

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of General Sessions

Appellate Case No. 2018-001488

The Honorable Carmen T. Mullen, Circuit Court Judge

The State of South Carolina Respondent,

v.

Richard Passio Jr. Appellant.

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RECORD ON APPEAL

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Volume I

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State's Exhibit 1 – 911 call

Marked into Evidence See Jasper County Clerk of Court

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STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF GENERAL SESSIONS
CASE NUMBER 2016-GS-27-00300

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

JULY 30, 31, AUGUST 1, 2, 2018

TRANSCRIPT OF PRETRIAL HEARING AND TRIAL

RIDGELAND, JASPER COUNTY, SOUTH CAROLINA

RICHARD PASSIO, JR.

DEFENDANT

BEFORE

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M

APPEARANCES

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ON BEHALF OF DEFENDANT
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Also present: Investigator Richard Ulbrich

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DEFENDANT:

No defendant exhibits.

1 BEGIN DAY ONE, MONDAY, JULY 30,
2 2018, 2:00 P.M.

3 VOIR DIRE:

4 THE COURT: Ladies and gentlemen, I will tell you
5 this. If you're chosen on this first trial, it's not
6 going to begin until tomorrow morning. So, as quickly
7 as I can pull this jury, I'm going to let you all go
8 home. And for those of you are chosen on this jury,
9 what I am going to do is tell you to call back later,
10 probably tomorrow night, to the juror line, and it's
11 going to tell you whether or not you need to report on
12 Wednesday. All right?

13 So, my goal here, ladies and gentlemen, and I was
14 going to say to try to get you out of here before it
15 starts raining, but I just looked out the window. So,
16 clearly, it's raining, so that's not going to happen,
17 but I will get you out here, ladies and gentlemen, as
18 quickly as I can. All right? So, it will be early
19 afternoon, and I -- it's probably late afternoon, but
20 everyone else's book, but by my book, it's early
21 afternoon, so, we'll get you out of here.

22 All right. Solicitor, why don't you go ahead and
23 call this first case that you intend on trying.

24 SOLICITOR SWANSON: Thank you, your Honor. The
25 State calls South Carolina versus Richard Passio, Jr.,

1 Indictment Number 2016-GS-27-00300. Mr. Passio has
2 been indicted for murder.

3 THE COURT: All right. Ladies and gentlemen, as
4 you've heard, the Solicitor has called her case. The
5 case is entitled the State of South Carolina versus
6 Richard Passio, Jr., who is charged by the Bill of
7 Indictment in this case with the offense of murder.

8 Ladies and gentlemen, it is alleged that Mr.
9 Passio did, on or about June 3rd of 2016, in Jasper
10 County, did kill Michelle Passio, and that she did die
11 as a result of his actions.

12 Ladies and gentlemen, to begin with, my first
13 question to you, and I ask that you respond just as
14 you did before, if you need to, stand, give me your
15 name and juror number, and then respond. Is there
16 anyone in this case related by blood, connected by
17 marriage, or a close personal friend, or a special
18 friend of Mr. Passio or his former wife? If so,
19 please stand.

20 Does anyone know Mr. Passio, or have any type of
21 employment or working relationship with him? If so,
22 please stand.

23 Yes, ma'am, your name and juror number.

24 JUROR NUMBER 4: I'm Juror Number 4. My name is
25 Andrea Allward. I know him from the restaurant. I

1 worked next door at the Quality Inn.

2 THE COURT: Okay. My question is this. So, you
3 know him. Do you converse with him when you see him?

4 JUROR NUMBER 4: I don't -- no, I do not. Not
5 since the restaurant has closed.

6 THE COURT: Okay. Not since the restaurant has
7 closed.

8 JUROR NUMBER 4: Yeah. We used to talk about
9 guests and different little things.

10 THE COURT: Okay. Let me ask you this, ma'am.
11 Do you feel comfortable sitting in the trial of this
12 case?

13 JUROR NUMBER 4: No.

14 THE COURT: All right. And I appreciate that,
15 and I appreciate your candor. I am going to go ahead
16 and excuse you for the trial of this case. I am going
17 to ask that you call back, though, tomorrow night,
18 after 6:00 p.m., to the juror line. You can ask the
19 bailiffs when you leave, and they can give you the
20 number. There's going to be a recorded message. It's
21 either going to tell you to report on Wednesday
22 morning, or it's going to say to call back Wednesday
23 night after 6:00 p.m. Okay?

24 JUROR NUMBER 4: Okay. My question there, if I
25 do call after 6:00; I will be at work on Wednesday

1 night.

2 THE COURT: Okay. Well, it depends on what
3 happens, so, do this. If you have a problem or a
4 question and you're supposed to be at work -- what
5 time do you work from on Wednesday?

6 JUROR NUMBER 4: 3:00 to 11:00.

7 THE COURT: Okay. And that's --

8 JUROR NUMBER 4: In the afternoon.

9 THE COURT: You can call after that, and then
10 just -- if you have a problem or an issue, you can
11 call down to the clerk's office beginning -- Margaret,
12 is it 8:00 or 8:30 your office is open?

13 MADAM CLERK: It's 8:30, but it stays on there
14 until I change it.

15 THE COURT: Okay. So, the message will be there,
16 and if you have a problem the next morning, I want you
17 to call into the clerk of court's office and ask to
18 speak with Ms. Bostick. Okay?

19 JUROR NUMBER 4: Okay.

20 THE COURT: And she'll take care of you. Okay.
21 You're excused at this point, and you're Number 4,
22 correct?

23 JUROR NUMBER 4: Thank you. Yes, ma'am.

24 THE COURT: Thank you, ma'am. I appreciate it.

25 JUROR NUMBER 4: Thank you.

1 THE COURT: All right. Ladies and gentlemen, I
2 am going to ask the attorneys to introduce themselves,
3 as well as who is at counsel table with them,
4 assisting them in the trial of this case. As well,
5 Mr. Geier, I'd like you to introduce your client to
6 the jury panel.

7 Ms. Swanson, then, we're going to start with you.

8 SOLICITOR SWANSON: Thank you, your Honor. My
9 name is Hunter Swanson, and I work as prosecutor in
10 the Fourteenth Circuit. I've been working for our
11 elected official -- or elected solicitor, Duffie
12 Stone, for well over ten years now. Sitting with me
13 is Chris McIntosh, formerly an investigator with
14 Richland P.D. He is now with Beaufort County
15 Sheriff's Office.

16 THE COURT: Thank you both. Mr. Geier.

17 MR. GEIER: Thank you, your Honor. My name is
18 Christopher Geier. I'm an attorney down in Beaufort.
19 I have been there for about, oh, twelve, thirteen
20 years. Sitting with me here is Richard Ulbrich. He's
21 my private investigator. Mr. Ulbrich's been here for
22 at least 15. And then, we have Richard Passio, and
23 this is my client in this case.

24 THE COURT: Thank you. Thank you, Mr. Passio.

25 Ladies and gentlemen, the question is: is there

1 any member of the jury panel related by blood or
2 connected by marriage, or have a close personal
3 relationship or special friendship with any of these
4 people that are sitting at counsel table? If so,
5 please stand.

6 Additionally, ladies and gentlemen, does anybody
7 have any type of working relationship, social
8 acquaintance, special acquaintance; or have ever been
9 employed by, prosecuted by, or defended by either the
10 prosecutor, Ms. Swanson, or the Defense attorney, Mr.
11 Geier? If so, please stand.

12 Ladies and gentlemen, the following are a list of
13 potential witnesses in this case. Ladies and
14 gentlemen, not all of these witnesses will be called,
15 but out of an abundance of caution, their names may be
16 mentioned. The question to you is going to be: are
17 you related by blood, connected by marriage, have a
18 close personal relationship or special friendship with
19 any of these people? I want to know if these are
20 people you would pick up the phone and call. Okay? I
21 want to know if these are people that, because they
22 may testify, you would believe their testimony over
23 others because of the nature of your relationship.
24 All right?

25 So, the first -- and if any of these people are

1 in the courtroom, I'm going to ask that they stand.

2 All right?

3 The first is Ryan Altman, who is with Fire and
4 Rescue, or EMS. Brandon Ashcraft. Carla Ashcraft.
5 Cathy Badgett. Pam Bennington. Linda Bennington.
6 Tom Bennington. Kellie Bishop. Karen Brodie. Ivy
7 Bryan. Anthony Buchanan, with the Richland Police
8 Department. John Donahue of Beaufort County Sheriff's
9 Office lab. Andrew Garinger of Beaufort County
10 Sheriff's Office lab.

11 Kayla Gerard. Lieutenant Joseph Ginn of Richland
12 Police Department, or Joey Ginn. Todd Harvey, who is
13 the Deputy Coroner here. Lisa Helbig.

14 DEPUTY SHERIFF: Your Honor.

15 THE COURT: Just keep standing, you're fine.

16 Otto Helbig. Kyle Horton of Richland Police
17 Department. Chris McIntosh, of course, who is here,
18 who just raised for you all, and formerly was of
19 Richland Police Department. Marian Mims. Jordan
20 Moser. Thomas Owens. Richard, or "Rick", Passio, Sr.
21 Steve Passio. Juanita Patrum. Devan Porter. Dr.
22 Erin Presnell. Angel Rose. Martin Sauls. Shelby
23 Simmons. Michael Singleton of Fire or EMS.

24 Sarah Stuchell. Tyler Sturkie of SLED. Chris
25 Warren of Richland Police Department. Rusty Wells of

1 Jasper County 911. Kaleb, Angelina, and Giovanni
2 Passio, of Ohio. Richard Ulbrich. Officer Jason
3 Stone of the Hardeeville Police Department. Aaron and
4 Latisha Horry. Casey Renee Keelen, also known as
5 Casey Renee Lattin, or Lattin, L/a/t/t/i/n. Asliel or
6 Aisi Wilson of Richland. And Donald Girndt of
7 Columbia, South Carolina.

8 All right. Again, thank you, ma'am. You were my
9 first person to stand. If you would please, give me
10 your name and juror number.

11 JUROR NUMBER 105: Jasmine Miles, 105.

12 THE COURT: All right. Number 105, you said?

13 JUROR NUMBER 105: Yes, ma'am.

14 THE COURT: Who do you know, Ms. Miles?

15 JUROR NUMBER 105: I know Todd Harvey and Jason
16 Stone.

17 THE COURT: How do you know them?

18 JUROR NUMBER 105: Todd Harvey, he lives two
19 houses down from me, and me and my husband are really
20 good friends with him.

21 THE COURT: Okay.

22 JUROR NUMBER 105: Jason Stone, he's actually a
23 friend of my husband. They play softball together.

24 THE COURT: Okay. Ma'am, can you be fair and
25 impartial in the trial of this case?

1 JUROR NUMBER 105: I'm sorry. I didn't hear.

2 THE COURT: Can you be fair and impartial in the
3 trial of this case, if these two people testify?

4 JUROR NUMBER 105: Yes.

5 THE COURT: Are you sure?

6 JUROR NUMBER 105: I'm sorry, I can't -- I'm hard
7 of hearing.

8 THE COURT: I'm sorry. That's okay, and I
9 apologize.

10 JUROR NUMBER 105: I'm sorry.

11 THE COURT: No, no, no. It's fine. Ma'am, my
12 question to you is: if these two witnesses testify,
13 can you be fair and impartial? In other words, you
14 wouldn't give their testimony any more credit simply
15 because you know them.

16 JUROR NUMBER 105: Oh. No.

17 THE COURT: Are you sure?

18 JUROR NUMBER 105: I'm positive.

19 THE COURT: All right, ma'am. I appreciate it.
20 You may be seated. You're Number 105, correct?

21 JUROR NUMBER 105: Yes, your Honor.

22 THE COURT: Okay. Give me a second. All right.
23 Ma'am, your name and number?

24 JUROR NUMBER 48: Lori Gantt, Juror Number 48.

25 THE COURT: Okay. Yes, ma'am.

1 JUROR NUMBER 48: I know Cathy Badgett.

2 THE COURT: How do you know Ms. Badgett?

3 JUROR NUMBER 48: We're friends, and we also have
4 a working relationship. She's one of my customers
5 that I call on.

6 THE COURT: Okay. What do you do for a living?
7 I wasn't here during roll call.

8 JUROR NUMBER 48: I'm a territory manager. I'm a
9 sales rep for the Coast of South Carolina. She's one
10 of my customers.

11 THE COURT: Okay.

12 JUROR NUMBER 48: But we're friends, also.

13 THE COURT: And I'm going to tell you, I don't
14 know what the nature of her involvement is in this
15 case, even.

16 JUROR NUMBER 48: Okay. I just --

17 THE COURT: So, at this point, I guess what I'm
18 going to need to find that out from the attorneys. My
19 question, though, to you is whether or not you can be
20 fair and impartial in the trial of this case.

21 JUROR NUMBER 48: I think so.

22 THE COURT: And you're comfortable that you can?
23 Is that correct? All right. That's a yes, for the
24 record?

25 JUROR NUMBER 48: Yes.

1 THE COURT: Thank you. You may be seated. Thank
2 you.

3 All right. Sir?

4 JUROR NUMBER 35: Richard DeLong. I believe I'm
5 Juror Number 35. I'm a close friend of Ryan Altman on
6 the Richland EMS. And also, Martin Sauls. I served
7 on the Jasper County Chamber of Commerce with Martin
8 Sauls.

9 THE COURT: Okay. And I'm sorry, it was Ryan
10 Altman that you're good friends with?

11 JUROR NUMBER 35: Yes.

12 THE COURT: Have you spoken with him about this
13 case in any way?

14 JUROR NUMBER 35: No, I haven't.

15 THE COURT: Never? Okay. Okay. Sir, can you be
16 fair and impartial in the trial of this case?

17 JUROR NUMBER 35: Yes.

18 THE COURT: Okay. You may be seated, sir.

19 All right. Yes, ma'am.

20 JUROR NUMBER 164: I think I'm Juror 164.

21 THE COURT: That's all right. Give me your last
22 name, and I will double-check.

23 JUROR NUMBER 164: Webster.

24 THE COURT: Yes, ma'am, you are.

25 JUROR NUMBER 164: Brandon Ashcraft is the father

1 of my great-great nieces and nephews.

2 THE COURT: Okay. He is the father --

3 JUROR NUMBER 164: Of my great-great nieces --
4 he's in a relationship or --

5 THE COURT: Pardon?

6 JUROR NUMBER 164: He's previously been in a
7 relationship with my great-niece.

8 THE COURT: Okay.

9 JUROR NUMBER 164: Who I'm very close to.

10 THE COURT: Okay. Who you're very close to. Has
11 he spoken to you about this case at all?

12 JUROR NUMBER 164: No, ma'am.

13 THE COURT: Okay. You know nothing about it.
14 How often do you see him?

15 JUROR NUMBER 164: Twice a year, maybe.

16 THE COURT: Okay. All right. And again, I don't
17 know his involvement yet in this case, so I will find
18 out. What I need to know from you is whether or not
19 you can be fair and impartial in the trial of this
20 case.

21 JUROR NUMBER 164: Certainly.

22 THE COURT: Thank you. I appreciate it, Ms.
23 Webster. You may be seated.

24 Sir, your name and juror number.

25 JUROR NUMBER: John Tuten. I don't remember my

1 number.

2 THE COURT: Mr. Pinckney [sic], we will find it.
3 Give me one second.

4 MADAM CLERK: What was his last name?

5 DEPUTY SHERIFF: Tuten.

6 THE COURT: Pinckney.

7 MADAM CLERK: Oh, Tuten?

8 DEPUTY SHERIFF: Tuten.

9 MADAM CLERK: 161.

10 THE COURT: Number 2 -- oh, I'm sorry, Number 1
11 -- oh, Mr. Tuten, I apologize. Boy, I was really off
12 on that. All right. Mr. Tuten.

13 JUROR NUMBER 161: I am related distantly to
14 Jordan Moser. She was mentioned.

15 THE COURT: Right. Do you see her at family
16 functions or?

17 JUROR NUMBER 161: (SHOOK HEAD IN NEGATIVE.)

18 THE COURT: Not even then.

19 JUROR NUMBER 161: Naw.

20 THE COURT: Okay. Sir, can you be fair and
21 impartial in the trial of this case?

22 JUROR NUMBER 161: I think I can.

23 THE COURT: All right. I need to know for sure.

24 JUROR NUMBER 161: Yes, I can.

25 THE COURT: Thank you, sir. I appreciate it.

1 You may be seated. Ma'am, your name and juror number.

2 JUROR NUMBER: Okay. My name is Kathy Smith.

3 I'm not sure of the juror.

4 MADAM CLERK: 150.

5 THE COURT: Number 150.

6 JUROR NUMBER 150: 150. Okay. You mentioned
7 Asrial [sic] Wilson.

8 THE COURT: Oh, I'm sorry. I had it down as
9 Aisi.

10 JUROR NUMBER 150: Aisi, yes.

11 THE COURT: Is that Aisi Wilson? Okay.

12 JUROR NUMBER 150: Yes.

13 THE COURT: What is the nature of your
14 relationship?

15 JUROR NUMBER 150: She is the girlfriend to my
16 nephew, and they have two children together.

17 THE COURT: Okay.

18 JUROR NUMBER 150: They're not married.

19 THE COURT: You're very close with her?

20 JUROR NUMBER 150: Not -- not really.

21 THE COURT: Not particularly?

22 JUROR NUMBER 150: I see her occasionally, if I
23 go to my sister's house.

24 THE COURT: Okay. Ma'am, can you be fair and
25 impartial in the trial of this case?

1 JUROR NUMBER 150: Yes, ma'am.

2 THE COURT: Thank you. You may be seated.

3 Sir?

4 JUROR NUMBER 78: Close friend with Martin Sauls.

5 THE COURT: Your name and juror number?

6 JUROR NUMBER 78: Julian, Julian Jeffers, Number
7 78.

8 THE COURT: Okay. You know Mr. Sauls. Is that
9 correct?

10 JUROR NUMBER 78: Yes. Very well.

11 THE COURT: Anyone else?

12 JUROR NUMBER 78: Ma'am?

13 THE COURT: What's the nature of your
14 relationship with Mr. Sauls?

15 JUROR NUMBER 78: All of our life.

16 THE COURT: You grew up with him?

17 JUROR NUMBER 78: Particularly, we've taken care
18 of family and such as that over the years.

19 THE COURT: Okay. Sir, can you be fair and
20 impartial in the trial of this case?

21 JUROR NUMBER 78: I believe so, but I'd have a
22 hard time doubting what Martin said.

23 THE COURT: Okay. Well, let me first see what --
24 if it's in controversy, even what he would testify to.
25 All right, sir?

1 JUROR NUMBER 78: All right.

2 THE COURT: So, you can go ahead and take a seat,
3 and you're Number 78, correct? All right. Anyone
4 else?

5 All right, can I see the attorneys up here,
6 please?

7 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
8 HEARING OF JURORS. PRESENT: THE COURT,
9 SOLICITOR SWANSON, MR. GEIER.
10 END BENCH CONFERENCE.

11 CONTINUE VOIR DIRE:

12 THE COURT: Ladies and gentlemen, I was just
13 talking to the attorneys about what these people
14 potentially will be testifying to. Part of the
15 process of a jury trial is that the judge, like the
16 jury, is supposed to come in almost blind. If you get
17 chosen as a juror in the trial of this case or another
18 case, you're going to find out that the jury is the
19 judge of the facts in the case, and I'm the judge of
20 the law. I am not permitted, as the judge, to have an
21 opinion about the facts in this case. That is a
22 matter solely for a jury. The same goes for you.
23 You're not allowed to have an opinion about the law.
24 You're supposed to take the law as I give it to you,
25 and apply it to the facts as you find them, and from

1 there render a true and just verdict, which is why I
2 needed to talk to the lawyers, who knew what these
3 people were potentially testifying to.

4 With that said, all of you told me that you could
5 be fair and impartial in the trial of this case, but
6 out of an abundance of caution, I am going to excuse
7 Juror Number 164. Is it Ms. Webster? Is that
8 correct?

9 JUROR NUMBER 164: Yes.

10 THE COURT: Ma'am, I'm going to go ahead and
11 excuse you from the trial of this case, but I
12 appreciate you being here. I need you to call
13 tomorrow night after 6:00 o'clock. All right? Thank
14 you for being here.

15 Additionally, do I have Juror Number 141?

16 JUROR NUMBER 141: Yes, ma'am.

17 THE COURT: Sir, do you work for the county or
18 the state? Who do you work for?

19 JUROR NUMBER 141: County, Jasper County.

20 THE COURT: All right, sir. I'm also going to
21 excuse you from the trial of this case, but I
22 appreciate you being here as well. Call in tomorrow
23 night after 6:00 o'clock. Okay?

24 JUROR NUMBER 141: Thank you.

25 THE COURT: Thank you, sir.

1 All right. Ladies and gentlemen, I'm going to go
2 ahead and resume asking the questions that I was on.

3 Ladies and gentlemen, I know you know very little
4 about this case, about the extent I know. The
5 allegation is, the defendant in this case, on or about
6 June 3, 2016, did, in Jasper County, kill Michelle
7 Passio, and that she died as a result of that,
8 obviously.

9 Ladies and gentlemen, does anyone on this jury
10 panel, has anyone, seen, heard, or read anything about
11 this case; or have any independent knowledge about
12 this case whatsoever, other than what you've learned
13 here in this courtroom? If so, please stand.

14 Ladies and gentlemen, has any member of the jury
15 panel formed or expressed an opinion as to the guilt
16 or the innocence of the defendant in this case? If
17 so, please stand.

18 Ladies and gentlemen, is there any member of the
19 jury panel who is a member of or contributor to any
20 group which has as its primary concern the promotion
21 of law enforcement or victims' rights? And that would
22 include groups, but certainly is not limited to,
23 Mothers Against Drunk Driving, the South Carolina Law
24 Enforcement Officers Association, Sister Care,
25 Victims' Assistance, the South Carolina Victim

1 Assistance Network, any neighborhood watch programs,
2 or anything known along the lines, or are concerning
3 victims' rights or law enforcement? If so, please
4 stand.

5 Ladies and gentlemen, based on the nature of this
6 charge, and as you understand, it is alleged a murder
7 charge between a husband and a wife. Is anyone aware
8 of any bias or prejudice for or against the defendant
9 in this case? If so, please stand.

10 Ladies and gentlemen, has any member of the jury
11 panel or any member of your family, or any very close
12 personal friend ever had a close personal friend of
13 family member who has been the victim of a violent
14 crime? And that would include murder, or something
15 along those lines. If so, please stand.

16 Ma'am, give me your name and juror number.

17 JUROR NUMBER 32: Gloria Cunningham, 32.

18 THE COURT: And Ms. Cunningham, who was it?

19 JUROR NUMBER 32: Me.

20 THE COURT: It was you. And what happened? just
21 very briefly and generally.

22 JUROR NUMBER 32: It's personal.

23 THE COURT: And you are welcome to come up and
24 talk to me personally. Come on up, ma'am. And then
25 you do that, if you would, just stand over here. I'm

1 going to take these next two people.

2 Ma'am, give me your name and juror number.

3 JUROR NUMBER 70: Debra Hodge, Number 70.

4 THE COURT: Do you want to talk to me personally,
5 or are you comfortable?

6 JUROR NUMBER 70: Close friend's wife was
7 murdered in Beaufort County.

8 THE COURT: In Beaufort County? How long ago was
9 that?

10 JUROR NUMBER 70: Gosh, it's been maybe six,
11 seven years ago.

12 THE COURT: Okay. Ma'am --

13 JUROR NUMBER 70: Maybe longer. I --

14 THE COURT: Okay.

15 JUROR NUMBER 70: Time has been crazy for me.

16 THE COURT: All right. My question to you is,
17 can you be fair and impartial in the trial of this
18 case? understanding that one has absolutely nothing to
19 do with the other.

20 JUROR NUMBER 70: Yes.

21 THE COURT: Are you sure?

22 JUROR NUMBER 70: Yes.

23 THE COURT: All right. Thank you, ma'am. You
24 may be seated.

25 Sir, your name and juror number.

1 JUROR NUMBER 155: My name is Clifton Swinton,
2 and I don't remember my number.

3 MADAM CLERK: 155.

4 THE COURT: That's okay, Mr. Swinton.

5 JUROR NUMBER 155: 155. I had a close relative,
6 my uncle, my oldest uncle, which I looked up at as my
7 father, like a father, he was murdered in '13,
8 February 1, 2013. And --

9 THE COURT: Where was it?

10 JUROR NUMBER 155: In Ridgeland, Jasper County.

11 THE COURT: It was here in Ridgeland?

12 JUROR NUMBER 155: Yes.

13 THE COURT: All right. Sir, anything about that
14 experience that would affect your ability to be fair
15 and impartial in the trial of this case? again,
16 understanding one has absolutely nothing to do with
17 the other.

18 JUROR NUMBER 155: I don't think I could be, your
19 Honor.

20 THE COURT: Okay. And Mr. Swinton, that's
21 absolutely fine. I certainly understand it. I'm
22 going to go ahead and excuse you from the trial of
23 this case. All right? You need to call in tomorrow
24 night after 6:00 o'clock. Number 155 is excused.

25 JUROR NUMBER 155: Thank you.

1 THE COURT: All right. Ma'am, come talk to me.

2 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
3 HEARING OF JURORS. PRESENT: THE COURT,
4 SOLICITOR SWANSON, MR. GEIER.
5 END BENCH CONFERENCE.

6 BY THE COURT:

7 THE COURT: All right. Juror Number 32 has been
8 excused.

9 MADAM CLERK: Is it excused, or to call back?

10 THE COURT: She's going to call back. She's just
11 going to be excused from the trial of this case. I
12 apologize, Margaret.

13 MADAM CLERK: Okay.

14 THE COURT: Ladies and gentlemen, this case
15 allegedly involves the use of a gun. Is there any
16 person on this jury panel that has such strong
17 feelings concerning guns that they cannot be fair and
18 impartial in the trial of this case? If so, please
19 stand.

20 I need to see the attorneys real quickly again.
21 I apologize. Come on up.

22 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
23 HEARING OF JURORS. PRESENT: THE COURT,
24 SOLICITOR SWANSON, MR. GEIER.
25 END BENCH CONFERENCE.

1 BY THE COURT:

2 THE COURT: Ladies and gentlemen, is there any
3 member of the jury panel who has a relative or a close
4 personal friend that has committed suicide? If so,
5 please stand.

6 Ma'am?

7 JUROR NUMBER 150: My name is Smith. Juror 150.

8 THE COURT: Yes, ma'am.

9 JUROR NUMBER 150: My brother-in-law committed
10 suicide back in -- August this year will be two
11 years.

12 THE COURT: All right, ma'am. Thank you. You
13 may be seated.

14 Yes, ma'am.

15 JUROR NUMBER 152: My uncle committed suicide
16 June 13th of 2014, and an ex-husband, as well, of the
17 same year.

18 THE COURT: Okay. Ma'am, give me your name and
19 juror number.

20 JUROR NUMBER 152: Jessica Stanley, Juror Number
21 152.

22 THE COURT: Thank you.

23 Yes, ma'am.

24 JUROR NUMBER: Debra Hodge, Number 70. My
25 brother-in-law committed suicide.

1 THE COURT: All right. Thank you, ma'am. You
2 may be seated.

3 SOLICITOR SWANSON: I'm sorry. What was the last
4 juror number?

5 MR. GEIER: 70.

6 SOLICITOR SWANSON: 70.

7 THE COURT: Ladies and gentlemen, is there any
8 member of the panel who has a personal or religious
9 objection to the religion Catholicism, or those who
10 are practicing Catholics? If so, please stand.

11 Ladies and gentlemen, does any member of the jury
12 panel know of any reason whatsoever that you cannot
13 give both the State of South Carolina and the
14 Defendant, Mr. Passio, a fair and impartial trial in
15 this matter?

16 Ladies and gentlemen, is there any member of the
17 panel whose conscious of any interest, any bias, or
18 any prejudice for or against the defendant, Mr.
19 Passio, in this matter? If so, please stand.

20 Are there any further questions required of this
21 panel from the State?

22 SOLICITOR SWANSON: None from the State, your
23 Honor.

24 THE COURT: From the Defense?

25 MR. GEIER: No, your Honor.

1 THE COURT: All right. Ladies and gentlemen,
2 what is going to happen is this. Your names are going
3 to be placed into a computer, where, hopefully,
4 Margaret, yes? Is it working?

5 MADAM CLERK: We're going to try, your Honor.

6 THE COURT: We're trying hard, ladies and
7 gentlemen. We were having some computer problems this
8 morning, but Ms. Bostick has been working on it.

9 Ladies and gentlemen, your names are all going to
10 be, hopefully, placed in the computer. They are going
11 to be drawn out as a list. Each side has an
12 opportunity to accept or reject jurors. They're
13 called strikes. All you are going to have to do,
14 ladies and gentlemen, when your name is called, or
15 your number is called, is simply stand in place. If
16 both attorneys accept you as a juror in the trial of
17 this case, you're going to be asked to come forward,
18 and you're going to be asked to take a seat up here in
19 the jury box. That's going to be your signal that
20 you're on my jury, ladies and gentlemen. If not, if
21 both sides don't accept you as a juror, you are to
22 take your seat, and you're going to stay right where
23 you are until I dismiss everybody. Okay?

24 So, with that said, Ms. Bostick, do you need just
25 a couple minutes?

1 MADAM CLERK: A couple minutes.

2 THE COURT: Just a couple minutes.

3 MADAM CLERK: Yes.

4 THE COURT: All right.

5 THE COURT: Ladies and gentlemen, does anyone
6 need to go refresh themselves? I would like to --
7 okay. This is what I'm going to do, ladies and
8 gentlemen. If you don't need to leave, don't leave.
9 But if you really need to go, you are welcome to.
10 Just please, quickly do it and come on back, as I told
11 you I'm trying hard to get you all out of here by 4:00
12 o'clock. That was kind of my hope. So, that's what
13 we're trying to do. But if you do need to leave, like
14 I said, go ahead, and if not, just keep your seat.

15 MADAM CLERK: How many strikes, your Honor?

16 THE COURT: Strikes are five and ten.

17 JURY SELECTION:

18 All right. We're ready to go, Ms. Bostick?

19 MADAM CLERK: Yes, ma'am.

20 THE COURT: All right. Ladies and gentlemen,
21 when your name is called, again, simply stand in
22 place. Don't do or say anything. If both sides
23 invite you to take a seat or accept you as a juror,
24 bring all your belongings, and come take a seat in the
25 box. Okay? Strikes are five and ten.

1 MADAM CLERK: Juror Number 152, Jessica Stanley.

2 How says the State?

3 SOLICITOR SWANSON: Please excuse this juror.

4 THE COURT: You may be seated, ma'am.

5 MADAM CLERK: Juror Number 99, James McCall. How
6 says the State?

7 SOLICITOR SWANSON: Please present this juror.

8 MADAM CLERK: How says the Defense?

9 MR. GEIER: Please seat Mr. McCall.

10 MADAM CLERK: Come forward, sir, and have a seat
11 in the jury box.

12 Juror Number 168, Christina Adela. How says the
13 State?

14 SOLICITOR SWANSON: Please present this juror.

15 MADAM CLERK: How says the Defense?

16 MR. GEIER: Please seat the juror.

17 MADAM CLERK: Please come forward ma'am, have a
18 seat in the jury box.

19 Juror Number 119, Evontuca D. Orr. How says the
20 State?

21 SOLICITOR SWANSON: Please excuse this juror.

22 MADAM CLERK: Thank you, sir. Please have a
23 seat.

24 Juror Number 97, Charlene Mason. How says the
25 State?

1 SOLICITOR SWANSON: Please present this juror.
2 MADAM CLERK: How says the Defense?
3 MR. GEIER: Please dismiss the juror.
4 MADAM CLERK: Thank you, ma'am. Juror Number 48,
5 Lori Gantt. How says the State?
6 SOLICITOR SWANSON: Please present this juror.
7 MADAM CLERK: How says Defense?
8 MR. GEIER: Please dismiss the juror.
9 MADAM CLERK: Thank you, ma'am. Please have a
10 seat.
11 Juror Number 118, Jane Norris. How says the
12 State?
13 SOLICITOR SWANSON: Please present this juror.
14 MADAM CLERK: How says the Defense?
15 MR. GEIER: Please seat Ms. Norris.
16 MADAM CLERK: Thank you, ma'am.
17 THE COURT: He said please seat her, correct?
18 MR. GEIER: Yes, your Honor.
19 THE COURT: Come on up, ma'am.
20 MADAM CLERK: Oh, I'm sorry. Come forward.
21 THE COURT: Come on up.
22 MADAM CLERK: I do apologize. Juror Number 70,
23 Debra Hodge. How says the State?
24 SOLICITOR SWANSON: Please present this juror.
25 MADAM CLERK: How says the Defense?

1 MR. GEIER: Please seat Ms. Hodge.

2 MADAM CLERK: Please come forward, ma'am. Have a
3 seat in the jury box.

4 Juror Number 63, Sammy Heyward. How says the
5 State?

6 SOLICITOR SWANSON: Please present this juror.

7 MADAM CLERK: How says the Defense?

8 MR. GEIER: Please seat this juror.

9 MADAM CLERK: Come forward, sir, and have a seat
10 in the jury box.

11 Juror Number 116, Samona Nelson. How says the
12 State?

13 SOLICITOR SWANSON: Please present this juror.

14 MADAM CLERK: How says the Defense?

15 MR. GEIER: Please seat Ms. Nelson.

16 MADAM CLERK: Come forward, ma'am, have a seat in
17 the jury box.

18 Juror Number 136, Richard Sanchez. How says the
19 State?

20 SOLICITOR SWANSON: Please present this juror.

21 MADAM CLERK: How says the Defense?

22 MR. GEIER: Please excuse Mr. Sanchez.

23 MADAM CLERK: Thank you, sir. Please have a
24 seat.

25 Juror Number 112, Rachell Moultrie. How says the

1 State?

2 SOLICITOR SWANSON: Please present this juror.

3 MADAM CLERK: How says the Defense?

4 MR. GEIER: Please dismiss Ms. Moultrie.

5 MADAM CLERK: Thank you, ma'am. Please have a
6 seat.

7 Juror Number 123, Deanna Peeples. How says the
8 State?

9 SOLICITOR SWANSON: Please present this juror.

10 MADAM CLERK: How says the Defense?

11 MR. GEIER: Please seat Ms. Peeples.

12 MADAM CLERK: Come forward, ma'am, and have a
13 seat in the jury box.

14 Juror Number 47, Guy Gantt. How says the State?

15 SOLICITOR SWANSON: Please present this juror.

16 MADAM CLERK: How says the Defense?

17 MR. GEIER: Please seat Mr. Gantt.

18 MADAM CLERK: Come forward, sir, and have a seat
19 in the jury box.

20 Juror Number 109, Samuel Mock. How says the
21 State?

22 SOLICITOR SWANSON: Please present this juror.

23 MADAM CLERK: How says the Defense?

24 MR. GEIER: Please seat Mr. Mock.

25 MADAM CLERK: Come forward, sir, and have a seat

1 in the jury box.

2 Juror Number 21, Linda Brownlee. How says the
3 State?

4 SOLICITOR SWANSON: Please present this juror.

5 MADAM CLERK: How says the Defense?

6 MR. GEIER: Please excuse Ms. Brownlee.

7 MADAM CLERK: Thank you, ma'am. Please have a
8 seat.

9 Juror Number 26, Quirstin Chisolm. How says the
10 State?

11 SOLICITOR SWANSON: Please present this juror.

12 MADAM CLERK: How says the Defense?

13 MR. GEIER: Please excuse Ms. Chisolm.

14 MADAM CLERK: Thank you, ma'am. Please have a
15 seat.

16 Juror Number 105, Jasmine Miles. How says the
17 State?

18 SOLICITOR SWANSON: Please present this juror.

19 MADAM CLERK: How says the Defense?

20 MR. GEIER: Please seat Ms. Miles.

21 MADAM CLERK: Come forward, ma'am, have a seat in
22 the jury box.

23 Juror Number 114, Kenneth Murray. How says the
24 State?

25 SOLICITOR SWANSON: Please present this juror.

1 MADAM CLERK: How says the Defense?

2 MR. GEIER: Please seat Mr. Murray.

3 MADAM CLERK: Come forward, sir, and have a seat
4 in the jury box.

5 Juror Number 110, Sade Montgomery. How says the
6 State?

7 SOLICITOR SWANSON: Please present this juror.

8 MADAM CLERK: How says the Defense?

9 MR. GEIER: Please excuse Mr. Montgomery.

10 MADAM CLERK: Thank you, ma'am.

11 Juror Number 68, Deborah Hilliard. How says the
12 State?

13 SOLICITOR SWANSON: Please excuse this juror.

14 MADAM CLERK: Thank you, ma'am.

15 Juror Number 165, David Wettrich. Close?

16 JUROR NUMBER 165: Yes, ma'am.

17 MADAM CLERK: How says the State?

18 SOLICITOR SWANSON: Please present this juror.

19 MADAM CLERK: How says the Defense?

20 MR. GEIER: Please seat Mr. Wettrich.

21 MADAM CLERK: Come forward, sir, have a seat in
22 the jury box.

23 THE COURT: All right. Strikes are one and two
24 for the first alternate.

25 MADAM CLERK: Juror Number 150, Cathy Smith. How

1 says the State?

2 SOLICITOR SWANSON: Please excuse this juror.

3 MADAM CLERK: Thank you, ma'am.

4 Juror Number 55, Shantell Grant. Does the State
5 have cause for strike?

6 SOLICITOR SWANSON: No, Madam Clerk.

7 MADAM CLERK: How says the Defense?

8 MR. GEIER: Please seat Ms. Grant.

9 MADAM CLERK: Come forward, ma'am, and have a
10 seat in Alternate Chair Number 1.

11 Alternate two, Juror Number 90, Glenda Kranack.
12 How says the State?

13 SOLICITOR SWANSON: Please present this juror.

14 MR. GEIER: Please excuse Ms. Kranack.

15 MADAM CLERK: Thank you, ma'am.

16 Juror Number 162, Michael Waite. How says the
17 State?

18 SOLICITOR SWANSON: Please present this juror.

19 MADAM CLERK: How says the Defense?

20 MR. GEIER: Please seat Mr. Waite.

21 MADAM CLERK: Come forward, sir, and have a seat
22 in Alternate Chair Number 2.

23 THE COURT: Margaret, would you come up, please,
24 a second.

25 OFF-THE-RECORD BENCH CONFERENCE, OUT

1 OF HEARING OF JURORS. PRESENT: THE
2 COURT AND MADAM CLERK:
3 END BENCH CONFERENCE.

4 THE COURT: All right. We're going to go ahead
5 and pull a third juror, or alternate juror. Mr.
6 Geier, we're going to pull a third alternate juror,
7 so.

8 MR. GEIER: Sure.

9 THE COURT: Margaret, you can continue.

10 MADAM CLERK: Juror Number 172, Julia Wright.
11 How says the State?

12 SOLICITOR SWANSON: Please present this juror.

13 MADAM CLERK: How says the Defense?

14 MR. GEIER: Please seat Ms. Wright.

15 MADAM CLERK: Come forward, ma'am, and have a
16 seat in Alternate Chair Number 3.

17 THE COURT: Are there any matters of law we need
18 to take up regarding the jury selection process, from
19 the State?

20 SOLICITOR SWANSON: None from the State.

21 THE COURT: From the Defense?

22 MR. GEIER: None from the Defense, your Honor.

23 THE COURT: Thank you.

24 Welcome, ladies and gentlemen. As you
25 understand, you're my jury for the trial of this case.

1 If you will sit tight for just a moment, there's just
2 a few things I want to go over with you before I
3 excuse you. Okay?

4 Ladies and gentlemen, those of you that are in
5 the gallery, I am going to excuse you and ask that you
6 call back Tuesday night after 6:00 p.m. to the
7 recorded message. It will tell you whether or not you
8 need to be here the next day, or it may tell you that
9 you need to call back Wednesday night after 6:00
10 o'clock. Just follow whatever instructions it says.
11 All right? You are excused. Thank you.

12 JURORS NOT CHOSEN LEAVE COURTROOM

13 3:48 P.M.

14 GENERAL GUIDELINES FOR JURY SERVICE:

15 THE COURT: Door shut. Okay? Thank you. Go
16 ahead and the door shut, if you would. All right.

17 Welcome, ladies and gentlemen. Again, as you
18 understand, you are the jury for the trial of this
19 case. As you can see, there are 15 of you, because
20 the case is lasting through probably Thursday. I just
21 want to make sure that, if someone else falls ill, we
22 have someone to replace them. I will tell you,
23 unfortunately, this summer, I've had a lot of issues
24 where I've lost jurors. So, we have used each and
25 every one of our alternates in many cases. So, that

1 means for the rest of you, everyone needs to pay close
2 attention in this case. You may actually become a
3 juror.

4 I need to give you a few ground rules before we
5 start, to begin with. If you were able to come into
6 the courtroom with a cell phone, I want you to leave
7 it back in your car or leave it at home. The reason
8 why is, on a smartphone and a cell phone these days,
9 you can get so much information. I don't want anyone
10 tempted. So, out of an abundance of caution, I ask
11 that you keep it back home, or keep it in your cars,
12 ladies and gentlemen.

13 If, for some reason, you are concerned someone
14 may need to reach you emergently while you are here,
15 simply tell them to call the clerk of court's office.
16 Tell them you're a juror and your name, and I promise
17 you, I will get you immediately. All right?

18 Additionally, while you're here performing jury
19 duty, if you need to make a phone call, simply ask the
20 bailiff. She is here to take care of you, ladies and
21 gentlemen. And any needs you have, you simply ask
22 her, and she will take care of it. All right?

23 Additionally, ladies and gentlemen, you are not
24 to discuss this case with anyone, and that includes
25 each other, until you've heard all the evidence, until

1 you've heard the lawyers' closing argument, and I
2 charge you on the law that's applicable to this case.

3 Additionally, when you go home tonight, if you
4 see a spouse or a loved one, or someone you work with,
5 the only thing you're permitted to say is that you've
6 been chosen as a juror in the trial of a criminal
7 case. You cannot say the parties involved, the
8 lawyers involved, the charge, or anything along those
9 lines. And the reason is this. Someone is going to
10 try to tell you something about something, when they
11 know nothing about this case, and I wouldn't want you
12 to be influenced in any way. So, I, therefore, tell
13 you to not even discuss it.

14 At the very end of the trial, you will be able to
15 discuss it once we're done here, but at this time, you
16 must not discuss it with anyone. Again, that includes
17 each other, until you've heard all of the testimony in
18 this case, and it's sent to you for your
19 deliberations.

20 Additionally, the lawyers and the parties have
21 been instructed that, in coming and going from the
22 courthouse here, if they happen to pass you or see
23 you, they are not to say anything to you, and the
24 reason is this. That's why you've got your juror
25 button, so they can recognize you. An innocent

1 conversation in the parking lot of, it looks like it's
2 going to rain again, will be misconstrued, and it will
3 be reported back, and I'll have to ask you about it.
4 And I don't want anyone to have any kind of concerns
5 or any problems. So, when you run into any of these
6 people involved in this case or any of the witnesses,
7 they're not even going to say hello. Understand
8 they're not being rude; they're following my orders.
9 All right?

10 Also, ladies and gentlemen, you are not to read
11 anything about this case, whether it be by the
12 Internet or the newspaper, or anything along those
13 lines. I don't know that there's going to be anything
14 in the newspaper, but out of an abundance of caution,
15 I need to tell you that, if, for some reason, you
16 happen to read the newspaper tomorrow or turn on the
17 T.V. or the radio and there's something about this
18 case, you are to disregard it. I can promise you, it
19 is not factual. It is rarely correct, ladies and
20 gentlemen, and again, you are not to consider it in
21 any way. So, out of an abundance of caution, I just
22 tell you not to look at it, read it, whatever.

23 I would like to start, ladies and gentlemen, at
24 9:30 tomorrow morning, if that's acceptable with you
25 all. Again, we very much want to get this case done

1 by Thursday, and that is my hope. Does anyone have a
2 problem with being here and getting here by 10:00 a.m.
3 in the morning? And I can certainly -- if you have
4 issues with transportation, I can certainly have
5 someone come get you as well. But is 9:30 just an
6 impossibility for anyone on this jury panel?

7 Yes, ma'am.

8 UNKNOWN JUROR: What about, like, a note for
9 work?

10 THE COURT: A note from work.

11 MADAM CLERK: An excuse?

12 JUROR NUMBER: I work 10:00 to 9:00 tomorrow.

13 THE COURT: Okay. Ma'am, you're sitting on this
14 jury now.

15 JUROR NUMBER: Okay.

16 THE COURT: So, you're on this jury. If you need
17 me to call your boss or tell someone, or Margaret can
18 give you a work excuse, that's fine. But as far as a
19 note for work, we can have you take one to them.

20 JUROR NUMBER: Okay.

21 THE COURT: But you all are going to be here, and
22 I'm going to go ahead and tell you right now, you're
23 going to be here every day through Thursday, from 9:30
24 to roughly 5:00 o'clock. You're going to have an hour
25 break for lunch, ladies and gentlemen. You're going

1 to have breaks in between. But please understand, I
2 can't do the county's business without all of you
3 here. These attorneys have prepared for this case.
4 They are ready to go, and it is time to go ahead and
5 put it in front of a jury of our peers. And so,
6 ladies and gentlemen, please understand the importance
7 of this, and that you will be here with me.

8 Oftentimes, when I have friends talk about jury
9 service -- we're all used to it, because we all sit
10 here all day long, and know what it's like to sit and
11 listen to a case, because that's what we do for a
12 living. But for you, I can understand it can be
13 difficult. But I always suggest to jurors, bring a
14 sweater, bring a book, if you need to, just something
15 to occupy your time when there's some down time. You
16 will be going back to your jury room. There will be
17 breaks during the trial of this case. You will have
18 Coke and coffee and Nabs. We'll break for lunch,
19 ladies and gentlemen, where you're going to go grab a
20 bite to eat. Okay? So, this is not an endurance
21 contest, but it is lengthy, ladies and gentlemen, if
22 you're not used to it. It can be somewhat difficult.
23 So, I just want to make sure you appreciate and
24 understand that and know that. All right?

25 Additionally, if anyone needs a restroom break

1 while we're here -- this is one of the tightest
2 courtrooms -- well, not really, but it's somewhat that
3 I have a good view of my jury -- simply wave at me and
4 say I need a break, anyone; or get a hold of your
5 bailiff, either one of us, and I'll be watching the
6 entire time. There's nothing wrong with that. Just
7 let us know; we'll break; go refresh yourself.

8 Everyone will go back and get a Coke, whatever you
9 need. Again, this is not an endurance contest. Okay?

10 All right. Ladies and gentlemen, what I am going
11 to do is excuse you back to your jury room. They're
12 going to tell you how you're going to get up there
13 tomorrow. I don't know that you're going to come
14 through the courtroom, but they're going to instruct
15 you on how you are to get back there. Please
16 understand that I cannot start until all 15 of you are
17 here. So, if, for some reason, you fall ill, or there
18 is a problem overnight, you need to call in to the
19 clerk of court's office by 8:30 in the morning and
20 tell us what the problem is. If you need a ride, you
21 need to tell me tonight. Or if there's car trouble
22 tomorrow in some way, by 8:30, you need to call us,
23 because I'm going to send someone to come and get you.
24 Again, nothing is going to happen in this courtroom
25 and this case until all 15 of you are here tomorrow.

1 So, please understand, again, the importance of your
2 responsibility, all right?

3 So, with that said, ladies and gentlemen, I'm
4 going to go ahead and excuse you back to your jury
5 room. The bailiff is going to explain a few more
6 things to you. We'll see you tomorrow morning at
7 9:30. Okay? Thank you.

8 JURORS LEAVE COURTROOM 3:56 P.M.

9 PRETRIAL HEARING:

10 THE COURT: All right, you all may be seated.
11 Okay. Are you all ready to go through -- my
12 understanding is we have significantly shortened our
13 pretrial matters in this case. You just need to go
14 ahead and put some things on the record. Is that
15 correct? And do we even need to do a *Jackson v.*
16 *Denno*, or not?

17 SOLICITOR SWANSON: We do not, your Honor.

18 THE COURT: Okay.

19 SOLICITOR SWANSON: The State does not intend to
20 offer any of the statements made while the defendant
21 was being interviewed by police at the station. Those
22 are the recorded interviews that Mr. Geier was
23 objecting to. One in which the defendant was not in
24 custody, but one in which he was in custody and being
25 interrogated.

1 The State -- and I have told Mr. Geier this. The
2 State does intend to offer a 911 call where the
3 defendant makes statements, as well as enter his
4 statements that were made on-scene to one of the
5 responding officers. But it was not an interrogation.
6 And again, he wasn't in custody at that time.

7 THE COURT: Okay.

8 SOLICITOR SWANSON: I do not believe that Mr.
9 Geier has any objection to those.

10 MR. GEIER: I do not, your Honor.

11 THE COURT: Okay. Thank you. All right. There
12 were a couple of other pretrial motions I saw on your
13 behalf, Mr. Geier. I know one had to do with the
14 using the word *victim* in the case.

15 MR. GEIER: Yes, your Honor. Prior to this
16 hearing, I talked to Hunter a little bit about it.
17 I'm not going to jump up and down and ask for a
18 mistrial if some law enforcement person says *victim*.
19 I just don't want it to be, you know, par for the
20 course as to what comes out of the mouth all the time.
21 So, if they do mention that, I may object.

22 THE COURT: Okay.

23 MR. GEIER: And I'll do it contemporaneously.

24 THE COURT: Okay. Can we agree to refer to her
25 by name, or how would you -- how do you want her

1 referred to during your trial?

2 SOLICITOR SWANSON: I -- I would probably refer
3 to her by name as Michelle, or his wife.

4 THE COURT: Okay. Okay. Or Mrs. Passio, or
5 anything along those lines.

6 SOLICITOR SWANSON: Right.

7 THE COURT: Okay. Okay. All right. What about
8 as far as any police reports or any NCIC reports from
9 any of the witnesses in this case? Are we turning
10 those over as they come?

11 SOLICITOR SWANSON: Mr. Geier, has everyone that
12 the State intends to call, as well as rap sheets on
13 his potential witnesses.

14 THE COURT: Okay. Thank you. All right.
15 Anything else? What about as far as sequestration of
16 witnesses? Is that necessary, or are we fine with
17 everyone being here? It's my understanding that there
18 was no eye witnesses to this. Am I correct on this?

19 SOLICITOR SWANSON: That's correct.

20 THE COURT: Okay. So, you don't really have that
21 concern. Anything else as far as motions, Mr. Geier?

22 MR. GEIER: None from the Defense.

23 THE COURT: Okay. And my understanding is Mr.
24 Passio is out on bond. Is that correct?

25 MR. GEIER: That's correct, your Honor.

1 THE COURT: And Mr. Passio, I just want to make
2 sure you are going to be here tomorrow morning.
3 You're fine, sir. I'd like to have the attorneys and
4 the parties here a little bit before the jury, just so
5 I make sure that you're all here and don't run into a
6 problem. I'm going to ask that the attorneys, unless
7 that there's something extraordinary that you need to
8 put on the record, you all be here by 9:15, and that
9 will include you, too, sir, as well.

10 Is there any objection or any need to come
11 earlier than that, Ms. Swanson?

12 SOLICITOR SWANSON: No, your Honor.

13 THE COURT: Mr. Geier, any earlier than that?

14 MR. GEIER: No, your Honor.

15 THE COURT: All right. So, we will see you all
16 tomorrow morning at 9:15.

17 Anything else that we need to put on the record
18 from the State or the Defense before we start this
19 trial?

20 SOLICITOR SWANSON: Nothing from the State.

21 THE COURT: Okay.

22 MR. GEIER: Nothing from the Defense, your Honor.

23 THE COURT: All right, you all, have a great
24 evening, and I will see you all tomorrow at 9:15.
25 Okay?

1 END DAY ONE, MONDAY, JULY 30,

2 2018, 4:00 P.M.

3 BEGIN DAY TWO, TUESDAY, JULY 31,

4 2018, 9:31 A.M.

5 CONTINUE PRETRIAL HEARING:

6 DEPUTY SHERIFF: All rise.

7 THE COURT: Please be seated. Good morning.

8 MADAM CLERK: Good morning.

9 THE COURT: All right. Are we ready to go?

10 All right. State's here, ready to go. Defense
11 is here. We're good to go? Is our jury here,
12 Margaret?

13 MADAM CLERK: Not yet. We're missing two.

14 DEPUTY SHERIFF: There's two missing.

15 THE COURT: We're missing two?

16 DEPUTY SHERIFF: I was wondering if --

17 THE COURT: Okay.

18 MADAM CLERK: Let's go see who they are.

19 THE COURT: Anything we need to take up, Ms.
20 Swanson or Mr. Geier, before we start?

21 SOLICITOR SWANSON: It's my understanding that
22 Mr. Geier is going to be objecting to some testimony
23 that I intend to bring out through my paramedic who
24 responded to the scene. And so, I didn't know if you
25 wanted us to proffer that prior to beginning. He is

1 going to be my fifth witness.

2 THE COURT: Is he here?

3 SOLICITOR SWANSON: He is.

4 THE COURT: Perfect. You want to do it right
5 now, while we have a little time and the jury's not
6 all here?

7 MR. GEIER: Sure. Sure.

8 THE COURT: Okay. Let's bring him up.

9 SOLICITOR SWANSON: All right. Michael
10 Singleton.

11 THE COURT: Good morning, sir.

12 MICHAEL SINGLETON: Good morning.

13 THE COURT: Come on up. Take a seat.

14 MICHAEL SINGLETON: Perfect.

15 THE COURT: Obviously, the jury's not here, so
16 we're just going to hear what the objectionable
17 testimony is. Did you respond to the scene? Is that?

18 MICHAEL SINGLETON: Yes, ma'am.

19 THE COURT: Okay. There should be a -- yes.

20 Ms. Swanson, if you want to, you can kind of give
21 me the overview of what he's going to -- you can tell
22 me what he's going to testify to, as far as the things
23 that's not objectionable, and then what it is that you
24 think is -- or Mr. Geier thinks is objectionable.

25 SOLICITOR SWANSON: Right. And I can kind of do

1 this one of two ways. I mean, I know -- I know
2 sometimes paramedics have been qualified as experts in
3 emergency medicine. He has been a paramedic for about
4 ten years now, primarily in the Atlanta and Savannah
5 area; has responded to many fresh gunshot wounds.

6 THE COURT: So, what is the objection? because I
7 don't know what you're objecting to.

8 MR. GEIER: Yes, your Honor. I believe he's
9 going to testify that, when he got there, based on the
10 coagulation level of that blood, that, in his opinion,
11 the scene had been there for awhile. In other words,
12 it wasn't a fresh death.

13 THE COURT: Can he give any kind of time frame?
14 Can you give any kind of idea as far as time?

15 MICHAEL SINGLETON: I can give a rough estimate,
16 but I'm not --

17 THE COURT: What is your rough estimate?

18 MICHAEL SINGLETON: Probably at least 30 minutes
19 for the coagulation to start setting in.

20 THE COURT: Okay.

21 MR. GEIER: Yeah. And --

22 SOLICITOR SWANSON: Just the fact that it didn't
23 occur in the past ten minutes. The Dispatch time was
24 5:52.

25 THE COURT: Got it.

1 SOLICITOR SWANSON: Mr. Singleton arrived at 6:00
2 o'clock.

3 THE COURT: Okay.

4 MR. GEIER: And your Honor, one of our witnesses
5 that's going to come on is a blood spatter and
6 criminal crime scene investigator. And my
7 understanding is, is that, it's almost impossible to
8 determine how long blood has been sitting there, based
9 on coagulation level, because everybody's different.
10 Every scene is different, based on a number of
11 factors, and I believe his opinion's going to be that
12 you just can't tell, and nobody can tell, with any
13 sort of certainly how long blood has been sitting
14 there.

15 THE COURT: How does that not go to, as far as
16 weight, as opposed to admissibility, you can cross-
17 examine him on, and then you get another guy up there
18 and says it's absolutely impossible? Because I would
19 qualify him as an expert as a paramedic. And it
20 sounds to me, from what Ms. Swanson has said is, with
21 his experience and training, ten to twelve years, I
22 think he could explain to that level, if he's
23 comfortable saying that.

24 SOLICITOR SWANSON: Well, and I'm not even
25 looking for a time frame, necessarily.

1 THE COURT: Okay.

2 SOLICITOR SWANSON: It's just, it hit him when he
3 walked in that this had not just happened.

4 MICHAEL SINGLETON: And I would have --

5 THE COURT: Well, that's the problem, because,
6 then, it gives you kind of big speculation. Instead
7 of two hours ago --

8 SOLICITOR SWANSON: Well, and we can do the rough
9 estimate as well, or Mr. Geier can cross on that. The
10 other thing that I did want to get into with Mr.
11 Singleton is, he has responded to a number of suicide
12 scenes. And I wanted to ask him about his experience
13 with those.

14 MR. GEIER: I don't have a problem with that,
15 your Honor. And going back to the blood, I mean, he
16 can testify to what he saw.

17 THE COURT: Right.

18 MR. GEIER: I mean, he can say, yeah, the blood
19 was kind of gelatinous, or whatever it is he's going
20 to say. And then, they can -- the jury can draw their
21 own conclusions. But there are people out there that
22 are experts in this area that receive training and
23 write papers on it, and go through lots and lots of
24 classes specifically on this area, and I don't think
25 that EMS is one.

1 THE COURT: Well, he's a paramedic, number one.

2 MR. GEIER: Sure.

3 THE COURT: And number two, I think, based on his
4 experience and knowing when, supposedly, crimes
5 occurred or deaths or wounds occurred, that he can say
6 that it didn't happen five minutes ago.

7 MR. GEIER: Right. Well, your Honor, also --

8 THE COURT: Yes.

9 MR. GEIER: -- I would guess that, about every
10 time he goes to a scene, and he's given information by
11 somebody there --

12 THE COURT: Right.

13 MR. GEIER: -- as far as when this happened. And
14 that's what he's basing his estimate on. Not because
15 he is able to say, well, you know what, this is a
16 wooden floor, or there is air conditioning, or it's
17 Type B blood. I mean, like I said, there's a lot of
18 factors.

19 THE COURT: I'm supposing he's taking the
20 totality of the circumstances when he testifies. And
21 again, I think you can cross-examine him on all those
22 questions.

23 SOLICITOR SWANSON: Well, of course, he knows
24 when he was dispatched.

25 THE COURT: Right. I think he can -- I think if

1 he is comfortable and he wants to, and he says that,
2 in my experience, you know, this didn't happen, you
3 know, five, ten minutes ago; this happened at least a
4 half hour ago; I think he can testify to that, if he's
5 comfortable to and wants to, and feels like he can.

6 MICHAEL SINGLETON: Whatever you say I can do,
7 that's fine.

8 THE COURT: I know. I just -- it's based,
9 really, on what your expertise is and what you feel
10 comfortable saying and doing. Because, of course,
11 he's going to cross-examine you and say, isn't it
12 true, you know, so.

13 MICHAEL SINGLETON: Yes, ma'am.

14 THE COURT: Okay. Well, I do think that he could
15 probably testify to this. Okay?

16 SOLICITOR SWANSON: Did you want to --

17 THE COURT: You have to qualify him as a
18 paramedic, though, obviously, as an expert.

19 SOLICITOR SWANSON: Correct. Did you want to go
20 through the proffer, or?

21 THE COURT: I think -- is this the full amount of
22 what we're talking about? Is it?

23 MR. GEIER: Yes, your Honor.

24 THE COURT: Okay. I don't think we need to,
25 because I think we've kind of gotten to the heart of

1 what you're looking for.

