

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

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S.C. SUPREME COURT

Appeal from Lancaster County
The Honorable Daniel Dewitt Hall, Circuit Court Judge

Appellate Case No. 2023-000404

Michael Brent Gay, Petitioner,

v.

The State of South Carolina, Respondent.

**SUPPLEMENTAL APPENDIX
VOLUME I**

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2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2018-GS-29-00377

5 State of South Carolina

6 Vs.

7 Michael Brent Gay

8

9 Lancaster, South Carolina

10 December 10-13, 2018

11 Before the Honorable Brian M. Gibbons

12 APPEARANCES

13 For the State: Randy Newman, Lisa Collins

14 For the Defendant: Dane Phillips, John Delgado

15

16 Reported by: Michael C. Watkins

17 Official Court Reporter

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1 THE COURT: All right. State ready to call the case?

2 MS. COLLINS: Yes, Your Honor. May it please the
3 Court? Your Honor, at this time the State of South Carolina
4 calls the following case for trial, indictment
5 2016-GS-29-377, State of South Carolina versus Michael Brent
6 Gay, a true billed indictment, count one, murder. The
7 second count, count two is a direct indictment for
8 possession of a firearm or knife during the commission of a
9 violent crime. The defendant has not yet been formally
10 arraigned, and unless he wishes to waive formal arraignment
11 we do need to arraign him at this time on count two.

12 THE COURT: All right. Is that your understanding,
13 Mr. Phillips and Mr. Delgado?

14 MR. DELGADO: Yes, sir.

15 MR. PHILLIPS: Yes, Your Honor.

16 THE COURT: Are you ready to proceed with arraignment?

17 MR. PHILLIPS: Yes, sir.

18 THE COURT: All right. If you'll just have your client
19 stand where he is, and Madam Solicitor, go ahead and
20 introduce it and tell me how you wish to have him arraigned.

21 MS. COLLINS: Thank you, Your Honor. Your Honor, I
22 would like to read the indictment to the defendant, I have
23 certified copies for him and counsel.

24 THE COURT: All right.

25 MS. COLLINS: Michael Brent Gay, I hand you at this

1 time a certified true copy of indictment 2016-GS-29-377, and
2 I have another certified true copy for your attorney. The
3 first count, count one, murder, is based upon arrest warrant
4 2015A291200184, that is not a direct indictment, that has
5 been true billed, however, count two is a direct indictment
6 for possession of a firearm or a knife during the commission
7 of a violent crime, that has also been true billed by the
8 grand jury. At this time I will arraign you, therefore, on
9 count two, that the grand jurors of Lancaster County, South
10 Carolina returned a true bill as follows; count two,
11 possession or display of a firearm or a knife during the
12 commission of a violent crime charging that Michael Brent
13 Gay did in Lancaster County, South Carolina on or about
14 December 5th, 2015 possess or visibly display a firearm, to
15 wit, a handgun, during his or her commission of a violent
16 crime, to wit, murder of Joshua Flint McManus in violation
17 of section 16-23-490 of the code of laws of South Carolina,
18 1976 as amended against the peace and dignity of the state
19 in contrary to the statute in such case made and provided.
20 To count two, the direct indictment for possession of a
21 firearm or knife during the commission of a violent crime
22 how do you plead?

23 THE DEFENDANT: Not guilty.

24 MS. COLLINS: And how will you be tried?

25 THE DEFENDANT: By jury.

1 MS. COLLINS: Thank you.

2 THE COURT: All right, thank you, that completes this
3 arraignment. I will find that he does have knowledge of
4 what he's charged with, that he understands as least from
5 this appearance that he understands what he's charged with
6 and he has requested a jury trial. Mr. Delgado, do you
7 agree with the technicalities at that arraignment?

8 MR. DELGADO: Yes, sir.

9 THE COURT: All right, thank you very much. All right.
10 What other pretrial issues are there?

11 MS. COLLINS: The next matter for pretrial, the defense
12 served the State with a standard Rule 5 discovery with Brady
13 and Edwards and we have complied with that. We have given
14 Mr. Delgado at least on two occasions a complete copy of our
15 file and all materials that we have today. The defense
16 recently filed a supplemental discovery motion, and before I
17 get to that I would like to note that the State filed a
18 reciprocal discovery motion upon compliance with the
19 discovery request of the defense, and that reciprocal
20 discovery motion addressed receiving any documents,
21 photographs, et cetera, intended to be introduced by the
22 defense. We have received no reciprocal discovery and it's
23 my understanding from defense counsel that there is no
24 reciprocal discovery to be turned over.

25 THE COURT: Is that your understanding, Mr. Phillips?

1 MR. PHILLIPS: Yes, Your Honor.

2 MS. COLLINS: Further we requested notice of any mental
3 health defense or alibi defense and we have been advised by
4 defense counsel that the defense will not present a mental
5 health defense and will not present an alibi defense.

6 THE COURT: Is that correct Mr. Phillips or Mr.
7 Delgado?

8 MR. PHILLIPS: Yes, Your Honor.

9 THE COURT: All right, thank you.

10 MS. COLLINS: Your Honor, the defense previously filed
11 a stand your ground hearing motion under the protections of
12 persons and property act, it's my understanding from
13 conversations with defense counsel that the defense has made
14 a strategic decision to withdraw that motion and will not
15 proceed and request a hearing prior to trial on that
16 under -- for immunity under that act.

17 THE COURT: Is that correct, Mr. Delgado?

18 MR. DELGADO: That is correct, Your Honor, yes, sir.

19 THE COURT: All right, thank you.

20 MS. COLLINS: The defense requested that a Jackson v.
21 Denno hearing be held, Your Honor. We have advised counsel
22 that we do not intend to introduce in the State's case in
23 chief the custodial interview of the defendant when he was
24 in custody immediately after his arrest. The State only
25 intends to use that to impeach him with it if he testifies

1 and does not testify consistent with that, so we will not be
2 using it in our case in chief, so no Jackson v. Denno
3 hearing we would submit as to that DVD is necessary.
4 However, we do intend to use the 911 call that was made
5 immediately after the defendant -- after this incident
6 occurred. The defendant made a 911 call, it is a
7 noncustodial 911 call that he made from his home at [REDACTED]
8 [REDACTED] in Lancaster, South Carolina. We also intend
9 to use a 911 call made as an excited utterance by one of the
10 eye witnesses to the incident and would lay the groundwork
11 for that tomorrow with the 911 custodian of record. The
12 defendant did make a noncustodial statement to one of the
13 lay witnesses that are noted on the State's witness list,
14 Tamara Cameron made two weeks prior to the incident. We
15 have provided a DVD of that interview between Jennifer
16 Rumbaugh and Tamara Cameron as to the substance of that
17 statement and we may use that in our case in chief, but that
18 would be the extent of the statements of the defendant.
19 Going back to the supplemental defense motion, the
20 discovery, the first supplemental motion, the State has
21 complied with that, we have responded. I understand from
22 defense counsel, and there was a second supplemental motion
23 as well for discovery and we'll be getting in a moment to
24 the DNA evidence, but as to the other matters that did not
25 involve the DNA evidence, we noted for counsel that there

1 are no photographs of the defendant's hands from the night
2 of the arrest, although his hands will be seen clearly in
3 his video of the interview with law enforcement. I have
4 asked all officers involved to give me any notes they have
5 in this case, none of the officers had separate notes which
6 had not been memorialized into their reports. I've been
7 told the practice is to put that in their reports and then
8 ultimately to distort if they did have any handwritten
9 notes, they did not have any to provide to me. I have
10 forwarded to counsel a two page written statement by Raymond
11 Robinson, which I don't think had somehow made it with
12 discovery previously, I wasn't sure so I did submit that
13 again and also provided a disc of the interviews of Raymond
14 Robinson and Stefan Perry by law enforcement. I typed notes
15 from our meetings with Raymond Robinson and Stefan Perry as
16 to statements that they made regarding what occurred, they
17 are the two eye witnesses at issue. In terms for requests
18 for updated criminal history for the citizen witnesses, I'm
19 not allowed under NCIC regulations to give them a copy of
20 the actual report, but I did type a list of all the criminal
21 convictions for both Robinson and Perry and delivered that
22 to them and hand delivered a packet to Mr. Delgado. I do,
23 however, have the rap sheets now, and so during a break they
24 were welcome to look through those themselves, I just can't
25 give them to them. And that would include rap sheets for

1 other citizen witnesses that were not named in their request
2 that are listed on the State's witness list. The responses
3 regarding DNA have been provided on disc and provided to
4 defense counsel, two separate discs by SLED. I have present
5 Catherine Leisy, a forensic scientist from SLED who along
6 with Lauren Johnson were involved in compiling the response
7 and she will be testifying regarding that. I also have
8 available if needed two other witnesses associated with SLED
9 and the new STRmix process for DNA analysis of mixtures of
10 DNA, and that would be Dr. Lauren Hash and forensic
11 scientist Paul Meade. However, I don't think that we'll
12 need their testimony at their level if needed to supplement
13 Ms. Leisy's testimony. Regarding cellphone extraction and
14 cell site location data, we have given a disc that had
15 downloaded information from the cell phone of the defendant.
16 Law enforcement made an attempt to retrieve information from
17 the cell phone of the victim, however they could not get it
18 to charge despite repeated efforts. They told me they could
19 remove the memory chip and get information off of that but
20 that would involve either filing it down or burning it, that
21 might result in either retrieving the information or it
22 might result in destroying the memory chip so that future
23 efforts would be futile. I instructed them not to proceed
24 because I did not want destruction of that for defense
25 counsel, I thought that they might indicate if they had a

1 particular expert they wanted to use to try to extract that
2 information. So I advised them of that in an email on
3 December 2nd that we have that, it's available, however we
4 did not proceed at that time because I did not want it to
5 result in the destruction of evidence in case they wanted to
6 use an expert they identified. The defense requested cell
7 tower information and call information. We have not
8 subpoenaed that as to either phone as there's no issue in
9 this case regarding the parties moving around. I did
10 indicate that if the defense desires that information they
11 are able to subpoena it, we do not believe that it's
12 relevant or necessary in this case. Finally in the
13 supplemental discovery motion the defense asked us to reveal
14 the deal as to any negotiations or promises or deals with
15 witnesses. There are absolutely no negotiations, promises
16 or deals whatsoever with any witnesses. We have subpoenaed
17 both Raymond Robinson and Stefan Perry who were eye
18 witnesses to the incident, to my knowledge Raymond Robinson
19 has no pending charges. At the conclusion of our meeting
20 with Stefan Perry on November 27th he showed me a copy of a
21 warrant and a doctor's excuse for missing a court appearance
22 and asked me to direct him to the clerk the court's office
23 so he could give her a copy of the doctor's excuse, I did
24 so. At that time I became aware therefore that he had a
25 warrant for second offense manufacturing or distribution of

1 crack, and I did not realize that he had that pending charge
2 until he showed it to me. There was no discussion at all
3 regarding any assistance from the State on that charge or
4 any charge. Subsequent to that the State -- law enforcement
5 executed a search warrant on the residence of Stefan Perry,
6 also residing there is his girlfriend, Tamara Cameron, who
7 is a potential citizen witness as well for the State in this
8 matter, she was not an eye witness but would testify as to
9 something the defendant told her prior to the incident a
10 couple of weeks before it happening, that the next person
11 that stole from him he was going to shoot him in the head.
12 We have made, again, no deal whatsoever. We have provided
13 DVD's of those interviews to the defense counsel. It is
14 communicated to both witnesses on those DVD's that there's
15 absolutely no deals regarding pending charges, however I
16 have given copies of those warrants to Mr. Delgado so that
17 he's aware of what those charges are. It would be our
18 position that in that there is no deal that they are not
19 convictions and should not be able to be used by the defense
20 but for discovery purposes, we have provided that completely
21 to the defense counsel. Your Honor, we do object to the
22 defense motions for supplemental proposed voir dire,
23 particularly as to attorney conducted and would ask that
24 Your Honor ask any requested voir dire questions of the
25 jury. There are some particular questions that we are

1 objecting to that we can go through at the proper time. I
2 believe that's just a framework then of everything that we
3 needed to walk through. I do believe that we've provided
4 everything to the defense counsel requesting in a remarkably
5 short time by SLED as to the DNA database and the science
6 behind the new STRmix, that's S-T-R-m-i-x, procedure.

7 THE COURT: Thank you. Gentlemen, Mr. Delgado and
8 Mr. Phillips, I have received your supplemental motion for
9 disclosure and inspection of evidence, along with the second
10 supplemental motion, and I believe by email correspondence
11 last week I told y'all that that needed to be argued on the
12 record in open court and, of course, we'll proceed to do
13 that in a moment. Mr. Delgado?

14 MR. DELGADO: Your Honor, may I ask the Court to ask
15 the solicitor, there was such a flurry of information there
16 I may not have heard this properly, two different things if
17 I could, and again, I may not have heard exactly her
18 phrasing but I want to just make certain that I am on the
19 same page as the solicitor. It was something -- I believe
20 it was relating to Mr. Raymond Robinson who is one of the
21 eye witnesses to this matter, something about notes that --
22 and again, I may not have made it into discovery. It is
23 my -- solicitor I --

24 MS. COLLINS: I will be glad to respond to that. I
25 memorialized that in an email to defense counsel on

1 December 2nd and noted that I was forwarding by hand
2 delivery to defense counsel, it was with a first hand
3 delivered package, a two page handwritten statement by
4 Raymond Robinson.

5 MR. DELGADO: Yes, ma'am, I do have that.

6 MS. COLLINS: Very good. I just wanted to make sure
7 they had it.

8 THE COURT: That issue is dealt with. All right.

9 MR. DELGADO: Your Honor, could you inquire to go over
10 if this is about Stefan Perry and her discussions with Mr.
11 Perry? There are two eye witnesses to this matter, Your
12 Honor, Mr. Raymond Robinson and Mr. Stefan Perry. The
13 solicitor said something about at the time that she met with
14 Mr. Perry, which was, I believe, on or around November the
15 27th of this year, that she did not realize he had
16 pending -- and again I could not hear properly, Solicitor,
17 I'm sorry, you were --

18 THE COURT: All right. What's the deal with Stefan
19 Perry?

20 MS. COLLINS: Your Honor, as noted in my email to
21 defense counsel on December 2nd, 2018, under item 60, I
22 noted that at the conclusion of our meeting Investigator
23 Jennifer Rumbaugh, who is seated at the table with myself
24 and Stefan Perry on November 27th, he showed me a copy of an
25 arrest warrant and a doctor's excuse for missing a court

1 appearance, he asked me to direct him to the clerk of
2 court's office so he could give him a copy of the doctor's
3 excuse, I did so. The warrant was for second offense
4 manufacturing of distribution of crack and I did not realize
5 that he had that pending charge until he showed it to me at
6 that time. There was no discussion at all regarding
7 assistance from the State on that charge or any charge. I
8 had made defense counsel aware by a prior email that when he
9 had his interview a year ago with Jennifer Rumbaugh he had
10 been picked up on a summary court charge for unlawful entry
11 on premises, no discussion occurred regarding that charge at
12 all. Subsequent to my meeting with Stefan Perry on
13 November 27th, on November 30th, Stefan Perry and his
14 girlfriend, Tamara Cameron, were arrested on drugs and
15 weapons charges arising from the search of their residence
16 on November 30th, at the time of my email I did not know
17 what the actual charges were. I have provided copies of
18 those charges now to Mr. Delgado. But again, as noted in a
19 follow-up interview with Mr. Perry and the only interview
20 with Ms. Cameron conducted by Investigator Rumbaugh, no
21 promises whatsoever have been extended to them or made to
22 them regarding any pending charges, they understand that
23 that's totally separate.

24 MR. DELGADO: Solicitor, so in other words Ms. Rumbaugh
25 had a conversation with him in 2017 and she's had one with

1 you with Mr. Stefan Perry.

2 MS. COLLINS: That's right.

3 MR. DELGADO: Is there a third one?

4 MS. COLLINS: There was a third one and we've forward
5 again and provided a copy of the disc from that.

6 MR. DELGADO: Okay. Thank you, Your Honor.

7 THE COURT: Okay. All right. Well, gentlemen, I'll be
8 glad to hear your motion then. It appears that the first
9 thing we need to resolve is whether or not the State has
10 complied with Rule 5 in its discovery responses to the
11 defense's motion and supplemental motions, and then I
12 understand that there's been a second supplemental motion
13 filed. And let me hear -- I've heard from the State in
14 their response, let me hear from the defense at this point
15 in time in the event that when -- I believe there does need
16 to be some type of evidentiary record so I can adequately
17 deal with the motion. Mr. Phillips?

18 MR. PHILLIPS: Good morning, Your Honor, thank you. We
19 do believe that an evidentiary hearing would be necessary
20 given the nature of this. We had essentially a traditional
21 what they call PCR type of DNA report done in 2017, and then
22 on November 28th a new report was done under what's called
23 STRmix, it's an algorithm type program that SLED I think now
24 has access to, it's a private company that has this
25 algorithm that is supposed to be more accurate when you have

1 mixture DNA. It gets pretty complicated in the weeds. The
2 litigation regarding the admissibility of STRmix DNA is
3 going on across the country, so part of this second
4 supplemental discovery request was kind of getting into the
5 weeds of that program. Because it is a third party program
6 because it attempts to do what traditional DNA testing is
7 unable to do, and in this case we actually have that it
8 wouldn't be an issue unless the reports weren't different.
9 The reports are different. The report we have in 2017
10 doesn't match up with the findings that occurred on
11 November 28th. On November 28th of this year under the
12 STRmix report it makes findings that the traditional DNA
13 analysis report did not, and that certainly can change the
14 nature of the case based on expert opinion. And because of
15 that we requested -- the main things that you're looking at
16 when trying to make due process and confrontation clause
17 challenges, and, of course, the right to present a complete
18 defense, you're looking at from an adversarial test access
19 to validation studies, kind of the underlying model, the
20 training data and source code, input parameters and data
21 specific cases -- I don't want to get too far into it as far
22 as --

23 THE COURT: Well, it goes to the reliability of the
24 expert testimony, and that's my role as the gatekeeper so I
25 understand where we are on that. You've got to protect your

1 client's rights. Do you want to go ahead and proceed with
2 the evidentiary hearing first and then, of course, you can
3 adequately cross examine and do what you need to with the
4 State's witnesses on the issue and then I will hear
5 argument, or do you want to do argument first?

6 MR. PHILLIPS: I think it's best to hold off on
7 argument and let's flesh out kind of the part and parcel of
8 what evidence is there, and then that might remove some of
9 the arguments that I may have for the Court.

10 THE COURT: Is the State ready to proceed on that
11 issue?

12 MS. COLLINS: Yes, Your Honor.

13 THE COURT: You may call your witness.

14 MS. COLLINS: The State calls Catherine Leisy from SLED
15 to the stand.

16 The witness, CATHERINE LEISY, was first duly sworn and
17 Testified as follows:

18 DIRECT EXAMINATION

19 BY MS. COLLINS:

20 Q Would you please state your name for the record?

21 A Catherine Leisy, L-e-i-s-y.

22 Q What is your occupation?

23 A I'm a forensic scientist assigned to the DNA casework
24 department at the South Carolina Law Enforcement Division
25 more commonly referred to as SLED.

1 Q How long have you held that position?

2 A Twelve years.

3 Q All within the DNA department at SLED?

4 A That's correct.

5 Q Please tell the Court your education and your
6 experience that provide you with the foundation for doing
7 these types of analyses?

8 A I have a Bachelor of Science Degree in Genetic
9 Engineering from Cedar Crest College in Allentown,
10 Pennsylvania. I have been trained in-house at SLED by other
11 court qualified analysts in all the other type of tests and
12 analyses that I have been required to perform. Prior to my
13 employment with SLED I worked for approximately four years
14 as a forensic DNA analyst at a private testing facility.
15 And I'm also required to maintain continuing education in
16 the forms of attending conferences or training seminars that
17 pertain to new analysis methods that are made available.

18 Q And have you ever testified in a court of law as an
19 expert witness?

20 A I have.

21 Q How many times?

22 A On more than 50 occasions.

23 Q And what were you qualified as an expert witness, in
24 what field?

25 A Forensic DNA testing and serology.

1 Q And do you get ongoing education in this field?

2 A I do.

3 Q Have you ever published any articles?

4 A I have been listed in a published article, it has been
5 several years.

6 Q Have you given any instructions?

7 A I have assisted in training of lesser experienced or
8 newly hired analysts throughout my career.

9 Q Okay. Thank you. And so again, what was the field
10 that you were qualified to testify in as an expert?

11 A Forensic DNA testing and in some cases also forensic
12 serology.

13 Q Thank you.

14 MS. COLLINS: Your Honor, at this time I offer Ms.
15 Leisy as an expert in the filed of DNA testing and as she
16 indicated in the last part, I'm sorry -- and forensic
17 serology. If counsel has any questions as to her voir dire
18 and then I will come back after that --

19 THE COURT: Any objection to her qualifications as an
20 expert in that field?

21 MR. PHILLIPS: As far as DNA testing, no. When it
22 comes into the STRmix report then that's another matter, but
23 as far as her being qualified as an expert in DNA testing,
24 no.

25 THE COURT: All right, she's so qualified. Do you wish

1 to voir dire any further in regards to forensic serology?

2 MR. PHILLIPS: Yes, Your Honor.

3 THE COURT: Okay.

4 VOIR DIRE EXAMINATION

5 BY MR. PHILLIPS:

6 Q Regarding forensic serology specifically as to your
7 training, what courses have you done throughout that period
8 of time?

9 A For forensic serology I've received in-house training
10 at SLED that incorporated all of the different types of
11 tests that we're required to perform. We also perform
12 annual proficiency testing that demonstrates that both the
13 protocols that we're following are correct and that we are
14 applying those protocols correctly.

15 Q And through that, how many times have you testified as
16 an expert in serology?

17 A Specifically to serology I'm not sure.

18 Q More than once?

19 A Yes, sir.

20 Q More than ten times?

21 A I would say yes.

22 Q And specifically as testifying in terms of evidence
23 that relates to serology and at least over ten times in that
24 testimony, have you ever had any questions regarding your
25 education ability, your training at that point? Were you

1 ever found not qualified?

2 A No, sir.

3 Q So you have been qualified for at least over ten times
4 in the area of serology?

5 A Yes, sir.

6 Q And in that testimony of serology you testified to
7 matters related to DNA in each one of those cases?

8 A In terms of forensic serology that would be bodily
9 identification, bodily fluid. So for any case where I
10 performed a test that would indicate the presence of a
11 bodily fluid that would bring into question qualifications
12 as far as serology.

13 Q So mutually generally when you've been qualified as an
14 expert in DNA you've also been qualified as an expert in
15 serology?

16 A Typically, yes, sir.

17 Q Is there times when you have not been, when it is
18 specifically DNA versus serology?

19 A There are times we're qualified specifically to just
20 DNA if serology testing has not been performed in that
21 particular case. We don't always perform serology when we
22 perform DNA testing.

23 MR. PHILLIPS: No further questions, Your Honor.

24 THE COURT: All right. Any further questions regarding
25 voir dire of forensic serology?

1 MS. COLLINS: No, Your Honor.

2 THE COURT: All right. Argument on that, Mr. Phillips?

3 MR. PHILLIPS: None, Your Honor.

4 THE COURT: All right. Based upon the testimony of
5 this witness I do find she's qualified and is so qualified
6 as an expert in the field of DNA testing as well as forensic
7 serology.

8 MS. COLLINS: Thank you.

9 BY MS. COLLINS:

10 Q Going further, so that in the field of DNA testing
11 there's been various advances and developments in the
12 science throughout its history; is that correct?

13 A That's correct.

14 Q Are you familiar with mitochondrial DNA or what some
15 refer to as MTDNA?

16 A I am somewhat familiar with it.

17 Q And that was a development in the science of DNA that
18 ultimately has now been accepted in the courts; is that
19 correct?

20 A That is my understanding, it's not a test that I have
21 ever performed myself.

22 Q Has there been a recent development in the DNA science
23 that aids the scientists to particularly pinpoint when
24 there's a mixture of more than one individual contributing
25 to the DNA evidence being analyzed?

1 A If we're referring to STRmix and probabilistic
2 genotyping?

3 Q Yes.

4 A There is. Currently over the last several years
5 forensic laboratories across the country and around the
6 world have started implementing software that performs what
7 is referred to as probabilistic genotyping. And this is a
8 method of analysis that employs biological modeling such
9 as considering the number of contributors to the mixture
10 or --

11 THE COURT: I'm sorry, what type of genotyping?

12 THE WITNESS: Probabilistic.

13 THE COURT: All right.

14 A Again, it combines the analysis of biological modeling
15 as well as statistical theory and mathematical calculations.
16 There are essentially two parts to this process, the first
17 being the deconvolution of a profile, or breaking that
18 profile down into the different genotypic combinations that
19 could have resulted in that profile. And then once the
20 profile is de-convoluted, if it's compared to a known
21 individual the software can perform a mathematical
22 calculation that tells you which of the genotypic
23 combinations is more likely to have given you that profile.

24 Q Does SLED utilize the STRmix procedure?

25 A We do.

1 Q How long has SLED utilized that procedure?

2 A We just went online, I believe, in September.

3 Q And did you utilize that procedure in analyzing a
4 mixture of DNA in this case?

5 A I performed a reanalysis of three mixtures in this case
6 just within the last week or so.

7 Q As to the STRmix procedure, have you received
8 specialized training in order to become certified in that
9 procedure?

10 A I have.

11 Q And what does that training involve?

12 A The training involved a four day course that was led by
13 Dr. John Buckleton, who was one of the developers of the
14 software, he's employed by the Institute of Environmental
15 Science and Research in New Zealand. I've also been
16 required to read appropriate validation and supporting
17 documentation to the software. I have received in-house
18 training and I was also a part of the team that performed
19 the internal validation at SLED for this software.

20 Q Did you become aware of the supplemental discovery
21 request and the second supplemental discovery request filed
22 by the defense in this case?

23 A Yes, I did.

24 Q Did you assist Lorie Johnson in compiling the
25 information to respond to those requests?

1 A I did.

2 Q To your knowledge did you provide all of the requested
3 information other than the source code?

4 A That's correct.

5 Q Tell me about the source code, what is that?

6 A Source code to my understanding refers to the
7 developmental validation aspect of the software as it was
8 developed. That is not something that we at SLED have
9 access to. To gain access to that the Institute of
10 Environmental Science and Research, or ESR, requires that a
11 request be made to them. They will allow supervised review
12 of those materials but it is something that has to be done
13 through ESR, it is not something that SLED can provide.

14 Q And on the disc that was provided, did you explain that
15 position and the procedure necessary where defense counsel
16 could request that directly from the developer themselves?

17 A I believe that document was included on the second
18 discovery disc that was required, it is also available on
19 the STRmix support website.

20 Q All right. Have you ever testified in a court of law
21 as an expert in the field of STRmix DNA analysis?

22 A Never specifically during my qualifications, I have
23 testified to STRmix prior.

24 Q And was that in a general sessions case in the County
25 of Spartanburg, South Carolina?

1 A That's correct, just in October.

2 Q And that was before the Honorable Mark Hayes, I
3 believe; is that correct?

4 A I believe so, yes.

5 Q So you were qualified in that case to testify as an
6 expert in the field of DNA analysis?

7 A Correct.

8 Q And in that field you were allowed to continue and
9 testify specifically as to the new development as to the
10 STRmix procedure; is that correct?

11 A I did testify to my results, the results of my STRmix
12 testing in that case, yes.

13 Q And were those results admitted in that case?

14 A They were.

15 Q To your knowledge have the results of STRmix testing
16 been admitted in two cases before the U.S. District Court in
17 Charleston?

18 A That is my understanding, yes.

19 Q To your knowledge does any of military use STRmix? I
20 believe the U.S. Army uses STRmix analysis now; is that
21 correct?

22 A That's correct. The United States Army Criminal
23 Investigation Laboratory was actually the first lab in the
24 United States to go online with STRmix and that was back in
25 2014.

1 Q There are laboratories throughout the world that have
2 now started utilizing STRmix to analyze mixtures of DNA; is
3 that correct?

4 A That is correct.

5 Q That would include New Zealand and Australia, correct?

6 A Correct.

7 Q The various state departments and labs throughout the
8 United States also use STRmix procedure, correct?

9 A Correct. To the best of my knowledge there are
10 currently approximately 40 labs within the United States
11 that are online, and approximately 50 more that are in the
12 process of validation or training.

13 MS. COLLINS: I ask that this be marked as Court's
14 Exhibit 1 for the purposes of this hearing. I'm sorry, this
15 will be Court's Exhibit 6.

16 Q I'm going to show you what's been marked as Court's
17 Exhibit 6 for the purpose of this hearing. Do you recognize
18 that chart?

19 A This would appear to be a chart that is provided by
20 STRmix as part of their resource material.

21 Q And the chart reflects various labs and states that now
22 admit or utilize the STRmix analysis; is that correct?

23 A Yes, ma'am.

24 Q You referenced just now other materials on the STRmix
25 website. Are you aware of peer review and other scientific

1 journals that acknowledge the validity of STRmix?

2 A Yes. There have been I would say dozens of peer
3 reviewed articles issued involving the validation,
4 implementation and reliability of STRmix.

5 Q I'm going to show you what is being marked as Court's
6 Exhibit 7, which is an article of Forensic Science
7 International on Genetics regarding internal validation of
8 STRmix with interpretation of single source and mixed DNA
9 profiles. Are you familiar with that article?

10 A Yes, ma'am.

11 Q That's also an article that discusses the validity of
12 the STRmix procedure on the STRmix website; is that correct?

13 A That's correct.

14 MS. COLLINS: I ask that this be marked as Court's
15 Exhibit 8, which is another article.

16 Q Do you recognize that as an article from the STRmix
17 website as again an accepted manuscript on the internal
18 validation of STRmix?

19 A I do recognize it, yes. It is part of their reference
20 materials.

21 Q Do you also recognize Court's Exhibit 9 as an article
22 of Journal of Forensic Sciences which recognizes the utility
23 and evidence for the validity of the software program for
24 STRmix?

25 A I do. This is also listed as part of the STRmix

1 reference material list.

2 Q I see one of authors of that, the first author listed
3 is Dr. Buckleton; is that correct?

4 A Yes, ma'am.

5 Q And John Buckleton is, in fact, the scientist who was
6 the main developer or one of the developers of the STRmix
7 program; is that correct?

8 A Correct. He's one of the three main developers of the
9 software.

10 Q I show you at this time an article from Forensic
11 Science International regarding genetics that addresses the
12 developmental validation of STRmix, the expert softwares for
13 interpretation of forensic DNA profiles. Are you familiar
14 with that article that references the validity of the STRmix
15 program?

16 A I am again as part of their reference material.

17 Q Okay. Would these have been included in some of the
18 training and articles that give you the foundation for your
19 training and accreditation in the STRmix program?

20 A Yes.

21 Q Are you certified to conduct DNA analysis utilizing the
22 STRmix program?

23 A I do have approval from SLED to -- authorization to
24 work is what we refer to it as, and I am authorized to
25 perform STRmix analysis at SLED.

1 Q All right. And although you've not testified as an
2 expert specifically in that field, you've testified as to
3 the results of a STRmix analysis in the general sessions
4 case in Spartanburg; is that correct?

5 A That's correct.

6 Q How many of your scientists at SLED are certified to
7 conduct a DNA analysis using the STRmix software?

8 A There are currently six of us within the department who
9 have authorization to perform the analysis, and the rest of
10 the department is currently finishing up their internal
11 competency so they can authorized.

12 Q And again, the purpose of the STRmix software is when
13 there's a mixture of a DNA profile, if there's some evidence
14 of DNA that is derived from a mixture of individuals, that
15 using the information and the software as you have described
16 it they're able to breakdown more and identify the
17 probability of whether or not one person contributed to that
18 mixture versus other unidentified individuals; is that
19 correct?

20 A Correct. A mixture interpretation is one of the
21 reasons that STRmix has sort of been the direction that
22 we're going towards. It gives us greater ability to
23 differentiate between the different contributors that are
24 present, and gives us a greater ability to include or
25 exclude individuals appropriately as possible contributors

1 to that mixture.

2 Q Okay.

3 MS. COLLINS: Your Honor, I don't think it's necessary,
4 but I would offer Ms. Leisy as an expert in the field of
5 STRmix analysis. But again, I would take the position that
6 her ability to testify in that area would you be included in
7 her overall expertise as a DNA analyst for which she has
8 already been qualified by the Court without objection to
9 testify as on expert witness, but if there's voir dire I
10 would --

11 THE COURT: All right. Well, Mr. Phillips, what's your
12 position on, I guess, being qualified as -- I've already
13 qualified her without challenge as an expert in the DNA
14 analysis. I also qualified her as an expert in the field of
15 forensic serology. I mean, the State doesn't think it's
16 necessary, at least at this point I don't either but I'll
17 ask you if you want me to to qualify her then as a
18 sub-expert in STRmix analysis which comes under DNA
19 analysis, what do you think?

20 MR. PHILLIPS: I would believe based on the fact that
21 she is -- I think based on the testimony we had that I would
22 need to do a little bit of voir dire. But with the fact
23 that there's only been one other qualification that
24 literally that came into SLED as far as an opportunity for,
25 what September -- I think this is such a nature that it

1 doesn't just automatically fall under that, especially given
2 that we have two reports three years in time, I believe it
3 not necessarily falls under that umbrella of DNA. Obviously
4 it is DNA analysis but it's a new separate DNA analysis that
5 in South Carolina we haven't parsed out yet.

6 THE COURT: That's fine. Why don't you go ahead and
7 voir dire her then on the issue of whether or not she should
8 be allowed to testify then as to the STRmix analysis.

9 MR. PHILLIPS: Thank you, Your Honor.

10 THE COURT: In the form of an opinion.

11 MR. PHILLIPS: Thank you, Your Honor.

12 VOIR DIRE EXAMINATION

13 BY MR. PHILLIPS:

14 Q And so in your training, when did you start training to
15 testify regarding STRmix analysis?

16 A Our internal validation began in April of 2017 and we
17 completed August of 2018. So that encompassed how to setup
18 the software, how to properly run the software. Specific
19 testimony was covered in training that was provided by ESR
20 in terms of STRmix, what its capabilities are and what our
21 responsibilities would be in running it and testifying to
22 it.

23 Q And you have testified in one case regarding STRmix.

24 A That's correct.

25 Q And how many STRmix DNA reports have you run to this

1 point?

2 A Personally I believe I've issued three or four
3 potential.

4 Q This case being one of the three or four?

5 A That's correct.

6 Q And in the case that you testified using STRmix, how
7 close in time from when essentially SLED came online to do
8 this type of DNA testing did you testify?

9 A It would have been approximately one month later.

10 Q All right. So October?

11 A Correct. It was -- I testified in a Castle hearing on
12 the 29th, and testimony for the trial was on the 30th of
13 October.

14 Q And through STRmix with your training and experience
15 specifically you said you started it in April of 2017?

16 A The formal validation process, yes, sir.

17 Q All right. And part of that training, could you
18 explain what you've done to that process to be considered an
19 expert in STRmix, essentially to do STRmix testing?

20 A In terms of the validation we followed guidelines that
21 were offered by the scientific working group on DNA analysis
22 methods. All internal validations at laboratories across
23 the country use those same guidelines that make sure that
24 we're following the appropriate steps and covering the
25 necessary methods. In terms of the validation I helped

1 perform some of the lab work that was required to inform the
2 system as to how it will analyze our data. I also assisted
3 in the overall writeup of our validation summaries as well
4 as with report writing guidelines and interpretation
5 guidelines.

6 Q So with the STRmix you would agree that it is different
7 than the standard traditional way of PCR DNA testing, it is
8 different.

9 A The actual PCR has not changed. The lab work is the
10 same, we're developing the same profiles. STRmix and
11 probabilistic genotyping softwares are just a different
12 method of analysis in terms of comparisons and statistics.

13 Q So you're using an entirely different method than
14 traditional DNA testing.

15 A It is different than what we have been using
16 previously, yes.

17 Q And it's a third party -- have you been able to review
18 the source code -- essentially you put in numbers so to
19 speak and it spits out a report. Other than being told how
20 to put in the numbers, what specifically have you done to
21 know that this is a reliable type of testing?

22 A In the training that was provided us by ESR we actually
23 went through what types of -- what analysis was performed,
24 what the formulas used were, that was all expressed to us
25 and, you know, examples shown and we had to go through it.

1 They also explained somewhat the developmental validation in
2 that they hand performed calculations for a certain number
3 of locations and samples to show that it was working
4 correctly. In terms of the specific source code, again, we
5 don't have access to that because that would be
6 developmental validation and it is property of the
7 developmental entities.

8 Q And so other than trusting the third party, you
9 wouldn't have any other way of knowing whether the result
10 that you received is accurate?

11 A Well again, our internal validation and the internal
12 validations performed at labs around the country, the point
13 of it is to run it against known individuals to make sure
14 that you're getting the answer that you're supposed to.
15 Thousands of samples have been run at dozens of labs around
16 the country to show that the internal validation is
17 supporting -- that the developmental validation was correct
18 and that the system does work as we expect it to.

19 MR. PHILLIPS: Your Honor, I know I'm starting to bleed
20 into the secondary matter. What I'm going to try to do is
21 I'll try to tighten it up, we'll get a ruling and then we'll
22 move on.

23 THE COURT: Sure, okay.

24 Q So specifically as we're looking at the scientific
25 method as far as peer review for STRmix, have you had peer

1 review prior to the case that you testified on?

2 A In terms of documentation and literature, the peer
3 review has been performed, again, on internal validations at
4 dozens of labs around the country. Our own internal
5 validation we reviewed internally, it has been submitted to
6 ESR, they helped us write up the validation summaries. We
7 have not published on our internal validation, but the
8 internal validations of other laboratories have been
9 published nationally.

10 Q So specifically we're looking at you being qualified to
11 testify regarding STRmix results, you said you've testified
12 once prior and been qualified once prior, did anybody peer
13 review the DNA testing that you did in that case?

14 A The DNA analysis in that case would have been
15 technically reviewed by another qualified analyst who has
16 been authorized to perform STRmix analysis, it also goes
17 through an administrative review. So all of the work is
18 reviewed by our peers before it's presented in report form.

19 Q So in that case somebody did review it and it was
20 accurate? That is something that we could request in
21 discovery and be given?

22 A It was reviewed and there is documentation as to who
23 reviewed it.

24 Q Okay. And in this case the report that you did on
25 November 28th, has it been peer reviewed and gone through

1 all of the validation -- internal validation studies?

2 A It was, it was peer reviewed. There was both a
3 technical and administrative review on this report as well.

4 MR. PHILLIPS: One moment, Your Honor.

5 (Break in proceedings.)

6 Q Have you provided those internal validation studies as
7 part of our request for discovery?

8 A There were summaries of SLED validation studies that
9 were submitted as part of the discovery request. Our
10 standard reply to such requests is that if you need more of
11 the source material or more of the raw data that someone
12 would have to go to the laboratory and review them there.
13 It's just too much information to be provided so it is made
14 available, but in this case only a summary of those
15 validations were handed over during discovery.

16 MR. PHILLIPS: Thank you. We've got further questions
17 on admissibility but no further questions on qualifications.

18 THE COURT: Any reexamination from the State on the
19 issue of qualification?

20 MS. COLLINS: No, Your Honor.

21 THE COURT: All right. Let's hear argument then from
22 the defense first on the qualification of this witness to
23 testify in the form of an opinion as to STRmix analysis and
24 results.

25 MR. PHILLIPS: Based on the limited scope of

1 qualification, this expert, or this witness to be qualified
2 as an expert witness in our opinion has not met that
3 threshold of having properly documenting. Obviously they
4 said there's been internal validation studies and we would
5 state that -- I guess maybe we can call another witness if
6 necessary, but that the State hasn't proven that this is an
7 accurate and reliable validation testing method, that SLED
8 didn't become qualified to even have someone be in a
9 position to testify in the cases until September of this
10 year. There's only one prior qualification of this witness.
11 At this point we don't believe there's enough quantitative
12 data to support that the studies are essentially -- or the
13 reports done by this witness qualify her as an expert in
14 STRmix report.

15 THE COURT: All right, thank you. Madam Solicitor,
16 argument as to this witness being qualified to offer opinion
17 testimony regarding STRmix analysis and the results?

18 MS. COLLINS: We would submit that the State has met
19 its burden. It's not an issue of quantity. I don't think
20 the case law has ever required a certain quantity of her
21 prior testing, that would go towards the weight, not the
22 admissibility and I would submit go toward the weight of her
23 testimony if the jury chose to give it weight after hearing
24 cross examination on that point by the defense counsel. But
25 I would submit that she is qualified to testify and we would

1 ask that Your Honor find her so.

2 THE COURT: All right, I find that, I do agree with the
3 State on that issue. I find that this witness is qualified
4 and so qualified to testify as an expert in the field of
5 STRmix analysis and results. I also agree with the State's
6 interpretation as to what this witness testifies to in the
7 form of an opinion regarding that goes to credibility, not
8 admissibility. All right. So what else do you need to hear
9 from this witness?

10 MS. COLLINS: Just very briefly I was going to submit
11 the two reports that have been referenced by defense counsel
12 that were conducted by Ms. Leisy.

13 THE COURT: For purposes of this hearing.

14 MS. COLLINS: For the purpose of this hearing Court's
15 Exhibit 11 and 12.

16 BY MS. COLLINS:

17 Q Ms. Leisy, I show you what's been marked for the
18 purposes of this hearing only as Court's Exhibits 11 and 12.
19 Can you tell me, do you recognize those two documents?

20 A Yes, I do.

21 Q Court's Exhibit 11, is that a copy of the report that
22 you initially prepared using the traditional DNA analysis of
23 the evidence in this case?

24 A It is.

25 Q What's the date of that report?

1 A It was issued on August the 4th of 2017.

2 Q And Court's Exhibit 12 is another report prepared by
3 you; is that correct?

4 A It is.

5 Q And that report is the results of your analysis
6 utilizing the STRmix analysis procedure; is that correct?

7 A That's correct.

8 Q And what is the date of that report?

9 A November the 28th of 2018.

10 Q And that supplement -- that second report was done at
11 the request of myself as the prosecutor in this case; is
12 that correct?

13 A Yes, it is.

14 Q This case, as noted in your first report, did create a
15 mixture of DNA particularly on various items including the
16 knife; is that correct?

17 A That is correct.

18 Q As well as on one or two of the watches; is that
19 correct?

20 A On two of the watches.

21 Q On two of the watches. And the report using the STRmix
22 analysis was able to breakdown that mixture; is that
23 correct?

24 A It was able to provide me a better opportunity to
25 examine and breakdown the profiles for terms of comparison

1 of statistical analysis.

2 Q So in the first report your conclusion was that there
3 appeared to be a mixture of individuals. I want to direct
4 your attention particularly to the knife from the swabs
5 gained from the right side of the knife, however beyond
6 being able to say there was a mixture of individuals nothing
7 further could be gleaned at that time; is that correct?

8 A Correct. The result would be that the partial DNA
9 profiled developed is a mixture of at least two individuals,
10 and that due to the inability to calculate a statistic no
11 further interpretation would be available.

12 Q However using the STRmix analysis and that software
13 program you were able to get a more specific result as to
14 the mixture; is that correct?

15 A That's correct.

16 Q And as to the swabs from the right side of the knife
17 that was found near the hand of the decedent, you actually
18 excluded the victim as a contributor to that mixture; is
19 that correct?

20 A That's correct. Using the proposition set of the list
21 of possible explanation for how this profile could have
22 developed, Joshua McManus was excluded as a possible
23 contributor giving the list of propositions.

24 Q And, in fact, the defendant, Michael Brent Gay, was
25 included as a contributor to the mixture found from the

1 right -- swabs of the right side of the knife; is that
2 correct?

3 A Well, using STRmix what we do is develop a set of
4 propositions, or again, possible explanations that could
5 explain how the DNA profile was developed. For the
6 comparison using Mr. Gay the propositions used were that the
7 DNA profile was interpreted as a mixture and originating
8 were two individuals, the first possible explanation being
9 that Michael Gay and an unrelated unidentified individual
10 contributed to the mixture. The second possible explanation
11 being that two unidentified unrelated individuals
12 contributed to the mixture. And the analysis indicated that
13 the DNA profile is approximately 13 quintillion times more
14 likely if Michael Gay and an unidentified unrelated
15 individual contributed to the mixture than if two
16 unidentified unrelated individuals contributed to the
17 mixture.

18 Q Thank you. Now, as to the two watches, there were two
19 watches, one was a Fossil watch and one was an Invicta
20 watch; is that correct?

21 A Yes.

22 Q As to the first report that you did as using the
23 traditional DNA analysis, were you able to develop a profile
24 as to either the victim or Mr. Gay using the traditional
25 analysis as to either watch?

1 A Based on the results for the swabs from the inside band
2 of Invicta watch, the DNA profile developed is a mixture of
3 at least two individuals. There was a partial DNA profile
4 of the major contributor developed, that particular major
5 contributor matches the DNA profile of Michael Gay, and the
6 probability of randomly selecting an unrelated individual
7 having a DNA profile matching the major contributor is
8 approximately one and 41 quadrillion. Due to the inability
9 to calculate a statistic no further interpretation was
10 offered regarding the minor contributor.

11 Q And that was as to which watch?

12 A That was the Invicta watch.

13 Q As to the Fossil watch using the traditional DNA
14 analysis in your first report, were you able to develop a
15 profile of either of the defendant or the deceased?

16 A In terms of the swabs from the inside band of the
17 Fossil brand watch, a partial DNA profile was developed as a
18 mixture of at least two individuals, and due to the
19 inability to calculate a statistic no further interpretation
20 was offered.

21 Q Now, your latest report using the STRmix program, were
22 you able to break down those mixtures? You've already
23 testified as to the knife, as to these two watches were you
24 able to with more specificity and certainty identify the DNA
25 of the defendant or the DNA of the victim on these two

1 watches?

2 A Using the STRmix I was able to do, again, a more
3 thorough interpretation of the profile that was developed.
4 In terms of swabs from the Invicta watch, the first set of
5 possible explanations and comparisons with Joshua McManus,
6 the DNA profile was interpreted as a mixture originating
7 from two individuals. The first possible explanation being
8 that Joshua McManus as an unidentified unrelated individual
9 contributed to the mixture, the second possible explanation
10 being that two unidentified unrelated individuals
11 contributed. And the analysis determined that the DNA
12 profile is approximately 64,000 times more likely if Joshua
13 McManus and an unidentified unrelated individual contributed
14 to the mixture than if two unidentified individuals
15 contributed.

16 MS. COLLINS: Thank you. No further questions, please
17 answer any questions of Mr. Phillips.

18 THE COURT: All right. Mr. Phillips?

19 MR. PHILLIPS: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. PHILLIPS:

22 Q It would be fair to say that STRmix allows for the
23 analyst to have its own input, is that fair to say?

24 A We do have some input in term in what is an actual DNA
25 type, how many contributors are present. STRMix is a tool

1 for us to use, it does still require interpretation on the
2 analyst's part.

3 Q So by interpretation on the analysts part, that goes to
4 input that you provide either through say specifically what
5 they call input data or essentially factors to ignore; is
6 that correct?

7 A That's fair.

8 Q And with that, that allows some subjective criteria
9 that you get to make when you're doing that test; is that
10 fair?

11 A There is some level of subjectivity to it, yes.

12 Q And so because there's a level of subjectivity, if you
13 and another analyst chose different input data or say
14 ignored different factors you could get different results.

15 A Different input and different data could result in a
16 different interpretation, yes, sir.

17 Q So the likelihood ratio -- because I think that's the
18 buzz word; is that right?

19 A Correct. That's the statistic that's being calculated
20 by STRmix.

21 Q So the likelihood ratio could be different depending on
22 whether you or a colleague didn't put in the same data; is
23 that correct.

24 A That's correct. And that's the point of protocols and
25 interpretation guidelines is to help maintain consistency in

1 analysis.

2 Q Are you familiar with another type of probabilistic
3 genotyping called TrueAllele?

4 A I am familiar with it, yes, sir.

5 Q Have you had training on TrueAllele?

6 A Specifically to that program, no, I have not.

7 Q But you're aware of it?

8 A Yes, sir.

9 Q Are you aware that in a case where STRmix had been done
10 and a TrueAllele statistic analysis had been done, that they
11 came up with different results?

12 A My familiarity with TrueAllele and its comparison to
13 STRmix is that typically if results are different the
14 differences are very minimal. And it's -- in this type of
15 analysis you will expect to see some small variation in
16 results when it's run.

17 Q And the variation is because we're using essentially a
18 math problem that a third party created; is that correct?

19 A That could be an issue in terms of comparison
20 TrueAllele to STRmix. I'm not familiar with exactly what
21 formulas they use or exactly how their software is set up.
22 It's a similar software, I'm not as familiar with it as I am
23 with STRmix.

24 Q But you are aware that they could have a different
25 result, and you have been made aware that there has been

1 different results between the two when they've run on the
2 same data.

3 A I would not expect them to be exactly the same, no,
4 sir.

5 Q With that there's called coding errors; is that right?
6 Could you explain what coding errors are?

7 A I'm not a computer or software engineer. My
8 understanding of a coding error would be that the sort of
9 background coding information that instructs the software
10 and how to perform and how to do their analysis, that if
11 there was a mistake in the coding that it could result in a
12 different answer being provided.

13 Q And that's the algorithm?

14 A It could explain the algorithm or, again, inform the
15 software on how to work.

16 Q Have you been aware through your training that there
17 was coding error in some cases out of Australia that
18 resulted in 60 cases coming in jeopardy?

19 A I am somewhat familiar with a coding error being
20 detected by STRmix. Based on my familiarity with that
21 situation there were small adjustments made to likelihood
22 ratios, I'm not aware of any large issues being created by
23 it.

24 Q But if you got different results because of these
25 coding errors it wouldn't necessary be reliable or accurate,

1 you couldn't say that with absolute certainty if you got
2 different results because of a coding error, is that fair to
3 say?

4 A Again, there were small variations created by these
5 coding differences. Again, I'm not a computer software
6 engineer, I'm not familiar with exactly how the coding
7 works.

8 Q But you are a scientist.

9 A Correct, sir.

10 Q And a scientist, if you had math problem that you're
11 doing and the math problem has something wrong with the
12 formula and you get a result that you weren't supposed to
13 get, that would necessarily not be reliable or accurate
14 because the formula wasn't correct, is that fair to say?

15 A Changes in the formula could cause different answers,
16 yes, sir.

17 Q And that's happened with STRmix before; is that true?

18 A To my understanding, yes, sir.

19 Q And they've had to create multiple versions of STRmix,
20 is that true?

21 A There have been multiple versions of STRmix, that's not
22 necessarily an issue in coding or a correction. They may
23 add a different feature to it or develop it further so that
24 it is more user friendly or more powerful.

25 Q Do you specifically know what they did with the new

1 versions of STRmix that it wasn't fixing coding errors, that
2 they are not playing catch up and fixing problems as they
3 can go?

4 A My familiarity is with version 2.5 which is what we
5 use. I know they are in development with version 2.6 which
6 gives us different options and allows us to perform
7 difference types of analyses.

8 Q More accurate. They're coming out with a new version
9 because it can be technically more accurate, right? Because
10 it's not as accurate as version 2.6 could be.

11 A Again, I don't know that I would say more accurate, it
12 may give us more options or be more user friendly. It's
13 sometimes as simple as the interface or how we interact with
14 it.

15 Q But with the versions that have changed, do you
16 specifically know what they've changed, why there is newer
17 versions of this third party program?

18 A Again, I'm not familiar with the coding or the
19 programming, that's not something that I perform.

20 Q But you admit that algorithms are fallible. I mean,
21 this is not something that is, you know, as set in stone as
22 gravity.

23 A Again, the algorithms work. If there is a coding
24 issue, that could cause an issue. The underlying science
25 and the background to it has been validated and deemed to be

1 reliable.

2 Q And you're aware of PCAST? It's simply the algorithm
3 of the president's council. I'm sure you've done a lot
4 of -- as being a forensic scientist a lot of training PCAST.

5 A Yes, sir.

6 Q And that's part of a lot of the litigation that we've
7 had across the country regarding STRmix and other forensic
8 science. I mean, they're looking at all types of forensic
9 science issues, but specifically with PCAST, PCAST has noted
10 that STRmix results could be troubling in the sense that a
11 jury could put an incredible amount of weight to a STRmix
12 report that possibly if there's a coding error or if there
13 is a different result because of a subjective intent of an
14 analyst who put something in there, where there was a
15 cognitive bias, that you would have a different result,
16 PCAST has labeled that as troubling, is that fair to say?

17 A Again, changes in coding or subjectivity as far as
18 input could result in different results. PCAST does
19 recognize that probabilistic genotyping itself is reliable
20 and has been developmentally validated and is widely
21 accepted in the scientific community.

22 Q And talking about subjective intent, if there was a
23 cognitive bias there whether it was known or unknown,
24 whether it was malice or not, that could affect the end
25 result as well, is that fair to say?

1 A It is. That's why we interpret the data first before
2 we consider any possible known standards to be included.

3 Q Now, as far as DNA transfers are concerned with it
4 being a mixture DNA, because in this case you have a DNA
5 mixture; is that correct?

6 A That's correct, for all three of the samples that were
7 run.

8 Q You're unable to tell whether there was a DNA transfer
9 in this case. All you were doing is looking at the mixture
10 and trying to come up using this formula, the likelihood
11 ratios using different variables so to speak as -- I think
12 it's in the report listed as proposition one, proposition
13 two, that if there was a DNA transfer your report doesn't
14 show any of that.

15 A If there is a DNA transfer our report does indicate
16 that. We perform a database search on mixtures that are run
17 through STRmix so that it's comparing the DNA profile that's
18 been developed through the profile of known individuals
19 within the laboratory, and individuals who work at different
20 agencies throughout the state that may have have access to
21 these items. We also perform a check comparing these
22 profiles to other, samples that may have been around in the
23 same batch to make sure that there's not a contaminated
24 issue.

25 Q More specifically as to the defendant and Mr. McManus

1 in this case, you wouldn't know whether it was a transfer.
2 Essentially you're well aware of and had education and
3 training on transfer DNA.

4 A Correct.

5 Q And so if I was to shake your hand and you were to
6 shake the Judge's hand it's possible, and they've proven it,
7 that my DNA could end up on the Judge's hand.

8 A That's true.

9 Q And if then the judge was to touch the door on the way
10 out my DNA could transfer even that next level, they've
11 proven that, to the door handle?

12 A That has been documented, that's typically referred to
13 as secondary transfer.

14 Q And so your report doesn't show whether someone who
15 picks up the knife or whether say a law enforcement officer
16 who is going through the residence of the defendant has a
17 piece of the defendant's DNA on his hand and depending on
18 the nature of the collection of the evidence, you weren't
19 there you -- the report doesn't show whether there was a
20 transfer of the defendant's DNA to a piece of evidence, it's
21 just analyzing the evidence as it's presented at the lab.

22 A That's correct, but that's true regardless of whether
23 or not STRmix was used. We can never definitively say how
24 DNA has been transferred to an item, it's just that it's
25 there when we test it. So STRmix isn't going to identify

1 the source or how the DNA was posited, it's just an analysis
2 method for comparison for statical purposes.

3 Q And the traditional method, the PCR method, that just
4 showed that it was a mixture and inconclusive.

5 A Again, the PCR doesn't change and the same mixtures
6 were interpreted. Previously the protocols and analysis
7 methods that we were using, these profiles didn't meet the
8 guidelines in terms of what would be appropriate for use in
9 statistical purposes. With STRmix it does allow us to
10 interpret lower level and partial mixtures, whereas before
11 we would have to just say it's not sufficient for
12 interpretation. STRmix gives us greater strength in
13 interpreting lower level and mixture samples.

14 Q And SLED had to pay for STRmix, right? It wasn't a
15 grant that was somehow given to them freely, they paid money
16 for it.

17 A Yes, sir.

18 Q Do you know how much they paid for it?

19 A I don't know the exact amount, no, sir.

20 Q And with that it is a third party program that the
21 government paid for, it's not something that was done
22 in-house, it's not something that was created at SLED.

23 A That's correct. Again, it was developed by Dr. John
24 Buckleton and Joanne Bright with ESR, as well as Dr. Duncan
25 Taylor with Forensic Science in South Australia. It was

1 originally designed just to be used in-house for Australia
2 and New Zealand labs, due to the interest in it
3 internationally it has been made available to labs around
4 the country.

5 MR. PHILLIPS: Thank you, Your Honor, one moment.

6 THE COURT: Okay.

7 (Break in proceedings.)

8 MR. PHILLIPS: No further questions, Your Honor.

9 THE COURT: All right. Any redirect?

10 MS. COLLINS: No, Your Honor. I would just ask that
11 Courts Exhibits 6 through 12 be moved into evidence for the
12 purposes of this hearing only.

13 THE COURT: For the purposes of this hearing, any
14 objection to that?

15 MR. PHILLIPS: For the limited scope.

16 THE COURT: Yeah, for the limited scope. Thank you,
17 ma'am, you can step down. Any further testimony from the
18 State regarding the issue of whether or not the State has
19 responded to the supplemental motion for discovery?

20 MS. COLLINS: No, Your Honor.

21 THE COURT: All right. Let's hear argument first from
22 the defense and then I'll come back to the State.

23 MR. PHILLIPS: Thank you, Your Honor? Specifically the
24 defendant would move for suppression of this DNA evidence
25 and testimony based on the 5th and 14th Amendments to the

1 United States Constitution, and in Article 1, Sections 3, 10
2 and 14 of the South Carolina Constitution. We also would
3 move to suppress the DNA evidence based on rules 403 and 702
4 of the South Carolina Rules of Evidence, specifically that
5 we believe that this type of testimony not only -- and
6 actually will include the 6th Amendment of the United States
7 Constitution in that as well. So specifically as to the 5th
8 and 14th we are arguing that it violates due process, it's
9 fundamentally unfair to a defendant, it deprives him of his
10 right to a fair trial to present testimony of this type of
11 evidence when you have this subjective intent. It was
12 testified to by the State that the STRmix allows an analyst
13 to have this ability to chose input data and to ignore other
14 factors. There was testimony by the State's witness that if
15 one of her colleagues was to change the input data, was to
16 change the subjective things to ignore that they could get
17 different results. Information not necessarily is fully
18 known that there is -- there was testimony by the State's
19 witness that there is another type of third party program
20 called TrueAllele, that there is evidence out there known
21 that that program would get a different result than the
22 STRmix report. There was testimony by the State's witness
23 that if there was a coding error, and she was aware that
24 there had been information out there about possible coding
25 errors where cases have been put into place, this goes to

1 the source code, that there has been multiple versions of
2 STRmix. The State's witness didn't know what was included
3 or what was omitted, what was changed in the different
4 version of STRmix except that they were working on a new
5 version of the STRmix report. The State's witness admitted
6 that algorithms are certainly fallible and that because of
7 this you could have mixed results and it takes away from the
8 validity and reliability that's required under Jones in
9 admitting scientific testimony. The State's witness also
10 acknowledged that if there was a cognitive bias, whether it
11 was known or unknown, whether it was intentional or some
12 type of malicious intent or unintentional that that could
13 affect because of this subjective intent as far as getting
14 it out with the STRmix report. There's testimony that this
15 is a program that was built by a third party who has a
16 financial incentive, who is selling this program to the
17 government, who was clearly in many cases trying to get a
18 desired result when they are testing DNA, and with that that
19 also comes into play. So again, with the 5th and 14th
20 Amendment, and again Article 1, Sections 3 and 14, we're
21 looking at essential fundamental fairness to present this
22 testimony -- and this goes right into rule 403, that it
23 would just be -- the inherent and prejudicial nature of it
24 would be too much. It's unduly prejudicial and would
25 substantially outweigh the probative value or -- the

1 probative value of this evidence would be substantially
2 outweighed by its prejudicial effect based on this and would
3 violate his due process right to a fair trial. As to the
4 6th Amendment right to confrontation, it's an issue where we
5 do not have the source code, we do not have essentially
6 these -- all of the information I can kind of go through
7 where we have every bit of source code, validation studies,
8 training data --

9 THE COURT: Those are the ones set forth in your brief.

10 MR. PHILLIPS: -- input parameters, and what we have
11 fleshed out through testimony as well. And because of that
12 it also not only denies in violation of due process, it
13 deprives the right of a full confrontation that the
14 defendant is not able to fully and properly confront this
15 evidence and testify essentially as far as confrontation
16 regarding the reliability and the admissibility. So I think
17 part of the confrontation also goes to rule 702 of the South
18 Carolina Rules of Evidence when we're looking at the Jones
19 test as far as admitting scientific evidence, kind of the
20 cornerstone of what we're looking at is repeatability,
21 validity and reliability. And there's so many different
22 factors here that the State's witness admitted that it just
23 not deprives the defendant the right to a fair trial, but it
24 deprives him of a right to truly confront this accuser,
25 which in this test we had a traditional PCR DNA report from

1 2017, and then now just two weeks before trial on
2 November 28th we have a new report under this new so to
3 speak STRmix type of DNA analysis where the South Carolina
4 Law Enforcement Division wasn't able to even use this --

5 THE COURT: But hang on. Wasn't the new STRmix report
6 done because you requested that it be done? Didn't this
7 whole STRmix thing start because you filed a motion for
8 supplemental discovery requesting all of this stuff? And
9 so -- hang on -- and then in protecting your client's rights
10 we had that discussion via email where I said, "Well, look,
11 you know, the motion" -- because essentially it was a
12 continuance motion, and I said these types of motions need
13 to be heard on the record, which is what we're doing right
14 now in open court. And I said if the State can believe that
15 they can successfully comply with this additional discovery
16 request by such and such a date then we will deal with it
17 then, and then that's when all of the supplemental stuff
18 which you're arguing now came up because the State did offer
19 all of this discovery to you. Answer that.

20 MR. PHILLIPS: Yes, I would like to clarify. So in the
21 first supplemental discovery motion it was related to
22 traditional PCR DNA testing, it was my standard DNA
23 supplemental discovery that you would do in a PCR test. I'm
24 pretty sure I went through and deleted anything, there might
25 be one reference in there, but I deleted anything related to

1 STRmix because we didn't have any STRmix evidence. My
2 second supplemental discovery report has all of the specific
3 STRmix requests, it's part and parcel, they're separate,
4 they're not mutual as far as the overlap. Now, if I
5 remember correctly, I don't want to speak for opposing
6 counsel, in her email it was specific that once she started
7 going through that first supplemental discovery request it
8 jogged her memory that during the solicitor's conference
9 they were made aware that STRmix was available, and
10 certainly she can comment on that. But our specific request
11 was not for STRmix records, I didn't even know that they now
12 had that ability. As we found out today that ability became
13 online in September and this witness only has been qualified
14 and testified to it in one other trial. And so based on
15 that certainly we did not ask for this report to be run,
16 because we're challenging not only the witness to be
17 qualified as an expert, but challenging the fact and the
18 admissibility of this evidence and testimony.

19 THE COURT: The first thing, do you believe that the
20 State has fully responded to the defense's motion for
21 discovery, including its motion for supplemental discovery?
22 And the second thing would be if they have or if I make a
23 finding that they have, do I suppress it nonetheless? So I
24 want to keep these two things separate. Go ahead.

25 MR. PHILLIPS: Thank you, Your Honor, keeping me

1 straight. So with the discovery motion specifically we do
2 not have the source code, we do not have every bit of the,
3 at least to my knowledge, again I was trying to go through
4 it in the short amount of time that we had, and I know
5 that's more information that -- it was essentially triggered
6 by this report on November 28th, the time period. So going
7 through this new discovery that's come through, we do not
8 have the source code, I do not believe we have every bit of
9 the training data or validation studies, and because of that
10 I believe the government has not complied with discovery.

11 THE COURT: Now, Solicitor Collins, let me hear from
12 you in reply to whether the response of the State to the
13 defense's discovery requests and whether or not you believe
14 that the State has complied with that discovery request, or
15 whether it's necessary to even further reply. Go ahead.

16 MS. COLLINS: Your Honor, as noted by Ms. Leisy, the
17 source code is something that is provided and in the
18 possession of the developer, and we did provide on one of
19 the discs provided to defense counsel produced by SLED both
20 an explanation of that as well as an instruction on how the
21 defense could request the source code directly from the
22 developer. And I know we're not in a position in terms of
23 anticipating a motion for a continuance, but I would submit
24 to the extent that they're asking for suppression of the
25 information based upon stuff that they have not received,

1 that again was -- explanation was given and the process to
2 obtain it was explained. As to any other information
3 regarding the training data and the validation studies, I
4 believe Ms. Leisy's testimony was that everything had been
5 provide on the two discs from SLED other than if there might
6 be some information that they, I believe she testified,
7 would have to go to SLED and observe there, and again I have
8 yet to hear from the defense counsel requesting a
9 continuance so that they could do that. So to the extent
10 that they're asking for suppression of the information based
11 upon that, we would submit we've provided everything that
12 we're able to provide in a remarkably short period of time.
13 I would like to address, Your Honor, bringing up that the
14 State requesting the STRmix analysis by SLED was in response
15 to the supplemental discovery motion of the defense. I
16 would note on page four of that supplemental -- this is the
17 first supplemental discovery motion, page four, section five
18 DNA evidence request, under section F it notes mixture
19 interpretation worksheets if applicable. Also page six
20 under 16, the software program used for forensic STR DNA
21 analysis under the laboratory's protocol. And on page seven
22 number 31 references also information for the statistical
23 interpretation of all of the STR loci testing results, and
24 that continues on -- 32 continues on page seven into page
25 eight also notes in terms of a request for -- STR methods.

