q And had you known that this thing would have gotten
18 worse than it was involving a knife or involving somebody,
19 you would have called the police, right?
- 20 A Yes, I would have.
- 21 Q Okay.
- 22 A Maybe I should have anyway.
- 23 Q But you're telling us that to your best guess about 12
24 minutes or so later you went back there. You saw police
25 there.

Jackie Lance
Cross-examination by Mr. Allen

- 1 A Right, 12 to 15 minutes.
- 2 Q You saw police there.
- 3 A Yes, I did.
- 4 Q How many police?
- 5 A They were everywhere.
- 6 Q Did you --
- 7 A They motioned me around their car, and I went on back
8 to my house.
- 9 Q Did you see an ambulance?
- 10 A No. I don't recall seeing an ambulance. All I
11 remember is all the lights.
- 12 Q Okay. But you didn't stop and say, hey, wait a
13 minute, this truck belongs to somebody.
- 14 A No, I did not.
- 15 Q Okay. Let me ask you the question.
- 16 You didn't stop to say, hey, this truck belongs to
17 somebody that's in that mobile home.
- 18 A No, sir.
- 19 Q You didn't stop to say, hey, I may know something
20 about this, let me talk to y'all, right?
- 21 A No, sir. I was scared. The police were there. So, I
22 mean, they were doing their job. Why did I need to stop?
23 I thought they were just fighting. I had no clue he had
24 killed him.
- 25 Q Okay. And you left and did not even -- and you took

Jackie Lance
Cross-examination by Mr. Allen

- 1 the truck back where?
- 2 A To my house, which I -- like I said, I rolled the
3 windows down and put the keys in the floorboard.
- 4 Q And the next morning you --
- 5 A I had his phone. His phone was in the truck. I tried
6 to call what I think was his mom several times. I tried to
7 call other people that was in the phone to let them know
8 what was going on or what I had saw, and no one -- I got in
9 touch with no one.
- 10 Q You knew his mom.
- 11 A I didn't know anyone.
- 12 Q You knew his mom's telephone number.
- 13 A It was in the phone.
- 14 Q Whose phone?
- 15 A His phone.
- 16 Q Where was his phone?
- 17 A In the truck.
- 18 Q How did you know it was his mother's number?
- 19 A Because it said mom.
- 20 Q Okay. Did you leave a message?
- 21 A I don't remember.
- 22 Q Now, so the next morning -- is it your testimony that
23 you went to the police?
- 24 A No, sir. I was getting dressed for work.
- 25 Q They came to you?

Jackie Lance
Cross-examination by Mr. Allen

1 A They came to me.

2 Q When you came into the house that night and saw them
3 drinking, how long were you sitting there at the table
4 before there was any kind of fight?

5 A Anywhere between maybe five to ten minutes. It wasn't
6 long.

7 Q Not long at all?

8 A No.

9 Q Maybe shorter than five to ten minutes?

10 A Maybe shorter, but I doubt it. I sat there for a
11 minute. We were talking, and they were telling me about
12 that they were friends and just talking in general. No one
13 was fighting. Everyone was smiling, laughing. It just did
14 not look like a violent situation to me, but it turned that
15 way very quickly.

16 Q While you were talking with them basically, I guess,
17 looking like you normally do in a conversation -- is that
18 right?

19 A Sure.

20 Q You're looking at Mike when he talked.

21 A I suppose so. I was mainly paying attention towards
22 Tonya.

23 Q You were paying most of the attention toward Tonya, is
24 that right?

25 A Uh-huh.

Jackie Lance
Cross-examination by Mr. Allen

- 1 Q You were not taking mental note of everything that was
2 in the house, correct?
- 3 A No, sir.
- 4 Q You were not taking mental note of where everything
5 was in the kitchen.
- 6 A No. Like I said, that's not true. I mean, the first
7 thing I do personally when I walk into any room is I will
8 look around to see what I see. And sitting at that table,
9 there was no knife on it.
- 10 Q What was on the table?
- 11 A There was maybe like a little napkin holder dispenser
12 thing like whatever around the table, his bottle of liquor
13 and a couple of shot glasses.
- 14 Q Anything else?
- 15 A Not that I recall.
- 16 Q Well, you made a mental note of it. What about the
17 mail?
- 18 A I didn't see any mail on the table either.
- 19 Q Any papers?
- 20 A No, sir.
- 21 Q So it was a pretty clean table.
- 22 A Yes. It was a very clean house.
- 23 Q A very clean house?
- 24 A Uh-huh, which part I was in. I had not been all the
25 way through his house, nor did I want to be.

Jackie Lance
Cross-examination by Mr. Allen

1 MR. ALLEN: One second, please, Your Honor.

2 (Pause.)

3 Q This conversation that you say you heard Tonya have
4 was over at your sister's house, right?

5 A Yes, yes, sir, it was.

6 Q Which sister?

7 A Her name is Pamela Lance. She resided -- like I said,
8 she lived on Fortune Drive.

9 Q This was the sister that lived on Fortune Drive.

10 A Yes, it was.

11 Q Now, I may be confused again, but that's the one
12 within a block of where Mike was living or --

13 A Yes.

14 Q Pamela Lance.

15 A Yes. And then on a separate occasion she had run into
16 another sister of mine at a store and was also bragging
17 about it to my sister Jessica.

18 Q Your sister Jessica.

19 A Yes. Jessica actually knew where they hid the weapon
20 and everything. From what she was saying, was she was in
21 the house the whole time.

22 There was never no exiting of the back door, that she
23 saw him stabbing him and that she saw him put the knife
24 under the dryer, or the washer rather, whichever. I don't
25 know if that was true or not. That's what she was saying.

Jackie Lance
Cross-examination by Mr. Allen

- 1 Q Okay.
- 2 A And it was in pretty good detail. So if it was lies,
3 she has a very detailed imagination.
- 4 Q And was all of this being said during the time that
5 you and Tonya were not getting along?
- 6 A At this time -- well, there was only one incident
7 where we did not get along, only one out of the whole time
8 I had known her.
- 9 Q All right.
- 10 A And we -- we settled that that day. So anywhere after
11 that, we had no altercations with each other.
- 12 Q I see. Y'all were friends then.
- 13 A No. I wouldn't call her a friend either. I just knew
14 her.
- 15 Q Just knew her.
- 16 A Right.
- 17 Q Okay. Didn't want to be friends with her.
- 18 A I didn't care to, no, sir.
- 19 Q These conversations that you say you heard Tonya
20 engage in with your sister --
- 21 A Uh-huh.
- 22 Q -- of course you knew the police had been called,
23 right?
- 24 A Excuse me?
- 25 Q You knew the police had been investigating this case.

Jackie Lance
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q I mean, after all, you went down to the police station
3 and gave a statement, right?

4 A I never went to the police station, no, sir. They
5 came to my house.

6 Q And you signed a statement.

7 A I sure did.

8 Q Okay. At your house.

9 A Yes, sir.

10 Q I see. So you did not call the police to say, hey, I
11 got more information for you, did you?

12 A No, sir. Sir, I did not want to be brought into none
13 of it. I did not ask for them to start fighting. I didn't
14 even want to be here today.

15 Q I understand.

16 A I mean, and I surely didn't want that man to kill that
17 man five seconds after I walk out the door. That man could
18 not defend himself. Like I said, my child could have
19 jumped on him. It was uncalled for. It was -- he already
20 beat him up. Why did he have to stab him too?

21 Q And that man could have left that residence, right?

22 A How could he have left?

23 Q Mr. Ryan could have gotten on his feet and walked out,
24 correct? Nothing stopped him.

25 A No. He could have maybe stumbled out. Walked out,

Jackie Lance
Cross-examination by Mr. Allen

1 no.

2 Q But he could have gotten out of that residence, right?

3 You would have -- you would have helped him.

4 A If that's what you want to say.

5 Q Wouldn't you have helped him out? You had his keys.

6 A Sure, I would have.

7 Q Okay.

8 A But like I said, I just wanted to leave. They're big
9 men. I had done been hit by one of them. I wanted to go
10 home.

11 Q And Mr. Ryan was bigger than Mr. Rogers.

12 A Maybe a little taller. Bigger, no. I think Mike was
13 bigger and definitely stouter.

14 Q You would not have wanted Mr. Ryan to cut Mr. Rogers
15 either, would you?

16 A No, sir. But I really don't think he did.

17 Q Okay. You didn't see -- but you didn't see a knife.

18 A No, I didn't.

19 Q You didn't see any cuts being made.

20 A No, sir.

21 Q So you got no way of coming to a police like that
22 except just what you believe, right?

23 A Well, with what I saw and the state of mind that that
24 man was in and that he was in I really -- no. I'm -- I'm
25 thinking to myself, no, sir, I did not think that man cut

Jackie Lance
Redirect examination by Mr. Fulmer

1 him at all. I do not think that man had that knife at all.

2 I think he did. I think he cold-bloodily killed him.

3 Q And you don't have any --

4 A And I think Tonya was an accessory to it.

5 Q You're just making -- what you're saying is based on
6 what you saw previously.

7 A And basically what I was told by Tonya, yes.

8 Q I see. No more questions. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. FULMER

11 Q Did you ever read the statement that Tonya gave to the
12 police?

13 A No, sir.

14 Q So you didn't know whether she told the police she had
15 been inside or outside of the trailer.

16 A No, sir. Today was the first time I had ever heard of
17 the back door actually. I heard about the stabbing and him
18 having the knife and her being there the whole time, her on
19 the phone with the police and on the porch telling them how
20 to get there, but there was never, ever nothing said about
21 her exiting the back door and coming back through the
22 front.

23 Q And did you ever hear Mike tell John to leave the
24 trailer?

25 A No, sir.

Sean Nix
Direct examination by Mr. Fulmer

1 Q Thank you.

2 THE COURT: Okay. Step down.

3 MR. FULMER: Call Sean Nix.

4 SEAN NIX, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. FULMER

7 Q Deputy Nix, where do you work?

8 A Spartanburg County Sheriff's Office.

9 Q How long have you worked there?

10 A A total will be 11 years next year.

11 Q What's your -- what's your role there? What do you
12 do?

13 A I am currently a crime scene investigator.

14 Q Were you involved in the investigation of the murder
15 at [REDACTED] --

16 A Yes, sir.

17 Q -- back in November, the one we've been talking about
18 her today?

19 A Yes, sir.

20 Q Did you make some photographs of that scene?

21 A Yes, sir.

22 MR. FULMER: May I approach Your Honor?

23 Q These photographs if you can look through those --

24 A Sure.

25 Q -- and let me know if those are the ones you took at

Sean Nix
Direct examination by Mr. Fulmer

1 the scene.

2 A Yes, sir.

3 Q Thank you.

4 MR. FULMER: Your Honor, the state would like to enter
5 these into evidence.

6 MR. ALLEN: For the purpose of this motion hearing
7 I've got no objection. That's not to say that I agree to
8 the admissibility of those photos to be shown to a jury, or
9 at least not all of them. I would object to that. But for
10 the purpose of this hearing, no.

11 THE COURT: Okay. Well, they are -- all of this
12 evidence is solely for the purpose of this hearing.

13 MR. ALLEN: Yes, sir.

14 (Photographs marked State's Exhibits Nos. 1 through
15 8.)

16 Q While you were processing the scene at [REDACTED]
17 [REDACTED] did you get a phone call from William Gary?

18 A I believe, yes. I'm sorry. Yes, I did.

19 Q Did he ask you to search the residence for a second
20 knife?

21 A Yes, sir.

22 Q Other than the knife that's depicted in these
23 photographs and has been described and claimed by
24 Mr. Rogers, were you able to find another knife?

25 A The only other knives found at the residence were in a

Sean Nix
Cross-examination by Mr. Allen

1 kitchen drawer.

2 Q Were they typical kitchen knives?

3 A Yes, sir.

4 Q Did you see any blood on them?

5 A No, sir.

6 Q Did they appear to be recently washed?

7 A No, sir.

8 Q Did you thoroughly search the entire residence?

9 A Yes, sir.

10 Q Did you move around the furniture?

11 A Yes, sir. I even moved the refrigerator.

12 Q Did not find another knife in the residence?

13 A No, sir.

14 Q Thank you.

15 MR. FULMER: That's all I have, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ALLEN

18 Q Did you look for -- did you search at any point during
19 this investigation the pockets of the decedent, Mr. Ryan?

20 A No, sir. Usually a body belongs to the coroner. So
21 anything on it stays on it. We don't mess with it unless
22 they do.

23 Q Did you notice anything on the kitchen table or on
24 the -- on the kitchen table or the dining room table?

25 A I understand what you're saying, Mr. Allen.

Sean Nix
Cross-examination by Mr. Allen

1 Q Did you notice anything on -- on that, on the table?

2 A There were a number of items on the table.

3 Q Papers?

4 A Yes.

5 Q Like mail?

6 A Yes.

7 Q Okay. It was in kind of a messy array, wasn't it?

8 A I wouldn't say messy, just typical clutter of a house.

9 Q But didn't just simply have like a napkin holder and a
10 couple of implements like salt and pepper shaker and some
11 glasses, did it?

12 A There was more than that, yes, sir.

13 Q A good bit more.

14 A I wouldn't say a good bit, but there was just more.

15 Q Now, in your looking around the residence you didn't
16 see any container that might be -- had been a container for
17 nerve pills for Mr. Ryan, did you?

18 A Not that I recall, sir.

19 Q Okay. Or any items that might be described by some
20 folks as nerve pills, did you?

21 A Not that I recall, sir.

22 MR. ALLEN: No other questions.

23 MR. FULMER: I don't have any.

24 THE COURT: Step down.

25 MR. FULMER: The state calls Susan Kolmer.

Susan Mary Comer
Direct examination by Mr. Fulmer

1 SUSAN MARY KOLMER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. FULMER

4 Q Ma'am, where do you live?

5 A [REDACTED].

6 Q What's your full name?

7 A Susan Mary Kolmer.

8 Q Are you related to John Ryan?

9 A I am his mother.

10 Q On the night prior to his death did you try to call
11 him?

12 A Yes, I did. I called his cell phone, and he answered
13 it, but he was too drunk to speak. He gave it to
14 Ms. Lowery, and she talked for him. She said that John was
15 going to spend the night there, that they were going to
16 play guitars and have a few beers.

17 I wanted to pick my son up -- my husband and I -- and
18 bring his truck home, and him too. And she said no. She
19 says that's all right. I said where do they live, where
20 are you. She didn't want to give me an address.

21 I could hear Mr. Rogers in the background saying that
22 John is 42 f'ing years old, he can do what he wants and I
23 -- Tonya says, well, this is his mother.

24 Well, I heard him say, well, she better not bring her
25 f'ing ass over here. And I said to Tonya is he threatening

Susan Mary Comer
Direct examination by Mr. Fulmer

1 me, I want to know where my son's at.

2 And she said everything's going to be all right,
3 Susan, just -- they're just having a little beer and a
4 little guitar playing.

5 So I let that night go. My gut instinct was to go get
6 him, find him, call the police. But he's 42. I can't do
7 that.

8 Q How did you know Tonya Lowery prior to this?

9 A I had met her. My son was giving her a ride. It
10 seemed like he was the taxi cab of the city -- giving her a
11 ride home where she had been walking past his trailer, and
12 which was on Black -- South Blackstock. And she lived
13 pretty far, and she was walking it.

14 So they stopped at my house and introduced me and
15 talked a little bit, and he told me where she -- he was
16 taking her. And that's how I met her.

17 Q How long ago was this before this night that you're
18 referring to now? In other words, how long had you known
19 of Tonya if you know the lady?

20 A Maybe three or four months. She would -- she would
21 stop by John's and talk to him. It was no
22 boyfriend-girlfriend thing.

23 Q Did your son drink basically every day?

24 A Yes, he did.

25 Q Would it have been unusual for him not to drink?

Susan Mary Comer
Cross-examination by Mr. Allen

1 A Yes. He drank every day. He was an alcoholic. And I
2 tried to watch after him for that reason.

3 Q So it would have been exceptional if at midnight or
4 close to midnight he wasn't pretty well drunk.

5 A Sometimes he drank around the clock and passed out.
6 He said that his body shook, so that he could drink. It
7 would calm him down.

8 Q Do you know whether or not he took any -- something
9 that might be called a nerve pill? Was he on any kind of
10 medication?

11 A He had restless leg syndrome, and I tried to take the
12 pills and issue the pill to him when he wasn't drinking.
13 But that wasn't always successful. You know, they were
14 made out to him. And sometimes I even took his truck and
15 locked it in my back yard.

16 Q Thank you. Please answer any questions Mr. Allen has.

17 CROSS-EXAMINATION

18 BY MR. ALLEN

19 Q With respect to the nerve pill, do you know what they
20 were?

21 A I -- I really don't.

22 Q You didn't know what the prescription was for?

23 A I want to say Klonzopin (sic), but I don't -- I'm not
24 sure.

25 Q Okay.

Susan Mary Comer
Cross-examination by Mr. Allen

1 A If -- I'm not sure if I'm saying it right.

2 Q You weren't part of his treatment. I mean, you took
3 him to the doctors for that or anything like that for
4 these.

5 A Yes, I did.

6 Q Did you tell the doctor that he was an alcoholic?

7 A Yes.

8 Q As I understand it, isn't it true that Klonopin, the
9 medication you're talking about, is not supposed to be used
10 in someone who is an alcoholic or drinks alcohol or may
11 have liver damage?

12 A Yes. I told the doctor that I would try to issue the
13 pills to him when he was not drinking.

14 Q The doctor talked to you then about that?

15 A Yes. We --

16 Q He's not supposed to be drinking alcohol with that?

17 A Yes.

18 Q And when you say your son drank -- and, I mean, it's
19 fair to say that he drank to excess.

20 A Yes.

21 Q Got drunk.

22 A Yes.

23 Q And that sometimes he would get violent or fights --

24 A No. I didn't say that.

25 Q No, no. I'm asking -- I'm asking.

Susan Mary Comer
Cross-examination by Mr. Allen

1 A No. He was never a fighter.

2 Q Oh, never a fighter.

3 A Never. People would -- you know, if there was a fight
4 he would end up with the worst end of it.

5 MR. ALLEN: One second, please, Your Honor.

6 (Pause.)

7 Q You did not receive any calls on the day or night of
8 the incident we're talking about, the 12th of November, did
9 you?

10 A Did I receive a call?

11 Q Yes, ma'am.

12 A If it's on my cell. I don't know what time you're
13 talking about. Would it be day, night, what?

14 Q At any time during the day of November 12th, which is
15 the date of this incident, did you talk to anybody over the
16 telephone in relation to, you know, about John or about
17 this incident on that day?

18 A No, not until 3:00 in the morning when the coroners
19 came to my door.

20 Q So up until the time that -- so from the time that you
21 got the call the day before -- and I believe you said that
22 your son called you, is that right?

23 A No, I didn't say my son called me. I called my son.
24 I got off work.

25 Q I'm sorry. You called your son the day before.

William Gary
Direct examination by Mr. Fulmer

1 A Yes.

2 Q And that's when the phone was handed off to Tonya,
3 right?

4 A Yes, because he was so drunk he couldn't talk.

5 Q So from that time until you heard from the coroner the
6 next morning you didn't get any telephone calls or
7 communications to the best of your knowledge.

8 A If I did it would be on the house phone. It would be
9 on the cell phone which I -- it's in my purse, and it's out
10 in another room. I don't sleep or keep my cell phone
11 beside my ear all of the time.

12 Q You don't -- you did not get any messages.

13 A No, not that I know of.

14 Q Voice.

15 MR. ALLEN: Thank you, Your Honor.

16 THE COURT: You may step down.

17 MR. FULMER: The state calls William Gary, Your Honor.

18 WILLIAM GARY, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. FULMER

21 Q Investigator, where do you work?

22 A Spartanburg County Sheriff's Office.

23 Q How long have you worked there?

24 A Sixteen and a half years.

25 Q What's your job there?

William Gary
Direct examination by Mr. Fulmer

1 A I'm an investigator in the violent crimes division at
2 the sheriff's office.

3 Q Did you investigate the death of John Rogers or John
4 Ryan?

5 A I did.

6 Q How did you become involved in that?

7 A I was -- it was my week to call for incidents that
8 occurred when they needed an investigator to respond. And
9 I was called about this incident.

10 Q Did you respond to the scene?

11 A I did.

12 Q Was Mr. Rogers on the scene when you got there?

13 A No, he was not.

14 Q Did you go into the scene at that time?

15 A Not at that time. I had called another investigator
16 to do a search warrant for the scene.

17 When I first got there I was briefed by the officers
18 as to what they were told had occurred. Basically, got
19 enough information for a search warrant, gave that
20 information to Investigator Letterman. And then I started
21 the interviewing Ms. Lowery in my vehicle parked out in
22 front of the residence waiting on the search warrant.

23 Q So you took the statement from Ms. Lowery.

24 A Yes, sir.

25 Q Did you also take a statement from Jackie Lance?

William Gary
Direct examination by Mr. Fulmer

1 A Yes, sir, the next day.

2 Q At some point were you able to talk with the
3 defendant?

4 A I was.

5 Q Prior to speaking with him did you tell him his
6 Miranda rights?

7 A Yes, went over -- we went over -- myself and --
8 Investigator Matt Davis also came out to assist in this.
9 And he and I went -- went in the interview room with him,
10 went over the preinterrogation waiver form we have at the
11 sheriff's office. And Mr. Rogers signed that he both
12 understood his rights and agreed to waive his rights at
13 that time and speak with us about the incident.

14 Q Did he appear to be intoxicated at that time?

15 A I'd been -- I'd been told there was some drinking.
16 You could smell some alcohol on him. So I made sure to go
17 over that with him to see, you know, if he felt like he was
18 actually intoxicated, taking any medication, feeling the
19 effects of the alcohol, that he understood what he was
20 doing.

21 I was able to understand what he was telling me. He
22 wasn't slurring his words very badly. He wasn't stammering
23 for things to say or having trouble staying awake, things
24 that you see with typical intoxication. And he told me
25 that he was not feeling the effects of the alcohol, wasn't

William Gary
Direct examination by Mr. Fulmer

1 taking any other medication with it, that he understood
2 exactly what was going on there that day.

3 Q And did he give you a statement?

4 A Not a written statement. We were doing a verbal
5 interview, but we were not able to provide or obtain a
6 written statement from him.

7 Q What did he tell you verbally?

8 A A number of things that -- he actually -- there's
9 about three different versions of the story that he tells
10 that took place.

11 He went over the -- that day where Ms. Lance had come
12 over. They went to the dump, went riding around. They
13 took her to a house to do some work or something there, had
14 come back to the house that evening.

15 Ms. Lowery came over, and they were mixing some drinks
16 and all. And he said they saw John put Tonya around -- or
17 John put his arms around Tonya. He didn't like it. He
18 said he confronted him and pushed him down. And said he
19 got the best of him when he pushed him down, got on top of
20 him.

21 Basically, actually his exact words were I'm not going
22 to lie to you, I was really getting the best of him. And
23 he told John that he would stop if it was over. He thought
24 it was over.

25 And the first story, he said that he got up. As he

William Gary
Direct examination by Mr. Fulmer

1 was getting up John was getting up, said John hit him a
2 couple of more times in the face and he realized that he
3 was cut on the arm. And that's the reason why he wasn't
4 there when I got there. He actually was transported to
5 Regional for some treatment to some injuries that he had.

6 And-but he said he -- he didn't have a choice. He
7 pulled his knife from his pocket and stabbed John. And
8 that's when he told Tonya to call 9-1-1. That was the
9 first version that he gave.

10 After that -- he didn't mention going to the bathroom.
11 And after previously interviewing Tonya I wanted to find
12 out about that. So that's why I went into that. You know,
13 I talked to Tonya. And she mentioned something about going
14 to the bathroom and cleaning up. You know, did you go into
15 the bathroom, and he said, yeah, I did go into the
16 bathroom. And I said, okay, so you went to the bathroom,
17 you know, let's -- let's start over.

18 What happens again, you know, you go the bathroom, and
19 then how does all of this transpire. And he said that
20 after the first fight and they separated he goes in the
21 bathroom to do some cleaning up.

22 He comes back in, and he's come up to the hall in the
23 kitchen. He said that John attacked him as he came into
24 the kitchen. And he said he hit him in the face and that's
25 when he saw that he was cut. And that's when he pulled his

William Gary
Direct examination by Mr. Fulmer

1 knife out and stabbed John.

2 And I had asked him previously, and I asked him again
3 here, well, tell me what -- what John cut you with, what --
4 you know, describe it. He tells me he never saw what John
5 had that he cut him with, never saw a knife, couldn't
6 describe anything that would have cut him at all that he
7 had.

8 So, you know, I was talking to him some more about it,
9 and during that it started over about the fight. And he
10 said that at one point he got away from him and went into
11 the bathroom. And while he was the bathroom he noticed
12 that his arm was cut. So now he's noticing it there.
13 And he -- and he said he still -- he still told him he
14 didn't see John with anything that could have cut him.

15 So he goes -- at this point he says he pulls his knife
16 out of his pocket while he's in the bathroom. And he went
17 back up the hall to confront John with the knife in his
18 hand.

19 And the way he was holding his hand, it's like we've
20 seen in training and all when someone is holding a knife
21 that's open, that they're trying to conceal the blade or
22 they run the blade up their arm and they can have it
23 turned. But he -- he was actually showing me how he was
24 carrying the knife.

25 He had it turned, his hand turned, like this is how I

William Gary
Direct examination by Mr. Fulmer

1 was walking up -- and like he would -- the position you see
2 where someone's trying to conceal the blade and all of that
3 but where it's open.

4 So I asked him about that, about it being -- you know,
5 the blade's already open and, you know, why are you opening
6 the blade before you go up there, you know, you're going
7 looking for a fight or whatever.

8 He said he didn't open the blade, that -- that it's
9 got a thumb -- he stuttered or whatever -- but a thumb
10 notch on the blade where it can be opened with one hand
11 just my flicking that. So he said I didn't need to open
12 the blade because I can -- I can just do that.

13 That's when I asked him, well, you know, if you were
14 back there away from him, you know, there's -- there's
15 nothing going on in the bathroom, why go out to confront
16 him with a knife and not pick up your phone and call
17 someone and say, hey, this guy just cut me in my house,
18 please send me some help. And he didn't really respond to
19 that.

20 Q Did you ask him to give a written statement at some
21 point?

22 A I was going to get to that. We were working on
23 obtaining a buccal from him for a D.N.A. standard. And I
24 believe he -- maybe he just misunderstood what was going
25 on. But when the -- he had signed a consent to search for

William Gary
Cross-examination by Mr. Allen

1 that.

2 When the crime scene technician went in there to take
3 it he started yelling he wasn't going to give his D.N.A.,
4 he's not raped anybody. And he actually got a little bit
5 too irate to -- to do anything else with him.

6 At that point he was -- while they were -- while I was
7 waiting on them to do that I was on the phone trying to
8 find out, you know, are we going -- are they going to be
9 charges with this. That's when I informed him that he was
10 going to be going to jail for murder.

11 Q Did you recover a guitar that belonged to John Ryan
12 from the residence?

13 A Yes, sir. When I -- when I went to -- by his mother's
14 residence and spoke with her, she advised me they'd been by
15 his apartment and noticed that his guitar was missing and
16 described it to me. And I said, well, I'm -- I know I saw
17 a couple of guitars over there, I think, I'll go look. And
18 so I went over there and found one exactly as they
19 described as being his. And so I returned it to the mother
20 from there.

21 Q Okay. Answer any questions Mr. Allen has, please.

22 CROSS-EXAMINATION

23 BY MR. ALLEN

24 Q When you began your interview with Mr. Rogers he did
25 not appear to be too drunk, or drunk, right?

William Gary
Cross-examination by Mr. Allen

- 1 A No, sir. You could tell he'd been drinking, but he
2 did not seem to be drunk, no, sir.
- 3 Q Okay. So he appeared to understand what was going on,
4 right?
- 5 A Yes, sir.
- 6 Q And understand what you were talking about, right?
- 7 A Yes, sir.
- 8 Q Because you wouldn't have talked to him otherwise --
- 9 A No.
- 10 Q -- is that correct?
- 11 A No, sir.
- 12 Q Now, when you were talking with Mr. Rogers you were in
13 the sheriff's department, correct?
- 14 A Yes, sir.
- 15 Q And in the sheriff's department interview room.
- 16 A Yes, sir.
- 17 Q And in the interview room at the sheriff's
18 department -- or let me ask you this. In the sheriff's
19 department do they have tape recorders?
- 20 A Yes, sir.
- 21 Q And they have tapes.
- 22 A Yes, sir.
- 23 Q That could be used during interrogation.
- 24 A They could be.
- 25 Q Okay. And they're available for officers to use

William Gary
Cross-examination by Mr. Allen

- 1 during interrogation, correct?
- 2 A If the officer chooses, yes, sir.
- 3 Q Okay. And of course you knew you were investigating a
- 4 death case.
- 5 A Yes, sir.
- 6 Q You did not use a tape recorder?
- 7 A I never have.
- 8 Q So you chose not to, is that right?
- 9 A Yes, sir.
- 10 Q You never asked Mr. Rogers if he told John anything
- 11 during the fights or between the fights, correct?
- 12 A Asked him if he told?
- 13 Q If he said anything to John. You never asked him
- 14 about it.
- 15 A I'm sure during the conversation we, you know, didn't
- 16 have any -- I don't know. As far as -- and I think you're
- 17 getting at to ask me if he asked him to leave. I never
- 18 asked him that question.
- 19 Q So you never asked him if he asked or if he told John
- 20 to leave.
- 21 A No, sir.
- 22 Q Mr. Rogers told you they lived at that location, that
- 23 mobile home, correct?
- 24 A Yes, sir.
- 25 Q You found -- or as chief investigator -- I guess

William Gary
Cross-examination by Mr. Allen

1 you're the chief investigator on this case, correct?

2 A Yes, sir.

3 Q You subsequently got the contents of Mr. Ryan's wallet
4 if he had one, or his papers.

5 A If we have it I've never -- I don't remember looking
6 through it. I think the coroner's office may have those
7 actually.

8 Q All right. When you looked through the house you
9 didn't find -- other than a guitar, you didn't find any
10 personal effects of Mr. Ryan's, did you?

11 A Not that I recall, no, sir.

12 Q When you were asking Mr. Rogers questions, of course
13 at first you -- I presume that you were asking open-ended
14 kind of questions like tell-me-what-happened kind of thing.
15 Is that what you're saying?

16 A Yeah. It basically started out as tell me what
17 happened.

18 Q Right. And you would let him talk. And of course
19 what he was saying might lead you to another question,
20 right?

21 A Yes, sir.

22 Q Now, when you were talking about what you called
23 different versions -- and what I was thinking about while
24 you were testifying about going into the bathroom the first
25 time, I mean, he told you about that when you specifically

William Gary
Cross-examination by Mr. Allen

1 asked him about going into the bathroom, right?

2 A Yes, sir.

3 Q And that was after you had learned some information
4 from Ms. Lowery.

5 A Yes, sir.

6 Q Correct?

7 A Yes, sir.

8 Q And he readily told you about that, right?

9 A After he was asked about it, yes, sir.

10 Q I'm sorry?

11 A After he was asked about it.

12 Q After -- right. I mean, in other words, he didn't
13 have to sit there and think and hem and haw for a while
14 before he answered the question, right?

15 A No, no.

16 MR. ALLEN: Nothing further, Your Honor.

17 MR. FULMER: I don't have anything, Your Honor.

18 MR. ALLEN: Step down.

19 MR. FULMER: That's all from the state, Your Honor.

20 THE COURT: Okay. Anything else?

21 MR. FULMER: No, sir, Your Honor.

22 MR. ALLEN: Nothing in reply, Your Honor.

23 END OF REQUESTED TRANSCRIPT OF RECORD.

24

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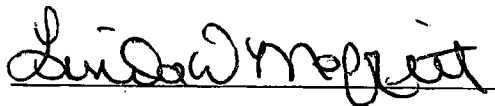
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 2nd day of September 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 1, 2011



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Michael Anthony Rogers,) 2011-GS-42-1933
6 Defendant.) October 4, 5 and 6, 2011
7 Spartanburg, South Carolina

8
9
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

13
14 A P P E A R A N C E S:

15 DANNY NELSON FULMER, JR., ESQ.
16 Attorney for the State

17 CLAY T. ALLEN, ESQ.
18 Attorney for the Defendant
19

20
21
22 Margaret A. Woods
23 Circuit Court Reporter

24 ORIGINAL
25

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JURY QUALIFICATION

1 THE COURT: Alright, are there any matters we need to
2 address before the jury's brought in?

3 MR. FULMER: None from the State, Your Honor.

4 MR. ALLEN: No, Your Honor, not before the jury's brought
5 in. I ---

6 THE COURT: Okay.

7 MR. ALLEN: --- I presume the Court's got my request of
8 *voir dire* and my witness list.

9 THE COURT: I do.

10 MR. ALLEN: Okay.

11 THE COURT: Alright, bring the panel around, please.

12 (Pause.)

13 MR. ALLEN: Your Honor, while the jury is being brought
14 around may Mr. Fulmer and I approach for one ---

15 THE COURT: Yes.

16 (Whereupon, a bench conference was held off the record.)

17 THE COURT: Good afternoon, ladies and gentlemen, we are
18 ready to begin with jury selection in the next case that's
19 going to require some of your participation; this case happens
20 to be a criminal case, not a civil case. In this case the
21 defendant who's the person charged with a crime is Michael
22 Anthony Rogers. Mr. Rogers has been accused by the State with
23 having committed the crime of murder. The State alleges by
24 way of an indictment, which is the charging paper, that
25 Michael Anthony Rogers did here in Spartanburg County on or

JURY QUALIFICATION

1 about November the 12th of 2010 wilfully and with malice
2 aforethought kill one John William Ryan by stabbing Mr. Ryan
3 and that he died as a proximate result of that stab wound.
4 Now as to those allegations and as to that indictment and as
5 to that charge, the defendant, Mr. Rogers, has entered a plea
6 of not guilty. A plea of not guilty places upon the State,
7 the prosecutor, of proving the allegations as set forth in
8 the, in the indictment, of proving each of the essential
9 elements of the crime alleged in the indictment and therefore
10 the burden is upon the State to establish the defendant's
11 guilt to the satisfaction of twelve jurors beyond a reasonable
12 doubt.

13 Now before we begin with jury selection in this case I've
14 got some questions that I'm gonna ask ya and the purpose of
15 the questions is to determine whether or not there is a reason
16 why any one of you jurors should not be selected to
17 participate in the trial of this particular case so as these
18 questions are asked should they apply to you and you need to
19 respond, I'll ask that you please stand and I'll address those
20 matters with you individually. First of all, I will be
21 introducing some people to ya. I'll be introducing to you the
22 defendant, the lawyers, some of the family members of the
23 deceased, Mr. Ryan, the other potential witnesses that could
24 be called during the trial and of course the purpose of
25 introducing these people to ya is to find out if you know

JURY QUALIFICATION

1 anybody involved in the case or anybody that might be
2 connected with them or related to them so as the names are
3 called out or as a person is introduced, if you have any
4 connection with that person: family relation, business
5 relation, employment relation, school relation, social
6 relation or if you just met 'em somewhere, you happen to know
7 them in some fashion, I will ask you to please stand so that
8 we can address that connection. First of all, as I've told ya
9 the defendant in this case, the person who's accused of having
10 committed the crime as is alleged in the indictment, is
11 Michael Anthony Rogers. Mr. Rogers, if you'll stand and face
12 the jury panel, please.

13 (Whereupon, the defendant complied.)

14 THE COURT: Alright, you may be seated. Representing
15 Mr. Rogers in this case is Clay Allen (stood), he's the public
16 defender for the Seventh Judicial Circuit. In this case the
17 person who is alleged to have been killed by Mr. Rogers was
18 John William Ryan. Are some of Mr. Ryan's family members
19 present?

20 MR. FULMER: They are, Your Honor.

21 THE COURT: Let me ask those to please stand if you will
22 and face the jury panel so that they can see who you are and
23 by seeing you perhaps they can determine if they did know John
24 William Ryan.

25 (Whereupon, the family members stood.)

JURY QUALIFICATION

1 THE COURT: Okay. Thank you, be seated. Presenting the
2 case on behalf of the State is Danny Fulmer, he is an
3 assistant circuit solicitor for the Seventh Judicial Circuit.
4 Potential witnesses in the case that may be called include
5 William Gary of the sheriff's department (stood), Sean Nix of
6 the sheriff's department, Jackie Lance, Susan Kolmer, as I
7 call these names if you know somebody by that name but you're
8 not certain if it's the same person you know, just stand and
9 I'll try to narrow down the identification of that person for
10 your benefit, Deputy Winks with the sheriff's department, John
11 David Wren who's a pathologist with the Spartanburg Regional
12 Medical Center, Tonya Lowery, Deputy Swanlund with the
13 sheriff's department, Greg Hendricks, Emergency Medical
14 Services, Robert Sears who's a toxicologist for the State Law
15 Enforcement Division, Randy Bogan and Ellen Holmes both of the
16 Spartanburg County Coroner's Office, Matt Davis of the
17 Spartanburg County Sheriff's Department, Investigator Arthur
18 with the sheriff's department, Freddie Thompson with 911
19 Emergency Communications and there may be someone who's the
20 custodian of some records from the Spartanburg Regional
21 Medical Center so if you happen to know somebody who works in
22 the records office at the Spartanburg Regional Medical Center,
23 you need to respond to that. Alright, does any juror know
24 anybody that's just been introduced or identified for your
25 benefit, if so please stand? Alright, and your name and

JURY QUALIFICATION

1 number, please.

2 JUROR NUMBER 92: Kelley Butler, Number 92.

3 THE COURT: Ninety-two?

4 JUROR NUMBER 92: Yes.

5 THE COURT: And who do you know?

6 JUROR NUMBER 92: I know one of the family members.

7 THE COURT: W -- okay. Did you know Mr. Ryan, John
8 William Ryan?

9 JUROR NUMBER 92: I did not.

10 THE COURT: Who is it that you know here?

11 JUROR NUMBER 92: I know Mr. Tom Boyer, he's a former
12 employer of mine.

13 THE COURT: Okay, and is there anything about your
14 connection with him that would have any impact upon your
15 decision in this case?

16 JUROR NUMBER 92: No, sir.

17 THE COURT: And you could put that connection aside and
18 not allow it to influence your judgement?

19 JUROR NUMBER 92: Yes, sir.

20 THE COURT: Okay, and you said your juror number was 92?

21 JUROR NUMBER 92: Yes, sir.

22 THE COURT: Alright, thank you, you may be seated.

23 THE COURT: Anyone else? Yes, ma'am?

24 JUROR NUMBER 91: Shirley Laws, 91. Tom Boyer is he the
25 one that works at Adidas?

JURY QUALIFICATION

1 THE COURT: Mr. Boyer, you work at Adidas?

2 MR. BOYER: I used to, sir.

3 THE COURT: He used to.

4 JUROR NUMBER 91: Okay, I worked for him years ago, ---

5 THE COURT: Okay.

6 JUROR NUMBER 91: --- 2004.

7 THE COURT: Alright, would that have any bearing upon
8 your decision in this case if you were called on to serve as a
9 juror?

10 JUROR NUMBER 91: No, sir.

11 THE COURT: And, Mr. Boyer, what's your connection with
12 Mr. Ryan?

13 MR. BOYER: Uh, his brother-in-law.

14 THE COURT: Okay. It wouldn't have any impact upon your
15 decision?

16 JUROR NUMBER 91: No, sir.

17 THE COURT: Alright, that's Juror 91. You may be seated.
18 Anyone else?

19 (No response.)

20 THE COURT: This is an event which the State alleges
21 occurred back on November the 12th of 2010, it occurred at a
22 residence at [REDACTED] located here in
23 Spartanburg County in the Roebuck community of Spartanburg,
24 sorta behind the downtown airport is it not?

25 MR. FULMER: Yes, Your Honor.

JURY QUALIFICATION

1 THE COURT: Downtown behind the or Spartanburg downtown
2 airport. There also may have been something that relates to
3 the case appearing on the television or radio, radio or
4 newspaper about the case so what I need to find out if any
5 juror believes that you have heard, seen, read or know
6 anything about the facts that might relate to this particular
7 event that occurred in November of 2010. If you think you've
8 been exposed to any type of information that relates to this
9 case from any source whatsoever, I would ask that you please
10 stand.

11 (No response.)

12 THE COURT: Alright, none responding. Is any member of
13 the jury panel connected to any person or know any person
14 employed in the Seventh Judicial Circuit Solicitor's Office or
15 the Seventh Judicial Circuit Public Defender's Office, if so
16 please stand?

17 (No response.)

18 THE COURT: Do -- yes, ma'am?

19 JUROR NUMBER 33: I'm sure I probably do but I can't
20 think ---

21 THE COURT: But you ---

22 JUROR NUMBER 33: --- who ---

23 THE COURT: --- don't know who it is? Alright, tell me
24 what your number is.

25 JUROR NUMBER 33: Thirty-three.

JURY QUALIFICATION

1 THE COURT: Alright, but you're not sure but you may know
2 somebody employed at one of those offices?

3 JUROR NUMBER 33: Well I've lived in Spartanburg
4 forty-one years ---

5 THE COURT: Alright.

6 JUROR NUMBER 33: --- so I probably do.

7 THE COURT: Alright, well let me ask you this: nobody
8 else that's employed in the solicitor's office that's not in
9 this courtroom today is gonna be involved in this case but
10 notwithstanding that fact if you did know someone in the
11 solicitor's office, would it have any bearing upon your
12 decision in this case?

13 JUROR NUMBER 33: Not a bit.

14 THE COURT: Okay. Thank, you ma'am, you may be seated.
15 Anyone else?

16 (No response.)

17 THE COURT: Has any member of the jury panel or any
18 member of your immediate family ever been employed as a law
19 enforcement officer in any type of law enforcement agency,
20 that includes not just sheriff's departments or city police
21 departments but it also includes town or municipal law
22 enforcement agencies, it also includes the Department of
23 Corrections, it also includes any county detention or jail
24 facility, it also includes the Department of Probation, Pardon
25 and Parole, it also includes the State Law Enforcement

JURY QUALIFICATION

1 Division and it also means any person employed as a law
2 enforcement officer whether it be a civilian agency or a
3 military police department so if you or a family member has
4 ever been employed as such I would ask that you please stand.
5 Alright. Let me start again, I'll start on the end with Juror
6 91?

7 JUROR NUMBER 91: My uncle he used to be a lieutenant
8 detective, he passed away.

9 THE COURT: What was his name?

10 JUROR NUMBER 91: Charles Wolf.

11 THE COURT: Employed with the city police department?

12 JUROR NUMBER 91: City, county, I can't remember.

13 THE COURT: It was the city police department. Charlie
14 Wolf, yeah, that's where it was. Alright, would that affect
15 your judgment in the case?

16 JUROR NUMBER 91: No, and then I'm, uh, there's some
17 people that goes to church with me, they're -- they work ---

18 THE COURT: I'm just talking about those who are either
19 you or an immediate family member.

20 JUROR NUMBER 91: That's it.

21 THE COURT: Okay. Thank you, you may be seated.
22 Thirty-three.

23 JUROR NUMBER 33: For a short time I worked as a night
24 worker for Department of Youth Services.

25 THE COURT: Alright. Thank you, ma'am, you may be

JURY QUALIFICATION

1 seated. Yes, sir?

2 JUROR NUMBER 12: My uncle Tom works for the Spartanburg
3 County Sheriff's Department, Danny Blackwell.

4 THE COURT: Alright, and your name and number?

5 JUROR NUMBER 12: Justin Blackwell, Juror Number 12.

6 THE COURT: Alright, would that have any bearing upon
7 your decision?

8 JUROR NUMBER 12: No, sir.

9 THE COURT: Thank you, be seated. Yes, ma'am?

10 JUROR NUMBER 27: Michelle Carracino, Number 27. My
11 husband is a ex-police officer for Greenville County and
12 Pickens County ---

13 THE COURT: Okay.

14 JUROR NUMBER 27: --- and I have two cousins: Justin
15 Colegrove that works for Spartanburg City I believe and Chris
16 Robinson, Spartanburg City.

17 THE COURT: Alright, thank you, you may be seated. Has
18 any member of the jury panel or any member of your immediate
19 family, let me define an immediate family member for you: I'm
20 referring to a parent, a spouse, a child or a sibling; parent,
21 spouse, child or sibling, have you or any members of your
22 immediate family as I just defined it ever been the victim of
23 any type of a violent criminal offense or have you or that
24 family member ever been accused of having committed a violent
25 criminal offense and I'm gonna define a violent criminal

JURY QUALIFICATION

1 offense or at least describe it as those crimes including
2 murder, manslaughter, armed robbery, burglary, criminal sexual
3 conduct, aggravated assault and battery, assault and battery
4 with intent to kill, attempted murder, criminal domestic
5 violence of a high and aggravated nature or any other similar
6 type of an offense, robbery, any similar type of offense, of
7 an offense, have you or an immediate family member ever been
8 the victim of such or have you or that family member ever been
9 accused of having committed such an offense, if so please
10 stand? Alright, I've got six jurors standing. I'm gonna
11 start to my right and I'll work to my left. I need your name,
12 your juror number and I'll start on the row closest to me and
13 I need you to tell me whether it was you or a family member,
14 whether it was being a a victim of such or being accused of
15 such and what the nature of the crime was, not the details but
16 just the nature of the crime and if you prefer not to respond
17 to the question where you're standing, you don't have to, you
18 can step down here and I'll discuss it with you privately, if
19 you don't step down here, I'll assume that you don't mind
20 responding where you are, okay? So I'll start with you,
21 ma'am.

22 JUROR NUMBER 32: Doris Clayton, Number 32. I have a son
23 that was accused of robbery and attempted.

24 THE COURT: Alright, and would that have any bearing upon
25 your decision?

JURY QUALIFICATION

1 JUROR NUMBER 32: No.

2 THE COURT: Thank you, be seated. Yes, ma'am?

3 JUROR NUMBER 27: Juror Number 27, Michelle Carracino.
4 My husband was a victim of CDV and he also was, I don't know
5 what charge but he was assaulted, um, as he was serving a
6 paper and that's actually still ongoing by the person he was,
7 the person he was trying to serve, somebody in the office
8 actually assaulted him and there were charges filed.

9 THE COURT: Okay, and would either of those facts have
10 any bearing upon your decision?

11 JUROR NUMBER 27: No.

12 THE COURT: Thank you, be seated. Yes, sir.

13 JUROR NUMBER 59: Joel Gilreath, Number 59, it's my
14 mother.

15 THE COURT: Your mother?

16 JUROR NUMBER 59: Yes.

17 THE COURT: And she was what?

18 JUROR NUMBER 59: Murdered.

19 THE COURT: Alright. And would that fact have any
20 bearing upon your decision in this case?

21 JUROR NUMBER 59: Yes, sir, it would.

22 THE COURT: Alright, we will excuse Juror Number 59 from
23 service.

24 JUROR NUMBER 59: Okay.

25 THE COURT: But don't leave yet. Don't leave yet. Yes,

JURY QUALIFICATION

1 sir?

2 JUROR NUMBER 1: Roger Anthony, Number 1, victim of a
3 robbery.

4 THE COURT: And would that have any bearing upon your
5 decision in this case?

6 JUROR NUMBER 1: No, sir.

7 THE COURT: Thank you, you may be seated. Yes, sir?

8 JUROR NUMBER 128: Robert Price, 128. My wife was the
9 victim of sexual assault.

10 THE COURT: And would that have any bearing upon your
11 decision?

12 JUROR NUMBER 128: I don't think so.

13 THE COURT: Well you're pretty certain it wouldn't?

14 JUROR NUMBER 128: Uh, no.

15 THE COURT: Sir?

16 JUROR NUMBER 128: No.

17 THE COURT: You're not pretty certain?

18 JUROR NUMBER 128: Um, ---

19 THE COURT: My my question is ---

20 JUROR NUMBER 128: I couldn't -- well, I guess I couldn't
21 say for certain, no.

22 THE COURT: You you think that there's a reasonable
23 probability that it would, it would affect your judgment?

24 JUROR NUMBER 128: Um, I honestly couldn't couldn't say.
25 Well I would do my best not to but I don't know if it would

JURY QUALIFICATION

1 affect it or not.

2 THE COURT: Well now you understand this is not a similar
3 type of ---

4 JUROR NUMBER 128: Yeah, ---

5 THE COURT: --- allegation ---

6 JUROR NUMBER 128: --- it's not, no.

7 THE COURT: --- but that doesn't -- it doesn't matter
8 what I think, it matters what you think.

9 JUROR NUMBER 128: Yeah, I I would say no.

10 THE COURT: Well what I'm sayin' do you think you could
11 could -- would -- could realistically not allow that fact to
12 interfere with your judgment in the case?

13 JUROR NUMBER 128: Um, I I guess it would probly affect
14 it, yes.

15 THE COURT: Okay, we'll excuse Juror 128 from service in
16 the case. Don't leave yet. Yes, ma'am?

17 JUROR NUMBER 10: Donda Bishop, Juror Number 10. I have
18 a brother who was accused of domestic battery.

19 THE COURT: And would that have any bearing upon your
20 decision?

21 JUROR NUMBER 10: Not at all.

22 THE COURT: Thank you, be seated. Is any member of the
23 jury panel a member of or do you contribute time or money to
24 any types of organizations that might be classified as law
25 enforcement support or victim's rights organizations or

JURY QUALIFICATION

1 victim's advocacy groups and those might include Mother's
2 Against Drunk Drivers, Citizens Against Violent Crime, the
3 Child Advocacy Center, the Battered Women's Organization,
4 Trooper's Association, Honorary Sheriff's Association,
5 Fraternal Order of Police or any other similar type of
6 organization, I need to know if you belong to any or you
7 contribute your time or your money to any of those
8 organizations, if so please stand?

9 JUROR NUMBER 98: Pamela Manatis, Juror Number 98. We
10 give financially to the Children's Advocacy Center.

11 THE COURT: Okay, thank you, be seated.

12 JUROR NUMBER 98: Um-hum.

13 THE COURT: Yes, ma'am?

14 JUROR NUMBER 154: Children's Advocate Center as
15 well ---

16 THE COURT: Well tell me what your number is.

17 JUROR NUMBER 154: 154.

18 THE COURT: Alright, thank you, be seated. Yes, sir?

19 JUROR NUMBER 45: Robert Fellner, Juror Number 45,
20 contribute annually annually to the State Trooper
21 Organization.

22 THE COURT: Alright, thank you, be seated. Understanding
23 those involved in the case and knowing who the lawyers are,
24 the defendant, the person alleged to be the victim and who the
25 witnesses are and what the case is about, does any juror know

JURY QUALIFICATION

1 of any reason why you think you could not be fair and
2 impartial if called upon to serve as a juror in this case, if
3 so please stand? Alright, yes, sir.

4 JUROR NUMBER 41: Yes, Myrick Dixon for -- Juror Number
5 41.

6 THE COURT: Forty-one?

7 JUROR NUMBER 41: Yes..

8 THE COURT: Alright, just let me -- don't tell me too
9 much but let me just ask you this: You do have a reason in
10 your mind that you believe would prevent you from being able
11 to be fair and impartial to one side or the other in this
12 case?

13 JUROR NUMBER 41: Well my belief, my religious beliefs.

14 THE COURT: Well is the answer to that question yes or
15 no?

16 JUROR NUMBER 41: Um, yes.

17 THE COURT: Alright. Thank you, you'll be excused. Your
18 number's what?

19 JUROR NUMBER 41: Forty-one.

20 THE COURT: Alright. Any other questions requested by
21 the State?

22 MR. FULMER: No, Your Honor.

23 THE COURT: By the defendant?

24 MR. ALLEN: No, Your Honor.

25 THE COURT: Yes, ma'am.

JURY QUALIFICATION

1 JUROR NUMBER 96: It's my religious beliefs too.

2 THE COURT: Okay, what's your number please, ma'am?

3 JUROR NUMBER 96: Ninety-six.

4 THE COURT: And your religious beliefs won't allow you to
5 be fair in this case, is that what you're saying?

6 JUROR NUMBER 96: Yeah.

7 THE COURT: Okay, Juror 96 is excused from service in the
8 case. Anyone else?

9 (No response.)

10 THE COURT: Alright, any other questions?

11 MR. FULMER: No, sir.

12 THE COURT: Alright.

13 MR. ALLEN: No, Your Honor.

14 THE COURT: Now jurors -- juries are selected differently
15 in the criminal side of the court as opposed to the civil side
16 so as your name is called you'll be asked to come forward and
17 you'll come towards me about two steps past where the lawyers
18 are seated at the desk and you'll turn and face your fellow
19 jurors, each side has an opportunity to have you excused from
20 serving as a juror in this case. If either ask that you be
21 excused, just simply go back and have a seat where you are
22 now. If both agree to have you seated for service in the
23 case, you'll be having a seat in the jury box to your right
24 and to my left so please come forward as your name is called
25 and you'll be instructed if you're to be seated or excused as

JURY QUALIFICATION

1 a juror in the case.

2 (Pause.)

3 THE CLERK: Juror Number 12, Justin Blackwell.

4 (Justin Blackwell, a white male, came forward.)

5 THE CLERK: What say the State?

6 MR. FULMER: Please present the juror.

7 THE CLERK: What say the defense?

8 MR. ALLEN: Please excuse Mr. Blackwell in this case.

9 THE CLERK: Juror 28, Mary Carter.

10 (Mary Carter, a white female, came forward.)

11 THE CLERK: What say the State?

12 MR. FULMER: Please present the juror.

13 THE CLERK: What say the defense?

14 MR. ALLEN: Please excuse Ms. Carter in this case.

15 THE CLERK: Juror 33, Ellen Conner.

16 (Ellen Conner, a white female, came forward.)

17 THE CLERK: What say the State?

18 MR. FULMER: Please present the juror.

19 THE CLERK: What say the defense?

20 MR. ALLEN: Please excuse Ms. Conner in this case.

21 THE CLERK: Juror 1, Roger Anthony.

22 (Roger Anthony, a white male, came forward.)

23 THE CLERK: What say the State?

24 MR. FULMER: Please present the juror.

25 THE CLERK: What say the defense?

JURY QUALIFICATION

1 MR. ALLEN: Please seat Mr. Anthony.

2 THE CLERK: Juror 98, Pamela ---

3 JUROR NUMBER 98: Manatis.

4 THE CLERK: Manatis.

5 (Pamela Manatis, a white female, came forward.)

6 THE CLERK: What say the State?

7 MR. FULMER: Please present the juror.

8 THE CLERK: What say the defense?

9 MR. ALLEN: Please seat Ms. Manatis.

10 THE CLERK: Juror 166, Tanesha West.

11 (Tanesha West, a black female, came forward.)

12 THE CLERK: What say the State?

13 MR. FULMER: Please present the juror.

14 THE CLERK: What say the defense?

15 MR. ALLEN: Please seat Ms. West.

16 THE CLERK: Juror 10, Donda Bishop.

17 (Donda Bishop, a white female, came forward.)

18 THE CLERK: What say the State?

19 MR. FULMER: Please present the juror.

20 THE CLERK: What say the defense?

21 MR. ALLEN: Please excuse Ms. Bishop from this case.

22 THE CLERK: Juror 68, James Harris.

23 (James Harris, a black male, came forward.)

24 THE CLERK: What say the State?

25 MR. FULMER: Please present the juror.

JURY QUALIFICATION

1 THE CLERK: What say the defense?
2 MR. ALLEN: Please seat Mr. Harris.
3 THE CLERK: Juror 32, Doris Clayton.
4 (Doris Clayton, a white female, came forward.)
5 THE CLERK: What say the State?
6 MR. FULMER: Please excuse this juror.
7 THE CLERK: Juror 106, Joan Merrill.
8 (Joan Merrill, a white female, came forward.)
9 THE CLERK: What say the State?
10 MR. FULMER: Please present the juror.
11 THE CLERK: What say the defense?
12 MR. ALLEN: Please seat Ms. Merrill.
13 THE CLERK: Juror 102, Tonya Mcdowell.
14 (Tonya Mcdowell, a black female, came forward.)
15 THE CLERK: What say the State?
16 MR. FULMER: Please excuse this juror.
17 THE CLERK: Juror 75, Willard Hollifield.
18 (Willard Hollifield, a white male, came forward.)
19 THE CLERK: What say the State?
20 MR. FULMER: Please present this juror.
21 THE CLERK: What say the defense?
22 MR. ALLEN: Please seat Mr. Hollifield.
23 THE CLERK: Juror 5, Mattie Barnes.
24 (Mattie Barnes, a black female, came forward.)
25 THE CLERK: What say the State?