2 SOLICITOR SWANSON: Sure.

3 THE COURT: Okay.

4 MR. GEIER: Your Honor, also --

5 SOLICITOR SWANSON: And may Mr. Singleton step
6 down?

7 THE COURT: You can step down, sir.

8 SOLICITOR SWANSON: Thanks.

9 THE COURT: Yes.

10 MR. GEIER: One thing that we're going to end up
11 bringing up on cross is regarding one of the
12 witnesses, Brandon Ashcraft.

13 COURT REPORTER: I'm so sorry.

14 THE COURT: You need to speak up, yes, please.

15 MR. GEIER: Mr. Ashcraft has a felony conviction
16 from 2015. It's not a dishonesty conviction. I was
17 planning on impeaching him on that, but because it's
18 not a crime of theft or something like that, I think
19 there needs to be a balancing test done.

20 THE COURT: So, what was the offense?

21 SOLICITOR SWANSON: It appears to be drugs.

22 MR. GEIER: Felony.

23 SOLICITOR SWANSON: Out-of-state drugs. I don't
24 know how that's probative of his credibility. So, I
25 --

1 THE COURT: What is his role? What is he going
2 to testify to? What's his role in this?

3 SOLICITOR SWANSON: Well, he had a brief affair
4 with Michelle Passio.

5 THE COURT: Okay.

6 SOLICITOR SWANSON: And Richard Passio confronted
7 him about it the night of her death.

8 THE COURT: Okay.

9 SOLICITOR SWANSON: And made certain statements
10 to him. They also work together at Jasper's Porch.

11 THE COURT: Okay.

12 SOLICITOR SWANSON: And he can testify about
13 their relationship, and the relationship between
14 Richard and Michelle when they were working together.

15 THE COURT: All right. You want to be able to
16 impeach him on, because he has a felony conviction
17 that carried over a year, from the last ten years; or
18 it could be a crime of moral turpitude or honesty.
19 You know, if he's giving opinion testimony, the
20 possibility, and it might be a stretch, but I think he
21 probably could ask him. I mean, I don't know if he
22 was high on drugs that night when he spoke, or at any
23 other time he's in here giving opinions. I think it's
24 fair game.

25 MR. GEIER: Thank you, your Honor.

1 THE COURT: Yes.

2 MR. GEIER: Last thing, and this is something
3 that we talked about briefly yesterday, although it
4 occurred to me last night that we might need to go
5 into it a little bit more. There are two recorded
6 interviews of Mr. Passio, and the State is not going
7 to be introducing either one of those. My concern is
8 with the second interview. Part of the basis for the
9 *Jackson v. Denno* motion we submitted was that Mr.
10 Passio was on Klonopin, which is a anti-anxiety, you
11 know, a highly addictive drug. What I'm concerned is,
12 because we didn't go through that whole process, and
13 because, you know, if you had suppressed that, that
14 would've suppressed all the contents of whatever was
15 spoken about. As it stands right now, with the State
16 withdrawing, presumably, they can still go in and talk
17 about specific things that were discussed and
18 statements made by Mr. Passio and have that said in
19 the record.

20 THE COURT: Ms. Swanson.

21 SOLICITOR SWANSON: Your Honor, no. When I with
22 -- when I withdrew my intent to introduce any of those
23 statements, that means I'm not getting into any of the
24 interviews through my investigator.

25 THE COURT: Okay.

1 SOLICITOR SWANSON: Not just not presenting the
2 recordings.

3 THE COURT: Right.

4 SOLICITOR SWANSON: And if Mr. Geier attempted to
5 get into the contents of those interviews, I would say
6 that that's hearsay and inadmissible for him to do,
7 so.

8 THE COURT: Okay. Then, I think we're on the
9 same page.

10 MR. GEIER: Yes, ma'am.

11 THE COURT: Okay. All right. Let's bring the
12 jury out.

13 JURORS ENTER COURTROOM 9:41 A.M.

14 JURORS SWORN:

15 MADAM CLERK: Everybody's all comfortable. Good.
16 Now, I'm going to ask you to please stand and raise
17 your right hand. Do you swear or affirm that you
18 shall well and truly try the case, 2016-GS-27-00300,
19 the State of South Carolina versus the defendant,
20 Richard L. Passio, Jr., and render a true verdict,
21 according to the law and the evidence, so help you
22 God?

23 RESPONSES FROM JURORS.

24 MADAM CLERK: Thank you.

25 GENERAL CHARGE:

1 THE COURT: You may be seated. Well, good
2 morning, ladies and gentlemen.

3 RESPONSES FROM JURORS.

4 THE COURT: Thank you for all being here
5 promptly. Before we begin, I just want to tell you
6 what we're going to do here today. I am going to go
7 ahead and just make a few brief comments, the lawyers
8 are going to make their opening statements, and then,
9 the State's going to start putting witnesses up. But
10 I did notice one of you had a pad of paper for notes.
11 Let me ask you this. By a show of hands, do any of
12 you want to take notes in the trial of this case? And
13 let me tell you why I ask that, because there is
14 something specifically we need to deal with on notes.
15 Is there anyone that --

16 Ma'am, do you want to take notes? I see you've
17 got something in your hand. No?

18 UNKNOWN JUROR NUMBER: No, I'm just --

19 THE COURT: You're just holding onto it. Okay.
20 We're fine. Ladies and gentlemen, the reason why I
21 ask you that is because, if you want to take notes, we
22 can provide to you pads and pencils, but there are
23 certainly rules with that. So, what I'm going to ask,
24 as long as, at this point, no one wants to take notes,
25 I'm going to ask that you don't take any. If, at some

1 point, you do feel like you would like a notepad, just
2 flag me, and we'll get you all copies. But of course,
3 no one's required to take notes, ladies and gentlemen.
4 Again, some juries like to, some don't. Some people
5 like to, some don't. Don't worry about it. I just
6 want to make sure that I understood whether or not you
7 all were taking notes. So, you all are fine. Just
8 sit back, relax, remember the testimony.

9 Ladies and gentlemen, what I'm going to tell you
10 right now is intended to serve as an introduction to
11 the trial of this case. These remarks are not a
12 charge on the law. I'm going to charge you on the law
13 that's applicable to this case at the end of the
14 trial. After you've heard the closing arguments from
15 the lawyers and I charge you on the law, and then we
16 send it to you. Ladies and gentlemen, again, this is
17 merely an explanation of what's going to happen, so
18 you can understand what's going on during the trial.

19 Now, the defendant in this case, Mr. Passio, is
20 charged by an indictment that is filed in this court
21 with the offense of murder, the elements of which,
22 again, I will explain to you later, ladies and
23 gentlemen. Now, an indictment is simply the written
24 charge by which the case is brought into the court,
25 and it is not in any sense evidence of any of the .

1 allegations it contains.

2 Now, in this case, the defendant, Mr. Passio, has
3 pled not guilty to this charge of murder. Therefore,
4 the State has the burden of proving each of the
5 elements of the murder indictment beyond a reasonable
6 doubt. And it's your duty, ladies and gentlemen, to
7 determine whether or not the State has met their
8 burden.

9 Now, your purpose as jurors, as I told you
10 yesterday, was to find and determine the facts. You,
11 the jury, are the sole judge of all facts in this
12 case. If, at any time, I make any comment regarding
13 the facts of this case, you must disregard it. And
14 again, you are only to determine the facts in this
15 case from the witness stand, when people testify right
16 here, as well as any other evidence that's introduced
17 into this case.

18 Please understand that it is especially important
19 that you perform your duty in determining the facts
20 diligently and conscientiously, because, ordinarily,
21 there is no way to correct an erroneous determination
22 of the facts by a jury.

23 Ladies and gentlemen, the same law that makes you
24 the judge of the facts makes me the judge of the law.
25 The law as given by the Court is the only law you may

1 consider. I cannot tell you what the facts of this
2 case are, and you cannot disagree with me about what
3 the law is, or what you think the law ought to be.
4 Your job at the end of this case, when you go into
5 your deliberations room, is to take the law as I give
6 it to you and apply it to the facts as you find them,
7 and from there render a just verdict.

8 Now, ladies and gentlemen, until I advise you to
9 begin your deliberations, you must not discuss this
10 case with anyone, and that includes each other, until
11 you've heard all of the evidence, until you've heard
12 the closing arguments from the lawyers, and I've
13 charged you on the law of this case. I remind you
14 again, in coming and going from the courthouse or the
15 parking lot, that, if you pass these lawyers, any of
16 the witnesses, any of the parties in this case, again,
17 they have been instructed not to speak to you. Again,
18 I would just remind you, they're not being unfriendly;
19 they're simply following my orders.

20 Additionally, ladies and gentlemen, I didn't see
21 anything in the newspaper on this case this morning,
22 but out of an abundance of caution, if you happen to
23 see something in a newspaper, T.V., radio, whatever,
24 and it has anything to do with this case, you are not
25 to read it. And I remind you again, it's because it's

1 not factual. You are going to have everything you
2 need right here in this courtroom to determine this
3 case. Again, it would be highly inappropriate for you
4 to be influenced by any outside facts. Therefore, I
5 tell you not to look or read anything.

6 Ladies and gentlemen, please understand that it
7 is especially important that you keep an open mind and
8 not decide any issue in this case until all of the
9 evidence has been presented, you've heard the closing
10 arguments, and again, I've instructed you on the law
11 that's applicable to this case. Your verdict must be
12 based solely on the evidence, again, that's presented
13 in this courtroom. You going to hear me remind you of
14 that throughout the trial of this case.

15 Now, in just a moment, Solicitor Swanson is going
16 to make what's called an opening statement, in which
17 she's going to explain to you the issues in this case,
18 or at least what she believes the issues are in this
19 case. And then, the Defense attorney, Mr. Geier, is
20 also going to make an opening statement, although he's
21 not required to do so. Please understand, what these
22 lawyers tell you in their opening statements is not
23 evidence in this case. Again, it is their contention
24 as to what the issues are in this case. I again
25 remind you, evidence in this case comes from the

1 witness stand, as well as any other physical evidence
2 that's entered into the case.

3 Now, I want you to know that, from time to time,
4 you may hear the lawyers say something like, your
5 Honor, there's a matter of law we need to take up; I
6 may motion them up here to talk to me at the Bench; or
7 I may even send you back to your jury room. I want
8 you to understand something. We're not hiding
9 anything from you. Oftentimes, when I have to rule as
10 a matter of law, or whether or not certain testimony
11 or evidence is admitted, I may make a comment on the
12 facts of the case. Because I would never want
13 anything I do to influence you in your determination
14 of the facts, we just do it outside your presence.

15 Now, in determining what the true facts are in
16 this case, you must decide whether or not the
17 testimony from the witnesses is believable. It's my
18 responsibility to rule as matter of law whether or not
19 certain testimony is admitted. But once it is
20 admitted, whether or not you believe it is for you to
21 determine. In deciding whether to believe a witness,
22 you have a right to consider the interest of any
23 witness, the bias of any witness, the prejudice of any
24 witness; and you can look at the opportunity that the
25 witness had to have seen the matters and things about

1 which the witness may testify; and you can look at the
2 way the witness acts on the witness stand. You have
3 the right to use anything that is in the record to
4 help evaluate the testimony of that witness.

5 Therefore, I ask you to pay close attention, ladies
6 and gentlemen, so at the very end of this case, you
7 can accurately remember the testimony that was given
8 here at trial.

9 Now, ladies and gentlemen, once again, in order
10 to preserve everyone's rights, I'm going to ask the
11 State if there's anything additional they'd like for
12 me to speak with you on, and also the Defense. If
13 not, we are actually going to go ahead and begin the
14 trial of this case. All right? Anything from the
15 State?

16 SOLICITOR SWANSON: Nothing from the State.

17 THE COURT: Anything from the Defense?

18 MR. GEIER: No, your Honor.

19 THE COURT: Ladies and gentlemen, we'll go ahead
20 and begin with the trial. Ms. Swanson.

21 SOLICITOR SWANSON: Thank you, your Honor. May
22 it please the Court?

23 THE COURT: Yes, ma'am.

24 OPENING STATEMENT ON BEHALF OF

25 THE STATE BY SOLICITOR SWANSON:

1 SOLICITOR SWANSON: In June of 2016, Richard
2 Passio decided that Michelle, his wife, was not
3 getting out of their twelve-year marriage alive.
4 Richard is a man that likes to be in control, and when
5 he lost control of Michelle, he fired a shot into her
6 head within feet of their six-week-old newborn, who
7 lay sleeping in a basinet in the living room of their
8 marital home.

9 Now, the troubled couple had moved from Ohio less
10 than a year before. They moved down to help with the
11 family restaurant here in Ridgeland. It's called
12 Jasper's Porch. It's since gone out of business. The
13 new beginning that Richard envisioned never came to
14 fruition. Then, the problems continued, and the more
15 he tried to control Michelle, the more she asserted
16 her independence. Richard was on the verge of losing
17 Michelle, and it was not going to be under her terms.
18 He was going to make that certain.

19 You're going to hear from witnesses from the
20 night of her death that ran into them at Schooner's, a
21 local bar. They witness an argument between Richard
22 and Michelle. Richard sends Michelle home, and he
23 goes to Jasper's Porch to retrieve a .9 millimeter,
24 the .9 millimeter that ends up under Michelle's chin,
25 and the bullet that came out of that gun, that went

1 through her head.

2 That same night, Richard confronts Brandon
3 Ashcraft, who is a man that Michelle had a flirtation
4 with, maybe a brief physical affair. This is mere
5 hours before Richard calls 911 to report what he
6 describes as a suicide. Multiple gunshots, but a
7 suicide.

8 Lieutenant Joey Ginn, who is seated right here,
9 was the first from Ridgeland P.D. on the scene, and
10 when he gets there, Richard is out on the porch. He's
11 not administering any lifesaving measures to his
12 beloved wife, as 911 has told him to do. When the
13 lieutenant goes into the house, it's completely dark.
14 The living room where Michelle lay on the couch
15 bleeding is completely dark. Sleeping baby in that
16 same room. The house also has seven other children
17 and a dog in it, yet, it's completely quiet.

18 Now, as Judge Mullen told you, it is the State's
19 burden to prove this case to you beyond a reasonable
20 doubt, and that means that I must leave you firmly
21 convinced of Richard Passio's guilt in this murder for
22 you to convict him. And that takes place after we
23 have presented all of the evidence. At the close of
24 evidence, Judge Mullen will charge you on the law, and
25 you get to determine what really happened that night.

1 Okay? You get to determine the truth, the facts of
2 the case. And I'll tell you, the most important tool
3 that you're going to have in determining that truth
4 and evaluating this case is your common sense.

5 This simply was no suicide, and this was no
6 accident. Richard Passio chose to play God that night
7 when he went and retrieved the murder weapon. He
8 wasn't going to let her leave, and that's exactly what
9 she wanted to do. As a consequence, he sits before
10 you in this courtroom, indicted for murder. And at
11 the end of this case, I'm going to be coming back to
12 you and asking you to speak Michelle's truth, and
13 return a verdict of guilty.

14 THE COURT: Thank you. Mr. Geier.

15 MR. GEIER: Thank you, your Honor.

16 OPENING STATEMENT ON BEHALF OF

17 THE DEFENSE BY MR. GEIER:

18 MR. GEIER: Good morning. A lot of times, when
19 lawyers like me get up here, we say things like, I'm
20 so happy to be here in front of you all; I'm so happy
21 to be representing my client on one of the most
22 important days of his entire life; and I'm so happy
23 that you, the jury, are here with us for what is one
24 of the most important things that we enjoy as
25 Americans, and that's our right to a fair and honest

1 trial.

2 I'm not happy. I'm not happy to be here. I'm
3 not happy that Richard is sitting there, accused
4 wrongfully of murder. I'm not happy that you all have
5 to be here to listen to this case. There is nothing
6 happy about this case. If I were to use a word to
7 describe this case, I think that word would be
8 suffering. You're going to hear about a lot of
9 suffering in this case. Richard had eight kids, and
10 they have all suffered. Richard has suffered. And
11 Michelle suffered.

12 With Michelle, and you're going to hear evidence
13 that she was diagnosed three months before her death,
14 as being bipolar. And you're also going to hear that
15 not much was done about that by people who were
16 supposed to help out with that kind of condition, who
17 are supposed to treat that kind of condition. You're
18 going to hear that that was largely ignored.

19 You're going to hear that, on the night -- or the
20 morning of June 3rd, early in the morning, Richard and
21 his eight kids suffered the loss of Michelle, a wife
22 and a mother. And then, you're going to hear about
23 how Richard, four days after this occurs, suffers the
24 humility of being arrested and accused of murder.
25 Just when he and his kids needed each other the most,

1 he was pulled away and arrested, and his name splashed
2 on websites and newspapers, next to the word *murder*.

3 He was taken away from his kids, and for the
4 first time, really, in Richard's life, he was alone.
5 And it's been a two-year journey to where we're at
6 right here.

7 Let me tell you about what the evidence is going
8 to show about what happened in that room. Richard and
9 Michelle, a little before 6:00 a.m., on June 3rd, were
10 sitting in a dark living room, facing each other.
11 Michelle was sitting on the couch, leather couch,
12 sitting towards one end; and Richard was sitting on a
13 coffee table, facing her, almost nose-to-nose. They
14 had been fighting all night long. It wasn't just that
15 night, though. These two have been arguing for years,
16 and this night was a culmination of that fight,
17 unfortunately. It was a culmination of Michelle's
18 mental illness. As they sat there face-to-face,
19 Michelle was crying. Richard put his arms around
20 Michelle and hugged her. For a minute, Michelle
21 hugged him back. What happened next ended Michelle's
22 life, and what happened next changed Richard and his
23 kids' lives forever.

24 You see, Richard had forgotten something. And if
25 he hadn't forgotten that, you all might not be here.

1 But you might be, given where things were going. But
2 there's no question, if he hadn't forgot something
3 that night, Michelle would've survived that morning.

4 See, Richard and Michelle lived on East Main
5 Street, right down here, downtown, in Ridgeland, about
6 halfway between Jacob Smart Boulevard and what is it?
7 There's a street just down the way from there, about
8 mid-way through. So, just a couple block -- not even
9 a block from Jacob Smart Boulevard. And it's real
10 pretty. There's nice old houses there. And while
11 it's nice enough in the daytime, at nighttime, walking
12 around at night, after dark, could be dangerous. So,
13 every time Richard would go outside and walk their
14 dog, Richard would put a pistol on. Richard owned a
15 pistol. He had a concealed weapon permit. And when
16 he was walking around after dark, he would wear this
17 pistol in the inside the waist holster for his walks.

18 Well, on this night, it was around 3:00 a.m.
19 They had been up, had neighbors over, friends over,
20 Michelle had been drinking. They had been talking.
21 They had been going back and forth. He had to run an
22 errand and come back. He walks the dog, he comes
23 back, and he's met by Michelle, who had given birth
24 six weeks prior, and she wanted to go back out. She
25 wanted to go out and party some more or hang out with

1 friends. She wanted to get out of the house at 3:00
2 a.m., and that's what Richard was met with as he
3 walked up the porch, with the dog in hand.

4 And that fight over whether or not she should go
5 out at 3:00 a.m., that happened as soon as he walked
6 in. He forgot to take that gun off. The next couple
7 hours they argued, as they had off and on for the last
8 several years of their marriage. They argued about
9 going out at 3:00 a.m. They argued about all kinds of
10 things. And Richard didn't remember to take that gun
11 off. And what Richard forgot, Michelle found when she
12 put her arms around him and returned that hug, which
13 lasted moments.

14 Suddenly, she pulls back. And it was dark in
15 that room. Suddenly, she pulls back, and Richard
16 realizes she's got the gun. He's sitting on the
17 coffee table; he reaches forward. She jumps back to
18 the far end of the couch, laying down almost, at that
19 point, to keep that gun out of his reach. He jumps
20 forward and tries to get that gun, and as he's
21 reaching out, there's a shot. He reached out again.
22 He puts his hand over the gun. There's another shot.
23 And this time his hand explodes with pain, and he
24 rears back trying to figure out what just happened.
25 Michelle's saying something; he's not listening to

1 what she's saying. All he knows is his hand is
2 killing him. He looks down and his hand is bleeding.
3 And as he looks down, as he's over Michelle, he sees
4 Michelle take that gun, put it under her chin, and
5 bang.

6 You're going to hear what happens next through
7 the course of this trial. You're going to hear from a
8 lot of witnesses, both for the Defense and from the
9 State. And you're going to find out a lot about
10 Michelle, you're going to find out a lot about
11 Richard. Neither one of them are perfect, there's no
12 question about that. But you need to listen closely
13 to a couple of things.

14 Let me show you something that I want you to pay
15 attention to. First thing is police investigation.
16 You're going to hear what the police did that morning
17 when they arrived, and what they did over the next
18 several days to investigate this case. You're going
19 to hear what they did, with the full power and
20 authority and resources of South Carolina, to
21 investigate this case. And who they interviewed, and
22 who they didn't interview.

23 The next thing is 95 percent sure. That should
24 be sort of a 1-A on this list. There is going to be
25 evidence that a member of the police force who

1 investigated this suicide told Richard's father, who
2 was there at the scene, right about the same time as
3 first responders started showing up, that they were 95
4 percent sure this was a suicide, based on the angle of
5 the shot.

6 The next thing is the autopsy. Any time there is
7 a case where somebody dies, there is an autopsy. And
8 usually, a coroner comes in, and usually, a medical
9 examiner comes in, and they testify as to what they
10 found. And most of the time, it's frankly not all
11 that interesting, because you've already heard what
12 happened, and they're showing you pictures that say,
13 yes, this is what happened. But there are some
14 interesting things in that autopsy that I'll be
15 highlighting that are important for this case.

16 The next thing is fact witnesses, and I've got
17 fact in quotation marks. There will be witnesses the
18 State puts on from law enforcement, where they were
19 investigating the case and responding. But there also
20 will be people that they will put up as, sort of, fact
21 witnesses, who think they know something about what
22 was going on with Michelle and Richard. People who
23 she saw sometimes; people who she considered friends
24 and they considered her a friend; but who didn't live
25 the day-to-day with Michelle for the last several

1 years.

2 The Defense is going to be putting on fact
3 witnesses who lived with Michelle, who saw the
4 progression of her issues, and can speak to what maybe
5 was going on in her mind.

6 The next thing is ear witnesses. There's going
7 to be no eyewitnesses to this, other than,
8 potentially, Richard Passio. Now, Richard doesn't
9 have to get up and testify. That's his right. But
10 they're going to put on maybe some supposed ear
11 witness who may have heard something; or maybe they
12 didn't hear something.

13 The Defense is going to put on an ear witness who
14 heard this. Richard's nine-year-old daughter, who had
15 woken up, because she stayed in her room that shared a
16 wall with the room where this happened. Pay close
17 attention to what she says, please.

18 The next is motives, with a question mark.
19 They're going to put up some stuff about how maybe
20 there was an affair, and maybe he was too controlling,
21 and maybe she wanted to leave, and all of that just
22 was enough to make him murder his wife.

23 You're going to find out that those supposed
24 motives were nothing new in the life of Richard and
25 Michelle Passio. It all had been done before. It all

1 had happened before. Yet, for some reason, at this
2 moment, they're going to tell you that Richard decided
3 that it was time to kill his wife.

4 The last thing is the government's burden. When
5 Richard walked in here today, he did so as an innocent
6 man. The law says that you have to believe that. And
7 at this point, you have to presume that he didn't do
8 this. If there's any of you that can't accept that,
9 that, at this stage, Richard is innocent, you need to
10 let us know right now. This case is too important,
11 and too many people here to ignore that requirement.

12 I think, also, the government, in order to meet
13 this burden, it's going to try a little sleight of
14 hand. They're going to try to convince you that
15 things that are not important are, in fact, important.
16 There's only two things that are really important in
17 this case, and that's what was going on inside
18 Michelle's head, and what went on inside that room.

19 To find Richard guilty, they're going to have to
20 prove beyond a reasonable doubt that he's a murderer.
21 Ninety-five percent sure it was a suicide. You're
22 going to have to be more than 95 percent sure that
23 he's a killer, and that he shot this wife in front of
24 their six-week-old child and a houseful of their kids.
25 And you're going to have to believe that, and believe

1 it firmly, and be convinced of it firmly, and not have
2 any doubts that are reasonable doubts in your mind.
3 You're not going to be able to do that. And I think
4 that, when this case is over, you're going to find
5 Richard not guilty. His suffering won't be over, but
6 he and his family can be able to begin to heal.
7 Thanks.

8 THE COURT: Okay. If you'll take your board
9 down. Thank you. Call your first witness.

10 SOLICITOR SWANSON: Thank you, your Honor. The
11 State calls Rusty Wells.

12 DEPUTY SHERIFF: Do you swear to tell the truth,
13 the whole truth, and nothing but the truth, so help
14 you God?

15 RUSTY WELLS: Yes, sir, I do.

16 RUSTY WELLS, DIRECT

17 EXAMINATION BY SOLICITOR SWANSON:

18 Q. Good morning.

19 A. Good morning.

20 Q. Who do you work for?

21 A. I work for Jasper County Emergency Services.

22 Q. Okay. And do you guys keep records and
23 recordings of 911 phone calls?

24 A. Yes, ma'am, we do.

25 Q. Are those kept in the normal course of business?

1 A. They are.

2 Q. And are you the records custodian --

3 A. Yes, ma'am.

4 Q. -- for 911?

5 A. I am.

6 Q. All right. I'm going to hand you what's been
7 previously marked as State's Exhibit 1, and ask if you
8 can identify this disk.

9 A. Yes, ma'am. That is the disk that holds the
10 recording of the 911 phone call that was placed.

11 Q. Okay. And when you say, *the 911 phone call that*
12 *was placed*, we're talking about June 3rd of 2016, by
13 Richard Passio?

14 A. Yes, ma'am.

15 SOLICITOR SWANSON: All right. The State would
16 move Exhibit 1 into evidence, and request to publish.

17 THE COURT: Any objection?

18 MR. GEIER: No objection, your Honor.

19 THE COURT: Without objection, you may publish.

20 ITEM IDENTIFIED AS C.D. OF JUNE 3,

21 2016, 911 CALL

22 MARKED STATE'S EXHIBIT NUMBER 1

23 ADMITTED AS EVIDENCE.

24 SOLICITOR SWANSON: And your Honor, I have it on
25 my computer, so I'm just going to play it from here.

1 THE COURT: Thank you.

2 BY SOLICITOR SWANSON:

3 STATE'S EXHIBIT NUMBER 1 PLAYING.

4 END PLAYING STATE'S EXHIBIT NUMBER 1.

5 Q. Thank you, Mr. Wells.

6 SOLICITOR SWANSON: I have nothing further.

7 MR. GEIER: No questions for this witness from
8 the Defense, your Honor.

9 THE COURT: You may step down, sir.

10 SOLICITOR SWANSON: The State calls Lieutenant
11 Joey Ginn.

12 THE COURT: Come on forward, Lieutenant Ginn.

13 DEPUTY SHERIFF: Do you swear or affirm to tell
14 the truth, the whole truth, and nothing but the truth,
15 so help you God?

16 LIEUTENANT JOEY GINN: I do.

17 LIEUTENANT JOEY GINN, DIRECT

18 EXAMINATION BY SOLICITOR SWANSON:

19 Q. Good morning, Lieutenant.

20 A. Good morning.

21 Q. How long -- where do you work, first of all?

22 A. Ridgeland Police Department.

23 Q. All right. And how long have you worked for
24 Ridgeland Police Department?

25 A. Eleven years.

1 Q. All right. And is that -- is that actually as of
2 today?

3 A. Yes.

4 Q. All right. Now, I think -- and you were in the
5 courtroom for this, when we played the 911 tape just a
6 minute ago, that you were the first responding
7 officer. Is that right?

8 A. Correct.

9 Q. All right. And it was before 6:00 a.m.?

10 A. Yes.

11 Q. Okay. So, when you -- where did you respond?

12 A. The residence on East Main Street, 7915.

13 Q. All right. And is that within Jasper County?

14 A. Yes.

15 Q. All right.

16 A. In the town limits, also.

17 Q. All right. And what sort of call were you
18 responding to?

19 A. From what I was given from our communications
20 center, I believed that it was a subject that had been
21 shot themselves. Shot themselves, rather.

22 Q. All right. I'm going to show you what has been
23 marked as State's Exhibit 2, and ask if you recognize
24 what's contained in this picture.

25 A. Yes, that's the residence that I responded to

1 that night.

2 Q. All right. And is that a fair and accurate
3 depiction of how it appeared June 3rd of 2016?

4 A. Yes, ma'am.

5 Q. Okay.

6 SOLICITOR SWANSON: The State would move 2 into
7 evidence at this time, and request to publish.

8 THE COURT: Without any objection?

9 MR. GEIER: No objection.

10 THE COURT: Without objection, you may publish.
11 Thank you.

12 ITEM IDENTIFIED AS PHOTOGRAPH

13 MARKED STATE'S EXHIBIT NUMBER 2

14 ADMITTED AS EVIDENCE.

15 BY SOLICITOR SWANSON:

16 Q. All right. So, what did you find when you
17 responded to this residence, just right down the road
18 from this courthouse?

19 A. The first thing I noticed was a white male coming
20 off -- around the residence on the porch, coming down
21 the steps, and he was waving his arms at me, trying to
22 get my attention.

23 Q. All right. And were you able to identify that
24 white male?

25 A. Not at the time I couldn't, because it was still

1 very dark. It was still dimly lit.

2 Q. Okay. Did you end up coming in contact with him?

3 A. Yes, I did.

4 Q. All right. And what did you notice about him?

5 A. He had large amounts of blood on his person.

6 Q. Did he say anything to you when you first
7 arrived?

8 A. Yes. He told me that his wife had shot herself;
9 that they were struggling over a weapon.

10 Q. All right. You say that he had blood on him.
11 Where was that blood?

12 A. There was some on his hand, his right hand, and a
13 lot on his -- if I remember correctly, the right side
14 of his pants.

15 Q. Do you recall if it appeared wet or dry?

16 A. The one on his pants appeared dry.

17 Q. Now, he mentioned something about contacts --

18 A. Um-hmm.

19 Q. -- in the 911 call. Did he mention anything
20 about contacts to you?

21 A. He kept saying his contacts were out of his eyes;
22 they'd gotten out of his eyes and he couldn't find his
23 glasses. And he even asked me to tell me his -- to
24 him my name to him when I walked up.

25 Q. All right.

1 A. He said he couldn't see who I was.

2 Q. Were you later able to find his glasses?

3 A. In a restroom that was at the residence.

4 Q. Okay. And when you walked into the house, what
5 did you notice? What did you observe as soon as you
6 walked into the house?

7 A. That it was dark. It was completely dark.

8 Q. No lights on?

9 A. No, ma'am. I had to use a flashlight to see my
10 way.

11 Q. What was the temperature like in the house?

12 A. I don't remember it being too warm. I thought
13 maybe a little warm, but not bad.

14 Q. All right. And what did you see? Did you turn
15 the lights on? Who turned the lights on?

16 A. Not at that time, I didn't.

17 Q. Okay.

18 A. Some time later, the lights were turned on, but
19 not right then.

20 Q. All right. Were the lights turned on when EMS
21 got there?

22 A. They could've been. They could've been the ones
23 that turned them on. I don't remember. I don't
24 recall turning them on myself.

25 Q. All right. What did you see once the lights were

1 on?

2 A. Well, the first thing I noticed when I went in
3 the room was a basinet that, at first, I thought maybe
4 was a doll. I didn't -- I couldn't realize it was an
5 actual child, because the child was not moving in the
6 basinet. It was sound asleep. But then, just a few
7 feet away from the basinet, on the couch where
8 Michelle lay on the couch.

9 Q. Okay. I'm going to show you what's been marked
10 as State's Exhibit 4, and ask if this is a fair
11 depiction of the scene that you walked into.

12 A. Yes, ma'am, it is.

13 SOLICITOR SWANSON: The State would move 4 into
14 evidence, and request to publish.

15 THE COURT: Without objection?

16 MR. GEIER: No objection, your Honor.

17 THE COURT: 4 is in evidence, without objection.

18 ITEM IDENTIFIED AS PHOTOGRAPH

19 MARKED STATE'S EXHIBIT NUMBER 4

20 ADMITTED AS EVIDENCE.

21 BY SOLICITOR SWANSON:

22 Q. Did you hear any other noises in that house? Any
23 of the seven children, the dog?

24 A. No, ma'am.

25 Q. Were you able to ascertain where their bedrooms

1 were? Do you know where the children were sleeping?

2 A. I was told various places throughout the
3 residence.

4 Q. Okay. Were there a couple of bedrooms that
5 backed up next to the living room?

6 A. I do not recall. I did not go in any other room,
7 other than the hallway, down to the bathroom.

8 Q. Okay. Now, I'm going to show you what's been
9 marked as State's Exhibit 3, and ask if you can
10 describe what's in this picture, if you recognize
11 what's in this picture, and if it's a fair and
12 accurate depiction.

13 A. Yes. This is a -- a photograph that I took, just
14 very shortly after I arrived on the scene. In that
15 picture, you can see my black boots at the right hand
16 of Michelle, and a pistol lying on the floor, with
17 blood in between the two of us.

18 Q. Okay. And is that where you collected the
19 pistol?

20 A. Yes, ma'am.

21 Q. All right.

22 SOLICITOR SWANSON: The State would move Exhibit
23 3 into evidence, and request to publish, your Honor

24 THE COURT: Without objection?

25 MR. GEIER: No objection, your Honor.

1 THE COURT: Without objection, you may publish.

2 ITEM IDENTIFIED AS PHOTOGRAPH

3 MARKED STATE'S EXHIBIT NUMBER 3

4 ADMITTED AS EVIDENCE.

5 BY SOLICITOR SWANSON:

6 Q. All right. And Lieutenant, you are the one that
7 actually collected this pistol. Is that correct?

8 A. Yes, ma'am.

9 Q. All right. I'm going to show you what's been
10 marked as Exhibit 5, and ask if this is the pistol
11 that you collected from the scene that day.

12 A. Yes, ma'am.

13 SOLICITOR SWANSON: The State would move 5 into
14 evidence at this time.

15 THE COURT: Any objection, Mr. Geier?

16 MR. GEIER: No objection, your Honor.

17 SOLICITOR SWANSON: And move to publish.

18 THE COURT: You may publish it.

19 ITEM IDENTIFIED AS .9 MILLIMETER,

20 SEMI-AUTOMATIC HANDGUN

21 MARKED STATE'S EXHIBIT NUMBER 5

22 ADMITTED AS EVIDENCE.

23 BY SOLICITOR SWANSON:

24 Q. And Lieutenant, do you recall what kind of weapon
25 this is?

1 A. This is a .9 millimeter, semi-automatic handgun.

2 Q. Now, when you collected that gun, did you use
3 gloves?

4 NO RESPONSE FROM WITNESS.

5 Q. Did you put on gloves before you handled the gun?

6 A. Yes.

7 Q. All right. Because, actually, there was some
8 blood on it. Is that right?

9 A. Yes.

10 Q. All right. And so, when you get back to -- did
11 you ask Richard to remain outside when you were --

12 A. Yes, I did.

13 Q. Okay. And so, when you get back to Richard on
14 the porch, he tells you what?

15 A. I had gone inside with EMS after I put up the
16 weapon. I secured it in my vehicle. And once EMS was
17 able to determine that there was not a heartbeat, that
18 Michelle was deceased, I went back outside and
19 informed Richard as such. At which time is when he
20 told me that the two of them had fought over the
21 weapon; that there was three rounds fired; that the
22 fourth round that was fired that entered the body.

23 Q. Okay. Was he emotional when you were speaking to
24 him?

25 A. He seemed a little, but I never once saw a tear

1 in his eyes.

2 Q. All right. And who arrives as the investigator
3 to come help process the scene after that?

4 A. Sergeant McIntosh.

5 Q. All right.

6 SOLICITOR SWANSON: I have no further questions
7 at this time.

8 THE COURT: Mr. Geier.

9 MR. GEIER: Thank you, your Honor.

10 LIEUTENANT JOEY GINN, **CROSS-**

11 EXAMINATION BY MR. GEIER:

12 Q. Good morning, Detective Ginn.

13 A. Good morning.

14 Q. So, this is a fair and accurate description of
15 how you found that gun that morning?

16 A. Yes.

17 Q. Didn't you tell Sergeant McIntosh that, when you
18 first came upon the gun, that a shell casing was stuck
19 in the slide?

20 A. No.

21 Q. You never told him that?

22 A. There was conversation later on that a shell
23 casing could have been somewhere else. And I told him
24 that, more than likely, the shell casing could have
25 been stuck in the chamber, not the slide.

1 Q. So, you never advised that a third shell casing
2 was lodged in the ejection port of the handgun?

3 A. Not the ejection port, no, sir.

4 Q. Okay.

5 A. That slide was closed, so there couldn't be
6 anything stuck in the ejection port.

7 Q. Did you take this picture?

8 A. Yes, I did.

9 Q. And this is, again, State's Exhibit 3 we're
10 talking about here. Did you take this one?

11 A. No, sir.

12 Q. This is State's Exhibit 4. In State's Exhibit 4,
13 there is a blanket sitting on top of Michelle. Was
14 that present when you took this picture?

15 A. Yes.

16 Q. Okay. And we just can't see it from that angle?

17 NO RESPONSE FROM WITNESS.

18 Q. All right. Now, Lieutenant Ginn, are you an
19 investigator?

20 A. No, sir.

21 Q. And have you ever been an investigator?

22 A. No, sir.

23 Q. Tell us a little bit about what sort of law
24 enforcement experience you've got. I mean, like, what
25 did you start off doing, and just briefly give us an

1 idea.

2 A. Sure. Sure. I started in 2004 with the Hampton
3 County Sheriff's Office. I was a patrol deputy. I
4 went to work for Hampton Police Department about a
5 year and a half later, and worked there for two years.
6 I came to work as a patrolman in Ridgeland in 2007.
7 I've worked traffic enforcement, patrol, and training.
8 And also the training officer for the Ridgeland Police
9 Department.

10 Q. All right. Okay. Now, you said that, when you
11 got to the Passio house, it was still dark out?

12 A. Dimly lit.

13 Q. Dimly lit.

14 A. It wasn't completely dark, but it was very dimly
15 lit.

16 Q. Street lights were still on?

17 A. Yes.

18 Q. And there was a street light right next to the
19 Passio house?

20 A. I don't recall.

21 Q. Are there windows inside of that room that
22 Michelle was laying in?

23 A. There was another room off to the side. And if
24 there was any windows, because of the overhang of the
25 porch cover, there was very little light coming in.

1 Q. Okay. Very little light, you said.

2 A. It was -- it was dark enough I used my
3 flashlight.

4 Q. I see. And was the porch lit when you walked up?

5 A. No.

6 Q. No. Okay. Did you see any blood on the porch
7 when you first walked up?

8 A. I don't recall.

9 Q. You don't know? You stated that -- all right.
10 So, let's see here. It was dark on the porch; very
11 dimly lit outside; and when you walked up, you saw
12 blood on Mr. Passio's hand and on his pants. And in
13 that lighting you were able to see that the blood on
14 his pants was dried.

15 A. I was using my flashlight.

16 Q. Okay. And so, again, you hadn't been inside the
17 scene yet.

18 A. No, sir.

19 Q. All right. So, you made that observation, in
20 hearing that there is potentially somebody dead
21 inside, you said, oh, look, there's dried blood right
22 there. Is that your testimony?

23 A. Yes, sir.

24 Q. Okay. Now, Mr. Passio, when he walked out, he
25 was kind of a wreck, wasn't he? Was he sweaty?

1 A. Didn't appear to be.

2 Q. Didn't appear to be? Was he breathing heavy?

3 A. Not badly.

4 Q. Not badly? All right. Had bloody clothes?

5 A. Yes.

6 Q. And he had a bloody hand?

7 A. Yes.

8 Q. No -- no bandage on that hand, correct?

9 A. No.

10 Q. All right. And you had him sit down on the front
11 porch?

12 A. Yes.

13 Q. Had him sit in a chair?

14 A. Yes.

15 Q. Okay. Was there blood afterwards on that chair?
16 Because you were around that scene for about an hour,
17 weren't you?

18 A. Roughly.

19 Q. Was there still -- when he got up and you were --
20 or when he was still sitting there, and you went and
21 saw him later, was there blood on that chair from
22 where he sat?

23 A. Not that I recall.

24 Q. Not that you recall. Okay. When did the baby
25 get moved?

1 A. I don't recall if it was the first time or the
2 second time I went into the residence, but the child
3 was kind of just, like, took a deep breath and
4 stretched a little bit.

5 Q. No, I'm asking, like, when did somebody
6 physically move that baby?

7 A. Oh, I'm not sure.

8 Q. So, you didn't move the baby when you first went
9 in.

10 A. No.

11 Q. And you were at the scene basically until
12 everybody wrapped up and left, weren't you?

13 A. No, sir. I left before that.

14 Q. You left before that?

15 A. I don't know how much longer everybody else
16 stayed, but.

17 Q. Okay. How many people were walking around that
18 house, in general, when you were there? Just give me
19 a ballpark.

20 A. At what point in time?

21 Q. Right when you were ready to leave, or when the
22 most people that were there at the scene happened to
23 be there.

24 A. The total scene is 20, rough estimate, counting
25 the EMS and family.

1 Q. Twenty?

2 A. Twenty that I estimated.

3 Q. All right. And that baby didn't wake up at any
4 time that you saw?

5 A. Like I said, I saw her take a deep breath and
6 stretch one time.

7 Q. Okay.

8 A. And it was before everybody else got there.

9 Q. Now, you noted in your report that you noted an
10 odd smell inside of the Passio household, and
11 specifically in that room. And you're aware that
12 Sergeant McIntosh described it as the smell of
13 decomposition. You've been around dead bodies before,
14 I assume.

15 A. Yes.

16 Q. And but you didn't -- you didn't attribute that
17 to the smell of decomposition. Is that correct?

18 A. At the time, I was uncertain.

19 Q. You weren't certain.

20 A. Yes. I --

21 Q. Did you -- go ahead.

22 A. I now know that, to me, that's what it was.

23 Q. I see. So, you didn't say to either Sergeant
24 McIntosh or somebody else there that: I think that's
25 just how they live; there's trash sitting over there?

1 A. There was quite a bit of trash. It didn't smell
2 like trash to me. And once again, later on, I was
3 able to figure out it's -- as you said, I have smelled
4 it several times before.

5 Q. Okay. So, it wasn't immediately apparent to you.

6 A. The odor was, but what the origin of it was, no.

7 Q. I see. And you never put that in your report,
8 correct?

9 A. No, I never.

10 Q. And you never amended it?

11 A. I never amended it, no, sir.

12 Q. I see. You had a conversation with Richard
13 Passio, Sr., at the scene; did you not?

14 A. I don't recall talking to him.

15 Q. You don't recall telling him you were 95 percent
16 sure? You don't recall that?

17 A. I don't recall talking to him.

18 Q. Okay.

19 A. I didn't talk to anyone, other than Richard, Jr.,
20 and Sergeant McIntosh, and a couple of EMS personnel.

21 Q. I see. Were you present -- let's say it was, for
22 the sake of argument, Sergeant McIntosh that made that
23 statement. You didn't hear that?

24 A. No, sir.

25 Q. Okay. On sort of another note, you've worked DUI

1 cases before?

2 A. Yes, I have.

3 Q. All right. And you're familiar with blood
4 alcohol levels?

5 A. Yes, sir.

6 Q. Yes. Okay. And you've been trained, as part of
7 working DUI cases, a little something about alcohol
8 absorption. Do you remember that?

9 A. Yes.

10 Q. Do you remember hearing that, for every hour
11 after you're done drinking, you absorb .015, as far as
12 BAC level. Do you remember that?

13 A. It's been many years since I've made a DUI case.

14 Q. So, you don't recall that?

15 A. I'm sure I've learned it at some point, but I've
16 probably forgotten.

17 Q. All right. All right.

18 MR. GEIER: I don't have anything further. Thank
19 you.

20 BY THE COURT:

21 THE COURT: Anything further, Ms. Swanson?

22 SOLICITOR SWANSON: No re-direct. Thank you.

23 THE COURT: All right. Ladies and gentlemen,
24 we're going to take a brief break, if we could.

25 Ladies and gentlemen, I'm going to send you back to

1 your jury room. Do not discuss this case, it wouldn't
2 be appropriate to do so. Get a cup of coffee or a
3 Coke. We'll bring you right back in here.

4 Ladies and gentlemen, I just want to make sure.
5 I didn't tell you this yesterday. We typically break
6 for lunch around 1:00 o'clock here. It does depend on
7 how the witnesses break down. It could be anywhere
8 from about 12:15 to 1:15-ish. I just want you to know
9 that. Also, if you need snacks or anything that is
10 not back there, please let the bailiff know, and we'll
11 make sure you're fine. All right?

12 Again, do not discuss this case. You're excused
13 to go back to your jury room. And I need you to do
14 one other thing for me. I need you to elect a
15 foreperson. A foreperson doesn't have anymore say
16 than anyone else, they're simply the person that I
17 talk with in regard to scheduling, and how late you
18 are willing to work, or able to work or come in. And
19 it's also the person, when the case gets sent to you,
20 they make sure that everyone is contributing to the
21 deliberations. And they also will sign the verdict
22 form, and do a few other ministerial acts for us. But
23 if you would elect that person among the twelve of you
24 and let the bailiff know who that person is, I'd
25 appreciate it.

1 And that person is going to take this front seat
2 right here. Okay? So, I know where he is, or she is.
3 Ladies and gentlemen, the rest of you, as you come and
4 go, you can move to other seats, is fine. I just need
5 to have my foreperson in that first seat, and my
6 alternates need to stay somewhere in this group.
7 Okay?

8 You all are excused back to your jury room.

9 JURORS LEAVE COURTROOM 1:43 A.M.

10 THE COURT: You all be seated for just a minute.
11 We need to re-visit the paramedic's testimony. Just
12 in thinking about a little more in detail, I think, as
13 long as he is comfortable, I think he can testify
14 that, when he arrived there, he saw that the blood,
15 potentially, was coagulating. I don't see anywhere in
16 the science that tells me that he can, or where he has
17 been trained, or learned in any way to talk about
18 timing, and that it has to be at least 30 minutes.

19 Ms. Swanson, unless you can point me to
20 something, unless you can point to me he has some kind
21 of specific training, and he can talk about
22 coagulation patterns and bloodstain patterns, I'm real
23 concerned about him going anywhere as far as timing is
24 concerned, because I can't find where there is any
25 scientific studies that will absolutely have experts

1 say that. I think he can say, again, in his
2 experience, he showed up, he saw blood coagulating,
3 provided he knows what that is. I'm pretty confident,
4 him sitting here, he does know what that is.

5 SOLICITOR SWANSON: Right.

6 THE COURT: I think that is a fact that he can
7 testify to, if that's what he saw. I'm very leery of
8 the leap factor that -- to a time period, because I
9 just don't see where the science allows him to put a
10 time on it.

11 SOLICITOR SWANSON: And I wasn't really asking
12 him to put a time on it.

13 THE COURT: Okay.

14 SOLICITOR SWANSON: I just wanted to -- him to
15 speak about his experience in responding to fresh
16 gunshot wounds, that this one struck him as different.

17 THE COURT: Okay. I mean, I just need to know.
18 I mean, has he gone through training that talks about,
19 you know, the behavior of blood, coagulation, the
20 specific stages it goes through? That's kind of where
21 I'm concerned. And about what happens to blood when
22 it's no longer in the body and agitated? That's where
23 I just don't want him going too far left --

24 SOLICITOR SWANSON: Sure.

25 THE COURT: -- to put this where we've got

1 something that needs to be overturned on.

2 SOLICITOR SWANSON: Right.

3 THE COURT: So.

4 SOLICITOR SWANSON: And so, I think -- and he
5 does note coagulation in his report.

6 THE COURT: Okay.

7 SOLICITOR SWANSON: You know, essentially, I'm
8 just trying to get in the difference between
9 coagulation and dripping blood.

10 THE COURT: And I think he can testify to those.

11 SOLICITOR SWANSON: And that nobody observes
12 dripping blood; they observe coagulation; it did not
13 appear like other scenes that he had been to --

14 THE COURT: Okay.

15 SOLICITOR SWANSON: -- where he responded within
16 five minutes or --

17 THE COURT: Where he was told he responded within
18 five minutes.

19 SOLICITOR SWANSON: Or -- right.

20 THE COURT: I guess that's for cross-examination.
21 I just want to make sure we don't go too far on this.

22 SOLICITOR SWANSON: Okay.

23 THE COURT: I think, again, I don't even know
24 that you need to qualify him as an expert.

25 SOLICITOR SWANSON: Okay.

1 THE COURT: He was a responding witness; he is a
2 fact, --

3 SOLICITOR SWANSON: Right.

4 THE COURT: -- and he can say what he saw when he
5 got there. And so, I mean, that's up to you.

6 SOLICITOR SWANSON: Right.

7 THE COURT: If you want to qualify him as an
8 expert, I just think, for him going anything beyond,
9 you know, there was coagulation of blood, I noted that
10 in my report, you know, it was significant to me.

11 SOLICITOR SWANSON: Right, right.

12 THE COURT: And so, I think you can go that far,
13 but I think anything further than that, and again, you
14 know, he is not a bloodstain expert or a blood spatter
15 expert or any kind of blood expert, for that matter.
16 So, I just -- I think we're walking a really tight
17 line. Okay?

18 SOLICITOR SWANSON: Okay.

19 THE COURT: You understand, correct? He's back
20 there; he knows exactly what he's doing.

21 All right, you all. We're going to go ahead and
22 just take five minutes for everyone to take a break,
23 if you could. If everyone would be back here at five
24 minutes to 11:00, we will continue. Okay? Thank you.

25 SOLICITOR SWANSON: Thank you.

1 OFF THE RECORD 10:47 A.M.

2 BACK ON THE RECORD 10:55 A.M.

3 BY THE COURT:

4 SOLICITOR SWANSON: I am going to need to re-call
5 Lieutenant Ginn just for one final question.

6 THE COURT: Got it.

7 SOLICITOR SWANSON: Just to clarify.

8 THE COURT: Okay.

9 SOLICITOR SWANSON: Thank you.

10 THE COURT: Okay. I'm not going to swear you in
11 again, Lieutenant; I'm just going to put you back up
12 there and remind you. Okay.

13 LIEUTENANT JOEY GINN: Yes, ma'am.

14 THE COURT: Thank you.

15 LIEUTENANT JOEY GINN: Thank you.

16 THE COURT: All right. Jury? If you want to
17 make sure they're ready to come on out, that would be
18 great.

19 MADAM CLERK: They're ready.

20 THE COURT: Thank you, Margaret.

21 JURORS ENTER COURTROOM 10:56 A.M.

22 THE COURT: All right. Welcome back, ladies and
23 gentlemen. Solicitor, I understand you need to re-
24 call Lieutenant Ginn very briefly. Is that correct?

25 SOLICITOR SWANSON: Yes, your Honor. Just

1 briefly.

2 THE COURT: All right. Lieutenant Ginn, come on
3 back very briefly. I just remind you that you're
4 still under oath, sir.

5 LIEUTENANT JOEY GINN, RE-DIRECT

6 EXAMINATION BY SOLICITOR SWANSON:

7 Q. Lieutenant Ginn, I'm going to show you State's
8 Exhibit 18, and ask if you collected this item.

9 A. Yes, ma'am.

10 Q. Okay. And what is it?

11 A. It's a shell casing from a .9 millimeter.

12 Q. Okay.

13 SOLICITOR SWANSON: At this time, the State would
14 move 18 into evidence.

15 THE COURT: Any objection.

16 MR. GEIER: No objection, your Honor.

17 THE COURT: Without objection, it's in evidence,
18 and you may publish it if you'd like to.

19 SOLICITOR SWANSON: Thank you.

20 ITEM IDENTIFIED AS SHELL

21 CASING FROM A .9 MILLIMETER

22 GUN

23 MARKED STATE'S EXHIBIT NUMBER 18

24 ADMITTED AS EVIDENCE.

25 BY SOLICITOR SWANSON:

1 Q. And where, exactly, did you recover this shell
2 case from? Was it from the ejection port, or from the
3 barrel of the gun?

4 A. It was located in the chamber, which is a part of
5 the barrel.

6 Q. Okay. And if you can just describe to the jury
7 the way that the gun is situated -- and you can stand
8 up, Lieutenant. The way the gun is situated right now
9 features the ejection port open. Is that right?

10 A. Yes, ma'am.

11 Q. Okay. Would it have been like that when it was
12 fired?

13 A. Had there not been another round in the magazine,
14 it would've locked to the rear. But if there's
15 another round in the magazine or a malfunction, the
16 slide will stay forward. And that was how I found it,
17 with the slide forward.

18 Q. So, this was not exposed?

19 A. No, ma'am.

20 Q. And the case was situated in here?

21 A. Inside the chamber.

22 Q. Okay.

23 A. That's the chamber.

24 SOLICITOR SWANSON: That's all I have. Thank
25 you.

1 THE COURT: Anything else, Mr. Geier, for
2 Lieutenant Ginn?

3 MR. GEIER: Just briefly.

4 LIEUTENANT JOEY GINN, RE-CROSS-
5 EXAMINATION BY MR. GEIER:

6 Q. Lieutenant Ginn, how many pictures did you take
7 at the scene?

8 A. Two.

9 Q. Two? What sort of camera did you use?

10 A. I used the one on my phone.

11 Q. Do you have that same phone now, or have you --

12 A. Yes.

13 Q. -- moved on.

14 A. Yes, sir.

15 Q. You do? Do you have it with you?

16 A. I do.

17 Q. Okay. Can I see it?

18 A. No, sir.

19 Q. I can't see your phone?

20 A. Huh-uh.

21 Q. I mean, I'm not going to hold it. I just want
22 you to show me what it looks like. Yeah, I'm not
23 going to -- I'm not going to go in there and search
24 your contacts or anything like that.

25 A. Yes.

1 Q. Okay. That's the same one you were using at the
2 time.

3 A. Yes, sir.

4 Q. And when you went to the scene, you were wearing
5 a flack vest; were you not?

6 A. Yes, sir.

7 Q. Was that a zappy plate flack vest, or is that
8 just like an old, standard flack vest?

9 A. It's -- it's one that has ballistic panels.

10 Q. Panels? Okay.

11 A. Soft panels.

12 Q. All right.

13 MR. GEIER: Nothing further. Thank you.

14 THE COURT: Thank you.

15 SOLICITOR SWANSON: All right. Thank you.

16 Nothing further from this witness.

17 THE COURT: You may step down now, sir.

18 LIEUTENANT JOEY GINN: Thank you.

19 THE COURT: I don't know if he wants to leave,
20 but any objection to Lieutenant leaving if he needs
21 to, from the State or the Defense?

22 SOLICITOR SWANSON: No, your Honor.

23 THE COURT: All right. You may, if you want to.
24 Of course, you're welcome to stay, sir.

25 LIEUTENANT JOEY GINN: Thank you.

1 SOLICITOR SWANSON: The State calls Chris
2 McIntosh.

3 DEPUTY SHERIFF: Do you swear to tell the truth,
4 the whole truth, and nothing but the truth, so help
5 you God?

6 CORPORAL CHRIS MCINTOSH: Yes, sir.

7 CORPORAL CHRIS MCINTOSH, DIRECT

8 EXAMINATION BY SOLICITOR SWANSON:

9 Q. What is your current rank?

10 A. I'm a corporal with Beaufort County Sheriff's
11 Office.

12 Q. Right. Okay. So, Corporal McIntosh, back in
13 June of 2016, who were you working for, and in what
14 capacity?

15 A. I was a sergeant -- excuse me -- investigator
16 with the Ridgeland Police Department.

17 Q. All right. And so, were you functioning as the
18 lead investigator into the death of Michelle Passio?

19 A. Yes, ma'am.

20 Q. All right. Tell me about where you responded and
21 when, and what you observed when you got there on the
22 morning of June 3, 2016.

23 A. I responded to a private residence at 7915 East
24 Main Street reference to a shooting incident. Upon
25 arrival, I observed Richard Passio, Jr., outside of

1 the home.

2 Q. Okay. About what time was that?

3 A. It was approximately 6:00 a.m.

4 Q. All right. And who all was on-scene when you got
5 there?

6 A. Lieutenant Ginn was on-scene.

7 Q. All right. Were the EMT's on the scene?

8 A. I don't recall if the EMT's were still -- I know
9 they weren't inside. They may have been outside.

10 Q. Okay. And did you photograph that scene?

11 A. Yes, ma'am.

12 Q. All right. I'm going to show you a series of
13 pictures marked State's 10, 12, and 13, and ask what
14 these are pictures of, if you recognize these
15 pictures.

16 A. These are photographs taken at the scene. Yes,
17 ma'am, I do recognize them.

18 Q. All right. And what do they depict?

19 A. The one -- one photograph is from the incident
20 room, towards a play room, or a room -- an adjacent
21 room. In fact, two of those photographs are that.
22 All three are of the bullet strike areas.

23 Q. Okay. So, what you were trying to capture are
24 the bullet strikes that you located within the
25 residence?

1 A. Yes, ma'am.

2 Q. All right. And how many, total, did you locate
3 within the residence?

4 A. I located three.

5 Q. All right. Are these fair and accurate
6 depictions of the scene as you came across it that
7 night?

8 A. Yes, ma'am.

9 Q. All right.

10 SOLICITOR SWANSON: The State would move 10, 12,
11 and 13 into evidence at this time.

12 THE COURT: Any objection?

13 MR. GEIER: No objection, your Honor.

14 THE COURT: It's in evidence, without objection.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 MARKED STATE'S EXHIBIT NUMBER 10

17 ADMITTED AS EVIDENCE.

18 ITEM IDENTIFIED AS PHOTOGRAPH

19 MARKED STATE'S EXHIBIT NUMBER 12

20 ADMITTED AS EVIDENCE.

21 ITEM IDENTIFIED AS PHOTOGRAPH

22 MARKED STATE'S EXHIBIT NUMBER 13

23 ADMITTED AS EVIDENCE.

24 BY SOLICITOR SWANSON:

25 Q. Okay. And Corporal, these are a little bit

1 difficult to see, but can you hold each up and point
2 to where the bullet strike was, noting the exhibit
3 number for the jury.

4 A. Yes, ma'am. On Exhibit -- State's Exhibit 10,
5 this is Michelle Passio. This is a bullet strike.
6 This is the adjacent room I'm speaking of. This is
7 one bullet strike in the frame of the door.

8 Q. Okay. In the doorframe, behind her head?

9 A. Yes, ma'am.

10 SOLICITOR SWANSON: And you guys will have these
11 back in the jury room.

12 BY SOLICITOR SWANSON:

13 Q. All right. Moving on to the next one.

14 A. On State's Exhibit Number 12, this is, again,
15 Michelle Passio. This is the -- the bullet strike we
16 just covered. The other one is up in the ceiling of
17 the adjacent room.

18 Q. Okay. And this is State's Exhibit 12. And
19 again, was that bullet strike located behind her head?

20 A. Yes, ma'am.

21 Q. Up in the ceiling. All right. And then, the
22 third bullet strike that you located?

23 A. Yes, ma'am. State's Exhibit 13, the third bullet
24 strike, is through a windowpane in the -- in the same
25 room, adjacent to the incident location.

1 Q. Okay. And this is State's 13. And is this
2 window located behind Michelle's head?

3 A. It is.

4 Q. All right. Did you recover any shell cases at
5 the scene?

6 A. Yes, ma'am.

7 Q. How many?

8 A. Two.

9 Q. All right. I'm going to show you what's been
10 marked as State's 17, and ask if these are the cases
11 that you recovered.

