

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of General Sessions

Appellate Case No. 2018-001488

RECEIVED
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SC Court of Appeals

The Honorable Carmen T. Mullen, Circuit Court Judge

The State of South CarolinaRespondent,

v.

Richard Passio Jr.Appellant.

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TRIAL EXHIBITS

State's Exhibit 1 – 911 call

Marked into EvidenceSee Jasper County Clerk of Court

Admitted into EvidenceSee Jasper County Clerk of Court

State's Exhibit 32 – Photo

Marked into Evidence737

Admitted into Evidence737

1 Q. Okay. And she continued therapy on her own with
2 Karen Brodie, who took over for you. Is that right?

3 A. Yes.

4 Q. Okay. And her last counseling session was on May
5 26th of 2016, correct?

6 A. Correct.

7 Q. All right. So, just about a week before she's
8 killed? Do you know when she died?

9 A. No.

10 Q. Okay. You said that mental health issues affect
11 the entire family, right?

12 A. Yes.

13 Q. All right. So, Michelle, in this session, wanted
14 to make an appointment for her oldest son, didn't she?

15 A. It says:

16 *Client reports making an appointment*
17 *for her oldest son to be assessed at Coastal*
18 *Empire Community Mental Health Center.*

19 Q. All right. And you can keep reading.

20 A. *However, her husband became angry because*
21 *she did not discuss with him first, and*
22 *called to cancel the appointment.*

23 Q. All right. You can keep reading.

24 A. *Client states she is not allowed to do*
25 *anything without his permission. Client*

1 *reports she is no longer allowed to*
2 *work at the family restaurant, and this*
3 *contributes to depressive symptoms.*

4 *Encourage client to look into furthering*
5 *her education through online courses, and to*
6 *inquire with One Stop about education*
7 *programs.*

8 Q. All right. So, they talk about doing some things
9 that might better her life, basically. And response
10 of the client is noted as coherent and goal-directed,
11 which I would take to mean as goal-oriented. Is that
12 right?

13 A. I really can't interpret somebody else's note.

14 Q. Okay. She was receptive to the information and
15 feedback, correct?

16 A. It says:

17 *Client was actively engaged; client was*
18 *coherent and goal-directed; client was*
19 *receptive to information and feedback.*

20 Q. All right. And that she had made some progress
21 in processing key life conflicts, which had been
22 contributing to her depressive systems -- symptoms.

23 A. *Client has made some progress in processing*
24 *key life conflicts, which contribute to --*

25 COURT REPORTER: Slow down just a little bit,

1 please.

2 A. -- *depressive symptoms.*

3 COURT REPORTER: Would you read that again,
4 please.

5 A. Yes.

6 *Client has made some progress in*
7 *processing key life conflicts, which*
8 *contribute to depressive symptoms.*

9 Q. And it seems like Karen Brodie, in the next
10 paragraph, indicates that, you know, she needed to
11 build social networks to prevent isolation, right?
12 Isolation seemed problematic. Is that right?

13 A. It's my understanding she had friends.

14 Q. Okay. Well, the advice of her psychologist,
15 which is what we are talking about, on May 26th, was
16 that she build social networks to prevent isolation.
17 Isn't that right?

18 A. Yes. Her social worker said that she needs to
19 build social networks to prevent isolation.

20 Q. Okay. Do you have a copy of the discharge form
21 for Michelle Passio?

22 A. Yes.

23 Q. All right. Can you read diagnosis at discharge?

24 A. Yes. *Unspecified anxiety disorder and*
25 *unspecified depressive disorder.*

1 Q. All right. Do you see bipolar there?

2 A. I see it on the left-hand side, under diagnosis
3 at admission, rule out bipolar disorder.

4 Q. Correct. And then, there was no diagnosis at
5 discharge, right? noted on that form.

6 A. Correct. Do you want me to say that I disagree
7 with Karen Brodie's diagnosis at this time?

8 Q. No. I want you to tell us what's on the form.

9 A. Correct.

10 Q. I want you to answer my question.

11 A. It's not on the form at discharge.

12 Q. Okay. And what was the reason for discharge?

13 A. Deceased.

14 Q. Death of client? Reason for discharge at the
15 top, death of client?

16 A. Um-hmm.

17 Q. Okay.

18 COURT REPORTER: I'm sorry. Is that yes or no?

19 THE COURT: Is that a yes, for the record?

20 Sorry.

21 BY SOLICITOR SWANSON:

22 A. Yes.

23 Q. All right. And what does it say -- well, it says
24 client was not prescribed any medications, correct?

25 A. No active medications found. Client was not

1 prescribed medications.

2 SOLICITOR SWANSON: All right. Thank you.

3 DR. SARAH STUCHELL, RE-DIRECT

4 EXAMINATION BY MR. GEIER:

5 Q. Dr. Stuchell, it's your testimony that you
6 diagnosed her with bipolar. Is that correct?

7 A. Correct.

8 Q. Okay. And after you left, I think Ms. Swanson
9 said that -- I think she met with Kellie Bishop.

10 There was a note there saying that they needed to rule
11 out bipolar.

12 A. Can you say that again, please.

13 Q. When she met with Kellie Bishop after you left --

14 A. Um-hmm.

15 Q. -- they state that they needed to rule out
16 bipolar at that point?

17 A. I hadn't left at that point. She had seen Kellie
18 Bishop after my last session with her, as I recall.
19 And so, in the system, it still said rule out bipolar.

20 Q. I see. I see.

21 A. So, the psychiatrist met with her to rule it in,
22 but the chart never got updated. And I -- at that
23 point, I wasn't working with them anymore.

24 Q. I see. Looking at the next several sessions that
25 she had, let's assume for a moment that the rule out

1 bipolar from Dr. Bishop was still in effect. Okay?

2 A. So, you mean she did have bipolar?

3 Q. No. That --

4 A. That she did not.

5 Q. That it was undetermined.

6 A. Okay.

7 Q. If it's undetermined whether or not somebody has
8 this condition, what would be the -- what were the
9 actions taken by mental health professionals after
10 that point? Are they just going say, we just don't
11 know?

12 A. Quite frankly, I think that it speaks to -- I
13 mean, she's an LMSW. She doesn't have the expertise
14 or training or skill set that a psychiatrist or myself
15 have. And if you also notice on the discharge
16 diagnosis, there's no -- there's no marital problems.
17 Where did those go?

18 Q. I see. Well, but looking at the subsequent
19 treatment she received -- and again, let's assume that
20 it was just rule out bipolar, as opposed to it being
21 your diagnosis, and I guess you're saying Dr. Bishop's
22 diagnosis, what did they do in those sessions to rule
23 that out?

24 A. In Karen's sessions?

25 Q. Yes.

1 A. Karen Brodie? Apparently, nothing. It doesn't
2 say anything about ruling it out or in.

3 Q. So, was there any discussion about treating
4 bipolar at that point?

5 A. No. I mean, not to my -- not according to these
6 notes. There was still discussion of marital
7 stressors, depressive symptoms.

8 Q. So, if you diagnosed her as bipolar, and then she
9 comes to see either Dr. Brodie or Kellie Bishop -- I'm
10 sorry -- Dr. Bishop or Karen Brodie, and she says my
11 husband thinks I'm crazy and bipolar, what does that
12 indicate to you?

13 A. That there's the potential that she could be.

14 Q. Is she accepting that diagnosis at that point?

15 A. With me, she was.

16 Q. And does it appear she was accepting of it after
17 that?

18 A. I can't --

19 SOLICITOR SWANSON: I would object. That would
20 call for conjecture.

21 THE COURT: It calls for -- it does call for
22 conjecture.

23 BY MR. GEIER:

24 A. Yeah. I can't say.

25 Q. Okay.

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MR. GEIER: I don't have anything further.

BY THE COURT:

THE COURT: Anything further, Ms. Swanson?

SOLICITOR SWANSON: No.

THE COURT: Any objection to this witness being excused from anyone?

SOLICITOR SWANSON: No, not at all.

THE COURT: You are excused. Thank you.

All right. We're going to take a very brief recess, ladies and gentlemen. Do not discuss this case. I will be right with you shortly. Go grab a Coke or some water, and we'll be right back with you. Thank you.

JURORS LEAVE COURTROOM 3:12 P.M.

THE COURT: Could I see the attorneys up here, please?

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

END BENCH CONFERENCE.

THE COURT: All right. We'll just go ahead and put on the record, I just had a side bar with the attorneys. I was questioning whether or not we should have minor children in this case sitting in the back of the courtroom. It's my understanding previously

1 that what they are going to testify to is their
2 mother's actions, demeanors, that type of thing. I
3 don't think it's appropriate for them to be in the
4 courtroom. A psychiatrist was talking -- or a
5 psychologist was talking about their mother and their
6 father and their relationship, so, I have asked Mr.
7 Geier to have them taken out. They are minor
8 children, and I understand that they are going to
9 testify; but I also understand that they were not here
10 when -- they did not witness anything. So, again, I
11 don't want them to be influenced in any way, so, Mr.
12 Geier told me that he would go talk to them about
13 taking care of that.

14 And then, secondly, Mr. Geier mentioned that he
15 does have a motion, for the record, that he needs to
16 make.

17 MR. GEIER: Thank you, your Honor. During the
18 testimony of Dr. Stuchell, I believe your Honor made a
19 improper comment on the evidence in response to
20 testimony of Dr. Stuchell. Your Honor rapidly moved
21 over to your clerk and made a comment to her, with a
22 very clear look of disagreement on your face. I
23 believe that was an improper comment on the evidence,
24 and I would move for a mistrial.

25 THE COURT: What was the comment, just for the

1 record?

2 MR. GEIER: Again, you, I believe, given your
3 actions and the look on your face, you undercut her
4 credibility and the legitimacy of what she said, based
5 on your actions.

6 THE COURT: Okay.

7 MR. GEIER: As I said, I would move for a
8 mistrial.

9 THE COURT: Well, we'll go ahead and -- I
10 appreciate that. And you're making a motion for a
11 mistrial?

12 MR. GEIER: Yes, your Honor.

13 THE COURT: All right. Well, I can tell you, the
14 comment I responded to with my law clerk, number one,
15 this is her very last day of sitting with me. So, in
16 addition to listening to this trial, we are going back
17 and forth, trying to take care of matters, matters
18 that are pending. I can tell you that the comment
19 that I got was a note that she wrote to me, and her
20 note to me says, *can I move your two GS*, which is
21 *General Sessions matters, from Friday to Monday of*
22 *next week.*

23 She has loaded me with a very full docket, and I
24 turned around and commented to her that, yes, she
25 could, because she has overloaded me, but it had

1 nothing to do with the case, and had nothing to do
2 with the doctor's testimony. So, respectfully, you
3 obviously misconstrued something, but I will go ahead
4 and note it for the record. I am denying your motion
5 for a mistrial. I didn't make any comment. If you're
6 saying that my facial expression or something in some
7 way, by turning and talking to my law clerk is a
8 comment, it occurs. I'm the one that sits here in the
9 courtroom the entire time, and I'm responsible for not
10 only handling what's in front of me, but,
11 additionally, other matters. So, I do talk to her,
12 and I can talk to her. So, with that said, again, I
13 note it, for the record.

14 At this point, we're going to go ahead and take
15 five minutes or so. I think we need to figure out
16 what you want to do with those kids. I just am very
17 concerned about them sitting in the back of the
18 courtroom.

19 MR. GEIER: Certainly.

20 THE COURT: Okay? Thank you.

21 MR. GEIER: Thank you.

22 THE COURT: Yes. We need to make it a -- it
23 needs to be an exhibit. Okay? Go ahead and make it a
24 court's exhibit, if you would.

25 COURT REPORTER: Court's Exhibit 1.

1 ITEM IDENTIFIED AS DOCUMENT IDENTIFIED
2 AS NOTE FROM LAW CLERK TO JUDGE
3 MARKED COURT'S EXHIBIT NUMBER 1.
4 OFF THE RECORD 3:19 P.M.
5 BACK ON THE RECORD 3:23 P.M.

6 BY THE COURT:

7 THE COURT: Is the State ready to go?

8 SOLICITOR SWANSON: State's ready.

9 MR. GEIER: Defense is ready, your Honor.

10 THE COURT: Mr. Geier, would you let me know when
11 it's a good time to your client's rights? Obviously,
12 you can decide whether to testify or not testify, but
13 he probably wants to see what comes before he makes
14 that decision.

15 MR. GEIER: Certainly.

16 THE COURT: So, you just let me know?

17 MR. GEIER: Sure.

18 THE COURT: Okay.

19 MR. GEIER: We can do that now if you'd like.

20 THE COURT: Okay.

21 MR. GEIER: And before we do that --

22 THE COURT: Yes.

23 MR. GEIER: -- regarding calling the minor
24 witnesses. I have a expert here that I'd like to cut
25 out, but then, I'd move to them.

1 THE COURT: Okay. And it's fine. I'm not
2 rushing you to that. I'm just -- I'm concerned about
3 them sitting in here. You know, I don't know anything
4 other than the circumstances I've heard in this case,
5 and I know they are sitting back there listening, too.
6 And you know, unless you tell me that someone -- some
7 therapist tells me that this is good for them in some
8 way, shape, or form, obviously, I would defer to that,
9 because they're the experts, but.

10 MR. GEIER: Your Honor, I don't think there's
11 anything about this case that's good for them..

12 THE COURT: Okay. I was of that belief as well.
13 So, again, I just don't want to do anything that would
14 further in any way, you know, being harmful to them.
15 So, anyway.

16 DEFENDANT'S RIGHTS:

17 Mr. Passio, if you would just please stand and
18 raise your right hand. I'm going to swear you in and
19 just ask you some questions. Okay?

20 Sir, do you swear or affirm the testimony you
21 give will be the truth, so help you God?

22 DEFENDANT PASSIO: I do.

23 THE COURT: All right. Sir, we're now at that
24 point in the trial where -- go ahead and put your hand
25 down, sir. We're now at the point in this trial where

1 you may put up a defense, which is exactly what your
2 attorney is doing. The *Fifth Amendment* to the
3 *Constitution of the United States* states, in part,
4 says that no criminal defendant is compelled to be a
5 witness against himself. In other words, you cannot
6 be required to testify in this case. If you choose
7 not to testify in this case, I'm going to tell the
8 jury, in the jury charge, that, if you don't testify,
9 they can't even consider it. They can't even discuss
10 it. And the reason is, is you're not required to
11 prove your innocence. The burden is on the State to
12 prove your guilt as to this charge beyond a reasonable
13 doubt.

14 I also want you to know that you have the right
15 to testify, if you would like to testify in this case.
16 You certainly have the right to come up here and tell
17 your side of the story, or whatever happened, sir.
18 But what I want to make sure that you understand is,
19 that, if you do choose to take the stand, you can be
20 asked questions and cross-examined by the State on
21 anything that I deem relevant in this case, and on
22 anything possibly in response to what other witnesses
23 have said in this case. So, I just want to make sure
24 you understand that, if you choose to take the witness
25 stand, you are going to be subject to the same rules

1 as every other witness in this case, where they are
2 able to be cross-examined.

3 Sir, have you had an opportunity to speak with
4 Mr. Geier and decide whether or not you wish to
5 testify in this case?

6 DEFENDANT PASSIO: We have not yet.

7 THE COURT: You have not talked to him?

8 DEFENDANT PASSIO: Well --

9 MR. GEIER: We had an opportunity. We talked
10 about it, but we're not decided. DEFENDANT PASSIO:
11 We've not decided, but we talked about it.

12 THE COURT: Okay. But you have spoken about it.

13 DEFENDANT PASSIO: Several times.

14 THE COURT: All right. Very good.

15 DEFENDANT PASSIO: I apologize.

16 THE COURT: What I want to make sure you
17 understand, sir, is this. Sir, while I expect you to
18 talk to your lawyer and get his opinion and his
19 advice, whether or not you wish to testify is a
20 personal decision. It is something that only you can
21 decide. So, I want to make sure. And I'm going to
22 come back and ask you at that point where Mr. Geier
23 says you do or do not wish to testify. I'm going to
24 ask you again, and I'm going to ask you to stand and
25 say, is this your own personal decision, that you've

1 made this decision, and knowingly of whatever your
2 constitutional rights are under the *Fifth Amendment*.
3 And I just want to make sure you appreciate and
4 understand that.

5 DEFENDANT PASSIO: Yes, ma'am

6 THE COURT: You do?

7 DEFENDANT PASSIO: Yes, ma'am.

8 THE COURT: All right, sir. You may be seated.

9 Okay. Let's go ahead, and, if the jury is ready,
10 and everyone is ready, let's go ahead and bring them
11 out.

12 MR. GEIER: We're ready, your Honor.

13 THE COURT: Okay. Let's bring the jury out.

14 JURORS ENTER COURTROOM 3:28 P.M.

15 THE COURT: You may be seated. Welcome back,
16 ladies and gentlemen. At this time, Mr. Geier, if
17 you'll call your next witness.

18 MR. GEIER: Thank you, your Honor. Defense calls
19 Donald Girndt.

20 DEPUTY SHERIFF: Do you swear or affirm the
21 testimony you're about to give in this case be the
22 truth, so help you God?

23 DONALD C. GIRNDT: I do.

24 COURT REPORTER: Spell your last name for me,
25 please.

1 DONALD C. GIRNDT: G/i/r/n/d/t.

2 DONALD C. GIRNDT, DIRECT

3 EXAMINATION BY MR. GEIER:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. Can you please state your full name, for the
7 record.

8 A. Donald C. Girndt.

9 Q. And can you tell us what you do.

10 A. Right now, I'm engaged in two different areas.
11 For the past eleven years, I've worked part-time at
12 the University of South Carolina Police Department, or
13 what they refer to as Division of Law Enforcement and
14 Safety. I'm their primary fingerprint examiner and
15 Automated Fingerprint Identification System operator.
16 And I also process the evidence that comes in, and we
17 teach new officers how to collect evidence and process
18 crime scenes, that kind of thing.

19 Q. And you said that there's two things that you're
20 involved in?

21 A. Oh, yeah. Sorry. I'm also, for the last 23 or
22 24 years, I've been involved as a forensic consultant.
23 Based on my background, I consult primarily on defense
24 cases in the areas of crime scene investigation, crime
25 scene analysis, fingerprint identification, footwear

1 identification, crime scene photography, and
2 bloodstain pattern interpretation as it relates to
3 crime scene.

4 Q. Okay. And how long have you been doing this --
5 that second portion there, the consulting?

6 A. Oh. Since I retired from SLED in 1994, so I
7 started in '95.

8 Q. Okay. And let's be clear, you're not a part of
9 this investigation, are you?

10 A. No, I'm not.

11 Q. And how did you hear about this case?

12 A. I was contacted by you.

13 Q. And are you being compensated for your time?

14 A. Yes.

15 Q. And how much are you charging?

16 A. My standard rate is \$150.00 an hour.

17 Q. Okay. Thank you. Let's talk a little bit more
18 about your background. How did you -- where did you
19 start off at in law enforcement?

20 A. That's a long, winding road. I actually started
21 out in the Marine Corps, four years in the Marine
22 Corps. And when I got out, there was a law
23 enforcement job that was similar to what I had in the
24 Marine Corps, so I transitioned into that at SLED.
25 Then, from SLED, I went on to Lexington County

1 Sheriff's Department as a deputy, and then Richland
2 County Sheriff's Department as a deputy in charge of
3 Fugitive Warrant Division for six years. And in 1985,
4 had the opportunity to go back to SLED, for the Crime
5 Scene Unit, and I stayed there until 1994, when I
6 retired.

7 Q. What was your title when you retired from SLED?

8 A. Agent.

9 Q. Agent? And what were your primary duties at
10 SLED?

11 A. SLED is an assisting agency, so, we primarily
12 assisted other smaller departments around the state
13 that didn't have the resources to -- or the expertise
14 to really process crime scenes. I mean, like, Bamberg
15 County, for example, has six deputies. They don't
16 have anything that could do murders. And they only
17 had a murder every few years. So, I've actually spent
18 time in this county when I was at SLED. So, we've
19 worked the majority of the counties.

20 Q. I see. What sort of education do you have?

21 A. I have an associate and bachelor's degree from
22 the University of South Carolina.

23 Q. Okay. And let's talk about your experience.
24 What sort of things does a crime scene investigator
25 typically do?

1 A. Well, typically, once you get a routine going, I
2 mean, just kind of walk through a typical crime scene.
3 We would always get calls to go to different counties.
4 So, once we arrived in the county, we'd get with the
5 local investigator; find out exactly where we were;
6 who the victim, or victims, might be; what type of
7 crime it was; usually death investigations. You know,
8 make a note of the weather and the time, the
9 temperature, that kind of thing. They're all started
10 with extensive notes, so, there were usually two
11 agents that went together.

12 Then we would do a walk-through of the crime
13 scene with the local investigator. They would point
14 out evidence they've already located. Usually, coming
15 from SLED, no matter where we go in the state, it
16 takes us about two hours -- two or three hours to get
17 where we're going. So, by the time we get there,
18 they've kind of evaluated the scene.

19 Once we walk through the scene, we try to collect
20 -- first of all, we -- we collect what we call
21 transient evidence. That's evidence that can walk
22 away, blow away. If you've got a blood drop on a
23 sidewalk in a rain storm is getting ready to come,
24 you'd want to go collect that first, if the rest of
25 the scene is inside. Or, if you've got a foot

1 impression in the sand and it's getting ready to rain,
2 then, you want to go cast that first, pick that up.
3 And then, once you get the transient evidence out of
4 the way, then you can start with the physical evidence
5 that's in the crime scene.

6 Q. Okay. Actually, I want to interrupt you real
7 quick. We'll go through specifics, but generally
8 speaking, if you could give us a quick overview of
9 what a crime scene investigator would do, if you would
10 give it to us.

11 A. Well, without being very specific, yeah, what
12 you're doing is, you're actually collecting evidence
13 to present in court, and to preserve -- excuse me --
14 to preserve it in such a way that it can be presented,
15 either by me or by someone else, if something happened
16 to me in the meantime.

17 So, the two purposes mainly that we deal with
18 evidence are to corroborate or refute statements that
19 are taken from people at the crime scene. We don't
20 take anything for granted at the crime scene.
21 Somebody gives a statement, then, we don't accept that
22 statement; we go back and do everything we can at the
23 crime scene. If it works out that's what they -- they
24 are correct, they're correct; if they weren't, they
25 weren't, so.

1 Q. Okay. And give us a ballpark of how many scenes
2 you've worked with, and start off from the time that
3 you were actually in law enforcement.

4 A. Well, scenes, we probably average six or eight
5 homicides or death investigations a year, but there
6 are eight of us in there, so. And everybody was doing
7 them. I mean, at that time, back in 1985, there was
8 almost one homicide a day in the state, so. Not that
9 we've worked all those, but. So, like, Greenville
10 County, we'd work all of theirs. Charleston, we'd
11 work there. So, we're talking about -- it would be
12 over 40 -- about 40 counties. So, I guess in the
13 eight-and-a-half years I was with the unit, maybe 60,
14 65 death investigations, but we worked a wide variety.
15 We worked rapes; robberies; auto theft rings.
16 Something you never hear of anymore, safe crackings.
17 You know, just -- just a wide variety of different --
18 the Highway Patrol MAIT team, which does accident
19 investigation for fatalities, they didn't start until
20 1994, so we had a lot of those. I didn't work this
21 particular case, but I think it was here in Jasper
22 County, Cobb County, where somebody's parachute failed
23 to open. So, I mean, we just -- we had just a wide
24 variety of cases, so.

25 Q. Okay. And since you've been a consultant, how

1 many cases have you worked on as in the past as a
2 crime scene investigator?

3 A. In the last 23 years, I would have to say
4 hundreds. I work North Carolina, South Carolina, and
5 Georgia, and occasionally, I would get a call from
6 somewhere else, so.

7 Q. All right. Is this the first time you've
8 testified as an expert?

9 A. No. This would be the 78th documented time, but
10 I -- I'm pretty sure that I haven't remembered all of
11 them, so.

12 Q. And is that just in South Carolina?

13 A. No. I've testified in South Carolina, North
14 Carolina, Georgia, Maryland, and in federal district
15 court.

16 Q. Okay. One issue in this case involves blood
17 clotting and blood coagulation. Are you familiar with
18 that?

19 A. Yes.

20 Q. How is it you are familiar with that?

21 A. It's a topic of -- one of my specialties is
22 bloodstain spatter interpretation. I've had the basic
23 course and the advanced course, and it's something
24 that you run into, of course, violent crime scenes,
25 unless the person strangled or drowned. Then, there's

1 going to be some kind of blood interpretation involved
2 in it. But bloodstain spatter interpretation doesn't
3 really have anything to do with coagulation. So, it's
4 -- coagulation is the clotting of the blood when it
5 turns from a liquid to a gel. So, in the
6 interpretation part that we do is actually -- by
7 looking at stains, you can determine if -- a lot of
8 times you go to a scene and the body's not there
9 anymore. They've moved it for some reason. And you
10 can usually make a determination as to whether the
11 person was beaten to death or shot to death, based on
12 the -- the stains at the crime scene.

13 So, stains usually fall into three categories.
14 There's what we call low-velocity stain, which would
15 be like a drip blood. That's usually in the larger
16 than four or five millimeters drop.

17 And then, there's what we call medium velocity,
18 which is usually associated with a beating death, and
19 those drops are -- we know that they're two, three,
20 four millimeters, and they can show directionality.
21 So, we can see where the person actually was at the
22 time they were beaten, if the body's not there
23 anymore.

24 And then, we have high-speed spatter, which is
25 normally associated with gunshot wounds. And with

1 that, we have what's called forward spatter, which is
2 where, say, if the person was shot through the head,
3 then, when the bullet goes out the other side, it
4 carries the material with it in a forward motion. So,
5 that's forward spatter, and it may -- see it on the
6 wall.

7 And then, there's what's called back spatter,
8 which is the tissue that's displaced goes back toward
9 the gun, back toward the shooter, onto the hands, that
10 kind of thing, so.

11 So, that's -- that's what we're talking about.
12 We're not really talking about clotting, we're talking
13 about -- clotting comes up because it's just a natural
14 process that, once the blood -- it'll start to
15 separate. And you may see -- after awhile, you may
16 see plasma on one side, which is clear, and then blood
17 on -- and the red color cells on the other side, so.

18 Q. Okay. Let's see here.

19 MR. GEIER: Your Honor, at this time, we offer
20 Mr. Girndt as a crime scene investigation expert and a
21 blood pattern analysis expert.

22 THE COURT: Solicitor, any voir dire, or?

23 SOLICITOR SWANSON: Just a little bit of voir
24 dire, if you don't mind, your Honor.

25 DONALD C. GIRNDT, VOIR DIRE,

1 BY SOLICITOR SWANSON:

2 Q. Regarding clotting and coagulation, as I
3 understood your testimony about your training, is that
4 you do not have any medical training or special
5 training in blood clotting or coagulation, how long
6 that may take, anything like that?

7 A. No, but it's always part of the -- there -- there
8 are two primary books that we use. One is called
9 *Bloodstain Pattern Analysis*, and the other one is just
10 called *Bloodstains*. And that's a section in each book
11 that's mentioned for the benefit of the -- of the
12 examiner, so.

13 Q. What examiner?

14 A. Beg your pardon?

15 Q. For the --

16 A. Clotting -- clotting is mentioned because it's a
17 part of the process. I mean, it's not part of the
18 stain that we try to interpret, but it is part of the
19 bloodstain pattern analysis, so to speak.

20 Q. Okay. You said it was -- it's mentioned in the
21 book for the benefit of the examiner. What examiner?

22 A. Like me. I would be a bloodstain pattern
23 examiner.

24 Q. Okay. But you don't have any medical training,
25 any history of majoring in biology, anything like

1 that?

2 A. No.

3 Q. Okay.

4 SOLICITOR SWANSON: Your Honor, at this time, I
5 don't have a problem with Mr. Girndt being declared an
6 expert in bloodstain pattern, but I don't think he has
7 the qualifications or the expertise to testify to
8 clotting and coagulation, those sorts of things.

9 MR. GEIER: Your Honor, as Mr. Girndt testified
10 earlier, he has been a part of hundreds and hundreds
11 of scenes, easily more than the State's own witness.

12 THE COURT: Okay. You don't need to comment on
13 pitting witnesses in front of the jury. What I am
14 going to do is this. In this case, Mr. Girndt is
15 being qualified as an expert witness in the area of
16 crime scene investigation and bloodstain patterns.
17 That allows him to give his opinion and the reasons
18 for his opinion. He can be subject to cross-
19 examination, just like every other witness. Ladies
20 and gentlemen, that is for you to use as you see
21 appropriate and as compared to other evidence in the
22 case.

23 MR. GEIER: Thank you, your Honor.

24 DONALD C. GIRNDT, CONTINUE DIRECT

25 EXAMINATION BY MR. GEIER:

1 Q. Okay. Let's talk about what you know about this
2 case. What did you do in order to get ready for
3 testimony today?

4 A. I reviewed the -- the few crime scene photographs
5 that were the from the State; some of the statements;
6 the body cam footage; the DNA report; the one gunshot
7 residue report for the victim in the case; the autopsy
8 report. There wasn't a lot of material, I mean, for a
9 -- you know, for a death investigation.

10 Q. Okay.

11 MR. GEIER: Your Honor, may I approach?

12 THE COURT: Yes.

13 BY MR. GEIER:

14 Q. Mr. Girndt, I want to show you a couple of
15 exhibits that have been entered in by the State. I'll
16 tell you what, we'll go through one at a time. First
17 of all, I'm going to hand you this State's Exhibit 11.
18 Take a look at that. Have you ever seen that picture
19 before?

20 A. I have. I think it's -- I think it's -- I think
21 that's actually the one with the shell casing in the
22 playroom.

23 Q. Okay.

24 COURT REPORTER: *The casing in the?*

25 A. Playroom. The shell casing in the playroom.

1 Q. All right. I'm going to hand you a couple, and
2 we're just going to go through. Next, I'm going to
3 hand you State's Exhibit 13.

4 A. I think that's what's been described as the exit
5 point for a bullet that went out of the room, through
6 the window, outside of the house.

7 Q. So, you've seen that before?

8 A. Yes.

9 Q. Next I'm going to hand you what's been marked as
10 State's Exhibit 24.

11 A. It's just a shot of Mrs. Passio on the couch. It
12 was taken from the left side.

13 Q. And I'm going to give you a copy of State's
14 Exhibit 12.

15 A. It's what I believe to be, from reading the
16 report, an impact, a bullet impact, into the door,
17 with Mrs. Passio in the foreground.

18 Q. And we got State's Exhibit 4.

19 A. It's an overall photograph that was apparently
20 taken after EMS had put the leads on her, and had
21 left.

22 Q. And we've got State's Exhibit 10.

23 A. It's a photograph that's similar to 12, only it
24 shows more of the playroom and the doorway, and a
25 portion of the body.

1 Q. All right. We've got State's Exhibit 3.

2 A. 3 is the -- the photograph of the gun on the
3 floor, next to the -- Mrs. Passio's hand.

4 Q. We've got State's Exhibit 9.

5 A. I have seen this, but it was in black and white.
6 This is purported to be a photograph of the wound on
7 Mr. Passio's right hand, where the -- the gun bit in,
8 for a better word.

9 Q. And finally, we've got State's Exhibit 14.

10 A. This is a photograph that shows the blood, which
11 has run across the floor, which I understand was
12 sloping, and it has a shell casing. The blood has
13 engulfed the shell casing as it goes across the floor,
14 and has a streak through it, which was associated
15 with, if I understand, a moving of the couch.

16 Q. Okay. Thank you. Sir, have you seen these
17 photos before?

18 A. Have I -- I've seen them on a disk, right.

19 Q. Okay.

20 A. I mean, I haven't seen them that size before.

21 Q. But you had a chance to look at all those photos
22 before you came here to testify?

23 A. Yes.

24 Q. Okay. All right. Let's talk about procedures
25 when an investigator arrives at a potential crime

1 scene. When you come up to a scene and there's
2 reports of gunshots or somebody down from a gunshot,
3 possibly dead, what is your standard procedure when
4 you are a crime scene investigator investigator?

5 A. When you're -- well, from a crime scene -- well,
6 investigator crime scene and investigator are two
7 different things. I mean --

8 Q. Well, tell you what. How about if you're just an
9 investigator for the Hardeeville Police Department,
10 let's say, and you come to a scene with reports of
11 shooting. What's the standard procedure?

12 A. Well, basically, what you'll do is, you'll -- of
13 course, it would be the same thing that I was asking
14 about to try, you know, find out who the victim is,
15 and the date, the time, and have any witnesses, that
16 kind of thing, and isolate your witnesses. And that
17 is one thing you do want to do is isolate your
18 witnesses. You don't want four of five witnesses
19 together that are gonna -- it's like, oh, yeah, that's
20 what I saw; and don't you remember. And so, that's
21 one thing we want to do.

22 And then, you want to -- if you're waiting on a
23 crime scene investigator -- of course, if they have
24 already rendered aid to the victim and can't progress
25 with that, then, what you want to do is kind of tape

1 off the area. You've all seen crime scene tape on --
2 on crime scene shows, crime scene line, do not cross,
3 or whatever, that kind of thing. And just kind of
4 isolate it. And then, what you want to do is set up
5 an officer with a notebook, with a notepad, who is
6 going to make -- record everybody who's coming in and
7 out of the crime scene; why they're there; what time
8 they got there; what time they left; that kind of
9 thing, so that, whoever the crime scene officer is,
10 when he gets in there -- like, in this -- this
11 particular case right here, you have blood that's
12 actually still wet in the crime scene, that the --
13 either the EMS or the officers are walking through,
14 and they've actually tracked it across the floor.