1 Now, I'm not a scientist, but Your Honor, when I read that
2 supplemental discovery motion and I saw those references to
3 STR and I knew from my training about this availability, and
4 during our conference call I believe Mr. Phillips pointed
5 out to Your Honor we are dealing with a mixture here, there
6 is a mixture in this case, at that time I discussed it with
7 the chief solicitor, Mr. Newman, my boss, and I said, "I
8 feel like we have to go ahead and request it." I didn't
9 want to do anything to delay this case but I felt like we
10 needed to request it because I feared otherwise that during
11 the trial itself that the defense counsel may ask Ms. Leisy
12 or other experts "You have this new technology, you have
13 this ability and yet you have not processed that. We will
14 never know what that would have provided. You have this
15 capability and you haven't brought that so the jury, the
16 finders of fact, can consider that." And so we felt that
17 from those references in the supplemental motion for
18 discovery as I just pointed out that reference STR coupled
19 with Mr. Phillips' pointed out we are dealing with a
20 mixture, that is why I made that request to SLED to produce
21 that.

22 THE COURT: All right. Mr. Phillips, coming back to
23 you then on the issue of --

24 MR. PHILLIPS: STR?

25 THE COURT: Yeah. Well, on the issue on whether or not

1 the State's discovery was complete. Anything else you want
2 to say on that? And then I'll let you finish your argument
3 on the suppression.

4 MR. PHILLIPS: Just a brief clarification that. Again,
5 maybe I'm not totally up to speed on DNA like I should be,
6 but I believe STR is a common part of it -- the STRmix is an
7 entirely separate third party program, STR is a type -- it's
8 a common term that's put into DNA language, it is not a
9 specific request for a STRmix report or STRmix evidence.
10 However, certainly the State can interpret what tests
11 they're supposed to run, and in this case they made the
12 determination to run a test that three years later on
13 November 28th that they had only had the ability to do it
14 since September, and right now we're challenging again the
15 admissibility of that, and, of course, us making sure that
16 we're providing effective assistance of counsel to Mr. Gay.

17 THE COURT: All right. Anything else in response from
18 the State?

19 MS. COLLINS: Just, Your Honor -- and I know that the
20 defense has no burden, there's been no testimony
21 counteracting what the State presented through Ms. Leisy,
22 and we would submit that all of the arguments put forth to
23 this point by the defense again would go toward the weight
24 and not the admissibility of the evidence matter.

25 THE COURT: All right, anything else from the defense

1 in regards to your suppression motion or in essence your
2 motion regarding discovery as far as information received up
3 to this point in time in preparation for this trial?

4 MR. PHILLIPS: No, Your Honor.

5 THE COURT: All right. Thank you, I will rule then as
6 follows. All right. First of all I am going to deny the
7 defense's request or second supplemental motion for
8 discovery disclosure and inspections on evidence. I'm
9 satisfied from the representation of counsel and from the
10 testimony in the record that the State has done anything and
11 everything it can to comply with Rule 5 and its progeny in
12 disclosing all information relied upon by the State in the
13 prosecution of Mr. Gay, so I respectfully deny the defense's
14 supplemental motion concerning that. We're going to proceed
15 with trial today and this week, okay? Now, as to the second
16 part of that motion, that is suppression of the DNA evidence
17 just let me -- before I specifically address each issue
18 raised but the defense, let me just state for the record and
19 for those who may be reading the record at some point in
20 time in the future, like it or not y'all have a judge
21 presiding over this trial who was a Biology major in
22 undergraduate and who took two semesters of genetics, okay?
23 So I have more of a -- I think more than any other judge's
24 understanding of DNA evidence and what the words genome and
25 genotyping and allele -- by the way, Mr. Court Reporter,

1 that is a-l-l-e-l-e when you type that in the transcript,
2 and what that is, okay? So I understand all of this, you
3 know, and in my analysis under the Jones Factors in
4 determining the reliability of evidence under rule 702 of
5 the South Carolina Rules of Evidence, when I make these
6 decisions I always like to think back on the history of
7 these type cases, criminal cases. At one point in time
8 defendants were charged and convicted of serious crimes
9 without bullet evidence, without casings, without gunshot
10 residue evidence, you know, just in the 1900's, you know.
11 Crime scene -- there's crime scene photographs from the
12 1930's and 40's of investigators walking around in blood not
13 thinking to pick up blood evidence. Well, you know, that
14 was used and developed later on in the prosecution of
15 crimes. Fingerprints. At one point in time fingerprints,
16 that was an issue. All of these issues have all gone up to
17 the U.S Supreme Court in one way or the other, and
18 eventually, of course, DNA evidence was developed and now it
19 is relied upon heavily. So one thing I did fail to ask,
20 solicitor, what portion of the State's case is this DNA
21 evidence? Is this like the main evidence for the State or
22 is this just one of many things that the State is relying on
23 in the prosecution of this case?

24 MS. COLLINS: This is one of many. We actually have
25 two eye witnesses to the murder.

1 THE COURT: Okay. All right. And, of course, I have
2 to consider all of that, that's one of the things the Court
3 considers. But, you know, DNA has been developed to the
4 point in time where now it's readily admissible into
5 evidence, and, of course, my role as the gatekeeper is to
6 determine what the jury gets to weigh, what the jury gets to
7 believe, what the jury finds credible. And, you know,
8 having heard what I've heard from the State's evidence and
9 witness testimony and considering arguments of counsel, I do
10 find that this evidence should come into trial and therefore
11 I am going to allow it to come into evidence in the trial of
12 this case. I respectfully deny the defense's motion to
13 suppress. I don't believe that it violates the 5th, 14th or
14 the 6th Amendment. Certainly it's prejudicial evidence but
15 all evidence against criminal defendants is prejudicial, the
16 issue is whether or not it's probative. Yes, it's
17 probative. It goes towards proving what the State has the
18 monumental task of proving. I find it doesn't specifically
19 violate his 6th Amendment right to confront it because he is
20 confronting it, he has you're excellent cross examination
21 techniques, Mr. Phillips, as well as his ability to
22 challenge this DNA evidence. I do find based upon what I
23 have heard from this witness' testimony that although there
24 hadn't been, you know, it hadn't been going on for a long
25 time under the general field of DNA analysis and testing, I

1 do find that this evidence is reliable. Again, whether or
2 not it's reliable enough to convince a jury, that's going to
3 be up to that jury of 12 to determine, but I'm going to
4 allow them to determine it and not me. So based upon all of
5 those analyses I respectfully deny the defense's motion to
6 suppress the introduction of DNA evidence. All right, here
7 is what we're going to do, it's now 1:15, I've got a jury
8 coming in at 2:00, right? I have addressed the continuation
9 issue, okay? We've got to take a break for lunch. Here is
10 what we're going to do, we're going to break here after you
11 say what you've got to say real quick, we will take a break
12 for a quick lunch, everybody -- y'all go do what you've got
13 to do, we'll come back and we will do the jury, okay? I'll
14 get with y'all -- well, what we'll do is I'll hear brief
15 argument concerning attorney directed voir dire after this
16 before we go and I'll let you put that in the record but I
17 already told you what I'm going to do on that and then we'll
18 do the jury, and then after the jury is drawn we'll
19 reconvene to finish all the pretrial issues this afternoon.
20 What do you want to say?

21 MR. PHILLIPS: Just that I had premarked the first
22 supplemental motion for discovery as Court's Exhibit Number
23 1, the second supplemental motion for discovery as Court's
24 Exhibit Number 2, the motion to suppress DNA evidence as
25 Court's Exhibit Number 3, provided the State with paper

1 copies as well as, Your Honor.

2 THE COURT: Yeah. I didn't have the actual flag
3 copies, I was doing extra copies, so yeah. We're good. All
4 right.

5 (Break in proceedings.)

6 (A lunch break was taken.)

7 (Jury selection in the jury assembly room.)

8 MR. NEWMAN: State calls indictment number
9 2016-GS-29-377, State versus Michael Brent Gay, indictment
10 for count one, murder, count two, possession of a firearm
11 during the commission of a violent crime.

12 THE COURT: All right. Thank you, Solicitor Newman.
13 Ladies and gentlemen of the jury, we're about to begin the
14 trial of the case called the State of South Carolina versus
15 Michael Brent Gay, who has been charged with murder in count
16 one of what's called an indictment, and possession or
17 display of a firearm or knife during the commission of a
18 violent crime in count two of what's called an indictment.
19 That's what an indictment is. It doesn't mean anything,
20 it's just a written piece of paper by which a case comes
21 into court, okay? And Mr. Gay, I believe, is seated over
22 here to my right along with his attorneys. At this point in
23 time I'm going to have both sides introduce themselves to
24 you who are involved in the trial of this case and then
25 we'll get into specific questions which I'm going to ask

1 about this specific case. Solicitor, if you'll please
2 introduce your table.

3 MR. NEWMAN: My name is Randy Newman, I'm the elected
4 solicitor for Lancaster, Chester and Fairfield Counties. To
5 my right is Keith Lewis, my investigator, Deputy Solicitor
6 Lisa Collins, Lancaster County investigator Jennifer
7 Rumbaugh, and solicitor's investigator Harlene Carter.

8 THE COURT: Thank you. All right, Mr. Phillips?

9 MR. PHILLIPS: I'm Dane Phillips, I'm an attorney out
10 of Columbia and Lexington, South Carolina. This is Michael
11 Brent Gay, he is from Lancaster. And then John Delgado is
12 also out of Columbia.

13 THE COURT: All right, thank you. So ladies and
14 gentlemen of the jury, I will remind you you are still under
15 oath. The first question I'll ask you, is there any member
16 of the jury panel who is related by blood or marriage or has
17 any close, personal or social relationship or has ever been
18 represented by any of the lawyers involved in this case? If
19 so, please stand. No response. Is there any member of the
20 jury panel who is related by blood or marriage or has any
21 close, personal or social relationship with Michael Brent
22 Gay? If so, please stand. Is any member of the jury panel
23 related by blood or marriage or has any close, personal or
24 social relationship with the family of the alleged victim,
25 Joshua Flint McManus? If so, please stand. All right, yes,

1 sir, what's your juror number, sir?

2 THE JUROR: Twelve.

3 THE COURT: Juror number 12. You are Mr. Barfield?

4 THE JUROR: I am.

5 THE COURT: How do you answer that question?

6 THE JUROR: He was a second cousin of mine.

7 THE COURT: All right. Thank you, sir, you can be
8 seated. Yes, sir, juror number?

9 THE JUROR: 147.

10 THE COURT: 147. Ladies and gentlemen, that's the
11 first question I'm going to ask is just -- if I don't ask it
12 tell me your juror number before we go to the next question
13 so we can all identify that. Yes, sir, how do you answer
14 that question?

15 THE JUROR: My sister-in-law's sister, that was his
16 mother -- I mean son.

17 THE COURT: Your sister-in-law's --

18 THE JUROR: Sister.

19 THE COURT: Okay. So you're not related by blood or
20 marriage but you know who the alleged victim was? Would
21 that affect your ability to be a fair and impartial juror?

22 THE JUROR: No.

23 THE COURT: All right, thank you. Now, ladies and
24 gentlemen of the jury, so we'll have just a basic factual
25 understanding of what the State has alleged happened in this

1 case I will read just various aspects of this indictment to
2 kind of give a general understanding of what this case is
3 about. I told you earlier, this is criminal court this week
4 or what's commonly referred to as general sessions court.
5 Of course, I will also start off with everyone regardless of
6 the type of crime a person is charged with, everybody is
7 presumed innocent until proven guilty, and I know all of you
8 understand that and I want to make sure you understand that
9 before I read these portions of this indictment. So this is
10 the basics of what the case is about. The State has alleged
11 that Michael Brent Gay did at [REDACTED] in
12 Lancaster County, South Carolina, on or about December 5th,
13 2015 feloniously, wilfully and with malice aforethought kill
14 and murder the victim, Joshua Flint McManus, by shooting the
15 victim in the head with a pistol. So he's charged with
16 murder for that as well as possession or display of a
17 firearm during the commission violent crime, that's the
18 essential elements -- or that's the essential facts of what
19 this case is about. You need to know that as I go through
20 these questions to determine your possibility of being
21 called to serve as a juror in the trial of this case. So
22 with that regard what I'm doing, ladies and gentlemen, I
23 have a list of witnesses, just because I name all of these
24 names doesn't mean they're actually going to testify. These
25 are in no particular order, these are just possible

1 witnesses which may be called during the trial of this case.
2 The question is going to be are you related to any of these
3 people by blood or marriage or do you have a close, personal
4 or social relationship with any of these people. Dr. Janice
5 Pat Ross with Newberry Pathology. Raymond Neil Robinson.
6 Stefan Perry. Alice Wallace. Tamara Cameron. Does anybody
7 recognize those names in the way I described? If so, please
8 stand. James Edward White. Ricky Taylor. Michael Deerman.
9 Sergeant Kerry Aldridge with the Lancaster County Sheriff's
10 Office? Deputy Josh Funderburke with the Union -- now with
11 the Union County, North Carolina Sheriff's Department,
12 formerly with Lancaster County. Does anybody recognize
13 those names as previously described? If so, please stand.
14 No response. Agent Marcus Heyward with SLED, which stands
15 for South Carolina Law Enforcement Division. Deputy Sarah
16 Kramer, Lancaster. Deputy Tim Ramsey, Lancaster.
17 Investigator Jennifer Rumbaugh, Lancaster. Investigator
18 Preston Simpson, Lancaster. Does anybody recognize those
19 names as previously described, either being related to or a
20 close, personal or social relationship? Yes, sir, juror
21 number?

22 THE JUROR: Forty-eight.

23 THE COURT: How do you answer that?

24 THE JUROR: Close friend with Preston Simpson.

25 THE COURT: Close friends?

1 THE JUROR: Yes.

2 THE COURT: Talk to him everyday?

3 THE JUROR: No.

4 THE COURT: Would that affect your ability to be a fair
5 and impartial juror?

6 THE JUROR: No, sir.

7 THE COURT: Thank you. Detectives Brooks Felmet with
8 Rock Hill Police. Lieutenant Christy Rogers, Lancaster.
9 Investigator Ken Taylor, Lancaster. Investigator Jeff
10 Steele, Lancaster. Ann Horton with the Lancaster Sheriff's
11 Office. Does anybody recognize those names as described?
12 Yes, ma'am, juror number?

13 THE JUROR: Honestly I don't remember, it was 180
14 something, Martha Truesdale.

15 THE COURT: That is juror 181. How do you answer that
16 question?

17 THE JUROR: Christy Rogers, I went to high school with
18 her but it should not affect anything, but I do recognize
19 her.

20 THE COURT: Would that affect your ability to be fair
21 and impartial?

22 THE JUROR: No, sir.

23 THE COURT: All right. I think I left off on that one.
24 Brittany Hudson with Lancaster. Craig Bailey formerly --
25 retired, formerly captain over investigations, Lancaster

1 Sheriff's Office. Captain Phillip Hall with the Lancaster
2 Police. Sergeant Brian Small, Lancaster Police. Officer
3 Thomas Funderburke, Lancaster County Detention Center. Does
4 anybody recognize those names as previously described? If
5 so, please stand. Yes, ma'am, juror number?

6 THE JUROR: 163.

7 THE COURT: All right.

8 THE JUROR: Phillip Hall is my fire chief. I'm a
9 volunteer firefighter, he's my chief.

10 THE COURT: So how frequently do you talk with Officer
11 Hall.

12 THE JUROR: I go to church with him too so usually
13 several times a week.

14 THE COURT: Would that affect your ability to be a fair
15 and impartial juror?

16 THE JUROR: No, sir.

17 THE COURT: Thank you. Juror number?

18 THE JUROR: I forgot.

19 THE COURT: What's your last name?

20 THE JUROR: Mackey.

21 THE COURT: Juror number 118. Who do you know?

22 THE JUROR: Brittany Hudson, that's my cousin.

23 THE COURT: How do you know Brittany Hudson?

24 THE JUROR: She's my cousin.

25 THE COURT: All right. First cousin, second cousin or

1 what?

2 THE JUROR: First.

3 THE COURT: Would that affect your ability to fair and
4 impartial?

5 THE JUROR: No.

6 THE COURT: All right. Thank you, sir, you can be
7 seated. Captain Larry Deason with the Lancaster County
8 Detention Center. Lieutenant Stacy Hatfield, detention
9 center. Ashley McKinny with the Lancaster County EMS. Ed
10 Abbott with Lancaster EMS. Tony Broome, deputy coroner.
11 Does anybody recognize those names as previously stated?
12 Yes, ma'am, juror number?

13 THE JUROR: 107.

14 THE COURT: Who do you know?

15 THE JUROR: Larry Deason, I go to church with him.

16 THE COURT: Would that affect your ability to be a fair
17 and impartial juror?

18 THE JUROR: No sir.

19 THE COURT: Thank you. Yes, sir?

20 THE JUROR: Number ten.

21 THE COURT: Yes, sir?

22 THE JUROR: Ashley McKinny, friends.

23 THE COURT: Would that affect your ability to be fair
24 and impartial?

25 THE JUROR: No, sir.

1 THE COURT: Thank you.

2 THE JUROR: 185, Tony Broome.

3 THE COURT: Yes, sir. Would that affect -- how do you
4 know Tony?

5 THE JUROR: He's good friends with my dad.

6 THE COURT: Would that affect your ability to be fair
7 and impartial?

8 THE JUROR: No.

9 THE COURT: Thank you.

10 MR. NEWMAN: Your Honor, what was that last number?

11 THE COURT: 185.

12 THE JUROR: Seth Walker.

13 THE COURT: Thank you, sir. Anybody else on that?
14 Okay. Wayne Boone, transport, Lancaster County Coroner's
15 Office. Catherine Leisy with SLED. Tyler Sturkie with
16 SLED. Jackie Davis with SLED. Sandra Cauthen, 911. Does
17 anybody recognize those names as previously described? Yes,
18 ma'am?

19 THE JUROR: 181. Sandy Cauthen.

20 THE COURT: How do you know Sandy Cauthen?

21 THE JUROR: Just friends.

22 THE COURT: Would her testifying affect your ability to
23 be fair and impartial?

24 THE JUROR: No, sir.

25 THE COURT: Thank you. Yes, ma'am?

1 THE JUROR: Number 163. I also know Wayne Boone, he's
2 on our fire department and he's just a good friend.

3 THE COURT: Would him testifying affect your ability to
4 be fair and impartial?

5 THE JUROR: No, sir.

6 THE COURT: Thank you. All right. Kayla Small,
7 Lancaster County 911. Jason Catoe, investigator with the
8 Lancaster County Sheriff. Steven Blackwelder, Director of
9 911. And Jamie Green forensic scientist with SLED. Does
10 anybody recognize those names as previously described? Any
11 of those names? No response. Yes, ma'am, go ahead.

12 THE JUROR: I know Steven Blackwelder but I don't talk
13 to him very often.

14 THE COURT: You know Steven Blackwelder just because of
15 what you do?

16 THE JUROR: Uh-huh.

17 THE COURT: Would that affect your ability to fair and
18 impartial?

19 THE JUROR: No.

20 THE COURT: Thank you. That's juror number 163.
21 Anybody else? Okay. I'm going to ask a series of
22 questions, ladies and gentlemen, just like we did with
23 qualification and exemption, if any question applies just
24 please stand, and again the first thing I will do is ask you
25 what is your juror number -- yes, sir?

1 MR. NEWMAN: The defense list.

2 (Break in proceedings.)

3 THE COURT: Of course Michael Brent Gay, I've already
4 asked that. Alice Wallace. Pete Skidmore, he's a private
5 investigator. Thomas Darnell with SLED. Tyler Sturkei with
6 SLED. Paul Miller and William Brewer, Dr. William Brewer.
7 Does anybody recognize those names as previously described?
8 All right, no response. Has any member of the jury panel or
9 a member of your immediate family ever been charged with
10 murder, manslaughter or possession of a firearm during the
11 commission of a violent crime? If so, please stand. That's
12 you or a member of your immediate family ever been charged
13 with any murder, manslaughter or possession of a firearm
14 during the commission of a violent crime? If so, please
15 stand. All right, yes, sir, juror number?

16 THE JUROR: Eighteen.

17 THE COURT: All right. How do you answer that?

18 THE JUROR: My first cousin was charged with murder.

19 THE COURT: What is your first cousin's name?

20 THE JUROR: (Inaudible.)

21 THE COURT: What's the status of that case? Was he
22 convicted or acquitted?

23 THE JUROR: Convicted.

24 THE COURT: How long ago was this?

25 THE JUROR: 2017.

1 THE COURT: Would that affect your ability to be fair
2 and impartial?

3 THE JUROR: No.

4 THE COURT: What county was that in?

5 THE JUROR: Mecklenburg County.

6 THE COURT: Up in North Carolina?

7 THE JUROR: Yes, sir.

8 THE COURT: All right. Thank you, sir, you can be
9 seated. All right, next question. Do you or any member of
10 your immediate family currently have a case pending in
11 criminal court up here in general sessions court that's
12 being prosecuted by the solicitor's office, that's you or
13 any member of your immediate family? If so, please stand.
14 No response. There may be testimony in this case about drug
15 use including excessive use of pain medicine. Is there any
16 juror who could not apply the law in this case as instructed
17 by me, the judge? If you don't think you can do what I tell
18 you to do please stand, or follow the law as I charge you
19 what the law is or I instruct you what the law is, if there
20 is anybody who doesn't think they can follow my instructions
21 please stand. Thank you for not standing. All right.
22 There are various entertainment television shows and movies
23 as well as books, many books, about law enforcement and
24 crime scene investigation such as Law and Order or CSI, and
25 again, those are things that are often based on fiction.

1 Can you as a juror -- is there any juror who could not set
2 aside any views regarding crime scene investigation and
3 judge this case solely on the evidence presented to you in a
4 courtroom by witness testimony and/or physical exhibits
5 admitted into evidence? So is there any juror who cannot
6 set aside any views that they may think they have because
7 they watch TV and go see crime movies and read books? Is
8 there any juror who can't see the difference between real
9 court and TV court? If so, please stand. All right. Thank
10 you for not standing. Is there any witness who believes
11 that a witness testifying for the State is more credible or
12 believable than a witness who testifies for the defense? If
13 so, please stand. No response. Is there any member of the
14 jury panel or a member of your immediate family or a close
15 friend ever been the victim or a witness of a violent crime?
16 If so, please stand.

17 THE JUROR: Would you repeat that?

18 THE COURT: Is there any member of the jury panel, have
19 you or a family member of your --

20 MR. DELGADO: Your Honor --

21 THE COURT: Right, she wanted me to repeat the
22 question. Have you or a family member or a close friend
23 ever been the victim or a witness -- victim of or a witness
24 to a violent crime? If so, please stand. All right, right
25 there in the front, juror number?

1 THE JUROR: 123.

2 THE COURT: Yes, ma'am, Ms. McCain?

3 THE JUROR: My nephew was murdered in April and the
4 trial is Wednesday.

5 THE COURT: All right. Here in Lancaster?

6 THE JUROR: York.

7 THE COURT: In York? And the trial is what?

8 THE JUROR: Wednesday.

9 THE COURT: This Wednesday. Were you -- all right. So
10 you weren't a witness to that, that's a family member who
11 was the victim?

12 THE JUROR: Yes.

13 THE COURT: All right. Thank you, ma'am. Would that
14 affect your ability to be a fair or impartial juror in this
15 case?

16 THE JUROR: Yeah.

17 THE COURT: Thank you, ma'am, you can be seated. Yes,
18 sir, juror number?

19 THE JUROR: I think it's 11, Pat Beaver.

20 THE COURT: Yes, sir?

21 THE JUROR: Yeah. My wife was carjacked at knife
22 point, she wasn't hurt, they never found out who did it.
23 And my daughter was robbed at gunpoint, her and my
24 mother-in-law while they were shopping and they never found
25 who did that either.

1 THE COURT: Are these things which happened recently?

2 THE JUROR: No, sir, ten years ago and probably seven
3 years ago.

4 THE COURT: All right. Would those things affect your
5 ability to be a fair and impartial juror in the trial of
6 this case?

7 THE JUROR: No, sir.

8 THE COURT: Thank you. All right.

9 THE JUROR: 181. My uncle was beaten with a two by
10 four in a fight and he's actually in a nursing home from
11 that. But it does not affect the way I would be able to --

12 THE COURT: How long ago was that?

13 THE JUROR: Honestly I cannot tell you, it's probably
14 been five or six years.

15 THE COURT: Did it happen in this area?

16 THE JUROR: Yes, sir.

17 THE COURT: And would that affect your ability to be
18 fair and impartial?

19 THE JUROR: No, sir.

20 THE COURT: Thank you. Yes, ma'am?

21 THE JUROR: Juror 168, my cousin was murdered by her
22 husband about five years ago here in Lancaster.

23 THE COURT: Would that affect your ability to be fair
24 and impartial?

25 THE JUROR: No.

1 THE COURT: Thank you. Yes, sir?

2 THE JUROR: Eighteen.

3 THE COURT: Yes, sir?

4 THE JUROR: I had two brothers murdered in 2015.

5 THE COURT: In Mecklenburg County?

6 THE JUROR: Yes, sir.

7 THE COURT: Would that affect your ability to be fair
8 and impartial?

9 THE JUROR: No, sir.

10 THE COURT: All right, thank you. Yes, ma'am?

11 THE JUROR: 179. My grandfather was shot and killed
12 outside of Atlanta.

13 THE COURT: How long ago was that?

14 THE JUROR: A long time ago.

15 THE COURT: Would that affect your ability to be fair
16 and impartial?

17 THE JUROR: No, sir.

18 THE COURT: All right. Next question. Ladies and
19 gentlemen of the jury, we're going to go about another five
20 minutes or so and then we'll take a quick break so y'all can
21 run to the restroom and get a drink, or water, y'all have
22 been in here for little over a hour and a half already so I
23 know that. Next question. Have you or a family member or
24 close friend ever been the victim or a witness -- victim of
25 or a witness to a theft related crime or a crime involving a

1 weapon that you didn't previously answer? In other words if
2 you didn't answer last time I'm giving you an opportunity to
3 answer this time, because specifically it's requested, have
4 you or family member or a close friend ever been the victim
5 of or witness to a crime that involved a weapon or a theft
6 or drugs, okay? So theft, weapon or drugs and you didn't
7 previously answer, if you've been a victim of or been a
8 witness to, either you or a family member or close friend?
9 All right. Yes, sir, juror number?

10 THE JUROR: I've forgotten, my name is William
11 Llewellyn.

12 THE COURT: 116. Yes, sir?

13 THE JUROR: If I might ask for clarification, must the
14 crime be a weapon against me?

15 THE COURT: No, sir. Just any type of crime involving
16 a weapon.

17 THE JUROR: It does not involve a weapon but it was
18 that.

19 THE COURT: And how long ago did this happen?

20 THE JUROR: Seven years.

21 THE COURT: Would that affect your ability to be a fair
22 and impartial juror in the trial of this case?

23 THE JUROR: No.

24 THE COURT: Thank you, sir. Have you or a family
25 member or a close friend ever been affected by drugs or by

1 someone abusing drugs? If so, please stand. All right.

2 Juror 181, yes, ma'am?

3 THE JUROR: I had a cousin die in an accidental drug
4 overdose.

5 THE COURT: Would that affect your ability to be fair
6 and impartial?

7 THE JUROR: No, sir.

8 THE COURT: Thank you. Anybody else on that one? Have
9 you, a family member or a close friend ever had a discussion
10 about arrests and crimes with anyone from either the
11 Lancaster County Sheriff's Department, Drug Enforcement
12 Administration, South Carolina Attorney General's Office,
13 Lancaster County Solicitor's Office or lawyers who do
14 criminal defense work or anything like that, ever had
15 discussions about arrests and crimes? If so, please stand.
16 Yes, sir?

17 THE JUROR: Juror number 32. My daughter is going to
18 school for criminal justice and she did an internship with
19 the DEA this past summer so we had some discussions about
20 activities in North Carolina.

21 THE COURT: Would that affect your ability to be fair
22 and impartial in the trial of this case?

23 THE JUROR: No, Your Honor.

24 THE COURT: Thank you, sir. Yes, ma'am?

25 THE JUROR: 179. Just child protective services.

1 THE COURT: And would affect your ability to be fair
2 and impartial?

3 THE JUROR: No, sir.

4 THE COURT: Thank you. Is there any perspective juror
5 who believes that someone is probably guilty simply because
6 they were arrested by law enforcement? If so, please stand.
7 No response. Is there any perspective juror who believes
8 that our criminal laws are too lenient and there should be
9 stricter punishment? If so, please stand. No response. Is
10 there any perspective juror who oppose laws which restrict a
11 person's right to gun ownership? If so, please stand. All
12 right, no response. Let's take about a ten minute recess so
13 y'all can go freshen up, then we'll finish the rest of these
14 questions. Please don't talk to each other about these
15 questions.

16 (A break was taken.)

17 THE COURT: Thank you for your patience. Let me have
18 juror number 51, Ms. Desantis. Yes, ma'am, you had
19 approached to ask a question. All right. Solicitor, Mr.
20 Phillips.

21 (A bench conference was held.)

22 THE COURT: And juror number 82.

23 (A bench conference was held.)

24 THE COURT: And juror number 12, Mr. Barfield.

25 (A bench conference was held.)

1 THE COURT: Back to the questions. Is there any juror
2 who is so morally opposed to violence and/or weapons that
3 you could not render fair and impartial juror service in a
4 case where there's evidence of a person being shot by a gun?
5 If so, please stand. Are you so morally opposed to drugs
6 and/or drugs use -- nobody stood on that. The next
7 question. Are you so morally opposed to drugs or drugs use
8 that you could not render a fair and impartial decision in a
9 case where there's evidence of drugs? If so, please stand.
10 No response. In the law, and I said this earlier, one of
11 the great tenants of our judicial system, ladies and
12 gentlemen, is that someone who is charged with a crime is
13 presumed innocent until proven guilty. A person charged
14 with a crime doesn't have to prove anything, it's up to the
15 State to prove every essential element of any crime charged,
16 okay? Now, do you -- and part of that is a defendant never
17 has to prove innocence, the State has to prove guilt. And
18 we also have this thing called the 5th amendment, meaning
19 that nobody can make you testify on your own if you don't
20 want to testify, all right, it prevents self incrimination,
21 okay? So is there any perspective juror who believes that
22 someone is probably guilty if that person chooses not to
23 testify? If so, please stand. No response. Has any
24 perspective juror ever commented on a news article on the
25 Internet or social media site such as Facebook or Twitter or

1 Instagram that relates to a person's arrest, crime or
2 criminal trial? If you've ever commented on social media
3 concerning allegations related to somebody being arrested or
4 somebody being charged with a crime or anything involving
5 that nature, please stand. All right, no response. Have
6 you ever commented on or liked a law enforcement agency's
7 social media site or a defendant or defense lawyer's social
8 media's site? For example, sheriff's departments Facebook
9 page or Facebook or a social media page advocating for a
10 criminal defendants' rights? If so, please stand. All
11 right, yes, ma'am, juror number?

12 THE JUROR: 179.

13 THE COURT: All right. How do you answer that one?

14 THE JUROR: I like the Lancaster County Sheriff's
15 Department page and probably share articles.

16 THE COURT: Okay. Would that affect your ability to be
17 fair and impartial?

18 THE JUROR: No, sir.

19 THE COURT: Thank you. Yes, ma'am?

20 THE JUROR: Juror 168. And I have liked the sheriff's
21 department's page, I get updates.

22 THE COURT: Would that affect your ability to be fair
23 and impartial?

24 THE JUROR: No.

25 THE COURT: Thank you. Yes, sir?

1 THE JUROR: Forty-eight, sheriff's department's page.

2 THE COURT: Facebook?

3 THE JUROR: Yes, sir.

4 THE COURT: Would that affect your ability to be fair
5 and impartial?

6 THE JUROR: No, sir.

7 THE COURT: Okay. Thank you. Have you, a family
8 member or a close friend ever been employed on either a
9 federal or state or more local level as a law enforcement
10 officer of any type, whether it be SLED or police or county
11 law enforcement, highway patrol, military police or
12 anything? So if that's you or a family member or a close
13 friend of a law enforcement officer of any type, if so,
14 please stand. All right, yes, ma'am?

15 THE JUROR: My father was clerk of court for 25 years,
16 and my husband is a retired South Carolina State Trooper.

17 THE COURT: All right. Would that affect your ability
18 to be fair and impartial?

19 THE JUROR: No.

20 THE COURT: And what's your juror number, ma'am?

21 THE JUROR: Eighty-two.

22 THE COURT: Yes, ma'am, beside her?

23 THE JUROR: Juror 70. My brother retired from the York
24 County Sheriff's Department.

25 THE COURT: What's your last name, ma'am?

1 THE JUROR: Gardner.

2 THE COURT: That's juror number 67. Go ahead, your
3 brother did what?

4 THE JUROR: He's retired from the York County Sheriff's
5 Department.

6 THE COURT: Okay. Would that affect your ability to be
7 fair and impartial?

8 THE JUROR: No, sir.

9 THE COURT: Thank you. Yes, sir?

10 THE JUROR: 130. My cousin's husband is a police
11 officer with Greensboro, and my second cousin is retired
12 highway patrol.

13 THE COURT: Would that affect your ability to be fair
14 and impartial?

15 THE JUROR: No, sir.

16 THE COURT: All right, thank you. Yes, sir?

17 THE JUROR: Thirty-seven. I have a brother who is a
18 retired policeman.

19 THE COURT: Would that affect your ability to be fair
20 and impartial?

21 THE JUROR: No. And another brother who is a retired
22 investigator for the U.S. Customs.

23 THE COURT: Same response?

24 THE JUROR: Yes.

25 THE JUROR: 96. Brother is a corrections officer.

1 THE COURT: Currently?

2 THE JUROR: Retired.

3 THE COURT: All right. Would that affect your ability
4 to be fair and impartial?

5 THE JUROR: No.

6 THE COURT: Thank you. Yes, sir?

7 THE JUROR: Seventy-four. Brother-in-law was a former
8 state trooper.

9 THE COURT: All right. For South Carolina?

10 THE JUROR: Yes, sir.

11 THE COURT: Would that affect your ability to be fair
12 and impartial?

13 THE JUROR: No, Your Honor.

14 THE COURT: Thank you. Yes, sir?

15 THE JUROR: Storm, I don't remember my number, I was at
16 the bottom.

17 THE COURT: Your last name is what?

18 THE JUROR: Storm.

19 THE CLERK: Number 172.

20 THE COURT: 172. Yes, sir?

21 THE JUROR: My sister is a clerk of court in
22 Charlestown, West Virginia currently.

23 THE COURT: Would that affect your ability to be fair
24 and impartial?

25 THE JUROR: No.

1 THE COURT: Thank you, sir. All right. Have you, a
2 family member or a close friend ever been employed by a
3 prosecutor's office such as the solicitor's office or a
4 criminal defense attorney's office? If so, please stand.
5 Yes, sir?

6 THE JUROR: My father was an investigator for the
7 public defender back in the Pennsylvania.

8 THE COURT: Would that affect your ability to be fair
9 and impartial.

10 THE JUROR: No, Your Honor.

11 THE COURT: And what's your juror number?

12 THE JUROR: 32.

13 THE COURT: Yes, ma'am?

14 THE JUROR: Not sure if this counts, I've got a really
15 good friend who is -- works for ab attorney here in town,
16 and I have a sister who works for an attorney in Rock Hill.

17 THE COURT: Okay. Do those attorneys do criminal
18 defense?

19 THE JUROR: I don't know.

20 THE COURT: That's juror number --

21 THE JUROR: 181.

22 THE COURT: Would that affect your ability to be fair
23 and impartial?

24 THE JUROR: No, sir.

25 THE COURT: Thank you. Has any member of the jury

1 panel or a close family member or friend ever applied for a
2 job in law enforcement either to be a law enforcement
3 officer or to work at the county detention center or work up
4 here at the courthouse or with the solicitor's office? If
5 so, please stand.

6 THE JUROR: I applied for the Lancaster Sheriff when I
7 got out of the military in '92?

8 THE COURT: Did you get the job?

9 THE JUROR: No, sir.

10 THE COURT: Would that affect your ability to be fair
11 and impartial?

12 THE JUROR: No, sir.

13 THE COURT: Any perspective juror a member of or
14 financial contributor to or supporter of a law enforcement
15 booster organization such as Fraternal Order of Police or
16 South Carolina Troopers Association or Mothers Against Drunk
17 Driving, or likewise on the other side support things
18 advocating for criminal defendants' rights and stuff like
19 that? If you're a supporter of or financial contributor to
20 any of those type organizations please stand. All right.
21 Yes, sir, in the back?

22 THE JUROR: I don't remember my juror number.

23 THE COURT: What's your last name?

24 THE JUROR: Metzler.

25 THE COURT: 126. Yes, sir?

1 THE JUROR: I support the sheriff's office financially.

2 THE COURT: Okay. And would that affect your ability
3 to be fair and impartial?

4 THE JUROR: No.

5 THE COURT: Thank you, sir. Yes, ma'am?

6 THE JUROR: Number 51. And we support the sheriff's
7 office and Mothers Against Drunk Driving.

8 THE COURT: Would that affect your ability to be fair
9 and impartial?

10 THE JUROR: No, sir.

11 THE COURT: Thank you. Has any member of the jury,
12 family member or a close friend ever been a member of any
13 organization religious or not religious that opposes the of
14 alcohol or illegal drugs? If so, please stand. All right,
15 no response. Have you or any family member or close friend
16 ever worked as a social worker, welfare worker,
17 psychologist, parapsychologist, psychiatrist, counselor or
18 other similar occupation? If so, please stand.

19 THE JUROR: 179.

20 THE COURT: Would that affect your ability to be fair
21 and impartial?

22 THE JUROR: No, sir.

23 THE COURT: All right. Thank you, ma'am. Do you or
24 any of your -- or any member of your immediate family or
25 close friend have any education, training, professional or

1 volunteer employment in the following fields: Criminal
2 justice, forensic sciences, pathology, and/or religion,
3 philosophy and ethics? If so, please stand. Yes, sir?

4 THE JUROR: I don't know my number. Rollins.

5 THE COURT: 151. Yes, sir?

6 THE JUROR: I graduated from the University of South
7 Carolina in criminal justice.

8 THE COURT: Okay. Would that affect your ability to be
9 fair and impartial?

10 THE JUROR: No.

11 THE COURT: All right, thank you. Yes, sir?

12 THE JUROR: Thirty-two, daughter is a criminal justice
13 major.

14 THE COURT: Would that affect your ability to be fair
15 and impartial?

16 THE JUROR: No, Your Honor.

17 THE COURT: Thank you. Yes, sir?

18 THE JUROR: Ordained minister. 130, ordained minister.

19 THE COURT: Would that affect your ability to fair and
20 impartial?

21 THE JUROR: No, sir.

22 THE COURT: All right. Has any member of the jury
23 panel or a member of your immediate family ever served on a
24 trial jury in a criminal case? So if you've ever served on
25 a trial jury in a criminal case, or you know of an immediate

1 member of your family who has served on a trial jury in a
2 criminal case, please stand. All right, right there. Yes,
3 sir, your juror?

4 THE JUROR: Number 37.

5 THE COURT: What kind of trial was it?

6 THE JUROR: It was a manslaughter trial my wife served
7 on.

8 THE COURT: What was the result?

9 THE JUROR: Conviction, this was about 30 years ago.

10 THE COURT: Here in South Carolina?

11 THE JUROR: In New York.

12 THE COURT: Would that affect your ability to be fair
13 and impartial?

14 THE JUROR: No.

15 THE COURT: All right, thank you. Yes, sir?

16 THE JUROR: Number 96, a juror on a DUI case.

17 THE COURT: All right. And how long ago was that?

18 THE JUROR: About 15 years ago.

19 THE COURT: What was the result?

20 THE JUROR: Not guilty.

21 THE COURT: Would that affect your ability to be fair
22 and impartial in the trial of this case?

23 THE JUROR: No.

24 THE COURT: All right, thank you. Yes, ma'am?

25 THE JUROR: Juror 168. My husband was on a jury, a

1 federal grand jury that was sequestered in Dillon for the
2 murder of a state trooper.

3 THE COURT: Would that affect your ability to be fair
4 and impartial in the trial of this case?

5 THE JUROR: No.

6 THE COURT: Thank you. Yes, ma'am?

7 THE JUROR: 178. I was on a DUI case in Mecklenburg
8 County.

9 THE COURT: All right. And would that affect your
10 ability to be fair and impartial in this case?

11 THE JUROR: No, sir.

12 THE COURT: Thank you. Has anybody ever been a witness
13 in a criminal case? If so, please stand. Like a testifying
14 witness. Yes, ma'am, juror number?

15 THE JUROR: 194.

16 THE COURT: All right. And how do you answer that?

17 THE JUROR: I served as a witness for a murder case in
18 Monroe, North Carolina.

19 THE COURT: Were you testifying for the State or for
20 the defense?

21 THE JUROR: For the defense.

22 THE COURT: Would that affect your ability to be fair
23 and impartial?

24 THE JUROR: No, sir.

25 THE COURT: All right, thank you.

1 THE JUROR: Eighty-six.

2 THE COURT: Yes, sir.

3 THE JUROR: It was a fraud case in Kentucky, resulted
4 in a mistrial.

5 THE COURT: And who did you testify for?

6 THE JUROR: Defendant.

7 THE COURT: Would that affect your ability to be fair
8 and impartial?

9 THE JUROR: No, sir.

10 THE COURT: All right. Any further voir dire from the
11 State?

12 MR. NEWMAN: None from the State.

13 THE COURT: Any further voir dire from the defense?

14 MR. PHILLIPS: None, Your Honor, just renew our
15 objection.

16 THE COURT: All right. Thank you very much, you're
17 covered in the record. All right. Ladies and gentlemen,
18 that's it for what's called voir dire where I ask you all of
19 those specific questions. We will now proceed with
20 selecting a trial jury for the trial of this case.

21 (Break in proceedings.)

22 THE CLERK: If I call your name please stand. Juror
23 105, Harold Kennington. What say the State?

24 MR. NEWMAN: Please present the juror.

25 THE CLERK: Defendant?

1 MR. PHILLIPS: Please seat the juror.

2 THE CLERK: Juror number 106, Brian Kent. What say the
3 State?

4 MR. NEWMAN: Please present the juror.

5 THE CLERK: Defendant?

6 MR. PHILLIPS: Please seat Mr. Kent.

7 THE CLERK: Juror number 17, Edna Bennett. What say
8 the State?

9 MR. NEWMAN: Please present the juror.

10 THE CLERK: Defendant?

11 MR. PHILLIPS: Please seat the juror.

12 THE CLERK: Juror 37, Richard Castioni. What say the
13 State?

14 MR. NEWMAN: Please present the juror.

15 THE CLERK: Defendant?

16 MR. PHILLIPS: Please excuse the juror.

17 THE CLERK: Juror 169, Joseph Steele. What say the
18 State?

19 MR. NEWMAN: Please present the juror.

20 THE CLERK: Defendant?

21 MR. PHILLIPS: Please seat Mr. Steele.

22 THE CLERK: Juror 56, Jeremy Edwards. What say the
23 State?

24 MR. NEWMAN: Please present the juror.

25 THE CLERK: Defendant?

1 MR. NEWMAN: Please excuse Mr. Edwards.

2 THE CLERK: Juror 25, Zondrel Bowden. What say the
3 State?

4 MR. NEWMAN: Please present the juror.

5 THE CLERK: Defendant?

6 MR. PHILLIPS: Please seat Ms. Bowden.

7 THE CLERK: Juror 16, Dawn Spencer. What say the
8 State?

9 MR. NEWMAN: Please present the juror.

10 THE CLERK: Defendant?

11 MR. PHILLIPS: Please excuse Ms. Spencer.

12 THE CLERK: Juror number 96, Christopher Holmes. What
13 says the State?

14 MR. NEWMAN: Present the jury.

15 THE CLERK: What says the defendant?

16 MR. PHILLIPS: Please seat Mr. Holmes.

17 THE CLERK: Juror number 129, Robbie Moree. What say
18 the State?

19 MR. NEWMAN: Please present the juror.

20 THE CLERK: What say the defendant?

21 MR. PHILLIPS: Please seat the juror.

22 THE CLERK: Juror 40, Vanessa Champion. What say the
23 State?

24 MR. NEWMAN: Please present the juror.

25 THE CLERK: Defendant?

1 MR. PHILLIPS: Please seat Ms. Champion.

2 THE CLERK: Juror 74, Joseph Giorgio. What say the
3 State?

4 MR. NEWMAN: Please present the juror.

5 THE CLERK: Defendant?

6 MR. PHILLIPS: Please excuse Mr. Giorgio.

7 THE CLERK: Juror 67, Dana Gardner. What say the
8 State?

9 MR. NEWMAN: Please present the juror.

10 THE CLERK: Defendant?

11 MR. PHILLIPS: Please excuse Ms. Gardner.

12 THE CLERK: Juror 170, Matthew Steen. What say the
13 State?

14 MR. NEWMAN: Please excuse this juror.

15 THE CLERK: Juror 135, Kathlyn Murray. What say the
16 State?

17 MR. NEWMAN: Please present the juror.

18 THE CLERK: Defendant?

19 MR. PHILLIPS: Please seat Mr. Murray.

20 THE CLERK: Juror 51, Judith Desantis. What say the
21 State?

22 MR. NEWMAN: Please present the juror.

23 THE CLERK: Defendant?

24 MR. PHILLIPS: Please excuse Ms. Desantis.

25 THE CLERK: Juror 151, William Rollings. What say the

1 State?

2 MR. NEWMAN: Please excuse this juror.

3 THE CLERK: Juror 163, Bridget Sims. What say the
4 State?

5 MR. NEWMAN: Please present the juror.

6 THE CLERK: Defendant?

7 MR. PHILLIPS: Your Honor, may we approach?

8 (A bench conference was held.)

9 THE COURT: Ms. Sims, you're excused from the trial of
10 this case, thank you.

11 THE CLERK: Juror 38, Timothy Catoe. What say the
12 State?

13 MR. NEWMAN: Please excuse this juror.

14 THE CLERK: Juror 71, Randy Gay. What say the State?

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

16 (A bench conference was held.)

17 THE COURT: Mr. Gay, is there any relation? Last name
18 is obviously the same as the defendant's last name, any
19 familial relationship with the defendant in this case?

20 THE JUROR: Not that I know of.

21 THE COURT: All right, not that he knows of.
22 Gentleman, y'all decide how y'all want to proceed.

23 MR. NEWMAN: Please present the juror.

24 THE CLERK: Defendant?

25 MR. PHILLIPS: Please excuse the juror.

1 THE CLERK: Juror 95, Bailey Holden. What say the
2 State?

3 MR. NEWMAN: Please excuse this juror.

4 THE CLERK: Juror 82, Deborah Haynes. What say the
5 State?

6 MR. NEWMAN: Please present this juror.

7 THE CLERK: Defendant?

8 MR. PHILLIPS: Please excuse Ms. Haynes.

9 THE CLERK: Juror 30, Kenneth Brown. What say the
10 State?

11 MR. NEWMAN: Please present the juror.

12 THE CLERK: Defendant?

13 MR. PHILLIPS: Please seat Mr. Brown.

14 THE CLERK: Juror 161, John Seegars. What say the
15 State?

16 MR. NEWMAN: Please present the juror.

17 THE CLERK: Defendant?

18 MR. PHILLIPS: Please seat Mr. Seegars.

19 THE CLERK: Juror 116, William Llewellyn. What say the
20 State?

21 MR. NEWMAN: Please present the juror.

22 THE CLERK: Defendant?

23 MR. PHILLIPS: Please seat the juror.

24 THE COURT: All right. We'll now proceed with
25 alternates, two alternates, one and two for each alternate.

1 All right, one and two for each alternate, we'll do three
2 alternates.

3 THE CLERK: Juror 143, Tamarah Rascon. What say the
4 State?

5 MR. NEWMAN: Please present the juror.

6 THE CLERK: Defendant?

7 MR. PHILLIPS: Please seat the juror.

8 THE CLERK: Juror 185, Seth Walker. What say the
9 State?

10 MR. NEWMAN: Please present the juror.

11 THE CLERK: Defendant?

12 MR. PHILLIPS: Please excuse Mr. Walker.

13 THE CLERK: Juror 23, Steven Bobo. What say the State?

14 MR. NEWMAN: Please present the juror.

15 THE CLERK: Defendant?

16 MR. PHILLIPS: Please seat Mr. Bobo.

17 THE CLERK: Juror 173, Lajana Stradford. What say the
18 State?

19 MR. NEWMAN: Please present the juror.

20 THE CLERK: Defendant?

21 MR. PHILLIPS: Please seat Ms. Stradford.

22 THE COURT: Any matters of law regarding jury selection
23 from the State?

24 MR. NEWMAN: None from the State.

25 THE COURT: From the defense?

1 THE JUROR: No, Your Honor.

2 (The remaining panel was excused.)

3 THE COURT: All right. We are down until tomorrow.

4 (Court adjourned for the day and resumed on Tuesday,
5 December 11, 2018, at 11:00 a.m.)

6 MS. COLLINS: State of South Carolina versus Michael
7 Brent Gay, it's Tuesday, December 11th, and we are with the
8 Court's permission back on the record. The defendant is in
9 the courtroom with counsel. At this time still moving
10 forward on pretrial matters, Sandra Cauthen, I advised the
11 defense attorneys and Your Honor yesterday that her father
12 had an emergency, he's currently awaiting a procedure
13 scheduled to start at noon, we would like to start with her
14 as the custodian of records for the 911 calls, if I could
15 call her at this time.

16 THE COURT: All right. Before we do that, Mr.
17 Phillips, what pretrial issues are there that the defense
18 wishes to bring up? Because I'm looking through all of your
19 motions, the written motions, and I left off at page 11 of
20 20 on your supplemental motion for discovery. I want to
21 make sure that all of the cell phone stuff is done, there's
22 no more cell phone stuff, because I took care of the DNA
23 matters yesterday. Are there any other cell phone issues?

24 MR. PHILLIPS: I believe that the State is not
25 intending to present any cell phone evidence. Based on our

1 trial strategy I believe there's no need to make any further
2 motions regarding the cell phone evidence.

3 THE COURT: Is that your understanding, Madam
4 Solicitor?

5 MS. COLLINS: One moment.

6 (Break in proceedings.)

7 MS. COLLINS: There may be some testimony from a
8 witness, Mike Deerman, just that he was texting with the
9 victim just to indicate at what point he was still alive,
10 but as far as the content we will not be going into that.

11 MR. PHILLIPS: That would then trigger that we would
12 need them to do the extraction that's requested, and that
13 would --

14 THE COURT: Okay. That's why I bring that up. So we
15 have that issue, the cell phone issue, and then I believe
16 I've dealt with the suppression of DNA evidence issue
17 already. We still have the suppression of involuntary
18 statement issue along with -- although there's no written
19 motion on the 911 matters, you know, obviously we need to
20 have a decision on that as well. Anything else that you can
21 think of?

22 MR. PHILLIPS: No, Your Honor, that was a perfect
23 summary.

24 THE COURT: All right. Madam Solicitor.

25 MS. COLLINS: Your Honor, if we could in view of Ms.

1 Cauthen's father's situation I would like to go forward with
2 the 911 call.

3 THE COURT: Sure. Go ahead and call her.

4 MS. COLLINS: The State calls Sandra Cauthen to the
5 stand.

6 The witness, SANDRA CAUTHEN, was first duly sworn and
7 Testified as follows:

8 DIRECT EXAMINATION

9 BY MS. COLLINS:

10 Q Would you please state your name for the record?

11 A Sandra Cauthen.

12 Q What is your occupation?

13 A I'm the deputy director of the Lancaster County Public
14 Safety Communications.

15 Q How long have you been employed with that agency?

16 A Thirty years.

17 Q Were you employed there in December of 2015?

18 A I was.

19 Q And pursuant to a recent request from Investigator
20 Jennifer Rumbaugh of the sheriff's department, did you
21 provide her with copies of two 911 calls that were made on
22 December 5th, 2015?

23 A I did.

24 Q Did you also provide her with a CAD report?

25 A I did.

1 Q And what does CAD stand for?

2 A Computer Aided Dispatch.

3 Q Thank you. I'm going to show you what's been marked as
4 Court's Exhibit 13 for the purposes of this hearing only and
5 ask you, is that a copy of the CAD report that you provided
6 to Investigator Rumbaugh?

7 A It is.

8 Q And does that CAD report indicate the time that a 911
9 call was received at your center by a citizen named Raymond
10 Robinson?

11 A It does.

12 Q And what time was that?

13 A I'm trying to find the beginning of the call.

14 Q I think Raymond Robinson's is right at the front of the
15 page if I'm not mistaken.

16 A 11:49:17 p.m.

17 Q 11:49 on 12/5 of 2015?

18 A That is correct.

19 Q P.m.?

20 A Correct.

21 Q Do y'all use military time or regular time?

22 A The CAD report is at regular time but our radios and
23 everything is military time.

24 Q And does it indicate on there further down when the 911
25 call was received by someone saying he was the defendant --

1 well, saying he was Michael Brent Gay?

2 A It does.

3 Q And what time was that call received?

4 A 11:56:29 p.m.

5 Q I would like to show you what's been marked as State's
6 Exhibits 14 and 15 for the purposes of this hearing. Do
7 those appear to be discs of 911 calls by the defendant and
8 Raymond Robinson?

9 A That's correct.

10 Q Yes?

11 A Yes.

12 Q And you emailed that information to Investigator
13 Rumbaugh, correct?

14 A I did.

15 Q Did you listen to those calls?

16 A I did.

17 Q Are those recordings made simultaneously at the time
18 that the call is being received?

19 A They are.

20 Q And that are preserved in the normal course of
21 business?

22 A They are.

23 Q And when you downloaded the copy of them you did not
24 edit that in any way; is that correct?

25 A I did not.

1 Q They have not been altered in any way, correct?

2 A They did not, that's correct.

3 Q They're complete, they have not been shortened at all,
4 correct?

5 A That's correct.

6 Q And you've listened to both of those calls, correct?

7 A I have.

8 Q And they are fair and accurate depictions -- well, you
9 were not one of the telecommunicators, which is what you
10 call your phone operators; is that right?

11 A Exactly.

12 Q But to your knowledge they haven't been edited, they've
13 been preserved in the normal course of business, and they
14 were produced at the request of law enforcement; is that
15 correct?

16 A That's correct.

17 Q How long do y'all save these calls?

18 A They're saved for three years.

19 Q And you produced them for Investigator Rumbaugh before
20 the expiration of that three year period, correct?

21 A That's correct.

22 MS. COLLINS: Your Honor, I have nothing further of
23 this witness at this time, I would like to play these two
24 calls. I do have one more witness as to -- well, two more
25 witnesses as to the content of the calls.

1 THE COURT: All right. Any cross examination at this
2 point?

3 MR. DELGADO: No, sir.

4 THE COURT: You can step down, ma'am. You want to
5 publish those now?

6 MS. COLLINS: Just one more minute. Can I call Kayla
7 Small from 911 as well?

8 The witness, KAYLA SMALL, was first duly sworn and
9 Testified as follows:

10 DIRECT EXAMINATION

11 BY MS. COLLINS:

12 Q What is your name?

13 A Kayla Small.

14 Q What's your occupation?

15 A I'm the training manager and quality assurance
16 coordinator.

17 Q In December of -- and that's for 911 services; is that
18 correct?

19 A Yes, ma'am.

20 Q Here in Lancaster County?

21 A Yes, ma'am.

22 Q In 2015, December of 2015, did you work as one of
23 telecommunicators at 911?

24 A Yes, ma'am.

25 Q So your responsibilities at that time were a little

1 different?

2 A Yes, ma'am.

3 Q Did your responsibilities include receiving the calls
4 that were placed to 911?

5 A Yes, ma'am.

6 Q Talking to the callers?

7 A Yes, ma'am.

8 Q And do y'all work with someone else, with your agency
9 that's typing up what's being said to send information out
10 to law enforcement?

11 A I was the one typing into the call.

12 Q Okay. Can you speak up just a little bit, I'm older so
13 I can't hear you. You're good. Did you receive a call as
14 the 911 telecommunicator in the normal course of your duties
15 there from -- no. You were not the telecommunicator for
16 Raymond Robinson, the first 911 call; is that correct?

17 A No, ma'am.

18 Q However you -- that telecommunicator is no longer with
19 your agency, correct?

20 A That's correct.

21 Q However you were the 911 telecommunicator that received
22 the call from Michael Brent Gay; is that correct?

23 A Yes, ma'am.

24 Q And you've had an opportunity to listen to that call;
25 is that correct?

1 A Yes, ma'am.

2 Q And that recording of that call as you've listened to
3 it is complete and has the entire call; is that right?

4 A Yes, ma'am.

5 Q Now, you don't know Mr. Gay, correct?

6 A No.

7 Q So you wouldn't recognize his voice on your own,
8 correct?

9 A Correct.

10 Q But the caller indicated to you that he was Michael
11 Brent Gay, correct?

12 A Correct.

13 Q And that he resided at [REDACTED] correct?

14 A Correct.

15 Q And he described an incident that had happened earlier
16 that evening, correct?

17 A Yes, ma'am.

18 Q All right. And to your knowledge the recording is not
19 only complete but it has not been altered or edited in any
20 way; is that right?

21 A That's correct.

22 MS. COLLINS: Nothing further for this witness.

23 THE COURT: Any questions for this witness?

24 MR. DELGADO: No, Your Honor.

25 THE COURT: All right. Thank you, ma'am, you may step

1 down, just stick around with us for a little bit.

2 MS. COLLINS: Your Honor, I would like to go ahead and
3 publish these calls, after which I have some questions for
4 Raymond Robinson who is one of the callers.

5 THE COURT: Okay. Permission to publish granted.

6 MS. COLLINS: I would like to go ahead and move into
7 evidence for the purposes of this hearing only the CAD
8 report and the two calls for the purposes of this hearing
9 only.

10 THE COURT: Any objection to those?

11 MR. DELGADO: None, Your Honor.

12 THE COURT: All right, thank you. Introduced for the
13 purpose of this pretrial hearing.

14 MS. COLLINS: At this time we will publish for the
15 purpose of this hearing Court's Exhibit 14, which is the
16 first 911 call received from citizen Raymond Robinson.

17 (At this time the 911 CD was played.)

18 MS. COLLINS: Your Honor, at this time I would like to
19 publish Court's Exhibit Number 15 for the purposes of this
20 hearing only. This is purportedly the 911 call made by the
21 defendant, however I would ask if Ms. Cauthen could go ahead
22 and leave at this time subject to coming back later in the
23 week.

24 THE COURT: All right, that's fine.

25 (The 911 CD was played.)

1 MS. COLLINS: Your Honor, one last witness as to these
2 calls. The State would like to call Raymond Robinson.

3 The witness, RAYMOND ROBINSON, was first duly sworn

4 And testified as follows:

5 DIRECT EXAMINATION

6 BY MS. COLLINS:

7 Q Would you please state your name?

8 A Raymond Robinson.

9 Q Mr. Robinson, do you know the defendant, Michael Brent
10 Gay?

11 A Yes, ma'am.

12 Q Did you know Joshua Flint McManus?

13 A Yes, ma'am.

14 Q Were you at the home of Michael Brent Gay at [REDACTED]
15 [REDACTED] Lancaster, South Carolina on the evening of
16 December 5th of 2015?

17 A Yes, ma'am.

18 Q Had you been there several hours?

19 A Yes, ma'am.

20 Q Y'all were watching a football games together?

21 A Uh-huh.

22 Q You were there during the ACC game between Clemson and
23 NC State?

24 A Yes, ma'am.

25 Q You were in the courtroom just now when we played

- 1 Court's Exhibit 14, the 911 call made by you? Were you?
- 2 A Yes, ma'am.
- 3 Q You heard that tape?
- 4 A Uh-huh.
- 5 Q You had listened to it one time before in my presence,
- 6 correct?
- 7 A Uh-huh.
- 8 Q Is that your voice on that recording?
- 9 A Yes, ma'am.
- 10 Q Is that -- was that call made immediately after you
- 11 left the house?
- 12 A I was backing out of the driveway when I called.
- 13 Q And about how minutes had passed when you initiated
- 14 that call to 911 to when the time of the shot that killed
- 15 Flint McManus happened?
- 16 A Maybe ten or 20 minutes, something like that.
- 17 Q And was that upsetting for you to observe that happen?
- 18 A Yes, ma'am.
- 19 Q Were you in the room when it happened?
- 20 A Yes, ma'am.
- 21 Q Within just several feet of the victim?
- 22 A Yes, ma'am.
- 23 Q And you'd known the victim for many years?
- 24 A Yes, ma'am.
- 25 Q Just as you had known Mr. Gay for several years,

1 correct?

2 A Yes, ma'am.

3 Q And you said that was upsetting. At the time you
4 placed the call were you still upset about it?

5 A I still am upset about it, yes.

6 Q You still are to this day. And, of course, at the time
7 you played the -- that you made the call to 911 it had just
8 happened, correct?

9 A Yes, ma'am.

10 Q And the purpose of you making the call was to let law
11 enforcement know, correct?

12 A Yes, ma'am.

13 Q But also to get help to come to the house; is that
14 right?

15 A Yes, ma'am.

16 Q Can you tell me why -- you said it was ten to 20
17 minutes at the time between the time of the shot that killed
18 Joshua Flint McManus to the time you placed that call, why
19 was there a delay there at all?

20 A After he shot Flint he ordered me and Stefan out of the
21 room and told us to go to his kitchen and he was behind us
22 with a gun. Instead of going to the kitchen I just walked
23 to the carport, and when I got to the carport Stefan
24 followed me, we turned around and he was standing there with
25 a gun. I was asking why he done it and he said something

1 about the watch, and I told him I said, "Well, if you think
2 he stole a watch check has pockets," or whatever, and he
3 walked back and he --

4 Q When you say he walked back, who? Say the name.

5 A Brent Gay walked back to where Flint was sitting at, he
6 started checking his pockets and he acted like he was mad
7 because Flint didn't have nothing in his pockets, and that's
8 when I ran to my truck and called 911.

9 Q So even though he told you to go to the kitchen you
10 went ahead and ran to your truck?

11 A I went to the carport because he had that gun and I was
12 scared he was going to shoot me or Stefan. He followed us
13 to the carport and that's when I asked him why did he do
14 that.

15 MS. COLLINS: All right. No further questions at this
16 time for the purposes of this hearing, Your Honor.

17 THE COURT: All right. Counsel?

18 CROSS EXAMINATION

19 BY MR. PHILLIPS:

20 Q Good morning, Mr. Robinson.

21 A Good morning.

22 Q You said that the time interval was ten to 20 minutes?

23 A I'm thinking it was ten or 20 minutes.

24 Q So let's kind of walk through that starting at the
25 point where you said on the 911 call that you heard a shot.

1 A I seen the shot.

2 Q Or seen the shot. And so you saw the shot, and then

3 time-wise let's kind of walk through that. You said that

4 Mr. Gay ordered you to the kitchen.

5 A Uh-huh.

6 Q But you didn't go to the kitchen?

7 A No. I was running for my life, I was scared.

8 Q So you were running?

9 A Well, I was walking but I was scared he was going to

10 shoot me.

11 Q And where was your truck located?

12 A Outside of his house.

13 Q Out front?

14 A Uh-huh.

15 Q So between -- how long did it take you to leave the

16 house in this ten to 20 minute period?

17 A Long enough to get to my truck and call 911. I was

18 watching and making sure he didn't come shoot me in my truck

19 while I was backing out.

20 Q So if we're breaking it down you see the shot, how many

21 minutes would it have been before you left the house?

22 A Anywhere from ten to 20 minutes.

23 Q So not like totally left -- the inside of the house,

24 let me be specific, sorry if I'm confusing you. For you to

25 walk physically out of the house, not his property but

1 physically to leave the house, how much time were you in the
2 house after you saw the shot?

3 A After he shot Flint he ordered us to the kitchen and I
4 walked outside, maybe a couple -- 30 seconds, a minute or
5 something like that.

6 Q So 30 seconds to a minute. And then you get to your
7 truck how long from you leaving the house to get to the
8 truck?

9 A Long enough to walk to my truck, I wasn't timing it,
10 I'm not sure.

11 Q How far was your truck?

12 A Right there at the carport.

13 Q So quickly?

14 A Yeah.

15 Q So based on what you're testifying you said it would be
16 a short period of time by the time you saw the shot to get
17 to your truck?

18 A After he shot Flint he ordered us to the kitchen.

19 Q Okay. But you said you were outside of the house
20 within 30 seconds.

21 A After he told us to go to the kitchen I walked to the
22 carport, that's what I'm saying outside.

23 Q And then -- so 30 seconds later you're outside. And
24 how many -- you said, what, another 30 seconds or a minute
25 before you get to your truck?

- 1 A Yeah.
- 2 Q Because you said your truck was right outside the home?
- 3 A Yeah.
- 4 Q So within that ten to 20 minutes now you're in your
5 truck. How much time passes before you call 911?
- 6 A I called them as soon as I got in my truck. As soon as
7 I got into my truck I dialed 911 and I kept my eye on the
8 door to make sure he wasn't coming to shoot me and I was
9 backing out at the same time.
- 10 Q And you're backing out while you're on the phone.
- 11 A Yeah.
- 12 Q So for this ten to 20 minute period, if you're in your
13 car within about a minute, a minute 30 and you're backing
14 out of the driveway, where does the ten to 20 minutes to
15 leave his house come in?
- 16 A After he shot him I was like, "Why did you do that?"
17 And that's when he was talking about his dad's watch, I'm
18 not sure about how long it was, but --
- 19 Q At that point you're backing out of the driveway. Did
20 you just immediately back out and leave the property? So
21 you would be off the property based on what you're telling
22 me within two or three minutes?
- 23 A Yes.
- 24 Q So when you --
- 25 A Well, I meant the ten to 20 minutes I was being on the

1 phone and all with 911, that's what I was getting at when I
2 said ten to 20 minutes.