JURY QUALIFICATION

1 MR. FULMER: Please present the juror.

2 THE CLERK: What say the defense?

3 MR. ALLEN: Please seat Ms. Barnes.

4 THE CLERK: Juror 124, Susan Parnam [sic].

5 (Susan Parham, a white female, came forward.)

6 THE CLERK: What says the State?

7 MR. FULMER: Please present the juror.

8 THE CLERK: What say the defense?

9 MR. ALLEN: Please seat Ms. Parham.

10 THE CLERK: Juror 15, Denise Brognano.

11 (Denise Brognano, a white female, came forward.)

12 THE CLERK: What says the State?

13 MR. FULMER: Please present the juror.

14 THE CLERK: What say the defense?

15 MR. ALLEN: Please excuse Ms. Brognano.

16 THE CLERK: Juror 159, Joan Vermont.

17 (Joan Vermont, a white female, came forward.)

18 THE CLERK: What say the State?

19 MR. FULMER: Please present the juror.

20 THE CLERK: What say the defense?

21 MR. ALLEN: Please seat Ms. Vermont.

22 THE CLERK: Juror 29, James Chapman.

23 (James Chapman, a black male, came forward.)

24 THE CLERK: What say the State?

25 MR. FULMER: Please present the juror.

JURY QUALIFICATION

1 THE CLERK: What say the defense?

2 MR. ALLEN: Please seat Mr. Chapman.

3 THE CLERK: Juror 91, Shirley Laws.

4 (Shirley Laws, a white female, came forward.)

5 THE CLERK: What say the State?

6 MR. FULMER: Please present the juror.

7 THE CLERK: What say the defense?

8 MR. ALLEN: Please excuse Ms. Laws.

9 THE CLERK: Juror 53, Adam Freseman.

10 (Adam Freseman, a white male, came forward.)

11 THE CLERK: What say the State?

12 MR. FULMER: Please present the juror.

13 THE CLERK: What say the defense?

14 MR. ALLEN: Please excuse Mr. Freseman.

15 THE CLERK: Juror 24, Alfred Camp.

16 (Alfred Camp, a black male, came forward.)

17 THE CLERK: What say the State?

18 MR. FULMER: Please excuse this juror.

19 THE CLERK: Juror 105, Larona Means.

20 (Larona Means, a black female, came forward.)

21 THE CLERK: What say the State?

22 MR. FULMER: Please present this juror.

23 THE CLERK: What say the defense?

24 MR. ALLEN: Please seat Ms. Means.

25 THE CLERK: Juror 89, Joseph ---

JURY QUALIFICATION

1 JUROR NUMBER 89: Kurkjian.

2 THE CLERK: Kurkjian.

3 (Joseph Kurkjian, a white male, came forward.)

4 THE CLERK: What say the State?

5 MR. FULMER: Please present this juror.

6 THE CLERK: What say defense?

7 MR. ALLEN: Please excuse Dr. Kurkjian.

8 THE CLERK: Juror 84, Randall Johnson.

9 (Randall Johnson, a white male, came forward.)

10 THE CLERK: What say the State?

11 MR. FULMER: Please present this juror.

12 THE CLERK: What say the defense?

13 MR. ALLEN: Please seat Mr. Johnson.

14 THE CLERK: And for the alternate Juror 112, Terry
15 Moates.

16 (Terry Moates, a black male, came forward.)

17 THE CLERK: What say the State?

18 MR. FULMER: Please excuse this juror.

19 THE CLERK: Juror 27, Michelle ---

20 JUROR NUMBER 27: Carracino.

21 THE CLERK: --- Carracino.

22 (Michelle Carracino, a white female, came forward.)

23 THE CLERK: What say the State?

24 MR. FULMER: Please present this juror.

25 THE CLERK: What say the defense?

JURY QUALIFICATION

1 MR. ALLEN: Please excuse Ms. Carracino.

2 THE CLERK: Juror 130, Doretha Prysock.

3 (Doretha Prysock, a black female, came forward.)

4 THE CLERK: What say the State?

5 MR. FULMER: Please present the juror.

6 THE CLERK: What say the defense?

7 MR. ALLEN: Please seat Ms. Prysock.

8 THE COURT: Let's have one more alternate.

9 THE CLERK: Juror 18, Durand Browning.

10 (Durand Browning, a black male, came forward.)

11 THE CLERK: What say the State?

12 MR. FULMER: Please present the juror.

13 THE CLERK: What say the defense?

14 MR. ALLEN: Please seat Mr. Browning.

15 THE CLERK: Jury selection's complete.

16 THE COURT: You don't need to sit down right this minute.

17 Those who have been selected let me ask you to go with the
18 bailiff to a jury room and I'll bring you back in just a few
19 minutes.

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

22 THE COURT: Are there any matters that need to be
23 addressed regarding jury selection by the State?

24 MR. FULMER: No, Your Honor.

25 THE COURT: The defendant?

MOTIONS AND MATTERS

1 MR. ALLEN: No, Your Honor.

2 THE COURT: Alright, those not selected you're excused
3 for the balance of the afternoon. Please call back after six
4 o'clock this evening to receive further reporting information.
5 Call back after six tonight. Thank you for your
6 participation.

7 (Whereupon, the jury pool left the courtroom.)

8 (Pause.)

9 THE COURT: Are there any matters that need to be
10 addressed prior to the jury being sworn?

11 MR. FULMER: None from the State, Your Honor.

12 MR. ALLEN: Your Honor, if it please the Court, I do have
13 some motions *in limine* I would like to raise at this time if
14 the Court pleases.

15 THE COURT: Okay.

16 MR. ALLEN: When the State presents its evidence, I
17 expect that they will call as a witness Tonya Lowery, at least
18 they've indicated they will. Ms. Lowery is currently in the
19 jail. She is charged with a crime. I would -- we have,
20 although I understood the solicitor's intent was to have her
21 appear in her jail oran -- oranges, we've brought in clothes
22 and I understand that she is being changed or has been changed
23 into that, that's no problem, into the clothing more suitable
24 for her appearance in court; I would certainly move *in limine*
25 that the State be prohibited from bringing up the fact that

MOTIONS AND MATTERS

1 she is currently in jail charged with a criminal offense. I
2 would also move *in limine* to prohibit the State from eliciting
3 testimony from officers, specifically Officer Matt Davis and
4 Officer William Gary as to a characterization in the event
5 they get into my client's statement that my client changed his
6 story; I believe that at the prior hearing they testis -- that
7 one of them testified in that manner. While I don't dispute
8 they have a right to testify as to what he said or what he
9 said various times, I will certainly object to their
10 characterization that he changed his story which is really a
11 matter, in my opinion, of interpretation and not a matter of
12 and they should be allowed to testify about. I believe those
13 are the only motions *in limine* I have at this time.

14 THE COURT: Alright, Mr. Fulmer.

15 MR. FULMER: Your Honor, with with regard to Tonya
16 Lowery, we have no objection, we will not get into the fact
17 that she's in custody. With regard to the investigators, I I
18 think they have the right to testify to the statement that he
19 gave them and the fact that he gave more than one version of
20 the statement during the course of his conversation with them.

21 THE COURT: Well, Mr. Allen, are you, are you suggesting
22 they can't inform the jury that that Mr. Rogers has given more
23 than one statement and they're different or I'm not sure I
24 understand exactly what it is you're trying to prohibit them
25 from doing.

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1 MR. ALLEN: Your Honor, when I've heard them talk about
2 this and and read this about this, they tend to lead off with
3 a characterization such as, Well he gave different versions of
4 what happened and then they go into talk about what he said.
5 Again, I don't dispute that they can relate to the Court what
6 he said and what he said at what point. For example, part of
7 the testimony will be that they asked him what happened and he
8 told them some things and then they went back and asked him
9 about a certain fact, specifically they asked him, Well did
10 you go to the bathroom before what they they might call the
11 the final fire of the last fight which my client responded
12 that he had. Now I think it's argumentative, I think it's an
13 interpretation for them to say he was changing his story.
14 They can certainly relate what he said and what he said in
15 response to certain questions but I don't view that as a
16 change of story but rather as answering a specific question
17 and I would move *in limine* and object to their characters --
18 characterizing what he said. It's up to the jury to determine
19 whether what he said was true or for that matter whether or
20 not he changed his story; I don't think the officer should be
21 allowed to testify to characterize it as such.

22 THE COURT: Well I understand they're not gonna be able
23 to tell the jury whether they believe it to be true or false
24 but obviously if one statement is different than another, if
25 they said that he changed his story or he gave, gave a

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1 different version on a separate occasion, that would not be
2 anything more than stating the obvious, would it?

3 MR. ALLEN: Well as I said I think it's really a matter
4 of of interpretation. The way I view it is he was answering a
5 specific question that they asked; they want to put it I
6 believe in a negative light such as he was changing his story
7 and I don't think that was an accurate reflection of what was
8 going on and that's why I think that they're characterizing it
9 before they get to say what he said is inappropriate for a
10 witness to do. Again, they can say what he said but they
11 certainly shouldn't be allowed to comment on such as he
12 changed his story or comment on it to put it in a negative
13 light.

14 THE COURT: Okay, well I'm not sure I'm I'm appreciatin'
15 the significance of that motion but let's just do it this way,
16 Mr. Fulmer: If if Mr. Rogers gave the more than one statement
17 and the statements are different then when the officers
18 testify about it they can say he gave another statement on a
19 separate day and that he added somethin' or deleted somethin'
20 from the one he'd given previously, there are differences and
21 they can point out what those differences are.

22 MR. FULMER: Yes, sir.

23 THE COURT: Okay. Alright. To the extent -- to that
24 extent the motion's granted as far as referencing him changing
25 his story. Alright, anything else?

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1 MR. ALLEN: No, Your Honor, not at this time.

2 THE COURT: Alright, Mr. Allen, you are aware that I have
3 denied the defendant's motion to dismiss this case pursuant to
4 16-11-450, copy of the order's been provided to you?

5 MR. ALLEN: Yes, Your Honor. Yes, Your Honor, I'm aware
6 of that, I believe I received it by e-mail today ---

7 THE COURT: It's just been filed but I I ---

8 MR. ALLEN: Yes, sir.

9 THE COURT: --- you were notified of it before it was
10 filed by e-mail. I just wanna be certain that you're -- you
11 are aware that that motion was denied.

12 MR. ALLEN: Yes, Your Honor, I'm aware that was denied
13 and I've also discussed it with my client.

14 THE COURT: Okay. Alright, anything else before we
15 begin?

16 (No response.)

17 THE COURT: Alright, let's bring the jury in and ask
18 Mrs. Manatis to take the foreperson's seat, Mrs. Manatis.

19 THE BAILIFF: Yes, sir.

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

21 THE BAILIFF: Mrs. Manata, Manata.

22 THE COURT: She's not in here.

23 THE BAILIFF: She's not in here yet.

24 THE BAILIFF: She didn't ---

25 THE COURT: Well ---

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1 THE BAILIFF: --- come --

2 THE COURT: --- ya'll need to get her. She's supposed to
3 be with the jury.

4 THE BAILIFF: I'll get her.

5 (Whereupon, Mrs. Manatis joined the jury panel.)

6 THE COURT: Alright, ladies and gentlemen, we are ready
7 to begin with the trial of the case for which each of you have
8 been selected. Ms. Manatis, I'm gonna ask you to serve as the
9 foreperson of the jury. As the foreperson you've gonna have
10 three duties that none of the other jurors will have; number
11 one, you'll be serving as a spokesperson for the jury and that
12 just means if something needs to be brought to my attention
13 during the course of this trial you let me know through the
14 bailiff or directly and I'll address those issues or answer
15 those questions; secondly, you'll be called upon to preside
16 over jury deliberations in the jury room when the time comes
17 just to ensure that that those deliberations are carried out
18 in some orderly fashion and; thirdly, you'll write the
19 decision of the jury, whatever that decision is, you'll do
20 that on a verdict form that I'll provide ya at the trial's
21 conclusion on which you will indicate the jury's unanimous
22 decision. Now the foreperson has those duties that I've just
23 indicated, that does not mean that she is any more important
24 than any of you other jurors because the decision of a jury is
25 the unanimous consensus opinion of all twelve of you jurors

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1 and so all of you will have an equal say and an equal vote in
2 what the ultimate decision is, someone simply has to be
3 delegated those responsibilities that I have just indicated
4 and I have delegated those to Ms. Manatis in appointing her as
5 the foreperson but all of the jurors are equally important so
6 far as the ultimate decision is concerned because as I've
7 stated the verdict has to be unanimous, all of you must be in
8 agreement. Ms. Prysock and Mr. Browning, ya'll should be on
9 the two end seats, ya'll are alternate jurors.

10 (Whereupon, the alternate jurors changed seats.)

11 THE COURT: Well you don't have to go that far down, just
12 move up one more. Move back one more, Ms. Prysock. There we
13 go. Alright, now those two seats are the alternate's --
14 alternate jurors seats and the seat you're in, Ms. Manatis, is
15 the foreperson's seat so the other seats are not designated,
16 ya'll just take 'em as you come. Ms. Prysock and
17 Mr. Browning, each of you been selected as an al -- alternate
18 jurors and as alternates you will not participate in
19 deliberations unless one or two of the original jurors are
20 unable to engage in those deliberations so if one or two are
21 unable to continue at the time deliberations begin then one or
22 both of you will be taking those juror's places, in that event
23 you become the twelfth juror. When the time does come for
24 deliberations, if all of the original twelve are able to do so
25 then your services end and that's because the verdict of a

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1 jury is that of twelve, no more than twelve are permitted to
2 engage in that deliberation process but it is important as you
3 know that you pay just as careful attention as all of the
4 jurors in the case because it does occur from time to time for
5 one reason or another one or more of these jurors may be
6 unable to continue and one or both of you might be called upon
7 to become the twelfth so we appreciate your service as
8 alternate jurors just as we appreciate the service of each
9 juror who have -- who has been selected for the purpose of
10 service in this case. You may swear the panel.

11 (Whereupon, the jury panel was sworn.)

12 THE CLERK: Thank you, you may be seated.

13 THE COURT: Alright, ladies and gentlemen, as you know
14 you've been selected to decide the verdict in the case of the
15 State vs. Michael Anthony Rogers, as you also know, he has
16 been accused by the State with having committed the crime of
17 murder. They set forth that charge in the document which I
18 referred to earlier we call the indictment and it alleges that
19 he did on November the 12th of 2010 wilfully and with malice
20 aforethought kill one John William Ryan by stabbing him, that
21 he died as a proximate result of that stab wound. As I've
22 also told ya as to that charge and as to that indictment he's
23 entered a plea of not guilty and a plea of not guilty places
24 upon the State the burden of proving his guilt to the
25 satisfaction of twelve jurors beyond a reasonable doubt before

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1 any such decision could be rendered.

2 Now the way the trial will proceed is that in a moment
3 the lawyers will address you in what are called "opening
4 statements." The opening statements are not evidence in the
5 case and that's because the lawyers aren't witnesses to
6 anything, they don't know anything about the case based upon
7 their own personal knowledge or perception like witnesses will
8 be testifying to. After the opening statements are concluded,
9 we'll receive the evidence and then they'll again address you
10 in what are called "closing statements" and again those
11 statements aren't evidence but it does afford the lawyers an
12 opportunity to discuss with you the evidence you've seen and
13 heard and through that discussion each can try to persuade you
14 or to convince you that the evidence in the case does or does
15 not support a particular decision. It's in between those
16 opening statements and the closing statements that we actually
17 receive the evidence upon which you will base your decision.
18 The State as you know has the burden of proof, they have
19 brought the charge against the defendant and therefore it is
20 their burden and obligation to establish his guilt to your
21 satisfaction beyond a reasonable doubt so they will go forward
22 first in their presentation of evidence. Once they have
23 concluded with that presentation, a defendant may testify or
24 call witnesses or produce evidence if he or she wished to do
25 so but a defendant in a criminal case is never under any

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1 obligation to take the witness stand and testify or to call
2 any witness or to produce any evidence because the burden is
3 not upon a person accused of a crime to prove that they are
4 not guilty or to prove that they are innocent because in some
5 cases that might not even be possible, the burden is always
6 upon the State to establish that person's guilt beyond a
7 reasonable doubt but a defendant is afforded an opportunity to
8 testify and/or present evidence if he or she wished to do so.
9 After all the evidence has been received and you hear the
10 final summations of the lawyers, I will then instruct you
11 fully on the law as it rela -- relates to criminal law
12 generally and as it relates to this specific crime
13 particularly and after that you'll go back and be asked to
14 begin your deliberations and through that process you'll
15 examine all of the evidence in the case, from that evidence
16 you'll decide what you believe to be the true facts as they
17 relate to these allegations in this event which occurred back
18 on November the 12th of 2010 and once you decide what you
19 believe to be the true facts, you'll apply the law that I will
20 have provided ya and you will determine whether or not the
21 evidence in this case establishes the defendant's guilt beyond
22 a reasonable doubt; if it has then your verdict would be
23 guilty, if it has not then your verdict would be not guilty so
24 all that we ask for you to do is to pay careful attention
25 throughout the course of the trial, give every witness the

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1 same degree of attention as they testify because one of your
2 prerogatives as as juror and as a fact finder is to evaluate
3 and to assess the credibility of witness testimony and in
4 doing that you can believe everything that a witness testified
5 to, you may choose to believe none of it; you can believe some
6 portion of a witness's testimony and reject some other portion
7 of that same witness's testimony, you can believe one against
8 more or more against one but in order for you to be in a
9 proper position to fairly evaluate a witness's credibility
10 it's important that you give every witness the same degree of
11 attention so that when you do go back to deliberate you'll be
12 in a proper position to judge that witness's credibility in
13 light of not just that witness's testimony but in light of all
14 of the testimony and all of the evidence in the case and of
15 course it's important that you keep an open mind throughout
16 the course of the trial and that just means that you are not
17 to begin making up your minds or formulating your opinions as
18 to what you think the ultimate decision in the case ought to
19 be until all of the evidence has been received, until you've
20 been instructed as to the law and until you've been asked to
21 begin with your deliberations, that is the process that is
22 designed for you twelve jurors to arrive at a fair and just
23 determination in this case so I do wanna thank you in advance
24 for your participation as well as for your careful attention;
25 I would ask that you please give the lawyers your attention

OPENING STATEMENTS

1 now as they give you their opening statements. Mr. Fulmer.

2 MR. FULMER: Thank you, Judge. Ladies and gentlemen,
3 Michael Rogers stabbed John Ryan in the chest with a knife
4 about a year ago, he severed or or struck a major blood vessel
5 in his chest and John Ryan bled to death within just a few
6 minutes, that's a fact about this trial that's not in dispute,
7 I don't think you're gonna hear any testimony or evidence that
8 disputes that fact. What is in dispute are what were the
9 events and circumstances and facts that led up to that
10 stabbing. This occurred on November the 12th 2010 late at
11 night, about ten minutes to midnight, the defendant and the
12 victim were acquaintances, they had been drinking together,
13 there were also two women in the, in the home at that point in
14 time, this was a single-wide trailer out on Carolina Drive
15 Extension. During the course of the evening, the the
16 defendant became angry towards the victim 'cause he felt like
17 he had done something to his girlfriend that he shouldn't
18 have, he touched her in some way so in his anger he attacked
19 the victim, he attacked John; it begins a fist fight, it
20 escalated shortly thereafter into a knife fight.
21 Unfortunately the two women that were there in the trailer for
22 reasons that you're gonna hear both were outside the trailer
23 at the time the knife fight occurred but in the short period
24 when they were outside less than a minute John Ryan was
25 stabbed in the chest as well as in the back and he died

OPENING STATEMENTS

1 shortly thereafter. You're gonna have a chance to hear from
2 the witnesses that were there as well as witnesses in law
3 enforcement, I just ask that you give your attention to them,
4 that you judge their credibility, that you use your common
5 sense and good judgment in doing that and after you've heard
6 all the evidence that you return a true verdict. Thank you.

7 THE COURT: Mr. Allen.

8 MR. ALLEN: Thank Your Honor. The evidence you're about
9 to hear, ladies and gentlemen, is gonna be about Mr. Rogers'
10 right to tell someone to leave his home and the evidence
11 you're about to hear is gonna be about Mr. Rogers' right to
12 defend himself from an attack from this same person who he
13 told to leave his home. A good bit of what the solicitor has
14 indicated he will present will be presented. The evidence
15 will indicate that after period a time when both people were
16 drinking, both Mr. Ryan and Mr. Rogers, they were in
17 Mr. Rogers' home which is gonna be referred to as [REDACTED]
18 [REDACTED] the mobile home that Mr. Fulmer spoke of.
19 Mr. Ryan did not live there but was visiting. The evidence
20 will also indicate that while there and just before this
21 incident occurred that Mr. Ryan touched, put his hands on
22 Ms. Lowery, Tonya Lowery, a woman who Mr. Rogers was dating at
23 the time, put his hands on her in what some may consider an
24 objectionable or inappropriate manner. The evidence will also
25 indicate that there was indeed a fight; Mr. Ryan fought back

OPENING STATEMENTS

1 hitting my client in the face, hitting him in the mouth
2 causing some bleeding in the mouth. The evidence will also
3 indicate that after my client went to the bathroom he came
4 back out an -- and again, Mr. Rogers -- excuse me, Mr. Ryan
5 attacked Mr. Rogers hitting him, again, having him somewhat
6 off the -- and against the refrigerator in this small kitchen
7 area of this mobile home, Mr. Rogers' home. The evidence will
8 show that even though Mr. Rogers was telling Mr. Ryan to leave
9 and get out of there, Mr. Ryan did not listen and the evidence
10 will indicate he continued to fight Mr. Rogers. What the
11 solicitor did not indicate is that the evidence will also show
12 Mr. Rogers in addition to the injuries to his mouth, to his
13 face, received cuts, a cut on the undersi -- side of his left
14 arm and some look to be superficial cuts on the top of his
15 forearm on his right side and that during this fight Mr. Ryan
16 received the injuries that ultimately caused his death. We'll
17 be talking a great deal about what happened there that night
18 and what led up to what some people may refer to as "these
19 fights" or "these assaults." You may hear sometimes the
20 lawyers or the witnesses talk in terms of first fight, second
21 fight or whatnot but you will hear all of what led up to this.

22 Right now Mr. Rogers as you know is presumed innocent,
23 that's a very strong presumption and remains with him
24 throughout this case unless and until the State can prove
25 beyond a reasonable doubt of his guilt; stated differently

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 it's not up to me to prove Mr. Rogers' innocence, he's already
2 presumed that. We will attempt to continue to show you that
3 he is innocent consistent with that presumption that the law
4 gives him and that law gives anyone who is charged by the
5 State with any crime but what it all boils down to you'll hear
6 us to again address the evidence with you, address the law
7 with you and it really comes down to did Mr., did Mr. Rogers
8 have the right to defend himself in his own home when he was
9 being attacked by Mr. Ryan. I do ask you to pay close
10 attention to all of the evidence in this case, both the
11 questions the solicitors will ask, questions I will ask and at
12 the conclusion of this case I will again address you to again
13 demonstrate to you why Mr. Rogers is not guilty and why the
14 State will fail and pass their evidence burden of proof
15 because Mr. Rogers is not guilty. Thank you.

16 THE COURT: Mr. Fulmer.

17 MR. FULMER: Your Honor, the State calls Jackie Lance.
18 She's just outside, Your Honor. She had a cell phone with her
19 inside.

20 JACKIE MICHELLE LANCE, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. FULMER:

23 Q. Ms. Lance, will you state your complete name.

24 A. Jackie Michelle Lance.

25 Q. How old are you?

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

- 1 A. What's that?
- 2 Q. How old are you?
- 3 A. Twenty-five.
- 4 Q. Where do you live?
- 5 A. At [REDACTED] [REDACTED] [REDACTED] [REDACTED].
- 6 Q. That in Spartanburg?
- 7 A. Spartanburg, South Carolina.
- 8 Q. Where were you living back in November of last year?
- 9 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED].
- 10 Q. And where is that about?
- 11 A. It's around the Roebuck, above Arkwright area offa 221.
- 12 Q. Is it near Carolina Drive Extension?
- 13 A. It is.
- 14 Q. Do you know the defendant, Michael Rogers?
- 15 A. I didn't really know him that well. I know who he is.
- 16 Q. Do you know John Ryan?
- 17 A. The same.
- 18 Q. On November 12th were you with Michael Rogers and John
- 19 Ryan?
- 20 A. I wasn't correct with the date but yes, I believe I was
- 21 because I know I was with them, I don't know if it was the
- 22 correct date or not but, yes.
- 23 Q. Okay. Were you with 'em on the, on the day where a fight
- 24 occurred between the two of 'em?
- 25 A. Yes, I was.

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 Q. Can you tell me about that day. When was the first time
2 you saw them?

3 A. The first time I saw this (indicating) one was I was
4 walking on -- my phone had died and I was going to the store
5 above my, like right below my sister, she lived right above
6 him and he let me use his phone.

7 Q. When you say "he", you mean the defendant?

8 A. Michael.

9 Q. Okay.

10 A. So we chatted a minute and then that's when I figured out
11 he was datin' this girl named Tonya from the neighborhood. I
12 knew her that she got around the neighborhood or whatever but
13 that's how come they come in the picture.

14 Q. And at some point did they offer you a ride?

15 A. Yes, they did.

16 Q. Okay, what happened after that?

17 A. We went to the store, we got cigarettes, they took me to
18 a frienda mine's house, um, he's a paraplegic, I clean his
19 house like on weekends so they took me to do that, I bought
20 him a packa cigarettes and gave him some gas money for taking
21 me and then we all went back.

22 Q. Who was driving?

23 A. Um, they were takin' turns driving. I mean, they were
24 back and forth.

25 Q. Okay. During the course of the afternoon did you go to

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 the dump?

2 A. Yes, we did.

3 Q. Okay. And whadya do after you went to the dump?

4 A. Well one of -- I, like I said I don't remember who was
5 driving but one of 'em hit a car, they were arguing and it
6 caused one of 'em to hit a car at the dump. The police were
7 not -- I mean, it -- the other car called the police but they
8 en -- ended up exchangin' like insurance information and just
9 lettin' it go at that.

10 Q. Okay. Okay. And what did you do after that?

11 A. I I went back home for a while and then I left back out
12 to go to the store and I was talkin' to Tonya on the phone I
13 believe and then they picked me up and gave me a ride back to
14 the store from my house and then he said he had to grab his
15 wallet or somethin' from his house which was on South Avenue.
16 We went back there and they all went ins -- we all -- they all
17 went inside and I sat outside for a while, it was like ten,
18 fifteen minutes passed and I finally got out and knocked on
19 the door myself and they invite -- well, ya know, they're
20 welcome, invited me in so I went on in, they were drinkin' and
21 the -- John was takin' like prescription nerve pills and he
22 was sharin' 'em with the whatever he (indicating) is and ---

23 Q. You're referring to Michael Rogers?

24 A. Yes.

25 Q. You said earlier on South Street but you're you're ---

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 A. South Avenue.

2 Q. --- you're talking about his trailer on this Carolina
3 Drive ---

4 A. Yes, well ---

5 Q. --- Extension?

6 A. --- I mean, from -- if you got off South Avenue, it kinda
7 turns, it all kindsa turns in the same road so...

8 Q. I see. I see. Okay, so you were, you were at his
9 trailer?

10 A. Yes.

11 Q. Okay, what happened then?

12 A. Like I say, we were sittin' around they were all
13 drinkin', they kept offerin' me to drink with 'em, I did not.
14 Like I said, I told 'em I do not drink after people, I do not,
15 they were all drinkin' after each other, that's just not
16 somethin' I was ready to do and like I said they were passin'
17 prescription medication around, that's also somethin' I was
18 not raised to do ---

19 Q. Who was ---

20 A. --- and ---

21 Q. --- present at this time?

22 A. It was me, Tonya, Michael and John.

23 Q. Okay, when you say "Tonya", you mean Tonya Lowery?

24 A. Lowery, yes.

25 Q. And John Ryan?

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 A. Right.

2 Q. Okay, and at some point did -- did a fight occur?

3 A. Yes, it did.

4 Q. What led up to that fight?

5 A. John was so drunk he couldn't even barely stand up. I
6 mean, he was really staggerin' around, he was bumpin' in all
7 kinda stuff. He le -- he leaned against Tonya like on her
8 shoulder, it was not no kinda sexual way, I don't even know
9 really why he got mad, it was nothin' to get mad over, it
10 looked like the man was tryin' to hold hisself up to me. Well
11 when he leaned against I guess his girlfriend, he come around
12 the bar with, just ragin' him and he jumped on that man and he
13 fell down and John's head bounced off the back of a stereo
14 system and he then got on top of him. I kept tryin' to
15 separate 'em. He -- the fight finally stopped. The first
16 fight broke up and then that's the only fi -- the only lick
17 that was thrown in between John and him was John kicked him
18 back one time, he like he was tryin' to kick him between the
19 legs. He made contact but not enough to hurt or slow him
20 down. I mean, like I said, the man was staggerin', he was
21 drunk, he couldn't hardly walk so then he jumps back on him
22 again, takes him back to the floor and he's just -- he just
23 kept hittin' him repeatedly over and over in his face and his
24 head.

25 Q. Are you trying to tell me that Michael, Michael ---

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 A. Michael ---

2 Q. --- couldn't ---

3 A. --- was beatin' John like this (demonstrating). John's
4 glasses flew off his face and I felt really bad for him.
5 These are two big grown man. I mean, I weigh a hundred and
6 twenty-six pounds but I don't like gettin' in between both of
7 'em but it still was not right so I did bend down and I I
8 stuck my arm in between 'em tryin' to plead with this man to
9 get offa this other man, it was obvious there was not even
10 fight in this man, but he did not and he just kept hittin' him
11 and hittin' him. I still stuck my arm in the way a little bit
12 further the second time tryin' to get his attention to get him
13 off of him, that's when he struck me in my forearm and I
14 backed up. I was like, Look, you know, and and I'm so sorry
15 for this, those words, I did not literally mean it, I said, I
16 don't know ya'll, I don't care if ya'll kill each other, I'm
17 goin' home. I really did not think he was really gonna kill
18 him but he obviously did.

19 MR. ALLEN: Objection to that, Your Honor, as being
20 speculation.

21 MS. LANCE: I don't believe it's ---

22 THE COURT: You can, ---

23 MS. LANCE: --- speculation but ---

24 THE COURT: --- you can cross-examine. Overruled. Go
25 ahead.

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 BY MR. FULMER:

2 Q. Okay, so you say at that point you couldn't take it any
3 longer.

4 A. No, I couldn't.

5 Q. Okay, and what did you do then?

6 A. Like I said, I tried to sep -- or well they separated
7 again as I was walkin' out the door and I was yellin', you
8 know I said, That's not right, you shouldn't, you know, nobody
9 should fight like that especially, you know, him and I picked
10 John's glasses up and I gave 'em back to him. He finally, he
11 sat on the couch and he stood up or whatever and that's when
12 he jumps back on him again so I mean, the guy was, he already
13 backed off, John had already backed off, he already sat on the
14 couch, I'd already handed him his glasses, he jumps on him
15 again, his glasses go flyin' again and I gave him his glasses
16 back for the third, I think the third time 'cuz I picked 'em
17 up a couple a times and I asked him was he okay and he told
18 me, Yeah, and he sat back on the couch. I said, I was like,
19 Look I'm leavin', I don't care, I'll walk home and John is
20 like, No, you don't have to walk, you didn't walk over here,
21 that's not right and he threw me his truck keys. He told me,
22 he said, Just go home for a few minutes, let everything cool
23 down and come back. I said, Are you sure? He told me yes,
24 then I asked him again was he sure he was alright he still
25 said yes. I did not see any blood shed between the two. I

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 seen like well I guess maybe bruises or blood puddlin' under
2 the skin where he had been hittin' him in the face so many
3 times in John's face, that's the only marks I saw on either of
4 them.

5 Q. What was Tonya Lowery doing during this time?

6 A. She actually had tried to help me separate them. She
7 come up behind him at one point in time and grabbed him by the
8 back of his pants and tried to pull him off and that's when I
9 was halfway in between 'em the first time and then like I
10 said, the second time when I leaned in I stuck my arm a little
11 bit further tryin' to really block John's face from him
12 hittin' him anymore and then that's when he like I said he
13 struck me right like right around here (indicating) on my
14 forearm with his fist.

15 Q. When when you you said John went over to to precipitate
16 all this, you said John went over to Tonya and put his arm on
17 her shoulder, ---

18 A. Yes.

19 Q. --- did Tonya say anything to John at that time?

20 A. I think she kinda looked, she's like, What are you doin'
21 but that was about all of it; it was no, Oh my God you touched
22 me in a sexual kinda way, it wasn't even like that. You could
23 tell he was just tryin' to prop hisself up.

24 Q. So would it be fair to say that once the fight got
25 started both you and Tonya were tryin' to stop this fight?

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 A. Yes, that -- yes.

2 Q. Did you, other than knowing their face from around the
3 neighborhood, did you have a previous relationship with John
4 or Mike?

5 A. No, ---

6 Q. Had you ---

7 A. --- never.

8 Q. --- ever spoken to either one of 'em?

9 A. Never.

10 Q. What about Tonya Lowery? What was, what was your prior
11 history with Tonya Lowery?

12 A. Ton -- I mean, that's not really funny. Tonya's got a
13 lotta mental problems, I mean, a lot. She just ---

14 MR. ALLEN: Objection, Your ---

15 MS. LANCE: --- everybody around the ---

16 MR. ALLEN: --- Honor, again, not qualified.

17 MS. LANCE: It's not objection. She's got papers.

18 THE COURT: You'll excuse me just a minute, ma'am.

19 MR. ALLEN: She's not qualified ---

20 THE COURT: Let me see ya'll just a minute.

21 (Whereupon, a bench conference was held off the record.)

22 THE COURT: Alright, I sustain the objection, it's not
23 responsive to the question. Just listen to the question,
24 respond to the question.

25 MS. LANCE: Yes, sir.

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 BY MR. FULMER:

2 Q. Just tell me about your prior relationship, if any, with
3 Tonya Lowery.

4 A. Well I just know her from around the neighborhood.

5 Q. Okay. Did ya'll ever have problems between the two of
6 you?

7 A. Yes, we had.

8 Q. Could you describe the nature of those problems.

9 A. Well we -- I mean, we only had one problem and that was I
10 was gone one day and my my son he was 2 at the time, he's 5
11 now, my sister also has a 2-year-old little boy, they're two
12 weeks apart, she took it upon herself to walk up in our yard;
13 they were, the boys were wrestlin' around playin', I mean,
14 they watched the wrestlin' on TV, they weren't hurtin' each
15 other, they were just playin', she walks up in the yard and
16 she jerked our kids around by their arms and she left a bruise
17 on my son so of course I confronted her on that and when I did
18 she tried to hit me and we got into a big fight, like a
19 physic -- physical fight.

20 Q. Had ya'll made up between the time of that ---

21 A. Yes, ---

22 Q. --- fight ---

23 A. --- we had.

24 Q. --- and this this night?

25 A. Yes.

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 Q. Okay. Would you have called her a friend that night? Is
2 that too much?

3 A. I would say yeah, friend's a little too much.

4 Q. Okay.

5 A. I mean, no, on that particular night I would not say a
6 friend was too much 'cuz she was doin' exactly what I was
7 doin'. She was tryin' to get those two men apart so yeah, she
8 was, yeah, she was a friend to me that night.

9 Q. Okay. You have a grudge or a beef against Mr. Rogers?

10 A. I don't even really know him.

11 Q. What about John Ryan? Do you have any reason to lie for
12 him ---

13 A. No, sir. I didn't even know either of their last names
14 until all this happened.

15 Q. While this fight was going on and while you were inside
16 the mobile home, did you ever hear Michael Rogers ask John
17 Ryan to leave his house?

18 A. No, sir. He was actually yellin' at him because he he
19 gave me the truck keys. He was yellin' like, Why why are you
20 lettin' her take your truck, you don't know her and he yelled
21 back at him, She just wants to go home, she wants to leave
22 so...

23 Q. When you left at that time, was it your plan to return?

24 A. N -- I mean, when I left he he asked me -- I -- my plans
25 were to do what he asked me to do. I was gonna go home and

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 let those men cool off for a while and bring his truck back to
2 him. I would have still walked, I would notta let one of them
3 drive me home 'cuz they were both drinkin' but yes, I -- my
4 intentions were to go back, not right away, no, but yes, they
5 were to go back.

6 Q. Would it be fair to say that John was tryin' to find a
7 way to keep you hangin' around that evening, he wanted to have
8 your company so he said let's cool off and then come back, is
9 that a fair characterization?

10 A. I mean, not really. I mean, maybe but I don't -- I
11 didn't look at it that way. I mean, like I say he never not
12 one time come across to me as any kind of anything but tryin'
13 to be a friend, he he didn't make no sexual passes towards me
14 nor Tonya, he just seemed harmless.

15 Q. Did you in fact go back by the trailer that night?

16 A. Yes, I did.

17 Q. And tell me about that.

18 A. Alright, well I went home and I said I live within
19 minutes from him, I got home and I was tell -- I was upset, I
20 was tellin' my roommate what had happened. I sat there and I
21 smoked a cigarette, he was like, Well what are you gonna do?
22 I said I'm gonna take that man's truck back to him, I'm comin'
23 home. He said, Alright, he told me be careful. I still
24 didn't trust the situation so a friend of mine was next door
25 at my sister's, I had him follow me to -- well was gonna take

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 the truck back. When we pulled up police were everywhere, I
2 mean, blue lights, they were puttin' the, you know, the tape
3 across the yard or whatever. Police motioned me and my friend
4 ma -- the man in the car behind me around. So we went back,
5 we met at the Mini-Mart and we're just lookin' at each other
6 and he's like, Well what are you gonna do? I said, Well I'm
7 just gonna take park the truck, I'll roll the window down, put
8 the keys in the floorboard I said, you know, they'll sober up,
9 one will come and get it in the mornin', police are there, you
10 know, they can handle it from here. I didn't know anyone was
11 hurt. I mean, I knew they'd been fightin' but I did not know
12 anyone was hurt, know anybody was bleedin', anything like that
13 so I didn't know. I didn't find out the fact that he had been
14 killed until the next morning.

15 Q. How did you find that out?

16 A. I was gettin' ready for work, it was maybe about 8:30,
17 9:00 that mornin' give or take a few and my roommate come in,
18 he let -- I didn't even hear no one knockin' on the door, I
19 guess 'cuz I'd been in the shower and I mean, I still had a
20 towel on my head, I was still gettin' dressed. I was dressed
21 in my my uniform and I went outside there was the police
22 standin' there, my roommate said, This cop wants to talk to
23 you, I said, okay and immediately I thought it was over his
24 truck, I thought, you know, maybe they just drunk and didn't
25 remember givin' me the keys or somethin' so the first words

JACKIE MICHELLE LANCE - DIRECT EXAMINATION BY MR. FULMER

1 outta my mouth was I did not take his truck, ya know, I -- he
2 told me to take it, I just came home, I threw his keys in the
3 floorboard, rolled the window down so they could come get it
4 the next mornin'. They would not tell me what happened or
5 anything. The only thing he could tell me was he could not
6 talk to me, he -- I just couldn't leave his sight until, you
7 know, the detective got there and or investigator whatever he
8 was, he pulled up and he talked to me, I gave him my statement
9 and it indeed matched everything that ---

10 MR. ALLEN: Objection as to her conclusion about
11 something matching.

12 THE COURT: Sustained.

13 BY MR. FULMER:

14 Q. So he asked you some questions, the officer?

15 A. Yes, sir, he asked me some questions.

16 Q. And and so then how did you come to know that John had
17 died?

18 A. Well after I gave him my statement of what happened the
19 night before ---

20 MR. ALLEN: Objection, Your Honor. I think that's
21 calling for hearsay testimony.

22 THE COURT: Well he just says how she found out and
23 that's not -- overruled. He wants to know how you found out
24 that Mr. Ryan was dead.

25 MS. LANCE: Okay well like I said, I gave a -- my

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 statement to the detec ---

2 THE COURT: No, he just asked how did you find out that
3 Mr. Ryan ---

4 MS. LANCE: The police ---

5 THE COURT: --- was dead.

6 MS. LANCE: --- officer told me after I gave him my
7 statement, he told me he was in the morgue. He first told me
8 he was in ---

9 THE COURT: That ---

10 MS. LANCE: --- the hospital ---

11 THE COURT: --- that's that's enough.

12 MS. LANCE: --- then he told me in the morgue.

13 MR. FULMER: Thank you. Okay, please answer any
14 questions Mr. Allen has for you.

15 CROSS-EXAMINATION BY MR. ALLEN:

16 Q. Ms. Lance, first wanna talk about where you were living
17 at ---

18 A. Could you speak up, please.

19 Q. Okay. I wanna talk to you about where you were living at
20 240 South Avenue ---

21 A. Okay.

22 Q. --- where that is in relation to [REDACTED]
23 [REDACTED], the mobile home that you went to that night ---

24 A. What was my connections between them?

25 Q. Tell you what, I'm I'm trying to direct you to where I

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 wanted to talk about, okay? You understand ---

2 A. Yes, sir, ---

3 Q. --- what ---

4 A. --- go ahead.

5 Q. As I understand it South Avenue comes up into or 221 or
6 South Church Street, ---

7 A. Right.

8 Q. --- is that correct?

9 A. Um-hum.

10 Q. And if you go straight across South Church Street from
11 South Avenue ---

12 A. South Avenue.

13 Q. --- you're onto a road called Airport Road, is that
14 right?

15 A. Yeah, it all runs in together but ---

16 Q. Right.

17 A. --- it's still the one road.

18 Q. And as you go down Airport Road and curve around a little
19 bit you end up on Carolina Dive Extension, is that correct?

20 A. Right, the same road.

21 Q. It curves around -- right. At some point it changes name
22 but it looks like one ---

23 A. Several ---

24 Q. --- road.

25 A. --- times but...

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. And you live as I understand it a little more than a mile
2 from John's home, right?

3 A. John's home?

4 Q. Excuse me, Mike Rogers' home. You live a little more
5 than a mile from there, ---

6 A. Yes, sir, I ---

7 Q. --- right?

8 A. --- live within a mile with my younger sister, Pamela,
9 she lived on Fortune Drive, that was not even maybe a halfa
10 block if if a block from him and that's where I said I was
11 walkin' from to start with, my sister's, so that's how I ran
12 up on him in his own yard, he let me use the phone so...

13 Q. Okay. So I'm glad you bought Fortune Drive up. Your
14 sister Jessica who lived on Fortune Drive or ---

15 A. No, Pamela.

16 Q. Pamela, I'm sorry.

17 A. Jessica lived beside on Fort. -- well she had lived on
18 Fortune prior to that but she lived on South Avenue be --
19 right beside me as a matter of fact.

20 Q. Okay. And as you're coming up Carolina Drive Extension
21 from South Avenue in the way I was earlier describing, if ---

22 A. Um-hum.

23 Q. --- and I think you're getting into if you go past Mike
24 Rogers' home ---

25 A. Right.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. --- just a little ways up the road, not even a tenth of a
2 mile, you -- Fortune Drive comes up to that Road, is that
3 right?

4 A. Well ---

5 Q. That the drive that your sister lives on?

6 A. I'll take you from the back way from Fortune. Now
7 there's a highway that's 2, I think it's 295 then here's
8 (indicating) Fortune Drive, I mean, well here's (indicating)
9 the, what's the other road, uh, Carolina Drive. Here's
10 (indicating) Fortune, here's (indicating) Carolina Drive so
11 say here's (indicating) Fortune Drive, here's (indicating) his
12 trailer, not even a whole block within ---

13 Q. Not even a whole block, okay.

14 A. Right.

15 Q. Close by.

16 A. Yeah.

17 Q. And you frequently walk from your home on [REDACTED]
18 [REDACTED] to your sister on Fortune Drive?

19 A. Very often.

20 Q. Okay. Now wanna talk with you a little bit about your
21 relationship with Tonya Lowery again. You didn't really like
22 her, did you?

23 A. Isn't that speculation?

24 Q. I'm asking the questions, please. You did not
25 really ---

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 A. I ---

2 Q. --- like ---

3 A. --- I mean, ---

4 Q. --- her, did you?

5 A. --- I had no feelings towards her one way or another.

6 It's not that I did not like her and it's not that I liked
7 her, I mean, it's not that I hated her, it's not that I
8 didn't, I just knew her from the neighborhood.

9 Q. Okay. But you weren't friends.

10 A. I wouldn't say that either. I mean, she serenaded my
11 fiancée on his birthday. I mean, she sang to him on his
12 birthday out in the front yard, it was quite funny. I mean,
13 we all just knew each other. I I lived there all my life,
14 everyone knows everyone.

15 Q. Okay.

16 A. He had to have just recently moved in or somethin' I
17 believe is the reason we didn't know each other.

18 Q. Mr. Rogers had re ---

19 A. Yes.

20 Q. --- cently moved in?

21 A. Um-hum.

22 Q. And Mr. Ryan did not live there or did not live in that
23 general area?

24 A. I don't think so.

25 Q. Okay. Now but yet your first meeting you you tell us

JACKIE MICHELLE LANCE -- CROSS-EXAMINATION BY MR. ALLEN

1 your first meeting with both Mr. Rogers and Mr. Ryan was
2 earlier that day, the day of ---

3 A. Yes.

4 Q. --- the fight, ---

5 A. Uh-huh (affirmative), ---

6 Q. --- right?

7 A. --- yes, sir.

8 Q. When you met with them or saw them, you did not see Tonya
9 with them.

10 A. The first time I seen him?

11 Q. The first time you saw him.

12 A. The first time I seen him I didn't see John period. I
13 just seen him, he was on his porch.

14 Q. He was on the porch?

15 A. On the porch.

16 Q. Okay, and you were ---

17 A. Yeah.

18 Q. --- walking by?

19 A. Yes.

20 Q. Okay, from your sister's back to your ---

21 A. Right, ---

22 Q. --- own ---

23 A. --- yes.

24 Q. --- home?

25 A. Um-hum.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Okay. He called out to you? Mr. Rogers called out to
2 you?

3 A. No, I mean, we like, we exchanged waves at first because
4 the guy that lived across the street I think his name was Kyle
5 he had been over to his yard or sumtin', he was walkin' back
6 and I -- me and Kyle were talkin', I guess he just walked past
7 me and then I was, I was gripin' 'cuz my phone was dead, I was
8 like, Darn, I'm gonna have to walk home which I did it often.
9 but it was really hot that day so and he was li ---

10 Q. It was hot that what?

11 A. It was hot that day so my phone was dead, I didn't wanna
12 walk home, I was just gonna call Jessica, my baby sister, live
13 beside me come get me and he let me use his phone.

14 Q. Okay, and then he gave you a cigarette I believe you
15 said, is ---

16 A. No.

17 Q. that right? Oh, I got that wrong? Okay. But you
18 started talking to him?

19 A. We spoke for a brief minute.

20 Q. Okay. And John was there as well?

21 A. I did not see John, no, not at this time.

22 Q. So he was not there at that ---

23 A. No.

24 Q. Did you go in the home that time?

25 A. No.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Okay, so this was just outside ---

2 A. Yes.

3 Q. --- around the porch.

4 A. Uh-huh.

5 Q. Okay. This is the front porch, correct, ---

6 A. Yes.

7 Q. --- the porch that faces Carolina Drive Extension?

8 A. Right.

9 Q. Now and you're telling us that you did not know
10 Mr. Rogers before you saw him on the porch that day, the day
11 of the fight?

12 A. Correct.

13 Q. You did not know him through a mutual friend that day.

14 A. No, sir.

15 Q. Okay. You're saying now that you did not know John Ryan
16 that day, is that correct?

17 A. I had met them both that day, that is correct.

18 Q. You did not know either one of them through a mutual
19 friend before.

20 A. No.

21 Q. Do you recall talking to the police on the morning of the
22 following day November 13th?

23 A. Yes, sir, I do remember talking to police.

24 Q. Do you remember telling the police that you were walking
25 on Carolina Drive and you saw Mike and John at Mike's house, I

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 know them through a, I know them a little through a mutual
2 friend?

3 A. I did not write that statement, I was given my words.

4 No, that was -- I said somethin' similar to that but no, that
5 was not it.

6 Q. Okay.

7 A. The only time that I had met them through a mutual friend
8 was Tonya and that was later on that evening after I had done
9 met him.

10 Q. Okay.

11 A. I did not see John at all when I first met Mike.

12 Q. Just wanna make sure I get this right. I'm gonna show
13 you a copy of a document.

14 A. You sure can.

15 Q. Is this a copy ---

16 A. This is not ---

17 Q. --- of your ---

18 A. --- I don't even know. I did not read this or I signed
19 it, yeah.

20 Q. You you signed it?

21 A. Yeah, but -- yeah, that's my signature but that's not my
22 handwritin'.

23 Q. Okay. It's not your handwriting.

24 A. No.

25 Q. --- but you talked to the police, correct?

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes, sir.

2 Q. You gave them a statement that day, correct?

3 A. Yes, sir.

4 Q. And they wrote it down as you were giving it to them,
5 correct?

6 A. I would imagine. I was upset and cryin' when I figured
7 out ---

8 Q. Okay.

9 A. --- one had been killed.

10 Q. Okay. And you signed this indicating that you've read
11 the statement and you swear that it -- that the statement you
12 gave was the truth, the whole truth and nothing but the truth,
13 is that correct?

14 A. Yeah, I signed it.

15 Q. Indicating that you had a chance to review it?

16 A. I didn't even read it.

17 Q. Okay. Do -- just correct me if I'm wrong, does it say
18 the first two lines, "Yesterday I was walking on Carolina
19 Drive and I saw Mike and John at Mike's house. I know them a
20 little through a mutual friend"?

21 A. That's what it says but it also says I used his phone.

22 Q. Yes, ma'am, it does say other things, ---

23 A. Um-hum.

24 Q. --- right?

25 A. Yeah.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. But it's your testimony today -- is this Officer Gary
2 that you were speaking with then?

3 A. I do not know. I mean, this has been a while back. I
4 remember talking to police officers but I don't know their
5 names.

6 Q. An investigators that came to your house?

7 A. I don't know his name either. I was very upset. I was
8 cryin'. I mean, I didn't -- I did not know that nobody was
9 hurt. I just kept cryin' and tellin' him that 'cuz my uncle
10 was a supervisor at Spartanburg County and a police officer as
11 well and I just kept cryin', said I know -- I knew anything
12 like that I would have called the police myself as I was
13 leaving. I had no clue that they were gonna get hurt.

14 Q. Now when you were giving this statement to the police you
15 did not know anybody was hurt, is that correct?

16 A. I knew somethin' was wrong but no, they just kept telling
17 me one was in the hospital. They didn't te -- they told me
18 that John's in the hospital but they they wouldn't tell me the
19 extent of it, no.

20 Q. And that was enough to upset you?

21 A. Yes, that was enough to upset me because of what I saw
22 the night before. I mean, I set there and watch this man beat
23 a man that could hardly walk.

24 Q. But you did not know who was in the hospital.

25 A. Yes, I knew who was in the hospital, I didn't know what

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 the extent of his damages were. I did not know he was in the
2 morgue; I knew he was in the hospital.

3 Q. Alright. Now and it was after you borrowed Mr. Rogers'
4 telephone that he gave you a ride?

5 A. I mean, I can't remember exa -- in direct order but yes
6 he gave me a ride.

7 Q. Okay. He and John together or just ---

8 A. Yes.

9 Q. Okay. And it's your testimony that this point you still
10 did not know that Mr. Rogers knew Tonya Lowery, is that
11 correct?

12 A. No, he -- I -- Tonya walked up like right after I fi --
13 finished talking to him the first time she walked up in his
14 yard and then that's when you could tell that they were a
15 couple.

16 Q. Okay.

17 A. You could -- I mean, you seen them together.

18 Q. So before he gave you a ride is when Tonya walked up in
19 the yard.

20 A. I don't know. I'm trying to recall every little detail
21 of what happened that evenin'. I don't know, maybe she didn't
22 walk up then. I mean, maybe sh -- I, 'cuz I remember her
23 walkin' up later on that evenin'. Maybe he told me that's
24 what it was but I -- maybe he mentioned Tonya or somethin'
25 because I don't -- I knew she was with him.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. You -- you've forgotten right now what order it occurred,
2 right?

3 A. Right, ---

4 Q. Okay.

5 A. --- I forgot what that order that occurred.

6 Q. Alright.

7 A. Like I said, some things I remember daily, you know, I
8 mean, it's been a while but there's things that I remember
9 exact detail.

10 Q. Okay. Let's talk a little bit about I believe you were
11 talking about that you later that day returned to Mike's
12 trailer, Mike's mobile home, correct?

13 A. Right.

14 Q. And this would have been in the evening, right?

15 A. Correct.

16 Q. Do you know what time?

17 A. No, sir.

18 Q. Do you know approximately what time?

19 A. Um, maybe a little before -- right at dark maybe.

20 Q. Right at dark?

21 A. Yes, 'cuz I remember it bein' almost completely dark when
22 I finally got outta the truck and knocked on the door.

23 Q. Okay. This, let's see, this was in November 12th, is
24 that right?

25 A. Like I told him, I don't remember the date.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Would this be around 5:30, 6:00, 7 or do you just ---

2 A. Yeah, ---

3 Q. --- you do not know?

4 A. --- somewhere around in there.

5 Q. Okay. Now this time you went in the ---

6 A. Yes, I did.

7 Q. --- home. And this time you saw both Mr. Rogers and
8 Mr. Ryan, correct?

9 A. Yes, sir.

10 Q. They were both drinkin'.

11 A. Yes, sir.

12 Q. You say you saw Mr. Ryan taking some of his prescription
13 nerve pills?

14 A. I saw them both taking his ---

15 Q. Okay, ---

16 A. --- prescription ---

17 Q. --- both, ---

18 A. --- nerve pills.

19 Q. --- Mr. Ryan too.

20 A. Yes.

21 Q. And did you see the pill bottle?

22 A. Did I see the pill bottle? Yes, I did. It was a
23 prescription bottle. I did not see whose name was on it,
24 no.

25 Q. You did not see whose name was on it, you did not see ---

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

- 1 A. But John said they were his.
- 2 Q. But John said they -- those were his.
- 3 A. Yes, and then he also had some kinda pills on him too. I
- 4 don't know what those were ---
- 5 Q. Okay.
- 6 A. --- but he was also takin' other medication also.
- 7 Q. Alright. Now you said that John was taking this
- 8 prescription nerve pill. You didn't see the name of the nerve
- 9 pills?
- 10 A. He told me it was Klonopins is what he said.
- 11 Q. Klonopins?
- 12 A. That's what they said.
- 13 Q. Alright. Now he took more than one? John?
- 14 A. No, I don't know how many he took, no I cannot say that.
- 15 I just saw them takin' the pills.
- 16 Q. But he took more than one?
- 17 A. I don't know what he took; I just seen him get somethin'
- 18 outta the bottle and put it in his mouth. I don't know what I
- 19 mean it was, I just know it was that pill.
- 20 Q. You saw Mr. Ryan take pills look like from the bottle,
- 21 put it in his mouth more than one time while you were there?
- 22 A. That I didn't pay attention; I only saw them once that I
- 23 can recall.
- 24 Q. And he ---
- 25 A. And he ---

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. --- was ---

2 A. --- just stuck his hand down in his bottle and he got it
3 out and I did not see -- I mean, just put it in his mouth. I
4 don't know if there's more than one, I don't know that.

5 Q. Okay. You don't know how many times he did that.

6 A. No.

7 Q. Okay. Do ya know -- do ya have any idea -- do you know
8 about what time it was that he took ---

9 A. No.

10 Q. --- those pills?

11 A. No.

12 Q. Now after you were there for a while you testified that
13 you saw John put his arm around Tonya?

14 A. He put his like his arm right here (indicating) like on
15 her shoulder right here (indicating).

16 Q. Okay.

17 A. Not around her. He like leaned on her like this
18 (demonstrating).

19 Q. Would it be fair to say it was his left arm on her right
20 shoulder?

21 A. No, it was his right arm on her left shoulder.

22 Q. Okay, ---

23 A. 'Cuz ---

24 Q. --- his right arm, that's right ---

25 A. Yeah, ---

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1 Q. I'm sorry.

2 A. --- 'cuz she was on this (indicating) side of him, she
3 was on the, she was on the right of him.

4 Q. She was on his right?

5 A. Um-hum.

6 Q. Okay. Now ---

7 A. If I remember correctly, yes.

8 Q. And he did this about -- well first before I get to that
9 when you got into the mobile home that night, you know, when
10 you're seeing the drinking ---

11 A. Right.

12 Q. --- and the pills taken, ---

13 A. Yes, sir.

14 Q. --- was was Tonya already there?

15 A. No, she walked up. Well I think she was there at this
16 point in time yes, but at at first no, she wasn't. She walked
17 and up and wanted a cigarette.