15 So, one of the procedures as a crime scene
16 investigator, what we normally would do is take
17 photographs of the victim's feet or the victim's
18 shoes. And then, if we have shoe prints that show up
19 in a crime scene, what we try to do is, we do
20 eliminations. We try to eliminate those shoes or
21 include those shoes. I mean, you'll have crime scenes
22 where a person doesn't die right away, and walk around
23 in the crime scene. And so, you'll have the shoe
24 prints in there. And then, you'll also have the shoe
25 prints of the -- maybe the perpetrator in there, so

1 you try to separate those. So, we try to account for
2 all the shoes, and, like, if we have EMS and police in
3 there, we'll take pictures of their shoes. So, when
4 we get back to the lab and start looking at things,
5 we'll say, well, we got a shoe print here that doesn't
6 match anybody's shoe, so we know we're looking for
7 something. But I'm kind of get -- I mean, this thing
8 is so involved. It's just -- just go from one thing
9 to the next.

10 Q. Sure. Okay. What other sorts of things are you
11 supposed to do when you come to a crime scene?

12 A. Well, I basically explained the walk through and
13 that kind of thing. And then, you try to collect your
14 transient evidence that's going to disappear on you.
15 You know, there's just so much equipment involved, so
16 it depends on what kind of scene that you have.

17 Here, what you want to do in this particular
18 case, one of the things we would want to do is bag the
19 hands. And when I say bag the hands of -- of the
20 victim, you actually take small, brown paper bags and
21 place them over the hands. And what that will do is
22 isolate any evidence that might be, like, under the
23 fingernails, or fibers, or hairs, or gunshot residue.
24 And we actually put a loose piece of tape around
25 there. And so, you can actually -- once you get --

1 you can either do gunshot residue at the scene -- I'm
2 not sure whether it was done here -- or you can do it
3 at the morgue, or at the -- when they do the autopsy.
4 And you can --

5 It's called a gunshot residue kit. There are a
6 couple of different kinds of kits. But basically what
7 you're doing is, you're testing the back of the right
8 hand, the palm of the right hand, the back of the left
9 hand, and the palm of the left hand. And then, you're
10 taking a control from somewhere on the body where you
11 wouldn't expect to find any gunshot residue. Say,
12 like, on the calf, something like that. And you can
13 actually -- once we submit the gunshot residue kit, we
14 can actually submit the bags, also, to the trace
15 department, and they can scan through the bags and see
16 if there's any -- any other evidence in there that
17 they might use. So, that's one thing you want to do.

18 Actually, the body is one of the last things to
19 go. I mean, what you want to do is collect all your
20 evidence, all your loose evidence. Well, let me back
21 up a minute. What you want to do, first of all, is
22 photograph everything. Say, like, what we would
23 normally do is photograph every room in the house,
24 regardless of whether that's where the crime took
25 place or not. So, we have a reference point later if

1 somebody says, did you go look in the kitchen; or did
2 you go look in the bedroom, that kind of thing. And
3 then, we would come back, maybe, to the main room. We
4 try to -- we teach this, to photograph a room from all
5 four corners of the room, so that you cover the entire
6 room.

7 And then, what you do is, you'll take what's
8 referred to as evidence markers. They're usually -- I
9 don't know if you've seen them on television or not --
10 but they're yellow, with black numbers on them, and we
11 set those markers beside individual pieces of
12 evidence. We go back and take overall photographs
13 again, with the markers in there, from a distance; and
14 then we do what's called a medium-range shot. We go
15 up and take -- so you can see the marker, see the
16 evidence. And then, we do a close-up shot of the
17 evidence so we know what it is. Then, that individual
18 piece of evidence is collected and placed in its own
19 container, with the investigator's initials, and date
20 and time, and what it is, that kind of thing.

21 Q. Okay. Actually, let me stop you right there real
22 quick. What's the purpose of these photographs and
23 markers?

24 A. The purpose of the photographs and markers is --
25 well, for, like, today, when you come into court, you

1 can actually explain where the evidence was and -- the
2 purpose of the numbers is that, part of the scene
3 processing is -- is to produce a crime scene sketch.
4 You've probably -- some people are horrible at it, and
5 I'm -- I don't -- can't draw very well. But the
6 purpose of the sketch is to, say, what we teach the
7 officers is that, say, in a situation like this, you
8 want to just do a rough sketch in case sometimes,
9 photographs can't get in, because they're -- you know,
10 they're too difficult for people to look at. And so,
11 we would rely on the sketch.

12 And we teach them things like, you want to use
13 letters for large pieces of evidence in the room. I
14 mean -- I mean, so the evidence -- but say, the sofa
15 would be an A, and the chair would be a B, and a table
16 would be a C, and that kind of thing. So, there's
17 only 26 letters in the alphabet. You're probably not
18 going to have 26 big pieces of evidence in a room.
19 But then, when you start with your smaller pieces of
20 evidence, you start with 1; and then you -- the
21 numbers are finite -- or infinite. I mean, you can
22 just keep going, and so you'll never run out of
23 numbers. So that's why we do that.

24 But we have had officers that do -- they start
25 numbering their evidence A through Z. And then, when

1 they get to Z, they've got another piece of evidence.
2 Then they go AA, AB, A -- I mean, it's just crazy.
3 So, we do the numbers that way.

4 Q. Okay. And then, you reviewed this case file.
5 Did the investigator in this case follow standard
6 procedures, as far as photograph?

7 A. No, not really.

8 Q. Is there anything else that stood out in this
9 investigation?

10 A. Well, the one -- one thing we like to try to do
11 is, like, in this particular instance, there were
12 three different holes. I mean, entry holes for the
13 bullets. There was one in the doorway, one in the
14 ceiling, and one that went out through the window.
15 What we would normally do is take what are called
16 trajectory rods, and we would try to replicate that
17 angle, so that --

18 I noticed in the report that the officer said
19 that the one in the ceiling lined up with the one that
20 went through her head. But you know, you can't really
21 tell that by looking and just by eyeballing the photo.
22 So, what we do is, we go back with these trajectory
23 rods, which are really just dowel rods, which are --
24 we buy them at the -- we call it the forensic section
25 at Lowe's -- but I mean, you can buy a lot of the

1 stuff that we use at Lowe's, or the Dollar Tree,
2 places like that. And we'd go back and insert these
3 rods in the holes, and see which one of those holes
4 actually lines up. And that may seem like
5 superfluous, but so what? But I mean, it's one of
6 those things that adds to your knowledge about a crime
7 scene, so.

8 Q. So, the purpose of that is what, though, as far
9 as the trajectory?

10 A. Reconstruct the crime scene. Basically,
11 reconstruct the crime scene.

12 Q. I see.

13 A. Understand what happened.

14 Q. I got you. And as far as the evidence that you
15 reviewed in this case, do you have an opinion as to
16 whether or not Mr. Passio did anything to the scene?

17 A. It doesn't appear that -- I mean, what I've read,
18 it doesn't appear that anything was tampered with.
19 Mainly what -- the big thing that's normally tampered
20 with would be, like, the body; because they would try
21 to move the body, or remove evidence, that kind of
22 thing.

23 In this particular case, where the bloodstain
24 pattern interpretation comes in, is it shows, in the
25 photograph that she had blood running out the side of

1 her ear and down onto the couch. And then, in the
2 right ear, it's kind of pooled up, which indicates to
3 me that she's in the same position she was in at the
4 time that the shot was fired. And she hasn't been
5 moved. Hasn't been moved one way or the other.

6 Sometimes you'll have cases like this where the
7 person's sitting up straight, when they might shoot
8 themselves, and then the blood would get on, like, the
9 shoulders, and then they would fall over, that kind of
10 thing. So, what we do is, we'll look for the blood
11 coming straight down, and then onto the shoulder. So,
12 there are different things to look for, but in this
13 particular case, she doesn't have any blood that's
14 flowing forward. It's all flowing down and to the
15 side, so it looks like she's right where she was.

16 As far as doing anything, being tampered with. I
17 mean, it's difficult to say, because there aren't that
18 many photos. And the one photo of the gun, I don't
19 know what to say about that, so. I'm not sure if
20 that's the way it was found, or it was put back in the
21 scene, or -- or what.

22 Q. Is there anything that you saw in the
23 investigation file that doesn't support Mr. Passio's
24 version of the events?

25 A. Not based on the way it was documented, no.

1 Q. And so, -- withdrawn. The standards that you
2 were talking about earlier as far as approaching the
3 crime scene, are those uniform across the state, or
4 how widely used are they?

5 A. That's uniform across the United States and
6 Canada, as far as I know.

7 MR. GEIER: All right. I have no further
8 questions. Thank you, Donald.

9 DONALD C. GIRNDT, CROSS-
10 EXAMINATION BY SOLICITOR SWANSON:

11 Q. All right. Mr. Geier asked you about Richard's
12 version of events. So, I take that to mean you've
13 viewed those videos of his version of events?

14 A. I did.

15 Q. Okay. And you're aware that he gives multiple
16 versions of events, right?

17 A. I -- I know there were different statements. I
18 didn't pay that much attention to them. I mainly
19 focused on the physical evidence.

20 Q. Okay. So, you -- and you just testified that
21 there's nothing in the files that doesn't support
22 Richard's version of events, but then, now you just
23 told me you didn't pay that much attention --

24 A. No. No, based -- based on the physical evidence
25 --

1 Q. I'm sorry, can I finish my question? But now you
2 say you didn't pay that much attention to his versions
3 of events, correct?

4 A. Well, I didn't -- I didn't notice a -- much
5 difference in one version to the next.

6 Q. Okay. So, you don't consider a story about
7 suicide different than a story about a struggle over
8 the gun, and the gun went off?

9 A. Those could be combined.

10 COURT REPORTER: I'm sorry. Did you say could be
11 combined?

12 A. It could be combined, yeah.

13 Q. So, his combined story is what you're going with
14 when you're analyzing this scene?

15 A. I'm actually --

16 Q. Is that your testimony?

17 A. I'm saying it could be combined. I mean, you --
18 you could be trying to prevent a person from
19 committing suicide, but struggle over the gun, so. I
20 don't think that would be too unusual.

21 Q. And the gun went off accidentally? Isn't --
22 doesn't suicide mean that somebody meant to shoot
23 themselves?

24 A. I don't know that the gun went off accidentally.

25 Q. All right. Yeah. So, yeah, I mean, you don't

1 know what happened in there between Richard and his
2 wife that night, right?

3 A. That's right.

4 Q. Okay. And you actually didn't go to the physical
5 scene, did you?

6 A. No.

7 Q. And you didn't review the physical evidence, did
8 you?

9 A. I reviewed photographs of the physical evidence.

10 Q. Right. But all of the evidence here, like the
11 firearm. Did you look at the firearm?

12 A. No, I didn't.

13 Q. Do you know what kind it is?

14 A. I think it's called a Skye, but I'm not --

15 Q. Do you know how many rounds it holds?

16 A. No, I don't.

17 Q. Okay. I'll let you look at it. I mean, you've
18 had a number of years in SLED, right? If you can tell
19 me how many rounds this firearm holds, how many live
20 rounds are in this bag that were collected right here.
21 I've got a glove for you.

22 A. All right.

23 THE COURT: That would be great.

24 BY SOLICITOR SWANSON:

25 A. I can tell you now, I don't know how many it

1 holds. And that -- but whatever number's in the bag
2 may not be the capacity, so.

3 Q. Right. Because, presumably, that was fired three
4 to four times, correct?

5 A. That -- that wouldn't be part of my -- of the
6 crime scene.

7 Q. Okay. The gun is not part of the crime scene?

8 A. It's not part of my examination. The gun would
9 be collected and sent to a firearms examiner to make
10 sure that it fired and fully functioned, and see how
11 many it held, and had the correct ammunition in it,
12 and on and on.

13 Q. Okay. But I mean, you're reviewing the entire
14 case file and all of the evidence in your crime scene
15 analysis, right?

16 A. An overall view of it, right.

17 Q. Okay. So, when you formed your opinion, you were
18 aware that Michelle had told her friends that she
19 wasn't getting out of her marriage alive? You were
20 aware of that?

21 A. I don't know what that's got to do with the
22 physical evidence.

23 Q. Well, you said that you based your opinion on the
24 case file, and that there was nothing in the case file
25 that didn't match with this man's version of events.

1 A. Not based on the statements he gave about the
2 crime scene.

3 Q. Okay. But you didn't just review the statements
4 about the crime scene.

5 A. Well, it was all interspersed. I had to review.

6 Q. Okay. So, when you formed your opinion, you were
7 not aware that Michelle had told her friends that she
8 wasn't getting out of their marriage alive. Yes or
9 no.

10 A. I don't --

11 Q. Were you --

12 A. -- I don't recall that portion of it, no.

13 Q. Okay. When you formed your opinion, were you
14 aware that Michelle had told her friends she'd end up
15 in a ditch, if she stopped having babies. Were you
16 aware of that one?

17 A. No, I --

18 Q. When you formed your opinion?

19 A. -- I don't. I don't recall that, no.

20 Q. Okay. When you formed your opinion, were you
21 aware that Michelle had told her friends that, if she
22 ended up dead, Richard did it. Were you aware of
23 that?

24 A. I formed my opinion based on the --

25 MR. GEIER: Your Honor --

1 A. -- evidence found at the crime scene.

2 MR. GEIER: I understand that the door might have
3 opened a little bit, but I think the Prosecution has
4 run through it.

5 THE COURT: Okay. This is cross-examination.
6 I'm going to go ahead and allow her to do it. Mr.
7 Girndt, again, you need to answer yes or no. You're
8 welcome to explain your answer in any way you'd like
9 afterwards, but if it's a yes or no question, you have
10 to answer it that way. Or if you don't know, you can
11 say, I don't know, clearly.

12 SOLICITOR SWANSON: Beg the Court's indulgence.
13 I don't have anything further.

14 THE COURT: Any re-direct, Mr. Geier?

15 MR. GEIER: Yes, your Honor.

16 DONALD C. GIRNDT, RE-DIRECT

17 EXAMINATION BY MR. GEIER:

18 Q. In a case such as this, how many photographs
19 would you expect to find in the investigative file?

20 A. Numerous photographs.

21 Q. Numerous?

22 SOLICITOR SWANSON: Your Honor, I would object.
23 This is beyond the scope of my cross.

24 THE COURT: Mr. Geier, it is outside the -- out
25 of her cross.

1 MR. GEIER: Okay. All right. I don't have any
2 further questions. Thank you.

3 THE COURT: Anything further, Solicitor?

4 SOLICITOR SWANSON: No, your Honor.

5 THE COURT: Anyone object to Mr. Girndt being
6 excused?

7 MR. GEIER: No, your Honor.

8 THE COURT: Ms. Swanson?

9 SOLICITOR SWANSON: No.

10 THE COURT: Sir, you are excused.

11 DONALD C. GIRNDT: Thank you.

12 THE COURT: Mr. Geier, if you would call your
13 next witness.

14 MR. GEIER: Sure. Defense calls Angelina Passio.

15 THE COURT: Come on forward, right up here.

16 DEPUTY SHERIFF: Raise your right hand. Do you
17 swear or affirm the testimony you're about to give to
18 be the truth, so help you God?

19 ANGELINA MARIE PASSIO: Yes.

20 ANGELINA PASSIO, DIRECT

21 EXAMINATION BY MR. GEIER:

22 Q. Hi, Angelina.

23 A. Hello.

24 Q. Can you tell us your full name.

25 A. Angelina Marie Passio.

1 Q. All right. And how old are you, Angelina?

2 A. I'm good.

3 Q. No, how old are you?

4 A. I am eleven years old.

5 Q. Okay. You understand why you're here?

6 A. Yes.

7 Q. We're going to have to talk about some tough
8 things. Okay? Things that someone your age shouldn't
9 have to talk about. All right?

10 A. Okay.

11 Q. But this is an important case, so I need you to
12 try to stay with us. Okay?

13 A. Okay.

14 Q. If you need some time to answer my questions, you
15 can take that time. Okay?

16 A. Okay.

17 Q. I don't want you to be in a hurry. If you don't
18 under --

19 THE COURT: I don't want to interrupt, but also,
20 if you want to take a break, if you just need to step
21 down and want to go to the restroom or take a break,
22 all you have to do is ask. Okay?

23 ANGELINA PASSIO: Okay.

24 THE COURT: Okay.

25 BY MR. GEIER:

1 Q. If you don't understand my question, it's okay.

2 You can tell me you don't understand. All right?

3 A. All right.

4 Q. I really don't want you to tell me about what
5 anybody else told you. I just want to know what you
6 heard and what you saw. Okay?

7 A. Okay.

8 Q. All right. Did anybody tell you to say something
9 that wasn't true?

10 A. No.

11 Q. Okay. Did anybody tell you what to say before
12 you came here?

13 A. No.

14 Q. Okay. Do you remember when you moved to South
15 Carolina?

16 A. Yes.

17 Q. Okay. Where did you live before you moved to
18 South Carolina?

19 A. We lived in Ohio.

20 Q. Okay. And who did you live in Ohio with?

21 A. My mom and my dad, and my siblings.

22 Q. Okay. And when you moved to South Carolina, who
23 did you move with?

24 A. My parents and my siblings.

25 Q. Okay. Did you have your own room here in South

1 Carolina?

2 A. No. I shared it with my two sisters.

3 Q. Two sisters? Okay. What are your two sisters'
4 names?

5 A. Cecilia and Ariella.

6 Q. All right. How old is Cecilia?

7 A. She is nine years old.

8 Q. And how about -- is it Ariella?

9 A. Yeah.

10 Q. How old is she?

11 A. She is six.

12 Q. Okay. Where was room your room in the house?

13 A. It was attached to the living room. There was a
14 door that led in it. And if you open the door, it led
15 to the hallway.

16 Q. Okay. So, if you opened your door, not the one
17 to the hallway, but the other door, would you go right
18 into the living room?

19 A. Yeah.

20 Q. Now, I've seen your house. You have one room
21 that had a couch, and a T.V. in one room that was --
22 had a bunch of windows. Would you walk out into the
23 one with a bunch of windows, or the one that had the
24 couch and T.V.?

25 A. The one with the couch and T.V.

1 Q. Okay. Do you remember what life was like when
2 you lived with your parents? And I mean both of them.

3 A. Well, they fought.

4 Q. Okay.

5 A. Not hitting each other, but they argued.

6 Q. And I'm going to ask you a little bit about your
7 mom and a little bit about your dad. Okay?

8 A. Okay.

9 Q. What do you remember about your dad when you
10 lived with him?

11 A. Well, it was pretty normal. I mean. We went out
12 sometimes, and stayed home for dinner. And it was
13 just normal.

14 Q. Okay. And what about your mom? What do you
15 remember about your mom?

16 A. She was happy sometimes, and sad, and stuff like
17 that.

18 Q. Was Dad happy and sad, too?

19 A. No.

20 Q. No? What was Dad?

21 A. Well, he was kind of both, together.

22 Q. Yeah. Okay. And it's -- was two years since
23 your mom died, right?

24 A. Yeah.

25 Q. Okay. Do you remember the morning when it

- 1 happened?
- 2 A. Yes.
- 3 Q. Where were you?
- 4 A. I was in my bedroom.
- 5 Q. Okay. Were you awake?
- 6 A. I -- in the middle of the night, yes.
- 7 Q. Okay. So, do you know what time it was?
- 8 A. No. We didn't have a clock in our room.
- 9 Q. Okay. What did you hear?
- 10 A. Well, I heard two bangs; and then my mom saying,
- 11 do you want me to do it again; and then another bang.
- 12 Q. All right. What did Mom sound like? Did she
- 13 sound happy, mad, scared, angry, like she was joking?
- 14 A. Well, she sounded kind of angry.
- 15 Q. Okay. What did you hear next?
- 16 A. I heard my dad crying, and then calling somebody.
- 17 Q. Okay. What happened after that?
- 18 A. People came in, and my sister woke up, Cecilia,
- 19 and I told her what I heard. And then, they were
- 20 talking about something.
- 21 Q. Did anybody come check on you?
- 22 A. My grandpa did. He told me not to come out of my
- 23 room.
- 24 Q. Did you fall asleep after you heard that, before
- 25 your grandpa came in?

1 A. After, but not before.

2 Q. You fell asleep after your grandpa came in?

3 A. Yeah.

4 Q. Where did you go after that?

5 A. Well, when I woke up, I went into the kitchen, I
6 think, and we were told that we had to get out of the
7 house.

8 Q. Okay. Did you tell anybody else about hearing
9 the -- the bangs?

10 A. I told my siblings.

11 Q. When did you do that?

12 A. That day.

13 Q. Okay. Are you sure about what you heard that
14 morning?

15 A. Yes.

16 Q. And so -- and I said morning, but was it the
17 middle of the night?

18 A. Well, I don't really recall it being in the
19 morning.

20 Q. Okay. Was it still dark out?

21 A. Well, kind of.

22 Q. Okay. All right. Thank you. Ms. Swanson's
23 going to ask you some questions, so you need to answer
24 her questions, too. Okay?

25 A. Okay.

1 MR. GEIER: Thank you.

2 ANGELINA PASSIO, CROSS-

3 EXAMINATION BY SOLICITOR SWANSON:

4 Q. Angelina, my name is Hunter. Okay? I just have
5 a few questions for you. Do you go by Angel?

6 A. Yes.

7 Q. Okay. And you are eleven now?

8 A. Yes.

9 Q. Okay. So, two years ago, you were nine?

10 A. Yes.

11 Q. Okay. And do you remember talking to Chris
12 McIntosh, right here, a couple years ago?

13 A. No.

14 Q. You don't? You don't remember him coming to your
15 house to ask you some questions about what you heard?
16 And you asked him if you could call him Chris?

17 A. No.

18 Q. Okay. Do you remember telling him that, or
19 saying to -- even though you might not remember his
20 face, do you remember telling people that the bangs
21 sounded like your mom hitting the coffee table? Bang,
22 bang?

23 A. Well, not a coffee table, but hitting something.

24 Q. Okay. That you described it as smacking her hand
25 on the table?

1 A. Yes.

2 Q. Okay. So, you do remember that?

3 THE COURT: Is that a yes, for the record? I see
4 you bobbing your head up and down. Is that a yes?

5 A. Yeah.

6 THE COURT: Okay.

7 BY SOLICITOR SWANSON:

8 Q. And your room was right by the living room. But
9 when your parents would get in arguments, you weren't
10 always able to hear every word, right?

11 A. Yeah.

12 SOLICITOR SWANSON: Okay. Thank you, Angel. I
13 appreciate it. I don't have anything else to ask you.

14 THE COURT: Anything else, Mr. Geier?

15 MR. GEIER: No, your Honor.

16 THE COURT: All right. You can step down.

17 MR. GEIER: Your Honor, Defense calls Giovanni
18 Passio.

19 THE COURT: Okay. Giovanni, come right up here.

20 DEPUTY SHERIFF: Left hand on the *Bible*, and
21 raise your right hand. Do you swear or affirm the
22 testimony you give will be the truth, so help you God?

23 GIOVANNI MICHAEL PASSIO: Yes, sir.

24 DEPUTY SHERIFF: Go right up there.

25 THE COURT: Come on, right up here.

1 GIOVANNI MICHAEL PASSIO, DIRECT

2 EXAMINATION BY MR. GEIER:

3 Q. Hi, Giovanni. How are you?

4 A. Good.

5 Q. Good. Can you tell us your full name.

6 A. Giovanni Michael Passio.

7 Q. And we're going to need you to talk kind of slow,
8 because I know you talk kind of fast. Okay?

9 A. Okay.

10 Q. All right. How old are you?

11 A. Twelve.

12 Q. Twelve? Okay. And do you know why we're here?

13 A. To -- I'm not sure.

14 Q. Okay. All right. Okay. We're going to talk
15 about some things that are kind of tough to talk
16 about. Okay? It's things that somebody who is twelve
17 years old shouldn't have to talk about.

18 If you need some time to answer my questions, go
19 ahead and take some time. If you need to take a
20 break, go ahead and tell me you just need to take a
21 break, and we'll take a break. Okay? If you don't
22 understand the question that I ask you -- and don't
23 worry, it happens to everybody -- just go ahead and
24 tell me, I don't understand your question. Okay?

25 A. Okay.

1 Q. Did anybody tell you to say anything today that
2 wasn't true?

3 A. No, sir.

4 Q. Okay. What I want to know is not what, really,
5 other people told you, but what -- things that you saw
6 and you heard. Okay?

7 A. Okay. And I want to start by talking about when
8 you first moved to South Carolina. Do you remember
9 that happening?

10 A. Yes, sir.

11 Q. Where did you live before you lived here?

12 A. We lived in Akron before we lived in South
13 Carolina.

14 Q. In Akron?

15 A. Akron, Ohio.

16 Q. Okay. And do you remember when you moved here?

17 A. I believe it was somewhere around 2014.

18 Q. Okay. Do you remember what life was like back in
19 Ohio?

20 A. Well, in Akron it was a lot more cramped,
21 because, like, it was a lot -- much more of a smaller
22 house. But life was -- I don't really remember it as
23 well back in Akron as I do in South Carolina, because
24 it was a lot longer ago.

25 Q. Okay. So, you had a bigger house here?

1 A. Yes.

2 Q. Okay. I'm going to talk to you a little bit
3 about what your mom was like, and a little bit about
4 what your dad was like. Let's start with your mom.
5 What do you remember about your mom before she passed
6 away?

7 A. I remember she took a lot of naps, and she would
8 -- she would, like, be more violent towards other --
9 like, me and my -- she would just -- she was more
10 violent at times than other times.

11 Q. Okay. What do you mean by that?

12 A. Like, calling people names.

13 Q. Okay. Okay. Was it your mom who typically took
14 care of you?

15 A. Well, my mom was usually the one, like, at home,
16 because my dad was usually working.

17 Q. Okay. And was that the case all the time that
18 you lived with both of your parents?

19 A. Yes. I always lived with all my -- both my
20 parents.

21 Q. Okay. What do you remember about living with
22 your dad? What was he like?

23 A. He was, like, if you got in trouble, then you'd
24 get a punishment. My mom was a lot more softer with
25 that.

1 Q. Okay. So, what kind of punishment would you get
2 from your dad?

3 A. Like, get sent to your room or get yelled at, go
4 sit on the couch and don't talk.

5 Q. Okay. What about your mom? If you got in
6 trouble from your mom, what would happen?

7 A. She'd usually just tell you, like, not to do it
8 again. The only time I ever remember, like, getting
9 punished from my mom was when she sent me to my room
10 one time.

11 Q. Do you remember -- and again, this is one of
12 those tough questions, but do you remember the day
13 that your mom died?

14 A. Yeah.

15 Q. Okay. Do you remember waking up that morning?

16 A. Yes, I do.

17 Q. What do you remember about waking up that
18 morning?

19 A. I remember waking up and looking down from my
20 bunk bed, seeing my dog that was deathly afraid of
21 loud noises, sleeping on a pair of my brother's pants
22 on the floor.

23 Q. Okay. How do you know your dog was deathly
24 afraid of loud noises?

25 A. Because, like, every time there was lightening or

1 thunder, she would start shaking and running around.

2 Q. And she was acting that way that morning?

3 A. Yes.

4 Q. Okay. What happened after that?

5 A. After that, I got up, and then I went to talk to
6 -- like, I went out in the hallway to see, like, what
7 had happened, and my grandpop had talked to me. And
8 --

9 Q. What did he tell you?

10 A. He just told me, like, not to worry, and that we
11 were going to go get -- to Jasper's Porch, like, go
12 get ready to leave.

13 Q. Okay. What happened after that?

14 A. After that, we went to Jasper's Porch. And I met
15 a waiter's kids for the first time.

16 Q. Who did you meet?

17 A. Lisa's children.

18 Q. Lisa's kids?

19 A. Yes.

20 Q. Okay. And did you spend most of the day with
21 her?

22 A. Yes, I spent most of the day with them.

23 Q. Okay. And then, you went to Aisi's house? Is
24 that right?

25 A. Yes.

1 Q. Okay. Did Angelina tell you what she heard that
2 morning? And don't tell me what she said, but.

3 A. Yes.

4 Q. She did? When did she tell you that?

5 A. Like, when Grandpop had finished talking to me.

6 Q. Okay. Let's talk about your grandma. She lived
7 upstairs with you for awhile, right?

8 A. Um-hmm.

9 Q. Okay. And do you remember when her boyfriend got
10 arrested?

11 A. Yes.

12 Q. Okay. Did you see what happened?

13 A. I did not see all that what happened, but I
14 remember going in there, seeing my father on -- like,
15 holding Jerry down.

16 Q. Okay. Did your grandma like your dad?

17 A. She didn't -- no, she didn't really seem very
18 fond of him.

19 Q. Did she ever tell you anything about your dad?

20 A. She told me that she was going to come up with a
21 plan, just so that she would get --

22 SOLICITOR SWANSON: Objection to hearsay.

23 THE COURT: Okay. You need to re-phrase the
24 question, so he can answer it.

25 MR. GEIER: Well, your Honor, she testified that

1 there was no such plan. Giovanni's going to counter
2 that.

3 THE COURT: Okay. Well, it's not hearsay if she
4 testified, so. Go ahead and answer.

5 BY MR. GEIER:

6 A. She had said that she was going to get my father
7 to hit my mom, so that they could call the cops.

8 Q. Did you say anything to her?

9 A. No.

10 Q. What did you do?

11 A. I just walked away.

12 MR. GEIER: All right. Thanks, Giovanni. I
13 appreciate it. If you would please answer any
14 questions that Ms. Swanson has for you. Okay?

15 A. Okay.

16 GIOVANNI MICHAEL PASSIO, CROSS-
17 EXAMINATION BY SOLICITOR SWANSON:

18 Q. Hey, Giovanni. How are you?

19 A. Good.

20 Q. All right. Now, when you were living in
21 Ridgeland, you were home-schooled, right?

22 A. Yes.

23 Q. Okay. And so, you were home a lot.

24 A. Yeah.

25 Q. Okay. Do you remember when you were interviewed

1 after your mom's -- well, I'm sorry. Let's get back
2 to -- to what you said your grandma said. She said
3 she was going to get your dad to hit your mom, so she
4 would call the cops. But Grandma never actually
5 called the cops, did she?

6 A. No, because my father had never hit my mom.

7 Q. Okay. Because your dad would never hit your mom.
8 And the only person that ever called the cops at your
9 house was your dad, right?

10 A. Yeah.

11 Q. On Jerry?

12 A. Yes.

13 Q. Okay. And do you remember talking to a counselor
14 at Hope Haven after your mom died, and telling her
15 that your mom was nice, and took you all on walks, and
16 did the -- did school with you guys?

17 A. I don't -- I don't understand what New Haven was.

18 Q. Do you remember going and talking to someone
19 about what was going on in the house, and about your
20 mom and -- and things like that, right after your mom
21 died?

22 A. When I was put in foster care?

23 Q. Yeah, it must've been at that time. Um-hmm. Do
24 you remember going to talk to a counselor?

25 A. I talked to so many counselors.

1 Q. Okay. Okay. Fair enough. When you woke up the
2 morning that your mom died, you had not heard anything
3 that night, right?

4 A. No.

5 Q. Okay. And your dog was in your room, and your
6 door was shut, wasn't it?

7 A. I don't remember if my door was shut or open.

8 SOLICITOR SWANSON: Okay. Thank you.

9 GIOVANNI PASSIO, RE-DIRECT

10 EXAMINATION BY MR. GEIER:

11 Q. Giovanni, I've just got a couple more questions
12 for you. Did you hear anything at all that night
13 before you woke up?

14 A. Well, the night, like, we don't talk.

15 Q. No. I mean, when you woke up and your dog was
16 shaking, did you hear anything at all that night
17 before?

18 A. No, sir.

19 Q. I told you I just had one question, but I'm going
20 to ask you another one. Okay? Where was your room
21 at?

22 A. It was, like, all the way in the back.

23 Q. Okay. So, if you walked in the front door, you
24 had to go all the way down the hall?

25 A. Yeah.

1 Q. Okay.

2 A. It was -- all the way down the hall was my room,
3 and then, finally, my parents' room.

4 Q. Okay.

5 SOLICITOR SWANSON: This is beyond the scope of
6 my cross.

7 THE COURT: It's okay.

8 MR. GEIER: Thank you, Judge.

9 THE COURT: Anything else, Ms. Swanson?

10 SOLICITOR SWANSON: No.

11 THE COURT: You can step down. Mr. Geier, if you
12 would call your next witness.

13 MR. GEIER: Defense calls Kayla Passio.

14 THE COURT: Okay.

15 MR. GEIER: Actually, your Honor, strike that.
16 We're going to call Ms. Latesha Horry.

17 THE COURT: Okay. Okay.

18 DEPUTY SHERIFF: Do you swear or affirm the
19 testimony you're about to give to be the truth, so
20 help you God?

21 LATESHA LOWTHER HORRY: Yes, sir. Thank you.

22 COURT REPORTER: Would you spell your name for
23 me, both names. Latesha, and last name.

24 LATESHA LOWTHER HORRY: It's Latesha Lowther
25 Horry. L/a/t/e/s/h/a, L/o/w/t/h/e/r, H/o/r/r/y.

1 LATESHA LOWTHER HORRY, DIRECT

2 EXAMINATION BY MR. GEIER:

3 Q. Hi, Ms. Horry. How are you?

4 A. I'm good.

5 Q. Good. Thank you. Where do you live?

6 A. I live across the street from the Passios.

7 Q. Okay. And that's on East Main Street?

8 A. Yes, sir.

9 Q. How long have you lived there?

10 A. Twelve years this past April.

11 Q. Are you from Ridgeland, originally?

12 A. Yes, sir.

13 Q. And as the Passios lived across the street, did
14 you have any social interaction with them at all?

15 A. Yes. Their oldest, Kaleb, is the same age as my
16 youngest, so they, you know, typical twelve-,
17 thirteen-year-old boys, video games, swimming, you
18 know.