3 MR. PHILLIPS: One moment, Your Honor.

4 (Break in proceedings.)

5 Q So one of the things that you testified to that --
6 essentially you said he was mad, he was angry, is that fair
7 to say?

8 A He seemed -- I mean, he shot someone.

9 Q So again, with that you said that you didn't see it
10 coming, right, on the 911 call, that you thought he was
11 joking?

12 A When I seen him pull the pistol out I figured he was
13 joking, I didn't see no point in shooting anybody, no reason
14 for him to murder Flint is what I'm getting at.

15 Q And how much time -- so if we kind of walk
16 chronologically, from the time that you see Brent -- or when
17 Brent first brings up the watch issue, how much time before
18 he goes and gets the pistol?

19 A I don't know, I'm not sure, he could have had it the
20 whole time. I don't know if he had it in his pocket the
21 whole time or what. I didn't know he had a pistol until he
22 pulled it out.

23 Q How much time do you believe from when the watch issue
24 first came out to when the shot happened, how much time had
25 passed?

1 A I don't know. I couldn't tell you, I don't know. I
2 don't know about the time, I couldn't tell you. I didn't
3 realize it was going to happen.

4 Q An hour?

5 A I can't tell you.

6 Q So you're sitting there watching the Clemson game. At
7 some point during that game Brent brings up the fact that a
8 watch is missing?

9 A He was in and out of his closet and just said something
10 about a watch was missing, he never accused anybody of
11 taking a watch.

12 Q So he never made any accusations.

13 A No.

14 Q And during this game he's saying about a watch being
15 missing and he's going in and out of the room?

16 A He mentioned something about it because I asked him,
17 "What are you looking for?" And he said something about a
18 watch.

19 Q And during this period while he's looking for a watch
20 you can't say how many -- 30 minutes, an hour had passed by
21 the time there's a shot?

22 A I don't know. I mean, the first I heard was -- when he
23 pulled the gun out and stuck it to Flit's head, that's when
24 he accused someone of the watch.

25 Q So timeline wise, he pulls out the gun and then he

1 makes the statement about the watch?

2 A After he shot.

3 Q So you're saying there's a shot and then he makes a
4 statement about the watch.

5 A He was in the middle of saying it when he shot Flint,
6 he didn't get it all the way out of his mouth. And I asked
7 him -- after I figured out what was going on I was like,
8 "Why did you shoot him?" He said, "He stole my daddy's
9 watch." Then he ordered me and Stefan to the kitchen.

10 Q And what did Stefan do at that point?

11 A He walked behind me to the kitchen.

12 Q And Stefan walked outside with you?

13 A Yes.

14 Q So Stefan left right away with you?

15 A No.

16 Q So what did Stefan do at that point?

17 A He was standing there -- when I watched Brent go back
18 and pat Flint down and then he was mad because Flint didn't
19 have nothing in his pockets, that's when I just ran to my
20 truck. I guess Stefan was scared he was going to come back
21 and shoot him because we could still see him.

22 Q All right. And so when the shot happens which room are
23 you in?

24 A Brent's bedroom I reckon.

25 Q And as you said, you got up and you ran out of the

1 room, right, and you got ordered to the kitchen.

2 A He ordered me to the kitchen, I was walking fast and I
3 didn't went to the kitchen, I walked straight into the
4 carport.

5 Q And did you go back to the room?

6 A No. I watched him go back to the room.

7 Q Okay. And so when you immediately left the room you
8 didn't go back, Stefan stayed in the room?

9 A No, he walked behind me.

10 Q Stefan came with you to the kitchen.

11 A Yeah. He ordered us to the carport -- well, to the
12 kitchen and I walked to the carport.

13 Q Stefan stayed in the kitchen?

14 A He never went to the kitchen.

15 Q Where did Stefan stay?

16 A He followed me to the --

17 MS. COLLINS: Your Honor, I'm going to object.

18 THE COURT: Hang on, sir. Objection?

19 MS. COLLINS: This is outside the scope. We're trying
20 to lay the foundation for excited utterance and now he's
21 asking about where Stefan is. I understand in terms of
22 asking about what he observed and where he was and the time
23 period, but I would object as to outside the scope of the
24 purposes of this hearing.

25 THE COURT: All right. Objection overruled, go ahead.

1 Q So at that point where was he?

2 A Brent?

3 Q No, Stefan.

4 A He was following me.

5 Q Okay. Again, I'm just trying to patch this together,

6 kind of confusing here. You go to the kitchen, straight

7 into the carport.

8 A I didn't go to the kitchen.

9 Q Never made it to the kitchen.

10 A No.

11 Q You go straight to the carport.

12 A Yes.

13 Q But Brent ordered you to the kitchen.

14 A Yes.

15 Q And Stefan followed you to the carport.

16 A Yes.

17 Q So Stefan didn't stay inside.

18 A He followed me out to the carport.

19 Q Okay. And then Stefan just stayed at the carport?

20 A Brent was right behind -- he come behind us, he came

21 and then I asked, "Why did you do that?" And that's when he

22 said he stole his daddy's watch. So that's when I told him

23 if he thinks he stole it -- and he went back in there and

24 patted him down and that's when he acted like he was mad.

25 Q You watched him do it?

1 A Yeah. He patted Flint down, Flint was still sitting in
2 the chair where he shot him at .

3 Q So you went back into the home.

4 A No. I could see from the carport, it's like a long
5 hallway.

6 Q So --

7 A From where I was standing on the carport and the
8 hallway I could see Flint still sitting in the chair where
9 Brent shot him at.

10 Q And this is where that ten to 20 minutes really took
11 place, right?

12 A I don't know how long it all happened, but from the
13 time it happened until the time I was on the phone with
14 911 --

15 Q So while we're standing on the carport is really where
16 the time period came into that ten or 20 minutes.

17 A It was not that long. He walked back, patted Flint
18 down, and then he was mad because Flint didn't have nothing
19 in his pockets, like he shot him for no reason.

20 Q And you're standing in the carport and you can see into
21 the bedroom from the carport.

22 A Yeah.

23 Q The bedroom is connected to the carport?

24 A It's like a little -- I think it was like a little
25 hallway if I ain't mistaken.

1 Q And the bedroom door is viewable from --

2 A Where Flint was sitting at I could see, and when Brent
3 walked back and patted him down I could see where he patted
4 him down.

5 MR. PHILLIPS: No further questions, Your Honor.

6 THE COURT: All right. Redirect?

7 MS. COLLINS: Nothing further at this time, Your Honor.

8 THE COURT: Thank you, sir, you may step down, stick
9 around with us though. All right. Anything further as far
10 as evidence or are we just going to move to argument?

11 MS. COLLINS: Well, no further witnesses as to the 911
12 call, just move into arguments.

13 THE COURT: Okay.

14 MS. COLLINS: Your Honor, I've handed up at this time a
15 copy of a case that I have given to defense counsel, this is
16 State versus DeMario Thompson, this is a case outside of
17 Lancaster County ruled upon by the South Carolina Court of
18 Appeals in 2017. This is regarding the admissibility of 911
19 calls, it was one of the issues on appeal. The Court
20 confirmed the first degree burglary and -- confirmed first
21 degree burglary and assault and battery conviction.
22 Interestingly enough the 911 custodian that testified in
23 this hearing as reflected in the Court's opinion is none
24 other than Sandra Cauthen who just testified with us. The
25 court found that the 911 calls, there are no error of the

1 trial court for admitting the calls, they were made in the
2 normal course of business --

3 THE COURT: Who was the trial judge?

4 MS. COLLINS: You know, Judge, they have started
5 leaving that off of the public opinions I've noticed.

6 THE COURT: I think it was me.

7 MS. COLLINS: You do?

8 THE COURT: I do.

9 MS. COLLINS: It was Solicitor Barfield.

10 THE COURT: Yeah, I think it was. Did you argue that
11 on appeal, Mr. Phillips?

12 MR. PHILLIPS: I did not.

13 THE COURT: I know you were involved in one of the 911
14 cases that went up on --

15 MR. PHILLIPS: State v. Hendricks was mine, and that
16 one was harmless error.

17 THE COURT: I think I just remembered this. Go ahead.

18 MS. COLLINS: But if you'll refer to the section of the
19 opinion, it's page four out of six.

20 THE COURT: All right.

21 MS. COLLINS: And the 911 recording, the Court notes
22 there was no error in the trial court admitting the 911
23 call, it was properly authenticated into evidence. And the
24 call -- in that case the caller did not testify and the
25 Court said beyond the normal issue of business records and

1 all there's no Crawford violation, it was, in fact, deemed
2 to be non-testimonial evidence that the call was made for
3 help to 911. Your Honor, we are offering these calls as
4 to -- under the excited utterance exception as to Raymond
5 Robinson. He said he was there when the shot happened, he'd
6 known both guys for several years and he saw the defendant
7 shoot the victim in the neck, he was a few feet away, it was
8 very upsetting to him, he's still upset three years later
9 regarding it but he had just seen it happen. Goes out very
10 shortly after to his truck, worried, upset, scared that the
11 defendant might shoot him too and is driving away calling
12 911 as he's driving out of the driveway. I would submit
13 that the call should come in as to Raymond Robinson as an
14 excited utterance, also under the basis of the authority of
15 the State v. Thompson. And again, we will be offering the
16 testimony of the Mr. Robinson so there is no Crawford issue
17 there, he'll be available to cross examination as he was at
18 this hearing. The custodian of records is also available,
19 although at the proper time I would like to ask the defense
20 if they're satisfied in terms of laying a foundation for the
21 business records exception and the authentication of the
22 call as being complete, and, of course, Ms. Small testified
23 as to the completeness of the call of the defendant and that
24 would be a statement by party opponent or admission against
25 interest. So we would submit that both of those calls

1 should be able to be submitted to the jury.

2 THE COURT: All right. Mr. Phillips?

3 MR. PHILLIPS: Thank you Your Honor. Addressing --

4 THE COURT: Let's do them in pieces just like the
5 solicitor did. First of all the defendant's alleged call to
6 911?

7 MR. PHILLIPS: So with the defendant' we would argue
8 certainly to suppress the 911 recording under Rules 801C and
9 403, we would argue that any probative value that would be
10 provided would be outweighed by its prejudicial affect, and
11 certainly with 801C of the hearsay they're having exception
12 of the statement versus statement against interest. We
13 argue that it would also violate the 5th and 14th Amendments
14 to the United States Constitution and Article 1, section 3
15 and 14 of the South Carolina Constitution. That's the only
16 arguments I have on the defendant's 911 call.

17 THE COURT: All right. Well, I respectfully deny the
18 defense motion to suppress the defendant's 911 call. I do
19 find it's a statement against interest, and in addition I've
20 considered the totality of the circumstances and I find that
21 it is more probative than prejudicial. All right.

22 MR. PHILLIPS: Now, going to the authentication issue,
23 the argument would be not that State versus Thompson doesn't
24 say what it says, it clearly does and it's a recent court of
25 appeals case, our argument would be that it's

1 distinguishable from the -- this case is distinguishable
2 from State v. Thompson. Under Rule 403 there is also a
3 further component that comes on the cumulative nature of the
4 evidence. State v. Thompson, the declarant, the person in
5 the phone call, if I read it correctly, did not testify and
6 the State used the 911 person to authenticate the recording
7 to get it in. In this case just as the solicitor stated, we
8 have Raymond Robinson, there's not a Crawford issue, we get
9 to cross examine him, he gets to testify about everything
10 that occurred, so it's distinguishable from State v.
11 Thompson. I would argue under Rule 403 it's cumulative,
12 it's unnecessary. And so with that we would argue -- he was
13 here while it was played, I mean, that's the crucible of
14 cross examination, he's here, it's distinguishable from
15 Thompson so we would argue under Rule 403 that
16 authentication is not the issue with that, it's not
17 admissible. Certainly I guess I can go ahead and make a
18 full --

19 THE COURT: I guess, are you arguing that it's not an
20 excited utterance as an exception to hearsay?

21 MR. PHILLIPS: Well, I was going to keep that separate.

22 THE COURT: All right, go ahead.

23 MR. PHILLIPS: I can make that argument now. So as far
24 as the excited utterance is concerned, under State v.
25 Burrows, that's 328 South Carolina 489, that's a court of

1 appeals case out of 1997, the Court stated that the time
2 interval between the event and the statement is long enough
3 to permit a reflective thought and it's not an excited
4 utterance. And so the hearsay case that we discussed that
5 was part of the argument that we had, the Hendricks and --
6 that one was a double hearsay, two different people totally
7 unrelated from this case. But what we're looking at is the
8 time interval between the event and the statement was long
9 enough to permit reflective thought. The testimony on
10 direct examination is much different than it was on cross
11 examination. On direct examination Mr. Robinson testified
12 it was ten to 20 minutes, and there are obviously some
13 inconsistencies that came out through cross examination. We
14 would argue that the ten to 20 minutes is the actual amount
15 of time, which would be enough time to have reflective
16 thought, and because of that would not have been an excited
17 utterance. And the other cases I cited for that is State v.
18 Whisonant, that's W-h-i-s-o-n-a-n-t, 335SC148. But based on
19 that rational, that case law we had the event, we had ten to
20 20 minutes and then we had a statement. Because of that
21 that's enough time for reflective thought based on the
22 testimony on direct examination, again it's different on
23 cross. But that would be our argument for why it's not an
24 excited utterance.

25 THE COURT: Okay.

1 MS. COLLINS: Your Honor, respectfully if counsel is
2 going to cite cases to the Court I would ask for courtesy
3 copies to be provided to the Court as well as opposing
4 counsel so that we can refer to them and attempt to
5 distinguish them. I don't have the benefit of those cases
6 before me at this time. I will say, Your Honor, the rules
7 of evidence are clear, this is clearly an excited utterance,
8 it's not hearsay, it's a statement relating to a startling
9 event or condition made while the declarant was under the
10 stress of excitement caused by the event or the condition.
11 This is necessary to come in. It is not under -- should not
12 be excluded under Rule 403, which excludes relevant evidence
13 on the grounds of prejudice, confusion or waste of time.
14 The very fact that the declarant is here and is able to be
15 cross examined as capably so as Mr. Phillips has already
16 done and I'm sure will continue to do during the trial
17 itself in front of the jury is important because it is an
18 excited utterance, because it did just happen. He was not
19 allowed to leave immediately, was held at gunpoint, but as
20 soon as he did leave he did make the call immediately to
21 911, he did call for help and did tell them why help was
22 needed. Clearly he was still under the stress of the event
23 which he'd just observed. It's not cumulative in that
24 regard. It's certainly not, for example, a later interview
25 that still -- where he's still not under that upset time

1 period of it happening and it's certainly not a waste of
2 time. I think it's certainly evidence that should be coming
3 in under the exception of the excited utterance.

4 THE COURT: I've got you. Mr. Phillips, you know, more
5 so arguing other than excited utterance, his main argument,
6 if I'm quoting you correctly or thinking correctly, Mr.
7 Phillips, that it's cumulative. I mean, he's here to
8 testify, he's going to testify, he can testify about making
9 the call, he can testify about what he saw, but to play the
10 911 call on top of that testimony is prejudicial to the
11 defense than it is probative, because, you know, the guy is
12 going to testify to what he's going to testify to so that's
13 kind of what I'm concerned about under a 403 analysis. Any
14 further argument on that?

15 MS. COLLINS: Yes, Your Honor. It's not -- I mean, all
16 evidence, or most evidence, would be deemed to be
17 prejudicial to the defendant. On the grounds of it wasting
18 the time or causing confusion, I would submit that it should
19 not be barred under 403 because the issue is the danger of
20 unfair prejudice. The very fact that defense counsel is
21 able to cross examine Mr. Robinson, is able to question Mr.
22 Robinson as to what he said at the time on the 911 call
23 coupled with what he saw at the time. You know, the
24 incident was three years ago. I submit to you part of our
25 role as the State is to present evidence and to ask

1 questions that we believe the jury would want to hear, and I
2 believe that they would want to hear what was said
3 immediately after while the incident just happened where
4 there wasn't time for reflection or contemplation of what
5 was being said. I would submit to you you can tell from the
6 demeanor of the witness on the call that clearly he wasn't
7 sitting there thinking I would submit different from the
8 defendant, he was having several minutes later as to what he
9 was saying, he was just blurting out and responding and
10 saying what had happened. I think it's relevant, I don't
11 think it causes confusion, it's not unduly bolstering. The
12 defense -- any prejudice is -- that he can point out any
13 issues and cross examine them and we would ask that it come
14 in.

15 THE COURT: All right. Mr. Phillips, you've got the
16 last bite, then I'll make a ruling.

17 MR. PHILLIPS: Again, starting at as far as laying the
18 foundation issue under Thompson. The case is on its face,
19 we're saying it's distinguishable, because in that case the
20 declarant, the person who made the 911 phone call, did not
21 testify in this case. Mr. Robinson is going to testify. We
22 believe it would be cumulative to go ahead and have him
23 testify to the very things that he's going to -- or that
24 would be played on the 911 recording. That cumulative
25 nature, there's certainly enhanced prejudice when you have

1 cumulative testimony that would necessarily bolster a
2 witness' testimony. When he's going to testify he's going
3 to be under the crucible of cross examination, and so I
4 would just kind of hold firm on that as far as that issue.
5 If the Court wishes I can go back to as far as the excited
6 utterance, although the rule does say startling event made
7 under stress and then the excitement caused was caused by
8 the event, that's true, that's what the rule says, and our
9 appellate courts have said that when there is a time
10 interval between the event and statement that's long enough
11 to permit reflective thought then it's not considered an
12 excited utterance. And so under the cases I've cited before
13 I would argue based on that ten to 20 minutes he had time to
14 commit or essentially have reflective thought, and because
15 of that it wasn't an excited utterance.

16 THE COURT: I've got you. Here is my finding on the
17 issue. First of all, I do find it's an excited utterance.
18 I clearly find it's an excited utterance under the facts
19 given and considering the totality of the circumstances of
20 everything I heard, and that's why I allowed you, Mr.
21 Phillips, to kind of go beyond the scope of the excited
22 utterance analysis in your questioning of this witness
23 because I have to consider the totality of everything, and
24 all of these cases that our appellate courts have decided
25 are all over the mark. There's a case where, you know, an

1 hour later that's an excited utterance. It was one case, I
2 think Burrows was ten hours later, that was deemed to be an
3 excited utterance. And, of course, those are all over the
4 mark, but they're unique to the facts and circumstances to
5 each case presented. So under the totality of the
6 circumstances for this specific instance I do find that it
7 was an excited utterance made by this witness, Mr. Robinson,
8 and therefore it is an exception to hearsay. Now, as far as
9 it coming into evidence, it does appear to be cumulative
10 testimony, however I do find that the probative value of it
11 outweighs the prejudicial effect to the defense, and I do
12 find that both the calls that have been presented have been
13 both been properly authenticated, I will allow the State to
14 introduce those 911 recordings into evidence. Okay?

15 MS. COLLINS: Thank you.

16 THE COURT: Next pretrial issue. See, y'all told me it
17 was only going to take an hour at the most and here it is
18 almost noon. Let's go, what we got?

19 MS. COLLINS: Your Honor, the State intends to call
20 Stefan Perry and Tamara Cameron, the latter may be in reply.
21 They have been recently arrested on various charges, and we
22 provided copies of those to the defense. There again has
23 been no offer, no consideration at all to either of these
24 witnesses for their testimony, and we would submit that in
25 that these are arrests they're not convictions, that the

1 defense should not be able to impeach them with this, and
2 again, we've been very clear that there were no promises
3 made. Also they are currently in custody and we would ask
4 that they be allowed to come in in civilian clothes, and if
5 Your Honor grants that we have made arrangements to allow
6 that, to have that clothing -- one moment. These are brand
7 new cases that didn't occur until just about a week and a
8 half ago, Your Honor, the warrants were not signed until
9 November 30th. The statements of Stefan Perry, some of them
10 were made well prior to that time.

11 THE COURT: All right. What is the defense's position
12 of that?

13 MR. PHILLIPS: Well, essentially -- I'm going off the
14 top of my head, I apologize, I have don't have courtesy
15 copies, but the case that I've argued at the court of
16 appeals, State v. Pradubsri, there was a supreme court case,
17 State v. Gracle and then I think a similar case where those
18 came from, State v. Brown, we have a 6th Amendment right to
19 cross examine on the fact that he's facing either 120 years
20 or 160 years by my calculation. On June 15th of 2018 he got
21 arrested for a manufacturing or distribution second offense,
22 that carries up to 30 years. On November 30th he got
23 arrested on a trafficking meth or cocaine, that carries up
24 to ten years. On December 3rd of 2018 he got arrested it
25 appears on two, possibly one trafficking heroine, so that

1 carries up to 40 years, trafficking MDA, ecstasy, up to 25
2 years, possession of a weapon during the commission of a
3 violent crime, five years; possession or --

4 THE COURT: These are arrests.

5 MR. PHILLIPS: Arrests, that's right. Possession with
6 intent to distribute marijuana, up to five years, possession
7 of a stolen pistol, five years. Those cases, I believe, are
8 unequivocal on point that we have an absolute right to cross
9 examine a witness on the amount of time that was hanging
10 over their head. And so I have -- I mean, I argued
11 Pradubsri, it came back and I happened to have left
12 appellate defense and ended up at the same PD's where they
13 tried it and tried it in the subsequent retrial because the
14 judge in that case wouldn't allow the defense attorneys to
15 question on the amount of time hanging over their heads. So
16 just specifically not just on impeachment, but it's a 6th
17 and 14th Amendment -- 6th and 14 Amendment of the United
18 States Constitution, Article 1, Sections 310 and 410 of the
19 South Carolina Constitution, we have an absolute right under
20 Pradubsri and Gracle, which is the supreme court case to
21 cross examine Stefan Perry about the amount of time hanging
22 over his head. As far as Tamara, whatever her charges are,
23 I assume that's all of the ones that's on December 3rd, we
24 would have an absolute right of confrontation to cross
25 examine her on how much time she's facing.

1 MS. COLLINS: Judge, we submit if there's a deal, if
2 there's been any deal whatsoever by the State or any
3 discussion, and the only discussion has been there is no
4 deal, there's been no offer. What you're charges are are
5 totally separate from you being called as a citizen witness
6 who was an eye witness to a murder, or Ms. Cameron would be
7 a witness to a statement made by the defendant prior that
8 the next person that stole from him he was going to shoot
9 them in the head. I anticipate we would most likely use
10 Ms. Cameron as a reply witness if the defendant testifies
11 and if I'm able to question him about that if he opens the
12 door to that. But as so Stefan Perry, he was an eye witness
13 at the time in December of 2015. There are no -- there's no
14 offer, there's no -- therefore they should be bound to the
15 rule of prior convictions which is allowed under the rules
16 of evidence to question about that. But as to pending
17 charges themselves, absolutely, if there was any offer on
18 the table they should be able to question them about that.
19 There is no offer, it's totally separate.

20 THE COURT: All right. Well, let me think about that
21 one. Is he your first?

22 MS. COLLINS: No, Your Honor. I do anticipate Mr.
23 Perry would be later this afternoon, so to that end I would
24 ask about the clothing issue.

25 THE COURT: Let me think about it and I'll let you

1 know. So the defense wants to be able to cross examine him
2 on pending charges.

3 MR. PHILLIPS: Yes, Your Honor.

4 THE COURT: And possible time facing.

5 MR. PHILLIPS: That's correct, Your Honor.

6 THE COURT: All right.

7 MR. PHILLIPS: And I can try --

8 THE COURT: Well, I tell you my gut tells me no on
9 possible time facing, but my gut tells me yes on pending
10 charges but that's my gut and I need to look at that and see
11 and I'll be back with you on that.

12 MR. PHILLIPS: And they specifically address that issue
13 in Pradubsri.

14 THE COURT: Spell that.

15 MR. PHILLIPS: P-r-a-d-u-b-s-r-i. And the other one,
16 the South Carolina Supreme Court case is Gracle.
17 G-r-a-c-l-e. Also if you search it with State v. Brown.

18 THE COURT: All right. What's the next issue?

19 MS. COLLINS: The only other issue, which I've
20 mentioned to Mr. Phillips, is as to the chain of custody.
21 We have a certified copy of the chain of custody by SLED as
22 to all the items of evidence that we've put in this, but
23 there's one technician, Jackie Davis, there are other
24 technicians available who will no longer work at SLED who
25 simply sign in evidence. The evidence itself would still

1 have been sealed, but earlier Mr. Delgado indicated that --
2 I asked him if he wants every Tom, Dick and Harry, he
3 indicated that just the primary players would suffice, that
4 he was not going to require every technician, et cetera.
5 Mr. Phillips asked that we hold off on that, that he might
6 want to look at that again, so at this time I just don't
7 know whether we need to keep that technician on standby or
8 if they are agreeing to allow just the primary forensic
9 scientist to testify about their analysis about that.

10 MR. PHILLIPS: And this is just the technician as far
11 as custody, right?

12 MS. COLLINS: Yes.

13 MR. PHILLIPS: Jackie Davis?

14 MS. COLLINS: Yes.

15 MR. PHILLIPS: She didn't do any analysis.

16 MS. COLLINS: She did not do any analysis, no. We'll
17 have all of the scientists that did the analysis.

18 MR. PHILLIPS: We're fine with that, Your Honor. If
19 it's just a chain witness and the analysis that's fine.

20 THE COURT: Okay. What's next?

21 MS. COLLINS: The last thing that I would hand up, and
22 we don't need to decision at this time because it won't be
23 immediate, is State v. Brazell, B-r-a-z-e-l-l. This is a
24 case of the Supreme Court of South Carolina saying that in
25 this case limited presentation of pictures of the decedent's

1 body are allowed where the position is important, and again
2 we can flesh this out further at a future time. But
3 particularly, Your Honor, the decedent was found seated in a
4 chair slumped back with his head up towards the ceiling, his
5 ankles were crossed. He had items that later -- that were
6 found in his pocket, which the eye witnesses will say were
7 not in the pocket at the time, but you can see from the
8 position that the eyes were in, it would be the State's
9 position that these items were just slid into the pockets as
10 the deceased was sitting there, also with the condition of
11 the pocket reflecting or not that there's blood and vomit on
12 other areas of the pants. It's important to note that some
13 of the left pocket doesn't have that which would indicate
14 that there had been interference -- it's our position that
15 the defendant staged the crime scene afterwards to plant
16 certain items in the victim's pocket. Also there is a knife
17 that several of the first responders described as being
18 under the hand that is tented above that, meaning tinted as
19 a tent about it that the hand is not clutching, is not
20 grasping the knife, it's not in a death grip holding the
21 knife but is above the knife and it appears to several of
22 the first responders that the knife was simply slid up in
23 there. That goes also to the testimony ultimately of Ms.
24 Leisy as to the DNA evidence on the knife excluding that the
25 victim's DNA is not on that.

1 THE COURT: How many photos is the State looking to get
2 in?

3 MS. COLLINS: I think there were about four, we can
4 show those to defense counsel. And we're going to crop them
5 so there's not any undue blood, et cetera, like we would
6 show just the feet and just the hand so we can do that
7 together. Also we have color photos if Your Honor feels
8 like those are too graphic, we can also change -- despite
9 the cropping we can have black and white. Finally there's a
10 picture of the entry wound that shows stippling, that would
11 be important to show kind of the distance from the body that
12 the shot occurred. There will be testimony by Dr. Ross
13 regarding that as to the proximity of the shot as well. And
14 again, that's something we can take up maybe during the
15 break. We can certainly crop them, again, we can use black
16 and white instead of color, but I wanted to make you aware
17 of that and allow you to read that decision.

18 THE COURT: Okay. I'm familiar with the decision.
19 Mr. Phillips, you want me to look at the photos now and
20 determine which ones my gut can tell me possibly can come
21 in? Obviously giving you, the defense, an opportunity a
22 contemporaneous objection.

23 MR. PHILLIPS: We can make the arguments now if you
24 want, Your Honor.

25 THE COURT: Yeah. I would like to do that now before

1 the jury starts. Have you got the photos?

2 MS. COLLINS: I do, Your Honor.

3 THE COURT: Let's go ahead and mark them for the
4 purpose of this hearing and then I can look at them and
5 decide and have argument on each one as necessary.

6 (Break in proceedings.)

7 MR. PHILLIPS: So just for the record, the photographs
8 that the solicitor is going to hand up, I believe she said
9 she's going to crop a lot of them so -- that we can agree on
10 hopefully, so I don't know, we really probably need to get
11 those before we hand those up to Your Honor, because as
12 is --

13 THE COURT: So the defense doesn't agree to any of them
14 as is?

15 MR. PHILLIPS: Well, we can certainly make --

16 THE COURT: What I want to do, the State has pulled out
17 the four that you told me you want to use and let me look at
18 them like they are and I can tell you whether they're coming
19 in or not, either as is or with cropping.

20 (Break in proceedings.)

21 THE COURT: All right. Let me see Court's Number 16.
22 State's position?

23 MS. COLLINS: Your Honor, we submit that this would be
24 important to show the stippling around the area of the
25 bullet wound, also showing the path of blood which is

1 important as to the position of the head at various times.

2 THE COURT: Defense position?

3 MR. PHILLIPS: We would argue under 403 that the
4 probative value would be substantially outweighed by the
5 prejudicial effect. There will be testimony from the
6 pathologist who did the autopsy and certainly other officers
7 that were there would be able to testify, so it would be
8 cumulative on top of prejudicial.

9 THE COURT: All right. I find the photo is prejudicial
10 but it is more probative than prejudicial. So I find it's
11 not inflammatory at this point in time, I find that it is
12 probative and relative to the nature of the crime and it
13 will purportedly corroborate the testimony of the eye
14 witnesses as well as the medical examiners. So my gut, of
15 course, this is pretrial, is to allow this in at this point
16 in time. That's Court Exhibit 16. All right. Court
17 Exhibit 20. All right, what is the State's position on --
18 20 and 21 are the identical photos, one is color, one is
19 black and white.

20 MS. COLLINS: This would just be after some of the
21 residue has been cleaned up. It still shows the stippling,
22 which is actually a minor wound to the skin, but also
23 personally we feel it shows the angle of the bullet shots
24 which will be testified as well to by the pathologist.

25 THE COURT: All right. Black and white versus color,

1 and the defense's position?

2 MR. PHILLIPS: Same 403 objection. It is from the --
3 for the record it is of the autopsy table with the
4 appropriate ruler, you can see the top of the incision
5 citing I believe one of these --

6 MR. NEWMAN: We'll be glad to crop that.

7 MR. PHILLIPS: So if it was properly redacted to where
8 it basically is the same picture of the previous exhibit
9 then I would argue that it's cumulative. They can pick one
10 or the other because it's basically the same picture, just
11 one is of the autopsy.

12 THE COURT: All right. I find that Court Exhibit 20
13 shall be allowed to come in cropped to not see the chin
14 area, which will support the State's theory of the case. I
15 do find that it's more probative than prejudicial, and I
16 think that since the first one I'm allowing is in color I'm
17 going to let number 20 in as well, okay? Court Exhibit 19.
18 We have black and white versus color, the black and white is
19 19 and the color is 18.

20 MS. COLLINS: Your Honor, this shows the position of
21 the knife under the tented hand that is not actually clasped
22 in the hand. It also shows, you can see the left pocket,
23 that there's a clean area as well as an area that sustained
24 receiving bodily fluid including blood and vomit. If
25 necessary we can crop the top quarter of the picture.

1 MR. NEWMAN: We can crop the T-shirt.

2 MS. COLLINS: Get the T-shirt out so that it doesn't
3 show the other -- the multitude of the blood there. But the
4 importance is not only we believe it shows that the pocket
5 was manipulated at some time after the vomit because part of
6 the area you now see is clean, and also the position of the
7 knife in the hand.

8 THE COURT: Defense?

9 MR. PHILLIPS: If it is cropped we have no objection.

10 THE COURT: All right, we'll crop. I'll allow again
11 color of Court Exhibit 18 for the purposes of this hearing,
12 I do find that it's more probative than prejudicial. We
13 will crop out -- I'm going to order that the State crop out
14 the portion of the T-shirt that shows all of the blood,
15 okay?

16 MS. COLLINS: All right.

17 THE COURT: All right. And I believe that's it. So we
18 have three photographs in.

19 MS. COLLINS: Right. There are some photographs that I
20 believe the defense would have a standard objection to, they
21 did not have blood or any --

22 THE COURT: And we can deal with those
23 contemporaneously, as well as allowing you again to deal
24 with these contemporaneously during the trial of the case.

25 MR. PHILLIPS: Thank you, Your Honor. And, Your Honor,

1 one issue that came up with the presentation of this at the
2 beginning was that there would be testimony from either EMS
3 or investigators, police officers about essentially the way
4 the knife is handled. I mean, other than say that it was --
5 I can go find the case but I don't believe it will pass the
6 improper lay opinion as far as being able to say that the
7 knife wasn't in his hand at the time whenever the shot
8 occurred. To be able to try to make that opinion regarding
9 how the knife is in the hand after someone had been shot I
10 think is going too far.

11 THE COURT: All right. What's the State's position on
12 that?

13 MS. COLLINS: We believe the importance of the photos
14 is for the jury to make their own determination ultimately
15 regarding that. We do believe that we would have to lay the
16 proper foundation if we want to establish someone who is an
17 expert in the crime scene reconstruction, I don't know that
18 we will.

19 THE COURT: If you can lay the proper foundation I will
20 rule on it at this point in time. But I tend to agree with
21 the defense just letting a lay witness say, "Well, it looks
22 like somebody put the knife under his hand." I mean, that
23 would be improper and I wouldn't allow that, but if you
24 establish a proper foundation which I will have to determine
25 at that time I may let it in.

1 MS. COLLINS: Yes, sir.

2 THE COURT: All right. Anything else?

3 MS. COLLINS: I think that's all that the State has,
4 Your Honor.

5 THE COURT: Mr. Phillips, can you think of anything
6 else at this point in time that we can't deal with
7 contemporaneously? Because the jury is coming in and we're
8 going to start at 1:00.

9 MR. PHILLIPS: This can be a real quick matter. I
10 noticed in the notes provided by the solicitor when she met
11 with Raymond Robinson on November 21st that he provided a
12 statement in that -- there's a note from that statement that
13 was provided to the solicitor on their meeting with Raymond
14 Robinson on November 21st where in her notes it says that
15 Raymond did not see anyone with a gun, and then it says,
16 "Beach had shot a gun about two weeks before that, there was
17 a crack in the mirror. B said that he shot the gun at some
18 dude, an older guy." That had not been in any prior
19 discovery, and because of that obviously there's a lot of
20 different issues that I could bring up, mainly the 403
21 and -- really 401 and 403 that the statement was not
22 provided in anything else, comes in in preparation of trial
23 with the notes and it certainly is not relevant and highly
24 prejudicial.

25 MS. COLLINS: Your Honor, I'm sorry to interrupt, but

1 I've already instructed Mr. Robinson not to reference that.
2 I just want to make -- it's one of those that once it comes
3 out --

4 THE COURT: Okay. Can y'all think of anything else?

5 MS. COLLINS: Mr. Newman has reminded me the issue
6 regarding the cell phone. Again, the testimony would be
7 that Michael Deerman, a friend -- the testimony of Michael
8 Deerman could be limited to the fact that he just spoke to
9 him, he doesn't have to reference text messages at all, that
10 he spoke to him during the course of the evening just to
11 verify at whatever point during the game that he was still
12 alive. Of course, we do have also the eye witnesses to
13 testify as to that. But to the extent that there's any
14 confusion regarding the time that would be the purpose of
15 that.

16 MR. PHILLIPS: I mean, just starting at the base level
17 relevance, we have two individuals who were going to testify
18 that were in the room, having a friend call or testify that
19 he was calling and speaking with him during that time period
20 of watching the game trying to figure out where it would be
21 relevant to the ultimate determination to the jury.

22 THE COURT: I find it's relevant, I'll allow the State
23 to offer that. Of course, if there's an objection made
24 during that testimony I can deal with it then.

25 MR. PHILLIPS: And then I guess there would be the 403

1 as well.

2 THE COURT: Sure. I'll make that decision then. All
3 right. Anything else?

4 MS. COLLINS: I would just ask if the defense is going
5 require Ms. Cauthen to return before we play those or if
6 Your Honor has already ruled pretrial about the authenticity
7 and authentication of the 911 calls, or if I can play that
8 today without Ms. Cauthen returning.

9 THE COURT: I've already made a finding that the State
10 properly authenticated and offered it. I mean, Mr.
11 Phillips? Her daddy is sick and is in the hospital.

12 MR. PHILLIPS: And you noted our objection, we're good.

13 THE COURT: You're good, you're covered in the record.

14 MR. PHILLIPS: We're good.

15 MS. COLLINS: We still might present Kayla Small but
16 just as to Ms. Cauthen.

17 THE COURT: All right. Mr. Delgado, can you think of
18 anything?

19 MR. DELGADO: At this we would make a motion to
20 sequester since we're about to get started.

21 THE COURT: All right. Any problem with that once the
22 trial starts?

23 MS. COLLINS: The only problem is that is Ms. Wallace
24 as well as Mr. Robinson have been in for this morning, I
25 think Ms. Wallace was in during part of yesterday although

1 we didn't take testimony yesterday. Ms. Wallace is the
2 grandmother of the defendant, she's on the witness list both
3 for the defense as well as the State, although we have not
4 made a decision about whether or not we would call her, she
5 wasn't in the room at the time of the shot, she was in the
6 house.

7 THE COURT: Okay. Well, what y'all want to do with
8 that?

9 MR. PHILLIPS: We would like to make a motion to
10 sequester.

11 THE COURT: Okay.

12 MS. COLLINS: If granted we would ask that Jennifer
13 Rumbaugh stay in as our case agent.

14 THE COURT: She's case manager, she can stay in, other
15 than that everybody else is sequestered, all right, both
16 sides. Court is in recess until 1:00 p.m. sharp, y'all be
17 ready.

18 (A lunch recess was taken.)

19 MR. DELGADO: I would like to see if the Court would
20 reconsider its ruling to sequester under 615. Ms. Alice,
21 Wallace, the defendant's mother (sic), that's all he's
22 really got in life as far as family is concerned, there's no
23 one else here on his behalf. I run the risk of any
24 prejudice from any State's witness that is in the courtroom,
25 but I think I need to be able to just for the good of the

1 client to ask her to be able to stay.

2 MS. COLLINS: Judge, even if she were his mother that
3 would not be allowed under the rules, she's a witness she
4 was there --

5 MR. DELGADO: No, I'm saying withdraw my 615 motion.

6 MS. COLLINS: Okay.

7 THE COURT: So you withdraw your sequestration motion.

8 MR. DELGADO: For you too, not just me.

9 MS. COLLINS: So you're withdrawing the motion to
10 sequester, you're not asking specifically as to Ms. Wallace.

11 MR. DELGADO: No.

12 THE COURT: No witnesses are sequestered.

13 MS. COLLINS: Okay. Thank you.

14 THE COURT: All right, anything else before I bring the
15 jury in?

16 (Break in proceedings.)

17 THE COURT: I've made a decision on the Stefan Perry
18 matter. Having talked about it more and considered it and
19 read the case law, here is what we're going to do: I'm
20 going to allow the defense to cross examine Mr. Perry
21 obviously about any prior criminal record convictions that
22 he may have that fall within the rule. Also I'm going to
23 allow the defense to cross examine him about pending
24 charges. However, the defense -- and the State can, of
25 course, dress him out, however, the defense cannot bring out

1 the fact that he's in the detention center and cannot go
2 into any potential punishments that he's facing, all right?

3 MS. COLLINS: Your Honor, security has advised me that
4 he will have a belly chain on, that's going to be -- just
5 FYI?

6 THE COURT: Well, it is what it is. Mr. Phillips?

7 MR. PHILLIPS: And if I need a moment later we can just
8 address it later, I need a chance to look back at those
9 cases and just put it on the record that --

10 THE COURT: That's fine. I am going to allow you under
11 a fundamental fairness analysis to cross examine as to the
12 credibility of his present testimony even though he issued a
13 statement or whatever three years ago you can certainly
14 question him about any pending charge he may have. However,
15 I'm not allowing you to go into, "That carries up to ten
16 years, correct? That carries up to 30 years, correct?" I'm
17 not going to let you do that, okay?

18 MR. PHILLIPS: Yes, Your Honor. And I'll go back --
19 and I apologize, I'll read Pradubsri and Gracle.

20 THE COURT: That's fine.

21 MR. DELGADO: By saying yes, Your Honor, he's not
22 saying he agrees, he's just --

23 THE COURT: He understands my ruling, I understand
24 that. You're protected in the record. All right, anything?
25 Bring the jury in.

1 (The jury returned to the courtroom.)

2 THE COURT: All right. Well good afternoon ladies and
3 gentlemen, thank you again for being here. Before we
4 proceed any further with some initial instructions to you so
5 that we can start the trial I do want the clerk of court to
6 swear you in as the trial jury. Madam Clerk?

7 (At this time the jury was sworn.)

8 THE COURT: Thank you very much, y'all can be seated.
9 Ladies and gentlemen, let me take just a few moments before
10 we start with opening statements to speak with you. And let
11 me tell you that this trial is probably going to be
12 different from what you might expect. Many people don't
13 have the chance to attend actual court sessions much less
14 participate in them the way you're doing right now, and
15 those people tend to think that what they see on TV or watch
16 in movies or read in books is the way that court always is.
17 They always think that trials are always full of high drama,
18 riveting circumstances and intense action. Now, while these
19 things may sometimes be true, this trial is not for
20 entertainment. This trial is a fundamental part of our
21 democracy to make sure that justice is done between the
22 parties before the Court. Now, making sure that justice is
23 done can often be a slow, deliberate and a repetitive
24 process, the opposite of what you may be expecting just from
25 watching TV or reading books or watching movies. Ladies and

1 gentlemen, this beautiful courthouse, this beautiful
2 courtroom is a place of honor dedicated to the preservation
3 and protection of citizens' rights through what many have
4 called the greatest justice system ever created. Now, the
5 attorneys who are appearing before you are advocates for the
6 parties they represent. The solicitor, as we call them in
7 South Carolina, they're called district attorneys elsewhere,
8 but we call them solicitors in South Carolina, they
9 represent the State of South Carolina, and the defense
10 lawyers, they represent the defendant who's been charged
11 with a crime. They are advocates for the parties they
12 represent, but first and foremost they're officers of this
13 court sworn to uphold the integrity and fairness of our
14 judicial system and to help you reach a verdict. Now, you
15 should expect them therefore to be professional, competent
16 and ethical in the representation of their client's
17 interests. Now, remember, you have just taken an oath to
18 try this case and to reach a verdict, you are also expected
19 to act the same way. Thank you again for accepting this
20 important civic duty and responsibility. Now, let me --
21 it's always helpful to discuss with juries how a trial
22 proceeds. First the State will make -- the State of South
23 Carolina will make an opening statement to you. An opening
24 statement is not evidence, ladies and gentlemen, it's simply
25 an outline to help you understand what that party, whoever

1 is making the opening statement, expects what the evidence
2 will show. Now the defense can make an opening statement if
3 they want to but they don't have to for reasons which I will
4 get on in a bit. Now, following opening statements you will
5 then hear testimony in this case and receive various
6 evidence. Testimony will come from various witnesses as
7 well as any physical exhibits which may be introduced into
8 evidence, and following the completion of testimony and
9 evidence, when that phase of the trial is over with, the
10 attorneys again will have an opportunity to speak directly
11 to you through what is called a closing argument or closing
12 statement. This is an opportunity at that point in time for
13 the attorneys to summarize the case to you from their
14 respective points of view and to try to argue a particular
15 verdict. Again, these statements and arguments to you
16 aren't evidence. Now, following the closing arguments by
17 the lawyers that is when I will instruct you on the law of
18 South Carolina as it pertains to the issues which have
19 arisen in this case, and when I have completed my
20 instructions to you, that's when you can begin to talk about
21 this case with each other, not until then, all right? After
22 you receive my instructions and I tell you you can start
23 deliberating, that's when you can start deliberating. Now,
24 as you know this is a criminal case that's been brought by
25 the State of South Carolina who has charged the defendant

1 with murder and possession of a weapon during the commission
2 of a violent crime. Now, the charge against the defendant
3 is contained in an indictment, and I showed you that
4 yesterday. An indictment, ladies and gentlemen, is not
5 evidence of anything, it's simply the description of the
6 charge that's been made by the State against the defendant.
7 Now, the defendant has pled not guilty to these charges and
8 is presumed innocent unless and until proven guilty beyond a
9 reasonable doubt. A reasonable doubt is defined quickly as
10 the kind of doubt that would cause a reasonable person to
11 hesitate to act. A defendant has the right not to testify
12 and never has to prove innocence or present any evidence.
13 The burden of proof is always upon the State of South
14 Carolina. It's going to be your duty, ladies and gentlemen,
15 to decide from the evidence what the facts are. You and you
16 alone are the judges of the facts. You will hear the
17 evidence, you will look at whatever evidence comes in, you
18 will decide what the facts are, and then you will judge
19 those facts and put those facts up to the law which I
20 instruct you, and that's how you reach a verdict. Now, in
21 doing so you must follow the law that I charge you or
22 instruct you on whether you agree with it or not. Please
23 don't take anything that I may say or do during the trial as
24 indicating what you think I think of what the evidence is
25 because that's not my job. My job is to be the judge of the

1 law, you're the judge of the facts. Now, just like rules
2 which govern sports and other activities that we all know
3 about and we all have to follow, we have certain rules of
4 evidence in court which controls what can come into
5 evidence. When a lawyer asks something or offers something
6 into evidence and the lawyer on the other side thinks that
7 it may be against the rules of evidence, that other lawyer
8 may object, y'all have seen it, "Objection," okay? And
9 that's when I have to decide whether the thing can come in
10 or whether the question can be answered or not, okay? So
11 whenever I overrule an objection that means the question may
12 be answered or the thing may come into evidence. Whenever I
13 sustain an objection that's me making a legal decision that
14 the thing -- the question cannot be answered or the thing
15 cannot come into evidence. So whenever I sustain an
16 objection you are not to speculate about what the answer
17 would have been if I would have let the person answer, or
18 what the thing would have shown, because again, the purpose
19 for these rules, ladies and gentlemen, is to give you the
20 best evidence possible for you to make your very important
21 decision. That's why we have these rules, okay? Now,
22 sometimes it may be necessary to take a break or a timeout
23 during the trial to deal with certain legal issues which may
24 come up. I will frequently get the lawyers up here, it's
25 called a bench conference, y'all have seen it in movies and

1 TV where I will talk to the lawyers about certain
2 evidentiary issues or legal issues which may arise, and I'll
3 try to do that as often as possible so as not to make y'all
4 keep coming and going from your jury room, okay? And again,
5 don't speculate what we're talking about outside your
6 presence, we're not trying to keep anything from you, we
7 just want to make sure that the rules of evidence and laws
8 follow so you can get the best evidence possibly, okay?

9 Now, in deciding the facts of the case, ladies and
10 gentlemen, you may have to decide which witnesses to believe
11 or which witnesses not to believe, that's called credibility
12 or believability of the witnesses. Now, as a juror you can
13 believe everything a witness says, none of it or part of it,
14 all right, that's the authority and power you have as the
15 fact finder. Now, you're not going to be allowed to take
16 notes during the trial so you need to pay very close
17 attention to what goes on. Look at the witnesses, look at
18 the way they testify, listen to them, listen to their
19 testimony. Please pay close attention as the trial goes on
20 so that you can accurately discuss it when you start to
21 deliberate. And at the end of the trial when you are
22 deliberating you're not going to have a written transcript
23 to consult. You see my court reporter down here below me
24 making an accurate transcription of everything that's going
25 on, every word that's said, it's very costly and time

1 consuming to pull back lengthy testimony, so please pay
2 attention to things as they go. Now, until I advise you to
3 begin your deliberations, ladies and gentlemen, you must not
4 and cannot discuss this case with anyone, even yourselves,
5 okay? Certainly you can't talk about it with friends,
6 family members or anybody else involved in this case. While
7 you're away from the courthouse you can't go on Facebook or
8 any other social media and talk about being a juror or seek
9 out information, because remember, your verdict must be
10 based solely from the evidence and testimony received in
11 this courtroom from that witness stand and whatever evidence
12 you get to take back in your jury room. Any stuff from
13 outside, any media reports, news reports, anything else like
14 that, that's irrelevant to what you have to decide, okay?
15 You cannot under your oath seek any independent other
16 information, okay? Now, if anybody attempts to talk with
17 you about this case in violation of these instructions,
18 which I've just given you, please advise me and I promise
19 you I will handle that situation, okay? Now, ladies and
20 gentlemen, lastly it's important that you keep an open mind
21 and not decide anything in this case until all of the
22 evidence has been presented, the parties have made their
23 closing arguments and I have instructed you on the law. It
24 is your solemn responsibility to determine the guilt or
25 innocence of this defendant, and your verdict must be based

1 solely on the evidence that's presented to you during this
2 trial in this courtroom and on the law as I instruct you
3 during and at the close of this trial. Thank you again for
4 your service. We will now proceed with opening statements.
5 Madam Solicitor?

6 MS. COLLINS: Thank you, Your Honor. May it please the
7 Court? Saturday, December 5, 2015, four guys watching a
8 football game at [REDACTED] Lancaster, South
9 Carolina. Clemson playing NC Tar Heels. It's a close game,
10 45 to 37 last score. Four guys just watching the game.
11 Four guys and one gun, one shot that takes the life of one
12 of those men as he's sitting watching the game, sitting in a
13 chair, ankles crossed, slumped back in the chair watching a
14 ball game. You will hear testimony from the two eye
15 witnesses to this crime. You will hear testimony from
16 Raymond Robinson and Stefan Perry, they were there, they
17 were two of the four guys. Raymond Robinson had been at the
18 defendant's house, Michael Brent Gay, because they were
19 friends and he had been there for several hours. He had
20 another friend with them, he had Flint McManus, Joshua Flint
21 McManus, and they'd come over to watch the ball game, they
22 had watched a couple of games. And you'll hear testimony
23 that during that time there was no fight, there was no
24 argument, but toward the end you'll hear testimony from Mr.
25 Robinson as to the demeanor of the defendant, Michael Brent

1 Gay, near the end of the game. And you'll hear testimony
2 from Mr. Robinson as to what he saw occurred that resulted
3 in Joshua Flint McManus being killed, killed by one blow to
4 just below the jaw, and that blow from a .38 caliber bullet.
5 You'll hear testimony that the three men; the defendant,
6 Michael Brent Gay, Raymond Robinson, and the deceased,
7 Joshua Flint McManus, had been there together for several
8 hours, and that about 15 minutes before the incident Stefan
9 Perry joined them and he also was there. Four men, one gun,
10 one bullet and everything changed. You'll hear testimony
11 from the two eye witnesses, Raymond Robinson and Stefan
12 Perry, about what they saw and what they didn't see, about
13 what they heard and what they didn't hear. And you will
14 hear that there was no struggle, no dissention until
15 suddenly out of the blue the defendant makes an accusation
16 and in the middle of the accusation shoots the victim,
17 Joshua Flint McManus, with no warning. You'll hear
18 testimony from the first responders, EMS, and law
19 enforcement. You'll hear the 911 call that Raymond Robinson
20 makes describing what had just occurred, that he makes as
21 soon as leaves the house, as soon as he's able to get out of
22 that house and call 911. You can listen to the emotion in
23 his voice as to what he just saw happen, how he says one
24 buddy shot another buddy, just a neutral eye witness, had
25 two buddies, and one buddy killed the other buddy. And

1 Raymond Robinson will come into this courtroom and put his
2 hand on that Bible and tell you what he saw as will Stefan
3 Perry. You'll hear testimony from the corner's office, Tony
4 Broome, the deputy corner, and from law enforcement, from
5 crime scene investigation as to the position of the body and
6 various items of evidence. I'm very sorry that Joshua Flint
7 McManus can't come into this courtroom and put his hand on
8 that Bible and tell you what happened that night, but to the
9 extent that he can his body will give that testimony.
10 Because I submit to you, it will be very important for you,
11 the judges of the facts, to consider the position of the
12 victim's body slumped back in a chair, ankles crossed and
13 consider what you hear in terms of what had happened just
14 before that. And you'll hear testimony from the eye
15 witnesses that immediately afterwards as to whether or not
16 there was anything in the victim's hands, as to whether or
17 not there was anything in the victim's pocket other than his
18 billfold, and you'll hear that testimony from Raymond
19 Robinson and Stefan Perry. But after they leave moments
20 later when law enforcement is finally able to clear the
21 house and determine that it's safe for emergency responders
22 to enter, you will hear that the body is different in terms
23 of what's in the hands and what's in the pocket, and I ask
24 that you you listen to that testimony, because what you will
25 hear will not be just that there were four men, four guys

1 watching a game and a gun, but that by the time first
2 responders get there there's a knife under the victim's
3 hand, the hand of the deceased as it's resting on his upper
4 thigh. You'll get to see a picture of that so that you can
5 make the decision, you as the finders of facts, whether or
6 not the hand was grasping the knife at the time he was shot
7 or if that knife was added later. You'll get to hear
8 testimony so that you can make the decision as to whether or
9 not there were items added to the crime scene. But you
10 won't hear testimony about just one knife, because what
11 you'll also hear and what you'll also see will be
12 photographs of the bedroom of the defendant, Michael Brent
13 Gay. You'll see where the chair was right near a wall right
14 in front of a TV to watch the game, and you'll see in close
15 proximity to the chair of the victim, you'll see these
16 pictures, there are many knives. They're on display. They
17 are martial arts knives, the chinese stars, even a samurai
18 sword and some knives right there, just a few feet away, as
19 well as the black belt that was proudly displayed by the
20 defendant, all right there. So at the end of the case
21 you'll make the decision as to whether or not this was a
22 murder, which is defined as the unlawful taking of another
23 human life, the unlawful killing of a human being with
24 malice aforethought. And His Honor will instruct you as to
25 the law to be applied at the end of the case, and he will

1 explain to you and instruct you on the law that malice
2 aforethought doesn't have to happen for any set period of
3 time immediately before, that malice aforethought can be the
4 instant before the shot. So I ask that you listen carefully
5 to the testimony of the eye witnesses about what was being
6 said that instant before the shot by the defendant as he
7 took the life of Joshua Flint McManus. Four men, one gun,
8 one death and a life is cut short. You'll hear testimony
9 from Dr. Janice Ross, a pathologist who performs autopsies
10 upon the body of those that unfortunately come to be her
11 patients, and you'll hear her testimony as to what she
12 observed as to the entry wound and as to the path of the
13 bullet, and as to what is called stippling, which is an area
14 around the bullet and what that means to her in terms of the
15 proximity of the gun to the victim. Four guys just watching
16 the game, just watching the game. The victim kicked back,
17 it's almost the end of the game, had no idea that it was
18 almost the end of his life. Ankles crossed. Think about
19 that, ankles crossed. Think about whether or not someone in
20 that position would be a threat to anybody. I submit to you
21 respectfully this is not the time for argument, that time
22 will come at the end when Mr. Newman addresses you, but I
23 submit to you that after you consider all of the evidence
24 and you hear from the eye witnesses who were there, that say
25 they were both my buddies, one buddy shot another buddy,

1 that this is what happened and I'm here to tell you about
2 it, when you hear that, when you look at these pictures,
3 when you consider the evidence, I submit to you that there
4 will be -- this will be the case of four men, one gun, and
5 one verdict, one verdict, the verdict that justice demands,
6 a verdict of guilty of murder. The taking -- unlawful
7 taking of a life of another with malice aforethought. I
8 want to thank each and every one of you for leaving your
9 jobs and your homes and your families to bring justice to
10 this courtroom today. Thank you.

11 THE COURT: Thank you, Madam Solicitor. Mr. Phillips?

12 MR. PHILLIPS: Good afternoon. The prosecutors always
13 have two options when giving an opening statement, they can
14 tell you everything, the good, the bad, and the ugly of the
15 their case or they can tell you only what they want you to
16 hear. You'll hear every bit of evidence from that witness
17 stand. You'll get to see the motives of Stefan Perry, the
18 motives of Raymond Robinson, inconsistencies, reasons to
19 lie, logical things that don't add up. That's the greatness
20 of why we're here today. That power is put in your hands.
21 You've now been empowered to listen to that testimony of
22 these witnesses, to identify these inconsistencies, to look
23 at the good, the bad, and the ugly. Now, the government is
24 also on trial here. What gets lost a lot of times in many
25 cases is that it's all about the defendant. In this case

1 the defendant is Michael Brent Gay. The indictment reads
2 the State versus Michael Brent Gay, that means the
3 government is also on trial, and that's important and it's
4 for one simple reason, the government has all the power, all
5 the money and the resources to take a man's freedom away
6 from him, gets accused and the only protection he has is his
7 constitutional right to a jury trial. It's this courtroom,
8 it's 12 strangers, 12 jurors -- a jury of 12 people of his
9 peers. At this time Michael, Brent -- ladies and gentlemen,
10 he goes by Brent but his name is Michael Brent Gay. He's 35
11 years old, born and raised in Lancaster. I bring him up
12 here, which is unusual in many criminal trials, because I
13 think it's important when I talked about that awesome
14 responsibility, that awesome power that's been given to you
15 today, that oath that you took to uphold the law is to sit
16 essentially in judgment of the facts and evidence of this
17 case based on the accusation that's been presented against
18 him, the grave accusation of murder, or whether it was
19 self-defense. We intend to prove beyond a shadow of a doubt
20 for our own self, and we have no burden, that it was
21 self-defense, and we have no burden, we intend to prove it,
22 make no mistake about it. But I think it's ultimately
23 important that you understand that in a trial everything
24 gets focused in this direction, prosecutors sit here right
25 in front of you, they keep him over here far away from you,

1 everything gets focused, I said again, on the witnesses, not
2 to get lost on the fact that this is the man the government
3 has accused of murder and you have been given the awesome
4 responsibility of deciding the facts based on the evidence.
5 Ladies and gentlemen, you're here for a reason, you were
6 chosen. Now, understand that probably yesterday you didn't
7 want to come to the courthouse, probably didn't want to get
8 selected on this jury either, but you're here for a reason,
9 we chose you for a reason, and I say that because this is
10 the greatest responsibility a citizen can be given to sit in
11 judgment of another citizen. It's the greatest
12 responsibility, that right to have a jury trial, the
13 ultimate responsibility, it's what our American soldiers and
14 their families have given blood, sweat and tears to
15 preserve. It's what makes us different from all of the
16 other countries. He has this day in court. It's something
17 he has never wavered from. He's asked for a jury trial from
18 day one. He didn't plead guilty, he didn't ask for
19 leniency, he wanted his day because he had faith that once
20 all of the evidence is presented to 12 people where he was
21 born and raised, that they would see what the just verdict
22 is. Now, with that you took an oath to uphold the law. One
23 thing that's human nature is assumptions, as human nature
24 we're quick to judge. I'm sure you've watched the news
25 multiple nights if not every night like most people do and a

1 story comes about someone getting arrested, and this is
2 something that even I can say that I'm guilty of doing
3 myself as you make a quick assumption of, "Oh my God, I
4 can't believe that person did it. Look at the thing that
5 person did, they got arrested. Here is something that I
6 can't imagine." Well, what you did was you made an
7 assumption, you assumed that person was guilty of something
8 they got arrested for. Now, you just took a sworn oath
9 before God not to do that to Mr. Gay. And so with that not
10 making assumptions it's only based on the evidence
11 presented, and being honest with ourselves, if after hearing
12 the prosecutor's opening statement that you already kind of
13 assume he was guilty based on what the prosecutor just told
14 you it's not too late. You can take a step back from that
15 line, you can start fresh, you can uphold your sworn oath
16 before God, before this country, and with that during this
17 trial it's been said that the best way not to make
18 assumptions is to ask questions, and to do that during this
19 trial there's really three things it boils down to;
20 credibility, responsibility, and duty. Credibility. The
21 State is going to have witnesses come up here and testify.
22 Like links in a chain, basic math, things add up, what
23 things don't make sense? Why are things not adding up? Why
24 is it not logical? These are the questions you must have
25 answered when you go back into the jury room and start

1 deliberating and trying to decide, "Well, that doesn't make
2 sense. Well, if he said this at this point and now he's
3 saying this and it's inconsistent, why would they do that?"
4 If everything was to say it happened the way they said it
5 did, why is it different today? Why is it different another
6 day? What biases do they have? Do they have pending
7 charges?" With that, with credibility, that's the best part
8 about it. You get to sit there and you weigh just as the
9 judge said all of it, none of it, you get to piece those
10 things together, that's part of that awesome responsibility
11 that you've been given. Now, credibility. Going into the
12 government's case what they've done to try to prove this is
13 there are things they could have done to try to surely prove
14 what they're saying. Is there further evidence that they
15 could have done? Did they properly look over all of the
16 forensic evidence? Is there things that they should have
17 done more? And all of that will be fleshed out through this
18 trial. And is there things they did that that seem suspect?
19 Those are questions you have to answer for yourself. And
20 finally, duty. Have you fulfilled your sworn oath in this
21 courtroom, your sworn duty to uphold the law? And I talked
22 about earlier that essentially he had faith from day one,
23 always asking for a jury trial. He had faith that 12
24 strangers would look at the evidence and see what occurred,
25 not what's been accused of. He had faith in your verdict,

1 he had faith in each one of you. And each one of you, your
2 decision is yours and yours alone, nobody else's, they can't
3 sway you, the Judge will give you all of that law at the end
4 of the trial. But each individual person has that power
5 themselves to make that determination, and we know, we have
6 the faith because we chose you that at the end of it you
7 will find the right verdict, and it's a verdict of not
8 guilty. Thank you.

9 THE COURT: Thank you, Mr. Phillips. Is the State
10 ready to proceed?

11 MS. COLLINS: The State is ready, Your Honor.

12 THE COURT: Call your first witness.

13 MS. COLLINS: The first witness is Dr. Janice Ross.

14 The witness, JANICE ROSS, was first duly sworn and

15 Testified as follows:

16 DIRECT EXAMINATION

17 BY MS. COLLINS:

18 Q Would you please state your name for the record?

19 A Janice Edwards Ross, R-o-s-s.

20 Q What is your occupation?

21 A I'm a forensic pathologist.

22 Q What is a pathologist?

23 A A pathologist is a doctor. So I have been through four
24 years of college, four years of medical school, and over
25 four years of training in the field of pathology, which

1 trains us how to identify cancers and blood diseases and
2 infections. We also learn how to look through the
3 microscope and identify certain organisms or cancers. We
4 learn how to do an autopsy to find a cause of death. I
5 further did training in a medical examiner's office in the
6 field of forensic pathologist, pathology. The word forensic
7 means legal, so a forensic pathologist uses their pathology
8 training to identify causes of death and manners of death.
9 We identify patterns of injury, we learn how to do that, and
10 we document and identify important materials for the State
11 and for the court of law in identifying a cause and manner
12 of death.

13 Q Thank you. Do you receive a special certification to
14 be a pathologist?

15 A Yes. I have board certifications in three areas of
16 pathology including forensic pathology.

17 Q That was my next question, thank you, Doctor. How long
18 have you been a physician?

19 A Forty-two years.

20 Q And how long have you been a forensic pathologist?

21 A I received my board certification in 1985.

22 Q You are licensed to practice medicine in South Carolina
23 in that field?

24 A Yes.

25 Q How many up autopsies have you performed during your

1 career?

2 A Over 13,000.

3 Q Have you ever been qualified in a court of law to
4 testify as an expert witness in the field of forensic
5 pathology?

6 A Yes, I have.

7 Q How many times?

8 A In the State of South Carolina over 200 times.

9 Q Thank you.

10 MS. COLLINS: Your Honor, at this time the State offers
11 Dr. Ross as an expert witness in the field of forensic
12 pathology.

13 THE COURT: Any objection?

14 MR. PHILLIPS: To that limited scope no objection.

15 THE COURT: All right, thank you. Ladies and gentlemen
16 of the jury, normally when people testify as you'll find
17 during the trial they can only testify about what they see,
18 about what they heard or about what they smelled or stuff
19 like that. There is an exception, however, for witnesses
20 who are qualified as an expert in some particular field or
21 specialty because of their training or education or
22 experience, those witnesses are called expert witnesses, and
23 an expert witness is allowed to testify in the form of an
24 opinion, okay? Now, just because an expert gives an opinion
25 doesn't mean you have to accept the opinion, it just means

1 it's something for you to consider when you get all of the
2 evidence and give it the credibility and weight that you
3 believe it deserves.

4 MS. COLLINS: Thank you.

5 Q Dr. Ross, did you perform a forensic autopsy on the
6 body of Joshua Flint McManus on December 7, 2015?

7 A Yes, I did.

8 Q At approximately what time?

9 A 9:00 a.m.

10 Q And was that at the request, directive and with the
11 authorization of the Lancaster County Coroner's Office?

12 A Yes.

13 Q Where did you perform the autopsy?

14 A In the Newberry County Memorial Hospital in the morgue
15 at that hospital.

16 Q Was the body of Joshua Flint McManus brought to you
17 there?

18 A Yes.

19 Q By the staff of the coroner's office for Lancaster
20 County?

21 A Yes.

22 Q And did a member of law enforcement come to the
23 autopsy?

24 A I believe so, I'm not sure of the name.

25 Q But a member of law enforcement was there to receive

1 certain items of evidence that you might recover from the
2 body of the victim; is that right?