18 Q. Now and of course when she got there she stayed there,
19 correct?

20 A. Yes, she did.

21 Q. Okay. Now when you saw John put his arm on Tonya, you
22 describe it as that he put his arm around Tonya?

23 A. No.

24 Q. You never described it as you you put his arm around
25 Tonya?

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 A. No, um, he leaned on her. I mean, he he put his arm on
2 her yes but I wouldn't say ---

3 Q. And ---

4 A. --- it was not a sexual way I'll just say that.

5 Q. Okay.

6 A. He just leaned, he put his arm on her yes but it wasn't
7 sexual.

8 Q. And he ---

9 A. It looked like to me like he was tryin' to hold hisself
10 up.

11 Q. And John did this this after ya'll had been there about
12 twenty minutes, that be fair to say?

13 A. It wasn't long, yes.

14 Q. About twenty minutes. But you never describe that he put
15 his arm around Tonya.

16 A. Like around her body, no.

17 Q. Just around Tonya.

18 A. Well I mean, yeah, I mean, I could say yes. I mean,
19 we'll say he put it around her but he just like put it on her.
20 Around her like this (demonstrating), no.

21 Q. And Tonya told him to take it off, that she does not play
22 like that.

23 A. That was her exact words.

24 Q. Okay. Now and of course that's when you indicated you
25 saw Mike get upset.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

- 1 A. Right.
- 2 Q. And that's when they had a fight, ---
- 3 A. Yes, sir.
- 4 Q. --- is that correct?
- 5 A. Um-hum.
- 6 Q. Okay. You were yelling for Mike to stop?
- 7 A. Yes, sir.
- 8 Q. Tonya ---
- 9 A. I mean, the first fight no, I mean, it it happened so
- 10 fast you really couldn't yell anything. The ---
- 11 Q. Okay.
- 12 A. John landed against the stereo and that's when his head
- 13 had bounced off the stereo and then that's when they were all
- 14 yellin' stop because that's when it really become like
- 15 obsessive. He continued to jump on him after he was down.
- 16 Q. Alright.
- 17 A. And then that's when Tonya grabbed him by the back of his
- 18 pants and we tried to separate 'em ---
- 19 Q. Now you and ---
- 20 A. --- and I succeeded, ---
- 21 Q. --- and ---
- 22 A. --- they separated.
- 23 Q. --- but you got Mike, you and Tonya got -- would it be
- 24 fair to say that you and Tonya got Mike off of John?
- 25 A. Well I would say I think it be fair to say that Tonya got

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Mike offa John. I never touched him. He scared me. I did
2 not touch that man.

3 Q. Okay, and you got them on their feet. You and Tonya got
4 them on their feet?

5 A. They got to their own feet.

6 Q. Okay, they both got to their feet?

7 A. Yes.

8 Q. And that was when John kicked Mike between the legs?

9 A. Right.

10 Q. Okay. And Mike put -- threw John back to the floor?

11 A. Yeah, he jumped on him again.

12 Q. Okay, and they were fighting again?

13 A. Yes.

14 Q. They were both fighting again?

15 A. Both fightin' I wouldn't say that. I mean, he was just
16 beatin' him up. He couldn't really fight him back too much.
17 The only lick that I saw John throw through the whole fight
18 was that kick.

19 Q. That was the only ---

20 A. Yes, that was the only one I saw total 'cuz he was so, he
21 was so slow reactin' and everything. I mean, even when he put
22 his arm on Tonya he was just like a slug, just really slow.

23 Q. Okay.

24 A. He was very intoxicated. Maybe it was the medication and
25 the drinkin' I'm not quite sure but he was very, very

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1 intoxicated.

2 Q. So you did not see John hit Mike in the face in the, in
3 the mouth?

4 A. No, I didn't see that.

5 Q. Okay.

6 A. Uh-uh (negative).

7 Q. Now after that you and Tonya again got them away from
8 each other.

9 A. Yes.

10 Q. Tonya took Mike to the bedroom?

11 A. They went down the hallway. I'd not been down that
12 hallway, that's the first time I'd ever been there so I mean,
13 I don't know where they went from there, I couldn't see.

14 Q. Okay, so they went down the hallway.

15 A. Right, and I was stayed checking on John. Like I said, I
16 picked his glasses up, gave 'em back to him tryin' to make
17 sure he was alright.

18 Q. And of course where this fight was going on was in the,
19 uh, ---

20 A. Living room area, ---

21 Q. --- living room.

22 A. --- yes.

23 Q. Yeah, near the stereo and the sofa, right? Near the
24 stereo?

25 A. Well the stereo was actually on one side of the room up

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1 against the wall ---

2 Q. Um-hum.

3 A. --- and the sofa was on the other side a the room ---

4 Q. Okay.

5 A. --- so they were kinda just like fightin' in the middle a
6 the floor there for a while.

7 Q. And it was after this point that you decided to leave,
8 right?

9 A. They had got in three fights and I left, it was that or
10 the third one I -- the second one I knew I was leaving but
11 they were fightin' all in the floor, I didn't try to go
12 towards the back at all. I mean, ---

13 Q. But help me understand. When Tonya and Mike went down
14 the hallway ---

15 A. Um-hum.

16 Q. --- and you got John and helped him to the couch, ---

17 A. Right.

18 Q. --- help me with the numbers. Are we talkin' about was
19 that after the second fight or the third fight the way you ---

20 A. That was ---

21 Q. --- remember?

22 A. --- the second fight.

23 Q. That's the second fight.

24 A. I believe so. I don't know. I mean, I don't -- he got
25 on the couch twice. I I helped him to the couch twice. I

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1 picked his glasses up and handed 'em while he was sittin' on
2 the couch twice. It all happened really fast.

3 Q. Right. And you told John that you had to get outta
4 there ---

5 A. Yes.

6 Q. --- and he gave you his keys.

7 A. Well it -- we were all in the same room when that
8 happened. E -- they were all in the same room with us.

9 Q. Did John ---

10 A. He he threw ---

11 Q. --- hand you ---

12 A. --- me ---

13 Q. --- his keys?

14 A. --- his keys, yes.

15 Q. He handed you the keys?

16 A. Yes.

17 Q. And you went home.

18 A. Yes.

19 Q. Took you just a couple a minutes or so to get there.

20 A. Right.

21 Q. Now you left at about -- let's see, you arrived there
22 somewhere between 5:30 and 7 or so?

23 A. That's correct.

24 Q. You were there about twenty minutes before John put his
25 arm on or around Tonya?

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1 A. Yes.

2 Q. And these, as you're calling them "three fights" occurred
3 very quickly?

4 A. Yes.

5 Q. A matter of just a few minutes?

6 A. I mean, yeah.

7 Q. Okay.

8 A. I I don't like people fightin' like that around me
9 especially men I do not know so yeah, it happened really
10 quick.

11 Q. Okay. And you got home let's say around eight o'clock,
12 would that be fair or was it before eight?

13 A. I don't know what time it was when I got home.

14 Q. Okay. Well ---

15 A. I said when I ---

16 Q. --- would it be fair to say ---

17 A. --- come in the door the only thing I kept doin' was
18 tellin' my roommate what had happened.

19 Q. Okay. Who's your roommate?

20 A. His name is Bobby Crisp.

21 Q. I'm sorry?

22 A. Bobby Crisp is his name.

23 Q. Bobby Crisp?

24 A. Crisp, yes.

25 Q. Okay. Now but you -- would it be fair to say you got

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 home somewhere around eight o'clock?

2 A. I don't know what time it was.

3 Q. Okay. You stayed home how long? ten minutes?

4 A. If that, ---

5 Q. Okay.

6 A. --- give or take a few.

7 Q. Not even ten minutes.

8 A. I said give or take a few. I don't know exactly how long
9 I sit there. It was not a long time, no.

10 Q. Okay. What's the -- okay. I'm not trying to trick you,
11 I just wanna know ---

12 A. I mean, you ---

13 Q. --- your best estimation ---

14 A. --- can't trick me I know ---

15 Q. --- of time that ---

16 A. --- when I left.

17 Q. --- you stayed home, how long was that?

18 A. I don't know. Like I said, it may be just minutes. I
19 sit there, I smoked me a cigarette, I talked to my my roommate
20 and I told him what was goin' on and I told him I was takin'
21 John's truck back.

22 Q. Okay.

23 A. It wasn't long.

24 Q. Okay, so it was not half an hour.

25 A. No.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Okay.

2 A. No, it was definitely not a half an hour.

3 Q. Not a half an hour. And you went straight back to
4 Mike's ---

5 A. Yes.

6 Q. --- home.

7 A. Um-hum.

8 Q. Took you just a couple minutes to get there again.

9 A. Right.

10 Q. You were in the truck.

11 A. Yes, I was.

12 Q. Would it be fair to say that you got back to the home
13 before nine o'clock?

14 A. There again I do not know what time it was. I mean, you
15 can sit there and guesstimate the time all you'd like, I mean,
16 I don't remember what time it was, period.

17 Q. Alright. You don't remember what ---

18 A. Sorry.

19 Q. --- time it was. But you are positive that you got,
20 before the fight that you got back to Mike's home right around
21 dark, you're sure of that?

22 A. Almost positive.

23 Q. Around the time that -- and you were only there for about
24 twenty minutes before the fight broke out give or take a
25 minute or two.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

- 1 A. Well, I mean, yeah, I wasn't there long, no.
- 2 Q. Okay. The fight lasted only a few ---
- 3 A. I mean, I'm ---
- 4 Q. --- minutes.
- 5 A. --- not gonna say directly twenty minutes I was sittin'
- 6 there but it was, it was not long.
- 7 Q. Okay, not long, not not a half an hour, not hours.
- 8 A. I'm not sure, it's been a while. All I know is I was
- 9 sittin' there and they went crazy.
- 10 Q. Well you told the officers that you were there about
- 11 twenty minutes before John put his arm around Tonya,
- 12 correct?
- 13 A. I don't know. I don't remember.
- 14 Q. Okay, ---
- 15 A. It's been a while.
- 16 Q. --- it's been a while. Let's ---
- 17 A. Please.
- 18 Q. Okay, is this (indicating) a copy of Page 2 of your
- 19 statement?
- 20 A. I don't know if that's the page. I mean, can ---
- 21 Q. You may see Page 1 and Page 3 if you'd like.
- 22 A. Please.
- 23 Q. This (indicating) is Page 1, Page 3. Is this your copy
- 24 of your statement, your signature's on it?
- 25 A. My signature's are on them, yes.

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1 Q. On each page? Okay, on Page 2, this is Page 1 if I
2 may ---

3 A. Can I read, please?

4 Q. Okay.

5 A. Thank you.

6 (Whereupon, the witnesses examined the document.)

7 What about Page 2?

8 Q. Okay, Page 2.

9 A. Yes.

10 Q. Of course you gave the statement when your mind was
11 clear.

12 A. No, my mind was ---

13 Q. I'm sorry?

14 A. My mind was I didn't know what to think.

15 Q. Okay.

16 THE COURT: Use that microphone and and, Mr. Allen, let
17 me ask you not to stand in between the court reporter and the
18 witness and don't have her turn towards us because then the
19 jury can't hear what she has to say.

20 MS. LANCE: Okay.

21 MR. ALLEN: Yes, Your Honor, let me make one reference
22 here.

23 MS. LANCE: At the time I gave this statement my nerves
24 were very bad. I know they had been fightin' that night, I
25 did not know what had happened. I knew that one of 'em was in

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 the -- that John was in the hospital, I knew that part ---
2 BY MR. ALLEN:

3 Q. When you ---

4 A. --- and I know what I saw with my own eyes the night
5 before and it was this (indicating) man beat this man that
6 could barely walk ---

7 Q. Now ---

8 A. --- several times.

9 Q. --- now when you were giving your statement of course you
10 understood the police were interested in what you saw,
11 correct?

12 A. Yes, they were very interested.

13 Q. You were trying to give them truthful information.

14 A. I was trying my best, yes, I was.

15 Q. You were gonna them accurate information.

16 A. Yes, I was.

17 Q. You wouldn't have told 'em anything that you did not
18 think was accurate, would you?

19 A. No, I wouldn't have.

20 Q. If you were not sure of something, you wouldn't let 'em
21 put it down on a statement, would you?

22 A. But like I said, sir, I never even seen a copy of the
23 statement. I mean, I may have seen it but I did not read it.
24 I don't even remember, I barely remember signin' it.

25 Q. Now you barely remember signing it, ---

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. --- now but on the fourth line from the top of that
3 second page, Page 2 of 3, doesn't it say that you were there
4 for about twenty minutes before ---

5 A. It does. It says I can't hardly read their writin',
6 Tonya was there when we got there, he had only been there for
7 about twenty minutes and John put his arm around Tonya.

8 Q. Okay. Thank you.

9 A. Yeah.

10 Q. You were sure of that time at that point, correct?

11 A. If I said it I musta been.

12 Q. If you said it you musta been. Thank you. Now -- so
13 after that -- okay, you know -- again, there was this flight
14 [sic] for a few minutes or these fights for a few minutes.

15 A. What was that? I'm sorry?

16 Q. After he put his arm around Tonya, there were these
17 fights for a few minutes, correct?

18 A. I, mean, yeah a few minutes or they weren't just a few
19 minutes, the fights were pretty heavy. They -- the first one,
20 I mean, like I said that lasted a minute because he knocked
21 him into the stereo ---

22 Q. Alright.

23 A. --- and that's where we jumped up try to separate 'em.

24 Q. Um-hum. And then the other fight lasted how long?

25 A. A little bit longer than the first one.

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Minute and a half? two minutes?

2 A. Couldn't tell you. All I know is they were fightin'. I
3 was, I was more worried about watching his face and his head
4 bounce off the carpet in front of me.

5 Q. Okay, ---

6 A. I tried to put my arm in between to make him stop hittin'
7 him. I didn't care about all other stuff, I just wanted him
8 to stop.

9 Q. The point I'm trying to get at, Ms. Lance, is from the
10 time that John put his arm around Tonya to the time you
11 left ---

12 A. Right.

13 Q. --- was only a few minutes, is that correct?

14 A. From the time he put his arm around Tonya from the time I
15 left?

16 Q. Right.

17 A. I mean, no. I mean, they had time to to fight it out the
18 first time and like I said, he slammed the stereo and then we
19 got -- both got back to their feet, the kick was exchanged, he
20 jumped on him again, took him back to the floor and there like
21 I said, he was on top of him, he just kept hittin' him. I
22 can't tell you how many times he hit him or for how long.

23 Q. Okay.

24 A. I put it to ya this way: He hit him so long and so many
25 times I actually sacrificed my own arm for a man I barely even

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 knew ---

2 Q. Okay.

3 A. --- just so he would stop.

4 Q. But it did not last for ---

5 A. And when he hit me ---

6 Q. --- half an hour.

7 A. --- he still did not stop.

8 Q. But it did not last for half an hour, did it?

9 A. I'm sure it didn't but ---

10 Q. Okay.

11 A. --- I don't know how, exactly how long it last but I
12 don't.

13 Q. And then you went home.

14 A. No, there was another fight before I went home.

15 Q. That didn't last for just a few minutes, is that
16 correct?

17 A. Except they were fightin'.

18 Q. And after that you left and went home, took about a
19 minute or two ---

20 A. Yeah.

21 Q. --- and you came back ten minutes later.

22 A. I came back minutes later. I don't -- I'm not gonna say
23 ten minutes, no.

24 Q. Okay.

25 A. I mean, I can't sit here and put a time on anything 'cuz

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 if I did I would be lyin' as far as my -- hello, if I sat
2 there five minutes, ten minutes, I mean, I can tell you it was
3 minutes. I can't tell you if it was five or ten or fifteen
4 not in time, no.

5 Q. Okay.

6 A. All I can tell ya is I, what I did when I got there: I
7 smoked a cigarette, I talked to Bobby, I told him what was
8 goin' on and told him what I was doin' with the truck and then
9 I said, Gosh, I oughta take it back and that's when the police
10 were everywhere.

11 Q. Alright. Now let me go back to when you entered the
12 trailer when you saw them drinking and as you testified takin'
13 pills.

14 A. Right.

15 Q. You went of course into the house, is that correct, you
16 went in ---

17 A. Yes, sir.

18 Q. --- through the front door?

19 A. Yes, sir.

20 Q. That comes into the living room.

21 A. Uh-huh (affirmative).

22 Q. And then they were sitting or that ya'll were sitting
23 around the table?

24 A. Yes.

25 Q. This would be the dining room or the dining table?

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 A. The kitchen table.

2 Q. The kitchen table, it's a ---

3 A. Right.

4 Q. --- round wooden table?

5 A. It was a wooden table.

6 Q. Okay. And it was clean, correct?

7 A. I mean, it had -- yeah, I mean, the part where I was
8 sittin' on, I mean, I had my arms all acrossed it had and they
9 were -- that's where their drinks and stuff were so yeah, that
10 area was clean.

11 Q. Okay. It didn't have books on it.

12 A. Not that I saw. I wasn't payin' attention to that.

13 Q. I'm sorry?

14 A. It's not that I saw and I wasn't really payin' attention
15 not to that. Like I said, they -- that's when they had the
16 big bottle a liquor and little shot glass or whatever. I was
17 more, at that moment I was more concerned about them drinkin'
18 after each other and tryin' to give me a drink. I remember
19 that distinctly.

20 Q. Okay.

21 MR. ALLEN: One second please, Your Honor.

22 MS. LANCE: I mean, as a matter of fact, Mike al -- he
23 actually handed me a shot glass with sumtin' to drink in it
24 and then I I started drink with 'em and then sumtin' just told
25 me not to and I'm so glad and then I was like, Nah, I don't

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 wanna and he had a mixed drink or whatever and I was like you
2 want me to dump it in there and he's like, I don't care so I
3 just dumped it in his drink right in front of him, he saw it,
4 it wasn't like a sneak or nothin' like that.

5 BY MR. ALLEN:

6 Q. When you go into a house, don't you take notice of things
7 around you?

8 A. Yes.

9 Q. Okay. But and you noticed at the table there was not,
10 other than some glasses and salt and pepper shaker and napkin
11 holder or something, there was not a lotta stuff on the table,
12 was there?

13 A. Not to my knowledge, no, ---

14 Q. You didn't see any mail on the table.

15 A. Not that I can recall.

16 Q. You didn't see any books on the table?

17 A. Not that I can recall, no, but the chair I was sittin' in
18 wasn't really, I mean, it was at the table but I was facin'
19 like this (demonstrating). Here (indicating) was the table so
20 I was facin' the guys, they were drinkin', here's (indicating)
21 their drinks and stuff in front of me on the table, that's
22 beside me on the table so I was facin' ---

23 Q. Is it true ---

24 A. --- that area.

25 Q. --- isn't it true that the only thing you saw on the

JACKIE MICHELLE LANCE - CROSS-EXAMINATION BY MR. ALLEN

1 table were a little napkin holder dispenser thing, bottle of
2 liquor and a couple a shot glasses.

3 A. That is all I remember seeing on the table yes, sir.

4 Q. That's all you saw on the table?

5 A. That's all remember seein' yes, sir.

6 Q. And you would've noticed if there was several books, mail
7 and other items of that sort on the table, wouldn't you?

8 A. I mean, not necessarily. I wasn't payin' attention.
9 Like I said, I -- we were all just carryin' on a conversation.
10 I was facin' them and, I mean, what was on the table didn't
11 really seem like a big deal to me.

12 Q. Isn't the first thing you do when you walk into any room
13 is that you look around to see what I see or to see what you
14 see ---

15 A. Well yes, it is. I look around; if there's nothin' that
16 can harm me there then I don't, I mean, I don't feel that it's
17 it's necessary to -- as long as I don't see anything that can
18 hurt me or harm me physically no, I don't really, I don't
19 really study people's mail ---

20 Q. Alright.

21 A. --- or books.

22 Q. About this liquor bottle that you saw on the table do you
23 know what size that was ---

24 A. It was a pretty good size bottle. I'm not sure -- no, I
25 don't know what you would call it as far as people drinkin'

JACKIE MICHELLE LANCE - REDIRECT EXAMINATION BY MR. FULMER

1 every day goes but it was in a little bottle, no.

2 Q. It was not in a ---

3 A. It wasn't a little bottle.

4 Q. Can you show with your hands as ---

5 A. I mean, / ---

6 Q. --- what you ---

7 A. --- about like that (indicating).

8 Q. Okay, now wait a second there. I'm gonna try to describe
9 it for the -- do it again, please.

10 A. Like about like this (indicating).

11 Q. The bottle was, looks like it's more than a foot long, is
12 that correct?

13 A. I mean, a foot long? I not sure of that. All I know is
14 it was a good size bottle a liquor. It was not one of the
15 little small ones that are like little mini-bottles or the
16 little pints or what you'd call 'em, it was a bigger bottle.

17 Q. Okay, it was a bigger bottle and not a little pint
18 bottle.

19 A. No, I didn't see no little bottles.

20 MR. ALLEN: Nothing further, Your Honor.

21 THE COURT: Mr. Fulmer, do you have anything?

22 MR. FULMER: Just one question, Your Honor.

23 REDIRECT EXAMINATION BY MR. FULMER:

24 Q. When you in your statement said that you knew them
25 through a mutual friend, speaking of John and Mike, you you

JACKIE MICHELLE LANCE - REDIRECT EXAMINATION BY MR. FULMER

1 were giving that statement the next day, right?

2 A. Yes.

3 Q. So at that point you did know them through a mutual ---

4 A. Right, ---

5 Q. --- friend from the previous ---

6 A. --- which was Tonya, yes.

7 Q. Okay. Thank you.

8 THE COURT: You may step down.

9 MS. LANCE: Thank you.

10 (Whereupon, the witness left the stand.)

11 THE COURT: Ladies and gentlemen, we're gonna recess for
12 the afternoon so you're gonna be excused now for the evening,
13 let me caution you however, let me caution you however that
14 during the overnight recess you're not to talk about the case
15 with anybody, you can't discuss it in any fashion whatsoever
16 with any person whatsoever, you can't even discuss it among
17 yourselves until you're instructed to begin jury deliberation
18 so don't talk about the case over night, don't talk about it
19 when you come back in the morning, also don't allow yourselves
20 to be exposed to any type of media coverage should there be
21 some. If there be somethin' on the television, radio or
22 newspaper avoid it, ignore it, do not look at it, listen to it
23 or read it, okay, also don't conduct any research or do your
24 own investigation into any issue that might arise during the
25 trial. You have to base your decision over which -- upon

MOTIONS AND MATTERS

1 which you see and hear during the trial, you can't supplement
2 that knowledge by consulting outside resources, with that do
3 have a good evening and please report to your jury room at
4 9:30 in the morning, 9:30 in the morning.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Alright, court is in recess until 9:30 in the
8 mornin'.

9 (Proceedings October 5, 2011)

10 THE COURT: May I see ya'll just a minute, please.

11 (Whereupon, a bench conference was held off the record.)

12 MR. FULMER: Judge, what juror number was that?

13 THE COURT: The sick one?

14 MR. FULMER: Yes.

15 THE COURT: 124.

16 MR. FULMER: Thank you.

17 MR. ALLEN: If we may approach.

18 THE COURT: Um-hum.

19 (Whereupon, a bench conference was held off the record.)

20 THE COURT: Alright. The Court has been informed that
21 one of the jurors, Juror 124, called in this morning, she's
22 ill and unable to continue to serve as a juror. I have
23 provided that information to the lawyers and I understand that
24 the lawyers are in agreement that the first alternate juror
25 that was selected will become the twelfth juror.

MOTIONS AND MATTERS

1 MR. FULMER: Yes, sir, Your Honor.

2 MR. ALLEN: Yes, Your Honor. I I also discussed that
3 proposal with my client, explained to him the alternatives and
4 he agrees to take the first alternate juror drawn as the
5 twelfth juror.

6 THE COURT: Alright, that's Ms. Prysock, Juror 130.

7 MR. ALLEN: Yes.

8 THE COURT: Alright, bring the jury in and Ms. Prysock
9 will be taking the twelfth juror's place.

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

11 THE COURT: Good morning, ladies and gentlemen.

12 THE JURY: Good morning.

13 THE COURT: During the overnight recess, one of your
14 fellow jurors had an illness and so she will be unable to
15 continue as a juror today and that of course is why we select
16 alternate jurors and, Ms. Prysock, you're gonna be taking that
17 juror's place, you are now the twelfth juror and so you will
18 participate throughout the trial including the jury
19 deliberations and, Mr. Browning, you will continue to serve as
20 an alternate and of course you'll become the twelfth if any
21 other juror becomes ill or unable to continue. As you know
22 when we recessed yesterday the State was in the midst of their
23 presentation of evidence so we'll continue with that
24 presentation this morning. Mr. Fulmer.

25 MR. FULMER: Thank you, Judge. The State calls Tonya

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 Lowery.

2 TONYA LOWERY, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. FULMER:

5 Q. State your name for the record.

6 A. Tonya Lowery.

7 Q. Ms. Lowery, where do you live?

8 A. At [REDACTED].

9 Q. How long have you lived there?

10 A. About a year and a half.

11 Q. Prior to that where did you live?

12 A. I lived on Fortune Road for some time, about eleven
13 years.

14 Q. How far is Fortune Road from Horton Drive?

15 A. Just about a block, like a block.

16 Q. Walking distance?

17 A. Um-hum.

18 Q. Do you know where [REDACTED] is?

19 A. Yes, I do.

20 Q. Where is that?

21 A. It's about four houses down from me on the next street
22 over.

23 Q. Is that also within walking distance of where where you
24 live?

25 A. Yes.

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

- 1 Q. Do you know the person that lives at 660 ---
- 2 A. Yes, I ---
- 3 Q. --- Carolina Drive?
- 4 A. --- do.
- 5 Q. Who is that?
- 6 A. Mike Rogers.
- 7 Q. What's your relationship with Michael Rogers?
- 8 A. We were seeing each other. We were just started seeing
- 9 each -- we started out as friends and then we started datin'.
- 10 Q. You had a romantic relationship?
- 11 A. Yes.
- 12 Q. Would you consider yourself his girlfriend?
- 13 A. Yeah.
- 14 Q. How long had you known him?
- 15 A. Since June of last year.
- 16 Q. Do you recall the night of November the 12th 2010?
- 17 A. Yes, I do.
- 18 Q. Do you know John Ryan?
- 19 A. Yes.
- 20 Q. Alright. Who is John Ryan or how do you know John
- 21 Ryan?
- 22 A. He was a frienda mine, I met him in Fair Forest.
- 23 Q. Met him where?
- 24 A. Where he lived. Down the road from where he lived I was
- 25 seein' a friend of mine and he walked up from behind me and

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 tapped me on the shoulder so we just became friends, started
2 talkin'.

3 Q. And when did you meet him?

4 A. Approximately the same amounta time.

5 Q. So June 2010, ---

6 A. Yes.

7 Q. --- July 2010. Did you have a romantic relationship with
8 John?

9 A. No.

10 Q. Did you see John on a regular basis?

11 A. No, I saw him periodically but no, I didn't see him on a
12 regular basis. We were good friends. I talked to him on the
13 phone and stuff seein' how he was doin'.

14 Q. The day before John died, that woulda been November the
15 11th, did you see John that day?

16 A. Yes, I did.

17 Q. Can you tell me about that day when you saw John.

18 A. He had taken my dog to the doctor that day for me and
19 then when we got back I had gone to the restroom and while I
20 was in the restroom he drove over to Mike's house.

21 Q. He left you there and drove to Mike's house?

22 A. Um-hum.

23 Q. Did John know Mike prior to that day?

24 A. Yes, he did.

25 Q. How long ---

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 THE COURT: Let me so ask you to pull that microphone a
2 little bit closer ---

3 MS. LOWERY: Oh, I'm sorry.

4 THE COURT: --- so we can be certain to hear what you
5 have to say.

6 BY MR. FULMER:

7 Q. Do you know how long they had known each other prior to
8 that day?

9 A. Uh, not too long. I'm not sure exactly how long. He had
10 taken Mike to a a Check Advance place or somethin' one day.

11 Q. Did John meet Mike through you?

12 A. Yes.

13 Q. Dur -- during the day of November 11th, were you and John
14 and Mike together?

15 A. Yes.

16 Q. Can you tell me what you were doing.

17 A. They start -- they had started drinking and I was just
18 sittin' there talkin' with 'em that's all I did. I don't
19 drink so...

20 Q. Were you with 'em throughout the day on the 11th?

21 A. Yes.

22 Q. Did you spend the night at Mike's house on on the 11th?

23 A. I stayed till about four o'clock in the mornin'. I
24 didn't spend the night though they stayed up all night. I
25 just left and told 'em I had to go back to the house 'cuz I

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 was gonna, I was gonna see about gettin' my daughter up for
2 school but she was still too sick so I didn't send her.

3 Q. Up until the point you left, were were they both drinking
4 throughout the time that you saw 'em?

5 A. Yes.

6 Q. Alright. When did you next see John again?

7 A. The next afternoon.

8 Q. Can you tell me about that afternoon.

9 A. It was another girl had come over, her name's Jackie and
10 she come over and I don't know what time she had came over but
11 I had called over there, I was wantin' a cigarette 'cuz I was
12 outta cigarettes, and I called over there and he said she was
13 there. He said a friend of mine, Mike did, was over there and
14 I'm like who and he said, I think her name's Jessie, Jessica
15 or somethin', I'm like who and he said and then I heard in the
16 background she said, No, Jackie, and I told him she wasn't a
17 frienda mine, he said well she come to borrow the phone so and
18 then I went over there and I got a cigarette and I -- he
19 wanted me to stay and I told him I couldn't, ya know, I stayed
20 over there day before when my, you know, when my daughter was
21 sick I had to be over there with the daughter so I left. I
22 just stayed long enough to smoke a cigarette and left.

23 Q. And what time a day was this do ya think?

24 A. Around 1:30, 2, I'm not sure exact though.

25 Q. Okay. To your knowledge had had John spent the night at

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 Mike's house?

2 A. Yeah, I -- yeah, yeah. Yeah, he was there at four
3 o'clock in the mornin' when I left; he was still there so I
4 assume he did.

5 Q. At at 1:30 when you were there, was getting a cigarette,
6 were John and Mike drinking at that time?

7 A. I guess I I didn't really pay any attention that time,
8 you know. I I had no idea really. I didn't see any alcoholic
9 beverages out if that's what you're asking. I mean, I wasn't
10 over there long enough to pay any attention. I was just
11 basically in and out at that time. I did tell John that I
12 wanted to call his mom, ya know, and tell him to come get her,
13 ya know, he said no, he he wanted to stay. The way they were
14 talkin' that Jackie liked him and everything he was talkin'
15 about havin' her move in with him and I thought that was a bit
16 quick 'cuz I knew he didn't know her.

17 Q. Now are you referring to what time a day or when did this
18 conversation take place?

19 A. That was when I went to come get the cigarette.

20 Q. During the afternoon.

21 A. Um-hum.

22 Q. Okay. At some point that day, did you return to Mike's
23 house?

24 A. No not that day, no.

25 Q. How 'bout that night?

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 A. That evenin', yeah.

2 Q. Okay. And who was at Mike's house that evening when you
3 returned?

4 A. She was still there and it was Mike and John.

5 Q. Okay. Tell me what what happened when you returned in
6 the evenin'.

7 A. When I returned that evenin' they were drinkin' and stuff
8 and I was tryin' to get a cigarette, ya know, and and they
9 said Jackie had a cigarette but she wouldn't hand me one, she
10 was talkin' to Mike and stuff and she was usin' a cell phone,
11 I don't know who she was talking to, I don't know whose phone
12 it was, it wasn't Mike's 'cuz Mike's was plugged in, his was
13 chargin' over there on the couch, and Mike was on the other
14 side of the bar and I started to talk to him and and John, um,
15 come up from behind, I didn't even know he was behind me, I
16 didn't even hear him and and he had put his arms around me and
17 it startled me and I asked him, you know, take his arms off
18 please and then I remember Mike comin' around and the next
19 thing I know John, I think Mike had shoved John and he was in
20 the stereo and he -- Mike was on top of John at the time and I
21 told Mike, I said, You need to get offa him, you proved your
22 point, ya know, I said and he -- there's no sense in fightin'
23 so Mike got off and and Mike was standin' on the other side
24 and John was standin' beside me at the time then John had
25 kicked Mike between the legs and Mike had just had surgery not

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 too long prior to that and prostate surgery and and they they
2 fought again and then we got 'em separated me and Jackie did
3 and I -- we went in the bathroom, I got him to rinse hisself
4 off and everything and I found some cigarettes. I gave him a
5 cigarette and I told him to calm down, ya know, and then
6 that's when Jackie decided she was gonna take John's truck, ya
7 know, to the store and she got the keys from Mike and and 'cuz
8 Mike was holdin' his keys 'cuz he didn't want him drivin'
9 'cuz he'd been drinkin' and next thing I know John gave her
10 permission and she took the truck and she left and left me
11 with the two of 'em.

12 Q. Okay. Let's go back just a little bit. You said Mike
13 pushed John and he fell into a stereo.

14 A. Um-hum.

15 Q. At that point did a, did a fist fight occur?

16 A. Yeah.

17 Q. Was Mike hitting John?

18 A. They were both hitting each other but, yeah.

19 Q. Was Mike on top of John at that point in time?

20 A. Um-hum.

21 Q. Okay. Did they break up voluntarily or did you get in
22 between 'em or did Jackie get in between 'em?

23 A. No, I just told please get off. I mean, that's all I
24 basically had to do the first time, I mean, and and he did. I
25 don't know why, I mean, and they just, I don't know why they

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 kept fightin', I don't know why. I don't know why they kept
2 doin' it.

3 Q. At that point would you say that that Mike was gettin'
4 the besta John?

5 A. No, not really it was about the same and I don't know
6 how -- I mean, I mean, they both the reason why I say it was
7 both about the same is they both looked bad to each other, to
8 me, ya know, face-wise they they both looked like they got
9 about the same outta each other.

10 Q. Okay. And at some point they both stood up and quit
11 fighting?

12 A. Yeah, I mean, but it was just for a brief moment. I
13 mean, like I say, as soon as it was like once they got on
14 their feet, ya know, John swung, I mean, his leg, ya know,
15 kicked him and and then they started again, I mean, but that
16 second fight it's like it didn't last long, I mean, and they
17 separated but and then then it was the third fight when I was
18 there by myself, ya know, and I ---

19 Q. Well ---

20 A. --- I couldn't ---

21 Q. --- let me stop you right there. After the second fight
22 Jackie was still there at that point, is that right?

23 A. Um-hum.

24 Q. Was anybody bleeding at that point?

25 A. Yeah.

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 Q. Who was bleeding?

2 A. They both were bleedin'.

3 Q. Where?

4 A. In the facial area.

5 Q. Did you take Mike not bathroom at that point?

6 A. Um-hum.

7 Q. Okay, what happened then? What happened in the bathroom?
8 Whadya do?

9 A. He -- I I told him to rinse his face and and his hand and
10 all.

11 Q. His hand was bleeding?

12 A. I -- it had blood on it. I don't know if it -- if he had
13 busted his knuckle or what but there was blood on it.

14 Q. Okay. After you left the bathroom, what happened?

15 A. I handed him a cigarette and and then like I say, Jackie
16 was talkin' about going' to the store and and I told her I
17 didn't think it be a good time to go and she, and she went to
18 the store. She was gonna leave to go to the store and asked
19 if anybody needed anything and she just left.

20 Q. So now you're alone in the trailer with Mike and John?

21 A. (The witness nodded in the affirmative.)

22 Q. Okay. What happened then?

23 A. It wasn't long after she left Mike asked John to leave.
24 He he told him to leave, he told him three times and and I
25 told him, I said, He can't go, she took his truck, and I'm

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 tryin' -- I wanted like, John, you sit here and, Mike, you sit
2 here and then John swung and and then he hit Mike in the face
3 and then I was 'cuz they were standin' and I was right here
4 (indicating) and he's got his table like right here
5 (indicating), his kitchen table and and there's a little
6 hallway right there between the kitchen table and stuff and
7 they were right there where they were fightin' and I I didn't
8 have nowhere else to go but down the hall or I was gonna get
9 hit and I went down the hall and I was upset and I went out
10 the back door and I was upset thinkin' she would come any
11 minute, I said why aint you not -- I couldn't understand why
12 she left and then I went around to the front 'cuz I figured,
13 ya know, I could get in, ya know, the front if they were still
14 in the kitchen fightin', ya know, 'cuz I -- the phone was in
15 there and it had been on a charge, I didn't have a phone of my
16 own and so I go in the front door and that's when I come in
17 the front door Mike was there and he said, Dial 911, I
18 accidentally stabbed him, and John was layin' in the floor and
19 I I I didn't know, I didn't know if he was alive or not when I
20 first come in. When I saw him in the floor and I I started
21 dialin' 911 and he stood up. He stood up and he said -- I
22 told him, I said, John, I said, You need to sit down, you --
23 or you need to lay down or sumtin', I said, you're losin' a
24 lotta blood. He said, No, I'm okay, I'm fine. I said, No,
25 you're not, John. He said, Yeah, I am. I said, No you're

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 not, and I kept, and I kept tellin' the 911 people, I said,
2 You need to hurry and get here, I said, You need to get here
3 fast, I said, He's losin' a lotta blood, and I looked out the
4 door, kept lookin' out the door just listenin' for a siren and
5 I didn't hear it, I didn't hear it.

6 Q. From the time you walked out the back door and you walked
7 around the trailer, came to the front door, is that right?

8 A. (The witness nodded in the affirmative.)

9 Q. How long were you outside?

10 A. I don't know. I mean, it wasn't a long time. I'm not
11 sure exact minutes but it it wasn't a long time.

12 Q. Did ya stop at some point or did you basically walk from
13 the rear of the trailer to the fronta the trailer?

14 A. I I can't remember, I -- it's -- it seems like I I don't
15 know. I know I was upset but I I can't remember. I know I
16 wanted to go home, I wanted to go home 'cuz I couldn't handle
17 the fightin' but I didn't go home, I just, I said I can't
18 leave 'em, you know, fightin' like that and then I went on
19 around and went in the front door but I never knew that I was
20 gonna walk in on sumtin' like that, I've never seen sumtin'
21 like that, I just, I've never witnessed anything.

22 Q. Do you think you were outside more than a minute?

23 A. Yeah, probably I'm sure I was 'cuz it probly take longer
24 than that to walk from the back to the front.

25 Q. While you were outside the trailer could you hear

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 fighting going on inside the trailer?

2 A. I could hear scuffling, yeah, it sounded like scuffling
3 and and I I mean, ---

4 Q. Did you hear any yelling?

5 A. I I don't remember. I don't, I don't remember.

6 Q. When you came around to the front the trailer, was the
7 front door open or closed?

8 A. It was closed, yeah, 'cuz I didn't even know if it was
9 gonna be open or unlocked or locked 'cuz Jackie had gone out
10 of it so I didn't know but it was unlocked.

11 Q. Up until the time that you walked out the back door of
12 the trailer and had you seen anyone with a knife?

13 A. No.

14 Q. Mike didn't have a knife in his hand?

15 A. No, no. I mean, if I -- no, I would not have walked out
16 if I thought somethin' like this was gonna happen. No, I I
17 didn't see any weapon.

18 Q. Did Mike have a knife in his pocket?

19 A. I have no idea. I mean, I I don't know.

20 Q. Did you see John with a knife?

21 A. No, all they had been doin' was fightin'. I mean...

22 Q. When you came around to the front door and opened it, did
23 you see a knife at that point?

24 A. No, I I didn't see any weapon. I assumed it had gone
25 under refrigerator or somethin' 'cuz like I say, they were

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 right there at the fridgerator because I told the paramedics
2 when the paramedics pulled in, I told 'em, I said, Come one
3 in, I said, I don't see a weapon so c'mon in, ya know, it's
4 safe to come in, please come in 'cuz I wanted out, I wanted
5 outta there.

6 Q. And tell me what the words were that Mike said to you
7 when you came back in.

8 A. That he accidentally stabbed him.

9 Q. What was Mike doing at that point?

10 A. He was standin' there where he was.

11 Q. Was he talkin' to John?

12 A. No, not when I walked in. He was just -- I -- as soo --
13 I -- soon as I walked in he just said he was standin' there
14 right where John was, he -- John was right there, John was
15 layin' on the floor and it seemed like he was right there
16 standin' above him or somethin', I don't, I can't remember if
17 he was standin' or hoverin' over him but I -- and he said,
18 Call 911, I accidentally stabbed him, and that's when I picked
19 up the phone.

20 Q. How long from the time you called 911 until the time 911
21 arrive -- or someone arrived?

22 A. I don't know. It seemed like it took forever, twenty or
23 thirty minutes. It took forever for them to get there because
24 as soon as I -- as soon as they got there, his phone had done
25 died, right after they got there his phone died 'cuz I was

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 gonna use Mike's phone to call my family to keep -- make sure
2 they didn't look me outta the house 'cuz I didn't have my
3 key.

4 Q. This was the phone you were using to talk to the 911
5 operator?

6 A. Um-hum, it died ---

7 Q. So it ---

8 A. --- before I ---

9 Q. --- went dead when they arrived, is that right?

10 A. Hah?

11 Q. It died as they arrived?

12 A. Yeah, I mean, as soon as they got there it, I mean, I
13 couldn't even dial my home phone, one bar came on.

14 Q. Had you dialed 911 at any point prior to this point ---

15 A. No.

16 Q. --- after walking in? You never tried to call the police
17 earlier in the evening?

18 A. Uh-uh (negative).

19 Q. Okay. What's your, what's your current relationship with
20 Mike Mike Rogers?

21 A. There is no relationship right now. I mean, he's ---

22 MR. ALLEN: Objection, Your Honor. If I may approach, I
23 think ---

24 THE COURT: Okay.

25 (Whereupon, a bench conference was held off the record.)

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 BY MR. FULMER:

2 Q. Before Mike attacked John the first time, did he say
3 anything to him?

4 A. Just that he told him that, he told John to keep his
5 hands off of me, off his woman is what he said.

6 Q. Keep your hands off my woman. Did John say anything
7 back?

8 A. I don't think so.

9 Q. When Jackie left was was -- what was she going to do?
10 What did she say she was gonna do?

11 A. She told me she -- well she told us she was goin' to the
12 store and asked Mike if he needed anything from the store.

13 Q. Was she goin' to get cigarettes or had she offered to do
14 that?

15 A. Yeah.

16 Q. Did did you know John to be basically a daily drinker?

17 A. Yes.

18 Q. Did you know anything about the -- his health
19 condition?

20 A. Yes, I did.

21 Q. What did you know about it?

22 A. That he had Hepatitis C.

23 Q. And and he still drank daily?

24 A. Yeah, I, that's one thing I tried to get him to quit. I
25 wanted him to quit 'cuz I wanted him to get better, I wanted

TONYA LOWERY - DIRECT EXAMINATION BY MR. FULMER

1 him to get the treatment that he needed.

2 Q. That night prior to the fights that occurred would you
3 describe John being drunk?

4 A. The night before?

5 Q. The night of the fight.

6 A. He had been drinkin', yeah. I don't know how much he
7 consumed, ya know, he, uh, didn't appear to be staggerin' like
8 he normally did but yeah, he had been drinkin', I could
9 tell.

10 Q. He normally staggered?

11 A. Yeah, when he had quite a bit.

12 Q. Was he slurrin' his words?

13 A. When when he had a lot?

14 Q. No, that night.

15 A. That night? I I I don't remember. I mean, I don't
16 remember. He didn't talk that much that night.

17 Q. Was he aggressive towards you or Mike or Jackie?

18 A. No, not that I can recall. He's never -- I never had any
19 problems with John. I mean, he's never, he's never even
20 approached me in that way. It shocked me that night that he
21 put his arms around me but, I mean, other than that no, I
22 hadn't, I ha -- he's always been nice to me.

23 Q. When when John put his arms around her -- around you, did
24 you take that as a sexual advance or was he being friendly?

25 A. Well it kinda startled me at first but, I mean, he put

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 it, ya know, all the way around here (indicating) but, ya
2 know, I didn't, I didn't know how to take it to be honest with
3 you. I mean, ...

4 Q. But you told the police earlier that you didn't think it
5 was a sexual advance, is that right?

6 A. No, I mean, like I say, he didn't touch anything, I mean,
7 any parts so no, I mean, woulda been that way, no.

8 Q. Please answer any questions Mr. Allen may have for you.

9 CROSS-EXAMINATION BY MR. ALLEN:

10 Q. During the time that you knew John, you knew that he
11 drank a lot?

12 A. Yes.

13 Q. To excess?

14 A. Well I didn't realize how bad it was until one afternoon
15 when he wanted me to help him get his bottles together.

16 Q. He had a lotta bottles?

17 A. Um-hum.

18 Q. Okay. You've seen him drunk before?

19 A. Yes.

20 Q. And would you say that when he gets drunk he gets mean?

21 A. No, he he doesn't really get mean but I have seen him
22 fight one other time and he -- he's he's gonna throw a punch
23 in, he's ---

24 Q. Okay. Hard punch?

25 A. I I don't know, I mean, ---

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 MR. FULMER: Objection, Your Honor, it's not relevant
2 to ---

3 MR. ALLEN: Oh ---

4 MR. FULMER: --- to this matter.

5 THE COURT: Sustained.

6 BY MR. ALLEN:

7 Q. Now your relationship with Jackie is that Jackie
8 Lance, ---

9 A. Yeah.

10 Q. --- the woman that was at the home that night?

11 A. Yes.

12 Q. Okay. Now you and she would you descri -- would you say
13 that you and she did not get along with each other?

14 A. No, we don't.

15 Q. And at that time you did not get along with each other.

16 A. No.

17 Q. Okay. She did not like you?

18 A. I -- well she'll say she's my friend but no, she -- I
19 don't care for her and and I'm sure the feelin's mutual.

20 Q. You -- okay, the feeling's mutual. Now matter of fact
21 when you at one point during that day, the day of the fight
22 you even asked Mike Rogers why was she there, is that
23 correct, ---

24 A. Yes.

25 Q. --- 'cuz you didn't like that she was there.

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Ye -- correct.

2 Q. Now let's go to that night. You came back to this, to
3 Mr. Rogers' home, is that correct?

4 A. Yes.

5 Q. After you were there for a while earlier.

6 A. Yes.

7 Q. I can hardly hear you way way back over here, it's --
8 speak -- if you just would just try to speak to me way over
9 here and I think we ---

10 A. Okay.

11 Q. --- can all hear you, okay?

12 A. Okay, I'm just nervous ---

13 Q. I understand.

14 A. --- I talk about that night.

15 Q. Now first of all you had known Mike for a few months, is
16 that correct?

17 A. Yes.

18 Q. And was he -- he was the only person that lived at [REDACTED]

19 [REDACTED], correct?

20 A. Yes.

21 Q. Okay. John had not moved in.

22 A. No.

23 Q. Now you came back to the home before the arguments,
24 before the fight at about something after eleven o'clock in
25 the night, would that be a fair statement?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Yeah, somewhere around there, the news was on so...

2 Q. Okay. The news -- now you had been at your home,
3 correct?

4 A. Yes.

5 Q. And it was just a few minutes walk away, is that correct?

6 A. About five minutes.

7 Q. About five minutes. And so you knew it was about eleven
8 o'clock because the news was on the television in your
9 house?

10 A. Yes.

11 Q. Television was not on at Mike's house, is that correct?

12 A. Uh, no.

13 Q. It was not?

14 A. No.

15 Q. Okay. So you arrived and you saw that Mike had been
16 drinking?

17 A. Yes.

18 Q. And John?

19 A. Yeah.

20 Q. And Jackie?

21 A. Yeah, I assumed everybody was drinkin'. I know he had,
22 Mike had poured, ya know, some drinks that, uh, it was comin'
23 out of a bottle, I don't know what it was.

24 Q. Okay. Did you see Jackie drinking?

25 A. She had a glass. I assume she did drink it. I mean, ---

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 Q. And you don't remember ---

2 A. --- I don't know if it was empty or not but he poured her
3 a drink so...

4 Q. Okay, but you did not actually see her drink?

5 A. No.

6 Q. Okay. Now I believe you said that when -- okay, now John
7 startled you when he put his arms around you, correct?

8 A. Yes.

9 Q. He put his arm around you underneath ---

10 A. Yes.

11 Q. --- your your chest?

12 A. Yes.

13 Q. Okay. It wasn't like he was trying to hold himself up,
14 was he?

15 A. No.

16 Q. He didn't need any help holding himself up?

17 A. No. No, I couldn't hold him up.

18 Q. I'm sorry?

19 A. I wouldn't be able to hold John up.

20 Q. John's bigger than ---

21 A. Yeah.

22 Q. --- you obviously, right? He's he's taller than than
23 Mike too, is that correct?

24 A. Yes.

25 Q. And he is a little heavier than Mike too, ---

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. --- that correct? And he's younger than Mike?

3 A. Yes.

4 Q. By a good many years?

5 A. He was 42.

6 Q. John was 42? Do ya know how old Mike is?

7 A. He's 54.

8 Q. Fifty-four? Okay. Now you you told John to get his
9 hands off you, is that correct?

10 A. Yes. Yes.

11 Q. Now at this point when John had put his arm around you
12 Mike had gone to the bathroom, is that correct?

13 A. No he was on, Mike was on the other side of the bar.

14 Q. On the other side of the bar, okay, and then Mike told
15 him to get his hands offa you too, is that correct?

16 A. Yes.

17 Q. And I believe you testified that Mike pushed him, pushed
18 John?

19 A. Yes.

20 Q. Now let's get a little bit -- I'll show you about the
21 layout. This this was the first -- 660 where Mike lived was a
22 mobile home, correct?

23 A. Yes.

24 Q. The front door opens directly into the living room,
25 correct?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes, correct.

2 Q. And there's no vestibule or anything like that.

3 A. No.

4 Q. Okay. And then the living room goes on back to and opens
5 up to where there's the kitchen, is that correct?

6 A. Yes.

7 Q. There's no real door that separates ---

8 A. No.

9 Q. --- the kitchen and the living room area, ---

10 A. No.

11 Q. --- is that correct? Part of the separation between ---

12 A. There's a little bar.

13 Q. --- the kitchen and the living room is that bar, correct?

14 A. Yes.

15 Q. Okay. And there is a table sitting in the kitchen area
16 where ---

17 A. Yes.

18 Q. --- there's -- where they're used apparently for eating,
19 that right?

20 A. Yes.

21 Q. That was the table where they were sitting when you
22 walked in?

23 A. Yes.

24 Q. All three of them?

25 A. I I don't remember exactly where everybody was sitting or

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 standing when I came in, no.

2 Q. Okay. When Mike pushed John, John fell into the
3 stereo, ---

4 A. Yeah.

5 Q. --- is that correct? And you say that Mike was hitting
6 John?

7 A. Yes.

8 Q. And John was hitting Michael back, is that right, ---

9 A. Yes.

10 Q. --- in the face?

11 A. Yes.

12 Q. You told Mike to get up offa John, that he proved his
13 point?

14 A. Yes.

15 Q. And Mike got up?

16 A. Yes.

17 Q. They, uh, ---

18 A. They separate.

19 Q. --- both stood up?

20 A. Yes.

21 Q. And they talked, right?

22 A. They were separated. Mike was over here (indicating) on
23 the other side of the living room and then John was here
24 (indicating.)

25 Q. Okay, and the two of them were talking?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. They really didn't take time to talk, it was right after
2 that's when John kicked him.

3 Q. Okay. Before John kicked, before John kicked Mike and
4 but after they gotten up from that push into the stereo in
5 that fight, did did Mike tell John, I'm telling you don't
6 touch my woman?

7 A. No, not at that time I think that, I don't think that was
8 said then, I don't, I don't remember ---

9 Q. Do you recall giving a statement to the officers?

10 A. Yes, after it happened that evening, yes.

11 Q. After it happened. You gave the statement real early in
12 the morning on the 13th of November, correct?

13 A. Yes.

14 Q. I believe the officers had taken you over to your house.

15 A. Well I -- it started in front of the trailer and then it
16 finished in my home, yes.

17 Q. Okay. Right. And you gave the officers a written
18 statement, ---

19 A. Yes.

20 Q. --- is that correct? Of course you told 'em everything
21 you knew about ---

22 A. Yeah.

23 Q. --- this matter, that you wanted to tell them accurate
24 information, is that that correct?

25 A. Yes.

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 Q. Okay. Now and after you told them everything that of
2 course probly you were talking to them they were writing down
3 a statement.

4 A. Yeah.

5 Q. The statement wasn't actually written by you, is that
6 correct?

7 A. No, sir.

8 Q. But you had a chance to review it?

9 A. No, I haven't seen it si ---

10 Q. Okay. Well before you signed it they allowed you to to
11 review it before you signed it?

12 A. Yes.

13 Q. Okay. And I'm gonna show you the document. Does this
14 (indicating) appear to be the statement that you signed ---

15 A. Yes.

16 Q. --- on the 13th of November ---

17 A. Yes.

18 Q. --- at 1:50 in the morning?

19 A. Yes.

20 Q. And this statement that they wrote after talking to you,
21 is that correct?

22 A. Yes.

23 Q. Looking at Page 1 toward the bottom a Page 1, you were
24 talking about, you said, I think Mike shoved John and John
25 fell into the stereo, is that correct?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

- 1 A. Yes.
- 2 Q. John got up and the two of them were talking, that say
3 that?
- 4 A. Yes.
- 5 Q. Okay. Mike told John, I'm telling you don't touch my
6 woman.
- 7 A. Yes.
- 8 Q. And that's what you told the ---
- 9 A. Yes.
- 10 Q. --- police at that time?
- 11 A. Um, yes, I did. I couldn't remember, it's been a while
12 so...
- 13 Q. It's been a while. Does this help refresh your memory
14 about the ---
- 15 A. Yeah.
- 16 Q. --- sequence of events? Okay. And it was after that
17 that John kicked Mike between the legs, correct?
- 18 A. Yes.
- 19 Q. And that's when Mike hit John back, is that correct?
- 20 A. Yes.
- 21 Q. I'm sorry?
- 22 A. Yes.
- 23 Q. John was not teetering or falling over when he kicked
24 Mike between the legs, correct?
- 25 A. No, he didn't lose his balance.

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 Q. It looked like an intentional act?

2 A. Yeah.

3 Q. It looked to you like John wanted to -- that John was
4 going to continue to fight, right?

5 A. Yes.

6 Q. After or while -- and and they both were fighting, that
7 correct?

8 A. Yes.

9 Q. Mike was hitting John?

10 A. Yes.

11 Q. John hitting Mike back?

12 A. (The witness nodded in the affirmative.) But that that
13 second fight it didn't last long..

14 Q. Not to long?

15 A. Uh-uh (negative).

16 Q. Okay. And that ended did you say that you -- did you get
17 Mike up or did you just talk to him and tell him to get up?

18 A. That I can't remember. I think they just separated, I
19 mean, just talkin' to 'em they finally separated and I, and I
20 took and told him, C'mon, let's go to the restroom and wash
21 him off 'cuz I knew he had blood and stuff on him and I I
22 wanted him to get cleaned up. He didn't ---

23 Q. So you accompanied Mike to the restroom, is that
24 correct?

25 A. Yes.

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 Q. Now in this mobile home the way you got to the restroom
2 that that you and Mike went to you walked from from the
3 living -- this -- let me ask it first, during the what we will
4 call the the fight after John kicked Mike between the legs,
5 this was in the living room, is that correct?

6 A. Yes.

7 Q. It was?

8 A. Yes.

9 Q. Okay. So to get to this restroom you and and Mike walked
10 through the the kitchen area, is that correct, ---

11 A. Yes, down the ---

12 Q. --- by the table ---

13 A. Yes, sir.

14 Q. --- and then you go ---

15 A. Down the hall, ---

16 Q. --- straight on back ---

17 A. --- it's back on the left, yes.

18 Q. --- through the kitchen and then there was a small
19 hallway, is that correct?

20 A. Yes.

21 Q. And this hallway has a dryer and a washer?

22 A. Washer.

23 Q. Okay, it's on the, as you're heading toward the restroom,
24 do you recall ---

25 A. It's on ---

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 Q. --- what side it's on?

2 A. --- the left. On the left.

3 Q. On the left. And is there -- and and then you you pass
4 the, first going from the kitchen, you pass first the dryer
5 then the washer to the ba -- restroom or do I have it
6 backwards?