19 Q. Are you married?

20 A. Yes, sir.

21 Q. Okay. What's your husband's name?

22 A. Aaron, A/a/r/o/n.

23 Q. And did you and Aaron ever socialize with Rock
24 and Michelle?

25 A. We have a D.J. business, a side D.J. business,

1 and that's how we got to know them, mainly.

2 Q. And what was your own impression of the
3 relationship?

4 A. It was a typical marriage. You know, you could
5 see them arguing sometimes across the street. And
6 then, other times they were very loving.

7 Q. Okay.

8 A. Typical marriage.

9 Q. Did -- did you ever personally socialize with
10 Michelle, just the two of you?

11 A. Just when she had come into a bar where we were
12 D.J.'ing at, and we had D.J.'ed at Jasper's Porch in
13 their bar area a few times, so we talked.

14 Q. And how about, did you ever socialize with just
15 Richard?

16 A. No. Usually, they were always together.

17 Q. Did you ever witness any unusual behavior from --
18 let's start with Richard. Anything of note?

19 A. Not really. I just, you know, typical Catholics,
20 lots of kids. You know, that behavior, you know, my
21 first impression, because of him being overweight, I
22 thought he was just kind of lazy.

23 Q. Okay.

24 A. That's just, you know --

25 Q. Sure.

1 A. -- typical impression.

2 Q. What about Michelle?

3 A. Michelle? She seemed like a very loving mother,
4 kind of erratic. You know, just kind of jumping here
5 and there.

6 Q. Do you remember the morning that Michelle died?

7 A. Yes, I do.

8 Q. And you lived right across the street?

9 A. Across the street.

10 Q. Did you hear anything at all that night?

11 A. Our house is very well-insulated. We don't even
12 hear the road noise.

13 Q. Sure. Okay. Let me ask you this. Were you able
14 to, I don't know, from your porch or your living room,
15 were you able to see across the street and see their
16 house?

17 A. Yes.

18 Q. Okay. Did you ever see Richard walk their dog?

19 A. Yes.

20 Q. How often?

21 A. Every night.

22 Q. Okay. No further questions.

23 A. Okay.

24 MR. GEIER: Please answer any questions that Ms.
25 Deysach has for you.

1 NOTE: MS. DEYSACH IS THE SAME PERSON

2 AS SOLICITOR SWANSON:

3 LATESHA LOWTHER HORRY, CROSS-

4 EXAMINATION BY SOLICITOR SWANSON:

5 Q. How are you doing?

6 A. I'm good.

7 Q. Good. All right. You testified that -- when you
8 knew Richard, was he going by Rick or Rock?

9 A. Rock.

10 Q. Rock. Okay.

11 A. That's how we were introduced. They had come
12 through Ridgeland before they decided to move. They
13 had taken, I think, the older children to Disney World
14 one time.

15 Q. Okay.

16 A. And they had stopped in, and that's where we met
17 them first.

18 Q. Okay. So, when you guys socialized, you were
19 usually with both Rock and Michelle, right?

20 A. Yeah.

21 Q. Okay. So, you didn't really have a lot of alone
22 time with Michelle, did you?

23 A. Other than -- I mean, they were in the same room,
24 so -- or the bar. So, she would be here talking to
25 somebody, and he'd be over there talking to other

1 people.

2 Q. Right. And you say that she was a loving mother,
3 albeit, kind of jumping here and there. But with
4 eight kids --

5 A. Yeah, you're gonna be jumping around.

6 Q. Jump around, right. And now, did you ever see
7 Richard -- you stated that you saw him walk the dog
8 every night. Was it every night at 1:00 or 2:00 in
9 the morning? Were you up at those hours?

10 A. Yes, but not looking outside.

11 Q. Okay. So --

12 A. And I -- and it would be during different times
13 of the day. My -- I actually have a salon that was a
14 garage to my house. So, I mean, it -- it'd be
15 different times of the day he would walk him, or one
16 of the kids would be on their little bicycle while he
17 was walking them.

18 Q. Right. So, he wasn't actually, like, at work all
19 the time or anything.

20 A. No.

21 Q. He was around the house.

22 A. He was around the house a lot, too, yes.

23 Q. Okay. And you did not hear anything the night
24 that Michelle was killed.

25 A. No, ma'am.

1 SOLICITOR SWANSON: Okay. Thank you. That's all
2 I have.

3 A. Okay.

4 MR. GEIER: I don't have any further questions.
5 Thank you.

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

7 LATESHA LOWHTER HORRY: Thank you.

8 THE COURT: Your Honor, Defense calls Richard
9 Passio, Sr.

10 THE COURT: Come on forward, sir.

11 DEPUTY SHERIFF: Raise your right hand, Mr.
12 Passio.

13 RICHARD PASSIO, SR.: Do you swear or affirm that
14 the testimony you're about to give is the truth, the
15 whole truth, and nothing but the truth, so help you
16 God?

17 RICHARD PASSIO SR.: Yes.

18 RICHARD PASSIO, SR., DIRECT

19 EXAMINATION BY MR. GEIER:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Can you please state your name, for the record,
23 please.

24 A. Richard Passio, Sr.

25 Q. And how are you related to --

- 1 A. I'm his father.
- 2 Q. Okay. When did you first meet Michelle?
- 3 A. Oh, God, it's been not long after my son met her,
4 they started dating.
- 5 Q. Okay. And do you remember about how long ago
6 that was?
- 7 A. Geez. I don't know, 15 years ago, 14 years ago.
8 Well, maybe not that --
- 9 Q. Okay.
- 10 A. I'm sorry. No. Yeah, about 15, 16 years ago.
- 11 Q. Okay. And where was that?
- 12 A. In Ohio, New Philadelphia, Ohio.
- 13 Q. Is that where you all lived?
- 14 A. Yes.
- 15 Q. And how much contact did you have with your son
16 and Michelle when they were dating, and then first got
17 married?
- 18 A. Not -- not too much. Nothing out of the normal
19 that, you know, a parent would have, I suppose. My
20 son lived on his own at the time.
- 21 Q. I see. And did that ever change as far as your
22 contact with them?
- 23 A. Yes. As time went on.
- 24 Q. All right. And how did it change?
- 25 A. After a few years, things started popping up that

1 would not seem to be so normal in their relationship.
2 Michelle seemed to be turning a certain way every time
3 she got pregnant. Things would happen. Comments
4 would be made. My son started calling, you know,
5 asking my advice in different areas for, you know,
6 marital issues and stuff like that. And even after
7 awhile, Michelle would, and she would talk to me about
8 different things, and what was going on in her mind,
9 and, you know, and so on. So, we got -- yeah, a lot.

10 Q. Okay. What was your relationship like with
11 Michelle?

12 A. She was my daughter, and she told me several
13 times I was the father she never had.

14 Q. So, you were close.

15 A. Very close.

16 Q. How about your relationship with your son?

17 A. Same. Very close.

18 Q. As time went on, you said you became a little bit
19 closer and talked to them, right?

20 A. Sure.

21 Q. You also said that there were some odd things
22 starting to happen. Can you please give us some
23 examples.

24 A. Yeah. It seemed that whenever Michelle -- this
25 is not the early pregnancies, but as time went on,

1 some of the later ones, it would seem, whenever she
2 got pregnant, she would start to say things that would
3 be out of the ordinary. She would say my son would do
4 this or my son would do that, or whatever. And she
5 would call me, you know, and discuss these things with
6 me. And then, of course, I would comfort her, you
7 know, whatever. I mean, just wild, wild things.
8 Then, later on, once the pregnancies would be over, in
9 the third trimester, actually, it would seem that
10 these things would calm down. And we would talk, and
11 she would not believe some of the stuff that she would
12 say.

13 Q. Did you ever talk to Richard to find out if he
14 really was doing the things she said?

15 A. Of course. I've confronted my son, absolutely.

16 Q. Okay. And he denied it?

17 A. Well, more than denied it. He was beside himself
18 with, like, Dad, you know me, you know, kind of thing.

19 Q. Sure. Did you have -- now, they moved down here
20 in 2015?

21 A. At my suggestion.

22 Q. Okay. Well, did you move here before them?

23 A. I was here before them, yes.

24 Q. All right. When did you move to South Carolina?

25 A. You would ask me that. I don't know the exact

1 year, but said -- this is '18. I would say '13.

2 Q. And when you first moved here, what did you do?

3 A. Bought a restaurant, Jasper's Porch, in
4 Ridgeland.

5 Q. And you operated that?

6 A. Yes.

7 Q. Okay. When you were down here and they were up
8 there --

9 A. Um-hmm.

10 Q. -- did you continue to have contact with them?

11 A. Yes. Some of the same kind of pattern. It
12 seemed to be actually getting a little worse. In
13 fact, one time, if I may elaborate, one time I even
14 went to Ohio and spent a day or two up there with
15 them, to discuss some of the marital issues that they
16 might have been having, what was going on, what
17 Michelle was saying. You know, that kind of thing.

18 It got to the point where my son would call me
19 fairly often with different issues that he was dealing
20 with, and he's just trying to get through what he's
21 dealing with. He provided some evidence to me of what
22 he was going through. So, it got to the point I said,
23 look, this would be a lot easier if you guys came down
24 here; I could help more; I'm close; we could, you
25 know, talk a lot easier. Things of that nature.

1 Perhaps we can get Michelle some help once she's here,
2 you know, that kind of thing. And I didn't know that
3 she had seen someone up there at the time. I did not
4 know that much. But they agreed. They talked about
5 it; they came down; and -- and obviously, sometimes I
6 wish they didn't because of what happened, but, you
7 know, I guess I wasn't helpful enough, which is
8 something that I'll probably live with and regret the
9 rest of my life.

10 Q. When they moved here, did you set that whole
11 thing up?

12 A. Yes.

13 Q. All right. Tell me what you did.

14 A. I got them a house to rent. Paid for the house
15 to rent. I don't remember if I paid for the whole
16 truck to come down, but I pretty much took care of
17 everything to get them down here. I gave my son a job
18 at the restaurant. Michelle wanted to work, also.
19 And I had told her well, if you get, you know -- the
20 agreement was that she would get help. Once she
21 started that process, she could certainly work at the
22 restaurant.

23 Q. Did you believe Michelle needed some sort of
24 help?

25 A. By that -- some of the stuff that I was exposed

1 to, absolutely.

2 Q. I see. Give me some examples. What would she
3 do?

4 A. Well, there was a time, as one example, there was
5 one time she -- my son called me. He was at his wit's
6 end. Didn't know what to do. He was driving around
7 --

8 SOLICITOR SWANSON: Hearsay.

9 A. Well, I just want to --

10 THE COURT: Okay.

11 SOLICITOR SWANSON: As long as we don't get into
12 his son told him.

13 THE COURT: Okay.

14 SOLICITOR SWANSON: It's self-serving hearsay.

15 THE COURT: Okay.

16 BY MR. GEIER:

17 A. May I continue?

18 Q. Yeah.

19 THE COURT: You can't say what your son said,
20 sir.

21 A. Oh, I -- that's fine. I wasn't going to do that
22 anyway.

23 THE COURT: Okay.

24 A. Yeah. We were talking, though. I'm allowed to
25 say that, right?

1 THE COURT: Of course.

2 BY MR. GEIER:

3 A. Okay. My son and I were talking on the phone,
4 and he was -- well, whatever. But in time, we --
5 while we were on the phone, Michelle was -- winded up
6 in the background, because he got home, I guess. And
7 the things that she was saying to him, I really
8 wouldn't want to repeat them. I mean, it was just
9 that bad, that awful. It wasn't only calling him
10 every name in the book, but it was re-writing the
11 book, if you will.

12 Q. Okay. Well, beyond things like that, I mean, you
13 never witnessed anything, any behaviors by her?

14 A. Not while they were in Ohio.

15 Q. Okay. Well, so they moved to South Carolina.

16 A. Yes.

17 Q. Did you witness anything then, at that time, that
18 was unusual?

19 A. Yes.

20 Q. All right. What's -- what's the first one that
21 you remember?

22 A. The biggest thing that comes to mind was when we
23 had Tropical Storm Bonnie, I believe it was, coming
24 through.

25 Q. Okay. What happened then?

1 A. I got a call, 1:15 in the night. My son always
2 called me, you know. He called me; there's eight kids
3 in the house; what's he going to do; his wife is not
4 home; she's -- it's -- you know, we're having a
5 tropical storm; would I, you know, see if I could find
6 her, because he didn't know where she was. So, I went
7 out in that rain, and I found her a few blocks away
8 from home, walking around in the pouring rain,
9 tropical storm, barefoot, drenched. No jacket, no
10 nothing, just dripping all over the place. She
11 finally saw me. I pulled up to her, obviously. She
12 saw me. I opened the window, and I told her to get
13 in, you know, I'd -- I'll take her home. And she
14 insisted she didn't want to do that for awhile. And
15 finally I told her, you know, either she was going to
16 get in the car, or I was going to put her in the car,
17 you know. And she promised me she was going to go
18 home, just let her walk, you know. Okay. Fine, you
19 know. If that's where you're going, that's fine.
20 Just get out of the elements kind of thing, because it
21 was pretty bad. I don't know if you remember
22 Hurricane Bonnie, but it wasn't fun. So, finally, she
23 said she would go home. So, I said fine. I shut the
24 window, I turned around, and I followed her home.
25 Made sure she got home, because I really didn't think

1 she was going to, but she did.

2 Q. All right. Is there any other instances that you
3 personally witnessed?

4 A. Only things that Michelle herself had told me.
5 Yes, she did admit to me of the --

6 SOLICITOR SWANSON: Hearsay.

7 BY MR. GEIER:

8 Q. Again, I want to make sure that you don't tell
9 anybody what she told you.

10 A. Okay. That'd be really hard, then, because most
11 of the things that happen were either verbal, or she
12 would show me on her phone. You know, stuff like
13 that.

14 Q. Okay. You said that Richard worked at Jasper's
15 Porch.

16 A. Yes.

17 Q. And she worked there, too.

18 A. Yes.

19 Q. What kind of employee was she?

20 A. She was good. She was a very good server.

21 Q. Okay.

22 A. Yes.

23 Q. And, well, did she work there the whole time
24 before she passed away?

25 A. You know, I don't remember when she stopped

1 working there, to be quite frank. My two sons winded
2 up taking over the daily operations of the restaurant.
3 I had done something a little bit different down in
4 Savannah, so, I don't remember if she worked there
5 'til, like, the last day.

6 I had an issue, to be honest with you. Like, she
7 just had a baby, you know. Somebody needs to be home.

8 Q. Sure. What was Michelle like, just in general as
9 -- you know, how would you describe her?

10 A. Geez. You couldn't help but like Michelle, if I
11 could put it that way. Very outgoing, very
12 personable, a magnetism about her, I guess, that drew
13 people to her. You just couldn't help liking her.
14 I've got -- there's people that you just can't help
15 liking, and Michelle would be one of those.

16 Q. Now, the morning that she died, how did you find
17 out about that?

18 A. My son called me.

19 Q. All right. And what did you do?

20 A. I immediately jumped up and -- well, I didn't
21 know she was dead. He called and told me that she
22 shot herself. And you know, I was over there in a
23 matter of minutes. Just jumped up, threw something
24 on. Didn't even get washed, I mean, obviously. Ran
25 to the house -- drove to the house.

1 Q. All right. And once you got there, what
2 happened?

3 A. Once I got there, I saw my son out on the porch.
4 There was this white stool, chair, had blood all over
5 it. Must've -- you know, from his hand. His hand
6 was, like, still bleeding. He was trying to wrap it
7 up, but you could see it, you know, calming down a
8 little bit. Shaken. I mean, he was just -- seemed
9 white, to me, you know. Just shaken. It -- trying to
10 tell me what happened, you know. There was police
11 officers in and out, doing whatever they do. But I
12 had stood on the porch for awhile and waited to be
13 allowed in, if you will. And I just tried to comfort
14 my son, but it's almost an impossibility in that
15 situation.

16 Q. What happened after that?

17 A. After a bit, and I don't know if it was ten
18 minutes or 20, I was allowed to go into the house. I
19 don't know if I asked or if someone came out and said
20 I could, or whatever. I went into the house. I
21 noticed that the room, you know, they were doing
22 whatever they do in the room. So, the first thing I
23 went to is check the kids. So, I passed the girls'
24 room door, and it was still cracked open. They seem
25 to have a habit of leaving their door open, so I made

1 sure the door was shut. And I went down to the boys'
2 room, and there's -- got to go through two doors to
3 get to their room, and both of those were ajar. I
4 made sure all of their doors were shut, so that they
5 didn't come out and see. I believe it was Officer
6 McIntosh who indicated to me to make sure the kids,
7 you know, stayed in their room and all that, and
8 nothing happens there. Which, obviously, I did. And
9 then, I called my son's mother. The first call I made
10 was to her, and to inform her of what was going on.
11 And then, I believe I called Pam, Michelle's mom.

12 Q. All right. And what happened after that?

13 A. In time -- you know, time frame-wise, I'm not
14 really sure, but --

15 Q. Let me -- let me back up a little bit. Did you
16 have any discussions with Officer McIntosh?

17 A. Yes, I did. I think we spoke a couple of times,
18 you know. Yeah.

19 Q. And did he say anything to you about what
20 happened?

21 A. Yeah. I was -- you know, you walk into that kind
22 of situation, you really don't know. I mean, I -- you
23 know. But anyway, I asked him what it looked like, or
24 -- to be honest with you, I can't take verbatim words,
25 but I asked him if he could tell what happened, and he

1 told me it was about 95 percent -- he was about 95
2 percent sure that it was a suicide, because of the
3 angle of the gun, and he went like this. And I -- in
4 seeing that, I'm saying, okay, what -- I didn't say,
5 hey, man, you know, and all that.

6 Q. What happened after that?

7 A. Not long after that, we -- and I don't think it
8 was the same conversation, but a little while later,
9 Officer McIntosh instructed me that I would -- make
10 sure I closed the room off. You know, find something
11 to close the door, so that when the kids woke up they
12 didn't see it. And then, clean the room. I had to
13 clean the room, which I did.

14 Q. Did you do that by yourself?

15 A. No, I had a friend of mine come over and help me
16 out.

17 Q. Where were the kids then?

18 A. By that time, they were not in the house anymore.
19 There -- he had some white folding tables that I put
20 up against the door, barricaded it, the doorway, so
21 nobody could see in the room. Got all the kids up,
22 make sure everybody was dressed, you know, and so on.
23 And called a couple of friends, Lisa Helbig and Aisi
24 Wilson, because I needed to do something with the
25 children that day. And both of those, thank God,

1 helped us out and watched some of the kids. After I
2 took care of the kids and had them set, is when I went
3 and cleaned the room.

4 Q. All right. Where did the children stay that
5 night?

6 A. I was trying to remember. I figured you might
7 ask, but some of them stayed with Lisa, and some of
8 them stayed with Aisi, and I -- for the life of me, I
9 can't remember who stayed with who. I think -- I know
10 Angel -- I think the older one stayed with Lisa, and I
11 think the younger ones stayed with Aisi, because her
12 children were younger. So, I kind of tried to,
13 hopefully, match them with, you know -- because it was
14 going to be an overnight deal, you know, that kind of
15 thing. Made it fun, if you will.

16 Q. Sure. Were you the ones who told the children
17 what happened?

18 A. I told Kaleb.

19 Q. When did that happen?

20 A. The day it happened.

21 Q. Where?

22 A. He was at Jasper's Porch. After I cleaned the
23 room, I went over to the Porch. I knew they were
24 still there. I wanted to make sure they ate, and it
25 was just bothering me to let -- he was the oldest, 14,

1 however old he was at the time, and he was exposed to
2 a lot. But anyway, I went to the Porch after I was
3 done cleaning, and the older ones were there with the
4 Helbig children. And I told Kaleb I wanted to talk to
5 him, and I pulled him out onto the porch of Jasper's
6 Porch, and we had that conversation. I didn't tell
7 any of the other children.

8 Q. You've been here through the trial?

9 A. Yes, I've been here through the trial.

10 Q. There's been a lot of testimony about how Richard
11 was controlling.

12 A. Right.

13 Q. Would you agree with that?

14 A. Only to a point. I think they make it bigger
15 than it actually is.

16 Q. Well, what were things that he would do that were
17 controlling?

18 A. Well, I think when you have a situation where
19 your wife is doing the kinds of things she was doing,
20 you tend to want to stop that behavior. So, you'll
21 try to control situations to keep it from happening.
22 Case in point, they -- I think Marian said something
23 about money, you know, things of that nature. And
24 it's like, I don't know -- or not Marian, I'm sorry.
25 Someone said something about --

1 SOLICITOR SWANSON: Your Honor, I'm going to
2 object to this witness rendering an opinion on other
3 witnesses' testimony.

4 THE COURT: Okay.

5 MR. GEIER: Well --

6 THE COURT: Sustained. I would agree.

7 MR. GEIER: Well --

8 BY MR. GEIER:

9 A. I'm sorry. I'm going on and on.

10 Q. No, I get you. But was -- were there things that
11 -- that Richard did that, in your opinion, were
12 controlling?

13 A. No.

14 Q. No?

15 A. Not abnormally so, no.

16 Q. Okay. Was Richard perfect?

17 A. Of course not.

18 Q. What did he do that wasn't perfect?

19 A. We would have a lot of conversations about his
20 imperfections.

21 Q. Well, I don't want to know the conversation.
22 But, you know, you're a dad. He was --

23 A. Yeah, I'm a dad.

24 Q. So --

25 A. He's a know-it-all.

1 Q. He's a know-it-all?

2 A. Yeah, he's a know-it-all. He's smart, thinks he
3 is, anyway. That kind of thing. Hard to argue with.
4 Very opinionated, I guess. Those are -- make it hard
5 sometimes.

6 Q. Okay. All right. Just one second.

7 A. Sure.

8 MR. GEIER: I don't have any further questions.
9 Thank you. Please answer any questions she has.

10 THE COURT: Solicitor?

11 SOLICITOR SWANSON: Thank you.

12 RICHARD PASSIO SR., CROSS-

13 EXAMINATION BY SOLICITOR SWANSON:

14 Q. You go by Rick. Is that right?

15 A. Rick is fine. Thank you.

16 Q. Okay. I mean, is that what people typically call
17 you?

18 A. Yes.

19 Q. And -- and at one point, your son was going by
20 Rick. Isn't that right?

21 A. Yes.

22 Q. And then, he switched to Rock. When did that
23 switch occur?

24 A. Somewhere after he moved out, when he was, like,
25 19 or 20 we started using it, I believe.

1 Q. All right. And you and Rock share a number of
2 similarities, don't you?

3 A. I would guess. We're father and son.

4 Q. Yes. And in your family life, a number of
5 similarities?

6 A. In what way?

7 Q. Well, you both -- you had eight children? Is
8 that right?

9 A. Yes.

10 Q. All right. Your son had eight children. You're
11 a devout Catholic. Is that right?

12 A. I try to be.

13 Q. Okay. And your son attempts to be as well,
14 right?

15 A. I would hope so.

16 Q. You and your wife home-schooled Richard, didn't
17 you?

18 A. Yes.

19 Q. And Richard home-schooled his children, or said
20 he did.

21 A. Okay.

22 Q. Okay. You were aware that the children were not
23 in school, right?

24 A. Not outside the home, yes.

25 Q. Were you aware that Angelina couldn't read?

1 A. Not until later.

2 Q. Okay. Were you aware that she told a counselor
3 that you said girls are not to be educated, only boys?

4 A. .I said that?

5 Q. Yes.

6 A. I have no idea where that came from, ma'am.

7 Q. Okay. You know your son well, don't you?

8 A. I guess as well as any father can know his son.

9 Q. And you talked to him a lot after Michelle was
10 killed right?

11 A. Yes.

12 Q. And he would talk to you about a lot, and he
13 would come to you with a lot of problems, wouldn't he?

14 A. I don't know about all of his problems, but some,
15 certainly.

16 Q. All right.

17 A. Like any parent and child would do.

18 Q. Were you aware that he took out a Craig's List
19 ad, looking for love, less than a month after Michelle
20 was killed?

21 MR. GEIER: Objection, your Honor.

22 THE COURT: Basis?

23 MR. GEIER: Relevance.

24 THE COURT: I need to see you guys up here.

25 OFF THE RECORD BENCH CONFERENCE, OUT

1 OF HEARING OF JURORS. PRESENT: THE
2 CÓURT, SOLICITOR SWANSON, MR. GEIER.
3 END BENCH CONFERENCE.

4 BY SOLICITOR SWANSON:

5 Q. All right. So, I was asking if you were aware
6 that your son had taken out a Craig's List ad less
7 than a month after Michelle was killed, asking, can we
8 have two true loves in our lifetime? Were you aware
9 of his Craig's List ad?

10 A. No.

11 Q. Okay. So, he didn't tell you about that.

12 A. No.

13 Q. Think maybe he didn't tell you about some other
14 things, too?

15 A. I would imagine.

16 Q. All right. You were talking about odd things
17 that were happening in Ohio. And -- and you were here
18 for the psychologist's testimony, where she went over
19 the records in which Rock had admitted to the
20 infidelity in counseling. Had he told you about that?

21 A. Actually, he did.

22 Q. Okay. So, that is -- he -- he admitted to
23 cheating to you?

24 A. Emotional infidelity is what he admitted to, to
25 me.

1 Q. And you gave your son a job at the restaurant
2 because he had actually been floundering around with
3 his employment, right?

4 A. That's not why I gave my son a job at the
5 restaurant.

6 Q. Okay. Well, he didn't have a steady job, did he?

7 A. Ever since he broke his back, while he was
8 working, he's had that issue.

9 Q. Okay. He was never a sworn law enforcement
10 officer, was he?

11 A. I wouldn't know that he was or wasn't. He didn't
12 tell me if he was.

13 Q. Well, surely, if the son that you know so well
14 was a police officer at one time, you would've been --

15 A. He was never a police officer.

16 Q. Right, he was never a police officer.

17 A. Okay.

18 Q. He was never in law enforcement.

19 A. No, he was a security guard, I think, for awhile,
20 so I wasn't sure where you were going with that.

21 Q. Okay. Never in law enforcement, though. Were
22 you aware that he held himself out to a female that he
23 was texting with after Michelle's death as a law
24 enforcement officer?

25 A. No.

1 Q. Specializing in bank robberies?

2 A. No.

3 Q. Okay. And you testified that you came across
4 Michelle when she was barefoot, in the middle of a
5 tropical storm, correct?

6 A. That is correct.

7 Q. Okay. So, I mean, things must be pretty bad if
8 you have to leave your house and get away with [sic]
9 your husband in the middle of a tropical storm;
10 wouldn't you agree with me?

11 A. Not in that situation. It was that bad.

12 Q. Are you friends with -- you're friends with Rock
13 on Facebook, aren't you?

14 A. Yes.

15 MR. GEIER: Your Honor, may we approach?

16 THE COURT: Please.

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 BY SOLICITOR SWANSON:

22 Q. All right. So, you're friends with your son on
23 Facebook, right?

24 A. Yes.

25 Q. All right. And so, you -- you're familiar with

1 his profile page, right?

2 A. I'm familiar with it.

3 Q. Okay. I'm going to show you State's Exhibit 32,
4 and ask if that's the profile page that you recognize
5 from your son.

6 A. I recognize the picture, but I don't recognize
7 the underneath. But I wouldn't say it's not there,
8 either. I mean, I don't -- I'm not on Facebook all
9 that much, ma'am.

10 Q. Okay. But that's your son.

11 A. Yeah.

12 Q. And that's his profile page.

13 A. Okay.

14 SOLICITOR SWANSON: State would offer 32 into
15 evidence at this time.

16 MR. GEIER: I would object to relevance. And I
17 don't believe what the witness said is enough to
18 authenticate that as being his Facebook page. He says
19 he saw -- recognized the picture, but didn't recognize
20 anything else about it.

21 THE COURT: Okay. We'll go ahead and I'll allow
22 it to go in. You can go ahead. You can publish it if
23 you want.

24 SOLICITOR SWANSON: I would move 32 in, and move
25 to publish.

1 ITEM IDENTIFIED AS PICTURE OF
2 FACEBOOK PAGE
3 MARKED STATE'S EXHIBIT NUMBER 32
4 ADMITTED AS EVIDENCE.
5 BY SOLICITOR SWANSON:

6 Q. There's a quote on there, sir. Can you read what
7 that quote says.

8 A. *I know I am -- I'm a dude, playing a dude,*
9 *disguised as another dude.*

10 Q. Thank you.

11 SOLICITOR SWANSON: I don't have anything
12 further.

13 THE COURT: Anything further, Mr. Geier?

14 RICHARD PASSIO, SR., RE-DIRECT

15 EXAMINATION BY MR. GEIER:

16 Q. Have you ever seen that before?

17 A. The picture of the two children with him? Yes.

18 Q. And who is that in there?

19 A. I think it's Giovanni and Kaleb, if I'm not
20 mistaken.

21 Q. And you said you have no idea what this is
22 underneath that.

23 A. I've never seen that, so I have no idea what that
24 is.

25 MR. GEIER: Okay. I don't have any further

1 questions. Thank you.

2 A. All right.

3 THE COURT: Anything further, Ms. Swanson?

4 SOLICITOR SWANSON: Just briefly.

5 RICHARD PASSIO, SR., RE-CROSS-

6 EXAMINATION BY SOLICITOR SWANSON:

7 Q. You testified that you are not on Facebook very
8 much, but you did update your profile picture on May
9 29th of this year. Is that correct?

10 A. It may be. I don't know the date. Didn't keep
11 track of that.

12 SOLICITOR SWANSON: Okay. Thank you.

13 BY THE COURT:

14 THE COURT: Anything further, Mr. Geier?

15 MR. GEIER: No, your Honor.

16 THE COURT: You may step down, Mr. Passio.

17 RICHARD PASSIO, SR: Thank you.

18 THE COURT: All right. I need to see the
19 attorneys.

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

24 BY THE COURT:

25 THE COURT: Ladies and gentlemen of the jury, I

1 think now is a very good time to break for the
2 evening. I will tell you, we are going to finish this
3 case tomorrow. It's my understanding that we have a
4 few more witnesses, but, and we have left to argue and
5 charge in this case from the lawyers. I have to
6 charge you on the law, and, but it will get to you
7 tomorrow.

8 I'm going to ask you all to be back at 9:30
9 tomorrow morning. Is that all right with everybody?
10 Is that a problem? Very good. All right.

11 Ladies and gentlemen, I need to remind you again,
12 do not discuss this case. It wouldn't be appropriate
13 to do so. If you come across anything in the
14 newspaper, on the news, the radio, or anything like
15 that, do not read it, watch it, listen to it. Don't
16 do any independent research, ladies and gentlemen. Go
17 home, get a good night's sleep. I look forward to
18 seeing you all back in the jury room at 9:30. Thank
19 you.

20 JURORS LEAVE COURTROOM 5:10 P.M.

21 CHARGE CONFERENCE:

22 THE COURT: All right. You all may be seated.
23 So, it's my understanding, Mr. Geier, we talked about,
24 just as a bench conference, that you think you have
25 two more witnesses left, roughly? Of course, if you

1 have more, that's fine. I just wanted to know, for
2 scheduling purposes.

3 I would like to talk about the jury charge
4 tonight. And my intention, obviously, is that you all
5 be back at 9:15 in the morning. We'll start at 9:30
6 with the jury; we'll put up these witnesses; we'll
7 take a short break; and then we'll go into closing
8 arguments; and then charge the jury. All right?
9 Let's talk about the jury charge.

10 Well, let me take up Mr. Geier's, because they're
11 first in front of me.

12 All right. First, I'm assuming you copied the
13 Solicitor. All I got them was printed off, and so, I
14 don't know who received them.

15 The first request to charge I saw was -- it was
16 by Ralph King Anderson. It had to do with suicide.
17 Any objection to this charge, other than I have a
18 question about the end of the charge. At the end of
19 the charge, it says:

20 *You may also consider the length of*
21 *time elapsing between the uttering of any*
22 *statements.*

23 You all need to remind me what the statements
24 were, if any. What I propose to do -- I do think that
25 the jury needs to know that the Defense does not have

1 the burden of proving suicide in this case. It's not
2 an affirmative defense. So, I understand that portion
3 of it. I just don't know that the last sentence of
4 this is applicable, is my concern. So, again, unless
5 you can tell me somewhere where she uttered to
6 anyone's statements declaring her intent to commit
7 suicide, I don't think it's applicable in this case.
8 Help me out.

9 MR. GEIER: I guess that would be largely
10 dependent on whether or not the defendant testifies.

11 THE COURT: Okay. All right. I guess we're
12 going to be making the determination tomorrow, then,
13 if he testifies, and whether or not that becomes
14 evidence in this case.