3 A Yes. I'm sorry, it was Ken Taylor.

4 Q Of the sheriff's department?

5 A Yes.

6 Q How was the body clothed when you received it?

7 A He had a shirt on, an undershirt, a pair of pants, a
8 pair of underwear, a pair of white socks, a pair of shoes,
9 he also had on a pair of gray and blue shorts, and in his
10 pockets were a key chain with two keys and a half of a white
11 pill, which had MB marking on it. On the shirt there was
12 some blood staining, especially on the left side.

13 Q Was the victim's clothing removed and given to law
14 enforcement as evidence?

15 A Yes.

16 Q Did you retrieve any bodily fluids from the victim's
17 body during the autopsy and give those samples to the law
18 enforcement officer for testing?

19 A The coroner in Lancaster County likes their toxicology
20 to go to a private lab called NMS because they are quicker.
21 And so we did, yes, we did draw blood, vitreous urine and
22 some contents. And we sent the pill, we sent that to NMS.

23 Q The lavender topped tube of blood of the victim, that
24 was given to SLED for DNA purposes?

25 A Yes.

1 Q Did you closely examine the body of the victim?

2 A Yes.

3 Q Is the victim's date of birth on the report?

4 A It is September 2, 1975.

5 Q At the conclusion of your examination of the victim's
6 body, did you prepare a report?

7 A Yes.

8 MS. COLLINS: I ask that this be marked as State's
9 Exhibit 1 for identification at this time.

10 Q Dr. Ross, I would like to show you what's been marked
11 as State's Exhibit 1 for identification and ask you, do you
12 recognize that document?

13 A Yes. This is my autopsy report on Joshua McManus.

14 Q All right. And that appears to be a complete copy of
15 the report that you prepared at the conclusion of your
16 autopsy?

17 A Yes.

18 Q The date of autopsy you've already stated was the early
19 morning of 12/7 of 2015, correct?

20 A Correct.

21 Q What's the date of death as reflected in your report?

22 A What the coroner told us was December 5th, 2015.

23 Q Okay. Do you have reflected there the height and
24 weight of the victim?

25 A Yes. We measured him as 70 and a half inches in

1 height, which is 5 feet, eight and a half inches. We don't
2 have a scale in our morgue, so we estimated his weight as
3 approximately 190 pounds.

4 Q Would you say that the victim's build was slender?

5 A Yes.

6 Q What injuries did you observe to the body of the
7 victim?

8 A Yes. During the process of an autopsy you look at the
9 external body back and forth and we saw evidence of a
10 gunshot wound, so we further did an x-ray to see if there
11 was any fragment of metal left in him. There was a bullet
12 wound that was right at the -- somewhat below the right ear
13 and the right mandible of the right jaw.

14 Q And was the bullet still in the body?

15 A Yes.

16 Q Where did the bullet come to rest?

17 A The bullet was on the other side of the left and the
18 soft tissue below the left jaw.

19 Q And did you retrieve the bullet?

20 A Yes.

21 Q And did you give that bullet to law enforcement, Ken
22 Taylor?

23 A Yes.

24 Q How would you describe the path of the bullet as you
25 observed it to be?

1 A It went from right to left and pretty much straight
2 across. It went through the back of the mouth of the
3 pharynx, and I think that laceration of that tissue is what
4 caused blood coming out of his mouth to come down onto his
5 shirt. It also fractured some of the cervical spine, some
6 of the bones of the cervix. There are seven of them and it
7 fractured numbers two and three.

8 Q Two and three. So they would be numbered sequentially
9 from the top being one, two and three?

10 A That is correct.

11 Q Okay. Did the fracture of C2 and 3 of the spinal cord
12 or the vertebrae, did that cause a spinal cord concussion?

13 A It can. Just like a concussion in a head when you hit
14 your head hard, when you hit bone around and near the spinal
15 cord you can have a shock wave go through and cause a
16 concussion, which causes the nerves to stop working.

17 Q Did you find in this case that there was a spinal
18 concussion?

19 A The evidence of the fracture was there. There's
20 nothing you can see for a spinal concussion.

21 Q But in your conclusion you noted that the spinal
22 cord -- the fractured C2 and 3 causing spinal cord
23 concussion; is that correct?

24 A Yes. When you have spinal cord concussion you have
25 paralysis from that point downward so you couldn't move your

1 arms or legs. And it also affects your breathing because it
2 paralysis your chest muscles and your diaphragm, which help
3 you to breath.

4 Q Would that be instant?

5 A It would take a few minutes.

6 Q In terms of the paralysis?

7 A Yes.

8 Q Were there any injuries to the victim's hands?

9 A No.

10 Q If there are injuries to the hands of a body, are those
11 sometimes referred to as defensive wounds?

12 A Yes.

13 Q So you observed no defensive wounds to the hands of the
14 victim?

15 A No.

16 Q Would the absence of defensive wounds on the victim's
17 hands indicate to you that there was no struggle or fight
18 prior to the victim's death?

19 MR. PHILLIPS: Objection, Your Honor, leading. It was
20 a long --

21 THE COURT: Sustained.

22 Q What, if anything, would the absence of defensive
23 wounds to the hands of the victim indicate to you as a
24 medical professional?

25 A It's possibly no defensive mechanism, but it's not

1 100 percent.

2 Q Dr. Ross, do you have an expert opinion to a reasonable
3 degree of medical and scientific certainty as to the cause
4 of death of Joshua Flint McManus?

5 A Yes.

6 Q What is that opinion?

7 A The cervical spinal fracture due to the gunshot wound
8 of the neck.

9 Q And the manner of death you determined was homicide?

10 A Yes.

11 Q What is your expert opinion as to the length of time it
12 would have taken for the victim to die from this injury?

13 MR. PHILLIPS: Objection, Your Honor.

14 THE COURT: Overruled.

15 A Minutes.

16 Q You've already described that there was no exit wound
17 and where the bullet came to rest near -- in the soft tissue
18 near the left jaw. Could you tell us, was there stippling
19 near the entrance wound?

20 A Yes. Let me define stippling. When a bullet comes out
21 of a gun so does soot and pieces of powder, but the soot and
22 the pieces of powder only go a certain distance, so if you
23 don't see evidence of it you can say it's a distant shot.
24 But if you do see evidence of it, in this case what
25 stippling is is where the powder hits the skin and causes

1 little abrasions, little pinpoint abrasions, and the
2 distance that powder would go depends on the type of weapon,
3 the length of the barrel, the type of ammunition, all kind
4 of things, so it's difficult to say exactly, plus the
5 stippling goes out in a cone shape. In this instance the
6 stippling was an area of five inches in diameter. To get an
7 exact number you would have to take the same gun, the same
8 ammunition and do target practicing. We call this an
9 intermediate range injury, which could be six inches, eight
10 inches, 10 inches, 18 inches.

11 Q Okay. Somewhere in that range.

12 A Yes.

13 Q So by abrasions these are actually like scratches or
14 cuts to the skin?

15 A It will pinpoint the powder as just little tiny
16 particles obviously and that's where the skin is hit.

17 Q So it's not just merely gunshot powder residue, it's
18 actually where the skin has been impacted by those projects?

19 A It's been impacted by the gunshot residue, yes.

20 Q Thank you. Dr. Ross, I would like to show you what's
21 previously been marked as Courts Exhibit 20 for the purposes
22 of an earlier hearing.

23 MS. COLLINS: I would ask that this be replaced now
24 with State's Exhibit 2 for identification purposes.

25 Q I show you now what has been marked as State's Exhibit

1 2 and ask you, do you recognize that picture?

2 A Yes.

3 Q Is that a picture of the right jaw area of the victim
4 after it had been cleaned up a little bit?

5 A Yes.

6 Q And it was there during the autopsy procedure that that
7 was taken?

8 A Yes.

9 Q Does that show the stippling that you've described here
10 to us today?

11 A Yes, it does.

12 Q And you said that was about a five inch area around the
13 bullet wound?

14 A Yes.

15 Q And is that fairly -- and is that a fair and accurate
16 depiction, that photograph, of the stippling and the wound
17 as you observed it at the time of the autopsy after the
18 entry area had been cleaned?

19 A Yes.

20 Q I would like to also show you what has been marked
21 as State's -- I'm sorry, previously marked as Court's
22 Exhibit 16 --

23 MS. COLLINS: I now ask that that be replaced with a
24 sticker, State's Exhibit 3 for identification purposes.

25 Q -- and ask, do you recognize what is depicted in that

1 photograph?

2 A Yes. It's a similar picture, it was before it was
3 cleaned.

4 Q Does that picture fairly and accurately depict the
5 injury, the wound and the stippling around the wound to the
6 victim, Joshua Flint McManus, prior to it being cleaned?

7 A Yes.

8 MS. COLLINS: Your Honor, at this time I move State's
9 Exhibits 2 and 3 into evidence, along with State's Exhibit
10 1, the report from Dr. Ross as to her conclusions from the
11 autopsy.

12 MR. PHILLIPS: Just subject to prior objections.

13 THE COURT: All right. Objection is noted, overruled
14 and introduced into evidence.

15 MS. COLLINS: Thank you.

16 Q Dr. Ross, can you step down briefly from the stand? I
17 would like you to show State's Exhibit 2 to the jury first,
18 and just show them stippling. We'll move down to this area
19 in a moment.

20 A The stippling is these little dots here. This big
21 round wound is where the bullet went in.

22 Q In fact, Dr. Ross, I'll have you take this blue pen,
23 please, and if you will circle the area of the stippling.
24 Thank you. And I'll show you what's also been entered into
25 evidence as State's Exhibit 3. And can you also circle the

1 stippling in that picture and hold that up and show that to
2 the jury?

3 A (Witness complies.)

4 Q Thank you. And you can take your seat as you show that
5 to the jury. Thank you, Dr. Ross. I know I asked you about
6 the path of the bullet and you said it was basically
7 straight across; is that correct?

8 A Yes, maybe slightly upward. I'm sorry, slightly
9 forward.

10 Q Slightly forward?

11 A Yes.

12 Q From the back of the head toward the front of the head?

13 A Yes.

14 Q How about up or down? Was it slightly down or up or
15 straight across?

16 A About straight across.

17 Q Okay. You've already testified regarding the specimens
18 that were drawn for toxicology analysis and they were sealed
19 and given to the law enforcement officer; is that correct?

20 A Yes.

21 Q At the conclusion of your autopsy report, which has
22 been entered into evidence, you note that your conclusion in
23 terms of the cause of death may be altered depending upon
24 the results of the toxicology. But if the toxicology
25 results don't alter that you've already stated your

1 conclusion was by gunshot wound; is that correct?

2 A Yes. Let me correct, the toxicology was sent to the
3 toxicology lab by my personnel, the bullet was sent -- was
4 taken by law enforcement.

5 Q Thank you.

6 A But the results of the toxicology shows some medication
7 and some drugs available, but nothing that would be lethal.

8 Q Would you have considered the report from the
9 toxicology analysis in making your final conclusion that
10 none of that was lethal, and that your -- the manner of
11 death was as stated in your initial report?

12 A Yes.

13 Q Okay.

14 MS. COLLINS: Ask that this be marked as State's
15 Exhibit 4.

16 Q And I ask you, Dr. Ross, if you will look at this
17 Exhibit 4, and ask if you recognize that document.

18 A Yes. This is the results of the blood levels of
19 medication found in Joshua McManus.

20 Q And those are prescription medicines; is that correct?

21 A Some of them, the methamphetamine may or may not be.

22 Q The levels that you've indicated, would they have been
23 at such that -- you've already stated that they did not
24 alter your opinion that the cause of death was the gunshot
25 wound; is that correct?

1 A That's correct.

2 Q The levels of the different substances as shown on the
3 toxicology report, do you have an opinion to a reasonable
4 degree of medical certainty as to what affect, if any, those
5 substances would have had on the behavior or demeanor of the
6 victim?

7 A That's best answered by a forensic toxicologist, but --

8 MR. PHILLIPS: Objection, Your Honor.

9 THE COURT: I'm sorry?

10 MR. PHILLIPS: Objection.

11 THE COURT: All right, overruled.

12 MR. PHILLIPS: Outside the scope of expertise.

13 THE COURT: Overruled.

14 Q Please proceed.

15 A But from my experience I don't find that these would
16 have any effect on the cause of death or activity.

17 Q And I know you stated that your lab sent -- your
18 office sent the toxicology results directly to be analyzed,
19 but again, a lavender top sample was given to law
20 enforcement so it could be sent to SLED for DNA purposes?

21 A Yes.

22 Q Thank you. One moment.

23 (Break in proceedings.)

24 MS. COLLINS: Your Honor, I believe I moved State's
25 Exhibit 1, Dr. Ross' report, into evidence, Mr. Newman told

1 me he wasn't sure, but I would do so at this time if I did
2 not.

3 THE COURT: All right. Any objection to that?

4 MR. PHILLIPS: No objection, Your Honor.

5 MS. COLLINS: Oh, I'm sorry. And State's Exhibit -- I
6 would move at this time the toxicology report, State's
7 Exhibit 4 into evidence as although hearsay something relied
8 upon by Dr. Ross.

9 THE COURT: Any objection?

10 MR. PHILLIPS: No objection.

11 THE COURT: Without objection 4 is entered as well. So
12 1, 2, 3 and 4 are in.

13 MS. COLLINS: Thank you. No further questions. Please
14 answer any questions of Mr. Phillips or Mr. Delgado.

15 CROSS EXAMINATION

16 BY MR. PHILLIPS:

17 Q Good afternoon, Ms. Ross.

18 A Good afternoon.

19 Q One of the things I kind of want to get right to,
20 earlier in direct examination you testified that you found
21 the manner of death as homicide.

22 A Correct.

23 Q If it was a case of self-defense, would the manner of
24 death on your report still be listed as homicide?

25 A Yes.

1 Q So it wouldn't make a difference if it was a
2 self-defense case, as far as your report is concerned it
3 would be listed as homicide.

4 A That's correct.

5 Q As far as the stippling is concerned you said it was
6 the intermediate range?

7 A Yes.

8 Q And for an expert in this realm, intermediate range
9 goes up to -- you stopped at 18 inches, it actually goes up
10 to 30 inches.

11 A I believe mostly it's 24 inches, 18 to 24 inches.

12 Q And so if you were say to go to Pathology Expert.com
13 and it said the intermediate range was 30 that would be
14 incorrect?

15 A I've never seen one that far.

16 Q But as far as the studies, the research that's out
17 there, not what you've seen but what's actually out there as
18 far as -- you know, in your field the distance could be up
19 to 30, is that --

20 A Well, yeah. I would defer to a ballistics expert. And
21 again, the exact measurement would depend on the weapon, the
22 ammunition, the type of length of the barrel, et cetera.

23 Q And so, yeah, that's actually exactly what I just read.
24 But for that to have in any accurate assessment you would
25 actually have to fire the exact weapon in the same

1 conditions to have any idea to give an actual distance; is
2 that fair?

3 A That's correct.

4 Q And with that the toxicology -- you talked about
5 therapeutical levels, there was methamphetamine listed
6 there, is that --

7 A Yes.

8 Q And there's no such thing as a therapeutic level of an
9 illegal substance.

10 A No. There is research that shows a person with a
11 methamphetamine as high as 200 to 500 will show aggressive
12 type of activity. In this case it was -- let me look, it
13 was 54 nanograms per milliliter.

14 Q And there was dihydrocodeine?

15 A Dihydrocodeine, yes.

16 Q There was hydrocodone?

17 A Hydrocodone and Hydromorphone.

18 Q Oxymorphone, is that Oxycontin or something similar?

19 A Something similar.

20 Q Amphetamine, I assume like Adderall?

21 A That's usually a byproduct of methamphetamine.

22 Q Opiates, would that be like Xanax?

23 A That's from the urinalysis, those last three. That's
24 the screening just to show what's there, the amount doesn't
25 matter in the ureter because the kidneys can concentrate or

1 dilute.

2 Q So there were numerous drugs in the system.

3 A Correct.

4 Q And to give any idea about the stippling and distance
5 you would actually have to fire the gun, like you said, a
6 ballistics expert, you would have to recreate -- it's kind
7 of beyond your expertise to even testify to exactly what the
8 distance could be.

9 A I can just give you a range, yes.

10 Q And ultimately in your report when you have the cause
11 and manner of death, self-defense would still be listed as
12 homicide.

13 A Correct.

14 MR. PHILLIPS: One moment, Your Honor.

15 (Break in proceedings.)

16 MR. PHILLIPS: No further questions, Your Honor.

17 MS. COLLINS: Just briefly in response.

18 REDIRECT EXAMINATION

19 BY MS. COLLINS:

20 Q So the outside range would be up to 18 or 24 inches; is
21 that correct?

22 A Correct.

23 Q And what would the closest range be?

24 A Again, that's ballistics, but it's probably at least
25 probably six inches, because this was quite --

1 MR. PHILLIPS: Renew the objection, Your Honor.

2 THE COURT: Overruled.

3 Q Please complete your answer.

4 A It would be more of a ballistics question, but it could
5 be as close to I think as six inches.

6 Q Okay. All right. And in terms of the
7 methamphetamines, are there prescription drugs that would
8 leave indications or amounts of that in the blood?

9 A That's a toxicology question, it's beyond my expertise.

10 MR. PHILLIPS: Objection, leading, outside the scope of
11 702.

12 THE COURT: She just said she couldn't answer it.

13 Q You have been a physician for how many years?

14 A Forty-two.

15 Q And one thing you consider in terms of cause of death
16 is the toxicology report, correct?

17 A Correct, and the NMS. We have a forensic toxicologist
18 who reviews our reports and gives their opinion and that
19 is -- the opinion is in the report itself.

20 Q But again, based upon 30 years of being a physician of
21 practicing medicine, can you tell us what types of medicine
22 would leave levels of methamphetamine in the blood at all?

23 MR. PHILLIPS: Objection.

24 THE COURT: Overruled.

25 A I cannot, no.

1 Q You cannot?

2 A No.

3 MS. COLLINS: Thank you. No further questions.

4 MR. PHILLIPS: Nothing further.

5 THE COURT: Thank you, Doctor, you can step down. Is
6 she free to leave, Solicitor?

7 MS. COLLINS: Yes, we ask that she be excused.

8 THE COURT: Thank you, ma'am, you're free to leave.
9 The State can call its next witness.

10 MS. COLLINS: Thank you. Your Honor, the next witness
11 for the State is Raymond Robinson, but first we would like
12 to play the 911 call made by Raymond Robinson on
13 December the 5th of 2015.

14 THE COURT: All right, thank you. Objection noted and
15 overruled.

16 MS. COLLINS: This has previously been marked as
17 Court's Exhibit 14, I ask that it be replaced as State's --

18 MR. PHILLIPS: Renew the same objection.

19 THE COURT: Yeah. Objection noted and overruled.

20 (The 911 tape was played.)

21 THE COURT: Okay. Before you call your next witness
22 let's take a brief comfort recess. Ladies and gentlemen,
23 don't talk about the case, go on back to your jury room.

24 (The jury left the courtroom.)

25 THE COURT: All right. Anything before we take a

1 break?

2 MS. COLLINS: No.

3 THE COURT: All right, let's take a quick break. Thank
4 you.

5 (A recess was taken.)

6 THE COURT: All right. Bring the jury back.

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you, ladies and gentlemen. The State
9 can call its next witness.

10 MR. NEWMAN: State calls Raymond Robinson.

11 The witness, RAYMOND ROBINSON, was first duly sworn

12 And testified as follows:

13 DIRECT EXAMINATION

14 BY MR. NEWMAN:

15 Q Please state your name for the record.

16 A Raymond Robinson.

17 Q Mr. Robinson, you'll have to forgive me, I've been
18 battling a cold and I have a cough drop in my mouth, I think
19 I can get by. Do you know the defendant in this case,
20 Michael Brent Gay?

21 A Yes.

22 Q How long have you known him?

23 A Maybe ten or 11 years, something like that.

24 Q How about the victim in this case, Joshua McManus, how
25 long had you known him?

1 A Since like 9th grade, maybe 20 years.

2 Q 9th grade, so y'all went to high school together?

3 A Yes, sir.

4 Q Lancaster High School?

5 A Yes, sir.

6 Q So as of December of 2015, you had known both of them

7 for quite some time?

8 A Yes, sir.

9 Q When did you graduate high school?

10 A Ninety-three.

11 Q Okay. Let's talk specifically about December 5, 2015.

12 Do you remember that date?

13 A Yes, sir.

14 Q What day was that?

15 A I believe it was on a Friday or Saturday -- Saturday.

16 Q Big football day, right?

17 A Yeah, Saturday.

18 Q Clemson versus North Carolina, ACC Championship?

19 A Yeah.

20 Q Where did y'all go to watch the game?

21 A To Brent's house, Brent Gay's house.

22 Q And you and Flint had made plans to go watch the game

23 together?

24 A We was trying to figure out where we could watch it at

25 and Brent said we could watch it over there at his house, so

1 we went over there.

2 Q Who else was there?

3 A Nobody at the time. Stefan, he came maybe like ten or
4 five minutes before it happened.

5 Q But when you get there it's just you, Flint McManus,
6 y'all are together in the same car?

7 A Yes.

8 Q And Mr. Gay?

9 A And his grandmother, I think she was there.

10 Q Okay. His grandmother. All right. Now, earlier in
11 the day how did you and Flint get together?

12 A He had called and said that he wanted to watch the
13 games together and I came back to Lancaster, we hung out for
14 a little bit and decided we would go back to Brent's to
15 watch it.

16 Q Was it common for y'all to hang out?

17 A Yeah.

18 Q Do you remember about what time you got to Brent's
19 house?

20 A It was daylight, I think we were watching the SEC game,
21 so about 2:00 or 3:00.

22 Q So the SEC game would have came on earlier that day,
23 ACC prime time, right?

24 A Yeah.

25 Q Okay. So it's still daylight, so daylight savings time

1 probably gets dark around 5:00. How was Brent acting while
2 y'all were watching the game?

3 A He was all right. He kept going in and out of his
4 closet, I don't know, he kept pulling out stuff like showing
5 stuff like that. Then he all of the sudden started throwing
6 ninja stars at his walls, like a sword and stuff, we was
7 asking why was he tearing his house up. He was putting
8 dents and holes in the wall.

9 Q He was just throwing knives and --

10 A Yeah. And he finally stopped doing that, like it
11 doesn't bother him that it was tearing his house up with it,
12 I don't know.

13 Q At some point did y'all leave the house?

14 A We went to the store.

15 Q Who all went to the store?

16 A All three of us; me, Flint and Brent.

17 Q You, Flint and Brent? What did y'all do at the store?

18 A Bought some stuff like chips and a little bit of beer,
19 and that was it.

20 Q Now, Branch Street, this is right off of Meeting Street
21 here?

22 A Yeah.

23 Q Down towards -- Branch Street is in West Manor; is that
24 right?

25 A West Manor, yes.

- 1 Q So what store did y'all go to?
- 2 A I believe that one on Riverside, I think they call it
- 3 Raceway or something like that.
- 4 Q So what did y'all get at the store?
- 5 A Chips and a little bit of beer.
- 6 Q What kind of beer, do you remember?
- 7 A Bud Light.
- 8 Q Were y'all drinking?
- 9 A Not much of it. I think I had like two and Flint maybe
- 10 had like two, but Brent don't drink so he didn't drink any.
- 11 Q You mentioned something in that 911 call about it being
- 12 Brent's birthday. Can you elaborate on that?
- 13 A I believe it was the day before or maybe a couple of
- 14 days before that happened that it was his birthday, I
- 15 couldn't remember exactly when.
- 16 Q And you said he'd been staying up?
- 17 A Seems like he'd been up for awhile or whatever.
- 18 Because I had asked him one time did he want us to leave
- 19 because he kept going in and out of his closet the whole
- 20 time like he was aggravated about something, but he said we
- 21 was all right to stay so we stayed.
- 22 Q And you'd been to his house to hang out before?
- 23 A Yeah.
- 24 Q No problems.
- 25 A No.

1 Q He's just in and out of his closet, does he say why?

2 A He said he was looking for something, he kept saying he
3 was looking for something.

4 Q At some point were y'all getting ready to leave the
5 house?

6 A Yeah. Me and Flint was getting ready to leave when
7 Stefan, I believe, called or Brent might have called him,
8 I'm not sure, but he was coming over there. Flint hadn't
9 seen him in awhile so he said he wanted to stay to see
10 Stefan, so we stayed until Droop, or Stefan got there.

11 Q I'm sorry, you said Droop?

12 A That's his nickname, we call him Droop.

13 Q Okay. So at this point is the game over or close to
14 over or --

15 A I believe it was about over with by then.

16 Q It was close to over.

17 A Yeah.

18 Q All right. So walk me through what happens after
19 Stefan gets there.

20 A Him and Flint -- like I said, Flint hadn't seen him in
21 awhile so they started talking and like gave each other a
22 hug or whatever, and then we all sat down. It wasn't long
23 after that that's when Brent shot Flint. He come out of --
24 walked, took like five long steps past us in the chairs and
25 come around and put the gun up to Flint's head said, "Did

1 you take my daddy's watch?" And Flint blinked his eyes and
2 he shot the gun right off in his head.

3 Q What was Flint doing when he got shot?

4 A He was sitting in the chair, and Stefan was on the left
5 side of him and I was on the other side of Stefan.

6 Q So he come out of the closet, gun in his hand?

7 A I didn't see the gun until he like whipped around on
8 Flint's side, like Flint was sitting like this, he just put
9 it up like that. I thought maybe he was kidding and that's
10 when he said did you steal my daddy's or take my daddy's
11 watch, and Flint blinked his eyes and he shot him right
12 there in the head.

13 Q Had you seen the gun prior to that?

14 A Not really. He was showing us all kind of stuff that
15 night, I don't really remember seeing the gun.

16 Q You don't remember him showing you the gun at all.

17 A No.

18 Q Was Flint holding anything in his hand?

19 A No. He was just sitting there watching the game.

20 Q He didn't have a knife in his hand.

21 A No.

22 Q Did Flint say anything right before he got shot?

23 A He just blinked his eyes one time, he didn't give him a
24 chance to even say anything.

25 Q And after he gets shot, what happens to Flint?

1 A It was like as soon as the gun went off his head went
2 down, blood come out of his mouth, and that's when I jumped
3 up and I was like, "Why did you do that?" I don't know, I
4 was scared, it was awful.

5 Q So he didn't fall out of the chair or anything.

6 A No. His head dropped and that was it.

7 Q Did you see blood come out?

8 A Yeah.

9 Q Now, what did Mr. Gay do after he fired the shot?

10 A He like -- that's when I said, "Why did you do that,"
11 when I figured out Flint was dead. I thought maybe he was
12 playing when I seen him pull the gun up to his head because
13 there wasn't no big confrontation about anything for anybody
14 to do anything like that, but then all of the sudden he
15 said, "He stole my daddy's watch." He ordered me and Stefan
16 to the kitchen, that's when I walked to the kitchen, and I
17 walked to the carport instead of going to the kitchen and I
18 kept looking back to see if he was going to shoot us.

19 Q He ordered you to the kitchen?

20 A Yeah.

21 Q Had you seen any watches that night?

22 A He was showing us all kind of stuff like in his closet,
23 so like I don't know if he might have shown it. I wasn't
24 really paying no attention to it.

25 Q What happened when he ordered you to the kitchen?

1 A I was walking toward the kitchen and Stefan was behind
2 me, and I kept glancing back to make sure he wasn't going to
3 shoot one of us. I just walked out on the carport and
4 Stefan followed me and then Brent stepped like on the first
5 step of the carport and he had the gun, like holding the gun
6 like that. And that's when I was like, "Why did you do
7 that?" And he kept saying that about the watch. And I
8 said, "Well, if you think he stole something go like check."
9 And walked back and started patting Flint down like that,
10 and it was like he was mad that there wasn't nothing in his
11 pocket and that's when I left and called 911.

12 Q So you saw him pat his pockets.

13 A Yeah.

14 Q And what other actions did he make after he patted his
15 pockets?

16 A He just like shook his head like he just knew he had
17 something and he was mad that he didn't have nothing.

18 Q So he ordered you to the kitchen but you went to the
19 garage?

20 A Yes.

21 Q Why?

22 A I was scared, I was trying to get out of there really.

23 Q What happened after you went to the garage, after you
24 saw him pat pockets?

25 A He was behind us with the guns, so I just stopped to

1 make sure he wasn't going to shoot Stefan or shoot me, and
2 that's when I was like, "Why did you do that?" That's when
3 he kept saying that he stole his daddy's watch or whatever.

4 Q Is that the point where you left?

5 A When he went back to check Flint's pockets and I seen
6 him pat him down, that's when I left.

7 Q Okay.

8 A Right after I seen that he was --

9 Q Where did you go?

10 A I went to my truck and called 911. I was backing out
11 of the driveway and talking on the phone talking to 911 at
12 the same time.

13 Q So you immediately get in the truck, get the phone, hit
14 reverse, you were getting out of there.

15 A Yeah.

16 Q About how long after this incident would you say he
17 called 911?

18 A I was calling when I was backing out of the driveway,
19 so --

20 Q Immediately.

21 A Yeah.

22 Q Now, you left and you called 911. What happened to
23 Perry?

24 A He was there. I was worried about Brent shooting him
25 and all of the sudden I seen headlights coming up the road,

1 I didn't know if it was him or Stefan, that's when I seen
2 Steven roll the window down and I told him I was on the
3 phone with the law --

4 MR. DELGADO: Your Honor, may I ask the solicitor to
5 ask the witness to raise his voice a bit.

6 THE COURT: Yeah. Please just speak into the
7 microphone, it's not very loud.

8 Q So Stefan comes by you, he's getting out of there too.

9 A Yeah.

10 Q And you tell him you're on the phone with the police,
11 what does he say then?

12 A He was saying -- I think that he said that Brent's
13 grandmom was on the phone, too, like she had called 911
14 herself but I'm not sure.

15 Q So watching this ACC game and it's almost over, was
16 there -- was there an argument over the team?

17 A No, there wasn't never no argument about anything. He
18 just at one time mentioned something was missing.

19 Q He mentioned something was missing. Does he confront
20 him about it?

21 A No, he never confronted him or anything.

22 Q No confrontation.

23 A No.

24 Q No argument whatsoever.

25 A No.

1 Q To your knowledge has there ever been any disagreement
2 between Flint and Brent?

3 A No. Flint was easy to get along with, I thought Brent
4 was too. He just had mentioned something about if somebody
5 ever messes over him again he was going to take care of
6 them, so I don't know what he meant by that.

7 MR. DELGADO: Objection to that.

8 THE COURT: All right, sustained.

9 MR. DELGADO: And not only that, Your Honor, but ask
10 that it be struck and caution the jury about that.
11 That's --

12 THE COURT: The jury will disregard that previous
13 statement, I sustained the objection.

14 MR. DELGADO: Your Honor, may we approach?

15 THE COURT: Just answer what is asked.

16 MR. NEWMAN: Just answer what I ask.

17 MR. PHILLIPS: We have a matter to address.

18 THE COURT: All right. Jury, go back to your room,
19 don't talk about the case.

20 (The jury left the courtroom.)

21 THE COURT: All right. Mr. Phillips?

22 MR. PHILLIPS: Your Honor, at this time we would make a
23 motion for a mistrial. Specifically this is evidence that's
24 never been presented in any of the discovery, a statement --
25 a hearsay statement allegedly made by Mr. Gay that he

1 would -- if somebody did it again they would come back and
2 he would kill them or shoot them in the head. This was
3 addressed through this witness, Ms. Tamara, and they said
4 that they would make sure that it wouldn't go in. There was
5 nothing that this was going to come out with as far as this
6 witness, however this hearsay statement did come out just a
7 second ago, highly prejudicial. Obviously there was no
8 foresight on our part that this statement would be coming
9 from this witness. Certainly at this time we believe that
10 it's appropriate to request a mistrial. And I understand
11 for appellate purposes we have to request a curative
12 instruction, we have to obviously say that the curative
13 instruction doesn't cure the prejudice, that doesn't un-ring
14 the bell and ultimately stand firm on the mistrial. But we
15 do have to ask for the strike for the curative, and then, of
16 course, we believe that it doesn't rise to that level of
17 curative prejudice. And one of the things we just discussed
18 in pretrial was actually -- even an entire different
19 statement about -- or actually I guess the same one, we
20 addressed that this issue may come up with this witness. I
21 was thinking that it was a separate statement, but now
22 putting it together it is the statement that we've
23 discussed, that there was an incident, a shooting with an
24 individual that was in the notes that the solicitor
25 provided. Solicitor said she discussed with this witness

1 that he wouldn't make that statement, that happened I guess,
2 what, an hour ago and said he wouldn't do it, and so we just
3 addressed that it wouldn't come out and it came out.

4 MR. NEWMAN: Your Honor, I believe that's a completely
5 different issue with the mirror. I did not illicit that
6 testimony from Mr. Raymond, I've never heard that before
7 frankly, and his statement was he mentioned if someone
8 messed with me he would take care of it. I don't think
9 that's enough to -- I don't know that the jury actually --
10 you know, we have this Tamara Cameron who did hear Mr. Gay
11 say that if someone ever stole from him again he was going
12 to shoot them in the head, that is not what he just said.

13 THE COURT: Not this witness.

14 MR. NEWMAN: Right, totally separate. And --

15 THE COURT: All right. Well, Mr. Phillips, what about
16 the State's position that this witness just blurted that
17 out, it wasn't in response to any question because that's
18 kind of how I pick up on it as well. What do you say about
19 that?

20 MR. PHILLIPS: Well, the case law on mistrial is not
21 whether the solicitor -- that is a separate form of a
22 mistrial if the solicitor intentionally elicited. But also
23 a witness can cause a mistrial kind of sua sponte on their
24 own, that's kind of part and parcel. In this case when you
25 have essentially this evidence that comes in that taints the

1 trial, now the jury is going to be under the belief that
2 Mr. Gay had been telling people if somebody messed with them
3 he would shoot them in the head and they're going to think
4 that he's a violent person. The prejudice is highly
5 enhanced now that they have this thing in their mind, kind
6 of like a 404B, like a prior act that he'd been telling
7 people that he would shoot somebody or take care of them.
8 And now they're under the belief that he's a violent person,
9 he'd been telling people if somebody messed with him he
10 would kill them essentially. And so -- and yeah, we can ask
11 the court reporter if necessary to get the exact quote
12 because I don't want to misrepresent. It's not in any of
13 the discovery, it's not something we anticipated. A similar
14 prejudicial statement we did address pretrial and the
15 solicitor said she told him not to go into it. Solicitor
16 Newman did just state that he didn't -- frankly the first
17 time he ever heard about it was today just then, so we
18 believe it's highly prejudicial, and I believe that without
19 a doubt it doesn't matter whether the solicitor elicited it.

20 THE COURT: All right. Solicitor?

21 MR. NEWMAN: Your Honor, I believe -- again, I would
22 ask the court reporter to repeat what was just said, the
23 quote, and I believe it could be cured but your instruction.

24 THE COURT: So at this point in time I will ask my
25 court reporter to go back and pull it up.

1 (The testimony was read)

2 THE COURT: Okay. So the question was were you aware
3 of any previous disagreement between the two, which I think
4 is a fair question given the circumstances of what happened,
5 and then the witness answered, no, not that I know of, I
6 always thought they essentially got along, and then he added
7 that last thing. All right. Anything else y'all want to
8 say?

9 MR. PHILLIPS: No, Your Honor.

10 THE COURT: All right. I'm going to deny the defense's
11 motion for a mistrial. I will -- I did read my curative --
12 well, I will instruct the jury again that they are to
13 disregard that last question and answer. I'm not going to
14 repeat it again because I don't want to further taint the
15 jury. I've already charged them that and I've already
16 instructed this witness to only answer the question asked,
17 all right, and that's the best we can do. You're protected
18 in the record. Anything else?

19 MR. PHILLIPS: That's it, Your Honor. It's that kind
20 of shell game with mistrials, just trying to make sure that
21 you can't un-ring the bell.

22 THE COURT: You're protected, got you. All right.
23 Let's bring the jury in.

24 (The jury returned to the courtroom.)

25 THE COURT: All right. All members of the jury are

1 present. Like I told you, the rules of court require any
2 time there's legal matters raised that I need to issue
3 decisions on that outside of your presence since y'all are
4 the judges of facts and I'm the judge of law. I
5 specifically instruct you as I instructed you before, when a
6 lawyer objects to something and I sustain the objection that
7 means the question cannot be asked -- or excuse me, cannot
8 be answered or the thing cannot come into evidence. I
9 previously instructed you concerning an answer that was
10 given to a question earlier that you were to disregard that
11 answer, I'm specifically instructing you now, you're to
12 disregard the answer from this witness to the last question
13 posed by the solicitor. That response is stricken from the
14 record, you are not to consider that response whatsoever,
15 okay? Thank you. Solicitor?

16 BY MR. NEWMAN:

17 Q Thank you, Mr. Robinson. So just to be clear, when
18 Flint got shot he was sitting down.

19 A Yes.

20 Q Sitting in a chair.

21 A Yes.

22 Q Y'all were just sitting there watching the game.

23 A Yeah.

24 Q Nobody is threatening anybody.

25 A No. Like I said, he took those five long steps when

1 came around and pulled the gun.

2 MR. NEWMAN: Your Honor, I've got six photos and one
3 diagram I want to have marked for identification purposes.

4 Q Mr. Robinson, I'm going to show you what's been marked
5 as State's 12. Do you recognize that drawing?

6 A Yes.

7 Q Now, I want you to take this red pen and show me where
8 you were standing when you walked out and you looked back
9 and you saw Mr. Gay patting down his pockets.

10 MR. DELGADO: Your Honor, that's -- the jury can't see
11 what has happened there.

12 THE COURT: All right. Well, are you planning on
13 publishing that, Solicitor?

14 MR. NEWMAN: I do, Your Honor, but frankly I don't know
15 that I can unless they agree until crime scene --

16 THE COURT: Well, just lay a better foundation as to
17 what that is.

18 Q Can you tell me what that's a photo of?

19 A That's like a layout of Brent's house is what it seems
20 to be.

21 Q And is that -- to the best of your knowledge that is
22 a --

23 A I believe so, yes.

24 Q -- clear depiction of the layout of that Gay home?

25 A Yeah.

1 Q All right.

2 MR. NEWMAN: Your Honor, this is a crime scene diagram
3 made by the Lancaster County Crime Scene, they will be here
4 to testify. I mean, I think I can ask him about without
5 publishing it.

6 THE COURT: Sure.

7 Q I want you to take the red pen and show me where you
8 were standing when you looked back and saw Mr. Gay patting
9 down the pockets of Mr. McManus.

10 A I believe that's like the door to the house, that's the
11 garage.

12 THE COURT: Speak up, sir.

13 A If that's the garage right here I was at this door, and
14 he walked back and Flint was sitting -- like I said, he was
15 sitting here.

16 Q Just circle the room that --

17 A Well, that's the room right there.

18 Q That's the room where the shooting happened.

19 A Yeah.

20 Q Okay. And you're standing here.

21 A Yeah, that's after he shot him.

22 Q Ever seen Flint with a green -- any type of green
23 zipper pouch?

24 A No.

25 Q Have you ever seen him with any needles such as like a

1 diabetic would use?

2 A No.

3 Q I'm going to show you what's been marked as State's 9
4 and 10. Have you ever seen either of those?

5 A No.

6 Q Never seen them.

7 A Nuh-uh.

8 Q I show you what's been marked as States 6 and 7. Do
9 you recognize what those are?

10 A Watches.

11 Q Have you ever seen those watches?

12 A No. Not that I remember, no.

13 Q Have you ever seen Flint McManus with those watches?

14 A No.

15 Q I show you what's been marked as State's 8. Do you
16 know what that is?

17 A A knife.

18 Q Have you ever seen that knife?

19 A No.

20 Q Have you ever seen Flint McManus with that knife?

21 A No.

22 Q You did not see Flint McManus with that knife in his
23 hand at all.

24 A No. He never carried a knife.

25 Q I show you what's marked as State's 11. Do you

1 recognize that?

2 A A pistol.

3 Q Is that the pistol that you saw that Saturday night?

4 A That's what it looked like pretty much.

5 Q Have you ever seen Flint McManus handle that pistol?

6 A No.

7 Q Do you recall -- we discussed Flint was sitting down
8 when he got shot, where were his hands?

9 A I believe he was just sitting down so I assume they
10 was --

11 Q Hands in his lap.

12 A Yeah.

13 Q Watching TV. You were there, you saw what went on, was
14 Brent Gay defending himself when he shot this man?

15 A No.

16 Q Just to clarify, sitting down, hands in his lap,
17 anything in his hands?

18 A No.

19 Q Nothing at all?

20 A No.

21 MR. NEWMAN: I have no further questions, please answer
22 anything Mr. Phillips has.

23 THE COURT: All right. Mr. Delgado?

24 CROSS EXAMINATION

25

1 BY MR. DELGADO:

2 Q Flint McManus was your best friend; isn't that right?

3 A Do what?

4 Q That's what you said before to law enforcement; isn't
5 that true?

6 A I didn't hear you, sir, I'm sorry.

7 Q Sure. Flint McManus was your best friend, right?

8 A Yes. He was a good friend, yeah.

9 Q And you said that to law enforcement over the times
10 that you've been interviewed or you've given a statement to
11 law enforcement, right?

12 A Yes, sir.

13 Q In fact, those statements include the 911 call just
14 before midnight, December the 5th into the morning of
15 December the 6th, 2015, right?

16 A Yes.

17 Q That's what's been played here for our jury. You were
18 then -- or you went to the Lancaster County Detention Center
19 or the sheriff's department and you gave a video statement
20 to the investigator, didn't you?

21 A Yes.

22 Q In the early morning of maybe Saturday, December the
23 6th, right?

24 A Yeah, that Sunday.

25 Q You've seen that since then, have you?

1 A Yes.

2 Q Yeah. That same day you even gave a written statement
3 in your own handwriting in addition, so there was three
4 times within 24 hours, correct?

5 A Yes.

6 Q Do you remember that written statement?

7 A I went to the detention center right after it happened
8 and wrote a statement.

9 Q That was you to law enforcement, right?

10 A Yeah, I rode with them.

11 Q Yeah. And the next time you talked to law enforcement
12 about this case of what you saw and what happened was
13 November 21st, 2018, three weeks ago, right?

14 A That sounds about right.

15 Q I'm sorry?

16 A That date sounds about right.

17 Q Yeah. Just tell these folks, at any of those times --

18 MR. DELGADO: And Your Honor, I say this with our
19 pretrial motion, or motion for a mistrial noted and
20 overruled --

21 Q -- when is the first time you ever said anything to law
22 enforcement about him, Brent Gay, taking a gun and
23 threatening somebody and shoot him in the head, when is the
24 first time?

25 MR. NEWMAN: Objection, Your Honor.

1 THE COURT: Overruled.

2 Q When is the first time? It's in this room five minutes
3 ago; isn't that right? It's either a yes or a no,
4 Mr. Robinson.

5 A I thought you was asking the jury.

6 Q No, sir, I'm asking you. See, you're the witness, you
7 answer my questions. When is the first time you ever said
8 anything to law enforcement or the solicitor's office or
9 anybody else about Brent threatening to shoot somebody in
10 the head if they stole anything from him, when was the first
11 time that ever happened?

12 A I didn't say shoot him in the head, I never said that.
13 I said Brent shot Flint in the head when he killed him.

14 Q That he would take care of them by shooting them; isn't
15 that right?

16 A Yeah.

17 Q When is the first time you've ever said that before?

18 A That's what happened.

19 Q No, sir, see, that's not my question. My question is
20 when is the first time you've ever said that before?

21 A I guess that night, I don't know, you've seen the
22 video.

23 Q No, you reckon this afternoon.

24 A Yeah.

25 Q Isn't that right?

1 A Yeah, I said that.

2 Q You've never said that before, have you?

3 A I'm not sure, it was three years ago.

4 Q Let's talk about those statements that you have made,

5 all right? You said in your 911 tape that he was delirious,

6 Brent was delirious, right?

7 A At that time I thought he was after he shot my friend.

8 Q Matter of fact you've often said, I think it was --

9 maybe it was your written statement you said he'd even

10 fallen down once and you'd helped him up; isn't that right?

11 A No, Flint helped him up.

12 Q Okay, I'm sorry. Brent fell down because he was so out

13 of it, right?

14 A He fell down, I don't know if was out of it.

15 Q Didn't you ever say he was on something, too; isn't

16 that right? Didn't you say that?

17 A I'm not sure. He seemed to be.

18 Q I'm sorry?

19 A I said he seemed to be.

20 Q Yeah. In your video statement to the sheriff's

21 department you said Brent was messed up on something, do you

22 remember that?

23 A That was three years ago, I don't remember.

24 Q Would you like to hear that again? Are you denying

25 that you said it?

1 A I may have said it.

2 Q You did, didn't you? You not only said in the 911 --
3 well, let me do it this way, Mr. Robinson, just for my own
4 purposes, I've got Robinson here, there's four different
5 times that you've talked to law enforcement. December the
6 5th, that's on the 911 call. Do you see where my finger is?
7 Right? Just before midnight of the morning of Saturday,
8 December the 6th you make a 911 call from your truck.

9 A Correct.

10 Q Right at the end of the road, right? Branch Road.

11 A Backing out of his driveway is when I made it.

12 Q Fine. Right up from where the house was, correct?

13 A Yeah.

14 Q On the morning of the 6th of December you do an
15 audio/video statement to the sheriff's department.

16 A That was the same night but it fondled over into the
17 morning time, yeah.

18 Q But the point is you did make that statement to them,
19 right? To law enforcement.

20 A Yeah. They took me out there to interview me about the
21 murder.

22 Q Yeah, sure. That's a standard way of doing things,
23 they videotape statements of witnesses, right?

24 A I recognize. That's the first murder I've ever
25 witnessed, I don't remember.

1 Q And on the morning of the 6th of December you also
2 handwrote out a statement in your own handwriting to
3 supplement whatever else you'd seen, heard or already told
4 about, correct?

5 A Yeah, I wrote a statement.

6 Q Yeah. And then three weeks ago here to Ms. Rumbaugh
7 and the solicitor on November 21st -- matter of fact, that
8 was a Tuesday so I guess that's what, two weeks ago today,
9 three weeks ago today, whatever, today then you give another
10 statement to them right, do you remember that?

11 A Yes.

12 Q In the 911 call you said Brent's been up for a couple
13 of days delirious, right?

14 A I thought he was delirious.

15 Q Well, that's what you said.

16 A Yeah.

17 Q That's what you told law enforcement on your 911 call.

18 A When you shoot someone for no reason I just figured he
19 was delirious.

20 Q All I'm saying, sir, is did you say, "I think he's been
21 up for a couple of days?"

22 A Yes, sir.

23 Q "He's out of his mind, he's delirious, oh my God." Do
24 you remember hearing that on the tape?

25 A Yes, sir.

- 1 Q That was your voice, right?
- 2 A Yes, sir.
- 3 Q Sir, let's talk about those four guys that the
- 4 solicitor told the jury about in opening. One of them is
- 5 yourself, one of them is Stefan, one is Flint McManus and
- 6 one is the defendant, right? Okay. And one of those four
- 7 guys is delirious, been up couple of days and fallen down
- 8 because he's under the influence something -- he's messed up
- 9 on something to use your words, right?
- 10 A I'm not sure when fell, but --
- 11 Q Do you remember saying in your 911 tape, "The gun went
- 12 off and blood shot out of Flint's mouth?" Do you remember
- 13 that?
- 14 A Brent shot him, yeah.
- 15 Q And then later on in that same 911 tape you said again
- 16 "And that gun went off," right?
- 17 A When Brent shot him the gun went off.
- 18 Q And then the third time just before the end of the
- 19 tape, just before the 911 folks say to you all right, you've
- 20 done everything you can do you said once again "And the gun
- 21 went off," right? Right, sir?
- 22 A If that's what I said, that's been three years ago.
- 23 Q You've heard that 911 tape before today, haven't you?
- 24 A Yes, sir.
- 25 Q Did you hear that on the 21st when you interviewed with

1 these folks again?

2 A I can't remember. No, I really didn't.

3 THE COURT: Sir, just back off of the microphone, it's
4 getting kind of muffled. Thank you.

5 Q So you've heard it some other way, some other time,
6 right?

7 A Yeah.

8 Q Today?

9 A Uh-huh.

10 Q Today you heard it before you came in the courtroom?

11 A No, I heard it today. The 911 call?

12 Q Yeah.

13 A Yeah.

14 Q Do you remember saying, sir, in that video statement on
15 the early morning of the 6th, "Brent may have handed Flint a
16 knife to look at." Do you remember saying that?

17 A No.

18 Q Don't remember saying that?

19 A He was handing him and showing all kind of stuff in his
20 closet, I'm not sure what all he showed him.

21 Q Sir, I'm sorry, I'm having a hard time hearing you.

22 A He was showing him -- like pulling stuff out of his
23 closet, I don't know what all he showed.

24 Q You didn't say that Michael -- or Brent may have handed
25 Flint a knife to look at. You don't remember.

1 A No.

2 Q Tell these folks how long you've been knowing Stefan
3 Perry.

4 A Maybe 20 years.

5 Q You've known him so well you even roomed with him for
6 awhile, right?

7 A What?

8 Q You roomed with Stefan Perry, didn't you?

9 A He lived with me for a little while.

10 Q How long was that?

11 A Maybe 15 years ago.

12 Q Not how long ago, how long did you room with him.

13 A Maybe six months, something like that.

14 Q So you know him well, right? Been knowing him almost
15 all of your life.

16 A That's what we was waiting on, for Stefan to come over.

17 Q Yeah, I know. Because as you said on your written
18 statement our friend Stefan comes up or comes over, our
19 friend Stefan.

20 A Uh-huh.

21 Q So Stefan is your friend, he's also Flint's friend and
22 he's also Brent's friend, right? Okay. Sir, let me just
23 ask you this -- sir, if I use the word toxicology, let me
24 see if I can explain that because that's a scientific word
25 that may not be in general use. Toxicology means an

1 evaluation of what's in somebody's blood; alcohol, marijuana
2 metabolite, drugs, prescription or nonprescription, caffeine
3 matter of fact. Your best friend, he had a lot of
4 prescriptions, didn't he?

5 A I think maybe two that I know of.

6 Q Have you seen him do any nonprescription stuff like
7 some street drugs?

8 A No.

9 Q Never had seen him? How does that wind up in his
10 blood, man? That's State's Exhibit Number 4. How does it
11 wind up in his blood just after the shooting? Just the four
12 guys having a good time, right? You said to law enforcement
13 on the 21st of November Flint wanted to wait for Stefan to
14 come, right? Isn't that right?

15 A Yes.

16 Q Stefan is in jail right now, isn't he?

17 A I believe he is.

18 Q Huh?

19 A I believe he is.

20 Q He was just arrested in the county's largest drug bust
21 ever back on the 10th of December; isn't that right?

22 A Yes.

23 Q I think it was heroine, Oxycodone, cocaine,
24 methamphetamine, weed, guns, money, that's our friend
25 Stefan, right?

1 A He's a friend of mine.

2 Q I'm sorry?

3 A He's a friend of mine, yes, sir.

4 Q He's not a friend of yours?

5 A I said he is a friend of mine.

6 Q So that friend, the real friend, that's his real

7 profile is that sort of record, right?

8 A I'm not sure.

9 Q Yeah, I understand. And I'm not saying that you had

10 anything to do with that, please understand, I'm saying that

11 is Stefan, right?

12 A Has he been convicted of it?

13 Q I'm sorry?

14 A Has he been convict of anything?

15 THE COURT: Just answer the question, sir. Thank you.

16 Q Let's talk about Stefan for a second. At the end of

17 Branch Street where Brent and his mama -- that's actually

18 his grandmom, her name is Alice Wallace, she's the lady

19 sitting over there in the kind of checked black and white

20 jacket, do you see her over there on the front row?

21 A Yeah.

22 Q They live on Branch Street here in Lancaster, right?

23 A They did, I'm not sure if she does.

24 Q Yeah, they did on December 5th. And they lived down at

25 the end of Branch Street, you can't go any further than

1 their house; isn't that right?

2 A Yeah.

3 Q Now, after the shooting took place you got in your
4 truck and you left the house and went up to the back -- to
5 the end of where Branch Street is and waited for law
6 enforcement because you had already called 911; isn't that
7 right?

8 A I was on the phone with them when they came.

9 Q Yeah, absolutely, and we've heard that. Stefan leaves
10 the house and has to drive in his jeep right by where you
11 are waiting for the police; isn't that right?

12 A Yes.

13 Q That's what we heard on the 911 tape where you yell off
14 the camera something about "I already called the law;" isn't
15 that right? That was you, right?

16 A I was on the phone with them.

17 Q Yeah. And you're telling Stefan, "I've already called
18 the law," right?

19 A Yes. I said I was on the phone with them.

20 Q Yeah. Do you know when Stefan ever made any statements
21 to law enforcement?

22 A I'm not sure if he has.

23 Q I'm sorry?

24 A I don't know that he ever had.

25 Q But you did, sure, you did three within six or eight

1 hours, right?

2 A Within two hours, yeah.

3 Q What if I tell you Stefan didn't make a statement for
4 almost 23 months later. An eye witness doesn't make any
5 statement to law enforcement at all, would you know that?

6 A I didn't know that.

7 Q Since December the 5th, December the 6th, 2015 up
8 through the time Stefan just got arrested, what, the 10th is
9 what -- today is the 11th. How many times have you seen
10 Stefan around here in Lancaster during that three years?

11 A Maybe a few times.

12 Q A few times? Yeah. Did you hang out with him just
13 buds kind of?

14 A No. I just pretty much just work and go home.

15 Q But you're still friends with him, right?

16 A Yeah.

17 Q I'm sure you told him, "Man, have you gone down and
18 made a statement?" I'm sure you've told him that, haven't
19 you?

20 A No.

21 Q You haven't asked him, "What did you say to law
22 enforcement?"

23 A No, sir.

24 Q Sir, you say now --

25 MR. DELGADO: Your Honor, because I'm a stranger to

1 your courtroom, is this diagram, which is State's Exhibit --

2 THE COURT: For ID only.

3 MR. DELGADO: ID only?

4 THE COURT: Yes, sir. It was not admitted, or hadn't
5 been admitted yet.

6 Q Sir, I've been in that house on Branch Street, okay?

7 And there's a diagram -- you've seen this diagram -- that's
8 right, because you put your red mark around it, right?

9 Let's just see if I can kind of replicate it for our jury,
10 okay? You come into Brent's house, Brent's part of the
11 house you come in through a door, it's a long hallway, you
12 walk up here and there's a door to the left, that's a little
13 living room and beyond that is a kitchen; isn't that right?

14 A I think that's how it is, I'm not sure.

15 Q And then if you go further you go and you turn into
16 Brent's bedroom, don't you?

17 A If you're standing in the garage his bedroom is
18 straight down the hallway.

19 Q And then you kind of turn to the right because that's
20 where the bedroom is, right?

21 A I believe that's how it was.

22 Q Well, do you want to look at it?

23 A I just did.

24 Q You've seen it, right?

25 A Yes, sir.

1 Q You come down and you turn into the bedroom, he's got
2 his own bathroom there, right?

3 A Yeah.

4 Q Now, you're saying today that after Brent shot Flint he
5 ordered you to go to the kitchen, right, but you didn't go
6 to the kitchen, did you?

7 A No.

8 Q Lord God, you wanted to get out of there, didn't you?

9 A Yeah.

10 Q Sure. And you wanted to get out of it the same way you
11 come in, by the door through the garage where your truck was
12 parked, or back out of that paving area outside of that
13 garage, right?

14 A Uh-huh.

15 Q And you wanted to get out of there, right?

16 A Yes, sir.

17 Q But now you're saying that you stalled right here in
18 the doorway and you could see down the hallway to the chair
19 where Brent was looking through his pockets; is that right?

20 A Yeah.

21 Q When is the first time you've ever said that before?

22 A He patted him down.

23 Q Huh?

24 A He patted him down.

25 Q No. My question is when is the first time you've ever

1 said that before?

2 A I believe I said it the night they took me to the
3 county.

4 Q I'm sorry, sir?

5 A I said if I'm not mistaken it was the night they took
6 me to the county.

7 Q The night they took you to the county?

8 A December the 5th, the night he shot him.

9 Q You mean on the videotaped statement?

10 A I reckon.

11 Q Would you like to hear that again, sir?

12 A I believe -- it's been three years, but --

13 Q Yeah. But what I'm saying is would you like to hear
14 that again? Because you don't say that, man. The first
15 time you ever say that is when you meet with the solicitor
16 on November 21st, right?

17 A I'm sure I told the detectives that night.

18 Q Then she's going to get up and testify to that, or he
19 is, right?

20 A I'm not sure.

21 Q Sir, where you are, let's just say the hallway is about
22 the length of this jury box, about right?

23 A Yeah.

24 Q Do I have a pen in either of my hands?

25 A You've got a wall in front you, I can't see.

1 Q I'm sorry?

2 A I can't see through the wall.

3 Q Yeah, I know. What have I got my foot on?

4 A I can't see.

5 Q Yeah. Because the angle don't let you see, right?

6 A If you step over I can see.

7 Q You couldn't see where Brent was because you were down

8 at the far end of the hallway and he's out of your view

9 because of the wall.

10 A No. I could still see --

11 Q And the first time you ever said that was

12 November 21st, right?

13 A No, I told the detectives that night.

14 Q I'm sorry?

15 A I told the detectives that night I was interviewed.

16 Q Well then they would have recorded that then, right?

17 They would have recorded that saying you saw him go through

18 pockets, right?

19 A Uh-huh.

20 Q And you're so scared while Brent supposedly walks away

21 from you with a gun, you're so scared you stay there, right?

22 A Yeah. I was wanting to see him pat him down.

23 Q Because you're so scared and you want to get the devil

24 out of there but you just wanted to make certain he was

25 patting him down.

1 A He had a gun.

2 Q Do you remember, sir -- you've been sitting out here
3 behind Mr. McManus' family out here, right?

4 A Yes.

5 Q You know those folks, don't you? Yeah. You have
6 feelings for them not only because they've lost their son
7 but you knew them before all of this happened; isn't that
8 right?

9 A I know them about as well as I knew Brent's
10 grandmother.

11 Q Sure. And she's a good person, isn't she?

12 A (Nods head yes.)

13 Q Isn't she? And that's where you've been sitting out
14 there with the family?

15 MR. DELGADO: Your Honor, may I just confer with Mr. --

16 THE COURT: Yes, sir.

17 (Break in proceedings.)

18 Q Mr. Robinson, I'm going to hand you something. First
19 of all just take your time, this isn't a test, I just want
20 you to see if you can identify that.

21 A That's the statement that I wrote.

22 Q That's your handwriting.

23 MR. NEWMAN: Your Honor, I would like to see what he's
24 showing him.

25 MR. DELGADO: Sure. I got it from you.

1 Q This, sir, is your handwriting again -- sorry. The
2 morning of December the 6th, 2015 you wrote that, correct?

3 A Yes, sir.

4 Q Did you ever put in here anything about Brent going
5 through his pockets?

6 A I'm not sure, it's been three years ago.

7 Q Well, go ahead and read it because this will help you
8 remember.

9 A I wrote that right before they interviewed me.

10 Q Go ahead and read it. There's nothing in there about
11 Brent patting down pants or trying to put a knife in
12 anybody's hands, there's nothing that is there, sir?

13 A Not that I recall.

14 Q Yeah. But you would recall, I wasn't there. That's
15 your handwriting, right?

16 A Yes, sir.

17 Q Right, sir?

18 A Yes, sir.

19 Q And in the same fashion, sir, there's nothing in here
20 about Brent saying anything about hurting somebody else and
21 getting back at him, is there?

22 A Well, I was just saying what happened like right within
23 that little bit of time.

24 Q Yeah. I mean, but you're not trying to tie it together
25 with anything else Brent supposedly said earlier about I

1 want to hurt somebody and get back with somebody, that's not
2 in this, is it?

3 A No. He mentioned that that day though.

4 Q Sir, it's your statement to law enforcement -- you
5 wanted to be complete and thorough, did you not?

6 A That's what happened right at the time it happened.

7 Q Yeah. And that's the reason you had -- the 911 call
8 you didn't say anything about it then, did you?

9 A I think I did, I'm not sure.

10 Q You didn't say anything about it in the audio statement
11 that Lancaster took from you.

12 A I told them.

13 MR. DELGADO: Thank you, Your Honor.

14 THE COURT: All right. Any redirect?

15 MR. NEWMAN: Your Honor, I would ask that -- I have a
16 clean copy of that voluntary statement, handwritten
17 statement. I also have a disc of the video recording of
18 Mr. Robinson, I would ask that we admit both in evidence and
19 publish the video to the jury.

20 THE COURT: All right. Any objection?

21 MR. DELGADO: No, sir.

22 THE COURT: All right. Without objection introduced as
23 State's next in order as well as -- the written statement
24 will be State's next in order, the video DVD will be after
25 that, whatever that number is. 13 and 14.

1 (At this time the DVD was played.)

2 REDIRECT EXAMINATION

3 BY MR. NEWMAN:

4 Q Now, you mentioned something in the video about him
5 handing a knife to Flint to look at. I show you State's 8.
6 Is that the knife he handed him to look at?

7 A I'm not sure if he even handed it to him. Like I said,
8 he was in and out of his closet.

9 Q Was that the knife that you saw?

10 A No.

11 Q Some of those knives he was handing around, were they
12 like ninja type knives like, almost like swords?

13 A Yeah. He had a lot of swords like ninja stars he was
14 throwing into the walls of his house.

15 Q Was he passing those around for y'all to look at?

16 A He was bragging on stuff like look what I got and all
17 of that.

18 Q But you never saw him pass this knife around.

19 A No, not that knife. It was like long swords or
20 whatever looking.

21 MR. NEWMAN: No further questions.

22 THE COURT: Mr. Delgado?

23 RECROSS EXAMINATION

24 BY MR. DELGADO:

25 Q Did I hear correctly, sir, Brent may have handed Flint

1 a knife to look at? Did I hear that?

2 A Yes, sir.

3 Q So that's how Brent -- excuse me, Flint, handed the
4 knife to him, he handed it to Flint. He didn't put it on
5 the floor, he didn't put it on top of the TV, he handed it
6 to him, right?

7 A I said he may have, I didn't say he did.

8 Q Did I hear correctly, sir, after Brent shot Flint he
9 told Raymond and Stefan to go to the kitchen, "I went on out
10 the door," right?

11 A Yeah.

12 Q That's the door to the garage where your truck was,
13 right?

14 A My truck wasn't in the garage, it was in the driveway.

15 Q Well, sorry. To get to your truck you have to go
16 through the garage to get out to the parking area outside of
17 the garage.

18 A Yes, sir.

19 Q So when you say I went on out the door, you went on out
20 the door towards your truck, right?

21 A No. I stopped at the steps and that's when he come --
22 he was walking behind us with the gun and I stopped at the
23 steps to look back at him and make sure what he was doing,
24 that's when he said -- he walked back in there and patted
25 Flint down.

1 Q And you were so scared that you walked back up into the
2 house with him.

3 A No. I was right there in the carport. The carport to
4 that room is just like a long hallway.

5 Q Yes, sir, I know exactly where it was. But when he
6 walks away from you he turns his back to you, right?

7 A Uh-huh.

8 Q Yes, sir?

9 A Yeah. He still had the gun in his hand.

10 Q Right, and walks out of your sight. And you supposedly
11 have to view him down the hallway, rather than run that's
12 what you did, right?

13 A I reckon I froze, I was scared.

14 Q Rather than run away.

15 A He just shot my friend, I was scared, I didn't know
16 what to do.

17 Q Matter of fact, did I hear you say, sir, that Brent was
18 nodding off?

19 A That may be why he fell down, I don't know.

20 Q Right. Because he was under the influence of some
21 drugs, right?

22 A His birthday was like the day before that, I don't know
23 what all he done for the birthday, I don't know.

24 Q So folks in your circle when you have a birthday you go
25 on a drug binge do you?

1 A I don't know, I don't know what he did.

2 Q I'm saying in your circle.

3 A I ain't got no circle.

4 Q Isn't it true, sir, that you said Robinson -- right
5 here, Robinson asked Brent if he, Brent, checked his
6 pockets. You said that to him, right?

7 A I asked Brent to check his pockets. I said, "If you
8 think he stole your daddy's watch go check his pockets," and
9 when he walked down the hall I watched him pat him down and
10 that's when I left. He got mad because there wasn't nothing
11 in his pockets.

12 Q But you've also said to this jury you could see him go
13 through his pockets.

14 A He patted him down like that.

15 Q From where you were at the end of that hallway.

16 A Yeah.

17 Q So let me just summarize. Four guys, one was one of
18 the biggest drug dealers of this county, one of them has a
19 lot of drugs in his system and another one is nodding off
20 and is delirious, right? And you, correct? Thank you.

21 THE COURT: Thank you, sir, you may step down. Ladies
22 and gentlemen of the jury, let's take a brief recess. Don't
23 talk about the case, we'll reconvene shortly, okay?

24 (The jury left the courtroom and a break was taken.)

25 THE COURT: All right. Anything else before we bring

1 the jury back?

2 MS. COLLINS: No, Your Honor.

3 MR. PHILLIPS: No, Your Honor.

4 THE COURT: All right. Let's bring them in if they're
5 ready.

6 (The jury returned to the courtroom.)