7 A. I'm not sure which comes first the washer or ---

8 Q. Okay.

9 A. --- the dryer, I don't use it so I ---

10 Q. Alright. Alright.

11 A. --- I don't know.

12 Q. And I I believe there was a bedroom even back beyond the
13 the bathroom, is that correct?

14 A. Yes.

15 Q. And that was the bathroom that you and John went to to
16 get him cleaned up, is that correct?

17 A. Me and Mike, yes.

18 Q. You and Mike, excuse me. Thank you. And he washed
19 himself, is that correct?

20 A. Yes, he washed ---

21 Q. Washed his face, ---

22 A. --- off his face and hands.

23 Q. --- his hands. And he was back there for some time?

24 A. No, not long at all.

25 Q. I mean, a a bit, few minutes?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Yeah. I got him a cigarette during the time he was back
2 there so he could have him a cigarette. I thought maybe
3 perhaps if he smoked a cigarette he'd calm down a bit.

4 Q. And so did he smoke a cigarette back there?

5 A. He didn't finish it I I don't ---

6 Q. Not ---

7 A. --- think, ---

8 Q. --- finish it.

9 A. --- I don't remember.

10 Q. Okay. Now when you came out of the restroom, as I
11 understand it Jackie was saying she was gonna go to the
12 store?

13 A. Yes.

14 Q. She was and she was asking someone for the keys to the
15 truck?

16 A. Yes.

17 Q. And those keys -- and who was she asking for the keys ---

18 A. Mike.

19 Q. From Mike?

20 A. Yes. He'd been holding 'em for John.

21 Q. I'm sorry?

22 A. He had been holdin' 'em for John.

23 Q. He'd been holdin' 'em for John. It was John's truck,
24 right?

25 A. Yes, but John told Mike to give him the keys to give her

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 the keys to go to the store, ya know, if she wanted.

2 Q. Alright. And so she took the keys, ---

3 A. Yes.

4 Q. --- she left.

5 A. Yeah.

6 Q. Did she -- so she didn't, she didn't say to ya'll that
7 she was gonna go home?

8 A. No. No. She said she was goin' to the store, matter of
9 fact she asked if anybody needed anything and I said, Yeah,
10 Mike apparently needs some cigarettes, he's runnin' low, she
11 said that she'd get him some cigarettes while she was gone.

12 Q. After she left Mike told John to leave?

13 A. Yes.

14 Q. Wanted him out, I mean, he said he wanted him outta the
15 house?

16 A. Yes.

17 Q. You told Mike he can't go right now because his truck or
18 that Jackie's gone with his truck, is that correct?

19 A. Yes.

20 Q. Mike told you or said, Well he can still get outta the
21 house and leave, is that correct?

22 A. He just said, he kept tellin' John he wanted him out of
23 his house. He told him like three times, I mean, right after
24 each other and then that's like I say, that's when John swung,
25 I mean, it was just, there wasn't no reaction, there was no

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 time to call nobody, I mean, it was just, it just happened. I
2 mean, they started fightin' again.

3 Q. What I'm tryin' to get at is even after you told Mike
4 that he couldn't leave because his truck was gone Mike still
5 told John that I want you outta the house?

6 A. Yes.

7 Q. Okay. At this time they were standing in the kitchen, is
8 that correct?

9 A. Yes.

10 Q. And you were also standing ---

11 A. Yes.

12 Q. --- in the kitchen. Mike was near the refrigerator, is
13 that right?

14 A. If I remember it correctly, Mike was right there where
15 the table and all is near the hall and John was right there
16 and I was, I had been kinda tryin' to stand was on the other
17 side of him tryin' to get, you know, to get them to calm down
18 and sit down and like I say, that's why I couldn't go because
19 they were right there, that's the only exit I had was to go
20 down the hall because they were right there when they started
21 fightin' again when he -- after John swung they were right
22 there, I didn't have no other way to go but down the hall.

23 Q. And when you say you had no other way to go but down the
24 hall, you talk of the same hallway that goes to that bathroom
25 that ---

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. --- you took Mike to?

3 A. And to the back door, yes.

4 Q. There's a back door. ---

5 A. On the right hand side ---

6 Q. On the right ---

7 A. --- close to the bathroom.

8 Q. And it's across from washing machine or the dryer,
9 correct, ---

10 A. Yeah, ---

11 Q. --- the door?

12 A. --- yeah, the bathroom and all.

13 Q. And that's the back door to the ---

14 A. The trailer, yes.

15 Q. --- to the trailer. But John swung and hit Mike first,
16 that correct?

17 A. Yes, in the kitchen, yes.

18 Q. Mike hit back?

19 A. Yeah, they they started fightin' again, that's and that's
20 what I'm sayin' I I I had to, I had to exit out. I mean, I
21 could've stood in the hall but that wouldn'ta done no good and
22 I, and I couldn't deal with the fighting. I mean, I couldn't
23 go in the kitchen 'cuz they were right there so the only thing
24 I knew to do was go out the back door.

25 Q. You did not wanna get hurt.

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. No, and and I just, I couldn't handle watchin' 'em fight
2 about -- and fight, fight, I couldn't deal with it anymore. I
3 just come over there to get a cigarette and I was gonna go
4 home, ya know. I was gonna go to bed, that was my plans for
5 the night.

6 Q. Yes, ma'am. When -- and of course you went out the back
7 door and you went around to the front door, is that correct?

8 A. Yes.

9 Q. Not sure how long it took but it didn't take that long.

10 A. No.

11 Q. And when you came back in John had told you that he had
12 accidentally stabbed ---

13 A. No, Mike.

14 Q. Excuse me, Mike had told you that he accidentally stabbed
15 John, that correct?

16 A. Yes.

17 Q. Now you of course got the cell phone that belonged to
18 Mike, is that correct?

19 A. Yes, it was still plugged in on on the couch.

20 Q. On the couch that was in the living room.

21 A. Yes.

22 Q. You of course called 911.

23 A. Yes.

24 Q. Okay, asked them to get an ambulance over there, is that
25 correct?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. Wanted them to hurry.

3 A. Yeah, I said immediately, he was losin' a lotta blood.

4 Q. You told 'em that John was injured badly, is ---

5 A. Yeah.

6 Q. --- that correct? Let me back up a little bit. At one
7 point during all of this after John was cut, of course you saw
8 the the cut or or the wound in the ---

9 A. Yeah.

10 Q. --- chest, is that right?

11 A. Yes.

12 Q. That's where he was bleeding most ---

13 A. Um-hum.

14 Q. --- from, is that right?

15 A. Yes.

16 Q. Okay, you saw John stand up?

17 A. Yeah.

18 Q. And he was standing near the counter in the kitchen?

19 A. He -- no, he was facin' like kitchen table and everything
20 and and I told him 'cuz I was sit -- I was, at the time I was
21 over there with the phone and when he stood up and I was
22 shocked, he was standing on his own two feet, ya know, and I
23 told him and you need to sit down, you need, you know, lay
24 down or somethin', he had his hands to his side and he's like,
25 Oh, I'm okay, I'm fine; I'm like you're not, you're not.

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 Q. You could see that he was not fine.

2 A. No, I mean, he wasn't wearin' a shirt and I I ---

3 Q. And then he fell to the floor. Did he -- how did he
4 get ---

5 A. No he stood there for a few minutes and then I grabbed
6 the phone and I had to unplug the phone 'cuz I was on the
7 phone with 911 begging them please hurry and I went to the
8 door see if I heard 'em and and he walked, he took a couple a
9 steps, he walked over to wear the bar was, he put his elbow on
10 the bar and after he put his elbow on the bar he fell on the
11 floor.

12 Q. And he fell to the floor that was ---

13 A. In the living room.

14 Q. --- in the kitchen area, is that right, or it was ---

15 A. It was actually he was in the living room area, it's ---

16 Q. In the living room area.

17 A. Yeah.

18 Q. Okay.

19 A. He had his back to the floor.

20 Q. He fell facing, you know, he was facing face up.

21 A. Yes.

22 Q. While you're on the phone with the 911 person, they --
23 you you told them the nature of the injury, is that correct?

24 A. Yeah.

25 Q. That he had a cut or a stab wound in the chest?

TONYA LOWERY- CROSS-EXAMINATION BY MR. ALLEN

1 A. I just told 'em he'd been stabbed ---

2 Q. That he had been stabbed.

3 A. --- and he was losin' a lotta blood.

4 Q. And the operator told you that had to apply pressure.

5 A. No, no, just, Oh, just hang in there, they'll be there
6 soon.

7 Q. They -- during this time Mike was ---

8 A. He ---

9 Q. --- beside John?

10 A. --- he, uh, Mike got up, he had his towels hangin' in the
11 kitchen, he grabbed a towel 'cuz he started coughin', he put
12 it over his wound and did CPR which he didn't do his chest, he
13 just did mouth to mouth 'cuz he had stopped breathin' at one
14 time.

15 Q. Mike did?

16 A. Yes.

17 Q. To John?

18 A. Yes.

19 Q. He was tryin' to help John?

20 A. Yes.

21 Q. One second please, ma'am.

22 (Attorney/client conference held off the record.)

23 Just to be clear about when we talk about -- when you
24 were talking about the bar that separates the living room from
25 the kitchen and the bar that John had put his elbow on, ---

TONYA LOWERY - REDIRECT EXAMINATION BY MR. FULMER

1 A. Yes.

2 Q. --- this this wasn't a like a liquor bar was it?

3 A. No, no, it's just, it's it's like a dividing bar thing.

4 There's -- no, it's it's just got cabinets and stuff, sink

5 it's, no, it's not a regular, no.

6 Q. Right it's got cabinets ---

7 A. Yeah.

8 Q. --- below it like a typical countertop bar ---

9 A. That ya have in a trailer, they just have the wall space
10 and they 'em bars that divides the, ya know, livin' room from
11 the kitchen.

12 Q. Okay. One second, please.

13 MR. ALLEN: Nothing further, Your Honor.

14 REDIRECT EXAMINATION BY MR. FULMER:

15 Q. Tonya, you told Mr. Allen that you you and Jackie weren't
16 friends.

17 A. No, we're not.

18 Q. Did you ever ask Mike to ask Jackie to leave when you got
19 there?

20 A. I told him I didn't like her. I mean, I I -- no, I
21 didn't ask him to ask her to leave. He he said that she, John
22 liked her or whatever and I said, Well, ya know, I'm -- that's
23 not my place. I don't, ya know, I I can't go in somebody
24 else's home and tell 'em who they can and can't have there so
25 no, I didn't ask, ---

TONYA LOWERY - REDIRECT EXAMINATION BY MR. FULMER

1 Q. Well this this ---

2 A. --- I just left.

3 Q. --- was your boyfriend's home, it just wasn't anybody's
4 home.

5 A. I know but I -- that's me. I just left, ---

6 Q. You di ---

7 A. --- that's how I am.

8 Q. But you didn't leave that night, you hung out with 'em.

9 A. That first night, yeah, 'cuz there's just, ya know, three
10 of us so, yeah.

11 Q. And the second night as well.

12 A. No, not not not the second night. The second night I
13 just went over to get a cigarette when all this happened.
14 I -- that -- I was just goin' to get a cigarette, I was goin',
15 I was goin' to bed. I was at home, I was gonna go to bed and
16 I wanted that one last cigarette before I went to bed and
17 that's what I went over there for and all this happened.

18 Q. Before Jackie left did Mike ever ask John to leave?

19 A. No.

20 Q. He he didn't want John to leave, did he, 'cuz he needed
21 John's truck?

22 MR. ALLEN: Objection, he's leading the witness and ---

23 THE COURT: Sustained. Rephrase it.

24 BY MR. FULMER:

25 Q. Did Jackie offer to go get cigarettes for John -- for

TONYA LOWERY - REDIRECT EXAMINATION BY MR. FULMER

1 Mike, excuse me.

2 A. Jackie just said she was goin' to the store and then I --
3 she asked if anybody need anything, I said well, we can use
4 some cigarettes, Mike could use some cigarettes if you're
5 gonna go to the store.

6 Q. How was she gonna get to the store?

7 A. She, um, said she was takin' John's truck. She done ask
8 John to use his truck, she was gonna go to the store.

9 Q. At that time did John have have the keys to his truck?

10 A. No.

11 Q. Who had the keys to the truck?

12 A. He had given 'em to Mike.

13 Q. You said when you came back in after being outside the
14 trailer you saw John and he did not have a shirt on?

15 A. No.

16 Q. Did he have a shirt on when you went out the back door?

17 A. Yeah, I'm sure he did, I I mean, I assume he did, I mean,
18 I don't remember. I I know nobody would've taken his shirt
19 off I wouldn't think. I mean, I don't re -- I know he didn't
20 have a shirt on that night 'cuz I could see a wound so I mean,
21 I I don't recall and I I know ---

22 Q. You don't know whether he had a shirt on when you -- when
23 they were fighting earlier?

24 A. I don't, I don't remember, no. I don't, I don't
25 remember, I really don't.

TONYA LOWERY - REDIRECT EXAMINATION BY MR. FULMER

1 Q. But you're sure he didn't have his shirt on when you came
2 back in.

3 A. I know he didn't 'cuz I mean, I could see, I could see
4 his chest, I I mean...

5 Q. You said at one point in your statement to the police
6 that night that once they got up from what we'll call the
7 first fight that Mike had blood on his face but I don't know
8 where it came from, you know why you said that?

9 A. Do what now?

10 Q. You told the police that when they got up from the first
11 fight ---

12 A. Um-hum.

13 Q. --- Mike had blood on his face but I don't know where it
14 came from.

15 A. I'm talkin' about his hand. He had I guess his lip was
16 busted but as far as the hand I didn't know where it come from
17 on his hands.

18 Q. Okay.

19 A. Don't know.

20 Q. Did he have blood on his face at that point?

21 A. Yeah. When they were fightin' the first time, he had
22 blood on his face. Look like he had busted his lip or
23 somethin' and then he had hand -- blood on his hand but like I
24 say, I don't know if it was blood from John or if it was blood
25 was from his head.

ROBERT MICHAEL SEARS- DIRECT EXAMINATION BY MR. FULMER

1 Q. Okay. Tonya, would you shade this story to protect Mike
2 because he was your boyfriend?

3 A. No, no. No, because I mean John was my friend too. I
4 mean, I liked John, I mean, he was good friend and and I
5 wouldn't do that for anybody, no I wouldn't.

6 Q. Thank you.

7 THE COURT: Okay. Okay, you may step down.

8 (Whereupon, the witness left the stand.)

9 MR. FULMER: Your Honor, the State calls Robert Sears.

10 ROBERT MICHAEL SEARS, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. FULMER:

13 Q. Mr. Sears, will you state your name on the record.

14 A. Yes, sir, my name is Robert Michael Sears.

15 Q. Where do you work?

16 A. I work for the South Carolina Law Enforcement Division
17 often referred to as SLED.

18 Q. What do ya do there?

19 A. I'm a forensic toxicologist with SLED.

20 Q. What kinda education do you have?

21 A. I have a bachelor's degree in chemistry from Francis
22 Marion College, now known as Francis Marion University, I also
23 have a master's degree in medicinal chemistry from the
24 University of South Carolina School of Pharmacy. In addition
25 to my formal education, I've attended numerous courses outside

ROBERT MICHAEL SEARS- DIRECT EXAMINATION BY MR. FULMER

1 of SLED throughout my tenure there including schools related
2 to alcohol toxicology, pharmacology, drug testing, drug
3 interpretation, a whole host of different trainings.

4 Q. I may, I may have asked you this, how long have you
5 worked at SLED?

6 A. I've been there almost, well actually I've been there a
7 little over twenty-three years right now.

8 Q. As a toxicologist?

9 A. Yes, sir, my entire career I've served in the toxicology
10 department.

11 Q. How many tests do you think you've performed during that
12 time period?

13 A. Oh, thousands and thousands. I've averaged over 500
14 cases a year for the last 20 years.

15 Q. Have you previously testified in court re -- regarding
16 tests, blood tests?

17 A. Yes, sir, I've testified over a hundred times in courts
18 in this state and I've testified in the courts in Georgia as
19 well.

20 Q. And you've been qualified as an expert ---

21 A. Yes, sir, I have.

22 Q. --- in toxicology?

23 A. In toxicology, pharmacology and chemistry.

24 MR. FULMER: Thank you. At this time, Your Honor, the
25 State would offer Mr. Sears as an expert in toxicology.

ROBERT MICHAEL SEARS- DIRECT EXAMINATION BY MR. FULMER

1 MR. ALLEN: No objection.

2 THE COURT: He is so qualified.

3 MR. FULMER: Thank you.

4 BY MR. FULMER:

5 Q. Did you receive in Columbia a blood sample marked John
6 Ryan?

7 A. Yes, sir, I received a sample of blood that was labeled
8 Ryan, John, John W.

9 Q. And who'd you receive that from?

10 A. I don't have the chain a custody with me; this woulda
11 come from one a my technicians within the lab.

12 Q. Okay. Did you test the blood for alcohol?

13 A. Yes, sir, this blood was tested for the presence of
14 alcohol and other volatiles as well.

15 Q. Okay, did you find the presence of alcohol?

16 A. Yes, sir.

17 Q. Can you tell me about your results.

18 A. The results on this particular case were 0.344 percent or
19 gram per deciliter ethanol and that's the alcohol found in
20 alcoholic beverages found in blood. Now we also tested for
21 other volatiles and it was negative for methanol, acetone and
22 isopropanol.

23 Q. Can you tell the jury what someone with a blood alcohol
24 level of point .344 what they might be like.

25 A. Well generally alcohol is a central nervous system

ROBERT MICHAEL SEARS- DIRECT EXAMINATION BY MR. FULMER

1 depressant, it affects everyone the same way and the easiest
2 way to start thinking about it is as you drink more it
3 inhibits or impairs various different abilities in your body
4 starting first with your inhibitions, that's the first,
5 generally the first thing that tend to go, people become more
6 bubbly and more vivacious at parties. As that alcohol level
7 goes up past the .05, we start to see decrements in
8 individual's ability to function if you do fine motor skills
9 tests, these are things that are easy to detect in the
10 laboratory but are much more difficult to detect if you're in
11 a social setting. Once the blood alcohol reaches a .1 to .15
12 we can see definite decrements in their ability to react to
13 stimulus, their motor coordination tends to be not as good,
14 much slower and more if gross impairment, you start to
15 actually be able to notice in an average individual at
16 about a .15 that they're impaired. At a .25 you tend to see
17 people with very slurred speech, people who seem to be slow in
18 recognition of things that are going on around them. Easiest
19 thing to do is correlate that to driving where you have to
20 react to stimulus, you have to be able to slow down and speed
21 up based on the cars around you and traffic coming in from
22 the side roads and things like that, we generally see people
23 that are much slower to react to those cars that are coming at
24 them and eventually when they do react, they don't react fast
25 enough or far enough to avoid a collision. At a .3 we tend to

ROBERT MICHAEL SEARS- DIRECT EXAMINATION BY MR. FULMER

1 see people that are very relaxed, some people even pass out or
2 become unconscious at levels of .25 to .3. In this case I
3 would expect this person to be relatively slow, would be, I
4 would expect slurred speech would be one of the more common
5 things, a a staggering gate and potentially swaying if he is
6 standing still.

7 Q. Would it make a difference in your opinion if he were
8 known to be a daily drinker?

9 A. Generally, people who drink regularly learn to mask the
10 outward effects of impairment. They're still gonna be slower
11 to react to stimulus but they tend to do things like slow
12 their speech so that you don't notice the slurring as much.
13 These are people that are again accustomed to drinking
14 regularly. Are all the outward symptoms there in somebody
15 that's a a chronic drinker? not as readily visible as they
16 would be in somebody else.

17 Q. Did you test the blood for any any other substances?

18 A. Yes, sir. Our routine, I guess our routine procedure on
19 a case like this is to look for various different classes of
20 drugs with a, what we call an "immunoassay." In this case we
21 tested for the presence of amphetamines, benzodiazepines,
22 methamphetamine, oxycodone, cannabinoids, cocaine metabolite,
23 benzoylecgonine and opiates as a general class and these were
24 all negative.

25 Q. Are you familiar with the drug Klonopin?

ROBERT MICHAEL SEARS - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes, sir, I am.

2 Q. And would the test that you run have detected Klonopin?

3 A. Klonopin, also known as "clonazepam," is a
4 benzodiazepine. The benzodiazepine assay that we utilize is
5 developed around diazepam and has poorer or not as good cross
6 cross-reactivity for Klonopin. Even at a therapeutic dose, we
7 might not have gotten a positive level on this screen and
8 there was no history provided to us by the coroner's office to
9 actually go look for Clonazepam so it could have been there
10 and we not detected it by the preliminary screen.

11 Q. So so John Ryan could have taken Klonopin prior to his
12 death and that would not have shown up on your test.

13 A. That is possible.

14 Q. Okay. Thank you. Please answer any question Mr. Allen
15 has.

16 CROSS-EXAMINATION BY MR. ALLEN:

17 Q. If one were taking more than their recommended dose say
18 taking Klonopins while drinking, could it -- would it have
19 been detected?

20 A. I think you just asked me two different questions.

21 Q. Okay.

22 A. Benzodiazepines in general have warnings on the labels
23 that say do not take a benzo while drinking alcohol or do not
24 consume alcohol while taking this be -- this medication.
25 The -- if he was taking the medication as prescribed, we might

ROBERT MICHAEL SEARS - CROSS-EXAMINATION BY MR. ALLEN

1 not have seen it whether there was alcohol on board or not it
2 wouldn'ta mattered. If he was taking more than the prescribed
3 level, it's still possible that it would not have been above
4 our threshold of our assay, we would have seen a negative on
5 the preliminary test. If we knew to look for Klonopin, we
6 have additional testing we could have done to look at a lower
7 level but we didn't have that history.

8 Q. How would you get that history? Would the officers
9 provide it to you?

10 A. Well in this case the sample was submitted to us by the
11 coroner's office and they should have been the ones who
12 through their investigation and talking with the police
13 department would have provided that information to us.

14 Q. And you're not saying that this person had Klonopin or
15 benzodiazepines in his system.

16 A. I can't tell you with a high degree of certainty whether
17 he did or did not have Clonazepam on board.

18 Q. Alright. Now a person such as Mr. Ryan, and let's say
19 there's information indicating that he drank a lot ---

20 A. Yes.

21 Q. --- to excess, he -- you -- you're not saying that he was
22 incapable of standing, right?

23 A. No, sir, I definitely am not and as I said, generally
24 people who are chronic or habitual drinkers learn to mask
25 those outward symptoms of staggered gate, slurred speech and

ROBERT MICHAEL SEARS - CROSS-EXAMINATION BY MR. ALLEN

1 various different things like that, they still would be slow
2 to react and and I'm, you know, I'm not trying to change that
3 at all, even chronic drinkers if you put them in a laboratory
4 simulator they're slow to react to stimulus. At this level he
5 would definitely have been impaired as far as that.

6 Q. Been impaired but he could, he could fight?

7 A. Having not been there that night, all I can say is that
8 it is possible based on the fact that he is or it's proposed
9 that he was a chronic drinker that he was still functioning at
10 a level, he could have had a fight.

11 Q. Okay. Coulda kicked.

12 A. Yes, sir.

13 Q. A second please.

14 (Attorney/client discussion was held off the record.)

15 BY MR. ALLEN:

16 Q. Let me also talk a little bit about this other effect of
17 alcohol if I may. At a level such as you detected of alcohol
18 in John, .344 percent, does that have an effect on his ability
19 to feel pain?

20 A. Yes, sir. As I said, alcohol acts as as central nervous
21 system depressant and would influence your ability to detect
22 your pain or recognize the pain, the stimulus, ya know, and ya
23 think about it anything that we use in the operating room to
24 deaden somebody's pain threshold acts very similarly, it acts
25 as a central nervous system depressant.

ROBERT MICHAEL SEARS - REDIRECT EXAMINATION BY MR. FULMER

1 Q. Okay, so if, for example, he had been hit he may not feel
2 it as readily as if he had -- did not have that level of
3 alcohol.

4 A. And that's true, he co -- again, the stimulus is not
5 gonna be recognized as being as abrupt as if you were not
6 drinking alcohol.

7 Q. Thank you. No other questions.

8 MR. FULMER: Just one question, Your Honor.

9 REDIRECT EXAMINATION BY MR. FULMER:

10 Q. What would be the effect of the combination of the
11 alcohol and the Klonopin?

12 A. Klonopin is used as a, for a lotta different reasons, one
13 of them is as a sedative drug, something that will help you
14 sleep, it's used to treat seizure disorders, it's used to
15 treat anxiety so in in and of itself it is a depressant and it
16 would have depressant activity so alcohol and the
17 Benzodiazepine or alcohol and Klonopin would have somewhat of
18 an additive effect on each other, one would potentiate the
19 other.

20 Q. Make it more extreme?

21 A. Yes, sir.

22 MR. FULMER: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 BY MR. FULMER:

25 Q. Hand you what I believe is a copy of your report. Can

ROBERT MICHAEL SEARS - REDIRECT EXAMINATION BY MR. FULMER

1 you take a look at that and tell me if that is a copy of your
2 report.

3 (Whereupon, the witness examined the document.)

4 A. Yes, sir, this is a copy of the report that I brought
5 with me or yeah, that's a facsimile of this report that I
6 brought with me as well.

7 Q. Thank you.

8 MR. FULMER: Your Honor, the State would offer the blood
9 analysis report into evidence, Your Honor, as as State's
10 Exhibit 1.

11 MR. ALLEN: Your Honor, we object on basis that it's not
12 directly in response to anything brought up on
13 cross-examination plus it's duplicative of what he's already
14 testified to so I don't see any basis or any reason to admit
15 it at this time.

16 THE COURT: Sustained.

17 MR. FULMER: Thank you.

18 THE COURT: You may step down.

19 (Whereupon, the witness left the stand.)

20 THE COURT: We'll take a short break before we go
21 further. I'll ask the jury to please go to your jury room, do
22 not discuss the case. I'll bring you back after that break.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Alright, we'll be at ease for fifteen

WILLIAM SWANLUND - DIRECT EXAMINATION BY MR. FULMER

1 minutes.

2 (Whereupon, a recess was taken.)

3 THE COURT: The Court's in session in case ya'll didn't
4 know.

5 MR. ALLEN: Your Honor, if Mr. Fulmer and I may approach.

6 (Whereupon, a bench conference was held off the record.)

7 THE COURT: Alright, bring the jury in, please.

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

9 THE COURT: Ya'll move down one more, please. Alright,
10 you may proceed.

11 MR. FULMER: Thank you, Your Honor. The State calls
12 Deputy Swanlund.

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

15 DIRECT EXAMINATION BY MR. FULMER:

16 Q. Deputy, would you state your name for the record, please.

17 A. Deputy William Swanlund.

18 Q. Where do you work?

19 A. Spartanburg County Sheriff's Office.

20 Q. How long have you worked there?

21 A. I've worked there four years.

22 Q. Alright. What what are your duties at the sheriff's
23 office?

24 A. I'm assigned to the patrol division on delta shift.

25 Q. Delta shift, is that night shift?

WILLIAM SWANLUND - DIRECT EXAMINATION BY MR. FULMER

1 A. Yes, sir.

2 Q. Were you on duty on November 12th 2010?

3 A. Yes, sir.

4 Q. Did you receive a call that night?

5 A. Yes, sir.

6 Q. Were you dispatched to [REDACTED] [REDACTED] [REDACTED]?

7 A. Yes, sir.

8 Q. What what did you find when you arrived at that
9 location?

10 A. While while in route dispatch had advised me that it was
11 a stabbing and there was a one person on the floor and the
12 other person that was also involved was also there. They told
13 me they di -- it was unknown where the weapon was at that
14 time.

15 MR. ALLEN: I'll object to his getting into the hearsay
16 that he received ---

17 THE COURT: Sustained.

18 MR. ALLEN: --- communication.

19 BY MR. FULMER:

20 Q. When you arrived at the scene, what is it that you saw
21 there?

22 A. When I arrived at the scene, I already -- I observed that
23 the EMS was already on the scene. I walked in the door, I was
24 encountered by Ms. Lowery, she was visibly upset. I saw the
25 victim, John Ryan, layin' on the floor with the EMS units

WILLIAM SWANLUND - CROSS-EXAMINATION BY MR. ALLEN

1 tending to him. As I was walkin' up, Mr. Rogers was sitting
2 at the table in the kitchen, he was covered in blood. I at
3 that time I didn't say anything to him, he said, I had to cut
4 him he was beating me. I then secured Mr. Rogers, I placed
5 him investigative detention. I asked him where the knife was,
6 he said it was underneath the washing machine. At that time
7 Deputy Winks was entering the trailer. I advised him since
8 there was so much blood to enter the back of the trailer and
9 then at that time Deputy Winks came in the back of the trailer
10 and I let deputy Winks take control of Mr. Rogers.

11 Q. At the time you arrived, was there anyone that was
12 present besides Mike Rogers, Tonya Lowery, John Ryan and the
13 EMT personnel?

14 A. There was nobody else in the trailer.

15 Q. [REDACTED] Extension is that in Spartanburg
16 County?

17 A. Yes, sir.

18 Q. Thank you. Please answer any questions Mr. Allen might
19 have for you.

20 CROSS-EXAMINATION BY MR. ALLEN:

21 Q. You received the report or you you received a call to go
22 to this location at about 11:42 p.m., that be about right?

23 A. Yes, sir.

24 Q. And I couldn't find it in your report, when did you
25 arrive?

WILLIAM SWANLUND - CROSS-EXAMINATION BY MR. ALLEN

1 A. I arrived shortly after, uh, it wasn't long, probly five
2 to ten minutes.

3 Q. Five to ten minutes from the time that you got the report
4 somewhere between obviously 11:47 and 11:52 p.m., ---

5 A. Yes.

6 Q. --- roughly.

7 A. Somewhere around there.

8 Q. Alright. And you say you were the first officer on the
9 scene.

10 A. Yes, sir.

11 Q. Now the EMTs were already there inside, is that
12 correct?

13 A. They were already there yes, sir.

14 Q. And their ambulance was outside?

15 A. Parked in the driveway.

16 Q. They parked in the driveway and it had lights flashing,
17 that the red lights were flashing?

18 A. I I believe so yes, sir.

19 Q. You think so. Okay. Of course when you arrived were
20 your blue lights also ---

21 A. Yes.

22 Q. --- activated or flashing?

23 A. Well we get -- ya know, we do the blue lights and sirens
24 till a certain point and then we turn 'em off once we get into
25 the area.

WILLIAM SWANLUND - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Okay, so when you parked your car to go inside the the
2 home, you did not have your lights on?

3 A. Not when I went inside.

4 Q. Okay. And when you arrived no other officers were there?

5 A. Just me.

6 Q. Just you. You, um, did you look under the washer?

7 A. I did but I didn't see anything.

8 Q. You did not see anything.

9 A. No.

10 Q. The washer is in the, is beyond the kitchen area, is that
11 correct?

12 A. It's right behind the kitchen area in the little
13 hallway.

14 Q. Okay. And there was a lotta blood on the floor, a lotta
15 blood.

16 A. Um-hum.

17 Q. Did you go out to go back around -- to to ---

18 A. No, I ---

19 Q. --- to get to the dr -- to get to the washer, did you
20 have to go -- do you walk through the kitchen?

21 A. It was just right behind the kitchen the ---

22 Q. Right behind the kitchen? You were able to get around
23 there without stepping in the blood or ---

24 A. Well I ---

25 Q. --- otherwise?

WILLIAM SWANLUND - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yeah, I had to step in the blood to get to Mr. Rogers at
2 first but I didn't go back the other way, I went behind to get
3 to the washer.

4 Q. And beside the washer was a dryer?

5 A. Um-hum.

6 Q. And you did not look under the dryer?

7 A. No, sir.

8 Q. The -- as I understand it you were not trying to get a
9 detailed report from Mr. Rogers at that time.

10 A. No, sir.

11 Q. In fact, you were not even a -- trying to ask him any
12 questions, ---

13 A. Not ---

14 Q. --- is that correct?

15 A. --- asking him any questions.

16 Q. Okay. When you came in you did not see or hear
17 Ms. Lowery and Mr. Rogers talking with each other, is that
18 correct?

19 A. No, sir.

20 Q. I believe you said that when you walked in the EMTs were
21 already right there with Mr. Ryan, is that correct?

22 A. Tendin' to the victim, yes, sir. He -- they were tendin'
23 to him.

24 Q. Okay. Mr. Rogers was -- where did you say he was at
25 the -- sitting at ---

WILLIAM SWANLUND - CROSS-EXAMINATION BY MR. ALLEN

1 A. He was sittin' at the kitchen table.

2 Q. At the kitchen table. He was bleeding?

3 A. He had blood on him. I don't know if he was bleedin'
4 from his own wounds or where the blood came from but he --
5 there was blood on it him.

6 Q. There was blood on him?

7 A. Um-hum.

8 Q. You saw that he had a cut to his harm?

9 A. I didn't see that. I just placed him in investigative
10 detention and I handed him to Mr. or Deputy Winks.

11 Q. When you say that you "placed him in investigative
12 detention," what's that mean? Did you ---

13 A. That means at that point he's not under arrest but for
14 our safety and his safety the -- we place the handcuffs on
15 him.

16 Q. Okay, 'cuz you don't want anybody movin' around too ---

17 A. Right, ---

18 Q. --- quickly until you figure out ---

19 A. --- I didn't know ---

20 Q. --- what's goin' on?

21 A. --- where the knife was, ---

22 Q. Alright.

23 A. --- I was unable to locate it so I placed him in
24 investigative detention.

25 Q. Okay. Were you -- he was ultimately taken to the

MIKE WINKS - DIRECT EXAMINATION BY MR. FULMER

1 ambulance, ---

2 A. By Deputy Winks.

3 Q. --- Mr. Rogers. I'm sorry?

4 A. By Deputy Winks.

5 Q. By Deputy Winks.

6 A. (No verbal response.)

7 (Attorney/client discussion was held off the record.)

8 MR. ALLEN: No other questions, Your Honor.

9 MR. FULMER: No question.

10 THE COURT: You may step down.

11 (Whereupon, the witness left the stand.)

12 MR. FULMER: State calls Deputy Winks. Can this witness
13 be excused, Your Honor?

14 THE COURT: He may be.

15 MIKE WINKS, having been first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. FULMER:

18 Q. Deputy, will you state your name for the record, please.

19 A. Deputy Mike Winks.

20 Q. Where do you work?

21 A. Spartanburg County Sheriff's Office, uniform patrol
22 division.

23 Q. How long have you worked there?

24 A. Nearly four years.

25 Q. Do you have any other prior law enforcement experience?

MIKE WINKS - DIRECT EXAMINATION BY MR. FULMER

1 A. I was a corrections lieutenant in the state of Ohio.

2 Q. Were you on duty November the 12th 2010?

3 A. Yes, sir.

4 Q. Did you receive a call to respond to [REDACTED] [REDACTED] [REDACTED]

5 Extension?

6 A. I did.

7 Q. Did you respond to that location?

8 A. Yes, sir.

9 Q. What did you see when you arrived there?

10 A. When I arrived on the scene, EMS and Deputy Swanlund were
11 already on the scene. I entered the front of the trailer,
12 Deputy Swanlund was in the kitchen with Mr. Rogers, at that
13 point he was placing handcuffs on him. At that time it was
14 decided due to all the blood that I would go around instead of
15 me walking through that blood and take control of Mr. Rogers
16 at the back door of the trailer.

17 Q. What was Mr. Rogers appearance at that time?

18 A. He had blood coverin' his body.

19 Q. When you took control of Mr. Rogers, what did you do with
20 him?

21 A. I, at that time I escorted him from the the back door of
22 the trailer to the ambulance that was out front.

23 Q. Did you ride in the ambulance with him?

24 A. Yes, sir.

25 Q. Where did you go?

MIKE WINKS - DIRECT EXAMINATION BY MR. FULMER

1 A. Spartanburg Regional.

2 Q. During the ride in the ambulance from that location to
3 Spartanburg Regional, did Mr. Rogers make any statements to
4 you?

5 A. Mr. Rogers made several statements in the, in the
6 ambulance and while at the Spartanburg Regional Hospital.

7 Q. Will you tell the jury what those statements were.

8 A. One of the statements was Mr. Rogers had stated that that
9 Mr. Ryan I believe was the victim's name that he had put his
10 hands on his girlfriend, he told him not to and that they got
11 in a fight. He stated that several different times and and in
12 that statement he said that Mr. Ryan had cut him so he got his
13 knife and cut Mr. Ryan. He also stated that it was a crime of
14 passion. He said, I, you know, I did it 'cuz a of my
15 girlfriend, he also stated that was an accident.

16 Q. Did he ever make a statement about holding a knife to
17 Mr. Ryan's neck?

18 A. Yes, sir, he did. He stated that at one time that he had
19 Mr. Ryan on the ground and held a knife to his throat.

20 Q. Do you recall anything else he may have said to ya?

21 A. No, sir.

22 Q. Did you stay with Mr. Rogers at the hospital while he was
23 being treated?

24 A. Yes, sir.

25 Q. And what happened after you left the hospital?

MIKE WINKS - CROSS-EXAMINATION BY MR. ALLEN

1 A. After I left the hospital, I I typed myself supplemental
2 report due to the statements that Mr. Rogers had made.

3 Q. Thank you. Please answer any questions Mr. Allen may
4 have for you.

5 CROSS-EXAMINATION BY MR. ALLEN:

6 Q. You recall about the time you arrived?

7 A. Excuse me, sir?

8 Q. Do you recall what time you arrived?

9 A. No, sir, I do not.

10 Q. It was af -- would you know if it was sometime after
11 11:30?

12 A. I I couldn't tell ya with any good certainty, sir.

13 Q. Okay.

14 A. I just know I was after Deputy Swanlund so...

15 Q. You were the second officer there?

16 A. Yes, sir.

17 Q. You -- did you arrive with your lights flashing?

18 A. I I believe I did.

19 Q. And did you turn them off when you parked your car?

20 A. I I don't believe I did because I parked along the
21 roadway so I wanted my lights to be -- I didn't want my car
22 bein' hit by anybody who's comin' by.

23 Q. Did you, did you have a partner there that night in your
24 car?

25 A. I I don't recall.

MIKE WINKS - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Okay. Were there any other officers there other than
2 Deputy Swanlund when you arrived?

3 A. When I arrived no, sir.

4 Q. When you went inside the home at 660, were any other
5 officers there by that time?

6 A. Deputy Swanlund was the only one in the residence.

7 Q. Okay. There was no other officer out directing
8 traffic?

9 A. Not that I recall.

10 Q. You saw the cut to Mr. Rogers' arm?

11 A. Yeah, I believe Mr. Ryan did have a cut on his arm.

12 Q. Mr. Rogers I'm talking about.

13 A. Yeah, Mr. Rogers.

14 Q. Okay. He had a cut to the lower part of his unders --
15 the lower part of his, was the left arm?

16 A. Remember back I believe it mighta been his left arm; I
17 can't remember if it was left or right.

18 (Photographs marked Defendant's Exhibit Nos. 1, 2 and 3
19 for identification.)

20 Q. You stayed with Mr. Rogers at the hospital while he was
21 there?

22 A. For a while yes, sir.

23 Q. Okay. You got a chance to see the injuries to his arm
24 while you were there at the hospital with him?

25 A. I believe I saw his injury to his arm while at the

MIKE WINKS - CROSS-EXAMINATION BY MR. ALLEN

1 ambulance.

2 Q. Okay, at the ambulance.

3 A. Yes, sir.

4 Q. And did you get to see it later at the hospital?

5 A. Not in good detail because they were treating it. I was
6 lettin' them do what they needed to do, ---

7 Q. What they ---

8 A. --- Your Honor, ---

9 Q. --- needed to do.

10 A. --- or, sir.

11 Q. Okay. I'm gonna show you three photographs that have been
12 marked this point as Defense Exhibits 1, 2 and 3 and ask if
13 you can identify these or tell me what those are.

14 A. It looks like the lacerations to the forearm, appear to
15 be the left arm.

16 Q. The left forearm of whom?

17 A. Mr. Rogers.

18 Q. Okay. Do those photographs accurately portray what his
19 wound to his left arm looked like when you saw him?

20 A. Well really when I, to be honest, when I saw him he had
21 so much blood on him I couldn't really tell how bad the wound
22 was.

23 Q. So you can't tell if those are accurate portrayals ---

24 A. Well I'm I'm sure that's his wound but he had so much
25 blood coverin' him ---

MIKE WINKS - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Um-hum.

2 A. --- I couldn't tell.

3 Q. Okay, you can't really tell ---

4 A. I mean, because that's been cleaned up.

5 Q. Yes, sir.

6 A. I mean, I -- you can tell how bad it is there.

7 Q. Right.

8 A. When I seen it I couldn't tell ---

9 Q. You couldn't tell, okay.

10 A. --- due to the amounta blood he had on.

11 Q. Okay. This (indicating) was taken at the hospital, is
12 that ---

13 A. Yes, sir, that's in the emergency room.

14 MR. ALLEN: Your Honor, at this time I will offer into
15 evidence Defense Exhibits 1, 2 and 3, three photographs.

16 MR. FULMER: State doesn't object, Your Honor.

17 THE COURT: They're admitted.

18 MR. ALLEN: Okay, thank you.

19 (Defendant's Exhibit Nos. 1, 2 and 3, photographs,
20 admitted into evidence.)

21 MR. ALLEN: May I give them to the jury to review at this
22 time, publish to the ---

23 THE COURT: You may.

24 MR. ALLEN: --- jury? Thank you.

25 (Whereupon, Defendant's Exhibits No. 1, 2 and 3 were

MIKE WINKS - CROSS-EXAMINATION BY MR. ALLEN

1 published to the jury.)

2 BY MR. ALLEN:

3 Q. Did you see other injuries to Mr. Rogers?

4 A. Well to be honest I, I don't remember. I do remember the
5 arm 'cuz he made a point to, ya know, he kept talkin' about
6 bein' cut on the arm so that -- that's one injury I do
7 remember.

8 Q. Okay. Do you remem -- do you, do you remember any
9 injuries to his face?

10 A. Not off the top of my head, no.

11 Q. Your primary goal was to basically arrive and help secure
12 the home at [REDACTED] [REDACTED] [REDACTED]?

13 A. Correct.

14 Q. As a -- essentially, you were among the first officers to
15 be there.

16 A. I was the first responder yes, sir.

17 Q. Part of what you're to do is to try to identify who's
18 present, correct?

19 A. Correct.

20 Q. And I think we use the phrase "secure the scene," is that
21 right?

22 A. Correct.

23 Q. Make sure it's not tampered with from the point that you,
24 that you and the other officers get there, is that ---

25 A. Correct.

MIKE WINKS - CROSS-EXAMINATION BY MR. ALLEN

1 Q. And then allow other officers or detectives to get
2 involved in the actual investigation of what happened.

3 A. Correct.

4 Q. You were not trying to get detailed information from
5 Mr. Rogers about what happened.

6 A. No, sir, I never asked Mr. Rogers any questions.

7 Q. That was not part of what your job is as one of the
8 initial officers on the scene, is that correct?

9 A. No, sir.

10 Q. Just to make sure, no, sir, I was correct or no, sir,
11 you're disagreeing with what I ---

12 A. No, no, I I would agree I never asked him any questions.
13 I wasn't fact-gathering or ---

14 Q. Okay, ---

15 A. --- none a that.

16 Q. --- that wasn't parta your job.

17 A. No, sir.

18 Q. Okay.

19 MR. ALLEN: No other questions of this officer.

20 MR. FULMER: No questions, Your Honor.

21 THE COURT: You may step down.

22 (Whereupon, the witness left the stand.)

23 MR. FULMER: State calls William Gary. Can this witness
24 be excused, Your Honor?

25 THE COURT: He may be.

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 WILLIAM GARY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. FULMER:

4 Q. Would you state your name for the record, Investigator.

5 A. It's William Gary.

6 Q. Where do you work?

7 A. Spartanburg County Sheriff's Office.

8 Q. How long have you worked there?

9 A. Almost seventeen years.

10 Q. And what do ya do there?

11 A. I'm currently assigned to the violent crimes division at
12 the sheriff's office, more specifically now my duties are to
13 investigate unsolved homicides.

14 Q. Were you working on November the 12th 2010?

15 A. I was on call that week. We rotate calls once every six
16 weeks for cases and I was called out, um, that evening to
17 Carolina Drive Extension.

18 Q. And when you arrived at [REDACTED],
19 what did you see out there?

20 A. When I arrived, the scene was secured with crime scene
21 tape, there were a number of deputy's vehicles present. I
22 spoke with one of the supervisors on the scene to try to get
23 an idea of what they had, what was goin' on and was advised of
24 one -- that Mr. Rogers had been transported to the hospital,
25 the victim was laying still in the residence and there was a

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 witness that was waiting at that point beside one of the
2 patrol vehicles.

3 Q. And was that witness Tonya Lowery?

4 A. It was.

5 Q. Did you look inside the trailer?

6 A. At that point I did not. I called another investigator
7 to get him to prepare a search warrant for us to be able to
8 process the scene at that time so I did not make entry. My
9 first thing I did at that point once I got the facts and
10 gathered 'em, give 'em to that investigator v -- on the phone,
11 I started interviewing Ms. Lowery in in my vehicle in front
12 the residence.

13 Q. Is that where you took her statement?

14 A. That's where I started. At some point she mentioned she
15 needed to go to the restroom and she was tellin' me, ya know,
16 she lives right around the corner basically so I asked
17 Investigator Davis who had come to the scene to assist me on
18 the case to ride with us to her residence and that's where her
19 statement was completed at at her residence at the kitchen
20 table.

21 Q. After you took her statement whadya do?

22 A. Went back to the scene, left her there at her house, went
23 went back to the scene, at that point the search warrant was
24 there. The forensics division had done started, um, and was
25 starting to get their job started with documenting the

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 evidence with photographs and and and all. I stepped to the
2 front door basically just to to look inside to see what the
3 scene looked like because I knew at some point I was gonna be
4 interviewin' Mr. Rogers so I wanted to have an idea of what it
5 looked like inside before I started that interview. I didn't
6 go in and walk around the whole residence and look 'cuz there
7 was a large amounta blood that you could see and plus I wasn't
8 sure exactly where the forensics division was so I didn't
9 wanna go and disturb the scene anymore than necessary where
10 they documented how -- where everything was and how it was in
11 that place.

12 Q. So at that point did you leave and go back to sheriff's
13 office?

14 A. I did.

15 Q. Okay, what did you do at the sheriff's office?

16 A. The sheriff's office I -- Mr. Rogers had been brought
17 from the hospital to the sheriff's office then Detective --
18 Investigator Davis and I went back to the sheriff's office,
19 Mr. Rogers was in one of the interview rooms. At that point
20 we went into the interview room where he was, first I asked
21 him if he needed somethin' to drink or whatever which he
22 declined anything then I went over his rights on on sheriff's
23 office pre-inber -- interrogation waiver form. The rights
24 they're basically are, you know, the right to remain silent,
25 right to an attorney, the right to stop answering questions at

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 any point, it's -- there's stop points we go through on that
2 form and and Mr. Rogers signed both that he understood his
3 rights and then the second part is that he waived which are
4 give -- gave up his rights at that point and agreed to talk to
5 us to tell us what happened. During this initial course, it
6 was obvious that Mr. Rogers, um, I could smell an alcoholic
7 beverage on him so I went through some questions with him
8 about that to make sure that, ya know, he had been drinking
9 but that he wasn't intoxicated, that he did, did not feel that
10 he was too intoxicated, I asked him, Have you been taking any
11 medication that could work with the alcohol to impair his
12 ability to understand what's going on and the entire time I'm
13 speaking with him I could understand what he was saying, it
14 appeared that he was understanding all of my questions and
15 answering without much hesitation so I I felt that the
16 interview was was possible to go forward at that time, that
17 was he was not too impaired for the interview.

18 Q. Okay, and so when you began to ask him questions what did
19 he tell you?

20 A. He started or basically when I asked him what happened,
21 his -- the the first time he he ran through the events he said
22 that Tonya was there, she was sittin' at the bar area, he was
23 in the kitchen, talked about Jackie being there, they end up
24 at one point John Ryan had walked up behind Tonya, put his arm
25 around her, he didn't like it, he said he really couldn't see

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 where his arm was because of the height of the bar and he went
2 around tellin', ya know, take your hands off of her and he
3 said that he pushed him and pushed him down and he he fell
4 into the stereo, then he got on top of him, I'm trying to
5 remember exactly how it was worded, he told me that he got the
6 best of John, he said quote, I'm not gonna lie to ya, I was
7 really getting the best of him, and he said he told John to
8 stop, that it was over, that he thought it was over, he said
9 that he was getting up and John was startin' to get up, he
10 said that John hit him a couple times in the face and he said
11 he realized he was cut in the arm and durin' the interview he
12 did have a bandage on on his arm and he said that he had -- he
13 didn't have a choice, he pulled his knife out of his pocket
14 and that's when he stabbed John and he told Tonya to call 911,
15 he got a rag tryin' to help John for his injuries. From a
16 interview with -- well that's when he said that he'd put the
17 knife under the washing machine, then he went through, I asked
18 him what kinda knife it was, I asked him what kinda knife John
19 had and he told me that he never saw what John cut him with,
20 he didn't know exactly what he cut him with and I asked him if
21 they were both on the ground rollin' around during the fight,
22 he said they were, he said they were were just -- he was just
23 sittin' there when the police arrived, that's where he en --
24 ended the story at that point as far as what happened.
25 Q. And then at some point did he give you some other details

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 about what happened?

2 A. He did. I asked him from from my interview with Tonya
3 she mentioned that there was what she described as a a a first
4 fight and that after that is when they both went into the
5 bathroom and during this version that I was being told now by
6 Mr. Rogers, he never mentioned going to the bathroom and so I
7 asked him about, ya know, goin' to the bathroom and he said,
8 Yeah, I did go in the bathroom so that's went it came out she
9 went to the bathroom, ya know, what happened and he told me
10 again about this initial the arm -- the arms goin' around
11 Tonya and coming around the bar pushing him into the stereo,
12 gettin' on top of him, went through all that, he said at that
13 point that he he got up and went down the hall and into the
14 bathroom and that's when he realized that he was cut or I'm
15 sorry, he said that he went to the bathroom and when he came
16 back up the hall that John attacked him when he came back up,
17 hit him in the face and at that point he noticed he was cut
18 and so that's when he said he pulled his knife out stabbed
19 John so I asked him again what kinda knife did John have and
20 he said he didn't see him with a knife or know what he cut him
21 with so I asked him if if he could have cut himself when they
22 were rollin' around on the ground when the knife was out, he
23 said he didn't cut himself and so I got him to explain where
24 in the kitchen was this goin' on and he talks about where the
25 refrigerator is where if you have the bar area, the

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 refrigerator is on the wall that the hall would go down, the
2 kitchen table would be here (indicating) and they were right
3 there around the refrigerator is where he's saying this was
4 was goin' on and he said that he was close to the refrigerator
5 and John was like was more towards the bar area which would be
6 going back towards the front door where -- when everything
7 started and he said that -- he went through this whole thing
8 again, it was, it it was kinda hard to keep up with at some
9 points 'cuz he kept goin' back and forth from -- on the story,
10 startin' back at the beginning, goin' back through.

11 Q. And then at this point di -- didn't he start to tell the
12 story again?

13 A. He did. It, um, he said that he he goes through the
14 whole thing again, starts with the first thing about goin'
15 around the coun -- the bar, pushin' him in the stereo, that
16 fight gettin' broken up, him going to the bathroom, then he
17 says at that point when he's in the bathroom cleanin' up he
18 realizes his arm's cut once he's in the bathroom and again he
19 he didn't, didn't see anything that he was cut with and he
20 said he reached in his pocket and pulled out his knife and was
21 going back to the the kitchen area or living room where where
22 John was so I asked him, you know, about the knife, well he
23 held his hand to show how he was carrying the knife and the
24 way he was, he was carrying it he had his -- he was holding it
25 like this (demonstrating) showing me his hand, his his right

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 hand, he had it out that he was doin' this (demonstrating),
2 well in in my experience in law enforcement training I've been
3 in whenever we approach someone and they -- and they're not
4 wanting to show us the palms their hands, they're holding
5 their hand like that (demonstrating) a lotta times it can be,
6 we're trained that it can be an indication they can have a
7 knife in their hand and once he was provoking, the blade would
8 be running up before where you're trying to conceal it and
9 that's how he was holdin' his hand when he was showin' it to
10 me so I asked him, you know, Did you have the blade open when
11 you went out there; he told me no, he didn't have the blade
12 open, that with his knife he didn't have to, that it had a a
13 thumb notch on it or whatever where he could just flip the
14 blade open quickly if he needed to and so that's when he went
15 back up to confront John about bein' cut so I asked him at
16 that point, ya know, if you've been through these fights and
17 and all this has happened you get in the bathroom you're
18 you're away from him, ---

19 MR. ALLEN: Objection to this testimony, Your Honor, as I
20 can probly explain a little bit better up at the bench. I
21 believe he's asking ---

22 THE COURT: Okay, you can step up here if you need to.
23 (Whereupon, a bench conference was held off the record.)

24 MR. FULMER: You can continue, Investigator.

25 INVESTIGATOR GARY: My question was to him, you know, why

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 were you, you're in there in your bathroom, you realize you're
2 cut by someone in your, in your home, why pull out a knife and
3 go back to confront them and I asked him why didn't you pick
4 up the phone and call the police and say there's someone in my
5 house that just assaulted me and cut me can you send me some
6 help; he didn't really answer it other than to say that Tonya
7 had called 911, called 91 three different times already. At
8 that point Investigator Davis and I stepped outta the room for
9 him, Investigator Davis was going to contact the
10 communications center and see how many phone calls were placed
11 to 911 to have someone respond to assist.

12 BY MR. FULMER:

13 Q. During the course of your conversation with him, did he
14 ever talk about or mention a -- what kinda drinking had been
15 going on that night?

16 A. Yes, sir. He said that he was mixin', he said they were
17 makin' high balls and he was the one mixin', mixin' the drinks
18 up and said that they were making he called 'em "high balls."

19 Q. Did he talk about how much drinking John had been
20 doing?

21 A. He told me that when they -- when he got up that morning,
22 I believe he said it was around ten or eleven o'clock, that he
23 wo -- he said he woke John, John up about eleven o'clock, he
24 went back to his bedroom and he said that John had started
25 drinking right away, john was sleepin' out, I believe out on a

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 couch in the livin' room, he said John started drinkin' as
2 soo -- basically as soon as he woke him up.

3 Q. Did you also have an opportunity to talk to Jackie
4 Lance?

5 A. Yes, I did.

6 Q. And did you take a statement from her?

7 A. I did.

8 Q. And when did you take a statement from her?

9 A. The following mornin' on the 13th I was actually at
10 Mr. Ryan's mother's house speaking with her telling her about
11 the case and and and all and I got a phone call telling me
12 where Ms. Lance was. At the time all I had was the name
13 Jackie and that she had left in Mr. Ryan's vehicle and I got a
14 phone call telling me that -- what her last name was and that
15 what address she was at which was her house and that the truck
16 and her both were there so I had a uniform deputy go by that
17 would be closer than I was to make sure the truck stayed there
18 and that she was there so that I could come and interview her
19 and take possession of the truck if necessary.

20 Q. And did she give you a statement?

21 A. She did. She, um, she told me what happened, went
22 through some of the story that she had, I gave her an
23 opportunity to write a statement or for me to write it for her
24 and she asked for me to write the statement for her. The
25 entire time that I was doing that she kept asking me about

WILLIAM GARY - DIRECT EXAMINATION BY MR. FULMER

1 John, kept talking about how hurt was he and it was har -- at
2 that point all I told her was that John was hurt and he was at
3 the hospital. I didn't want, I didn't wanna lie to her so
4 that's what I told her 'cuz the morgue is at the hospital and
5 I could tell as upset as she was about that that if I told her
6 at that point that he was dead that I may have a hard time
7 completing her statement, that that it would upset her so I
8 waited until after the statement was complete and that's when
9 I told her what actually happened to John, that he he did in
10 fact die from his injuries.

11 Q. And did she appear to be surprised by that?

12 A. She did, it it lack of better term it tore her up. She
13 was, she was really upset, hurt by it, she started cryin' and
14 blamin' herself at that point.

15 Q. When you originally arrived on the scene at [REDACTED]
16 [REDACTED], were there multiple patrol cars there?

17 A. Yes, sir, there were quite a few there by the time that I
18 arrived, I would estimate probly five or six. I believe one
19 of the coroner's investigators had already arrived or either
20 she arrived as soon as I did, it was real close to the same
21 time.

22 Q. Do you recall if any of the blue lights or red lights
23 were on?

24 A. They they were. That road there's -- whenever we park on
25 the road if we can't pull completely off the record even at

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 times then but if we have to park partially on the road which
2 here you had to, we'll have our blue lights on more than just
3 the hazard lights to just give people a warning and that not
4 really any streets lights on that road it's pretty dark so
5 there were several cars that had their blue lights on because
6 there was a ditch on both sides of the road so you really
7 couldn't pull all the way off so they had their lights on
8 some, ya know, at some point, when I got there it wasn't as
9 congested for that -- from what I recall but at some point I'm
10 sure there was as narrow as the road is there was someone out
11 there directing cars around because the road had been blocked
12 partially at least one la -- one side woulda been.