15 MR. GEIER: Yes, your Honor.

16 THE COURT: Okay. All right. Well, I appreciate
17 knowing that. But at this point, I have a question
18 next to that. I think the rest of it, for the most
19 part, I just need a few word changes, obviously.
20 Instead of his, it says her. Okay.

21 The second one, as far as payment of expert
22 witnesses. Obviously, you talked about the payment of
23 Mr. Girndt, and I think that's fine and that's
24 appropriate.

25 I can tell you, your circumstantial evidence that

1 you have requested on *State v. Logan* is either
2 identical, or almost identical, to mine, so it covers
3 it. It has to do with everything has to be taken to
4 point conclusively; something suspicious is not
5 enough; that's my standard charge. So, I'm not -- any
6 concerns about that?

7 Solicitor, I know we haven't heard all the
8 testimony, but you did request voluntary manslaughter
9 as a potential lesser-included in this case. Can you
10 put on the record why you want voluntary manslaughter.
11 And then, Mr. Geier, if you go ahead -- if you agree,
12 I guess I don't need to hear from her, but do you
13 object?

14 MR. GEIER: I do, your Honor.

15 THE COURT: You object. Okay. So, Ms. Swanson,
16 unless you think there is more testimony, as well,
17 coming that would also contribute to it.

18 SOLICITOR SWANSON: Well, I do think that, from
19 the circumstantial evidence, that a jury could
20 conclude that she had shot at him, as -- as he says,
21 sometimes; and that between that or -- you know, that
22 there was sufficient legal provocation, and there was
23 heat of passion due to their marriage and the
24 infidelity and the arguing that had taken place that
25 night.

1 He -- he told Otto Helbig that his hands were on
2 the gun when the fatal shot was fired. You know, I
3 mean, I know that there's not a complete admission,
4 but he also tells the two stories of suicide versus
5 accident. And I mean, with the way the crime scene
6 is, I mean, the jury could infer -- deduce a lot of
7 things. And you know, a lot of times they decide that
8 the truth is somewhere in between, based on the
9 testimony and the evidence.

10 I think there is some evidence that, you know,
11 certainly, you know, he -- Mr. Passio says that she
12 had the gun. He also says in his 911 call she was
13 really drunk and attacked me a few times. And then,
14 he makes admissions that his hands were on the gun
15 when the fatal shot was fired. And his DNA is on the
16 trigger. So.

17 THE COURT: Of course, it was his gun, so you
18 would expect the DNA to be on the trigger.

19 SOLICITOR SWANSON: Right. But he also admitted
20 that his hands were on the gun when the fatal shot was
21 fired. He just doesn't say where.

22 THE COURT: Okay. Okay. Mr. Geier.

23 MR. GEIER: Your Honor, my -- I mean, we're
24 talking about voluntary manslaughter. I understand
25 that's sort of --

1 THE COURT: It needs to be the heat of passion.
2 I can tell you where I see it potentially coming in,
3 in the facts of this case, is that we've heard lots of
4 testimony about them fighting all night. Kind of,
5 this has been going on and on and on, and this has
6 been a constant struggle, and I think there's a
7 possibility that the jury could believe that this was
8 not, you know, obviously, with malice or premeditated,
9 particularly if you did believe the facts, like Ms.
10 Hunter portrayed them, but I guess they could; that,
11 if she fired those two shots, and that was just enough
12 to, you know.

13 MR. GEIER: It seems like that would be self-
14 defense, though, if -- if she fired two shots. It's
15 -- I think --

16 THE COURT: I don't think -- I'm going to go
17 ahead and say that I don't think right now -- I
18 haven't heard him testify yet, but right now, I am not
19 seeing self-defense in this case. That has not been
20 your defense so far.

21 MR. GEIER: No, I -- I agree.

22 THE COURT: And unless it changes, I haven't seen
23 it as being self-defense.

24 MR. GEIER: No.

25 THE COURT: I also haven't seen it as being an

1 accident, either.

2 MR. GEIER: Right.

3 THE COURT: I just don't think the facts bear out
4 on that. Let's do this. I'm not ready to make a
5 decision on whether or not we're going to charge
6 voluntary right now. I understand what you're saying,
7 Ms. Swanson. I think I need to hear the rest of the
8 testimony. I need to hear the possibilities of what
9 the jury could state. And really, I think it will
10 depend on, if he does testify, what he says. So, I
11 think we're just going to -- it's just food for
12 thought for all of you all. And I'm going to allow
13 you to re-argue it in the morning, which means, if you
14 have a better idea or if you can come up with
15 something that you just tell me absolutely why it's
16 not, or, if you can find some kind of, you know, fact
17 scenario that's similar to case law that says it was
18 error to charge that. You all know the law on this.
19 It's, if there's any evidence that, at all, this jury
20 could decide that, potentially, it was voluntary
21 manslaughter, it's a requirement of the judge to
22 charge it. So, usually, it's, you know, you hear on
23 it any evidence. So, again, you all do a little bit
24 of research, and then we'll look in the morning.
25 We'll also see whether on the next two witnesses what

1 happens. Okay?

2 SOLICITOR SWANSON: Just briefly.

3 THE COURT: Sure.

4 SOLICITOR SWANSON: Just for --

5 THE COURT: Sure.

6 SOLICITOR SWANSON: Just to kind of get
7 everything out there. Heat of passion, yes, the
8 arguing all night, sufficient legal provocation. He,
9 in his 911 call, talks about her attacking him a few
10 times, and then later admits to Otto that his hands
11 are on the gun when the fatal shot is fired. So, I
12 throw that out there --

13 THE COURT: Okay.

14 SOLICITOR SWANSON: -- for everyone to sleep on.

15 THE COURT: Thank you. Okay. All right. There
16 was another portion of that, the charge for the
17 sufficient legal provocation, you wanted me to charge
18 the jury. Is that correct?

19 SOLICITOR SWANSON: That is correct. If -- if
20 the jury is going to get the voluntary charge, I was
21 asking for adultery as sufficient legal provocation;
22 that the victim would have to be caught in a flagrant
23 embrace or something like that for it to be an excuse
24 for sufficient legal provocation. That is based on
25 case law *State v. Cooley*, that -- and I know I'm

1 asking for it kind of both ways here, but, you know,
2 the sufficient legal provocation would be her -- his
3 version of her -- that is not my theory, obviously.

4 THE COURT: Okay.

5 SOLICITOR SWANSON: But his version of her
6 attacking him and firing those shots, that's his
7 sufficient legal provocation, your Honor. I don't
8 want the jury confused --

9 THE COURT: Okay.

10 SOLICITOR SWANSON: -- as to the fact that,
11 because she had an affair, that's not a license to
12 kill. I don't think they would think that, but that's
13 what the case law says.

14 THE COURT: Okay. I'm just concerned looking at
15 it, number one, it's so close to being a comment on
16 the facts when it starts discussing adultery that --
17 hold on a second.

18 SOLICITOR SWANSON: I did have a similar instance
19 in a case with Judge Goldsmith a couple months ago,
20 and --

21 THE COURT: The sufficient legal provocation must
22 be present at the time of the killing to constitute
23 voluntary manslaughter. I think that is enough as far
24 as the charge, and I just -- I think even talking
25 about adultery, I just think that's a comment on the

1 facts.

2 SOLICITOR SWANSON: Okay.

3 THE COURT: I think it's just steps to further
4 the actual -- if I charge voluntary manslaughter, I
5 think it's actually in here where it says, you know,
6 obviously, what sufficient legal provocation is that
7 must be present at the time of the killing is
8 appropriate. Because the only testimony I heard was
9 from Mr. --

10 SOLICITOR SWANSON: Ashcraft?

11 THE COURT: Ashcraft. Thank you. That he
12 believes it happened, first he said a couple months
13 before this occurred, and then he said six months, and
14 I don't think he was quite sure. But I don't think
15 there was anything at that point that was --

16 SOLICITOR SWANSON: Okay.

17 THE COURT: -- immediate, so.

18 SOLICITOR SWANSON: The family reque -- I'll
19 withdraw that request.

20 THE COURT: Okay.

21 SOLICITOR SWANSON: The only request that the
22 State would like is voluntary. Thank you.

23 THE COURT: Okay. All right. I also, in looking
24 at it, I also think it's appropriate, and no one's
25 requested it, but I'm assuming that it's not a

1 standard charge, is about child witnesses and whether
2 or not, you know, they can weigh and believe them;
3 that the child appreciated that type of thing.

4 MR. GEIER: Yes.

5 THE COURT: I think that's appropriate in this
6 case.

7 MR. GEIER: I do, too.

8 THE COURT: I'm just looking to see if there's
9 anything else I've got in here that -- prior
10 inconsistent statements, I think it's appropriate to
11 give a charge on prior inconsistent statements in this
12 case. I think there's been some questions as to that.
13 I consider it a statement of the defendant, because
14 there was the one that he spoke with the officer just
15 directly after, but it wasn't a recorded statement
16 that could be played, which would be typical. So, I
17 don't know if it's necessary, unless either one of you
18 want the statement of the defendant charged in there.

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

20 THE COURT: Okay. And the State doesn't either?
21 Is that a no for the record?

22 SOLICITOR SWANSON: Yes, a no.

23 THE COURT: Okay. And I also think it's
24 appropriate, I'm going to talk -- just give a small
25 charge on prior record of the witness, because Mr.

1 Ashcraft had a prior record that we allowed in, so I'm
2 going to do that as well. And that's pretty much it.
3 Obviously, if he doesn't testify, I'll talk to them
4 about, you know, they can't talk about that. But if
5 he does, that, that takes care of it.

6 So, anything else that you all can think of as --
7 anything else you're requesting from the State?

8 MR. GEIER: None from the Defense.

9 SOLICITOR SWANSON: None from the State.

10 THE COURT: Okay. All right. So, 9:15 tomorrow
11 morning. I will say this, and I don't even know if
12 she's in here, I know these are difficult, you know,
13 cases. I certainly understand it. I asked, or I kind
14 of motioned to have Ms. Bennington removed because she
15 was kind of shaking her head and crying. The
16 gentleman right behind you, Mr. Geier, in the plaid
17 shirt, was also shaking his head during certain
18 testimony.

19 People don't recognize that they do it. I think
20 it's a natural reaction, but I can't have a jury
21 seeing you looking like you're doing anything trying
22 to influence any testimony. So, again, I just wanted
23 to let you all know that. So, tomorrow, I am going to
24 say again, because this is such a difficult case, and
25 it involves family and children, just make sure that

1 you do everything you can to pull yourself together,
2 because I think there's going to be very difficult
3 things to see tomorrow. I have no idea if these
4 lawyers are putting PowerPoints up, but oftentimes, I
5 will have family members, if they see pictures of the
6 deceased or difficult things, that there are
7 outbursts, and I want to make sure we don't have that.
8 Again, I appreciate how difficult all of this is, but
9 just make sure that, if you think there's going to be
10 something, or if you can't contain yourself, either
11 remove yourself or do something. Okay?

12 All right. Anything else from anybody? No?

13 MR. GEIER: Not from Defense.

14 THE COURT: Okay. I'll see you all tomorrow
15 morning, 9:15. Okay?

16 MR. GEIER: Thank you, your Honor.

17 THE COURT: Thank you.

18 END DAY 3, WEDNESDAY, AUGUST 1,

19 2018, 5:23 P.M.

20 BEGIN DAY FOUR, THURSDAY, AUGUST 2,

21 2018, 9:30 A.M.

22 BY THE COURT:

23 THE COURT: All right. Mr. Geier, do you still
24 have two witnesses for this morning?

25 MR. GEIER: I do. I've gone one.

1 THE COURT: Okay. You've got one here.

2 MR. GEIER: I've got one here.

3 THE COURT: Okay.

4 THE COURT: Is now a good time to speak to Mr.
5 Passio about whether or not he wishes to testify?

6 MR. GEIER: Sure.

7 THE COURT: Okay. All right. Mr. Passio, if
8 you'll just stand again, like I asked you yesterday,
9 and I talked to you about your *Fifth Amendment* rights
10 and whether or not you wanted to testify. I have to
11 swear you in again, sir, if you don't mind. Just
12 raise your right hand. Do you swear or affirm the
13 testimony you give will be the truth, so help you God?

14 DEFENDANT PASSIO: I do.

15 THE COURT: All right, sir. Thank you. You can
16 put your hand down. Have you had an opportunity to
17 discuss with Mr. Geier and decide whether or not you
18 wish to testify in the trial of your case?

19 DEFENDANT PASSIO: We did discuss it at length.

20 THE COURT: Okay.

21 DEFENDANT PASSIO: And we decided --

22 THE COURT: That's fine. You go ahead.

23 DEFENDANT PASSIO: -- and we decided --

24 THE COURT: Would you like to testify in this
25 case?

1 DEFENDANT PASSIO: No.

2 THE COURT: Okay. All right. And I just wanted
3 to make sure that that's your decision and that you
4 made it freely and voluntarily.

5 DEFENDANT PASSIO: I do.

6 THE COURT: Okay. Thank you, sir. You may be
7 seated. Okay.

8 So, we still have two witnesses left, Mr. Geier?
9 Am I correct on that?

10 MR. GEIER: That's correct.

11 THE COURT: Okay. Are you anticipating they're
12 going to be lengthy, short, whether -- just so I can
13 gauge?

14 MR. GEIER: They're not going to be that long, I
15 don't believe.

16 THE COURT: Okay. And does the State have any
17 rebuttal witnesses at this point?

18 SOLICITOR SWANSON: No, your Honor.

19 THE COURT: Okay. All right. Well, if you think
20 -- Margaret's fine with me going ahead?

21 MADAM CLERK: Would you like me to call and find
22 out.

23 THE COURT: Yes. Do you mind just -- yes, just
24 text her and see if she's on her way. That's okay.
25 she'll grab her.

1 MR. GEIER: Do you want to talk about the jury
2 charges?

3 THE COURT: Sure.

4 MR. GEIER: Not jury charges, but -- yeah.

5 THE COURT: Sure. If you want -- do you want to
6 talk about the jury charges?

7 MR. GEIER: Sure, sure.

8 THE COURT: Okay. I was just going to wait 'til
9 the end of the testimony, just so I could go over it.
10 The problem is we have the last two witnesses, so.

11 MR. GEIER: And we're going to wait for Ms.
12 Bostick.

13 THE COURT: Sure. Okay. Sure. So, what else do
14 we need to take up?

15 MR. GEIER: I guess there was some discussion as
16 to whether or not --

17 THE COURT: Voluntary?

18 MR. GEIER: -- voluntary.

19 THE COURT: Okay. What are your thoughts, Mr.
20 Geier?

21 MR. GEIER: I pulled up *State v. Cooley*.

22 THE COURT: Okay.

23 MR. GEIER: Which appears to be similar. And I
24 don't believe voluntary matches the facts that we have
25 here.

1 THE COURT: Tell me one why.

2 MR. GEIER: Well, I'm guessing -- I have a hard
3 time knowing exactly what the State's theory is,
4 whether or not it's voluntary, because there was
5 adultery. The possibility that he committed adultery,
6 or if it was --

7 THE COURT: Well, she can tell us what it is.
8 So, what would it be?

9 SOLICITOR SWANSON: Well, your Honor, the -- the
10 standard is not what my theory is. The standard is --

11 THE COURT: What the evidence shows.

12 SOLICITOR SWANSON: Yes. And so, just going to
13 the 911 clip, there are a couple of quotes. She shot
14 in the air twice, then she put it under her neck. And
15 then, he says, a few minutes later, my wife shot three
16 times in the air, one time right here, to what
17 Lieutenant Ginn when he arrives on-scene. Lieutenant
18 Ginn testified that Rock told him they fought over the
19 weapon, three rounds were fired, and a fourth round
20 ended her life.

21 Otto Helbig testified that Rock told him that
22 Michelle had been shooting towards him, but missed and
23 hit the wall. He also says his hand was on the gun
24 when the fatal shot was fired. That, combined with
25 the DNA on the gun, I do believe that there are facts

1 in which -- and, also, I'm sorry, on the 911 call, he
2 does say that Michelle had attacked him. And so, all
3 of that --

4 THE COURT: He said that on the 911 call; that
5 Michelle attacked him?

6 SOLICITOR SWANSON: Yes, he does.

7 MR. GEIER: He said that she attacked -- she
8 attacked him.

9 THE COURT: She attacked him?

10 MR. GEIER: Right.

11 THE COURT: Okay. Okay.

12 MR. GEIER: But again, it wasn't clear.

13 THE COURT: Could you give me the exact words,
14 Ms. Swanson? if you have them.

15 SOLICITOR SWANSON: Yes.

16 THE COURT: Or pretty close to it.

17 SOLICITOR SWANSON: At three minutes, 33 seconds:

18 *Oh, she was really drunk. She was*
19 *biting me. She attacked me a few times. She*
20 *does this a lot.*

21 MR. GEIER: Sure. I mean, that sounds like she
22 attacked him a few times. I mean, I don't think it
23 could've been right then. It could've been over the
24 course of the argument.

25 SOLICITOR SWANSON: Well, but then, also, Otto

1 says he told him that she was firing at him, and
2 missed, and hit the wall. I mean, these are just
3 facts that are in evidence.

4 MR. GEIER: But --

5 SOLICITOR SWANSON: And so, those rise to the
6 level of sufficient legal provocation, combined with
7 the heat of passion from arguing all night long.

8 THE COURT: I'm reading the *Cooley* case, Mr.
9 Geier. Well, in the *Colley*, it talks about -- it
10 talks about where the State points to no evidence of
11 the victim provoking the defendant in their alleged
12 verbal argument. But in this case, I would argue that
13 shooting at the defendant would certainly be
14 sufficient provocation. I think taking any of this
15 talk about adultery out of it, it was -- if he
16 actually did, in fact, know about it, at a minimum, he
17 heard rumors about it, and from, obviously, his
18 testimony, he didn't believe it. I think, taking that
19 aside, though, I think in this case, we can talk about
20 that they did have some type of argument that night;
21 there was some struggle; and there is evidence on the
22 911 tape that he said that she attempted to shoot at
23 him and missed. So, because of that, I do think a
24 voluntary manslaughter charge is appropriate in this
25 case, just based on that testimony alone. Again,

1 taking aside, you know, anything having to do with the
2 adultery and whether or not he believed it. And from
3 my understanding, from the testimony I heard, is that,
4 that was something that was addressed previously, so.

5 MR. GEIER: Your Honor, if I may.

6 THE COURT: Yes.

7 MR. GEIER: I think that speaks more to
8 involuntary manslaughter than manslaughter. I've got
9 *State v. Light* here. I'll give it up to you. But
10 basically, in that case, it stated that the fact
11 petitioner and Davis were struggling over the weapon
12 is sufficient evidence to support an involuntary
13 manslaughter charge to the jury. So.

14 THE COURT: That isn't the testimony I heard from
15 him. I haven't heard that -- I haven't heard that
16 they were struggling over the gun, unless that's --

17 MR. GEIER: I think that's what the -- my hand
18 was on the gun in the final -- or on the gun when the
19 final shot. That's what Otto testified to. And I
20 believe that's also what, by and large, what was said
21 in the 911.

22 THE COURT: I think that they were struggling
23 over the gun, then, he's not guilty of anything. He
24 can't be guilty of anything. I don't even think he
25 can be guilty of voluntary manslaughter -- or, I'm

1 sorry -- involuntary manslaughter.

2 MR. GEIER: Well, if that's the case, then, I
3 guess, are you going to give a self-defense charge?

4 THE COURT: I mean, you have not put the elements
5 of self-defense in this case, clearly. I mean,
6 obviously, for self-defense, he would've had to be
7 able to show the animus. He would've had to be able
8 to show that he couldn't leave and do whatever else.
9 I mean, I haven't heard one word from anyone saying
10 that he ever said he was in fear for his life. So,
11 you've not presented this as a self-defense case at
12 all.

13 MR. GEIER: Oh, I have not.

14 THE COURT: So.

15 MR. GEIER: But, however, if the basis of this
16 coming in and becoming a possible voluntary
17 manslaughter charge is that there was some sort of
18 struggle over the gun, and she took two shots at him,
19 if -- if the State's going to say that there's
20 evidence in there that she took two shots at him, and
21 that somehow she ended up dead, I mean, I think that's
22 a clear depiction of --

23 SOLICITOR SWANSON: State's not going to say
24 that. State's going to say it's murder, but that
25 doesn't matter. This is simply based on the facts in

1 evidence, from which a jury can determine an outcome.

2 THE COURT: I mean, your entire defense has been
3 that she committed suicide; she killed herself. And
4 she's -- what I have heard from you is that she shot
5 three times; may or may not -- I'm not sure what
6 you've adopted, but may or may not have shot at him.
7 He struggled to get that gun from her, potentially.
8 But I don't hear that, in the struggle, in self-
9 defense, he shot her. I hear that she shot herself.
10 And his hand may have been laying on the gun or near
11 the gun, which caused the injury to his hand, but not
12 that he did it.

13 MR. GEIER: Right.

14 THE COURT: I mean, that's been your defense.
15 And there's a -- there's a huge difference between
16 that. I heard all along you said is that, no, she's
17 the one that did this. And that put it up underneath
18 her chin, and he -- while he was trying to do
19 something. I mean, someone had to get the gun to
20 right here. And so, I think you probably chose very
21 wisely that that's the way your defense was, because I
22 don't think in the -- I think in a hard time in the
23 struggle, that the gun goes up underneath here and
24 goes. I mean, I'm sorry, I know this is hard, Mr.
25 Passio. But I think that's very difficult to believe.

1 I think -- I think with her actually doing it and him
2 trying to stop her, that I understand. But the facts
3 just don't bear out that, over a struggle with the
4 gun, he accidentally shot her. I mean, that's not
5 what I'm hearing. Although -- that's not what I've
6 heard your defense to be in this case, so.

7 MR. GEIER: Well, and again, if we're going to go
8 off of what the --

9 THE COURT: Yes.

10 MR. GEIER: -- 911 tape says, then there is -- I
11 said there is -- there are statements there that there
12 was a struggle.

13 THE COURT: Well, I definitely don't see it as
14 self-defense. I don't see it as a self-defense case.

15 MR. GEIER: Right. Well, I'm just saying --

16 THE COURT: That's not out there. The question
17 is just whether or not voluntary manslaughter is
18 appropriate. I do think there's evidence from which
19 this jury could determine -- I mean, we still have to
20 look at it at the flip side for the State's case, if
21 they still say or allege that he shot her, that he
22 intentionally shot her. So I do think, still,
23 voluntary manslaughter is appropriate. I do think the
24 facts could potentially fit in. I don't see a self-
25 defense in this case. I don't see an accident in this

1 case. And the whole difference between, obviously,
2 murder and voluntary is whether or not there was
3 malice aforethought. I mean, it could just be, you
4 know, this was a tumultuous relationship for a lot of
5 years.

6 So, respectfully, I'm going to deny your motion
7 not to charge voluntary manslaughter. I do think it's
8 appropriate in this case, though. I think it's
9 definitely distinguishable from the *Cooley* case, based
10 on the simple fact that he says that three shots were
11 fired. And I don't even know if the three shots were
12 fired at him, necessarily. She was shooting, and
13 maybe she was just trying to get to herself. And
14 again, I'm just talking about potential, obviously,
15 for all of you all. This is not my comment on the
16 facts. This is what the evidence could show, what the
17 jury could find. I have to look at every case
18 scenario of what they possibly could find. But it's
19 -- it's not a self-defense case.

20 MR. GEIER: Oh, your Honor, I agree.

21 THE COURT: Yes. Okay.

22 MR. GEIER: But I'm just saying that I just note
23 my objection to the voluntary manslaughter charge.

24 THE COURT: Okay. I understand that. Okay.
25 Anything else for this morning before the jury comes

1 in? I say we get them out here, let's get these last
2 two witnesses up, and we'll go from there. Okay?
3 Let's bring them in.

4 JURORS ENTER COURTROOM 9:43 A.M.

5 THE COURT: You all may be seated. Good morning,
6 ladies and gentlemen.

7 RESPONSES FROM JURORS.

8 THE COURT: Pleasure to see you all. At this
9 time, I understand, I believe we have one or two final
10 witnesses this morning, and then there are some
11 matters of law I need to take up with the attorneys.
12 And then we are going to hear their closing arguments,
13 both sides, and I'm going to charge you on the law
14 that's applicable to this case, and we're going to
15 send it to you. Okay?

16 So, with that said, Mr. Geier, are you ready to
17 proceed?

18 MR. GEIER: Yes, your Honor.

19 THE COURT: Okay.

20 MR. GEIER: Defense calls Kaleb Passio. Come
21 forward.

22 THE COURT: Okay. Come on forward, Mr. Passio.

23 DEPUTY SHERIFF: If I could get you to raise your
24 right hand. Place your left hand on the *Bible*. Do
25 you swear or affirm the testimony you're giving will

1 be the truth, so help you God?

2 KALEB LAWRENCE BENNINGTON Yes, sir.

3 KALEB LAWRENCE BENNINGTON, DIRECT

4 EXAMINATION BY MR. GEIER:

5 Q. Good morning, Kaleb.

6 A. Good morning.

7 Q. Can you please state your full name for the
8 record.

9 A. Kaleb Lawrence Bennington. I'm 15, oldest of --

10 Q. Speak up a little bit for us.

11 A. Kaleb Lawrence Bennington. I'm 15. I'm the
12 oldest of my dad's over there, his kids.

13 Q. Okay. So, your last name's Bennington, it's not
14 Passio?

15 A. Yeah.

16 Q. Why is that?

17 A. My -- my dad was not in the room when I was born,
18 so he didn't inherit my name, and they were not
19 married at the time, so.

20 Q. I see. So, Richard Passio isn't your biological
21 father, is he?

22 A. That's what I've been told, but I --

23 Q. Who told you that?

24 A. A woman named Ms. Reed and DSS, when I was over
25 there with them.

1 Q. I see. So, you lived your whole live believing
2 that --

3 A. Yeah.

4 Q. -- he was your father?

5 A. Yeah.

6 Q. Okay. And he raised you as if he was your son?

7 A. Yeah.

8 Q. Did he ever treat you any differently than
9 anybody else?

10 A. Never in my life. Still doesn't.

11 Q. Again, I'm going to talk to you about some tough
12 things today.

13 A. Um-hmm.

14 Q. All right. If you need time to answer my
15 questions, go ahead and take that time. All right?

16 A. Um-hmm.

17 Q. When you answer questions, if it's a yes or no
18 question, you need to say yes or no. Okay?

19 A. Yeah.

20 Q. If you don't understand my question, it's okay to
21 tell me that you don't understand. All right?

22 A. Yeah.

23 Q. I don't want to know, necessarily, anything that
24 your dad told you or your mom told you, or really
25 anybody else told you. I want to know about what you

1 saw, what you heard, what you believed and perceived
2 at the time. Okay?

3 A. Um-hmm.

4 Q. All right. Do you remember living in Ohio?

5 A. Yeah. For the most part, that was about -- we
6 lived in Akron for a pretty long time, so I remember a
7 lot of that.

8 Q. All right. How old were you when you moved to
9 South Carolina?

10 A. I was around twelve.

11 Q. Oh.

12 A. Yeah.

13 Q. And tell me about your brothers and sisters. How
14 many brothers and sisters do you have?

15 A. I have seven brothers and sisters. There is five
16 boys and four [sic] girls. Well, that's counting me.
17 There's Giovanni, he's twelve; Angelina, she's eleven;
18 Cecilia, she's nine; Mario, he's five; Cecil -- I
19 mean, Bella is six; and Frankie is one.

20 Q. Okay. A lot of names to remember, isn't it?

21 A. Yeah.

22 Q. What do you remember about your mom before you
23 moved to South Carolina?

24 A. She was kind of -- she was kind of secretive at
25 times, but she was usually very happy. She would --

1 when she was in those little fits of happiness and
2 things like that, she would, like, leave at times,
3 things like that. Would, like, dad was at work, and
4 she just kind of leaves. But that was not so
5 commonplace. It only happened towards the end of when
6 we were living down there -- well, up there.

7 Q. I see.

8 A. And --

9 Q. Let's see. Let me ask you a couple questions
10 about what you said. You said she -- sometimes she
11 was kind of secretive. What do you mean by that?

12 A. Well, she was always trying to hide something,
13 whatever she was doing at the time. Like, there was
14 -- there was a thing where they had an agreement where
15 she wouldn't smoke. She was always constantly
16 smoking, and she was trying to hide that. There was
17 drugs involved, there was alcohol, there was people
18 she -- like, friends that she wasn't supposed to see
19 because they were giving her drugs. She would go see
20 them without, you know, telling my dad, or, you know,
21 that's what -- where she would go when she leaves.

22 Q. Okay. You said when she would leave, too. When
23 would she leave?

24 A. If my dad was out at work, which he usually was,
25 he usually worked 'til around 8:00. He had long

1 hours, so he would leave in the morning and be gone
2 until 8:00. And my mom wouldn't -- maybe about
3 halfway through the day she would decide, I'm going to
4 go to the gas station, and not come back for hours,
5 so. You know, she wouldn't tell us where she went,
6 but later on -- she had a friend named Brandy, who --
7 that's where we assume she went a lot. But there was
8 other people, too.

9 Q. Okay. And so, when she would leave for
10 supposedly a couple minutes, and then be gone for
11 hours, who watched you all?

12 A. Well, it was usually me. If she was -- if she
13 really expected to be gone for a long time and my dad
14 knew about it, she might have had one of the neighbors
15 come over, or have one of the neighbors check on us
16 once in awhile; but it was usually just me.

17 Q. And at that time, you had six brothers and
18 sisters. Is that right?

19 A. Yeah. It was before Francesca, or Frankie.

20 Q. But you were -- you were twelve?

21 A. Yeah. Twelve, eleven.

22 Q. What do you remember about when you first moved
23 to South Carolina? And not just about your mom, but
24 what do you remember about moving here?

25 A. Other than the fact that it was extremely hot

1 when I got here. It -- I remember when we came here
2 to Ridgeland. It was a nice, small town. There
3 wasn't much, you know, going on when we got here
4 besides, you know, the moving and all that stuff.

5 Q. Well, let me ask you. So, you moved into a house
6 on East Main Street?

7 A. Yeah. The -- one of the -- the big white house
8 on East Main Street, really big house.

9 Q. Tell me what the inside of that house looked
10 like.

11 A. Well, the ceilings were very high, maybe about --
12 like, where that light post is up there, that's where
13 the ceilings would end. We had this huge Christmas
14 tree that didn't even fit in the porch, and we could
15 put it on our house, and it still had room to go up.
16 There was a lot of odd doors every once in --
17 everywhere, because they were trying to cut the place
18 up into apartments at one point. And so, like, there
19 was a door in my room that led to the bathroom, but
20 then there was the normal bathroom door. And then,
21 like, they had this porch that was added on, because
22 it used to have a wrap-around porch, but then they
23 built a wall around it. So, like, there was an area
24 that had really bad air conditioning, and the upstairs
25 unit didn't even work. There was a door between the

1 girls' room and the -- what we used as a living room.
2 And then, there was a lot of, like, ways to get
3 outside. From upstairs, there was a porch upstairs.
4 There was a little sunroom, a glassed-in sunroom, with
5 two ways to get out on each side. There was a door in
6 the back room where the -- where the porch used to be,
7 and then there was another door that led into the
8 kitchen that we usually went through.

9 Q. All right. Do you recall there being a cupboard
10 in the kitchen with your dad's name on it?

11 A. No. The only cupboard that nobody went into was
12 a cupboard that had alcohol in it. It was the alcohol
13 cabinet, in the corner. Don't go in there. It's
14 normal.

15 Q. Okay. So, did this cupboard have Dad's name on
16 it?

17 A. No.

18 Q. And what was in there?

19 A. Stuff to mix alcohol, things like that. There
20 was, like, vodka in there. There was really not much
21 alcohol in it.

22 Q. Okay. So, there wasn't anyplace where there was
23 a cupboard with food that you weren't allowed to
24 touch?

25 A. Yeah, there was no hidden food at all. There was

1 -- we had the pantry over in the corner, and that's
2 where all of the food was.

3 Q. What do you remember -- and we'll talk a little
4 bit about now what your mom was like when we -- when
5 you all got here to South Carolina. What sort of
6 things would she do?

7 A. Well, when we originally got here, she was much
8 more calm. I think she would just be excited to be
9 down here because the beach. But a little bit later,
10 she started to get more -- she got aggravated a lot
11 easier. She start -- like, a lot of things she just
12 started -- she just stopped caring about. She just --
13 I don't care about this anymore. So, you know, little
14 petty fights between the kids that she used to be able
15 to deal with easily, she just got super-annoyed by.
16 She was just more -- a lot more aggravated a little in
17 general. She -- she also was a lot, like -- the
18 secretive thing that she had went away for a little
19 while, and then, you know, came back even stronger.
20 She would -- you know, she was constantly on her
21 phone. Things like that. She would also sleep a lot.

22 Q. Okay.

23 A. She would go through these large fits where she
24 would just sleep for hours.

25 Q. All right.

1 A. In the -- in the middle of the day.

2 Q. So, when you first got to South Carolina, you
3 said that she was -- wasn't like she had been in Ohio?

4 A. Yeah.

5 Q. But after awhile, that changed?

6 A. Yeah.

7 Q. And was she like she was when she was in Ohio?

8 A. Maybe even worse than when she was in Ohio.

9 Q. And was she disappearing again?

10 A. Yeah. Every -- when she stopped working at the
11 Porch, she started leaving a lot.

12 Q. And when you say --

13 COURT REPORTER: I'm sorry. When she started
14 working?

15 A. When she stopped working at the Porch.

16 Q. You said when she was in Ohio, she would smoke
17 and drink and take drugs. Did that happen again, as
18 far as you know?