7 THE COURT: Thank you, ladies and gentlemen. We don't
8 have any reserved seats, okay? So you can seat where you
9 want to, except for the foreperson and that's going to be
10 you, Mr. Kennington, so thank you for volunteering. I know
11 you didn't volunteer, I understand. I've been a judge for a
12 long time and I always find it easier to appoint a foreman
13 or forelady for the jury, that's just been my regular
14 practice so I'm doing that at this point. You'll be just
15 like any other juror but it will be your added duty --
16 you'll be the presiding juror over deliberations whenever
17 y'all get to deliberate and you'll be the jury's official
18 spokesperson here in court like if y'all need a break or
19 whatever I'll look to you, okay? And it will also be your
20 sole duty at the appropriate time to write whatever the
21 verdict is going to be. And, of course, I will go over that
22 in greater detail and I'll tell you then that you can't
23 write whatever the verdict is going to be until there's a
24 unanimous decision, okay? But you will be the foreman, and
25 again, thank you for volunteering, I appreciate it. All

1 right. The State can call its next witness.

2 MR. NEWMAN: State calls Captain Phillip Hall.

3 The witness, PHILLIP HALL, was first duly sworn and

4 Testified as follows:

5 DIRECT EXAMINATION

6 BY MR. NEWMAN:

7 Q First time I've called you to the stand by captain,
8 congratulations.

9 A Thank you.

10 Q State your name for the record.

11 A Phillip L. Hall.

12 Q And where do you work, Officer Hall?

13 A Lancaster Police Department here in Lancaster, South
14 Carolina.

15 Q And how long have you been a law enforcement officer?

16 A Twenty-three years total.

17 Q All 23 with the police department?

18 A '96 to 2000 was with the Lancaster County Sheriff's
19 Office.

20 Q You've been with the LPD ever since?

21 A Yes, sir.

22 Q Were you on duty December 5th of 2015?

23 A I was.

24 Q Were you with your fellow officers from the police
25 department, Brian Small and Jody Sims, were you with them?

1 A Yes, sir, I was.

2 Q Did you go to a murder scene at [REDACTED]

3 A Yes, sir, I did.

4 Q Now, what caused you to go there? That's not in the

5 City of Lancaster, is it?

6 A It is not.

7 Q It's in the county.

8 A It is, just outside the city limits.

9 Q What caused you to go there?

10 A I can't recall if the sheriff's office requested

11 assistance from us or we were just monitoring their

12 channels. At that time I was the lieutenant over special

13 operations, which is nothing but a bunch of detectives and

14 I'm not sure if I heard it over the radio as a homicide or

15 what it was, but somehow we ended up out there.

16 Q But is it common for you to go as a city officer to

17 assist with the county?

18 A Yes. We have mutual agreements with each other.

19 Q Okay. So this wasn't something out of the ordinary for

20 you to go.

21 A No, sir, not for a scene like this.

22 Q When you arrived on scene what did you do?

23 A When we first got there there was a couple of other

24 young officers there. We pretty much -- they were setting

25 up a perimeter, and I think myself and Sergeant Aldridge

1 were on the back side of the house, and I think Sergeant
2 Sims made contact with the elderly lady of the house, I'm
3 not exactly sure what her name was. But when she came out
4 that's when we saw Mr. Gay in the house walking around
5 through the windows and we called him out and he obeyed
6 orders and come out, and I think Sergeant Small was able to
7 put him in handcuffs. And then once he was secured Sergeant
8 Aldridge, myself and some other officers or deputies went
9 into the house to clear the house.

10 Q Okay. And did you, in fact, clear the house?

11 A We did.

12 Q So by clearing the house that just means there's nobody
13 else --

14 A Wanted to make sure nobody else was in the house.

15 Q Nobody in danger.

16 A Correct.

17 Q Now, did you see the body of Flint McManus when you
18 walked in the house?

19 A Not initially when I walked in the house, but as we
20 were clearing rooms we did locate a body in a bedroom.

21 Q Did you go in the back of the house?

22 A Yes, sir, I believe it was the back of the house.

23 Q That's the door he came out of, correct?

24 A Correct.

25 Q Can you describe the position of the body when you saw

1 it?

2 A Like I said, we pretty much cleared room to room.
3 Because of the actual call was a possible shooting we didn't
4 know who all was in the house. We didn't stop and have time
5 to interview Mr. Gay because we didn't know what we had
6 going on in the house. And I'm part of the SWAT team so I
7 used my expertise going in and helped clearing the
8 residence, and in that process as we go room to room we have
9 to physically walk in and clear the room. I can't remember
10 if I was lead or if a sergeant was lead, but somehow we
11 ended up in the room together with the body. There was
12 also -- I think there was a dog in the room as well, and we
13 cleared around him in the closet area, and he was sitting in
14 a chair. At that time I think his head was down with his
15 chin down, I believe, I'm not really exactly sure, I can't
16 recall that specific.

17 Q I'm going to have this marked for ID purposes only as
18 Exhibit Number 15, this is not in evidence so don't flip it
19 over to the jury. Is that a clear and accurate
20 representation of what you saw when you walked into the
21 house?

22 A I believe it was.

23 Q So sitting down in the chair, legs crossed.

24 A Yes, sir.

25 Q Relaxed, hands in his lap.

- 1 A Yes, sir.
- 2 Q Any sign of a struggle?
- 3 A I didn't see any. Like I said, the reason I thought
- 4 his head was down is because of the way the blood was. I
- 5 seen it dripping off his chin when we -- after we cleared
- 6 the house we come back in there and checked for a pulse,
- 7 there was no pulse, and I noticed -- I started looking at
- 8 him as far as trying to collect evidence or visualize what
- 9 evidence was there.
- 10 Q Is it fair to say at some point his head was down?
- 11 A Correct. Based on the way the blood was on his chin
- 12 and his nose area.
- 13 Q Did you see a knife anywhere near the victim?
- 14 A There was one on his right hand with an open blade.
- 15 Q Was it in his hand?
- 16 A It's not in his hand, it's like if I've got your hand
- 17 cupped, it looks like that right there, like the knife is
- 18 laying in there.
- 19 Q Did you touch the body or move the body in any way?
- 20 A The only thing I done was check a corroded pulse and
- 21 couldn't locate one.
- 22 Q Were you still there when EMS arrived?
- 23 A I was not, I don't recall being there.
- 24 Q Now, this is a Lancaster County case so as soon as --
- 25 you helped assist with clearing the home, did you stay

1 throughout the night and process the scene?

2 A No. I went back outside and seen what assistance they
3 needed outside. I knew that they already had called their
4 detectives and their CSI and we just stood by. I think I
5 met with Captain Hilton and briefed him on what we did and
6 asked him if he needed anymore service from us.

7 Q And have you had any follow-up involvement in this case
8 since then?

9 A I have not.

10 Q Now, again, by clearing the room you're not -- what do
11 you do when you clear a room?

12 A I'm looking for a body.

13 Q You're looking for a person.

14 A For a person. Something that would cause harm to
15 myself or somebody else.

16 Q So you're not looking for evidence.

17 A I am not, no.

18 Q And, in fact, there's a crew that comes in and
19 processes all of the evidence.

20 A Right. The CSI team, yes.

21 Q And you don't work with the CSI team.

22 A I do not.

23 MR. NEWMAN: That's all of the questions I have, please
24 answer anything Mr. Phillips or Mr. Delgado have.

25 THE COURT: Mr. Phillips?

1 MR. PHILLIPS: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. PHILLIPS:

4 Q Good afternoon, Mr. Hall, or Captain Hall,
5 congratulations.

6 A Thank you.

7 Q All right. I'm showing you what's been marked as
8 State's Exhibit Number 12. You can have a moment to just
9 take a look at it. Is that a fair representation of the
10 layout of that home?

11 A It looks like it is. Now, it's been three years since
12 I've been in there, but it looks like it.

13 Q Does it look like it was prepared by law enforcement?

14 A Yes.

15 Q And so presumably it would be the Lancaster County
16 Police Department?

17 A Sheriff's department, yes, sir.

18 Q So with that they made this layout and you're looking
19 at it and it's accurate. In looking at it, where is the
20 position of the chair in that room? Is it down the hallway
21 in that room past another wall?

22 A From where? Where am I standing?

23 Q I apologize for being very confusing.

24 MR. PHILLIPS: Your Honor, I will try to speed this up.

25 THE COURT: Yeah.

1 Q So as I was saying, as you're coming down the
2 hallway -- get our bearings here. You came in the back
3 door?

4 A Correct.

5 Q All right. So if we're looking at it from the front
6 and we've got this long hallway here, right?

7 A Yes.

8 Q And they have this marked as the chair?

9 A Correct.

10 Q Would that be the chair that the defendant was in?

11 A It appears to be. Like I said, I know that was a
12 pretty good sized bedroom so -- it looks like it's the
13 biggest room in the house, I would say yes.

14 Q And that's down that long hallway.

15 A Yes, sir.

16 Q Coming from the front of the house.

17 A Correct.

18 Q And that chair is positioned off the side of the wall
19 of that room, like you said it's a big room, it goes out
20 this way --

21 A Well, it was right in front of a TV. I noticed there
22 was a big TV in the room and the TV was on and so --

23 Q And the chair is right in front of that TV.

24 A Well, you've got a distance to walk through.

25 Q Right. It's not right in front of that doorway.

1 A Right.

2 Q And so just to be clear that chair is not in the sight
3 line, is that fair to say?

4 A Not the actual front.

5 Q Right. Not right in the sight line.

6 A Right.

7 Q Trying to give kind of the law enforcement terms. But
8 bottom line is in laymen's terms you just couldn't see it.

9 A From the doorway, correct.

10 Q Right. You could not see it from the doorway. And so
11 when you get there and you go through the back door, but
12 you've got to go through that hallway eventually, and you
13 can't see anything through that doorway you've got to go
14 into that room so you don't see it. Really other than that
15 the only other thing as far as clearing the house was when
16 you first got there Mr. Gay was walking around in the home
17 and you said that you gave him an order as well as your
18 colleagues to come out of the home.

19 A Correct.

20 Q And he cooperated.

21 A After a few minutes, after we gave him a couple
22 commands, yeah.

23 Q He was on the phone with 911?

24 A I'm not exactly sure. All I could see -- because we
25 were 30 yards, all we could see was him walking back in

1 front of the window on the back porch. We could see it was
2 the kitchen area because we could see the kitchen light over
3 the sink and all of that.

4 Q So after a couple of commands you said he obeyed orders
5 and came on out.

6 A Correct.

7 Q Put his hands up.

8 A Well, he was prone down on the porch.

9 Q Gun was in there unloaded, separated, the bullets were
10 separated, that's all something that law enforcement didn't
11 do?

12 A Yeah, I don't know anything about that. Like I said,
13 our job was just to clear the house, hold the scene until
14 CSI and the other investigators got there and that's what we
15 did.

16 MR. PHILLIPS: No further questions, Your Honor.

17 THE COURT: Any redirect?

18 MR. NEWMAN: None, Your Honor.

19 THE COURT: Okay. Thank you, sir, you may step down.
20 You can call your next witness.

21 MR. NEWMAN: I ask that Mr. Hall be excused from his
22 subpoena.

23 THE COURT: Yes, sir, you're free to leave.

24 MS. COLLINS: Your Honor, the State's next witness is
25 Brian Small.

1 The witness, BRIAN SMALL, was first duly sworn and
2 Testified as follows:

3 DIRECT EXAMINATION

4 BY MS. COLLINS:

5 Q Please state your name.

6 A Brian Small.

7 Q What is your occupation?

8 A Detective Lieutenant.

9 Q With?

10 A Lancaster Police Department, I'm sorry.

11 Q And how long have you been a law enforcement officer?

12 A Nineteen years.

13 Q And you are in command of the investigative division at
14 the LPD now; is that correct?

15 A It is.

16 Q And in December of 2015, were you a member of the
17 investigative division?

18 A I was.

19 Q And you have been for several years, correct?

20 A Yes, ma'am.

21 Q You just heard the testimony of Captain Hall, correct?

22 A Yes.

23 Q Were you and Captain Hall, and is it Sergeant Jody
24 Sims?

25 A It is, yes, ma'am.

1 Q Were y'all doing some duties for the city on the late
2 evening hours of December 5th of 2015?

3 A Yes.

4 Q And at that time were you in the neighborhood of the
5 defendant's home at [REDACTED] in Lancaster in that
6 general area?

7 A We were close. I think we were on Meeting Street when
8 we heard the call.

9 Q And when you heard the call as noted by Captain Hall,
10 y'all responded to give assistance to the sheriff's
11 department; is that right?

12 A We did.

13 Q The home is in the county but it's just past the city
14 lines, correct?

15 A Yes, ma'am.

16 Q And y'all have a mutual assist agreement with the
17 sheriff's department, correct?

18 A We do when requested, yes, ma'am.

19 Q So when y'all arrived at [REDACTED] in
20 Lancaster at the defendant's home, were y'all all traveling
21 in one vehicle or separate?

22 A Captain Hall was in his own and Sergeant Sims was with
23 me.

24 Q Did y'all all arrive there at approximately the same
25 time?

1 A We did.

2 Q And when you arrived there, what first action did you
3 take?

4 A The first thing I did was asked one of the deputies,
5 because I saw an older female, didn't know who she was, how
6 she was related, but I told him to hand her off to Sergeant
7 Jody Sims, the female, so that was what we did.

8 Q So you saw an older female come out of the residence?

9 A She was already in the backyard.

10 Q Pardon?

11 A She was already in the backyard.

12 Q Okay. All right. And I believe she was dressed in a
13 nightgown and a robe?

14 A I believe so.

15 Q And what happened then? You were at the back of the
16 house?

17 A I was.

18 Q What happened then?

19 A Well, I saw several deputies in the backyard and when
20 they told me that there had been a shooting I immediately
21 just did what I do, I'm trained to be a law enforcement
22 officer. So I went down the back of the house where I could
23 get a view of the back of the home, windows, whatever, and I
24 saw an open door and I took a place of cover right there at
25 the corner of the door, drew my firearm. When I saw a

1 subject moving in the house I immediately started giving
2 commands.

3 Q And the subject that you saw moving within the home,
4 was that the defendant, Michael Brent Gay?

5 A Yes.

6 Q And what did you observe him doing at that time?

7 A He was walking, just walking around, he would peak out
8 the door, and when I commanded him out he came out. He had
9 some type of can in his hand, I don't know what type of can
10 it was, but he walked out, and when I told him to put it
11 down he drank it and then he sat it down. And then he laid
12 down belly down on the porch, on a small little small back
13 porch, maybe one step up.

14 Q Let's go through that a little bit again. So you gave
15 the defendant instructions to come out of the home, correct?

16 A Yes.

17 Q Did you instruct him to hold up his hands or do
18 something with his hands?

19 A I told him to keep his hands where I could see them.

20 Q Okay. And did he do so?

21 A He did.

22 Q And did you observe -- did he have anything in his
23 hands?

24 A A can.

25 Q And in a situation like that, you as an officer, you're

1 paying close attention to someone's hands, correct?

2 A Yes.

3 Q Because you want to make sure there's not a weapon in

4 there, right?

5 A That's right.

6 Q And, of course, the defendant had no weapon in his

7 hand.

8 A He did not.

9 Q But he had a can.

10 A Yes, ma'am.

11 Q A can like for a beverage.

12 A Yes.

13 Q And did you give him instructions as to what he should

14 do with that can?

15 A Put it down.

16 Q You did give him those instructions to put it down.

17 A I did.

18 Q And what did the defendant do?

19 A He sat it down after -- well, he finished drinking

20 whatever it was, I can't remember what it was, then he sat

21 it down.

22 Q So he followed your instructions.

23 A He did.

24 Q He complied. And then what did you instruct him to do?

25 A Get on the ground, basically just get down.

1 Q And did he do that?

2 A He did.

3 Q So he followed each of your instructions exactly as you
4 asked him to do.

5 A He did.

6 Q He didn't fall or stumble?

7 A No.

8 Q He appeared to understand what you were instructing him
9 to do?

10 A Yes.

11 Q After the defendant came out of the home -- well, let
12 me back up and ask again, you were looking at the
13 defendant's hands, correct? Is that right?

14 A Yes, ma'am.

15 Q Did you observe any injuries to the defendant's hands?

16 A I did not.

17 Q Did you observe any injuries to the defendant himself?

18 A I did not.

19 Q After the defendant came out of the home what did you
20 do?

21 A I entered -- I want to say that I handcuffed him and
22 then I stepped over him once the county deputy took
23 possession of him, because, again, we didn't know what his
24 involvement was at the time, and as soon as they stepped up
25 to take possession of him I immediately went to the door

1 that was already opened.

2 Q So do you believe that you actually handcuffed him?

3 A I cannot remember. I got down for a moment. Now,
4 whether a deputy was there with me that handcuffed him right
5 then I cannot remember that.

6 Q You handcuffed him or you observed him being
7 handcuffed, correct?

8 A Right.

9 Q So again, you were in close proximity to observe that
10 the defendant had no injuries to him whatsoever that you
11 observed, correct?

12 A None that I observed, no.

13 Q So then you entered the home?

14 A I did.

15 Q To assist the sheriff's department to clear it,
16 correct?

17 A I was the first one in it.

18 Q And again to clear the home means what?

19 A To check for anybody else.

20 Q To make sure that there are no other human beings in
21 the home that could cause harm to citizens or officers?

22 A Right.

23 Q To make sure it's safe then to do any evidentiary
24 investigation?

25 A Yes, ma'am.

1 Q And do y'all go room to room to check to make sure that
2 each room is clear?

3 A We do unless we encounter a split. If we encounter a
4 split somebody will hold that way while officers go this way
5 and then we'll get back together.

6 Q A split sort of being like a fork in the road or
7 where --

8 A Right. We don't want to separate anymore than we have
9 to.

10 Q Right. Did you ultimately see the body of the victim
11 in the back bedroom?

12 A I did.

13 Q That would be the back bedroom as you entered the front
14 of the home, correct?

15 A I never used the front door.

16 Q So coming in from the back of the home, where would the
17 bedroom where the victim was found out be?

18 A I can't remember if the room that I first went in was
19 the kitchen. But coming off the back porch I went through a
20 door that was already opened, I made a slight right and then
21 I came up to another doorway and Captain Hall was on my
22 right, so they checked right and I went left, and when I
23 went left I was actually in the hallway and I could see the
24 body at the end of the hallway.

25 Q So when you turned to go left you could see the body at

1 the end of the hallway?

2 A You could see into that room, yes.

3 Q You could see into the room, you were not yet in the
4 room.

5 A No.

6 Q Could you see any portion of the victim's body from the
7 hallway?

8 A Just the right side of it.

9 Q The right side of the victim?

10 A Yes.

11 Q And was he seated or standing or lying on the floor?

12 A Seated.

13 Q I would like to show you what's been marked for
14 identification purposes only. And this is not in evidence
15 so if you will just review it yourself without showing the
16 jury, State's Exhibit 15. Do you see that picture?

17 A Yes, ma'am.

18 Q Is that a fair and accurate depiction of the body of
19 the victim at the time you saw it when you entered that
20 bedroom?

21 A Yes, ma'am.

22 Q Can you describe the position of the victim?

23 A I cannot. And I cannot because the -- there was a dog
24 in the room and he was sitting right beside to the right
25 side of the body, and when I went to reach for the person

1 and see the dog tried to bite me, so I backed off. He
2 wouldn't let me get too close to him.

3 Q Do you remember what kind of dog that was?

4 A It was an English Bulldog.

5 Q But again, you've said that the picture is a fair and
6 accurate depiction of the body as you observed it, correct?

7 A Yes.

8 Q So let me ask, was the body standing or sitting or
9 lying down?

10 A It was sitting in a chair.

11 Q And was it sitting up straight in a 90-degree angle or
12 slumped back?

13 A Slightly slumped, yes.

14 Q With the hips more forward than the shoulders?

15 A Yes, ma'am.

16 Q Were the ankles or the legs crossed?

17 A Legs were crossed.

18 Q Many ways you can cross a leg, like a lady does at the
19 knee or ankle at the knee or ankles together, how were they
20 crossed?

21 A His legs were crossed at the ankles.

22 Q Did you see a knife anywhere near the victim's body?

23 A I did not.

24 Q Pardon me?

25 A I did not.

1 Q You did not. Your focus was on the dog, right?

2 A Yes.

3 Q Because dogs like human beings can cause harm, correct?

4 A I would assume this was this gentleman's dog because it
5 was not going to let me get near him.

6 Q It was protective. Okay. You did not touch or move
7 the body in any way; is that correct?

8 A I did not.

9 Q Do you know, Lieutenant Small, were you still present
10 when the EMS came to the best of your knowledge?

11 A I was not.

12 Q And since this was a sheriff's department case and
13 y'all were assisting, did you clear the scene as soon as
14 your presence was no longer needed of assistance so you
15 could return to your duties protecting citizens within the
16 city limits?

17 A I did.

18 Q Did you have any follow-up involvement in this case?

19 A No, ma'am.

20 MS. COLLINS: One moment.

21 (Break in proceedings.)

22 MS. COLLINS: No further questions, please answer any
23 questions of defense counsel.

24 THE COURT: All right. Mr. Phillips?

25 MR. PHILLIPS: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. PHILLIPS:

3 Q Good afternoon, Lieutenant Small.

4 A Yes, sir.

5 Q I've got just a few quick things for you. So it's
6 consistent, you gave orders to Mr. Gay.

7 A Yes, sir.

8 Q He complied with those orders?

9 A Yes, sir.

10 Q So he cooperated?

11 A Yes, sir.

12 Q He wasn't violent to you?

13 A No.

14 Q He wasn't belligerent?

15 A No, sir.

16 MR. PHILLIPS: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q One of the things I wanted to go over, it might still
19 be up here, this diagram. If you could look at it. You
20 weren't at the carport side when you came in, were you?
21 Your advantage point was different.

22 A I exited my vehicle and went to where I saw people
23 standing, which was in the backyard.

24 Q So you came in through the back door, not through the
25 carport.

1 A I never approached the carport.

2 Q So you came in through the back door and then you said

3 you went through the kitchen?

4 A I believe it was the kitchen, I'm trying remember.

5 Q Right here is the kitchen.

6 A Okay.

7 Q Here is that long hallway, this is the bedroom.

8 A I came in through a back door, wherever the back door

9 is --

10 Q Back porch right here.

11 A This is the back porch.

12 Q And so you came in through there. So you walked

13 through the --

14 A And then I got to a hallway, and when I got to the

15 hallway I made a left and that's when I could see a partial

16 body.

17 Q Okay. So what you could -- you were several feet down

18 that hallway, is that fair to say?

19 A When?

20 Q When you could see the body?

21 A Maybe two steps.

22 Q Two steps down the hallway. And that's coming in from

23 I guess you could call it another hallway between the

24 kitchen and the sitting room?

25 A I just came through the back door, came through the

1 room. Because, like I said, I didn't see anybody, didn't
2 encounter anyone so I just kept going. Until I encounter
3 someone I keep moving, and when I came to that corner I
4 checked the hall to make sure it's safe, and then I looked
5 down the hall, took like two steps and that's when I saw the
6 partial body.

7 Q So wherever we have this hall. There's some -- to
8 orient ourselves, there's some distance between when you
9 took those two steps down that hallway and where this back
10 garage is, right? It's not side by side.

11 A I never went to the garage, I don't know.

12 Q So you're not sure how far back it is.

13 A No, sir.

14 Q But based on this it appears to be several feet
15 obviously between those two; is that fair?

16 A Based on this drawing it could be.

17 Q So when you look several feet down this hallway, that's
18 not being the same as saying right here in this say where
19 that red dot is.

20 A What is the red dot down here for?

21 Q If we were saying that was -- if you were two or three
22 steps down this hallway, how far do you think it was to that
23 red dot?

24 A I never saw that door, I don't know.

25 Q So it could be 10 feet behind you for all you know.

1 A It could be. I came in and made a left, and whenever I
2 was down with this room I went back out the same way into
3 the backyard.

4 Q But at least from this drawing that you're looking at
5 it's several feet. There's two sets, there's a closet and a
6 bathroom that would be at least a distance between where
7 you're two steps would be to that door?

8 A I don't recall this door because I did not go that way.

9 Q Right. I'm talking about this diagram. So if you were
10 two or three steps -- I mean, if you could point your finger
11 about where you're at --

12 MS. COLLINS: Your Honor, I'm going to object, this has
13 been asked and answered several times, he says he doesn't
14 know.

15 THE COURT: All right, sustained. Move on.

16 Q Okay. If you could point your finger where you're at.
17 I just want to make sure you and I are on the same page.
18 Where were you when you saw the body?

19 A I am probably roughly in this area right here.

20 Q So about midway down the hallway.

21 A Maybe not quite midway.

22 Q So if this is the length of the hallway and you came
23 through this back part and you're coming through this way
24 and this is the length of the hallway you would be a couple
25 steps in.

1 A Are you saying you just stepped from the kitchen and
2 I'm in that bedroom where the body was?

3 Q Yeah. If I'm you.

4 MS. COLLINS: Judge, I'm sorry, I've got to object
5 again, this assumes fact not in evidence. There's been no
6 testimony as to the length of the hallway, there will be
7 officers that can do that tomorrow.

8 THE COURT: I sustain the objection, Mr. Phillips.
9 Move on. Thank you.

10 Q Based on this diagram from where you said you were --

11 A Yes, sir.

12 Q -- this diagram shows that there would be presumably
13 several feet of hallway, a closet and a laboratory, a
14 bathroom before the carport.

15 A I never saw the carport.

16 Q Okay. I'm just saying the diagram.

17 A Right. I mean, I can say that there is because it's in
18 the diagram but I never saw it, I didn't go there.

19 Q Right.

20 A I came in through the back hallway through the --

21 Q And all of that would have been the distance between
22 you and that if this diagram is accurate. You can't say it
23 because you didn't see --

24 MS. COLLINS: Your Honor, I will renew the objection.

25 THE COURT: I've got you. I don't know how many times

1 I've got to say move on but I'm going to say it one more
2 time, move on.

3 MR. PHILLIPS: Yes, Your Honor, I apologize. No
4 further questions.

5 THE COURT: Any redirect?

6 MS. COLLINS: Nothing further for the witness.

7 THE COURT: All right. Thank you, sir, you can stap
8 down, you're free to leave. Ladies and gentlemen of the
9 jury, we're going to go ahead and end today, now is a good
10 time to break, I understand the next witness may take
11 awhile. We'll take advantage of the good weather we have
12 tomorrow so I want you in your jury room at 9:00 a.m., okay?
13 We're going to jump on this first thing in the morning.
14 Remember my instructions to you yesterday before you left,
15 while you're away from this courthouse you can't do any
16 independent research on this case, you can't talk to anybody
17 about this case, don't let anybody talk to you about this
18 case. You are not to look at news articles about this case,
19 listen to news reports about this case, because if you do so
20 you're violating your juror oath, okay? Remember, your
21 verdict is based solely from the information that you seek
22 in this courtroom, okay? Y'all have a great night, we'll
23 see you tomorrow morning at 9:00 a.m. Thank you.

24 (The jury left the courtroom.)

25 THE COURT: All right. Anything else for the good of

1 the cause today?

2 MS. COLLINS: No, Your Honor.

3 THE COURT: Y'all ready? Anything else for the good of
4 cause today? Thank you.

5 (Court recessed for the evening and resumed on
6 Wednesday, December 12, 2018 at 9:00 a.m.)

7 THE COURT: All right. Anything else before we bring
8 the jury back out to start this morning?

9 MS. COLLINS: No, Your Honor, thank you.

10 THE COURT: Thank you. Did y'all want to discuss that
11 one witness that we talked about briefly yesterday, is that
12 the next witness, or do y'all want to deal with that when
13 that witness comes up?

14 MS. COLLINS: We're going to do three smaller
15 witnesses, or shorter witnesses before that one comes up,
16 but we can go ahead and discuss it if you want to, whatever
17 you want to do.

18 THE COURT: Well, let's go ahead and do that before we
19 actually get started. So let me hear from the defense first
20 as to your position or your motion with Mr. Perry, let me
21 hear from you what you wish to do and what you wish to bring
22 out.

23 MR. PHILLIPS: Thank you, Your Honor. I think the two
24 cases from the United States Supreme Court that we're
25 looking at is Davis v. Alaska, 415US308, and Delaware vs.

1 Van Arsdall, 475US673. Essentially defendant has a right to
2 cross examine a witness concerning bias under the
3 confrontation clause, and we would argue that by not being
4 able to specifically elicit the term of years hanging over
5 Mr. Perry's head for these arrests would improperly limit
6 the scope of cross-examination in violation of the 6th and
7 14th Amendments to the United States Constitution, and
8 Article 1, Sections 3, 10 and 14 of the South Carolina
9 Constitution. We would include the 5th Amendment as well in
10 the sense that it would be fundamentally unfair and
11 essentially violate the due process clause to prevent us
12 from doing that, but specifically the case law is the 6th
13 Amendment. And with that a criminal defendant may show a
14 violation of the confrontation clause, 0and this is quote
15 from Van Arsdall, "By showing that he was prohibited from
16 engaging in otherwise appropriate cross examination designed
17 to show a prototypical form of bias on the part of the
18 witness and thereby to expose to the jury the facts from
19 which the jurors," and it's got a dot, dot, dot, "to
20 appropriately draw inferences relating to the reliability of
21 the witnesses." So the specific argument would be when an
22 individual who has been arrested multiple times and has
23 numerous pending charges and is facing up to, if my math is
24 correct, 160 years, that that is a potential bias and
25 because --

1 THE COURT: Whether or not he's a codefendant.

2 MR. PHILLIPS: That's correct. I'm pulling all of that
3 from State v. Mazell. The other cases that we brought up
4 did specifically really -- their crux was more of the
5 codefendant aspect of it, but I believe when you look at
6 Mazell and some of the other cases it goes beyond that, it's
7 really the argument -- there's two different types.
8 Obviously you've got the codefendant and then just a regular
9 testifying witness, but at the core of it is the bias of the
10 witness.

11 THE COURT: Bias is bias and that goes to the weight of
12 the evidence and the credibility of the witness.

13 MR. PHILLIPS: Exactly.

14 THE COURT: All right, I understand. What's the
15 State's position?

16 MS. COLLINS: Your Honor, again, we would distinguish
17 the cases cited yesterday, I realize he's citing a different
18 one today, Gracle and Pradubsri, in that they did involve
19 codefendants who were initially charged with the same thing
20 or in the same case as the defendant. I recognize that the
21 position and what's being cited today is different and I
22 understand that Your Honor is saying bias is bias. We would
23 submit that again there's been no offer, no discussion of
24 any offer, however we would submit that if the defense
25 questions the witness about that that we should be able to

1 get in his prior recorded statement from November of 2017,
2 which was well before any of the charges, the initial drug
3 charge as well as these most recent charges. We would also
4 object to the defense being able to say the number of years
5 that each charge carries. We wouldn't be opposed to them
6 saying something to the affect of obviously you're looking
7 at a lot of charges, obviously you're looking at a lot of
8 time, but I don't think to cite them individually is
9 necessary for what they need.

10 THE COURT: Is there any crime that he's currently --
11 or any charge that he's currently facing substantially
12 similar to the charges this defendant has here? This is
13 just drug charges?

14 MS. COLLINS: No. He has a distribution of crack
15 second offense charge that, again, I learned of when he
16 asked to find directions to the clerk of court to give them
17 a doctor's excuse for missing court, and then he's got these
18 more recent charges which involve more drug charges
19 including trafficking and gun charges.

20 MR. PHILLIPS: The gun charge would be the only similar
21 since we have the possession of a weapon during the
22 commission of a violent crime, that's the one similarity in
23 due candor to the Court. But it is the manufacturing or
24 distribution second, two -- really it is three traffickings
25 because it appears on the public index it is two counts of

1 trafficking in heroine.

2 THE COURT: Is the gun charge --

3 MR. PHILLIPS: I think it is just the fact that there
4 was a weapon there when he got arrested.

5 MS. COLLINS: I think it is possession of a weapon
6 during a violent crime because of the trafficking charge.

7 MR. PHILLIPS: That's correct. But there is also a
8 possession of a stolen pistol charge which we would say is
9 not similar, but possession of a weapon, Mr. Gay was
10 indicted on that.

11 THE COURT: Here is what we're going to do, here is
12 what we're going to do. I mean, I've thought about it,
13 pondered about it, you know, and I like to put this on the
14 record for my friends on the court of appeals and the
15 supreme court, they like it when I say that, they like
16 reading transcript when I say that, they like that, so
17 they'll like it even better now that I keep talking about
18 it. But my general rule in doing this as long as I've done
19 it is when in doubt let in. Some people say when in doubt
20 keep it out. I think, you know, it's the jury's job to
21 weigh the credibility and the weight of the evidence and,
22 you know, if it's rationally related to the theory of the
23 case I'm going to let it in. So I am going to allow the
24 defense to question this witness, Mr. Perry, concerning
25 pending charges against him. Of course, in any -- are there

1 any prior convictions of the witness there's any issue
2 about?

3 MR. PHILLIPS: I think there was some impeachable
4 offenses.

5 THE COURT: Well, you know the law on that, we'll deal
6 with that if we have to. But I am going to allow the
7 defense to cross examine and bring up potential charges as
8 well as potential punishment terms for those pending charges
9 except the pistol and the possession of a weapon during the
10 commission of a violent crime, those are too substantially
11 similar to what he's facing and it's inappropriate for the
12 defense to bring out the term of punishment that he may be
13 facing if he's convicted. So everything else is fine, just
14 not the gun stuff, okay?

15 MR. PHILLIPS: Shave off the ten years we're good.

16 THE COURT: Right, just the gun stuff.

17 MR. PHILLIPS: Your Honor, we would like to clarify, so
18 we can't even discuss the gun at all, is that the limitation
19 or can we go into that?

20 THE COURT: No. You can say aren't you facing that
21 charge, but don't go into the punishment, "doesn't that
22 carry five years just like it does for this" -- you know
23 what I mean, they'll put that together. Now, having said
24 that conversely I think it is fundamentally fair then that
25 the State should be able to introduce his prior video

1 statement to show consistency. You know, the defense is
2 arguing bias, well, the State should be able to rebut some
3 of the defense's argument of bias by showing that -- I don't
4 know what his statement shows, but showing that his
5 statement is substantially similar or exactly alike with his
6 present testimony, I think that's fundamentally fair to both
7 sides. So that's the ruling of the Court.

8 MS. COLLINS: And Your Honor, just to clarify, he gave
9 two video statements, one was in November of '17, that's the
10 one that I believe we should be able to put in because that
11 was prior to these charges. He was interviewed again I
12 believe on December 4, that Tuesday after his arrest, and
13 he -- but I'm not sure, I think it's the same, I think it's
14 consistent, but at the beginning the officer says, you know,
15 no promises about your charges but I am not at this time
16 planning on using that one. That may change depending on
17 the questioning.

18 MR. PHILLIPS: The new statement your person brought
19 up, we don't have a new statement.

20 MS. COLLINS: We had it hand delivered to Mr. Delgado's
21 office, it was on a disc, it contained the video interview
22 of Mr. Perry as well as Ms. Cameron.

23 THE COURT: If you say it was delivered I believe you,
24 I have no reason not to believe you. There was a lot of
25 stuff -- you know, in preparation for a criminal trial

1 there's a lot of stuff that happens, so I'll give y'all time
2 to look at it if you need to look at it.

3 MR. PHILLIPS: That's all we're asking. I'm certainly
4 not making any type of dispersions.

5 THE COURT: Yeah. That's not the first witness up,
6 that's in a couple of witnesses, so what we could do is take
7 a morning break and then, Lisa, if you don't mind getting
8 one of your staff members just to hand him the DVD of that
9 video, he can look at it and they can decide if they want to
10 do anything with it.

11 MS. COLLINS: I don't mind. Mr. Newman asked for
12 clarification, so in terms of questioning regarding the
13 potential sentence, is that per charge, they can go through
14 each charge or is it just in totality that they can say
15 altogether then you're facing X amount of time.

16 THE COURT: I'm not limiting them in their cross
17 examination, I just -- except for the gun thing, because
18 that's substantially similar to what this defendant is
19 charged with and that will be inappropriate.

20 MS. COLLINS: Yes, sir. Thank you.

21 THE COURT: Anything else?

22 MS. COLLINS: No, Your Honor.

23 THE COURT: All right. Let's bring in the jury.

24 (The jury returned to the courtroom.)

25 THE COURT: We'll go ahead and jump right into it this

1 morning. The State may call its next witness.

2 MS. COLLINS: Thank you, Your Honor. May it please the
3 Court? The next witness is Ed Abbott with Lancaster County
4 EMS.

5 The witness, EDWARD ABBOTT, was first duly sworn and
6 Testified as follows:

7 DIRECT EXAMINATION

8 BY MS. COLLINS:

9 Q Please state your name for the record.

10 A Edward Abbott.

11 Q What is your occupation?

12 A I'm a paramedic with the Lancaster County EMS, and I've
13 been employed with the county for 25 years as a paramedic.

14 Q As a paramedic, do you receive certain training?

15 A Yes, ma'am. It's usually two years of college is what
16 you have to have to have this degree.

17 Q Do you get ongoing training to serve as a paramedic?

18 A Yes, ma'am. Every month we do quarterly training and
19 then we do online stuff that's required, and if there's
20 other classes available around it we can attend we take it.

21 Q Do you have a certification or license?

22 A We're certified as a paramedic through the State of
23 South Carolina, and then I have my degree through -- a
24 college degree.

25 Q Thank you. And how many years have you been with EMS?

1 A Twenty-five years here, I've been doing it 44 years
2 total.

3 Q Where else did you do it, Ed?

4 A I grew up in Texas so I worked EMS in Texas when I
5 started when I was 16 years old. I've been in it pretty
6 much my whole life.

7 Q You don't have to ride horses there in Texas, do you,
8 to get to the patient?

9 A No. Depends if you're in West Texas you do.

10 Q All right. Let's talk about December 5th of 2015, were
11 you on duty that day?

12 A Yes, ma'am. I was stationed at EMS 2, which is over by
13 the college behind the Pizza Hut. We were on duty, myself
14 and my partner were on duty and we got dispatched -- I would
15 have to go over my notes with time, it was like, let's see,
16 like 11:48 in the evening.

17 Q Okay. On 12/5 of 2015?

18 A Yes, ma'am.

19 Q Are you referring to a copy of your report?

20 A Yes, ma'am.

21 MS. COLLINS: I'm going to show defense a copy.

22 Q I show you what is marked for ID purposes as State's
23 Exhibit 16. Is that a copy of what you were just referring
24 to?

25 A Yes, ma'am.

1 Q Okay. And would it help your memory or refresh your
2 memory to refer to that?

3 A Yes, ma'am.

4 Q Well, as needed please do so. So what time were you
5 dispatched?

6 A 11:48 in the evening on December the 5th.

7 Q Do you ultimately prepare that report, Mr. Abbott?

8 A Yes, ma'am.

9 Q So the note is dispatched at 12:48 you say?

10 A 11:48. We were --

11 Q Right, 11:48, military time?

12 A 23:48 is military time.

13 Q 23:48 military time?

14 A Yes, ma'am.

15 Q And I note at the beginning it says a PSAP call was
16 received at 23:48, correct?

17 A Yes, ma'am.

18 Q What does PSAP stand for?

19 A I guess that's -- dispatch deals with what they use
20 when somebody gets a call. When you call 911 it goes
21 through our communications system and they have a call-taker
22 that takes the information, and as soon as the call comes in
23 they timestamp it, and that's the initial to start the call.
24 And then like -- then they notify everybody and then they
25 dispatch it out, and then we have to be in route within --

1 after 11:00 we have to be in route within three minutes, and
2 if I look at my notes we were in route pretty much within
3 about ten seconds or 12 seconds, somewhere around that part
4 of it. So we were already up, I guess we were in our
5 vehicle.

6 Q Okay. Very good. So when the PSAP or call for
7 services is received it almost immediately is transferred
8 over to y'all if it was identified that an ambulance may be
9 needed and y'all were dispatched out, correct?

10 A Yes, ma'am.

11 Q Now, just for clarification you keep saying I'm
12 referring to my notes, you're referring to the report?

13 A Yes, ma'am.

14 Q Nothing --

15 A Nothing -- just my report that was done by our computer
16 generated reporting, yes, ma'am.

17 Q Thank you. I just wanted to be clear about that.

18 A Yes, ma'am.

19 Q What time did you reach the scene?

20 A We arrived on scene at ten minutes after midnight,
21 which would have been December the 6th.

22 Q And the location was [REDACTED] Lancaster,
23 South Carolina?

24 A Yes, ma'am.

25 Q And that's here within Lancaster County, South

1 Carolina?

2 A Yes, ma'am.

3 Q So you arrived at ten after midnight?

4 A Yes, ma'am.

5 Q And what time did you get to the patient?

6 A About two minutes later. We have to wait to. Usually

7 when we get dispatched they advised us that the scene is not

8 secure, law enforcement is in route and they'll advise us

9 when the scene is secure, so we kind of stage a little ways

10 out of the way and then they say it's clear so we proceed

11 in. And then when we arrived on scene that's what time we

12 actually checked out on scene.

13 Q And by stage do you mean that y'all are in your vehicle

14 where they can see that you're there but you don't yet

15 enter.

16 A No, ma'am. Sometimes we're staged a block or two

17 blocks away.

18 Q What does staged mean?

19 A We put our ambulance in a safe area because we're not

20 armed, we don't carry anything. We're medics, you know, so

21 we stay out of the way, that's law enforcement's job.

22 Q So you're waiting there to proceed as instructed --

23 A Yes, ma'am.

24 Q -- that it's safe by law enforcement?

25 A Yes, ma'am.

1 Q And they clear the house first to make sure it's safe
2 for you?

3 A Yes, ma'am.

4 Q Okay. And that's what you wait for is the instruction
5 from law enforcement?

6 A Then law enforcement notifies our dispatch and our
7 dispatcher then notifies us the scene is secure so we can
8 proceed in.

9 Q And at that time do you pull your vehicle up to the
10 home?

11 A Yes, ma'am, that's correct.

12 Q And who was with you that night?

13 A Ashley McKinny, that was my partner at the time.

14 Q And did y'all enter the house?

15 A Yes, ma'am. We got on scene, we were advised -- the
16 officer on scene said we just need the crew from EMS 2. Our
17 supervisor is also on dispatch with us and another ambulance
18 is also dispatched because we don't know if we have one
19 patient or multiple patients anytime dispatch has a gunshot.
20 So we always have an extra set of hands with us that gives
21 us a little bit more -- we can do a lot more with an extra
22 pair of hands.

23 Q So when you got to the scene and you were getting out
24 to the house, were you -- was there only one patient there
25 that you were asked to observe?

1 A That's correct. When we got there they said -- the
2 officer on scene, I don't remember what officer it was that
3 says we just need the crew from our EMS 2, which is our
4 crew, myself and my partner, Ashley, to proceed in. And we
5 went around through the -- I asked where we needed to go and
6 they directed us toward the back door. We went around and
7 went into the back door, and I think there was an officer
8 standing there and he said you're going to go down the
9 hallway here, so we went to the left down the hallway. We
10 went in, we walked in the room, there was another officer
11 standing, I believe, to my right side of me, and that's when
12 we observed the patient.

13 Q The patient being the body of Joshua Flint McManus?

14 A Yes, ma'am.

15 Q And, of course, at that time you weren't sure whether
16 or not he was deceased; is that right?

17 A That is correct.

18 Q He was not moving however, correct?

19 A No, ma'am, he was not moving at all.

20 Q What was his position?

21 A He was kind of in one of those older wooden chairs
22 sitting in the room kind of slumped back, you know, hips
23 forward, head back, left arm was kind of dangled down off
24 the side, head was up, eyes open and his mouth was open and
25 he was like looking up at the ceiling.

1 Q All right, very good. This is not yet in evidence so
2 if you'll just keep it there to refer to if needed. This is
3 a copy of what's already been marked as State's Exhibit 15
4 for ID purposes, and if you need to refer to that to refresh
5 your memory. Do you remember the position of the legs of
6 the victim at that time?

7 A Yes, ma'am, that's correct.

8 Q What was the position?

9 A His legs were crossed at the ankles. Like I said, he
10 was laying back, head and mouth and -- his head was back
11 looking up at the ceiling, mouth was open, eyes were open.

12 Q And let me ask you, Ed, by legs crossed, you can sit in
13 a chair where you're sitting kind of like they have pictures
14 of Princess Diana or somebody where they're demurely or you
15 could cross where they're extended out.

16 A They were extended out. He was extended out like if
17 you're sitting in a recliner and had your legs crossed, kind
18 of that style. He was in a chair.

19 Q Thank you. And you said it was an older type chair
20 like an older like wooden like desk chair type?

21 A Yes, ma'am, like a desk chair.

22 Q So what action did you then take at that time?

23 A We were advised just to check to see if there was
24 stable life. When I got up into him I walked up there,
25 officers said just be real careful, try not disturb the body

1 or do anything like this and everything. He said there was
2 a pocket knife on his leg, there was at about the mid-thigh
3 level kind of up toward the groin area of the person, and
4 his hand was like over the pocket knife and he just warned
5 us not to disturb that knife, you know, on that part of it.
6 So all I did then was just go in and just check for a pulse.
7 The corroded artery, which is -- I did it on the right side
8 of the body right here in the neck area, and that's when I
9 put my fingers up there to check and see if there was a
10 pulse and when I did that I couldn't feel a pulse, and also
11 when that happened his body shifted a little bit to the
12 right.

13 Q To the right or the left?

14 A Excuse me, to his left. I'm sorry, to his left.

15 Q About how many inches did you say it shifted to the
16 left?

17 A Probably one to two inches, something like that. Like
18 the upper body just kind of slid over a little bit.

19 Q Did the position of the head change at all?

20 A Not really, just --

21 Q Was it still back?

22 A It was still back, yes, ma'am.

23 Q As you had observed it when you first entered?

24 A Yes, ma'am.

25 Q Was there any other change to the body other than it

1 shifting two or three inches to the left?

2 A No, ma'am. Just like the upper body just kind of slid
3 a little bit to the left a little bit. His arm was still
4 hanging down to his side on that part.

5 Q You said you took your fingers and checked for the
6 corroded artery on the right side of the neck?

7 A Yes, ma'am.

8 Q That was in proximity to where the shot was, correct?

9 A Yes, ma'am. It was probably more toward the front
10 right in here. We're going to be -- if it's going to be
11 like right on this side, closer to the throat area.

12 Q All right. I want to show you another picture that I
13 believe is in evidence, but again just keep it there,
14 State's Exhibit 3.

15 A Uh-huh.

16 Q Do you recognize that to be a picture of the victim's
17 neck?

18 A Yes, ma'am.

19 Q And you see where the bullet wound is there?

20 A Yes, ma'am.

21 Q Where would you have touched him there?

22 A More toward the front, toward the Adams apple area,
23 which would be -- like right up -- like if the wound is
24 here --

25 Q Turn so the jury can see you, Mr. Abbott.

1 A I'm sorry. If the wound is right here then I would be
2 checking like right up here, this is where your corroded
3 artery falls. So it's more toward the Adams apple, toward
4 the front part of your throat area, that's where we're
5 taught to check for a pulse.

6 Q And when you touched his skin there to check you apply
7 some pressure to feel it?

8 A Yes, ma'am, just a little bit of pressure. You have to
9 press just a little bit of pressure onto it just to be able
10 to feel for a pulse.

11 Q But that touch would not have disrupted any of the
12 blood pattern; is that correct?

13 A No, ma'am, that is correct.

14 Q Did you have on gloves --

15 A We wear latex gloves. At the time we were wearing
16 rubber latex gloves. That's our policy, or actual control
17 policy is anytime you come into contact with any type of
18 bodily fluids we're supposed to wear proper PPE, which is
19 protective personal equipment which would be considered
20 gloves.

21 Q Thank you. You said law enforcement was in the room
22 with you when you did that?

23 A Yes, ma'am.

24 Q And when you felt for a pulse did you feel a pulse?

25 A No, ma'am, we didn't feel a pulse. And I told the

1 officer there's no pulse.

2 Q Did you hear any breathing of the patient?

3 A No, ma'am. There was no chest movement, no chest wall
4 movement that we could see that the person was breathing or
5 anything like that.

6 Q No signs of life.

7 A No, ma'am, no signs of life.

8 Q In your opinion was he dead at that time?

9 A Yes, ma'am.

10 Q What did you then do, Mr. Abbott?

11 A Then we just advised the officer there's nothing we can
12 do for him, and then they told us to leave. So we just went
13 right out the same way we came in, we went out the same way,
14 went back to our unit and we staged outside the crime scene
15 area where they have it roped off, we went back to the unit
16 and we just stayed there and waited on the -- we notified
17 our dispatcher that we need to have the on-duty coroner
18 dispatched, and at the time we don't know who it's going to
19 be until they show up on the scene. And --

20 Q And then ultimately did a deputy coroner or the coroner
21 herself show up?

22 A Yeah, it was Tony Broome.

23 Q And he did show up?

24 A Yes.

25 Q Did you brief him on what you had observed?

1 A Yes. We told him what we found -- what we observed and
2 what we found, and then we just sat out in our truck until
3 we're cleared to clear the scene. Usually that's the
4 coroner that said we are free to go, y'all can leave, so
5 then we went back in service.

6 Q Mr. Abbott, I asked you earlier in terms of there was
7 just one patient identified for you; is that correct?

8 A Yes, ma'am, that's correct.

9 Q So at no time were you asked to give medical treatment
10 to the defendant, Michael Brent Gay, on scene; is that
11 correct?

12 A That's correct.

13 Q And at no time did you have to render any medical
14 treatment to the grandmother of the defendant, Ms. Alice
15 Wallace; is that correct?

16 A That's correct.

17 Q Okay. Mr. Abbott, just to all of the questions, again
18 if you need to refresh your memory refer to the picture, but
19 testify, please, from your memory. You've been very
20 descriptive about the position of the body, can you also
21 describe for the jury the blood on the shirt of the victim
22 or in the area?

23 A Yes, ma'am. When we walked in we saw him, like I said,
24 there was a large amount of blood down the front part of his
25 shirt down this way.

1 Q And since the record -- we don't have video but you
2 have taken your hand and gone up and down the middle of your
3 chest?

4 A Yes, ma'am. Like from about say about right here, like
5 if you're wearing a shirt it would be like from right here
6 down to probably around the beltline.

7 Q And you're pointing to the top being about the sternum?

8 A Yes, ma'am. Top of the sternum down about a normal
9 person's beltline in that area, it's a large amount of blood
10 down here. And like I said, the arm was down leaned over to
11 the side this way and there was blood. When we kind of
12 looked around like this there was blood on the floor, on the
13 floor down beside the chair.

14 Q On the left side of the chair?

15 A Yes, ma'am, left side of the chair. There was some
16 blood on the left side of the chair which also looked like
17 vomit was mixed in with the blood. This was all on the left
18 side of the chair, and like a small amount of blood like
19 there, a little bit on the floor along with the blood part
20 of it also.

21 Q You describe with the width of your hand the area on
22 the front middle of the shirt, was there some also on the
23 left side of the shirt?

24 A It was all -- like I said, it was started at the center
25 of the chest, it was kind of like going -- like if you use

1 the chest reference it was like starting from right here
2 kind of like this area just kind of going down this way,
3 almost like a tear drop type thing and it just got a little
4 bit wider as you went down like this.

5 Q Thank you, Mr. Abbott.

6 MS. COLLINS: One moment.

7 (Break in proceedings.)

8 MS. COLLINS: Thank you. Please answer any questions
9 that the defense counsel.

10 THE COURT: Mr. Phillips?

11 MR. PHILLIPS: Yes, Your Honor.

12 CROSS EXAMINATION

13 BY MR. PHILLIPS:

14 Q Good morning, Mr. Abbott.

15 A Good morning, sir.

16 Q So you testified that his face was up, his mouth was
17 open towards the ceiling?

18 A Yes, sir.

19 Q Like that?

20 A Yes, sir.

21 Q So it wasn't down.

22 A No, sir. When we were arrived on scene -- when we
23 arrived in to observe the patient he was, like I said, laid
24 back in the chair kind of like set back kind of reclined
25 back a little bit, head was up, mouth was open and eyes were

1 open and he was looking at the ceiling.

2 Q And you checked his pulse, he was deceased.

3 A Yes, sir, that's correct.

4 Q And so if his head was down before you didn't move his

5 head.

6 A That's correct, we did not move his head.

7 Q When you got in there his head was back.

8 A That's correct.

9 Q Not down.

10 A Yes, sir.

11 Q And you said when the solicitor asked you that you

12 walked into the room and then you saw him.

13 A Uh-huh.

14 Q And so essentially the wall was obstructing your view

15 until you walked into the room.

16 A That's correct, yes, sir.

17 Q So you couldn't see him until then.

18 A Right. We came in the back door, we were directed down

19 the back down the hallway -- we came in the back door and

20 took a left, went down a hallway, and I can't remember

21 whether there was a wall or whatever. I just remember when

22 we walked in a room there was an officer, I believe he was

23 on my right hand side, and then the patient was sitting in a

24 chair just right there in the room. And I remember, there

25 was a big -- he was -- there was a big TV right here and the

1 officer was kind of standing like right on this side.

2 Q So you didn't see him until you got into the room.

3 A That's correct.

4 MR. PHILLIPS: Thank you.

5 THE COURT: All right. Thank you, sir, you may step
6 down.

7 MS. COLLINS: Yeah, nothing further.

8 THE COURT: You're free to leave.

9 MS. COLLINS: We would call at this time Mr. Abbott's
10 partner, Ashley McKinny. Your Honor, I would move the EMS
11 report into evidence at this time.

12 THE COURT: Any objection?

13 MR. PHILLIPS: Without objection.

14 The witness, ASHLEY MCKINNY, was first duly sworn and
15 Testified as follows:

16 DIRECT EXAMINATION

17 BY MS. COLLINS:

18 Q Would you please state your name?

19 A Ashley T. McKinny.

20 Q What is your occupation?

21 A Paramedic with Lancaster County EMS for six years.

22 Q And you've been -- thank you, you got me, six years.

23 A Six years.

24 Q I need to listen to your answer, thank you, Ashley.

25 You've worked with EMS for six years?

- 1 A Yes, ma'am.
- 2 Q And have you always been a paramedic?
- 3 A No, ma'am. I've been a paramedic for right at three
4 years, I've been certified for six years and employed with
5 Lancaster County right at six years.
- 6 Q Okay. Tell me what you first did at EMS.
- 7 A I was an EMT, it's a lower level of certification.
- 8 Q Is that emergency medical technician?
- 9 A Yes.
- 10 Q And so you have similar duties but not all the same as
11 a paramedic?
- 12 A Correct, it's noninvasive. EMT does not administer
13 medications, IV's, things like that, more like CPR and first
14 aide.
- 15 Q All right. Ms. McKinny, on December 5th of 2015, what
16 was your title and role?
- 17 A I was an emergency medical technician, I was not yet a
18 paramedic.
- 19 Q And you were assisting Ed Abbott on scene on that date?
- 20 A Correct.
- 21 Q Did you ride in the same ambulance with Mr. Abbott?
- 22 A Yes.
- 23 Q And you've been here in court and heard his testimony
24 earlier, correct?
- 25 A Correct.

1 Q The copy of the report is in, if necessary if you will
2 refer to State's Exhibit 16 which is now in evidence in
3 front of you. Do you see it?

4 A Yes.

5 Q But please testify from your memory. So what time did
6 y'all arrive on scene to the best of your memory?

7 A It was close to midnight, and according to our
8 report -- I'll refer to that, we arrived on scene at ten
9 minutes after midnight.

10 Q And you would have been dispatched about ten minutes or
11 so before?

12 A Take a look at the report.

13 Q Again, please refer to the report if you need.

14 A We were dispatched in route about ten -- eight to ten
15 minutes prior.

16 Q And did y'all know at that time you were going to a
17 scene of a possible shooting?

18 A We have a computer system we call our CAD system, and
19 our dispatchers type up information to us, and some of the
20 information as we were going to the call referred that
21 someone had been shot.

22 Q Is that information received so that you can be aware
23 of what type of emergency you're responding to?

24 A Yes.

25 Q So that you can be prepared as to what possible medical

1 care you will have to render?

2 A Correct.

3 Q And when you did arrive you had to wait a few moments
4 to go in with Mr. Abbott to make sure the scene was safe?

5 A More than a few moments, but yeah, we did have to wait
6 for law enforcement to establish it's safe for us.

7 Q All right. And again, when that was established, did
8 you enter the residence along with Mr. Abbott?

9 A Yes, we went in together.

10 Q As you were entering the residence, did you observe
11 Mr. Gay anywhere?

12 A No.

13 Q And did you observe his grandmother, Ms. Wallace,
14 anywhere?

15 A Not that I recall.

16 Q Y'all were never asked to render medical attention to
17 Mr. Gay?

18 A No.

19 Q Never asked to enter medical attention to his
20 grandmother, Ms. Wallace?

21 A No.

22 Q You entered the house. What did you observe? Tell the
23 jury in your own words.

24 A Honestly, I don't know which way we walked into the
25 house, but what I do remember is entering the room where

1 Mr. McManus was. And he was sitting in the chair as
2 Mr. Abbott described, hips forward, back -- head back
3 looking up, mouth open. You know, as we walk in our first
4 thing we do is assess the patient, we call it a doorway
5 assessment, do we notice signs of life breathing, movement.
6 I did not observe any movement, as we got closer noticed he
7 was not breathing. And as we approached Mr. Abbott felt for
8 the pulse on the right side and he stated there was no
9 pulse.

10 Q When you're walking toward the room, was Mr. Abbott in
11 front of you or were you in front of Mr. Abbott?

12 A I do not recall. Usually when I was an EMT I would
13 follow my paramedic but I cannot say for sure.

14 Q And do you know, was one of the officers leading y'all
15 to the area of where the body was?

16 A I would say yes, I do not recall for sure. But on a
17 possible crime scene that's how -- we would be led in by a
18 law enforcement officer.

19 Q Due to what you had been advised earlier, did y'all
20 bring in a stretcher or other equipment as you came in?

21 A No. We were told by law enforcement that just the crew
22 would be necessary.

23 Q Okay. So as you're entering, do you have a
24 memory of -- your own memory, a specific memory of walking
25 into a room with a doorway clear, no one in front of you, or

1 whether or not you had people in front of you obscuring your
2 view as you walked to the doorway? Do you remember?

3 A Mr. Abbott was in front of me, I believe there was an
4 officer in front of me, but other than that that's the only
5 obscurity I had.

6 Q Thank you. You've heard the testimony earlier that the
7 position of the body as you stated was seated, correct?

8 A Uh-huh.

9 Q And head back, mouth open as you've already indicated,
10 correct?

11 A Uh-huh.

12 Q Can you describe the blood flow on the shirt?

13 A Going from right side down the neck on the shirt
14 towards the -- his left side onto the floor.

15 Q All right. Thank you. Lost my train of thought. The
16 position of the feet.

17 A Uh-huh.

18 Q Crossed?

19 A That I do not personally know, I did not pay attention
20 to that.

21 Q Did you observe the body shift as described by Mr.
22 Abbott?

23 A Yes. When he felt for a pulse, because you have to
24 apply some pressure, and whenever he did feel he did shift
25 slightly.

1 Q And would you agree that it was about two or three
2 inches --

3 A Uh-huh.

4 Q -- to the left?

5 A Yes. The patient's -- Mr. McManus' left, yes.

6 Q And other than shifting to the left, did the head stay
7 in the same position?

8 A Yes.

9 Q And to your knowledge did the hands and feet stay in
10 the same position?

11 A Yes, they stayed in the same position.

12 Q All right.

13 MS. COLLINS: Thank you, one moment.

14 (Break in proceedings.)

15 MS. COLLINS: Thank you. Please answer any questions
16 of defense counsel.

17 CROSS EXAMINATION

18 BY MR. DELGADO:

19 Q Good morning. Ms. McKinny, I've learned something, for
20 whatever reason I didn't know there was an EMT and a
21 paramedic so I've learned something, thank you. Let me talk
22 to you about the doorway assessment, I think that was your
23 word, right?

24 A Okay.

25 Q So when you as either an EMT or a paramedic, the first

1 thing you do is you go into an area where you've been called
2 to and you make a generalized visual assessment of what's in
3 front of you, right?

4 A Uh-huh.

5 Q And from where I think you said that Mr. Abbott came
6 before you you believe, if not that's fine, but when you got
7 to the doorway you turned to the right and could see Mr.
8 McManus in the chair?

9 A I know he was in the room, I'm not exactly sure to the
10 right but I just know he was in the room.

11 Q But you couldn't see until you got to the doorway.

12 A Correct.

13 MR. DELGADO: Thank you, that's all.

14 THE COURT: All right. Thank you.

15 MS. COLLINS: Nothing further.

16 THE COURT: Thank you, you can step down, you're free
17 to leave. The State can call its next witness.

18 MS. COLLINS: Thank you, Your Honor. We had told our
19 witnesses that they may need to wait in the hallway, if I
20 may have a moment.

21 (Break in proceedings.)

22 MS. COLLINS: Thank you, Your Honor. Your Honor, the
23 next witness for the State is Sergeant Kerry Aldridge with
24 the Lancaster County Sheriff's Department.

25 The witness, KERRY ALDRIDGE, was first duly sworn and

1 Testified as follows:

2 DIRECT EXAMINATION

3 BY MS. COLLINS:

4 Q Good morning.

5 A Good morning.

6 Q Please state your name for the record.

7 A My name is Sergeant Kerry Aldridge, I work for the
8 Lancaster County Sheriff's Office.

9 Q And how long have you been with the Lancaster County
10 Sheriff's Office?

11 A For seven years.

12 Q And how long have you been a law enforcement officer?

13 A Seven years.

14 Q And what are your duties at the sheriff's department?

15 A Currently my duties are I'm assigned to the patrol
16 division as a supervisor over the district two which is
17 essentially the Lancaster area of the county.

18 Q And were you also in that same position in December of
19 2015?

20 A Yes, ma'am.

21 Q Was Josh Funderburke one of the officers that also
22 worked with you on that shift?

23 A Yes, ma'am.

24 Q He was under you.

25 A Yes.

1 Q And he has since left the Lancaster County Sheriff's
2 Office and gone to another law enforcement agency; is that
3 right?

4 A Correct.

5 Q But he was there at the same time you were, correct?

6 A Yes, ma'am.

7 Q So if you will, Sergeant Aldridge, just tell the jury
8 to the best of your memory what transpired on December 5th,
9 2015, and what you as a law enforcement officer did to
10 investigate it.

11 A All right. On December 5th, 2015, myself along with
12 other deputies were dispatched to [REDACTED] in
13 reference to a shooting.

14 Q And let me just ask you there, you were referring to
15 something; is that right?

16 A Yes, ma'am. That would be my supplement that I
17 complete for the report.

18 Q Very good. Refer to it as needed but please testify
19 from your memory.

20 A Okay.

21 Q Thank you.

22 A Because of the incident we were told that somebody had
23 been shot so we responded lights and sirens to the address.
24 Once we arrived there began directing the officers that had
25 responded with me to various positions around the home

1 because we'd been advised that the subject was still inside
2 the house, so rather than risk going in we began to set up a
3 perimeter, checking various locations around the home. I
4 believe I stepped over to check on a garage and a vehicle
5 just to make sure nobody was in there. And then we were
6 called by dispatch stating that one of the subjects involved
7 inside wished to come out, so we devised just a basic
8 strategy to safely bring him outside the residence and we
9 did that.

10 Q Thank you. Let me back up and ask you a couple
11 questions. So this was within Lancaster County within your
12 jurisdiction, correct?

13 A Correct.

14 Q And it was determined to be the home of the defendant,
15 Michael Brent Gay, correct?

16 A Yes.

17 Q And his grandmother, Alice Wallace, right?

18 A Yes.

19 Q And as you're looking at the home the garage is right
20 in front of you to the right?

21 A Yes, ma'am.

22 Q And it opens out to the street, do you recall?

23 A If I remember correctly it opens up to a driveway which
24 then comes out to the street. I think the door is kind of
25 parallel with the house.

1 Q All right. Do you remember if the garage door was open
2 or closed?

3 A It was open.

4 Q And you said that at that point you were waiting to see
5 if anyone had indicated that they wanted to exit the home;
6 is that right?

7 A Yes. Our dispatch center called us over the radio and
8 stated that they had received a phone call I believe from
9 Mr. Gay that he wanted to exit the home.

10 Q And from your understanding that was the accused
11 shooter?

12 A Yes.

13 MS. COLLINS: I ask that this be marked as State's
14 Exhibit 17.

15 Q I show you this Exhibit 17 and ask you, do you
16 recognize that?

17 A Yes, ma'am. That's the residence that we responded to.

18 Q The residence at [REDACTED]

19 A Yes.

20 Q Is that a fair and accurate depiction of the residence
21 as you observed it that night?

22 A Yes, ma'am.

23 MS. COLLINS: I move State's Exhibit 17 into evidence
24 at this time.

25 MR. PHILLIPS: No objection.

1 THE COURT: Without objection introduced.

2 Q If you'll just step down with me, Sergeant Aldridge,
3 briefly. Bring the picture. You can just hold it up and
4 show it to the jury if you would, and show us which area of
5 the home was the garage.

6 A This is the garage right here.

7 Q Okay. And the door to the garage was there to the left
8 of the home?

9 A To the right, it was right here to the back.

10 Q To the right. Thank you. Come on down and let's show
11 these people too so they can see. Show them again where the
12 garage is.