13 Q. Please answer any questions Mr. Allen may have for you.

14 CROSS-EXAMINATION BY MR. ALLEN:

15 Q. Speaking briefly about Jackie Lance when you were talking
16 to her, you were writing her statement as ya'll were talking
17 in her house?

18 A. I wrote the state -- she went through the story once and
19 we went back through it again which is normal for me anyway
20 but we did it outside in the driveway on the hood of Deputy
21 Babbs car who had responded earlier when I had a deputy go out
22 there, we did it on the hood of his car in the driveway.

23 Q. Okay. And you were writing it as she told it to you?

24 A. Yes.

25 Q. You let her look at it before she signed it?

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes. Whenever I do a statement if someone requests that
2 I write their statement for 'em is I try to just give them the
3 option of writing it themselves but I always either allow them
4 to read over it or if they appear to have difficulty reading,
5 and my handwriting's not the best in the world, I'll at least
6 read it back to them and let them follow along with me and and
7 see if there's any changes that need to be made or something
8 struck out or added to it, change the order of something,
9 whatever changes they feel like need to be made and then once
10 all of that's completed then it's signed at that...

11 Q. Okay, and she read it?

12 A. She did.

13 Q. And you watched her follow with her eyes on the paper and
14 took a while to read it?

15 A. I -- it's again one that I was reading to her and so I
16 was looking at the paper, not looking at her but that once we
17 were done -- I don't remember in hers right right now if there
18 were any changes made in hers or not but she -- I read it, I
19 know I read it to her as she was standing right there so once
20 we got done and she was satisfied with that as being her
21 statement, it was signed at that point.

22 Q. Okay. Did she indicate to you she was satisfied that was
23 her statement?

24 A. Yes, she did.

25 Q. It was after that that she signed it?

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. Now as I understand it you you did not go to the hospital
3 to see Mr. Rogers, is that correct?

4 A. Correct, I I did not see him at the hospital.

5 Q. I believe you indicated that you did not at least
6 initially go inside the home at [REDACTED] [REDACTED] [REDACTED] [REDACTED].

7 A. Correct.

8 Q. When you spoke with Mr. Rogers, it certainly appeared as
9 if he'd been drinking, is that correct?

10 A. Yes.

11 Q. Had some of the, some of the characteristics of having
12 been drinking?

13 A. The only real characteristic I noticed was the smell.
14 His speech, his ability to understand, ya know, when asked
15 questions to respond whenever, he s -- I asked him to sign on
16 the in -- pre-interrogation waiver form, he didn't have a
17 problem with that. The only real indication I can tell
18 outwardly appearance was was the odor.

19 Q. Now when you first had asked him what happened, of course
20 he explained to you what he remembered, is that correct, or he
21 he he told you one thing, is that right?

22 A. He told me one thing, yes.

23 Q. Now you had earlier as you indicated talked to Tonya,
24 correct?

25 A. Yes.

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 Q. You knew that she had described in the situation where
2 she had taken him to the bathroom after a fight in the living
3 room around the stereo, correct?

4 A. Yes.

5 Q. Okay. You asked him specifically about that, correct?

6 A. Yes, I did.

7 Q. Now Mr. Rogers didn't think about it for a long time, did
8 he? He listened to your question, he responded, correct?

9 A. Yes, well I I was open and I asked him what -- tell me
10 what happened and that's when he ran through the first ---

11 Q. Right, ---

12 A. --- version.

13 Q. --- but when you specifically asked him about the
14 bathroom, ---

15 A. Um-hum.

16 Q. --- he did say yes that happened, ---

17 A. Yes, ---

18 Q. --- correct?

19 A. --- he did.

20 Q. He didn't have to think about it, correct?

21 A. Not that I recall; it was, it was pretty quick.

22 Q. Okay.

23 A. He didn't have to sit there and just did I go, did I go;
24 it was I asked him and he thought -- he didn't think about it
25 and he said yes, I did go to the bathroom but it wasn't a long

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 pause in there, no.

2 Q. Alright. I believe you even said that even while he was
3 talking with you was you said that it was kinda hard for you
4 to keep up with what he was saying at times?

5 A. Oh, yeah. Once he started -- once he went from the first
6 version to the additional versions of of what happened is when
7 it started he he would jump right back to a beginning of of
8 his beginning and and would start going through it so it was,
9 ya know, it was run through several times and that's where it
10 was him going back and forth only it was that was kinda hard
11 to track because what point are we now especially once we got
12 to the final version it was havin' to keep up okay this
13 happened when, tryin' to, tryin' to keep up with that was
14 where it was gettin' tough.

15 Q. Now parta your training as an officer is to take reports,
16 is that correct?

17 A. To take reports?

18 Q. To take reports, write reports ---

19 A. Right, yes.

20 Q. --- and to take statements, is that correct, ---

21 A. If we can, ---

22 Q. --- from a witness list.

23 A. --- yes, if we can.

24 Q. You've in -- you've interviewed a lotta folks, is that
25 correct?

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. It's not unusual, is it, for people who are not
3 accustomed to doing police work to forget a detail here or
4 there, is that correct?

5 A. Yes.

6 Q. It's not unusual.

7 A. Correct.

8 Q. And it's not unusual that you say, Well what about such
9 and such and the person recalls, Oh yes, is that right?

10 A. At times, yes.

11 Q. I mean, you've run that -- into that more people than
12 just Mr. Rogers, right?

13 A. Sure.

14 Q. Okay. And I noticed when you were talking about what
15 Mr. Rogers told you did you say anything about his saying, I
16 told him to get out, I told him to leave, get outta my
17 house?

18 A. I don't believe so. I don't believe he ever brought it
19 up.

20 Q. Okay. Now but he didn't bring the bathroom up either,
21 right?

22 A. No, sir.

23 Q. You asked him about that because Tonya had told you,
24 correct?

25 A. Yes. Yes.

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 Q. She had also told you that he had told John to get out of
2 his home, correct?

3 A. Yes.

4 Q. Okay. Did you ask him about that?

5 A. I did not.

6 Q. You didn't ask him, Hey, did you ever say get outta my
7 house?

8 A. No, I didn't.

9 Q. The -- when you -- did you go into the home later after
10 you talked to Mr. Rogers?

11 A. I did. It was, it was a good while later, um, that I
12 actually went into the residence. I actually had to leave and
13 go handle another call and when I got finished from what I had
14 to do at that point on that call is when I went to speak to
15 his mother and then actually I talked to her on the phone
16 first then I went to the residence at that point to meet with
17 our forensics division to find out what -- where they were in
18 processing the scene. Generally, when we work these once they
19 feel like they've done what they can 'cuz I was communicating
20 with them periodically during the interview when when I was --
21 when Mr. Rogers said that he was cut but didn't know what by,
22 I was communicating with officer -- with Deputy Nix who was
23 processing the scene look for another knife, look for
24 something that could cut him, ya know, 'cuz from me walkin' to
25 the door looking in it was a pretty well kept residence, it

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 was not cluttered, it wasn't real dirty, it was pretty clean
2 and so I asked him, Look, see what -- see if you can find
3 anything. Well I, so I went back, that's at the point I
4 actually went in was after speaking to Mr. Ryan's mother on
5 the phone I went back to the residence to go over with Deputy
6 Nix and Deputy Arthur who was assisting him what what they
7 found there, anything else I might have learned that I can
8 tell them we might need to process this way or look for this
9 'cuz of information that I'm gatherin' 'cuz they're in the
10 dark, they're just there processin' the scene as best they
11 know how at that point so we try to relay information to them
12 so they can adjust what they're doing or look for things they
13 may not initially look for so we went through all of that and
14 and then we actually determined that I felt like they had done
15 what they needed do and in my phone conversation with
16 Ms. Ryan or with Ms. Ryan's mother she had described his
17 guitar to me and told me that ---

18 Q. I I don't really wanna get into what Ms. Ryan talked
19 about, I think that that's not really part of my question but
20 what I was trying to get at is did you -- you went into the
21 home to look for some items that belonged to Mr. Rogers and
22 Mr. Ryan?

23 A. That's what I was getting at.

24 Q. Okay.

25 A. Um, it was ---

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Was it ---

2 A. I'm so sorry.

3 Q. Did Mr., from your looking in the home, did Mr. Ryan have
4 clothing there?

5 A. I don't, I do not know if he had clothing there or not.

6 Q. Okay. Did he have -- was there any mail there with his,
7 with Mr. Ryan's name on it?

8 A. Not that I saw.

9 Q. What about any mail there with Mr. Rogers' name on it?

10 A. There was some mail there; I don't remember specifically
11 looking at it.

12 Q. Okay. Did you notice the the table in the kitchen
13 area?

14 A. Yes.

15 Q. Okay, did it have items on it?

16 A. It it did.

17 Q. Okay, books?

18 A. I don't recall exactly what was on it right now. I can
19 look at a picture and tell you if that's what it looked like.

20 Q. Okay. These can be marked as Defense Exhibit's 4 and 5,
21 please.

22 (Photographs marked Defendant's Exhibit Nos. 4 and 5 for
23 identification.)

24 Q. I'm showing Exhibits 4 and 5 to the solicitor.

25 (Whereupon, the solicitor examined the exhibits.)

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 Now I'm showin' Exhibits 4 and 5 to you. Can you tell me
2 what those are?

3 A. These appear to be photographs one showing, both of 'em
4 showing the table in Mr. Rogers' residence, one showing the
5 view looking across the table down the hallway and the other's
6 showing a view looking across the table towards the living
7 room area.

8 Q. Okay, and does that photograph -- is the view of the
9 table in those photographs an accurate depiction of what they
10 appeared like when you saw them?

11 A. Well from what I recall yes, it does.

12 Q. Okay, thank you.

13 MR. ALLEN: I offer these into evidence at this time as
14 Defense Exhibits 4 and 5.

15 MR. FULMER: No objection, Your Honor.

16 THE COURT: They're admitted.

17 (Defendant's Exhibit Nos. 4 and 5, photographs, admitted
18 into evidence.)

19 MR. ALLEN: And may I pass them to the jury?

20 THE COURT: You may.

21 (Whereupon, Defendant's Exhibit Nos. 4 and 5 were passed
22 to the jury.)

23 BY MR. ALLEN:

24 Q. Let me go back to when you met up with Ms. Lance, Jackie
25 Lance. You met up with her at 240 South Avenue?

WILLIAM GARY - CROSS-EXAMINATION BY MR. ALLEN

1 A. Yes, I did.

2 Q. That was within about 1.2 miles from [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED]?

4 A. That that sounds right. I didn't, I didn't check the
5 distance but that sounds from being there, knowing the area
6 that sounds about right.

7 Q. Sounds about right, okay.

8 A. Yes.

9 Q. You see the truck in the driveway?

10 A. Yes.

11 Q. Did you find the keys to that truck?

12 A. Yes.

13 Q. Where?

14 A. They were, I think they were in it. It was -- I didn't
15 go straight to the truck, it was more of going to her, she was
16 out on the porch, Deputy Babb was standin' there along with
17 the male, her roommate I guess was out there and my first
18 approach was to her then I I think the keys were in it.

19 Q. Okay, you recall where they were inside?

20 A. Not right offhand I don't.

21 Q. Did you make a notation in your report about where the
22 keys were found in the truck?

23 (Whereupon, the witness reviewed the report.)

24 A. I don't see it if I did.

25 Q. It's not in there ---

WILLIAM GARY - REDIRECT EXAMINATION BY MR. FULMER

1 A. I don't see it no, sir, if I did.

2 Q. Alright.

3 A. I don't think it's in here.

4 Q. Okay. Now did you have photographs made of the truck?

5 A. No.

6 MR. ALLEN: One second please, Your Honor.

7 (Attorney/client discussion held off the record.)

8 MR. ALLEN: Okay, no other questions for Mr. Gary. Thank
9 you.

10 MR. FULMER: Just a couple, Your Honor.

11 REDIRECT EXAMINATION BY MR. FULMER:

12 Q. Were you able to retrieve an item of Mr. John Ryan's from
13 660 Carolina Avenue?

14 A. Yes, I was.

15 Q. What was that item?

16 A. It was a guitar in its case, an acoustic guitar in its
17 case.

18 Q. Why'd ya have reason to believe a guitar was there?

19 A. When I was speaking to his mother on the phone, she
20 advised me she had been by his his house and that she didn't
21 see the guitar and it was missing and she was able to
22 de -- describe it to me in in pretty good detail and when I
23 arrived it was, it was there exactly as she described the
24 case, the damage to the case and that's when I took it from
25 the residence and when I went to meet with her I took it to

WILLIAM GARY - RECROSS-EXAMINATION BY MR. ALLEN

1 her at her house.

2 Q. Do you recall where in the residence it was located?

3 A. When I got there at that point I think it was sitting on
4 a chair in the living room. When you first come in the door,
5 I think there was a chair right there, I think it was kinda
6 laying across both arms. I think that's where it was when I
7 was there.

8 Q. Okay, and just to clarify in your interview with
9 Mr. Rogers did he at one point tell you that he left the
10 bathroom with a knife in his hand and then at another point
11 tell you that he didn't draw the knife or or take the knife
12 out of his pocket until after he was outta the bathroom?

13 A. Yes. He, the first two versions that he told me the
14 fight was ongoing, when he realized he's cut that's when he
15 said he pulled his knife outta his pocket and cut and then it
16 was -- I'm -- his version was that he was cut, that's when he
17 decides to pull his pocket out and go back to confront him
18 after this -- after they were apart he goes back to, back in
19 there after armin' himself with a knife is, ya know, like I
20 said, the first two fight's ongoing when he decides to pull
21 out then the last one it was, you know, I'm cut so I'm -- I'll
22 pull a knife out and go back.

23 Q. Thank you, that's all I have.

24 RECROSS-EXAMINATION BY MR. ALLEN:

25 Q. You found another guitar ---

WILLIAM GARY - RECROSS-EXAMINATION BY MR. ALLEN

1 A. Yes, ---

2 Q. --- at the home too?

3 A. --- there was one that wasn't in the case. I believe it
4 was another acoustic guitar.

5 Q. Another acoustic guitar, not the one just described.

6 A. Not not that one.

7 Q. Okay. And you left that at the home?

8 A. Yes.

9 Q. Okay. Thank you.

10 THE COURT: You may step down.

11 (Whereupon, the witness left the stand.)

12 MR. FULMER: Your Honor, may we approach?

13 THE COURT: Yes.

14 (Whereupon, a bench conference was held off the record.)

15 THE COURT: Alright, ladies and gentlemen of the jury,
16 we're gonna need to recess for lunch at this time so we'll do
17 so. Keep in mind my caution: You're not to discuss the case,
18 not to conduct any research, don't permit yourselves to be
19 exposed to any type of media coverage that might relate to the
20 case. Have a good lunch and please report to your jury room
21 at 1:45, at 1:45 this afternoon. Thank you.

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

24 THE COURT: The Court is in recess until 1:45.

25 (Whereupon, a recess was taken.)

MOTIONS AND MATTERS

1 (Photographs marked State's Exhibit Nos. 1 thru 17 for
2 identification.)

3 THE COURT: Alright, we ready for the jury?

4 MR. FULMER: Judge, the State has some, I mean, the the
5 State has some pictures that they would like to introduce not
6 the first witness but the second witness and I think Mr. Allen
7 has some objection to some of those. Would you like to take
8 that up now before we have the jury?

9 THE COURT: Okay.

10 (Whereupon, the Court examined the photographs.)

11 THE COURT: Alright, I have seventeen photographs.
12 Mr. Allen, you object to which numbers?

13 MR. ALLEN: Your Honor, please the Court, I object to
14 Numbers 4, 6, 7 and 15. These are all photographs apparently
15 taken essentially at the morgue or during the autopsy, it's
16 it's obviously there are pictures of a body that has died,
17 particularly the facial photos pictures number, those are
18 State's Exhibit 6 and 7 showing the face and then and also the
19 wound to the chest which is State's Exhibit No. 15. We
20 believe these are unduly prejudicial simply because they're so
21 shocking for the jury to see essentially a dead body and the I
22 think not only in the face but also in the wounds as
23 indicated. They can adequately be described by the
24 pathologist, they can be described by others who who saw it
25 without actually having to des -- to show it to the jury for

MOTIONS AND MATTERS

1 what I will suggest to the Court is primarily for a shock
2 value. Also, I object to State's Exhibit 8 which is a
3 photograph of the kitchen floor with a lotta blood on it, I
4 believe that this is unduly prejudicial again, because it
5 would be shocking to a jury to see that amount of blood or on
6 the floor of of that particular kitchen; I would ask the Court
7 to exclude that photograph for that reason as well.

8 THE COURT: Alright, Mr. Fulmer.

9 MR. FULMER: Your Honor, the the photographs of the face
10 in the morgue are shown for the purpose of -- will be
11 presented for the purpose of showin' the bruises and
12 contusions to his, to his eyebrows, eyes, his cheeks. There
13 was some conflicting testimony as to who got the best of whom
14 and and how much of a fight it was versus how much of a
15 beating it was and that's the reason we'd like to introduce
16 those pictures. With regard to the the wound to the chest,
17 the defendant's made statements that it was an accident, that
18 would be introduced to show that it was a clear stabbing wound
19 that penetrated deeply that would not have been the result of
20 an accident. The picture in the kitchen of the kitchen floor
21 with the extensive blood is shown because the the photo of the
22 knife and that knife as it was recovered is almost clean. My
23 argument would be that it shows that the knife musta been
24 washed given the extensive nature of the blood throughout the
25 kitchen that that knife would have been covered in blood had

MOTIONS AND MATTERS

1 it not been washed first before placed under, before being
2 placed under the dryer.

3 THE COURT: Alright, Mr. Allen, you wanna be heard any
4 further?

5 MR. ALLEN: No, Your Honor. I mean, just again, I mean,
6 the purpose of -- first of all, you -- one can't tell the
7 extensive or or how extensive the wound to the chest is simply
8 from the photograph of State's Exhibit 15.

9 THE COURT: Cannot?

10 MR. ALLEN: I mean, cannot really see how extensive. I
11 mean, you can see a a huge wound what's gonna be testified to
12 by the pathologist I presume and he'll actually talk about the
13 length or the depth of the probe and that type stuff and where
14 it cut and you can't really see that from the photograph, I
15 think it's being used primarily to basically to shock the the
16 jury in in seeing this particular wound and so so yes, Your
17 Honor, I I believe that those because there's other testimony
18 available to to demonstrate that I I believe that it is too
19 shocking to show the jury and unduly prejudicial, prejudice my
20 client and possibly may arouse the passions and sympathies of
21 the jury against my client toward Mr. Ryan.

22 THE COURT: Mr. Fulmer, do you have any black and white
23 photographs indica -- showing the same or or the same
24 photograph in black and white?

25 MR. FULMER: I do have a black and white photograph of

MOTIONS AND MATTERS

1 the stab wound, Your Honor.

2 THE COURT: Let me see that.

3 (Whereupon, defense counsel examined the photograph which
4 was then handed to the Court.)

5 THE COURT: Tell me again what Photograph 4 is designed
6 to depict.

7 MR. ALLEN: I believe it's supposed to depict some wounds
8 on the back. There were two superficial, I think they might
9 be described as cuts or lacerations on the back of Mr. Ryan.

10 THE COURT: Is that it?

11 MR. FULMER: Yes, sir. He was stabbed in the back twice
12 and that's why that picture's being entered into evidence or
13 presented into evidence.

14 THE COURT: Okay. You you don't have that in a black and
15 white?

16 MR. FULMER: I do not, Your Honor.

17 THE COURT: Well I tell you what, why don't you take
18 these photographs and copy 'em and see what they look like in
19 black and white. Put 'em on a copier.

20 MR. FULMER: You'd like 'em all in black and white?

21 THE COURT: Those.

22 MR. FULMER: Th -- okay.

23 THE COURT: And let's see what they look like.

24 (Pause.)

25 THE COURT: Alright, any other matters we need to

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1 address?

2 MR. FULMER: No, Your Honor.

3 MR. ALLEN: No, Your Honor, not at this time.

4 (Pause.)

5 THE COURT: Let me see ya'll just a minute, please.

6 (Whereupon, a bench conference was held off the record.)

7 (Pause.)

8 THE COURT: Alright, Mr. Allen, I've had black and white
9 photographs made of those photographs that you objected to,
10 those are State's Exhibits 4, 7 -- excuse me, 4, 6, 7, 8 and
11 15. Out of an abundance of caution I have made black and
12 white photographs of those color photographs. If there is any
13 shock value to the color photographs, that will be negated by
14 the black and white photographs and still properly allow the
15 State to demonstrate a relevant fact that's an issue in the
16 case, okay.

17 MR. ALLEN: Okay.

18 THE COURT: So again, 4, 6, 7, 8 and 15 are black and
19 white photographs.

20 MR. ALLEN: Okay.

21 THE COURT: Any objection to the other photographs,
22 Mr. Allen?

23 MR. ALLEN: No objections. I presume of course this is
24 all gonna be subject to being, ya know, having somebody
25 testify as to what they depict but no objections as to these

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1 photographs themselves.

2 THE COURT: Well, okay. Well, I didn't understand that.
3 I thought the only objection was is that there was a shock
4 value to the photographs and it was not necessary for the
5 State to introduce them. You object to there's no foundation
6 been laid?

7 MR. FULMER: The the ---

8 MR. ALLEN: Well he's ---

9 MR. FULMER: --- State's, we're gonna introduce 'em, Your
10 Honor, we'll lay a foundation.

11 THE COURT: Okay.

12 MR. ALLEN: Okay.

13 THE COURT: Alright, well then you can just take 'em back
14 and introduce 'em as you lay your foundation. Alright, we
15 ready for the jury now?

16 MR. FULMER: Yes, sir.

17 MR. ALLEN: Yes, Your Honor.

18 THE COURT: Okay, bring 'em in.

19 (State's Exhibit Nos. 4, 6, 7, 8 and 15, black and white
20 photographs, marked and substituted for colored photographs of
21 State's Exhibit Nos. 4, 6, 7, 8 and 15 that were previously
22 marked.)

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE BAILIFF: Quietly, ladies and gentlemen, please.

DR. JOHN DAVID WREN - DIRECT EXAMINATION BY MR. FULMER

1 THE COURT: Good afternoon, ladies and gentlemen, ---

2 UNIDENTIFIED JUROR: Good afternoon.

3 THE COURT: --- alright, and I apologize for the delay, I
4 had some evidentiary issues that I had to address and that
5 necessarily had to be taken up outside of your presence but we
6 are now ready to continue with the trial of the case and the
7 State's presentation of evidence. Mr. Fulmer.

8 MR. FULMER: Thank you, Judge. The State calls Dr. David
9 Wren.

10 DR. JOHN DAVID WREN, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. FULMER:

13 Q. Doctor, will you state your name for the record.

14 A. John David Wren.

15 Q. And what's your profession?

16 A. I'm a medical doctor with a specialty in pathology.

17 Q. Would you tell the jury about your education.

18 A. I have a bachelor's degree and master's degree and a
19 doctor of philosophy degree in chemical engineering, um, ---

20 MR. ALLEN: Your Honor, if it please the Court, we'll
21 stipulate to Dr. Wren's qualifications as an expert in the
22 area of forensic pathology.

23 THE COURT: Do you wish to examine the witness any
24 further on that point?

25 MR. FULMER: It's not necessary, Your Honor.

DR. JOHN DAVID WREN - DIRECT EXAMINATION BY MR. FULMER

1 THE COURT: Alright, he is so qualified as an expert in
2 the field of forensic pathology.

3 BY MR. FULMER:

4 Q. Doctor, did you have an occasion to perform an autopsy on
5 John W. Ryan on November the 13th 2010?

6 A. Yes, I performed an autopsy on a individual identified as
7 John William Ryan on that day in the Spartanburg Regional
8 Medical Center autopsy room beginning at 1:30 p.m.

9 Q. Had you ever seen John Ryan before?

10 A. No, sir.

11 Q. Can you tell me what kinda wounds that you found on him.

12 A. Well he had, he had some abrasions and contusions about
13 his left forehead and along his left cheek, he had a little
14 bit of periorbital hemorrhage around the orbit of the left
15 eye, he had a -- some abrasions along the anterior right
16 shoulder and he had a large gaping deep stab wound and incised
17 wound to his left chest that extended essentially under his
18 arm arm, he had a little abrasion that was less than a inch in
19 diameter on the right elbow, he had a contusion which is a
20 bruise along the left forearm on the volar, the anterior
21 surface up near the elbow that was about one and a half by one
22 inch in overall dimensions, he had a old scar along his left
23 forearm that was a zigzag-type full scar and he had a little
24 abrasion along his proximal portion of his left hand at at
25 almost at the wrist and it measured about six tenths of an

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1 inch, a little over a half a inch in diameter and then he had
2 some abrasions with mild contusions about both knees with the
3 largest on the right knee that measured about almost an inch
4 in diameter, then he had two stab wounds to the back that were
5 superficial too.

6 Q. Can you talk a little bit more about the the stab wound
7 to the chest.

8 A. The stab wound to the chest was a -- the fatal wound, the
9 other two although went u -- beneath the skin and and
10 undermined, to -- one of 'em undermined like a grazing-type
11 underlying stab wound that went upward on his back, the one in
12 his, in his left shoulder was a huge wound and it was gaping
13 as the body was lying there to at least one and a quarter inch
14 in maximum opening, it measured, let's see if I got the
15 measurements here somewhere; I didn't give the exact
16 measurements although I gave all the others in detail, but it
17 was approximately seven inches long altogether and it -- the
18 wound is you -- one could see that if you pulled the wound
19 closed the way the the wound was when he actually was stabbed
20 and incised, one could see the the the base of the handle of
21 the blade or at least close to the handle along toward the
22 sternum or the chest plate and then you could pull it to where
23 you had a a little area that was about maybe this (indicating)
24 long that you could see where the blade went in and then what
25 they're called "redirectional wounds" to where if the body or

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1 the handle of the blade moves or the blade itself moves as it
2 comes back out or is pushed further in, it will go in a
3 slightly different direction, he had, there were two of those
4 so this indicated that the blade went in and the body of the,
5 of the blade moved and then as it was coming back out it moved
6 again so it -- and it went deep into the tissues up under the
7 arm and there are prominent vessels that come off the aorta,
8 the one in the underneath the clavicle or the, or the
9 collarbone is called the "subclavian artery and vein" and then
10 as it goes out into the arm it divides into several areas and
11 then it becomes the the brachial artery and vein. Up up in
12 the, what's called the "axilla", up in there I could -- I
13 found that the the vein was lacerated, completely cut in two
14 and the artery was partially incised or lacerated and so he
15 was bleeding from both venus blood and arterial blood. Now I
16 tried to probe that wound but there's soft tissue in there and
17 and one, it it depends on where you started the probe from but
18 it looked like it probed to about five and a half inches and I
19 said there was a blunt edge hilt mark near the medial edge and
20 it measured twenty-one hundredths of an inch in width, was
21 pretty wide, and the sharp edge was up under the arm so the
22 the the weapon was turned in a a manner to where the sharp
23 edge was was over on this side
24 (indicating) -- I mean, the blunt edge was on this side
25 (indicating), the sharp edge was on this (indicating) side, it

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1 went in, turned and turned again as it went across and went
2 deep into his soft tissues. Now the other two wounds tells
3 you a little bit more about the weapon. The one in the the
4 right medial back which was near the shoulder blade it was
5 twenty inches from the top of the head and two inches to the
6 right of midline, it had a sharp edge inferiorly, it was
7 obliquely oriented, not horizontal and not vertical, it was
8 obliquely oriented and it was 1.25 inches long when you
9 approximated it and it was four one-hundredths of an inch in
10 width at the blunt edge and it was a single edge blade so that
11 indicates that the weapon was somewhere between about one inch
12 and one and a half inch but that's so I can give you a little
13 bit closer if it's necessary, and it was between two, about
14 three hundredths and five hundredths of an inch in width at
15 the blunt edge. The one in the lower back on the -- was on
16 the left, it was three inches to the left of midline and that
17 sharp edge was oriented inferiorly rather than the other one
18 was oriented inferiorly also so both of those were in the back
19 with with the sh -- blunt edge up toward his head and it went
20 in that (indicating) way but the one in the lower back was
21 1.65 inches in length, a little bit longer, and it was also
22 gaping but when you reapproximate it it was also four one
23 hundredths of an inch in width indicating that was the more
24 accurate e -- measurement of the the blunt edge of the, of the
25 weapon and it was the one, the second one I described, the one

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1 in the right upper back was undermined toward the shoulder
2 meaning that when it went in it went up toward the shoulder
3 and it probed two inches so it didn't go all the way to the
4 hilt but it was at least two inches long to go in there and I
5 could probe up from that weapon -- I mean, from that wound.

6 Q. Based on the autopsy were you able to form an opinion as
7 to what the cause of death was?

8 A. It was unquestionably he exsanguinated or bled to death
9 secondary to a stab/incised wound to the chest and I call it a
10 stab/incised because the wound was so large it had to have
11 been partially incised to to go like that, it wouldn't, a stab
12 wound usually just goes in and comes back out and it may have
13 a a twist in it before it comes back out, you might be able to
14 see that but this one was so long and so deep it went in and
15 then well the the assailant either pushed up on it or the
16 decedent fell against it or whatever happened it made a long
17 gaping wound.

18 Q. Thank you doctor. Please answer any question Mr. Allen
19 has for you.

20 CROSS-EXAMINATION BY MR. ALLEN:

21 Q. In your examination of Mr. Ryan, you didn't see any
22 bruises to the back of his head?

23 A. No, sir.

24 Q. Okay. You also in examining the body you didn't see any
25 marks about his throat as if someone were, say, holding a

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1 knife to his throat?

2 A. No, sir.

3 Q. Okay. Typically, you might see that kinda stuff against
4 the throat if somebody was holding a knife you might see
5 slight abrasions depending upon how close the knife was and
6 that sorta thing?

7 A. If they were holding him hostage?

8 Q. Well not necessarily hostage but just holding a knife up
9 to the throat.

10 A. Depends on how sharp the knife was but, ya know, that --
11 that's a hard question to answer. You can say that but I
12 haven't seen very many like that, they usually are are cut if
13 they've held it up there.

14 Q. And usually you'll see a ---

15 A. Yes.

16 Q. --- cutting, a cut if it's held up there?

17 A. At least a little bit, yes.

18 Q. Okay. And as I think I understood you to say as far as
19 the chest wound on this case the the the the length of the
20 wound you -- can be -- can cau -- be caused by one of two
21 things or or a combination: either a movement of the knife of
22 the person holding the knife or possibly even the movement of
23 the body if the body was moving ---

24 A. Yeah, either one ---

25 Q. --- right before the sharp ---

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1 A. --- or both, yeah, yeah. If the per -- if a person is
2 pretty inactive when this -- when a a person's stabbed,
3 usually you'll just -- like the two in the back they were
4 definitely in and out the same way they wen -- came out the
5 same way they went in so that would indicate that that -- this
6 person either was unaware that was happening or was already
7 down when it happened, one cannot tell but at least there was
8 no movement of either the the wou -- the weapon itself as some
9 assailants have a tendency when they stick a weapon in they'll
10 turn it to get more effect, those two didn't have, they were
11 just in and out what we call "in and out", the other one would
12 have either been movement by one or both or either one or both
13 to cause the weapon to go in, you can definitely see when you
14 approximate the wound about the same length as the two I
15 described in the back and then the the skin has a nick in it
16 where it changes direction and goes a little bit further and
17 then it has another change of direction where it goes to the
18 end and you can see the the sharp edge makes a cut as it comes
19 out it -- under the arm and then there's no trailing
20 abrasions. Sometimes when a weapon comes out the sharp edge,
21 the point of the weapon will make a little abrasion that
22 trails off of it and one can see is it can -- you can
23 definitely see which end came out or which was the sharp end
24 then but this one didn't. The one one out on the back had
25 that but the one on the front didn't.

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1 Q. Okay. And the the hilt mark that you mentioned that's
2 where the weapon, apparently a knife goes up to the point
3 where there is a a blunt, ---

4 A. A stop, a stopping ---

5 Q. --- a stop, ---

6 A. --- area, yes.

7 Q. --- a stopping to it?

8 A. Yes.

9 Q. And I believe you said that wound probed, um, ---

10 A. 5.6 inches.

11 Q. And a wound can probe a little bit or deeper than the
12 blade of a knife in some cases if there's some give in the
13 skin or the top of the ---

14 A. Or the tissue's beneath it, yes. If someone stabbed
15 somebody right in the middle of the chest, there's very little
16 sof -- unless the person's very heavy, there's hardly any soft
17 tissue beneath there ---

18 Q. Right.

19 A. --- so there's -- when the weapon goes in if you can
20 probe down into the tissues and see whether it stops, you got
21 a pretty good estimate but if if it's in the abdomen, for
22 instance, where and most people are soft, it could go in you
23 can push in a long ways, you see the hilt mark but then there
24 would be ar -- once the person is deceased the skin comes to
25 the natural space where it should be occupying it when we're

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 ly -- when they're lying down and so that would give a false
2 indication of how long the the weapon was.

3 Q. Okay. Thank you. No other questions, Doctor.

4 MR. FULMER: No questions, Your Honor.

5 THE COURT: Alright, thank you. You may step down.

6 (Whereupon, the witness left the stand.)

7 MR. FULMER: May the witness be excused, Your Honor?

8 THE COURT: He may be.

9 MR. FULMER: The State calls Sean Nix.

10 SEAN NIX, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. FULMER:

13 Q. Investigator Nix, where do you work?

14 A. Spartanburg County Sheriff's Office.

15 Q. How long have you worked there?

16 A. Ten years total and be five years in crime scene unit
17 this November.

18 Q. And you're currently in the crime scene unit?

19 A. Yes, sir.

20 Q. What are, what are your duties as part of the crime scene
21 unit?

22 A. We document and collect evidence at crime scenes.

23 Q. Were you on duty on November 12th 2010?

24 A. I was not on duty but I was on on call status for
25 homicides.

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 Q. Did you respond to [REDACTED] [REDACTED] [REDACTED]?

2 A. Yes, sir.

3 Q. And what what did you do there?

4 A. I responded at the scene, we was notified by phone to the
5 address that you just previously mentioned, arrived on scene,
6 saw that it was roped off with crime scene tape, got some
7 information from patrol officers on the scene, talked to some
8 of the investigators and then waited to -- for the search
9 warrant to arrive in order to process the scene.

10 Q. Did the search warrant arrive?

11 A. It did, sir.

12 Q. And what did you do at that point?

13 A. At that point before, let me back up, before the search
14 warrant arrived I took all around photos of the exterior of
15 the residence to show what it looked like after the search
16 warrant arrived and myself and Investigator Arthur donned on
17 our gloves and booties over our boots and entered the
18 residence and proceeded to take note of what the inside of the
19 scene looked like and from that point we started photographing
20 and goin' about numbering and collecting and measuring all the
21 evidence that we could find.

22 Q. May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MR. FULMER:

25 Q. I'm gonna hand you some photographs. If you would, tell

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 tell me if those are some of the photographs you took that
2 night on the scene.

3 (Whereupon, the witness examined the exhibits.)

4 A. Sorry. These are a combination of photos that I've taken
5 at the scene, later at the autopsy and several of 'em at the
6 lab afterward after clearing the scene.

7 Q. Okay. Of of of the ones that are of the -- at the
8 scene, ---

9 A. Um-hum.

10 Q. --- do they fairly and accurately represent what you saw
11 at the scene?

12 A. Yes, sir.

13 MR. FULMER: At this time the State would move into
14 evidence State Exhibits No. 8, 14, 13, 12, 11, 10, 9, 5, 2 and
15 1.)

16 MR. ALLEN: Only my previous -- only my objection
17 previously stated as to State's Exhibit 8 which was previously
18 ruled upon but no objections as to the remaining.

19 THE COURT: Alright, they're admitted.

20 (State's Exhibit Nos. 8, 14, 13, 12, 11, 10, 9, 5, 2 and
21 1, photographs, admitted into evidence.)

22 BY MR. FULMER:

23 Q. At some point after you processed the crime scene, did
24 you go to the morgue?

25 A. Yes, sir, it was later in the day on the thir -- 13th I

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 believe, yeah.

2 Q. Okay. What was going on when you arrived at the
3 morgue?

4 A. Arrived at the morgue and Doctor Wren was gettin' ready
5 to stop it -- I'm sorry, start his autopsy.

6 Q. Did you make some photographs during that autopsy?

7 A. Yes, sir, I did.

8 Q. Have I handed you some of those photographs?

9 A. You have handed me some of those photographs, yes, sir.

10 Q. Would you take a look at those and and tell me whether or
11 not they accurately and fairly represent the condition of John
12 Ryan as you photographed him in in the morgue.

13 (Whereupon, the witness examined the exhibits.)

14 A. Yes, sir, they do.

15 MR. FULMER: Your Honor, at this time the State would
16 move State's Exhibit No. 4, No. 7, No. 6 and No. 15 into
17 evidence.

18 MR. ALLEN: Again, my objections as previously stated and
19 ruled upon by the Court.

20 THE COURT: Alright, they're admitted.

21 (State's Exhibit Nos. 4, 7, 6 and 15, photographs,
22 admitted into evidence.)

23 BY MR. FULMER:

24 Q. At some point later at the sheriff's office, did you make
25 some photographs of some items you collected as evidence at

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 the scene?

2 A. Yes, sir.

3 Q. And have I handed you some pictures of those items?

4 A. You have, sir.

5 Q. What were you those items?

6 A. There are three photographs: One appears to be a
7 photograph of a knife that was collected at the scene and the
8 other two appear to be photographs of a shirt that was
9 collected at the scene.

10 Q. And does -- do those photographs accurately and fairly
11 represent the items of evidence that you collected?

12 A. Yes, sir.

13 MR. FULMER: Your Honor, the State would move Exhibit
14 No. 3, Exhibit No. 16, Exhibit No. 17 into evidence.

15 MR. ALLEN: No objections as to those.

16 THE COURT: They're admitted.

17 (State's Exhibit Nos. 3, 16 and 17, photographs, admitted
18 into evidence.)

19 MR. FULMER: Your Honor, may I publish these pictures to
20 the jury?

21 THE COURT: You may.

22 BY MR. FULMER:

23 Q. Investigator, can you tell me what that's (indicating) a
24 picture of?

25 A. That is a picture of the front of the house at [REDACTED]

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 [REDACTED] [REDACTED] [REDACTED].

2 Q. That's where you responded on November 12th?

3 A. Yes, sir.

4 Q. What about that (indicating)? You recognize that?

5 A. Yes, sir.

6 Q. What is that a picture of?

7 A. That is a picture of the dryer that is in the hallway of
8 that residence.

9 Q. And what's the room behind the dryer that you see the
10 doorway?

11 A. The the room behind the dryer is the bathroom.

12 Q. 'Bout that (indicating)?

13 A. That is a picture of the bottom side of the dryer as well
14 as a floor leading into the bathroom.

15 Q. Different, just a different angle of the same dryer?

16 A. Yes, sir, just different angle.

17 Q. At some pint while you were making photographs, did you
18 receive a phone call asking you to take a look at -- for a
19 knife under the dryer?

20 A. Yes, sir, I did.

21 Q. And did you look under the dryer for a knife?

22 A. I did, sir.

23 Q. Did you find the dryer, uh, knife?

24 A. Yes, sir, I did.

25 Q. What's that (indicating) a picture of?

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

- 1 A. That is a picture of a knife under the dryer.
- 2 Q. Had you, at this point had you moved the knife?
- 3 A. I have not moved a knife.
- 4 Q. When you first saw the knife, was it in a open position
- 5 or a closed position?
- 6 A. It was in a closed position.
- 7 Q. Is that (indicating) the same knife a little closer?
- 8 A. It is, sir.
- 9 Q. Is that (indicating) still the same knife?
- 10 A. Yes, sir, even closer.
- 11 Q. How 'bout that (indicating)?
- 12 A. That is after I retrieved the knife from the dryer and I
- 13 have opened the blade up on it.
- 14 Q. Had you washed it at this point?
- 15 A. I'm sorry, sir, say that again.
- 16 Q. Had you washed the knife at this point?
- 17 A. No, sir.
- 18 Q. So this was the condition you found the knife in?
- 19 A. Yes, sir.
- 20 Q. Did it appear to have blood on it?
- 21 A. There were little small areas of blood on the blade, sir,
- 22 or excuse me, what appeared to be blood, I'm sorry.
- 23 Q. Okay, how 'bout that (indicating)? What's a -- what's
- 24 that a picture of?
- 25 A. That is a picture of a brown bag with what appears to be

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 a bottle in it in the bottom of a drawer.

2 Q. You remember what room that was in?

3 A. It -- the drawers in question were located in the, if one
4 came into the rear door of the residence and the first thing
5 you see a course is the dryer, the previous photos that you
6 put up and the bathroom is directly across from the rear door,
7 the bedroom in question would be on your right as you come in
8 the rear door.

9 Q. And then what's this (indicating) picture of?

10 A. That would be a picture of the bottle once I removed it
11 outta the brown paper bag.

12 Q. And does it appear to have blood on it?

13 A. It's a little hard to tell but yes, sir, it does appear
14 to have what appears to be blood on it.

15 Q. And then one last photo from the crime scene, that's a
16 black and white. Can you tell me what that is?

17 A. That is a picture of the kitchen area of the residence
18 after we had placed number placard down for evidence
19 collection.

20 Q. Okay, and the the dark material on the floor and the
21 walls what is that?

22 A. What appeared to be blood, sir.

23 Q. Is this (indicating) a different shot of the same
24 knife?

25 A. Yes, sir.

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 Q. Knife found under the dryer?

2 A. Yes, sir.

3 Q. And how 'bout that (indicating)?

4 A. That's a picture of a shirt that was retrieved I believe
5 from the kitchen area.

6 Q. Okay.

7 A. The same shirt just at a different photograph.

8 Q. Okay. Can you tell me what that (indicating) is? who
9 that is?

10 A. That is a overhead picture of the victim, John Ryan.

11 Q. And where was this taken?

12 A. At the Spartanburg Regional Medical Center morgue.

13 Q. Did you notice anything about his face when you took the
14 photograph?

15 A. I noticed he had what appeared to me to be bruises on his
16 forehead.

17 Q. Same thing different view, ---

18 A. Yes, sir.

19 Q. --- that right? What's this (indicating) photograph
20 showing?

21 A. That's a photograph of the back of the victim and two
22 dark or darkest spots in the middle and to the lower right of
23 the screen are what appeared to be stab wounds.

24 Q. Okay. How 'bout that (indicating)?

25 A. That would be the large stab wound in question underneath

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 or on his left chest underneath his left arm.

2 Q. And this (indicating) picture also was taken as he lay in
3 the morgue?

4 A. Yes, sir.

5 Q. Okay. Did you collect a a knife that you photographed
6 from the scene?

7 A. Yes, sir, I did.

8 Q. Would you take a look at this and tell me if this is the
9 knife that you collected from the scene.

10 A. Well that's (indicating) not really gonna work.

11 Q. Let me try it again.

12 A. Alright.

13 (Whereupon, the witness examined the knife.)

14 This appears to be the knife that was collected fr --
15 b -- from the scene and when I referred to as "I" earlier, I
16 meant we, Marilyn, Investigator Marilyn Arthur is actually the
17 collecting officer on this ---

18 Q. Alright, what ---

19 A. --- but I was present while she collected it.

20 Q. Okay, and that's also -- that's the same knife you
21 photographed ---

22 A. Yes, sir.

23 Q. --- that we saw just a moment ago?

24 MR. FULMER: Your Honor, the State would like to move the
25 knife in as evidence in this case.

SEAN NIX - DIRECT EXAMINATION BY MR. FULMER

1 (Knife marked State's Exhibit No. 18 for identification.)

2 (Whereupon, defense counsel examined State's Exhibit No.
3 18.)

4 MR. ALLEN: No objection.

5 THE COURT: It's admitted.

6 MR. FULMER: Your Honor, that's State's Exhibit 18.

7 (State's Exhibit No. 18, knife, admitted into evidence.)

8 BY MR. FULMER:

9 Q. While you were photographing the scene, did you get a
10 telephone call asking you to look for a second knife?

11 A. Yes, sir.

12 Q. And what did you do in response to that telephone call?

13 A. We searched the rest of the house more thoroughly looking
14 for a second knife.

15 Q. And were ya able to find a second knife?

16 A. We were not able to find a second knife except for knives
17 that were found in the kitchen drawer which were common
18 kitchenware knives that looked like they had not been
19 disturbed and did not ha -- appear to have any blood on 'em.

20 Q. Any of 'em appear to be wet or freshly washed?

21 A. No, sir.

22 Q. When you say you more thoroughly searched the the home,
23 would you explain how you searched it, the extent of your
24 search.

25 A. Since we were looking for something small like a knife

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

1 and this incident took place in the kitchen, we, you know, we
2 we moved out large items and appliances such as the stove,
3 refrigerator, you know, we even searched other ends of the
4 house under beds, in drawers, in closets, underneath, you
5 know, sofa, check, we just basically checked everywhere where
6 another knife could possibly be hidin' to see if we could
7 locate it.

8 Q. No knife was ever found.

9 A. No, sir.

10 Q. When you collected the knife from the dryer, did it
11 appear to you as if it had been washed?

12 A. It appeared to have been, sir.

13 Q. And why do ya say that?

14 A. S -- the best way I can explain it is is sometimes when
15 you have water that sits on somethin' and dries it leaves
16 behind kinda like water spots, kinda like the same effect you
17 get if rain dries on your car and that's the way the blade
18 appeared to me, it looked like it had a, like a water spot on
19 it is best way I can describe it.

20 Q. Please answer any questions Mr. Allen has.

21 CROSS-EXAMINATION BY MR. ALLEN:

22 Q. You did find some residue on the knife that appeared it
23 might have been blood, correct?

24 A. Yes, sir.

25 Q. Okay. And parta what you do in processing a scene is to

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

1 gather up I think you call 'em swabs, is that right?

2 A. Yes, sir.

3 Q. Okay. And a swab is and you can explain a little bit
4 better but it's kinda like a cotton swab or a Q-tip-type
5 implement, is that correct?

6 A. A sterile, sterile Q-tip would be the best way to
7 describe it yes, sir.

8 Q. Okay, sterile Q-tip and you put it on or in a substance
9 especially something that, somewhat liquid like a, something
10 that might be blood, correct?

11 A. Yes, sir.

12 Q. Okay. And the purpose of this -- and of course after you
13 take the swab then you put it into a -- its own special
14 container, right?

15 A. Just carton boxes yes, sir.

16 Q. Just a carton box.

17 A. That's what we call 'em.

18 Q. Okay. And the purpose of putting it in the carton box,
19 of course you seal it up too, right?

20 A. Um-hum.

21 Q. Okay, yes?

22 A. Yes, sir, ---

23 Q. Okay.

24 A. --- I'm sorry.

25 Q. And the purpose is so that there will be no other

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

1 contamination or cross-contamination with what you collect,
2 correct?

3 A. Yes.

4 Q. Okay. And from cross -- by cross-contamination we
5 generally talk about if you had one swab from one location,
6 another swab from another location you don't want them
7 touching each other, right?

8 A. Yes, sir.

9 Q. That's what we call ca -- cross-examine --
10 cross-contamination?

11 A. It -- yes, sir.

12 Q. Alright. Now you took some swabs from the knife, ---

13 A. Um-hum.

14 Q. --- correct?

15 A. Yes, sir.

16 Q. Substances that you suspected were blood.

17 A. Yes, sir.

18 Q. And the purpose of taking these swabs is so they could be
19 ta -- taken down to a laboratory ---

20 A. Um-hum.

21 Q. --- to determine what it is, correct?

22 A. Yes, sir.

23 Q. Determine if it's blood, yes?

24 A. Oh, yes, sir.

25 Q. Human or animal, for example, it could also be used for

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

1 DNA analysis, correct?

2 A. Yes, sir.

3 Q. Which helps to identify whose blood, correct?

4 A. Yes, sir.

5 Q. You took more than -- more swabs than just a couple from
6 the knife, correct, in connection ---

7 A. If I, ---

8 Q. --- with this case.

9 A. --- if I remember correctly yes, sir.

10 Q. You know how many swabs you took?

11 A. If you'll let me refer real quick I can tell ya.

12 Q. Yes, please.

13 A. I seem to have on here at least two carton boxes from the
14 knife that I can see.

15 Q. They're not just from the knife, I mean, all the swabs
16 you took in connection with this case.

17 A. Oh, all of them, I'm sorry.

18 Q. Yes, sir.

19 A. I thought you were just talkin' about the knife.

20 Q. I'm sorry.

21 A. That's alright. Let's see, if I'm counting right and
22 excluding any buckle swabs from your client, I would, I would
23 have twenty-six if I'm counting right.

24 Q. Twenty-six ---

25 A. Um-hum, ---

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

- 1 Q. --- swabs.
- 2 A. --- twenty-six cartons containing swabs.
- 3 Q. Okay. And a buckle swab from my client would be a swab
- 4 from which his DNA could be detected?
- 5 A. It would be referred to as a standard yes, sir.
- 6 Q. A standard ---
- 7 A. Um-hum.
- 8 Q. --- 'cuz we know it comes from him 'cuz ---
- 9 A. Yes.
- 10 Q. --- somebody would actually put the swab against the
- 11 cheek, right?
- 12 A. Yes, sir.
- 13 Q. Okay, and get a sample of what amounts to his DNA?
- 14 A. Yes.
- 15 Q. So but a DNA analyst can compare and determine if his DNA
- 16 is anywhere in there, correct?
- 17 A. Right.
- 18 Q. Do you know if there swabs were taken or known standards
- 19 were taken of Mr. Ryan?
- 20 A. No swabs are taken from Mr. Ryan because the procedure is
- 21 is that his blood sample which is taken by the coroner's
- 22 office is sent down to SLED and that serves as his DNA
- 23 standard and we cross-reference with them in order to get that
- 24 standard.
- 25 Q. Okay, so his DNA can be ter -- detected from standards

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

1 the coroner's office takes.

2 A. Yes, from his blood.

3 Q. Now while you were collecting samples and collecting
4 evidence in this house, in addition to seeing the kitchen in
5 the state that it was in, a lot of blood on the floor,
6 correct, ---

7 A. Yes, sir.

8 Q. --- you also saw drops of blood or drops of something red
9 that looked like it might be blood, correct?

10 A. In various places in the house yes, sir.

11 Q. In various places. In fact, and, Your Honor, if I may
12 inquire I was trying to keep up with the numbering but State's
13 Exhibits 11, 12 and 13 also been admitted into evidence, I I
14 might have missed those if they were called out. I know they
15 were -- it was exhibited to the Court -- I mean, to the, to
16 the jury, they've all been admitted?

17 THE COURT: They are.

18 MR. ALLEN: Thank you, Your Honor.

19 BY MR. ALLEN:

20 Q. Well, for example, I'll just use ---

21 THE COURT: Excuse me, be caref -- be careful of that
22 microphone, please, you're rubbin' up ---

23 INVESTIGATOR NIX: Oh, I'm sorry.

24 THE COURT: --- against it, that's what that ---

25 INVESTIGATOR NIX: Sorry, Your ---

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

1 THE COURT: --- noise is.

2 INVESTIGATOR NIX: --- Honor.

3 BY MR. ALLEN:

4 Q. I'm putting up State's Exhibit 14 for example. Do you
5 see red drops coming and I guess that linoleum area is what?
6 is that the bathroom?

7 A. The no -- I'm sorry, the linoleum area, yes, sir, it is.

8 Q. Okay, you see these (indicating) red drops going from the
9 bathroom and onto this (indicating) area near the dryer,
10 correct?

11 A. Um-hum.

12 Q. Okay. Did you take some swabs from some of those ---

13 A. Talkin' about the ---

14 Q. --- examples.

15 A. --- linoleum floor?

16 Q. Either the the linoleum or on the dryer?

17 A. I believe I did, let me just check just to make one
18 hundred percent sure for ya, sir. I took the swabs from the
19 dryer and and indeed I took some from the bathroom floor yes,
20 sir.

21 Q. Okay. Thank you. Now we talked a little bit about the
22 the knife that you found. Of course you say you found it in a
23 closed position, is that right?

24 A. Yes, sir.

25 Q. Which meant the blade was into the handle, correct?

SEAN NIX - CROSS-EXAMINATION BY MR. ALLEN

- 1 A. Yes, sir.
- 2 Q. And it was under the dryer, correct?
- 3 A. Yes, sir.
- 4 Q. But not too far under the dryer, correct?
- 5 A. It didn't appear to be no, sir.
- 6 Q. And close to the front edge of the dryer.
- 7 A. It's actually more to the side, sir. That's a side ---
- 8 Q. More to the side?
- 9 A. Yeah, that's a side shot of the dryer?
- 10 Q. Excuse me, that's right 'cuz the hose would be in the
- 11 back.
- 12 A. Yes, sir.
- 13 Q. This (indicating) is the side near the bathroom,
- 14 correct?
- 15 A. Yes.
- 16 Q. So you -- as one comes outta the bathroom, the dryer's on
- 17 their ---
- 18 A. Right-hand side.
- 19 Q. --- right-hand side?
- 20 A. Yes, sir.
- 21 Q. And you found it not too far underneath the edge of that
- 22 right hand -- to the right as you come outta the bathroom?
- 23 A. Yes, sir, you're correct.
- 24 Q. Thank you. Talk to you briefly about a bottle that you
- 25 found. That was a pint bottle, correct?

SEAN NIX - REDIRECT EXAMINATION BY MR. FULMER

1 A. I don't remember what size it is, sir.

2 Q. Okay. Let me show you -- I'm showing you State's
3 Exhibit 2, ---

4 A. Um-hum.

5 Q. --- does it, does it indicate on this label that you see
6 what size it is, if you don't mind.

7 (Whereupon, the witness examined the exhibit.)

8 A. 375 milliliters.

9 Q. 375 milliliters.

10 A. Yes.

11 Q. And this (indicating) picture of the hand that's holding
12 the bottle, that that be you?

13 A. Yes, sir.

14 Q. Okay. It's not a big bottle then, right?

15 A. No, sir.

16 Q. Okay. Did you also take pictures of Mr. Rogers?

17 A. No, sir, that was taken by Investigator Arthur at the
18 hospital.

19 Q. Okay.

20 MR. ALLEN: No other questions, Your Honor.

21 MR. FULMER: Just one, Your Honor.

22 REDIRECT EXAMINATION BY MR. FULMER:

23 Q. The photo of the dryer from the side shows the bathroom
24 behind it?

25 A. Um-hum.

SEAN NIX - REDIRECT EXAMINATION BY MR. FULMER

1 Q. Was there water in the bathroom sink?

2 A. Yes, sir, there was.

3 Q. Was the stopper pulled in the sink to hold water?

4 A. Yes, the stopper was down in order to hold water yes,
5 sir.

6 Q. Thank you.

7 THE COURT: May step down.

8 (Whereupon, the witness left the stand.)

9 MR. FULMER: Can this witness be excused, Your Honor?

10 THE COURT: He may be.

11 MR. FULMER: Your Honor, the State rests.

12 THE COURT: Alright. Ladies and gentlemen, that is all
13 of the testimony or other evidence to be offered by the State
14 at least in their case in chief. Before we go further I've
15 got some matters I need to address with the lawyers so we'll
16 do that now. I'll ask you to please go to your jury room, do
17 not yet discuss the case, I'll bring you back shortly.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Any motions or other matters to address
21 before we continue?

22 MR. ALLEN: Yes, Your Honor. At this point I move for a
23 directed verdict on on the grounds that the State has failed
24 to prove or perhaps failed to present sufficient evidence to
25 prove each and every element of the offense charged and in

MOTIONS AND MATTERS

1 particular that they have failed to prove or failed to present
2 sufficient evidence to prove beyond a reasonable doubt that my
3 client was not acting in self-defense or in the ejectment of a
4 trespasser or in the application of the what I frequently
5 refer to as the castle doctrine, specifically Section, the
6 Court will bear with me one second, 16-11-420 and 16 11-440.
7 Furthermore, Your Honor, I move for a directed verdict on the
8 grounds as previously stated in -- at my motion for a
9 dismissal and in the hearing that was held on September the
10 3rd I believe this year which motion was denied by the Court
11 but I move for a directed verdict on that ground as well
12 without further argument like I put it forth fully in in the
13 hearing. Thank you, Your Honor.