12 A. Yes, ma'am.

13 Q. All right.

14 SOLICITOR SWANSON: At this time, the State would
15 move 17 into evidence.

16 THE COURT: Objection?

17 MR. GEIER: No objection, your Honor.

18 THE COURT: Without objection.

19 ITEM IDENTIFIED AS SHELL CASINGS

20 RECOVERED FROM SCENE

21 MARKED STATE'S EXHIBIT NUMBER 17

22 ADMITTED AS EVIDENCE.

23 BY SOLICITOR SWANSON:

24 Q. I'm going to show you State's 11, State's 14, and
25 ask what these are pictures of.

1 A. These are photographs of the shell casings I
2 collected.

3 Q. Okay. So, they're pictures of the location from
4 which you collected them?

5 A. Yes, ma'am. Those are prior to me picking them
6 up.

7 Q. Okay. And those are fair and accurate depictions
8 of -- of --

9 A. Yes, ma'am.

10 Q. -- the location where you collected them?

11 A. Yes.

12 Q. Okay.

13 SOLICITOR SWANSON: The State would move 11 and
14 14 into evidence at this time.

15 THE COURT: Any objection?

16 MR. GEIER: No, your Honor.

17 THE COURT: Without objection.

18 ITEM IDENTIFIED AS PHOTOGRAPH

19 MARKED STATE'S EXHIBIT NUMBER 11

20 ADMITTED AS EVIDENCE.

21 ITEM IDENTIFIED AS PHOTOGRAPH

22 MARKED STATE'S EXHIBIT NUMBER 14

23 ADMITTED AS EVIDENCE.

24 BY SOLICITOR SWANSON:

25 Q. Okay. And if you can do just the same, starting

1 with State's Exhibit 11, and please show the jury
2 where that first shell case was collected, and then
3 where the next one was.

4 A. Yes, ma'am. State's Exhibit 11, the room that
5 I'm standing in taking this photo is the incident
6 location. This is the adjacent room. We referred as
7 the playroom, because of all the children's toys.
8 There is a shell casing lying right here.

9 Q. Okay.

10 A. That is one of the shell casings I collected.

11 Q. And that's State's 11. And that's located behind
12 Michelle Passio?

13 A. Yes.

14 Q. Okay. In the room behind her head. All right.

15 A. State's Exhibit 14, this is the incident
16 location. This is a shell casing that was underneath
17 the couch. This is obviously the blood from the
18 incident. This is a drag mark where the couch had
19 been moved by EMTs on-scene, in order to get Ms.
20 Passio.

21 Q. Okay. So, this is State's 14, and it depicts a
22 pool of blood where the case was located?

23 A. Yes, ma'am.

24 Q. All right. And was this pool of blood underneath
25 the couch?

1 A. It was.

2 Q. Okay. When Michelle's body was moved, let me ask
3 you, I -- was this blood, blood that had soaked
4 through from the couch; or blood that had spilled and
5 gone underneath the couch; or could you tell?

6 A. It had gone underneath. There was a slight lean
7 to the floor in the room, and therefore, the -- the
8 blood had traveled underneath the couch.

9 Q. All right. What were your general observations
10 when you came into the living room and found
11 Michelle's body? What did you note in your report?

12 A. Michelle's body was lying on the couch. Excuse
13 me. She was lying with -- with the back of her head
14 towards the -- the playroom. There was a basinet.
15 She was on the couch. There was a coffee table just
16 in front of the couch, and the baby's basinet was a
17 couple of feet behind that, with -- the baby was
18 asleep inside.

19 Q. Okay. Did you speak to any EMTs at the scene?

20 A. Yes, ma'am.

21 Q. All right. Who did you speak to?

22 A. I spoke to Mr. Ryan Altman.

23 Q. All right. And did you make any observations
24 about the scene, or did you touch Michelle's body, or
25 note any smells?

1 A. Yes, ma'am. There was a -- there was an odor of
2 -- of what I would describe as -- as early states of
3 decomposition in the room. Michelle's body was cold
4 to the touch. The blood on the floor, as well as
5 there was some in her right ear that had coagulated,
6 ballooned up. It was not -- it was not dripping. It
7 was a -- there was nothing coming from the exit wound.
8 No blood, no nothing dripping. There was nothing
9 dripping from the couch, the arm of the couch.
10 Everything had already soaked in there.

11 Q. Okay. And so, you observed the exit wound.
12 Where was the exit wound?

13 A. Top of her head.

14 Q. Okay. How did that appear?

15 A. It -- it -- dry.

16 Q. Did you perform a GSR kit on Michelle?

17 A. Yes, ma'am.

18 Q. All right. What is that?

19 A. It's a gun -- gunshot residue kit. It's -- it's
20 a test in order to determine if anyone -- if that
21 person has fired a weapon.

22 Q. That person or someone close to that person.

23 A. Yes.

24 Q. Okay. Now, when you came across Richard Passio,
25 Jr., that day, did you see any bruising or scratches,

1 or any wounds besides the one to his right hand, on
2 him?

3 A. No, ma'am.

4 Q. Okay. And he sits in the courtroom today. Does
5 he look any different than he did two years ago?

6 A. Yes, ma'am.

7 Q. Okay. Can you describe how?

8 A. He's lost a lot of weight. Clean-shaven. Hair
9 -- hairstyle's different.

10 Q. Okay. So, I'm going to show you a couple of
11 pictures, State's 7 and 8, and ask what these are
12 pictures of.

13 A. These are photos of Mr. Passio a couple of days
14 after the incident.

15 Q. Okay. So, they're photos of how he appeared in
16 June of 2016?

17 A. Yes, ma'am.

18 Q. And those are fair and accurate depictions?

19 A. Yes, ma'am.

20 Q. Okay.

21 SOLICITOR SWANSON: The State would move 7 and 8
22 into evidence at this time.

23 MR. GEIER: Your Honor, I object, for relevance.
24 I don't know what that has to do with anything.

25 THE COURT: Do you all need to take it up with

1 me? Let's just do this. If we can keep going, I'll
2 just take it up at the next break. Okay?

3 SOLICITOR SWANSON: Okay.

4 THE COURT: Can I see them?

5 SOLICITOR SWANSON: Yes, your Honor. Thank you.

6 THE COURT: Just go ahead and move on, and then
7 we'll --

8 SOLICITOR SWANSON: Oh. Okay. So, I can't
9 publish at this time?

10 THE COURT: No, because we have to talk about it
11 first.

12 SOLICITOR SWANSON: Okay. Right. I mean, we can
13 approach.

14 THE COURT: Come on right now. Come on, Mr.
15 Geier.

16 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
17 HEARING OF JURORS. PRESENT: THE COURT,
18 SOLICITOR SWANSON, MR. GEIER.

19 END BENCH CONFERENCE.

20 THE COURT: All right. You may go ahead.
21 They're in evidence, and they are published.

22 ITEM IDENTIFIED AS PHOTOGRAPH

23 MARKED STATE'S EXHIBIT NUMBER 7

24 ADMITTED AS EVIDENCE.

25 ITEM IDENTIFIED AS PHOTOGRAPH

1 MARKED STATE'S EXHIBIT NUMBER 8

2 ADMITTED AS EVIDENCE.

3 SOLICITOR SWANSON: All right. So, these are
4 State's 7 and 8 that I am publishing to the jury at
5 this time.

6 BY SOLICITOR SWANSON:

7 Q. Now, after the incident, were you able to
8 photograph the defendant's injury on his right hand?

9 A. Yes, ma'am.

10 Q. Okay. I'm going to show you State's 9, and ask
11 if this is a fair and accurate depiction of the photo
12 you took of his injury.

13 A. Yes, ma'am.

14 SOLICITOR SWANSON: I'd move 9 into evidence at
15 this time.

16 THE COURT: Any objection?

17 MR. GEIER: I'm sorry. I didn't hear when he
18 said he took those photos.

19 BY SOLICITOR SWANSON:

20 A. Yes, they're fair and accurate.

21 MR. GEIER: When did you take that photo?

22 BY SOLICITOR SWANSON:

23 A. The photo of the incident was June the 3rd.

24 Q. June 6.

25 A. That photo would've been June 6th, yes.

1 Q. Okay. All right.

2 MR. GEIER: No objection, your Honor.

3 THE COURT: Without objection, you may publish.

4 SOLICITOR SWANSON: All right. State's 9.

5 ITEM IDENTIFIED AS PHOTOGRAPH

6 MARKED STATE'S EXHIBIT NUMBER 9

7 ADMITTED AS EVIDENCE.

8 BY SOLICITOR SWANSON:

9 Q. All right. So, after you go to the scene,
10 collect items at the scene, did you conduct a number
11 of interviews?

12 A. Yes, ma'am.

13 Q. All right. So, who all did you interview in
14 conjunction with this investigation?

15 A. That day, or?

16 Q. Sure. Let's start with June 3rd. Who did you
17 interview? Did you interview Pam Bennington?

18 A. I did, yes, ma'am.

19 Q. All right. And who is that?

20 A. Pam Bennington is Michelle's mother.

21 Q. All right. Did you interview Shelby Simmons?

22 A. I did.

23 Q. Who is that?

24 A. A friend and co-worker.

25 Q. Carla Ashcraft?

1 A. Carla Ashcraft, I did speak with her.

2 Q. Who is that?

3 A. Carla is a -- the mother of another person I
4 interviewed. The mother of Brandon Ashcraft.

5 Q. All right. Was she a friend of Michelle's?

6 A. She was.

7 Q. All right. Brandon Ashcraft, did you speak to
8 him?

9 A. Yes.

10 Q. All right. And who was he to Michelle?

11 A. He was a close personal friend of Michelle's.

12 Q. All right. Who was he to Rock? Was he a co-
13 worker?

14 A. I believe Brandon worked at the -- at the
15 restaurant as well.

16 Q. Okay. All right. Did you speak to Cathy
17 Badgett?

18 A. I did.

19 Q. All right. Who is she?

20 A. She is a local attorney that Michelle had been
21 speaking with.

22 Q. All right. Angel Rose?

23 A. Yes.

24 Q. Who is she?

25 A. She is a -- she is a employee at the Jasper's

1 Porch Restaurant.

2 Q. All right. And then, did you go Jasper's Porch
3 that day?

4 A. Yes, I did.

5 Q. All right. And who did you speak with there?

6 A. I spoke with Angel Rose, and I spoke with Marian
7 -- Marian Mims.

8 Q. All right. And what is Marian's position at --
9 or what was it at Jasper's Porch at that time?

10 A. She was the manager on duty at the time.

11 Q. All right. And what did you ask her to review?

12 A. Their surveillance video. The interior
13 surveillance video from the restaurant.

14 Q. All right. From when?

15 A. From the night of June the 3rd.

16 Q. Okay.

17 A. Or the early morning hours of June the 3rd. I
18 believe I actually started on the 12th -- or, excuse
19 me -- the 2nd.

20 Q. Okay.

21 A. And went through.

22 Q. I'm going to show you State's Exhibit 6. And at
23 this point, I'm just going to have you identify.

24 SOLICITOR SWANSON: Actually, I will be asking to
25 enter it, but I'm not going to be asking to publish at

1 this time.

2 THE COURT: Okay.

3 BY SOLICITOR SWANSON:

4 Q. I'm going to hand you State's Exhibit 6, and ask
5 you to identify this disk.

6 A. Yes, ma'am.

7 Q. What is it?

8 A. It is a disk containing the footage of the
9 surveillance.

10 Q. That you pulled from Jasper's Porch security
11 system?

12 A. Yes, ma'am.

13 Q. Okay. How do you know it's the footage that you
14 pulled that night?

15 A. It's got my initials on it.

16 Q. All right. You reviewed it at my request?

17 A. Yes, ma'am.

18 Q. All right.

19 SOLICITOR SWANSON: The State would move 6 into
20 evidence at this time.

21 THE COURT: Any objection?

22 MR. GEIER: No objection.

23 THE COURT: Okay. Without objection.

24 ITEM IDENTIFIED AS DVD OF

25 SURVEILLANCE FOOTAGE FROM JASPER'S

1 PORCH SECURITY SYSTEM

2 MARKED STATE'S EXHIBIT NUMBER 6

3 ADMITTED AS EVIDENCE.

4 BY SOLICITOR SWANSON:

5 Q. All right. The next day, did you interview a
6 woman by the name of Ivy Bryan?

7 A. June the 4th, yes, ma'am.

8 Q. All right.

9 A. I did.

10 Q. And you went and talked to Brandon Ashcraft
11 again?

12 A. I did speak with him again on -- yes, ma'am.

13 Q. All right. And then, you continued interviews
14 through June the 6th. Is that right?

15 A. Yes, ma'am.

16 Q. All right. And who did you interview on the 6th?

17 A. On June the 6th, I interviewed Otto Helbig, Linda
18 and Tom Bennington, Jordan Moser, and Richard Passio,
19 Jr.

20 Q. Okay. Now, at some point, do you go to MUSC and
21 retrieve items from the autopsy, from Michelle's
22 autopsy?

23 A. Yes, ma'am, on June the 7th.

24 Q. Okay. I'm going to show you what's been marked
25 as State's 19, 20, and 21. And ask for you to

1 identify these items, those items that you collected
2 from MUSC.

3 A. Yes, ma'am.

4 Q. All right. What are those items? Just go one-
5 by-one, noting the exhibit number, please.

6 A. Exhibit Number 19 is a known -- Michelle Passio's
7 known standard blood spot.

8 Q. Okay.

9 A. Exhibit Number 20 is Michelle Passio's left
10 fingernail scrapings.

11 Q. Okay.

12 A. Exhibit Number 21 is Michelle Passio's right
13 fingernail scrapings.

14 Q. Okay. All right. Thank you. Did you have an
15 occasion to search a gold Chevy Cavalier?

16 A. I did.

17 Q. All right. Did you get permission to search that
18 car?

19 A. Yes, ma'am. I got permission from the registered
20 owner.

21 Q. All right. Who is the registered owner of that
22 car?

23 A. The registered owner is -- you'll have to forgive
24 me, I'm -- I'm at a loss for a name, but it's Richard
25 Passio, Jr.'s sister-in-law.

1 Q. Okay. His sister-in-law's car?

2 A. Yes. Yes, ma'am.

3 Q. And were you able to determine that Richard had
4 been driving that car?

5 A. Yes.

6 Q. Okay. I'm going to show you State's Exhibit 15
7 and 16, and ask if this is the gold Chevy Cavalier
8 that you searched and were able to determine that
9 Richard was driving.

10 A. Yes, ma'am.

11 Q. Okay.

12 SOLICITOR SWANSON: The State would move 15 and
13 16 into evidence.

14 THE COURT: Any objection?

15 MR. GEIER: No objection.

16 THE COURT: Without objection.

17 ITEM IDENTIFIED AS PHOTOGRAPH

18 MARKED STATE'S EXHIBIT NUMBER 15

19 ADMITTED AS EVIDENCE.

20 ITEM IDENTIFIED AS PHOTOGRAPH

21 MARKED STATE'S EXHIBIT NUMBER 16

22 ADMITTED AS EVIDENCE.

23 BY SOLICITOR SWANSON:

24 Q. Did you collect anything out of that car?

25 A. I did.

1 Q. All right. I'm going to show you what's been
2 marked as State's Exhibit 25, and ask what this item
3 is.

4 A. This is a -- excuse me -- a hard-shell case that
5 I collected from the trunk of the vehicle.

6 Q. All right. That was in the trunk?

7 A. Yes, ma'am.

8 Q. What day was this collected?

9 A. This was collected on the -- this was collected
10 on the 7th, I do believe.

11 Q. Okay.

12 A. Excuse me.

13 SOLICITOR SWANSON: The State would move the case
14 into evidence at this time, 25.

15 THE COURT: No objection. Without objection.

16 SOLICITOR SWANSON: And move to publish.

17 ITEM IDENTIFIED AS HARD-SHELL CASE

18 FOUND IN TRUNK OF CAR

19 MARKED STATE'S EXHIBIT NUMBER 25

20 ADMITTED AS EVIDENCE.

21 BY SOLICITOR SWANSON:

22 Q. What day did you place Mr. Passio under arrest?

23 A. The 7th. June the 7th.

24 Q. On June 7th. And what did you arrest him for?

25 A. A charge of murder.

1 Q. At some point, did you obtain a search warrant
2 for Mr. Passio's DNA?

3 A. I did.

4 Q. All right. When was that?

5 A. I obtained a search warrant --

6 Q. Well, actually, I'm going to show you State's
7 Exhibit 23. I believe it's noted on the package. And
8 if you can just identify this item.

9 A. This is a buccal swab collected from Mr. Passio.

10 Q. Can you describe for the jury exactly what a
11 buccal swab is.

12 A. It's a large Q-tip. It goes between the cheek
13 and the gum, and it's used to collect DNA samples.

14 Q. All right. Saliva?

15 A. Yes.

16 Q. Okay. And were you wearing gloves when you
17 collected this from Richard Passio, Jr.?

18 A. Yes, ma'am.

19 Q. All right.

20 SOLICITOR SWANSON: The State would move 23 into
21 evidence at this time.

22 MR. GEIER: No objection.

23 THE COURT: Without objection.

24 ITEM IDENTIFIED AS BUCCAL SWAB

25 COLLECTED FROM RICHARD PASSIO, JR.

1 MARKED STATE'S EXHIBIT NUMBER 23

2 ADMITTED AS EVIDENCE.

3 BY SOLICITOR SWANSON:

4 Q. All right, Corporal, please answer any questions
5 that Mr. Geier may have for you.

6 A. Yes, ma'am.

7 SOLICITOR SWANSON: I don't have anything further
8 at this time.

9 A. Yes, ma'am.

10 CORPORAL CHRIS MCINTOSH, CROSS-

11 EXAMINATION BY MR. GEIER:

12 Q. Good morning.

13 A. Good morning.

14 Q. Before I get into the meat of what I want to talk
15 about, before everybody forgets what you did just a
16 little while ago, when you were describing where the
17 exit wound from the shot was, where did you pat on
18 your head?

19 A. Right here.

20 Q. Right back there?

21 A. Yes, sir.

22 Q. So, it wasn't right at the top of her head?

23 That's not where it was. It was in the back?

24 A. I -- I -- I don't recall. It's top of the head.

25 Q. Okay. All right. So, you don't recall exactly

1 where it was.

2 A. Exactly where the exit wound was?

3 Q. Right.

4 A. The precise location, no, sir.

5 Q. Okay. All right. We're going to talk about a
6 number of things. The first thing I want us to talk
7 about is the investigation from start, and we'll work
8 on, all right?

9 A. Yes, sir.

10 Q. As an investigator at the Ridgeland Police
11 Department, when that was your job, you underwent
12 training for that position?

13 A. Yes, sir.

14 Q. And at the time of this investigation, you had
15 been an investigator for five or six years?

16 A. Yes, sir.

17 Q. All right. And at that point, I believe you had
18 previously testified that you had worked four
19 homicides for the Ridgeland Police Department?

20 A. I would say four, yes, sir.

21 Q. Okay. And I think you also said you worked four
22 or five suicides at that point, too?

23 A. I've worked some suicides, yes.

24 Q. Okay. And before you were an investigator --
25 again, you received training on how to be an

1 investigator, correct?

2 A. Yes, sir.

3 Q. And before you were an investigator, you were
4 some other type of a police officer. Is that right?

5 A. Yes, sir.

6 Q. What did you do before that?

7 A. I was a -- before I was moved to investigation, I
8 was traffic enforcement.

9 Q. Yes. Traffic enforcement?

10 A. Yes, sir.

11 Q. All right. And when you were trained to become a
12 investigator, you were trained that you've got some
13 duties when you arrive at the scene. Is that right?

14 A. Yes, sir.

15 Q. And because you're in charge of the scene once
16 you arrive. Is that correct?

17 A. Yes, sir.

18 Q. All right. And you're supposed to control
19 individuals from coming and going from the scene?

20 A. Physically control?

21 Q. Right, right.

22 A. I -- I -- I can quarantine the scene, yes, sir.

23 Q. Sure. All right. And you're supposed to
24 document any entry or exit of anybody, other than your
25 investigation team, that enter that scene; are you

1 not?

2 A. Yes, sir. You're talking about a -- a -- the
3 word escapes me. Yes, sir.

4 Q. Sure. So, I mean, if I just tried to walk into
5 the scene, you would, or somebody on your behalf,
6 would say, hey, you can't be in there, right?

7 A. Correct.

8 Q. And the reason for that is to preserve the scene.
9 Is that correct?

10 A. Correct.

11 Q. All right. And you're supposed to document the
12 condition of a firearm before anybody tampers it --
13 with it. Is that correct?

14 A. The -- the condition?

15 Q. Yeah, it was kind of a bad question. I'm sorry.
16 When you get on the scene and there's a weapon
17 involved, you're supposed to document what the
18 condition of that firearm is before anybody messes
19 with it. Is that right?

20 A. The firearm had already been collected prior to
21 my arrival, but --

22 Q. I see.

23 A. -- are you meaning is the slide locked back, or?

24 Q. No, no, no. So, when you arrived, that gun
25 wasn't sitting there on the ground anymore. Is that

1 correct?

2 A. No, sir.

3 Q. All right. Now, generally speaking, when you
4 arrive at a scene and there -- somebody's dead, and
5 there's a gun sitting around somewhere --

6 A. Yes, sir.

7 Q. -- everything's supposed to stay where it's at.
8 Is that correct?

9 A. It -- short of a safety measure, yes, sir.

10 Q. All right. Well, the purpose of keeping
11 everything where it's at is so somebody can go in and
12 take pictures, so later on, you can look at those
13 photos and say, yeah, that's where everything was. Is
14 that correct?

15 A. Can you repeat the question? I'm sorry.

16 Q. Yes. The purpose of having everything stay
17 exactly as it is when the first responders arrive is
18 so somebody can go in and take a photo.

19 A. Yes.

20 Q. Is that right?

21 A. Yes.

22 Q. And sometimes people go and take videos, too. Is
23 that right?

24 A. Yes, sir.

25 Q. And that's important because, again, down the

1 road, you want to be able to look at those pictures
2 and videos, and say that's how the scene looked when
3 somebody from our department first walked in.

4 A. Yes, sir.

5 Q. Okay. They can give us information about that
6 weapon, can't they? Those pictures and videos?

7 A. Yes.

8 Q. All right. It can tell us where it was at when
9 somebody first walked in?

10 A. Yes, sir.

11 Q. And they could indicate, and I'm talking about
12 the general videos and the photos, they can help you
13 determine, on further investigation, whether or not
14 the scene was staged. Do you know what I mean by
15 that?

16 A. Correct. Yes, sir.

17 Q. Okay. And staging the scene is where somebody
18 tries to set the scene up to make it look like
19 something happened. Is that right?

20 A. Correct. Yes.

21 Q. Okay. And these photos and videos that are taken
22 at that time, they provide you clues, so you can
23 follow up later on, so you can build your case against
24 a suspect. Is that right?

25 A. Yes.

1 Q. All right. And the photos and the videos are
2 important because they're necessarily going to get
3 altered, as far as what the scene's like, by EMS and
4 by the investigation unit.

5 A. Yes.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. Because we're not just going to keep that place
9 in that same condition in perpetuity, right?

10 A. Correct.

11 Q. All right. And again, those pictures and videos
12 are important so solicitors can build their case
13 against that suspect. Is that right?

14 A. Correct. Yes, sir.

15 Q. Okay. And a lot of times, those pictures and
16 videos are given to a jury; are they not?

17 A. Um-hmm.

18 Q. So, they can make a decision as to what happened.

19 A. Yes, sir.

20 Q. All right. So, it's important those photos and
21 videos are accurate, so the jury can make their
22 decision. Is that correct?

23 A. Yes, sir.

24 Q. All right. So, when you came to that scene, the
25 gun had been removed.

1 A. Yes, sir.

2 Q. When you came to that scene, Lieutenant Ginn had
3 told you that he had removed that gun.

4 A. Correct.

5 Q. All right. And that gun never came back inside
6 at any point. Is that correct?

7 A. Not that I'm aware of.

8 Q. Okay. And earlier, I was asking Lieutenant Ginn
9 whether or not the -- that, when he first came in,
10 that the shell was stuck in the slide. You noted that
11 in your report. Is that what he told you?

12 A. Lieuteant Ginn is, I believe, the word is in
13 armor. He -- he knows the ins and outs of a gun.
14 What I would call a regular gun guy. There's the --
15 there's the barrel, there's the slide, there's --
16 there's the basic parts -- parts of the gun. If he
17 says something was stuck, I -- I consider it the
18 ejection port. If the -- if the shell was stuck in
19 the barrel, I can't -- I can't tell you whether or not
20 he said ejection port or whether he said barrel. I
21 did note ejection port.

22 Q. Okay.

23 A. Which meets the barrel.

24 Q. Well, if it's stuck in the ejection port -- hold
25 on. Let's take a look at this.

1 MR. GEIER: May I approach, your Honor?

2 THE COURT: You may.

3 MR. GEIER: Thank you.

4 BY MR. GEIER:

5 Q. This is State's Exhibit 5, and it's already been
6 put into evidence.

7 A. Yes, sir.

8 Q. So, that's the ejection port right there.

9 A. Correct.

10 Q. And for the record, that is a hole on the top of
11 the pistol. Is that correct?

12 A. Correct.

13 Q. And the barrel is this portion right here in the
14 front that's kind of like a tube, isn't it?

15 A. Yes, sir.

16 Q. All right. And so, Lieutenant Ginn, what -- did
17 he tell you it was stuck in the barrel, or did he tell
18 you it was stuck in the ejection port?

19 A. I don't recall.

20 Q. You don't recall.

21 A. No, sir.

22 Q. Okay. If he had told you that it was in the
23 barrel, would that seem kind of odd?

24 A. With the shell casing being stuck in the barrel?

25 Q. Yeah.

1 A. I can't say. I don't know guns as well as him.

2 Q. Okay. But you've been trained on firearms,
3 haven't you?

4 A. Yes, sir.

5 Q. I mean, you get a lot of training on firearms.

6 A. Yes, sir.

7 Q. Okay. And there have been times when you have
8 gone out to a range and fired a pistol, and had a
9 shell get stuck in the ejection port. Is that case?

10 A. Yes, sir.

11 Q. All right. And that happens from time to time,
12 doesn't it?

13 A. It does.

14 MR. GEIER: Your Honor, just for a moment I'm
15 going to show the jury what I was pointing at.

16 THE COURT: Certainly.

17 BY MR. GEIER:

18 Q. And so, Lieutenant Ginn, when he told you he --
19 that one of those shells was stuck somewhere in that
20 gun --

21 A. Yes, sir.

22 Q. -- he told you that he had cleared that?

23 A. Yes, sir. He -- he --

24 Q. When you got there, that shell wasn't stuck in
25 that -- that gun any longer, was it?

1 A. No, sir.

2 Q. All right. Now, I've received several pictures
3 from the scene. And I'm not including the one that
4 you took of Mr. Passio's hand a couple days later.

5 A. Okay.

6 Q. Or pictures of the -- of the car there.

7 A. Yes, sir.

8 Q. But as far as the photos from the scene that you
9 took, or Lieutenant Ginn took, I think it's 19 photos.
10 Or I'm sorry, 21 photos.

11 A. I'm not sure how many there are in total.

12 Q. Okay. Do you think it's more than that?

13 A. No, sir, I wouldn't say.

14 Q. Okay. You wouldn't say that it --

15 A. No, sir. My answer is no.

16 Q. Okay. So, do you think it was 50 photos?

17 A. No, sir.

18 Q. Okay. All right. So, if it -- again, if I told
19 you it was 21 photos, you wouldn't disagree with that.

20 A. I wouldn't.

21 Q. That's not very many for a scene where you
22 believe somebody was murdered. Is that fair to say?

23 A. No, I -- I wouldn't say that's --

24 Q. Do you believe that was an appropriate number of
25 photos to take?

1 A. Yes, sir.

2 Q. I see. When you received your training as an
3 investigator, were you not trained that there are
4 three types of photos you're supposed to take at
5 scenes? Overall, mid-range, and close-up? Have you
6 ever heard that?

7 A. Of -- are you talking about of, like, the shell
8 casings, things of that nature?

9 Q. Sure. Let's start with the shell casings.

10 A. Okay.

11 Q. So, when you have a shell casing somewhere,
12 you're supposed to take one overall, mid-range, and
13 close-up. You ever heard that?

14 A. I've -- I believe I've heard that, yes, sir.

15 Q. All right. And let's -- let's expand it. The
16 body. Overall, mid-range, and close-up, right?

17 A. Yes, sir.

18 Q. All right. Okay. When you have a scene, you're
19 supposed to take photos, so, later on, everybody can
20 go in there and look at those photos and say, yeah,
21 that's where this was, that's where that was. Is that
22 correct?

23 A. Yes, sir.

24 Q. All right. Now, there was an air vent located on
25 the ground behind the couch. Did you take a picture

1 of that?

2 A. I don't recall.

3 Q. Okay. I had an opportunity to look at a body cam
4 video, and on that video there were drops of blood on
5 the front porch. Did you take any pictures of those?

6 A. I -- I don't recall. There are some photos of
7 that, I do believe, but I don't recall if I took them
8 or if Lieutenant Ginn took them.

9 Q. Okay. But you recall there being drops of blood
10 on the front porch?

11 A. Yes.

12 Q. All right. You were trained to use evidence
13 markers in cases like this; were you not?

14 A. Yes, sir.

15 Q. Did you use any evidence markers?

16 A. No, sir. I did not have any with me.

17 Q. Okay. You're supposed to generate a crime
18 sketch, which notes where evidence was collected. Did
19 you do that?

20 A. No, sir, I didn't create it.

21 Q. When you have a question as to where the gun was
22 and where the bullets went, there are tools you use to
23 determine that; is there not? They're called
24 trajectory rods.

25 A. Yes, sir.

1 Q. You're familiar with trajectory rods?

2 A. Yes, sir.

3 Q. And those are basically sticks that you can take
4 in and line everything up?

5 A. They are.

6 Q. Okay. You didn't use those?

7 A. No, sir.

8 Q. Now, in the report, I saw a note that it appeared
9 that the hole in the ceiling lined up with the wound
10 --

11 A. Yes, sir.

12 Q. -- under the chin?

13 A. Yes, sir.

14 Q. So, you believe that wound, or the path of that
15 bullet, was here, through the top of the head, and
16 into the ceiling?

17 A. It appeared, from the way she was lying. Yes,
18 sir.

19 Q. And were you the one who talked to Richard
20 Passio's father about being 95 percent sure it was a
21 suicide?

22 A. I --

23 Q. Based on the angle of that shot?

24 A. I spoke with Richard Passio's father.

25 Q. Did you tell him that?

1 A. I don't recall saying that to him.

2 Q. You don't deny saying that, though?

3 A. I don't recall saying that to him.

4 Q. Okay. So, if he recalls saying that, would you
5 oppose that?

6 A. I -- I can't oppose or support it. I -- I don't
7 recall saying that to him.

8 SOLICITOR SWANSON: I would object. Pitting the
9 witnesses.

10 THE COURT: Okay. Sustained. Don't pit
11 witnesses.

12 BY MR. GEIER:

13 Q. Briefly, this is State's Exhibit 12. It's
14 already in evidence. That's the photo we were talking
15 about before, correct? Where the -- it appears the
16 entry wound is under the chin, and the hole in the
17 ceiling of that adjacent room, that you believe that's
18 the final shot?

19 A. I -- this lined up with the -- with -- with the
20 body, yes, sir.

21 Q. Okay. All right. Let me talk to you real quick
22 about State's Exhibit Number 4. I want you to hold
23 onto that for me for a minute.

24 A. Yes, sir.

25 Q. I want to just ask you some questions about that.

- 1 A. Okay.
- 2 Q. You were there when that picture was taken,
3 right? You actually took it, correct?
- 4 A. Yes, sir.
- 5 Q. Okay. And the baby was asleep in that room?
- 6 A. Correct.
- 7 Q. And he didn't wake up when the lights came on?
- 8 A. No, sir. He --
- 9 Q. Or when people came in?
- 10 A. Not that I recall. I never heard the baby make a
11 sound.
- 12 Q. Do you know who moved the baby?
- 13 A. I don't know.
- 14 Q. Do you know where he was moved to?
- 15 A. No, sir.
- 16 Q. Did you find any blood on the baby's clothes?
- 17 A. No, sir, not that I recall.
- 18 Q. You didn't find any bloody baby clothes anywhere?
- 19 A. I can't say as I found any bloody baby clothes,
20 no, sir.
- 21 Q. All right. Looking at that picture again there,
22 there's blood on the couch; is there not?
- 23 A. There is.
- 24 Q. Let me take a look here real quick, so I can --
25 so, we've got blood sort of by the headrest here.

1 A. Yes.

2 Q. There's a --

3 A. I assume that's blood.

4 Q. Okay.

5 COURT REPORTER: I'm sorry. What was your
6 answer?

7 A. I assume that's blood.

8 Q. All right. Let's assume for a minute it is
9 blood. So, we have, like, a blood streak right here
10 towards the far-left side of the couch?

11 A. We do.

12 Q. And then, a couple spots, almost, with blood
13 drips, which is a little bit to the right of the
14 streak.

15 A. Yes.

16 Q. Is that fair to say?

17 A. Yes.

18 Q. Okay. Did you take any samples of that blood?

19 A. I did not.

20 Q. So, you don't know if it was Richard's or
21 Michelle's?

22 A. No, sir. You're referring to that streak there?

23 Q. Right, the streaks of blood right there.

24 A. Correct, I did not take any samples.

25 Q. You were talking about GSR earlier. Did you take

1 GSR of Richard's hands?

2 A. I did not.

3 Q. You're familiar with how GSR works, correct?

4 A. I'm familiar in the capacity that it -- it can
5 indicate whether or not you were in proximity or fired
6 a weapon.

7 Q. I see. So, if Richard fired these shots, there
8 would've been a lot of GSR on at least one of his
9 hands. Is that fair to say?

10 A. Well, there would have been GSR on his hands
11 because he had already stated --

12 Q. Well, no, I'm asking you. If he fired a gun, he
13 would have GSR on his hands, unless he was wearing a
14 glove or something like that.

15 A. Or -- or, if he was with a person who was firing
16 it, there would be -- there would be GSR.

17 Q. I understand that. But I'm saying if Richard
18 fired a gun --

19 A. Yes.

20 Q. -- would he have GSR on his hands?

21 A. Yes.

22 Q. If Richard had fired a gun and had one hand
23 behind his back, would he have significantly more GSR
24 on the hand that he fired the gun with than the other?

25 A. Most likely.

1 Q. All right. But you didn't test his hands at all?

2 A. I didn't.

3 Q. You said you did do GSR on Michelle.

4 A. Yes, sir.

5 Q. You didn't do that immediately, at the scene, did
6 you?

7 A. No, sir.

8 Q. In fact, you went to, was it the coroner's
9 office?

10 A. The morgue.

11 Q. The morgue?

12 A. Yes, sir.

13 Q. And opened the body bag?

14 A. Yes.

15 Q. And you said in your report that her hands were
16 preserved inside the body bag?

17 A. Yes.

18 Q. But not with paper bags. Is that correct?

19 A. I don't recall whether or not her hands were
20 bagged at the scene. I can't say it was whether they
21 were or not.

22 Q. I see. Would you have been in charge of bagging
23 the hands?

24 A. I would've been.

25 Q. All right. And you don't recall if you did that

1 or not?

2 A. I don't recall bagging them, no, sir.

3 Q. If you had bagged the hands at the scene, would
4 you have noted that in the report?

5 A. Most likely, yes, sir.

6 Q. Now, Lieutenant Ginn testified earlier that, when
7 he arrived at the scene, Richard's hand was not
8 bandaged. Do you remember that?

9 A. In -- during his testimony, yes.

10 Q. Yes. Okay.

11 A. Yes.

12 Q. When you arrived at the scene, his hand was
13 bandaged.

14 A. Correct.

15 Q. All right. And it was your understanding he
16 injured his hand while he had his hand on the slide of
17 this gun?

18 A. That's my understanding, yes, sir.

19 Q. All right. And you're familiar -- again, we
20 talked a little bit about guns earlier, but you're
21 familiar with how a semi-automatic pistol works,
22 aren't you?

23 A. Yes, sir.

24 Q. So, basically, there's a firing pin that hits the
25 cartridge. There's a little explosion in there, the

1 projectile comes out?

2 A. Correct.

3 Q. And the slide moves backwards really quickly?

4 A. Yes, sir.

5 Q. And it's so quick you can't even follow it with
6 the eye, can you?

7 A. Correct.

8 Q. All right. And then, after that -- well, in the
9 middle of that motion, a shell gets ejected out,
10 typically.

11 A. Correct.

12 Q. All right. And then, the next bullet comes up,
13 and it's ready to be fired.

14 A. Correct.

15 Q. All right. And if you're not careful, and you
16 have your hand too high up on the pistol, you've got
17 your hand on the side of it, you can get what's called
18 slide bite, can't you?

19 A. Yes, sir.

20 Q. And slide bite is basically where you get pinched
21 in there?

22 A. Um-hmm, yes, sir.

23 Q. And sometimes, if you're firing the pistol, and
24 you get your thumb up, have you ever seen people get
25 hit on the thumb when that slide comes back?

1 A. I haven't seen it personally, but I -- I know you
2 can get --

3 Q. Yeah.

4 A. -- bitten by the slide, yes, sir.

5 Q. Okay. So, do you dispute that the wound on
6 Richard's hand was caused by that slide?

7 A. I don't dispute it, no, sir.

8 Q. So, you said earlier there were drips of blood on
9 the front porch?

10 A. Yes, sir, I do believe there were.

11 Q. Okay.

12 A. It was gray paint.

13 Q. I see.

14 A. On the porch.

15 Q. Okay. And those drops of blood went from the
16 entry of the house, the front door --

17 A. Yes, sir.

18 Q. -- down to the steps?

19 A. I don't -- I don't recall if they went down the
20 steps.

21 Q. You don't recall. You didn't take any pictures
22 of that?

23 A. I don't recall blood going on the steps. I don't
24 recall.

25 Q. Okay. All right. And if Richard was over or on

1 top of Michelle, with his hand on the slide of that
2 pistol when it was fired --

3 A. Yes, sir.

4 Q. -- with his right hand, is that where you'd
5 expect him to put his hand down afterwards at some
6 point, on the right side, or to his right, on the
7 couch?

8 A. After --

9 SOLICITOR SWANSON: Your Honor, this is calling
10 for conjecture. I'm going to object.

11 THE COURT: All right. Well, I'm going to let
12 him go ahead and just do a little -- if he can answer
13 the question, that's fine. But if he can't.

14 BY MR. GEIER:

15 Q. It is your understanding that Mr. Passio was over
16 on top of --

17 SOLICITOR SWANSON: And I'm sorry. I'm going to
18 object to the insertion of hearsay into the question
19 at this time.

20 MR. GEIER: Your Honor, I'm just asking what his
21 understanding was. I'm not asking to any specifics as
22 to what it is he was told.

23 THE COURT: What's the question again?

24 MR. GEIER: The question is, is, are those
25 bloodstains consistent with having a cut on your right

1 hand, where you would put it down after receiving that
2 wound?

3 THE COURT: Well, if he can answer it.

4 BY MR. GEIER:

5 A. It -- you might put your hand down; you might
6 clasp it to you. I mean, I -- I cut this finger off.
7 I didn't immediately follow down like this. I went
8 like that. I didn't -- I mean, everyone's different.

9 Q. Um-hmm.

10 A. If someone got a wound to their right hand and
11 was falling over, it's safe to assume that they would
12 put their right hand right there, because it's on the
13 right side of where they would be, if they were on top
14 of that person.

15 Q. Okay. It doesn't appear that there are any
16 photos of this, but there were drops of blood, or a
17 pool of blood, on Michelle's right thigh. Do you
18 recall that?

19 A. I don't. There was a lot of blood. I don't
20 recall exactly on her right thigh.

21 Q. Okay. Now, we've seen the photos, and there's a
22 lot of blood on the floor.

23 A. There is.

24 Q. Okay. Well, let me back up real quick. There
25 was also blood smeared on that chair that was sitting

1 out front where Richard was sitting. Do you recall
2 seeing that?

3 A. I don't recall seeing it.

4 Q. You don't recall seeing that. Okay. You're
5 aware, though, that hand was bloody at some point when
6 first responders first showed up.

7 A. To my understanding, it was, yes, sir.

8 Q. Right. Where else did you find blood in that
9 house, besides the living room and the front porch?

10 A. Leading -- well, there was blood leading from the
11 living room to the front door.

12 Q. Okay. And so, the way it's set up is, we've got
13 the living room here, and there's a little bit of a
14 hallway, kind of a little foyer area?

15 A. Yes, sir.

16 Q. Then, there's the door.

17 A. Yes, sir.

18 Q. So, you didn't find any blood in the bathroom?

19 A. Not that I recall.

20 Q. And you didn't find any in the bedroom?

21 A. No, sir.

22 Q. Or the kitchen?

23 A. No, sir.

24 Q. Or any of the tables, other than a few of them
25 there in the living room?

1 A. Correct.

2 Q. You didn't find blood on any of the doorknobs
3 around the house?

4 A. No, sir.

5 Q. Or on the baby?

6 A. No, sir.

7 Q. Or in the hamper?

8 A. No, sir.

9 Q. Or a washing machine?

10 A. No, sir.

11 Q. Okay. I'd have you take a look at State's
12 Exhibit 14 again.

13 A. Yes, sir.

14 Q. That's Lieutenant Ginn's footprint, isn't it?

15 A. Can you point to it, please? I'm -- I'm unaware.

16 Q. Hmm?

17 A. I can't tell you whether that's --

18 Q. Can't tell you that?

19 A. No, sir.

20 Q. You were made aware, weren't you, that somebody
21 stepped in the blood.

22 A. I don't recall.

23 Q. You don't recall?

24 A. No, sir. Is that when they were moving the body?
25 That someone stepped in it?

1 Q. Show you State's Exhibit 3 here.

2 A. Yes, sir.

3 Q. That's Lieutenant Ginn's boot; is it not?

4 A. It is, yes, sir. I see.

5 Q. And in that scene, he's actually standing in a
6 little bit of the blood. Is that fair to say?

7 A. Yes, sir.

8 Q. Okay.

9 A. Some of the splatter.

10 Q. And let's take a look at this here. Those are
11 his footprints, are they not, from where he had walked
12 around?

13 A. I can't say whether those are his footprints or
14 anyone else's.

15 Q. I see. And you didn't take any specific pictures
16 of those footprints, did you?

17 A. I didn't, no, sir.

18 Q. You didn't try to match those footprints with
19 anybody else's shoes, did you?

20 A. No, sir.

21 Q. And those are the only footprints, really, that
22 you saw in that room?

23 A. I don't recall seeing any footprints.

24 Q. I see. And it's fair to say, when you go to a
25 scene as an investigator, you got a team that you're

1 working with, which includes law enforcement and EMS?

2 A. Yes, sir.

3 Q. They're all aware that they're supposed to be
4 careful in there; are they not?

5 A. Yes, sir.

6 Q. So, they're going -- they're trying to do their
7 best not to step in anything. Is that fair to say?

8 A. I would say that's fair to say.

9 Q. But I mean, it happens sometimes, doesn't it?

10 A. It does.

11 Q. So, for an hour or so, the team was in there,
12 doing their best not to step in any blood or cause any
13 mess in there. Is that correct?

14 A. I can't say what others were trying or trying not
15 to do.

16 Q. Well, that -- that was -- that's your directive;
17 is it not? That you guys need to preserve that scene.

18 A. To preserve a scene, yes, sir.

19 Q. And so, they're presumably are trying; are they
20 not?

21 A. Correct.

22 Q. Not to do that?

23 A. Right.

24 Q. All right. And the lights were on from -- when
25 you got there, the lights were on, correct?

1 A. No.

2 Q. The lights were off when you first showed up?

3 A. Yes, sir.

4 Q. Were they soon after turned on?

5 A. Yes, sir.

6 Q. All right. And for the majority of the time you
7 were there, were the lights on?

8 A. Yes, sir.

9 Q. All right.

10 A. Then, the sun came up shortly after.

11 Q. Okay. But somebody still stepped in some blood.

12 A. I don't know.

13 Q. You don't know. All right.

14 A. There was a lot of blood. I -- I don't think you
15 could avoid stepping in some of the spatter.

16 Q. Couldn't avoid stepping in some of that spatter.
17 Thank you. Okay.

18 You talked about smelling the early stages of
19 decomposition in the air when you walked in there,
20 correct?

21 A. Yes, sir.

22 Q. You don't have any training at all, do you? as
23 far as how long it takes a body to decompose and
24 smell.

25 A. No. No, sir, I don't.

- 1 Q. You also stated that the blood had coagulated.
- 2 A. Yes, sir. That's what I said.
- 3 Q. Okay. You're not a hematologist, are you?
- 4 A. I'm not, no, sir.
- 5 Q. And you're not a biologist?
- 6 A. I'm not.
- 7 Q. You're not a bloodstain or blood spatter expert?
- 8 A. No, sir.
- 9 Q. And you can't say with any degree of certainty
- 10 how long it takes blood to clot outside of the body,
- 11 can you?
- 12 A. I can't.
- 13 Q. You can't tell us the range of time it took blood
- 14 to coagulate outside of the body in any clinical
- 15 trial, can you?
- 16 A. I can't cite a clinical trial, no, sir.
- 17 Q. You can't name any of the factors that go into
- 18 blood coagulation, as far as increasing or decreasing
- 19 the time, can you?
- 20 A. No, sir.
- 21 Q. You don't know what blood types may affect that,
- 22 do you?
- 23 A. No, sir.
- 24 Q. And let's see. You said you had experience maybe
- 25 going to four homicides before this one?

1 A. Yes, sir.

2 Q. And maybe four or five suicides?

3 A. Yes, sir.

4 Q. Not all of those were bloody scenes, were they?

5 A. No, sir. Not this -- to this degree, no, sir.

6 Q. No. Okay. And not all of them occurred inside,
7 did they?

8 A. No, sir.

9 Q. And not all of them occurred during the
10 summertime, did they?

11 A. I -- I can't say.

12 Q. And not all of them had pools of blood next to an
13 air conditioning vent, did they?

14 A. No, sir.

15 Q. And you're aware that there are people that
16 specialize in blood spatter and bloodstain
17 interpretation?

18 A. Yes, sir.

19 Q. SLED has them, don't they?

20 A. I suppose they do. I can't say whether they do
21 or not.

22 Q. Well, you can call SLED, can't you? And they'll
23 come out at no cost --

24 A. You can.

25 Q. -- to come and work a scene for you?

1 A. Correct.

2 Q. And you didn't call SLED?

3 A. No, sir, I didn't.

4 Q. All right. Now, another thing that you learned,
5 I imagine, was that you were supposed to poten -- or
6 interview any potential witnesses at the scene. Is
7 that correct?

8 A. Yes, sir.

9 Q. And you spoke to Richard at the scene.

10 A. I did.

11 Q. And you spoke to his father, too. Is that
12 correct?

13 A. Correct. He had arrived.

14 Q. Don't remember what he said, but you remember you
15 spoke to him?

16 A. I remember he had arrived. Yes, sir, we spoke.

17 Q. All right. And you were told there were eight
18 children living in the house.

19 A. There was a lot of -- lot of kids. I don't --

20 Q. Okay. Which ones did you interview? At the
21 scene.

22 A. At the scene?

23 Q. Yes.

24 A. I interviewed none at the scene.

25 Q. None at the scene? Why not?

1 A. They were asleep.

2 Q. All right. Let's stop right there. They were
3 asleep.

4 A. Yes, sir.

5 Q. How do you know they were asleep?

6 A. They made no noise, and later on in my
7 interviews, they stated that they were.

8 Q. Well, I'm not asking about later on. I'm talking
9 about right there.

10 A. Yeah, I understand.

11 Q. How do you know they were asleep? Did you check
12 on them?

13 A. Yes, sir. The -- the glasses that were retrieved
14 out of the rear bedroom were in the oldest boy's
15 bedroom. He was asleep when -- when that door was
16 accessed to get the glasses.

17 Q. I see. So, you checked on one, or somebody
18 checked on one of those kids, correct?

19 A. Yes.

20 Q. When they were going to get those glasses.

21 A. Yes.

22 Q. All right. And I think at some point you said
23 there were maybe 20 people inside of that -- that
24 house?

25 A. I can't tell you how many people were in that

1 house.

2 Q. Was it more than five?

3 A. I can't tell you that.

4 Q. You don't know if it was more than five people?

5 It was a scene that you had --

6 A. I -- I would -- I would say it's more than five.

7 Q. Okay. All right. And in all that commotion, you
8 don't believe that any of the kids were awake?

9 A. While we were in there, or --

10 Q. Yeah.

11 A. -- are you talking about when the incident
12 occurred?

13 Q. No. While you were in there.

14 A. While we were in there, I have no reason to
15 believe that any of the children were awake.

16 Q. You have no reason to believe that any of the
17 children weren't awake, or were awake?

18 A. Were.

19 Q. Were awake. I see. And you all were trying to
20 be quiet so they wouldn't wake up. Is that right?

21 A. No, sir.

22 Q. Okay. Later on, you interviewed one of the
23 children; did you not?

24 A. Yes.

25 Q. By the name of Angelina?

1 A. I interviewed -- I did, yes, sir.

2 Q. Okay. And she told you that she heard something
3 happen that morning; did she not?

4 SOLICITOR SWANSON: Your Honor, hearsay.

5 THE COURT: Okay. She said -- he can say she
6 heard something; just can't say what she heard.

7 BY MR. GEIER:

8 A. Can you ask the question again, please?

9 Q. Sure.

10 THE COURT: Go ahead.

11 BY MR. GEIER:

12 Q. So, when you interviewed her --

13 A. Yes.

14 Q. -- she indicated that she heard something that
15 night.

16 A. Correct.

17 Q. And you don't believe what she told you, do you?
18 Do you believe what she told you?

19 A. It's -- as -- as for her hearing anything?

20 Q. Right. Do you believe her when you interviewed
21 her?

22 SOLICITOR SWANSON: Your Honor, again, this is
23 pitting the witnesses.

24 MR. GEIER: I'm not pitting witnesses. I'm
25 asking if he believed what she told him.

1 THE COURT: Okay. You can -- if you can answer
2 it.

3 BY MR. GEIER:

4 A. I have no reason to not believe her.

5 Q. So, you have no opinion of whether or not that
6 was true or not? when you talked to her.

7 A. Of -- of what she heard, or she heard something?

8 Q. No. What she heard.

9 A. Of what she stated to me she heard?

10 Q. Um-hmm.

11 A. I -- I -- I -- I don't -- I don't have any reason
12 to not believe her.

13 Q. Okay. While you were at that scene, did you
14 believe this was a murder investigation or a suicide
15 investigation?

16 A. When I initially responded, I believed it was a
17 -- likely a suicide investigation, because that's what
18 Dispatch had dispatched us to.

19 Q. I see. And so, when you left that scene --

20 A. I had my doubts.

21 Q. -- did you believe it was a murder investigation
22 or a suicide investigation?

23 A. At that point, I had decided to conduct an
24 investigation to determine which one it was.

25 Q. I see. So, you had doubts. Is that fair to say?

1 A. I did.

2 Q. That it was a suicide.

3 A. Yes.

4 Q. Okay. And if it wasn't suicide, it was murder.
5 Is that your opinion there?

6 A. Yes.

7 Q. All right. And murder is a serious crime; is it
8 not?

9 A. It is.

10 Q. One of the most serious crimes that can be
11 committed anywhere in this country.

12 A. Yes.

13 Q. And for a crime that serious, you took, what, 20
14 photos?

15 A. I'm not sure how many exactly how photos I took.

16 Q. Well, let's see here. Let's see how many we have
17 in evidence right here. We've got one, two, three.
18 And that was taken somewhere else. Four, five, six,
19 seven. We have seven photos of the scene in evidence.
20 So, you think you took how many? If you were to
21 guess.

22 A. I took well over seven.

23 Q. All right. How many do you think you took?

24 A. Between 15 to 20.

25 Q. Fifteen to twenty. Okay. And you took no GSR

1 from Richard Passio.

2 A. I didn't.

3 Q. And you took no blood sample from that couch.

4 A. I collected a -- a blanket.

5 Q. I'm talking about the couch. Did you take a
6 blood sample from the couch?

7 A. No, sir.

8 Q. Did you take fingerprints from the trigger?

9 A. The trigger itself, no, sir.

10 Q. Okay. So, we don't know if her fingerprints were
11 there or not?

12 A. No, sir.

13 Q. And you didn't call SLED.

14 A. No, sir.

15 Q. And you didn't interview the children.

16 A. I did.

17 Q. At the scene.

18 A. Not at the scene, no, sir.

19 Q. Because they were sleeping.

20 A. Because they -- honestly, they were about to get
21 the news that their mother was dead.

22 Q. Sure.

23 A. So, no, sir, I didn't interview the children at
24 that point.

25 Q. Okay. Even though you suspected at that point it

1 might be murder.

2 A. I had my doubts.

3 Q. Let's talk about some of the witnesses that you
4 interviewed. When you were testifying earlier, it was
5 odd. There was some -- two people that you left out.
6 And it was Devan Porter and Kayla -- let's see, what
7 was her name?

8 A. Gerard.

9 Q. Kayla Gerard. You didn't mention that you had
10 interviewed them, did you?

11 A. I wasn't asked if I had interviewed them.

12 Q. They were at the Passio house that night; were
13 they not?

14 A. To my understanding, yes.

15 Q. And you interviewed -- when you interviewed them,
16 you made an audio recording of that interview; did you
17 not?

18 A. I did.

19 Q. And let's see. You also made an audio recording
20 of Tom and Linda Bennington's interview. Is that
21 correct?

22 A. I believe so.

23 Q. But you didn't audio or video record anybody
24 else's, besides those two sets of couples, right?

25 A. No, sir. I -- I did recordings of -- I believe I

1 did recordings of the children.

2 Q. Okay. Yeah, yeah. What about -- what about your
3 -- the statement you received from Pam Bennington?

4 A. The --

5 Q. Did you audio-record that?

6 A. Was that the phone call? I -- I can't say
7 whether or not that was recorded. I don't recall.

8 Q. How about Shelby Simmons?

9 A. Did you record that?

10 A. I don't recall.

11 Q. Carla Ashcraft?

12 A. I don't recall.

13 Q. Brandon Ashcraft?

14 A. I don't -- I don't recall.

15 Q. Or Angel Rose?

16 A. Don't recall.

17 Q. Marian Mims?

18 A. I don't recall. No, sir.

19 Q. Ivy Bryan?

20 A. I wouldn't have -- Marian Mims was when I went to
21 collect the video. No, sir, I -- I didn't record
22 that.

23 Q. Ivy Bryan?

24 A. I don't recall.

25 Q. Otto Helbig?

1 A. I -- that may have been a phone call. I don't
2 recall.

3 Q. Jordan Moser?

4 A. That was a phone call. I -- I don't recall.

5 Q. Hmm. Do you typically record interviews that you
6 make with various witnesses?

7 A. When witnesses don't ask me not to, I -- I do
8 like to record, yes, sir.

9 Q. And as you're sitting there --

10 A. I prefer it.

11 Q. Go ahead.

12 A. Go ahead.

13 Q. As we're sitting here right now, you don't recall
14 if you interviewed or recorded anybody else, other
15 than the people we've already mentioned?

16 A. I -- I don't recall, sir. There was -- there was
17 a lot of interviews.

18 Q. Okay. As you were getting ready for this trial,
19 did you review your police report and all the evidence
20 in the case?

21 A. Yes, sir.

22 Q. Did you find any audio recordings or video
23 recordings of any of the people we just mentioned?

24 A. Yes, sir. There were audio and video recordings.

25 Q. Of the people that you don't recall?

1 A. Of not those exact people. They were audio/video
2 recordings of -- of -- of the Benningtons. I know
3 Linda and Tom Bennington. The Ash -- and -- excuse me
4 -- Devan and Kayla. There was recordings of -- I
5 believe there's a recording of Jordan Moser. There
6 was a recording of Ms. Juanita Patrum. And like I
7 said, the children.

8 Q. Um-hmm. Okay. But none of these other people,
9 as far as you know, there are no audio or video
10 recordings of them?

11 A. Not as far as I know, no, sir.

12 Q. All right. The reason I ask about that is -- and
13 I've read your report, and I watched those videos, and
14 in some cases, there are some things in there that
15 didn't make into your report.

16 A. Okay.

17 Q. I mean, you understand that, when you make this
18 police report, that you're supposed to put all
19 relevant information in there.

20 A. Yes, sir.

21 Q. Are you not?

22 A. Yes, sir.

23 Q. All right. Do you believe that the time Devan
24 and Kayla claimed to have left the Passio household is
25 relevant to this investigation?

1 A. Yes, sir.

2 Q. But you didn't include the time that they gave
3 you in your police report.

4 A. The --

5 Q. It's right in front of you. Take a look real
6 quick of your summary of their statement.

7 A. The Devan and Kayla interview?

8 Q. Yes.

9 SOLICITOR SWANSON: This is hearsay.

10 MR. GEIER: Your Honor, I'm not using it to prove
11 the truth of the matter asserted. I'm just trying to
12 point out that there are inconsistencies in his
13 report, as opposed to what was actually produced.

14 THE COURT: Okay. You can ask that.

15 BY MR. GEIER:

16 A. Okay. No, sir, I don't have the time that they
17 left. No, sir. Or that they reportedly left the
18 Passio house.

19 Q. But in that case, they told you when they left;
20 did they not?

21 A. I believe they did.

22 Q. All right. And you didn't think that was
23 important?

24 A. I -- I can't tell you why I didn't type it in
25 there.

1 Q. I see.

2 A. Other than a typo of sorts.

3 Q. A typo?

4 A. I've actually got one sentence in there that I
5 saw the other day that just kind of stops and goes
6 into another sentence. It was a typo.

7 Q. So, is it your testimony, on the stand, that
8 leaving the time that they claim they left the Passio
9 household out of that report was a typo?

10 A. It was a mistake.

11 Q. A mistake?

12 A. Yes, sir.

13 Q. Well, that mistake didn't jibe with your theory
14 of the case, did it?

15 A. I'm sorry?

16 Q. You didn't believe them at all, did you?

17 A. I -- I had no reason to doubt Devan and Kayla. I
18 interviewed them, and --

19 Q. But what they told you did not match with what
20 you wanted in your report.

21 A. I didn't matter what I wanted in my report.

22 Q. Really?

23 A. Really.

24 Q. I see. And you were -- withdrawn.

25 Another thing you didn't put in your report was

1 anything about their assessment of Michelle's
2 intoxication level.

3 A. The -- Devan and Kayla?

4 Q. Yeah, Devan and Kayla; you don't have anything in
5 there about Michelle's intoxication level.

6 A. No, sir.

7 Q. No. And they told you that she was definitely
8 drunk that night; did they not?

9 A. Yes, sir.

10 Q. And you didn't think that was important to
11 include in the report?

12 A. I -- I can't tell you why I left it out. I -- I
13 don't believe that was important, no, sir.

14 Q. You don't believe that was important at all?

15 A. I didn't say that. I said I didn't believe that
16 was -- intoxicated or sober.

17 Q. Um-hmm. But you've seen the autopsy report; have
18 you not?

19 A. I have.

20 Q. And you saw her BAC level; did you not?

21 A. Yes.

22 Q. And you used to do road work; did you not?

23 A. I did.

24 Q. And so, you've done DUIs before.

25 A. I've done a couple.

1 Q. A couple. Are you -- are you being bashful
2 there, or have you done a whole lot?

3 A. No, sir, I'm -- I'm being bashful.

4 Q. Okay. So, you've done a lot of DUIs?

5 A. No.

6 Q. Okay. So, you haven't done very many.

7 A. No.

8 Q. I see. Were you ever trained on field sobriety
9 tests?

10 A. Years and years and years ago, yes, sir.

11 Q. Okay. All right. All right. So, you talked
12 earlier about some of the people that you interviewed.
13 I asked you about two of them, and you said you
14 weren't asked about it. So, let's go through here.
15 As far as fact witnesses, or lay witnesses, as they're
16 sometimes called, you interviewed Pam Bennington.