13 A This here is the garage and the door was on this side
14 of it.

15 Q Thank you, please have a seat. And by door to the
16 garage I mean the door that lifts up so the cars can exit;
17 is that correct?

18 A Yes, ma'am.

19 Q Thank you. Now, did you -- when you were advised that
20 a subject wanted to exit the home and it was determined that
21 that was the defendant Mr. Gay, correct?

22 A Uh-huh.

23 Q And do you recall what door he exited?

24 A We were going to bring him out the front door to the
25 residence because that's where we were, with it being on a

1 cul de sac it would have been easier for us to bring him out
2 there. Once we had everybody kind of set in place one of
3 the deputies that was on the back door stated he saw
4 somebody moving toward the -- at the back of the residence
5 it was a back door, so we all moved around to that side and
6 engage the person that had stepped outside.

7 Q All right. And did you see the grandmother, Mrs.
8 Wallace, step out?

9 A Yes, she stepped out first.

10 Q And when she came out was she escorted by an officer
11 off the property or --

12 A She was called -- I can't remember if it was the back
13 patio or a back deck, but it was the back area of the house,
14 she was called out to the side, quickly searched by one of
15 the officers that was there and she was escorted to a patrol
16 vehicle.

17 Q And she was dressed in some type of pajamas and a robe;
18 is that correct?

19 A I believe it was like a nightgown.

20 Q The defendant came out next, correct?

21 A Yes.

22 Q And when he came out, were you situated where you could
23 see him come out?

24 A Yes, ma'am, I could. I don't remember where I was
25 positioned but I was able to observe where he was coming out

1 from.

2 Q Was Sergeant Brian -- at the time Sergeant Brian Small
3 also there with the city police?

4 A Yes, ma'am.

5 Q And when the defendant came out, did he have anything
6 in his hands?

7 A I believe he had a cigarette in one hand and a Monster
8 like the coffee energy drink in the other hand.

9 Q And did y'all give him instructions to follow as he
10 came out of the house?

11 A We did. As he came out we told him to keep his hands
12 up to where we could see them, we brought him out, had him
13 lay down on the decking and we approached him, handcuffed
14 him and searched him.

15 Q And the defendant followed all of your instructions?

16 A He did.

17 Q He appeared to understand them?

18 A Yes.

19 Q He did not appear disoriented or confused?

20 A No.

21 Q He didn't fall or trip?

22 A No.

23 Q When he came out with his hands in that situation you
24 were paying close attention to his hands, correct?

25 A Correct.

1 Q Because it's possible a weapon might be in his hands,
2 correct?

3 A That is correct.

4 Q You stated you clearly observed he had a cigarette in
5 one hand, correct?

6 A Uh-huh.

7 Q And an energy drink in the other, correct?

8 A Correct.

9 Q Did you observe his hands -- again, you're looking
10 close at his hands to see potential weapons, did you observe
11 if there were any injuries to his hands?

12 A Not that we could see, no.

13 Q Did you observe any injuries whatsoever to the body of
14 the defendant?

15 A No, ma'am.

16 Q And when he came out you said y'all instructed him to
17 get down on the ground?

18 A Uh-huh.

19 Q And he did so without falling?

20 A Yes.

21 Q And he -- after he laid down on the ground what did
22 y'all do?

23 A We approached him, we secured his hands in handcuffs to
24 the rear back behind his back and did a quick pat down for a
25 weapon, didn't find anything. We stood him up and escorted

1 him out to another patrol car.

2 Q When you asked him to put the energy drink down he did
3 so, correct?

4 A Correct.

5 Q He did so without dropping it, correct?

6 A Correct. I believe when he laid down he just kind of
7 sat it down as far as I can recollect.

8 MS. COLLINS: Ask that these be marked as State's
9 Exhibits 18 and 19.

10 Q Sergeant, I show you what has now been marked as
11 State's Exhibits 18 and 19 and I ask you, do you recognize
12 what's in those pictures?

13 A Yes, ma'am. That's the energy drink that was in his
14 hand.

15 Q And are those both fair and accurate depictions of the
16 energy drink as you observed them that night after the
17 defendant put them down -- put it down?

18 A Yes, ma'am.

19 Q And again it's standing straight up, right?

20 A Uh-huh.

21 Q Right?

22 A Standing straight up, doesn't appear to be spilled like
23 it was placed.

24 Q Okay.

25 MS. COLLINS: Thank you. I move State's Exhibits 18

1 and 19 into evidence at this time.

2 MR. PHILLIPS: No objection.

3 THE COURT: Without objection introduced.

4 Q Thank you. So you've already testified that he was
5 down and at that time y'all cuffed him, correct?

6 A Yes, ma'am.

7 Q Who cuffed him, do you remember?

8 A I can't recall. I don't remember if it was myself or
9 if it was one of the other city investigators.

10 Q Okay. But again, no one called your attention as they
11 cuffed him that there were any injuries to his hands,
12 correct?

13 A No, ma'am.

14 Q Or any injuries to his body, correct?

15 A No.

16 Q And then what did you do, Sergeant?

17 A We stood him up and escorted him to another deputy's
18 patrol vehicle because he was potentially a suspect, so we
19 had him detained at that time and placed him in a car.

20 Q All right. Sergeant, you generally work night shift?

21 A Yes, ma'am.

22 Q You worked night shift at the time?

23 A Yes, ma'am.

24 Q Was this in the middle of the night shift?

25 A If I remember correctly it was right around midnight.

1 Q Y'all work 4:00 to 4:00, or what is your shift?

2 A Yes, ma'am, 4:00 p.m. to 4:00 a.m.

3 Q So it would have been middle of your shift?

4 A Toward the end, that last third of the shift.

5 Q Okay. But you were fresh?

6 A Yeah.

7 Q You have a clear memory of everything?

8 A Uh-huh.

9 Q Sergeant, what did you do next?

10 A After he was detained myself and several other officers

11 moved inside the residence just to perform what we call a

12 protective sweep, make sure there's nobody else hiding or

13 waiting outside. We also asked the defendant prior to

14 moving him if there was anybody in the house that was hurt

15 or needed help and he said yes, and I believe he gave us

16 directions to a back bedroom, which from there where we --

17 in the back of the house would have been to the left. We

18 moved through the house to clear it and located a body in

19 that back room that he had directed us to.

20 Q All right. There was no one else in the home, correct?

21 A No. We did not find anyone else in the home.

22 Q And when you located someone in the back bedroom, who

23 was it?

24 A I did not -- I didn't have a name. I just knew it was

25 a male subject that was in the back bedroom.

1 Q And do you recall walking down the hall to the back
2 bedroom?

3 A Yes, ma'am.

4 Q And do you recall, were other officers with you at the
5 time?

6 A I believe some of the -- there was one or two
7 investigators from the city that were assisting us, I
8 believe they were just ahead of me in the hallway if I
9 remember correctly.

10 Q When y'all are walking through you're clearing the
11 house?

12 A Correct.

13 Q Clearing means that you were checking to make sure
14 there are no individuals there that could be armed that
15 could harm law enforcement or other citizens; is that right?

16 A Correct.

17 Q Thank you.

18 MS. COLLINS: I ask that that be marked as State's
19 Exhibit 20.

20 Q I'm going to show you, Sergeant, what has been marked
21 as State's Exhibit 20 and ask you to, do you recognize that?

22 A Yes, ma'am. I believe it looks like the bedroom at the
23 end of the hall where we moved to where the victim was
24 found.

25 Q All right. And is that a fair and accurate depiction

1 of the bedroom from the hallway?

2 A Yes, ma'am.

3 Q All right. Let me check, one of the other witnesses
4 may have left a picture. Okay. State's Exhibit 15 is not
5 in evidence but do not hold that up and show it to the jury.
6 But State's Exhibit 15, do you understand what's in that
7 picture?

8 A Yes, ma'am. It appears to be the body of the victim
9 that was found in that back bedroom.

10 Q And as portrayed in State's Exhibit 15, is the body of
11 the victim wearing the same shirt that you can see the
12 sleeve of from State's Exhibit 20 seeing the bedroom from
13 the hallway?

14 A Yes, ma'am.

15 Q Thank you. And State's Exhibit 20, again, is a fair
16 and accurate depiction of the view into the bedroom from the
17 hallway; is that correct?

18 A Yes, ma'am.

19 MS. COLLINS: At this time I move State's Exhibit 20
20 into evidence.

21 THE COURT: Without objection introduced.

22 Q Thank you. As you entered the room, and again please
23 testify from your memory, but if you have to refer to
24 State's Exhibit 15 without showing it, again it's not in
25 evidence, can you describe the body and the position of the

1 body as you observed it at that time?

2 A Uh-huh. If I remember correctly he was sitting in an
3 office style chair in a back bedroom. I believe he was kind
4 of leaned, you know, essentially slouched in the bedroom and
5 one hand on his lap. I had taken a pretty quick fairly fast
6 look, but I didn't look, I didn't fully examine the body or
7 take time to because we were still conducting our sweep.

8 Q All right. Do you recall the body was slouched, you
9 said slouched forward or backward?

10 A Like his bottom was kind of slid forward in the chair
11 to lean back.

12 Q Okay. And at that time, did you observe any weapons
13 near the body of the victim?

14 A We did observe what appeared to be like a folding knife
15 on his leg.

16 Q And did you observe blood on the victim's shirt?

17 A Yes.

18 Q And did you observe a wound to the victim's right neck?

19 A Yes.

20 Q Do you recall what other officers were there with you?

21 A I want to say it was Deputy Wolfe, Investigator Small
22 and Investigator Hall, I believe.

23 Q Do you recall what time Mr. Gay walked out of the
24 residence?

25 A I don't recall the exact time. I want to say it was

1 within five to ten minutes of us actually arriving on the
2 scene. It was fairly quick in the timeline of things.

3 Q So five to ten minutes after law enforcement arrived on
4 the scene the defendant, Michael Brent Gay, was still inside
5 the house; is that right?

6 A Correct.

7 Q He was still inside the house, which was the crime
8 scene, correct?

9 A Uh-huh.

10 Q He was still inside the house with the victim's body,
11 correct?

12 A Correct.

13 Q Do you recall there being a type of display or book
14 shelf to the left of the victim as you're looking at the
15 victim's body that had various martial arts weapons on it?

16 A Not that I can recall. Normally it's not a -- when we
17 do our protective sweep we're checking closets, behind
18 furniture, behind couches but not necessarily book shelves.
19 We'll glance over at it but it's not something that we spend
20 a lot of time with.

21 Q You're looking for bodies.

22 A Correct.

23 Q You're looking for people.

24 A Correct.

25 Q You're not looking for evidence.

- 1 A Correct.
- 2 Q That's for CSI and other officers, correct?
- 3 A Correct.
- 4 Q Were you present, Sergeant, when EMS came to examine
5 the body to determine if there was life still in the body of
6 the Flint McManus?
- 7 A Yes, ma'am. Once EMS -- or once we had declared the
8 scene was safe for them to enter we led the team -- two EMS
9 workers into the house into that back bedroom. Rather than
10 having a lot of first responders to preserve the scene we
11 brought them in, and they determined that there was no life
12 in that body.
- 13 Q Okay. You were present at the time they did so?
- 14 A Yes, ma'am.
- 15 Q Do you recall cautioning them to be very careful not to
16 move the body?
- 17 A I don't remember specifically, but that's normally
18 something we try to do.
- 19 Q That's what you would normally do?
- 20 A Uh-huh.
- 21 Q Have you seen dead bodies before this incident?
- 22 A Yes, ma'am.
- 23 Q Multiple occasions?
- 24 A Yes, ma'am.
- 25 Q When you entered the room prior to EMS, did the body of

1 Flint McManus appeared to be dead to you?

2 A It appeared to be, yes.

3 Q Didn't hear any breathing?

4 A No breathing, didn't see his chest rise and fall.

5 Q No signs of life.

6 A No signs of life.

7 MS. COLLINS: One moment.

8 (Break in proceedings.)

9 MS. COLLINS: Sergeant, thank you. Please answer any
10 questions of defense counsel.

11 CROSS EXAMINATION

12 BY MR. PHILLIPS:

13 Q Good morning, Sergeant.

14 A Good morning, how are you?

15 Q I'm doing well, how are you?

16 A Wonderful.

17 Q You have a clear memory of what happened based on what
18 you can actually remember?

19 A Correct.

20 Q Did a great job saying this is what I can remember and
21 this is what I can't.

22 A Uh-huh.

23 Q And in your report you noted that when you got there
24 Mr. Gay was on the phone with 911.

25 A Correct. They called us on the radio and let us know.

1 Q And you told the dispatcher, 911, to tell him to come
2 on out.

3 A I told him to give us just a moment so we could devise
4 a plan and then have him come out the front door.

5 Q And with that clear memory you said he cooperated?

6 A Yes. Other than he came out the back door but we'll
7 call it --

8 Q But he wasn't violent.

9 A No.

10 Q Wasn't aggressive.

11 A No.

12 Q Wasn't belligerent?

13 A No.

14 Q Wasn't "messed up?"

15 A Not that we could tell.

16 Q Wasn't out of his mind?

17 A No.

18 Q During your protective sweep you found a revolver in
19 the kitchen where the bullets had been removed, they were
20 separated.

21 A Yes.

22 Q Did you or any of the officers do that?

23 A No. When we walked in we saw that it was laying on the
24 kitchen counter, the weapon -- or the rounds were removed
25 from it. I placed an officer there to stand by it but we

1 didn't touch it. We were -- had been instructed by CSI that
2 if we find it try to leave it as we found it.

3 Q So part of that cooperation and being clear-headed,
4 Mr. Gay had done that.

5 A We weren't standing inside when it was done, but --

6 Q Presumably --

7 A Presumably he could have been the one to do it, yes.

8 Q And so with that you said when you entered into the
9 room the body was in a laid back position; is that right?

10 A Correct.

11 Q It wasn't in that slouched head down position?

12 A No.

13 MR. PHILLIPS: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 MR. PHILLIPS: Thank you.

16 Q I'm going to refer to State's Exhibit Number 20. This
17 picture that we discussed, this is the picture of the
18 hallway?

19 A Uh-huh.

20 Q Where you said you could see the sleeve. How close do
21 you think that picture was taken from that doorway if I was
22 the camera man? Would you say I would be about right here
23 to the doorway if you were just a few feet?

24 A Sure, I believe so. I mean, there's a couple of tiles
25 there, they look about one foot by one foot, so I would say

1 a couple of feet.

2 Q Real close to the where the picture was taken to the
3 doorway of that room?

4 A Uh-huh.

5 Q As far as your memory is concerned, do you remember how
6 long that hallway was to where the carport was?

7 A No, I can't remember.

8 Q It would be difficult?

9 A Uh-huh.

10 Q But one thing you know is based on that picture,
11 because you said it was a fair and accurate depiction, that
12 it was taken from somebody just literally two or three feet
13 from the door.

14 A Correct.

15 Q And it wouldn't be taking it back from where that
16 carport was, right? Like if you were coming down from the
17 front of the home with the garage?

18 A I'm not sure where they were or how they were taking
19 their pictures, I was outside at the time.

20 Q But as far as what you're saying it was obviously very
21 close to the room.

22 A This picture, yes.

23 MR. PHILLIPS: One moment, Your Honor.

24 (Break in proceedings.)

25 MR. PHILLIPS: No further questions, Your Honor.

1 MS. COLLINS: Nothing further, thank you.

2 THE COURT: Thank you, sir, you may step down.

3 MS. COLLINS: We ask that this witness be excused.

4 THE COURT: You can leave. You can call your next
5 witness.

6 MS. COLLINS: State's next witness is Deputy Tim
7 Ramsey.

8 The witness, TIMOTHY RAMSEY, was first duly sworn and
9 Testified as follows:

10 DIRECT EXAMINATION

11 BY MS. COLLINS:

12 Q Please state your name.

13 A Timothy Ramsey.

14 Q What is your occupation?

15 A I'm a patrol officer at the Lancaster County Sheriff's
16 Office.

17 Q And how long have you been a law enforcement officer?

18 A Approximately six and a half years.

19 Q And how much of that time have you served with the
20 Lancaster County Sheriff's Department?

21 A The whole time.

22 Q So doing the math in December of 2015 you had been an
23 officer about three and a half years?

24 A That's correct.

25 Q A deputy?

1 A That's correct.

2 Q Were you part of law enforcement that responded from
3 the sheriff's office to the crime scene at [REDACTED]
4 [REDACTED] Lancaster, South Carolina?

5 A I was.

6 Q Did you ride in your own patrol car?

7 A Yes, ma'am, I did.

8 Q Have anybody riding with you?

9 A No, ma'am.

10 Q When you arrived on scene -- well, tell me, what caused
11 you to go to the scene?

12 A I heard a call come out over the radio in reference to
13 a shooting at that address. I knew they had multiple
14 officers in route and I responded to assist those officers,
15 as well as the fact that we were advised that the suspect
16 was still inside the residence possibly armed.

17 Q And are you a member of the SWAT team?

18 A Yes, ma'am, I am.

19 Q And you received special training as a member of the
20 SWAT team?

21 A Yes, ma'am.

22 Q Training that helps you address situations where there
23 may be a shooter?

24 A Yes, ma'am.

25 Q Training that helps you address situations where there

1 may be a shooter still within a residence?

2 A Yes, ma'am.

3 Q And what did do when you arrived there?

4 A When I arrived I took up a position in front of the
5 house where I could see the front door in case the suspect
6 came out the front door. After a short time one of the
7 deputies on the back side of the residence advised they had
8 movement at the back side, so I headed to the back side
9 where I could see the door on the back of the house.

10 Q So you moved to the back where you could see the door
11 on the back of the house.

12 A Yes, ma'am.

13 Q And is that the door that the defendant, Michael Brent
14 Gay, exited out of?

15 A Yes, ma'am.

16 Q Did you see the grandmother, Alice Wallace, exit the
17 home?

18 A Yes, ma'am, I did.

19 Q Did she exit out of that same door?

20 A She did.

21 Q And did she exit alone?

22 A She did.

23 Q When she exited alone, did law enforcement officers go
24 up to her and move her away from the household?

25 A We actually called her off the back decking to where an

1 officer met with her and then escorted her away from the
2 residence.

3 Q And at that point the defendant, Michael Brent Gay, had
4 not yet come out; is that correct?

5 A That's correct.

6 Q Do you recall approximately how much time elapsed from
7 the time that the grandmother exited the home to when
8 Michael Brent Gay exited the home?

9 A I don't recall the exact amount of time, I don't
10 believe it was more than a minute or two.

11 Q Okay. But they did not come out together, correct?

12 A No, they did not.

13 Q And y'all proceeded to call out Michael Brent Gay,
14 correct?

15 A That's correct.

16 Q And to give him instructions on what to do when he came
17 out, correct?

18 A Yes, ma'am.

19 Q For the safety of the officers, correct?

20 A That's correct.

21 Q For the safety of any citizens because the grandmother
22 was still in distance, correct?

23 A That's correct.

24 Q And for the safety of Michael Brent Gay himself,
25 correct?

1 A That's correct.

2 Q What would those instructions include?

3 A When he came out the door we advised him to keep his
4 hands where we could see the, we had him step out on the
5 decking. Once he was away from the doorway we advised him
6 to get down on the ground, which he complied. Once he was
7 on the ground we approached, several officers went to him to
8 secure him while I went past him along with the Sergeant
9 Small from the city PD and held on the door in the event
10 there was someone else still in the house.

11 Q And was there anyone else still in the house other than
12 the deceased, Joshua Flint McManus?

13 A No, ma'am. Once we conducted our protective sweep we
14 didn't locate anyone other than the deceased.

15 Q Is it fair to say that the defendant, Michael Brent
16 Gay, followed all of your instructions in terms of coming
17 out of the house?

18 A That's correct, yes, ma'am.

19 Q That he appeared to understand your instructions,
20 correct?

21 A Yes, ma'am.

22 Q Instructions as to the hands he followed, correct?

23 A Yes, ma'am.

24 Q Didn't lose his footings?

25 A No, ma'am.

1 Q Didn't stumble?

2 A No, ma'am.

3 Q Ultimately had to lie down on the ground?

4 A Yes, ma'am.

5 Q He did so?

6 A He did.

7 Q He didn't fall to the ground.

8 A No, ma'am.

9 Q Did you at any time observe any injuries to the

10 defendant, Michael Brent Gay?

11 A I did not.

12 Q When you entered the home you said other officers were

13 attending to Mr. Gay.

14 A That's correct.

15 Q Were there other officers with you to clear the home?

16 A Yes, ma'am, there were.

17 Q And by clear the home you're looking for possible other

18 persons that may be inside, correct?

19 A That's correct.

20 Q Persons that may have firearms or other weapons,

21 correct?

22 A That is correct.

23 Q And you didn't find anyone else other than the

24 deceased, Joshua Flint McManus, correct?

25 A No, ma'am, we did not.

1 Q Do you recall, were you one of the first officers to go
2 into the room where the body of Mr. McManus was?

3 A I was.

4 Q I want to show you what's been marked as State's
5 Exhibit 15. Without holding that up to the jury because
6 that is not in evidence, if you need to refer to that to
7 refresh your memory please do so, but please testify from
8 your memory, all right?

9 A Yes, ma'am.

10 Q Can you describe the body of the victim as you observed
11 it that night?

12 A Once we were able to see the body as we were going down
13 the hallway there was a white male subject that was in a
14 seated position in the chair and had blood on his shirt.

15 Q So you said you were able to see the body as you were
16 going down the hallway?

17 A Yes, ma'am.

18 Q And when you entered the room you saw a white male
19 victim in a chair?

20 A That's correct.

21 Q With blood on his shirt?

22 A Yes, ma'am.

23 Q Can you please describe for the jury, who does not have
24 the benefit of that picture, describe as you recall it the
25 blood on the victim's shirt.

1 A There was a stain on the shirt and it started to spread
2 down the shirt. As we entered the room I took my eyes off
3 of him and proceeded to the far corner of the room to make
4 sure there was no one waiting for us in the corner of the
5 room.

6 Q And again, because we don't have a video recorder of
7 your testimony, can you describe -- you've done it with your
8 hand gesture, but can you verbally describe where on the
9 shirt you saw the blood stain?

10 A The blood stain was up in the chest area. Once again
11 like I said, once we entered the room I quickly took my eyes
12 off of the subject to make sure there was no one else
13 waiting in the room with us.

14 Q All right. And there was no one else in the room,
15 correct?

16 A That's correct.

17 Q I believe there was a dog in the room, correct?

18 A Yes, ma'am.

19 Q But the dog didn't attack, correct?

20 A No, ma'am.

21 Q And after you made sure no one else was in the room
22 what did you do, Deputy?

23 A Once no one else was in the room I exited the room,
24 went back toward where we had entered the residence to make
25 sure the officers that cleared the other side of the

1 residence were okay, once they advised they were okay then I
2 exited the residence.

3 Q Deputy, do you recall of your own memory when you
4 entered the room whether the head of the victim was down
5 toward his chest or back facing up towards the ceiling, do
6 you recall?

7 A From my memory I do not recall.

8 Q And while you were there in the room -- or at any other
9 time are you aware, did anyone make any movement to the
10 body?

11 A Not while I was in there, no, ma'am.

12 Q Thank you.

13 MS. COLLINS: One moment.

14 (Break in proceedings.)

15 MS. COLLINS: Thank you. Please answer any questions
16 of the defendant.

17 MR. DELGADO: We have no questions for Deputy Ramsey.

18 THE COURT: Thank you, sir, you may step down.

19 MS. COLLINS: We ask that Deputy Ramsey be excused.

20 THE COURT: You're free to leave. The State can call
21 its next witness.

22 MS. COLLINS: The State calls SLED Agent Marcus Heyward
23 to the stand.

24 The witness, MARCUS HEYWARD, was first duly sworn and
25 Testified as follows:

1 DIRECT EXAMINATION

2 BY MS. COLLINS:

3 Q Please state your name.

4 A Marcus Keith Heyward.

5 Q What is your occupation?

6 A I'm a special agent with the South Carolina Law
7 Enforcement Division.

8 Q And how long have you been with SLED, Agent?

9 A It will be coming up on two years in February.

10 Q Agent Heyward, in December of 2015 were you a law
11 enforcement officer with a different agency?

12 A Yes, ma'am.

13 Q And which agency was that?

14 A Lancaster County Sheriff's Office.

15 Q All right. And how long were you with the sheriff's
16 office?

17 A I'm going to say a year and about six months.

18 Q And were you there in December of 2015?

19 A Yes.

20 Q I think I already asked you that in a different way.
21 And what was your role there?

22 A I was a patrol deputy.

23 Q What is your role now with SLED?

24 A Special agent doing investigations and digital
25 forensics with the computer crimes unit.

1 Q So in December of 2015 you were dressed similarly to
2 Deputy Ramsey who just exited the room?

3 A Yes, ma'am.

4 Q And you were a deputy and responded to the scene at
5 [REDACTED] in Lancaster, South Carolina?

6 A Yes, ma'am.

7 Q And do you recall when you first responded what you
8 did?

9 A When deputies first responded we set up a perimeter on
10 the house, I went to the back of the house and covered the
11 rear exit of the house.

12 Q And at that time had anyone from within the home exited
13 the house?

14 A Shortly after that an older white female exited the
15 house.

16 Q About my age, an older female?

17 A Yes.

18 Q And was she dressed in bed clothes?

19 A Yes, ma'am.

20 Q And when she exited the house she came out the back
21 door?

22 A Yes, ma'am.

23 Q You were able to see her?

24 A Yes, ma'am.

25 Q And she came out alone, correct?

1 A Yes, ma'am.

2 Q And after she exited the house later did the defendant,
3 Michael Brent Gay, come out of the home?

4 A Yes, ma'am.

5 Q And he came out alone, correct?

6 A Yes, ma'am.

7 Q But he didn't come out at the same time as Ms. Wallace,
8 correct?

9 A No, ma'am.

10 Q And, in fact, Ms. Wallace, the grandmother, and the
11 defendant, Michael Brent Gay, they were in the home for
12 sometime after law enforcement got there, correct?

13 A Yes, ma'am.

14 Q They didn't come out immediately upon arrival of law
15 enforcement, correct?

16 A No, ma'am.

17 Q And when Mr. Gay came out of the home did law
18 enforcement officers give him specific instructions as to
19 how to exit the home not only for law enforcement's safety
20 but also for his own safety?

21 A Yes, ma'am.

22 Q And did he follow those instructions?

23 A Yes, ma'am.

24 Q Did the defendant appear confused or disoriented in any
25 way?

- 1 A No, ma'am.
- 2 Q What were those instructions to the best of your
3 memory?
- 4 A Best of my memory keep your hands up, walk, walk, walk,
5 lay down on the ground, and that's when officers moved in to
6 secure him.
- 7 Q And the defendant did so, correct?
- 8 A Yes.
- 9 Q Kept his hands up?
- 10 A Yeah.
- 11 Q Walked, right? And was told to lay down on the ground?
- 12 A Yes.
- 13 Q And he did so?
- 14 A Yes.
- 15 Q Face down?
- 16 A Yes.
- 17 Q And he didn't stumble or fall, correct?
- 18 A No, ma'am.
- 19 Q And at anytime did you observe any injuries to the
20 hands of the defendant?
- 21 A No, ma'am.
- 22 Q Did you observe any injuries to the body of the
23 defendant?
- 24 A No, ma'am.
- 25 Q When the defendant first exited the home, did he have

1 something in his hands?

2 A He had what appeared to be a black cylinder can in his
3 hand.

4 Q And what, if any, instructions did he receive from law
5 enforcement as to what to do with that can?

6 A Keep your hands up and as he went down place the can on
7 the ground.

8 Q And he did place the can down?

9 A Yes.

10 Q And he didn't drop it?

11 A No.

12 Q And after he did so, did officers move forward and cuff
13 him?

14 A Yes.

15 Q Did you cuff him?

16 A No.

17 Q Do you recall who cuffed him?

18 A I do not recall.

19 Q What did you do next, Agent?

20 A I was ordered by Sergeant Aldridge, as the house was
21 cleared I was into the kitchen door and observed a revolver
22 and bullets on the counter and my job was to secure the area
23 and not allow anybody in there.

24 Q So you went to the kitchen area?

25 A Yes.

1 Q Did you ever go into the room where the body of the
2 victim was?

3 A Yes, after I was relieved from the kitchen area.

4 Q But initially you stood by the kitchen area; is that
5 correct?

6 A Correct.

7 Q I'm going to show you what was marked yesterday as
8 State's Exhibit 11, and ask you first to look at that. Do
9 you recognize that?

10 A Yes, ma'am.

11 Q What is that?

12 A That's the handgun that was on the counter.

13 Q Is that picture a fair and accurate portrayal or
14 depiction of the handgun as you observed it the evening of
15 12/5/15 in the home at the [REDACTED]

16 A Yes.

17 MS. COLLINS: I move that exhibit into evidence.

18 MR. PHILLIPS: No objection.

19 THE COURT: Without objection introduced.

20 Q Thank you. At this time I show you the next three
21 pictures, State's Exhibits 21 through 23, the sticker is on
22 the back, please refer to the stickers as you look at the
23 pictures. If you will please look at State's Exhibit 21.
24 Again, do you recognize that?

25 A Yes, ma'am.

1 Q What is that?

2 A That's the handgun and the bullets that was on the
3 counter.

4 Q And is that a fair and accurate depiction of the
5 handgun with the bullets on the counter as you observed it?

6 A Yes.

7 Q Is there also a shell casing in that picture?

8 A Yes.

9 Q Because a revolver doesn't spit out or reject a shell
10 casing when it fires, correct?

11 A Correct.

12 Q The shell casing stays in the revolver?

13 A Yes.

14 Q But all of them are out, correct?

15 A Yes.

16 Q For safety did you observe whether or not the gun
17 itself was empty or you just didn't touch it?

18 A I didn't touch it.

19 Q Very good. Now, that's State's Exhibit 21.

20 MS. COLLINS: I move State's Exhibit 21 into evidence
21 at this time.

22 THE COURT: Without objection introduced.

23 MR. PHILLIPS: No objection.

24 Q Agent Heyward, please look at State's Exhibits 22 and
25 23. Do you recognize those pictures?

1 A Yes.

2 Q What are those?

3 A Those were the drawer that was open in the kitchen
4 area.

5 Q And so when you went in the kitchen area there was a
6 kitchen drawer open?

7 A Yes.

8 Q Just one?

9 A From my memory I believe it was just one.

10 Q All right. Is that a fair and accurate depiction of
11 the drawer and its contents as you observed them on the
12 evening of 12/5 of 2015?

13 A Yes.

14 MS. COLLINS: I move those two exhibits into evidence,
15 I believe they're 22 and 23.

16 MR. PHILLIPS: No objection.

17 THE COURT: Without objection introduced.

18 Q Agent Heyward, if you could just for the jury step down
19 with those three -- well, four pictures, the one of the gun
20 by itself and the gun with the bullets and shell casing and
21 the two of the drawer. All right. First, if you could hold
22 up and show it this half of the jury the two pictures of the
23 gun and the shell casings so that they can see. Very good.
24 If you could just move down here for the benefit of these
25 remaining jurors. Very good. And now if you'll trade with

1 me and show this side of the jury the two pictures of the
2 drawer that are now in evidence, and then move down to that
3 portion of the jury panel. Agent, thank you, you may be
4 seated. Agent, let's talk about the room with the body of
5 Flint McManus. I believe you testified earlier that you did
6 enter that room, correct?

7 A Correct.

8 Q Did you observe the body of the victim, Flint McManus?

9 A Yes.

10 Q Now, without holding this picture up because it is not
11 in evidence I'm going to show you what's been marked as
12 State's Exhibit 15. Do you recognize that?

13 A Yes.

14 Q What is that?

15 A That's the body of the victim as it was in the room.

16 Q Is that picture, does it accurately depict the body as
17 you recall it to be from your memory?

18 A Yes.

19 Q Again, without holding that picture up, if you need to
20 reference it to refresh your memory but please testify from
21 your memory, could you tell us the position of the body as
22 you observed it that night?

23 A The position of the body as I walked into the room was
24 laid back, I noticed that there was a knife in one of the
25 hands and blood was coming from that area.

1 Q You said blood was coming from that area?

2 A Basically like the -- as in the picture again from the

3 ear to the chin going down.

4 Q All right. And was there blood on the T-shirt or

5 shirt?

6 A Yes.

7 Q Do you recall -- now, you said the body was lying back

8 I believe?

9 A Yes.

10 Q I don't want to mischaracterize, is that what you said?

11 A Leaning back.

12 Q On a bed or a chair?

13 A A chair.

14 Q Okay. And with the shoulders back?

15 A Yes.

16 Q Was the bottom or the hips up or was it where the body

17 was like perpendicular 90 degrees?

18 A It was --

19 Q If you remember.

20 A -- I wouldn't say 90 degrees but it was just sitting as

21 I'm sitting in the chair --

22 Q Tilted back.

23 A -- tilted back, yes.

24 Q When you entered the bedroom and saw the body, were

25 there other officers in there?

1 A I believe so, yes.

2 Q And while you were there in the room with the body, was
3 there any change to the position of the body whatsoever?

4 A No.

5 Q Agent Heyward, do you remember of your own memory
6 looking back, was the head of the body, the head of the
7 victim, was it down toward his chest at the time you entered
8 the room or was it tilted back looking at the ceiling if you
9 remember?

10 A It was tilted back towards the ceiling.

11 Q Thank you. One moment. Other than that as you have
12 described, said you stood by in the kitchen, at one point
13 you did go into the room where the body was, do you have any
14 other work or duties or assignments in this particular case?

15 A No.

16 MS. COLLINS: Thank you for coming today, please answer
17 any questions that the defense counsel may have.

18 THE COURT: Any questions?

19 MR. PHILLIPS: Thank you for coming.

20 THE COURT: Thank you, sir, you can step down, you're
21 free to leave. All right, ladies and gentlemen of the jury,
22 let's go ahead and take a midmorning recess. Don't talk
23 about the case, we'll get you back out here just as soon as
24 possible. Thank you.

25 (The jury left the courtroom.)

1 THE COURT: All right. Anything before we break?

2 MS. COLLINS: No.

3 (A break was taken.)

4 THE COURT: All right. Solicitor and defense counsel,
5 we're going to have a proffer of potential testimony
6 concerning a potential witness.

7 MS. COLLINS: State calls James White.

8 The witness, JAMES WHITE, was first duly sworn and
9 Testified as follows:

10 DIRECT EXAMINATION

11 BY MR. NEWMAN:

12 Q Good morning. State your name for the record.

13 A Hanshi James N. White.

14 Q Okay. And what is your occupation, Mr. White?

15 A Professional martial arts instruction.

16 THE COURT: Back up from the microphone a little bit.

17 Q Professional martial arts instructor.

18 THE COURT: That's good.

19 Q And how long have you been a professional martial arts
20 instructor?

21 A Fifty-seven years.

22 Q What type of martial arts do you teach?

23 A The basic type is called Okinawa Kenpo, the parental
24 art Okinawa Te, the family martial art is called (inaudible)
25 and crosses the boundaries of some Korean, Japanese and

- 1 Chinese martial arts.
- 2 Q You teach karate?
- 3 A Karate-do, not karate.
- 4 Q Karate-do. All right. And are these martial arts?
- 5 What is the purpose or the philosophy of those?
- 6 A Well, karate-do is for defense only, that is the main,
- 7 main thing that is enforced in the minds of all of the
- 8 practitioners, however sport karate is changing a bit. But
- 9 the core philosophy of karate is for defense only.
- 10 Q So you would take karate for self-defense?
- 11 A Yes, but it goes a little deeper.
- 12 Q Sir?
- 13 A It goes a little deeper than that.
- 14 Q I understand. Do you know this defendant, Brent Gay?
- 15 A Yeah, I know him. I know him well.
- 16 Q You say you know him well?
- 17 A I know him well.
- 18 Q Did you teach Brent Gay?
- 19 A I was his former instructor.
- 20 Q Okay. Do you recall how long ago you met Mr. Gay?
- 21 A That's a hard one, maybe 15 years ago, 15 or 17 years
- 22 ago, somewhere in that line. It was awhile.
- 23 Q How long did you teach Mr. Gay?
- 24 A Three or four years.
- 25 Q Had he already taken some karate when he came to you?

1 A Yes. He had been introduced to karate by one of my
2 former students, well, he's a good friend of mine --

3 THE COURT: Speak up a little bit, sir.

4 A -- Mr. Ricky Taylor, USA Karate, he trained with him
5 for awhile.

6 Q Okay. Now, can you explain the different skill levels
7 of karate?

8 A Yes, very easily. To what area do you want to go in?

9 Q As far as belts, I want to talk about the belts. When
10 I start out where I am at?

11 A You start off as a white belt, and you use that belt to
12 tie your uniform so you look neat. And then you go to
13 yellow or orange, which is the beginners level, some schools
14 use yellow, some schools use orange as the second level, but
15 it's still the beginner or novice is somewhere would speak
16 of, anywhere from two to three months of training that's
17 where you are. Then you go to intermediate, six months to
18 up to two years of training and that's a blue/purple/green
19 belt. Then you go to advanced, and advanced usually takes
20 two and a half years of training before you even think about
21 getting the black belt, and you will stay in that advanced
22 area from red/brown/high brown, that particular journey will
23 take you about two years. So a person can go from a black
24 belt in our system in an average the same amount of time it
25 will take you to get your bachelor's degree.

1 Q Okay. What belt was Mr. Gay when he came to you?

2 A Black belt.

3 Q When he came to you.

4 A That I don't remember, but --

5 Q He wasn't a black belt when he came to you.

6 A No.

7 Q But when he left you he was a black belt?

8 A He was a black belt.

9 Q Okay. When you receive your black belt, is there any

10 kind of ceremony that happens?

11 A The first thing you do in receiving a black belt,

12 you've got to do a little research and do a little

13 academics. You go through the academics. You make the

14 student go in and study and take a look at what he's doing,

15 and you have to write some thesis about karate-do, what it

16 does for them, what it means to them, and they look into the

17 history of karate, so try to get them some enlightenment on

18 what they're getting into. Because let me tell you,

19 becoming a black belt is like getting potty trained, you're

20 really just at the door, the real stuff is on the other

21 side.

22 Q Okay. But when I -- when you receive a black belt, is

23 there any kind of pomp and circumstance, any kind of

24 ceremony or you just hand it over to them? Is it a big deal

25 to get a black belt?

1 A It's a big deal. Oh, it's a big deal.

2 Q Did you present Mr. Gay with a black belt?

3 A I believe so, I believe so. But now, that's to the
4 best of my knowledge. I have given so many belts to over --
5 over 160 something black belts in my time, so I believe I
6 did.

7 Q Okay. Just one moment. You say 160 black belts
8 approximately? How many students have you had overall?

9 A Overall from the time I opened karate dojo until now I
10 trained over 10,000 students.

11 Q Only 160 had a black belt?

12 A 168, yes.

13 Q 168. Okay. Now, speaking of Mr. Gay in particular,
14 did y'all compete in competitions with Mr. Gay?

15 A Sport karate events, yes. He was very prolific in that
16 sport karate, he was good.

17 Q Did y'all travel around for these competitions?

18 A Yeah. We go all over North/South Carolina, you know.
19 I don't think he extended himself too far beyond that, if he
20 did it wasn't with me.

21 Q The black belt that you gave him, did it have his name
22 on it?

23 A Brent Gay, yes.

24 Q You went to competitions with Mr. Gay, was he good?
25 Did he win those competitions?

1 A He won a lot. I thought he was a very, very good sport
2 karate player.

3 Q Okay. Can you kind of give us an overview of what
4 sparring is?

5 A Sparring is a training procedure that is used to help a
6 person develop their skills without actually penetrating the
7 individual's body or to create a lot of injury, you're just
8 sparring. It's a training exercise. When you say sparring
9 we're talking about training. Now, if we say fighting,
10 that's a whole different thing. It's just like -- that's
11 sparring, that's fighting, so it's that close together but
12 it's -- both practitioners have got to understand we're
13 sparring. If one say we're fighting and the other thinks
14 we're sparring it's going to be a mess.

15 Q Okay. When students spar, do they hit each other?

16 A Contact is normally made in my school. Some schools
17 don't use contact at all, but in my school we do allow
18 contact because we always use the head gear with the face
19 cover for insurance issues.

20 Q What type of -- you said head gear. What other type of
21 protective gear do you have?

22 A We have the foam equipment, hand gear, we have foot
23 gear, it's just like a shoe that you step into and wrap your
24 thing around it and it stays on. You have body gear, test
25 gear, also have shin pads and step pads that protect the

1 individual. That's pretty much as far as we go for the
2 safety.

3 Q Did Brent Gay wear all of that protection when he --

4 A He wore head gear, hand gear and foot gear.

5 Q In sparring and competition or just in sparring?

6 A He did more performance in competition than he did in
7 fighting competition.

8 Q Okay. Now, in the sparring did he get hit a lot?

9 A No. I don't really believe that he got hit a lot
10 because he was pretty good at everything he did. I think he
11 did pretty much most of the hitting.

12 Q He did most of the hitting?

13 A I think he did most of the hitting. We tried not to
14 match him up to someone that was way above his skill level.

15 Q How about when your students are fighting or sparring,
16 do they take a lot of blows to the head?

17 A No, we don't allow that. We just don't allow that.

18 Q Do you recall Mr. Gay ever having a concussion from
19 karate?

20 A No, I don't.

21 Q Any head injury from karate?

22 A I don't recall that at all.

23 Q Have you ever had a student ever have a concussion from
24 karate?

25 A No. Not that I can remember, no. All in all karate is

1 safer than playing basketball.

2 MR. NEWMAN: I'll have these photos marked for ID as
3 State's 24 and 25.

4 Q I'm going to show you these photos, State's 24 and 25
5 and tell me if you recognize what's in that photo.

6 A I recognize all of this stuff but it's not mine.

7 Q Okay. In particular the black belt?

8 A It says UKS, Brent Gay.

9 Q Did that come from you?

10 A That came from me. The swords, I did not issue that to
11 him, I did not purchase those from him, he purchased them
12 for himself.

13 Q You don't teach sword fighting.

14 A I do, but I only teach it to certain people.

15 Q Did you teach Brent Gay sword fighting?

16 A No.

17 Q Okay. I know you had over 10,000 students, but do you
18 recall when you last instructed Mr. Gay?

19 A As I said earlier I really don't, it's been quite a few
20 years. I mean, Mr. Gay, when he left he ended class, he
21 disappeared and the next time I saw him I think he was
22 muscle bound, tattooed up, but very, very good attitude. He
23 didn't have a bad attitude. I was glad to see him. I know
24 his grandparents are good people and he always treated me
25 well, and I never had any conflict with Brent Gay.

1 Q All right.

2 MR. NEWMAN: That's all of the questions I have, please
3 answer anything that Mr. Phillips has, or Mr. Delgado.

4 MR. PHILLIPS: Just argument, Your Honor.

5 THE COURT: Sir, you can step down, thank you. Head on
6 back to your --

7 MR. NEWMAN: Your Honor, I'm sorry, we didn't explain
8 to Mr. White that this was a --

9 THE COURT: Yeah. Sir, this is just a pretrial
10 hearing, they may be calling you again when a jury is in
11 here, okay? So you can just go on back to where you were
12 and we'll let you know. Yes, sir?

13 MR. PHILLIPS: Specifically as far as the rules of
14 evidence we believe that this should be excluded -- this
15 testimony should be excluded based on rules 401 and 403 for
16 the South Carolina Rules of Evidence, under 401 we believe
17 it's not relevant. At this time it's the State's case, we
18 haven't presented our case yet, so as far as self-defense I
19 think this would be appropriate in like reply or rebuttal on
20 the State's case as far as the affirmative part of
21 self-defense. At this point I don't even believe it passes
22 that low threshold of relevance. Now, with that you go into
23 the 403 component. Not only is he in a karate uniform and
24 he's going into a discussion about how the defendant is a
25 good martial artist and was very successful in competitions,

1 not only is it not relevant but it's highly prejudicial.
2 One of the kind of key things you look at in the case law
3 for this is whether it would cause the jury to make a
4 decision based on improper basis, not based on the evidence.
5 In this case it is whether there was a knife based on what
6 the State has presented and whether a gunshot. There was no
7 hand fighting, no talk about using karate, it's just not
8 part of it, and so going into the fact he's kind of where
9 they're leading that leads a reasonable belief like a
10 "lethal weapon" that he is this trained skilled fighter,
11 it's just going in a whole nother direction that I think is
12 not relevant and highly prejudicial and would cause the jury
13 to make an improper basis. We already had the mistrial
14 issue that came up where it was if somebody messed with him
15 again he would take care of them, so we already had that
16 seeped into the jury, and I know Your Honor told them not --
17 to disregard it. It's one of those things in my opinion you
18 can't un-ring the bell, you can't take that away, so now
19 we're going to couple that, we're going to enhance the
20 prejudice by putting in all of this, to me it's just not
21 part of the case. And I can certainly go beyond that if
22 we're taking it to the next level of that in the 5th and
23 14th Amendments of the United States Constitution.

24 THE COURT: Got you.

25 MR. PHILLIPS: And it's just fundamentally unfair.

1 THE COURT: All right. What's the State's position?

2 MS. COLLINS: Your Honor, from the very beginning Mr.
3 Phillips had the defendant approach him and stand beside him
4 to the jury, and I submit that there were two reasons, one,
5 to introduce his client to the jury, he'd already been
6 introduced at jury selection, but also like myself, which I
7 am a little bit larger person as Mr. Phillips is, next to
8 Mr. Phillips Mr. Gay looks diminutive. And I would submit
9 to you there has already been interjected some testimony as
10 to whether or not self-defense was at issue, I believe it
11 may have been mentioned in the opening by Mr. Phillips.
12 But irregardless I think there has been some testimony
13 regarding that, that there wasn't a fight or a confrontation
14 at that time. It's the State's position that the use of a
15 gun is certainly not necessary whatsoever, and again,
16 right -- there was testimony earlier that the defendant was
17 throwing like knives, throwing chinese stars or ninja stars,
18 I don't know what they're called, and a reference to what's
19 there on the stand. So again, we believe that it's very
20 relevant that the defendant did not need a gun to confront
21 the victim about any theft or to defend himself from any
22 alleged threat, that there's a knife in the victim's hand
23 when found. I do not believe that it causes any confusion.
24 Some of the testimony by Mr. White is extremely favorable to
25 the defendant in terms of saying that he never had any

1 conflict with him, he was a very good student, although he
2 did spar a lot of times, the competitions he did was
3 regarding other types of presentations, and that everyone
4 that saw him enjoyed watching that, so we believe it is
5 highly relevant. I do believe at a minimum it would be
6 relevant in rebuttal or reply, but we would submit -- and we
7 could have Mr. White go home and change if there's an issue
8 about him wearing his uniform, that's no problem whatsoever,
9 we'll instruct him to go home and change and then come in at
10 a later time. But the black belt that's hanging right there
11 in the crime scene photos was provided to him by the
12 witness. So we believe it's not unduly prejudicial, it
13 doesn't cause any confusion to the jury, it is at issue, it
14 is relevant. And quite frankly we got the name of Mr. White
15 from the defense when they earlier filed an affidavit
16 seeking to have a medical exam of the defendant leading up
17 to the trial, they mentioned Mr. White in there, that
18 coupled with seeing the black belt in the pictures is what
19 caused us to call Mr. White as a witness. Thank you.

20 THE COURT: All right. I don't think it's relevant at
21 this time, I'm not going to allow the State to call him. If
22 the State wishes to call him in rebuttal you can do that.
23 All right, are we ready to proceed? I don't have any issue
24 with him wearing the suit, that's his work attire, I don't
25 have -- I don't have a problem with that, I find that's not

1 prejudicial if he testifies.

2 (Break in proceedings.)

3 THE COURT: All right. Let's bring the jury in.

4 (The jury returned to the courtroom.)

5 THE COURT: All right. Call your next witness.

6 MS. COLLINS: Thank you, Your Honor. Your Honor, first
7 a little bit out of order but a brief witness, we would call
8 Wayne Boone with the coroner transport team. Mr. Boone?

9 The witness, WAYNE BOONE, was first duly sworn and
10 Testified as follows:

11 DIRECT EXAMINATION

12 BY MS. COLLINS:

13 Q Good morning.

14 A Good morning.

15 Q What is your name, please?

16 A Irvin Wayne Boone.

17 Q What is your occupation?

18 A I'm a full-time firefighter for the city but I also
19 work part-time with the Lancaster County Coroner's Office.

20 Q How long have you worked part-time with the Lancaster
21 County Coroner's Office?

22 A Roughly about six or seven years, maybe longer.

23 Q Maybe longer? I'm a little older, I'm a little hard of
24 hearing, if you could just speak up and speak into the
25 microphone. Mr. Boone, so therefore you were still working

1 part-time at the coroner's office as you are today but back
2 in December of 2015?

3 A Yes, ma'am.

4 Q And what is your role with the coroner's office?

5 A My role is to transport the deceased from either a
6 scene or the hospital to our location on South Main Street,
7 which is the Lancaster County Coroner's Office.

8 Q And is that sometimes referred to as the morgue?

9 A Yes, ma'am.

10 Q And do you also sometimes transport the body or the
11 remains of the victim from the morgue to where the autopsy
12 is performed?

13 A Yes, ma'am. Right now we have two locations, one which
14 is located in Newberry, South Carolina, and our other one is
15 MUSC in Charleston, South Carolina.

16 Q All right. And so you sometimes transport there as
17 well?

18 A Yes, ma'am.

19 Q And when you transport there then do you wait while the
20 autopsy is being performed?

21 A Yes, ma'am.

22 Q And then transport the body back to the morgue?

23 A Yes, ma'am. Or sometimes we're instructed if the
24 family has selected a funeral home we will -- out of
25 courtesy we will come through from the autopsy and actually

1 drop the deceased off at the funeral home.

2 Q Okay. So ultimately after the autopsy the remains, or
3 the body of the victim, are released from the authority of
4 the coroner's office to the victim's family so he can have a
5 Christian burial?

6 A Yes, ma'am.

7 Q So were you involved in December of 2015 with the case
8 before the Court in which Joshua Flint McManus was found
9 deceased at [REDACTED] in Lancaster, South Carolina?

10 A Yes, ma'am.

11 Q Did you respond to that crime scene?

12 A I did.

13 Q And was that at the direction of the deputy coroner,
14 Tony Broome?

15 A Yes, ma'am.

16 Q Was he the deputy coroner on call?

17 A Yes, ma'am.

18 Q And when you responded you had another transporter with
19 you?

20 A Yes, ma'am.

21 Q And who was that?

22 A He's Jason Freeman. What we do is when we go to a
23 scene or a home we actually carry two people with us just as
24 a safety precaution and out of respect of the family.

25 Q Thank you. Now, Mr. Freeman is no longer with the

1 coroner's office?

2 A No, ma'am.

3 Q So Mr. Boone, that night when you arrived with

4 Mr. Freeman, did you enter the home at [REDACTED]

5 A Yes, ma'am.

6 Q And did you go into the bedroom where the body of the
7 victim was?

8 A Yes, ma'am.

9 Q And did you see the body of the victim as it was still
10 at the crime scene?

11 A Yes, ma'am.

12 Q And do you recall the position of the body?

13 A He was in like a slumped position. I can't recall
14 whether he was like slumped over forward a little with his
15 head forward or back, because by the time we were directed
16 to come to the scene crime scene investigators had already
17 started processing the scene and the deputy coroner was on
18 scene, so I'm not entirely sure as to what went on between
19 the time I was contacted until the time I got there.

20 Q Certainly. And thank you for just testifying from your
21 memory. Mr. Boone, when you did get there with Mr. Freeman,
22 the other transporter, you said he was slumped. Do you
23 recall was he on the floor, in a bed or somewhere else?

24 A He was sitting in a chair almost similar to the one
25 that I'm sitting in now.

1 Q Similar to the one you're sitting in now?

2 A Yes, ma'am. It's like an office style chair.

3 Q Like an office style chair?

4 A Yes, ma'am.

5 Q Now -- and so at the direction of the deputy coroner,

6 did you then move the body from the chair to somewhere else?

7 A Yes, ma'am. We're instructed not to enter a residence

8 or a scene or make physical contact with the deceased until

9 instructed by the deputy coroner.

10 Q And did you move the body from the chair to perhaps, I

11 don't know what you call them, a paddock or a stretcher?

12 A Yes, ma'am.

13 Q And you did that in this case?

14 A Yes, ma'am.

15 Q And do you recall, at that time had rigor set in?

16 A No, ma'am.

17 Q So the body was not yet at that time stiff; is that

18 correct?

19 A No, ma'am.

20 Q And when you put the body on the stretcher, were you

21 careful not to disrupt any of the blood or vomit or other

22 patterns on the body as you moved it?

23 A Yes, ma'am. We're instructed -- we wear protective

24 gloves and all to preserve any possible evidence that might

25 still be on the deceased, and we're also instructed to

1 carefully remove the deceased and place them on the
2 stretcher.

3 Q And you did so.

4 A Yes, ma'am.

5 Q And did you have a -- and I don't know what to call it
6 so forgive me if I use a colloquial term, a bag or
7 preservation?

8 A Yes, ma'am, we have body bags.

9 Q And you placed -- was that already on like the
10 stretcher?

11 A Yes, ma'am. A lot of us that work together, we -- if
12 they're sitting in a position or close to a bed or something
13 we'll actually open the bag up onto the stretcher and
14 actually transfer from their position to the stretcher.

15 Q And you placed the body of Mr. McManus in the body bag
16 and closed it?

17 A Yes, ma'am.

18 Q And do you secure it?

19 A Yes, ma'am.

20 Q With a zipper or --

21 A Yes. Our body bags all have a two-way zipper that we
22 try to meet in the middle with it.

23 Q And then is the body transported to the morgue?

24 A Yes, ma'am.

25 Q And then y'all did so that night?

- 1 A Yes, ma'am.
- 2 Q Went straight to the morgue?
- 3 A Yes, ma'am.
- 4 Q And the morgue is the secure facility?
- 5 A Yes, ma'am. All of the transport members have a key
6 card that the only people that have them are transport and
7 deputy coroners, and at that time we transported him there.
8 And always as a precaution to myself and the people that's
9 with me I wait until the gate is closed, back up and then me
10 being me I look around to make sure there's no car sitting
11 at the gate or anything, and as soon as the gate closes then
12 we moved forward to removing the deceased from our transport
13 vehicle into the facility.
- 14 Q And sometimes do the deputies or investigators come to
15 the morgue to take further pictures?
- 16 A Yes, ma'am.
- 17 Q But ultimately the body is kept there overnight to be
18 transported to the autopsy the next morning?
- 19 A Yes, ma'am.
- 20 Q Since this happened just before midnight on 12/5 and
21 the body would have been transported by yourself early
22 morning, 12/6 to the morgue; is that right?
- 23 A Yes, ma'am.
- 24 Q And so the autopsy in this case was scheduled for
25 Newberry Pathology; is that correct?

1 A Yes.

2 Q At the direction of the deputy coroner, correct?

3 A Yes, ma'am.

4 Q That would have been the next morning, December 7th; is
5 that right?

6 A From my recollection, I believe so.

7 Q Thank you. And to the best of your memory were you
8 also part of the transport team that then took the body of
9 Mr. McManus to the location in Newberry where the autopsy
10 was to be performed?

11 A Yes, ma'am.

12 Q And when you took the body, again nothing had happened
13 in between -- in terms of the body was still in a zipped
14 body bag, correct?

15 A Yes, ma'am.

16 Q Do y'all actually secure the zipper some way?

17 A Yes, ma'am.

18 Q And you put a tag or a name tag on it?

19 A Yes.

20 MS. COLLINS: Thank you. One moment, please.

21 (Break in proceedings.)

22 MS. COLLINS: Thank you, Mr. Boone, please answer any
23 questions.

24 RECROSS EXAMINATION

25

1 BY MR. DELGADO:

2 Q Mr. Boone good afternoon -- it's still morning. I'm
3 John Delgado, I'm from Columbia. I just want to see if I
4 can get these names straight. You are Mr. Boone and you
5 work with or under Mr. Broome.

6 A Yes.

7 Q Is that correct?

8 A Yes, sir.

9 Q All right. So Mr. Broome is your deputy coroner.

10 A Yes, sir.

11 Q Do you know if he ever filed a report in this matter?

12 A From my recollection I'm not entirely sure. I believe
13 but I'm not entirely sure.

14 Q What I'm saying is, is that a routine type of thing
15 that the coroner's office will do as a result of the work
16 you do in the coroner's office I reckon?

17 A Yes. They actually have an incident report that they
18 actually fill out and they list everybody associated with it
19 and what happened.

20 Q Do you know -- you don't know whether Mr. Broome did
21 that in this case.

22 A No, sir.

23 MR. DELGADO: All right. Thank you, sir.

24 THE COURT: All right.

25 MS. COLLINS: No further questions.

1 THE COURT: Thank you, sir, you can step, you're free
2 to leave. State can call its next witness.

3 MS. COLLINS: And the next witness is Deputy Coroner
4 Tony Broome, please.

5 The witness, MICHAEL "TONY" BROOME, was first duly
6 Sworn and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. COLLINS:

9 Q Good morning.

10 A Good morning.

11 Q Would you please tell us your name?

12 A Michael Broome.

13 Q What is your occupation?

14 A Deputy Coroner with the Lancaster County Coroner's
15 Office.

16 Q Do you go also go by Tony?

17 A Uh-huh.

18 Q Is that your middle name?

19 A My middle name is Anthony. Most of the time if you
20 call me Michael I won't answer because everybody calls me
21 Tony.

22 Q Okay. Well, Deputy Broome, you are the deputy coroner
23 for Lancaster County, correct?

24 A Yes, I am.

25 Q And you have been so for several years, correct?

- 1 A Yes, ma'am.
- 2 Q How many years?
- 3 A Over seven for full-time. I've been doing it with the
- 4 coroner's office for 15 years, I did it part-time or
- 5 volunteer for awhile.
- 6 Q So 15 total.
- 7 A Yes, ma'am.
- 8 Q And you were work under Carla Knight, who is the
- 9 current coroner?
- 10 A I do now, yes, ma'am.
- 11 Q And previously Mike Morris?
- 12 A Yes, ma'am.
- 13 Q Was the prior coroner?
- 14 A Yes, ma'am.
- 15 Q In December of 2015 were you the deputy coroner as you
- 16 are now?
- 17 A Yes, ma'am.
- 18 Q You are one of several?
- 19 A Yes, ma'am.
- 20 Q And as a deputy coroner are you on call so that y'all
- 21 take turns in terms of responding to death scenes?
- 22 A Yeah. We work 24 hours on and we are off 48 hours, so
- 23 I have to work about every third day.
- 24 Q And as deputy coroner, were you the deputy coroner on
- 25 call the evening hours of 12/5 of 2015?

1 A Yes, ma'am.

2 Q And as such did you respond to a crime scene on the
3 early morning hours of 12/6 of 2015?

4 A Yes, ma'am.

5 Q Did you prepare a report ultimately regarding your
6 actions as deputy coroner?

7 A Yes, ma'am.

8 Q Thank you.

9 MS. COLLINS: I would like to have this marked as
10 State's Exhibit 26, and it's marked for identification at
11 this time.

12 Q Deputy Broome, do you recognize that?

13 A Yes, ma'am.

14 Q And what is that?

15 A That's our report for our coroner's report.

16 Q Is that a copy of your coroner's death report that you
17 prepared?

18 A Yes, ma'am.

19 Q Now, that copy isn't actually signed; is that right?

20 A Right.

21 Q But you sign it when you do it, correct?

22 A Yes, ma'am.

23 Q And look over it carefully, please, and tell me, is
24 that a true, fair and accurate and complete copy of the
25 report as you prepared it after working on this crime scene?

- 1 A Yes, ma'am.
- 2 Q Thank you. You may refer to the report to refresh your
3 memory if needed but please testify from your memory if you
4 will.
- 5 A Okay.
- 6 Q When you responded to the scene at [REDACTED]
7 do you know approximately what time you arrived there?
- 8 A Somewhere around -- I think it was a little before
9 1:00.
- 10 Q I'm sorry, I couldn't quite hear you.
- 11 A A little before 1:00 a.m.
- 12 Q A little before 1:00 a.m. That would be on 12/6 of
13 2015?
- 14 A Yes, ma'am.
- 15 Q All right. And when you arrived, did you ultimately
16 view the body of the victim, Joshua Flint McManus?
- 17 A Yes, ma'am.
- 18 Q And as you noted in your report he -- it was a white
19 male; is that correct?
- 20 A Yes, ma'am.
- 21 Q His date of birth was in September of 1975?
- 22 A Yes, ma'am.
- 23 Q And his age at the time of his death was 40?
- 24 A Yes, ma'am.
- 25 Q You note his height at 6-2; is that correct?

1 A It's estimated.

2 Q Okay. And his weight is estimated at 180?

3 A Yes, ma'am.

4 Q Would you describe his build as slender?

5 A Yes, ma'am.

6 Q Black eyes -- you've got black eyes and black hair?

7 A Black hair, yes, ma'am.

8 Q Okay. Thank you. Now, noting further the police were

9 already on scene when you arrived, correct?

10 A Yes, ma'am.

11 Q And, in fact, the crime scene investigation unit was on

12 scene when you arrived; is that right?

13 A Yes, ma'am.

14 Q When you entered the home, did you enter with a member

15 of the crime scene unit?

16 A Yes, ma'am.

17 Q And was that member Ken Taylor?

18 A Yes, ma'am.

19 Q And did you walk through the house with Ken Taylor?

20 A I walked behind him. As he was photographing I walked

21 in behind him.

22 Q So you said as he was photographing? Did you take

23 photographs yourself of the home?

24 A Yes, ma'am.

25 Q But in any event so you're following behind

1 Investigator Taylor, correct?

2 A Yes, ma'am.

3 Q And did you ultimately go into the room where the body
4 was?

5 A Yes, ma'am.

6 Q Do you make note of the position of a body at the time
7 as you saw it?

8 A Yes, ma'am.

9 Q And again, without reading from the report, you may
10 refer to it if necessary to refresh your memory, but can you
11 tell the jury the position of the body as you observed it
12 the early morning hours of 12/6 of 2015.

13 A Yes, ma'am. When I arrived in the bedroom the deceased
14 was sitting in an office type chair with his feet stretched
15 out in front of him crossed, his right hand was in his lap,
16 his left hand was hanging over the chair, and he was laid
17 back with his head tilted back.

18 Q And was he -- was there blood or vomit around him?

19 A Yes, ma'am, down the front of his shirt, from the chair
20 down to the floor.

21 Q On down to the floor?

22 A Yes, ma'am.

23 Q Was there vomit on the chair?

24 A Yes, ma'am.

25 Q And where was that located?

- 1 A On his left side.
- 2 Q Okay. On the chair?
- 3 A On the chair right beside his legs.
- 4 Q Was there some blood or sometimes I've heard it called
- 5 vomituous or vomit residue on his T-shirt as well you
- 6 mentioned?
- 7 A Yes, ma'am.
- 8 Q And on an area of his pants?
- 9 A Yes, ma'am.
- 10 Q Now, you were there when ultimately the body was
- 11 removed from the chair and placed on the stretcher, correct?
- 12 A Yes. Once I arrive on scene I don't leave until the
- 13 body leaves.
- 14 Q Okay. And there was a pad in the chair, is that
- 15 correct, do you remember?
- 16 A Yes, ma'am.
- 17 Q And sometimes people use them in kitchens or wherever,
- 18 but it was a chair pad that tied on to the back of the
- 19 chair; is that right?
- 20 A Yes, ma'am.
- 21 Q And was the pad still tied on to the chair?
- 22 A Yes, ma'am.
- 23 Q And sometimes when we die our bodies void fluids; is
- 24 that correct?
- 25 A Yes, ma'am.

- 1 Q Was there some dampness and all in the pad from that?
- 2 A Yes, ma'am.
- 3 Q Going back to the position of the body and the
- 4 condition of the body as you viewed it, was there a readily
- 5 apparent wound at that time?
- 6 A Yes, ma'am.
- 7 Q Do you recall where?
- 8 A On the right side on his neck.
- 9 Q And what did it appear to you to be?
- 10 A A gunshot wound.
- 11 Q Did you observe stippling around the area?
- 12 A Yes, ma'am.
- 13 Q What is stippling?
- 14 A It's where the muzzle fire of a pistol, which it was a
- 15 fairly close range.
- 16 Q All right. And is it like gunpowder residue or is it
- 17 actually cuts or abrasions to the skin?
- 18 A It's where the actual flame of it comes out and it does
- 19 put little lacerations on the skin.
- 20 Q Do you recall the temperature of the body as you
- 21 observed it to be?
- 22 A It was cool.
- 23 Q Was it cool in the household?
- 24 A Yes, ma'am.
- 25 Q Do you note the temperature?

1 A I think it was around 65 or 66, somewhere around there.

2 Q And, of course, this was December.

3 A Yes, ma'am.

4 Q And was rigor -- had rigor set in?

5 A No, ma'am.

6 Q In your training, do you know normally -- do you learn

7 when rigor would set in after the body is deceased?

8 A Sometimes, yes.

9 Q Okay. And so rigor had not yet occurred?

10 A No, ma'am.

11 Q How long would it normally take rigor to set in?

12 A Somewhere around -- the typical is somewhere around six

13 to eight hours before it would start setting in.

14 Q Okay. All right. You note in your report cause of

15 death. Is that as you observed it or is that filled out

16 after you receive the autopsy report?

17 A No, ma'am. The cause of death was given to us by our

18 pathologist after the autopsy.

19 Q That would have been Dr. Ross?

20 A Yes, ma'am. We know where the gunshot started but we

21 don't know what it gets, that's why we send it to autopsy.