14 THE COURT: Mr. Fulmer.

15 MR. FULMER: Thank you, Judge. With regard to 16 11-440,
16 I don't think the the victim in this case, Mr. Ryan, comes
17 within the, comes within the purview of that statute. He was
18 an invited guest in that home, he was not attempting to make
19 forcible entry, he was not attempting to remove someone from
20 the home who was an occupant of that home so I don't think
21 that that code section applies to him. With regard to our
22 failure to disprove self-defense, Mr. Mr. Rogers brought on
23 this difficulty to himself by starting the fight with Mr. John
24 Ryan and therefore was not an act of self-defense and we've
25 given evidence that was presented as to the state of Mr. John

MOTIONS AND MATTERS

1 Ryan, it's difficult to believe that Mr. Ryan just could have
2 had had a reasonable fear for his life in this case and in
3 any, in any event it would be a question for the jury, Your
4 Honor.

5 THE COURT: Alright, motion for a directed verdict is
6 denied. Any others?

7 MR. ALLEN: No additional motions at this time, Your
8 Honor.

9 THE COURT: Alright. Have you talked with your client
10 about his right to testify as well as not testify?

11 MR. ALLEN: I have, Your Honor.

12 THE COURT: Has he indicated to you a preference?

13 MR. ALLEN: He has.

14 THE COURT: What has he indicated?

15 MR. ALLEN: He indicates he wishes to testify.

16 EXAMINATION BY THE COURT:

17 Q. Alright, Mr. Rogers, your lawyer tells me that you and he
18 have discussed your right to testify as well as not testify.
19 Do you fully understand that right?

20 A. Yes, I do.

21 Q. And have you had plenty of time to talk with your lawyer
22 about your decision?

23 A. Yes, I have.

24 Q. You understand that if you take the witness stand and
25 testify that you have to answer not just your lawyer's

MOTIONS AND MATTERS

1 questions but you have to answer the prosecutor's question, to
2 the extent they're relevant even if the responses to those
3 questions might tend to prove you guilty of some crime they
4 allege you committed or even some lesser included offense?

5 A. Yes, I do, Your Honor.

6 Q. You also understand that if you elect not to take the
7 witness stand and testify I'll instruct the jury that they
8 can't hold that against ya, they can't consider it in any way
9 in their deliberations or in their determination as to whether
10 or not your guilt has been proven beyond a reasonable doubt?

11 A. Yes, Your Honor.

12 Q. Have you and Mr. Allen discussed the advantages and
13 disadvantages of testifying as well as not testifying?

14 A. Yes, Your Honor.

15 Q. And do you appreciate what those advantages and
16 disadvantages are?

17 A. Yes, Your Honor.

18 Q. And have you had time to reflect upon your decision?

19 A. Yes, Your Honor.

20 Q. And have you reached a decision?

21 A. Yes, Your Honor.

22 Q. And what is that decision?

23 A. I would like to testify.

24 Q. And is that a decision that you've made of your own free
25 will and accord?

MOTIONS AND MATTERS

1 A. Yes, sir.

2 Q. Has anyone forced you into that decision?

3 A. No, sir.

4 Q. Has anyone pressured you into that decision?

5 A. No, sir.

6 Q. Has anyone even suggested that that's the the decision
7 that you need to make in this case?

8 A. No, sir.

9 Q. You made that decision on your own?

10 A. Yes, sir.

11 Q. And you're satisfied with it?

12 A. Yes, sir.

13 Q. Okay. You can have a seat. Thank you.

14 THE COURT: Do you have other witnesses you wanna call?

15 MR. ALLEN: Your Honor, there is a matter that I'd like
16 to recall Officer Gary and during the break there was just one
17 small subject, a few questions that I did not ask him about I
18 wanted today get into with him and I would like to ask him
19 those questions essentially concerning the availability of a
20 tape recorder when he interviewed my client and the fact that
21 he decided not to do so. I should, Your Honor, in
22 cross-examination it should not be very long and I'll ask to
23 recall him for that purpose.

24 THE COURT: Okay. Alright, let's take a a break, let's
25 take about ten minutes then we'll resume.

WILLIAM GARY - DIRECT EXAMINATION BY MR. ALLEN

1 (Whereupon, a recess was taken.)

2 THE COURT: Alright, we ready for the jury?

3 MR. ALLEN: Yes, Your Honor.

4 THE COURT: Bring 'em in. Who you callin' first,
5 Mr. Allen?

6 MR. ALLEN: Investigator Gary.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: Alright, as you know the State has rested in
10 their presentation so we'll now proceed with any to be offered
11 by the defense. Mr. Allen.

12 MR. ALLEN: Your Honor, please the Court I would call, I
13 would recall Investigator William Gary to the stand.

14 THE COURT: Alright, Mr. Gary, you've previously been
15 placed under oath and so you're still under oath for the
16 purpose of these questions.

17 INVESTIGATOR GARY: Yes.

18 WILLIAM GARY, having been
19 previously sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. ALLEN:

21 Q. Investigator Gary, I wanna ask just a few more questions.
22 November 12th and 13th when you interviewed Mr. Rogers did
23 you -- you interviewed him in the sheriff's department?

24 A. Yes, I did.

25 Q. In in a interview room in the sheriff's department?

WILLIAM GARY - CROSS-EXAMINATION BY MR. FULMER

1 A. Yes.

2 Q. Did the sheriff's department at that time have available
3 tape recorders?

4 A. They're available, they're not set up in the rooms but
5 you can find one that's somewhere.

6 Q. Are they portable?

7 A. Yes.

8 Q. Did they have tape cassettes or something to record on
9 tape recorders?

10 A. Yes.

11 Q. They were available as well?

12 A. Yes.

13 Q. Did you use one in this case ---

14 A. No, I did not.

15 Q. --- when you talked to Mr. Rogers?

16 A. No, I might've used one once in my career.

17 Q. Okay. Is there a policy about using or not using ---

18 A. No, ---

19 Q. --- tape recorder?

20 A. --- there's not, it's at the discretion of the
21 investigator.

22 Q. Okay, thank you, Investigator, if you'll answer any
23 questions of the solicitor.

24 CROSS-EXAMINATION BY MR. FULMER:

25 Q. Was anyone else present during your interview with

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 Mr. Rogers?

2 A. Yes, Investigator Matt Davis was present during the whole
3 thing.

4 Q. So he heard everything Mr. Rogers said?

5 A. Yes.

6 Q. Thank you.

7 THE COURT: Alright, you may step down.

8 (Whereupon, the witness left the stand.)

9 MR. ALLEN: I call Michael Anthony Rogers to the stand.

10 MICHAEL ANTHONY ROGERS, having
11 been first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. ALLEN:

13 Q. Mr. Rogers, I want you to speak up loud enough that I can
14 hear way over here. Let me help adjust the microphone, just
15 make sure you don't brush against it and don't worry too much
16 about the microphone, just speak up loud enough for me to
17 hear, can you do that for me?

18 A. Yes, sir.

19 Q. Louder, please.

20 A. Yes, sir.

21 Q. Alright. How old are you, sir?

22 A. Fifty-four.

23 Q. Where did you live back in November of 2 -- November 12th
24 of 2010 this past year?

25 A. [REDACTED], Roebuck, South Carolina

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 29376.

2 Q. How long had you lived there?

3 A. Just about a little bit over a year.

4 Q. And who did you live there with?

5 A. Myself.

6 Q. Did you have any other people living in your home at that
7 time?

8 A. No, sir.

9 Q. Did you know, at that time did you know Tonya Lowery?

10 A. Yes, I had. Yes, I did.

11 Q. How did you know her?

12 A. I met her few months back sometime probly about in June,
13 it was in the summer.

14 Q. In June of 2010?

15 A. Yes, sir.

16 Q. And back in November 2010 how would you describe your
17 relationship with her?

18 A. We were, we were more than just friends, we were
19 romantically involved.

20 Q. Romantically involved?

21 A. Yes, sir.

22 Q. And did you know John Ryan?

23 A. Yes, sir.

24 Q. How did you know him?

25 A. I met him through Tonya.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

- 1 Q. Do you know how long you had known him?
- 2 A. I met him maybe a week or t -- a week ago prior to this
- 3 incident of the 12th ---
- 4 Q. A week, ---
- 5 A. --- of November.
- 6 Q. --- about a week before?
- 7 A. About a week or two before, yes.
- 8 Q. A week or two.
- 9 A. I believe so.
- 10 Q. You were, you were introduced to him?
- 11 A. Yes, sir.
- 12 Q. By whom?
- 13 A. By Tonya.
- 14 Q. Okay. And what about Jackie Lance? Did you know her?
- 15 A. No, I hadn't met her until that day of the incident.
- 16 Q. When did you meet her that day?
- 17 A. I met her on, uh, my front porch.
- 18 Q. Okay, you met her on the front porch. About when was it
- 19 during the day?
- 20 A. Oh, it was in the afternoon. I don't know, it was early
- 21 afternoon maybe 12, 12:30.
- 22 Q. Okay. How did you meet her?
- 23 A. Let's see, I was -- it was a beautiful summer day, well
- 24 it was not summer, it was in November but it was a beautiful
- 25 day and, um, I was out on my porch and I was on the cell

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 phone, I don't recall who I was talking to and she was walkin'
2 by and she walked just right up into my yard and asked me if
3 she could use the phone just as bluntly like that.

4 Q. Did she know your name at that time?

5 A. I'm not sure.

6 Q. Okay.

7 A. I think she might have said -- yeah, I think she mighta
8 mentioned it, I'm not positive, Can I use your phone, Hey,
9 Mike, can I use your phone?

10 Q. Did you let her use the phone?

11 A. Yes, I did.

12 Q. Okay. One question I forgot to ask about your mobile
13 home: were you purchasing that or renting that?

14 A. I was renting it.

15 Q. Okay.

16 A. It's not a trailer park; I wasn't livin' in a trailer
17 park. I had ho -- I have homes all around me. If anybody's
18 familiar with the Calora -- Carolina Drive Extension it's
19 right across the street from the Auto Sales, Carolina Drive
20 Auto Sales.

21 Q. Okay, let's talk about that a little bit. How does --
22 one would -- is Carolina Drive it comes offa Airport Road I
23 believe.

24 A. Yes, it does.

25 Q. Okay.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 A. It's Pop's Au -- the sign on 295 it says Pop's Auction,
2 veer that left if you're comin' from Fuddruckers, you bear a
3 right you're you're coming the highway if not that way to 221
4 way.

5 Q. And is the downtown airport just beyond that?

6 A. I believe so.

7 Q. Do you know where South Avenue is?

8 A. Yes, I do.

9 Q. Where is that?

10 A. It's across 221. If you're go -- if you're heading south
11 on my road, [REDACTED] [REDACTED] [REDACTED] you get to Airport Road and
12 you'll be, you'll be goin' south like you're goin' down Church
13 Street and South Church Street, it's across 221 on the other
14 side of Airport Road.

15 Q. Is it directly across from Airport Road?

16 A. Yes.

17 Q. Okay.

18 A. There's a Family Dollar on the left.

19 Q. Now and what about Horton Road? Do you know where that
20 is in connection to where your ---

21 A. Yes, it's, ---

22 Q. --- home was?

23 A. --- uh, gee, maybe ten house lots away, twelve. It's not
24 far. It's it's the next -- it's the first if you leave my
25 house and take a, you leave my front door and you take a left,

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 it would be the first left of a side street, it's it's not,
2 it's it's not maybe five, six, houses away.

3 Q. Okay. Is that where Jackie lived?

4 A. No, that's where ---

5 Q. Excuse me, ---

6 A. --- Tonya lives.

7 Q. --- it's where Tonya Lowery lives, that right?

8 A. Yes.

9 Q. Could you see where she lived from your ---

10 A. No.

11 Q. --- porch?

12 A. No.

13 Q. Okay. But you -- but it was, was it close enough to
14 walk?

15 A. Yes, three minute walk I would say, three, five minute
16 walk.

17 Q. Now you indicated that you lived at that home alone. Did
18 you allow John Ryan to move in?

19 A. No, I did not.

20 Q. Had he moved his stuff in?

21 A. No, he did not.

22 Q. Did he have any possessions in your home on the 12th of
23 November?

24 A. I believe he did, he had a a a guitar.

25 Q. Okay. Why was his guitar over there?

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

- 1 A. I was gonna teach him how to play and I guess he was a
2 novice at it and I've been playin' since I was a child and he
3 saw me playin' the day before the incident and I told him I
4 would, I, you know, I'd show him a few things, some cords and
5 stuff and so he had it, he just had it with him. I guess I
6 don't know if he had left my home for a little while, I don't
7 know if he went to get it or how he got it, it was just he got
8 it out of his truck, that's all I know.
- 9 Q. Okay. But did you own a guitar at that ---
- 10 A. Yes, I own five. I had owned five.
- 11 Q. Okay, had owned.
- 12 A. I had owned five.
- 13 Q. You had owned five.
- 14 A. Yes.
- 15 Q. On the 12th did you have your own guitar?
- 16 A. Yes.
- 17 Q. Let's, if you will, let's talk about the 12th of
18 November, okay. Was John Ryan there all day?
- 19 A. Yes.
- 20 Q. Why was he there all day?
- 21 A. It's the day of the incident?
- 22 Q. Yes?
- 23 A. He had woken at, he had awoken at my home. He had awoken
24 at my home.
- 25 Q. Did you allow him to spend the night?

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 A. Yes, I did.

2 Q. Okay, and why was that?

3 A. I felt he was too intoxicated to drive.

4 Q. Okay.

5 A. I told him he could use my back bedroom.

6 Q. Alright. And what time did you get up that day if you
7 recall?

8 A. Probly about 10:30, 11.

9 Q. What about John? Was he up when you got up?

10 A. Yeah, he wa -- he was already up when I had gotten up.

11 Q. Okay. Jumping forward that day, you said that was also
12 the day you met Jackie, is that right?

13 A. Yes.

14 Q. Okay, and did you, did you or John take Jackie
15 somewhere?

16 A. Yeah, something about a a a job she had to do. I
17 don't -- I'm not, I'm not sure said, she said something about
18 a job ---

19 Q. Okay.

20 A. --- that she had to do so we all went for the ride. I
21 went for the ride, John John took her, I went for the ride.

22 Q. Okay, I'm gonna remind you need to kinda ---

23 A. Oh, I'm sorry.

24 Q. --- keep your voice up 'cuz I'm havin' a hard time
25 hearing you over here. So you and John both took her for a

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

- 1 ride ---
- 2 A. Yes, yes.
- 3 Q. --- at her request?
- 4 A. Yes.
- 5 Q. Okay. In whose vehicle?
- 6 A. In John's truck.
- 7 Q. John's truck. Did she stay at that other location?
- 8 A. Yes, we dropped her off and we had left and we came back
- 9 to my home.
- 10 Q. Do you know where it is that you took her?
- 11 A. I -- apparently it's that 221, wherever that place where
- 12 she said she's living.
- 13 Q. On South Avenue?
- 14 A. Yeah or yes, that's it, across from 221.
- 15 Q. Across ---
- 16 A. Yeah, across ---
- 17 Q. --- Highway 221?
- 18 A. --- where the, where the Family Doll -- Dollar, right,
- 19 going up towards that way.
- 20 Q. Okay.
- 21 A. That's the first time I've ever been down that way so I I
- 22 didn't know.
- 23 Q. Alright.
- 24 A. I don't know if that's the name of it, South Avenue
- 25 whatever.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 Q. Now let's go to the evening or nighttime of the 12th, day
2 of the incident. You were back in your home?

3 A. Yes.

4 Q. Who, and who else was there?

5 A. John was with me and Jackie.

6 Q. Jackie Lance?

7 A. Yes.

8 Q. How did she get back there?

9 A. Well he -- we went and get her.

10 Q. Okay. Do you know what time that it was that ya'll went
11 to get her and bring her back?

12 A. It was dark already. I would say it was about maybe a
13 half hour after sun fall, the sun, the sun left. Yeah, I'm
14 not sure, maybe it was about a hour or half hour after
15 sunset.

16 Q. Okay.

17 A. Maybe 6:30, 7:30, I'm not, I'm not really sure.

18 Q. Alright. When you picked her up, did ya'll go back to
19 your house directly or did ya'll go somewhere else?

20 A. No, we went directly back to my home.

21 Q. Alright. And do you know where Tonya Lowery was at this
22 time?

23 A. At home.

24 Q. At whose home?

25 A. Her home.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 Q. What did you, what did you and John and Jackie do when
2 you arrived back at your home?

3 A. We listened to music, uh, I made drinks. At the time
4 John was lettin' me know he was interested in Jackie and they
5 would, it was, it was kinda strange, I don't know and I I --
6 we were just talking really and really about nothing to be
7 honest with you, it was just...

8 Q. Were you drinking?

9 A. Yes, I I ha -- I was drinking with 'em.

10 Q. Was John drinking?

11 A. Yes.

12 Q. What about Jackie?

13 A. I had made her a drink.

14 Q. Do you know if she drank it?

15 A. Well I I -- I'm not sure. I assume she did.

16 Q. Do you know how much John had to drink that night?

17 A. Well when I -- he -- when I woke up that morning, he was
18 already drinking in just the course of the day. I mean, ...

19 Q. What type of drinks was he drinking? Was ---

20 A. Well it was ---

21 Q. --- it beer?

22 A. --- he started off -- yeah, we was drinking beers all
23 day.

24 Q. Okay. Then it moved to something else?

25 A. Yeah, I had gotten that Canadian Club for him, a pint, it

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1 was just a pint, evidence showed it just a pint.

2 Q. And what about you? What did you ---

3 A. I had ---

4 Q. --- drink?

5 A. --- some of the the the Canadian Club also with them.

6 Q. Were you drinking all day?

7 A. No.

8 Q. When did you -- do you know when you started drinking?

9 A. I don't know, maybe the afternoon I had a couple a beers,
10 that was it and then later when we got that bottle on the way
11 back from picking up Jackie we stopped and got that.

12 Q. Okay. Did Tonya come over to your house that evening
13 after you and John and Jackie arrived?

14 A. Yes, she did.

15 Q. Do you know approximately what time?

16 A. Probly around twenty past 11, 11:30, somewhere around
17 there.

18 Q. And do you know -- did did she say why she came over?

19 A. Cigarette.

20 Q. Okay. You smoked at that time?

21 A. Yes.

22 Q. Okay. Now did did John also smoke?

23 A. Yes.

24 Q. What happened after Tonya got there?

25 A. Well she came in, she was surprised to see Jackie still

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1 there and she asked for the cigarette and I tried, I says,
2 Hey, you know, what's goin', she kept on asking me what's
3 goin' on, why's she's, you know, why was she -- why's she
4 still here and I, and I said I think, I think her and John got
5 somethin' goin', he's gonna, ya know, he's tryin' to hook up
6 with her, that's what he was tryin' to do. Well anyway, I
7 talked with her for a little while just about nothing, what I,
8 what I was planning on doin', have I ate and things like that
9 and I had gone to the bathroom and on my way outta the
10 bathroom I looked and I -- and John was, had his crick of his
11 neck up against her sho -- ya know, in between her shoulder
12 blade and her head with his, with his head like this
13 (demonstrating), like he had his head right here (indicating)
14 on her shoulder from behind, his chest was against her back
15 and I had turned and said to him, I said, What do you think
16 you're doin', and when I turned around the corner from where
17 my little bar is, it's a breakfast nook, I seen his hands were
18 around her waist and I took it as in a provocative sexual
19 manner 'cuz his body was against her body in the rear with his
20 hands around her and I heard her say, John, what are you
21 doin', and I took it that way and I did go between them and I
22 pushed the man aggressively, I pushed him away and I said,
23 What the heck you think you're doin' and I pushed him and he
24 pushed against my my stereo was maybe two, three feet away,
25 the speakers, and he hit them, he went with his back against

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1 the stereo.

2 Q. Let me get some idea of spacing and all that. When you
3 went to use the bathroom before you came out and saw John with
4 his head down like that which b -- do -- how many bathrooms
5 do ---

6 A. I have ---

7 Q. you have?

8 A. --- two bathrooms. I have one near near the entrance
9 where the washer and dryer is with the that yous people saw on
10 the the pictures there, that's my my bathroom, the main
11 bathroom and I have a spare bedroom where you come into my my
12 front door the living room area, it's off to the left, there's
13 a a back bedroom back there with a spare bathroom, that's the,
14 that's the, um, the guest bathroom. I didn't go to that one,
15 I went to my bathroom which is where the washer and dryer is
16 and it -- and that's with the one I used.

17 Q. And to get to your bathroom and the bathroom that you use
18 you would walk ---

19 A. I'd have to go through my living room, walk through my
20 kitchen and a little little hallway maybe five, six feet long
21 and take a right and my bathroom's right there.

22 Q. Okay. And I think you said the washer and dryer were
23 also there.

24 A. Yes, the washer and dryer's off to my left.

25 Q. Now the -- and the washer and dryer sit together?

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1 A. Yes, they're side by side.

2 Q. Okay. And then your bedroom is where in connection with
3 that bathroom, washer and dryer?

4 A. If you, if you did not take a left to go to the bathroom
5 or a right to go outside, you'd walk straight ahead there's
6 --it's my bedroom door.

7 Q. And the door that you mentioned that you go outside of is
8 that across from what the bathroom?

9 A. It's directly across from the bathroom. My hallway's
10 probly about this (indicating) wide right here (indicating).

11 Q. Your hallway is about this (indicating) wide ---

12 A. This (indicating) wide. Where you're, where you're, ---

13 Q. Witness ---

14 A. --- where you're walking.

15 Q. --- which is about ---

16 A. I would say four, three feet, four feet.

17 Q. Four feet or so?

18 A. Yeah.

19 Q. Okay. Now when you came out of the bathroom and you saw
20 John positioned that way with Tonya, where were they
21 standing?

22 A. I have a breakfast, it's a, it's a breakfast nook like a
23 little bar where you can stand up and that's where they were.
24 She wasn't -- she was against that and he was against her.

25 Q. As you were coming out of your bathroom and and coming

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1 into the kitchen from where your bathroom was, were they
2 on ---

3 A. They were facing me. Tonya was facing me but I only, but
4 I only could see her from three quart -- from her -- from this
5 (indicating) far down, from maybe from her -- a little farther
6 from her chest down, that's it. I couldn't see, uh, uh, this
7 (indicating) way up, I couldn't see from this (indicating) far
8 down 'cuz a the -- that's how high the breakfast nook is.

9 Q. So you could not see ---

10 A. I couldn't see, you're right, till I turned the corner.

11 Q. Alright. Now you mentioned that when you saw that and
12 then you heard Tonya say something to John that you came up
13 and you say you pushed John aggressively?

14 A. Yes.

15 Q. What happened then?

16 A. He fell into my stereo speakers and I, and I went to get
17 him off of them, he weigh -- he's a lot heavier than I was at
18 the time. At the time this incident happened, I only weighed
19 a hundred and eighty-four pounds, I know I look a little
20 bigger now I thank God for that but anyway I I just finished
21 havin' cancer surgery September 13th which I had prostate
22 cancer and it was taking me six months that they said to
23 recover and I was really havin' a hard time with this recovery
24 thing, anyway I was only a hundred and eight-five pounds, I
25 seen his body against my stereo speakers like that, the fall

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1 was gonna crush, I went and I went to get him, to get him up,
2 I think he took it at -- took it as me being aggressive
3 towards him again and he went to swung and I -- and we just
4 started all over, I hit him too and we started but it was
5 brief, it was -- it wasn't a big thing, it was not like we
6 were, we were wrestlin' all over the floor, blows with -- were
7 were thrown at one another and and it just, I thought it --
8 that would have been it.

9 Q. When you said that he took a swung or he took, he he took
10 a swing, did he take a swing at at anything in particular?

11 A. He, well he, well he he tried to hit me and I and so I I
12 I went and hit him first I guess.

13 Q. Okay. And did -- do you know how many hits ---

14 A. No, we started swingin' back and forth and and it was
15 like in a matter of seconds it was over, I thought it was
16 over.

17 Q. Did he hit you?

18 A. Yes, he had.

19 Q. During that time?

20 A. Yes.

21 Q. Okay. And when you said that you thought it was over,
22 what do you mean? Describe what happened that led you to
23 believe you thought it was over.

24 A. Well I I I stopped, he stopped and, I mean, we just -- it
25 just ended. I thought it just stopped and that's -- I can't

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1 explain why it just did. There was no saying, I mean, he knew
2 what he did. I I says, Hey I I made my point, I thought I
3 made my point, ---

4 Q. Now ---

5 A. --- leave her alone, what are you ---

6 Q. --- when ---

7 A. --- doin?

8 Q. --- when when that happened, was anybody else in the home
9 at that time?

10 A. Jackie and Tonya were there.

11 Q. Do you know if they were saying anything to you or to
12 John during that time?

13 A. Yeah, they they were speakin' somethin' when, uh, during
14 the, during the, uh, altercation when I was gettin' him off
15 the speakers.

16 Q. They were sayin' what?

17 A. That, Leave him alone, leave him alone, Mike, I did.

18 Q. And then -- so how did you -- were you pulled offa him or
19 did you ---

20 A. No, I go -- I had -- I just stopped. He just stopped
21 swingin', I stopped swingin' all of a sudden. I did leave him
22 alone.

23 Q. Okay. Did you get up?

24 A. Yeah, I was standing.

25 Q. You were sta ---

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1 A. He was -- I never -- we never -- I never did fall and he,
2 and he wasn't really falling himself ,he was just leaning
3 against the speakers 'cuz when I had pushed him he fell
4 backward like this (demonstrating) ---

5 Q. Okay.

6 A. --- so that ---

7 Q. Did ---

8 A. --- that's how it, that's how it worked. We'd start when
9 he'd -- when I had gone to him and we started swingin', we
10 were both up in the upright position.

11 Q. Okay. Did he -- after you stopped and that you you
12 thought it was over, what did he do?

13 A. Outta nowhere, man, he kicked me right in the groin.

14 Q. Did he ---

15 A. I didn't expect that comin'. He just kicked me right in
16 the groin.

17 Q. Without trying to ask an obvious question, I'm just gonna
18 ask ya did it hurt?

19 A. Extremely.

20 Q. Okay. And that part -- that have anything to do with
21 your surgery?

22 A. Yes.

23 Q. Did he do anything else at that time or what, if
24 anything, did he do at that time well after he kicked you?

25 A. After he kicked me ju -- he was just standing there wh --

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1 in a, in a defensive manner and I, and I just went after
2 him.

3 Q. What did you do?

4 A. I got him to the ground.

5 Q. Okay, and then what?

6 A. And I started to hit him.

7 Q. Okay. When you say "to the ground," do you -- were you
8 outside?

9 A. I got him to the floor. I managed to get him to the
10 floor and I started to hit him.

11 Q. Do you know how many times you hit him?

12 A. Quite a few.

13 Q. What was he doing, if anything, while you were ---

14 A. He was fighting me back, he was try -- he was trying to
15 fight me back. I I -- it's like the officer said I did tell
16 him I got the better of him. I wanted to ma -- I want -- I
17 wanted to make a point for him to just stop and leave it
18 alone, just let it go, John, leave it, stop and that didn't --
19 even that confrontation didn't really last that long either.
20 I made my, I mean, I I made my point, I I thought, I thought
21 that that woulda been the end of it, that la -- again, I
22 thought that was just been it.

23 Q. Did he hit you?

24 A. Yes, he hit me.

25 Q. How did that end after or while -- after ---

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1 A. I had -- my my lip was all swollen. I was bleedin' outta
2 my lip.

3 Q. How did it end? I mean, tell me how that ---

4 A. I had got -- we had Tonya and Jackie they had to split or
5 somethin', they they they wouldn't -- they they got between me
6 and John were on floor. John was on the floor and I was on
7 top but when they were -- they got between -- Jackie and and
8 Tonya was pulling me off of him and I, and I finally gave in
9 and I got, and I, and I got, and I got up and I let him up,
10 that's what happened.

11 Q. And then what happened?

12 A. Then I I I had gotten up and then Tonya says, You're
13 bleeding, you're bleeding, go go -- come with me to the
14 bathroom, I went and I went to the bathroom.

15 Q. Which bathroom did you go to?

16 A. My bathroom, my ---

17 Q. Okay, ---

18 A. --- my ---

19 Q. --- the one that you had been in earlier?

20 A. Passed the dryer, correct.

21 Q. Pass the dryer?

22 A. Right.

23 Q. What did you do while in that bathroom?

24 A. While I was in there I wipe -- I washed, I wiped my hand,
25 my face, I was taking the blood off me. I was tellin' her,

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1 See how, see what I get for bein' a nice guy, this is your
2 friend, see what I get, that's how I was feeling. I was mad,
3 I was ---

4 Q. Then ---

5 A. --- very upset.

6 Q. And then what happened? Anything else happen back in the
7 bathroom?

8 A. Well we we were -- I was just telling her how I was
9 feeling, look what, look what happens. I, you know, I always
10 get the the enda the stick all the time when tryin' to go
11 outta my way tryin' to help somebody. I'm not saying I'm
12 Mr. per -- well, you know, that's just the way I felt anyway
13 and she told me to, Calm down, calm down, you -- I don't
14 understand why you guys are fightin', he's my friend, he's my
15 friend, I woulda never had him come over here if I'da thought,
16 ya know, this was gonna happen, she was goin' on and on too
17 and, uh, we smoked a cigarette, I don't even think I a -- I
18 finished it.

19 Q. Okay, while you were in the bathroom?

20 A. Yeah, I I had -- I was smokin' while I was in the
21 bathroom talkin' to her. She left and I I was doin'
22 somethin'. I mighta just walked to my room for somethin', I
23 don't even remember, walked out with my -- walked right back
24 out ---

25 Q. And ---

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- 1 A. --- and wa -- I started walking back into the kitchen.
- 2 Q. Well let me go back to the bathroom a little bit. Where
- 3 were you bleeding from that you were washing ---
- 4 A. My mouth.
- 5 Q. --- yourself off?
- 6 A. My mouth.
- 7 Q. Okay. Mouth?
- 8 A. Yeah, it was in my gum area in my mouth.
- 9 Q. Were you, were you cut in your arm at that time?
- 10 A. No.
- 11 Q. Okay. When you came outta the bathroom, where was
- 12 Tonya?
- 13 A. In the kitchen.
- 14 Q. Kitchen?
- 15 A. Yes.
- 16 Q. And what about -- where ---
- 17 A. John was ---
- 18 Q. --- was Mr. Ryan?
- 19 A. --- in the, John was in the kitchen also.
- 20 Q. What about Jackie?
- 21 A. She was, she was in, uh, in the kitchen.
- 22 Q. What happened after you ---
- 23 A. Oh, ---
- 24 Q. --- came ---
- 25 A. --- excuse me.

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1 Q. --- out of the bathroom?

2 A. Excuse me. When I was in the bathroom, Jackie, they were
3 all three were in the kitchen. First time they was in there
4 with me and they were, John and them were talking and John and
5 Ton -- and Jackie were talking and then Tonya had left the
6 bathroom and he -- I heard 'em calling my name, Mike, John
7 wants his keys, wants his keys, asked me what and that --
8 that's right.

9 Q. Alright, so where were the the -- where was John's
10 keys?

11 A. I had took them from, tooken 'em. I didn't want him to
12 to drive.

13 Q. Alright. So what did you do with the keys?

14 A. I threw 'em, I was in the -- I was in my hallway and I
15 through 'em towards the the bar there where they all three of
16 'em were there, I believe Jack -- Jackie picked 'em up.

17 Q. Okay. When you came outta ---

18 A. I said, ---

19 Q. --- the bath---

20 A. --- Here, I threw 'em, I said, Here, ---

21 Q. Okay, and you said you ---

22 A. --- take 'em.

23 Q. --- said here. Okay. When you came outta the bathroom,
24 and of course you said you saw Tonya and John still in the
25 kitchen, ---

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1 A. Yeah.

2 Q. --- did you see Jackie?

3 A. When I throw the keys I did.

4 Q. Okay, and ---

5 A. I, then I, then I went back to do what I was doin'.

6 After I gave him the keys, I went back in my bathroom.

7 Q. Okay. Did you come back out to where Tonya and and ---

8 A. Yes.

9 Q. --- Ryan were?

10 A. Yes.

11 Q. Or Mr. Ryan.

12 A. Yes.

13 Q. Was Jackie present at that time?

14 A. No.

15 Q. Okay. Did you see Jackie again that evening or that ---

16 A. No, I had -- that was the last I saw her.

17 Q. When you came back outta the bathroom, did you say
18 anything to John?

19 A. First I didn't say a word and I just turned into, turned
20 into my my fridgerator and I says to them, I started thinkin',
21 I says, Hey you gotta leave, said, You gotta get the freak
22 outta here, you gotta go, man.

23 Q. What, if anything, did anyone else say or do?

24 A. She informed me, Tonya informed me that, He can't go
25 nowhere, Mike, he can't go nowhere, said, He aint got his

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1 truck. I said, I I don't, I don't care, you go, you go, you
2 you walk, do whatever you gotta do, you get the hell outta
3 here, that's as plain -- excuse me, but that's as bluntly as I
4 could put it, You gotta get, you gotta get the heck outta
5 here, you're not staying here, not again, not another night,
6 believe it.

7 Q. And did anything happen after that?

8 A. After I I said it a few times to him.

9 Q. Okay.

10 A. I don't care, I'm not takin' no for an answer, you --
11 you're goin', one way or the other, you're leavin' my home,
12 that's how, that's how I put it and and I turned towards my
13 fridgerator and since just something was said off the wall and
14 I turned back and bang, I got, I got suckered, he ---

15 Q. What do ya mean ---

16 A. --- whacked me, he whacked me good.

17 Q. Where?

18 A. Right in the mouth. Right here (indicating).

19 Q. And then what happened?

20 A. We started goin' at it again.

21 Q. Why?

22 A. He just whacked me. He was relentless. This man
23 wouldn't let -- wouldn't stop. Well I, you know, I figured
24 after the time I I got the better of him, ya know, the the
25 second I got the better of him I figured he'd stop with the

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1 beatings already, I, ya know, I mean, I got, I got him up and
2 said enough is enough. This man was really he just kept on
3 and on and on, what was he trying to prove, and that's just
4 how I felt. What was I supposed to do and it and I'm telling
5 ya that he just kept on whalin' on, wantin' to whale on me.
6 The more I fought back the more he he he was fighting then I
7 noticed that it was -- he had a knife in his hand and I said,
8 Aaw, gee, the first thing I was doin' was just tryin' to get
9 it outta his hand, that's all I wanted to do.

10 Q. What kinda knife did he have in his hand, do you know?

11 A. It was a pocket knife. It was my knife, it was my knife.

12 Q. It -- was it the knife that ---

13 A. It was the you just showed on the ---

14 Q. That we saw in the pictures?

15 A. Yes, the exhibit, yes.

16 Q. With the black handle?

17 A. Yes.

18 Q. Had the blade that folds in?

19 A. Yes.

20 Q. When he had it, was the blade in or out when ---

21 A. It was out.

22 Q. --- you saw it?

23 A. It was out.

24 Q. Okay. Do ya know where he got it?

25 A. Only the way -- only thing I can think of was off my

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1 kitchen table.

2 Q. Why do you say that?

3 A. It's where I open my mail, I and I keep all my mail
4 there, I -- my mail there every day. I usually keep that
5 knife in my pocket. I I know I opened my mail. I had just
6 gotten that knife that day, it was a early Christmas present,
7 it was brand new right outta the package, little small Buck
8 knife, brand new. John had seen it, he looked at it. I put
9 it back in my pocket. I get my mail, all my mail is on that
10 kitchen table as you can see and I, and I opened my letters
11 and I apparently left it there. I didn't realize where it was
12 there, I had no idea it was there.

13 A. I u -- like I say, I usually keep it in my pocket.

14 Q. Now when you saw the knife in his hand, what was goin'
15 on? What what was he trying to do with that knife?

16 A. Mr. Allen, we were fighting, I mean, he suckered me. I
17 went to swin -- I was swinging at him, I looked down, he has a
18 knife, I'm, uh, I'm trying to get it off him. I don't know
19 what he -- I guess he -- I -- I'm thinking he's gonna stab me
20 so I'm tryin' to get that knife off of, offa him and we, and
21 we fought, we were fighting over the knife, that's my -- I was
22 trying to get it away from him.

23 Q. And then what happened?

24 A. And I I I I had, I succeeded after a while.

25 Q. And how did you do that?

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1 A. I subdued him. I finally got him on the ground and ---

2 Q. Were ya outside or ---

3 A. --- we we were roll, we -- yeah, we fro -- were we, we
4 were swingin' back and forth, back and forth, he's swinging at
5 me, lungin' at me, I'm I'm try -- I'm lungin' at him, I ---
6 finally -- he -- I -- we finally both fall and we ---

7 Q. Where did you fall?

8 A. In the kitchen where this happened in my le -- my
9 linoleum floor.

10 Q. You said earlier that you got him on the ground. What
11 did you mean when you say you got him on the ground?

12 A. We -- I -- we both fell on the ground and it, it ---

13 Q. Were ya outside or inside?

14 A. Yeah, I mean, my floor, my kitchen floor, excuse me, the
15 ground.

16 Q. Okay. And while you were fighting on the floor, the
17 kitchen floor, what happened best you can tell?

18 A. I'm not sure. I mean, I I know that eventually I got the
19 knife off of him. He started to, he started to not resisting
20 so much, he wa -- he wasn't as -- so did I. I was tired, he
21 was tired. I got that knife out of his hand, that's all I
22 cared about.

23 Q. And then whadya do with the knife?

24 A. Well at first I I I just looked at it and then, and then
25 I said and I I was, I was probly cursing at the time sayin',

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1 Gee, ya know, whatever I was sayin' and and I looked down and
2 I noticed I'd been cut and I was, I was bleedin' really bad on
3 this forearm (indicating).

4 Q. Okay. I'm showing you Defense Exhibits 1, 2 and 3 are
5 the -- are these photos -- what are these photos of?

6 A. They're a stab on my left arm cut.

7 Q. Okay, is that the cut you were just talking about?

8 A. Yes.

9 Q. Okay. And these (indicating) photos were taken when?

10 A. At the Spartanburg Regional Hospital.

11 Q. Okay. That day?

12 A. That night.

13 Q. That night.

14 A. The next morning.

15 Q. Alright. Now did you -- when you got the knife from him,
16 did you notice anything else?

17 A. I only noticed that I was bleeding.

18 Q. Okay. What about him?

19 A. I didn't really pay attention to him. He was on the
20 ground and I I I was gettin' blood all over my floor so I ran
21 to the bathroom.

22 Q. Okay, what and what did you do in the bathroom?

23 A. I grabbed a face cloth or whatever, a dish towel,
24 whatever, whatever I had in there, little towel and I started
25 wash wash my wound, I put water in the sink so I could wash my

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1 wound.

2 Q. Where was John at this time?

3 A. He was -- I left him in the kitchen, I left him on the
4 floor.

5 Q. Did you stab or cut John?

6 A. At the time I didn't, no, I didn't think so. I just got
7 the knife and I knew I was bleedin', I had to stop my bleedin'
8 first before I even thought about him. I went ba -- I went to
9 my bathroom ---

10 Q. Okay.

11 A. --- and I, and I had that knife with me, I took that
12 knife with me. I put that on the counter, I I filled up that
13 sink with water, I washed my hand, um, was water all over the
14 place, I didn't care, I just wanted to stop this bleedin'. I
15 wrapped that -- my my my forearm so it would stop bleedin', I
16 walked back into the kitchen. I heard Tonya talkin' to John
17 but I didn't care, I didn't pay attention what was bein' done,
18 I was tryin' stop the bleedin' on my hand. When I came back
19 from my -- from doin' that, it was very, very brief where it
20 didn't take long at all just to wrap it. After I washed it
21 and wrapped it, I wasn't worried about infection or anything,
22 I just wanted to clean it and get the blood off and wrap and I
23 came back into the kitchen. John was on the floor, I said,
24 Tonya call 911.

25 Q. Where was Tonya ---

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 A. She ---

2 Q. --- when you came back in you told her to call 911?

3 A. She was, she was over, over like John into the living
4 room area. John was in between like his head was like on the
5 living room, the kitchen area.

6 Q. Okay, and did she call 911?

7 A. Yes, she did.

8 Q. Where'd she -- do you know where she got the phone
9 from?

10 A. No, and and I'm not sure the living room, that's it, for
11 sure definitely in the living room.

12 Q. What did you do while she was calling 911?

13 A. I was tryin' to -- I looked at John and I noticed I said,
14 Oh, my God, I seen there was all kinds of blood all over him
15 and when I leaned over and I looked, I got s -- and I, and I
16 moved on his chest, I got squirted in the eye, came up and
17 just got me right in the eye, all over my face, his blood. I
18 didn't know what the heck to do, it was just comin' out of him
19 and I just gra -- I have, uh, dish towels I keep hangin' on on
20 the cupboard, the cabinet door, I took one a them and I put it
21 on his chest and I'm hold -- and I'm ho -- just holdin', I
22 said, and she's talkin' to 911 at the time, Tonya, I said,
23 Hold on, hold on, just hold on, John, John, John, he passed
24 out on me a few times. I didn't know what else to do, I just
25 gave him mouth to mouth.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 Q. Okay.

2 A. I I I didn't know, I didn't know what to do, s -- I di --
3 first time this ever happened in my life, I -- God Almighty, I
4 didn't know what to do.

5 Q. And why were you tryin' -- why were you doin' that? What
6 were you trying to do?

7 A. This man was hurt really bad, I realized that, ya know,
8 he, I mean, he didn't look good, I didn't want and I didn't
9 want him to die. I didn't want him to die. I actu -- I I I
10 tried to stop and save his life. I really really tried to
11 save this man's life.

12 Q. How long, if you know, were you trying to -- were you
13 down beside him trying to help him with the towels and ---

14 A. I don't know, it s -- it seemed like forever. I kept
15 yellin', Where are they, where are they and he passed out on
16 me. I thought he was gone for sure then. I slapped him a few
17 times across the face, he wasn't respondin' to the mouth-to-
18 mouth, he wasn't respondin'. I don't know. I didn't know
19 what -- yeah, I thought he, he was gone already but...

20 Q. Did the, did the medics or the emergency medical folks
21 arrive?

22 A. It took forever, really a long time it seemed it to me
23 anyway.

24 Q. Seemed to you.

25 A. It seemed to me. I I don't, I don't know how long they

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 actually took, it felt like twenty minutes, it really did,
2 I -- it might've been earlier but it really felt that long to
3 me.

4 Q. And did they eventually come into the house?

5 A. Yes.

6 Q. And then whad'you do?

7 A. I moved out of the way. I told 'em, I I said, He's not
8 respondin', that was it, I didn't know what else to do, I was
9 ni -- I didn't know what to do, there's nothing I could do.

10 Q. I'm going to show you, ---

11 (Photographs marked Defendant's Exhibit Nos. 6, 7, 8 and
12 9 for identification.)

13 --- show you four photographs have been marked for
14 identification purposes as Defense Exhibit 6, 7, 8 and 9. Do
15 you know what those (indicating) photographs are?

16 A. It's my left hand.

17 Q. Okay. Let me just ask you are these photographs of
18 you?

19 A. Yes.

20 Q. Okay. These photographs were taken where?

21 A. At Spartanburg Regional.

22 Q. Okay, when?

23 A. After the incident.

24 Q. Okay, the night -- I mean, the ---

25 A. The night of ---

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 Q. --- the the night of the incident?

2 A. Yes.

3 Q. Okay. Do these photographs fairly and accurately depict
4 some a your injuries as they appeared on that night?

5 A. Yes.

6 Q. Okay. Now let me gather these up again for reason, show
7 Defense Exhibit 6, 7, 8 and 9 to the solicitor ---

8 (Whereupon, the solicitor examined the exhibits.)

9 --- and ask that they be admitted into evidence at this
10 time as Defense Exhibit 6, 7, 8, 9.

11 MR. FULMER: No objection, Your Honor.

12 THE COURT: They're admitted.

13 (Defendant's Exhibit Nos. 6, 7, 8 and 9, photographs,
14 admitted into evidence.)

15 BY MR. ALLEN:

16 Q. Okay, putting Defense Exhibit 6 on the overhead, can you
17 tell us what that is?

18 A. It's my left, it's my left hand. I've got a wound on my
19 knuckle and my baby finger.

20 Q. You wear your wedding ring on or that ring on the left
21 hand?

22 A. Yes.

23 Q. Okay. And where did the wound on the little finger come
24 from?

25 A. That's my right hand, ain't it? That's my right hand,

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 excuse me, ---

2 Q. Alright.

3 A. --- it's this (indicating) hand.

4 Q. Where did that wound come from on your little finger?

5 A. I imagine I -- from hittin' John.

6 Q. Okay. Was it there earlier that day?

7 A. No.

8 Q. Now putting Defense Exhibit 7 on the overhead, can you
9 tell me what that is?

10 A. Some kinda laceration on my left hand.

11 Q. Is that on the same ---

12 A. On my le -- my my right hand, is it? Yes, it's my right,
13 my right side.

14 Q. And do you know where you got that laceration?

15 A. During the altercation, during the fight.

16 Q. Did you have that cut when you went to the bathroom the
17 first time to wash up after the ---

18 A. No, ---

19 Q. --- pushing into the stereo?

20 A. --- no, no.

21 Q. Putting on the overhead Defense Exhibit 8.. What is that
22 (indicating) a picture?

23 A. My mouth. I'm missin' a tooth, broke my tooth.

24 Q. Okay. Did you have that tooth on the night of the
25 incident?

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. You did?

3 A. Yes. See, it's missin' and it's is bro -- it chi -- it
4 broke, it's the the root, broke at the root, the the root was
5 still there, the tooth itself was gone.

6 Q. Do you see any other injuries on that photograph?

7 A. My chin right here (indicating). See a big bruise right
8 here (indicating), that's from when he hit me, down in my
9 mouth and my chin right here (indicating).

10 Q. Any other injuries?

11 A. On myself?

12 Q. On -- that you see in that picture.

13 A. On the face I can't really see that well. My lip is
14 swollen, that was from the first, the the well after the
15 stereo incident, that lip that's where I was bleeding from my
16 lip and it had stopped. I came out the bathroom and he
17 suckered me dire -- directly in what -- in the mouth and
18 rocked my world, that's when he broke my tooth, that's when we
19 fought and that's when he got cut and I got cut.

20 Q. And again, showing Defense Exhibit 9, is that
21 (indicating) another picture of your mouth taken on that
22 night?

23 A. Yes.

24 Q. Okay.

25 MR. ALLEN: One second please, Your Honor.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 (Pause.)

2 BY MR. ALLEN:

3 Q. When you took the knife into the bathroom, I believe you
4 indicated you put it on the counter of the bathroom ---

5 A. Yes, and I proceeded to wash.

6 Q. Wash what?

7 A. Wash my hand.

8 Q. Wash your hand?

9 A. My hand, my cut I was filling the sink with water and
10 washing my cut.

11 Q. Do you know if the blade was open or closed?

12 A. It was open at the time I put it down.

13 Q. Did you wash the knife?

14 A. No, I did not. It got wet, there's no doubt about it got
15 wet and I closed it too. I closed it after I was done
16 taking care of my cut. I closed it.

17 Q. What did you do with it after you closed it?

18 A. I thought I left it on the counter, ---

19 Q. Of ---

20 A. --- co ---

21 Q. --- what?

22 A. On on -- in the bathroom, ya know, the sink.

23 Q. Yes, sir. Did you intentionally put it somewhere else?

24 A. No, I did not.

25 Q. But there's testimony that it was found under the the

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 dryer, ---

2 A. Yes.

3 Q. --- do ya know how it got there?

4 A. I didn't place it there. Only thing I can speculate, and
5 that's all it is is speculation, is it fell off my co -- the
6 counter and when I walked back into the kitchen living room I
7 musta scuffed it in.

8 Q. Okay.

9 A. Last time I'd seen it it was i -- it was on my kitchen
10 sink.

11 Q. Your kitchen sink?

12 A. I mean, not the kitchen, excuse me, my bathroom sink,
13 excuse me, that's the last time I'd seen it.

14 Q. Now showing you a picture of, I'm gonna put it on the
15 overhead, picture of State's Exhibit 14. This (indicating) is
16 a picture of or is this a picture of your dryer?

17 A. Yes. Yes.

18 Q. On the picture as it appears over to the right as we're
19 looking at it of the dryer, ---

20 A. Right.

21 Q. --- what is that linoleum floor area?

22 A. That's the, uh, bathroom floor.

23 Q. Okay. And toward the back of that picture, toward the
24 back of that linoleum floor area what is is that?

25 A. That's the, that's the, uh, the the of the sink.

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 Q. The side of the ---

2 A. My sink is right there (indicating), that's (indicating)
3 the countertop and that's (indicating) the side of a cabinet
4 comin' down ---

5 Q. Okay.

6 A. --- then in the corner and up to the right there
7 (indicating) that's a wastebasket, ---

8 Q. Alright.

9 A. --- it's a little wicker wastebasket.

10 Q. And of course to the left of that dryer as we're looking
11 at it, to the left of that dryer there's another white ---

12 A. It's a washing machine.

13 Q. It's a wa ---

14 A. It's the washer then dryer.

15 Q. Okay. The State presented photograph of a bottle of
16 blended whiskey in a paper bag that was found in dresser
17 drawers of a room.

18 A. Yes.

19 Q. Okay. You kn -- do you know whose dresser drawers that
20 was?

21 A. That's mine.

22 Q. Okay, and what room was it, what room was that in?

23 A. My bedroom.

24 Q. The one that's off of this (indicating) bathroom that's
25 next to the dryer?

MICHAEL ANTHONY ROGERS - DIRECT EXAMINATION BY MR. ALLEN

1 A. Yes.

2 Q. Do you know how it got in there?

3 A. I put it there.

4 Q. When?

5 A. After I had gotten cut.

6 Q. Why?

7 A. I I didn't know the condition of John and neither di --
8 and if he -- I didn't want him drinkin' no more and when I had
9 got cut I hit, I hit it, I drank some and I capped it and I
10 put it back in the drawer. I didn't wanna leave it out, I
11 didn't want him gettin' anymore.

12 Q. Now was there a larger bottle of ---

13 A. No, ---.

14 Q. --- whiskey in your ---

15 A. --- uh, that was the only bought.

16 Q. --- house that night?

17 A. No, no, none whatsoever.

18 Q. Earlier or before the fighting and the touching and and
19 all that had you and John been drinking out of a larger bottle
20 of whiskey?

21 A. No, that was the only bottle that that was was bought.

22 Q. Was ---

23 A. That was the only bottle bought, that was the only bottle
24 that was -- we were drinkin' out of.

25 Q. And and what size bottle was that?

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 A. It's a pint.

2 Q. It's a pint?

3 A. And I made three drinks out of it and there was still
4 some left.

5 Q. After you -- well let's just skip back a little bit.
6 After you told John to leave that night, you ever change your
7 mind and tell him that he could stay for a while?

8 A. No.

9 MR. ALLEN: Nothing further, Your Honor. Thank you.

10 CROSS-EXAMINATION BY MR. FULMER:

11 Q. Mr. Rogers, how did you know to tell police to look
12 underneath the dryer for the knife if you didn't know it was
13 under there?

14 A. I I didn't tell 'em to look under the dryer, I says check
15 the washer, check the washer machine or dryer, check that
16 area, check the wash, the dryer, that ---

17 Q. Why did ---

18 A. --- area.

19 Q. --- you tell 'em to check there if you didn't know the
20 knife was there?

21 A. 'Cuz I took, I took the -- I didn't know. I told 'em
22 washing machine, it was under the dryer. I told 'em to look
23 in that area that's what I had said because I took that knife
24 with me into the bathroom, that's why I had said that. If I
25 was gonna hide the knife, sir, I would have hid it a lot

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 better than under a dryer, think about it.

2 Q. You testified a few minutes ago that you left the knife
3 on the bathroom counter ---

4 A. Yes, and I closed it too. I I ---

5 Q. --- but you told the police ---

6 A. --- after when I was leaving'.

7 Q. Did you tell the police to look under the washer or the
8 dryer for the knife?

9 A. I said check around the washer, check around the dryer.
10 I didn't say it was underneath, I said, Check there, that's my
11 exact words I told 'em. I didn't say, Look underneath, I
12 said, Check in that area.

13 Q. Did you tell 'em to check anywhere else in the house?

14 A. No.

15 Q. Why'd you wash the knife off?

16 A. I did not wash the knife off.

17 Q. How'd the blood get off the knife?

18 A. How did what?

19 Q. How did the blood get off the knife?

20 A. As far as I know there was -- but there's no blood on the
21 knife, that's how you did your DNA analysis.

22 Q. At what point did you stab John Ryan in the back?

23 A. I did not stab John, sta -- stab him.

24 Q. You didn't stab him?

25 A. I did not.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. Do you know how he came to be stabbed?

2 A. I know how he got cut was us fighting over the knife. I
3 did not intentionally grab that knife out of his hand and stab
4 him, ---

5 Q. Did you know there's ---

6 A. --- we fought over that knife.

7 Q. Did you hear Doctor Wren testify earlier today?

8 A. Yes, I sure did.

9 Q. Do you know how the stab wounds were inflicted on his
10 back?

11 A. Through the fight.

12 Q. Through you.

13 A. I got ahold of that knife while -- during the fight.

14 Q. And you stabbed him in the back?

15 A. I didn't stab him in the back, he got cut in the back.

16 Q. You cut him in the back?

17 A. He could have got cut in the back.

18 Q. Was there anyone else in the room when this happened?

19 A. No, no one else, it was him and I and we were fighting
20 over the knife.

21 Q. Okay, let's go back a little bit. You said you were
22 romantically involved with Tonya.

23 A. Yes.

24 Q. Would you call her your girlfriend?

25 A. Somewhat, yes.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. Somewhat?

2 A. Yes.

3 Q. Was -- were you monogamous with her?

4 A. Yes.

5 Q. I don't mean sexually, I mean, ---

6 A. Yes.

7 Q. Okay. She was your only girlfriend?

8 A. Yes.

9 Q. And how long had you known John Ryan?

10 A. I has -- I had just met him. I met him maybe two weeks,
11 a week prior to this incident.

12 Q. And so he had been staying at your house for a couple
13 d -- this was the second day he'd been at your house?

14 A. The night of the incident was the second day, yes.

15 Q. And that would it be fair to say that he had been
16 drinking pretty much the whole time he'd been there except
17 when he was sleeping?

18 A. Pretty much, yes..

19 Q. You had been teaching him how to play guitar?

20 A. We never got that far.

21 Q. Had you discussed doin' that?

22 A. Yes.

23 Q. You let him sleep over at your house?

24 A. Yes, I did.

25 Q. Road around together in the truck?

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 A. Yes, we did.

2 Q. Picked up a 24-year-old girl together?

3 A. No, that's not true. She came to my home, wanted to use
4 my phone.

5 Q. And then she began to hang out with ya?

6 A. Yes.

7 Q. So ya'll were getting to be pretty good friends pretty
8 quick.

9 A. No, the reason why she was hanging around was because
10 John was interested in her.

11 Q. This man you'd been drinking with for a couple days, let
12 sleep over, ---

13 A. I wasn't drinking with him for a couple of days.

14 Q. --- gonna teach him how to play guitar.

15 A. Yes, I was.

16 Q. You all got in the bathroom and he's got his hands on
17 your woman.

18 A. Yes.

19 Q. Made you mad, didn't it?

20 A. Yes.

21 Q. Made you very angry, didn't it?

22 A. I was upset.

23 Q. So you attacked John?

24 A. I told him, I pushed him away, like I state stated, Get
25 away from her, ---

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. You pushed ---

2 A. --- what are you doin', ----

3 Q. --- him down and then you started ---

4 A. -- what ---

5 Q. --- to beat on him, ---

6 A. --- are you doin'?

7 Q. --- is that true?

8 A. What's that?

9 Q. You pushed him down and then you start to beat on him?

10 A. No, I I didn't start to beat on him until we started to
11 fight then I, then I, then I -- yes, I was, I was fighting
12 with him.

13 Q. But when you pushed him down what happened next?

14 A. I went to go take him off the the the stereo, off my
15 speakers and he took it as me advancin' on him, he went to
16 swing and I swung at him first and I, and I, and I -- and we
17 started fighting.

18 Q. Are you telling this jury you were going over there to
19 help him up?

20 A. I was gettin' him off, yeah, I was gonna get him off my
21 speakers because he was leanin' on it and the cushions were
22 gettin' crushed. Ya know, we -- the fronta the speaker would
23 crush and I didn't want it crushed, I says I was gonna get him
24 off, Hey, John, just, ya know, that the push was enough, I
25 thought it would have been enough, he got my point, he knew.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. So you come outta the bathroom, his hands are on your
2 girlfriend, you're mad enough to go over and push him down but
3 your immediately now gonna help him back up off the ---

4 A. I just ---

5 Q. --- ground.

6 A. --- wanted to get -- I was so close to him, it was so
7 close and this is a, this is a living room in a single wide
8 trailer; you take away the couch, the stereo, everything what
9 do you got left? nothing. I coulda leaned over and just had
10 picked him up like this (indicating), well he took it as an
11 aggressive move, I know he did 'cuz that's why he wanted to go
12 hit me and I hit him and I hit him.