19 A. She smoked a lot. I -- she -- I never really,
20 like, saw her drinking outside of, like, when she was
21 making a drink with Dad or something like that. But I
22 -- actually, never mind. She -- she did a lot of Buzz
23 Balls, if you know what those are, the little alcohol
24 things. She liked those. She would buy a lot of
25 those. So, there was that. But after Ohio, I never

1 really caught her with drugs. Like, I knew she was
2 doing them, because she was, you know, she mentioned
3 it to me, but that's --

4 Q. All right. Did your mother do anything that
5 seemed strange to you in the last several months of
6 her life?

7 A. To be honest, she wasn't really acting like
8 herself. She was -- she was -- my mother has always
9 been a very caring person, and she was just overly-
10 aggressive, didn't care about what other people were
11 thinking, you know. She always had a really big
12 heart, always, you know, what's new with everybody
13 else; and she just didn't want to deal with anything.

14 Q. Were you around when your mother went out into a
15 storm?

16 A. Yes. I do remember that. She left in the middle
17 of the night, and I remember sitting on the porch with
18 my dad, and my grandpa went out to go try to find her.
19 And he found her walking barefoot in the rain, and he
20 brought her home.

21 Q. About what time was that?

22 A. Maybe a little bit -- maybe after midnight. I
23 don't know. It was -- it was late. I remember that.

24 Q. Well, why were you up?

25 A. I actually don't recall. I just remember getting

1 up. It was something I frequently did after the stuff
2 started. I just started getting up to see if I could
3 do anything.

4 Q. So, you -- you would get up because something was
5 happening sometimes?

6 A. Yeah.

7 Q. Okay. Like what?

8 A. Well, whenever there was a fight or I heard
9 something, I would get up; because most of the time,
10 my presence used to be -- calm something down, or she
11 would stop. I -- when I was around, she didn't act so
12 erratic.

13 Q. Let's talk a little bit about what your dad was
14 like. What was he like before he moved to South
15 Carolina?

16 A. Well, he worked a lot. He was always, you know
17 -- when he was home, he was calm. He just wanted to
18 have fun. He -- there was -- like, we always had this
19 fun thing where we would go out to this Italian deli
20 and try new foods, things like that. That's what he
21 wanted to do on his days off; he wanted to spend time
22 with his kids. So, for the most part, everything was
23 fine. I mean, he just was completely oblivious until
24 he finally found out what was going on with my mom.
25 So, that's when he got really worried, and that's

1 when, you know, the problems where they say he's
2 controlling.

3 Q. Okay. Was your dad controlling?

4 A. I wouldn't say so. Not -- not in a way that
5 really was bad. More so trying to keep her from make
6 -- doing things that could really hurt either herself
7 or the family.

8 Q. Have you ever seen -- well, let me ask you this.
9 Have -- has your dad ever spanked you or any of your
10 brothers and sisters?

11 A. No. No, not -- the last time I can remember
12 doing that, I -- I was little, and I poured a little
13 toothpaste on the toilet, and I got spanked for that.

14 Q. All right. So, when you were little, you used to
15 get spanked?

16 A. That's -- not that I can remember, really. It
17 was just that one time. That was the last time I can
18 remember actually, like, being scared, but.

19 Q. Were the kids really good around your dad?

20 A. Yeah. For the most part, yeah. They were --
21 there was always, you know, there was little fights,
22 things like that, but that's just what kids do. There
23 -- they were usually really good. I mean, Mom was
24 good at using the excuse that, when Dad comes home,
25 you're in a lot of trouble, so, that's what it was.

1 Q. And when Dad came home, was he real strict with
2 you and the other kids?

3 A. Not really. It was more so, you know, the normal
4 stuff that Mom let us get away with, you know, like,
5 the constant snacking, things like that, and stuff he
6 wasn't going to put up with, that -- that he, like,
7 eliminated, and that's kind of what made it -- made
8 him seem strict, but it was really just a normal
9 parenting thing.

10 Q. Other than -- did he ever spank any of the other
11 kids?

12 A. Not that I can remember.

13 Q. Have you ever seen your dad hit anyone?

14 A. No.

15 Q. Have you ever seen your dad in a physical fist
16 fight?

17 A. Yeah. There was this one time, Jerry, Pam's
18 boyfriend, attacked him over a dispute about him
19 getting fired. What happened was, he was -- he was
20 stealing liquor from the bar, at Jasper's Porch, and
21 --

22 SOLICITOR SWANSON: Your Honor, is this based on
23 information that this witness actually knows or
24 perceived?

25 MR. GEIER: Right. Yeah, we already talked about

1 that.

2 THE COURT: Okay. Thank you.

3 BY MR. GEIER:

4 Q. You didn't -- that's all just stuff you've heard,
5 right?

6 A. No, actually I -- I -- well, the part about why
7 he got fired is what I heard?

8 Q. Right, right. Yeah. So, just -- just tell us
9 what -- what you saw.

10 A. Okay. What I saw was, he came in the room
11 yelling about --

12 Q. Don't tell us what he was yelling about.

13 A. Okay.

14 Q. Just what you saw.

15 A. Well, he came in the room, and he was yelling at
16 my dad. And he told me to get out. He yelled at me.
17 And my dad said, don't talk to my son like that in my
18 house. And he turned around and screamed, this is
19 your dad's house, and then stepped forward and started
20 punching him. And so, I immediately went to the
21 stairs, because my grandma was upstairs, and I started
22 screaming for her. And you know, before I even
23 started that, I -- he -- my dad had probably taken,
24 like, three -- he had got punched in the face, like,
25 three times. And then, my dad grabbed him and brought

1 him to -- brought him to the ground, and started,
2 like, restrained him. And as he was doing -- like, it
3 was probably, like, the gentlest I've ever seen him do
4 -- do anything like -- like -- like that. Like, I
5 would not have been that nice. But he put him to the
6 ground as gently as he just possibly could. He didn't
7 want to hurt him. And you know, after I saw that,
8 Jerry was sitting there still swinging at him, trying
9 to get him. And I, you know, went over to the stairs
10 and started yelling for my grandma.

11 Q. All right. Let's talk about your grandma. What
12 was she like?

13 A. For the most part, there was a lot of drugs and
14 alcohol involved with her. Constantly smoking. I --
15 on occasions, I've seen her smoke weed.

16 SOLICITOR SWANSON: Your Honor. Did the -- has
17 the witness actually observed this behavior with the
18 drugs?

19 THE COURT: I just want to make sure that --

20 MR. GEIER: Sure.

21 THE COURT: -- he can only testify as to what
22 you've actually seen with your own eyes.

23 A. I've actually seen her do that.

24 THE COURT: Okay. So, I think you maybe need to
25 get a little specific.

1 MR. GEIER: Sure.

2 BY MR. GEIER:

3 Q. So, what did you actually see?

4 A. I've seen her drink a lot. I've seen her buy
5 couple of the, you know, the big things of alcohol all
6 the time. I've seen her drink. I've seen her smoke
7 weed on occasion with my mom's friend, Brandy. But
8 when my mom and dad went out to go get something for a
9 cookout, in front of the kids, by the way, I'm sure
10 that, you know, pushed them over along and tried to
11 get them to go away, and, you know, basically watched
12 as they did that. And then, you know, my -- my
13 grandmother is a smoker, so I've constantly seen her
14 do that.

15 Q. Okay.

16 A. Which only encouraged my mother, who was already
17 trying to get off of them.

18 Q. Okay. Let's go back to your dad. Have you ever
19 seen your dad hit your mom?

20 A. No.

21 Q. Ever?

22 A. No.

23 Q. You ever seen him push her?

24 A. No.

25 Q. What about your mom?

1 A. I have -- yeah, I've seen my mom hit my dad
2 before. I've actually had to -- one night, there was
3 a big fight going on, and I heard a big slam. I
4 walked out from my room, and the door was off the
5 hinges, and my mom was beating my dad. So, I helped
6 him hold her -- restrain and hold her down. So, I
7 held her top half so she wouldn't hit -- punch him,
8 and she sat there and kicked him as he tried to hold
9 her legs.

10 Q. Okay. Was there ever any other time like that?

11 A. Nothing that was ever that bad. Usually, I
12 wasn't involved. It was the only time I ever had to
13 get involved.

14 Q. Okay. Let's talk real quick about the morning
15 your mom died. Did you hear anything that night?

16 A. I was dead asleep. I heard nothing. My room is
17 all the way in the back, and my door's shut.

18 Q. When you woke up this morning, what was going on?

19 A. Well, when I woke up, my grandpa was in the
20 hallway. He was -- I think he woke Giovanni up, and
21 Giovanni woke me up. I remember my dog was under my
22 bed, and she was really scared of loud noises,
23 thunder, things like that. So, that was commonplace,
24 so I was wondering if it rained last night, but I
25 don't remember it raining. So, you know, that was the

1 first sign of, like, well, there was just some kind of
2 loud noise, that's why she's under my bed. So, I
3 remember that.

4 And then, we all got up, and he told us to get
5 dressed, and we were going to go to the Porch and sit
6 there for a little while. But when I walked out, I
7 walked over towards the living room, and we had these
8 two flip -- foldable tables that you, like, you bring
9 to parties and stuff, because the family's so big, we
10 just bought them. And they're covering the doorway.

11 Q. Okay. I just want to make sure that you talk
12 slow enough that the court reporter can --

13 A. Yeah. Sorry.

14 Q. I know it's -- I know it's -- you're nervous up
15 there. All right. Did anybody -- or, I'm assuming
16 somebody told you what happened.

17 A. Yeah. When I -- when we got to the Porch, my
18 grandpa took me aside, and we went and sat on the,
19 like, front table, and my grandpa basically told me a
20 -- a very abbreviated story of what happened.

21 Q. Okay.

22 A. He just said there was a fight last night --

23 Q. Don't tell me don't tell me what he told you.
24 But he told you what happened. Going back to your
25 mom, and then we're almost done here.

1 A. Um-hmm.

2 Q. Have you ever seen your mom with fingernail
3 polish?

4 A. Yes. Actually, there's been times where, like,
5 for Angelina's birthday and, you know, that she took
6 Cecilia and her to go get manicures and stuff at some
7 -- some salon. Sorry, stuttered. She -- she did a
8 lot of clear nail polish. She said it was good for
9 her nails. There has been times when she was going
10 out somewhere, and I've see her do pink and a lot of
11 blues.

12 Q. Did your dad make her take that off?

13 A. No. He -- he said he didn't like makeup and
14 stuff like that, but he never forced her to not have
15 it. He just, you know, he didn't like it, so she
16 didn't do it. It was normal.

17 Q. Did you ever see her wearing jewelry, other than
18 a wedding ring?

19 A. I've seen her wear earrings sometimes. She had
20 piercings, but she would wear them only, like, on
21 special occasions, when she was going out. My dad has
22 bought her earrings before. She got earrings for
23 Christmas one year. We've bought her watches,
24 necklaces, things -- bracelets, things like that.

25 Q. That's all I have for you.

1 A. All right.

2 MR. GEIER: Ms. Swanson's going to ask you some
3 questions. Please answer anything she may have for
4 you. Okay?

5 A. Yeah.

6 KALEB LAWRENCE BENNINGTON, CROSS-
7 EXAMINATION BY SOLICITOR SWANSON:

8 Q. Hey, Kaleb. My name's Hunter. I have some
9 questions for you.

10 A. Okay.

11 Q. So, you -- it's your testimony, right? from what
12 I heard you say, that your dad and all of his
13 behaviors are completely normal, right? Is that not
14 what you just testified to?

15 A. Yes. From what I've witnessed, yes.

16 Q. Okay. And you've been interviewed before by
17 Chris McIntosh, on June 21, 2016; as well as Hope
18 Haven counselors on July 21, 2016.

19 A. Yes.

20 Q. Okay. And when you talked to Hope Haven
21 counselors, you told them that your mom felt trapped
22 because only Dad could leave the house. Isn't that
23 right?

24 A. Yes.

25 Q. You also told them that your mom was very nice

1 and open-hearted. I really don't know. She was my
2 mother. Isn't that right?

3 A. Yeah.

4 Q. You also told them that, when your mom was late,
5 Richard would always ask a lot of questions, and that
6 made him angry. Isn't that right?

7 A. Well, I did say that but, no, that wasn't --

8 COURT REPORTER: I'm sorry. *Well, I could say*
9 *that, but?*

10 A. I said, I did say that, but, no, I -- I -- that's
11 not the -- no.

12 Q. And you testified that Richard was always happy,
13 right? Your dad was always happy?

14 A. Not exactly, no. That's not what I meant by
15 that.

16 Q. Okay. So, when you said your mom wasn't always
17 happy, you also mean, when you say your dad is always
18 happy, he's not really always happy, because nobody's
19 always happy, right?

20 A. Yeah.

21 Q. Especially with a family of nine for a long time
22 that became a family of ten when you guys moved down
23 here, right?

24 A. No. It was family -- well, if you're counting
25 kids, there's only seven of us.

1 Q. What about Frankie, the newborn?

2 A. Well, when we -- well, yeah, I guess you're
3 right. I was thinking before then.

4 Q. And two parents? Used to be two parents.

5 A. Yeah.

6 Q. Do you recall telling a story to the counselor
7 that your dad was drinking; mom had gone out and she
8 had cut her hair short; and he got so upset because he
9 loved her hair long, and he started crying?

10 A. I do recall that story.

11 Q. Okay. You think that's normal?

12 A. For someone who is drunk at home, yeah.

13 Q. Okay. So, he was drunk. And maybe he didn't act
14 normal when he was drunk. Is that what you're saying?

15 A. He's very loving and happy when he's drunk, from
16 my experience.

17 Q. But not that night when he was crying?

18 A. No, he was very happy. He was dancing with the
19 girls, he was -- I mean, my sisters. We were playing
20 music and we were dancing around, playing games,
21 things like that.

22 Q. But then he started crying, which indicates
23 unhappiness, right?

24 A. Well, yeah.

25 Q. Okay. All right. You talked about -- Mr. Geier

1 asked about your mom and -- and sleeping. And so, you
2 talked about how, when you were in South Carolina, she
3 was sleeping a lot. Well, you know that for the
4 majority of the time she was in South Carolina, she
5 was pregnant with her last child, right?

6 A. Yes. I do remember.

7 Q. Right. So, she was pregnant, in her mid-
8 thirties. And that whole time, up until she gave
9 birth, she was working at Jasper's Porch, wasn't she?
10 She was on her feet, waiting tables, right?

11 A. No, not actually. About the whole time -- she --
12 she worked for the Porch for a little while, but
13 because of some stuff, like, rumors and stuff that
14 were getting spread around, she -- at least that's
15 what I've been told, that's why, you know, they
16 stopped with that.

17 Q. Okay. So -- so, your dad made her stop because
18 of some rumors. Made her stop working. But he's not
19 controlling.

20 A. Is -- no. I --

21 COURT REPORTER: I'm so sorry. You're going to
22 have to enunciate.

23 A. Sorry. Yeah. I understand I need to speak up.

24 COURT REPORTER: What was your answer?

25 A. No, that he's not controlling.

1 Q. Okay. Frankie was about six weeks old when she
2 was killed, so there were those six weeks that she was
3 caring for a newborn, as well as, you know, seven
4 other children. You're aware that newborns wake up in
5 the middle of the night, right?

6 A. Yeah.

7 Q. And you have to get sleep when you can, right?

8 A. Yeah.

9 Q. Otherwise, she would get no sleep. Right?

10 A. Yeah.

11 Q. And your dad wasn't really helping out around the
12 house too much, was he?

13 A. Yeah, he was working, so.

14 Q. Okay. And you have a 9:00 p.m. bedtime, right?

15 A. Yeah.

16 Q. So, you don't really know what goes on after 9:00
17 p.m.

18 A. I -- I started getting up and finding out.

19 Q. I'm sorry?

20 A. I started getting up after 9:00 p.m. and finding
21 out what was going on.

22 Q. Okay. But not the night that your mother was
23 killed.

24 A. No, I didn't get up that night. I slept. I was
25 completely asleep.

1 Q. Right. Not the night that gunfire rang through
2 the living room of that house.

3 A. Yeah, and I'm all the way in the back room.

4 Q. I'm sorry?

5 A. I'm all the way in the back room. I can't hear
6 anything. That door is, like, shut.

7 Q. I see. Now, you talked about spanking, how you
8 never witnessed anyone spanked, you were never
9 spanked. So, you never witnessed two-year-old Vito
10 being hit without a diaper on?

11 A. No.

12 Q. You're not aware that one of your sisters told
13 counselors about that?

14 A. No.

15 MR. GEIER: Objection, your Honor, hearsay.

16 SOLICITOR SWANSON: It's not for the truth of the
17 matter asserted.

18 THE COURT: Which is whether or he had heard of
19 it, so. He answered it. We need to move on.

20 BY SOLICITOR SWANSON:

21 Q. Were you aware that she also told counselors that
22 she gets spanked by Dad, and when she gets in trouble,
23 it was in a really mad way?

24 A. Nope.

25 Q. Okay. Did your dad tell you that Mom's brain

1 just stopped working, like he told your sisters?

2 A. No.

3 Q. And going back to that interview with the Hope
4 Haven counselor, you told them that, 16 minutes into
5 that interview, that, when Mom and Dad were arguing,
6 we're not really around. But that's not what you
7 testified to here today, is it?

8 A. Yeah.

9 SOLICITOR SWANSON: Thank you.

10 THE COURT: Mr. Geier, anything further?

11 MR. GEIER: Just briefly.

12 KALEB LAWRENCE BENNINGTON, RE-DIRECT

13 EXAMINATION BY MR. GEIER:

14 Q. Were you around sometimes when they were argued?

15 A. Towards the end, yes. I purposely put myself
16 there, because I understood that, if I was around, a
17 lot less would happen.

18 Q. Okay. Were you around when your mother would
19 want to go out?

20 A. In the middle of the night, yeah. Sometimes
21 during the day, too. I was usually around when she
22 was just trying to leave the house or something like
23 that. I'd usually be one of the --

24 COURT REPORTER: I'm so sorry. *I'd usually be*
25 *what?*

1 A. One of the people telling her that she shouldn't
2 leave.

3 Q. So, you would try to get her to stay?

4 A. Yeah.

5 Q. Would your dad try to get her to stay?

6 A. Yeah, but a lot of times she just wasn't having
7 it. She wouldn't listen.

8 Q. So, he didn't stop her and keep her from walking
9 out the door?

10 A. He -- he tried. It wasn't physical until, you
11 know, something got violent or something like that.

12 Q. Say that again.

13 A. It wasn't just physical until something got
14 violent or she threw something, or was trying to
15 leave, or he knew exactly her intentions or what she
16 was going to do.

17 Q. So, would he physically try to restrain her when
18 she was trying to walk out at night?

19 A. Yes. Some -- sometimes.

20 Q. And did she end up leaving anyway?

21 A. Yeah, a lot of the time. But I can recall at
22 least, like, two different times where she left in the
23 middle of the night, in the middle of the rain, and we
24 sat there on the porch and waited for her.

25 Q. Did he ever lock her inside the house?

1 A. No. If he locked her inside the house, she'll
2 break a window and get out.

3 COURT REPORTER: I am so sorry. *If he locked her*
4 *inside the house, she'd break a window?*

5 A. Yeah.

6 MR. GEIER: Thank you.

7 SOLICITOR SWANSON: Just briefly.

8 KALEB LAWRENCE BENNINGTON, RE-CROSS-
9 EXAMINATION BY SOLICITOR SWANSON:

10 Q. You testified that you started going around
11 towards the end, because, when you were around, and
12 this is your quote, a lot less would happen, right?

13 A. Um-hmm.

14 Q. So, you were scared of what might happen, right?

15 COURT REPORTER: Is that yes or no?

16 A. Yes.

17 Q. Okay. And you didn't know what was happening
18 behind closed doors, right? And when you weren't
19 around, right?

20 A. Yeah.

21 SOLICITOR SWANSON: Thanks.

22 THE COURT: You may step down, Kaleb.

23 MR. GEIER: Just a second.

24 THE COURT: Of course.

25 MR. GEIER: Defense calls Stephen Passio.

1 THE COURT: Okay. Come on, Mr. Passio.

2 DEPUTY SHERIFF: Do you swear or affirm the
3 testimony you give will be the truth, the whole truth,
4 so help you God?

5 STEPHEN PASSIO: Yes, sir.

6 COURT REPORTER: Spell your first name, please.

7 STEPHEN PASSIO: S/t/e/p/h/e/n.

8 STEPHEN PASSIO, DIRECT

9 EXAMINATION BY MR. GEIER:

10 Q. Morning, Stephen.

11 A. Good morning.

12 Q. Again, for the record, could you state your full
13 name.

14 A. Stephen Passio.

15 Q. And how are you related to Richard?

16 A. I'm his brother.

17 Q. You worked at Jasper's Porch?

18 A. Yes, sir.

19 Q. In what capacity?

20 A. I was the general manager.

21 Q. Were you there when Richard started?

22 A. Yes, I was.

23 Q. All right. Were you the general manager the
24 whole time?

25 A. Yes.

1 Q. What did Richard start doing when he got there,
2 as far as work?

3 A. He started out in the kitchen as a cook.
4 Eventually moved up to working a little more with me
5 and trying to develop new recipes, or minor changes we
6 were trying to make to the restaurant to liven things
7 up.

8 Q. And is that how he ended up, as far as position
9 goes, at Jasper's Porch?

10 A. Yes.

11 Q. Did Michelle work there?

12 A. Yes, she did.

13 Q. What did Michelle do?

14 A. She was a waitress. And in the beginning, she
15 was a part-time cook in the kitchen, I believe.

16 Q. If you'd move forward just a little bit.

17 A. Uh-huh.

18 Q. Thanks. Tell me about Michelle's work there.
19 Was she a good employee?

20 A. She started off as a very good employee. She was
21 one of our stronger waitresses at first, very lively,
22 greeted everyone who walked in the door. So right
23 away, off the bat, she took the more busy schedules.
24 When we knew we were going to be busy, we'd put
25 Michelle on. And then, on times when she wasn't

1 waitressing and she wanted to work, she started
2 working in the kitchen. So, starting off, she was a
3 very strong employee. Definitely good to have.

4 Q. And did that stay that way?

5 A. It did not.

6 Q. What happened?

7 A. I assumed, as her pregnancy went on, progressed,
8 she either got tired. She started to slow down a
9 little bit. And then, more towards the end of her
10 employment there, she started what I believed to bring
11 her home life into work. She wasn't always cheerful.
12 She started singling people out. Seemed to start
13 alienating some of the other waitresses. She started
14 to become, actually, a liability. So, when we were
15 busy, I started to put her on the slower schedules.
16 So, she would do day shift. And then, in that case
17 she couldn't cook during the day. So, she turned into
18 just a day waitress.

19 Q. So, in fairness, I mean, she was pregnant, right?

20 A. Yes, she was.

21 Q. So, she's going to slow down because she's
22 getting bigger and bigger?

23 A. I -- I've had several kids, and my wife gets a
24 little moody when she's pregnant, so I assume that's
25 what it was.

1 Q. Was she ever fired?

2 A. I couldn't say that I fired her. I had a talk
3 with her one day. I told her she was coming in some
4 days as happy Michelle, and some days as -- I wouldn't
5 want to say not-happy Michelle, but as a problem. I
6 worded it in a bad way to her. I -- I -- I asked her
7 which Michelle was going to come in, and I wasn't sure
8 which Michelle was coming in each day. And I needed
9 her to step away, take care of whatever was going on
10 at home, and then we could talk again. So, you may
11 call it a firing or laying her off, but that's how we
12 left things.

13 Q. Other than talking to Richard or Michelle about
14 what was going on at home, do you have any idea of
15 that, of what was going on at home?

16 A. I do not. I stayed -- I tried to stay out of as
17 much of the drama as I could.

18 Q. Sure. I want to talk to you briefly about some
19 of the folks who worked at Jasper's Porch, and the
20 first one I want to start with is Brandon Ashcraft.
21 Did he work there?

22 A. Yes, he did.

23 Q. How long did he work there?

24 A. Maybe eight months to a year. I'm not a hundred
25 percent sure.

1 Q. What sort of work did he do?

2 A. He was a cook.

3 Q. How often would you work with Brandon?

4 A. Probably at least four times a week.

5 Q. Is that -- what was your schedule like, and his
6 schedule?

7 A. I worked Tuesday, Wednesday, Thursday, day shift.
8 I would come in, in the morning, for opening, and I
9 would leave usually around 5:00 o'clock, 4:00 or 5:00
10 o'clock. And then, Friday and Saturday, our busy
11 nights, I stayed at night. He was there, usually
12 during the busier times. He was a good, fast cook, so
13 we worked together a lot.

14 Q. And obviously, there at the Porch, you knew all
15 of the employees, didn't you?

16 A. Yes, sir.

17 Q. All right. Were you ever around when other
18 employees would talk about or discuss Brandon?

19 A. Yes, I was.

20 Q. And were you able to hear and figure out what it
21 was they were saying about him when you were around?

22 A. Some of it. If it was drama that would affect
23 the Porch or the restaurant, I definitely tried to
24 figure out what was going on, get to the bottom of it.
25 But other than that, I tried to stay out of people's

1 personal lives.

2 Q. Did he have a reputation at all around the Porch?

3 SOLICITOR SWANSON: Your Honor, I would object,
4 under Rule 608. Evidence of character or conduct, and
5 bias of witness, opinion and reputation evidence of
6 character. You just -- you can't go into character
7 assassination, particularly through another witness.

8 THE COURT: Sustained. You can't ask him.

9 BY MR. GEIER:

10 Q. Who else worked for you there?

11 A. There were a lot of employees. Do you want me to
12 start naming them?

13 A. Well, let's -- let's talk about -- you've been
14 here for the last couple days, haven't you?

15 A. I was here yesterday.

16 Q. Okay. I'll go through some of them. Shelby
17 Simmons?

18 A. Yes.

19 Q. Let's see. Jordan Moser didn't work there, did
20 she?

21 A. No.

22 Q. All right. Are you aware of some of the people
23 who have been part of this -- this investigation and
24 court case?

25 A. A little bit. I have a little bit of

1 information, yes.

2 Q. What employees of yours, or former employees,
3 have been here to testify?

4 A. Yesterday, as far as I know, Lisa Helbig and Otto
5 Helbig. I know they were here. Other than that, I
6 don't think any of the employees were here.

7 Q. Okay.

8 A. To testify.

9 A. Oh, no, Shelby Simmons was, but we already talked
10 about that.

11 Q. What about Angel Rose?

12 A. She worked for me.

13 Q. All right. Did you have any issues with Otto
14 Helbig?

15 A. Not generally.

16 Q. All right. Did, as far as you could tell,
17 Richard and Otto have any issues?

18 A. No.

19 SOLICITOR SWANSON: Your Honor, again, the -- Mr.
20 Geier's asking about specific instances of conduct
21 now. Under Rule 608 this type of examination is not
22 allowed.

23 MR. GEIER: Your Honor, I'm asking if there was
24 any issues. I haven't asked any specifics.

25 THE COURT: Okay. You can go ahead, but it

1 depends on what it elicits from him.

2 MR. GEIER: Sure.

3 THE COURT: So, if there is something specific
4 she's going to object again, but.

5 BY MR. GEIER:

6 Q. How did -- did Brandon end up getting fired, or
7 did he quit? What happened to Brandon?

8 A. He got fired.

9 Q. Okay. Were you around when Jerry was arrested?

10 A. Yes. Yes, I was there.

11 Q. All right. Tell me what you saw with that whole
12 night.

13 A. I pulled in. I got a call -- well, or a text
14 asking me to come, so I came. It was a police officer
15 there. And Ricky was out, being -- standing by his
16 car, and the police officer was with him. Jerry and
17 Pam and Michelle were in the side yard, kind of
18 talking together, away from Rock. So, I went over to
19 Ricky and talked to him, to see what had happened. I
20 was there as he talked to the police officer and gave
21 his statement; and then, when he decided to go ahead
22 and press charges, or have Jerry arrested.

23 MR. GEIER: Just one minute here. Nothing
24 further.

25 STEPHEN PASSIO, CROSS-

1 EXAMINATION BY SOLICITOR SWANSON:

2 Q. How are you, Stephen?

3 A. I'm good, ma'am. How are you?

4 Q. Good. It's my understanding that -- that
5 everyone actually liked working with you at the Porch,
6 right?

7 A. I'd like to think so.

8 Q. Yeah. Much more so than your brother over here,
9 right?

10 A. I hate to compare myself to other people.

11 Q. Okay. Speaking of your brother, we hear Richard,
12 we hear Ricky, we hear Rock. Who is this guy? What
13 does he go by?

14 A. He generally goes by Rock.

15 Q. Rock. Okay. Now, when Otto Helbig came on, you
16 and your dad had asked him to come on to kind of re-
17 evaluate the business and start making a profit,
18 right?

19 A. Yes.

20 Q. Business wasn't going so well.

21 A. Right.

22 Q. And then, when Michelle was killed, business
23 really shut down, right?

24 A. It did.

25 Q. Okay. So, everyone that we heard from in this

1 case is a former employee. Isn't that right?

2 A. I don't know.

3 Q. They were all --

4 A. I was here yesterday.

5 Q. Well, they were all let go.

6 A. Okay.

7 Q. Because the business shut down.

8 A. Yes, ma'am.

9 SOLICITOR SWANSON: Okay. Thank you. That's all
10 I have.

11 A. Okay.

12 MR. GEIER: Just real quick.

13 STEPHEN PASSIO, RE-DIRECT

14 EXAMINATION BY MR. GEIER:

15 Q. Ms. Swanson asked you if people liked working for
16 you much more than they liked working for Rock.

17 A. Okay.

18 Q. Was he unpopular at the Porch?

19 A. I wouldn't say that.

20 Q. Was he unpopular with some people?

21 A. He was a little more vocal than me.

22 MR. GEIER: Okay. All right. Thank you.

23 BY THE COURT:

24 THE COURT: Anything further? All right, sir.

25 You may step down. Anything further from the Defense?

1 MR. GEIER: Nothing further, your Honor.

2 DEFENSE RESTS.

3 THE COURT: All right. And you rest your case.

4 Is that correct?

5 MR. GEIER: That's correct.

6 THE COURT: All right. And there's no rebuttal.

7 Is that correct, Solicitor?

8 SOLICITOR SWANSON: That is correct.

9 THE COURT: Ladies and gentlemen of the jury, you
10 have now heard all of the evidence in this case.
11 There is a matter of law I need to take up with the
12 lawyers, and then what we have is to hear the closing
13 arguments from the attorneys; I am going to charge you
14 on the law that's applicable to this case; and we're
15 going to send it to you, for your deliberations. But
16 I do need to take up a matter of law with the
17 attorneys at this time. I'm going to send you back to
18 your jury room.

19 Even though you have heard all of the evidence,
20 ladies and gentlemen, you haven't heard the arguments
21 of the lawyers, you haven't heard my charge on the
22 law, and it would be inappropriate for you to begin
23 discussing this case. All right? Go back to your
24 jury room, grab a cup of coffee. We're going to bring
25 you back in shortly, and we're going to go ahead and

1 hear the closing arguments and charge you. All right?
2 Thank you.

3 JURORS LEAVE COURTROOM 10:31 A.M.

4 MOTIONS AND RULINGS:

5 THE COURT: All right. You all may be seated.
6 All right. Any motions?

7 MR. GEIER: Yes, your Honor. At this time, I
8 would renew my directed verdict motion, and without
9 any real further comment on that; and renew my motion
10 for mistrial. I think that's it.

11 THE COURT: All right. Any response?

12 SOLICITOR SWANSON: I would stand on the same
13 evidence that I spoke about during the initial
14 directed verdict motion.

15 THE COURT: Okay. All right. Well,
16 respectfully, again, taking the evidence in the light
17 most favorable to the State, I do think there's
18 evidence from which this jury could conclude the
19 defendant is guilty of murder.

20 As I told you, I'm also going to charge voluntary
21 manslaughter, because I think there is evidence as to
22 that, potentially. So, I am going to send it to the
23 jury.

24 Additionally, and again, deny your motion for a
25 mistrial, and I think it's time to go forward, and go

1 ahead and hear closing arguments.

2 How long do you think you're going to argue,
3 Solicitor?

4 SOLICITOR SWANSON: I mean, I typically do not go
5 past about 30 to 45 minutes. I wouldn't imagine that
6 I would today. I would like about 15 minutes, just to
7 prep my closing and things like that.

8 THE COURT: Okay.

9 SOLICITOR SWANSON: Prior to the jury coming in.

10 THE COURT: Certainly. And Mr. Geier, what about
11 you?

12 MR. GEIER: My guess is it's probably going to be
13 about a half-hour. And I'd like some time, too.

14 THE COURT: Okay. Well --

15 MR. GEIER: Is there any way we can give him --
16 or give him about 20, 30 minutes?

17 THE COURT: Looking at the clock in the back of
18 the room, what I would like to do, if this is fine
19 with you all, is maybe -- let's give them until 11:00
20 o'clock. That gives you guys about 26, 27 minutes or
21 so, before we're ready to go, so you all can get your
22 thoughts together.