22 Q Very good. The case narrative is the next section that

23 you have in your report that you completed, it describes

24 your arrival and your actions at that time; is that correct?

25 A Yes, ma'am.

1 Q I forgot to ask you about EMS. When you first arrived
2 at the scene, were the EMS attendants still in their vehicle
3 or in the yard in the area?

4 A They were outside, yes, ma'am.

5 Q Did they brief you as to what they had observed?

6 A Yes, ma'am.

7 Q And did they accompany you back inside or you went on
8 inside?

9 A No, ma'am, I went in.

10 Q Okay. Were you there as evidence was collected from
11 the body, such as did you observe a knife?

12 A Yes, ma'am.

13 Q Where did you observe the knife to be?

14 A When he was sitting he was sitting with his right palm
15 in his lap, and the knife was right under the edge of his
16 palm.

17 Q Was the palm up toward the ceiling or down toward the
18 floor?

19 A No, ma'am, palm down, fingers extended.

20 MS. COLLINS: I ask that this be marked as the State's
21 next three exhibits, which will be Exhibits 27 through 29.

22 Q I would like to show you what has been marked for
23 identification purposes, the numbers are on the back of
24 those as State's Exhibits 27 through 29. Looking at State's
25 Exhibit 27, the numbers again are on the back.

- 1 A Yes, ma'am.
- 2 Q Can you tell me what that's a picture of?
- 3 A Of his right hand.
- 4 Q And is that a picture of the body as you observed it at
- 5 the time?
- 6 A Yes, ma'am.
- 7 Q Does it fairly and accurately depict that portion of
- 8 the body as you observed it that night?
- 9 A Yes, ma'am.
- 10 Q Thank you. Moving to the next picture, if you'll look
- 11 at the back for the number. What number is that?
- 12 A Twenty-eight.
- 13 Q Okay. And what is that a picture of?
- 14 A Picture that's out further of the same hand and also
- 15 showing his feet crossed, and the weapon is still in the
- 16 right hand.
- 17 Q And is that a fair and accurate depiction of that
- 18 portion of the body as you observed it that night?
- 19 A Yes, ma'am.
- 20 Q And finally, do you see the next exhibit, is it 29?
- 21 A Twenty-nine, yes, ma'am.
- 22 Q And what is that a picture of?
- 23 A Showing his feet crossed.
- 24 Q And a phone down beside him?
- 25 A A phone in the floor. And if you look at what would be

1 the chair leg is a little bit of the vomit.

2 Q And that's a fair and accurate depiction of that area
3 of the body as you observed it that night?

4 A Yes, ma'am.

5 Q Thank you.

6 MS. COLLINS: I would like to move State's Exhibits 27,
7 28 and 29 into evidence at this time.

8 MR. PHILLIPS: No objection.

9 THE COURT: Without objection introduced into evidence.

10 MS. COLLINS: I'm going to ask that the court reporter
11 mark this next picture as State's 30. We have cropped it
12 with -- together Mr. Phillips and I cropped so that to
13 remove some of the blood and vomit from the picture.

14 THE COURT: All right.

15 Q I would like to show you what's been marked as State's
16 Exhibit 30 for identification purposes. And apart from the
17 cropping of it, does the remaining portion of that picture
18 fairly and accurately depict that portion of the body and
19 the hand and the knife as you observed it at that time?

20 A Yes, ma'am.

21 Q Thank you.

22 MS. COLLINS: I would like to move State's Exhibit 30
23 into evidence at this time.

24 MR. PHILLIPS: No objection.

25 THE COURT: All right. Without objection introduced.

1 Q Mr. Broome, if you will step down with me with the
2 exhibit at this time for the jury's reference. If you will
3 hold these two pictures up, which are 27 and 28, if you will
4 hold them up so the jury on this side can see them. And
5 this depicts the body as you observed it that night or the
6 early morning hours of 12/6/2015; is that right?

7 A Yes, ma'am.

8 Q If you would come. And again showing that to this
9 portion of the jury panel, that's a fair and accurate
10 depiction of the body as you observed it that night.

11 A Yes, ma'am.

12 Q Thank you. And let's switch. I'm going to hand you
13 first State's Exhibit 30, ask that you also show that, this
14 portion to the jury. And come down here to this portion of
15 the jury. Is that a fair and accurate depiction of the
16 crossed ankles and lower legs of the victim as you observed
17 them?

18 A Yes.

19 Q And finally I'm going to show you the cropped picture,
20 State's Exhibit 30, and ask that you hold that for this
21 portion and that portion afterwards so the jury can see
22 that. If you'll come down here. Is that a fair and
23 accurate depiction of the body of the victim other than the
24 cropping; is that right?

25 A Yes. At this point the body has not been altered in

1 any way.

2 Q And the cropping would have deleted some blood and
3 vomit from the shirt?

4 A Yes, ma'am.

5 Q Thank you. Please have a seat. Thank you. Did you
6 instruct Wayne Boone and Mr. Freeman, his assistant, to come
7 and transport the body from the scene to the morgue?

8 A Yes, ma'am.

9 Q And they did so at your direction?

10 A Yes, ma'am.

11 Q And after they did so, did you go to the morgue?

12 A Yes, ma'am.

13 Q And did Investigator Taylor come to the morgue in case
14 he needed to take any additional photos there of the body?

15 A Yes, ma'am, in account of the lighting that was in the
16 room or where we were at.

17 Q And after he did so, was the body secured for the
18 evening in the morgue?

19 A It was secured and tagged out, yes, ma'am.

20 Q Thank you. And at that time did you call either the
21 chief coroner or reach out to the Newberry Pathology
22 themselves to request an autopsy? How is that done?

23 A Yes, ma'am. Once we get back to the office and I have
24 the information such as the birthday and stuff, then I call
25 in and schedule for an autopsy at the best available time

1 for them, and once they give me that then I instruct our
2 transport what time and what day that the body needs to be
3 down there. The body is -- I would say it stays in the body
4 bag and it doesn't get reopened until Dr. Ross and them
5 opens it up at the autopsy.

6 Q Thank you. You don't actually go to the autopsy
7 yourself; is that correct?

8 A No, ma'am, not normally.

9 Q Okay. But did you under your authority as deputy
10 coroner authorize the autopsy to be performed?

11 A Yes, ma'am.

12 Q Thank you. One moment. Will you look at the copy of
13 your report that I handed up and tell me what's the exhibit
14 number on the back?

15 A Twenty-six.

16 MS. COLLINS: Your Honor, I would move State's Exhibit
17 26 into evidence at this time.

18 THE COURT: Any objection?

19 MR. PHILLIPS: No objection.

20 THE COURT: All right, introduced.

21 MS. COLLINS: Thank you. Please answer any questions
22 that the defense counsel may have.

23 THE COURT: Mr. Delgado?

24 MR. DELGADO: Thank you.

25 CROSS EXAMINATION

1 BY MR. DELGADO:

2 Q Mr. Broome, good afternoon.

3 A Good afternoon almost.

4 Q Almost, I'm sorry. Mr. Broome, I know enough about
5 your work to be dangerous, okay?

6 A Yes, sir.

7 Q Let me talk to you just a minute about, when you all
8 say rigor that's short for rigor mortis; is that correct?

9 A Yes, sir.

10 Q Again, from what I understand when we pass our body not
11 contracts but it tightens or stiffens, would that be fair?

12 A The muscle actually tightens up, yes, due to lack of
13 oxygen.

14 Q Blood will seep to the furthest -- like any gravity
15 prone liquid, it would flow to the back if we're on our
16 back, to our front if we're on our front.

17 A Yes, sir.

18 Q If we're standing up for whatever reason it will flow
19 downward.

20 A Yes, sir.

21 Q The reverse, correct?

22 A Yes, sir.

23 Q So when you say -- and again, sir, it was no rigor had
24 set in. That means when you saw the body of Mr. McManus
25 that had not started, that physical process had not started

1 with the body; is that correct?

2 A Not in the extremities and all, right.

3 Q I'm sorry, sir?

4 A Not in the extremities or anything right. There's
5 about six stages of rigor and it starts -- rigor normally
6 starts in a small muscle such as the jaw and all and then
7 works down. But as far as his limbs and all of that there
8 was no rigor.

9 Q Okay. But that's what I want to talk about. Because
10 Ms. Solicitor just put in State's Exhibit Number 26. Do you
11 have that with you there, sir?

12 A Yes.

13 Q Okay. That was signed by an individual by the name of
14 Tony Broome, that would be you?

15 A That's me, yes, sir.

16 Q That's you. On the second page of that, sir, if you'll
17 look at that, "We walked through the rooms as he
18 photographed them. I saw the decedent at 3:10 a.m. and no
19 rigor had set in then." So a little over three hours from
20 the shooting, would that be right?

21 A Right.

22 Q "He was -- he, that is Mr. McManus, "was in a back room
23 sitting in a chair," right?

24 A Yes, sir.

25 Q And the last part of that was "with a knife in his

1 hand," right?

2 A Yes.

3 Q All right, sir. So when the solicitor asked you
4 whether or not it was right underneath his palm, that's not
5 what you immediately said in your report I guess the day of
6 this incident, right?

7 A Yes, sir.

8 Q It was in his right hand. Okay.

9 MR. DELGADO: Thank you. Mr. Broome, thank you, sir.

10 THE COURT: All right. Any redirect?

11 MS. COLLINS: Yes.

12 REDIRECT EXAMINATION

13 BY MS. COLLINS:

14 Q So when you put in the report a knife was in the right
15 hand, was again --

16 MR. DELGADO: Objection to any leading, please.

17 MS. COLLINS: Sure, I'll rephrase.

18 Q What, if any, position were the fingers of the hand in
19 regarding to the knife?

20 A They were extended out.

21 Q They were not wrapped around the knife.

22 A No, ma'am.

23 MS. COLLINS: Thank you.

24 THE COURT: All right. Thank you, sir, you can step
25 down.

1 MS. COLLINS: Your Honor, I believe we've reached a
2 good point, if it pleases Your Honor, to stop for lunch.
3 Our next witness will be lengthy.

4 THE COURT: All right. This witness will be free to
5 leave?

6 MS. COLLINS: Ask that he be excused.

7 THE COURT: Thank you, sir, you're free to leave. All
8 right, ladies and gentlemen, we'll go ahead and take a lunch
9 recess, I've got a meeting at 1:30, actually interviewing
10 possibly next year's law clerk. Why don't we reconvene at
11 2:00 p.m., okay? Y'all have a good lunch. Remember, don't
12 seek any information out about the case, don't talk to
13 anybody about the case. Y'all have a good lunch, see you at
14 2:00.

15 (The jury left the courtroom and a lunch break was
16 Taken.)

17 THE COURT: All right. Anything before we bring the
18 jury in?

19 MS. COLLINS: Yes, Your Honor. Our next witness will
20 be Stefan Perry. I don't know that he has been appointed
21 counsel, but I believe that it might be helpful, if Your
22 Honor feels so too and with no objection from the defense,
23 for us to go ahead and bring him out and have him be seated
24 and have Your Honor explain to him while he may be asked
25 about the charges and the potential that they carry, that he

1 will not be asked about what happened or the circumstances.

2 THE COURT: Sure. I'll talk to him about his 5th
3 Amendment rights. Any objection from the defense in doing
4 that?

5 MR. PHILLIPS: Not at all. And one other matter that
6 we wanted to address after watching the video that there
7 would be Kyles v. Whitley, whether he's ever been an
8 informant for the State. While we are watching it he made a
9 few statements that led me to have to ask that question.

10 MS. COLLINS: Again, I don't have a courtesy copy so
11 I'm not quite familiar with the premise of Kyles v. Whitley,
12 please refresh my memory.

13 MR. PHILLIPS: It's very specific, it's basically the
14 catchall that comes after Brady, essentially anything that
15 goes to attack the prosecution's case, anything that would
16 go to the credibility of the State's witnesses falls under
17 Kyles v. Whitley, specifically if he was an informant for
18 the government we would need to know that.

19 THE COURT: Well, I'm going to advise him of his 5th
20 Amendment right against self incrimination, so if you ask
21 him something like that I would certainly hope he would say
22 "I invoke the 5th Amendment."

23 MR. PHILLIPS: Right. So -- I apologize, Your Honor.

24 THE COURT: I'm not quite following you, what are you
25 talking about?

1 MR. PHILLIPS: A discovery issue that if he was an
2 informant or has been --

3 THE COURT: Oh, that the State would disclose that.

4 MR. PHILLIPS: That's right.

5 MS. COLLINS: And to my knowledge he's never been an
6 informant. I have asked Investigator Rumbaugh, she's
7 indicated to her knowledge no.

8 (The witness was sworn.)

9 THE COURT: All right. If you would just please look
10 at me, sir. All right. You are Mr. Perry?

11 THE WITNESS: Yes, sir.

12 THE COURT: You are Mr. Stefan Perry?

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Perry, my name is Judge Gibbons and I
15 am the presiding judge over the trial of this case, and
16 before you testify I understand that you have currently
17 pending some criminal charges against you; is that correct?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Now, I want you to understand,
20 of course, you're not on trial today, today is not your day
21 in court. You're here as a witness, you've been subpoenaed
22 or requested to come here by the State as a witness in this
23 case, you understand that?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. During your testimony it may

1 come up, and I'm sure it will come up about these pending
2 criminal charges against you, okay? Having said that, I
3 want to advise you of your 5th Amendment right against self
4 incrimination, okay? The 5th Amendment to the United States
5 Constitution says that nobody can be compelled in any
6 criminal case to testify against himself or herself. In
7 other words, if you don't want to testify about what
8 happened on these pending criminal charges or anything like
9 that you don't have to, okay? You can simply say 5th
10 Amendment and you don't have to answer any question related
11 to the things that the State has said you did for which you
12 are currently in the detention center, do you understand
13 that?

14 THE CLERK: Yes, sir.

15 THE COURT: Because I don't want you to incriminate
16 yourself, and on that line have you -- do you have a lawyer?
17 Have you retained a lawyer or are you been appointed a
18 lawyer yet on these pending charges?

19 THE WITNESS: Yes, sir.

20 THE COURT: You have retained or you've been appointed?

21 THE WITNESS: I've been appointed.

22 THE COURT: Who is your lawyer?

23 THE WITNESS: Brandon Steen.

24 THE COURT: Brandon Steen is your lawyer. All right.
25 We need to get Mr. Steen here in the courtroom. Mr. Steen

1 should be up on the third floor. All right. And he is a
2 public defender here and he's been appointed your lawyer, I
3 just want to make sure that he knows that his client is here
4 testifying in the event any issue comes up, okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: So do you understand your 5th Amendment
7 rights against self incrimination?

8 THE WITNESS: Yes, sir.

9 THE COURT: Do you have any questions about it?

10 THE WITNESS: No, sir.

11 THE COURT: I don't know what the lawyers are going to
12 ask you. Now, you've been sworn to tell the truth the whole
13 truth and nothing but the truth.

14 THE WITNESS: I'm going to tell it like I saw it.

15 THE COURT: You tell the truth just like you swore to
16 do, however if it's a question about you or the pending
17 criminal charge -- or excuse me, if it's a question about
18 your pending criminal charges and you don't want to answer
19 it, okay, you don't have to.

20 THE WITNESS: I'm gone tell it like I seen it.

21 THE COURT: All right, thank you. Do y'all see any
22 need to proffer any testimony?

23 MS. COLLINS: No, Your Honor.

24 THE COURT: I don't either. Okay. Are y'all ready?

25 MR. PHILLIPS: Can we ask him if he's ever been an

1 informant? That will clear up any --

2 THE COURT: Why don't we do that right now? Okay. Go
3 ahead. Do you want me to ask?

4 MR. PHILLIPS: He'll probably need his lawyer here.

5 THE COURT: Yeah, that's true. We'll wait on Mr.
6 Steen.

7 (Break in proceedings.)

8 THE COURT: Mr. Steen, Stefan Perry, your client, is
9 here, he's been subpoenaed to testify in the trial of this
10 case and I was advising him of his 5th Amendment right
11 against self incrimination, because during cross examination
12 counsel for the defense is going to elicit testimony from
13 him or bring up on cross examination his pending criminal
14 charges as well as any potential punishment for that. I
15 have ruled that they should be allowed to do that in cross
16 examination to try to demonstrate bias or credibility issues
17 and I wanted you to be aware of that as his lawyer. I've
18 advised him I have his 5th Amendment rights, I've advised
19 him if he doesn't want to answer any question about his
20 criminal -- pending criminal charges he can simply say "5th
21 Amendment."

22 MR. STEEN: Yes, sir.

23 THE COURT: So unless you're tied up with anything else
24 I would like it if you would just stay here during his
25 testimony if that's okay.

1 MR. STEEN: Yes, sir.

2 MR. PHILLIPS: Then if we could ask whether or not he
3 has been an informant.

4 THE COURT: Right. Go ahead and tell him what you want
5 to ask, tell Mr. Steen what you're talking about.

6 MR. PHILLIPS: We're going to ask your client whether
7 he has ever been an informant or provided information as a
8 source of information as a CI or a SOI for law enforcement
9 ever.

10 THE COURT: Do you wish to speak with him with that
11 real quick?

12 MR. STEEN: Yes, sir.

13 THE COURT: All right, come on around.

14 (Break in proceedings.)

15 THE COURT: Anything else?

16 MR. PHILLIPS: Is he taking the 5th on whether he has
17 been an informant?

18 MR. STEEN: He has not. He can ask the question, he's
19 not going to take the 5th.

20 THE COURT: All right. Let's go ahead and proffer
21 that, if you want to do that go ahead.

22 MR. PHILLIPS: It will be real quick. We don't want to
23 do the Jack in the box, he's going to be doing the cross.

24 THE COURT: Mr. Delgado, go ahead and proffer that
25 testimony.

1 MR. DELGADO: Yes, sir. Mr. Perry, at anytime over the
2 past five years have you ever been asked to be or have you
3 ever asked to be an informant or a confidential source of
4 information as a result of your knowledge of any criminal
5 activity?

6 THE WITNESS: No, sir.

7 MR. DELGADO: Have you ever received any benefit for
8 any testimony you have given as a result of any criminal
9 activity that you know about?

10 THE WITNESS: No, sir.

11 MR. DELGADO: Have you ever met with any law
12 enforcement officers about any possible information you
13 could give?

14 THE WITNESS: No, sir.

15 MR. DELGADO: Thank you.

16 THE COURT: Any problems with those questions from the
17 State during his cross examination?

18 MS. COLLINS: No, Your Honor.

19 THE COURT: All right, let's bring the jury in.

20 MS. COLLINS: Your Honor, if we could hold the jury for
21 a minute.

22 THE COURT: Yeah, hold on.

23 MS. COLLINS: I've not had the opportunity -- I have
24 not yet had the opportunity to caution Mr. Perry about not
25 saying anything if he has any knowledge about a prior

1 incident with a girl in the day or two before or anything
2 that the defendant supposedly said to Mr. Perry's
3 girlfriend, that is not to be referenced at all during his
4 testimony or anything regarding a shot to the mirror in the
5 bathroom of Mr. Gay, that should not be --

6 MR. PHILLIPS: And just not to beat around the bush,
7 specifically "If somebody messed with you again or stole
8 from you again I would shoot him them in the head," that's
9 the statement that we're trying to stay away from.

10 MS. COLLINS: And it's my understanding that Mr. Perry
11 was not there when that was said but he should not refer to
12 that at all in his testimony.

13 THE COURT: Okay. I'm not going to tell a witness how
14 to testify because he has been sworn to tell the truth, but
15 I will tell every witness the same thing that I always tell
16 them is you answer the question that's asked, okay? You
17 don't need to be blurting out any additional information
18 other than what the question is asked, and hopefully that
19 won't -- you won't -- that won't come up, okay?

20 MS. COLLINS: Thank you.

21 THE COURT: I'm not going to go into the substance of
22 what he can and can't say because that's subject to -- its
23 his testimony, it's not mine, it's not y'all's, it's his.

24 MR. DELGADO: Your Honor, there is one matter related
25 to that. In the CD given to us by the solicitor relating to

1 a statement Mr. Perry makes to Ms. Rumbaugh on December the
2 4th there is at the latter stages of that something where
3 Mr. Perry says I want you, Ms. Rumbaugh, to talk to my
4 girlfriend about what Brent said about shooting somebody in
5 the head. If that is played that is the 12/4 statement, we
6 need -- before we play that we need to excise that. It is
7 maybe ten seconds long but I want to make sure that's not
8 inadvertently presented to the jury.

9 MS. COLLINS: We're not playing the December 4th video.

10 MR. DELGADO: Thank you.

11 THE COURT: Thank you, that's addressed and we're ready
12 for the jury.

13 (The jury returned to the courtroom.)

14 THE COURT: All right. Thank you, ladies and
15 gentlemen. The State can call its next witness.

16 MS. COLLINS: Your Honor, our next witness is Mr.
17 Stefan Perry, I do not believe Mr. Perry has yet been sworn
18 in.

19 The witness, STEFAN PERRY, was first duly sworn and
20 Testified as follows:

21 DIRECT EXAMINATION

22 BY MS. COLLINS:

23 MS. COLLINS: Your Honor, as the other witnesses have
24 placed their hands on the Bible I would ask Mr. Perry to do
25 that.

1 (The witness was sworn again.)

2 MS. COLLINS: Thank you, Your Honor. Thank you, Mr.
3 Perry.

4 Q Good afternoon.

5 A Afternoon.

6 Q You'll need to answer out loud so the court reporter
7 can take down everything that you say. Would you please
8 tell us your name?

9 A My name is Stefan Craig Perry.

10 Q All right. And Mr. Perry, do you know the defendant,
11 Michael Brent Gay?

12 A Yes, ma'am.

13 Q About how long have you known Mr. Gay?

14 A Fifteen or 20 years.

15 Q All right. And do you know the deceased, Joshua Flint
16 McManus?

17 A Yes, ma'am.

18 Q How long did you know him before his death?

19 A About the same amount of time, 15 or 20 years. I met
20 them through a good friend of mine named Raymond Robinson.

21 Q Through Raymond Robinson?

22 A Yes.

23 Q Now, Mr. Gay, what name would you refer to him by? You
24 said Michael Brent Gay, was it Brent?

25 A Brent, and I used to call him B.

1 Q B?

2 A Yeah.

3 Q And do you have a nickname?

4 A Yes.

5 Q What is that?

6 A Droop, Droop Dog.

7 Q Droop Dog? Like d-r-o-o-p?

8 A Droop Dog, d-o-g.

9 Q Okay. Thank you. And Flint, did Flint have a
10 nickname?

11 A I just called him Flint.

12 Q By his middle name? Okay. And do you know Raymond
13 Robinson?

14 A Yes, ma'am.

15 Q How long have you known Raymond?

16 A Been knowing him about 20 years.

17 Q Does Raymond have a nickname?

18 A I just call him Big Boy.

19 Q He's pretty big, pretty tall.

20 A Yeah.

21 Q Do you remember the day and night of December 5th,
22 2015?

23 A Yes, ma'am.

24 Q At any point during that day or evening did you have
25 the opportunity or did you go to the home of the Brent Gay?

1 A Yes, ma'am.

2 Q And about what time did you get there?

3 A It was probably about 11:00 maybe.

4 Q All right. And had you seen Brent earlier that day?

5 A No. I had talked to him and Raymond and Flint on the

6 phone earlier that day, they was going to a cookout and I

7 was going to go with them but I couldn't go, I had to

8 babysit my daughter.

9 Q Okay. Had you -- so you had not seen the defendant,

10 Mr. Gay, right, earlier?

11 A No.

12 Q And you had not seen Flint that day; is that correct?

13 A No, ma'am.

14 Q And you had not seen Big R or Big Boy that day,

15 Raymond.

16 A No, ma'am.

17 Q So the first time you saw any of them, was that when

18 you went to the home of the defendant?

19 A Went to the home.

20 Q And you said it was about 11:00 that night?

21 A Yeah.

22 Q And why did you go to the home at that time?

23 A I went by there to see Brent, I owed him a little bit

24 of money so I went by there and paid him his money. Well,

25 they called me before they got back and said they had made

1 it back to Brent's so I took off and went over there. I
2 wasn't there 15 minutes and everything hit the fan.

3 Q Okay. We'll talk about that in just a minute. Why did
4 you owe Brent money?

5 A For some pills.

6 Q And you had received those from Brent?

7 A This was a week before that.

8 Q Okay. And how much money did you owe him?

9 A I owed him \$80.

10 Q And did you pay him all of that that night?

11 A Yeah, I paid him that money.

12 Q When you got there to Brent's house, who let you in?

13 A Brent.

14 Q Okay. Where did you go -- did you go in the front or
15 the back or the side?

16 A Through the side carport door. He let him in and I
17 asked him what he was going to do on his birthday, his
18 birthday had been that night or the night before and he said
19 "I'm probably going to chill out tonight," he said, "I had a
20 long night before." So I said, "Well, that's all right, go
21 on and lay it down." So --

22 Q And when you asked him that, were you still within the
23 hallway from the carport or were you -- where were you?

24 A We was walking down the hallway and talking at the same
25 time, and that hallway led to the bedroom.

1 Q Did you see Ms. Wallace, his grandmother, at that time?

2 A No, I think she was asleep.

3 Q When you went into the bedroom, was it Brent's bedroom?

4 A Yes.

5 Q And was it straight down that hall from the --

6 A Straight down the hall and it opened up in a big old --

7 he had a pretty nice sized house, big ole bedroom.

8 Q Okay. And did he have a bathroom off of that bedroom?

9 A Yes. He had a big walk-in bathroom and had two big

10 walk-in closets.

11 Q Had you been over there before, Mr. Perry?

12 A Oh yeah, me and Brent was friends.

13 Q So you'd been over there several times, or many times?

14 A Yeah, several times.

15 Q When you got into the room, who else was there?

16 A Flint and Raymond.

17 Q Flint and Raymond?

18 A Flint was sitting right there in front of the TV

19 watching the ball game, Raymond was sitting 10 foot from him

20 watching the ball game, and I had a seat right there beside

21 Flint in the recliner.

22 Q Okay. Now, was there a dog around?

23 A Brent had -- he had a dog, I think they might have been

24 in the other bedroom, the front part of the house.

25 Q So at that moment you didn't see a dog?

- 1 A No.
- 2 Q But you sat in the recliner?
- 3 A Yeah.
- 4 Q And that was beside Flint?
- 5 A Yeah.
- 6 Q Now, when you sat in the recliner, did you sit all of
7 the way back or did you sit on the edge? Can you
8 describe --
- 9 A I was sitting on the edge like this, just sitting on
10 the edge talking to Flint and talking to Raymond, watching
11 the game. I wasn't really watching the game, I was just
12 talking.
- 13 Q Okay. Now this was a special game, the ACC
14 championship; is that right? Is that right?
- 15 A Yeah.
- 16 Q Okay. You just need to answer out loud.
- 17 A Yes, ma'am.
- 18 Q Had you watched any of it at home or before you came?
- 19 A No, ma'am, I sure didn't. I babysat my daughter that
20 evening and wasn't even into it.
- 21 Q How old is your daughter?
- 22 A Four years old.
- 23 Q Okay. And do you remember, was the game still on?
- 24 A The game was still on when I got there.
- 25 Q Okay. Was it Clemson and the NC Tar Heels?

1 A Yes.

2 Q And so the game was not yet over?

3 A It was getting ready to be over.

4 Q And when you came in, what did the mood appear to be at

5 that time?

6 A Everything was fine to me. I mean, hell, I thought

7 everybody was in a damn good mood, I mean I was, they were.

8 Q Had you had anything to drink earlier that day?

9 A No, I don't drink.

10 Q Okay. Had you had any pills or any substances whether

11 prescription or otherwise that day?

12 A No, ma'am.

13 Q So you were alert and able to observe everything as it

14 happened?

15 A Oh yeah.

16 Q And just tell us in your own words what did happen.

17 A Well, I was sitting there talking to Flint and Raymond

18 was about 10 foot from me, we was just kind of conversating

19 back and forth, and Brent, he was doing his thing just --

20 looked like he was in the closet looking for something, but,

21 you know, that's his house, it ain't none of my business

22 what he's doing, you know. But he was -- I seen him like

23 straight ahead and through the bathroom like he was looking

24 for something but, you know, wasn't none of my business. So

25 a few minutes later, about five minutes later he come just

1 walking by Raymond, walked by me, walked by Flint, he went
2 by Flint about four foot, turned around and said, "You got
3 my watch," and shot him in the head, cold as ice.

4 Q Had there been any argument or yelling before that?

5 A I ain't heard no argument one.

6 Q And when the defendant said that to Flint and shot him
7 in the head, did he say it as I'm talking to you now or was
8 his voice higher or lower, as in not higher like volume --

9 A He said, "He stole a watch from me," and I said, "Well
10 get it out of his pocket then." He went in his pocket,
11 there wasn't a watch there. Flint had a wallet in his
12 pocket.

13 Q Okay. Let's back up just a little bit. I want to show
14 you a diagram. Mr. Perry, I would like to show you what's
15 been marked on the back now as State's Exhibit Number 31 and
16 ask you, do you recognize what that appears to be? And if
17 you don't that's okay.

18 A This is Brent's house.

19 Q And that's the house at [REDACTED] where Brent
20 lived?

21 A Uh-huh.

22 Q It appears to be a diagram of that, of part of it?

23 A Yeah.

24 Q Okay. Do you see on that diagram any area that appears
25 to you to be the bedroom of Brent Gay?

- 1 A Yeah, right here.
- 2 Q Okay. And can you take this pen and mark on that and
- 3 we'll say with a S since your first name is Stefan and put a
- 4 S where you were seated.
- 5 A What's this right here?
- 6 Q Well, I can't answer any questions, but --
- 7 A Well, is this supposed to be something hanging on the
- 8 wall? Okay, I've got you.
- 9 Q Okay. But again, if the diagram is confusing we can
- 10 just ask you to describe it, would you rather do that?
- 11 A Yeah.
- 12 Q Let's have you describe everything, okay?
- 13 MR. DELGADO: I'm sorry, Your Honor, that's so far away
- 14 and both of them have a soft voice --
- 15 MS. COLLINS: I just said let's just describe
- 16 everything.
- 17 Q Mr. Perry, if you could just put that pen down and
- 18 we'll just walk through it, okay? Shall we?
- 19 A I can go ahead and mark it because I see it now.
- 20 Q You do see it now? Okay. Can you put a S where you
- 21 were seated in the recliner?
- 22 A Uh-huh.
- 23 Q And can you put a F where Flint was seated? Now, did
- 24 your recliner face the TV?
- 25 A Yes, ma'am.

- 1 Q And did Flint's chair face the TV?
- 2 A Yes, ma'am.
- 3 Q And was Flint's chair to your left or to your right?
- 4 A Me facing the TV it would have been to the right of it.
- 5 Q Okay. And where was Raymond seated?
- 6 A He was sitting about eight foot diagonal from me.
- 7 Q And you're using your left hand, would that be to the
- 8 left or the right?
- 9 A Left of me.
- 10 Q Okay. About eight foot diagonal to your left?
- 11 A Yes.
- 12 Q And if I -- if you had to get up and go to the men's
- 13 room to the bathroom, where would the bathroom have been
- 14 located?
- 15 A Straight in front of me.
- 16 Q All right. So if the TV is there the bathroom would
- 17 have been to the right or the left?
- 18 A The left of it.
- 19 Q And the door exiting the bedroom, would that have been
- 20 to the right or to the left?
- 21 A To the right of me. The right of me would have been
- 22 the hallway.
- 23 Q Okay. Now, you've described for us where Raymond was
- 24 sitting, where you were sitting and where Flint was sitting.
- 25 Can you put a R where you say Raymond was sitting?

1 A Uh-huh.

2 Q Have you done that?

3 A Yes, ma'am.

4 Q Now, where was Flint? Did Flint ever sit down and

5 watch the game while you were there?

6 A Yeah, he sat --

7 Q I'm sorry, I said Flint. Yes, you said where was

8 Flint.

9 A Right beside of me to the right.

10 Q And he was sitting.

11 A Yes.

12 Q I said Flint, I'm getting a little older. Brent, the

13 defendant, where was Brent? Was he sitting and watching the

14 game too?

15 A No. He was in his bathroom, a big old walk-in

16 bathroom, he had a big walk-in closet, and I was facing

17 that bathroom door and he was in that big walk-in closet

18 fiddling through something. Like I said, what a man does in

19 his own house ain't none of my business, I don't know what

20 he was looking for or whatever but I didn't care because we

21 all are here together, friends, I mean, didn't think nothing

22 bad was going to come out of it.

23 Q You were friends with all of those men, correct?

24 A Exactly. I mean, I didn't think I had to watch out for

25 nobody, what he's doing in his own house.

1 Q Okay.

2 A I mean, I ain't going to ask no questions about what a
3 man is doing in his closet or what he's looking for, it
4 ain't none of my business.

5 Q Okay.

6 A So when he come out of that bathroom wasn't doing
7 nothing but talking, you know, as normal until that shot
8 fired.

9 Q When Brent came out -- was it the bathroom or the
10 closet within the bathroom?

11 A Well, he was in the closet, but the way the bathroom
12 and all it was built-in, you know.

13 Q Okay. And when Brent came out, at what point did you
14 see a gun?

15 A Hell, I never did see a gun. I didn't do nothing but
16 see a -- hear a shot, when he come around like this and shot
17 the man in the head. I mean, I didn't do nothing but hear
18 it.

19 Q You've described where he walked out. Did he walk in
20 front of your chair or behind your chair?

21 A No. When he walked out of that bathroom he come by
22 Raymond, come by me, come by Flint, went past Flint four
23 foot, turned around and said, "You've got my watch," and
24 pow, shot him in the head.

25 Q So he walked in front of all three of you?

1 A In front of all three of us. I never did see a gun,
2 wasn't paying attention to look for a gun, you know, I mean
3 just wasn't -- I mean --

4 Q Did Flint have anything in his hands when he was shot
5 by Mr. Gay?

6 A No, he was talking to me.

7 Q What were y'all talking about?

8 A Just old times. Back when I was doing electrical work
9 I had to finish up a job and Raymond and Flint used to come
10 by my house about everyday when I was in layoff, and I mean,
11 just come by the house, shoot shit with me. And I hadn't
12 seen Flint in awhile because I started back working and he
13 said he wanted to wait around for me to get to Brent's, he
14 was wanting to talk to me because we had a pretty good bond,
15 you know.

16 Q So you said after -- so again right before he shot
17 Flint what did Brent Gay say?

18 A I heard him say something about, "You got my watch,"
19 and then that's when the shot fired off.

20 Q All right. And did he say -- the defendant say
21 anything immediately after that?

22 A Who?

23 Q The defendant immediately after that.

24 A Well, I asked him, I said, "What the hell was that
25 about?" And I jumped off the floor about three foot, I

1 mean, just didn't know what was going on. And I said, "What
2 was that about?" And he said, "He stole my watch,"
3 something about a watch his granddaddy had left him, and I
4 said, "Well get it out of his pockets then." So he went in
5 his pockets and didn't come out with no watch. I said --

6 Q And you saw the defendant go into Flint's pockets?

7 A Yeah.

8 Q So --

9 A And he had a wallet in his back pocket.

10 Q And other than the wallet in Flint's back pocket, did
11 Flint have anything else in his pockets?

12 A That's it.

13 Q And what, if anything, did the defendant say after he
14 saw that there was nothing in Flint's pockets other than the
15 wallet?

16 A He said, "Let's go to the kitchen."

17 Q And did you go to the kitchen?

18 A Yeah.

19 Q Why?

20 A Hell, he could have shot me. I mean, I was so
21 hysterical and upset I just kind of done what the order
22 was -- how it was ordered, so me and Raymond go walking up
23 the little hallway. Raymond makes it out to the carport
24 door, I cut to the kitchen, his grandmother was up then and
25 I was kind of informing her what happened, she was upset.

1 She said, "What was that gunshot about?" And I said, "Well
2 Brent shot Flint." So I kind of comforted her a little bit,
3 she was upset, and she told Brent, you know, "Son, you're
4 going to jail." And he said, "No hell I ain't," he said,
5 "I'm getting ready to shoot myself when the police gets
6 here."

7 Q Did he -- I'm sorry, go ahead.

8 A And so I'm standing there in a daze thinking about what
9 I need to do to get the hell out of there. So I asked Brent
10 did he want a cigarette and he said he didn't have none, and
11 I said, "Well, I've got some out there in the jeep," I said,
12 "I'll go get us a cigarette." So when I got out of there I
13 left, I said there's my way out right there.

14 Q So when you went out -- you drove there alone?

15 A I drove there alone, and when I backed out Raymond was
16 up the road and he had done called 911.

17 Q Was he standing outside in the road or in his vehicle?

18 A He was right there -- at the stop sign it's like a road
19 that goes in front of it like a T, he was standing there
20 waiting on the police to get there.

21 Q Was his vehicle there?

22 A Yeah. His vehicle was right there on the side of the
23 road.

24 Q And he was standing by the vehicle?

25 A He was standing right there in the road waiting on the

1 police, he was trying to show them where it was.

2 Q And when you saw Raymond there what did you do?

3 A I said, "Look here man," I said, "If they need to talk
4 to me send them to my house." I didn't have no driver's
5 license. I drove over there, didn't have no license and I
6 said, "If they want to talk to me send them over to my
7 house."

8 Q Okay.

9 A I said -- my nerves was shot.

10 Q Yes, sir. And at that point did you go on home?

11 A I went straight to the house and waited on somebody to
12 call me, I thought somebody might want to talk to me about
13 the incident.

14 Q Okay. All right. And did anybody talk to you that
15 night?

16 A No, ma'am.

17 Q I want to back up just a little bit to the incident
18 itself again. I asked you if Flint had a knife at the time
19 that he was shot by the defendant, do you remember me asking
20 you that?

21 A Yes, ma'am.

22 Q And what was your answer?

23 A Flint didn't have a knife.

24 Q Okay. Did you ever see him with a knife that day?

25 A I ain't never seen Flint with a knife. I think he

1 might have had a knife on him one day when we went fishing.

2 Q Is that the only time you'd seen him with a knife?

3 A Yeah. And I think that might have been in his tackle
4 box.

5 Q I want to show you what's been marked as State's
6 Exhibit 8 and ask you, do you recognize that?

7 A Yeah, I recognize that knife.

8 Q So that's a picture of a knife?

9 A Yeah, that's a knife. I sharpened that knife before.

10 Q You had sharpened that knife before?

11 A That's Brent's knife.

12 Q And because the similarity of the names I want you to
13 say the full name of the person that knife belongs to.

14 A Michael Brent Gay.

15 Q And how do you know that knife belonged to Michael
16 Brent Gay?

17 A It looks like one I give him before. Brent liked
18 watches and he liked knives and I do too, and back when I
19 was doing electrical work I had good knife sharpener, I know
20 how to put an edge on a knife. And yeah, I sharpened that
21 knife before.

22 Q You have to have a sharp knife to do electrical work?

23 A Yeah.

24 Q Did Brent do electrical work some?

25 A Yeah, Brent worked with me before.

1 Q Is that to cut the insulating wire off of the wire?

2 A That or just any kind of utility, you know.

3 Q And so you recognized that as a knife you had given to
4 Brent Gay in the past?

5 A It looks like one I -- I had got a knife -- a pack with
6 two knives in it, like a two-pack special, and I give him
7 one out of that pack.

8 Q All right. And regardless, had you ever seen Flint
9 with a knife like that?

10 A No, Flint didn't carry a knife.

11 Q And that night you didn't see Flint with any type of
12 knife at all?

13 A No, ma'am.

14 Q That night did you see that knife, anyone have that
15 knife at all before?

16 A I didn't see that knife at all that night.

17 Q Okay.

18 A I didn't see much but the shooting.

19 Q Okay. Let me ask you, you said that you were there and
20 I'm going to show you what's been marked as State's
21 Exhibits 6, 7 and 10. Let me show you first Exhibit 6. Do
22 you recognize that?

23 A Yeah, that's one of Brent's watches.

24 Q You've seen that watch before?

25 A Yeah. Brent had ordered quite a few watches off that

1 QVC, and yeah, that looks like one of them right there.

2 Q And what type of watch is that, does it say on there?

3 A Like a Nautica watch.

4 Q Well, when I say type I mean, does it say the brand on
5 there?

6 A Invicta.

7 Q Invicta? And I would like to show you State's Exhibit
8 7 and ask you, do you recognize that?

9 A Yeah.

10 Q What is that?

11 A That's a Fossil watch.

12 Q And have you ever seen that Fossil watch before?

13 A Yeah.

14 Q Where did you see that?

15 A Brent had this watch. Brent had a quite a few watches.

16 Q Had Brent ever shown you a watch that he said -- and
17 you said earlier granddaddy, that he said anyone in his
18 family had ever given him?

19 A Well, that night he was stating a watch that I guess he
20 thought Flint stole from him, he was indicating a watch that
21 his granddaddy gave him when he died or he inherited when he
22 died or whatever, but it wouldn't be one of these new ones.

23 Q And did he say what type of watch that was?

24 A Never had seen it, never did hear what kind of watch it
25 was.

1 Q And he had never shown you a watch before saying this
2 is the watch that someone left me or gave me?

3 A No, ma'am.

4 Q I would like to show you what has been marked as
5 State's Exhibit 10, and ask you -- let me -- do you
6 recognize State's Exhibit 10?

7 A Yeah, I know what that is.

8 Q What is that?

9 A That come with his golf cart. He bought a golf cart,
10 that's a little -- holds your manual, your paperwork in a
11 golf cart, that's what that is, Easy Go.

12 Q And it's a little green pouch?

13 A Yeah.

14 Q Had you ever seen that before?

15 A Yeah.

16 Q Who did that belong to?

17 A They belonged to Brent Gay.

18 Q And had you ever seen Flint with that?

19 A No, ma'am.

20 Q Had you ever seen Flint with either of those two
21 watches you just identified?

22 A No, ma'am.

23 Q Okay. Now, when you went to the kitchen, did Ms.
24 Wallace, was she already in there or she came in there after
25 y'all went there?

1 A She was in the process of getting out of bed, she had
2 just made it to the kitchen. Like she was coming out of the
3 bedroom, getting her robe on and to ask what that gunshot
4 was about.

5 Q All right.

6 A And I told her.

7 Q And you've already described the conversation you heard
8 at that time between Ms. Wallace and Mr. Gay and yourself
9 because she asked what had happened.

10 A Yeah.

11 Q And I think you said that you said Brent shot Flint; is
12 that right?

13 A Yeah.

14 Q And you comforted her; is that correct?

15 A Yes, ma'am.

16 Q And after she said something to Brent and he responded
17 as you said, what happened next, do you remember?

18 A He said that -- she said, "Brent, you're going to
19 jail." And he said, "No hell I ain't neither," he said,
20 "When the police gets here I'm going to shoot myself."

21 Q And is that the point that you left and said something
22 about getting the, did you say, smokes or cigarettes?

23 A I said, "Brent, you want a cigarette?" He said he
24 didn't have none. I said, "I've got some out there in the
25 jeep, do you want one?" And he said, "Yeah." So that give

1 me a chance to get out there and get up out of there.

2 Q Okay. And at that point was Brent Gay still holding
3 the weapon?

4 A It was laying on the counter right there beside of him.

5 Q Okay. I want to show you what's been marked as State's
6 Exhibit 11 and ask you, do you recognize that?

7 A Uh-huh.

8 Q What is that?

9 A A .38 Special.

10 Q And have you ever seen that gun before?

11 A Yeah.

12 Q Where did you see that gun?

13 A That's Brent's gun.

14 Q Did you see the gun, that gun that night?

15 A Yeah, that's the one he shot him with.

16 Q Okay. And at the time that you said it was laying on
17 the counter, had Brent Gay unloaded the gun at that point?

18 A Unloaded it?

19 Q Yes.

20 A I didn't see nobody unload it.

21 Q Okay.

22 A If it was unloaded -- if I seen him unload it I
23 probably would have hung around, you know, until the police
24 got there. But I seen that gun sitting right there and I
25 know it had bullets in it, so hell, I left.

- 1 Q Right.
- 2 A It could have been my life.
- 3 Q Yes, sir.
- 4 MS. COLLINS: One moment. Just a minute, Mr. Perry.
- 5 (Break in proceedings.)
- 6 Q Mr. Perry, while you were there, did you see Brent Gay
- 7 drink anything?
- 8 A No. He poured some pills out on the counter and
- 9 crushed them and snorted them.
- 10 Q When was that?
- 11 A Right before I left there.
- 12 Q So that was after the shooting?
- 13 A That was after the shooting.
- 14 Q And you said on the counter, was that the counter in
- 15 the bathroom or where?
- 16 A No, in the kitchen right there where his grandmother
- 17 was. He was sitting there crushing them up, I guess, doing
- 18 what he had to do, but I left.
- 19 Q Did you see how many he poured out?
- 20 A I don't know, maybe five.
- 21 Q Okay. And what color were they, do you remember?
- 22 A He was on them Opana pills, they was white.
- 23 Q Okay. And --
- 24 A But I seen him snort them and then I left.
- 25 Q And did he do that in front of his grandmother?

1 A Oh yeah.

2 Q One moment.

3 MS. COLLINS: Thank you, Mr. Perry, please answer any
4 questions of the defense attorney.

5 THE COURT: All right. Mr. Delgado?

6 MR. DELGADO: Thank you.

7 CROSS EXAMINATION

8 BY MR. DELGADO:

9 Q Mr. Perry, the reason you would have stayed around if
10 the gun was unloaded was because you had something important
11 to tell them, that would be the police, right?

12 A What's that now? I couldn't hardly hear you.

13 Q If you had known the gun was unloaded you may have
14 stayed around for the police who were coming to the scene,
15 right?

16 A Yes, I probably would have. But considering he had a
17 loaded gun right beside him on the counter that I knowed it
18 was loaded, I was trying to find a way up out of there
19 before I got myself shot.

20 Q I understand.

21 A I mean, I just seen him shoot one man, he could have
22 shot me and the other guy in the bedroom, you know, to get
23 rid of everything, all of the evidence.

24 Q Right.

25 A If, you know -- but I figured I needed to find an

1 escape way before he shot me in the back, you know what I
2 mean?

3 Q I guess what I'm saying is the reason you would have
4 stayed around if there wasn't any danger to you was because
5 you wanted to tell the police what you knew, right?

6 A Yeah. Because me being there on the spot they was
7 going to ask.

8 Q Right.

9 A Yeah.

10 Q Okay. Sir, it's matter of fact, I think there was a
11 statement that you've made that while you were there in that
12 kitchen with Brent and his mama, Ms. Wallace, that you even
13 heard the sirens from the police coming to the scene, do you
14 remember that?

15 A Oh yeah, I heard sirens from a long distance. I heard
16 sirens coming, oh yeah.

17 Q And you figured then that you would get out of there
18 before the police got there, right?

19 A No, it wasn't nothing like that. I figured I would get
20 out of there before I got shot.

21 Q Mr. Perry, let's just talk about this just for a
22 second. My friend, Ms. Collins, didn't ask you about that,
23 ask you about any of this, and I'm not saying there's any --
24 she's ever said anything to you about what offer you may
25 get, I'm not saying the solicitor has said anything to you

1 about any offer you may get. But right now --

2 A I ain't worried about a offer.

3 Q Oh, okay. Well, I guess what I'm talking about is --

4 let me just see if I can make certain I know you mean by

5 that. You are right now -- you have pending charges in

6 Lancaster, correct, sir?

7 A Yes, sir.

8 Q Tell these folks how many charges you have got on you.

9 A I've got six.

10 Q Again, I'm not saying that there's any deal, are you

11 hoping there's maybe some deal?

12 A Why do you ask?

13 Q No, I didn't say that. I'm saying are you hoping

14 there's some deal down the road?

15 A No. I ain't asked about no deal.

16 Q Just kind of the guy you are, right?

17 A What happens happens.

18 Q Now, have you ever -- relating to all of these charges,

19 the six charges -- let me see if I can read them off to you,

20 okay?

21 A Uh-huh.

22 Q Well, actually in June the 9th, 2018, that's less than

23 a year ago, half a year ago, right, matter of fact six

24 months ago you were charged with manufacturing and

25 distributing methamphetamine, right?

1 A Possession.

2 Q Oh, okay. Well, if I said to you that the index says
3 manufacturing and distribution of methamphetamine, would you
4 know that -- is that the same charge, just possession is
5 what you think it is?

6 A It's possession.

7 Q Would you know how much that carries in the way of jail
8 sentence?

9 A Not really.

10 Q What if I told you --

11 A I haven't really thought about it yet.

12 Q Yeah, because that's just the kind of guy you are. You
13 don't care about --

14 A I don't care about it but I have too much going on to
15 really even think about it.

16 Q Right. What if I told you that carries up to 30 years
17 in jail.

18 A I guess I would have to do it if I get it, I mean --

19 Q Well, see, there's a lot more, though, in addition to
20 that, isn't there?

21 A Yes, sir.

22 Q Back on the 30th of November, Lord, that's what, less
23 than two weeks ago, right?

24 A Yeah. I have got some major charges on me now, yes,
25 sir.

1 Q Let me just go through those. One of those is
2 trafficking in methamphetamine, right?

3 A Yes, sir.

4 Q Do you know what that brings in jail?

5 A Yes.

6 Q What?

7 A Damn near life.

8 Q Well, it actually brings only three to ten, okay? If I
9 say to you that you're charged here in Lancaster County by
10 the Lancaster County Sheriff's Department, Ms. Rumbaugh's
11 outfit, going to be prosecuted by the solicitor's office
12 here in Lancaster with trafficking in heroine, that's
13 another one of your charges?

14 A Yes.

15 Q And that carries a minimum of 25, up to 40 years in
16 jail, right?

17 A Yes, sir.

18 Q And then there's another trafficking in heroine that
19 you were arrested for. All of these are at one time, right?

20 A Yeah.

21 Q As a matter of fact when I read the Lancaster News
22 they -- the headline was this is the largest drug bust in
23 the history of the county, right?

24 A Sounds like, yeah.

25 Q That's you, right?

- 1 A I mean, I hadn't been convicted of it yet.
- 2 Q I didn't say that, I'm just saying that's what you're
- 3 charged with.
- 4 A That's what I'm charged with, yes, sir.
- 5 Q That's who you are, right?
- 6 A Yeah.
- 7 Q Okay. Then you got another trafficking in MDMA, what
- 8 is that?
- 9 A Ecstasy.
- 10 Q Yeah. See, some of these folks may not know what MDMA
- 11 is but you know what it is, right?
- 12 A Yeah.
- 13 Q If I told you that brings a minimum of 25 years in
- 14 jail, would you know that?
- 15 A Yes, sir.
- 16 Q And when the police raided your house back on the 30th
- 17 they found some smoke there at your house, marijuana, right?
- 18 A Yeah, a little bit of marijuana. That was mine, that
- 19 was mine.
- 20 Q Oh, so the rest of those things weren't yours?
- 21 A No.
- 22 Q You were just who holding it for somebody, right?
- 23 A I was held at gunpoint to hold that.
- 24 Q I'm sorry, what?
- 25 A I was held up at gunpoint to hold that.

1 Q Oh, so somebody held you up and made you hold all of
2 that stuff?

3 A Man, I tell you what --

4 Q Man, that's something. I'm certain you reported that
5 to law enforcement and told them, "Lord have mercy, somebody
6 is making me hold all of these drugs."

7 A I ain't had a chance to talk to nobody.

8 Q Oh, you didn't? How long had that stuff been in your
9 house?

10 A I ain't had a bond yet.

11 Q No, no. You said somebody made you hold that stuff,
12 right? How long had that stuff been in your house?

13 A Couple weeks.

14 Q And in those couple of weeks you didn't go Ms.
15 Rumbaugh who you know by name, right? You know her, don't
16 you?

17 A Yeah, I know her.

18 Q She's interviewed you a couple of times in this case,
19 hadn't she? Right?

20 A On what case?

21 Q On the case against Brent that you know about.

22 A Yeah, twice.

23 Q And so for those two months you didn't go to Ms.
24 Rumbaugh and tell her, "Lord, somebody is making me do
25 something illegal, something wrong and I've got all of this

1 dope at my house?"

2 A No.

3 Q They even charged you with possession of a stolen

4 pistol, didn't they?

5 A A stolen pistol?

6 Q Yes, sir.

7 A I didn't have none stolen.

8 Q Possession of a pistol then, right?

9 A Yeah.

10 Q Tell these folks whether or not that pistol --

11 A But it's registered.

12 Q Well, that's registered, there you go. But see, you

13 can't have it because you're a felon; isn't that right?

14 A I'm not a felon.

15 Q Haven't you been convicted and done time in the

16 department corrections already?

17 A I ain't a convicted felon.

18 Q Did you hear what I said to you? Haven't you already

19 been convicted and been to the department of corrections?

20 A Yeah.

21 Q How much time did you do there?

22 A Where, at the department?

23 Q The South Carolina Department of Corrections.

24 A That was a probation violation.

25 Q You've never been in SCDC?

1 A Yeah.

2 Q For what?

3 A Probation violation.

4 Q Probation violation for what?

5 A I violated probation.

6 Q Yeah, I know that. Probation for what underlying

7 charge?

8 A Drugs.

9 Q Yeah. What were those drugs?

10 A It was possession with intent to distribute.

11 Q What kind of drug?

12 A Cocaine.

13 Q See, but that's a felony, brother.

14 A I had a drug habit and I went and got help.

15 Q Yeah, you sure did. Well, you got help and then you

16 got in trouble again, right?

17 A Yeah.

18 Q You've continued that same problem --

19 A Twenty years later.

20 Q -- right to this day?

21 A 20 years later.

22 Q And the folks you hang around with, including Brent

23 Gay, may have also some of that problem too, right?

24 A Some might, some might not. But hey, I know a lot of

25 different people, good people, some bad people.

1 Q Right.

2 A Mid-class.

3 Q Some folks that buy drugs from you and some folks that

4 you distribute drugs to, right?

5 A No.

6 Q You've never distributed any drugs?

7 A Yeah, years ago.

8 Q Oh, years ago? Well --

9 A Not lately.

10 Q Sir, let me just ask this, the house that was raided by

11 the police on the 30th --

12 A Uh-huh.

13 Q -- right, your girlfriend lives at that house with you,

14 doesn't she?

15 A Yeah. That's my house, she lives with me.

16 Q Yeah. Matter of fact your four year old child lives

17 there with y'all, right?

18 A She did.

19 Q Yeah.

20 A She lives with my mom now.

21 Q Matter of fact they charged you and your girlfriend

22 with willful neglect of a child because all of those drugs

23 were in access -- ready access for your baby, right? Isn't

24 that right?

25 A Baby was in the house.

1 Q So my question to you is you were charged because it's
2 easy for a child -- let's say you're not there for some
3 period of time or your girlfriend is not there and you've
4 got a baby there, the baby could get in that drugs; isn't
5 that right?

6 A They wasn't that close.

7 Q Well, let's talk about the number of drugs that you
8 had, okay?

9 A Why have we got to talk about that?

10 Q Because I'm asking the questions and you're not.

11 A Okay.

12 Q You had about eight pounds of Oxycodone, didn't you?

13 A 7.5.

14 MS. COLLINS: Your Honor, at this point I'm going to
15 object. I think the rules do allow Mr. Delgado to question
16 him regarding the name of the charge as well as what it
17 carries, but as far as to the specifics I do not believe the
18 rule permits that.

19 THE COURT: All right.

20 MR. DELGADO: Well, I think so. This is the underlying
21 facts about what he's charged with to be able to get to
22 manufacturing or the trafficking.

23 MS. COLLINS: He's not allowed to ask about the
24 underlying factors.

25 THE COURT: I'm going to sustain the objection.

1 Q Sir, there was powder and there were pills there in
2 your house, correct?

3 MS. COLLINS: Objection. The same objection, Your
4 Honor.

5 THE COURT: I'm going to overrule that objection.

6 Q Correct, sir?

7 THE COURT: Specific quantity and et cetera is the
8 objection that I sustained.

9 Q Correct, sir? In other words there was marijuana, that
10 was in a lump form I guess?

11 A No, it was just --

12 Q Loose?

13 A In small bags.

14 Q Small bags, yeah. All right. The heroine, how was
15 that packaged?

16 A They considered the pills heroine.

17 Q Oh, okay.

18 A They was in bags of a thousand pills in each bag.

19 Q About how many pills overall?

20 MS. COLLINS: Objection.

21 MR. DELGADO: He opened the door, he just opened the
22 door.

23 MS. COLLINS: And he has stated it, but beyond that the
24 question should not be permitted.

25 THE COURT: Sustained.

1 Q What about the ecstasy, the MDMA? How is that
2 packaged? Is it just in a bag somewhere; is that right?

3 A I thought we was done with that.

4 Q No, answer my question. The MDMA, how was that
5 packaged?

6 A That's these pills, that was in a bag.

7 Q That pistol -- I may have asked you this and if I have
8 I apologize, that pistol was loaded?

9 A Which one? There was one gun in my house.

10 MS. COLLINS: Objection to relevance.

11 A There was one gun in my house that was registered --

12 THE COURT: Hang on, sir. Objection overruled.

13 Q The one gun in your house, was it loaded or unloaded?

14 A There was a --

15 Q It's an easy question, sir, it's either loaded or
16 unloaded.

17 A The gun didn't have the clip in it, but the rounds was
18 in the clip but the clip wasn't in the gun.

19 Q Okay. Sitting right beside the gun?

20 A No, it was on top my refrigerator. I told the police,
21 when they come in they asked me if I had any guns, I said I
22 have got one on top of the refrigerator.

23 Q Tell us about the cash money that was seized there at
24 your house, how much money?

25 A Well, I think they said they got \$600, \$400 was my

1 girlfriend's and \$200 was mine. She had just got her
2 paycheck.

3 Q Yeah. Were you holding that money for somebody else?

4 A Yeah. I was holding it for the landlord getting ready
5 to pay the rent.

6 Q Yeah, I understand. Now, the drugs that you were
7 holding for somebody else at gunpoint, right, that's what
8 you've said to our jury.

9 A What about it?

10 Q Well, I just want to make certain that I remembered
11 what you'd said, somebody had forced you to hold the
12 heroine, the Oxycodone, the ecstasy, the weed --

13 A No, not the weed, that was my weed.

14 Q Oh, that was your weed, okay. All right. Well -- but
15 somebody else then had made you hold the heroine and the
16 Oxycodone -- actually that was Fentanyl, wasn't it?

17 A I don't know what it was, they wasn't mine.

18 Q Okay. And the ecstasy, somebody had forced you to hold
19 that.

20 A Uh-huh.

21 Q Right?

22 A Yes, sir.

23 Q I am certain that you've told the police about who that
24 person was, right?

25 A I haven't had a chance, my case ain't come up on it.

1 I'm worried about this case.

2 Q Yeah. Well, there's nothing for you to worry about for
3 this case.

4 A I mean, it's just been going on for three years, I'm
5 ready to get it over with.

6 Q Yeah. Well, let's talk about that for just a second.
7 The shooting takes place on December 5th, 2015, isn't it,
8 right?

9 MS. COLLINS: Your Honor, I would like to see what Mr.
10 Delgado is displaying to the jury.

11 THE COURT: All right.

12 MS. COLLINS: I don't believe that the witness can see
13 it.

14 MR. DELGADO: Sure, I'll be glad, I'll stand right
15 here.

16 MS. COLLINS: I object. I don't believe it's
17 necessary, it's cumulative to the questions being asked and
18 the witness has not yet answered.

19 THE COURT: Objection overruled.

20 MR. DELGADO: May I stand here, Your Honor?

21 THE COURT: Yes, sir. Just talk loud so everybody can
22 hear you.

23 Q Mr. Perry 12/5/15, that's when Flint McManus was shot,
24 right? The first one up here, right?

25 A Yes, sir.

1 Q You drove away from that house on Branch Street and
2 went back to your house, correct?

3 A Yes, sir.

4 Q Tell these folks about the next time that you talked to
5 law enforcement about anything that you knew as the result
6 of being an eye witness.

7 A Well, there was an investigator came by the house about
8 a month after the shooting and I give him a statement.

9 Q Oh really. Who was that investigator?

10 A I had his business cards in my wallet but I don't have
11 my wallet right now, I was going to give it to Rumbaugh.

12 Q But that was one from the Lancaster County Sheriff's
13 Department, was it?

14 A Where?

15 Q Huh?

16 A What, the statement I gave?

17 Q Yeah.

18 A Yes.

19 Q Oh, it was a month later?

20 A Yeah.

21 Q Do you think that's been -- they -- you've given that
22 to them? Have you seen it since then, the statement that
23 you gave?

24 A This was another investigator.

25 Q Sure.

1 A There was three different investigators come by my
2 house and I gave them a statement, okay? But they no longer
3 are investigators for Lancaster County no more.

4 Q But their report would have to be in the file from
5 Lancaster County.

6 A I had nothing to do with holding a file.

7 Q No. Do you understand what I'm saying? What you told
8 them had to be in their file, right?

9 A It must have.

10 Q Was it a man or woman investigator?

11 A Man.

12 Q White or black?

13 A White.

14 Q How old was he?

15 A I don't know, in his fifties.

16 Q Have you seen him out here in the -- since then? If I
17 told you, sir, that that was an investigator that I sent to
18 your house, his name was Pete Skidmore from Rock Hill.

19 A Yeah, I remember Skidmore, I remember him.

20 Q That was the fellow who worked for me and introduced
21 himself as a private investigator working for me.

22 A Okay.

23 Q The first time you ever told Lancaster County Sheriff's
24 Department anything was December the 30, 1917 -- I mean
25 2017, right? That's 23 months later, man, right?

1 A Uh-huh.

2 Q You were so concerned, you were so upset, you had so
3 much information, Lord God, you didn't get down there for
4 almost two years, right, to Ms. Rumbaugh?

5 A Yeah, that's when she come by my house.

6 Q At 10/30/17?

7 A Well, what about it?

8 Q That's the first time that you ever made a statement,
9 that's on that recording that's a video of you at the
10 sheriff's department.

11 A No. What, that?

12 Q Yeah, right there, 10/30 of '17.

13 A He come to my house.

14 Q No, no, she.

15 A I'm talking about Skidmore, he come to my house.

16 Q I understand. Skidmore doesn't work for them, he's a
17 private investigator. The first time you ever said anything
18 to law enforcement was 10/30/17, right?

19 A You got me lost on that one, partner. I had two
20 different investigators come by my house on this shooting
21 right here.

22 Q Sure. One of them met --

23 A I do remember Skidmore because Skidmore knows my
24 girlfriend, my girlfriend knows his daughter, they went to
25 school together.

1 Q Right. So mine --

2 A So he's from York and they got to talking and, I mean,
3 I give him the truth just like I said it right here in the
4 courtroom.

5 Q My question to you, sir, an official representative of
6 the Lancaster County Sheriff's Department, you never made
7 any written statement or oral statement --

8 A Oh, yeah.

9 Q -- until the 30th of October, 2017?

10 A Nuh-uh.

11 Q What did you do? Who did you meet with? Who was it?

12 A I don't know who it was but I met with several others
13 besides Skidmore.

14 Q No. Will you please listen to me? I'm saying forget
15 Mr. Skidmore, I'm talking about a representative of the
16 Lancaster County Sheriff's Department, that is Ms. Rumbaugh,
17 you met with her on October the 30th, right? Right here.

18 A Yeah.

19 Q That was a video recorded statement down at the
20 sheriff's department, right?

21 A Right.

22 Q So for 22 months you had so much information you didn't
23 call them, you didn't go down there, you didn't say anything
24 to them about, "Let me tell you what I know. Let me tell
25 you what happened. I've got to be able to get this off my

1 chest."

2 A Well, look here, I didn't think it was none of my
3 business, I thought they was going to get up with me. I
4 didn't think that was my job.

5 Q That's just the kind of guy you are, right?

6 A No, it's not just the kind of guy I am. I was working
7 ten or 12 hours a day.

8 Q You mean when you weren't dealing drugs, right?

9 A No, I'm an electrician. But --

10 Q Let's move to June 9, 2018. Were you an electrician
11 there when you were arrested for a drug arrest? That was --

12 A No, I was down on my leg. I've been down on my leg two
13 years.

14 Q That's right. So because you were down on your leg you
15 just thought you would fall back to your default position of
16 being a drug dealer, right?

17 A No.

18 Q But that's what you were arrested for, right?

19 A No, just being in my possession.

20 Q I'm sorry?

21 A They was in my possession.

22 Q You got out of jail on a \$10,000 bond, didn't you?

23 A When?

24 Q June 9th, 2018.

25 A Uh-huh.

1 Q Isn't that right?

2 A Yes, sir.

3 Q And the next time you ever said anything about what you
4 saw that night up on Branch Street to the sheriff's
5 department -- oh, I'm sorry, you know what? That 10/30/17,
6 that statement that you made to the sheriff's department,
7 okay, to Ms. Rumbaugh --

8 A Uh-huh.

9 Q -- do you remember? That was because you had a charge
10 of illegal entry into a closed space, do you remember that?
11 You and maybe the girlfriend had gotten into a problem, you
12 were arrested when you made that statement, weren't you?

13 A Arrested?

14 Q Yes, sir.

15 A No. They took me by the -- they took me by to go talk
16 to her and then took me to jail.

17 Q Well see, man, that's what I mean by being under
18 arrest, they being the sheriff's department, right? Isn't
19 that's correct?

20 A Yeah.

21 Q They had you in their custody and took you by to speak
22 to Ms. Rumbaugh, right?

23 A Uh-huh.

24 Q You wouldn't have come down on October the 30th and say
25 anything that you knew about Brent unless you had been under

1 arrest, right?