17 A. Yes.

18 Q. And that was Michelle's mother.

19 A. Yes.

20 Q. And you interviewed Shelby Simmons.

21 A. Yes.

22 Q. And Brandon Ashcraft.

23 Q. Yes.

24 Q. And Carla Ashcraft.

25 A. Yes.

- 1 Q. And Angel Rose.
- 2 A. Yes.
- 3 Q. And Ivy Bryan.
- 4 A. Yes.
- 5 Q. And Otto Helbig.
- 6 A. Yes.
- 7 Q. And Marian Mims.
- 8 A. Yes.
- 9 Q. And Jordan Moser.
- 10 A. Yes.
- 11 Q. And Cecilia Angelina Giovanni and Kayla Passio.
- 12 A. The young girl? Yes.
- 13 Q. And Ronald Hampton, eventually.
- 14 A. I don't recall Ronald Hampton.
- 15 Q. All right. And we already talked about Devan and
- 16 Kayla. You interviewed them as well, right?
- 17 A. Yes.
- 18 Q. Yeah. Let's see. You didn't interview Aaron and
- 19 Latisha Horry, lived across the street?
- 20 A. No, sir.
- 21 Q. All right.
- 22 A. No.
- 23 Q. What about Eshia Jenkins?
- 24 A. I don't recall.
- 25 Q. Worked at Jasper's Porch.

1 A. I don't recall that name.

2 Q. How about Aisi Wilson? Worked at the Porch.

3 A. I don't recall that name.

4 Q. When you were at the scene, do you recall two
5 females coming that weren't part of this family at
6 all?

7 A. Coming to the scene?

8 Q. Coming to the scene and in the house?

9 A. I don't recall.

10 Q. You don't recall?

11 A. No, sir.

12 Q. If you had two people, civilians, not family
13 members, walking around your scene, you wouldn't
14 recall that?

15 A. If they stayed out in the hall -- I don't recall
16 two girls that I didn't know.

17 Q. Okay. Were you -- did you know anything about
18 Aisi Wilson?

19 A. I -- I don't recall that name.

20 Q. You don't recall that name? Well, I'd tell you
21 to look in your police report, but. Devan and Kayla
22 told you about Aisi Wilson; did they not? You're not
23 going to find it in your police report.

24 A. Okay. Then, I don't recall whether they did or
25 not.

1 Q. Okay. How about Debbie Sargent, who worked at
2 the Porch?

3 A. No, sir.

4 Q. How about Casey Lattin, who also worked at the
5 Porch?

6 A. No, sir.

7 Q. How about Lisa Helbig, Otto's wife?

8 A. No, sir.

9 Q. Okay. Aren't you going to want to interview
10 anybody that may have relevant information when you're
11 investigating something like murder?

12 A. If I can locate them.

13 Q. If you can locate them. All right. So, is it
14 your testimony that you couldn't inter -- or locate
15 the people that lived across the street?

16 A. In every investigation, you're going to come
17 across people you can't locate, people who don't want
18 to talk to you.

19 Q. Did you go across the street, knock on the door,
20 and say did you hear anything?

21 A. I didn't go across the street, no, sir.

22 Q. Did you go and talk to Richard Passio, Sr., who
23 owned Jasper's Porch, and say, I want to talk to
24 everybody who works here about Michelle and Richard
25 Passio?

1 A. No, sir, I didn't approach them.

2 Q. I see. Did you take any field notes during any
3 of these interviews?

4 A. Just scribbling down notes on a -- on a pad?
5 Yes, sir.

6 A. All right. Well, generally speaking, aren't you
7 trained, when you're generating a police report, that
8 you're supposed to take field notes at the scene, or
9 wherever it is that you're making that interview?

10 A. Yes, sir.

11 Q. Did you take notes?

12 A. Yes, sir.

13 Q. Did you produce those notes to the Solicitor's
14 Office when this case went up to them?

15 A. No, sir.

16 Q. Did you keep those notes?

17 A. No, sir.

18 Q. So, you destroyed those notes?

19 A. I -- yes, sir.

20 Q. Isn't it fair to say there might be something in
21 those notes that didn't make it into your report?

22 A. No, sir.

23 Q. It's not?

24 A. No, sir.

25 Q. Okay. Wait a minute. Haven't we already talked

1 about how there were things in those video interviews
2 that didn't make it into your report?

3 A. You're -- you're not talking about the video
4 interviews; you're talking about notes.

5 Q. Right. No, I'm talking about the notes. So, I'm
6 saying if there were things that were in those
7 recorded video interviews that didn't make it into
8 your report, is it your testimony that there was
9 nothing in those notes that didn't make it into your
10 police report?

11 A. Correct.

12 Q. You're certain of that?

13 A. Yes, sir.

14 Q. I see. Do you think your notes contained the
15 time when Devan and Kayla said they left the Passio
16 household?

17 A. I -- I don't know. I don't have those notes in
18 front of me.

19 Q. Well, wait a minute. You can't have it both
20 ways. You said that there was no way that there was
21 nothing -- that there was anything in those notes that
22 didn't make it in my police report.

23 A. I -- I don't know if I wrote that down into my
24 notes.

25 Q. Because you don't have them any longer.

1 A. Correct.

2 Q. So, you can't say for certain, can you?

3 A. Whether or not that was in there?

4 Q. Right.

5 A. No, sir, I can't.

6 Q. So, is it fair to say that there may be important
7 information that you were told by Carla Ashcraft or
8 Brandon Ashcraft or Angel Rose or Mariam Mims or Ivy
9 Bryan or Otto Helbig or Jordan Moser that didn't make
10 it into your report?

11 A. Is it safe to say -- repeat the beginning of the
12 question.

13 Q. All right.

14 A. I'm sorry, with all the names.

15 Q. Here's the thing. You interviewed Devan and
16 Kayla, and you recorded it. And ultimately, some of
17 the things that were in that audio recording didn't
18 make it into your report.

19 A. Yes.

20 Q. Now, we haven't talked about the Benningtons yet,
21 but I'll give you a sneak preview. There's stuff that
22 wasn't included in that, either.

23 A. Okay.

24 Q. So, how can you say for certain that there wasn't
25 something important that Carla Ashcraft told you that

1 didn't make it into your report?

2 A. I can't say.

3 Q. You can't say about any of those folks, can you?

4 A. No, sir. Short of the video recordings. If I'm
5 audioing and videoing some -- someone, I may not put
6 it in there, because I've got the video. Just -- I --
7 I can't tell you why I wouldn't have put it in there,
8 other than it -- I know it's recorded.

9 Q. So, the reason why you wouldn't put it in your
10 video is because it was recorded?

11 A. I -- that may be a reasoning for me not putting
12 it in there.

13 Q. Well, okay. I mean, again, you realize that, I
14 mean, those reports are important because --

15 A. Yes, sir.

16 Q. -- you give that report to the Solicitor, don't
17 you?

18 A. Yes, sir.

19 Q. The Solicitor, yeah, they've got all these
20 videos, but that takes a long time to watch all those;
21 does it not?

22 A. Yes, sir.

23 Q. And so, they might be relying on your report when
24 they are preparing and getting ready to go forward
25 with the case.

1 A. Yes, sir.

2 Q. All right. Let's talk about your interview with
3 Tom and Linda Bennington real quick.

4 A. Yes, sir.

5 Q. You got that in your report?

6 A. I do.

7 Q. I want you to take a look at that real quick.

8 A. Okay.

9 Q. Okay. Take a second and read through it.

10 A. Yes, sir. Yes, sir.

11 Q. All right. You indicate that they're the
12 grandparents of Kaleb, who is the oldest Passio child.

13 A. Yes.

14 Q. And actually, he wasn't. They tell you that he
15 wasn't really a Passio -- or Mr. Passio's child; he
16 was from another relationship of Michelle's?

17 A. Yes, sir.

18 Q. Okay. And that their son was Kaleb's father?

19 A. Yes, sir.

20 Q. Now, in that video, they tell you that they are
21 actually Michelle's grandparents; do they not? Do you
22 recall that?

23 A. I don't recall.

24 Q. Or I'm sorry. Michelle's grandparents-in-laws.

25 A. I don't recall.

1 Q. Okay. They also told you in that interview that,
2 in their opinion, Pam Bennington is a pathological
3 liar; did they not?

4 A. I believe they did, yes.

5 Q. And that didn't make it in your report.

6 A. No, sir.

7 SOLICITOR SWANSON: That is hearsay.

8 MR. GEIER: Again, I'm not using it to prove the
9 truth of the matter asserted, your Honor. I'm just
10 saying that they told him that, and he didn't put it
11 in the report.

12 THE COURT: Okay. It's allowed.

13 BY MR. GEIER:

14 A. No, sir. I didn't put their opinion of Ms.
15 Bennington.

16 Q. They told you that Pam was probably going to
17 blame Richard for this; did they not?

18 A. I believe they did.

19 Q. And you didn't put that in the report?

20 A. No, sir.

21 Q. Let me ask you a question about the Passio house.

22 A. Yes.

23 Q. You've seen the map, right?

24 A. Yes, sir.

25 Q. From up above?

1 A. Yes, sir.

2 Q. As you're on the street looking at the Passio
3 house, the living room where Michelle passed away is
4 on the right-hand side of that house.

5 A. Of the front door, yes, sir.

6 Q. Right. Okay. And around the corner from the
7 front door is an air conditioning unit; is there not?

8 A. I can't -- I can't say.

9 Q. You never went and took pictures of around the
10 house?

11 A. Around the outside of the house?

12 Q. Yeah.

13 A. Other than the photo of the broken window, no,
14 sir.

15 Q. Okay. So, do you have any recollection at all?

16 A. I don't have any recollection of a window-unit
17 air conditioner, no, sir.

18 Q. All right. Now --

19 COURT REPORTER: I'm sorry. You do or you don't
20 have a recollection?

21 A. I don't have a recollection on it.

22 Q. Okay. Now, one of the people you interviewed was
23 Juanita Patrum?

24 A. Yes.

25 Q. And I don't know if I'm saying that right or not,

1 and if she's here, I apologize.

2 Q. She resided in the house that, as you're looking
3 at the Passio house, is on the left side, and kind of
4 towards the back. Is that fair to say?

5 A. Correct.

6 Q. Okay. And it's a small, little house?

7 A. Yes, sir.

8 Q. Did you ever go to that house at all?

9 A. Yes, sir.

10 Q. You went to that house. What did you do at that
11 house?

12 A. I attempted to contact her. I ended up leaving a
13 card.

14 Q. All right.

15 A. A business card.

16 Q. You went up, knocked on the door?

17 A. Yes.

18 Q. All right. I want to talk to you about another
19 interview that you recorded that was with Cecilia
20 Passio.

21 A. Is that one of the children?

22 Q. I'm sorry?

23 A. Is that one of the children?

24 Q. Yes.

25 A. Okay. Yes, sir.

1 Q. You have that in your notes?

2 A. I do.

3 Q. And again, those notes are in your police report?

4 A. Yes.

5 Q. And that police report is what you submitted to
6 the Solicitor's Office --

7 A. Yes.

8 Q. -- when this case went up to them? In your
9 report you state, she woke up in the middle of the
10 night when she heard her mom yelling and her dad
11 crying. Do you see that?

12 A. Yes.

13 Q. In the interview, didn't Cecilia actually say, I
14 woke up in the middle of the night; it was almost day;
15 and I heard yelling and stuff?

16 A. I -- I -- she -- I can't say whether or not she
17 said that exactly.

18 Q. Okay. But if it's on there, you don't have a
19 problem with --

20 A. Then, that's what she said.

21 Q. Yeah. I mean, again, that was a -- that's a big
22 fact for you; is it not?

23 NO RESPONSE FROM WITNESS.

24 Q. So, you don't think this happened --

25 A. The -- the fact that --

1 Q. -- when she says that it happened?

2 A. No, sir.

3 Q. And so, you left out the *it was almost day* in
4 your police report.

5 A. It -- it's not in there, no, sir. It's just, she
6 woke up in the middle of the night, fell back to sleep
7 for an hour or so, and then woke up in the morning.

8 Q. All right. As you were continuing on in your
9 investigation in this case, you received a fax that
10 was sent to you by the Coroner's Office, from Coastal
11 Empire Mental Health; did you not?

12 A. Yes.

13 Q. I think it's referenced in your police report.

14 A. Yes.

15 Q. And that was about ten pages?

16 A. I -- I -- I suppose. I don't have it here in
17 front of me. I mean, I don't have that fax.

18 Q. Did you review those documents at all?

19 A. Yes.

20 Q. Now, earlier this month, we got another set of
21 records from Coastal Empire Mental Health. You aware
22 of that?

23 A. No, sir.

24 Q. Have you seen those new records?

25 A. No, sir.

1 Q. You haven't seen them at all?

2 A. No, sir.

3 Q. You have no idea what's contained in them?

4 A. No, sir.

5 Q. All right.

6 MR. GEIER: One minute, your Honor.

7 BY MR. GEIER:

8 Q. Let me ask you this.

9 A. Yes, sir.

10 Q. Did you testify earlier that there was no
11 evidence of any injury to Richard Passio, other than
12 the hand gash?

13 A. I -- I saw no cuts, scrapes, or bruises.

14 Q. All right. But you sent off fingernail
15 scrapings?

16 A. Yes.

17 Q. Okay.

18 MR. GEIER: And just one second, your Honor.

19 Nothing further, your Honor. Thank you.

20 THE COURT: Okay. Anything further?

21 SOLICITOR SWANSON: Yes, just briefly.

22 CORPORAL CHRIS MCINTOSH, RE-DIRECT

23 EXAMINATION BY SOLICITOR SWANSON:

24 Q. All right. Mr. Geier questioned you quite a bit
25 about whether or not you doubted that it was a suicide

1 at first, correct?

2 A. Yes, ma'am.

3 Q. Okay. And when you began those doubts, did you
4 begin a homicide investigation?

5 A. Yes, ma'am.

6 Q. Which included interviewing a number of people,
7 right?

8 A. Yes, ma'am.

9 Q. Okay. Those interviews of people, when you note
10 them in your report, are they summaries or are they
11 transcriptions?

12 A. They're summaries. I didn't do transcriptions.

13 Q. Devan Porter and Kayla Gerard, do you know where
14 they are now?

15 A. Yes, ma'am.

16 Q. Where are they?

17 A. They're in prison.

18 Q. In prison in-state or out-of-state?

19 A. Out-of-state.

20 Q. Do you know what they're in prison for?

21 A. Yes, ma'am.

22 Q. What is that?

23 A. I believe they're in prison for killing their
24 child, or attempted.

25 Q. Okay. So, some sort of child abuse, and they're

1 doing time out-of-state?

2 A. Yes, ma'am.

3 Q. Okay. You testified that you've been to suicide
4 scenes before?

5 A. Yes, ma'am.

6 Q. Did you ever go to any suicides where there were
7 multiple gunshots?

8 A. No, ma'am.

9 Q. Okay. So, the suicides that you went to that
10 involved firearms, there was only one gunshot?

11 A. Yes, ma'am.

12 Q. All right. Those people didn't miss their head?

13 A. No, ma'am.

14 Q. Okay. The suicides that you attended that
15 involved firearms, were those people male or female?

16 A. Male. I've never gone to a female suicide,
17 ma'am.

18 Q. With a firearm?

19 A. Never.

20 Q. Never gone to a female suicide with a firearm?

21 A. No, ma'am.

22 Q. Okay. Mr. Geier asked you about the photos, how
23 many you took. Now, I've entered seven into evidence.
24 Is that -- is that the total amount of photos?

25 A. No, ma'am.

1 Q. Okay. I didn't enter every single one of the
2 bloody photos.

3 A. Correct.

4 Q. Okay. Now, the bulk of what Mr. Geier asked you
5 about, what you had in your report about Linda and
6 Tom.

7 A. Yes, ma'am.

8 Q. And you know, what they told you on the
9 recording. The bulk of what they told you was
10 thirdhand, right?

11 A. Yes, ma'am.

12 Q. It was information from the children that they
13 had gotten from their father, Richard Passio.

14 A. Correct.

15 Q. And he wanted to talk about the fact that you
16 left out certain details in your report that would've
17 meshed with your theory of the case. Did you put in
18 your report that they told you that Richard Passio was
19 controlling to the point that he wouldn't let Michelle
20 wear nail polish?

21 A. You're talking about Devan and Kayla?

22 Q. No, I'm talking about --

23 A. Are you talking about the Benningtons?

24 Q. -- Linda and Tom Bennington.

25 A. I don't -- I don't believe that's in the report,

1 no, ma'am.

2 SOLICITOR SWANSON: Right. Okay. Thank you.

3 BY THE COURT:

4 THE COURT: Mr. Geier?

5 MR. GEIER: Nothing, your Honor.

6 THE COURT: You may step down. Ms. Swanson, you
7 come see me for a minute, please.

8 MR. GEIER: Sure.

9 OFF THE RECORD BENCH CONFERENCE,
10 OUT OF HEARING OF JURORS. PRESENT:
11 THE COURT, SOLICITOR SWANSON, MR.
12 GEIER.

13 END BENCH CONFERENCE.

14 THE COURT: All right. Ladies and gentlemen, I
15 was just talking to the lawyers about scheduling. My
16 understanding from the State is they have two quick
17 witnesses right now, with not a lot of cross, if any.
18 And then, we're going to try to get them up before
19 lunch. And then, we're going to break for lunch.
20 Okay? You all okay? Okay. Perfect.

21 Call your next witness, please.

22 SOLICITOR SWANSON: Thank you. The State calls
23 Ryan Altman.

24 THE COURT: Come on.

25 DEPUTY SHERIFF: Raise your right. Do you swear

1 or affirm to tell the truth, the whole truth, and
2 nothing but the truth, so help you God?

3 RYAN ALTMAN: Yes, sir.

4 THE COURT: Come on around, sir.

5 RYAN ALTMAN, DIRECT

6 EXAMINATION BY SOLICITOR SWANSON:

7 Q. Good afternoon.

8 A. Afternoon.

9 Q. What do you do for a living and how long have you
10 done it?

11 A. I am a firefighter/EMT. I've been doing it for
12 about ten years now, total.

13 Q. Okay. And about how many -- well, no, let me ask
14 you this. Were you on duty the morning of June 3,
15 2016?

16 A. I was.

17 Q. Okay. And can you tell us about a call that you
18 responded to that morning.

19 A. I responded from the information given to us by
20 the dispatcher. We were responding to --

21 THE COURT: Sir, hold the microphone a little bit
22 closer to you.

23 RYAN ALTMAN: Oh.

24 THE COURT: I'm having a hard time hearing you,
25 and I know the jury will, too. Thank you.

1 BY SOLICITOR SWANSON:

2 A. From the information given to us by the Jasper
3 County Dispatch, it was a to a possible suicide.

4 Q. Okay. And was that at a private residence?

5 A. Yes, ma'am, it was.

6 Q. All right. And so, what did you note or observe
7 when you arrived to that scene?

8 A. I arrived along with a medic unit. I was on a
9 rescue truck that was from the Ridgeland Fire
10 Department, and we usually go in and aid the medic
11 unit with anything that they need. Arrived on-scene,
12 and we -- me and Paramedic Singleton walked in to, you
13 know, check possible, I guess, viability of life.
14 Check, you know, vital anything. Heart, anything like
15 that to see if they were still alive. And when we
16 were there, they were not. They were deceased.

17 Q. Okay. Did you check the deceased's temperature?

18 A. I did, with the, like, back of my hand.

19 Q. Um-hmm.

20 A. Just to check, like, her arm area, just to see,
21 and her arm was very cold.

22 Q. Okay. And did you notice anything about the
23 blood that you noted or relayed to law enforcement
24 that was on the scene?

25 A. I did. I noticed that the blood that was --

1 there was blood on her and on the floor that was very
2 thick and very pliable. It wasn't liquid-like, it was
3 more Jello.

4 Q. Did you treat -- actually, I'm sorry. Let me --
5 did you treat a wound to -- on Richard Passio's hand?

6 A. I do remember a cut on his hand that was. It was
7 -- I guess it was crusty, and I handed him a bandage.
8 And I don't remember if there was -- we usually carry,
9 like, saline water to wash it off and things like
10 that, to clean the wound.

11 Q. All right. Did you rinse that hand with sterlie
12 water?

13 A. I didn't. I didn't do it personally. I handed
14 it to -- I think I handed him the bandage to put on it
15 himself.

16 Q. Okay. Did you make any observations about that
17 wound?

18 A. Yeah. I noticed that the area around it, it was
19 not profusely bleeding at all. It was -- it was very
20 crusty around it, as it was dry.

21 Q. Okay. And did you relay any information about
22 that wound to Investigator McIntosh on the scene?

23 A. I may have mentioned the hand. I had more
24 mentioned, I think, the fact that she was still -- she
25 was very cold, and the blood was, like I said, in a

1 gelatinous state after --

2 Q. Okay.

3 A. -- responding.

4 Q. All right.

5 SOLICITOR SWANSON: I don't have anything further
6 for this witness at this time.

7 THE COURT: Mr. Geier?

8 RYAN ALTMAN, CROSS-

9 EXAMINATION BY MR. GEIER:

10 Q. Afternoon.

11 A. Afternoon.

12 Q. What did you do to prepare for this hearing
13 today?

14 A. I -- I was -- I've talked to them before. That's
15 it.

16 Q. Did you review your report?

17 A. I did look over my report from the town of
18 Ridgeland Fire Department.

19 Q. I see. Did you actually generate that report?

20 A. Yes, sir, I believe I did. I don't really
21 recall. I know that I explained to them that my
22 report from them is very vague. It's -- usually,
23 whenever we go to aid them, we just put in the report
24 that we went there, assisted with any kind of medical
25 that they needed, and that we cleared the scene.

1 Q. Okay. So, are you telling us that there are some
2 things that you just told us that weren't included in
3 your report, because it was vague before? You were
4 very specific just a minute ago about some things that
5 happened.

6 A. Correct.

7 Q. I read your report.

8 A. Right.

9 Q. And I agree, it was kind of vague.

10 A. Yes.

11 Q. So, is it -- are you able to independently recall
12 what you did as we're sitting here right now?

13 A. For the most part, yes, sir.

14 Q. Okay. More than what was actually noted in that
15 report?

16 A. Correct.

17 Q. I see. Okay. This was two years ago?

18 A. Yes, sir.

19 Q. Okay. When you got to the scene, it was about
20 6:02, I believe it said in your report?

21 A. Yes, sir.

22 Q. Okay. And when you first walked in the scene,
23 was the gun still sitting on the ground?

24 A. I do not recall that, sir.

25 Q. You don't recall if it was or not?

1 A. I do not recall seeing the gun.

2 Q. Okay. So, you don't recall if there was a gun
3 there or not, or there wasn't a gun? I'm kind of
4 confused by what your answer was.

5 A. I'm saying I do not recall seeing a gun.

6 Q. Okay. So, when you came to the scene, you put
7 some, like, probes and stuff like that on Michelle;
8 did you not?

9 A. I did not.

10 Q. You did not?

11 A. No.

12 Q. Okay. Were you there --

13 A. Paramedic Singleton --

14 Q. -- when that was happening?

15 A. I was.

16 Q. Okay.

17 A. Paramedic Singleton did.

18 Q. I see. And you don't recall if there was a gun
19 that people were stepping over when they were putting
20 those things on?

21 A. No, sir.

22 Q. All right. And again, you were talking about,
23 gelatinous blood and things like that, you're not a
24 hematologist, are you?

25 A. No, sir.

1 Q. Or a biologist?

2 A. Absolutely not.

3 Q. Or a bloodstain expert?

4 A. No, sir.

5 Q. And you can't say with any degree of certainty
6 how long it takes the average person's blood to clot
7 outside of the body, can you?

8 A. It's all different.

9 Q. And most of the time, when you -- how long did
10 you say you had been a EMS?

11 A. I've been doing it since I was 18 years old.

12 Q. Eighteen years? Okay.

13 A. Ten years. Ten years ago.

14 Q. So, how long is it, then, when you joined this?

15 A. Eight years.

16 Q. Eight years? All right. And most of the time
17 when you've gotten there, and there is some sort of
18 blood or injury, you're usually told by somebody, as
19 far as when this happened. Is that correct?

20 A. For the most part, yes, sir. A time line and --

21 Q. Right. So, it's not part of your job to say,
22 huh, I see there's blood here, and I can tell, based
23 on my training and experience, that it's been there
24 this amount of time.

25 A. Correct.

1 Q. All right. And again, when you showed up, there
2 was no bandage on that hand?

3 A. No, sir.

4 Q. Okay. All right.

5 MR. GEIER: Nothing further, your Honor. Thank
6 you.

7 SOLICITOR SWANSON: Just briefly.

8 RYAN ALTMAN, RE-DIRECT

9 EXAMINATION BY SOLICITOR SWANSON:

10 Q. Fire and EMS is not allowed on a scene before law
11 enforcement secures it, right?

12 A. Correct.

13 Q. And would part of securing a scene include
14 securing loaded firearms?

15 A. Yes, ma'am.

16 SOLICITOR SWANSON: Okay. Thank you.

17 THE COURT: Anything further from Mr. Geier?

18 MR. GEIER: No, your Honor.

19 THE COURT: All right. You may step down. You
20 are excused, sir. Thank you.

21 SOLICITOR SWANSON: Thank you. The State calls
22 Michael Singleton.

23 THE COURT: Come on forward, Mr. Singleton.

24 DEPUTY SHERIFF: Raise your right hand. Do you
25 swear or affirm to tell the truth, the whole truth,

1 and nothing but the truth, so help you God?

2 MICHAEL SINGLETON: Yes, sir.

3 MICHAEL SINGLETON, DIRECT

4 EXAMINATION BY SOLICITOR SWANSON:

5 Q. Good afternoon.

6 A. Hi.

7 Q. Tell us what you do, Michael.

8 A. I'm a paramedic and a firefighter for Jasper
9 County Fire and Rescue. I'm also a paramedic in
10 Savannah, and a paramedic in Effingham County.

11 Q. Okay. And what is a paramedic allow you to do?

12 A. I facilitate emergency scenes and intervene for
13 patients during medical emergencies, life threats; and
14 then, things that aren't life threats, but still need
15 help and assistance until they can be appropriately
16 transported to a hospital, if it's so warranted by
17 their -- their injuries or medical concerns.

18 Q. Okay. So, you can perform lifesaving measures on
19 a patient?

20 A. Yes, ma'am.

21 Q. All right. And how long have you been a
22 paramedic?

23 A. I've been -- I've been a paramedic for six years.
24 I've been an EMS overall for ten years. And before
25 that, I was Search and Rescue with Wilderness First

1 Aid.

2 Q. All right. Do you have a copy of your report in
3 front of you?

4 A. No, ma'am.

5 Q. Okay.

6 SOLICITOR SWANSON: May I approach and provide
7 one?

8 THE COURT: You may.

9 SOLICITOR SWANSON: Okay.

10 BY SOLICITOR SWANSON:

11 Q. Just in case you need to refer to it.

12 A. Yes, ma'am.

13 Q. Where did you spend the majority of your time as
14 a paramedic?

15 A. The majority of my time has been in Savannah.

16 Q. Did you ever work in Atlanta?

17 A. Yes, ma'am.

18 Q. All right. Have you responded to shootings?

19 A. Yes, ma'am.

20 Q. A lot of shootings?

21 A. Unfortunately.

22 Q. Ones that were fatal?

23 A. Yes, ma'am.

24 Q. Have you responded to suicides?

25 A. Yes, ma'am.

1 Q. A lot of suicides?

2 A. Yes, ma'am.

3 Q. Let me ask you this about suicides. In your
4 responding to suicides, did you ever encounter scenes
5 where there were multiple gunshots?

6 A. No, ma'am.

7 Q. Suicides that involved a firearm, were they men
8 or women or a mixture?

9 A. I've had one female suicide attempt with a gun,
10 and I've probably dealt with about 300 suicide
11 attempts with a firearm over the course of my career
12 to this point.

13 Q. With men?

14 A. Yes, ma'am.

15 Q. Okay. So, one out of the approximate 300 --

16 A. Yes, ma'am.

17 Q. -- was a female suicide with a gun. All right.
18 Were you on duty the morning of June 3, 2016?

19 A. Yes, ma'am.

20 Q. What time did that call come out that you
21 responded to?

22 A. One second, please. We were dispatched at 5:53
23 in the morning.

24 Q. All right. And what time did you get on the
25 scene?

1 A. At 6:00 o'clock.

2 Q. So, seven minutes later?

3 A. Yes, ma'am.

4 Q. Do you know when 911 got the call?

5 A. It says here the call was received at 5:52.

6 Q. Okay. So, eight minutes after the 911 call,
7 after 911 got the call, you were on the scene?

8 A. Yes, ma'am.

9 Q. All right. And what observations did you note in
10 your report when you came into contact with Michelle
11 Passio?

12 A. Once the scene was cleared and we entered, we
13 entered to find -- I'm just -- it's easier for me to
14 read it.

15 COURT REPORTER: Speak up, please.

16 A. Yes, ma'am. Sorry. We entered the scene to find
17 the patient lying on the sofa, with her head back,
18 with obvious bullet hole to the bottom of her chin.
19 There was a pool of blood on the chest that had
20 already started to coagulate. Patient had blood
21 coming from their nose and mouth. Her skin was
22 already cyanotic and ashen. And based off that, just
23 the rest of my treatments. But her presentation was
24 blood coagulation on her chest; blood coming from the
25 nose and ears; and then, she was already cool and

1 ashen when I got to her.

2 Q. Her skin was ashen?

3 A. Yes, ma'am

4 Q. Okay. I'm going to show you what's been marked
5 as State's 24, and ask what this is a picture of.

6 A. That is a picture of my patient and the position
7 on the sofa, with the coagulation of blood on her
8 chest and coming from her right ear.

9 Q. Okay. And is that how it appeared when you were
10 on the scene at 6:00 a.m.?

11 A. Yes, ma'am.

12 Q. All right.

13 SOLICITOR SWANSON: State moves 24 into evidence
14 at this time.

15 THE COURT: Any objection?

16 MR. GEIER: No objection.

17 THE COURT: Without objection, it's in evidence.

18 SOLICITOR SWANSON: Move to publish.

19 THE COURT: You may.

20 ITEM IDENTIFIED AS PHOTOGRAPH

21 MARKED STATE'S EXHIBIT NUMBER 24

22 ADMITTED AS EVIDENCE.

23 BY SOLICITOR SWANSON:

24 Q. And you felt that significant enough to note that
25 in your report, right?

1 A. Yes, ma'am.

2 Q. Did you note any dripping blood?

3 A. No, ma'am.

4 Q. Is dripping blood something that you've seen at
5 other shootings and fatalities that you've responded
6 to?

7 A. Yes, ma'am.

8 Q. Were you able to confirm whether or not there
9 were any signs of life to Michelle Passio when you
10 arrived?

11 A. Yes, ma'am. We attached a cardiac monitor to the
12 patient. All I did was the four limb leads. I didn't
13 do it in a complete twelve-lead, because it still
14 shows me the electrical activity of the heart. So, I
15 had to move some of the clothing around so I could
16 gain access to the patient's limbs, but it's just a
17 four-sticker process. Each shoulder, and then under
18 the abdomen or the ankle, and there was no electrical
19 activity. When we turned the cardiac monitor she
20 showed asystole, which is a -- a workable cardiac
21 rhythm, but with the injuries to her head, she had
22 brain matter and blood in her hair, which, in the
23 opinion of EMS, is something considered inconsistent
24 with life. We do not attempt to revive those
25 patients.

1 Q. Right. And so, she was dead, for all intents and
2 purposes?

3 A. Yes, ma'am.

4 Q. Okay. Thank you.

5 SOLICITOR SWANSON: Nothing further from this
6 witness.

7 MICHAEL SINGLETON, CROSS-

8 EXAMINATION BY MR. GEIER:

9 Q. Afternoon.

10 A. How are you doing?

11 Q. Your report didn't note -- you testified just a
12 minute ago that you didn't note any dripping blood.

13 Is that correct?

14 A. Correct.

15 Q. But you didn't note the opposite was true,
16 either? You didn't say there was no dripping blood in
17 your report.

18 A. No, that's what the coagulation was.

19 Q. So, it's impossible for it to drip if it's begun
20 to coagulate? Is that your testimony?

21 A. Yes. Once it starts to coagulate. And it was
22 sitting there. There was no active moving blood when
23 I was on-scene.

24 Q. All right. Can I take a look at the report that
25 you have there.

- 1 A. Absolutely. Sorry.
- 2 Q. That's okay. I just want to make sure it's the
- 3 same one I've got. You note the skin was cyanocic
- 4 [sic]? C/y --
- 5 A. Cyanotic.
- 6 Q. Cyanotic.
- 7 A. Cyanoic.
- 8 Q. How do you --
- 9 A. It was blue.
- 10 Q. C/y/a/n/o/t/c?
- 11 A. T/i/c.
- 12 Q. Okay. So, there's just a typo here.
- 13 A. Yes, sir.
- 14 Q. You said that it means it's blue.
- 15 A. Yes.
- 16 Q. Okay. Was it obvious when you approached
- 17 Michelle Passio that -- well, I should ask you this.
- 18 Was the exit wound at the top of her head obvious?
- 19 A. Yes.
- 20 Q. Whereabouts was it located?
- 21 A. The -- this general area.
- 22 Q. The crown?
- 23 A. Yes.
- 24 Q. Okay.
- 25 A. Once it becomes clear that a patient's not

1 viable, I try not to move too much else around.

2 Q. How closely did you look at that exit wound?

3 A. Ma'am? I'm sorry? I feel like I'm yelling.

4 Ma'am -- or, sir.

5 Q. How closely did you look at that exit wound?

6 A. I noticed the bone and the brain matter, and then

7 I left it alone. I'm not an investigator.

8 Q. Okay. I mean, I've seen pictures, and it looks

9 like the exit wound is right here, at the top of the

10 head, not in the crown.

11 A. Well, it --

12 Q. So, do you have an independent recollection as to

13 where that exit wound was?

14 A. No. We were just using a different terminology.

15 I apologize.

16 Q. Okay. Well, but again, I mean, you were here for

17 the investigator's testimony, weren't you?

18 A. Yes.

19 Q. Did you see him go like this?

20 A. I was reading. I --

21 Q. You didn't see him pat the back of his head?

22 A. No, sir. I try not to be influenced by anything

23 else.

24 Q. I see. I see.

25 COURT REPORTER: Speak up.

1 A. I'm sorry.

2 Q. So, if the wound was actually in the front,
3 towards the front of the top of her head, do you have
4 a reason as to why you would think it was someplace
5 other than that?

6 A. No, sir. There was matted hair. Like I said, I
7 did not dig through her head to locate the injury.

8 Q. I see. So, you didn't -- you didn't really
9 examine that area.

10 A. No. Once it was bone and brain matter noted, I
11 --

12 Q. Okay. You talked about a number of times you
13 have gone out to a suicide scene with a gun, and you
14 said there was one time that you've seen a female use
15 a gun to commit suicide?

16 A. Yes, sir.

17 Q. And what articles have you read regarding that,
18 as far as percentages of women who commit suicide with
19 a gun, as opposed to male?

20 A. That wasn't an article. That was a call I ran.

21 Q. No, no, no. I'm asking you, in general, what
22 articles have you read that discuss the frequency of
23 women using -- committing suicide with a gun?

24 A. Oh. It's not any recent article I can point you
25 to, but it is part of our training during paramedic

1 school when it discusses how often different types of
2 injuries are associated with males and females, or who
3 is more likely to harm themselves in different
4 manners, not necessarily just a gun.

5 Q. I see. And so --

6 A. It's general guidelines. It's not a specific.

7 Q. General guidelines.

8 A. Yes, sir.

9 Q. And it doesn't say that it's impossible for a
10 woman to use a gun to kill herself, does it?

11 A. No, it's not.

12 Q. It's uncommon?

13 A. Yes, sir, very uncommon.

14 Q. I see. And you weren't there, were you, when she
15 shot herself?

16 A. No, sir.

17 Q. So, you don't know exactly what happened, do you?

18 A. No, sir.

19 Q. When you were at the scene, did you see the gun
20 on the ground?

21 A. Yes, sir. I asked the officer to secure that.

22 Q. I see.

23 A. It's noted in my report.

24 Q. Okay. So, while you were there, he secured the
25 pistol?

1 A. Yes, sir.

2 Q. I see.

3 A. It's a general practice. When I have firearms on
4 the scene, I ask the officers there to take care of
5 that.

6 Q. All right. You saw him pick the gun up?

7 A. After I asked for the scene to be secured, I
8 didn't -- I was focused on my patient.

9 Q. I heard an audio recording of things that were
10 going on inside that room, and I heard somebody say,
11 you're standing in blood. Did you say that, or do you
12 remember hearing that said?

13 A. I don't remember. That was two years ago.

14 Q. I see. Do you remember if you stepped in blood?

15 A. I could have, sir. I don't know.

16 Q. Okay. And just like the other fellow, you seem
17 to have more experience in different areas, but you
18 have not been specifically trained about blood
19 coagulation, have you?

20 A. All I know is --

21 Q. As far as the factors?

22 A. We discuss it in school, but I'm not a
23 pathologist, no.

24 Q. Okay.

25 MR. GEIER: No further questions. Thank you,

1 your Honor.

2 THE COURT: Anything further?

3 SOLICITOR SWANSON: Just briefly.

4 MICHAEL SINGLETON, RE-DIRECT

5 EXAMINATION BY SOLICITOR SWANSON:

6 Q. Mr. Singleton, would it be unusual for you to
7 step in blood when you were trying to determine
8 whether or not you can save your patient's life?

9 A. I'm sorry?

10 Q. Would it be unusual for you to step in blood when
11 you respond to a scene, when you're trying to
12 determine whether or not you can save your patient's
13 life?

14 A. No, I generally wind up with blood on me on most
15 trauma calls.

16 SOLICITOR SWANSON: Thank you.

17 THE COURT: Anything further?

18 MR. GEIER: No, your Honor.

19 THE COURT: Mr. Singleton, you are excused, sir.
20 Thank you.

21 MICHAEL SINGLETON: Thank you.

22 BY THE COURT:

23 THE COURT: Ladies and gentlemen, now is a good
24 time to break for lunch. We're a little over our
25 normal time. It's 1:10 by the clock by there. I am

1 asking you all to be back in your jury room at 2:30,
2 where we're going to continue with the trial of this
3 case.

4 Mr. Foreperson, I would like to know, after
5 lunch, how late you all are willing to work today.
6 And I don't anticipate working anything terribly late,
7 but I am not sure. I have not spoken with the
8 attorneys about how many witnesses they're trying to
9 get up this afternoon. I just need to know, if one of
10 you has to be somewhere at, say, a specific time,
11 there is nothing wrong with that. You just need to
12 tell me what time you need to walk out of this
13 courtroom. Okay? And if you would just inquire of
14 the jury.

15 Typically, we like to work 'til about 5:00-ish,
16 maybe 5:30, as the case gets moving. If I can push
17 more, and I need to get witnesses up, sometimes we'll
18 push 'til 6:00 or so. But I just need to know what
19 the jury is willing to do. I know it's hard, and you
20 all have been sitting here all day. Okay?

21 Go grab a bite to eat. Do not discuss this case.
22 Don't do any independent research. I look forward to
23 seeing you all back at your jury room at 2:30. If
24 you're running five minutes late, don't worry about
25 it. Okay? I know you all are going to grab a bite.

1 Okay? Thank you. You're excused.

2 JURORS LEAVE COURTROOM 1:08 P.M.

3 THE COURT: Okay. Let's go ahead and just take a
4 break. Anything we need to put on the record?

5 SOLICITOR SWANSON: None from the State?

6 THE COURT: No. Let me ask you, I just need a
7 copy of the pathologist's report, either now, if you
8 can, or right when we come back from lunch. If you'll
9 just have someone put it on my desk, that would be
10 great. You got it? Perfect. Thank you. Is it okay
11 if I hold it during the lunch hour? Do you mind? I
12 don't want to take your only copy. Okay.

13 All right. We'll be at ease until 2:30.

14 OFF THE RECORD 1:09 P.M.

15 BACK ON THE RECORD 2:43 P.M.

16 BY THE COURT:

17 MADAM CLERK: Alternate 172.

18 THE COURT: Number 172?

19 MADAM CLERK: Right, Alternate 3.

20 THE COURT: Just for the record, we're going to
21 go ahead and release Alternate Number 3. Apparently,
22 there was an accident with her son. She doesn't know
23 yet, so.

24 All right. State ready to go?

25 SOLICITOR SWANSON: The State's ready.

1 THE COURT: Defense ready?

2 MR. GEIER: Defense is ready, your Honor.

3 THE COURT: All right. Let's go ahead and bring
4 the jury in.

5 JURORS ENTER COURTROOM 2:44 P.M.

6 THE COURT: Thank you. Welcome back, ladies and
7 gentlemen. I hope everyone had a nice lunch, and I'm
8 sure you all got caught in the rain, like everyone
9 else. We're going to go ahead and continue with the
10 trial of this case. I do need to let you know that we
11 did have to let the last alternate go, just for some
12 other purpose. So, again, that's just to let you know
13 what's going on, so you don't think someone's just
14 missing. And we're going to go ahead and begin for
15 this afternoon.

16 If the State will continue and call their next
17 witness.

18 STIPULATION REGARDING DR. ERIN

19 PRESNELL TESTIMONY:

20 SOLICITOR SWANSON: Thank you, your Honor. The
21 State calls Dr. Erin Presnell. And your Honor, the
22 Defense has agreed to stipulate to her expertise in
23 forensic pathology.

24 THE COURT: Thank you.

25 DEPUTY SHERIFF: Do you swear to tell the truth,

1 the whole truth, and nothing but the truth, so help
2 you God?

3 DR. ERIN PRESNELL: Yes.

4 THE COURT: Are you going to -- are you going to
5 go through some of her background or not?

6 SOLICITOR SWANSON: No, your Honor.

7 THE COURT: Okay. Ladies and gentlemen, in this
8 case, both the State and the Defense agree that Dr.
9 Presnell, who is a medical doctor, is an expert in the
10 area of forensic pathology. That allows her to give
11 her opinion and the reasons for her opinion. Of
12 course, that's for you to use as you see appropriate,
13 and as compared to other evidence in this case.

14 SOLICITOR SWANSON: Thank you.

15 THE COURT: Thank you.

16 DR. ERIN PRESNELL, DIRECT

17 EXAMINATION BY SOLICITOR SWANSON:

18 Q. Dr. Presnell, where do you work?

19 A. I am -- I'm a forensic pathologist, and I work at
20 the Medical University of South Carolina, up in
21 Charleston.

22 Q. All right. And as part of your duties, do you
23 perform autopsies on people?

24 A. I do. Forensic autopsies at the request of our
25 county coroners.

1 Q. Okay. And did you have an occasion to conduct an
2 autopsy on Michelle Passio on June 4th of 2016?

3 A. I did.

4 Q. As part of that autopsy, did you collect a blood
5 standard from her?

6 A. Yes.

7 Q. Okay. And did you also collect fingernail
8 clippings or scrapings from the left and right hands?

9 A. I did.

10 Q. All right. And for what purpose?

11 A. So, at any type of potential traumatic death,
12 where there might be some suspicious circumstances or
13 there's a potential of an altercation, then we will
14 either get fingernail clippings or fingernail scraping
15 to -- for, potentially, a DNA analysis, to see if
16 there's any other tissue besides hers under the
17 fingernails.

18 Q. Okay. And what is the purpose of the blood spot?

19 A. The blood spot is just a -- it's her blood spot.
20 It's just a standard, so, if anybody wanted to compare
21 a different blood sample to hers, to see if it was
22 hers or not, then they could.

23 Q. Okay. Can you describe for the jury what types
24 of injuries, what injuries you found, on Michelle
25 Passio.

1 A. She had a few minor scrapes and -- and bruises,
2 but her most significant injury was a single gunshot
3 wound to the bottom of her chin. This gunshot wound
4 went up through the oral cavity; through the base of
5 the skull; through the brain stem, which is the -- the
6 -- what connects the brain to your spinal cord;
7 through the middle of the brain; and out the very top
8 of the skull.

9 Q. Was a toxicology was done on Mrs. Passio?

10 A. Yes.

11 Q. And what were the findings there?

12 A. We do toxicology on all of our cases, and in this
13 instance, she had some marijuana metabolite;
14 significant nicotine; caffeine; and a blood alcohol
15 level of 0.07.

16 Q. How tall was Mrs. Passio and how much did she
17 weigh?

18 A. She weighed 215 pounds, and she's 67.5 inches,
19 which is five feet, seven-and-a-half inches.

20 Q. And what did you determine the cause of death to
21 be?

22 A. The cause of death was the gunshot wound to the
23 head.

24 Q. All right. And were you able to determine a
25 manner of death in this case?

1 A. Typically, we would look at four categories for
2 determining manner of death, from our perspective as a
3 forensic pathologist. That would be natural, an
4 accident, a suicide, or a homicide. In this instance,
5 with the single gunshot wound to the -- under the
6 chin, I couldn't differentiate whether this was a
7 homicide or a suicide. And so, I selected
8 undetermined manner of death.

9 Q. Okay. So, based on medical findings, you could
10 not rule out a homicide?

11 A. Correct. I have a single gunshot wound, and the
12 findings don't tell me who actually pulled the
13 trigger.

14 Q. Right. Okay. Thank you.

15 SOLICITOR SWANSON: No further questions at this
16 time.

17 THE COURT: Mr. Geier?

18 MR. GEIER: Thank you, your Honor.

19 DR. ERIN PRESNELL, CROSS-

20 EXAMINATION BY MR. GEIER:

21 Q. Good afternoon, Dr. Presnell.

22 A. Good afternoon.

23 Q. We spoke a couple of months ago. Nice seeing you
24 in person. I'm going to ask you a couple questions.
25 It has to do with paleness after death. Are you

1 familiar with that?

2 A. Paleness after death?

3 Q. Yeah. Yeah, the paleness of the skin when it
4 becomes -- begins to pale?

5 A. And so, I'm familiar with lividity where the
6 blood pools towards gravity. Since your heart's no
7 longer beating, wherever -- whatever position the body
8 is in, the blood will start to pool down with gravity.
9 So, that area will look purple red, and so the other
10 skin might look more pale.

11 Q. And that begins 15 to 20 minutes after death?

12 A. Usually, you can see some levidity where -- livor
13 mortis is what they call it -- about a half an hour --
14 half an hour to two hours after death.

15 Q. And what does it mean if someone is -- I can't
16 pronounce it. You probably can. It's spelled
17 c/y/a/n/o/t/i/c?

18 A. Cyanotic means that there's some blueness.
19 Usually, people will see it around the mouth, the
20 airway. And that typically -- and in a live person,
21 that typically means that the blood is not
22 oxygenating. So, like, if you have a baby with
23 congenital heart defect, and it's not getting enough
24 oxygen, you can see some blueness or some cyanosis in
25 the facial area.

1 Q. And is death a cause of that as well?

2 A. Not necessarily. It's pretty, I would say, non-
3 specific.

4 Q. Okay. You mentioned that there was THC in her
5 bloodstream?

6 A. Yes.

7 Q. And that doesn't necessarily mean that she was
8 under the active influence of THC at that time, when
9 you took this autopsy, is it?

10 A. Correct. This is -- the THC that I -- we
11 detected, or that the toxicology lab detected, was a
12 metabolite. So, it's an inactive metabolite, so she
13 was not under the influence of marijuana at the time
14 of her death.

15 Q. How long would that remain in her system,
16 typically?

17 A. It has a pretty short half-life when you make --
18 it gets metabolized pretty quickly, but it depends on
19 how much she had used prior. So, I don't -- I don't
20 have a good estimate for you.

21 Q. And then, the blood alcohol level was .073?

22 A. .073, yes.

23 Q. Okay. And are you familiar with how long it
24 takes a person to eliminate alcohol?

25 A. No. Again, it depends on the individual.

1 There's estimates of approximately .015 per hour.

2 Q. Now, were those numbers a snapshot of from the
3 moment she died; or did those numbers change from the
4 time that she died to the time she showed up to your
5 place?

6 A. They're a relative snapshot. After death, the
7 body quits metabolizing, so the levels are pretty
8 consistent. But after death, if the bacteria, mostly
9 in your intestines, start to multiply, which they
10 will, they could start to produce some alcohol. And
11 then, on the flip side, some alcohol could be broken
12 down, just by some of the enzymes that are in the
13 blood, even though the body's not actively been
14 metabolizing it. So, again, it's an estimate of her
15 levels at the time of death.

16 Q. Let's see. You've worked hundreds of suicides
17 involving guns, haven't you?

18 A. I have.

19 Q. And a shot to the temple is the most common?

20 A. Yeah. Usually, we see it in the temple.

21 Q. And then, followed by the mouth?

22 A. There -- there's intra-oral. Under the chin is
23 not rare. And in the chest.

24 Q. Is it -- when you're talking about suicide with a
25 gun, is it more common for men to use a gun than

1 women, in your experience?

2 A. Yeah. I was thinking about just the different
3 methods of suicide, and mostly, gunshot wounds are
4 probably the most frequent. Hangings are another one.
5 And then, O.D.s really aren't as frequent as you might
6 think that they -- that they are, overdoses. There's
7 a lot more, at least at our prac -- at MUSC, we
8 examine a lot more males that have committed suicide,
9 so, just that -- that number, skewed by the greater
10 numbers of men. But I -- I don't have the specific
11 numbers of what the ratio is, as far as gunshot wounds
12 versus other methods of suicide for women. But maybe
13 I -- I would estimate 20 percent, and that's an
14 estimate.

15 Q. Okay. And so, 20 percent of the hundreds that
16 you've seen?

17 A. Of the women. And so, again, there's more men
18 than women. So that, and again, it's an estimate off
19 the top of my head.

20 Q. Yeah. Okay. Now, there's no question that the
21 gun was in contact with her chin when it was fired?

22 A. Correct. So, one of the -- when we're evaluating
23 gunshot wounds, one of the things that we do is not
24 only track the pathway through the body, but look at
25 the skin around the entrance wound. And when you

1 think of a gun and what comes out the end, it's not
2 just a bullet, but also soot, and also some gunpowder
3 particles. For a gun that is up against the skin or
4 in contact with the skin, you -- the bullet,
5 obviously, will go in, but you get a soot deposition.
6 And also, in fact, a gunshot wound that's up
7 contacting the skin, you can actually get a muzzle
8 imprint. And in this case, she had both the soot and
9 a muzzle imprint, the muzzle of the gun imprint on her
10 skin.

11 Q. And you said that the exit wound was right at the
12 top of her head?

13 A. The top of her head, yes.

14 Q. Okay. And you've worked hundred of homicides as
15 well, haven't you?

16 A. Probably hundreds, yes.

17 Q. Okay. It's rare to see a homicide where there's
18 a contact wound under the chin. Is that correct?

19 A. I've seen single-gunshot-wound homicides; I've
20 seen contact-gunshot-wound homicides. I don't recall
21 that there's been any that specifically have been
22 under the chin.

23 Q. Let's talk about the odor of decomposition. How
24 long does it typically take for a dead body to start
25 to smell like a dead body?

1 A. Well, that's relative, because what I think it
2 doesn't smell that bad, somebody else might think
3 doesn't smell pleasant. Really, there's not good
4 literature on how fast the smell changes. You have --
5 there is literature on bodies that are in the process
6 of decomposition, and there's estimates of how fast
7 the stiffness comes on, and how fast the levidity,
8 that purple red coloration comes on. And then, when
9 they start to turn green. And then, when their skin
10 starts to slip. Et cetera, et cetera, et cetera. She
11 was obviously not that far along.

12 And then, one other caveat is that the way that
13 our death investigation system is set up, I typically
14 don't see the person until the next day, after they've
15 been in a refrigerator. And of course, a refrigerator
16 is going to really slow down any of that decomposition
17 process.

18 Q. I believe, when we talked before, you said some
19 people will just smell. Is that correct?

20 A. Well, un-bathed persons, perhaps, may smell.
21 Again, the decomposition, it's -- I guess the smell
22 might be considered a personal thing. I -- I -- I
23 don't have a good estimate of when an odor might start
24 to be detected.

25 Q. And earlier, you said that you couldn't rule out

1 that this was a homicide?

2 A. Correct. I have a contact gunshot wound to the
3 bottom of the chin, underneath the chin, and I can't
4 say, from my autopsy findings, who would have pulled
5 the trigger.

6 Q. Okay. So, you can't rule out a suicide, either?

7 A. Correct.

8 MR. GEIER: No further questions. Thank you.

9 THE COURT: Anything further from the State?

10 SOLICITOR SWANSON: Nothing further. And I would
11 ask that Dr. Prenell be allowed to be excused, and
12 released from her subpoena.

13 THE COURT: You are excused, Doctor. Thank you.

14 DR. ERIN PRESNELL: Thank you.

15 SOLICITOR SWANSON: The State calls Andrew
16 Garinger.

17 DEPUTY SHERIFF: Raise your right hand. Do you
18 solemnly swear or affirm to tell the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 ANDREW GARINGER: I do.

21 STIPULATION REGARDING ANDREW GARINGER

22 TESTIMONY:

23 SOLICITOR SWANSON: And your Honor, in reference
24 to Mr. Garinger, the Defense has stipulated that he is
25 an expert in DNA analysis.

1 THE COURT: All right. Ladies and gentlemen, I
2 probably should have explained to you a little bit
3 more before Dr. Presnell came in. Typically, a
4 witness can only testify as to matters they've seen,
5 heard, whatever. We allow expert witnesses to testify
6 to those things, along with their opinion, and the
7 reasons for their opinion. The Court permits them to
8 do such when they find them an expert in that area.
9 In this case, both the State and the Defense have
10 stipulated that Mr. Garinger is an expert in DNA
11 analysis. That's going to allow him to give his
12 opinion and the reasons for his opinion. Again,
13 that's for you to use as you see appropriate, and as
14 compared to other evidence in the case.

15 SOLICITOR SWANSON: Thank you, your Honor.

16 ANDREW GARINGER, DIRECT

17 EXAMINATION BY SOLICITOR SWANSON:

18 Q. Mr. Garinger, where do you work?

19 A. I work for the Beaufort County Sheriff's Office
20 Forensic Services Laboratory.

21 Q. Okay. And there, do you do DNA analysis?

22 A. Yes, I do.

23 Q. Okay. And were you asked to analyze a few things
24 in the case against Richard Passio?

25 A. I was.

1 Q. All right. I'm going to hand you Items 19, 20,
2 and 21. Well, first I'll hand you 19, and ask if you
3 can identify this item.

4 A. Yes.

5 Q. Okay. What is it?

6 A. This is the blood standard from Michelle Passio.

7 Q. All right. And did you get a DNA profile from
8 that blood standard?

9 A. Yes, I did.

10 Q. Okay.

11 SOLICITOR SWANSON: The State would move 19 into
12 evidence at this time.

13 THE COURT: Any objection?

14 MR. GEIER: No objection.

15 THE COURT: Without objection, it's in evidence.

16 ITEM IDENTIFIED AS KNOWN BLOOD
17 STANDARD FROM MICHELLE PASSIO
18 MARKED STATE'S EXHIBIT NUMBER 19
19 ADMITTED AS EVIDENCE.

20 BY SOLICITOR SWANSON:

21 Q. Okay. I'm going to hand you State's Exhibit 20,
22 and ask what this item is.

23 A. This is the left-hand fingernail, scraper, from
24 Michelle Passio, as well as the extracted DNA that I
25 didn't use in my analysis.

1 Q. Okay. So, did you analyze the left-handed
2 fingernail scrapings from Michelle Passio?

3 A. I did.

4 Q. All right. And -- and that's -- that was from
5 that piece of evidence?

6 A. Correct.

7 Q. Okay.

8 SOLICITOR SWANSON: The State would move 20 in.

9 MR. GEIER: No objection.

10 THE COURT: Without objection.

11 ITEM IDENTIFIED AS LEFT-HAND

12 FINGERNAIL SCRAPER AND EXTRACTED

13 DNA FROM MICHELLE PASSIO

14 MARKED STATE'S EXHIBIT NUMBER 20

15 ADMITTED AS EVIDENCE.

16 BY SOLICITOR SWANSON:

17 Q. All right. And then, 21, what item is this, and
18 did you analyze that?

19 A. Yes, I did analyze this. This is the right-hand
20 fingernails and the scraper from Michelle Passio, as
21 well as the -- the remaining DNA that I didn't use in
22 my analysis.

23 Q. Okay.

24 SOLICITOR SWANSON: The State would move 21 into
25 evidence at this time.

1 THE COURT: Any objection? Without objection.

2 ITEM IDENTIFIED AS RIGHT-HAND
3 FINGERNAILS SCRAPER AND REMAINING
4 DNA FROM MICHELLE PASSIO
5 MARKED STATE'S EXHIBIT NUMBER 21
6 ADMITTED AS EVIDENCE.

7 BY SOLICITOR SWANSON:

8 Q. All right. And did you also take swabs from a
9 firearm?

10 A. Yes, I did.

11 Q. Okay. I'm going to show you what's already been
12 entered as State's Exhibit Number 5.

13 A. Okay.

14 Q. And ask if this is the firearm that you swabbed.

15 A. This looks familiar.

16 Q. Let me have your --

17 A. It does.

18 Q. Okay.

19 A. And then, I usually put -- yeah. Okay.

20 Q. Okay.

21 A. Yes, that does look familiar.

22 Q. All right. So, State's Exhibit 5. And how can
23 you tell that?

24 A. It's got numerous pieces of evidence tape on the
25 box with my initials, the date, and my badge number on

1 them.

2 Q. Okay. I'm going to hand you State's 26 and 27,
3 and ask for you to identify those items, please.

4 A. So, these would be the remaining DNA from my
5 analysis of swabs that were taken from this handgun.

6 Q. All right. So, you were able to pull DNA
7 information and profiles from the swabs from the gun?

8 A. Correct.

9 Q. Okay. I've got a glove here.

10 A. I've got a glove as well.

11 Q. Oh, I'm sorry.

12 SOLICITOR SWANSON: And at this time, can I enter
13 26 and 27?

14 THE COURT: You may.

15 THE COURT: Okay.

16 ITEM IDENTIFIED AS REMAINING DNA
17 FROM ANALYSIS OF SWABS
18 TAKEN FROM HANDGUN
19 MARKED STATE'S EXHIBIT NUMBER 26
20 ADMITTED AS EVIDENCE.

21 ITEM IDENTIFIED AS REMAINING DNA
22 FROM ANALYSIS OF SWABS
23 TAKEN FROM HANDGUN
24 MARKED STATE'S EXHIBIT NUMBER 27
25 ADMITTED AS EVIDENCE.

1 BY SOLICITOR SWANSON:

2 Q. And I would just like for you to show the jury
3 what area of the gun --

4 A. Sure.

5 Q. -- you swabbed. So, you can stand up, and just
6 kind of point to it.

7 A. It's not a very stable surface. And it is zip-
8 tied in there. So, there were two areas that I
9 focused on. One swab was taken from the muzzle of the
10 gun, the very front of it. And then, one swab was
11 taken sort of from the -- the bottom interior of the
12 slide on the top of the gun.