23 I also wanted to show you a copy of the verdict
24 form in this case. I'm not sure if you all had seen
25 it before Crystal left yesterday. I just want to make

1 sure there's no objections to it.

2 Margaret, do you mind showing them that?

3 Yes?

4 SOLICITOR SWANSON: One additional thing, your
5 Honor. Under new rules, I suppose Mr. Geier could
6 make me argue to the jury twice. I'm fine with
7 waiving my first argument and just arguing last, if
8 Mr. Geier is fine with that.

9 MR. GEIER: That's fine, your Honor.

10 THE COURT: Okay. All right. So, Mr. Geier will
11 go first.

12 SOLICITOR SWANSON: The State has no objection to
13 the verdict form.

14 MR. GEIER: I have no objection.

15 THE COURT: Okay. All right. I also just tell
16 those of you who are still in here that, during the
17 closing arguments, the doors are not locked, but I
18 would just like everyone to try to keep their moving
19 around to a minimum, and try not to be going in and
20 out. Also, everyone needs to do their very best not
21 to head-bob, shake, you know, whatever, in agreement
22 with what's being said, or disagree. It's disturbing
23 for the jury, and they do watch you.

24 And then, I will just let you know, for the
25 record, that, when I actually start charging the law,

1 we actually lock the back doors. So, just to let you
2 know, you all will see during the trial all of the
3 lawyers in the room that are watching do a mass
4 exodus, because they don't want to hear the charge on
5 the law, because, to them, it's long and boring, and
6 all I do is read it. So, that's just to let you know
7 that, if you don't want to hear it, and certainly, you
8 don't need to if you don't want to, you're welcome to
9 go ahead and leave before I do that. Okay?

10 Yes?

11 SOLICITOR SWANSON: Ms. Winston has just asked me
12 -- she had to take Ms. Bennington out. Is she going
13 to be allowed to come back in, if she can control
14 herself during closing?

15 THE COURT: She can come in. She just -- she
16 needs to not shake her head and, you know. She just
17 -- she needs to keep herself, you know, together.
18 Okay?

19 SOLICITOR SWANSON: Thank you, your Honor.

20 THE COURT: Thank you. All right. We'll be at
21 ease until, like I said, roughly 11:00 o'clock or so,
22 and we'll go forward. Okay?

23 OFF THE RECORD 10:36 A.M.

24 BACK ON THE RECORD 11:05 A.M.

25 BY THE COURT:

1 THE COURT: Let's bring the jury in.

2 JURORS ENTER COURTROOM 11:06 A.M.

3 THE COURT: You all may be seated. Welcome back,
4 ladies and gentlemen. At this time, as I told you,
5 you are going to hear the closing arguments from the
6 attorneys; I am going to charge you on the law that's
7 applicable to this case; and then we're going to send
8 it to you. All right? So, with that said, if you
9 would please give your attention to Mr. Geier.

10 MR. GEIER: Thank you, your Honor.

11 CLOSING ARGUMENT ON BEHALF

12 OF DEFENSE BY MR. GEIER:

13 MR. GEIER: Good morning.

14 RESPONSES FROM JURORS.

15 MR. GEIER: When I came up here on Monday, I told
16 you this case was going to be about suffering. And it
17 was, wasn't it? There wasn't one person who came up
18 on the stand, who knew Michelle, that doesn't hurt
19 because she is no longer with us. Michelle's loss is
20 a tragedy. It's a tragedy to friends; it's a tragedy
21 to her family. You know, we saw a lot of tears from
22 people who knew Michelle. We didn't see that many
23 tears from the kids, and I mean, what does that tell
24 us about what their life has been like since they lost
25 their mother? It's -- it's a heartbreaking thing.

1 Unfortunately for Richard, he has got to continue
2 to deal with her loss and fight for his life. Richard
3 didn't want this to happen. He didn't cause it to
4 happen. He wished it didn't happen. You can hear on
5 the 911 tape, he was just devastated over the loss of
6 his wife, trying to maybe see if someone could help.
7 But you heard from the EMTs. You know, she had a shot
8 through the head, underneath the chin, out the back.
9 There wasn't anything that he or anybody else was
10 going to be able to do about that.

11 And so, now, my job is to talk to you all about
12 this case and what I felt was important. A lot of
13 what I'm going to talk about for the next several
14 minutes is what I talked to you about when I first
15 came here, a lot of those same issues. I'm going to
16 go over what I thought was important for you all to
17 remember and think about when you're deciding what's
18 going to happen in this case.

19 The first thing that I had on there was the
20 police investigation. We heard from Lieutenant Ginn,
21 who was the first person to show up at the scene. But
22 the primary witness in this case, or the primary
23 investigator, was Investigator McIntosh. One thing
24 that I wanted to make sure that he knew and you knew
25 were what some of the proper procedures were when

1 coming to a scene where someone has been killed, and
2 maybe it's murder. And he admitted that he's got a
3 number of duties when he gets there. He's -- he's the
4 main guy. Even though he was out-ranked by Lieutenant
5 Ginn, he was the investigator, and it was his job to
6 compile evidence, to make sure he talked to everybody
7 that was there, make sure everything was marked, make
8 sure everything was photographed and videoed, and he
9 didn't do that.

10 You're going to get a chance to see the photos
11 the State has submitted into evidence, and there's not
12 very many. Looking at this, or at the photos, there
13 is only some things you can tell about what was going
14 on in that room; where shell casings landed; where the
15 mystery shell case was. They found two shell casings
16 on the ground. Lieutenant Ginn said that there was
17 one stuck in the barrel, and he had to clear that out.
18 But first, he took a picture of it on the ground.

19 Now, I was in the military. I have pistols.
20 I've had guns jam. I've never in my life heard about
21 a shell getting stuck inside of a pistol. Sometimes
22 when there's a problem, they will stick up a little
23 bit from the ejection port, which is right there. You
24 can see on Mr. Passio's pistol. It's the hole at the
25 top. But in this case, Lieutenant Ginn said it was in

1 the barrel, somehow. Okay.

2 Otherwise, we have six or seven other photos. As
3 Don Girndt came up and talked to you a little bit
4 about, he expected to find hundreds, and there were
5 however many. Not many. I believe Investigator
6 McIntosh said there were 20 or so that were taken from
7 the scene. He didn't use any evidence markers or any
8 video. He didn't use any sketches or make any
9 sketches. He didn't make any trajectory rods, which
10 can verify where the pistol was when the various shots
11 were fired. Doesn't that seem like a huge thing that
12 we'd all like to know when we're trying to decide what
13 happened in that room? But again, something he didn't
14 do.

15 He didn't do any fingerprints on the gun. And
16 they did do some DNA. And what did the DNA show? It
17 showed some of Richard's DNA on the -- actually, a lot
18 of Richard's DNA on the trigger, which would make
19 sense; it's his pistol. But it also had Michelle's.

20 They didn't interview the children at the scene
21 to find out if any of them heard anything. He said
22 that they were sleeping. And then, he said they were
23 about to find out that they lost their mother. As far
24 as the investigator knew, they might have already
25 known that, but he never asked. Never asked them if

1 they heard anything; if they saw anything at all. As
2 it turns out, somebody did hear something, and we'll
3 talk about her in a minute.

4 They didn't use paper bags, or if they did, he
5 couldn't remember, to preserve Michelle's hands for
6 the gunshot residue, which he admitted was proper
7 procedure. They didn't take any gunshot residue from
8 Richard's hands, either one. No photos were taken of
9 the blood that was on the front porch. No photos of
10 any other blood in the house except for there on the
11 ground and on Michelle. We don't have any photos of
12 blood on Richard.

13 And Investigator Ginn, when he showed up there,
14 Richard was there on the front porch to meet him. And
15 Investigator Ginn comes up, here's what's going on,
16 tells him to sit down. He goes at -- he goes inside.

17 The State's witnesses admitted that there was
18 some blood on that chair, and there were some blood
19 drips on the floor there of the porch. Again, how
20 much -- where was it going? We don't have any idea,
21 because they didn't take any pictures. But where was
22 there not blood? There wasn't any blood on any door
23 handles. There wasn't any blood on any walls, or in
24 the bathroom, or in a pantry, or the baby, or any baby
25 clothes that they found anywhere. There wasn't any of

1 that.

2 There were some footprints. But the State's
3 witnesses admitted that somebody stepped in some blood
4 at some point, and it was one of them.

5 And they're trying to make a big thing about how
6 we think there was this long period of time between
7 Michelle's death and Richard's calling 911. But if
8 that were the case, wouldn't there have been some
9 footprints? Wouldn't there have been some blood some
10 place, as he had a big gash on his hand from the slide
11 bite of the pistol when he had his hand on top?

12 When they got done dealing with the scene, the
13 investigator didn't remember if he spoke to Richard
14 Passio, Sr., but Richard got up here, and he testified
15 that the investigator told him that he was 95 percent
16 sure, based on the angle of the shot. It wasn't the
17 testimony of the investigator that he didn't tell him
18 that; it was that he didn't remember if he told him
19 that.

20 With respect to the rest of the investigation,
21 they treated that the same way they treated the
22 investigation of the scene, haphazard. They didn't
23 interview the Horrys. And remember, Ms. Horry came
24 and testified for us, who lived across the street, if
25 she'd heard anything. They didn't interview the next-

1 door neighbor on the right side of the house as you're
2 looking at it. They didn't interview anybody who
3 lived behind the house. They didn't interview any of
4 those neighbors there. They interviewed Juanita
5 Patrom, and they interviewed Ivy Bryan. I want to
6 talk about them again in a minute.

7 It seems like the only people they ended up
8 interviewing were people at the Porch who had some
9 issues with Richard. Now, again, Michelle was loved,
10 and there isn't any question about that. She was
11 loved by her co-workers. And when you lose somebody
12 you love, you want somebody to blame. And Richard was
13 an easy target, because Richard was Richard. We've
14 heard stuff about Richard, about what he was like, and
15 he maybe wasn't the most pleasant person to work with
16 or be around.

17 And then, we had his mother-in-law, who said she
18 didn't like him from the start, and maybe, at some
19 point, wanted to make sure he got arrested for some
20 reason. I don't think this was some sort of elaborate
21 scheme to have him kill her. I don't think that was
22 ever the intention. But when her daughter ended up
23 dead, she was more than happy to call up the police
24 and blame Richard, knowing nothing about what was
25 going on there.

1 When we talk about the people who he interviewed,
2 he doesn't remember if he inter -- recorded seven of
3 the interviews that he took in this case. Didn't say
4 he didn't record them, but he said he didn't remember.
5 We know he recorded five of them, and some -- for
6 whatever reason, he didn't. And the ones that he did
7 record, I talked to him for awhile about it, and he
8 said -- he said, was this a -- when you're making
9 these notes, I mean, did you include everything that
10 was important and relevant? And he said, yeah, that's
11 -- that's what I do; that's what I'm trained to do.
12 And there were things that were important and relevant
13 that he did not include.

14 He left out what time Devan Porter and Kayla
15 Gerard left the Passio house. As there's a question
16 about timing of the reporting of this case, that was
17 important. He left out their statement that she was
18 intoxicated. That might have been important. The
19 only way we knew that he left those things out is
20 because those happened to be some of the ones that he
21 recorded. So, who knows what he left out in the other
22 interviews.

23 All right. Next, I want to talk about the
24 autopsy, but before I do that, I want to talk a little
25 bit about the EMT that got up there, Mr. Altman. And

1 he made some statements about coagulation of blood,
2 and I'm sure the State is going to try to use that to
3 convince you that she had been sitting there for
4 awhile before Richard called 911. But he also said
5 something that was real interesting, and, you know,
6 frankly, I missed it. I missed it, and I'm his
7 defense lawyer. I'm supposed to be paying attention
8 to everything. And as much as I try, sometimes things
9 get past it. It might've gotten past you. But what
10 he said was that, when he got to the scene, he put
11 some probes on Michelle, and he said she had a working
12 cardiac rhythm. But that wasn't really that
13 important, given the severity of the gunshot through
14 Michelle's head. She had a heartbeat. So, that has
15 to be a problem for the State, doesn't it? If she's
16 dead and laying there, and she still has a heartbeat,
17 how are they going to say that it was some long period
18 of time?

19 Now, the next person they called was Dr.
20 Presnell, who was a medical examiner. They could've
21 asked her about that. They certainly could have.
22 It's their burden to prove their case. They didn't
23 ask her a thing about it. Didn't ask her a thing
24 about it.

25 She said that suicides involving a gun are most

1 common to the temple, but the next most common was
2 under the chin or in the mouth. She said 20 percent
3 of the suicides involving a gun that she has worked
4 were women. So, despite what some folks said about,
5 well, I've, you know, seen one or two or three in all
6 my years, Dr. Presnell is a medical examiner, and she
7 looks at and examines dead people for her living, and
8 she said 20 percent. She said she didn't recall a
9 homicide that she had been a part of, and she said
10 she's done hundreds, where there was a contact wound
11 under the chin. She agreed that a lot of factors go
12 into how quickly blood coagulates, and she could not
13 rule out suicide.

14 And as both Lieutenant Ginn and Sergeant
15 McIntosh, as they were standing on the stand, and they
16 were talking about the exit wound, and they kept going
17 like this, to the back of the head, to indicate, I
18 guess, that was going, somehow, this way, she made it
19 clear, no, no, it was at the top of the head. So,
20 basically, straight up through her head, not with an
21 angle back, as if maybe somebody had the pistol like
22 this.

23 Now, next, I had mental health. She heard from
24 Dr. Stuchell. She wasn't some expert that the Defense
25 paid to come in. She was a treating psychologist for

1 Michelle and Richard. She wasn't doing this because
2 she got paid money. She was doing this because this
3 was her patient, and former patient, and she had
4 information, and I subpoenaed her.

5 And she came in and she told us about her
6 meetings with Michelle and Richard, both individually
7 and together. She testified under oath that she
8 diagnosed Michelle with bipolar disorder, and she
9 testified that she was qualified to do so. And she
10 testified that Michelle was making some progress in
11 their joint sessions. Unfortunately, Dr. Stuchell
12 left the practice. And before she left the practice,
13 she testified that Michelle was evaluated by Dr.
14 Bishop. She said, I don't know why the diagnosis
15 wasn't changed on the forms, but it should have been.
16 Regardless, Dr. Bishop's record, she said, had rule
17 out bipolar. So, in other words, she might be
18 bipolar; we have to rule it out.

19 She said that Dr. Bishop described a manic
20 episode, and had a conversation with Michelle that she
21 could be bipolar, but they didn't want to put her on
22 any medications because she was pregnant.

23 So, what followup did they do at Coastal Empire
24 Mental Health to rule out bipolar, or to treat
25 bipolar? They had her meet with a social worker, who

1 didn't appear to do anything with regards to either
2 the diagnosis of bipolar, or even ruling it out. If
3 there's someone to blame here, I think there's
4 somebody right there. Coastal Empire knew, or should
5 have known, that Michelle had a serious issue, or at
6 least, potentially had a serious issue, and they
7 didn't do anything to help her.

8 Next, I had fact witnesses. The first person I
9 want to talk about is Juanita Patrum. Juanita was the
10 lady who lived in the house next door that was kind of
11 pushed back behind the Passio house. She talked about
12 how the Passios had a dad pantry with food that only
13 Richard was able to go into and use. Just today, we
14 heard from Kaleb, and Kaleb said there was no such
15 pantry like that, no cupboard like that. The only
16 thing that would even be close to that was some place
17 where they kept the liquor, and we weren't allowed to
18 go in there, because there was liquor.

19 She said she was good friends with Pam and she
20 was good friends with Michelle. She had talked about
21 how she and Michelle would hang out almost every day
22 and drink and smoke, and she did these things while
23 she was pregnant. I'm talking about Michelle. And my
24 mom smoked while I was in the womb, and that's why I'm
25 so tall and good-looking, I guess. That's not -- see

1 that's something that people did 40 years ago. It's
2 not something that responsible parents do anymore.
3 And there's a reason why Richard didn't want her to do
4 that.

5 And she was drinking. Now, one person got up and
6 testified and said, well, it was only once in awhile,
7 I'd only see her have a drink. But think about how
8 many people testified that they would sit around and
9 drink with Michelle when she was pregnant. It
10 might've been several times a day.

11 Juanita also sort of falls into the ear witness,
12 a point that I have there, so I'll address that now.
13 She said she didn't hear anything at 5:50 in the
14 morning. She also said she didn't hear anything at
15 any time during the night. She was asleep. She also
16 wasn't outside the whole time. She said she went out
17 about 5:30 or so and took her dog for a walk. Then
18 she went inside, and she fed the cats. I wasn't clear
19 if she was going on the front porch to feed the cats,
20 or if she was doing that inside, but -- and she was
21 getting ready to go to work. And then she walked out
22 to go walk to work, and as she walked out Lieutenant
23 Ginn pulled up.

24 Lieutenant Ginn got there, what, a couple minutes
25 after he got the 911 call? It's exceedingly possible

1 that, when this happened, she was inside. And she
2 said she had a window unit in her house, an air-
3 conditioning unit. It was June. My guess is that was
4 on. Also, she was about as far away from that room in
5 her house as you could be from the Passio living room.
6 Her house was, as you're looking at it, on the left
7 side, towards the back. The Passio living room was on
8 the right side, in the front.

9 One thing she also said that was interesting, and
10 we heard it from somebody else, too, her good friend,
11 Pam Bennington, was that she never -- she was very
12 clear, I've never seen Richard walk that dog; he
13 didn't walk that dog. Of course, we heard from
14 Latesha Horry, who lived across the street, who said I
15 saw Richard walking the dog; I saw him walking the dog
16 at night, typically.

17 Next, I want to talk about Brandon Ashcraft.
18 Brandon was an interesting cat. He testified that he
19 was having an affair, or had had an affair, with
20 Michelle, maybe three months before her death. And I
21 asked him, so, what, she would've been about seven
22 months pregnant at the time. He said, oh, okay, well
23 maybe six months. All right.

24 He was also the one who said Richard came to me
25 the night Michelle died; he texted me or sent me a

1 Facebook message, asking if I could -- he could borrow
2 a bottle at 2:00 in the morning; and he came over.
3 And according to Brandon, Richard said, I'm really
4 worried about Michelle; I hope she doesn't commit
5 suicide; I hope tonight's not the night. I don't know
6 if Richard said anything to him about that, but, if
7 Richard's plan was to kill his wife, I guess you could
8 say that's a tricky way to try to throw everybody off
9 the trail, and say, oh, I hope she doesn't kill
10 herself tonight; and then next day say, oh, she killed
11 herself. It seemed a little difficult to believe that
12 anybody would say something like that, let alone
13 somebody who had the intent to murder their wife.

14 Angel Rose, she worked at the Porch. Again, she
15 was upset that she had lost her friend. And the State
16 has tried to paint Richard and Michelle's relationship
17 as terrible; that they were always fighting. But
18 Angel Rose said sometimes there was tension; sometimes
19 there wasn't; sometimes they got along just fine;
20 sometimes they were -- there was issues there.

21 Linda Bennington. We called Linda Bennington.
22 The Defense called her, primarily, to talk about her
23 daughter Pam. So, let's talk about Pam before we get
24 to Linda. Pam said, also, that Richard never walked
25 that dog. She said that there was a food cupboard

1 with his name on it, with Richard's name on it, that
2 nobody was allowed to get into. Again, Kaleb said
3 that wasn't true. She admitted that, when Richard
4 called the police to have her boyfriend arrested for
5 assaulting him, that she told Richard, you're going to
6 regret this. She denied that there was ever any sort
7 of scheme or plot or plan in her mind to try to egg
8 Richard on to hitting Michelle, so they could call the
9 police on him, and get Michelle on out of there. Said
10 that, why would she ever do that. And I asked her,
11 did you tell your ten-year-old grandson about that
12 scheme? And she said why would I ever do that? I
13 said I don't know; I don't know why you would ever do
14 that. We had Giovanni get up and he said, yes, my
15 grandmother told me about that; told me about that
16 plan.

17 She said that, at some point, Richard shoved
18 Michelle, and at some other point, she had shown her
19 bruises. But again, she never called the police on
20 any of those occasions.

21 And it was interesting when Richard called the
22 police on Pam's boyfriend, Jerry, and he went to jail,
23 and he sat there for, I think they said ten days,
24 thirteen days or something like that. Eventually, he
25 was released. He wasn't convicted. And I said, well

1 what happened? She said Michelle convinced Richard --
2 actually, that's not true, she said Michelle made
3 Richard drop those charges. Michelle made Richard
4 drop those charges. All we've heard about is how
5 controlling Richard is; about how Richard rules the
6 roost; Michelle can't do anything for herself. But in
7 this case Richard, allegedly assaulted, had somebody
8 arrested, and Michelle made him drop those charges.

9 The last thing she said, saying that Michelle was
10 taking meth in Ohio. I don't know if that's true or
11 not. I don't know what came out of Pam's mouth was
12 true. (1) because some of the things were outlandish;
13 but then, let's go back to Linda Bennington, who
14 admitted, when she talked to police, that Pam was a
15 pathological liar. Then she said, well, not about
16 like really big things; just little things.

17 Pathological liar is not something that I reserve
18 for my friends or relatives who tell white lies a lot.
19 She also admitted -- I'm sorry. She didn't admit --
20 she didn't remember telling the police that Pam was
21 going to accuse Richard of doing this. We had to call
22 Investigator McIntosh to the stand, who confirmed
23 that, yes, she told her Pam was going to end up
24 calling and saying that it was Richard.

25 Let's talk about Ivy Bryan real quick. She also

1 falls under the ear witness category. Ivy testified
2 that she heard four shots. The timing of it is hard
3 to say. Again, I had to call Investigator McIntosh up
4 to the stand and confirm that, when he spoke to her
5 initially, she said it was at 1:00 o'clock, 1:00 a.m.
6 And on the stand, I think she said 2:30 or 3:00. So,
7 somewhere between the two, two-and-a-half-hour period
8 of time, she heard shots, four shots. Not three.
9 Four. From the direction of the Passio household.
10 Said she heard arguing. She didn't identify who was
11 arguing. She didn't say if it was two females or two
12 males, or a male and a female. Didn't say if they
13 sounded like they were inside or outside. Said heard
14 some arguing; heard four shots. And she didn't call
15 the police or tell anybody about that until the next
16 morning. Now, at that point, I would assume, based on
17 what was going on a couple houses down, that there
18 were ambulances and fire trucks and police cars out
19 there. So, maybe that's what jogged her memory. But
20 again, how many shots did she hear? Four. Was there
21 any evidence in the record that there were four shots.
22 I didn't hear any. There were three shells collected
23 from the scene. Two on the ground, and then the --
24 the mystery shell in the barrel.

25 Also, I might add, no one else heard these shots.

1 Now, maybe someone else heard those shots, and we
2 would know if somebody else heard those shots, if the
3 police had gone and interviewed everybody in the
4 general area, but they didn't do that.

5 Let's talk about Shelby Simmons. Again, Shelby
6 was another one of Michelle's friends. And again,
7 just like a number of others, she testified that she
8 would hang out, and drink and smoke with Michelle.
9 Including when she was pregnant. She said she would
10 only drink a Four Loko, or some wine or something. I
11 don't know if you know what Four Loko is, but it's got
12 a lot of alcohol.

13 She also testified that Richard called her at
14 2:00 in the morning, the morning that Michelle died,
15 asking for a baby bottle, just as he had done, I
16 guess, later, with Brandon. And before Richard hung
17 up, she heard Michelle on the other side of the phone.

18 Let's talk about Angelina. Angelina was Richard
19 and Michelle's, at the time, nine-year-old daughter.
20 Again, it's -- it's not an easy decision to put
21 someone that age on the stand. It's not something you
22 do lightly. It's something you only do when you know
23 somebody's life is at stake, and it only happens when
24 they have information that can assist the jury make
25 their decision.

1 Angelina testified that, that morning, she said
2 in the night, it was still dark out. But the things
3 that she said later on would tell us that it was
4 morning. That she heard bang, bang; want me to do it
5 again; bang. And she heard Dad crying. And then she
6 said she heard people in the house. And then, her
7 grandpa came in and told her not to come out; just
8 stay in the room. So, while she was waiting there,
9 she said, I fell back asleep. And then, Grandpa had
10 me come out; we went to Jasper's Porch and had
11 breakfast.

12 As long as we're talking about kids again, we
13 talked about -- or we talked to Giovanni. Giovanni
14 testified that there were issues between his parents.
15 He told you a little bit about what his mom was like,
16 and a little bit about what his dad was like. I think
17 Giovanni was pretty young. He was older than Angelina
18 at the time. He was maybe ten. The thing I want you
19 to remember about Giovanni was, when he woke up that
20 morning, his dog was in the room, shaking, like it did
21 when it would hear thunder. And he wondered, I wonder
22 if there was a thunderstorm outside.

23 I want to talk about Richard Passio, Sr. He said
24 he loved Michelle like she was his daughter; that a
25 lot of times when they started having problems, he was

1 the one who would try to work them through it; so much
2 so that, when there was a lot of things going on in
3 Ohio, he had -- he moved them up, or I should say
4 down, to South Carolina, so he could help. Put them
5 up in a house, got Richard a job, eventually got
6 Michelle a job. He said that Michelle had a good
7 heart.

8 And again, I -- I want to make sure that you all
9 don't think I'm blaming Michelle, or that you think
10 I'm that trying to say that this is all Michelle's
11 fault that Richard is sitting here right now, because
12 that's not what I'm saying. I don't think Michelle
13 had any ability to stop what came, and I don't blame
14 Michelle at all. I don't think anybody who knew
15 Michelle would ever blame her.

16 He said that she was having problems. And you
17 might recall when Dr. Stuchell was talking about
18 common symptoms and behaviors of people who have
19 bipolar disorder, she talked about things like impulse
20 control. She talked about things like problems
21 handling money. She talked about things like
22 promiscuity. She said they are, a lot of times, prone
23 to alcohol and drug abuse.

24 The reason I bring that up right now -- and
25 again, we heard about possible infidelity, anyway. We

1 heard about drug and alcohol abuse. Let's talk about
2 impulse control. I believe that's what led to this
3 death. She said, in her notes, that -- I asked her,
4 are you having suicidal thoughts. Michelle said no.
5 I don't know that Michelle was necessarily suicidal
6 all the time, but the problem with bipolar is,
7 sometimes you're not yourself. And Richard Passio,
8 Sr., told us about an occasion where Michelle wasn't
9 really acting herself, wasn't acting normal, and that
10 was Hurricane Bonnie.

11 When I first heard, you know, let's talk about
12 Hurricane Bonnie, I didn't really remember what that
13 was until I looked it up to figure out, well, when was
14 that. And that was the storm that came through. It
15 wasn't a hurricane anymore when it hit us. It was a
16 tropical storm, and it crept through the Low
17 Country, and it washed roads out all over the place,
18 including here in Jasper County. Some of those roads
19 were closed for a year. It wasn't just a rain storm
20 at that point. It was big-time. And in the middle of
21 that storm, she walked out of the house, barefoot, and
22 was walking the streets, and it was the middle of the
23 night. And he saw her walking there and tried to
24 convince her to get in the car, and she wouldn't. I
25 guess she eventually agreed to go back, and he said I

1 followed her to make sure she actually would go back.
2 Doesn't that sound like somebody who has impulse
3 control?

4 Now, the Solicitor tries to make it sound like,
5 boy, life must've been really, really bad with Richard
6 if she was willing to do that. Again, there was never
7 any question that there were highs and lows in this
8 relationship. And I think it's unreasonable. I don't
9 think it's something that people who are thinking
10 clearly would ever do, no matter how bad something
11 got. If you really believe that your husband was this
12 controlling monster, as the State is trying to portray
13 of Passio, would you leave your children with him in
14 the middle of a storm, and walk outside without any
15 shoes on? That sounds like impulse control. That
16 sounds like risky behavior.

17 The last witness I want to talk about is the last
18 one we spoke to, and that's Kaleb. Kaleb is mature
19 beyond his years, and he's had to be. He was mature
20 beyond his years because this has been happening.
21 This is something that he's been living with for the
22 last two years, since his mother died. He's mature
23 beyond his years because, at some point, DSS took him.
24 He's mature beyond his years because he was sort of a
25 surrogate father and a surrogate mother for his

1 siblings.

2 He testified that there were times when Michelle
3 would leave. Supposed to be gone just for a couple
4 minutes, and she'd be gone for hours, leaving Kaleb in
5 charge. He grew up too fast, and it's surprising to
6 see how mature he is, but he's still a kid. He's
7 still a kid. And the things that he might've said to
8 an investigator or to Hope Haven two years ago, I
9 don't know. I don't know if there was any real big
10 consistency there. If there was, as I said, he -- he
11 has had to grow up in a hard, hard way.

12 I don't think there's any question that he loves
13 Richard Passio, despite the fact that he is not his
14 flesh and blood. He's still the only father he's ever
15 known, but if there's going to be somebody who's going
16 to blame their father for killing their mother, you
17 would think it would be somebody who didn't have that
18 blood connection. But obviously, Kaleb doesn't blame
19 his father for the death of his mother.

20 Motives. So, we heard some talk about possible
21 motives as to why Richard would kill Michelle. And
22 when I came up here initially, I said, everything
23 they're going to tell you about these potential
24 motives have happened before. This is nothing new in
25 the life of Richard Passio. There was talk about

1 infidelity. There was talk about infidelity in Ohio.
2 The infidelity talk came from Brandon Ashcraft.
3 Brandon suggested that Richard heard a rumor that he
4 was having some sort of affair with his wife. And I
5 think he said something like, if I believed it, this
6 would be a different conversation. Not I'm going to
7 kill you, mind you, just this might be a different
8 conversation.

9 Other than that, what evidence was there that,
10 (1) that Michelle was having an affair. But if you
11 believe that Brandon Ashcraft, that, in fact, there
12 was an affair, what evidence that was put on that
13 Richard knew about it, this time? I don't think there
14 was any question he knew about the old affairs, but
15 what evidence is there that he even knew that Michelle
16 was having an affair with Brandon? I didn't hear any,
17 other than Brandon's statement.

18 The other motive, I suppose, is the fighting.
19 That there was this fight at a bar because Michelle
20 was supposed to be back earlier, and that she was
21 smoking, and he knocked the cigarette out of her hand.
22 We did hear they fought a lot. Maybe not every day,
23 but a lot. More than most couples would fight. What
24 did the State present that, on this night, there was a
25 fight that was unlike any they'd ever had, and it

1 caused Richard to murder his wife? There wasn't
2 anything that you saw or heard that suggests that this
3 argument or fight was any different.

4 Now, there was the 911 tape where Richard said,
5 we were fighting all night, and she -- she hit me a
6 couple times. Well, we heard from Kaleb that him
7 getting hurt by Michelle wasn't all that unusual,
8 either.

9 Lastly, I want to talk about the government's
10 burden. As I said when I got here and first spoke to
11 you, Richard, when he walked in the door, was presumed
12 innocent, and you had to believe that, and you had to
13 accept that. Now, in order to get past that
14 presumption of innocence -- and the Judge is going to
15 tell you what the law is, and she's going to talk
16 about this stuff. But in order to prove somebody
17 guilty, they have to strip away every reasonable doubt
18 that you could have.

19 Now, in this case, this is a circumstantial
20 evidence case. You can get a conviction with
21 circumstantial evidence. Circumstantial evidence is
22 still good evidence, but in order to do that, there
23 has to be a logical chain. You have to be able to
24 say, okay, we don't know for certain this happened,
25 because nobody saw it; but everything lines up and

1 everything makes sense. And only then, when it's all
2 the way lined up, is that good enough for a conviction
3 on circumstantial evidence.

4 Now, even though there are slightly different
5 analyses as to how you reach proof beyond a reasonable
6 doubt, or I should say, considering evidence between
7 direct and circumstantial -- and again, the Judge is
8 going to tell you what the law is, and pay close
9 attention to that. But regardless of that, again,
10 they've got to prove Richard's guilt beyond a
11 reasonable doubt. That's the highest standard in the
12 law. It's the most difficult burden to overcome. You
13 don't have to have every single possible doubt
14 imaginable out of your head, but you do have to have
15 every reasonable doubt out of your head.

16 If there is anything that you just don't know
17 about, like, well, no, maybe that was true, that's a
18 reasonable doubt, and you can't find him guilty. In
19 other words, when -- in our criminal justice system,
20 if you say, eh, he might've done that, you have to
21 find him not guilty. If you say, eh, he could've done
22 that, you have to find him guilty. If you say, he
23 probably did that, you have to find him not guilty.
24 If you say, I'm pretty sure he did that, you have to
25 find him not guilty. If you say, I'm almost certain

1 he did it, but there's this one thing I just don't
2 know about, you have to find him not guilty. And that
3 is what our criminal justice system is predicated on.
4 That's what separates us from countries that none of
5 us here want to live in, because we have those
6 protections.

7 And the reasons why those protections are in
8 place are because of investigations like the one in
9 this case where there are so many questions, as far as
10 what was there, what was seen. That's why the burden
11 is so high, because, if it wasn't high, yeah, we think
12 he did it; yeah, well, he says he did it, and I trust
13 him because he's a police officer, that would be
14 enough. That is not enough in our country. They have
15 to prove it beyond a reasonable doubt.