2 A They didn't ask me to come see them.

3 Q Oh, okay. It's important I guess for good citizens to
4 be able to be asked about eye witness testimony involving a
5 murder according to you, right?

6 A Well, it's like this, I thought they could call you or
7 come by your residence if they needed you.

8 Q Yeah.

9 A That's how it was told to me. They said if they need
10 me they'll come see me and get in contact with me.

11 Q I guess so it's their fault, right?

12 A It's somebody's fault, it ain't mine.

13 Q And on 11/20/17 you met with Ms. Collins and Ms.
14 Rumbaugh probably up here? Was it in their office?

15 A We come up here and talked to them.

16 Q That was up on the third floor?

17 A Third floor.

18 Q And that's when you made a statement to them, right?

19 A Uh-huh.

20 Q About Brent, right?

21 A Uh-huh.

22 Q I'm going to go into that in just one second. But I
23 just wanted to say to you, so some three days later -- I
24 mean, when you come up here to the solicitor's office and
25 give them a statement about what you say what you know to be

1 true, that doesn't have any impact on Stefan Craig Perry,
2 because three days later you were already holding drugs
3 then, weren't you, at your house?

4 A Yeah, the drugs at my house.

5 Q I'm certain you must have -- upstairs on the third
6 floor in the prosecutor's office for Lancaster County you
7 didn't tell Ms. Collins or Ms. Rumbaugh anything about, "You
8 know, I have got to tell you about some Oxycodone?"

9 A They didn't ask.

10 Q I know, and they didn't ask about that heroine either,
11 did they?

12 A No.

13 Q They didn't ask the about the MDMA either, did they?

14 A Uh-huh.

15 Q Did they?

16 A No, sir.

17 Q They didn't probably ask you about whether or not you
18 had some smoke on you, right?

19 A No.

20 Q Okay. So on the 27th you met with them upstairs, three
21 days later, Lord, you get arrested for the largest drug raid
22 in the history of Lancaster County, right?

23 A Yes, sir.

24 Q Man, today is the 12th, it's a Wednesday, last Tuesday
25 the 4th you made a statement to them once again about what

1 you supposedly know about this case, right?

2 A Yes, sir.

3 Q But you were already in jail for all of those times,
4 right?

5 A I was in jail when she come by there.

6 Q Because if you weren't in jail you're not going to tell
7 them because it's their responsibility to ask you, right?

8 A I feel like it's their responsibility to get in contact
9 with me if they need to talk to me, I mean, the ball is in
10 their hands.

11 Q Sir, if I told you that you were looking at a minimum,
12 a minimum of with all of those charges added together of 78
13 years in jail, would you know that? Has your lawyer
14 explained that to you? That's just the minimum, right?

15 A Yes, sir.

16 Q The maximum, Lord, is 160 years.

17 A Yes, sir.

18 Q Now, I'm not saying there's any deal over here. See,
19 they're not going to say that to you, man, are they?
20 They're not going to say you come and say what you
21 supposedly know about Brent Gay, they're never going to put
22 that down if writing, they're never going to tell you that
23 but that's what you're looking at minimum and that's what
24 you're looking at maximum. As a matter of fact, if they so
25 desire to do it they can do what is known as a LWOP, a life

1 in prison without parole, do you know that?

2 A Yes, sir.

3 Q But it's just their job to come to you and get the
4 truth, right? Right?

5 A Yes.

6 Q Yeah. Sir, let me just ask this, on December the 5th
7 when you came over to Brent's house on Branch Street, you
8 owed him some money for drugs, right?

9 A Yeah.

10 Q So all of this time before you got clean in effect
11 you're still a drug addict, aren't you?

12 A Kind of sort of.

13 Q Well, see, kind of and sort of means that you're not
14 doing it or you are doing it.

15 A I mean, not really. I mean, I do a little bit of pain
16 pills because of my leg, I'm prescribed that though.

17 Q I'm sorry, you're what?

18 A I'm prescribed that.

19 Q Well, you weren't prescribed for the stuff that Brent
20 sold you, right?

21 A No.

22 Q He gave you other pain pills, right?

23 A Yeah.

24 Q Pain pills that he had prescriptions for, right?

25 A Right.

1 Q So he was using and also selling to you, right?

2 A Right.

3 Q He had all kinds of medicine, didn't he?

4 A No, just one kind, pain pills.

5 Q But you've seen lots of other medicines at his house,

6 haven't you?

7 A Pain pills.

8 Q As a matter of fact, he's the face of this national

9 opioid crises, isn't he? I mean, that's what we're talking

10 about, isn't it? He's strung out, isn't he, or was?

11 A Ask him.

12 Q I have, that's exactly what he told me.

13 MS. COLLINS: Objection.

14 THE COURT: Sustained.

15 Q You've used drugs with him, haven't you?

16 A I have before.

17 Q Yeah, before December the 5th, right? Plenty of times.

18 A Way before then, yeah.

19 Q Yeah. Because that's the kind of addict you are,

20 right?

21 A I ain't an addict now.

22 Q No, no. Well, you're not an addict since the 30th,

23 right?

24 A Yeah.

25 Q No. They don't let you have those things down in the

1 jail.

2 A I use what my doctor writes me now.

3 Q Yeah.

4 A Yeah.

5 Q Sir, these charges that you're looking at gosh, what is
6 it, is it -- well, there's six drug charges; stolen pistol,
7 a weapon during the commission of a violent crime and an
8 unlawful neglect of a child, that's nine different charges
9 you're looking at right now, right?

10 A Where you get a stolen pistol from?

11 Q I don't know, this came off the index. Is that a big
12 deal to you?

13 A I didn't have no stolen pistol. I had a registered
14 pistol, it was registered.

15 Q Well, let's talk about the six drug cases that you
16 have.

17 MS. COLLINS: Objection, asked and answered.

18 THE COURT: Sustained, move on.

19 Q Have you ever said that you're not worried about those
20 -- that right there is taken care of on something else? Do
21 you know while talking about? Do you know what I'm saying?

22 A No, sir.

23 Q Well, sir, you know this lady right here, Ms. Jennifer
24 Rumbaugh, she works for the Lancaster County Sheriff's
25 Department, right?

1 A Yes, sir.

2 Q She interviewed you back on October 30th of 2017,
3 right? She interviewed you on December the 4th, 2018,
4 right? Do you ever remember in the interview with her
5 having the charges, your six drug charges and the two pistol
6 charges and the unlawful neglect of a child charge, do you
7 remember having those stuffed into your pocket in the video,
8 do you ever remember that?

9 A Yeah.

10 Q You remember that? But let's talk about that for just
11 a second. Are those your clothes or are those the ones you
12 got at the jail today to wear here?

13 A These right here?

14 Q Yeah.

15 A These are my clothes. Your.

16 Q Yeah. And they put those on for your testimony here
17 today rather than that orange jumpsuit, right?

18 A I requested it.

19 Q Yeah. And in that orange jumpsuit when you were talked
20 to by Ms. Rumbaugh you put all of the charges that you had
21 been listed into your pocket, do you remember that?

22 A Uh-huh.

23 Q Do you ever remember saying to Ms. Rumbaugh that, "That
24 right there" -- and with your left hand you pointed to the
25 papers -- "That right there is taken care of on something

1 else." Do you remember saying that?

2 A No.

3 Q That wouldn't be a deal somewhere as a result of those
4 charges, right?

5 A No. I had them papers in my pocket because I didn't
6 know what I was leaving for.

7 Q I'm sorry?

8 A I didn't know what I was leaving to the jailhouse for
9 so I thought I might need them papers if I was going to --
10 you know. I thought I might be going to talk to a public
11 defender or something.

12 Q Sir, can I just ask this question? Let me just go back
13 to this date again, from the 15th to the 30th, that's almost
14 23 months, either, sir, you didn't care to come down and see
15 them or maybe you hadn't gotten the story right, would that
16 be fair?

17 A There wasn't nobody I had to talk to back then.

18 Q What about between December the 5th and October the
19 30th, how many times did you see Big Raymond?

20 A Couple of times a week.

21 Q Well, that's 22 months times twice a week, that's --
22 that's a couple of hundred times.

23 A He didn't talk to nobody either.

24 Q Oh, that's right. The most important thing that the
25 two of y'all have ever experienced, somebody being shot to

1 death in front of you, y'all didn't even talk about it.

2 A Man, that was a bad experience, I didn't want to talk
3 about it. I mean, we're talking about a good friend of
4 mine, you know, gone.

5 Q Yeah.

6 A Just cold as ice.

7 Q Never talked about anything about what you saw, what
8 you sensed, how it went over, who you talked to.

9 A Didn't like to talk about it, man, just cold as ice. I
10 mean, if there was some kind of fighting going on they
11 should have got together on that.

12 Q I'm sorry, say that again.

13 A If Brent had a problem with Flint, him and Flint should
14 have got together on that.

15 Q Well, let me ask you this about for Flint for one
16 second. Let's go back to the evening of December the 5th,
17 it was called the Dr. Pepper ACC Championship game up here
18 at Charlotte at the Bank of America Stadium, Clemson versus
19 North Carolina State. You didn't even come to Brent's house
20 until about 11:00 that night, right?

21 A Yes, sir. I had been babysitting my little girl all
22 that day and my wife was at work.

23 Q Okay.

24 A She worked in 12 hour shifts.

25 Q Oh really?

1 A Yeah.

2 Q And so when she got off she came home and you then were
3 free to go do whichever you wanted to do, right?

4 A I mean, why not? I was going to go to the cookout with
5 them.

6 Q Yeah. Let's talk about that for just a second. So
7 it's your testimony that Brent and Raymond and Flint went to
8 a cookout, right?

9 A Yeah.

10 Q At a fellow by the name of Cameron's house, right?

11 A Right.

12 Q Where was Cameron's house located?

13 A It was towards Buford.

14 Q Say that again, I'm sorry.

15 A Out towards the Buford area.

16 Q And the three of them went to that, right?

17 A Right.

18 Q And they stayed there for a couple hours --

19 MS. COLLINS: I'm going object to that, Your Honor,
20 that would rely upon hearsay. He said he wasn't there.

21 MR. DELGADO: No, I didn't say he was there. I'm
22 sorry.

23 THE COURT: Just rephrase your question.

24 MR. DELGADO: Sure.

25 Q You knew that Brent and Flint and Raymond left and went

1 to this cookout at Cameron's house, right?

2 MS. COLLINS: Objection. He was not there, he would
3 only know that by hearsay.

4 Q Let me ask you this, on the way back you were called by
5 one of those three fellows and said "We're coming back from
6 the cookout, meet us at the house;" isn't that right?

7 A I didn't say -- I didn't tell nobody to meet me at the
8 house.

9 Q Weren't you invited to go to the cookout too?

10 A I was invited, yeah.

11 Q Yeah, okay.

12 A But I didn't go to the cookout.

13 Q That's right, because you had your child.

14 A They had called me and said they was back from the
15 cookout.

16 Q Right. Okay.

17 A That they was back at Brent's house.

18 Q So they didn't just go up the road to the store to get
19 some chips or anything, they went to an actual physical
20 location and had a cookout with other folks there besides
21 just the three of them, right?

22 A I guess, I wasn't there.

23 Q Yeah, you weren't there. But on the way back or when
24 they got there they called you and said they were back --

25 A Uh-huh.

1 Q -- at Brent's house, right?

2 A That's right.

3 Q Did you know, sir, that Flint wanted to wait until you
4 got to the house before he left do you know that?

5 A Yeah, he wanted to talk to me, sure did.

6 Q Raymond says that to the police, doesn't he? Raymond
7 and Flint -- the game was ending or it was just about to end
8 and Raymond said, "Come on Flint, let's go." But Flint
9 says, "No, Stefan is not here yet," right?

10 MS. COLLINS: Objection. Mr. Delgado is asking this
11 witness about something that happened when he was not there.

12 THE COURT: Sustained. Y'all just say objection, I'll
13 make rulings.

14 MR. DELGADO: Thank you, I'm sorry.

15 MS. COLLINS: Yes, sir.

16 Q Mr. Perry, in truth and in fact you did come back to
17 Brent's house, didn't you? Or you came to Brent's house,
18 didn't you?

19 A I didn't come back.

20 Q Sure, I agree, you came, right. And when you came
21 there was Flint and Raymond and Brent, right?

22 A Yes, sir.

23 Q And you paid -- as you're walking down the hall, is
24 that when you paid him the money you owed him for the drugs,
25 Brent?

1 A No. I paid him after he done shot the man. I mean, we
2 was -- when I first got there I talked to Brent going down
3 the hallway and asked him what he was going to do for his
4 birthday and then he said probably go to bed and he said, "I
5 had a rough night last night." So I didn't -- you know,
6 just standing there and say "Hey, I've got your \$80," you
7 know what I mean?

8 Q Let me make sure certain I heard that right now, you
9 paid him the \$80 after Flint McManus was shot; is that
10 right?

11 A Yeah, before I left his house.

12 Q I'm certain you told that to Ms. Rumbaugh, didn't you?

13 A I don't know if I told her I owed him \$80 or not.

14 Q Sir, I have -- you told Ms. Rumbaugh on November the
15 27th that you saw Brent -- that's right, you said you saw
16 Brent -- no, that's way down here. You never said on the
17 27th that you saw Brent take any pills or snort some stuff
18 up, you never said that until the 4th.

19 A What's that?

20 Q That you saw Brent crush some pills up and ingest them
21 through his nose, you never said that until December, did
22 you, last week?

23 A No, before then.

24 Q You never said -- or did you ever say to Ms. Rumbaugh
25 back on the 27th that you had to pay Brent for some pills?

1 A I don't believe I did.

2 Q Yeah. Much less that you paid him after the boy was
3 shot and killed and dead cold like you said, right?

4 A Cold as ice.

5 Q Sir, on the statement to Ms. Rumbaugh on the 27th and
6 the statement to Ms. Rumbaugh on the 4th, both of those were
7 at the sheriff's department, correct?

8 A One was at the sheriff's office, the other one was at
9 the --

10 Q Detention center.

11 A No, they was both at the sheriff's office.

12 Q That's right, they both were and both of them were tape
13 recorded. Did you see that little camera up in the corner,
14 do you know that?

15 A What's that?

16 Q That both of those two statements, that is the 27th of
17 November and the 4th of December were tape recorded, video?

18 A Right.

19 Q Right. Do you ever remember saying back here on
20 December the 4th that after the shooting we spent three
21 minutes in the same room, do you remember that?

22 A The kitchen.

23 Q I'm sorry?

24 A The kitchen.

25 Q Say that again.

1 A The kitchen.

2 Q No, in the same room. Right after Flint was shot we

3 stayed in the same room, we, Raymond, you and Brent, with

4 that boy shot.

5 A Yeah. Because I told him I said, "If he got your watch

6 get it out of his pocket."

7 Q That's right.

8 A And he went in his pockets, pulled his pockets out,

9 wasn't no watch. So --

10 Q You didn't order Raymond and --

11 A What's that?

12 Q -- I mean, Brent didn't order you and Raymond into the

13 kitchen, did he?

14 A He said, "Let's go in the kitchen."

15 Q Well, that's after the three minutes, right?

16 A That's when we was talking about the watch in his

17 pocket.

18 Q Yeah. After that first three minutes that's when he

19 orders you all to go to the kitchen.

20 A The kitchen.

21 Q We're going to get into that and that diagram in just

22 one second, let me just make certain to get something down.

23 After the boy was shot his head went back and then went

24 down, right?

25 A Right.

1 Q Sitting in the same chair.

2 A Same chair.

3 Q Do you have a copy of that diagram? Is that in
4 evidence in front of you? Do you have it up there? If you
5 don't it's here somewhere. Here it is.

6 THE COURT: He's got it.

7 Q Sir, let's talk about this diagram.

8 MR. DELGADO: This is going to be State's Exhibit
9 number 12, Mr. Court Reporter.

10 MS. COLLINS: Your Honor, one moment. There were two
11 diagrams, Mr. Delgado, I think with an earlier with Mr.
12 Robinson. I think Mr. Perry might still have the diagram.

13 MR. DELGADO: I'm sorry, that's fine. Then this is 12
14 and this one is another one. I correct myself, State's
15 Exhibit Number 31, right?

16 Q This is the diagram of Brent's house, right? Is that
17 right?

18 A Yes, sir.

19 MS. COLLINS: And that's not yet in evidence but I
20 would move it into evidence at this time.

21 MR. DELGADO: Oh, okay. Well, so State's Exhibit 31 by
22 the solicitor into evidence.

23 Q This is a diagram of his house, right, on Branch
24 Street, right?

25 A Uh-huh.

1 Q Now, Ms. Alice, you know Ms. Alice, she's sitting up
2 here on the second row right up there.

3 A Yes, sir.

4 Q She lives in another bedroom off this piece of paper.
5 In other words, this isn't the whole house, is it? Her
6 bedroom is down here, isn't it?

7 A Her bedroom is past --

8 Q Down where my finger is, right?

9 A Uh-huh.

10 Q One roof, one house, but she lives in a bedroom on the
11 other side of the house from where Brent lives, right? And
12 the way that you -- because you've been over to that house
13 on Branch Street plenty of times according to what you said,
14 right?

15 A Yeah, I did.

16 Q And the way you get into it is you either park in the
17 garage or park in the parking area outside and come through
18 the garage door entrance.

19 A Yes, sir.

20 Q It's not a garage door, it's an entrance from the
21 garage, right?

22 A Right, yes, sir.

23 Q And when you do that you go down a hallway down to
24 Brent's room; isn't that right?

25 A Yes, sir.

1 Q Okay. So when you come out of this bedroom if you were
2 going to the kitchen you would come back down this way, go
3 here and turn to the right past this little room where Ms.
4 Alice basically kind of watches TV all of the time, right?
5 And go past here into the kitchen, right?

6 A Well, actually -- yeah, it's just right straight --

7 Q Down the hallway to the right --

8 A That little kitchen bar --

9 Q Yeah.

10 A -- it's not from here to that bar right there from the
11 hallway.

12 Q Yeah. What I'm saying is if you were going to go out
13 to the garage you would go straight on down the hall, right?

14 A That's where Raymond went out.

15 Q That's right. So Raymond left, didn't he, when he was
16 supposedly ordered into the kitchen? That would be Raymond
17 and then you with Brent following, instead of going in the
18 kitchen, Lord, he just goes out the door.

19 A He took off, went and dialed 911.

20 Q Yeah. He didn't stick around, did he?

21 A No, he went and called 911.

22 Q Right. Left the house completely, he wasn't standing
23 out here in the garage, was he?

24 A No, he took off. He said, hell, he wasn't going to get
25 shot.

1 Q But you went into the kitchen, right?

2 A Yeah, I did.

3 Q And that's because you still had that \$80 to pay,
4 right?

5 A No, it wasn't nothing like that. That's what I was
6 ordered to do and that's what I done.

7 Q I've got you.

8 A And like I said, I seen the gun, he still had the gun
9 in his hand so I had to make something up to get out of
10 there.

11 Q And while you were in the kitchen --

12 A But like I said, I owed the man \$80 so I give him his
13 \$80.

14 Q You were in the kitchen for maybe five minutes, maybe
15 more and you heard sirens and that's when you --

16 A About five minutes or so, yeah.

17 Q I'm sorry?

18 A Maybe five minutes or a little more.

19 Q Actually I listened to you say it, you said five
20 minutes, maybe a little bit more when you heard sirens.

21 A I was talking to his grandmother trying to comfort her,
22 yeah.

23 Q And you realized then those sirens were probably coming
24 to this house, to Branch Street.

25 A I knew they was coming there, I knew Raymond done

1 called 911.

2 Q Right. And on the way out of the house you passed
3 Raymond while he was standing by his truck or in the truck.

4 A Right there in the road, yeah, waiting on the police to
5 get there.

6 Q And you said to them if they need to talk you tell them
7 to call me or come to my house.

8 A I told him tell them to come to my house, yes, sir.

9 Q Now, you didn't even think about going down to see them
10 at anytime, right, and reporting what you saw.

11 A To see who?

12 Q They being the Lancaster County Sheriff's Department.

13 A No. I figured they would come see me.

14 Q And you never thought about calling them to say hey --

15 A I mean --

16 MS. COLLINS: Objection, Your Honor, this has been
17 asked and answered.

18 THE COURT: Hang on a second. Overruled, answer that
19 question and then move on.

20 A I didn't think it was necessary because I figured they
21 would be getting in contact with me right away, you know
22 what I mean?

23 Q But they didn't, right?

24 A Not right away.

25 Q In fact, they didn't get in touch with you until you

1 got arrested and then you tell them the end of October --
2 first time you ever said anything to law enforcement, end of
3 October of 2017, right?

4 A Well, they knew where I was.

5 Q They what?

6 A If they needed to talk to me they knew where I was,
7 I've had that address for ten years.

8 Q Well, this Kershaw knife that was there, Lord, you gave
9 that to Brent, right?

10 A I gave it to Brent about a year prior to that.

11 Q Right. Had you ever said that to law enforcement
12 before December 4th?

13 A The two investigators that come to my house, I told
14 them that.

15 Q I'm talking about Lancaster County investigators, Ms.
16 Rumbaugh.

17 A When they asked I told them.

18 Q Yeah. Well, they didn't ask you about the -- matter of
19 fact, Ms. Collins asked you about that in November 27th, you
20 didn't see anything to her.

21 A I told her about it.

22 Q Yeah. You told her about the knife but you didn't say
23 you gave it to him, did you?

24 A I told her it looked like a knife that I had given him.

25 Q That is true you did. But on the 4th you said, "No, I

1 now remember I did, I gave that to Brent."

2 A I said it looks like a knife that I did give him, yeah.

3 Q And that's the one that you had sharpened up because
4 that's what you use in skinning wire, right?

5 A Yeah. But back when I sharpened that knife that was a
6 year or so prior to that.

7 Q Sure, I understand.

8 A That was way before the accident happened.

9 Q Sir, let me just see if I can get this right, and you
10 may have said this, Flint and Raymond, sometimes after you
11 got laid off, they would come to your house a couple of
12 times a week?

13 A Yeah.

14 Q Y'all wouldn't smoke anything when they would come to
15 the house, would you?

16 A No, no, didn't do no drugs.

17 Q I'm sorry?

18 A Didn't do no drugs. They didn't do drugs.

19 Q They didn't do drugs?

20 A No. I seen them drink a little bit.

21 Q Who is Cameron, do you know that name? Do you know who
22 that is?

23 A Yeah, he used to work with me. That's the guy's house
24 they went to for the cookout.

25 Q Sir, when -- December the 4th, 2018, last Wednesday a

1 week ago yesterday, right, you were with Ms. Rumbaugh at the
2 sheriff's department and you made a video statement, that's
3 when you took this thing out of your pocket, those were the
4 list of charges that you had on you then, those are the
5 arrest warrants or a copy from the index about all you were
6 charged with, right?

7 A Yeah. I had that paperwork on me, yeah.

8 Q And you remember sitting down there, there's a little
9 table, you were on one side of the table and she's on the
10 other side of the table, right? Again, do you ever remember
11 saying as you're sitting at the table you pointed with your
12 left hand after you had taken those papers out and you
13 pointed to that and you said, "That right there is taken
14 care of on something else," do you remember saying that at
15 all?

16 A Well, I might have but it wasn't nothing to do with
17 this.

18 Q Yeah. But you asked then Ms. Rumbaugh if you could
19 speak to her about what was on those papers, do you remember
20 that?

21 A I was trying to get a public defender then.

22 Q Oh, okay. And you remember her saying something to
23 you, "Well, we can talk about that but let's do that out
24 here," that is in the hallway, do you remember that?

25 A Me and her talked about it, there wasn't going to be

1 any kind of deal made about --

2 Q I agree with that.

3 A -- me being in this case here and a new case, she said
4 we're not going to do no deal about, you know --

5 Q She says she can't promise you anything; isn't that
6 right?

7 A But I wasn't trying to get to that, I mean, I was
8 trying to get to a public defender.

9 Q That's just the kind of guy you are, right?

10 A Yeah.

11 Q You're a man and you'll take it?

12 A Yeah. I'll take it, yeah, if it comes down to it.

13 Q I'm sorry?

14 A If it comes down it I will.

15 MR. DELGADO: Your Honor, may I just confer with --

16 THE COURT: Yes, sir.

17 (Break in proceedings.)

18 Q Sir, one thing Mr. Phillips reminded me I wanted to ask
19 you about. After the boy was shot, after the gun goes off,
20 for those three minutes nobody leaves the room according to
21 what you say on December 4th.

22 A What you mean nobody leaves the room?

23 Q Well --

24 A We were trying to find that watch.

25 Q I understand. I'm simply saying that bedroom -- after

1 the shot goes off for three minutes nobody leaves the room,
2 not you, not Brent, not Raymond, right?

3 A Yeah, that's right.

4 Q And then when everybody leaves it's Raymond first then
5 you and then Brent, and Raymond leaves on out the door out
6 to the garage and he skedaddles, he's gone.

7 A He seen a way -- with his knowledge in his head he seen
8 that was the scapegoat goed (sic) and called 911, and Brent
9 behind me, I take that right -- I seen Raymond was gone, I
10 knew he was going to handle business so I took that right to
11 the kitchen, and I seen Alice and I got to hugging on her
12 telling her --

13 Q And Alice asked -- in your presence Alice asked what
14 had happened. She came from her side of the house down
15 towards to that little sitting room right by the kitchen;
16 isn't that right?

17 A Right. And she said, "What's going on?" And I said,
18 "Brent shot Flint. She said, "What the hell is going on,
19 Brent?"

20 Q She said what the hell?

21 A What the hell is going on?

22 Q She said that.

23 A Yeah.

24 Q I guess what I'm asking is for those three minutes
25 Raymond is in that bedroom, he doesn't leave?

1 A Who?

2 Q Raymond doesn't leave.

3 A All three of us was in the bedroom.

4 Q That's all I wanted to hear. Thank you.

5 A All three of us was in there.

6 MR. DELGADO: Thank you, Your Honor, that's all.

7 THE COURT: All right, thank you. Ladies and
8 gentlemen, I see several of you squirming, I'm squirming
9 myself, before we do redirect we're going to take a recess,
10 about a ten minute recess. Do not talk about the case,
11 Mr. Witness, you stay right here just for a moment, okay?
12 Thank you.

13 (The jury left the courtroom and a recess was taken.)

14 THE COURT: Anything else before we bring the jury back
15 in?

16 MS. COLLINS: No, Your Honor, thank you.

17 THE COURT: All right, bring them in.

18 (The jury returned to the courtroom.)

19 THE COURT: Thank you. Madam Solicitor?

20 MS. COLLINS: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. COLLINS:

23 Q Mr. Perry, we all had a bit of a break. During that
24 break you continued to sit right there in the chair as
25 instructed by the Judge; is that right?

1 A Yes, ma'am.

2 Q And neither I or Mr. Newman or Ms. Rumbaugh or anybody

3 from our table came up and spoke to you; is that right?

4 A No, ma'am.

5 Q Thank you. Now, in fact, no one spoke to you other

6 than perhaps Mr. Steen, right?

7 A Yes, ma'am.

8 Q Thank you. Now, in regard to the raid on your house on

9 November the 30th of this year, 2018, there are others

10 charged in that same drug case; isn't that right?

11 A Yes, ma'am.

12 Q There are two other men charged, correct?

13 A Yes, ma'am.

14 Q And those men don't live with you, right?

15 A No.

16 Q Those meant don't live at your house, right?

17 A One is a neighbor.

18 Q Pardon me?

19 A One is a neighbor.

20 Q One is a neighbor. And so there are others charged as

21 well with those drugs; is that right?

22 A Yes, ma'am.

23 Q Okay. Now, prior to those charges happening after the

24 raid on your house on November 30, 2018, prior to that you

25 spoke to Jennifer Rumbaugh in October of 2017; is that

1 right?

2 A Yes.

3 Q October 30th of 2017; is that right?

4 A Yes, ma'am.

5 Q And before you talked to Ms. Rumbaugh on that day her
6 business card had been left on the door of your house,
7 right?

8 A Yes, ma'am.

9 Q So a few weeks or days before that you knew she was
10 trying to reach out to you.

11 A Yes, ma'am.

12 MR. DELGADO: Your Honor, may I ask her not to lead?

13 MS. COLLINS: Yes, Mr. Delgado, I'll be glad to. Thank
14 you, Your Honor.

15 Q So prior to Ms. Rumbaugh speaking to you in October of
16 2017 you had heard her name before.

17 A Yes.

18 Q Whose business card had been left in your door prior to
19 you speaking with her?

20 A Hers.

21 Q Ms. Rumbaugh's?

22 A Yes.

23 Q And when you ended up speaking with Ms. Rumbaugh on
24 October 30, 2017, had you received a charge at that time?

25 A No.

1 Q Do you remember a city charge that --

2 A It was an old city charge, yeah.

3 Q -- that Mr. Delgado asked you about?

4 A Yeah.

5 Q Some kind of unlawful entry?

6 A Yeah. I had to go to court for that.

7 Q And that was a city charge, right?

8 A Yeah, that was a city charge.

9 Q That had nothing to do with the sheriff's department;

10 is that right?

11 A Nothing to do with it.

12 Q And, in fact, that's in city court, I think just

13 carries up to 30 days or just a fine; is that right?

14 A I paid a fine.

15 Q All right. And so back in October of 2017 when you

16 first spoke with Ms. Rumbaugh none of these other charges

17 had happened, correct?

18 A Correct.

19 Q None from -- as Mr. Delgado's chart showed, from June

20 of 2018, right?

21 A Right.

22 Q And none from November of 2018, right?

23 A That's right.

24 Q And going to the incident itself, you said that Raymond

25 was in the room with you, with Brent, the defendant --

1 A Yes.

2 Q -- and with Flint's body.

3 A Yes.

4 Q -- for about three minutes after it happened; is that
5 right?

6 A Yeah. We had done three minutes of talking, asking him
7 why he did it, said the man stole his watch that his
8 granddaddy give him, and I told him to get the watch back
9 but the man didn't have a watch.

10 Q Is three minutes an estimate or is it exact?

11 A I mean, an estimate. I mean --

12 Q What had just happened was upsetting?

13 A Yeah, it was very upsetting.

14 Q Okay. And so Raymond was in the room when Brent
15 checked the pockets of Flint?

16 A Yes.

17 MS. COLLINS: Thank you. Your Honor, at this time I
18 would like to move into evidence the video statement of
19 Stefan Perry to Ms. Rumbaugh on October 30th, 2017?

20 THE COURT: All right. Any objection?

21 MR. DELGADO: In response to what maybe is what I'm
22 trying to ask?

23 MS. COLLINS: Mr. Delgado not only has inferred that
24 the reason Mr. Perry has given his statement on 12/4/18 as
25 well as testified to this jury is because of a hope for some

1 kind of leniency or deal on those charges even though
2 Mr. Perry has denied that repeatedly, because of that I
3 think it's very important for this jury to hear what he said
4 almost a year before that on 10/30 of 2017.

5 THE COURT: All right. So we have an objection, we
6 have argument from the State, any further argument on your
7 objection?

8 MR. DELGADO: Yes. I hope I didn't say that there was
9 a deal. I said if he hopes there's a deal, he hopes there
10 is some leniency. I didn't say there was, whether it is in
11 2017 or last week.

12 THE COURT: Remember, I remind the lawyers we argue
13 outside the presence of the jury for legal issues, but I
14 have an objection, we have argument, brief argument from the
15 State and I'm going to overrule the objection and I'm going
16 to allow the introduction into evidence of the October 30th,
17 2017 video statement and I will grant the State permission
18 to publish the statement.

19 MS. COLLINS: Thank you, Your Honor. At this time I do
20 move that this be marked then as a State's Exhibit in
21 evidence. Let the record reflect it's State's Exhibit 32.

22 THE COURT: Admitted into evidence.

23 MS. COLLINS: While he does that if we can go back on
24 the record for just a moment -- I think I already did, I
25 moved State's 31 into evidence, the diagram?

1 THE COURT: Right, that was admitted into evidence.

2 (The video was played.)

3 Q Mr. Perry, right there at the end, was that as to the
4 unlawful entry charge?

5 A Yeah. I went to the court and paid a fine.

6 Q All right. On the video we saw you draw a diagram for
7 Ms. Rumbaugh and you dated it and put your name, do you
8 remember that?

9 A Yes, ma'am.

10 Q I you would like to show you, Mr. Perry, what has been
11 marked as State's Exhibit 33 and ask you to take a look at
12 that. Is that a copy of the diagram that you drew for Ms.
13 Rumbaugh on October 30th of 2017?

14 A Yes, ma'am.

15 Q And that's a true and accurate copy?

16 MS. COLLINS: Thank you, I move that into evidence at
17 this time.

18 THE COURT: Any objection?

19 MR. DELGADO: No objection.

20 THE COURT: Without objection admitted into evidence.

21 MS. COLLINS: Thank you.

22 Q Mr. Perry, at the time you were interviewed by Ms.
23 Rumbaugh, had anybody shown you any diagrams of the house?

24 A No. I drew that on my own.

25 Q Okay. You had drawn that on your own.

1 A I drew this, yes.

2 Q And had anybody shown you any of the pictures that
3 you've been shown now?

4 A No. I just scene them pictures, you know, a few weeks
5 back.

6 Q Okay. And let me just ask you, Mr. Perry, you stated
7 that you paid Mr. Gay the money you owed him after Flint was
8 shot; is that right?

9 A Yeah.

10 Q Can you tell us why in the world would you have given
11 money to Mr. Gay after you saw him shoot Flint?

12 A Hell if I know, I owed him the money.

13 Q Did you ever plan to see Mr. Gay again after this?

14 MR. DELGADO: Object to that, Your Honor, it's leading.

15 THE COURT: Overruled, just answer the question.

16 Q Let me just ask you this, when did you ever plan to see
17 Mr. Gay again after this?

18 A Never.

19 Q And when did you ever plan again to enter the home
20 after at [REDACTED] after this?

21 A Never.

22 MS. COLLINS: Thank you.

23 THE COURT: All right. Any recross based on redirect?

24 MR. DELGADO: Yes, sir.

25 RE CROSS EXAMINATION

1 BY MR. DELGADO:

2 Q Mr. Perry, did I hear correctly when Ms. Rumbaugh asked
3 you on this recording "Well, we can kill two birds with one
4 stone today," right? Do you remember that?

5 A (Shakes head no.)

6 Q Oh, you don't? You didn't hear her ask you that? You
7 know, in other words since you're down here on that other
8 little city charge we'll just go ahead and take a statement.
9 That was the context.

10 A Yeah.

11 Q That's what she meant.

12 A Yeah. You're confusing me, yeah.

13 Q Okay. Yeah. But you were going -- your words were, "I
14 was going to get up with you," right, before she said that.

15 A Yeah.

16 Q Is that funny?

17 A No. I mean, yeah, I was planning on getting up with
18 her.

19 Q Yeah. And if you hadn't been picked up on that city
20 charge we would still be waiting --

21 A I was still going to get up the next day.

22 Q Yeah, right, if we believe you.

23 A I ain't going to do nothing to tell you the truth
24 buddy, I don't lie.

25 Q Well, let's speak about the truth about Flint McManus.

1 He was on pain medication too, wasn't he?

2 A No, sure wasn't.

3 Q Do you know what type of medications he was on
4 prescriptions? You don't know.

5 A No, not really.

6 Q You said you think he's on prescriptions.

7 A Yeah. But I didn't know what kind of prescription he
8 was on, didn't ask.

9 Q Okay. The money that you owed Brent when you just said
10 just a minute ago, "Hell, I just owed him the money," he
11 hadn't threatened you for that, had he?

12 A He didn't threaten me but I owed him so I paid him.

13 Q That's right. So with everything else that just
14 happened you think, you know, I think I will be straight-up
15 and clear off that debt now, right?

16 A Hey, I owed the man, I paid him.

17 Q There you go.

18 A He's still alive.

19 Q Right. I think you said something, sir, that Flint
20 said to you, "I've been meaning to come to your house" --
21 no. "I've been meaning to catch up with you," or "I've been
22 meaning to come to your house to see you." Didn't he say
23 that to you?

24 A Him and Raymond used to come by the house once or twice
25 a week, yeah. He was fascinated with my little girl, he

1 nicknamed my little girl biscuit and my little girl loved
2 him to death.

3 Q Good.

4 A Yeah.

5 Q You said that Flint and Raymond --

6 A And my girlfriend was friends with him also.

7 Q Sure. Flint and Raymond were getting ready to leave,
8 that's Brent's house, but Flint wanted to see you, right?

9 A Yeah.

10 Q There you go.

11 A I hadn't seen him in awhile.

12 Q Sir, let me just ask you this, what we just saw of
13 Stefan Craig Perry on that video on October 30th, when is
14 the last time you had taken any drugs before that day?

15 A I was taking Percocet then because --

16 Q Yeah. You were high then, weren't you?

17 A How do you figure that?

18 THE COURT: No, sir, just answer the question.

19 Q Scraping your head, all your mannerisms, you were high
20 then.

21 A I wasn't really high but that toboggan had my head
22 itching and I was on Oxycodone because I had a surgery done.
23 I done had two surgeries done since that incident.

24 Q And we have you to believe that you have never sold any
25 of your Percocets or your Oxycodone to anybody else for any

1 money, right?

2 A Yeah, I took my Oxycodone.

3 Q Yeah. So you've never sold any Oxycodone.

4 A No, I took my medicine.

5 Q You never sold any Percocets, right?

6 A I took my medicine.

7 Q Right. Sometimes you take your medicine and maybe make
8 some money off of it too?

9 A No, I took my medicine.

10 Q Yeah. We've got you to believe to for that.

11 A Yeah.

12 MR. DELGADO: All right, thank you.

13 THE COURT: Thank you. Ladies and gentlemen of the
14 jury, let's take a brief recess, I'm going to talk some
15 scheduling issues with the lawyers and we'll get you back
16 out here and let you know that in a moment, okay? Don't
17 talk about the case.

18 (The jury left the courtroom.)

19 THE COURT: All right. Thank you, Mr. Perry, your
20 testimony has now concluded, you can take him back into the
21 holding cell and take him back to the detention center, I
22 didn't want to do that in the presence of the jury. As far
23 as scheduling, the State's next witness, how long do you
24 anticipate?

25 MS. COLLINS: Your Honor, our next witness will be

1 Christy Rogers of CSI, I think she would be pretty lengthy.

2 THE COURT: I mean, I'm willing to go another hour or
3 so, do you think we could be done in an hour, Mr. Phillips?

4 MR. PHILLIPS: We're willing to serve.

5 THE COURT: What's that?

6 MR. PHILLIPS: We're willing to serve, we're ready.

7 THE COURT: Well, I understand that, but I'm trying to
8 think about timing, because I ain't worried about me, I
9 ain't worried about y'all, I am worried about them for both
10 sides. It has been a long day. We can keep going if you
11 want to and I don't mind breaking in the middle of a witness
12 and just start cross in the morning. I know a lot of
13 lawyers don't like to do that but we kind of got a late
14 start yesterday.

15 MS. COLLINS: I would rather not break in the middle of
16 a witness because I don't want any speculation about that.

17 THE COURT: So if we start this witness -- Solicitor,
18 what do you want to say?

19 MR. NEWMAN: I was just going to converse with her.

20 (Break in proceedings.)

21 MS. COLLINS: Judge, we will go ahead and call Christy
22 Rogers.

23 THE COURT: Thank you, ladies and gentlemen. Everybody
24 is aware of the time, I was talking to the lawyers about the
25 schedule. The lawyers have indicated they will call one

1 more witness for the day and try to get everything in, so
2 the State can call its next witness, okay?

3 MS. COLLINS: Thank you, Your Honor. Your Honor, the
4 State's next witness is Lieutenant Christy Rogers.

5 The witness, CHRISTY ROGERS, was first duly sworn and
6 Testified as follows:

7 DIRECT EXAMINATION1

8 BY MS. COLLINS:

9 Q Would you please tell us your name?

10 A Christine Rogers.

11 Q And you go by -- I think I said Christy, you go by
12 Christy?

13 A I do.

14 Q And your title is lieutenant?

15 A Yes, ma'am.

16 Q And you are the head of the crime scene investigation
17 unit in the Lancaster County Sheriff's Department; is that
18 correct?

19 A That is my current position.

20 Q Lieutenant Rogers, how long have you held that
21 position?

22 A Since 2010.

23 Q How long have you been with law enforcement?

24 A The Lancaster County Sheriff's Office is the only law
25 enforcement job I've ever had and I started in 1997, so in

1 January it will be 22 years.

2 Q Thank you. As head of the crime scene investigation
3 unit of the Lancaster County Sheriff's Department, what are
4 your duties?

5 A I supervise a total of three crime scene investigators
6 now, and I'm also over evidence for the office.

7 Q Were those also your duties in December of 2015?

8 A Yes, ma'am.

9 Q You were head of the crime scene unit at that time too?

10 A Yes, ma'am, I was.

11 Q What special training do you receive to serve as a
12 member of the crime scene unit?

13 A I got my first official training in 2001. I spent
14 three weeks with the crime scene unit at SLED, the State Law
15 Enforcement Division. And then back in 2011 I got to go to
16 the National Forensic Academy that is a part of the
17 University of Tennessee, which is a ten week course that
18 trains you to be a crime scene investigator.

19 Q Have you ever been certified in an area of specialty?

20 A Yes, ma'am, I have.

21 Q Or have you graduated any programs with an area of
22 specialty?

23 A Yes, ma'am. The National Forensic Academy certainly
24 does that for crime scene investigation; shooting
25 reconstruction, blood stain pattern analysis as part of that

1 training.

2 Q Have you ever been qualified in a court of law as an
3 expert witness?

4 A Yes, ma'am.

5 Q In what field?

6 A Crime scene investigation and blood stain pattern
7 analysis.

8 Q And how many times have you been so qualified?

9 A One time of each of those categories.

10 Q And you've described the training that you received,
11 did you receive special training in both of those areas?

12 A Yes, ma'am, I have.

13 Q And how many crime scenes would you say that you have
14 investigated in the course of your career?

15 A I've never pondered that. It's been quite a few, over
16 50. I don't know an exact number.

17 Q Okay. And did most of those involve blood?

18 A A great deal of them do, because most of the time that
19 we're called out to a scene there's been a violent crime.
20 We do work some property crimes, but many of them involve
21 some bloodletting.

22 MS. COLLINS: Your Honor, at this time I would offer
23 Ms. Rogers as an expert in the field --

24 Q You said prior qualification was crime seen
25 investigation and blood stain analysis?

1 A Yes, ma'am.

2 MS. COLLINS: I would offer Ms. Rogers as -- Lieutenant
3 Rogers as an expert in those two fields.

4 THE COURT: Any objection?

5 MR. PHILLIPS: So crime scene investigation, and what
6 was the other?

7 MS. COLLINS: Blood stain analysis.

8 THE COURT: Any further voir dire on that?

9 MR. PHILLIPS: I can do -- crime scene investigation I
10 have no issue with, blood stain analysis I do have some voir
11 dire.

12 THE COURT: Why don't you ask her questions then and
13 I'll make that determination.

14 VOIR DIRE EXAMINATION

15 BY MR. PHILLIPS:

16 Q Good afternoon.

17 A Afternoon.

18 Q And so you've done forensic training?

19 A Yes, sir.

20 Q And part of the forensic training is really learning
21 the scientific method?

22 A That's part of it, yes, sir.

23 Q And the whole point is to make sure that your results
24 are reliable?

25 A Yes, sir.

1 Q Accurate?

2 A Yes, sir.

3 Q And you go through all of that training, and part of
4 that's kind of walking through the scientific method of peer
5 review, right?

6 A Could you ask that question again?

7 Q So peer -- you learn about peer review, the importance
8 of that?

9 A In analysis, yes, sir.

10 Q Right. And you learn about all the different things
11 that goes into your training. And so how much specific
12 training have you had on blood analysis?

13 A At the National Forensic Academy we spent an entire
14 week on blood stain pattern analysis, and then there's been
15 subsequent trainings as well, both on site and distant
16 learning.

17 Q And so you went to the national academy when?

18 A That was in 2011.

19 Q And then you said subsequent training since 2011?

20 A Yes, sir.

21 Q How many a year?

22 A I don't know how many a year. It's probably at least
23 once a year that we get some type of training either
24 distance learning or on site.

25 Q What did that training consist of?

1 A Just talking about different patterns that -- are you
2 talking about blood stain pattern specifically? Yes, sir,
3 about the different patterns that can be created, the
4 difference forces enacted on the blood to create the
5 patterns.

6 MR. PHILLIPS: No further questions, Your Honor. I
7 don't have any objection but I do want to approach about one
8 matter.

9 THE COURT: All right, y'all approach.

10 (A bench conference was held.)

11 THE COURT: Well, based upon the questioning of this
12 witness as to her qualifications, I do qualify her as an
13 expert in the field of crime scene investigation as well as
14 blood stain analysis. Ladies and gentlemen, you'll remember
15 yesterday where I briefly charged about an expert can --
16 when an expert testifies they can also testify in regards to
17 an opinion. Now, just because an expert gives an opinion
18 doesn't mean you have to accept the opinion, it's just
19 something for you to consider when you consider everything
20 when you start deliberating, okay? Madam Solicitor?

21 MS. COLLINS: Thank you.

22 Q Lieutenant Rogers, were you called out on December 5th,
23 2015 to the scene of [REDACTED] in Lancaster, South
24 Carolina?

25 A Yes, ma'am. I got the information that we had had a

1 shooting at that location via text, it's a way that we're
2 informed of the different happenings in the county and in my
3 role as a supervisor I got that information. And then I
4 contacted another crime scene investigator, which would have
5 been Jeff Steele, to find out what he knew about the
6 shooting.

7 Q And did you then secure a search warrant for that
8 property?

9 A Yes, ma'am. My first responsibility in that
10 investigation was to respond to our office and begin to
11 prepare an affidavit for a search warrant for the property.

12 Q And you did secure a search warrant?

13 A I did.

14 Q And after you did, did you then go to the scene?

15 A I did. I went to the scene and met with the
16 investigators that were already there, presented a warrant
17 to Investigator Jeff Steele and he executed the warrant.

18 Q And so Investigator Jeff Steele, he's a member of your
19 crime scene investigation unit, correct?

20 A He is.

21 Q You also have another member, Investigator Ken Taylor;
22 is that correct?

23 A He is a member of the team as well.

24 Q You have some others now but I don't know that Sergeant
25 Kendra Howell was with you at that time.

1 A She was a patrol supervisor at the time, she had not
2 yet been assigned to our unit.

3 Q All right. Was Investigator Taylor there also when you
4 arrive at the scene?

5 A He was already there. Investigator Steele and Taylor
6 were on the scene when I arrived with the search warrant.

7 Q And when you arrived with the search warrant, was Ms.
8 Wallace still there at that time?

9 A No, ma'am. I believe she'd been taken to the office
10 for interview, I didn't have any contact with her then.

11 Q Did you have any contact with the defendant, Brent Gay?

12 A No, ma'am, not at all.

13 Q Did you enter the household at that time?

14 A After the search warrant was executed we made a plan to
15 do an initial walk-through with Investigator Taylor
16 photographing as we entered, Investigator Steele went with
17 us as well, and also Deputy Coroner Tony Broome accompanied
18 us.

19 Q Did you enter in the back of the house or the area
20 through the garage, or the front door?

21 A We went through the back of the house.

22 Q And when you went into the house, what area did you go
23 to first?

24 A When we first went in that door it entered into like a
25 small sitting area or a den, there was a kitchen close by as

1 well. One of the first things we had to deal with was a
2 couple of loose dogs in the house and that was kind of the
3 first thing we did was secure those so there wasn't any harm
4 to us or them. So that was one of the first things we did
5 is to make sure that area, which I think was Mrs' Wallace's
6 quarters, were cleared of any evidence or anything we needed
7 to preserve, and then the dogs, with the help of an animal
8 control officer, were moved safely into that part of the
9 house.

10 Q By quarters do you mean her bedroom and maybe an
11 attached bathroom?

12 A Yes, ma'am.

13 Q You cleared it of any humans, correct?

14 A Yes, ma'am.

15 Q There were no humans then.

16 A No, ma'am.

17 Q And you at that time determined there was no evidence
18 to be gleaned or gathered from there, correct?

19 A From our initial search in that part of the house I
20 didn't see anything that appeared to be related to the
21 shooting of Flint McManus.

22 Q All right. Where did y'all go from there once the dogs
23 were secured in Ms. Wallace's bedroom?

24 A We just walked the entire house taking -- of course,
25 Investigator Taylor taking pictures the whole time. So we

1 walked the whole house before we started focusing our
2 efforts on the bedroom that was at the opposite side of the
3 house in Ms. Wallace's quarters at the time.

4 Q And where did you gather the first piece of evidence?

5 A After we had taken photographs of the body, the
6 position of the body and the room it was located in we
7 started dealing with some evidence that was on him. Of
8 course, the coroner's office was going to come in at one
9 point and remove the body so we wanted to make sure we had
10 preserved any evidence related to the body and its position
11 before we collected any evidence. But we did start with the
12 first piece of evidence collected from the body itself.

13 Q When you entered the home you put on a pair of gloves,
14 or at what point did you put on a pair of gloves?

15 A We will put on gloves -- a pair of gloves before we
16 ever enter because, of course, we're going to be touching
17 surfaces, doors and other things to get access to the house,
18 so we'll have gloves on before we ever make entry.

19 Q Okay. Did you touch any items of evidence at that
20 time?

21 A Not during the initial walk-through. It was just to
22 photograph documents and, of course, secure the dogs. But I
23 didn't touch anything at that point.

24 Q You had not touched anything at that point.

25 A No, ma'am.

1 Q Including any surfaces?

2 A That's correct. Besides any doors, whatever we had to
3 touch to get actual access.

4 Q Okay. When you went into the bedroom you observed the
5 body of Flint McManus?

6 A I did.

7 Q And at that time did the deputy coroner observe the
8 body with y'all?

9 A Tony Broome with the coroner's office was with us and
10 observed the body at the same time I did.

11 Q All right. Do you recall at the time that you observed
12 the body, was there anything near the hand of the body or in
13 proximity of the hand?

14 A Yes, ma'am. There was a folding knife in proximity of
15 his right hand.

16 Q All right. I show you what has been marked as State's
17 Exhibit 8 for identification and ask you, do you recognize
18 what that's a picture of?

19 A Yes, ma'am. That is a picture of the Kershaw brand
20 folding knife that was in the proximity of the victim, Flint
21 McManus', right hand.

22 Q All right. And is that a fair and accurate depiction
23 of that knife?

24 A It is. This picture was taken at our lab, but it was
25 the knife that was on Flint's right thigh.

1 Q I would like to show you what's been marked as State's
2 Exhibit 30 and is in evidence. Do you recognize that?

3 A Yes, ma'am. This is a picture -- a cropped picture of
4 the decedent showing the knife on his right thigh.

5 Q Okay. And at that time when the picture was taken
6 nothing had been moved as to the body while you were there;
7 is that correct?

8 A That's correct.

9 Q Okay. I want to show you also what's been marked as
10 State's Exhibit 3 and ask you, do you recognize that
11 picture?

12 A Yes, ma'am, I do.

13 Q What is that?

14 A It's a picture of the gunshot wound to the right side
15 of Mr. McManus' neck.

16 Q All right. And does that fairly and accurately depict
17 the gunshot wound to Mr. McManus' neck as you observed it at
18 that time?

19 A Yes, ma'am. Without the circle around it, yes, ma'am.

20 Q All right.

21 MS. COLLINS: I believe both of those are already in
22 evidence, Your Honor, if not I move those into evidence at
23 this time.

24 THE COURT: They're in.

25 Q I would like to show you these two pictures, please,

1 Lieutenant, and ask you, do you recognize that?

2 A Yes, ma'am, I do.

3 Q Okay. And are those photographs of the victim's body
4 as you observed them?

5 A Yes, ma'am.

6 Q The area of the right pocket of the victim, do you see
7 that?

8 A Yes, ma'am, I do.

9 Q What, if anything, appears -- is it flat or does there
10 appear to be something in it?

11 A There appears to be something in his pocket --

12 Q All right.

13 A -- on that photo.

14 Q And pursuant to your role as an investigator, did you
15 proceed to collect items?

16 A Yes, ma'am, I did. I was designated as the seizing
17 officer for that search.

18 Q And what was the first items that you seized?

19 A The first item that we seized was the Kershaw brand
20 folding knife that was on the victim's right thigh.

21 Q At that time prior to collecting the first items of
22 evidence, did you put on a fresh pair of gloves?

23 A I did.

24 Q Okay. Is that standard protocol?

25 A Yes, ma'am. Anything that we think that we may later

1 on need to have processed for DNA evidence we will switch
2 gloves on between each item.

3 Q And was the first item collected the knife?

4 A Yes, ma'am, it was.

5 MS. COLLINS: Mr. Phillips, did you wish to look at
6 these again?

7 MR. PHILLIPS: They're just marked as ID, right?

8 MS. COLLINS: Yeah.

9 MR. PHILLIPS: We're fine.

10 Q I think they're a little bit out of order, we were
11 trying to organize them quickly over there, but if you will,
12 flip through those pictures.

13 A Yes, ma'am. I've had a chance to review them.

14 Q Thank you. And of those photographs, which I believe
15 are items 34 through 50 for the State, are those -- what are
16 those photographs of just generally?

17 A They're photographs of items that -- of evidence that
18 were removed from the victim.

19 Q Okay. And there is a pair of hands and gloves in that
20 picture. Are those your hands?

21 A Yes, ma'am.

22 Q Do those pictures fairly and accurately depict your
23 collection of evidence from the victim's body apart from
24 them being in black and white?

25 A Yes, ma'am, they are.

1 MS. COLLINS: Your Honor, at this time I move State's
2 Exhibits 34 through 50 into evidence.

3 THE COURT: Any objection?

4 MR. PHILLIPS: Maybe one, Your Honor.

5 THE COURT: Okay.

6 MR. PHILLIPS: No objection, Your Honor, they're all
7 good.

8 THE COURT: Admitted into evidence.

9 Q You've already stated that the first item collected was
10 the knife; is that correct?

11 A Yes, ma'am.

12 Q And all of the items that you collected, did you later
13 log them into evidence at the sheriff's department?

14 A I did.

15 Q And what was the next item you collected?

16 A The next area of focus was the victim's right pants
17 pocket so that the next series of things were the things out
18 of that pocket.

19 Q Okay. And what did you first remove from the pocket?

20 A It was a zipped pouch green in color.

21 Q And do you recall, was there anything written on the
22 pouch?

23 A I referred to it as an EGO pouch.

24 Q And it's State's Exhibit 36, the black and white
25 photographs of you holding that after you removed it from

1 his pocket?

2 A Yes, ma'am.

3 Q Now, I would like to show you State's Exhibit 27, which
4 is already in evidence that we referenced a moment ago, the
5 right pocket of the victim, correct?

6 A Yes, ma'am.

7 Q There appears to be a bulge; is that correct?

8 A Yes, ma'am.

9 Q So the EGO pouch as you've referred to it, was it down
10 within the pocket or there at the top?

11 A It was inside the pocket.

12 Q Okay. And was it down, in other words, to the bottom
13 of the pocket or was it as he was seated the first thing you
14 encountered as you reached in?

15 A It was the first thing that I encountered in the
16 pocket. It certainly wasn't at the bottom of the pocket
17 because there was also a second item in the pocket, but it
18 was -- that's all I can say, it was the first thing that I
19 removed.

20 Q Okay. What was the second item that you removed?

21 A It was like a money clip and a ID holder.

22 Q Okay. The EGO pouch that you removed, did you open it
23 up?

24 A I did, and we took a photograph of that.

25 Q And you were wearing gloves?

1 A Yes, ma'am.

2 Q And what were the contents of that?

3 A There were some syringes inside that pouch.

4 Q These are in evidence, I'll hand them to you if you

5 need to refer to them. Was there anything in the syringes

6 that you could tell?

7 A I couldn't tell at that time.

8 Q All right. But that was collected and placed in

9 evidence?

10 A Yes, ma'am.

11 Q What was under the EGO pouch you just stated?

12 A It was a money clip and a ID holder, kind a combo

13 piece.

14 Q Was there an ID?

15 A There was. The victim, Joshua Flint McManus' ID was in

16 that pocket as part of that.

17 Q And there are photos of that?

18 A Yes, ma'am.

19 Q And was that all that was in his right pocket?

20 A Yes, ma'am, that's all we found in that pocket.

21 Q Moving to his left pocket, the left pocket of the

22 victim. May I ask what, if anything, you recovered from the

23 left pocket?

24 A Yes, ma'am. There were a number of items from the

25 victim's left pants pocket. The first thing we got out was

1 a Fossil, at least that's what it said on the face of it, a
2 Fossil man's watch, and then an Invicta watch, a package of
3 red hot sausage, a football parlay card. I didn't know what
4 it was when I looked at it but that's what I was told it
5 was, and then a charging cord or a USB cord.

6 Q All right. The charging cord, was it -- what color was
7 it?

8 A I believe it was black.

9 Q And I know sometimes charging cords are long and
10 sometimes they're short, what was it?

11 A This one was a shorter cord.

12 Q I'm going to show you what's previously been marked for
13 ID as State's Exhibits 9 and 10 and ask you, do you
14 recognize what's in those photographs?

15 A Yes, ma'am. This is the green EGO pouch that contained
16 the syringes.

17 Q Okay. And that's after y'all got it back to the
18 sheriff's department?

19 A Yes, ma'am. That's on a different day and at our crime
20 lab.

21 Q And that's a fair and accurate depiction of the EGO
22 pouch and the contents?

23 A It is.

24 Q And also the watches, did y'all later take watches --
25 pictures at the sheriff's department of the watches?

1 A Yes, ma'am, we did.

2 Q Who would have taken those pictures?

3 A Investigator Steele and I were working together that
4 day.

5 Q Then I'll ask Investigator Steele about that. But
6 you've already identified the black and whites of those as
7 they were being removed, right?

8 A Yes, ma'am.

9 Q Did you observe the stippling around the bullet wound
10 on the victim's neck?

11 A I did.

12 Q And did you observe the blood flow from the stippling?

13 A I observed the blood flow from the wound and the small
14 wounds caused by the stippling.

15 Q I'm going to show you State's Exhibit 3, which I
16 believe is also in evidence at this time. Are there
17 different patterns of blood flow in that picture?

18 A Yes, ma'am. Stemming from the gunshot wound -- the
19 apparent gunshot wound that we thought at the time, you can
20 tell that there is a flow of blood going down his neck and
21 under his chin, and then you also see a separate flow from
22 the same wound flowing downward towards the back of his
23 neck.

24 Q You've been qualified as an expert in the field of
25 blood stain analysis, do you have an opinion to a reasonable

1 degree of scientific certainty looking at the blood flow
2 from the wound as depicted there and from your memory as you
3 observed it that night as to whether or not there had been a
4 change in the position of the victim's head?

5 A Absolutely.

6 Q And why is that?

7 A The blood is in a flow and followed gravity and the
8 path of least resistance, so as it flowed down his neck he
9 had to have been positioned to get that blood flowing down,
10 and then for it to have gone the opposite direction his head
11 had to have been back. Of course, when we found him his
12 head was in a back position that supported the blood flow
13 that went towards the back of his neck and kind of pooled it
14 into the back of his shirt, but that certainly didn't
15 support that position of that blood going down his neck and
16 onto his shirt and then onto other surfaces.

17 Q All right. Thank you. Now, in regarding to collecting
18 the knife, was any effort -- did -- the autopsy had not yet
19 occurred, correct?

20 A That's correct.

21 Q So in removing the knife, were you careful to leave the
22 position of the hand as much as you could -- did you have to
23 alter the position of the hand in taking the knife into
24 evidence?

25 A No, ma'am. I don't think the hand moved much at all,

1 if it did just a very small amount.

2 Q So you did not have to manipulate the fingers at all?

3 A No, ma'am, not at all.

4 Q Okay. What position were the fingers in in relation to
5 the knife before you collected the knife?

6 A May I refer back to the picture?

7 Q Yes, please do, but please testify from your memory.

8 A Yes, ma'am. The knife was on the victim's right thigh
9 and it was in between his -- the inside of his right thumb
10 and his pointer finger with his other fingers kind of being
11 in close proximity.

12 Q And were they extended out or folded?

13 A They weren't into a ball, they were just kind of folded
14 in slightly.

15 Q Okay. Now, you collected other items of evidence as
16 well, correct?

17 A Yes, ma'am.

18 Q There was a knife with a sheath and a table near the
19 bed; is that right?

20 A Yes, ma'am, on the right side of the bed.

21 Q There was a .38 -- or there was a revolver or handgun
22 in the kitchen, correct?

23 A Yes, ma'am, on the counter to the left of the stove.

24 Q And that was collected, correct?

25 A Yes, ma'am, I collected it.

1 Q And there were some bullets there with it and a
2 cartridge, a shell casing, correct?

3 A Yes, ma'am, that's correct.

4 Q Okay. And State's Exhibit 11, is that a photograph of
5 the gun that was collected?

6 A Yes, ma'am.

7 Q And that you placed in evidence?

8 A Yes, ma'am.

9 Q But that picture does not have the bullets and the
10 shell casing, correct?

11 A No, ma'am, it does not.

12 Q All right. But again, Investigator Taylor was with you
13 as you collected all of these items and he was taking
14 pictures, correct?

15 A Yes, ma'am.

16 Q And you placed them in evidence?

17 A Yes, ma'am, I did.

18 Q I want to ask you about your gloves. You've already
19 stated that prior to collecting items from the area of the
20 victim's body that you put on a new set of gloves; is that
21 correct?

22 A Yes, ma'am, that's correct.

23 Q And so prior to collecting the knife you put on a new
24 set of gloves?

25 A I did.

1 Q What did you do after, in terms of gloves, after you
2 collected the knife?

3 A After we collected the knife and then our next --
4 again, like I testified, the next area of interest was the
5 victim's right pants pocket. I switched gloves in between
6 collecting the knife and the items out of his right pants
7 pocket.

8 Q And when you say you put on a new pair of gloves before
9 the knife and then afterwards you switched, did you put on a
10 new pair of gloves again?

11 A Yes, ma'am. After we got the contents of the right
12 pants pocket out I switched gloves again and collected
13 things out of the left pants pocket.

14 Q And these are rubber latex gloves?

15 A They're nitrile gloves, yes, ma'am.

16 Q What is that?

17 A It adds a little bit different level of chemical
18 resistance, helps to avoid accidental exposure to drugs.

19 Q And when you say a new pair of gloves, are you
20 referring to like new out of the box never been used?

21 A That's correct.

22 Q So they're not reused from crime scene to crime scene.

23 A Oh, no, ma'am.

24 Q When you continued collecting the items from the right
25 pocket, did you -- after collecting the EGO pouch, did you

1 then switch gloves again for the right pocket?

2 A In between collecting the EGO pouch and his money clip
3 I did not.

4 Q Why did not?

5 A Those items were already in the same pocket. They were
6 already co-mingled, I wasn't going to introduce any
7 contaminates to those, they were already in an environment
8 to share evidence.

9 Q And after going through the right pocket, did you move
10 to the left pocket?

11 A I did after I switched gloves.

12 Q And at that time did you, as you say, switch gloves
13 again and put on a new pair of gloves?

14 A Everything that was collected from the left pants
15 pocket was collected with the same pair of gloves.

16 Q Not the same as the right pocket.

17 A That's correct.

18 Q You put on a new pair?

19 A Yes, ma'am.

20 Q And then everything from the left pocket was collected
21 with that new pair of gloves?

22 A Yes, ma'am, that's correct.

23 Q And again, the reason they weren't changed for the
24 items within the left pocket was because those items are
25 co-mingling?

1 A Yes, ma'am, they are.

2 Q So they already would have the same environment.

3 A Yes, ma'am.

4 Q All right. Were there some other areas in the house
5 where there were what y'all call RBS identified?

6 A Yes, ma'am.

7 Q And RBS stands for?

8 A It stands for reddish brown stains. We usually use
9 that designation for something we think is blood but it
10 hasn't been tested yet, so we don't call it blood, we don't
11 make that assumption, but it appeared to be blood.

12 Q And did you later determine that those items of RBS
13 that appeared to be blood, were those like droplets or
14 smears?

15 A There were different shapes, there were drops, there
16 were transfers and smears, there was blood and blood
17 spatter.

18 Q And that was outside of the bedroom where the victim's
19 body was located?

20 A It was.

21 Q And did you later make a determination that these other
22 droplets of blood were not related to this crime scene?

23 A We had already begun to believe there wasn't any
24 relation to the blood stains that we were seeing based on
25 the characteristics of the stains, and then when Ms. Wallace

1 was able to get --

2 MR. PHILLIPS: Objection, it's going to be a hearsay
3 statement.

4 THE COURT: Overruled at this point in time. Go ahead.

5 A When Ms. Wallace was able to get back on scene we had
6 the chance to ask her about the blood and she --

7 MR. PHILLIPS: Objection.

8 THE COURT: Overruled.

9 A She told us at that point that Brent --

10 THE COURT: Sustained.

11 Q Based upon what she told you you still swabbed those
12 areas, correct?

13 A We had swabbed them prior to her coming back.

14 Q Okay. But at that time it was your opinion that they
15 were not related to this crime scene?

16 A Yes, ma'am.

17 Q To this incident?

18 A That's correct.

19 Q I would like to show you another photo.

20 MS. COLLINS: Ask that this be marked as State's
21 Exhibit 51.

22 Q Do you recognize that photograph?

23 A Yes, ma'am.

24 Q What's that a picture of?

25 A This is a pill bottle that was found, I believe, in