13 Q. You hit him at that point?

14 A. Yes, I did.

15 Q. How many times did you hit him?

16 A. Once when when when we were -- he was against the stereo
17 just once, ---

18 Q. In the head?

19 A. --- and he got up and it -- this (indicating) area.

20 Q. You told Mr. Allen that John had indicated to you that he
21 was interested in Jackie. How did he do that? What he say to
22 ya?

23 A. Who Ja -- who John, John said to me?

24 Q. Right.

25 A. Well it was so much what Jackie was sayin' to us, you

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 know, she was making herself out there. She had know -- she
2 knew that I, that I was involved with Tonya so she was more
3 making a a play for John and John was more for -- more willing
4 to go for it. I told him go for it, I said, Go ahead, why
5 not, ya know, I I mean, that's the truth.

6 Q. So this 24-year-old girl chasing after a 42-year-old
7 man?

8 A. Hey, it happens.

9 Q. Okay.

10 A. It happens, I'm I'm serious.

11 Q. How much had you had to drink that day?

12 A. Altogether?

13 Q. Yes.

14 A. Probly about five beers and and one one mixed drink.

15 Q. You think that you were drunk at this time?

16 A. No.

17 Q. How much did John have have to drink that day?

18 A. Yeah, I I can't even speculate, quite a bit.

19 Q. How would you describe his mental condition at at the
20 time of the fight?

21 A. Mental condition, that's a good question. Angry, just
22 like I was, really mad.

23 Q. Was he impaired?

24 A. Yes.

25 Q. Had you seen John take any drugs that day?

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

- 1 A. No.
- 2 Q. Had you taken any drugs that day?
- 3 A. Just my normal prescription.
- 4 Q. Which is what?
- 5 A. Cymbalta and Benicar which is for blood pressure.
- 6 Q. Did you know whether or not John was taking Klonopins?
- 7 A. Not really.
- 8 Q. You also told Mr. Allen that at some point during the
- 9 between I guess fight number 1 and fight number 2 John kicked
- 10 you in the groin?
- 11 A. Yes, sir.
- 12 Q. How did you respond to that?
- 13 A. I keeled, I I I kneeled over, I keeled over.
- 14 Q. And did did John attack ya at that point?
- 15 A. No, ---
- 16 Q. What did he ---
- 17 A. --- couldn't.
- 18 Q. --- do?
- 19 A. I I, and I keeled, I come, I come up and boom, we just
- 20 started fighting.
- 21 Q. So you were ---
- 22 A. I went -- I came up, I I came after him after he kicked
- 23 me.
- 24 Q. That wasn't a debilitating kick?
- 25 A. Oh, it hurt, trust me, it hurt.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. But not enough to where you weren't able to ---

2 A. No, ---

3 Q. --- fight.

4 A. --- not enough to get -- not enough to put me to my
5 knees, no.

6 Q. And you had just had prostate surgery.

7 A. Yes, sir, I did. It wasn't enough to put me on my knees
8 I can tell ya that 'cuz if it was that's where I woulda been.

9 Q. At some point did the, did the girls try to intervene in
10 this fight and stop it?

11 A. Yes, they did.

12 Q. Did they both do that?

13 A. Yes.

14 Q. And then at some point Jackie left?

15 A. Yes.

16 Q. Okay. To the point that Jackie left, had you told John
17 to leave?

18 A. Prior to Jackie leavin'?

19 Q. Yeah.

20 A. No.

21 Q. At what point did you tell, did you tell John to leave
22 the trailer?

23 A. When I came out, after I came out of the bathroom the
24 second time, after the, after the fight of the groin, after
25 the fight in the groin.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. Okay. And you weren't cut on your arm at that time?

2 A. No, I was not.

3 Q. Why'd you tell the police you came outta the bathroom
4 with a knife in your hand?

5 A. I didn't tell 'em that.

6 Q. You didn't tell ---

7 A. I I did not.

8 Q. --- Investigator Gary that?

9 A. God is my judge, I did not tell that man that I had came
10 outta the knife --- out the bathroom with a knife in my hand.

11 Q. So he made that up?

12 A. I don't know where he got it. I answered his questions
13 and he took -- twisted my words, that's the God's honest
14 truth.

15 Q. You said this knife was a early Christmas present.

16 Whose -- who was it a present from?

17 A. From a friend up north from ---

18 Q. How'd you, ---

19 A. --- Massachusetts.

20 Q. --- how did you receive it?

21 A. By UPS and I have the box there and the date on it that
22 it arrived. If you, if you want -- wanted to check that out,
23 it's in there, it's in there, the receipt, everything, UPS it
24 came.

25 Q. Well I think you testified earlier that you used that

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 knife to open your mail that was your habit?

2 A. That's right.

3 Q. Well if you'd just gotten the knife that day how could it
4 be your habit that you typically use that knife to open your
5 mail?

6 A. Because I had one just like it, that's why it was
7 replaced.

8 Q. What happened to that knife?

9 A. I lost it.

10 MR. FULMER: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. FULMER:

13 Q. Let me show you a couple a pictures that you've seen
14 before. That's (indicating) your kitchen table?

15 A. Yes, sir.

16 Q. Alright. Is that your mail?

17 A. Yes, ---

18 Q. And di ---

19 A. --- that's some of it, that's some of it. It's it's
20 things that I left up there it's probly either gotta go out or
21 I gotta respond to along with my two Bibles. It coulda been,
22 I don't -- I'm not sure exactly what it is, I aint ---

23 Q. Well ---

24 A. --- got my reading ---

25 Q. --- but my question ---

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 A. --- glasses.

2 Q. --- to you is that the ---

3 A. Can I get my reading glasses, please. I can tell you
4 exactly what the mail is if it's clear -- if it's close
5 enough. What you wanna know is where's the UPS thing? It's
6 it's in the cabinet.

7 Q. No, just take a look. I'll ask you a question once
8 you've had a chance to look at it.

9 (Whereupon, the witness examined the photograph.)

10 A. Yeah, that looks like the mail I received that day,
11 coulda been.

12 Q. Okay, well it it looks to me like at least some a that
13 mail's been opened by hand, in other words, ripped open or
14 torn open.

15 A. Yeah, it coulda been so I I didn't say it was all ol --
16 it's not all that day's mail.

17 Q. So some a ---

18 A. It coulda ---

19 Q. --- your mail you ---

20 A. --- been yesterday's. Yeah, I I can leave it all
21 there, ---

22 Q. Okay, so ---

23 A. --- I keep my bills ---

24 Q. --- some of your mail you open with your finger or pull
25 it open, others -- other parta your mail you open with that

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 knife?

2 A. No, majority a time I open all my mail with a clean
3 thing: I'll use a butter knife, I'll use something with a
4 sharp object. Those those those things you see there those
5 are re -- there's receipts. Those aren't envelopes you see,
6 those envelopes have got a clean cut on 'em. The police got
7 'em. You wanna get 'em from what -- get 'em, go get 'em, they
8 have clean cuts on 'em, every one.

9 Q. Do you typically carry that knife on your person or one
10 like it?

11 A. Majority a time I do.

12 Q. That's your habit?

13 A. Excuse me?

14 Q. That's your habit?

15 A. Majority a the time I keep it, I keep it on me. Yeah, I
16 use it for -- comes in handy in a lotta things.

17 Q. Did you have it on your person the night of the 12th?

18 A. I believed I had.

19 Q. How did John get it from you?

20 A. I coulda left it on the kitchen table.

21 Q. Well you just said you had it on your person that night.

22 A. I had it on me that day, yes, that whole night then I
23 whatever. I had it, I had it on me.

24 Q. Well what time you get your mail that day?

25 A. I don't know. I'm not sure. My mail usually runs, I

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

- 1 don't know, 4:30, 5:30. I couldn't be exact, I I don't know
2 when I went and got my mail.
- 3 Q. Before dark ---
- 4 A. UPS ---
- 5 Q. --- would that be fair?
- 6 A. --- came. Excuse me?
- 7 Q. Would it be fair to say before dark?
- 8 A. I I really, I'm not sure. I could have, I coulda not
9 too.
- 10 Q. But you'd already gotten your mail by the time this fight
11 started.
- 12 A. Yes.
- 13 Q. Okay. And you said you carried your kni -- your knife on
14 your person that night.
- 15 A. Said night, I usually carry it on me yes, I do.
- 16 Q. No, I asked you just a minute ago if you were carrying it
17 on your person that night you said yes?
- 18 A. Yes. Yes.
- 19 Q. Okay. How did John get the knife away from you?
- 20 A. I told you it was on the kitchen table.
- 21 Q. You just said you had it on your person.
- 22 A. I told you it was on my kitchen table. I carried that
23 knife with me prior to me open my mail.
- 24 Q. Which was earlier in the evening.
- 25 A. I can't tell you what time I opened my mail.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. Okay. Are you speculatin' that the knife musta been on
2 the table or do you remember the knife being on the table?

3 A. I remember u -- opening my mail, I can't tell you what
4 time as to what I did but, I mean, I'm speculating that the
5 knife coulda been on the table, yes.

6 Q. But you don't remember seeing it on the table.

7 A. No, I don't recall seeing it on the table.

8 Q. Okay. Alright, let's let's jump ahead in time a little
9 bit. Tonya at some point went out your back door.

10 A. That's -- I never seen that. I never saw anya that.

11 Q. Well Tonya testified earlier that she never saw a knife.
12 Did you see a knife before she left?

13 A. Before she left when? Did she -- when she left out my
14 back door? I never saw her leave the back door.

15 Q. At what point did you see a knife?

16 A. When I had it when I opened my mail.

17 Q. During the fight?

18 A. I -- oh, it it was in John's hand.

19 Q. Okay, and I'm asking you was Tonya in the trailer at that
20 point or was she outside the trailer at that point?

21 A. I I don't -- I didn't know. I don't know. I didn't know
22 about that. I didn't ---

23 Q. Were you ---

24 A. --- know. I ---

25 Q. --- aware that she ---

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 A. --- didn't, I ---

2 Q. --- ever left the trailer?

3 A. --- wasn't aware of Tonya leaving the trailer until the
4 testimony. I had no idea that she had left. My assumption
5 was that she was behind us at all -- through the whole thing,
6 that was my assumption till I had heard that she had exited
7 the trailer. I -- it made sense because the simple reason is
8 that she came out, came in the front door.

9 Q. So you saw her come in the front door.

10 A. Yes, I did.

11 Q. So you knew she'd been outside.

12 A. Apparently, yeah, after she comin' in the front door.
13 She had to leave the trailer to go by -- to come in by the
14 front door, she was behind me.

15 Q. Well you just testified until today you didn't know that
16 she had gone outside.

17 A. I did not know that she had exited when the fight was
18 going on, that's what I said.

19 Q. Well how would she get from behind you to coming in the
20 front door?

21 A. To my back door?

22 Q. So you did know she went outside?

23 A. No, I didn't know she exited the trailer during the
24 fight.

25 Q. Okay. Would there be another way from behind you where

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 the back door is to coming in the front door without exiting
2 the trailer?

3 A. No.

4 Q. Okay, at at the point you see that John has a knife tell
5 me what happens.

6 A. I tried getting the knife from him. I started fighting.
7 I started to fight him. I tried getting the knife. I tried
8 grabbing his hand, if that didn't work I punched him. I tried
9 to do whatever I could. It all happened so fast and he was
10 lungin' just as much as as I was lunging at him. It was like
11 I said, he was relentless. He wouldn't give up, I'm tellin'
12 ya he would -- he wouldn't stop, I ---

13 Q. Were the two of you standing at this point?

14 A. Yes, we were. Yes, we were.

15 Q. And ---

16 A. --- then we we -- yes, we were.

17 Q. --- he was relentless. Was he punching you with one hand
18 while he held the knife with the other?

19 A. Swingin'. He was punching.

20 Q. How long did this go on?

21 A. I can't speculate, uh, it was quick. It all happened so
22 fast, it's not like we were having a boxing match, you know.
23 Blows were were thrown and the next thing you know we're on
24 the, we're on the floor, ground.--

25 Q. At some point you were able to get the knife away from

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 John?

2 A. Yes. Yes, thank God I did.

3 Q. And what did you do at that point?

4 A. I stood up and he he had stopped, I had stopped, I just
5 got up.

6 Q. You didn't stab him?

7 A. I didn't know he was stabbed at the time.

8 Q. Is it your testimony that at at the point you were able
9 to take the knife away from John you immediately stood up?

10 A. Pretty much so. When I got the, when I finally got that
11 knife out of his hand and had control of it, complete control
12 of that knife, I got up, we stoo -- I stood up.

13 Q. Okay. Then do you have an explanation as to how John had
14 two stab wounds to his back?

15 A. Yes, I d -- yes.

16 Q. Well what is that?

17 A. Now when we rolling around on the ground, my kitchen
18 floor, me trying to get the knife away from him.

19 Q. You stabbed him in the back?

20 A. I did not stab the man.

21 Q. Once you got the knife away from John did you stab him in
22 the chest at that point?

23 A. No, he ha -- he was cut already and I didn't even know it
24 till I came back to see him when he didn't -- when he was on
25 laying on the floor. I left him on the floor, I went -- I

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 came on into the bathroom and when I came back to the kitchen
2 he was back on the floor.

3 Q. Isn't it true that you came outta that bathroom with a
4 knife and you stabbed John in the chest and you stabbed John
5 in the back?

6 A. That -- that's absolutely false.

7 Q. And you cut yourself in the process on the forearm?

8 A. That's absolutely false.

9 Q. Isn't it true that John was stumbling around drunk that
10 night an easy prey for you?

11 A. That's not true.

12 Q. Isn't it true that you were in a rage over the fact that
13 he made an advance with your girlfriend ---

14 A. That's absolutely false.

15 Q. --- and you took advantage of him ---

16 A. That's ---

17 Q. --- to show what a man you were?

18 A. --- absolutely false.

19 Q. You stabbed a drunk man and killed him, didn't you?

20 A. No, I did not; God is my judge I did not.

21 Q. If you'd never pushed John, it's n -- he'd he'd be alive
22 today, wouldn't he?

23 A. I can't say that.

24 Q. Well he wouldn't be dead by your hand.

25 A. He didn't, he didn't die by my hand.

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 Q. I'm still confused as to how a man gets stabbed in the
2 back if he's got control of the knife.

3 MR. ALLEN: Objection's form of the question is more of a
4 statement than a question.

5 THE COURT: Rephrase it.

6 MR. FULMER: Yes, sir.

7 BY MR. FULMER:

8 Q. Can you explain to me how John came to be stabbed in the
9 back?

10 A. No, I cannot.

11 Q. But there was nobody else in the room, wasn't there?

12 A. No, there wasn't.

13 Q. John didn't stab himself in the back, did he? That's
14 what you're goin' with?

15 A. I don't know. I don't know how it happened. I can't, I
16 can't tell you how it happened. I know I was fighting for
17 that knife to get it out of his hand and that's what I did. I
18 accomplished what I had to do for me.

19 Q. And after you, after you stab him in the back and you
20 realize what you've done to this man, didn't you panic?

21 A. No, I didn't realize nothing.

22 Q. Did not you panic and you took the knife in the
23 bathroom ---

24 A. I didn't ---

25 Q. --- and washed it off?

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 A. --- even know he was cut. I didn't even know I was cut
2 until I had gotten up and realized I was bleeding blood, I was
3 pourin' blood all over the floor ---

4 Q. Didn't you hide the knife?

5 A. Excuse me?

6 Q. Didn't you hide the knife?

7 A. I had the knife. Yeah, when I stood up I had the
8 knife.

9 Q. No, did not you hide the knife?

10 A. No, I did not hide no knife. If I was gonna hide that
11 knife, believe me I'da hid it, you just never woulda found it
12 and what did I have to hide? I stood there. I tried to save
13 this man's life. I didn't try to run, I didn't try to cover
14 it up, take his body, put it somewhere else or do whatever, I
15 didn't do anya that.

16 Q. Well where'd ---

17 A. I waited, ---

18 Q. --- you run to?

19 A. --- I'm the one who had her call 911 ---

20 Q. Where would you run to?

21 A. I had to ---

22 Q. You had a dead man in your livin' room?

23 A. Excuse me?

24 Q. Where would you run to? You had a dead man in your
25 living room?

MICHAEL ANTHONY ROGERS - CROSS-EXAMINATION BY MR. FULMER

1 A. I had no reason to run. It's my home, I had no reason to
2 run. I had nothin' to hide, nothing at all. Even at 911 they
3 asked if I was still there, I I was yelling in the background,
4 they heard it, they know I I wasn't going nowhere.

5 Q. But you ---

6 A. C'mon.

7 Q. --- it was your home but you weren't trying to eject John
8 at this time, were ya, ---

9 A. I was tryin' to eje -- I didn't try to eject John, I told
10 him to leave before he attacked me. I did not try to eject
11 him. If I wanted -- if I'da tried to eject him, I woulda
12 accomplished just that and got him outta my home.

13 Q. Yeah, if you kicked him out, he'd be alive right now,
14 wouldn't he?

15 A. Probably so.

16 Q. Nothing further, Your Honor.

17 MR. ALLEN: No redirect, Your Honor.

18 THE COURT: You may step down.

19 (Whereupon, the defendant left the stand.)

20 MR. ALLEN: There's no other witnesses or evidence to
21 redress, Your Honor.

22 THE COURT: Any reply?

23 MR. FULMER: I would have one witness, Your Honor,
24 briefly.

25 THE COURT: Okay.

MATTHEW DAVIS - DIRECT EXAMINATION BY MR. FULMER

1 MR. FULMER: The State calls Matt Davis.

2 MATTHEW DAVIS, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. FULMER:

5 Q. Please state your name for the record.

6 A. Matthew Davis.

7 Q. Where do you work, Investigator Davis?

8 A. Spartanburg County Sheriff's Office.

9 Q. How long have you been there?

10 A. I've been there for four years, I was at the city for
11 four so a total of eight years, currently assigned to the
12 Criminal Investigation Division.

13 Q. Were you present in the interview room on November probly
14 13th I guess early in the morning when Investigator Gary
15 interviewed Mr. Rogers?

16 A. Yes, sir, I was present for the entire interview.

17 Q. Did you hear Mr. Rogers tell you and Investigator Gary
18 where the knife was?

19 A. I did.

20 Q. And where did he tell you that knife was?

21 A. Said it was gonna be underneath the dryer, washer area,
22 up underneath there.

23 Q. Were you also present when he gave some details of what
24 happened that evening?

25 A. I was.

MATTHEW DAVIS - CROSS-EXAMINATION BY MR. ALLEN

1 Q. And did you hear Mr. Rogers state that he had a knife in
2 his hand when he left his bathroom?

3 A. I did.

4 Q. Were were you present in the courtroom for Mr. for
5 Investigator Gary's testimony?

6 A. I was.

7 Q. And was his testimony substantially the way you remember
8 that interview?

9 A. Yes, sir, it was.

10 Q. Thank you. Please answer any questions Mr. Allen may
11 have for you.

12 MR. ALLEN: One second please, Your Honor.

13 CROSS-EXAMINATION BY MR. ALLEN:

14 Q. Your testimony is that Mr. Rogers told you to check
15 around or to check or look under the washer and dryer area?

16 A. Yes, sir.

17 Q. When you were speaking, when you and Mr. Gary were
18 speaking with him, did you tell him that there was no knife,
19 that ya'll did not see a knife?

20 A. At the beginning of it as Investigator Gar -- Gary had
21 already said, we did not go into the trailer due to they had
22 began to process so neither one of us, myself especially had
23 not been inside, farthest I made it was on the front porch
24 just a brief look, also was with Investigator Gary not been up
25 under anywhere to look around, check around for anything.

MATTHEW DAVIS - CROSS-EXAMINATION BY MR. ALLEN

1 Q. Well let me ask you this: When you were talking with
2 Mr. Rogers in the interview room, did you or Mr. Gary tell him
3 that the officers who were processin' the the scene did not
4 see any knife?

5 A. I do not recall that being said. If it was said, I do
6 not recall that.

7 Q. Possible it coulda been said, you just don't remember one
8 way or the other?

9 A. I just, I do not recall that being said at all during.
10 I -- I'd have to have my notes to know if that was somethin' I
11 notated but I do not recall notatin'.

12 Q. Did you notate everything that occurred in the interview
13 room or just ---

14 A. I don't know, I'm not perfect, I wouldn't say that I was
15 able to notate every little thing everybody said.

16 Q. Okay, do you need to review -- view your notes to see if
17 that was said or if it was notated?

18 A. I don't recall it being notated but I can look at it if
19 you wish for me to.

20 (Whereupon, the witness examined his notes.)

21 I don't believe a quick scan here that I see anything
22 where I notated that he was told ---

23 Q. You can't find the notation?

24 A. --- like that, I'm looking through here, uh, ---

25 (Whereupon, the witness read to himself out loud

MATTHEW DAVIS - CROSS-EXAMINATION BY MR. ALLEN

1 inaudibly while examining his notes.)

2 I don't, don't see it anywhere in here, it's -- ya know
3 somewhere it is?

4 Q. I couldn't find it either.

5 A. Okay.

6 Q. So it's not notated.

7 A. Uh, no, sir.

8 Q. Not even notated in here about Mr. Rogers telling you to
9 check around the washer or dryer area, is it?

10 A. No, sir, that's not notated in there no, sir.

11 Q. And this is your report, ---

12 A. Yes, sir, this one right here (indicating) it's ---

13 Q. --- the one that you prepared ---

14 A. --- it's it's mine.

15 Q. --- in connection with this case?

16 A. Yes, sir, the one I prepared the followin' day or a
17 couple days out from and then printed out, gave it to Sarge
18 for it to be approved to give to Investigator Gary.

19 Q. Right. Okay.

20 A. Um-hum.

21 Q. Now also are you aware that there are tape recordings
22 available at the sheriff's office?

23 A. Yes, sir, I am aware that they are available.

24 Q. Available for use by investigators such as yourself and
25 Mr. Gary?

MATTHEW DAVIS - CROSS-EXAMINATION BY MR. ALLEN

1 A. If you can find one at the time, yes.

2 Q. Did you look for one?

3 A. I don't have one. I didn't until recently been given one
4 so I didn't even have access to one at that time.

5 Q. So until you were given one you didn't use one in
6 interviews?

7 A. No, sir, I didn't have one. No, sir, during a lotta
8 interviews dependin' on where I'm at, one might not even be
9 available to me dependin' on where I'm at,---

10 Q. Okay, so ---

11 A. --- um, batteries, tapes, all that stuff, run into a
12 whole buncha different things.

13 Q. Okay. It's kinda hard to keep up with all that stuff, is
14 that right?

15 A. No, sir, it's just hard to get it given to ya.

16 Q. While you're working on a homicide case?

17 A. Uh, no, sir, we're both in there in the room together.

18 Q. But Mr. Rogers did tell you he was acting in
19 self-defense.

20 A. He stated several different things.

21 Q. That he ---

22 A. Well I -- I'd have to look at my thing where I notate
23 specific things he said.

24 Q. I ---

25 A. I believe it was somethin' to that effect that he said

MATTHEW DAVIS - REDIRECT EXAMINATION BY MR. FULMER

1 when we first walked in.

2 Q. Alright. He said something to that effect?

3 A. Um-hum, ---

4 Q. Okay.

5 A. --- along with the ---

6 Q. Thank you.

7 A. Um-hum.

8 MR. ALLEN: No other questions, Your Honor.

9 MR. FULMER: Just briefly, Your Honor.

10 REDIRECT EXAMINATION BY MR. FULMER:

11 Q. Investigator Davis, I'm gonna hand you your report and if
12 you will look at Page 2 of your report the top line leading
13 into the second line. Didn't you make a note of the fact that
14 Mr. Rogers told you ---

15 A. There it is right there, yes, Mr. Rogers advised before
16 police arrived he placed the knife around the washing machine,
17 I was looking for it, that's where it's at right there.

18 Q. Okay, thank you.

19 RECROSS-EXAMINATION BY MR. ALLEN:

20 Q. Where does it say anything about the dryer?

21 A. No, sir.

22 Q. But your testimony is today is that he said check under
23 the washer, dryer area.

24 A. Um-hum.

25 Q. Okay. Thank you.

MOTIONS AND MATTERS

1 THE COURT: Step down.

2 (Whereupon, the witness left the stand.)

3 THE COURT: Anything else?

4 MR. FULMER: Nothing further, Your Honor.

5 THE COURT: Alright, ladies and gentlemen, that is all of
6 the evidence that's gonna be presented. What remains to be
7 done are the lawyer's final summations after which I'll
8 instruct you on the law and then you can begin deliberations.
9 We're not gonna do that tonight, we'll do that beginning at
10 9:30 in the morning. So again, keep in mind my caution: no
11 discussions about the case with anybody in any fashion, don't
12 permit yourselves to be exposed to any type of media coverage
13 that might relate to the case and don't conduct any research
14 or do your own investigation into any issue. Do have a good
15 evening and please report to your jury room at 9:30 in the
16 mornin', 9:30 in the mornin'.

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

19 THE COURT: Mr. Allen, would you like to renew your
20 motions or make any additional ones?

21 MR. ALLEN: Yes, Your Honor. I would renew my motions on
22 the grounds as previously stated in my earlier motion for a
23 directed verdict and but especially now that there's been
24 additional evidence presented, that being the testimony of my
25 client, that I still move for a directed verdict in that the

MOTIONS AND MATTERS

1 State has failed to disprove the defenses of self-defense and
2 the right to eject, I'm gonna call it right to eject trespass
3 or the right to eject someone who's not an occupant beyond a
4 reasonable doubt as well as their failure to prove beyond a
5 reasonable doubt in light of my client's testimony as well as
6 the other evidence the right to that that they failed to to
7 disprove that he was acting under Section 16-11-440 which I've
8 been calling the castle doctrine and then also on the grounds
9 as previously stated in my motion for dismissal which was
10 heard prior to our beginning of the trial this week which was
11 ruled upon by the Court in its written order. Thank you.

12 THE COURT: Let me ask ya this: What evidence is there
13 that Mr. Rogers was trying to eject a trespasser?

14 MR. ALLEN: After what people been calling the second
15 fight that he came out of the bathroom and told him to leave,
16 even though Ms. Lowery indicated that had he didn't have a
17 truck to leave in, he continued to tell him to leave. The man
18 did not leave, instead that he began attacking my client so I
19 believe at that point that he was also acting in a, in a way
20 not only to defend himself but also to basically eject a
21 non-occupant in the sense that he did not have a right to stay
22 there and that he did not leave as well and I think he was
23 acting to eject what amount to a trespasser at that point.
24 When he tells a man to leave and he refuses to leave, I think
25 he becomes a trespasser.

MOTIONS AND MATTERS

1 THE COURT: Well that may be true but he testified he was
2 not trying to eject him, Mr. Rogers. He said he was not
3 trying to eject him from the residence.

4 MR. ALLEN: Yeah, well ---

5 THE COURT: He did tell him to leave ---

6 MR. ALLEN: Yes.

7 THE COURT: --- and the fight ensued but he testified
8 specifically that he did not intend nor try to eject Mr. Ryan
9 from the residence.

10 MR. ALLEN: That was a response to a question in
11 cross-examination, I believe it came out in cross-ex ---

12 THE COURT: Does it matter if it's cross or direct if
13 it's his testimony?

14 MR. ALLEN: Well, Your Honor, I believe that of course
15 jury can I won't say pick and choose but they can decide to
16 believe some parts of the testimony and disbelieve others and
17 I believe that there -- that what he has said is sufficient
18 for the jurors to believe that he was trying to tell -- trying
19 to make the guy leave as well.

20 THE COURT: So you think it would be reasonable for a
21 jury to consider his testimony that he was not trying to eject
22 Mr. Ryan but they ought to disbelieve that and believe that he
23 was trying to eject Mr. Ryan from the residence?

24 MR. ALLEN: I mean, essentially what he was trying to do
25 in addition to defending himself was trying to get the guy to

MOTIONS AND MATTERS

1 leave.

2 THE COURT: Well I I I understand about ---

3 MR. ALLEN: Yes.

4 THE COURT: --- him defending himself, I -- I'm satisfied
5 there's evidence of that but we're talking about specifically
6 ejecting a trespasser.

7 MR. ALLEN: Yes, sir, that was my position.

8 THE COURT: Okay. Alright, Mr. Fulmer, you wanna
9 respond?

10 MR. FULMER: Just that there's been ample evidence before
11 that a jury -- where a jury could conclude that the State's
12 proved or disproved self-defense beyond a reasonable doubt and
13 the jury oughta be able to decide, decide that matter.

14 THE COURT: Alright, well I clearly believe there is
15 sufficient evidence for it to be a question for the jury so
16 your motion for a directed verdict is denied.

17 MR. ALLEN: Yes.

18 THE COURT: We're gonna recess for the afternoon. I'll
19 ask the lawyers to meet with me in chambers to discuss any
20 instruction request. Do ya have a written request? Does
21 anybody have any written request?

22 MR. FULMER: I do not, Your Honor.

23 MR. ALLEN: I had run some off but we can talk about
24 'em ---

25 THE COURT: Alright, we'll discuss those in chambers.

MOTIONS AND MATTERS

1 MR. ALLEN: Yes.

2 THE COURT: Alright, Court's in recess until 9:30 in the
3 mornin'.

4 (Proceedings October 6, 2011)

5 THE COURT: Mr. Allen, you got that charge for me?

6 MR. ALLEN: Yes, Your Honor, I I do. I've shared copies
7 with the solicitor. In addition to that while I was
8 researching, I've added or I'm I'm requesting two additional
9 charges that which go along with the the fact that the
10 homeowner does not have a duty to retreat in his own premises
11 which I understand which I believe the Court is going to
12 charge but also where the charge number 2 what I'm primarily
13 trying to get at is that the homeowner or someone whose lawful
14 occupancy of the home has no duty to retreat even where the
15 other person is also a lawful occupant or a guest of the home.
16 Furthermore, my request under number 3 comes out of primarily
17 *State v. Brown* which recognized that a lawful guest in another
18 person's home may not have a duty to retreat against an
19 intruder of that home but has a duty to re -- to retreat
20 against the homeowner and I would ask the Court to consider
21 that. I think we have evidence which in the record that will
22 support that charge, it also goes again to the officer's
23 testimony when he asked the question about why didn't you just
24 stay back in the bathroom instead of coming back out, and I
25 don't want the jury to get the impression that they both had

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1 no duty to retreat when in fact one person is a guest, the
2 other person is the homeowner 'cuz he essentially the
3 homeowner, therefore that guest had a duty to retreat. I'm
4 thinking primarily of that final episode which occurred in the
5 kitchen after my client came out the bathroom and that's why
6 I'm requesting that charge.

7 THE COURT: Well I'm not understanding the difference. I
8 mean, if a homeowner has no duty to retreat, he has no duty to
9 retreat, I mean, it's as simple as that. I mean, you, do you
10 want me to say it twice, is that -- I mean, if you have no
11 duty to retreat, you don't have to give examples of when you
12 don't have a duty to retreat. The the law is if you are in
13 your own home you have no duty to retreat but for employing
14 the use of deadly force so long as you have a reasonable
15 belief it's necessary.

16 MR. ALLEN: Yes, sir. I -- I'd agree with that but I I
17 thought these charges were also appropriate given the
18 testimony and the evidence in this particular case. I didn't
19 want again, the jury to get the impression that well this
20 other guy was an -- was a -- an invited guest up to a certain
21 point and that I didn't want them to get the impression that
22 he had no duty to retreat either and that there was something
23 and I don't want them to to get the impression especially from
24 the officer's testimony that there was something wrong with my
25 client's coming back out of the bathroom when, as the officer

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1 put it, when he was talking about his questioning my client
2 why didn't you just stay back in the bathroom.

3 THE COURT: Well I understand that that came out in
4 evidence and that's somethin' that's perfectly appropriate for
5 ya'll to argue but that's an issue of fact, that's not for me
6 to comment upon that. I mean, I I -- I'm intending to
7 instruct the jury that a homeowner has no duty to retreat from
8 his own home ---

9 MR. ALLEN: Yes.

10 THE COURT: --- and I don't know how it can be any
11 clearer than that. It doesn't matter what the circumstances
12 are, I mean, in other words, ya'll can argue the facts and the
13 circumstances, I'm not permitted to comment upon 'em.

14 MR. ALLEN: Yes, Your Honor.

15 THE COURT: Maybe I'm not, maybe I'm not quite
16 understanding. You you you think that your request number 2
17 is is different than, is it somehow different than number 3
18 and/or what the law actually is with regard to a duty to
19 retreat or not?

20 MR. ALLEN: Well I view number 3, especially the last
21 sentence of my request as essentially a a further explanation
22 of the, of the homeowner's ---

23 THE COURT: Oh, I see. Okay, there is something to
24 compare, okay.

25 MR. ALLEN: So I just view it as more of an explanation

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1 of the duty to retreat as opposed to a statement of of
2 different law.

3 THE COURT: Alright, what's the State's position on that?
4 I haven't had a chance to review these cases obviously since I
5 just got these requests, does the State have any objection to
6 them?

7 MR. FULMER: Your Honor, I think, I think that's a fair
8 statement of the law. I don't, I don't object.

9 THE COURT: Okay. Alright. Any others?

10 MR. ALLEN: No, Your Honor. As I understand from our
11 chambers conference yesterday we -- that the Court intends to
12 charge in addition well obviously self-defense but also the
13 offenses of murder and voluntary manslaughter and we so
14 request those charges.

15 THE COURT: Alright, the State wanna be heard?

16 MR. FULMER: No, Your Honor, we're happy with those those
17 charges, Your Honor.

18 THE COURT: Okay. Anything further?

19 MR. ALLEN: No, Your Honor.

20 THE COURT: Alright, bring the jury in, please.

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

22 THE COURT: Good morning, ladies and gentlemen.

23 THE JURY: Good morning.

24 THE COURT: As you know when we recessed yesterday, all
25 of the evidence had been received and therefore what remains

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1 to be done are the lawyer's final summations after which I'll
2 instruct you on the law in the case and then you can begin
3 with your deliberations so please give the lawyers your
4 attention now as they give you their final summations.
5 Mr. Allen.

6 MR. ALLEN: Thank Your Honor. As I indicated to you in
7 my opening statement, this case has been about Mr. Rogers'
8 right to defend himself in his own home, his right to defend
9 himself against a man that he allowed to stay over night and
10 his right to defend himself against a man whom he told to
11 leave. You heard testimony and the evidence which indicates
12 that on the 12th of November of this past year after a period
13 of time, long period of time which they were drinking,
14 especially Mr. Ryan, that late in the evening after Tonya came
15 over sometime after eleven o'clock that Mr. Ryan touched her
16 in a way that even surprised Tonya. After she told him not to
17 touch her like that, Mr. Rogers saw it and pushed him. After
18 pushing him, Mr. Rogers began fighting with him and Mr. Ryan
19 was fighting back. Although Mr. Ryan had a good bit of
20 alcohol to drink, he was not helpless, he was able to fight
21 back and he did fight back. After a short while Mr. Rogers
22 got up, Mr. Ryan got up. When Mr. Ryan got up he then kicked
23 Mr. Rogers, kicked him between the legs, Mr. Ryan who had just
24 a couple months before this incident had prostate surgery,
25 Mr. Ryan, excuse me, Mr. Rogers again fought back. After

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1 another short period of time, Mr. Rogers got up, he and
2 Ms. Lowery went back to the bathroom that he typically uses,
3 back beyond the kitchen towards Mr. Rogers' bedroom where he
4 was cleaning up a little bit, washing some of the blood from
5 his hands and his face where he had been hit, where he was
6 hitting, smoked a cigarette, at least part of a cigarette,
7 gave the keys Mr. Ryan's truck over, apparently got
8 transferred to Ms. Lance who then left in Mr. Ryan's truck.
9 Mr. Rogers comes out of the bathroom and then tells Mr. Ryan
10 to leave, you gotta go, I don't want ya in here, But wait a
11 minute, well his his truck's not here, Tonya says, he can't
12 leave without his truck but Mr. Rogers said, Well he can get
13 outta here anyway, he needs to leave or words to that effect;
14 Mr. Ryan answered with a hit. Apparently, he had picked up a
15 knife, the knife that Mr. Rogers had been opening mail with
16 earlier that day, a knife that apparently was left on kitchen
17 table where they had been drinking and smoking and he had this
18 knife. The earlier two fights if you wanna call 'em that were
19 over, they were done with. Mr. Rogers told Mr. Ryan to leave,
20 Mr. Ryan then attacked Mr. Rogers in Mr. Rogers' own home. In
21 the struggle, what became the struggle over the knife, they
22 were both cut and injured with that knife obviously.
23 Mr. Rogers you'll see a cut on his right arm, more serious cut
24 on his left arm on the underside. Why would he -- how would
25 he get cut under there? holding his arms up, holding his hands

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1 up trying to defend himself, think so? Once he got the knife,
2 he got up, cleaned himself up but did not realize that
3 Mr. Ryan was injured, he certainly didn't realize he was
4 injured as severely as he really was. In these -- in this
5 short struggle it's difficult for anyone, Mr. Rogers,
6 Ms. Lowery, anyone to remember blow for blow action from
7 action what happened. They know there was a struggle, they're
8 telling it the best way that they can, the best way that they
9 can remember and the best way that they could remember back
10 then but Mr. Rogers upon realizing that Mr. Ryan was injured
11 told Tonya call 911. Obviously, he stayed there, it's on,
12 it's on -- it his home, he stayed there and he tried to help
13 Mr. Rogers putting a towel on him, trying to give him --
14 perform CPR, trying to keep Mr. Ryan alert until help could
15 come, help which while they're anxiously waiting for it seemed
16 all to slow, not saying it was slow but obviously when you're
17 waiting for help and you need help it never comes fast enough
18 for anyone.

19 What do we know about Mr. Ryan? Well we know that he had
20 a lot of alcohol in him, that he had been drinking a lot, we
21 know this not only from testimony of Mr. Rogers and
22 Ms. Lowery, some degree Ms. Lance, but we also know because
23 Mr. Sears took a vile of his blood and analyzed it and found a
24 pretty high amount of alcohol in that blood, .344 percent. He
25 did not find any other drugs or medications they typically

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1 check for including he did not find the chemical make up of
2 Klonopin, the pills that Ms. Lance says he was taking. But he
3 wasn't helpless, even Mr. Sears said that he could stand
4 especially if he was an experienced drinker and you've heard
5 testimony that indeed Mr. Ryan frequently abused alcohol and
6 drank quite a bit, quite a while, that he can, that he could
7 function at least well enough to stand, to kick, to hit, he
8 wasn't helpless. We also know he wasn't helpless because the
9 testimony that you heard from Ms. Lowery and even Mr. Rogers.
10 He was injured in in this fight and that we cannot deny,
11 Mr. Rogers not sure how it happened. Obviously it happened
12 when they were fighting or struggling over that knife that
13 Mr. Ryan himself was trying to use against Mr. Rogers.

14 You've heard some testimony about some pills that
15 Mr. Ryan was supposed to have taken according to one witness,
16 Ms. Lance. Now when you look and consider evidence, you have
17 a lotta things that you can consider and a lot of what we
18 lawyers may call "factors". You can consider how a witness
19 appeared sitting here (indicating) in the witness stand
20 testifying before you, you can consider other factors, how
21 well her testimony, for example, is backed up by other
22 evidence 'cuz the pills part is not backed up by any other
23 evidence, it's not backed up by Ms. Lowery, it's not backed up
24 by Mr. Rogers, it's not backed up by Mr. Sears, the forensic
25 toxicologist, although he was saying, Well, you know, we

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1 didn't really know to look specifically for it, sometimes if
2 he's taking it according to his medication he -- we may not
3 have detected it which Ms. Lance is trying to indicate that he
4 was taking it not in accordance with his medication but it's
5 not even backed up by the officers and by Mr. Nix. Sean Nix
6 who processed the scene search, scoured the place for
7 evidence, looked, for example, to find a pint whiskey bottle
8 in a paper bag in the the drawer of Mr. Rogers' bedroom,
9 searched all over for a knife but yet we didn't hear anything
10 about a pill bottle of Klonopin or a pill bottle that had
11 Klonopin or any pill bottle that had Mr. Ryan's name on it,
12 it's not backed up by anything else in this case and that's
13 why it can't be believed and it should not be believed
14 especially when you consider other things that Ms. Lance said.

15 Ms. Lance in addition to talking about his pills in an
16 attempt I would submit to try to make Mr. Ryan seem even more
17 helpless or more intoxicated than he really was but she also
18 couldn't get the times correct. It doesn't really make sense
19 when you think about this and about her testimony about her
20 leaving just to go to her home for a few minutes, come back to
21 pick up Mr. Ryan whom she's also trying to act as if she
22 really didn't care about and didn't care about the defendant
23 because she's trying, overly trying to appear impartial or
24 trying to present herself to be impartial to you, ladies and
25 gentlemen. It's obvious that she's partial, remember how she

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1 first referred to Mr. Rogers, remember, pointed to him
2 disdainfully I was think and said, This one, didn't even
3 initially call him by name when she was up here testifying.
4 Oh, she's got what -- whatever it is she -- she's trying to to
5 present herself as she's got herself arriving back where
6 police officers were before the police officers ever got
7 there. She claims she got to the home of Mr. Rogers around by
8 the time it got dark, gave a span time well okay, 5:30 to 7
9 somewhere around there, that's about when it gets dark in
10 November, claimed that she was there for about twenty minutes,
11 the fight lasted short period a time, she left, goes home,
12 less than thirty minutes, not quite sure of the time how long
13 she was there but she did finally agree that she was at her
14 house for less than thirty minutes, it only takes her a couple
15 a minutes to get from Mr. Rogers' home to her home, that gets
16 her coming back easily by nine o'clock, there's about another
17 thirty minutes 9:30, it's about another thirty minutes make it
18 10:00 but the officer didn't even arrive until 11:42 p.m. She
19 did not come back to that house to see officers there, she did
20 not come back to that house at all. She did not go home to
21 stay for a few minutes so she could calm down or so that they
22 could calm down and then she could come back and pick up
23 Mr. Ryan and go. After all, if she was, if her intent was to
24 leave, take Mr. Ryan's truck, why not simply take him as well?
25 Her testimony is utterly unbelievable and it is certainly a

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1 far cry from proof beyond a reasonable doubt.

2 Mr. Rogers as you've heard told several people involved
3 in this case what happened. When the initial officers came on
4 the scene he said, I accidentally stabbed him. Well sure, he
5 wasn't trying to give them a detailed statement, he wasn't
6 trying to talk in detail step 1, step 2, step 3 to those
7 initial officers, he wanted them to know in a short, concise
8 way what had happened and if they're struggling over a knife
9 that Mr. Ryan is bringing into this situation and he didn't
10 intend for anybody to get hurt other than to get this knife
11 away from this man who's attacking him, sure, wouldn't most
12 people consider that an accident -- dental cutting, not in a
13 legal sense, I'm not saying that that's a defense, I'm just
14 saying in common parlance, common way we speak that is not an
15 inconsistent statement from his testimony before you
16 yesterday. The officers, Officers Davis, Investigators Davis
17 and Gary, excuse me, Mr. Gary but talk about what they were
18 presenting as different versions. Now let's imagine this
19 situation: He was drinking that night as wha -- nothing wrong
20 with that, he's drinking in his own home, Mr. Rogers was, it
21 was late at night, he took him in his interview room again
22 later willing to talk to the officers about what had happened
23 and they just flat out say, Okay, tell us what happened, so he
24 tells them but the officers because they earlier talked to
25 Ms. Lowery knew that Ms. Lowery had said, Well, we're taking,

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1 you know, she had taken him back to the bathroom to clean up
2 so they said, Yeah, well what about the bathroom; Oh, yes, I
3 did go into the bathroom, it's not really a change. You know
4 from your common every day experience when you -- when you're
5 talking about an event or when other people are talking about
6 an event with you you don't always, people do not always
7 explain it in the same way that you you or others may leave
8 out a detail or a step when you relate the event, doesn't mean
9 that person is lying, doesn't mean that anybody's trying to
10 hide anything, just simply means that they're trying to
11 remember, they're trying to tell the important facts what
12 happened and when they ask what about the bathroom, Oh, yes,
13 not like, Hmm, let me think, how can I -- should I put put
14 put that in somehow, no, it didn't happen that way; they
15 asked, he answered not trying to change, not trying to tell
16 different versions as they would have you believe. I find it
17 curious that they didn't ask him what about asking him to
18 leave. Again, they knew that from Mr. Tonya, they gave him
19 opportunities to say it but, you know, Mr. Rogers probly
20 didn't understand the significance of that. They didn't ask
21 him, Did you, did you ever tell him to leave, didn't bring
22 that up at all. I will submit, I will suggest to you that
23 they asked him about that he would have readily told them
24 about that just as he readily told them about the bathroom.
25 Again, it was just a step that he didn't think to tell them at

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1 that time and wasn't asked specifically about that.

2 Now, one thing about considering how the officers
3 testified about what my client said 'cuz there is some
4 difference and even my client says, No, I didn't tell the
5 officers certain things, he didn't tell the officers that he
6 got the knife out of his pocket that he brought out of the
7 bathroom. The officers would have you, have you believe that
8 well yes he did, we listened to it and that's what we, that's
9 what we we remember. The officers are human, everyone, just
10 like everyone else they are human, just because they're an
11 officer doesn't mean they can't make mistakes and if they
12 write a report or when they write a report it's just as a
13 guide to try to help them remember. These officers who
14 apparently heard the same thing remembers it differently and
15 testified about it differently. Just yesterday Mr. Gary says
16 that Mr. Rogers told him where he put the knife under the
17 washer. Mr. Davis remembers that -- well no, he said check
18 under the washer and dryer area, big difference in those two
19 accounts. Why would he have them check under the washer/dryer
20 area 'cuz apparently it wasn't in the bathroom where he had
21 laid it after he left the fight, putting it on the counter in
22 the bathroom, the bathroom that's right next to the dryer.
23 He's washing up, water apparently got on the knife and yet
24 that's where he last remembered having it but in this -- but
25 in the movement and in the bustle it is entirely feasible,

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1 entirely reasonable that that knife fell off, dropped off,
2 pushed o -- got pushed off that counter, ended up going back
3 and forth, got under, just under that dryer which was right
4 beside that bathroom and it ended up being just underneath the
5 dryer on the very side of that dryer where the bathroom is and
6 there is a picture that depicts that.

7 Another thing about the officers' memory is it could have
8 been helped if they recorded the conversation then there would
9 be no doubt as to what Mr. Rogers actually told them and what
10 they actually said to him. Ladies and gentlemen, I'm not sure
11 if the officers have you believe that they, either they don't
12 want to use a recording which they have the equipment as they
13 indicated they -- that it may be hard to find in the sheriff's
14 office, it's hard to believe. They have people in the
15 sheriff's office whose job is to take a lot of swabs of this
16 scene whether or not these swabs are sent off for DNA testing
17 or not. They scoured this whole area in this house looking
18 for evidence and the officers know at the time they're talking
19 to Mr. Rogers that we're talking about a homicide yet they
20 don't want to record exactly what the person that they're
21 going to accuse, a person they have investigated, they don't
22 wanna record exactly what he said, they want to just rely on
23 their memory, want you to rely on their memory because they're
24 hoping that you will believe what they say over and above what
25 Mr. Rogers says, they're hoping that you're gonna believe them

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1 because they are police officers and Mr. Rogers is not.

2 The knife was found, apparently had gotten wet, a lot of
3 the blood was not on there but there were some swabs taken.
4 You can see on this (indicating) picture a spot of red, we
5 don't know what it is, don't really know, there's no evidence
6 as to what it is, there were swabs taken of what Mr. Nix
7 thought might be blood. What else could have been done to
8 determine if it was blood? send those swabs to SLED. You can
9 tell if it's blood, you can tell if it's -- the blood matches
10 Mr. Rogers, Mr. Ryan, possibly both. They had samples from
11 Mr. Rogers, they had a sample from Mr. Ryan but you heard no
12 evidence about that. All these other swabs that Mr. Nix
13 painstakingly took you heard no other evidence about what
14 happened to that and this is important, ladies and gentlemen,
15 because it is up to the State because they brought these
16 charges to prove Mr. Rogers' guilt beyond a reasonable doubt.
17 It is not up to Mr. Rogers or me to prove his innocence, as
18 I've told you before we start out with that presumption, you
19 start out with that presumption and if the State wants to
20 bring this charge against him, they must prove their case
21 beyond all reasonable doubt to the satisfaction of each and
22 every one of you and you can make your decision based on what
23 you've heard, what you've seen, you can make your decision
24 based on the lack of evidence as well.

25 In addition, the State will have to disprove that

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1 Mr. Rogers acted in self-defense beyond a reasonable doubt.
2 This is not a situation where we again have to prove anything,
3 the State brought the charges, they have to disprove
4 self-defense and they not only just have to disprove it, you
5 have to disprove it beyond a reasonable doubt and again, it is
6 entirely likely, that is, that Mr. Rogers was defending
7 himself when Mr. Ryan brought that knife into their
8 disagreement after Mr. Rogers told him to leave and Mr. Ryan
9 attacked Mr. Rogers, Mr. Rogers' own home with the knife. He
10 had the right to defend himself even if that cost Mr. Ryan's
11 life if what Mr. Rogers did is reasonable under the
12 circumstances, that is a hard, that's a blunt way of putting
13 it, ladies and gentlemen, but that's the way it is.
14 Mr. Rogers did not have to run away from him, he's in his own
15 home. He didn't have to stay away from him. He didn't have
16 to stay back in the back and hide and cower away away from
17 this man, he had the right to come back out of that bathroom,
18 stay in his home and say to Mr. Ryan, You have to go, leave,
19 get out now, and indeed Mr. Ryan should have done that, ladies
20 and gentlemen, that is why Mr. Rogers is not guilty in this
21 case and that is why the State has not proven his guilt beyond
22 a reasonable doubt and I ask you, ladies and gentlemen, to
23 return verdicts that speak the truth and find Mr. Rogers not
24 guilty. Thank you.

25 MR. FULMER: Ladies and gentlemen, Mr. Allen told a good

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1 story and I'm gonna tell ya a different one and I think the
2 one I'm gonna tell ya is gonna fit the facts a little bit
3 better but before I do that I wanna talk with you just a few
4 minutes about what what the law, the evidence in the case and
5 what you're gonna hear from the judge and if I say something
6 different right now than what you hear from the judge in a few
7 minutes, you listen to what the judge says, I'm just gonna
8 paraphrase it briefly, okay?

9 Mr. Rogers is charged with murder, it's the unlawful
10 killing of another person with malice aforethought which begs
11 the question what is malice aforethought? Well malice is bad
12 intentions, it's an evil heart. What's aforethought? It
13 means premeditated: a week ago, an hour ago or the moment
14 before this happened, this was an intentional act on your
15 part, that's what murder is. Your gonna also be charged on
16 voluntary manslaughter if you find Mr. Rogers guilty of that.
17 Well how's voluntary manslaughter different from murder? Well
18 there are two elements involved with voluntary manslaughter:
19 there's a crime of passion, heat of passion and legal
20 provocation. Classic example a man comes home and he finds
21 his wife in bed with another man, he becomes enraged and in
22 that rage he kills the other man. Now what he did was wrong,
23 it's unlawful but it doesn't amount to murder because he had a
24 le -- legal provocation and in the heat of passion he was
25 unable to control himself so that's kind of a distinction

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1 between murder and voluntary manslaughter.

2 You're also gonna be charged on the law of self-defense
3 and I I won't go over all of the elements of self-defense but
4 a couple, one of those is if you bring on the difficulty
5 yourself you can't claim self-defense. You can't start a
6 fight and in the midst of that fight kill the other person and
7 claim you only did that in self-defense. You also have to be
8 under the belief that you're actually -- your life is in
9 danger. You have to reasonably believe that you have -- your
10 life is being threatened and you're reacting in response to that
11 threat so keep that in mind as I go through the facts with you
12 if you would.

13 The first person you heard from the day before yesterday
14 was a girl named Jackie Lance. She told ya she had met John
15 and Mike that day or the day before, she didn't know these
16 people. She knew Mike by his face, didn't know John, ya know,
17 she really had no dog in this fight, she has, she has no
18 reason to tell you a story that's bias towards one or the
19 other which is why I think you ought to give great weight to
20 her testimony. Of the people you heard from that were there
21 at the time, she's really the only one that doesn't have a
22 reason to tell you a story that is not as accurate as she
23 remembers it. It's clear that she got the timing wrong. She
24 thought they were there together and the fight occurred
25 sometime around eight o'clock in the evening when actually it

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1 occurred sometime after eleven. Ya know, Mr. Allen wanted to
2 make a a big deal of the fact that well she couldn't have
3 returned and seen the police because when she returned it was
4 only nine o'clock. Well it wasn't nine, she thought it was
5 nine but everybody we know she was there during the fight,
6 Tonya says she was there, Mike says she was there, she says
7 she was there, there's no dispute that she was there and saw
8 the fight and that the fight actually happened at about
9 quarter till midnight so when she returned thinking well it
10 must be around nine, it was actually midnight, the police were
11 there. What, what did Jackie say? She said John was
12 stumbling, he was obviously drunk, he was slurring his speech
13 and that her version of it was that he was actually leaning on
14 Tonya, he wasn't really hugging Tonya, that it wasn't so much
15 a fight as it was a beating, it was a very one-sided fight,
16 that from the very beginning Mike got the best of John. She
17 also said that while she was there she never heard Mike tell
18 John to leave.

19 The next witness you heard from was Tonya Lowery, she
20 gave a little bit different version of what happened. She
21 made the fight out to be a little fair. Of course she told ya
22 she was Mike's girlfriend so maybe she had a reason to shade
23 the truth a little bit to make it look a little more like a
24 fair fight to help give Mike a defense. Of course she
25 claimed, I never saw a knife. She says she was outside for a

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1 matter of a minute or so. When she left it was a fist fight
2 and when she came back in John Ryan was laying on the floor
3 with a pool of his own blood and Mike was standing there over
4 him.

5 The next witness you heard wa -- from was the
6 toxicologist, he told you what John's blood alcohol was, .344,
7 he explained to you what the effects of that would be on a
8 person: slowed reaction, slurred speech, staggering gate. He
9 told you some people who who didn't drink often would probly
10 be passed out with that level of alcohol in their blood but
11 this man was obviously intoxicated, he's also obviously was an
12 alcoholic, he drank every day, you heard multiple people give
13 you that in - that testimony so he was used to his alcohol but
14 clearly he was in an impaired state when this was goin' on.
15 The toxicologist, Mr. Sears, he also told you that the test
16 that he used would not have necessarily picked up Klonopin so
17 there's -- there was no confirmations or was there any
18 negation that Klonopin was involved from from Mr. Sears.

19 The first officer on the scene, Detective Swanlund, he
20 said when he got there there was Mike, there was Tonya, there
21 was John, the EMT and right away, unsolicited, Mike
22 volunteered a statement. Mike told Deputy Swanlund, I had to
23 cut him, he was beating me. He also told Deputy Swanlund the
24 knife was under the washer in the hallway, immediately this is
25 his response when the police arrived. The next officer on the

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1 scene, Deputy Winks, he rode with Mike to the hospital.
2 During the course of that ride and at the hospital, Mike made
3 several statements inconsistent with each other. He told
4 deputy John stabbed him on the arm and then Mike grabbed a
5 knife and cut John, he told the deputy John pulled out a knife
6 and cut Mike so Mike went and got his knife and that he cut
7 John, he said, I did not mean to do it it was an accident, he
8 said, It was a crime of passion, and at some point he gave a
9 statement saying that he had John on the floor with a knife to
10 his neck. All of those things can't be true.