16 Each one of you has the power and authority and
17 responsibility of your own opinion. You're going to
18 go in there and you're going to talk about what your
19 thoughts are. And some of you might convince each
20 other about something, and that's what this process is
21 supposed to do. But when that conversation is over,
22 no matter what it is, if you have a reasonable doubt,
23 it's your responsibility to say no. It's your duty,
24 and it's maybe one of the most important duties you've
25 ever had to undertake as a United States citizen,

1 other than maybe voting. But even voting doesn't
2 necessarily directly have somebody's life in the
3 balance.

4 That's all I have. Thank you very much.

5 THE COURT: Thank you, Mr. Geier. Ms. Swanson.

6 SOLICITOR SWANSON: Thank you, your Honor. May
7 it please the Court?

8 THE COURT: Yes. You all okay? Does anyone need
9 a break before we do this? No? You okay? Okay.

10 SOLICITOR SWANSON: You all good?

11 CLOSING ARGUMENT ON BEHALF OF

12 THE STATE BY SOLICITOR SWANSON:

13 SOLICITOR SWANSON: I'm going to start by
14 addressing some of the things that Mr. Geier just
15 talked to you about in his closing. He talked to you
16 a lot about the crime scene, what was and wasn't done.
17 There were not hundreds of pictures taken. Things
18 like that. Well, let me ask you this. Do you need to
19 see hundreds of pictures of Michelle's bloody,
20 lifeless body on the couch? Would that help you in
21 determining Richard Passio's guilt? Fact is, police
22 knew who was at the scene that day, and they knew it
23 was Michelle bleeding all over the place, because here
24 she is with a perfect gunshot wound right here that
25 went straight through her head and killed her almost

1 instantly.

2 We knew who handled the gun. It was Richard's
3 gun. He says that he -- he and Michelle struggled
4 with the gun. We knew who touched the gun.

5 McIntosh didn't speak to the children that day.
6 Okay? Well, you know what, that was an act of
7 kindness and mercy not to drag those children into the
8 police station to talk about their dead mother that
9 their father killed.

10 Richard Passio, Sr., the fixer, the one who Rock
11 always called with all of his problems, was the only
12 one that testified that, oh, he heard everyone was 95
13 percent sure that this was a suicide. Well, when did
14 he hear that? When he got on the scene, (a) if that
15 were said, and I highly doubt that, it was prior to
16 any investigation. Believe you me, the State has not
17 spent over two years prosecuting a murder when
18 everyone's 95 percent sure it's a suicide. Because it
19 wasn't.

20 The Defense wants you to believe that this is
21 Michelle's fault; that this is bipolar's fault; that
22 this is Coastal Mental Health's fault; when, in fact,
23 it's really just Richard's fault. And don't get
24 confused. You're not here to decide whether or not
25 Michelle had symptoms of bipolar. Okay? You're here

1 to decide whether or not Richard Passio murdered his
2 wife.

3 One of the last things Mr. Geier asked you was
4 what evidence we had presented that this was a fight
5 like no other. Well, maybe the evidence that Rock
6 brought a gun to this fight; that Michelle ended up
7 shot through the head. That's a fight like no other.
8 No more fights now.

9 What if tonight was the night that something
10 happened; what if tonight she decided to commit
11 suicide; right after I went and retrieved the gun that
12 she committed suicide with.

13 I mean, we heard Richard describe there's lot of
14 things. Psychic was not among them. Okay? This is
15 not a coincidence. He picked up that gun at Jasper's
16 Porch. Carried the case out of the restaurant. You
17 saw him on camera. Took the gun out, left the case in
18 the trunk of the car, where it was found, and took it
19 to the fight.

20 He had been drinking all night. He was up late.
21 He was running all around Ridgeland like a maniac,
22 going from his house, to Schooner's, to Jasper's
23 Porch, and then over to Brandon's, and then back to
24 his house, all in the middle of the night. He was --
25 he was getting a little crazy. Okay? Because he had

1 lost all control on Michelle, and he knew the end had
2 come, and he knew that she was taking steps to leave
3 him. Michelle was not getting out of this marriage
4 alive.

5 And that night, when she was on that couch, she
6 tried to fight him off. Okay? He was 300 pounds
7 then. Big guy. Okay? Big guy. She's sitting on the
8 couch. She's trying to fight him off. He pushes her
9 down. He begins to shoot. She's flailing, he's
10 shooting, bullets are going behind her head, because
11 he misses her head, because she's fighting him off,
12 and end up in the wall, in the ceiling. And then,
13 eventually, he gets control, and he shoots her right
14 here. She has his DNA under her fingernails.

15 Now, I want to talk a little bit about Rock's
16 story. Let's talk about the 911 phone call. And I'm
17 going to -- I'm going to read you some of the 911
18 call, and then I'm going to play, you know, just a
19 couple of things from it.

20 *My wife shot herself in the head. I*
21 *think she shot my hand. Yeah, she got shot*
22 *in the neck. My contacts are missing. I*
23 *can't see her. I was trying to get it out*
24 *of her hand. She shot three times. She shot*
25 *in the air twice, then put it under her neck.*

1 And I'm going to play that clip for you, in his voice.

2 STATE'S EXHIBIT NUMBER 1, CLIP OF
3 911 CALL, PLAYING.
4 END PLAYING CLIP OF STATE'S EXHIBIT
5 NUMBER 1.

6 SOLICITOR SWANSON: *She shot in the air twice,*
7 *and then she put it under her neck.*

8 I'm going to play another clip.

9 STATE'S EXHIBIT NUMBER 1, CLIP OF
10 911 CALL, PLAYING.
11 END PLAYING CLIP OF STATE'S EXHIBIT
12 NUMBER 1.

13 SOLICITOR SWANSON: Shot, this time, just two
14 minutes later, just can't keep his story straight, my
15 wife shot three times in the air, and then one time
16 right here.

17 He also says in that tape that she knocked his
18 contacts out. Is that believable? You heard McIntosh
19 testify, he didn't see any marks on Richard's face or
20 anything, you know, to explain that -- that she
21 could've knocked him so hard in the face that his
22 contacts flew out. He complains about not being able
23 to see because of his contacts, and yet, he's not
24 attempted to turn a light on in the house.

25 Three shots or four? I don't know. He can't

1 even decide. But remember Ivy Bryan's testimony that
2 there were two shots, a pause, and two more, some time
3 between 1:00 a.m. and 3:00 a.m., when she was outside,
4 and after she heard a male and female voice arguing.
5 She did specify that she heard a male and female voice
6 arguing; a door slam; and then a little later, the
7 four gunshots.

8 And remember, we're talking about Ivy's house,
9 which is right here. She's in her back yard, so,
10 she's outside, and then the Passio household right
11 here.

12 The 911 call is a total lie. It's an acting job
13 by Richard, because we hear later from the other first
14 responders that something isn't right.

15 He also tells Lieutenant Ginn, who testified that
16 Rock told him they fought over the weapon, three
17 rounds were fired, and a fourth round ended her life.

18 Otto Helbig testified that Rock told him Michelle
19 had been shooting towards him, but missed him and hit
20 the wall. Now, does that make any sense? Because you
21 saw where her head was, and you saw where those bullet
22 strikes were, and they were behind her head. How in
23 the world did that happen? She's laying down like
24 this and trying to shoot at him behind her? No. No,
25 no, no, no.

1 You heard from the two first responding police
2 officers, as well as emergency personnel who came to
3 the scene. Everyone noted unusual things about that
4 scene. Richard called 911 at 5:52. All right?
5 That's on the tape. That is a do-or-die time. Okay?
6 Lieutenant Ginn, you actually hear arriving on-scene
7 six minutes later, at 5:58. Michael Singleton, the
8 paramedic, testified he was at the patient by 6:00
9 a.m. McIntosh was there at 6:00 a.m. and taking
10 pictures. So, we are talking about observations made
11 between six and eight minutes after Richard calls 911.
12 Richard, who supposedly called 911 immediately, oh,
13 God, my wife just shot herself, this just happened.

14 They all noted that there was no dripping blood.
15 They all noted that the blood was coagulating, kind of
16 getting to be that jelly-like substance. The blood on
17 Michelle's chest and in her ear almost looks like a
18 piece of wax, I mean, that is solidifying.

19 They also noted the smell of what they thought
20 was decomposition. Both the EMT and the paramedic
21 said that her body felt cold. Her extremities were
22 cold to the touch. Her skin was turning an ashen
23 color. And when the EMT, Ryan Altman, observed
24 Richard's hand wound, he stated that it was crusty
25 with blood, and did not appear fresh; and that the

1 clothes that he was wearing, though covered in blood,
2 appeared dry.

3 Now, McIntosh testified that this was taken a
4 couple days later, but I mean, is this a hand wound
5 that you need immediate medical attention for? Well,
6 he certainly got it that day. You know why he got it?
7 Because, as his dad says, he thinks he's smart. And
8 if EMS treated him, they had to rinse that wound on
9 his right hand, the one that he would pull a trigger
10 with, and bandage it, getting rid of any GSR that
11 would possibly be on his hand.

12 The scene did not appear fresh. The shooting had
13 not just happened, the way Richard said it did. He
14 needed time to get things under control, get his story
15 straight, tell whatever children were awake what he
16 needed them to do.

17 The scene also appeared unusual for a suicide,
18 for a number of reasons. These first responders said
19 that they had never attended a suicide scene where
20 there were multiple shots fired. Only one of the
21 first responders had attended a female suicide scene
22 that involved a gun. And in fact, he talked about 300
23 suicides, and only one female having been a suicide
24 victim with a gun. That's just based on his
25 experience. And then, Mr. Geier got out of him, which

1 helped me, you know, that he had learned that in
2 training, too, that this was something to be expected.

3 Now, when Mr. Geier talked about Dr. Presnell
4 saying that 20 percent of their suicides were female,
5 she did not specify that those were females with a
6 gun. Those are females, female suicides. Okay?
7 Regardless, it's unusual, and that's the point.

8 Did you ever think about why we might not see
9 multiple gunshots at a suicide? Because people don't
10 usually miss their head.

11 Let's talk about the time line for a little bit.
12 Michelle went to the bar at 11:00. Rock went looking
13 for her about midnight. She leaves; he sends her home
14 with friends. He stays for a few minutes, and then we
15 see him picking up the gun at Jasper's Porch at --
16 going into the restaurant at 12:53, leaving the
17 restaurant at 12:55. Picks it up in the gun case that
18 all the witnesses describe. Okay? We see that gun
19 case in the video. We heard from three different
20 witnesses the gun is at the restaurant. It's
21 certainly not at the house with eight children and the
22 wife that he has looked up on the Internet to diagnose
23 as bipolar.

24 Rock calls Shelby around 1:45 for a baby bottle.
25 Weird. They have eight kids. They don't have a

1 bottle in the house? It's a little odd. Then
2 messages Brandon for a bottle at 2:00 a.m. Also,
3 weird. Shows up at Brandon's. Keeps acting weird.
4 Says some weird things. We talked about that. Some
5 -- some premonitions he seemed to have about Michelle
6 committing suicide that night, and he leaves about
7 2:10, 2:15. And like I said, all before that time
8 he's running around town. And then some time he gets
9 home between 2:15 and 3:00, and he kills her.

10 Ivy Bryan, you heard from her. She's a high
11 school senior; does not know the Passios; had never
12 really interacted with them. Has no ill will or
13 anything towards Richard. Doesn't know him. She was
14 simply outside with her friend and remembers the four
15 shots. Two, pause, and then two more, between 1:00
16 and 3:00 in the morning, because she went to bed
17 shortly after 3:00.

18 Then we hear from Juanita Patrum, and you saw how
19 close she lives to the house. That cottage is just
20 feet away from the main house, and she told you at the
21 time that she worked at the Piggly Wiggly, Monday
22 through Friday; had to be at work at 6:00 a.m. every
23 day. This was a Thursday night, going into early
24 mornings of Friday, the early morning hours of Friday.
25 And so, she knew she got up between 4:30 and 5:00 that

1 morning, and she would go out and walk her dog. Well,
2 she didn't hear anything from 4:30, 5:00 o'clock, on.
3 No gunshots. You can't tell me that she wouldn't have
4 heard those gunshots, being that close to the house,
5 when Ivy was able to hear them from two doors down.

6 We know he shot her earlier. Can I tell you
7 exactly when? No. But it wasn't when he called 911,
8 and that makes the call a complete lie.

9 She also remembers Rock on the porch, fully
10 dressed, which was unusual. Just another thing that's
11 unusual about the scene. He was usually wearing
12 pajamas, something like that, around the house. And
13 Juanita, having been friends with Michelle and living
14 so close, gave you insight to their dysfunctional
15 relationship. Michelle would go over there to get
16 away from Rock. She would keep money over there. She
17 would keep her cigarettes over there. Okay? Because
18 Rock hated it. Rock was trying to control her.

19 You know, they can allude to the fact that she
20 was bipolar and he didn't want her to go on some
21 crazy, manic spending spree, but in reality what did
22 Pam tell you? She was saving up money so that she
23 could get a divorce.

24 And don't forget the bruises that Michelle showed
25 her under her clothing. Rock, again, who was

1 described by his father as smart, or at least he
2 thinks so, knew better than to hit her in front of
3 people. He knew to close those doors. And that's why
4 Michelle wasn't killed until a few weeks after Pam
5 went back up to Ohio.

6 I'm going to talk about motive and the fighting
7 that night. Three witnesses testified about the
8 argument at the bar. Rock's calling up there.
9 Michelle's one minute late. The phone's ringing off
10 the hook. Everyone knows it's Rock. They're like,
11 ugh, God, guess who that is. He almost immediately
12 walks into the bar, confronts Michelle, begins to
13 argue with her, knocks the cigarette out of her hand.
14 They're arguing. He sends her home with friends,
15 stays another few minutes, when he makes that phone
16 call, and then goes on to Jasper's Porch before going
17 home.

18 Jordan, the bartender, Jordan Moser, who works at
19 Schooner's, sweet friend of Michelle's, okay? They
20 had gotten close. She got emotional on the stand.
21 She testified that Michelle had shown her Cathy
22 Badgett's card one night when -- when Rock was, you
23 know, kind -- maybe in the restroom, or not right
24 there, because Jordan was a confidant of Michelle's,
25 and she knew what was going on.

1 She also told you that she loved her children,
2 and that she talked about that -- them constantly.
3 Does that sound like a woman who would leave eight
4 children on her own volition, by her choice?

5 They had also made plans to meet up the next day.
6 Okay? Jordan was going to go meet her children for
7 the first time. They were going to go out to lunch.
8 This wasn't a Michelle who was laying in bed,
9 wallowing about this horrible relationship. She
10 wanted to go have some social interaction and make
11 plans on Friday.

12 Angel testified that, yes, sometimes Rock would
13 control Michelle at work. Sometimes he would tell her
14 what not to eat and what to eat, and what to wear.
15 He'd sent her home to change before.

16 And we also heard from Brandon, in addition to
17 what he said about Rock coming over that night, that
18 Michelle was an awesome person.

19 Now, the science. The science is hinky. I get
20 it. It can't tell us alone what happened in this
21 house. Okay? But it's certainly not inconsistent
22 with homicide. I've already talked to you a little
23 bit about the GSR. You know, Rock was not swabbed for
24 GSR, but, you know, he had made sure that his hand was
25 treated, and rinsed, and you know, put a bandage on

1 his gun hand. So, there wasn't really any
2 opportunity.

3 Now, there was GSR on Michelle, which is to be
4 expected, because gunshot residue is a measure, or can
5 be conclusive as to whether or not someone was near a
6 gun that discharged. If she is fighting him off and
7 he is shooting at her, she's going to have GSR on her.
8 All right? And she could've touched the trigger as
9 well. So, we've got both of their DNA on the gun,
10 which does make sense. Not conclusive about anything,
11 but it makes sense.

12 Dr. Presnell cannot rule out homicide because, as
13 she told you, based on the medical findings, she
14 couldn't tell who pulled the trigger. Well, the only
15 one that's still alive that was there is Richard
16 Passio.

17 She did note several abrasions, cuts, and bruises
18 on Michelle, and she also told you that this was a
19 contact wound that went straight to the brain,
20 straight through the brain; that there was a muzzle
21 impression underneath her chin. A perfect shot. A
22 perfect shot for somebody that's flailing around and
23 just decides willy-nilly to kill themselves. Does
24 that make sense to you?

25 She also tells us that Michelle's blood alcohol

1 level was a .07, below the legal limit. Not the drunk
2 as a skunk, you know, visual that the Defense wanted
3 you guys to have. And she testified that that was a
4 snapshot of what she was when she died.

5 That's something else that Rock says on the 911
6 tape, too. She was really drunk and she's attacking
7 me.

8 Then we heard from a number of members of the
9 community and people who worked with Michelle, who
10 were close to Michelle, about their relationship
11 history, and the fact that Michelle wanted a divorce.
12 These are people that Michelle felt safe around, and
13 confided in regarding her tortured relationship, first
14 of which Carla Ashcraft.

15 Carla was a friend. She had grandchildren about
16 the, you know, the age of some of Michelle's children.
17 They'd come over and play. She told you that Michelle
18 was trapped; that she had trouble getting out. And it
19 was fine when she first started going over to her
20 house, but eventually, she starts parking two blocks
21 away? Does that seem odd to you that she has to hide
22 the fact that she's over at Carla's house? That she
23 can't go see a friend of hers and allow the children
24 to play together? She wasn't stuck in the house. She
25 didn't want to be stuck in the house, Rock wanted her

1 stuck in the house. And that's -- that's another
2 thing. That's why he kept her pregnant for pretty
3 much the whole twelve years of their marriage. Lot
4 easier to control a woman who's pregnant and has a
5 bunch of kids to look after, isn't it?

6 Now, Carla, after Michelle confides in her, her
7 advice is, look, you can't put up with this; you can't
8 live this way; you gotta leave him; I'm going to give
9 you the name of my divorce lawyer; she helped me get
10 custody of my kids; go see Cathy Badgett. What does
11 she do? She goes and sees Cathy Badgett. Cathy
12 Badgett comes in; testified that Michelle came and saw
13 her on March 2nd of 2016, about a divorce. She was
14 concerned about her situation. She seemed frightened.
15 Cathy referred her to a domestic violence support
16 group, who could help offer support. Not something
17 she does on a routine basis, but something that she
18 felt appropriate after her conversations with
19 Michelle. She also told you that she was familiar
20 with Michelle because members of the community had
21 voiced concerns to her about Michelle's situation.

22 Shelby Simmons was another confidant of
23 Michelle's, someone, you know, a place where she would
24 escape to and get away from Rock. The Passios didn't
25 like that. They didn't like that one bit. They --

1 they stopped letting them work together. Shelby was
2 fired.

3 Pam Bennington, Michelle's mother, I'm sure you
4 remember her testimony. She lived in the house for
5 eight months. Now, she did witness the aggression,
6 Rock's aggression, over the course of their marriage.
7 She told you about him getting mad and throwing a cat
8 against the wall, flipping over a kitchen table. You
9 know, Michelle showing her bruises. And she also knew
10 that Michelle would have never committed suicide; that
11 she was a Catholic; she was afraid of going to hell,
12 and she would've never done that.

13 Michelle only survived weeks after Pam went back
14 up to Ohio, and sadly, Pam has to live with that
15 guilt. Rock was behind closed doors again, and he
16 took advantage of that.

17 I'm going to move on to the Defense's case.
18 Sarah Stuchell is still here, for what purpose? I
19 don't know. It's a public forum. But remember, she
20 seemed more interested in arguing with me than
21 answering my questions or just simply telling us what
22 was in those medical records. She could never point
23 out the diagnosis of bipolar that Mr. Geier promised
24 you in his opening statement. Claimed it wasn't her
25 responsibility to update that system; it was some --

1 some mistake in the system.

2 And for whatever reason, she seemed biased, not
3 just a mental health patient who had -- who had seen
4 someone a few times. After avoiding my questions, she
5 sat right down behind Richard. Continues to sit
6 there. Clearly a busy woman. So, I don't know. You
7 get to choose whether or not to believe her or her
8 opinions, you know, that she rendered when she wasn't
9 answering my questions. You get to believe whether or
10 not she really diagnosed Michelle with bipolar.

11 What we did learn from her was that Richard had a
12 number of issues, too. All right? And that, on top
13 of the fact that Michelle was diagnosed -- never
14 diagnosed as bipolar, nor was she ever prescribed any
15 medication. Now, if she had been bipolar, even very
16 depressed, do you really think that, in this day and
17 age, the day and age where doctors over-prescribe,
18 over-treat, that such a severe illness, the kind that
19 Stuchell testified to, would go unmedicated,
20 unprescribed?

21 We also learn that Michelle was never suicidal.
22 There's never any note in any of those medical records
23 that she endorsed any feelings of hurting herself or
24 others. She was also compliant in her counseling. In
25 fact, during her last session, which was just about a

1 week, week and a half before her death, the note was
2 that she was coherent and goal-directed. Does that
3 sound like somebody that's off-their-rocker crazy?

4 You remember all the testimony about their
5 dysfunctional relationship that was disclosed to the
6 counselors, infidelity on both sides, all this kind of
7 stuff. Rock knew about the infidelity; he knew about
8 the cheating; and he knew about the fact that she
9 wanted a divorce, because all of that was discussed.

10 Defense also called the crime-scene extra
11 ordinaire, Don Girndt, who went on and on about what
12 you should do with a crime scene, most of which is
13 more relevant to a situation where you have maybe,
14 like, a stranger home invasion. You're looking for a
15 suspect, and you want to, like, swab doorknobs and
16 stuff like that, because you don't know who was in the
17 house. We're talking about a couple who was in their
18 home, and we know the two people who were in that
19 room.

20 He looked at some pictures. He reviewed the case
21 file. You heard he didn't recall reviewing any
22 statements that didn't go along with the Defense
23 theory. He wouldn't own up to that. And then he
24 tried to say -- well, after saying that there was
25 nothing in the file that didn't match Richard's

1 version of events, and I pointed out that there were
2 several versions, he kind of backtracked and said,
3 well, you can kind of smash those up all together and
4 mesh them. Okay. Does that sound like an expert
5 opinion? He couldn't say anything about the
6 coagulated blood, or the fact that the body was cold.

7 You know, his main thing was saying that the --
8 the crime scene did not appear staged. There's been
9 no allegation that Passio, as smart as he is, staged
10 that crime scene.

11 We heard from Richard Passio, Daddy, the problem
12 solver, the fixer. You can even hear Richard asking
13 if he can call him on the 911 tape. Can I call my
14 dad? Make no mistake, his father is an enabler and a
15 fixer. But at the end of the day, even he had to
16 admit that Michelle was personable and outgoing, and
17 you couldn't help but like her. And more importantly,
18 he was nowhere in the chain of events that led up to
19 her killing that night. He can't testify to any of
20 that. He's simply not a witness. And of course, Dad
21 does not want to believe the good Catholic boy that he
22 raised and home-schooled could kill his wife.

23 The children. The fact that the children were
24 paraded through this courtroom to testify on behalf of
25 their murderous father is just sad. And I wasn't

1 going to beat up on them. Okay? I really tried not
2 to. They've been through enough. They're victims,
3 too, here. What kind of man takes their kids' mother
4 away, and then makes them re-live it in front of
5 strangers?

6 Poor Giovanni couldn't tell us what counselor he
7 had spoken to, because he's been to too many. Not one
8 of the children, except Angelina, Angel, claimed to
9 have heard anything that night. And I'm not going to
10 call her liar, but she thought she heard someone's
11 hand smacking something. That doesn't sound like a
12 gun shot. It doesn't sound like multiple gun shots
13 that rang through in the room next to her, one of
14 which went through a window and broke it.

15 When I asked her, she also said she could -- she
16 -- she can frequently hear arguing from that room,
17 because that's where she sleeps, but she can't always
18 make out the words. Is it possible that she
19 misunderstood her mother's words? Of course it is.
20 You want me to do it again, she testified to. You
21 want me to do it again. Does that not sound an awful
22 lot like, I won't do it again, or don't do it again?

23 Let's not forget that the house was totally quiet
24 when police arrived. That house, with eight kids, two
25 adults, and a dog was never quiet. And Linda

1 Bennington admitted that. And I think common sense
2 would also, you know, tell you that as well. That's a
3 lot of people in one house. Eight kids, one of which
4 is a baby, one of which -- you know, and then -- and
5 then add an animal into the mix, somebody's always
6 going to need something. Someone's always going to be
7 awake, particularly this newborn.

8 You also heard testimony that, around Richard,
9 the children would act like little robots. They
10 heeded anything he said. They would stay quiet, if
11 they needed to stay quiet. Everyone in that house was
12 living in fear of Richard, including the shaking dog.
13 Remember the shaking dog. Well, you'd probably be
14 shaking if the 300-pound guy just yelled at you to be
15 quiet.

16 It's -- it's sad. I mean, it really is, and
17 it's probably more of a ploy for sympathy than
18 anything, parading these children through here. But
19 -- but don't forget that their loss came at his hands.

20 Kaleb, the oldest, I was a little bit harder on
21 him, because I think he -- you know, I mean, his --
22 his endorsement of his dad went over the top. All
23 right? Was he lying, lying? I don't know. He wasn't
24 very good at it, but he was certainly embellishing and
25 trying to paint his father, the only person he has

1 left, and the only dad he's known, in the best light.
2 Probably natural for a child that was raised by this
3 guy.

4 Let's talk just for a minute about why this is
5 not suicide. At the time of her murder, Michelle,
6 like so many battered women, had reached out and
7 started to make moves. Okay? She had started to
8 reach out for support. And Rock knew this. And even
9 though she was beaten down physically, psychologically
10 abused, she began to make plans. She went to see the
11 divorce attorney; she was saving up money; she reached
12 out to CODA, Citizens Opposed to Domestic Abuse; and
13 she was doing her counseling.

14 She spoke to her mom about her plans without
15 Rock. And when Rock realized she was really going to
16 make that happen, that's when he killed her. They
17 were no longer empty threats. Was Michelle depressed?
18 Of course she was. Who wouldn't be in her situation?
19 She was trapped in that house all day with eight
20 children, just given birth. She was overwhelmed with
21 child care duties, a newborn. But worst of all she
22 was married to this guy, Richard Passio. But she
23 wasn't suicidal.

24 Just about to finish up with you guys. As I told
25 you, and Judge Mullen told you, at the beginning of

1 the case, the State bears the burden of proof, and I
2 must prove that Passio is guilty beyond a reasonable
3 doubt, which means you must be firmly convinced.
4 Okay? Firmly convinced of his guilt. Doesn't have to
5 overcome any doubt. Nothing is -- in life is certain,
6 and we are not held to that burden.

7 Mr. Geier told you, as well, and I'm going to
8 tell you, too, this is a circumstantial case. I'm not
9 saying this is, you know, some case that you're not
10 going to have to think about too much. But Judge
11 Mullen is going to tell you that circumstantial
12 evidence is no different than direct evidence, and as
13 long as we have substantial circumstantial evidence
14 that leads you to Richard Passio, that's enough. And
15 that can leave you firmly convinced, and that's what
16 we have here.

17 Now, he is indicted for murder, which, under the
18 law, is defined as an intentional killing of another
19 with malice aforethought. Intent can be inferred from
20 the use of the gun. Malice can be formed in a second.
21 But here, I would argue that malice was formed when he
22 went to Jasper's Porch, walked in that door at 12:53,
23 but we're going to fight with her some more, and
24 picked up that gun, and brought that gun to the fight.
25 This one. Her blood's still all over it.

1 Mr. Geier promised you a lot that he never
2 delivered, in his opening statement. He told you all
3 the stuff about what the evidence was going to show,
4 and that just never materialized. So, you can't rely
5 on what the lawyers tell you; you have to rely on the
6 evidence. And I told you, your biggest tool in
7 evaluating this case is your common sense. Rock may
8 think he knows it all, but he don't know more than you
9 twelve people do, I can assure you. You decide the
10 truth, and you decide whether or not to believe these
11 witnesses.

12 And don't let the Defense try and demonize
13 Michelle. There's obviously no excuse for murder.
14 The only two people there that night. Rock made sure
15 he was around that morning to tell his story, and
16 that's exactly what it is, a story, a lie, a made-up
17 tale, designed to explain away the perfect shot in a
18 chaotic scenario; designed to get rid of the wife that
19 he could no longer control; so he could start fresh,
20 re-invent himself. He's had an extreme make-over
21 already.

22 I'm going to leave you with his quote:

23 *I know who I am, I'm a dude playing a*
24 *dude, disguised as another dude.*

25 Well, he does know who he is, and he does know

1 what he did. He knows the monster inside that he has
2 tried to disguise. Don't be fooled by that disguise.
3 I'm asking you to return a verdict of guilty on
4 murder, and speak the truth that Michelle can no
5 longer speak.

6 JURY CHARGE:

7 THE COURT: Ladies and gentlemen, does anyone
8 need a break? My charge takes about 20 minutes or so.
9 You all okay? You're sure? Okay.

10 Well, with that said, then, we're going to go
11 ahead and close the doors in the back. If anyone
12 wants to leave, they need to do so now.

13 Mr. Foreperson, members of the jury, you followed
14 very patiently and listened very attentively to the
15 presentation in this case, and I want to thank you for
16 that. It now becomes the duty of the trial judge and
17 to the constitution of this state to charge and
18 instruct you on the law that's applicable to this
19 case, and it's your duty as jurors to accept and apply
20 the law as the Court will now state it to you.

21 As jurors, it is your exclusive duty to decide
22 all of the issues of fact in this case. You must
23 determine the effect, the value, and the weight of the
24 evidence. Both the State of South Carolina and the
25 defendant, Mr. Passio, have a right to expect that you

1 will carefully consider and evaluate the evidence, and
2 apply the law of the case to the evidence. And by
3 doing so, again, both the State and Mr. Passio will
4 receive and obtain a fair and impartial trial in this
5 matter.

6 Now, the State of South Carolina, by the bill of
7 indictment in this case, charges the defendant,
8 Richard Passio, Jr., with the offense of murder. Now,
9 I remind you that the fact the defendant was arrested,
10 charged, and indicted in this case is not evidence in
11 this case, and cannot be considered by you as evidence
12 in this case; nor does it create any presumption or
13 inference of guilt. An indictment is simply the
14 formal written instrument which contains the charge
15 made against the defendant. It's the formal document
16 by which the case is brought into the Court.

17 Now, the defendant in this case, Mr. Passio, has
18 pled not guilty to this indictment, and that plea puts
19 the burden on the State to prove him guilty beyond a
20 reasonable doubt.

21 Now, a person charged with committing a criminal
22 offense in South Carolina is never required to prove
23 himself innocent. I charge you that it is an
24 important rule of law that the defendant in a criminal
25 trial, no matter what the seriousness of the charges

1 may be, will always be presumed innocent of a crime
2 for which an indictment was issued, unless guilt has
3 been proven by evidence satisfying you, the jury, of
4 that guilt beyond a reasonable doubt.

5 Now, this presumption of innocence does not end
6 when you begin your deliberations, but it accompanies
7 the defendant throughout the trial until you reach a
8 verdict of guilt, based on evidence satisfying you of
9 that guilty beyond a reasonable doubt. Now, the
10 presumption of innocence is like a robe or
11 righteousness that's placed about the shoulders of the
12 defendant, and it remains with him until it has been
13 stripped away by evidence satisfying you of the
14 defendant's guilty beyond a reasonable doubt. The
15 presumption of innocence is not a mere legal theory
16 that we use, it's not just a legal phrase. It is a
17 substantial right to which every defendant is entitled
18 unless you, the jury, are satisfied from the evidence
19 of the defendant's guilt beyond a reasonable doubt.
20 So, what is reasonable doubt in the law? A reasonable
21 doubt is the kind of doubt that would cause a
22 reasonable person to hesitate to act in their most
23 important decisions.

24 Now, the State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. The term

1 reasonable doubt must be given its plain and ordinary
2 meaning. However, to the extent that I may define it
3 for you again, a reasonable doubt is the kind of doubt
4 that would cause a reasonable person to hesitate to
5 act in the most important of their personal decisions.
6 The defendant is entitled to every reasonable doubt
7 arising in this case. If, upon a fact essential to
8 conviction, you have a reasonable doubt as to how that
9 issue should be resolved, you must resolve that
10 reasonable doubt in favor of the defendant.

11 Now, some of you may have served as jurors in
12 civil cases where you were told that it was only
13 necessary to prove that a fact is more likely true
14 than not true, such as by the greater weight, or what
15 we call a preponderance of the evidence. In criminal
16 cases the State's proof must be more powerful than
17 that. It must be beyond a reasonable doubt.
18 Suspicion, no matter how strong, is insufficient to
19 convict a person charged with a crime. That the facts
20 and circumstances presented may seem suspicious, and
21 the defendant's guilt may seem probable, this is not
22 sufficient in the law to convict. Proof beyond a
23 reasonable doubt is proof that leaves you firmly
24 convinced of the defendant's guilt.

25 Now, there are very few things in this world that

1 we know with absolute certainty, and in criminal
2 cases, the law does not require proof that overcomes
3 every possible doubt. If, based on your consideration
4 of the evidence, you are firmly convinced that the
5 defendant is guilty of the crime charged, you must
6 find the defendant guilty. If, on the other hand, you
7 think there is a real possibility the defendant is not
8 guilty, you must give the defendant the benefit of the
9 doubt and find him not guilty.

10 Now, I remind you that, during this trial, you
11 and I have certain duties to perform. As the judge
12 it's my responsibility to preside over the trial in
13 this case, and I also have the duty to rule on the
14 admissibility of the evidence that's entered during
15 the trial. You are to consider only competent
16 evidence that's before you. You are to consider only
17 the testimony which has been presented from the
18 witness stand and any other exhibits which have been
19 made a part of the record in this case.