13 Q. Okay. Did you take any swabs of the trigger?

14 A. Oh, I'm sorry. Yes.

15 Q. Okay.

16 A. The -- the first swab was from the trigger, not
17 the muzzle.

18 Q. Right.

19 A. My apologies. That was the -- the forward
20 surface of the trigger. Yeah, sorry.

21 Q. That's okay. Sorry.

22 A. Is that all we're doing with the -- the handgun?

23 Q. Um-hmm. Yes.

24 A. Okay.

25 Q. All right. So, swabs taken from the rear slide

1 and the forward trigger. What findings did you reach
2 on the swabs from the trigger?

3 A. I would have to refer to my notes. So, as far as
4 the trigger was concerned, there was a mixture of DNA
5 profiles that came from at least two contributors
6 there. And the mixture was complex enough that I was
7 unable to separate it into individual profiles that I
8 could make comparisons with.

9 Q. Okay. And then, did you pass that along -- that
10 information along to a colleague for further analysis?

11 A. Correct.

12 Q. Okay. And was that John Donahue?

13 A. Correct.

14 Q. Okay. In the same lab?

15 A. Correct.

16 Q. All right. All right. Regarding the victim's
17 fingernail scrapings, what were your findings?

18 A. The right-hand fingernails and scraper had
19 similar conclusion. There was a mixture of at least
20 two contributors to that DNA profile, and the mixture
21 was complex enough that I wasn't able to manually
22 separate the two contributors. As far as the left-
23 hand fingernail scraper, again, mixture of at least
24 two contributors, and I was unable to manually perform
25 that separation.

1 Q. Okay. So, again, did you pass that along to your
2 colleague John Donahue for further analysis?

3 A. Correct.

4 Q. Okay. We talked about the blood spot from
5 Michelle Passio. You were able to get a DNA profile
6 on that?

7 A. Yes.

8 Q. Were -- did you get a DNA profile on State's
9 Exhibit 23, the buccal swab collected from Richard
10 Passio, Jr.?

11 A. That's the one. Yes, I was able to get a DNA
12 profile from that as well.

13 Q. Okay. And I believe I've already entered Mr.
14 Passio, Jr.'s buccal swab, but if I have not, I would
15 move to enter State's Exhibit 23 at this time.

16 MR. GEIER: No objection.

17 THE COURT: Without objection.

18 ITEM IDENTIFIED AS BUCCAL SWAB
19 COLLECTED FROM RICHARD PASSIO, JR.
20 MARKED STATE'S EXHIBIT NUMBER 23
21 PREVIOUSLY ADMITTED AS EVIDENCE.

22 BY SOLICITOR SWANSON:

23 Q. I'm going to hand you State's Exhibit 28 and ask
24 what this swab is.

25 A. This is the remaining DNA from my analysis of a

1 swab collected from the handle of a gun case.

2 Q. I'm going to pass up State's Exhibit 25, and ask
3 if this is the gun case that you swabbed.

4 A. That is correct.

5 Q. Okay. And I'm going to take it out and ask which
6 portion of the case you swabbed.

7 A. So, I would have swabbed the interior of this
8 handle.

9 Q. Okay.

10 SOLICITOR SWANSON: The State would move 28 into
11 evidence at this time.

12 MR. GEIER: No objection.

13 ITEM IDENTIFIED AS REMAINING DNA
14 FROM ANALYSIS OF A SWAB
15 COLLECTED FROM THE HANDLE OF A CASE
16 MARKED STATE'S EXHIBIT NUMBER 28
17 ADMITTED AS EVIDENCE.

18 BY SOLICITOR SWANSON:

19 Q. And were you able to reach any conclusions
20 regarding the handle of the gun case?

21 A. The handle of the gun case, again, I got a mixed
22 -- mixed DNA profile of at least two contributors, and
23 I was unable to make any manual separation of those
24 profiles.

25 Q. Okay. And so, did you submit that data, again,

1 to John Donahue for further analysis?

2 A. Correct.

3 Q. Okay. Thank you.

4 SOLICITOR SWANSON: No further questions at this
5 time.

6 ANDREW GARINGER, CROSS-

7 EXAMINATION BY MR. GEIER:

8 Q. Good afternoon.

9 A. Afternoon.

10 Q. Sir, you told us it was a gun case?

11 A. I believe that was how it was described to me in
12 the initial examination request.

13 Q. Okay. So, nothing on this that specifically
14 denotes that it is a gun case, is there?

15 A. Nothing specific on the case itself, no.

16 Q. It's just a locked case?

17 A. Correct. And it was locked when it was given to
18 me.

19 Q. So, you have no knowledge if there was a gun
20 inside this case at any time.

21 A. No, I do not.

22 Q. Okay. So, it's really just a case.

23 A. Fair enough.

24 MR. GEIER: I don't have any further questions.
25 Thank you.

1 SOLICITOR SWANSON: All right. Thank you. And I
2 would ask that Mr. Garinger be allowed to be released
3 from his subpoena.

4 THE COURT: Any objection. Without -- you may be
5 released, please. Thank you.

6 SOLICITOR SWANSON: Thank you. The State calls
7 John Donahue.

8 DEPUTY SHERIFF: Do you solemnly swear to tell
9 the truth, the whole truth, and nothing but the truth,
10 so help you God?

11 JOHN DONAHUE: I do.

12 STIPULATION REGARDING JOHN DONAHUE'S
13 TESTIMONY:

14 SOLICITOR SWANSON: Again, the Defense has
15 stipulated that Mr. Donahue is an expert in DNA
16 analysis.

17 THE COURT: All right. Ladies and gentlemen, in
18 this case, again, like you heard with the other
19 witness, Mr. Donahue has been qualified in the area as
20 an expert in DNA analysis. It allows him to give his
21 opinion, and the reasons for his opinion.

22 JOHN DONAHUE, DIRECT

23 EXAMINATION BY SOLICITOR SWANSON:

24 Q. All right. Mr. Donahue, you work at the Beaufort
25 County Sheriff's Office DNA lab?

1 A. I do.

2 Q. Okay. And you were provided data from your
3 colleague, Andrew Garinger, on the case involving
4 Richard Passio?

5 A. Yes.

6 Q. Okay. You're trained in a program called
7 TrueAllele?

8 A. Yes.

9 Q. What does that program do?

10 A. It's a computer program that will look at DNA
11 mixtures and attempt to sort out who the contributors
12 to a mixture might be; and then compare them to
13 reference samples from known individuals. So, what
14 the computer does is, it will look at electronic data
15 that's generated in a DNA test. It assesses the data
16 without any knowledge of who these subject references
17 might be. So, for example, if you're looking at an
18 alleged victim in a case and an alleged suspect, the
19 computer doesn't know any of that information. It
20 simply looks at the DNA data from the piece of
21 evidence and tries to sort everything out. And when,
22 when that's all finished, at the very end, then, it
23 will go back and look at the known individuals and
24 compare what it has found from the evidence to the
25 known individuals, and determine if there could be a

1 match, or if there's not a match.

2 Q. Okay. And so, going into this, you had DNA
3 profiles from Michelle Passio and Richard Passio,
4 right?

5 A. I did. I had the electronic data that Andrew had
6 already obtained from those items.

7 Q. Okay. And were you successful in determining
8 what two contributors to some of these mixtures were?

9 A. The computer did assess the data that he forwarded
10 to me, and was able to come to some conclusions, yes.

11 Q. All right. So, let's talk about the trigger.
12 What conclusions did you come to regarding the trigger
13 of the firearm?

14 A. The trigger that -- the data that I examined was
15 assessed as a mixture of assuming there were two
16 contributors present. From that, the computer
17 identified a match to Michelle Passio, and a match to
18 Richard Passio, Jr.

19 Q. Okay. And was one of those match statistics
20 higher?

21 A. Yes. So, the computer had identified a match to
22 Michelle Passio of -- that was 52 quadrillion times
23 more likely than a coincidental match to an unrelated
24 person. So, for reference, one quadrillion is a one,
25 followed by 15 zeroes. To Richard Passio, Jr., the

1 computer determined a match of 414 quadrillion times
2 more likely than a coincidental match to a related
3 individual. Which, again, a quadrillion being a one,
4 followed by 15 zeroes.

5 Q. Okay. So, the higher-matched statistic was
6 attributed to Richard Passio?

7 A. Yes, that is correct.

8 Q. Now, moving on to the slide, what were your
9 findings there?

10 A. Again, it's -- examined the -- the swab from the,
11 what was it? the inner surface, the rear-inner surface
12 of the slide, and the computer again determined a
13 match to Richard Passio, Jr. It was approximately
14 2.45 quintillion times more likely than a coincidental
15 match to an unrelated person. Quintillion being a
16 one, followed by 18 zeroes.

17 As far as a comparison to Michelle Passio, that
18 was statistically inconclusive. What that means is
19 that, when the computer looks at some data, there's a
20 sort of a gray zone in which it can't tell whether
21 there is a match or it's not a match. So, above a
22 certain threshold, the computer will say and identify
23 a match. Below a certain threshold, it will say a
24 person is not there. But within that middle range, it
25 can't tell. There's a possibility of a false match

1 and a possibility of a false exclusion, so we just
2 can't report anything other than an inconclusive
3 result.

4 Q. So, you were not able to definitively place
5 Michelle as a match on the top of that gun slide or on
6 that gun slide?

7 A. The swab was from the rear inner surface of the
8 slide.

9 Q. Right. From the slide.

10 A. Yes.

11 Q. Okay. Gun case, what were your findings?

12 A. Again, that was a mixture of assuming three
13 contributors for that analysis, with a match to
14 Richard Passio, Jr., being approximately 1.44 billion
15 times more likely than a coincidental match to an
16 unrelated individual, with Michelle Passio being
17 excluded as a possible contributor.

18 Q. Okay. So, Michelle's DNA was not on the gun
19 case?

20 A. Michelle's DNA was not present in the mixture
21 data that I analyzed, no.

22 Q. Okay. From the handle of the gun case?

23 A. Yes.

24 Q. Thank you.

25 SOLICITOR SWANSON: No further questions.

1 JOHN DONAHUE, CROSS-

2 EXAMINATION BY MR. GEIER:

3 Q. Afternoon. If you were to find, let's say, the
4 pistol we have in this case, that I touched routinely,
5 and then I stuck it in a box, and years went by; if
6 you went and did a DNA analysis on that -- that
7 trigger, let's say, is my DNA still going to be on it?

8 A. I would expect it probably would, assuming it
9 hasn't been cleaned or anything of that nature, yes.

10 Q. Okay. So, that trigger wasn't cleaned at all?

11 A. I have no idea of its condition. All I worked
12 with was the electronic data that I received.

13 Q. Okay. And you found DNA of both Richard and
14 Michelle?

15 A. That's correct.

16 Q. On that trigger? Okay.

17 MR. GEIER: No further questions. Thank you.

18 SOLICITOR SWANSON: Thank you. I would ask that
19 Mr. Donahue be allowed to be excused and released from
20 his subpoena.

21 THE COURT: You are excused, sir. Call your next
22 witness.

23 SOLICITOR SWANSON: The State calls Ivy Bryan.

24 DEPUTY SHERIFF: Do you swear or affirm to tell
25 the truth, the whole truth, and nothing but the truth,

1 so help you God?

2 COURT REPORTER: I'm sorry. What was your
3 answer?

4 IVY BRYAN: I do.

5 IVY BRYAN, DIRECT

6 EXAMINATION BY SOLICITOR SWANSON:

7 Q. Ms. Bryan, how are you doing?

8 A. Good.

9 Q. Good. Now, you just graduated from high school,
10 right?

11 A. I'm a senior.

12 Q. Oh, okay, senior. All right. How old are you
13 now?

14 A. Eighteen.

15 Q. Eighteen. So, you were 16 back in 2016?

16 A. Yes, ma'am.

17 Q. All right. And where do you live? What's your
18 address?

19 A. [REDACTED] et.

20 Q. Okay. I want you to just look at this, and see
21 if this makes sense to you. [REDACTED]

22 A. Yes, ma'am.

23 Q. Can you see that? Okay. I'm also going to show
24 you what's been marked as State's 29. See if you can
25 identify what's contained within this picture. Do you

1 see your house in that picture?

2 A. Yes, ma'am.

3 Q. Where is it?

4 A. Last one on the left.

5 Q. Far-left?

6 A. Yes, ma'am.

7 Q. Okay. And is that how it appears today? Or back
8 in 2016? It hasn't changed?

9 A. Yes, ma'am.

10 Q. Okay.

11 SOLICITOR SWANSON: The State would move 29 into
12 evidence at this time.

13 THE COURT: Any objection? Without objection.

14 SOLICITOR SWANSON: Okay.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 MARKED STATE'S EXHIBIT NUMBER 29

17 ADMITTED AS EVIDENCE.

18 BY SOLICITOR SWANSON:

19 Q. And Ivy, were you aware of where the Passios
20 lived?

21 A. Well, I knew, like, of them.

22 Q. Okay.

23 A. Just because, like, they're neighbors, obviously.

24 Q. Okay. Did you know which house they lived in?

25 A. Yes, ma'am.

1 Q. Which one is it?

2 A. The --

3 Q. Can you point it out?

4 A. The big white house.

5 Q. Okay. So, there's how many houses in between you
6 guys?

7 A. Well, two, counting the small one behind them.

8 Q. Okay. So, two, counting the cottage behind the
9 Passios house?

10 A. Yes, ma'am.

11 Q. All right. And again, yours is with the reddish,
12 kind of orange roof, all the way to the left?

13 A. Yes, ma'am.

14 Q. And the Passios' house is the plantation-looking
15 house to the right. Were you at home the night of
16 June 3rd of 2016?

17 A. Yes, ma'am.

18 Q. All right. What were you doing that night?

19 A. I was outside. I don't remember exactly what,
20 but I was hanging out with one of my friends.

21 Q. All right. Were you all just talking, hanging by
22 the fire?

23 A. We were around by the fire, in the back yard,
24 talking.

25 Q. All right. And did you hear anything come from

1 the direction of the Passios' house?

2 A. Arguing. And then a door slams, and then after
3 that, gunshots.

4 Q. Okay. Did you -- what sort of voices did you
5 hear arguing? Were they male voices? Female?

6 A. Male and female.

7 Q. I'm sorry?

8 A. Male and female.

9 Q. Okay. Were you outside late at night?

10 A. Yes, ma'am.

11 Q. All right. About what time you think you were
12 outside?

13 A. Probably around 2:30 to 3:00.

14 Q. Okay. What time do you think you remember going
15 to bed?

16 A. Probably went inside around 3:10, so I was
17 probably in my room by then.

18 Q. Okay. And so, you hear arguing between a male
19 and a female, a door slammed, and then gunshots?

20 A. Later. It wasn't exactly after the door slammed,
21 but it was not long after.

22 Q. Okay. And can you describe the gunshots that you
23 heard.

24 A. It probably went like, two, a pause, and then two
25 more.

1 Q. All right. Did you tell anyone the next day
2 about what you heard?

3 A. I told my dad when I -- because when I woke up,
4 my mom told me, and then he was there.

5 Q. Okay. And what did -- what did you do after you
6 told your dad? What did your dad tell you to do?

7 A. We talked to the investigator.

8 Q. All right. Did you talk to Investigator
9 McIntosh?

10 A. Yes, ma'am.

11 Q. All right. And that was the day after?

12 A. Yes, ma'am.

13 Q. Okay. Did you know the Passios at all?

14 A. Not -- no, ma'am. I only saw them if they were,
15 like, on the porch.

16 Q. Okay. And you don't bear any ill will towards
17 Richard Passio?

18 A. No, ma'am.

19 Q. Don't know him?

20 A. No idea who they are.

21 Q. Okay. Thank you.

22 SOLICITOR SWANSON: Nothing further of this
23 witness.

24 IVY BRYAN, CROSS-

25 EXAMINATION BY MR. GEIER:

1 Q. Good afternoon, Ivy.

2 A. Good afternoon.

3 Q. So, did you say that, when you heard arguing and
4 gunshots from the direction of the Passio house, it
5 was what time?

6 A. Like, 2:30 to 3:00.

7 Q. Do you recall talking to the investigator in this
8 case, Investigator McIntosh?

9 A. In the morning.

10 Q. You didn't tell them that it happened at
11 approximately 1:00 a.m.?

12 A. I might -- I mean, it was two years ago. I don't
13 really remember exactly. It was around that time,
14 though.

15 Q. Okay. So, anywhere between 1:00 and 3:00?

16 A. Yeah, because that's the time I was out there.

17 Q. Okay. And you were inside or outside when you
18 heard the shots?

19 A. Outside.

20 Q. Outside. Okay. And you didn't hear it
21 necessarily coming from the house; you heard it coming
22 from the direction?

23 A. Yes, sir.

24 Q. Okay.

25 A. It's not that far from mine, so it was kind of

1 relatively close.

2 Q. Okay. And so, it was loud?

3 A. I mean, it was a good sound. It wasn't, like, as
4 if it was right next to me, but I could tell it wasn't
5 far.

6 Q. Okay. And you said you went inside?

7 A. Around probably 3:00. 3:00, 3:10.

8 Q. Okay. Did you see people sitting out on the
9 porch earlier that night?

10 A. I wasn't paying attention. I was hanging out
11 with my friend, like I said. So, I really wasn't
12 looking.

13 Q. So, you didn't hear any voices or laughter, or
14 anything like that coming from the porch?

15 A. Hm-mmm. I only heard arguing towards, like,
16 2:30.

17 Q. Okay. And you said you heard a total of four
18 shots?

19 A. Yes, sir.

20 Q. You sure about that?

21 A. Positive.

22 Q. Okay.

23 MR. GEIER: Nothing further, your Honor. Thank
24 you.

25 THE COURT: Anything else?

1 SOLICITOR SWANSON: Nothing further for Ms.
2 Bryan, and I would --

3 THE COURT: You may step down.

4 SOLICITOR SWANSON: -- ask that she be allowed to
5 be excused.

6 THE COURT: You may step down, and you are
7 excused.

8 SOLICITOR SWANSON: The State calls Juanita
9 Patrum.

10 DEPUTY SHERIFF: Do you swear or affirm to tell
11 the truth, the whole truth, and nothing but the truth,
12 so help you God?

13 JUANITA PATRUM: Yes, sir.

14 JUANITA PATRUM, DIRECT

15 EXAMINATION BY SOLICITOR SWANSON:

16 Q. Thank you for being here, Juanita. Where do you
17 live?

18 A. [REDACTED] et.

19 Q. Okay. And is it a separate building, with the
20 same address?

21 A. Yes. Yes, yes.

22 Q. Okay. I'm going to show you [REDACTED]
23 Street. Does this make sense?

24 A. Yeah.

25 Q. Okay. And is it a cottage that you live in out

1 back?

2 A. Yes. Yes.

3 Q. All right. I'm going to show you a picture of
4 State's Exhibit 30, and ask if you can see your
5 cottage in this photo.

6 A. Yes.

7 Q. All right. And where is it located in the
8 picture?

9 A. It's right here.

10 Q. Okay. Is that what it still looks like today?

11 A. Yes.

12 Q. Okay. And how it appeared in 2016?

13 A. Yes.

14 Q. And that's how close it is to the main residence?

15 A. Yes.

16 Q. All right.

17 SOLICITOR SWANSON: The State would move 30 into
18 evidence at this time, and move to publish.

19 THE COURT: You may.

20 ITEM IDENTIFIED AS PHOTOGRAPH

21 MARKED STATE'S EXHIBIT NUMBER 30

22 ADMITTED AS EVIDENCE.

23 BY SOLICITOR SWANSON:

24 Q. All right. Juanita, were you familiar with
25 Michelle and Richard Passio?

1 A. Yes, very.

2 Q. Okay. How long had you been there when they
3 moved in?

4 A. A while. It's maybe not quite a year.

5 Q. Okay.

6 A. Around a year. I was there before.

7 Q. You were there before they moved in.

8 A. Yes.

9 Q. So, you were there for the duration of them
10 living there.

11 A. Yes.

12 Q. All right. And at the time, where were you
13 working?

14 A. Piggly Wiggly.

15 Q. What days a week did you work?

16 A. Five days a week, Monday through Friday.

17 Q. And what time did you have to go into work?

18 A. I had to be there at 6:00.

19 Q. All right. So, what time would you get up every
20 morning during the day of the week?

21 A. About 5:00. 4:30, 5:00.

22 Q. Do you remember the last day of Michelle's life?

23 A. Yes.

24 Q. Tell me what you remember about that day.

25 A. When I got off work, we hung out on my porch, and

1 watched the kids play in the water hose.

2 Q. Is that something that you would do often?

3 A. All the time.

4 Q. All right. About what time did you get off work
5 that day?

6 A. About 2:00.

7 Q. Okay. So, you hung out on the porch, played with
8 the children. And then, what else do you remember?

9 A. We drank a couple beers, we talked.

10 Q. Did you talk about doing anything the next day?

11 A. Oh, yes, yes. She had made a -- her first
12 attempt at Low Country broil, and she wanted me to try
13 it, and she wanted me to tell her how it was. And so,
14 we had big plans to meet the next day, and sit on the
15 porch, drink some beers. Said I was going to tell her
16 how great it was. Wish I had the chance.

17 Q. Did she bring you any of that food that night?

18 A. Oh, yes. It was awesome.

19 Q. And was that the last time that you saw her?

20 A. Yes.

21 Q. What do you remember about the next morning?
22 What time did you wake up?

23 A. Probably around 4:30, 5:00.

24 Q. Okay.

25 A. Got up, took my dog out. She's just a little

1 puppy, so didn't have to take her far. And went back
2 in, and got dressed, and went to work, and there was
3 cops out in front of the house.

4 Q. Okay. So, you remember waking up at 4:30 or
5 5:00.

6 A. Yeah.

7 Q. Did you hear any gunshots at 4:30 or 5:00?

8 A. No.

9 Q. About what time would you have taken the dog out
10 that day?

11 A. Probably before I went to work. Just before --

12 Q. So, some time between 5:30 --

13 A. -- about 5:30. Probably.

14 Q. Some time between 5:30 and 6:00?

15 A. Um-hmm.

16 Q. Did you hear any --

17 COURT REPORTER: Is that yes or no?

18 A. Yes. I'm sorry.

19 Q. Did you hear any gunshots when you were out
20 walking your dog between 5:30 and 6:00?

21 A. No.

22 Q. Were you still out walking your dog when you saw
23 police arrive?

24 A. No. She -- I had put her in the house, but I was
25 outside.

1 Q. Okay. You were still outside?

2 A. Yeah. I was getting ready to go, yeah. I have
3 cats, too. I had to feed them.

4 Q. Did you see Richard Passio that morning?

5 A. Yes, on the porch.

6 Q. All right. Can you identify Richard Passio?

7 A. Oh, yeah. He's sitting right there.

8 Q. Okay. How was he dressed?

9 A. He was fully dressed. Had dark clothes on,
10 slacks, pants. But he wasn't wearing what you would
11 expect he would be wearing at 6:00 o'clock in the
12 morning.

13 Q. What was he usually wearing at 6:00 o'clock in
14 the morning?

15 A. His pajamas.

16 Q. While you lived in the cottage, did you ever hear
17 anything from the house?

18 A. Oh, yeah. I heard fighting all the time.

19 Q. About how often?

20 A. Probably two, three times a week.

21 Q. And about how often would Michelle come over?

22 A. Every day.

23 Q. All right. And why would she come over?

24 A. To have some adult conversation, and to, you
25 know, not be trapped in that house.

1 Q. All right. Did she ever talk to you about her
2 relationship with Rock?

3 A. Yes.

4 Q. Did you ever give her any advice?

5 A. Leave.

6 Q. Did she ever show you any bruises on her?

7 A. Yes, ma'am.

8 Q. Where were those bruises?

9 A. Right around here, under her shirt.

10 Q. Under her shirt?

11 A. Yeah.

12 Q. Around her waistline?

13 A. Where they couldn't be seen.

14 Q. Okay. Did you ever help Michelle out with the
15 kids?

16 A. Yes.

17 Q. Did you ever help feed them?

18 A. Yes.

19 Q. How so? Tell me about that?

20 A. I bought them some Ramen Noodles.

21 Q. Was that because there wasn't any food in the
22 house?

23 A. Yes, ma'am. Or wasn't any food for them.

24 Q. What do you mean by food for them?

25 A. There was a special cabinet was just for food

1 that -- for Richard, that the kids and Michelle wasn't
2 allowed to get into.

3 Q. Okay. Was it labeled?

4 A. It was Dad's.

5 Q. Dad's Cabinet?

6 A. Dad's Cabinet.

7 Q. All right. And nobody was allowed to go in
8 there?

9 A. No. Just him.

10 Q. Okay. Would Michelle leave anything at your
11 cottage?

12 A. Yes, ma'am. Money, cigarettes. Because, if she
13 didn't leave her cigarettes there, he would throw them
14 away.

15 Q. What about the money?

16 A. He'd take the money, put it in his pocket.

17 Q. Did the Passios have a dog?

18 A. Yes. Farrah, beautiful dog.

19 Q. And -- and who -- who took care of the dog?

20 A. Michelle and Kaleb, the eldest boy.

21 Q. All right. Do you remember Pam Bennington?

22 A. Oh, yeah.

23 Q. Michelle's mom. Do you remember her living in
24 the residence?

25 A. Yes, ma'am.

1 Q. Did she ever take care of the dog?

2 A. Yeah. I mean, she fed her. And if they was
3 busy, I guess.

4 Q. Did you ever see Richard Passio walking that dog?

5 A. No, ma'am. Only after.

6 Q. Only after what?

7 A. Only after Michelle was gone, and Kaleb was back
8 wherever they sent Kaleb.

9 Q. Okay. But prior to Michelle's death, you never
10 saw --

11 A. No, ma'am.

12 Q. -- Richard walking that dog.

13 A. No, ma'am, I never did.

14 SOLICITOR SWANSON: All right. Thank you.

15 Please answer any questions that Mr. Geier may have
16 for you.

17 A. Yes, ma'am.

18 JUANITA PATRUM, CROSS-

19 EXAMINATION BY MR. GEIER:

20 Q. Afternoon.

21 A. Afternoon.

22 Q. So, you said that you got up that morning, and
23 you walked the dog around 5:00 -- some time between
24 5:30 and 6:00?

25 A. Yeah.

1 Q. And I mean, you stayed in the -- in the yard,
2 right?

3 A. Um-hmm.

4 Q. So, you were out there from, what, ten -- ten
5 minutes at tops?

6 A. Then I took her in, and then I took -- went back
7 out and fed my cats.

8 Q. Okay. Okay. And then you went back inside and
9 finished getting ready?

10 A. I was pretty much ready.

11 Q. Okay. And you didn't hear any shots in the
12 middle of the night, did you?

13 A. I was sleeping.

14 Q. Sleeping. All right. So, nothing really loud
15 woke you up in the night?

16 A. A freight train wouldn't wake me up.

17 Q. Your house is on that same piece of property
18 there.

19 A. Yes.

20 Q. Where's that picture at? There we go. Let's
21 see. I think this is State's Exhibit 30. So -- so
22 that these folks can see, too, this is your house
23 right there, correct?

24 A. Yes.

25 Q. Okay. And the living room of the Passio

1 household is over here?

2 A. Um-hmm.

3 Q. And there is a air conditioning unit over here,
4 is there not, on this side of the house?

5 A. Yes, over here.

6 Q. You have an air conditioning unit?

7 A. Window.

8 Q. Window?

9 A. At the time.

10 Q. Okay. All right. And it was June?

11 A. Yes.

12 Q. All right. You were friends with Michelle's
13 mother, Pam?

14 A. Yes.

15 Q. And you used to drink together when she lived
16 upstairs?

17 A. Oh, yeah.

18 Q. Yeah. And you were friends with Michelle, too,
19 right?

20 A. Yes.

21 Q. And you all would drink together and smoke
22 cigarettes and hang out, right?

23 A. Yeah.

24 Q. Okay. And you said it happened all the time?

25 A. That we hung out, yeah.

1 Q. Okay. Let's see. They moved there, what, July
2 of --

3 A. Something like that, yeah.

4 Q. Yeah, of 2015?

5 A. Yeah, they moved in June 22nd. So, yeah, maybe
6 July-something.

7 Q. And did you, throughout that -- I mean, almost a
8 year, what, eleven months, you hung out with her, and
9 you all sat there and drank, and --

10 A. We didn't drink every night, but we did drink,
11 yes.

12 Q. Okay. And she was pregnant during that time?

13 A. When we was hanging out? Yeah.

14 Q. Yeah. And you said you saw bruises on Michelle?

15 A. Yeah.

16 Q. And you never saw anything that caused those
17 bruises; is that the case?

18 A. Oh, no.

19 Q. Okay. And you said you never saw Richard walking
20 the dog?

21 A. No. Him personally, no.

22 Q. But you didn't sit out on your porch all the time
23 watching to see who was letting the dog out at night,
24 especially dark, did you?

25 A. No, I wasn't particularly watching who walked

1 her.

2 Q. Sure.

3 A. But I know who I seen walk her.

4 Q. Right. And your house was kind of behind their
5 house, correct?

6 A. Yeah, but they always used their back door, which
7 is literally, my front door is facing theirs.

8 Q. So, if somebody went out the front of that house,
9 you wouldn't necessarily be able to see them from your
10 house, would you?

11 A. Hm-mmm.

12 COURT REPORTER: Is that yes or no?

13 A. No, ma'am.

14 MR. GEIER: I have no further questions. Thank
15 you.

16 A. Um-hmm.

17 SOLICITOR SWANSON: Just briefly.

18 JUANITA PATRUM, RE-DIRECT

19 EXAMINATION BY SOLICITOR SWANSON:

20 Q. Juanita, your place is pretty small, right?

21 A. Yes, ma'am.

22 Q. Okay. And so, as a result, would you often sit
23 on your porch?

24 A. Yes, ma'am.

25 Q. Okay. A lot?

1 A. Yeah.

2 Q. Okay. Thanks.

3 A. Quite a bit, yeah.

4 Q. Thanks.

5 SOLICITOR SWANSON: Nothing further.

6 JUANITA PATRUM, RE-CROSS-

7 EXAMINATION BY MR. GEIER:

8 Q. One of the -- did you ever tell her she shouldn't
9 be drinking when she was pregnant?

10 WITNESS NODDED HEAD IN NEGATIVE.

11 MR. GEIER: No? Okay.

12 SOLICITOR SWANSON: I don't have anything
13 further.

14 THE COURT: Okay. Any objection to her being
15 released?

16 MR. GEIER: No, your Honor.

17 THE COURT: You are released, Ms. Partrum. Thank
18 you. Call your next witness.

19 SOLICITOR SWANSON: The State calls Jordan Moser.

20 DEPUTY SHERIFF: Left hand on the *Bible*. Raise
21 your right hand. Do you swear or affirm to tell the
22 truth, the whole truth, and nothing but the truth, so
23 help you God?

24 JORDAN MOSER: Yes, sir.

25 JORDAN MOSER, DIRECT

1 EXAMINATION BY SOLICITOR SWANSON:

2 Q. Jordan, where do you work?

3 A. Schooner's Bar and Grill.

4 Q. Okay. And where is that located?

5 A. Right on the edge of 278 and 17.

6 Q. Okay. I'm going to show you this map, and ask if
7 the location makes sense to you for Schooner's.

8 A. Yes, ma'am.

9 Q. Okay. All right. So, right here. Close to
10 where Michelle and Richard Passio lived?

11 A. Yes, ma'am. Just around the corner.

12 Q. So, like, a few blocks?

13 A. Yes, ma'am.

14 Q. How long have you been bartending at Schooner's?

15 A. About six-and-a-half years.

16 Q. All right. Were you friends with Michelle
17 Passio?

18 A. Yes, ma'am.

19 Q. How did you come to meet Michelle and Richard?

20 A. Her and Rock would come in after they'd closed
21 the restaurant. I -- just come in and have a couple
22 drinks, and then we got to know each other pretty good
23 right when they first moved here.

24 Q. Okay. Can you come a little closer to the
25 microphone. Thank you. And you say when they closed

1 the restaurant. You mean when Jasper's Porch would
2 close at night?

3 A. Yes, ma'am.

4 Q. Okay. When Michelle was coming in there, did she
5 ever show you a business card?

6 A. Towards the end, I think -- maybe right after she
7 had the baby, she showed me the card for Cathy
8 Padgett, the lawyer, but that was -- that's the only
9 card she ever showed me.

10 Q. Okay. And when did she show you Cathy Padgett's
11 card? Was Rock sitting right there? Had he walked
12 away?

13 A. I mean, he was in the bar, but I think he maybe
14 had gone to the bathroom. He wasn't, I mean, of
15 course, he wasn't standing right beside her or
16 anything.

17 Q. Okay. Now, were you working the night of June
18 2nd, into the 3rd --

19 A. Yes, ma'am.

20 Q. -- in 2016?

21 A. Yes, ma'am.

22 Q. All right. And do you remember Michelle coming
23 in?

24 A. Yes, ma'am.

25 Q. All right. What did she do when she came in?

1 A. She came in and brought me the Low Country Boil
2 that she had fixed, and she sat down and was just
3 talking to the other people that were in there. We
4 were just kind of cutting up, made plans to meet her
5 kids for the first time on that -- on the Friday, on
6 the 3rd.

7 Q. Okay. So, this was a Thursday night.

8 A. Yes, ma'am.

9 Q. And you guys made plans for the following day,
10 Friday, the 3rd?

11 A. Yes, ma'am. We were supposed to go out to lunch.

12 Q. Had you ever met her kids before?

13 A. No.

14 Q. All right. So, you were going to meet her kids
15 for the first time. What time did she come in?

16 A. It's hard to remember, but I want to say it was
17 around 11:00 or so, maybe.

18 Q. Okay. And what kind of mood was she in?

19 A. She was in a all right mood. She was giggly, I
20 guess, same as she usually was. I mean, she was --
21 like I said, handed me my food, and we started cutting
22 up and, you know, making plans.

23 Q. Did you find her to be suicidal or depressed?

24 A. No, ma'am.

25 MR. GEIER: Objection, your Honor.

1 THE COURT: Excuse me?

2 MR. GEIER: Objection.

3 THE COURT: Basis?

4 MR. GEIER: She's calling for an opinion based on
5 something that she --

6 COURT REPORTER: I need you to speak up. *She's*
7 *calling for?*

8 THE COURT: I think you could re-phrase the
9 question in a way that doesn't call for speculation.

10 SOLICITOR SWANSON: Okay.

11 BY SOLICITOR SWANSON:

12 Q. Was her -- was her demeanor depressed in any way?

13 A. No, ma'am.

14 Q. How many kids did Michelle have?

15 A. Eight.

16 Q. And did she talk about them?

17 A. Constantly.

18 Q. How did she feel about them?

19 A. She loved them.

20 Q. Did you see Rock that night?

21 A. Yes.

22 Q. Okay. Tell us about his contact with you, and at
23 the bar that night.

24 A. He -- she was there, and she was supposed to be
25 home by midnight, I think, and she obviously was still

1 at the bar right at midnight. And he called the bar
2 phone, and I -- I think I let -- I think I handed it
3 to her to answer, maybe. I didn't answer it; I know
4 that; but I think I handed it to her to answer. I
5 don't know if she answered or not, but then, he showed
6 up a minute later, maybe.

7 He came in, and I know he was mad that she was
8 there still, and they kind of started to argue. And
9 you know, I had other customers, so I wasn't just
10 focused on them, obviously. And you know, I saw them
11 arguing, and he hit the cigarette out of her hand or
12 mouth or wherever it was. I barely remembered that.
13 And then, she left, and he left shortly there, after
14 her.

15 Q. So, she left before he did.

16 A. Yes, ma'am. I think -- I mean, I think so. It's
17 been a long time ago.

18 Q. Sure. And do you remember him making a phone
19 call before he left?

20 A. I really don't, to be honest with you. I don't
21 remember.

22 Q. Okay. Do you know about how long they were at
23 the bar arguing before Michelle left?

24 A. It couldn't have been more than 20 or 30 minutes.
25 I mean, because, like I said, he got there right after

1 midnight, and they were -- I think they were maybe
2 gone by 12:30.

3 Q. All right. And when did you learn of Michelle's
4 death?

5 A. The next morning, when I got to work.

6 Q. And what was your reaction?

7 A. Angel had called me a couple times, and I didn't
8 know why, so I went outside to call her. And I was
9 pretty upset, you know.

10 Q. And did you tell Chris McIntosh, the investigator
11 from Ridgeland P.D., about what went on at Schooner's
12 that night?

13 A. Yes, ma'am.

14 Q. Okay. All right. Thank you, Jordan.

15 SOLICITOR SWANSON: Nothing further at this time.
16 Please answer any questions Mr. Geier may have.

17 JORDAN MOSER, CROSS-

18 EXAMINATION BY MR. GEIER:

19 Q. Michelle was your friend, wasn't she?

20 A. Yeah.

21 Q. It's hard to lose a friend, isn't it?

22 WITNESS DID NOT RESPOND.

23 Q. Well, I'm sorry you lost her. Michelle could be
24 really friendly, couldn't she?

25 A. Yes, sir.

1 Q. Real outgoing?

2 A. Yes, sir.

3 Q. Okay. I mean, sometimes she was the life of the
4 party, wasn't she?

5 A. I wouldn't say that. Usually, when they came in,
6 there was nobody but us -- or but me and them. But, I
7 mean.

8 Q. What about when it was just you and her?

9 A. She would just -- we just talked, you know. I
10 mean, nothing special. We were just --

11 Q. Right.

12 A. -- very good friends.

13 Q. Yeah. And how often would you hang out with
14 Michelle?

15 A. When they first moved here, they came in to see
16 me a couple of nights a week at the bar. I mean, I
17 work there a good bit. They'd come and see me every
18 few nights or so. And then, after she found out was
19 pregnant -- she was pregnant, she would still come in,
20 but they wouldn't stay as long. And of course, she'd
21 only -- you know, she only had, like, a beer, maybe,
22 then. You know, they wouldn't stay very long.

23 And from time to time, towards the end of her
24 pregnancy, she would come to my grandma's, just stop
25 by and say hey. That was, I mean, that -- that was

1 most of the time when I saw her, is when she stopped
2 by there before I went to work.

3 Q. Okay. When did you start selling -- or giving
4 Michelle marijuana?

5 A. I didn't sell or give Michelle marijuana. I
6 smoked marijuana with her, but I didn't give or sell
7 her any.

8 Q. Okay. How often did you do that?

9 A. We did it maybe twice.

10 Q. Maybe twice?

11 A. Yes, sir.

12 Q. When did you do that?

13 A. I don't remember.

14 Q. Okay. So, no one spoke to Richard, as far as you
15 know, that evening when he called the bar?

16 A. No, sir, not that I remember.

17 Q. And you could tell it was Richard's number?

18 A. It said his name on the caller I.D.

19 Q. Okay. All right. How many people were in
20 Schooner's that night?

21 A. I don't remember. There was couple other people
22 there, but I can't give you a number or anything.

23 Q. I mean, I've never been in there. I mean, if
24 there is --

25 A. Maybe -- maybe five or ten other people. I don't

1 even think it was that many.

2 Q. Okay. So, it wasn't a real busy night?

3 A. No. I mean, I had some customers, but it wasn't
4 busy.

5 Q. Okay. And this is a -- it's a bar, but is it
6 also a private club?

7 A. Yes, sir.

8 Q. So, does that mean you can serve after 2:00 a.m.?

9 A. No, sir, not anymore.

10 Q. Okay. Well, at the time.

11 A. At the time, yes, sir.

12 Q. Okay. Okay. Did Michelle come over to your
13 house very often?

14 A. No.

15 Q. You all just met mostly at the bar?

16 A. Mostly at the bar, yes, sir.

17 Q. Okay. All right.

18 MR. GEIER: I don't have any further questions.
19 Thank you.

20 SOLICITOR SWANSON: Just briefly.

21 JORDAN MOSER, RE-DIRECT

22 EXAMINATION BY SOLICITOR SWANSON:

23 Q. Mr. Geier asked you what Michelle was like when
24 she was with you. Was she different with you than
25 when she was around Richard?

1 A. I would say she was a little bit more reserved.
2 I mean, I was friends with both of them, but he
3 definitely was, I mean, kind of controlling. So, I
4 mean, she was a little -- a little bit more outgoing
5 when she was by herself, but.

6 Q. Okay. So, she was more reserved around Richard?

7 A. Yes, ma'am.

8 Q. Than when she was by herself?

9 A. Yes, ma'am.

10 SOLICITOR SWANSON: Okay. Thank you.

11 A. Um-hmm.

12 THE COURT: Anything else, Mr. Geier?

13 MR. GEIER: No, your Honor.

14 THE COURT: Okay. You may be excused, ma'am.

15 JORDAN MOSER: Yes, ma'am.

16 THE COURT: Thank you. You all need a break?
17 Take a little break? No? You okay? Are you sure?
18 Okay. Let's call our next witness.

19 SOLICITOR SWANSON: The State calls Angel Rose.

20 THE COURT: Okay.

21 DEPUTY SHERIFF: If you would raise your right
22 hand. Do you solemnly swear or affirm to tell the
23 truth, the whole truth, and nothing but the truth, so
24 help you God?

25 ANGEL ROSE: I do.

1 ANGEL ROSE, DIRECT

2 EXAMINATION BY SOLICITOR SWANSON:

3 Q. Angel, hey.

4 A. Hey.

5 Q. Where were you working back in 2016?

6 A. Jasper's Porch.

7 Q. And how long had you worked at Jasper's Porch?

8 A. I was there for about a year.

9 Q. Okay. Where is Jasper's Porch located?

10 A. Right off of Main Street, on Heron Trail.

11 Q. Okay. I'm going to have you just look at this
12 map. And it's actually labeled here, but does that
13 make sense to you?

14 A. Yes.

15 Q. Jasper's Porch?

16 A. Yes.

17 Q. Okay. Close to Schooner's?

18 A. Yeah.

19 Q. Okay. Just right down the street, and not far
20 from here?

21 A. Not far from here.

22 Q. Did you work in the kitchen or out on the floor
23 at Jasper's Porch?

24 A. I worked in the kitchen. Towards the end, I
25 actually worked on the floor a little while.

1 Q. Okay. And when did you meet Michelle and
2 Richard?

3 A. Actually, I met him first. He came down when he
4 came down to work, and then she came a little bit
5 later.

6 Q. All right. Where was Richard working when he
7 first came down?

8 A. When he first came, he was in the kitchen,
9 learning all the different things, and.

10 Q. All right. And what was he like at work in the
11 kitchen?

12 A. I mean, he was really inventive. He wanted to,
13 you know, change the menu and learn different things
14 and make bigger things for the restaurant and stuff,
15 you know.

16 Q. All right. Did Michelle and Richard ever work
17 together?

18 A. Some.

19 Q. All right. And what were things like at work
20 when they worked together?

21 A. I mean, all situations are different, but it
22 could be a little tense sometimes, because, like, I
23 was friends with both of them. Both of them would
24 talk about their relationship and issues and stuff
25 like that, and you could tell when there was problems,

1 and everybody was just kind of walking on eggshells
2 and stuff.

3 Q. Okay. Would he ever tell her what to eat or what
4 not to eat?

5 A. Sometimes.

6 Q. Would he ever make her go home and change?

7 A. I remember one time when she changed clothes.

8 Q. Okay.

9 A. She was -- that's after she had started
10 witnessing some.

11 Q. All right. Now, at some point, Richard decides
12 to start a bar area at Jasper's Porch, right?

13 A. Well, it already had a bar.

14 Q. Okay.

15 A. I mean, yeah, it already had a bar. He just felt
16 like, when he kind of came out of the kitchen some,
17 then, you know, he started, like, working, I guess, in
18 the office more, trying to change different things,
19 whatever. And then, kind of, in the bar, was going to
20 make, like, a new bar menu and, you know, wanted
21 entertainment, whatever, kind of liven that set-up a
22 little bit.

23 Q. All right. And when he began to move out to the
24 bar area, did he begin making different sorts of
25 cocktails?

1 A. I mean, we'd get done at night, he would make
2 drinks. He'd make drinks and stuff. We'd try
3 different things. Especially on the weekends, you
4 know, like, if we had --

5 Q. Right.

6 COURT REPORTER: On the weekend if we had what?

7 A. If we had entertainment and stuff. Yeah. Like,
8 you know, at the -- playing at the bar or something.
9 We'd all stay after the kitchen closed or whatever,
10 you know.

11 Q. Okay.

12 A. So, maybe it was more drink, more all of us, you
13 know.

14 Q. All right. So, you all began drinking more --

15 A. Maybe so.

16 Q. -- as the bar was -- was starting up?

17 A. Yeah.

18 Q. With Richard.

19 A. Yeah.

20 Q. Okay.

21 A. More interesting things. Trying new drinks and
22 making new.

23 Q. Can you tell us about the last night that you saw
24 Michelle.

25 A. I guess it was just a blessing, because I wasn't

1 even going to be out. I didn't go anywhere. I walked
2 to my friend's down in the forest, and I was coming
3 home. And I didn't know she was there, because, like,
4 she was usually driving the van or the little red car.
5 So, I wasn't -- I didn't think to even think she was
6 there.

7 Q. And when you say *there*, where is that?

8 A. At Schooner's. I'm sorry. At Schooner's.

9 Q. Okay. At Schooner's.

10 A. Because I was walking past there. I got to the
11 light or whatever, and she saw me out the window -- or
12 Jordan saw me out the window, and they came to the
13 door, hey, you know. And so, I went in for a minute.
14 And so, it was about -- probably about 11:30. And so,
15 I was like, oh, I was going home, I need to get home,
16 you know. And she was like, well, I'll give you a
17 ride. I was like, I didn't see your car. And she
18 said, oh, you know, I have the other car, which I'm to
19 assume is the -- the --

20 COURT REPORTER: I'm sorry. Would you slow down
21 just a little.

22 A. Sorry. It was a family car, the other car they
23 had borrowed, because their car was messed up or
24 something. So. I didn't recognize it, you know.

25 Q. What kind of mood was she in?

1 A. She was okay. She was -- I mean, she was okay.
2 She was -- we talked about a lot of stuff. She had a
3 lot of issues. She was a little sad. She was like,
4 oh, have a beer. So, I had a beer. And she was like,
5 I'll take you home. I said, you don't need to take me
6 home, I can walk. It was only, like, two blocks from
7 where I live. And she's like, well, I ain't got to be
8 home until 12:00 o'clock. And so, I said, okay. And
9 so, she said, well, I'll give you a ride, because I
10 don't have to be home until 12:00. It got like five
11 minutes 'til 12:00; so, well, have another beer; it'll
12 be okay. So, right at 12:00 o'clock the phone rang,
13 and they see it on the caller I.D. or whatever. So,
14 they didn't answer it the first time. Then, I think
15 the second time she handed it to her to answer or
16 whatever, and then maybe she just clicked it right
17 off.

18 Q. Okay.

19 A. And so, then, a few minutes later, Rock, Richard,
20 whatever, showed up. And right before that situ --
21 right before the phone had started ringing, you know,
22 she was like, stay a few more minutes, have another
23 beer. Then we started talking. And then, she was all
24 like, oh, she -- she said, I know you need your job;
25 don't try to take sides; she's like, but I'm going to

1 leave. She's like, I'm getting ready to leave. She
2 was like, but you have to have a job, so don't take
3 sides.

4 MR. GEIER: Your Honor, I object to the hearsay
5 at this point.

6 THE COURT: Okay. It's hearsay.

7 A. That's just what she told me.

8 THE COURT: Hold on a second. Okay?

9 A. Yeah. That is what she told me, yeah.

10 SOLICITOR SWANSON: Okay.

11 A. Sorry.

12 THE COURT: Ladies and gentlemen, you're just to
13 strike what she just said.

14 A. Okay.

15 THE COURT: Someone can't say what someone else
16 said.

17 A. To me, though. I didn't -- I'm sorry.

18 THE COURT: Exactly. That's okay. Go ahead.

19 SOLICITOR SWANSON: Okay.

20 BY SOLICITOR SWANSON:

21 Q. So, but your conversation with her was about
22 plans for the future?

23 A. Yes.

24 Q. Is that right?

25 A. Yes.

1 Q. Without saying what she said.

2 A. Yes.

3 Q. Okay. And so, when -- how did you know it was
4 Richard calling? Did you know --

5 A. The caller I.D. They look at the number.

6 Q. Okay. And when he shows up, do you remember him
7 saying anything to Michelle?

8 A. No. What he said, just that he leaned over and
9 was speaking.

10 Q. That what?

11 A. Like, he leaned over and was speaking, you know,
12 like, quietly, you know. But you could tell, like,
13 facial expressions, you could see that he was upset
14 and --

15 Q. And did you see any other interactions between
16 the two?

17 A. He -- the only thing I heard after that, he said
18 that it was, you know, well, you said you were going
19 to be home. She said, I'm getting ready to leave.
20 She was like, I can give you a ride home, still. I
21 said, it's okay, I'll walk, you know, go ahead. And
22 so, she was like, well, I'm going to finish my beer,
23 just kind of, like, defiant. And she lit a cigarette,
24 went to light it -- went to light the cigarette, and
25 like, he knocked it out of her -- it wasn't quite in

1 her mouth yet, but kind of knocked it out of her hand.

2 Q. Okay. All right.

3 A. I was like, well, that's my cue, I gotta go, you
4 know.

5 Q. Okay. All right. Thank you.

6 A. Thank you.

7 SOLICITOR SWANSON: Nothing further at this time.

8 ANGEL ROSE, CROSS-

9 EXAMINATION BY MR. GEIER:

10 Q. Afternoon.

11 A. Good afternoon.

12 Q. You said when Michelle was working at the Porch,
13 sometimes it could be tense?

14 WITNESS DID NOT RESPOND.

15 Q. So, sometimes it wasn't tense. Is that fair to
16 say?

17 A. Oh, yeah. Yeah, I mean, it was --

18 Q. Sometimes they got along just fine, as far as you
19 could tell?

20 A. Absolutely.

21 Q. And again, you said that -- is it fair to say
22 that sometimes she seemed kind of down; other times
23 she didn't?

24 A. We talked about a lot of the problems that she
25 had that she felt that her relationship, with her -- I

1 mean, baby, when the baby got there.

2 Q. Okay.

3 A. We all have those days.

4 Q. Sure. You're aware of Michelle smoking
5 marijuana.

6 A. Yes.

7 Q. Yeah. And she did it while she was pregnant,
8 too?

9 A. I don't -- I don't -- I didn't smoke with her
10 when she was pregnant. I don't remember her smoking
11 it when she was pregnant.

12 Q. I see. And did you tell Richard Passio that she
13 was getting that marijuana from Jordan Moser?

14 A. The only marijuana conversation I had with him
15 was when he was angry because she took me -- that's
16 when I was living in a motel -- and she gave me a ride
17 home one day, and we had smoked together or whatever.

18 Q. I see.

19 A. And he pitched a fit and, you know.

20 Q. So, you didn't ever tell him that Jordan Moser
21 was the one who was supplying marijuana?

22 A. I don't believe that I did.

23 Q. Okay.

24 A. Because I didn't know that's where she was
25 getting it from. I mean, I didn't --

1 Q. I see.

2 A. Like, I knew she would smoke with either one of
3 us, but you know.

4 Q. Um-hmm.

5 A. And like that.

6 Q. And Michelle would drink while she was pregnant,
7 too, wouldn't she?

8 A. Maybe occasionally. But not like we did before.

9 Q. Before. So, when did you first start hanging out
10 with Michelle?

11 A. When she came down there.

12 Q. Okay.

13 A. When she came to work at, you know, the Porch.

14 Q. Okay. And did she start working at the same time
15 as Richard?

16 A. It was afterwards when she actually started
17 working. I mean, she was around there. She wasn't
18 really working.

19 Q. Okay. And so, they got there around July of
20 2015, right?

21 A. I believe so.

22 Q. And she gave birth, let's see -- their youngest
23 son was Frankie, wasn't it?

24 A. I don't know.

25 Q. You didn't know the name of their youngest child?

1 A. I don't, no, sir.

2 Q. Okay.

3 A. She might have told me. It all happened pretty
4 quickly afterwards.

5 Q. She just had a baby --

6 A. Yeah.

7 Q. -- before this, didn't she?

8 A. Yeah.

9 Q. Okay. And do you know at all how old that baby
10 was?

11 A. No.

12 Q. Okay. At some point, did you recommend to
13 Michelle that she go seek some counseling at Coastal
14 Empire Mental Health?

15 A. We talked about the situation that my mom had,
16 and Mom --

17 Q. And again, just make sure you tell me what you
18 said.

19 A. Yeah, tell you what was going to said. I know.

20 Q. Right. Sure.

21 A. What I said was that my mom had a situation, you
22 know, problems with her husband, and some of the same
23 issues that we had talked about. Some of the stress,
24 some of the, you know, and that it was a place to go.

25 Q. Okay. I see.

1 MR. GEIER: No further questions. Thank you.

2 SOLICITOR SWANSON: Nothing further.

3 THE COURT: You may be excused, Ms. Rose.

4 ANGEL ROSE: Thank you.

5 BY THE COURT:

6 THE COURT: Ladies and gentlemen, we are going to
7 take a brief recess at this time. Do not discuss this
8 case. It wouldn't be appropriate to do so.

9 Mr. Foreperson, roughly what time does the jury
10 want to work 'til?

11 FOREPERSON: There were several members that had
12 problems anything later than 5:00 o'clock.

13 THE COURT: I understand that perfectly, ladies
14 and gentlemen. All right. We will adhere to that
15 schedule. Again, go back to the jury room, grab a
16 Coke or whatever you need. Do not discuss this case.
17 It wouldn't be appropriate to do so. Okay? Thank
18 you, sir.

19 JURORS LEAVE COURTROOM 4:01 P.M.

20 THE COURT: All right. We'll be at ease for --
21 let's take as short a break as we can. You heard
22 them; they want to be done by 5:00; and it's raining
23 out and not nice. So, let's just work up to 5:00, if
24 that's fine with you.

25 SOLICITOR SWANSON: Sure.

1 THE COURT: Okay. Okay. All right. We'll be
2 just maybe seven or eight minutes or so, if that's
3 okay. All right.

4 SOLICITOR SWANSON: Okay.

5 OFF THE RECORD 4:02 P.M.

6 BACK ON THE RECORD 4:22 P.M.

7 JURORS ENTER COURTROOM 4:22 P.M.

8 BY THE COURT:

9 THE COURT: All right. If you'll call your next
10 witness.

11 SOLICITOR SWANSON: Thank you. The State calls
12 Brandon Ashcraft.

13 THE COURT: Come on forward, Mr. Ashcraft.

14 DEPUTY SHERIFF: Raise your right hand, left hand
15 on the *Bible*. Do you solemnly swear or affirm to tell
16 the truth, the whole truth, and nothing but the truth,
17 so help you God?

18 BRANDON ASHCRAFT: Yes, sir.

19 BRANDON ASHCRAFT, DIRECT

20 EXAMINATION BY SOLICITOR SWANSON:

21 Q. Brandon, back in June of 2016, where were you
22 living?

23 A. 323 Third Avenue -- Fifth -- no, it was --

24 Q. Fifth Avenue?

25 A. It was Fifth Avenue, yes, ma'am.

1 Q. Okay. So, does that make sense on this map, over
2 here, [REDACTED]

3 A. Yes, ma'am.

4 Q. Okay. Not too far from Jasper's Porch, right?

5 A. No, ma'am, not at all.

6 Q. Okay. And were you working at Jasper's Porch?

7 A. I believe I had left the restaurant due to
8 something, probably a week or two prior to that.

9 Q. Okay. When did you work at Jasper's Porch?

10 A. When -- I can't tell you the exact date. When I
11 first got in the kitchen, Rock was still in the
12 kitchen. And him and his -- Stephen, his brother,
13 were given kind of free range to update the restaurant
14 a little bit. And at that point, I kind of assumed
15 the executive chef role, and brought in a bunch of new
16 food.

17 Q. Okay. So, when you came on to Jasper's Porch,
18 you kind of took over the kitchen role?

19 A. Yes, ma'am. I worked my way up to it, but, yes.

20 Q. Okay. And so, when did you meet Richard and
21 Michelle?

22 A. Again, I -- I don't remember the dates, but when
23 I came, I remember he was one of the first people I
24 met, and he was working on the line in the kitchen, so
25 it before he was really a manager, where he was just

1 kind of just getting into town, I believe.

2 Q. Okay. Just slow down a little for me, Brandon,
3 when you talk.

4 A. I'm sorry.

5 Q. I know. So, they had just recently got into
6 town?

7 A. Yes, ma'am.

8 Q. Okay. What was your relationship with Richard
9 like?

10 A. We were all friends.

11 Q. All right. What about your relationship with
12 Michelle?

13 A. Friends. Very good friends.

14 Q. All right. And what was her personality like?

15 A. She was just an awesome person. Laughing all the
16 time. Always tried to have fun. She was just a great
17 person to be around.

18 Q. All right. Did she act any differently around
19 Richard than she did when she wasn't around Richard?

20 A. Yes, 100 percent.

21 Q. All right. And how do you mean?

22 A. I mean, you know, herself, she would -- she was
23 vocal, would speak out. When he was around, she was
24 more reserved; wouldn't really speak her mind as much.

25 Q. Did you ever have any sort of physical

1 relationship with Michelle?

2 A. Yes, ma'am.

3 Q. All right. Did it last very long?

4 A. Not at all.

5 Q. Okay. How many times were you intimate with
6 Michelle?

7 A. I don't know. A handful, over a couple weeks. I
8 would -- back when I was working, and I had just got
9 out of a long relationship, and she was very
10 interested in me, and I just -- it just happened a few
11 times. And then, I ended up back with the mother of
12 my children. It kind of just ended after that, and
13 she was just very good friends with me and my mother.

14 Q. Okay. So, after you were intimate with her, you
15 still maintained the friendship?

16 A. Absolutely.

17 Q. Okay. Were there ever rumors about you two?

18 A. Yes.

19 Q. Okay. Did Richard ever confront you about those
20 rumors?

21 A. Yes.

22 Q. Do you remember what he told you about them?

23 A. Well, the first time he talked about it, we
24 walked outside, and I was adamantly denying it, and he
25 made sure to tell me, he's like, if he thought -- this

1 exact, he said, if you thought he believed what he had
2 heard, it'd be a different conversation.

3 Q. Okay. Did you, after the rumors -- after he
4 confronted you about the rumors, did you notice any
5 changes at work?

6 A. Well, he had confronted me, and even his brother
7 had pulled me aside and asked me something. And I
8 noticed after that, cameras went up in the kitchen.

9 Q. All right. What was Richard like at work?

10 A. I mean, most of the time, we worked -- we worked
11 side-by-side, trying to make the restaurant a better
12 place. So, I mean, we definitely tried to build the
13 place back together, you know, trying to bring in
14 better food. It was -- I mean, I had a lot of fun
15 there for awhile.

16 Q. Did you ever work when both Michelle and Richard
17 were at the restaurant?

18 A. Yes.

19 Q. Can you describe what that was like.

20 A. Well, it would be completely different, you know.
21 I mean, I think Rock would be more -- instead of
22 worrying about the business, be more worried about
23 what Michelle was doing all the time. And she would
24 be talking, you know, she would just be doing her job.
25 But I mean, when they were together, it was always

1 kind of tense at the work a lot of the time.

2 Q. Okay. And you said he was more worried about
3 what she was doing than what was going on at the
4 restaurant?

5 A. Yeah.

6 Q. Would he watch her?

7 A. Yeah.

8 Q. Would he ever watch her from the cameras?

9 A. I don't know. I never -- wasn't privy, really,
10 to camera information or anything of that, but I would
11 assume those cameras were for something.