11 The next person you heard from was Investigator Gary. He
12 admitted to Investigator Gary just like Tonya said, just like
13 Jackie said, just like Mike even said, that he started this
14 fight. He saw, he saw John touch his girlfriend in a way that
15 he didn't like so he went over there and pushed him down. He
16 told Investigator Gary that, I got the best of him, I won the
17 fight. He said, I'm not gonna lie to ya, I was really getting
18 the best of him, that was his statement to the, to the
19 investigator and then he went on to give details of what
20 happened. He first said John cut him so then he pulled his
21 knife and cut John, pulled his own knife and cut John, then he
22 said, Well I went to the bathroom, I wasn't cut at that time
23 but when I came out John cut me so I pulled my knife and cut
24 John. And then he gave a third version of what happened, he
25 said, Well when I was in the bathroom, I realized I was

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1 already cut on my arm so I took my knife out, I didn't open
2 it, carried it in my hand, I had a -- it has a thumb notch on
3 it to make it open quickly, he said, John cut me -- I'm sorry,
4 John attacked me so I cut him with my knife. He also told
5 Investigator Gary the knife's under the washing machine. He
6 also made a statement to Investigator Gary that Tonya had
7 called 911 three times to try to diffuse the situation. Well
8 Tonya told you herself she didn't call 911 till she came back
9 in, John's already lying on on the floor bleeding to death,
10 that was the first time 911 had been called.

11 That gets us to Doctor Wren and Sean Nix the investigator
12 on the scene took pictures of John Ryan.. Doctor Wren said
13 that John Ryan had been stabbed, he hadn't been cut, he hadn't
14 been sliced, he'd been stabbed. Here's (indicating) a picture
15 from the morgue, that's (indicating) John Ryan's back, been
16 stabbed here (indicating) upper back, he's been stabbed here
17 (indicating) the lower back. Here's (indicating) a picture
18 also from the morgue. This (indicating) is John's chest,
19 gaping, wide wound Dr. Ryan -- Dr. Wren said over five and a
20 half inches deep. A picture of the kitchen, scene from the
21 kitchen Investigator Nix took, blood everywhere, blood on the
22 walls, blood on the floor, blood on the cabinets. Here's
23 (indicating) a picture of John Ryan's face beaten up. We know
24 Mike was gettin' the best of him, you can tell it by lookin'
25 at the bruises and contusions of his face, he'd been beaten

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1 around the head, around the eyes. Doctor Wren told ya he had
2 scrapes and bruises elsewhere, arms and legs but we know John
3 had been beat up. And the other thing that Investigator Nix
4 told ya is that there was no other knife found, there was not
5 a second knife on this scene. They searched the entire
6 trailer, there was not -- no other knife that could have been
7 used as a weapon in this crime.

8 And then who'd you hear from? You heard from Mr. Rogers.
9 What he have to say? Well he told ya that he never armed
10 himself with a knife, he said John had a knife and the way I
11 understood his testimony John stabbed himself in the back and
12 John stabbed himself in the chest because he said the moment
13 he got control of that knife from John Ryan, he stood up and
14 the fight was over, that was his testimony. John stabbed
15 himself in the chest and left a gaping wound. I think that
16 woulda been debilitating so before he stabbed himself in the
17 chest and left that gaping wound, he stabbed himself in the
18 back and Mr. Rogers demonstrated to ya how he coulda done that
19 from the, from the witness chair yesterday. He said he went
20 to wash up, said he washed his hands, closed the knife, he had
21 to tell you that because the knife was found in a closed
22 position, but he said he didn't wash that knife, did not wash
23 it, then said it coulda gotten a little wet while he was
24 washing his hands but he didn't wash the knife. Here's
25 (indicating) the knife in the same condition Deputy Nix found

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1 it, you'll have a chance to look at this in the jury room,
2 there's a tiny droppa blood right there (indicating),
3 everywhere else that knife is clean. There's (indicating) the
4 kitchen where John died and where this fight had just
5 happened, blood everywhere. Mike told ya he had to go to the
6 bathroom wash the blood off his hands, Mike was bleeding and
7 there's the knife that didn't get washed and that he never put
8 underneath that dryer, the knife that he left in a closed
9 position on the bathroom counter, that's what he's tellin' ya.
10 Somehow it got under this (indicating) dryer from the bathroom
11 counter which you can see the edge of that bathroom counter
12 way back here (indicating), that's where he left it after he
13 closed it but didn't wash it, it got over here (indicating)
14 underneath this (indicating) dryer, I don't know how that
15 happened. Here's (indicating) another view of the dryer with
16 the knife underneath it, can't see the knife and there's
17 (indicating) a view of the knife as they found it under the
18 dryer and they knew to look there because Mike Rogers told 'em
19 where to look, told several officers where to look for that
20 knife.

21 Let's go back to John stabbing himself in the chest.
22 Doctor Wren talked about the depth of that chest wound, he
23 said it was about five and a half inches deep. Well the sharp
24 parta that knife is about two and a half, two and a quarter
25 inches long, the whole knife blade itself was three inches

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1 long so not only did John stab himself in the chest, he drove
2 that knife two inches further than the length of the blade
3 into his chest all the while fightin' with Mike as Mike tried
4 to take the knife away from him. That's amazing. Then what
5 Mike do after he washed his hands, didn't wash the knife,
6 closed the knife, did -- never put it underneath the dryer,
7 what he do? had a drink, told ya that he was a little shaky,
8 John's lyin' on the floor in the kitchen bleedin' to death,
9 Mike wants a drink so he finds his liquor bottle, his Royal
10 Canadian, takes himself a swiga that, left some blood on
11 there, put it back in the paper sac, took it to his bedroom,
12 put it in his bed -- in his bedroom dresser drawer, this is
13 the same bottle that had been sittin' out on the table that
14 they'd all been drinking out of earlier in the evening, Mike
15 told ya he did that, remember why he did it? he didn't want
16 John to drink anymore think, things had got as far outta
17 control as he wanted 'em to go and it's be best at this point
18 if John just didn't have anything else to drink, lookin' out
19 for John, after all the man just stabbed himself in the back
20 twice and in the chest once, that's what Mike was thinkin'
21 about. He plainly admitted to you, he said, I wasn't tryin'
22 to kick John out when we were fightin', said, I never tried to
23 eject John from my trailer, told ya that yesterday from the
24 stand. He also told ya that as a matter of habit he carried a
25 knife, um, he just recently lost the knife that he usually

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1 carried and that very day he'd gotten a new knife, Christmas
2 present he said. I asked him if he had it on his person that
3 night the night of this fight, he said yes. I said, How did,
4 how did John get this knife away from you, the knife that he
5 agrees is the murder weapon, the knife that he agrees is his
6 knife, he told ya that, How'd John get that knife from you; I
7 don't know, it musta been on the kitchen table where I was
8 openin' my mail. Okay, well did ya have it on your person, I
9 asked him, Yeah, I asked him three times, Yes, I had it on my
10 person; Well how'd John get it away from ya? I don't know,
11 musta been on the kitchen table. Of course he then he told ya
12 he had gotten his mail about 5:30 earlier in that evening. He
13 had the, he had the knife on his person since then? Really
14 didn't have a good explanation for how John got his knife from
15 him. And then of course an earlier version of these events he
16 told police that John cut him first before his knife had ever
17 came outta his pocket. Now he he told the police the version
18 he he was in the bathroom and either brought the knife outta
19 the bathroom with him or he drew the knife from his pocket
20 shortly after comin' outta the bathroom because John had
21 already cut him. Well the only problem was there was no other
22 knife around so he had to change his story somehow to match
23 the facts so now that's where we get to from his testimony
24 yesterday that somehow John got his knife that was on his
25 person and attacked him with his own knife. Well let's try to

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1 think about what really happened. Mike and John had known
2 each other a couple days, they had been drinkin' together,
3 John had a truck, Mike didn't, didn't even have a car or a
4 driver's license so now Mike had a way to get around, they
5 both liked guitars, they knew they had a common friend in
6 Tonya and they had this 24-year-old pretty girl hanging'
7 around two middle-aged men, how that happened I'm not sure but
8 I imagine Mike and John were havin' a pretty good time and low
9 and behold Mike walks outta the bathroom, he sees John
10 touching his woman and that set him off and he attacked John,
11 he told ya he attacked John, he admits to that. He was in a
12 fit a rage, some fights ensued, Jackie's now gone, Tonya's
13 outside maybe, I don't know where she really may have been,
14 but he's mad, he's mad and he's got a knife, he attacked John.
15 John was drunk, John was no match for him, he'd already beat
16 him up twice, he just, he couldn't get beyond that anger, in
17 that rage he stabbed John, stabbed John in the back, he
18 stabbed John in the chest and John bled to death on the floor
19 of his trailer. After John's layin' there, I would imagine
20 the thought occurred to him, Ut-oh, what have I done, so he
21 does what a guilty person would do, he goes to the bathroom,
22 he washes his hands, he washes that knife and he throws it
23 underneath the dryer. Now that's not a real good story or a
24 real good plan but it was the one that came to his mind
25 immediately after seeing what he had done, of course then he

JURY CHARGE

1 has a few more minutes to think and he realizes, I'm not
2 gettin' outta this, this is my house, there's blood
3 everywhere, there's witnesses to the fight, I better see if I
4 can change this around a little bit so he starts to come up
5 with a story of self-defense: He tries to help help John
6 unsuccessfully, he -- he'd already done the damage and then
7 his stories begin to change as as he tries to make the stories
8 fit the facts as he's learning them and as he's trying to
9 develop a story over these first few hours and that's why we
10 see so many inconsistent statements 'cuz he can't tell the
11 truth, that ain't gonna help him any.

12 There were only Mike and John in that room when this
13 happened and only Mike had a knife. John didn't stab himself.
14 There was no reasonable danger that Mike was in. John was no
15 match for Mike and Mike was not in fear of his life, this was
16 not self-defense; this was one man taking another man's life
17 in a fit of anger, in a fit of rage, I'm asking you because
18 that's what the facts show to return a guilty verdict. Thank
19 you.

20 THE COURT: Mr. Fulmer, can you turn that projector off,
21 please.

22 (Whereupon, counsel complied.)

23 THE COURT: Alright, madam forelady and ladies and
24 gentlemen of the jury, you of course have heard and seen all
25 of the evidence and now the final summations of the lawyers so

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1 I'm now gonna instruct you on the law that's applicable in the
2 case and then you'll be asked to go back and begin with your
3 deliberations and through that process you'll examine all of
4 the evidence, you'll decide the facts, apply the law and
5 arrive at a fair and just decision in the case, whatever that
6 decision may be. It is your exclusive duty to determine what
7 the facts are, you do that through your own common sense,
8 examination and evaluation of all of the testimony and the
9 other evidence received during the course of the trial. You
10 twelve jurors alone will decide what weight, value and effect
11 to give any particular witness's testimony or other evidence
12 in the case. Your sole objective is to simply reach the truth
13 in the matter and by doing that you will have fulfilled your
14 obligations as jurors and that is to simply give both the
15 State and this defendant a fair and impartial trial.

16 Now in this case as you know the State through the
17 solicitor and by way of the the indictment has charged the
18 defendant, Michael Anthony Rogers, with the crime of murder.
19 The allegations of setting forth that charge are contained in
20 the indictment. The State alleges that on or about November
21 the 12th of 2010 Michael Anthony Rogers did here in
22 Spartanburg County wilfully and with malice aforethought kill
23 one John William Ryan by stabbing him and that Mr. Ryan did
24 die as a proximate result of that stab wound. Now as I've
25 told that ya, that indictment is not evidence of anything,

JURY CHARGE

1 it's not proof of anything, it does not establish anything, it
2 is simply the means by which any person is brought into this
3 court and formally accused of a crime. The indictment is not
4 evidence as I say but it will be in the jury room with you
5 jurors because it is, madam forelady, on the back of the
6 indictment that you'll be indicating the jury's unanimous
7 decision but other than serving as the verdict form, the
8 indictment serves no purpose so far as you jurors are
9 concerned.

10 Now as to the allegations in that indictment and as to
11 the charge contained therein, the defendant has entered a plea
12 of not guilty and that plea of not guilty has therefore placed
13 upon the State the burden of proving the allegations that they
14 have set forth in the indictment, the burden of proving each
15 of the essential elements of the crime they allege the
16 defendant has committed and therefore, the burden is upon the
17 State to establish the defendant's guilt to the satisfaction
18 of you twelve jurors beyond a reasonable doubt before any
19 verdict of guilty could be returned as to any unlawful
20 homicide. The burden is never upon a defendant or a person
21 accused of a crime to prove that they are not guilty or to
22 prove that they are innocent because in some cases that might
23 not be possible. The burden is always upon the State because
24 they bring the charge against another to establish that
25 person's guilt beyond a reasonable doubt. You are further

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1 instructed that it is a vital, important and cardinal rule of
2 law that every defendant in a criminal trial no matter how
3 serious the offense might be for which that person stands
4 charged that person shall always be presumed innocent of the
5 charge and that presumption of innocence remains with any
6 defendant as it does with this defendant from the time that he
7 is placed under arrest and throughout the course of the
8 criminal process and even throughout the course of the actual
9 trial in the case, that presumption of innocence will be with
10 this defendant even as you go back into your jury room to
11 begin with your deliberations in this case and that
12 presumption of innocence will be with him in that jury room
13 and it'll be with him forever unless you twelve jurors
14 determine that he's no longer entitled to that presumption of
15 innocence; in other words, after you have carefully considered
16 all of the evidence in the case and from that evidence you
17 decided the facts and after deciding those facts you apply the
18 law that I will have provided you, if you twelve jurors
19 unanimously determine that his guilt has been proven beyond a
20 reasonable doubt then he would no longer be entitled to the
21 presumption of innocence but it's only unless and until you
22 are satisfied of his guilt beyond a reasonable doubt that the
23 presumption of innocence would no longer be applicable.

24 Now while the State does have the burden of proving the
25 defendant's guilt beyond a reasonable doubt, that does not

JURY CHARGE

1 mean that the State has to prove his guilt beyond all doubt or
2 beyond any possible doubt but it does require the State to
3 prove his guilt to your satisfaction beyond a reasonable doubt
4 and the term "reasonable doubt" should be given its plain and
5 ordinary meaning. A reasonable doubt is the kind of doubt
6 that would cause a reasonable person to hesitate to act upon
7 the information provided and a defendant in a criminal trial
8 is entitled to any reasonable doubt that arises from the
9 evidence or lack of evidence in the case and if upon any
10 factual issue essential to a finding of a verdict of guilty
11 and you have some reasonable doubt as to how that issue should
12 be resolved, it would be your duty to resolve that reasonable
13 doubt in favor of the defendant and, therefore, if upon your
14 consideration of the whole case you have a reasonable doubt as
15 to his guilt, you must resolve that reasonable doubt in his
16 favor and return a verdict of not guilty. And on the other
17 hand after you've considered all of the evidence in the case
18 and you've decided the fact and you've applied the law, if you
19 have no reasonable doubt as to his guilt then it would be your
20 corresponding duty to find him guilty of any crime the State
21 has proven he has committed to your satisfaction beyond a
22 reasonable doubt.

23 Now the same law that provides that you are the judges of
24 the facts also provides that I'm the judge of the law and that
25 simply means that nobody's gonna tell you how to arrive at

JURY CHARGE

1 your determination of fact in this case, you do that as I've
2 already stated through the exercise of good judgment and
3 common sense, conscientiously apply it to the testimony and
4 the evidence received during the course of the trial. You
5 must, however, under your oath as a juror accept the law as I
6 provide it to ya as being the law that you are to apply in
7 this case; in other words, you're not to concern yourself with
8 what you thought the law was before you came to serve as a
9 juror this week or what you think the law ought to be, you
10 must simply under your oath as a juror accept the law as I
11 provide it to ya as being the law that you are to apply in the
12 case and then you simply take that law and you apply it to the
13 facts as you twelve jurors determine those facts to be based
14 upon your own common sense, examination and evaluation of all
15 of the evidence received during the course of the trial.

16 Now as you know you are the judges of the facts and you
17 are therefore necessarily the sole judges of the credibility
18 and the believability of any witness that has testified during
19 the course of the trial and you twelve jurors alone will
20 deci -- will decide what weight, value and effect to give to
21 any particular witness's testimony or even a portion of that
22 testimony. There are several factors which you should
23 consider in arriving at your assessment as to a witness's
24 credibility and I'm going to list those factors for you: You
25 should consider the demeanor of the witness, that is how the

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1 witness appeared to you as the witness testified from the
2 witness stand, was the witness straightforward in responding
3 to questions or was the witness hesitant or evasive in
4 responding to questions that were asked of the witness, simply
5 put, did the witness appear to you to be telling the truth and
6 to have knowledge of the facts to which that witness has
7 testified. You should also consider whether or not the
8 testimony of a witness is consistent or is it inconsistent
9 with that witness's testimony provided here in court or with
10 any other statements written or oral that were provided
11 outside of court and you should consider whether or not the
12 testimony of a witness is consistent or inconsistent with
13 other testimony or other evidence received during the course
14 of the trial. You should also consider how the witness came
15 to know the facts to which a witness has testified; in other
16 words, what was a particular witness's opportunity and ability
17 to perceive the existence of those facts to which that witness
18 has testified by having previously used his or her senses and
19 then what is that witness's ability to be able to come into
20 court and to accurately recollect to you as to what they have
21 previously perceived. You should also consider any bias or
22 prejudice or interest that you find a witness might have with
23 regard to the case; in other words, do you find some reason
24 that a particular witness would come into court and would
25 testify one way or another to help or to hurt one side or the

JURY CHARGE

1 other and you may consider any interest that a witness might
2 have in the outcome of the case if you determine that a
3 witness has such an interest and you find that that interest
4 would bear upon that particular witness's credibility and you
5 should also consider whether or not the testimony of a witness
6 is strengthened or is it weakened by other testimony or other
7 evidence received during the course of the trial.

8 Now you as the finders of the fact and you as the judges
9 of the credibility of each witness are permitted to believe as
10 much or as little of what a witness has testified to as you
11 deem is appropriate and therefore you may believe everything
12 that a witness testified to, you may choose to believe none of
13 it, you may believe some portion of a witness's testimony and
14 reject some other portion of that same witness's testimony,
15 you may believe one witness as opposed to several or several
16 as opposed to one but whatever your good judgment and common
17 sense tells you is the most believable and credible testimony
18 is the testimony you should accept and you should reject any
19 testimony or other evidence that you find not to be credible
20 or believable. Again, your sole object -- objective is to
21 simply reach the truth in the matter and by doing that you
22 will have fulfilled your obligations as jurors and that is to
23 give both the State and the defendant a fair and an impartial
24 trial.

25 Now while there are various forms of evidence such as

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1 testimony, photographs, documents, charts and other types of
2 physical exhibits, there are really only two types of evidence
3 and either or both of those types of evidence may be used to
4 prove any fact and issue but the two types of evidence are
5 direct evidence and circumstantial evidence. Direct evidence
6 is the testimony of a person who testifies from actual
7 knowledge of that fact, it is the testimony by a person who
8 has perceived the existence of some fact by means of his or
9 her senses and then they come into court and they testify as
10 to what they've previously seen, heard or felt for that
11 matter. Circumstantial evidence on the other hand is the
12 proof of some other fact or set of facts which taken either
13 singly or collectively may prove the existence of a fact in
14 question as a necessary consequence that is through an
15 inference and an inference is simply a deduction of fact that
16 may logically and reasonably be drawn from the proof of some
17 other fact or set of facts; in other words, it's not a fact
18 proven by the direct testimony of a person based upon their
19 personal perception but it is a conclusion which might
20 reasonably drawn from the proof of other facts; in other
21 words, you may infer that a particular fact exists or
22 the -- that a particular event occurred based upon the proof
23 of sufficient factual circumstances which would reasonably
24 warrant your arriving at that conclusion. The law, however,
25 makes absolutely no distinction between the weight or value to

JURY CHARGE

1 be given to direct evidence as opposed to circumstantial
2 evidence nor is a greater degree of certainty required of
3 circumstantial evidence as opposed to direct evidence.

4 Whatever the type of evidence used to prove any fact and
5 issue, you should consider all of the evidence presented in
6 the trial of this case and after carefully considering all
7 that evidence and weighing it in your minds if you are not
8 convinced of the guilt of the defendant beyond a reasonable
9 doubt then it would be your duty to resolve that doubt in his
10 favor and to return a verdict of not not guilty.

11 Now as you are well aware the defendant in this case has
12 been charged by way of the indictment with the crime of
13 murder. Some crimes have what are referred to as "lesser
14 included offenses" and sometimes depending upon the facts of
15 the matter and your determination of those facts a jury may be
16 able to consider a lesser included offense as an option for a
17 verdict in lieu of that which is actually set forth in the
18 indictment and that of course just depends upon your
19 determination of fact and then your application of the law as
20 it relates to those particular criminal offenses. In this
21 particular case I'm going to be instructing you on the law of
22 murder, that is the charge that's contained in the indictment,
23 that is the charge that has been brought against the
24 defendant. I will also be instructing you on the law as it
25 relates to the lesser included offense known as "voluntary

JURY CHARGE

1 manslaughter" which simply means that you may find the
2 defendant guilty of the charge contained in the indictment if
3 you find that that crime has been proven beyond a reasonable
4 doubt or you may find the defendant guilty of the lesser
5 included offense of voluntary manslaughter if you find only
6 that crime has been proven to your satisfaction beyond a
7 reasonable doubt and of course if neither of those offenses
8 has been proven to your satisfaction beyond a reasonable doubt
9 then your verdict must be not guilty. In any event I'm gonna
10 so I'm going to instruct you as I say on the law of murder
11 first after which I'll instruct you on the law as it relates
12 to voluntary manslaughter and then I'll instruct you on the
13 law as to a defense that has been raised by the defendant in
14 this case.

15 Now murder is defined in a code section and the code is
16 simply the -- one of those blue volumes over here
17 (indicating). Every year the legislature meets from January
18 to June and during the course of that session they pass a
19 number of laws and rules and regulations that govern our
20 conduct in a variety of ways, some of those laws are criminal
21 statutes and that just means that the legisla -- the
22 legislature defines a criminal offense; in other words, they
23 prohibit us from engaging in certain type of conduct in
24 violation of that statute and where a person has been found
25 guilty of violating that statute; in other words, has

JURY CHARGE

1 committed the crime that is prohibited and then it subjects
2 that person to some form of punishment or penalty as a result.
3 Please understand, however, that you are never to be concerned
4 with punishment or penalty, that's not something that you
5 decide, you are only to be concerned with whether or not the
6 State has proven the defendant guilty of a crime beyond a
7 reasonable doubt and you are to make that determination
8 without any regard to the consequences of your decision but
9 the code section that defines the crime of murder is set forth
10 in 16-3-10 of the South Carolina Code of Laws and that code
11 section provides the definition of murder as the killing of
12 any person with malice aforethought either expressed or
13 implied. The term "expressed" or "implied" means expressed or
14 implied malice.

15 Now in order for you to find a defendant guilty of the
16 crime of murder, it would be necessary that the evidence in
17 this case has established to your satisfaction beyond a
18 reasonable doubt that the defendant did commit some act or
19 acts which proximately caused the death of John William Ryan
20 and that that killing was done with malice aforethought.
21 Malice aforethought is an essential element of the crime of
22 murder. So what is malice aforethought? Well malice as an
23 essential element of the crime of murder is a state of mind
24 connoting an ill will and having the intent to do harm.
25 Intent refers to the state of a person's mind which directs

JURY CHARGE

1 his actions towards a specific object or goal. Malice is a
2 technical term importing wickedness and excluding just cause
3 or legal excuse, it is something which springs from depravity,
4 from a heart devoid of social duty and fatally bent on
5 mischief, it is a state of mind indicating an extreme
6 disregard for or an extreme difference to human life. Malice
7 may be likewise defined as a state of mind which indicates a
8 formed purpose and design to do a wrongful act under
9 circumstances that exclude any legal right to do it. And the
10 words "expressed" or "implied" malice do not mean different
11 kinds of malice but merely the manner in which malice may be
12 shown to have existed, that is to say either by direct
13 evidence or by circumstantial evidence from which the
14 existence of malice might be reasonably inferred. And as I've
15 told ya an inference is simply a deduction of fact that may
16 logically bro -- logically and reasonably be drawn from the
17 proof of some other fact or set of facts; in other words, you
18 may infer the existence of malice from facts established by
19 the evidence in the case from which you might reasonably infer
20 that fact. Malice may be expressed as where there is an
21 expressed threat to kill or where there's a lying in wait or
22 where the circumstances show directly that the intent to kill
23 was entertained by the defendant. Malice may be inferred
24 though no expressed intent to kill is proven by direct
25 evidence where the facts and the circumstances which have been

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1 proven by the evidence in this case satisfy you beyond a
2 reasonable doubt that malice was present in the mind of the
3 defendant at the time any killing took place. The existence
4 of malice may be inferred from any acts, declarations and
5 conduct of the defendant as well as from any other
6 circumstances shown to have existed at the time of the event
7 and from which you might reasonably infer the existence of
8 malice as often the state of a person's mind can only be
9 proven by circumstantial evidence. Malice as an essential
10 element of the crime of murder does not necessarily require
11 proof of an ill will or a hatred toward the particular
12 individual who is killed nor does it necessarily require proof
13 of an actual or a specific intent to take human life although
14 such an intent may be proven by the evidence in the case but
15 rather what it means is a state of mind which accompanies
16 conduct signifying a general malignant recklessness and an
17 extreme disregard for or an extreme indifference to human
18 life. The State is required to prove malice just as it must
19 prove any other essential -- essential element of the
20 crime and it is for you twelve jurors to determine whether or
21 not the evidence in this case establishes malice beyond a
22 reasonable doubt. It's also essential that there exists not
23 only malice but that it be malice aforethought. The law does
24 not require that malice must exist for any appreciable length
25 of time before the commission of an act proximately causing

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1 the fatal result, indeed it may be conceived at the very
2 moment that the fatal act is inflicted. It is sufficient in
3 the law so long as the State does prove beyond a reasonable
4 doubt both the existence of malice and the commission of an
5 act or acts by the defendant which proximately caused the
6 death of John William Ryan. You must determine whether or not
7 malice aforethought existed based upon your consideration of
8 all of the evidence introduced in the trial of the case and
9 any reasonable inferences that might be drawn from that
10 evidence.

11 Now as I told ya in addition to the crime of murder which
12 is actually set forth in the indictment, I'm going to instruct
13 you on the law as it relates to the lesser included offense of
14 voluntary manslaughter. An indictment for murder may also
15 include the lesser included offense of voluntary manslaughter
16 whether or not that lesser included offense is actually set
17 forth in the indictment itself. A jury may find a defendant
18 guilty of the lesser included offense where the evidence in
19 the case warrants such a finding; in other words, a defendant
20 who has been charged with the crime of murder may be found
21 guilty of the lesser included offense of voluntary
22 manslaughter if the jury determines that the evidence in the
23 case warrants that finding whether or not that lesser included
24 offense is actually set forth in the indictment itself.
25 Manslaughter is defined as an unlawful killing of a human

JURY CHARGE

1 being without the element of malice either expressed or
2 implied being present. While the element of malice
3 aforethought must be proven in order for the defendant to be
4 found guilty of the crime of murder, malice aforethought is
5 not an element of the crime of manslaughter. Voluntary
6 manslaughter is defined in the law as the unlawful killing of
7 another human being committed in sudden heat of passion
8 provoked by a sufficient legal provocation. The law
9 recognizes that sudden heat of passion arising out of
10 exasperation, rage, anger, sudden resentment, fear or terror
11 may for the time being affect the self-control of an
12 individual temporarily disturbing the ability to properly
13 reason, creating an uncontrollable impulse to do violence and
14 therefore reduces the crime from that of murder to that of
15 voluntary manslaughter provided that the sudden heat of
16 passion arose from a sufficient legal provocation. The law
17 does not reduce from murder to manslaughter every homicide
18 that is committed in the heat of passion, it must be the heat
19 of passion justly excited by a sufficient legal provocation.
20 If a sufficient legal provocation does not exist then the
21 killing even committed in the heat of passion is murder and
22 not manslaughter. The sudden heat of passion aroused by a
23 sufficient legal provocation which may reduce a homicide from
24 that of murder to that of voluntary manslaughter need not be
25 such emotion as would dethrone reason entirely or shut out

JURY CHARGE

1 knowledge and volition but it must be a heat of passion which
2 is provoked by such facts or circumstances as would naturally
3 disturb the sway of reason and the ability of an ordinary
4 reasonable person to properly reason and rendering in his mind
5 the inability of cool reflection and producing what according
6 to human experience may be described as an uncontrollable
7 impulse to do violence.

8 In determining whether an act resulting in the death of
9 another was impaled by heat of passion aroused by a sufficient
10 legal provocation or by malice aforethought, you should take
11 into consideration all of the surrounding circumstances and
12 conditions relating and accompanying -- relating to and
13 accompanying the event, therefore as stated voluntary
14 manslaughter is an unlawful homicide committed in the absence
15 of malice but in sudden heat of passion aroused by a
16 sufficient legal provocation.

17 Now in this case the defendant has raised what is known
18 in the law as the "defense of self-defense." The law
19 recognizes the right of every person to defend himself from
20 death or from sustaining serious bodily harm and to do this a
21 person may use such force as is reasonably necessary even to
22 the point of taking human life. The right of self-defense is
23 founded upon necessity, either actual or reasonably apparent
24 necessity and it is a complete defense to a charge of any
25 unlawful homicide should you find it to exist based upon your

JURY CHARGE

1 evaluation of the evidence produced during the trial of the
2 case. The existence of self-defense entitles a person charged
3 with the commission of an unlawful homicide to a verdict of
4 not guilty. Now although the defendant has raised the defense
5 of self-defense, the burden of proof is not on the defendant
6 to prove the existence of self-defense. As I have already
7 instructed you, the burden is always upon the State to prove
8 the defendant's commission of a crime alleged against him
9 beyond a reasonable doubt and this would therefore necessarily
10 require that the State prove beyond a reasonable doubt the
11 absence of self-defense. In your consideration as to whether
12 or not self-defense is established under the facts of the
13 case, there are four basic elements required to be present
14 before self-defense can exist where deadly force is employed
15 in defense of any assault; first, it must be shown that the
16 defendant was without fault in bringing on the immediate
17 difficulty which gave rise to the necessity for the use of
18 deadly force resulting in the taking of human life. One
19 cannot provoke, initiate or otherwise through his own fault
20 bring about a difficulty or a confrontation and then claim the
21 right of self-defense in the use of deadly force against an
22 attack which is caused by that provocation. A person accused
23 of an unlawful homicide is not considered under the law to be
24 at fault in bringing on the immediate difficulty which gave
25 rise to the use of deadly force if following any initial

JURY CHARGE

1 aggressive or wrongful conduct directed by the defendant
2 toward the deceased the defendant abandons his conduct and
3 withdraws from the conflict in such a manner that reasonably
4 conveys his withdrawal to the deceased, in such a case any
5 legal right the defendant has to act in self-defense is
6 reinstated and he would be entitled to the right of
7 self-defense as if his initial aggressive conduct had not
8 occurred; in other words, the defendant would be entitled to
9 act in self-defense and to use whatever force is reasonable
10 and necessary in response if the deceased attacks the
11 defendant after the defendant has withdrawn from the conflict
12 and that withdrawal has been reasonably conveyed to the
13 deceased. The second element necessary in order for
14 self-defense to be made out is that it must be shown that at
15 the time that the fatal act was committed that the defendant
16 actually believed that he was in eminent danger of losing his
17 life or sustaining serious bodily injury or that he actually
18 was in such eminent danger. The term "eminent danger" means
19 an immediate or present danger and not a past or future
20 danger. And thirdly, if the defense is based upon a belief of
21 eminent danger then it must be shown that the belief was
22 reasonable, that a reasonably prudent person of ordinary
23 firmness and courage would have entertained the same belief if
24 acting under the same or similar circumstances as established
25 by the evidence in the case. If the defendant actually was in

JURY CHARGE

1 eminent danger then it must be shown that the circumstances
2 were such as would warrant a person of ordinary prudence and
3 courage to inflict the fatal injury in order to save himself
4 from serious bodily injury or loss of life. Deadly force is
5 only appropriate when necessary and may only be exercised
6 where the defendant entertains a reasonable belief that he is
7 about to sustain a loss of life or serious bodily injury. The
8 law of self-defense encompasses preventative action taken to
9 protect one's life if such action is taken in anticipation of
10 eminent danger of losing one's life or sustaining serious
11 bodily injury and such action is taken in response to that
12 immediate threat. The defendant has the right to act upon
13 appearances although he may be mistaken. The law does not
14 hold someone to a refined assessment of danger as might be
15 accomplished having an adequate time to reflect provided
16 however that he acts as a person of ordinary reason, courage
17 and firmness would have acted or should have acted in meeting
18 the appearance of the danger. There is, however, a
19 requirement of objectivity: the belief must be reasonable,
20 that is that a reasonable and prudent person if acting under
21 the same or similar circumstances would have so believed or
22 would have been warranted in so acting. In determining
23 whether the defendant's belief in an apparent danger and in
24 the necessity of using deadly force meets the objective
25 standard, you should consider a reasonable person of ordinary

JURY CHARGE

1 firmness and courage but one who also shares some of the same
2 physical characteristics of the defendant such as age, size,
3 sex and physical condition in contrast to those
4 characteristics of the person who was alleged to be the
5 aggressor. And lastly, it must be shown that the defendant
6 had no other means of avoiding the danger of losing his life
7 or sustaining serious bodily injury other than inflicting the
8 fatal blow against the deceased and that he had no other means
9 of avoiding the danger other than to act as he did under the
10 circumstances as established by the evidence in the case
11 because as I've stated self-defense is founded upon necessity.
12 In that regard you are further instructed that while one does
13 ordinarily have a duty to retreat from any conflict before
14 employing the use of deadly force where retreat would not --
15 where a retreat would not increase the danger of sustaining
16 serious bodily injury or loss of life to the retreator, there
17 is no duty to retreat where one is attacked in one's own home.
18 Where a person is in his own home, he is not required to
19 retreat even if the aggressor is also an owner or an invited
20 guest in the home. While a lawful guest has no duty to
21 retreat against an attack by one who has no right to be upon
22 the property, a lawful guest does have a duty to retreat
23 before employing the use of deadly force where the attacker is
24 the homeowner unless by retreating he would increase the
25 danger to himself of losing his own life or sustaining serious

JURY CHARGE

1 bodily injury. A person who has not engaged in an unlawful
2 activity and who is attacked in a place he has a right to be
3 including his own home has noted -- has no duty to retreat and
4 has the right to stand his ground and to meet force with force
5 including deadly force if he reasonably believes it is
6 necessary to prevent his own death or great bodily injury to
7 himself. And again, there is however a requirement of
8 objectivity; in other words, the belief must be reasonable,
9 that is, an ordinary, reasonable and prudent person is acting
10 under the same or similar circumstances as established by the
11 evidence in this case would have entertained the same belief
12 and would have been warranted in acting as the defendant did
13 in this case.

14 Now if you have a reasonable doubt as to the defendant's
15 guilt after considering all of the evidence received during
16 the trial of the case including any evidence relating to the
17 issue of self-defense then it would be your duty to resolve
18 that doubt in favor of the defendant and to find him not
19 guilty. If, on the other hand, you have no reasonable doubt
20 as to the defendant's guilt after considering all of the
21 evidence including any evidence relating to the issue of
22 self-defense then it would be your duty to find the defendant
23 guilty of any unlawful homicide that has been proven to your
24 satisfaction beyond a reasonable doubt based upon my
25 instruction already provided to you as to the elements of

JURY CHARGE

1 those offenses which are in this case murder and voluntary
2 manslaughter.

3 Now, madam forelady and ladies and gentlemen, I am not in
4 any way concerned with what your decision is but I do tell you
5 that your verdict has to be unanimous, all twelve of you must
6 be in agreement before any decision may be reached. Now,
7 madam forelady, as you know you're gonna be presiding over
8 jury deliberations in the jury room simply to ensure that they
9 are carried out in some orderly fashion but all the jurors are
10 expected to participate because the verdict is the unanimous
11 consensus opinion of all twelve. Now, madam forelady, as you
12 know in addition to the evidence that will be provided you in
13 the jury room, you're also gonna have the indictment, as I've
14 stated it's not evidence of anything but it will serve as the
15 verdict form, so it's on the back of the indictment you'll see
16 in the lower left hand corner of the indictment on the back
17 the word "verdict" and it's beneath that word that you will
18 indicate the jury's unanimous decision, whatever that decision
19 might be. You are also called upon to sign your name as the
20 foreperson, you're the only juror that needs to sign the
21 verdict form and you'll also place the appropriate date.

22 Now in this case based upon my instruction to ya, you
23 have three potential verdict forms, those three potential
24 verdict forms are; number one, guilty, that one word, which
25 means guilty of the charge in the indictment which is the

JURY CHARGE

1 crime of murder; a second potential verdict form is guilty of
2 voluntary manslaughter, that is not actually set forth in the
3 indictment so in the event the jury finds the defendant guilty
4 of the lesser included offense of voluntary manslaughter, you
5 have to write that out and you'd simply write out guilty of,
6 excuse me, guilty of voluntary manslaughter; and if
7 considering all of the evidence in the case the State has
8 failed to prove either of those unlawful homicides to your
9 satisfaction beyond a reasonable doubt then the third
10 potential verdict form would be not guilty so whatever that
11 decision is please indicate it in the space provided, sign
12 your name as the foreperson and place the date on it. Once
13 you have reached a unanimous decision and you've indicated
14 that on the form, knock on the door, let the bailiff know that
15 you've reached your decision and we'll bring you back into the
16 courtroom to receive your decision. Madam forelady, you will
17 maintain possession of the verdict form as you come back into
18 the courtroom, don't give it to the bailiff, bring it with you
19 back into the courtroom and I'll receive it from you after all
20 of you are seated.

21 Now during your deliberations there may come a time where
22 you have some question about the facts of the matter, you
23 might even wonder if there's some other evidence that you
24 could have that that would help you reach a decision, no
25 additional evidence can be received now that you are getting

JURY CHARGE

1 ready to go back and begin your deliberation so even if
2 there's something in, something in existence that might help
3 you, you can't have to because it's not been introduced and no
4 additional evidence can be introduced once you go back to
5 begin deliberations. If, however, you have a question about
6 testimony of a witness, we can bring you back into the
7 courtroom to have that testimony replayed in whole or in part.
8 I don't have transcripts for the benefit of the jury but if
9 you wanna hear a witness's testimony replayed in its entirety
10 or in just some part of it, if you'll let me know then we'll
11 bring you back into the courtroom to have that testimony
12 replayed. If at any time you have a question about the law
13 that is applicable, I am permitted to answer those questions
14 so should you need me to give you -- reinstruct ya, I'll be
15 happy to do that. If you need a clarification or an
16 explanation of some point of law, I'm happy to do that so if
17 at any time, madam forelady, you have any question about the
18 law, you let me know and I can bring you back to provide you
19 with that additional instruction, explanation or
20 clarification. If at any time you need to direct something to
21 me, madam forelady, if you'll just write it on a piece of
22 paper, give it to the bailiff, he'll provide it to me and then
23 I'll respond accordingly. If we have any smokers on the jury,
24 you can smoke during deliberations but you're not permitted to
25 smoke in the jury room, you have to go outside to accomplish

JURY CHARGE

1 that, but if anybody wants to smoke, let the bailiff know,
2 he'll take those who wish to smoke outside for that purpose
3 but you are instructed that deliberations have to stop if any
4 juror is absent for some authorized purpose and the
5 deliberations may only resume when all twelve jurors are
6 present so that all may participate.

7 Lunchtime, excuse me. Right now it's not lunch time but
8 there may come a time where it is lunchtime and you're still
9 involved in deliberations. I don't know how long your
10 deliberations will take nor do you because you haven't started
11 but it ordinarily takes about an hour for lunch to be ordered,
12 prepared and brought to the jury room for the benefit of the
13 jury so as you go back to begin deliberations just keep in
14 mind that it'll take an hour or maybe a little bit more before
15 your lunch will arrive so as you begin deliberations just keep
16 that time frame in mind and I'll let you decide when and if
17 you wish to order lunch. Again, if you do wish to order
18 lunch, just knock on the door tell the bailiff and I'll send
19 the clerk back to take your lunch orders.

20 Well I think that covers everything but we'll know in a
21 minute. As you go back to begin deliberations, I'm gonna ask
22 you not to start until I send you word to do so, I need to
23 address some matters with the lawyers. If I don't need to
24 bring you back for any reason, I'll send word by way of the
25 bailiff that you can begin with your deliberations and in that

JURY CHARGE

1 event he'll bring, excuse me, he'll bring to the jury room all
2 of the exhibits which ha -- have been introduced and to you,
3 madam forelady, he'll also bring the indictment which will
4 serve as the verdict firm so please, with exception of
5 Mr. Browning, I'll ask the twelve primary jurors to please
6 retire to your jury room but do not begin deliberations until
7 I send you word to do so. Mr. Browning, you just stay right
8 here with me.

9 JUROR NUMBER 18: Yes, sir.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: As you know, you can't participate in
13 deliberations so that's gonna conclude your service but we do
14 sincerely appreciate your service as a juror and the time and
15 the attention that you've devoted to it. We're not gonna need
16 you to remain any longer this week 'cuz this is the last case
17 that we have that's gonna require the jury but if you're
18 curious about the decision that your fellow jurors are gonna
19 make, you're welcome to stay if you'd like, you can just have
20 a seat in the back or wherever you want to and wait around for
21 the verdict if you want to, you don't have to, that's up to
22 you, I'll leave it to your discretion as to how you wanna do
23 that. You're gonna receive a pay voucher for your service,
24 it'll be mailed to you at your -- at the address that appears
25 on your juror summons unless you've given the clerk a

MOTIONS AND MATTERS

1 different address so if that's not your correct address, be
2 sure you give the clerk your correct address before you leave,
3 okay?

4 JUROR NUMBER 18: Yes, sir. I got a question, sir.

5 THE COURT: Okay.

6 JUROR NUMBER 18: Um, I gotta return back to work
7 tomorrow and so I was wonderin' is they not gonna give me
8 anything to take back to my employee?

9 THE CLERK: Cindy has those in the office, that's who you
10 get ---

11 THE BAILIFF: I'll help him with that, ---

12 THE COURT: The ---

13 THE BAILIFF: --- Your Honor.

14 THE COURT: --- bailiff will take you around to the
15 clerk's office and ---

16 JUROR NUMBER 18: Yes, sir.

17 THE COURT: --- Ms. Parish will give you that
18 statement.

19 JUROR NUMBER 18: Thank you, sir.

20 THE COURT: Thank you. Appreciate your help.

21 (Whereupon, Juror Number 18, the alternate juror, was
22 released.)

23 THE COURT: Are there any exceptions taken to the
24 instruction or request for additions to the instruction by the
25 State?

MOTIONS AND MATTERS

1 MR. FULMER: No, Your Honor.

2 THE COURT: By the defendant?

3 MR. ALLEN: No, Your Honor.

4 THE COURT: Okay. Let me ask ya'll to verify all of the
5 exhibits before they go back them.

6 (Whereupon, counsel verified the exhibits and a
7 discussion was held off the record.)

8 THE COURT: Alright, all the exhibits are accounted for?

9 MR. FULMER: Yes, sir.

10 MR. ALLEN: Yes, Your Honor.

11 THE COURT: Okay, send 'em back, tell the jury to begin
12 deliberations, notify us when they've concluded. We'll be at
13 ease while the jury is deliberatin'.

14 (Whereupon, jury deliberations began at 11:30 a.m.)

15 THE COURT: I understand the jury has reached a decision.
16 Are we ready to receive it?

17 MR. ALLEN: Yes, Your Honor.

18 MR. FULMER: Yes, sir, Your Honor.

19 THE COURT: Okay, bring 'em in.

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

21 THE COURT: Madam forelady, have you and your fellow
22 jurors reached a unanimous decision?

23 JURY FORELADY: Yes, we have.

24 THE COURT: And have you ref -- reflected that decision
25 on the back of the indictment as requested?

VERDICT

1 JURY FORELADY: Yes, I have.

2 THE COURT: And did you sign your name and date it?

3 JURY FORELADY: Yes, I have.

4 THE COURT: If you'll please hand that up by way of the
5 bailiff.

6 (Whereupon, the jury forelady complied.)

7 THE COURT: You may publish the verdict.

8 THE CLERK: Case Number 2011-GS-42-1933 the State vs.
9 Michael Anthony Rogers, the verdict is guil -- guilty under
10 voluntary manslaugh -- manslaughter signed by the foreperson,
11 dated October 6th of 2011. Ladies and gentlemen of the jury,
12 is this your verdict and still your verdict, if so please
13 raise your right hand.

14 (Whereupon, the jury raised their hands.)

15 THE CLERK: So say you all.

16 THE COURT: Does the defendant wish to have the jury
17 polled?

18 MR. ALLEN: Request polling, Your Honor.

19 THE COURT: Alright, poll the jury please, ma'am.

20 THE CLERK: Ladies and gentlemen, I will ask -- I will
21 pose a question to you after which I ask you to stand
22 individually and respond to the question the question being is
23 this your verdict and still your verdict. Juror Number 1,
24 Roger Anthony?

25 JUROR NUMBER 1: Yes, it is.

VERDICT

1 THE CLERK: Juror 98, Pamela Mana -- Manatis.
2 JUROR NUMBER 98: Yes, it is.
3 THE CLERK: Juror 166, Tanesha West.
4 JUROR NUMBER 166: Yes, it is.
5 THE CLERK: Juror 68, James Harris.
6 JUROR NUMBER 68: Yes, it is.
7 THE CLERK: Juror 106, Joan Merrill.
8 JUROR NUMBER 106: Yes, it is.
9 THE CLERK: Juror 75, Willard Hollifield.
10 JUROR NUMBER 75: Yes, it is.
11 THE CLERK: Juror 5, Mattie Barnes.
12 JUROR NUMBER 5: Yes, it is.
13 THE CLERK: Juror 159, Joan Vermont.
14 JUROR NUMBER 159: Yes, it is.
15 THE CLERK: Juror 29, James Chapman.
16 JUROR NUMBER 29: Yes, it is.
17 THE CLERK: Juror 105, Larona Means.
18 JUROR NUMBER 105: Yes, it is.
19 THE CLERK: Juror 84, Randall Johnson.
20 JUROR NUMBER 84: Yes, it is.
21 THE CLERK: And Juror 130, Doretha Prysock.
22 JUROR NUMBER 130: Yes, it is.
23 THE CLERK: Your Honor, jury's been polled.
24 THE COURT: Let me see you up here.
25 (Whereupon, a bench conference was held off the record.)

MOTIONS AND MATTERS

1 THE COURT: Alright, any other matters to be addressed
2 with the jury present?

3 MR. ALLEN: No, Your Honor. Thank you.

4 THE COURT: Alright, ladies and gentlemen, thank you for
5 your participation in the trial of the case, that is going to
6 conclude your service as a juror this week so I do wanna take
7 this opportunity to thank you for your willingness to serve as
8 jurors and for your actual service in the trial of the case
9 and for some of you actual service in the trial of two cases
10 so you will be paid for your service this week. You'll
11 receive a pay voucher and it will be mailed to you at the
12 address that appears on your juror summons so if the address
13 on your juror summons is not your correct address and you have
14 not already provided the clerk with your correct address, you
15 need to see the clerk before you leave, okay? Thank you again
16 for your participation. You won't need to call back or report
17 back any further this week. Have a good weekend.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Alright, any other matters to address prior
21 to the imposition of sentence?

22 MR. ALLEN: Yes, Your Honor, if it please the Court, uh,
23 this time we move for a new trial based again on the grounds
24 as I previously stated in my two motions for directed verdict
25 at the close of the State's case and the close of our case as

MOTIONS AND MATTERS

1 well as on the essentially that the State failed to put up
2 sufficient evidence to sustain the charge, especially they had
3 not proven beyond a reasonable doubt or disproved beyond a
4 reasonable doubt the defense of self-defense as well as my
5 motion for a dismissal that was made and heard back in
6 September and ruled upon prior to the beginning of the case,
7 specifically that motion to dismiss under the Castle Doctrine,
8 those are the grounds for my motion for a new trial.

9 THE COURT: Alright, each of those motions are denied.

10 MR. ALLEN: Yes.

11 THE COURT: Any other matters to be presented by the
12 State?

13 MR. FULMER: No, Your Honor.

14 THE COURT: Alright, Mr. Allen, I'll hear from you and
15 Mr. Rogers.

16 MR. ALLEN: Would you prefer the client be seated or to
17 stand?

18 THE COURT: You can stand if you'd like.

19 MR. ALLEN: Okay.

20 THE COURT: I'll leave it up to you. Do ya'll have the
21 sentencing sheet?

22 (Whereupon, the document was handed to the Court.)

23 THE COURT: Alright, Mr. Allen.

24 MR. ALLEN: Your Honor, if it please the Court, you've
25 heard my client is 54-years-old. He is originally from

MOTIONS AND MATTERS

1 Massachusetts. He was raised up there in New Bedford I
2 believe it was. He graduated from high school, he's also
3 attended a culinary school up there, has done work in not only
4 the fishing industry up there but also he has done
5 construction-type work. He came to South Carolina in 1996 I
6 believe it was. He has been working -- he initially worked
7 with his brother and they have some sort of pallet, they were
8 making pallets and then he, his brother-in-law, excuse me, and
9 then he was trained as an electrician and also has done some
10 work as an electrician. While working as an electrician in
11 the late nineties I believe it was, he was as he describes it
12 electrocuted, he was shocked, that caused him to fall off of
13 the place where he was working and he further injured his
14 back. He had had some back difficulty before that time, had
15 some operations and as a result of his injuries from that work
16 accident it's my understanding he was ultimately determined to
17 be disabled after a period a time where he was receiving
18 workers comp. and he applied for disability as well. Your
19 Honor, he's got two adult children. He's got a child by his
20 first wife who is herself an adult and she has one child, his
21 grandson is about 2-years-old as I understand it, he also has
22 a son who's about 18-years-old by his second wife who is
23 present in ---

24 (Attorney/client conference held off the record.)

25 MR. ALLEN: --- he had a son in Massachusetts. He is

SENTENCE

1 married but that he and his wife are -- have been separated
2 for about four and a half, five years and so of course were
3 separated at the time that all this occurred. Your Honor,
4 you've heard the facts of the case and and what led up to all
5 of this and I would ask the Court to consider the fact that
6 this is first time my client has been in trouble, significant
7 trouble like this and ask the Court to be as lenient with him
8 as possible under all the circumstances of the case. Thank
9 you.

10 THE COURT: Alright, Mr. Rogers, is there anything you'd
11 like to add to what your lawyer's told me?

12 THE DEFENDANT: Yes, Your Honor. I'd like to ask the
13 victim's mom, Lord, this musta been awful for her, if she
14 could find it in her heart to forgive me. It wasn't meant to
15 be, Your Honor, I never meant to take this man's life. I'm so
16 sorry for the heartache I caused everybody: my family, my mom,
17 it's gonna kill her, I'm sure this is -- musta took a toll on
18 Mr. Ryan's mom and family also. I apologize.

19 (Pause.)

20 THE COURT: Alright, on Indictment 2011-1933 an
21 indictment for murder wherein you have been found guilty by
22 the jury of voluntary manslaughter, sentence of the Court is
23 you, Michael Anthony Rogers, be confined to the South Carolina
24 Department of Corrections for a period of 21 years, give him
25 credit for any time he's entitled to pursuant to 24-13-40.

SENTENCE

1 Mr. Rogers, you have a right to appeal the decision of the
2 jury and the sentence of the Court, you must file any notice
3 of your intention to appeal those decisions within ten days of
4 today's date.

5 MR. ALLEN: Thank you very much, Your Honor.

6 THE COURT: Okay.

7 MR. FULMER: Thank you, Judge.

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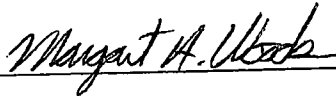
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 4, 5 and 6, 2011 at the time and place heretofore set forth; and that the foregoing pages numbered from 7 through 372, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

January 9, 2012



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)Michael Anthony Rogers, #348110)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-42-3862

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence General Sessions of Spartanburg County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011GS4201933
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 6, 2011 -- sentence 21 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 23, 2015 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No.: 2014-UP-332 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel. See attached papers
- (b) Ineffective Assistance of Appellate Counsel. See attached papers
- (c) I reserve the right to amend PCR application
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached papers
- (b) See attached papers
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance of Counsel can only be raised through PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Clay T. Allen, 366 North Church St., Spartanburg, S.C. 29303
- ii. Robert M. Dudek, 1330 Lady St. Suite 401, Columbia, S.C. 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- TO vacate conviction and remand case for new trial
20. Are you now under sentence from any other court that you have not challenged?
- No

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STATE OF SOUTH CAROLINA)
)
County of Spartanburg)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael A. Roger

SWORN to and subscribed before me this 14
day of September, 2015,

Lamara C. Russell (L.S.)
Notary Public

My Commission Expires
05-2023

My Commission Expires: September 25, 2023

2013 SEP 16 AM 9:02
10.10.10.10

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael A. Rogers

Applicant

SWORN or affirmed to and subscribed before me this
14 day of September, 2015.

Tamara Crowell
Notary Public

My Computerized Experience

My Commission Expires: September 25, 2023

2015 SEP 16 Fri 9:02
15.10.2015 10:00

GROUNDS AND SUPPORTING FACTS

10(a)

Applicant was denied the right to effective assistance of trial counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article I, §3 and 14 of the South Carolina Constitution during trial.

11(a)

ARGUMENT I

Trial counsel was ineffective in failing to respond, object and appeal to trial judge's pretrial decision on the matter of immunity from prosecution under S.C. Code §16-11-450, which was denied.

When the trial court asked if there be and were any matters for consideration prior to proceeding with trial, trial counsel for Applicant remained silent. Tr.p. 35, 11. 1-16.

It was Applicant's right of due process to object and appeal an order granting or denying a motion to dismiss because it is in the nature of an injunction and immediately appealable. S.C. Code Ann. §14-3-330(a).

We find an order denying motion to dismiss under the act is immediately appealable, as it is in nature an injunction Supp. the Supreme court shall review upon appeal.. An interlocutory order or decree granting, continuing, modifying or refusing an injunction. This is applicable to Applicant because Applicant's trial took place before and prior to State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013).

Trial counsel for Applicant was ineffective and deficient because it was incumbent on trial counsel to directly appeal from the denial of his motion for immunity from prosecution. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993).

ARGUMENT II

Trial counsel was ineffective for failing to properly preserve the issue of immunity from prosecution for appellate review. The issue of immunity was rendered moot when Applicant's trial counsel proceeded to trial without challenging the ruling of the court. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993).

ARGUMENT III

Defense trial counsel failed to object and adequately challenge statement made by State's witness Jackie Lance (Sept. Tr.p. 96, 11. 1-7), which prejudiced the Applicant to the jury during trial.

ARGUMENT IV

Trial counsel was ineffective for failure to request instruction on lesser included offense of Involuntary Manslaughter where evidence of a struggle between Applicant and victim over the weapon, See Tr.p. 261, 11. 22-25; Tr.p. 262, 11. 6-9; Tr.p. 263, 11. 16-22; Tr.p. 294, 11. 4-12; Sept. Tr.p. 41, 11. 23-25; Sept. Tr.p. 42, 3-6; Sept. Tr.p. 63, 1. 25; Sept. Tr.p. 64 11. 1, 3-4, is sufficient for submission of an Involuntary Manslaughter instruction to the jury. *Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991); *Tisdale v. State* 622 S.E.2d 514 (S.C. 2000).

A Self Defense charge (which was given) and involuntary charge are not mutually exclusive as long as there is any evidence to support both charges when there is a factual issue as to whether (in Applicant's case) the stabbing was committed intentionally in self defense or was committed unintentionally then the defendant is entitled to both charges as there is evidence to support each charge. *State v. Light*, 378 S.C. at 650-51, 664 S.E.2d at 465-470. Sept. Tr.p. 47, 11. 19-25; Sept. Tr.p. 48, 11. 15-25; Sept. Tr.p. 49, 11. 1-3.

If negligence in scuffling with an open knife results in homicide, such negligence would support a conviction of involuntary manslaughter. *State v. Gorey*, 111 S.E.2d 560, formerly 203k 34 (1959). Applicant presented evidence of a struggle over the weapon in both pretrial and trial transcript records. Sept. Tr.p. 41, 11. 23-25; Tr.p. 42, 11. 1-6, 14-15; Tr.p. 47, 11. 19-22, Tr.p. 48, 11. 15-24, Tr.p. 58, 11. 9-10, Tr.p. 63, 11. 23-25, Tr.p. 64, 11. 1, 3-4; Trial Tr.p. 261, 11. 22-25, Tr.p. 262, 11. 6-9; Tr.p. 265, 11. 16-22. See *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006). [If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given]. A trial court commits reversible error if it fails to give charge on an issue raised by the evidence. *State v. Brayboy*, 387 S.C. 174, 691 S.E.2d 482; *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993).

S.C. 2015, trial court is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that the defendant committed the lesser offense rather than the greater offense. *State v. Sams*, 2014 WL 47233846; *State v. Drafts*, 288 S.C. 30, 340 S.E. 784 (1986);