20 I have the additional duty to charge you the law
21 applicable to this case. I am the sole judge of the
22 law in this case, and it's your duty as jurors to
23 accept and apply the law as I will now state it to
24 you. If you have any idea as to what the law is or
25 what the law ought to be, and it does not agree with

1 what I now tell you the law is, you must abandon this
2 idea, because you are sworn to accept the law and
3 apply the law exactly as I state it to you.

4 In every case tried in this court before a jury,
5 the jury becomes the sole and exclusive judge of the
6 facts. A trial judge cannot intimate, comment on, or
7 make any statement to a trial jury about the facts in
8 this case. And since you, the jury, are the sole
9 judges of facts in this case, you are not to infer
10 from what I've said during the progress of this trial,
11 in ruling upon the admissibility of evidence or
12 otherwise, or anything that I say now during the
13 course of this instruction to you that I have an
14 opinion about the facts in this case. The law does
15 not allow me to have an opinion about the facts in
16 this case. This is a matter solely for you, the jury,
17 to determine, and again, it is your duty to determine
18 the effect, the value, and the weight of the evidence
19 that's presented during this trial.

20 Now, there are two types of evidence which are
21 generally presented during the trial: direct and
22 circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual
24 knowledge of a fact, such as an eyewitness. It is
25 evidence which immediately establishes a main fact to

1 be proved. Circumstantial evidence is proof of a
2 chain of facts and circumstances indicating the
3 existence of a fact. It is evidence which usually
4 establishes collateral facts from which the main fact
5 may be inferred. Circumstantial evidence is based on
6 inference, and not on personal knowledge or
7 observation.

8 Crimes may be proven by circumstantial evidence.
9 The law makes no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence. However, to the extent the State relies on
12 circumstantial evidence, all of the circumstances must
13 be consistent with each other, and when taken
14 together, point conclusively to the guilty of the
15 accused beyond a reasonable doubt. If these
16 circumstances merely portray the defendant's behavior
17 as suspicious, the proof has failed.

18 The State has the burden of proving the defendant
19 guilty beyond a reasonable doubt, and this burden
20 rests with the State regardless of whether the State
21 relies on direct evidence, circumstantial evidence, or
22 some combination of the two.

23 Now, ladies and gentlemen, it's your duty to
24 determine the credibility of the witnesses who have
25 testified in this case, and credibility simply means

1 believability. It's your duty as jurors to analyze
2 and to evaluate the evidence, and determine which
3 evidence convinces you of its truth. In determining
4 believability of the witnesses who have testified in
5 this case, you may believe one witness over several
6 witnesses, or several witnesses over one witness. You
7 may believe a part of the testimony of a witness and
8 reject the remaining part of the testimony of that
9 same witness. You may believe the testimony of a
10 witness in its entirety, or reject the testimony of a
11 witness in its entirety. You may consider whether any
12 witness has exhibited to you any interest, bias,
13 prejudice, or other motive in this case. And you may
14 also consider the appearance and manner of any witness
15 while on the witness stand.

16 Now, there may have been evidence presented that
17 witnesses made prior statements which may not be
18 consistent with the witnesses' present testimony. You
19 may use this evidence to decide whether to believe the
20 witness. You may also use evidence of the earlier
21 contradictory statements to determine the truth of
22 those statements. It is up to you to decide to
23 believe the earlier statements or the testimony given
24 at trial. If a witness has shown to have knowingly
25 testified untruthfully concerning any material matter,

1 you may consider this in determining whether to trust
2 the witness' testimony as to other matters. You may
3 reject all testimony of that witness, or give all or
4 part of the testimony the weight you think it
5 deserves.

6 Now, a person who has a past criminal record is
7 competent to testify during a trial. A past record
8 does not affect the ability of that witness to
9 testify. The past record may only be considered by
10 you, if at all, in determining the witness'
11 believability. Remember, ladies and gentlemen, you
12 are the sole judges of fact in this case, and the
13 believability of any and all of the witnesses.

14 Now, normally in a trial, a person cannot give
15 what we call opinion testimony. Normally, when a
16 person testifies, they must testify as to what they
17 either saw, heard, or sensed by smell, or something of
18 that nature. However, there is an exception. When
19 someone is qualified because of education and/or
20 experience, they are permitted to give their opinion
21 in certain areas if the Court qualifies them that way.
22 And that evidence, ladies and gentlemen, is for you to
23 use in any way you see fit, and give it the weight and
24 credibility you believe it deserves.

25 Now, when an expert witness is called by either

1 the State or the defendant, they expect to be paid and
2 should be paid. You should not take into
3 consideration the fact that the witness is paid,
4 unless there is some evidence or circumstances
5 appearing from the evidence which would fully and
6 reasonably convince you that the testimony of the
7 witness has been influenced because of the sum which
8 he has been paid as a witness.

9 Now, during this trial you have heard testimony
10 from children. Where a witness is a child, you must
11 determine, as with any witness, whether that testimony
12 is believable. In deciding believability, you may
13 consider not only matters that I have already
14 discussed with you, but you may also consider the age
15 of the child, the child's ability to observe and
16 remember facts, and the child's ability to understand
17 and answer questions. Because children may not fully
18 understand what is happening here, it is up to you to
19 decide whether the child understood the seriousness of
20 appearing as a witness at this criminal trial; whether
21 the child understood the questions; whether the child
22 has a good memory; and whether the child understands
23 the difference between lying and telling the truth.
24 In addition, that child may be influenced by the way
25 that the questions are asked. It is up to you to

1 decide whether the child understood the questions
2 asked.

3 Now, I instruct you and emphasize that the fact
4 that the defendant did not testify is not a factor to
5 be considered by you in any way in your deliberation
6 and in your consideration on the question of the guilt
7 or the innocence of the defendant. It must not be
8 considered by you in any manner whatsoever. A
9 defendant has the constitutional right to remain
10 silent, and the assertion of this right must not be
11 considered by you in your deliberations. I repeat,
12 under your oath you are to draw no conclusion
13 whatsoever from the fact that the defendant in this
14 case did not testify.

15 The fact that the defendant did not testify
16 should not even be discussed in the jury room. The
17 burden of proof, as I stated to you, is on the State.
18 The defendant is not required to prove his innocence,
19 and the burden of proof remains on the State to prove
20 guilt beyond a reasonable doubt.

21 Now, the defendant in this case is charged with
22 the murder of Michelle Cramer -- I'm sorry, Michelle
23 Passio. I apologize. And to prove this charge, the
24 State must prove beyond a reasonable doubt that the
25 defendant killed another person with malice

1 aforethought. Malice is hatred, ill will, or
2 hostility towards another person. It is the
3 intentional doing of a wrongful act, without just
4 cause or excuse, and with an intent to inflict an
5 injury, or other circumstances that the law will infer
6 evil intent. Malice aforethought does not require
7 that malice exists for any particular time before the
8 act is committed, but malice must exist in the mind of
9 the defendant just before and at the time that the act
10 is committed. Therefore, there must be a combination
11 of the previous evil intent and the act.

12 Malice aforethought may be either express or
13 inferred, and these terms, express and inferred, do
14 not mean different kinds of malice, but merely the
15 manner in which malice may be shown to exist. That is
16 either by direct evidence or by inference from the
17 facts and circumstances which are proved. Express
18 malice is shown when a person speaks words which
19 express hatred or ill will toward another, or when the
20 person prepared beforehand to do the act which was
21 later accomplished. For example, lying in wait for a
22 person or any other acts of preparation are going to
23 show that the deed was within the defendant's mind,
24 with the express malice. Malice may also be inferred
25 from conduct showing a total disregard for human life.

1 Now, ladies and gentlemen, if you find that the
2 State has failed to prove beyond a reasonable doubt
3 that the defendant committed murder, you may consider
4 whether the State has proved beyond a reasonable doubt
5 that the defendant has committed voluntary
6 manslaughter. To prove voluntary manslaughter, the
7 State must prove beyond a reasonable doubt that the
8 defendant took the life of another in a sudden heat of
9 passion, based on sufficient legal provocation. Now,
10 both heat of passion and sufficient legal provocation
11 must be present at the time of the killing to
12 constitute voluntary manslaughter. Sudden heat of
13 passion may, for a time, affect a person's self-
14 control, and temporarily disturb a person's reason.
15 The sudden heat of passion must be the type that would
16 make an ordinary person unable to clearly reflect on
17 their actions, and would produce an uncontrollable
18 impulse to do violence. Sufficient legal provocation
19 must be the type that would make a person of ordinary
20 reason and caution to become enraged and to lose
21 control temporarily. The provocation needed for
22 voluntary manslaughter must come from some act of, or
23 related to, the victim. Words alone, either vulgar or
24 insulting, are not enough to be the legal provocation.
25 And where death is caused by the use of a deadly

1 weapon, the words must be accompanied by some overt,
2 threatening act which could have produced the heat of
3 passion.

4 Now, the exercise of a legal right, no matter how
5 offensive it is to another, is never sufficient legal
6 provocation for voluntary manslaughter. If the heat
7 of passion had cooled, or if there is enough time
8 between the provocation, if any, and the killing for
9 the passion of a reasonable person to cool, the
10 killing would not be voluntary manslaughter. In
11 deciding whether a reasonable person would have had
12 enough time to cool off, you should consider all of
13 the circumstances surrounding the killing. You may
14 consider the nature of the provocation, if any; the
15 defendant's mental and physical state; and the
16 circumstances and relationship between the parties.

17 Now, the defendant in this case denies his guilt
18 and claims the deceased committed suicide. Suicide is
19 the deliberate determ -- or, excuse me -- termination
20 of one's own life. The defendant claims he did not
21 participate in the defendant's -- I'm sorry -- in the
22 victim's death, but that the defendant [sic] took her
23 own life by her own acts. Ladies and gentlemen, the
24 defendant does not have to prove that the deceased
25 committed suicide. Instead, the State must prove

1 beyond a reasonable doubt that the defendant did not
2 commit suicide, and that the defendant killed the
3 deceased. If you find that there is a reasonable
4 doubt as to whether the deceased committed suicide,
5 you must find the defendant not guilty of murder and
6 voluntary manslaughter.

7 Mr. Foreperson, members of the jury, as you
8 retire to begin your deliberations in this case, I
9 wish to express the hope that each of you are mindful
10 of the importance of your responsibility here. You're
11 not called upon very often to serve as jurors, and the
12 proper performance of that duty requires that each of
13 you reach the height of freeing your mind of all
14 improper influences. So, please don't get the idea
15 that I'm trying to intimate to you how I think you
16 should decide this case. As I've already told you,
17 under the laws of our state, you, the jury, are the
18 sole judge of all the questions of fact. Again, it
19 would be highly improper for me to influence you in
20 your performance of that duty.

21 However, ladies and gentlemen, as the presiding
22 officer of this court, I am vitally concerned that
23 whatever verdict you reach will be the result of you
24 going back into your jury room and confining your
25 consideration to the evidence and the law that you've

1 heard here in this courtroom, weighing fairly and
2 impartially, as I have every confidence you will.

3 Ladies and gentlemen, you owe no support of
4 sympathy to anyone.

5 Mr. Foreperson, I remind you, your verdict must
6 be unanimous. It must be the verdict of all twelve
7 jurors. And to that end, my law clerk, Crystal, who
8 left yesterday for her final day with me, prepared a
9 verdict form. It simply has the case caption. It's
10 the State of South Carolina versus Richard Passio,
11 Jr., and it has two questions, Mr. Foreperson, both of
12 which you must answer.

13 The first questions says this:

14 *As to the charge of the murder of*
15 *Michelle Passio, we find the defendant,*
16 *Richard Passio, Jr., --*

17 -- and there are two places for a checkmark. The
18 first one says not guilty, and the second one says
19 guilty. If you choose not guilty, it says, *please*
20 *proceed to Question Number 2.* If you do proceed to
21 guilty, it says, *stop deliberating, you have reached a*
22 *verdict.* And you need to go ahead and alert us and
23 let us know.

24 Ladies and gentlemen, if you find the defendant
25 not guilty of the charge of murder, you would then

1 consider the lesser-included charge of voluntary
2 manslaughter. And it says the same question as to
3 that charge. It says that's the lesser-included
4 charge of voluntary manslaughter, we find the
5 defendant, Richard Passio, Jr., either not guilty or
6 guilty.

7 Ladies and gentlemen, please don't infer the
8 order in which I put not guilty or guilty. Every
9 trial we just reverse them. After that, Mr.
10 Foreperson, there is a place for you to sign the
11 verdict form and date it.

12 Ladies and gentlemen, once the jury has reached a
13 unanimous verdict, I need you to knock on the jury
14 room door, and we are going to accept you back into
15 the courtroom to take your verdict.

16 Ladies and gentlemen, I am going to remind you of
17 just a few things. As you have seen during the trial
18 of this case, my court reporter has been taking down
19 everything that anyone has said. I do need to tell
20 you, though, that there is no transcript, no written
21 transcript of this trial. If there is testimony you
22 would like heard back, what I can do is bring you back
23 out here and play that witness' testimony, but I need
24 to let you know, ladies and gentlemen, that that
25 witness' testimony must be played in its entirety. In

1 other words, the direct, the cross, the re-direct, the
2 re-cross, however long it was, I am required to play
3 the entire thing for you. All right?

4 Additionally, ladies and gentlemen, all evidence
5 that has been entered into this case will be back with
6 you in the jury room. Ladies and gentlemen, if it is
7 not back there with you, it has not been introduced as
8 evidence and you are not entitled to it. I sometimes
9 will have a jury to ask me, can we have this or that,
10 and I will just have to send a note back that says,
11 no, you can't, because it wasn't entered into
12 evidence. All right?

13 Mr. Foreperson and members of the jury, for the
14 last time I'm going to send you back to your jury
15 room, and I'm going to tell you not to begin
16 discussing this case. If there's something further on
17 the law that the lawyers want me to charge you, I'm
18 going to bring you back out here, and I'm going to
19 charge you further. If not, Mr. Foreperson, you're
20 going to receive this verdict form and the evidence in
21 the case that you'll see is marked with exhibit
22 stickers. That is going to be your signal to begin
23 your deliberations. All right?

24 And I remind you again, when you have reached a
25 unanimous verdict, simply knock on the door and we

1 will accept you back into the courtroom to take your
2 verdict. All right?

3 I understand, Margaret, are we getting some food,
4 or is there some food back there?

5 MADAM CLERK: It's here.

6 THE COURT: It is here, ladies and gentlemen.
7 So, please go back, if it is in the jury room, begin
8 eating, ladies and gentlemen. All right? I
9 appreciate your patience. We'll be back with you
10 shortly.

11 Again, Mr. Foreperson, you will receive the
12 evidence and the verdict form, or I will bring you
13 back out and charge you further on the law. All
14 right? Thank you.

15 JURORS LEAVE COURTROOM 1:14 P.M.

16 BY THE COURT:

17 THE COURT: Any exceptions or additions from the
18 State?

19 SOLICITOR SWANSON: The only thing I'd like to
20 mention is that the gun and the ammo are in the same
21 box, so, I suppose we need to keep one of those items
22 out.

23 THE COURT: Okay.

24 SOLICITOR SWANSON: So, they --

25 THE COURT: There's no safety on it, too. It's

1 just attached, correct?

2 SOLICITOR SWANSON: Right. So, if they want to
3 see the gun, maybe they just need to come out into the
4 courtroom, or.

5 THE COURT: Can we -- so is there any ammo in the
6 gun?

7 SOLICITOR SWANSON: No.

8 THE COURT: Let's just take the --

9 SOLICITOR SWANSON: We'll just keep this out.

10 THE COURT: Let's take the ammunition out and
11 send the gun back. Okay? Okay. Thank you. All
12 right. Mr. Geier, any exceptions or additions?

13 MR. GEIER: The only thing I would note, for the
14 record, is that I object to the verdict form for the
15 fact that it has the voluntary manslaughter charge
16 that I've already objected to.

17 THE COURT: Okay. Thank you. I appreciate it.
18 All right. You all, have you been through the
19 evidence this morning, or have you all seen it, know
20 exactly what's here?

21 SOLICITOR SWANSON: Well, we'll make sure
22 everything's here.

23 THE COURT: Okay. Margaret, why don't you go get
24 them set up first, and then we'll -- we'll take care
25 of this. And I need the alternate, yes, if that's all

1 right.

2 SOLICITOR SWANSON: Do you all have a cart that
3 you take it in on, or?

4 THE COURT: Do you use a cart, or just?

5 MADAM CLERK: We just take it back.

6 THE COURT: Just take it back.

7 SOLICITOR SWANSON: All right. Okay.

8 THE COURT: Just pile it in sections. Okay. All
9 right.

10 COURT REPORTER: Do you want the CD's to go back?

11 THE COURT: You can put the CD's back, but they
12 can't be played unless they need them, so.

13 COURT REPORTER: Okay. You want to -- just, you
14 know --

15 SOLICITOR SWANSON: Okay.

16 COURT REPORTER: -- you can start with 1, and --

17 SOLICITOR SWANSON: Just call out.

18 COURT REPORTER: Call off the number and tell me
19 what it is.

20 SOLICITOR SWANSON: All right. Well, let's just
21 get this one out of the way. State's Exhibit 25, the
22 gun case.

23 COURT REPORTER: Yeah.

24 THE COURT: Is this my alternate? Okay. I was
25 just wondering if she was bringing me out the

1 alternate.

2 SOLICITOR SWANSON: 1, the 911 phone call.

3 THE COURT: Do you want to bring me the
4 alternate?

5 SOLICITOR SWANSON: 6, the surveillance footage
6 from Jasper's Porch.

7 MADAM CLERK: One moment.

8 THE COURT: Sure. Let's make sure the door is
9 shut, please.

10 DEPUTY SHERIFF: I'm Sorry.

11 ALTERNATE ENTERS COURTROOM:

12 THE COURT: No, not you. Margaret, thank you.
13 Sir, you saw that I lost two jurors during the trial
14 of this case. At this time, I'm going to go ahead and
15 excuse you from the trial.

16 ALTERNATE JUROR: Okay.

17 THE COURT: I need to, though, tell you, when you
18 go home, you are free to discuss this case. It's fine
19 to do that. You're certainly not required to. The
20 only thing that I would ask is that, if you have made
21 friends with this jury that you not speak to any of
22 them until they've reached a verdict, either by phone
23 call or any other way.

24 ALTERNATE JUROR: Okay.

25 THE COURT: Again, I just want to make sure that

1 they've reached their verdict. Also, I will tell you
2 that sometimes the lawyers like to ask you, you know,
3 what your thoughts are, what your feelings are. They
4 are permitted to do that. You, of course, don't have
5 to talk to them, if you don't want to. You just say,
6 no, thank you. But at this time I am going to go
7 ahead and excuse you. I'm going to excuse you for the
8 remainder of the week.

9 ALTERNATE JUROR: All right. Okay.

10 THE COURT: And thank you.

11 ALTERNATE JUROR: Okay.

12 THE COURT: We really appreciate you being here.

13 ALTERNATE JUROR: Thank you.

14 THE COURT: Okay? Thank you, sir.

15 While they're going through that, I'm just going
16 to step off for just one minute, Margaret.

17 MADAM CLERK: Okay.

18 THE COURT: Just come get me if there's anything.
19 For the rest of you, we're just going to be at ease,
20 awaiting the jury's verdict. I will tell you all, for
21 those of you that are here, that we do have other
22 matters we're taking up at 2:00 o'clock, hopefully.
23 So, you will see a number of lawyers come in and a
24 number of people come in.

25 OFF THE RECORD 1:20 P.M.

1 ATTORNEYS AND COURT REPORTER
2 CONTINUE REVIEWING EXHIBITS.
3 EXHIBITS AND VERDICT FORM TAKEN
4 TO JURORS 1:26 P.M.
5 JURORS KNOCK ON DOOR 3:14 P.M.
6 BACK ON THE RECORD 3:17 P.M.

7 VERDICT:

8 THE COURT: Someone let Mr. Passio, Jr., know?

9 MR. GEIER: Yes, your Honor. He's out -- he was
10 out in his car. He's coming.

11 THE COURT: Okay. Those of you that are in the
12 courtroom, I'll just let you know, as well.
13 Obviously, none of us know what the verdict is, but I
14 want to make sure that everyone can contain themselves
15 when the verdict is read. If you think for some
16 reason you can't, will you please just excuse yourself
17 before the verdict is read. I would hate to have to
18 take someone into custody for any kind of outburst.
19 So, this is your invitation if you really don't think
20 you can contain yourself, you need to go ahead and
21 remove yourself at this time. Okay?

22 All right. Mr. Geier, are you ready, sir?

23 MR. GEIER: Yes, your Honor.

24 THE COURT: Ms. Swanson?

25 SOLICITOR SWANSON: Yes, your Honor.

1 THE COURT: Let's bring them out, please.

2 JURORS ENTER COURTROOM 3:21 P.M.

3 THE COURT: You all may be seated. Mr.
4 Foreperson, I understand the jury has reached a
5 verdict.

6 FOREPERSON: Yes, ma'am.

7 THE COURT: Will you please hand it to Ms.
8 Bostick.

9 THE COURT: Mr. Geier, you and Mr. Passio please
10 stand.

11 In the case of the State of South Carolina vers -
12 - excuse me -- versus Richard Passio, Jr., as to the
13 charge of murder of Michelle Passio, we find the
14 defendant, Richard Passio, guilty.

15 You may be seated, gentlemen.

16 Ladies and gentlemen of the jury, if this is your
17 verdict, will you please indicate by raising your
18 right hand? Thank you.

19 Would you like me to have this jury individually
20 polled, Mr. Geier?

21 MR. GEIER: Please, your Honor.

22 THE COURT: Okay. Ms. Bostick, could you go
23 ahead.

24 Ladies and gentlemen, Ms. Bostick is going to
25 call your name. When she does, she's going to ask you

1 if this is your verdict, and if this is still your
2 verdict, and I just need you to verbally respond.
3 Okay?

4 JURORS POLLED:

5 MADAM CLERK: James McCall. Was this your
6 verdict; is it still your verdict?

7 JUROR NUMBER 99: Yes, ma'am, it is.

8 MADAM CLERK: Thank you.

9 THE COURT: You may be seated, sir.

10 MADAM CLERK: Christina Adela. Was this your
11 verdict; is it still your verdict?

12 JUROR NUMBER 168: Yes.

13 MADAM CLERK: Thank you. Jane Norris. Was this
14 your verdict; is it still your verdict?

15 JUROR NUMBER 118: Yes, ma'am.

16 MADAM CLERK: Thank you. Debra Hodge. Was this
17 your verdict; is it still your verdict?

18 JUROR NUMBER 70: Yes.

19 MADAM CLERK: Thank you. Sammy Heyward. Was
20 this your verdict; is it still your verdict?

21 JUROR NUMBER 63: Yes.

22 MADAM CLERK: Thank you. Deanna Peeples. Was
23 this your verdict; is it still your verdict?

24 JUROR NUMBER 123: Yes, ma'am.

25 MADAM CLERK: Thank you. Guy Gantt. Was this

1 your verdict; is it still your verdict?

2 JUROR NUMBER 47: Yes.

3 MADAM CLERK: Thank you. Samuel Mock. Was this
4 your verdict; is it still your verdict?

5 JUROR NUMBER 109: Yes, ma'am.

6 MADAM CLERK: Thank you. Jasmine Miles. Was
7 this your verdict; is it still your verdict?

8 JUROR NUMBER 105: Yes, ma'am.

9 MADAM CLERK: Thank you. Kenneth Murray. Was
10 this your verdict; is it still your verdict?

11 JUROR NUMBER 114: Yes.

12 MADAM CLERK: Thank you. David Wettrich. Was
13 this your verdict; is it still your verdict?

14 JUROR NUMBER 68: Yes, ma'am.

15 MADAM CLERK: Thank you. Shantell Grant. Was
16 this your verdict; is it still your verdict?

17 JUROR NUMBER 55: Yes, ma'am.

18 MADAM CLERK: Thank you.

19 BY THE COURT:

20 THE COURT: Is there anything further required
21 from this jury, from the State?

22 SOLICITOR SWANSON: None from the State.

23 THE COURT: From the Defense?

24 MR. GEIER: Not from the Defense, your Honor.

25 THE COURT: Ladies and gentlemen, at this time, I

1 am going to go ahead and excuse you, and I want to
2 thank you for working so diligently and hard on this
3 case. You've not only helped us resolve this matter,
4 but many other matters that were on the trial roster
5 for the beginning of this week.

6 Ladies and gentlemen, at this time, when you go
7 home, you are permitted to discuss this case, now that
8 the jury has reached a verdict. Also, sometimes the
9 attorneys may want to ask you your opinion. Of
10 course, you are never required to talk about it. If
11 you are not interested, if they ask you and want to
12 know something, just say no, thank you, and you can
13 politely dismiss them. I assure you they will not
14 pursue you.

15 Ladies and gentlemen, but I want to thank you
16 again. These are very difficult cases, and I
17 certainly appreciate that. And sitting as a juror on
18 them, I know, is very hard when you have cases among
19 family. So, please understand how much we appreciate
20 your work here and thank you.

21 We're going to go ahead and excuse you at this
22 time. Ms. Bostick is going to take you out and make
23 sure everybody gets to their car.

24 JURORS RELEASED 3:25 P.M.

25 MADAM CLERK: Your Honor?

1 THE COURT: Yes.

2 MADAM CLERK: I have some jurors that would like
3 to stay for the sentencing.

4 THE COURT: They would, and I didn't offer it to
5 them, and I apologize. Do you want them to go ahead
6 and walk around, or how do -- you know what, they can
7 come back out here. If they want to, they can. I'm
8 sorry. They're welcome to, if they would like.

9 JURORS WISHING TO STAY DURING
10 SENTENCING ENTER COURTROOM.

11 SENTENCING:

12 THE COURT: Ladies and gentlemen, normally, I
13 would have asked you to stay for sentencing. It just
14 so happens in this case, I don't know why, but I went
15 ahead and dismissed you before we did that. We are
16 going to go into the sentencing at this time unless
17 there's some reason we can't, but you are certainly
18 welcome to be here and stay. As you understand, your
19 job is done and the sentencing is left to me, so
20 that's my responsibility.

21 So, if we have a sentencing sheet prepared. Is
22 that correct, Solicitor?

23 SOLICITOR SWANSON: That is correct.

24 THE COURT: Mr. Geier? And Mr. Geier, you all
25 can stay where you are as well. You don't need to

1 come up any closer. You're fine. Okay?

2 SOLICITOR SWANSON: And --

3 THE COURT: You just have to fill out the
4 sentencing form.

5 SOLICITOR SWANSON: Mr. Passio doesn't need to
6 sign it, does he?

7 THE COURT: No.

8 SOLICITOR SWANSON: Okay.

9 THE COURT: No.

10 SOLICITOR SWANSON: I didn't think so. I was
11 just having Mr. Geier look over it.

12 And your Honor, obviously, you've heard all the
13 facts of the case. I don't have anything to add in
14 addition to those. You know, this was a horrible
15 domestic homicide. It's -- it's, you know, it's sad
16 when battered women do take those steps to get out of
17 their situation and that's, in fact, what leads to
18 their demise.

19 None of the family wishes to address the Court on
20 sentencing.

21 THE COURT: All right. Mr. Geier.

22 MR. GEIER: Thank you. Again, I would renew my
23 motions from the end of trial, including a motion for
24 a new trial on essentially the same grounds that were
25 for my -- the directed verdict motion.

1 I would also make a motion just on the grounds
2 for the verdict being the result of passion and
3 prejudice, given the facts that were presented by the
4 State in this case.

5 THE COURT: All right. Tell me, Mr. Geier, as
6 far as sentencing is concerned, Mr. Passio is now 39
7 years of age. Is that correct? Is he 39 now? Is
8 that correct?

9 MR. GEIER: Yes, your Honor.

10 THE COURT: And tell me, obviously, I saw the
11 oldest, Kaleb, testify. Is the youngest now two years
12 of age? So, what are all the ages of the eight
13 children, currently? And who are they living with?
14 Where are they?

15 MR. GEIER: They're living in Ohio with their
16 aunt.

17 THE COURT: With their aunt? All right. Is that
18 Mr. Passio's sister or? That is Mr. Passio's sister?
19 Is that correct?

20 MR. GEIER: Yes, that's correct, your Honor.

21 THE COURT: Okay. And when you say they're
22 living there, have they been placed in custody there?
23 I mean, what is their --

24 MR. GEIER: Yes, your Honor.

25 THE COURT: -- custody status?

1 MR. GEIER: That's correct. They have been
2 placed there.

3 THE COURT: Okay. I mean, is it a permanent
4 placement? Do you know?

5 MR. GEIER: I believe it is.

6 THE COURT: Yes.

7 MR. GEIER: Yes.

8 THE COURT: It was a permanent placement, pending
9 the charges?

10 MR. GEIER: Yes.

11 THE COURT: Okay.

12 MR. GEIER: At least, that's what they say.

13 THE COURT: Okay. I would be surprised, but
14 okay. It was a permanent placement?

15 MR. GEIER: I didn't have anything to do with
16 that.

17 THE COURT: I understand, but okay. All right.
18 So, tell me the ages of the children now.

19 DEFENDANT PASSIO: Kaleb is 15; and Giovanni is
20 twelve and a half. Angelina is eleven. Cecelia will
21 be ten in August. Belle Ariella will be seven in
22 August. Mario will be -- I'm sorry --

23 COURT REPORTER: I'm so sorry. I lost you at
24 Belle.

25 DEFENDANT PASSIO: Bella Ariella. Ariella was

1 seven in August, and Mario will be six in October.
2 Vito will be four -- he'll be five in -- in August,
3 and Frankie will turn two in April.

4 COURT REPORTER: Two in April?

5 MR. GEIER: That's correct.

6 THE COURT: Okay. Does the State have any
7 position on sentencing or anything along those lines?

8 SOLICITOR SWANSON: Your Honor, I -- I really
9 don't have anything to add. It's -- you've heard more
10 than what the jury heard about this case.

11 THE COURT: Okay. All right. Mr. Geier, what
12 else would you like to say on Mr. Geier's -- or on Mr.
13 Passio's behalf?

14 MR. GEIER: Your Honor, I first met Richard when
15 he was arrested for the 20-some days. I've been in
16 contact with him ever since. Richard is extremely
17 bright in some areas, and in some areas not. But he
18 works hard; he's detail-oriented. I don't think
19 there's any question that he loves his kids, and
20 despite the verdict -- I've had numerous conversations
21 with him. He loved Michelle. And what happened in
22 that room, I don't think it was indicative of how he
23 generally felt about her.

24 His family, particularly his father, has also
25 been in very close contact with me. And I've had some

1 contact with his brother. Richard has never been
2 arrested, ever. Never been in any sort of trouble.
3 He --

4 The diagnosis of OCD that he disclosed to Dr.
5 Stuchell, I think that is a very relevant and ongoing
6 diagnosis. He has a number of mannerisms, and he's
7 dealing with something in that regard. I think it's a
8 -- it's a tough blow, and I know he will -- he will do
9 whatever he can to make sure he moves on from this and
10 never sees the inside of a courtroom again. I assure
11 you of that.

12 THE COURT: Would anyone else like to speak on
13 his behalf?

14 RICHARD PASSIO SR: Your Honor, obviously, this
15 is a tough blow. We didn't expect this outcome. And
16 the situation, obviously, I do not believe that my son
17 did this.

18 COURT REPORTER: I'm so sorry, I can't hear you.
19 *Obviously, I do not believe?*

20 RICHARD PASSIO SR: Obviously, I do not believe
21 that my son did this, obviously. However, as the
22 attorney said, he's never been an ounce of trouble,
23 ever, in his entire life. His family is there to
24 support him in any which way we can. Hopefully, your
25 Honor will have mercy in your sentencing, and we can

1 finally maybe start to heal somewhere down the road
2 through this whole process, because we've been
3 suffering for two years, your Honor, both emotionally,
4 financially, every way you can possibly think. It's
5 been hell, and we were really praying that that would
6 end today.

7 THE COURT: Anything further from anyone?

8 On Indictment 2016-GS-27-0300, it is for murder.
9 I'm sorry, Mr. Geier, you need to have your client
10 stand. The sentence of this court is that you be
11 committed to the Department of Corrections for a
12 period of 30 years. Good luck to you, sir.

13 MR. GEIER: Thank you, your Honor.

14 SOLICITOR SWANSON: Thank you, your Honor.

15 THE COURT: We'll be at ease until 9:00 a.m.,
16 tomorrow morning. And I'm giving him credit for the
17 27 days that he did.

END TRIAL 3:34 P.M.

CERTIFICATE OF REPORTER

JULY 30, 31, AUGUST 1, 2, 2018 PRETRIAL HEARING

AND TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

I, Wanda H. Rowe, Certified Verbatim Reporter-Master, do hereby certify that the foregoing July 30, 31, August 1, 2, 2018 Transcript of Pretrial Hearing and Trial is a true and accurate record of the proceedings had and exhibits admitted on said dates, in the case of State versus Richard Passio, Jr., Jasper County, Court of General Sessions, Case Number 2016-GS-27-00300; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of this transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature December 6, 2018.

Wanda H. Rowe, CVR-M
Certified Verbatim
Reporter-Merit



Q Rock Passio



Rock Passio

I know who I am. I'm a dude, playing a
dude, disguised as another dude.

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