12 Q. Okay. Did you ever see Richard with a gun at the
13 restaurant?

14 A. Yes.

15 Q. All right. Where did you see him with the gun at
16 the restaurant? Tell us about that.

17 A. There was a back sunroom off the bar, and I was
18 told that it was there, more or less, for security
19 drops, the money deposits or whatever. But he took a
20 couple cooks back there, and we saw the gun back in
21 the side room, next to the bar.

22 Q. And what was the gun in?

23 A. It was in some kind of case. I can't -- I mean,
24 I'm -- I can't really -- really remember. I remember
25 it being a black case.

1 Q. And about how long before Michelle's death did he
2 show you the gun at the restaurant? Do you recall?

3 A. Probably a few weeks. Three, maybe. Three or
4 four.

5 Q. Let's talk about that Thursday night, the last
6 time you saw Michelle. What did you do that night?

7 A. Well, that night I was at home, and I just
8 couldn't sleep, so I decided to walk uptown and get a
9 beer. And the gas station and the BP was closed, so I
10 went to walk into town, like down Main Street, to one
11 of the gas stations close to the interstate that was
12 there, and Rock was sitting on the front porch. And
13 he said, hey, you know. We were still friends at the
14 time. Called me over, and I went over there.

15 Q. All right. And so, did you stay for a beer over
16 at the Passio's place?

17 A. Yes. He -- we had some of the liquor, because we
18 had recently lost our liquor license at Jasper's
19 Porch, so a lot of the liquor out of the restaurant
20 was at his house. And me and him had been doing a lot
21 of research on drink development, and made a mean Long
22 Island, you know. So, he -- I -- we had stopped in, I
23 think we -- he had a March -- a Long Island or a
24 Margarita. I saw the Low Country Boil on the stove.
25 I sat on the porch. Probably had one or two drinks.

1 A kid named Devan was there, and we talked for a
2 little while, and then I left.

3 Q. Okay. So, Richard was drinking that night?

4 A. Yes.

5 Q. Liquor?

6 A. Yes.

7 Q. And had -- had he started drinking more as you
8 all started developing these drinks for the bar?

9 A. I mean, I think we all maybe a little bit. I
10 would say so, because we were always playing with new
11 drinks. And then, when the bar really opened up, he
12 made it a rule. So, employees got dollar shots or
13 dollar beers after they got off work. Dollar, dollar-
14 fifty, so we all kind of drank a little bit at the bar
15 after work.

16 Q. Right. Okay. So, he was a regular drinker,
17 then?

18 A. Yeah. Well, I mean, we -- we probably drank
19 together two or three nights a week.

20 Q. After you had a drink over at the Passio's, what
21 did you do?

22 A. Well, I was headed home, and I -- you know, I --
23 I kind of asked Michelle, this was probably at the
24 bar, so I said all right, you know. And I had
25 friends, Jordan, my cousin, and I live on Third

1 Avenue, it's right on my way -- I'm on Fifth Avenue,
2 so it's right on my way home. So, I walked up there,
3 and I was walking by the bar and saw Angel. So, I
4 went inside and said hello, and her and Michelle were
5 sitting at the corner of the bar, and Jordan was
6 there. And I saw a girl that I was talking to at the
7 time at the other end of the bar, so I walked across
8 there and sat there and was drinking, on the opposite
9 side of the bar.

10 Q. Were you at Schooner's when Richard arrived that
11 night?

12 A. Yes, ma'am.

13 Q. Okay. And tell us what you remember about that.

14 Q. I remember he walked in. Didn't look happy.
15 They sat at the end of the bar for a minute, and I
16 think they all had a drink. And he was sitting there
17 drinking, and I could tell they were talking about
18 something, you know, just kind of like, you know, low
19 tone, but you could tell he was displeased. And then,
20 she had mentioned a couple times she had to be home at
21 midnight, and I see -- saw her to go to light a
22 cigarette and him knock it out of her hand. And he
23 went outside and was on the phone for a minute, and
24 then she left. And I thought she left with Devan and
25 them, and then he left shortly afterwards.

1 Q. Okay. So, they left separately?

2 A. Yes, ma'am.

3 Q. Did he mention anything to you when he was
4 leaving?

5 A. Nothing much. I heard them talking about going
6 to get -- I thought I heard him say he had to go get
7 the Jager from the restaurant, you know, saying he had
8 to go get liquor, which didn't make much sense,
9 because we had all the alcohol -- I thought, legally,
10 we had to have all the alcohol out of the restaurant,
11 because we had lost our liquor license.

12 Q. All right. And did you talk to Richard again
13 that night?

14 A. Yes, ma'am. I ended up staying at the bar,
15 talking to the girl I was talking to, until it closed
16 down, and -- which means it had to be about 2:00
17 o'clock. And she -- or whenever we decided to leave,
18 and she took me home, to my house. And then I went
19 inside, and it wasn't sooner than I got into my home
20 than Rock texted me, and asked me if I had a baby
21 bottle. Which, I had -- I have two kids, so I have
22 one. But it kind of struck me as odd, because he has
23 eight kids. I don't know why he'd need a baby bottle,
24 but I said, yeah, come on, get a baby bottle. And I
25 kind of was just, like, I was kind of buzzed. I was

1 like, yeah, I was talking to that Tori chick all
2 night, you know, talking to him. And then, he got to
3 my -- then he -- not --

4 Q. Let me stop you right there.

5 A. Go ahead.

6 Q. Okay. I'm going to show you what's been marked
7 as State's Exhibit 31, and ask if you recognize this.

8 A. Yeah.

9 Q. Okay. What is that?

10 A. That is a Facebo -- Facebook messages between me
11 and Rock that night.

12 Q. Okay. And -- and that's how -- that's actually
13 something that you provided to me. And so, that's how
14 the initial message came through?

15 A. Yes, ma'am. That's a direct copy of my screen.

16 Q. With the date and time stamp on the top?

17 A. Yes, ma'am.

18 Q. Okay.

19 SOLICITOR SWANSON: State would offer 31 into
20 evidence at this time.

21 MR. GEIER: No objection.

22 THE COURT: Without objection.

23 SOLICITOR SWANSON: Okay. And move to publish.

24 THE COURT: You may.

25 THE COURT: All right.

1 ITEM IDENTIFIED AS FACEBOOK MESSAGES
2 BETWEEN RICHARD PASSIO, JR..
3 AND BRANDON ASHCRAFT, DATED JUNE 3,
4 2016, 2:03 A.M.
5 MARKED STATE'S EXHIBIT NUMBER 31
6 ADMITTED AS EVIDENCE.

7 SOLICITOR SWANSON: I'm just going to read it, if
8 that's okay.

9 THE COURT: Go ahead.

10 SOLICITOR SWANSON: From Rock Passio:

11 *Hey, are you still up? Do you have an*
12 *extra baby bottle I can borrow?*

13 There's a 9 there. And then, from Brandon:

14 *Yeah, just got home. I talked to that*
15 *Tori chick all night. She is hella cool.*

16 She just dropped me off. Rock says:

17 *I'm sorry. It's...so bad... Okay.*
18 *I will come by and grab it.*

19 *Hell, yeah, I got you.*

20 *On my way.*

21 And that's June 3, 2016, at 2:03 a.m.

22 All right. After you received the message that
23 he was on his way, how quickly does he get to your
24 house?

25 A. I mean, it seemed almost instantaneous. You

1 know, it seemed pretty quick, because I remember
2 answering the text message and putting my phone on the
3 table to go to the kitchen to get the baby bottle over
4 my cabinet. Grabbed the baby bottle, and there's a
5 window looking out the front of my house. And when I,
6 you know, grabbed the baby bottle and looked out, he
7 had already pulled up.

8 Q. Okay. Slow down again for me.

9 A. Sorry.

10 Q. Sorry. Do you remember what kind of car he
11 pulled up in?

12 A. I believe it was a Cavalier, a gold Cavalier.

13 Q. Okay. I'm going to show you State's 15 and 16.
14 Is this the car that you remember him pulling up in?

15 A. That's it.

16 Q. Okay. All right. And so, when he pulls up, what
17 does he do?

18 A. First, he got out the car and he -- you know, I
19 was going to run the baby bottle up to him, but he
20 turned off the car and got out; kind of came up my
21 step -- I have a front porch. I had two swings on it,
22 and he kind of came up my front stairs. And the first
23 thing he kind of did was just kind of got on my case.
24 He was kind of like, if you were my friend, why didn't
25 you come and talk to me when we were at the bar; why?

1 when you were there with us. And ever since those
2 rumors, you know, if me and Michelle were ever in the
3 same place, I made stay -- you know, stay opposite
4 sides, you know. That's why I sat at the other end of
5 the bar. I didn't want him to come in and think I was
6 sitting there talking to her. So, I was just, like,
7 man, you know, you looked like you were having
8 problems, and I learned not to get in the middle of
9 your all's things, you know. And that's kind of what
10 I said to him. And then, I went on talking about this
11 girl, Tori, and he kind of changed his demeanor then,
12 and had a seat on my -- my swing.

13 And the conversation just kind of switched it.
14 And he was like, man, it's really bad at my house.
15 And then he even mentioned -- he said, I hope that
16 tonight's not the night, and mentioned Michelle
17 killing herself to me, just like that. Was like, I
18 hope tonight's not the night that something happens.
19 And I kind of got a weird -- a really weird vibe. I
20 -- I mean, I was just standing there, and I was kind
21 of -- at this point, I'm kind of standing up close to
22 my door, and I was like, well, it's late, I need to
23 get inside. I said, I'm sure it's going to be all
24 right, just give it time, man, you know. And he kind
25 of hung his head, grabbed the bottle, and said all

1 right, and walked back to the car.

2 Q. All right. So, about what time did he leave?

3 About how long did he stay?

4 A. I mean, maybe six, seven minutes. Like he -- he
5 came up, we talked for a second. I rambled on about
6 me talking with the girl at the bar. He sat down,
7 said that little piece about him and Michelle talking.
8 And I was kind of -- at this point, I was kind of
9 weirded out; I was tired; it was about 2:10, 2:15 in
10 the morning. So, I kind of stood up and opened the
11 door like I was going in, and he got up off the porch
12 and walked to the car.

13 Q. Okay. So, it was about 2:15 in the morning?

14 A. I would say probably about then.

15 Q. Okay. And then, did you ever see Michelle again?

16 A. No, ma'am. I woke up the next morning; my mom
17 told me the coroner was outside her house.

18 SOLICITOR SWANSON: All right. Thank you,
19 Brandon. Please answer any questions Mr. Geier may
20 have.

21 A. Not a problem.

22 BRANDON ASHCRAFT, CROSS-

23 EXAMINATION BY MR. GEIER:

24 Q. Afternoon. Can you describe the case that you
25 saw Richard's pistol in.

1 A. Again, I can't. It was on a desk in the black --
2 I mean, I knew it was black. I can't remember the
3 exact specifics. All I remember was seeing the gun,
4 being it's a smaller, smaller, more compact handgun,
5 seeing it. It was me and the other cook from the
6 kitchen.

7 Q. I think you told police at one point that it kind
8 of looked like a shaving kit.

9 A. I mean, it was -- I mean, it looked like a
10 regular bag, like this, is what I saw. A regular
11 pistol case. I mean, I saw something, you know, like
12 this. And I -- I mean, I -- and I -- it's kind of
13 speculation for me, because I really don't have an
14 ingrained memory of what the case looked like. I
15 remember there was a pistol; I remember it was in a
16 case.

17 Q. Okay.

18 A. I know that -- I know it was black. That's about
19 all I can remember.

20 Q. Okay. Let's see here. So, you went to the
21 Passio house around 11:00 p.m.?

22 A. I'd say it was close to the time I was there.
23 Michelle was never there when I was there. It was
24 just Rock sitting on the front porch.

25 Q. It was just Rock, or was --

1 A. Well, Devan was there. And then --

2 Q. What about Kayla?

3 A. Kayla might have been inside with the kid, or
4 Kayla might have been there. And then, there was
5 another guy that had been walking by that we knew that
6 was there for a minute.

7 Q. How long were you at Schooner's while Michelle
8 was there? I mean, you all were both there at the
9 same time, without Richard being there.

10 A. It couldn't have been too long, because, I mean,
11 I walked from Rock's house and told him I was going up
12 to the bar, and he showed up to the bar not too long
13 after that. Maybe 15, 20 minutes. I walked in and
14 said hey to her and Angel; then walked over to the
15 girl I was talking to at the other end; hugged Jordan;
16 and sat down.

17 Q. Was Michelle -- she was drinking that night?

18 A. Yeah.

19 Q. Was she drunk at all?

20 A. I don't know if she was drunk. It's not like she
21 ever got real sloppy, you know; she just drank.

22 Q. Okay. And Michelle left with Devan?

23 A. I thought that that's who she caught a ride home
24 with, Devan or Kayla.

25 Q. Devan. And so, Kayla was there?

1 A. I can't remember exactly. I know -- they had a
2 car at that point, Devan and Kayla had a car. Who was
3 driving the car, who was in the car, I don't know. I
4 just know that she left separately, and got a ride
5 back to the house with somebody else, and I thought it
6 was Devan or Kayla, whoever was driving that car.

7 Q. When you left Schooner's that night, or
8 Schooner's --

9 A. Yeah.

10 Q. Schooner's?

11 A. That's correct.

12 Q. Schooner's. Did you go by the Passio house?

13 A. No.

14 Q. And when Richard came over to your house that
15 night, he came by car?

16 A. Yes. Yes, sir.

17 Q. When he came by that evening, he didn't have his
18 hand wrapped up in a bandage or anything like that,
19 did he?

20 A. Not that I can recall.

21 Q. No. Okay. So, and you talked to him for, what,
22 10, 15 minutes, you think?

23 A. I'd say about seven.

24 Q. Seven?

25 A. Six, seven minutes.

1 Q. Okay.

2 A. But it's also, again, you know, it's -- I've just
3 left the bar, it's 2:00 o'clock in the morning, so
4 it's not something I was really paying attention to.

5 Q. All right. So, tell me again what Richard said
6 about Michelle.

7 A. He pretty much -- he just said it was really bad
8 at the house, and what if tonight's she's actually the
9 night she kills herself. And I said, man, things are
10 just rough; you all just give it time; I don't think
11 that's -- I don't think that's a very -- I don't think
12 that's likely. You know, just trying to comfort a
13 friend, you know.

14 Q. Okay.

15 A. He was visibly upset, and I was just trying to
16 comfort my friend.

17 Q. Had he expressed concerns to you before that
18 Michelle might try to kill herself?

19 A. Not -- not specifically. I mean, he had
20 mentioned her going to get help at Mental Health
21 Center. And she had told me that she was talking to a
22 therapist there that she liked a lot.

23 Q. Now, Brandon, you've been convicted of a crime in
24 the past couple years, haven't you?

25 A. Which one?

1 Q. Okay. Well, let's go with the felony. Were you
2 convicted of a felony in the last couple of years?

3 A. I had some felony charges on my record at 18. It
4 probably just hit two years ago because non-com, non-
5 compliance of probation.

6 Q. I see. And that was in Delaware?

7 A. Delaware, Ohio. Happened when I was 19 years
8 old.

9 Q. I see. Okay. And so, were you convicted a
10 couple years ago, then, or?

11 A. No, I -- I was on intervention -- not
12 intervention in lieu of. Yeah, it was intervention-
13 in-lieu-of conviction. And then, I had probation for
14 a couple of years. And then, the probation ended up
15 getting taken out almost ten years. And then, I kind
16 of just stopped complying by not going. And then, I
17 got picked up. And at that point is when they put the
18 charges from when I was 18 on my record, because they
19 were all shelved at that time, before then.

20 Q. Now. Just a moment for me. All right?

21 A. Oh. Take your time, man.

22 Q. All right. When you had your affair with
23 Michelle, you were married at the time.

24 A. No.

25 Q. You were --

1 A. I've never been married.

2 Q. Okay. But you knew she was married.

3 A. Yes.

4 Q. All right. And how -- you would hang out with
5 Michelle how often? And I'm not talking about affair,
6 but just in general.

7 A. I mean, not too terribly often. She was very
8 good friends with my mom. She'd come by the house a
9 couple times and hang out there. We'd see each other
10 at the bar. But I mean, as far as hanging out a lot,
11 it's not like we spent a lot of time together and went
12 and did things.

13 Q. But when did -- going back to the affair, when
14 did you -- give me a time frame. I mean, was it six
15 months before she passed away? Was it two weeks
16 before she passed away?

17 A. Had to be months.

18 Q. How many?

19 A. Had to be months. Three or four months.

20 Q. Three or four months before she passed away?

21 A. Yeah.

22 Q. Okay. And so, she was, at that point, what,
23 seven months pregnant?

24 A. Yes.

25 Q. Okay. Okay. And when she was pregnant, you saw

1 her --

2 A. It was probably -- it was probably before that,
3 actually. About, like, six months, then.

4 Q. Okay. All right. And during that time, you
5 would see Michelle drinking when she was pregnant,
6 didn't you?

7 A. Yeah, she would have a drink or two.

8 Q. Okay. And --

9 A. Occasionally, but nothing severe. It wasn't like
10 she was doing shots of liquor or anything. Have a
11 glass of wine.

12 Q. Sure.

13 A. I think she drank more wine, a glass of red wine,
14 when she was pregnant. Or a beer.

15 Q. And you were aware she was smoking marijuana,
16 too?

17 A. She was a grown woman.

18 Q. But during her pregnancy?

19 A. Yeah.

20 Q. And she smoked cigarettes?

21 A. Yes.

22 Q. While she was pregnant?

23 A. Yeah. I mean, I -- I mean, I'm sure she tried to
24 cut back. She was really trying to cut back a lot. I
25 think she was down to, like, one or two a day, but.

1 Q. And did you ever see her out with Shelby Simmons
2 or Angel Rose, or anybody like that?

3 A. I wouldn't say out. I mean, they were her
4 friends, so, yeah, they would -- she'd go hang out at
5 her friends' house.

6 Q. Okay. Just a minute, one more time.

7 A. No problem.

8 MR. GEIER: All right. I don't have any further
9 questions. Thank you.

10 SOLICITOR SWANSON: Just briefly.

11 BRANDON ASHCRAFT, RE-DIRECT

12 EXAMINATION BY SOLICITOR SWANSON:

13 Q. Mr. Geier asked you about Rock bringing up
14 Michelle committing suicide. So, the first and only
15 time he ever brought that up was the night that she
16 was killed?

17 A. I mean, yeah. I mean, he had hinted to it I
18 guess a couple times, I guess, at one point. I think
19 that's why he said he moved the gun to the restaurant,
20 because he was scared of that. But yeah.

21 Q. Okay. And -- and hinted at it a couple of times.
22 That would be in the couple months before her death?

23 A. Yes. I mean, in the month before her death.

24 Q. In the weeks to month before her death.

25 A. And -- yeah. All right.

1 SOLICITOR SWANSON: Thank you, Brandon.

2 MR. GEIER: Just a minute, your Honor.

3 THE COURT: Okay.

4 THE COURT: And Solicitor, do you have another
5 short witness, or should we just go ahead and break
6 for the day?

7 SOLICITOR SWANSON: I do have one short witness I
8 would very much like to get in, who is here.

9 THE COURT: Okay.

10 SOLICITOR SWANSON: Thank you.

11 THE COURT: Okay.

12 BRANDON ASHCRAFT, RE-CROSS

13 EXAMINATION BY MR. GEIER:

14 Q. Brandon, did Richard ever tell you that he
15 believed Michelle was bipolar?

16 A. Yeah.

17 Q. And when was that?

18 A. Same time they were talking about mental -- the
19 health issues.

20 Q. So, it was several months before?

21 A. I mean, I wouldn't say several months. I
22 remember she started seeing that therapist, but I was
23 also -- she also told me that she was going to see a
24 therapist because he had made the appointment, and she
25 wasn't allowed to have her keys unless she went to see

1 the therapist. So, I kind of got -- I mean, I -- I
2 know she enjoyed talking to her therapist once she got
3 there, but I kind of got the impression that she had
4 to go.

5 MR. GEIER: All right. Thank you.

6 A. No problem.

7 BRANDON ASHCRAFT, RE-RE-DIRECT

8 EXAMINATION BY SOLICITOR SWANSON:

9 Q. Okay. So, she had to go to the therapist to
10 maintain her freedom.

11 A. Yes.

12 MR. GEIER: Objection, your Honor. That was
13 disparaging.

14 THE COURT: Anything further?

15 SOLICITOR SWANSON: Nothing further.

16 THE COURT: You may step down.

17 SOLICITOR SWANSON: The State calls Marian Mims.
18 May Mr. Ashcraft be excused from his subpoena?

19 THE COURT: You may be excused, sir.

20 SOLICITOR SWANSON: Thank you.

21 DEPUTY SHERIFF: Raise your right hand, place
22 your left hand on the *Bible*. Do you solemnly swear or
23 affirm to tell the truth, the whole truth, and nothing
24 but the truth, so help you God?

25 MARIAN MIMS: Yes.

1 MARIAN MIMS, DIRECT

2 EXAMINATION BY SOLICITOR SWANSON:

3 Q. Good afternoon, Ms. Mims.

4 A. Good afternoon.

5 Q. Did you work at Jasper's Porch?

6 A. Yes.

7 Q. For how many years?

8 A. Seven years.

9 Q. All right. And what was your position there?

10 A. I was the manager.

11 Q. All right. And so, did you manage the front of
12 the house?

13 A. Yes.

14 Q. The servers?

15 A. Yes.

16 Q. Okay. When did you meet Rock and Michelle?

17 A. When they moved to Ridgeland.

18 Q. And what was Richard like at work?

19 A. Okay. Some days were different than other days.
20 And when his wife was there, he was always looking to
21 find out what she was doing and where she was while
22 she was working.

23 Q. Okay. Were there any problems when they worked
24 together?

25 A. Some days you could feel the tension in the air,

1 and other days it was okay.

2 Q. Were you responsible for collecting the money
3 from the servers?

4 A. Yes.

5 Q. Was Michelle ever missing money?

6 A. Yes. She came to me several times that he took
7 her money, and he put it in the office somewhere.

8 Q. All right. And did Michelle have the combination
9 to the safe in the office?

10 A. No.

11 Q. Did you?

12 A. Yes.

13 Q. Did you ever go in there for Michelle to get her
14 tip money?

15 A. Yes.

16 Q. After Michelle was killed, do you remember
17 Investigator McIntosh coming into the restaurant?

18 A. Yes.

19 Q. All right. And what did he want?

20 A. He wanted to know where the cameras pointed to,
21 and where the monitor was, and it was in the office.

22 Q. All right. So, you showed him where the
23 surveillance video was?

24 A. Yes, yes.

25 Q. And did he show you what he found on that video?

1 A. Yes.

2 Q. And did you review that video with me?

3 A. Yes.

4 Q. And is that video that came from Jasper's Porch

5 A. Yes.

6 Q. All right. And now, there's a time stamp on that
7 video, and I'm going to play that video for you, and
8 for the jury. But is the time accurate?

9 A. No. It was an hour off.

10 Q. Okay. And let's go ahead and publish the video,
11 and then I'll ask you which way it was off. Okay?

12 A. Okay.

13 SOLICITOR SWANSON: And there's two clips that --
14 this is the same content that is on the disk that has
15 been entered into evidence. Okay. I'm not sure why
16 it's not coming up on --

17 THE COURT: Are you trying to put it on both, or
18 just this one?

19 SOLICITOR SWANSON: Well, I was trying to put it
20 on this one, too, so that --

21 THE COURT: Right. That would be great.

22 SOLICITOR SWANSON: -- Ms. Mims could see it.

23 THE COURT: Okay. That would be helpful.

24 SOLICITOR SWANSON: However, I could ask her to
25 step down.

1 THE COURT: Why don't you go ahead and step down,
2 Ms. Mims, if that's all right with you. And can
3 everyone else in the jury see it?

4 RESPONSES FROM JURORS.

5 SOLICITOR SWANSON: The light's reflecting on it.

6 THE COURT: Can we dim the lights a little bit,
7 you all? Is that possible? Thank you.

8 SOLICITOR SWANSON: Okay. Thank you. Perfect.
9 It's a very short video.

10 BY SOLICITOR SWANSON:

11 PLAYING STATE'S EXHIBIT NUMBER 6.

12 END PLAYING STATE'S EXHIBIT NUMBER 6.

13 Q. All right. And so, you see the time stamp, Ms.
14 Mims.

15 A. Yes.

16 Q. It's 1:55?

17 A. Yes.

18 Q. Is that really 12:55?

19 A. Yes.

20 Q. Okay. And the door that we see the person
21 walking through, is that the front door to Jasper's
22 Porch?

23 A. Yes, it was.

24 SOLICITOR SWANSON: I'm sorry, I have one more
25 clip to show.

1 THE COURT: Thank you. I'm sorry.

2 SOLICITOR SWANSON: Okay.

3 BY SOLICITOR SWANSON:

4 Q. And Ms. Mims, I'm sorry, can you step back down?

5 A. Okay.

6 Q. Another two-second clip.

7 PLAYING STATE'S EXHIBIT NUMBER 6.

8 END PLAYING STATE'S EXHIBIT NUMBER 6.

9 Q. And Ms. Mims, are you able to identify the person
10 leaving the restaurant at 12:55 --

11 A. Yes.

12 Q. -- on that tape?

13 A. Yes.

14 Q. Who is it?

15 A. Rock Passio.

16 Q. All right. The same Richard Passio, Jr., that
17 sits in the courtroom today?

18 A. Yes.

19 SOLICITOR SWANSON: All right. Thank you so
20 much. If you can have a seat, that's all the
21 questions I have for you. Please answer any questions
22 Mr. Geier might have.

23 A. Sure.

24 MARIAN MIMS, CROSS-

25 EXAMINATION BY MR. GEIER:

1 Q. Afternoon, ma'am. How are you?

2 A. Hi.

3 Q. At some point, when you were working at Jasper's
4 Porch, did you have conversation with Richard Passio
5 about not talking about Michelle's mental health
6 issues with the other employees?

7 A. I don't recall that conversation.

8 Q. Did you ever have a conversation like that with
9 Richard Passio, Sr.?

10 A. I don't think so.

11 Q. You don't think so.

12 A. I'm not a hundred percent sure.

13 Q. Okay. Did you used to tell people around
14 Jasper's Porch that you thought Michelle was crazy?

15 A. No.

16 Q. You never said that?

17 A. No. I was friends with her.

18 Q. Okay. And when you were around her, you said
19 that sometimes there was tension in the room when
20 Richard was there, and sometimes it was fine?

21 A. That's correct.

22 Q. And sometimes was she really happy and fun-
23 loving?

24 A. Yes.

25 Q. Yeah.

1 A. We'd laugh a lot.

2 Q. And sometimes she wasn't?

3 A. We laughed together a lot.

4 Q. Sure. And sometimes, was she kind of depressed?

5 A. Yes.

6 Q. Okay.

7 MR. GEIER: I don't have any further questions.

8 Thank you.

9 SOLICITOR SWANSON: Very briefly.

10 THE COURT: Um-hmm.

11 MARIAN MIMS, RE-DIRECT

12 EXAMINATION BY SOLICITOR SWANSON:

13 Q. Marian, do you remember if Michelle was any
14 different around you than she was when she was around
15 Rock?

16 A. Yes.

17 Q. How so?

18 A. We had fun. She was happier. We laughed
19 together about things, and we talked about things.
20 And -- and many a time she said she couldn't talk
21 about things with her husband like she could with me
22 or with another worker, too.

23 Q. Okay. And so, when she was around Richard, was
24 her personality any different?

25 A. At times, yes.

1 Q. Okay. More reserved, or was she --

2 A. Yes, much more reserved.

3 Q. All right. Thank you.

4 BY THE COURT:

5 THE COURT: Anything further from this witness?

6 MR. GEIER: No, your Honor.

7 THE COURT: You may step down, and you are
8 excused, ma'am.

9 All right. Ladies and gentlemen, I think right
10 now is a perfect time to stop for the day.

11 Mr. Foreperson, are you all okay to start at 9:30
12 tomorrow morning? We all right? Yes? Speak loudly.

13 FOREPERSON: Yes, your Honor.

14 THE COURT: Ladies and gentlemen, for some reason
15 that doesn't work. All right. I need to remind you,
16 even though you have heard some evidence today, you
17 are not to read anything about this case; you are not
18 to do any independent research on the computer.

19 Additionally, if you are anyone who does anything with
20 social media, you are not to post on social media or
21 anything along those lines if you are sitting as a
22 juror in the trial of a case. Again, it invites
23 comment. This is not something I had to talk about
24 ten years ago when I started, but it is nowadays.

25 So, ladies and gentlemen, go home, get a good

1 night's sleep. We look forward to seeing you back at
2 9:30 tomorrow morning. We'll go ahead and continue
3 with the trial of this case. Okay? Thank you.

4 JURORS LEAVE COURTROOM 4:59 P.M.

5 THE COURT: All right. Solicitor, roughly how
6 many more witnesses you have, or do you have? That
7 was Number 14, so.

8 SOLICITOR SWANSON: Right. So, I have about six.

9 THE COURT: Okay.

10 SOLICITOR SWANSON: And I anticipate being able
11 to get through those before lunch.

12 THE COURT: Tomorrow? Okay.

13 SOLICITOR SWANSON: Yes.

14 THE COURT: All right. Mr. Geier, do you have
15 any idea if you are going to be calling witnesses, and
16 how many, roughly?

17 MR. GEIER: I will be calling witnesses, your
18 Honor.

19 THE COURT: Okay.

20 MR. GEIER: I will at least go through tomorrow
21 and --

22 THE COURT: Afternoon?

23 MR. GEIER: Yeah.

24 THE COURT: Okay.

25 MR. GEIER: And may spill into --

1 THE COURT: And that's absolutely fine. I just
2 want to know for scheduling purposes if I need to be
3 ready to argue and charge tomorrow.

4 MR. GEIER: No, your Honor.

5 THE COURT: So, no way. Okay. Okay. All right.

6 MR. GEIER: And I think, your Honor, also, I've
7 got some people who are coming from out of town.

8 THE COURT: Okay.

9 MR. GEIER: Possibly Mount Pleasant and Columbia.

10 THE COURT: Okay.

11 MR. GEIER: I told them to try to be here
12 tomorrow around 1:00 or 2:00.

13 THE COURT: Okay. I think that's probably a good
14 idea.

15 MR. GEIER: I might have to juggle them around,
16 you know, when they get in.

17 THE COURT: Okay. And that's fine, yes. I would
18 suggest maybe 1:00 or 1:30 I guess would be a good
19 idea.

20 Also, if anyone has any special proposed jury
21 charges, I need to know about it, if there's anything
22 other than the usual in this case. Okay? So. And if
23 you do, just forward them to Crystal. Okay?

24 SOLICITOR SWANSON: Yes, your Honor.

25 THE COURT: And tomorrow is her true last day.

1 It was supposed to be today, but I couldn't let her
2 go, so. We'll see you all tomorrow morning, about
3 9:15 for the lawyers. All right? I appreciate it.

4 SOLICITOR SWANSON: Thank you.

5 THE COURT: Thank you.

6 END DAY TWO, TUESDAY, JULY 31,

7 2018, 5:02 P.M.

8 BEGIN DAY THREE, WEDNESDAY,

9 AUGUST 1, 2018, 9:50 A.M.

10 BY THE COURT:

11 THE COURT: And the jury's all here, yes?

12 MADAM CLERK: Yes, ma'am.

13 THE COURT: Okay. Well, Let's go. Let's bring
14 them in.

15 JURORS ENTER COURTROOM 9:52 A.M.

16 THE COURT: Good morning, ladies and gentlemen.
17 You all may be seated. I hope you all had a good
18 evening. Thank you all for being back here promptly.
19 I will tell you that we did lose one juror, who was
20 unable to return because I believe she had some type
21 of allergic reaction. So, Juror Number 116 has been
22 excused. And Ms. Grant, you are now -- there you are
23 -- a formal member of the jury. All right? So,
24 that's to explain to you why we have three alternates,
25 because, obviously, we've already lost two. So, thank

1 you, and I appreciate it.

2 JUROR NUMBER 116: You're welcome.

3 THE COURT: And thank you all. So, we're going
4 to continue to go forward with the trial of this case.
5 If the State would call their first witness for today.

6 SOLICITOR SWANSON: Thank you. The State calls
7 Lisa Helbig.

8 DEPUTY SHERIFF: Raise your right hand. Left
9 hand on the *Bible*. Do you solemnly swear or affirm to
10 tell the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 LISA HELBIG: Yes.

13 LISA HELBIG, DIRECT

14 EXAMINATION BY SOLICITOR SWANSON:

15 Q. Lisa, did you work at Jasper's Porch?

16 A. Yes, ma'am.

17 Q. And from what dates did you work?

18 A. November 2015 'til June 2016.

19 Q. All right. What was your position?

20 A. I was a server. And then, at the end, sort of a
21 manager. Shift leader, if you will.

22 Q. Did you ever work with Michelle?

23 A. Yes.

24 Q. Did you talk to Michelle?

25 A. We talked the first half of my time there, and

1 then she stopped talking to me. And then, she didn't
2 work there anymore, so.

3 Q. What changed the relationship between you and
4 Michelle?

5 A. I can only assume. We got -- we got along really
6 well. We had the same sense of humor. She just
7 started not liking me. I know there were a lot of
8 times she would tell me that her husband would come
9 home and just talk about me, and ask, you know, why
10 she couldn't be more like me or make money like me
11 kind of stuff. So, I don't --

12 Q. Did her husband, Richard, ever talk to you about
13 Michelle's friends?

14 A. Yes.

15 Q. What did he say about Michelle's friends?

16 A. He just thought they were trash, and he wished
17 she would hang out with me more.

18 Q. All right. Did he ever tell you that you were
19 the only one that he would approve of to be friends
20 with Michelle?

21 A. Yes.

22 Q. All right. And so, do you think all of that led
23 to the fact that you didn't end up having a
24 relationship with her at the end?

25 A. Yes.

1 Q. When you were speaking to Michelle, did you have
2 any conversations with her about her marriage?

3 A. Yes.

4 Q. And did you ever give her any advice about the
5 marriage?

6 A. I did. Specifically her getting on birth control
7 before she gave birth to her last child, so.

8 Q. All right. And was that -- was -- was having
9 eight children something that she brought up to you?

10 A. Yeah. She didn't -- she told me she didn't want
11 to have anymore after this.

12 Q. Okay.

13 A. So.

14 Q. When Rock was at the restaurant, what was he like
15 with Michelle?

16 A. He -- he was controlling. He would watch her
17 from the cameras in the office, or he would come stand
18 in the server alley and just stare at her, if she got
19 too close to the kitchen.

20 Q. Without going into the details of what the fights
21 or arguments were about, did he ever get angry with
22 Michelle at the restaurant?

23 A. At the restaurant, yes, but she wasn't there on
24 one of the times he found something out about her, and
25 he got very angry about it.

1 Q. And what did he do when he was angry?

2 A. He punched a wall.

3 Q. Okay. Did he ever kick trash cans?

4 A. Yeah, he's kicked a trash can before.

5 Q. Did Rock admit that they were having marital
6 problems to you?

7 A. Yes.

8 Q. And who did he blame for those problems?

9 A. Michelle.

10 Q. Did he blame any other third parties for those
11 problems?

12 A. Yes.

13 Q. Who was that?

14 A. Brandon, her friends.

15 Q. Did he tell you why they moved from Ohio?

16 A. Yes.

17 Q. What did he say about that?

18 A. So, that he could get her away from the bad
19 people that were there; get her away from the drugs
20 that were there at home. So, he can bring her here
21 and get her away from that kind of lifestyle, I guess.

22 Q. Did Michelle act any differently around Richard?

23 A. Just tense. I knew that she really was unhappy
24 with him, so she would try to put a face on. But you
25 know it was tense.

1 Q. Did you ever see Richard with a gun?

2 A. Yes.

3 Q. And where did you see him with a gun?

4 A. In the office of the restaurant.

5 Q. All right. What was he doing with the gun?

6 A. I don't know. He called me from the office on
7 the phone that we have behind the server alley; asked
8 me to come in the office. I go in the office, and he
9 just sitting at the desk, with the gun case open, with
10 the gun right there. I kind of tried to act like I
11 didn't see it, and I don't even think there was a
12 reason for me being called into the office, so I just
13 left.

14 Q. All right.

15 A. So.

16 Q. And what color was that gun case? Do you
17 remember?

18 A. Black.

19 Q. Do you know if it was a hard case or a soft case?

20 A. I don't really remember. I just know it was open
21 and it was black.

22 Q. Have you seen Richard since Michelle's death?

23 A. I have.

24 Q. All right. And when did you see him?

25 A. Ran into him at WalMart once. Took my kids out

1 to eat with my husband; didn't know he worked there;
2 and he worked there. And then, a third time, he came
3 into the restaurant that I worked at and sat in my
4 section.

5 Q. All right. Do you know if he requested your
6 section?

7 A. He did request my section.

8 Q. And what did you do?

9 A. I panicked and made another server take his
10 table. And he sat there for about an hour, and I
11 stayed on the other side of the restaurant.

12 Q. All right. So, you didn't end up interacting
13 with him?

14 A. I -- I did initially, because I didn't recognize
15 him from across the restaurant. And as soon as a I
16 got about a foot away, I realized it was him, and I
17 said, hi, I'll be right back, and I never came back.

18 Q. Okay. And you don't know why he requested your
19 section, do you?

20 A. I -- I -- I was told that he was trying to get my
21 reaction as to how I would act towards him.

22 Q. How long ago was that?

23 A. Oh, gosh. I am guessing it was probably about
24 four or five months ago.

25 SOLICITOR SWANSON: All right. Thank you, Lisa.

1 Please answer any questions Mr. Geier might have for
2 you.

3 A. Yes, ma'am.

4 LISA HELBIG, CROSS-

5 EXAMINATION BY MR. GEIER:

6 Q. Morning.

7 A. Morning.

8 Q. You mentioned that Richard would tell Michelle
9 that he wanted her to hang out with you, as opposed to
10 some of the other people that were hanging out at the
11 Porch?

12 A. Correct.

13 Q. That he had problems with Brandon and some of the
14 other people?

15 A. Correct.

16 Q. But one of those people took drugs; did they not?

17 A. I was told that, yes.

18 Q. And you know, I know it's embarrassing, but
19 you've had some issues before in the past with drugs.

20 A. In the past, yes.

21 Q. And you've gotten over those.

22 A. Right. Correct.

23 Q. And it's been quite some time since you had any
24 problems with that.

25 A. Yes, sir.

1 COURT REPORTER: I'm sorry. Just one at a time,
2 please.

3 A. Yes, ma'am.

4 Q. And you said that he talked about drugs in Ohio
5 with Michelle?

6 A. Yes.

7 Q. All right. And did he go into specifics, as far
8 as what drugs she was supposedly taking?

9 A. No.

10 Q. No? Okay. Ms. Helbig, after Michelle's death,
11 you had occasion to actually care for some of the
12 Passio children for awhile. Is that true?

13 A. Yes.

14 Q. When did that happen?

15 A. The day of the death.

16 Q. Okay. And which children did you have?

17 A. I had the -- the five oldest.

18 Q. And one of those was Angelina?

19 A. Yes.

20 Q. And why was it that you had those kids?

21 A. Rick's dad called us; said what had happened. We
22 met him at the restaurant. We stayed there for a
23 couple of hours. Decided to take them back to our
24 place. We had a pool. They -- they could eat. So,
25 that's why we took them back with us.

1 Q. And do you know if the children knew exactly what
2 happened that morning?

3 A. No, they didn't know. They -- they knew
4 something happened, but they didn't know what.

5 Q. Would you characterize them, like, all the kids,
6 as being nervous and confused as to what was going on?

7 A. Originally, but they were playing in the pool,
8 having fun. The oldest, Kaleb, I would say that he
9 probably definitely was nervous.

10 Q. Okay. And did any of the children express any
11 indication that they had an idea as to what happened?

12 A. Yes.

13 Q. All right. And which child was that?

14 A. That would be Angelina, I think. Not that she
15 knew what happened; but she heard something, knew
16 something bad happened.

17 Q. Okay. All right. And she told you what it is
18 that she heard?

19 A. Yes.

20 Q. Okay. Just one moment.

21 MR. GEIER: No further questions. Thank you.
22 Your Honor, I have Ms. Helbig still under subpoena.

23 THE COURT: Um-hmm.

24 MR. GEIER: There's a chance I may need to re-
25 call her, but I would hope to be able to do it

1 tomorrow. She has to work today.

2 THE COURT: Okay. And is it all right with you
3 Ms. Helbig, that he will just contact you by phone, if
4 that's okay?

5 LISA HELBIG: Yes, ma'am.

6 THE COURT: And if you need to come, and again,
7 just make sure you do. Okay?

8 LISA HELBIG: Yes, ma'am. Okay.

9 THE COURT: I appreciate it. Thank you. You are
10 released for today. Okay. Call your next witness.

11 SOLICITOR SWANSON: Thank you. The State calls
12 Otto Helbig.

13 DEPUTY SHERIFF: Would you raise your right hand,
14 and place your left hand on the *Bible*? Do you
15 solemnly swear to tell the truth, the whole truth, and
16 nothing but the truth, so help you God?

17 OTTO HELBIG: I do.

18 OTTO HELBIG, DIRECT

19 EXAMINATION BY SOLICITOR SWANSON:

20 Q. Good morning.

21 A. Good morning.

22 Q. Who are you married to -- and it's Otto, right?

23 A. Yes.

24 Q. Okay. Who are you married to, Otto?

25 A. Lisa Helbig.

1 Q. All right. And we just heard from her, right?

2 A. Yes.

3 Q. Okay. What sort of involvement did you have in
4 Jasper's Porch back in 2016?

5 A. I was brought on as a consultant to review the
6 restaurant operations and make suggestions on how to
7 run the restaurant more efficient, and get it
8 profitable.

9 Q. Okay. Because, at that time, the restaurant
10 wasn't doing very well, was it?

11 A. That's correct, yes.

12 Q. Okay. And who were you brought in by?

13 A. I was first approached by Rick Passio, and --

14 Q. Senior or Junior?

15 A. Senior. And then, I talked to Steve Passio.

16 Q. Okay. Did you meet Richard Passio, Jr.?

17 A. Yes.

18 Q. And what was your relationship with him like?

19 A. Very rocky.

20 Q. How so?

21 A. He was not very open to my suggestions.

22 Sometimes he even went behind something that I
23 suggested or put in place, and just ignored it.

24 Q. So, he didn't like any of the changes that you
25 were wanting to put in place?

1 A. No.

2 Q. All right. Did you ever see him with a gun?

3 A. Yes.

4 Q. All right. Tell us about that.

5 A. It was one day that -- in the office, where he
6 had his gun and the gun case.

7 Q. All right. And that was at Jasper's Porch?

8 A. Yes.

9 Q. Do you know what the gun case looked like?

10 A. Yes. It was a box-like gun case.

11 Q. All right. What color was it?

12 A. Black.

13 Q. After Michelle's death, did you talk to Rock in
14 September of 2016?

15 A. Yes.

16 Q. All right. Tell us about that.

17 A. I was meeting with Rock at a BP station in
18 Ridgeland. He was supposed to give me some money that
19 his dad still owed to my wife, Lisa, for some cake
20 sales that he did with his business in Savannah.

21 Q. And did you guys have a conversation?

22 A. Yes.

23 Q. All right. What was that conversation about?

24 A. We greeted each other, normal; shook hands; and I
25 asked him how he was doing and how everything was

1 going. And he told me, you know, it's -- it's very
2 hard, and still waiting for the trial, and trying just
3 to get that over with. And then, I asked him how his
4 hand was doing, because I knew he sustained an injury
5 on his hand. We just kept talking and talking. And
6 then, all of the sudden, he told me the way he got the
7 injury was, he had the hand on the gun when the fatal
8 shot was triggered.

9 Q. He had his hand on the gun when the fatal shot
10 was fired?

11 A. Yes.

12 Q. All right. Did he say anything about her
13 shooting at him?

14 A. Yes. She was -- she -- he said she was shooting
15 twice into the wall.

16 Q. At him or into the wall?

17 A. Towards him, but missed him, and into the wall.

18 Q. Okay. Anything else you can remember from that
19 conversation?

20 A. No, ma'am.

21 SOLICITOR SWANSON: Okay. Thank you, Otto.
22 Please answer any questions. Mr. Geier may have for
23 you.

24 A. Yes.

25 OTTO HELBIG, CROSS-

1 EXAMINATION BY MR. GEIER:

2 Q. Good afternoon.

3 A. Good morning.

4 Q. You're right, it's morning. Thank you. You said
5 that, when you first started, that your relationship
6 was rocky?

7 A. Yes.

8 Q. And you had the impression that he didn't value a
9 lot of your opinions?

10 A. Yes.

11 Q. And he was a big fan of your wife, wasn't he?

12 A. Yes.

13 Q. And you saw that, like, it was clear that he was
14 a fan of hers when she was working there?

15 A. Yes, yes.

16 Q. And you said you had this conversation with
17 Richard when?

18 A. In the -- September, in the fall of 2016.

19 Q. So, about two years ago, just shy?

20 A. Yes, sir.

21 Q. You were also present when Angelina and some of
22 the other children were staying at your house; were
23 you not?

24 A. Yes. Later on.

25 Q. Later on. And again, you heard Angelina say that

1 she had heard something that night. Is that true?

2 A. No.

3 Q. You never heard that?

4 A. No.

5 MR. GEIER: Just one second. All right. I don't
6 have any further questions. Thank you, Otto.

7 A. Thank you.

8 SOLICITOR SWANSON: I don't have anything else.

9 THE COURT: Okay. You may step down sir.

10 SOLICITOR SWANSON: And I would ask that he be --

11 THE COURT: Is he under subpoena as well?

12 MR. GEIER: No, your Honor.

13 THE COURT: Okay. You are excused, sir. Thank
14 you.

15 OTTO HELBIG: Thank you.

16 SOLICITOR SWANSON: Thank you, your Honor. The
17 State calls Carla Ashcraft.

18 DEPUTY SHERIFF: If you would raise your right
19 hand, and place your left hand on the *Bible*. Do you
20 solemnly swear or affirm to tell the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 CARLA ASHCRAFT: Yes, I do.

23 CARLA ASHCRAFT, DIRECT

24 EXAMINATION BY SOLICITOR SWANSON:

25 Q. Carla, where are you from?

1 A. Ridgeland, South Carolina.

2 Q. All right. And who is your son?

3 A. Brandon Ashcraft.

4 Q. How did you come to know Michelle Passio?

5 A. Brandon was employed at the Porch, working for
6 Rock and Michelle, and they would -- they had all
7 become friends, and they would come and pick Brandon
8 up for work. He didn't have a driver's license. And
9 we got to meet that way. And then, when Michelle
10 would get a chance to run by, you know, we -- we
11 developed a friendship.

12 Q. Okay. So, your relationship with her was a
13 friendship.

14 A. Absolutely.

15 Q. About how often would she come by your house?

16 A. It wasn't very frequent. It would only be when
17 she could get out. She always had trouble getting
18 out, is the way she put it, or being allowed out. So,
19 normally, it would be when she had an appointment or
20 something. We had -- I was -- I have custody of my
21 grandchildren. And I was not employed at the time,
22 and I was a stay-at-home mom, so, she would bring a
23 couple of the kids with her, and she would always
24 bring a treat or a sucker or something for the
25 children. And she would never stay more than 30, 45

1 minutes, you know, in the beginning. And that's how
2 our friendship kind of blossomed, because of the
3 children, the common interest in the children.

4 Q. Okay. And so --

5 A. Having kids of a similar age.

6 Q. So, your grandchildren and her children would
7 play together?

8 A. Correct. Only a couple at the time. She never
9 brought them all, because --

10 Q. Right. She had a lot, right?

11 A. Right, exactly.

12 Q. Where would she park when she came over to your
13 house?

14 A. In the beginning, she would park in the front.
15 And then it got to where she would hide her car. She
16 would hide. She had a van, and she would hide it
17 around the block, over on Promise Way, was one time.
18 I remember it started to rain, so I gave her a ride,
19 because I didn't want her walking. And it was over on
20 Promise Way, which is actually, like, two blocks away
21 from my home.

22 Q. Okay.

23 A. And I asked her why she was parked there.

24 Q. Okay. And can't testify as to what she said.

25 A. Right, exactly. I realize that now.

1 Q. Did her husband, Rock, ever show up at your house
2 when she was over there?

3 A. Yes. Yes, he did.

4 Q. All right. And what was that like when he would
5 show up?

6 A. Like, well, like they were going to argue, and
7 she would be caught, as if she was caught doing
8 something wrong. And at one time, there was
9 beginnings of an altercation. I explained to them
10 that I was currently in a custody issue with DSS and
11 my grandchildren, and I couldn't have this kind of
12 thing going on in my house, so they were going to have
13 to please take it somewhere else. Because it was,
14 like, the second incident where they had -- an
15 argument would ensue, and I just told them. And I
16 reiterated to my son, I couldn't have this going on at
17 my house.

18 Q. Do you remember anything that he would say to her
19 in front of you, or, I mean, was he angry when he
20 showed up?

21 A. As a rule, if she was there by herself, yes.
22 Now, there was an occasion where they would come
23 together, you know, and he was never angry then.

24 Q. Did he ever accuse her of anything when he showed
25 up?

1 A. He would accuse her of drinking, having a glass
2 of wine, or -- or anything like that, yeah. And she
3 had not partaken in any glass of wine.

4 Q. Was Michelle different around Richard than when
5 she wasn't?

6 A. Yes. Very, in my opinion.

7 Q. All right. And how so? Can you describe that.

8 A. She was very pensive. When Rock was around, she
9 walked on eggshells.

10 Q. Okay. What about the children? Did you ever get
11 a chance to see the children around their father?

12 A. Only in the restaurant.

13 Q. Okay. And were the children different around --

14 A. Completely.

15 Q. Okay. Around Richard?

16 A. Yes.

17 Q. Than Michelle?

18 A. Than Michelle, yes, ma'am.

19 Q. All right. And what were the children like
20 around Richard?

21 A. I equated them to little automatons, robots. He
22 would single-file them through in the restaurant in a
23 line, and they would sit down. And I don't know about
24 you all, but I have grandchildren, and they don't sit
25 quiet at the table, but these children were perfect.

1 They sat quiet, nobody -- they were just the most
2 well-behaved. I made the comment to the guests I was
3 eating with, I can't believe how well-behaved those
4 children are, because, I mean, nobody talked, nobody
5 -- they just sat there and ate their dinner, like they
6 were told.

7 Q. All eight children?

8 A. All eight children, yes, ma'am.

9 Q. And how were the children around Michelle?

10 A. Well, I didn't have eight at one time, ever. But
11 when I would have a couple, they were, like, normal,
12 precocious toddlers, because she always brought the
13 ones that were closer in age to my grandchildren. So,
14 they were normal toddlers. They messed the room up,
15 they played, they ran.

16 Q. And throughout your friendship with Michelle, did
17 she ever talk to you about her marriage?

18 A. Yes, she did.

19 Q. And did you ever give her advice about her
20 marriage?

21 A. Yes, I did.

22 Q. What was the advice that you gave her?

23 A. That she did not have to live that way. Some of
24 the things that she told me were very degrading and
25 abusive, in my opinion, and only in my opinion. So, I

1 told her that, if that was indeed the case, the way
2 she was living, that I would suggest that she talk to
3 an attorney. And she said that she was lost.

4 MR. GEIER: Your Honor.

5 THE COURT: Okay.

6 A. Oh, I'm sorry. Sorry.

7 THE COURT: You can't say what she said.

8 A. I forgot, I forgot. Yeah.

9 THE COURT: Okay.

10 BY SOLICITOR SWANSON:

11 A. So, I suggested that she go see Cathy Badgett.

12 Q. All right.

13 A. My attorney, the attorney I had used.

14 Q. Okay. In your divorce?

15 A. Yes, in my divorce.

16 Q. Okay.

17 A. And also, in my custody issue with my
18 grandchildren.

19 Q. All right.

20 A. For everything.

21 SOLICITOR SWANSON:

22 Q. All right. Thank you, Carla. Please answer any
23 questions that Mr. Geier may have.

24 CARLA ASHCRAFT, CROSS-

25 EXAMINATION BY MR. GEIER:

1 Q. Good morning, Ms. Ashcraft.

2 A. Good morning, sir.

3 Q. So, is it your testimony that Michelle Passio
4 never drank or smoked or anything like that when she
5 was at your house, in your presence?

6 A. Not in my presence, no, sir.

7 Q. Okay.

8 A. Now, I'm not saying she didn't have a cigarette.
9 She would -- she would sit on the swing and smoke a
10 cigarette.

11 Q. What about smoking pot? Did she do that at your
12 house, too?

13 A. No, sir. That was not allowed in my home. I was
14 embroiled in a custody issue with my grandchildren,
15 and that was highly off-limits, but, and my son knew
16 that.

17 Q. Sure. You said that she would park around back?

18 A. No, two blocks away.

19 Q. Two blocks over?

20 A. Yes, sir.

21 Q. All right. And were you aware of any sort of
22 inappropriate relationship between Brandon and
23 Michelle?

24 A. No, sir, not at that time. Now, Brandon did
25 bring that to my -- after Michelle's death, he came

1 clean and told me that, yes.

2 Q. I see. And you said the only time you really saw
3 the Passio children was at the Porch, when Richard was
4 there?

5 A. That was the only time I ever saw all eight
6 children together, with their father.

7 Q. I see. And you said they were -- they were
8 perfect?

9 A. Yes. That would be a good way to describe them.

10 Q. Okay. And when you were around the children
11 without Richard there, they were just rambunctious,
12 and they were like normal kids, right? Is that what
13 you said?

14 A. They were normal kids. Not overly-rambunctious.
15 Just precocious, normal, toddler kids.

16 MR. GEIER: All right. Nothing further. Thank
17 you.

18 CARLA ASHCRAFT: Thank you. Are you done?

19 SOLICITOR SWANSON: Nothing further.

20 BY THE COURT:

21 THE COURT: Okay. You may step down. Thank you.
22 Call your next witness.

23 SOLICITOR SWANSON: Your Honor, prior to the next
24 witness, I believe we have a matter of law that we
25 need to take up.

1 THE COURT: Okay. Ladies and gentlemen of the
2 jury, I'm going to send you back to your jury room.
3 Get a cup of coffee. Do not discuss this case. It
4 would not be appropriate to do so. And we'll bring
5 you right back. Okay?

6 JURORS LEAVE COURTROOM 10:21 A.M.

7 SOLICITOR SWANSON: Your Honor, the next witness
8 will be Cathy Badgett.

9 THE COURT: Okay.

10 SOLICITOR SWANSON: Who believes that she has to
11 invoke the attorney-client privilege, although the
12 Court can order her to waive it. But I suppose we
13 just need to call her to the stand and proffer some
14 testimony.

15 THE COURT: Okay.

16 SOLICITOR SWANSON: And so, she is in the
17 courtroom.

18 THE COURT: Come on forward, Ms. Badgett.

19 SOLICITOR SWANSON: And I apologize. She is on
20 an order of protection, but she has made herself
21 available to us just for this morning, and --

22 THE COURT: Okay. Well, thank you for being
23 here. Come on.

24 DEPUTY SHERIFF: Raise your right hand. Do you
25 swear or affirm to tell the truth, the whole truth,

1 and nothing but the truth, so help you God?

2 CATHERINE BADGETT: I do.

3 THE COURT: Good morning.

4 CATHERINE BADGETT: Good morning.

5 THE COURT: All right. Catherine Badgett, for
6 the record, a local attorney here in Jasper. Why
7 don't you go ahead and proffer what you would like to
8 elicit from her. My understanding is, she needs to
9 first, even before the proffer, she needs to invoke
10 her attorney-client, and then, go from there. Okay?

11 SOLICITOR SWANSON: Okay. How -- how should we
12 go about doing that?

13 THE COURT: I don't think she can give a proffer
14 before the Court finds that -- I just think that would
15 put her in jeopardy. All right. So, I think you need
16 to -- you need to say, I want to ask you some
17 questions in regards to a conversation.

18 SOLICITOR SWANSON: Okay. I got you.

19 THE COURT: Or, I don't know how many she had.

20 SOLICITOR SWANSON: Right. I understand.

21 THE COURT: And I don't know if she retained you
22 or not, of if you just had an initial meeting, but I
23 kind of need to know that as we into this.

24 SOLICITOR SWANSON: Yes, yes, yes, yes.

25 THE COURT: Okay.

1 CATHERINE BADGETT, PROFFER, DIRECT

2 EXAMINATION BY SOLICITOR SWANSON:

3 Q. It's my understanding that you had an initial
4 intake interview with Michelle Passio in March of
5 2016, and I would like to ask you some questions about
6 that.

7 A. And that is correct. My concern about offering
8 my testimony is that I believe that it would be
9 subject to the attorney/client privilege, and for that
10 reason I'm concerned about testifying.

11 Q. Okay.

12 SOLICITOR SWANSON: At this time, I would ask
13 that the Court waive the attorney-client privilege.
14 Michelle Passio is deceased, and I'd like to at least
15 proffer the testimony for the Court to rule on that I
16 intend to seek from Ms. Badgett.

17 THE COURT: Okay. Any argument from you, Mr.
18 Geier, as to the Court waiving the attorney-client
19 privilege?

20 MR. GEIER: No, your Honor. I'm going to do
21 something similar later on.

22 THE COURT: Okay. I understand. All right.
23 Well, I will go ahead and waive the attorney-client
24 privilege, so you can go ahead. She is deceased, and
25 this is a matter of criminal, you know, case, and go

1 ahead.

2 SOLICITOR SWANSON: Okay.

3 BY SOLICITOR SWANSON:

4 Q. And again, I don't anticipate trying to elicit
5 anything that Michelle said to you, Ms. Badgett, but
6 simply want to -- want to get into some of the
7 circumstances and things that you referred to her, or
8 referred for her.

9 So, what do you do for a living, Ms. Badgett?

10 A. I practice law in Ridgeland.

11 Q. All right. And does that include domestic law?

12 A. It does.

13 Q. All right. So, you handle divorces as well?

14 A. Yes. I have a general practice, but living in a
15 small town, a large portion of that is family law that
16 I practice.

17 Q. Okay. All right. And did Michelle Passio ever
18 come to you seeking advice?

19 A. She did.

20 Q. What date was that?

21 A. I'm not certain of the exact date. I do have my
22 -- my folder. I believe it -- and I'm -- I'm not even
23 certain if the exact date is on my folder, but I
24 believe it to have been in March.

25 Q. All right. If I told you March 2nd of 2016, does

1 that sound --

2 A. That sounds right.

3 Q. -- reasonable?

4 A. Yes.

5 Q. How did she appear when she came to see you?
6 What was her demeanor like?

7 A. Concerned. Somewhat frightened.

8 Q. Was she pregnant at the time?

9 A. She was.

10 Q. And did you give her any referrals to other
11 agencies?

12 A. I did. I referred her to Citizens Opposed to
13 Domestic Abuse, the CODA shelter. I --

14 Q. Is that something that you would routinely do
15 with clients?

16 A. No. Only in a situation where I felt it was
17 appropriate.

18 Q. Okay. During her meeting with you, did she
19 express concern for her children?

20 A. She was very concerned about her situation, and
21 the number of children that she had was a barrier, I
22 believe, to her feeling like she could obtain help, is
23 the best way I can put it. She -- she was in a
24 difficult situation, and was --

25 Q. And did she end up retaining your services?

1 A. She did not retain my services.

2 Q. Did you ever see her again?

3 A. I don't believe I saw her again.

4 SOLICITOR SWANSON: Thank you.

5 THE COURT: All right. Mr. Geier.

6 CATHERINE BADGETT, PROFFER, CROSS-

7 EXAMINATION BY MR. GEIER:

8 Q. Good morning.

9 A. Good morning.

10 Q. So, the only information you had about Michelle
11 Passio was information that Michelle Passio gave. Is
12 that correct?

13 A. I was a -- I was aware of her situation prior to
14 her coming to see me, from other individuals who had
15 concerns. But the only information I was provided
16 about her marital situation was certainly through her
17 own information that she provided to me, if that makes
18 any sense.

19 Q. I understand. I understand.

20 MR. GEIER: I don't have any further questions at
21 this time.

22 SOLICITOR SWANSON: Just briefly.

23 THE COURT: Sure.

24 CATHERINE BADGETT, PROFFER, RE-DIRECT

25 EXAMINATION BY SOLICITOR SWANSON:

1 Q. What people approached you about concerns
2 regarding Michelle Passio's situation?

3 A. All I can say is there was talk, as there is in a
4 small town. And various people. And I can't even --
5 I mean, several people expressed concern about her
6 situation. I can't remember whether I spoke with
7 Carla briefly about it, but it was -- the jury's not
8 present -- it was certainly a situation that people in
9 the community were aware of. That's the only way I
10 know to put it.

11 SOLICITOR SWANSON: Okay. All right. Thank you.

12 THE COURT: Okay. All right. You can step down,
13 Ms. Badgett.

14 CATHERINE BADGETT: Thank you.

15 ARGUMENT AND RULING:

16 THE COURT: Any argument?

17 MR. GEIER: Your Honor, I don't -- I mean, I
18 understand that they're trying to establish that
19 Michelle Passio was seeking divorce and going through
20 the steps, anyway. But we have a single meeting with
21 an attorney that was never followed up. Ms. Badgett
22 can't tell us, really, anything, other than she told
23 her to go see CODA, I guess. I don't know that that's
24 relevant.

25 THE COURT: I think it would potentially go to --

1 not to make your argument for you -- would go to
2 motive. If he were to have killed her, and -- I think
3 it would be almost akin and the same as having an
4 affair, and that would be another reason that he had
5 motive to kill her. So, I think it's relevant in this
6 case. Okay. Anything else?

7 After Ms. Badgett, who else do we have for
8 witnesses? I just don't want to --

9 SOLICITOR SWANSON: Yes, your Honor. I only have
10 two more witnesses.

11 THE COURT: Okay. After Cathy?

12 SOLICITOR SWANSON: Correct.

13 THE COURT: Okay. Do we need to take a break
14 before them, or is there anything we need to take up
15 with them, or?

16 SOLICITOR SWANSON: There is one thing that we do
17 need to possibly take up with -- with Michelle's
18 mother, Pam Bennington.

19 THE COURT: Okay.

20 SOLICITOR SWANSON: I disclosed that Pam had been
21 shown a note by Michelle that said: *good marriage,*
22 *bad marriage, or death,* and death was circled. Pam
23 recognized that it was in Richard Passio's
24 handwriting. She lived in the household for eight
25 months. This was a note that was shown to her about

1 two -- a month or two before their youngest child was
2 born. I would be seeking to enter that testimony as
3 an admission by a party opponent.

4 I know that we don't have the note. However,
5 that would go to weight, not the admissibility. You
6 know, I think she can, you know, testify that she
7 recognized his handwriting and, you know, and the fact
8 that she lived in the house; and that this is what the
9 note said. And it's not hearsay, because it's an
10 admission by a party opponent. Obviously, you know,
11 the Defense can cross-examine on, you know, the weight
12 of the evidence, but.

13 THE COURT: Mr. Geier?

14 MR. GEIER: I can't imagine a world where that
15 would be admissible.

16 THE COURT: Well, how would it be any different
17 if he had said it in front of her daughter? It would
18 still be an admission by a party opponent, if he had
19 actually said it.

20 MR. GEIER: But -- right, but then --

21 THE COURT: What you're talking about is a note
22 taken by -- given by Michelle. Mr. Passio wasn't
23 anywhere around at the time.

24 MR. GEIER: I mean, it's one thing when somebody
25 says, yeah, Richard Passio said that.

1 THE COURT: Not the same, yeah. I think that's a
2 stretch unless you can -- you don't have the note at
3 all? You don't have the note? No? Okay. I just
4 don't see how I can allow that. There's no way to
5 cross-examine. It's not here to verify and for them
6 to look at it and say -- and agree that, yes, Mr.
7 Passio wrote that; that was in his hand. It could
8 have been in Michelle's hand, and it would've
9 completely flipped the intent of it. So.

10 SOLICITOR SWANSON: I do think that those issues
11 could be addressed on cross-examination, I mean.

12 MR. GEIER: Your Honor, I think the prejudice is
13 just gigantic that I don't think I could overcome that
14 on cross-examination. If there is some case law out
15 there that had something to say --

16 THE COURT: Okay. Find me something. If you all
17 can find something, let me know. And if you want me
18 to, I can take a break, Ms. Swanson, before -- do you
19 want to go take maybe just take ten minutes right now,
20 and let's see what you can find? Find me something.

21 SOLICITOR SWANSON: Yes, your Honor.

22 THE COURT: And I'm going to have Crystal look as
23 well.

24 SOLICITOR SWANSON: Okay.

25 THE COURT: Okay. I mean, my concern is this.

1 Is that, it's something that would be so easy to make
2 up; or, again, and they have no way -- when you say
3 that it was written and was written in his hand, it
4 gives more validity to it. But he can't look at it
5 and determine whether or not it is, in fact, in Mr.
6 Passio's hand. And with something as cryptic as that
7 sounds, as well, I mean, with just -- we're talking
8 about it sounds like three words, I mean, how to
9 explain that and the meaning of it is --

10 MR. GEIER: And also, your Honor, it didn't say
11 whose death. It may have meant Richard's death.

12 THE COURT: Yes.

13 MR. GEIER: And also, who's going to say it was
14 her death?

15 THE COURT: Well, then, that would be subject to
16 cross-examination, then, and you could ask. I just
17 need to know how that comes in, and how it comes in;
18 because I can't even verify at this point that it's an
19 admission by a party opponent.

20 MR. GEIER: Well --

21 THE COURT: And that's what my concern lies. I
22 would agree that any statement he made; she says she
23 saw him, and he said that, then I wouldn't have a
24 problem with it. But again, I just don't see how we
25 are attributing it to him, and there's really no way

1 to cross-examine it. Michelle's not here, and --

2 I'm going to give you all ten minutes. Let's
3 come back at about quarter 'til. See what you can
4 find on case law, and if you come up with anything,
5 make sure you send it to Crystal, my law clerk, and
6 we'll go from there. Okay?

7 SOLICITOR SWANSON: Yes, your Honor. I will just
8 say that, under Rule 801, a statement is an oral or
9 written assertion. I -- you know, I understand you
10 mean that we don't have the actual writing here.

11 THE COURT: Right.

12 SOLICITOR SWANSON: But I mean, it can certainly
13 be both. And that's what the admission by a party
14 opponent is, a statement offered against a party.

15 THE COURT: I would agree if you actually had it,
16 but I don't think you have it.

17 MR. GEIER: And the circle, I don't know that she
18 can testify whose circle that was. It may have been
19 that Michelle circled it, and said, yeah, I'm thinking
20 about death. There's no way of knowing.

21 THE COURT: All right. Let me just think about
22 it. Let's just take ten minutes. Okay?

23 OFF THE RECORD 10:36 A.M.

24 BACK ON THE RECORD 10:56 A.M.

25 CONTINUE ARGUMENT AND RULING:

1 THE COURT: All right. I know Crystal came out
2 and asked if you all found anything else. Anything
3 you need to put on the record, Ms. Swanson, Mr. Geier?

4 SOLICITOR SWANSON: No, your Honor. I do not
5 have any new case law at this point.

6 THE COURT: I can tell you, the closest I came to
7 finding anything that could even be remotely parallel
8 factually is the *Cheeseborough* case, which I know
9 you're all familiar with it. It is used all the time.
10 And in that case, it was the admissions of the lyrics
11 of a rap song that were written by a murder defendant,
12 listening from his cell. And basically, what they had
13 said was, is that, because the song referenced no
14 prints and bodies left in a pool of blood, what the
15 Court found is that, that was so vague, and that it
16 had minimal probative value such that it was
17 outweighed by any unfair, prejudicial impact of the
18 evidence for the defendant's bad character. And I
19 kind of think that's where we're here in this case.
20 If it just says bad marriage, good marriage, death,
21 that was circled, we don't even have the writing, I
22 just don't know what it -- what it really says. And I
23 don't even know how to put it. So, I just think it's
24 overly-vague. I don't think it's going to assist the
25 jury. I do think the prejudice outweighs any

1 probative value, so I'm not going to allow it, her to
2 testify to that. Okay?

3 SOLICITOR SWANSON: Thank you, your Honor.

4 THE COURT: Thank you. All right. Are we ready
5 to go, then?

6 SOLICITOR SWANSON: Yes, your Honor.

7 THE COURT: I know Ms. Badgett needs to get out
8 of here, because --

9 SOLICITOR SWANSON: Correct.

10 THE COURT: -- she's on vacation.

11 SOLICITOR SWANSON: Yes.

12 THE COURT: All right. Let's bring the jury in.

13 JURORS ENTER COURTROOM 10:58 A.M.

14 THE COURT: All right. You all may be seated.
15 Welcome back, ladies and gentlemen. The State will
16 call their next witness.

17 SOLICITOR SWANSON: The State calls Cathy
18 Badgett.

19 THE COURT: Come on forward, Ms. Badgett.

20 DEPUTY SHERIFF: She's already been sworn in.

21 THE COURT: Do it again in front of the jury.
22 Swear you in again.

23 DEPUTY SHERIFF: Raise your right hand. Do you
24 solemnly swear or affirm to tell the truth, the whole
25 truth, and nothing but the truth, so help you God?

1 CATHERINE BADGETT: I do.

2 THE COURT: Hunnicut, the jury's got to hear you
3 swear them in. Okay? All right.

4 CATHERINE BADGETT, DIRECT

5 EXAMINATION BY SOLICITOR SWANSON:

6 Q. All right. Ms. Badgett, what do you do for a
7 living?

8 A. I practice law here in Ridgeland, across the
9 street.

10 Q. Okay. And I wanted to ask you some questions
11 about your interactions with a woman named Michelle
12 Passio during an intake interview.

13 A. Yes.

14 Q. Would you be comfortable with that?

15 THE COURT: Well, I think we need to go ahead and
16 -- I'm going to go ahead and give you permission to
17 talk about it. Obviously, we don't want anything to
18 violate the attorney/client privilege, but the Court
19 can order her to speak about something, if the Court
20 finds it necessary. So, at this point, I am going to
21 go ahead and allow her to.

22 SOLICITOR SWANSON: All right. Thank you.

23 BY SOLICITOR SWANSON:

24 Q. What sort of law do you practice?

25 A. I have a general practice. I practice primarily

1 in family law, but a general practice here in town.

2 Q. All right. So, does that mean that you handle
3 divorces?

4 A. Yes.

5 Q. As a part of your family law practice?

6 A. Yes.

7 Q. Okay. And on March 2nd of 2016, did you have an
8 occasion to speak with Michelle Passio?

9 A. I did.

10 Q. Did she come to see you?

11 A. She did. She made an appointment and came in to
12 see me.

13 Q. All right. About how long did you speak to her?

14 A. I would say probably around an hour.

15 Q. And how did she appear that day?

16 A. Very concerned, frightened.

17 Q. Was she pregnant at the time?

18 A. I believe she was, yes.

19 Q. And did she express concern for her children?

20 A. She did. She had, if I recall correctly, seven
21 children and one on the way. I think that's right. A
22 great number of children, and she was very concerned
23 about them, yes.

24 Q. All right. Did you give her any referrals --

25 A. I did.

1 Q. -- to other agencies?

2 A. I did. Actually, to two agencies. I referred
3 her to Legal Services. I referred her to Citizens
4 Opposed to Domestic Abuse shelter in -- in Beaufort.

5 Q. All right.

6 A. I believe it's in Beaufort now.

7 Q. And that shelter and the organization that deals
8 with domestic abuse, is that an agency that you
9 typically refer clients to?

10 A. I would only refer a client if it were
11 appropriate to do so.

12 Q. All right. And in this situation, you felt it
13 appropriate?

14 A. I did feel it was appropriate, yes.

15 Q. Okay. Did she end up retaining your services?

16 A. She did not.

17 Q. And did you ever see her again after this?

18 A. I don't believe I did.

19 Q. All right. Were you familiar with Michelle
20 Passio's situation from members of the community?

21 A. Yes.

22 Q. Had people raised concerns to you as a member of
23 the community?

24 A. Yes.

25 SOLICITOR SWANSON: Thank you.

1 MR. GEIER: I don't have any questions for Ms.
2 Badgett.

3 THE COURT: All right. You are excused, and
4 thank you. I know you're under an order of
5 protection.

6 CATHERINE BADGETT: Thank you.

7 THE COURT: From me.

8 CATHERINE BADGETT: Yes, ma'am.

9 THE COURT: All right. Call your next witness.

10 CATHERINE BADGETT: Am I free to go?

11 THE COURT: Please.

12 CATHERINE BADGETT: Thank you.

13 SOLICITOR SWANSON: All right. The State calls
14 Shelby Simmons.

15 DEPUTY SHERIFF: Raise your right hand. Place
16 your left hand on the *Bible*. Do you swear or affirm
17 to tell the truth?

18 SHELBY SIMMONS: I do.

19 SHELBY SIMMONS, DIRECT

20 EXAMINATION BY SOLICITOR SWANSON:

21 Q. Hi, Shelby. How did you know Michelle Passio?

22 A. Me and Michelle -- I started -- I was out on work
23 leave due to a foot injury, and I started back in,
24 like, the end of October. And me and Michelle got
25 along real good. She came over to the house, played

1 -- the kids played. We hung out every day, and then
2 we worked at night shift. Me and her were just really
3 good friends.

4 Q. Okay. Can you pull that microphone a little
5 close to you. Okay.

6 So, you guys worked together?

7 A. Yes, ma'am.

8 Q. Okay. At Jasper's Porch?

9 A. Yes, ma'am.

10 Q. And were you both servers?

11 A. Yes, ma'am.

12 Q. Okay. So, how far -- how long after she moved
13 from Ohio did you meet her?

14 A. I met -- I guess, according to everybody, they
15 came down in July, and I started, like, right -- the
16 first weekend of October. Right after the first
17 weekend, because it was right after Gopher Hill.

18 Q. Okay.

19 COURT REPORTER: I'm sorry. It was right after
20 what?

21 A. Gopher Hill Festival.

22 Q. So, you knew her for about a year?

23 A. Yes, ma'am.

24 Q. Okay. How close a friends were you with
25 Michelle?

1 A. I mean, we were real close. I mean, we talked on
2 the phone whenever we weren't around each other. She
3 showed up every morning with either Mario or Cecliia
4 and played with my son and my nephew. And then, I
5 just got done recently having a baby, and I mean, she
6 was there through a lot of stuff that I went through.

7 Q. So, your kids would play together, and she would
8 come over quite a bit?

9 A. Yes, ma'am.

10 Q. Did you ever work with both Richard and Michelle?

11 A. Yeah. Me and Michelle and Rick, Jr., always -- I
12 mean, we worked night shift up until, you know, up
13 until towards the end of her pregnancy. Then she went
14 towards day shift. And then it would just be me and
15 Rock working at nights.

16 Q. Okay. And what was it like when Rock and
17 Michelle were both at the restaurant working?

18 A. I mean, at first, they were okay. And then,
19 like, during, I would say, like, the last six months,
20 I mean, you could tell, like, they were having
21 problems.

22 Q. When was the last time you saw Michelle before
23 her death?

24 A. I saw Michelle the day before her -- she died.

25 Q. All right. Where did you see her?

1 A. She had came over to my house. During that time,
2 you know, Rock and them -- Rock and the Passios didn't
3 really, you know, they wanted me to breeze off for
4 Michelle, because, you know, according to them, you
5 know, she wasn't acting right; she was lashing out.
6 So, therefore, you know, I had to die out with my
7 relationship with her. We couldn't hang out. And if
8 so, we couldn't, you know, let it be known, because my
9 job was threatened. And they threatened to fire me,
10 if I hung out with her.

11 Q. Okay. The Passios threatened to fire you --

12 A. Yes, ma'am.

13 Q. -- if you hung out with Michelle?

14 A. I, in fact, got fired three days after she died.

15 Q. When you saw her the day before her death, when
16 she came over to the house, did she appear depressed?

17 A. No, she was happy. She said that, you know, that
18 she was going to go help Jordan Moser --

19 MR. GEIER: Objection, your Honor.

20 Q. We -- we can't --

21 THE COURT: Okay.

22 A. Okay, yeah, that --

23 THE COURT: That's okay. So, Ms. Simmons, again,
24 you can't say what she told you.

25 A. Okay.

1 THE COURT: Okay?

2 BY SOLICITOR SWANSON:

3 A. I mean, she seemed fine.

4 Q. Okay.

5 A. She was happy.

6 Q. Did she talk about plans for the future, like the
7 next day, the next week?

8 A. I know she was going to help Jordan move.

9 Q. Well, okay. So, she did talk about --

10 A. Yeah. Talked about helping her friend move. I
11 mean, that was it.

12 MR. GEIER: Objection, your Honor.

13 COURT REPORTER: I'm so sorry.

14 THE COURT: Okay. Again, you can't say what she
15 said.

16 A. Okay. Well, then, yeah, she was fine.

17 THE COURT: Just listen to her questions. She's
18 going to ask you questions that's not going to elicit
19 that, so. Go ahead. Just --

20 SOLICITOR SWANSON: All right.

21 BY SOLICITOR SWANSON:

22 Q. So, just yes or no, did she talk about what she
23 was going to do the next day?

24 A. Yes.

25 Q. Okay. And the next day was Friday, right?

1 A. Yes, ma'am.

2 Q. Okay. And late that night, the last day that you
3 saw her, Thursday, into the early hours of Friday,
4 what happened?

5 A. I got off at 11:00 o'clock. I rode by the house.
6 They were all on the porch having -- I mean, seemed
7 like they were fine. I went home. I got a phone call
8 about 1:45, asking for a bottle, and it was Rick, Jr.
9 And then, when I told him I didn't have a bottle, I
10 mean, can I say what she said on the phone or no?

11 Q. No.

12 A. Okay. Well, then, that was it.

13 Q. Did you -- did you hear anyone in the background?

14 A. I heard Michelle in the background.

15 Q. All right. And did you ask to speak to Michelle?

16 A. No.

17 Q. You didn't ask Rick if you could speak with
18 Michelle?

19 A. No. I was -- Rick was on the phone. He asked me
20 for the bottle. I told him I didn't have a bottle. I
21 only had one bottle, because I was staying at the
22 Siesta with my mom. And then, after I told him that,
23 the conversation ended pretty much after that through,
24 you know -- or Michelle.

25 Q. Okay. And you thought you heard Michelle in the

1 background.

2 A. I did hear Michelle.

3 Q. Okay. And -- and you were not able to speak to
4 her?

5 A. No.

6 Q. Okay. Did you -- did you go to Michelle's
7 funeral?

8 A. No.

9 Q. Why not?

10 A. Because, from what I was told, it was just a --
11 MR. GEIER: Objection, your Honor.

12 THE COURT: Okay.

13 BY SOLICITOR SWANSON:

14 A. No, because of the family reasons.

15 Q. Okay. Did you and some of Michelle's friends
16 choose to remember her in a different way?

17 A. Yes. We had a memorial for her at the park.

18 Q. And when you found out about Michelle's death,
19 what did you do?

20 A. I woke up that morning. I got a phone call
21 saying there was a coroner at her house. And I went
22 to the job to see what was going on. And then, after
23 that, I rode by the house, and they wouldn't let me
24 get out. They told me what happened, and I left.

25 Q. Okay. But did you contact law enforcement?

1 A. Yes. I called McIntoth.

2 Q. All right. And why?

3 A. Because I had talked to Michelle, and Michelle
4 explained to me what was --

5 MR. GEIER: Objection, your Honor.

6 COURT REPORTER: I'm so sorry. I can't
7 understand what she's --

8 THE COURT: Okay. Let's just take a break for a
9 second, okay? All right.

10 BY SOLICITOR SWANSON:

11 A. Because Michelle had spoken to me about what was
12 going on.

13 Q. Okay. You can't say that.

14 A. I know I can't say that. That's why I just said
15 that.

16 Q. Okay.

17 THE COURT: That's fine.

18 BY SOLICITOR SWANSON:

19 Q. Okay. Because she had spoken to you --

20 A. Yes.

21 Q. -- about what was going on?

22 A. Yes.

23 THE COURT: Okay.

24 SOLICITOR SWANSON: Okay. Thank you, Shelby.

25 That's all I have. Please answer any questions Mr.

1 Geier might have for you.

2 THE COURT: Okay.

3 SHELBY SIMMONS, CROSS-

4 EXAMINATION BY MR. GEIER:

5 Q. Good morning, Shelby.

6 A. Morning.

7 Q. Michelle had a good heart, didn't she?

8 A. She did. She was very loving.

9 Q. And she was a friend to people who needed
10 friends.

11 A. Yes.

12 Q. I know you're taking her loss hard. When you
13 were speaking to Richard on the night before she died
14 -- or, I should say the morning she died, you didn't
15 ask to speak with Michelle, did you?

16 A. No. She was in the background.

17 Q. So, you said you started hanging out with
18 Michelle around October of 2015?

19 A. Yes, sir.

20 Q. And you all would hang out socially?

21 A. Yes. I mean, she helped me through my previ -- I
22 mean, my recent child's -- me and his father had
23 issues. She helped me through that. I mean, she was
24 just a really good friend. She was there for me all
25 the time.

1 Q. Yeah. I mean, you all would -- I mean, Michelle
2 drank; did she not?

3 A. Yeah. I mean, she would come over, and she'd
4 probably drink a Four Loko, and she'd go home. But
5 it's not like -- I mean, the only thing I ever seen
6 her do was, like, drink a beer and maybe smoke
7 cigarettes. Me and Rock and Michelle would always go
8 out after work to Schooner's at the beginning, and
9 everything was fine. I mean, they got along at first.

10 Q. And did she ever smoke marijuana around you?

11 A. Not around me, but, I mean, there was rumors
12 about it. Rock asked me about it, too. And I mean, I
13 told him I didn't. The most me and Michelle ever
14 would do is drink, and maybe sit on the porch and
15 smoke a cigarette, and talk about the kids.

16 Q. Were you ever around Michelle when she was breast
17 feeding Frankie, the baby?

18 A. No, no.

19 Q. Okay.

20 A. Like I said, once Frankie got here, I really
21 shook that off, because, I mean, she was just -- had
22 to stay at home with the baby.

23 Q. So, you never hung out with her after the baby
24 came?

25 A. I mean, besides when she would come into the

1 restaurant. I mean, once Frankie got here, I mean,
2 she was just -- within the last six weeks, I mean, she
3 was there at the house from the time she woke up, to
4 the time she went to sleep.

5 Q. And so, you weren't there, or the night before?

6 A. No. No, no, no. I was home. I got off work
7 about 11:00 o'clock, and I rode by and seen Rock and
8 Brandon and Devan and them all sitting on the porch.
9 I beeped the horn, waved at them, and then went to the
10 Siesta; until I got the phone call at 1:00 o'clock.
11 And then, that morning I woke up about 7:30.

12 Q. I see. I don't understand about the time. What
13 time do you think it was?

14 A. The phone call came in about 1:45, or between
15 1:50.

16 Q. Okay. So, between --

17 A. Yeah. I'm going to say right before 2:00
18 o'clock.

19 Q. I just asked because you spoke to law enforcement
20 a couple days later, and I think you said 2:00. But
21 when --

22 A. Yeah, I'm going to say it was right before 2:00.
23 I want to say it was, like, 1:50, something like that.

24 Q. Okay. All right. Just one second.

25 A. Okay.

1 MR. GEIER: I have no further questions.

2 THE COURT: Okay. Anything further, Ms. Swanson?
3 Can she be excused?

4 SOLICITOR SWANSON: No, your Honor.

5 THE COURT: Okay. Call your next witness.

6 SOLICITOR SWANSON: The State calls Pam
7 Bennington.

8 DEPUTY SHERIFF: Raise your right hand. Do you
9 swear or affirm the testimony that you're about to
10 give will be the truth, the whole truth, and nothing
11 but the truth, so help you God?

12 PAM BENNINGTON: I do.

13 PAM BENNINGTON, DIRECT

14 EXAMINATION BY SOLICITOR SWANSON:

15 Q. Pam, what's your relationship to Michelle?

16 A. I'm her mother.

17 Q. All right. And how long have you known Richard
18 Passio, Jr.?

19 A. For about 13, 14 years.

20 Q. So, you knew him and Michelle when they were --
21 their relationship when they were dating?

22 A. Yes.

23 Q. Were you supportive of that relationship?

24 A. No. No.

25 Q. But were you supportive of Michelle?

1 A. Yes.

2 Q. Were you close to her children?

3 A. Yes.

4 Q. Were you there when they were all born?

5 A. Every single one of them.

6 Q. Can you pull the microphone closer to your face.

7 A. I was there for every birth.

8 Q. Okay. And this was when -- primarily when you
9 were living in Ohio, right?

10 A. Yes.

11 Q. Okay. At some point, Michelle and Rock moved to
12 Ridgeland.

13 A. Yes.

14 Q. Okay. And did you move in with them?

15 A. I did. After they were here awhile, I moved in.
16 September, I believe. No, the end of October,
17 actually, of 2015.

18 Q. Okay. And why did you move in with them in the
19 fall of 2015?

20 A. To help them out with the children, so they could
21 both work on the restaurant.

22 Q. All right. Was Michelle pregnant at that time?

23 A. Yes, she was.

24 Q. Can you describe for the jury what life was like
25 around the house.

1 A. At first, it was fine. When I first moved in, it
2 wasn't bad at all. And then, as time went on, it just
3 got worse and worse. They fought constantly, every
4 single day. The children would come to me, the girls,
5 crying, couldn't understand why they were fighting all
6 the time. He wouldn't let her do anything. Anytime
7 we would go anywhere, to the grocery store, he'd call
8 five or six times, wondering what was taking us so
9 long. He was just very, very controlling of her.

10 Q. When Richard was fighting with Michelle, did he
11 ever order you to do anything?

12 A. Yes. There were several times, and one
13 particular time they were arguing really, really loud.
14 And I was upstairs, and I approached -- I came down
15 the stairs, and he looked and yelled at me, and told
16 me to get back upstairs. And of course, I just -- I
17 did it. I mean, he was huge then. He was -- I was
18 scared of him. I was. And I -- I knew she was okay,
19 because she'd always say, I'm okay, go; because she
20 knew if I'd get in it, it'd make it worse. You know,
21 he'd stop doing what he was doing, but whenever I
22 would go elsewhere, then it -- he'd take up where he
23 left off. I could hear them constantly. They fought
24 daily over nothing.

25 Q. Did you ever see Richard get aggressive with

1 Michelle when you were present?

2 A. Yes. One -- I did. Yes. One night, she was
3 pregnant, they were in the hallway, and he grabbed her
4 arm and shoved her, and she pulled away. And Mr.
5 Passio was there, also, Richard's dad. And he knew,
6 and Michelle and him went on the front porch and
7 talked about it. And my boyfriend was there at the
8 time, and he was going to do something. I talked to
9 him. We went upstairs and went to bed and went to
10 sleep. And as I know, everything was okay that night.

11 Q. Okay. Had Michelle ever shown any bruises on her
12 body?

13 A. Yes, she has.

14 Q. Where and when did she show you bruises on her
15 body?

16 A. In Akron, in Ohio, she had bruises around her
17 neck, and she had --

18 Q. You can't say what she said.

19 A. I know. But it appeared that he had choked her,
20 to me, when I saw them. And then, here in Ridgeland,
21 she had bruises on her legs.

22 Q. What else did he do when he was angry?

23 A. One time, I was coming down the stairs. They
24 were arguing, and I heard this crash. And he had Vito
25 in his arms, and he had flipped the kitchen table. He

1 was upset. I can't remember why. I really don't
2 recall why he did it, but he did it. He flipped the
3 table over, and the children were there. They were in
4 their rooms. They didn't hear it, but I think it was
5 Mario was in the kitchen at the time when he flipped
6 the table, and he was holding the baby when he flipped
7 it, because he was mad.

8 Q. Was Richard ever degrading towards Michelle?

9 A. All the time. He would call her names all the
10 time. I -- at one time, I asked Mario what his
11 mother's first name was, and he said a word that was
12 so inappropriate.

13 Q. Okay. Without saying what he said, what did you
14 hear Rock call her?

15 A. Cunt.

16 Q. A cunt?

17 A. Um-hmm. All the time.

18 Q. What else would he say to her?

19 A. She -- he'd always put her down. She couldn't
20 spell very good. He'd make -- on the way home from
21 the -- see, that's what she said. I can't say that.

22 Q. You can't say what she said.

23 A. But she couldn't spell his name right, and I --
24 he'd yell at her because she wouldn't do things the
25 way he wanted her to.

1 Q. Did he have very specific ways he wanted things
2 done?

3 A. Absolutely. The -- he had a cupboard with his
4 food only in it. The kids could not touch it. I
5 would leave the butter out sometimes. Oh, he'd throw
6 a fit. He'd just have a fit. Or, she'd go to the
7 grocery store, if she didn't get the ham shaved a
8 certain way, she'd have to go back and get more. He
9 was just really particular. Had to have certain
10 water; only ate certain kinds of bread. She had to
11 shop specially just for him.

12 Q. All right. Did the Passios have pets?

13 A. They had two cats in Akron. And then, when they
14 moved to Ridgeland, she had purchased a dog.

15 Q. Okay. Did you ever see him do anything
16 aggressive with the cat?

17 A. In Akron, one time, they got the cat, and Rick
18 had the cat sitting on his lap. The cat wanted down.
19 He wouldn't let the cat down. The cat peed on Rick.
20 He got mad and threw the cat against the wall.

21 Q. Who took care of the dog in Ridgeland?

22 A. Michelle and Kayla.

23 Q. All right.

24 A. And when I got there, myself.

25 Q. Did you ever see Richard walk the dog?

1 A. Never, ever did he walk that dog the whole time I
2 was there. Not once.

3 Q. Michelle was your daughter.

4 A. Yes.

5 Q. Would you talk to her about her relationship with
6 Richard?

7 A. Yes.

8 Q. And as a mother, would you give her advice?

9 A. Yes.

10 Q. All right. And what kind of advice did you give
11 your daughter?

12 A. Well, at first, you know, I told her to try to
13 work it out, because they had eight children, you
14 know, and it's something you don't take lightly. And
15 she tried to work it out for a couple months while I
16 was there, and it just seemed to get worse and worse.
17 Then, finally, we sat down and we decided -- she
18 decided, and I said, okay, that she wanted a divorce.
19 She just couldn't take it anymore.

20 Q. What was -- what was your advice at that point?

21 A. That she needed to do that. That I would come
22 back after I left, and I would come back, and I would
23 help her through it, and she was all for it. We had
24 decided that's what we were going to do, and I thought
25 that she was okay when I left.

1 Q. Okay. And so, you guys talked about the plans
2 for the future --

3 A. Yes.

4 Q. -- before you left?

5 A. Yes.

6 Q. And you were a part of those plans.

7 A. Yes.

8 Q. When were you going to move back down?

9 A. She was gonna go ahead and work at the kitchen
10 for -- or the Porch for awhile, and try to save up
11 some money, because -- that's what she's going to tell
12 me, what it costs to get divorced. She was going to
13 save up the money, and go ahead and try to get it, but
14 she had to be away from him for a year before she
15 could get a divorce. She couldn't get in a homeless
16 shelter without the children, and she wouldn't leave
17 them there. So, we decided she was just going to hang
18 out; try to save enough money; and then, when she --
19 apply for a divorce. And when she started going
20 through with it, I was to come back and help her.

21 Q. Okay. How long after Frankie was born did you
22 stay?

23 A. I stayed for -- he was, I believe, five to six
24 weeks when I left.

25 Q. All right. So, you left how long before

1 Michelle's death?

2 A. A month, probably. It was June 3rd. I think I
3 left May 19th.

4 Q. All right. So -- and then, we're talking about
5 June 3rd.

6 A. Yeah. So, it was probably about a month, I
7 guess.

8 Q. So, two --

9 A. I came -- I came home May 10th.

10 Q. Okay. So, two to three weeks?

11 A. Um-hmm.

12 Q. When you moved back to Ohio, before Michelle's
13 death, was that the last time that you saw her?

14 A. Yes.

15 Q. All right. What religion was Michelle?

16 A. Catholic.

17 Q. All right. And was she scared to get help?

18 A. Yes, she was. We talked about it. We talked
19 about suicide. She would never kill herself, because
20 she was afraid to go to hell.

21 Q. All right. And again, when you left, was she
22 depressed?

23 A. Absolutely not. We had plans. She was going to
24 try to make it work for awhile, until she saved enough
25 money. She promised it would be okay. I thought it

1 was -- she was good. On the -- couple days before I
2 left, they were getting along fine.

3 Q. Okay.

4 A. She was trying, and they were fine, and I
5 thought, it's good, so I left.

6 Q. And hindsight is always 20/20.

7 A. Right.

8 Q. Do you feel guilty for leaving?

9 A. Of course I do. If I would've stayed, she'd
10 still be alive.

11 SOLICITOR SWANSON: Thank you, Pam. Please
12 answer any questions that Mr. Geier might have for
13 you.

14 PAM BENNINGTON, CROSS-

15 EXAMINATION BY MR. GEIER:

16 Q. Good morning, Pam.

17 A. Hi.

18 Q. I'm sorry for your loss.

19 A. Thank you.

20 Q. And as I said before, she was a -- a good person.

21 A. Yes, she was.

22 Q. She had a good heart.

23 A. Yes.

24 Q. And she wanted to help people.

25 A. Yes.

- 1 Q. You have two additional sons as well?
- 2 A. Yes.
- 3 Q. And they're still okay?
- 4 A. Yes.
- 5 Q. How old were you when Michelle was born?
- 6 A. Oh, my God, I don't know. Twenty-two?
- 7 Q. And I understand that Michelle was raised by
- 8 several different people?
- 9 A. I raised her until I had brain surgery, and then
- 10 she moved with her dad.
- 11 Q. With who?
- 12 A. Her father.
- 13 Q. Her father?
- 14 A. In Indiana.
- 15 Q. And your mother- and father-in-law, Tom and
- 16 Linda?
- 17 A. Yes.
- 18 Q. They raised her for a time?
- 19 A. When she lived with her father, I don't know.
- 20 Q. I see. Okay. And was there anybody else that
- 21 raised Michelle?
- 22 A. My grandma -- my mom helped raise her, but other
- 23 than that.
- 24 Q. And you had a number of struggles in your time?
- 25 A. Oh, absolutely.

1 Q. Yeah.

2 A. Absolutely.

3 Q. Okay. And some of those struggles prevented you
4 from -- from raising her. Is that right? And that's
5 why she went --

6 A. No, not when she was a child. Just after I had
7 my brain surgery --

8 Q. Sure.

9 A. -- then things fell apart. Because I was sick
10 and couldn't take care of her, and yeah.

11 Q. And the fathers of -- your sons were raised by
12 their fathers as well? I'm sorry. That didn't make
13 any sense, did it? Your other sons, they were raised
14 by their fathers?

15 A. No. I raised Ka -- or -- oh, my God. I can't
16 even think. The neighbors -- I was with a -- a man
17 named Joe, and I had my son, that the neighbors took
18 care of him for, like, four years; because I was
19 having struggles and a hard times with the
20 relationship.

21 Q. Okay. When you moved in the apartment upstairs
22 from Richard and Michelle --

23 A. Um-hmm.

24 Q. -- that was -- what time was that? You said it
25 was October?

- 1 A. The end of October.
- 2 Q. October? Okay. And you lived there with your
- 3 boyfriend, Jerry?
- 4 A. Yes. Yes.
- 5 Q. And Richard helped Jerry get a job at Jasper's
- 6 Porch?
- 7 A. Yes.
- 8 Q. You didn't work there?
- 9 A. No. I'm -- no. I've been there one time to eat.
- 10 Q. You were helping Michelle with the children?
- 11 A. Yes. I stayed home all the time.
- 12 Q. And you became friends with Juanita?
- 13 A. Yes.
- 14 Q. Patrum.
- 15 A. Yes.
- 16 Q. Now, you were never a fan of Richard, were you?
- 17 A. We got along. I mean, I didn't put him down or
- 18 anything like that, but, no, I did not. I was -- he
- 19 was a control freak.
- 20 Q. And he wasn't much fun, either, was he?
- 21 A. No. He didn't do anything.
- 22 Q. He didn't like to party or go out?
- 23 A. Well, no, he partied. Don't think he didn't
- 24 party. He partied. He drank.
- 25 Q. Um-hmm. Right. But he wasn't any fun to hang

1 around with?

2 A. I didn't say that.

3 Q. Well, okay. Well, what would you say?

4 A. He was fun to hang around with. He was funny.

5 Q. Um-hmm.

6 A. I had no problem hanging around him. It's just
7 his controlling I had a problem with.

8 Q. I see.

9 A. He drank and partied with us, too.

10 Q. Right. With you and Michelle?

11 A. Correct. But you make it sound like we partied
12 all the time. We did not. We had eight children.

13 Q. Yeah. Okay. But you knew that Michelle was
14 drinking and smoking, and smoking marijuana, when she
15 was pregnant?

16 A. I didn't know she was smoking marijuana when she
17 was pregnant. She drank when she was pregnant, wine.

18 Q. Got you. She had had issues with drugs in the
19 past; had she not?

20 A. Not -- not that I know of. Rick would call it
21 issues if she took an aspirin.

22 Q. Um-hmm.

23 A. That's drugs to him.

24 Q. You never told somebody that Michelle was on meth
25 in Ohio?

1 A. Absolutely not.

2 Q. You never said that?

3 A. No. She told me she was.

4 Q. I see.

5 A. But no, I never told anybody.

6 Q. So, Richard and your boyfriend got in an
7 altercation --

8 A. Yes.

9 Q. -- when you all were living there, right?

10 A. Yes.

11 Q. Okay. And your boyfriend was arrested?

12 A. Yes.

13 Q. I see. You weren't real happy with that, were
14 you?

15 A. Absolutely not.

16 Q. And you were upset that they called the police.

17 A. I wasn't upset; I just didn't know why; because
18 he didn't touch him.

19 Q. I see.

20 A. And the reason he did it is because he laid his
21 hands on her the night before.

22 Q. I see. And he ended up going to jail for --

23 A. For ten days.

24 Q. I see. And your boyfriend lost his job after
25 that?

1 A. Yes.

2 Q. And you were told you needed to leave that
3 apartment?

4 A. Yes. Many times.

5 Q. I see.

6 A. He tried to get us out of there from -- four
7 months after we moved in, he tried everything to make
8 us move, because he couldn't control her as much as
9 long as I was there.

10 Q. Now, you're certain --

11 A. Pardon me?

12 Q. I'm sorry. After Michelle died --

13 A. Yes.

14 Q. -- you called the police; did you not?

15 A. Yes, I did.

16 Q. I see. And you blamed Richard?

17 A. What do you mean blamed him?

18 Q. You blamed him for Michelle's death.

19 A. Yes.

20 Q. You wanted to take custody of his children.

21 A. Yes, I did.

22 Q. And you weren't allowed to take custody?

23 A. I was. I couldn't. I didn't have a home to
24 raise all eight of them.

25 Q. I see.

1 A. I had given my home up to come here to take --
2 help take care of them.

3 Q. And your request to have those children was
4 opposed by Tom and Linda Bennington?

5 A. Correct.

6 Q. After Richard had your boyfriend arrested, you
7 told him he would regret that; did you not?

8 A. Of course, I did.

9 Q. And you came up with a plan to convince Richard,
10 or to egg Richard on, into hitting Michelle. Is that
11 not true?

12 A. Hitting her?

13 Q. Yes.

14 A. No.

15 Q. You -- you're denying that?

16 A. I'm denying that I egged him on to hit her.

17 Q. That you -- you deny that you were trying to have
18 some sort of scheme to cause Richard to somehow harm
19 Michelle?

20 A. Ex -- no, I did not.

21 Q. You never told anybody that?

22 A. No.

23 Q. You never told your ten-year-old grandson about
24 that?

25 A. No. Absolutely not.

- 1 Q. I see. So, it's your testimony under oath --
- 2 A. Yes.
- 3 Q. -- that you never told Giovanni?
- 4 A. That I was going to have Rick hit her?
- 5 Q. That -- that you --
- 6 A. No.
- 7 Q. -- when you wanted to have --
- 8 A. Why would I do that? That doesn't even make
- 9 sense. No, I did not do that.
- 10 Q. I see. You said that you never saw Richard walk
- 11 the dog?
- 12 A. Never.
- 13 Q. And you kept tabs on that?
- 14 A. Absolutely. I was there 24/7. I did not leave
- 15 that place.
- 16 Q. I see.
- 17 A. He did not have nothing to do with that dog.
- 18 Q. I see.
- 19 A. The only thing he did with that dog was take it
- 20 outside and tie him up.
- 21 Q. I see. You said that you witnessed Richard
- 22 shoving Michelle?
- 23 A. Yes.
- 24 Q. And you didn't call the police?
- 25 A. No, I did not.

1 MR. GEIER: I see. Thank you.

2 A. You're welcome.

3 SOLICITOR SWANSON: Just briefly.

4 PAM BENNINGTON, RE-DIRECT

5 EXAMINATION BY SOLICITOR SWANSON:

6 Q. So, Richard -- did he need any help,
7 particularly, from you to be mean or aggressive with
8 Michelle?

9 A. Absolutely not.

10 Q. And Mr. Geier asked you about the fight between
11 Rick and Jerry. What was that fight about?

12 A. Because he had put his hands on Michelle the
13 night before.

14 Q. Richard had?

15 A. Yes.

16 Q. Okay.

17 A. And Jerry saw it, as well as I. Jerry was going
18 to do something that night, but I wouldn't let him. I
19 made him go upstairs. The next morning, Cecilia comes
20 upstairs. Jerry's gone. Grandma, Daddy said --

21 Q. You can't say what she said.

22 A. I'm telling you what Ce -- oh, I can't say what
23 Cecilia told me.

24 Q. No. But the reason for the fight was because --

25 A. He --

- 1 Q. -- Richard had gotten aggressive with Michelle.
- 2 A. The night before.
- 3 Q. And the only person who ever called the police in
- 4 that household was Richard?
- 5 A. Yes.
- 6 Q. All right. Did he get any medical attention for
- 7 this assault?
- 8 A. Jerry did not touch him. Did not lay a finger on
- 9 him. He missed him. He slipped and fell in the
- 10 kitchen; Rick sat on top of him.
- 11 Q. Okay. And called the police?
- 12 A. He called -- he -- when I came downstairs, Rick
- 13 was standing up in the kitchen. Jerry was out -- out
- 14 standing there. I took Jerry outside; calmed him
- 15 down. Richard, Jr., took Kaleb in the bedroom and
- 16 called the police, and said that Jerry had assaulted
- 17 him.
- 18 Q. Okay. But no ambulance came?
- 19 A. No.
- 20 Q. Were there any marks on Richard?
- 21 A. No. Abs -- he didn't come in contact with him.
- 22 Q. And was -- how big was Richard, compared to
- 23 Jerry?
- 24 A. Like, almost three times.
- 25 Q. How big is Richard, compared to Michelle?

1 A. Same. Not now, but he was.

2 SOLICITOR SWANSON: All right. Thank you.

3 PAM BENNINGTON, RE-CROSS-

4 EXAMINATION BY MR. GEIER:

5 Q. So, you all told the police what you witnessed
6 when they came out to the --

7 A. I didn't.

8 Q. No one did?

9 A. They did. When the police came, I just walked
10 away, trying to find Michelle. She went to the store
11 to get cigarettes. She didn't even come back the
12 whole time they were there.

13 Q. I see.

14 A. If Michelle would've been there, he probably
15 wouldn't have went to jail.

16 Q. I see. But the police decided to arrest him?

17 A. Yeah. Yeah.

18 Q. And he was found guilty?

19 A. No.

20 Q. He was not guilty?

21 A. No. No. Rock dropped the charges.

22 Q. I see.

23 A. Because Michelle told him he wouldn't be able to
24 see the baby born if he didn't drop the charges.

25 Q. I see.

1 A. So, he dropped the charges.

2 Q. I see. And this incident that you were talking
3 about the night before --

4 A. Um-hmm.

5 Q. -- with Richard and Michelle?

6 A. Um-hmm.

7 Q. That's the one you spoke about earlier?

8 A. Um-hmm.

9 Q. I see.

10 COURT REPORTER: Is that yes or no?

11 A. Yes. I'm sorry.

12 MR. GEIER: Thank you.

13 A. You're welcome.

14 THE COURT: Anything else? All right. You may
15 step down.

16 PAM BENNINGTON: Thank you.

17 THE COURT: Solicitor?

18 SOLICITOR SWANSON: Your Honor, at this time, the
19 State rests its case.

20 STATE RESTS.

21 BY THE COURT:

22 THE COURT: All right. Ladies and gentlemen, at
23 this time, the State has rested their case. There's a
24 matter of law I need to take up with the attorneys.
25 Do not discuss this case. It wouldn't be appropriate

1 to do so, and we'll be right back with you all. Okay?
2 You can go back to your jury room.

3 JURORS LEAVE COURTROOM 11:39 A.M.

4 MOTION AND RULING:

5 THE COURT: Mr. Geier, before we do motions, how
6 many witnesses do you anticipate the Defense calling?

7 MR. GEIER: Let's see here.

8 THE COURT: I should ask if they're here as well,
9 probably, right?

10 MR. GEIER: We have about 13.

11 THE COURT: Is it -- you have --

12 MR. GEIER: All of -- one of them is -- I've got
13 12.

14 THE COURT: You've got 12. Are any of them here
15 right now?

16 MR. GEIER: Let's see. I know that we have them
17 here right now. I have one. Actually, I do have one.

18 THE COURT: Okay. My thought process is that we
19 could put up one. Do you know -- have you spoken to
20 your client about whether or not he wishes to testify
21 and there's a discussion you have to make, or have,
22 and I need to go through his rights.

23 MR. GEIER: We have discussed it, your Honor, and
24 that is a possible.

25 THE COURT: Okay. So, let's go ahead and do

1 this. I'm going to step down for about -- how long is
2 this witness? Is it quick?

3 MR. GEIER: It is pretty quick.

4 THE COURT: Do you want to get that person up and
5 out of here before lunch?

6 MR. GEIER: I don't have a preference. So, it's
7 really up to your Honor.

8 THE COURT: Okay. I say let's go ahead, and
9 we'll put her up. I just want to know. I mean, I can
10 give the jury a nice, long lunch break, if they need
11 it. But let's go ahead and -- I'm going to give you
12 ten minutes right now.

13 Before the directed verdict motion, Solicitor,
14 you need to go through every piece of evidence that
15 points to actual conviction, obviously, for this. And
16 we'll come back; you'll put your first witness up;
17 we'll break for lunch. And then, did you tell them to
18 come at 1:00 and 1:30?

19 MR. GEIER: I've got one that's coming at 1:00,
20 your Honor; I've got one that's coming about 1:30 or
21 2:00. But there's going to be a number of folks, so.

22 THE COURT: Well, there's ten more. So, I'm
23 assuming they're all coming at 1:00 or 1:30 as well.

24 MR. GEIER: Sure.

25 THE COURT: So, I'm just trying to figure out how

1 long to give them for lunch break. I'm guessing maybe
2 I could give them until at least 1:30. And hopefully,
3 you'll have enough witnesses at that point to begin.

4 MR. GEIER: Sure.

5 THE COURT: Is that safe to say?

6 MR. GEIER: Yes, your Honor.

7 THE COURT: All right. So, let's take ten
8 minutes right now; and we'll come back; we'll do the
9 directed verdict motion. And then, we'll put up the
10 one witness, and then we'll break for lunch. Okay?
11 Thank you.

12 OFF THE RECORD 11:39 A.M.

13 BACK ON THE RECORD 11:57 A.M.

14 MOTIONS AND RULINGS:

15 THE COURT: All right. Wanda, you ready to go?

16 COURT REPORTER: Yes, ma'am.

17 THE COURT: All right. Everyone ready to go?
18 Let's not bring the jury in. Let's hear from you, Mr.
19 Geier.

20 MR. GEIER: Thank you, your Honor. Your Honor,
21 this case is -- as I've been sitting here the last day
22 and a half, I don't know that there's any direct
23 evidence at all in this case. It's all
24 circumstantial, which, obviously, it's evidence that
25 can be used to obtain a conviction. However, at the

1 directed verdict stage, there has to be substantial
2 circumstantial evidence. And the circumstantial
3 evidence that's out there has to do more than raise
4 just a suspicion of guilt.

5 As I see it in this case, we have a couple things
6 that have been put on by the State. Michelle was
7 dead, and Richard was there. And we heard the 911
8 tape that was entered. And in that tape, he said she
9 shot herself, with my gun. So, I think we have those
10 things.

11 We've had, you know, back to the gun. Yeah, it
12 was his gun. The State's DNA expert said her DNA was
13 on the trigger, as was his.

14 There was -- most of the testimony that came in
15 from any sort of fact witness was that Richard would
16 lose control, which is not, in and of itself, evidence
17 that he murdered Michelle.

18 There were claims of infidelity. And they had
19 Brandon Ashcraft get up there and say, yes, I was
20 having an affair. They never once presented any
21 evidence that Richard knew. Absolutely none.

22 And it's the same thing with the claims of
23 divorce. They had Ms. Badgett get up there; they had
24 various family members say, yeah, she was talking
25 about a divorce. Never was there any indication that

1 Richard knew. Absolutely no evidence of either of
2 those two things.

3 They put on some evidence suggesting that Richard
4 didn't call 911 immediately after Michelle's death.
5 They did that partially through the coagulation of
6 blood. But again, their witness, the EMT, testified
7 that, when they got there, that, yeah, the blood was
8 goopy. But they found a working cardiac rhythm in
9 Michelle, so her heart was still beating when they got
10 here.

11 They put on Ivy Bryan, who said that it happened
12 at -- that she heard shots, four shots, at 1:00 a.m.
13 There's no question there was only three. She
14 couldn't identify exactly where they came from. She
15 couldn't identify who was arguing that she heard,
16 anything at all about that. No one else came on and
17 said they heard shots around that time, including
18 Juanita Patrum, who was next door.

19 Juanita said that she heard a shot -- or didn't
20 hear anything, including at 5:50 in the morning, when
21 -- about the time Richard called 911. But she also
22 said that she wasn't outside the entire time; that she
23 walked the dog; she went inside; fed the cats; got
24 ready; and left. She started walking out as -- then,
25 again, pulled up.

1 They've got a case that they called a gun case,
2 and they've asked all kinds of witnesses, did you see
3 Richard with a gun at Jasper's Porch. Yeah. Did he
4 have a case? Yeah. The case sitting right there, and
5 it's entered into evidence, but not one of them
6 testified that, that was the case. None of them
7 identified that. They didn't ask them to. So, I
8 guess that seems -- they seem to be implying that
9 Richard kept the gun at Jasper's Porch, in that case.
10 And then, that morning, at 1:00 in the morning, I
11 guess it was, with the time stamp being off, that he
12 went there and retrieved this case. Well, again,
13 nobody said that, that was the case that he ever kept
14 any sort of firearm in.

15 That's all we've got. I mean, we've got him
16 going to Jasper's Porch. There was some talk about
17 how he was going to go to Jasper's Porch to get the
18 Jagermeister, and that was from Brandon Ashcraft. But
19 there was nothing else about any of that.

20 We have, sounds like, one claim of some sort of
21 prior difficulties, some sort of physical altercation,
22 between Richard and Michelle. But they don't have
23 anything else, and that evidence came from the
24 decedent's mother, who admitted she blamed Richard for
25 it before she heard anything.

1 You know, again, I understand that these don't
2 get granted very often, your Honor, but I just don't
3 see that there is a causal connection between any of
4 these things. If you're going to prove your case by
5 circumstantial evidence, you've got to have a direct
6 link. And nobody identified that box. That's a big
7 kink in the chain. Nobody is saying that Richard said
8 she was divorcing him; she's leaving me. Nobody is
9 saying Richard knew that Brandon was having an -- an
10 affair with his wife. Those are huge missing links in
11 that chain, and to be honest, I don't think they got
12 there.

13 THE COURT: Ms. Swanson.

14 SOLICITOR SWANSON: Thank you, your Honor. As
15 you know, we are looking at the evidence and the facts
16 taken in the light most favorable to the State at this
17 time. I do believe we have presented evidence that
18 the defendant, Richard Passio, had the motive, means,
19 and opportunity to commit this murder.

20 We began by entering the 911 phone call, where he
21 places himself at the scene. He calls it a suicide at
22 that time. He also says that she was attacking him.
23 And then, he gives statements to responding officer,
24 Lieutenant Ginn, in which he says that there was a
25 struggle over the gun, you know, that they were

1 fighting.

2 MR. GEIER: I object to that. I don't think any
3 of that ever came in.

4 COURT REPORTER: I'm sorry. *I object to that; I*
5 *don't* what?

6 MR. GEIER: I don't think any of that ever came
7 in.

8 THE COURT: What, in the 911 tape, did he say
9 about the first two shots? Because I thought it was
10 different than what Mr. Geier said in his opening
11 statement. I understood the opening statement to be
12 that when they were somewhat struggling over the gun.
13 That's the way you made it sound in your opening
14 statement; that he was trying to push it down and it
15 went off.

16 You -- or, I'm sorry. The 911 tape said she shot
17 twice, and then the third time she killed herself.

18 MR. GEIER: Right.

19 THE COURT: That's what the 911 tape said, so.

20 MR. GEIER: Right. Well, I want to point out
21 that what I say in opening statements is not evidence.

22 THE COURT: I understand that.

23 MR. GEIER: But -- but --

24 THE COURT: I just want to know which it is.

25 MR. GEIER: No, no. It's she fired two shots.

1 The second shot he had his hand on the slide.

2 THE COURT: Okay.

3 MR. GEIER: And that injured his hand.

4 THE COURT: Okay.

5 MR. GEIER: That's said in the 911 call.

6 THE COURT: Okay. Okay.

7 SOLICITOR SWANSON: Lieutenant Ginn did testify
8 to the statements that Richard Passio made on the
9 scene. If Mr. Geier doesn't recall those, I'm sure
10 Wanda can pull them up. But what Richard told him at
11 the scene was that he and Michelle struggled over the
12 gun; that the gun went off; that she was struck in the
13 head; that there were three shots; and the final one
14 -- that there were three shots; and then the final one
15 struck her; and that's when his hand was injured. So,
16 three shots, and then a final one struck her, totaling
17 four.

18 THE COURT: Okay.

19 SOLICITOR SWANSON: Now, I understand that we
20 have three shell cases. It's not that unusual for us
21 to be missing a shell case. I do not think that there
22 is, you know, I mean, it's not unquestionable that
23 only three shots were fired, just because we had three
24 bullet strikes.

25 THE COURT: I understand.

1 SOLICITOR SWANSON: One in her head, two behind
2 her head, which doesn't make any sense. If she's
3 shooting up in the air, you know, she has the gun.
4 She's like this, behind her, because he is most likely
5 on top of her, with the gun, trying to fire at her.

6 Anyway, he tells two different stories. He tells
7 a story of suicide and a struggle over the gun. Those
8 are two different things.

9 First responders testified that she was cold to
10 the touch; blood was coagulating; there was no
11 dripping blood; there was the smell of decomposition
12 in the air. All of which, you know, indicate she was
13 dead longer than the six- to seven-minute response
14 time that it took them to come, after the defendant
15 called 911 at 5:52 in the morning.

16 The EMT testified he was already right next to
17 her, on-scene at 6:00 o'clock. 6:00 a.m. He has
18 responded to, you know, many gunshot wounds, many
19 fatalities, many suicides in the Atlanta/Savannah, and
20 this area as well. He had never responded to a
21 suicide where there had been multiple gunshots. That
22 was kind of different in the scene. And then, he had
23 never responded to a female suicide with a gun, or he
24 had responded to one out of 300 or so. As well as the
25 testimony that Mr. Geier elicited from him, just

1 regarding the fact that females are much less likely
2 to shoot themselves as a way to commit suicide than
3 men, statistically, and he learned that in his
4 training. But his experience bore that out as well.

5 The pathologist could not rule out suicide. But
6 she couldn't rule it a suicide. And she couldn't rule
7 out homicide, because she said she doesn't know who
8 pulled the trigger. Well, there were two people
9 there, and one of them's dead. So, we have to look at
10 circumstantial evidence to determine who pulled the
11 trigger.

12 We have both the victim and the defendant's DNA
13 on the trigger. We also have the defendant's DNA
14 under the victim's fingernails. That is evidence that
15 the jury can consider that she was fighting him off.
16 He was much larger than her. Another, you know,
17 factor in -- in what the jury can consider in the
18 State's theory.

19 Witnesses described the gun case. You know,
20 having everyone -- having sat in the courtroom, I
21 didn't feel comfortable -- I -- I thought it was
22 fairly -- it would be fairly obvious if I present them
23 with the case that the police took, when everyone's
24 sitting in the courtroom hearing about it. So, I had
25 them describe the case that -- that they had seen.

1 THE COURT: We also saw it in the video.

2 SOLICITOR SWANSON: Right, right.

3 THE COURT: Coming out with it.

4 SOLICITOR SWANSON: Yes, yes. And it --

5 THE COURT: At Jasper's Porch.

6 SOLICITOR SWANSON: Obviously, the surveillance
7 video, which is very clear, where Richard was
8 identified as the one taking a square black, what
9 appears to be a hard case. Same sort of case that all
10 the witnesses testified that he kept the gun in; that
11 he kept the gun at Jasper's Porch. He goes and gets
12 that right after a fight that they have at Schooner's,
13 that a number of people witness; and right before, he
14 goes home to Michelle. And hours before she ends up
15 dead, by his gun.

16 He also tells Brandon, the man that his wife had
17 an affair with, boy, I sure hope this isn't the night
18 she commits suicide, just hours before she ends up
19 dead, and he calls 911, claiming she committed
20 suicide.

21 He was aware of the affair. He may have claimed
22 ignorance, but he was certainly aware of the rumors,
23 nonetheless. So, it's not like he was clueless about
24 it. He had confronted Brandon prior to that night,
25 you know, and told Brandon -- and Brandon testified to

1 this: if I believed them, this would be a very
2 different conversation.

3 However, we also have witness testimony about
4 Brandon working in the kitchen; how he would always
5 watch Michelle if she got too close to the kitchen.
6 You know, that's what he was kind of looking for. He
7 didn't like her being around Brandon.

8 So, multiple witnesses recount the infidelity,
9 the plans for divorce that she had as a possible
10 motive for him getting rid of her; because she wasn't
11 going to leave him on her own terms.

12 They recount the prior difficulties, abuse at the
13 hands of Richard Passio, as well as his aggression.
14 So, you know, all of that, I believe -- and, of
15 course, our most direct evidence is the surveillance
16 video, him going to get the case that he kept the gun
17 in, and the fact that that gun was used, you know, to
18 kill Michelle. That's the most direct evidence, of
19 course, because there were two people there. One of
20 them's dead.

21 We have to rely on the circumstantial evidence.
22 But I believe, through the 20 witnesses that
23 testified, we have presented substantial
24 circumstantial evidence for a jury to conclude, taken
25 in the light most favorable to the State, that the

1 defendant killed his wife, Michelle Passio.

2 THE COURT: You want to respond, just very
3 briefly.

4 MR. GEIER: Your Honor, I'd like to respond. It
5 sounds like, at the end, that the box is the thing.
6 And you know, we have a picture, or a video of him,
7 going to the Porch and getting that box. Again, they
8 could've had anybody come up and say, yes, that's the
9 box I saw him keep his gun in, and they did not. And
10 we didn't have anybody say that I saw him put that gun
11 in that box that day or that week or that month. We
12 don't have any idea as to when he might have had maybe
13 that box, maybe another box, or when he had that gun.
14 And again, that was stuff that they could've pulled
15 out, and they did not. There is no causal link
16 between that box and that gun on that particular
17 night. And the State could certainly gone through
18 there and talked about it, found evidence of that, but
19 they did not. They just said it was in some sort of
20 box. Again, didn't point out that one; didn't put any
21 place or time when that gun was in that box. It
22 might've been months before. Might've been days
23 before. We don't know.

24 I will also, with respect to the scene and the
25 timing of the call, even if there was a delay, (1)

1 there is no evidence that he tampered with the scene.
2 Nobody testified as to that. And you know, beyond the
3 heartbeat going on when they showed up, he had -- they
4 stepped in blood, and they tracked it around a little
5 bit. You know who didn't step in blood? Richard
6 Passio. He had a cut on his hand that they said was
7 dry and crusty, but there was no blood that they found
8 on any walls or bathrooms or anyplace else. They said
9 he was covered in blood. And yet, for hours he didn't
10 get that blood on anything.

11 Again, I think that the circumstantial evidence
12 that there was some sort of delay is weak. But even
13 if there was a delay, I don't think that changes
14 whether or not he killed himself -- or he killed
15 Michelle. I don't know that it has any bearing on it.

16 THE COURT: Well, I think, respectfully, taking
17 all the evidence in the light most favorable to the
18 State, I think there is substantial circumstantial
19 evidence in this case that points to the defendant in
20 this case, and I'm going to let it go to the jury.

21 MR. GEIER: Thank you, your Honor.

22 THE COURT: Okay? All right. Let's bring the
23 jury out here. You're going to put up -- just our
24 first witness here, and you don't have a second one,
25 just a first? How many witnesses do you have?

1 MR. GEIER: Let's see. I've got --

2 THE COURT: No, no, no. How many do you have
3 here that can testify before lunch break?

4 MR. GEIER: Oh, I'm sorry. I have one, your
5 Honor. Well, I have one, your Honor.

6 THE COURT: Okay. Okay. Let's bring the jury
7 out. Let's put that one witness, Mr. Geier, and we'll
8 break for lunch. Okay?

9 JURORS ENTER COURTROOM 12:15 P.M.

10 THE COURT: Thank you. All right. Welcome back,
11 ladies and gentlemen. It's my understanding we're
12 going to go ahead and put up our first witness, and
13 then we're going to break for lunch. And we'll come
14 back, and then we'll hear the rest of the Defense's
15 witnesses, hopefully, today. The goal, then, is, is
16 tomorrow we will come back and we'll hear the closing
17 arguments; I'll charge you on the law; and then send
18 the case to you. All right? That's for scheduling
19 purposes.

20 So, with that said, Mr. Geier, if you'll call
21 your witness, sir.

22 MR. GEIER: Thank you, your Honor. Defense calls
23 Linda Bennington.

24 THE COURT: Come on forward, Ms. Bennington.

25 DEPUTY SHERIFF: Do you swear or affirm to tell

1 the truth, the whole truth, and nothing but the truth,
2 so help you God?

3 LINDA BENNINGTON: I do.

4 COURT REPORTER: You need to scoot up as close as
5 you can.

6 LINDA BENNINGTON: Okay.

7 THE COURT: Thank you. All right.

8 LINDA BENNINGTON, DIRECT

9 EXAMINATION BY MR. GEIER:

10 Q. Good afternoon, Ms. Bennington. Could you please
11 state your full name, for the record.

12 A. Linda Bennington.

13 Q. And thank you for coming, and thank you for being
14 here. And you are Michelle's grandmother?

15 A. Yes.

16 Q. And again, I'm sorry for your loss. I understand
17 that you had a hand in raising Michelle?

18 A. Yes. She stayed with my husband and me for about
19 six months when she was a teenager.

20 Q. Okay. And why was that necessary?

21 A. She had been living with her father, and actually
22 had moved out and was living with a boyfriend. And I
23 saw that she had a need, and invited her to come and
24 stay with us.

25 Q. I see. Why wasn't she living with Pam any

1 longer?

2 A. I don't know.

3 Q. You don't know? You aware of any problems that
4 Pam had when Michelle was still alive?

5 A. I don't know what you're referring to.

6 Q. Again, did Pam ever have any issues as far as
7 being able to care for Michelle?

8 A. I don't know.

9 Q. You don't know. How long have you known Pam?

10 A. For about 36 years.

11 Q. And after this occurred, you were interviewed by
12 Investigator McIntosh?

13 A. Yes.

14 Q. And he didn't call you all. You all went over
15 there.

16 A. We went to see him.

17 Q. What did you tell Investigator McIntosh about
18 Pam?

19 A. I told him that she was a pathological liar.

20 Q. And you gave an example; did you not? Do you
21 recall that?

22 A. Well, I was referring primarily to when the
23 children were young, grade-school age. And she and
24 the family lived nearby us. We would see them
25 frequently, and she would frequently tell lies about

1 things that I thought were inconsequential.

2 Q. I see. In fact, you told him that, if she told
3 you the grass was green, you wouldn't believe her.

4 A. Yeah, I probably said that.

5 Q. And the reason -- well, what was the reason why
6 you told him that?

7 A. Because when -- when I was around her, like I
8 said, when the children were young, she would often
9 lie about things that didn't mean anything.

10 Q. Pam tried to get custody of the children; did she
11 not?

12 A. She offered. We had a conference call among
13 interested parties --

14 Q. I see.

15 A. -- and she did offer.

16 Q. And you and your husband opposed that; did you
17 not?

18 A. Yes.

19 Q. Was Michelle subject to mood swings?

20 A. I don't know.

21 Q. You weren't around her enough to see that?

22 A. No, we visited -- as an adult, we just visited a
23 couple times a year. We'd visit her and the family.

24 Q. And there was an occasion, was there not, when
25 you understood that Michelle was no longer interested

1 in her kids anymore? Is that fair to say?

2 A. I was told by her husband, Rick, that she wasn't
3 interested in her kids anymore. I didn't believe it.

4 Q. I see. Again, do you recall being interviewed by
5 Investigator McIntosh?

6 A. Yes.

7 Q. Did you not tell him that Michelle indicated that
8 she wasn't interested in the kids anymore?

9 A. I don't recall ever saying that.

10 MR. GEIER: I have no further questions. Thank
11 you.

12 LINDA BENNINGTON, CROSS-

13 EXAMINATION BY SOLICITOR SWANSON:

14 Q. Linda, you stated that Pam would lie about things
15 that you felt were inconsequential.

16 A. Yes.

17 Q. So, she never told big huge lies that would
18 affect someone's future, would she?

19 A. I -- I was never aware that -- of anything like
20 that.

21 Q. Okay. No schemes that she conducted or anything
22 like that?

23 A. No, I don't recall any schemes.

24 Q. Okay. And when Rick told you, or Rock, that
25 Michelle was no longer interested in her kids, you

1 didn't believe that. Why?

2 A. Because she always loved her kids. Her kids were
3 her life.

4 Q. All right.

5 A. And at the time, it was Rick. I never knew him
6 as Rock. And this was in Ohio, and he called me to
7 complain about Michelle.

8 Q. Did he do that often?

9 A. No. There was only twice.

10 Q. And was that when they were living in South
11 Carolina?

12 A. No, there were in Ohio.

13 Q. Okay. And you told Investigator McIntosh that
14 Richard and Michelle's relationship had been stormy
15 for the past couple years, right?

16 A. Yes, probably.

17 Q. And that she was not happy.

18 A. Yes.

19 Q. She was dissatisfied with their relationship.

20 A. Yes.

21 Q. And that she loved being a mom.

22 A. She did love being a mom.

23 Q. And primarily, what you talked to Investigator
24 McIntosh about was what the children had told you
25 Richard said about what happened that night, right?

1 A. It was what Richard, Sr., had said.

2 Q. Okay.

3 A. To Kaleb.

4 Q. Okay. So, what the children had heard from the
5 Passio family members, right?

6 A. Yes.

7 Q. Not what they knew about what happened that
8 night.

9 A. Correct.

10 SOLICITOR SWANSON: Okay. Thank you, Linda.

11 THE COURT: Anything further?

12 MR. GEIER: Yes, your Honor. Briefly.

13 LINDA BENNINGTON, RE-DIRECT

14 EXAMINATION BY MR. GEIER:

15 Q. Back when Richard and Michelle lived in Ohio, is
16 it your understanding that Michelle had an affair?

17 A. I was never aware of her having an affair.

18 Q. Did you tell Investigator McIntosh that she was
19 looking for sex out of the marriage?

20 A. No.

21 Q. You never told him that?

22 A. No.

23 Q. You never told him that she was thinking about
24 running around?

25 A. No.

1 Q. And you said that you told him that she loved
2 being a mom.

3 A. Yes.

4 Q. But didn't you say until her fifth child?

5 A. I said -- well, I don't recall exactly what I
6 said at that time, but she was very content with
7 having that many children around her. Through the
8 fifth child she was very happy, and I think it became
9 harder for her as she had more children. It was
10 harder to handle them.

11 Q. I see. And at that time, she made it -- you were
12 of the understanding that she wanted out of the
13 marriage at that point?

14 A. Yes. She had indicated that she would like to be
15 somewhere besides with Rick, yes.

16 Q. And it's your testimony that she didn't even care
17 if she had the kids or not; she just wanted to be out.

18 A. I don't recall. I don't recall ever hearing that
19 or saying that.

20 MR. GEIER: Okay. All right. Thank you.

21 THE COURT: Anything further?

22 SOLICITOR SWANSON: Just briefly.

23 LINDA BENNINGTON, RE-CROSS-

24 EXAMINATION BY SOLICITOR SWANSON:

25 Q. Linda, did you visit the Passio household in

1 Ridgeland?

2 A. Yes.

3 Q. Okay. And so, you were there when all eight kids
4 were there and the dog was there?

5 A. Yes.

6 Q. Was that house ever quiet when all these people
7 were there?

8 A. Never. Never.

9 Q. Okay. Was it a little chaotic?

10 A. It was very chaotic.

11 Q. And never completely quiet?

12 A. Never.

13 SOLICITOR SWANSON: Okay. Thank you.

14 THE COURT: Anything further, Mr. Geier?

15 MR. GEIER: No, your Honor.

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

17 MR. GEIER: Actually, your Honor --

18 THE COURT: You have a witness here?

19 MR. GEIER: -- may we approach?

20 THE COURT: Sure. Yes.

21 OFF THE RECORD BENCH CONFERENCE, OUT

22 OF HEARING OF JURORS. PRESENT: THE

23 COURT, SOLICITOR SWANSON, MR. GEIER.

24 END BENCH CONFERENCE.

25 THE COURT: Ladies and gentlemen, I think we

1 maybe do have one witness we can put up before lunch
2 time, which we'd like to do another one. Go ahead and
3 call your witness, Mr. Geier.

4 MR. GEIER: Thank you, your Honor. Defense calls
5 Investigator McIntosh.

6 DEPUTY SHERIFF: Do you swear or affirm the
7 testimony you're about to give is the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 CORPORAL CHRIS MCINTOSH: Yes, sir.

10 CORPORAL CHRIS MCINTOSH, DIRECT

11 EXAMINATION BY MR. GEIER:

12 Q. Hello again.

13 A. Hello.

14 Q. See, you thought you were done, but, no, you're
15 back up. Do you recall interviewing Ivy Bryan when
16 you were doing your initial interviews in this case?

17 A. I know she was interviewed. So, yes, sir, I -- I
18 did interview her.

19 Q. I see. And do you have your report with you?

20 A. I do. Okay. Yes, sir.

21 Q. All right.

22 A. The young lady, yes.

23 Q. All right. When you interviewed her, what time
24 did she tell you she heard shots coming from the
25 direction of the Passio house?

1 A. She stated at approximately 1:00 a.m.

2 Q. I see. And she heard four shots?

3 A. She stated that she had heard four gunshots.

4 Q. Okay. All right. And do you recall your meeting
5 with Tom and Linda Bennington?

6 A. Yes, sir.

7 Q. That was June 6th?

8 A. Yes, sir.

9 Q. And, oh, I grabbed the wrong notes. What did Ms.
10 Bennington tell you about Michelle loving being a
11 mother?

12 A. She stated that she loved being a mom until about
13 the fifth child, at which time she seemed to feel
14 overwhelmed.

15 Q. That's what you put in your report?

16 A. Yes, sir.

17 Q. And she told you that, before leaving Ohio,
18 Michelle was looking to have sex out of the marriage?

19 A. I -- I don't recall her saying that.

20 Q. Okay. You don't recall that?

21 A. No, sir.

22 Q. Okay. Have you reviewed the video?

23 A. Yes, sir.

24 Q. If that's what's on the video, would you agree --

25 A. Then, that's what's on the video, yes, sir.

1 Q. And you don't recall her saying that she wasn't
2 interested in the children any longer? And this was
3 in Ohio.

4 A. No -- no, sir. I don't recall that. The only
5 remark regarding the interest in the children would've
6 been the -- the statement of the -- overwhelmed after
7 the fifth child.

8 Q. That's, again, something you didn't include in
9 your report?

10 A. It's not in my summary here, no, sir.

11 Q. Okay. And if that was said and it was in that
12 video, would you agree that it was?

13 A. Yes, sir.

14 Q. What did she tell you about Pam Bennington?

15 A. She told me that Pam Bennington was a
16 pathological liar.

17 MR. GEIER: Thank you.

18 A. Yes, sir.

19 CORPORAL CHRIS MCINTOSH, CROSS-

20 EXAMINATION BY SOLICITOR SWANSON:

21 Q. Investigator McIntosh, you didn't have any reason
22 to disbelieve that Pam Bennington had to tell you, did
23 you?

24 A. No, ma'am.

25 Q. And in fact, it went along with what everyone

1 else had been telling you about Rick and Michelle and
2 their relationship, right?

3 A. Yes, ma'am.

4 Q. Okay. And when you talked to Ivy Bryan, she
5 actually approached you because she said to herself --
6 or she said, four shots doesn't sound like suicide.
7 So, she contacted law enforcement, right?

8 A. She did.

9 Q. Or her dad did on her behalf?

10 A. Yes, ma'am.

11 Q. All right. And there were no other reports of
12 shots fired in the town of Ridgeland that night, were
13 there?

14 A. No, there weren't.

15 Q. And in your report, of course -- and this summary
16 is not large regarding Ivy Bryan's conversation with
17 you, is it?

18 A. No, ma'am.

19 Q. It's just a three-sentence summary, right?

20 A. Yes, ma'am. It was out by the roadway.

21 Q. Okay.

22 COURT REPORTER: Yes, ma'am, it was what?

23 A. Out by the roadway. Yes, ma'am.

24 Q. Okay. And you note approximately 1:00 a.m.?

25 A. Yes, ma'am.

1 Q. All right. And you heard her testimony here
2 today.

3 A. Yes, ma'am.

4 Q. I mean, yesterday. I'm sorry.

5 A. Yes.

6 Q. And in her testimony, she said some time between
7 1:00 and 3:00. That's when she was outside with her
8 friend. So, you wouldn't consider that inconsistent
9 with what she told you, would you?

10 A. No, ma'am. I believe she testified between 1:30
11 and 2:00 at one point.

12 Q. All right. Now, regarding Linda and Tom, they
13 primarily gave you information about what the children
14 were telling them Richard and Richard, Sr., told them
15 about what happened that night, right?

16 A. Yes, ma'am.

17 Q. Not what they actually observed.

18 A. Correct. This was -- excuse me -- three days
19 after the incident, yes, ma'am.

20 Q. Okay. And three days after the incident, Richard
21 had had access to his children for three days,
22 correct?

23 A. Yes.

24 SOLICITOR SWANSON: That's all I have at this
25 time.

1 THE COURT: Anything further?

2 MR. GEIER: May I approach, your Honor?

3 THE COURT: You may.

4 CORPORAL CHRIS MCINTOSH, RE-DIRECT

5 EXAMINATION BY MR. GEIER:

6 Q. Please take a look at this portion here, where
7 I've got Tom and Linda Bennington.

8 A. The highlighted portion?

9 Q. Well, I want you to take a look at that and make
10 sure that that is what -- the same thing you've got in
11 your report.

12 A. Yes, sir. The entire portion highlighted?

13 Q. No, no. I just -- so just look at that. You can
14 tell that's what you had in your report?

15 SOLICITOR SWANSON: May I have a reference to
16 what Defense Counsel is pointing the witness first?

17 MR. GEIER: Sure. What I'm showing is --

18 BY MR. GEIER:

19 A. I think you're spacing is a little bit different
20 than mine.

21 Q. Okay. Sure. This is Tom and Linda Bennington's
22 interview notes from the police report.

23 A. Okay. It's more towards the bottom. There we
24 go.

25 Q. Yes, sir. And I'm looking --

1 A. Yes, sir. Yes, sir. I see.

2 Q. All right. And so, is --

3 A. The high -- the highlighted portion does match.

4 Q. Yeah. They're the same?

5 A. Yes.

6 Q. Okay. Would you read, for the jury, the
7 highlighted portion.

8 SOLICITOR SWANSON: Your Honor, this isn't proper
9 direct examination.

10 THE COURT: You need to ask him a question in
11 regards to it.

12 MR. GEIER: Sure.

13 THE COURT: It's not appropriate for him to read
14 from his report.

15 MR. GEIER: Okay.

16 THE COURT: He needs to refresh his recollection.

17 MR. GEIER: All right.

18 BY MR. GEIER:

19 Q. After looking at that, did Linda Bennington ever
20 tell you anything about Michelle not caring about the
21 kids?

22 A. She reportedly told her during a telephone call
23 in June of '15, the -- 2015, that she didn't care
24 about the children anymore and just wanted out.

25 Q. All right. Thank you.

1 MR. GEIER: Nothing further.

2 CORPORAL CHRIS MCINTOSH, RE-CROSS-

3 EXAMINATION BY SOLICITOR SWANSON:

4 Q. All right. And so, in your notes, you don't
5 specify whether or not she meant she didn't care about
6 getting the custody of the children anymore.

7 A. Correct.

8 Q. She just wanted to leave Rick.

9 A. Correct.

10 Q. Okay.

11 A. Yes, ma'am.

12 Q. So, yes. Non-specific.

13 A. Yes, ma'am.

14 SOLICITOR SWANSON: Okay. Great. Thanks.

15 MR. GEIER: I don't have anything further.

16 BY THE COURT:

17 THE COURT: Okay. You may step down, sir.

18 Ladies and gentlemen, now is a very good time for us
19 to take a lunch break. By the clock back there, I'm
20 going to ask you to be back in the jury room at 2:00
21 o'clock, where we're going to go ahead and continue
22 with witnesses in this case.

23 I need to remind you, don't discuss this case
24 with each other or anyone else. Don't do any
25 independent research. Go get a bite to eat. We'll

1 see you all back in the jury room at 2:00 o'clock.
2 All right. Give you a nice long time. Hopefully,
3 we'll all be back on time. Okay?

4 JURORS LEAVE COURTROOM 12:37 A.M.

5 THE COURT: All right. Anything else we need to
6 take up before we come back?

7 MR. GEIER: No, your Honor.

8 THE COURT: If the jury's all here at 2:00
9 o'clock, I want us all here ready to go with the first
10 witness.

11 MR. GEIER: Actually, your Honor, that's not
12 true. There is something much like Hunter had to do
13 earlier. I've got a psychologist who is going to have
14 to assert privilege.

15 THE COURT: Okay.

16 MR. GEIER: And have her ordered to be -- or her
17 to waive that privilege.

18 THE COURT: Okay.

19 SOLICITOR SWANSON: I would actually join Defense
20 Counsel in requesting that waiver. She was the intake
21 psychologist on some of Richard Passio's records that
22 Defense asked us to retrieve.

23 THE COURT: Okay.

24 SOLICITOR SWANSON: So, I would be seeking to get
25 into those portions on cross.

1 THE COURT: Okay. Is there any case law on my
2 ordering of a doctor? And the whole point -- I mean,
3 I can certainly order a lawyer or an officer of the
4 Court, but I just -- and to make sure we're protecting
5 this doctor in whatever they're doing. I just -- I
6 would love a case or something. Even though you both
7 consent to it, again, the person that exercises the
8 privilege would be Michelle, or whoever saw the
9 doctor. So, I just want to make sure that we've cover
10 the doctor appropriately. Okay? Thank you.

11 MR. GEIER: Thank you.

12 THE COURT: So, once you find it, email Crystal,
13 or let us know. Okay?

14 OFF THE RECORD 12:40 P.M.

15 BACK ON THE RECORD 2:07 P.M.

16 BY THE COURT:

17 THE COURT: Is the State ready to go?

18 SOLICITOR SWANSON: The State's ready to go.

19 THE COURT: Is the Defense ready?

20 MR. GEIER: Yes, your Honor.

21 THE COURT: How many witnesses do you have right
22 now, sir?

23 MR. GEIER: I think I have the majority of them
24 here.

25 THE COURT: Very good. Okay. Well, we are going

1 to keep going as long and as fast as we can. Is there
2 anyone that you anticipate cannot come until tomorrow,
3 or?

4 MR. GEIER: The only one, your Honor, was the
5 possible re-calling of Lisa Helbig.

6 THE COURT: Okay.

7 MR. GEIER: Did you get the statute I sent to
8 your Honor?

9 THE COURT: No. I did not. Crystal is not back,
10 so, if you want to report it directly to me at
11 cmullenj, I'll go ahead and take a look at it. Okay?

12 MR. GEIER: Actually, I can give you a hard copy.

13 THE COURT: Perfect. Even better. Thank you.

14 MR. GEIER: There was very little case law.

15 THE COURT: Thank you.

16 MR. GEIER: And it's highlighted on the second
17 page, your Honor.

18 THE COURT: Okay.

19 SOLICITOR SWANSON: And I actually don't have it
20 printed, but I did forward *State v. Terry* to Crystal's
21 account.

22 THE COURT: Okay. And I'm sorry, she went out to
23 lunch.

24 SOLICITOR SWANSON: That's fine. No, it -- it --

25 THE COURT: Yes. Yes.

1 SOLICITOR SWANSON: And -- and my only thing is
2 if -- I mean, I'm not consenting to the admission of
3 Michelle's records, you know, but if the Court ruled
4 them in and waived the doctor/patient privilege, I
5 think it's only fair and in the interest of justice
6 that I get to cross on the records of Richard Passio
7 as well.

8 THE COURT: Okay. So, just so I understand, what
9 are you trying to do? What are you going to do? Just
10 ask questions of the psychiatrist, or what, exactly,
11 are you going to do?

12 MR. GEIER: Yeah. Your Honor, initially, I was
13 planning on putting -- trying to enter those records
14 into evidence, but I think I agree with Hunter that
15 that's basically like a police report.

16 THE COURT: Right.

17 MR. GEIER: So, instead of that, I would just
18 have her get up and testify as to, you know, basically
19 what her impressions were of Michelle, what her
20 diagnoses were. Additionally, she has reviewed some
21 prior records from Ohio, and can testify generally
22 what -- what the treatment was there, and --

23 THE COURT: Did she serve as a marital counselor
24 for both of them, or did she --

25 MR. GEIER: She -- she -- she saw Michelle

1 several times alone.

2 THE COURT: Okay.

3 MR. GEIER: Did an initial intake. She saw them
4 in joint sessions.

5 THE COURT: Okay.

6 MR. GEIER: And she saw Richard by himself as
7 well.

8 THE COURT: As well. Okay.

9 MR. GEIER: And then, additionally, she left the
10 practice, and some other folks took over. And I was
11 going to have her basically just give her -- a
12 synopsis of what treatment she received after she left
13 the practice.

14 THE COURT: She received?

15 MR. GEIER: Michelle received --

16 THE COURT: Okay.

17 MR. GEIER: -- after she left practice.

18 THE COURT: Okay. Okay. All right. So, none of
19 that's objectionable to you, Ms. Swanson? I just want
20 to make sure, for the record, that the doctor is
21 protected. Is the doctor a psychiatrist, a
22 psychologist? Who is it?

23 MR. GEIER: A psychologist, your Honor.

24 THE COURT: A psychologist? I just want to make
25 sure that that person is protected under the law; that

1 no one could come back against him or her. So, we'll
2 do that. I just wanted to see.

3 Okay. All right. Well, I'll go ahead, Wanda,
4 for the record, and just find, pursuant to South
5 Carolina Code Section 19-11-95, Subsection (D), Number
6 (1): confidences and required by court order for good
7 cause shown. And I do find good cause shown in this
8 case. To make sense of the patient's care and
9 treatment, or the nature and extent of any mental
10 illness or emotional condition is an issue in the case
11 or proceeding, and that it's appropriate. So, I'll go
12 ahead and allow it.

13 SOLICITOR SWANSON: Just so that we're --

14 THE COURT: Yes.

15 SOLICITOR SWANSON: -- all on the same page.

16 THE COURT: Yes.

17 SOLICITOR SWANSON: I did want to make clear that
18 I will be eliciting on cross, statements made by
19 Michelle, via Rule 8034, statements for purposes of
20 medical diagnosis or treatment.

21 THE COURT: Absolutely.

22 SOLICITOR SWANSON: Okay.

23 THE COURT: You're opening the door to this.

24 SOLICITOR SWANSON: Right.

25 THE COURT: So, whatever she said and disclosed,

1 you know.

2 SOLICITOR SWANSON: Okay.

3 MR. GEIER: Understood, your Honor.

4 THE COURT: She walks in and says that, you know,
5 he did x, y, and z, and that was revealed, then, we're
6 opening the door. Okay?

7 MR. GEIER: Sure.

8 THE COURT: All right. Anything else? I know
9 the jury's all here and we're ready to go. Is that
10 correct? Okay.

11 MR. GEIER: Your Honor, there's one other issue.
12 I have three child witnesses, one of whom, Giovanni,
13 is eleven years old, and he's raised some concerns
14 about something. Actually, if can we approach real
15 quick?

16 THE COURT: Sure.

17 OFF THE RECORD BENCH CONFERENCE, OUT
18 OF HEARING OF JURORS. PRESENT: THE
19 COURT, SOLICITOR SWANSON, MR. GEIER.
20 END BENCH CONFERENCE.

21 THE COURT: Okay. All right. Let's bring them
22 in.

23 JURORS ENTER COURTROOM 2:16 P.M.

24 THE COURT: All right. You all may be seated.
25 Welcome back, ladies and gentlemen.

1 Mr. Geier, if you'll call your next witness, sir.

2 MR. GEIER: Thank you, your Honor. Defense calls
3 Dr. Sarah Stuchell.

4 MADAM CLERK: Come right around. If you'd raise
5 your right hand and put your left hand on the *Bible*.
6 The testimony you're about to give the Court will be
7 the truth, the whole truth, and nothing but the truth,
8 so help you God?

9 DR. SARAH STUCHELL: Yes.

10 MADAM CLERK: Come right around and have a seat
11 in the witness chair. And adjust that mic.

12 COURT REPORTER: You'll have to scoot up as far
13 as you can. Scoot up as far as you can.

14 DR. SARAH STUCHELL: Okay. Is this good?

15 DR. SARAH STUCHELL, DIRECT

16 EXAMINATION BY MR. GEIER:

17 Q. Good afternoon, Dr. Stuchell. Would you please
18 introduce yourself to the jury.

19 A. I'm Dr. Sarah Stuchell. I'm a licensed marriage
20 and family therapist.

21 Q. All right. And what does a licensed marriage and
22 family therapist do?

23 A. We do individual, couple, family therapy.

24 Q. And what degrees do you hold?

25 A. I have a bachelor's in psychology from

1 Pepperdine; a master's in clinical psychology from
2 Pepperdine; and a doctorate in marriage and family
3 therapy from Loma Linda University.

4 Q. I see. And how long did it take for you to get
5 your master's degree in clinical psychology?

6 A. Four years.

7 Q. And that's on top of your bachelor's degree?

8 A. Yes.

9 Q. Okay.

10 A. Which was four years.

11 Q. Okay. And how long did it take you, then, to get
12 your Ph.D. in marriage and family therapy?

13 A. Nine years.

14 Q. Nine years. And besides going to class and
15 passing some tests, what goes into getting a doctorate
16 degree?

17 A. You have a doctoral qualifying exam, which is
18 where you present your clinical work and you show some
19 theory. You do a qualifying exam, and you also have
20 to pass a licensing exam for licensure.

21 Q. I see. And besides general schooling, what
22 additional training did you receive in clinical
23 psychology and marriage and family therapy?

24 A. I did two internships; one at the Pepperdine
25 Community Counseling Center; and one at the Loma Linda

1 Marriage and Family Therapy Clinic.

2 Q. And how long do those take?

3 A. Let's see. I started in 2004 to two thousand and
4 -- well, two thousand and -- about four years, total.
5 Yeah.

6 Q. Would you tell us a little bit about your work
7 experience.

8 A. Where should I start? So, the internships were
9 in community clinics with low-income families. And
10 then, after that, I went into private practice, and I
11 worked from about 2008 to 2015, in residential dual-
12 diagnosis treatment centers in California. I worked
13 in adolescent treatment centers; women and children
14 treatment centers; co-ed treatment centers, which
15 primarily focused on both severe substance abuse and
16 severe mental health issues.

17 Q. Are there are any specific areas of psychology
18 and family therapy that you deal with routinely?

19 A. Routinely, I deal with severe mental health
20 issues like bipolar; depression; schizophrenia;
21 chronic lifelong issues; severe substance abuse, like
22 opiate addiction, marijuana addiction, alcohol abuse.
23 And then, of course, the family component, because
24 mental health and addiction is what we call a family
25 disease. It affects everyone in the family.

1 Q. Okay. And have you written any books or articles
2 or studies that have been published either online or
3 in print?

4 A. I have lots of publications. Can I refer to my
5 resume?

6 Q. Sure.

7 A. Okay. 2013, a book chapter on *Missing Data and*
8 *Advanced Methods in Family Research; Handgook of*
9 *Clinical Couples and Family Research Methods.* 2013,
10 *Avoidance of Marriage is Avoidance of a Divorce.*
11 *2013, Glamorized Divorce.* 2013, *Mental Cruelty.*
12 *2013, Monogamy and the Culture of Divorce.* 2013,
13 *Parental Dating.* 2013, *Deadbeat Parents.* 2013, *Tips*
14 *for Selecting and Working with a Substance Abuse*
15 *Treatment Center.*

16 2010, *Legal Prescription Drugs are Emerging as a*
17 *New Gateway Drug.* 2010, *Financial Straing on*
18 *Families.* 2010, *Vigorous Exercise Makes a Difference*
19 *in Children's Psychological Health.* 2009, *New Faces*
20 *of China; a Young Woman Seeks Success and Family Honor*
21 *via Knifecut Beauty.* 2009, *Culture Makes a Difference*
22 *in Diagnosis, Symptoms, and Treatment.* 2008,
23 *Loneliness Reflects Disconnection in More Ways than*
24 *One.* 2008, *Marriages Seem to be Becoming More Stable.*
25 2008, *Did You Know High Socio-economic Status is a*

1 *Surprising Risk Factor for Teen Depression, Anxiety,*
2 *Social Isolation, and Substance Abuse.*

3 *2007, Housework Hits Home for Marital Equality.*
4 *2007, Marriage and Family Therapy is More Spiritually*
5 *Focused than Other Mental Health Fields.*

6 Q. Dr. Stuchell, I'm going to cut you off. You've
7 written a lot of stuff, haven't you?

8 A. Yes.

9 Q. Okay. Can you give me a general idea as to how
10 many patients you've treated with bipolar disorder?

11 A. I've been seeing patients since 2001, but I can
12 tell you, percentage-wise, in terms of -- I would say
13 bipolar is about 35 to 40 percent of my case load.

14 Q. And how about depression?

15 A. Depression's probably about 55, 60 percent of my
16 case load.

17 Q. Okay. How about post-partum depression?

18 A. Probably about 15 to 20 percent.

19 Q. All right. And how about alcohol and drug abuse?

20 A. Probably about 85 percent.

21 MR. GEIER: Your Honor, at this time I would --
22 I'm going to be speaking to Dr. Stuchell as a fact
23 witness, but we also tender her as an expert in
24 psychology and marital and family counseling.

25 THE COURT: Okay. Any objection?

1 SOLICITOR SWANSON: No objection.

2 THE COURT: Ladies and gentlemen, in this case
3 Dr. Stuchell is being qualified as an expert in the
4 area of psychology and family and marital therapy.
5 That allows her to give her opinion and the reasons
6 for her opinion. And that's for you to compare to
7 other evidence in the case, and to use it as you see
8 appropriate.

9 MR. GEIER: Thank you, your Honor.

10 BY MR. GEIER:

11 Q. Okay. So, beyond the fact that you're here as an
12 expert witness today, do you know, or have you ever
13 had occasion to treat, Michelle or Richard Passio?

14 A. Well, I have to assert privilege.

15 THE COURT: Okay. Ladies and gentlemen, just
16 like you heard prior, when we talked about Ms. Badgett
17 as an attorney, there is a patient/doctor privilege
18 that is always in place, unless the Court finds for
19 good cause that she can go into it. This protects
20 her, as well as the patient in the case. In this
21 case, I do find good cause, and so, I am going to go
22 ahead and allow her to testify as to any mental state
23 or any treatment with Mr. Passio or Mrs. Passio in
24 this case. All right. Thank you.

25 BY MR. GEIER:

1 Q. All right. So, again, did you have occasion to
2 treat either one of those two?

3 A. Yes.

4 Q. Okay. And who did you treat?

5 A. When I was the director of clinical services for
6 Coastal Empire, I helped out at the Jasper Clinic when
7 they were short a couple therapists. So, I treated
8 both Richard and Michelle.

9 Q. I see. What did you review in order to testify
10 today?

11 A. Their record from Coastal Empire.

12 Q. Okay. Did you review anything else?

13 A. Not that I recall.

14 Q. Okay. When did you first treat Michelle Passio?

15 A. Can I --

16 Q. And you can --

17 A. -- refer to the record? Okay.

18 Q. If you need to refer to your records, that's
19 fine.

20 A. It looks like her first session was February 29,
21 2016.

22 Q. And was this by herself, or with her husband?

23 A. By herself.

24 Q. What were --

25 A. For the initial clinical assessment.

1 Q. Okay. What is a initial clinical assessment?

2 A. We just gather background information and review
3 symptoms, why they're here presenting problems.

4 Q. Is there a diagnosis issued at that point?

5 A. If it's finished. But I think with her, it took
6 two sessions.

7 Q. Okay. What were your general -- what were her
8 general complaints?

9 A. She said she was coming to counseling because her
10 husband wanted her to; that he claimed she had bipolar
11 and wanted to rule that out; that they were having
12 marital issues. You know, she was pregnant and under
13 a lot of stress.

14 Q. Okay. And at that time, did you have any
15 recommendations or make the -- you said before you
16 didn't come to any diagnosis. What were your
17 recommendations?

18 A. After that first session, I recommended that her
19 husband come back and to complete the assessment, so
20 that I could get collateral information. Because,
21 oftentimes, when people come in on their own, they're
22 not forthright with information. So, you always want
23 to get collateral information from family members.

24 Q. I see. All right. Did Michelle disclose any
25 history of mental health treatment?

1 A. At that time, no.

2 Q. Were you -- are you aware of any previous
3 treatment?

4 A. I am now.

5 Q. And tell me, generally, what that was.

6 A. About a year before coming to South Carolina, she
7 sought treatment for depression, and I believe she was
8 prescribed Zoloft.

9 Q. You said she didn't disclose that to you at the
10 initial meeting?

11 A. No.

12 Q. Did she disclose any history of alcohol or drug
13 abuse?

14 A. Yes. She disclosed that she drank alcohol; she
15 smoked cigarettes while pregnant. She denied
16 marijuana use, but said that her husband drug tested
17 her, and it came up positive for marijuana.

18 Q. All right. When did you next see Michelle?

19 A. I saw her next, it looks like, on March 3rd, with
20 her husband, to complete the assessment.

21 Q. All right. And what was your assessment at that
22 time?

23 A. Well, Richard had given me more collateral
24 information on the symptoms of bipolar that he saw in
25 her.

1 Q. Okay. Let's talk about that.

2 A. Okay.

3 Q. So, when he came in, was he -- did he have an
4 opinion as to what her condition was?

5 A. Yeah. He said that he had done a lot of
6 research; he'd looked it up online; and it fit her
7 perfectly that she had bipolar 1, with rapid cycling.

8 Q. Okay. So, if somebody comes in and says, I think
9 my wife's bipolar and I looked it up online, is that
10 going to affect your diagnosis?

11 A. Well, I'm going to take that information in,
12 because people with mental illness can't really speak
13 well to their own symptoms or their own diagnoses, so.

14 Q. I see. Okay.

15 A. Yeah.

16 Q. And so, what all -- what did you determine --
17 well, let me ask you this. Did you make a diagnosis
18 at that time?

19 A. At the end of that session, the diagnoses -- the
20 diagnoses I made were unspecified anxiety disorder;
21 unspecified trauma and stress or related disorder;
22 relationship distress with spouse or intimate partner;
23 religious or spiritual problem; and to rule out
24 bipolar disorder.

25 Q. And that was part of the assessment?

1 A. Yes.

2 Q. Okay. And what was -- was there anything else
3 that came from that session? I'm not trying to trick
4 you, Dr. Stuchell.

5 A. I mean, it's all -- no, probably not.

6 Q. Now, when did you next see either Richard or
7 Michelle?

8 A. Then, the next time I saw them was five days
9 later, on March 8th.

10 Q. And what sort of meeting was this?

11 A. Marriage counseling session, so both Michelle and
12 Richard came in.

13 Q. I see. And what occurred during this session?

14 A. So, I pulled out what's called the *Diagnostic*
15 *Statistical Manual of Mental Disorders*, the *DSM*, and I
16 went through the criteria for bipolar disorder. And I
17 explained the symptoms, and we went through it
18 together. And she seemed to think that she did, in
19 fact, fit the criteria for bipolar.

20 Q. And did you make a specific diagnosis at that
21 point?

22 A. It doesn't say here that I ruled it in, but at
23 that point, I probably did rule it in. I know that I
24 had referred her to the psychiatrist, who usually
25 would have the final authority on that diagnosis, so.

1 Q. Are you able to make a diagnosis of bipolar?

2 A. Yes.

3 Q. I see. Was she resistant at all to that?

4 A. Initially. I mean, yeah. Nobody wants to hear
5 that they have a serious mental health condition.

6 Q. I see. And at that point, how -- how much time
7 had you spent with Michelle?

8 A. The initial session probably went about an hour
9 and a half to two hours. The second session with her
10 husband, about an hour. So, probably four hours.

11 Q. Okay. Is that sufficient time to reach a
12 conclusion as far as a diagnosis?

13 A. Yeah.

14 Q. When did you next meet with either Richard or
15 Michelle?

16 A. March 14th.

17 Q. And what was the nature of that?

18 A. Couples therapy again.

19 Q. And what occurred at that session?

20 A. This session, we dealt more with relationship
21 issues. We reviewed their relationship history; got
22 into what kind of troubles they had in the past. I
23 provided some psycho-education on marital equality and
24 building trust. It says that she cried throughout the
25 session; that she remembered the history. She

1 acknowledged that her behaviors were not okay, nor
2 appropriate. And that both client and her spouse had
3 appeared to develop insight to their relationship
4 issues.

5 Q. Was she making any progress at that point, in
6 your opinion?

7 A. I would say so.

8 Q. I see. And at that point, was your diagnosis
9 still bipolar disorder?

10 A. Yes.

11 Q. When did you next see her?

12 A. I think that was the last session. Yeah, that
13 was the last session.

14 Q. So, you -- is it that they never came to Coastal
15 again?

16 A. No, I left Coastal.

17 Q. All right. Did she continue to treat?

18 A. Did she get treatment at Coastal, still? Yes.

19 Q. All right. And have you had an opportunity to
20 review those records?

21 A. Yes.

22 Q. Can you give us a general idea as to the
23 treatment that she received at Coastal after you left?

24 A. So, the day after my last session with her, she
25 met with a psychiatrist. And it's kind of protocol at

1 Coastal that the psychiatrist rule in and out those
2 final diagnoses, have the final say, because they're
3 the psychiatrist. So, in that note, it does say here
4 that the patient had one episode that lasted three to
5 four weeks. That meets the criteria for a manic
6 episode. Patient states that she feels this was due
7 to the fact she had been pushed to her limit and
8 wanted a divorce.

9 Discussed with her the potential that she does
10 have bipolar disorder, and encouraged her to call
11 within the extended periods of decreased sleep or
12 racing thoughts.

13 Q. So, at that point, was she still diagnosed by
14 that psychiatrist?

15 A. Me and the psychiatrist, yes.

16 Q. Okay. And did she share your same opinion, or
17 was -- did she have a different opinion as far as the
18 diagnosis for Michelle?

19 A. No, we shared the same opinion.

20 Q. What happened after that? Did she see anybody at
21 Coastal again?

22 A. Yes. It looks like she worked with Karen Brodie
23 one, two -- two sessions. Three sessions.

24 Q. Who is Karen Brodie?

25 A. Just a mental health clinician.

1 Q. I see. So, is she a psychologist?

2 A. No. She's a licensed master social worker. So,
3 she's not independently licensed.

4 Q. Can you give us an idea of what sort of treatment
5 she received during those sessions.

6 A. Looking at the notes here, it just looks like
7 individual therapy. I can't -- I mean, I could read
8 these to you, but.

9 Q. No, I don't want you to do that.

10 A. Okay.

11 Q. Are there -- just looking through quickly, are
12 there any references to bipolar disorder?

13 A. With Karen Brodie?

14 Q. Yes.

15 A. No.

16 Q. Okay.

17 A. And in fact, on her final plan of care, which is
18 like her treatment plan, the diagnoses are just
19 unspecified anxiety disorder and unspecified
20 depressive disorder. So, there's no mention of
21 marital issues or bipolar.

22 Q. So, is it possible that she was cured in between
23 the time you diagnosed her and --

24 A. No.

25 COURT REPORTER: Did you say no?

1 A. No. Yes, I said no.

2 Q. As a psychologist, are you able to prescribe
3 medicine?

4 A. No.

5 Q. So, if she was to receive medicine for bipolar
6 disorder -- well, first let's ask this. Is there a
7 medicine that can treat bipolar disorder?

8 A. Yes.

9 Q. So, you wouldn't have been able to prescribe that
10 medication?

11 A. No. And being pregnant, I don't think you want
12 to be on a bipolar med. So, she would've had to wait
13 'til she gave birth.

14 Q. I see. In some of the notes, are there any
15 references or acknowledgments of whether or not
16 Michelle was suicidal?

17 A. Not that I recall, no.

18 Q. And if she had said no, what would that mean to
19 you?

20 A. Well, with bipolar -- do you want me to discuss
21 suicide and bipolar?

22 Q. Yeah. Actually, tell you what, we'll back up a
23 little bit.

24 A. Okay.

25 Q. Can you give us some general ideas of what you

1 typically see as far as symptoms in somebody who is
2 bipolar?

3 A. So, bipolar is a mood disorder where you go from
4 -- swings from highs to lows. You're happy; you're
5 sad. But the happys can be also aggressive or
6 impulsive. So, there's lots -- when you're in that
7 high state, there's lots of racing thoughts; you can't
8 control your impulses; you engage in risky behavior,
9 like, you know, driving super-fast down the freeway,
10 drug use, hyper-sexual-type stuff where you're sexting
11 or acting out sexually.

12 Q. I see. And then, what about the low points?

13 A. The low points is severe depression where, you
14 know, you can't get out of bed for days. You lose
15 your appetite. You feel hopeless. That's where the
16 traditional suicidality comes in, in those low
17 depressive states.

18 Now, when you're in your manic state, and you're
19 engaging in risky behavior, that's when people commit
20 suicide on accident. You know, if you're speeding
21 down the freeway, and you speed up, and you kill
22 yourself because you roll your car.

23 Q. Is it common or uncommon for somebody who has
24 been diagnosed bipolar to reject that diagnosis?

25 A. Absolutely.

1 Q. So, it is, what? Common?

2 A. I would say a hundred percent of people initially
3 reject the diagnosis. It's -- nobody wants it, and
4 they have a hard time accepting it. But once they hit
5 that rock bottom, and they just -- their life keeps
6 spiraling out of control, they have to start accepting
7 it.

8 Q. Is there a -- are there any common
9 characteristics of spouses of people who are bipolar?

10 A. So, bipolar affects everyone in the family, not
11 just the spouse. Parents, children, siblings. You
12 know, when they're in a manic phase, they could spend
13 all their money. So, spouses or parents don't let
14 them have money, don't give them access to money.
15 It's just -- it's awful. It's -- so -- so, typically,
16 yeah, it's what they call controlling behaviors,
17 because, someone with bipolar is so out of control all
18 the time that they have to set parameters, and they
19 have to literally manage their life for them, because
20 it's unmanageable.

21 Q. I see. Were there some other complaints from
22 Michelle?

23 A. Yes.

24 Q. Do you remember any specifics?

25 A. She just complained that her husband was

1 controlling.

2 Q. I see. Given your sessions with Michelle, the
3 initial information that you've reviewed, in your
4 professional and educational experience, do you have
5 an opinion as to whether or not Michelle was a suicide
6 risk?

7 A. That's hard to say. I mean, I wouldn't rule it
8 out, so I would have to say yes, she was at risk for
9 suicide.

10 Q. Is somebody who is bipolar a higher risk than
11 average people?

12 A. Absolutely.

13 Q. Do you have any idea as to how much?

14 A. I would say probably around 20 percent.

15 Q. Twenty percent higher?

16 A. Yeah.

17 Q. Now, you said you also met with Richard Passio.

18 A. Yes.

19 Q. Can you tell us when that happened.

20 A. I met with Richard March the 10th, 2016.

21 Q. And what was the nature of that?

22 A. Well, this would've been after Michelle's initial
23 session and completing her thing. So, I think at that
24 point, he decided, you know, he would like to come in
25 and get some help for himself. So, this was for his

1 initial assessment.

2 Q. All right. And so, was his initial assessment
3 just like Michelle's?

4 A. Yes. Exactly identical.

5 Q. And what was he complaining of?

6 A. His biggest complaint was anxiety over the stress
7 that was going on in his marriage with Michelle.

8 Q. And was there a specific diagnosis at that point?

9 A. At that point, it's unspecified anxiety disorder;
10 and then, history of obsessive compulsive disorder
11 with good insight, which is in remission; and then
12 relationship distress with spouse.

13 Q. And did you meet with him again?

14 A. No, not alone.

15 Q. Okay. Did you instruct him to continue to treat
16 individually?

17 A. I don't recall.

18 Q. Now, again, you talked about some of the common
19 indications of bipolar, or common symptoms.

20 A. Um-hmm.

21 Q. Given the history that was given to you by both
22 Michelle and Richard, can you tell us if some -- what
23 some of those were that matched that?

24 A. So, looking at the notes, you know, that she
25 would leave the house late at night; she'd stay out

1 all night. She wouldn't -- she didn't need a whole
2 lot of sleep; that, you know, some days she would
3 hardly sleep at all. She was texting, I think I
4 remember reading, like, 30 guys, you know,
5 inappropriate text messaging. So, that's acting out
6 sexually. Drug use, drinking.

7 MR. GEIER: I don't have any further questions.
8 Please answer any questions Ms. Swanson has for you.
9 A. Okay.

10 DR. SARAH STUCHELL, CROSS-

11 EXAMINATION BY SOLICITOR SWANSON:

12 Q. Is it Ms. Sturchell or Stuchell?

13 A. Stuchell.

14 Q. Stuchell. Okay. All right. Did I -- did I read
15 correctly that you actually have a reality show in the
16 works?

17 A. No, I don't.

18 Q. Okay. Something I read on Fits News. I wasn't
19 sure if that was accurate or not.

20 A. Oh.

21 Q. I want to start by talking about when you saw
22 Richard Passio. You stated that you saw him alone
23 just once, right?

24 A. Yes.

25 Q. Okay. And that was on March 10th, about a week

1 and a half after you first saw Michelle.

2 A. Correct.

3 Q. And you diagnosed him with an unspecified anxiety
4 disorder, correct?

5 A. Yes.

6 Q. All right. And that was the same diagnosis that
7 you reached when you first spoke with Michelle Passio,
8 right?

9 A. Yes.

10 Q. Okay. So, they're both diagnosed with the same
11 thing in their intakes, correct?

12 A. Correct.

13 Q. Okay. And so, when he began to talk to you, he
14 told you about his obsessive compulsive disorder that
15 he has suffered from since his childhood, right?

16 A. He had it in childhood, and he outgrew it in
17 childhood.

18 Q. Okay. Because he told you that he fought his
19 brain and stopped it, correct?

20 A. Correct.

21 Q. Okay. Now, he also told you that he wouldn't
22 have these problems if it weren't for his wife,
23 correct?

24 A. He says my wife is my solution; if my wife wasn't
25 going through what she was going through, I wouldn't

1 have these problems. Client reports he hopes therapy
2 will help him and his wife.

3 Q. All right. But again, I mean, he never sought
4 therapy on his own again, right?

5 A. He was willing to participate in individual
6 counseling.

7 Q. But he did not make an appointment.

8 A. He came for couples counseling.

9 Q. Right. So, he never came again for individual
10 counseling.

11 A. Not with me, because I had left. And my focus
12 was on the marital issues at the time.

13 Q. Okay. But he did not pursue individual
14 counseling.

15 A. I can't say that he did or didn't.

16 Q. All right. Even though your report indicates
17 that he displayed symptoms of hyper-vigilance,
18 flashbacks, intrusive thoughts regarding emotional
19 marital trauma.

20 A. Correct.

21 Q. Okay.

22 A. Which we addressed in the marital counseling.

23 Q. All right. And we also -- Mr. Geier asked you
24 about common characteristics of spouses of those who
25 are diagnosed with bipolar disorder, and you talked

1 about how they can be controlling with money and
2 things like that, because, you know, these folks may
3 go on a spending spree during the manic phase. But, I
4 mean, what are they going to do with nail polish, or
5 listening to music, or wearing makeup, or wearing
6 jewelry or fancy clothing?

7 A. It's my understanding that the makeup and fancy
8 jewelry and clothing had to do with their religious
9 beliefs.

10 Q. Okay. So, he was not just controlling in the
11 sense that he was trying to control a mental disorder
12 of his wife; he was controlling in a religious way as
13 well. And actually, you note that in the reports,
14 correct?

15 A. This was a religion that Michelle participated in
16 and chose for herself.

17 Q. Right. But also, diagnosis -- at one point,
18 under *Diagnosis*, it says -- and this is pursuant to a
19 March 3rd report where you saw Michelle -- and it
20 says:

21 *Unspecified anxiety disorder;*
22 *unspecified trauma; stressor related*
23 *disorder; relationship distress with*
24 *spouse; religious or spiritual problem;*
25 *rule out bipolar disorder.*

1 A. And what's your question?

2 Q. You thought that the religion could be a problem

3 --

4 A. For her.

5 Q. -- and you noted that in your report, right?

6 A. Correct. Because as I recall, she did not grow
7 up religious, but she became religious when she met
8 Richard.

9 Q. Okay.

10 A. And so, she went along with this religion, even
11 though it gave her internal struggles.

12 Q. Again, on March 3rd, other possible trauma, you
13 note, may include religious brainwashing. Is that --
14 is that your note?

15 A. Yes.

16 Q. Okay.

17 A. But that's religious brainwashing; that's not
18 husband brainwashing.

19 Q. And that couldn't be perpetuated by a controlling
20 husband?

21 A. I don't recall that she ever told me that he
22 perpetuated it.

23 Q. You note:

24 *Client reports she and her daughters*
25 *are not allowed to wear makeup, jewelry, or*

1 fancy clothing due to husband's controlling,
2 which is influenced by religious ideas.
3 Client also reports it is because of their
4 religion that she is on her eighth pregnancy,
5 and that she is to be sexually available for
6 her husband whenever he wants, and with no
7 birth control. Client reports she wants a
8 divorce, and she is done with his controlling
9 behavior.

10 So, you would not say that the husband is
11 perpetuating this religious control?

12 A. Not entirely, no.

13 Q. Okay. You knew that she was seeking a divorce,
14 right?

15 A. I don't think she was a hundred percent seeking a
16 divorce, but, yes, I did know that she was consulting.

17 Q. All right. I mean, you noted it in your report
18 that she is seeking a divorce and help from CODA,
19 correct?

20 A. Correct.

21 Q. All right. And do you know what CODA is?

22 A. Co-dependents Anonymous.

23 Q. And that's not correct. Citizens Opposed to
24 Domestic Abuse.

25 A. Oh.

1 Q. Are you familiar with that organization?

2 A. Yes.

3 Q. Okay. So, you knew that she was seeking help
4 through that domestic abuse organization, because you
5 noted it in your report, right?

6 A. Correct.

7 Q. Okay. Now, she always denied any thoughts of
8 hurting herself or others, correct?

9 A. Correct.

10 Q. Okay. So, there is no note anywhere that she is
11 thinking about killing herself or hurting anyone else:
12 children, husband, nobody?

13 A. Correct.

14 Q. Okay. And actually, you all had discussed
15 infidelity quite a bit. And the infidelity occurred
16 on both sides, didn't it?

17 A. From what I recall, Richard acknowledged
18 emotional infidelity early on in the marriage. And
19 she acknowledged infidelity on her side.

20 Q. On March 14th of 2016, you guys talked a lot
21 about the history of cheating on both sides. Isn't
22 that what your note says? And that the client cried
23 throughout the session as she remembered his history
24 of him cheating on her? That's from the March 14,
25 2016, group therapy.

1 A. Correct. And she acknowledged that her behaviors
2 are not okay, nor appropriate, either. So, they both
3 acknowledged.

4 Q. Now, you said in your direct to Mr. Geier that
5 there was some diagnosis of bipolar when it came to
6 Michelle. Can you show me anywhere where that is
7 under diagnosis? The only thing I've seen is rule out
8 bipolar, r/o, which, in medical terms, apparently
9 means rule out, correct?

10 A. Correct.

11 Q. Okay. So, I'm kind of struggling with the fact
12 that I can't find anywhere in these records under Axis
13 1 or Axis 2, you know, the diagnosis. I guess that
14 would be Axis 1. Is that right?

15 A. Yes.

16 Q. For the DSM?

17 A. It would've -- I think it was the responsibility
18 of the psychiatrist to update the diagnoses.

19 Q. Okay. So, I want to look at the records that we
20 were provided by the psychiatrist, who is Dr. Karen
21 Brodie; is that right?

22 A. No, the psychiatrist is Kellie Bishop.

23 Q. Oh. Okay. Kellie Bishop. All right. And here
24 we go. All right. Yes. That's what I meant. All
25 right. So, Kellie Bishop sees Michelle on March 15th,

1 and the chief complaint is: my husband wants me to
2 come; he thinks I'm bipolar; right?

3 A. Yes.

4 Q. All right. And she tells Dr. Bishop, because
5 Kellie Bishop is an actual medical doctor, correct?

6 A. Correct.

7 Q. That, yeah, she feels depressed at times, but
8 thinks it's because of her controlling husband; the
9 fact that she has seven kids and is pregnant yet
10 again; but sleep has never been an issue; and denies
11 racing thoughts at that point. Is that what that
12 initial assessment indicates?

13 A. I mean, it also said that she did not get regular
14 prenatal care until yesterday.

15 Q. Okay.

16 A. She wasn't on prenatal vitamins.

17 THE COURT: Doctor, you need to answer the
18 question that's posed first.

19 DR. SARAH STUCHELL: Oh.

20 THE COURT: And then, you can go ahead and say
21 anything that's further in there, or explain it. But
22 you need to answer her question, to begin with.

23 BY SOLICITOR SWANSON:

24 A. Well, yes. That's correct, but that's -- you're
25 only reading one or two sentences out of a whole

1 paragraph.

2 Q. Okay.

3 A. If we go further down it says:

4 *Husband thinks she is bipolar, because*
5 *she finally did what she has done in the*
6 *past; she began online relationships; with*
7 *sleeping for only a couple of hours for two*
8 *to three days in a row. Her thoughts were*
9 *racing, and she did admit that she was a bit*
10 *out of control, sending naked photos of*
11 *herself.*

12 Q. Right. And that says, *husband thinks*, correct?

13 A. Correct.

14 Q. It's prefaced with what husband thinks, the one
15 who researched online about bipolar and made her come
16 to see you. And she said she was here to be
17 compliant, because husband thinks she is crazy for
18 seeking a divorce, and she wants to rule out the fact
19 that she's bipolar, because she's not crazy, it's just
20 controlling behavior, right? Is that not what she
21 told you when she first came to see you?

22 A. Sure.

23 Q. Okay. Going back to Dr. Bishop's assessment, the
24 -- she noted that Michelle's behavior was calm; her
25 thought process was logical and goal-directed; that

1 she did not have any suicidal ideation; correct?

2 A. Correct. And this was after already doing three
3 sessions with me.

4 Q. Oh, so you did cure her?

5 A. No.

6 Q. Okay.

7 A. But we did make some progress.

8 Q. Right. But you didn't ever diagnose her with
9 bipolar, did you?

10 A. I did. I ruled it in.

11 Q. Where is that in any note you have? Because I'm
12 pretty sure you just testified that it would've been
13 Dr. Bishop's responsibility to update the diagnosis.

14 A. To update the chart in the system, yes.

15 Q. All right. Well, where is the diagnosis in your
16 notes and reports?

17 A. Well, in my session on March 8th, I reviewed the
18 criteria for bipolar 1 with her and her husband in the
19 room. We gave the history of the symptoms that met
20 each and every criteria. I provided psycho-ed on mood
21 disorder. I processed her thoughts and feelings and
22 reactions to the diagnosis. I processed their
23 relationship issues. And she was resistant,
24 initially, towards reviewing the criteria bipolar;
25 however, became more accepting of the diagnosis

1 throughout the session.

2 Q. But it never says that you diagnosed her, and
3 it's not in any of the notes, under diagnosis.

4 A. Well, that's what it --

5 Q. Axis 1?

6 A. This would've been my note that I ruled it in,
7 and --

8 Q. Okay. And yet --

9 A. -- the chart just didn't get updated.

10 Q. -- that was obviously not communicated to the
11 doctor, Dr. Bishop, who -- whose diagnosis says
12 unspecified anxiety disorder, which is the same as
13 what you diagnosed Richard Passio with, correct?

14 A. No. In Kellie Bishop's final statement, she says
15 that she discussed with Michelle the potential that
16 she does, in fact, have bipolar disorder.

17 Q. The potential.

18 A. And encouraged her to call with any extended
19 periods of decreased sleep or racing thoughts.

20 Q. The potential that she may have had a mental
21 illness that she had yet to be diagnosed with.

22 A. She was diagnosed with the mental illness. For
23 whatever reason, it didn't get in the chart in the
24 specific area on the form where you are hoping to see
25 it.